

OUTCOMES COMMITTEE

Meeting Date 12 November 2013

Item Number. 158

SUBJECT: Rural Area - Secondary Dwelling, Planning Proposal and Draft Development Control Plan

Proposal: Rural Area - Secondary Dwelling, Planning Proposal and Draft Development Control Plan

Premises: Horsley and Cecil Park

Applicant: N/A

Zoning: Fairfield LEP 2013 - RU2 Rural Landscape, RU4 Primary Production Small Lots

FILE NUMBER: 12/04666

PREVIOUS ITEMS: 52 - Rural Area - Secondary Dwellings Study and Planning Proposal - Outcomes Committee - 14 May 2013
107 - DCP Controls Secondary Dwellings - Outcomes Committee - 13 August 2013

REPORT BY: Andrew Mooney, Coordinator Strategic Planning

RECOMMENDATION:

That Council:

1. Adopt the Planning Proposal (**Attachment A**) as publicly exhibited to allow the additional permitted use of '*secondary dwellings*' in zones RU2 – Rural Landscape and RU4 – Primary Production Small Lots applying to Horsley Park and Cecil Park.
2. Adopt the draft Development Control Plan (DCP) (**Attachment B**) as publicly exhibited, subject to the amendments discussed in the report, and incorporate its provisions into the Fairfield City Wide Development Control Plan 2013.
3. Place a public notice in the local newspaper advising of Council's adoption of the draft DCP.
4. Submit the Planning Proposal to the Department of Planning and Infrastructure (DP&I) for finalisation.

Note: This report deals with a planning decision made in the exercise of a function of Council under the EP&A Act and a division needs to be called.

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SUPPORTING DOCUMENTS:

AT-A	Planning Proposal - Secondary Dwellings	16 Pages
AT-B	draft DCP - Secondary Dwellings controls	17 Pages
AT-C	Secondary Dwellings Study	51 Pages

CITY PLAN

This report is linked to *Theme 2 Places and Infrastructure* in the Fairfield City Plan.

SUMMARY:

Council, at its meetings in May and August 2013 respectively, endorsed public exhibition of a planning proposal and associated draft DCP controls to allow secondary dwellings (granny flats) as an additional permitted form of residential accommodation in the RU2 – Rural Landscape and RU4 – Primary Production zones applying to Horsley Park and Cecil Park.

The planning proposal subsequently received a Gateway Determination from the DP&I and along with the draft DCP was placed on public exhibition for 28 days.

Submissions were received from 3 State Government agencies and 1 from the gas network manager for the Sydney Region (Jemena) who raised a broad range of issues. As detailed in this report, these issues are either addressed by current planning controls or do not represent an impediment to Council providing its further endorsement to the planning proposal for referral to the DP&I requesting it be made (gazetted).

No submissions were received from the general community and accordingly it is recommended the Council endorse the planning proposal to permit secondary dwellings in the rural area and adopt the draft DCP so that relevant controls will apply to this form of development.

BACKGROUND - Gateway Determination from DP&I

Following Council's endorsement, the planning proposal (**Attachment A**) was referred to the DP&I for a Gateway Determination which was issued by the DP&I in July 2013 and required:

- Provision of a project timeline in the planning proposal in accordance with the Departments guidelines for preparation of planning proposals;
- Community consultation for a minimum of 28 days;
- Compliance with requirements for public exhibition contained in the Departments guidelines; and
- Consultation with relevant State Government Agencies and Utility providers.

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The Gateway Determination did not require a public hearing and under public exhibition, the above Gateway requirements (including provision of a project timeline for the proposal) were addressed.

The following sections of this report detail the results of public exhibition and relevant planning comments.

PUBLIC EXHIBITION

Public exhibition took place for a period of 28 days in accordance with the DP&I guidelines and included:

- Letters to all property owners in the rural area
- Notice in the local newspaper under Council's Corporate Notice.
- Letters to relevant State Government Agencies, utility providers and adjoining Councils

In addition, although generally in accordance with consultation strategy reported to Council in May 2013 the project timeline for public exhibition of the planning proposal did not allow sufficient time to include a notice in publication of Council's news letter 'City Life'. However provision of a public notice in 'City Life' was not specifically required under the Gateway Determination and general notification across the City still occurred under Council's Corporate Notice.

Four submissions were received to public exhibition and are detailed below:

SUBMISSIONS

1. NSW Rural Fire Service (RFS)

The RFS advised as follows:

"The RFS raise no concerns or special considerations in relation to bushfire matters for the proposed LEP.

Applications for all development on bushfire-prone lands will still be required to comply with either Section 79BA of the Environmental Planning and Assessment Act 1979 or Section 10013 of the Rural Fires Act 1997 depending upon the nature of the proposed development".

Planning Comments

As alluded to in the above comments from the RFS, under existing State Government legislation and associated guidelines (*Planning for Bushfire Protection*) processes are already in place to require the assessment of bushfire hazards on land classified as bushfire-prone land where applications for secondary dwellings may be considered in future in Horsley Park and Cecil Park.

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In this regard, there are no further requirements for Council to address in relation to these comments provided by the NSW RFS.

2. Jemena Asset Management Ltd (gas network)

Jemena is the asset manager for high pressure gas mains in the State and advised that an existing high pressure trunk main affects part of the study area where secondary dwellings are proposed comprising the western edge of the Key Hole lands (zoned RU2 – Rural Landscape) between Chandos Road and The Horsley Drive in Horsley Park.

In assessing the planning proposal Jemena initially advised that it would be required to assess the need to prepare a safety and risk management study to determine the impact and assess the need for mitigation measures for the proposal to allow secondary dwellings in the RU2 zone located near the high pressure gas main.

Planning Comments

Further analysis revealed that although traversing 2 properties (fronting Chandos Road and Redmayne Road) in the Key Hole Lands the high pressure gas main runs predominantly through the Western Sydney Parklands and is located largely outside the area affected by the planning proposal.

The gas main is located entirely within easements applying to these 2 properties which contain existing rural/residential development constructed outside the gas easement area.

The restrictions applying to the easements mean that any future secondary dwellings on the 2 sites would also need to be constructed outside the footprint of the easement and would not impact on the gas mains.

A meeting was held with Jemena to discuss the above issues, as part of this process Jemena also acknowledged that the scale of secondary dwellings (limited to 60m² or maximum of 10% of the floor area of the principal dwelling – whichever is greater) permitted under the planning proposal would not result in any significant increase in both the footprint of rural/residential development or residential densities in the RU2 or RU4 zones.

As a result of the above Jemena subsequently advised as follows:

“Jemena Asset Management Pty Ltd on behalf of Jemena Gas Networks would like to advise in reference to the proposed development as detailed below and confirming our discussions yesterday that due to the location and type of works proposed there will be no impact on Jemena’s trunk main and therefore no formal review (Safety Management Study) will be required”.

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3. NSW Trade and Investment – Mineral Resources Branch (MRB)

In summary the above State agency raised the following issues:

Specific Issues

- Fairfield City LGA is an important centre for brick manufacture and the production of structural clay (clay used in the manufacture of bricks, tiles and pipes) with 3 brick making plants, 2 operated by Austral Bricks and 1 by PGH Bricks & Payers are located on the north western margin of the LGA.
- Furthermore, an operating brick manufacturing plant and an undeveloped, identified resource are located at Cecil Park (PGH) on the southern margin of the LGA with the potential to provide significant resources of dark-firing clay.
- MRB notes that parts of the RU4 – Primary Production Small Lots zone in the Horsley Park and Cecil Park areas lie immediately adjacent to the operations. These areas partly coincide with the transition areas (formerly referred to as buffer zones) of the operations. MRB encourages the use of transitions zones as 1 method of avoiding potential land use conflicts.
- MRB has concerns regarding the proposal which allows for the intensification of residential dwellings in the areas adjacent to brickworks and quarries. The proposal has the potential to cause land use conflicts in these areas and any decision regarding the proposal should consider the impacts of these operations on surrounding residential dwellings and likewise any increase in residential dwellings should not impact the brick making/quarrying operations.

General Information

- Petroleum Exploration License (PEL) Nos. 2 and 463 held by AGL Upstream Investments Pty Limited and Macquarie Energy Pty Limited respectively exist over a broad regional area that includes the subject site. Identification of the petroleum titles is to make the consent authority aware that there are other stakeholders with interests in the region.

Planning Comments

Quarry Noise

As Council would be aware, the above 3 extractive industry sites have been in operation in the rural lands for many years. During this time under previous zoning provisions broad scale rural/residential development has been approved adjoining the quarry sites subject to DCP provisions which require submission and approval of acoustic proofing measures to safeguard against the potential impacts of noise emissions from quarrying activities.

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Under the current Fairfield LEP 2013 and previous Fairfield LEP 1994 there are no formal LEP 'transitional' (buffer) zones adjoining the quarry sites in the rural area. Indeed under recent preparation of the Fairfield LEP 2013 there were no formal requirements for provision of a buffer around the quarry sites as a result of Standard LEP guidelines nor were buffers requested during consultation with relevant State Government agencies.

Rather, as mentioned previously, issues in relation to quarry noise have to date been addressed via DCP requirements. These provisions extend out a distance of approximately 500m from the property boundary of the quarries to the surrounding adjoining rural/residential lands.

This arrangement will also apply to any future secondary dwelling development in proximity to current and future quarrying activities in the area.

In addition, under Section 149 (5) zoning certificates (accompanying the sale of a property) advice is included on relevant properties regarding the proximity to quarry activities and need for acoustic provisions in new development.

The smaller scale and nature of secondary dwellings will not result in significant increase in the density of residential development in the rural areas. In this regard, there are no additional DCP or LEP measures recommended to address the comments provided in the submission from the MRB.

Petroleum Licences

A review of the Mineral Resources Website does not indicate there are any specific exploration licences applying to the rural area. Rather, as referred to in the submission from the MRB the area is affected by a regional licence applying to the whole of the Sydney Basin and includes the urban areas across the Sydney Metropolitan Area.

Further discussions with the MRB indicate that the above license relates to exploration for Coal Seam Gas (CSG) in the Sydney Basin. MRB also advise that at this stage there are no specific planning requirements for development in proximity to CSG sites.

In addition to the above, the DP&I has recently issued amendments to the SEPP (Mining Petroleum Production or Extractive Industry) which places a 2km exclusion zone around land zoned for residential purposes or 2km from a rural village (i.e. Horsley Village) where CSG activities are now prohibited. It is noted that this issue was previously reported to the April Outcomes Committee where Council endorsed a submission to the State Government requesting that CSG activities be prohibited across the entire Fairfield LGA.

The 2km exclusion zone means that the majority of the rural lands in Horsley Park and Cecil Park are now excluded from CSG activities. This issue and implications of the SEPP amendments are currently being reviewed by Council officers and further advice regarding this matter will be forwarded to Council in due course.

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At this stage, based on the available information it is not necessary for Council to consider implementing any special planning measures or controls for either secondary dwellings or other forms of rural residential development permitted within the limited area of Horsley Park and Cecil Park where CSG activities are still permitted.

4. NSW Department of Primary Industries – Office of Water

In summary the above agency raised the following issues:

- It is unclear how waterways or sections of waterways, for instance Eastern Creek, which have not been mapped on the watercourse LEP maps will be protected, particularly when the LEP/ DCP clauses apply to land shown on the Riparian land and Waterways Map in the LEP. Eastern Creek is located to the west of the Keyhole lands shown on the study area map in Appendix A of the planning proposal but no waterway/riparian corridor has been mapped.
- It is noted the proposed DCP Controls – Chapter 4B for Secondary Dwellings in Rural Area – Horsley Park and Cecil Park includes an objective under 413.0.2 *"to protect adjacent land and the wider environment from the impact of secondary dwellings"*. it is recommended the proposed DCP controls also include the following specific objectives:
 - to protect and enhance waterways and riparian corridors from the impact of secondary dwellings
 - to protect surface water and groundwater sources from the impact of secondary dwellings
- It is noted the E2 zoning within the study area has been applied to Ropes Creek. The Office of Water encourages the zoning of waterways and riparian land as E2 to afford greater protection to these environmentally sensitive areas. The objective under the E2 zone is also supported *"to enhance and protect riparian corridors and water quality associated with the waterways of Fairfield"*. It is recommended a similar objective is included under the RU2 and RU4 zones particularly as the LEP maps have not mapped all waterways and riparian corridors.
- Section 6 of the planning proposal notes that based on a minimum subdivision requirement of 1 hectare the majority of sites in the rural area have the potential to accommodate a secondary dwelling with minimum impacts on riparian lands. The Office of Water supports the proposed recommendation to construct the secondary dwelling within 10 metres of the existing dwellings or where proposed as part of a new principal dwelling the secondary dwelling be attached, so as to achieve a more compact residential building footprint and assist mitigate potential impacts on watercourses and riparian land.

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Groundwater

- Section 7 of the Planning Proposal notes that Horsley Park and Cecil Park are not connected to the Sydney Water reticulated sewerage system (page 36). The Office of Water supports planning proposals that can provide reticulated sewer and water to a site to assist mitigate potential impacts on surface and groundwater resources and concurs with the Planning Proposal report that secondary dwelling applications would need to submit a report demonstrating adequate arrangements have been made for the disposal of waste water in accordance with Council's Sewage Management Policy.

Planning Comments

The comments from the NSW Office of Water (NOW) are addressed below;

Under preparation of the Fairfield LEP 2013 mapping was undertaken of the primary watercourses in the City including those contained in Horsley Park and Cecil Park within zones RU2 – Rural Landscape and RU4 – Primary Production Small Lots having regard to Standard LEP guidelines issued by the DP&I and previous advice provided by the former Department of Water and Energy (DWE).

In the rural areas of Horsley Park and Cecil Park, further detailed assessment and classification of the primary watercourses was also undertaken under preparation of Council's Biodiversity Strategy with the main watercourses (between top of the creek of banks) being zoned E2 Environmental Conservation under the Fairfield LEP 2013.

This mapping process did not extend to or include mapping of smaller intermittent watercourses and creek tributaries of the rural area and is consistent with relevant State Government advice and guidelines referred to above.

However, the existence and need to assess the impacts of development on the smaller watercourses and tributaries in both the rural and urban areas of the City is not disregarded and is taken into account through the development assessment process having regard to detailed provisions contained in the Environmental Planning and Assessment (EP&A) Act and Council's City Wide DCP 2013. The essential components of this process are;

- Smaller tributaries and watercourses (that support intermittent water flows) are identified and assessed on a case by case basis as a result of site inspections for development applications submitted with Council. Development issues need to be considered having regard to the nature and merits of each proposal.

In some instances, proponents may need to prepare an overland flood study to determine the extent of the watercourse/tributary and potential flood hazards to ensure there are no detrimental impacts on the development or on properties downstream or upstream of a proposal.

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These developments are also referred to the NOW for comment under relevant provisions of the EP&A Act relating to integrated development.

- Under preparation of the Fairfield LEP 2013, relevant guidelines issued by the DP&I and advice from the former DWE did not require that smaller tributaries and watercourses be zoned E2 – Environmental Protection and as referred to previously the approach followed by Council addressed relevant guidelines associated with the NSW Standard LEP and advice from State Government Agencies.
- Chapter 3 of the City Wide DCP includes more detailed provisions applying to all watercourses in the City (including those unmapped) and sets out measures that require development to mitigate impacts on water quality and ecological function of these areas.
- Although in the Fairfield City, Eastern Creek is located in the Western Sydney Parklands and is covered by the provisions of the SEPP (Western Sydney Parklands). As a result the provisions of the Fairfield LEP 2013 are specifically excluded from applying to the Parklands and therefore do not appear on the associated LEP maps.
- The request by the NOW to include additional objectives under the RU2 and RU4 zones applying to watercourses could potentially trigger the need to re-exhibit the planning proposal for secondary dwellings. This step is not considered warranted giving the current processes applying to assessment of DA's where unmapped (smaller) intermittent watercourses are located and detailed provisions covering this issue under the City Wide DCP.

In this regard the issues raised by the NOW regarding unmapped watercourses are generally covered by existing planning provisions and legislation relating to this matter. Council officers will continue to review the status of this matter and report the need for any amendments to relevant DCP/LEP provisions as may be required.

It is recommended that Council endorse the above advice for referral to the DP&I under further consideration of the planning proposal for secondary dwellings.

DRAFT DCP ISSUES

In addition to public exhibition, further consultation in relation to secondary dwellings in the RU2 and RU4 zones was also undertaken with relevant Council Departments.

As a result Council's Building Control Branch has recommended the following additional advice be included in the draft DCP to confirm that an existing on-site sewerage disposal system has adequate loading capacity for a proposed secondary dwelling.

- Provide certification for the current on-site sewage management system by a suitably qualified person that is to certify that it is operating in accordance with the designers and manufacturers guidelines.

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- Provide certification that the current on-site sewage management system can cope with the proposed additional load or make an application for a new separate on-site sewage management system that is for the proposed secondary dwelling (granny flat).

It is recommended that the above requirements be included in the draft DCP attached to this report.

CONCLUSIONS

As detailed in this report, submissions to public exhibition of the planning proposal and draft DCP do not pose a constraint to Council providing its endorsement to the planning proposal for referral to the DP&I to permit secondary dwellings as an additional form of residential accommodation in zones RU2 – Rural Landscape and RU4 – Primary Production Small Holdings.

Planning provisions associated with the planning proposal and draft DCP will ensure that secondary dwellings in the RU2 and RU4 zone have minimal impact on the environment and are compatible with the existing agricultural and environmental qualities of the area.

The planning study prepared with the proposal indicates that secondary dwellings will provide a valuable form of residential accommodation for the area and address an emerging housing need as identified in both the Fairfield Residential Development Strategy and Fairfield City Plan.

In this regard it is recommended Council adopt the planning proposal (for referral to the DP&I) and draft DCP attached to this report.

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Coordinator Strategic Planning

Authorisation:
Group Manager City Development
Manager Strategic Land Use Planning

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***** END OF ITEM 158 *****