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Ubicumque

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## STATEMENT OF ENVIRONMENTAL EFFECTS

**Proposed Detached Dual Occupancy**  
**Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie.**



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**ZONING & LOCALITY PLAN**

**Detached Dual Occupancy Dwellings  
Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie  
RU1 Primary Production Zone**



Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie



## 1 INTRODUCTION

This report is to accompany a Development Application for the proposed construction of two Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie. The subject site has an area of 39.15 hectares.

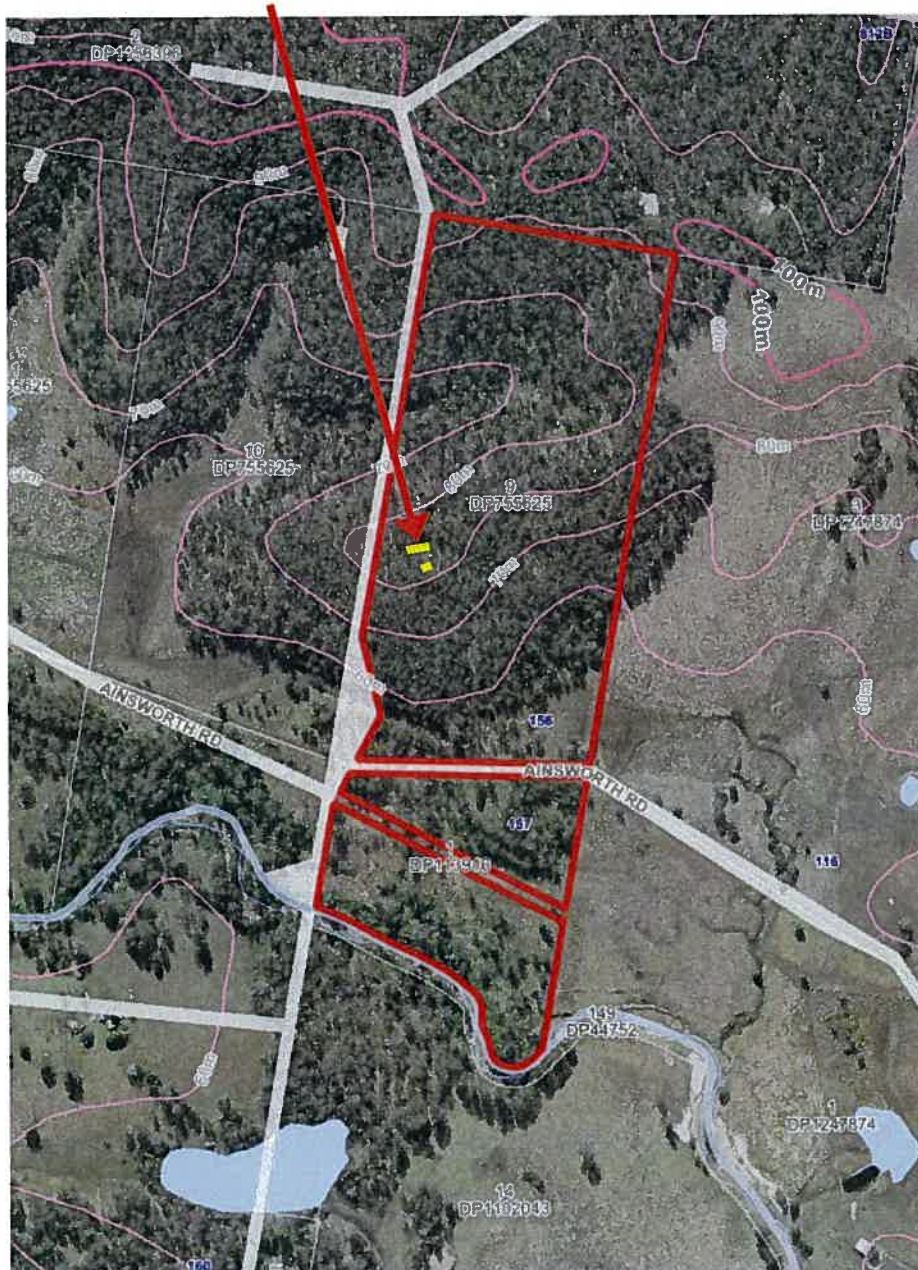
Access to the site is from the existing central southern driveway off Ainsworth Road, where sight distances are good.

The two dwellings are to be of slab on ground, brick construction, with colorbond roofs.

The dwellings will be setback 300m from Ainsworth Road, and 53m from the western boundary on an existing cleared and gently sloping section of the site, with their floor levels being 86.4m AHD and 84.2m AHD respectively, placing them well clear of flood impact.

The annexed Bushfire report shows that the siting of each dwelling in the existing central southern cleared section of the site, ensures that they are not exposed to a Bushfire Attack Level exceeding BAL 29.

Two car spaces are proposed for each dwelling as required by Richmond Valley D.C.P. No. 2021.



Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie





## 2 SECTION 4.15(1) (E.P.A. ACT) STATUTORY ASSESSMENT

The property is Zoned RU1 Primary Production under the provisions of Richmond Valley Local Environmental Plan 2012.

### 3 Permitted with consent

*Agritourism; Air transport facilities; Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Correctional centres; Crematoria; **Dual occupancies**; Dwelling houses; Eco-tourist facilities; Educational establishments; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Funeral homes; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Home occupations (sex services); Hospitals; Information and education facilities; Intensive livestock agriculture; Intensive plant agriculture; Jetties; Kiosks; Landscaping material supplies; Moorings; Open cut mining; Passenger transport facilities; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Service stations; Signage; Turf farming; Veterinary hospitals; Water recreation structures; Water supply systems*

The proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarrie are permissible with the consent of Council pursuant to the provisions of the RU1 Zone under LEP 2012.

### 2.1 STATUTORY OBJECTIVES – RU1 Primary Production Zone.

To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

- 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 ensure that development does not unreasonably increase the demand for public services or public facilities.

**The proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarrie, meets these RU1 Zone Objectives as they are well removed from intensive horticulture and primary industry enterprises, do not result in the fragmentation of land as the two dwellings are confined to the existing cleared area in the central southern section of the site, and the annexed Waste Management and Bushfire Reports show clearly that they will not detract from the rural amenity of the area, particularly as they are visually isolated within the site, and will not create unmanageable waste, and are not beyond the capacity of local services.**

**These factors ensure that this otherwise complying application does not offend the Objectives set within Richmond Valley Local Environmental Plan 2012 for land zoned RU1.**

### 2.2 Clause 4.1B Minimum lot sizes for dual occupancies

- (1) The objective of this clause is to achieve planned residential density in certain zones.
- (2) Development consent may be granted for development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.

Column 1	Column 2	Column 3
Dual occupancy (attached)	Zone RU5 Village	400 square metres
	Zone R1 General Residential	400 square metres

Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarrie



	Zone C3 Environmental Management	5 hectares
Dual occupancy (detached)	Zone RU5 Village	600 square metres
	Zone R1 General Residential	600 square metres
Dual occupancy	Zone RU1 Primary Production	1.5 hectares
	Zone R5 Large Lot Residential	1.5 hectares

The allotment at 39.15ha. Exceeds the minimum 1.5ha allotment size required for a Dual Occupancy in the RU1 Zone.

### **2.3 Clause 4.2B Erection of dual occupancies and dwelling houses on land in Zones RU1, R5 and C3**

(1) The objectives of this clause are as follows—

- (a) to minimise unplanned rural residential development,
- (b) to enable the replacement of lawfully erected dual occupancies or dwelling houses in rural and conservation zones,
- (c) to provide alternative accommodation for rural families and workers,
- (d) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,
- (e) to set out consent considerations for development of dual occupancies (detached) to address matters such as access, siting, land suitability and potential impacts.

**(2) Development consent must not be granted for the erection of a dual occupancy or a dwelling house on land in Zone RU1 Primary Production or a dual occupancy (attached) or a dwelling house on land in Zone C3 Environmental Management, and on which no dual occupancy or dwelling house has been erected, unless the land is—**

- (a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or**
- (b) a lot resulting from a subdivision for which development consent has been granted under clause 4.6, or**
- (c) a lot created before this Plan commenced and on which the erection of a dual occupancy or a dwelling house was permissible immediately before that commencement, or**
- (d) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dual occupancy or a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or**
- (e) a lot on land that is identified as "Dwelling opportunity" on the Dwelling Opportunity Map, or**
- (f) a lot created under clause 4.1 (4A) (b), but only if the erection of a dual occupancy or a dwelling house was permissible for the land from which it was created.**

*Note— A dwelling cannot be erected on a lot created under clause 4.2.*

**(3) However, development consent may be granted for the erection of a dual occupancy or a dwelling house on land in Zone RU1 Primary Production or a dual occupancy (attached) or a dwelling house on land in Zone C3 Environmental Management (the relevant dwelling) if—**

- (a) there is a lawfully erected dual occupancy or dwelling house on the land and the relevant dwelling to be erected is intended only to replace the existing dual occupancy or dwelling house, or**
- (b) the land would have been a lot or a holding referred to in subclause (2) had it not been affected by—**
  - (i) a minor realignment of its boundaries that did not create an additional lot, or**
  - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or**
  - (iii) a lot boundary adjustment under clause 4.2C.**

**(4) Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production or Zone R5 Large Lot Residential unless the consent authority is satisfied that—**

- (a) the development will not impair the use of the land for agriculture or rural industries in the locality, and**
- (b) if it is practicable, each dwelling will use the same vehicular access to and from a public road, and**
- (c) any dwellings will be situated within 100 metres of each other, and**
- (d) the land is physically suitable for the development, and**
- (e) the land is capable of accommodating the on-site disposal and management of sewage for the development, and**

Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie



**(f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.**

(5) To the extent that subclause (4) applies to development on land in Zone RU1 Primary Production, it applies in addition to any other requirements for development consent that may apply to the development under this clause.

**Clause 4.2B(2)(a)** of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map LSZ\_002 AB 40ha., sets 40ha. to achieve a Dwelling and or Dual Occupancy. The subject property has an area of 39.15 hectares, being only a 3.3% departure from the Statutory Minimum.

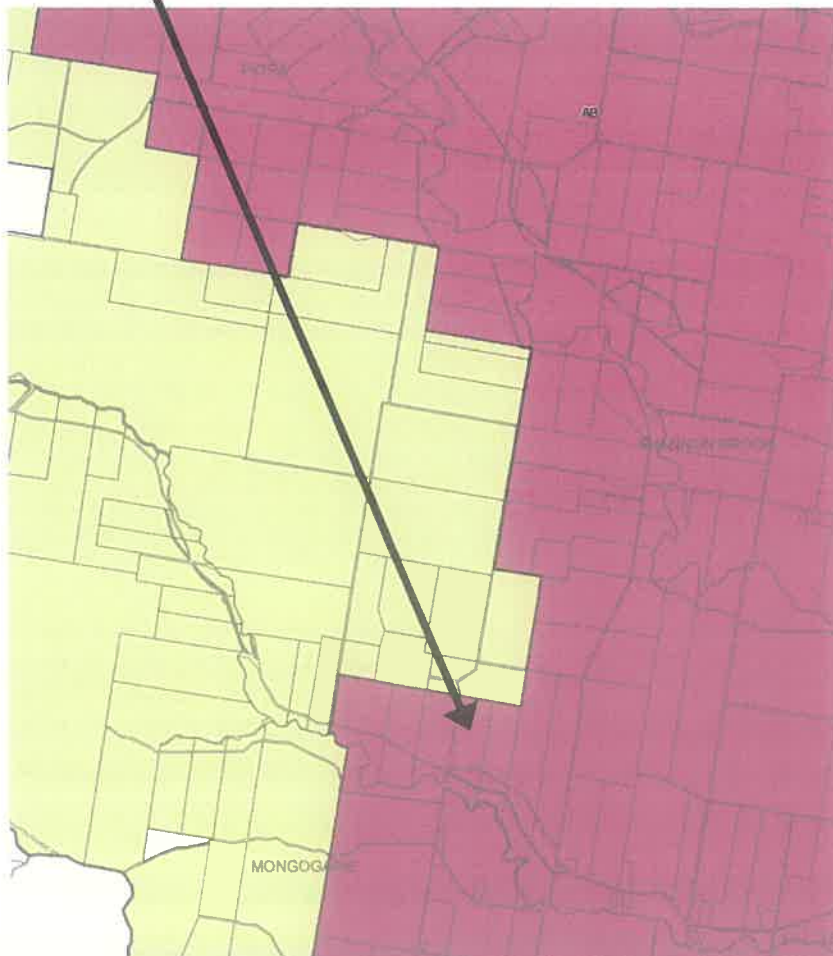
This specification of a Minimum Allotment Size within Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 is a Development Standard.

Clause 4.6 of the LEP 2012 specifies circumstances under which "Exceptions to development standards" can be achieved. These Exemption provisions are invoked within the Planning Report.

**Clause 4.2B(4)** of the Richmond Valley Local Environmental Plan 2012 is satisfied as proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie, meet these RU1 Zone Objectives as they are well removed from intensive horticulture and primary industry enterprises, do not result in the fragmentation of land as the two dwellings are confined to the existing cleared area in the central southern section of the site. Both houses gain access from the same access point, the dwellings are proposed within 20.299m of each other, the annexed Waste Management and Bushfire Reports show clearly that they will not detract from the rural amenity of the area, particularly as they are visually isolated within the site, and will not create unmanageable waste, and are not beyond the capacity of local services.

### Minimum Allotment Size Map

Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map,LSZ\_002 AB 40ha.



Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie





This application formally invokes the LEP Clause 4.6 provisions to permit Councils approval of this environmentally responsible application.

The subject property has an area of 39.15 hectares, being only a 3.3% departure from the Statutory Minimum 40ha. Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land.

## **2.4 Clause 4.6 Exceptions to development standards**

(1) The objectives of this clause are as follows:

**(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,**

**(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following— (a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,

### **EXCEPTION TO DEVELOPMENT STANDARD – Clause 4.6 LEP 2012.**

This formal request provides the required written request from the applicant that seeks to justify the contravention of the development standard as required by Clause 4.6 (3) of LEP 2012.

### **DEVELOPMENT STANDARD**

Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map, LSZ\_002 AB, that the property is located within an area requiring a 40ha. allotment size to achieve approval by Council for the construction of Dual Occupancy Dwellings. The subject property has an area of 33.67ha.

This specification of a Minimum Allotment Size under Clause 4.2B(2)(a) is a Development Standard as defined by Section 1.4 of the EPA Act.

The subject property at 39.15ha., represents only a 3.3% departure from the 40ha.

Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land.



**"development standard"**

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) **area, shape frontages of land, buildings or works, or distances from a specified point.**
- b) proportion or percentage of the area of a site a building or work may occupy.
- c) the character, location, siting, bulk, scale, shape, size, height, density design or external appearance of a building or work.
- d) cubic content or floor space of a building.
- e) **intensity or density of development.**
- f) provision of public access, open space, or tree planting.
- g) provision of facilities for vehicles, parking, maneuvering, loading etc.
- h) volume nature or type of traffic generated.
- i) road patterns,
- j) drainage
- k) carrying out earth works
  - l) effect of development patterns on wind, sunlight shadows etc.
- m) provision of services, facilities & amenities.
- n) emission of pollution and control or mitigation thereof.
- o) such other matters as may be prescribed.

In this instance the L.E.P. permits Dual Occupancy Dwelling Houses within the RU1 Zone, therefore there is no prohibition of the development proposed, however Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012 specifies via the LEP Lot Size Map,LSZ\_002 AB, that the property is located within an area requiring a 40ha. allotment size to achieve approval by Council for the construction of Dual Occupancy Dwellings.

The prescription of the **area**, and **intensity or density of development**, are both a **Development Standard**.

In *Strathfield v Poynting, Young* CJ held that "**The dichotomy between a development standard and an absolute prohibition provides a valuable guideline as long as it is remembered that a development standard may contain expressly or implied some sort of prohibition. However the sort of prohibition involved is a prohibition on the extent of development, not as a prohibition as to whether development is possible at all.**"

**Conclusion:** Although Clause 4.2B(2)(a) contains an implied prohibition in relation to "area", there is no specific prohibition of this type of development contained in any part of the Richmond Valley L.E.P. 2012.

As such the provisions of Clause 4.2B(2)(a) may be utilised to provide Council, or the Land & Environment Court, with the power to grant this consent for the proposed Dual Occupancy Dwellings, despite its departure from the "area" development standard, and despite the implied prohibition contained in Clause 4.2B(2)(a), which based on the Judgement of Young JC in "Poynting", remains Development Standards".

**OBJECTIVE OF DEVELOPMENT STANDARD VARIATION**

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

In this instance the difference between the 40ha Development Standard and the 39.15ha. Allotment, represents only a 3.3% variation from the standard. This is considered to be reasonably within the range of "**appropriate flexibility**" anticipated by this Clause, particularly given the proposed location of the dwellings in the cleared land in the central south of the site, which is already accessed, and which is visually isolated, thus maintaining the rural integrity of the area. The annexed reports also show that the development is able to treat its own wastes and that the dwellings are not exposed to a Bushfire Attack Level greater than BAL 29.



Further to this, Compensatory Plantings are proposed about the dwellings to achieve internal privacy from each other, reduce radiant heat from a Bushfire, and meet DCP requirements. On this basis the proposed dwellings meet all of the Aims of both the Development Standard and those of the RU1 Zone within which they are located.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

As stated above, the requested flexibility in this instance, achieves better outcomes as development is achieved with meets the underlying Objectives of the EPA Act, i.e.

**E.P.A. Act Objective 1.3 requires.**

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The proposed Dual Occupancy Dwellings further these objectives by:-

Optimising the use of well located and easily serviced land, with minimal environmental impact by using existing cleared land in the central south of this otherwise mostly forested property. The large 39.15ha size of the property mirrors existing settlement patterns in the area, accords with the settlement pattern objectives of the Development Standard.

Given the large size of the allotment, with the development using an existing access road and an existing cleared areas, ensures minimal additional environmental impact, and the maintenance of adequate physical and environmental buffers to adjacent lands.

The design thus meets the needs of the land, improves management effectiveness, maintains a broad habitat base within the area, and maintains rural amenity.

The proposed dwellings are to occupy only a small cleared area, which achieves bushfire APZ requirements within the subject 39.15ha site. Additional native Plantings are proposed to achieve radiant heat buffers about the fringe of the APZ and to achieve privacy between the dwellings.

**This positive outcome would not be achieved if the Development Standard was not varied.**

The conclusion to be drawn from this is that by not varying the development standard, then there will be no **facilitation of ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.**

The conclusion is that the strict application of the Development Standard will hinder these specific Section 1.3 Objectives from being achieved.

The variation of the Development Standard, does not increase the planned scale of development in the area, the large 39.15ha size of the subject property ensures that the additional dwellings proposed are not at odds with the rural character of the area, or its anticipated density, as the approval only results in a 3.3% departure from the 40 ha Development Standard, and as such, given the circumstances of the case, strict application is deemed to be unreasonable and unnecessary.



The result is that the development proposed will improve environmental and farm management outcomes, in particular weed management, and this achieves the underlying objectives of the RU1 Zone as previously detailed in this report. On this basis the small variation sought to the minimum size development standard is justified.

Further, it provides a managed buffer area, with reduced vegetation, thus minimising Bushfire Threat.

As such to not vary the Development Standard is to not permit Objectives 1.3 to be met.

As such compliance with the development standard in this instance would tend to hinder the attainment of the objects specified in section 1.3 of the EP&A Act, and the Objectives of the RU1 Zone, as the proper management and development of land would not be achieved, and the proper development of RU1 Zoned land would not occur due to a lack of onsite management, which can only be achieved by occupation and economic use of the site as proposed.

### **TESTS TO BE IMPOSED ON THE VARIATION OF THE DEVELOPMENT STANDARD**

#### 3(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

In this instance the difference between the 40ha Development Standard and the 39.15ha allotment is only 3.3%. This is considered to be reasonably within the range of “appropriate flexibility” anticipated by this Clause, particularly given the proposed location of the dwellings in the cleared central south of the site, accessed via an existing internal road, via an existing single access point.

On this basis the proposed dwellings achieve adequate access to services, and achieve safe access off Ainsworth Road.

#### 3(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation of the Development Standard, does not increase the planned scale of development in the area as a Large 39.15ha RU1 Zoned Lot is to be utilised, with the dwellings located on cleared land off a single access point, and in a visually and spatially isolated section of the property, thus maintained the rural amenity and rural character of the area.

The result is that the development proposed will improve environmental and land management outcomes, in particular weed management, and this achieves the underlying objectives of the RU1 Zone as previously detailed in this report.

On this basis the small 3.3% variation sought to the minimum size development standard is justified.

#### 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed Two Dwelling Houses will not result in any significant alteration to the existing situation as there will be :-

No loss of agricultural land, only an improvement in long term potential by permitting the property to achieve better site and weed management through it being permanently occupied, and

No precedent will be set as all that is proposed is a formalisation of an existing allotment of land, which is only marginally below the 40ha. Development standard, by only 3.3%, and meets landuse, and future land management needs, whilst maintaining rural amenity and Zone Objectives, as well as the landuse potential of the site.

The proposed dwellings are to occupy only a small already cleared area within the subject 39.15ha site. Additional native Plantings are proposed to achieve radiant heat buffers about the fringe of the APZ, and privacy between the dwellings.

This positive outcome would not be achieved if the Development Standard was not varied.

Based on the preceding assessments, it can be concluded that the variation requested to the Development Standard is incidental, and achieves positive outcomes in terms of land management and optimisation of usage within environmental management parameters.



As such the strict application of the development standard is unreasonable in this regard. In addition to this, the benefits of the proposed variation far outweigh the minor nature of the variation in terms of the Objective of the Development Standard.

The proposed Two Dwelling Houses will thus not result in any alteration to the existing character of the area, nor will they reduce the viability of the existing farming operations in the area.

To the contrary it will ensure that the long term viability and security of the allotment, and ensure that long term farming viability is improved through the creation of better managed land, particularly in terms of weed management and fire control.

Also the environmental integrity of the area will be enhanced by the planting of native vegetation corridors as proposed.

On this basis, the objectives of the standard are better met by its variation.

It is in the interests of good economic management, environmental management, and achieving effective utilisation of rural land resources, that this proposed Two Dwelling Houses need be approved.

This will enable long term planning to be effected realistically on a more secure base, thus ensuring the long term viability of the site in terms of it being a manageable unit.

The proposed design is thus, in terms of farm management, rural land utilisation, and effective land management - in particular to achieve improved rural amenity, habitat management, and improved land productivity, **in the greater public interest.**

In relation to it's impact on the amenity of the area, the current settlement pattern, and the future planning of the area. The approval of this Two Dwelling Dual Occupancy will have no adverse impact as it will not change to any significant extent the density or character of the area.

As such the visually isolated dwellings as proposed on this large 39.15ha allotment of land, will maintain the planned settlement patterns and landuse characteristics of the surrounding area.

The infrastructure currently exists, the allotment enjoys an existing farm access off a Council maintained bitumen road (Ainsworth Road), and the potential of this land will be improved in accordance with the settlement pattern which surrounds the site and the future landuse planning of the area in terms of agricultural buffers, native vegetation corridors, weed management, and fire management, which will be achieved through the Dual Occupancy dwelling development proposed.

In terms of settlement density, this area is already closely settled, and the proposed Dwelling Houses will not be out of character with the existing and planned settlement pattern for the area.

On this basis the Public Interest is served and the approval will not prejudice the proper future planning of the area.

## **CONCLUSION**

Having detailed the circumstances of the case, it is my considered opinion that Council should consent to this variation of the development standards contained in Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012. This Clause specifies via the LEP Lot Size Map, that the property is located within an area requiring a 40ha. allotment size to achieve Dual Occupancy Dwellings.

This specification of a Minimum Allotment Size is a Development Standard.

Clause 4.6 of the LEP 2011 specifies circumstances under which "Exceptions to development standards" can be achieved.

This application formally invokes these LEP provisions to permit Councils approval of this environmentally responsible application.

The subject property at 39.15ha., represents only a 3.3% departure from the 40ha. Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land.

This support is based on the fact that strict compliance with the minimum lot size provisions in this instance, is unreasonable, particularly as better agricultural and environmental outcomes will be achieved.





No environmental disturbance related to access or dwelling construction will result, as a single access point exists for the proposed dwellings, with additional native Plantings proposed to achieve radiant heat buffers about the fringe of the APZ.

This positive outcome would not be achieved if the Development Standard was not varied.

No loss of agricultural land, only an improvement in economic potential, and

No precedent will be set as all that is proposed is a rationalisation of the existing and future landuse situation, with the better economic use of a large parcel of land, and where compensatory plantings are proposed to broaden the habitat base of the area.

This positive result from the variation of the development standard is the major test to determine whether the standard is indeed unreasonable or unwarranted in the circumstances of a particular case.

(See Judgement of His honour, C.J. Cripps, *Hooker Corporation v. Hornsby* - 2 June 1986).

The conclusion is that the non variation of the Development Standard would not **encourage the proper management, development and conservation of natural and man-made resources, for the purpose of promoting the social and economic welfare of the community and a better environment.** and this therefore meets the test proffered in the decision in *Winten Property Group v. North Sydney Council* (2001) 130 LGERA 79

*First*, the planning control in question is a **Development Standard** as detailed in the preceding assessment of this matter against the guidelines set in *Strathfield v Poynting, Young CJ*.

*Second*, the underlying object or purpose of the standard is shown to be one of permitting Rural dwellings, yet maintaining a perceived level of agricultural production potential, environmental protection, and rural amenity by setting a minimum Lot Size.

With the improved environmental and long land management outcomes which will be achieved by recognising this large parcel as being suited to the placement of two dwellings, it can achieve a settlement pattern commensurate with that sought by Clause 4.2B(2)(a) of the Richmond Valley Local Environmental Plan 2012, which specifies via the LEP Lot Size Map, that the property is located within an area requiring a 40ha. allotment size to achieve Two Dwellings.

The subject property at 39.15ha., represents only a 3.3% departure from the 40ha. Development Standard, and as such the variation sought will achieve a sensible use of otherwise sterilised land, and it will result in a development which will blend into the planned settlement pattern of the area, and thus the underlying purpose of the objective is met.

*Third*, the preceding assessment of the development against the primary objectives of the EPA Act shows that the variation of the development standard is consistent with the aims of the State Policy, and shows that compliance with the development standard would tend to hinder the attainment of the objects specified in section 1.3 of the EP&A Act.

*Fourth*, the report shows that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, particularly as this large 39.15ha allotment is within 3.3% of being compliant.

In addition to this, plantings are proposed to achieve radiant heat buffers about the fringe of the APZ.

This positive outcome would not be achieved if the Development Standard was not varied.

These additional plantings will broaden the habitat base of the area, as well as enable weed management to be effected within the APZ of this occupied property.

As such not to vary the Standard would result in the retention of a sterilised allotment which would not promote landuse productivity, and which could have negative environmental and social outcomes.

The economic and social flow on from this is important, and encouraging the dwelling use of this large vacant allotment is supported by the provisions of Clause 4.2B(2)(a) of the Richmond Valley LEP.

On this basis a blending development will result, with an improved local environment, and better



utilisation of a large RU1 zoned land parcel, and therefore strict application of the standard cannot be seen to be reasonable, or necessary.

*Fifth*, based on the unique circumstances of the case, there is minimal risk of this variation of the standard being precedential. As such this approval will not prejudice the proper future planning of the area, and can only be considered as achieving an outcome which promotes the appropriate agricultural and environmental development of already divided farm land.

**As such the strict application of the development Standard in this instance is unnecessary and unreasonable, and strict application would not promote the attainment of EPA Act Objectives for the area.**

## **2.5 Heritage Cl 5.10 Heritage conservation**

Note—

No Heritage items (if any) are listed and described in Schedule 5 proximate to the site.

**The following AHIMS Search found no records of Aboriginal Sites within 1km of the site.**

The distant southern river bank areas could have been a path of travel for aboriginal people, as well as the ridge to the north, to which this site is connected, although no sites are mapped proximate to this property.

The southern creek and northern ridges provide physical characteristics indicate the potential for Aboriginal cultural heritage values.

The Aboriginal Heritage Information Management System was contacted for specific comment on the proposal, however the response indicates no know Aboriginal Heritage within 1km of the site. Despite this, all development is restricted to existing developed and cleared areas, which are the site of historic cattle grazing.

Local residents in the area have stated that no aboriginal objects have ever been sighted in the disturbed former grazing lands on site, to which the development is restricted.

No caves exist on site, and the water holes in the south, which are possible sites where aboriginal people many have visited pre white invasion, are not to be changed or modified or impacted.

In any case, it is proposed to carry out all works on site following the exercise of caution and to proceed with care, and with awareness of the legislative requirements of the NPW Act 1974 relating to 'harm' of an Aboriginal object.

The site is a Significantly Altered Environment, the land has always only been used for cattle, and that until recent years it was completely cleared land. On this basis it is unlikely to retain previous aboriginal usage characteristics, other than the likely use of the ridge north west of the development sits, as a pathway through the area, and this is the same for Middle Creek to the south.

No disturbance of creek bank areas is proposed, and as such the RISK of DISTURBANCE is LOW.

On this basis there is no requirement for an Aboriginal cultural heritage assessment. However, the property owners are advised to exercise due diligence as the requirements under the NPW Act to avoid "harm" continue to apply.

**It is noted that any discovery of objects or human remains requires immediate stop work procedures.**



Your Ref/PO Number : Mongogarrie

Client Service ID : 861664

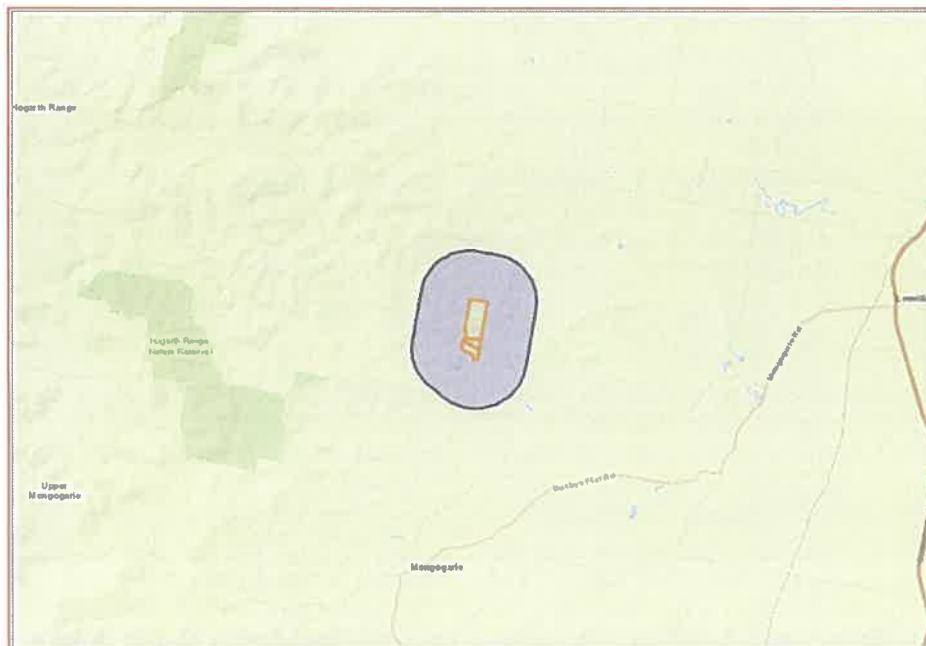
Christopher Lonergan  
P.O. Box 2585  
Byron Bay New South Wales 2481  
Attention: Christopher Lonergan  
Email: chris@byronbayplanning.com.au

Date: 06 February 2024

Dear Sir or Madam:

**AHIMS Web Service search for the following area at Lot : 9, DP:DP755625, Section : - with a Buffer of 1000 meters, conducted by Christopher Lonergan on 06 February 2024.**

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 Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

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

## 2.6 Water Catchment CI 6.9 Drinking water catchments

The site is located outside protected drinking water catchments

Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarrie



## 2.7 Richmond Valley D.C.P. No. 2021

<p><b>Part A-2 Dwelling Houses in the RU1 Primary Production Objectives</b></p> <p>(a) To alert applicants to the range of potential site constraints including natural hazards constraints, that may apply to a lot. (b) These constraints may impact on the siting and form of the development and require preparation of additional planning reports as part of the development applications.</p> <p><b>Design Criteria</b></p> <p>1. The development design must take into account any hazards or constraints applying to the land, which may include the following:</p> <p>(a) Flood – Habitable floors to be above Flood Planning Level (FPL). – see Council for flood levels and Part H-1 of this DCP.</p> <p>(b) Bushfire– comply with Planning for Bushfire Protection 2019. A Bushfire Report is required.</p> <p>(c) Acid Sulfate Soils (ASS) - see clause 6.1 of RVLEP &amp; Part H-2 of this DCP.</p> <p>(d) Coastal Development – A statement addressing the matters in SEPP (Coastal Management) 2018 is required.</p> <p>(e) Contaminated Lands – Land to be of a standard compatible with residential development. Contaminated Land should be based upon consideration of current and historic land uses, the likely presence of asbestos and lead paints, and the land uses identified in SEPP 55.</p> <p>(f) Natural Resource Sensitivity – confirm whether any one or more overlays applies – See clauses 6.6 to 6.10 of RVLEP: • Terrestrial Biodiversity (Native Vegetation and/or Wildlife Corridors) • Key Fish Habitat - referral to NSW Fisheries may be required. • Wetland - buffer of 50 metres recommended. • Steep Land - engineering required and consideration of scenic impacts. • Drinking Water Catchments – assess impacts on water quality</p> <p>(g) Clearing of native vegetation - A report is provided addressing the Biodiversity Conservation Act 2019 and a map showing the vegetation to be removed is provided.</p> <p>(h) Heritage – on or adjoining the site. See Part I-1 &amp; RVLEP</p> <p>(i) Easements, Clear Zones, Zone of Influence for Services – see Council for locations and zone of influence and clear zone requirements.</p> <p>(j) Aircraft Noise - Any development within the 20 ANEF contour is to be constructed to comply with AS 2021:2015 Acoustics – Aircraft Noise Intrusion</p> <p>(k) Dwellings that are within 100 m of a classified road or 80 m from a rail corridor need to comply with relevant noise control treatment for sleeping areas and other habitable rooms in Appendix C of RMS Development Near Rail Corridors and Busy Roads - Interim Guideline.</p> <p><b>A- 2.2 Maximum height of building Objectives</b></p>	<p>The two dwellings are to be of slab on ground brick construction, with colorbond roofs.</p> <p>The dwellings will be setback 300m from Ainsworth Road, and 53m from the western boundary on an existing cleared and gently sloping section of the site, with their floor levels being 86.4m AHD and 84.2m AHD, placing them well clear of flood impact.</p> <p>The annexed Bushfire report shows that the siting of each dwelling in the existing central southern cleared section of the site, ensures that they are not exposed to a Bushfire Attack Level exceeding BAL 29.</p> <p>Two car spaces are proposed for each dwelling as required by Richmond Valley D.C.P. No. 2021.</p> <p>The site is clear of mapped contaminated lands, and sits outside Coastal Development threats.</p> <p>The location of the dwellings in the cleared and elevated central southern areas of the site ensures optimum separation from Bushland to achieve a BAL 29 rating, and locates these sites almost 600m from the Biodiversity mapped areas along Middle Creek which forms the southern boundary of the property.</p> <p>The sites are located well clear of road and rail corridors.</p> <p>On this basis the proposal totally complies with the anticipated low scale environmental outcomes sought by DCP 2021.</p> <p>The two proposed dwellings satisfy the maximum 8.5m height</p>
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(a) To comply with the maximum building height requirement in the Richmond Valley LEP 2012.

**Design Criteria**

1. The maximum height, as specified in the Height of Buildings Map in Richmond Valley Local Environmental Plan 2012, is 8.5m.

**A- 2.3 Building Setbacks****Objectives**

(a) Provide a buffer between a dwelling and the road to minimise the impact of noise, dust and vibration on dwellings and their occupants. (b) To preserve the rural character of the locality.

**Design Criteria**

1. The following setback controls apply to the road frontage: • 15 metres from a local sealed road • 50 metres from a local unsealed road • 20 metres from a classified road

**Side and Rear Boundary Setbacks****Objectives**

(c) Ensure that new dwellings are located to minimise intrusion on the privacy and amenity of adjoining properties. (d) Provide building separation which reflects the rural character of the locality.

**Design Criteria**

RU1 and E3 Zones 2. Minimum Side Boundary Setback: 5m  
3. Minimum Rear Boundary Setback: 5m

**A-2.4 Car Parking and Access Objective**

(a) Car parking is provided appropriate for the scale of the development.

**Design Criteria**

2 car parking spaces are to be provided, located behind the building line.

**A-2.5 Visual Privacy Objective** (a) Ensure building design and siting minimises impacts on privacy of habitable rooms and private outdoor space of adjoining dwellings.

**Design Criteria**

Locate, orientate and design new development to ensure visual privacy between buildings, and also between buildings and adjacent private open space.

restriction as follows.

Northern 3BR Dwelling 4.8m.

Southern 2BR Dwelling 4.4m.

The two dwellings will be setback 300m from Ainsworth Road, and 53m from the western boundary.

On this basis they totally comply with DCP Setback requirements.

Both Dwellings use the same access point off Ainsworth Road. Northern 3BR Dwelling 1 garage and 1 adjacent car parking space.

Southern 2BR Dwelling 2 adjacent car parking spaces.

The proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarrie, meets these RU1 Zone Objectives as they are well removed from intensive horticulture and primary industry enterprises, do not result in the fragmentation of land as the two dwellings are confined to the existing cleared area in the central southern section of the site. Both houses gain access from the same access point, the dwellings are proposed within 20.299m of each other, the annexed Waste Management and Bushfire Reports show clearly that they will not detract from the rural

**A-2.6 Acoustic Privacy Objective**

(a) Noise transfer is minimised through the siting of buildings and building layout.

**Design Criteria**

. Electrical, mechanical, hydraulic and air conditioning equipment is housed so that it does not create an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 either within or at the boundaries of any property at any time of the day.

**A-2.7 View Sharing Objective**

(a) To allow for the reasonable sharing of views with adjoining and/or nearby properties.

**Design Criteria**

1. Where views from other dwellings or public spaces are likely to be impacted, the applicant may be required to submit a view loss assessment.
2. View loss and opportunities for view sharing is to be considered in accordance with the Land and Environment Court Planning Principals.

**A-2.8 Local Character and Context Objectives** (a) The built form relates to the local character of the area and the context. (b) Encourage building design and locations that have regard for the existing characteristics of the site and locality

**Design Criteria**

1. The design of dwelling and associated buildings should be in keeping with the rural character of the locality. Traditional construction materials (i.e. timber, corrugated roofing or similar) and natural colours (grey, greens and browns) are encouraged;
2. Extensive use of highly reflective materials and/or colours is not acceptable for roof or wall cladding

**A-2.9 Water, Stormwater and Sewage Objective** (a) To ensure all development is adequately serviced by water, sewer and stormwater infrastructure. (b) To ensure that development is located and designed so that it will not impact upon existing infrastructure.

**Design Criteria**

**Stormwater** 1. All dwellings must: (a) connect to urban water, sewer & stormwater infrastructure where provided, (b) install a rainwater tank being a minimum 5,000 litres connected to the dwelling, and (c) have a minimum 80% of impermeable surface area diverted to an infiltration area e.g. lawn or garden areas, or water tank. Erosion and sediment controls are to be implemented during construction to prevent sediment and pollution leaving the

amenity of the area, particularly as they are visually isolated within the site, and will not create unmanageable waste, and are not beyond the capacity of local services.

The 20m separation of the 2 dwellings, and their visual isolation within the site from neighbouring properties ensures optimum Acoustic Privacy.

The visual isolation of the development area ensures that the proposal does not detract from significant local views from neighbouring properties or local roads.

It thus meets this DCP requirement.

The two dwellings are to be of slab on ground brick construction, with colorbond roofs (Grey). The dwellings will be setback 300m from Ainsworth Road, and 53m from the western boundary on an existing cleared and gently sloping section of the site, with their floor levels being 86.4m AHD and 84.2m AHD, placing them well clear of flood impact.

This meets Richmond Valley D.C.P. No. 2021 requirements.

20kl of water is provided to each dwelling, and the annexed waste water report shows that the proposed development meets all Richmond Valley D.C.P. No. 2021 requirements.



site. Note. Part I-9 Water Sensitive Urban Design provides further details.

**Sewage 2.** Dwellings not serviced by reticulated town sewer—are to have an approved onsite sewage management facility designed in accordance with Council's Onsite Sewage and Wastewater Strategy and associated guidelines.

**Water Supply 3.** Each dwelling is to have a suitable potable water supply being: (a) Dwellings serviced by reticulated town water— connection to a reticulated water supply is required unless a solution, meeting NSW Health requirements, can be demonstrated, or (b) Dwellings not serviced by reticulated town water—a minimum 60,000 litres of potable water supply per dwelling. 4. Where reticulated water is unavailable, or in areas where there is reticulated water but there is a distance of greater than 90 metres from the nearest hydrant point to further most part of the dwelling, an additional water source is to be provided that is dedicated for firefighting purposes: (a) rural or rural residential land having an area <2ha— a minimum 10,000 litres per lot, or (b) rural or rural residential land having an area =>2ha—a minimum 20,000 litres per lot. (c) urban areas – a minimum of 5,000 litres per dwelling

#### **A-2.10 Earthworks and Retaining Walls Objective (a)**

To ensure cut and fill required for any development is designed to minimise any safety, environmental and amenity impacts on the site and adjoining properties.

##### **Design Criteria**

1. Applications involving earthworks and retaining walls must: (a) provide details of the extent of all cut and fill, and (b) where fill is greater than 600mm high provide geotechnical certification to verify the structural stability of any fill material, and (c) not redirect the flow of any surface water or ground water in a concentrated manner onto an adjoining property, and (d) be located outside the Clear Zone of and have footings outside which extend below the Zone of Influence for any sewer main, water main, or stormwater pipeline, and (e) have adequate drainage lines connected to the existing stormwater drainage system for the site, and (f) retaining walls must be of masonry construction and have engineering certification if: • 900mm or higher in height, or • if located within 900mm of a boundary, and (g) if the fill is imported to the site—be free of building and other demolition waste, and only contain virgin excavated natural material.

#### **Part A-4 Dual Occupancy in the RU1 Primary Production**

##### **A-4.1. Permissibility, Minimum Lot Size and Subdivision Requirements Objectives**

(a) Dual occupancy is of a type that is permitted in the zone by Richmond Valley LEP 2012.

##### **Design Criteria**

1. A dual occupancy (attached) or dual occupancy

The slab on ground method of construction of gently sloping land minimises site works, and as such the development accords with these DCP requirements. See Plans.

See Sec 4.6 Objection to application of Minimum Allotment Size Standard to this 39.15ha allotment.

The allotment does exceed the 1.5ha minimum for Dual Occupancy, and the 20.299m separation sits well below the



<p>(detached) is permitted in the RU1 and R5 zones.  2. dual occupancy (attached) permitted in the E3 zone.  3. Subdivision of a dual occupancy development is not permitted in the RU1, R5 or E3 zones.  Minimum lot size for carrying out dual occupancy development  Objectives (b) To achieve planned residential density consistent with the local housing strategy.  Design Objectives  4. The minimum lot size for a dual occupancy (attached or detached) in the RU1 and R5 zones: 1.5 hectares  5. Only attached dual occupancies are permitted in the E3 zone. The minimum lot size is 5 hectares.  Separation between detached dual occupancy dwellings  (c) To comply with maximum separation requirement of Richmond Valley LEP 2012.  6. Maximum separation between detached dual occupancy dwellings is 100m.  (d) Provide adequate separation between buildings to <b>allow for landscape, provide visual separation and daylight access between buildings.</b>  7. Minimum separation between detached dual occupancy dwellings is 1.8 between the external walls.</p> <p><b>A-4.9 Car Parking Objective</b>  (a) Car parking is provided appropriate for the scale of the development.  <b>Design Criteria</b>  2 car parking spaces are provided for each dual occupancy dwelling, located behind the building line.</p>	<p>maximum 100m spatial separation permitted.</p> <p>Additional native Plantings are proposed to achieve radiant heat buffers about the fringe of the APZ and to achieve privacy between the dwellings.</p> <p>Both Dwellings use the same access point off Ainsworth Road.  Northern 3BR Dwelling 1 garage and 1 adjacent car parking space.  Southern 2BR Dwelling 2 adjacent car parking spaces.</p>
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**Summary :** Viewed in total, the approval of the proposed "Detached Dual Occupancy", will in no way prejudice the proper future planning of the area, or the development of adjoining land, as it accords with Zoning, Zone Objective, and D.C.P. requirements.

**2.8 LANDSCAPING – DCP 2012**

The ecological history of the area indicates that it was once covered in Bloodwood-Red Gum Grassy Forest, and its current state is the result of its previous development as grazing land, with tall thin regrowth all competing for light at the same time, thus indicating that this occurred at the same time after a landuse change occurred.

As required by DCP 2012, the annexed plans show the Planting Schedule for additional screen plantings between the two dwellings, and to provide a radiant heat shield on the southern side of the northern forest.

This plantings will effect visual screening, improves fire safety, and broadens the habitat base of the area.

The proposed screen plantings and radiant heat buffer will add to the sites habitat value within a rural location (See Site Plan P1). Landscape plantings propose native species with a proven track record, to improve the visual integrity of the site, and achieve a broad habitat base within a rural location.

Landscaping is proposed to thus effect privacy, visual softening, and broaden the habitat base of the area, as per. the attached plan.

The basic aims of these landscape plans are:

- 1). The embellishment of the natural eco-base;
- 2). To create an environment of privacy for the residents;





- 3). The creation of usable spaces within the design;
- 4). The enhancement of the visual atmosphere of the site.
- 5). To provide a landscape design that is easy to maintain and construct.

### **LANDSCAPE DEVELOPMENT PLAN**

These landscape details have been prepared in conjunction with Mr. D. Sweet Ecologist, to meet the design requirements specified in DCP 2012, and to this end the following planting schedule is provided. No species of threatened native flora are to be disturbed on site, and the site is currently devoid of extensive forest areas.

All planting holes will need to be deeply dug to approx. 400mm and soil mixed with a 50/50 mix of compost as part of the landscape design. Also mulch layers are proposed over planted areas to improve soil conditions, maintain soil moisture levels, increase micro-organism levels, and regulate soil temperature.

As can be seen from the architectural plans, the plantings proposed are clear of overhead power lines and underground services.

Landscape Specification details planting structure. "Over excavate each plant hole by at least twice the pot diameter and pot height".

Drainage achieved by adequate planter hole preparation and the intrinsic nature of the local soils at ground level, and via the soil profile and drainage created within planted areas.

Location of species marked on annexed plans.

### **PLANTING SCHEDULE**

<b><u>Scientific Name</u></b>	<b><u>Common Name</u></b>	<b><u>No.</u></b>	<b><u>Symbol</u></b>	<b><u>Pot Size</u></b>	<b><u>Mature Ht.</u></b>	<b><u>Spread</u></b>
<b><u>TREES</u></b>						
<i>Araucaria cunninghamii</i>	Hoop Pine	3	1	200mm	25-35	6m
<i>Cupaniopsis anacardioides</i>	Tuckeroo	6	2	200mm	25-35	6m
<b><u>SHRUBS</u></b>						
<i>Acmena smithii</i> (minor)	Creek Lilli Pilli	20	3	200mm	3m	2.5m
<i>Callistemon saligna</i>	Bottlebrush	20	4	200mm	3m	2.5m
<b><u>SHRUBS &amp; UNDERSTOREY</u></b>						
<i>Lomandra longifolia</i>	Spiny-headed mat-rush	40	5	100mm	0.8m	0.8m



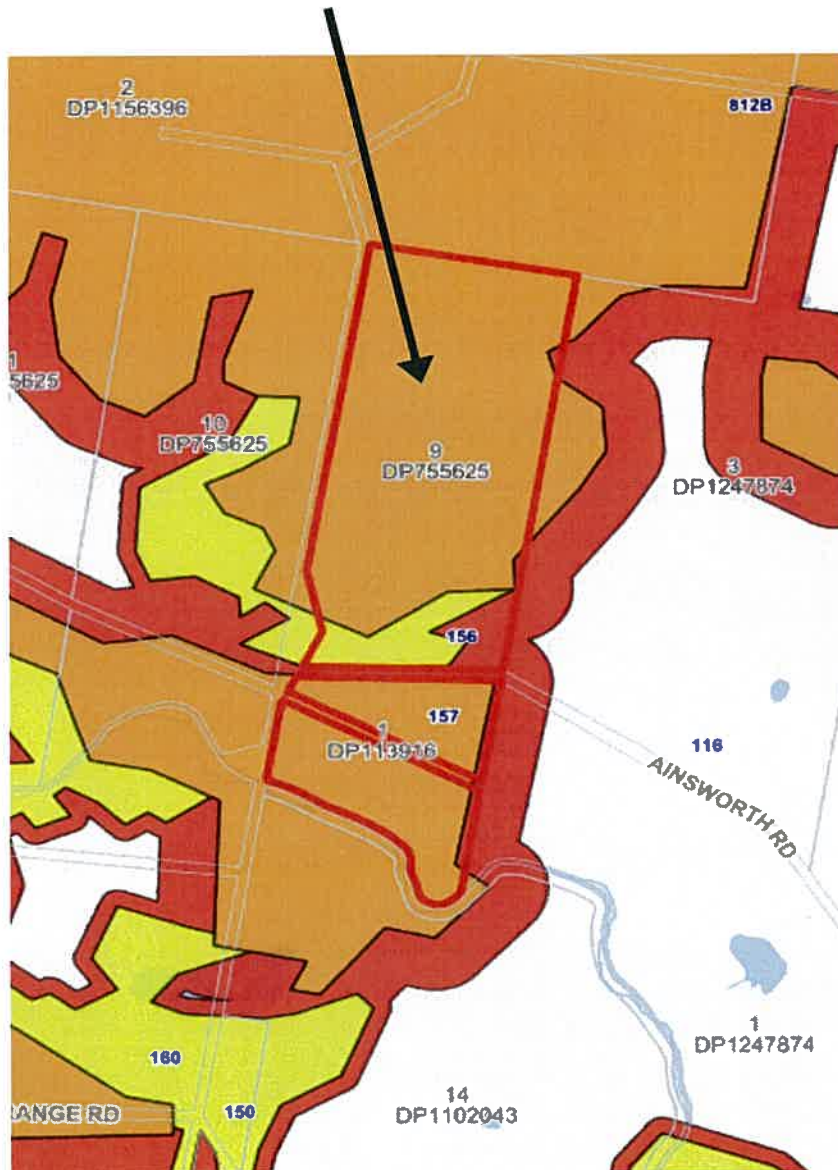
## 2.9 PLANNING FOR BUSHFIRE PROTECTION 2019.

To assist in the assessment of this application by Council under the provisions of the Rural Fire Service Regulation 2019, the annexed assessment is provided.

This shows that as required by PBP 2019, the proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie, are not exposed to a Bushfire Attack Level greater than BAL 29.

They therefore meet these Bushfire Safety requirements and can be approved by Council.

### Bush Fire Map Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie



Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie



### 3 Sec. 4.15(1)(b) IMPACT ON ENVIRONMENT

The Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarrie, are located within already cleared land.

The site is screened by existing vegetation to adjacent properties and adjacent roads such that the development is visually isolated and softened.

The landuse will thus not cause any adverse environmental impact, and the pockets of native regeneration will continue, with weed management implemented to optimise the integrity of the landscape plantings about the site.

Thus the propensity for this development to impact on the amenity of the area is low.

As previously stated, the building and landuse areas are well setback from all boundaries, and this spatial separation ensures that there will be no adverse impact on existing and planned habitat areas. All waste is to be separated on site for composting, or collection and recycling.

It is therefore considered that the proposed development will have no adverse impact on the environment of the area.

The site was extensively disturbed by vegetation clearance during the early part of this century when timber was extracted from the area. This was followed by decades of stock grazing resulting in the loss of all the original forest, and maintaining the area as pasture.

The landscape plantings about the site will not be affected by the proposed spatially isolated use which is to occur on areas of the site that have remained cleared or have been cleared.

Thus the site of the proposed “Dual Occupancy” will not compromise existing vegetation about the site, and as such their habitat potential is to remain unchanged.

On this basis, the landuse, site layout, and design character will remain similar to that already approved, yet provides better site management outcomes.

By approving the design, the “Dual Occupancy” maintains the character of the area.

The flora species specifically targeted in the study of the site found that the development did not impact upon threatened species over this cleared site.

#### 3.1 EPA Act Sec 5.5 Duty to consider environmental impact

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

As stated above, the native species are to be retained, and this will effect screening, visual softening, and the broadening of the habitat base of the area.

On this basis the proposal results in development meets the Sec 5.5 requirements of the EPA Act in that it results in the “protection and enhancement of the environment”.

#### 3.2 Biodiversity Conservation Regulation 2017

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offsets Scheme will be triggered. The threshold has two elements:

- Whether the amount of native vegetation being cleared exceeds a threshold area, or
- Whether the impacts occur on an area mapped on the Biodiversity Values map published by the Minister for the Environment

If clearing and other impacts exceeds either trigger, the Biodiversity Offset Scheme applies to the proposed development including biodiversity impacts prescribed by clause 6.1 of the Biodiversity Regulation 2017.

If the Biodiversity offsets scheme is not triggered, the test of significance detailed in section 7.3 of the Biodiversity Conservation Act 2016 must be used to determine whether a local development is likely to significantly affect threatened species.



The Biodiversity Conservation Regulation 2017 sets out thresholds for when the Biodiversity Offsets Scheme will be triggered.

**The threshold has three triggers:**

1. whether the amount of native vegetation being cleared exceeds a threshold area set out in the table below, or
2. whether the area being cleared is mapped as 'sensitive' on the Biodiversity Values Map published by the NSW Office of Environment and Heritage, or
3. whether a significant impact is likely according to a 'test of significance'.

**Area Clearing Threshold.**

Minimum lot size associated with the property	Threshold for clearing above which the offsets scheme applies
Less than 1 hectare	0.25 hectares or more
1 hectare to less than 40 hectares	0.5 hectares or more
40 hectares to less than 1000 hectares	1 hectare or more
1000 hectares or more	2 hectares or more

As the property has an areas of 39.15ha., then the clearing threshold is 0.5ha. In this instance, only existing cleared land is to be used, and as the development areas within the property already provide adequate bushfire buffers, then no additional clearing outside these already cleared areas is required to achieve APZs which need to be achieved to limit threat to BAL 29.

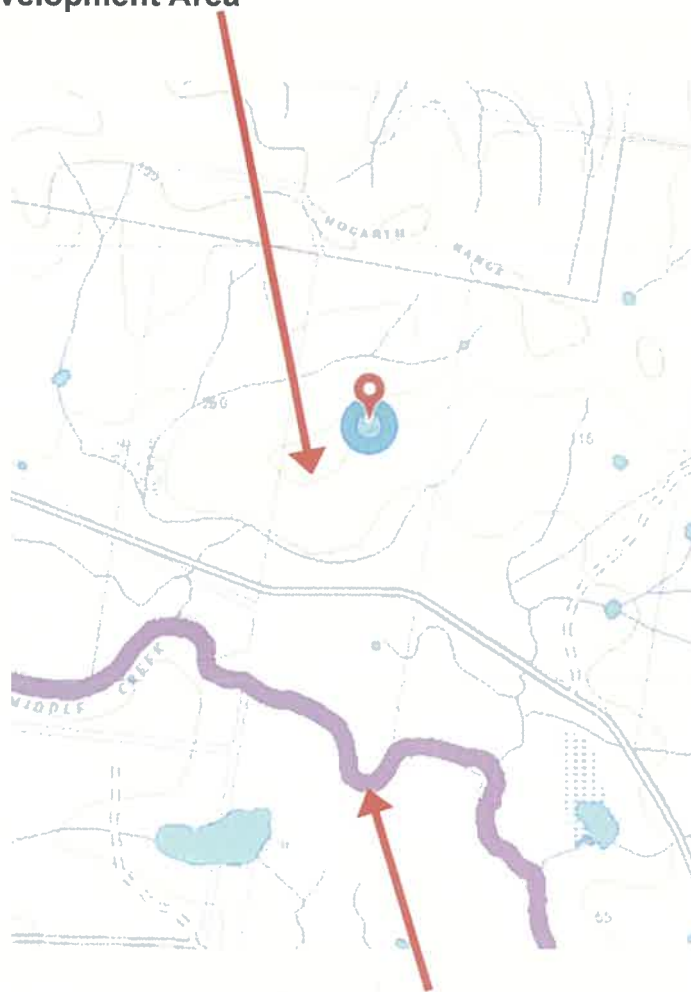
The location of the dwellings in the cleared and elevated central southern areas of the site ensures optimum separation from Bushland to achieve a BAL 29 rating, and locates these sites almost 600m from the Biodiversity mapped areas along Middle Creek, which forms the southern boundary of the property.

**As can be seen from the following extract from the Biodiversity Values map, as published by the Minister for the Environment, the proposed development area in the central south of the property sits outside the areas mapped on the Biodiversity Values map, which are restricted to Middle Creek on the southern boundary of the property. No development is proposed in these southern areas.**





**Development Application for the proposed Detached Dual Occupancy Dwellings on Lot 9  
DP 755625, No 156 Ainsworth Road, Mongogarie  
Development Area**



**3.2.1 Sec 7.3 of the Biodiversity Conservation Act 2016**

**Sec 7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats**

(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

In these areas of the Shire, the following Endangered or rare species could occur:

**Endangered or rare Bird Species:-**

Calyptorhynchus lathami

Daphoenositta chrysoptera

Pomatostomus temporalis temporalis

Glossy BlackCockatoo

Varied Sittella

Grey-crowned Babbler

**Endangered or rare animal Species:-**

Phascolarctos cinereus

Pteropus poliocephalus

Mogurnda adspersa Southern

(Koala)

Grey-headed Flying Fox

Purple Spotted Gudgeon

(likely in Middle Ck.)



Threatened species were not identified on this site, and all habitat areas within the site are to be retained. This is particularly so given the cleared nature of the “Detached Dual Occupancy” areas. Endangered populations could be affected if established forest, or mature regrowth was to be removed. This however is not the case, and as such the proposed “Detached Dual Occupancy” will not disrupt populations such that the viability of the population is likely to be significantly compromised.

**(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:**

**(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or**

**(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,**

As previously indicated, no habitat is to be removed, all native vegetation is retained, and this will effect screening, visual softening, and the broadening of the habitat base of the area.

**(c) in relation to the habitat of a threatened species or ecological community:**

**(i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and**

**(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and**

**(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,**

Due to there being no native trees to be removed, then no habitat areas in the district will become isolated from interconnecting or proximate areas of habitat for a threatened species, population or ecological communities.

**(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),**

As detailed, no critical habitat will be affected.

**(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.**

The proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie is to take place on the cleared, and grossly disturbed central areas of the site, with all native vegetation retained, and additional landscape plantings proposed. This will effect screening, visual softening, and result in the broadening of the habitat base of the area.

It is thus considered that the development will not be a threatening development or activity.

**(2) The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program.** In this instance no Ministerial order has been issued in relation to the proposed development, and to this end the proposal is not considered to be one which will impact on any declared area of outstanding biodiversity value.



### 3.3 NATIVE FAUNA

#### **Mammal, Reptile, Bird and Bat Species:-**

The study area was traversed on foot, with fauna identified by tracks, scats, and visual sighting, as well as sightings by local residents.

#### **REPTILES**

Skinks:- *Lampropholis delicata* (Common Garden Skink)

Snakes:- *Demansia psamophis* (Yellow Faced Whip Snake)

*Dewrelapinis punctulatus* (Green Tree Snake).

Although not sighted, the following reptiles are commonly known to inhabit the area:- *Cryptonis nigreslens* (Small Eyed Snake), *Hemiaspis signata* (Swamp Snake), and *Morelia spilotes* (Carpet Snake).

#### **AMPHIBIANS**

*Limnodynastes peronii* (Striped Marsh Frog)

*Litoria caerulea* (Green Tree Frog)

*Bufo Marinus* (Cane Toad)

#### **BIRDS**

*Corvus orru* (Torresian Crow)

*Cracticus torquatus* (Grey Butcher-Bird)

*Dacelo novaeguineae* (Kookaburra)

*Gymnorhina tibicen hypoleuca* (Magpie)

*Malurus cyaneus* (Superb Blue Wren)

*Philemon corniculatus* (Noisy Friarbird)

*Psophodes olivaceus* (Eastern Whipbird)

*Rhipidura albiscapa* (Grey Fantail)

*Rhipidura leucophrys* (Willie Wagtail)

*Strepera graculina* (Pied Currawong)

*Trichoglossus moluccanus* (Rainbow Lorikeet)

#### **NATIVE MAMMALS**

Few Native Mammals have been identified or sighted other than occasional flying foxes, and Echidnas.



### 3.4 NATIVE VEGETATION

The site was extensively disturbed by vegetation clearance during the early part of this century when timber was extracted from the area. This was followed by decades of stock grazing resulting in the loss of all the original forest, and maintaining the area as pasture. The regrowth stands will not be affected by the proposed spatially isolated use, which occurs on areas of the site that have been cleared.



### PLANT COMMUNITY

**Two major plant communities exist within the site.**

#### **COMMUNITY 1 - Grassland.**

**Structure:** Generally close cover of various grass species with occasional Pink Bloodwood (*Corymbia intermedia*) and Broadleaved Apple (*Angophora subvelutina*), with occasional Forest Oak (*Allocasuarina torulosa*), in an informal park like placement.

**Habitat:** Generally gently sloping land.

**Distribution:** The southern cleared areas of the property, and the central cleared dwelling sites, with the northern areas remaining as forest.





## **COMMUNITY 2 - Northern Hinterland Hills Bloodwood-Red Gum Grassy Forest**

**Structure :** The vegetation comprises of open forest dominated by Pink Bloodwood (*Corybia intermedia*) and Broadleaved Apple (*Angophora subvelutina*), with occasional Forest Oak (*Allocasuarina torulosa*), Forest Red Gum (*Eucalyptus tereticornis*) and scattered Broad-leaved Paperbark (*Melaleuca quinquenervia*). The midstorey consists of Red Ash (*Alphitonia excelsa*), Green Wattle (*Acacia irrorata* subsp. *irrorata*), Curracabah (*Acacia concurrens*) and occasional Banksia (*Banksia integrifolia*).

The midstorey is also features Lantana (*Lantana camara*\*) incursions at the edges.

Groundcover on the is dominated by Kikuyu Grass (*Cenchrus clandestinus*\*), Broad-leaved Paspalum (*Paspalum mandiocanum*\*) and Blue Billygoat Weed (*Ageratum houstonianum*\*).

### **3.5 S.E.P.P. 2020 KOALA HABITAT.**

#### **7 Land to which this Part applies**

This Part applies to land that —

- (i) has an area of more than 1 hectare, or
- (ii) has, together with adjoining land in the same ownership, an area of more than 1 hectare.

**The property has an area of 39.15ha and as such the policy applies.**

#### **8 Step 1—Is the land potential koala habitat?**

(1) Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies, the council must be satisfied as to whether or not the land is a potential koala habitat.

**Prescribed Koala Food Tree Species have been identified on the land.**

(2) The council may be satisfied as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.

(3) If the council is satisfied—

- (a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
- (b) that the land is a potential koala habitat, it must comply with clause 9.

**Prescribed Koala Food Tree Species have been identified on the land.**

#### **9 Step 2—Is the land core koala habitat?**

(1) Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies that it is satisfied is a potential koala habitat, it must satisfy itself as to whether or not the land is a core koala habitat.

(2) The council may be satisfied as to whether or not land is a core koala habitat only on information obtained by it, or by the applicant, from a person with appropriate qualifications and experience in biological science and fauna survey and management.

(3) If the council is satisfied—

- (a) that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
- (b) that the land is a core koala habitat, it must comply with clause 10.

**Prescribed Koala Food Tree Species have been identified on the land, however no Koalas were observed.**

#### **Sec 11 Koala Habitat Protection Guideline.**

1. Understand and identify koala habitat values including landscape connectivity (such as habitat extent and habitat linking areas).

**Core Koala Habitat** means—

- (a) an area of land where koalas are present, or
- (b) an area of land— (i) which has been assessed by a suitably qualified and experienced person in accordance with the Guideline as being highly suitable koala habitat, and (ii) where koalas have been recorded as being present in the previous 18 years

**Prescribed Koala Food Tree Species have been identified on the land, and no Koala Habitat is to be removed.**



The proposal therefore meets all of the aims and objectives of SEPP 2020 for Koalas.

### **3.6 S.E.P.P. (Resilience and Hazards) 2021 CONTAMINATED LAND**

#### **S.E.P.P. (Resilience and Hazards) 2021 CONTAMINATED LAND.**

##### **Clause 4.6 Contamination and remediation to be considered in determining development application**

- (1) A consent authority must not consent to the carrying out of any development on land unless—
- (a) it has considered whether the land is contaminated, and (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is—
- (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).

**Table 1. Some Activities that may Cause Contamination** • acid/alkali plant and formulation • agricultural/horticultural activities • airports • asbestos production and disposal • chemicals manufacture and formulation • defence works • drum re-conditioning works • dry cleaning establishments • electrical manufacturing (transformers) • electroplating and heat treatment premises • engine works • explosives industry • gas works • iron and steel works • landfill sites • metal treatment • mining and extractive industries • oil production and storage • paint formulation and manufacture • pesticide manufacture and formulation • power stations • railway yards • scrap yards • service stations • sheep and cattle dips • smelting and refining • tanning and associated trades • waste storage and treatment • wood preservation

The site is part of an old grazing property and has not in the past been used for bananas.



## Contaminated Land Map



### Contaminated Land off site to South

The assessment satisfies Clauses 1(a) and 2 of SEPP (Resilience and Hazards) 2021 CONTAMINATED LAND, as there is no likelihood of contamination from the types of landuses listed in Table 1, and as such no further detailed assessment is required. The site is part of an old grazing property and has not in the past been used for bananas.

Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie



### **3.7 IMPACT ON SCENIC QUALITY**

The Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie development as proposed will not alter the existing development characteristics of the site as existing cleared lands are used, and these areas are screened from view off site. As such the scenic amenity of the area will be unaffected by the proposed development.

The retention of all existing screening vegetation about the site will ensure that the site and its uses are not visually dominant.

### **3.8 IMPACT ON THE BUILT ENVIRONMENT**

The design of the proposal reflects the needs of the owners to optimise their use of the site within its character and constraints. It fits in well with the characteristics of the existing development within the site, the nature of the site, and the requirements of Councils L.E.P. and D.C.P.s. The development will not prejudice future planning in the area, as it is to take place in the southern central cleared land.

The small scale of the development combined with the large 39.15ha size of the land, the sites visual isolation, and single storey dwellings, will not result in the visual character of the area changing, particularly as boundary plantings are retained.

As well as these considerations, the development reflects the design requirements of D.C.P. 2012, and is not out of character with the development characteristics of the surrounding area.

### **3.9 SOCIAL & ECONOMIC IMPACTS IN LOCALITY**

The social and economic benefits of the Detached Dual Occupancy development are:-

- a) the provision of design controlled, low key accommodation development, that will help increase housing stock within the local community.
- b) the broadening of the economic base of the Richmond Valley Shire, and the multiplier effect such development has for the areas building industry and retail sector. And
- c) most importantly, the minor impact such development has on the environment.

This developments economic, environmental and social benefits to future residents, and the Shire are:-

- a) The environment that is created as a direct function of its design.
- b) Its natural beauty and outlook.
- c) The developments environmental integrity.

In a social context, the low density of the development proposed, will result in a high level of rural amenity being maintained. Thus the developments social impact can only be seen as positive.

### **3.10 RELATIONSHIP TO ADJOINING DEVELOPMENT**

The proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie is compatible with the character of the area by virtue of its 39.15ha. Land size and rural and character. This is a feature of the site that will not be changed, particularly as the two dwellings building are screened from view off site and are in keeping with the existing character of the site.

Further, the contemporary styled single storey buildings and landscaped surrounds will continue to have minimal impact on the amenity of the area.

The proposed development is thus in keeping with the existing and likely future character of the area, and the Detached Dual Occupancy Dwellings will not alter the development characteristics of the area, as detailed in the Waste management and Bushfire Impact reports, which form part of this application.

As such the scenic quality and rural amenity of the area will be unaffected by the proposed development, particularly having regard to the visual isolation and spatial separation of the central development areas from adjacent properties and roads.





## **4 Sec. 4.15(1)(c) SUITABILITY OF THE SITE**

The Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarrie achieves a compatible and blending permissible development on site.

It blends with adjacent properties, where large setbacks and established vegetative screen plantings exist, and additional landscaping is proposed.

On this basis it maintains the character of this section of Mongogarrie where large numbers of lifestyle rural properties exist, fringed by grazing lands.

Byron Bay Planning have determined, through the assessment within this S.E.E. and annexed Waste management and Bushfire reports, which form part of this application, that the development can be managed to ensure no adverse off site impacts.

### **4.1 ACCESS AND PARKING**

Access to the site is currently gained from the central south of the lot from Ainsworth Road.

It is proposed that this existing access point will continue to provide access to Lot 9.

At this location large safe sight distances are achieved.

Given that the site is currently utilised for low scale agriculture (grazing), vehicular movements may include onsite machinery (tractors, utility vehicles, etc.) and eight (8) passenger vehicle movements per day, per dwelling, can be expected.

Ainsworth Road in this location, is considered to be of an adequate standard.

With the proposed retention of the existing access point, it is considered that the proposed developments potential to generate approximately 16 additional vehicle movements per day, which is unlikely to impact neighbouring lands, or exceed the local road design capacity.

### **4.2 SERVICES**

**ELECTRICITY SUPPLY** - Country Energy has advised that electricity supply to the development is already connected from the existing mains system.

**TELEPHONE SUPPLY** - Telstra advise that the site is already connected to the local Exchange Network.

**GARBAGE COLLECTION** - Garbage from the development will be taken to the Tip, with organic waste composted on site.

**WATER SUPPLY** - Tank.

**SEWERAGE** - The site is to be connected to effluent treatment systems to be used in accordance with the annexed Waste Water Management Report.

## **5 Sec. 4.15(1)(d) SUBMISSIONS UNDER ACT OR REGULATIONS**

Not applicable.

## **6 Sec. 4.15(1)(e) PUBLIC INTEREST**

Due to the spatial separation of the site from surrounding dwellings, and the fact that the buildings are generally hidden behind existing landscaping, then it is considered that the public response to the proposal will on the whole be a positive one.

As stated, Byron Bay Planning have determined that the development can be managed to ensure no adverse off site impacts.

The development accords with Councils' Statutory and D.C.P. requirements, and the proposed Detached Dual Occupancy Dwellings are in response to a genuine need to optimise the use of large parcels of rural land within the Shire.

It keeps within existing cleared and already developed areas within the site.



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## 7 MERIT CONSIDERATIONS

It is considered that the proposed Detached Dual Occupancy Dwellings on Lot 9 DP 755625, No 156 Ainsworth Road, Mongogarie, with retention of native landscaping, planting of additional landscaping, combined with the sensitive design, in a visually isolated section of the property, will have a minimal impact on the environment and visual amenity of the area.

In addition, the proposal will also satisfy a genuine need for this type of low scale compatible development in the Richmond Valley Shire.

CHRIS LONERGAN. B.A. (Town Planning UNE)  
27<sup>th</sup>. March 2024.