

PLANNING PROPOSAL

**To permit the erection of a single dwelling house
on the following allotments:**

- 1. Lot 83 DP 752459, No 312 Hilldale Road, Hilldale**
- 2. Lot 6 DP 248699, 22 Clements Road, East Gresford**

Prepared by Dungog Council

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Part 1 Objectives or Intended Outcomes

To enable the construction of a single dwelling house on the following two parcels of land.

Property One - Lot 83 DP 752459, No 312 Hilldale Road, Hilldale

Property Two - Lot 6 DP 248699, 22 Clements Road, East Gresford

Part 2 Explanation of Provisions

Amendment of Dungog Local Environmental Plan 2006 Schedule 1 Vacant Holdings to include Lot 83 DP 752459, No 312 Hilldale Road, Hilldale and Lot 6 DP 248699, 22 Clements Road, East Gresford

Part 3 Justification

A Need for the Planning Proposal

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

The planning proposal is not a result of any study or report, it is however consistent with the Dungog LEP 2006 and the Dungog Rural Strategy 2003. Both Council and the Department of Planning (DoP) have agreed that a strategic approach to Vacant Holdings is required. Council has received Planning Reform Funding from the DoP to undertake this assessment. Council is in the process of preparing the MOU and the consultant's brief.

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

Under the Dungog LEP this is the only opportunity to permit a single dwelling house on both of the subject properties.

Council is commencing a study to establish a more efficient and strategic way to deal with vacant holdings. One alternative is to wait until this vacant holding study is complete, however it is more expedient to progress these vacant holdings now. Council will forward vacant holding LEPs grouped together to minimize the number of Planning Proposals referred to the DoP in the interim.

(3) Is there a net community benefit?

The planning proposal is intended to restore a dwelling entitlement that existing prior to the Dungog LEP 2006 on both of the subject properties. This planning proposal enables a dwelling on existing land that is potentially suitable, which alleviates the pressure for

development on land that is more constrained. This planning proposal therefore provides a net community benefit through the potential environmental benefit.

B Relationship to Strategic Planning Framework

- (1) *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.

- (2) *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plans?*

The two properties are less than 60 hectares in area, which is the minimum area for a dwelling house in the Rural 1(a) zone. The Dungog LEP 2006 established the Vacant Holding provision which allows for properties smaller than 60 hectares to demonstrate that they are capable and suitable for a dwelling house. Both of these properties have demonstrated that they comply with the Vacant Holding definition as follows:

- (a) comprises one lot (which may be a consolidated lot) with an area of less than 60 hectares on which no dwelling is currently located, and
- (b) was the total area of all adjoining or adjacent land held on one ownership on 1 July 2003.

Both properties have also demonstrated that they can comply with Clause 26 – Environmental Protection of the Dungog LEP 2006. This clause ensures that they are capable and suitable for a single dwelling house and will not have an adverse impact on the environment. The properties have been assessed against this provision in Table 1.

Table 1.

Clause 26(1) – LEP 2006	Response Property 1 – HILLDALE	Response Property 2 -
<i>(a) any buildings or works resulting from carrying out the development will blend into the landscape to promote rural amenity and character, and not be silhouetted on a ridgeline in a rural area, particularly when seen from a public road.</i>	Whilst the proposed building envelope is located on a ridgeline, due to existing vegetation and surrounding hills, the dwelling-house would not be silhouetted against the rural landscape.	The proposed buildings envelope can be situated well back from both Clements and Gresford Roads. Setbacks as per the DCP can be achieved. Furthermore, whilst not located on the lowest section of the property, the proposed house sites are not located on prominent ridgelines. Suitable screening with a range vegetation exists in some locations.
<i>(b) the design, bulk and colours of any such buildings will be compatible with the surrounding landscape, they are low buildings, and they are suitably screened from a public road.</i>	The applicants have indicated that the building will be designed to blend into the surrounding landscape. This will be assessed when the DA for the dwelling is lodged.	The applicant has indicated that the building will be designed to blend into the landscape. This will be assessed when the DA for a dwelling house is lodged.
<i>(c) there will be no, or only minimal, removal of trees or significant areas of native vegetation in carrying out the proposed development, in obtaining access to its site, in drainage from it, or for bush fire hazard protection, unless the development is essential and there is no reasonable alternative.</i>	The applicants have advised that it will not be necessary to remove any additional trees or significant areas of native vegetation to enable construction of the proposed dwelling-house. Should it be necessary to remove any native vegetation to facilitate the construction of a new access track, installation of an on-site sewage management facility or provision of adequate APZs around the proposed dwelling, a flora & fauna assessment will be required to be submitted.	A future dwelling could be sited so that no vegetation removal is required. Due to the current and historical agricultural use of the land, only a small amount of native vegetation exists on the site.

<i>(d) adequate vehicular access can be provided and maintained to and on the site of the proposed development.</i>	Adequate vehicular access should be considered in terms of both legal and practical access. In terms of practical access, there is an existing gravel access track off Hilldale Road. However, the RFS have advised that the existing track would not meet the RFS standards for access i.e. it is too narrow and too steep to enable fire fighting vehicles to access the proposed dwelling. Accordingly, The RFS will require a new access track to be constructed in an alternative location to comply with <i>Planning for Bushfire Protection 2006</i>. Details will be required to be submitted with the DA for the proposed dwelling. In terms of legal access, the lot does not have direct frontage to Hilldale Road. Access is obtained via a closed road known as Lot 186 DP 128949, which is also owned by the Winchesters. It is recommended that a condition be imposed on any development consent for the proposed dwelling that Lot 83 and Lot 186 be consolidated, with provision made for a formal ROW in favour of the adjoining Lot 184 DP 128949.	The property has an established access with safe sight distances off Clements Road.
<i>(e) adequate provision has been or will be made for any telecommunication and electricity services needed because of the proposed development.</i>	Telecommunication and electricity services are available to the property.	Telecommunication and electricity services are located in the vicinity of the property. A single dwelling should not have a major impact.
<i>(f) if the development will be carried out on land that is flood prone, it will not be adversely affected by flood and will not exacerbate flood conditions elsewhere.</i>	The subject land is not flood prone.	The land is not identified as being flood prone. Localised flooding may occur in storm events.

<i>(g) the land to be used for development is stable, has a slope of less than 18°, and, if relevant, has minimal disturbance of sodic or dispersive soil.</i>	The actual site of the proposed dwelling is relatively flat but the land slopes steeply away to the east and west, with slopes greater than 18 degrees. The property is not known to contain sodic or dispersive soils.	The location of proposed building envelopes is on a relatively flat section of the property which will require minimal excavation. The property is not known to have sodic or dispersive soils.
<i>(h) where the development will result in the erection of dwellings, the dwellings have been or will be provided with an inner bush fire asset protection zone and any proposed buildings can be protected from bush fire hazard without creating any additional risk to life or property, fire-fighting personnel or equipment.</i>	A bushfire risk assessment has been submitted with the application demonstrating that the proposed dwelling can be provided with appropriate APZs, in accordance with <i>Planning for Bushfire Protection 2006</i>. It is anticipated that Council will be required to formally consult with RFS during preparation of the draft LEP.	A bushfire risk assessment accompanies the application. This demonstrates that the proposed building envelopes can comply with Planning for Bushfire Protection 2006 with no clearing required for the asset protection zone. An asset protection zone already exists on both proposed building envelopes and is at least 140 metres.
<i>(i) adequate buffers are provided to any existing or foreseeable future agricultural, intensive agricultural or extractive industry activities which could cause noise, smell, fumes, vibration, spray or other objectionable impacts.</i>	The proposed building envelope complies with Council's boundary setback requirements and is located centrally on the lot and should not be adversely affected by existing agricultural activities on surrounding rural land.	This is a considerable issue associated with this application as this vacant holding application is the existence of Hoffman's Quarry to the south, within 150 metres of the future dwelling. If the quarry expands as once intended the operation could be within 50 metres of the second building envelope. This raises a range of land use conflict issues including noise, vibration, traffic, dust, health and amenity impacts that could ultimately impact upon both the future dwelling and long term viability of the quarry. The applicant has obtained advice from an acoustic engineer and suggests that additional landscaping along the boundary could reduce dust and to a lesser extent noise impact.

<i>(j) adequate buffers are provided to places of Aboriginal heritage or endangered or threatened ecological communities.</i>	No Aboriginal heritage sites or endangered/threatened ecological communities are known to occur on the property or adjoining properties.	No Aboriginal heritage sites nor endangered threatened habitats have been identified on the lot.
<i>(k) where relevant, appropriate measures have been taken to protect the amenity and comfort of the occupants of buildings near a rail corridor, or other existing or potential utility installations, from noise and vibration.</i>	The property is not located adjacent to a rail corridor or any other existing or potential utility installations.	The site is not located in close proximity to the rail corridor or other utility installations. However, the potential for noise and vibration exists, due to the existing quarry on adjacent land.
<i>(l) where the proposed development will result in the erection of a habitable building, either the building can be connected to a reticulated sewerage system, or it is in accordance with an effluent capability assessment (which takes into account hydrologic loading) demonstrating effective disposal of sewage.</i>	There is an existing approved on-site wastewater treatment system adjacent to the existing shed. However, it will be necessary to install an additional system to service the proposed dwelling. An effluent capability assessment will be required to be submitted at DA stage.	A report has been submitted by 'Garden Master' for the suitability of the site for effluent disposal. The site being 10 ha has suitable area to dispose of effluent.
<i>(m) the quality of stormwater run-off from the site will not degrade water quality or the quality of groundwater supplies and complies with any environmental management plan required by Council.</i>	Stormwater run-off from the dwelling site is proposed to be redirected to on-site rainwater storage tanks and the existing dam. Excess stormwater from tank overflow will not impact on water quality or groundwater supplies.	The majority of stormwater will be collected into a tank system for domestic use in the proposed dwelling. Excess stormwater from tank overflow can be directed into storage or rubble drains and will not affect the quality of ground water. An additional dwelling on the site is unlikely to have an adverse impact upon water quality.
<i>(n) stormwater run-off from the site will not contribute to additional flooding downstream.</i>	Stormwater run-off from the dwelling site is to be redirected to on-site rainwater storage tanks and the existing dam and therefore will not contribute to additional flooding downstream.	Any excess stormwater run-off can be directed into a natural drainage line and captured by an existing dam/storage on the property. This site will be managed to ensure

		that it does not contribute to additional localised flooding.
<i>(o) any relevant harvestable water rights are protected or adequately assessed.</i>	There will be no change to the existing dams on the property and therefore no impact on any harvestable water rights.	The site has a dam located to the east of the proposed dwelling sites. Harvestable rights will not be changed as a result of a dwelling and the property is required to comply with the requirements of the <i>Water Management Act 2000</i> .
<i>(p) the development will not unduly lower the water table or disturb the soil so as to result in the creation of acid sulfate soil.</i>	The property is not known to contain any potential acid sulfate soils.	This proposal will not lower the water table and there are no potential acid sulfate soils known to be on the site.
<i>(q) any impact of the development on biodiversity, and on native habitat on the land, is minimal.</i>	Impact on biodiversity should be minimal, as no additional tree removal is required to enable construction of the proposed dwelling-house. Should it be necessary to remove any native vegetation to facilitate the construction of a new access track, installation of an on-site sewage management facility or provision of adequate APZs around the proposed dwelling, a flora & fauna assessment will be required to be submitted at DA stage.	Impact on biodiversity will be minimal, as the house site requires no tree removal or clearing for asset protection zones. The site has been heavily disturbed due to past activities.

- (3) *Is the planning proposal consistent with applicable state environmental planning policies?*

The Planning Proposal is consistent with the applicable State Environmental Planning Policies (refer to Appendix 2)

SEPP (Rural Lands) 2009.

The Principles of the Rural Lands SEPP are as follows:

- (a) the minimization of rural land fragmentation*
- (b) the minimisation of rural land use conflict, particularly between residential land uses and other rural land uses.*
- (c) The consideration of the nature of existing agricultural holdings and the existing and planning future supply of rural residential land when considering lot sizes for rural lands*
- (d) The consideration of the natural and physical constraints and opportunities of land*
- (e) Ensuring that planning for dwelling opportunities takes account of those constraints.*

The planning proposal is consistent with these principles. The proposal is to utilize existing vacant rural land for dwelling houses where it is consistent with the surrounding land. The natural and physical constraints of the site have been taken into account.

The matters for consideration in determining applications for rural subdivisions or rural dwellings in a rural zone:

- (a) existing uses and approved uses in the vicinity*
- (b) whether the development is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development*
- (c) whether or not the development is likely to be incompatible with the use referred to in (a) and (b) above.*
- (d) if the land is not within a rural residential zone, whether the development is likely to be incompatible with use on land within an adjoining rural residential zone*
- (e) any measures proposed to avoid or minimize incompatibility referred to in (c) or (d).*

A dwelling house on either property is generally compatible with the surrounding rural land uses as the Hilldale and Clements Road areas are generally used for rural residential and hobby farm purposes.

The Clements Road property is adjacent to an existing quarry which raises land use conflict issues which will need to be mitigated.

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

Consistency with applicable s117 Directions:

Table 2.

1.2 Rural Zones	4(a) The planning proposal will not rezone the land. It will continue to be zone 1(a) Rural 4(b) The planning proposal will not increase the permissible density. <i>The planning proposal is consistent with this direction.</i>
1.5 Rural Lands	The planning proposal is consistent with the principles of the SEPP (Rural Lands) 2008. <i>The planning proposal is consistent with this direction.</i>
2.1 Environmental Protection Zones	The planning proposal does not include specific provisions to facilitate the protection and conservation of environmentally sensitive areas. LEP 2006 which is the principle planning instrument governing land use LEP 2006 does contain specific provisions in relation to environmental protection. <i>The inconsistency is therefore considered to be of minor significance.</i>
3.3 Home Occupation	This planning proposal does not include specific provisions relating to home occupations, however the LEP 2006 contains provisions which are consistent with this direction <i>The inconsistency is therefore considered to be of minor significance.</i>
4.4 Planning for Bushfire Protection	A bushfire hazard assessment report has been submitted with each of the applications. Council will consult with the NSW Rural Fire Service. The proposal will be consistent with this direction. <i>The planning proposal is consistent with this direction.</i>
6.1 Approval and Referral Requirements	<i>The planning proposal is consistent with this direction</i>
6.2 Reserving Land for Public Purposes	<i>The planning proposal is consistent with this direction</i>
6.3 Site Specific Provisions.	The LEP is consistent with clause 4(c) as

	the planning proposal does not impose any development standards or requirements in addition to those already contained in the Dungog LEP 2006. It is also consistent with clause 5 of this direction, as the planning proposal does not contain or refer to any drawings that show detail of the development proposal. <i>The planning proposal is consistent with this direction.</i>
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The planning proposal has an inconsistency with two (2) s117 Directions. 2.1 Environmental Protection Zones and 3.3 Home Occupation. These inconsistencies are considered to be minor as the principle planning instrument (the Dungog LEP 2006) contains provisions which are consistent and are not proposed to be altered with this planning proposal.

C Environment, Social and Economic Impacts

- (1) *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?*

Property one – It is unlikely that the construction of a dwelling would have an adverse impact on critical habitat or threatened species, populations or ecological communities or their habitats. In the event that it is necessary to remove native vegetation to facilitate the construction of a new access track, installation of an on-site sewerage management system or provisions of adequate APZs around the proposed dwelling a flora and fauna assessment will be required to be submitted at DA stage.

The National Parks and Wildlife Service Atlas of NSW Wildlife states that there are no sightings recorded of threatened flora or fauna species in the vicinity. The vegetation generally consist of native forest.

Property two – No native vegetation will be cleared to enable the construction of the proposed dwelling and associated works. This proposal is not likely to have an adverse impact on the threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

- (2) *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

Other likely environmental effects are considered to be minimal and relate to the construction of a single dwelling house on the two subject properties.

The proposed dwelling houses will need to be assessed under Section 79C of the EP & A Act 1979. Issues such as bushfire hazard, water management and effluent disposal will be managed during the Development Application process.

A preliminary assessment has been undertaken against Clause 26 of the Dungog Local Environmental Plan 2006, see Table 1 of this report.

(3) *How has the planning proposal adequately addressed any social and economic effects?*

There are no known Aboriginal or European heritage sites on the subject properties. Due to their locations it is unlikely that an Aboriginal item would be found, however Council would consider it appropriate to consult with the Department of Environment, Climate Change and Water as part of the LEP Amendment process. The proposal is unlikely to create any adverse social or economic effects.

D State and Commonwealth Interests

(1) *Is there adequate public infrastructure for the planning proposal?*

Property One has access to Hilldale Road via a constructed gravel access; it is likely that a new access track will need to be constructed in an alternative location to comply with *Planning for Bushfire Protection 2006*.

Property Two has direct access to Clements Road, which is a sealed Council maintained road.

Both properties have access to:

- Electricity;
- Telecommunication services,
- Garbage service,
- Emergency services.

Both properties have demonstrated that they can adequately dispose of waste water through on-site sewerage management system.

(2) *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 referred the Bushfire Threat Assessment for Property One off Hilldale Road to the NSW Rural Fire Service for a preliminary consultation as the site has steep slopes and heavily timbered on much of the land.

Council officers attended an on-site meeting with the applicants and Peter Murphy, from

the RFS, on 16th June 2009 and were advised that the existing access track would not meet the RFS standards for access i.e. it is too narrow and too steep to enable fire fighting vehicles to access the proposed dwelling. Accordingly, the RFS would require a new access track to be constructed in an alternative location to comply with *Planning for Bushfire Protection 2006*. In addition, the RFS would provide further recommendations upon receipt of detailed house plans and siting details.

Council will undertake a formal consultation with the relevant Government Agencies as identified and advised by the gateway determination. Council recommends the following agencies:

1. NSW Rural Fire Service (RFS)
2. Department of Environment, Climate Change and Water (DECCW)
3. Hunter Central Rivers Catchment Management Authority (CMA)

Part 4 Community Consultation

The planning proposal is considered to be consistent with the strategic planning framework and with the surrounding development. The planning proposal is intended to restore a dwelling entitlement from prior to the Dungog LEP 2006 on both of the subject properties. It is therefore considered to be a low impact planning proposal requiring a 14 day exhibition period.

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

Appendix 1	Location Maps
Appendix 2	Checklist for consideration of State Environmental Planning Policies
Appendix 3	Section 117 Ministerial Directions Checklist
Appendix 4	Council Reports including Council resolution