

# Nambucca Shire Council

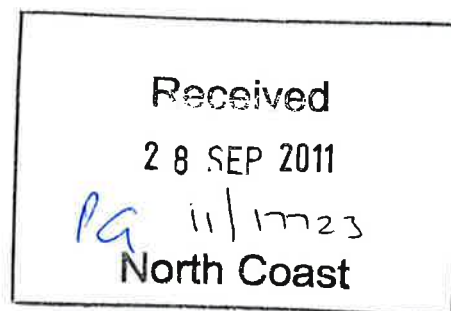


Enquiries to: Mr Grant Nelson  
Contact Phone: 6568 0248  
Our Ref: SF1606



26 September 2011

Steve Murray - Regional Director  
Department of Planning, Northern Region  
Locked Bag 9022  
GRAFTON NSW 2460



Dear Sir

## **PLANNING PROPOSAL - LOCAL ENVIRONMENTAL PLAN AMENDMENT NO. 4 LOT SIZE AMENDMENT FOR THE PURPOSE OF AN EDUCATION FACILITY AT DUDLEY STREET, MACKSVILLE**

As resolved through recent email correspondence with the Department of Planning, Council is re-lodging a Planning Proposal to allow a Lot Size Amendment to land at Lot 11 DP 805157, Dudley Street, Macksville.

### Background

On 16 September 2010, Council adopted the recommendations regarding a Planning Proposal under the "Gateway Process" for land at Dudley Street, Macksville.

The purpose of the amendment was to allow the subdivision of land for the purposes of an educational establishment. Through discussion with the Department of Planning an appropriate method to achieve the intent of this resolution was agreed and on 3 February 2011 Council resolved the following:

**That pursuant to the clause 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a Planning Proposal for the following, and the Planning Proposal be submitted to the Minister for Planning for consideration under clause 56 of the Act:**

- a An amendment to the Lot Size Map on Lot 11 DP 805157, Dudley Street, Macksville to permit the future subdivision of the land for the purposes of an Educational Establishment.**

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This resolution of Council reflects the recommendation provided by the Department of Planning in a revised gateway determination issued on 15 February 2011 (PP\_2010\_NAMBU\_003\_00). It is noted that this gateway determination included other proposed amendments which rectified anomalies with the Nambucca LEP 2010 at Uriti Road, Macksville and Short Street, Nambucca Heads. For exhibition purposes the Planning Proposal was split into LEP amendment No. 3 (Correction of Anomalies at Uriti Road, Macksville and Short Street, Nambucca Heads) and LEP amendment No. 4 (Dudley Street, Macksville).

LEP Amendment No. 4 was exhibited in accordance with the gateway determination and the results of the exhibition are provided below.

Consultation:

Subject to the conditions of the gateway determination and the provisions of Section 72K of the *Environmental Planning and Assessment Act 1979* the Planning Proposal was exhibited at the same time as the Development Application to subdivide the land for the purposes of an Educational Establishment (DA 2011/010). Pursuant with gateway determination the exhibition period was from the 10 March 2011 to 25 March 2011. The exhibition included two (2) advertisements in the local paper and appropriate notification to adjoining landholders.

During the exhibition period Council received two (2) submissions raising the following matters:

*Submission Issue 1: Should the subdivided land be used for the construction of school buildings, then because of increased noise levels the value of our own property may be decreased.*

Planning Response: The construction of the school is a permissible use on the land and is presently subject to Land and Environment Court Proceedings (DA 2010/234). Matters related to the impact a school will have on the area are being considered as part of these proceedings and are not relevant to this planning proposal. The underlying intent of this Planning Proposal is to allow the school to purchase the part of the land relevant to the development application for the school should it be approved by the Land and Environment Court.

*Submission Issue 2: Drainage of water from this very wet, flood prone, area on to our own property, may well be increased particularly during heavy rainfall, causing problems with the sewerage drains.*

Planning Response: Flooding is a matter being given consideration by the Land and Environment Court for the development application of the school. As stated above the planning proposal itself will simply allow the later separation of the school from the rural allotment should the school be approved.

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*Submission Issue 3: Once rezoning of this land takes place there will be an expectation that housing can be built here. The land is not suitable for housing as life and property would possibly be at risk.*

Planning Response: The Planning Proposal will not rezone the land, rather it will allow the subdivision of the land to accommodate a proposed school. As the land is zoned rural the land will not provide for residential housing. Council may determine to place a restriction of use on the subdivided block to prohibit the erection of a rural dwelling on the land should the subdivision be approved but for some reason the school not proceed.

Associated Development Applications

As indicated above the Planning Proposal is associated with two (2) development applications:

- DA 2010/234 - Education Establishment - Dudley Street, Macksville; and
- DA 2011/010 - Two (2) Lot Subdivision of Land - Dudley Street, Macksville

On 12 April 2011 DA 2010/234 for an education establishment was refused by the Joint Regional Planning Panel mainly due to concerns with flooding.

Given there were no complications encountered with LEP Amendment No. 3, on 23 May 2011, the Department of Planning was requested to make this Part of the Planning Proposal. In the same letter the Department was advised that LEP amendment No. 4 relating to the educational establishment may proceed at a later date.

During this hold period the application for the subdivision of subject land (DA 2011/010) was withdrawn.

Since this time the applicant for the Education Facility has lodged an appeal against JRPP's decision to refuse the application and the Land and Environment Court is presently considering the matter. A decision is expected in mid October 2011.

The applicant for the Education Facility and the associated Planning Proposal has requested that all matters relevant to the proposal for the educational establishment be progressed as far as possible to ensure an expeditious process should the appeal be upheld in October.

Important Note:

It is noted that should the appeal for the proposed educational facility (DA 2010/234) be dismissed by the Land and Environment Court this proposed amendment will not proceed.

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**CONCLUSION**

Council considers it gave appropriate notification that LEP amendment No. 4 may proceed at a later date and Councils preference is to pursue the existing Planning Proposal (LEP amendment no. 4) under section 59 of the EP&A Act dependant upon the results of the Land and Environment Court Proceedings.

Should the Department deem it necessary to re-submit the Planning Proposal (LEP amendment No. 4) for a new Gateway Determination, then it should be noted that exhibition has already been undertaken and a section 59 Report to Council has been prepared. Further exhibition and notification of the amendment would create undue processing delays.

Should the Department consider it necessary to provide a second gateway determination on the same matter all relevant information to make this determination is attached to this letter. Alternatively, if the Department advises Council it may proceed to section 59 of the EP&A Act then a report will be prepared for Councils consideration prior to advising the Minister to make the plan.

Should you require further information concerning this matter, please contact Mr Grant Nelson of Council's Environment and Planning Department.

Yours faithfully



Grant Nelson  
STRATEGIC PLANNER

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- Council Resolutions
- Planning Proposal
- Previous Gateway Determinations
- Advertisement
- Copies of submissions

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