

8.4 PLANNING PROPOSAL 9 – SCHEDULED AMENDMENT TO PERMIT MINOR ANCILLARY COMPONENTS OF MEDICAL CENTRE & AGED HOUSING DEVELOPMENT IN INDUSTRIAL ZONE AT RAILWAY ST, DORRIGO.

File/Index: Planning Proposal 9 (Land Use & Planning)

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REPORT SUMMARY:

Council has received a request to prepare a Planning Proposal (PP) that will facilitate the development of a medical centre and aged housing development at Dorriggo, by allowing for a series of minor encroachments of the development into the IN1 Industrial Zone. The request is considered to be minor in nature and worthy of support. This report recommends that Council proceed with the preparation of a planning proposal to facilitate the proposed development and request the issuing of a Gateway determination from the Department of Planning.

REPORT DETAIL:

Background

Councillors would recall the lengthy history concerning attempts by the Cork Trust to permit the construction of seniors housing on land at Railway St in Dorriggo. As the relevant land was zoned IN1 – General Industrial it was necessary to amend Bellingen Local Environmental Plan 2010 (LEP) to permit this use of the land. Two formal requests were made to Council to amend the LEP.

The first request to amend the LEP was made by the Cork Trust in 2010 and despite being supported by resolution of the elected Council the request failed to receive the support of the NSW Department of Planning. The potential conflict between seniors housing and industrial development was the principle reason for previous planning proposals not being supported by the NSW Department of Planning.

The second request was made in February 2012 and was considered by Council in parallel with the development of an Employment Lands Strategy (ELS). This planning proposal request was ultimately withdrawn by the proponents and the endorsed ELS did not support the removal of the IN1 zone on the relevant land, or the establishment of seniors housing on the land.

The need for seniors housing in Dorriggo was a key issue addressed by the ELS and has been a matter of considerable significance to the Dorriggo community in recent years. Over the past 12 months, Council officers have been in regular discussion with the Cork Trust regarding the possible options for development of seniors housing in Dorriggo.

Importantly, the viability of development in this precinct has been significantly enhanced by the Cork Trusts acquisition of land that is zoned R1 General Residential and adjoins the Industrial Zone. The R1 zone is capable of permitting a variety of proposed uses including a medical centre and seniors housing.

This parcel of land (Lot 709 DP 706735) was one of the potential sites for seniors housing evaluated for its suitability according to criteria detailed in the ELS. In terms of relative suitability, this site scored 94 out of 100 as opposed to 77 for the industrially zoned land. The relevant land parcels and zonings are depicted in the diagram that is included as Attachment A to this report.

A further factor that has improved the viability of development in the precinct is the amalgamation of both lots (ie: Lots 709 & 710 DP 706735) into a single title (Lot 70 DP 1191049). Final registration of the Deposited Plan occurred on 11 February 2014 and a copy of the registered plan is included as Attachment B. This will allow the Cork Trust, as the single owner of the land, to assume a greater responsibility for managing any conflicts that may occur between land uses on the industrial and residential parts of the property.

The Cork Trust has prepared a Development Application (DA) for the construction of a medical centre and 4 seniors housing dwellings on Lot 70 DP 1191049. This application was received on 12 February 2014. Whilst these buildings will be located primarily on land zoned R1 General Residential (and therefore capable of being approved as development that is permissible in the zone) minor ancillary components of the development are proposed to be located in the IN1 Zone.

Council has met with the Cork Trust on numerous occasions to explore opportunities for the approval of the minor encroachments as part of a DA, without having to amend the LEP to allow these uses. Despite the minor nature of the encroachments (ie: outdoor waiting area for the medical centre and water tanks for seniors housing) there is unfortunately no opportunity to use flexible zone provisions or any other mechanism to approve the encroachments in the IN1 zone. It should be noted that Council has sought advice from the Department of Planning & Infrastructure, at the request of the proponents, to further confirm that this is the case.

Accordingly, the sequencing of approvals in relation to the development in the manner anticipated by the Cork Trust is included below.

- Council resolves to prepare planning proposal to permit minor encroachments in the IN1 zone.
- Development Application and Construction Certificate approved for Stage 1 works wholly located within R1 Zone.
- Construction commences in accordance with relevant plans.
- BLEP 2010 amended to permit IN1 zone encroachments.
- Development Application and Construction Certificate approved for additions to previously approved buildings.
- Final development constructed.

It is noted that any reference to approval of applications herein should not be construed as an indication of Council's support or otherwise of those applications which will be considered on their merit upon receipt.

The proposal

The planning proposal as depicted in the preliminary plan (Attachment C) would seek to facilitate development that includes encroachments onto the Industrial Zone. The proposal involves:

- The part construction of a medical centre on land zoned IN1 General Industrial, including an outdoor waiting area, landscaping and roofing components within 14 metres of the existing R1 / IN1 zone boundary.
- The placement of domestic water tanks on land zoned IN1 General Industrial that is no greater than 6m north of the existing R1 / IN1 zone boundary, associated with the development of seniors housing on land within land zoned R1 General Residential.

Although a photovoltaic solar array is also proposed on land zoned IN1 General Industrial (approximately 40m north of the existing R1 / IN1 zone boundary) it is considered that this does not require any amendment of BLEP 2010 as it is permissible with consent pursuant to

the provisions of Clause 34(7) of State Environmental Planning Policy (Infrastructure) 2007. This provides as follows with respect to solar energy systems.

“(7) Solar energy systems

Except as provided by subclause (8), development for the purpose of a solar energy system may be carried out by any person with consent on any land.”

The proponents have been requested to justify why they should not be required to redesign the development in order to locate all relevant development components within Zone R1 General Residential. The following arguments have been presented as to why this is not viable in the circumstances.

“The benefits and requirements of the encroachments

1. Medical centre outdoor waiting area-

- a) The outdoor waiting area is positioned to the Northern side of the medical centre for the purpose of weather protection and solar gain.*
- b) The Medical Centre itself is positioned hard up against the "zone" boundary to facilitate parking and drop-off areas as well as access to the Seniors Housing development using the existing driveway access point, this narrow access point is the only access option due to frontage constraints.*
- c) The East-West orientation of the medical centre is optimising solar access with the central arched roof (North-South) offering protection to the main entry as well as the northern outside waiting area. Other configurations were considered but contained issues of access and solar control.*
- d) It is envisaged by the Cork Trust that the land to the north of the Medical Centre will be reserved for future community health services including a Natural Health Clinic and hydrotherapy pool, as such the encroachment is not considered out of character nor detrimental to future use.*
- e) The two lots are being amalgamated onto a single title, industrial development will not happen on that portion of land.*

2. Solar Power Scheme

- a) The solar power array is part of a larger autonomous services component of the development.*
- b) Solar systems on the individual buildings would require the removal of a significant number of established trees on the site, positioning the panel array on this section of the development will allow the project to produce virtually all its own power without needing to remove additional trees.*
- c) The solar array area is likely to remain undeveloped for a number of years, in this time it is expected that the technology for power generation will improve and this proposed system will be updated or moved onto the rooftop of that development.*

3. Rain Water Tanks

- a) As part of the overarching sustainability plan the development will be implementing a 30,000 ltr rainwater tanks for individual units. These systems have quite large footprints, in order to keep a modest density it has been necessary to place a small number of tanks on the northern side of the zone boundary.*

4. Fencing and Landscaping

- a) *The whole of the existing lot 710 is designated for community use until required for development, this will include gardens, green zones and plantings."*

Although there is considered to be potential for the redesign of the development and this would normally be the favoured option of Council, the following arguments support the preparation of a PP in these particular circumstances.

- The establishment of a Medical Centre in Zone IN1 represents an effective transitional land use between the existing residential zone and existing industrial development. This is because it will not impact significantly upon the amenity of the R1 zone and will not jeopardise use of land in the IN1 zone given the lack of residential occupation.
- The issue of a reduced supply of industrial land can be addressed with reference to the employment generating nature of the medical centre and the retention of the IN1 zoning over the land.
- The area of land is minor in extent.
- The broader community benefit likely to accrue from the establishment of a medical centre in Dorrig.
- The history of attempts to develop land in the precinct and the desire of all parties to see the vision of the Cork Trust realised in Dorrig.

The proposed amendment to LEP

The proposed mechanism for amendment of the LEP is the insertion of an additional item in Schedule 1 – Additional permitted uses, of the LEP. The schedule would make a "medical centre" a use that is permissible with development consent on that part of the land zoned IN1 and make minor ancillary components to residential development permissible within Zone IN1 within a 6 metres distance of the zone boundary with the R1 Zone.

This is considered preferable to:

- The amendment of Clause 5.3 – Development near zone boundaries to prescribe a distance between Zones IN1 and R1 within which uses may be permitted with consent that are prohibited in one of those zones but permissible in the other. This is due to the fundamental incompatibilities that can exist between industrial and residential developments and the potential use of this clause at the zone interface between IN1 & R1 in other areas of the Shire that do not have the same conducive set of circumstances as the subject site.
- The inclusion of a medical centre and residential development as permissible uses within the IN1 zone across the Shire, given the same issues of incompatibility that may apply in other circumstances.
- The rezoning of a small strip of land to R1 that would permit the development with consent, given that the underlying employment generating zoning of the land has recently been re-affirmed via the adoption of the ELS.

The proposed amendment to Schedule 1 is included below.

3 Use of certain land at Railway St, Dorrig

- (1) *This clause applies to land at Railway St, Dorrig, being Lot 70 DP 1191049.*
- (2) *Development for the purpose of a medical centre is permitted with consent on that part of the land zoned IN1 General Industrial.*
- (3) *Development for the purpose of domestic water tanks and landscaping is permitted with consent on that part of the land zoned IN1 General Industrial*

provided that it is no greater than 6m north of the R1 General Residential and IN1 General Industrial zone boundary on the land.

- (4) *Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.*

BUDGETARY IMPLICATIONS:

The Planning Proposal will be prepared and exhibited by Council. In view of the broader community benefit likely to accrue from the development of a medical centre and seniors housing in Dorrigo, it is considered reasonable that the costs of preparing the proposal be absorbed by Council in this instance. All administrative costs that will be incurred can be met from existing budget allocations.

SUSTAINABILITY ASSESSMENT:

The planning proposal will facilitate the establishment of both a medical centre and a seniors housing development in Dorrigo. These are both uses that will contribute not only towards the social infrastructure in Dorrigo but are also likely to have a positive economic impact by virtue of the employment opportunities associated with the construction phase of the project.

The minor amendment to the LEP will provide for land uses that although not industrial in nature, will act as an effective form of buffering between future residential uses and more conventional industrial uses within the existing industrial estate. This will ultimately mitigate any adverse environmental impacts associated with industrial activities and the inclusion of environmentally friendly infrastructure such as water tanks and solar power within the buffer zone area is a desirable design response to the constraints of the site.

ENGAGEMENT:

For amendments to Environmental Planning Instruments such as the LEP, there are statutory provisions that must be observed with respect to community consultation. These take precedence over any requirement stipulated in the Bellingen Shire Community Engagement Strategy.

The planning proposal is required to include details as to the proposed form of Community Consultation. In the circumstances, it is considered that the proposed amendment to the LEP would be classified as a "low impact" planning proposal in accordance with "A Guide to preparing local environmental plans". This requires a 14 day exhibition period that must include;

- Newspaper notification of the amendment.
- Notification on the Council website.
- Notification of adjoining landowners.

Having regard to the Bellingen Shire Community Engagement Strategy, it is considered that the proposal would be appropriately classified as having a Level 4 Impact (Lower impact – local), which requires Council to "inform" and "consult" with the community. The measures documented to ensure compliance with 'A Guide to preparing local environmental plans' are considered appropriate for a Level 4 impact activity and no additional measures are proposed.

SHIRE OF BELLINGEN 2030 COMMUNITY VISION ALIGNMENT:

The Planning proposal provides an opportunity for Council to represent the aspirations of the community as opportunities are identified, with particular reference to the following two Strategic Directions documented in the Delivery Program & Operational Plan (June 2013).

Goal	CV Strategic Direction	BSC Role		Delivery Plan 94 years)		Operational Plan (1 year)
PP.2.3	Eco-village and/or community living developments for mixed ages are encouraged	Influence	PP.2.3.1	Represent the aspirations of the community as expressed in the Community Vision as opportunities are identified	PP.2.3.1.1	Represent the aspirations of the community as expressed in the Community Vision as opportunities are identified
PP.4.1	Health care options and facilities are enhanced across the shire including birthing, palliative and aged care support	Influence	PP.4.1.1	Represent the aspirations of the community as expressed in the Community Vision as opportunities are identified	PP.4.1.1.1	Represent the aspirations of the community as expressed in the Community Vision as opportunities are identified

DELEGATION OF PLAN MAKING FUNCTIONS TO THE GENERAL MANAGER

Council resolved as follows at the Ordinary Meeting of Council 28 November 2012 regarding Delegation of Ministerial Functions to Council for the making of certain Local Environmental Plans.

“RESOLVED (Cr Scott/Cr Manning)

That Council advise the Minister for Planning & Infrastructure that it formally accepts the proposed delegations for plan making under the provisions of Section 59 of the EP & A Act 1979.

That, pursuant to Section 381(a) of the Local Government Act 1993, Council approve the delegation of plan making functions to the General Manager.

That Council advise the Minister for Planning & Infrastructure that the nominated Council Officer for the exercising of the proposed delegations for plan making is Liz Jeremy, General Manager.”

It is prudent at this point in the process to document Councils intention, or otherwise, to use its delegations for the making of the Plan.

It is recommended, given the locally specific and minor nature of this proposed amendment that Council inform the Department of its intention to use its delegation to make the Plan.

OFFICERS RECOMMENDATION:

- 1 That Council resolve to prepare a Planning Proposal to insert the following item into Schedule 1 of Bellingen Local Environmental Plan 2010.

3 Use of certain land at Railway St, Dorrigo

- (1) *This clause applies to land at Railway St, Dorrigo, being the amalgamated area of Lots 709 & 710 DP 706735, Lot 70 DP 1191049.*

(2) Development for the purpose of a medical centre is permitted with consent on that part of the land zoned IN1 General Industrial.

(3) Development for the purpose of domestic water tanks and landscaping is permitted with consent on that part of the land zoned IN1 General Industrial provided that it is no greater than 6m north of the R1 General Residential and IN1 General Industrial zone boundary on the land.

(4) Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.

- 2 That Council resolves to forward the Planning proposal to the Department of Planning & Infrastructure in accordance with Section 56(1) of the Environmental Planning & Assessment Act 1979 and request the issuing of a Gateway Determination to allow for the exhibition of the proposed amendment.
- 3 That Council resolves to advise the Minister of Planning & Infrastructure that it considers the proposed amendment to be of minor significance and that it intends to use its delegations to permit the General Manager to make the Local Environmental Plan.

ATTACHMENTS:

8.4.A Plan showing relevant details – Planning Proposal 9
(DWS 419519)

8.4.B Plan of consolidation of Lots 709 & 710 DP 706735
(DWS 419392)

8.4.C Preliminary plan of proposed encroachments into the Industrial Zone
(DWS 419268)

Report (DWS 420840)

Cr Scott/Cr Harrison)

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- (4) Development consent under subclause (2) must not be granted after 5 years from the commencement of this Plan.*

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- 3 That Council resolves to advise the Minister of Planning & Infrastructure that it considers the proposed amendment to be of minor significance and that it intends to use its delegations to permit the General Manager to make the Local Environmental Plan.

UNANIMOUS

