



Dungog Shire Council

PLANNING PROPOSAL

Amendment to the Dungog Local Environmental Plan 2014

Lot 12 Sec 8 DP 758250

68 Grey Street, Clarence Town

Version 3

November 2021

Planning Proposal

Lot 12 Sec 8 DP 758250

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Version	Date
1 – Council Report for endorsement for Gateway Determination.	April 2021
2 – Gateway Determination Assessment	May 2021
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Introduction

Council has received a planning proposal to amend the Dungog Local Environmental Plan 2014 (DLEP) for the purpose of including Lot 12 Sec 8 DP 758250, 68 Grey Street, Clarence Town in Schedule 1 of the DLEP 2014 to allow the establishment of an interim service station on the land.

This planning Proposal has been prepared in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979* and the Department of Planning, Industry and Environments *Guide to preparing planning proposals*. A gateway determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979* has been sought.

Background and Locality Context

The subject site, Lot 12 Sec 8 DP 758250, known as 68 Grey Street, Clarence Town is located on the corner of Duke Street and Grey Street, Clarence Town. The subject site has an area of 2,089m² and is currently zoned R1 General Residential. The site is adjoining the B2 Local Centre corridor of the Clarence Town Local Centre, with adjoining land uses comprising of a residential dwellings, a bakery and mechanical business. The site is occupied by a single storey dwelling along the southern boundary of the site, with site access currently off Grey Street.

Duke Street is a main thoroughfare connecting to Durham Street, and Limeburners creek Road, which connects Clarence Town to the Bucketts Way, East Seaham Road and the Pacific Highway. Where the site is located, Duke Street and Grey Street intersect, with Grey Street, being the main street of the Clarence Town local centre that comprises the commercial development of the town.



Figure 1: Aerial image of subject site 68 Grey Street, located on the corner of Duke and Grey Street, Clarence Town

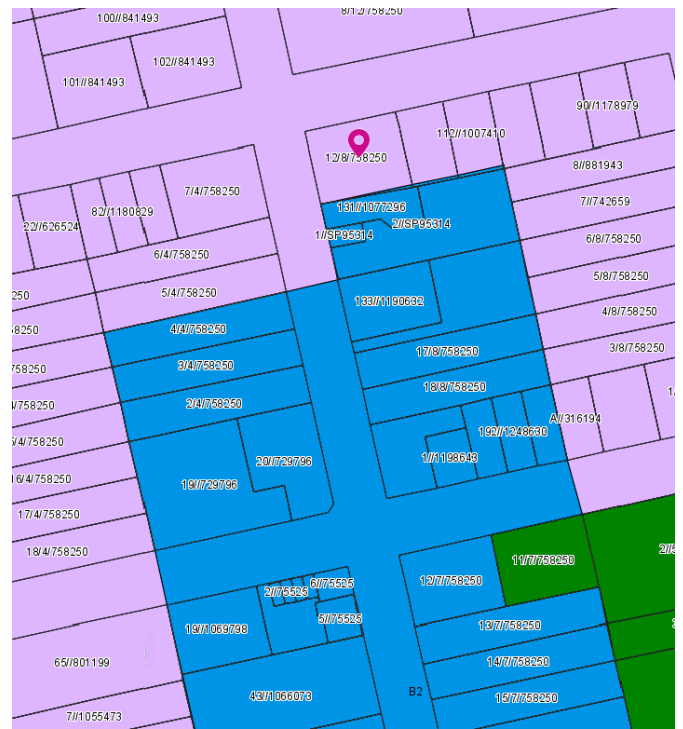


Figure 2: Location of Subject site and existing land zoning under the Dungog Local Environmental Plan 2014.

Part 1 – Objectives and Intended Outcomes

The intended outcomes of the Planning Proposal (PP) are to:

- (a) Enable a service station at 68 Grey Street, Clarence Town for an interim period.

Part 2 – Explanation of Provisions

The Planning Proposal seeks to amend the DLEP 2014 by the introduction of a new local provision in Schedule 1 – Additional Permitted Uses. The proposed local provision seeks to enable an interim service station on the subject site. Currently this is a prohibited use in the R1 General Residential Zone.

The interim service station would be a self-contained automatic fuel module that comprises of fuel tanks and dispensing mechanisms, all housed in a shell and situated completely above ground. The following restrictions are proposed to reinforce the interim nature of the proposal:

- The service station would not be permitted to include ancillary uses such as the sale or installation of spare parts and accessories, the cleaning of motor vehicles, repairs or servicing of motor vehicles or the selling or hiring of general merchandise and services.
- The service station would be limited to an above-ground facility capable of automatic operation with an area of not more than 25 m².
- Any development consent for a service station on the site must be granted within 5 years of the Additional Permitted Use being included in the DLEP.

The intended outcomes of the planning proposal will be achieved by amending the Dungog Local Environmental Plan 2014 (DLEP) to include a new local provision as follows:

- (1) New additional permitted use – Schedule 1 (Item 5)

The new additional permitted use will be inserted into Schedule 1 as an interim measure.

Proposed Item in Schedule 1

5 Use of certain land at 68 Grey Street, Clarence Town

- (1) *This clause applies to land described as Lot 12 Sec 8 DP 758250*
- (2) *Development for the purpose of a service station is permitted with development consent excluding subclauses (a) to (e) as defined in this Plan.*
- (3) *The service station used for the sale by retail of fuels must be an above-ground facility capable of automatic operation and not exceed a gross floor area (excluding canopy) of 25 square metres.*
- (4) *Development consent under subclause (2) must not be granted after 5 years from the commencement of this plan.*

Part 3 – Justification

Section A – Need for the Planning Proposal

Q1. Is the planning proposal the result of an endorsed strategic study or report?

No. The planning proposal is not the result of a strategic study or report, but is related to a specific localised matter. The proposed amendment responds to localised growth in the Clarence Town area as well as the provision of a necessary service. The interim measure proposed is in response to the absence of a strategic direction or economic report for Clarence Town.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes?

Yes. The subject site is currently zoned R1 General Residential wherein service stations are prohibited under the DLEP 2014. Given the absence of strategic direction for the localised area of Clarence Town or an employment lands study, the provision of an interim measure through the proposed amendment is the best means of achieving the intended outcomes.

The proposed clause for insertion in schedule 1 has been structured in a way that limits the development on the site to the extent of the fuel module that has been proposed by the proponent. As the proposed development is unlike a traditional services station and operates as an automatic above ground fuel dispensing machine, the fuel module lends itself to be a temporary installation as an interim measure.

By inserting a local provision, as an interim measure with an expiry date, means the proposal does not seek to pre-empt the outcomes of an employment lands study or permanently impact on the existing B2 Local Centre Corridor. As at this time, there is no strategic justification or basis for a permanent local provision for a service station on this site, or for a rezoning to allow for the land use without the local provision. In the absence of a strategic study or employment lands study and with the existing B2 Local centre Corridor underutilised commercially, due to residential development and constraints it is unknown at this time as to whether additional B2 Local Centre land would be required, and if so where this would occur. Without this, and economic analysis of Clarence Town, the approach of an interim measure, which the proposed development lends itself to, allows this work to be completed whilst providing the service to the community over the next 5 years. The subject site is in a suitable location for a service station given its position on the corner of two key routes through Clarence Town, however this position is also isolated from the existing commercial cluster located at the southern area of Grey Street. This is another reason for the interim measure as the boundaries of what should be the B2 local centre corridor has not been determined. In the instance that there is a basis for the provision of a service station in Clarence Town and this location is deemed suitable in the broader context of employment lands and the local Clarence Town economy, the local provision can be removed and the site rezoned if required, or has the additional permitted use amended to remove the timeframe and specific provisions.

Awaiting strategic direction and a broader review of employments lands and the local Clarence Town economy aligns with seeking to provide strategic justification for the proposed development, as without this there is limited strategic justification for a permanent local provision.

Section B – Relationships to strategic planning framework

Q3. Will the planning proposal give effect to an applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies?)

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 (HRP) identifies Clarence Town as a regionally significant centre in the context of the Dungog Local Government Area. The Planning Proposal is considered generally consistent with the directions of the HRP 2036 by providing a service to the community that does not seek to adversely impact upon biodiversity or economic values.

Relevant directions of the HRP for this proposal are;

Direction 20 – Revitalise Existing communities	The proposal seeks to enable the development of a service station that will provide a necessary service for the local community and visitors, which can prevent economic expenditure in other adjoining centres.
Direction 21 – Create a compact settlement	The subject site is located in the existing urban footprint of the Clarence Town local centre, adjoining the B2 Local Centre Corridor. This site is serviced by water, sewer, electricity and telecommunications, without impact to biodiversity values. Notwithstanding the location of the site within the Williams river Drinking Water Catchment, on site works can prevent any impacts to water quality. The position of the subject site adjoining the B2 Local Centre Corridor, though not utilised at full capacity for commercial purposes, seeks to reduce land use conflict by not placing a commercial use in the midst of residential development, but on a corner site in proximity to existing commercial uses.
Direction 24 – Protect the economic functions of employment land	The proposed amendment seeks to introduce the local provision for a service station as an interim measure, so to not impact upon the existing business corridor in Clarence Town or to potentially impeded upon economic development prior to the outcomes of an employment lands study. The proposed provision, restricts future development to the proposed fuel module, to ensure that the future development does not provide duplicate retail and services that existing businesses provide in the existing business corridor of Clarence Town.

Upper Hunter Strategic Regional Land Use Plan (2012)

The Upper Hunter Strategic Land Uses Plan is a sub-regional strategic plan providing a framework for key regional priorities over a 20-year span. As the plan is high level with a focus on significant regional priorities there is limited relevance to this planning proposal. Notwithstanding this, the proposal is consistent with the broader objectives of the plan regarding the provision of infrastructure and diversifying the local economy, and reducing land use conflict.

Q4. Will the planning proposal give effect to council's endorsed local strategy or strategic plan?

Dungog Shire Community Strategic Plan

2. Our Local Economy

The proposed amendment is consistent with the community values relevant to the Shires local economy, as the provision of a service station will provide ease of access to a service that is currently unavailable to the residents of Clarence Town and surrounding localities as well as visitors. The provision of the proposed amendment as an interim measure is to consistent as it does not seek to impact upon the existing economic functions of Clarence Town prior to a strategic direction, but also by restricting the development to not have an impact on existing retail premises in Clarence Town.

The Dungog Local Strategic Planning Statement – Moving Toward 2040

The proposal is generally consistent with the planning principles of the LSPS, in particular the below principles.

A Thriving New Economy: Planning principle 3 -Encourage new industry and economic development.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposal has been considered against the relevant State Environmental Planning Policies (SEPP) and is considered to be consistent with the below. Given the nature of the proposal there are limited relevant SEPPs.

SEPP 33 – Hazardous and Offensive Development

The proposed amendment has been tailored to fit the fuel module style development proposed by the proponent. This self-contained module meets Australian Standards for the storage of combustible liquids and is considered to be able to meet the provisions of SEPP 33 at the development application stage.

Q6. Is the planning proposal consistent with the applicable Ministerial Directions?

The proposal has been considered against the relevant Section 9.1 Ministerial Directions. An assessment of the proposal against relevant Ministerial Directions is provided below.

Direction	Comment
Employment & Resources	
1.1 Business & Industrial Zones	
Aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and to support the viability of identified centres. Applies when a planning proposal affects land within an existing or proposed business or industrial zone.	Not Applicable as the subject site is located on land zoned R1 General Residential.
1.2 Rural Zones	
Aims to protect the agricultural production value of rural land. Applies when a planning proposal affects land within an existing or proposed rural zone.	Not Applicable
1.3 Mining, Petroleum Production and Extractive Industries	
Aims to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development. Applies when a planning proposal would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restricting the potential of development resources of coal, other mineral, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	Not Applicable
1.5 Rural Lands	
Aims to protect the agricultural production value of rural land; and facilitate the orderly and economic development of rural lands for rural and related purposes. Applies to local government areas to which State Environmental Planning Policy (Rural Lands) 2008 applies and prepares a planning proposal that affects land within an existing or proposed rural or environment protection zone.	Not Applicable
Environment & Heritage	
2.1 Environmental Protection Zones	
Aims to protect and conserve environmentally sensitive areas. Applies when the relevant planning authority prepares a planning proposal.	Consistent. The proposal does not affect any lands zoned for environmental protection, as the site is located within the existing urban area.

2.3 Heritage Conservation	
<p>Aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Consistent.</p> <p>The proposal does not impact upon any items of heritage significance.</p>
2.4 Recreational Vehicle Areas	
<p>Aims to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	Consistent
Housing, Infrastructure and Urban Development	
3.1 Residential Zones	
<p>Aims to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services and to minimise the impact of residential development on the environment and resource lands.</p> <p>Applies when a planning proposal affects land within an existing or proposed residential zone, and any other zone in which significant residential development is permitted or proposed to be permitted.</p>	<p>Consistent.</p> <p>This direction applies as the proposed local provision is for inclusion on land zoned R1 General Residential. Though the proposal does not provide for additional housing, the proposal seeks to provide a service for existing residents, efficiently utilising an area currently underutilised in the residential zone.</p>
3.2 Caravan Parks and Manufactured Home Estates	
<p>Aims to provide for a variety of housing types and provide opportunities for caravan parks and manufactured home estates.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	Consistent.
3.3 Home Occupations	
<p>Aims to encourage the carrying out of low impact small business in dwelling houses.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	Consistent.
3.4 Integrating Land Use & Transport	
<p>Aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts to achieve: improving access to housing, jobs and services by walking, cycling and public transport; increasing choice of available transport and reducing dependence on cars; reducing travel demand; supporting efficient and viable public transport services; and provide for efficient movement of freight.</p> <p>Applies when a planning proposal creates alters or moves a zone or provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p>	Not Applicable

3.6 Shooting Ranges	
<p>Aims to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range, to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land, and to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.</p> <p>Applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.</p>	Not Applicable
Hazard & Risk	
4.1 Acid Sulfate Soils	
<p>Aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>Applies when a planning proposal applies to land having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps.</p>	Not Applicable
4.2 Mine Subsidence & Unstable Land	
<p>Aims to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.</p> <p>Applies when a planning proposal permits development on land which is within a mine subsidence district, or identified as unstable in a study, strategy or assessment undertaken by or on behalf of the relevant planning authority or other public authority and provided to the relevant planning authority.</p>	Not Applicable
4.3 Flood Prone Land	
<p>Aims to ensure: development on flood prone land is consistent with NSW Government's Flood Prone Land Policy and principles of the Floodplain Development Manual 2005; and provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.</p> <p>Applies when a planning proposal creates, removes or alters a zone or provision that affects flood prone land.</p>	Not Applicable
4.4 Planning for Bushfire Protection	
<p>Aims to protect life, property and the environment from bushfire hazards, and encourage sound management of bushfire prone areas.</p> <p>Applies when a planning proposal affects or is in proximity to land mapped as bushfire prone land.</p>	Not Applicable
Regional Planning	
5.10 Implementation of Regional Plans	
<p>Aims to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	Consistent.

5.11 Development of Aboriginal Land Council Land	
<p>Aims to provide for the consideration of development delivery plans prepared under the State Environmental Planning Policy (Aboriginal Land) 2019.</p> <p>Applies when the relevant planning authority prepares a planning proposal for land shown on the Land Application Map of the SEPP (Aboriginal Lands) 2019.</p>	This direction does not apply to the Dungog Local Government Area.
Local Plan Making	
6.1 Approval and Referral Requirements	
<p>Aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	Applicable
6.2 Reserving Land for Public Purposes	
<p>Aims to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where land is no longer required for acquisition.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	Not Applicable
6.3 Site Specific Provisions	
<p>Aims to discourage unnecessarily restrictive site-specific planning controls.</p> <p>Applies when the relevant planning authority prepares a planning proposal to allow particular development to be carried out.</p>	<p>Consistent.</p> <p>The proposed amendment is for the inclusion of a site-specific local provision the seeks to enable an additional permitted use on a site. The provision is specific in restricting the development to ensure there are not impacts on the existing B2 Local Centre Corridor in Clarence Town. However, these specifications in the proposed clause for inclusion in schedule 1 allow for the proposed development of a service station.</p>

Section C – Environmental and Social Impact

Q7. Is there any likely hood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

It is unlikely there will be any impacts to critical habitat or threatened species as the subject site is located in an existing urban setting and is generally clear of vegetation, notwithstanding the presence of some minor trees.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they being proposed to be managed?

Drinking Water catchment

The subject site is located in the Williams River Drinking Water Catchment, identified as Special Area Williams. Clause 6.10 Williams River catchment manages development in this special catchment area. Consultation with Hunter Water would be required as part of the development application process to ensure there will be no impacts to water quality in the drinking water catchment as a result of the development.

Bushfire

The subject site is not identified as being bushfire prone land.

Aboriginal and European Cultural Heritage Items

There are no items of Aboriginal Cultural Heritage or European Cultural Heritage on the site.

Contaminated Land and Acid Sulphate Soils

The site is not identified as contaminated land and is identified as Acid Sulfate Soils Class 5, any matters relevant to this are managed under Clause 6.1 Acid Sulfate soils of the DLEP 2014, however there are limited groundworks and ground disturbance proposed that would impact upon acid sulfate soils.

Flooding and Drainage

The site is not identified as flood prone land. Drainage and stormwater management can be achieved on site.

Q9 Has the planning proposal adequately addresses at social or economic effects?

Social Impacts

The provision of a service station does not seek to have adverse social impacts on the existing Clarence Town community as the proposal will be providing a service to the residents and visitors of Clarence Town.

Economic Impacts

An economic impact assessment has not been prepared with this proposal. As the proposal seeks to respond to a localised issue with the provision of an interim measure, it has been determined that an economic assessment would not be required for the proposal to proceed. The proposal will not be contributory to the local economy by providing employment or

increased revenue to the local area, but will provide a service. The economic impacts of the proposal will be limited to the existing B2 Local centre corridor as the proposal does not seek to provide for competing uses by providing for retail or additional services to that of the retail sale of fuel.

Section D – State and Commonwealth Interests

Q10. Is there adequate public infrastructure for the planning proposal?

There is adequate infrastructure available to the subject site to service the future development, with regard to reticulated water, sewer and electricity as well as telecommunications. The subject site is located on the corner of an existing road network.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The planning proposal has not yet been referred for a gateway determination wherein consultation with state agencies has not been specified. It is not anticipated that this proposal would require consultation with any commonwealth agencies.

Part 4 Mapping

Not applicable as there is no amendments required as part of this planning proposal.

Part 5 Community Consultation

Consultation with the community and State Agencies will be undertaken in accordance with the conditions of the Gateway Determination. Generally, the public exhibition period for a planning proposal is 28 days, which is in accordance with Councils Community Participation Plan, unless otherwise stated in the gateway determination.

Notice of the exhibition period will be on Council's website, the planning portal and the local newspaper, the Dungog Chronicle.

Part 6 Project Timeline

Below is an indicative timeframe for the progression of the planning proposal.

	April 2021	May 2021	June 2021	July 2021	Aug 2021	Sep 2021	Oct 2021	Nov 2021	Dec 2021	Jan 2021
Council report seeking endorsement										

to request a gateway determination										
Submit PP to DPIE with request for Gateway Determination										
Gateway determination issued										
Public Exhibition of PP and Agency Consultation										
Review of Submissions										
Report to Council to progress										
Forward PP to DPIE with request to make the LEP amendment										
Parliamentary Council and LEP made										

Part 7 Supporting Documentation

Doc. Number	Document
	Council Report – April Ordinary Meeting – 21 April 2021
	Council Meeting Minutes - April Ordinary Meeting – 21 April 2021
	Gateway Determination