

ITEM	13.093/15	PLANNING PROPOSAL – CAMBRIDGE STREET, SOUTH GRAFTON (REZ2014/0003)
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Meeting	Environment, Planning & Community Committee	14 July 2015
Directorate	Environment, Planning & Community	
Reviewed by	Manager - Strategic & Economic Planning (David Morrison)	
Attachment	Yes	

SUMMARY

<i>Proponent</i>	Davkel Drafting and Design
<i>Date Received</i>	19 August 2014 – registered as REZ2014/0003
<i>Owner</i>	Chellev Investments Pty Ltd (Directors - Jason & Meshel Chellev)
<i>Subject land</i>	Lots 2981, 2982 and 2983 DP733046, 165-169 Cambridge Street, South Grafton. (Area = approximately 3672m ²)
<i>Current Zoning CVLEP 2011</i>	B1 Neighbourhood Centre (B1)
<i>Proposal</i>	To rezone the land from B1 to R1 General Residential (R1) to permit the residential development of the land.

This report considers a planning proposal which supports a case to rezone land at Cambridge Street, South Grafton from B1 to R1 to facilitate the development of the land for residential purposes. The existing B1 zone owes back to a spot rezoning dating back to the mid 1980s to enable the establishment of a retail plant nursery into what was a predominantly residential zone. As that use has now ceased, it is now proposed to return the zoning back to residential in conformity with the surrounding locality. Potential site contamination as the use reverts to a more sensitive land use is the main issue. Given that once rezoned, some forms of residential development can be constructed without further Council approval (under complying development) it is important that site remediation and validation is undertaken prior to rezoning being completed to ensure that the site is safe for habitation. Seeking a Gateway determination in advance of that work, but requiring the work to be completed prior to finalization of the rezoning, provides the proponent with the confidence to proceed with site remediation.

It recommends that Council provide its initial support to the Planning Gateway.

OFFICER RECOMMENDATION

That Council:

1. As the relevant planning authority, initiate the Local Environmental Plan "Gateway" process pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by endorsing the attached Planning Proposal over Lots 2981, 2982 and 2983 DP733046, 165-169 Cambridge Street, South Grafton to amend Clarence Valley Local Environmental Plan 2011 to rezone the land from B1 Neighbourhood Centre to R1 General Residential.
2. Forward the Planning Proposal to the Department of Planning and Environment (the Department) requesting a "Gateway" Determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. Advise the Department that it will accept any plan making delegations that may be offered to Council and request a 12 month period to complete the rezoning in view of the need to rehabilitate and validate site contamination before rezoning is completed.
4. Advise the Department that inconsistencies with Section 117 Directions 1.1 and 4.1 are considered to be minor and warranted in the circumstances.

5. Advise the proponent that:

- (a) prior to Council finalising the LEP amendment under section 59(1) of the Act, Council will require the actions recommended by section 10.2 of the report entitled *“Report for Chellev Property Investment Trust - Phase 1 Contamination Assessment with Targeted Sampling”* (GHD, May 2015) be implemented and validated; and
- (b) clause 7.1 Acid sulfate soils of Clarence Valley Local Environmental Plan 2011 will be required to be addressed as part of any future development application.

Cr Williamson, having declared an interest in this item, left the Environment, Planning & Community Committee Meeting at 5.23 pm.

COMMITTEE RECOMMENDATION

Howe/Hughes

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Baker, McKenna, Hughes, Howe

Against: Nil

Cr Williamson returned to the Environment, Planning & Community Committee Meeting at 5.26 pm.

Having declared an interest, Cr Williamson left the Ordinary Meeting at 4:57 pm.

The Deputy Mayor Cr Baker assumed the Chair.

COUNCIL RESOLUTION – 13.093/15

(Crs Howe/Hughes)

That Council:

- 1. As the relevant planning authority, initiate the Local Environmental Plan “Gateway” process pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by endorsing the attached Planning Proposal over Lots 2981, 2982 and 2983 DP733046, 165-169 Cambridge Street, South Grafton to amend Clarence Valley Local Environmental Plan 2011 to rezone the land from B1 Neighbourhood Centre to R1 General Residential.**
- 2. Forward the Planning Proposal to the Department of Planning and Environment (the Department) requesting a “Gateway” Determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.**
- 3. Advise the Department that it will accept any plan making delegations that may be offered to Council and request a 12 month period to complete the rezoning in view of the need to rehabilitate and validate site contamination before rezoning is completed.**
- 4. Advise the Department that inconsistencies with Section 117 Directions 1.1 and 4.1 are considered to be minor and warranted in the circumstances.**
- 5. Advise the proponent that:**
 - (a) prior to Council finalising the LEP amendment under section 59(1) of the Act, Council will require**

(b) clause 7.1 Acid sulfate soils of Clarence Valley Local Environmental Plan 2011 will be required to be addressed as part of any future development application.

For: Councillors Baker, Howe, Hughes, Simmons, Toms, Lysaught, McKenna, Kingsley
Against: Nil

LINKAGE TO OUR COMMUNITY PLAN

Strategy 5.1.4 Provide open, accountable and transparent decision making for the community

Council has received a planning proposal, entitled “*Planning Proposal, 165-169 Cambridge Street, South Grafton*” that supports a case to rezone Lots 2981, 2982 and 2983 DP733046, 165 -169 Cambridge Street, South Grafton from B1 to R1 to facilitate the development of the land for residential purposes. The location of the site the subject of the planning proposal is shown in figure 1 below. A copy of the planning proposal is at Attachment 1.



Figure 1 – location plan

- (a) carry out a boundary adjustment between Lots 2892 and 2893 to 'remove' any current building encroachments;
- (b) retro-fit the existing former nursery office and residence on Lot 2983 to a residential building to contain 4 units; and

(c) develop Lots 2891 and 2892 with new duplex dwellings.

This action will result in a total of 8 dwellings on the three allotments, providing an average density of one dwelling per 460 sq. m of site area”.

Prior to the B1 zoning under CVLEP 2011 and 3(b) Special Development zone under Grafton LEP 1988 the land was originally zoned Residential 2(a) under the old Grafton Planning Scheme Ordinance. The site was rezoned to 3(b) Special Development in the mid – 1980’s to facilitate the development of the site for a retail plant nursery. This use prevailed on the site until its cessation in recent times.

KEY ISSUES

The principal merit issues include potential site contamination and relevant section 117(2) directions. These and other issues are addressed below.

1. Compliance with the Planning Proposal guidelines

The planning proposal in this case is contained within a document entitled *“Planning Proposal, 165-169 Cambridge Street, South Grafton”*, prepared by Davkel Drafting and Design, April 2015. A copy of the planning proposal is at Attachment 1.

A review of the planning proposal indicates that it generally complies with section 55(2) of the Act and the Department of Planning and Environment’s *“A guide to preparing planning proposals”* (October 2012). The main planning proposal document otherwise outlines the future intended development and most of the relevant merit issues in a sufficiently detailed manner at the rezoning stage.

2. Potential hazard

Given the potential of the retail plant nursery to have caused land contamination due to chemicals used, stored and sold the proponent was requested to undertake and submit a preliminary investigation (carried out in accordance with the contaminated land planning guidelines) for Council to consider before it makes any decision to support the planning proposal.

In response to Council’s request a contamination assessment undertaken by GHD was submitted. Its recommendations (Section 10.2) were:

“Based on the desk top review and the results of the current investigations, it is considered that the site can be made suitable for redevelopment for residential land use by implementation of the following:

- 1. Preparation of a brief Contaminated Soil Management Plan (CSMP) to describe excavation, validation and disposal requirements for TRH contaminated materials. The CSMP should include contingency plans for remediation of additional contaminated soils (if encountered).*
- 2. Remediation of the surface soil materials in the area surrounding H01 by excavation and disposal offsite. The following procedure should be undertaken for this material:*
 - (a) The material should be excavated and appropriately managed prior to disposal, with excavations continuing in a lateral and vertical extent to remove material identified as being contaminated (stained and / or odorous soils).*
 - (b) The soil should be classified in accordance with the NSW EPA Waste Classification Guidelines, Part 1: Classifying Waste (NSW EPA 2014) and disposed offsite.*

(c) *The resultant excavation should be validated to confirm the removal of the contaminated material with collection of soil samples from the base and walls of the excavation and analysis for contaminants of concern (zinc and TRH C10-C40 only).*

(d) *Provision of a short validation report detailing extent of remediation and validation results”.*

The land is land upon which complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (“Codes SEPP”) meaning that it is possible for complying development application for a dwelling house to be approved/certified (even by a private certifier) on each Lots 2981 and 2982 in particular without regard to the recommendations of the contamination assessment referred to above and without such recommendations being implemented. To avoid this possible scenario and despite the developers intentions Council should require the implementation of the recommendations and all actions in the recommendations of the contamination assessment to be carried out before the rezoning is completed.

Refer also comments from Council’s Senior Environmental Officer and Development Engineer provided in **Consultation** below.

3. Relevant Section 117(2) Directions

The planning proposal has acknowledged and addressed relevant Ministers Section 117(2) Directions which include:

- Direction 1.1 Business and Industrial Zones
- Direction 4.1 Acid Sulfate Soils

Direction 1.1 Business and Industrial Zones requires that a planning proposal must retain the areas and locations of existing business and industrial zones and must not reduce the total potential floor space area for employment uses and related public services in business zones. In addressing this Direction the proposal acknowledges that it would appear to be in conflict with 4(b) & 4(c) of the Direction. It argues that the inconsistency in this case is of minor significance citing the following reasons:

“This site is both isolated (in terms of commercial connectivity) and abandoned (in terms of use). To rezone it back to residential (i.e. to its original zoning) is, given the location and character of the wider adjoining neighbourhood, entirely logical and a common sense application”.

The case for an inconsistency based on minor significance is accepted in the circumstance.

The land is mapped as class 5 acid sulfate soils (ASS) with Minister’s section 117(2) Direction 4.1 Acid sulfate soils being relevant. Direction 4.1 (4) requires that a Council must consider the Acid Sulfate Soils Planning guideline where a planning proposal applies to land that is mapped as having a probability of ASS being present. Further where a planning proposal proposes an intensification of land uses in such instance Direction 4.1 (6) requires that Council must consider an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of ASS. In this case an acid sulfate soils study has not been submitted. The planning proposal argues for consistency with this direction on the basis that residential development of the land is unlikely to have an impact on the water table. Whilst this may be possible, the case for consistency is not agreed with and instead the matter is considered to be inconsistent due to there being no acid sulfate soils study as yet. However the inconsistency is considered to be justifiable and of minor significance due to the mapped acid sulfate soils being of the lowest class and the low likelihood of future residential development of the land having adverse impacts from any ASS disturbance. In any case future development applications will be required to address clause 7.1 Acid sulfate soils of CVLEP 2011.

Approximately 612m² (or about 16.6%) of the land is subject to the 1 in 100 year flood. This affects the western margins of the land. Strictly speaking Direction 4.3 Flood Prone Land is not relevant or applicable as this is not a planning proposal seeking to rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. Notwithstanding this the majority of the land is above the 1 in 100 years flood and flood planning controls are otherwise applicable through the development assessment process.

4. Conclusion

It is considered that at present there is sufficient information and merit for this planning proposal to proceed to the planning gateway. The site is in a logical location for residential development and identified merit issues including addressing contamination report recommendations and acid sulfate soils and partial site flooding can be addressed and resolved at the future development assessment stage.

COUNCIL IMPLICATIONS

Budget/Financial

Assessment and management of the planning proposal is being undertaken within existing budgets.

Asset Management

N/A

Policy or Regulation

- Environmental Planning and Assessment Act 1979 – including relevant State environmental planning policies (SEPPs) and Minister's Section 117 Directions made under the Act.
- Clarence Valley LEP 2011

Consultation

<i>Internal Section or Staff Member</i>	<i>Comment</i>
M Rhodes, Development Engineer	1. The land ranges in RL from 4m to 8m sloping towards Wharf Street. The flood mapping shows the western boundary being affected by the 1:100 flood event, this could be problematic if slab on ground is proposed, but is only over a relatively small area, these issues could be dealt with during subsequent development applications. The site has access to land above the extreme event without crossing other flood bound land. Though it is noted that the entire area is affected by the extreme event. 2. The Wharf Street frontage is unconstructed, with the overland flow heading in a northerly direction. 3. There is a rising main running past the property on Wharf Street. If any water connections are proposed on Wharf Street, the water main would need to be extended from the corner of Cambridge Street. 4. It is difficult to see where the existing nursery shed connects to the sewer. This would need to be looked at with future DA's. The other two lots appear to have sewer junctions available within their lots. 5. It is noted that properties to the east and south that have the same constraints on flood heights and are residential zonings.

	6. It is noted that all three lots are currently consolidated for rating and are paying rates for 25mm water and sewer (2.2ET). Issues in regards to water and sewer connections and contributions can be dealt with during any subsequent DA. In regards to advice for future DA's, this is not something I am willing to give without discussion with Building Surveyors, etc., as the proposals (converting sheds etc.) utilized the expertise from other sections than engineering. Additionally, no plans have been submitted in regards to the future use and DA's. It is noted in the draft Council report and the applicants submission that Contamination rectification is to be considered with future DA's. Is there any possibility of this being addressed prior to rezoning. By doing this, the contamination over the complete site can be resolved prior to the land being split into different ownerships without any Council consents being required. (The boundary adjustment would probably come in as Exempt and Complying Boundary adjustment, as it is to rectify an encroachment. – when this occurs there are no provisions in the legislation to correct other aspects of the development – land contamination, water & sewer connections, access, stormwater). Engineering has no objection to the rezoning taking place considering the infrastructure in the area.
Senior Environmental Officer	I have looked at the report and it recommends certain works to remove contamination and validation works. So yes there are issues with contamination but these can be addressed and the site validated with future works/ conditions.

External referrals

No external referrals have been undertaken as yet. However the scale and nature of this proposal and its issues do not warrant referral to any public authorities.

It is intended that all immediately adjoining owners be notified of this proposal at the community consultation/public exhibition stage. As the proposal is considered to be low impact a community consultation/public exhibition period of 14 days is suggested.

Legal and Risk Management

The Act does not provide for any inbuilt legal appeal rights for third parties who may oppose a planning proposal.

Prepared by	Terry Dwyer, Senior Strategic Planner (Policy)
Attachment	Attachment 1 - <i>"Planning Proposal, 165-169 Cambridge Street, South Grafton"</i> dated April 2015, prepared by Davkel Drafting and Design – abridged to delete technical appendices (site contamination) to reduce size of document