

Item 10.4. Planning Proposal, Palerang LEP 2014, Lot 4 DP 841326, Self-storage Units

SUBJECT	Amendment No.1 Palerang Local Environmental Plan 2014, amendment of schedule 1 Additional permitted uses - to permit self-storage units with development consent on Lot 4 DP 841326		
FILE NO.	PROJ0035/11	DIVISION	Planning and Environmental Services

Attachment

1. Planning Proposal, Amendment No.1 *Palerang Local Environmental Plan 2014*, amendment of schedule 1 Additional permitted uses - to permit self-storage units with development consent on Lot 4 DP 841326, Bombay Road, Braidwood

Synopsis

A planning proposal has been prepared under Part 3 of the *NSW Environmental Planning and Assessment Act 1979* to amend the *Palerang Local Environmental Plan 2014* to permit self-storage units on Lot 4 DP 841326, Bombay Road, Braidwood. The report recommends that the planning proposal is sent to the Minister of Planning and if approved by the gateway panel, exhibited for 28 days.

Recommendation

Recommended that Council:

1. submit the planning proposal for the amendment of the *Palerang Local Environmental Plan 2014* schedule 1 to allow self-storage units on Lot 4 DP 841326, Bombay Road, Braidwood with consent to the Minister for Planning for a Gateway Determination in accordance with section 56 of the *NSW Environmental Planning and Assessment Act 1979*;
2. advise the Minister that Council considers that the planning proposal should be exhibited for 28 days.

Report

Background

Lot 4 DP 841326, Bombay Road, Braidwood currently contains self-storage units which are leased for the storage of personal items. The property owners have development approval to erect another 19 self-storage units on the site.

Lot 4 DP 841326 is zoned E4 Environmental Living under the *Palerang Local Environmental Plan 2014*. Prior to the coming into effect of the PLEP 2014 the land was zoned 1(c) Rural Small Holdings under the *Tallaganda Local Environmental Plan 1991*. Both of these environmental planning instruments prohibit self-storage units in these land use zones. The following section outlines the background to this situation:

In 1989, an application was lodged for a water bottling plant on Portion 201, Bombay Road, Parish of Boyle. At that time the land was zoned non-urban 1(a) under the *Tallaganda Interim Development Order No. 1*, which was the planning instrument that applied to the site. The proposal was classified as light industrial and it was approved on 23 June 1989. The approved development involved the construction of a light industrial building, which was then used to bottle water which had been extracted from a site at Monga.

On 22 November 1991 the *Tallaganda Local Environmental Plan 1991* came into effect, changing the zoning of the land to 1(c) Rural Small Holdings.

In 1994, an application was received for a four lot subdivision of Portion 201 under the provisions of the *Tallaganda Local Environmental Plan 1991* (TSC/012/1994/DA). This application was approved and the plan registered on 12 July 1994.

In 1997, Council received an application for a vermiculture farm on one of the lots created in the 1994 subdivision, Lot 4 DP841326. The application proposed to utilise the existing shed on the site by placing 13 bins inside the building for use as worm farms, for the production of worms, collection of solid worm castings and liquid worm fertilizer. Consent was issued for this development on 18 August 1997.

In 2003, Tallaganda Council received a development application to develop a self-storage business on Lot 4 DP841326 (TSC/216/2003/DA). The proposal involved the use of the existing building, as well as an extension to create additional storage units.

In the assessment of the application Council staff took the view that the vermiculture use was a 'commercial use' and therefore a prohibited use under the *Tallaganda Local Environmental Plan 1991* that had enjoyed existing use rights since the coming into effect of the *Tallaganda Local Environmental Plan 1991*.

Following on from this, the application was assessed as a change of use from one prohibited commercial use to another, and therefore permissible under section 107 of the *Environmental Planning and Assessment Act 1979* – Continuance of and Limitations on Existing Use. Note that at the time of the assessment in 2004, clause 41 of the *Environmental Planning and Assessment Regulation 2000* allowed an existing use to be changed to another use that would otherwise be prohibited. The legislation changed in February 2007 and today an existing use can only be changed to another use if the new use is permissible on that land.

It has now been determined that the attribution of existing use rights in 2004 was in error since when the vermiculture farm was approved in 1997 it was in fact approved as a "rural industry", not as commercial premises. Rural industries were permissible in the relevant zone under the *Tallaganda Local Environmental Plan 1991* and as a consequence existing use rights did not and do not apply.

Consent was granted to the application on 9 March 2004. A subsequent modification application was lodged on 17 December 2007 to amend the proposed shed additions. This modification was approved on 30 May 2008.

In 2013 Council received an application for the expansion of the self-storage units on Lot 4 DP841326. As required under Council's Notification Policy, adjoining owners were notified, and two submissions were received. Consent was issued for this application on 29 August 2013. In the assessment of this application staff assumed that the earlier approvals on which the expansion was based had been correctly granted.

A subsequent review of the files by Council staff found that Council erred in 2004 in granting consent to the self-storage facility which, as 'commercial premises' was prohibited development in the 1(c) zone. Council thus did not have power to approve the use of the land for a 'self-storage facility' because this land use was prohibited.

The existing 'self-storage facility' has been operating on Lot 4 DP 841326 since consent was given in 2004 without complaint. It is proposed to amend the *Palerang Local Environmental Plan 2014* to make the continued operation of the 'self-storage facility' on Lot 4 DP 841326

permissible. If the proposed amendment to the LEP is made, a new development application for a 'self-storage facility' on Lot 4 DP 841326 will be required.

To amend the local environmental plan it is necessary to prepare and publicly exhibit a planning proposal, consider any submissions received, and following this, for the Minister for Planning (or delegate) to agree to the amendment. The following section outlines the planning proposal process.

The planning proposal process

A planning proposal is a document that explains the intended effect of the proposed local environmental plan or amendment and provides the justification for making it. The process is outlined below:

- Council determines whether it supports the planning proposal
- If the planning proposal is supported, it is forwarded to the Minister for Planning for a gateway determination. The intention of the gateway process is to allow the proposal to be reviewed at an early stage so that a decision whether to proceed can be made; before significant resources are committed
- If the gateway determination permits the planning proposal to proceed, the planning proposal will be sent to any relevant government agencies for comment and exhibited for the period stated on the gateway determination

Further information on the process can be found in the NSW Department of Planning and Infrastructure documents *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Only the planning proposal and supporting documents are exhibited. The written legal instrument (draft amending local environmental plan) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister or her delegates. The local environmental plan takes effect when it is published on the NSW government legislation website.

It is possible under the *NSW Environmental Planning and Assessment Act 1979* for Council to undertake much of this process 'under delegation' however, it is suggested that as this situation occurred due to any error of Council that that it would be appropriate that Council does not use its delegations in this instance.

Implications of SEPP (Exempt and Complying Development Codes) 2008

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Part 5 Commercial and Industrial Alterations Code, permits as complying development, changes of use from specified commercial or industrial uses to other specified uses, provided the new use is also permissible on the land. In the case of the current proposal, because neighbourhood shops are permissible in the E4 zone, a change of use from self-storage units to a neighbourhood shop could occur as complying development. The other uses to which the SEPP allows self-storage units to be changed are not permissible in the E4 zone.

A state environmental planning policy cannot be amended by Council and prevails over a local environmental plan. However, it is considered highly unlikely that such a change of use would be contemplated as a neighbourhood shop in this location is unlikely to be viable.

Financial considerations

Council staff have prepared the planning proposal and the report to Council. If the proposal is supported by Council and it receives a positive gateway determination, staff will manage the consultation with government authorities, public exhibition and legislative process associated with preparing the local environmental plan. Council will pay for the costs associated with the public exhibition such as advertisements in newspapers.

Policy implications

The amendment of the LEP to allow a specific land use to occur on a particular site is considered justified in this instance as the 'self-storage facility' has operated for ten years without affecting the amenity of the area.

Social implications

The 'self-storage facility' has operated for ten years and has not had a negative impact on the amenity of the area.

Environmental considerations

The site has been disturbed through the erection of the existing 'self-storage facility' and surrounding land uses such as dwellings, driveways and electricity infrastructure. Given this there has been no assessment for Aboriginal cultural heritage or native flora and fauna. As previously stated the current 'self-storage facility' has been in use for ten years and prior to that the buildings were used for a commercial water bottling business. The self-storage sheds are single storey and front the Bombay Road. It is considered that they do not detract from the rural amenity of the area and have a similar impact on the landscape as surrounding dwellings and farm buildings. There is no signage associated with the existing or proposed development. In regard to aural amenity, there have not been complaints regarding the operation of the facility. Access to the units is restricted through a locked gate and controlled entry times.