

Planning Services

Gateway Determination Report

LGA	Ballina Shire Council
RPA	Ballina Shire Council
NAME	Ballina Shire Council – Amendment to permit with consent, detached dual occupancies on land zoned RU1 Primary Production and RU2 Rural Landscape
NUMBER	PP_2017_BALLI_006_00
LEP TO BE AMENDED	Ballina LEP 2012
ADDRESS	
DESCRIPTION	All land zoned RU1 and RU2 within Ballina LGA
RECEIVED	05/07/2017
FILE NO.	17/09325
QA NUMBER	qA41531
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

The Planning Proposal aims to amend Ballina LEP 2012 to permit with consent, detached dual occupancies on land zoned RU1 Primary Production and RU2 Rural Landscape.

Note: - Attached dual occupancies are already permitted with consent in these zones.

Site Description

All land zoned RU1 Primary Production and RU2 Rural Landscape within Ballina LGA.

Surrounding Area

N/A

Summary of Recommendation

Approval subject to conditions.

PROPOSAL

Objectives or Intended Outcomes

The Planning Proposal has adequately outlined the objectives and intended outcomes which are to:

- Permit detached dual occupancies with development consent within the RU1 and RU2 zones;

- Specify additional matters for consideration prior to the granting of development consent for rural area dual occupancies; and
- Amend relevant BLEP 2012 clause (4.2A and 7.8) so as to reference their applicability to dual occupancies generally (instead of dual occupancies attached).

Explanation of Provisions

The explanation of provisions adequately addresses the intended outcome of the proposal.

Council have included under Section 3.2 of the PP, a draft clause for insertion into the LEP. For community consultation purposes, the PP should be amended to remove this draft clause and only refer in general to the intended provisions and issues to be considered as 'heads of consideration'. This will help to potentially alleviate any confusion should Parliamentary Counsel draft a clause that looks different to that proposed by Council.

Mapping

The proposed amendment to BLEP 2012 involves the written document only. No map changes are required.

NEED FOR THE PLANNING PROPOSAL

The Planning Proposal has not resulted from any specific strategic study but rather a resolution of Council following Councillor briefings on the issue.

Council support the need for a Planning Proposal in regards to this issue for the following reasons:

- It removes an anomaly – that being that attached dual occupancy, tourist and visitor accommodation and studios are already permitted with consent in the RU1 and RU2 zones;
- It provides additional and affordable housing choice;
- Assists with succession planning; and
- Potentially provides a source of additional farm income.

Amending the written component of the Ballina LEP 2012 is the best means for achieving the intended outcomes with similar adjoining Councils (Byron and Lismore), having already amended their LEP's to achieve the same outcome.

STRATEGIC ASSESSMENT

State

The Planning Proposal does not contain any matters of state significance.

Regional / District

The North Coast Regional Plan 2036 (NCRP)

The Planning Proposal is consistent with Goal 4 of the NCRP as it supports 'greater housing choice and lifestyle options'. The Planning Proposal is also consistent with Direction 23 of the plan delivering 'housing diversity and choice' and Direction 25 'delivering more opportunities for affordable housing'.

Northern Rivers Farmland Protection Project 2005 (NRFRP)

The Ballina LGA contains both State and Regionally significant farmland as identified by the NRFRP. The Planning Proposal does not intend to rezone any State or Regionally significant farmland but to permit with consent detached dual occupancies in the RU1 and RU2 zones where attached dual occupancy, tourist and visitor accommodation and studios are already permitted with consent.

Local

The Planning Proposal is not the result of any strategic or economic study and is not considered to be inconsistent with any relevant Council strategy or plan. The Planning Proposal will maintain the objectives of the RU1 and RU2 zones particularly with the inclusion of a 'heads of consideration' clause which will ensure such development only in appropriate locations.

Section 117(2) Ministerial Directions

The Planning Proposal is considered to be consistent with all relevant directions apart from the following;

1.5 Rural Land

This direction applies to the proposal as it affects rural land. The proposal is generally consistent with the Rural Planning Principles that underpin this direction particularly as it will provide opportunities for rural lifestyle whilst having consideration for impacts on services and infrastructure through the proposed heads of consideration clause.

3.5 Development near Licensed Aerodromes

The Planning Proposal is inconsistent with this direction as it alters the provisions relating to land potentially located within the OLS for Ballina Byron Gateway Airport and/or is located within an ANEF contour of 20 or greater. Consultation with the Department of the Commonwealth responsible for aerodromes is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved. If written advice is obtained from the relevant department is received and no objection is raised then the inconsistency may be assessed as minor significance.

4.1 Acid Sulfate Soils

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

4.2 Mine Subsidence and Unstable Land

The Planning Proposal is inconsistent with this direction as it applies to land, some of which is impacted by landslip constraints as identified in mapping undertaken by the Department of Mineral Resources &/or Coffey Partners. This inconsistency is considered to be of minor significance as BLEP 2012 contains provisions that will adequately address this issue at the development application stage. The proposed 'heads of consideration' clause will also assist in ensuring appropriate land use.

4.3 Flood Prone Land

The Planning Proposal applies to land that may be mapped as flood prone under BLEP 2012. The Planning Proposal is inconsistent with this direction as it will create a provision that may potentially affect flood prone land and because it is not supported by a study assessing the appropriateness of the land.

This inconsistency is considered to be of minor significance as the development of detached dual occupancies is unlikely to have any significant impact on flood prone land.

Any development would be subject to the relevant flood provisions under BLEP 2012 and any potential impact would be addressed at development application stage.

4.4 Planning for Bushfire Protection

The Planning Proposal applies to land that may be mapped as bushfire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service (RFS), and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved. If written advice is obtained from the Commissioner of the NSW RFS and no objection is raised, then the inconsistency may be justified in accordance with the terms of the Direction.

State Environmental Planning Policies

SEPP Rural Lands

The proposal will contribute to the social and economic welfare of rural communities, through increased housing opportunity and affordability and without increasing dwelling intensification beyond that already allowed under the LEP. The potential for impact on agricultural land and activities is considered minor and is able to be addressed through the consideration at the development application stage.

The Planning Proposal is considered to be consistent with all other SEPP's.

SITE SPECIFIC ASSESSMENT

Social

The Planning Proposal is unlikely to result in any detrimental social impacts within the LGA. Alternatively, it has the potential to create a net community benefit through an increase in housing choice and diversity and greater opportunities for affordable housing. There is a concern that dispersed rural settlement can result in a rural poor, and increased reliance on private transport. However as Ballina comprises a coastal LGA with reduced travel distances even in its rural areas, this is less of a concern than elsewhere in the State. This matter is one for Council to consider when determining whether to proceed with this proposal.

Environmental

As the Planning Proposal applies to all land zoned RU1 and RU2 within the LGA, it is entirely probable that this may include land subject to flooding, bushfire, acid sulfate soils and landslip. It is anticipated that such issues can be addressed at the development application stage either through the relevant provisions already contained in BLEP 2012 or the proposed heads of consideration clause detailed in the Planning Proposal.

Economic

It is anticipated that the Planning Proposal will have a positive economic impact within the LGA as it has the potential to increase housing choice and affordability and provide an additional source of farm income.

Infrastructure

The provision and funding of state infrastructure is not necessary for this proposal.

CONSULTATION

Community

Council has indicated a 28 day public exhibition/community consultation period. As the Planning Proposal only relates to matters of local interest and is low impact in nature, a 14 day exhibition period is considered adequate. Nothing prevents Council undertaking a longer period should they consider it necessary.

The proposal will be notified in the local newspaper, in Council's newsletter and facebook posts, on Council's website as well as several other media sources.

This level of consultation is appropriate in these circumstances.

Agencies

Council have proposed consultation with the NSW Rural Fire Service and the Department of Primary Industry – Agriculture. It is also recommended that consultation be undertaken with the Commonwealth Department responsible for aerodromes as the Planning Proposal could result in development occurring within the OLS for Ballina Byron Gateway Airport or located within an ANEF contour of 20 or greater.

This consultation is considered adequate.

TIMEFRAME

Council have provided a project time line which proposes submission to the Department in seven (7) months. As this timeframe runs over the Christmas period, it is recommended that the Gateway determination be conditioned to allow nine (9) months to complete the draft LEP.

DELEGATION

The RPA has requested an Authorisation to exercise delegation for this proposal. It is recommended that an Authorisation for delegation be issued in this instance as this proposal does not contain matters of State or regional significance.

CONCLUSION

The Planning Proposal is supported to proceed subject to conditions. Support for the Planning Proposal is based on the following:

- It meets the adequacy criteria by providing appropriate objectives and intended outcomes; a suitable explanation of the provisions and justification for the proposal; outlines appropriate community consultation; provides a project timeline; and an evaluation for the delegation of plan making functions.
- It is consistent with all relevant s117 directions and SEPP's,
- It is not inconsistent with the aims and objectives of the RU1 and RU2 zones under Ballina LEP 2012,
- It is not inconsistent with the North Coast Regional Plan 2036 or the Northern Rivers Farmland Protection Project 2005,
- It is unlikely to have any detrimental impact on the environment or the socio-economic welfare of the LGA,
- Site specific issues will be able to be adequately addressed at the development application stage through the proposed 'heads of consideration' clause, and
- It will address the Shire wide need to provide for greater housing choice and affordability.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree the proposal is consistent with all relevant section 117 Directions apart from the ones listed below; and
2. Agree any inconsistencies with Section 117 Directions;
 - 1.5 Rural Land
 - 4.1 Acid Sulfate Soils
 - 4.2 Mine Subsidence and Unstable Land
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protectionare justified in accordance with the terms of the Direction; and
3. Note the outstanding inconsistency with Section 117 Directions 3.5 Development near Licensed Aerodromes and 4.4 Planning for Bushfire Protection.

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

1. Prior to community consultation, Council is to amend Section 3.2 of the Planning Proposal so that only a plain English explanation of the proposed provisions is included.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - NSW Department of Primary Industries - Agriculture
 - Commonwealth agency responsible for aerodromes
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.

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