

## Planning Services

### Gateway Determination Report

LGA	Coffs Harbour
RPA	Coffs Harbour City Council
NAME	Permit Dual Occupancy (Detached) in the RU2 Rural Landscape Zone
NUMBER	PP_2017_COFFS_004_00
LEP TO BE AMENDED	Coffs Harbour Local Environmental Plan 2013
ADDRESS	LGA wide
DESCRIPTION	LGA wide
RECEIVED	23 October 2017
FILE NO.	14/14550
QA NUMBER	qA421507
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

### INTRODUCTION

#### Description of Planning Proposal

To amend the written provisions of the Coffs Harbour Local Environmental Plan 2013 to permit dual occupancy (detached) development in the RU2 Rural Landscape Zone.

#### Site Description and Surrounding Area

The planning proposal will be applicable to all RU2 Rural Landscape Zoned land within the Coffs Harbour LGA.

#### Summary of Recommendation

It is recommended that the planning proposal should proceed with conditions as it provides for diversity in residential accommodation in RU2 Rural Landscaped Zoned land without compromising the objectives of the zone.

### PROPOSAL

#### Objectives or Intended Outcomes

The planning proposal will:

- Permit dual occupancy (detached) dwellings in the RU2 Rural Landscape Zone with Council consent; and
- Set out matters for consideration such as access, siting, land suitability and potential impacts.

This will provide for an additional form of rural housing for rural land owners that, when correctly implemented, should have limited negative impacts on horticulture, agriculture and other rural land uses.

This will be achieved by amendments to Coffs Harbour LEP 2013 as follows:

- Amend the land use table to the RU2 Rural Landscape zone to delete the word “(attached)” following “dual occupancies”. This has the effect of permitting both attached and detached dual occupancy development with consent in the RU2 zone.
- Including a new local provision (clause 4.2E) that provides objectives for the land use as well as siting and design criteria that Council will consider in determining an application for a detached dual occupancy.

### **Explanation of Provisions**

The draft provision proposed by Council clearly sets out the objectives of the clause and the matters which will be considered and required to be met by proposed development. The draft provisions are as follows:

#### ***Clause 4.2E Erection of dual occupancies (detached) in Zone RU2 Rural Landscape***

*(1) The objectives of this clause are as follows:*

*(a) to ensure that dual occupancy (detached) development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

*(b) to ensure that consent is only granted to development for the purposes of a dual occupancy (detached) if issues such as access, siting, land suitability and potential impacts are addressed.*

*(2) Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU2 Rural Landscape unless the consent authority is satisfied that:*

*(a) the development will not impair the use of the land (or adjacent land) for agriculture or rural industries, and*

*(b) each dwelling will use the same vehicular access to and from a public road, and*

*(c) any dwellings will be situated within 50 metres of each other, and*

*(d) any dwelling will be situated no closer than 200 metres from the boundary of the lot on which it is located, and*

*(e) the land is physically suitable for the development, and*

*(f) the land is capable of accommodating the on-site disposal and management of sewage for the development, and*

*(g) the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

These provisions will be supported by a Development Control Plan. It has been raised with the Council Officer that there appears to be an inference in the DCP that “typically” horticultural uses will require a 200m separation distance and other distances may be considered where circumstances warrant it. This suggests that the distance may be increased or reduced dependent on surrounding landuses. As the LEP specifies a minimum 200m setback, any reduction will require a variation under Clause 4.6. As the 200m standard is not considered a “minimum lot size”, Council may assume the concurrence of the Secretary to vary this standard. Council should monitor the appropriate use of this delegation as it is likely that the maximum 50m separation distance between dwellings together with the 200m separation distance from boundaries may be difficult to meet where one dwelling already exists.

### **Mapping**

The planning proposal does not seek to amend the LEP maps.

## **NEED FOR THE PLANNING PROPOSAL**

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During the process of reviewing the LEP 2013 and DCP 2015, Council investigated the issue of permitting dual occupancy (detached) development in rural zones. As part of Council's Local Growth Management Strategy, Council is developing a Rural Lands Strategy. This involved community consultation on a Rural Lands Issues and Options Summary Paper, which indicated community support to permit dual occupancy (detached) development in the RU2 Rural Landscape Zone. The planning proposal is the only way to change the land use table and provisions of the RU2 Rural Landscape zone on a LGA wide basis.

## **STRATEGIC ASSESSMENT**

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### **State**

The planning proposal is not inconsistent with state planning matters.

### **Regional**

The North Coast Regional Plan 2036 is silent on the specific subject of dual occupancy (detached) development in RU2 Rural Landscape Zone. However, the planning proposal is considered consistent with the Plan's Directions as the proposed provisions specify assessment criteria designed to protect productive agricultural lands (Direction 11), deliver additional accommodation options for rural workers (Direction 22) and provide for the changing housing needs of retiring farmers/landowners involved in successional planning of their farms (Direction 23).

### **Local**

Council has undertaken strategic studies to review its Local Growth Management Strategy. This planning proposal has taken results of the research and consultation at a local level and applied it to the planning proposal. Council updated its Community Strategic Plan (MyCoffs) in 2017 and the planning proposal is consistent with the objectives of the MyCoffs Plan as follows:

A thriving and sustainable local economy	B1.2 We attract people to work, live and visit in the Coffs Harbour local government area
Liveable neighbourhoods with a defined identity	C1.2 We undertake development that is environmentally, socially and economically responsible
A natural environment sustained for the future	C2.2 We use resources responsibly to support a safe and stable climate
Our leaders give us confidence in the future	D1.2 We undertake effective engagement and are informed
We have effective use of public resources	D2.2 We collaborate to achieve the best possible future for all the Coffs Harbour area

## **Section 117(2) Ministerial Directions**

The following Directions apply:

1.2 Rural Zones – The Direction applies as it effects land within an existing rural zone. Attached dual occupancy development are already permissible within the RU2 Rural Landscape Zone. Amending the LEP to permit detached dual occupancy development does not increase the permissible density. No inconsistency exists between the planning proposal and this Direction.

1.5 Rural Lands – The Direction applies as it will affect land within an existing rural zone. The planning proposal is consistent with the Rural Planning Principles of Clause 7 of SEPP (Rural Lands) 2008. The provisions of the draft LEP aim to protect rural areas from inappropriate residential development whilst providing increased opportunity for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities. It is proposed that the Rural Planning Principles will be transferred to this s.117 Direction as part of the Draft SEPP and planning reforms of primary production and rural development. No inconsistency exists between the planning proposal and this Direction.

2.1 Environmental Protection Zones – The assessment criteria proposed in the draft LEP clause will protect and conserve environmental sensitive areas by ensuring development is within the environmental capacity of the land and that it is physically suitable for dual occupancy (detached) development. No inconsistency exists between the planning proposal and this Direction.

2.2 Coastal Protection – The LGA wide planning proposal applies to land located within the coastal zone. The planning proposal does not contain the necessary depth of provisions to be consistent with this Direction, however, the amendment will make no change to the effect the LEP gives to the protection and development of the coastal zone. It is considered that the provisions of the planning proposal that are inconsistent are of minor significance and justified in accordance with the terms of the Direction.

2.3 Heritage Conservation – The planning proposal does not contain provisions to facilitate heritage conservation as required by the Direction. The amendment will not change the effect the LEP gives to items, areas, objects and places of environmental heritage significance and indigenous significance. It is considered that the provisions of the planning proposal that are inconsistent are of minor significance and justified in accordance with the terms of the Direction.

2.4 Recreation Vehicle Areas – The planning proposal does not enable land to be developed for the purpose of recreation vehicles and is consistent with the Direction.

3.2 Caravan Parks and Manufactured Home Estates – The planning proposal is not inconsistent with the Direction as it makes no alteration to the permissibility of caravan parks with the RU2 Rural Landscape Zone.

3.3 Home Occupations – The planning proposal is consistent with the Direction as home occupations remain permissible without consent in RU2 Rural Landscape Zone.

3.6 Shooting Ranges – The planning proposal does not increase the density of development of the land adjoining Shooting Ranges, as dual occupancy (attached) development is already permissible within the zone. The planning proposal seeks to permit dual occupancy (detached) development meeting certain criteria. The planning proposal is consistent with this Direction.

4.1 Acid Sulfate Soils – The planning proposal does not increase intensification of development and is consistent with this Direction.

4.3 Flood Prone Land – The planning proposal does not contain provisions consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. These are contained in the existing LEP and remain unaltered by the planning proposal. The planning proposal is inconsistent with this Direction however, the provisions of the planning proposal that are inconsistent are of minor significance.

4.4 Planning for Bushfire Protection – This planning proposal is LGA wide and as such will include mapped bushfire prone land. The planning proposal will remain inconsistent with the terms of the Direction until consultation with NSW Rural Fire Service has occurred. The Gateway determination will be conditioned to require consultation with the Authority prior to the plan being made.

5.10 Implementation of Regional Plans – The planning proposal is consistent with the North Coast Regional Plan 2036 and will not impede its vision, land use strategy, goals, directions or actions. The planning proposal will need to be updated prior to community consultation to reflect its consistency with this Direction.

6.1 Local Plan Making – The planning proposal does not contain concurrence requirements and is consistent with the terms of this Direction.

6.2 Reserving Land for Public Purposes – The planning proposal does not involve land reserved for public purposes and as such is not inconsistent with this Direction.

### **State Environmental Planning Policies**

#### **SEPP 55 – Remediation of Land**

The planning proposal does not permit a change of use of the land as described in the Policy, as dual occupancy (attached) development remains permissible with consent. The planning proposal seeks to permit dual occupancy (detached) development within 50m of another dwelling. Council will consider potential contamination issues under Clause 7 of the Policy at the time of submission of the Development Application.

#### **SEPP 71 – Coastal Protection**

Very little, (if any) of the RU2 Rural Landscape Zone is located within the Coastal Zone. The planning proposal is not inconsistent with the Policy and additional assessment under Clause 8 Matters for Consideration will be done at DA stage by Council, as the consent

authority. The Proposed Coastal Management Area under Draft NSW Coastal Management SEPP Map is shown below with most RU2 Rural Landscape Zone occurring inland of the coastal areas.



## **SITE SPECIFIC ASSESSMENT**

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### **Social**

The ability for a dual occupancy (detached) on RU2 Rural Landscape Zone land will have a small but positive social impact on rural communities. The ability for retiring farmers to maintain connection to their land but live apart from the successional family owner is a positive outcome. The ability for landowners to offer on farm permanent accommodation to extended family or other support person is also beneficial to social wellbeing.

### **Environmental**

The criteria contained in the draft provisions are adequate to ensure that the planning proposal does not have an adverse environmental impact on land on which a dual occupancy (detached) development consent is sought. Further environmental impact assessment will be undertaken at DA stage by Council.

### **Economic**

The purpose of the 200m setback is to provide a buffer between the proposed dual occupancy and any adjoining agricultural use, to reduce the likelihood of residential/agricultural landuse conflicts. Blueberry cropping is a growing industry in the Coffs Harbour LGA and the 200m is the minimum buffer for sugar cane, cropping and horticulture recommended in Table 6 of the Living and Working in Rural Areas document issued by the NSW Department of Primary Industries. Whilst the planning proposal may

have positive economic benefits to individual landowners, it is of primary importance that the planning proposal will not have an adverse economic impact on agricultural pursuits that are of economic importance to the Coffs Harbour region. The 200m setback distance will provide a sufficient buffer to help ensure that agricultural pursuits are protected.

### **Infrastructure**

Under the planning proposal the dual occupancy (detached) must be accessed by a public road. It is unlikely that the number of dual occupancies (detached) developed on any one road will exceed the capability of that roadway. Section 94 contributions will be levied to provide for and maintain services and facilities within the locality and connection to all available services such as water, electricity and sewer will be required as part of a development consent or alternative arrangements made, such as onsite effluent disposal, rainwater tanks and solar power systems.

## **CONSULTATION**

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### **Community**

Council proposes a community consultation period of 28 days in accordance with the Department's guidelines, as it is not considered a low impact activity. Notification will be by locally available newspaper and on the Coffs Harbour City Council website.

### **Agencies**

Council proposes to consult with the NSW Department of Primary Industries (Agriculture) and the NSW Rural Fire Service. This consultation will be required as a condition of the Gateway determination.

## **TIMEFRAME**

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Council has proposed a six-month time frame for completion of the planning proposal, which is appropriate considering the exhibition period occurs over the December – January period and that external agency consultation is required.

## **DELEGATION**

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Council has sought authority to exercise plan making delegations which is recommended to be supported so that the plan may be made as efficiently possible.

## **CONCLUSION**

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The preparation of the planning proposal is supported to proceed with conditions as it will enable a greater diversity of residential accommodation within the RU2 Rural Landscape Zoned land without compromising the objectives of the zone.

## **RECOMMENDATION**

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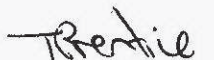
It is recommended that the delegate of the Secretary:

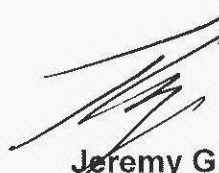
1. Agree any inconsistencies with Section 117 Directions 2.2 Coastal Protection, 2.3 Heritage Conservation and 4.3 Flood Prone Land are minor; and

2. Note that the consistency with Section 117 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
  - NSW Department of Primary Industries (Agriculture)
  - NSW Rural Fire Service
3. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.
5. The planning proposal is required to be updated prior to community consultation to include a strategic merit review of the proposal's consistency with s117 Direction 5.10 Implementation of Regional Plans.

 10/11/17  
**Tamara Prentice**  
Team Leader, Northern

 10-11-2017  
**Jeremy Gray**  
Director Regions, Northern  
Planning Services

Contact Officer: Heidi Naylor  
Planning Officer, Northern  
Phone: 02 6641 6604

## Gateway Determination

**Planning Proposal (Department Ref: PP\_2017\_COFFS\_004\_00):** to amend the written provisions of the Coffs Harbour Local Environmental Plan 2013 to permit dual occupancy (detached) development in the RU2 Rural Landscape Zone.

I, the Director Regions, Northern at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act, 1979* (the Act) that an amendment to the Coffs Harbour Local Environmental Plan (LEP) 2013 to amend the written provisions to permit dual occupancy (detached) development in the RU2 Rural Landscape Zone should proceed subject to the following conditions:

1. The planning proposal is required to be updated prior to community consultation to address the proposal's consistency with s117 Direction 5.10 Implementation of Regional Plans.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
3. Consultation is required with the following public authorities and/organisations under section 56(2)(d) of the Act and/or to comply with the requirements of relevant Section 117 Directions:
  - NSW Rural Fire Service
  - NSW Department of Primary Industries (Agriculture)

Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The timeframe for completing the LEP is to be **6 months** following the date of the Gateway determination.

Dated *10* day of *NOVEMBER* 2017.



**Jeremy Gray**  
**Director Regions, Northern**  
**Planning Services**  
**Department of Planning and**  
**Environment**

**Delegate of the Minister for Planning**



## WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Coffs Harbour City Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2017_COFFS_004_00	Planning proposal to amend the written provisions of the Coffs Harbour Local Environmental Plan 2013 to permit dual occupancy (detached) development in the RU2 Rural Landscape Zone.

In exercising the Minister's functions under Section 59 of the EP&A Act, the Council must comply with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".

Dated *10 NOVEMBER* 2017

**Jeremy Gray**  
**Director Regions, Northern**  
**Planning Services**  
**Department of Planning and Environment**

**Delegate of the Secretary**  
**of the Department of Planning and Environment**

## Attachment 5 – Delegated plan making reporting template

### Reporting template for delegated LEP amendments

#### Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the RPA's request to have the LEP notified

**Table 1 – To be completed by Department of Planning and Environment**

Stage	Date/Details
Planning Proposal Number	PP_2017_COFFS_004_00
Date Sent to DP&E under s56	23 October 2017
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	10-11-2017

**Table 2 – To be completed by the RPA**

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Have changes been made to the draft LEP after obtaining final PC opinion?	YES NO	
Date LEP made by GM (or other) under delegation		
Date sent to DPE requesting notification		

**Table 3 – To be completed by Department of Planning and Environment**

Stage	Date/Details
Notification Date and details	

#### Additional relevant information:



Mr Steve McGrath  
General Manager  
Coffs Harbour City Council  
Locked Bag 155  
COFFS HARBOUR, NSW 2450

Dear Mr McGrath

**Planning Proposal PP 2017\_COFFS\_004\_00 to amend Coffs Harbour Local Environmental Plan 2013**

I am writing in response to Council's request for a Gateway determination under Section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) and additional information received on 23 October 2017 in respect of the Planning Proposal to amend the written provisions of the Coffs Harbour Local Environmental Plan 2013 to permit dual occupancy (detached) development in the RU2 Rural Landscape Zone .

As delegate of the Minister for Planning, I have now determined the Planning Proposal should proceed subject to the conditions in the attached Gateway determination.

It is noted that Council intends to introduce a 200m separation distance from any new dual occupancy to a property boundary to buffer adjoining farming uses. It is considered that this requirement, combined with the maximum separation distance of 50m between the dwellings may be difficult to achieve, particularly where a dwelling already exists. It is recommended Council give further thought to this issue prior to community consultation. If the proposal is updated a revised copy is to be submitted to the Department for consideration.

I have also agreed, as delegate of the Secretary, the Planning Proposal's inconsistencies with Section 117 Directions 2.2 Coastal Protection, 2.3 Heritage Conservation and 4.3 Flood Prone Land are justified in accordance with the terms of the Direction.

Council may still need to obtain the agreement of the Department's Secretary to comply with Section 117 Direction 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

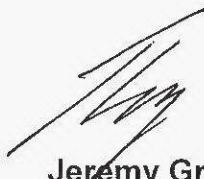
Plan making powers were delegated to Councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under Section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Ms Heidi Naylor to assist you. Ms Naylor can be contacted on (02) 6641 6604.

Yours sincerely

 10-11-2018  
**Jeremy Gray**  
**Director Regions, Northern**  
**Planning Services**

Encl: Gateway Determination  
Written Authorisation to Exercise Delegation  
Delegated Plan Making Reporting Template