

Dungog LEP 2006 - Lot 16 DP 865027 - Hanley Creek Road, Dungog (Amend No.15)

Proposal Title : **Dungog LEP 2006 - Lot 16 DP 865027 - Hanley Creek Road, Dungog (Amend No.15)**

Proposal Summary : **To rezone land from 1(a) Rural zone to R5 Large Lot Residential to facilitate approximately 215 lots.**

PP Number : **PP_2011_DUNGO_001_00** Dop File No : **10/21424**

Proposal Details

Date Proposal Lodged with DOP : **16-Mar-2011** Date Proposal Uploaded to Public Website : **12-Apr-2011**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **NSW Aboriginal Land Council
Hunter - Central Rivers Catchment
Management Authority
Office of Environment and Heritage
NSW Department of Primary Industries
- Agriculture
Energy Australia
Hunter Water Corporation
NSW Rural Fire Service**

Gateway Determination

Decision Date : **18-Apr-2011** Gateway Determination : **Passed with Conditions**

Due Date of LEP : **25-Apr-2014**

Implementation

Implementation Start Date : **25-Apr-2011** Exhibition Duration : **30**

Agency consultation consistent with recommendation : **Yes**

If No, comment :

Agency Objections : **No**

If Yes, comment : **No objections or substantial issues were raised, with agencies generally recognising that further work or involvement would be required as part of the detailed planning that would occur at the DA stage (eg Rural Fire Service involvement with bushfire planning for subdivision).**

An issue identified at Gateway was consistency with the Rural Lands SEPP and s117 direction 1.2 Rural Zones, as the PP was potentially inconsistent with both. Consultation with the Department of Primary Industries (DPI Agriculture) was therefore required.

DPI made two submissions on the PP to Council (see Tag Hanleys Creek PP - DPI) raising issues but not objecting to the PP. The first submission stated

- the PP was not consistent with the subdivision principles of the Rural Lands SEPP;
- is not consistent with planning objectives to contain urban growth within or adjoining existing residential centres; and
- the PP contains little discussion regarding the significance of agriculture in the locality or the site.

The second submission appears to be in response to Council advice regarding the strategic assessment process Council used to identify possible rural residential zoned areas in Dungog LGA. DPI noted that it:

- supports strategic investigations for determining rural residential zoned areas which align with the strategic direction provided by the Department and the objectives of s117 direction 1.2 Rural Zones; and
- if the proposal is consistent with the above strategic approach then it has no further comment regarding the proposal.

As the DPI advice was inconclusive, the Department sought further confirmation from DPI and an additional two submissions were received (see Tag Hanleys Creek PP - DPI) raising the following matters:

- limited discussion on the value of the land for agricultural production or its value within the broader regional agricultural context;
- concern about the future direction of development in the LGA because this site was not identified as the primary candidate site as part of a shire-wide study;
- potential for land use conflict with existing agricultural operations;
- DPI supports a strategic approach to identifying potential rural-residential locations;
- DPI prefer rural-residential to be located near or close to existing urban settlements however due to limited sites closer to Dungog, the proposal could provide growth for the Dungog township; and
- DPI requests that the lot yield be maximised and that the subdivision design reduce the visual footprint and potential for land use conflict with existing agricultural operations.

The Department has considered DPI's comments and notes the following:

- Dungog Council has employed a strategic approach to considering rural-residential in the Dungog locality. Its shire-wide Land Use Strategy (LUS, 2010) identifies Council's preference for this site to be developed. The LUS was informed by studies (including a dwelling demand analysis and rural-residential sites investigation) with community and agency input.
- The LUS does not identify a primary candidate site but does identify this site. Demand for at least 250 rural-residential dwellings is anticipated by 2031. This site, along with three others, are identified as preferred locations for meeting demand. Without this site there would be a substantial shortfall.
- By nominating specific sites other rural areas should be protected from redevelopment pressure in the future. If considered in the context of the broader 337 ha site, then the loss of this class 3 land equates to 0.5% of all class 2 and class 3 agricultural land in the LGA. (Note: figure sourced from Council's Dungog Town Rural Residential Environmental Study 2009).
- DPI acknowledges that there are limited sites closer to the township that could be developed for rural-residential. This position is supported by the Dungog Town Rural Residential Environmental Study 2009 which informed the LUS and identifies the present site as a preferred location for rural-residential.
- Regarding increased lot yield and subdivision design, DPI's advice has been provided to Council for its consideration should the proposal progress to the development application stage.

Documentation consistent with Gateway :

Yes

If No, comment :

COMPLIANCE WITH THE GATEWAY DETERMINATION (GD):

The GD provided the PP amend the draft comprehensive LEP and required the following:

- prepare a draft LEP zone map and minimum lot size map per the Department's technical guides;
- address inconsistencies with s117 direction 1.2 Rural Zones and consult with Department of Primary Industries;
- community consultation for 28 days;
- consult with the Aboriginal Land Council, Catchment Management Authority, Department of Primary Industries, Energy Australia, Hunter Water Corporation, NSW Rural Fire Service, Office of Environment & Heritage;
- no public hearing is required under s.56(2)(e); and
- complete the PP within 12 months (ie 25 April 2012).

The GD has been amended twice. The first amendment was to extend the completion date to 26 April 2013. The second was to further extend the completion date (to 26 January 2014) and to note the PP may also amend the existing Dungog LEP 2006. Council has complied with the GD conditions, noting the subsequent GD amendments.

Council has modified the PP since it was considered by the Gateway. Originally the PP affected a 337 ha site and was to provide 215 rural-residential dwellings as well as golf course, conference centre and sports field.

The PP now only relates to the 150 ha part of the site as identified in Council's LUS. It is to be zoned R5 Large Lot Residential with a 8,000 sq.m minimum lot size and would provide approximately 115 dwellings. The PP remains consistent with the intent and purpose of the GD.

CONSISTENCY WITH SEPP (Rural Lands) 2008 and s117 DIRECTIONS 1.2 RURAL ZONES and 1.5 RURAL LANDS:

The Gateway identified the proposal as being potentially inconsistent with this SEPP and s117 direction 1.2 Rural Zones, and required consultation with DPI occur. Inconsistency was also raised as an issue by community objectors to the Department/ Minister.

Also relevant is s117 direction 1.5 which requires the PP to be consistent with both the rural planning principles and rural subdivision principles of the Rural Lands SEPP.

The following assessment details consistency with the Rural Lands SEPP principles and consistency with s117 directions 1.2 and 1.5.

Rural Planning Principles:

The PP is broadly consistent with several of the Rural Planning Principles ie Council has sought to balance social/ economic/ environmental interests (principle 7(d)), it has sought to protect natural resources and avoid constrained land (principle 7(e)) through its Land Use Study process, the proposal would provide for rural lifestyle opportunities (principle 7(g)), and Council has considered impacts on services/ infrastructure (principle 7(g)) as part of its rural-residential future sites selection process.

However, the PP could also be considered inconsistent with principle 7(a), principle 7(b) and principle 7(c) because, in isolation, the PP does not support the promotion/ protection of agriculture or its significance to rural communities because it would rezone a site zoned for rural purposes to residential.

These inconsistencies however are considered minor. Council has adopted a strategic approach to considering rural-residential development in the Dungog locality, consistent with that identified by DPI. Having identified housing demand for at least 250 rural-residential dwellings by 2031, Council's LUS identifies this site (along with three others) as preferred locations for meeting demand. Without this site there would be a substantial shortfall.

Further, by nominating specific sites for rural-residential other rural areas should be protected from redevelopment pressure in the future. The redevelopment of this 150 ha site equates to a loss of about 0.1% of the 150,000 ha of agricultural land estimated to be in the LGA. Alternatively, if considered in the context of the broader site (337 ha) and higher value agricultural land (classes 2 & 3), then the loss equates to 0.5% of all higher value agricultural land in the LGA. (Note: figures sourced from Council's Dungog Town Rural Residential Environmental Study 2009).

Rural Subdivision Principles:

As with the Rural Planning Principles, the PP is broadly consistent with several but not all. Council has considered means of minimising land use conflicts (8(b)), the nature of existing holdings and planned rural-residential supply (8(c)) as well as constraints and dwelling opportunities (principles 8(d)&(e)). However, the PP would result in the fragmentation of a 337 ha rural site (principle 8(a)) and so is inconsistent (the existing minimum lot size is 120 ha).

This inconsistency is considered minor for the same reasons discussed regarding the Rural Planning Principles.

s117 directions:

The PP is inconsistent with s117 direction 1.2 Rural Zones because it rezones rural land to residential (subclause 4a) and direction 1.5 because it is not consistent with the principles of the Rural Lands SEPP (clauses 4 & 5).

However, these inconsistencies are considered minor when considered in the broader context of what the PP would help achieve. Council has gone through a strategic process to evaluate the need to provide for rural-residential and then to identify this site as a preferred location for supply. In doing so, this should help protect the agricultural production value of rural land elsewhere. This approach is generally consistent with the strategic approach referred to by DPI and the intent of the s117 directions.

As a result, the DG should agree that the inconsistencies with direction 1.2 Rural Zones and 1.5 Rural Land is of minor significance per the terms of those directions.

ISSUES RAISED IN SUBMISSIONS TO COUNCIL:

Council advises 31 submissions were received, including 13 in support of the proposal. The submissions have been adequately considered by Council. In responding to submissions, Council recognises the trade-offs associated with the proposal and identifies mitigation measures which would be further refined through the DA process. The Department supports Council's approach. A summary of the submission issues reported by Council, and its response, is provided below.

1. Land Use Conflict

Issue summary:

The proposed large lot residential development may conflict with the existing agricultural activities in the locality. (Note: Council does not specify what uses are currently occurring beyond stating that few agricultural enterprises exist in close proximity to the site. It is understood from community correspondence to the Department that at least some land is used for cattle and horse grazing).

Council response:

Council acknowledges the potential for conflicts to arise, however it considers these impacts can be reduced/ mitigated through DA conditions relating to design and ongoing land management. The physical separation between the site and existing uses, vegetation buffers and special s149 certificate notification (on new residential lots) are identified by Council as means of further managing impacts.

2. Visual Amenity

Issue summary:

The development would adversely alter the existing rural vistas experienced on approach to Dungog. Further, the development would detrimentally impact on existing rural amenity and scenic quality.

Council response:

Council recognises the development would reduce the visual amenity of the area however it also notes that the proposal would increase housing supply/ choice and result in socio economic benefits through increased population close to the town. Visual mitigation measures have been identified through a Visual Assessment and Council indicates this would inform the development of a DCP for the site prior to any development application approvals. (Note: presumably the DCP would apply at the subdivision stage and may apply to those dwellings subject to a DA with Council. Dwellings progressed under the Codes SEPP would generally not be subject to the DCP requirements).

3. Loss of Prime Agricultural Land

Issue summary:

Loss of prime agricultural land would result from the proposal.

Council response:

Council notes the land is not prime agricultural land (class 3), rather it is consistent with the quality that makes up a large proportion of rural land in the LGA. While land would be lost for rural-residential, Council states this amounts to less than 0.5% of productive land in the LGA and therefore any loss is minimal. It also notes that the development of this site is in keeping with its LUS which seeks to protect rural land in the long term by identifying specific areas such as this site for rural residential, thereby protecting those other rural areas for production.

4. Concern with Process

Issue summary:

This issue relates to community confusion created by the site's inclusion/ exclusion from the LUS, the PP process and subsequent amendment, and the associated consultations. (Note: the site was excluded from Council's LUS then re-instated. Throughout the LUS and the PP processes, the landowner however was proposing a larger development including 215 dwellings with conference and recreation facilities. The proposal changed during the PP process, prior to exhibition, to only include part of the site and for 115 dwellings only).

Council response:

Council acknowledges the potential sources of confusion, but states it has followed the legislated process for PPs.

ISSUES RAISED WITH THE DEPARTMENT/ MINISTER:

Correspondence has been provided from the community to both the Department and the Minister objecting to the proposal. The issues raised and the Department's response are as follows.

Land use conflict, visual amenity, loss of prime agricultural land:

Some adverse impacts may result from the proposal and Council has indicated it would pursue mitigation measures to minimise these impacts. Examples include placing notification on s149 certificates for future rural-residential lot owners about possible land use impacts of nearby agriculture, landscape treatment along Hanleys Creek Road, etc. Further refinement of these measures would occur as part of the DA and DCP processes, with input from the community.

Confusion about process:

The Department acknowledges the potential for confusion through the multiple planning processes Council has progressed relating to this site (Council's LUS, Planning Proposal) and that the proposal has changed from a rural-residential/ tourist/ recreation proposal to just a rural-residential proposal over the course of the PP.

This said, in terms of the statutory process as it relates to the Planning Proposal, which is the subject of this assessment, Council has complied with the requirements of the Act and the Gateway Determination.

The proposal is unnecessary due to an oversupply of rural-residential land:

The Department has not issued Council with specific guidance regarding dwelling types or targets beyond the generic advice in the Upper Hunter Strategic Regional Land Use Plan (discussed later). Notwithstanding this, Council undertook its own supply investigations which confirmed demand in the Dungog locality and a supply shortage. This site was identified as a suitable location for supply as part of Council's LUS.

Inconsistency with Rural Lands SEPP, s117 direction 1.2 and inadequate consultation with DPI:

These matters have already been discussed in this report.

CONSISTENCY WITH THE UPPER HUNTER SRLUP:

When planning for rural residential development, the SRLUP requires its settlement planning principles be considered. While not specifically referred to by Council, the matters identified in the principles have been broadly considered by Council through its preceding strategic planning process and through the progression of this PP.

In terms of principles, Council considered infrastructure and service access/ demand when it considered potential rural residential sites as part of its Dungog Town Centre Rural Residential Environmental Study. Similarly, the matters relating to responding to the character of an area, land use conflict and environmental/ cultural constraints have been investigated through the studies undertaken by Council as part of the PP process (eg visual, riparian, flood,

heritage, soils).

Should the plan be made, the matters the principles identify would continue to be considered through DA and DCP processes. Specific measures would be determined for managing adverse impacts and land use conflicts, as well as examining opportunities for walk/ cycle and recreation/ open space. This would involve collaboration between the proponent and Council, with input from the community.

PC OPINION AND COMPREHENSIVE LEP

A PC Opinion was issued on 7 March 2014 and the draft LEP was accepted by Council. The draft LEP was to amend the Dungog LEP 2006. However, due to delays with the draft LEP, the amendment is now to be included in the draft comprehensive LEP. It will now be finalised as part of the comprehensive LEP.

DELAYS IN FINALISING THE PROPOSAL

Delays following the issuing of the PC Opinion are the result of outstanding DPI advice. Final advice from DPI was received on 30 April 2014.

LEP Assessment

Date Received from RPA : 17-Dec-2013

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP : 05-Mar-2014

Determination Date :

Determination Decision :

Notification Date :