

**5. 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

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**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.

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**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.

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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 land at either end of the site. Adjoining development comprises of rural allotments with single detached dwellings and agricultural land.



Figure 1: Location Map of site at Fosterton

## PLANNING PROPOSAL

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.

The submitted planning proposal states:

*“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 PP is intended to enable the use of the site for rural/residential purposes which in turn will assist in the overall maintenance of the site. The Proposal can be carried out without any adverse impacts on the locality or environment”*

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 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’**.

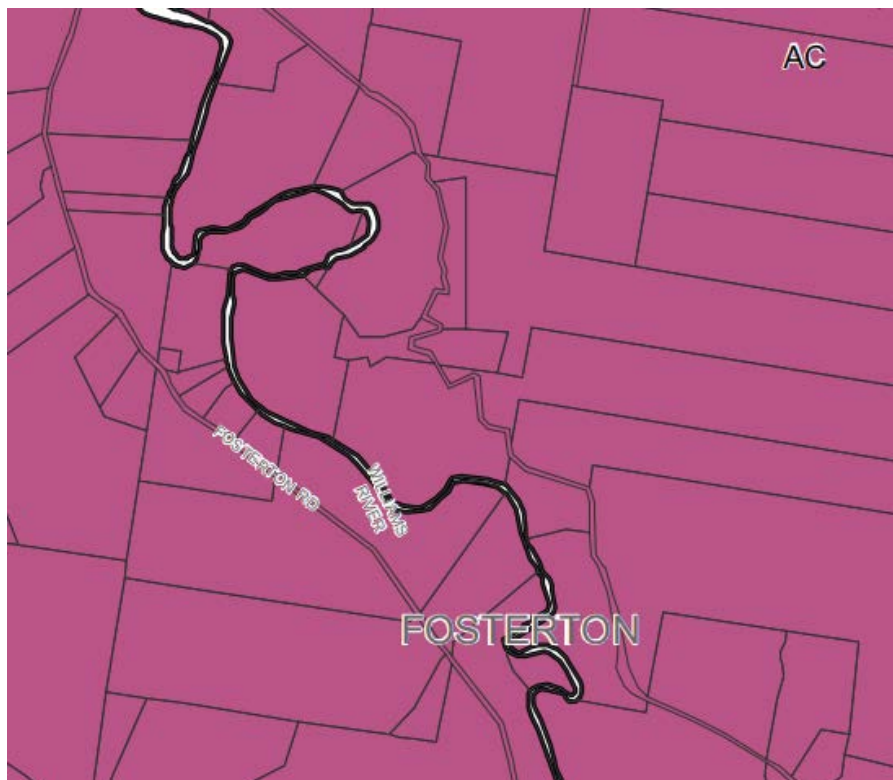


Figure 3: Dungog LEP 2014 Lot Size Map

## **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*

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,*
- (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

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>	
<p>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:</p> <p>(a) by requiring the preparation of plans of management before development consent can be granted in relation to</p>	<p>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.</p>

<p>areas of core koala habitat, and</p> <p>(b) by encouraging the identification of areas of core koala habitat, and</p> <p>(c) by encouraging the inclusion of areas of core koala habitat in environment protection zones</p>	
<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> <p>(a) by specifying when consent is required, and when it is not required for the remediation work, and</p> <p>(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</p> <p>(c) by requiring that a remediation work meet criteria standards and notification requirements</p>	<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> <p>(a) to facilitate the orderly economic use and development of lands for primary production,</p> <p>(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,</p> <p>(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,</p> <p>(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,</p> <p>(e) to encourage sustainable agriculture, including sustainable aquaculture,</p> <p>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</p> <p>(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.</p>	<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>

Direction	Comment
	The subject proposal is consistent with the 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</p>	<p>The proposal would not trigger the requirement for concurrence from the</p>

Direction	Comment
development. Applies when the relevant planning authority prepares a planning proposal.	Minister nor would any future development be considered designated development 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.

## **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.

# ANNEXURE 'B'



## REZONING APPLICATION FORM

Dungog Shire Council  
PO Box 95  
DUNGOG NSW 2420

DUNGOG SHIRE COUNCIL  
RECEIVED LGF  
JLW  
26 FEB 2013

RA171/82/48

Date Received \_\_\_\_\_

### 1. PROPERTY DETAILS –

Address of the land that will be affected by the rezoning/amendment

Address: 1222 Fosterton Road, Fosterton, NSW, 2420

Lot Number(s): Lot 1

DP Number(s): DP 867951

TPA 2039/b (PART)  
A: 52340  
PN: 9979

### 2. ZONING

What is the current zoning of your property? RU1 Primary Production

Do you want to change the zone?

YES

NO ✓

If yes, what zone do you want for your property?

If the purpose of your application is to change the aims, definitions or clauses which apply to the

Shire in general (or in part) or to add an additional permissible land use, please describe:

Purpose of the application is to provide a dwelling entitlement on the subject site.

### 3. YOUR PROPOSAL

Please give a brief description of what your application is intended to allow (eg commercial development, rural lifestyle subdivision)

Purpose of the application is to provide a dwelling entitlement on the subject site.

\$6000.00 Paid 28/2/19

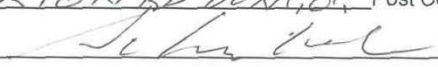
Rec# 710543

Costed to 2828.600

\$ Category 2 - Lodgement Fee

**4. OWNERS CONSENT –**

All owners if there are more than one.

Owner's name: LESLIE SCHWIEBEL  
Address: 1222 FOSTERTON RD DUNGOG Post Code: 2420  
Owner's signature/Company Stamp:   
Date: 12/02/2019

**5. APPLICANTS DETAILS –**

This is the person nominated by the owner(s) to lodge this application with Council. Council will communicate only with the applicant during the assessment process. All requests for additional information required will be directed to the applicant.

Name: Matt Brown  
Postal Address: Po Box 107 Clarence Town NSW  
 Post Code: 2321  
Phone (Business Hours): 0437 195 264 Facsimile:   
Email Address: matt@perceptionplanning.com.au  
Signature of Applicant:

**6. REZONING CHECKLIST –**

Please tick the box if your answer is YES.

- |   |                                     |
|---|-------------------------------------|
| Have you discussed your application with Dungog Council's Rezoning Panel?   | <input checked="" type="checkbox"/> |
| Does your application satisfy the requirements of the Dungog LEP, Dungog Rural Strategy and any relevant Local Area Plan? | <input type="checkbox"/>            |
| Have you read Council's rezoning proposals Information sheet?   | <input checked="" type="checkbox"/> |
| Have you supplied five (5) hard copies and one electronic copy?   | <input checked="" type="checkbox"/> |

## Sharna Stimson

---

**From:** Matt Brown <matt@perceptionplanning.com.au>  
**Sent:** Thursday, 21 February 2019 11:18 AM  
**To:** Shire Council; Lyn Forbes; Sharna Stimson; Katrina Watson  
**Cc:** Elysha Jordan; Jeff Bretag; Tilly Munn; Josh Real; Leslie Schwebel  
**Subject:** Planning Proposal - 1222 Fosterton Road Fosterton  
**Attachments:** Fosterton Road, Fosterton\_PP\_FINAL.pdf; Fee Quote Email.docx

---

Good morning Council,

We have posted the Construction Certificate Application in the mail today and our client has advised us that they will contact you shortly to make payment of the fees.

Please find attached the PP Package for your records, which includes the following;

- Planning Proposal
- Attachment 1- AHIMS search
- Attachment 2- Pre-lodgement Meeting Minutes

The Fee quote has been provided to the client and is also attached.

The client will contact council shortly to make payment and they have been provided with the fee quote received from Council. Les can you please phone Council on 4995 7777 or call into the admin office (early next week when the post arrives) to attend to the fees. If the fees are not received Council will send back the package and they cant accept and assess the application.

If you have any questions please don't hesitate to contact us.

Kind Regards

---

### MATT BROWN Director

BURBRegPlan, MAdminLead, DipBuildSurv, GradCertEnvMgt,  
DipMgmt, Cert IV T&A, MPIA, CPP/Registered Planner

☎ 0437 195 264 🌐 [www.perceptionplanning.com.au](http://www.perceptionplanning.com.au)

Find us on   

*Where town planning is our sixth sense*

**PERCEPTION  
PLANNING**



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**Business Solutions**

Negotiation / Facilitation / Mediation  
**Project Management**  
Training  
**Bushfire Assessments**

---

This email has been scanned by the Symantec Email Security.cloud service.

**From:** Jenny Webb <JennyW@dungog.nsw.gov.au>  
**Sent:** Tuesday, 12 February 2019 12:09 PM  
**To:** Tilly Munn  
**Subject:** FW: Planning proposal - fee quote request.



Hi Matilda

The Planning proposal would be Category 2 as defined in Council's adopted fees and charges, which has a fee of \$12,000. \$6000 is to be paid at lodgement with a further \$6000 to be paid following a Gateway determination. Please refer to Council's adopted fees and charges (attached) for more details.

Regards

*Mr Leslie Schwebel*  
*RA 171/82/48*

Jenny

Jenny Webb

Senior Town Planner/

Development Officer

*Available Mon-Tue, Thur-Fri*

t:02 49957777 | f:02 49957750

e:jennyw@dungog.nsw.gov.au



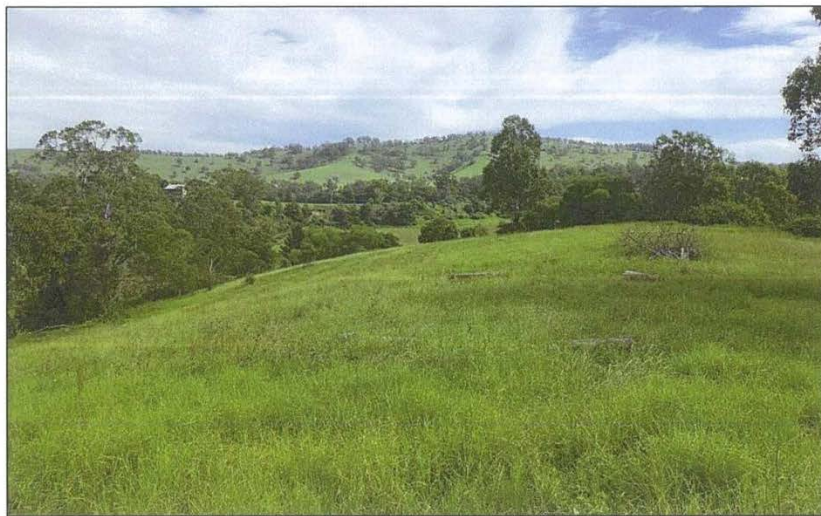


Planning Proposal at

**1222 Fosterton Road, Fosterton, NSW, 2420**

To seek an additional permitted use for a building entitlement.

Prepared by Perception Planning Pty Ltd for Mr. Leslie Schwebel.



February 2019

**Contact Details:**

Perception Planning Pty Ltd  
PO Box 107,  
Clarence Town, NSW, 2324  
Phone: 0437 195 264  
Email: [matt@perceptionplanning.com.au](mailto:matt@perceptionplanning.com.au)

---

Document Versions and Control				
Planning Proposal, 1222 Fosterton Road, Fosterton, NSW, 2420				
No:	Date:	PP Ref:	Author:	Reviewed by:
Version 1	11/10/2018	Draft Planning Proposal	MM	MB
Version 2	07/02/2019	Client Review	MM	MB
Version 3	12/02/2019	Peer Review	MM	JB
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## EXECUTIVE SUMMARY

---

This Planning Proposal (PP) has been prepared on behalf of the client, Leslie Schwebel, in relation to a proposed dwelling entitlement on Lot 1 DP867951, being a lot of 1222 Fosterton Road, Fosterton, NSW, 2420.

Specifically, it is proposed the subject site include a dwelling entitlement, despite being under the minimum lot size. This proposal will allow for better management of the land given the site is primarily dense vegetation and well 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.

This PP is intended to enable the use of the site for rural/residential purposes, which in turn will assist in the overall maintenance of the site. The proposal can be carried out without any adverse impacts on the locality or environment.

This PP describes the subject site, relevant planning controls and outlines the proposed development. Overall, this PP is consistent with the Department of Planning & Environment, August 2016, 'A Guide to Preparing Planning Proposals'. The Proposal has the potential to deliver improved social, economic and environmental outcomes for site.

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## 1.0 INTRODUCTION

This Planning Proposal (PP) has been prepared on behalf of the client, Leslie Schwebel, in relation to a proposed dwelling entitlement on Lot 1 DP867951, being a lot of 1222 Fosterton Road, Fosterton, NSW, 2420.

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

### 1.1 BACKGROUND

A Pre-Lodgement Meeting took place at Council on 7 June 2018. The matters discussed during the meeting primarily involved the proposed rezoning of the site, which is no longer part of the PP. There were no direct matters raised regarding the proposed dwelling entitlement on Lot 1 DP867951. It was noted by Matthew Brown that a dwelling entitlement on the site would provide for active management of the site given the topography and site characteristics are not conducive of agricultural pursuits.

Following the pre-lodgement meeting, it was decided to amend the PP and apply for the dwelling entitlement on Lot 1 DP867951 only.

Refer to Appendix B for a copy of the meeting minutes. Note the PP in question is 'Item 3'.

### 1.2 SITE DESCRIPTION AND RELEVANT PLANNING CONTROLS

The subject site is known as 1222 Fosterton Road, Fosterton NSW, and can be legally identified as Lot 1 DP867951. The site is located within Fosterton, which is 10.4km (15 minutes' drive) to the north of Dungog, NSW.

The site is 6.561ha in size, and is located in the Dungog Local Government Area (LGA). The site is bound by Fosterton Road to the west, and is surrounded by a vast variety of rural and rural residential lot size properties. The Williams River is located beyond Fosterton Road to the west. The majority of the site consists of bushland vegetation with a portion of cleared land located within the southern portion of the site.

A summary of the key site particulars and characteristics are as follows:

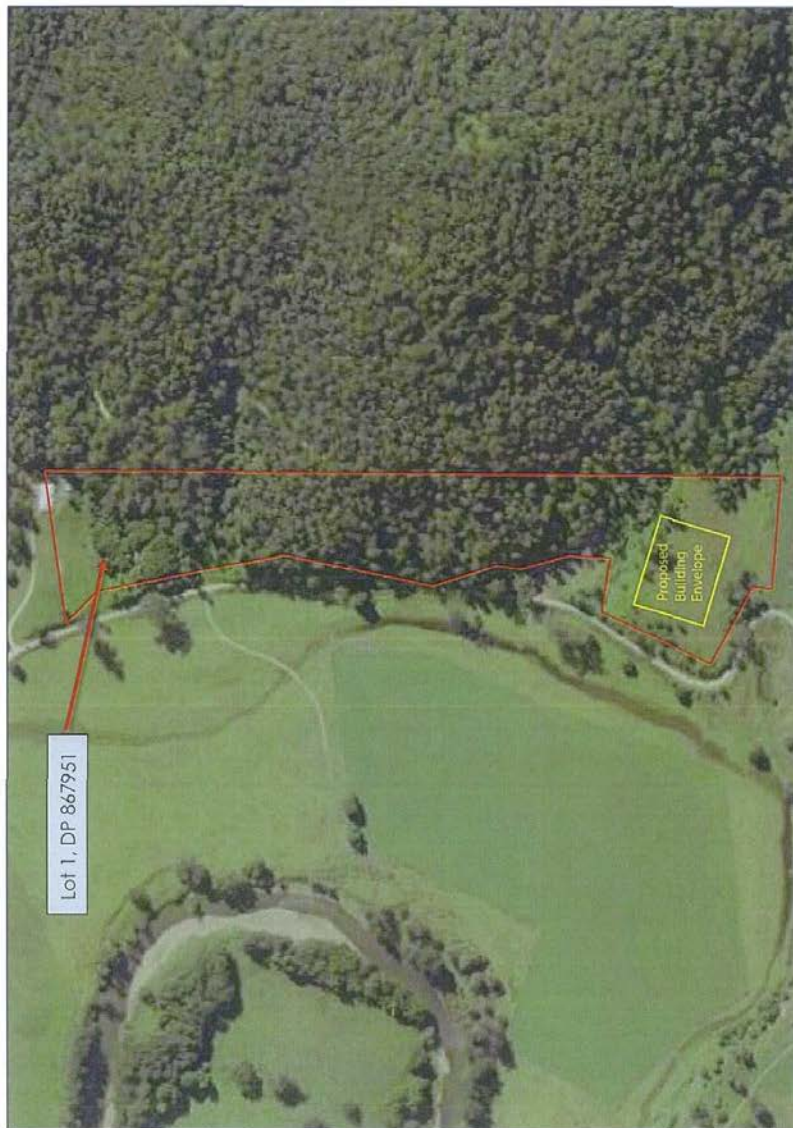
<b>Local Government Area:</b>	Dungog Shire Council
<b>Name of LEP:</b>	Dungog Local Environmental Plan (the LEP) 2014
<b>Address:</b>	1222 Fosterton Road, Fosterton, NSW, 2420 (the site)
<b>Zoning:</b>	RU1 Primary Production
<b>Minimum Lot Size:</b>	AC 60ha
<b>Bushfire Prone:</b>	Yes
<b>Flood Prone:</b>	No (NSW Planning Portal)
<b>Heritage:</b>	No (NSW Planning Portal)
<b>Acid Sulfate Soils:</b>	No (NSW Planning Portal)
<b>Land Acquisition:</b>	No (NSW Planning Portal)

Urban Release Area:	No (NSW Planning Portal)
Drinking Water Catchment:	Yes
Strategic Agricultural Land:	No (NSW Planning Portal)
Relevant Strategies:	Dungog Local Government Area Situation Analysis, Land Use Strategy, Hunter Regional Plan 2036, and Upper Hunter Strategic Regional Land Use Plan.
Site Area:	6.561ha
Legal Description:	Lot 1, DP 867951
Land Owner:	Mr. Leslie Schwebel
Applicant:	Perception Planning on behalf of the landowners
PP Job No:	JOOO176
Appendices:	APPENDIX A – AHIMS RESULTS APPENDIX B – PRE LODGEMENT MEETING MINUTES

Figure 1 – Locality Map



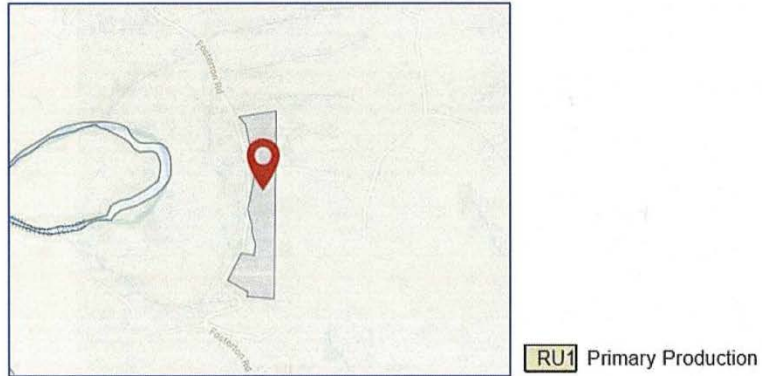
Figure 2 - Site Plan - 1222 Fosterton Road, Fosterton NSW



### 1.3 CURRENT ZONING

The subject site is currently zoned RU1 Primary Production under the current LEP (See **Figure 3** below).

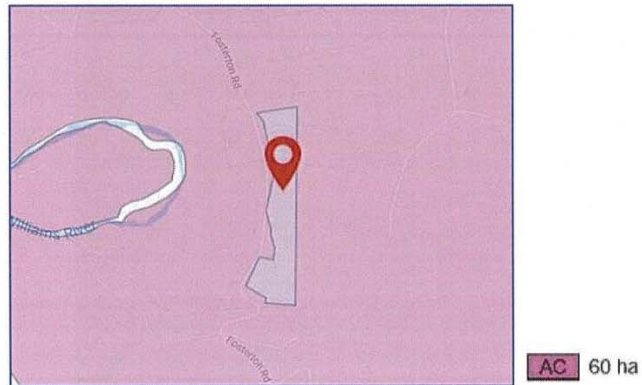
Figure 3 - Land Use Zoning Map



### 1.4 MINIMUM LOT SIZE PROVISIONS

The subject site currently has a minimum lot size of 60ha under the current LEP (See **Figure 4** below).

Figure 4 - Minimum Lot Size Map



## **2.0 THE PROPOSAL**

---

The proposal consists of providing a dwelling entitlement on the subject site which is less than the minimum lot size.

### **2.1 THE NEED FOR THE PROPOSAL**

The intended outcome of the PP is to facilitate a dwelling on the subject site.

The proposal will provide a low impact residential opportunity in an area of aesthetic value and potential ecological value.

This proposal will allow for better management of the land given the site is primarily dense vegetation and well below the minimum lot size, thus not prime rural farming land.

An indicative building envelope has been shown in Figure 2 above, which demonstrates the practicality and feasibility of the proposal. It is considered that there is sufficient cleared land on the site for a dwelling and associated supporting infrastructure without the need for extensive vegetation clearing, if any, and thus the site is suitable for the proposal. The proposal has been created with respect to the existing vegetation, bushfire requirements and existing access/egress.

Overall this is considered the highest and best use of the site given its location, site characteristics and lack of agricultural abilities.

### **2.2 LAND USE CONFLICT CONSIDERATIONS**

The proposal will not create conflict with the current land uses on adjacent lands as the proposed development is non-offensive and is similar to the land use of many surrounding properties.

### 3.0 MATTERS TO BE ADDRESSED IN A PLANNING PROPOSAL

The NSW Department of Planning and Environment (DoPE) have prepared a guideline for the submission of planning proposals. The guideline identifies six overarching matters that must be addressed in a Planning Proposal. These include:

1. A statement of the objectives or intended outcomes of the proposed instrument.
2. An explanation of the provisions that are to be included in the proposed instrument.
3. Justification for those objectives, outcomes and provisions and the process for their implementation, including:
  - a) Need for the Planning Proposal
  - b) Relationship to strategic planning framework
  - c) Environmental, social and economic impact
  - d) State and Commonwealth interests.
4. Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies.
5. Details of the community consultation that is to be undertaken on the Planning Proposal.
6. Project timeline.

These matters are addressed below.

#### 3.1 PART 1 – OBJECTIVES OR INTENDED OUTCOMES

##### THE PRIMARY OBJECTIVE OF THE PLANNING PROPOSAL

The primary objective of this PP is to provide a dwelling entitlement on the site despite being under the minimum lot size. The proposal will allow for better management of the land given the site is primarily dense vegetation and well below the minimum lot size, thus not prime rural farming land that it is zoned as.

The objectives of the RU1 Primary Production zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To provide for recreational and tourist activities that are compatible with the agricultural, environmental and conservation value of the land.

- 
- *To promote the rural amenity and scenic landscape values of the area and prevent the silhouetting of unsympathetic development on ridgelines.*
- 

The proposal will be compatible with these objectives by providing a low impact residential opportunity in an area of aesthetic value and potential ecological value. Having a dwelling entitlement on the site will allow for the ongoing management of the site. The site is well below the minimum lot size and not practical for agricultural purposes given its dense vegetation, thus the site in its current state is not being utilized for agricultural purposes and therefore not meeting the zone objectives. By providing a dwelling entitlement on the site, the site will be managed for rural amenity and will provide a use of the land which is sympathetic and compatible with surrounding development and land uses.

The proposal is considered the highest and best use of the site given its location, site characteristics and lack of agricultural abilities.

### **3.2 PART 2 – EXPLANATION OF THE PROVISIONS**

#### **SUMMARY OF PROPOSED CHANGES TO THE LEP**

The objective of the proposal will be achieved by inserting the following clause within the Dungog Local Environmental Plan 2014 (Schedule 1 – Additional Permitted Uses):

4. Use of certain land at 1222 Fosterton Road, Fosterton
  - (1) This clause applies to land at 1222 Fosterton Road, Fosterton, being Lot 54, DP 837849
  - (2) Development for the purpose of a dual occupancy or dwelling house is permitted with development consent.

### **3.3 PART 3A – NEED FOR THE PLANNING PROPOSAL**

#### **IS THE PLANNING PROPOSAL A RESULT OF ANY STRATEGIC STUDY OR REPORT?**

##### **HUNTER REGIONAL PLAN 2036**

The Hunter Regional Plan 2036 was adopted in October 2016, and applies to the Hunter Region which includes the Dungog LGA.

The Vision of this Plan is to create a leading regional economy in Australia, through the use of four goals. These goals being:

- A leading regional economy in Australia
- A biodiversity-rich natural environment
- Thriving communities
- Greater housing choice and jobs.

While the subject site is small in size and not specifically identified within this Plan, it is considered that the proposed development meets the vision of the Plan by providing a rural/residential

dwelling opportunity within an area characterized by environmental integrity and amenity. Given the size and characteristics of the site do not practically allow the site to be utilized for primary production purposes, the proposed dwelling entitlement will allow for the ongoing management and sustainability of the environmental land. This is considered the best use of the site.

The proposal is not a result of this Plan.

#### **UPPER HUNTER STRATEGIC REGIONAL LAND USE PLAN**

The Upper Hunter Strategic Regional Land Use Plan (UHSRLUP) applies to the Upper Hunter Region, which includes the Dungog LGA.

The UHSRLUP identifies lands and considerations important to the future growth and development of the Upper Hunter. In particular, the UHSRLUP addresses challenges and actions facing the region in relation to infrastructure, economic development and employment, housing and settlement, community health and amenity, natural environment, natural hazards and climate change, and cultural heritage.

Similar to above, while the subject site is small in size and not specifically identified within this Plan, it is considered that the proposed development meets the vision of the Plan by providing a rural/residential dwelling opportunity within an area characterized by environmental value and amenity. As the size and characteristics of the site do not practically allow the site to be utilized for primary production purposes, the proposed dwelling entitlement will allow for the ongoing management of the land and will provide an opportunity for minor residential development in an area of aesthetic and environmental value. This is considered to be consistent with the UHSRLUP, which identifies the need for a range of housing opportunities through various land use zones.

The proposal is not a result of this Plan.

#### **DUNGOG LAND USE STRATEGY**

The Dungog Land Use Strategy applies to the Dungog LGA, and thus applies to the subject site. The Strategic Plan provides a direction and planning context to guide the preparation/review of planning documents. The Strategy is intended to provide a framework to guide land-use decisions affecting the Dungog LGA through to the year 2031, and is designed to provide Council with a clear land use framework for strategically directing growth and change into the future.

The Strategy discusses the various areas of social, economic and environmental growth of the LGA, and identifies that the sustainability of environmental integrity and amenity is of high importance to residents and visitors of the LGA. While the subject site is currently zoned RU1 Primary Production, the site characteristics and size of the land inhibits the potential for the site to be utilized for primary production purposes as it is zoned. Therefore, the sustainability of the environmental integrity and amenity of the site is a more appropriate use of the land.

While the site is not specifically identified within the Strategy for future rezoning or investigation, it is considered that the planning proposal is consistent with the Strategy by providing an additional housing opportunity within the LGA while respecting and supporting the existing environment and values within the immediate and surrounding environment. Given the site cannot feasibly be utilized for primary production purposes as its currently zoned, the proposed use of the site is considered the best possible outcome for the land.

The proposal is not a result of this Strategy.

---

#### ***DUNGOG LOCAL GOVERNMENT AREA SITUATION ANALYSIS***

The Dungog Local Government Area Situation Analysis was prepared to identify emerging trends and issues for the LGA, and has been undertaken through background research, community consultation, and the preparation of specific issues papers including economic, tourism, social and rural residential availability.

While the Situation Analysis does not specifically identify the subject site within the paper, it states that 'Dungog LGA is an area of high environmental integrity and amenity, and its sustainability is of utmost importance'. Similar to above, it is considered that the planning proposal is consistent with the situation analysis by providing an additional housing opportunity within the LGA while respecting the existing environment and values within the immediate and surrounding environment. Given the site cannot feasibly be utilized for primary production purposes as it is currently zoned, the proposed use of the site is considered the best possible outcome for the land.

The proposal is not a result of this Analysis.

#### ***DUNGOG SHIRE COMMUNITY STRATEGIC PLAN***

The Community Strategic Plan forms part of the Dungog Shire Council Integrated Planning and Reporting (IP&R) Framework. The Plan outcomes the community's vision and the other supporting documents assist with achieving that vision.

The most relevant priority from the Plan is from Theme 4 – Rural and Urban Development, which aims to 'ensure that there is adequate land supply to accommodate future expected population growth' and 'maintain a long term planning approach that caters for diversity and choice in rural and village living'. This proposal is consistent with this by providing an additional housing opportunity and creating a choice of town or rural living.

#### **IS THE PLANNING PROPOSAL THE BEST MEANS OF ACHIEVING THE OBJECTIVES OR INTENDED OUTCOMES, OR IS THERE A BETTER WAY?**

The Planning Proposal seeks to allow a dwelling entitlement on the site, and will have limited conflicts (if any) with the future development of the surrounding land.

The proposed amendment to the Dungog LEP 2014 is considered the most appropriate way to achieve the objectives outlined in this PP and desired outcome for the subject site.

### **3.4 PART 3B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK**

#### **IS THE PLANNING PROPOSAL CONSISTENT WITH THE OBJECTIVES AND ACTIONS CONTAINED WITHIN THE APPLICABLE REGIONAL OR SUB-REGIONAL STRATEGY**

The subject site is not specifically identified in the Upper Hunter Regional Strategy (LHRS). However, as the subject site is relatively small in comparison, it is unlikely to be specifically identified in a Regional Strategy.

Despite not being identified within the Plan, it is considered that the proposed development meets the vision of the Plan by providing a rural/residential dwelling opportunity within an area characterized by environmental value and amenity. As the size and characteristics of the site do not practically allow the site to be utilized for primary production purposes, the proposed dwelling entitlement will allow for the ongoing management of the land and will provide an opportunity for minor residential development in an area of aesthetic and environmental value. This is considered to be consistent with the UHSRLUP, which identifies the need for a range of housing opportunities through various land use zones.

**IS THE PLANNING PROPOSAL CONSISTENT WITH THE LOCAL COUNCIL ' S COMMUNITY STRATEGIC PLAN, OR OTHER LOCAL STRATEGIC PLAN?**

Despite the site not being specifically identified within the Dungog Land Use Strategy for future rezoning or investigation, it is considered that the planning proposal is consistent with the Strategy by providing an additional housing opportunity within the LGA while respecting the existing environment and values within the immediate and surrounding environment. Given the site cannot feasibly be utilized for primary production purposes as its currently zoned, the proposed use of the site is considered the best possible outcome for the land.

**IS THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE STATE ENVIRONMENTAL PLANNING POLICIES?**

The relevant State Planning Legislation for NSW is the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979). The EP&A Act is supplemented by a suite of Environmental Planning Instruments (EPI's), namely State Environmental Planning Policies (SEPP's) and Local Environmental Plans (LEP's). The SEPP's that are potentially relevant to this PP include:

- *State Environmental Planning Policy No 44—Koala Habitat Protection*
- *State Environmental Planning Policy (Rural Lands) 2008*

In addition, it is a requirement under the EP&A Act that directions prepared under Division 9.1, previously known as Section 117, are considered when preparing a planning proposal.

**STATE ENVIRONMENTAL PLANNING POLICY NO 44 – KOALA HABITAT PROTECTION**

This Policy applies to the Dungog LGA. The objectives of this SEPP are to promote the protection of Koala habitat.

The subject site contains dense vegetation throughout a large portion of the site, with a cleared area of land located within the southern portion of the site which is where the proposed dwelling entitlement would logically be located. As the proposed dwelling entitlement is not anticipated to impact upon vegetation within the site, a flora and fauna assessment is not considered necessary at this stage.

It is anticipated that an assessment of subsequent development applications on the land proposed for the dwelling entitlement will contain a detailed SEPP 44 assessment and will propose mitigation measures should this be required.

The aim of this Policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes. This policy applies to the Dungog LGA.

While the proposal does not promote or facilitate productive and sustainable rural activities on the subject site, the overall size and characteristics of the site do not provide the opportunity for primary production and agricultural activities to be undertaken. The site is well below the minimum lot size and not practical for agricultural purposes given its dense vegetation, thus the site in its current state is not being utilized for agricultural purposes and therefore not meeting the zone objectives or the aims of this Policy.

As such, it is considered that the planning proposal will allow for the ongoing management of the site and subsequently its environmental values and characteristics. By providing a dwelling entitlement on the site, the site will be managed for rural amenity and will provide a use of the land which is sympathetic and compatible with surrounding development and land uses. The proposal is considered the highest and best use of the site given its location, site characteristics and lack of agricultural abilities.

#### STATE ENVIRONMENTAL PLANNING POLICY 55 – REMEDIATION OF LAND

The objectives of this SEPP are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

- a) By specifying when consent is required, and when it is not required, for a remediation work.
- 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.
- c) By requiring that a remediation work meet certain standards and notification requirements.

Under Clause 6 (1) of SEPP 55 – Remediation of land, a planning authority must consider whether the land is contaminated.

A dwelling house is permissible under the zoning of the site and would be permissible if the subject site was not an undersized lot, therefore the proposal is not seeking to change the permissible uses from those expected of rural lands to those expected from a residential zone,

No notices have been issued for the site under the Contaminated Land Management Act, nor have any licences been issued under the Protection of the Environment Operations Act for the site.

As the subject site and the surrounding areas are not believed to be contaminated, no further investigations are therefore considered necessary at this stage.

#### IS THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE MINISTERIAL DIRECTIONS (S. 117 DIRECTIONS)

The relevant and applicable Section 117 Ministerial Directions are identified below.

SECTION 9.1 (PREVIOUSLY 117) MINISTERIAL DIRECTION	CONSISTENCY
1.2 Rural Zones	<p>Given the PP does not involve the rezoning of rural land for residential, business, industrial, village or tourist purposes, it is considered that the proposal is not inconsistent with the Direction.</p> <p>The PP merely proposes a dwelling entitlement on a parcel of land that is currently below the minimum lot size, is primarily heavily vegetated and therefore not practical for agricultural purposes. The site in its current state is not being utilized for agricultural purposes and cannot practically be utilized for that purpose.</p> <p>The proposal will provide a low impact residential opportunity in an area of aesthetic value and potential ecological value.</p> <p>The proposal will allow for better management of the land given the site is primarily dense vegetation and below the minimum lot size, thus not prime rural farming land that it is zoned as. This is considered the highest and best use of the site given its location, site characteristics and lack of agricultural abilities.</p> <p>Overall it is considered the PP is minor in nature and will have minimal to no impact on primary production and agricultural activities within the area.</p>
1.3 Mining, Petroleum Production and Extractive Industries	<p>Under the current zone of the site, mining is permissible with consent. This will not be altered and therefore is consistent with this Direction.</p>
1.5 Rural Lands	<p>While the proposal does not promote or facilitate productive and sustainable rural activities on the subject site, the overall size and characteristics of the site do not provide the opportunity for primary production and agricultural activities to be undertaken. The site is well below the minimum lot size and not practical for agricultural purposes given its dense vegetation, thus the site in its current state is not being utilized for agricultural purposes.</p> <p>As such, it is considered that the planning proposal will allow for the ongoing management of the site and subsequently its environmental values and characteristics.</p>

SECTION 9.1 (PREVIOUSLY 117) MINISTERIAL DIRECTION	CONSISTENCY
	<p>The proposal does not alter the current rural zoning of the site, and while is not technically consistent with this Direction, it is considered that the PP is the most appropriate use of the site.</p>
<p><b>4.4 Planning for Bushfire Protection</b></p>	<p>The subject site is identified bushfire prone, and any future development of the land for residential purposes, will require referral to the Rural Fire Service under Section 100B of the <i>Rural Fires Act 1997</i>.</p> <p>While majority of the site is vegetated, there is a large area of cleared land within the southern portion of the site, which neighbours other cleared land and Fosterton Road.</p> <p>Any future residential development on the site will be subject to a thorough bushfire assessment against Planning for Bushfire Protection 2006.</p> <p>It is considered that the PP can be consistent with Direction 4.4.</p>
<p><b>5.10 Implementation of Regional Plans</b></p>	<p>The Hunter Regional Plan 2036 and the Upper Hunter Strategic Regional Land Use Plan both apply to the Dungog LGA.</p> <p>While the subject site is small in size and not specifically identified within either Plan, it is considered that the proposed development meets the vision of both Plans by providing a rural/residential dwelling opportunity within an area characterized by environmental integrity and amenity. Given the size and characteristics of the site do not practically allow the site to be utilized for primary production purposes, the proposed dwelling entitlement will allow for the ongoing management and sustainability of the environmental land. This is considered the best use of the site.</p> <p>Overall, it is considered that the PP is consistent with Direction 5.10.</p>
<p><b>6.1 Approval and Referral Requirements</b></p>	<p>It is considered that the proposal is substantially consistent with this Direction. The proposal seeks a dwelling entitlement on a site under the minimum lot size that is likely to contain minor concurrence provisions. Further, the proposal does not seek to identify development as designated development.</p>

SECTION 9.1 (PREVIOUSLY 117) MINISTERIAL DIRECTION	CONSISTENCY
6.3 Site Specific Provisions	<p>The PP does not involve the implementation of restrictive site specific planning controls, rather it provides an additional use to a site that is currently not being utilized for rural purposes to which it is zoned for. The PP has been designed to allow a dwelling entitlement on a site that is under the minimum lot size specific to the site, without the need to rezone or reduce the minimum lot size.</p> <p>The PP is considered generally consistent with this Direction by proposing an additional use to the site rather than restricting use of the site.</p>

### 3.5 PART 3C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

#### IS THERE A LIKELIHOOD THAT CRITICAL HABITAT OR THREATENED SPECIES, POPULATION OR ECOLOGICAL COMMUNITIES, OR THEIR HABITATS WILL BE ADVERSELY AFFECTED AS A RESULT OF THE PROPOSAL?

It is considered that flora and fauna within the subject site is able to be protected and managed should the planning proposal be approved. It is unknown if the subject site contains any ecologically significant flora and fauna, however, given the proposal and the subsequent development, it is not anticipated that copious amounts of vegetation and subsequent ecological impact, if any, will be removed to support a future dwelling. In addition to this, future development will be subject to its own assessment, with any ecological impact to be assessed during that stage.

An indicative building envelope has been shown in Figure 2, which demonstrates the practicality and feasibility of the proposal. It is considered that there is sufficient cleared land on the site for a dwelling and associated supporting infrastructure without the need for extensive vegetation clearing, if any, and thus the site is suitable for the proposal. It is considered that a future dwelling could be designed and constructed with respect to the existing ecological values of the site, including the preservation of existing vegetation and environmental characteristics.

Overall it is considered that the proposal and future dwelling will allow for the ongoing management of the site and preservation of these environmental values. Should any impact upon these values be likely, it is suggested that assessments of that kind be undertaken during future development applications.

#### ARE THERE ANY OTHER LIKELY ENVIRONMENTAL EFFECTS AS A RESULT OF THE PLANNING PROPOSAL AND HOW ARE THEY PROPOSED TO BE MANAGED?

##### **BUSHFIRE**

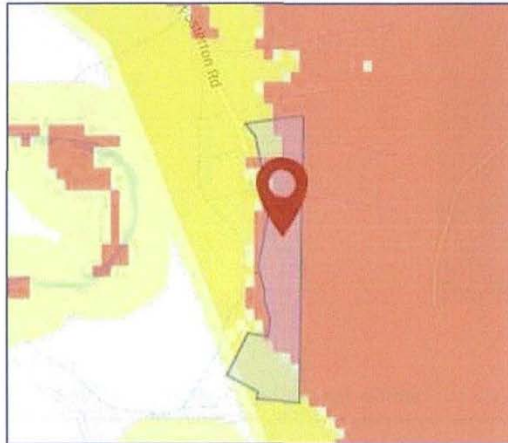
The site is identified as within an area affected by bushfire (See **Figure 5** below).

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A portion of the subject site is identified as being bushfire prone land on the NSW Planning Portal.

The site has good access to the public road network, which is considered sufficient for emergency services. Given that a portion of the site is predominantly vacant of vegetation, close to access/egress and in the bottom of a valley, it is considered that the proposal is feasible while ensuring the safety of future residents and emergency personnel.

Figure 5 - Bushfire Prone Land Map



#### **FLOODING**

The subject site is not identified as being flood prone as per the NSW Planning Portal.

#### **HERITAGE**

An AHIMS search undertaken on 12 February 2019 did not identify any Aboriginal sites or places recorded in or near the subject site. Refer to Appendix A for further detail. No other Aboriginal or European Heritage, State or local heritage items have been identified on or near the subject site.

#### **DRINKING WATER CATCHMENT**

As noted in Figure 6 below, the site is located in a Drinking Water Catchment, specifically the Special Area 'Williams'.

Despite this, it is considered the PP and future development of the site will not adversely impact the quality and quantity of water entering the drinking water storage. Any future development application on the site will thoroughly address Clause 6.5 of the Dungog LEP 2014 with regard to any impacts anticipated and any appropriate measures proposed to avoid, minimize and mitigate any impacts of the development.

At this stage of the development, it is not anticipated that adverse or significant impacts will be created by permitted a dwelling entitlement on the site.

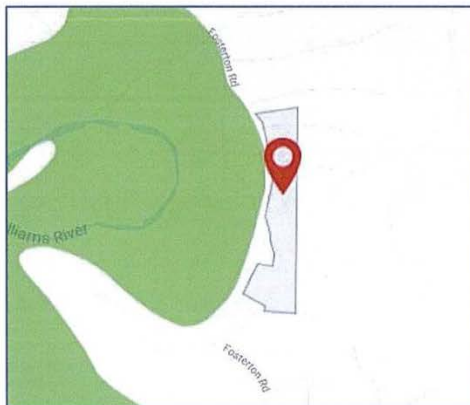
Figure 6 - Drinking Water Catchment - Special Area 'Williams'



#### STRATEGIC AGRICULTURAL LAND

As noted within Figure 7 below, the subject site is not identified as containing strategic agricultural land. As such, it is considered the planning proposal does not contradict or contravene this Clause of the Dungog LEP 2014.

Figure 7 - Strategic Agricultural Land



No further environmental effects are anticipated as a result of the PP.

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HOW HAS THE PLANNING PROPOSAL ADEQUATELY ADDRESSED ANY SOCIAL AND ECONOMIC EFFECTS?

Given the minor nature of the PP, it is considered that social and economic effects resulting from the proposal are minimal.

The site does not contain any registered or identified items of European or Aboriginal significance, and does not create a significant impact on essential services or infrastructure.

The PP will provide some economic growth in the area during construction and future residents.

It is considered all impacts have been satisfactorily addressed throughout this PP.

### **3.6 PART 3D – STATE AND COMMONWEALTH INTERESTS**

#### **IS THERE ADEQUATE PUBLIC INFRASTRUCTURE FOR THE PLANNING PROPOSAL?**

The site is located within Fosterton, which is 10.4km (15 minutes' drive) to the north of Dungog, NSW. Dungog is serviced by transport services, health centres, education facilities, religious facilities, and local grocery facilities.

It is considered that there is sufficient access to the main road, being Fosterton Road from the site. Given the site is a rural lot, the site is not connected to reticulated water, sewer and storm water. However, a single dwelling on a rural lot does not necessarily require connections to reticulated services, and thus it is considered that this will not be of major concern for any future residential development on the site which will incorporate water, storm water and sewerage systems during future applications.

#### **WHAT ARE THE VIEWS OF STATE AND COMMONWEALTH PUBLIC AUTHORITIES CONSULTED IN ACCORDANCE WITH THE GATEWAY DETERMINATION?**

The Planning Proposal has not been formally publically exhibited at this time, and as such there has been no consultation with, or responses from, State or Commonwealth Government Agencies. There is considered few environmental issues to warrant consultation with State Government Agencies at this stage.

### **3.7 PART 4 – MAPPING**

This proposal does not require any amendments to the LEP mapping, rather an additional permitted use to Schedule 1 of the Dungog LEP 2014.

### **3.8 PART 5 - COMMUNITY CONSULTATION**

Given the minor nature of the PP, no initial community consultation has been undertaken. The Planning Proposal has therefore not yet been exhibited, however will be in accordance with the requirements of the EP&A Act.

### **3.9 PART 6 - PROJECT TIMELINE**

It is intended that the PP proceed within a reasonable timeframe given any potential impacts of the development have been thoroughly addressed within this PP.

## **4.0 PRE GATEWAY INVESTIGATIONS/PLANS**

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This preliminary analysis has not identified the need for further investigations/plans pre Gateway.

## 5.0 CONCLUSION

This Planning Proposal has been prepared on behalf of the client, Leslie Schwebel, in relation to the proposed dwelling entitlement on Lot 1 DP867951, being a lot of 1222 Fosterton Road, Fosterton, NSW, 2420.

Specifically, it is proposed the subject site include a dwelling entitlement despite being under the minimum lot size. The proposal will allow for better management of the land given the site is primarily dense vegetation and well below the minimum lot size, thus not prime rural farming land that it is zoned as.

The PP intends to provide a low impact residential opportunity in an area of aesthetic value and potential ecological value. Having a dwelling entitlement on the site will allow for the ongoing management of the site. The site is well below the minimum lot size and not practical for agricultural purposes given its dense vegetation, thus the site in its current state is not being utilized for agricultural purposes and therefore not meeting the overall RU1 Primary Production zone objectives. By providing a dwelling entitlement on the site, the site will be managed for rural amenity and will provide a use of the land which is sympathetic and compatible with surrounding development and land uses.

The proposal is considered the highest and best use of the site given its location, site characteristics and lack of agricultural abilities.

Overall, this PP is consistent with the Department of Planning & Environment, August 2016, 'A Guide to Preparing Planning Proposals'. The Proposal has the potential to deliver improved social, economic and environmental outcomes for the site.

## APPENDIX A – AHIMS RESULTS

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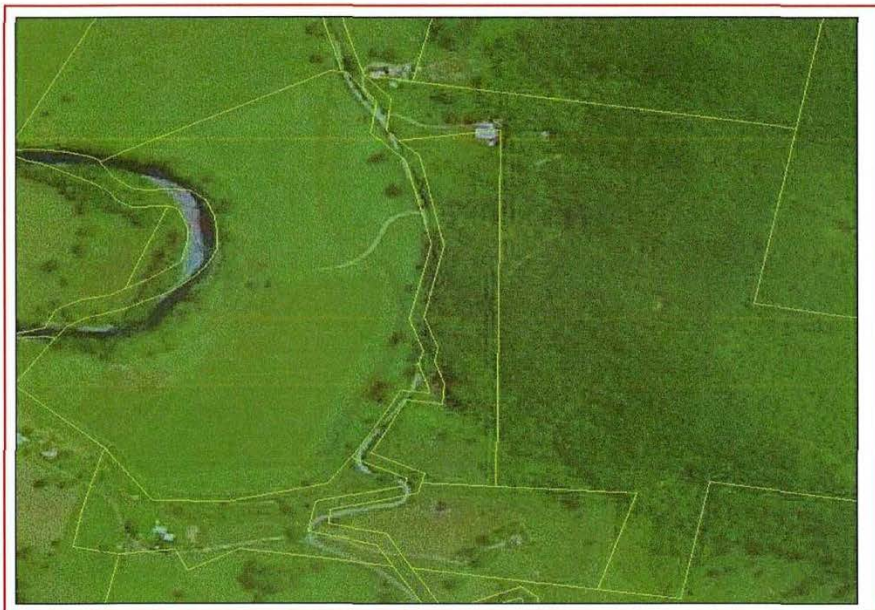
Matilda Munn  
PO Box 107  
Clarence Town New South Wales 2321  
Attention: Matilda Munn  
Email: [tilly@perceptionplanning.com.au](mailto:tilly@perceptionplanning.com.au)

Date: 12 February 2019

Dear Sir or Madam:

**AHIMS Web Service search for the following area at Lot : 1, DP:DP867951 with a Buffer of 200 meters, conducted by Matilda Munn on 12 February 2019.**

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

**If your search shows Aboriginal sites or places what should you do?**

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the NSW Government Gazette (<http://www.nsw.gov.au/gazette>) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

**Important information about your AHIMS search**

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.

## **APPENDIX B – PRE LODGEMENT MEETING MINUTES**



RECORD OF MEETING OF THE DUNGOG SHIRE COUNCIL REZONING PANEL  
HELD AT DUNGOG SHIRE COUNCIL COMMITTEE ROOM ON 7<sup>th</sup> JUNE 2018  
COMMENCING AT 10:00 AM

ITEM 1: PLANNING PROPOSAL TO REDISTRIBUTE DWELLING  
ENTITLEMENTS BETWEEN VARIOUS PARCLES OF LAND THAT  
COMPRISE ONE OF THE RECENTLY DISPOSED OF TILLEGRA  
HOLDINGS

Attendees: MATTHEW BROWN -PERCEPTION PLANNING  
ALEYSHA JORDAN - PERCEPTION PLANNING  
BRETT LEWIS- LAND OWNER  
  
STEVE HITCHENS – EXECUTIVE MANGER INFRASTRUCTURE &  
ASSETS-DUNGOG SHIRE COUNCIL  
PAUL MINETT – MANAGER ENVIRONMENTAL SERVICES-  
DUNGOG SHIRE COUNCIL  
JACQUI TUPPER –PLANNING MANAGER - DUNGOG SHIRE COUNCIL

Subject Land: VARIOUS ALLOTMENTS REFER TO ATTACHED RATE NOTICES  
Proposal: PLANNING PROPOSAL TO AMEND DUNGOG LOCAL  
ENVIRONMENTAL PLAN 2014 BY INCLUSION OF A R5 ZONE  
ADJACENT TO THE RIVER AND SALISBURY RD. REDISTRIBUTION  
OF DWELLING ENTITLEMENTS IN THE RU1 ZONE WITH SOME ON  
PROPOSED ON UNDERSIZED ALLOTMENTS.

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INTRODUCTION/BACKGROUND:

The proponents submitted the following plans as part of their pre DA  
application information package.

- Current existing holding plan
- Surrounding subdivision pattern and allotment sizes
- Proposed rezoning and subdivision plan.

Mr Brown gave an introduction and rationale as to why the redistribution of the dwelling entitlements as they currently stood over the whole of the land parcel would lead to a better planning outcome. His reasoning was that it placed those entitlements in locations where they were more accessible, safer and more easily serviced whilst consolidating a large proportion of the land into a 472.6 hectare parcel which was more viable from an agricultural perspective and assisted in preserving the locations environmental values.

Brett Lewis advised his family has been in the district for an extended period and that he did have a buy back option on land in the Tillegra precinct originally. Mr Lewis stated that he was looking for the best economic and logical use of the land and that he wanted to make a positive contribution to the district. He indicated that a number of properties purchased as part of the original land parcel sold off by Hunter Water had already been disposed of but that the bulk remained and that some of the back country was very constrained. Mr Lewis indicated he was not in a hurry to dispose of the properties but that he wanted to understand Council's position on such a proposal.

Jacqui Tupper Planning Manager (JT) indicated that she understood the rationale behind the proposal and acknowledge that the only legal mechanism available to effect such a development would be through the lodgement of a planning proposal as the development as described would not comply with the provisions contained within Dungog LEP 2014 .

JT stated the proposal is inconsistent with Dungog Council's current strategic framework :-

- Dungog Land Use Strategy,
- Dungog Shire Rural Strategy ,
- SEPP (Rural Lands)2008

Given the information lodged Council staff are unlikely to support such a planning proposal as it is not in line with Councils adopted strategic framework albeit that this will be reviewed as part of a Rural Lands Strategy process.

Development Options indicated for the owner to contemplate:-

- Dispose of holdings in their current format
- Consolidate and re-subdivide the land pursuant to the current Clauses within Dungog LEP 2014
- Lodge a Planning Proposal with a strategic justification for the rezoning of land to R5 Large Lot residential and also the reallocation of dwelling entitlements onto undersized RU1 allotments.
- Await the exhibition of the Rural Lands Strategy and the subsequent review of Dungog Council's Shire wide Local Environmental Plan and make representations to those documents seeking inclusion of the R5 rezoning.

Minutes taken by:

Jacqui Tupper  
Town Planner  
T: 02 4995 7777  
jacquit@dungog.nsw.gov.au

**ITEM 2: PLANNING PROPOSAL TO ADD PROPERTY TO SCHEDULE 1 "SCHEDULE 1 ADDITIONAL PERMITTED USES" TO PERMIT THE ERECTION OF A DWELLING HOUSE ON AN UNDERSIZED ALLOTMENT AT CLARENCE TOWN**

**Attendees: MATTHEW BROWN of PERCEPTION PLANNING  
ALEYSHA JORDAN of PERCEPTION PLANNING**

**STEVE HITCHENS – EXECUTIVE MANGER INFRASTRUCTURE & ASSETS-DUNGOG SHIRE COUNCIL**

**PAUL MINETT – MANAGER ENVIRONMENTAL SERVICES-DUNGOG SHIRE COUNCIL**

**GARRY WARNES – TOWN PLANNER - DUNGOG SHIRE COUNCIL**

**DANIEL SEACH – WORK EXPERIENCE STUDENT**

**Subject Land: LOT 2 DP 609802 N° 106 EBSWORTH ROAD, CLARENCE TOWN**

**Proposal: PLANNING PROPOSAL TO AMEND DUNGOG LOCAL ENVIRONMENTAL PLAN 2014 BY INCLUSION OF SUBJECT LAND IN "SCHEDULE 1 ADDITIONAL PERMITTED USES" SUCH THAT A DWELLING HOUSE WOULD BE PERMISSIBLE WITH CONSENT ON THE SUBJECT LAND**

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#### **INTRODUCTION/BACKGROUND:**

This meeting was held in the Council Committee Room on the 7<sup>th</sup> June 2018 at 10.00 am.

Attendees were as set out above.

The proponents provided an aerial photograph of the site.

#### **MATTHEW BROWN:**

Mr Brown gave a quick overview of their client's position and the intent of a Planning Proposal to include the subject land in Schedule 1 of the LEP 2014 such that a dwelling House would be permissible on the land with the consent of Council.

The overview included a history of how the lot was created and the owners desire to be able to erect a dwelling house on the lot.

Mr Brown recounted that the parcel was a residue of a larger holding that extended into the Mid Coast Council area (then Great Lakes Shire) and the parcel was severed by subdivision along the Local Government boundaries.

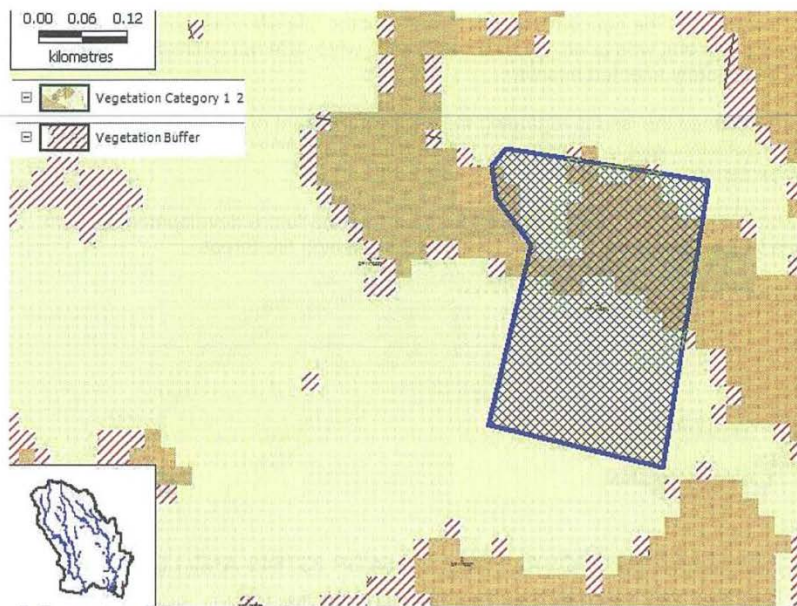
#### **GARRY WARNES- TOWN PLANNING COMMENTS:**

It was advised that the subject land was within **Zone RU1Primary Production** under the **Dungog Local Environmental Plan 2014** and did not meet the requirements of "*Clause 4.2A Erection of dwelling houses and dual occupancies on land in certain rural and environment protection zones*" in that the lot had been created in December 2009 for the purpose of agriculture and no dwelling entitlement attached to the land.

Mr Warnes conveyed concerns as to how a Planning Proposal as suggested could succeed given that the proposal was not in accordance with any adopted Strategy of either the Council or the Department of Planning and Environment and was contrary to the Zone objectives of Zone RU1 Primary Production.

It was also commented that it would be considered highly unlikely that a Planning Proposal as suggested could meet or address the relevant s9.1 Planning Directions of the Minister (formerly s117 Directions) including the "Rural Planning Principles" and "Rural Subdivision Principles" as contained within State Environmental Planning Policy (Rural Lands) 2008

It was also commented that site was isolated from the main through road system, was poorly accessed by roads which are not maintained by the Council and was severely affected bushfire.



#### Extract form Council's Bushfire Prone Lands Mapping

Mr Brown commented that the site was now accessed by a right of carriageway over adjoining lands to the west off of Ebsworth Road.

Mr Warnes commented that the right or carriageway was not evident on plans held by Council and asked what width the right of carriageway was, given that the need for access under Planning for Bushfire Protection by way requiring a minimum trafficable surface of 4 metres which meant that a width of at least 6 metres or more possibly 10 metres was often required to properly contain the carriageway and its support works along with services.

Further that the need may also exist for passing bays of up to 6 metres width of carriageway every 200 metres from the through road system.

Mr Brown said he would look into that aspect of the proposal.

#### PAUL MINETT- ENVIRONMENTAL HEALTH COMMENTS:

Paul Minett commented that the site is remote from Mains Sewer and would need to have sufficient area within which to dispose of treated effluent on site with the system and area required for irrigation being ultimately determined by the number of rooms and toilet facilities of any future dwelling house.

Mr Minett commented that whilst the site contained a well vegetated creek line across its northern portion the site appeared to be likely to contain sufficient area to the south of this area for the purpose of effluent disposal.

#### STEVE HITCHENS- ENGINEERING COMMENTS:

Steve Hitchens re iterated the concerns of Mr Warnes that the site was isolated from the main through road system, was poorly accessed by roads which are not maintained by the Council and was severely affected by bushfire.

Mr Hitchens also echoed the issues regarding the need for the right of carriageway servicing the site being of sufficient width, 10 metres or more, so as to allow for road construction/maintenance, support/drainage and services.

Mr Hitchens stated that he could not see Council supporting the future development of such an isolated site which was poorly accessed and subject to a high fire threat.

Minutes taken by:

Garry Warnes  
Town Planner  
T: 02 4995 7777  
e: [garryw@dungog.nsw.gov.au](mailto:garryw@dungog.nsw.gov.au)



**ITEM 3: PLANNING PROPOSAL FOR LOT 54 DP 837849 AND LOT 1 DP 867951, NO 1222 AND NO 1177 FOSTERTON ROAD, FOSTERTON**

**Attendees:** Matthew Brown (Perception Planning)  
Elysha Jordan (Perception Planning)

Steve Hitchens (Executive Manager Infrastructure & Assets, DSC)  
Paul Minett (Manager Environmental Services, DSC)  
Jacquie Tupper (Manager Planning, DSC)  
Jenny Webb (Senior Town Planner, DSC)

**Subject Land:** Lot 54 DP 837849 and Lot 1 DP 867951, No 1222 & 1177 Fosterton Road, Fosterton

**Proposal:** Planning Proposal to rezone Lot 1 DP 867951, No 1177 Fosterton Road, Fosterton from RU Primary Production To E2 Environmental Conservation with Dwelling Entitlement

**INTRODUCTION/BACKGROUND:**

Both properties are currently owned by the same owner, with a heritage listed house on Lot 54. Lot 1 is vacant and is separated from Lot 54 by Fosterton Road. The site is zoned RU1 Primary Production under Dungog LEP 2014, although has limited capacity for agriculture due to size, topography and vegetation cover. It is proposed to:

1. Seek a reduction in the minimum lot size to enable subdivision of the vacant lot from the lot containing the dwelling;
2. Seek to rezone the vacant lot from RU1 Primary Production to E2 Environmental Conservation; and
3. To obtain a dwelling entitlement on the vacant lot to improve active management of the land.

#### DISCUSSION:

JW advised that based on Council's records, the property already formed two separate lots (being Lot 54 DP 837849, No 1222 Fosterton Road and Lot 1 DP 867951, No 1177 Fosterton Road). Lot 54 contains the dwelling and Lot 1 is vacant. As such a subdivision would not be required.

MB explained that the site is not currently suited to agricultural pursuits given the steep topography and the extent of native vegetation on the site. As such, it would be more appropriate to have a zone which provides for its conservation, whilst still permitting a dwelling and active management of the site. MB was confident that matters including wastewater management, bushfire, ecology and access could be satisfactorily addressed for the site.

In relation to the proposed zoning of E2 Environmental Conservation, Council advised that it would be premature to consider the introduction of new zonings within the rural areas of the shire before the strategic agricultural land mapping exercise has been undertaken and the Rural Land Strategy completed. It was acknowledged that depending on the outcome of the Rural Lands Strategy, there may be scope to introduce a new zone/s within the current rural areas, although the completion of the Rural Lands Strategy is still some time away. There is also no current indication as to what appropriate zones or minimum lot sizes may be.

#### OUTCOME:

A Planning Proposal would be unlikely to be supported by Council staff as it would not be consistent with the local land use strategy and would be premature considering the Rural Lands Strategy has not been completed. If a new zone was to be introduced to the LEP, this would be considered on a shire wide basis having regard for the strategic agricultural land mapping and the outcomes of Rural Land Strategy rather than for an individual site.

#### ITEM 4: PLANNING PROPOSAL FOR LOT 11 DP 1239182, LOTS 1 AND 2 DP 797920, PART LOT 14 DP 13089 AND PART LOT 113 DP 774843, BOULTON DRIVE PATERSON

**Attendees:** Matthew Brown (Perception Planning)  
Elysha Jordan (Perception Planning)

Steve Hitchens (Executive Manager Infrastructure & Assets, DSC)  
Paul Minett (Manager Environmental Services, DSC)  
Jacquie Tupper (Manager Planning, DSC)  
Jenny Webb (Senior Town Planner, DSC)

**Subject Land:** Lot 11 DP 1239182, Lots 1 and 2 DP 797920, Part Lot 14 DP 13089 and Part Lot 113 DP 774843, Boulton Drive Paterson

**Proposal:** Planning Proposal to rezone land from E3 Environmental Management to R5 Large Lot Residential

#### INTRODUCTION/BACKGROUND:

The site is currently zoned partly E3 Environmental Management and partly R5 Large Lot Residential. It is proposed to amend the zone boundary between the E3 Environmental Management zone and the R5 Large Lot Residential zone to permit further subdivision for dwellings.

#### **DISCUSSION:**

A plan (Attachment 1) was put forward showing the land proposed to be rezoned from E3 Environmental Management to R5 Large Lot Residential, with a minimum lot size of 8,000 m<sup>2</sup> to enable further subdivision. The proposed subdivision plan was presented in Attachment 2. MB explained that the site had been found to have limited ecological value and larger lots (up to 5 ha) would be proposed in recognition of the steeper slopes and retention of vegetation.

JT advised that she has previously visited site on a number of occasions and noted that clearing had taken place, which would have impacted on the ecological value. It was also noted that the site is quite steep and questioned the suitability for further subdivision and construction of dwellings.

The most recent approval for subdivision of the Paterson Hills estate was marginal and was negotiated through the Court, which is representative of the site constraints and suitability of the land for that purpose.

JT and JW raised concerns over the visual impact of additional lots being created higher up, given that a number of the dwellings on the existing lots are highly visible. JT also raised concerns in relation to wastewater disposal, referencing a cost analysis which had been undertaken for some of the lots within the approved subdivision.

JW asked whether the preliminary ecological investigation had considered the implications of the Biodiversity Conservation Act 2016 and whether the Biodiversity Assessment Method would apply to the proposed subdivision. MB advised that level of assessment had not been carried out at this preliminary stage.

#### **OUTCOME:**

A Planning Proposal would be unlikely to be supported by Council staff as it would not be consistent with the local land use strategy. Site suitability, including visual impact and impact on native vegetation (and possibly threatened species *Eucalyptus glaucina*) were also raised as concerns.

MB advised that if the client proceeded with the planning proposal, a number of studies would be undertaken in support of the proposal to address the issues that had been raised.

#### **PLEASE NOTE:**

The Rezoning Panel meeting is intended to assist proponents in preparing Planning Proposals to effect alterations to Council's Local Environmental Plan 2014.

However, please note that Council is unable to determine whether the Planning Proposal would be approved until a formal Planning Proposal had been lodged with Council and had successfully passed the Gateway process as set out in the Environmental Planning and Assessment Act 1979.

Should you have any further enquires relating to a Planning Proposal or require clarification of any of the matters listed above, please contact Council on (02) 4995 7777.