

(Clause 4.6 Variations)

Prepared by



For Mr & Mrs Charlton

Lot 12 DP 851360

198 Wangat Trig Road

Bandon Grove NSW 2420



1. INTRODUCTION

This is a written request pursuant to Clause 4.6 - Exceptions to Development Standards of the Dungog Local Environmental Plan 2014.

The development standard for which the variation is sought relates to:
Clause 6.11 - Dual occupancies (detached) in Zone RU1.

This request has been prepared in accordance with:

- The relevant considerations in Clause 4.6 of the LEP.
- The matters in Appendix 3 of the NSW Department of Planning and Infrastructure publication Varying Development Standards: A Guide August 2011 (the Guidelines).
- The five-part test referred to in the Guidelines

2. DESCRIPTION OF PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1. What is the name of the environmental planning instrument that applies to the land?

Dungog Local Environmental Plan 2014

2.2. What is the zoning of the land?

The land is zoned RU1 Primary Production.

2.3. What are the objectives of the zone?

The objectives of the RU1 zone are:

- 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 provide for recreational and tourist activities that are compatible with the agricultural, environmental and conservation value of the land.
- To promote the rural amenity and scenic landscape values of the area and prevent the silhouetting of unsympathetic development on ridgelines.

2.4. What is the development standard being varied?

Dual occupancies (detached) in Zone RU1

2.5. Is the development standard a performance-based control?

No.

Clause 4.3 of the LEP represents a development standard and not a 'prohibition' in respect of development.

2.6. Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under part 6 'Additional local provisions' of the LEP.

2.7. What are the objectives of the development standard?

Under Clause 6.11 of the LEP, the objectives of the development standards are:

- (a) to provide alternative accommodation for rural families and workers,
- (b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land.

2.8. What is the numeric value of the development standard in the environmental planning instrument?

According to Clause 6.11 of the LEP, the proposed dual occupancy should be within 100m of an existing dwelling on the site.

There is also a non-numeric value that is being requested to be varied.

Part 3c notes, "the 2 dwellings have shared infrastructure, including fire breaks, water supply, electricity supply, sewage disposal and management, stormwater drainage and suitable vehicle access".



The two dwellings will share a driveway into the site with the new dwellings access driveway turning off about 150m into the site to enable the best use of the topography for access of fire fighting vehicles as per the standards.

The remaining infrastructure would be completely independent due to the sloping nature of the site and existing creek between the two dwellings. As the proposed dwelling has been designed to be self sufficient there will be no laying or erecting of supply's of water or electricity to the new dwelling from the existing.

2.9. What is the proposed numeric value of the development standard in the development application?

With reference to the drawings by Blencowe Design the location that has been chosen for the erection of the dual occupancy to best work with the solar north, existing site topography, to ensure minimal environmental impact and a lower BAL level to protect human life in the event of a Bushfire is under 145m.

2.10. What is the percentage variation between the proposal and the environmental planning instrument?

The percentage variation to the 100m separation control is in the order of 45%.

3. ASSESSMENT OF THE PROPOSED VARIATION

3.1. Overview

Clause 4.6 - Exceptions to development standards establishes the framework for varying development standards applying under an LEP. Clause 4.6 of the LEP provides as follows:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).



(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 2.8, 6.1 or 6.2.

3.2 Response to Clause 4.6 Matters

Clause 4.6 - Exceptions to development standards establishes the framework for varying development standards applying under an LEP

In consideration of subclause (1):

A clear aim of Clause 4.6 is for flexibility in the application of a planning control where it can be demonstrated that strict compliance is unreasonable and unnecessary.

This proposal relies on such flexibility to have the development approved at the increased separation distance and with the approval of separate services to ensure the most successful self-sufficient outcome while protecting the existing natural environment with not removing any of the existing rainforest.

Flexibility in this matter would result in a better development outcome for and from the development for the reasons outlined in support of subclause (3) below.

In consideration of subclause (2):

A variation to the maximum separation and shared services is a development standard that may be considered within the ambit and operation of this clause and does not seek approval for anything that is expressly excluded from this clause.

In consideration of subclause (3):

The matters contained in subclause {3}{a) and {b) are addressed in detail in Sections 3.2 and 3.3 below.

In consideration of subclause (4):

The information submitted in Sections 3.3 to 3.9 below provides reasonable justification to contravene the development standard.

In consideration of subclause (5):

The matters contained in subclause (5){a) to {c) are addressed in Sections 3.3 to 3.9 below.

In consideration of subclause (6):

The proposal does not involve the subdivision of land. As such, subclause (6) is not relevant.

In consideration of subclause (7):

The requirements of subclause (7) are a matter for Council as the consent authority.

In consideration of subclause (8):

The proposal does not involve any of the matters referred to in {a) to {ca) above. As such, subclause (8) above is not relevant.

3.3 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the 100m separation control is unreasonable or unnecessary in this circumstance for the following reasons:

- As per the 'Figure 1' attached to this section, if the 100m separation was made to be upheld the most logical location of the dwelling would require over 3000m² of existing rainforest and fauna habitat to be removed, partly for the dwelling and partly to lower the Bushfire rating to Bal 29 for added human safety.
- It would also result in the orientation of the dwelling to be facing north west to best suit the existing site topography which would result in a dwelling that would overheat in the warmer months and potentially under heat in the cooler months meaning a large energy load (and possibly grid power) would be required to maintain a safe and healthy internal environment.
- With the chosen location of the dwelling as per our submitted plans the existing rainforest and fauna will remain safe and untouched with the dwelling being located in an existing open grazing field.
- The proposed separation of less than 145m will still provide a look of grouped development on a single lot from the ariel view and if both dwellings can be seen from distant farms the difference between 100m separations and 145m will be very minimal.

A development that strictly complies with the shared services is unreasonable or unnecessary in this circumstance for the following reasons:

- There is an existing patch of rainforest with a natural creek that runs between the existing and proposed dwellings, if we were to connect the water supply, electricity supply, sewage disposal and management, and stormwater drainage to the existing dwellings locations this would mean running all of these services under or over the existing creek.
As the proposed dwelling has been designed to be self-sufficient and not be connected to the electricity grid it makes more sense to not connect all of these services to the existing dwelling and have the development be solely responsible for its own electrical, water and sewage needs.
- As the proposed development is on an opposing hillside to the existing dwelling a bushfire report and recommendations for its exact location will be followed and therefore the sharing of a fire break may not be relevant.
- The two dwellings will share the same site access point with a new driveway for the proposed dwelling veering off the main entrance driveway over 100m from the front boundary.
The new driveway to the proposed dwelling will be constructed to meet the Bushfire access requirements as outlined in the attached Bushfire assessment.

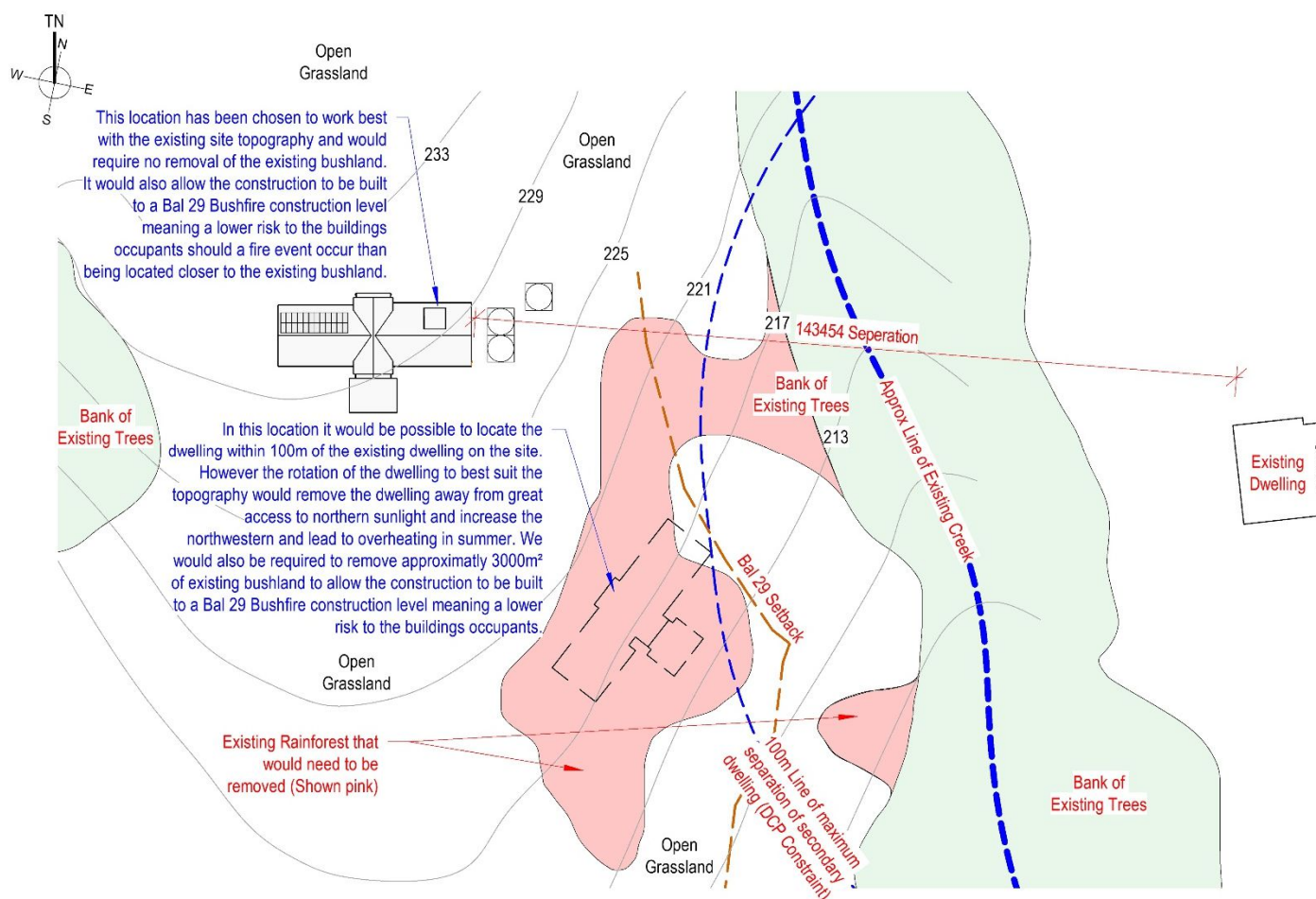


Figure 1

Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The underlying objective of the development is to provide a dwelling that is solely self-sufficient while remaining comfortable and healthy for its occupants. The rotated location of the dwelling would need to be fully assessed to understand the negative impact on the heating and cooling loads that would be imposed should the compliance be required. What ever the impact it would result in additional construction cost to provide additional shading and added insulation to windows, doors, walls and roof etc.

A development that strictly complied with the 100m separation control and shared services would not result in a more positive outcome for the site, surrounding properties or the local area.

3.4 Are there sufficient environmental planning grounds to justify contravening the development standard?

In the circumstances of the case, there are sufficient environmental planning grounds to justify a variation of the development standard. These are as follows:

- The proposal satisfies the objectives of the Zone RU1 Primary Production and the objectives of 6.11 - Dual occupancies (detached) in Zone RU1 by providing a dwelling for a family member of the lot owners that fits within the natural environment without removing it and will allow the lot to continue to fit into the local rural amenity.
- Furthermore, non-compliance with the standard does not contribute to unacceptable impacts to the

neighbouring lots, local environment and fauna, local rural amenity or future area development.

3.5 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

Objectives of the Dual occupancies (detached) in Zone RU1

The proposal remains consistent with the relevant objectives of the standard as explained below.

Objective (a): to provide alternative accommodation for rural families and workers.

The proposed dwelling is for the son (and his family) of the lot owners and therefor will allow an intergenerational rural family to live on the same lot to help with farming duties into the future as the lot owners age in place.

Objective (b): to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land.

The building as proposed would achieve reasonable integration in terms of scale and rural character and provide an additional farming shed for the working of the land.

3.6 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?

The contravention of the development standard does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

3.7 Is there public benefit in maintaining the development standard?

Public benefit would not suffer as a result of the variation to the maximum dwelling separation because we are in a rural context and the difference of a 100m and 140m separation would not really be perceivable from the closest viewable neighbouring property (over 1km way). Despite the increase in separation, there would be no discernible difference to the public use or appreciation of the site.

3.8 Is the objection well founded?

Based on the information outlined in previous sections, it is considered that the objection is well founded and that granting an exception to the development standard can be supported in the circumstances of the case.

4. CONCLUSION



The proposed variation is based on the reasons within this formal request to vary the dwelling separation control and the shared services control that applies to the subject land.

The proposed dwelling separation is considered appropriate in the context of surrounding development; the circumstances of the site; and the needs of the development.

The increased dwelling separation will not result in unacceptable impacts with regard to the amenity of adjoining properties, or the broader area.

A development that strictly complies with the development standard would not necessarily improve the amenity of surrounding land uses and will not result in an appropriate or better response to the site and its characteristics.

The proposed departure from the development standard is not likely to result in an unacceptable precedent given the particular site circumstances and surrounding development pattern.

It is concluded that the variation to the dwelling separation and shared services is well founded and that compliance with the standard is unnecessary and unreasonable in the circumstances of the case.