

Subject: PES - PP & DCP Amendment Rural Detached Dual Occ & Secondary Dwellings
Index: SP-PP-25
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Ordinary Meeting: 8 June 2016

SUMMARY OF REPORT:

In November 2015 Council supported a Planning Proposal to amend Great Lakes LEP 2014 to permit dual occupancy (detached) with consent in the RU2 Rural Landscape zone. To support the LEP amendment, Council also resolved to prepare draft Development Control Plan provisions for dual occupancy (detached) in the RU2 Rural Landscape zone for inclusion in Great Lakes DCP.

The Planning Proposal and the DCP changes that address this issue were publicly exhibited together from 23 March to 13 May 2016. Seven public submissions, which all support the Planning Proposal and DCP, were received. A detailed submission was also received from the NSW Department of Primary Industries. Its concerns are addressed in the report. No changes to the Planning Proposal and the DCP are recommended as a result of these submissions.

This report recommends that Council considers the submissions received and uses its delegation to finalise the Planning Proposal. The DCP changes should be adopted to commence upon being published in a local newspaper immediately following the gazettal of the changes to Great Lakes LEP 2014.

SUMMARY OF RECOMMENDATION:

1. That Council agrees to exercise its delegation to finalise the attached Planning Proposal to amend Great Lakes LEP 2014 to permit dual occupancies (detached) with consent in the RU2 Rural Landscape zone.
2. That Council adopts Development Control Plan provisions contained in Annexure A for dual occupancy (detached) in the RU2 Rural Landscape zone with the provisions to commence upon the making of the related changes to Great Lakes LEP 2014.

FINANCIAL/RESOURCE IMPLICATIONS:

The cost of finalising the Planning Proposal and the DCP amendment will be borne by Council as it is Council initiated.

POLICY IMPLICATIONS:

The recommended changes to the Great Lakes LEP will permit detached dual occupancy in rural areas. The changes to DCP provisions will provide guidance to applicants about the circumstances in which detached rural dual occupancy may be acceptable. They will also provide a basis for Council to assess any such applications.

LEGAL IMPLICATIONS:

Nil.

LIST OF ANNEXURES:

- A: Development Control Plan provisions for dual occupancy (detached) and detached secondary dwellings in the RU2 Rural Landscape zone.

LIST OF ATTACHMENTS:

- A: Planning Proposal (PP_2016_GLAKE_002_00) to permit dual occupancies (detached) with consent within the RU2 Rural Landscape zone

Due to its large size, Attachment A has been circulated in hard copy to the Administrator and Senior Staff only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.

REPORT:

Background

On 10 November 2015, Council's Strategic Committee Meeting resolved to prepare a Planning Proposal to permit dual occupancy (detached) with consent in the RU2 Rural Landscape zone. The draft Planning Proposal was sent to the NSW Minister for Planning and Environment and received a Gateway Determination on 17 February 2016. Council also resolved to prepare draft Development Control Plan provisions for dual occupancy (detached) in the RU2 Rural Landscape zone so that they could be exhibited at the same time as the Planning Proposal.

Community engagement

The Planning Proposal and DCP amendments were exhibited concurrently, from 23 March to 13 May 2016. An article was also placed in the Council Communicator and distributed with rate notices. The Planning Proposal and DCP amendments were placed on Council's web site and made available at the Council Chambers and other public access points throughout the LGA.

All seven submissions from the public support the Planning Proposal and DCP. A detailed submission was also received from the NSW Department of Primary Industries.

What issues were raised in the public submissions?

All seven submissions from the public support the Planning Proposal and DCP provisions in principle. Five of the submissions, however, believed the requirement that "*any dwellings will be situated within 100 metres of each other*" is too restrictive. Some submissions suggested that the topography or location of farm boundaries may not allow this to be achieved or may result in a second dwelling being located in other than the most favourable location. One submission suggested that the standard be changed to 500 metres.

Comment:

The 100 metres is a numerical development standard that is intended to encourage detached dual occupancy and detached secondary dwellings to be intentionally located in proximity to the primary dwelling on the site. This will reduce the likelihood of land use conflicts, excessive clearing and duplication of services. It will also reduce the pressure for future subdivision. However, it is subject to clause 4.6 of Great Lakes LEP 2014 (Exceptions to Development Standards), which specifically allows for flexibility in numerical standards if it is justified in the circumstances. Therefore a merit case for any distance can be submitted to Council, bearing in mind the underlying reasons for the standard in the first place.

No change to the planning proposal is recommended.

What issues were raised in the Government submissions?

The NSW Department of Primary Industries is the only government authority that made a submission. The issues raised by DPI are as follows:

- The planning proposal has the potential to create long term implications or cumulative impacts on agriculture and resources
- The decision to permit additional housing is not reversible and if land is lost, it will not be returned to agriculture
- The planning proposal will increase the likelihood of land use conflict with agriculture
- The planning proposal will increase land values and potentially prevent investment in agriculture
- A landscape of houses will make it difficult for new agribusiness to occur in the LGA
- The criteria for assessment of proposed rural dual occupancy should include “distance to neighbouring boundaries” and “water take for additional dwellings and its impact on neighbouring water supplies”.

Comment:

Long term implications are always difficult to gauge when applications are dealt with on a merits basis at a single point in time. Cumulative impacts are also difficult to gauge for the same reason. There is, however, a requirement in the Planning Proposal that the development “*will not impair the use of the land for agriculture or rural industries*”. Council can refuse an application if this requirement cannot be achieved. There is no assumption that all properties will be suited to additional dwellings.

The decision to amend the LEP (and DCP) is reversible if Council over time considers it is not working. Any dwellings legally approved will be able to remain, but this is the same for all approvals. Importantly, the additional dwellings do not come with an expectation of future subdivision.

The potential for land use conflict between traditional agricultural practices and unrelated rural residents is real and, to some extent, is a problem in most rural LGAs. Council acknowledges the recent NSW Right to Farm Policy in this regard. Land use conflict will be a matter that Council will consider in assessing any applications and will be taken seriously. The DCP amendment specifically requires both the applicant and Council to consider:

“potential conflicts, including the distance from the proposed detached dual occupancy or detached secondary dwelling to dwellings on adjoining land and potentially conflicting land uses on adjoining land (eg intensive horticulture, pesticide use, intensive livestock activities, rural industry and the like)”

Improvements to property such as additional dwellings do increase the value of rural land holdings and this may impact on some buyers. However, it also increases the utility of a property and can provide an opportunity to offer accommodation (as an incentive) to a prospective farm worker (permanent or seasonal) or generate rental income that can be used to run the agricultural business on the balance of the property.

Council does not anticipate a “landscape of houses” as a result of this LEP and DCP amendment. It is expected that there will be an initial surge of interest and many of these may be existing structures. It is also anticipated that the requirement for a shared vehicular access in a location 100 metres from the primary dwelling should minimise the excessive sterilisation of rural land or future rural industries.

The distance to a neighbouring boundary as suggested by DPI can be a useful guide to reducing the likelihood of conflict in the right circumstances but it is misleading to suggest that a single number can represent a margin of safety to avoid conflict across all rural land uses. The Living and Working in Rural Areas Handbook (DPI, 2007) suggests that buffers between uses rather

than boundaries is a better guide and that these will vary depending on the use. A rural dwelling is recommended to be at least 50 metres from a stock grazing area but 500 metres from a cattle feedlot. Neither of these numbers are relevant to the lot boundary. Rather than place a wide range of buffer distances into planning instruments the recommended approach is already contained in the proposed LEP clause 4.2B as follows:

“Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling that is separate from the principle dwelling on land in Zone RU2 Rural Landscape unless the consent authority is satisfied that:

(a) the development will not impair the use of the land (or adjacent land) for agriculture or rural industries,”

This is reinforced by the DCP clause (clause 5.13 (3) (b)) that specifically refers to the need to address potential conflicts including the distance to land uses on adjoining land.

The DPI reference to “water take” implies that an additional dwelling may seek to access surface or groundwater that is otherwise required by a neighbouring rural enterprise. In fact, the most likely scenario is that any additional dwelling will have water tanks for domestic consumption and will not need to access untreated river or groundwater other than perhaps for non-potable use such as domestic gardens. No additional riparian rights are created by a second dwelling (without subdivision) and any rural enterprise that needs significant water is subject to existing water legislation and is not linked to how many dwellings are on the property. As with the above response in relation to potential conflict, Council is required to consider whether the additional dwelling will “impair the use of the land (or adjacent land)”. This would include impacts on water supplies should this issue be relevant to the site.

No changes to the planning proposal are recommended.

What changes are proposed?

No changes are proposed. It is recommended that the proposed amendments to Great Lakes LEP 2014 in the Planning Proposal and the DCP amendments remain as publicly exhibited.

CONCLUSION:

There are valid concerns about the potential for some detached rural dual occupancies or secondary dwellings to cause problems or land use conflicts with agriculture or rural industries. This, however, has to be weighed against the potential benefits to farmers with succession planning and workers’ accommodation, rural families looking to share property, and those in need of additional options for rural housing. On balance, the Planning Proposal and DCP amendments should proceed without any amendments.

RECOMMENDATION:

It is recommended that Council:

- A. Adopt the Planning Proposal, contained in Attachment A to this report, to amend Great Lakes LEP 2014 to permit dual occupancy (detached) with consent in the RU2 Rural Landscape zone.
- B. Submit the Planning Proposal to the Parliamentary Counsel’s Office for the associated local environmental plan (LEP) to be drafted.
- C. Upon acceptance of the Parliamentary Counsel’s Office drafted LEP, that Council utilise its authorisation to use delegation to make the local environmental plan.

- D. That Council adopt the Development Control Plan provisions, contained in Annexure A, for dual occupancy (detached) in the RU2 Rural Landscape zone with the provisions to commence upon the gazettal of the related amendments to Great Lakes LEP 2014.

ANNEXURES:

- A: Development Control Plan provisions for dual occupancy (detached) and detached secondary dwellings in the RU2 Rural Landscape zone.

Great Lakes DCP Detached Dual Occupancy Amendment

5.12 Attached Dual Occupancies within Large Lot Residential, Rural and Environmental Zones

This control applies to alterations and additions to an existing lawful [dwelling](#)-house to create an attached [dual occupancy](#); or the erection of two attached lawful [dwellings](#).

Objectives

- To ensure that [dual occupancy](#) development does not dominate the natural environment, views or vistas.

Controls

- 1) The two [dwellings](#) in an attached [dual occupancy](#) are to be connected by a common wall, garage or carport. Separation of the [dwellings](#) by covered walkways, passageways, voids or the like is not permitted.

5.13 Detached Dual Occupancies and Detached Secondary Dwellings (where permitted) within Rural and Large Lot Residential Zones

This control applies to the erection of two detached lawful [dwellings](#) as either a [dual occupancy](#) or a [secondary dwelling](#).

Objectives

- To ensure that detached [dual occupancies](#) and detached [secondary dwellings](#) in rural and large lot residential areas are located to avoid potential for conflicts with agricultural activities on adjoining land, to avoid adversely affecting the sustainability of the land for agriculture, and to ensure compatibility with the rural character and landscape of the locality.

Controls

- 1) The detached [dual occupancy](#) or detached [secondary dwelling](#) must be located so that it does not create potential for conflict with adjoining land uses.
- 2) The detached [dual occupancy](#) or detached [secondary dwelling](#) must be located and retained on the same legal title as the principal [dwelling](#)-house on the property, and may not be excised by subdivision.
- 3) A development application must be accompanied by information that demonstrates:
 - a) The existing use of all parts of the site, including existing and proposed infrastructure (buildings, sheds, services, on-site wastewater disposal, etc);

- b) potential conflicts, including the distance from the proposed detached [dual occupancy](#) or detached [secondary dwelling](#) to [dwellings](#) on adjoining land and potentially conflicting land uses on adjoining land (eg intensive horticulture, pesticide use, intensive livestock activities, rural industry and the like);
- c) access and site details, including a plan showing the location of the principal [dwelling](#) and the proposed detached [dual occupancy](#) or detached [secondary dwelling](#); and proposed access arrangements from the public road to the principal [dwelling](#) and the proposed detached [dual occupancy](#) or detached [secondary dwelling](#).