

PLANNING DEPARTMENT MANAGER REPORT

Carolyn Maginnity

1. ACROPLAN – VACANT HOLDING APPLICATION LOT 72 DP 736606 1287 BINGLEBURRA ROAD, BINGLEBURRA 171/82/30

Application No.	171/82/30
Applicant:	Acroplan
Owner:	L W & P D Webb
Subject Land:	Lot 72 DP 736606, 1287 Bingleburra Road, BINGLEBURRA
Area:	Approx 6.93ha
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 72 DP 736606, 1287 Bingleburra Road, Bingleburra.

The report recommends that the amendment request be supported.

SUBJECT LAND

The subject land is located on Bingleburra Road, approximately 5 kilometres east of the intersection of Bingleburra Road and Allyn River Road.

The subject property comprises a total area of 6.93 hectares and is divided into two parts by Bingleburra Road. The portion to the north comprises 3.045ha, whilst the portion to the south comprises 3.885ha. Several natural watercourses traverse the site.

The land is gently undulating and is predominantly cleared with patches of remnant and regrowth vegetation occurring along natural watercourses.

Access to the property is via Bingleburra Road, which is a sealed, all weather access road. Utility services available to the site include electricity, telephone, garbage and recycling collection and mail delivery services.

The subject land is zoned Rural 1(a) under Dungog LEP 2006. The land is currently vacant and is used for livestock grazing. Surrounding properties are also rural in nature supporting low impact agricultural activities and grazing.

Figure 1 depicts the subject land.

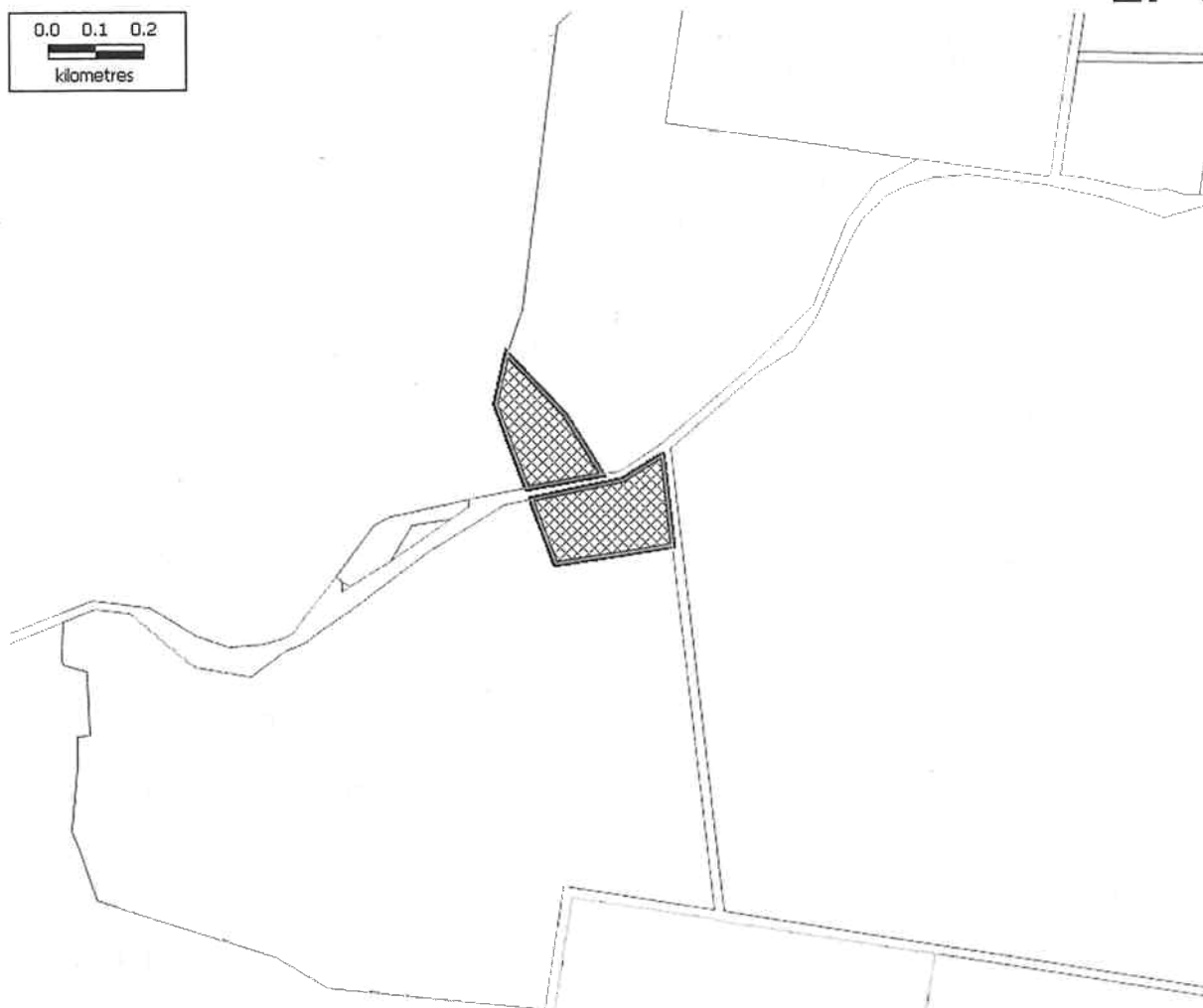


Figure 1: Pt Lot 72 DP 736606 No. 1287 Bingleburra Road, Bingleburra

PURPOSE OF THE PLAN

The application seeks to amend *Dungog Local Environmental Plan 2006* (LEP 2006) by inserting Lot 72 DP 736606, No. 1287 Bingleburra Road, Bingleburra 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 with Council once the proposed LEP amendment is approved by the Minister for Planning.

The applicants have nominated a preferred building envelope in the southern portion of the site. The building envelope is located approximately 50m from the southern boundary, and 50m from the western boundary (refer to **Annexure 'A'**). The proposed building envelope is situated on a gently sloping portion of the subject land that falls to the north towards Bingleburra Road.

It will not be necessary to remove any native vegetation for either the construction of the proposed dwelling or the establishment of the required asset protection zones (APZs).

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;
- a report addressing the suitability of the site for on-site effluent disposal;
- a statement addressing the proposal's compliance with the matters set out in clause 26(1) 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 subject land has been in the same ownership since 1993 and has only been utilised for small scale agricultural pursuits during this time. 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 72 DP 736606 was not created by a Council approved subdivision after the appointed day. 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>	The nominated building envelope is not located on a ridgeline. The proposed dwelling will be set back approximately 150m from the eastern site boundary and approximately 50m from the southern and western boundaries in accordance with Council's setback requirements. Given the size and configuration of the allotment (with Bingleburra Road dividing the property in two) it will not be possible to comply with Council's front setback requirement of 140 metres from Bingleburra Road. However, any future dwelling will be partially screened from view by the existing vegetation and cattle yards located within the front portion of the property. Additional landscaping along the road frontage could be required as a condition at DA stage.
<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 proposed building design, bulk, scale and colours will be assessed when the DA for the dwelling-house 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>	It will not be necessary to remove any trees or significant areas of native vegetation for the construction of the proposed dwelling-house or establishment of the required APZs.
<i>(d) adequate vehicular access can be provided and maintained to and on the site of the proposed development.</i>	As previously stated, access to the property is from Bingleburra Road, which is a two-lane sealed public road maintained by Council. Bingleburra Road in this location has a sign-posted speed limit of 90km/hr, is in good condition and features a relatively straight alignment. The minimum required safe intersection sight distance (SISD) of 190m is available in both directions from the existing access/egress point.
<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 currently available to the subject land.
<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>	Council has no detailed information with respect to localised flooding on the subject land. However, given the elevation of the nominated building envelope and the surrounding natural topography, it is unlikely to be affected by flooding.

<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 features slopes of 0-5° and is considered stable. 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-house can be provided with the necessary APZs), in accordance with <i>Planning for Bushfire Protection 2006</i> . Based upon the hazard assessment and the FDI for the Dungog LGA, the construction requirements have been determined as Level 1 – Medium. It is anticipated that Council will be required to formally consult with the RFS during preparation of the draft LEP.
<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 has been located so as to comply with Council's standard setback of 50m from side and rear boundaries, affording the proposed dwelling adequate buffering from any existing or foreseeable agricultural activities on adjacent rural land.
<i>(j) adequate buffers are provided to places of Aboriginal heritage or endangered or threatened ecological communities.</i>	The subject site is highly disturbed as a result of a long history of agricultural use. No Aboriginal heritage sites or endangered/threatened ecological communities are known to occur on the subject land or adjoining properties. It is not proposed to clear any native vegetation and as such there will be little or no impact upon native flora and fauna.
<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>	An effluent capability assessment 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 on-site waste water treatment system.
<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 is proposed to be redirected to on-site rainwater storage tanks for re-use on the site. Excess stormwater from tank overflow will be directed to existing dams on the site and 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 subject land will only increase marginally as a result of the proposed construction of a dwelling-house on the site. Roof water will be redirected to on-site rainwater tanks for re-use and therefore will not contribute to additional downstream flooding.
<i>(o) any relevant harvestable water rights are protected or adequately assessed.</i>	The two (2) small farm dams on the property are under the maximum harvestable right dam capacity of 0.6 megalitres. There will be no change to the existing dams 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>	It is not proposed to clear any native vegetation to make way for the construction of a dwelling-house on the site and as such there will be no impact on biodiversity or native habitat on the land.

THE GATEWAY

If Council resolves to support the planning proposal, the planning proposal will be sent to the Minister for Planning (or delegate) for a gateway determination. A gateway determination 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.

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. Further, the applicant has satisfactorily demonstrated that the requirements of subclause 26(1) of *Dungog Local Environmental Plan 2006* can be achieved i.e. a dwelling-house can be erected on the subject land with minimal disturbance to the environment.

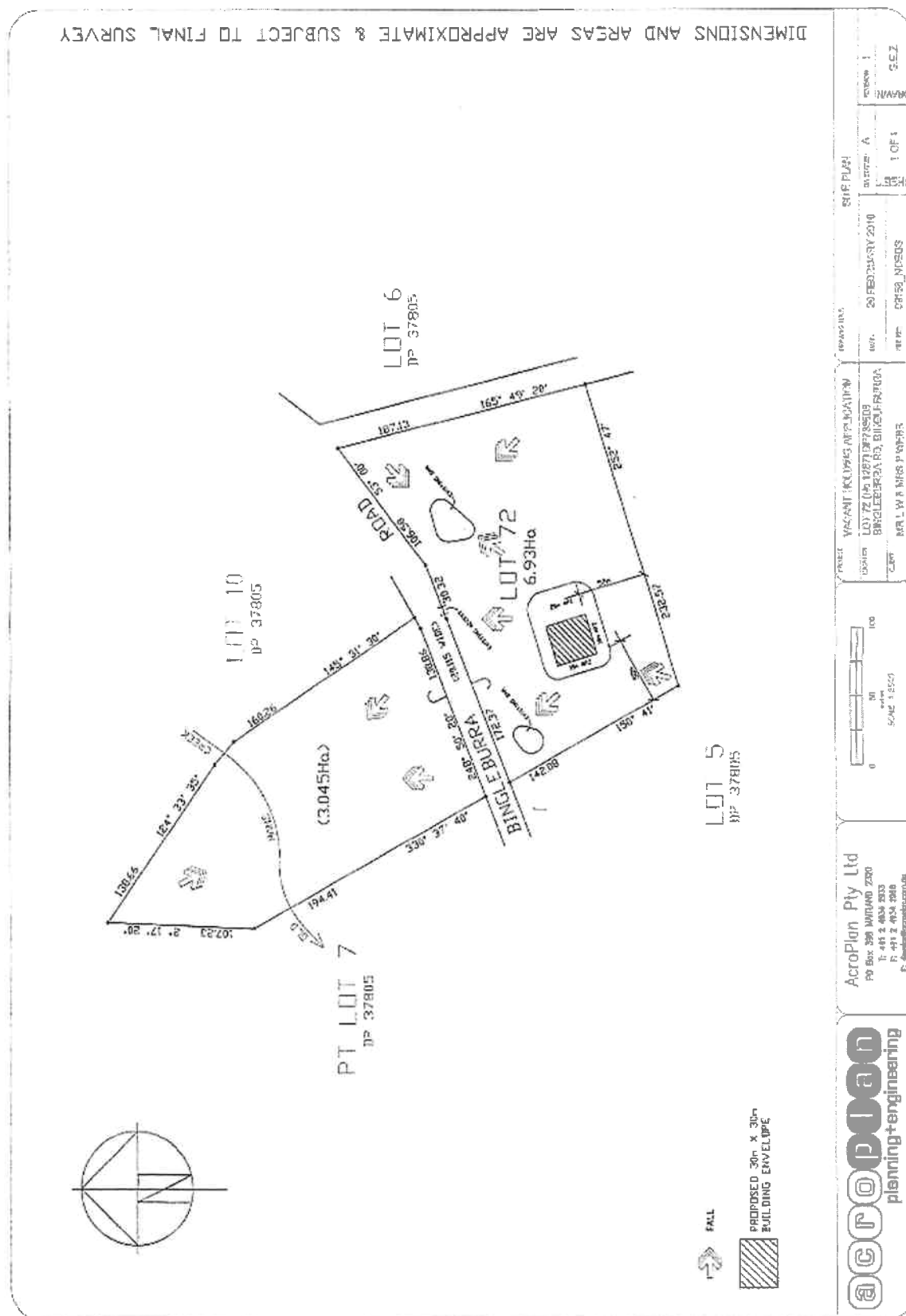
Accordingly, it is recommended that the amendment request be supported.

RECOMMENDATION

That:-

1. Council resolve to prepare an amendment to *Dungog Local Environmental Plan 2006* to include Lot 72 DP 736606, No. 1287 Bingleburra Road, Bingleburra 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 of the *Environmental Planning and Assessment Act 1979*, Council forward the planning proposal to the Minister for Planning for a gateway determination.
4. Pursuant to section 57 of the *Environmental Planning and Assessment Act 1979*, Council consult with the community and relevant public authorities in accordance with the Minister's requirements (as set out in the gateway determination).
5. Following completion of the required community consultation, should no objections be received, Council forward the planning proposal to the Director-General to make arrangements for the drafting of the legal instrument (LEP), in accordance with section 59 of the *Environmental Planning and Assessment Act 1979*.

ANNEXURE 'A' TO ITEM NO. 1 – MANAGER PLANNING'S REPORT



1. **ACROPLAN – VACANT HOLDING APPLICATION**
LOT 72 DP 736606 1287 BINGLEBURRA ROAD, BINGLEBURRA
171/82/30

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 72 DP 736606, 1287 Bingleburra Road, Bingleburra.

Minute No. 34957

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

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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.