

PLANNING DEPARTMENT MANAGERS REPORT

Carolyn Maginnity

1. **G & L WINCHESTER – VACANT HOLDING APPLICATION**
LOT 83 DP 752459 & LOT 186 DP 128949, 312 HILLDALE ROAD, HILLDALE
171/82/20

Application No.	171/82/20
Applicant:	G & L Winchester
Owner:	G & L Winchester
Subject Land:	Lot 83 DP 752459 & Lot 186 DP 128949, 312 Hilldale Road, HILLDALE
Area:	Approx 16.19ha
Current Zone:	Rural 1(a) – Dungog LEP 2006
Proposal:	LEP Amendment - Vacant Holding Application

Précis:

This report considers a request for an amendment to Schedule 1 of *Dungog Local Environmental Plan 2006* to facilitate the erection of a dwelling-house on Lot 83 DP 752459, 312 Hilldale Road, Hilldale.

The report recommends that the amendment request be supported.

SUBJECT LAND

The subject land is situated off Hilldale Road, approximately three (3) kilometres north of the intersection of Hilldale Road and Dungog Road.

The property is approximately 16.19ha in area and is roughly rectangular in shape. The land is moderate to steeply undulating and forms part of a prominent ridgeline. Parts of the property are quite heavily timbered, particularly the northern portion of the property.

There is an existing steel-framed shed on the property and two small dams. Access to the property is from Hilldale Road, via a 270m long gravel access track constructed within a 10.5m wide closed road, known as Lot 186 DP 128949. Lot 186 also provides access to two other properties i.e. Lot 184 DP 128949 (also owned by the Winchesters) and Lot 54 DP 752459, which adjoins the subject land to the west.

The subject land is currently used for grazing horses. Surrounding land is also zoned Rural 1(a) and adjoining properties are predominantly used for grazing/agricultural purposes.

Figure 1 depicts the subject land.



Figure 1: Lot 83 DP 752459 No. 312 Hilldale Road, HILLDALE

PURPOSE OF THE PLAN

The application seeks to amend *Dungog Local Environmental Plan 2006* (LEP 2006) by inserting Lot 83 DP 752459, No. 312 Hilldale Road, Hilldale into Schedule 1 – Vacant Holdings, to enable the erection of a single dwelling-house on the lot with consent. It should be noted that the zoning of the land is not proposed to change.

A development application (DA) for a dwelling-house has not yet been lodged. A DA for construction of the dwelling house would need to be lodged following gazettal of the draft LEP.

The applicants have nominated a preferred building envelope. The building envelope is located approximately 320m from the southern boundary, 140m from the northern boundary, 150m from the western boundary and 180m from the eastern boundary of the site (refer to **Annexure 'A'**). The building envelope is situated on a small ridgeline between two hills. The actual site of the proposed dwelling is relatively flat but the land slopes steeply away to the east and west, with slopes greater than 18 degrees.

Should the Vacant Holding application be successful, the owners intend to construct a dwelling house comprising three buildings. The main building will house bedrooms, laundry and bathrooms. The second building will be connected to the first building by a covered walkway and will contain living areas. The third building will be separate and contain the kitchen/dining and living areas, as well as a parent's retreat. The dwelling will be predominantly two-storey construction, with provision for parking of vehicles underneath. The main materials are likely to be steel frame, concrete slab and fire retardant external cladding, such as fibrous cement products.

BACKGROUND

The land was previously zoned Rural 1(b) under the *Dungog Local Environmental Plan 1990* (LEP 1990) and the erection of a dwelling-house was permissible with the consent of Council under Clause 24 of LEP 1990.

It is understood that the existing steel-framed shed was constructed and occupied by the previous owners of the property without Council approval. The current owners purchased Lot 83 DP 752459 in July, 1992 and have been living in the shed (albeit unlawfully) since that time. Telecommunication services were provided to the site some time prior to 1992 and

electricity was connected to the site in 1993. Council approved an application for installation of a new Sewage Management Facility on the site in May 2007.

The current owners purchased the adjoining property comprising Lots 184, 185 and 186 DP 128949 (total 9.13ha) in November 2003. Lot 184 is approximately 6.7ha in area and is vacant. Lots 185 and 186 form part of a closed road providing Lot 184 with legal access to Hilledale Road.

The Vacant Holding application was submitted in October 2008. Council officers inspected the site in January 2009. Given the relatively isolated location of the site and the fact that much of the land is steeper than 18 degrees and heavily timbered, Council requested the applicants to provide a more detailed bushfire assessment report prepared by a specialist bushfire consultant, addressing the proposal's compliance with *Planning for Bushfire Protection 2006*. A revised bushfire assessment prepared by Edward Murrell was submitted in June and was referred to the NSW Rural Fire Service (RFS) for comment.

Council officers attended an on-site meeting with the applicants and Peter Murphy, from the RFS, on 16th June 2009 and were advised that the existing access track would not meet the RFS standards for access i.e. it is too narrow and too steep to enable fire fighting vehicles to access the proposed dwelling. Accordingly, the RFS would require a new access track to be constructed in an alternative location to comply with *Planning for Bushfire Protection 2006*. In addition, the RFS would provide further recommendations upon receipt of detailed house plans and siting details.

SUPPORTING INFORMATION/DOCUMENTS

The applicants have submitted the following information in support of the proposed LEP amendment:

- a plan showing the proposed location of the dwelling-house
- a bush fire risk assessment prepared by Edward Murrell
- a statement addressing the proposal's compliance with the matters set out in clause 26 of LEP 2006.

Given the relatively minor nature of the proposed amendment, it is considered that a Local Environmental Study is not warranted in this case.

ANTICIPATED EFFECTS OF THE PLAN

The proposed amendment is not expected to result in any significant social, economic or environmental impacts.

The effect of not proceeding with the draft plan at this time would be that a dwelling-house would not be able to be erected on the property.

EFFECT OF EXISTING AND PROPOSED LEGISLATION/POLICIES

Dungog Local Environmental Plan 2006

Clause 27(5) of LEP 2006 states:

"Consent must not be granted to the erection of a dwelling-house or a dual occupancy on land in Zone 1(a), 7 (a) or 9 (a), unless it is erected on:

- a) a lot created in accordance with clause 28 (4) (b), or*
- b) a vacant holding identified in Schedule 1, or*
- c) land comprising an established holding on which there is no dwelling-house, or*
- d) land comprising part of an established holding, providing it will not result in there being more than one dwelling or dual occupancy for each 60 hectares of the holding."*

Lot 83 is an old parish lot and therefore was not created by a Council approved subdivision. The subject land does not comprise an established holding or part of an established holding. Therefore, in accordance with the provisions of LEP 2006, Council can only consent to the erection of a dwelling-house on the subject land if the land is identified in Schedule 1 of the LEP as a Vacant Holding.

The subject property complies with the LEP definition of a "Vacant Holding" being land in Zone 1(a) or 9(a) that:

- "(a) comprises one lot (which may be a consolidated lot) with an area of less than 60 hectares on which no dwelling is currently located, and*
- (b) was the total area of all adjoining or adjacent land held in one ownership on 1 July 2003."*

Applications for properties to be identified in Schedule 1 as Vacant Holdings must also demonstrate compliance with the provisions of Clause 26(1) of LEP 2006. The table below lists each of the requirements of Clause 26(1) and provides comments about how the particular requirement will/will not be met.

Clause 26(1) – LEP 2006	Comment
<i>(a) any buildings or works resulting from carrying out the development will blend into the landscape to promote rural amenity and character, and not be silhouetted on a ridgeline in a rural area, particularly when seen from a public road.</i>	Whilst the proposed building envelope is located on a ridgeline, due to existing vegetation and surrounding hills, the dwelling-house would not be silhouetted against the rural landscape.
<i>(b) the design, bulk and colours of any such buildings will be compatible with the surrounding landscape, they are low buildings, and they are suitably screened from a public road.</i>	The applicants have indicated that the building will be designed to blend into the surrounding landscape. This will be assessed when the DA for the dwelling is lodged.
<i>(c) there will be no, or only minimal, removal of trees or significant areas of native vegetation in carrying out the proposed development, in obtaining access to its site, in drainage from it, or for bush fire hazard protection, unless the development is essential and there is no reasonable alternative.</i>	The applicants have advised that it will not be necessary to remove any additional trees or significant areas of native vegetation to enable construction of the proposed dwelling-house. Should it be necessary to remove any native vegetation to facilitate the construction of a new access track, installation of an on-site sewage management facility or provision of adequate APZs around the proposed dwelling, a flora & fauna assessment will be required to be submitted.
<i>(d) adequate vehicular access can be provided and maintained to and on the site of the proposed development.</i>	Adequate vehicular access should be considered in terms of both legal and practical access. In terms of practical access, there is an existing gravel access track off Hilldale Road. However, the RFS have advised that the existing track would not meet the RFS standards for access i.e. it is too narrow and too steep to enable fire fighting vehicles to access the proposed dwelling. Accordingly, The RFS will require a new access track to be constructed in an

	alternative location to comply with <i>Planning for Bushfire Protection 2006</i>. Details will be required to be submitted with the DA for the proposed dwelling. In terms of legal access, the lot does not have direct frontage to Hilddale Road (refer to attached copy of Deposited Plan) Access is obtained via a closed road known as Lot 186 DP 128949, which is also owned by the Winchesters. It is recommended that a condition be imposed on any development consent for the proposed dwelling that Lot 83 and Lot 186 be consolidated, with provision made for a formal ROW in favour of the adjoining Lot 184 DP 128949.
(e) adequate provision has been or will be made for any telecommunication and electricity services needed because of the proposed development.	Telecommunication and electricity services are available to the property.
(f) if the development will be carried out on land that is flood prone, it will not be adversely affected by flood and will not exacerbate flood conditions elsewhere.	The subject land is not flood prone.
(g) the land to be used for development is stable, has a slope of less than 18°, and, if relevant, has minimal disturbance of sodic or dispersive soil.	The actual site of the proposed dwelling is relatively flat but the land slopes steeply away to the east and west, with slopes greater than 18 degrees. The property is not known to contain sodic or dispersive soils.
(h) where the development will result in the erection of dwellings, the dwellings have been or will be provided with an inner bush fire asset protection zone and any proposed buildings can be protected from bush fire hazard without creating any additional risk to life or property, fire-fighting personnel or equipment.	A bushfire risk assessment has been submitted with the application demonstrating that the proposed dwelling can be provided with appropriate APZs, in accordance with <i>Planning for Bushfire Protection 2006</i> . It is anticipated that Council will be required to formally consult with RFS during preparation of the draft LEP.
(i) adequate buffers are provided to any existing or foreseeable future agricultural, intensive agricultural or extractive industry activities which could cause noise, smell, fumes, vibration, spray or other objectionable impacts.	The proposed building envelope complies with Council's boundary setback requirements and is located centrally on the lot and should not be adversely affected by existing agricultural activities on surrounding rural land.
(j) adequate buffers are provided to places of Aboriginal heritage or endangered or threatened ecological communities.	No Aboriginal heritage sites or endangered/threatened ecological communities are known to occur on the property or adjoining properties.

<i>(k) where relevant, appropriate measures have been taken to protect the amenity and comfort of the occupants of buildings near a rail corridor, or other existing or potential utility installations, from noise and vibration.</i>	The property is not located adjacent to a rail corridor or any other existing or potential utility installations.
<i>(l) where the proposed development will result in the erection of a habitable building, either the building can be connected to a reticulated sewerage system, or it is in accordance with an effluent capability assessment (which takes into account hydrologic loading) demonstrating effective disposal of sewage.</i>	There is an existing approved on-site wastewater treatment system adjacent to the existing shed. However, it will be necessary to install an additional system to service the proposed dwelling. An effluent capability assessment will be required to be submitted at DA stage.
<i>(m) the quality of stormwater run-off from the site will not degrade water quality or the quality of groundwater supplies and complies with any environmental management plan required by Council.</i>	Stormwater run-off from the dwelling site is proposed to be redirected to on-site rainwater storage tanks and the existing dam. Excess stormwater from tank overflow will not impact on water quality or groundwater supplies.
<i>(n) stormwater run-off from the site will not contribute to additional flooding downstream.</i>	Stormwater run-off from the dwelling site is to be redirected to on-site rainwater storage tanks and the existing dam and therefore will not contribute to additional flooding downstream.
<i>(o) any relevant harvestable water rights are protected or adequately assessed.</i>	There will be no change to the existing dams on the property and therefore no impact on any harvestable water rights.
<i>(p) the development will not unduly lower the water table or disturb the soil so as to result in the creation of acid sulfate soil.</i>	The property is not known to contain any potential acid sulfate soils.
<i>(q) any impact of the development on biodiversity, and on native habitat on the land, is minimal.</i>	Impact on biodiversity should be minimal, as no additional tree removal is required to enable construction of the proposed dwelling-house. Should it be necessary to remove any native vegetation to facilitate the construction of a new access track, installation of an on-site sewage management facility or provision of adequate APZs around the proposed dwelling, a flora & fauna assessment will be required to be submitted at DA stage.

NEW PROCEDURES FOR PREPARING LEPs

The *Environmental Planning and Assessment Amendment Act 2008* (the Amendment Act) was assented to on 25 June 2008. Provisions of the Amendment Act relating to the making of environmental planning instruments commenced on 1 July 2009 and introduce new requirements and procedures for the preparation of local environmental plans (LEP's). The new procedures, which will apply to the proposed LEP amendment, are outlined below.

Draft LEPs have been replaced with 'planning proposals'. A 'planning proposal' is a document that explains the intended effect of, and justification for, a proposed LEP. The preparation of a planning proposal is the first step in the process of making a LEP. The planning proposal can be prepared by the relevant planning authority (usually Council), or by a proponent for the proposed LEP. In either case, the relevant planning authority must be satisfied with it, such that it is prepared to forward it to the Minister for the next step in the process, being the 'gateway determination'.

A 'gateway determination' is issued by the Minister for Planning (or delegate) and specifies whether a planning proposal is to proceed and, if so, in what circumstances. The purpose of the gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal.

Once the planning proposal is forwarded to the Minister for Planning (or delegate), it is assessed by the Department of Planning. The planning proposal and the recommendation of the Department of Planning will then be forwarded to the LEP Review Panel. The LEP Review Panel will consider the planning proposal and the recommendation of the Department of Planning before providing their own recommended gateway determination to the Minister. The Minister will consider the recommendation of the LEP Review Panel.

The gateway determination will indicate the following:

- whether the planning proposal should proceed (with or without variation)
- whether the planning proposal should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal)
- community consultation requirements
- any consultation required with State or Commonwealth public authorities
- whether a public hearing is to be held into the matter by the Planning Assessment Commission or other specified person or body
- the times within which the various stages of the procedure for the making of the proposed LEP are to be completed
- whether the function of making the LEP is to be exercised by the Minister for Planning or delegated to the relevant planning authority.

It is important to note that a gateway determination under section 56 of the EP&A Act must be obtained authorising a planning proposal to proceed before community consultation takes place.

IMPLICATIONS

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Policy

The draft plan is unlikely to have any policy implications for Council.

Statutory

The statutory process for preparing an amendment to the Dungog LEP 2006 is detailed in Part 3 of the *Environmental Planning and Assessment Act 1979*.

CONCLUSION

The proposal is generally consistent with relevant environmental planning instruments, section 117 directions, Government policies and Council strategies. The applicants have

satisfactorily demonstrated compliance with the provisions of clause 26(1) of *Dungog Local Environmental Plan 2006*.

Accordingly, it is recommended that the amendment request be supported.

RECOMMENDATION

That:-

1. Council resolve to prepare an amendment to *Dungog Local Environmental Plan 2006* to include Lot 83 DP 752459, No. 312 Hilldale Road, HILLDALE in Schedule 1 – Vacant Holdings.
2. Pursuant to section 55 of the *Environmental Planning and Assessment Act 1979*, Council prepare a Planning Proposal explaining the intended effect of the proposed LEP and setting out the justification for making the proposed instrument.
3. Pursuant to section 56(1) of the *Environmental Planning and Assessment Act 1979*, Council forward the Planning Proposal to the Minister for Planning for a Gateway determination.