

**COFFS HARBOUR CITY COUNCIL
ORDINARY MEETING
25 SEPTEMBER 2014**

RESOLUTION NO. 269

Minutes confirmed at Council meeting: 9 October 2014
To view Report, double-click on Agenda Report link below

Agenda Report

**CP14/30 PLANNING PROPOSAL - PP_2013_COFFS_002_00 FOR LOT 13,
DP591220 COOK DRIVE, COFFS HARBOUR**

The purpose of this report is to present a Planning Proposal (PP) for Council's consideration.

269 RESOLVED (Arkan/Innes):

1. That Council endorse and forward the subject Planning Proposal to NSW Planning and Environment seeking a "Gateway Determination" for the rezoning of Lot 13, DP591220 Cook Drive, Coffs Harbour as shown in Attachment 1 of this report.
2. That Council note the inconsistency and seek endorsement from NSW Planning and Environment in regard to the Section 117 Direction relating to flooding.
3. That Council agree to enter into a Voluntary Planning Agreement with the proponent in accordance with the draft planning agreement contained in the offer from James Robert Auld and Margaret Dawn Auld as shown as Attachment 2 of this report.
4. That subject to the "Gateway Determination" from NSW Planning and Environment, Council place the Planning Proposal and Voluntary Planning Agreement on public exhibition.
5. That a further report be considered by Council following the outcome of the public exhibition.
6. That the landowner be informed of Council's decision.

The Resolution on being put to the meeting was carried unanimously.

PLANNING PROPOSAL - PP_2013_COFFS_002_00 FOR LOT 13, DP591220 COOK DRIVE, COFFS HARBOUR

Purpose:

The purpose of this report is to present a Planning Proposal (PP) for Council's consideration.

The report recommends that Council seek a Gateway Determination from NSW Planning and Environment (P&E) requesting to place the PP on public exhibition. The report also recommends that Council consider the outcome of the exhibition in a future Council report. The PP is included as Attachment 1 to this report.

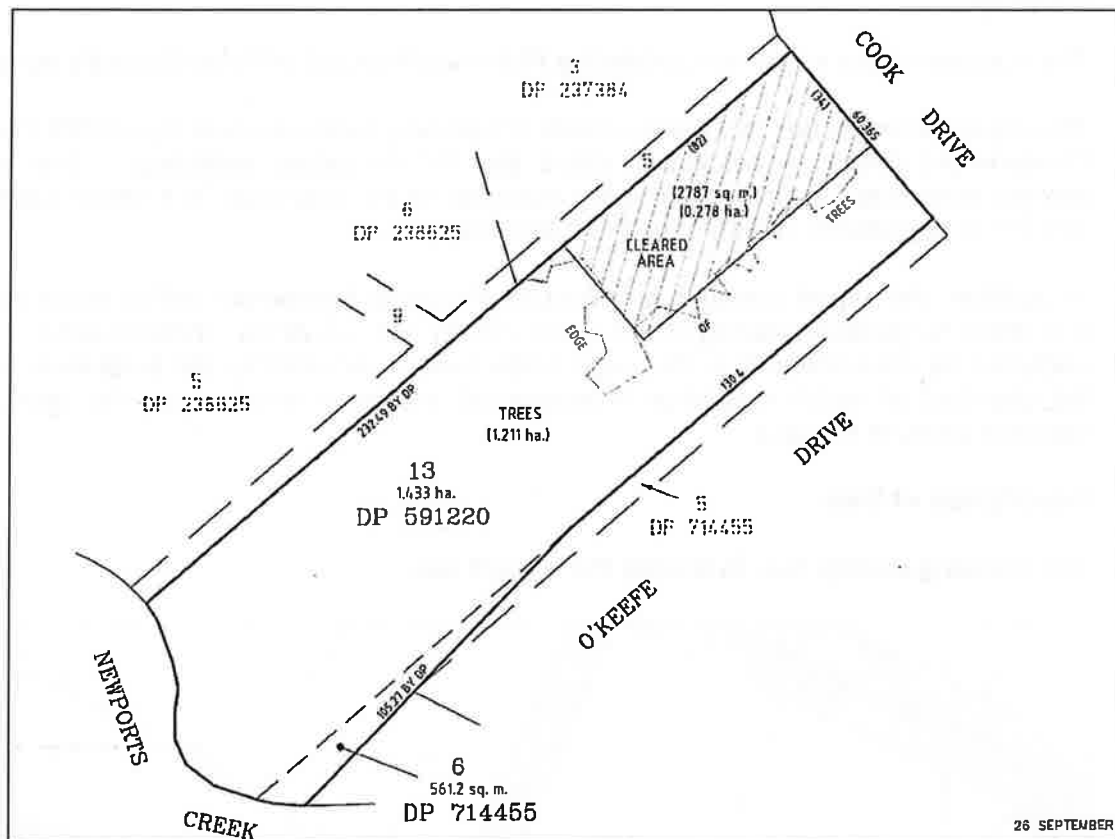
In addition, the report presents a Voluntary Planning Agreement (VPA) which includes an amended Vegetation Management Plan (VMP) for Council's consideration. The VPA (included as Attachment 2 to this report) has been submitted by the landowner and details the standard at which vegetation management will be undertaken on the environmentally sensitive parts of the land.

Description of Item:

The following locality plan illustrates the subject site.



The proposal includes the rezoning of the cleared part of the subject land (as shown below) to B5 Business Development to enable a wider variety of development options for the land e.g. bulky goods premises or light industrial premises. The proposed rezoning will expand the available land uses for the subject land which currently allows for a dwelling house on the land as the 'best and highest' use. A dwelling house may not be a suitable choice in terms of the surrounding industrial land use functions, aesthetics, noise and environmental management of the balance of the subject land.



The subject land is located approximately 2.5km south of the Coffs Harbour City Centre on the eastern side of the Pacific Highway. The property has frontage to Cook Drive, a collector road serving the South Coffs Industrial Estate which connects to the Pacific Highway approximately 200 metres away.

With rezoning of the land to business development, the land will potentially be able to accommodate a land use which will contribute to an economic boost to the local economy.

The subject land is strategically located near areas of significant residential growth outlined in the Council's Our Living City (OLC) Settlement Strategy. The OLC outlines significant growth around the South Coffs Harbour area including:

- North Boambee Release Area (849 possible dwellings); and
- South Coffs Release Area (477 possible dwellings).

The Planning Proposal (rezoning) proposes to:

- rezone existing cleared lands on the site from E2 Environmental Conservation to B5 Business Development;
- permit bulky goods premises;
- provide economic incentives to rehabilitate degraded bushland and riparian vegetation in the remaining E2 zoned lands; and

- provide for development in keeping with the environmental and servicing capacity of the land.

Sustainability Assessment:

Any amendment to Coffs Harbour Local Environmental Plan (LEP) 2013 needs to address environmental, social, civic leadership and economic sustainability criteria as follows:

• Environment

The site is subject to the following environmental constraints:

- a “very low risk” Acid Sulfate Soils classification;
- the vegetated parts of the site contain primary koala habitat (Koala Plan of Management);
- the vegetated parts of the site contain an endangered ecological community – Swamp Sclerophyll forest (as identified under the fine scale Class 5 map as adopted by Council on 13 December 2012);
- the site is located in the Coastal Zone under State Environmental Planning Policy 71 – Coastal Protection;
- the site is bushfire prone; and
- the site is a potential flood risk.

Consultation with appropriate government agencies and other branches/departments of Council confirm that these environmental matters can be addressed at the development application stage, where appropriate mitigation measures can be implemented to ensure that no adverse environmental impacts are associated with the rezoning and subsequent development of the subject site.

The Planning Proposal aims to ensure the City’s development is carried out in an environmentally sustainable manner.

As noted above, the subject site is located on land identified as being of significant ecological and habitat value (primary koala habitat and an endangered ecological community). The proposal includes the retention and rehabilitation of existing native vegetation on the subject land by way of a VMP. A VPA has been drafted to ensure that the actions contained in the VMP are carried out as recommended. The adoption and implementation of the VMP, supported by a VPA, will ensure that the ecological values of the land will be enhanced through rehabilitation.

• Social

The Planning Proposal seeks to promote equitable access to an increased range of services and facilities for the local community. This reflects Council’s long term strategic vision for the City as endorsed in the OLC Settlement Strategy, Business Lands Strategy and the Coffs Harbour 2030 Plan.

• Civic Leadership

The Planning Proposal process will be undertaken in accordance with the provisions of the Environmental Planning and Assessment (EP&A) Act 1979, as well as the EP&A Regulation 2000.

The Planning Proposal also seeks to implement appropriate and relevant strategies of the Coffs Harbour 2030 Plan to achieve the following objectives:

– **Objective:** *LP 2 We have a strong and diverse economy*

Strategy: *LP 2.1 Maximise opportunities for workforce participation*

Comment:

The Planning Proposal will result in an employment activity that will assist in achieving this strategy. The construction of the building will provide employment and post construction employment may include trade apprenticeships etc.

– **Objective:** *LE 3 Our natural environment and wildlife are conserved for future generations*

Strategy: *LE 3.1 Manage land use to conserve the region's unique environmental and biodiversity values*

Comment:

The Planning Proposal includes the rehabilitation of a significant area (1.43 hectares) of natural bushland in an urban setting that has been subject to rubbish dumping and associated weed infestation. The rehabilitation works and associated ongoing maintenance routine are outlined in a Vegetation Management Plan and secured by a Voluntary Planning Agreement.

Strategy: *LE 3.2 Enhance protection of our catchments, waterways and marine areas*

Comment:

Similarly, the rehabilitation of the bushland that is also located adjacent to Newports Creek will benefit this waterway.

By considering and implementing these community endorsed strategies as part of this Planning Proposal, Council demonstrates that it is committed to achieving the outcomes of the 2030 plan.

- **Economic**

The continued economic growth and development of the City is supported by the Planning Proposal. The proposal identifies a site to enable the development of a bulky goods or light industrial uses to service the South Coffs Harbour area.

Broader Economic Implications

The Planning Proposal aims to rezone part of the land to a more suitable zone which will expand the development opportunities for the land, while providing a mechanism for the protection and maintenance of some environmentally sensitive lands.

The Planning Proposal provides an additional business development option and opportunity in the South Coffs Harbour area.

Delivery Program/Operational Plan Implications

There are no immediate financial implications or impacts on Council by proceeding with the Planning Proposal – this process is on a user pays basis – i.e. the administration and processing costs associated with the Planning Proposal are covered by the proponent/landowner.

Additional fees (as established in Council's fees and charges) will be required to be paid to progress the proposal to the government agencies.

Risk Analysis:

The Planning Proposal has assessed and documented the constraints that affect the land. The Planning Proposal has demonstrated that the constraints affecting the land can be managed, therefore minimising associated risks.

Consultation:

Some of the key stakeholders include the NSW Office of Water (NOW), Office of Environment and Heritage (OEH), NSW Rural Fire Service (RFS) and the Coffs Harbour and District Local Aboriginal Land Council (CHLALC). These agencies have already been consulted and have provided initial comments on the Planning Proposal.

Consultation through public exhibition of the associated documents, as well as consultation with a number of State government bodies and stakeholders will be necessary should Council endorse the Planning Proposal and should P&E endorse the gateway process. Public exhibition will also need to include the VPA submitted with the Planning Proposal.

Related Policy and / or Precedents:

Council is undertaking this process in accordance with the guidelines associated with Planning Proposals. All statutory requirements will be complied with.

This Planning Proposal has been commissioned in response to a landowner's request. It accords with the Council's Local Growth Management Strategy, and is in accordance with requirements of the Mid North Coast Regional Strategy.

The Business Centres Hierarchy Review (BCHR) document states that:

"There should be no increase to the land area where bulky goods retailing is permissible for at least 10 years because there is an adequate supply of land zoned for this purpose."

Despite this statement within the BCHR document, this Planning Proposal is supported for the following reasons:

- it is a minor extension of the adjacent B5 zoned lands directly to the west of the subject lands;
- it is a concise area (2787 square metres); and
- it provides a benefit to the community in that it will result in ongoing restoration and protection of adjacent environmentally sensitive lands.

Statutory Requirements:

The statutory process under the EP&A Act 1979 and Regulations must be followed in the preparation of the Planning Proposal and its exhibition, including the following documents:

- The Department of Planning Standard Instrument (LEPs) Orders (gazetted March 2006, amended September 2006 and July 2008).
- The Mid North Coast Regional Strategy March 2009.
- Various Ministerial Directions.

Issues:

The following are key issues associated with the Planning Proposal:

- **The rehabilitation, protection and management of the proposed E2 zone and the appropriate mechanism to secure such.**

The NSW Office of Environment and Heritage (OEH) notes that the vegetated area of the property has been degraded by the dumping of rubbish including garden waste which is a source of weed establishment. They suggest that the Vegetation Management Plan for the E2 area within the site should consider requiring the installation of some type of protective fencing (i.e. bollards) to protect the environmental values of the E2 area of the property by restricting/reducing access to the area.

OEH also notes that the applicant has put forward a five year rehabilitation and maintenance program for the E2 area subject to the rezoning being approved, and that this process intends to secure the protection of the E2 area in perpetuity.

OEH recommends that prior to finalising the Planning Proposal, Council should be satisfied that:

- a. Future development on the site will be excluded from the area proposed to be zoned E2.*

Comment:

The intended development of the site relies on the development of the cleared land that will potentially be zoned B5. This will mean that future development of the site will be excluded from the area proposed to be zoned E2, other than those activities that are allowable in the E2 zone.

- b. The APZ and any other infrastructure associated with future development of the site can be wholly contained within the B5 zoned area.*

Comment:

The proposal seeks to rezone the cleared parts of the site to a B5 zoning. This will mean that any likely future building on the site will be a Class 5 – 8 commercial building. The NSW RFS in their response to Council's initial referral state that "any new construction on the site will require a BAL flame zone construction on the east and south building elevations" (those elevations that will face the vegetation on site). Further that - "No openings will be permitted in those elevations". RFS have also stated that "any new construction on the site will need a defensible space of a minimum one metre separation from the hazard located to the east and south." These requirements can be met at the development application stage and this will result in any APZ being contained wholly within the B5 zoned parts of the site. A caretaker dwelling could potentially be approved on the site to provide security to an associated industry etc. on the land, however a caretakers dwelling would also need to comply with this requirement.

- c. The Vegetation Management Plan for the E2 area will appropriately manage biodiversity values in perpetuity.*

Comment:

Council's biodiversity staff support OEH comments and confirm that the VMP provides a positive outcome for the E2 zoned parts of the site.

- d. *A suitable mechanism such as a Bio Banking Agreement under the Threatened Species Conservation Act 1995 or a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 is used to secure the in perpetuity protection, rehabilitation and management of the area proposed to be zoned E2.*

Comment:

The applicant has prepared a VPA that will ensure that the rehabilitation and maintenance program for the E2 area is secured.

- **Voluntary Planning Agreement**

In the context of local government, a VPA is an agreement entered into by Council and a developer. Under the agreement, a developer agrees to provide or fund the likes of public amenities and public services, affordable housing, transport or other infrastructure.

VPAs cannot be entered into unless public notice has been given and an explanatory note is made available for inspection for at least 28 days.

Comment:

In the case of this Planning Proposal, the "public notice" mentioned above will form part of the subsequent consultation process.

A VPA is considered appropriate in this situation as the proponent has provided a program of works to rehabilitate and maintain the vegetation on the site, however without a VPA, there is no legal ability to lock the landowner in to the ongoing program of works. A VPA provides this certainty.

Council's lawyer has provided input on the final version of the VPA.

- **The assessment of cumulative impacts of the future development to be enabled by the Planning Proposal with respect to flooding within the catchment of Newports Creek.**

Comment:

A flood assessment has been undertaken for the Planning Proposal in order to satisfy Council's 'Floodplain Development and Management Policy' and to address the NSW Government Office of P&E's 'Section 117 Ministerial Direction, Direction No: 4.3 Flood Prone Land'.

The relevant 'Section 117 Ministerial Direction (No: 4.3 Flood Prone Land) requires the following:

- *A draft LEP shall include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and principals of the Floodplain Development Manual, 2005;*
- *A draft LEP shall not rezone land within the flood planning areas from Special Area, Recreation, Rural or Environmental Protection zones to a Residential, Business, Industrial or Special area zone;*
- *A draft LEP may be inconsistent with this direction only if council can satisfy the Secretary (or an officer of the Department nominated by the Director – General) that*

any particular provision or area should be varied or excluded having regard to the provisions of section 5 of the Environmental Planning and assessment Act, and

- *The rezoning is in accordance with a floodplain risk management plan prepared in accordance with the principals and guidelines of the Floodplain Development Manual 2005;*
- *The rezoning is, in the opinion of the Secretary (or an officer of the Department nominated by the Director-General), of a minor significance.*

The flood assessment has been undertaken in accordance with the Floodplain Development Manual 2005, and the proposed rezoning is considered to be of minor significance for the following reasons:

- The 'Boambee-Newport's Creek Flood Study, Jan 2011' identifies the proposed rezoning area as affected by the 1% AEP flood level, but it is not considered to be a floodway. To satisfy councils flood policy the rezoned area would need to be filled above the 1% AEP flood level. Modelling has been undertaken to assess the possible impacts of filling. The modelling shows that filling will have an impact on flood levels for the adjoining properties to the northwest of the site being land owned by Bunning's and other small sections of land owned by Council. Correspondence has been provided from a representative of Bunning's that they have no objection to the modelled flood impacts for their site.
- Council owns two narrow strips of land that are located on either side of the length of the subject property. These two narrow strips of land were intended to provide a vegetated buffer surrounding the subject land which was originally intended to form part of a deviation corridor of the Pacific Highway (Eastern Arterial) but has since been abandoned. Council's Property branch has no objection to the filling proposed to be undertaken on the adjacent property.
- The size of the land to be re-zoned is relatively small compared to the overall size of the property (2787m² from an overall area of 1.7 hectares).
- The cleared parts of the site which are proposed to be re-zoned hold no particular environmental value. Much rubbish has been dumped on the land and this proposal offers a way of rehabilitating the site and providing an environmental benefit.

Further details that address all relevant Section 117 Directions and other legislative requirements are provided in the Planning Proposal (see Attachment 1).

• **The adequate assessment of Aboriginal cultural heritage matters**

Council has received the following referral response from the CHDLALC:

"The CHDLALC holds no objections to the rezoning proposal at Cook Drive.

CHDLALC understands that the area in question has been impacted by previous land use activities. However please note that should any material be suspected to be of Aboriginal origin be uncovered during any earth disturbance works then the Office of Environment and Heritage's "Stop work procedure" would need to be followed."

Comment:

The above advice is noted and the requirements relating to "earth disturbance works" are standard considerations for any subsequent development application that will involve earthworks on the site.

Implementation Date / Priority:

The timeframe for a Planning Proposal is established in the EP&A Act. The timeframe is triggered once the matter is forwarded to NSW P&E by Council (i.e. after Council endorsement).

Recommendation:

- 1. That Council endorse and forward the subject Planning Proposal to NSW Planning and Environment seeking a "Gateway Determination" for the rezoning of Lot 13, DP591220 Cook Drive, Coffs Harbour as shown in Attachment 1 of this report.**
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Attachments:

ATT1 Planning Proposal - Cook Drive

ATT2 Voluntary Planning Agreement - Cook Drive