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Gateway determination report – PP-2024-2541

Secondary dwellings in rural zones

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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
Planning Proposal – 20 November 2024
Council Meeting 12 November – Business Paper
Council Meeting 12 November – Minutes

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Tamworth Regional
PPA	Tamworth Regional Council
NAME	Secondary dwellings in rural zones
NUMBER	PP-2024-2541
LEP TO BE AMENDED	Tamworth Regional LEP 2010
LAND DESCRIPTION	Certain land zoned RU1 Primary Production and RU4 Primary Production Small Lots
RECEIVED	20/11/2024
FILE NO.	IRF24/2882
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 objective of the planning proposal is to permit secondary dwellings on land in the RU1 Primary Production and RU4 Primary Production Small Lots zones outside of the proposed Namoi Regional Job Precinct (RJP).

The Department of Primary Industries and Regional NSW (DPIRD) - Regional Growth, NSW Development Corporation (RGDC) is responsible for delivering the proposed Namoi RJP. If the proposed Namoi RJP boundaries have not been determined before public exhibition of the planning proposal is due to commence, the proposal should be updated to apply to the lands that Council, in consultation with the DPIRD, has otherwise identified as potentially suitable for secondary dwellings and where land use conflict with agricultural industries is less likely.

A condition has been imposed on the Gateway determination in this regard.

1.3 Explanation of provisions

Council anticipate that the proposal will be implemented by either Schedule 1 - Additional Permitted Uses of the LEP or introduction of new local clause in the Tamworth Regional LEP 2010. The explanation of provisions is clearly stated and contains enough information to assist legal drafting of the LEP, noting that the Parliamentary Counsel Office will ultimately determine how the objectives and intended outcomes of the proposal are achieved at the finalisation stage.

Clause 5.5 of the Tamworth Regional LEP 2010 contains the controls for secondary dwellings in rural zones and this clause will have effect should the LEP be made.

1.4 Site description and surrounding area

The proposal is intended to apply to rural zones RU1 and RU4 outside of the proposed Namoi RJP.

As discussed in section 1.2 of this report, if DPIRD-RGDC has not determined the boundary of the proposed Namoi RJP before exhibition of the planning proposal is due to commence, the proposal should be updated to apply to the lands that Council, in consultation with the DPIRD, has identified as potentially suitable for secondary dwellings and where agricultural industries are unlikely to be adversely impacted.

It is noted that the Department's LEP Plan Making Guidelines (August 2023) contains specific timeframes for satisfaction of the consultation process.

1.5 Mapping

The planning proposal does not include proposed maps but identifies they will be included prior to exhibition. Given that it is intended to permit secondary dwellings only in certain areas within the RU1 and RU4 zones, it is important that mapping is included to identify the land to which the amendment applies and assist with interpretation of the proposal.

It is recommended that a condition be imposed on the Gateway determination to confirm maps must be included in the planning proposal prior to community consultation.

1.6 Background

1.6.1 Namoi Regional Jobs Precinct

DPIRD-RGDC is responsible for delivering the proposed Namoi RJP which aims to provide investment certainty for sustainable economic development of the intensive livestock agriculture sector in the Namoi region (which includes the Tamworth Regional LGA).

The intent of the Namoi RJP is to:

- support sustainable development of intensive agriculture;
- create clarity within the planning framework to support investment; and
- protect important environmental and cultural values.

The work of DPIRD-RGDC is focused on minimising land use conflict with dwellings by identifying land most suitable for intensive livestock agriculture through strategic odour modelling. DPIRD-RGDC has indicated to Council that public exhibition of the Namoi RJP package is imminent.

1.6.2 Planning Proposal PP-2024-673

Planning Proposal PP-2024-673 for the phase 1 review of the Tamworth Regional LEP 2010 sought to permit secondary dwellings in the RU1 and RU4 zones.

During the agency consultation process, DPIRD - Agriculture and RGDC and the NSW Environment Protection Authority (EPA) raised concerns about permitting secondary dwellings across the RU1 and RU4 zones due to the potential impact on the Namoi RJP.

In response to these submissions, Council resolved in August 2024 to finalise the proposal with changes which would only permit secondary dwellings in the RU1 and RU4 zones outside the Namoi RJP. As the boundaries of the Namoi RJP have not yet been determined by DPIRD-RGDC and PP-2024-673 is at the finalisation stage, Council is now seeking to progress the secondary dwellings component of the proposal as a separate amendment.

2 Need for the planning proposal

The proposal is a result of Action 2.5 of the Tamworth Regional Housing Strategy (RHS) which was approved by the Department on 26 September 2024.

The RHS identifies the Tamworth region is projected to see an increase in older age groups, and it is important that older people have the option to age in place. Permitting secondary dwellings in the RU1 and RU4 zones is intended to enable this outcome and support succession planning on rural properties.

It is noted in the RHS that increased opportunities to retire on farm, may also reduce the competition for aged and affordable accommodation within urban areas. It is also noted the proposal seeks primarily to increase the housing typologies that can occur on the identified lands (as attached dual occupancies are already permitted on the lands with development consent).

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against the main relevant aspects of the New England North West Plan 2041.

Table 3 9.1 Regional Plan Assessment

Regional Plan Objective	Justification
Objective 2: Protect the viability and integrity of rural land	Permitting secondary dwellings only outside the proposed Namoi RJP will ensure that the objectives of the project are not compromised. It also aligns with the aims of the Objective by minimising the potential for land use conflict which may restrict the use of agricultural land and protecting the integrity of existing and planned areas of intensive agriculture. It is however, recommended that consultation be undertaken with DPIRD – Agriculture to confirm the suitability of the proposal.
Objective 13: Provide well located housing options to meet demand	The proposal confirms the intent of the proposed changes is to provide older people with the option to age in place. This will support housing diversity and choice, improve affordability and support the ongoing reduction in household size
Local Government Narrative	The planning proposal is consistent with the local priority to deliver a variety of dwelling types across the LGA while protecting the viability of and promoting intensive agriculture clusters and the opportunities of the proposed Namoi RJP.

3.2 Local

The Tamworth Regional Housing Strategy (RHS) was conditionally approved by the Department on 26 September 2024. The planning proposal aligns with Action 2.5 of the RHS which is to investigate the potential of permitting secondary dwellings in RU1 and RU4 zones outside of the Namoi RJP to enable additional rural housing to age in place.

The Department encouraged Council as an outcome of the approval to work collaboratively with DPIRD – Agriculture when investigating the potential of permitting secondary dwellings in the rural zones to ensure agricultural industries are not adversely impacted through increased land use conflict. It is recommended that Council consult with DPIRD as a condition of the Gateway determination.

3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Directions except as discussed below.

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction because due to the geographic extent, it applies to areas that are environmentally sensitive but does not include provisions that facilitate the protection and conservation of these environmentally sensitive areas.</p> <p>The inconsistency is considered to be of minor significance because:</p> <ul style="list-style-type: none"> the proposal does not reduce the environmental protection standards currently applicable to land in the LGA; and environmental impact can be considered and adequately addressed before consent is granted for any future development application on individual land parcels.
3.2 Heritage Conservation	Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction because due to the geographic extent, it applies to items, areas, objects and places of environmental heritage significance and indigenous heritage significance and does not contain provisions that facilitate their conservation.</p> <p>The inconsistency is considered to be of minor significance because the Tamworth LEP 2010 contains provisions relating to heritage which will need to be considered and addressed before consent is granted for any future development application on individual land parcels.</p>
4.1 Flooding	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as its geographic extent will include flood prone land but does not include provisions that give effect to and are consistent with the relevant policy, manual, guideline, study or plan.</p> <p>The inconsistency is considered to be of minor significance because the Tamworth LEP 2010 contains provisions relating to flooding which will need to be considered and adequately addressed before consent is granted for any future development application on individual land parcels.</p>

4.3 Planning for Bushfire Protection	Unresolved	The planning proposal is potentially inconsistent with this Direction because it applies to land that is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) following the issue of a Gateway determination. Consultation with the RFS is yet to occur. Until this consultation has occurred the inconsistency with the Direction is unresolved.
5.3 Development Near Regulated Airports and Defence Airfields	Unresolved	The planning proposal is potentially inconsistent with this Direction because it applies to land that is within proximity a regulated airport. The Direction provides that the Council must consult with the operator of the airport. It is noted that Council has also nominated in the proposal they wish to consult with the Commonwealth Department responsible for airports. Until this consultation has occurred the inconsistency with the Direction is unresolved.
9.2 Rural Lands	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as it does not respond to all of the requirements specified such as reducing the risk of land use conflict.</p> <p>The inconsistency has been justified in accordance with the terms of the Direction as it is consistent with a Department approved local strategy. It is recommended that consultation however be undertaken with the DPIRD – Agriculture to confirm that the proposal is satisfactory.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

It is unlikely that the proposal will have any adverse impact upon threatened species, populations or ecological communities, or their habitats as it primarily involves expanding the housing typologies available on the land rather than dramatically increasing development potential.

Council will also have the opportunity, as the responsible planning authority, to make assessments and determinations regarding the suitability of secondary dwellings should they involve vegetation or habitat removal. This assessment will also consider matters relating to flooding, bushfire and potential contamination.

4.2 Social and economic

Permitting secondary dwellings on certain land in zones RU1 and RU4 has the potential to stimulate economic growth in rural areas and provide positive social outcomes to support rural communities. However, introduction of additional sensitive receivers also has the potential to increase land use conflict in rural areas.

As discussed in section 1.6.2 of this report, the planning proposal has been informed by feedback from various government agencies in relation to PP-2024-673 which highlighted the need to

carefully consider potential land use conflicts arising from secondary dwellings in rural areas and the impact on the proposed Namoi RJP.

It is recommended that further consultation is undertaken with DPIRD - Agriculture and RGDC as well as the EPA as a condition of the Gateway determination to confirm the suitability of the proposal.

4.3 Infrastructure

It is not expected that new or additional State infrastructure will be required as a result of the planning proposal.

In relation to local infrastructure, Council has indicated that reticulated water and sewer services are not typically available in the RU1 and RU4 zones and the merit assessment undertaken at the development application stage, will amongst other matters, consider infrastructure requirements for individual land parcels such as road access and onsite wastewater disposal.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

In accordance with the Department's LEP Making Guideline (August 2023), a standard planning proposal should be exhibited for 20 working days. A condition of the Gateway determination requires an exhibition period of 20 days to align with the Guideline.

5.2 Agencies

Council has nominated it will consult with a number of agencies and organisations. It is recommended that the following key agencies be consulted on the planning proposal and given 30 working days to comment:

- DPIRD – Agriculture
- DPIRD - RGDC
- NSW EPA
- NSW Rural Fire Service
- The operator of the Tamworth Regional Airport
- Civil Aviation Safety Authority
- Airservices Australia

6 Timeframe

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

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

The proposed nine-month LEP completion date is considered appropriate and in line with the Department's commitment to reducing processing times and with regard to the benchmark timeframes subject to exhibition commencing by the end of March 2025. Conditions to the above effect are recommended in the Gateway determination.

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 addresses matters of local significance and is the outcome of the Department approved strategy it is recommended 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:

- it contributes to housing diversity and availability in the Tamworth region;
- it is not inconsistent with the New England North West Regional Plan 2041; and
- it gives effect to Action 2.5 of the Tamworth RHS.

9 Recommendation

It is recommended the Director as delegate of the Secretary:

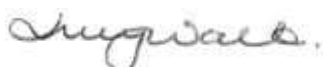
- **agree** that any inconsistencies with section 9.1 Directions, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.1 Flooding and 9.2 Rural Lands are minor or justified; and
- **note** that the consistencies with section 9.1 Directions 4.3 Planning for Bushfire Protection and 5.3 Development Near Regulated Airports and Defence Airfields are unresolved and will require further justification.

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. Prior to community consultation, the planning proposal is to be:
 - updated to include maps of the areas where secondary dwellings are proposed to be permitted with consent; and
 - revised to apply to the lands that Council, in consultation with the DPIRD, has identified as potentially suitable for secondary dwellings and where the risk of increased land use conflict with agricultural industries is less likely, if the boundary of the proposed Namoi RJP has not been determined before exhibition of the planning proposal is due to commence.
2. Consultation is required with the following public authorities:
 - Department of Primary Industries and Regional Development – Agriculture
 - Department of Primary Industries and Regional Development - Regional Growth, NSW Development Corporation
 - NSW Environment Protection Authority
 - NSW Rural Fire Service
 - The operator of the Tamworth Regional Airport
 - Civil Aviation Safety Authority
 - Airservices Australia
3. Community and agency consultation is to commence no later than 31 March 2025.
4. The planning proposal should be made available for community consultation for a minimum of 20 working days.

5. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority.
6. The timeframe for the LEP to be completed is on or before nine months of the Gateway determination date.



18-12-2024

(Signature)

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18-12-24

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