

### 7.3 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 with regard to 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

Reference: x  
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Authoriser: General Manager

#### PURPOSE

The purpose of this report is to seek Council endorsement of a Planning Proposal to amend Clause 7.2 of the Wingecarribee Local Environmental Plan 2010 to remove an 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*.

**THIS ITEM WAS REFERRED FROM LOCAL PLANNING PANEL MEETING ON 2 FEBRUARY 2022.**

#### RECOMMENDATION

**THAT** the Planning Proposal be submitted to the Department of Planning Industry and Environment for Gateway determination under section 3.34 of the Environmental Planning and Assessment Act 1979.

#### PANEL ADVICE

This matter was considered at the Local Planning Panel meeting of 2 February 2022 and the Panel supported the staff recommendation.

#### REPORT

##### **BACKGROUND**

Clause 7.2 was introduced into the Wingecarribee Local Environmental Plan (WLEP) 2010 to enable the subdivision of dual occupancies in certain circumstances, where subdivision was not otherwise permissible under the minimum lot size provisions. A copy of Clause 7.2 is provided below (**bold** added for emphasis):

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

*(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,*
- (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, **only if 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.*

On 1 July 2020, 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.

In response to the changes to the Codes SEPP, Council introduced two (2) new clauses into WLEP 2010, to ensure that dual occupancy developments were consistent with the established lot sizes and character of our towns and villages. The recently introduced Clauses 4.2E and 4.2F 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.*

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

The original intent of the wording '*despite any other provision of this plan*' was to overcome the minimum lot size provisions otherwise applicable to the site and which would thereby prevent such development.

Although the provisions of the Codes SEPP enable the subdivision of dual occupancies as complying development in accordance with Clause 4.2F, as explained above, the current wording of clause 7.2 creates an inconsistency between the two approval pathways thereby encouraging applicants to utilise the complying development option.

Council are seeking to amend Clause 7.2 to ensure that the wording of that clause enables an approval pathway for the subdivision of dual occupancies additional to Clause 4.2F, rather than conflicting with and overriding Clause 4.2F.

Council are also seeking to amend Clause 7.2 to apply to both the R2 Low Density and R3 Medium Density zones, but not to the B1 Neighbourhood Centre zone. It is considered appropriate to include the R3 zone within the clause, but it is noted that the Department of Planning Industry and Environment is currently undertaking a transition of all B (Business) zones across to E (Employment) zones and the removal of the references to the current B1 zone avoids further confusion and potential conflict.

The proposed Clause 7.2, with changes shown in red, is provided below.

## **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.

The proposed changes to Clause 7.2 will:

- Remove the overlap of clauses in WLEP 2010
- Allow the subdivision of dual occupancy development in accordance with Clause 4.2F **and** Clause 7.2
- Provide consistency across approval pathways
- Provide for infill development in accordance with the Planning Priorities outlined in the Wingecarribee Local Housing Strategy.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Community engagement would occur as required under the Gateway determination would the Planning Proposal proceed. This would normally be for a period of at least 28 days and include notification to adjacent and near neighbours.

### **Internal Communication and Consultation**

No further consultation would occur should the Planning Proposal not proceed.

### **External Communication and Consultation**

No further consultation would occur should the Planning Proposal not proceed.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.



- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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### **COUNCIL BUDGET IMPLICATIONS**

There are no budget implications in relation to this report. The preparation of the Planning Proposal will be undertaken with existing staff resources.

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### **RELATED COUNCIL POLICY**

Not Applicable

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### **CONCLUSION**

The advice of the Wingecarribee Local Planning Panel from the meeting held on 3<sup>rd</sup> November 2021 included the recommendation:

*THAT the Planning Proposal be reported back to the Local Planning Panel for advice prior to being sent to the Department of Planning Industry and Environment for Gateway determination under section 3.34 of the Environmental Planning and Assessment Act 1979.*

The purpose of this report is therefore to report the Planning Proposal back to the Local Planning Panel for consideration in regards to the amendment of Clause 7.2 of the Wingecarribee Local Environmental Plan 2010 to remove an 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.**

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### **ATTACHMENTS**

1. Planning Proposal - Gateway Determination