

PLANNING PROPOSAL

Dungog Local Environmental Plan 2006 (Amendment No. 9)

Proposed Amendment to Schedule 4 - Additional Development to allow:

- a) erection of a Rural Workers Dwelling on Lot 1 DP 67312, No. 1590 Fosterton Road, Dungog; and**
- b) subdivision of Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla into two (2) lots.**

Introduction

This planning proposal concerns two (2) separate parcels of land within the Dungog Local Government Area, in particular:

- a) Lot 1 DP 67312, No. 1590 Fosterton Road, Dungog; and
- b) Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla

A plan showing the location of the subject land is attached as Appendix A. Aerial photos are attached as Appendix B.

Lot 1 DP 67312, No 1590 Fosterton Road, Dungog

Lot 1 DP 67312 is approximately 50 hectares in area and is located approximately 1.2 kilometres north of the intersection of Fosterton Road and Stroud Hill Road.

The Rockyhill Pastoral Co. purchased the property in 2005 and established the Hunter Valley Warmblood Stud (HVWS), which specialises in breeding equestrian horses for the national and international market, including the Asia Pacific region and Northern Europe. Since purchasing the property, the owners have invested significantly in capital improvements including new horse paddocks, a stables complex, pasture improvement and a new watering system specifically designed to cater for horse breeding. In addition, the existing cottage has been renovated and a new training arena and round yard have been constructed.

The property is zoned Rural 1(a) under the *Dungog Local Environmental Plan 2006* (Dungog LEP 2006) and the erection of a rural worker's dwelling on the property is prohibited under the current LEP provisions. An amendment to the LEP is therefore required to enable Council to consider a development application for the proposed dwelling.

Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla

Lot 100 DP 1089164 is approximately 88 hectares in area and is situated on the eastern side of Clarence Town Road, approximately 7 kilometres south of Dungog.

The property, known as "Crooks Park", is also owned by Rocky Hill Pastoral Co. The "Crooks Park" homestead was constructed in 1873 and is listed in Schedule 3 of Dungog LEP 2006 as a heritage item. "The Carriageway" resort was established on the property in 1990 and provides accommodation for up to 60 guests in self contained cottages, spa suites and refurbished train carriages. The resort also includes a restaurant, swimming pool, children's playground and petting zoo.

The property is zoned Rural 1(a) under Dungog LEP 2006. The proposed subdivision is not permissible under the current LEP provisions as one of the lots to be created would be less than 60 hectares in area. An amendment to the LEP is therefore required to enable Council to consider a development application for the proposed two (2) lot subdivision.

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Part 1 - Objectives or Intended Outcomes

The objective of the planning proposal is to specify additional development that may be carried out on the subject land, with development consent, under the Dungog LEP 2006. In particular:

- c) the erection of a rural worker's dwelling on Lot 1 DP 67312, No. 1590 Fosterton Road, Dungog, and
- d) the subdivision of Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla into two (2) lots.

The proposed amendment, in conjunction with Clause 34 of Dungog LEP 2006, will enable development, which is currently prohibited, to be carried out on the subject land, with development consent. It should be noted that the zoning of the subject land is not proposed to change.

Part 2 - Explanation of Provisions

The planning proposal seeks to amend Schedule 4 of Dungog LEP 2006 by inserting in alphabetical order of locality in Columns 1, 2 and 3, respectively:

Dungog

1590 Fosterton Road, being Lot 1 DP 67312	Rural Workers Dwelling	Nil
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Wirragulla

4426 Clarence Town Road, being Lot 100 DP 1089164	Subdivision of the land into not more than 2 lots	Nil
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It is also proposed to amend the Dictionary by inserting in alphabetical order:

rural worker's dwelling means a dwelling, ancillary to a dwelling house on the same landholding, used as the principal place of residence by persons employed for the purpose of agriculture or a rural industry on that land.

Part 3 - Justification

Section A - Need for the Planning Proposal

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

The planning proposal is not the result of any strategic study or report. The need for the planning proposal is discussed below.

Lot 1 DP 67312, No 1590 Fosterton Road, Dungog

Rocky Hill Pastoral Co. has plans to expand their horse breeding program, requiring additional investment in infrastructure and resources. The investment in infrastructure would include a covered arena for all year round training and an expansion of the stable complex. Currently HVWS employs a full-time Groom, who has to be accommodated off-site. This poses considerable difficulties given her duties involve 24 hour surveillance, particularly through the breeding season, which runs from September through to January. In addition, to support the proposed expansion program, the company intends to employ a professional Rider/Trainer, probably from Germany, who would most likely have a family and require on-site accommodation.

The existing three (3) bedroom cottage on the site is currently occupied by the owners. The owners have received advice from a valuer that given the proximity of the existing dwelling to the road, it is not feasible to expand the cottage. A second dwelling is therefore required to accommodate additional staff. It is proposed to construct the second dwelling some distance to the south of the existing dwelling, as indicated on the plan submitted with the application and attached as Appendix C.

Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla

The subject land is currently zoned Rural 1(a) under Dungog LEP 2006. The proposed subdivision is not permissible under the current LEP provisions as one of the lots to be created would be less than 60 hectares in area. An amendment to the LEP is required to enable Council to consider a development application for the proposed two (2) lot subdivision.

A plan of the proposed subdivision was submitted with the rezoning application. A copy of the plan is provided in Appendix D.

The planning proposal will not result in the erection of a dwelling but will enable the existing tourist facility to be excised from the remainder of the property, which is used for agricultural purposes (grazing). Annual valuation reports confirm that the capital improvements to the resort are not reflected in

the overall valuation of the property. Excising the existing tourist facility from the main farm will not impact on the agricultural potential of the land but will ensure the continued operation of both components. It will provide a satisfactory return on infrastructure investment and avoid the need to close down the existing tourist facility.

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

Amending Schedule 4 of Dungog LEP 2006 to specify additional development that may be carried out on the subject land with consent is considered to be the most effective means of achieving the intended outcomes. An alternative would be to rezone the subject land from Rural 1(a) to another zone, in which the proposed development would be permissible. However, this alternative is not considered appropriate given that, in both cases, the surrounding land is zoned Rural 1(a) and adjoining properties are predominantly used for grazing/agricultural purposes.

3. Is there a net community benefit?

Lot 1 DP 67312, No 1590 Fosterton Road, Dungog

The proposed amendment will result in the erection of a second dwelling-house on a rural property of less than 60 hectares. However, the dwelling will be occupied by person/s employed to work on the existing farm and the dwelling will not be able to be subdivided off at a later date. Therefore, rather than reducing the agricultural potential of the land, the proposed erection of a rural worker's dwelling will enhance the agricultural potential of the land by facilitating the proposed expansion of the horse breeding program at HVWS. This, in turn, will have positive flow-on effects for the local economy. The proposal is therefore considered justifiable and will not create an undesirable precedent in terms of other rezoning requests.

Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla

The proposed amendment will enable the existing tourist facility to be excised from the remainder of the property, which is used for agricultural purposes. The proposed subdivision will provide a satisfactory return on infrastructure investment and avoid the need to close down the tourist facility, thereby providing positive economic benefits for both the owners of the property and the local community.

The effect of not proceeding with the amendment at this time would almost certainly be closure of the existing tourist facility, resulting in the loss of jobs and much needed tourist accommodation.

Section B - Relationship to Strategic Planning Framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metro Strategy or exhibited draft strategies)?

The Dungog local government area is not included within the Sydney Metro Strategy or the Lower Hunter Regional Strategy and therefore the objectives and actions do not apply.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plans?

Dungog LEP 2006 is the principal environmental planning instrument governing land use within the LGA. The proposal's consistency with the provisions of LEP 2006 is discussed below.

Lot 1 DP 67312, No 1590 Fosterton Road, Dungog

The subject land is zoned Rural 1(a) under Dungog LEP 2006. Whilst dwelling-houses and dual occupancies are permissible in the 1(a) zone with consent, rural worker's dwellings are prohibited. In fact the LEP makes no provision for rural workers dwellings in any zone. Further, rural workers dwellings are not specifically defined in the LEP.

Notwithstanding the above, it was clearly Council's original intention that LEP 2006 make provision for rural worker's dwellings. Section 13.2 of the Dungog Rural Strategy 2003 refers specifically to rural worker's dwellings and defines a rural worker's dwelling as "*...a second or subsequent dwelling required for a person whose principal occupation is working on the farm on which the dwelling is situated and on which all the other dwellings are occupied by at least one person whose principal occupation is working on that farm*".

According to the Strategy, rural worker's dwellings will be permitted where it can be demonstrated that the applicant meets the following criteria:

- The property is located within General Rural zone 1(a);
- The owner is recognised by the Australian Taxation Office as a primary producer
- The farm cannot operate without the employee's labour and on-site accommodation is essential for the enterprise. It must be shown that the employee will assist in the management of the farm
- The dwelling must be on the same legal title as the principal farm dwelling

- The dwelling must have the same road access as the principal farm dwelling
- The dwelling must be located so that it minimises conflict with adjoining land users
- The farm must generate enough income to support the employee who is to be housed in the dwelling
- The applicant must demonstrate that no alternative local labour or housing is available
- A report in relation to labour requirements must include:-
 - b) what jobs the employee will do,
 - c) when the employee is required (eg daily, seasonally), and
 - d) what are the critical components of the employment that require an onsite residence.

This intention, however, was not reflected in the final wording of the LEP instrument.

The information submitted with the rezoning application demonstrates compliance with the above criteria.

It should be noted that when Council prepares its comprehensive shire-side LEP in accordance with the *Standard Instrument – Principal Local Environmental Plan*, rural worker's dwellings will be permissible in the RU1 zone with development consent. The Standard Instrument defines rural worker's dwelling as "... a dwelling ancillary to a dwelling-house on the same landholding, used as the principal place of residence by persons employed for the purpose of agriculture or a rural industry on that land". However, the comprehensive shire-wide LEP is not expected to be finalised/adopted before the end of 2011. The planning proposal will therefore facilitate the erection of a rural worker's dwelling on the property, ahead of the implementation of a new comprehensive shire-wide LEP, which will permit rural worker's dwellings in the RU1 zone with consent.

Clause 11- Rural 1(a) Zone Objectives

Clause 11 of Dungog LEP 2006 sets out the objectives of the Rural 1(a) zone.

The objectives of the zone are to:

- (a) reinforce the agricultural character and landscape attributes of the area of Dungog, and
- (b) promote agriculture, protect high productivity land and prevent the fragmentation of farm holdings, and
- (c) ensure development is compatible with agricultural operations and does not adversely affect the environment or amenity of the locality, and

- (d) prevent development which could compromise the efficient extraction of valuable deposits of minerals or extractive materials, and
- (e) maintain and enhance environmentally sensitive land, particularly wetlands, riparian ecosystems, forests, woodlands and linkages between them, and
- (f) allow for the natural flooding of rivers and for the temporary storage of floodwaters, and
- (g) maintain and enhance local biodiversity, and
- (h) provide for recreational and tourist activities that are compatible with the agricultural, environmental and conservation value of the land.

The proposal will result in the erection of a second dwelling on the subject land, the dwelling will be occupied by person/s employed to work on the farm and the dwelling will not be able to be subdivided off at a later date. Therefore, rather than reducing the agricultural potential of the land, the proposed erection of a dwelling will enhance the agricultural potential of the land by facilitating the proposed expansion of the horse breeding program at HVWS. Therefore, the proposal is consistent with the Rural 1(a) zone objectives

Clause 26 – Environmental Protection

The applicant will need to demonstrate, at development application stage, the proposal's compliance with the matters set out in clause 26(1), (2) and (3) of Dungog LEP 2006 i.e. that the construction of the proposed dwelling can be carried out with minimal disturbance to the environment.

Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla

Clause 11 – Rural 1(a) Zone Objectives

The proposed two (2) lot subdivision would not be inconsistent with the Rural 1(a) zone objectives.

Clause 25 – Heritage

Pursuant to clause 25 of Dungog LEP 2006, the subdivision of land on which a heritage item is located may only be carried out with development consent. In determining a development application, Council must consider the extent to which the proposed subdivision would affect the heritage significance of the heritage item and may only grant consent if it has considered a heritage impact statement prepared for the proposed development.

Notwithstanding the above, clause 25(5) states that consent that would otherwise be required by this clause is not required if, in the opinion of the Council, the proposed development is of a minor nature.

Given the minor nature of the proposed subdivision, the heritage significance of the 'Crooks Park' homestead would be unlikely to be affected. Therefore consent under this clause would not be required.

Clause 26 – Environmental Protection

The applicant will need to demonstrate, at development application stage, the proposal's compliance with the matters set out in clause 26(1), (2) and (3) of LEP 2006 i.e. that the proposed subdivision can be carried out with minimal disturbance to the environment.

Clause 28(4) Subdivision Requirements

Clause 28(4) of LEP 2006 states that consent must not be granted for a subdivision to create a lot of land in Zone 1(a) or 9(a) unless:

- (a) the lot is for use for intensive agriculture, a utility installation or a community facility, without the need for an additional dwelling, and the consent authority is of the opinion that creation of the lot is justified for this purpose, or
- (b) the land to be subdivided is an established holding with an area in excess of 120 hectares, and:
 - i. where the established holding comprises more than one lot, the land is first consolidated into one lot, and each of the lots to be created by the subdivision contains 60 hectares or more, and
 - ii. no lot to be created will, immediately after the subdivision, have on it more than one dwelling-house or more than on dual occupancy, and
 - iii. each lot to be created which is vacant is suitable for the erection of a dwelling.

The proposed subdivision would not satisfy any of the above criteria for subdivision and therefore would not be permissible under the current LEP provisions, hence the need for a site-specific amendment to the LEP.

6. Is the planning proposal consistent with applicable state environmental planning policies?

The planning proposal's consistency with relevant State Environmental Planning Policies (SEPPs) is summarised in the following table.

SEPP	Relevance	Consistency	Comment
SEPP (Rural Lands) 2008	The SEPP identifies Rural Planning Principles and Rural Subdivision Principles to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State. Clause 10 of the SEPP lists a number of matters which must be considered in determining development applications for rural subdivisions or rural dwellings.	Yes	The planning proposal is generally consistent with the Rural Planning Principles and Rural Subdivision Principles. These matters generally relate to the potential for land use conflict. Neither the proposed subdivision nor rural worker's dwelling are considered to be incompatible with existing or approved uses in the vicinity, which are predominantly rural in nature.
Williams River Catchment REP 1997	The REP aims to protect and improve the environmental quality of the Williams River catchment through the management and use of the catchment's resources in an ecologically sustainable manner.	Yes	The planning proposal will not result in any impacts on the Williams River or the quality of the catchment's water resources.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The proposal's consistency with applicable section 117 directions is summarized in the following table.

Ministerial Direction	Relevance	Consistency	Implications
1.2 Rural Zones	The direction applies when a relevant planning authority prepares a planning proposal that will affect land within a rural zone.	Yes	It is not proposed to rezone the subject land to a residential, business, industrial, village or tourist zone, nor increase the permissible density of land within a rural zone. The proposal is therefore consistent with the terms of Direction 1.2.
1.5 Rural Lands	According to the direction, a planning proposal that affects land within a rural zone, or changes the existing minimum lot size on land within a rural zone must be consistent with the Rural Planning Principles and Rural Subdivision Principles listed in SEPP (Rural Lands) 2008.	Yes	The planning proposal is generally consistent with the Rural Planning Principles and Rural Subdivision Principles listed in SEPP (Rural Lands) 2008 and is therefore consistent with the terms of Direction 1.5.
4.4 Planning for Bushfire Protection	The direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. In preparing the planning proposal, Council is required to consult with the NSW Rural Fire Service, following receipt of a gateway determination and prior to undertaking community consultation, and take into account any comments so made.	Yes	Parts of the subject land are mapped as bushfire prone. Bushfire Risk Assessments have been prepared in respect of both properties, demonstrating compliance with the provisions of <i>Planning for Bushfire Protection 2006</i> . These will be referred to the RFS for comment during the consultation phase.

6.3 Site Specific Provisions	The direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.	Yes	It is proposed to amend schedule 4 of Dungog LEP 2006 to permit the erection of a rural worker's dwelling on Lot 1 DP 67312 and the subdivision of Lot 100 DP 1089164 into two (2) lots. It is not proposed to impose any development standards or requirements in addition to those already contained in the principal LEP. The planning proposal will not contain or refer to drawings that show details of the development proposal.
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Section C - Environmental, Social and Economic Impact

8. 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?

It is unlikely that any native vegetation will need to be cleared to facilitate the proposed subdivision or the erection of the proposed rural worker's dwelling. The proposal is therefore unlikely to adversely impact on any threatened species, populations or ecological communities, or their habitats.

Both properties are predominantly cleared, with native vegetation primarily confined to the banks of the Williams River and associated creeks. Should it be necessary to remove any vegetation to facilitate the construction of an access road, installation of an on-site sewerage management system or provision of required asset protection zones around the proposed dwelling, a flora and fauna assessment will be required to be submitted with the development application.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Any development arising from this planning proposal will need to be assessed under section 79C of the *Environmental Planning and Assessment Act 1979*. Issues such as bushfire hazard, water management and effluent disposal are not

considered to be significant constraints to development in this instance and can be dealt with, in detail, at the development application stage.

Further, the applicant will need to demonstrate, at the development application stage, the proposal's compliance with the matters set out in clause 26(1), (2) and (3) of Dungog LEP 2006 i.e. that the proposal can be carried out with minimal disturbance to the environment.

10. How has the planning proposal adequately addressed any social and economic effects?

The proposal is not expected to generate any significant adverse social or economic effects.

The proposed erection of a rural worker's dwelling on Lot 1 DP 67312, No. 1590 Fosterton Road, Dungog will provide necessary on-site accommodation for staff associated with the existing horse-breeding establishment and facilitate a proposed expansion to the company's breeding program. This, in turn, will have positive flow-on effects for the local economy, as well as the national and international equestrian markets.

In the case of the Clarence Town Road property, the effect of not proceeding with the proposal at this time would almost certainly be closure of the existing tourist facility, resulting in the loss of jobs and much-needed local tourist accommodation.

Section D- State and Commonwealth Interests

11. Is there adequate public infrastructure for the planning proposal?

Lot 1 DP 67312 has direct access to Fosterton Road, which is a sealed Council maintained public road, whilst Lot 100 DP 1089164 has frontage to Clarence Town Road, which is a classified regional road (MR 301).

Both properties have access to reticulated electricity and telecommunication services. Both properties rely on on-site effluent disposal.

Development arising from this planning proposal will not significantly increase the demand for public infrastructure.

12. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal? (To be completed after consultation but prior to gateway)

Council will undertake formal consultation with the relevant State and Commonwealth public authorities, as directed by the Minister for Planning, following gateway determination.

Part 4 - Community Consultation

The planning proposal is considered to be consistent with Council's strategic planning framework and is unlikely to result in any significant environmental, social or economic impacts. It is therefore considered to be a "low impact" planning proposal requiring a 14 day exhibition period only.

Council will undertake the required community consultation in accordance with the Department of Planning's document '*A guide to preparing local environmental plans*'.