

Attachment 6

Council Report and Resolution, 9 December 2014

ORDINARY MEETING

Meeting Date: 09 December 2014

Item: 239 CP - Permissibility of Rural "Secondary Dwellings" and "Detached Dual Occupancy" in the Hawkesbury Local Government Area - (95498, 124414)

REPORT:**Executive Summary**

The purpose of this report is to discuss options for making "secondary dwellings" and detached dual occupancy (DDO) development types permitted within the rural zones of the Hawkesbury area under the Hawkesbury Local Environmental Plan (LEP 2012). The current provisions of the Hawkesbury's Local Environmental Plan 2012 (LEP 2012) prohibit both "secondary dwellings" and "detached dual occupancy" development in rural and environmental zones. The previous Plan, LEP 1989, also had the same prohibitions in place. This report responds to various requests relating to this matter from councillors.

Based on previous council reports, briefings, and resolutions, the options discussed in this report are as follows:

1. Locational criteria for permitted "secondary dwellings".
2. Citywide permissibility of "secondary dwellings" in all rural and environmental zones.
3. Locational criteria for permitting "detached dual occupancy".
4. Citywide permissibility of "detached dual occupancy" in all rural and environmental zones.

The report recommends that both Option 1 and Option 3 be pursued that involves a planning proposal being prepared that seeks to amend Clause 2.5 of Local Environmental Plan 2012 to permit "secondary dwellings" and "detached dual occupancy" within certain rural areas and zones.

The report also recommends that accompanying development controls (via a new DCP chapter) and a contributions plan (a new Section 94 Plan) be prepared.

Further, the report suggests that an amendment to Council's enforcement policy include a 12 month moratorium on orders after the gazettal of a planning amendment. This will assist with the regulation of unauthorised development and to encourage the submission of development applications for converting existing unauthorised land uses or buildings to either "secondary dwellings" or "dual occupancy" development.

Background

There have been a variety of discussions at Council meetings relating to dual occupancy and these include:

On 26 June 2012, Council considered a Notice of Motion and then a subsequent report and briefing on the following:

"That a report be submitted to Council regarding the possible amendment of the Hawkesbury Local Environmental Plan to incorporate provisions, similar to those utilised by The Hills and Penrith City Councils, allowing second dwellings on appropriately sized lots and the possible implementation of an associated infrastructure levy where a second dwelling is approved to contribute to the cost of upgrading infrastructure, including roads, affected by such approvals."

On 24 June 2014, a report on the "Progress and Review of Hawkesbury Residential Land Strategy" was considered and Council resolved:

ORDINARY MEETING

Meeting Date: 09 December 2014

"That:

1. *The areas identified in the Hawkesbury Residential Land Strategy for large lot residential investigation be mapped to align with cadastral boundaries and form an addendum to that Strategy.*
2. *The investigation area for Kurmond identified by Council on 5 February 2013 be reviewed and be the first area to have a development/structure plan (as described in the report) prepared.*
3. *A report be brought back to Council in September 2014 identifying priority areas for the preparation of structure plans and Section 94 Plans.*
4. *Future planning proposals for residential development must be consistent with any structure plan and/or Section 94 Plan prepared for the locality. If no such plan is in place the applicant is to work with Council to prepare same as part of the planning proposal. Existing planning proposals currently submitted to Council will continue to be processed.*
5. *A Voluntary Planning Agreement Policy, which includes a template agreement and Clauses, be drafted and reported to Council for consideration.*
6. *Existing Council Policies in relation to development be reviewed to be consistent with the Hawkesbury Residential Land Strategy.*
7. *The suggested action for the introduction of Second dwellings on rural properties as outlined in this report be commenced and reported back to Council in the fourth quarter of 2014.*
8. *Once the addendum mentioned in part 1 of the resolution has been added, that the Hawkesbury Residential Land Strategy be placed on public exhibition to allow the Community to comment.*
9. *The review of the Hawkesbury Residential Land Strategy be referred to a Councillor Briefing Session."*

In response to the resolution above, on 7 October 2014 a Councillor Briefing Session was held about the Residential Land Strategy Review.

At the Ordinary Meeting of 28 October 2014, Council considered a Notice of Motion from Councillor Porter as follows:

"Council amend the Hawkesbury LEP 2012 in the following manner to permit detached dual occupancies in certain rural and environmental zones with an area of two hectares or greater:

1. *Dual Occupancy (detached) as currently defined in the LEP be permitted with consent in the following zones:*
 - *RU1 Primary Production*
 - *RU2 Rural Landscape*
 - *RU4 Primary production small lots*
 - *E3 Environmental Management*
 - *E4 Environmental Living.*
2. *Insert the following additional clause:*

Dual Occupancies (detached) in certain rural and environmental zones.

ORDINARY MEETING**Meeting Date: 09 December 2014**

- a) *The objective of this clause is to ensure that effluent generated by dual occupancies is managed on-site to protect waterways and the amenity of the adjoining lots.*
- b) *This clause applies to land in the following zones:*
 - *RU1 Primary Production*
 - *RU2 Rural Landscape*
 - *RU4 Primary production small lots*
 - *E3 Environmental Management*
 - *E4 Environmental Living.*
- c) *Development consent must not be granted for a dual occupancy detached on a lot to which this clause applies unless the lot has an area of at least two hectares.*
- d) *Development consent must not be granted for the erection of more than two dwellings on a lot to which this clause applies.*
- e) *Development consent must not be granted for the subdivision of a dual occupancy on a lot to which this clause applies into a strata, company or community title."*

In relation to this Motion Council resolved the following:

"That this Notice of Motion be included in the report on detached dual occupancies on certain rural properties to be brought to Council in December 2014."

This report seeks to consider that option as well as detail alternative approaches for consideration.

At the Human Services Advisory Committee meeting of 6 November 2014, the Committee resolved:

"That staff prepare a report to the Committee on the provision of affordable rental housing and that report be subsequently reported to Council."

Whilst this matter did not arise from the discussion about dual occupancy development at the Committee level, both affordable housing and housing affordability have been raised by Council during debates and briefings on dual occupancy.

It should be noted that affordable housing and housing affordability are not issues that would drive the permissibility of dual occupancy in rural areas as they are very separate issues that need careful consideration. For that reason this issue will not be addressed in this report. The abovementioned report is expected to be submitted to the Committee in the first half of 2015.

Consultation

The issues raised in this report do not trigger the community consultation requirements of Council's Policy. However, should Council resolve to proceed to prepare a planning proposal and accompanying changes to the Residential Land Strategy, the DCP, a draft development (S94) Contributions Plan and an amendment to Council's enforcement policy, there will be a separate report to Council proposing a community engagement strategy for those processes.

What is the Difference Between a "Secondary Dwelling" and "Dual Occupancy?"

Both secondary dwellings and dual occupancy involves two separate, self-contained permanent dwellings for permanent residents and each has their own kitchen, bathroom and laundry. However the size and scale of these dwellings are quite different as defined in LEP 2012.

ORDINARY MEETING

Meeting Date: 09 December 2014

A "secondary dwelling" only has a maximum floor space of a 60 square metres or no more than 10% of the total floor area of the principal dwelling whichever is greater (e.g. a one bedroom granny flat). Currently "secondary dwellings" are only permitted within residential areas under State Environmental Planning Policy (Affordable Rental Housing) 2009 and LEP 2012.

Secondary dwellings are designed to complement the design of the principal dwelling and be subservient to the principal dwelling in terms of visual bulk and scale (e.g. siting, height, setbacks, materials, roof pitch). A secondary dwelling can be attached or detached as shown below.

A secondary dwelling shares the same water meter and sewer connection as the principal dwelling and is rated as one land holding so no additional garbage service is provided or charged. Subdivision of "secondary dwellings" on residential land is prohibited by the SEPP.

A "dual occupancy" involves two separate dwellings, has no maximum floor space and both dwellings can be of any floor space and any number of bedrooms. In dual occupancy development where an original cottage is retained, the second (new) dwelling is often substantially larger in floor space, number of occupants and number of bedrooms, bathrooms and living areas.

Currently only attached "dual occupancy" (i.e. dwellings that are joined or closely connected) are permitted in the rural and environmental zones under LEP 2012. The Development Control Plan (DCP) requires the appearance of one dwelling to be achieved with an integrated design of the two buildings. In residential zones both attached and detached "dual occupancy" is permitted with no floor space limits under LEP 2012.

Any rural "dual occupancy" is required to have individual water tanks and onsite systems for each dwelling but the development would be rated as one land holding. An additional garbage service is provided if requested and charged accordingly. Subdivision of an attached dual occupancy is prohibited.

What is not a "secondary dwelling" or "detached dual occupancy"?

- An "attached dual occupancy" - two dwellings joined by a common wall (or floor) or by a connection no more than six metres apart
- The approved temporary use of a "farm building" whilst building a "dwelling" that is converted back to a "farm building" later on (this is a staged development approval to ensure there is only one "dwelling" on the land at any time)
- Dwelling "alterations and additions" to create more living areas or bedrooms but does not include second kitchen, laundry and separate entry.
- An approved "rural workers dwelling"; "rural tourist facility" or "bed and breakfast".
- A structure that is currently being used for residential purposes but has not obtained approval.

Existing Statutory Situation - "Secondary Dwellings"

Currently, the construction of a second dwelling, even of small scale (e.g. one bedroom) on a rural or environmental zone would be categorised as an "attached dual occupancy". Hence it would be subject to the full requirements applicable to a dual occupancy development including S94A payments and bushfire requirements etc.

Options for Permitting "Secondary Dwellings" within LEP 2012

- Option 1 - Amend the Land Use Table of LEP 2012 to permit "secondary dwellings" with consent within all rural zones and the E3 and E4 environmental zones.
- Option 2 - Amend "Clause 2.5 - Additional permitted uses for particular land" of LEP 2012 to allow "secondary dwellings" as an additional permitted use in certain areas and circumstances (using locational criteria).

ORDINARY MEETING

Meeting Date: 09 December 2014

Option 1 - Secondary dwellings permitted in all rural and environmental zones	Option 2 - Secondary dwellings permitted in certain areas and circumstances
The Hills, Penrith and some other councils use this option.	This is a new approach subject to consultation with the Department of Planning and Environment.
Proliferation of detached dual occupancy throughout the rural and environmental zones in an ad-hoc fashion.	Proliferation is controlled with the identification of selected land within a certain distance of rural village/neighbourhood centres, transport and facilities.
May adversely affect the rural character and rural resource lands.	Does not affect the rural character.
There may be an unreasonable demand for additional services and facilities.	There may not be a large demand.
Conflicts with the Residential Land Strategy which aims to concentrate rural residential development within and around existing rural villages and neighbourhood centres. i.e., requires an amendment to the Strategy as resolved on 24 June 2014.	Generally consistent with the Residential Land Strategy, but may still require an amendment to the Strategy as resolved on 24 June 2014.
Requires an amendment to the existing Land Use Table and land use definitions.	Requires an amendment to Schedule 1 and inclusion of an additional LEP map layer to identify land suitable for 'detached dual occupancy'.

Table 1 - Implications for Permitting "Secondary Dwellings" within Rural and Environmental Zones

Recommendation for "Secondary Dwellings" in Rural Areas

It is recommended that:

- "Clause 2.5 of LEP 2012 be amended with an accompanying map layer to permit "secondary dwellings" within the RU1, RU2, RU4, RU5 and E3 and E4 zones on a minimum lot size of 2 hectares subject to development consent.
- Add the words "secondary dwelling" into the RU1, RU2, RU4, E3 and E4 zones of LEP 2012 as required to make that land use permitted with development consent. The definition is already included in LEP 2012.

Options for Permitting Detached Dual Occupancy within Rural and Environmental Zones

Option 3 - Amend "Clause 2.5 - Additional permitted uses for particular land" of LEP 2012 to allow "detached dual occupancy" as an additional permitted use in certain areas and circumstances (using locational criteria).

Option 4 - Amend the Land Use Table of LEP 2012 to permit "detached dual occupancy" with consent within all rural zones and the E3 and E4 environmental zones.

Option 3 - Location criteria for Detached Dual Occupancy

In Council's report of 24 June 2014 regarding the Residential Land Strategy (RLS), the following information was included:

ORDINARY MEETING

Meeting Date: 09 December 2014

"...It is suggested that investigation be undertaken into permitting detached dual occupancy dwellings in a variety of locations that are defined by certain criteria that is set in the RLS. In this regard the criteria used for the consideration of large lot residential proposals, i.e. Section 3.3.8 Role of Rural Residential Development, should be used to consider the permissibility of detached dual occupancy. The suggested criteria proposed is the same as in the above mentioned Section 3.3.8 with changes shown in italics (NOTE: the following criteria is a suggestion only and is subject to further consultation):

All future detached dual occupancy residential development in rural locations must:

- *Be able to have separate onsite sewerage disposal systems*
- *Cluster around or on the periphery of villages*
- *Cluster around villages with services that meet existing neighbourhood criteria services as a minimum (within 1.5 – 2.0 km radius)*
- *Address environmental constraints and with minimal environmental impacts and*
- *Be within the servicing capacity of the rural village*
- *Have a minimum allotment size of 2.0ha.*

If outside the above criteria and is located on a heritage listed property, detached dual occupancy permitted where attachment to the main dwelling would be detrimental to the significance of the heritage item.

Suggested Action

That when mapping the location for rural residential development proposals as an addendum to the RLS an additional map, accompanied by defined criteria as mentioned above, be prepared to indicate the locations where detached dual occupancies can be considered for rezoning.

Detached Dual Occupancy development should only be permitted once an appropriate infrastructure contribution plan (Section 94 Plan) is in place. Additionally, whilst Council has existing Policies to address retrospective development, there is a need for Policy/procedure clarification to guide how existing illegal dual occupancy dwellings, if found, will be addressed in relation to building controls (BCA matters), compliance action and contribution payments by these developments..."

Council resolved at that time that the suggested action for the introduction of second dwellings (detached dual occupancies) on rural properties as outlined in that report be commenced and reported back to Council in the fourth quarter of 2014. This report now discusses these matters in more detail below.

Comment:

Separate Onsite Sewerage Disposal Systems

The increase from a single dwelling to a dual occupancy increases the number of occupants on a site and therefore the demand on a disposal system. Typically original on-site wastewater systems are not designed to accommodate significantly larger dwellings and a doubling of occupants. For a dual occupancy (particularly larger dwellings with more bedrooms) new separate systems would need to be required to be installed to ensure that potentially adverse environmental impacts in sensitive rural areas are avoided or at least the risk is minimised.

Cluster around or on the Periphery of Villages

This is consistent with the identified areas for growth around existing centres nominated in the Residential Land Strategy. To change this approach will require a change to the Residential Land Strategy and also Council would need to justify in its planning proposal to the Department of Planning and Environment a strategic rationale for increasing housing in rural areas (away from rural villages) that would be isolated from services, facilities and would also need to meet bushfire, flooding and rural access requirements. This is because housing targets and housing diversity options for the Hawkesbury are already planned for within the Residential Lands Strategy and by already permitting attached dual occupancy.

ORDINARY MEETING

Meeting Date: 09 December 2014

Cluster around Villages with Services that Meet Existing Neighbourhood Criteria Services as a Minimum (within 1.5 - 2.0 km radius)

The distance from services is a critical planning consideration for future development in areas that have limited public transport. Housing affordability and affordable housing are intrinsically linked to these criteria. In this regard, should a detached dual occupancy be developed on a rural property it is not likely to have access to public transport, will be required to have a private vehicle and is likely to have medium to high rental costs (due to the amenity of the 2 hectare property) as Council does not have any control over the rents charged for these developments. It is clear that the suggestion of "1.5km -2.0km radius" can be amended. However the proximity of services is the most important factor in locational criteria.

The location criteria is also an important consideration in relation to future growth options. The permissibility of dual occupancy development in an ad-hoc fashion will also limit medium to long term growth options. In this regard, uncontrolled development will limit future growth patterns or may "sterilise" land in the longer term for future development options.

Address Environmental Constraints and with Minimal Environmental Impacts and be within the Servicing Capacity of the Rural Village

This is consistent with the identified areas for growth around existing centres nominated in the Residential Land Strategy.

Have a Minimum Allotment Size of 2.0ha.

Presumably the minimum lot size of 2 hectares was selected as being of sufficient size to cater for most onsite wastewater systems, however it is suggested that the additional subclauses be added to address other potentially significant environmental matters that need to be considered. A proposed wording is:

"The objective of this clause is to ensure that:

- effluent generated by dual occupancies is managed on-site to protect waterways and the amenity of the adjoining lots; and*
- sufficient evacuation for major bushfire events and 1:100 flood events is provided; and*
- legal access to a public road is provided; and*
- vegetation removal to accommodate the curtilage of a dwelling/s and outbuildings is minimised; and*
- additional demand on emergency services is minimised."*

Option 4 - Amend the land use table in LEP 2012 to permit "Detached Dual Occupancy" in all rural zones subject to a minimum lot size of 2 hectares

Option 3 - Detached dual occupancy permitted in all rural and environmental zones	Option 4 - Detached dual occupancy permitted in certain areas and circumstances
The Hills and Penrith permit detached dual occupancy. However Blacktown and Camden only permit attached dual occupancy in the same fashion as Hawkesbury.	This is a new approach subject to consultation with the Department of Planning and Environment.
Proliferation of detached dual occupancy throughout the rural and environmental zones in an ad-hoc fashion.	Proliferation is controlled with the identification of selected land within a certain distance of rural village/neighbourhood centres.
May adversely affect the rural character and rural resource lands.	Does not affect the rural character.
There may be an unreasonable demand for additional services and facilities.	There may not be a large demand.

ORDINARY MEETING

Meeting Date: 09 December 2014

Option 3 - Detached dual occupancy permitted in all rural and environmental zones	Option 4 - Detached dual occupancy permitted in certain areas and circumstances
Conflicts with the Residential Land Strategy which aims to concentrate rural residential development within and around existing rural villages and neighbourhood centres, i.e., requires an amendment to the Strategy as resolved on 24 June 2014.	Generally consistent with the Residential Land Strategy, but may require a minor amendment.
Requires an amendment to the existing Land Use Table and land use definitions.	Requires an amendment to Schedule 1 and inclusion of an additional LEP map layer to identify land suitable for 'detached dual occupancy'.

Table 2 - Implications for Permitting "Detached Dual Occupancy" within rural and environmental zones

Aligning Detached Dual Occupancy with Minimum Lot Sizes for Subdivision

The current minimum lot sizes for the Hawkesbury are shown in Table 3. For comparison with other councils see Appendix 1. The Hills Council approach aligns the lot size for "detached dual occupancy" with the zoning. There is no specified minimum lot size for "secondary dwellings" as they are considered under the minimum lot size provisions for dwellings under Clause 4.1A. Whereas Camden Council's approach is similar to Hawkesbury in prohibiting "detached dual occupancy" and "secondary dwellings in rural areas."

The previous planning provisions that applied in Penrith (under Penrith LEP 201 (Rural Lands)) required a minimum lot size of 2ha for the construction of a dwelling. The amended planning provisions for Penrith's new standard template LEP maintain this requirement and extend the 2 hectare minimum lot size to the construction of a "dual occupancy" or "secondary dwelling".

To simply transfer the 2 hectare minimum to the Hawkesbury area for every rural and environmental zone would actually be inconsistent with the Penrith approach as the 2 hectare minimum is currently the only size applicable. However, the only 2 hectare minimum lot size in the Hawkesbury is in E3 Environmental Management zone (see Table 3).

RU1 Primary Production	RU2 Rural Landscape	RU4 Primary production small lots	E3 Environmental Management	E4 Environmental Living
AB3 40 hectares including Bilpin, Putty, St Albans, Upper McDonald, Lower McDonald, Upper and Lower Colo, part of Wiseman's Ferry, part of Leets Vale, Kurrajong Heights, part of Yarramundi,	AB1 10 hectares including Lower Portland, East Kurrajong, Kurmond, Tennyson, Glossodia (rural areas), part of Agnes Banks, Richmond Lowlands, Cornwallis, Ebenezer	Z2 4 hectares including Blaxland's Ridge, Grose Vale, Grose Wold	Z1 2 hectares Including Kurrajong Hills, Bowen Mountain, part of Agnes Banks, part of Lower McDonald, part of Leets Vale, Cattai, Maraylya, Wilberforce (rural areas)	AF 400 hectares Including Kurrajong Hills (The Islands)

Table 3 - Current Minimum Lot sizes for Subdivision in Hawkesbury LEP 2012

ORDINARY MEETING

Meeting Date: 09 December 2014

Recommendation for “Detached Dual Occupancy” in Rural Areas

As discussed above, a 2 hectare minimum does not correlate with the minimum lot sizes already chosen as being appropriate for the Hawkesbury area for dwellings. Hence, this approach is not appropriate. Instead it is proposed that the location criteria and Hawkesbury minimum lot sizes be used and that:

- a) *“Detached dual occupancy” only be permitted consistent with the minimum lot size for a dwelling in that zone.*
- b) *“Attached dual occupancy” continue to be permitted in all zones.*
- c) *Add the words “dual occupancy (detached)” into the RU1, RU2, RU4, E3 and E4 zones of LEP 2012 as required to make that land use permitted with development consent. The definition is already in LEP 2012.*

Development Controls for “Secondary Dwellings” and “Detached Dual Occupancy”

Permissibility is, however, only one step in the process of securing development consent. All development applications must meet the zone objectives and be assessed against the detailed development controls contained in Hawkesbury Development Control Plan and the matters identified by Section 79C of the *Environmental Planning and Assessment Act 1979*.

Example - Penrith City Council - Design & Siting of Rural Detached Dual Occupancy

Section D1 Rural Land Use within the Penrith DCP requires design and siting of rural detached dual occupancies to be:

1. *In close proximity to and associated with the existing dwelling on the site*
2. *Be behind the existing dwelling house*
3. *similar or sympathetic design to the existing dwelling on the site*
4. *detached with a minimum separate of 10m*
5. *the second dwelling must be significantly smaller than the existing dwelling (by approximately 50% in area)*
6. *similar external finishes*
7. *access is limited to one driveway only with shared access*
8. *one electricity line and meter serving both properties*
9. *minimum site area of 2 hectares*
10. *existing vegetation is retained*

Comment:

Development controls of a similar nature could be considered for Hawkesbury, however, currently attached dual occupancy is not subject to these types of restrictions.

The controls should be developed so that there are consistent controls for attached and detached dual occupancy development. In a review of a number of other Councils use of Local Provisions in their LEPs it is noted that they have added a clause to specifically facilitate dual occupancy development in rural areas.

Recommendation

That Council staff develop an additional local provisions clause for LEP 2012 to permit dual occupancy development in rural areas. This clause would then be used in the discussions with the Department of Planning and Environment. The clause will need to be specific to the Hawkesbury and would include the following:

- Planning considerations for local conditions relevant to the Hawkesbury such as infrastructure (including emergency services), flooding, bushfire, access, vegetation removal, on-site wastewater and heritage, and

ORDINARY MEETING

Meeting Date: 09 December 2014

- Introduce location specific controls into the LEP via a map for "Lot sizes for dual occupancy development map",
- Subject to discussion with the Department, there may be a need to introduce provisions for development to be limited to an "Existing Holding" (A holding as defined at a certain date, as this is contained in some other Council dual occupancy provisions). Should that be required the details would be reported back to Council prior to formalising.

Funding for Infrastructure

Infrastructure includes drainage, roads, bridges, intersections, footpaths, roundabouts, community and cultural facilities such as neighbourhood centres and libraries and open space such as parks and playground equipment. New development (and the new residents) contributes to the demand on existing infrastructure in an incremental but cumulative way.

Typically councils provide for new infrastructure via the collection of a development contribution (a cash levy) on each additional dwelling or new lot. Currently in the Hawkesbury Local Government Area this is only done when the value of the new dwelling exceeds \$150,000. This has implications for the consideration of allowing existing buildings to be converted to dual occupancy and also for small scale dwellings to be used as a detached dual occupancy dwelling. Essentially under the current contributions plan virtually no additional funds could be collected for infrastructure as most conversions and small "granny flat" dwellings would fall below this threshold.

In this regard, the appropriate contributions for new, additional dwellings, including the conversion of existing structures whether legal or unauthorised, would need to be developed to ensure that these additional dwellings, and residents, make appropriate contributions to the provision of infrastructure.

Development Contributions Plans under Section 94 and Section 94A of the *Environmental Planning and Assessment Act 1979*

The purpose of development contributions (under either section) is, amongst other things, to ensure adequate public facilities are provided for additional development and prevent the existing community being financially burdened by having to provide extra public amenities and services required as a result of additional development.

The S94A levies do not apply in addition to S94 levies. The S94 Plans apply instead of S94A plans unless the contribution required to be paid under the S94 Plans is less than 1% of the value of the works in the Development Application (in which case the S94A Plan applies). If the plans are contradictory on how they relate to each other, the most recently adopted plan shall take precedence.

It is not possible to charge both S94 and S94A levies to the same development or property.

If a contribution has already been paid under a S94 Plan, then no contribution is payable on that portion of the land already levied and paid.

Hawkesbury City Council***Section 94 Contributions Plan 2008 (not currently applied to new development LGA wide)***

This Plan was a citywide plan (now only applies to Pitt Town and some minor other areas) applying to forms of development and had categories for:

- Community facilities
- Recreation facilities
- Park improvements
- Car parking
- Intersection improvements
- Road maintenance

ORDINARY MEETING**Meeting Date: 09 December 2014**

The Plan identified different rates for different 'catchment' areas across the LGA and applied different rates according to the nature of capital works required. It was prepared in conjunction with a comprehensive capital works program for which the levies contribute in a cumulative fashion over time.

Comment:

This type of Plan is useful for collection in relation to distinct catchment areas. In this regard, should detached dual occupancies be permitted more broadly, a S94 Plan would be the more appropriate contributions plan to apply.

Section 94A Plans

Section 94A Development Contributions Plan 2006 is a citywide plan that is applied based on the costs of construction works for new development. S94A levies paid to council are applied towards meeting the costs of provision or augmentation of new public facilities. A schedule of proposed facilities is included in the plan and includes toilets, community buildings, parks structures and landscaping.

- The existing plan does not provide for traffic related works such as upgrades intersections, road widening, traffic lights or roundabouts.
- The plan does not apply to dwellings or works with a value of less than \$150,000.

Comment:

This type of plan is useful for low to no growth areas and when the value of works exceeds the threshold amount. If the development falls below the threshold it may still have an impact on resources but no levy can be made.

Voluntary Planning Agreements

Under Section 93F of the *Environmental Planning and Assessment Act 1979*, Hawkesbury has agreed to Voluntary Planning Agreements (VPAs) for specific urban release areas (e.g. North Richmond and Glossodia).

Comment:

VPAs are not relevant to small, incremental developments as they cannot individually provide a valuable item of sufficient public benefit (e.g. bridge, road works) to warrant an agreement.

Other Development Contribution Options - Comparison with Penrith Council

Penrith Council has 4 development contributions plans that are citywide as well as more than 10 other contributions plans related to distinct locations for release areas for housing business and industrial release areas as well as separate plans for both Penrith CBD and St Marys CBD.

The citywide contribution plans are applied to all dual occupancy in both residential and rural areas (outside the new housing release areas) for the following categories:

1. Open space
2. Cultural facilities
3. Footpaths

To calculate the contribution the plan applies a rate of 3.1 persons for each additional dwelling. A credit is given for an existing dwelling hence the contribution is only payable on the new dwelling (regardless of size/number of bedrooms).

ORDINARY MEETING

Meeting Date: 09 December 2014

Voluntary Planning Agreements

Under Section 93F of the *Environmental Planning and Assessment Act 1979*, Penrith City Council has multiple Voluntary Planning Agreements (VPAs) for specific urban release areas and large developments.

Works-in-Kind

Works in kind (WIK) means the developer doing work or providing something in lieu of a cash contribution that is levied in a S94 Plan. This is typically only used for larger development and major housing release areas and is not relevant to individual sites for "secondary dwellings" or "dual occupancy".

Conformance to the Hawkesbury Community Strategic Plan

The proposal is consistent with the Looking After People and Places Direction Statement:

- Offers residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury
- Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury
- Have development on both sides of the river supported by appropriate physical and community infrastructure

and is also consistent with the nominated strategy in the Hawkesbury Community Strategic Plan being:

- Encourage affordable, diverse and quality housing solutions in serviced areas

Financial Implications

The preparation of a planning proposal could be accommodated within existing staff resources. However, the preparation of a developer contributions plan would require additional funds to provide resources for the plan and the supporting capital works program to be developed (as discussed in a separate report in the business paper on this matter). Ongoing specialist resources (staff, auditors, electronic systems) would be required to monitor the contributions plan, contributions register and allocation of funds.

Additional development assessment staff resources would be required to handle enquiries and processing of development applications and building upgrade requirements for both new detached dual occupancy applications and conversion of existing buildings.

In addition, after the 12 month moratorium there would need to be temporary additional regulatory staff resources for enforcement of unauthorised dual occupancy development.

Conclusion

In preparing standard template LEPs, the NSW Department of Planning and Environment (DPE) has indicated that if a council proposes to allow new dwellings within rural zones that early discussion with the relevant State Government officers should occur well before a planning proposal proceeds to the gateway.

The position that is discussed in this report in regards to the development of secondary dwellings and dual occupancies in the Hawkesbury signals a significant policy change. It is important that council is sure that the provisions of the LEP will result in the intended outcome, and is aware of, and accepts any potential outcomes that cannot be managed through the LEP/DCP and development contributions (S94) provisions.

ORDINARY MEETING

Meeting Date: 09 December 2014

In addition, particularly in the process to authorise the apparent unauthorised development in rural areas, conditions of development consent may be applicable in relation to development contributions (S94) and may require upgrades to existing buildings to current Building Code of Australia (BCA), BASIX and other requirements.

Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

RECOMMENDATION:

That:

1. The report regarding the options for amending Hawkesbury Local Environmental Plan 2012 to permit "secondary dwellings" and "detached dual occupancy" be received and noted.
2. Council officers prepare a concept planning proposal for discussion with the Department of Planning in February 2015 based on the recommendations in this report for both Option 1 and Option 3 to amend Local Environmental Plan 2012 to permit 'secondary dwellings' and "detached dual occupancy" within certain rural zones.
3. Should the Department of Planning and Environment support the preliminary discussions about the concept planning proposal, a planning proposal be prepared and be referred to the Department for a gateway determination.
4. Council also amend the Residential Land Strategy to address the Policy change to permit Secondary Dwellings and Detached Dual Occupancy as described in this report.
5. A further report be presented to Council in the first quarter of 2015 providing an update on the status of the planning proposal, Development Contributions (Section 94) Plan, DCP chapter and Enforcement Policy chapter preparation.

ATTACHMENTS:

AT - 1 Permissibility of Rural "Secondary Dwellings" and "Dual Occupancy"

ORDINARY MEETING
Meeting Date: 09 December 2014

AT - 1 Permissibility of Rural "Secondary Dwellings" and "Dual Occupancy"

Hawkesbury City Council

CURRENT

Hawkesbury LEP (EXISTING)	RU1 Primary Production	RU2 Rural Landscape	RU4 Primary production small lots	E3 Environmental Management	E4 Environmental Living
Secondary Dwellings	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
ADO	Permitted	Permitted	Permitted	Permitted	Permitted
DDO	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Minimum Lot Size of DDO	40 hectares	10 hectares	4 hectares	40 hectares	400 hectares* (The Islands)

PROPOSED

Hawkesbury LEP (Option 1&3)	RU1 Primary Production	RU2 Rural Landscape	RU4 Primary production small lots	E3 Environmental Management	E4 Environmental Living
Secondary Dwellings	Permitted	Permitted	Permitted	Permitted	Permitted
ADO	Permitted	Permitted	Permitted	Permitted	Permitted
DDO	Permitted	Permitted	Permitted	Permitted	Permitted
Minimum Lot Size	40 hectares	10 hectares	4 hectares	40 hectares	400 hectares* (The Islands)

Comparison with other Councils

Penrith LEP 2010 (*cl 6.8)	RU1 Primary Production	RU2 Rural Landscape	RU4 Primary production small lots	E3 Environmental Management	E4 Environmental Living
Secondary Dwelling	Permitted*	Permitted*	Permitted*	Permitted*	Permitted*
ADO	Permitted*	Permitted*	Permitted*	Permitted*	Permitted*
DDO	Permitted*	Permitted*	Permitted*	Permitted*	Permitted*
Minimum Lot Size SD, ADO or DDO*	2 hectares	2 hectares	2 hectares	2 hectares	2 hectares

* "Clause 6.8 Dual occupancies and secondary dwellings in certain rural and environmental zones

- (1) The objective of this clause is to ensure that effluent generated by dual occupancies or secondary dwellings is managed on site to protect waterways and the amenity of adjoining lots.
- (2) This clause applies to land in the following zones:
 - (a) RU1 Primary Production,
 - (b) RU2 Rural Landscape,
 - (c) RU4 Primary Production Small Lots,

ORDINARY MEETING

Meeting Date: 09 December 2014

- (d) E3 Environmental Management,
(e) E4 Environmental Living.

- (3) Development consent must not be granted for a dual occupancy on a lot to which this clause applies unless the lot has an area of at least 2 hectares.
- (4) Development consent must not be granted for a secondary dwelling on a lot to which this clause applies unless the lot has an area of at least 2 hectares or it can be demonstrated that the existing on-site effluent disposal system has sufficient capacity for the secondary dwelling.
- (5) Development consent must not be granted for the erection of more than 2 dwellings on a lot to which this clause applies.
- (6) Development consent must not be granted for the subdivision of a dual occupancy on a lot to which this clause applies into a strata, company or community title."

Hills LEP 2012	RU1 Primary Production	RU2 Rural Landscape	RU6 Transition	E4 Environmental Living
Secondary Dwellings	Permitted	Permitted	Permitted	Permitted
ADO	Permitted	Permitted	Permitted	Permitted
DDO	Prohibited	Prohibited	Prohibited	Prohibited
Minimum Lot size for DDO	10 hectares	10 hectares	2 hectares	2000 square metres

Camden LEP 2010	RU1 Primary Production	RU2 Rural Landscape	RU4 Primary production small lots	E4 Environmental Living
Secondary Dwellings	Permitted	Permitted	Permitted	Prohibited
ADO	Permitted	Permitted	Permitted	Permitted
DDO	Prohibited	Prohibited	Prohibited	Prohibited
Minimum Lot size for DDO	N/A	N/A	N/A	N/A

oooO END OF REPORT Oooo

ORDINARY MEETING
Minutes: 09 December 2014

MOTION:

RESOLVED on the motion of Councillor Porter, seconded by Councillor Creed.

Refer to RESOLUTION

418 RESOLUTION:

RESOLVED on the motion of Councillor Porter, seconded by Councillor Creed.

That:

1. The report regarding the options for amending Hawkesbury Local Environmental Plan 2012 to permit "secondary dwellings" and "detached dual occupancy" be received and noted.
2. Council officers prepare a concept planning proposal for discussion with the Department of Planning in February 2015 based on the recommendations in this report for both Option 1 and Option 4 (4 ha) to amend Local Environmental Plan 2012 to permit "secondary dwellings" and "detached dual occupancy" within all rural zones and E3 & E4 environmental zones.
3. Should the Department of Planning and Environment support the preliminary discussions about the concept planning proposal, a planning proposal be prepared and be referred to the Department for a gateway determination.
4. Council also amend the Residential Land Strategy to address the Policy change to permit Secondary Dwellings and Detached Dual Occupancy as described in this report.
5. A further report be presented to Council in the first quarter of 2015 providing an update on the status of the planning proposal, Development Contributions (Section 94) Plan, DCP chapter and Enforcement Policy chapter preparation.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

For the Motion	Against the Motion
Councillor Creed	Councillor Conolly
Councillor Ford	Councillor Lyons-Buckett
Councillor Porter	Councillor Rasmussen
Councillor Reardon	
Councillor Tree	
Councillor Williams	

Councillors Calvert, Mackay and Paine were absent from the meeting.

This is Page 15 of the Minutes of the ORDINARY MEETING of the HAWKESBURY CITY COUNCIL held at the Council Chambers, Windsor, on Tuesday, 9 December 2014