

Singleton Council - Planning proposal for Lot 5 DP 1058431, Roughit Lane, Sedgefield – October 2009

The proponent has chosen to submit a planning proposal to Council in accordance with the Department of Planning (DoP) guidelines. Council staff have drawn heavily on this material, however, some sections (such as Part 2) have been significantly modified to bring them up to date with the current situation.

Part 1 – Objectives or Intended Outcomes

To amend Singleton Local Environmental Plan (LEP) 1996 to permit (with consent) the subdivision of Lot 5 DP 1058431 in accordance with the provisions for the Sedgefield rural residential Candidate Area (CA) outlined in Singleton Land Use Strategy (SLUS) 2008 and detailed in Sedgefield Structure Plan (SSP) 2009.

Part 2 – Explanation of Provisions

Since Singleton is not a prioritised council, the rezoning proposal needs to be progressed as an amendment to Singleton LEP 1996. It is considered that the provisions for subdivision of the subject land should be drafted as an enabling clause, incorporating the criteria outlined in the SLUS and detailed in the SSP. This will involve a minimum average of 5 hectares with an absolute minimum of 2 hectares to allow for conservation of native vegetation, and provision of building envelopes in existing cleared areas.

It is anticipated that the proposed Local Environmental Plan (LEP) will form an amendment to the Singleton LEP 1996, along the following lines:

1. Name of plan

This plan is Singleton Local Environmental Plan 1996 (Amendment No ??).

2. Aim of the plan

The aim of the plan is to permit subdivision of Lot 5 DP 1058431 into two lots, having a minimum average area of 5 hectares and an absolute minimum area of 2 hectares.

3. Land to which this plan applies

This plan applies to Lot 5 DP 1058431, being No. 208A Roughit Lane, Sedgefield.

4. Relationship to other environmental planning instruments

This plan amends Singleton Local Environmental Plan 1996 in the manner set out in Schedule 1.

Schedule 1

Singleton Local Environmental Plan in amended by inserting at the end of Schedule 4 the following matter:

Land being Lot 5 DP 1058431, Parish of Sedgefield, 208A Roughit Lane, Sedgefield – subdivision into two lots, having a minimum average area of 5 hectares and an absolute minimum area of 2 hectares.

Part 3 - Justification

Section A – Need for the planning proposal

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

Yes, the land was first identified in general terms in Council's draft Rural Residential Development Strategy 1993, and specifically, as part of the Sedgefield CA in Council's adopted and endorsed Rural Residential Development Strategy 2005. The Sedgefield CA, including the subject land is now included in Council's current adopted and endorsed SLUS 2008 and SSP 2009.

The subject land, with an area of 13.48 hectares, has the potential to realise one additional lot if permitted to be developed under the provisions of the SLUS and SSP.

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

The planning proposal is in accordance with the adopted and endorsed strategic planning documents (SLUS 2008 and SSP 2009) for the area. Consideration has been given to a number of options in preparing the provisions to implement the planning proposal. These include:

- Use of an Environmental Living Zone, such as the E4 Standard Instrument (SI) Zone;
- Use of State Environmental Planning Policy (SEPP) No. 1;
- Use of a general rural residential zone; and
- Use of an enabling clause.

Following discussions with the consultant planner preparing Council's comprehensive SI LEP and the Regional Office of DoP (after reporting the initial planning proposal to Council) it was determined that the use of an enabling clause would be the best way of achieving the intended outcome.

Use of the E4 (or similar) Zone would not be appropriate because nothing of special ecological, scientific or aesthetic value has been identified on the land. It would unnecessarily pre-empt the use of the zone in Council's draft comprehensive SI LEP and may needlessly restrict the use of the land.

Use of SEPP 1 was considered inappropriate because it would involve a 50%, or greater, reduction in the minimum lot size in the current 1(b) (Hobby Farms) Zone.

Use of current general rural residential zone, 1(d) – (Rural Small Holdings), or introduction of a new general rural residential zone was considered inappropriate because these zones are designed for estate style rural residential development, where some level of servicing, such as town water supply, is available.

It is therefore considered that the use of an enabling clause is the best way to achieve the intended outcome of the proposal, especially when taking into account that this is a transition period from the current Singleton LEP to the SI LEP. The enabling clause will allow this proposal to be progressed without impacting of either Council's SI LEP nor the use of rural residential zones in the current LEP to progress the larger rezoning proposals for Sedgefield which are already in the system.

3. Is there a net community benefit?

The subject site is one of several throughout the Sedgefield CA with potential to realise only one additional lot. Development of these lots in accordance with the SLUS and SSP will provide additional opportunity for environmental living. If this potential is not realised, the ability of the Sedgefield CA to supply market demand for hopefully the next 10 years will be significantly diminished. It is considered that the proposed rezoning will therefore result in a net community benefit.

Section B – Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

There is no regional or sub-regional strategy that applies to the land.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The planning proposal is consistent with the current, relevant strategic plans, which have been adopted by Council and endorsed by DoP. These are:

- Singleton Land Use Strategy 2008; and
- Sedgefield Structure Plan 2009.

Singleton Land Use Strategy (SLUS) 2008

The subject land lies within the Sedgefield Candidate Area (SCA). The SCA has been identified as being suitable for environmental living style rural residential development. The SLUS identifies a minimum average lot size of 5 ha, with an absolute minimum of 4 ha. However, in adopting the SSP, Council effectively reduced the absolute minimum for the SCA to 2 ha, whilst maintaining the minimum average of 5 ha. This was to allow more flexibility in vegetated areas, so that development could be clustered, and vegetation retained on larger lots.

The subject land has an area of 13.48 hectares, so the planning proposal will allow it to be subdivided to realize one additional lot.

Sedgefield Structure Plan (SSP) 2009

The SSP provides guidelines for rural residential development in the SCA to ensure that it is socially, economically and environmentally sustainable. The proposal is consistent with the SSP. In detail, the key areas for consideration are:

1. Biodiversity;
2. Erosion and salinity;
3. Bushfire;
4. Aboriginal Archaeology;
5. Traffic and transport;
6. Services and infrastructure;
7. Community facilities; and
8. Natural resources

Biodiversity:

The SSP 2009 details vegetation mapping which shows only one Endangered Ecological Community (EEC) within the SCA, being the Hunter Lowland Redgum Forest. The subject land does not appear to contain any of this EEC. The amount of native tree vegetation on the site is minimal and restricted to the south eastern portion. The site is characterised by large expanses of cleared land with adequate opportunity to site a building envelope with minimal impact on native vegetation.

Erosion and salinity:

The SSP 2009 identifies that erosion generally occurs in the SCA where there is little vegetation, or where there is timbered over-storey with little near surface under-storey. It is also widespread along gully lines.

The SCA generally has been identified as having potential for widespread salinity issues. Management strategies outlined in the SSP 2009 will need to be included in the Development Control Plan (DCP) that is prepared for the SCA and enforced during the assessment and development of the site.

Inspection of the subject land indicates that the property is in good condition and has not been significantly affected by erosion or salinity.

Bushfire:

The subject site is affected by Bushfire Buffer along the southern boundary and north eastern portion of the site. The majority of the site is free of bushfire hazard and can easily accommodate a dwelling envelop with complying Asset Protection Zones and on-site designated fire fighting tanks. It is envisaged that future development of the site will be able to comply with Planning for Bushfire Protection 2006.

Aboriginal archaeology:

The subject site has been used for farming practices for many decades and given the high level of disturbance and the minimal drainage lines, it is considered unlikely that

there would be significant archaeological deposits on the land. Further investigation will be carried out if required, including consultation with local Aboriginal stakeholders. If artefacts are located, they would be preserved on-site, pending further investigation or approval for removal obtained from the Department of Environment, Climate Change and Water.

Traffic and transport:

The subject site is accessed from Roughit Lane via an 800 metre long and 15 metre wide battle-axe handle to the subject allotment. The battle-axe handle contains a private road which consists of a 4 metre wide seal on 200 millimetres of gravel. The private road continues across the front and along part of the northern boundary of the subject lot to act as a right-of-way access to four additional 10 hectare lots which were subdivided off the subject land in 2003, following its rezoning to Rural 1(b) (Hobby Farms Zone). The total length of the private road is approximately 1200 metres.

Council's development engineer has advised that six lots gaining access off a right-of-way exceeds Council's standard, which is a maximum of five lots under the Design and Construction DCP and is reduced to four under Council's draft Singleton DCP. This advice says that supporting an additional lot with access off the right-of-way by rezoning Lot 5 DP 1058431 would set a precedent for Lots 1-4 DP 1058431, which could also be rezoned and subdivided, giving a total of 10 lots with access via the right-of-way. Lots 3 and 4 in DP 865430 also have frontage to the right-of-way and may wish to use it for future access. Further, the advice concludes that Council should require the access road to be redesigned and reconstructed to Council's current public road standard and increase the width of the access corridor to at least 18 metres. This would also require (amongst other matters) the pavement depth to be increased from 200 millimetres to approximately 450 millimetres of gravel.

Whilst the engineering comments and concerns are acknowledged it is considered that Council should support the concept of providing access to six lots off the right-of-way (ROW) as a one-off event due to the following exceptional circumstances of the case:

- Lots 1 and 2 in DP 1058431 are heavily vegetated and would not be able to subdivide in accordance with the Sedgefield Structure Plan, which requires the use of existing cleared areas for building envelopes;
- Lots 3 and 4 in DP 1058431 would be serviced from Big Ridge Lane (North End) if they were to rezone and subdivide (the Windt proposal provides a public road along the boundary of Lot 4);
- Lots 3 and 4 in DP 865430 have direct access from Roughit Lane and currently fall within the Department of Mineral Resources restricted area and cannot be subdivided, however, if this restriction were ever to be lifted, Lot 4 could be developed from the one access to Roughit Lane accessing the two potential lots. Lot 3 has potential to be subdivided into six lots if the Mineral Resources restriction is lifted and could be serviced, practically and economically by the provision of a public road to Council's standard;

- The existing ROW provides access to five properties, has been in service for a number of years and shows little, if any signs of depreciation. It was designed and constructed to Council's "Minor Rural Road" construction standard at the time as a condition of development consent (being a 6 metre wide formation with a 4 metre wide, 2 coat bitumen seal and a pavement thickness of 200 millimetres);
- To require the ROW to be ripped up and replaced by a public road, including widening the reserve, solely because Council refuses to be flexible on a development standard, would be a significant waste of resources given the special circumstances involved, and may well make the proposal unviable;
- Advice has been received on behalf of the proponent that a maintenance agreement is in place for current land owners who have ROW over the private road to share maintenance costs. This could be extended to include the proposed additional lot.

It is therefore considered that supporting this one-off proposal will not create an undesirable precedent.

The local road system in the area is adequate for any small increase in traffic generation which may result from the proposal.

Services and infrastructure:

The subject site is not serviced by town water. The future allotment would rely on rainwater collected from roof areas and stored in tanks, similar to other rural residential environmental living development in the area. Likewise, the land is not serviced by reticulated sewer. An on-site effluent disposal system would be used, similar to other dwellings in the area.

The provisions of the SLUS 2008 and SSP 2009 do not require provision of town water or reticulated sewer to this type of development.

The subject site is currently serviced by electricity, telecommunications, and garbage services. It is anticipated that these can be extended to cater for the additional allotment.

Community facilities:

Future residents will have access to the complete range of community facilities located in the Singleton Township. They will all be within about 15 minutes drive on sealed roads. Development contributions will be applicable under Council's Development Contributions Plan.

Natural resources:

The Department of Primary Industries (Minerals and Petroleum Division) has required a buffer zone to a potential open cut coal reserve in the area. This buffer

essentially sterilised land in the SCA within 800 metres of Roughit Lane. The subject site is outside this buffer area and is not restricted in regard to mineral resource issues.

6. Is the planning proposal consistent with applicable state environmental planning policies?

The planning proposal is not inconsistent with any applicable state environmental planning policy (SEPP). Future rural residential development of the site has the potential to be affected by the following SEPPs:

- SEPP (Building Sustainability Index: BASIX) 2004;
- SEPP (Exempt and Complying Development Codes) 2008;
- SEPP (Rural Lands) 2008.

Full consideration of the impacts of SEPPs will be considered at the development application stage. Discussion on the planning proposal's consistency with the rural principles under SEPP (Rural Lands) 2008 is provided below.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Section 117 directions that affect the proposal are outlined below:

Direction 1.2 – Rural Zones

The objective of Direction 1.2 is to protect the agricultural production value of rural land. This direction applies when a council prepares a planning proposal that affects land within an existing or proposed rural zone. In the case of Singleton Shire, the planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. A planning proposal may be inconsistent with the terms of this direction only if Council can satisfy the Director-General of DoP that the provisions of the planning proposal that are inconsistent are:

- Justified by a strategy that considers the objective of this directive, identifies the land and is approved by the Director-General, or
- Justified by a study prepared in support of the planning proposal, or
- In accordance with the relevant Regional Strategy prepared by the Department, or
- Is of minor significance.

As discussed earlier, the planning proposal is within the designated SCA for rezoning and is consistent with the DoP endorsed SLUS 2008 and SSP 2009. Enabling the subject land to be subdivided into two lots is also supported by this planning proposal, which identifies that there are minimal constraints to development and that the proposal is of minor significance.

It is considered that any inconsistency of the planning proposal with Direction 1.2 is justified.

Direction 1.5 – Rural Lands

The objectives of Direction 1.5 are to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural related purposes. This direction applies when a council prepares a planning proposal that affects land within an existing or proposed rural or environmental protection zone, and when a planning proposal changes the existing minimum lot size on land within a rural or environmental protection zone.

The Direction states that planning proposals must be consistent with the Rural Planning Principles listed in SEPP (Rural Lands) 2008, which are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- (b) recognition of the significance 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,
- (c) 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,
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,
- (e) 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,
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
- (h) ensuring consistency with any applicable regional strategy of the DoP or any applicable local strategy endorsed by the Director-General.

A planning proposal may be inconsistent with the terms of this direction only if Council can satisfy the Director-General that the provision of the planning proposal that are inconsistent are:

- justified by a strategy that considers the objectives of this directive, identifies the land and is approved by the Director-General, or
- is of minor significance.

As discussed above, the subject site is within the designated SCA for rezoning and the proposal is consistent with the DoP endorsed SLUS 2008 and SSP 2009. It is also of minor significance.

It is considered that the planning proposal is consistent with Direction 1.5.

Direction 2.3 – Heritage Conservation

The objective of Direction 2.3 is to conserve items, area, objects and places of environmental heritage significance and indigenous heritage significance. This direction applies when a council prepares a planning proposal.

The direction states that a planning proposal must contain provisions that facilitate the conservation of:

- items, places, buildings, works, relics, moveable objects or precincts of environmental heritage;
- Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1979; and
- Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and peoples.

The direction states that a planning proposal may be inconsistent with the terms of this direction only if Council can satisfy the Director-General of the DoP that:

- The environmental or indigenous heritage significance of the item, areas, object or place is conserved by existing or draft environmental planning instruments, legislation or regulations that apply to the land, or
- The provisions of the planning proposal that are inconsistent are of minor significance.

The planning proposal will not impact on any known items of environmental heritage. Further investigations would be required to establish whether there are any Aboriginal items or objects on site which require protection. It is envisaged that further investigation on this aspect of the planning proposal may be required. However, it is noted that there is sufficient land available to ensure any Aboriginal items or objects found would not be disturbed through creation of building envelopes or access roads. Should items or objects be discovered, provisions can be required to be included in the DCP for this part of the SCA.

It is considered that the planning proposal will be consistent with Direction 2.3.

Direction 4.4 – Planning for Bushfire Hazard

The objectives of Direction 4.4 are to protect life, property and the environment from bushfire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas, and to encourage sound management of bushfire prone areas.

The directive applies when a Council prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone.

The subject site is affected by Bushfire Buffer along the southern boundary and the north eastern portion of the site. The majority of the site is free from bushfire hazard and can easily accommodate a dwelling envelope with complying Asset Protection Zones and on-site designated fire fighting tanks. It is envisaged that future development of the site will be able to comply with Planning for Bushfire Protection 2006 and any subsequent proposal for subdivision will be supported by a Bushfire

Protection Assessment. It is intended to consult with the NSW Rural Fire Service following the Gateway determination in accordance with this direction.

It is considered that the planning proposal will be consistent with Direction 4.4.

Section C – Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The SSP 2009 details vegetation mapping which shows only one Endangered Ecological Community (EEC) within the SCA, being the Hunter Lowland Redgum Forest. The subject land does not appear to contain any of this EEC. The amount of native tree vegetation on the site is minimal and restricted to the south eastern portion. The site is characterised by large expanses of cleared land with adequate opportunity to site a building envelope with minimal impact on native vegetation.

It is considered that the flora and fauna on-site will be able to be protected and the planning proposal will not adversely affect the ecological qualities of the site.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no other likely environmental effects associated with this planning proposal.

10. How has the planning proposal adequately addressed any social and economic effects?

The planning proposal is consistent with the relevant Council strategies (SLUS 2008 and SSP 2009), which give consideration to social and economic issues in the identification of the Sedgefield Candidate Area and the provision of guidelines for its development. There are no other likely social and economic effects associated with this planning proposal.

Section D – State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

Services and infrastructure are discussed in Part 3 – Section B of this planning proposal. In conclusion, the proposal will only realise one additional allotment which will not place any significant demand on services and infrastructure.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

A response to this section will be provided following the gateway determination.

Part 4 – Community Consultation

The gateway determination will specify the community consultation requirements for this planning proposal. Given that the planning proposal is consistent with the relevant adopted and endorsed strategic planning framework and would only realise on additional allotment, it is considered likely that it would be classified as a “low impact planning proposal” and the minimum exhibition period of 14 days would apply.

Conclusion:

The planning proposal site is within the identified Sedgefield Candidate Area and is consistent with the Council adopted and DoP endorsed Singleton Land Use Strategy 2008 and Sedgefield Structure Plan 2009. The preliminary investigations undertaken for this planning proposal indicate that the subject site is suitable for subdivision into two lots with minimal constraints to development.

The use of an enabling clause will allow the objective of the planning proposal to be achieved, without pre-empting a suitable rural residential zone for the Sedgefield Candidate Area, which is yet to be determined.

Attachment 1



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Attachment 3

