

GR4 – Planning Proposal – Attached Dual Occupancies in Rural Zones and Clarification of Sewer Requirements

GR4 **Planning Proposal – Attached Dual Occupancies in Rural Zones and Clarification of Sewer Requirements**
272411 TRIM 8290

Applicant: **Wollondilly Shire Council**
Owner: **Various**

Stage	Completed
Preliminary notification	N/A
Gateway Determination/Revised	22 June 2015. Revised 15 April 2016 and 05 April 2017
Consultation with Public Agencies	9 June 2017
Specialist Studies	N/A
Public Exhibition/Community Consultation	14 June 2017 to 28 June 2017
Referred to Minister for Publication	Not Completed

EXECUTIVE SUMMARY

- The purpose of this report is to seek Council’s endorsement to finalise a planning proposal to permit dual occupancies (attached) with consent on rural zoned land and clarify the requirements for the provision of essential services, namely the disposal and management of sewage, for development on unsewered land in rural and environmental protection zones.
- This Planning Proposal has been prepared by Wollondilly Shire Council. It seeks changes to Wollondilly Local Environmental Plan 2011 and relates to land in the R5 Large Lot Residential, rural (RU1, RU2, RU4) and environmental (E4) zones under this plan.
- The Planning Proposal is consistent with the Key Policy Directions and Assessment Criteria of Council’s Growth Management Strategy.
- No submissions were received in response to Community Consultation.
- It is recommended:
 - That Council support the Planning Proposal as exhibited; and
 - That the Planning Proposal be finalised and forwarded to the Greater Sydney Commission for publishing.



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REPORT

1.1 DESCRIPTION OF PROPOSAL

This Planning Proposal intends to amend Wollondilly LEP 2011 (WLEP 2011) in the following manner:

- Amend the Land Use Table and Land Use Matrix to permit dual occupancies (attached) with consent in rural zones (RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots); and
- Amend clause 7.1 of WLEP 2011 to remove subclause (3) in order to clarify that if dual occupancies (attached), rural workers' dwellings and secondary dwellings are permitted on land where reticulated sewer is not available (i.e. rural zones RU1, RU2 and RU4, the R5 Large Lot Residential zone and E4 Environmental Living zone), requirements for adequate disposal and management of sewage can be satisfied by adequate on-site wastewater disposal.

Council supported the planning proposal on 9 February 2015. There have been minor changes to the planning proposal to reflect current policy and previous consultation with relevant government agencies, authorities and organisations.

PERMISSIBILITY OF DUAL OCCUPANCIES (ATTACHED) IN RURAL LAND USE ZONES

Prior to the making of Wollondilly LEP 2011, attached dual occupancies were permissible through the previous planning controls for over 25 years. Council established that there is community support for the permissibility of dual occupancies (attached) in rural zones during the public exhibition of the Wollondilly LEP 2011. The Planning Proposal intends to re-introduce dual occupancies (attached) into the rural zones in line with community support.

PROPOSED CHANGES TO CLAUSE 7.1 ESSENTIAL SERVICES

The planning proposal also seeks to strengthen the requirements for the provision of essential services where there are two or more dwellings proposed on unsewered land in the R5 Large Lot Residential zone, rural zones and the environmental living E4 zone.

Clause 7.1(3) currently defines the term 'disposal and management of sewage' (Figure 1). Through ongoing use of WLEP2011, it has become apparent that this definition may be interpreted to prohibit development involving 2 or more dwellings, such as dual occupancy, rural workers' dwellings and secondary dwellings (granny flats), where there is no connection available to a reticulated sewerage scheme.

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The implication is that these types of developments could be considered as being prohibited within rural land use zones and environmental protection zones, which in most cases are not connected to reticulated sewerage.

Figure 1: Wollondilly Local Environmental Plan 2011 Clause 7.1(3)

- (3) In this clause:
- Disposal and management of sewage* means the disposal and management of sewage in the form of a reticulated sewerage scheme:
- (a) That is provided to each separate lot proposed as part of the development, and
 - (b) If a lot contains 2 or more dwellings, is for the purpose of dual occupancy, multi dwelling housing, residential flat buildings, attached dwellings and shop top housing.
- reticulated sewerage scheme* means a network of pipes that conveys sewage from dwellings to a treatment facility licensed or required to be licensed under the Water Industry Competition Act 2006.

The intent of this clause was to ensure that adequate disposal and management of sewage could be provided before development could go ahead. In rural and environmental protection zones this would be demonstrated by on-site effluent disposal, the adequacy of such would be subject to assessment as part of a development application. The planning proposal seeks to remove clause 7.1(3) from Clause 7.1 Essential Services in order to remove the ambiguity of its application.

1.2 GATEWAY DETERMINATION

A Gateway Determination was issued on 22 June 2015. The Gateway Determination permitted the planning proposal to proceed.

An Alteration to the Gateway Determination was issued on 15 April 2016 to:

- remove condition (1) which required Council to amend the planning proposal to facilitate the exclusion of attached dual occupancies from clause 7.1(3) of WLEP 2011 in rural zones and Zone E4 Environmental Living through an appropriate amending clause;
- Amend condition (5) to extend the timeframe for completing the LEP to 29 December 2016;
- Amend condition (2) to include public authority Sydney Water; and
- Re-label conditions “2-5” to “1-4”.

A further Alteration to the Gateway Determination was issued on 5 April 2017 to extend the timeframe for completing the LEP to 31 October 2017.

The conditions of the revised Gateway Determination are summarised in the following table with comments as to how these have been addressed in the Planning Proposal process.

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Gateway Condition	Addressed by:
1. Prior to undertaking community consultation, Council is to consult with the relevant public authorities.	Completed. Letters sent to relevant public authorities on 9 June 2017.
2. The Secretary's delegate approves the inconsistency of the proposal with section 117 Direction 1.2 Rural Zones on the basis that the inconsistency is of minor significance.	Noted. See section 2.7 for consideration of consistency with Section 117 Directions.
3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979, for a period of 14 days.	Completed. The planning proposal was exhibited for 14 days from 14 June 2017 to 28 June 2017.
4. The timeframe for completing the LEP is by 31 October 2017.	Noted. It is anticipated a gateway extension will be required to complete the LEP.

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CONSULTATION

2.1 CONSULTATION WITH COUNCIL STAFF

No comments or objections on the Planning Proposal were received from Council staff. The original need for this proposal was identified by development assessment staff.

2.2 CONSULTATION WITH PUBLIC AGENCIES

The Gateway Determination required consultation with the following Public Agencies:

- NSW Resources and Energy (formerly NSW Resources and Geoscience)
- Subsidence Advisory NSW (formerly NSW Mine Subsidence Board);
- NSW Rural Fire Service (RFS)
- Water NSW (formerly Sydney Catchment Authority)
- Sydney Water
- relevant adjoining LGAs i.e. Blue Mountains City Council, Camden Council, Campbelltown City Council, Goulburn Mulwaree Council, Liverpool City Council, Oberon Council, Penrith City Council, Wingecarribee Shire Council and Wollongong City Council.

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Responses were not received from the following agencies/councils:

- Subsidence Advisory NSW (formerly NSW Mine Subsidence Board (MSB)
- Oberon Council, Wingecarribee Shire Council and Wollongong City Council.

The following is a summary of the matters raised by public authorities and assessment comments.

NSW RESOURCES AND ENERGY (FORMERLY NSW RESOURCES AND GEOSCIENCE)

NSW Resources and Energy provided comments on the planning proposal in June 2016 and during the public exhibition period in June 2017 expressing a number of concerns with the proposed amendment to permit attached dual occupancies within all rural zoned land.

Comment:

The issues raised by NSW Resources and Energy have been outlined and addressed in detail below. Refer to 2.7 Section 117 Ministerial Directions- 1.3 Mining, Petroleum Production and Extractive Industries.

NSW RURAL FIRE SERVICE (NSW RFS)

NSW RFS raise no objection to the planning proposal proceeding and provide the following information for dual occupancy/secondary dwelling development:

- Secondary dwellings or dual occupancies, where there is no subdivision proposed, on land mapped as bush fire prone, will be required to be assessed under s79BA of the Environmental Planning and Assessment Act 1979. Council should note that the relevant provisions of Planning for Bush Fire Protection 2001 (PBP 2006) and Factsheet 4/12 “Increased Density on a single parcel of land’ applies;
- The minimum specifications for asset protection zones (APZ’s) for dual occupancies in Table A2.5 of PBP 2006 do not correspond directly with the minimum separation distances for BAL 29 construction under Table 2.4.3 of the Australian Standard AS3959 “Construction of buildings in bushfire-prone areas’ (AS3959-2006). Minimum APZ’s for future dual occupancy development should be designed to achieve separation distances consistent with BAL 29 under AS 3959-2009;
- Council should note that AS3959-2009 and the NSW RFS ‘Guide for Bushfire Prone Land Mapping’ includes grasslands as a hazardous vegetation category. Any future dwellings will need to consider this at the design and construction stage.

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Comment

These comments are noted and are considered to be matters that can be addressed at the development application stage.

SYDNEY WATER

Sydney Water raise no objection to the planning proposal proceeding.

Comment

Noted.

WATER NSW (SYDNEY CATCHMENT AUTHORITY)

Water NSW provided comments on the planning proposal prior to community consultation. These were received on 31 May 2016 and raised no objection to the planning proposal.

Water NSW provided a supplementary submission during the public exhibition period and raised concern regarding the amended Gateway Determination to delete Condition 1 regarding the exclusion of attached dual occupancies from clause 7.1(3) of the WLEP in rural zones and Zone E4 Environmental Living through an appropriate amending clause, rather than the deletion of the clause.

Water NSW state that an amended clause would facilitate more sustainable development.

Comment

This Planning Proposal seeks to facilitate a Shire wide policy change (by making attached dual occupancy development permissible within rural land zones and by clarifying the requirements for the disposal and management of sewage) and does not relate to a particular parcel of land.

Any development application on land which is (for example) environmentally sensitive, would be subject to an assessment under the existing statutory provisions. These existing measures are considered to be satisfactory to safeguard the environment and resources.

RELEVANT ADJOINING LGA'S

Six (6) submissions were received from adjoining LGA's including Blue Mountains Council, Goulburn Mulwaree Council, Penrith Council, Campbelltown Council, Camden Council and Liverpool Council. The submissions raised no objection to the planning proposal proceeding.

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2.3 COMMUNITY CONSULTATION

The Gateway Determination specified a **14 day** period of community consultation and public exhibition. During this time the Planning Proposal, specialist studies and other documents as required by the Gateway Determination were made available for public viewing on Council's website and at Council's Administration Building. A public notice was placed in the local newspaper and individuals who enquired about the planning proposal were notified by email of the exhibition.

There were no submissions received from the community on this proposal during the public exhibition.

2.4 PLANNING PROPOSAL

The Planning Proposal has been prepared in accordance with Section 55 to the EP&A Act, 1979 and the guidelines published by the Department of Planning and Environment.

Council's options are:

1. Resolve to support the Planning Proposal in the form as described in Section 2.11 to this report.
2. Resolve to support the Planning Proposal in another form. With this option a new Gateway Determination and a new public exhibition period may be required.
3. Resolve not to support the planning proposal. With this option Council would need to request an Alteration to the Gateway Determination to say that the planning proposal should not proceed.

Option **1** is the recommendation of this report.

2.5 A PLAN FOR GROWING SYDNEY

The planning proposal will not result in an inconsistency with this plan and does not conflict with the directions outlined in the plan for achieving housing diversity, promoting heritage and protecting our natural environment and biodiversity.

2.6 DRAFT SOUTH WEST SYDNEY DISTRICT PLAN (NOVEMBER 2016)

The planning proposal is generally consistent with the draft plan and supports the priorities outlined in the plan for increasing housing choice, diversity and affordability.



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2.7 SECTION 117 MINISTERIAL DIRECTIONS

The Gateway Determination requires consultation with a number of public agencies on the following section 117 Directions inconsistencies:

MINISTERIAL DIRECTION 1.3 MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES

The objective of Direction 1.3 is to 'ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development'.

As a requirement of the Gateway Determination, NSW Resources and Energy (formerly NSW Resources and Geoscience) were notified of the planning proposal. NSW Resources and Energy provided comments on the planning proposal in June 2016 and during the public exhibition period in June 2017 expressing a number of concerns with the proposed amendment to permit attached dual occupancies within all rural zoned land. The Department's concerns can be summarised as follows:

- The Planning Proposal is not consistent with the intended purpose of the rural zones, which is for commercial primary industry (including opportunities for mining and extractive industries)
- The Planning Proposal supports intensification of dwellings in rural areas, and it is also inconsistent with some of the objectives of the rural zones within the Wollondilly LEP 2011
- The Department provided mapping to show identified and potential (non-energy) resource areas within Wollondilly and noted that the Shire also contains high quality coking coal resources used for steel manufacture. The Department believes that the proposal could lead to an intensification of people residing in rural zoned areas therefore increasing the potential for land use conflict
- Intensification of residences in rural zoned land may have future impacts on Subsidence Management Plans (SMPS) which can impact on future mining methods, limiting resource recovery and possibly jeopardising the viability of future resource extraction
- Potential for cumulative long-term impacts and resource sterilisation associated with intensification in rural zones within the vicinity of identified resources.

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The following considerations are provided in response to the Departments submission:

- The Planning Proposal does not represent urban expansion.
- Attached dual occupancies have been permitted within Wollondilly's rural land use zones since the early 1980s. They only became a prohibited development in February 2011 through the making of Wollondilly LEP 2011.
- The removal of attached dual occupancies as a permissible use from the land use table in the transition to the standard instrument appears unintended. The reason for its removal is not known. It is likely due to the infancy of standard instrument local environment plans and a desire by the Government for the new LEPs to rigidly conform to the LEP template.
- Low impact residential development is compatible with the objectives of the rural land use zones.
- Although the reintroduction of attached dual occupancy development has the potential to permit additional dwelling density on rural zoned land, the proposed changes are not based on a policy to promote housing supply in rural areas. The potential increase in dwellings as a result of the reintroduction of attached dual occupancy development is expected to be negligible. Based on the number of dual occupancy developments that were approved in the 10 year period from 2000 to 2010, the number is anticipated to be between 5 and 10 per year.
- The principle of additional dwellings on rural land already exists as 'Secondary Dwellings' and 'Rural Worker's Dwellings' are currently permissible with consent in all rural land use zones under the Wollondilly LEP 2011.
- Wollondilly Development Control Plan 2016 (DCP) includes requirements for dual occupancy development in rural zones (Volume 4, section 3.16). These were introduced in anticipation of this Planning Proposal. The DCP controls will result in a dwelling that is compatible with and "subservient" to the main dwelling house in a number of ways, including: limiting the length of blank walls; ensuring that the common wall that attaches the 2 dwellings is 50% of the length of that wall; requiring setbacks from all boundaries; limiting the size of garage doors across the front façade; the provision of car parking and private open space; as well as more aesthetic controls such as integrated roof lines; and providing the appearance of 1 dwelling and compatibility with the scale and appearance of surrounding development.
- The Planning Proposal will not lead to the fragmentation of land as Torrens title subdivision is not permitted in association with this type of development.

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However, the submission from NSW Resources and Energy has been considered to make the Planning Proposal inconsistent with Direction 1.3. The submission was provided to the NSW Department of Planning & Environment with a request for confirmation as to whether the inconsistency with this Direction is considered to be of minor significance.

On 16 December 2016 the Department of Planning and Environment responded to Council and stated “that the inconsistency with S117 Direction 1.3 is of minor significance.” No amendments are proposed to the Planning Proposal in light of and after consideration of the submission from NSW Resources and Energy.

MINISTERIAL DIRECTION 4.2 MINE SUBSIDENCE AND UNSTABLE LAND

The objective of Direction 4.2 is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence. While the planning proposal applies to land covered by this Direction, any inconsistency is considered to be of minor significance as the proposed changes will not affect existing statutory provisions which apply to these areas in the assessment of a development application.

As a requirement of the Gateway Determination, Subsidence Advisory NSW (formerly NSW Mine Subsidence Board) were notified of the planning proposal. No comments or objections on the Planning Proposal were received from Subsidence Advisory NSW.

MINISTERIAL DIRECTION 4.4 PLANNING FOR BUSHFIRE PROTECTION

The objective of Direction 4.4 is to protect life, property and the environment from bush fire hazards and to encourage sound management of bush fire prone areas. The planning proposal applies to bushfire prone land covered by this Direction. However, any inconsistency is considered to be of minor significance because the proposed Shire-wide policy changes to the WLEP 2011 will not affect existing statutory provisions which apply to these areas in the assessment of a development application.

As a requirement of the Gateway Determination, NSW RFS were notified of the planning proposal. The NSW RFS raised no objection to the planning proposal proceeding and provided information on requirements for dual occupancy development applications lodged in the future.

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MINISTERIAL DIRECTION 5.2 SYDNEY DRINKING WATER CATCHMENTS

The objective of Direction 5.2 is to protect water quality in the Sydney drinking water catchment. The planning proposal applies to land covered by this Direction. As a requirement of the Gateway Determination, Water NSW (formerly Sydney Catchment Authority) and Sydney Water were notified of the planning proposal. Sydney Water raised no objection to the planning proposal, however Water NSW raised concern as outlined in Section 2.2 above.

Any inconsistency is of minor significance because the proposed Shire-wide policy changes to the WLEP 2011 will not affect existing statutory provisions which apply to these areas in the assessment of a development application.

2.8 STATE ENVIRONMENTAL PLANNING POLICIES

All relevant State Environmental Planning Policies have been considered and are addressed satisfactorily in the planning proposal. The planning proposal is considered to be consistent with all applicable State Environmental Planning Policies and draft State Environmental Planning Policies.

2.9 WOLLONDILLY GROWTH MANAGEMENT STRATEGY (GMS)

The Planning Proposal is consistent with the Key Policy Directions and Assessment Criteria of Council's Growth Management Strategy. The Planning Proposal represents a sound approach to the permissibility of attached dual occupancy development in appropriate non-urban zones in the Shire of Wollondilly. It also allows alternative, acceptable methods of onsite sewerage disposal, when a reticulated system is not available. Both amendments may also encourage longer term, consistent ownership of rural land; which in turn may offer opportunities to reduce the unwanted fragmentation of existing rural holdings in the Shire.

Permitting attached dual occupancy in rural areas and accepting other types of onsite sewerage disposal would make a positive contribution towards increased housing diversity and affordability in the Wollondilly Shire. This is a key policy direction of the Growth Management Strategy.

2.10 WOLLONDILLY COMMUNITY STRATEGIC PLAN 2033

The planning proposal is generally consistent with the plan and supports the priorities outlined in the plan to engage and communicate with the community, protect and conserve biodiversity and natural resources, and to encourage and manage growth. The proposal is also consistent with Council's adopted position on growth.

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2.11 FINAL FORM OF PLANNING PROPOSAL

Outlined below is the final form of the planning proposal.

2.11.1 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011 (WLEP 2011)

There are no changes to the Planning Proposal as exhibited. The Planning Proposal seeks amendments to WLEP 2011 as described below:

- Amend the Land Use Table and Land Use Matrix to permit dual occupancies (attached) with consent in rural zones (RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots); and
- Amend clause 7.1 to remove subclause (3) in order to clarify that if dual occupancies (attached), rural workers dwellings and secondary dwellings are permitted on land where reticulated sewer is not available (i.e. rural zones, the R5 Large Lot Residential zone and E4 Environmental Living zone), requirements for adequate disposal and management of sewage can be satisfied by adequate on-site wastewater disposal.

2.12 WOLLONDILLY DEVELOPMENT CONTROL PLAN, 2011 (WDCP 2011)

No further amendments are proposed to WDCP 2011 at this stage. Sufficient controls have been introduced into the WDCP 2011 in anticipation of this amendment.

FINANCIAL IMPLICATIONS

Funding for the maintenance of Planning Instruments is part of the ongoing operational budget for Strategic Planning and no additional funding sources are required. This matter has no financial impact on Council's adopted budget of forward estimates. The assistance, free of charge, of the NSW Department of Planning and Environment in drafting this report is acknowledged.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Planning Proposal- Attached Dual Occupancies in Rural Zones and Clarification of Sewer Requirements (June 2017)
2. Proposed Land Use Table for Rural Zones
3. Proposed changes to Wollondilly LEP Land Use Matrix
4. Proposed Clause 7.1 Essential Services.

Sustainable and Balanced Growth
Report of to the Ordinary Meeting of Council held on Monday 16 October 2017

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RECOMMENDATION

1. That Council support the Planning Proposal to permit dual occupancies (attached) with Council's consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones and clarify sewer requirements by removing subclause (3) of clause 7.1 – Essential Services of Wollondilly Local Environmental Plan 2011.
2. That in accordance with Section 59 to the Environmental Planning and Assessment Act, 1979 the Planning Proposal be finalised and forwarded to the Greater Sydney Commission for publishing.