

PALERANG COUNCIL

File: 43472
Contact: J Wright
Your Reference

12 August 2009

Mr Brett Whitworth
A/Regional Director
Southern Region
Department of Planning
PO Box 5475
WOLLONGONG NSW 2520

Dear Mr Whitworth

**RE PLANNING PROPOSAL – DWELLING ENTITLEMENT, LOT 276, DP
754915, 462 BUNGENDORE ROAD, BUNGENDORE**

At its meeting of 6 August 2009 Council resolved to “forward to the Minister for Planning for a gateway determination in accordance with section 56 of the Environmental Planning and Assessment Act 1979, the planning proposal to amend the Yarrawlumla LEP 2002 such that a dwelling house is permissible with development consent on Lot 276, DP 754915, 462 Bungendore Road, Parish of Wamboin”.

This proposal concerns the land owned by Mrs Barbara Carter which has been the subject of a number of representations to the Minister.

The planning proposal and report to Council are attached. The minutes of Council’s meeting are not yet available but I can advise that the recommendation was carried unanimously.

I look forward to receiving your advice as to the Minister’s gateway determination in due course.

If you wish to discuss these matters or require additional information please contact me on 02 62388111.

Yours sincerely


John Wright
Manager Strategic Planning

*Noted 17/8/09
BW.
→ Martin Brown.*

Department of Planning
RECEIVED

17 AUG 2009

Southern Region

Doc. no *CW09/266*
Officer *Martin*
Due/Comment *7/9/09*
File no

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Planning Proposal – Dwelling Entitlement, Lot 276, DP 754915, 462 Bungendore Road, Bungendore

This planning proposal concerns Lot 276, DP 754915, 462 Bungendore Road, Parish of Wamboin. This land is located approximately 4 km north west of Bungendore and has an area of 4.5 ha. It is zoned 7(e) Environmental Protection under the Yarrowlumla LEP 2002 (Figure 1).

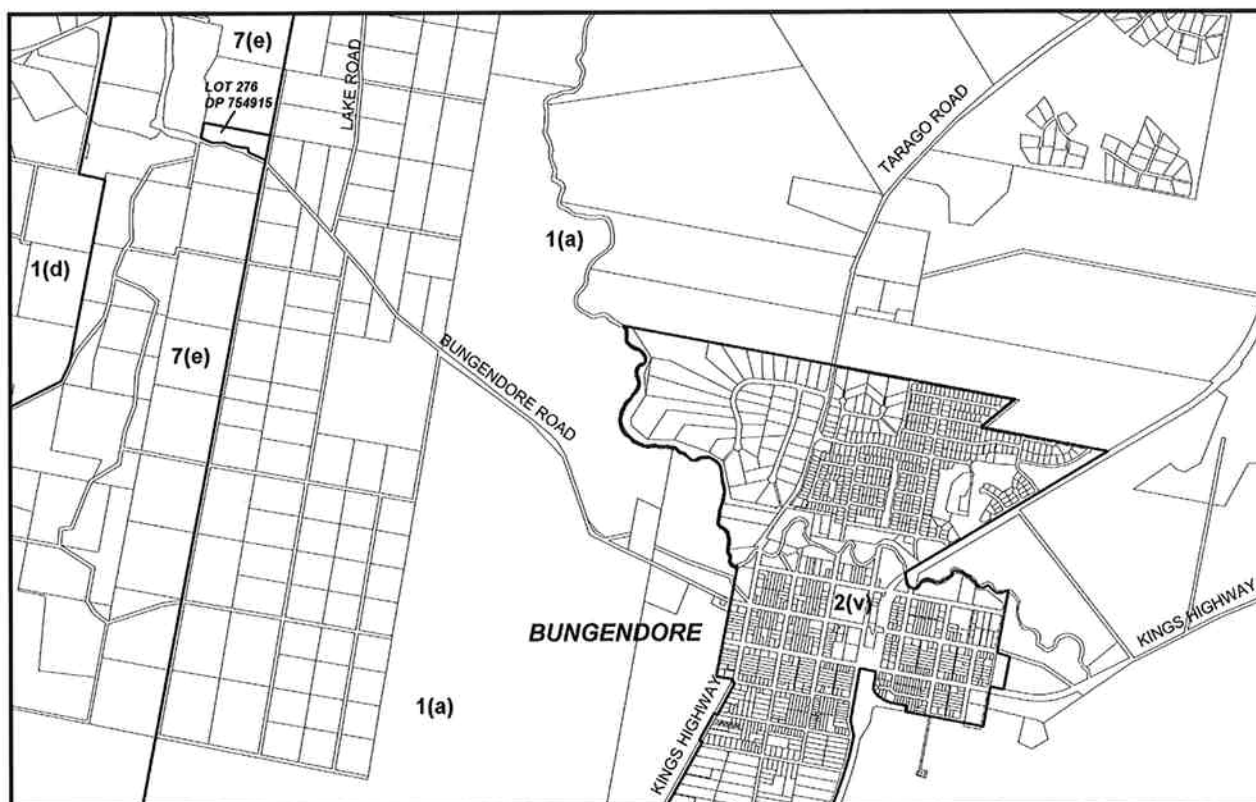


Figure 1 Location and current zoning

Part 1 – Objectives or Intended Outcomes

To enable the construction of a dwelling house on Lot 276, DP 754915, 462 Bungendore Road, Bungendore.

Part 2 – Explanation of Provisions

Amendment of Schedule 9 of the Yarrowlumla LEP 2002 by the addition of Lot 276, DP 754915, 462 Bungendore Road, Bungendore - development for the purpose of a dwelling house. This amendment, in conjunction with clause 60 of the Yarrowlumla LEP 2002 will make a dwelling house on the subject land permissible with development consent.

Part 3 – Justification

Section A – Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

No. The planning proposal is intended to restore the dwelling entitlement that existed on the land prior to the making of the Yarrowlumla LEP 2002.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The only alternative would be to use SEPP 1 to vary the 80 ha development standard contained in clause 28 of the Yarrowlunla LEP 2002. The use of SEPP 1, which requires a development application and detailed plans, is not considered appropriate in this instance as the land is to be sold prior to any building consent being sought.

3. Is there a net community benefit?

No. The proposal is neutral in terms of community costs and benefits.

Section B – Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Not relevant due to the minor nature of the proposal.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Not relevant due to the minor nature of the proposal.

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are no applicable State Environmental Planning Policies.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Consistency with applicable s.117 Directions is indicated in the following table.

s.117 Direction	Consistency
1.5 Rural Lands	Consistent – The planning proposal is consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008.
2.1 Environment Protection Zones	Inconsistent – The planning proposal does not include provisions that facilitate the protection and conservation of environmentally sensitive areas. However the existing environmental protection standards of the YLEP continue to apply and the inconsistency is of minor significance.
2.3 Heritage Conservation	Inconsistent – The planning proposal does not contain specific conservation provisions. However there are no known heritage items affected by the proposal and any that did exist would be protected by existing planning instruments. The inconsistency is of minor significance.
2.4 Recreation Vehicle Areas	Consistent – The planning proposal will not enable the land to be developed for the purpose of a recreation vehicle area.

4.4 Planning for Bushfire Protection	Part of the subject land, but not the site of the proposed dwelling house, is bushfire prone land. The direction requires consultation with the Rural Fire Service prior to community consultation.
5.1 Implementation of Regional Strategies	Consistent – The Sydney-Canberra Corridor Regional Strategy deals with issues at a regional scale that is not relevant to this site specific planning proposal. Any inconsistency with the strategy would be of minor significance due to the minor nature of the proposal.
6.1 Approval and Referral Requirements	Consistent – The planning proposal does not contain concurrence, consultation or referral provisions.
6.2 Reserving Land for Public Purposes	Consistent – The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	Consistent – The planning proposal does not impose additional development standards or requirements.

Section C – Environmental, social and economic impact

- 1. Is there any likelihood that critical habitats or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of this proposal?**

No. The area where a future dwelling would be constructed is cleared grazing land with exotic pasture species.

- 2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No.

- 3. How has the planning proposal adequately addressed any social and economic effects?**

The proposal is unlikely to generate any significant social or economic effects.

Section D – State and Commonwealth interests

- 4. Is there adequate public infrastructure for the planning proposal?**

Yes. The land has direct access onto Bungendore Road. The entrance was upgraded as part of the 1995 shed approval, but could be further upgraded by the applicant if considered necessary in the assessment of a future development application. Electricity is already available on the land.

- 5. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Public authorities have not yet been consulted. It is unlikely that the relevant authorities will have any concerns due to the minor nature of the proposal.

Part 4 – Community Consultation

The planning proposal is considered to be a 'low impact planning proposal' as defined in the Department's guidelines, being consistent with surrounding land uses, not being inconsistent with the strategic planning framework and presenting no issues with regard to infrastructure servicing. On this basis 14 days is the appropriate exhibition period. A public hearing is not considered necessary.

9.a. GENERAL ITEMS

Item 9.a.1: Amendment of Yarrowlumla Local Environmental Plan

SUBJECT	Proposed amendment of Yarrowlumla Local Environmental Plan 2002 – to restore the permissibility of a dwelling on Lot 276 DP 754915, 462 Bungendore Road, Bungendore		
FILE NO.	P43472		Planning and Environmental Services

Attachment

1. Planning Proposal

Synopsis

Lot 276 DP 754915, 462 Bungendore Road lost its building entitlement when the Yarrowlumla Local Environmental Plan 2002 (YLEP 2002) came into effect in June 2002. The owners of the land are seeking an amendment to the YLEP to reinstate the building entitlement. This is the first proposed amendment to be dealt with under the new plan making provisions of the *Environmental Planning and Assessment Act 1979*. If Council supports the proposal the planning proposal must be submitted to the NSW Minister for Planning for a gateway determination.

Recommendation

Recommended that Council forward to the NSW Minister for Planning the planning proposal to amend the *Yarrowlumla Local Environmental Plan 2002* such that a dwelling is permissible, with development consent, on Lot 276 DP 754915, 462 Bungendore Road, Bungendore, for a gateway determination in accordance with s.56 of the *Environmental Planning and Assessment Act 1979*,

Report

Lot 276 DP 754915, 462 Bungendore Road, Bungendore has an area of 4.5 ha and is zoned 7(e) Environmental Protection under the YLEP 2002. It is located approximately 4 km north west of Bungendore (Figure 1) starting at the foot of Smith's Gap, opposite the former quarry, and extending part way up the escarpment beside Bungendore Road. The majority of the land is steep, timbered country but there is a flat area of cleared pasture of approximately 1 ha.

The current owner of the lot, Mrs B Carter, has requested an amendment to the YLEP 2002 to reinstate the dwelling entitlement that existed prior to the making of the YLEP 2002.

Background

Mrs Carter purchased the land from the Department of Lands at auction in 1993. At this time, under the provisions of the Yarrowlumla Local Environmental Plan 1986 (YLEP 1986), a dwelling house was permissible on the land with council consent. Council had earlier advised the Department of Lands of this by letter dated 11 April 1989 and prior to the auction the land was advertised by the Department as a "rural homesite".

On 28 September 1994, development consent was granted to Mr and Mrs Carter for the construction of a farm shed on the land. This development application identified a proposed site for a future dwelling house and sought approval of variations to the standard setbacks to accommodate the dwelling, but this part of the application was subsequently withdrawn.

Council approved a later request for the setback variation in November 1995, but no development application for a dwelling house was received.

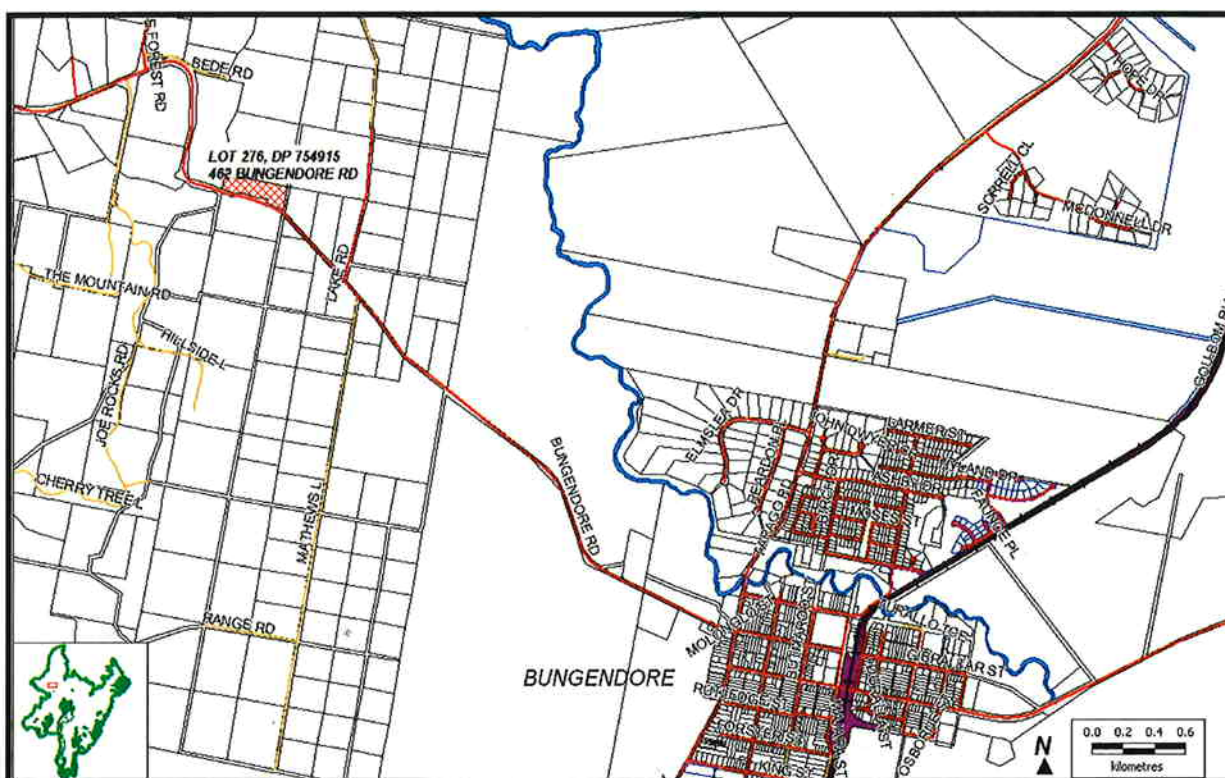


Figure 1 Location of Lot 276, DP 754915

Planning Controls

Lot 276 was zoned 7(e) Environmental Protection (Scenic) under the YLEP 1986 and 7(e) Environmental Protection Scenic under the Yarrowlumla Local Environmental Plan 1993 (YLEP 1993). Both planning instruments had very similar dwelling house controls and these controls applied equally in the environmental protection and general rural zones. Because Lot 276 has an area of less than 80 ha the permissibility of a dwelling house depended on the lot's status as a vacant 1966 holding. Lot 276 qualified as a 1966 holding as it had been held as a special lease from the Department of Lands by a number of occupiers and had been held separately from other Crown Land since 1961.

In June 2002 the YLEP 2002 was made. This planning instrument differed from its predecessors in having different dwelling house controls applying in the environmental protection zone from those applying in the general rural zone. Significantly for Lot 276, the applicable YLEP 2002 controls do not make special provision for dwelling houses on 1995 or 1966 holdings. In the 7(e) Environmental Protection Zone dwelling houses are only permissible on lots having an area of at least 80 ha or lots created in Council approved subdivisions. Thus since 12 June 2002 when the YLEP 2002 came into effect a dwelling house has not been permissible development on Lot 276 DP 754915.

Current situation

As has been discussed with Council at workshops, it was planned to address this matter in the new Palerang LEP by including a reference to Lot 276 in *Schedule 1 Additional Permitted Uses*. However Mrs Carter no longer lives in Palerang and wishes to dispose of the property. The delays in finalising the Palerang LEP are preventing the sale of the land and this is understood to be causing financial hardship.

The NSW Department of Planning has previously advised Council to concentrate on the new LEP and where possible to avoid site specific LEP amendments. However, following Mrs Carter's representations to the Minister for Planning the Department of Planning has advised Council that:

Having had regard to the circumstances, particularly that the land had a dwelling entitlement when he (sic) purchased the land from the State Government, the Department is keen to see this dwelling entitlement returned to the property, subject to Council's support. Accordingly, the Department would view favourably any proposal from Council to undertake an amendment to the Yarrowlumla LEP 2002 that seeks to restore this entitlement.

It is thus proposed to prepare a draft LEP to restore the dwelling entitlement to Lot 276 by amending the YLEP 2002. This will be achieved by inserting into *Schedule 9 Development for Additional Purposes* a reference to Lot 276 DP 754915 noting that a dwelling house is permissible with Council consent.

Recent changes to the NSW planning system

On 1 July 2009 amendments to the plan making provisions of the *Environmental Planning and Assessment Act and Regulation* came into effect. The subject proposal is the first in Palerang to be dealt with under the new procedures.

The significant difference at this initial stage of the plan making process is that if Council supports the proposal, under the previous provisions it would have made a resolution under section 54 to prepare a draft LEP. Under the new procedures Council must formally consider the Planning Proposal (Attachment 1) and, if the proposal is supported, resolve to forward it to the Minister for a Gateway Determination. If the proposal is not supported Council should simply resolve to not proceed.

The planning proposal has been prepared in accordance with the Department of Planning's publications *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* (NSW Department of Planning July 2009). The planning proposal addresses the matters required by the Director General to be addressed in all planning proposals.

If Council wishes to proceed with the draft amendment (as recommended) the planning proposal is forwarded to the Minister for Planning for a "Gateway Determination". The intention of the gateway process is to allow a planning proposal to be reviewed at an early stage to make a decision whether to proceed further, before significant resources are committed. At the gateway determination stage the Minister will determine:

- whether the proposal will proceed, with or without variation, and whether it should be re-submitted;
- the level of community consultation required;
- whether input from State and Commonwealth authorities is required;

- the necessity for a public hearing by the Planning Assessment Commission or other body; and
- the appropriate timeframes for the various stages of the proposal.

Following the gateway determination the proposal will be publicly exhibited; Government authority views will be sought (if necessary); and Council will consider any submissions received.

In contrast with the former planning system, it is only the planning proposal which is exhibited. Under the new system, the written legal instrument (draft LEP) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister or her delegate. The LEP takes effect when it is published on the NSW Legislation website.

Financial considerations

Staff time preparing the planning proposal, reports to Council, and consultation with government authorities; advertising costs associated with the public exhibition.

Policy implications

Consistent with previous decisions of Council, for example TLEP 1991 (Amendment No. 3).

Social implications

Nil.

Environmental considerations

No significant environmental implications.