

## PLANNING DEPARTMENT MANAGER'S REPORT

Carolyn Maginnity

1. **CRAIG MAHER – VACANT HOLDING APPLICATION**  
**LOT 1 DP 343072 8 PARKES CREEK ROAD, BINGLEBURRA**  
**171/82/29**

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|-----------------|---------------------------------------------------------|
| Application No. | 171/82/29                                               |
| Applicant:      | Craig Maher                                             |
| Owner:          | G S Hudson, L M Burgess and I M Ellicott                |
| Subject Land:   | Pt Lot 1 DP 343072, 8 Parkes Creek Road,<br>BINGLEBURRA |
| Area:           | Approx 25.5ha                                           |
| Current Zone:   | Rural 1(a) – Dungog LEP 2006                            |
| Proposal:       | LEP Amendment – Vacant Holding Application              |

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### 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 Pt Lot 1 DP 343072, 8 Parkes Creek Road, Bingleburra.

The report recommends that the amendment request be supported.

### SUBJECT LAND

The subject land is located on the northern side of Bingleburra Road, on the corner of Bingleburra Road and Parkes Creek Road. The property is approximately 25 hectares in area and is bounded by Bingleburra Road to the south, Parkes Creek Road to the west, Little Creek to the north and rural grazing property to the east.

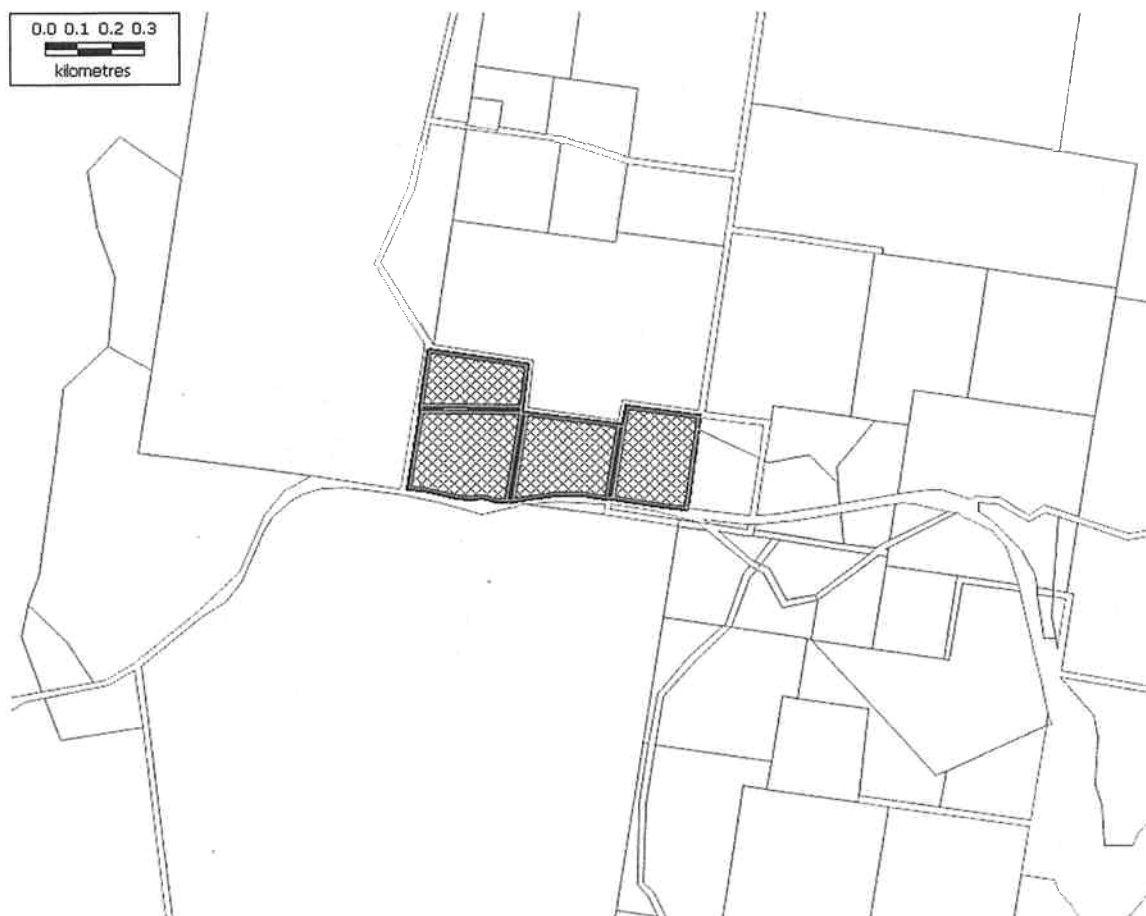
The land is gently undulating and is predominantly cleared with patches of remnant and regrowth woodland scattered throughout the site.

Access to the property is via Parkes Creek Road, which is a Council maintained gravel road.

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

There are three (3) former Crown reserve roads running through the property, two of which run in a north-south direction joining Bingleburra Road to the Crown road adjacent to the northern boundary of the subject land and another that joins Parkes Creek Road to the same Crown Road. The owners of the subject land made application to the Department of Lands for the closure of these roads. This process was recently completed and the owners have now purchased the three (3) Crown reserve roads.

Figure 1 depicts the subject land.



**Figure 1: Pt Lot 1 DP 343072 No. 8 Parkes Creek Road, Bingleburra**

## PURPOSE OF THE PLAN

The application seeks to amend *Dungog Local Environmental Plan 2006* (LEP 2006) by inserting Pt Lot 1 DP 343072, No. 8 Parkes Creek 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 following gazettal of the draft LEP.

The applicants have nominated a preferred building envelope in the south-western portion of the site. The building envelope is located approximately 300m from the southern boundary, and 70m 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 Little Creek.

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 and associated effluent disposal area;
- 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 1(a) zone objectives and 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 subject land has been in the same ownership since 1947 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."*

Pt Lot 1 DP 343072 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                                                                                                                                                                                                                                                                                                                                            |
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| <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 and is set back in excess of Council's setback requirements of 140 metres from Bingleburra Road and 50 metres from Parkes Creek Road, which will ensure that any future dwelling-house is almost completely obscured from view from both Bingleburra and Parkes Creek Roads.         |
| <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 Parkes Creek Road, which is a Council maintained gravel road. Parkes Creek Road in this location is in good condition and features a straight alignment. There are also a number of other locations along Parkes Creek Road that may provide suitable alternative access locations if needed. |
| <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 flooding on the subject land. However, the nominated building envelope has a reduced level (RL) of approximately 85m AHD and given its elevation and surrounding natural topography is therefore considered to be flood free.                                                                  |
| <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>                                                                                                                                                           | <p>The subject land features slopes well below 18 degrees and is considered stable and not at risk from land slip, land slide or erosion.</p> <p>The property is not known to contain sodic or dispersive soils.</p>                                                                                                                               |

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| <p><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></p> | <p>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.</p> <p>It is anticipated that Council will be required to formally consult with RFS during preparation of the draft LEP.</p> |
| <p><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></p>                                                                                          | <p>The proposed building envelope is located well clear of all boundaries and is protected by stands of established native vegetation, affording adequate buffering from any existing or foreseeable agricultural activities on adjacent rural land.</p>                                                                                                                                                                                                                                              |
| <p><i>(j) adequate buffers are provided to places of Aboriginal heritage or endangered or threatened ecological communities.</i></p>                                                                                                                                                                                                          | <p>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.</p>                                                                                                                                                                                                                      |
| <p><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></p>                                                                                                 | <p>The property is not located adjacent to a rail corridor or any other existing or potential utility installations.</p>                                                                                                                                                                                                                                                                                                                                                                              |
| <p><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></p>          | <p>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.</p>                                                                                                                                                                                                                         |
| <p><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></p>                                                                                                                              | <p>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 not impact on water quality or groundwater supplies.</p>                                                                                                                                                                                                                                                                    |
| <p><i>(n) stormwater run-off from the site will not contribute to additional flooding downstream.</i></p>                                                                                                                                                                                                                                     | <p>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.</p>                                                                                                                                                                                                      |

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| <i>(o) any relevant harvestable water rights are protected or adequately assessed.</i>                                                     | The existing dam on the property is well under the maximum harvestable use right dam capacity of 2.5 megalitres. There will be no change to the existing dam 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>                                   | The proposal will not involve the clearing of any native vegetation and as such there should 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 compliance with the matters set out in clause 26(1) of *Dungog Local Environmental Plan 2006* can be achieved i.e. the proposed subdivision can be carried out 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 Pt Lot 1 DP 343072, No. 8 Parkes Creek 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(1) 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 59 of the *Environmental Planning and Assessment Act 1979*, upon completion of the community consultation period, 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).