

PLANNING DEPARTMENT

Glen Harper

15. **E P NOBBS – VACANT HOLDING APPLICATION**
LOT 73 DP 619217, 86 MARSHDALE ROAD, ALISON
171/82/25

Application No.	171/82/25
Applicant:	E P Nobbs – c/o Acroplan
Owner:	E P Nobbs & N F Knudsen
Subject Land:	Lot 73 DP 619217, 86 Marshdale Road, ALISON
Area:	Approx 16.43 Hectares
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 73 DP 619217, 86 Marshdale Road, Alison.

BACKGROUND

Given the land is only 16.43 hectares, the property does fall short from meeting the 'Established Holding' requirement of 60 hectares pursuant to clause 27(5)(c) of the Dungog LEP 2006. In addition, the lot was created on the 8th September 1981, and therefore a dwelling is not be permissible pursuant to clause 27(7)(a) of the LEP 2006. Compliance with either of these clauses would have eliminated the need for this vacant holding process.

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. However, when the 2006 LEP was gazetted the subject property lost its dwelling entitlement.

Under the Dungog LEP 2006, a dwelling may only be permissible by undertaking a LEP amendment to include the property as a 'Vacant Holding' under Schedule 1 of the Dungog LEP 2006.

SUBJECT LAND

The subject land is situated adjacent to Marshdale Road, approximately three (3) kilometres south east direct from the town centre of Dungog.

The property is 16.43 hectares in area. The land is moderately undulating with some parts of the lot relatively level and adequate for the situation of a dwelling.

The lot does maintain some limited native vegetation, although given the disturbed history due to its agricultural pursuits, a large portion of the lot is cleared with some remanent vegetation (i.e. vegetation re-growth post 1990).

The location of the proposed building envelope as detailed by the applicant is located in such that it is removed from the existing vegetation and therefore remains relatively clear of vegetation.

The property is currently vacant with two small dams. The lot does have road frontage to Marshdale Road, and therefore access is possible subject to satisfactorily complying with Councils Rural Roads Policy.

It remains unclear of the current use of the lot, although it does remain likely that the subject land may still periodically be used for small scale extensive agricultural operation i.e. the grazing of livestock. Surrounding land is also zoned Rural 1(a) and adjoining properties are predominantly used for grazing/agricultural purposes. It does appear that all adjoining properties contain single dwelling houses and associated rural ancillary structures.

Figure 1. The hatched depicts the subject land.

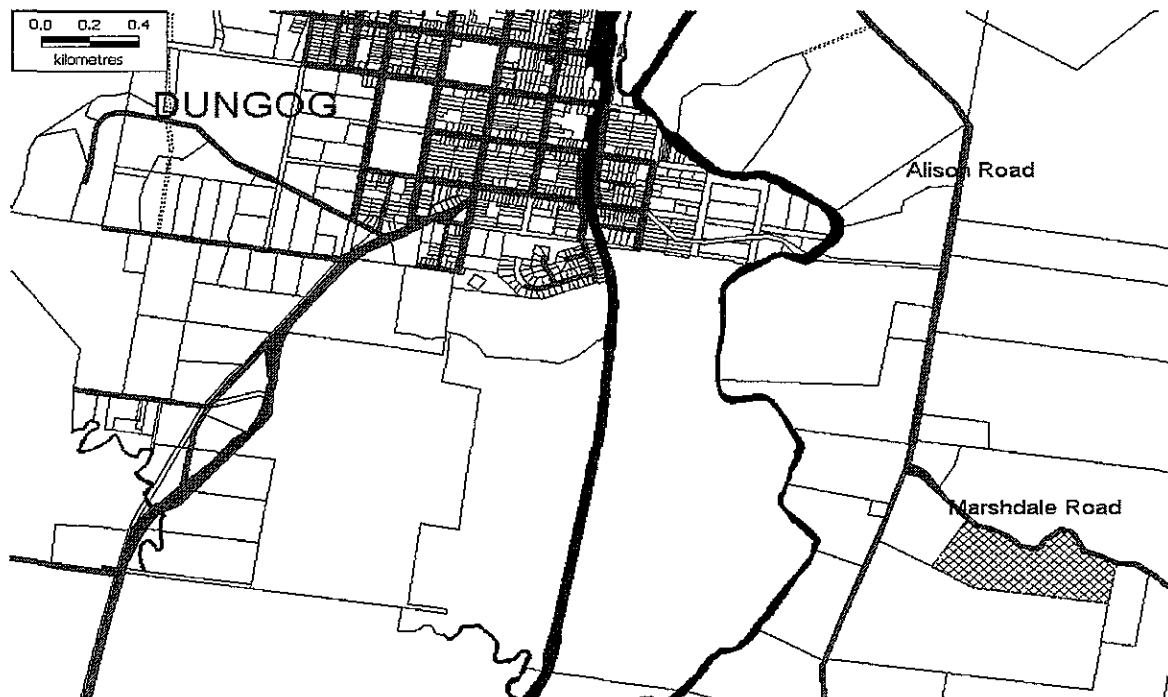


Figure 1: Lot 73 DP 619217, No. 86 Marshdale Road, ALISON

PURPOSE OF THE PLAN

The application seeks to amend *Dungog Local Environmental Plan 2006* (LEP 2006) by inserting Lot 73 DP 619217, No. 86 Marshdale Road, Alison 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/Planning Proposal.

The applicants have nominated a preferred building envelope. The building envelope is located approximately 37.5 metres from Marshdale Road, 125 metres from the western boundary, 100 metres from the southern boundary and 412.5 metres from the western boundary (refer to **Annexure 'C'**).

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Although it will be expected, any Development Application for a dwelling would need to comply with the building line setbacks as stipulated within the Shire Wide Development Control Plan No. 1, (i.e. a minimum 50 metre setback from all boundaries) the location of the building envelope is considered appropriate. The relative clear and level ground makes the site conducive to development. Although the dwelling may be visible from Marshdale Road, the location of the building envelope is situated so that any dwelling will not be prominent from any part of Marshdale Road.

Should the Vacant Holding application be successful, a Development Application will then be lodged. Once the Development Application is lodged, the aesthetics of the dwelling, so that to ensure the dwelling fits into the surroundings, will be assessed accordingly.

SUPPORTING INFORMATION/DOCUMENTS

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

- a plan showing the proposed location of the building envelope;
- a bush fire risk assessment;
- a geotechnical report;
- 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:

- e) a lot created in accordance with clause 28 (4) (b), or*
- f) a vacant holding identified in Schedule 1, or*
- g) land comprising an established holding on which there is no dwelling-house, or*
- h) 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 73 was created on the 8th September 1981 and therefore was not created by a Council approved subdivision whilst the Dungog LEP 2006 was in force. 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.

Further, Clause 27(7) of the LEP 2006 states:

"Nothing in this clause prevents consent being granted to the erection of a dwelling house or dual occupancy on:

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- (a) *a lot created for the purpose of a dwelling since 6 April 1990, but before the appointed day, or*
- (b) *a lot created for the purpose of a dwelling on or after the appointed day in accordance with a valid consent for subdivision granted prior to that day."*

Given Lot 73 was not created after 6th April 1990, this clause does not apply.

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*
- (c) 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>	It is acknowledged that any dwelling located on the lot, or in particular within the proposed building envelope, will be visible from Marshdale Road. Although, the nature of the lot and the chosen location of the building envelope will minimise the visual impact of the dwelling from the road. Given the building envelope is not located on a ridgeline and will be setback from the road at Councils setback distance of 50m, it is expected that the visual impact will be minimal. The location of sparse and intermittent vegetation adjacent to the building envelope may further minimise the visual impact of the dwelling against the rural landscape. The visual amenity of the dwelling from Marshdale Road will be further assessed once a Development Application is lodged and assessed.
<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 applicant has not indicated the design of the building thus far, although indicating the dwelling will be of single storey. The building will need to 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</i>	The location of the building envelope has been chosen to ensure minimal removal of vegetation. The location of the building envelope remains relatively clear of any vegetation.

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<i>protection, unless the development is essential and there is no reasonable alternative.</i>	If required, any sparse vegetation that may need to be removed to achieve the 10m asset protection zone (APZ) is likely to be exempt from approval under the Native Vegetation Act. The access to the lot is existing, and therefore does not require any vegetation to be removed. Although, to achieve the Safe Intersection Sight Distance (SISD) at the access point to the lot, some vegetation may need to be removed. Removal of any vegetation is expected to be minimal and should be contained within the road reserve. Any removal of vegetation to comply with Councils SISD will be assessed under the <i>Native Vegetation Act 2003</i> There are no Tree Preservation orders for this lot.
<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. Given Lot 73 has road frontage to Marshdale Road, the lot does have legal access. In terms of practical access, it is important to determine whether the access complies in regard to the Safe Intersection Sight Distance (SISD). Marshdale Road is sign posted as 80km/hr and therefore requires a sight distance of at least 155m upgrade and 165m downgrade. Although some vegetation may need to be removed within the road reserve to achieve this SISD, the assessment officer does see the SISD as being achievable. This will require an access relocation, however this is enough room for this to occur with a SISD. The new access crossing and its subsequent SISD will be assessed once the Development Application for the dwelling is lodged. At the plan making stage the important aspect is that it can be practically achieved.
<i>(e) adequate provision has been or will be made for any telecommunication and electricity services needed because of the proposed development.</i>	Telecommunication and electricity services are available to the property.

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<i>(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.</i>	The subject land is not flood prone by Council records.
<i>(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.</i>	The site of the proposed dwelling is relatively flat and therefore considered far less than 18 degrees. The property is not known to contain sodic or dispersive soils.
<i>(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.</i>	A bushfire risk assessment has been submitted with the application demonstrating that the proposed dwelling can be provided with appropriate APZs (10 metres), in accordance with <i>Planning for Bushfire Protection 2006</i>. The recommendations of the applicant are as follows:- (i) Provide an APZ surrounding the dwelling of at least 10m. (ii) Fuel management within the Asset Protection Zones on Lot 73 should be continually maintained by regular slashing/mowing. Fuel management should also occur within the subject lot to prevent the build up of hazardous materials. (iii) There is no requirement for a specific level of construction for the future proposed dwelling in accordance with AS3959. (iv) The access driveways should have a six metre high corridor maintained free of all vegetation and overhanging branches. (v) The site is a rural allotment greater than 10,000 square metres. It is therefore recommended that a 20,000 litre dedicated static water supply in the form of a tank of non-combustible material will need to be connected to the proposed dwelling, with a 38mm or 65mm Storz fitting and ball gate valve dedicated for the sole purpose of the RFS in the event of a fire. Subject to compliance with these recommendations and the <i>Planning for Bushfire Protection 2006</i>, it is considered that a dwelling would satisfy these requirements.

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<i>(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.</i>	The proposed building envelope is situated over 50 metres from the southern, eastern and western boundaries, and therefore complies with Councils setback of 50m within the Rural 1(a) zone. The plan submitted by the applicant details the building envelope 37m from Marshdale Road, and therefore does not comply with the 50m setback. Although this does not comply with Councils setback, the nature of the lot would enable the location of the building envelope to be situated 50m from Marshdale Road. The adjoining lots are similar in nature to the proposed use of the lot under assessment. All adjoining lots currently have a dwelling and a variable number of outbuildings. It is generally considered that extensive agricultural activity is a common land use complementing the existing dwellings on many of the adjoining lots. There is no evidence of conflicting land uses that may be considered as offensive within the immediate area.
<i>(j) adequate buffers are provided to places of Aboriginal heritage or endangered or threatened ecological communities.</i>	No Aboriginal heritage sites or endangered/threatened ecological communities are known to occur on the property or adjoining properties. Should such be uncovered during construction the normal practice in accordance with the NPWA 1974 would be followed.
<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>	A geotechnical report was submitted with the application. This report indicates the site has sufficient area and soil type, capable of supporting the disposal of on-site wastewater from any future proposed onsite waste water treatment system. The Geotechnical Report details numerous options deemed satisfactory for effluent disposal on the lot. The report has demonstrated many effluent disposal methods are suitable given the land characteristics and the size of the lot.
<i>(m) the quality of stormwater run-off from the site will not degrade water quality or the quality of groundwater supplies and complies</i>	Stormwater run-off from the dwelling site is proposed to be redirected to on-site rainwater storage tanks. Excess

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<i>with any environmental management plan required by Council.</i>	stormwater from tank overflow will not impact on water quality or groundwater supplies. The RFS requirements and BASIX will dictate this further at DA stage.
<i>(n) stormwater run-off from the site will not contribute to additional flooding downstream.</i>	No significant creek or stream traverses the property. Stormwater run-off from the dwelling site is to be redirected to on-site rainwater storage tanks and a storm water retention system. It is not expected that stormwater runoff will not contribute to additional flooding downstream.
<i>(o) any relevant harvestable water rights are protected or adequately assessed.</i>	While drainage lines do exist throughout the lot, no significant river, creek or stream traverses the lot for which water may be obtained. There are two existing dams on the property and no additional dams are proposed. Given there will be no change to the existing dams on the property and no water courses traverse the property, there appears to be 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, an updated flora & fauna assessment will be required to be submitted at DA stage.

THE GATEWAY

If Council was to support the Planning Proposal (PP), the PP would be sent to the Minister for Planning (or delegate) for the Gateway determination to specify whether the PP 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 or the Applicant 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.

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

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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.

Minute No. 34848

RESOLVED on the motion of Cr Farrow and seconded by Cr Johnston that:

1. Council resolve to prepare an amendment to *Dungog Local Environmental Plan 2006* to include Lot 73 DP 619217, No. 86 Marshdale Road, Alison in Schedule 1 – Vacant Holdings.
2. Pursuant to section 55 of the *Environmental Planning and Assessment Act 1979*, Council or the Applicant 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.

