

PLANNING DEPARTMENT

Carolyn Maginnity

**2. DRAFT AMENDMENT TO DUNGOG LEP 2006
LOT 100 DP 1089164, 4426 CLARENCE TOWN ROAD, WIRRAGULLA
171/82/24**

Application No.	171/82/24
Applicant:	H Den-Ouden
Owner:	C J Perkins and L M Summerhayes
Subject Land:	Lot 100 DP 1089164, 4426 Clarence Town Road, WIRRAGULLA
Area:	Approx 88ha
Current Zone:	Rural 1(a) – Dungog LEP 2006
Proposal:	Site-Specific Rezoning to permit 2 lot Subdivision.
Issues:	New Procedures for Preparing LEPs

BACKGROUND

On 19 May 2009, Council resolved to prepare an amendment to Schedule 4 of the *Dungog Local Environmental Plan 2006* to facilitate the subdivision of Lot 100 DP 1089164, 4426 Clarence Town Road, Wirragulla into two (2) lots.

A copy of the previous report to Council is attached as **Annexure 'B'**.

On 1 July 2009, certain provisions of the *Environmental Planning and Assessment Amendment Act 2008* relating to the making of environmental planning instruments commenced and new requirements and procedures for the preparation of local environmental plans (LEPs) were introduced.

All draft LEPs that have not been made before 1 July 2009 will now have to be made under the new plan-making provisions in Part 3 of the *Environmental Planning & Assessment Act 1979* (EP&A Act). Savings and transitional provisions provide that where Council has resolved to prepare a draft LEP under section 54(1) of the EP&A Act and the Director-General has received notification of Council's decision before 1 July 2009, the draft LEP will continue to be made under the previous plan-making provisions.

In the case of the proposed LEP amendment, whilst Council had resolved to prepare the draft LEP under section 54(1) of the EP&A Act prior to 1 July 2009, Council had not yet notified the Director-General of its decision under section 54(4) of the Act. Therefore the draft LEP will need to be prepared under the new plan-making provisions in Part 3 of the EP&A Act.

The new procedures, which will apply to the proposed LEP amendment, are outlined below.

Extract from the Ordinary Council Meeting of the 21 July 2009

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 an 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; and
- whether the function of making the LEP is to be exercised by the Minister for Planning or delegated to the relevant planning authority.

Therefore, in order to proceed with the proposed LEP amendment, Council needs to prepare a planning proposal explaining the intended effect of and justification for the draft LEP and forward the planning proposal to the Minister for a Gateway determination, in accordance with the new plan-making provisions in Part 3 of the EP&A Act.

Minute No. 34598

RESOLVED on the motion of Cr Mitchell and seconded by Cr Lloyd that:

1. Council resolve to prepare an amendment to *Dungog Local Environmental Plan 2006* to include Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla in Schedule 4 – Additional Development, to permit the subdivision of the subject land into two (2) lots.
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.

The Mayor in accordance with Section 375A of the Local Government Act 1993 called for a Division. The Division resulted in 9 for and 0 against, as follows:

For: Crs Wall, Mitchell Booth, Ainsworth, Johnston, McKenzie, Lloyd, Thompson, Farrow.

Ordinary Meeting of the Council of the Shire of Dungog, to be held Tuesday 21 July
2009 commencing 6.00pm.

ANNEXURE 'B' TO ITEM NO. 2 – MANAGER PLANNING'S REPORT

2. **DRAFT AMENDMENT TO DUNGOG LEP 2006 LOT 100 DP 1089164, 4426 CLARENCE TOWN ROAD, WIRAGULLA**
171/82/24
-

Carolyn Maginnity

Application No.	171/82/24
Applicant:	Hank Den-Ouden
Owner:	C J Perkins and L M Summerhayes
Land:	Lot 100 DP 1089164, 4426 Clarence Town Road, Wirragulla
Area:	Approx 88ha
Current Zone:	Rural 1(a) – Dungog LEP 2006
Proposal:	Site-Specific Rezoning to permit 2 Lot Subdivision.

Précis:

This report considers a request for an amendment to Schedule 4 of *Dungog Local Environmental Plan 2006* to facilitate the subdivision of Lot 100 DP 1089164, 4426 Clarence Town Road, Wirragulla into two (2) lots.

The report recommends that the amendment request be supported.

SUBJECT LAND:

The property is situated on the eastern side of Clarence Town Road, approximately 7 kilometres south of Dungog. The entrance to the property is located just north of the intersection of Clarence Town Road and Dungog Road.

The property is approximately 88 hectares in area and is flat to gently undulating. The Williams River forms the eastern boundary of the property, with Clarence Town Road forming the western boundary. The North Coast Railway line runs in a north-south direction through the property. There is also a small section of closed road running through the south-western corner of the property, between Clarence Town Road and the railway line.

The property, known as "Crooks Park", is owned by C J Perkins and L M Summerhayes (trading as Rocky Hill Pastoral Co).

The "Crooks Park" homestead was constructed in 1873 and is listed in Schedule 3 of *Dungog Local Environmental Plan 2006* (Dungog LEP 2006) as a heritage item. The Carriageway Resort was established on the property in 1990 and provides accommodation for up to 60 guests in self contained cottages, spa suites and refurbished train carriages. The resort also includes a restaurant, swimming pool, children's playground and petting zoo.

Extract from the Ordinary Council Meeting of the 21 July 2009

The land is predominantly cleared and has historically been used for grazing. Significant stands of native vegetation exist around the entrance to the property and the resort, as well as along the banks of the Williams River and associated creeks.

The subject land is zoned Rural 1(a) under Dungog LEP 2006.

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

Figure 1 below, depicts the subject property.

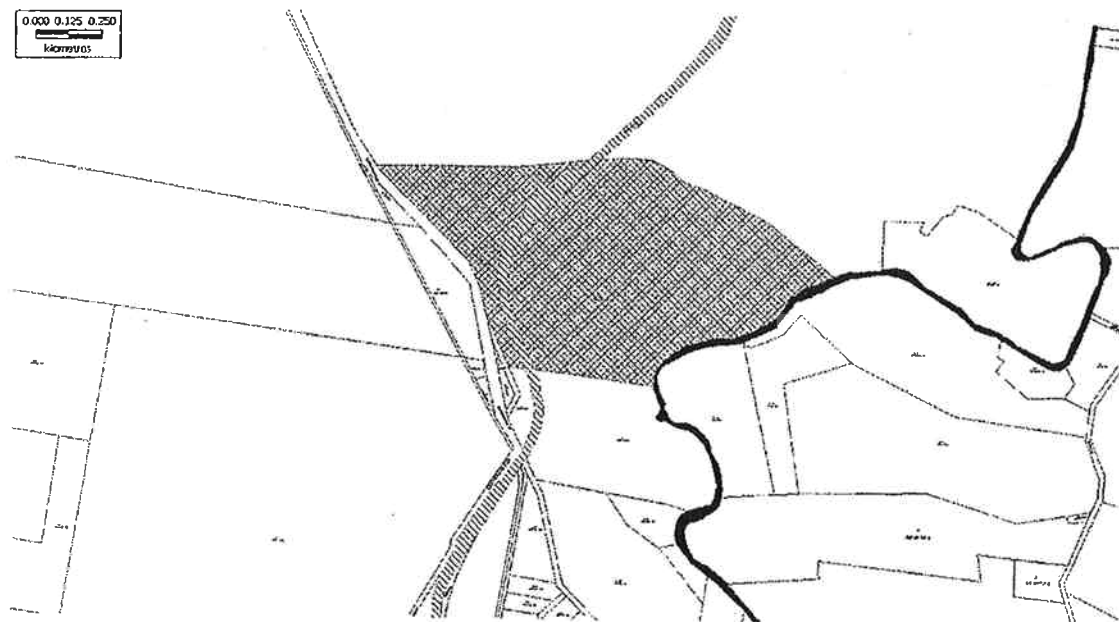


Figure 1: Lot 100 DP 1089164, 4426 Clarence Town Road, WIRAGULLA

PURPOSE OF THE PLAN:

Dungog LEP 2006 is proposed to be amended by inserting Lot 100 DP1089164, 4426 Clarence Town Road, Wirragulla into Schedule 4 – Additional Development, to permit the subdivision of the subject land into two (2) lots. It should be noted that the zoning of the land is not proposed to change.

The subject land is currently zoned Rural 1(a) under Dungog LEP 2006. The proposed subdivision is not permissible under the current LEP provisions as one of the lots to be created would be less than 60 hectares in area. An amendment to the LEP is required to enable Council to consider a development application for the proposed two (2) lot subdivision.

A plan of the proposed subdivision was submitted with the rezoning application. A copy of the plan is provided in **Annexure 'A'**.

BACKGROUND:

This section of the report is confidential in accordance with Section 10(a) 2(d) of the Local Government Act 1993 as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it. This information has been provided to Councillors in the Confidential Section for consideration.

ANTICIPATED EFFECTS OF THE PLAN:

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

The proposed amendment will enable the existing tourist facility to be excised from the remainder of the property, which is used for agricultural purposes. The proposed subdivision will provide a satisfactory return on infrastructure investment, which will offset the lower return on income and avoid the need to close down the tourist facility, thereby providing positive economic benefits for both the owners of the property and the local community.

The effect of not proceeding with the draft plan at this time would almost certainly be closure of the existing tourist facility, resulting in the loss of jobs and much needed tourist accommodation.

SUPPORTING INFORMATION/DOCUMENTS:

The applicant has submitted the following information in support of the proposed amendment:

- extracts from the company's business plan
- a plan of the proposed subdivision
- a basic bush fire assessment
- 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.

EFFECT OF EXISTING AND PROPOSED LEGISLATION/POLICIES:

In deciding whether or not to support the amendment request, Council should consider whether the proposal is consistent with relevant State Environmental Planning Policies (SEPPs), Regional Environmental Plans (REPs), Local Environmental Plans (LEPs), section 117 directions, Government policies, Council strategies, etc. A preliminary assessment of the proposal against the relevant legislation/policies is provided below.

Section 117 Directions

A number of section 117 directions apply to consideration of this amendment. Of particular relevance are the following:

Direction 4.4 – Planning for Bushfire Protection

This direction applies when a council prepares a draft LEP that affects, or is in close proximity to land mapped as bushfire prone land. According to this direction, Council, in preparing the draft LEP must consult with the NSW Rural Fire Service under Section 62 of the EP&A Act and take into account any comments made.

Part of the property is mapped as bushfire prone land. The applicant has prepared a basic bushfire assessment, which will be referred to the NSW Rural Fire Service at Section 62 consultation stage.

The proposed subdivision would be 'integrated development' under Section 91 of the EP&A Act, as it would require an approval under section 100B of the *Rural Fires Act 1997*. Tourist accommodation is classed as a 'Special Fire Protection Purposes' development under *Planning for Bushfire Protection 2006*. A detailed bush fire assessment will be required to be

Extract from the Ordinary Council Meeting of the 21 July 2009

submitted at Development Application stage, demonstrating compliance with *Planning for Bush fire Protection 2006*.

Direction 1.2 – Rural Zones

This direction applies when a council prepares a draft LEP that affects land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

According to this direction, a draft LEP shall:

- (d) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone,
- (e) not contain provisions which will increase the permissible density of land within a rural zone (other than land within an existing town or village), and
- (f) include provisions that control access from traffic generating developments to classified roads in rural zones.

A draft LEP may be inconsistent with the terms of this direction only if Council can satisfy the Director-General that any inconsistencies are justified by a Strategy/environmental study or are of minor significance.

It is not proposed to rezone the subject land to a residential, business, industrial, village or tourist zone, nor increase the permissible density of the land. In this regard the proposal is consistent with the terms of the Direction. Whilst Clarence Town Road is a classified road, it is not considered necessary to include provisions that control access from the resort to Clarence Town Road, as this access already exists. This inconsistency with the terms of the Direction is, however, considered to be of minor significance.

Direction 1.5 – Rural Lands

According to this direction, a draft LEP that affects land within an existing or proposed rural zone, or changes the existing minimum lot size on land within a rural zone, must be consistent with the Rural Planning Principles and Rural Subdivision Principles set out in *State Environmental Planning Policy (Rural lands) 2008* (see below).

State Environmental Planning Policy (Rural Lands) 2008

SEPP (Rural Lands) identifies Rural Planning Principles and Rural Subdivision Principles to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State.

The Rural Planning Principles are as follows:

- (i) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- (j) the recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- (k) recognition of the significance of rural land uses to the State and rural communities including the social and economic benefits of rural land use and development,
- (l) in planning for rural lands, to balance the social, economic and environmental interests of the community,
- (m) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,
- (n) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

Extract from the Ordinary Council Meeting of the 21 July 2009

- (o) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
- (p) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

The Rural Subdivision Principles are as follows:

- (a) the minimisation of rural land fragmentation,
- (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,
- (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,
- (d) the consideration of the natural and physical constraints and opportunities of land,
- (e) ensuring that planning for dwelling opportunities takes account of those constraints.

The proposed amendment is generally consistent with the above principles and is therefore consistent with the SEPP and the terms of Direction 1.5.

Hunter Regional Environmental Plan 1989

The Hunter Regional Environmental Plan 1989 (HREP) aims to protect prime crop and pasture land from alienation, fragmentation, degradation and sterilisation. Prime crop and pasture land is defined as land mapped by the Department of Primary Industries (NSW Agriculture) as agricultural suitability Class 1, 2 or 3. The subject land is mapped as prime crop land and pasture land.

According to the HREP, Council, before granting consent to the subdivision of prime crop and pasture land for purposes other than agriculture, or for the erection of a dwelling on prime crop and pasture land "... *should be satisfied that the creation of an allotment or the erection of a dwelling will not significantly reduce the agricultural potential of the land*".

The proposed amendment will not result in the erection of a dwelling. Excising the existing tourist facility from the main farm will not impact on the agricultural potential of the land but will ensure the continued operation of both components.

Williams River Catchment Regional Environmental Plan 1997

The aims of the Williams River Catchment REP are to protect and improve the environmental quality of the Williams River catchment through the management and use of the catchment's resources in an ecologically sustainable manner.

The objectives of the plan are:

- (e) to promote sustainable use of land, water, vegetation and other natural resources within the Williams River catchment;
- (f) to promote the protection and improvement of the environmental quality of the catchment;
- (g) to establish a coordinated and consistent approach to the planning and management of the natural and built environment on a catchment-wide basis by linking the environmental planning system and total catchment management policies, programs and activities within the Williams River catchment through an endorsed catchment-wide regional planning strategy; and
- (h) to provide for changes to occur in the use of land in a manner which protects the quality of the catchment's water resources.

In accordance with clause 6 of the REP, these aims and objectives should be taken into account in the preparation of each environmental planning instrument that applies to land in the Williams River catchment.

Extract from the Ordinary Council Meeting of the 21 July 2009

The proposed amendment will facilitate subdivision of the subject land into two (2) lots only. It will not result in any impacts on the Williams River or the quality of the catchment's water resources.

Dungog Local Environmental Plan 2006

Clause 11 – Rural 1(a) Zone Objectives

Clause 11 of LEP 2006 sets out the objectives of the Rural 1(a) zone.

The objectives of the zone are to:

- (i) reinforce the agricultural character and landscape attributes of the area of Dungog, and
- (j) promote agriculture, protect high productivity land and prevent the fragmentation of farm holdings, and
- (k) ensure development is compatible with agricultural operations and does not adversely affect the environment or amenity of the locality, and
- (l) prevent development which could compromise the efficient extraction of valuable deposits of minerals or extractive materials, and
- (m) maintain and enhance environmentally sensitive land, particularly wetlands, riparian ecosystems, forests, woodlands and linkages between them, and
- (n) allow for the natural flooding of rivers and for the temporary storage of floodwaters, and
- (o) maintain and enhance local biodiversity, and
- (p) provide for recreational and tourist activities that are compatible with the agricultural, environmental and conservation value of the land.

The proposed subdivision would be consistent with the Rural 1(a) zone objectives.

Clause 25 – Heritage

Pursuant to clause 25 of LEP 2006, the subdivision of land on which a heritage item is located may only be carried out with development consent. In determining a DA required by this clause, Council must consider the extent to which the proposed subdivision would affect the heritage significance of the heritage item and may only grant consent if it has considered a heritage impact statement prepared for the proposed development.

Notwithstanding, clause 25(5) states that consent that would otherwise be required by this clause is not required if, in the opinion of the Council, the proposed development is of a minor nature, but only if the Council has advised in writing its opinion that the proposed development would not adversely affect the heritage significance of the item concerned.

Given the minor nature of the proposed subdivision, the heritage significance of the 'Crooks Park' homestead would be unlikely to be affected. Therefore consent under this clause would not be required.

Clause 26 – Environmental Protection.

The applicant will need to demonstrate, at Development Application stage, the proposal's compliance with the matters set out in clause 26(1), (2) and (3) of LEP 2006 i.e. that the proposed subdivision can be carried out with minimal disturbance to the environment.

Clause 28(4) Subdivision Requirements

Clause 28(4) of LEP 2006 states that consent must not be granted for a subdivision to create a lot of land in Zone 1(a) or 9(a) unless:

Ordinary Meeting of the Council of the Shire of Dungog, to be held Tuesday 21 July
2009 commencing 6.00pm.

Extract from the Ordinary Council Meeting of the 21 July 2009

- (a) the lot is for use for intensive agriculture, a utility installation or a community facility, without the need for an additional dwelling, and the consent authority is of the opinion that creation of the lot is justified for this purpose, or
- (b) the land to be subdivided is an established holding with an area in excess of 120 hectares, and:
 - i. where the established holding comprises more than one lot, the land is first consolidated into one lot, and each of the lots to be created by the subdivision contains 60 hectares or more, and
 - ii. no lot to be created will, immediately after the subdivision, have on it more than one dwelling-house or more than on dual occupancy, and
 - iii. each lot to be created which is vacant is suitable for the erection of a dwelling.

The proposed subdivision would not satisfy any of the above criteria for subdivision and therefore would not be permissible under the current LEP provisions, hence the need for a site-specific amendment to the LEP.

SECTION 65 AND 69 DELEGATIONS:

In February 2006, the Department of Planning revoked all NSW Council's delegations to exhibit LEP amendments under section 65(1) and section 69 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Council is required to notify the Department under Section 54(4) of the EP&A Act of Council's decision to prepare a draft LEP. The Department will then determine if Council can exercise its Section 65 and 69 delegations.

All proposed LEPs are subject to review by the LEP Review Panel at Section 54(4) notification stage. The role of the LEP Review Panel is to scrutinise proposed LEPs very early in their development, to ensure that draft LEPs are consistent with State and regional planning objectives and strategies before they go to the Minister for Planning for approval.

It is important to note that, based on recent advice from the Department, the proposed site-specific amendment may not be supported by the LEP Review Panel. Councils have been requested to avoid, where possible, resolving to prepare spot rezonings. A compelling reason must be provided demonstrating the need to prepare such a plan. In particular, the proposed LEP must be considered in the context of State and regional policy direction, as well as the site context in terms of compatibility with neighbouring uses and the potential to create an undesirable precedent in terms of other rezoning requests.

SECTION 62 CONSULTATION:

Council intends to consult with the following government agencies during the preparation of the draft LEP in accordance with section 62 of the *Environmental Planning and Assessment Act 1979*:

- Department of Planning
- Department of Environment and Climate Change
- Department of Primary Industries
- Hunter-Central Rivers Catchment Management Authority
- Department of Water and Energy
- NSW Rural Fire Service
- Country Energy
- Telstra
- ARTC
- Karuah Local Aboriginal Land Council

IMPLICATIONS

Financial

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

Policy

It is considered that the proposed LEP amendment is justifiable and will not set an undesirable precedent. The draft plan is therefore 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

It is considered that the applicant has provided sufficient justification for Council to proceed with a site-specific amendment to LEP 2006, ahead of the preparation of the shire-wide comprehensive LEP, to facilitate the subdivision of the property into two (2) lots. The proposal is generally consistent with relevant SEPPs, REPs, LEPs, section 117 directions, Government policies and Council strategies.

Accordingly, it is recommended that Council support the amendment request.

RECOMMENDATION

That:

1. Pursuant to section 54(1) of the *Environmental Planning and Assessment Act 1979*, Council resolve to prepare an amendment to Dungog Local Environmental Plan 2006 to include Lot 100 DP 1089164, No. 4426 Clarence Town Road, Wirragulla in Schedule 4 – Additional Development.
2. Pursuant to section 54(4) of the *Environmental Planning and Assessment Act 1979*, Council inform the Director-General of the decision to prepare the draft Local Environmental Plan.
3. Pursuant to section 62 of the *Environmental Planning and Assessment Act 1979*, Council consult with the relevant public authorities and other organisations that may have an interest in the draft LEP.