



DUNGOG SHIRE COUNCIL

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Ref:EF07/93 - jlw

20 June 2016

Regional General Manager
Department of Planning and Environment
PO Box 1226
NEWCASTLE NSW 2300

Attention: Paul Maher

Dear Sir

**RE: DRAFT AMENDMENT TO DUNGOG LEP 2014
PLANNING PROPOSAL – LOT 1 DP 860372 WEBBERS CREEK ROAD,
PATERSON**

At the Ordinary Meeting of Council held on 17 May 2016, Council resolved to endorse the Planning Proposal to amend Dungog Local Environmental Plan 2014, pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 (EP&A Act). The site is currently zoned SP2 Infrastructure (Rail Infrastructure Facility) and the Planning Proposal seeks to rezone the land to enable it to be used for purposes other than rail infrastructure and that are consistent with surrounding uses.

In accordance with Section 56 of the EP&A Act, Council is now forwarding the Planning Proposal to the Minister for a gateway determination.

Please find the attached Planning Proposal, Council Report and minutes detailing the resolution.

Council is not seeking authorization to exercise delegation in the making of the Local Environmental Plan.

If you require any additional information regarding this matter, please contact me on (02) 4995 7767.

Yours faithfully

Jenny Webb
**Senior Town Planner/
Development Officer**

PLANNING DEPARTMENT

Jenny Webb

2. REZONING APPLICATION – LOT 1 DP 860372 WEBBERS CREEK ROAD, PATERSON EF07/93

Application No.	171/82/40
Applicant:	Mr B M Burgmann & Mrs S M Burgmann
Owner:	Mr B M Burgmann & Mrs S M Burgmann
Subject Land:	Lot 1 DP 860372 Webbers Creek Road, Paterson
Area:	4,944 m ²
Current Zoning:	SP2 (Rail Infrastructure Facility)
Proposal:	To rezone the subject land to RU5 Village under Dungog Local Environmental Plan 2014

Précis:

Council has received a request from the owners of Lot 1 DP 860372 for a site-specific amendment to Dungog Local Environmental plan 2014. The proposal seeks to rezone the existing property from SP2 (Rail Infrastructure Facility) to RU5 Village under Dungog LEP 2014 to enable the site to be used for purposes other than rail infrastructure and that are consistent with surrounding uses. A development application for the use of the site as a vehicle repair station has been lodged concurrently with the rezoning application.

This report considers the merit of the proposed rezoning, having regard to the relevant local and regional strategic planning framework and recommends that the draft Planning Proposal be supported and that it be forwarded to the Minister for a Gateway Determination.

BACKGROUND

The site was historically owned by the State Rail Authority of NSW. During its period of public ownership, the site was used for the storage of rail materials and equipment, and as a workshop. It was first sold to a private buyer on 3 February 1999 and then sold to the current owners on 27 November 2015. There has been two major revisions to Dungog Local Environmental Plan since the sale of the land to private owners (Dungog LEP 2006 and Dungog LEP 2014), however, the land remained zoned for rail infrastructure.

SUBJECT LAND

The subject land is an irregular shaped parcel of approximately 4,944 m² in area and is bounded by the Main Northern Rail Line and Webbers Creek Road as shown in the locality plan below.

The land is relatively flat and is predominantly cleared. Access to the property is from Webbers Creek Road, which is a Council-maintained sealed road. There is an existing metal clad shed and concrete water tank on the site as well as a number of concrete slabs where sheds were previously located. Utility services either connected or available to the site include water, electricity, telephone, waste collection and mail delivery services. There is also a current approval to operate an on-site sewage management system, comprising a septic tank and transpiration area.

An aerial photograph of a residential area. A specific lot is outlined in red, situated between a road and a railway track. The surrounding area includes various houses, trees, and a large green field on the left. A NSW Government logo is visible in the bottom right corner.

Ordinary Meeting of the Council of the Shire of Dungog, to be held Tuesday 17 May 2016 commencing at 6.00pm.

Extract from the Ordinary Council Meeting of the 17 May 2016

The subject land is currently zoned SP2 Rail Infrastructure Facility under Dungog LEP 2014. Land to the north and west of the site, on the opposite side of Webbers Creek Road is zoned RE1 Public Recreation and RU5 Village. The railway line and associated land immediately to the south and east of the site is zoned SP2 Rail Infrastructure Facility and the land to the east of the railway line is zoned RU5 Village. The current zoning of the subject land and surrounding properties is shown in **Figure 3**.

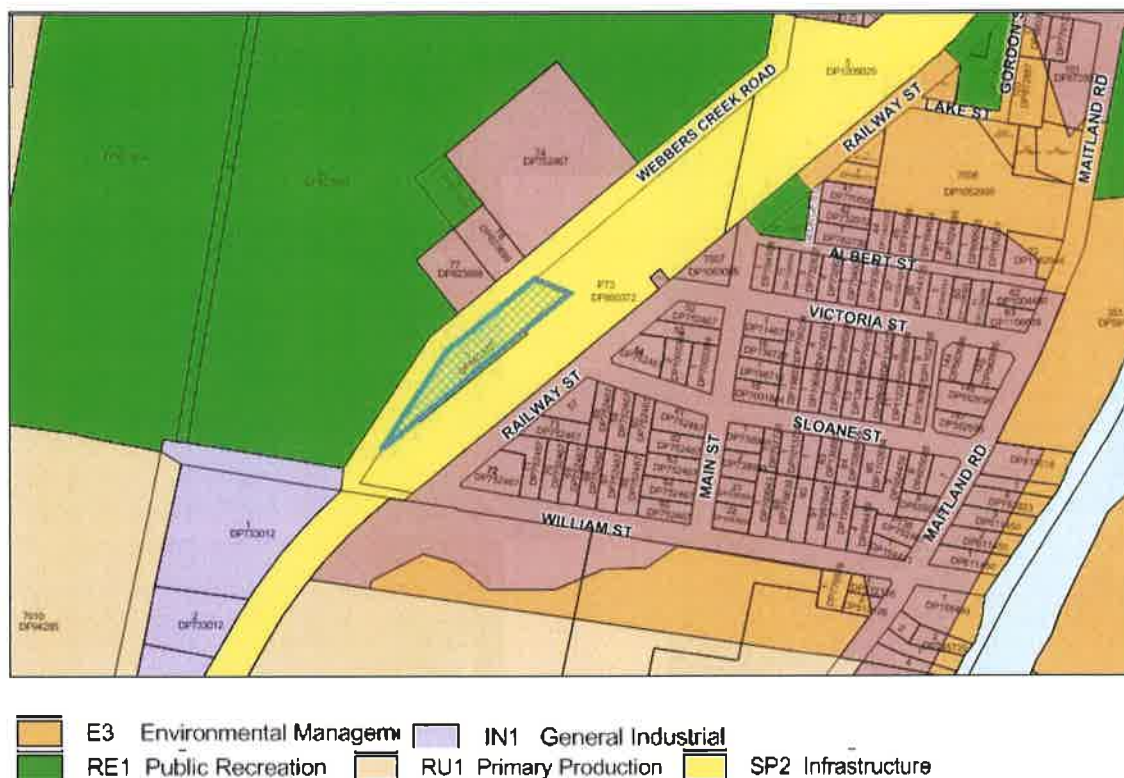


Figure 3: Current zoning under Dungog Local Environmental Plan 2014

THE PLANNING PROPOSAL

The application seeks to rezone the site from SP2 Rail Infrastructure Facility to RU5 Village to enable the site to be used for purposes other than for rail infrastructure. Whilst some land uses permitted in the RU5 Village zone would not be appropriate due to the proximity of the rail line, some commercial or industrial uses may be. The owner in this case is wishing to utilise the site as a vehicle repair station.

The applicant has prepared a draft Planning Proposal outlining the proposed rezoning and subsequent use of the site (attached as **Annexure 'C' (B:38)**). Pursuant to division 4B of the Environmental Planning and Assessment Act, two separate development applications have also been lodged, one for an awning to be attached to the existing shed and the other to enable the site to be used as a vehicle repair station.

THE GATEWAY PROCESS

Should Council resolve to support the Planning Proposal, it will be sent to the Minister for Planning (or delegate) for a gateway determination. A gateway determination specifies whether a Planning Proposal is to proceed and if so, under what circumstances.

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. Should a favourable gateway determination be given, then the rezoning and the development application will be placed on exhibition simultaneously.

PLANNING ASSESSMENT

Dungog Local Environmental Plan 2014

Under Dungog LEP 2014, the SP2 Infrastructure zone only permits development for the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose. Any other development (other than roads) is prohibited. As the current land zoning map shows this site as being zoned for a Rail Infrastructure Facility, development consent can only be granted for uses that are ordinarily or incidental to railway operations. Given that the land is now owned by private people and has no association with Australian Rail Track Corporation (ARTC), the zoning is inappropriate and prevents effective utilisation of the land. A change of zoning is therefore supported.

The RU5 Village zone is considered to be a suitable zone as it is consistent with surrounding land, and permits a range of land uses, including a vehicle repair station for which the owners have lodged a development application. Other zones that would permit a vehicle repair station include the B2 Local Centre, B4 Mixed Use or IN1 Industrial Zone. The B2 or B4 zones are not favoured as these zones are not currently located elsewhere in Paterson and are currently only located in the larger commercial areas of Dungog or Clarence Town where reticulated sewerage systems are in place. There is IN1 Industrial zoned land located further to the south of the subject site, although having regard for the existing land uses opposite the subject site, particularly the primary school, pre-school and public sports ground, an IN1 Industrial zone is not considered appropriate for this site. It should be noted that noise sensitive development such as dwellings, schools and child care centres are permissible in all of the B2, B4, RU5 and IN1 zones under Dungog LEP 2014, although are unlikely to be suitable uses for the subject site.

A copy of the land use tables for the SP2 - Infrastructure and RU5 Village zones are included in **Annexure 'D' (B:55)**.

Local Planning Direction - 117(2) Directions

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 as an attachment to the draft Planning Proposal.

State Environmental Planning Policies

SEPP 55 – Remediation of Land

Having regard for the relevant SEPP's, it is recommended that further information be provided following the Gateway determination to address potential contamination issues under SEPP 55 – Remediation of Land. In this regard, the Planning Proposal has not acknowledged that the site could be potentially contaminated. In accordance with the SEPP, an investigation is necessary where an activity referred to in Table 1 of the Managing Land Contamination Planning Guidelines is or has been carried out on the land. Railway yards is included in the table and therefore the proposed rezoning should be supported by a Stage 1—Preliminary Investigation and depending on the findings, potentially a Stage 2—Detailed Investigation.

SEPP (Rural Lands)

The draft Planning Proposal has identified that SEPP (Rural Lands) is applicable. However, in accordance with the SEPP, the RU5 Village Zone is not included in the definition of a rural zone or a rural residential zone and therefore is not applicable.

Environmental Considerations

Onsite Sewage Management

There is an existing OSSM system, servicing a small industrial shed. An inspection of the system in 2015 found it to be satisfactory for the usage at the time, although it is noted that the proposed rezoning could establish a range of land usages, which may require the redesign of the system in the future. However, it is considered that there is sufficient land capability within the allotment and no other limiting factors on site, and therefore it is likely that a complying OSSM could be designed for a range of potential future land uses.

Contaminated Land

The parcel is not identified on Council's potentially contaminated land register, however a basic initial investigation of the property reveals that it has previously been used as a workshop associated with the railway, a fabrication workshop and most recently a storage area for second hand building materials and scrap. Railway yards are listed in the Planning Guidelines for SEPP55 – Remediation of land (1998) as activities which are likely to contaminate land and Council's Development Control Plan also requires a Preliminary Site investigation to be carried out with a rezoning proposal. As detailed previously in the report, it is recommended that further information be provided following the Gateway determination, but prior to public exhibition, to address potential contamination issues under SEPP 55 – Remediation of Land.

Rail Noise and Vibration

The property is adjacent to the Northern Railway line. The draft Planning Proposal does not reference rail noise as a factor for consideration, however it is considered to be a major consideration due to the range of potential land uses, including residential permitted in RU5.

NSW Planning's "*Development near Rail Corridors and Busy Roads – Interim Guideline*" sets criteria for considering noise and vibration from existing rail infrastructure. Section 3.5.1 of the Guideline imposes a requirement for a full acoustic assessment of a sensitive development be carried out if it is within 40m of an operational track and some acoustic measures be considered if within 80m. Accordingly, should the planning proposal be supported at the Gateway determination, it is recommended that the proposal be accompanied by an Acoustic Consultants report which identifies the level of noise and vibration impact on the allotment, the level of compliance with noise and vibration criteria for each potential land use, possible noise and vibration mitigation measures to address impacts and some discussion on the likely effectiveness of such measures. Appendix D of the *Development near Rail Corridors and Busy Roads – Interim Guideline* lists the matters that need to be included in such a report.

Flora and Fauna

The site is predominantly clear and does not contain potential habitat for threatened species.

Bushfire

The site is not mapped as being bushfire prone land.

Flooding

The site is not mapped as being flood affected.

Heritage

The site is not heritage listed and is located outside of the Heritage Conservation Area, which is located further to the north of the site.

EXTERNAL REFERRALS AND COMMUNITY CONSULTATION

Consultation with relevant government agencies and the community in respect of a Planning Proposal is required to be undertaken once a Gateway Determination has been given.

IMPLICATIONS

Environmental

It is anticipated that the following reports/studies would be required at a minimum, should the Planning Proposal proceed through the Gateway:

- Preliminary Contaminated Land Investigation report
- Rail Noise and Vibration Report

Financial

In accordance with Council's Fees and Charges 2015-2016, the fee for a site specific rezoning where there are a limited number of issues and a limited local impact is \$6000 at the lodgement of the application. A further \$6000 is payable after the Gateway Determination.

Policy

The proposal has been assessed against relevant State Environmental Planning Policies and Section 117(2) directions. No unjustified inconsistencies have been identified. The proposal is also consistent with Dungog Local Environmental Plan 2014.

Statutory

The statutory process for preparing an amendment to the Dungog LEP 2014 is detailed in Part 3, Division 4 of the *Environmental Planning and Assessment Act 1979*.

Minute No. 37105

RESOLVED on the motion of Cr Booth and seconded by Cr Wall that Council resolves to:

1. Support the attached draft planning proposal to amend the Dungog Local Environmental Plan 2014, pursuant to Section 55 of the Environmental Planning and Assessment Act 1979, in order to rezone Lot 1 DP 860372 from SP2 Rail Infrastructure Facility to RU5 Village under Dungog LEP 2014.
2. Forward the draft planning proposal to the Minister for Planning for gateway determination pursuant to Section 56 of the EP&A Act 1979.
3. Advise the Director-General of Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 59(1) of the EP&A Act 1979.
4. 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 57 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.

The Mayor in accordance with Section 375A of the Local Government Act called for a Division. The Division resulted in 8 for 0 against as follows:

<i>For: Crs Johnston, Bale, McKenzie, Farrow, Knudsen, Booth, Wall, Bowden.</i>
