

Planning Services

OBJ16/15069

Plan finalisation report

Local government area: Dungog

1. NAME OF DRAFT LEP

Dungog Local Environmental Plan 2014 (Amendment No 6)

2. SITE DESCRIPTION

The planning proposal applies to Lot 9, DP1009184 located at Serenity Way, Vacy (**Attachment A**). The site covers an area of 1.36ha and is mostly cleared with scattered vegetation located on the eastern boundary (Figure 1). The site is owned by Dungog Shire Council.

The site is surrounded by detached dwellings on large rural residential lots zoned R5 Large Lot Residential. The site is approximately 5km from the village of Vacy.

The site was previously used as a waste management facility (sanitary waste depot). Council no longer uses the site for this purpose and seeks to dispose of the land as it is considered to be surplus to Councils' needs. The site is currently classified as 'operational land' under the *Local Government Act 1993* and therefore can be disposed of by Council.



Figure 1: Site location (source: Nearmap)

3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone the site from SP2 Infrastructure to R5 Large Lot Residential; and
- introduce a minimum lot size of 8,000m².

The proposal will allow for the development of one dwelling on the site.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Upper Hunter State Electorate. Michael Johnsen MP is the State Member for Upper Hunter.

The site falls within the Lyne Federal Electorate. David Gillespie MP is the Federal Member for Lyne.

To the Regional Team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no communications with registered lobbyists about this proposal.
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NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 9 December 2016 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway determination was altered on 13 September 2017 and 25 June 2018 to extend the timeframes (**Attachment C**). These two timeframe extensions allowed for:

- the completion of a site contamination investigation; and
- for Council to address the EPA's requirement that a contaminated site auditor be appointed to audit of the remediation work on the site.

It is noted that the Gateway determination currently requires the finalisation by 16 December 2018.

It is recommended that an extension of six months until 16 June 2019 is provided. The Alteration of the Gateway determination is at **Attachment Alteration**.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 22 February 2017 to 31 March 2017 for 28 days. There was one public submission, in support of the proposal.

7. ADVICE FROM PUBLIC AUTHORITIES

As required in the Gateway determination, Council consulted with the Rural Fire Service (RFS) and the Environment Protection Authority (EPA).

Rural Fire Service

Referral to the RFS was a Gateway condition to address Section 9.1, Direction 4.4 - Planning for Bushfire Protection as the site was identified as being bushfire prone land. RFS advised Council on 28 March 2017 that it had no objection to the proposal subject to any future development complying with *Planning for Bush Fire Protection 2006* (**Attachment F**). Compliance with this guideline for any future development can be addressed at a development application stage.

Environment Protection Authority

Consultation with the EPA was required in relation to SEPP 55 – Remediation of Land as the site was previously used as a waste management facility including as a night soil depot resulting in contamination from residual tar deposits and microbiological contamination.

A Site Audit Report (October 2018) and Remediation Action Plan (RAP) (October 2018) were prepared for the site to identify potential contamination and proposed remediation methods.

The EPA advised Council on 27 November 2018 that it had reviewed the Site Audit Report and the RAP and did not raise any objections or issues with the works proposed (**Attachment G**). However, as part of the remediation, Council was required to engage a contaminated site auditor accredited by the EPA.

Council advised that they engaged an accredited site auditor. Council also advised in November 2018 that works identified in the RAP were not yet completed, however anticipated to be completed with certification by an accredited site auditor in early 2019.

8. POST-EXHIBITION CHANGES

No changes were made to the proposal post-exhibition.

9. ASSESSMENT

The proposal seeks to rezone the former Council waste management facility from SP2 Infrastructure to R5 Large Lot Residential. The site is surrounded by land zoned R5 Large Lot Residential (Figure 2). The proposed zoning and lot size is consistent with surrounding planning controls and would complement the existing rural and residential character of the area.

Any potential impacts are expected to be minimal. With the exception of contamination and bushfire hazards (discussed further below), the site is not subject to any other environmental constraints or hazards and is considered suitable for large lot residential development.

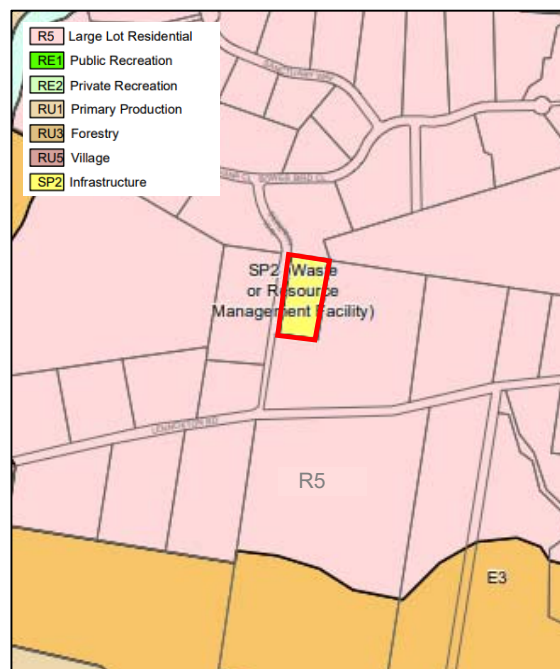


Figure 2: Existing zoning

Section 9.1 Directions

Direction 4.4 - Planning for Bushfire Protection

As identified in Section 7, the site is bushfire prone. Written advice from RFS indicates that no objections to the progression of a planning proposal as Asset Protection Zones (APZs), access and the provision of services are to be considered at a development application stage. With confirmation received from RFS, the proposal is now considered consistent with this Direction.

State environmental planning policies

SEPP 44 - Koala Habitat Protection

The site contains existing native vegetation on the eastern boundary that may include feed tree species listed in Schedule 2 of SEPP 44. However, Council advised that as the site does not contain more than a 15 percent tree canopy of the species listed in Schedule 2, the requirements of SEPP 44 do not apply.

In addition, the site is not known as an area that contains a local resident population of koalas as is not defined as 'core koala habitat'. There have been no records or recent sightings. The Department is satisfied that the proposal is consistent with the requirements of SEPP 44.

SEPP 55 – Remediation of Land

As identified in Section 7 of this Report, consultation with the EPA was required to identify potential contamination on site and remediation measures. The EPA reviewed the Site Audit Report and RAP and did not raise any issues.

Remediation of the site is currently underway and will be certified by an accredited EPA Site Auditor, as required by the EPA.

Council and the EPA are satisfied that following remediation the site would be suitable for rezoning to a rural residential use. The Department is satisfied that the proposal is consistent with the requirements of SEPP 55.

State and regional plans

Hunter Regional Plan 2036

Council advises that the proposal is minor in scale and nature, however is considered consistent with the Hunter Regional Plan as it enables growth in a suitable location consistent with Direction 21 - Creating a compact settlement. The proposal also caters to the needs of 'tree changers' and the demand for rural lifestyle housing as identified in the Hunter Regional Plan. The proposal will incrementally contribute to the LGA's dwelling targets. The Department considers the proposal consistent with the Hunter Regional Plan.

Dungog Community Strategic Plan

Council advises that the proposal is consistent with the Community Strategic Plan as it will maintain the rural character of the area and will assist in preserving the rural lifestyle of the area surrounding Vacy. The Department considers the proposal consistent with the Community Strategic Plan.

10. MAPPING

The LEP will be amended through mapping amendments including the following maps:

- Land Zoning (LZN_006AA); and
- Lot Size (LSZ_006AA).

These maps have been checked by both the Regional Team and the ePlanning Team. The proposed maps are provided as **Attachment Maps**.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment D**) on 25 February 2019. Council confirmed on 26 February 2019 that it supports the draft and that the Plan should be made (**Attachment E**).

12. PARLIAMENTARY COUNSEL OPINION

On 27 March 2019, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. CONCLUSION

The planning proposal to rezone land at Serenity Way, Vacy from SP2 Infrastructure to R5 Large Lot Residential is supported because:

- the proposal is consistent with the Hunter Regional Plan and Council's Community Strategic Plan;
- the proposal is consistent with section 9.1 Ministerial directions;
- the site can be appropriately remediated in accordance with SEPP 55 and is suitable for residential use;
- the proposed zoning is consistent with surrounding rural residential land uses and will have minimal impact; and
- there were no public or agency objections.

14. RECOMMENDATION

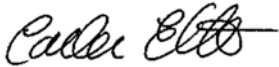
That the Director Regions, Hunter, as a delegate of the Secretary:

1. **determine** that the draft LEP's inconsistency with section 9.1 direction, 4.4 Planning for Bushfire Protection is justified in accordance with the terms of the Direction.

That the Director Regions, Hunter, as a delegate of the Minister:

1. **agree** under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* (the Act), to alter the Gateway determination for planning proposal no. PP_2016_DUNG_003 as set out in **Attachment Alteration** which involves the extension of the timeframe to complete the proposal by deleting condition 5 and replacing it with a new condition:
 - The timeframe for completing the LEP is to be 16 June 2019;
2. **sign** the Gateway alteration (**Attachment Alteration**);
3. **note** the planning proposal (**Attachment A**) and the Gateway determination (**Attachment B**);
4. **note** Parliamentary Counsel's Opinion that the draft LEP can legally be made and no changes have been made to the draft LEP since obtaining this Opinion (**Attachment PC**);
5. **note** the LEP maps (**Attachment Maps**), which have been approved by the Department's ePlanning Team and provided to Parliamentary Counsel;

6. **make** the draft LEP under section 3.36(2)(2) of the Act, by signing the instrument (**Attachment PC**) and supporting Map Cover Sheet (**Attachment MCS**); and
7. **sign** the letter to Dungog Shire Council (**Attachment Letter**) advising of the decision.



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Team Leader, Hunter



3/6/2019
Monica Gibson
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Planning Services

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Attachment A: Planning proposal
Attachment B: Gateway determination
Attachment C: Previous Gateway alterations
Attachment D: Section 3.36 consultation
Attachment E: Council response – section 3.36 consultation
Attachment F: RFS correspondence
Attachment G: EPA correspondence
Attachment PC: Parliamentary Counsel's Opinion and draft LEP
Attachment MCS: Map Cover Sheet
Attachment Maps: LEP maps
Attachment Letter: Letter to Council
Attachment Alteration: Gateway Alteration