

PLANNING DEPARTMENT

3. PLANNING PROPOSAL – AMENDMENT TO CLAUSE 4.2a(3)(F) OF DUNGOG LOCAL ENVIRONMENTAL PLAN 2014

FILE NO: EF15/123

H Extract Dungog LEP 2014 – Clause 4.2A

ANNEXURES: I Extract from 2011 and 2013 draft LEP Exhibition

J Draft Planning Proposal

AUTHOR: Senior Town Planner/Development Officer

PROPOSAL: Amendment to Clause 4.2a(3)(F) of Dungog Local Environmental Plan 2014 as it Relates to the Permissibility of Dwelling Houses and Dual Occupancy Development on Existing Holdings

OFFICERS RECOMMENDATION:

1. That Council resolve to amend Dungog Local Environmental Plan 2014, pursuant to Section 3.33 of the Environmental Planning and Assessment Act 1979, in order to amend clause 4.2A(3)(f) as follows:
 - (3) Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot on which the dwelling is to be erected:
 - (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land on which the dwelling house or dual occupancy is proposed, or
 - (b) is a lot created under this Plan (other than under clause 4.1B or clause 4.2 (3)), or
 - (c) is a lot created before this Plan commenced and:
 - (i) the erection of a dwelling house was permissible on that lot, and
 - (ii) no development standards limiting the power to grant development consent for the erection of a dwelling house applied to that lot, before that commencement, or
 - (d) is 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 or a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (e) is an existing holding, or
 - (f) would have been a lot or a holding referred to in paragraph (a), (b), (c), (d) or (e) had it not been affected by:

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- (i) a minor realignment of its boundaries that did not create an additional lot, or
- (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or
- (iii) a consolidation with an adjoining public road or public reserve or for another public purpose.

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.

2. That Council forward the draft planning proposal to the Minister for Planning for Gateway Determination pursuant to Section 3.34 of the EP&A Act 1979.
3. That Council advise the Director-General of Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 3.36 of the EP&A Act 1979.
4. That Council consult with the community and relevant government agencies as instructed by the Gateway Determination.
5. Receive a report back on any planning proposal to which a written objection is received during consultation with the community as per the requirements of Section 3.34 of the EP&A Act 1979, otherwise forward the revised planning proposal to the Department of Planning and Environment requesting to make the proposed amendments to Dungog LEP 2014.

Precis:

Clause 4.2A of Dungog LEP 2014 contains provisions relating to the granting of consent for dwelling houses or dual occupancy development within rural and environmental zones and subclause (3)(a) to (f) sets out the criteria that must be met. One of the criteria is if the land is an 'existing holding'. Under the current provisions of clause 4.2A, a dwelling entitlement on an existing holding is lost if the existing holding is subject to a minor realignment of its boundaries (no new lots created), or modified through a subdivision or consolidation with adjoining land for a public purpose. The purpose of this report and the attached Planning Proposal is to amend clause 4.2A(3)(f) of Dungog LEP 2014 to enable an 'existing holding' to be modified by a minor realignment of its boundaries, or modified through a subdivision or consolidation with adjoining land for a public purpose, without extinguishing its dwelling entitlement.

RESOLUTION

37907	<ol style="list-style-type: none">1. That Council resolve to amend Dungog Local Environmental Plan 2014, pursuant to Section 3.33 of the Environmental Planning and Assessment Act 1979, in order to amend clause 4.2A(3)(f) as follows:<ul style="list-style-type: none">(3) Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot on which the dwelling is to be erected:<ul style="list-style-type: none">(a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land on which the dwelling house or dual occupancy is proposed, or(b) is a lot created under this Plan (other than under clause 4.1B or clause 4.2 (3)), or
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	<p>(c) is a lot created before this Plan commenced and:</p> <ul style="list-style-type: none">(i) the erection of a dwelling house was permissible on that lot, and(ii) no development standards limiting the power to grant development consent for the erection of a dwelling house applied to that lot, <p>before that commencement, or</p> <p>(d) is 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 or a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or</p> <p>(e) is an existing holding, or</p> <p>(f) would have been a lot or a holding referred to in paragraph (a), (b), (c), (d) or (e) had it not been affected by:</p> <ul style="list-style-type: none">(i) a minor realignment of its boundaries that did not create an additional lot, or(ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or(iii) a consolidation with an adjoining public road or public reserve or for another public purpose. <p>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.</p> <p>2. That Council forward the draft planning proposal to the Minister for Planning for Gateway Determination pursuant to Section 3.34 of the EP&A Act 1979.</p> <p>3. That Council advise the Director-General of Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 3.36 of the EP&A Act 1979.</p> <p>4. That Council consult with the community and relevant government agencies as instructed by the Gateway Determination.</p> <p>5. Receive a report back on any planning proposal to which a written objection is received during consultation with the community as per the requirements of Section 3.34 of the EP&A Act 1979, otherwise forward the revised planning proposal to the Department of Planning and Environment requesting to make the proposed amendments to Dungog LEP 2014.</p> <p>Moved: Cr S Low, Seconded: Cr J Connors.</p> <p style="text-align: right;">Carried.</p>
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The Mayor in accordance with Section 375A of the Local Government Act called for a Division. The Division resulted in 9 for 0 against as follows:

<i>For: Crs Norman, Rayward, Connors, Riley, Murphy, Booth, Wall, Lyon, Low.</i>
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BACKGROUND

Council's Standard Instrument LEP, Dungog LEP 2014 came into force on 1 June 2014. Clause 4.2A of Dungog LEP 2014 contains provisions relating to the granting of consent for dwelling houses or dual occupancy within the RU1 Primary Production zone, the E3 Environmental Management zone and the E4 Environmental Living zone. A copy of clause 4.2A is included in **Annexure 'H'**. Subclause (3)(a) to (f) sets out the criteria that must be met for a dwelling or dual occupancy to be granted consent on vacant land within one of the relevant zones. One of the criteria is if the land is an 'existing holding'. The term 'existing holding' is specifically defined within the clause (see Annexure A).

Subclause (3)(f) provides some flexibility in that a dwelling or dual occupancy can still be granted consent even if the lot or holding has 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 or public reserve or for another public purpose, or*
- (iii) *a consolidation with an adjoining public road or public reserve or for another public purpose.*

However, due to the wording of subclause (3)(f), this flexibility does not apply to an existing holding that has been modified as described above. Consequently, a dwelling entitlement is extinguished if an existing holding is affected by a minor realignment of its boundaries or if it is subject to subdivision or consolidation for a public purpose.

For example, if Council undertook road widening that affected a vacant existing holding, upon registration of the new plan of title, the dwelling entitlement would be lost. This is not considered to be a reasonable outcome and therefore it is proposed to amend clause 4.2A(3)(f) to ensure that the provisions for flexibility apply to existing holdings.

During the preparation of draft Dungog LEP 2014, there were two separate public exhibition periods. The draft LEP was exhibited between 28 November 2011 and 24 February 2012 and between 16 May 2013 and 14 June 2013. For both these exhibition periods, the wording of the draft plan would have applied the flexibility to 'existing holdings' (See **Annexure 'I'**).

When draft Dungog LEP 2014 was forwarded to the NSW Department of Planning and Infrastructure (as it was then known) in December 2013, the flexibility applied to all of subclause (3), including existing holdings. However, the gazetted Dungog LEP 2014 only applies to subclause (3)(a) to (d), and does not include (e), which is the existing holding provision. The reason for this change is unclear, although it may be a result of Parliamentary Council's review of the draft Plan, and the accompanying Council report which stated that the existing holding must be in the same configuration on July 1 2003 and at the time of lodging a Development Application.

The proposed change is consistent with the way that Dungog LEP 2014 was originally drafted and is similar to a number of other Standard Instrument Local Environmental Plans, including Great Lakes, Gloucester, Muswellbrook, Upper Hunter and Cessnock.

THE PLANNING PROPOSAL

The draft Planning Proposal is included as **Annexure 'J'** and seeks to amend clause 4.2A(3)(f) as follows:

....

(f) would have been a lot or a holding referred to in paragraph (a), (b), (c), (d) **or (e)** 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 or public reserve or for another public purpose, or
- (iii) a consolidation with an adjoining public road or public reserve or for another public purpose.

THE GATEWAY PROCESS

Should Council resolve to support the Planning Proposal, it will be sent to the Minister for Planning (or his delegate) for a Gateway determination. The Gateway Committee will determine if the Planning Proposal is to proceed and if so, under what circumstances.

It is important to note that a Gateway determination under section 3.34 of the EP&A Act must be obtained authorising a Planning Proposal to proceed before community consultation takes place.

Should a favourable gateway determination be given, then the proposed amendment would be placed on exhibition for public comment.

PLANNING ASSESSMENT

Dungog Local Environmental Plan 2014

The objectives of clause 4.2A of Dungog LEP 2014 are as follows:

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

The clause permits dwelling houses and dual occupancy development on existing holdings and it is unreasonable for a dwelling entitlement to be lost, simply because of a minor realignment of boundaries or as a result of a subdivision or consolidation of land or public purposes.

Should the proposed amendment not be supported, the only option for landowners that have lost a dwelling entitlement would be to seek to have their land included in Schedule 1 of Dungog LEP 2014, which lists additional permitted uses. Clause 2.5 of Dungog LEP 2014 relates to Schedule 1 as follows:

Clause 2.5 - Additional permitted uses for particular land

(1) Development on particular land that is described or referred to in Schedule 1 may be carried out:

- (a) with development consent, or*
- (b) if the Schedule so provides—without development consent,*

in accordance with the conditions (if any) specified in that Schedule in relation to that development.

(2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.

Currently, there are three (3) properties which are listed in Schedule 1 of Dungog LEP 2014. These include individual properties at Common Road, Dungog, Glen Martin Road, Glen Martin and Gresford road, Vacy. All three lots are listed for the purpose of permitting a dwelling house or dual occupancy. Two of the sites (Glen Martin and Vacy) were carried forward from Dungog LEP 2006 and one new site at Common Road was added in response to the public submissions during the drafting of Dungog LEP 2014.

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Council has received a Planning Proposal application (see separate report) to include a fourth property in Schedule 1, which would have been an existing holding, had it not been for a boundary adjustment that was registered 2012. Rather than adding land to Schedule 1, it is proposed to amend clause 4.2A of Dungog LEP 2014 to reflect the original intent of the clause.

Local Planning Direction – S9.1 Directions by the Minister

The proposal is considered to be consistent with the local planning directions issued by the Minister for Planning. A table summarising the applicability and compliance with each direction is included in the draft Planning Proposal.

State Environmental Planning Policies

As the proposal does not relate to a specific site, there are no State Environmental Planning Policies that would be relevant to this proposal. Future development applications would be assessed having regard to:

- State Environmental Planning Policy (Rural Lands) 2008
- State Environmental Planning Policy 55 – Remediation of Land
- State Environmental Planning Policy 44 –Koala Habitat Protection
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Environmental Considerations

The proposed change to the wording of clause 4.2A(3)(f) is not likely to have a significant environmental impact. The environmental impact of development for the purpose of a dwelling house or dual occupancy that is permitted under the clause would be assessed when an individual development application is lodged for a specific site.

EXTERNAL REFERRALS AND COMMUNITY CONSULTATION

The Gateway determination of the Planning Proposal will direct Council as to which government agencies need to be consulted with at the same time as the community is being consulted.

IMPLICATIONS

Environmental

The proposal is unlikely to have a significant environmental impact. The impact that a dwelling house or dual occupancy may have on the environment is assessed when a development application is lodged.

Financial

The proposal has been completed by Council Planning Staff with no additional costs incurred.

Policy

The proposal has been assessed against relevant State Environmental Planning Policies and Ministerial Directions. No unjustified inconsistencies have been identified.

Statutory

The statutory process for preparing an amendment to the Dungog LEP 2014 is detailed in Part 3, Division 3.4 of the *Environmental Planning and Assessment Act 1979*.

ANNEXURE 'H'

Dungog Local Environmental Plan 2014

Current version for 31 August 2018 to date (accessed 8 November 2018 at 11:02)

Part 4 > Clause 4.2A

4.2A Erection of dwelling houses and dual occupancies on land in certain rural and environment protection zones

- (1) The objectives of this clause are as follows:
 - (a) to minimise unplanned rural residential development,
 - (b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and environment protection zones.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone E3 Environmental Management,
 - (c) Zone E4 Environmental Living.
- (3) Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot on which the dwelling is to be erected:
 - (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land on which the dwelling house or dual occupancy is proposed, or
 - (b) is a lot created under this Plan (other than under clause 4.1B or clause 4.2 (3)), or
 - (c) is a lot created before this Plan commenced and:
 - (i) the erection of a dwelling house was permissible on that lot, and
 - (ii) no development standards limiting the power to grant development consent for the erection of a dwelling house applied to that lot,before that commencement, or
 - (d) is 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 or a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (e) is an existing holding, or
 - (f) would have been a lot or a holding referred to in paragraph (a), (b), (c) or (d) 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 or public reserve or for another public purpose, or

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

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.

- (4) Development consent may be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies if there is a lawfully erected dwelling house or dual occupancy on the land and the dwelling house or dual occupancy to be erected is intended only to replace the existing dwelling house or dual occupancy.

- (5) In this clause:

existing holding means land that:

- (a) was a holding on 1 July 2003, and
(b) is the same holding at the time of lodging a development application under this clause,

whether or not there has been a change in the ownership of the holding since 1 July 2003.

holding means all adjoining land, even if separated by a road, river or railway, held by the same person or persons.

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.

ANNEXURE 'I'

~~Draft~~ Dungog Local Environmental Plan 2011

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

(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 E3 Environmental Management.

(3) Development consent must not be granted for the erection of a dwelling house on land 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.

(4) 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 or public reserve or for another public purpose.

(5) In this clause:

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

- (a) on 1 July 2003, and
- (b) at the time of lodging a development application for the erection of a dwelling house under this clause.

draft for exhibition

4.2 Rural subdivision [compulsory if clause 4.1 adopted and land to which land applies includes land zoned RU1, RU4 or RU6]

- (1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.
- (2) This clause applies to the following rural zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,
 - (c) Zone RU4 Primary Production Small Lots,
 - (d) Zone RU6 Transition.
- (3) Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.
- (5) A dwelling cannot be erected on such a lot.

Note .A dwelling includes a rural worker's dwelling (see definition of that term in the Dictionary). When this Plan was made, it did not include Zones RU2 Rural Landscape, RU4 Rural Small Holdings and RU6 Transition.

4.2A Erection of dwelling houses on land in certain rural and environment protection zones [local]

- (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 RU3 Forestry,
 - (c) Zone E3 Environmental Management,
 - (d) Zone E4 Environmental Living
- (3) Development consent must not be granted for the erection of a dwelling house on land 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.

- (4) 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:

draft for exhibition

- (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 or public reserve or for another public purpose, or
 - (iii) a consolidation with an adjoining public road, a public reserve or for another public purpose.
- (5) In this clause:
 - existing holding** means all adjoining land, even if separated by a road, railway or river, held in the same ownership:
 - (a) on 1 July 2003, and
 - (b) at the time of lodging a development application for the erection of a dwelling house under this clause.

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.

ANNEXURE 'J'



COUNCIL'S VISION
A vibrant, united community,
with a sustainable economy.
An area where rural character,
community safety and
lifestyle are preserved.

PLANNING PROPOSAL

AMENDMENT TO DUNGOG LOCAL ENVIRONMENTAL PLAN 2014

CLAUSE 4.2A ERECTION OF DWELLING HOUSES AND DUAL OCCUPANCIES ON LAND IN CERTAIN RURAL AND ENVIRONMENT PROTECTION ZONES

Prepared by Dungog Shire Council
November, 2018

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INTRODUCTION

This Planning Proposal provides an explanation of the intended effect and justification for the amendment to Clause 4.2A - *Erection of dwelling houses and dual occupancies on land in certain rural and environment protection zones* of the Dungog Local Environmental Plan 2014 (LEP 2014).

The Planning Proposal has been prepared in accordance with section 3.33 of the Environmental Planning and Assessment Act 1979 and the format specified within the relevant Department of Planning Guidelines including 'A Guide to Preparing Local Environmental Plans' and 'A Guide to Preparing Planning Proposals'.

BACKGROUND

Council's Standard Instrument LEP, Dungog LEP 2014 came into force on 1 June 2014. Clause 4.2A of Dungog LEP 2014 contains provisions relating to the granting of consent for dwelling houses or dual occupancy within the RU1 Primary Production zone, the E3 Environmental Management zone and the E4 Environmental Living zone. A copy of clause 4.2A is included in Attachment A. Subclause (3)(a) to (f) sets out the criteria that must be met for a dwelling or dual occupancy to be granted consent on vacant land within one of the relevant zones. One of the criteria is if the land is an 'existing holding'. The term 'existing holding' is specifically defined within the clause.

Subclause (3)(f) provides some flexibility in that a dwelling or dual occupancy can still be granted consent even if the lot or holding has been affected by:

- (iv) *a minor realignment of its boundaries that did not create an additional lot, or*
- (v) *a subdivision creating or widening a public road or public reserve or for another public purpose, or*
- (vi) *a consolidation with an adjoining public road or public reserve or for another public purpose.*

However, due to the wording of subclause (3)(f), this flexibility does not apply to an existing holding that has been modified as described above. Consequently, a dwelling entitlement is extinguished if an existing holding is affected by a minor realignment of its boundaries or if it is subject to subdivision or consolidation for a public purpose.

PART 1: OBJECTIVE OF THE PLANNING PROPOSAL

Objective

This Planning Proposal seeks to enable an 'existing holding' to be modified by a minor realignment of its boundaries (no new lots created), or modified through a subdivision or consolidation with adjoining land for a public purpose, without extinguishing a dwelling entitlement.

PART 2: EXPLANATION OF PROVISIONS

The Planning Proposal will achieve the objective by amending clause 4.2A(3)(f) of Dungog LEP 2014 as follows:

4.2A Erection of dwelling houses and dual occupancies on land in certain rural and environment protection zones

- (1) *The objectives of this clause are as follows:*
 - (a) *to minimise unplanned rural residential development,*
 - (b) *to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and environment protection zones.*
- (2) *This clause applies to land in the following zones:*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone E3 Environmental Management,*
 - (c) *Zone E4 Environmental Living.*
- (3) *Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot on which the dwelling is to be erected:*
 - (a) *is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land on which the dwelling house or dual occupancy is proposed, or*
 - (b) *is a lot created under this Plan (other than under clause 4.1B or clause 4.2 (3)), or*
 - (c) *is a lot created before this Plan commenced and:*
 - (i) *the erection of a dwelling house was permissible on that lot, and*
 - (ii) *no development standards limiting the power to grant development consent for the erection of a dwelling house applied to that lot,*
 - before that commencement, or*
 - (d) *is 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 or a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (e) *is an existing holding, or*
 - (f) *would have been a lot or a holding referred to in paragraph (a), (b), (c), (d) **or (e)** 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 or public reserve or for another public purpose, or*
 - (iii) *a consolidation with an adjoining public road or public reserve or for another public purpose.*

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.

(4) Development consent may be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies if there is a lawfully erected dwelling house or dual occupancy on the land and the dwelling house or dual occupancy to be erected is intended only to replace the existing dwelling house or dual occupancy.

(5) In this clause:

existing holding means land that:

(a) was a holding on 1 July 2003, and

(b) is the same holding at the time of lodging a development application under this clause,

whether or not there has been a change in the ownership of the holding since 1 July 2003.

holding means all adjoining land, even if separated by a road, river or railway, held by the same person or persons.

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.

PART 3: JUSTIFICATION of PROVISIONS

Section A: Need for Planning Proposal

1. Is the planning proposal a result of any strategic study or report

This Planning Proposal is not a result of a strategic study or report. It is noted that when the Standard Instrument LEP for Dungog (now Dungog LEP 2014) was being prepared, both exhibition drafts included provision for an existing holding to be modified by a minor realignment of its boundaries, or modified through a subdivision or consolidation with adjoining land for a public purpose, without extinguishing its dwelling entitlement. Extracts of the exhibited versions of clause 4.2A are included in Attachment B.

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

The Planning Proposal is the best means for Council to enable existing holdings to be modified by a minor realignment of its boundaries, or be modified through a subdivision or consolidation with adjoining land for a public purpose, without extinguishing a dwelling entitlement.

Alternatively, existing holdings that have lost their dwelling entitlement through minor boundary realignment or subdivision or consolidation for a public purpose would need to apply to be listed in Schedule 1 – Additional permitted uses, in order for a dwelling or dual occupancy to remain permissible with consent.

Council has received a draft Planning Proposal and request from a landowner seeking to be included in Schedule 1 of Dungog LEP 2014, due to a dwelling entitlement on an existing holding being lost as a result of a boundary adjustment. An amendment to clause 4.2A(3)(f) is the preferred option as opposed to including land within Schedule 1.

Section B: Relationship to Strategic Planning Framework

1. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy including exhibited draft strategies)?

The Hunter Regional Plan 2036 applies to Dungog Local Government Area. The Planning Proposal seeks to amend clause 4.2A of Dungog LEP 2014 to ensure that 'existing holdings' do not lose their dwelling entitlement as a result of a minor realignment of boundaries or a subdivision or consolidation with adjoining land for a public purpose. The proposal does not reflect the actions of Direction 21: Create a

compact settlement, as the Planning Proposal relates to rural and environmental zoned land. However, the proposal applies to lots that would have a dwelling entitlement as an 'existing holding' and therefore would not be creating additional opportunities for dwellings in rural areas.

The proposal is consistent with Action 22.1, which seeks to respond to the demand for housing and services for weekend visitors, students, seasonal workers, the ageing community and resource industry personnel by retaining dwelling entitlements. The Proposal is also consistent with Action 22.2 which seeks to encourage housing diversity, including studios and one and two bedroom dwellings to match forecast changes in household sizes. It is also noted that the Hunter Regional Plan identifies a projected increase of 400 new dwellings in Dungog LGA by 2036. The proposed LEP amendment would contribute towards achieving this goal by maintaining dwelling entitlements that would otherwise be lost, if subject to minor boundary realignments.

2. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

Dungog Shire Council does not have a Department of Planning endorsed local planning strategy. However, the Dungog Shire Council Community Strategic Plan 2012-2030 (CSP) identifies the community's main priorities and aspirations for the future. The CSP incorporates seven focus areas that have been established following engagement with the community:

1. Natural Environment
2. Local Economy
3. Community and Culture
4. Rural and Urban Development
5. Recreation and Open Space
6. Public Infrastructure and Services
7. Dungog Shire Council Governance and Finance

For rural and urban development, the CSP sets a goal for achieving growth through 'a balanced mix of development which acknowledges our unique scenic qualities, rural amenity and country lifestyle'. Relevant strategies for achieving this are to:

- Ensure that there is adequate land supply to accommodate future expected population growth.
- Maintain a long term planning approach that caters for diversity and choice in rural and village living.

The Planning Proposal is consistent with Council's Community Strategic Plan in that it proposes to retain rural dwelling entitlements that may otherwise be lost, and in doing so contributes to the supply of land for population growth and provides for diversity and choice in rural living.

3. Is the Planning proposal consistent with applicable state environmental planning policies (SEPPs)?

An assessment has been undertaken to determine the level of consistency the Planning Proposal has with relevant State Environmental Planning Policies (SEPPs). The assessment is provided below:

Extract from the Ordinary Council Meeting of the 21 November 2018

SEPPs	Relevance	Implications
SEPP No.44 – Koala Habitat Protection	This Policy encourages the proper conservation of vegetation that provides habitat for koalas	This Planning Proposal does not apply to a specific site and therefore an assessment of Koala habitat cannot be undertaken. This would be required when individual development applications are lodged.
SEPP No. 55 – Remediation of Land.	This Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	This Planning Proposal does not apply to a specific site and therefore an assessment of potential contamination cannot be undertaken. This would be required when individual development applications are lodged.
State Environmental Planning Policy (Rural Lands) 2008	This Policy aims to facilitate the orderly and economic use and development of rural lands for rural related purposes, to identify Rural Planning Principles so as to assist in the proper management, development and protection of rural lands and to implement measures to reduce land use conflict.	The proposed amendment to the LEP relates only to parcels of land which are/were considered to be existing holdings. The opportunity for additional rural dwellings is therefore limited.

4. Is the Planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The following assessment of the proposal has been undertaken against the relevant Section 9.1 Directions:

Direction	Requirement	Proposal	Consistency
1.2 Rural Zones	A Planning Proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.	The Planning Proposal does not seek to rezone land.	Consistent
1.5 Rural Lands	A Planning Proposal must be consistent with the Rural Planning Principles and Rural Subdivision Principles listed in SEPP (Rural Lands) 2008	The Planning Proposal seeks to amend clause 4.2A of DLEP 2014, which relates to RU1, E3 and E4 zoned land. However, the amendment does not relate to minimum lot sizes.	Consistent
2.1 Environment Protection Zones	A Planning Proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas and must not reduce the environmental protection standards that apply to the land.	The Planning Proposal relates to E3 and E4 zones. All existing environmental protection provisions within the LEP will remain unchanged.	Consistent

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2.3 Heritage Conservation	A Planning Proposal must contain provisions that facilitate heritage conservation	All existing heritage conservations provisions within the LEP will remain unchanged.	Consistent
2.4 Recreation Vehicle Areas	A Planning Proposal must not enable land to be developed for the purpose of a recreation vehicle area within an environmental protection zone, beach or dune.	The Planning proposal does not relate to recreation vehicle areas.	Consistent
3.2 Caravan Parks and Manufactured Home Estates	A Planning Proposal must take into account permissibility of caravan parks and manufactured home estates.	The Planning proposal does not relate to caravan parks and manufactured home estates or propose any zone changes.	Consistent
3.3 Home Occupations	A Planning Proposal must permit home occupations to be carried out in dwelling houses without the need for development consent.	The Planning Proposal does not relate to the permissibility of home occupations, which would remain permissible without consent	Consistent
4.4 Planning for Bushfire Protection	Consultation required with NSW RFS following Gateway determination. Must have regard to Planning for Bushfire Protection (PBP).	The Planning Proposal relates to the permissibility of dwelling houses in rural and environmental zones. Although specific sites are not known, it is likely that at least some affected sites would be mapped as bush fire prone land.	Consultation to be undertaken if required by Gateway determination. The provisions of PBP are required to be considered as part of DA assessment.
5.10 Implementation of Regional Plans	Planning Proposal must be consistent with a Regional plan released by the Minister for Planning.	Planning proposal is consistent with action 22.1 and 22.2.	Consistent
6.1 Approval and Referral Requirements	A Planning Proposal must minimise provisions that require concurrence, consultation or referral of DA s to a minister or public authority and must not identify development as designated development.	The Planning Proposal does not include any referral requirements or nominate designated development.	Consistent
6.2 Reserving land for Public Purposes	This Direction includes requirements when land is to be reserved for public purposes.	The Planning Proposal does not relate to the reservation of land for public purposes.	Consistent
6.3 Site Specific Provisions	This direction applies to a Planning Proposal that will allow a particular development to be carried out.	The Planning Proposal does not relate to site specific provisions. However, Council has received a Planning Proposal to include a	Consistent

		site specific provision for land that lost its existing holding status and dwelling entitlement as a result of a minor boundary adjustment. The proposed amendment to Dungog LEP 2014 seeks to rectify this issue with the LEP, rather than deal with site specific proposals.	
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Section C: Environmental, Social and Economic Impact

- 5. 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 does not relate to a specific site and therefore no test of significance, as set out in Section 7.3 of the Biodiversity Conservation Act 2016, has been undertaken. This matter would need to be considered when individual development applications for dwellings or dual occupancy are lodged over specific sites.

- 6. Are there any other likely environmental effects as a result of this planning proposal and how are they proposed to be managed?**

As the Planning Proposal does not relate to a specific site the extent of environmental impact is not known. This would need to be considered when individual development applications are lodged over specific sites.

- 7. How has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal is expected to have a minor, yet positive impact on social and economic by enabling dwelling entitlements to be retained, despite minor changes to lot configurations caused by realignment of boundaries or by a subdivision or consolidation with adjoining land for a public purpose.

Section D: State and Commonwealth Interests

- 8. Is there adequate public infrastructure for the Planning Proposal?**

The Planning Proposal does not relate to a specific site. This matter would need to be considered when individual development applications are lodged over specific sites. Given that the proposal relates to the permissibility of dwelling houses and dual occupancy development, it is unlikely that the demand for public infrastructure would be significantly increased.

- 9. What are the views of state and commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation with any state or commonwealth public authority will be undertaken in accordance with the Gateway determination.

PART 4: MAPPING

No LEP mapping changes are required as a result of the Planning Proposal.

PART 5: COMMUNITY CONSULTATION

10. Details of the community consultation that is to be undertaken on the planning proposal

The requirements for community consultation would be undertaken in accordance with the Gateway determination.

PART 6: PROJECT TIMELINE

The project timeline will be updated post Gateway Determination and is subject to the requirements of the Gateway Determination. A preliminary timeline is provided below.

Task	Timeframe
Commencement Date – Gateway Determination	December 2018
Timeframe for completion of technical information	No further technical information is likely required
Government Agency Consultation	December 2018 – January 2019 if required
Commencement and completion Dates for Public Exhibition Period	December 2018 – January 2019
Dates for Public Hearing	Public Hearing unlikely to be required
Timeframe for consideration of Submissions	March 2019
Timeframe for consideration of a proposal post exhibition	May 2019
Submission to Department to finalise LEP	June 2019