

Rezoning of "Clearview" site, Thirlmere Way, Picton

Proposal Title : **Rezoning of "Clearview" site, Thirlmere Way, Picton**

Proposal Summary : **To enable residential development of land known as the "Clearview" site, Thirlmere Way, Picton, by rezoning it from Zone RU2 Rural Landscape to part Zone R2 Low Density Residential and part Zone R5 Large Lot Residential under Wollondilly Local Environmental Plan 2011.**

PP Number : **PP_2011_WOLLY_007_00** Dop File No : **09/02759**

Proposal Details

Date Proposal Lodged with DOP : **28-Jun-2011** Date Proposal Uploaded to Public Website : **01-Jul-2011**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult :

- Ambulance Service of NSW**
- NSW Health - Local Health Districts**
- Hawkesbury - Nepean Catchment Management Authority**
- Department of Education and Communities**
- Office of Environment and Heritage**
- NSW Department of Primary Industries - Minerals and Petroleum**
- Energy Australia**
- Mine Subsidence Board**
- Transport for NSW**
- Fire and Rescue NSW**
- Department of Health**
- NSW Police Force**
- NSW Rural Fire Service**
- Transport for NSW**
- Transport for NSW - Roads and Maritime Services**
- Transport for NSW - NSW Trains**
- Department of Transport - State Transit Authority**
- Sydney Water**
- Telstra**

Gateway Determination

Decision Date : **08-Aug-2011** Gateway Determination : **Passed with Conditions**
Due Date of LEP : **15-Feb-2016**

Implementation

Implementation Start Date : **15-Aug-2011** Exhibition Duration : **29**

Agency consultation consistent with recommendation :

Yes

If No, comment :

On 10 April 2014, Council wrote to the Department, as required by Condition 7, seeking approval to exhibit the planning proposal.

On 11 July 2014, the Department wrote to Council, raising no objection to the exhibition providing Council re-consult the agencies, particularly the Mine Subsidence Board.

The planning proposal was exhibited for comment from 23 July to 20 August 2015 and Council conducted further consultations with State agencies including the NSW Mine Subsidence Board and NSW Department of Trade and Investment.

Agency Objections :

Yes

If Yes, comment :

It is noted that a number of conflicting submissions have been made by NSW Department of Trade and Investment, and the NSW Mine Subsidence Board.

The below list of State agency submissions are grouped by agency, then by chronological order. The key points of each submission are given. The NSW Department of Planning and Environment's analysis and position on the key issues raised in this proposal is provided at the end.

SUBMISSIONS BY NSW DEPARTMENT OF TRADE AND INVESTMENT;

1. NSW Department of Trade and Investment, Regional Infrastructure Resources and Energy (17 November 2011)

- The Minerals and Land Use section, Resources and Energy objects to the proposal.
- The Clearview site is located within the Southern Coalfields. Current being mined to the south of the site by Tahmoor Coal Pty Ltd (Glencore) for high grade coking.
- The site is covered by Coal Authorisation (AUTH) 410 and Mining Lease (ML) 1376. The resources beneath Clearview likely to be mined in the short to medium term.
- The significant coal resources beneath the proposed area.
- There would be subsidence concerns and ML 1376 may be sterilised by residential development.

2. NSW Department of Trade and Investment, Regional Infrastructure Resources and Energy (22 January 2012)

- Refers to a meeting between Council, TERSOL, Mine Subsidence Board and Mineral Resources.
- Mineral Resources lifts its objection providing that development adheres to Mine Subsidence Board Guidelines

3. NSW Department of Trade and Investment Resources and Energy (26 August 2014)

- The DTIRS Mineral Resources Branch (MRB) does not support the proposed rezoning as it considers that the potential number of residences is likely to have a significant impact on local mining operations.
- There is also the potential for coal resources to be sterilised.

- The MRB has serious concerns but would reconsider their position as soon as longwall mining has been completed underneath the site.
 - The site is not within a mine subsidence area and therefore any compensation should there be subsidence issues would be required from the local colliery.
-

**4. NSW Department of Trade and Investment - Resources and Energy
(30 September 2014)**

The Coal and Petroleum Geoscience section provides the following objection:

- Previous comments in November 2011, January 2012 and August 2014 have been contradictory, however the objection remains per recent correspondence in August 2014.
 - Position reaffirmed by review of coal resources and mine planning information
 - Belief that proceeding with residential rezoning and development (even as per MSB guidelines) ahead of mining creates risk of at least partial sterilisation of the coal resource.
-

SUBMISSIONS BY NSW MINE SUBSIDENCE BOARD:

**1. Mine Subsidence Board (MSB)
(11 January 2011)**

- MSB states that the site is located within a proclaimed Mine Subsidence District and Board approval is required for future subdivision.
 - A copy of the relevant building guidelines was provided to Council.
-

**2. Mine Subsidence Board
(5 October 2011)**

- MSB does not support this proposed, as the density of the proposed housing and imminent longwall extraction present an unacceptable risk and liability to the Board.
 - States that the property is not within proclaimed Mine Subsidence District but lies within the boundaries of the Picton, Bargo and Wilton Mine Subsidence Districts. The MSB is formalising details to proclaim this area as a Mine Subsidence District.
 - Current longwall plans indicate the site will be undermined in 5-6 years with subsidence at surface greater than 1000mm.
 - Proposed development should be staged around mining schedule which will also greatly reduce impact on the community.
-

**3. Mine Subsidence Board
(12 December 2011)**

- Confirms current longwall plans indicate that site will be undermined in 5-6 years with subsidence at surface of greater than 1000mm.
-

**4. Mine Subsidence Board
(24 July 2014)**

- MSB has no objection to the proposal as provided for public exhibition on 23rd July 2014.
-

ANALYSIS, POSITION AND RECOMMENDATION OF NSW DEPARTMENT OF

PLANNING AND ENVIRONMENT:

In considering all relevant planning issues, the Department has met with, or been in communication with, representatives from the following stakeholders during the planning process to attempt to satisfactorily resolve all outstanding matters and objections:

- Wollondilly Shire Council
- NSW Department of Trade and Investment
- NSW Mine Subsidence Board
- Glencore Pty Ltd (the mining company licensed to operate in this area)
- TERSOL (the proponents of the planning proposal)

Additionally, the Department has explored alternative LEP drafting options in an attempt to resolve outstanding concerns. The Department has now exhausted all alternative drafting options, and has concluded there are no acceptable alternative forms of the proposal that would resolve the outstanding issues.

The Department notes there have been a number of contradictory submissions, as listed above. After consideration of all the submissions, and consultation with stakeholders, the Department concludes that substantial, valid concerns surrounding the proposal still remain.

The Department, having regard to all relevant factors, recommends the planning proposal does not proceed in any form.

In summary, the proposal is unable to be supported at this time for the following reasons:

- the proposal is subject to outstanding objections from the NSW Department of Trade and Investment, Resources and Energy that cannot be resolved;
- the site is subject to planned extraction of Longwalls 31 to 37 at Tahmoor Colliery in the short term (within the next 5 to 7 years), and any development of the Clearview site may sterilise the coal resource;
- any development of the site during mining operations runs a high risk of land subsidence of at least 1000mm leading to high cost to the government and community;
- the proposal is inconsistent with S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries;
- considered against the principles outlined in the Greater Macarthur Investigation Area, mining within 0-7 years should proceed ahead of any proposed urban development on the site;
- a sunrise clause has been considered as an option, however, it is considered there is significant policy risk in using a sunrise clause for the Clearview proposal, where the Commission's plan making powers are removed for an indefinite or unknown length of time, leading to uncertainty for all parties.

FUTURE LAND USES AND REZONING OPPORTUNITIES

At some future stage after mining has been completed and subsidence has occurred, it may be appropriate for the land uses to be re-considered.

Documentation consistent with Gateway :

If No, comment :

No

The proposal is inconsistent with S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries. Although varied responses from NSW Department of Trade and Investment Resources and Energy have occurred, the proposal has the potential to restrict the potential development of coal resources and the subject proposal is incompatible with mining. Therefore, the proposal is inconsistent, and given the development potential of the land, and the possible subsidence risk, the inconsistency with the Direction is not of minor significance.

LEP Assessment

Date Received from RPA : **21-Sep-2015**

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP :

Determination Date :

Determination Decision :

Notification Date :