



Gateway determination report – PP-2024-1275

Permit Torrens Title subdivision for dual occupancy
development on certain R2 zoned Land

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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

Council Minutes 30 April 2024

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details.

LGA	Eurobodalla
PPA	Eurobodalla Shire Council
NAME	Permit Torrens Title subdivision for dual occupancy development on certain R2 zoned Land.
NUMBER	PP-2024-1275
LEP TO BE AMENDED	Eurobodalla LEP 2012
ADDRESS	Land zoned R2 Low Density Residential Zone with a minimum lot size shown on the Lot Size Map no greater than 550 sqm.
RECEIVED	12/06/2024
FILE NO.	IRF24/1597 and EF24/9406
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 objectives of the planning proposal are to permit Torrens Title subdivision (minimum 300 sqm) for dual occupancy development on certain R2 Low Density Residential zoned land where there is existing capacity in infrastructure to support additional development and minimise the demand for new release areas.

Dual occupancy development is currently permitted with Council consent in the R2 Zone. The proposed provision will not apply to land zoned R2 Low Density Residential Zone that has a minimum lot size shown on the Lot Size Map that is greater than 550 sqm because these lands are more constrained and are not considered appropriate for further subdivision.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Eurobodalla LEP 2012 per the changes below (extract from Planning Proposal). The new provision is intended to achieve a similar intent as clause 4.1B of the Mid-Western Regional Local Environmental Plan 2012, notably:

- apply to land zoned R2 Low Density Residential with a minimum lot size of 550m²,
- apply to existing lawful dual occupancy developments (attached and detached),
- allow the subdivision of existing lawful dual occupancy development (attached and detached) down to a minimum of 300m²,
- ensure only one dwelling will be located on each lot resulting from the subdivision,
- allow a combined subdivision and dual occupancy development application where each dwelling is located on a separate lot with a minimum size of 300m².

It is proposed that clause 4.6 would apply to allow a variation to the new development standard to be considered.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description

The provisions will apply to all land zoned R2 Low Density Residential Zone under Eurobodalla LEP 2012 and on land with a minimum lot size shown on the Lot Size Map not greater than 550 sqm.

1.5 Mapping

The planning proposal does not propose any changes to the LEP Maps. The proposed amendment is an instrument only amendment to Eurobodalla LEP 2012.

2 Need for the planning proposal.

Q1. Is the planning proposal a result of an adopted local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The planning proposal implements the Eurobodalla Local Strategic Planning Statement (LSPS) to encourage greater housing diversity and affordability in the LGA.

The proposal is generally consistent with the Eurobodalla Settlement Strategy 2006-2031 and the exhibited draft Eurobodalla Housing Strategy 2024-2041 that seeks to increase housing diversity and housing affordability in existing urban areas.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal to amend the Eurobodalla LEP 2012 to permit Torrens title subdivision of dual occupancy development to enable 1 dwelling per 300 sqm within land zoned R2 Low Density Residential Zone and with a minimum lot size shown on the Lot Size Map is the best means of achieving the objectives of the proposal.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is consistent with the South East and Tablelands Regional Plan 2036 and exhibited draft South East and Tablelands Regional Plan 2041. It is relevantly consistent with *Goal 4 Environmentally sustainable housing choices* and the following Directions;

- 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.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies stated in the table below:

Table 3 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	The planning proposal implements Planning Priority 1 in the Eurobodalla LSPS to encourage greater housing diversity and affordability and Planning Priority 3 to consolidate development within towns and villages.
Eurobodalla Settlement Strategy 2006-2031	<p>The planning proposal is consistent with the following objectives of the Eurobodalla Settlement Strategy 2006-2031.</p> <ul style="list-style-type: none"> - Consolidate growth in existing urban and rural residential areas to prevent new unsustainable settlement patterns developing, such as ribbon development. - Provide a greater range of housing choices to address the needs of various lifecycle stages and socio-economic categories
Draft Eurobodalla Housing Strategy 2024-2041	The proposal is generally consistent with the exhibited draft Eurobodalla Housing Strategy 2024-2041 that seeks to increase housing diversity and housing affordability in existing urban areas.

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional plan	Yes	The proposal seeks to encourage housing diversity and affordability by providing an alternative option for the subdivision of dual occupancy development in the R2 Zone. See also the response under section 3.1 Regional Plan.
3.1 Conservation Zones	Yes	The proposal does not seek to rezone land with high conservation or biodiversity value or increase housing densities in existing zones. Dual occupancy development is already permitted in the R2 zoned land. Permitting Torrens title subdivision in addition to strata subdivision for dual occupancy development in the R2 Zone is unlikely to have an adverse impact on biodiversity.

3.2 Heritage Conservation	Yes	<p>The proposal does not seek to rezone land with heritage value or increase housing densities in existing zones. Dual occupancy development is already permitted in the R2 zoned land. Permitting Torrens title subdivision in addition to strata subdivision for dual occupancy development in the R2 is unlikely to have an adverse impact on heritage values.</p>
4.1 Flooding	No - justified	<p>The proposal affects certain R2 Zoned land and is some of this land is likely to be identified as flood prone land.</p> <p>The planning proposal states that it is not inconsistent with this Direction because it does not seek to permit new development in flood prone areas. It only seeks to permit subdivision of dual occupancy development that is already permissible with council consent in the R2 Zone.</p> <p>However, subdivision is development so technically the proposal may be inconsistent with section (3) (a) to (c) of the Direction because some the R2 Zoned land maybe in a flood way or high hazard areas.</p> <p>Furthermore, any potential inconsistency however is considered minor because dual occupancy development is already permissible in the R2 Zone and can be strata subdivided. Council will also need to consider the impact of flooding when assessing any development application for a dual occupancy development.</p>
4.2 Coastal Management	Yes	<p>The proposal affects certain R2 Zoned land and is some of this land is likely to be identified within the coastal zone.</p> <p>Dual occupancy development is already permitted in the R2 zoned land. Permitting Torrens title subdivision in addition permitting to strata subdivision for dual occupancy development in the R2 is unlikely to create any additional adverse impacts within the coastal zone.</p> <p>Council will also need to consider the impact of development within the coastal zone when assessing any development application for a dual occupancy development.</p>
4.3 Planning for Bushfire Protection	To be determined following consultation with RFS	<p>The proposal affects certain R2 Zoned land and is some of this land is likely to be identified as bush fire prone land.</p> <p>Dual occupancy development is already permitted in the R2 zoned land. Permitting Torrens title subdivision in addition to strata subdivision for dual occupancy development in the R2 is unlikely create any additional adverse impact on heritage values. The planning proposal states that subdivision of bush fire prone land for residential purposes will still require a Bushfire Safety Authority under the Rural Fires Act 1997 at the DA stage. Council has also undertaken preliminary consultation with the NSW RFS. The service suggested that Council consider using Council's Development Control Plan to address the potential for subdivision of lots with existing dwellings that do not meet current construction standards or asset protection</p>

		<p>zone, particularly for isolated communities. The proposal states that draft amendments to the Residential Zones DCP are being considered by Council concurrently with this planning proposal and further consultation will be undertaken with the NSWRFs prior to finalisation of the planning proposal and DCP amendments.</p> <p>Recommend that Council be required to consult with the NSWRFs in accordance with planning proposal and the requirements of Direction 4.1.</p>
4.4 Remediation of Contaminated Land	Yes	<p>The planning proposal is not inconsistent with this Direction because it does not seek to permit new residential development in the existing R2 Zoned land. It only seeks to permit subdivision of dual occupancy development that is already permissible with council consent in the R2 Zone.</p> <p>Any development application for dual occupancy development will be required to consider land contamination prior to the site being subdivided.</p>
4.5 Acid Sulfate Soils	Yes	<p>The proposal affects certain R2 Zoned land and is some of this land is likely to be mapped as Acid Sulfate Soils.</p> <p>The planning proposal is not inconsistent with this Direction because it does not seek to permit new development in areas mapped as acid sulfate soils. It only seeks to permit subdivision of dual occupancy development that is already permissible with council consent in the R2 Zone.</p>
5.1 Integrated Land Use and Transport	Yes	<p>The planning proposal is consistent with this Direction because it potentially encourages dual occupancy development in existing R2 zoned land where transport options are more likely to be available.</p>
6.1 Residential Zones	Yes	<p>The planning proposal is consistent with this Direction because it potentially encourages greater housing choice and makes more efficient use of existing infrastructure.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal only applies to areas already zoned R2 Low Density Zone where dual occupancy development is already permissible with Council consent. The proposal is not inconsistent with any SEPPs.

The DPHI Codes Team have also confirmed that the planning proposal does not affect the operation of Part 6 Subdivision of SEPP Exempt and Complying Development.

4 Site-specific assessment

4.1 Environmental

It is unlikely that the proposed changes to Eurobodalla LEP 2012 to permit subdivision of dual occupancy development (currently permitted with consent) to enable 1 dwelling per 300 sqm within

land zoned R2 Low Density Residential Zone and on land with a minimum lot size shown on the Lot Size Map not greater than 550 sqm will have any adverse environmental impacts.

4.2 Social and economic

It is unlikely that the proposed changes to Eurobodalla LEP 2012 to permit subdivision of dual occupancy development (currently permitted with consent) to enable 1 dwelling per 300 sqm within land zoned R2 Low Density Residential Zone on land with a minimum lot size shown on the Lot Size Map not greater than 550 sqm will have any adverse social or economic impacts.

4.3 Infrastructure

The proposal applies to existing land zoned R2 Low Density Residential Zone and land with a minimum lot size that is not greater than 550 sqm. The planning proposal states the new provision does not apply to the C4 Environmental Living Zone, R5 Large Lot Residential Zone and RU5 Village zone because these zones are not sewered and require land area for suitable effluent disposal. This implies that R2 Zoned land is connected to Council's reticulated sewerage supply system. Page 25 of the proposal acknowledges that R2 Zoned land is connected to Council's reticulated water system.

5 Consultation

5.1 Community

The planning proposal is categorised as a basic under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 10 working days is recommended and this forms part of the conditions to the Gateway determination.

5.2 Agencies

The proposal is of minor/local significance. It applies to dual occupancy development on existing land zoned R2 Low Density Residential Zone where dual occupancy development is already permitted with Council consent. Only Direction 4.3 Planning for Bushfire Protection triggers a requirement to consult with the NSW Rural Fire Service because some land currently zoned R2 Low Density Residential Zone is identified as bush fire prone land.

6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a basic

The Department recommends an LEP completion date of 18 January 2025 (6 months) in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal is a basic planning proposal of minor significance the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal is consistent with local strategies, regional plan and draft regional plan and will support housing diversity on land zoned R2 Low Density Residential Zone with a minimum lot size shown on the Lot Size Map no greater than 550 sqm.
- The proposal is of minor significance that seeks to provide another option for the subdivision of dual occupancy development other than strata subdivision.

9 Recommendation

It is recommended that the delegate of the Secretary approve any inconsistency with S.9.1 Direction 4.1 Flooding on the basis that the inconsistency is of minor significance.

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

The following conditions are recommended to be included on the Gateway determination:

1. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
2. The planning proposal should be made available for community consultation for a minimum of 10 working days for low impact PPs.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 18 January 2025 be included on the Gateway.

The timeframe for the LEP to be completed is on or before 18 January 2025



18/7/2024

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