

PWG001809



Enquiries: Mr Mark Adams (MA)
Our Ref: PL/STR/28
Your Ref:

14 February 2014

Meredith McIntyre
Department of Planning
PO Box 5475
WOLLONGONG NSW 2520



Dear Meredith

PLANNING PROPOSAL – AMENDMENT TO CLAUSE 4.2B OF COOMA-MONARO LOCAL ENVIRONMENTAL PLAN 2013 – GATEWAY SUBMISSION

Please find attached a copy of the Planning Proposal referred to above. This application has been referred to the Department seeking an amendment to clause 4.2B(4) of Cooma-Monaro Local Environmental Plan 2013 as follows:

- a. By removing the words 'or dwelling house' from subclauses 4.2B(4)(a) and 4.2B(4)(b)

Please find attached a copy of documentation relating to this planning proposal, which includes:

- A Planning Proposal report
- the Council report and resolution

As this matter is essentially a legal drafting issue, the Council would like it expedited with no public notification period. The Council is currently assessing an application for a dual occupancy to which this clause applies and is anticipating receiving other applications shortly. The current application cannot be issued with a development consent until the change to clause 4.2B is in force. As such no savings provisions are required to be associated with this amendment.

Should further information be required please contact Mark Adams on 6455-1912 or by email at mark.adams@cooma.nsw.gov.au.

Yours sincerely

Mark Adams
Planning Manager

for
Peter Smith
Director of Environmental Services

PLANNING PROPOSAL – AMENDMENT OF CLAUSE 4.2B OF COOMA-MONARO LOCAL ENVIRONMENTAL PLAN 2013

1 Objectives

The objective of this Planning Proposal is to rectify an anomaly with clause 4.2B(4) of Cooma-Monaro Local Environmental Plan 2013 which prevents the approval of a second dwelling house (to create a dual occupancy) on a lot which already contains an existing dwelling house, but allows the approval of a dual occupancy on a lot which is vacant.

This was not the Council's original intention with the clause. The Council always intended that the clause be used to permit one or two dwellings on a single lot, regardless of whether or not the lot contained an existing dwelling.

2 Proposed Provisions

It is intended to address this problem by recommending the words 'or dwelling house' be removed from subclauses 4.2B(4)(a) and 4.2B(4)(b).

However Council would have no objection to the complete removal of subclause 4.2B(4) as it does not appear to be necessary to achieve the objectives of the clause and is covered by other provisions (eg definitions and the land use table).

3 Justification of Objectives

At present the clause will facilitate the creation of situations which serve no clear planning purpose. For example, a situation could arise where an application for a second dwelling to create a dual occupancy on a lot already containing an existing dwelling would have to be refused, however if the applicant demolished the existing house first and then rebuilt it as part of the dual occupancy application this could be approved.

Similarly, where there are two adjoining properties, if one contains an existing dwelling house and the other is vacant, the vacant lot would be permitted to have two dwellings on it (provided they were applied for in the same application) whereas the site with the existing dwelling house would not be permitted a second dwelling.

There is no justification from Council's perspective for such inconsistent application of a permissible land use.

This Planning Proposal is essentially the rectification of an administrative legal issue and has no implications of note for the environment, and is consistent with the 117 Directions.

Is the PP a result of any strategic study or report?

No.

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

There is no way to rectify this problem other than by a change to the wording of the clause.

Is the PP consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Not applicable.

Is the PP consistent with a council's local strategy or other local strategic plan?

It was always the intention of Council in preparing its new LEP that dual occupancies in the relevant zones be permitted as per the requirements of subclause 4.2B(3), regardless of whether the lot in question contained an existing dwelling house or otherwise.

Council is introducing a curtilage provision for dual occupancies in the RU1, R5 and Environmental Zones in its new DCP, which is currently on public exhibition. This provision requires the dwellings in a detached dual occupancy to be within 200 metres of each other. It is expected this provision will be finally adopted by Council in its new DCP, however the actual curtilage distance may change as a result of the public exhibition.

Is the PP consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with State Environmental Planning Policy (Rural Lands) 2008, particular with Rural Planning Principle (f) in clause 7.

Is the PP consistent with applicable Ministerial Directions (s.117 Directions)?

Yes.

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?

Not directly. An assessment of possible impacts is more appropriately considered at the development application stage given the nature of this particular Planning Proposal.

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

No.

Has the PP adequately addressed any social and economic effects?

Not applicable.

Is there adequate public infrastructure for the PP?

Not applicable.

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

Not applicable.

There are no maps intended to be amended as part of this Planning Proposal.

5 Community Consultation

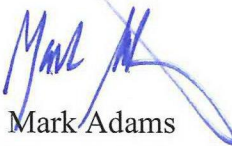
This Planning Proposal concerns the rectification of an administrative/legal issue and there is no need for community consultation or consultation with other State Government agencies.

6 Project Timeline

The Council is keen to see this matter rectified as soon as possible within 4-5 weeks.

RECOMMENDATION

It is recommended that clause 4.2B of Cooma-Monaro Local Environmental Plan 2013 be amended by the deletion of the words 'or dwelling house' from subclauses (4)(a) and (4)(b).


Mark Adams
Planning Manager
Date: 13/2/14

**ITEM 37 PLANNING PROPOSAL – RECTIFICATION OF CLAUSE 4.2B(4)
OF COOMA-MONARO LOCAL ENVIRONMENTAL PLAN 2013**

Reporting Officer Planning Manager	File No PL/STR/28
Budget Allocation N/A	Expenditure to Date N/A
Effect of Recommendation on Budget N/A	

Report Summary

This Report seeks Council's endorsement for the submission of a Planning Proposal to the Minister to alter clause 4.2B(4) of the *Cooma-Monaro Local Environmental Plan 2013* to correct a drafting oversight in the clause which prevents the approval of a dual occupancy in certain circumstances in contradiction to the intentions of the clause.

Commentary

Clause 4.2B(4) of Cooma-Monaro Local Environmental Plan 2013 (LEP) currently reads as follows:

4.2B Erection of dual occupancies and dwelling houses on land in certain rural, residential and environment protection zones

- (4) *Development consent must not be granted under subclause (3) unless:*
- (a) *no dual occupancy or dwelling house has been erected on the land, and*
 - (b) *if a development application has been made for development for the purpose of a dual occupancy or dwelling house on the land—the application has been refused or it was withdrawn before it was determined, and*
 - (c) *if development consent has been granted in relation to such an application—the consent has been surrendered or it has lapsed.*

Subclause 4(a) above has been highlighted as it is the specific part of the clause which is presenting an issue. Clause 4.2B has been designed to permit both dwelling houses and dual occupancies on land in Zones RU1 – Primary Production, R5 – Large Lot Residential, E3 – Environmental Management and E4 – Environmental Living. However subclause 4(a) is preventing the erection of a second dwelling on a lot which already contains a dwelling house. As such it is effectively preventing the erection of a dual occupancy on a site that already contains a single dwelling, but it allows a dual occupancy on a lot which is vacant. This clearly does not make sense and the clause is contradicting itself.

The Department of Planning has been made aware of this anomaly and has agreed that it should be corrected. Council has been advised in writing by the Department that this could be done relatively quickly and with no need for public exhibition.

It is understood this subclause was originally inserted by the Department's legal branch during the finalisation of LEP. As such it is likely that specific wording changes will need to be clarified with them prior to the LEP being amended. However, removal of the words '*or dwelling house*' from subclause 4(a) will rectify the clause from Council's perspective.

It is recommended Council submit a Planning Proposal to the Minister to correct this anomaly by altering clause 4.2B(4) to remove any obstacles to a dual occupancy being erected on land in accordance with the remainder of the clause.

RECOMMENDATION

- 1 That a Planning Proposal be submitted to the Minister to alter clause 4.2B(4) of the *Cooma-Monaro Local Environmental Plan 2013* to correct the drafting anomaly that is preventing a dual occupancy on a lot containing an existing dwelling.
- 2 That the Director of Environmental Services/Planning Manager be delegated authority to carry out all necessary steps in the process to effect this amendment to *Cooma-Monaro Local Environmental Plan 2013*.

COOMA-MONARO SHIRE COUNCIL

MINUTES OF THE COUNCIL MEETING HELD ON 10 FEBRUARY 2014

ITEM 34 MOWING OF COUNCIL PARKS, RESERVES AND OPEN SPACE POLICY

Report Summary

For Council to adopt the Mowing of Council Parks, Reserves and Open Space Policy.

42/14

RESOLVED (Hughes/Corbett)

That the Mowing of Council Parks, Reserves and Open Space Policy be adopted.

CARRIED UNANIMOUSLY (7-0)

ITEM 35 WATER CHARGE FOR HOME HAEMODIALYSIS POLICY

Report Summary

For Council to adopt the Water Charge for Home Haemodialysis Policy.

43/14

RESOLVED (Taylor/Mitchell)

That the Water Charge for Home Haemodialysis Policy be adopted.

CARRIED UNANIMOUSLY (7-0)

ITEM 37 PLANNING PROPOSAL – RECTIFICATION OF CLAUSE 4.2B(4) OF COOMA-MONARO LOCAL ENVIRONMENTAL PLAN 2013

Report Summary

This Report seeks Council's endorsement for the submission of a Planning Proposal to the Minister to alter clause 4.2B(4) of the *Cooma-Monaro Local Environmental Plan 2013* to correct a drafting oversight in the clause which prevents the approval of a dual occupancy in certain circumstances in contradiction to the intentions of the clause.

44/14

RESOLVED (Kaltoum/Hughes)

- 1 That a Planning Proposal be submitted to the Minister to alter clause 4.2B(4) of the *Cooma-Monaro Local Environmental Plan 2013* to correct the drafting anomaly that is preventing a dual occupancy on a lot containing an existing dwelling.
- 2 That the Director of Environmental Services/Planning Manager be delegated authority to carry out all necessary steps in the process to effect this amendment to *Cooma-Monaro Local Environmental Plan 2013*.

CARRIED UNANIMOUSLY (7-0)