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Item: 14.02

Subject: PLANNING AMENDMENT TO PORT MACQUARIE-HASTINGS  
LOCAL ENVIRONMENTAL PLAN 2011 - SECONDARY DWELLINGS  
IN RURAL ZONES UNDER CLAUSE 5.5 OF THE STANDARD  
INSTRUMENT - PRINCIPAL LOCAL ENVIRONMENTAL PLAN 2006.

Presented by: Community, Planning and Environment, Melissa Watkins

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#### Alignment with Delivery Program

4.3.1 Undertake transparent and efficient development assessment in accordance with relevant legislation.

#### RECOMMENDATION

That Council:

1. Adopt the State Government Standard Instrument - Principal Local Environmental Plan 2006 (SI LEP)) optional 'Clause 5.5 Controls relating to secondary dwellings on land in a rural zone' for inclusion in the Port-Macquarie-Hastings Local Environmental Plan 2011.
2. Notify the Department of Planning and Environment of its decision to adopt Optional 'Clause 5.5 Controls relating to secondary dwellings on land in a rural zone', including:
  - a. Permitting secondary dwellings with development consent in the following land use zones:
    - i. *RU1 Primary Production,*
    - ii. *RU2 Rural Landscape, and*
    - iii. *RU5 Village;*
  - b. Setting the following development controls for Clause 5.5:
    - i. *the greater of -*
      - a) *60 square metres total floor area the total for the secondary dwelling, or*
      - b) *33% of the total floor area of the principal dwelling, excluding any area used for parking, and*
    - ii. *the distance between the secondary dwelling and the principal dwelling must not exceed -*
      - a) *100 metres.*
3. Request the Minister for Planning and Minister for Homes, the Hon. Anthony Roberts MP to prepare a draft Local Environmental Plan under Section 3.22 of the Environmental Planning and Assessment Act, 1979 to expedite an amendment to the Port Macquarie-Hastings Local Environmental Plan 2011 to insert optional 'Clause 5.5 Controls relating to secondary dwellings on land in a rural zone' from the Standard Instrument - Principal Local Environmental Plan 2006.

#### Executive Summary

This report makes recommendations regarding an administrative update to the *Port Macquarie-Hastings Local Environmental Plan (LEP) 2011* to support housing

diversity in rural areas by making secondary dwellings permissible in rural zones where dwellings are permitted.

The change will be implemented through an amendment to the *Port Macquarie-Hastings Local Environmental Plan (LEP) 2011* to include (Optional) 'Clause 5.5 controls relating to Secondary Dwellings in a rural zone' of the Standard Instrument - Principal Local Environmental Plan 2006 under the *Environmental Planning and Assessment (EP&A) Act 1979*.

The report notes already commenced provisions for development of secondary dwellings in residential zones through *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) - and recommends that Council formally adopt and work with the Department of Planning Industry and Environment (DPIE) to prepare a planning proposal to amend LEP 2011 to implement *Optional Standard Instrument - Principal Local Environmental Plan (2006) Order - Clause 5.5 (SI Clause 5.5)* as an expedited amendment.

*SI Clause 5.5* relates to secondary dwellings on land in a rural zone - '*SI Clause 5.5 Secondary dwellings on land in a rural zone*'.

Under current LEP 2011 planning provisions, secondary dwellings are permitted with consent in residential zones *R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, and R5 Large Lot Residential*, but not in rural zones *RU1 Primary Production, RU2 Rural Landscape and RU5 Village*.

Implementation of *SI Clause 5.5* will allow a secondary dwelling, associated with a primary dwelling, to be built anywhere in the LGA where dwellings are permitted - apart from environmental zones to protect environmental values, and the rural RU6 Transition zone, which is a buffer zone to minimise conflict between rural zoned land and other land uses of varying intensities and sensitivities.

The proposed change aligns with Council's Local Strategic Planning Statement *Shaping Our Future 2040*, which identifies the need to provide greater housing diversity in the LGA, particularly smaller dwellings, to contribute to improved housing diversity and affordable housing options. Secondary dwellings can be used as a downsizing option as peoples housing needs change through their lives, or as visitor accommodation for family or friends, accommodation for a young adult or older parents, or rented to a tenant.

*SI Clause 5.5* can be adopted and made with or without total maximum floor area controls for a secondary dwelling in a rural zone, and a maximum distance between the secondary dwelling and the principal dwelling.

This report recommends that Council adopt *SI Clause 5.5*, applying the greater of a total maximum floor area control of 60sqm, or 33% of the total floor area of the principal dwelling, and a maximum distance of 100 metres between the principal and secondary dwelling.

## Discussion

Secondary dwellings are a type of residential accommodation under the *Standard Instrument Principal LEP 2006*.

A **secondary dwelling** means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the **principal dwelling**), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

This report focuses on Clause 5.5 of the 'Standard Instrument (SI) and proposes that Council adopt the clause for inclusion in Port Macquarie-Hastings LEP 2011.

### **Revised/New LEP clauses for Secondary Dwellings**

There are two LEP clauses developed by the state government for secondary dwellings are:

**Clause 5.4(9)** - The 'secondary dwelling on land **other than in a rural zone**' clause (compulsory)

**Clause 5.5** - The 'Secondary dwelling on land **in a rural zone**' clause (optional).

Clauses 5.4 and 5.5 of the *Standard Instrument Principal LEP 2006* set the development controls relating to secondary dwellings.

The matters addressed in the SI clauses for secondary dwellings and their intended effect are discussed below:

#### **1. Compulsory Standard Instrument LEP Clause - 5.4 (9) Secondary dwellings.**

Subclause 5.4(9) is a compulsory clause under Part 5 Miscellaneous provisions of the LEP. The clause sets maximum development standards for the total floor area of secondary dwellings. Amendments to the Standard Instrument prescribed (Local Environmental Plans) Order 2006 in December 2020 inserted additional text to clarify application of the clause to 'land other than in a rural zone' and commenced 1 February 2021. The text is mandated and included in Port Macquarie-Hastings LEP 2011 commencing 1 February 2021. The subclause reads:

#### ***5.4 Controls relating to miscellaneous permissible uses***

***(9) Secondary dwellings on land other than land in a rural zone - If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater:***

- a) 60 square metres,*
- b) 33% of the total floor area of the principal dwelling.*

No recommendation is required for this item.

#### **2. Clause 5.5 Controls relating to secondary dwellings on land in a rural zone - SI Clause 5.5**

Under current planning provisions for the Port Macquarie-Hastings Council area, secondary dwellings are not permitted in zones RU1 Primary Production, RU2 Rural Landscape, or RU5 Village in the Port Macquarie-Hastings Local Government Area (LGA) - 'the rural zones'.

*SI Clause 5.5* is an optional clause for councils to use in their LEPs. It allows development for a secondary dwelling on rural zoned land, and includes optional

development standards for maximum floor area and separation distance between a principal and secondary dwellings in a rural zone. Councils are able to nominate the development standards applying in their individual LEPs, or to adopt the clause with or without development standards.

The SI Optional Clause 5.5, and recommended development controls for inclusion in Port Macquarie-Hastings LEP 2011 is as follows:

**5.5 Controls relating to secondary dwellings on land in a rural zone  
[optional]**

*If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone:*

- (a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—*
  - a. [insert number] square metres - **it is recommended that Council adopt 60 square metres,***
  - b. [insert number] % of the total floor area of the principal dwelling - **it is recommended that council adopt 33%, and***
- (b) the distance between the secondary dwelling and the principal dwelling must not exceed [insert number] metres - **it is recommended that Council adopt 100 metres.***

The above development standards for subclauses (a) and (b) are consistent with those for secondary dwellings on land other than in a rural zone.

Internal consultation regarding appropriate numerical development standards has occurred. Council's Development Assessment staff have confirmed their support for inclusion of the SI Clause in Council's LEP, to improve diversity and affordability, and as an appropriate planning response to recent spikes enquiries for secondary dwellings, or small houses in rural areas.

A survey of the use of clause 5.5 in other local government LEPs indicates consistency and alignment with the approach taken by other regional councils in relation to implementation of Optional SI clause 5.5 in their LEPs.

It is recommended that Council adopt the clause, and the specified development controls without variation, and work with the Department to expedite implementation of SI clause 5.5 in Port Macquarie-Hastings LEP 2011.

**Options**

1. Do nothing - Development for the purpose of a secondary dwellings on rural zoned land in the local government area will remain prohibited.
2. Resolve to adopt the Optional SI Clause 5.5 - Secondary dwellings on land in a rural zone', and advise the DPIE of the decision.



Secondary dwellings are relevant to the overall housing supply in Port Macquarie-Hastings area. Council has the option to adopt SI clause 5.5 to assist with housing diversity, and improve affordability.

Not adopting the clause will mean that people seeking to apply for development consent to build a secondary dwelling house in rural areas would have limited options for housing family and friends compared to their urban counterparts.

Council has received numerous enquiries from property owners seeking to provide secondary dwellings on their rural properties. Council support for adopting the clause will ensure that development consent can be granted to rural homeowners to construct a secondary or small dwelling house on their land which they are now prevented from doing so.

Option 2 is recommended.

### Community Engagement and Internal Consultation

The requirements for community engagement in relation to a Planning Proposal are specified by the Minister or delegate in the Gateway Determination. The mandatory period for public exhibition and consultation in relation to the Planning Proposal can be 28 days. However, under *Section 3.22 Expedited amendments of environmental planning instruments* the Minister may determine a lesser period of 14 days, or that the matter does not require community consultation.

Expedited amendments may be made if the Minister agrees to the rationale for expediting the amendment, and the terms of expedition. If agreed, an LEP under section 3.22 of the Act may proceed without compliance with the steps in the plan making process (including consultation), if the amendment:

- corrects an obvious error, misdescription, a wrong cross reference, a spelling error, grammatical mistake, formatting error or unnecessary wording.
- addresses matters that are inconsequential, or of a transitional, machinery, or other minor nature, or
- The Minister considers that the matters do not warrant compliance with the conditions precedent for the making of the proposed instrument because they will not have any significant adverse impact on the environment or adjoining land.

This report recommends that Council seek the Minister's agreement to progress a proposed instrument to introduce ***SI 'Clause 5.5 Controls relating to secondary dwellings on land in a rural zone'*** without compliance with the usual steps in the plan making process (including community consultation).

### Planning and Policy Implications

A secondary dwelling, small house, or granny flat, is a self-contained dwelling located within, attached to, or separate from another dwelling on the same site. The development of a secondary dwelling can only result in there being one principal dwelling and one secondary dwelling on the site.

Secondary dwellings are permitted through the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) in residential zones (R1, R2, R3, R4, and R5).

The Housing SEPP added the optional clause 5.5 of the Standard Instrument Local Environmental Plan to some local environmental plans commencing 1 February

2021, not including Port Macquarie-Hastings LEP 2011. The inclusion of clause 5.5 in LEP 2011 is a decision for Council.

A lot on which a secondary dwelling is constructed cannot be subdivided, and the development standards set for maximum total floor area and separation distance under SI Clause 5.5 cannot be varied using Clause 4.6 'Exemptions to development standards' of Port Macquarie-Hastings LEP 2011.

The Housing SEPP does not require any additional parking for a secondary dwelling.

A secondary dwelling may be built with consent, or as complying development. For the development of a secondary dwelling to be approved through complying development, it must meet the provisions contained in Schedule 1 of the Housing SEPP, and the principal dwelling must meet the standards set out in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. There are additional requirements for complying development on bushfire prone land and complying development cannot be undertaken in areas of Bushfire Attack Level 40 (BAL-40) or the Flame Zone.

All lawfully constructed dwellings that are permitted to be used as residential accommodation in all land-use zones can be used for short-term rental, including a secondary dwelling.

Applications seeking development consent for secondary dwellings, regardless of zoning, are subject to merit assessment and compliance with safety standards. Site specific hazards and constraints such as flooding and bushfire will also impact whether development consent is granted or not for a secondary dwelling.

### **Financial and Economic Implications**

There are no immediate cost implications associated with administration of introducing SI Clause 5.5 in LEP 2011. If adopted, Council staff will manage and progress an amendment to Port Macquarie-Hastings LEP 2011 to introduce SI Clause 5.5.

Council currently offers a range of relief measures for secondary dwellings, including no Section 7.11 Infrastructure contributions (under the environmental Planning and Assessment Act, 1979), or water and sewer Headwork/Developer Servicing Charges under Section 306 of the Water Management Act for secondary dwellings up to and including 60m<sup>2</sup>. These measures are existing operational relief measures for secondary dwellings and they will continue to apply.

It also means rural homeowners will not be subject to developer contributions, which will save them approximately \$12,000 exclusive of water and sewer headwork charges where applicable.

There may be financial cost and/or benefit for rural homeowners who want to use their secondary dwellings as visitor accommodation for family or friends, accommodation for a young adult or older parents, or rented to a tenant.

### **Attachments**

Nil

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**14.02 PLANNING AMENDMENT TO PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 - SECONDARY DWELLINGS IN RURAL ZONES UNDER CLAUSE 5.5 OF THE STANDARD INSTRUMENT - PRINCIPAL LOCAL ENVIRONMENTAL PLAN 2006.**

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*RESOLVED: Intemann/Roberts*

That Council:

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  - a. Permitting secondary dwellings with development consent in the following land use zones:
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      - a) 60 square metres total floor area the total for the secondary dwelling, or
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    - ii. the distance between the secondary dwelling and the principal dwelling must not exceed -
      - a) 100 metres.
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*CARRIED: 8/0*

*FOR: Edwards, Griffiths, Intemann, Lipovac, Pinson, Roberts, Sheppard and Slade*

*AGAINST: Nil*