

## 4.2A Erection of dwelling houses on land in certain rural and environmental protection zones

### General Information

This model clause has been drafted to reflect the majority of dwelling house provisions in existing LEPs. The clause should be used by all councils that currently permit dwelling houses in rural and/or environment protection zones or intend to in the new comprehensive SI LEPs.

It is noted that in certain circumstances the model clause may not address all circumstances and councils should contact the relevant Regional Office of the Department to discuss these issues. In particular, councils may wish to insert an additional part which ‘sunsets’ the provisions in subclauses (3)(b) & (3)(c). The name/s of the EPI(s) preceding the SI LEP can also be named in subclause (3) for additional clarity.

The model clause introduces a definition for “existing holding” for the purpose of this provision only. Where a council currently has a provision in an EPI that permits the erection of a dwelling house on an existing holding/parcel or like provisions, then the existing date that appears in the current planning controls must be used in the new SI LEP. The date can not be changed. A council may also choose to sunset this provision within a specified time period.

One of the objectives is to enable the replacement of lawful dwelling houses, e.g. due to destruction (fire), or where the land no longer enjoys a dwelling entitlement due to changes to the planning provisions applying to the land.

If councils wish to permit other types of legitimate residential accommodation land uses such as dual occupancy (attached or detached) in rural zones to which this local provision applies, contact your Regional Office of the Department to discuss whether an amendment to the model clause is supported.

If it is proposed to allow dual occupancies to be detached the following controls may be included in the clause:

- the second dwelling should be located on the same parcel of land as the existing dwelling, or
- if the second dwelling is not located on the same parcel as the existing dwelling the clause should require, by condition of consent, the lots to be consolidated.

(1) The objectives of this clause are as follows:

- (a) to minimise unplanned rural residential development, and
- (b) to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones.

(2) This clause applies to land in the following zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (c) Zone RU3 Forestry,
- (d) Zone RU4 Rural Small Holdings,
- (e) Zone RU6 Transition,
- (f) Zone E2 Environmental Conservation,
- (g) Zone E3 Environmental Management.
- (h) Zone E4 Environmental Living

**Drafting direction.**

If any of the above rural or environmental protection zones are zones in the Plan but are excluded from the application of this clause, they should be omitted from subclause (2). Zones where dwellings are prohibited are not to be included (e.g. E1 National Parks and Nature Reserves).

- (3) Development consent must not be granted for the erection of a dwelling house on a lot in a zone to which this clause applies, and on which no dwelling house has been erected, unless the lot is:
- (a) a lot that is at least the minimum lot size specified for that lot by the Lot Size Map, or
  - (b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
  - (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
  - (d) an existing holding.

**Note.** A dwelling cannot be erected on a lot created under clause 9 of *State Environmental Planning Policy (Rural Lands) 2008* or clause 4.2.

**Drafting direction.**

If the intention is to permit secondary dwellings or dual occupancies as well as dwelling houses, then the specific types of dwellings for which the clause is to apply should be listed and the heading of the clause altered.

Paragraph (d) should be included only if the council's current planning controls contain a provision for the erection of dwellings on an existing holding/parcel or a like provision in an existing EPI that relates to land ownership being held at a certain date. The Council may choose to sunset this provision within a specified time period.

- (4) Land ceases to be an existing holding for the purposes of subclause (3)(d), if an application for development consent referred to in that subclause is not made in relation to that land before *[insert date]*

**Drafting direction.** The intention of this subclause is to provide a sunset on when applications in relating to existing holdings may be made so that dwellings can no longer be erected on existing holdings after the date specified in this subclause. (This subclause may be omitted if a sunset provision is not required and if so, the following subclauses should be renumbered.)

- (5) Despite any other provision of this clause, development consent may be granted for the erection of a dwelling house on land in a zone to which this clause applies if:
- (a) there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house, or
  - (b) the land would have been a lot or a holding referred to in subclause (3) had it not been affected by:
    - (i) a minor realignment of its boundaries that did not create an additional lot, or
    - (ii) a subdivision creating or widening a public road, public reserve or for another public purpose, or

(iii) a consolidation with adjoining public road, a public reserve or for another public purpose.

**Drafting direction.**

If subclause (3) (d) is not adopted, “or a holding” should be removed from subclause (5) (b).

(6) In this clause:

**existing holding** means all adjoining land, even if separated by a road or railway, held in the same ownership:

- (a) on [*insert date*], and
- (b) at the time of lodging a development application for the erection of a dwelling house under this clause, and includes any other land adjoining that land acquired by the owner since [*insert date*].

**Note.** The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

**Drafting directions.**

If subclause (3) (d) is not adopted, subclause (6) is not required.

If subclause (6) is required, the date to be inserted in paragraph (a) is the date that currently appears in the current planning controls applying to the land.

It is optional for the Council to include or exclude the words below subclause (6) (b).

A paragraph (c) may be included in subclause (6) to limit the definition of existing holdings to a specific part of the LGA.

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