



# **Ordinary Meeting of Council**

**23 May 2018**

**UNDER SEPARATE COVER  
ITEM 12.2 ATTACHMENTS**



**QUEANBEYAN-PALERANG REGIONAL COUNCIL  
ORDINARY MEETING OF COUNCIL**

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# QUEANBEYAN-PALERANG REGIONAL COUNCIL

## Council Meeting Attachment

23 MAY 2018

ITEM 12.2 REZONING AND DWELLING ELIGIBILITY REQUESTS

ATTACHMENT 1 LOT 1154 DP 136392 TARAGO ROAD

**Lot 1154 DP 136392, Tarago Road (Attachment 1)**

*Request*

The property owners of Lot 1154 DP 136392 are seeking the ability to erect a dwelling on the lot (Attachment 1). The location of the lot is shown in Map 1.



Map 1 Location of Lot 1154 DP 136392

*Description of the land*

Lot 1154 and 1155 DP 136392 are zoned RU1 Primary Production with a minimum lot size of 80 hectares under the PLEP. In the preparation of the PLEP the provisions from the YLEP 2002 for these lots were transferred across. Lot 1154 is 14.5 hectares and Lot 1155 is 14.9 hectares.

Lot 1154 contains native vegetation and an area where flowers are grown for business purposes. Clause 6.3 Terrestrial Biodiversity of the PLEP requires consideration as the lot is shown in the Terrestrial Biodiversity map. The entire lot is shown as being bushfire prone. The lot is not within a drinking water catchment under the PLEP.

#### *Background*

A development application and variation under *State Environmental Planning Policy No 1—Development Standards* was submitted to Council in December 2012 to erect a dwelling on Lot 1154 DP 136392. The application sort to vary the required minimum lot size required for the erection of a dwelling. Clause 24(1) (a) of the YLEP 2002 required a minimum lot size of not less than 80 hectares for land within Zone 1(a).

At the meeting of Council on 2 May 2013, Council resolved (Minute No.102/2013) to refuse the development application for the following reasons:

1. the application is prohibited by clause 24(4) of the *Yarrowlumla Local Environmental Plan 2002*;
2. the objection under State Environmental Planning Policy No 1 is not well founded;
3. granting of consent would not be in accordance with the aims of State Environmental Planning Policy No 1;
4. the development is inconsistent with the objectives of the Yarrowlumla LEP 2002;
5. the development is inconsistent with the provisions of the Yarrowlumla DCP Rural Zones;
6. the development is not in the public interest;
7. approval of the variation of the development standard would create an undesirable precedent, and
8. the development does not comply with the principles of Ecologically Sustainable Development.

A request for consideration of the matter in the preparation of the draft PLEP was submitted in March 2013 (Attachment 2).

#### *Property history*

Lot 1154 and 1155 DP 136392 were previously identified as Portions 54 and 55 in the Parish of Currandooly. A new deposited plan was issued in 1998 as a result of road widening. The lots were created by a subdivision, they were part of the original Crown division of the Parish of Currandooly at some time prior to 1888. They are shown on the 1888 2nd Edition of the Currandooly Parish Map which is the earliest parish map available on the NSW Land and Property website.

There were five lots in this area of the Crown division that were slightly less than 40 acres (16.1874 hectares) which was common at the time. The two lots were part of the large 'Werriwa' farming property until sold as a pair in 1972. They changed hands (as a pair) at an unknown date prior to 1995 and were then purchased (again as a pair) in 1997 by the current property owners.

On 18 May 2005, development consent was granted to the erection of a dwelling house on Lot 1155 DP 136392 (2005/DEV-069). The dwelling entitlement which allowed this consent to be granted derived from Lot 1154 and 1155 together constituting a vacant '1995 holding' as defined under the YLEP 2002. The permissibility of dwelling houses on land within Zone 1(a) General Rural (which includes the subject land) was controlled by clause 24 of the YLEP 2002. It includes the following subclause:

- (1) The land on which it is proposed to erect a dwelling house within Zone No 1 (a) must:
  - (a) be a vacant allotment having an area of not less than 80 hectares. However, this paragraph allows the erection of a dwelling house only if it will not generate

- demands for the provision of services which, in the opinion of the Council, cannot be economically provided, or
- (b) be a vacant 1995 holding on which a dwelling house could have been lawfully erected immediately before the appointed day, or
  - (c) be a lot in a subdivision consented to in accordance with clauses 18 and 19, or
  - (d) be a lot in a subdivision which was consented to or approved by the Council before the appointed day and which met the requirements for erecting a dwelling house that applied at the date the subdivision was consented to or approved.

Prior to granting consent to the development application in 2005, Council had to be satisfied that one of these pre-conditions could be met. As Lot 1155 DP 136392 was less than 80 hectares the requirements of subclause (a) could not be met. As the lot was not created through a subdivision under clauses 18 and 19 of the YELP 2002 subclause (c) was not applicable. Subclause (d) was also not applicable as the lot was not created in a subdivision approved by Council prior to the gazettal of the YLEP 2002. The creation of a new Deposited Plan associated with the work on Tarago Road does not constitute a subdivision approved by the Council.

Council was able to grant consent to the application for a dwelling house on Lot 1155 in 2005 under clause 24(1)(b) as the property owners also owned Lot 1154 and the two lots together constituted a '1995 holding'. Under the YELP 2002:

a 1995 holding means:

- (a) except as provided by paragraph (b)—an allotment, portion or parcel of land in existence at the date of gazettal of *Yarrowluma Local Environmental Plan 1993 (Amendment No 6)* (13 October 1995), as a separate allotment, portion or parcel, or
- (b) where, as at the date of gazettal of *Yarrowluma Local Environmental Plan 1993 (Amendment No 6)*, a person owned 2 or more adjoining or adjacent allotments, portions or parcels of land having access to a public road—the land comprised of the aggregation of the areas of those allotments, portions or parcels, but does not include land held under the Crown Lands Act 1989.

Council's records show that Lots 1154 and 1155 DP 736392 were held in the same ownership at the critical date and therefore together they form a '1995 holding'. It should be noted that if the lots had not been in the one ownership when the application was determined, consent could not have been granted, since neither lot on its own could meet any of the requirements of clause 24(1). As a consequence the consolidation of the two lots comprising the '1995 holding' was required by condition no. 8 of the development approval for the dwelling house.

In 1997, a section 149 certificate was issued that stated that a dwelling was permissible on the combination of the two lots ('1995 holding').

Council's records show that Lots 1154 and 1155 DP 736392 have not been consolidated. If the lots had been consolidated it would not be possible to erect a dwelling on Lot 1154 (as a separate lot), however, it would be possible to erect a dual occupancy.

#### *Discussion*

As with similar requests seeking the ability to erect an additional dwelling with consent in areas zoned RU1 Primary Production, it is suggested that an additional dwelling creates demand for hard and soft infrastructure. Without a strategic approach to the provision and management of infrastructure it will be problematic for state and local government. Additionally, the precedent set by an amendment will likely result in further requests across the local government area.



*Assessment against the Rural Lands Strategy*

*Is the land an anomaly with regard to the current land use or are there other factors that warrant one-off support?*

The land is not an anomaly in regard to land use. There is a dwelling on Lot 1155 DP 736392 as it is part of a '1995 holding' in association with Lot 1154. There is also a cut flower business on Lot 1155 DP 736392, both these land uses can continue to occur without an amendment to the PLEP.

*If the proposal is not an anomaly or justified on special grounds as an ad hoc rezoning, the proposal must fit a broader pattern of logical extension of development. For example, fit a logical extension of an existing small properties zone or form part of a potential new zone.*

There is no E4 Environmental Living land use zone within the vicinity of Lot 1154. There are two community title developments on Tarago Road closer to Bungendore however, the lots in these developments are considerably smaller.

*If it is possible to support the proposal, what ranking and timeline should be set for the particular proposal? Is there sufficient data from the applicant or should more be supplied to finalise a decision?*

It is recommended that the proposal not be supported.

*Will the development of the land be self-funding with regard to adequate road access, power and bushfire protection measures?*

A development contributions for roads would be payable. Tarago Road is sealed. It is likely that power is provided to the existing dwelling on 1155 DP 736392. As stated above, Lot 1154 is bushfire prone.

*Does the proposal add benefit to the Queanbeyan-Palerang LGA i.e. not just a commuter satellite for Canberra?*

The additional dwelling does not add a substantial benefit to the local government area. Additional residents would increase the social capacity of the Queanbeyan-Palerang LGA.

*Recommendation*

It is recommended that the request not be progressed.

