

COMMITTEE: Planning & Development MEETING DATE: 8.12.10 ENCL.NO.

DE3203

**SD300111 - Planning Proposal to Rezone Lots 601 and 602, DP 1015995, 1 - 3 Kilbenny Street, Kellyville Ridge from 2(a) Residential to 2(c) Residential RZ-10-2310**

**RECOMMENDATION**

1. Council resolve to forward the applicant's Planning Proposal held at Attachment 2, to allow the rezoning of Lots 601 and 602, DP 1015995, 1 - 3 Kilbenny Street, Kellyville Ridge from 2(a) Residential to 2(c) Residential under Blacktown Local Environmental Plan 1988, to the Minister for Planning seeking a Gateway Determination.
2. Upon receipt of notification of the Gateway Determination to proceed, Council exhibit the Planning Proposal in accordance with the requirements of the Gateway Determination and the Environmental Planning and Assessment Act 1979.
3. The initial application fee be deferred until final adoption by Council of the rezoning proposal and Council require payment prior to the Local Environmental Plan amendment being referred to the Department of Planning for publication on the legislation website.
4. The applicant be advised of Council's decision.
5. It be noted that Ms. R. Bonham attended the Planning & Development Committee meeting at 6.22 p.m.

**COMMITTEE DIVISION**

Supported: Bleasdale; Atalla; Collins; Robinson

Absent: Donaldson

# EXCEPTION

---



---

REFERRED TO: DCSD FOR: Attention DATE: 9.12.10

---



---



---



---



---



---



---



---



---



---



---

## Planning & Development.

MinuteNumber:

Council Meeting Date:

Report Number: SD300111

Director City Strategy & Development Author: Akhter K. Galt S. (SH), Taylor T.

ITEM: <#>

SUBJECT:

SD300111 - Planning Proposal to Rezone Lots 601 and 602, DP 1015995, 1 - 3  
Kilbenny Street, Kellyville Ridge from 2(a) Residential to 2(c) Residential

DIVISION REQUIRED: ☐ Yes

FILE NUMBER: RZ-10-2310

### BLACKTOWN CITY 2025 VISION

Strategy: Urban living and infrastructure

### SUMMARY OF REPORT:

1. Council is in receipt of an Application to amend Blacktown Local Environmental Plan 1988 in respect of Lot 601, DP 1015995, H/N 1 Kilbenny Street, Kellyville Ridge and Lot 602, DP 1015995, H/N 3 Kilbenny Street, Kellyville Ridge.
2. The land currently consists of 2 detached houses and is zoned 2(a) Residential under Blacktown Local Environmental Plan 1988. The applicant wishes to rezone the lots from 2(a) Residential to 2(c) Residential.
3. Reforms to the *Environmental Planning and Assessment Act 1979* which commenced in July 2009 to fast-track the assessment and processing of local environmental plans mean that this proposal will need to be forwarded to the Minister for Planning seeking a "Gateway Determination" in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*. In respect of that process, a Planning Proposal has been prepared by Don Fox Planning on behalf of the owners which stipulates the aim and any impacts of the proposed rezoning.
4. Accordingly, the purpose of this report is to seek Council's endorsement to forwarding the Planning Proposal to the Minister for Planning seeking a "Gateway Determination" to proceed with this rezoning.
5. Attachments to this report are:
  - Attachment 1 - Location plan.
  - Attachment 2 - Planning Proposal for the rezoning of Lots 601 and 602, DP

1015995, 1 - 3 Kilbenny Street, Kellyville Ridge.

#### RECOMMENDATION:

1. Council resolve to forward the applicant's Planning Proposal held at Attachment 2, to allow the rezoning of Lots 601 and 602, DP 1015995, 1 - 3 Kilbenny Street, Kellyville Ridge from 2(a) Residential to 2(c) Residential under Blacktown Local Environmental Plan 1988, to the Minister for Planning seeking a Gateway Determination.
2. Upon receipt of notification of the Gateway Determination to proceed, Council exhibit the Planning Proposal in accordance with the requirements of the Gateway Determination and the Environmental Planning and Assessment Act 1979.
3. The initial application fee be deferred until final adoption by Council of the rezoning proposal and Council require payment prior to the Local Environmental Plan amendment being referred to the Department of Planning for publication on the legislation website.
4. The applicant be advised of Council's decision.

#### REPORT:

##### 1. Background

- a. Council has received an Application from Mrs Rosie Bonham, on behalf of Greg Bonham and Nina and Kerri Matthews, to rezone Lots 601 and 602, DP 1015995, 1 - 3 Kilbenny Street, Kellyville Ridge from 2(a) Residential to 2(c) Residential under Blacktown Local Environmental Plan 1988 (BLEP 1988). A location plan is held at **Attachment 1**.
- b. 1 Kilbenny Street, Kellyville Ridge has a site area of 817.1 sq.m and 3 Kilbenny Street has a site area of 816.9 sq.m, giving the site a total area of 1,634 sq.m. The land is currently zoned 2(a) Residential.
- c. Land within the broader area of Kellyville Ridge, bounded by Clonmore Street in the west, Waterford Street in the north, Windsor Road in the east and Kilmore Street in the south, was zoned 2(c) Residential in April 1991 as part of the Parklea Release Area and was intended to provide for higher density housing because the Rouse Hill Regional Centre was originally intended to be located on the opposite side of Windsor Road (It has since been constructed further to the north).
- d. It was not until nearly 10 years after the gazettal of the Parklea Release Area zonings that Council first began to receive preliminary enquiries from developers wishing to submit Development Applications for Residential Flat Buildings within the 2(c) Residential zone. It was at this time that Council became concerned over the prospect of repetitive Residential Flat Buildings on small sites in this location.
- e. Accordingly, Council resolved to downzone this area from 2(c) to 2(a) Residential and a draft Local Environmental Plan (LEP) was placed on public exhibition which proposed to completely eliminate the 2(c) zone and replace it with a conventional 2(a) zone. This proposal resulted in a strident outcry from developers who claimed that they had purchased the land with the express purpose of fully utilising the 2(c) Residential zone. Further, the then Department of Urban Affairs and Planning indicated to Council, in response to the draft LEP, that it was extremely unlikely to

agree to the total elimination of the 2(c) zone at this location, given its close proximity to the Rouse Hill Regional Centre and major transport infrastructure.

- f. Given these factors, Council decided in late 2000 that the draft LEP as exhibited would not receive State Government support and resolved instead to prepare a new draft LEP that would reduce the extent of the 2(c) zone rather than completely eliminate it.
- g. This resulted in the subject land being down-zoned to 2(a) Residential, with the adjoining land immediately to the south retaining its 2(c) Residential zoning.
- h. The applicant is now seeking to rezone the subject land from 2(a) Residential to 2(c) Residential under Blacktown Local Environmental Plan 1988 in order to facilitate a 3 storey residential flat development on the site.

## **2. Details of the Subject Sites**

- a. The land is identified as 1 Kilbenny Street, Kellyville Ridge (Lot 601, DP 1015995) and 3 Kilbenny Street, Kellyville Ridge (Lot 602, DP 1015995). The total site area is 1,634 sq.m which consists of the 2 adjoining lots.
- b. The land is currently occupied by 2 detached houses.
- c. These 2 houses are wedged between townhouses to the north and residential flat development to the south.

## **3. LEP Amendment Process**

- a. In July 2009 the NSW Government introduced reforms to the Environmental Planning and Assessment (EP&A) Act 1979 to expedite the assessment and processing of Local Environmental Plans (LEPs).
- b. An integral part of the new planning reforms in respect of LEPs is the preparation of a "Planning Proposal" (Section 55 of the EP&A Act). The Planning Proposal stipulates the intent, benefits and any impacts of the proposed LEP amendment, as well as compliance with relevant State Government Growth Strategies, Ministerial Directions and State Environmental Planning Policies (refer to the submitted Planning Proposal at **Attachment 2**).
- c. The initial step in making an LEP is for the relevant Planning Authority, in this case Council, to formally consider the Planning Proposal and decide whether or not to proceed. Section 4 of this report discusses the merits of this particular Planning Proposal.
- d. If Council decides to proceed, the next step in the process is to forward Council's resolution and Planning Proposal to the Minister for Planning seeking a "Gateway Determination". The Determination will stipulate whether the Minister for Planning supports the amendment to proceed to the next stage and, if so, it will detail the requirements for any further technical studies, consultation with government authorities (Section 56 of the EP&A Act) and public exhibition timeframes (Section 57 of the EP&A Act).
- e. Following public exhibition, a further report will be prepared for Council's consideration of any submissions received.

#### 4. Justification for the Clause Amendment

- a. The Planning Proposal at **Attachment 2** indicates that the intended outcome is to amend BLEP 1988 to rezone 1 - 3 Kilbenny Street, Kellyville Ridge from 2(a) Residential to 2(c) Residential.
- b. The proposed 2(c) Residential zoning will facilitate the rectification of the irregular built form context of the 2 allotments resulting from the existing conflicting densities of surrounding residential land uses.
- c. The intended zoning of the site is considered appropriate for this location for the following reasons:
  - i. 1 – 3 Kilbenny Street have been developed with a single dwelling each, whereas the land to their immediate south (5 Kilbenny Street) is developed with a 4-storey Residential Flat Building consisting of 18 residential units, while 9 Kilbenny Street consists of 21 residential units. This has resulted in 3 Kilbenny Street being significantly affected by the lack of privacy from overlooking from the flats.
  - ii. The bulk and scale of the 4-storey development to the south is significantly out of context with the low density development on 1 – 3 Kilbenny Street.
  - iii. The land immediately to the north of 1 Kilbenny Street has been developed with a Medium Density Townhouse development, which provides for 8 two-storey townhouses. Four of these townhouses are directly adjacent to 1 Kilbenny Street. Therefore, 1 and 3 Kilbenny Street are effectively surrounded by higher density housing.
  - iv. By rezoning 1 – 3 Kilbenny Street from 2(a) Residential to 2(c) Residential the site can be developed for higher densities which will make it consistent with surrounding development. In this regard the Planning Proposal notes that a 3 storey residential flat development on the subject land would provide a transition between the existing 2 storey townhouses to the north and the existing 4 storey residential flat development to the south.
- d. Although the current zoning of 2(a) Residential already permits Medium Density Housing with consent, it does not allow Residential Flat Buildings, which currently exist immediately to the south of the site.

#### 5. Request to Defer the Application Fee

- a. The applicant has requested that the Council application fee of \$6,330 be deferred and paid in full upon the sale of both properties due to financial hardship.
- b. As payment of the fee cannot be guaranteed at the time of sale as Council would not be involved in this transaction, it is considered more appropriate to defer the fee until the final stages of the rezoning process, i.e. upon adoption of the Local Environmental Plan amendment. In this regard Council would be able to secure payment of the fee by requiring it prior to the adopted LEP amendment being referred to the Department of Planning for finalisation.

#### 6. Political Donations Disclosure

- a. In accordance with the provisions of Section 147 of the Environmental Planning and Assessment Act 1979, a Disclosure Statement must be lodged in certain circumstances in relation to any planning application, i.e a Development Application, an application to modify a consent, and an application to make an environmental planning instrument or development control plan.
- b. A Disclosure Statement of a *reportable political donation or gift* must accompany a planning application or submission (including a submission either objecting to or supporting the proposed development) if the donation or gift is made within 2 years before the application or submission is made. If the donation or gift is made after the lodgement of the application, a Disclosure Statement must be sent to Council within 7 days after the donation or gift is made. The provision also applies to an associate of a submitter.
- c. A Disclosure Statement may be made available for viewing upon a written request to Council in accordance with Section 12 of the Local Government Act 1993.
- d. In accordance with Section 147(3) of the Act, a Disclosure Statement has not been submitted to Council in respect of the subject Planning Proposal.

## 7. Conclusion

- a. The proposed rezoning is considered appropriate as it would allow redevelopment of the sites into a form of development consistent with surrounding development. On this basis it is **recommended** that the Planning Proposal be referred to the Minister for Planning for a Gateway Determination.

## RECOMMENDATION:

1. Council resolve to forward the applicant's Planning Proposal held at Attachment 2, to allow the rezoning of Lots 601 and 602, DP 1015995, 1 - 3 Kilbenny Street, Kellyville Ridge from 2(a) Residential to 2(c) Residential under Blacktown Local Environmental Plan 1988, to the Minister for Planning seeking a Gateway Determination.
2. Upon receipt of notification of the Gateway Determination to proceed, Council exhibit the Planning Proposal in accordance with the requirements of the Gateway Determination and the Environmental Planning and Assessment Act 1979.
3. The initial application fee be deferred until final adoption by Council of the rezoning proposal and Council require payment prior to the Local Environmental Plan amendment being referred to the Department of Planning for publication on the legislation website.
4. The applicant be advised of Council's decision.

## ATTACHMENTS:

Attachment 1 - Location plan.



A1SD300111.PDF

Attachment 2 - Planning Proposal for the rezoning of Lots 601 and 602, DP 1015995, 1 - 3 Kilbenny Street, Kellyville Ridge.



A2SD300111.PDF

## COUNCIL RESOLUTION:

*Memmy S. Davis*  
VCSD