



Planning Proposal 17/008

**» Rural Area Detached Dual
Occupancy**

August 2017 (V2. Exhibition) 17/63635

ballina
shire council



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Contents

1. Introduction.....4

1.1 Summary of Planning Proposal4

1.2 Land to Which the Planning Proposal Applies5

1.3 Council Resolutions.....6

1.4 Gateway Determination7

2. Objectives & Intended Outcomes8

3. Explanation of Provisions8

3.1 Background8

3.2 The Proposal.....9

3.3 Mapping Overview.....9

4. Justification10

4.1 Section A – Need for the Planning Proposal.....10

4.2 Section B – Relationship to Strategic Planning Framework10

4.3 Section C – Environmental, Social and Economic Impact.....13

4.4 Section D – State and Commonwealth Interests.....15

5. Mapping.....16

6. Community Consultation16

7. Timeline.....16

8. Appendices17

Appendix One – Council Reports18

Appendix Two – Section 117 Direction Checklist.....42

Appendix Three – Gateway Determination.....46

Ballina Shire Council

1. Introduction

1.1 Summary of Planning Proposal

This planning proposal proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production (RU1) and RU2 Rural Landscape (RU2) zones under the provisions of Ballina LEP 2012 (BLEP 2012).

Currently only *dual occupancies (attached)* are permitted with development consent.

This planning proposal has been prepared in response to the Council's resolution of 22 June 2017.

9.1 Planning Proposal - Rural Area Detached Dual Occupancy.DOC

Planning Proposal 17/008 Rural Area Detached Dual Occupancy

1.2 Land to Which the Planning Proposal Applies

This planning proposal relates to all land zoned RU1 and or RU2 under the provisions of Ballina LEP 2012.

Ballina Shire Council

1.3 Council Resolutions

At its Ordinary Meeting held on 23 March 2017, the Council resolved as follows [Minute No. 230317/5] following consideration of the report, *Policy (Review) – Detached Dwelling Development Within Rural Areas*:

That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary dwellings).

A copy of the report considered by the Council is provided in Appendix One.

Following a Councillor briefing on 16 May 2017, the Council at its Ordinary Meeting held on 22 June 2017 further considered the issue of permitting dual occupancies in rural areas, and resolved as follows [Minute No. 220617/1]:

1. *That based on the feedback from the Councillor briefing held 16 May 2017, Council endorses the preparation of a planning proposal which proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.*
2. *That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for Gateway determination.*
3. *That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition for a minimum period of 28 days in accordance with the consultation strategy detailed in this report and the requirements of the gateway determination.*
4. *That Council prepares associated draft amendments to Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity to align the DCP with the planning proposal.*
5. *That the draft DCP amendments be placed on public exhibition with the planning proposal for a minimum period of 28 days.*
6. *That Council give further consideration to the planning proposal and associated draft DCP amendments following the conclusion of the public exhibition period.*
7. *That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.*

A copy of the report considered by the Council is provided in Appendix One.

1.4 Gateway Determination

A Gateway determination, allowing this planning proposal to proceed to public exhibition, was issued by the Department of Planning and Environment on 28 July 2017. The Gateway determination is contained within Appendix 3.

Ballina Shire Council

2. Objectives & Intended Outcomes

To amend Ballina LEP 2012 so as to:

- Permit dual occupancies (attached or detached) with development consent within the RU1 and RU2 rural zones;
- Specify additional matters for consideration prior to the granting of development consent for rural area dual occupancies; and
- Amend relevant associated BLEP 2012 clauses (4.2A and 7.8) so as to reference their applicability to dual occupancies generally (instead of dual occupancies (attached)).

3. Explanation of Provisions

3.1 Background

North Coast Regional Environmental Plan 1988

The North Coast Regional Environmental Plan 1988 (NCRP) (now repealed) applied prior to Ballina LEP 2012 being made on 4 February 2013. The NCRP required councils when deciding to prepare a draft local environmental plan to consider the aims and objectives of the NCRP.

The NCRP objective relating to dual occupancy stated that a draft local environmental plan should not include provisions to permit the erection of more than one dwelling on an allotment of land but may include provisions relating to the creation of 2 attached dwellings.

It was in response to the above NCRP provisions that BLEP 2012 restricted dual occupancy development within the RU1 and RU2 zones to attached dual occupancy development.

The restriction of dual occupancy development within rural zones to “attached dwellings” also mirrored similar restrictions contained within Ballina LEP 1987 (refer clause 14).

Lismore City Council and Byron Shire Council LEP Amendments

Lismore LEP 2012 was amended on 25 October 2012 to permit dual occupancies (attached or detached) within the RU1 zone. This was followed by the amendment of Byron LEP 2014 on 10 July 2015 to also permit dual occupancy development (attached or detached) as well as secondary dwellings within the RU1 and RU2 zones.

3.2 The Proposal

This planning proposal seeks to achieve the following amendments to Ballina LEP 2012:

- To permit dual occupancies (attached or detached) with development consent within the Land Use Tables applicable to the RU1 and RU2 rural zones;
- To remove the reference to (attached) in reference to dual occupancies where it occurs in clause 4.2A and 7.8; and
- To insert a local clause to further regulate dual occupancies within the RU1 and RU2 zones;

The proposed local clause is intended to set out objectives as well as define the circumstances under which development consent must not be granted for dual occupancy development proposed within the RU1 or RU2 zones.

It is proposed that Council, before granting development consent, must satisfy itself that the proposed development will:

- Not adversely impact the use of adjoining land for agriculture or rural industry use;
- Use the same vehicle access point from a public road;
- Be able to accommodate on-site disposal and management of sewage waste; and
- Be able to be accommodated on the land having regard to the land's physical characteristics and constraints. For example if the land is subject to land slip, bush fire prone or flood prone or any other land constraint then these matters must all be considered before a decision is made to grant development consent.

3.3 Mapping Overview

The proposal does not involving any mapping amendments.

Ballina Shire Council

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No. This planning proposal was developed following Councillor briefings held on 8 March 2017 and 16 May 2017 and an initial report to the Council on 23 March 2017.

Council considers that this planning proposal warrants support for the following reasons:

- Removes an anomaly (attached dual occupancy, tourist and visitor accommodation and studios already permitted with development consent);
- Provides additional housing choice;
- Provides a potential affordable housing option;
- Assists farm succession planning;
- Potentially frees up enforcement resources; and
- Provides a source of farm income (rental housing).

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

An LEP amendment is the best way of achieving the proposed outcomes as the proposal directly relates to land use permissibility and associated matters for consideration prior to the determination of a development application.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The proposal is considered to be consistent with the North Coast Regional Plan 2036 (NCRP).

The planning proposal aligns with the following Directions listed under Goal 4 – great housing choice and lifestyle options:

- *Direction 23.1: Increase housing diversity and choice* – the proposal will provide additional housing choice options for rural residents.
- *Direction 25.1: Delivering more opportunities for affordable housing* – the proposal will enable the creation of a greater variety of housing types within Ballina Shire's rural areas.

Q4 Is the planning proposal consistent with a council’s local strategy or other local strategic plan?

Ballina Shire Council Community Strategic Plan 2017-2027 (CSP)

The planning proposal is consistent with the elements and specified outcomes of the CSP as indicated in the table below:

Element and Reference	Outcomes	Benefits
Connected Community		
CC1.3	Monitor the built infrastructure and the services delivered to the community to ensure relevant standards are being met	High levels of legislative compliance Reduced reactive response programs
PE3 Prosperous Economy	Improve liveability in the shire	
PE3.2	Facilitate and provide affordable infrastructure	More affordable housing
HE3 Healthy Environment	Our built environment blends with the natural environment	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development

The planning proposal is also considered to be consistent with the following key local plans:

Ballina LEP 2012

The planning proposal applies to land within the RU1 and RU2 rural zones.

The objectives of the RU1 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural, cultural and landscape character of the locality.*
- *To enable development that is compatible with the rural and environmental nature of the land.*
- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

The objectives of the RU2 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To minimise the fragmentation and alienation of resource lands.*

Ballina Shire Council

- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To enable small-scale tourist-orientated development that is compatible with the rural nature of the land.*
- *To encourage development that involves restoration or enhancement (or both) of the natural environment if consistent with the production and landscape character of the land.*
- *To enable development that does not adversely impact on the natural environment, including habitat and waterways.*
- *To ensure that there is not unreasonable or uneconomic demands (or both) for the provision of public infrastructure.*

It is considered that broadening the permissibility of dual occupancy development to include both attached and detached dual occupancies does not give rise to any automatic inconsistency with zone objectives. Individual development applications will need to be assessed against zone objectives to determine whether in a specific case an inconsistency may arise and to consider potential mitigation options.

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The purpose of the BSGMS is to provide the framework for managing population and employment growth for Ballina Shire’s urban areas over the planning period of 2012-2031. Whilst not directly applicable to the subject planning proposal consistency with the following Growth Management Strategy Principles is considered to be also achieved:

Growth Management Principle	Comment
Facilitate greater housing choice through an adequate mixture of dwelling types.	Permitting both attached and detached dual occupancy development in the RU1 and RU2 zones broadens housing choice for rural residents.
Provide for affordable housing stock.	Council considers that the planning proposal will provide additional opportunities for affordable housing options to be realised in rural areas.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs) as detailed in the table below:

SEPP Title	Compliance of Planning Proposal
SEPP No. 55 Remediation of Land	The planning proposal does not propose to rezone land. Sensitive land uses such as dwelling houses, dual occupancies (attached), rural workers dwellings and tourist and visitor accommodation are already permitted with development consent. Therefore no significant increase in sensitive land uses are proposed. The assessment of land contamination issues will be considered as part of the development application process as is the case with other sensitive land uses currently permitted within the RU1 and RU2 zones.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	The proposal is consistent with the SEPP as mining and extractive industry permissibility is not affected.
SEPP (Rural Lands) 2008	The proposal is considered to be consistent with the rural planning principles contained within the SEPP. Principle (f), reproduced below, is of particular relevance to this planning proposal: <i>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i>

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

No. A number of justifiable inconsistencies considered to be of minor significance have been identified. A Section 117 Direction checklist for this planning proposal is provided at Appendix Two.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal does not give rise to any direct adverse impacts on critical habitat or threatened species, population or ecological communities, or their habitats.

Detailed assessment of any subsequent development applications will include consideration of ecological and biodiversity issues so as to ensure that there are unlikely to be any adverse outcomes.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no other significant environmental impacts identified as a result of the planning proposal.

Ballina Shire Council

Q9 Has the planning proposal adequately addressed any social and economic effects?

The social and economic outcomes resulting from the proposed rezoning are considered to be generally positive. The table below provides a summary of potential positive and negative impacts associated with permitting detached dual occupancy development.

Potential Positive Impacts	Potential Negative Impacts
Additional dwellings can allow farmers and others approaching or at retirement age to remain on their farm / rural land but not within the same dwelling as a new farmer takes over. This creates opportunities for physical (workers), social and financial support, and can assist with succession planning.	May give rise to an increase in dispersed rural settlement. This may occur gradually as long as subdivision of the second dwelling is not supported. Pressure for subdivision may occur if substantial dual occupancy dwellings are erected which may then result in further fragmentation of rural land and land use conflict.
Potential to legitimise unapproved dwellings and structures, and receive financial contributions from such buildings that may otherwise be occupied illegally. Section 94 contributions apply to dual occupancy development (attached and detached).	The potential to legitimise suitable unauthorised development may free up enforcement resources and ultimately save costs and reduce angst amongst some residents. Potential for land use conflicts is considered to be of concern, particularly where primary production is seen as the desirable principal purpose for rural land in the shire. The potential for conflict can be mitigated to some extent by requiring the dwellings to have the same vehicular access from a public road.
Increasing the number of residents in rural areas can provide increased support for rural halls and schools.	Creates potential for fragmentation and alienation of land from farming.
Providing for an additional housing option on existing rural land may reduce longer term pressure for new rural residential estates.	There is potential for increased vehicular traffic, especially if employment is not available within the immediate area. Not only will this increase the cumulative impact on rural roads but it raises the question about long term environmental sustainability, for example increased vehicle emissions. Section 94 contributions provide some financial response; however they cannot address the longer term maintenance aspects. Regulation of additional on-site sewerage systems may require additional Council resources and give rise to additional costs. Conversion of some farm buildings may be costly and problematic due to non-compliances with the Building Code of Australia (BCA), land constraint and buffer concerns.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The proposal is not considered to generate any significant increase in demand for public infrastructure above that generated by dual occupancy (attached) development already permitted within the RU1 and RU2 zones.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation will be undertaken with the NSW Rural Fire Service (RFS), the Department of Primary Industry – Agriculture and the Civil Aviation Safety Authority (CASA) as per the terms of the Gateway determination.

Ballina Shire Council

5. Mapping

No mapping is proposed to support this planning proposal.

6. Community Consultation

This planning proposal will be exhibited in accordance with the Gateway determination and the terms of the EP&A Act. A minimum public exhibition period of 28 days is proposed which will incorporate the following elements:

- Advertisement within the Ballina Shire Advocate,
- Letters to Secretaries of rural area hall committees,
- Notice on Council's web site and Facebook posts,
- Ward Committee information item,
- Poster and Flyers at Rural Area post offices including Tintenbar, Wardell, Empire Vale and Alstonville.

7. Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	28 July 2017
Government Agency Consultation	August 2017
Public Exhibition Period	16 August to 16 September 2017
Public Hearing	N/A
Submissions Assessment	October 2017
RPA Assessment of Planning Proposal and Exhibition Outcomes	October 2017
Submission of Endorsed LEP to DP&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	November 2017
Forwarding of LEP Amendment to DP&E for Notification (if delegated)	December 2018

8. Appendices

Ballina Shire Council

Appendix One – Council Reports

Report to Council's Ordinary Meeting on 23 March 2017

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Delivery Program Strategic Planning

Objective To invite the Council's consideration of the merits of permitting detached dual occupancy and/or secondary dwelling development within rural areas of Ballina Shire.

Background

The Council, at its meeting held on 24 March 2016, when considering the extension of the urban secondary dwelling developer contribution policy, resolved in part to receive a report concerning secondary dwellings on land in rural zones [Minute No. 240316/16].

This report gives consideration to a policy approach that would permit secondary dwellings and/or detached dual occupancies on land within rural zones under the provisions of Ballina LEP 2012.

Key Issues

- Primary purpose and planning principles applying to rural land
- Rural land fragmentation and land use conflict.
- Housing choice in rural areas

Information

Legislative Framework Ballina LEP 2012

Ballina LEP 2012 (LEP) contains two rural zones. The RU2 Rural Landscape zone (RU2) and the RU1 Primary Production zone (RU1). Development characterized as secondary dwellings and detached dual occupancies are prohibited within the RU1 and RU2 zones, whereas an attached dual occupancy is permissible with development consent. This approach (being to enable only attached dual occupancy development on rural land) also applies to deferred areas under the LEP and has been applied in Ballina Shire since the introduction of the Ballina LEP in February 1987.

In considering second dwellings on rural land, there are several terms used to describe such development. The legal definitions of the relevant land uses (or dwelling types) are set out below.

The LEP defines a secondary dwelling as:

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.*

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Clause 5.4 of the LEP restricts the size of secondary dwellings to 60 square metres (excluding garages) or 50% of the total floor area of the principal dwelling, whichever is the greater.

The LEP defines a dual occupancy (detached) as:

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

The LEP permits, with development consent, attached dual occupancy dwellings within the RU1 and RU2 zones. Such dwellings may range in form from a typical granny flat arrangement to two substantial dwellings. Whilst it is the case that secondary dwellings are not specifically permitted, there is sufficient flexibility within the LEP to be able to consider such small dwellings, if attached to the principal dwelling, as an attached dual occupancy.

Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity (DCP) specifies that a dual occupancy on rural land must comply with the following criteria:

- *The second dwelling must be within 10 metres of the first dwelling and is to be attached to the first/ original dwelling. Attachment may be achieved by way of a covered walkway, deck or the like;*
- *The second dwelling must be on the same legal title as the first dwelling;*
- *The second dwelling must have the same road access as the first dwelling; and*
- *The second dwelling must be located so that it minimises conflict with adjoining land uses.*

It is possible to Strata Title subdivide attached dual occupancy dwellings. Each strata lot, excluding common property, must however conform to the minimum lot size shown on the lot size map (generally 40 hectares). Torrens Title subdivision of land in rural areas is subject to conformity with the minimum lot size for subdivision, which is typically 40 hectares.

Also permitted with development consent on land within the RU1 and RU2 zones are studio-type uses, rural workers' dwellings and tourist and visitor accommodation. The latter includes farm stay accommodation.

A rural worker's dwelling is subject to specific criteria in the LEP and is defined as:

Rural worker's dwelling means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.

There is no definition of what constitutes a studio within the LEP. In a rural context a studio is viewed as buildings ancillary to a dwelling house which cannot be separately occupied and used as a dwelling.

As an indication of the extent of land that might be influenced by a policy change, there are some 4,588 rural lots located in Ballina Shire.

Adjoining Council Position – Lismore City Council

Lismore City Council resolved to prepare a planning proposal to permit detached dual occupancies in rural areas at its Ordinary Meeting held on 12 March 2013. The objective behind this planning proposal was to increase rural

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

housing options, to provide support for farmers, and to allow older people to stay on the land and younger people to remain in the area.

The amendments to Lismore LEP 2012 were subsequently published on 25 October 2013. The amendments permitted dual occupancies (attached or detached) within the RU1 zone. The amendments also prohibited *rural workers' dwellings* within this zone. Previously, only attached dual occupancies were permitted with development consent.

The prohibition of *rural workers' dwellings* was designed to limit the impact of housing within the RU1 zone. Few rural workers' dwellings had been approved by Lismore City Council due to the nature of agricultural uses which did not necessitate farm workers living on the farm (in addition to the occupants of the principal residence). The Council also considered that *rural workers' dwellings* would become a redundant land use once detached dual occupancies were permitted.

The principal controls relating to detached dual occupancy development are contained within clause 4.2C of Lismore LEP 2012 which provides as follows:

4.2C Erection of dual occupancies (detached) in Zone RU1

- (1) *The objectives of this clause are as follows:*
- (a) *to provide alternative accommodation for rural families and workers,*
 - (b) *to ensure development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land.*
- (2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production unless the consent authority is satisfied that:*
- (a) *the development will not impair the use of the land for agriculture or rural industries, and*
 - (b) *each dwelling will use the same vehicular access to and from a public road, and*
 - (c) *each dwelling will be situated within 100 metres of each other, and*
 - (d) *the land is physically suitable for the development, and*
 - (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
 - (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

In terms of the impact of these provisions, an examination of Lismore City Council's on line development consent register revealed that the following number of approvals had been granted:

Year	Number of Detached Dual Occupancies Approved in the RU1 Zone
2014	4
2015	9
2016	14

It is noted that in the first year of detached dual occupancies being permitted, 7 conversions of existing studios were approved.

The impact of the changed Lismore City Council policy was discussed with a Lismore Council Strategic Planner who advised he considered that there have

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

been no real negative consequences. In his view the community appears to be accepting of this housing form and the development planners appear to be satisfied with the administration of the new legislative provisions. Initial concerns relating to land fragmentation and increased usage of rural roads appear not to have been realised. A minor amendment is currently proposed to the objectives of clause 4.2C to further reinforce the primary production value of the RU1 zone.

Advice was also provided by the Lismore Council Strategic Planner that the 100 metre maximum separation distance between dwellings was an arbitrary figure selected to prevent excessive land fragmentation and impacts. This distance has been varied a number of times by Council using the variation provisions of the LEP (clause 4.6).

Lismore LEP 2012, following its amendment in October 2013, now permits both attached and detached dual occupancies on land within the RU1 zone. It does not permit this form of development within the RU2 zone. However, the extent of the RU2 zone is relatively limited. Secondary dwellings are not permitted within the RU1 and RU2 zones under the provisions of Lismore LEP 2012.

Adjoining Council Position – Byron Shire Council

Byron Shire Council followed Lismore City Council's lead when on 10 July 2015 amendments to Byron LEP 2014 were published. The amendments were in similar terms to those contained within Lismore LEP 2012 except that they also permitted, with development consent, secondary dwellings and extended the permissibility provisions to both the RU1 and RU2 zones.

Information extracted from Byron Shire Council's on line DA register for the period 10 July 2015 to 31 December 2016 has found that 12 detached dual occupancy applications had been approved during that period. No specific search of secondary dwellings approved in Byron Shire's rural zones was undertaken. This was due to the very significant number of secondary dwellings being approved within this shire's urban areas and the difficulties associated with locating those in rural zones.

Advantages and Disadvantages Associated with Permitting Detached Dual Occupancy and Secondary Dwellings in Rural Zones

The planning proposals submitted by both Lismore and Byron Councils for Gateway determination relied on the same table of advantages and disadvantages which is reproduced below, together (italics) with Ballina Shire Council staff comments.

Ballina Shire Council

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Advantages	Disadvantages	Ballina Shire Strategic Staff Comments
<p>Additional dwellings can allow farmers and other approaching or at retirement age to remain on their farm / rural land but not within the same dwelling as a new farmer takes over. This creates opportunities for physical (workers), social and financial support, and can assist with succession planning.</p>	<p>Increase in dispersed rural settlement. This will occur gradually as long as subdivision of the second dwelling is not supported. Pressure for subdivision will occur if substantial dual occupancy dwellings are erected.</p>	<p>Council has initiated a planning proposal (111 Friday Hut Road) the objective of which is to free up land for primary production purposes by allowing the subdivision of the dwelling on a lot below the minimum lot size and preventing a dwelling house from being erected on the undersized residue lot. Pressure for subdivision of land in the longer term is a significant concern and may result in further fragmentation of rural and land use conflict.</p>
<p>Potential to legitimise unapproved dwellings and structures, and receive financial contributions from such buildings that may otherwise be occupied illegally.</p> <p>Section 94 contributions apply to detached dual occupancy (not secondary dwellings).</p>	<p>Potential increases in land use conflicts, which can impact adversely on existing farming operations. The potential for conflict can be mitigated to some extent by requiring the dwellings to have the same vehicular access from a public road and be within a prescribed radius of each other.</p>	<p>The waiver of development contributions for secondary dwellings in Byron Shire does not extend to the rural areas. In the case of Ballina Shire, secondary dwellings are not currently permitted within rural zones and hence the fee waiver issue does not currently arise. If detached dual occupancy development is permitted (with or without the inclusion of secondary dwellings) there is the potential to recoup s94 contributions which may not have been previously paid. The potential to legitimise suitable unauthorised development may free up enforcement resources and ultimately save costs and reduce angst amongst some residents. However, it is not necessarily the case that providing a pathway to conformity for unauthorised dwellings will result in substantial improvement in compliance or building standards without continued compliance action by Council. Land use conflict is considered to be a primary concern, particularly where primary production is seen as the desirable principal purpose for rural land in the shire.</p>
<p>Increasing the number of residents in rural areas can provide increased support for rural halls and schools.</p>	<p>Potential for fragmentation and alienation of land from farming. This can be minimised if locational criteria are used. The inability to subdivide the dwellings will also assist.</p>	<p>Noted.</p>

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Advantages	Disadvantages	Ballina Shire Strategic Staff Comments
<i>Providing for an additional housing option on existing rural land may reduce the need to subdivide larger allotments for new rural residential estates.</i>	<i>As with any form of dispersed settlement, there is potential for increased vehicular traffic, especially if employment is not available within the immediate area. Not only will this increase the cumulative impact on rural roads but it raises the question about long term environmental sustainability, for example increased vehicle emissions. Section 94 contributions provide some financial response; however they cannot address the longer term maintenance aspects.</i>	Ballina Shire no longer permits rural residential subdivision within the rural area. It is agreed that longer term traffic issues may arise if this form of development becomes popular. The experience to date in the Byron and Lismore LGAs indicates a low take up rate for detached dual occupancy development in rural zones in terms of dwellings that progress to approval and construction. Council does not have any current information on the extent to which compliance is achieved in relation to unauthorised dwellings.
<i>Additional dwellings can provide farm income to subsidize the agricultural activity and provide additional rental housing to the market.</i>	<i>Impact on rural character. An increase in dispersed dwellings will impact on the rural landscape. This can be managed to some extent through the development assessment process but there will still be an impact over time.</i>	Impact on rural character is somewhat subjective and is considered can be managed through the existing development assessment process without further specific controls.

In addition to the disadvantages nominated by Lismore and Byron Councils, the following additional disadvantages appear to exist:

- Additional on-site sewerage systems will be required and will need to be regulated, and
- The conversion of some farm buildings may be costly and problematic due to non-compliances with the Building Code of Australia, land constraint and buffer concerns.

Notwithstanding the potential advantages outlined above, it is considered that there is presently insufficient evidence to underpin a change to long standing policy relating to second dwellings on rural land in Ballina Shire. Matters to consider in this regard include:

- A policy change of this nature should have regard for overarching land use principles and strategic intent. In the context of this issue, a fundamental consideration is the intended primary purpose(s) of rural land in the shire. Historic policy approaches and Council decisions associated with the introduction of the Ballina LEP 2012 identified agricultural and environmental outcomes (and associated economic activity) as the focal areas for rural land as opposed to housing choice. It is suggested that the overarching intent of Council in relation to rural land in the shire (if different from the current approach underpinning local planning policy) should be determined and clearly articulated before instigating a change relating to rural dwellings.
- It is not clear that there is an overriding public benefit associated with enabling detached second dwellings on rural land, albeit that there is likely to be private social and/or economic benefit for some landholders.
- There is presently no clear rationale established as the basis for a policy change. That is, there are differing reasons as to why second dwellings might be enabled on rural land, such as housing affordability, farm succession, improving compliance with planning provisions, providing

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

housing choice or simply facilitating private landholder benefits. The rationale might direct the nature of any change (for example an affordability focus might mean only secondary dwellings as a more modest form of housing are enabled).

- Whilst anecdotally it is relatively common for Council to receive enquiries about second dwellings on rural land, there is no quantifiable evidence available at present to confirm the number of landholders who desire a change, how rural landholders might view potential impacts associated with housing development on neighbouring land and the extent to which the broader community has a view about second dwellings on rural land.
- There is limited evidence to demonstrate that a change in policy will result in intended outcomes. For example, Council is not able to directly control housing affordability outcomes (such as the rent set for a dwelling) and it may be that currently unauthorised dwellings cannot comply with building requirements even where it becomes possible to obtain development consent for a detached dwelling. That is, the uncertainty about achievement of potential advantages relative to the nature of the potential disadvantages creates doubt about the public benefit associated with a change to rural dwelling policy.
- The potential for increased rural land use conflict between residential occupants of land and farming activities is a significant concern, particularly in a context of an existing fragmented rural landscape.
- The potential for pressure to subdivide rural land in the longer term is a concern in that this may undermine primary production through further fragmentation of land holdings and increased land use conflict over time. This matter, as well as the broader land use conflict issue referenced above, relates back to the broader planning intention of Council for rural land use in Ballina Shire into the future.

It is also important to reinforce that second dwellings in the form of attached dual occupancy development and rural workers' dwellings are permitted in rural areas of the shire at present, subject to the grant of development consent.

However, if the Council is of the view that detached dual occupancy and/or secondary dwelling development on rural land has sufficient merit to consider a policy change further, it is suggested that Council first seeks additional information and clarifies its policy intentions for rural land and rationale for enabling detached second dwellings in all or part of the Shire's rural areas.

Sustainability Considerations

- **Environment**
There will likely be a series of potential environmental, social and economic benefits and impacts associated with additional dwellings in any form in rural areas. Such impacts and associated planning provisions would need to be considered as part of any policy adjustment.
- **Social**
As above.
- **Economic**

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

As above.

Legal / Resource / Financial Implications

The extent to which there may be legal, resource or financial implications associated with this matter is dependent on the nature of Council's preferred approach.

Cessation of further consideration of the matter has no legal, resource or financial implications.

Undertaking further research or initiating a planning proposal to permit detached dual occupancy and/or secondary dwelling development on land within rural areas under the provisions of Ballina LEP 2012 is likely to require at least several months of documentation preparation. This can be managed within existing resources although this matter is not currently part of the Strategic and Community Facilities Group work program.

Financial implications arise where further community engagement is desired. As a guide, the 2014 Rural Settlement Character Statement project which involved four public meetings, letters to rural land owners, hall hire and consultant facilitator cost in the order of \$15,000.

A telephone based (or otherwise randomised) survey with suitable statistical validity has an estimated cost in the order of \$15,000 to \$20,000.

The cost of sending letters to all rural landowners and associated newspaper advertisement, without staff time, is estimated at approximately \$6,000.

It is relevant to note that if community consultation is undertaken prior to a planning proposal being prepared then additional community consultation would again be required as part of the planning proposal exhibition process.

Consultation

No specific community consultation on this matter has been undertaken at this stage. As indicated above, if Council is inclined to further consider a policy change, it is recommended that community and stakeholder engagement is undertaken to inform and support decision making. This would include engagement with State Government agencies as well as the broader rural community.

Feedback relating to second rural dwellings (assumed detached dual occupancy) from some members of Ballina Shire's rural community has previously also been obtained as part of the 2014 Rural Settlement Character Statement project. This project included four public meetings which attracted a total of 167 rural residents. Reproduced below are extracts from the *Ballina Shire Rural Settlement Character Statements Part 2 Report* which are considered to be of some relevance:

Newrybar public meeting held on 14 May 2014 with 37 people in attendance:

- *Rural workers' dwellings should not be allowed to be built if they are not authentic rural workers' dwellings. One has been approved in the locality and not built as approved on the DA and very close to neighbouring houses.*

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

Tintenbar and Fernleigh public meeting held on 12 May 2014 with 33 people in attendance:

- *Need more affordable housing to keep young people in the community;*
- *The State says there is a housing shortage. More housing on farming lots for families needed. Also want the ability to subdivide. Two separate houses should be allowed on one title. It is about families living together. There are many advantages to having family living on the same property so parents can "age in place". Many smaller properties that are not big enough for viable farming could be given a dwelling entitlement.*

Meerscham Vale, Rous Mill, Rous public meeting held on 22 May 2014 with 60 people in attendance:

- *Like the lack of density in the area. But people have to live somewhere. It would be good to allow second dwellings on rural properties to allow more people to live around here without residential subdivision to occur. Families could stay at a lower cost. Some of the community was not so sure about this as they thought it would become too busy if everyone was allowed a second dwelling on their property.*
- *Ballina Council has a bad record of allowing residential subdivision on prime agricultural land. Community does not want to see this happen again. However it would be good to allow second dwellings on rural properties to allow more people to live around here without residential subdivision. Again not everyone agreed with this.*

South Ballina, Empire Vale, Keith Hall and Patches Beach public meeting held on 26 May 2014 with 37 people in attendance. No specific references to rural area second dwellings within the report comments.

The above comments reflect some of the divergent views within the community relating to rural area second dwellings.

Options

Having regard for the reasoning outlined above, it is recommended that Council take no further action in relation to the alteration of the current planning relating to rural dwellings in the shire. Based on the information available, it is not clear that the current policy approach presents a mismatch with the current values and land use outcomes associated with the shire's rural areas. Further, there does not appear to be a compelling public benefit associated with enabling detached dual occupancy or secondary dwellings on rural land relative to the potential disadvantages.

If, however, the Council is of the view that the current policy approach warrants further consideration, it is recommended that the policy be considered based on community and stakeholder feedback and having regard for overarching strategic planning principles relating to rural land (similar to the way in which Council currently establishes strategic planning policy for its urban areas e.g. the Wardell and Alstonville strategic planning process).

It may also be prudent to consider the outcomes of Council's economic development strategy process (due later this year) as this strategy may provide direction around preferred outcomes for economic activity in rural areas (e.g. tourism and hospitality initiatives for example). Some of these outcomes may not be well aligned with further residential development on

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

rural land. This again relates back to the principles underpinning rural land use related policy in the shire.

Therefore, if a policy review is to be progressed, it is recommended that Council undertakes a randomised survey process addressing land use principles and strategic intent for rural land, potential benefits and disadvantages associated with a policy shift and rationale for a change. An alternate resolution in this regard is set out below:

1. That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary dwellings).
2. That this investigation includes:
 - a. a randomised survey of rural residents having regard for rural planning principles, the potential benefits and disadvantages of a policy change and associated rationale; and
 - b. a strategic process to review Council's preferred vision and planning principles for rural areas within Ballina Shire as the basis for policy decision making in these areas.
3. That Council receive a further report on the outcomes of the further investigations and community engagement.

If Council wishes to pursue the alternate resolution/approach set out above, it is estimated that this will incur costs in the order of \$25,000 to \$30,000. Given this, Council may also wish to consider an allocation of funds in the 2017/18 budget to facilitate this project.

Alternatively, the Council could initiate a planning proposal to change the policy approach to dwellings on rural land. This approach is not recommended as the planning intent behind a change and the associated clarity around purpose and achievement of intended outcomes has not yet been established, in staff's view. That is, there is not considered to be a clear consistent reason or justification for the change in terms of the public interest at present.

RECOMMENDATIONS

1. That Council notes the contents of this report relating to current and potential options for additional second dwellings on land within rural parts of Ballina Shire.
2. That having regard for the contents of the report, Council takes no further action with respect to enabling detached dual occupancy development and/or secondary dwellings on rural land at this time.

Attachment(s)

Nil

- 9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas**
230317/1 Resolved
(Cr Keith Williams/Cr Nathan Willis)

That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary

9.1 Planning Proposal - Rural Area Detached Dual Occupancy.DOC

Ballina Shire Council

9.2 Policy (Review) - Detached Dwelling Development Within Rural Areas

dwellings).

FOR VOTE - Cr David Wright, Cr Sharon Parry, Cr Jeff Johnson, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith
AGAINST VOTE - Cr Phillip Meehan

Report to Council's Ordinary Meeting on 22 June 2017

9.1 Rural Area - Detached Dual Occupancy Development

9.1 Rural Area - Detached Dual Occupancy Development

Delivery Program Strategic Planning

Objective To invite Council's further consideration of the merits of permitting detached dual occupancy development within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.

Foreword

The Council at its Ordinary Meeting on 23 March 2017 resolved as follows in respect to Item 9.2 Detached Dual Occupancy Development Within Rural Areas [Minute No 230317/1]:

That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary dwellings).

A Councillor briefing was held on 16 May 2017 to further discuss available options and issues relating to permitting detached dual occupancy and secondary dwellings within certain rural areas located within Ballina Shire. The briefing presentation updated in respect to consultation options forms Attachment One to this report.

Following the Councillor briefing the report previously presented to Council at its Ordinary Meeting held on 23 March 2017 has been revised. The report below reflects issues discussed at the briefing.

Background

The Council, at its Ordinary Meeting held on 24 March 2016, when considering the extension of the urban secondary dwelling developer contribution policy, resolved in part to receive a report concerning secondary dwellings on land in rural zones [Minute No. 240316/16].

Council further considered the issue of detached dual occupancy development and secondary dwellings at its Ordinary Meeting on 23 March 2017 and at a Councillor briefing on 16 May 2017 (Information presented at the briefing is contained in Attachment One).

This report gives further consideration to a policy approach that would permit dual occupancy development (attached and detached) on land located within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012. Permissibility of secondary dwellings within these rural zones is not further discussed within this report.

It is considered that sufficient flexibility exists, should dual occupancy development be permitted, such that there is no specific need to also permit secondary dwellings in the RU1 and RU2 zones.

9.1 Rural Area - Detached Dual Occupancy Development

Key Issues

- Planning framework for rural land
- Compliance framework related to unauthorised rural dwellings
- Long term impacts

Information

Legislative Framework Ballina LEP 2012

Ballina LEP 2012 (LEP) contains two rural zones. The RU1 Primary Production zone (RU1) and the RU2 Rural Landscape zone (RU2).

Development characterised as detached dual occupancy is prohibited within the RU1 and RU2 zones, whereas an attached dual occupancy is permissible with development consent. The permissibility of only attached dual occupancy development on rural land also applies to deferred areas under the LEP and has been applied in Ballina Shire since the introduction of the Ballina LEP in February 1987.

Ballina LEP 2012 defines a dual occupancy, dual occupancy (attached) and dual occupancy (detached) as:

***dual occupancy** means a dual occupancy (attached) or a dual occupancy (detached).*

***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.*

The LEP permits, with development consent, attached dual occupancy dwellings within the RU1 and RU2 zones. Such dwellings may range in form from a typical granny flat arrangement to two substantial dwellings.

Whilst it is the case that secondary dwellings are also not specifically permitted, there is sufficient flexibility within the LEP to be able to consider such small dwellings, if attached to the principal dwelling, as an attached dual occupancy. It is for this reason that it is considered that there is no specific benefit derived from also permitting secondary dwellings (as distinct from dual occupancies) within the RU1 and RU2 zones.

Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity (DCP) specifies that a dual occupancy on rural land must comply with the following criteria:

- *The second **dwelling** must be within 10 metres of the first **dwelling** and is to be attached to the first/ original **dwelling**. Attachment may be achieved by way of a covered walkway, deck or the like;*
- *The second **dwelling** must be on the same legal title as the first **dwelling**;*
- *The second **dwelling** must have the same road access as the first **dwelling**; and*
- *The second **dwelling** must be located so that it minimises conflict with adjoining land uses.*

9.1 Rural Area - Detached Dual Occupancy Development

It is possible to Strata Title subdivide attached dual occupancy dwellings. Each strata lot, excluding common property, must however conform to the minimum lot size shown on the lot size map (generally 40 hectares). Torrens Title subdivision of land in rural areas is subject to conformity with the minimum lot size for subdivision, which is typically 40 hectares.

Also permitted with development consent on land within the RU1 and RU2 zones are studio-type uses, rural workers' dwellings and tourist and visitor accommodation. The latter includes farm stay accommodation.

A rural worker's dwelling is subject to specific criteria in the LEP and is defined as:

***Rural worker's dwelling** means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.*

There is no definition of what constitutes a studio within the LEP. In a rural context a studio is viewed as a building ancillary to a dwelling house which cannot be separately occupied and used as a dwelling.

As an indication of the extent of land that might be influenced by a policy change, there are some 4,588 rural lots located in Ballina Shire. Of these 3,672 properties are zoned all or part RU1 or RU2.

Reasons Supporting a Policy Change

Councillors at the briefing on 16 May 2017 nominated the following reasons in support of a change in policy position to permit detached dual occupancy development with development consent throughout the RU1 and RU2 rural zones:

- Removes anomaly (Attached dual occupancy, tourist and visitor accommodation and studios already permitted)
- Provides additional housing choice
- Provides a potential affordable housing option
- Assists farm succession planning
- Potentially frees up enforcement resources by providing an approval pathway and
- Provides a source of farm income (rental housing).

Adjoining Council Position – Lismore City Council

Lismore City Council resolved to prepare a planning proposal to permit detached dual occupancies in rural areas at its Ordinary Meeting held on 12 March 2013. The objective behind this planning proposal was to increase rural housing options, to provide support for farmers, and to allow older people to stay on the land and younger people to remain in the area.

The amendments to Lismore LEP 2012 were subsequently published on 25 October 2013. The amendments permitted dual occupancies (attached or detached) within the RU1 zone. The amendments also prohibited *rural workers' dwellings* within this zone. Previously, only attached dual occupancies were permitted with development consent.

9.1 Rural Area - Detached Dual Occupancy Development

The prohibition of *rural workers' dwellings* was designed to limit the impact of housing within the RU1 zone. Few rural workers' dwellings had been approved by Lismore City Council due to the nature of agricultural uses which did not necessitate farm workers living on the farm (in addition to the occupants of the principal residence). The Council also considered that *rural workers' dwellings* would become a redundant land use once detached dual occupancies were permitted.

The principal controls relating to detached dual occupancy development are contained within clause 4.2C of Lismore LEP 2012 which provides as follows:

4.2C Erection of dual occupancies (detached) in Zone RU1

- (1) *The objectives of this clause are as follows:*
- (a) *to provide alternative accommodation for rural families and workers,*
 - (b) *to ensure development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land.*
- (2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production unless the consent authority is satisfied that:*
- (a) *the development will not impair the use of the land for agriculture or rural industries, and*
 - (b) *each dwelling will use the same vehicular access to and from a public road, and*
 - (c) *each dwelling will be situated within 100 metres of each other, and*
 - (d) *the land is physically suitable for the development, and*
 - (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
 - (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

In terms of the impact of these provisions, an examination of Lismore City Council's on line development consent register revealed that the following number of approvals had been granted:

Year	Number of Detached Dual Occupancies Approved in the RU1 Zone
2014	4
2015	9
2016	14

It is noted that in the first year of detached dual occupancies being permitted, 7 conversions of existing studios were found to have been approved.

The impact of the changed Lismore City Council policy was discussed with a Lismore Council Strategic Planner. Advice was provided that he considered that there have been no real negative consequences. In his view, the community appears to be accepting of this housing form and the development planners appear to be satisfied with the administration of the new legislative provisions.

9.1 Rural Area - Detached Dual Occupancy Development

Initial concerns relating to land fragmentation and increased usage of rural roads appear not to have been realised. A minor amendment is currently proposed to the objectives of clause 4.2C to further reinforce the primary production value of the RU1 zone.

Advice was also provided by the Lismore Council Strategic Planner that the 100 metre maximum separation distance between dwellings was an arbitrary figure selected to prevent excessive land fragmentation and impacts.

This distance has been varied a number of times by Council using the variation provisions of the LEP (clause 4.6).

Lismore LEP 2012, following its amendment in October 2013, now permits both attached and detached dual occupancies on land within the RU1 zone. It does not permit this form of development within the RU2 zone.

However, the extent of the RU2 zone is relatively limited. Secondary dwellings are not permitted within the RU1 and RU2 zones under the provisions of Lismore LEP 2012.

Adjoining Council Position – Byron Shire Council

Byron Shire Council followed Lismore City Council's lead when on 10 July 2015 amendments to Byron LEP 2014 were published. The amendments were in similar terms to those contained within Lismore LEP 2012 except that they also permitted, with development consent, secondary dwellings and extended the permissibility provisions to both the RU1 and RU2 zones.

Information extracted from Byron Shire Council's online DA register for the period 10 July 2015 to 31 December 2016 has found that 12 detached dual occupancy applications had been approved during that period.

No specific search of secondary dwellings approved in Byron Shire's rural zones was undertaken. This was due to the very significant number of secondary dwellings being approved within this shire's urban areas and the difficulties associated with locating those in rural zones.

Advantages and Disadvantages Associated with Permitting Detached Dual Occupancy and Secondary Dwellings in Rural Zones

The planning proposals submitted by both Lismore and Byron Councils for Gateway determination relied on a similar table of advantages and disadvantages which is reproduced below (*italics*), together with Ballina Shire Council staff comments.

9.1 Rural Area - Detached Dual Occupancy Development

Advantages	Disadvantages	Ballina Shire Strategic Planning Staff Comments
<p><i>Additional dwellings can allow farmers and others approaching or at retirement age to remain on their farm / rural land but not within the same dwelling as a new farmer takes over. This creates opportunities for physical (workers), social and financial support, and can assist with succession planning.</i></p>	<p><i>Increase in dispersed rural settlement. This will occur gradually as long as subdivision of the second dwelling is not supported. Pressure for subdivision will occur if substantial dual occupancy dwellings are erected.</i></p>	<p>Council has initiated a planning proposal (111 Friday Hut Road) the objective of which is to free up land for primary production purposes by allowing the subdivision of the dwelling on a lot below the minimum lot size and preventing a dwelling house from being erected on the undersized residue lot.</p> <p>Pressure for subdivision of land in the longer term is a significant concern and may result in further fragmentation of rural land and land use conflict.</p>
<p><i>Potential to legitimise unapproved dwellings and structures, and receive financial contributions from such buildings that may otherwise be occupied illegally.</i></p> <p><i>Section 94 contributions apply to detached dual occupancy (not secondary dwellings).</i></p>	<p><i>Potential increases in land use conflicts, which can impact adversely on existing farming operations. The potential for conflict can be mitigated to some extent by requiring the dwellings to have the same vehicular access from a public road and be within a prescribed radius of each other.</i></p>	<p>It is understood that the waiver of development contributions for secondary dwellings in Byron Shire does not extend to the rural areas.</p> <p>In the case of Ballina Shire, secondary dwellings are not currently permitted within rural zones and hence the fee waiver issue does not currently arise.</p> <p>If detached dual occupancy development is permitted (with or without the inclusion of secondary dwellings) there is the potential to recoup s94 contributions which may not have been previously paid.</p> <p>The potential to legitimise suitable unauthorised development may free up enforcement resources and ultimately save costs and reduce angst amongst some residents. This issue is discussed in greater detail under the heading Legitimation and Compliance Options below.</p> <p>Land use conflict is considered to be a primary concern, particularly where primary production is seen as the desirable principal purpose for rural land in the shire.</p>
<p><i>Increasing the number of residents in rural areas can provide increased support for rural halls and schools.</i></p>	<p><i>Potential for fragmentation and alienation of land from farming. This can be minimised if locational criteria are used. The inability to subdivide the dwellings will also assist.</i></p>	<p>Noted.</p>

9.1 Rural Area - Detached Dual Occupancy Development

Advantages	Disadvantages	Ballina Shire Strategic Planning Staff Comments
<i>Providing for an additional housing option on existing rural land may reduce the need to subdivide larger allotments for new rural residential estates.</i>	<i>As with any form of dispersed settlement, there is potential for increased vehicular traffic, especially if employment is not available within the immediate area. Not only will this increase the cumulative impact on rural roads but it raises the question about long term environmental sustainability, for example increased vehicle emissions. Section 94 contributions provide some financial response; however they cannot address the longer term maintenance aspects.</i>	Ballina Shire no longer permits rural residential subdivision within the rural areas of the Shire. It is agreed that longer term traffic issues may arise if this form of development becomes popular. The experience to date in the Byron and Lismore LGAs indicates a low take up rate for detached dual occupancy development in rural zones in terms of dwellings that progress to approval and construction. Council does not have any current information on the extent to which compliance is achieved in relation to unauthorised dwellings.

As indicated primary planning concerns in relation to Ballina Shire are:

- The potential for increased rural land use conflict between residential occupants of land and farming activities, particularly in a context of an existing fragmented rural landscape.
- The potential for pressure to subdivide rural land in the longer term in that this may undermine primary production through further fragmentation of land holdings and increased land use conflict over time.

In addition to the above and the disadvantages nominated by Lismore and Byron Councils, the following additional disadvantages have also been identified:

- Additional on-site sewerage systems will be required and will need to be regulated, and
- Conversion of some farm buildings may be costly and problematic due to non-compliances with the Building Code of Australia (BCA), land constraint and buffer concerns.

Unauthorised Dwelling Legitimation and Compliance Options

Should Council see merit in permitting detached dual occupancy development, within the RU1 and RU2 zones under the provisions of Ballina LEP 2012, then the question arises as to how to respond to unauthorised dwellings. This is of particular relevance in the period between Council's decision to prepare a planning proposal, the LEP amendment taking effect, and a development application being submitted to legitimise the buildings use, as well as the subsequent period relating to compliance with consent conditions.

There is no one process available which would guarantee that all current examples of unauthorised rural dwellings can be legitimised or can be cost effectively brought into compliance with BCA requirements.

Ballina Shire Council

9.1 Rural Area - Detached Dual Occupancy Development

Council's compliance staff advised in February 2017 that they had investigated 88 complaints in relation to unauthorised residential dwellings within rural zones since July 2012. These complaints resulted in some form of legal action (either Court action or resulting in the service of formal Notices and Orders).

This figure did not include complaints lodged where no formal action was required or where the unauthorised residential dwelling was decommissioned prior to the service of a formal Notice. It also did not include 30 uninvestigated complaints which had been identified as lower priorities and were awaiting investigation.

Permitting detached dual occupancy dwellings within the RU1 and RU2 zones may provide additional options for some land owners to legitimise buildings through the DA process. It will not provide a solution to those owners in other rural or environmental zones. It may also ultimately not provide a solution for owners who may subsequently find that they cannot cost effectively upgrade buildings to meet minimum building and or on-site sewerage management requirements.

Byron Shire Council's Compliance Approach

Information was sought from Byron Council's Compliance staff as to the approach used by that Council relating to the occupation of unauthorised residential premises.

The information obtained has been summarised as follows:

- From approximately two years prior to Council's July 2015 LEP amendment, which permitted detached dual occupancy and secondary dwellings in rural zones, Council staff maintained a list of unauthorised dwellings. The list was reported to Council and unauthorised dwellings were inspected to ensure that public health and safety issues were rectified.
- In the period following July 2015 compliance staff undertook inspections of unauthorised dwellings including those listed in the period before July 2015. Health and safety issues such as fire safety and on-site sewerage management were addressed as a matter of priority.
- Land owners since July 2015 have been requested to lodge development applications for the use of unauthorised dwellings within 28 days. If this is not complied with then a process involving Notices and Orders follows.
- If the unauthorised dwelling cannot be made compliant enforcement action is taken to have the building decommissioned as a dwelling, and alternative solutions are suggested for the use of the building such as a studio or shed etc.
- Byron Shire Council's adopted 2017 Compliance Priorities Program lists as a high priority the undertaking of education or workshops and a compliance enforcement program related to shared accommodation and improved compliance standards for unapproved dwellings.
- Responding to unapproved dwellings is also listed as a high priority matter.

9.1 Rural Area - Detached Dual Occupancy Development

Restricting Permissibility of Dual Occupancy Development (Detached) to buildings that existed as of a certain date.

Consideration has been given to whether it would be possible and/or reasonable to limit the opportunity to convert existing buildings to a detached dual occupancy if the building existed as of a certain date. This approach would limit the impact of the proposal only to those buildings which existed in a detached state on a certain date and or those that have already been completed and converted without consent.

The above approach would be unusual and may pose legal drafting difficulties. It could be seen as rewarding those in the community who may not have had due regard to planning laws and penalise those that have been properly waiting for the amendments to be introduced. As a consequence of these issues it is considered to result in an inequitable outcome which should not be supported irrespective of whether the legal drafting issues may be able to be resolved.

Sustainability Considerations

- **Environment**
There will likely be a series of potential environmental, social and economic benefits and impacts associated with additional dwellings in any form in rural areas. Such impacts and associated planning provisions would need to be considered as part of any policy adjustment.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

Initiating a planning proposal to permit dual occupancy development (attached and detached) on land within the RU1 and RU2 rural zones under the provisions of Ballina LEP 2012 can be managed within existing resources. This matter is not currently part of the Strategic and Community Facilities Group work program.

Financial implications arise depending on the nature of community engagement specified. If the engagement is limited generally to that indicated within the Consultation section of this report then this will also be able to be achieved within allocated resources. However, if it is desired that each rural zoned property owner be advised then a cost in the vicinity of \$6,000 plus staff time is estimated. A randomised telephone survey of 400 rural owners has been quoted as costing \$12,600 plus GST.

Consultation

Following Gateway determination it is proposed to consult with the following Government Authorities:

9.1 Rural Area - Detached Dual Occupancy Development

- NSW Rural Fire Service, and
- NSW Department of Primary Industries – Agriculture.

A minimum public consultation period of 28 days is proposed involving the following consultation strategies:

- Advertisement within the Ballina Shire Advocate,
- Letters to Secretaries of rural area hall committees,
- Notice on Council's web site and Facebook posts,
- Ward Committee information item,
- Paradise FM interview (GM's Briefing and/or discussion with Strategic staff),
- Poster and Flyers at Rural Area post offices including Tintenbar, Wardell, Empire Vale and Alstonville.
- Community Connect information story for September 2017 (depending on timing of exhibition commencement).

Options

Options available to the Council to progress this matter include the following:

1. Support the preparation of a planning proposal and associated amendments to Ballina DCP 2012 (DCP) which will permit and manage the erection of dual occupancy development (attached and detached) within the RU1 and RU2 rural zones under the provisions of Ballina LEP 2012.

The DCP will require amendment to remove the maximum 10 metre separation and attachment distance requirements specified in Chapter 7 – Rural Living and Activity as well as the associated advisory notes.

It is also suggested that the drafting of the LEP amendment include a provision in the Ballina LEP 2012 consistent with the following:

Development consent must not be granted to development for the purpose of a dual occupancy on land in zone RU1 Primary Production or zone RU2 Rural Landscape unless the consent authority is satisfied that:

- (a) the development will not impair the use of the land or adjoining land for agriculture or rural industries, and*
- (b) each dwelling will use the same vehicular access to and from a public road, and*
- (c) the land is physically suitable for the development, and*
- (d) the land is capable of accommodating on-site disposal and management of sewage for the development, and*

In adopting this approach, it is also open to the Council to apply the change to some or all of the deferred matter areas in the shire. Expanding the scope of zones to which the change is applied (beyond the RU1 and RU2 zone) is not recommended on the basis that:

- the areas not subject to existing environmental protection zoning will progressively be brought into the 2012 LEP under Council's current approach (that is, areas that are integrated into the 2012 LEP that

9.1 Rural Area - Detached Dual Occupancy Development

receive an RU1 or RU2 zone will be subject to the revised policy position in future), and

- the policy approach to enable the change is in its current form designed around application to rural land rather than environmental protection areas.

This option is recommended on the basis that it provides for the outcomes discussed by Councillors at the briefing on 16 May 2017, noting that the March 2017 reporting to Council addressed the potential advantages and disadvantages of the change (with these summarised again in this report).

2. Take no further action in respect to the permitting detached dual occupancy development within Ballina Shire's rural areas.

The benefits associated with permitting additional detached dwellings in certain rural areas of the shire appear to be finely balanced. Whilst it is the case that various building forms are already permitted (studios, tourist and visitor accommodation, sheds etc), and numerous examples exist of unauthorised dwelling conversions, setting a policy direction that will permit additional detached dwellings may result in pressure to review minimum lot sizes and permit additional subdivision in the future. Such an outcome would disadvantage agricultural uses and the future agricultural use of rural land.

As Councillors are aware, this was the originally recommended course of action in the March reporting to Council. This approach is not recommended in this report on the basis that the report seeks to address the sentiment expressed by Councillors in relation to the March report and recommendations (being an interest in identifying an approach to enable a detached second dwelling on rural land).

3. Broaden the planning proposal to incorporate secondary dwellings and to remove rural workers dwellings as a permissible use.

This option is not recommended on the basis of the following.

It is considered that there is little benefit to be gained by permitting secondary dwellings as small dwellings will be permitted as a consequence of permitting dual occupancy development (attached and detached).

In respect to rural workers' dwellings few have been approved due to the requirements of clause 4.1C of the LEP. Clause 4.1C requires Council to be satisfied, amongst other matters, that the dwelling is required due to *the nature of the agricultural or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.*

4. Defer the decision to prepare a planning proposal to enable additional research or information to be obtained.

It is open to the Council to request additional information should there be matters that require additional investigation or clarification.

Ballina Shire Council

9.1 Rural Area - Detached Dual Occupancy Development

If Council were of the view that there is significant merit in restricting conversion opportunities only to existing buildings then it is suggested that it would be appropriate for this report to be deferred pending consultation with the Department of Planning and Environment. Such an approach would enable the Department to consider whether they would be prepared to issue a Gateway determination allowing the proposal to proceed to public exhibition and to explore legal drafting concerns with Parliamentary Counsel.

As a consequence of the equity concerns previously raised limiting the planning proposal to existing buildings is not supported.

In conclusion the recommendation is as per option one, as outlined. However the Council staff preference remains option two, as was recommended in the March 2017 meeting report.

Option two has been the long standing position of this Council and from a whole of community perspective it is considered that Council has managed rural land use conflicts relatively well, with generally speaking, limited conflicts in use.

There remain genuine concerns that over the longer term (it may take many years for the full impacts to be felt) that a decision by this current Council to allow increased residential use of the rural areas will create increased land use conflicts (i.e. between residential and rural uses as well as potential traffic issues), while doing little in the way of providing substantial benefits in respect to housing diversity or affordability. Council's focus for housing should be in the urban areas where there is adequate infrastructure in place to support residential living.

RECOMMENDATIONS

1. That based on the feedback from the Councillor briefing held 16 May 2017, Council endorses the preparation of a planning proposal which proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition for a minimum period of 28 days in accordance with the consultation strategy detailed in this report and the requirements of the gateway determination.
4. That Council prepares associated draft amendments to Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity to align the DCP with the planning proposal.
5. That the draft DCP amendments be placed on public exhibition with the planning proposal for a minimum period of 28 days.

Ballina Shire Council
22/06/17

Ordinary Meeting of Ballina Shire Council
Page 12

9.1 Rural Area - Detached Dual Occupancy Development

6. That Council give further consideration to the planning proposal and associated draft DCP amendments following the conclusion of the public exhibition period.
7. That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.

Attachment(s)

1. Attachment One - Councillor Briefing Presentation 16 May 2017

Rural Area - Detached Dual Occupancy Development

220617/1 RESOLVED

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That based on the feedback from the Councillor briefing held 16 May 2017, Council endorses the preparation of a planning proposal which proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition for a minimum period of 28 days in accordance with the consultation strategy detailed in this report and the requirements of the gateway determination.
4. That Council prepares associated draft amendments to Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity to align the DCP with the planning proposal.
5. That the draft DCP amendments be placed on public exhibition with the planning proposal for a minimum period of 28 days.
6. That Council give further consideration to the planning proposal and associated draft DCP amendments following the conclusion of the public exhibition period.
7. That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.

FOR VOTE - All Councillors voted unanimously.

ABSENT, DID NOT VOTE - Cr David Wright

Ballina Shire Council

Appendix Two – Section 117 Direction Checklist

Section 117 Direction Checklist Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent – Permissible rural densities are not considered to be increased by this proposal which will broaden dwelling types permitted with consent. No increase in the overall number of dwellings possible on an individual property will result.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent – This planning proposal is considered to be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> .
2. Environment and Heritage	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve the development of land identified as being of environmental significance.
2.2 Coastal Protection	Consistent. Some RU1 and RU2 zoned land in Ballina Shire is located within the coastal zone. <i>Clause 5.5 Development within the coastal zone</i> contained within Ballina LEP 2012 is applicable to the proposed land use. Clause 5.5 included the provisions that give effect to and are consistent with: (a) the <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997</i> , and (b) the <i>Coastal Design Guidelines 2003</i> , and (c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual 1990</i>).
2.3 Heritage Conservation	Consistent. Ballina LEP 2012 contains provisions (clause 5.10 and Schedule 5) which are consistent with this direction. Such provisions will be applicable to development applications related to land upon which an item of Ballina Shire's environmental heritage is situated.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	This direction is not considered to apply to this planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.

42

Section 117 Direction Checklist Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrating Land Use and Transport	Does not apply to this planning proposal.
3.5 Development Near Licensed Aerodromes	Justifiably inconsistent. Some land zoned RU1 or RU2 is located within the Obstacle Limitation Surface (OLS) for Ballina Byron Gateway Airport and may also be affected by aircraft noise. Future dual occupancy development proposals impacted by the OLS or located within an ANEF contour of 20 or greater will be considered in accordance with clauses 7.5 and 7.6 of BLEP 2012. Given that no increase in existing height limits or permissible densities are proposed, and the fact that BLEP 2012 already contains appropriate controls which require consultation with Commonwealth authorities, it is considered that the inconsistency with this direction is minor and justifiable. It is noted that the Gateway determination requires consultation with the Civil Aviation Safety Authority (CASA).
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Justifiably inconsistent. There are significant RU1 and or RU2 zoned areas within Ballina Shire that are affected by acid sulfate soils. This planning proposal is not considered to lead to intensification of development on land identified on Acid Sulfate Soil Maps above what is likely to result under existing controls. Future development applications for dual occupancy development, if located upon land identified on the Acid Sulfate Soil Maps will be required to be assessed in accordance with clause 7.1 of BLEP2012.
4.2 Mine Subsidence and Unstable Land	Justifiably inconsistent. This proposal does not impact on any mine subsidence area. Some RU1 and or RU2 zoned land is impacted by landslip constraints as identified in mapping undertaken by the Department of Mineral Resources and or Coffey Partners. Where this is the case development proposals will be subject to the considerations contained within Ballina Shire Development Control Plan 2012 – Chapter 2 – section 3.5 Land Slip / Geotechnical Hazard. Given that no increase in permitted rural densities will result from this planning proposal it is considered that the inconsistency with this direction is minor and justifiable.
4.3 Flood Prone Land	Justifiably inconsistent. Some RU1 and or RU2 zoned land is situated on flood prone land. BLEP 2012 already contains flood planning provisions (clause 7.3) under which development on flood prone land must be considered. Given that this planning proposal will not give rise to any significant increase in development potential for land zoned RU1 or RU2, but is designed to provide greater flexibility in terms of building design, it is considered that this proposal is consistent with the principles and guidelines contained within the Floodplain Development Manual or is otherwise of minor significance.

Ballina Shire Council

Section 117 Direction Checklist	
Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
4.4 Planning for Bushfire Protection	Justifiably Inconsistent. Some RU1 and or RU2 zoned land is situated on Bushfire Prone Land as a consequence the NSW Rural Fire Service will be consulted as part of the planning proposal post Gateway determination.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The planning proposal is considered to be generally consistent with the relevant Directions contained within the North Coast Regional Plan 2036.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent This planning proposal does not propose to rezone land mapped as farmland of State or Regional Significance.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is considered to be consistent with the North Coast Regional Plan 2036.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Justifiably inconsistent. This planning proposal seeks to incorporate additional development requirements applicable to dual occupancy development proposed for the RU1 or RU2 zone under the provisions of Ballina LEP 2012. The objective of these requirements is to ensure that that the primary production potential of the land is maintained and that the development is also compatible with the environmental capability of the land. It is noted that amendments to Lismore and Byron LEP's related to dual occupancy development have also introduced specific development requirements.
7. Metropolitan Planning	

9.1 Planning Proposal - Rural Area Detached Dual Occupancy.DOC

Planning Proposal 17/008 Rural Area Detached Dual Occupancy

Section 117 Direction Checklist Planning Proposal – Rural Area Dual Occupancy	
Direction No.	Compliance of Planning Proposal
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.

Ballina Shire Council

Appendix Three – Gateway Determination



Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Our ref: PP-2017-BALL-006-00 (17/09325)
Your ref: LEP Amendment – Rural Area Dual
Occupancies (1910)

Dear Mr Hickey:

Planning proposal to amend Ballina Local Environmental Plan (2012)

I am writing in response to your Council's letter dated 4 July 2017 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 (the Act) in respect of the planning proposal to amend Ballina LEP 2012 to permit with consent, detached dual occupancies on land zoned RU1 Primary Production and RU2 Rural Landscape.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistency with S117 Direction 1.5 Rural Land, 4.1 Acid Sulfate Soils, 4.2 Mine Subsidence and Unstable Land and 4.3 Flood Prone Land is of minor significance. No further approval is required in relation to this Direction.

Council may still need to obtain the agreement of the Department's Secretary to comply with the requirements of relevant S117 Directions 3.5 Development Near Licensed Aerodromes and 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Northern Region | 69 Victoria Street Grafton 2480 | Locked Bag 9022 Grafton 2460 | planning.nsw.gov.au

Planning Proposal 17/008 Rural Area Detached Dual Occupancy

Should you have any queries in regard to this matter, I have arranged for Ms Gina Davis of the Department's regional office to assist you. Ms Davis can be contacted on (02) 6701 9667.

Yours sincerely



28-7-2017

Jeremy Gray
Director Regions, Northern
Planning Services

Encl:
Gateway Determination
Written Authorisation to Exercise Delegation
Attachment 5 = Delegated Plan Making Reporting Template

Ballina Shire Council



Gateway Determination

Planning Proposal (Department Ref: PP_2017_BALLI_006_00) to amend Ballina LEP 2012 to permit with consent, detached dual occupancies on land zoned RU1 Primary Production and RU2 Rural Landscape.

The Director regions, Northern, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under Section 56(2) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) that an amendment to the Ballina Local Environmental Plan (LEP) (2012) to permit with consent, detached dual occupancies on land zoned RU1 Primary Production and RU2 Rural Landscape should proceed subject to the following conditions:

1. Prior to community consultation, Council is to amend Section 3.2 of the Planning Proposal so that only a plain English explanation of the proposed provisions is included.
2. Community consultation is required under Sections 56(2)(c) and 57 of the EP&A Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and must be made publicly available for a minimum of 14, and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
3. Consultation is required with the following public authorities and / organisations under Section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant Section 117 Directions:
 - NSW Rural Fire Service
 - NSW Department of Primary Industries - Agriculture
 - Civil Aviation Safety AuthorityEach public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).



5. The timeframe for completing the LEP is to be 9 months following the date of the Gateway determination.
6. The final LEP maps shall be prepared in accordance with the requirements of the Department's "Standard Technical Requirements for Spatial Datasets and Maps" Vers. 1.0 November 2015.

Dated 28 day of JULY 2017

A handwritten signature in black ink, appearing to read 'J. Gray'.

Jeremy Gray
Director Region, Northern
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning

Ballina Shire Council



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Ballina Shire Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP 2017 BALLI 006 00	Planning proposal to amend Ballina LEP 2012 to permit with consent, detached dual occupancies on land zoned RU1 Primary Production and RU2 Rural Landscape.

In exercising the Minister's functions under Section 59 of the EP&A Act, the Council must comply with the Department's "A guide to preparing local environmental plans 2016" and "A guide to preparing planning proposals 2016".

Dated 28 JULY 2017

A handwritten signature in black ink, appearing to read 'Jeremy Gray'.

Jeremy Gray
Directors Regions, Northern
Planning Services
Department of Planning and Environment

Delegate of the Secretary
of the Department of Planning and Environment



Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to Table 2 to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the RPA's request to have the LEP notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP 2017 BALLI 006 00
Date Sent to DP&E under s56	5 July 2017
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Have changes been made to the draft LEP after obtaining final PC opinion?	YES NO	
Date LEP made by GM (or other) under delegation		
Date sent to DPE requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information:

Attachment Two – Submissions to Planning Proposal 17/008



OUT17/38383

15 September 2017

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger
klaus.kerzinger@ballina.nsw.gov.au

Dear Sir/Madam

Planning Proposal BSCPP 17/008 – Rural Area Detached Dual Occupancy

DPI Agriculture Comments

Thank you for the opportunity to provide comment for the above proposal as per your correspondence dated 4 August 2017. The NSW Department of Primary Industries (NSW DPI) Agriculture provides advice to consent authorities about the protection and growth of agricultural industries and the resources upon which these industries depend.

LEPs in NSW are increasingly permitting housing development within rural zones which is not related to agricultural outcomes. The cumulative impact of the various forms of housing permitted within rural zones has the potential to negatively impact on the productive capacity of agricultural industries and the availability of agricultural resources.

The long-term implications of increasing the housing density in rural areas including intergenerational equity should be considered before a decision is made. Construction of a second dwelling on a rural property can inflate property values and can prevent other farmers from purchasing land to start or expand operations. This is a particularly important issue for young farmers wanting to invest in the industry. Increasing the housing density in an area can also make it difficult for new agri-business to develop in the future due to the close settlement pattern and distances to sensitive receptors. There is also an increased potential for land use conflict risk if additional dwellings are poorly sited, designed and/or managed. Having dual occupancies attached assists in reducing some of these adverse impacts.

DPI Agriculture is currently developing a guideline for applicants, consultants and consent authorities to use in the design and assessment of a development application for a detached dual occupancy or secondary dwelling when it pertains to land in a rural zone. The guideline covers a range of issues of interest to DPI Agriculture, DPI Fisheries, DPI Water, Water NSW, Office of Environment & Heritage, NSW Rural Fire Service and local government. A draft of this publication is attached for your consideration. It is hoped that a final document will be published in the near future. This will be forwarded to your council when complete.

NSW Department of Primary Industries - Agriculture
Locked Bag 21, Orange NSW 2800 | 161 Kite St, Orange NSW 2800
Tel: 02 6391 3391 | Email: landuse.ag@dpi.nsw.gov.au | www.dpi.nsw.gov.au | ABN: 72 189 910 072

The advice provided in this correspondence is consistent with the following policies. Please refer to the links for more information.

- Maintaining land for agricultural industries
<http://www.dpi.nsw.gov.au/agriculture/lup/legislation-and-policy/maintaining-land-for-agricultural-industries>
- NSW Right to Farm Policy
<http://www.dpi.nsw.gov.au/agriculture/lup/legislation-and-policy/right-to-farm-policy>

DPI Agriculture is working to ensure that the advice provided is of the highest quality. Please take some time to provide us with feedback on our work by completing a [short survey](#).

Should you have any questions in relation to this advice please contact Agricultural Resource Management Officer, Selina Stillman, on (02) 66261215.

DPI Fisheries Comments

Thank you for providing DPI Fisheries with the opportunity to comment on Ballina Shire Council's proposal to amend the *Ballina Local Environment Plan 2012*, specifically, broadening the type of dual occupancy development permitted within the RU1 Primary Production and RU2 Rural Landscape zones. The following comments are provided with reference to the *Marine Estate Management Act 2014* (MEM Act) and the *Fisheries Management Act 1994* (FM Act), both of which are administered by DPI Fisheries.

Fisheries Management Act 1994

DPI Fisheries Aquatic Ecosystems Unit is responsible for ensuring that fish stocks are conserved and that there is "no net loss" of key fish habitats upon which they depend. To achieve this, the Aquatic Ecosystems Unit assesses activities under Part 4 and Part 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the FM Act, the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, and the associated *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)* (the policy). This document is available online at www.dpi.nsw.gov.au/fisheries/habitat/protecting-habitats/toolkit. In addition, DPI Fisheries is responsible for ensuring the management of sustainable commercial fishing, quality recreational fishing and viable aquaculture within NSW.

Impacts to Key Fish Habitat

DPI Fisheries has concerns that such an amendment, without necessary caveats, may lead to reduced fish passage outcomes and reduced water quality within waterways on premises where access to one or both of the properties requires a waterway crossing. Previous experience of DPI Fisheries is that privately-owned waterway crossings that service a single or small number of dwellings typically result in a higher level of environmental impact, such as that related to erosion and sedimentation of the waterway and poor fish passage provisions, compared with other waterway crossings due to funding issues or neighbourly disputes over ownership and use. In addition, new waterway crossings in coastal areas may require removal of key fish habitat such as marine vegetation. Furthermore, future approved subdivision of applicable lots (i.e. those with a minimum lot size of 40 ha) may create neighbour disputes over funding and responsibility for access-ways and waterway crossings, particularly as new dwellings, prior to land subdivision, would be required to have the same vehicular access from a public road as the existing dwelling (pg. 14, Q9 of Planning Proposal 17/008).

To lessen these potential issues, DPI Fisheries recommends the following:

- New detached secondary dwellings should be sited in a location that does not require a new waterway crossing; and

- On lots that meet the minimum lot size requirement for future subdivision, new detached secondary dwellings should be sited such that future alternative public road access is available without requiring a new waterway crossing.

Priority Aquaculture Oyster Lease

New detached secondary dwellings located in close proximity to Priority Oyster Aquaculture Areas would trigger the need to satisfy provisions outlined in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS). This would encompass the design, construction and operation of the facilities.

OISAS and enabling amendments to State Environmental Planning Policy 62 - Sustainable Aquaculture were gazetted in December 2006. The strategy covers all oyster growing estuaries in NSW and identifies Priority Oyster Aquaculture Areas as areas where commercial oyster aquaculture is a priority intended outcome and outlines the agreed water quality needs of the oyster industry.

It is essential for oyster aquaculture that the development does not have a deleterious effect on the water quality of the estuary. The water quality guidelines for oyster aquaculture areas are detailed in OISAS. The table below provides some of the key parameters.

Parameter	Guideline	Source
Faecal (thermotolerant) coliforms	90th percentile of randomly collected Faecal coliform samples do not exceed 43MPN or 21 MF/100mL	ASQAP Operations Manual 2002 and the NSW Shellfish Program Operations Manual 2001
pH	6.75 – 8.75	Schumway (1996)
Salinity	20.0 – 35.0 g/L	Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)
Suspended solids	<75 mg/l	
Aluminium	<10µg/L	
Iron	<10µg/L	
Other parameters	For other parameters please refer to Section 4.4 and Section 9.4 of the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)	

These guidelines should be viewed cognisant that an intended outcome of SEPP62 is to achieve no net deterioration of estuarine water quality and remediation of existing problems to achieve estuarine water quality improvements.

Marine Estate Management Act 2014

Sections 55 and 56 of the *Marine Estate Management Act 2014* (MEM Act) outline requirements for a consent authority determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of a development that is within or in the locality of a marine park.

Additionally a marine parks permit will be required for any works taking place within the Cape Byron Marine Park and Part 2 of the *Marine Estate Management Regulations 2009* contains guidance for the consent of activities within a marine park and also the specific permit assessment criteria.

In considering the requirements of the MEM Act, Council should consider the waters and habitat of the Marine Park when identifying potential impacts associated with the proposed amendment, including but not limited to: stormwater and nutrient inputs; building debris; silt run off; plastic litter; and contaminated or potential acid sulphate soils. Consequently, it is essential that the amendment does not result in any further adverse or ongoing impacts on Marine Park waters, particularly from stormwater runoff or other pollutants.

It is appropriate that the proponent (or Council) demonstrates effective plans and actions to manage the amount of nutrients and other pollutants entering the system, particularly through the management of, stormwater and other inputs to the river. The retention of and/or rehabilitation of existing vegetation in riparian and adjacent areas is supported.

It is expected that the management of any potential impacts, particularly stormwater runoff, is in accordance with the requirements of State Environmental Planning Policies. In addition, all works must be undertaken in accordance with or exceeding the recommendation of "Managing Urban Stormwater - Soils and Construction Vol 14th Edition March 2004" Published by the NSW Government ("the Blue Book")
<http://www.environment.nsw.gov.au/stormwater/publications.htm>

If you have any further enquiries regarding the *Fisheries Management Act 1994* or requirements under DPI Fisheries Policy and Guidelines please contact Jonathan Yantsch, Fisheries Manager (North Coast) on 0447 635 777 or jonathan.yantsch@dpi.nsw.gov.au. Enquiries regarding the *Marine Estate Management Act 2014* and Cape Byron Marine Park should be directed to Mr Andrew Page, Manager – Cape Byron Marine Park on 6620 9305 or andrew.page@dpi.nsw.gov.au.

Yours sincerely



for: Lilian Parker
A/Manager
Agriculture Landuse Planning



Australian Government
Civil Aviation Safety Authority

STAKEHOLDER ENGAGEMENT GROUP

CASA Ref: G117/669

28 August 2017

Mr Klaus Kerzinger
Strategic Planner
Strategic and Community Facilities Group
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Email: klaus.kerzinger@ballina.nsw.gov.au

Dear Mr Kerzinger

Thank you for your letter of 4 August 2017 addressed to Mr Daniel Eatock at the Civil Aviation Safety Authority (CASA) seeking comments in respect to a planning proposal to amend Ballina Local Environmental Plan 2012 (LEP).

CASA has reviewed the documents provided and has no objection to the proposal.

In the event that this planning proposal is amended, CASA notes that clause 7.5 of the Ballina LEP requires the Council to consult with the consenting authorities, such as CASA and Airservices Australia to ensure the protection of the Ballina/Byron Gateway Aerodrome's Obstacle Limitation Surfaces and Procedures for Air Navigation Services – Aircraft Operations surfaces.

Ballina Shire Council should consider the specific issues which are contained in the attachment. These should be carefully considered as part of any planning and development.

For further information, please contact Mr Daniel Eatock, Aerodrome Inspector on 131 757.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'CHutton', written over a faint grid background.

Carolyn Hutton
Manager
Government and International Relations Branch

GPO Box 2005 Canberra ACT 2601 Telephone 131 757



NSW RURAL FIRE SERVICE



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Your Ref: BSCPP 17/008
Our Ref: L12/0003
DA17080908840 AB

ATTENTION: Klaus Kerzinger

31 August 2017

Dear Mr Kerzinger

Agency Comment – Ballina Shire Council LEP 2012 Planning Proposal – Detached Dual Occupancy's in Rural Land Use Zones

I refer to your letter dated 4 August 2017 seeking advice for the above Planning Instrument in accordance with the *Environmental Planning and Assessment Act 1979*.

The NSW Rural Fire Service (NSW RFS) understands the Planning Proposal intends to amend Ballina LEP 2012 in the following manner:

- Permit dual occupancies (attached or detached) with development consent within the RU1 and RU2 rural zones;
- Specify additional matters for consideration prior to the granting of development consent for rural area dual occupancies; and
- Amend relevant associated BLEP 2012 clauses (4.2A and 7.8) so as to reference their applicability to dual occupancies generally (instead of dual occupancies (attached)).

The NSW RFS noted that the Planning Proposal will apply to mapped bush fire prone land.

The NSW RFS has no objection to the Planning Proposal proceeding, providing future dual occupancy development proposals comply with the specification and requirements of *Planning for Bush Fire Protection 2006*.

Postal address

Records
NSW Rural Fire Service
Locked Bag 11
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
Planning and Environment Services (North)
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

T: (02) 6691 0400

F: (02) 6691 0499

www.rfs.nsw.gov.au

Email: pes@rfs.nsw.gov.au

For any enquiries regarding this correspondence please contact Alan Bawden on 6691 0400

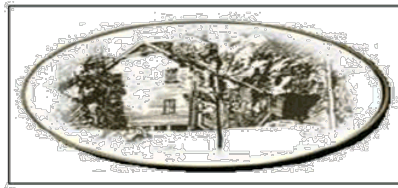
Yours faithfully,



Ian Cook
Acting Manager – Planning and Environment Services North

The RFS has made getting additional information easier. For general information on Planning for Bush Fire Protection 2009, visit the RFS web page at www.rfs.nsw.gov.au and search under Planning for Bush Fire Protection 2009.





Tintenbar Community Hall

Established in 1905, still serving our community

Cnr George Street and Tintenbar Road

P.O. Box 5002 Ballina NSW 2478

Contact: Sheila Aveling, Ph: 0432588375 or www.tintenbarhall.org

ABN 54708919638

Klaus Kerzinger
Strategic Planner
Ballina Shire Council

Dear Klaus,

RE: Consultation of Dual Occupancy on Rural Land Proposal

I am responding on behalf of the Tintenbar Hall Committee, as a resident and a past member of the Council's B & C Ward Committees. I have done as requested and placed a poster regarding the public display of the Council's proposal to amend the LEP to allow dual residences on land zoned RU1 and RU2.

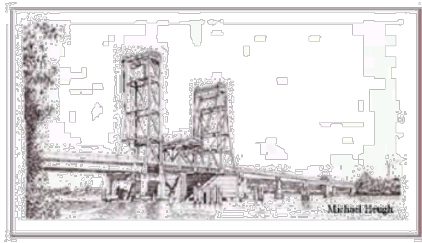
Members of our committee have read your initial document titled *Planning Proposal 17/008 Rural Detached Dual Occupancy August 17 Exhibition* and applaud the Council's decision to move forward with the adoption of this initiative, which will give consistency with our neighbouring Shires that are able to demonstrate the advantages of the policy.

The benefits of the proposal are clearly outlined in the document as providing additional housing options, succession planning, additional income, maintenance assistance and an 'on tap' rural workforce. It is of note that in Tintenbar and the Village, there are a number of small parcels of land zoned 'rural' which in themselves are unproductive because of their topography and small size. By enabling additional dwellings on these parcels, there may be an improvement to the landscape and useability of properties that are presently overgrown.

The Tintenbar Village amenities provides an ideal infrastructure for the limited potential development that would arise from the policy. It may also assist in providing social and physical support to the increasing number of elderly and aging people who live on properties and presently feel isolated and overwhelmed by the physical tasks of farming and property maintenance.

In all, we strongly support the proposal for dual occupancy for rural land and look forward to participating in further consultation as required.

Regards,
Sheila Aveling
Secretary



The Wardell & District Progress
Association Inc.

ABN 123 748 214 10

Post Office
Wardell NSW 2477

President: Pat Carney
02 6683 4360

patcarney@westnet.com.au

24th August 2017.

The Wardell and District Progress Association fully supports the proposal by Ballina Shire Council to amend the Ballina Local Environmental Plan 2012 to permit detached dual occupancy development (in addition to attached dual occupancy development) upon land within the RU1 Primary Production and RU2 Primary Production Rural Landscape zones.

Kerry Turpin
Secretary
Wardell & District Progress Association

From: Megan Pickford
To: Ballina Shire Council
Subject: Att: Klaus Kerzinger

Attention Klaus Kerzinger

Dear Klaus,

I own a rural property in Pimlico and I think that the planning proposal is a great idea. I would like to show my support for Council on this planning proposal.

I do note that Council recognises that rural land is subject to many constraints (bushfire, flood, land slip etc). These requirements can imposed significant restraints on land as they do in my case. I would like to suggest that in the implementation of this policy these aspects are given consideration. In my opinion further restrictions such as maximum offset distances from the first house on the lot may make many existing rural properties unable to implement a secondary dwelling. Therefore disadvantaging many existing rural properties.

I would encourage Council to not place to many restrictions within the policy that may limit the original intent of the policy

Thankyou for this opportunity to provide input

Meg Pickford

9.1 Planning Proposal - Rural Area Detached Dual Occupancy.DOC

From: Delman, Adrian
Sent: Friday, 15 September 2017 8:59 PM
To: Ballina Shire Council
Subject: Planning Proposal BSCPP 17/008 – Rural Area Detached Dual Occupancy Development

Attention: Klaus Kerzinger
SUBJECT: PLANNING PROPOSAL BSCPP 17/008
RURAL DETACHED DUAL OCCUPANCY
Dear Sir,

In reference to the above mentioned Planning Proposal, I wish to submit my general **support** for the proposed changes to the BSC LEP 2012 as referenced within the exhibited document at item 3.2 The Proposal & subsequent proposed local clauses. I would however suggest the following amendment to the DCP Chapter 7 - Rural Living & Activity regarding vehicular access to a property with a detached dwelling;
Use the same vehicle access point from a public road; ***OR where an alternate existing OR alternative vehicular access from the property is practical.***

Alternate access may be more beneficial in some instances and this should be considered by council on a case by case application

Kind Regards

Adrian Delman

9.1 **Planning Proposal - Rural Area Detached Dual Occupancy.DOC**

From: Laura McKinley [mailto:lmck6710@gmail.com]
Sent: Friday, 8 September 2017 4:26 PM
To: Ballina Shire Council
Subject: Comment - Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy

Good afternoon,

I would simply like to support the planning proposal to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) to permit detached dual occupancy development (in addition to attached dual occupancy development) upon land within the RU1 Primary Production and RU2 Rural Landscape zones.

I believe you have covered bases of infrastructure, access, site specific environmental and other development consent requirements whilst providing additional options for lower income earners, property owners and families including those planning for business succession.

Lets do it!

Regards,
Laura.

Alstonville NSW 2477

9.1 Planning Proposal - Rural Area Detached Dual Occupancy.DOC

From: karen rodwell
Sent: Saturday, 9 September 2017 9:35 AM
To: Ballina Shire Council
Cc: Garry Rodwell; karen_rodwell
Subject: Planning proposal BSCPP 17/008-Rural Area Detached Dual Occupancy Development

Dear Ballina Shire Council,

Firstly we would like to applaud wholeheartedly the Ballina Shire Council for the forward thinking applied in this case to move towards detached dual occupancy on rural land. Well done Councillors!!

In our personal situation we wish to have an authorised dual occupancy on our property at 58 Dou-Jea Lane Alstonville 2477. The building in question is a 'shed ' as per current council definition however we are willing to perform all works to create an authorised detached dwelling to provide potential accommodation for use both personally and possibly to establish extra income from our property going forward to assist in retirement planning options.

We look forward to further communication from Council to establish the timeline to enable us to commence the authorisation process for our detached dwelling. A process we will act on swiftly once go-ahead is given!

Again congratulations to all involved in this innovative move by our Council and individual councillors participating in the creation of this new direction for our beautiful region.

We thank you, we applaud you.

Karen and Garry Rodwell

8 September 2017

Ballina Shire Council
PO Box 450
BALLINA NSW 2478



Dear Sir,

Re proposed plan 2012 re rural detached dual occupancy.

I would like this plan to be approved.

This has always been a problem I have never been able to explain to my clients as I have been selling rural properties for over 40 years. Recently I have lost some clients going to Lismore and Byron Shire.

I also cannot explain to my clients why the second dwelling has to be in close proximity to the main house.

Thank you for considering this matter.

Regards

Richard Bacon

ballina.ljhooker.com.au
JETOGROVE PTY LTD trading as
LJ Hooker Ballina
ABN 97 605 148 960

From: Gail Mensinga
Sent: Wednesday, 13 September 2017 12:00 PM
To: Ballina Shire Council
Cc: Dave Rowe
Subject: Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy

Dear Mr. Kerzinger,

My husband and I would like to comment on the above proposal.

We have twelve acres on Eden Valley Drive and have adult children whom we would like to assist with affordable housing options on our land due to the current housing affordability limitations for young people.

The current DA rules for detached dual occupancy we understand allows us to build a second dwelling, however the second dwelling needs to be within 10 metres of our home and to have a joining walkway.

We are not happy to do that as we would prefer our adult children to reside a reasonable distance from us within the 12 acre parcel of land. WE are aware that Lismore and Byron both enable a dual occupancy to be within 100 metres of the main home, however we would request that the 100 metre rule not apply and we are enabled to place the dual home at the other end of the block preferably.

We also understand that a covenant applies to determine the size and type of building in this area.

For a second dwelling we would like it to house two two bedroom units with downstairs garage and verandahs under one roofline please. We believe this would have the least impact on the land and the abundant wildlife we enjoy here.

We would also like to be able to consider using more environmentally sustainable building materials such as hempcrete products for low cost light weight insulation and to be able to consider using pole home construction principles due to the slope of the land on our block. Thank you for this opportunity to express our views on this important matter.

Gail Mensinga & Dave Rowe

From: paulster51
Sent: Wednesday, 13 September 2017 8:48 PM
To: Ballina Shire Council
Subject: Planning Proposal BSCPP 17/008-Rural Area Detached Dual Occupancy Development

Dear Sir/Madam,

We would like to make a submission in favour of the above proposal.

We are rural landholders with a secondary dwelling at 10 Martins Lane, Knockrow. The dwelling is located approximately 60 metres from the primary dwelling and is fully self sufficient with its own power supply, septic system and town water.

At present we have a DA approval for holiday letting but we would very much prefer to have the ability to rent it out permanently, or have family live here in the future. We are retired and this would provide us with the facility to have assistance in the running of the property. It would also mean that we could provide affordable housing for our children, or indeed for others in need.

We sincerely hope that this proposal is accepted by council, and that finally we will be able to utilize a building that has previously been a dwelling, and has current approval for habitation for holiday letting.

Yours Sincerely,

Julianne Reid and Paul Sternberg

9.1 **Planning Proposal - Rural Area Detached Dual Occupancy.DOC**

From: patrickcarney
Sent: Thursday, 14 September 2017 9:44 AM
To: Councillors
Subject: Dual occupancy submission

The General Manager

Dear Sir

I would like to support the planning proposal to permit detached dual occupancy on land zoned RU and RU2

I support it as I believe it would provide housing diversity and choice and it would help deliver more affordable housing.

It would also be useful for younger family members to build on farms and support their ageing parents

Yours Sincerely

Pat Carney

Wardell

From: Terry Lavis
Sent: Friday, 15 September 2017 4:58 PM
To: Ballina Shire Council
Subject: Submission re Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy - Att Klaus Kerzinger, Strategic Planner

15.9.17

Submission re Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy - Ballina Local Environmental Plan 2012

Attention - Klaus Kerzinger, Strategic Planner, Ballina Shire Council

I am writing to request certain conditions be made if this Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy proceeds as proposed:

Recommended Conditions

1. That any detached Dual Occupancy can only be built in an area of the same land so as not to hinder or obstruct the residential amenity and views of other homesteads nearby. Such views could be defined as water views or any other vista or hinterland views which would be significantly reduced or obstructed by inconsiderate placement of the proposed Dual Occupancy dwelling.
2. This right of views and continued residential amenity should apply to all neighbouring homesteads which would otherwise be affected by the placement of the second dwelling on someone else's land, whether attached or detached from its main homestead.
3. This condition should apply to all new fencing and other special barriers and plantings on the property which would otherwise hinder or obstruct the views from other homesteads nearby.
4. Dual Occupancy dwellings should not be used for multiple commercial purposes on rural land, and neighbouring homesteads should not be subjected to unacceptable noise and disturbances from occupants living in or using the dual dwelling for any purpose whatsoever.
5. Dual Occupancy dwelling must be placed no closer to other neighbouring homesteads than it is placed from the applicant's own homestead, without the express consent from the affected neighbour.
5. For properties and partial land holdings along Ross Lane which were deemed "not suitable for development for residential purposes" in 2012 (because of excess noise and loss of residential amenity as a result of a projected 32,900 vehicles a day passing along Ross Lane), no Dual Occupancy should be placed closer to the road than the original homestead, and insulated against the traffic noise in accordance with Council standards, unless the projected noise levels have been amended.

Submitted for your consideration and action,
Terry Lavis

Prev owner of 92 Ross Lane, Tintenbar 2478 (now presumably renamed Kinvara)

From: Ozinet Performance Wear
Sent: Friday, 15 September 2017 4:53 PM
To: Ballina Shire Council
Cc:
Subject: SUBJECT : Objection to a specific section of Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy

SUBJECT : Objection to a specific section of Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy

I am writing to object to a specific reference on page 10 of 51 of Ballina Shire Council's Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy.

I do not object to the proposed change of definition for dual occupancy (attached/unattached) per se, but I do most strenuously object to the **first specific point** on page 10 of 51, highlighted in red below:

"4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No. This planning proposal was developed following Councillor briefings held on 8 March 2017 and 16 May 2017 and an initial report to the Council on 23 March 2017.

Council considers that this planning proposal warrants support for the following reasons:

- Removes an anomaly (attached dual occupancy, tourist and visitor accommodation and studios already permitted with development consent);
- Provides additional housing choice;
- Provides a potential affordable housing option;
- Assists farm succession planning;
- Potentially frees up enforcement resources; and
- Provides a source of farm income (rental housing)."

as it appears to be a word for word extract from Byron Bay Planning's DA 2017/408 : "Dual Occupancy, Tourist/Visitor Accommodation Establishment of an Attached Dual Occupancy and Tourist and Visitor Accommodation Comprising Three Holiday Cabins and Vegetation Management Works.", for which I have already expressed by submission, my objection.

It appears that Council's proposal to change the current definition of dual occupancy, is an attempt to include a personal favour to the proponents (Byron Bay Planning) of DA 2017/408. Why is Council including this word for word extract, for a change of definition of dual occupancy across the whole Shire? Why is Council singling out any one landholder with RU1 or RU2 zoning?

It's not a good look at all. Council should not be seen to be so radically favouring any one landholder. I ask that Council delete this first point **highlighted in red**. Why is it even being referred to as an "anomaly"? It looks very much like preferential treatment and **a presumption that DA 2017/408 is a done deal**, even before it has been officially approved.

To back up my argument further, there appears to be a contradiction, see page 42 of 51, highlighted below in maroon:

"Appendix Two – Section 117 Direction Checklist

Section 117 Direction Checklist

Planning Proposal – Rural Area Dual Occupancy

Direction No. Compliance of Planning Proposal

1. Employment and Resources

1.1 Business and Industrial Zones Does not apply to planning proposal.

1.2 Rural Zones Consistent – Permissible rural densities are not considered to be increased by this proposal which will broaden dwelling types permitted with consent. **No increase in the overall number of dwellings possible on an individual property will result.**

...1.5 Rural Land Consistent – This planning proposal is considered to be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*."

but DA 2017/408 specifically proposes: "...Attached Dual Occupancy and Tourist and Visitor Accommodation Comprising **Three Holiday Cabins.**" This flies in the face of Council's [Appendix Two – Section 117 Direction Checklist 1.2](#). regarding the number of dwellings and density permissible not changing. "Dual Occupancy" means two, not at least three, which I would define as "Multiple Occupancy".

As stated earlier: I ask that Council delete the first point **highlighted in red** on page 10 of 51 of Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy, because of :

- 1) apparent favouritism to one landholder, that is, Byron Bay Planning, and
- 2) to avoid a contradiction in Section 117 Direction Checklist 1.2 of Planning Proposal BSCPP 17/008 Rural Area Detached **Dual** Occupancy.

Yours Sincerely,
Janet Lavis



Secretary: Mrs. Kath Robb
PO Box 394 Alstonville 2477
Phone & Fax: 66281110
Email: robbk@nswfarmers.org.au

13th September 2017

Submission re Proposed Detached Rural Property Development.

The membership of the above branch of NSW Farmers includes those who are resident in Ballina Shire Council area.

The Council's stated Potential Negative Impacts of the Proposal are real and of major significance.

Issues of Concern:

The current manager/workers cottage ability for a second dwelling has already created the facility for a second residence for succession planning and also a rental income (by default) and further housing in Shire. Does this mean that a Rural Lifestyle block on RU 1 or Ru 2 land may build a second dwelling? Is only one further building allowed and is this therefore a second building entitlement?

Consequences:

Tenants may have no knowledge of routine agricultural activities on the property with the rental residence, or any adjoining farming enterprise. This may result in Council receiving complaints regarding routine agriculture management practices which tenants may perceive to be unacceptable, which in fact, is not the case. This may mean in the future, both unnecessary work for Council, if complaints are received from residents of these dwellings and also be stressful to the producer.

Properties are often on unsealed, narrow roads or lanes which are not regularly maintained to a standard for increased vehicular traffic.

Subsequent Councils may be subject to pressure, in the future, to allow separate title (not intended in current proposal) which would have the potential to place further pressure on those carrying on legitimate primary production on adjacent properties.

The Alstonville Plateau and Ballina Shire, is one of the most secure areas for sustainable primary production and this should be not put under threat by pressure to provide greater population density and thus changing the desirable landscape of the area.

Members urge Council to reject this proposal. However, if the proposal is adopted, we urge Council to consider providing documents to all Development Applicants covering the following:

No future ability to obtain separate title (in keeping with current Council subdivision policies ;
Right to Farm Document-to be signed by Applicant as understood, at time of issue of Council Approval documents-Our Branch would be prepared to assist with preparing such a document.

Please feel free to contact me for further information.

Yours sincerely,

(Mrs.) Kath Robb – Hon. Secretary

NSW Farmers' Association

ABN 31 000 004 851 PO Box 459 St Leonards NSW 1590 Level 6 35 Chandos Street St Leonards NSW 2065
Member Service Centre 1300 794 000 T 02 9478 1000 F 02 8282 4500 www.nswfarmers.org.au

9.1 Planning Proposal - Rural Area Detached Dual Occupancy.DOC

From: council@ballina.nsw.gov.au [mailto:council@ballina.nsw.gov.au]
Sent: Friday, 15 September 2017 1:21 PM
To: Ballina Shire Council
Subject: New response for survey 'Feedback for Documents on Exhibition'

GENERAL RESPONSE INFORMATION

Response Start Time: 9/15/2017 1:02:44 PM Response End Time: 9/15/2017 1:21:17 PM IP Address:
1.129.96.186 Completed Survey: Yes
Respondent: Anonymous

SURVEY RESPONSES

1. Name of exhibited document you want to make comment on.
[http://scanmail.trustwave.com/?c=4991&d=j8e72RiRkGKo0j55QVvXqwHX9K-jffjGVaumDuucwA&u=http%3a%2f%2fwww%2eballina%2ensw%2egov%2eau%2fpage%2easp%3ff%3dRES-QHY-14-08-70 planning proposal dual occupancy.](http://scanmail.trustwave.com/?c=4991&d=j8e72RiRkGKo0j55QVvXqwHX9K-jffjGVaumDuucwA&u=http%3a%2f%2fwww%2eballina%2ensw%2egov%2eau%2fpage%2easp%3ff%3dRES-QHY-14-08-70%20planning%20proposal%20dual%20occupancy)

2. Your name (anonymous submissions may be disregarded by Council) Dave Rowe

3. Phone number (optional)

4. Email (confirmation of your email address is required to provide feedback from Council)
daveforbes@hushmail.com

5. Having read the document, is it easy to read and understand?
Yes

6. Please provide any suggestions for improvement.
Dear Klaus. We fully support this proposal.
We own 12acres off Eden Valley Drive Alstonville. The land is RU1 and we have done extensive repairman
vegetation.

Given the very steep terrain of our block it would be suitable for dual occupancy but only in two spots 300 to 350 metres apart. Both sites would comply with your proposal as all sewerage waste water can be processed on sit separately. The block lot 12 has access for phone and electricity at both ends and there would be minimal impact with the second dwelling for our two neighbours as we have a shared lane way privately owned and the main dwelling at the front will be accessed off Eden valley drive, Da being submitted in next few weeks.

I understand Lismore and Byron have a 100 metre rule. Such a rule would be limiting and impractical on many blocks. We support the dual occupancy however the location of the second dwelling should be decided after discussions with council staff as to the most appropriate location to facilitate disposal of waste on site, impact on neighbours, riparian vegetation maintenance (very important for cleaning up Richmond River). We have family returning a son with two grandchildren early next year. It would be good to have them live in a separate house on our land so they can maintain their independence and help with some form of rural land use on our block.

7. Do you support the overall objectives ad content of the document?
Yes see above.

8. Please provide further comments if you wish.
See above

9. If you wish your feedback to remain confidential please provide reasons for this.
No

137A ELTHAM ROAD
TEVEN NSW 2478

MR KLAUS KERZINGER
BALLINA COUNCIL
BALLINA NSW 2478

DEAR KLAUS

I FULLY SUPPORT YOUR MOVE TO
ALLOW A SECOND DWELLING ON RURAL LAND.
AT THE MOMENT OUR DAUGHTER, HUSBAND AND
CHILDREN HAVE MOVED BACK TO THE AREA AND
ARE UNABLE TO AFFORD TO RENT OR PURCHASE
IN THE LOCAL AREA AS THE PRICES ARE OUT
OF THEIR REACH AND ARE LIVING WITH US
BY ALLOWING A SECOND DWELLING ON OUR LAND
AND WITH A LITTLE HELP FROM US THEY
MAYBE ABLE TO BUY THEIR OWN HOME ON
OUR 50 ACRES.

KIND REGARDS

DARIC & JUCIE SPENCER

Jodie Shelley
231 Coolganlie Rd
Ballina 2478

To Mr Klaus Kerzinger
Ballina Shire Council
Ballina 2478

Dear Klaus,

Rural detached dual occupancy

We are rural area rate payers and would give our support for Council to allow a second detached home on rural zoned farmland.

We have 80 acres and 2 sons, who I fear will never be able to afford to buy their own home as they are both low income earners. It would allow one of them to build a home on our farm.

Thanking you,

Jodie Shelley

Peter Small
"Cassel Eden"
54 Blue Seas Pde.
Lennox Head 2478
Friday 8th Sept 2017
Phone 66877321

Mr. Klaus Koenzinger
Ballina Shire Council
Ballina 2478

Dear Klaus

Re: Rural area detached dual occupancy

Thank you & Ballina Council for giving rate payers the opportunity to lodge a submission.

As rural area rate payers we give our full support for Councils plan to allow a second detached home on Rural zoned land. (Farmland)

We have approx. 48HA (120acres) so would help our family greatly with five grandsons. With property prices forever increasing most young people are priced out of the market. In allowing a second detached home would certainly be a good outcome, In helping people to have a home.

Yours sincerely

Peter & Judy Small

9.1 **Planning Proposal - Rural Area Detached Dual Occupancy.DOC**

From: Colin Dorey
Sent: Friday, 15 September 2017 9:48 AM
To: Ballina Shire Council

Subject: Detached Dual Occupancy

Attention. Klaus Kerzinger, Strategic planner. Re Planning Proposal BSCPP 17/008 Rural Area Detached Dual Occupancy.

Dear Klaus.

The Dorey family support Ballina councils proposal to allow Rural Area Detached Dual Occupancy for the following reason.

The Doreys are a large family based farming operation with five brothers owning seven farms in the Ballina Council Area and another two in the Richmond Council area. Four of the brothers live on farm as well as a nephew who is a farm manager.

The flexibility of having another dwelling on farm to allow for part or full time retirement for the aging brothers. As well as allowing the next generation to live on farm and to farm the land would be of great advantage to our succession planning.

Yours Sincerely

Colin C Dorey

TW Dorey & Sons PTY LTD

From: welvry welvry
Sent: Thursday, 14 September 2017 11:01 PM
To: Ballina Shire Council;
Subject: Proposed detached rural property development

I would like to share a few thoughts as to why the Rural Area Detached Dual Occupancy Development should not proceed
I own property as well as manage other properties in the Ballina Shire , producing macadamias and cattle enterprises
I am responsible for over 500 hectares of prime agricultural land and have over 120 neighbours
I am concerned this proposal has the potential to double the numbers of neighbours I have to be mindful of
I feel that more pressure would be exerted on my operations making it harder to carry out genuine primary production enterprises by allowing more neighbours
These pressures include environmental pressures such as noise , sight and smell .
These are pressures I am feeling now with no desire to have them increase
What also needs to be considered also is the pressure these proposed developments would have on the existing resources
There would be increased pressure on water supplies as when during dry times many farmers are able to supplement rainwater catchments with alternative sources such as wells , creeks and dams
There would also increased pressure on effluent disposal which could lead to contamination of precious groundwater
The road network currently is only just adequate which would require more maintenance should more vehicle activity occur
There would be problems with infrastructure like electricity which would be difficult and expensive to upgrade
Until recently with the nbn roll out there was congestion with the telecommunication network
This has not improved with the nbn as speeds have decreased as more consumers embrace this technology
For those of us that reside on gravel roads , more traffic movements would mean more dust also , both in houses and on crops and pasture
I also wonder if increased rating has been considered to those wishing to adopt second dwellings like maybe doubling the rates paid to council
The increase to garbage services would also have to be considered
It would also have to be mandatory for buffer zones to be implemented and enforced on any new developments regardless of any current buildings
There would also need to be an education program to teach people wanting to move into rural areas as to what to expect from farms which are carrying on a legitimate enterprise
I am also concerned that this proposal is only to allow illegal dwellings to gain approval without meeting necessary criteria
I do not support this proposal as I feel that the negative elements far outweigh any positive gains or need for change
Housing should be planned in a civil manner with proper planning and suitable infrastructure not just randomly without future consideration

I hope these issues are considered seriously
Warren Elvery



**BUILDING DESIGNERS
ASSOCIATION OF AUSTRALIA**

**BUILDING DESIGNERS ASSOCIATION of AUSTRALIA
TWEED RICHMOND CLARENCE CHAPTER**

PO Box 872 Ballina NSW 2478

Hon. Secretary: Peter Turner Tel: (02) 6686 2665 Fax: (02) 6686 4037

BDAA TRCC Email: bdaatrcc@gmail.com

Date: 14 September 2017

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger

**SUBJECT: PLANNING PROPOSAL BSCPP 17/008
RURAL DETACHED DUAL OCCUPANCY**

Dear Sir,

In reference to the above mentioned Planning Proposal, the Tweed Richmond Clarence Chapter of the BDAA wish to submit our support for the proposed changes to the BSC LEP 2012 in relation to the definition/requirement of attached or Detached Dual Occupancy Residences where proposed on Rural Zoned Land.

However we wish to raise one consideration nominated in the exhibited document at item 3.2 *The Proposal*, & more directly within the proposed local clauses related to Vehicular Access:

Vehicular Access

(Excerpt from the exhibited document)

The proposed local clause (assume this is related to the Ballina Shire Development Control Plan - Chapter 7 Rural Living & Activity) is intended to set out objectives as well as define the circumstances under which development consent must not be granted for dual occupancy development proposed within the RU1 or RU2 zones.

It is proposed that Council, before granting development consent, must satisfy itself that the proposed development will:

- *Use the same vehicle access point from a public road.*

We suggest council consider adding the following:

- *Use the same vehicle access point from a public road, OR where an alternate existing OR alternative vehicular access from the property is practical.*

REASONING FOR THIS RE-CONSIDERATION:

While this is a very 'Prescriptive' requirement in the original DCP, it related to dual occupancy residences that were attached to another dwelling, whereas the intent of this change in policy to be more 'Non-Prescriptive' & more reliant on meeting the Objectives of the DCP with each application, ie now that we have 'uncoupled' the dwellings to provide each applicant with an opportunity for a more robust analysis for better outcomes for individual property owners, for instance some rural properties may already have alternate vehicular accesses & the proposed location for a Dual Occupancy Residence May yield a better outcome if accessed from a separate vehicular access.

Other Items to be considered – Required Changes to the OLD BLEP 1987:

Currently some rural zoned land in the shire is still covered under the Old BLEP & these provisions still only reflect the requirement for 'attached' – see expert below:

Ballina Local Environmental Plan 1987

14 Dual occupancy

- (1) This clause applies to land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 2 (a), 2 (b), 2 (t), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (j).
- (2 (a) alter or add to a dwelling-house erected on the allotment so as to create 2 dwellings, or
- (b) erect 2 attached dwellings on the allotment

We also suggest council consider changes to this to reflect the new proposed changes to the BLEP 2012

Thank you for your consideration in this matter, if you wish to further discuss these comments feel free to contact me on 0266 285 048.

Yours sincerely,



Richard Lutze
Chairperson



Connecting the Business Community on the Plateau

President	Vice President	Secretary	Treasurer	Membership	Office bearer
Richard Lutze	Belinda Cordery	Debbie Chapman Sharni Lavis	Ann Leslie	Margie Heffernan	Mary Weingarth

Date: 14 September 2017

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger

**SUBJECT: PLANNING PROPOSAL BSCPP 17/008
RURAL DETACHED DUAL OCCUPANCY**

Dear Sir,

In reference to the above mentioned Planning Proposal, the Alstonville Wollongbar Chamber of Commerce wish to submit our general support for the proposed changes to the BSC LEP 2012 as referenced within the exhibited document at item 3.2 *The Proposal* & subsequent proposed local clauses, with the following exceptions that we believe need to be considered:

Vehicular Access

(Excerpt from the exhibited document)

The proposed local clause (assume this is related to the Ballina Shire Development Control Plan -Chapter 7 Rural Living & Activity) is intended to set out objectives as well as define the circumstances under which development consent must not be granted for dual occupancy development proposed within the RU1 or RU2 zones.

It is proposed that Council, before granting development consent, must satisfy itself that the proposed development will:

- *Use the same vehicle access point from a public road.*

We suggest council consider adding the following:

- *Use the same vehicle access point from a public road; OR where an alternate existing OR alternative vehicular access from the property is practical.*

PO Box 697 Alstonville NSW 2477 email: info@alstonvillwollongbar.com.au
ABN: 93 230 596 458 Incorporation: INC9890617

REASONING FOR THIS RE-CONSIDERATION:

While this is a very 'Prescriptive' requirement in the original DCP, it related to dual occupancy residences that were attached to another dwelling, whereas the intent of this change in policy to be more 'Non-Prescriptive' & more reliant on meeting the Objectives of the DCP with each application, ie now that we have 'uncoupled' the dwellings to provide each applicant with an opportunity for a more robust analysis for better outcomes for individual property owners, for instance some rural properties may already have alternate vehicular accesses & the proposed location for a Dual Occupancy Residence *May* yield a better outcome if accessed from a separate vehicular access.

Other items to be considered – Required Changes to the OLD BLEP 1987:

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Ballina Local Environmental Plan 1987

14 - Dual occupancy

- (1) This clause applies to land within Zone No. 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 2 (a), 2 (b), 2 (t), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l).
- (2 (a) alter or add to a dwelling-house erected on the allotment so as to create 2 dwellings, or
- (b) erect 2 attached dwellings on the allotment

We also suggest council consider changes to this to reflect the new proposed changes to the BLEP 2012

Thank you for your consideration in this matter, if you wish to further discuss these comments feel free to contact Richard Lutze on 0266 285 048.

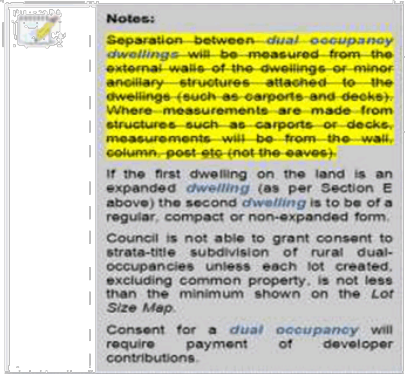
Yours sincerely,



Richard Lutze
President AWCC

Extract From BDCP 2012 Draft Amendment No 11 – August 2017

No	DCP Reference			Reason
23	<p>Chapter 7 Rural Living and Activity</p> <p>Part 3 General Controls</p> <p>Clause 3.1.3</p> <p>Element F – Dual Occupancies</p>	<p>F. Dual Occupancies</p> <p><i>Dual occupancies</i> involve two <i>dwelling</i>s on a single allotment of land. These may range in form from a typical "granny-flat" arrangement to two more substantial <i>dwelling</i>s.</p> <p>i. <i>Dual occupancies</i> must comply with the following criteria:</p> <ul style="list-style-type: none"> • The second <i>dwelling</i> must be within 10 metres of the first <i>dwelling</i> and is to be attached to the first/ original <i>dwelling</i>. Attachment may be achieved by way of a covered walkway, deck or the like; • The second <i>dwelling</i> must be on the same legal title as the first <i>dwelling</i>; • The second <i>dwelling</i> must have the same road access as the first <i>dwelling</i>; and • The second <i>dwelling</i> must be located so that it minimises conflict with adjoining land uses. <div data-bbox="680 842 1104 1204" style="border: 1px solid black; padding: 5px;"> <p>Notes:</p> <p>Separation between <i>dual occupancy dwelling</i>s will be measured from the external walls of the dwellings or minor ancillary structures attached to the dwellings (such as carports and decks). Where measurements are made from structures such as carports or decks, measurements will be from the wall, column, post etc (not the eaves).</p> <p>If the first dwelling on the land is an expanded <i>dwelling</i> (as per Section E above) the second <i>dwelling</i> is to be of a regular, compact or non-expanded form.</p> <p>Council is not able to grant consent to strata-title subdivision of rural dual-occupancies unless each lot created, excluding common property, is not less than the minimum shown on the Lot Size Map.</p> <p>Consent for a <i>dual occupancy</i> will require payment of developer contributions.</p> </div>	<p>F. Dual Occupancies</p> <p><i>Dual occupancies</i> involve two <i>dwelling</i>s on a single allotment of land. These may range in form from a typical "granny-flat" arrangement to two more substantial <i>dwelling</i>s.</p> <p>i. <i>Dual occupancies</i> must comply with the following criteria:</p> <ul style="list-style-type: none"> • The second <i>dwelling</i> must be within 10 metres of the first <i>dwelling</i> and is to be attached to the first/ original <i>dwelling</i>. Attachment may be achieved by way of a covered walkway, deck or the like; • The second <i>dwelling</i> must be on the same legal title as the first <i>dwelling</i>; • The second <i>dwelling</i> must be able to be accommodated on the land having regard to on-site disposal and management of sewerage waste; • The second <i>dwelling</i> must be able to be accommodated on the land having regard to the land's physical characteristics and constraints. • The second <i>dwelling</i> must have the same road access as the first <i>dwelling</i>; and • The second <i>dwelling</i> must be located so that it minimises conflict with adjoining land uses. 	<p>The proposed changes align the controls contained within the DCP with those described in <i>Planning Proposal 17/008 Rural Area Detached Dual Occupancy</i> and proposed to be incorporated within Ballina LEP 2012.</p>

No	DCP Reference			Reason
			 <p>Notes: Separation between dual occupancy dwellings will be measured from the external walls of the dwellings or minor ancillary structures attached to the dwellings (such as carports and decks). Where measurements are made from structures such as carports or decks, measurements will be from the wall, column, post etc (not the eaves). If the first dwelling on the land is an expanded dwelling (as per Section E above) the second dwelling is to be of a regular, compact or non-expanded form. Council is not able to grant consent to strata-title subdivision of rural dual-occupancies unless each lot created, excluding common property, is not less than the minimum shown on the Lot Size Map. Consent for a dual occupancy will require payment of developer contributions.</p>	



Detached Dual Occupancy and Secondary Dwellings in Rural Zones Guideline

Primefact [number], First edition

Selina Stillman, Agricultural Resource Management Officer, Land Use Planning

This guideline is designed for applicants, consultants and consent authorities to use in the design and assessment of a development application for a detached dual occupancy or secondary dwelling when it pertains to land in a rural zone.

The guideline covers a range of issues of interest to DPI Agriculture, DPI Fisheries, DPI Water, Water NSW, Office of Environment & Heritage, NSW Rural Fire Service and local government.

Why this Guideline is needed

There is increasing interest in creating an additional separate dwelling on rural and primary production zoned land.

Landowners in rural areas are increasingly looking to other opportunities for supporting household incomes; and detached dual occupancy and secondary dwellings are often seen as potential rental income.

In coastal areas where the proximity to towns and villages often negates the justification for a rural workers dwelling, dual occupancies and secondary dwellings are also considered as opportunities to attract rural workers or to allow people to age in place while providing a housing opportunity for the next generation.

For each local government area, LEPs state whether a detached dual occupancy or secondary dwelling is permitted within a particular land use zone. Planning provisions, such as in Development Control Plans will also apply that provide further consent requirements.

Often the desire for an additional dwelling may not be related to agricultural industry production outcomes. Poor planning or design of dual occupancies and secondary dwellings has the potential to negatively impact on the future productive capacity of agricultural industries and the environment, particularly where a significant increase in housing density in an area results.

The intent of this guideline is to reduce the level of potential risk through providing information on key considerations and recommendations when planning detached dual occupancy or secondary dwellings in rural areas.

Definitions

The standard instrument *Local Environmental Plan (LEP)* provides a legal definition for a **dwelling**. In simple terms it is a building or structure that can be lived in.

'A **detached dual occupancy** is defined as two detached dwellings on one lot of land, but does not include a secondary dwelling'.

A **secondary dwelling** is defined as 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'.

A secondary dwelling is generally smaller than the principal dwelling, e.g. a granny flat.

Controls relating to the total floor area of a secondary dwelling are included in Clause 5.4 of most LEPs.

Key Considerations

Before submitting an application for a second dwelling on a rural property, applicants should consider the existing and potential agricultural land use for the property and long-term implications of adding an additional dwelling. It is important for applicants to consider local planning provisions and to talk to their local council about their requirements.

Applicants are encouraged to include a thorough site analysis, including but not limited to:

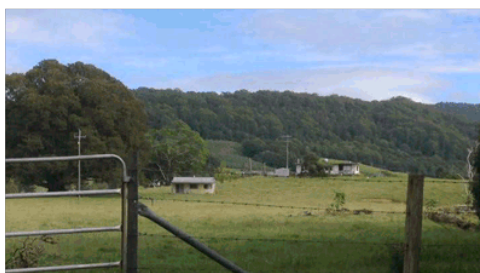
- the location and size of the development
- proximity to existing and potential dwellings and agricultural activities, including on neighbouring properties
- access road/s
- need for a watercourse crossing/s
- vegetation clearing, and
- essential services such as electricity, waste and sewerage disposal.

If not properly managed, increasing the number of dwellings in a rural zone can impact on agricultural and environmental outcomes and increase emergency management risk.

Examples of potential impacts include:

- Changes to scenic amenity and character of the rural landscape
- Increased conflict between normal agricultural operations (which may create noise, dust and odour) and new residents
- Heightened capital value of properties impeding future agricultural development
- Increased development footprint including dwelling, access and power.
- Physical damage to waterways, and impeding fish and invertebrate passage
- Increased ground and surface water take
- Increased predation on native animals and livestock from domestic pets
- Heightened emergency risk to persons and assets during a flood or bushfire
- Increased production of domestic waste

Figure 1: Secondary dwelling



Recommendations

To support sustainable primary industry development, all dwellings in rural areas should:

- meet LEP zone objectives
- be consistent with regional strategies/plans and relevant development control guidelines
- have suitable site access and services, and
- avoid adverse agricultural, environmental, heritage and amenity impacts.

Additionally, it is recommended that detached dual occupancies and secondary dwellings:

- avoid mapped agricultural resources of importance or significance.
- be of a scale and nature that it is compatible with primary production potential, rural character and environmental capabilities
- be situated in close proximity to the principal dwelling
- be a suitable distance from the boundary fence with a neighbouring property to minimise land use conflict risk (Suitable buffer distances should be implemented)
- use the same vehicle access, power and communication infrastructure as the principal dwelling
- avoid the need for additional waterway crossings
- be appropriately separated from potentially conflicting land uses (e.g. intensive livestock operations, livestock yards, intensive cropping or horticulture operations.) Suitable buffer distances should be implemented.
- require appropriate land use conflict mitigation measures in accordance with a [Land Use Conflict Risk Assessment](#)
- have an acceptable managed impact on the scenic amenity of the rural landscape
- have an acceptable managed impact on significant environmental features including habitat corridors, threatened species, wetlands and water courses
- do not have a detrimental impact on neighbouring properties access or supply of water. Additional dwellings should require the provision of a water tank for domestic supplies where a reticulated water supply is not available. Alternatively if water take is to be from a watercourse or groundwater, evidence of consultation with appropriate water

authorities should be provided for water access and water sharing proposals.

- in the absence of a reticulated sewerage network, require an approved on-site sewerage system appropriate to the location and adherence to minimum buffer requirements for sensitive receptors. Refer to the Australian standards for any further requirements.
- do not restrict the availability of 'Flood mounds' or other area of high ground on flood prone land such that this land would not be available to livestock as a refuge during flood events.

Applicants should also be aware of additional electricity needs and additional costs that may be associated with upgrading electricity facilities. Local government contributions and levies may also apply.

The following sections provide further detail on the issues that need to be considered in designing and assessing detached dual occupancies and secondary dwellings.

Land Use Conflict

Land use conflicts occur when one land user is perceived to infringe upon the rights, values or amenity of another.

Rural amenity issues are the most common land use conflict issue and include:

- Impacts of agricultural and rural industry operations on local air quality (odour, pesticides, dust, smoke and particulates)
- Impacts of the use and enjoyment of neighbouring land, e.g. noise from machinery
- Visual impacts associated with rural industry, e.g. netting, planting of monocultures and impacts on views.

Unresolved land use conflicts and disputes can sometimes escalate and affect community wellbeing. Impacts of land use conflict can include personal stress and anxiety, negative view of an industry or individual landholder, and financial and time costs associated with resolving disputes.

Adding further dwellings to a rural land parcel that are not linked to the agricultural operations of the holding can potentially lead to land use conflict issues in the future. Additionally, further dwellings can impact the scenic amenity of a rural landscape.

Figure 2: Stock yards – Distance from agricultural activities is important



The *Living and Working in Rural Areas Handbook* provides further information on land use conflict and ways in which to reduce the potential risk.

Avoiding land use conflict by making better and more informed decisions on property planning, dwelling siting and design is more effective than trying to manage land use conflict and disputes after they arise.

A combination of strategies for managing land use conflict is often required and may include:

- open communication with neighbours
- development controls
- land use buffers
- best management or codes of practice

Development control plans may include:

- principles for avoiding and reducing land use conflict issues
- responsibilities for new development to address land use conflict risks and risks to key environmental assets
- requirements for assessing land use conflict risk potential and management arrangements to reduce and minimise risks
- guidance on the minimum consultation required with neighbours and other key stakeholders
- setting minimum separation distances between dwellings and agricultural activities and/or environmental assets
- setting separation distances between on-site waste water treatment systems and drainage lines

Undertaking a **Land Use Conflict Risk Assessment (LUCRA)** can assist in identifying compatibility of land uses and potential for land use conflict. A LUCRA is an appraisal system designed to help development proponents and consent authorities to assess the potential conflict risk level and inform the application of appropriate land use conflict avoidance and buffer measures.

The NSW Government has recently released the [NSW Right to Farm Policy](#) that provides a state-wide approach to land use conflict and right to farm.

Addressing land use conflicts that arise from lawful agricultural practices is an issue of shared obligations. Farmers, neighbours, land developers, new land buyers as well as local and state government all have a significant role to play.

Access Roads & Waterway Crossings

Provision of an access road or driveway is an important factor to consider when evaluating the suitability of establishing a second dwelling on a property.

The location of the second dwelling will be influenced by access constraints such as the farming enterprise, the location of Crown roads, native vegetation, topography, waterways, distance to road frontage and flooding and bushfire risk considerations. These factors should be carefully considered as maintenance of long access ways over difficult terrain can be expensive, create heightened erosion risk and impact on water quality.

Shared access roads can reduce costs and minimise farming and environmental impacts but the layout should be designed to maintain privacy. It is important to remember that an arrangement acceptable to landholders and their families might not be suitable to a future occupant of the second dwelling and over time lead to conflicts. An agreement about reciprocal rights to an access-way and maintenance over time is an important step.

Construction and maintenance of the access and driveway, particularly over waterways may trigger the need to obtain certain approvals from Department of Primary Industries (DPI) Water and DPI Fisheries. Please check with your local Council.

Waterway Crossing Approvals – DPI Water Requirements

The number of waterway crossings should be minimised. Crossings have the potential to disrupt the functions of a watercourse affecting flows, bed and bank stability and the ecological values and functions of the riparian corridor.

The construction of watercourse crossings is a controlled activity under the *Water Management Act 2000* (WM Act). DPI Water administers the WM Act and is required to assess the impact of any proposed controlled activity to ensure that no more than minimal harm will be done to

waterfront land as a consequence of carrying out the controlled activity.

Waterfront land includes the bed and bank of any river, lake or estuary and all land within 40 metres of the highest bank of the river, lake or estuary.

This means that a [controlled activity approval](#) must be obtained from the DPI Water before commencing the activity.

Waterway Crossing Approvals – DPI Fisheries Requirements

Poorly designed waterway crossings can also obstruct the free movement of fish. Fish passage along our waterways is critical to the survival of native fish. Species of both fresh and saltwater fish move within waters at different times to access food and shelter, to avoid predators, and to seek out mates to breed and reproduce.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is “no net loss” of key fish habitats upon which they depend. To achieve this, the Aquatic Ecosystems Unit assesses activities in accordance with the objectives of the *Fisheries Management Act 1994*, the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*.

DPI Fisheries requires that waterway crossings are designed, constructed, maintained and modified in a way that maintains or improves fish passage. DPI Water refer applications for Controlled Activity Approvals to DPI Fisheries for assessment. If a DPI Water approval is not required, a permit under s201 of the *Fisheries Management Act 1994* for dredging and reclamation works may need to be obtained prior to commencement of the works within the high banks of a waterway. Also sections 219-220 of the *Fisheries Management Act 1994* require appropriate fish passage be provided when designing, modifying or constructing watercourse crossings. Fish passage requirements are outlined in the document [Why Do Fish Need To Cross The Road? Fish Passage Requirements for Waterway Crossings](#). This document aims to minimise impacts on fish passage and general aquatic wildlife by providing practical guidelines to those involved in the planning, design, construction and maintenance of waterway crossings.

For landowners in coastal areas a permit would be required from DPI Fisheries under s205 of the *Fisheries Management Act 1994* if the works

4 NSW Department of Primary Industries, September 2017

resulted in harm to marine vegetation such as mangroves or saltmarsh.

Permits issued by DPI Fisheries may also require that construction techniques incorporate the use of environmental safeguards (silt curtains, booms etc.) to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls need to be in place prior to and after construction, until the site has stabilised. The Blue Book: *"Managing Urban Stormwater: Soils and Construction"* (4th Edition Landcom, 2004) outlines the best practice for these techniques. Permit application forms from DPI Fisheries are available at:

<http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit>

Figure 3: Fish-passage friendly water-crossing



Photo courtesy of Patrick Dwyer

Water supply

Increasing the housing and population density in a rural area through permitting additional dwellings may potentially increase the take of water from a holding thereby impacting on available water supplies for neighbouring properties. It is therefore important that applications for additional dwellings include their own water supply, e.g. water tanks, or provide evidence of consultation with DPI Water around water access and water sharing.

Under the *Water Management Act 2000*, an owner or occupier of a landholding is entitled to take water from a river, estuary or lake which fronts their land or from an aquifer which is underlying their land for domestic consumption and stock watering without the need for an access licence. This is a domestic and stock right. This right does not extend to the commercial harvesting of water.

While owners and occupiers of landholdings do not need a water access licence to take water under a domestic and stock right, they still need to obtain a water supply work approval to **construct a dam** or a **water bore**.

The take of water under a domestic and stock right has no volumetric entitlement but rather provides a right to take water of an amount deemed 'reasonable' for domestic and stock purposes. The cumulative impact of additional dwellings within an area could therefore impact on water supplies and should be a consideration in the development assessment.

Biodiversity

Additional dwellings on a property may require the clearing of native vegetation for the development footprint, road access, bushfire prevention and/or electricity easements.

Inappropriate clearing can impact on threatened species, wildlife habitat or corridors and remove biodiversity assets. When planning for a second dwelling it is important to consider whether the clearing of native vegetation can be avoided.

If you are planning to clear any native vegetation you must comply with the *Biodiversity Conservation Act 2016* and relevant local laws. Contact Local Land Services (LLS) and your local council for more information.

Emergency Management

An important consideration when proposing or assessing a development application for a dual occupancy or secondary dwelling on rural land is bush fire and flood risk. The NSW Rural Fire Service outlines their position on the assessment of dual occupancy and secondary dwellings that increase the housing density on a parcel of bush fire prone land in their fact sheet, *'Increased Density on a Single Parcel of Land'*.

A single parcel of bush fire prone land whilst being suitable for the erection of a single dwelling may not be suitable for additional dwellings and higher densities given the increased exposure of additional people to unacceptable levels of risk.

Local councils can provide information and maps on flood risk for a property. It is important to consider both property inundation risk and evacuation access as part of the design.

Waste Disposal

Domestic waste should be disposed of via the Council's waste service and facility where possible. If domestic garbage is to be disposed on-site, a plan for the construction of or management of that disposal site should be submitted for approval. This plan should include an analysis of topography, soil and vegetation type, hydrology and proximity to waterways, and the controls intended to manage pests, odour, dust and wind mobilising waste.

Sewerage Disposal

In coastal areas where detached dual occupancies are proposed and the existing and proposed dwelling are not connected to the reticulated sewerage network there may be special requirements.

Proposals located within 10km of Priority Oyster Aquaculture Areas (POAA) will trigger provisions within the State Environmental Planning Policy 62. This policy provides considerations for the effects of a proposed development on oyster aquaculture. Refer to the [NSW Sustainable Aquaculture Strategy 2016](#) for more information about this policy and maps of POAA.

The preferred on-site sewerage management system for sites close to Priority Oyster Aquaculture Areas is secondary treatment (aerated wastewater treatment system) with disinfection, sub-surface irrigation and a minimum buffer of 100m to a waterbody or drain. In circumstances where these requirements cannot be met then additional risk management measures should be incorporated in the design.

Landowners have a responsibility to have their on-site sewerage management system approved by the local Council and to operate it in accordance with that approval. They should understand how to use their on-site sewerage management system and to make sure regular maintenance inspections are conducted by suitably qualified and experienced technicians. This is important to reduce the risk to public health. Landowners are required to take quick action to have an on-site sewerage management system repaired if it fails and report any discharge of effluent to the local Council. Refer to the Australian Standards for on-site sewerage management and to local council guidelines.

Who should be consulted

The following agencies should be consulted with respect to the issues identified below:

Agency	Issue
Crown Lands	Where access impacts on Crown Land Lands
DPI Agriculture	For information on land use conflict risk or management
DPI Fisheries	Where development requires a waterway crossing; or where marine vegetation may be harmed
DPI Water	Where riparian vegetation may be impacted
Water NSW	Where development impacts ground or

Agency	Issue
	surface water resources and infrastructure
Local Land Services	Where removal of native vegetation may be required For information on biosecurity including pest animals and weeds and emergency management and assistance issues
Office of Environment and Heritage	For information on potential impact on wildlife or wildlife corridor Where threatened species are present Where development potentially impacts Aboriginal heritage For information on where site sewerage systems can be located/managed
Roads and Maritime Services	Where there is potential impact to existing public roads including increased traffic use and signage
Rural Fire Services	Where land is bush fire prone

Resources

Managing land use conflict

DPI – Agricultural Land Use Planning

<http://www.dpi.nsw.gov.au/land-and-water/land-use/lup>

Living and Working in Rural Areas Handbook
http://www.dpi.nsw.gov.au/research/alliances/centre_for_coastal_agricultural_landscapes/living-and-working-in-rural-areas

Land Use Conflict Risk Assessment Guide

<http://www.dpi.nsw.gov.au/agriculture/resources/lup/development-assessment/lucra>

NSW Right to Farm Policy

http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0006/587184/NSW-Right-to-farm-policy.pdf

Access Roads and Waterway Crossings

Roads and Maritime Services

www.rms.nsw.gov.au

<http://www.rms.nsw.gov.au/maritime/property-planning/development/index.html>

DPI Fisheries

www.dpi.nsw.gov.au/fisheries

Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)

Why do fish need to cross the road?

http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0004/202693/Why-do-fish-need-to-cross-the-road_booklet.pdf

Erosion & Sediment Controls

Landcom 2004, The Blue Book: “*Managing Urban Stormwater: Soils and Construction*” (4th Edition)

Fisheries Permit application forms:

<http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit>

Water NSW

www.water.nsw.gov.au

Controlled Activity Approval

<http://www.water.nsw.gov.au/water-licensing/approvals/controlled-activity>

Water supply

Constructing a bore

<http://www.water.nsw.gov.au/water-licensing/about-licences/constructing-a-bore>

Water supply work approvals

<http://www.water.nsw.gov.au/water-licensing/approvals/water-supply-work-and-use-approvals>

Biodiversity

Local Land Services

www.lls.nsw.gov.au

Office of Environment and Heritage

www.environment.nsw.gov.au

www.environment.nsw.gov.au/threatenedspecies/

Emergency Management

Rural Fire Services

www.rfs.nsw.gov.au

State Emergency Services

www.ses.nsw.gov.au

Increased Density on a Single Parcel of Land

http://www.rfs.nsw.gov.au/__data/assets/pdf_file/0019/4627/Fast-Fact-4-12-Increased-Density-on-a-Single-Parcel-of-Land.pdf .

Building in a Bushfire Area

<http://www.rfs.nsw.gov.au/plan-and-prepare/building-in-a-bush-fire-area>

Sewage Disposal – Priority Oyster Aquaculture Areas

http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0006/638250/NSW-oyster-industry-sustainable-aquaculture-strategy-2016.pdf

More information

Agricultural Land Use Planning Unit, NSW DPI,

Coffs Harbour: (02) 66503125

Dubbo: (02) 68811250

Goulburn: (02) 48243736

Parramatta: (02) 98428607

Tamworth: (02) 67631142

Tocal: (02) 49398962

Wagga Wagga: (02) 69381906

Wollongbar: (02) 66261215

Email: landuse.enquiries@dpi.nsw.gov.au

Acknowledgments

Thank you to Alex Wells, Wendy Goodburn, Helen Squires, Therese Hulme, Rob Williamson and Leonie Coleman (DPI Agriculture), Patrick Dwyer (DPI Fisheries), Patrick Pahlow (DPI Water), Josh Townsend (NSW Department of Planning & Environment), Nicky Owner (NSW Office of Environment & Heritage) Iain Lonsdale (Tweed Shire Council) and NSW Rural Fire Service for their input to and/or review of the Primefact publication.

For updates go to www.dpi.nsw.gov.au/factsheets

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (March 2017). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent advisor.

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