

## GENERAL MANAGER

### 10. PLANNING PROPOSAL – AMENDMENT TO DUNGOG LOCAL ENVIRONMENTAL PLAN 2014 – ADDITIONAL PERMITTED USES

**FILE NO:** 171/82/48

**ANNEXURES:** A Extract Dungog LEP 2014 – Clause 4.2A  
B Draft Planning Proposal

**AUTHOR:** Strategic Planner

**APPLICANT:** Perception Planning Pty Ltd

**OWNER:** Mr L G Schwebel

**PROPOSAL:** Amendment of Dungog Local Environmental Plan 2014 Schedule 1 'Additional Permitted Uses' to include Lot 1 DP 867951 for the Purpose of a Dwelling House

**LOCATION:** Lot 1 DP 867951, 1177 Fosterton Road , FOSTERTON

**ZONE:** RU1 Primary Production

---

#### OFFICERS RECOMMENDATION:

That Council does not support the draft planning proposal to amend Dungog Local Environmental Plan 2014 Schedule 1 'Additional Permitted Uses' to include Lot 1 DP 867951 for the purpose of a dwelling house.

---

#### Precis:

This report considers the merit of the draft Planning Proposal to amend Dungog Local Environmental Plan (LEP) 2014 Schedule 1 'Additional Permitted Uses' to include Lot 1 DP 867951 for the purpose of a dwelling house.

\*\*\*\*\*

#### MOTION

<b>38153</b>	<p>That Council supports the draft planning proposal and amend Dungog Local Environmental Plan 2014 Schedule 1 'Additional Permitted Uses' to include Lot 1 DP 867951 for the purpose of a dwelling house.</p> <p>Moved: Cr S Low AM, Seconded: Cr D Rayward.</p> <p>Carried.</p>
--------------	---

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 Norman, Rayward, Connors, Riley, Booth, Murphy, Low, Lyon.</i>
--

### ***Extract from the Ordinary Council Meeting of the 21 August 2019***

Perception Planning Pty Ltd has lodged a draft Planning Proposal seeking to enable a dwelling entitlement on the subject site. The landowner has been advised by Council's planning staff that the site does not benefit from a dwelling entitlement due to Clause 4.2A Erection of dwelling houses and dual occupancies on land in certain rural and environmental zones of the Dungog LEP 2014.

If supported, the draft planning proposal would permit with consent a dwelling house or a dual occupancy on the site. The subject site is zoned RU1 Primary Production wherein dwelling houses are permissible however, the site does not currently benefit from a dwelling entitlement due to Clause 4.2A of the Dungog LEP 2014 which in the instance, prohibits dwelling houses and dual occupancies due to the site not meeting the provisions of the Clause.

## **BACKGROUND**

The subject site was originally part of land known as 'Fig Tree' being Lot 5 DP 62230. The development application (DA171/93/54) for the subdivision of 'Fig Tree' was lodged in August 1993 as a one in to five lot subdivision with the following proposed lots;

Proposed Subdivision DA 171/93/54			As approved 11 November 1993			Additional Notes
Lot	Lot Size	Purpose	Lot	Land Size	Approved under the following Clauses of DLEP 1990	
1	5 Ha	dwelling entitlement (proposed)	51	5.123 Ha	Clause 20 Subdivision for the purposes of a dwelling house within Zone No 1(b)	Dwelling approved under SEPP 1 objection to Clause 24 & Clause 25 under DA 171/94/13
2	6 Ha	quarry (private) with no dwelling entitlement	52	6.14 Ha	Clause 22 Subdivision for the purpose other than agriculture or a dwelling house	This lot was not registered until 20 April 1994 as Lot 1 DP 867951
3	91 Ha	agriculture -no dwelling entitlement	53	91.22 Ha	Clause 18 Subdivision for the purposes of agriculture within Zone 1(b)	This lot was not registered until 20 April 1994 as Lot 2 DP 867951
4	5 Ha	existing dwelling 'Fig Tree'	54	5.055 Ha	Clause 21 Consolidation of rural land	Lot created at time of subdivision
5	27 Ha	Agriculture - no dwelling entitlement	55	25.61 Ha	Clause 18 Subdivision for the purposes of agriculture within Zone 1(b)	Lot created at time of subdivision

- Note: The proposed lot numbers were changed under DA 171/93/54 as a condition of consent to those listed above.
- Note: One of the lots was considered a 'concessional' lot permissible under the Dungog LEP 1990.
- Note: Council Clerk Certificate No. 4/94 was endorsed on 24 February 1994 to allow for the subdivision of four of the five lots to sell off Lot 54.

## **SITE**

The site is identified as Lot 1 DP 867951 known as 1177 Fosterton Road, Fosterton. The subject site is a narrow elongated allotment with a frontage to Fosterton Road. The site has an area of 6.14ha is zoned RU1 Primary Production and is subject to a minimum lot size of 60Ha under the Dungog LEP 2014. The site is vacant of any development. The topography of the site is undulating with the land rising away from the Fosterton Road frontage towards the western boundary. Generally the site is heavily vegetated with two small areas of cleared



The planning proposal is not the result of a strategic plan but is for the purpose of enabling a dwelling entitlement under the Dungog LEP 2014 for which the site does not currently benefit from.

*“Specifically, it is proposed the subject site include a dwelling entitlement, despite being under the minimum lot size. This proposal will allow for a better management of the land given the site is primarily dense vegetation and will be below the minimum lot size, thus not prime rural farming land. This is considered the highest and best use of the site given its location, site characteristics and lack of agricultural abilities.*

The proposal makes reference to a potential building envelope at the southern end of the site. This proposed building envelope does not consider the specific constraints of the site and the implications on a future development application in this instance that is if the proposal is to proceed. The site is constrained by its topography, access from Fosterton

***Extract from the Ordinary Council Meeting of the 21 August 2019***

Road, ability to accommodate on site sewer management, being categorised as bushfire prone land and possible overland flow paths.



**Figure 2: Proposed building envelope on site**

Justification for the proposed LEP amendment is limited and based on the premise that the provision of a dwelling entitlement by inclusion of the lot in Schedule 1 – Additional Permitted Uses would enable active management of the vegetation on the site. The proponents have not provided any form of Vegetation Management Plan which details the nature and extent of works proposed to be undertaken to improve the environmental qualities of the site nor specified any timeframes within which the work will be completed.

The topography with the vertical quarry face and typology of the vegetation on the site would make any form of active management highly problematic and cost prohibitive for limited benefit to the owner.



## **ASSESSMENT**

### **Policy**

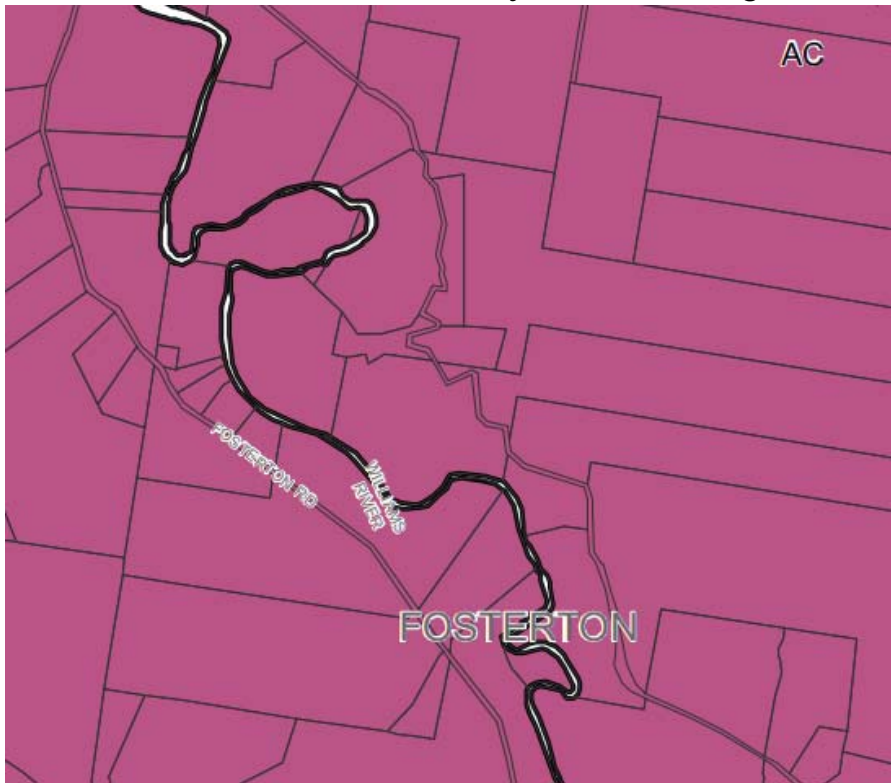
#### **Environmental Planning and Assessment Act 1979**

Schedule 1 – Additional Permitted Uses of the Standard Instrument is a mechanism that was introduced to enable additional land uses for a site specific purpose wherein it is deemed that there is sufficient justification for such land use. The application of such mechanism is outlined in LEP Practice Note – PN 11-001 issued by the Department of Environment and Planning, Preparing LEPs using the standard instrument: standard clause outlines the application of Schedule 1 – Additional Permitted Uses and is found in the Dungog LEP 2014 under Clause 2.5 which states “this clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.” Notwithstanding the inclusion of such mechanism in the standard instrument, the Practice Note reiterates that there must be adequate justification and any listings to the schedule should be minimised.

The Environmental Planning and Assessment Act 1979 require Council to undertake regular periodic reviews of their Local Environmental Plan of which Dungog Shire Council is undertaking in the near future. This will require undertaking a Rural Lands Strategy which will inform the preparation of the comprehensive LEP. To include the site in Schedule 1 Additional Permitted Uses of the Dungog LEP 2014 would be premature to the undertaking of the Comprehensive LEP Review which will be an LGA wide approach to addressing the future zoning and land use within the Dungog LGA.

#### **Dungog Local Environmental Plan 2014**

The subject site is zoned RU1 Primary Production under the Dungog LEP 2014 wherein dwelling houses are permissible with consent provided the site meets the minimum lot size as prescribed by the Lot Size Map of the LEP. Clause 4.2A Erection of dwelling houses and dual occupancies on land in certain rural and environment protection zones which provides specific provisions for the development of dwelling houses and dual occupancies on land zoned RU1 Primary Production. Under this clause the erection of a dwelling house on the site is prohibited as it fails to meet the required provisions. The intent of this clause to ensure that rural residential development is carefully considered which aligns with the objectives of the RU1 zone to limit conflict between land uses and maintain rural amenity. An explanation of the proposal against Clause 4.2A is provided in **Annexure ‘A’**.



**Figure 3: Dungog LEP 2014 Lot Size Map**

### **Existing land included in Schedule 1 - Additional Permitted Uses of the Dungog LEP 2014**

There are three sites currently listed under Schedule 1 – Additional Permitted Uses Dungog LEP 2014 for the purpose of permitting with consent of Council a dwelling house or dual occupancy. These sites have been carried over from previous planning instruments and have not been included as an amendment to the Dungog LEP 2014. To allow the inclusion of additional sites in Schedule 1 in an ad hoc manner prior to an LGA wide land use review has the opportunity to set a precedent and encourage the submission of further applications for those other undersized properties zoned RU1 within the Dungog LGA. This is considered to be an unfavourable planning outcome that is contrary to the Dungog Land Use Strategy 2010 and the objectives of the RU1 zone under the Dungog LEP 2014.

#### *Lot 64 DP 597832 – Common Road, Dungog*

The site was split zoned IN1 General Industrial and RU1 Primary Production as recommended by the Dungog Land Use Strategy 2010. In the review of submissions for the Dungog LEP 2014 it was considered that the split zoning remain across the site. As it was uncertain whether the site benefited from a dwelling entitlement it was determined to include the site in Schedule 1 of the Dungog LEP 2014 in order to permit a dwelling house. This would clarify the permissibility of a dwelling house or dual occupancy on the site.

#### *345 Glen Martin Road, Glen Martin – Lot 383 DP 806172*

This site was zoned Rural 1(a) under the Dungog LEP 2006 and was listed in Schedule 4 Additional development enabling the 'development for the purpose of a dwelling house or a dual occupancy'. With the gazettal of the Dungog LEP 2014 this provision was carried over to Schedule 1 – Additional Permitted Uses.

#### *656 Gresford Road, Vacy - Lot 123 DP 1063557*

### **Extract from the Ordinary Council Meeting of the 21 August 2019**

The site was listed in Schedule 1 Vacant Holdings of the Dungog LEP 2006. Under Clause 27(5)(b) of the Dungog LEP 2006 the erection of a dwelling house or dual occupancy is permissible with the consent of Council in Rural Zone 1 (a) if the lot is a vacant. This entitlement was carried over in the gazettal of the Dungog LEP 2014.

### **Statutory Requirements and Strategic Justification**

The Environmental Planning and Assessment Act 1979 outlines the statutory process for preparing an amendment to the Dungog LEP 2014. If the planning proposal is not supported by the Minister the proponent has the opportunity to forward a request for review of the determination to the Hunter Central Coast Joint Regional Planning Panel.

### **Strategic Planning Directions – Section 9.1 Ministerial Directions**

The draft planning proposal has been assessed with having regard to the Directions issued by the Minister of Planning under Section 9.1 of the Environmental Planning and Assessment Act 1979. An assessment of the draft planning proposal against the Section 9.1 directions is attached in **Annexure 'B'**.

### **State Environmental Planning Policies (SEPPs)**

The following SEPPs are applicable to the subject site;

- State Environmental Planning Policy (Primary Production and Rural Development) 2019
- State Environmental Planning Policy 55 – Remediation of Land

### **State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)**

Contaminated land and the remediation of such land must be considered when preparing a planning proposal under Clause 6 of SEPP 55.

*(1) In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:*

- (a) the planning authority has considered whether the land is contaminated, and*
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.*

*(2) Before including land of a class identified in subclause (4) in a particular zone, the planning authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.*

*(3) If a person has requested the planning authority to include land of a class identified in subclause (4) in a particular zone, the planning authority may require the person to furnish the report referred to in subclause (2).*

*(4) The following classes of land are identified for the purposes of this clause:*

- (a) land that is within an investigation area,*
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*

**Extract from the Ordinary Council Meeting of the 21 August 2019**

*(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*

- (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
- (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

*(5) In this clause, planning authority has the same meaning as it has in section 145A of the Act.*

Council's records indicate that the subject site was, for a period of time utilised as a quarry, though there is not formal recording of this. Notwithstanding that the quarry was not formally registered with Council, the evidence in Council's records are sufficient to raise concerns regarding whether the land is contaminated. As aforementioned, the subject site was created for the purpose of a quarry therefore the provision of a dwelling entitlement on the land, on which it is currently prohibited would in effect change the use of the land. The land is identified under subclause 4 ion Table 1 of the contaminated land planning guidelines. For the purposes of this clause, under subclause 2 the planning authority can obtain and have regard to a preliminary investigation of the land carried out with the contaminated land planning guidelines. A preliminary investigation has not been supplied with the draft planning proposal.

An assessment of the draft planning proposal against the applicable SEPPs is attached in Annexure 'A'.

## **THE GATEWAY PROCESS**

Should Council resolve to support the LEP Amendment Request, the draft planning proposal will be forwarded to the Department of Planning, for a Gateway Determination under Section 3.34 of the Environmental Planning and Assessment Act 1979, wherein if the Minister deems that the matter shall proceed, a Gateway Determination will be issued.

If the draft Planning Proposal is not to be endorsed by Council, the proponent may apply for a pre – gateway Review of the Planning Proposal through the Department of Planning, Industry and Environment which would be undertaken by the Hunter Central Coast Joint Regional Planning Panel.

## **EXTERNAL REFERRALS AND COMMUNITY CONSULTATION**

Referral of the draft planning proposal and public exhibition for community consultation will occur if a favourable Gateway Determination is issued under Section 3.34 of the Environmental Planning and Assessment Act 1979. The Gateway Determination will identify those government agencies for which the proposal will be referred and the specified timeframe for exhibition.

## **IMPLICATIONS**

### ***Environmental***

The draft planning proposal does not seek to have any adverse environmental impacts. Any environmental impacts will be addressed during the assessment of a development application in the instance that a Gateway Determination is issued.



***Financial***

The fee payable to Council for the lodgement of an LEP amendment request has been paid by the proponent. In accordance with Council's Fees and Charges 2019-2020 under section 39 – Preparation of LEP's and DCPS'- rezoning's there will be an additional charge payable by the proponent if the proposal proceeds to the Department of Planning, Industry and Environment and is issued a Gateway Determination.

**CONCLUSION**

The proposed amendment to the Dungog LEP 2014 for the inclusion of the subject site in Schedule 1 – Additional Permitted Uses does not have strategic merit and the planning proposal does not provide adequate justification in determining that the proposal should proceed to the Department of Planning, Industry and Environment for a Gateway Determination. In this instance it is considered inappropriate to utilise this mechanism within the standard instrument to permit the provision of a dwelling house on land on which it is prohibited under Clause 4.2A of the Dungog LEP 2014.

Within the Dungog Local Government Area there are many allotments that are zoned RU1 Primary production that would not benefit from a dwelling entitlement under Clause 4.2A. It is considered premature to enable a dwelling entitlement through an ad hoc spot rezoning prior to conducting the Rural Lands Strategy and the comprehensive LEP review. The provision of a dwelling entitlement on this undersized constrained land zoned RU1 Primary Production is an undesirable planning outcome and is contrary to the Rural Lands Strategy 2010 and is therefore recommended for refusal.

## ANNEXURE 'A'

### Strategic Assessment for Proposed Amendment to the Dungog Local Environmental Plan 2014

#### Hunter Regional Plan 2036 Assessment

Directions	Applicable	Comment
<b>Goal 1 – The leading regional economy in Australia</b>		
1. Grow Greater Newcastle as Australia's next metropolitan city	Not Applicable	The site is not located in the Greater Newcastle City
2. Enhance connection to the Asia Pacific global Gateway	Not Applicable	The site is not contributory to Asia Pacific global gateway
3. Revitalise Newcastle City Centre	Not Applicable	The site is not located in the Newcastle City Centre
4. Enhance inter – regional linkages to support economic growth	Not Applicable	The site is not located in proximity to any inter – regional linkages
5. Transform the productivity of the Upper Hunter	Applicable	The proposal is for the purpose of permitting a dwelling entitlement on the site and is not contributory to the productivity of the Upper Hunter.
6. Grow the economy of the MidCoast and Port Stephens	Not Applicable	The site is not located in Port Stephens or the MidCoast region
7. Develop advanced manufacturing, defence and aerospace hubs	Not Applicable	The site is not located in the proximity to the Newcastle airport and Williamstown RAAF Base.
8. Promote innovative small business and growth in the service sectors	Not Applicable	The proposal does not affect business zones or land use for servicing
9. Grow Tourism in the region	Applicable	The proposal does not contribute to promoting tourism in the area
10. Protect and enhance agricultural productivity	Applicable	The subject site is zoned RU1 Primary Production though is not currently being utilised for agricultural purposes. The proposal would not impact on the viability of adjoining agricultural lands.
11. Manage the ongoing use of natural resources	Applicable	The site is not identified for extractive resources in any plan or strategy. The proposal would inhibit any resource activities however this would not affect any adjoining sites.
12. Diversify and grow the energy sector	Applicable	The proposal for the purpose of a dwelling entitlement does not contribute to the energy sector of the hunter region
13. Plan for greater land use compatibility	Applicable	Permitting a dwelling on the site not ancillary to an agricultural land use is inconsistent with planning for
<b>Goal 2 – A Biodiversity –rich natural environment</b>		
14. Protect and connect natural areas	Applicable	There are no Ecological Endangered Communities or areas of significant flora or fauna identified on the site. There are no biodiversity corridors present or adjoining the site. The proposal does not seek to impact upon area of biodiversity significance.
15. Sustain water quality and security	Applicable	The subject site is located on land that falls within the Williams river water catchment. Issues affecting water quality and security from future development would be addressed at the development application stage

**Extract from the Ordinary Council Meeting of the 21 August 2019**

16. Increase resilience to hazards and climate change	Applicable	The subject site is not identified as flood prone land but is identified as bushfire prone land. Future development on the site would need to be managed through the provision of Asset Protection Zones on the site.
<b>Goal 3 – Thriving Communities</b>		
17. Create healthy built environments through good design	Applicable	The subject site is located in a Rural area outside of the village of Dungog.
18. Enhance access to recreational facilities and connect open spaces	Applicable	The proposal is located in a rural area and would not require access to recreation facilities.
19. Identify and protect the regions heritage	Applicable	The site is consistent with this direction as there is no items of Heritage affected by this proposal
20. Revitalise existing communities	Applicable	The subject site is located outside the existing community of Dungog.
21. Create a compact settlement	Applicable	The subject site is outside the village of Dungog, located on rural land and is for the provision of a single dwelling or dual occupancy development. Development in the rural area is not considered
22. Promote housing diversity	Applicable	The proposal would permit, if supported the erection of a detached dwelling or a dual occupancy. These do not promote housing diversity in the Dungog LGA
23. Grow centres and renewal corridors	Not Applicable	The subject site is not located in an identified centre or urban renewal corridor.
24. Protect the economic functions of employment land	Applicable	The subject site is not currently zoned for employment outside of agricultural uses and has not been identified for future employment use.
25. Monitor housing and employment supply and demand	Applicable	The subject site is not identified as land for future residential development or employment lands. Notwithstanding that the proposal is for the provision of an additional dwelling, this subject site is not serviced and will not impact upon the supply and demand of employment and housing lands.
26. Deliver infrastructure to support growth and communities	Applicable	The subject site is not serviced by infrastructure and does not propose the addition of any infrastructure.
27. Strengthen the economic self determination of Aboriginal Communities	Not Applicable	The proposal does not directly impact on any local Aboriginal communities

**State Environmental Planning Policy Assessment**

State Environmental Planning Policy	Comment/ Assessment
<b>SEPP No. 44 – Koala Habitat</b>	
Aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reserve the current trend of koala population decline: (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and	A flora and Fauna assessment has not been provided with the proposal and the site has not been identified as core koala habitat. The proposal does not seek to remove any vegetation on the site or impact upon the existing vegetation.

**Extract from the Ordinary Council Meeting of the 21 August 2019**

<ul style="list-style-type: none"> <li>(b) by encouraging the identification of areas of core koala habitat, and</li> <li>(c) by encouraging the inclusion of areas of core koala habitat in environment protection zones</li> </ul>	
<b>SEPP No. 55 – Remediation of Land</b>	
<p>Aims to promote the remediation of contaminated land for the proposed of reducing the risk of harm to human health or any other aspect of the environment:</p> <ul style="list-style-type: none"> <li>(a) by specifying when consent is required, and when it is not required for the remediation work, and</li> <li>(b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and</li> <li>(c) by requiring that a remediation work meet criteria standards and notification requirements</li> </ul>	<p>A contamination report has not been provided with the application and the site is not identified as being contaminated land.</p> <p>Although the proposal does not seek to rezone the land, Council's records indicate that the site may have been utilised as a quarry around the time of subdivision. A contamination report may be required as part of a development application.</p>
<b>SEPP (Primary Production and Rural Development) 2019</b>	
<p>The aims of this Policy are as follows:</p> <ul style="list-style-type: none"> <li>(a) to facilitate the orderly economic use and development of lands for primary production,</li> <li>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</li> <li>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</li> <li>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</li> <li>(e) to encourage sustainable agriculture, including sustainable aquaculture,</li> <li>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</li> <li>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</li> </ul>	<p>The site is highly constrained for use for agricultural purposes and the proposal does not seek to facilitate or promote agricultural activities through the provision of a dwelling entitlement.</p> <p>Notwithstanding the site being constrained for the purposes of agricultural activities, enabling the provision of a dwelling entitlement on the site through the mechanism of an additional permitted use would promote land use conflict in the area. The provision of a dwelling on undersized rural land does not result in a favourable planning outcome.</p>

**Ministerial Section 9.1 Directions**

Direction	Comment
<b>Employment &amp; Resources</b>	
<b>1.2 Rural Zones</b>	
<p>Aims to protect the agricultural production value of rural land.</p> <p>Applies when a planning proposal affects land within an existing or proposed rural zone.</p>	<p>The proposal does not seek to rezone the land from rural to residential as the provision of a residential dwelling would be under Schedule 1 additional permitted uses</p> <p>The proposal is consistent with Ministerial Direction 1.2.</p>
<b>1.5 Rural Lands</b>	
<p>Aims to protect the agricultural production value of rural land; and facilitate the orderly and economic development of rural lands for rural and related purposes.</p> <p>Applies to local government areas to which State Environmental Planning Policy (Rural Development and Primary Production) 2019 applies and prepares a planning proposal that affects land within an existing or proposed rural or environment protection zone.</p>	<p>The proposal affects land zoned RU1 Primary Production. When considering the topography of the site and the constraints on the land it is reasonable to consider that the land is not prime agricultural land as its previous use is documented as being a quarry. Notwithstanding this the land is still zoned for Rural Purposes and Clause 4 of the Direction must be considered.</p> <p>The subject site is not identified specifically in the Hunter Regional Plan 2036, the Upper Hunter Land Use Strategy and is contrary to the Dungog Land Use Strategy 2010 which did not identify the site or adjoining lands for residential development. Based on the above its not considered that the proposal will have adverse impacts on the agricultural or environmental value of the land. The topography of the site and vegetation is prohibitive to the site being utilised extensively for agricultural purposes. The proposal would not promote opportunities for investment and productivity that would farmers. Notwithstanding the incompatibility of the land with an agricultural use, enabling a dwelling on rural land on which it is prohibited is not conducive to maintaining the land and locality for primarily agricultural use.</p>
<b>Environment &amp; Heritage</b>	
<b>2.1 Environmental Protection Zones</b>	
<p>Aims to protect and conserve environmentally sensitive areas.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>There are no areas of environmental protection present on the site.</p> <p>The subject proposal is consistent with the Ministerial Direction 2.1</p>
<b>2.3 Heritage Conservation</b>	
<p>Aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>There are no items of environmental heritage significance or indigenous heritage significance identified on the site.</p> <p>An Aboriginal Heritage Information Management System (AHIMS) search of the area provided with the application indicates no aboriginal site or places on or near the site.</p> <p>The subject proposal is consistent with the</p>



**Extract from the Ordinary Council Meeting of the 21 August 2019**

Direction		Comment
		Ministerial Direction 2.3
<b>2.4 Recreational Vehicle Areas</b>		
<p>Aims to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>		<p>The proposal does not seek to affect sensitive land or land with conservation values.</p> <p>The subject proposal is consistent with the Ministerial Direction 2.4</p>
<b>Housing, Infrastructure and Urban Development</b>		
<b>3.2 Caravan Parks and Manufactured Home Estates</b>		
<p>Aims to provide for a variety of housing types and provide opportunities for caravan parks and manufactured home estates.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>		<p>The existing land zoning does not permit caravan parks and manufactured home estates.</p> <p>The subject proposal is consistent with the Ministerial Direction 3.2</p>
<b>3.3 Home Occupations</b>		
<p>Aims to encourage the carrying out of low impact small business in dwelling houses.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>		<p>Though permissible under the RU1 Primary Production zone dwelling houses are prohibited on the site under Clause 4.2A of the Dungog LEP 2014. The proposal does not impact upon the permissibility of home occupations on the site.</p> <p>The subject proposal is consistent with the Ministerial Direction 3.3.</p>
<b>Hazard &amp; Risk</b>		
<b>4.4 Planning for Bushfire Protection</b>		
<p>Aims to protect life, property and the environment from bushfire hazards, and encourage sound management of bushfire prone areas.</p> <p>Applies when a planning proposal affects or is in proximity to land mapped as bushfire prone land.</p>		<p>The site is mapped as bushfire prone land. In the instance that the proposal is issued a gateway determination the proposal may require a referral to the NSW Rural Fire Service and in the instance that a Development application is lodged on the site the DA will be forwarded to the NSW RFS for a referral under 100B of the Rural Fires Act.</p> <p>The proposal is consistent with Ministerial Direction 4.4.</p>
<b>Regional Planning</b>		
<b>5.10 Implementation of Regional Plans</b>		
<p>Aims to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>		<p>The Hunter Regional Plan 2036 and the Upper Hunter Strategic Land Use Plan is applicable to the Dungog LGA. The subject site and is not identified in either regional plan. Despite the proposal not being considered suitable, the proposal is not explicitly inconsistent or contrary with the directions of the Hunter Regional Plan or the Upper Hunter Strategic Land Use Plan</p>
<b>Local Plan Making</b>		
<b>6.1 Approval and Referral Requirements</b>		
<p>Aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>Applies when the relevant planning authority</p>		<p>The proposal would not trigger the requirement for concurrence from the Minister nor would any future development be considered designated development</p>

**Extract from the Ordinary Council Meeting of the 21 August 2019**

Direction	Comment
prepares a planning proposal.	requiring the approval of a public authority. The proposal is consistent with Ministerial Direction 6.1.
<b>6.2 Reserving Land for Public Purposes</b>	
Aims to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where land is no longer required for acquisition. Applies when the relevant planning authority prepares a planning proposal.	The proposal does not affect land for public purposes not does it seek to facilitate the provision of public services. The proposal is consistent with Ministerial Direction 6.2.
<b>6.3 Site Specific Provisions</b>	
Aims to discourage unnecessarily restrictive site specific planning controls. Applies when the relevant planning authority prepares a planning proposal to allow particular development to be carried out.	The proposal seeks to utilise the mechanism of Schedule 1 Additional Permitted Uses of the LEP to permit the land use of a dwelling house which is currently prohibited under Clause 4.2A of the Dungog LEP 2014. As the proposal does not seek to restrict development on the site through the use of specific planning controls and instead permit additional development it is considered that the proposal is consistent with Ministerial Direction 6.3.

## **Upper Hunter Strategic Land Use Plan**

*Is the proposed amendment to the Dungog Local Environmental Plan 2014 consistent with the Upper Hunter Strategic Land Use Plan (UHSLUP)?*

The site is not specifically identified in the UHSLUP as the plan covers the broad region of the Upper Hunter which includes the Dungog LGA. The most applicable part of the plan in this instance is that of Chapter 6 Housing settlement which addresses the typology and location of future housing to meet the demands and trends of the Upper Hunter region. The settlement planning principles are not completely applicable to the proposal as the it is located on land outside of a new rural residential release area. Notwithstanding this of those principles applicable, the proposal does not align succinctly with those or the intent of the chapter regarding rural residential development. The proposal is generally consistent with the approach to increase housing however not as outlined in the plan.

## **Dungog Land Use Strategy 2010**

*Is the proposed amendment to the Dungog Local Environmental Plan 2014 consistent with the directions of the Dungog Land Use Strategy 2010?*

The Dungog Land Use Strategy 2010 is applicable to the Dungog Local Government Area and provides a land use framework for the Dungog LGA. The Dungog Land use Strategy identifies areas and land within the Dungog LGA that are suitable and viable for residential development in the future. The strategy identifies land in Fosterton just north of the Stroud Hill Road, Fosterton Road intersection for rural residential development. The subject site lies outside of this area and has not been further identified as required or suitable for rural residential development. In this instance the proposal is inconsistent to the directions of the Dungog Land Use Strategy 2010.

***Extract from the Ordinary Council Meeting of the 21 August 2019***  
**Dungog Community Strategic Plan**

*Is the proposed amendment to the Dungog Local Environmental Plan 2014 consistent with the themes of the Dungog Community Strategic Plan (CSP)?*

Rural and Urban Development

*Growth is achieved through a balanced mix of development which acknowledges our unique scenic qualities, rural amenity and country lifestyle.*

The provision of a dwelling entitlement on land zoned RU1 Primary Production on a significantly constrained site on an undersize allotment is inconsistent with the theme of Rural and Urban Development as identified in the CSP. Enabling land zoned for primary production to be utilised for the primary purpose as a dwelling would be to contrary to the intent of the zone and would not be considered a 'balanced mix' of development . In the instance that the proposal proceeds and a development application is lodged on the site, there will be issues in regards to maintaining scenic quality and rural amenity give the prominent location of the building envelope identified.