

Kristy Cousins

**9. BRIAN FORD - PLANNING PROPOSAL NUMBER 17
LOT 15 DP 1084524, 131 FORDS ROAD, CLARENCE TOWN
171/82/34**

Application No.	171/82/34
Applicant:	Brian D Ford
Owner:	BD & JB Ford
Subject Land:	Lot 15 DP 1084524, 131 Fords Road, CLARENCE TOWN
Area:	55.22 ha
Current Zone:	Rural Lifestyle 1(l) & Rural 1(a) – Dungog LEP 2006

Precis

This report considers a planning proposal (PP) to amend the Dungog Local Environmental Plan 2006 (LEP 2006). The PP seeks to resolve the issue of subdivision with split zoned properties.

SUBJECT LAND

The subject land is located on Fords Road approximately 1.5 kilometres North of Clarence Town off Glen William Road.

This property is an irregular shaped lot which runs along the northern side of Fords Road down to the Williams River. The lot comprises a total area of 55.22 hectares, and was created via a Council approved boundary adjustment (DA 23/04) in July 2005. The property comprises moderately sloping cleared grazing land and is currently used for beef production (considered to be class 2 and 3 agricultural land).

The land currently contains an existing dwelling house and associated structures within the Rural 1(a) portion of the property. Utility services currently available to the site include electricity, telephone, garbage and recycling collection and mail delivery services, however reticulated water and sewer is not available.

Figure 1 below is an aerial photograph of the area.



Figure 1 – Aerial Photo

Background.

The subject land was previously zoned *Transition 9(a)* under the Dungog LEP 2006. A 33 ha portion of the property adjacent the Williams River was considered to be productive agricultural land by Industry & Investment NSW (previously the Department of Primary Industries), therefore zoned Rural 1(a), whilst the remainder of the property was considered generally suitable for Rural Lifestyle development. LEP Amendment No. 6 was gazetted on 19 December 2008 and rezoned the land to part Rural Lifestyle 1(l) and part Rural 1(a).

Figure 2 below depicts the subject land and its current zoning.

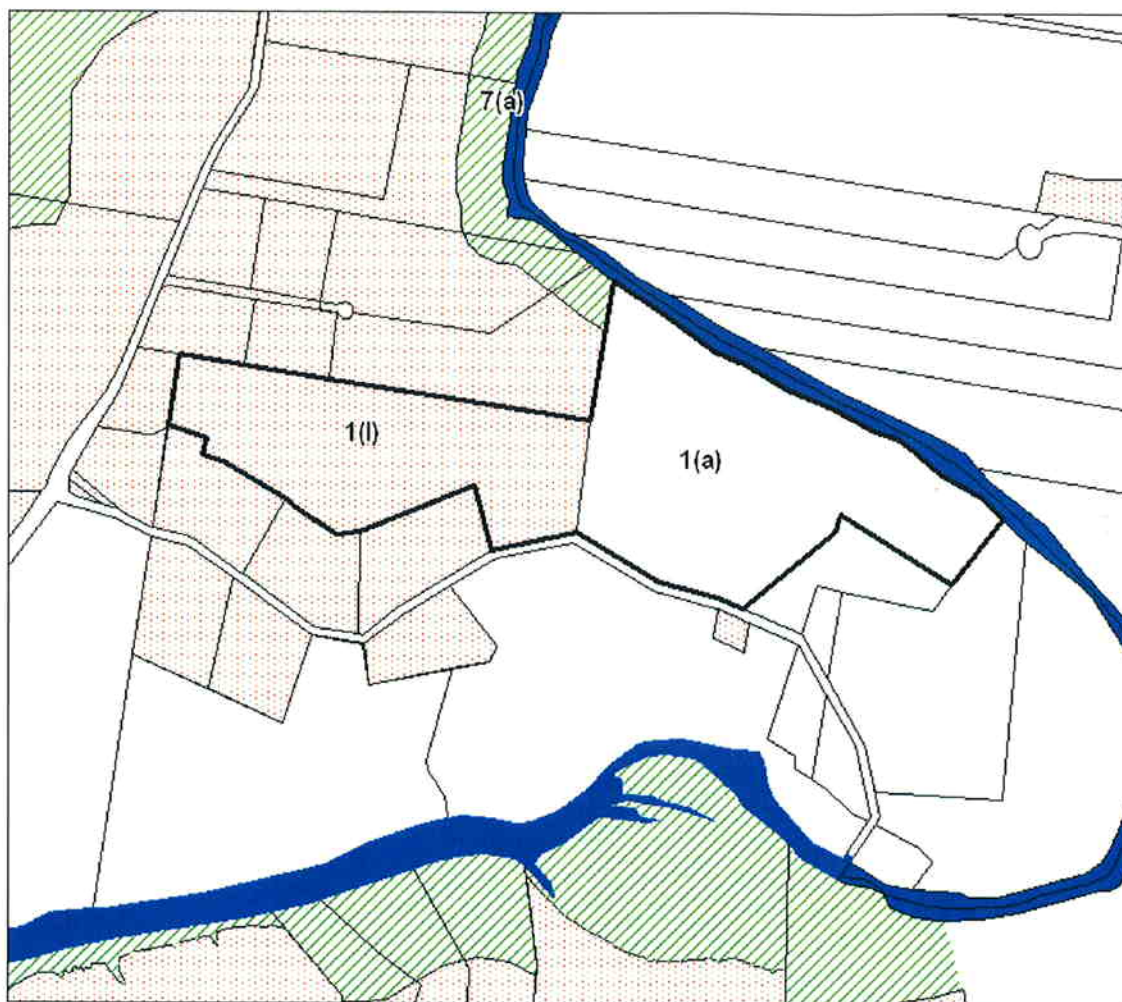


Figure 2 – LEP 2006 Zoning Map

Development Application

On the 19 April 2010 the owner of the subject site lodged a Development Application for a 6 Lot Subdivision. The application involved the creation of 5 'Rural Lifestyle' allotments ranging in size from 1.294 hectares to 13.6 hectares; and the creation of a residual lot zoned Rural 1(a) approximately 32.42 hectares with the existing dwelling house and associated structures.

During the assessment of the Development Application Council staff determined that the subdivision of the Rural Lifestyle portion of the property was not permissible under the Dungog LEP 2006 because it required the creation of a Rural 1(a) lot with a dwelling house under 60 hectares in area. **Annexure 'F'** contains an extract from the Planning report which details the assessment under the Dungog LEP 2006. This report concluded that:

"Council can not grant consent for the proposed subdivision as it is not permissible under the provisions of clause 28(4) of the Dungog LEP 2006. It is acknowledged that it was the intention of the Dungog LEP to allow for subdivision in the Rural Lifestyle portion of the property. However, Council is bound specifically and technically by the entire provisions of the Dungog LEP 2006."

Council staff have identified a number of properties that are split zoned Rural Lifestyle 1(l) & Rural 1(a) or Rural Enterprise 1(e) & Rural 1(a) which will be affected by this clause.

ISSUE

The Dungog LEP 2006 was finalised following the preparation over several years, including extensive consultation with the community and government agencies. Suitable land in the vicinity of rural villages in the Shire were identified for closer settlement, in line with the wishes of the community, the Shire and its Rural Strategy. Part of Lot 15 DP 1084524 was identified and marked as potential Rural Lifestyle 1(l), due to its topographical suitability, accessibility to services, proximity to the village of Clarence Town and the fact that it is already surrounded on three sides by rural residential blocks.

It is however the split zoning with a Rural 1(a) zone of the property which is preventing the property from being developed. The current wording of Clause 28(4) of the Dungog LEP 2006 does not permit the creation of Rural 1(a) lots under 60 hectares with a dwelling house and therefore defeats the purpose of the Dungog LEP 2006 to allow closer rural settlement within the Rural Lifestyle zone.

PLANNING PROPOSAL

There are a number of options to resolve this issue however, the most appropriate option is considered to be an amendment to the Subdivision Clause 28(4) as follows:

The creation of an amendment to Clause 28(4) of the Dungog LEP 2006 to permit the subdivision of the Rural 1(a) lot less than 60 hectares when the property is affected by a split zoning with Rural Lifestyle 1(l) or Rural Enterprise 1(e) subject to the following requirements:

1. The applicant has demonstrated that the Rural Lifestyle 1(l) or Rural Enterprise 1(e) portion of the property is suitable for subdivision; and
2. Only one (1) lot to be created within the Rural 1(a) zone smaller than 60 hectares with one (1) existing dwelling house; or
3. In the event that the Rural 1(a) portion of the property is vacant, a building envelope is to be located in the Rural Lifestyle 1(l) or Rural Enterprise 1(e) zone so no additional dwellings entitlements are created on an undersized Rural 1(a) lot.

PROJECT JUSTIFICATION

Is the planning proposal a result of any strategic study or report?

The Dungog Local Environmental Plan 2006, Dungog Rural Strategy 2003 and the Dungog Land Use Strategy all identify the suitable land in the vicinity of the towns and villages for closer rural settlement. As a result of these strategies land was zoned Rural Lifestyle 1(l) or Rural Enterprise 1(e) to permit further subdivision.

Currently the provisions of the Dungog LEP 2006 do not permit the primary intention of subdivision in the Rural Lifestyle 1(l) or Rural Enterprise 1(e) zone when the property is subject to a split zoning with the Rural 1(a) zone. This is contrary to Council's adopted strategies and therefore the PP has been prepared to resolve this anomaly in the Dungog LEP 2006.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The PP is the best means of achieving the rural residential objective and intended outcomes of the strategic studies. The western portion of the property was considered suitable for future development and was zoned accordingly. The alternative of not amending the LEP will not permit the desired outcome of closer rural settlement to occur.

Will the LEP be compatible/ complimentary with the surrounding land uses? What is the impact on amenity in the location and wider community?

The PP will be compatible with the surrounding land uses. The subject property is surrounded on 3 sides by existing rural residential development.

In this circumstance, due to the topography of the site, the Rural Lifestyle portion is not visible from the main part of the farm. This provides a buffer to ameliorate any concerns regarding the potential for conflict with neighbouring land uses.

The PP is likely to result in a positive economic and social impact for the wider community. Rural residential living opportunities that will increase the local population resulting in positive socio-economic multiplier opportunities for Dungog.

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 prior to all the detailed reports being commissioned.

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.

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*.

RECOMMENDATION

1. That Council resolve to prepare an amendment to Clause 28(4) of the *Dungog Local Environmental Plan 2006* to permit the subdivision of land with a split zoning Rural Lifestyle 1(l) & Rural 1(a) or Rural Enterprise 1(e) & Rural 1(a) subject to:
 - a. The applicant has demonstrated that the Rural Lifestyle 1(l) or Rural Enterprise 1(e) portion of the property is suitable for subdivision; and
 - b. Only one (1) lot to be created within the Rural 1(a) zone smaller than 60 hectares with one (1) existing dwelling house; or
 - c. In the event that the Rural 1(a) portion of the property is vacant, a building envelope is to be located in the Rural Lifestyle 1(l) or Rural Enterprise 1(e) zone so no additional dwellings entitlements are created on an undersized Rural 1(a) lot.
2. That 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. That 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.

Appendix 2 – Adopted Council Minutes

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. Council amend the Land Use Strategy; specifically Figure 10 to reinstate part of the subject property (Lot 16 DP 865027) as proposed at the February 2010 Ordinary Council meeting.

The Chair in accordance with Section 375A of the Local Government Act 1993 called for a Division. The Division resulted in 7 for and 0 against, as follows:

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

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Minute No. 35107

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

1. Council resolve to prepare an amendment to Clause 28(4) of the *Dungog Local Environmental Plan 2006* to permit the subdivision of land with a split zoning Rural Lifestyle 1(l) & Rural 1(a) or Rural Enterprise 1(e) & Rural 1(a) subject to:
 - a. The applicant has demonstrated that the Rural Lifestyle 1(l) or Rural Enterprise 1(e) portion of the property is suitable for subdivision; and
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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.
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