



Planning Proposal 17/008

**» Rural Area Dual
Occupancy**

July 2017 (V1. Gateway) 17/51837

ballina
shire council



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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production (RU1) and RU2 Rural Landscape (RU2) zones under the provisions of Ballina LEP 2012 (BLEP 2012).

Currently only *dual occupancies (attached)* are permitted with development consent.

This planning proposal has been prepared in response to the Council's resolution of 22 June 2017.

1.2 Land to Which the Planning Proposal Applies

This planning proposal relates to all land zoned RU1 and or RU2 under the provisions of Ballina LEP 2012.

1.3 Council Resolutions

At its Ordinary Meeting held on 23 March 2017, the Council resolved as follows [Minute No. 230317/5] following consideration of the report, *Policy (Review) – Detached Dwelling Development Within Rural Areas*:

That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary dwellings).

A copy of the report considered by the Council is provided in Appendix One.

Following a Councillor briefing on 16 May 2017, the Council at its Ordinary Meeting held on 22 June 2017 further considered the issue of permitting dual occupancies in rural areas, and resolved as follows [Minute No. 220617/1]:

1. *That based on the feedback from the Councillor briefing held 16 May 2017, Council endorses the preparation of a planning proposal which proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.*
2. *That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for Gateway determination.*
3. *That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition for a minimum period of 28 days in accordance with the consultation strategy detailed in this report and the requirements of the gateway determination.*
4. *That Council prepares associated draft amendments to Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity to align the DCP with the planning proposal.*
5. *That the draft DCP amendments be placed on public exhibition with the planning proposal for a minimum period of 28 days.*
6. *That Council give further consideration to the planning proposal and associated draft DCP amendments following the conclusion of the public exhibition period.*
7. *That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.*

A copy of the report considered by the Council is provided in Appendix One.

1.4 Gateway Determination

To be completed following the Gateway determination.

2. Objectives & Intended Outcomes

To amend Ballina LEP 2012 so as to:

- Permit dual occupancies (attached or detached) with development consent within the RU1 and RU2 rural zones;
- Specify additional matters for consideration prior to the granting of development consent for rural area dual occupancies; and
- Amend relevant associated BLEP 2012 clauses (4.2A and 7.8) so as to reference their applicability to dual occupancies generally (instead of dual occupancies (attached)).

3. Explanation of Provisions

3.1 Background

North Coast Regional Environmental Plan 1988

The North Coast Regional Environmental Plan 1988 (NCRP) (now repealed) applied prior to Ballina LEP 2012 being made on 4 February 2013. The NCRP required councils when deciding to prepare a draft local environmental plan to consider the aims and objectives of the NCRP.

The NCRP objective relating to dual occupancy stated that a draft local environmental plan should not include provisions to permit the erection of more than one dwelling on an allotment of land but may include provisions relating to the creation of 2 attached dwellings.

It was in response to the above NCRP provisions that BLEP 2012 restricted dual occupancy development within the RU1 and RU2 zones to attached dual occupancy development.

The restriction of dual occupancy development within rural zones to “attached dwellings” also mirrored similar restrictions contained within Ballina LEP 1987 (refer clause 14).

Lismore City Council and Byron Shire Council LEP Amendments

Lismore LEP 2012 was amended on 25 October 2012 to permit dual occupancies (attached or detached) within the RU1 zone. This was followed by the amendment of Byron LEP 2014 on 10 July 2015 to also permit dual occupancy development (attached or detached) as well as secondary dwellings within the RU1 and RU2 zones.

3.2 The Proposal

This planning proposal seeks to achieve the following amendments to Ballina LEP 2012:

- To permit dual occupancies (attached or detached) with development consent within the Land Use Tables applicable to the RU1 and RU2 rural zones;
- To remove the reference to (attached) in reference to dual occupancies where it occurs in clause 4.2A and 7.8; and
- To insert a local clause generally in the following terms to further regulate dual occupancies within the RU1 and RU2 zones:

Erection of dual occupancies in Zone RU1 and RU2

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

- (a) to provide alternative accommodation for rural families,*
- (b) to protect the primary production potential of the land,*
- (c) to ensure development is of a scale and nature that is compatible with the environmental capabilities of the land.*

(2) Development consent must not be granted to development for the purpose of a dual occupancy on land in Zone RU1 Primary Production or Zone RU2 Rural Landscaped unless the consent authority is satisfied that:

- (a) the development will not impair the use of the land or adjoining land for agriculture or rural industries, and*
- (b) each dwelling will use the same vehicular access to and from a public road, and*
- (d) the land is physically suitable for the development, and*
- (e) the land is capable of accommodating the on-site disposal and management of sewage for the development.*

3.3 Mapping Overview

The proposal does not involving any mapping amendments.

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No. This planning proposal was developed following Councillor briefings held on 8 March 2017 and 16 May 2017 and an initial report to the Council on 23 March 2017.

Council considers that this planning proposal warrants support for the following reasons:

- Removes an anomaly (attached dual occupancy, tourist and visitor accommodation and studios already permitted with development consent);
- Provides additional housing choice;
- Provides a potential affordable housing option;
- Assists farm succession planning;
- Potentially frees up enforcement resources; and
- Provides a source of farm income (rental housing).

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

An LEP amendment is the best way of achieving the proposed outcomes as the proposal directly relates to land use permissibility and associated matters for consideration prior to the determination of a development application.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The proposal is considered to be consistent with the North Coast Regional Plan 2036 (NCRP).

The planning proposal aligns with the following Directions listed under Goal 4 – great housing choice and lifestyle options:

- *Direction 23.1: Increase housing diversity and choice* – the proposal will provide additional housing choice options for rural residents.
- *Direction 25.1: Delivering more opportunities for affordable housing* – the proposal will enable the creation of a greater variety of housing types within Ballina Shire's rural areas.

Q4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Ballina Shire Council Community Strategic Plan 2017-2027 (CSP)

The planning proposal is consistent with the elements and specified outcomes of the CSP as indicated in the table below:

Element and Reference	Outcomes	Benefits
Connected Community		
CC1.3	Monitor the built infrastructure and the services delivered to the community to ensure relevant standards are being met	High levels of legislative compliance Reduced reactive response programs
PE3 Prosperous Economy	Improve liveability in the shire	
PE3.2	Facilitate and provide affordable infrastructure	More affordable housing
HE3 Healthy Environment	Our built environment blends with the natural environment	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development

The planning proposal is also considered to be consistent with the following key local plans:

Ballina LEP 2012

The planning proposal applies to land within the RU1 and RU2 rural zones.

The objectives of the RU1 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural, cultural and landscape character of the locality.*
- *To enable development that is compatible with the rural and environmental nature of the land.*
- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

The objectives of the RU2 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To minimise the fragmentation and alienation of resource lands.*

- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To enable small-scale tourist-orientated development that is compatible with the rural nature of the land.*
- *To encourage development that involves restoration or enhancement (or both) of the natural environment if consistent with the production and landscape character of the land.*
- *To enable development that does not adversely impact on the natural environment, including habitat and waterways.*
- *To ensure that there is not unreasonable or uneconomic demands (or both) for the provision of public infrastructure.*

It is considered that broadening the permissibility of dual occupancy development to include both attached and detached dual occupancies does not give rise to any automatic inconsistency with zone objectives. Individual development applications will need to be assessed against zone objectives to determine whether in a specific case an inconsistency may arise and to consider potential mitigation options.

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The purpose of the BSGMS is to provide the framework for managing population and employment growth for Ballina Shire's urban areas over the planning period of 2012-2031. Whilst not directly applicable to the subject planning proposal consistency with the following Growth Management Strategy Principles is considered to be also achieved:

Growth Management Principle	Comment
Facilitate greater housing choice through an adequate mixture of dwelling types.	Permitting both attached and detached dual occupancy development in the RU1 and RU2 zones broadens housing choice for rural residents.
Provide for affordable housing stock.	Council considers that the planning proposal will provide additional opportunities for affordable housing options to be realised in rural areas.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs) as detailed in the table below:

SEPP Title	Compliance of Planning Proposal
SEPP No. 55 Remediation of Land	The planning proposal does not propose to rezone land. Sensitive land uses such as dwelling houses, dual occupancies (attached), rural workers dwellings and tourist and visitor accommodation are already permitted with development consent. Therefore no significant increase in sensitive land uses are proposed. The assessment of land contamination issues will be considered as part of the development application process as is the case with other sensitive land uses currently permitted within the RU1 and RU2 zones.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	The proposal is consistent with the SEPP as mining and extractive industry permissibility is not affected.
SEPP (Rural Lands) 2008	The proposal is considered to be consistent with the rural planning principles contained within the SEPP. Principle (f), reproduced below, is of particular relevance to this planning proposal: <i>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i>

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

No. A number of justifiable inconsistencies considered to be of minor significance have been identified. A Section 117 Direction checklist for this planning proposal is provided at Appendix Two.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal does not give rise to any direct adverse impacts on critical habitat or threatened species, population or ecological communities, or their habitats.

Detailed assessment of any subsequent development applications will include consideration of ecological and biodiversity issues so as to ensure that there are unlikely to be any adverse outcomes.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no other significant environmental impacts identified as a result of the planning proposal.

Q9 Has the planning proposal adequately addressed any social and economic effects?

The social and economic outcomes resulting from the proposed rezoning are considered to be generally positive. The table below provides a summary of potential positive and negative impacts associated with permitting detached dual occupancy development.

Potential Positive Impacts	Potential Negative Impacts
Additional dwellings can allow farmers and others approaching or at retirement age to remain on their farm / rural land but not within the same dwelling as a new farmer takes over. This creates opportunities for physical (workers), social and financial support, and can assist with succession planning.	May give rise to an increase in dispersed rural settlement. This may occur gradually as long as subdivision of the second dwelling is not supported. Pressure for subdivision may occur if substantial dual occupancy dwellings are erected which may then result in further fragmentation of rural land and land use conflict.
Potential to legitimise unapproved dwellings and structures, and receive financial contributions from such buildings that may otherwise be occupied illegally. Section 94 contributions apply to dual occupancy development (attached and detached).	The potential to legitimise suitable unauthorised development may free up enforcement resources and ultimately save costs and reduce angst amongst some residents. Potential for land use conflicts is considered to be of concern, particularly where primary production is seen as the desirable principal purpose for rural land in the shire. The potential for conflict can be mitigated to some extent by requiring the dwellings to have the same vehicular access from a public road.
Increasing the number of residents in rural areas can provide increased support for rural halls and schools.	Creates potential for fragmentation and alienation of land from farming.
Providing for an additional housing option on existing rural land may reduce longer term pressure for new rural residential estates.	There is potential for increased vehicular traffic, especially if employment is not available within the immediate area. Not only will this increase the cumulative impact on rural roads but it raises the question about long term environmental sustainability, for example increased vehicle emissions. Section 94 contributions provide some financial response; however they cannot address the longer term maintenance aspects.
	Regulation of additional on-site sewerage systems may require additional Council resources and give rise to additional costs.
	Conversion of some farm buildings may be costly and problematic due to non-compliances with the Building Code of Australia (BCA), land constraint and buffer concerns.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The proposal is not considered to generate any significant increase in demand for public infrastructure above that generated by dual occupancy (attached) development already permitted within the RU1 and RU2 zones.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation is proposed to be undertaken with the NSW Rural Fire Service (RFS) and the Department of Primary Industry – Agriculture post Gateway determination.

5. Mapping

No mapping is proposed to support this planning proposal.

6. Community Consultation

This planning proposal will be exhibited in accordance with the Gateway determination and the terms of the EP&A Act. A minimum public exhibition period of 28 days is proposed which will incorporate the following elements:

- Advertisement within the Ballina Shire Advocate,
- Letters to Secretaries of rural area hall committees,
- Notice on Council's web site and Facebook posts,
- Ward Committee information item,
- Paradise FM interview (GM's Briefing and/or discussion with Strategic staff),
- Poster and Flyers at Rural Area post offices including Tintenbar, Wardell, Empire Vale and Alstonville.
- Community Connect information story for September 2017 (depending on timing of exhibition commencement).

7. Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	July 2017
Government Agency Consultation	August 2017
Public Exhibition Period	September 2017
Public Hearing	N/A
Submissions Assessment	October 2017
RPA Assessment of Planning Proposal and Exhibition Outcomes	November 2017
Submission of Endorsed LEP to DP&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	December 2017
Forwarding of LEP Amendment to DP&E for Notification (if delegated)	January 2018

8. Appendices

Appendix One – Council Reports

Report to Council's Ordinary Meeting on 23 March 2017

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Delivery Program Strategic Planning

Objective To invite the Council's consideration of the merits of permitting detached dual occupancy and/or secondary dwelling development within rural areas of Ballina Shire.

Background

The Council, at its meeting held on 24 March 2016, when considering the extension of the urban secondary dwelling developer contribution policy, resolved in part to receive a report concerning secondary dwellings on land in rural zones [Minute No. 240316/16].

This report gives consideration to a policy approach that would permit secondary dwellings and/or detached dual occupancies on land within rural zones under the provisions of Ballina LEP 2012.

Key Issues

- Primary purpose and planning principles applying to rural land
- Rural land fragmentation and land use conflict.
- Housing choice in rural areas

Information

Legislative Framework Ballina LEP 2012

Ballina LEP 2012 (LEP) contains two rural zones. The RU2 Rural Landscape zone (RU2) and the RU1 Primary Production zone (RU1). Development characterized as secondary dwellings and detached dual occupancies are prohibited within the RU1 and RU2 zones, whereas an attached dual occupancy is permissible with development consent. This approach (being to enable only attached dual occupancy development on rural land) also applies to deferred areas under the LEP and has been applied in Ballina Shire since the introduction of the Ballina LEP in February 1987.

In considering second dwellings on rural land, there are several terms used to describe such development. The legal definitions of the relevant land uses (or dwelling types) are set out below.

The LEP defines a secondary dwelling as:

secondary dwelling means a self-contained dwelling that:

- (a) *is established in conjunction with another dwelling (the principal dwelling), and*
- (b) *is on the same lot of land as the principal dwelling, and*
- (c) *is located within, or is attached to, or is separate from, the principal dwelling.*

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Clause 5.4 of the LEP restricts the size of secondary dwellings to 60 square metres (excluding garages) or 50% of the total floor area of the principal dwelling, whichever is the greater.

The LEP defines a dual occupancy (detached) as:

dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

The LEP permits, with development consent, attached dual occupancy dwellings within the RU1 and RU2 zones. Such dwellings may range in form from a typical granny flat arrangement to two substantial dwellings. Whilst it is the case that secondary dwellings are not specifically permitted, there is sufficient flexibility within the LEP to be able to consider such small dwellings, if attached to the principal dwelling, as an attached dual occupancy.

Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity (DCP) specifies that a dual occupancy on rural land must comply with the following criteria:

- *The second dwelling must be within 10 metres of the first dwelling and is to be attached to the first/ original dwelling. Attachment may be achieved by way of a covered walkway, deck or the like;*
- *The second dwelling must be on the same legal title as the first dwelling;*
- *The second dwelling must have the same road access as the first dwelling; and*
- *The second dwelling must be located so that it minimises conflict with adjoining land uses.*

It is possible to Strata Title subdivide attached dual occupancy dwellings. Each strata lot, excluding common property, must however conform to the minimum lot size shown on the lot size map (generally 40 hectares). Torrens Title subdivision of land in rural areas is subject to conformity with the minimum lot size for subdivision, which is typically 40 hectares.

Also permitted with development consent on land within the RU1 and RU2 zones are studio-type uses, rural workers' dwellings and tourist and visitor accommodation. The latter includes farm stay accommodation.

A rural worker's dwelling is subject to specific criteria in the LEP and is defined as:

Rural worker's dwelling means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.

There is no definition of what constitutes a studio within the LEP. In a rural context a studio is viewed as buildings ancillary to a dwelling house which cannot be separately occupied and used as a dwelling.

As an indication of the extent of land that might be influenced by a policy change, there are some 4,588 rural lots located in Ballina Shire.

Adjoining Council Position – Lismore City Council

Lismore City Council resolved to prepare a planning proposal to permit detached dual occupancies in rural areas at its Ordinary Meeting held on 12 March 2013. The objective behind this planning proposal was to increase rural

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

housing options, to provide support for farmers, and to allow older people to stay on the land and younger people to remain in the area.

The amendments to Lismore LEP 2012 were subsequently published on 25 October 2013. The amendments permitted dual occupancies (attached or detached) within the RU1 zone. The amendments also prohibited *rural workers' dwellings* within this zone. Previously, only attached dual occupancies were permitted with development consent.

The prohibition of *rural workers' dwellings* was designed to limit the impact of housing within the RU1 zone. Few rural workers' dwellings had been approved by Lismore City Council due to the nature of agricultural uses which did not necessitate farm workers living on the farm (in addition to the occupants of the principal residence). The Council also considered that *rural workers' dwellings* would become a redundant land use once detached dual occupancies were permitted.

The principal controls relating to detached dual occupancy development are contained within clause 4.2C of Lismore LEP 2012 which provides as follows:

4.2C Erection of dual occupancies (detached) in Zone RU1

- (1) The objectives of this clause are as follows:
 - (a) to provide alternative accommodation for rural families and workers,
 - (b) to ensure development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land.
- (2) Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production unless the consent authority is satisfied that:
 - (a) the development will not impair the use of the land for agriculture or rural industries, and
 - (b) each dwelling will use the same vehicular access to and from a public road, and
 - (c) each dwelling will be situated within 100 metres of each other, and
 - (d) the land is physically suitable for the development, and
 - (e) the land is capable of accommodating the on-site disposal and management of sewage for the development, and
 - (f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.

In terms of the impact of these provisions, an examination of Lismore City Council's on line development consent register revealed that the following number of approvals had been granted:

Year	Number of Detached Dual Occupancies Approved in the RU1 Zone
2014	4
2015	9
2016	14

It is noted that in the first year of detached dual occupancies being permitted, 7 conversions of existing studios were approved.

The impact of the changed Lismore City Council policy was discussed with a Lismore Council Strategic Planner who advised he considered that there have

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

been no real negative consequences. In his view the community appears to be accepting of this housing form and the development planners appear to be satisfied with the administration of the new legislative provisions. Initial concerns relating to land fragmentation and increased usage of rural roads appear not to have been realised. A minor amendment is currently proposed to the objectives of clause 4.2C to further reinforce the primary production value of the RU1 zone.

Advice was also provided by the Lismore Council Strategic Planner that the 100 metre maximum separation distance between dwellings was an arbitrary figure selected to prevent excessive land fragmentation and impacts. This distance has been varied a number of times by Council using the variation provisions of the LEP (clause 4.6).

Lismore LEP 2012, following its amendment in October 2013, now permits both attached and detached dual occupancies on land within the RU1 zone. It does not permit this form of development within the RU2 zone. However, the extent of the RU2 zone is relatively limited. Secondary dwellings are not permitted within the RU1 and RU2 zones under the provisions of Lismore LEP 2012.

Adjoining Council Position – Byron Shire Council

Byron Shire Council followed Lismore City Council's lead when on 10 July 2015 amendments to Byron LEP 2014 were published. The amendments were in similar terms to those contained within Lismore LEP 2012 except that they also permitted, with development consent, secondary dwellings and extended the permissibility provisions to both the RU1 and RU2 zones.

Information extracted from Byron Shire Council's on line DA register for the period 10 July 2015 to 31 December 2016 has found that 12 detached dual occupancy applications had been approved during that period. No specific search of secondary dwellings approved in Byron Shire's rural zones was undertaken. This was due to the very significant number of secondary dwellings being approved within this shire's urban areas and the difficulties associated with locating those in rural zones.

Advantages and Disadvantages Associated with Permitting Detached Dual Occupancy and Secondary Dwellings in Rural Zones

The planning proposals submitted by both Lismore and Byron Councils for Gateway determination relied on the same table of advantages and disadvantages which is reproduced below, together (italics) with Ballina Shire Council staff comments.

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Advantages	Disadvantages	Ballina Shire Strategic Staff Comments
<i>Additional dwellings can allow farmers and other approaching or at retirement age to remain on their farm / rural land but not within the same dwelling as a new farmer takes over. This creates opportunities for physical (workers), social and financial support, and can assist with succession planning.</i>	<i>Increase in dispersed rural settlement. This will occur gradually as long as subdivision of the second dwelling is not supported. Pressure for subdivision will occur if substantial dual occupancy dwellings are erected.</i>	Council has initiated a planning proposal (111 Friday Hut Road) the objective of which is to free up land for primary production purposes by allowing the subdivision of the dwelling on a lot below the minimum lot size and preventing a dwelling house from being erected on the undersized residue lot. Pressure for subdivision of land in the longer term is a significant concern and may result in further fragmentation of rural and land use conflict.
<i>Potential to legitimise unapproved dwellings and structures, and receive financial contributions from such buildings that may otherwise be occupied illegally.</i> <i>Section 94 contributions apply to detached dual occupancy (not secondary dwellings).</i>	<i>Potential increases in land use conflicts, which can impact adversely on existing farming operations. The potential for conflict can be mitigated to some extent by requiring the dwellings to have the same vehicular access from a public road and be within a prescribed radius of each other.</i>	The waiver of development contributions for secondary dwellings in Byron Shire does not extend to the rural areas. In the case of Ballina Shire, secondary dwellings are not currently permitted within rural zones and hence the fee waiver issue does not currently arise. If detached dual occupancy development is permitted (with or without the inclusion of secondary dwellings) there is the potential to recoup s94 contributions which may not have been previously paid. The potential to legitimise suitable unauthorised development may free up enforcement resources and ultimately save costs and reduce angst amongst some residents. However, it is not necessarily the case that providing a pathway to conformity for unauthorised dwellings will result in substantial improvement in compliance or building standards without continued compliance action by Council. Land use conflict is considered to be a primary concern, particularly where primary production is seen as the desirable principal purpose for rural land in the shire.
<i>Increasing the number of residents in rural areas can provide increased support for rural halls and schools.</i>	<i>Potential for fragmentation and alienation of land from farming. This can be minimised if locational criteria are used. The inability to subdivide the dwellings will also assist.</i>	Noted.

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Advantages	Disadvantages	Ballina Shire Strategic Staff Comments
<i>Providing for an additional housing option on existing rural land may reduce the need to subdivide larger allotments for new rural residential estates.</i>	<i>As with any form of dispersed settlement, there is potential for increased vehicular traffic, especially if employment is not available within the immediate area. Not only will this increase the cumulative impact on rural roads but it raises the question about long term environmental sustainability, for example increased vehicle emissions. Section 94 contributions provide some financial response; however they cannot address the longer term maintenance aspects.</i>	Ballina Shire no longer permits rural residential subdivision within the rural area. It is agreed that longer term traffic issues may arise if this form of development becomes popular. The experience to date in the Byron and Lismore LGAs indicates a low take up rate for detached dual occupancy development in rural zones in terms of dwellings that progress to approval and construction. Council does not have any current information on the extent to which compliance is achieved in relation to unauthorised dwellings.
<i>Additional dwellings can provide farm income to subsidise the agricultural activity and provide additional rental housing to the market.</i>	<i>Impact on rural character. An increase in dispersed dwellings will impact on the rural landscape. This can be managed to some extent through the development assessment process but there will still be an impact over time.</i>	Impact on rural character is somewhat subjective and is considered can be managed through the existing development assessment process without further specific controls.

In addition to the disadvantages nominated by Lismore and Byron Councils, the following additional disadvantages appear to exist:

- Additional on-site sewerage systems will be required and will need to be regulated, and
- The conversion of some farm buildings may be costly and problematic due to non-compliance with the Building Code of Australia, land constraint and buffer concerns.

Notwithstanding the potential advantages outlined above, it is considered that there is presently insufficient evidence to underpin a change to long standing policy relating to second dwellings on rural land in Ballina Shire. Matters to consider in this regard include:

- A policy change of this nature should have regard for overarching land use principles and strategic intent. In the context of this issue, a fundamental consideration is the intended primary purpose(s) of rural land in the shire. Historic policy approaches and Council decisions associated with the introduction of the Ballina LEP 2012 identified agricultural and environmental outcomes (and associated economic activity) as the focal areas for rural land as opposed to housing choice. It is suggested that the overarching intent of Council in relation to rural land in the shire (if different from the current approach underpinning local planning policy) should be determined and clearly articulated before instigating a change relating to rural dwellings.
- It is not clear that there is an overriding public benefit associated with enabling detached second dwellings on rural land, albeit that there is likely to be private social and/or economic benefit for some landholders.
- There is presently no clear rationale established as the basis for a policy change. That is, there are differing reasons as to why second dwellings might be enabled on rural land, such as housing affordability, farm succession, improving compliance with planning provisions, providing

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

housing choice or simply facilitating private landholder benefits. The rationale might direct the nature of any change (for example an affordability focus might mean only secondary dwellings as a more modest form of housing are enabled).

- Whilst anecdotally it is relatively common for Council to receive enquiries about second dwellings on rural land, there is no quantifiable evidence available at present to confirm the number of landholders who desire a change, how rural landholders might view potential impacts associated with housing development on neighbouring land and the extent to which the broader community has a view about second dwellings on rural land.
- There is limited evidence to demonstrate that a change in policy will result in intended outcomes. For example, Council is not able to directly control housing affordability outcomes (such as the rent set for a dwelling) and it may be that currently unauthorised dwellings cannot comply with building requirements even where it becomes possible to obtain development consent for a detached dwelling. That is, the uncertainty about achievement of potential advantages relative to the nature of the potential disadvantages creates doubt about the public benefit associated with a change to rural dwelling policy.
- The potential for increased rural land use conflict between residential occupants of land and farming activities is a significant concern, particularly in a context of an existing fragmented rural landscape.
- The potential for pressure to subdivide rural land in the longer term is a concern in that this may undermine primary production through further fragmentation of land holdings and increased land use conflict over time. This matter, as well as the broader land use conflict issue referenced above, relates back to the broader planning intention of Council for rural land use in Ballina Shire into the future.

It is also important to reinforce that second dwellings in the form of attached dual occupancy development and rural workers' dwellings are permitted in rural areas of the shire at present, subject to the grant of development consent.

However, if the Council is of the view that detached dual occupancy and/or secondary dwelling development on rural land has sufficient merit to consider a policy change further, it is suggested that Council first seeks additional information and clarifies its policy intentions for rural land and rationale for enabling detached second dwellings in all or part of the Shire's rural areas.

Sustainability Considerations

- **Environment**
There will likely be a series of potential environmental, social and economic benefits and impacts associated with additional dwellings in any form in rural areas. Such impacts and associated planning provisions would need to be considered as part of any policy adjustment.
- **Social**
As above.
- **Economic**

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As above.

Legal / Resource / Financial Implications

The extent to which there may be legal, resource or financial implications associated with this matter is dependent on the nature of Council's preferred approach.

Cessation of further consideration of the matter has no legal, resource or financial implications.

Undertaking further research or initiating a planning proposal to permit detached dual occupancy and/or secondary dwelling development on land within rural areas under the provisions of Ballina LEP 2012 is likely to require at least several months of documentation preparation. This can be managed within existing resources although this matter is not currently part of the Strategic and Community Facilities Group work program.

Financial implications arise where further community engagement is desired. As a guide, the 2014 Rural Settlement Character Statement project which involved four public meetings, letters to rural land owners, hall hire and consultant facilitator cost in the order of \$15,000.

A telephone based (or otherwise randomised) survey with suitable statistical validity has an estimated cost in the order of \$15,000 to \$20,000.

The cost of sending letters to all rural landowners and associated newspaper advertisement, without staff time, is estimated at approximately \$6,000.

It is relevant to note that if community consultation is undertaken prior to a planning proposal being prepared then additional community consultation would again be required as part of the planning proposal exhibition process.

Consultation

No specific community consultation on this matter has been undertaken at this stage. As indicated above, if Council is inclined to further consider a policy change, it is recommended that community and stakeholder engagement is undertaken to inform and support decision making. This would include engagement with State Government agencies as well as the broader rural community.

Feedback relating to second rural dwellings (assumed detached dual occupancy) from some members of Ballina Shire's rural community has previously also been obtained as part of the 2014 Rural Settlement Character Statement project. This project included four public meetings which attracted a total of 167 rural residents. Reproduced below are extracts from the *Ballina Shire Rural Settlement Character Statements Part 2 Report* which are considered to be of some relevance:

Newrybar public meeting held on 14 May 2014 with 37 people in attendance:

- *Rural workers' dwellings should not be allowed to be built if they are not authentic rural workers' dwellings. One has been approved in the locality and not built as approved on the DA and very close to neighbouring houses.*

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Tintenbar and Fernleigh public meeting held on 12 May 2014 with 33 people in attendance:

- *Need more affordable housing to keep young people in the community;*
- *The State says there is a housing shortage. More housing on farming lots for families needed. Also want the ability to subdivide. Two separate houses should be allowed on one title. It is about families living together. There are many advantages to having family living on the same property so parents can "age in place". Many smaller properties that are not big enough for viable farming could be given a dwelling entitlement.*

Meerschaum Vale, Rous Mill, Rous public meeting held on 22 May 2014 with 60 people in attendance:

- *Like the lack of density in the area. But people have to live somewhere. It would be good to allow second dwellings on rural properties to allow more people to live around here without residential subdivision to occur. Families could stay at a lower cost. Some of the community was not so sure about this as they thought it would become too busy if everyone was allowed a second dwelling on their property.*
- *Ballina Council has a bad record of allowing residential subdivision on prime agricultural land. Community does not want to see this happen again. However it would be good to allow second dwellings on rural properties to allow more people to live around here without residential subdivision. Again not everyone agreed with this.*

South Ballina, Empire Vale, Keith Hall and Patches Beach public meeting held on 26 May 2014 with 37 people in attendance. No specific references to rural area second dwellings within the report comments.

The above comments reflect some of the divergent views within the community relating to rural area second dwellings.

Options

Having regard for the reasoning outlined above, it is recommended that Council take no further action in relation to the alteration of the current planning relating to rural dwellings in the shire. Based on the information available, it is not clear that the current policy approach presents a mismatch with the current values and land use outcomes associated with the shire's rural areas. Further, there does not appear to be a compelling public benefit associated with enabling detached dual occupancy or secondary dwellings on rural land relative to the potential disadvantages.

If, however, the Council is of the view that the current policy approach warrants further consideration, it is recommended that the policy be considered based on community and stakeholder feedback and having regard for overarching strategic planning principles relating to rural land (similar to the way in which Council currently establishes strategic planning policy for its urban areas e.g. the Wardell and Alstonville strategic planning process).

It may also be prudent to consider the outcomes of Council's economic development strategy process (due later this year) as this strategy may provide direction around preferred outcomes for economic activity in rural areas (e.g. tourism and hospitality initiatives for example). Some of these outcomes may not be well aligned with further residential development on

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

rural land. This again relates back to the principles underpinning rural land use related policy in the shire.

Therefore, if a policy review is to be progressed, it is recommended that Council undertakes a randomised survey process addressing land use principles and strategic intent for rural land, potential benefits and disadvantages associated with a policy shift and rationale for a change. An alternate resolution in this regard is set out below:

1. That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary dwellings).
2. That this investigation includes:
 - a. a randomised survey of rural residents having regard for rural planning principles, the potential benefits and disadvantages of a policy change and associated rationale; and
 - b. a strategic process to review Council's preferred vision and planning principles for rural areas within Ballina Shire as the basis for policy decision making in these areas.
3. That Council receive a further report on the outcomes of the further investigations and community engagement.

If Council wishes to pursue the alternate resolution/approach set out above, it is estimated that this will incur costs in the order of \$25,000 to \$30,000. Given this, Council may also wish to consider an allocation of funds in the 2017/18 budget to facilitate this project.

Alternatively, the Council could initiate a planning proposal to change the policy approach to dwellings on rural land. This approach is not recommended as the planning intent behind a change and the associated clarity around purpose and achievement of intended outcomes has not yet been established, in staff's view. That is, there is not considered to be a clear consistent reason or justification for the change in terms of the public interest at present.

RECOMMENDATIONS

1. That Council notes the contents of this report relating to current and potential options for additional second dwellings on land within rural parts of Ballina Shire.
2. That having regard for the contents of the report, Council takes no further action with respect to enabling detached dual occupancy development and/or secondary dwellings on rural land at this time.

Attachment(s)

Nil

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

230317/1 Resolved

(Cr Keith Williams/Cr Nathan Willis)

That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary

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dwellings).

FOR VOTE - Cr David Wright, Cr Sharon Parry, Cr Jeff Johnson, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Phillip Meehan

Report to Council's Ordinary Meeting on 22 June 2017

9.1 Rural Area - Detached Dual Occupancy Development

9.1 Rural Area - Detached Dual Occupancy Development

Delivery Program Strategic Planning

Objective To invite Council's further consideration of the merits of permitting detached dual occupancy development within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.

Foreword

The Council at its Ordinary Meeting on 23 March 2017 resolved as follows in respect to Item 9.2 Detached Dual Occupancy Development Within Rural Areas [Minute No 230317/1]:

That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary dwellings).

A Councillor briefing was held on 16 May 2017 to further discuss available options and issues relating to permitting detached dual occupancy and secondary dwellings within certain rural areas located within Ballina Shire. The briefing presentation updated in respect to consultation options forms Attachment One to this report.

Following the Councillor briefing the report previously presented to Council at its Ordinary Meeting held on 23 March 2017 has been revised. The report below reflects issues discussed at the briefing.

Background

The Council, at its Ordinary Meeting held on 24 March 2016, when considering the extension of the urban secondary dwelling developer contribution policy, resolved in part to receive a report concerning secondary dwellings on land in rural zones [Minute No. 240316/16].

Council further considered the issue of detached dual occupancy development and secondary dwellings at its Ordinary Meeting on 23 March 2017 and at a Councillor briefing on 16 May 2017 (Information presented at the briefing is contained in Attachment One).

This report gives further consideration to a policy approach that would permit dual occupancy development (attached and detached) on land located within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012. Permissibility of secondary dwellings within these rural zones is not further discussed within this report.

It is considered that sufficient flexibility exists, should dual occupancy development be permitted, such that there is no specific need to also permit secondary dwellings in the RU1 and RU2 zones.

9.1 Rural Area - Detached Dual Occupancy Development

Key Issues

- Planning framework for rural land
- Compliance framework related to unauthorised rural dwellings
- Long term impacts

Information

Legislative Framework Ballina LEP 2012

Ballina LEP 2012 (LEP) contains two rural zones. The RU1 Primary Production zone (RU1) and the RU2 Rural Landscape zone (RU2).

Development characterised as detached dual occupancy is prohibited within the RU1 and RU2 zones, whereas an attached dual occupancy is permissible with development consent. The permissibility of only attached dual occupancy development on rural land also applies to deferred areas under the LEP and has been applied in Ballina Shire since the introduction of the Ballina LEP in February 1987.

Ballina LEP 2012 defines a dual occupancy, dual occupancy (attached) and dual occupancy (detached) as:

dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).

dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

The LEP permits, with development consent, attached dual occupancy dwellings within the RU1 and RU2 zones. Such dwellings may range in form from a typical granny flat arrangement to two substantial dwellings.

Whilst it is the case that secondary dwellings are also not specifically permitted, there is sufficient flexibility within the LEP to be able to consider such small dwellings, if attached to the principal dwelling, as an attached dual occupancy. It is for this reason that it is considered that there is no specific benefit derived from also permitting secondary dwellings (as distinct from dual occupancies) within the RU1 and RU2 zones.

Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity (DCP) specifies that a dual occupancy on rural land must comply with the following criteria:

- *The second **dwelling** must be within 10 metres of the first **dwelling** and is to be attached to the first/ original **dwelling**. Attachment may be achieved by way of a covered walkway, deck or the like;*
- *The second **dwelling** must be on the same legal title as the first **dwelling**;*
- *The second **dwelling** must have the same road access as the first **dwelling**; and*
- *The second **dwelling** must be located so that it minimises conflict with adjoining land uses.*

9.1 Rural Area - Detached Dual Occupancy Development

It is possible to Strata Title subdivide attached dual occupancy dwellings. Each strata lot, excluding common property, must however conform to the minimum lot size shown on the lot size map (generally 40 hectares). Torrens Title subdivision of land in rural areas is subject to conformity with the minimum lot size for subdivision, which is typically 40 hectares.

Also permitted with development consent on land within the RU1 and RU2 zones are studio-type uses, rural workers' dwellings and tourist and visitor accommodation. The latter includes farm stay accommodation.

A rural worker's dwelling is subject to specific criteria in the LEP and is defined as:

Rural worker's dwelling means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.

There is no definition of what constitutes a studio within the LEP. In a rural context a studio is viewed as a building ancillary to a dwelling house which cannot be separately occupied and used as a dwelling.

As an indication of the extent of land that might be influenced by a policy change, there are some 4,588 rural lots located in Ballina Shire. Of these 3,672 properties are zoned all or part RU1 or RU2.

Reasons Supporting a Policy Change

Councillors at the briefing on 16 May 2017 nominated the following reasons in support of a change in policy position to permit detached dual occupancy development with development consent throughout the RU1 and RU2 rural zones:

- Removes anomaly (Attached dual occupancy, tourist and visitor accommodation and studios already permitted)
- Provides additional housing choice
- Provides a potential affordable housing option
- Assists farm succession planning
- Potentially frees up enforcement resources by providing an approval pathway and
- Provides a source of farm income (rental housing).

Adjoining Council Position – Lismore City Council

Lismore City Council resolved to prepare a planning proposal to permit detached dual occupancies in rural areas at its Ordinary Meeting held on 12 March 2013. The objective behind this planning proposal was to increase rural housing options, to provide support for farmers, and to allow older people to stay on the land and younger people to remain in the area.

The amendments to Lismore LEP 2012 were subsequently published on 25 October 2013. The amendments permitted dual occupancies (attached or detached) within the RU1 zone. The amendments also prohibited *rural workers' dwellings* within this zone. Previously, only attached dual occupancies were permitted with development consent.

9.1 Rural Area - Detached Dual Occupancy Development

The prohibition of *rural workers' dwellings* was designed to limit the impact of housing within the RU1 zone. Few rural workers' dwellings had been approved by Lismore City Council due to the nature of agricultural uses which did not necessitate farm workers living on the farm (in addition to the occupants of the principal residence). The Council also considered that *rural workers' dwellings* would become a redundant land use once detached dual occupancies were permitted.

The principal controls relating to detached dual occupancy development are contained within clause 4.2C of Lismore LEP 2012 which provides as follows:

4.2C Erection of dual occupancies (detached) in Zone RU1

- (1) *The objectives of this clause are as follows:*
- (a) *to provide alternative accommodation for rural families and workers,*
 - (b) *to ensure development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land.*
- (2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production unless the consent authority is satisfied that:*
- (a) *the development will not impair the use of the land for agriculture or rural industries, and*
 - (b) *each dwelling will use the same vehicular access to and from a public road, and*
 - (c) *each dwelling will be situated within 100 metres of each other, and*
 - (d) *the land is physically suitable for the development, and*
 - (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
 - (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

In terms of the impact of these provisions, an examination of Lismore City Council's on line development consent register revealed that the following number of approvals had been granted:

Year	Number of Detached Dual Occupancies Approved in the RU1 Zone
2014	4
2015	9
2016	14

It is noted that in the first year of detached dual occupancies being permitted, 7 conversions of existing studios were found to have been approved.

The impact of the changed Lismore City Council policy was discussed with a Lismore Council Strategic Planner. Advice was provided that he considered that there have been no real negative consequences. In his view, the community appears to be accepting of this housing form and the development planners appear to be satisfied with the administration of the new legislative provisions.

9.1 Rural Area - Detached Dual Occupancy Development

Initial concerns relating to land fragmentation and increased usage of rural roads appear not to have been realised. A minor amendment is currently proposed to the objectives of clause 4.2C to further reinforce the primary production value of the RU1 zone.

Advice was also provided by the Lismore Council Strategic Planner that the 100 metre maximum separation distance between dwellings was an arbitrary figure selected to prevent excessive land fragmentation and impacts.

This distance has been varied a number of times by Council using the variation provisions of the LEP (clause 4.6).

Lismore LEP 2012, following its amendment in October 2013, now permits both attached and detached dual occupancies on land within the RU1 zone. It does not permit this form of development within the RU2 zone.

However, the extent of the RU2 zone is relatively limited. Secondary dwellings are not permitted within the RU1 and RU2 zones under the provisions of Lismore LEP 2012.

Adjoining Council Position – Byron Shire Council

Byron Shire Council followed Lismore City Council's lead when on 10 July 2015 amendments to Byron LEP 2014 were published. The amendments were in similar terms to those contained within Lismore LEP 2012 except that they also permitted, with development consent, secondary dwellings and extended the permissibility provisions to both the RU1 and RU2 zones.

Information extracted from Byron Shire Council's online DA register for the period 10 July 2015 to 31 December 2016 has found that 12 detached dual occupancy applications had been approved during that period.

No specific search of secondary dwellings approved in Byron Shire's rural zones was undertaken. This was due to the very significant number of secondary dwellings being approved within this shire's urban areas and the difficulties associated with locating those in rural zones.

Advantages and Disadvantages Associated with Permitting Detached Dual Occupancy and Secondary Dwellings in Rural Zones

The planning proposals submitted by both Lismore and Byron Councils for Gateway determination relied on a similar table of advantages and disadvantages which is reproduced below (*italics*), together with Ballina Shire Council staff comments.

9.1 Rural Area - Detached Dual Occupancy Development

Advantages	Disadvantages	Ballina Shire Strategic Planning Staff Comments
Additional dwellings can allow farmers and others approaching or at retirement age to remain on their farm / rural land but not within the same dwelling as a new farmer takes over. This creates opportunities for physical (workers), social and financial support, and can assist with succession planning.	Increase in dispersed rural settlement. This will occur gradually as long as subdivision of the second dwelling is not supported. Pressure for subdivision will occur if substantial dual occupancy dwellings are erected.	Council has initiated a planning proposal (111 Friday Hut Road) the objective of which is to free up land for primary production purposes by allowing the subdivision of the dwelling on a lot below the minimum lot size and preventing a dwelling house from being erected on the undersized residue lot. Pressure for subdivision of land in the longer term is a significant concern and may result in further fragmentation of rural land and land use conflict.
Potential to legitimise unapproved dwellings and structures, and receive financial contributions from such buildings that may otherwise be occupied illegally. Section 94 contributions apply to detached dual occupancy (not secondary dwellings).	Potential increases in land use conflicts, which can impact adversely on existing farming operations. The potential for conflict can be mitigated to some extent by requiring the dwellings to have the same vehicular access from a public road and be within a prescribed radius of each other.	It is understood that the waiver of development contributions for secondary dwellings in Byron Shire does not extend to the rural areas. In the case of Ballina Shire, secondary dwellings are not currently permitted within rural zones and hence the fee waiver issue does not currently arise. If detached dual occupancy development is permitted (with or without the inclusion of secondary dwellings) there is the potential to recoup s94 contributions which may not have been previously paid. The potential to legitimise suitable unauthorised development may free up enforcement resources and ultimately save costs and reduce angst amongst some residents. This issue is discussed in greater detail under the heading Legitimation and Compliance Options below. Land use conflict is considered to be a primary concern, particularly where primary production is seen as the desirable principal purpose for rural land in the shire.
Increasing the number of residents in rural areas can provide increased support for rural halls and schools.	Potential for fragmentation and alienation of land from farming. This can be minimised if locational criteria are used. The inability to subdivide the dwellings will also assist.	Noted.

9.1 Rural Area - Detached Dual Occupancy Development

Advantages	Disadvantages	Ballina Shire Strategic Planning Staff Comments
<i>Providing for an additional housing option on existing rural land may reduce the need to subdivide larger allotments for new rural residential estates.</i>	<i>As with any form of dispersed settlement, there is potential for increased vehicular traffic, especially if employment is not available within the immediate area. Not only will this increase the cumulative impact on rural roads but it raises the question about long term environmental sustainability, for example increased vehicle emissions. Section 94 contributions provide some financial response; however they cannot address the longer term maintenance aspects.</i>	Ballina Shire no longer permits rural residential subdivision within the rural areas of the Shire. It is agreed that longer term traffic issues may arise if this form of development becomes popular. The experience to date in the Byron and Lismore LGAs indicates a low take up rate for detached dual occupancy development in rural zones in terms of dwellings that progress to approval and construction. Council does not have any current information on the extent to which compliance is achieved in relation to unauthorised dwellings.

As indicated primary planning concerns in relation to Ballina Shire are:

- The potential for increased rural land use conflict between residential occupants of land and farming activities, particularly in a context of an existing fragmented rural landscape.
- The potential for pressure to subdivide rural land in the longer term in that this may undermine primary production through further fragmentation of land holdings and increased land use conflict over time.

In addition to the above and the disadvantages nominated by Lismore and Byron Councils, the following additional disadvantages have also been identified:

- Additional on-site sewerage systems will be required and will need to be regulated, and
- Conversion of some farm buildings may be costly and problematic due to non-compliances with the Building Code of Australia (BCA), land constraint and buffer concerns.

Unauthorised Dwelling Legitimation and Compliance Options

Should Council see merit in permitting detached dual occupancy development, within the RU1 and RU2 zones under the provisions of Ballina LEP 2012, then the question arises as to how to respond to unauthorised dwellings. This is of particular relevance in the period between Council's decision to prepare a planning proposal, the LEP amendment taking effect, and a development application being submitted to legitimise the buildings use, as well as the subsequent period relating to compliance with consent conditions.

There is no one process available which would guarantee that all current examples of unauthorised rural dwellings can be legitimised or can be cost effectively brought into compliance with BCA requirements.

9.1 Rural Area - Detached Dual Occupancy Development

Council's compliance staff advised in February 2017 that they had investigated 88 complaints in relation to unauthorised residential dwellings within rural zones since July 2012. These complaints resulted in some form of legal action (either Court action or resulting in the service of formal Notices and Orders).

This figure did not include complaints lodged where no formal action was required or where the unauthorised residential dwelling was decommissioned prior to the service of a formal Notice. It also did not include 30 uninvestigated complaints which had been identified as lower priorities and were awaiting investigation.

Permitting detached dual occupancy dwellings within the RU1 and RU2 zones may provide additional options for some land owners to legitimise buildings through the DA process. It will not provide a solution to those owners in other rural or environmental zones. It may also ultimately not provide a solution for owners who may subsequently find that they cannot cost effectively upgrade buildings to meet minimum building and or on-site sewerage management requirements.

Byron Shire Council's Compliance Approach

Information was sought from Byron Council's Compliance staff as to the approach used by that Council relating to the occupation of unauthorised residential premises.

The information obtained has been summarised as follows:

- From approximately two years prior to Council's July 2015 LEP amendment, which permitted detached dual occupancy and secondary dwellings in rural zones, Council staff maintained a list of unauthorised dwellings. The list was reported to Council and unauthorised dwellings were inspected to ensure that public health and safety issues were rectified.
- In the period following July 2015 compliance staff undertook inspections of unauthorised dwellings including those listed in the period before July 2015. Health and safety issues such as fire safety and on-site sewerage management were addressed as a matter of priority.
- Land owners since July 2015 have been requested to lodge development applications for the use of unauthorised dwellings within 28 days. If this is not complied with then a process involving Notices and Orders follows.
- If the unauthorised dwelling cannot be made compliant enforcement action is taken to have the building decommissioned as a dwelling, and alternative solutions are suggested for the use of the building such as a studio or shed etc.
- Byron Shire Council's adopted 2017 Compliance Priorities Program lists as a high priority the undertaking of education or workshops and a compliance enforcement program related to shared accommodation and improved compliance standards for unapproved dwellings.
- Responding to unapproved dwellings is also listed as a high priority matter.

9.1 Rural Area - Detached Dual Occupancy Development

Restricting Permissibility of Dual Occupancy Development (Detached) to buildings that existed as of a certain date.

Consideration has been given to whether it would be possible and/or reasonable to limit the opportunity to convert existing buildings to a detached dual occupancy if the building existed as of a certain date. This approach would limit the impact of the proposal only to those buildings which existed in a detached state on a certain date and or those that have already been completed and converted without consent.

The above approach would be unusual and may pose legal drafting difficulties. It could be seen as rewarding those in the community who may not have had due regard to planning laws and penalise those that have been properly waiting for the amendments to be introduced. As a consequence of these issues it is considered to result in an inequitable outcome which should not be supported irrespective of whether the legal drafting issues may be able to be resolved.

Sustainability Considerations

- **Environment**

There will likely be a series of potential environmental, social and economic benefits and impacts associated with additional dwellings in any form in rural areas. Such impacts and associated planning provisions would need to be considered as part of any policy adjustment.

- **Social**

As above.

- **Economic**

As above.

Legal / Resource / Financial Implications

Initiating a planning proposal to permit dual occupancy development (attached and detached) on land within the RU1 and RU2 rural zones under the provisions of Ballina LEP 2012 can be managed within existing resources. This matter is not currently part of the Strategic and Community Facilities Group work program.

Financial implications arise depending on the nature of community engagement specified. If the engagement is limited generally to that indicated within the Consultation section of this report then this will also be able to be achieved within allocated resources. However, if it is desired that each rural zoned property owner be advised then a cost in the vicinity of \$6,000 plus staff time is estimated. A randomised telephone survey of 400 rural owners has been quoted as costing \$12,600 plus GST.

Consultation

Following Gateway determination it is proposed to consult with the following Government Authorities:

9.1 Rural Area - Detached Dual Occupancy Development

- NSW Rural Fire Service, and
- NSW Department of Primary Industries – Agriculture.

A minimum public consultation period of 28 days is proposed involving the following consultation strategies:

- Advertisement within the Ballina Shire Advocate,
- Letters to Secretaries of rural area hall committees,
- Notice on Council's web site and Facebook posts,
- Ward Committee information item,
- Paradise FM interview (GM's Briefing and/or discussion with Strategic staff),
- Poster and Flyers at Rural Area post offices including Tintenbar, Wardell, Empire Vale and Alstonville.
- Community Connect information story for September 2017 (depending on timing of exhibition commencement).

Options

Options available to the Council to progress this matter include the following:

1. Support the preparation of a planning proposal and associated amendments to Ballina DCP 2012 (DCP) which will permit and manage the erection of dual occupancy development (attached and detached) within the RU1 and RU2 rural zones under the provisions of Ballina LEP 2012.

The DCP will require amendment to remove the maximum 10 metre separation and attachment distance requirements specified in Chapter 7 – Rural Living and Activity as well as the associated advisory notes.

It is also suggested that the drafting of the LEP amendment include a provision in the Ballina LEP 2012 consistent with the following:

Development consent must not be granted to development for the purpose of a dual occupancy on land in zone RU1 Primary Production or zone RU2 Rural Landscape unless the consent authority is satisfied that:

- (a) the development will not impair the use of the land or adjoining land for agriculture or rural industries, and*
- (b) each dwelling will use the same vehicular access to and from a public road, and*
- (c) the land is physically suitable for the development, and*
- (d) the land is capable of accommodating on-site disposal and management of sewage for the development, and*

In adopting this approach, it is also open to the Council to apply the change to some or all of the deferred matter areas in the shire. Expanding the scope of zones to which the change is applied (beyond the RU1 and RU2 zone) is not recommended on the basis that:

- the areas not subject to existing environmental protection zoning will be progressively be brought into the 2012 LEP under Council's current approach (that is, areas that are integrated into the 2012 LEP that

9.1 Rural Area - Detached Dual Occupancy Development

receive an RU1 or RU2 zone will be subject to the revised policy position in future), and

- the policy approach to enable the change is in its current form designed around application to rural land rather than environmental protection areas.

This option is recommended on the basis that it provides for the outcomes discussed by Councillors at the briefing on 16 May 2017, noting that the March 2017 reporting to Council addressed the potential advantages and disadvantages of the change (with these summarised again in this report).

2. Take no further action in respect to the permitting detached dual occupancy development within Ballina Shire's rural areas.

The benefits associated with permitting additional detached dwellings in certain rural areas of the shire appear to be finely balanced. Whilst it is the case that various building forms are already permitted (studios, tourist and visitor accommodation, sheds etc), and numerous examples exist of unauthorised dwelling conversions, setting a policy direction that will permit additional detached dwellings may result in pressure to review minimum lot sizes and permit additional subdivision in the future. Such an outcome would disadvantage agricultural uses and the future agricultural use of rural land.

As Councillors are aware, this was the originally recommended course of action in the March reporting to Council. This approach is not recommended in this report on the basis that the report seeks to address the sentiment expressed by Councillors in relation to the March report and recommendations (being an interest in identifying an approach to enable a detached second dwelling on rural land).

3. Broaden the planning proposal to incorporate secondary dwellings and to remove rural workers dwellings as a permissible use.

This option is not recommended on the basis of the following.

It is considered that there is little benefit to be gained by permitting secondary dwellings as small dwellings will be permitted as a consequence of permitting dual occupancy development (attached and detached).

In respect to rural workers' dwellings few have been approved due to the requirements of clause 4.1C of the LEP. Clause 4.1C requires Council to be satisfied, amongst other matters, that the dwelling is required due to *the nature of the agricultural or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.*

4. Defer the decision to prepare a planning proposal to enable additional research or information to be obtained.

It is open to the Council to request additional information should there be matters that require additional investigation or clarification.

9.1 Rural Area - Detached Dual Occupancy Development

If Council were of the view that there is significant merit in restricting conversion opportunities only to existing buildings then it is suggested that it would be appropriate for this report to be deferred pending consultation with the Department of Planning and Environment. Such an approach would enable the Department to consider whether they would be prepared to issue a Gateway determination allowing the proposal to proceed to public exhibition and to explore legal drafting concerns with Parliamentary Counsel.

As a consequence of the equity concerns previously raised limiting the planning proposal to existing buildings is not supported.

In conclusion the recommendation is as per option one, as outlined. However the Council staff preference remains option two, as was recommended in the March 2017 meeting report.

Option two has been the long standing position of this Council and from a whole of community perspective it is considered that Council has managed rural land use conflicts relatively well, with generally speaking, limited conflicts in use.

There remain genuine concerns that over the longer term (it may take many years for the full impacts to be felt) that a decision by this current Council to allow increased residential use of the rural areas will create increased land use conflicts (i.e. between residential and rural uses as well as potential traffic issues), while doing little in the way of providing substantial benefits in respect to housing diversity or affordability. Council's focus for housing should be in the urban areas where there is adequate infrastructure in place to support residential living.

RECOMMENDATIONS

1. That based on the feedback from the Councillor briefing held 16 May 2017, Council endorses the preparation of a planning proposal which proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition for a minimum period of 28 days in accordance with the consultation strategy detailed in this report and the requirements of the gateway determination.
4. That Council prepares associated draft amendments to Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity to align the DCP with the planning proposal.
5. That the draft DCP amendments be placed on public exhibition with the planning proposal for a minimum period of 28 days.

9.1 Rural Area - Detached Dual Occupancy Development

6. That Council give further consideration to the planning proposal and associated draft DCP amendments following the conclusion of the public exhibition period.
7. That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.

Attachment(s)

1. Attachment One - Councillor Briefing Presentation 16 May 2017

Rural Area - Detached Dual Occupancy Development

220617/1 RESOLVED

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That based on the feedback from the Councillor briefing held 16 May 2017, Council endorses the preparation of a planning proposal which proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition for a minimum period of 28 days in accordance with the consultation strategy detailed in this report and the requirements of the gateway determination.
4. That Council prepares associated draft amendments to Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity to align the DCP with the planning proposal.
5. That the draft DCP amendments be placed on public exhibition with the planning proposal for a minimum period of 28 days.
6. That Council give further consideration to the planning proposal and associated draft DCP amendments following the conclusion of the public exhibition period.
7. That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr David Wright

Appendix Two – Section 117 Direction Checklist

Section 117 Direction Checklist Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent – Permissible rural densities are not considered to be increased by this proposal which will broaden dwelling types permitted with consent. No increase in the overall number of dwellings possible on an individual property will result.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent – This planning proposal is considered to be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> .
2. Environment and Heritage	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve the development of land identified as being of environmental significance.
2.2 Coastal Protection	Consistent. Some RU1 and RU2 zoned land in Ballina Shire is located within the coastal zone. <i>Clause 5.5 Development within the coastal zone</i> contained within Ballina LEP 2012 is applicable to the proposed land use. Clause 5.5 included the provisions that give effect to and are consistent with: (a) the <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997</i> , and (b) the <i>Coastal Design Guidelines 2003</i> , and (c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual 1990</i>).
2.3 Heritage Conservation	Consistent. Ballina LEP 2012 contains provisions (clause 5.10 and Schedule 5) which are consistent with this direction. Such provisions will be applicable to development applications related to land upon which an item of Ballina Shire's environmental heritage is situated.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	This direction is not considered to apply to this planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.

Section 117 Direction Checklist Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrating Land Use and Transport	Does not apply to this planning proposal.
3.5 Development Near Licensed Aerodromes	Justifiably inconsistent. Some land zoned RU1 or RU2 is located within the Obstacle Limitation Surface (OLS) for Ballina Byron Gateway Airport and may also be affected by aircraft noise. Future dual occupancy development proposals impacted by the OLS or located within an ANEF contour of 20 or greater will be considered in accordance with clauses 7.5 and 7.6 of BLEP 2012. Given that no increase in existing height limits or permissible densities are proposed, and the fact that BLEP 2012 already contains appropriate controls which require consultation with Commonwealth authorities, it is considered that the inconsistency with this direction is minor and justifiable.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Justifiably inconsistent. There are significant RU1 and or RU2 zoned areas within Ballina Shire that are affected by acid sulfate soils. This planning proposal is not considered to lead to intensification of development on land identified on Acid Sulfate Soil Maps above what is likely to result under existing controls. Future development applications for dual occupancy development, if located upon land identified on the Acid Sulfate Soil Maps will be required to be assessed in accordance with clause 7.1 of BLEP 2012.
4.2 Mine Subsidence and Unstable Land	Justifiably inconsistent. This proposal does not impact on any mine subsidence area. Some RU1 and or RU2 zoned land is impacted by landslip constraints as identified in mapping undertaken by the Department of Mineral Resources and or Coffey Partners. Where this is the case development proposals will be subject to the considerations contained within Ballina Shire Development Control Plan 2012 – Chapter 2 – section 3.5 Land Slip / Geotechnical Hazard. Given that no increase in permitted rural densities will result from this planning proposal it is considered that the inconsistency with this direction is minor and justifiable.
4.3 Flood Prone Land	Justifiably inconsistent. Some RU1 and or RU2 zoned land is situated on flood prone land. BLEP 2012 already contains flood planning provisions (clause 7.3) under which development on flood prone land must be considered. Given that this planning proposal will not give rise to any significant increase in development potential for land zoned RU1 or RU2, but is designed to provide greater flexibility in terms of building design, it is considered that this proposal is consistent with the principles and guidelines contained within the Floodplain Development Manual or is otherwise of minor significance.
4.4 Planning for Bushfire Protection	Justifiably Inconsistent. Some RU1 and or RU2 zoned land is situated on Bushfire Prone Land as a consequence the NSW Rural Fire Service will be consulted as part of the planning proposal post Gateway determination and prior to public exhibition.

Section 117 Direction Checklist	
Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The planning proposal is considered to be generally consistent with the relevant Directions contained within the North Coast Regional Plan 2036.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent This planning proposal does not propose to rezone land mapped as farmland of State or Regional Significance.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is considered to be consistent with the North Coast Regional Plan 2036.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Justifiably inconsistent. This planning proposal seeks to incorporate additional development requirements applicable to dual occupancy development proposed for the RU1 or RU2 zone under the provisions of Ballina LEP 2012. The objective of these requirements is to ensure that the primary production potential of the land is maintained and that the development is also compatible with the environmental capability of the land. It is noted that amendments to Lismore and Byron LEP's related to dual occupancy development have also introduced specific development requirements.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.

Section 117 Direction Checklist Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.

Appendix Three – Gateway Determination

A copy of the Gateway determination will be included here.