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16/11/2011

Council Meeting Date: 23/11/2011
Report Number: SD310126

Director City Strategy & Development Author: Nair K. (SH), Manager: Taylor T.

ITEM: <#> DE3297

SUBJECT:

SD310126 - Proposed Amendment to Blacktown Local Environmental Plan (BLEP) 1988 to Rezone Lot 5003, DP 1158929 Schofields Road, Rouse Hill from 2(a) Residential to 5(a) Special Uses – Cemetery and Crematorium

DIVISION REQUIRED: Yes

FILE NUMBER: RZ-11-1997

BLACKTOWN CITY 2025 VISION

BLACKTOWN CITY 2025 VISION

Strategy: Urban living and infrastructure

REPORT ITEM:

SUMMARY OF REPORT:

1. Council is in receipt of an Application to amend Blacktown Local Environmental Plan (BLEP) 1988. The Application relates to land at Lot 5003, DP 1158929 Schofields Road, Rouse Hill, being residential land abutting the Castlebrook Lawn Cemetery.
2. The Applicant (Planning Ingenuity Pty Ltd, on behalf of Invocare Australia Pty Ltd) wishes to have the site rezoned from its existing zoning of 2(a) Residential to 5(a) Special Uses – Cemetery and Crematorium so that it can be incorporated into the existing Castlebrook Lawn Cemetery (being Lot 1 in DP 1086553).
3. The rezoning request has arisen from the Roads and Traffic Authority needing to acquire a strip of cemetery land adjacent to Schofields Road for road widening as well as a possible further strip adjacent to Windsor Road. It is considered that the rezoning is appropriate for the site as it will offset that land to be lost for road widening and it will provide a buffer to the adjacent residential subdivision which forms part of "The Ponds" residential estate. In addition, a Section 88B Instrument applies to the subject site, which was imposed as part of the recent residential subdivision, requiring its consolidation with the existing cemetery land and provision of an appropriate zoning for this use.
4. Reforms to the Environmental Planning and Assessment Act 1979 which commenced on 1 July 2009 provide for the "fast-tracking" of the assessment and processing of Local Environmental Plans (LEPs). Resultantly, 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.
5. A Planning Proposal has been prepared by Planning Ingenuity Pty Ltd, on behalf of the owner, Invocare Australia Pty Ltd, which outlines the aim and any impacts of the proposed

LEP amendment.

6. 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.
7. The attachments for this report are:
 - Attachment 1 - Location Plan.
 - Attachment 2 - Section 88B Instrument.
 - Attachment 3 - Planning Proposal.

REPORT:

1. Background

- a. Council has received an Application from Planning Ingenuity Pty Ltd, on behalf of Invocare Australia Pty Ltd, to rezone Lot 5003, DP 1158929 Schofields Road, Rouse Hill from 2(a) Residential to 5(a) Special Uses - Cemetery and Crematorium. A location plan is held at **Attachment 1**.
- b. The proposal is related to a 3 party land transfer agreement between Invocare Australia Pty Ltd, Landcom and the Roads and Traffic Authority (RTA) relating to Lot 5003.
- c. Initially Landcom owned Lot 5003 that was part of "The Ponds" residential estate located at the rear western boundary of the cemetery. The RTA bought Lot 5003 in June 2011 from Landcom and currently is in the process of transferring Lot 5003 to Invocare (who is the owner of Castlebrook Lawn Cemetery) in exchange for acquiring 2 strips of land located to the north and east of Castlebrook Lawn Cemetery, adjacent to Windsor Road and Schofields Road for road widening purposes. Road widening will reduce the current and future traffic issues as well as benefit and support the North West Growth Centre (this is covered in detail in Section 4 of this report). In total the 2 strips of land are approximately 15,000 sq.m in area.
- d. In order to facilitate the abovementioned land transfers, and following the subdivision approval of the north-eastern corner of The Ponds residential estate, a Section 96 Application was lodged by Landcom and approved by Council subject to a condition requiring a Section 88B Restriction over Lot 5003 requiring its consolidation with the existing Castlebrook Lawn Cemetery and rezoning (to be undertaken either by RTA or Invocare Australia Pty Ltd) to cemetery uses only. The Section 88B Instrument (copy at **Attachment 2**) is the part of a Deposited Plan which upon registration creates easements, restrictions on the use of land and positive covenants.
- e. The Section 96 Application created the proposed Lot 5003 (the subject site) that is now a residual parcel. The RTA has provided its consent for Invocare to proceed with the rezoning of Lot 5003 from 2(a) Residential to 5(a) Special Uses. Invocare has indicated that it has not allocated any use for Lot 5003 and that it will remain a vacant parcel due to the topography and land characteristics of the subject site. If the rezoning is adopted, the RTA will be able to swap this land with Invocare in exchange for the 2 strips of existing Castlebrook Lawn Cemetery land that is adjacent to Schofields Road and Windsor Road for road widening purposes. In addition, the proposal will provide additional social and community infrastructure by facilitating

expansion of a cemetery use, which is covered in detail in Section 4 of this Report.

2. Details of the Subject Site and Surroundings

- a. The subject site is identified as Lot 5003 in DP 1158929 and abuts the northern part of the western boundary of the Castlebrook Lawn Cemetery, Schofields Road, Rouse Hill. The subject site has been created by a recent subdivision of Lot 148 in DP 1146615 from the adjoining residential estate known as "The Ponds".
- b. The subject site extends almost 360m from Schofields Road, with an approximate width of 47m. The allotment, which has a total site area of 1.509 hectares, is generally rectangular with a narrow access battle-axe handle extending approximately 55m into the site from Schofields Road at its north-western corner.
- c. The site slopes gently from east to west, falling from a small ridge that sits within the western part of the existing Castlebrook Lawn Cemetery site.
- d. To the south and west of the subject site is the eastern part of "The Ponds" residential estate. To the north of the site on the opposite side of Schofields Road is recently rezoned land known as Area 20.
- e. To the east of the subject site is the Castlebrook Lawn Cemetery, with which Lot 5003 will be consolidated. The existing Castlebrook Lawn Cemetery comprises areas of lawn cemetery, crypts, a chapel and crematorium, administration facilities and a maintenance depot shed.
- f. To the eastern side of the Castlebrook Lawn Cemetery (on the opposite side of Windsor Road) is the Rouse Hill Town Centre.

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, and as part of the process of amending an LEP, 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. In accordance with this requirement the Applicant has submitted a Planning Proposal which is held at **Attachment 3**. The Planning Proposal sets out the justification for preparing the LEP. Section 4 of this report discusses the merits of this particular Planning Proposal.
- 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 to decide whether or not to proceed.
- 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 Act) and public exhibition timeframes (Section 57 of the Act).

- e. After the exhibition of the proposal and consideration of submissions, a further report will be prepared for Council's consideration.

4. Assessment of the Planning Proposal

- a. Invocare Australia Pty Ltd has indicated that at least in the short to medium term Lot 5003 will remain a vacant parcel as they have not allocated any specific use to the site due to the nature, topography, size and dimension of the Lot. The subject site is currently zoned 2(a) Residential. The gentle slope on the site (from east to west, falling from a small ridge within the Castlebrook Cemetery) may present challenges for access, drainage and achieving building forms for residential purposes. As a result, residential development on the subject land will be unsuitable and rezoning Lot 5003 to 5(a) Special Uses will allow for the Lot to be logically consolidated with the adjoining Castlebrook Lawn Cemetery. Furthermore, a Section 88B Instrument also applies to the subject site that restricts any further development of the site until the site is consolidated with the existing Castlebrook Cemetery and is zoned from residential to cemetery use only.
- b. As mentioned above, Invocare have indicated that Lot 5003 will remain a vacant parcel, hence rezoning the subject site will also provide an opportunity for the site to act as a generous buffer, i.e. allow approximately 45 metres of distance separation in width between "The Ponds" residential estate (that is located on the western side of Lot 5003) and the existing Castlebrook chapel and crematorium, crypts, administration facilities and the existing maintenance depot that is located on the eastern side of Lot 5003.
- c. The proposal is consistent with the objectives and actions of the Sydney Metropolitan Strategy 2036 and draft North West Subregional Strategy which require provision of employment and additional social and physical infrastructure to benefit and support the North West Growth Centre. Rezoning of Lot 5003 will allow the RTA to swap this land with Invocare in exchange for the 2 strips of existing Castlebrook Lawn Cemetery land adjacent to Schofields Road and Windsor Road for road widening purposes. The extension of road reservation will provide support to one of the key economic gateways that will serve the surrounding Growth Centre Precincts, i.e. Riverstone, Alex Avenue and Area 20 Precincts as well as the Rouse Hill Major Centre. The road widening will also improve local opportunities for walking, cycling and using public transport as well as assist to reduce potential traffic issues that are envisaged on Schofields Road and Windsor Road over coming decades due to rapid urban growth and development in the surrounding Growth Centre Precincts.
- d. In addition to the above, the proposal will benefit the surrounding community in terms of creating appropriate social and community infrastructure by facilitating expansion of a cemetery use and protecting a place, i.e. cemetery, that has a special cultural and open space value. Expansion of the Castlebrook Lawn Cemetery will also meet the demand for future cemetery space that is expected to rise in conjunction with the increasing housing supply within the North West Growth Centre. Furthermore, the proposal will create employment opportunities in the area of landscape maintenance.

- e. The NSW Department of Planning and Infrastructure's "Guide to Preparing Planning Proposals" states that the guidance on conducting a Net Community Benefit Test under the Draft Centres Policy should be followed when assessing net community benefit of a Planning Proposal. The proposed zoning of the site will provide public benefits by:
 - i. creating appropriate social and community infrastructure with the expansion of the existing Castlebrook Lawn Cemetery;
 - ii. creating appropriate physical infrastructure for commuters and the North West Growth Centre community via swapping of Lot 5003 for 2 strips of Castlebrook Lawn Cemetery land adjacent to Schofields and Windsor Road;
 - iii. protecting a place, i.e. cemetery, that has special cultural values;
 - iv. meeting the demand for future cemetery space that is expected to rise in conjunction with the increasing housing supply within the North West Growth Centre; and
 - v. creating employment opportunities.

- f. When amending an LEP Council is required to consider State Environmental Planning Policy (SEPP) No. 55 – *Remediation of Land*. The SEPP states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. Land suitability was investigated in detail during the development phase of "The Ponds" residential estate and it is considered that the proposal satisfies the requirements of the SEPP in terms of enabling the rezoning of the land.

- g. The proposal is consistent with Ministerial Directions pursuant to Section 117 of the *Environmental Planning and Assessment Act 1979*, which planning authorities must follow when preparing Planning Proposals. In particular, the Proposal is consistent with Direction 3.4 Integrating Land Use and Transport which states "*improving access to housing, jobs and services by walking, cycling and public transport.*" The site is located in an established urban area well serviced by existing infrastructure, public transport and is located within easy walking distance of the Rouse Hill Town Centre. Rezoning of the subject site will also create employment opportunities within the local area, primarily in the area of landscape maintenance as a result of the future expansion of the Castlebrook Lawn Cemetery.

5. 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 been submitted to Council in respect of the subject Planning Proposal indicating that no political donations have been made.

6. Conclusion

- a. The Applicant (Invocare Australia Pty Ltd) wishes to have the subject site (identified as Lot 5003 in DP 1158929) rezoned from its existing zoning of 2(a) Residential to 5(a) Special Uses – Cemetery and Crematorium to be incorporated into the existing Castlebrook Lawn Cemetery.
- b. The proposal is related to a 3 party land transfer agreement between Landcom, the RTA and Invocare relating to Lot 5003. Rezoning of Lot 5003 to 5(a) Special Uses will allow the RTA to swap this land with Invocare in exchange for the 2 strips of Castlebrook Lawn Cemetery land that is adjacent to Schofields Road and Windsor Road for road widening purposes.
- c. The proposal is consistent with the Metropolitan Plan Strategy 2036, draft North West Subregional Strategy, applicable Ministerial Directions and will facilitate expansion of a cemetery use that will act as a generous buffer between "The Ponds" residential estate and the existing cemetery and meet the demand for future cemetery space that is expected to rise in conjunction with the increasing housing supply within the North West Growth Centre.
- d. It is **recommended** that the rezoning of the subject site from 2(a) Residential to 5(a) Special Uses – Cemetery and Crematorium proceed to Gateway Determination and public exhibition.

RECOMMENDATION:

1. Council resolve to forward the Applicant's Planning Proposal held at Attachment 3 to the Minister for Planning and Infrastructure 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 provisions of the Environmental Planning and Assessment Act 1979.
3. The Applicant be advised of Council's decision.

ATTACHMENTS:

COMMITTEE RECOMMENDATION:

1. Council resolve to forward the Applicant's Planning Proposal held at Attachment 3 to the Minister for Planning and Infrastructure 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 provisions of the Environmental Planning and Assessment Act 1979.
3. The Applicant be advised of Council's decision.

COMMITTEE DIVISION

Supported: Atalla; Bleasdale; Collins; Robinson; Donaldson

COUNCIL RESOLUTION:

1. Council resolve to forward the Applicant's Planning Proposal held at Attachment 3 to the Minister for Planning and Infrastructure 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 provisions of the Environmental Planning and Assessment Act 1979.
3. The Applicant be advised of Council's decision.

COUNCIL DIVISION

Supported: Atalla; Lowles; Tyrrell; Pendleton; Griffiths; Kelly; Robinson; Diaz; Collins; Dickens; Bilic; Bali; Donaldson; Bleasdale

Absent: Green