



IRF22/934

## Gateway determination report – PP-2022-1055

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Amend Clause 7.2 of the Wingecarribee Local  
Environmental Plan 2010 regarding requirements for  
subdividing dual occupancies on corner lots

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1: Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal (Version 2, March 2022)
Local Planning Panel Resolution (16 February 2022)

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Council Meeting Minutes (16 February 2022)

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Delegation request form

# 1 Planning proposal

## 1.1 Overview

Table 2: Planning proposal details

LGA	LGA name
PPA	Wingecarribee Shire Council
NAME	Clause 7.2 Planning Proposal regarding requirements for subdividing dual occupancies on corner lots
NUMBER	PP-2022-1055
LEP TO BE AMENDED	Wingecarribee Local Environmental Plan 2010
ADDRESS	Wingecarribee local government area
DESCRIPTION	Land zoned R2 Low Density Residential, B1 Neighbourhood Centre and R3 Medium Density Residential in the Wingecarribee local government area
RECEIVED	28/03/2022
FILE NO.	IRF22/1061
POLITICAL DONATIONS	There are no donations or gifts to disclose, and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to amend clause 7.2 of the Wingecarribee Local Environmental Plan 2010 (Wingecarribee LEP) to remove inconsistency between:

- Clause 7.2 - Requirements for subdividing dual occupancies in Zones R2 and B1; and
- Clause 4.2F - Minimum subdivision lot sizes for dual occupancies in certain zones.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

To achieve the intended outcomes of the planning proposal, the following amendments are proposed to clause 7.2 of the Wingecarribee LEP:

### **7.2 Requirements for subdividing dual occupancies in Zones R2 ~~and B1~~ R3**

(1) *The objectives of this clause are as follows—*

(a) to provide opportunities for housing on smaller lots in suitable locations on land in Zone R2 Low Density Residential and Zone ~~B1-Neighbourhood Centre~~ R3 Medium Density Residential,

(b) to protect the heritage significance of the historic village of Berrima.

(2) Despite any other provision of this Plan, development consent may be granted for the subdivision of a lawfully erected dual occupancy in Zone R2 Low Density Residential ~~and Zone R3 Medium Density Residential, only if where~~ the development—

(a) is on a corner allotment of not less than 1,000 square metres, and

(b) has access to a reticulated town water supply and sewerage system.

(3) Despite subclause (2), development consent must not be granted for the subdivision of a lawfully erected dual occupancy ~~on land in Zone R2 Low Density Residential or Zone B1-Neighbourhood Centre~~ if the land is located within the Berrima Conservation Area as shown on the Heritage Map.

Clause 7.2 of the Wingecarribee LEP was introduced to enable the subdivision of dual occupancies on corner lots in certain circumstances, where subdivision was not otherwise permissible under the minimum lot size provisions.

It is noted the village of Berrima was excluded from the operation of the clause due to its high heritage significance.

On 1 July 2019, amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) came into effect in the Wingecarribee Shire, which enabled the erection and subdivision of dual occupancies as complying development under the SEPP (now known as the Low Rise Housing Diversity Code).

In response to the changes to the Codes SEPP, Council introduced two new clauses (4.2E and 4.2F) into Wingecarribee LEP to ensure that dual occupancy developments would be consistent with the established lot sizes and character of Wingecarribee's towns and villages. These clauses are provided below.

#### **4.2E Minimum lot size for dual occupancies**

(1) The objective of this clause is to ensure that dual occupancy development is compatible with the character of existing development within the surrounding area.

(2) This clause applies to land in the following zones—

(a) Zone R2 Low Density Residential,

(b) Zone R3 Medium Density Residential.

(3) Development consent must not be granted for development for the purposes of a dual occupancy on a lot in a zone to which this clause applies unless the area of the lot is at least 1,000 square metres.

#### **4.2F Minimum subdivision lot sizes for dual occupancies in certain zones**

(1) The objective of this clause is to ensure that dual occupancy development is compatible with the character of existing development within the surrounding area.

(2) This clause applies to land in the following zones—

(a) Zone R2 Low Density Residential,

(b) Zone R3 Medium Density Residential.

- (3) Despite clause 4.1, development consent may be granted for the subdivision of land to which this clause applies if the consent authority is satisfied that—*
- (a) there is an existing dual occupancy on the land that was lawfully erected under an environmental planning instrument, or*
  - (b) the application for development consent also provides for the erection of a dual occupancy on the land.*
- (4) In addition to the matters listed in subclause (3), the consent authority must be satisfied that—*
- (a) the lot size of each resulting lot will be 50% of the minimum lot size shown on the Lot Size Map in relation to the land, and*
  - (b) the lot size of each resulting lot will be at least 600 square metres, and*
  - (c) there will be no more than 1 dwelling on each resulting lot.*
- (5) If an application is made to which subclause (3)(b) applies, the subdivision must not occur before an occupation certificate has been issued for each dwelling forming part of the dual occupancy.*

Council considers that the introduction of clauses 4.2E and 4.2F created conflict and potential confusion regarding the operation of clause 7.2.

Council notes that the provisions of the Codes SEPP (e.g Part 6, Division 2, clause 6.4) enable the subdivision of dual occupancies as complying development in accordance with clause 4.2F of the Wingecarribee LEP. However, Council considers the current wording of clause 7.2 creates an inconsistency between the two approval pathways causing confusion with regards to subdivision applications and encouraging applicants to utilise the complying development pathway.

In this regard, Council is seeking to amend Clause 7.2 by removing the words ‘*only if*’, as indicated above, to make it clear that the clause enables an approval pathway for the subdivision of dual occupancies on corner allotments additional to clause 4.2F, rather than conflicting with and overriding clause 4.2F when it comes to subdivision applications.

Council considers that by removing the words ‘*only if*’ from clause 7.2, it changes the intent of the clause from a restrictive one, inferring that only clause 7.2 allows for dual occupancy subdivision, to an enabling one, allowing dual occupancy subdivision under clause 7.2, as well as under clauses 4.2F.

Council is also seeking to amend clause 7.2 to apply to the R3 Medium Density zone instead of the B1 Neighbourhood Centre zone. Council notes that as part of the Department’s Employment zones reform work, all B (Business) zones are being transition across to E (Employment) zones and the removal of references to the B1 zone would avoid further confusion and potential conflict as this zone will become redundant.

The Department accepts that the current wording of clause 7.2(2) (key words being ‘*Despite any other provision of this plan*’ and ‘*only if*’) means that it could be interpreted as the only clause in the LEP which allows dual occupancy subdivision potentially creating confusion and encouraging applicants to utilise the complying development pathway rather than making a subdivision application.

In relation to the proposed removal of references to the B1 zone from clause 7.2, it is accepted that this zone will soon become obsolete due to the Department’s employment zones reform work. Further, it is considered that removal of the B1 zone from this provision would be inconsequential in terms of facilitating dual occupancy subdivisions as the current wording of clause 7.2 does not appear to allow for them in this zone.



In any case, B1 zones in Wingecarribee are generally in the villages rather than towns and limited in their extent. This suggests there may be limited opportunity for dual occupancy subdivision on corner lots in the B1 zone. Council has advised that it is not aware of any application for a dual occupancy under clause 7.2 in the B1 zone.

The addition of the R3 zone to this clause is supported to enable consistency with clauses 4.2E and 4.2F and the relevant provisions of the Codes SEPP. Council has advised much of the land zoned R3 in Wingecarribee contains large areas of detached housing. This suggests there is good potential for infill dual occupancy development and subdivision in the R3 zone.

Overall, the Department supports the proposed amendments to the Wingecarribee LEP as they seek to:

- remove conflict between clauses for dual occupancy subdivisions;
- provide consistency across clauses for dual occupancy subdivisions;
- provide clarity on additional approval pathways for dual occupancy subdivisions; and
- encourage dual occupancy subdivision and greater housing choice in Wingecarribee.

It is recommended that Council discuss the proposed amendments with Parliamentary Counsel's Office during finalisation to ensure they are as clear as possible and achieve their intended effects. In this regard (to improve clarity), the Department considers there may be an opportunity to combine clauses 4.2F and 7.2 in the LEP so that key provisions relating to dual occupancy subdivisions are contained in the same place.

## 1.4 Site description and surrounding area

The planning proposal applies to land zoned R2 Low Density Residential, R3 Medium Density Residential and B1 Neighbourhood Centre in the Wingecarribee LEP 2010.

## 1.5 Mapping

No changes to maps are required because of the planning proposal.

# 2 Need for the planning proposal

As noted in Section 1.3 of this report, the proposed amendments to the Wingecarribee LEP are needed to:

- remove conflict between clauses for dual occupancy subdivisions;
- provide consistency across clauses for dual occupancy subdivisions;
- provide clarity on additional approval pathways for dual occupancy subdivisions; and
- encourage dual occupancy subdivision and greater housing choice in Wingecarribee.

# 3 Strategic assessment

## 3.1 Regional Plan

Key Directions of the Regional Plan relevant to the proposal include:

- Direction 24 - deliver greater housing supply and choice;
- Direction 25 - focus housing growth in locations that maximise infrastructure and services;
- Direction 27 - deliver more opportunities for affordable housing; and
- Direction 28 – manage rural lifestyles.

The proposal seeks to deliver greater housing supply and choice in the form of dual occupancy development/subdivisions making efficient use of existing infrastructure and services. This is also likely to deliver more affordable housing opportunities in Wingecarribee.

The proposal is therefore considered to be consistent with the above Directions in the Regional Plan.

## 3.2 Local

### Wingecarribee Local Strategic Planning Statement

The Wingecarribee LSPS adopted by Council on 24 June 2020 provides a vision to guide land use planning decisions in the Shire over the next 20 years.

The planning proposal is generally consistent with key Planning Priorities in the LSPS (4.1, 4.2, and 5.2) which seek to promote infill development in appropriate locations to provide a greater mix of housing types, improve housing affordability, and ensure communities are supported by essential infrastructure.

The planning proposal does not address Council's LSPS. A Gateway condition is therefore recommended requiring the planning proposal to be updated prior to exhibition to address consistency with Council's LSPS.

### Wingecarribee Local Housing Strategy

The Wingecarribee Local Housing Strategy (LHS) provides a long-term planning framework to meet the housing needs of the Wingecarribee community.

Council considers the proposal to be consistent with Planning Priority 1 of the LHS which seeks to promote infill development and increased densities in appropriate locations, and facilitate a greater mix of housing types, to ensure our housing stock is reflective of the needs of our community (Page 21).

The Department accepts the planning proposal is likely to facilitate infill (dual occupancy) development in Wingecarribee consistent with Planning Priority 1 of the LHS.

### Minister's Planning Principles

The planning proposal addresses the previous Minister's Planning Principles which have now been discontinued. A Gateway condition is therefore recommended to remove this section of the planning proposal.

## 3.3 Local planning panel (LPP) recommendation

Wingecarribee Local Planning Panel considered the matter at a Panel meeting on 2 February 2022 and supported the staff recommendation for the planning proposal to be submitted to the Department seeking a gateway determination.

## 3.4 Ministerial Directions

Relevant Section 9.1 Directions have been identified in the planning proposal.

Key applicable Directions are discussed in detail below.

### 1.2 Implementation of Regional Plans

This Direction gives legal effect to the vision, directions and actions contained in regional plans. Planning proposals must be consistent with the relevant Regional Plan.

As identified earlier in this report, the planning proposal is consistent with the South East and Tablelands Regional Plan and this Direction.

### 3.3 Sydney Drinking Water Catchments

The entire Wingecarribee local government area is within the drinking water catchment.

Direction 5.2 aims to protect water quality in Sydney's Drinking Water Catchment, including land within the Wingecarribee LGA. This Direction requires consultation with Water NSW prior to Gateway determination.

Council acknowledges the planning proposal will support the assessment of dual occupancy developments within the R2 Low Density and R3 Medium Density zones, potentially increasing demand for such development and consequent demands on water infrastructure and services across Wingecarribee. It is noted that these services, especially sewer and stormwater are currently at or near capacity in some locations and there could be cumulative adverse impacts on these services by facilitating dual occupancy infill development.

However, Council notes that service upgrades are planned, and infill development is supported under Council's LHS, LSPS and *State Environmental Planning Policy (Housing) 2021*.

The planning proposal is currently inconsistent with the Direction because Council has not yet consulted with Water NSW. It is recommended that Council consult with Water NSW and provide further information demonstrating it has addressed the requirements of this Direction, prior to finalisation of the planning proposal.

### 4.3 Planning for Bushfire Protection

It is likely that the planning proposal affects land mapped as bushfire-prone land given applies to land zoned R2 Low Density Residential, R3 Medium Density Residential and B1 Neighbourhood Centre in the Wingecarribee LEP 2010.

Consultation has not occurred with the NSW Rural Fire Service (NSW RFS) and consistency with Direction 4.4 remains unresolved.

A Gateway condition has therefore been recommended requiring consultation with the NSW RFS.

### 6.1 Residential Zones

Key aims of Direction 3.1 are to encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services.

The Direction applies to planning proposals affecting a proposed residential zone.

The Department considers the proposal would encourage the delivery greater housing supply and choice in the form of dual occupancy development/subdivisions making efficient use of existing infrastructure and services.

The Secretary's delegate may be satisfied the planning proposal is consistent with Direction 6.1.

## 3.5 State environmental planning policies (SEPPs)

The planning proposal is not inconsistent with relevant SEPPs. SEPPs of particular relevance are discussed below.

### SEPP (Exempt and Complying Development Codes) 2008

The Low Rise Housing Diversity Codes and associated Subdivisions Code within the Codes SEPP seek to allow dual occupancy development to be undertaken and subdivided as complying development.

The planning proposal seeks to provide clarity on additional approval pathways for dual occupancy subdivisions in the Wingecarribee LEP and would not inhibit the undertaking of dual occupancy subdivisions as complying development. The proposal would provide greater consistency between the zones referenced in the Codes SEPP and clauses in the Wingecarribee LEP relating to dual occupancy subdivisions.

The proposal is not inconsistent with the Codes SEPP.

## 4 Site-specific assessment

### 4.1 Environmental

Council does not consider the proposal would adversely impact this critical habitat or threatened species, populations or ecological communities, or their habitats.

Environmental impacts of resulting dual occupancy development and subdivisions would be appropriately considered at the development/subdivision application stage.

### 4.2 Social and economic

It is considered the proposal is likely to have a positive social impact by providing increased housing in Wingecarribee on smaller lots (meeting community demand) that are well located and contribute (albeit marginally) to increased housing affordability.

Landowners will have the opportunity to make their own assessment of any potential economic impacts resulting from the proposal as part of the public exhibition.

Any issues raised will be considered as part of the finalisation of the planning proposal.

### 4.3 Infrastructure

The planning proposal is not expected to result in significant or adverse infrastructure impacts.

The planning proposal seeks to make minor amendments to existing provisions in the Wingecarribee LEP which allow dual occupancy development and subdivisions at a scale that ensures town infrastructure (water, sewer etc) and services are not overloaded.

## 5 Consultation

### 5.1 Community

The Department's Local Environmental Plan Making Guideline recommends a maximum public exhibition period of 20 working days for a standard category proposal.

A Gateway condition is recommended requiring the proposal to be made publicly available for a minimum of 20 days.

## 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal:

- NSW Rural Fire Service; and
- Water NSW.

## 6 Timeframe

Council proposes a 7 month time frame to complete the LEP.

The Department recommends a time frame of 9 months to allow the planning proposal to be updated in accordance with the Gateway conditions and in case any unforeseen issues arise.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has asked for plan-making authority in relation to this proposal. This is considered appropriate, as the proposal would result in a modest increase in housing and is not inconsistent with local or regional strategic planning objectives.

## 8 Savings and transitions

It is considered highly unlikely the proposed amendments would adversely impact any active development applications. However, as a safeguard, a Gateway condition is recommended requiring the planning proposal to be updated prior to public exhibition to include a savings and transition clause to ensure any development applications lodged and not determined are not adversely impacted by the proposed changes.

## 9 Assessment summary

The Department considers the proposal to be consistent with local and regional strategic planning objectives regarding provision of housing. This is because the amendments would clarify approval pathways for dual occupancy subdivisions contributing to greater housing supply and choice (in the form of infill development), making efficient use of existing infrastructure and services, and helping to deliver more affordable housing opportunities in Wingecarribee.

## 10 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any potential inconsistencies with section 9.1 Directions are minor or justified (except those outlined below); and
- Note that consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection and Direction 3.3 Sydney Drinking Water Catchments are unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal is to be updated to:
  - address consistency with Council's Local Strategic Planning Statement; and
  - remove the section addressing the Minister's planning principles on page 7 and page 8.

2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service; and
  - Water NSW.
3. The planning proposal should be made available for community consultation for a minimum of 20 days.
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



2/5/22

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