

PLANNING PROPOSAL

Amendment to the Maitland LEP 2011

**Amendments to Clause 4.2A to Include
References to Dual Occupancy**

**Version 1.0
28 May 2013**



**MAITLAND
CITY COUNCIL**

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Version 1.0 – 28 May 2013 for report to Council

INTRODUCTION

In accordance with Section 55 of the Environmental Planning and Assessment Act 1979, this planning proposal has been prepared to amend the provisions of Clause 4.2A of the Maitland Local Environmental Plan 2011 (MLEP 2011) to clarify the relationship between Dual Occupancies and dwelling entitlements in certain rural and environmental zones.

Clause 4.2A of the MLEP 2011 sets out the requirements for the erection of dwellings in certain rural and environmental zones ("dwelling entitlements").

Clause 4.2A currently incorporates an inference, by strict interpretation of LEP definitions of "Dwelling" and "Dual Occupancy", that Council can consider applications for Dual Occupancies on allotments in certain rural and environmental zones that do not necessarily have a dwelling entitlement. The purpose of this planning proposal is to introduce wording into Clause 4.2A that clarifies that there is no difference between the interpretation of the definitions of "Dwelling House" and "Dual Occupancy" in respect of Clause 4.2A as far as that clause applies to dwelling entitlement.

PART 1: OBJECTIVES or INTENDED OUTCOMES

The objectives of this planning proposal are:

1. To amend the wording of Clause 4.2A to clarify that there is no difference between the interpretation of the definitions of "Dwelling House" and "Dual Occupancy" in respect of Clause 4.2A, as far as that clause applies to dwelling entitlement.
2. Clause 4.2A identifies "Dwelling House" but not "Dual Occupancy", which is a separately defined term in the MLEP 2011. It should be noted that the MLEP 2011 has been prepared in accordance with the Standard Instrument and Clause 4.2A is a model clause. It is therefore proposed to prohibit Dual Occupancies in the zones that Clause 4.2A applies, being RU1 Primary Production zone, RU2 Rural Landscape zone, E3 Environmental Management zone and E4 Environmental Living zone.

PART 2: EXPLANATION of PROVISIONS

To achieve the objectives of this planning proposal, it is intended to make the following minor amendments (shown in red text below) to Clause 4.2A of the Maitland LEP 2011:

4.2A Erection of dwelling houses on land in certain rural and environmental protection zones

- (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 *and dual occupancies* in certain rural and environmental protection zones.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,

- (b) Zone RU2 Rural Landscape,
 - (c) Zone E3 Environmental Management,
 - (d) Zone E4 Environmental Living.
- (3) Development consent must not be granted for the erection of a dwelling house *or dual occupancy* on land in a zone to which this clause applies, and on which no dwelling house *or dual occupancy* has been erected, unless the land is:
- (a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or
 - (b) a lot created before this Plan commenced and on which the erection of a dwelling house *or dual occupancy* was permissible immediately before that commencement, or
 - (c) 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 *or dual occupancy* would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (d) an existing holding.

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 of this Plan.

- (4) Land ceases to be an existing holding for the purposes of subclause (3) (d) if an application for development consent referred to in that subclause is not made in relation to that land within 12 months from the date this Plan commences.
- (5) Despite subclause (3), development consent may be granted for the erection of a dwelling house *or dual occupancy* on land to which this clause applies if:
- (a) there is a lawfully erected dwelling house *or dual occupancy* on the land and the dwelling house *or dual occupancy* to be erected is intended only to replace the existing dwelling house *or dual occupancy*, or
 - (b) the land would have been a lot or a holding referred to in subclause (3) 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, or
 - (iii) a consolidation with an adjoining public road, a public reserve or for another public purpose.
- (6) Subclause (3) (b) and (c) do not apply to any lot created by consolidation.
- (7) In this clause:
existing holding means:
- (a) land that was held on 3 September 1993, and
 - (b) all land adjoining that land, even if separated by a road or railway, held by the same person or persons, whether or not there has been a change in the ownership of the land since 3 September 1993.

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.

PART 3: JUSTIFICATION for PROPOSED LEP AMENDMENTS

In accordance with the Department of Planning's 'Guide to Preparing Planning Proposals', this section provides a response to 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 a result of any strategic study or report?*

This planning proposal is a result of recent applications for development of Dual Occupancies on land where the Maitland LEP 2011 currently prohibits applications for development of Dwellings in the same circumstances. The current wording of Clause 4.2A means that Council is forced to consider applications for Dual Occupancy in the relevant zones identified under Clause 4.2A, which is an obvious anomaly, since an application for a Dwelling cannot be considered in the same circumstances. Clause 4.2A has been tested in this regard recently, resulting in Council recommending approval for a Dual Occupancy development on land that a Dwelling is not permissible upon.

The intended outcome of this planning proposal is to limit the proliferation of Dual Occupancies in rural and environmental zones, consistent with the current intentions for minimising the proliferation of Dwellings, as is the intention of Clause 4.2A. The outcome is consistent with the Maitland Rural Strategy 2005 (MRS 2005) and objectives of the Lower Hunter Regional Strategy 2006 (action 9.7). Extracts from these strategies are included as Attachment 1.

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 Maitland LEP 2011 is the only method to achieve the objectives of this planning proposal, as it relates to the prohibition of Dwellings and Dual Occupancies in certain rural and environmental zones, as specified under Clause 4.2A of the Maitland LEP 2011.

It is necessary to make these amendments to Clause 4.2A of the Maitland LEP 2011, since taking no action could result in the proliferation of Dual Occupancies in rural and environmental zones, which would be contrary to the principles of the LHR 2006 and the MRS 2005.

3. *Is there a net community benefit?*

A net community benefit arises from this planning proposal as it will reinforce Council's adopted MRS 2005 and the Lower Hunter Regional Strategy 2006, as well as removing ambiguity and inference from the operation of Clause 4.2A of the Maitland LEP 2011.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional strategy?

The applicable regional strategy is the Lower Hunter Regional Strategy (NSW Dept of Planning) – October 2006. Part 9 - Rural Landscape and Rural Communities of the LHRs 2006 (p. 37) states that:

Local Environmental Plans and other relevant planning provisions will be required to align with the strategic intentions contained in the Regional Strategy by:

- *Limiting further dwelling entitlements in rural areas; and*
- *Maintaining or increasing minimum lot sizes for rural subdivisions that confer a new dwelling entitlement (where established by an appropriate methodology as agreed by the Department of Primary Industries).*

This planning proposal is consistent with the Lower Hunter Regional Strategy, as it limits further dwelling entitlements in rural areas (LHRs 2006 p. 37) by including the term "Dual Occupancy" under Clause 4.2A, and through this, embraces the sustainable, affordable, prosperous and liveable future envisaged for the Lower Hunter.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The Community Strategic Plan, Maitland 2021, was adopted by Council on 22 February 2011. The Delivery Plan 2011-2015, detailed Council's strategies and actions to assist in meeting outcomes outlined in Maitland 2012. This document establishes clear links to the ten year community strategic plan, Maitland 2021. Council has developed an associated Resourcing Strategy covering the assets, people, financial requirements and time required to deliver strategies. This planning proposal is consistent with the objectives of the Delivery Plan 2011-2015.

The MRS 2005 outlines proposed changes to the Maitland LEP 2011, including the future of dwelling entitlements. It is the objective of the Rural Strategy to protect the underlying agricultural potential of Maitland's rural lands and to limit the further fragmentation of rural lands. By decreasing the number of dwelling entitlements in rural areas, the fragmentation of Maitland's rural lands will be further limited.

The objectives of this planning proposal are consistent with the objectives and intention of the Maitland Rural Strategy 2005.

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are no existing or draft state environmental planning policies that apply to this planning proposal.

7. Is the planning proposal consistent with applicable Ministerial Directions for Local Plan Making?

There are no s.117 Ministerial Directions that apply to this planning proposal.

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

8. 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?

There will be no impact on any of these matters as a result of this planning proposal.

9. 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 environmental effects likely as a result of this planning proposal.

10. How has the planning proposal adequately addressed any social and economic effects?

This planning proposal seeks to clarify Council's intentions regarding dwelling entitlements. The social and economic effects of dwelling entitlements for rural areas of Maitland were addressed during the preparation of the MRS 2005. Some of the aims in the MRS 2005 relate to the minimisation of additional fragmentation and preventing the proliferation of dwellings in rural areas.

There are no additional social or economic effects as a result of this planning proposal.

Section D – STATE and COMMONWEALTH INTERESTS

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

There is no additional demand generated for public infrastructure as a result of this planning proposal.

12. What are the view of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No consultation with State or Commonwealth public authorities is proposed for this planning proposal, due to its consistency with adopted strategies and its objective to clarify the function of the Maitland LEP 2011.

PART 4: COMMUNITY CONSULTATION

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, this planning proposal must be approved before community consultation is undertaken by the local authority. Council has deemed the planning proposal to be low impact and require a 14 day exhibition.

In accordance with Council's adopted *Community Engagement Strategy (March 2009)*, consultation on the proposed LEP amendment will be to inform and receive limited feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the local newspaper;
- Exhibition material and relevant consultation documents to be made available at all Council libraries and Council's Administration Building; and
- Consultation documents to be made available on Council's website.

At the close of the consultation process, Council officers will consider all submissions received and present a report to Council for their endorsement of the planning proposal before proceeding to finalisation of the amendment.

The consultation process, as outline above does not prevent any additional consultation measures that may be determined appropriate as part of the 'Gateway' determination process.

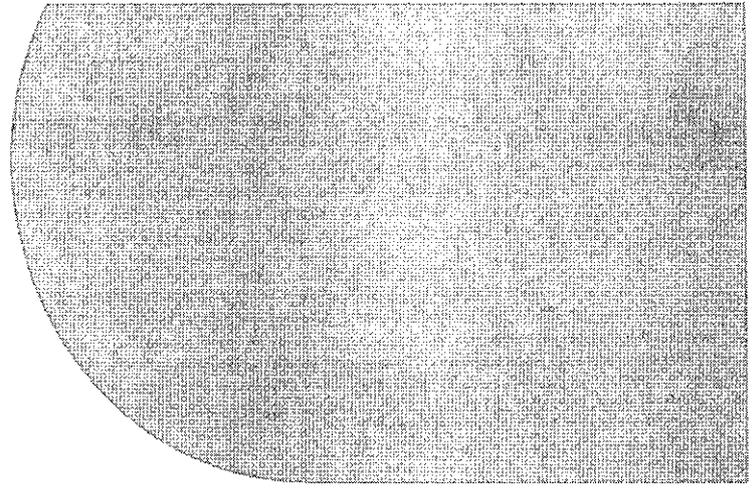
Project Timeline

The following timeframes are considered approximate, but are included in accordance with the Department's publication "*A Guide to Preparing Planning Proposals*".

- Anticipated Gateway determination date: 16 August 2013
- Timeframe for completion of required technical information: N/A – minor wording change only
- Timeframe for government agency consultation: to be undertaken with public exhibition (see below)
- Commencement & completion dates for public exhibition: 4 September 2013 – 20 September 2013
- Date of public hearing: N/A
- Timeframe for consideration of submissions: 2 weeks
- Timeframe for consideration of a proposal post-exhibition: 2 weeks
- Date of submission to DOPI to finalise LEP: 18 October 2013
- Anticipated date RPA will make plan: 15 November 2013
- Anticipated date RPA will forward to DOPI for notification: 15 November 2013

Overall, it is anticipated that the Gateway determination would be for at least a 6 month period for this planning proposal, provided that the information outlined in this planning proposal is deemed to be all that is required by the Department in order to process the LEP amendment.

Appendix ONE
Extracts from Lower Hunter Regional Strategy 2006 &
Maitland Rural Strategy 2005



Rural landscape and rural communities

BACKGROUND

Rural land has played a historically significant role in the settlement and development of the Lower Hunter Region. Although the Lower Hunter is now the sixth largest urban settlement in Australia, rural land still comprises approximately 80 per cent of all land within the Region.

These rural areas will continue to have significant value associated with their social and cultural heritage, scenic amenity, recreational value, rural production role, current and future tourism opportunities and rural living opportunities.

The Lower Hunter's rural lands contain rural industries such as agriculture, extractive industry and mining and natural areas that are of environmental significance and provide valuable regional open space. The rural lands enhance the landscape, contributing to scenic amenity, recreation and tourism opportunities and a sense of place.

In terms of productivity, the rural lands of the vineyards district and the cultivated floodplain of the Hunter River provide the greatest return per hectare (apart from intensive industries such as poultry farming). The vineyards district experiences pressure for development that is often inconsistent with its rural/grape-growing character. Development in the vineyards district, therefore, needs to be carefully managed to avoid detracting from its character.

Rural residential development provides for those who desire to reside in a rural area without having to commit to the purchase of a working farm. This desire is catered for with a large supply of existing small rural holdings in the general rural zone (estimated to be approximately 7000) that is effectively being used for rural living without significant agricultural production. In addition, there is currently almost 7000 hectares of land zoned for rural residential purposes

in the Lower Hunter. To further supplement that, another 700 hectares of land has been identified for rural residential development within endorsed local council strategies, which is yet to be rezoned.

Appropriate development of rural lands can contribute to the character, economy and social fabric of the Region and revitalise rural communities. However, these areas are also subject to many competing and potentially conflicting pressures that have the potential to damage some of their most valuable and irreplaceable attributes. Inappropriate rural residential development has the potential to conflict with agricultural activities, reduce agricultural viability and increase environmental damage.

OUTCOMES

The rural character of the Region is recognised and protected in local environmental plans. This includes protecting highly valued



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agricultural lands (such as the vineyards district) from urban and rural-residential encroachment as well as maintaining the character of small rural villages.

Existing opportunities for rural residential development provided in local environmental plans, endorsed local council strategies and in the large supply of existing small rural holdings is maintained.

ACTIONS

- The scale of new development within and adjacent to existing villages and rural towns must respect and preserve their character, scale, cultural heritage and social values.
- Local environmental plans are to maintain rural zoning for regionally significant agricultural land including the vineyard district as defined by the existing 1(v) zone in Cessnock Local Environmental Plan and the irrigated floodplains.
- Local environmental plans are to recognise any additional regionally significant agricultural land identified by the State Government through an agreed upon methodology consistent with the objectives of the Regional Strategy.
- Provide a consistent approach to the zoning system in rural lands through the Standard Instrument (Local Environmental Plans) Order 2006 and ensure that access to resource lands (including mineral resources) are maintained and protected from incompatible and inappropriate uses.
- Recognise that mining is a transitional land use and that former mining land offers opportunities for both conservation and development outcomes when activities are completed.
- Any future rezoning proposal for rural-residential development, beyond areas already available or identified, should be:
 - > consistent with the Sustainability Criteria (Appendix 1)
 - > consistent with an endorsed local council strategy
 - > maintain the character and role of the existing village centre.
- Local environmental plans and other relevant planning provisions will be required to align with the strategic intentions contained in the Regional Strategy by:
 - > limiting further dwelling entitlements in rural areas
 - > maintaining or increasing minimum lot sizes for rural subdivisions that confer a new dwelling entitlement (where established by an appropriate methodology as agreed by the Department of Primary Industries).

(d) Dwelling Houses in Rural Zones

Clause 13 of the LEP outlines the *'requirements with respect to the erection of dwelling houses in rural zones'*. Clause 13(1) provides a definition for *'separate parcel'*, which means:

'an allotment of land in existence on 1st January 1991 or the aggregation of two or more adjoining or adjacent allotments of land if they were in common ownership on 1 January 1991.'

The significance of this Clause is that Council may consent to the erection of a dwelling house on an allotment in a 1(a) zone that is less than 40ha and used for either an *'established cropping enterprise'* or an *'established horticultural enterprise'* or on an allotment zoned 1(b) with a minimum area of 4000m², if it satisfies the *'separate parcel'* criteria.

The dwelling entitlement provisions are somewhat cumbersome and relatively complicated. It was suggested in the draft Strategy that was publicly exhibited that a new definition for *'existing holding'* could be introduced and take effect on 15 March 2002 (i.e. the date at which the preliminary draft strategy was first submitted to the Coordinating Group).

The only basis for a change of date would be for administrative purposes. However, it is not considered that this is sufficient justification to provide an increase in dwelling entitlements that would create further fragmentation of rural lands.

The current *'existing parcel'* provisions has created an anomalous situation whereby if a dwelling house is erected on a small allotment and the adjoining lot(s) in the same ownership is/are greater than 40ha but less than 80ha, another dwelling cannot be erected on that property.

Anecdotal evidence indicates that Clause 13(2), relating to *'established cropping enterprise'* and *'established horticultural enterprise'*, has not been effective in encouraging additional productive agricultural land uses. In fact, it appears that this Clause has only created opportunities for large rural living allotments to remain when

the agricultural land use has ceased. This has had the effect of inflating rural land value and alienating potential productive agricultural land.

In order to achieve more effective regulatory controls relating to the *'separate parcel'* provisions, it is proposed that when Council undertakes its review of the LEP, these provisions be reassessed and consideration be given to the introduction of a *'sunset'* clause to extinguish the definition of *'separate parcel'* so that the relevant date is not carried on in perpetuity. Further, that consideration be given to deleting the provisions relating to *'established cropping enterprise'* and *'established horticultural enterprise'*.

This approach is consistent with the draft Lower Hunter Regional Strategy that opposes the creation of additional dwelling entitlements in the rural areas of the Region.

6 STRATEGIES

The previous section of the Strategy described the rural planning principles, policies and objectives relating to environmental, social and economic management.

Specific measures that can be achieved within Council's area of responsibility are provided in this section. It should be noted that some of the measures described below have already been implemented. However, they have been included to articulate Council's commitment to its vision for the Rural Strategy.

The following strategies are proposed to satisfy the various planning principles, policies and objectives:

6.1 Environmental Management

(a) Identify and protect biodiversity in Maitland's rural areas through sound conservation management and ecologically sustainable development.

Appendix TWO

Council Report and Resolution

10.6 AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY

File No:	RZ13004
Attachments:	1. Planning Proposal
Responsible Officer:	Bernie Mortomore - Executive Manager Planning, Environment and Lifestyle Ian Shillington - Manager Urban Growth
Author:	Josh Ford - Strategic Town Planner
Maitland 2021	Outcome 7: Diverse and affordable housing
Council Objective:	7.2.1 To ensure land and housing choice is consistent with forecast demographic demand

EXECUTIVE SUMMARY

*Clause 4.2A of the MLEP 2011 sets out the requirements for the erection of dwellings in certain rural and environmental zones ("dwelling entitlements"). Clause 4.2A currently incorporates an inference, by strict interpretation of LEP definitions of "Dwelling" and "Dual Occupancy", that Council can consider applications for Dual Occupancies on allotments in certain rural and environmental zones that do not necessarily have a dwelling entitlement. The purpose of this planning proposal is to introduce wording into Clause 4.2A that clarifies that there is no difference between the interpretation of the definitions of "Dwelling House" and "Dual Occupancy" in respect of Clause 4.2A as far as that clause applies to dwelling entitlement (see **Attachment 1 – Planning Proposal**).*

A draft Local Environmental Plan (LEP) has been prepared to rectify the noted anomaly contained within the current MLEP 2011. The purpose of this report is to propose that the planning proposal be submitted to the Department of Planning & Infrastructure so that a Gateway Determination can be issued, which will permit the planning proposal to be exhibited.

OFFICER'S RECOMMENDATION**THAT**

- 1. Pursuant to Section 55 of the Environmental Planning and Assessment Act 1979, the draft Local Environmental Plan for the subject amendments to Clause 4.2A of the Maitland Local Environmental Plan 2011 be submitted to the Department of Planning & Infrastructure for a Gateway Determination.**
- 2. A further report be presented to Council following the public exhibition period, to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process.**

PROCEEDINGS IN BRIEF

A motion was moved as follows:
(Clrs B Geoghegan/L Baker)

THAT

1. Pursuant to Section 55 of the Environmental Planning and Assessment Act 1979, the draft Local Environmental Plan for the subject amendments to Clause 4.2A of the Maitland Local Environmental Plan 2011 be submitted to the Department of Planning & Infrastructure for a Gateway Determination.
2. A further report be presented to Council following the public exhibition period, to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process.
3. A letter be sent to the Department of Planning & Infrastructure requesting that Council be notified when any other NSW Council applies for a variation of their LEP and when the Department or that particular Council identifies that the change is the result of an anomaly in the standard LEP template. This request is to apply for past and future applications.

The motion when put to the meeting was declared carried.

COUNCIL RESOLUTION

THAT

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Moved Cllr B Geoghegan, Seconded Cllr L Baker

CARRIED

The Mayor in accordance with Section 375A of the Local Government Act 1993 called for a division.

The division resulted in 13 for and 0 against, as follows:

For:	Cllr R Aitchison Cllr L Baker Cllr P Blackmore Cllr B Burke	Against:	
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Clr P Garnham
Clr B Geoghegan
Clr A Humphery
Clr H Meskauskas
Clr N Penfold
Clr P Penfold
Clr S Procter
Clr K Wethered
Clr B Whiting

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File No:	RZ13004
Attachments:	1. Planning Proposal
Responsible Officer:	Bernie Mortomore - Executive Manager Planning, Environment and Lifestyle Ian Shillington - Manager Urban Growth
Author:	Josh Ford - Strategic Town Planner
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A draft Local Environmental Plan (LEP) has been prepared to rectify the noted anomaly contained within the current MLEP 2011. The purpose of this report is to propose that the planning proposal be submitted to the Department of Planning & Infrastructure so that a Gateway Determination can be issued, which will permit the planning proposal to be exhibited.

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AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

BACKGROUND

The MLEP 2011 was gazetted on the 16th December 2011. The MLEP 2011 was prepared in accordance with the Department of Planning & Infrastructure's Standard Instrument Order 2006, which has the objective of ensuring statewide consistency regarding comprehensive LEPs.

Clause 4.2A of the MLEP 2011 sets out the requirements for the erection of dwellings ("dwelling entitlements") in certain rural and environmental zones, being RU1 Primary Production zone, RU2 Rural Landscape zone, E3 Environmental Management zone and E4 Environmental Living zone. The current wording of Clause 4.2A means that Council is forced to consider applications for Dual Occupancy in the relevant zones identified under Clause 4.2A, which is an obvious anomaly, since an application for a Dwelling cannot be considered in the same circumstances. Clause 4.2A has been tested in this regard recently, resulting in Council recommending approval for a "Dual Occupancy" development on land that a "Dwelling" is not permissible upon.

The full details of the various changes proposed under this draft LEP are included in **Attachment 1 - Planning Proposal**.

POLICY CONTEXT

The MLEP 2011 is Council's principal statutory planning instrument that governs land use planning decisions within the Maitland LGA. The draft LEP relates to a wording anomaly in Clause 4.2A of the MLEP 2011. Rectification of this anomaly will ensure that the MLEP 2011 is strengthened in regards to dwelling entitlements relating to Dual Occupancies and Dwellings in certain rural and environmental zones.

GATEWAY PLANNING PROCESS

If Council resolves to forward the planning proposal to the Department of Planning & Infrastructure seeking a Gateway Determination, the next step is for the Department of Planning & Infrastructure to issue a Gateway Determination which will outline the requirements for community and government agency consultation. The outcomes of community and government agency consultation will be reported to Council as part of a future Council report.

FINANCIAL IMPLICATIONS

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

POLICY IMPLICATIONS

The MLEP 2011 is Council's principal statutory planning instrument that governs land use planning decisions within the Maitland LGA. As such, the draft LEP will ensure that Clause 4.2A of the MLEP 2011 is amended to rectify the known anomaly and thereby strengthen the provisions of the MLEP 2011.

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

STATUTORY IMPLICATIONS

The procedures for the preparation of an LEP under Part 3 of the Environmental Planning and Assessment Act 1979 have been adhered to.

There are no statutory implications under the Local Government Act 1993 with this matter.

CONCLUSION

The purpose of this planning proposal is to introduce wording into Clause 4.2A of the MLEP 2011 that clarifies that there is no difference between the interpretation of the definitions of " Dwelling House " and " Dual Occupancy " in respect of Clause 4.2A, as far as that clause applies to dwelling entitlement. Clause 4.2A has been tested in this regard recently, resulting in Council recommending approval for a " Dual Occupancy " development on land that a " Dwelling " is not permissible upon. Should the draft LEP be supported by Council, a Gateway Determination will be sought from the NSW Department of Planning & Infrastructure to enable exhibition of the planning proposal, and a further report will be presented to Council following the exhibition period.

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

Planning, Environment and Lifestyle Reports

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY

Planning Proposal

Meeting Date: 9 July 2013

Attachment No: 1

Number of Pages: 13

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Version 1.0 – 28 May 2013 for report to Council

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The objectives of this planning proposal are:

1. To amend the wording of Clause 4.2A to clarify that there is no difference between the interpretation of the definitions of "Dwelling House" and "Dual Occupancy" in respect of Clause 4.2A, as far as that clause applies to dwelling entitlement.
2. Clause 4.2A identifies "Dwelling House" but not "Dual Occupancy", which is a separately defined term in the MLEP 2011. It should be noted that the MLEP 2011 has been prepared in accordance with the Standard Instrument and Clause 4.2A is a model clause. It is therefore proposed to prohibit Dual Occupancies in the zones that Clause 4.2A applies, being RU1 Primary Production zone, RU2 Rural Landscape zone, E3 Environmental Management zone and E4 Environmental Living zone.

PART 2: EXPLANATION of PROVISIONS

To achieve the objectives of this planning proposal, it is intended to make the following minor amendments (shown in red text below) to Clause 4.2A of the Maitland LEP 2011:

4.2A Erection of dwelling houses on land in certain rural and environmental protection zones

- (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 *and dual occupancies* in certain rural and environmental protection zones.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

- (b) Zone RU2 Rural Landscape,
 - (c) Zone E3 Environmental Management,
 - (d) Zone E4 Environmental Living.
- (3) Development consent must not be granted for the erection of a dwelling house or *dual occupancy* on land in a zone to which this clause applies, and on which no dwelling house or *dual occupancy* has been erected, unless the land is:
- (a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or
 - (b) a lot created before this Plan commenced and on which the erection of a dwelling house or *dual occupancy* was permissible immediately before that commencement, or
 - (c) 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 or *dual occupancy* would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (d) an existing holding.

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 of this Plan.

- (4) Land ceases to be an existing holding for the purposes of subclause (3) (d) if an application for development consent referred to in that subclause is not made in relation to that land within 12 months from the date this Plan commences.
- (5) Despite subclause (3), development consent may be granted for the erection of a dwelling house or *dual occupancy* on land to which this clause applies if:
- (a) there is a lawfully erected dwelling house or *dual occupancy* on the land and the dwelling house or *dual occupancy* to be erected is intended only to replace the existing dwelling house or *dual occupancy*, or
 - (b) the land would have been a lot or a holding referred to in subclause (3) 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, or
 - (iii) a consolidation with an adjoining public road, a public reserve or for another public purpose.
- (6) Subclause (3) (b) and (c) do not apply to any lot created by consolidation.
- (7) In this clause:
- existing holding** means:
- (a) land that was held on 3 September 1993, and
 - (b) all land adjoining that land, even if separated by a road or railway, held by the same person or persons, whether or not there has been a change in the ownership of the land since 3 September 1993.

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.

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

PART 3: JUSTIFICATION for PROPOSED LEP AMENDMENTS

In accordance with the Department of Planning's 'Guide to Preparing Planning Proposals', this section provides a response to 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 a result of any strategic study or report?**

This planning proposal is a result of recent applications for development of Dual Occupancies on land where the Maitland LEP 2011 currently prohibits applications for development of Dwellings in the same circumstances. The current wording of Clause 4.2A means that Council is forced to consider applications for Dual Occupancy in the relevant zones identified under Clause 4.2A, which is an obvious anomaly, since an application for a Dwelling cannot be considered in the same circumstances. Clause 4.2A has been tested in this regard recently, and Council has recommended approval for a Dual Occupancy development on land where a dwelling would not be permissible.

The intended outcome of this planning proposal is to limit the proliferation of Dual Occupancies in rural and environmental zones, consistent with the current intentions for minimising the proliferation of Dwellings, as is the intention of Clause 4.2A. The outcome is consistent with the Maitland Rural Strategy 2005 (MRS 2005) and objectives of the Lower Hunter Regional Strategy 2006 (action 9.7). Extracts from these strategies are included as Attachment 1.

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 Maitland LEP 2011 is the only method to achieve the objectives of this planning proposal, as it relates to the prohibition of Dwellings and Dual Occupancies in certain rural and environmental zones, as specified under Clause 4.2A of the Maitland LEP 2011.

It is necessary to make these amendments to Clause 4.2A of the Maitland LEP 2011, since taking no action could result in the proliferation of Dual Occupancies in rural and environmental zones, which would be contrary to the principles of the LHR 2006 and the MRS 2005.

3. Is there a net community benefit?

A net community benefit arises from this planning proposal as it will reinforce Council's adopted MRS 2005 and the Lower Hunter Regional Strategy 2006, as well as removing ambiguity and inference from the operation of Clause 4.2A of the Maitland LEP 2011.

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK**4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional strategy?**

The applicable regional strategy is the Lower Hunter Regional Strategy (NSW Dept of Planning) – October 2006. Part 9 - Rural Landscape and Rural Communities of the LHR 2006 (p. 37) states that:

Local Environmental Plans and other relevant planning provisions will be required to align with the strategic intentions contained in the Regional Strategy by:

- *Limiting further dwelling entitlements in rural areas; and*
- *Maintaining or increasing minimum lot sizes for rural subdivisions that confer a new dwelling entitlement (where established by an appropriate methodology as agreed by the Department of Primary Industries).*

This planning proposal is consistent with the Lower Hunter Regional Strategy, as it limits further dwelling entitlements in rural areas (LHR 2006 p. 37) by including the term "Dual Occupancy" under Clause 4.2A, and through this, embraces the sustainable, affordable, prosperous and liveable future envisaged for the Lower Hunter.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The Community Strategic Plan, Maitland 2021, was adopted by Council on 22 February 2011. The Delivery Plan 2011-2015, detailed Council's strategies and actions to assist in meeting outcomes outlined in Maitland 2012. This document establishes clear links to the ten year community strategic plan, Maitland 2021. Council has developed an associated Resourcing Strategy covering the assets, people, financial requirements and time required to deliver strategies. This planning proposal is consistent with the objectives of the Delivery Plan 2011-2015.

The MRS 2005 outlines proposed changes to the Maitland LEP 2011, including the future of dwelling entitlements. It is the objective of the Rural Strategy to protect the underlying agricultural potential of Maitland's rural lands and to limit the further fragmentation of rural lands. By decreasing the number of dwelling entitlements in rural areas, the fragmentation of Maitland's rural lands will be further limited.

The objectives of this planning proposal are consistent with the objectives and intention of the Maitland Rural Strategy 2005.

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are no existing or draft state environmental planning policies that apply to this planning proposal.

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

7. Is the planning proposal consistent with applicable Ministerial Directions for Local Plan Making?

There are no s.117 Ministerial Directions that apply to this planning proposal.

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

8. 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?

There will be no impact on any of these matters as a result of this planning proposal.

9. 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 environmental effects likely as a result of this planning proposal.

10. How has the planning proposal adequately addressed any social and economic effects?

This planning proposal seeks to clarify Council's intentions regarding dwelling entitlements. The social and economic effects of dwelling entitlements for rural areas of Maitland were addressed during the preparation of the MRS 2005. Some of the aims in the MRS 2005 relate to the minimisation of additional fragmentation and preventing the proliferation of dwellings in rural areas.

There are no additional social or economic effects as a result of this planning proposal.

Section D – STATE and COMMONWEALTH INTERESTS

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

There is no additional demand generated for public infrastructure as a result of this planning proposal.

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

No consultation with State or Commonwealth public authorities is proposed for this planning proposal, due to its consistency with adopted strategies and its objective to clarify the function of the Maitland LEP 2011.

PART 4: COMMUNITY CONSULTATION

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, this planning proposal must be approved before community consultation is undertaken by the local authority. Council has deemed the planning proposal to be low impact and require a 14 day exhibition.

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

In accordance with Council's adopted *Community Engagement Strategy (March 2009)*, consultation on the proposed LEP amendment will be to inform and receive limited feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the local newspaper;
- Exhibition material and relevant consultation documents to be made available at all Council libraries and Council's Administration Building; and
- Consultation documents to be made available on Council's website.

At the close of the consultation process, Council officers will consider all submissions received and present a report to Council for their endorsement of the planning proposal before proceeding to finalisation of the amendment.

The consultation process, as outline above does not prevent any additional consultation measures that may be determined appropriate as part of the 'Gateway' determination process.

Project Timeline

The following timeframes are considered approximate, but are included in accordance with the Department's publication "*A Guide to Preparing Planning Proposals*".

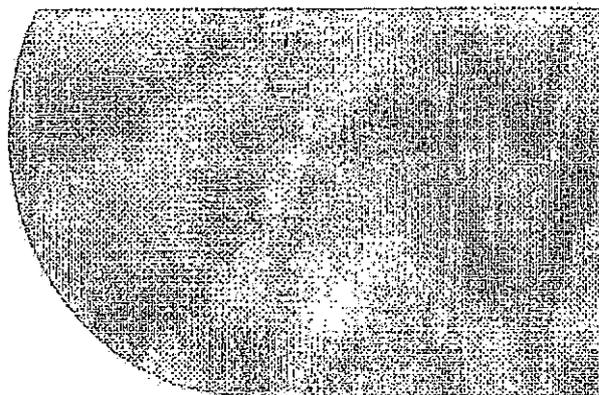
- Anticipated Gateway determination date: 16 August 2013
- Timeframe for completion of required technical information: N/A -- minor wording change only
- Timeframe for government agency consultation: to be undertaken with public exhibition (see below)
- Commencement & completion dates for public exhibition: 4 September 2013 – 20 September 2013
- Date of public hearing: N/A
- Timeframe for consideration of submissions: 2 weeks
- Timeframe for consideration of a proposal post-exhibition: 2 weeks
- Date of submission to DOPI to finalise LEP: 18 October 2013
- Anticipated date RPA will make plan: 15 November 2013
- Anticipated date RPA will forward to DOPI for notification: 15 November 2013

Overall, it is anticipated that the Gateway determination would be for at least a 6 month period for this planning proposal, provided that the information outlined in this planning proposal is deemed to be all that is required by the Department in order to process the LEP amendment.

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

Appendix ONE
Extracts from Lower Hunter Regional Strategy 2006 &
Maitland Rural Strategy 2005

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)



Rural landscape and rural communities

BACKGROUND

Rural land has played a historically significant role in the settlement and development of the Lower Hunter Region. Although the Lower Hunter is now the sixth largest urban settlement in Australia, rural land still comprises approximately 80 per cent of all land within the Region.

These rural areas will continue to have significant value associated with their social and cultural heritage, scenic amenity, recreational value, rural production role, current and future tourism opportunities and rural living opportunities.

The Lower Hunter's rural lands contain rural industries such as agriculture, extractive industry and mining and natural areas that are of environmental significance and provide valuable regional open space. The rural lands enhance the landscape, contributing to scenic amenity, recreation and tourism opportunities and a sense of place.

In terms of productivity, the rural lands of the vineyards district and the cultivated floodplain of the Hunter River provide the greatest return per hectare (apart from intensive industries such as poultry farming). The vineyards district experiences pressure for development that is often inconsistent with its rural/grape-growing character. Development in the vineyards district, therefore, needs to be carefully managed to avoid detracting from its character.

Rural residential development provides for those who desire to reside in a rural area without having to commit to the purchase of a working farm. This desire is catered for with a large supply of existing small rural holdings in the general rural zone (estimated to be approximately 7000) that is effectively being used for rural living without significant agricultural production. In addition, there is currently almost 7000 hectares of land zoned for rural residential purposes

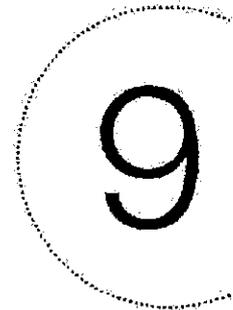
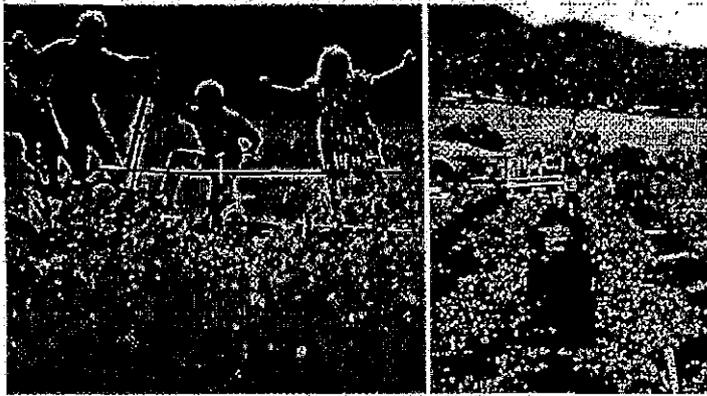
in the Lower Hunter. To further supplement that, another 700 hectares of land has been identified for rural residential development within endorsed local council strategies, which is yet to be rezoned.

Appropriate development of rural lands can contribute to the character, economy and social fabric of the Region and revitalise rural communities. However, these areas are also subject to many competing and potentially conflicting pressures that have the potential to damage some of their most valuable and irreplaceable attributes. Inappropriate rural residential development has the potential to conflict with agricultural activities, reduce agricultural viability and increase environmental damage.

OUTCOMES

The rural character of the Region is recognised and protected in local environmental plans. This includes protecting highly valued

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)



agricultural lands (such as the vineyards district) from urban and rural-residential encroachment as well as maintaining the character of small rural villages.

Existing opportunities for rural residential development provided in local environmental plans, endorsed local council strategies and in the large supply of existing small rural holdings is maintained.

ACTIONS

- The scale of new development within and adjacent to existing villages and rural towns must respect and preserve their character, scale, cultural heritage and social values.
- Local environmental plans are to maintain rural zoning for regionally significant agricultural land including the vineyard district as defined by the existing 1(v) zone in Cessnock Local Environmental Plan and the irrigated floodplains.

- Local environmental plans are to recognise any additional regionally significant agricultural land identified by the State Government through an agreed upon methodology consistent with the objectives of the Regional Strategy.
- Provide a consistent approach to the zoning system in rural lands through the Standard Instrument (Local Environmental Plans) Order 2006 and ensure that access to resource lands (including mineral resources) are maintained and protected from incompatible and inappropriate uses.
- Recognise that mining is a transitional land use and that former mining land offers opportunities for both conservation and development outcomes when activities are completed.
- Any future rezoning proposal for rural-residential development, beyond areas

already available or identified, should be:

- > consistent with the Sustainability Criteria (Appendix 1)
- > consistent with an endorsed local council strategy
- > maintain the character and role of the existing village centre.
- Local environmental plans and other relevant planning provisions will be required to align with the strategic intentions contained in the Regional Strategy by:
 - > limiting further dwelling entitlements in rural areas
 - > maintaining or increasing minimum lot sizes for rural subdivisions that confer a new dwelling entitlement (where established by an appropriate methodology as agreed by the Department of Primary Industries).

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

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(d) Dwelling Houses in Rural Zones

Clause 13 of the LEP outlines the requirements with respect to the erection of dwelling houses in rural zones. Clause 13(1) provides a definition for 'separate parcel', which means:

'an allotment of land in existence on 1st January 1991 or the aggregation of two or more adjoining or adjacent allotments of land if they were in common ownership on 1 January 1991.'

The significance of this Clause is that Council may consent to the erection of a dwelling house on an allotment in a 1(a) zone that is less than 40ha and used for either an 'established cropping enterprise' or an 'established horticultural enterprise' or on an allotment zoned 1(b) with a minimum area of 4000m², if it satisfies the 'separate parcel' criteria.

The dwelling entitlement provisions are somewhat cumbersome and relatively complicated. It was suggested in the draft Strategy that was publicly exhibited that a new definition for 'existing holding' could be introduced and take effect on 15 March 2002 (i.e. the date at which the preliminary draft strategy was first submitted to the Coordinating Group).

The only basis for a change of date would be for administrative purposes. However, it is not considered that this is sufficient justification to provide an increase in dwelling entitlements that would create further fragmentation of rural lands.

The current 'existing parcel' provisions has created an anomalous situation whereby if a dwelling house is erected on a small allotment and the adjoining lot(s) in the same ownership is/are greater than 40ha but less than 80ha, another dwelling cannot be erected on that property.

Anecdotal evidence indicates that Clause 13(2), relating to 'established cropping enterprise' and 'established horticultural enterprise', has not been effective in encouraging additional productive agricultural land uses. In fact, it appears that this Clause has only created opportunities for large rural living allotments to remain when

AMENDMENTS TO CLAUSE 4.2A TO INCLUDE REFERENCES TO DUAL OCCUPANCY (Cont.)

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the agricultural land use has ceased. This has had the effect of inflating rural land value and alienating potential productive agricultural land.

In order to achieve more effective regulatory controls relating to the *'separate parcel'* provisions, it is proposed that when Council undertakes its review of the LEP, these provisions be reassessed and consideration be given to the introduction of a *'sunset'* clause to extinguish the definition of *'separate parcel'* so that the relevant date is not carried on in perpetuity. Further, that consideration be given to deleting the provisions relating to *'established cropping enterprise'* and *'established horticultural enterprise'*.

This approach is consistent with the draft Lower Hunter Regional Strategy that opposes the creation of additional dwelling entitlements in the rural areas of the Region.

6 STRATEGIES

The previous section of the Strategy described the rural planning principles, policies and objectives relating to environmental, social and economic management.

Specific measures that can be achieved within Council's area of responsibility are provided in this section. It should be noted that some of the measures described below have already been implemented. However, they have been included to articulate Council's commitment to its vision for the Rural Strategy.

The following strategies are proposed to satisfy the various planning principles, policies and objectives:

6.1 Environmental Management

(a) Identify and protect biodiversity in Maitland's rural areas through sound conservation management and ecologically sustainable development.