

REQUEST TO VARY DEVELOPMENT STANDARD

DUNGOG LEP 2014

**CLAUSE 6.11 – DUAL OCCUPANCIES (DETACHED) IN
ZONE RU1**

**509 FISHERS HILL ROAD, FISHERS HILL NSW 2421
LOT 14 DP14138**

Blake Sullivan Town Planner PO Box 107 Clarence Town, NSW, 2321		Phone: 0429 776 443 Email: blake@perceptionplanning.com.au		
PP Reference		J004962		
Prepared for (client)		Marcus & Ali Padmos		
Document Versions and Control				
Variation to development standard, 509 Fishers Hill Road, Fishers Hill				
Version	Date	PP ref	Author	Reviewed by
1	26/03/2026	Clause 4.6 (Cl.6.11) – 509 Fishers Hill Road, Fishers Hill	TS	HD
Disclaimer: This document may only be used for the purpose for which it was commissioned and in accordance with the contract between Perception Planning and the client. The scope of services by defined in consultation with the client by time and budgetary constraints imposed by the client, and the availability of reports and other data of the site. Changes to information, legislation and schedule are made on an ongoing basis and readers should obtain up to date information. Perception Planning accepts no liability or responsibility whatsoever for or in respect of any use of or reliance upon this report and its supporting material by any third party. Information provided is not identified to be suitable for a site-specific assessment or legal advice in relation to any matter. Unauthorised use of this report in any form is prohibited.				

EXECUTIVE SUMMARY

Perception Planning Pty Ltd have been engaged by Marcus & Ali Padmos (the client) to prepare this submission to vary a development standard at 509 Fishers Hill Road, Fishers Hill NSW 2421 (Lot 14 DP14138) (**the site**).

This report has been prepared to support a Development Application (DA) for the construction of a detached dual occupancy. Clause 4.6 of LEP 2014 provides for an appropriate degree of flexibility in applying certain development standards such as Clause 6.11 to provide improved environmental planning outcomes. In summary:

- Strict adherence to the Clause 6.11 Dual Occupancies (detached) in Zone RU1 development standard would be unreasonable and unnecessary in the circumstances of the case.
- The proposed building location is appropriate for the site context, including environmental features, and existing development. The proposed building location takes due consideration of environmental constraints.
- The proposed development integrates with the desired contemporary built form of the area.
- The proposed development provides an appropriate response to the context of the site and its location within Fishers Hill, along Fishers Hill Road.
- There are negligible environmental or social impacts as a result of the proposed variation.

This report demonstrates that the proposed development should not be refused on the basis of a variation to the Clause 6.11 development standard resulting from the proposed development.

TERMS AND ABBREVIATIONS

EP&A Act	Environmental Planning & Assessment Act 1979
EPI	Environmental Planning Instrument
DA	Development Application
HOB	Height of Buildings
LGA	Local Government Area
PSLEP	Port Stephens Local Environmental Plan
SEPP	State Environmental Planning Policy
SEE	Statement of Environmental Effects
VIA	Visual Impact Assessment

LIST OF TABLE AND FIGURES

Figure 1: Aerial image of the site (ePlanning Spatial Viewer, 2026)	7
Figure 2: Site plan of proposed development (source: Agcad, 2026)	8
Figure 3: Elevations (source: Agcad, 2026).....	9
Figure 4: Proposed site plan, showing existing and proposed dwelling (source: Agcad, 2026)	12
Figure 6: Proposed dwelling, with landscaping screening the frontage (source: Sorensen, 2025)	Error! Bookmark not defined.
Table 1: Development standard compliance assessment.....	13

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
TERMS AND ABBREVIATIONS	4
LIST OF TABLE AND FIGURES	4
SITE AND PROPOSED DEVELOPMENT	6
1. Describe the site	6
2. Describe the proposed development.	9
PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION	10
3. What is the environmental planning instrument/s you are seeking to vary?	10
4. What is the site's zoning?	10
5. Identify the development standard to be varied.	10
6. Identify the type of development standard.	10
7. What is the numeric value of the development standard in the environmental planning instrument?	11
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)?	11
9. Visual representation of the proposed variation	12
JUSTIFICATION FOR THE PROPOSED VARIATION	13
10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?	13
a) <i>Are the objectives of the development standard achieved notwithstanding the non- compliance?</i>	13
b) <i>Are the underlying objectives or purpose of the development standard not relevant to the development?</i>	14
11. Are there sufficient environmental planning grounds to justify contravening the development standard?	15
12. Is there any other relevant information relating to justifying a variation of the development standard? <i>(If required)</i>	17
CONCLUSION	18

SITE AND PROPOSED DEVELOPMENT

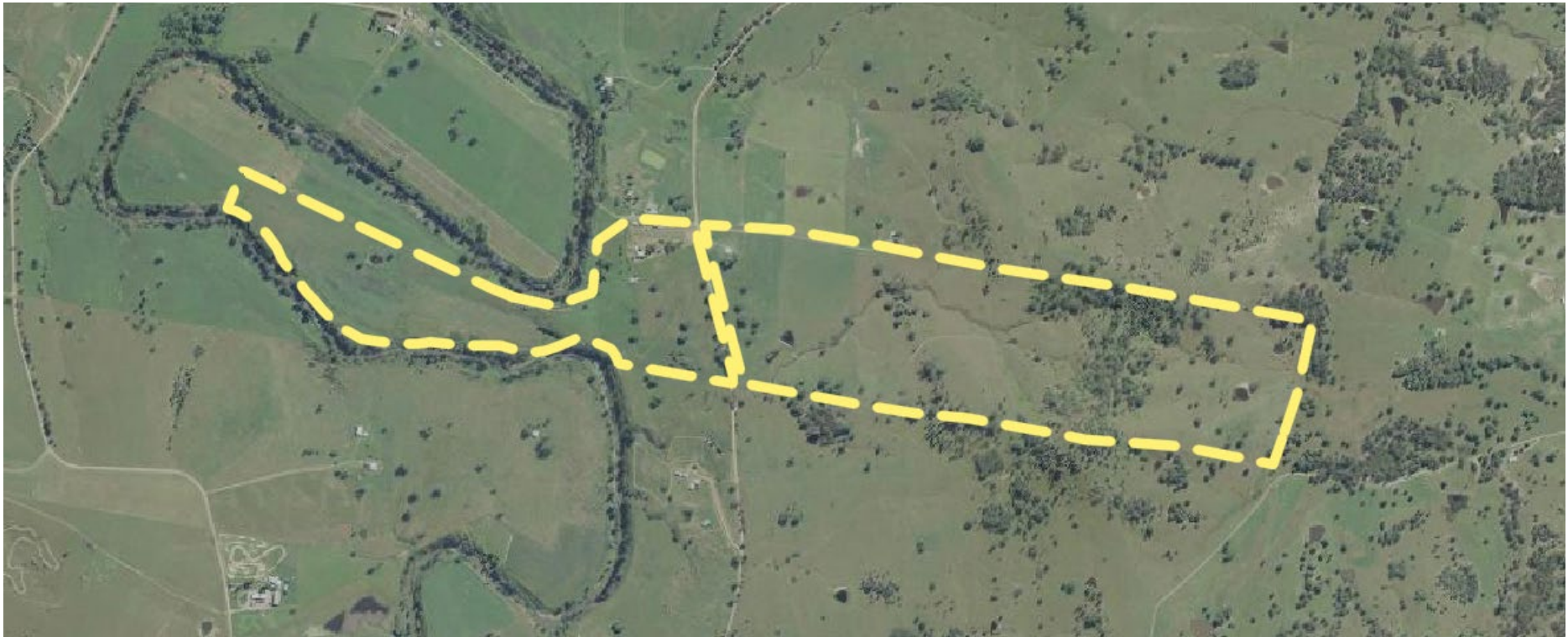
1. Describe the site.

The site is located at 509 Fishers Hill Road, Fishers Hill, NSW, 2421 (**'the site'**) and has a total area of 78.7ha (**FIGURE 1**). The site is located within an existing rural area located in the Dungog Local Government Area (LGA).

The site currently contains two dwelling houses, forming a dual occupancy, as well as ancillary development related to the sites residential and primary production uses.

The site gains legal and physical access via an unformed driveway off Fishers Hill Road. The site is of varying topography and is largely free of vegetation except for in the eastern portion of the site, away from the developed area.

Figure 1: Aerial image of the site (ePlanning Spatial Viewer, 2026)



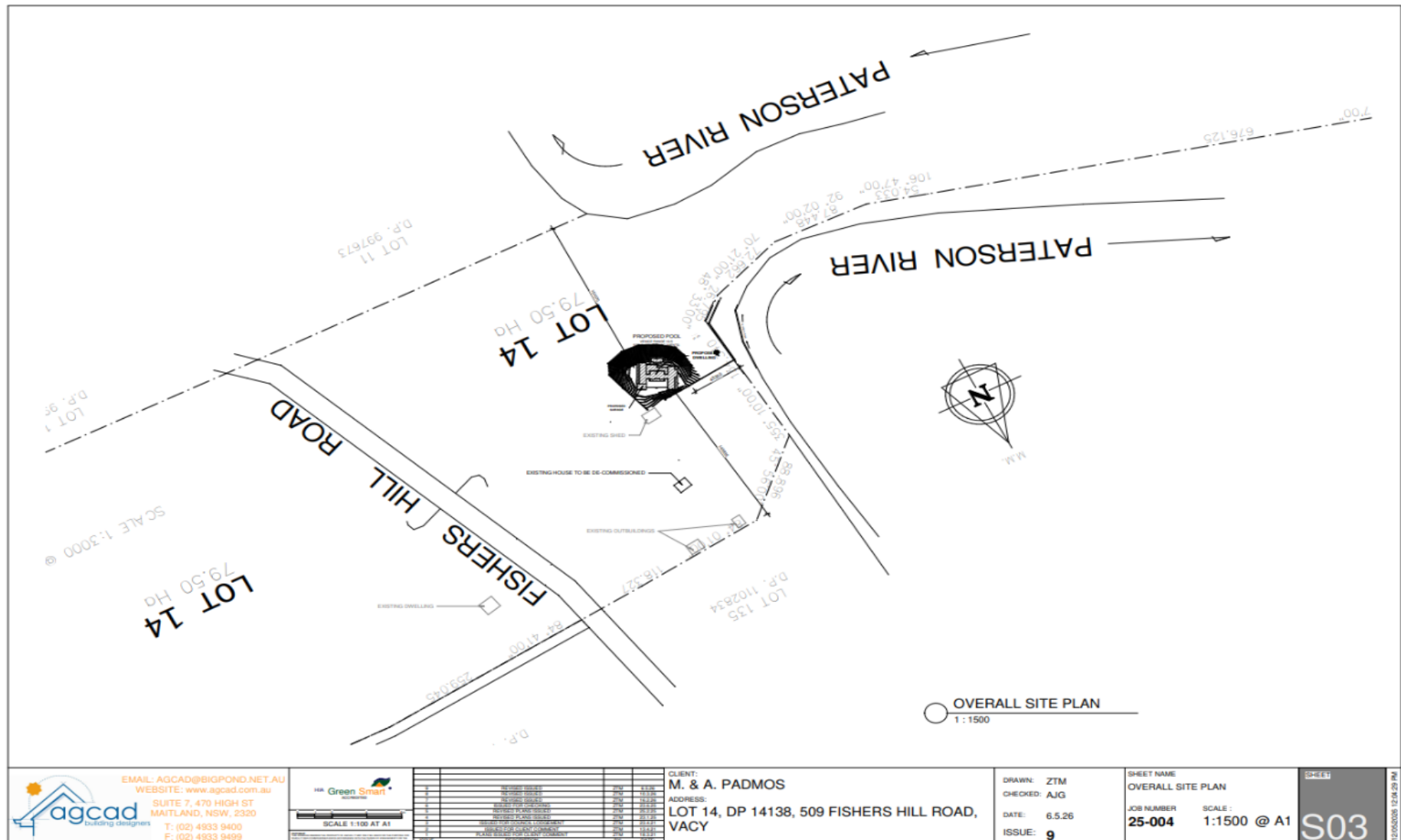


Figure 2: Site plan of proposed development (source: Agcad, 2026)

2. Describe the proposed development.

Development consent is sought for the construction of a detached dual occupancy (retention of one existing dwelling and decommissioning of another). Further details are provided within the Architectural Plans at **APPENDIX 2**. The proposed development consists of a single storey dwelling, with four bedrooms.



Figure 3: Elevations (source: Agcad, 2026)

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?*

Dual occupancies (detached) in Zone RU1

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

Clause 6.11 – Dual occupancies (detached) in Zone RU1

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

The objective of clause 6.11 is as follows:

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

- (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.*

6. Identify the type of development standard.

The development standard is both numeric and non-numeric.

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

As discussed, the development standard is both numeric and non-numeric. Notwithstanding this, the requirements are provided below.

(3) Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land to which this clause applies unless the consent authority is satisfied that—

- (a) the development is sited and designed in such a way as to give the development the appearance of a unified and consistent built form, and*
- (b) the dwellings will be located within 100 metres of each other, and*
- (c) the 2 dwellings have shared infrastructure, including fire breaks, water supply, electricity supply, sewage disposal and management, stormwater drainage and suitable vehicle access, and*
- (d) the development is on land that is physically suitable for the erection of the dwellings.*

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)?

With respect to subclause (3)(b), the proposed dwelling and retained dwelling are sited approximately 245m apart, representing a 145% variation.

9. Visual representation of the proposed variation

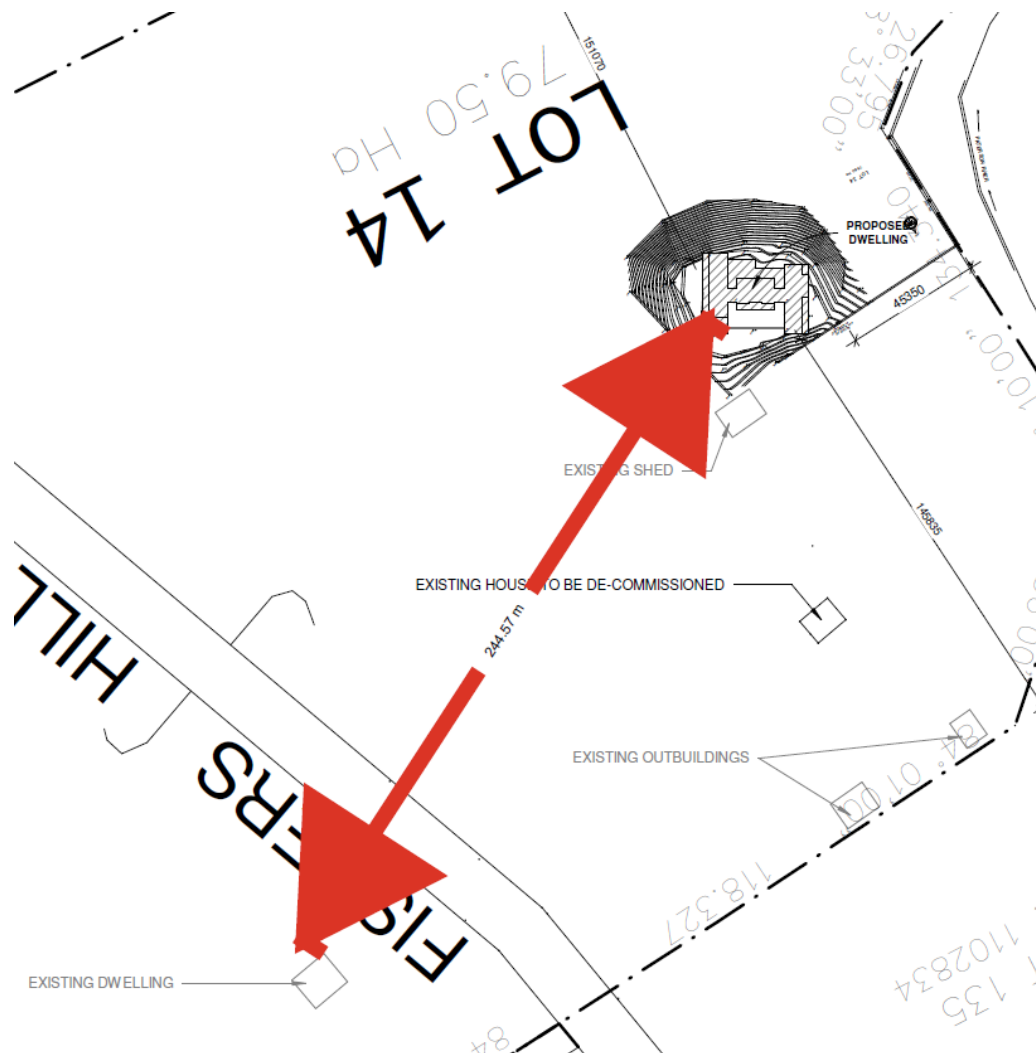


Figure 4: Proposed site plan, showing existing and proposed dwelling (source: Agcad, 2026)

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. One of them are relevant in this case.

Table 1: Development standard compliance assessment

<i>a) Are the objectives of the development standard achieved notwithstanding the non-compliance?</i>
This request seeks to vary 6.11(3)(b), as follows: <i>(b) the dwellings will be located within 100 metres of each other, and</i> The remaining sub clauses have been complied with, and do not seek to be varied, noting that the proposed development causes little change to the existing arrangements on site; Clause 6.11(3)(a) The development maintains a unified and consistent built form appropriate to the rural context. The dwellings are located on a single landholding and, despite the physical separation influenced by the site configuration and intervening road, will continue to function as a single rural development. Clause 6.11(3)(c) The dwellings share common infrastructure, including access arrangements and services. The proposed dwelling utilises existing access and is capable of being serviced in conjunction with the existing development, consistent with the intent of the clause. Clause 6.11(3)(d) The site is physically suitable for the erection of the proposed dwelling, having regard to access, servicing, and environmental constraints. The proposal represents an orderly and logical use of the land. 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 6.11 is: (1) <i>The objectives of this clause are as follows—</i> <i>(a) to provide alternative accommodation for rural families and workers,</i> <i>(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.</i> <i>(a) the development is sited and designed in such a way as to give the development the appearance of a unified and consistent built form, and</i>

The subject site currently contains an existing dual occupancy, with the two dwellings located approximately 200m apart and separated by a public road. Accordingly, the existing development does not comply with the 100m separation requirement.

The proposal does not introduce an additional dwelling or a new pattern of development. Rather, it involves the decommissioning of one existing dwelling and the construction of a replacement dwelling, maintaining a dual occupancy on the land.

The proposed dwelling is sited in proximity to existing access and ancillary development, representing a logical and orderly development outcome that responds to the constraints and configuration of the site, including the presence of the road bisecting the property.

In this context, the separation distance between the retained dwelling and the proposed dwelling (approximately 245m) does not result in any additional fragmentation or dispersal of development beyond that which already exists on the site. The development will continue to function as a single rural landholding, with no subdivision proposed.

The underlying purpose of Clause 6.11(3)(b) is to ensure that dual occupancy development maintains a clustered and unified form, avoiding scattered rural development and inefficient infrastructure provision. This objective is achieved in this instance, as the proposal:

- maintains only two dwellings on the land,
- does not introduce additional development intensity, and
- utilises existing access and infrastructure,

noting that the existing separation between dwellings already exceeds the prescribed standard.

Strict compliance with the 100m separation requirement would not result in a superior planning or environmental outcome in this instance and would unnecessarily constrain the orderly development of the land given the established development pattern.

Accordingly, it is considered that compliance with Clause 6.11(3)(b) is unreasonable and unnecessary in the circumstances, as the objectives of the development standard are achieved notwithstanding the numerical non-compliance.

b) Are the underlying objectives or purpose of the development standard not relevant to the development?

The underlying objectives of Clause 6.11 are relevant to the proposed development. In this instance, the proposal has been designed having regard to these objectives, and it is considered that they are achieved notwithstanding the numerical non-compliance with the separation requirement. Accordingly, this test is not relied upon in support of the variation.

c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)

In this instance, strict compliance with the 100 metre separation requirement would necessitate relocating the proposed dwelling closer to Fishers Hill Road. As demonstrated

in the submitted plans, this would result in non-compliance with the applicable DCP front setback control (50 metres), creating a new planning non-compliance that does not currently arise under the proposed design.

Further, relocating the dwelling to achieve compliance would result in a more dispersed and less coherent development pattern across the site, contrary to the objective of Clause 6.11(3)(a), which seeks a unified and consistent built form.

Accordingly, strict compliance with Clause 6.11(3)(b) would give rise to an internal inconsistency in the planning framework, whereby compliance with one control would directly lead to non-compliance with others and a poorer overall planning outcome.

In this regard, compliance with the development standard is considered unreasonable, as it would defeat the underlying objective of achieving a cohesive and orderly development outcome.

d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?

There is no evidence to suggest that the development standard has been virtually abandoned or destroyed through the consent authority's past decisions, and this test is not relied upon in support of the variation.

However, it is noted that strict compliance with the development standard in this instance would result in an internal inconsistency within the planning framework. As outlined above, achieving compliance with the 100 metre separation requirement would necessitate siting the proposed dwelling closer to Fishers Hill Road, resulting in non-compliance with the applicable DCP front setback control.

This reinforces that strict adherence to the development standard would not result in a superior planning outcome and would instead give rise to additional non-compliances.

e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?

This test considers whether the zoning of the land is unreasonable or inappropriate, such that a development standard applying to that zone is also unreasonable or unnecessary. In this instance, the RU1 Primary Production zoning of the site is appropriate having regard to the surrounding locality and the nature of development in the area. The proposed development is permissible within the zone and is consistent with its objectives. Accordingly, this test is not relied upon in support of the variation.

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.

Architectural Design, Amenity, Site Characteristics and Visual Impact

- The proposed dwelling is sited within the established developed portion of the site, adjoining existing built form and utilising the existing access arrangements. This clustering of development ensures the proposal reads as a cohesive rural residential grouping, notwithstanding the separation distance between dwellings.
- The development is well setback from Fishers Hill Road (in excess of 140m), consistent with the requirements of the DCP. Combined with the scale of the allotment and intervening vegetation, the proposed dwelling will have minimal visual prominence from the public domain. As such, the development will not materially alter the perceived character of the site or locality. It is also noted that strict compliance with the 100 metre separation requirement would necessitate relocating the dwelling closer to Fishers Hill Road, resulting in non-compliance with Council's DCP front setback controls and a less appropriate planning outcome. The proposed dwelling is single storey in form and adopts a scale and design consistent with the existing dwelling and surrounding rural development. This ensures the built form does not dominate the landscape and maintains the rural character of the locality, while providing a positive architectural contribution to the area.
- While the separation between dwellings exceeds the 100m requirement, both dwellings are located within the same general development envelope of the site, being the area already disturbed and serviced, and separated from environmentally constrained portions of the land. This reflects a logical and site-responsive design outcome having regard to topography, access, and environmental constraints.
- The proposed siting avoids unnecessary disturbance of undeveloped or environmentally sensitive areas of the site and utilises existing infrastructure, including access and electricity. This reinforces that strict compliance with the development standard would not result in a superior environmental or visual outcome.
- Overall, the proposed development will maintain the existing rural character of the site, achieve an appropriate level of amenity, and present as a cohesive and compatible form of development within the locality, notwithstanding the numerical non-compliance.

Zone objectives and public interest

- The land is zoned RU1 Primary Production. The objectives of this zone are:
 - o To encourage sustainable primary industry production by maintaining and enhancing the natural resource base;
 - o To maintain the rural landscape character of the land;
 - o To minimise fragmentation and environmental impacts associated with rural development; and
 - o To provide for a range of compatible land uses.
- The proposed development is consistent with the above objectives. The development maintains the rural landscape character of the site through its low scale, substantial setbacks, and siting within the existing developed portion of the landholding. The

proposal does not result in fragmentation of the land or compromise its primary production potential, noting the large lot size (~78.7ha) and established use of the site for rural residential purposes.

- The proposal represents a compatible land use within the locality, being a dwelling associated with an existing rural holding. The development will not adversely impact the surrounding environment or rural character and is consistent with the pattern of development in the area.
- In this regard, the proposed development is in the public interest as it is consistent with both the objectives of the RU1 zone and the objectives of Clause 6.11. The proposal facilitates the orderly and economic use of land for a permissible purpose, without giving rise to adverse environmental or land use conflict outcomes.

Natural Environment

- The proposed variation is supported by sufficient environmental planning grounds. The site is subject to a range of environmental constraints, including flood affected land and mapped wetlands within parts of the allotment.
- The proposed dwelling has been sited within the existing developed portion of the site, on land that is not subject to flooding risk. Relocating the dwelling to achieve strict compliance with the 100m separation requirement would necessitate siting the development closer to flood affected areas, increasing risk to life and property and resulting in an inferior planning outcome.
- Further, portions of the site are affected by mapped wetlands and associated environmental constraints. Siting development closer to these areas would increase the potential for adverse environmental impacts. The proposed location avoids these constraints and minimises disturbance to environmentally sensitive land.
- Accordingly, strict compliance with the development standard would not achieve a better environmental outcome and, in fact, has the potential to create conflict with other relevant provisions of the LEP relating to flood risk and environmental protection.
- The proposed development in its current form ensures that all key components of the development, including access, servicing and on-site wastewater management, are located on suitable, unconstrained land. This represents a more appropriate and considered planning outcome.

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

The proposed variation arises from the existing configuration of the site, which already contains a dual occupancy with a separation distance exceeding the development standard. The proposal does not introduce an additional dwelling or increase development intensity but rather replaces one existing dwelling while maintaining two dwellings on the land.

The siting of the proposed dwelling responds to the physical and environmental constraints of the site, including the presence of a public road bisecting the land, flood affected areas, and mapped wetlands. The proposed location represents a logical and orderly development outcome, utilising existing access and infrastructure while avoiding environmentally constrained land.

In this context, strict compliance with the development standard would not result in a superior planning or environmental outcome and may in fact give rise to additional constraints. The variation is therefore considered appropriate in the circumstances of the case.

CONCLUSION

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

- Strict compliance with Clause 6.11(3)(b) of the Dungog LEP 2014 is unreasonable and unnecessary in the circumstances of the case, noting the site already contains an existing dual occupancy that exceeds the prescribed separation distance.
- The proposal does not introduce an additional dwelling or increase development intensity, but rather involves the replacement of an existing dwelling, maintaining two dwellings on the land.
- The proposed dwelling is appropriately sited having regard to the existing development pattern, access arrangements, and environmental constraints of the site, including the presence of a public road, flood affected land and mapped wetlands.
- The objectives of Clause 6.11 and the RU1 Primary Production zone are achieved notwithstanding the numerical non-compliance, with the development maintaining the rural character of the locality and representing a compatible and orderly use of the land.
- The proposed variation will not result in adverse environmental, social or amenity impacts, and strict compliance would not lead to a superior planning outcome.

Accordingly, there are sufficient environmental planning grounds to justify the contravention of the development standard, and the proposal is considered to be in the public interest.