

EGROW 09**Planning proposal request to rezone land and amend development standards at 240 Governor Macquarie Drive, Warwick Farm**

Strategic Direction	Strengthening and Protecting our Environment Exercise planning controls to create high-quality, inclusive urban environments
File Ref	315222.2019
Report By	David Smith - Manager Planning & Transport Strategy
Approved By	Tim Moore - Director, City Economy and Growth / Deputy CEO

EXECUTIVE SUMMARY

At its meeting of 31 July 2019, Council considered a planning proposal request to rezone 240 Governor Macquarie Drive, Warwick Farm from B5 Business Development to part B4 Mixed Use and part R4 High Density Residential.

The report to Council recommended that Council endorse a modified version of the planning proposal request and for it to be submitted to the Department of Planning, Industry and Environment (DPIE) for a Gateway determination.

Following discussion on the matter, Council subsequently resolved:

That Council:

1. *Note the advice provided by the Liverpool Local Planning Panel.*
2. *Delegate to the CEO to provide a report back to Council by the December 2019 Council meeting that includes the possible number of dwellings that would be permitted in the remaining Warwick Farm precinct presuming the LEP is revised to rezone the Warwick Farm Racing precinct to B4 mixed business and presuming all Government Departments and Agencies agree to the change in zoning currently being considered by Council.*
3. ***Endorses in principle the planning proposal for 240 Governor Macquarie Drive, Warwick Farm, subject to the provision of the Council report to be provided at the December 2019 Council meeting and the possible need for the proponent to submit a modified proposal that takes into consideration the report from Council in which the number of dwellings permissible is proportionate to the area of the development site and the total number of dwellings that would be possible in the***

remaining Warwick Farm Racing Precinct area if the LEP is revised to include B4 in that remaining area and if the rezoning the remaining site was subsequently approved by Gateway.

4. *Notes the current VPA offer from the proponent and that a new VPA would need to be negotiated should the council report identify the need for a revised submission from the proponent.*

Following the above Council resolution, the applicant for the planning proposal request exercised their right to seek a rezoning review as Council had not made a decision on the planning proposal request within 90 days of lodgement of the proposal. The review was considered by the Sydney Western City Planning Panel (SWCPP) on 10 September 2019. The SWCPP published its determination on 13 September 2019 stating that the proposal should not be submitted for a Gateway determination as the proposal had not demonstrated strategic merit.

There has been diverging legal advice on the status of the planning proposal request following the review undertaken by the Sydney Western City Planning Panel. The comments provided in the Council report (EGROW02) in the main agenda of the December 2019 business papers stated that *"the proponent had provided legal advice that disputed the Panel's decision that the planning proposal cannot be reconsidered by Council and requested that Council still consider the planning proposal and submit it to DPIE for a Gateway determination. Council subsequently obtained legal advice from its solicitor which confirmed the Panel's advice above is correct. Given the Panel's decision that the planning proposal not proceed to the next stage of the plan making process, no further action can be taken by staff in relation to points 3 and 4 of the above Council resolution"*.

Given the difference in legal advice before Council, the CEO directed that further legal advice be obtained from Scott Nash, Barrister of Martin Place Chambers. That advice (provided separately to Councillors) confirms the applicant's position that the Council may lawfully resolve, if it chooses, to endorse the planning proposal request, and forward a planning proposal to the Department of Planning, Industry and Environment for a Gateway determination.

RECOMMENDATION

That Council:

1. Note the advice provided by the *Liverpool Local Planning Panel*;
2. Endorses in principle the planning proposal request for 240 Governor Macquarie Drive, Warwick Farm, subject to the applicant submitting a modified request with a maximum floor space ratio (FSR) of 2:1 equating to approximately 58,600m² GFA or 500 dwellings with access to the bonus FSR provisions contained within Clause

- 4.4 (2B) of the Liverpool Local Environmental Plan (LEP) (up to 3:1), a maximum height of buildings of 45m and the preparation of a site specific Development Control Plan;
3. Delegate to the CEO authority to negotiate a revised VPA offer with the proponent, agree the terms of the offer with the proponent and report back to Council the details of the VPA prior to exhibition of the planning proposal, consistent with Council's Planning Agreements Policy;
 4. Endorses in principle the potential public benefit contributions of the VPA, to be further negotiated, including:
 - Monetary contributions towards the cost of local road improvements;
 - Funding appropriate road works including a 2.5m wide shared path, public domain improvements including street trees and landscaping along Governor Macquarie Drive between Hume Highway and Munday Street in accordance with Council's design plan for the Hume Highway/Governor Macquarie Drive intersection upgrade and Warwick Street between the Hume Highway and Manning Street;
 - Improved pedestrian and bicycle access to and from the site and Warwick Farm railway station and north and south of the Hume Highway;
 - Provision of 5% of the dwelling yield as affordable housing (to be dedicated to Council) to be managed as affordable rental housing by a community housing provider; and
 - Providing a retail/commercial space in the development for a period of 5 years at a reduced commercial rent for a community organisation/s to be agreed between the proponent and Council; and
 5. Delegate authority to the CEO to finalise the above amendments to the planning proposal request and submit a planning proposal to the Department of Planning, Industry and Environment for a Gateway determination with a recommendation that detailed traffic modelling, an economic impact assessment, a noise mitigation strategy and a site specific DCP be included as Gateway conditions to be satisfied prior to public exhibition.

REPORT

On 10 July 2018, Council received a planning proposal request to rezone land at 240 Governor Macquarie Drive, Warwick Farm from B5 Business Development to part B4 Mixed Use and part R4 High Density Residential (**Attachment 1**). The planning proposal request also seeks to increase the floor space ratio (FSR) development standard from 0.75:1 to 3:1 (equating to

approximately 87,900m² GFA) and the height of buildings (HOB) development standard from 15m to 50m and to reduce the minimum lot size from 2000m² to 1000m².

The proponent requested a rezoning review on 29 October 2018 as the planning proposal request had been with Council for more than 90 days without a determination. On 15 April 2019, Council was informed by the Department of Planning, Industry and Environment (DPIE) that the proponent had withdrawn the request for a rezoning review, and that the Council should make the decision on how to proceed with the planning proposal request.

An assessment of the planning proposal request was completed on behalf of Council by town planning consultants City Plan (**Attachment 2**). The planning proposal request was referred to the Liverpool Local Planning Panel (LPP) for advice on 24 June 2019. The majority of the LPP agreed with the planning assessment report prepared by City Plan consultants that the proposal lacked strategic and site merit and provided their advice to Council that the planning proposal request should not be referred to the DPIE for a Gateway determination (**Attachment 3**).

At its Ordinary meeting of 26 June 2019, Council endorsed the draft Liverpool Local Strategic Planning Statement (LSPS) for exhibition, which designated the subject site as part of a precinct to be investigated for a “mix of uses”.

A report on this rezoning request was considered by Council at its meeting of 31 July 2019 (EGROW 04). That report recommended that Council:

1. Note the advice provided by the *Liverpool Local Planning Panel*;
2. Endorses in principle the planning proposal for 240 Governor Macquarie Drive, Warwick Farm, subject to the applicant submitting a modified proposal with a maximum floor space ratio (FSR) of 2:1 equating to approximately 58,600m² GFA or 500 dwellings with access to the bonus FSR provisions contained within Clause 4.4 (2B) of the Liverpool Local Environmental Plan (LEP) (up to 3:1), a maximum height of buildings of 45m and the preparation of a site specific Development Control Plan;
3. Delegate to the CEO authority to negotiate a revised VPA offer with the proponent, agree the terms of the offer with the proponent and report back to Council the details of the VPA prior to exhibition of the planning proposal, consistent with Council's Planning Agreements Policy;
4. Endorses in principle the potential public benefit contributions of the VPA, to be further negotiated, including:
 - Monetary contributions towards the cost of local road improvements;
 - Funding appropriate road works including a 2.5m wide shared path, public domain improvements including street trees and landscaping along Governor Macquarie Drive between Hume Highway and Munday Street in accordance

with Council's design plan for the Hume Highway/Governor Macquarie Drive intersection upgrade and Warwick Street between the Hume Highway and Manning Street;

- Improved pedestrian and bicycle access to and from the site and Warwick Farm railway station and north and south of the Hume Highway;
 - Provision of 5% of the dwelling yield as affordable housing (to be dedicated to Council) to be managed as affordable rental housing by a community housing provider; and
 - Providing a retail/commercial space in the development for a period of 5 years at a reduced commercial rent for a community organisation/s to be agreed between the proponent and Council; and
5. Delegate authority to the CEO to finalise the above amendments to the planning proposal and submit the planning proposal to the Department of Planning, Industry and Environment for a Gateway determination with a recommendation that detailed traffic modelling, an economic impact assessment, a noise mitigation strategy and a site specific DCP be included as Gateway conditions to be satisfied prior to public exhibition.

Following discussion on the item, Council ultimately resolved:

That Council:

1. Note the advice provided by the Liverpool Local Planning Panel;
2. Delegate to the CEO to provide a report back to Council by the December 2019 Council meeting that includes the possible number of dwellings that would be permitted in the remaining Warwick Farm precinct presuming the LEP is revised to rezone the Warwick Farm Racing precinct to B4 mixed business and presuming all Government Departments and Agencies agree to the change in zoning currently being considered by Council;
3. Endorses in principle the planning proposal for 240 Governor Macquarie Drive, Warwick Farm, subject to the provision of the Council report to be provided at the December 2019 Council meeting and the possible need for the proponent to submit a modified proposal that takes into consideration the report from Council in which the number of dwellings permissible is proportionate to the area of the development site and the total number of dwellings that would be possible in the remaining Warwick Farm Racing Precinct area if the LEP is revised to include B4 in that remaining area and if the rezoning the remaining site was subsequently approved by Gateway; and

4. Notes the current VPA offer from the proponent and that a new VPA would need to be negotiated should the council report identify the need for a revised submission from the proponent.

Following the above Council resolution, the applicant for the planning proposal exercised their right to seek a rezoning review as Council had not made a decision on the planning proposal request within 90 days of lodgement of the proposal.

The review was considered by the Sydney Western City Planning Panel (SWCPP) on 10 September 2019. The SWCPP published its determination on 13 September 2019 stating that the proposal **should not** be submitted for a Gateway determination as the proposal had not demonstrated strategic merit.

The advice provided to Council by the Panel stated that the decision of the Panel not to forward the planning proposal to the DPIE for a Gateway determination is final and that there are no opportunities for it to be reconsidered or challenged on its merits.

The proponent provided legal advice that disputed the Panel's decision that the planning proposal cannot be reconsidered by Council and requested that Council still consider the planning proposal and submit it to DPIE for a Gateway determination. Council subsequently obtained legal advice which confirmed the regional panel's advice. That position was therefore reflected in EGROW02 Council report included in the December 2019 business papers.

Given the difference in legal advice before Council, the CEO directed that further legal advice be obtained from Scott Nash, Barrister of Martin Place Chambers. That advice (provided separately to Councillors) confirms the applicant's position that the Council may lawfully resolve, if it chooses, to endorse the planning proposal request, and to forward a planning proposal to the Department of Planning, Industry and Environment for a Gateway determination.

The staff report on the planning proposal (EGROW 04) is included as **Attachment 4** and its recommendation remain current.

It is therefore recommended that Council endorse in principle the planning proposal request (including the recommended amendments) and to forward a planning proposal to the Department of Planning, Industry and Environment seeking a Gateway determination.

CONSIDERATIONS

Economic	Further develop a commercial centre that accommodates a variety of employment opportunities. Deliver a high quality local road system including provision and maintenance of infrastructure and management of traffic issues. Facilitate economic development.
Environment	There are no environmental and sustainability considerations.
Social	Regulate for a mix of housing types that responds to different population groups such as young families and older people.
Civic Leadership	Encourage the community to engage in Council initiatives and actions.
Legislative	Environmental Planning & Assessment Act 1979

ATTACHMENTS

1. Planning Proposal Request
2. Planning Assessment Report
3. Local Planning Panel Advice
4. EGROW04 31 July 2019 Council Report