

QUEANBEYAN-PALERANG REGIONAL COUNCIL

Council Meeting Attachment

23 MAY 2018

ITEM 12.2 REZONING AND DWELLING ELIGIBILITY REQUESTS

ATTACHMENT 2 SUBMISSION AND SUPPORTING DOCUMENTS - LOT 1154,
DP 136392, TARAGO ROAD BUNGENDORE

Submission to the Draft Palerang Local Environment Plan 2012

Address or property description to which the submission pertains:-

Lot 1154, DP 136392, Tarago Road, Bungendore.

Applicants: [REDACTED]

Blackwood Park, Tarago Road, Bungendore.

March 7, 2012

INDEX

Proposal	Page 3
Reason for submission	Page 3
Background to this submission	Page 5
Consistency with Planning Objectives...	
under the Draft PLEP 2012	Page 9
Other Justifications for the Submission	Page 12-22
	<ol style="list-style-type: none"> 1. AC classification is inappropriate for Lot 1154; 2. Dwelling on Lot 1154 is consistent with the settlement pattern of the locality; 3. History of dwelling house suitability on Lot 1154 & Council's misrepresentations of its creation; 4. Examples of other similar approved submissions/SEPPs; 5. Consistency with Planning Objectives for 15 years under Yarrowlumla LEP 2002; 6. Consolidation/consent issue of 2005 DA explained; 7. Precedent not an issue in this case; 8. Exigent circumstances for Lot 1154 and, 9. Effects of obfuscation by Council staff
Map showing Plan of Settlement Lot 1154	Page 13
Conclusions	Page 22
Letters of Support of proposal from Community	Page 23
Deed confirming 1927 creation of Lot 1154	Page 32
Flora and Fauna Report Lot 1154	Page 33
Soil and Effluent Report Lot 1154	Appendix
Statement of Environmental Effects	Appendix

Proposal:

The purpose of this submission is to have a dwelling house deemed permissible, with consent, on Lot 1154, DP 136392, Tarago Road, Bungendore, under Clause 2.5 (Additional permitted uses for particular land) under the *Draft PLEP 2012*.

And, as such, have the subject lot listed in Schedule 1 of the *Draft PLEP 2012* as having an additional permitted use.

Clause 2.5 of the *Draft PLEP 2012* states development on particular land that is described, or referred to in Schedule 1, may be carried out:

- (a) with development consent, or;
- (b) if the Schedule so provides—without development consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.

This clause has effect despite anything to the contrary in the Land Use Table or any other provision of the Plan.

Reason for submission:

Under the *Draft PLEP 2012*, Lot 1154, DP 136392 is zoned RU2 (Rural Landscape), and classified AC under the *Draft PLEP 2012* Lot Size Maps.

Draft PLEP 2012, Part 4.2, Clause 3: Erection of dwellings on land in certain residential, rural and environmental protection zones [local] states:

Development consent must not be granted for the erection of a dwelling on a lot in a zone to which this clause applies, and on which no dwelling has been lawfully erected, unless the lot is:

- (a) a lot that is at least the minimum lot size specified by the Lot Size Map, or;
- (b) a lot created in accordance with clause 4.1, 4.1A, 4.1AA, or 4.1B of this plan, or;
- (c) a lot created before this Plan commenced, and on which the erection of a dwelling was permissible immediately before that commencement, or;
- (d) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling would have been permissible if the plan of subdivision had been registered before that commencement, or;
- (e) an existing holding.

In this instance, the minimum area of land on which it is proposed to erect a dwelling on land classified AC under the *Draft PLEP 2012* Lot Size Maps, is 80ha; as set by

the relevant draft development standard - this being Clause 4.2 3(a) of the *Draft PLEP 2012* as set out above.

Clauses 4.2(3) (b)(c),(d),(e) cannot be relied upon in this submission for the following reasons:

a) The subject site is only part of a 1995 holding as advised by the Section 149 certificate issued by Palerang Council on September 26, 2012, therefore clause 4.2(3)(e) cannot be relied upon.

b) Clause 4.2(3)(b) cannot be relied upon as Lot 1154 was not a subdivision under clause 4.1, 4.1A ,4.1AA, or 4.1B.

c) Clause 4.2(3) (c&d) cannot be relied upon as the lot was not part of a subdivision that was consented to or approved by the Council before the appointed day.

The development proposal is to erect a dwelling on 14.49 hectares of land within Zone RU2 (Rural Landscape) that has been used for 15 years as an approved and sustainable horticultural venture.

Accordingly, the erection of a dwelling of the subject land is subject to a variation of the minimum area requirement of 80ha as specified by clause 4(3)(a) and is sought under Clause 2.5 (Additional permitted uses for particular land) under the *Draft PLEP 2012* seeking listing under Schedule 1.

The subject lot is, at the time of lodgment of this submission, a separate allotment.

Background to this submission

The current use of the 14.49ha subject allotment is as an environmentally-sustainable agribusiness that has been operating commercially for 15 years and is unique to the area.

In a meeting with Council staff on March 6 this year, Council staff member John Wright, agreed in a meeting with one of the Applicants, that the agribusiness had been operating for that period.

As background, the Applicants purchased the subject property in 1997, specifically with the intention of establishing an agribusiness that specialised in the growing of natives and proteaceae as cut flowers. The subject lot was chosen, after a long search, for its unique microclimate and rare, deep sandy soil; rare geographic requirements for growing specialised natives.

Prior to purchasing the lot, in June 1997, the Applicants met with the then-Council Director and their legal representative, to confirm the compliance of their proposed business and to confirm whether the proposed two lots had building entitlements.

The legal representative and the Applicants left that meeting understanding the business proposal was compliant and both lots had building permits. The Applicants and their legal representative understood a mark made on the Original Section 149 Certificate by the then-Council Director, to be an affirmation of this.

There is no mention on the certificate of any requirement, future or otherwise, that the lots be consolidated. Nor was this issue mentioned by Council, neither in 1997 nor at any time prior to 2005. Based on this understanding, the Applicants instructed their legal representative to proceed with the purchase of the lots in August 1997.

The Applicants focused on establishing their business. They did not apply for a dwelling permit but travelled to the farm to work from their then-residence in the village of Bungendore.

A capital investment of around \$400,000 was outlaid in the first few years to establish the business onsite. The business achieved infrastructure and business targets set by the ATO and was extended the status of a legitimate primary production business in 1998. The business has operated as an agribusiness consecutively since that time.

In establishing the business, extensive irrigation infrastructure was implemented; two bores, shedding and electricity connection were constructed. The initial planted area was 1.6 ha and has since doubled to about 3.2ha. The plantings consist of about 70% natives and 30% proteaceae.

The agribusiness has been growing consistently at around 3% per annum and requires fulltime onsite management. As the business grew, eventually the Applicants were no longer logistically able to run the business from their village home.

They lodged a dwelling application in 2005 to erect a home on Lot 1155. (This is currently the Applicants' principle place of residence.)

It was only in 2005 that the Applicants were made aware (through a development condition (8) attached to their 2005 DA) that Council sought the consolidation of their two lots. This meant the Applicants had, in good faith, been operating a business for eight years before Council sought consolidation.

The day the Applicants learned of this condition, they contacted Council via staff member Mrs Annie Schumaker, to protest against what they perceived as its unfairness. As they perceived it, the condition, if enforced, effectively prevented the Applicants from selling their business in the future, unless they also sold their principle place of residence.

Each lot had been operated – infrastructure-wise and financially - separately for eight years. This has been acknowledged by the ATO, financial institutions and the Department of Land and Information Service. For eg: Lot 1154's title is clear of a mortgage; Lot 1155 is not.

The Applicants also contacted the former Council Director who had signed their Section 149 certificate. That staff member was now a private planning consultant. The Applicants have written evidence they consulted him about this matter. He advised them they did not have to worry about the condition for various reasons.

He asked if the 2005 DA had been submitted under both lots or just Lot 1155. The Applicants told him the DA had been submitted under Lot 1155. Whether right or wrong, the planning advisor told the Applicants that Council could not enforce a condition on a lot that had operated separately, even though the two lots formed an allotment.

The Applicants accepted this advice.

The Applicants went on running their business. From their discussions with Mrs Schumaker, the Applicants understood, however, they would not gain a Final Occupation Certificate unless they consolidated the lots.

The Applicants felt they had put so much work into the business they were unwilling to jeopardise its future. They told Mrs Schumaker this. Mrs Schumaker said she understood.

To date, Mrs Schumaker, nor anyone else from Council, contacted the Applicants to advise them they should have officially dealt with the consolidation issue in 2005. If the Applicants had known of the significance of the issue, they would have tried to resolve it then. The Applicants have made this known to Council staff on several occasions.

To date, the onsite persons working the farm have been the land owners and temporary, contracted labourers. For the business to continue to be successful, it is necessary for an owner/farm manager to reside onsite. This will require the construction of a dwelling on lot 1154.

Onsite residence is needed due to the labour-intensive nature of cut-flower farming, coupled with the continued growth of the business. A key factor in the business' success has been its ability to respond on a timely basis to customers' requirements. This has been achievable because the current owners have resided next door on Lot 1155.

In addition, the physical demands from the long hours required to maintain a cut-flower farm are such that the farmer is required to reside on the farm. Between them, the current owners work up to 7 days a week on the farm to keep up with its demands. Lot 1154 was purchased with the intention of establishing the agribusiness and constructing a farm manager/owner's residence.

Circumstances have now led to the owners to a position where they cannot maintain the large, principle home on Lot 1155 and the business on Lot 1154. They want, and need, to dispose, of one or the other. Most subjective, fair-minded onlookers would agree that after 15 years of building up a business, the Applicants have a right to make the commercial decision to dispose of, or keep, their business, without Council dictating the way that should be done. Council has no experience in dictating to farmers how farming enterprises should operate.

However, during discussions with Council staff on March 6, staff told one of the Applicants that while he conceded they had run an agricultural business for 15 years, he saw no need for a dwelling to be erected on Lot 1154. The Council staff member claimed the business could be run from the principle place of residence.

This directly ignored information supplied to him in a SEPP 1 Objection lodged by CBRE on behalf of the Applicants on December 24, 2012. That objection clearly explained to Council, that the Applicants were finding it to hard to physically maintain the growing demands of the business and the large home on Lot 1155. They either needed help via an onsite farm manager, and/or the option of disposing of the business to ensure its future.

That SEPP 1 objective clearly explained, and is included again in this submission: "The agribusiness will only be attractive to a potential purchaser if there is the consent to construct a residence to manage the business onsite. The intensive, daily workload of the farm is only realistically achievable if a farm operator resides onsite. It was always the intention of the owners to establish a viable business before seeking approval for the construction of a residential dwelling. The existence of a viable business is the precursor to a farm residence."

Contrary to Council staffs' opinion, a farm manager and his/her family cannot realistically live and work from the Applicant's principle place of residence on Lot 1155.

A dwelling on the subject lot for the purposes of managing a demonstrated, viable agricultural pursuit is entirely consistent with the relevant objectives of the *Draft Palerang LEP 2012*, and justified.

In addition to the demonstrated need for the dwelling, it is otherwise noted that the erection of a dwelling on the subject land is in entirely consistent with the settlement

pattern of the locality shown on the Zone Maps of the *Draft Palerang LEP 2012*, which can be characterised as rural living by virtue of the number of existing dwellings and smaller sized holdings in the area.

Consistency with Planning Objectives:

1. Lot 1154, DP 136392 (the lot) is zoned under the Draft PLEP 2012 as RU2 Rural Landscape: The erection of a dwelling on this lot meets all the Draft PLEP 2012 Zone Objectives for RU2 Rural Landscape.

The Draft PLEP 2012 Zone Objectives for RU2 Rural Landscape states it wants the land to be used to:

- *Encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

Lot 1154 has been operating as a commercially viable, highly-respected, horticultural venture since its purchase in 1997. For 15 years it has contributed to the primary industry landscape with the ongoing operation of one of the most environmentally-sustainable and successful ventures in the Shire.

In order to ensure the business' ongoing operations, it is necessary for a dwelling to be approved and for the Applicants to be allowed to make commercial decisions about the future of that business, which includes being able to sell the business with a dwelling consent or selling their principle place of residence on the lot next door and building a farm manager's residence on Lot 1154.

This was explained in a SEPP 1 Objection lodged with Council on December 24, 2012. Although, under law, Council was obliged to have assessed this application within 42 working days; it had failed to do so at the time this submission was lodged.

Additionally, during discussions on March 6, between the Applicant and Council staffers, a staffer acknowledged an agricultural business had operated on the lot for 15 years, but stated he did not believe a dwelling was necessary on lot 1154 to run the business.

He stated the business could be operated from the principle dwelling on the neighbouring lot. Effectively, staff believes a farm manager should either reside with the Applicants and their family, or that the Applicants should sell their principle residence if they want to sell their horticultural business.

The Applicants have tried to explain to Council on a number of occasions, that this is a unique case with exigent circumstances. These circumstances are outlined further along in the submission.

- *Maintain the rural landscape character of the land.*

Currently operating as a long-term, cut-flower venture specialising in native vegetation, Lot 1154 has not only maintained the rural landscape but has vastly improved it.

When it was first purchased in 1997, the lot was regarded as degraded, with a poor DSE and unable to support any form of traditional, broad acre agriculture.

This directly contradicts Council's decision to include Lot 1154 in an AC classified area. AC is supposedly reserved for large, broad acre ventures and which sets a minimum standard for a dwelling at 80ha. When asked at the March 6 meeting why Lot 1154 had been included in the AC land area, staffers explained that the Council had simply used the old Yarrowlumla/Mulwaree Shire border as a cut-off point. They confirmed no attention had been given to changing any classification of any lots based on their current land use.

The Applicants have improved the subject land by planting in excess of 6000 mainly native plants and related proteacea which has contributed to the biodiversity of flora and fauna of the area and increased its primary production output.

In order to ensure the business' ongoing operations, it is necessary for a dwelling to be approved.

The Applicants have reached a stage where the business' growth, as well as maintaining a home on Lot 1155, has become too much for them to sustain physically. If approval for a dwelling on Lot 1154 is rejected by Council, trade will cease and the business closed. Council staff has been made aware of this proposition on a number of occasions.

- *Provide for a range of compatible land uses, including extensive agriculture.*

The Applicants' establishment of a successful and environmentally-appropriate horticultural venture, which has been operating for 15 years, is proof the subject lot's land use is compatible with the Zone's proposed Objectives. In order to ensure the business' ongoing operations it is necessary for a dwelling to be approved on Lot 1154.

- *To minimise conflict between land uses within the zone and land uses within the adjoining zones.*

Council has not given appropriate consideration to the size, history, nor longstanding land-use of the subject lot and the three subsequent northerly-located lots in assessing them as lots appropriate for an AC classification.

If you look at the *Draft PLEP 2012 Lot Size Maps* you can see Lot 1154 is one of only four, small, 40-acre lots to be included in the AC zone and yet they are the only four to have an RU2 rating (Apart from Capital Wind Farm).

These four small blocks border the AB2 zone which has a minimum lot size of 40ha. It would have been more appropriate, considering the established pattern of

settlement, to have included these properties in AB2 which has a lower minimum lot size rate.

At a meeting on March 6 with the Applicant, Council staff confirmed that Council had given no consideration to the individual use of lots but used the old Yarrawlumla/Mulwaree Shire border as a cut-off line to delineate between AC and AB2 areas.

The fact that three of these four isolated lots already have dwellings and are more closely associated with the pattern of settlement in the AB2 area, shows that little consideration, if any, was given to the history and use of the subject lot by Council when considering the Lot Size Maps.

The operating of a successful horticultural venture and the erection of a dwelling pose no conflict within the zone. Neighbours of the Applicants, and members of the Bungendore community, support the Applicants' submission for a dwelling on Lot 1154, because they want the business to keep operating. (Please see the attached Letters of Support.)

There are homes on blocks zoned RU2 that are smaller than Lot 1154. See the map on Page 13, showing the adjoining blocks to Lot 1154 along Tarago Road and Mount Fairy Road. The map shows examples of homes on smaller lots with no agricultural pursuits.

In order to ensure the subject lot's business' ongoing operations it is entirely appropriate for a dwelling to be approved for Lot 1154.

5. To minimise the impact of any development on the natural environment.

The erection of a dwelling on Lot 1154 will have no adverse environmental effects on the natural environment. Please see the attached Environmental Flora and Fauna Report on Lot 1154 as well as the Soil and Effluent Report for Lot 1154.

Allowing a dwelling on the subject lot for the purposes of maintaining a demonstrated, viable agricultural pursuit, is entirely consistent with the relevant objectives of the *Draft PLEP 2012* for RU2 properties and is therefore justified.

Other Justifications for the Submission

1. Lot 1154 was not properly assessed before being included in zoning classification of AC under the Draft PLEP 2012, and therefore, due its unique merits, should be recognised under Clause 2.5 of the Draft PLEP 2012 as being land eligible for an additional purpose.

Under the Draft PLEP 2012, Lot 1154 has been included in the Land Zoning Map (Sheet LZN_004) in the RU2 zone (Rural Landscape). This means it is regarded by Council, as less important agricultural land than that land zoned RU1 (Primary Production).

Despite this acknowledgement, Council has lumped Lot 1154 and three other small blocks on the western side of Tarago Road in the AC zone. It is this classification that imposes an 80ha dwelling-size restriction.

When asked to explain at the March 6 meeting why four, small blocks on the western side of Tarago Road had been included in the AC zone, when all the other surrounding blocks to the west and south with this classification are huge, well-known properties ranging in size from 3000 ha to 10,000ha and all zoned RU1, Council staff stated: “we just used the old Shire border” as a cut-off point.

Additionally, it should be noted that three of these four lots have been extended dwelling rights. All lots are similarly sized, but 1154 is the only lot to be denied a dwelling entitlement.

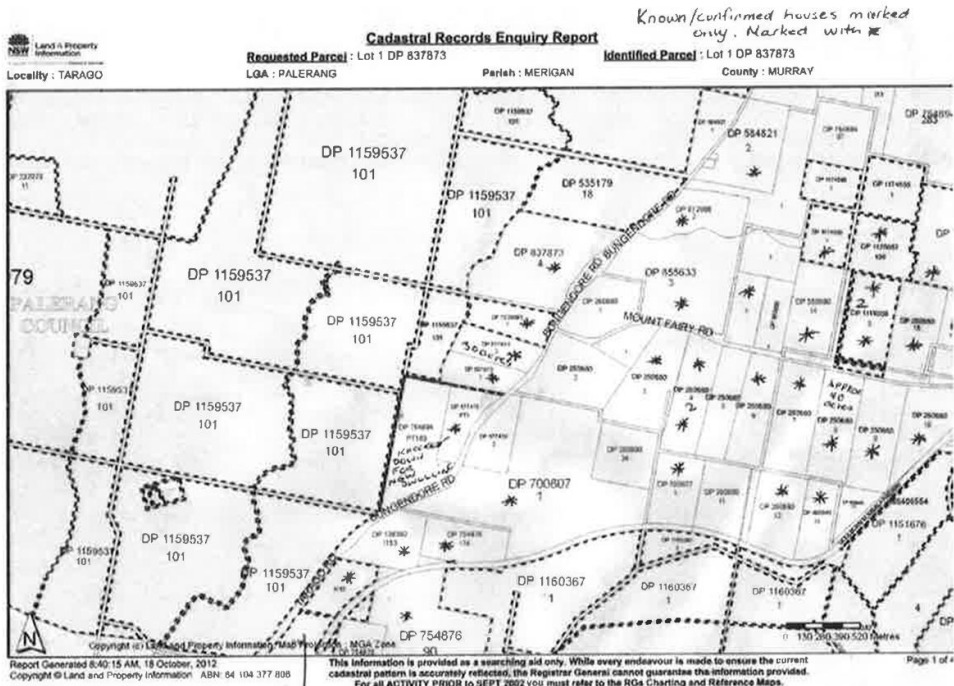
The SEPP 1 objection lodged with Council on December 24, 2012, explained this extensively, but to date Council has not assessed the application within the timeframe lawfully permitted.

AC classification should apply to areas with an ability to sustain large, broad acre activity. Lot 1154 and the three other lots named and classified AC have never, and will never, have broad acre potential. This is acknowledged by Council by their application of an RU2 zoning for the four lots.

2. In addition to the demonstrated need for the dwelling, it is otherwise noted that the erection of a dwelling on the subject land is in entirely consistent with the settlement pattern of the locality which can be characterised as rural living by virtue of the number of existing dwellings and smaller-sized holdings in the area.

This fact was also pointed out in a SEPP 1 Objection lodged December 24, 2012, by CBRE on behalf of the Applicants.

Immediately to the north of Lot 1154 is a large area classified under the *Draft PLEP 2012* as AB2 (requiring 40ha for dwelling entitlement). These are Lot 1154's neighbours. Many of the lots are the same size or smaller than 14.49ha and have dwellings. Examples of these include Lot 1153 DP 136392; Lot 1 DP 837873; Lot 2 DP 837873; Lot 1 DP 1039093; Lot 2 DP 250880, Lot 1, DP 700807, Lot 11, DP 250880 Lot 3 DP 250880, Lot 4, DP 250880, Lot 5 DP 250880. Others are pointed out on the LPI map below.



The three lots to Lot 1154's immediate north are also (in the applicants' view) incorrectly classified AC and all have dwellings.

The subject lot is closer in description to the Map Zoning of properties located in nearby AB2, than the large properties it has been included with in Lot Size Maps' classification AC. There is no planning merit in leaving one of the smallest lots in the AC Zone Map, classifying it as RU2, and not RU1, but not allowing a dwelling.

Allowing a dwelling on the subject lot for the purposes of maintaining a demonstrated, viable agricultural pursuit, is entirely consistent with the relevant objectives of the *Draft PLEP 2012* objectives for properties zoned RU2, and therefore justified.

The locality map included in this submission shows the pattern of subdivision in which the subject site is located. In the time since the subject allotment was created in 1927, a number of dwellings have been approved and constructed on lots comprising less than 10 hectares within the vicinity of the subject site. Allowing a dwelling on the subject lot for the purposes of maintaining a demonstrated, viable agricultural pursuit, is entirely consistent with the relevant objectives of the *Draft PLEP 2012* objectives for properties zoned RU2, and therefore justified.

At the March 6 meeting, a Council staffer stated it had been “remiss of CBRE” and its SEPP 1 Objection not to include larger properties to the west and south in its Locality Map showing Patterns of Settlement around Lot 1154.

It was pointed out to this staff member, that all the properties to which she referred were all zoned RU1, not RU2, like Lot 1154. It was entirely appropriate for CBRE to compare Lot 1154 with similarly-sized neighbouring properties, also zoned RU2 under the *Draft PLEP 2002*.

3. The creation and history of this block should be taken into consideration when assessing Lot 1154 submission under Clause 2.5 of the Draft PLEP 2012.

The history of this block is important. The Applicants have tried unsuccessfully to clarify the history of the block for Council staff on many occasions.

According to Council staffer John Wright, in a letter dated September 5, 2012 (and confirmed again in a meeting on March 6, 2013) Mr Wright states Lots 1154 and 1155 “were part of a larger land holding [known as] (Werriwa) in 1966 and remained in that holding until purchased together by GD Fox in 1972 ... the lots have been held together since being separated from the Werriwa property in 1972.”

This is incorrect. It has been pointed out to Mr Wright on several occasions.

In fact, Lot 1154 was one of three lots created from Crown Land in 1927 under the 1886 Crown Land Alienation Act and sold under Conditional Sale Without Competition to Mr James Henry Forbes Gordon in that same year.

These lots are Lot 1154 (14.49ha), 1155 (14.89ha), 1153 (15.73ha). A fourth block (Lot 174 DP 754876) of 15ha borders Lot 1153 but was created at a later date. Mr Gordon did own ‘Werriwa’ 4km to the south of the subject lot and another property “Birkenburn” to the rear of the subject lot, but at no time were these other, small lots ever part of those two, larger properties.

The Alienation Act was specifically enacted in order that citizens - other than existing large land holders - might be given the opportunity to reside on rural land.

Crucially, one of the five conditions attached to the government’s original sale of Lot 1154 to Mr Gordon, was that they **had to be resided upon and used for agricultural purposes**. As such, the other two blocks in the existing portion have had building entitlements granted. Therefore Lot 1154 originally had a building entitlement but it was extinguished by subsequent planning instruments introduced to the Shire over the past 85 or so years.

It aids the case to understand why the State Government created these three, small blocks in an area bordered on three sides by large properties.

The state government sensibly realised late in the 19th century that it was in possession of 111 acres of extremely marginal, isolated land left alienated by its awkward locality squashed between Tarago Road and the Canberra-Sydney railway line.

Under the planning standards applicable under the Act, the three blocks created should have had a minimum of 40 acres even then. However, the government did not have enough land to create 3 blocks of 40 acres (that being a total of 120ac).

It only had 111 acres. It sensibly therefore divided the land into three residential blocks as close to 40 acres as possible given the locality limitations. The government understood that the land would never be viable left as one long strip of marginal Crown Land and would be better off made into small rural residential blocks. That rationale has not been altered; as neither Tarago Road nor the railway will disappear in the foreseeable future.

4. Council has considered the history, and land use, of other blocks when assessing submissions from ratepayers to change the permitted use of their land.

During a meeting on March 6, 2013, a Council staffer claimed Council could not take into consideration exigent factors when assessing SEPPs and other submissions. She added that they had to abide by the rules of the Act [the *Environmental Planning and Planning Assessment Act 1979*].

This is incorrect. There is nothing in the Act that prevents Council from considering any aspect of this submission, or all the information submitted as part of the SEPP 1 objection. In fact, they are obliged under the Act to consider all relevant information.

For example: On August 12, 2009, John Wright wrote to the Department of Planning seeking its concurrence to allow a planning proposal on Lot 276 DP 754915, Bungendore Road, to make a “dwelling house on the subject land permissible with development consent”.

This lot was owned by Mrs Barbara Carter. It was 4.9ha and zoned 7 (e) Environmental Protection under the *Yarrowlumla LEP 2002*. The block was subject to the same 80ha restriction as the Applicants’ subject lot. However, the variation from the development standard was much greater and there was no agricultural production being pursued on Mrs Carter’s land.

Mr Wright recommended the proposal be approved because of the circumstances of the lot and its history. The NSW Government concurred.

Other examples where Council has approved dwellings on lots smaller than the stated development standard include: Lot 9 DP 1974, approved 31/5/2010; Lot 212 DP 755934, approved 4/10/2011; Lot 1 DP 104031 approved 10/9/2009; Lot 1 DP 855945 approved 8/5/2008; Lot 41 DP 1001917 approved 2/5/2008.

In fact with DEV.2008.0026 Lot 2 DP 1071842 approved on 20/6/2008, Councillors used the discretionary powers available to them and found that the development not be “determined by percentage” at all as the development “meets objectives of the zone and strict compliance would sterilise a block clearly created for a dwelling”. There is no difference between the merits of this development proposal and that of Lot 1154.

The Applicants have obtained a list from the NSW Department of Planning which shows further examples of such approvals.

Under the current *Draft Palerang LEP 2012*, Council has already recommended that under Clause 2.5 the following two properties the:-

1 Use of certain land at 6 Rocky Glen Road, Bungendore

(1) This clause applies to land at 6 Rocky Glen Road, Bungendore, being Lot 1, DP 791113.

(2) Development for the purpose of a two lot subdivision resulting in a single dwelling

house on each allotment is permitted with consent.

Note. This item will be given legal effect by an amendment to the Palerang Local Environmental Plan

2012 - Lot Size Map following the exhibition of the draft Palerang Local Environmental Plan 2012.

2 Use of certain land at 114 Keewong Lane, Burra

(1) This clause applies to land at 114 Keewong Lane, Burra, being Lot 11 DP 700016.

(2) Development for the purpose of a two lot subdivision resulting in a single dwelling house on each allotment is permitted with consent.

Note. This item will be given legal effect by an amendment to the Palerang Local Environmental Plan 2012 - Lot Size Map following the exhibition of the draft Palerang Local Environmental Plan 2012.

These two properties produced no more stronger arguments for additional use of land under *the Draft PLEP 2012* than the subject lot 1154 does in this submission.

5. It should be considered that Lot 1154, DP 136392 was purchased when the Yarrawumla LEP 1993 was in effect. It operated as a primary production venture for 15 years under the Yarrawumla LEP 2002.

The objectives of this outgoing plan required much of properties zoned Rural 1(a). The Applicants ask that Council take this into consideration, as Lot 1154 more than adequately fulfilled all these objectives as well.

The objectives in place over the 15 years the Applicants' have owned the business included:-

(a) to protect the agricultural potential of rural land and to prevent the fragmentation of viable rural holdings;

(b) to prevent premature and sporadic subdivisions and to ensure consolidation of urban areas;

(c) to prevent the subdivision of land on the fringe of urban areas into small allotments that may prejudice the proper layout of future urban areas;

(d) to ensure that development occurs only on land which is suitable for, and economically capable of, the proposed development so as not to create conflicting uses;

(e) to allow the use of land within the zone for agricultural purposes and a range of other appropriate purposes;

(f) to restrict the generation of inappropriate traffic-generating uses along arterial and main road frontages;

(g) to ensure sound land management and ensure development does not adversely effect extractive industry;

(h) to prevent inappropriate industry; and,

(i) to ensure that the development will not affect threatened plant and animal species or grasslands.

The granting of a building entitlement to Lot 1154 is consistent with all these objectives.

Each objective is individually addressed below and found to be consistent:-

(a) Proposal is Consistent.

The owners have established and run their business on Lot 1154 - a long-standing cut-flower business specialising in natives and protea - for the past 15 years. This business is not only environmentally-sustainable and viable, but has added significantly to the agricultural worth of the land. Before the business, the land was regarded as extremely degraded, having a negative DSE, riddled with serrated tussock, a lack of trace elements in the soil and unable to sustain traditional farming pursuits such as stock carrying or cropping.

(b) Proposal is Consistent.

The application does not seek subdivision nor encourage it. The land cannot be subdivided in any case. A *Soil, Effluent and Environment Report for Lot 1154* has been completed and is attached to this submission. The report confirms no public services need to be provided to this block by Council if an entitlement is granted, as it is capable of independently providing and maintaining all necessary works. More importantly, it shows there are nil environmental impacts in erecting a residence as a naturally clear area at the rear of the flower plantation is available for building and complies with all relevant building standards;

(c) Proposal is Consistent.

The granting of a building entitlement does not prejudice in any way future urban areas. There are four blocks in this strip all smaller than 16ha and, as such, the 80ha development standard. None of the homes detract from the operations of local agriculture or to the local environment. In fact, Lot 1154 has done more than all the other lots combined to comply with the zone objectives and add to the agricultural and economic worth of the area. Due to the unique location of the block – wedged between the railway line and the main road – it cannot be resumed into a larger farming property. Therefore it can *never* comply with the 80ha standard.

(d) Proposal is Consistent.

The fact the Applicants' agri-business has operated successfully for 15 years shows growing cut flowers is an appropriate development for the area. Granting a building entitlement adds to the likelihood of the business' continuance.

(e) Proposal is Consistent.

For the reasons outlined in (a) and (d).

(f) Proposal is Consistent.

The granting of a building entitlement will not increase traffic on, or degrade, Tarago Road. Lot 1154 already has direct access to Tarago Road which was constructed by former Mulwaree Shire Council.

(g) Proposal is Consistent.

Extraction industry policy remains unaffected by the granting of a building entitlement.

(h) Proposal is Consistent.

See reasons outlined at (a) and (d).

(i) **Proposal is Consistent.** No plant and animal species will be threatened if the submission is approved. A Flora and Fauna study for Lot 1154 has been completed and is attached which shows there will be nil impact created by a residence placed at the rear of the subject lot. Additionally, the establishment of 8 acres of mainly native plants has *increased* the native bird life on the lot. Allowing a dwelling on the subject lot for the purposes of maintaining a demonstrated, viable agricultural pursuit, is entirely consistent with the relevant objectives of the former Yarrowlumla LEP 2002, under which the business has operated for 15 years and therefore justified. The

Applicants would like Council to take into consideration the property's unique locality in assessing this submission.

It is only one of three, long narrow blocks left isolated by their position between the Sydney-Canberra railway line and Tarago Road in the Zone Map AC. Realising the lack of broad acre potential for the land, due to its locality, the blocks were created in 1927 by the NSW Government and sold specifically as residential blocks with

building entitlements. This unusual location has not changed over the past 85 years, making it logistically impossible for the block to be absorbed into a larger, nearby agricultural property. Currently, the Applicants' block is the only one of the three not to have had a building erected. To deny a dwelling entitlement to the subject lot has no justifiable planning merit in the circumstances.

6 The Applicants would like to make it known to Council, that had they not been advised to ignore Condition 8 on their original DA in 2005 by a former Council Director; they would have dealt with the issue in 2005.

They ask Council to take into consideration that they only discovered the lots did not have two, separate building entitlements in May 2012, when they went to put their business on the market.

The Applicants acknowledge that no matter what view is held – either by certain Council staff or the Applicants - this case is legally unique in that the Applicants acted in good faith on information supplied by council, whether correctly or incorrectly, in establishing their 15-year business and subsequent home. They ask that this be given due consideration.

The Applicants intend on dealing with the consent issue appropriately. However, it is a separate matter to this submission, and to the SEPP 1 objection lodged, and cannot be subsumed by either.

7: *It is highly unlikely this submission, if approved, would set a precedent.*

There are so few small blocks zoned RU2 but included in the Lot Size Map under AC that could submit submissions with the same strength of merit as produced in this case.

Additionally, Council has approved other applications that have had variations to development standards: Examples: Lot 9 DP 1974, approved 31/5/2010; Lot 212 DP 755934, approved 4/10/2011; Lot 1 DP 104031 approved 10/9/2009; Lot 1 DP 855945 approved 8/5/2008; Lot 41 DP 1001917 approved 2/5/2008.

In fact with DEV.2008.0026 Lot 2 DP 1071842 approved on 20/6/2008, Councillors used the discretionary powers available to them and found that the development not be “determined by percentage” at all as the development “meets objectives of the zone and strict compliance would sterilise a block clearly created for a dwelling”.

There is no difference between the merits of this development proposal and that of Lot 1154. Additionally, Council approved a proposal in August 2009 when it granted dwelling entitlement to Lot 276 DP 754915, 462 Bungendore Road, in the Parish of Wamboin. This block was zoned 7(e) Environmental Protection and was also subject to the 80ha standard. However at 4.5ha it was *a lot smaller* than Lot 1154 and, as such, its variation was greater than Lot 1154.

When asked at a March 6 meeting to give specific examples of properties that could cite Lot 1154 as setting an example to use as precedent, staffers failed to name any.

When it was pointed out that under a SEPP1 objection, any applicant wanting to use Lot 1154 as an example of precedent would have to either submit their own SEPP 1 Objection– to be judged on merit – or a submission under the *Draft Palerang LEP 2012*.

Again, both procedures are required to be judged on merit of the individual lots involved.

9. Exigent Circumstances:

A mark was made on the Original Section 149 Certificate prior to sale in July 1997 by the then-Council Director under Col 3 (dwelling permit) with the word “Yes” written in blue pen.

Whether rightly or wrongly, at the time, the Applicants and their legal representative took this mark to mean that both lots had two building entitlements.

Fourteen years later, Council staff member, John Wright, stated in a letter to the Applicants dated September 5, 2012, “the bracket and the word 'yes' in column 3 refers to the combination of the two lots on which, at the date the certificate was issued, a dwelling house was permissible development under Yarrawlunla LEP 1993.”

How can Mr Wright claim to know this? He was not present at the meeting.

Even if Mr Wright is correct in his application of fact that the blocks were part of a 1995 holding, it remains that the Applicants and their legal representative emerged from the meeting believing they were purchasing two lots. That the “yes” with two arrows effectively meant yes to two entitlements.

They purchased a property *based on the belief* the mark indicated each lot had a building permit. Whether this was factually correct or not, it remains the Applicants purchased a property based on this belief and in good faith established a thriving business which still operates. The Applicants urge Council to consider the weight this argument might carry under law.

In a meeting on March 6, Mr Wright revealed his prejudice in regards this issue, when he stated it was a “rational” possibility that the Applicants had operated a physically-demanding business for 15 years in order to “get one over on Council”.

10: Obfuscation by Council staff:

To date, Council has known about the Applicants’ desire to implement the proposal outlined above since May 2012.

In May 2012 the Applicants asked real estate agents to assess Lot 1154. The agents contacted Council to get a new Section 149 certificate issued. The agent spoke to staffer Daniel Walsh.

Mr Walsh confirmed he could not find the file for the subject lot but it sounded like a 1995 holding and, as such, only had one building entitlement. That afternoon, Katrina spoke to Daniel who confirmed the lost file. However, Mr Walsh listened to Katrina's history of the lot and recommended that a SEPP1 application be lodged.

Soon after, Council staff advised that neither a SEPP1 nor a gateway proposal would be accepted by council and that the couple should wait for the new LEP to lodge an objection.

By August, after Katrina received solid advice that either proposal could indeed be lodged with Council, she submitted her case to councillors.

Another staffer indicated to Katrina in a phone conversation on August 14th that the proposal was something the Department of Planning had in mind when it introduced SEPPs and said that it was likely to be supported by DoP.

In a meeting the following day, that staffer refused to discuss the merits of Ms Iffland's proposal.

On September 5, Mr Wright sent the Applicants an [erroneous] letter which indicated that a SEPP could not be heard.

On September 27, 2012, the Applicants received advice from the NSW Regional Director of Planning and Infrastructure, Brett Whitworth, who confirmed if a SEPP was lodged it must be assessed by Council.

As such, the Applicants engaged CBRE to finish their SEPP 1 Objection. It was lodged on December 24, 2012.

Council then claimed a cheque issued for the Department's concurrence fee of \$320 had been lost. To date, Council has not completed its assessment of the SEPP 1 objection, despite being required to, under law, by 42 working days from lodgement.

This obfuscation by Council staff has severely impeded the commercial operating of the business. For eg: the Applicants have been unable to commit to Spring (Sep 2012) and Autumn (March 2013) plantings because of the uncertainty of the business' future. This will have long-term effects on the economic operations of the farm. The Applicants are currently considering ceasing trade because of its impeded business opportunities.

Conclusions:

The established use of the site for an environmentally-sustainable and commercially viable intensive agricultural purpose justifies the need for a fulltime farm residence. Notwithstanding the basis for the approval of the dwelling on the adjoining lot, the agribusiness was established and has operated continuously on an entirely separate allotment since its purchase in 1997.

It is this separate allotment on which the farm residence is proposed to be located.

Although the proposed development does not comply with the minimum lot size standard at Clause 4.2A (3)(a) of the *Draft PLEP 2012*, it nevertheless meets the underlying objectives of the standard and the planning objectives of the *Draft PLEP 2012*.

In particular:

- The subject site is used for sustainable and viable agriculture in the form of a native cut-flower farm.
- The proposed construction of a dwelling is in keeping with the character and pattern of the historical rural-residential style subdivision in which the subject site is located. Approval of the proposed development will result in the orderly and economic use and development of land in line with the Applicant's expectations.

Due to its establishment of a viable and environmentally-appropriate agribusiness, the proposal for Lot 1154 is consistent with all Palerang Council's planning objectives for land zoned RU2. These objectives justify Council's upholding of the 80ha development standard. Therefore upholding strict compliance with this standard, in this specific case, is unnecessary and unreasonable.

Denying the proposal in this case will only serve to show ratepayers that Council is not genuine in its pursuit of encouraging appropriate agriculture and other land use purposes outlined in its objectives. It will appear as if the merits of specific applications are ignored and not as important as the blanket upholding of a development standard.

The standard is further rendered redundant in this case due to the lot's unique locality. No matter whether the block carries a residence or not, due to the practical limitations placed inadvertently upon it by its locality between a road and railway, it will *never* attain the minimum 80ha standard. Even if the Applicants' were to consolidate their two blocks the acreage would rise to only 29ha and the standard would still not be attained. It is therefore unnecessary and unreasonable to use this standard to deny a building permit in this instance.

Whether a pen mark on the original Section 149 made by the then-Council Director was a mistake or a misinterpretation, the owners purchased the lots genuinely believing they both had a building entitlement and with the

understanding they could establish an agribusiness. It adds weight to the case that withholding a building entitlement in this case is unjust in the extreme.

There are already three other lots in the immediate area that have homes on blocks under 40ha. This will not change by denying a dwelling entitlement to Lot 1154.

The land was marginal. It is likely if a dwelling is not allowed the cut flower business will cease. Alternatively, the Applicants could be forced to consolidate their two blocks which would mean that to sell their business; they would also have to sell their home as well. No farmer, big or small, deserves to be forced into that situation.

The approval of the proposal is a win-win situation for Council and the lot owners. By determining the matter under the current LEP or a SEPP 1, the issue of precedence is greatly reduced.

It also means another lot of rates will be created. This is a genuinely exceptional case where the owners of a lot, have worked hard to improve its agricultural worth in compliance with Palerang planning objections. It is a case that deserves to be approved. As cited by the letters of support: this business adds to the fabric of the district, not detracts, and it should be given every opportunity of survival.

The control standard as it applies to the subject site is both unreasonable and unnecessary as the site is suitable for and currently supports intensive agriculture.

Accordingly there is no justifiable basis for Council to not support this submission and allow a dwelling house on Lot 1154 DP 136392 under Clause 2.5 (Additional permitted uses for particular land) under the *Draft PLEP 2012*.

Letters of Support



Duesburys Nexia
ABN 59 903 291 025
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60 Marcus Clarke Street
GPO Box 500
Canberra ACT 2601
Tel (02) 6279 5400
Fax (02) 6279 5444
mail@dnexia.com.au
www.dnexia.com.au

25 July 2012

Palerang Council
10 Majura Street
BUNGENDORE NSW 2621.

Submission for Building Entitlement for Agri-Business.

To Whom it May Concern

I am a Partner of Duesburys Nexia Chartered Accountants which has attended to the accounting and tax requirements of small to medium sized businesses in the ACT and regional NSW since 1952.


I have been the accountant for the business trading as Blackwood Park Flora (Bungendore Blooms) since its inception for the last 12 years. The business of cultivating flowers is located at RMB 1178 Tarago Road, Bungendore NSW 2621. Since 2000, the business has grown and produced a steadily increasing income.

The start-up and operating costs of this business have been significant; being in excess of \$400,000 (not including the purchase price of the land).

Following an extensive review by the Australian Taxation Office (ATO) in 2000, the business was granted primary producer status. This involved demonstrating to the ATO that Blackwood Flora was a fully operational flower cultivation business and not a hobby or other insignificant activity.

The business of flower cultivation is demanding, subject to the whims of nature including drought, diseases and insect infestations. Katrina Iffland and Richard Mihaich have applied themselves to the business with diligence and focus without which the business would not have grown.

The development of the business is at a point where further planting is now required; that the point of sale is ready to move online and an export arm could be developed.


Duesburys Nexia

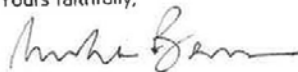
To ensure its continuing success, the cultivation of the flowers requires daily maintenance. Because of their ages and because of the length of time that they have had the business, [REDACTED] would prefer to move in other directions. In order for the business to continue contributing to an undoubted need in the Canberra/Queanbeyan and Bungendore regions, they would like to sell the business and the land on which it operates.

Any new owner keen to develop the business further will need to reside on the land in order to maximise its potential. For this reason, a building entitlement on the land is a necessity. Travelling to and from the property to tend to the business is inefficient on many fronts let alone the unnecessary fuel and other environmental costs.

Therefore, the granting of a building entitlement will enhance the prospects of the business developing under new ownership. Such business development is a positive for the Palerang Council and the Bungendore and Queanbeyan/Canberra communities.

For the above reasons, I fully support any representation seeking a building entitlement on the land.

Yours faithfully,



M G Bannon
Partner



To whom it may concern.

As the owner of Bungendore Woodworks Gallery, I set very high standards when it comes to quality of product and presentation.

Our multi award winning gallery has, over twenty-nine years, gained a reputation for these attributes.

We have, for many years, ordered flower arrangements from Bungendore Blooms to enhance our exhibition openings.

We have done so because this is a business that, through its professional service and quality of product, provides an elegant way to enhance our reputation and presentation.

I have no hesitation in supporting moves that will ensure the continued viability of Bungendore Blooms. I do this not only because this is something the village needs, but because the very existence of this sort of alternative farm is a positive addition to the fabric of our local business community.

Yours sincerely

David MacLaren
Artistic Director
Bungendore Woodworks Gallery

Kings Highway Bungendore New South Wales 2621 Australia
Postal Address: 18 Malbon Street Bungendore New South Wales 2621 Australia ABN 56 269 790 152
P +61 2 6238 1682 F +61 2 6238 1817 contact@bwoodworks.com.au www.bungendorewoodworks.com.au

kiffland

From: "Eric Dangerfield" <cafewoodworks@gmail.com>
To: <kiffland@imetro.com.au>
Sent: Wednesday, 1 August 2012 7:49 PM
Subject: Bungendore Blooms

To whom this may concern

The Woodworks Cafe has purchased flowers from Bungendore Blooms on a regular basis for close to a decade.

The arrangements are exquisite and comparable with any I could order from Canberra or interstate. I am often asked by cafe patrons about our floral displays and I have referred many of these people back to Bungendore Blooms.

In my view, Bungendore Blooms is an excellent business that has always delivered fresh, original arrangements at a competitive price.

After almost 12 years of operation, I understand [REDACTED] now wish to move on and hand the business over to new owners. If this business is jeopardised because they cannot find an owner because they cannot live on the farm, then Bungendore will be losing one of its most environmentally-sustainable and successful businesses.

Kind regards
Eric Dangerfield

Cafe WoodWorks
18 Malbon Street
Bungendore NSW Q2 6238 1688
<http://www.bungendorewoodworks.com.au>

3/08/2012



2/33 Ellendon Street
Bungendore NSW 2621

23rd July 2012

[REDACTED]
1178 Tarago Road,
Bungendore NSW 2621

To whom it may concern,

Sutton Real Estate inspected the cut-flower business on Lot 1154 DP136392 Tarago Road and found it to be a very saleable property.

It is of our opinion, however, that without a building entitlement the property's chance of a sale will be greatly reduced. It is our opinion that to run the agri-business prospective buyers will need/want to live on the property.

Regards,

Ben Lee
Sutton Real Estate
PH 6238 0999

The name in country real estate Phone 02 62380999 Fax 02 62380888 Page 1
www.suttonrealestate.com.au sales@suttonrealestate.com.au rentals@suttonrealestate.com.au



3/30 Ellendon St, BUNGENDORE NSW 2621
02 62380512
ABN: 82 890 113 988

Wednesday 25 July 2012

To Palerang Council:

I have purchased flower arrangements from Bungendore Blooms for display within my salon every fortnight for more than 10 years.

Flowers are a luxury, not a necessity and we would not have purchased them for such a substantial period if this fantastic local company had not provided such an efficient and competitive service.


The arrangements are always different and always delivered on time; those who use the business' services know the village would be poorer for not having Bungendore Blooms to service it.

Should you require any further information, please do not hesitate to contact me during business hours.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Marcel Lovelock".

Marcel Lovelock
(Proprietor)



Janine Batley
Janine Florist
Baileys Corner
Canberra City
Ph-0262485658

To Whom It May concern-

I am the proprietor of Janine Florist, in Baileys Corner, Canberra City. We are the oldest Florist shop in the Canberra Area.

With 52 years, buying flowers for the successful running of our stores in Canberra, we have been buying flowers from Bungendore Blooms for more than 10 years.


As the only grower of native cut flowers in the Canberra / Queanbeyan region, Bungendore Blooms is a unique resource in Canberra - with all our other flowers being sourced from Sydney and Melbourne.

No other grower can provide same-day delivery of quality freshly picked flowers.


Any impediment to the future viability of the region's only wildflower farm would be a great inconvenience to the many florists in Canberra and Queanbeyan who buy their produce.

We do rely on this important supplier to our industry.

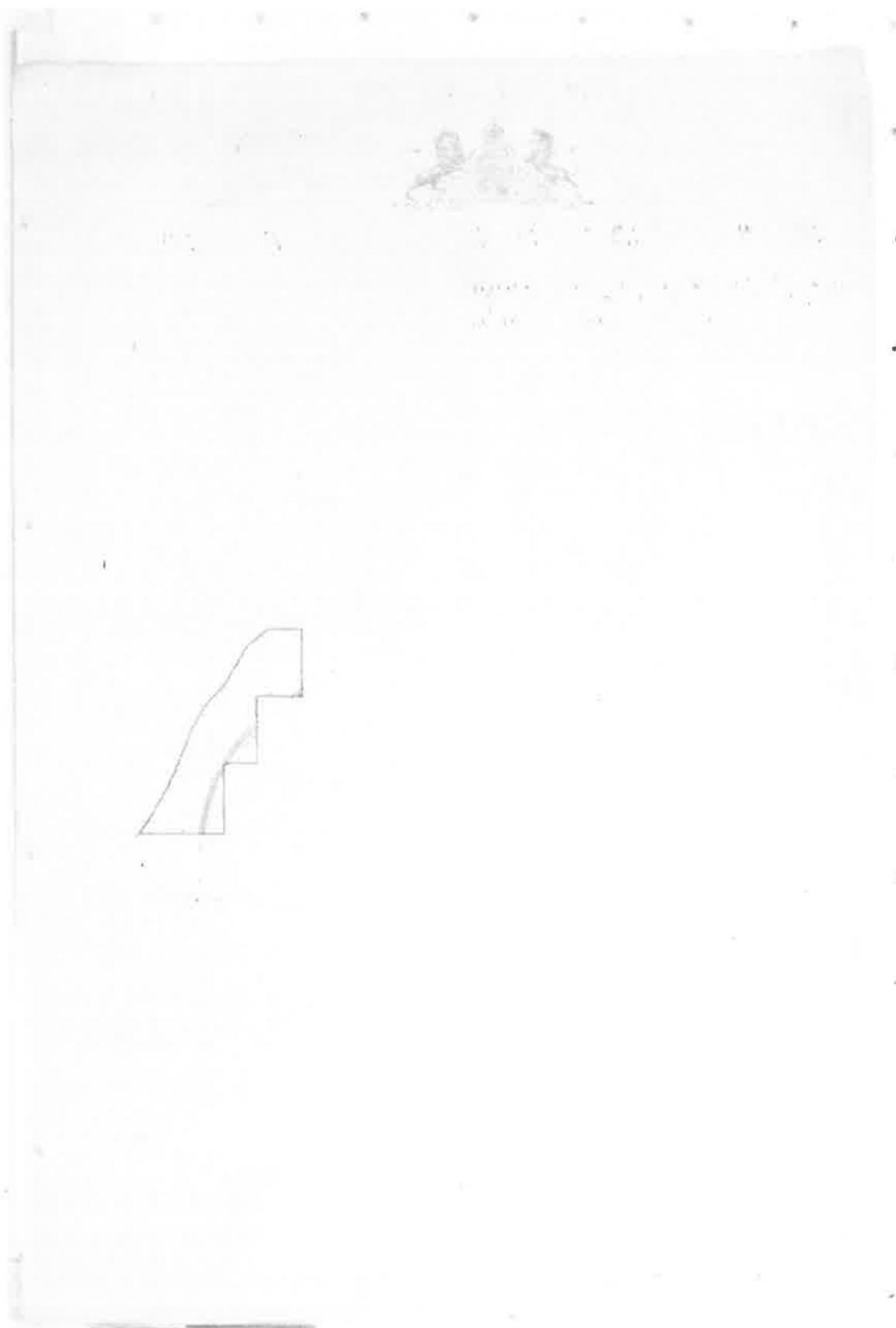
Yours Sincerely



Janine Batley
Proprietor
Janine Florist
1.8.12



Janine Batley
Bailey Arcade, Canberra City, A.C.T. 2601 Telephone: 6248 5658 or 6248 6153 Fax: 6257 2564



If this image is unreadable you can call it up on the LPI Service as Vol: 4035, Fol: 39.
Folio: 39 – Grant of Land Purchased by Conditional Sale without Competition.

**STATEMENT ON THE FLORA AND FAUNA OF A
PROPOSED BUILDING PRECINCT ON THE
PROPERTY OF**

████████████████████, LOT 1154 DP136392

Report prepared

by

**Roger Good
Good Environmental Systems
1178 Bungendore Road
Bungendore 2621**

ABN 96134570303

**STATEMENT ON THE FLORA AND FAUNA OF THE
PROPOSED BUILDING PRECINCT**

████████████████████ LOT 1154 DP136392

Introduction

An inspection and survey of part of the property of ██████████ Lot 1154 DP 136392 Tarago Road, Lake George, was made on the 9th July 2012. The owners plan to seek approval for an additional building precinct on the property. This building precinct is to be located on a parcel of land held under a separate title to that on which their present home exists.

The proposed building precinct is located immediately adjacent to the commercial wildflower plantation and between this and the Bungendore Tarago railway line in a cleared area within an open woodland, (fig.1).

The property is located approximately 11 km north of Bungendore on the Tarago Road. The property covers an area of approximately 15 ha., being Lot 1154, DP 136392.

In preparing this statement it was assumed that a full and extensive flora and fauna survey was undertaken on the property as part of the original subdivision development application and as such, only the proposed building precinct area and the immediate surrounding vegetation was surveyed.



The property is located on an interesting soil complex of the Butmaroo sandhills. The general terrain is one of undulating low hills with a local relief in the order of 20 to 30 metres with a low slope of approximately 5 - 10 degrees .

The soils are shallow well drained lithosols (Uc1.43) and earthy sands (Uc4.12) with intrusions of red earths (Gn2.12). Moderately deep but poorly drained soloths and solodic soils occur along the ephemeral creek / drainage line that dissects the property from east to west.

Survey methodology

The vegetation of the planned building precinct and the immediate surrounding area was specifically surveyed by way of a random walk over the building precinct site and in the immediate vegetation communities, to record all native plant species, including any locally significant or threatened species. A composite list of flora species was made from this survey and is presented below.

During the survey all bird species observed were recorded and any signs of native fauna noted eg frog calls, scats, diggings and scratchings. No small mammal trapping was undertaken, as predictably, few small mammals would be present in the surveyed area due to the many years of disturbance by domestic stock grazing, exotic plant invasion and the lack of identified suitable habitat. No destructive habitat sampling was undertaken and the presence of any invertebrates and fauna was recorded from observations only.

All remnant paddock trees near to and around the building precinct area were inspected for any hollows and any probable use of the hollows noted (eg. den scats at base of trees, avifauna use, etc). No evening bat surveys were undertaken as it was considered that the only species likely to occur on and in the near vicinity of the property would be the Lesser Long-eared Bat *Nyctophilus geoffroyi*

The NSW Wildlife Atlas was interrogated to ascertain if any threatened fauna species had been recorded in the local area of the property and an assessment of the significance of all potential habitats was made as an indicator of potential native fauna occurrences.

General vegetation landscape

The general vegetation is that of a dry sclerophyll open woodland of Manna Gum *Eucalyptus viminalis* and Snow Gum *E. pauciflora* together with sparsely distributed Yellow Box *E. melliodora* occurring on deeper soil areas where the soil moisture regime is more stable. The sub-dominant understorey is one of sparse Wattles *Acacia spp.* The woodland has a sparse and widely distributed native shrub understorey of Guinea Bush *Hibbertia obtusifolia*, Urn Heath *Melichrus urceolatus*, and Peach Heath *Lissanthe strigosa*; together with Bracken *Pteridium esculentum* and a mixed native and exotic herbaceous groundstorey. Groundcover is in the order of 80% and the weed population is small.

At the site of the proposed building precinct area no mature trees exist but a small number of young trees are regenerating (fig 2 & 3). The herbaceous vegetation complex at the site includes the native grasses, Kangaroo Grass *Themeda australis*, Wallaby Grass *Austrodanthonia spp.*, Spear Grass *Austrostipa spp.*, Tussock Grass *Poa spp.*, Couch *Cynodon dactylon* and Wattle Mat-rush *Lomandra filiformis*. The flowering herbaceous species include Scaly Buttons *Leptorhynchos squamatus*, Austral Bears Ear *Cymbonotus lawsonianus*, Fireweed Groundsell *Senecio linearifolius*, Stinking Pennywort *Hydrocotyle laxiflora*, Creeping Cudweed *Euchiton gymnocephalus*, Variable Plantain *Plantago varia*, Grassland Wood Sorrel *Oxalis perennans*, Rock Fern *Cheilanthes austrotenuifolia* and exotic and weed species, Nightshade *Solanum chenopodioides*, Oxalis *Acetosella vulgaris*, Ribwort Plantain *Plantago lanceolatus*, Flatweed *Hypochaeris radicata*, Capeweed *Arctotheca calendula* and Vipers Bugloss *Echium vulgare*.

Figure 2. SE view across the proposed building precinct with several regenerating trees, (Manna Gums – *E.*

The vegetation of the building precinct provides little or no habitat for smaller native fauna, the only species that may frequent this area (Cunningham's Skink *Egernia cunninghamii*, Grass and Eastern Blue tongue Lizard *Tiliqua scinoides* and Shingleback Lizard *Trachydosaurus rugosus*. These lizards and Geckos such as the Wood Gecko *Diplodactylis vittatus* would / could utilise the litter layer at the base of some Manna Gums on the property but would only be transient visitors to the proposed building precinct. The heavy litter layers in parts of the woodlands on the property could predictably also support the carnivorous marsupial, the Yellow-footed Antechinus *Antechinus flavipes* that has been trapped in the area in the past. (CSIRO / OEH advice)

Figure 3. SW view across the proposed building precinct.

The larger native mammals Eastern Grey Kangaroos *Macropus giganteus* obviously frequent the area and the surrounding woodlands, as scats are common. Similarly Wombat *Vombatus ursinus* and Echidna *Tachyglossus aculeatus* diggings are evident in the near vicinity of the building precinct.

The ferocious marsupial, the Spotted-tailed Quoll *Dasyurus maculatus* could potentially inhabit the local area, as several sightings of this animal in the Bungendore, Tarago, Taylor's Creek area have been reported over recent years. An unconfirmed sighting was recently reported from the Mt Fairy road area, only a short distance from the Iffland property (OEH 2012).

There are no fallen logs or rock outcrops or lenses for threatened reptile species such as the Earless Lizard *Tympanocryptis lineata pinguicolla*, Pink-tailed Worm Lizard *Aprasia parapulchella*, Striped Legless Lizard *Delmar impar* and the Little Whip Snake *Suta flagellum*; recognising that none of the latter group have been recorded from the area. None were expected to occur and none were found.

The only large threatened native animal that could possibly frequent the local area would be that of Rosenberg's Monitor *Varanus rosenbergii* but none have been observed or located / recorded in the area; the closest animals known to exist in the region being on Lake George Escarpment - Macs Reef road area. This animal has a preference for light sandy soil areas with active ant nest mounds as a food source, but it is highly unlikely that this Goanna would be in the local area due to the many years of disturbance by domestic stock grazing and at this site by the development of the commercial wildflower plantation.

The only avifauna observed during the survey were relatively common species, these being Crimson Rosella, *Platycercus elegans*, Sulphur Crested Cockatoo *Cacatua galerita*, Galah *Cacatua roseicapilla*, Eastern Rosella *Platycercus eximius*, Red Wattlebird *Anthochaera carunculata*, Willie-Wagtail *Rhipidura leucophrys*, Silveryeye *Zosterops lateralis*, Brown Thornbill *Acanthiza pusilla*, Eastern Spinebill *Acanthorhynchus tenuirostris*, White-winged Chough *Corcorax melanorhamphos*, Magpie-lark *Grallina cyanoleuca* and Magpie *Gymnorhina tibicens*, The very harmonious Grey Shrike Thrush *Colluricincla harmonica* and the petite Eastern Yellow Robin *Eopsaltria australis* were heard calling from within the wildflower

plantation as were several other nectivorous birds (honeyeaters) near the property home. These are two of a number of woodland bird species that are recognised as being in decline across the Tablelands. Others are the Speckled Warbler *Chthonicola sagittata* (V), Diamond Firetail *Zonaeginthus bellus* (V&D), Hooded Robin *Petroica cucullata* (D), Restless Flycatcher *Seisura inquieta* (D), Jacky Winter *Microeca leucophaea* (D), Brown Treecreeper *Climacteris picumnus* (V&D), Striated Thornbill *Acanthiza lineata* (D), Crested Shrike Tit *Falcunculus frontatus* (D) and Painted Quail *Turnix varia* (D). (V – vulnerable, D – declining)

Summary of survey and assessment

A short field survey of an area on the Iffland property where it is proposed / planned to develop a building, was carried out in late July. While this was not the most appropriate time for a flora and fauna survey it did provide for an assessment of the likely impacts (if any) on any native flora or fauna from the development of the building precinct.

The field survey found no significant native flora or fauna and no significant fauna habitat that would be detrimentally impacted by development of the building precinct. No threatened species have been recorded for the property in past surveys (NSW CRA) and no indicators of their presence were observed during this survey. No significant populations of native plants and animals exist and no significant communities occur in the near vicinity of the property and building precinct eg important or critical habitat as considered in the NSW Threatened Species Conservation Act (TSC Act) or the Commonwealth Environmental Protection and biodiversity Conservation Act (EPBC Act). It is considered that only the Diamond Firetail Finch could possibly frequent the area as it does occur in the local region. As such the development of the building precinct and the construction of buildings and infrastructure on the site will not have any detrimental impact on any native flora and fauna.

In assessing the potential impacts of the proposed development of the building precinct the ‘significance’ of any potential impacts was made within the following criteria:

1. The extent of fragmentation of any native vegetation

No further fragmentation of the woodland or any herbaceous community will accrue from the development of the building precinct.

2. Extent of degradation of native vegetation on the site

Little degradation of any significant or important native plant communities will accrue from the clearing of building precinct area.

3. Extent of destruction / removal of habitat

No mature trees will be removed and only the building precinct areas will be cleared of herbaceous species, so little fauna habitat will be destroyed.

4. Degree of reduction in species population numbers

There will not be any reduction of native flora or fauna species, or any native vegetation communities

5. Destruction / loss of any threatened species

No threatened species were located during the surveys.

6. Presence of any rare or locally important species

No locally rare or important species were located during the surveys or are known to occur on the property

7. Existence of an endangered ecological community (EEC).

No endangered ecological communities occur on the property, particularly in the vicinity of the proposed building precinct

8. Existing and potential threatening processes (pre and post development)

No listed threatening processes will be operative during the development but other processes could have some impact, such as vegetation degradation, dust and noise.

References

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Appendix 1. Seven Part Test of Significance.

Section 5A of the Environmental Planning and Assessment Act and Section 94 (2) of the New South Wales Threatened Species Conservation Act, require the evaluation of any significant impacts on threatened species, populations or ecological communities or habitats through the application of a 'seven-part test'.

The application of the seven-part test to this development is summarised as follows:

Diamond Firetail - *Stagonopleura guttatus*

- 1. In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk.**

The only threatened species predicted to possibly frequent or inhabit the property is the Diamond Firetail. No Diamond Firetails were observed or noted during the survey of the Iffland property although small flocks have been recorded from the general area. The species spends much of its time feeding on the ground on grass seed but little mature native grasses exist on the building precinct area. Little potential feeding habitat for this species would be disturbed. As such, the planned development would have little or no adverse impacts on the life cycle of this species, if any populations did actually frequented the area.

- 2. In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction**

As no Diamond Firetails were observed, predictably there are no populations of the species on the property. The Diamond Firetail utilises tall tussocky grassland of which there is little on the property. Building would not impact on the life cycle of the species if any birds were present.

- 3. In the case of an endangered ecological community or critically endangered ecological community, whether the proposed:**

- a. Is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or**

- b. Is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.**

There are no endangered ecological communities or critically endangered ecological communities of potential use by Diamond Firetails within or near the property.

4. In relation to the habitat of a threatened species, population or ecological community:

- a. The extent to which habitat is likely to be removed or modified as a result of the action proposed, and**
- b. Whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and**
- c. The importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.**

No critical potential habitat will be damaged or fragmented by the development of the building precinct.

As the native grassy woodland vegetation habitat on the property has long been disturbed through clearing, grazing and agricultural activities (wildflower plantation) limited native habitat suitable for Diamond Firetails exists on the property. Development of the proposed building precinct will not contribute to any further fragmentation of habitat.

5. Whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)

No critical native fauna (or flora) habitats exist on the property so no habitat critical to the survival of any fauna populations will be impacted by the subdivision works.

6. Whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan

No recovery plan has been prepared specifically for the Diamond Firetail and no recovery plans for other threatened fauna that could possibly occur on the property have been prepared. The development of the building precinct will not be inconsistent with any recovery plan.

7. **Whether the action proposed is part of a key threatening process or is likely to result in the operation of, or increase the impact of a key threatening process.**

The development of the proposed building precinct is not considered to be a listed threatening process and subdivision developments within approved local government rural subdivision areas are not listed as key threatening processes.

PLEASE NOTE: THE SOIL AND EFFLUENT REPORT FOR LOT 1154 AND IS INCLUDED AS AN APPENDIX TO THIS DOCUMENT ON BOTH THE HARD COPY, DISC COPY AND EMAILED VERSION OF THIS SUBMISSION.