

Planning Proposal 2/2018

Proposed Amendment to Narrabri Local Environmental Plan 2012

Amendments to Clause 4.2B to prevent Dual Occupancies being constructed on rural zoned land where dwelling houses are not permissible

Version 01

PART 1: OBJECTIVES OR INTENDED OUTCOMES

Background

Clause 4.2B of the Narrabri Local Environmental Plan (LEP) 2012 sets out the requirements for the erection of dwellings houses in certain rural and environmental zones. The requirements of this clause affectively restrict the erection of dwellings houses on the affected rural and environmental protection zoned land where that land does not achieve the minimum lot size prescribed, where the land has not historically been benefited with an opportunity for a dwelling house to be erected, or where it is not a lot created by a subdivision approved under the Narrabri LEP 2012 or an environmental planning instrument proceeding this plan under which the erection of a dwelling house would have been permitted with or without consent.

Clause 4.2B of the clause of the Narrabri LEP 2012 does not include any requirements for the erection of dual occupancies on rural or environmental protection zoned land. The definitions of the terms 'dwelling house' and 'dual occupancy' are strictly set by the dictionary accompanying this environmental planning instrument. The dictionary does not define a 'dual occupancy' as a type of 'dwelling house', and therefore a consent authority cannot consider the provisions of Clause 4.2B when determining an application for a 'dual occupancy' on rural or environmental protection zoned land. The Narrabri LEP 2012 was previously amended to permit 'dual occupancies' on rural zoned land, while dual occupancies (attached) are permitted with consent on certain environmental protection zoned land.

Effectively this means that under the current provisions of the Narrabri LEP 2012 the erection of a 'dual occupancy' may be permissible on rural and environmental zoned land, on which the erection of a 'dwelling house' is prohibited by Clause 4.2B.

The purpose of this planning proposal is to introduce wording into Clause 4.2B that would subject development involving a 'dual occupancy' to the same provisions prescribed by this Clause for development involving a 'dwelling house'.

Objectives

The objectives of this planning proposal are:

- Clause 4.2B identifies the term 'dwelling house', but not 'dual occupancy', which is a separately defined term by the Narrabri LEP 2012. The objective of this planning proposal is to amend the wording of Clause 4.2B to include references to 'dual occupancy' where appropriate to impose the same restrictions on the construction of a 'dual occupancy' on land zoned RU1 Primary Production, RU4 Primary Production Small Lots, R5 Large Lot Residential or E3 Environmental Management, as is currently imposed on the construction of a 'dwelling house' on land within these land use zones by this Clause.

PART 2: EXPLANATION OF PROVISIONS

To achieve the planning proposal's objectives, it is proposed to amend Clause 4.2B of the Narrabri LEP 2012 to include references to dual occupancies where appropriate to subject their construction to the same restrictions as dwelling houses.

The following is an example of how Clause 4.2B could be amended to achieve the objectives of the planning proposal. The changes recommended to the existing are shown in ***bold and italic text***:

- (1) The objectives of this clause are as follows:
 - (a) to minimise unplanned rural residential development,
 - (b) to enable the replacement of lawfully erected dwelling houses in rural and environment protection zones.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU4 Primary Production Small Lots,
 - (c) Zone R5 Large Lot Residential,
 - (d) Zone E3 Environmental Management.
- (3) Development consent must not be granted for the erection of a dwelling house **or dual occupancy** on land to which this clause applies, and on which no dwelling house **or dual occupancy** has been erected, unless the land:
 - (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or
 - (b) is a lot created under this Plan (other than under clause 4.2 (3)), or
 - (c) is a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
 - (d) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (e) is an existing holding, or
 - (f) would have been a lot or a holding referred to in paragraph (a), (b), (c), (d) or (e) had it not been affected by:
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose.

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

- (4) Development consent may be granted for the erection of a dwelling house **or dual occupancy** on land to which this clause applies if there is a lawfully erected dwelling **or dual occupancy** house on the land and the dwelling house **or dual occupancy** to be erected is intended only to replace the existing dwelling house.
- (5) In this clause:

existing holding means land that:

 - (a) was a holding on the relevant date, and
 - (b) is a holding at the time the application for development consent referred to in subclause (3) is lodged, whether or not there has been a change in the ownership of the holding since the relevant date.

holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

relevant date means:

 - (a) in relation to land to which the Narrabri Local Environmental Plan 1992 applied immediately before the commencement of this clause—7 January 1966, or
 - (b) in relation to land to which the Narrabri Local Environmental Plan No 2 applied immediately before the commencement of this clause—6 June 1986.

Note. The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date. NSW Government

PART 3: JUSTIFICATION

In accordance with the Department of Planning and Infrastructure's Guide to Preparing Planning Proposals, this section considers the following issues:-

- Section A: Need for the planning proposal
- Section B: Relationship to strategic planning framework
- Section C: Environmental, social and economic impact
- Section D: State and Commonwealth Interests

SECTION A – NEED FOR THE PLANNING PROPOSAL

1. Is the planning proposal the result of any strategic study?

The planning proposal is not a direct result of a strategic study or report. The need for the planning proposal has been identified by Council Staff reviewing the provisions of the Narrabri LEP 2012, and a situation in the Maitland Local Government Area which saw a development application on land which a dwelling house would not be permissible under similar clause in the Maitland LEP 2011 to clause 4.2B of the Narrabri LEP 2012 being recommended for approval.

Although it is not directly related to a strategic study this planning proposal is seen to be broadly in line with the objectives of the New England North West Strategic Land Use Plan 2012 and the Narrabri Shire Growth Management Strategy 2009, as it supports the orderly development of rural land and it seeks to alleviate the potential for land use conflict.

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

It is considered that an amendment to the Narrabri LEP 2012 is the only method to achieve the objectives and outcome sought by this planning proposal, given the planning proposal objectives directly relate to amending an anomaly in the provisions of the Narrabri LEP 2012 which has resulted in development for the purposes of dual occupancies being permitted on rural and environmental zoned land where development involving the construction of dwelling houses is prevented.

The provisions and amended wording proposed for clause 4.2B is seen to be the best way of achieving the outcomes of the planning proposal, however the proponent would consider alternately worded versions of the changes to clause 4.2B proposed if they were recommended to it through the progression of the planning proposal.

SECTION B –RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Strategic Regional Land Use Policy

The *New England North West Strategic Regional Land Use Policy 2012* was prepared by the Department to give strategic direction to development in the New England North West Region and is a relevant consideration for this planning proposal.

Chapter 6 – Housing settlement of the *New England North West Strategic Regional Land Use Policy 2012* considers the supply and demand of housing stock in the region, and the challenges for local authorities to ensure there is an adequate supply of land to facilitate different types of housing developments.

Chapter 6 recommends six actions to achieve the policy response objectives proposed by the chapter, including Action 6.3 which states:

- Local Council's will ensure new residential development makes a positive contribution to liveability and character by ensuring residential areas are planned in accordance with the settlement planning principles of this plan.

The settlement planning principles include the following:

- New residential and rural residential areas will respect environmental and cultural heritage and avoid areas most affected by natural hazards or having high cultural significance
- New residential and rural residential areas should minimise the potential for land use conflict with land needed for valuable economic activities, such as valuable agricultural lands and natural resource lands. This includes avoiding locations where possible adverse impacts associated with industry (such as noise, dust, visual impacts or other amenity impacts) are likely to affect future residents.

This planning proposal is considered to be broadly in line with these settlement planning principles as Clause 4.2B restricts the development of rural and rural residential housing for the purpose of dwelling houses on lots which do not comply with the applicable minimum lot size, ensuring that such development occurs in an orderly manner and reducing the potential for land use conflict. Including references to dual occupancies in Clause 4.2B will extend the restrictions currently affecting the development of dwelling houses on rural and environmental protection zoned land to dual occupancies, a more intensive type of residential development than single dwelling houses.

Draft Strategic Regional Land Use Policy

The *New England North West Regional Plan 2017* is a draft strategic plan prepared, and publicly notified by the Department of Planning and Environment. This planning proposal is considered to generally compatible with the directions of this strategy which relate to managing land use conflict and providing housing for communities. As discussed throughout this document the planning proposal would ensure development of dual occupancies on rural and environmental zoned land is subject to the same controls as development involving the construction of dwelling houses on land within the same zones. The planning proposal would not conflict with a direction or action proposed by this draft regional strategy.

4. Is the planning proposal consistent with the local Council's Community Strategic Plan or other local strategic plan?

The Narrabri Growth Management Plan is a local strategic plan which was prepared in 2009 and relates to the entirety of the Narrabri Local Government Area (LGA).

This planning proposal does not directly relate to any provisions or outcomes of this strategy, however it is considered to be broadly compatible with its recommendations regarding the protection of biodiversity values and the management of rural land use conflict. The planning proposal would rationalise planning controls in place for the construction of dual occupancies on rural and environmental protection zoned land, imposing controls consistent with those in place for the construction of dwelling houses on the same land.

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

The State Environmental Planning Policies (SEPPs) that are relevant to this planning proposal are outlined below:-

Relevant SEPP/Deemed SEPP	Consistency of Planning Proposal
State Environmental Planning Policy No 1—Development Standards	Not applicable.
State Environmental Planning Policy No 14—Coastal Wetlands	Not applicable.
State Environmental Planning Policy No 19—Bushland in Urban Areas	Not applicable.
State Environmental Planning Policy No 21—Caravan Parks	Not applicable.
State Environmental Planning Policy No 26—Littoral Rainforests	Not applicable.
State Environmental Planning Policy No 30—Intensive Agriculture	Not applicable.
State Environmental Planning Policy No 33—Hazardous and Offensive Development	Not applicable.
State Environmental Planning Policy No 36—Manufactured Home Estates	Not applicable.
State Environmental Planning Policy No 44—Koala Habitat Protection	Not applicable.
State Environmental Planning Policy No 47—Moore Park Showground	Not applicable.
State Environmental Planning Policy No 50—Canal Estate Development	Not applicable.
State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable.
State Environmental Planning Policy No 55—Remediation of Land	Not applicable.
State Environmental Planning Policy No 62—Sustainable Aquaculture	Not applicable.
State Environmental Planning Policy No 64—Advertising and Signage	Not applicable.
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	Not applicable.
State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)	Not applicable.
State Environmental Planning Policy No 71—Coastal Protection	Not applicable.
State Environmental Planning Policy (Affordable Rental Housing) 2009	Not applicable.
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Not applicable.
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	Not applicable.
State Environmental Planning Policy (Infrastructure) 2007	Not applicable.
State Environmental Planning Policy (Integration and Repeals) 2016	Not applicable.
State Environmental Planning Policy (Kosciuszko	Not applicable.

Relevant SEPP/Deemed SEPP	Consistency of Planning Proposal
National Park—Alpine Resorts) 2007	
State Environmental Planning Policy (Kurnell Peninsula) 1989	Not applicable.
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable.
State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007	Not applicable.
State Environmental Planning Policy (Penrith Lakes Scheme) 1989	Not applicable.
State Environmental Planning Policy (Rural Lands) 2008	This planning proposal would impose restrictions on the construction of dual occupancies on rural land in the Narrabri LGA that reflect restrictions currently imposed on the construction of dwellings on rural land. It is considered that the planning proposal would not conflict with any aims or controls of this SEPP, and would impose controls compatible with the following aims of the SEPP: <i>(a) To facilitate the orderly and economic use and development of rural lands for rural and related purposes, and</i> <i>(c) to implement measures designed to reduce land use conflict.</i>
State Environmental Planning Policy (State and Regional Development) 2011	Not applicable.
State Environmental Planning Policy (State Significant Precincts) 2005	Not applicable.
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	Not applicable.
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	Not applicable.
State Environmental Planning Policy (Three Ports) 2013	Not applicable.
State Environmental Planning Policy (Urban Renewal) 2010	Not applicable.
State Environmental Planning Policy (Western Sydney Employment Area) 2009	Not applicable.
State Environmental Planning Policy (Western Sydney Parklands) 2009	Not applicable.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	Not applicable

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

Each s117 Ministerial Direction is listed below with an annotation stating whether it is relevant to the Planning Proposal and comments relating to its consistency with the corresponding objective.

s.117 Direction Title	Consistency of Planning Proposal
1.1 Business and Industrial Zones	Not applicable.

s.117 Direction Title	Consistency of Planning Proposal
1.2 Rural Zones	This Section 117 Directive is relevant to the planning proposal as the proposal would affect rural zoned land, however the planning proposal is considered to be consistent with this Directive as it would not rezone land from any rural zone or increase the density of development which could be carried out in a rural zone.
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable.
1.4 Oyster Aquaculture	Not applicable.

s.117 Direction Title 1.5 Rural Lands	Consistency of Planning Proposal This Section 117 Directive is relevant to this planning proposal as it would affect rural zoned land. Where this Directive applies the planning proposal proposed must be consistent with the Rural Planning Principles contained in SEPP (Rural Lands) 2008. The rural Planning Principles are listed below and comments have been included under each principle considering its relationship with the planning proposal: - the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas. <u>Planning Comment:</u> the planning proposal would not affect the opportunity for rural land to be used for productive agriculture or economic purposes. The proposal would restrict the opportunity for dual occupancies to be constructed on certain rural properties, however it is considered that this restriction would have a negligible impact on the overall opportunity for rural lands to be used for productive agricultural activity. - recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State. <u>Planning Comment:</u> the proposal would have a limited impact in relation to this planning principle. - recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development. <u>Planning Comment:</u> the planning proposal would not affect any existing rural land uses or the opportunity for such uses to be carried out on rural land. - in planning for rural lands, to balance the social, economic and environmental interests of the community. <u>Planning Comment:</u> the planning proposal would put in place controls on the development of dual occupancies on rural land which reflect existing expectations and controls for residential type development of rural land. - the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land. <u>Planning Comment:</u> the planning proposal would not cause any impacts that relate to this planning principle. - the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities. <u>Planning Comment:</u> The planning proposal would restrict the construction of dual occupancies, a form of residential development more intensive than single dwelling houses, from being carried out on land which development involving dwelling houses is currently restricted. The planning proposal is therefore not seen to be obstructive to the reasonable development of rural lifestyle, settlement and housing. - the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing. <u>Planning Comment:</u> the planning proposal would impose restrictions on rural housing development and would not increase expectations or reliance on services and infrastructure. - ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General. <u>Planning Comment:</u> the planning proposals relationship with strategic plans has been discussed above under the relevant sections of this document. The proposal is considered to be broadly compatible with existing local and regional land use strategies. In line with the comments above the planning proposal is considered to be consistent with the Rural Planning Principles of the SEPP (Rural Lands) 2008 and therefore the requirements of this Section 117 Directive.
---	--

s.117 Direction Title	Consistency of Planning Proposal
2.1 Environment Protection Zones	The planning proposal is consistent with the requirements of this Directive.
2.2 Coastal Protection	Not applicable.
2.3 Heritage Conservation	Not applicable.
2.4 Recreation Vehicle Areas	Not applicable.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable.
3.1 Residential Zones	Not applicable.
3.2 Caravan Parks and Manufactured Home Estates	Not applicable.
3.3 Home Occupations	Not applicable.
3.4 Integrating Land Use and transport	Not applicable.
3.5 Development Near Licensed Aerodromes	Not applicable.
3.6 Shooting Ranges	Not applicable.
4.1 Acid Sulfate Soils	Not applicable.
4.2 Mine Subsidence and Unstable Land	Not applicable.
4.3 Flood Prone Land	Not applicable.
4.4 Planning for Bushfire Protection	This Directive is relevant to the planning proposal, as some of the rural and environmental protection zoned land to be affected by it is considered bushfire prone land. As the planning proposal would reduce the opportunity for development to be carried out on this land it is considered it could be supported as being of minor significance pending a referral to the NSW RFS.
5.1 Implementation of Regional Strategies	Not applicable.
5.2 Sydney Drinking Water Catchments	Not applicable.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	Not applicable.

s.117 Direction Title	Consistency of Planning Proposal
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Not applicable.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Not applicable.
5.8 Second Sydney Airport: Badgerys Creek	Not applicable.
5.9 North West Rail Link Corridor Strategy	Not applicable.
5.10 Implementation of Regional Plans	Not applicable.
6.1 Approval and Referral Requirements	Not applicable.
6.2 Reserving Land for Public Purposes	Not applicable.
6.3 Site Specific Provisions	Not applicable.
7.1 Implementation of A Plan for Growing Sydney	Not applicable.
7.2 Implementation of Greater Macarthur Land Release Investigation	Not applicable.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Not applicable.

SECTION C – ENVIRONMENTAL SOCIAL AND ECONOMIC IMPACT

- 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

This planning proposal would impose a new restriction on type of development permitted on certain rural and environmental protection zoned land. As the proposal would decrease the development potential of affected land it is considered that the planning proposal would not have an adverse impact on critical habitats or threatened species.

- 8. Are there any other environmental effects as a result of the planning proposal and how are they proposed to be managed?**

This planning proposal would impose a new restriction on type of development permitted on certain rural and environmental protection zoned land, and as such Council considers that the proposal would not give rise to any significant environmental effects.

- 9. How has the planning proposal adequately addressed any social and economic effects?**

It is considered that the planning proposal would have minor positive social and economic effects. The proposal would rationalise the planning controls relating to the construction of dual occupancies on rural and environmental zoned land, and would impose provisions in line with those affecting the construction of dwelling houses on the same land. The planning proposal would put in place restrictions on the development of rural and environmental zoned land that would be in accordance with the community's expectations of how that land is to be developed.

SECTION D – COMMONWEALTH AND STATE INTERESTS

10. Is there adequate public infrastructure for the planning proposal?

Not applicable.

11. What are the views of State and Commonwealth public authorities in accordance with the Gateway determination?

Relevant State and Commonwealth Government Agencies will be consulted in accordance with the requirements of any Gateway Determination. However, due to the minor nature of the Planning Proposal it is not anticipated that any authorities would have a significant interest or concerns regarding the planning proposal.

PART 5: COMMUNITY CONSULTATION

In accordance with the NSW Department of Planning Guidelines to preparing LEP's, upon Gateway Determination adjoining landholders and any affected community organisations will be formally notified of the proposal and invited to provide comment.

In accordance with prevailing Departmental Guidelines and the provisions of the Environmental Protection Authority Act, the Planning Proposal will also be notified publicly for the prescribed period in local newspapers and Council's website at <http://www.narrabri.nsw.gov.au/>

It is anticipated that the proposal will require a minimum of fourteen (14) days notification.

PART 6: PROJECT TIMELINE

It is expected that the relevant steps in the planning proposal process will be completed as set-out in the table below:

Milestone	Timeframe
Council endorse the Planning Proposal	September 2017
Gateway Determination issued by the Department of Planning and Environment	October 2017
Public exhibition of the planning proposal and any required consultation with any public authorities	October 2017
Consideration of any submissions received made during public notification/consultation	November 2017
Refer proposal to Parliamentary Counsel and obtain Opinion	December 2017
Determination to make the LEP and notification of the LEP on legislation website	January 2018

Note: this project timeline has been drafted on the assumption that Council will be permitted to utilise its delegated plan making powers by the Department of Planning and Environment. Timeframes for

achieving milestones may be subject to change pending issues arising during the planning proposal process.

