

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 15 February 2016

PE2 – Clause 4.1A – Wollondilly Local Environmental Plan, 2011

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TRIM 2145

EXECUTIVE SUMMARY

- The purpose of this report is to address a previous resolution of Council.
- On 20 April 2015, Council resolved to undertake a review of the appropriate application of Clause 4.1A of Wollondilly Local Environmental Plan, 2011. The review was to include a Councillor workshop and further report to a future Ordinary Meeting.
- A review was undertaken and a workshop with Councillors held on 26 October 2015.
- It is recommended that there be no change to Clause 4.1A of Wollondilly Local Environmental Plan, 2011.

REPORT

Council considered a development application for the construction and subdivision of 2 dual occupancies in Wonson Street, Wilton at its meeting of 20 April, 2015. When determining this application Council made the following resolution:

That Council undertake a review of the appropriate application of Clause 4.1A of Wollondilly Local Environmental Plan, 2011. The review will include a Councillor workshop and further report to a future Ordinary Meeting.

Unlike other clauses in the Wollondilly Local Environmental Plan, 2011, there is no objective to Clause 4.1A. Clause 4.1A of Wollondilly Local Environmental Plan, 2011 states as follows:

4.1A Minimum lot size for dual occupancies in residential zones.

- (1) *This clause applies to land within Zone R2 Low Density Residential or Zone R3 Medium Density Residential that contains an existing dual occupancy.*
- (2) *Clause 4.1 does not apply to the subdivision of land to which this clause applies if the size of the land to be subdivided is at least:*
 - (a) *in the case of a dual occupancy (attached) - 800 square metres.*
 - (b) *in the case of a dual occupancy (detached) - 975 square metres.*

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To understand the operation of this clause it is necessary to refer to the relevant definitions which are outlined as follows:

Dual Occupancy (Attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

Dual Occupancy (Detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

In interpreting this clause it is important to note:

- It only applies in the R2 and R3 zones. It does not apply in rural zones or environmental zones
- It only applies where there is an existing dual occupancy
- It prevents Clause 4.1 from having effect in certain circumstances. Clause 4.1 requires that any subdivision that requires development consent must comply with the minimum lot size shown on the minimum lot size map for that land.

In other words, if there is an existing dual occupancy on land in the R2 or R3 zones, and the existing lot complies with the standards in clause 4.1A(2) (ie 800 square metres if the dual occupancy is attached and 975 square metres if the dual occupancy is detached) then that dual occupancy is able to be subdivided, including by Torrens Title, even though that subdivision would result in lots smaller than the minimum lot size that would otherwise apply to that land.

If an existing dual occupancy is subdivided into 2 separate titles it is unlikely to be of any environmental consequence as the environmental impacts have already occurred through the construction and use of the dual occupancy. The separate ownership of the 2 dwellings does not of itself change the built form or the intensity of the use.

When Council has received applications for dual occupancy, whether attached or detached, and there have been submissions from objectors to the application, those submissions have been based on the built form and environmental impacts of the construction and use of the dual occupancy. The submissions made over recent years have not raised any concerns with the dwellings being located on separate titles.

Dual occupancies have been approved and constructed in most towns and villages throughout Wollondilly Shire and have provided flexibility in housing form and have provided a more affordable housing option. The ability to have separate ownership of each dwelling has benefits to the eventual occupiers of the dwellings. Given that there is minimal environmental impact or community concern about dwellings in a dual occupancy being under separate ownership it is recommended that there be no change to Clause 4.1A of Wollondilly Local Environmental Plan, 2011.

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CONSULTATION

The Councillors were consulted at the Councillor workshop on 26 October, 2015.

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates.

ATTACHMENTS

Nil

RECOMMENDATION

That the effect and operation of Clause 4.1A of Wollondilly Local Environmental Plan, 2011 be noted and that there be no change to this clause.