

Extract from the Ordinary Council Meeting of the 21 July 2009
PLANNING DEPARTMENT

Carolyn Maginnity

**3. DRAFT AMENDMENT TO DUNGOG LEP 2006
LOT 1 DP 67312, 1590 FOSTERTON ROAD, DUNGOG
171/82/24**

Application No.	171/82/24
Owner:	Rockyhill Pastoral Co.
Applicant:	H Den-Ouden
Land:	Lot 1 DP 67312, 1590 Fosterton Road, DUNGOG
Current Zone:	Rural 1(a) – Dungog LEP 2006
Area:	approx 50ha
Proposal:	Site Specific Rezoning to allow a Rural Workers Dwelling.

Précis:

This report considers a request for an amendment to Schedule 4 of *Dungog Local Environmental Plan 2006* to facilitate the erection of a Rural Workers Dwelling on Lot 1 DP 67312, 1590 Fosterton Road, Dungog.

The report recommends that the amendment request be supported.

SUBJECT LAND

The subject land is situated on the western side of Fosterton Road, approximately 1.2km north of the intersection of Fosterton Road and Stroud Hill Road.

The property is approximately 50ha in area and is flat to gently undulating. The land has direct frontage to the Williams River and is predominantly cleared, with vegetation consisting primarily of native and introduced grasses.

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.

Figure 1 depicts the subject land.

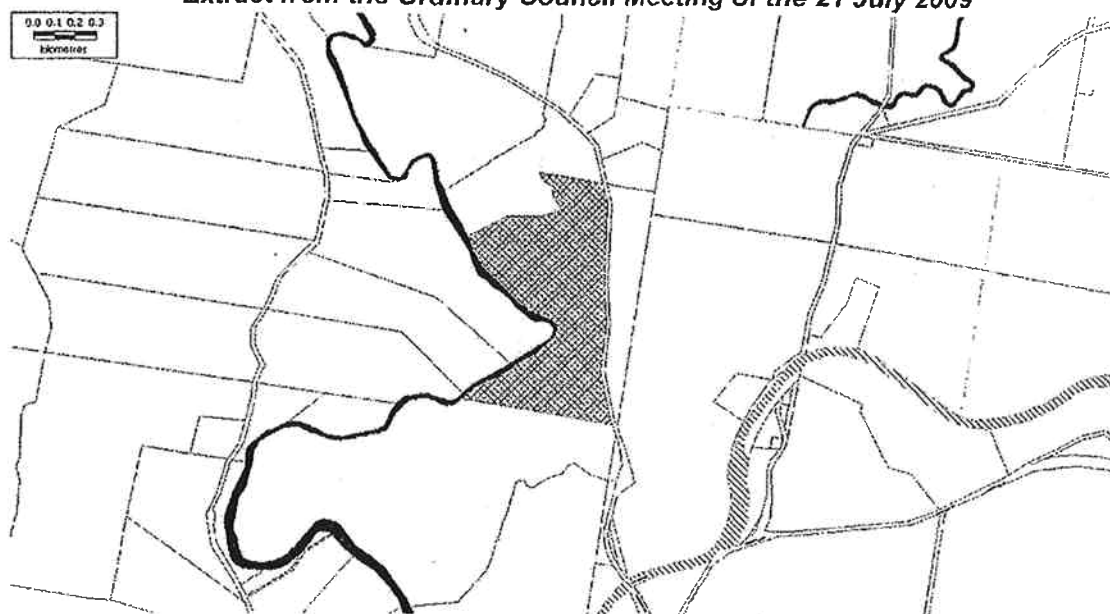


Figure 1: Lot 1 DP 67312, 1590 Fosterton Road, DUNGOG

BACKGROUND

The company has plans to expand their 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 3 bedroom cottage is currently used 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. An additional dwelling is therefore required to accommodate additional staff. It is proposed to construct a second dwelling some distance to the south of the existing dwelling, as indicated on the plan submitted with the application and attached as Annexure A.

PURPOSE OF THE PLAN

It is proposed to amend the *Dungog Local Environmental Plan 2006* by inserting Lot 1 DP 67312, No. 1590 Fosterton Road, DUNGOG into Schedule 4 – Additional Development to permit the erection of a Rural Workers Dwelling on the subject land. It is also proposed to include a definition of Rural Workers Dwelling in the Dictionary. It should be noted that the zoning of the land is not proposed to change.

The subject land is zoned Rural 1(a) under Dungog LEP 2006 and the erection of a Rural Workers 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.

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It should be noted that when Council prepares its comprehensive shire-wide LEP in 2011, in accordance with the *Standard Instrument - Principal Local Environmental Plan*, Rural Workers Dwellings will be permissible in the RU1 zone with consent. The Standard Instrument defines Rural Workers 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".

ANTICIPATED EFFECTS OF THE PLAN

The proposed amendment is not expected to result in any significant social or environmental impacts nor create an undesirable precedent in terms of other rezoning requests.

The proposal will allow a second dwelling to be erected on the property to provide much-needed on-site accommodation for staff associated with the existing horse breeding establishment. The proposal will enable the construction of a Rural Workers Dwelling ahead of the preparation/adoption of a new comprehensive LEP in 2011, which will permit Rural Workers Dwellings in the RU1 zone with consent.

SUPPORTING INFORMATION/DOCUMENTS

The applicant has submitted the following information in support of the proposed amendment:

- extracts from the company's business plan;
- plans showing the proposed location of the Rural Workers Dwelling;
- a bush fire risk assessment; and
- a statement addressing the proposal's compliance with the matters set out in clause 26 of LEP 2006.

Given the relatively minor nature of the proposed amendment, it is considered that a Local Environmental Study is not warranted in this case.

EFFECT OF EXISTING AND PROPOSED LEGISLATION/POLICIES

In deciding whether or not to support the amendment request, Council should consider whether the proposal is consistent with relevant environmental planning instruments, section 117 directions, Government policies, Council strategies, etc. A preliminary assessment of the proposal against the relevant legislation/policies is provided below.

Section 117 Directions

A number of section 117 directions apply to consideration of this amendment. Of particular relevance are the following:

Direction 6.3 – Site Specific Provisions

This direction applies when a council prepares a draft LEP to allow a particular development to be carried out.

According to this direction, a draft LEP that amends another environmental planning instrument in order to allow a particular development proposal to be carried out shall either:

- (a) allow that land use to be carried out in the zone the land is situated on, or
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or
- (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

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In addition, a draft LEP shall not contain or refer to drawings that show details of the development proposal.

It is proposed to amend schedule 4 of LEP 2006 to permit the erection of a Rural Workers Dwelling on the land, without imposing any development standards or requirements in addition to those already contained in LEP 2006. The draft LEP will not contain or refer to drawings that show details of the development proposal. The proposal is therefore consistent with the terms of the Direction.

Direction 4.4 – Planning for Bushfire Protection

This direction applies when a council prepares a draft LEP that affects, or is in close proximity to land mapped as bushfire prone land.

According to this direction, Council, in preparing the draft LEP must consult with the NSW Rural Fire Service under section 62 of the EP&A Act and take into account any comments made.

Part of the property is mapped as bushfire prone land. The applicant has prepared a bushfire risk assessment demonstrating compliance with the provisions of *Planning for Bushfire Protection 2006*, which will be referred to the NSW Rural Fire Service at section 62 consultation stage.

Direction 1.2 – Rural Zones

This direction applies when a council prepares a draft LEP that affects land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

According to this direction, a draft LEP shall:

- (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone,
- (b) not contain provisions which will increase the permissible density of land within a rural zone (other than land within an existing town or village), and
- (c) include provisions that control access from traffic generating developments to classified roads in rural zones.

A draft LEP may be inconsistent with the terms of this direction only if Council can satisfy the Director-General that any inconsistencies are justified by a Strategy/environmental study or are of minor significance.

It is not proposed to rezone the subject land to a residential, business, industrial, village or tourist zone, nor increase the permissible density of rural zoned land. Further, Fosterton Road is not a classified road. The proposal is therefore consistent with the terms of the Direction.

Direction 1.5 – Rural Lands

According to this direction, a draft LEP that affects land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), must be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural lands) 2008* (see below).

State Environmental Planning Policy (Rural Lands) 2008

SEPP (Rural Lands) identifies Rural Planning 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.

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The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- (b) the recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- (c) recognition of the significance of rural land uses to the State and rural communities including the social and economic benefits of rural land use and development,
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

The proposed amendment is generally consistent with the above principles and is therefore consistent with the SEPP and the terms of Direction 1.5.

Williams River Catchment Regional Environmental Plan 1997

The aims of the Williams River Catchment REP are 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.

The objectives of the plan are:

- (a) to promote sustainable use of land, water, vegetation and other natural resources within the Williams River catchment;
- (b) to promote the protection and improvement of the environmental quality of the catchment;
- (c) to establish a coordinated and consistent approach to the planning and management of the natural and built environment on a catchment-wide basis by linking the environmental planning system and total catchment management policies, programs and activities within the Williams River catchment through an endorsed catchment-wide regional planning strategy; and
- (d) to provide for changes to occur in the use of land in a manner which protects the quality of the catchment's water resources.

In accordance with clause 6 of the REP, these aims and objectives should be taken into account in the preparation of each environmental planning instrument that applies to land in the Williams River catchment.

The proposed amendment will facilitate the erection of a Rural Workers Dwelling only. It will not result in any impacts on the Williams River or the quality of the catchment's water resources.

Dungog Local Environmental Plan 2006

The subject land is zoned Rural 1(a) under LEP 2006. Whilst dwelling-houses and dual occupancies are permissible in the 1(a) zone with consent, Rural Worker's Dwellings are

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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 Workers 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.

Clause 11- Rural 1(a) Zone Objectives

Clause 11 of 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 is consistent with the Rural 1(a) zone objectives. Whilst the proposed amendment 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

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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.

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 construction of the proposed dwelling can be carried out with minimal disturbance to the environment.

NEW PROCEDURES FOR PREPARING LEPs

The *Environmental Planning and Assessment Amendment Act 2008* (the Amendment Act) was assented to on 25 June 2008. Provisions of the Amendment Act relating to the making of environmental planning instruments commenced on 1 July 2009 and introduce new requirements and procedures for the preparation of local environmental plans (LEPs). The new procedures, which will apply to the proposed LEP amendment, are outlined below.

Draft LEPs have been replaced with 'planning proposals'. A 'planning proposal' is a document that explains the intended effect of, and justification for, a proposed LEP. The preparation of a planning proposal is the first step in the process of making a LEP. The planning proposal can be prepared by the relevant planning authority (usually Council), or by a proponent for the proposed LEP. In either case, the relevant planning authority must be satisfied with it, such that it is prepared to forward it to the Minister for the next step in the process, being the 'gateway determination'.

A 'gateway determination' is issued by the Minister for Planning (or delegate) and specifies whether a planning proposal is to proceed and, if so, in what circumstances. The purpose of the gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal.

Once the planning proposal is forwarded to the Minister for Planning (or delegate), it is assessed by the Department of Planning. The planning proposal and the recommendation of the Department of Planning will then be forwarded to the LEP Review Panel. The LEP Review Panel will consider the planning proposal and the recommendation of the Department of Planning before providing their own recommended gateway determination to the Minister. The Minister will consider the recommendation of the LEP Review Panel.

The gateway determination will indicate the following:

- whether the planning proposal should proceed (with or without variation);
- whether the planning proposal should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal);
- community consultation requirements;
- any consultation required with State or Commonwealth public authorities;
- whether a public hearing is to be held into the matter by the Planning Assessment Commission or other specified person or body;
- the times within which the various stages of the procedure for the making of the proposed LEP are to be completed; and
- whether the function of making the LEP is to be exercised by the Minister for Planning or delegated to the relevant planning authority.

It is important to note that a gateway determination under section 56 of the EP&A Act must be obtained authorising a planning proposal to proceed before community consultation takes place.

IMPLICATIONS

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Policy

It is considered that the proposed LEP amendment is justifiable and will not create an undesirable precedent in terms of other rezoning requests. The draft plan is therefore unlikely to have any policy implications for Council.

Statutory

The statutory process for preparing an amendment to the Dungog LEP 2006 is detailed in Part 3 of the *Environmental Planning and Assessment Act 1979*.

CONCLUSION

It is considered that the applicant has provided sufficient justification for Council to proceed with a site-specific amendment to LEP 2006, ahead of the preparation of the shire-wide comprehensive LEP, to facilitate the erection of a Rural Workers Dwelling on the property. The proposal is generally consistent with relevant environmental planning instruments, section 117 directions, Government policies and Council strategies.

Accordingly, it is recommended that Council support the amendment request.

Minute No. 34599

RESOLVED on the motion of Cr Lloyd and seconded by Cr Mitchell that:

1. Council resolve to prepare an amendment to *Dungog Local Environmental Plan 2006* to:
 - a) include Lot 1 DP 67312, No. 1590 Fosterton Road, Dungog in Schedule 4 – Additional Development, to permit the erection of a Rural Workers Dwelling on the subject land; and
 - b) include, in the Dictionary, the standard LEP template definition of Rural Workers Dwelling.
2. Pursuant to section 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a Planning Proposal explaining the intended effect of the proposed instrument and setting out the justification for making the proposed instrument.
3. Pursuant to section 56(1) of the *Environmental Planning and Assessment Act 1979*, Council forward the Planning Proposal to the Minister for Planning for a Gateway determination.

The Mayor in accordance with Section 375A of the Local Government Act 1993 called for a Division. The Division resulted in 9 for and 0 against, as follows:

<i>For: Crs Wall, Mitchell Booth, Ainsworth, Johnston, McKenzie, Lloyd, Thompson, Farrow.</i>

ANNEXURE 'C' TO ITEM NO. 3 – MANAGER PLANNING'S REPORT

