

Planning Services

IRF18/49074

Gateway determination report

LGA	Dungog
PPA	Dungog Shire Council
NAME	Amend Clause 4.2A(3)(f) of Dungog Local Environmental Plan 2014 (0 homes, 0 jobs)
NUMBER	PP_2018_DUNGO_003_00
LEP TO BE AMENDED	Dungog Local Environmental Plan 2014
ADDRESS	various rural and environmental zoned properties
DESCRIPTION	various
RECEIVED	17 December 2018
FILE NO.	EF18/49074
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

EXECUTIVE SUMMARY

Description of planning proposal

The planning proposal (**Attachment A**) seeks to amend Clause 4.2A(3)(f) of the Dungog LEP 2014 to include existing holdings which have had a boundary change, and so preserve their dwelling entitlement.

Clause 4.2A sets out the circumstances whereby the erection of a dwelling house or dual occupancy may occur on rural (RU1) or environmental (E3, E4) zoned land. One of the circumstances whereby a dwelling may be erected is where the lot is an existing holding.

However, due to the current wording of the clause, this provision does not apply if an existing holding has been modified (e.g. due to a minor realignment of its boundaries that did not create an additional lot or widening of a public road). This proposal seeks to address this oversight in the drafting of the clause.

Site description

The proposal would apply to various properties that were considered to be existing holdings prior to a boundary change occurring per the circumstances set out in 4.2A(3)(f), and are zoned either RU1 Primary Production, E3 Environmental Management or E4 Environmental Living.

Existing planning controls

The subject clause seeks to permit the erection of dwelling houses and dual occupancies on land zoned either RU1 Primary Production, E3 Environmental

Management or E4 Environmental Living subject to certain circumstances. Clause 4.2A(3) sets out these circumstances whereby this may occur, including an exception to these circumstances where certain boundary changes have occurred (4.2A(3)(f)):

- (3) *Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot on which the dwelling is to be erected:*
- (a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land on which the dwelling house or dual occupancy is proposed, or*
 - (b) is a lot created under this Plan (other than under clause 4.1B or clause 4.2(3)), or*
 - (c) is a lot created before this Plan commenced and:*
 - (i) the erection of a dwelling house was permissible on that lot, and*
 - (ii) no development standards limiting the power to grant development consent for the erection of a dwelling house applied to that lot, before that commencement, or*
 - (d) is 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 dwelling house or a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (e) is an existing holding, or*
 - (f) would have been a lot or a holding referred to in paragraph (a), (b), (c) or (d) 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 consolidation with an adjoining public road or public reserve or for another public purpose.*

Surrounding area

Surrounding areas in the general case are likely to be other properties in the same RU1, E3 and E4 zones. These may or may not have existing holding status depending on their individual planning and property histories.

Summary of recommendation

It is recommended that, as a minor matter, the proposal proceed with conditions for community consultation, no agency consultation, and with a period of six months for finalisation of the proposal.

The proposal would correct an error in the clause and in doing so, make the LEP clause consistent with the Department's model clause.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal is to amend Clause 4.2A(3)(f) to preserve dwelling entitlements after an existing holding has been subject to minor boundary adjustments (no new lots created) or the subdivision/ consolidation of lots for either road widening or the creation of a public reserve on land zoned RU1 Primary Production, E3 Environmental Management and E4 Environmental Living.

Explanation of provisions

Council proposes to change subclause (3)(f) of clause 4.2A of the Dungog LEP such that it also refers to land subject to subclause (3)(e) (i.e. existing holdings). This approach is consistent with the Department's model clause (**Attachment B**).

Mapping

The proposal does not require mapping.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a study or report. Council advises that it has identified an error in the drafting of clause 4.2A which needs to be fixed. It notes that the error was unintended, and highlights that when the Dungog LEP 2014 was exhibited, the clause did not contain the error.

Council has considered alternative options to the proposed change, such as listing affected properties in Schedule 1 of the LEP as a local additional permitted use but considers the change to clause 4.2A to be the most efficient solution.

The need for the proposal is supported. The change proposed makes the clause consistent with the Department's model clause and other LEPs in the Hunter region (eg Cessnock, Great Lakes, Gloucester).

STRATEGIC ASSESSMENT

State

The planning proposal is not inconsistent with the state strategic planning framework.

Regional

The planning proposal is not inconsistent with the Hunter Regional Plan 2036 (HRP).

Local

Community Strategic Plan

Council advises that the proposal is consistent with its Community Strategic Plan (CSP) because it would retain rural dwelling entitlements that may otherwise be lost. In doing so, Council states that this contributes to the supply of land for population growth and provides for diversity and choice in rural living per the CSP objectives.

The CSP is a high-level document with limited guidance that is directly relevant to this proposal. Notwithstanding, it is agreed that the proposal may help achieve the outcomes identified by Council.

Dungog Land Use Strategy 2010

The planning proposal aligns with the local strategy in that any additional housing facilitated by this change would assist in achieving the dwelling targets set out in the strategy.

Section 9.1 Ministerial Directions

The planning proposal does not trigger any Ministerial Planning Directions.

State environmental planning policies

The planning proposal does not trigger any SEPPs.

SITE-SPECIFIC ASSESSMENT

Social

Social impacts are anticipated to be minimal.

Environmental

Environmental impacts are anticipated to be minimal.

Economic

The proposal may have a positive economic impact for those property owners who would benefit from the proposed change to the clause.

Infrastructure

Infrastructure impacts are anticipated to be minimal.

CONSULTATION

Community

Council has not specified a timeframe for community consultation however, as the proposal is considered to be of a low impact nature and a 14-day public exhibition is considered suitable.

Agencies

Council has not specified consultation with any Government agency.

No consultation is required for the following Government agencies.

TIME FRAME

Due to the minor nature of the planning proposal a six month timeframe is appropriate.

LOCAL PLAN-MAKING AUTHORITY

The Minister delegated his plan making powers to councils in October 2012, however Dungog Council did not accept these delegations, therefore authority to exercise delegations should not be issued.

CONCLUSION

The proposal is supported to proceed with conditions. The proposal corrects an error in clause 4.2A(3)(f) of the Dungog LEP 2014. The correct proposed by Council would make the clause consistent with the Department's mode clause 4.2A.

RECOMMENDATION

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. No consultation is required with public authorities/organisation under section 3.34(2)(d) of the Act
3. No public hearing is required.
4. The time frame for completing the LEP is to be six months from the date of the Gateway determination.
5. Given that Dungog Shire Council has not accepted plan-making delegations, Council should not be authorised to be the local plan-making authority to make this plan.



21/1/2019
Ben Holmes
Acting Team Leader, Hunter



24/1/2019
Monica Gibson
Director Regions, Hunter
Planning Services

Assessment officer: Ken Phelan
Planning Officer, Hunter
Phone: 4904 2705