

Planning Proposal

Amendment to permit Torrens Title subdivision of dual occupancy development on certain land in the R2 Low Density Residential Zone

Eurobodalla Local Environmental Plan 2012

ELEP 2012 Amendment No. 21



Navigate Planning

12 February 2024

Introduction

Eurobodalla Shire Council is seeking to facilitate the Torrens title subdivision of dual occupancy development on land in the R2 Low Density Residential zone that currently has a minimum lot size for subdivision of 550m². Currently, dual occupancy development cannot be subdivided other than by strata subdivision.

The proposed new provision is not intended to apply to R2 zoned land with a minimum lot size larger than 550m² (eg. 1500m² or 5000m²) as these lands are more constrained with environmental qualities or steeper slopes and are not considered appropriate for further subdivision. However, unsubdivided dual occupancy development would continue to be permissible with development consent on these lands.

The proposed new provision is not proposed to apply to other residential zones for the following reasons:

- Council does not wish to encourage dual occupancy development in the R3 Medium Density Residential zone, preferring that the zone be developed for medium to higher density housing developments.
- Land in the C4, R5 and RU5 zones are not sewerred. By default, the area of land capable of accommodating dual occupancy development is limited by the requirement for suitable effluent disposal areas to be provided.

It is also not proposed to apply a minimum lot size for dual occupancy development. There is currently no minimum lot size for dual occupancy development in the Eurobodalla Local Environmental Plan 2012. All development proposals for dual occupancy development are considered on their merits and in accordance with the Council's Development Control Plan. As part of this planning proposal process, consideration is being given to any necessary amendments to Council's Development Control Plan to ensure such developments are undertaken with minimal impacts on the environment or the amenity of the locality.

It is also noted that, on land zoned R2 with a minimum lot size of 550m² that is less than 600m² in size, dual occupancy development would continue to be permissible with development consent, however Torrens title subdivision of these developments would not be possible. However, clause 4.6 of the Eurobodalla Local Environmental Plan 2012 would apply should an exception to the new development standard be proposed.

The purpose of the proposal is to encourage additional dual occupancy development in residential areas where there is existing capacity in infrastructure to support additional development and to minimise the demand for new release areas. The creation of smaller dwelling lots also assists in increasing housing affordability in the Shire.

To achieve this outcome, a Planning Proposal is required to amend the Eurobodalla Local Environmental Plan 2012. Navigate Planning has been engaged by Council to prepare the relevant planning documents and provide the relevant justifications for the planning proposal.

It is proposed to seek an amendment to the Eurobodalla Local Environmental Plan 2012 to include a new clause similar to the following clause in the Mid-Western Regional Local Environmental Plan 2012.

4.1B Exceptions to minimum lot sizes for certain residential development

(1) *This clause applies to the following land—*

- (a) *land within Zone R1 General Residential,*
- (b) *land within Zone R3 Medium Density Residential,*
- (c) *land in Rylstone or Kandos that is within Zone RU5 Village.*

(2) *Despite any other provision of this Plan, development consent may be granted to the subdivision of land to which this clause applies if—*

- (a) *multi dwelling housing or a dual occupancy is lawfully erected on the land, and*
- (b) *the area of each resulting lot will not be less than—*
 - (i) *300 square metres for a dual occupancy (attached) or multi dwelling housing, or*
 - (ii) *400 square metres for a dual occupancy (detached), and*
- (c) *only one dwelling will be located on each lot resulting from the subdivision.*

(3) *Development consent may be granted to a single development application for development to which this clause applies that is both of the following—*

- (a) *the subdivision of land into 2 or more lots,*
- (b) *the erection of a dual occupancy (attached), dual occupancy (detached) or multi dwelling housing on each lot resulting from the subdivision, if the size of each lot is equal to or greater than—*
 - (i) *300 square metres for a dual occupancy (attached) or multi dwelling housing, or*
 - (ii) *400 square metres for a dual occupancy (detached).*

Part 1: Objectives or Intended Outcomes

Objective

To amend the Eurobodalla Shire Local Environmental Plan 2012 to provide for the subdivision of dual occupancy development in the R2 Low Density Residential zone.

Intended Outcomes

The planning proposal is intended to achieve the following outcomes:

- To encourage an increase in the proportion of residential lots developed for dual occupancy dwellings.
- To encourage additional residential development in areas with existing services and utilities.
- To minimise the demand for new land releases.
- To assist in increasing housing affordability in Eurobodalla.

Part 2: Explanation of Provisions

This planning proposal seeks to achieve the objective identified in Part 1 through the introduction of a new clause in the Eurobodalla Local Environmental Plan 2012, similar to clause 4.1B of the Mid-Western Regional Local Environmental Plan 2012.

It is intended that the clause will:

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

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

Part 3: Justification of Strategic and Site-Specific Merit

Section A - Need for the Planning Proposal

1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The Planning Proposal seeks to further Planning Priority 1 in the Eurobodalla Local Strategic Planning Statement, being to encourage greater housing diversity and affordability.

The planning proposal aims to encourage additional dual occupancy development on a range of lot sizes, providing increased housing diversity in existing residential areas. The ability to subdivide dual occupancy developments increases the number of small lot housing opportunities, providing a new affordable housing option for many.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Subdivision of dual occupancy development on R2 zoned lots (with a minimum lot size of 550m²) less than 1100m² in size is currently not permissible in the Eurobodalla Shire. The only means of achieving this outcome is to include a new clause in the LEP to make provision for this outcome.

Section B - Relationship to Strategic Planning Framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The South East and Tablelands Regional Plan 2036 is applicable to the subject land. The following table outlines the consistency of the planning proposal with relevant goals, directions and actions of the Regional Plan.

Goal / Direction	Relevance and Consistency
Goal 1: A connected and prosperous economy	
Directions 1 to 13	Not relevant.

Goal 2: A diverse environment interconnected by biodiversity corridors	
<p>Direction 14: Protect important environmental assets</p> <p>Direction 15: Enhance biodiversity connections</p> <p>Direction 16: Protect the coast and increase resilience to natural hazards</p> <p>Direction 17: Mitigate and adapt to climate change</p>	<p>Some areas zoned R2 are located in coastal areas, in bushfire prone areas, in areas known to be flood prone and adjacent to waterways. Some areas are also mapped as containing terrestrial biodiversity. The planning proposal does not change the fact that dual occupancy development is currently permissible in these areas. The assessment of a development application for dual occupancy development in these areas will take into account all of the relevant considerations.</p> <p>The opportunity to subdivide a dual occupancy development does not generate additional considerations, with the exception that subdivision of bushfire prone land for residential purposes requires a Bushfire Safety Authority under the Rural Fires Act 1997.</p> <p>It is considered that the proposal will not undermine the objective of protecting environmental assets, the coast and increasing resilience to natural hazards.</p>
Direction 18: Secure water resources	Not relevant.
Goal 3: Healthy and connected communities	
Direction 19: Strengthen cross-border connectivity	Not relevant.
Direction 20: Enhance access to goods and services by improving transport connections	Not relevant.
Direction 21: Increase access to health and education services	Not relevant.
Direction 22: Build socially inclusive, safe and healthy communities	Not relevant.
Direction 23: Protect the region's heritage	Some land zoned R2 contains a heritage item. The planning proposal does not change the fact that dual occupancy development is currently permissible on the site of a heritage item. The assessment of a development application for dual occupancy development on land

	<p>containing a heritage item will take into account the relevant heritage considerations.</p> <p>The opportunity to subdivide a dual occupancy development on the site of a heritage item does generate an additional heritage consideration, being the potential impact of the subdivision on the curtilage of the heritage item. While the proposal raises an additional consideration, it is considered that the proposal will not undermine the objective of conserving heritage assets.</p>
Goal 4: Environmentally sustainable housing choices	
<p>Direction 24: Deliver greater housing supply and choice</p> <p>Direction 25: Focus housing growth in locations that maximise infrastructure and services</p> <p>Direction 27: Deliver more opportunities for affordable housing</p>	<p>The planning proposal aims to encourage additional dual occupancy development on a range of lot sizes, providing increased housing supply and choice in existing residential areas.</p> <p>The planning proposal will maximise the use of existing infrastructure and service capacity.</p> <p>The ability to subdivide dual occupancy developments increases the number of small lot housing opportunities, providing a new affordable housing option for many.</p>
Direction 26: Coordinate infrastructure and water supply in a cross-border setting	Not relevant
Direction 28: Manage rural lifestyles	Not relevant
Local Government Narratives	
<p>Eurobodalla</p> <ul style="list-style-type: none"> Encourage more diverse and affordable housing choices, particularly for older people. 	<p>The planning proposal aims to encourage additional dual occupancy development on a range of lot sizes, providing increased housing diversity in existing residential areas. The ability to subdivide dual occupancy developments increases the number of small lot housing opportunities, providing a new affordable housing option for many, including for older people.</p>

The Draft South East and Tablelands Regional Plan 2041 is also applicable to the subject land. The following table outlines the consistency of the planning proposal with relevant goals, directions and actions of the Draft Regional Plan.

Theme / Objective	Relevance and Consistency
Theme 1: Recognising Country, people and place	
Objective 1: Build capacity for shared knowledge about Aboriginal culture in land use planning	Not relevant.
Objective 2: Strengthen Aboriginal self-determination	Not relevant.
Objective 3: Support diverse, vibrant and socially active communities	Not relevant
Objective 4: Preserve the heritage and character of the region's towns and villages	<p>Some land zoned R2 contains a heritage item. The planning proposal does not change the fact that dual occupancy development is currently permissible on the site of a heritage item. The assessment of a development application for dual occupancy development on land containing a heritage item will take into account the relevant heritage considerations.</p> <p>The opportunity to subdivide a dual occupancy development on the site of a heritage item does generate an additional heritage consideration, being the potential impact of the subdivision on the curtilage of the heritage item. While the proposal raises an additional consideration, it is considered that the proposal will not undermine the objective of conserving heritage assets.</p>

Theme 2: Enhancing sustainable and resilient environments	
<p>Objective 5: Protect important environmental assets</p> <p>Objective 6: Enhance biodiversity, habitats and the connections between them</p> <p>Objective 7: Build resilient places and communities</p>	<p>Some areas zoned R2 are located in coastal areas, in bushfire prone areas, in areas known to be flood prone and adjacent to waterways. Some areas are also mapped as containing terrestrial biodiversity. The planning proposal does not change the fact that dual occupancy development is currently permissible in these areas. The assessment of a development application for dual occupancy development in these areas will take into account all of the relevant considerations.</p> <p>The opportunity to subdivide a dual occupancy development does not generate additional considerations, with the exception that subdivision of bushfire prone land for residential purposes requires a Bushfire Safety Authority under the Rural Fires Act 1997.</p> <p>It is considered that the proposal will not undermine the objective of protecting the environment, the coast and increasing resilience to natural hazards.</p>
Objective 8: Plan for a net zero region by 2050	Not relevant.
Objective 9: Secure water resources	Not relevant.
Objective 10: Manage the role and operation of extractive industries	Not relevant.
Theme 3: Leveraging diverse economic identities	
<p>Objective 11: Realise economic benefits from a connected regional economy</p> <p>Objective 12: Promote a year-round visitor economy</p> <p>Objective 13: Promote innovation and sustainability in agriculture and aquaculture industries</p> <p>Objective 14: Support the development of a circular economy</p>	Not relevant.

Objective 15: Promote business and employment opportunities in strategic locations Objective 16: Support industries to integrate operations and digital solutions	
Theme 4: Planning for fit for purpose housing and services	
Objective 17: Plan for a supply of housing in appropriate locations Objective 18: Plan for more affordable, low-cost and social housing Objective 19: Improve the quality, resilience and sustainability of housing Objective 21: Provide efficient access to infrastructure and service	The planning proposal aims to encourage additional dual occupancy development on a range of lot sizes, providing increased housing diversity in existing residential areas. The ability to subdivide dual occupancy developments increases the number of small lot housing opportunities, providing a new affordable housing option for many.
Objective 20: Manage rural living	Not relevant
Theme 5: Supporting a connected and active region	
Objective 22: Strengthen cross-border connectivity and infrastructure coordination Objective 23: Enhance strategic transport links Objective 24: Plan for walkable centres Objective 25: Adapt infrastructure to meet future needs	Not relevant.

4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

Eurobodalla Local Strategic Planning Statement

The proposal aligns well with a number of the planning priorities of the Eurobodalla Local Strategic Planning Statement. The following table outlines the consistency of the planning proposal with the relevant planning priorities.

Planning Priority	Relevance and Consistency
1: Encourage greater housing diversity and affordability	The planning proposal aims to encourage additional dual occupancy development on a range of lot sizes, providing increased housing diversity in existing residential areas. The ability to subdivide dual occupancy developments increases the number of small lot housing opportunities, providing a new affordable housing option for many.
2. Enhance the distinctive character and heritage of towns, villages and hamlets	Some land zoned R2 contains a heritage item. The planning proposal does not change the fact that dual occupancy development is currently permissible on the site of a heritage item. The assessment of a development application for dual occupancy development on land containing a heritage item will take into account the relevant heritage and local character considerations. The opportunity to subdivide a dual occupancy development on the site of a heritage item does generate an additional heritage consideration, being the potential impact of the subdivision on the curtilage of the heritage item. While the proposal raises an additional consideration, it is considered that the proposal will not undermine the objective of conserving heritage items and the character of places.
3. Consolidate development within towns and village centres	The planning proposal aims to encourage additional dual occupancy development in residential areas where there is existing capacity in infrastructure to support additional development and to minimise the demand for new release areas.

4. Adapt to natural hazards	<p>Some areas zoned R2 are located in coastal areas, in bushfire prone areas, in areas known to be flood prone and adjacent to waterways. The planning proposal does not change the fact that dual occupancy development is currently permissible in these areas. The assessment of a development application for dual occupancy development in these areas will take into account all of the relevant considerations.</p> <p>The opportunity to subdivide a dual occupancy development does not generate additional considerations, with the exception that subdivision of bushfire prone land for residential purposes requires a Bushfire Safety Authority under the Rural Fires Act 1997.</p> <p>It is considered that the proposal will not undermine the objective of adapting to natural hazards.</p>
5. Conserve and celebrate bushland and waterways	<p>Some areas zoned R2 are located in areas mapped as containing terrestrial biodiversity and adjacent to waterways. The planning proposal does not change the fact that dual occupancy development is currently permissible in these areas. The assessment of a development application for dual occupancy development in these areas will take into account all of the relevant considerations.</p> <p>The opportunity to subdivide a dual occupancy development does not generate additional considerations.</p> <p>It is considered that the proposal will not undermine the objective of protecting bushland and waterways.</p>
6 Promote sustainable living	Not relevant
7. Collaborate with NSW government in delivering strategic infrastructure projects	Not relevant
8. Align local infrastructure delivery with planned growth	Not relevant

9. Develop highly accessible town and activity centres	Not relevant
10. Promote nature-based tourism opportunities	Not relevant
11. Activate town and village centres	Not relevant
12. Ensure an adequate supply of employment land	Not relevant
13. Promote a diverse and sustainable agricultural sector	Not relevant

Eurobodalla Community Strategic Plan

The proposal aligns well with a number of the goals of the Eurobodalla Community Strategic Plan. The following table outlines the consistency of the planning proposal with the relevant goals.

Goal	Relevance and Consistency
1. Our sustainable Shire celebrates our natural environment and outdoor lifestyles	<p>Some areas zoned R2 are located in areas mapped as containing terrestrial biodiversity and adjacent to waterways, including the coast. The planning proposal does not change the fact that dual occupancy development is currently permissible in these areas. The assessment of a development application for dual occupancy development in these areas will take into account all of the relevant considerations.</p> <p>The opportunity to subdivide a dual occupancy development does not generate additional considerations.</p> <p>It is considered that the proposal will not undermine the goal of celebrating our natural environment.</p>
2. Our community welcomes, celebrates and supports everyone	Not relevant.
3. Our region of vibrant places and spaces	Not relevant.
4. Our connected community through reliable and safe infrastructure networks	Not relevant.

5. Our engaged community with progressive leadership	Not relevant.
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5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other applicable State or regional studies or strategies.

6. Is the Planning Proposal consistent with applicable state environmental planning policies?

An assessment of relevant SEPPs against the planning proposal is provided in the table below.

SEPP	Relevance	Consistency and implications
SEPP (Biodiversity Conservation) 2021	Chapter 2 – Vegetation in Non-Rural Areas	The planning proposal facilitates the subdivision of existing or proposed dual occupancies on certain land. Should the planning proposal facilitate development that requires the clearing of vegetation, such clearing will be considered as part of the development application.
SEPP (Exempt and Complying Development Codes) 2008	No	
SEPP(Housing) 2021	No	
SEPP (Industry and Employment) 2021	No	
SEPP 65 – Design Quality of Residential Apartment Development	No	
SEPP (Planning Systems) 2021	No	
SEPP (Precincts-Central River City) 2021	No	

SEPP (Precincts- Eastern Harbour City) 2021 SEPP (Precincts- Regional) 2021 SEPP (Precincts- Western Parkland City) 2021		
SEPP (Primary Production) 2021	No	
SEPP (Resilience and Hazards) 2021	Chapter 2 – Coastal Management	<p>Some areas zoned R2 are located in coastal management areas. The planning proposal does not change the fact that dual occupancy development is currently permissible in these areas. The assessment of a development application for dual occupancy development in these areas will take into account all of the relevant considerations.</p> <p>The opportunity to subdivide a dual occupancy development does not generate additional considerations.</p> <p>It is considered that the proposal will not facilitate development that is inconsistent with this chapter of the SEPP.</p>
	Chapter 4 – Remediation of Contamination Land	<p>The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. The assessment of a development application for a dual occupancy development must already consider the potential contamination of the land and the need for any remediation.</p> <p>There are no additional considerations for a development application for subdivision of an approved dual occupancy development.</p> <p>For new development applications for dual occupancy development and subdivision, the assessment of</p>

		potential contamination will be considered under State Environmental Planning Policy (Resilience and Hazards) 2021.
SEPP (Resources and Energy) 2021	No	
SEPP (Sustainable Buildings) 2022	Chapter 2 – Standards for residential development - BASIX	BASIX Certificates will be required to be submitted with development applications for dual occupancy development irrespective of the potential for subdivision of the development.
SEPP (Transport and Infrastructure) 2021	Chapter 2 - Infrastructure	Any proposed subdivision of a dual occupancy on land that fronts a classified road or that contains a power line or easement will need to be assessed having regard to the relevant provisions of the SEPP.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions) or key government priority?

An assessment of relevant s. 117 Directions against the Planning Proposal is provided in the table below.

Focus Area	Relevant Ministerial Direction	Consistency and Implications
Focus Area 1: Planning Systems and Planning Systems – Place-Based	1.1 Implementation of Regional Plans	As noted above, the planning proposal is consistent with relevant directions and objectives of the current and draft Regional Plan.
	1.2 Development of Aboriginal Land Council land	Not applicable.
	1.3 Approval and Referral Requirements	The planning proposal includes no concurrence, consultation or referral provisions and does not identify development as designated development.
	1.4 Site Specific Provisions	The planning proposal includes no site specific provisions.

Focus Area	Relevant Ministerial Direction	Consistency and Implications
	1.5 to 1.22	Not applicable.
Focus Area 2: Design and Place		Not applicable.
Focus Area 3: Biodiversity and Conservation	3.1 Conservation Zones	The planning proposal does not apply to conservation zones.
	3.2 Heritage Conservation	The planning proposal does not affect existing LEP provisions relating to heritage conservation.
	3.3 Sydney Drinking Water Catchments	Not applicable.
	3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPS	Not applicable.
	3.5 Recreation Vehicle Areas	Not applicable.
	3.6 Strategic Conservation Planning	The planning proposal does not apply to strategic conservation land or land mapped as “avoided area”.
	3.7 Public Bushland	Not applicable.
	3.8 Willandra Lakes Region	Not applicable.
	3.9 Sydney Harbour Foreshore and Waterways Areas	Not applicable.
	3.10 Water Catchment Protection	The planning proposal does not apply to land in a regulated catchment.

Focus Area	Relevant Ministerial Direction	Consistency and Implications
Focus Area 4: Resilience and Hazards	4.1 Flooding	<p>The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. Some of the lots that could be developed as a dual occupancy and subdivided are mapped as flood prone. Any development application for dual occupancy development on these lots would already be assessed having regard to the flooding impacts.</p> <p>The planning proposal does not permit new development in flood prone areas. The subdivision of permissible dual occupancy development is not considered to be inconsistent with this direction.</p>
	4.2 Coastal Management	<p>Some areas zoned R2 are located in coastal management areas. The planning proposal does not change the fact that dual occupancy development is currently permissible in these areas. The assessment of a development application for dual occupancy development in these areas will take into account all of the relevant considerations.</p> <p>The subdivision of permissible dual occupancy development is not considered to be inconsistent with this direction.</p>

Focus Area	Relevant Ministerial Direction	Consistency and Implications
	4.3 Planning for Bushfire Protection	The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. Subdivision of bushfire prone land for residential purposes requires a Bushfire Safety Authority under the Rural Fires Act 1997 at the development application stage. A development application for subdivision, or for a new combined dual occupancy and subdivision development application, would be treated as Integrated Development and referred to the NSW Rural Fire Service for general terms of approval.
	4.4 Remediation of Contaminated Land	The planning proposal does not rezone land or facilitate any change of use of land and is therefore consistent with this direction.
	4.5 Acid Sulfate Soils	The planning proposal does not facilitate an intensification of land uses and is therefore considered to be consistent with this direction.
	4.6 Mine Subsidence and Unstable Land	Not applicable.
Focus Area 5: Transport and Infrastructure	5.1 Integrating Land Use and Transport	The planning proposal seeks to encourage dual occupancy development (that is already permissible) in urban areas by allowing such developments to be subdivided. The planning proposal is considered to be consistent with this direction as it encourages further development in existing urban areas where transport options are available.
	5.2 Reserving Land for Public Purposes	Not applicable

Focus Area	Relevant Ministerial Direction	Consistency and Implications
	5.3 Development Near Regulated Airports and Defence Airfields	Not applicable.
	5.4 Shooting Ranges	Not applicable.
Focus Area 6: Housing	6.1 Residential Zones	The planning proposal encourages additional dual occupancy development (that is already permissible) in the R2 Low Density Residential Zone. The planning proposal is considered to be consistent with this direction as it encourages greater housing choice, makes more efficient use of existing infrastructure and reduces the need for greenfield housing in Eurobodalla.
	6.2 Caravan Parks and Manufactured Home Estates	Not applicable.
Focus Area 7: Industry and employment	7.1 Employment Zones	Not applicable.
	7.2 Reduction in non-hosted short-term rental accommodation period.	Not applicable.
	7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable.
Focus Area 8: Resources and Energy	8.1 Mining, Petroleum Production and Extractive Industries	Not applicable.
Focus Area 9: Primary Production	9.1 Rural Zones	Not applicable.
	9.2 Rural Lands	Not applicable.

Focus Area	Relevant Ministerial Direction	Consistency and Implications
	9.3 Oyster Aquaculture	Not applicable.
	9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.

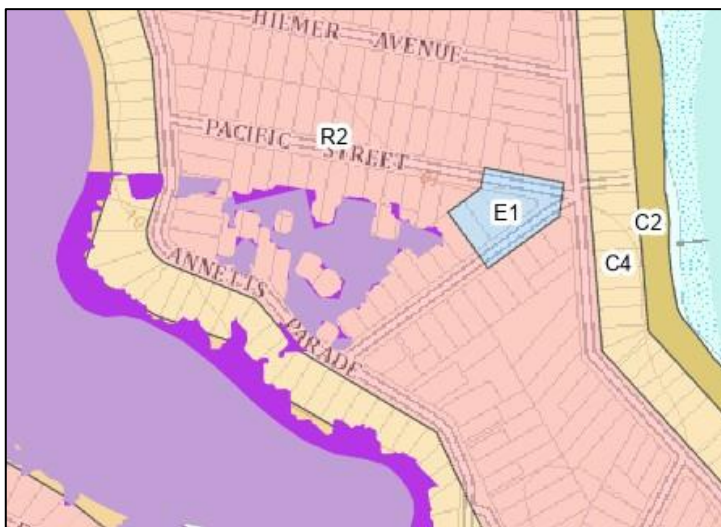
Section C - Environmental, Social and Economic Impact

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

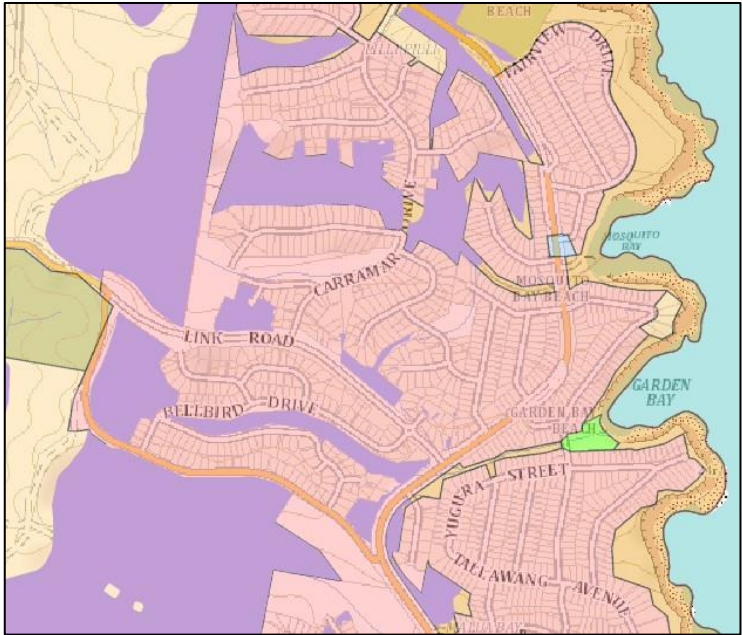
The planning proposal applies to land zoned R2 Low Density Residential on which a dual occupancy development already exists or is permissible with consent.

Where it applies to existing dual occupancy, there is unlikely to be any significant impact on critical habitat or threatened species, populations or ecological communities as the only physical works that may result from the subdivision of an existing dual occupancy is fencing (where such fencing does not already exist).

Where it applies to vacant residential land or to the redevelopment of a lot containing a single dwelling with a dual occupancy, there are a small number of R2 zoned properties across the Eurobodalla Shire where biodiversity values exist and are mapped. The maps below identify examples of R2 zoned land with mapped biodiversity values.

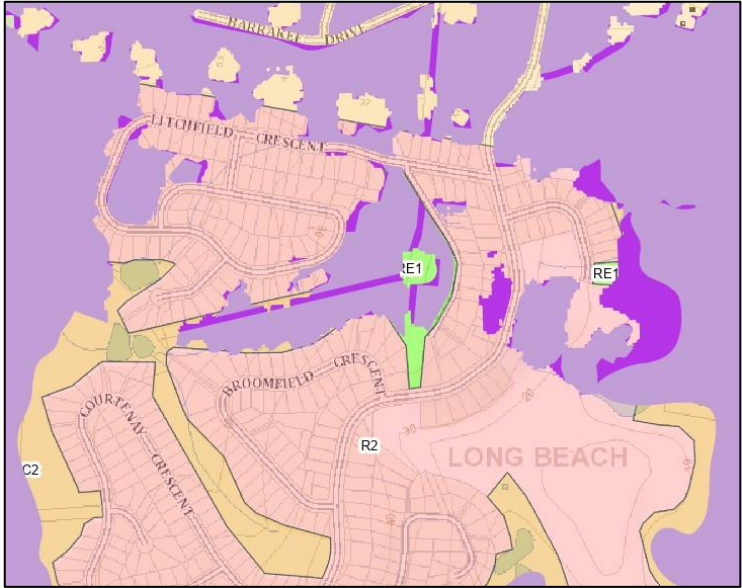


Zoning Map with Biodiversity Values Map overlay – Annetts Parade, Mossy Point



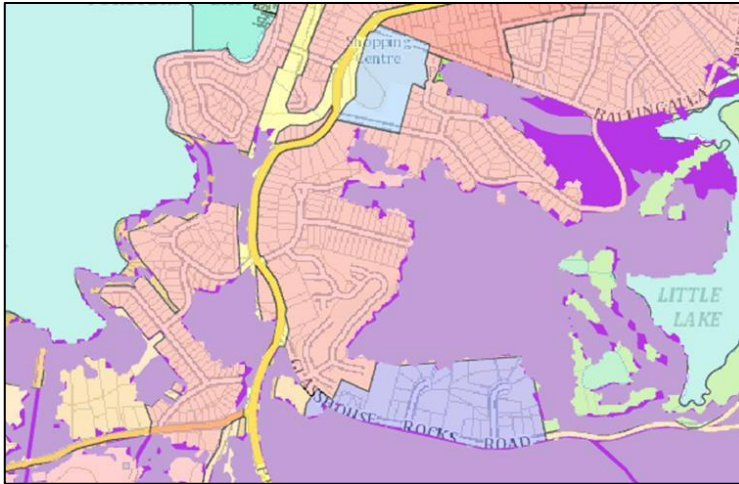
Zoning Map with Biodiversity Values Map overlay – Malua Bay

Note: The bulk of the mapped biodiversity values in the Malua Bay area are located on public land such as drainage corridors, land zone C2 Environmental Conservation or on larger undeveloped residential land.



Zoning Map with Biodiversity Values Map overlay – Long Beach

Note: The bulk of the mapped biodiversity values in the Long Beach area are located on public land such as drainage corridors, land zone RE1 Public Recreation or on larger undeveloped residential land.



Zoning Map with Biodiversity Values Map overlay – South Narooma

Note: The bulk of the mapped biodiversity values in the South Narooma area are located on larger undeveloped residential land.

As demonstrated above, the vast bulk of mapped biodiversity values on land zone R2 Low Density Residential is on larger undeveloped lots. This planning proposal will make no change to the planning outcomes for those lands.

For the small number of smaller developed or vacant lots zoned R2 where there are mapped biodiversity values, this planning proposal will not change the permissibility of dual occupancy development. It will facilitate the subdivision of an existing or proposed dual occupancy development where the only additional physical works is likely to be fencing of the proposed new lot boundary (where such fencing does not already exist).

The impacts of any proposed dual occupancy development and any fencing associated with the subdivision of that development will be considered at the development application stage in accordance with the Biodiversity Conservation Act 2016 and other relevant legislation or planning instruments.

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

Impact on watercourses and the coast

The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. The impact on watercourses and the coastal environment from dual occupancy development are already relevant considerations.

The potential impact on watercourses and the coastal environment from the ability to subdivide a dual occupancy development arises from the fencing of the proposed boundary where such fencing may be in close proximity to a watercourse or in the coastal zone.

However, for existing dual occupancy developments, it is likely that some form of fencing already exists to separate the private open space areas of each dwelling. In

these cases, the proposed lot boundary in a subdivision proposal is likely to follow that existing fence line. In these cases, there is no additional impact.

For new development applications for dual occupancy development and subdivision, the impact on existing vegetation, watercourse or the coastal environment from the construction of the dual occupancy and the erection of new fencing will be considered at the same time, under the relevant provisions of the Eurobodalla Local Environmental Plan 2012, relevant State Environmental Planning Policies and the Biodiversity Conservation Act 2016.

Impact on Aboriginal and non-Aboriginal Heritage

The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. The impact on Aboriginal and non-Aboriginal heritage from dual occupancy development are already relevant considerations.

The potential impact on Aboriginal or non-Aboriginal heritage from the ability to subdivide a dual occupancy development arises from:

- the fencing of the proposed boundary, and/or
- the change in ownership of land that may be in the curtilage of the heritage item.

In relation to fencing, issues may arise where significant earthworks are required to facilitate such fencing. However, for existing dual occupancy developments, it is likely that some form of fencing already exists to separate the private open space areas of each dwelling. In these cases, the proposed lot boundary in a subdivision proposal is likely to follow that existing fence line. In these cases, there is no additional impact.

In relation to the impact on the curtilage of a heritage item from the subdivision of a dual occupancy, if the proposed lot boundary is within the curtilage of the heritage item, there is potential for a negative impact on the significance of the item.

Where a dual occupancy development has been approved and constructed on the site of a heritage item, the impact of the development on the significance of the item has already been assessed. Conditions of that development consent may be relevant in any future proposal to subdivide that dual occupancy development. Therefore, any development application to subdivide must be assessed having regard to the original conditions of the dual occupancy and a new assessment of the impact of the subdivision on the heritage item should be undertaken.

For new development applications for dual occupancy development and subdivision, the impact on Aboriginal and non-Aboriginal heritage from the construction of the dual occupancy, the subdivision of the land and the erection of new fencing will be considered at the same time under clause 5.10 of the Eurobodalla Local Environmental Plan 2012.

Bush Fire Impact Assessment

The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. The assessment of a development application for a dual occupancy development on bush fire prone land must consider the impact of bush fire

in accordance with the residential infill requirements of Planning for Bushfire Protection 2019.

However, the subdivision of a dual occupancy development requires a further assessment of bush fire impact in accordance with the residential subdivision requirements of Planning for Bushfire Protection 2019.

In some cases, particularly where the dual occupancy development was recently approved and constructed, there are unlikely to be significant differences between the assessment of the dual occupancy development and the assessment of the subdivision.

However, where the dual occupancy development was approved and constructed some time ago, the assessment of the subdivision may require additional bushfire protection measures to be implemented, including upgrading of the buildings for ember protection. As R2 zoned land is connected to a reticulated water supply, there should be no additional water supply requirements.

Planning for Bushfire Protection 2019 states that “*subdivision will not be supported where the development would be BAL-40 or BAL-FZ. The APZ distances identified in Tables A1.12.2 and A1.12.3 provide the acceptable solutions for meeting this threshold.*”

It is noted that the residential infill requirements of Planning for Bushfire Protection 2019 also apply Tables 1.12.2 and 1.12.3 in determining asset protection zones.

Subdivision of bushfire prone land for residential purposes requires a Bushfire Safety Authority under the Rural Fires Act 1997 at the development application stage. A development application for subdivision, or for a new combined dual occupancy and subdivision development application, would be treated as Integrated Development and referred to the NSW Rural Fire Service for general terms of approval.

Preliminary consultation has been undertaken with the NSW Rural Fire Service (RFS). The RFS identified concerns with the potential for subdivision of lots with existing dwellings that do not meet current construction standards or asset protection zone requirements, particularly in isolated communities. The RFS suggested that a DCP control be considered to address this issue. Draft amendments to the Residential Zones DCP are being considered concurrently with this planning proposal and further consultation with the RFS will be undertaken prior to the finalisation of the planning proposal and DCP amendments.

Potential Contamination Assessment

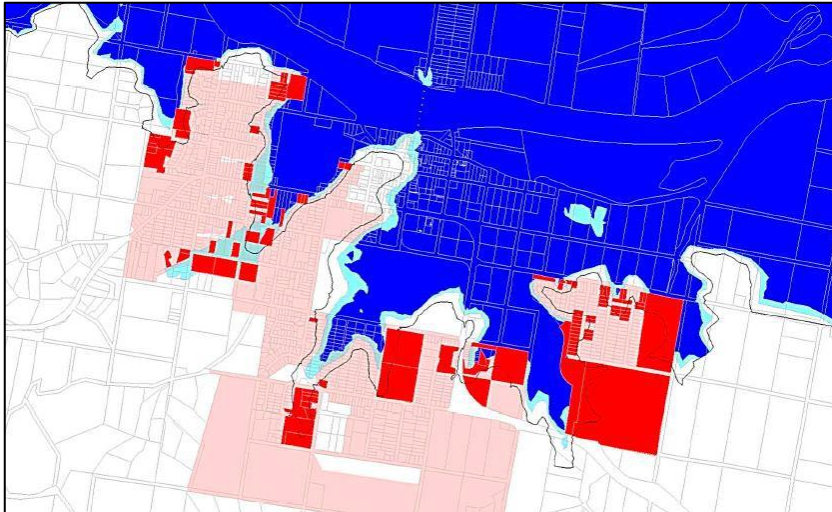
The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. The assessment of a development application for a dual occupancy development must already consider the potential contamination of the land and the need for any remediation.

There are no additional considerations for a development application for subdivision of an approved dual occupancy development.

For new development applications for dual occupancy development and subdivision, the assessment of potential contamination will be considered under State Environmental Planning Policy (Resilience and Hazards) 2021.

Flood Impacts

The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. Some of the lots that could be developed as a dual occupancy and subdivided are mapped as flood prone. As an example, the map below shows a number of lots wholly or partly within flood prone areas.



Zoning and Flood overlay – Moruya

Any development application for dual occupancy development on these lots would already be assessed having regard to the flooding impacts. The additional subdivision potential does not raise additional considerations.

Impacts on and from Acid Sulfate Soils

The planning proposal facilitates the subdivision of dual occupancy development that is already permissible. Some of the lots that could be developed as a dual occupancy and subdivided are mapped as having acid sulfate soils. The map below shows some properties zoned R2 in Narooma that are mapped as having acid sulfate soils.



Zoning Map with Acid Sulfate Soils Map overlay – Narooma

There are also a small number of R2 zoned lots at Moruya Heads and Surfside mapped as having acid sulfate soils.

Any development application for dual occupancy development on these lots would already be assessed having regard to the impacts of and from acid sulfate soils. The additional subdivision potential does not raise additional considerations.

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

The subdivision of existing or proposed dual occupancy developments has potential positive social and economic impacts through the provision of greater housing choice and smaller, more affordable housing options for residents. The more efficient use of existing infrastructure also has positive economic benefits to the Council and the broader community through the reduced need for development of new infrastructure.

The planning proposal seeks to encourage additional dual occupancy development. It is estimated that the total increase in dwellings across the Shire would be in the order of 600 to 650 dwellings, based on 5% of existing developed R2 zoned lots being redeveloped with a dual occupancy and 10% of existing vacant R2 zoned lots being developed with a dual occupancy.

Given the relatively small scale of additional development over the whole of the Shire, it is considered that the planning proposal is unlikely to result in any significant strain on existing infrastructure or have significant traffic impacts.

Section D - State and Commonwealth Interests

11. Is there adequate public infrastructure for the Planning Proposal?

The potential to subdivide dual occupancy development is expected to increase the demand for such development in existing residential areas.

The capacity of existing infrastructure in certain areas to accommodate the potential increase in dual occupancy development has been considered and, given the likely diffuse uptake of dual occupancy development opportunities across the Shire, it is unlikely that there will be any constraints in the sewer and water networks. Where the water and sewer systems in certain locations become overloaded, upgrades to the systems can be implemented as required.

The increase in traffic generated by the potential increase in dual occupancy development has also been considered. Again, given the likely diffuse uptake of dual occupancy developments across the Shire, it is unlikely that there will be significant impacts on road or intersection capacities as a result of the planning proposal.

12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination??

Preliminary consultation have been held with the Department of Planning and the NSW Rural Fire Service.

The Department of Planning suggested consideration be given to extending the same proposal to other residential zones. This has been considered by Council, however no additional zones are proposed to be included at this stage, for various reasons.

- Council does not wish to encourage dual occupancy development in the R3 Medium Density Residential zone, preferring that the zone be developed for medium to higher density housing developments.
- Land in the C4, R5 and RU5 zones are not seweraged. By default, the area of land capable of accommodating dual occupancy development is limited by the requirement for suitable effluent disposal areas to be provided.

The NSW Rural Fire Service raised concerns with the potential for subdivision of lots with existing dwellings that do not meet current construction standards or asset protection zone requirements, particularly in isolated communities. The RFS suggested that a DCP control be considered to address this issue. Draft amendments to the Residential Zones DCP are being considered by Council concurrently with this planning proposal and further consultation with the RFS will be undertaken prior to the finalisation of the planning proposal and DCP amendments.

Part 4: Mapping

There is no mapping associated with this planning proposal.

Part 5: Community Consultation

Community consultation will be undertaken following the receipt of a gateway determination.

The Planning Proposal was placed on public exhibition for 28 days from 14 August to 11 September 2024. Copies were available for viewing at Council's Moruya Administration Centre, Batemans Bay Library, Narooma library and on Council's website.

No objections were received as a result of the public and agency consultation process. One submission supporting the proposal was received from a member of the public. One supporting referral response were received from the Rural Fire Service.

Part 6: Project Timeline

Estimated Timeline

Key Stages of Consultation and Approval	Estimated Timeframe
STAGE 1 – Consideration by Council	April 2024
STAGE 2 – Council Decision	April 2024
STAGE 3 – Gateway Determination	June 2024
STAGE 4 – Pre exhibition	June 2024
STAGE 5 – Commencement and completion of public exhibition period	July 2024
STAGE 6 – Consideration of submissions	August 2024
STAGE 6 – Post exhibition review and additional studies	August 2024
STAGE 7 – Submission to the Department for finalisation (where applicable)	October 2024
STAGE 8 – Gazettal of LEP amendment	December 2024