

Our Ref: DWEE2021/0051
Contact: Ross Jauncey



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**Lee Environmental Planning
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Dear Sir/Madam

Re: Dwelling Entitlement Search DWEE2021/0051
Property: Part Lot 11 DP 1226788
Part Lot 11 DP 1226788 – 659 OLD SOUTH ROAD MITTAGONG NSW 2575

I refer to your recent request for a dwelling entitlement search on Part Lot 11 DP 1226788
Part Lot 11 DP 1226788 – 659 OLD SOUTH ROAD MITTAGONG NSW 2575. Council trusts the following letter responds to your enquiry.

It is advised the site is zoned E3 Environmental Management under the *Wingecarribee Local Environmental Plan 2010*, where the minimum lot size for subdivision and the erection of a dwelling house on a parcel of land is 40 hectares. The lot in question has a lot size of 37.26 hectares. The provisions pertaining to the erection of a dwelling house on this lot is contained within clause 4.2A of the LEP, in particular sub clause 3 which states:

Clause 4.2A

- (3) *Development consent must not be granted for the erection of a dwelling house or dual occupancy on a lot in a zone to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot is:*
- (a) a lot that is at least the minimum lot size specified for that lot by the [Lot Size Map](#), or*
 - (ab) a lot created under clause 4.2C (3) (a) or clause 4.2C (5) (b), or*
 - (ac) a lot resulting from a subdivision permitted under clause 4.6, or*
 - (b) a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or*
 - (c) a lot resulting from a subdivision for which development consent (or its equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (d) an existing holding.*

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Note. A dwelling cannot be erected on a lot created under clause 9 of [State Environmental Planning Policy \(Rural Lands\) 2008](#) or clause 4.2.

Council has undertaken a detailed historical records search to find out the purpose of the lot and determine whether any of the criteria in clause 4.2A(3) of the LEP are able to grant a dwelling entitlement.

4.2A(3)(ac) answer

The lot was created by LUA09/1043 (as a lot resulting from a subdivision permitted under clause 4.6 of the *Wingecarribee Local Environmental Plan 2010*) and therefore attracts a dwelling entitlement under clause 4.2A(3)(ac).

Consequently, Council has the legal ability to consider a development application for a permissible residential use on the land. Any development application would of course, be subject to suitability matters, including but not limited to:

- The submission of a satisfactorily completed development application form;
- Notification of the proposal in accordance with Council's advertising policy, and the satisfactory resolution of any objections received;
- Consideration being given to the relevant clauses in the LEP (notably clause 4.2A as the application would be for a permissible residential accommodation use, clause 5.9 if trees are proposed to be removed, clause 7.3 if any earthworks are proposed);
- Location of residential building/s on the site which demonstrate sound compliance with the Rural Lands/Rural Living Development Control Plan, particularly B2.1 Siting, Design and Landscaping of Residential Development;
- Consideration of any stormwater (quality and quantity) management requirements;
- Consideration of any effluent management requirements;
- Consideration of any flora and fauna impacts the development may have on the vegetation areas on the site;
- Consideration of any bushfire construction compliance with the NSW RFS Planning for Bushfire Protection 2006: and
- A merits based assessment of the proposal under section 79C of the *Environmental Planning and Assessment Act 1979*.

The above advice has been provided based on the legislation currently affecting the subject land, and is correct at this point in time. The written LEP and associated maps are available the following website, where you should browse "W" under EPIs in force: www.legislation.nsw.gov.au.

If any additional information is required regarding the above, please contact assessing officer on (02) 4868 0888.

Yours sincerely,

Ross Jauncey
Development Assessment Officer
Planning, Development and Regulatory Services