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20 September 2013
Our Ref: 8518A.4JM
Your Ref: LEP2013

The General Manager
Lithgow City Council
P.O. Box 19
LITHGOW NSW 2790

Attention: Ms Sherilyn Hanrahan, Strategic Land Use Planner

By Email: council@lithgow.nsw.gov.au

Dear Sherilyn,

**Draft Lithgow City Local Environmental Plan 2013
Proposed Inclusion of an Educational Establishment as an Additional Permitted Use at
Lot 4 DP1171245 Wolgan Road, Wolgan Valley owned by Cranbrook School**

We refer to the exhibition of Draft Lithgow City Local Environmental Plan 2013 (Draft LCLEP 2013) by Lithgow City Council (Council) and confirm that DFP acts on behalf of Cranbrook School (Cranbrook) in relation to this request for inclusion of an 'educational establishment' as an additional permitted use pursuant to Clause 2.5 and Schedule 1 of Draft LCLEP 2013.

Background

On 11 June 2013, representatives from Cranbrook, EPM Projects (EPM) and DFP met with Council staff to discuss the lodgement of a development application (DA) for an educational establishment at Lot 4 DP1171245 Wolgan Road, Wolgan Valley.

On 2 July 2013, Council issued a subsequent letter to DFP acknowledging the following pertinent information (**Attachment 1**):

"It is confirmed that the development is currently permissible in the 1(a) Rural (General) zone under the Lithgow City Local Environmental Plan 1994 (LEP).

However, as discussed the proposal would be classed as a 'school' or 'educational establishment' in the Draft Principle (sic) Local Environmental Plan 2013 (Draft LEP) which is prohibited in the proposed RU1 – Primary Production zoning for this property."

Despite Cranbrook's intention to lodge a DA under Lithgow Local Environmental Plan 1994 (LLEP1994) for an educational establishment, the purpose of this letter is to request that Council recognise an 'educational establishment' as an additional permitted use at Lot 4 DP 1171245 Wolgan Road, Wolgan Valley pursuant to Clause 2.5 and Schedule 1 of Draft LCLEP 2013.

The above request will enable Cranbrook to continue in accordance with the local environmental planning framework without relying upon existing use rights under Sections 106 – 109B (inclusive) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), or Clause 28(2) of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) in order to pursue further development of the site for educational establishment purposes.



Draft Lithgow City Local Environmental Plan 2013

Clause 2.5 of Draft LCLEP 2013 states the following:

- (1) *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.*
- (2) *This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.*

Schedule 1 of Draft LCLEP 2013 does not currently include any additional permitted uses, but provides an appropriate mechanism for Council to recognise the current development potential and suitability of the site for this type of use, particularly as a DA for an educational establishment is scheduled to be submitted to Council in the interim confirming Cranbrook's intentions for the future use of the site.

An 'educational establishment' is defined in the Draft LCLEP 2013 as follows:

- “a building or place used for education (including teaching), being:*
- (a) a school, or*
 - (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.”*

Request for 'Educational Establishment' to be inserted as an Additional Permitted Use Pursuant to Clause 2.5 and Schedule 1 of Draft LCLEP 2013

On behalf of Cranbrook, DFP requests that Council insert the following text into Schedule 1 prior to gazettal of Draft LCLEP 2013:

“WOLGAN VALLEY

- (1) Use of certain land at Lot 4 DP 1171245 Wolgan Road, Wolgan Valley.
- (2) Development for the purpose of an educational establishment is permitted with consent.”

Justification for 'Educational Establishment' to be inserted as an Additional Permitted Use Pursuant to Clause 2.5 and Schedule 1 of Draft LCLEP 2013

The inclusion of an educational establishment as an additional permitted use at Lot 4 DP 1171245 Wolgan Road, Wolgan Valley pursuant to Clause 2.5 and Schedule 1 of Draft LCLEP 2013 is justified as follows:

- (1) An educational establishment is currently permitted with consent under LLEP 1994, but if Draft LCLEP 2013 is gazetted in its current form it will become prohibited;
- (2) A DA for an educational establishment is scheduled to be submitted to Council under LLEP 1994 to confirm Cranbrook's intentions to use or develop the site for this purpose;
- (3) The risk to Council (and the potential for planning controls to be at odds with community expectations associated with this request) is low because



Cranbrook will otherwise be able to rely upon existing use rights under Sections 106 – 109B (inclusive) of the EP&A Act 1979, or Clause 28(2) of ISEPP in order to pursue further development of the site for school purposes following favourable determination of a DA by Council;

- (4) The suitability, scale and impacts associated with any future educational establishment proposal are able to be assessed by Council under Section 79C of the EP&A Act 1979 irrespective of whether a DA is lodged under LLEP 1994, or as an additional permitted use pursuant to Clause 2.5 and Schedule 1 of Draft LCLEP 2013 (upon gazettal); and
- (5) Council is able to consider this request on behalf of Cranbrook as part of the Draft LCLEP 2013 submission review process because development consent from Council for an educational establishment on the site is not a prerequisite for an additional permitted use to be inserted into Schedule 1 of Draft LCLEP 2013.

Conclusion

DFP has reviewed Draft LCLEP 2013 on behalf of Cranbrook and notes that whilst an educational establishment is permitted with consent in the 1(a) Rural (General) zone under LLEP 1994, this type of use will be prohibited in the RU1 – Primary Production zone under Draft LCLEP 2013.

Notwithstanding Cranbrook's intentions to lodge a DA for an educational establishment at Lot 4 DP1171245 Wolgan Road, Wolgan Valley under LLEP 1994, we hereby request that Council include an 'educational establishment' as an additional permitted use pursuant to Clause 2.5 and Schedule 1 of Draft LCLEP 2013 for the reasons stated herein.

Please advise when submissions received in relation to Draft LCLEP 2013 will be reported to Council and contact the writer on 9980 6933 in the interim should you wish to discuss.

Yours faithfully,

DFP PLANNING CONSULTANTS

A handwritten signature in black ink, appearing to read 'John McFadden', written in a cursive style.

**JOHN MCFADDEN
PARTNER**

jmcfadden@dfplanning.com.au

Reviewed: _____

A handwritten signature in black ink, appearing to read 'W. Gosling', written in a cursive style.



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ATTACHMENT I



Reference: JKH
Environment & Development Dept.

2 July 2013

John McFadden
Don Fox Planning
11 Dartford Road
Thornleigh NSW 2120

CC/-DHull@cranbrook.nsw.edu.au

Dear Sir,

RE: LOT 4 DP 1171245 WOLGAN ROAD, WOLGAN VALLEY - CRANBROOK SCHOOL PROPOSAL



I refer to your emails in regards to your proposal for use of the abovementioned property for Cranbrook School educational purposes and Council meeting 11 June 2013. It is confirmed that the development is currently permissible in the 1(a) Rural (General) zone under the Lithgow City Local Environmental Plan 1994 (LEP).



However, as discussed the proposal would be classed as a 'school' or 'educational establishment' in the Draft Principle Local Environmental Plan 2013 (Draft LEP) which is prohibited in the proposed RU1- Primary Production zoning for this property. In principle Council is supportive of this type of proposal; however, it would require a detailed assessment on its merits in accordance with the current LEP while also considering the Draft LEP.


Therefore, to progress your proposal, a Development Application (DA) for the smaller scaled development may be lodged seeking consent for the use of the site as an 'educational establishment' with ancillary support facilities. If approved this may allow for existing use rights to apply upon implementation of the Draft LEP and allow for increased use of the site as required in the future subject to subsequent DA's. However you should obtain your own legal advice in this respect.

For the first DA the following information will be required for its assessment:

- A Development Application form (including owners consent
- A Statement of Environmental Effects that includes:
 - Proposed use of the site in detail (i.e. outdoor activities, number of classrooms, facilities, each building use etc.);
 - Justification for the proposed location and use of the site in regards to the current LEP and Draft LEP;
 - Any potential impacts of the development and any proposed mitigation measures;
 - Required buildings;
 - Frequency of use (how many times a year, for how long etc.);
 - Number of students;
 - Number of teachers;

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 (02) 6351 4259

 www.lithgow.nsw.gov.au
 council@lithgow.nsw.gov.au

 ADDRESS CORRESPONDENCE
TO GENERAL MANAGER
PO BOX 19, LITHGOW NSW 2790

- Utilities to be used;
- Proposed clearing;
- Access arrangements;
- Compliance with Development Control Plan for Off-Street Carparking; and
- Compliance with Development Control Plan for Outdoor Advertising.
- Property layout plan including all boundaries of the allotment in relation to buildings, structures and access;
- Site Plan, detailing location of buildings, carparking, walkways etc;
- Elevations, Sections and Floor Plans for each proposed building;
- Bushfire Risk Assessment Report;
- If clearing is proposed, a preliminary Flora and Fauna Report under appropriate legislation, including assessment under *State Environmental Planning Policy No.44 Koala Habitat Protection*;
- Geotechnical Report (water balance report) for assessment of an appropriate onsite effluent management system (for the implementation of any effluent disposal system a Section 68 application will be required to be lodged include the manufacturers details of the proposed septic system to be used); and
- Justification for the proposed exemption from the Section 94A Development Contributions Plan 2012.

Please note that additional information may be required once the application is submitted to Council. Information for a Construction Certificate has not been included in the abovementioned list, but can be further discussed should you choose to use Council as the Certifying Authority.

In relation to other enquiries, Council does not retain information regarding plant diseases in the area, however in regards to existing noxious weeds on the property it is suggested that you contact the Upper Macquarie County Council on (02) 63331375 or their website at www.umcc.nsw.gov.au.

Please do not hesitate to contact Miss Jessica Heath who is available between 12:45pm and 2:30pm Monday to Friday on (02) 63549999, in Council's Environment & Development Department should you have any queries in relation to this matter.

Yours sincerely



Mr Andrew Muir

GROUP MANAGER ENVIRONMENT & DEVELOPMENT