

REQUEST TO VARY DEVELOPMENT STANDARD

DUNGOG LEP 2014

CLAUSE 4.1 – MINIMUM SUBDIVISION LOT SIZE

**1501 PATERSON RIVER ROAD, MOUNT RIVERS, NSW
2311
(LOT: 20 DP1125086)**

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EXECUTIVE SUMMARY

Perception Planning Pty Ltd have prepared this submission because of a variation to a development standard at 1501 Paterson River Road, Paterson, NSW, 2311 (LOT: 2 DP1125086) (**'the site'**). It is noted that according to the NSW Planning Portal the address is known as 1501, whilst 1420 is recognised on Council records, both referring to the same Lot and DP.

This report has been prepared to support the Development Application for the subdivision of the site (1 into 2 Torrens Title Lots). The proposed development results in proposed Lot 201 measuring less than the minimum subdivision lot size (MLS) of 60 ha applicable to the land specified under Clause 4.1 of the Dungog Local Environmental Plan 2014 (**'DLEP'**).

The subdivision seeks to subdivide the Lot into two separate titles, to create Lot 201 which will contain the existing dwelling and ancillary structures and proposed Lot 202 which will contain an existing dam to service future development on site. No physical building works are proposed. The proposed size of Lot 201 will be 56.6ha which is 94.33% of the MLS of 60ha prescribed by the Lot Size Map of the LEP. The proposed variation to the development standard is 3.4ha or 5.66%. Lot 201 will have a compliant minimum lot size of 60ha. The development is compliant with Clause 4.6(6) of the DLEP, whereby:

Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production 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.

Clause 4.6 of the DLEP provides for an appropriate degree of flexibility in applying certain development standards such as minimum subdivision lot size to achieve better planning outcomes. In summary:

- The proposed boundary adjustment is consistent with the layout of the existing area, without burdening the essential services supply.
- The boundary adjustment is minor in scale and will create two lots that are largely unconstrained and have no adverse impacts on the serviceability of the subject or neighbouring sites.
- Despite the variation, the proposed development will achieve the objectives of the development standard and the objectives of the relevant land use zone being RU1 Primary Production.

This report demonstrates that the proposed development should not be refused on the basis of a variation to the minimum subdivision lot size resulting from the development.

TERMS AND ABBREVIATIONS

EP&A Act	Environmental Planning & Assessment Act 1979
EPI	Environmental Planning Instrument
DA	Development Application
DLEP	Dungog Local Environmental Plan
LGA	Local Government Area
MLS	Minimum Lot Size
SEPP	State Environmental Planning Policy
SEE	Statement of Environmental Effects

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SITE AND PROPOSED DEVELOPMENT

1. Describe the site.

The site is located at 1501 Paterson River Road, Paterson, NSW, 2311 shown in ('the site') and has a total area of 116.6ha (**FIGURE 1**). According to council records, the site is addressed as 1420 Paterson River Road, although the NSW Planning Portal Spatial Viewer among other platforms recognise the site as 1501 Paterson River Road. The site is located within an existing rural residential area, in Mount Rivers, within the Dungog Local Government Area (LGA).

The site currently contains an existing dwelling in the eastern portion of the site with an associated swimming pool, shed, and driveway. Further ancillary development in the form of sheds exist further north in the eastern portion of the site. Access for the existing dwelling is facilitated via an existing gravel driveway from Paterson River Road. The property is zoned RU1: Primary Production. The existing Lot is sized 116.6ha. The site consists of a varying topography, with areas of scattered vegetation, dams and managed grassland throughout

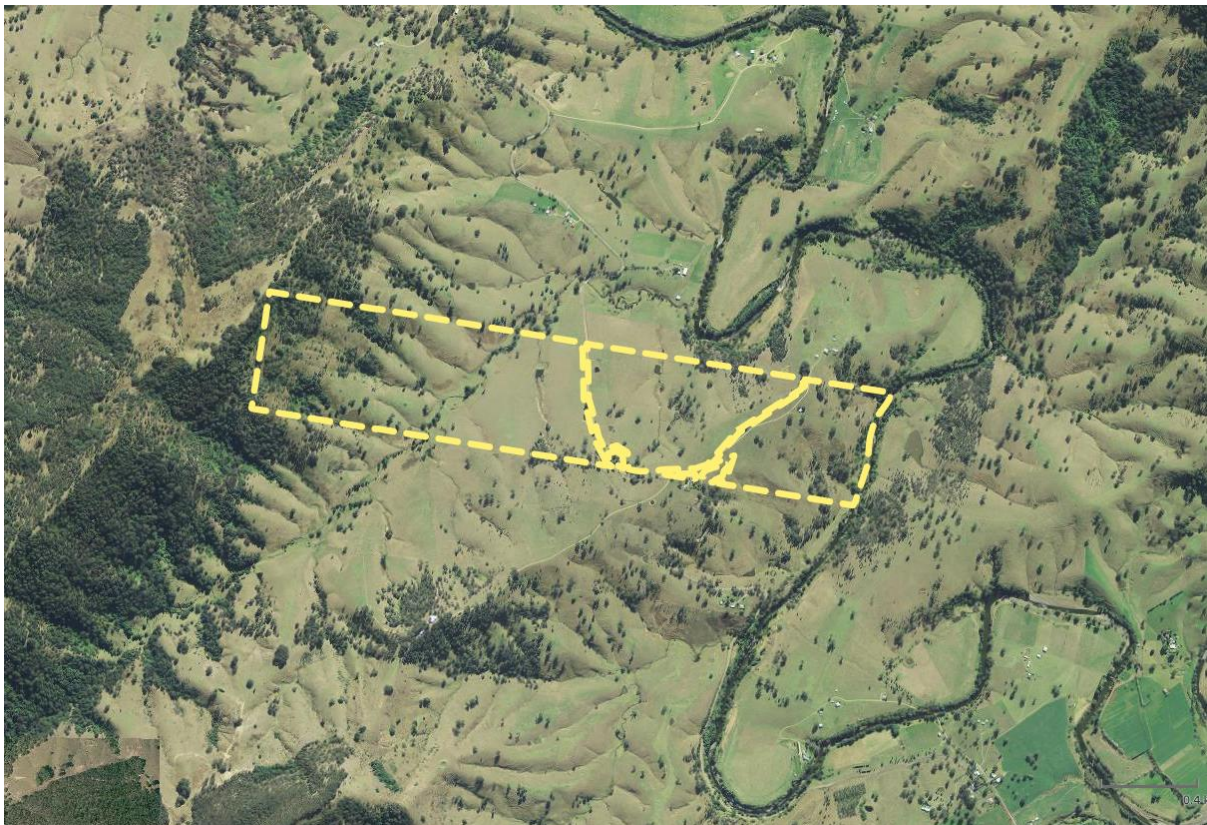


Figure 1: Satellite Image of Site (NSW ePlanning Spatial Viewer, 2025)

2. Describe the proposed development.

Key features of the proposed development include:

Proposed subdivision (one into two lots)

The proposed lots will have the following lot sizes:

- a. Proposed Lot 201 – 56.6ha
- b. Proposed Lot 202 – 60ha

The existing Lot is located within an area zoned for primary production purposes, consistent with the immediate locality. The proposed subdivision will result in one new lot with a new dwelling entitlement, which will continue to meet the objectives of the primary production zoning. It is therefore considered appropriate for the area in that it will have a minimal impact.

The proposed development results in a lot size of area less than the minimum subdivision lot size (MLS) applicable to the land specified under Clause 4.1 of the Dungog Local Environmental Plan 2014 ('DLEP').

The proposed size of Lot 201 will be 56.6ha which is 94.33% of the 60ha MLS prescribed by the Lot Size Map of the LEP. The proposed variation to the development standard is 3.4ha or 5.66%. Lot 202 will have a compliant minimum lot size of 60ha.

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the environmental planning instrument/s you are seeking to vary?

Dungog Local Environmental Plan 2014

4. What is the site's zoning?

RU1 Primary Production

5. Identify the development standard to be varied.

- *What is the development standard being varied?*

Minimum Subdivision Lot Size

- *What clause is the development standard listed in the EPI?*

Clause 4.1 – Minimum Subdivision Lot Size

- *What are the objectives of the development standard?*

The objectives of clause 4.1 are as follows:

- (a) *to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*
- (b) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls,*
- (d) *to ensure that lot sizes and dimensions allow dwellings to be sited to protect natural features and retain special features such as trees and views,*
- (e) *to protect and enhance waterways by restricting the creation of new riparian rights through subdivision so as to prevent increased direct access onto rivers.*

6. Identify the type of development standard.

The development standard is numerical.

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

60ha

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed size of Lot 201 will be 56.6 which is 94.33% of the 60ha MLS prescribed by the Lot Size Map of the LEP. The proposed variation to the development standard is 3.4ha or 5.66%. Lot 202 will have a compliant minimum lot size of 60ha.

FIGURE 2 demonstrates the proposed subdivision plan.

9. Visual representations of the proposed variation

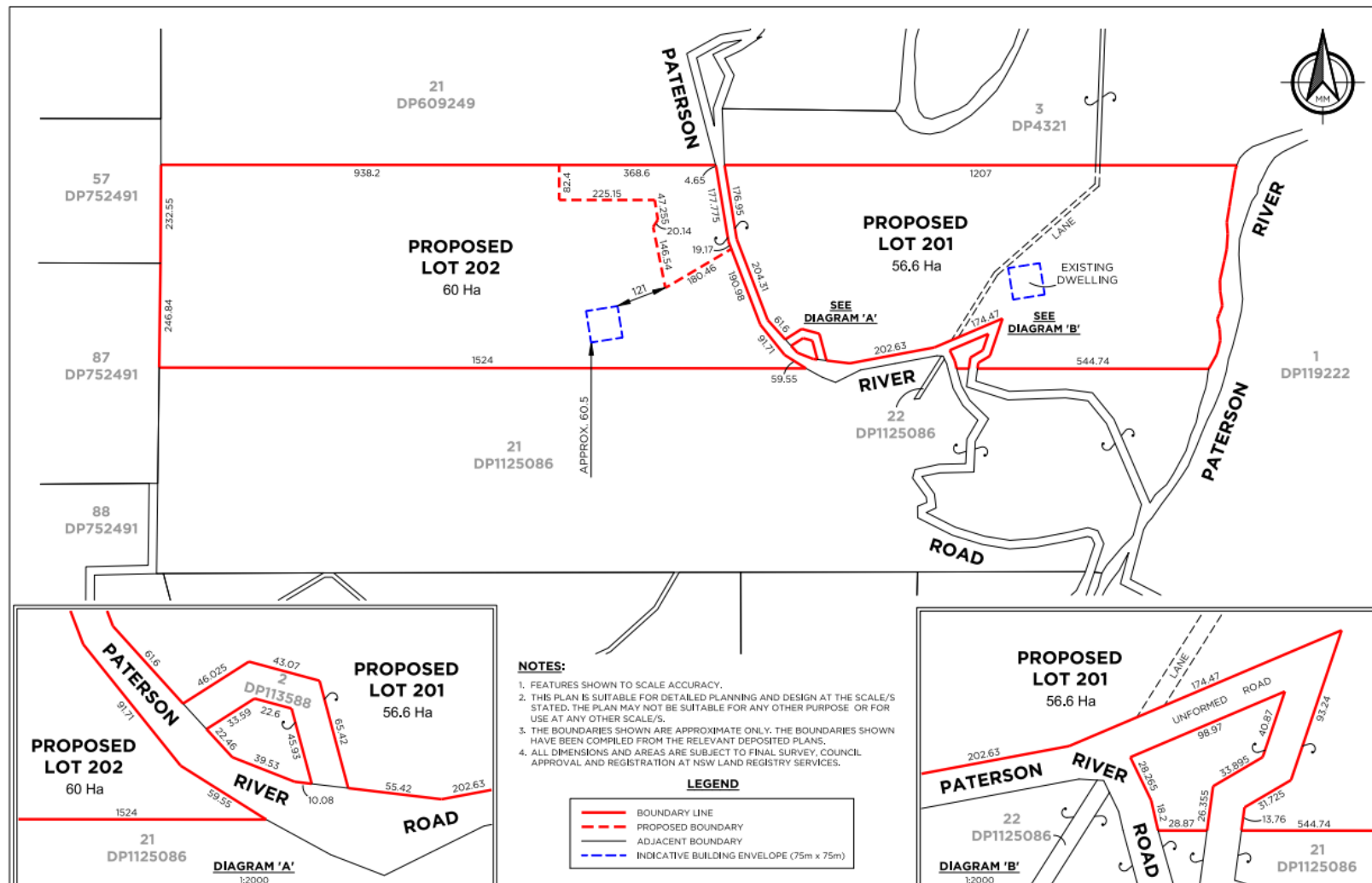


Figure 2: Proposed Subdivision Plan (Delfs Lascelles, 2025)

JUSTIFICATION FOR THE PROPOSED VARIATION

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

There are five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e), in accordance with the Five Part Test (*Wehbe vs Pittwater Council*). The five possible ways and associated assessment are set out in **TABLE 1** below. Two of them are relevant in this case.

Table 1: Development standard compliance assessment

<p><i>Are the objectives of the development standard achieved notwithstanding the non-compliance?</i></p>
<p>The first way is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The objectives of Clause 4.1 are:</p> <ul style="list-style-type: none"> <i>(a) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,</i> <i>(b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,</i> <i>(c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls,</i> <i>(d) to ensure that lot sizes and dimensions allow dwellings to be sited to protect natural features and retain special features such as trees and views,</i> <i>(e) to protect and enhance waterways by restricting the creation of new riparian rights through subdivision so as to prevent increased direct access onto rivers.</i> <p>a) The proposed size of Lot 201 will be 56.6ha which is 94.33% of the 60ha MLS prescribed by the Lot Size Map of the LEP. The proposed variation to the development standard is 3.4ha or 5.66%. Lot 202 will have a compliant minimum lot size of 60ha. Despite the minimum lot size variation, the proposed development is consistent with the existing subdivision pattern in the locality, with the site bordered by historic undersized lots. To this extent, it is considered that the minor variation of the development standard would result in consistency with the existing character of the locality.</p> <p>b) The proposed subdivision, including the locations of the proposed building envelopes are not anticipated to cause any impact to the amenity of neighboring properties</p> <p>c) The size of the lots resulting from the proposed subdivision are sufficient in size to meet the objectives of the RU1 – Primary Production zone, and all relevant DCP and LEP requirements have been addressed.</p> <p>d) The size of the lots resulting from the proposed subdivision are sufficient in size to avoid any impacts on natural features, trees and views. The proposed building</p>

<p>envelopes contain only grassland with no clearing required for future development. Due to the sites topography and size, as well as the nature of the existing development in the locality, it is not anticipated that views would be impacted as a result of the proposed subdivision and potential future development.</p> <p>e) N/A – whilst a riparian watercourse is mapped partially on the site, the proposed subdivision will not create new riparian rights and will not increase the access onto rivers.</p> <p>Taking the above into consideration, the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Thus, strict compliance with the standard is unnecessary in the circumstance of this case.</p>
<p><i>Are the underlying objectives or purpose of the development standard not relevant to the development?</i></p>
<p>N/A – Not relevant in this case.</p>
<p><i>Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)</i></p>
<p>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</p> <p>The underlying objective of the development standard is to present a subdivision where lot sizes can accommodate suitable development that is consistent with relevant development controls and promotes the ecologically, socially, and economically sustainable subdivision of land.</p> <p>Strict compliance with the development standard for minimum lot size would restrict and prevent the available land uses in contradiction to the objectives and permissible land uses of the zone.</p> <p>If the lot size and composition of the site was to be retained, the opportunity to create a more suitable lot layout which improves on the existing layout would be prevented.</p> <p>To this extent, the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</p>
<p><i>Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?</i></p>
<p>N/A – Not relevant in this case.</p>
<p><i>Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?</i></p>
<p>N/A – Not relevant in this case.</p>

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

Environmental planning grounds that justify contravening the development standard are detailed below.

Zone objectives and public interest

- The land use zone at the date of this report is RU1 Primary Production. The objectives of the zone include:
 - *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.*

Despite the variation, the development is in the public interest as is consistent with the above-mentioned objectives:

- The resultant lot layout will permit an additional lot that is capable of sustaining primary industry production and maintaining the natural resource base, therefore encouraging diversity in primary industry enterprise.
- Future development of the vacant proposed Lot 202 and use of the existing dwelling on proposed 201 will be more effectively facilitated by the proposed subdivision which will subsequently encourage employment opportunities for future development.
- The proposed subdivision will continue to promote the rural amenity and scenic landscape values of the area through the lack of adverse impacts identified.

The proposed variation results from the desire to create a more suitable lot layout to allow for the continued/future use of the site, that is in the public interest and, compliant with the DCP controls and objectives of the RU1 Primary Production zone.

The proposed subdivision, and resultant clause 4.6 variation has been applied to achieve subdivision of the land, which will in turn enable provision of a rural residential lot for development to meet the housing needs of the community, without compromising rural or agricultural capabilities of the land.

This variation sought to Clause 4.1 of the DLEP is considered acceptable in this instance as it will allow for a development that contributes to the zone objectives of the respective property owners.

12. Is there any other relevant information relating to justifying a variation of the development standard? *(If required)*

Not applicable.

CONCLUSION

In summary, through this Clause 4.6 analysis it has been found that:

- Strict adherence to the numerical minimum subdivision lot size development standard is unnecessary in the circumstances of the case.
- The proposed subdivision is consistent with the layout of the existing area, without burdening the essential services supply.
- Subdivision of the land will result in a more even distribution of land, increasing the size of an existing undersized lot to more closely aligning with the relevant minimum lot size.
- The proposed subdivision will have a positive economic and social impact on the surrounding community by creating opportunities for future development and subsequent short term construction jobs.
- There are negligible environmental or social impacts as a result of the proposed variation.