

# **Report No. 13.11 Resolution 21-221 Multiple Occupancies and Rural Workers Cottages & Resolution 21-275 MOs and CTs - pathway for secondary dwellings and dual occupancies**

5 **Directorate:** Sustainable Environment and Economy

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**File No:** I2021/1621

## 10 **Summary:**

Council at the Ordinary Meeting of 24 June 2021 considered a Notice of Motion No. 9.2 Multiple Occupancies and Rural Workers Cottages [Agenda of Ordinary Meeting - Thursday, 24 June 2021 \(infocouncil.biz\)](#) and resolved as follows:

**21-221 Resolved** that Council:

- 15 1. Prepares a report exploring the possibilities, hurdles, and opportunities for continuing Multiple Occupancies and Community Title as a pathway to providing more options for accessible and affordable housing in the Byron Shire.
2. Prepares a report on pathways to encourage the use of rural workers' cottages to provide accommodation for farmers wanting to live and work on the land.
- 20 3. Progress points 1 and 2 as part of the review of the RLUS to commence FY21/22. Noting this review will enable a fresh dialogue with relevant state government agencies on the current needs of our rural community five years on from the original RLUS adoption.

25 Separate and subsequently, Council at the Ordinary (Planning) meeting of 5 August 2021 considered Notice of Motion No. 9.5 MOs and CTs – pathway for secondary dwellings and dual occupancies [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#) and resolved as follows:

- 30 **21-275 Resolved** that Council investigates how to enable a workable pathway to facilitate secondary dwellings on Multiple Occupancies and to facilitate secondary dwellings and/or dual occupancies on Community Titles.

Multiple Occupancies (MO) and rural Community Title (CT) developments have had various approval pathways in the past.

- 35 Both resolutions have requested a further report on the current pathways to enable new MO or CT development and to facilitate secondary dwellings on existing MOs and to facilitate secondary dwellings and/or dual occupancies on existing CTs.

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This report addresses those parts of the above resolutions in more detail.

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#### 5 **RECOMMENDATION:**

**That Council:**

1. **Notes the staff update on Resolution 21-221 Multiple Occupancies and Rural Workers Cottages & Resolution 21-275 MOs and CTs - pathway for secondary dwellings and dual occupancies.**
2. **Requests staff to prepare and submit a planning proposal to the Department of Planning Industry and Environment for Gateway Determination to amend clauses 4.1B and 4.2B Byron Local Environmental Plan 2014 to:**
  - i. **remove the restriction of one dwelling per neighbourhood lot and make any other necessary changes to permit dual occupancy and secondary dwellings on existing Multiple Occupancy and rural Community Title development; and**
  - ii. **update where relevant the assessment criteria for Multiple Occupancy and rural Community Title development.**

## Report

### Update on Resolution 21-221

Resolution items are addressed below.

- 5     **1. Prepares a report exploring the possibilities, hurdles, and opportunities for continuing Multiple Occupancies and Community Title as a pathway to providing more options for accessible and affordable housing in the Byron Shire.**
- 10    See discussion below.
- 2. Prepares a report on pathways to encourage the use of rural workers' cottages to provide accommodation for farmers wanting to live and work on the land.**

15    Rural workers dwellings across the Shire were originally approved to help landowners manage the ongoing viability of their farm holdings. But in many cases the size and viability of these farm holdings have been reduced over the years due to a wide variety of reasons including aging of farmers, loss of economic viability, declining farming skills in younger generations and sales of portions of the original property.

20    Clause 16 of Byron LEP 1988 enables development consent to be obtained for a rural worker's dwelling provided that certain conditions are met. The LEP 1988 applies to that land deferred from LEP 2014.

### **16 Rural workers' dwellings**

- (1) *This clause applies to land within Zones Nos 1 (a), 1 (b1), 1 (b2), 1 (d), 7 (c) or 7 (d).*
- 25    (2) *The council shall not consent to the erection of a rural workers' dwelling on land to which this clause applies unless—*
- (a) *the erection of the additional dwelling will not impair the suitability of the land for agriculture,*
- (b) *the needs of existing agriculture genuinely require that rural workers reside on the land,*
- 30    (c) *any other rural workers' dwellings on the land are being used by persons substantially engaged in agricultural employment on that land, and*
- (d) *the rural worker to occupy the dwelling is to be employed by the owner of the land.*
- 35    (3) *A rural worker's dwelling may, with the consent of the council, be erected on a parcel of land to which this clause applies on which a rural worker's dwelling is already in existence if the number of such dwellings does not exceed one for each 40 hectares of land contained within the parcel.*

A rural worker's dwelling under Byron LEP 1988 is defined as:

**rural worker's dwelling** means a dwelling which is on land upon which there is already erected a dwelling and which is occupied by persons engaged in rural occupation on that land.

- 5 Clause 4.2C of Byron LEP 2014 also enables development consent to be obtained for rural worker's dwellings provided that certain conditions are met.

**4.2C Erection of rural workers' dwellings on land in Zones RU1 and RU2**

- (1) *The objective of this clause is to ensure the provision of adequate accommodation for employees of existing agricultural or rural industries.*
- 10 (2) *This clause applies to land in the following zones—*
- (a) *Zone RU1 Primary Production,*
- (b) *Zone RU2 Rural Landscape.*
- (3) *Development consent must not be granted for the erection of a rural worker's dwelling on land to which this clause applies, unless the consent authority is satisfied that—*
- 15 (a) *the development will be on the same lot as an existing lawfully erected dwelling house, and*
- (b) *the development will not impair the use of the land for agricultural or rural industries, and*
- 20 (c) *the agriculture or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*
- (d) *the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or*
- 25 *isolated location of the land.*

A rural worker's dwelling under the Byron LEP 2014 is defined as:

- rural worker's dwelling** means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.
- 30

The Department of Primary Industry provides advice to councils to determine if rural workers dwellings should be provided for in their LEP together with some relevant planning considerations.

Topics include:

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- Are rural workers dwellings needed?
- Recommended approaches
- Developing relevant criteria for rural workers dwellings

See [Rural Workers Dwellings \(nsw.gov.au\)](https://www.nsw.gov.au/rural-workers-dwellings)

- 5 Under the RU1 and RU2 zones of Byron LEP 2014, detached dual occupancy development and secondary dwellings are also permissible with development consent. Both of which have had substantial development applications made and approved in recent years.

- 10 It is highly likely that the take up of rural worker's dwellings as an accommodation option on rural land is currently not occurring because of this. These types of development can be approved without having to demonstrate that the 'dwelling' is required for a rural worker on that land and is otherwise not constrained by the strict planning provisions around a rural worker's dwelling. This would also appear to be the case given that so much of our rural land is no longer being farmed but instead occupied for lifestyle purposes only. This
- 15 observation is supported by economic data which has shown a decline in primary industry output in the Shire in recent years.

- Notwithstanding the above, Council has a current commitment to supporting our agricultural sector and the employment of an Agricultural Extension Officer to do so. This may result in an increased demand for bonofide rural worker's dwellings due also to
- 20 farming and agribusiness initiatives and projects being rolled out by various business groups, organisations and agencies across the northern rivers region.

[Agriculture - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/agriculture-byron-shire-council)

1. **Progress points 1 and 2 as part of the review of the RLUS to commence in FY21/22. Noting this review will enable a fresh dialogue with relevant state**
- 25 **government agencies on the current needs of our rural community five years on from the original RLUS adoption.**

Noted for further action by staff FY21/22.

- 30 **Update on Resolution 21-275**

- That Council investigates how to enable a workable pathway to facilitate secondary dwellings on Multiple Occupancies and to facilitate secondary dwellings and/or dual occupancies on Community Titles.**

- 35 MOs and rural CT developments have been granted additional dwelling density compared to freehold rural lots. In this regard the parent parcel had one dwelling entitlement before being developed for a MO or rural CT development, comprising somewhere between three dwelling and fifteen dwellings.

- 40 The exact number of additional dwelling sites would be determined from the assessment of the development application for the MO or rural CT development in terms of a site capability assessment or by a local environmental plan (LEP) amendment.

Under Byron LEP 2014 Clause [4.2B](#) limits the number of dwellings for MOs to 1 dwelling per 3 hectares up to a maximum of 15 dwellings on the lot, or the number shown for that lot on the [Multiple Occupancy and Community Title Map](#) (where applicable). Subsequent conversion of MOs to CT Development restricts the number of residential lots created based on the number of dwelling sites approved under the MO.

Under Byron LEP 1988 the maximum number of dwellings is reflected in the Schedules below.

[Byron Local Environmental Plan 1988 - NSW Legislation](#) – Schedule 8

[Byron Local Environmental Plan 1988 - NSW Legislation](#) – Schedule 10

[Byron Local Environmental Plan 1988 - NSW Legislation](#) – Schedule 13

Having regard to the above, there are three planning pathways for additional dwellings to be permitted subject to approval on MO or CT communities.

**Pathway 1 to permit additional ‘dwellings’ on existing approved MO or CT sites**

(Note: a secondary dwelling or dual occupancy dwelling is considered an additional dwelling)

**Existing Multiple Occupancies**

A development application under clause [4.2B](#) of LEP 2014 can be lodged to amend an existing MO development consent where the approved/constructed number of dwellings does not exceed the assessed site capability of the land for that MO development, provided that property is identified on the Multiple Occupancy and Community Title Map under the clause.

This pathway presents the possibility of one lot constructing additional dwellings at the expense of other lots within that approved MO development. For example, a property that has say an area of 40 hectares theoretically could have 13 dwellings on it. If ten dwellings already exist on it, the MO community would need to determine amongst themselves who would benefit from receipt of the additional yield of three more dwellings if approved.

In this circumstance, it remains a matter for the MO community to determine prior to DA lodgement which MO share/s, would receive the additional dwelling/s. This would not be a matter for Council staff to arbitrate once a development application is lodged.

Further, the historical context of the existing approved MO community would need to be considered by Council as part of the DA assessment in terms of merit, even though the land may no longer fall under provisions of the Byron LEP 1988.

Applications for additional development/dwellings often result in objections from the community.

An example of this is a MO approved in the late 1990's in Goonengerry. The applicant's applied for 12 sites, Council approved 10 sites and following a third-party appeal by a community group, the development consent was amended back to 7 dwellings.

- 5 In this circumstance, it would now seem somewhat perverse if Council were to permit an additional 7 dwellings on this land in the form of dual occupancies or secondary dwellings given the site history.

- 10 It should also be noted that many older MOs approved under Byron LEP 1988 are not mapped under Byron LEP 2014, and as such the pathway for additional dwelling sites would need to rely upon existing use rights for expanding the approved MO. Any applications for extra dwellings would again need to consider the historical context of the development, the merits of the application and the site capability of the land noting any maximum number of dwellings would be based on 1 dwelling per three hectares and up to a maximum of 15.

### Existing Community title developments

- 15 As discussed, the rural CT developments have been approved based on one dwelling per lot ([4.1B](#)) Subdivisions that have been approved under Byron LEP 2014 could have the number of dwellings increased. It is noted some development consents have conditions of approval that also reflect this limitation on the number of dwellings and or the restriction is carried over into the Management Plan and Statement for the subdivision. It is considered
- 20 this is a development standard that could be varied under Clause 4.6 of the LEP. Such an application will need to be considered on merit, having regards to the historical context of the property and the site capability of the land. Again, the ultimate number of dwellings would be limited to one per three hectares and the community would need to determine who benefits from the receipt of the additional dwellings.
- 25 Like older MOs some of the older CT subdivisions approved under Byron LEP 1988 are not mapped under Byron LEP 2014. The pathway for additional dwellings would also rely upon existing use rights as discussed above.

### Pathway 2 to permit additional 'dwellings' on existing mapped and or vacant MO or CT sites

- 30 (Note: a secondary dwelling or dual occupancy dwelling is considered an additional dwelling)

As discussed, currently in Byron LEP 2014 clause [4.2B](#) controls housing density on these sites and [4.1B](#) restricts sites to 1 dwelling.

- 35 Although secondary dwellings and dual occupancies are permitted in the RU1 and RU2 zones, the above-mentioned clauses restrict dwelling numbers on MO or CT communities.

The process listed above under Pathway 1 has limited application and provides little certainty of approval.

Council could if of a mind, consider an amendment to clauses 4.2 B and 4.1B of LEP 2014 to permit additional dwellings on merit and to simplify the approval process for same.



The amendment would be two-fold – firstly remove the restriction of one dwelling per neighbourhood lot and make any other necessary changes to the LEP to permit dual occupancy and secondary dwellings on existing MO and CT development. And update where relevant the assessment criteria (previously imposed by State Environmental Planning Policy No 15 Rural Land Sharing, and subsequently refined and adopted by Council for the former Byron Rural Settlement Strategy and in LEP 1988 and LEP 2014) for this type of development.

**Pathway 3 to permit new MO or CT sites on vacant land not currently identified for such development**

MO and CT development was already considered in the preparation Council's [Rural Land Use Strategy](#) (adopted 2017), where only a handful of sites met the site suitability assessment criteria. An early draft of the Rural Land Use Strategy (2016) identified substantial areas for MO and/or CT development, but these were rejected by the State government mainly due to their distance from nearest service centre/s and sub-standard road infrastructure.

The current State/regional policy framework (namely the [North Coast Regional Plan](#) and s117 [Ministerial Direction 5.3 - Farmland of State and Regional Significance on the NSW Far North Coast](#)) severely restricts Council's ability to amend the Rural Land Use Strategy for the purpose of increasing MO or CT rural settlement in the Shire.

The North Coast Regional Plan is currently under review.

A review of the Rural Land Use Strategy is to follow the North Coast Regional Plan update later in FY21/22. This review will enable a fresh dialogue with relevant state government agencies on the current needs of our rural community five years on from the original Rural Land Use Strategy adoption.

## **Strategic Considerations**

### **Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.3: Manage development through a transparent and efficient assessment process	<b>4.1.3.11</b>	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps



## **Recent Resolutions**

- 21-221
- 21-275

## **Legal/Statutory/Policy Considerations**

- 5 The preparation of the planning proposal will need to satisfy the requirements of the Environmental Planning and Assessment Act 1979 and guidance and information on the process for preparing planning proposals from the DPIE.

- 10 It should be noted that Council has developed the Rural Land Use Strategy and Residential Strategy to guide future housing within the Shire. Additional housing in rural MO and CT developments is not currently supported within these strategies, mainly due to locational and road infrastructure constraints. This may be an issue raised by the DPIE in considering whether to issue a Gateway Determination for the planning proposal if it is to be progressed following any Council resolution.

## **Financial Considerations**

- 15 The planning proposal would be considered Council initiated and will be funded from the existing land use planning services budget.

## **Consultation and Engagement**

Not applicable to this report.