



SUBJECT: *PLANNING PROPOSAL - BELLBIRD HEIGHTS*

AUTHOR: *Coordinator Strategic Landuse Planning - Bo Moshage*

SUMMARY

APPLICATION NUMBER:	18/2005/2/1
PROPOSAL:	BELLBIRD HEIGHTS PRECINCT
PROPERTY DESCRIPTION:	40-42 FRANCIS STREET, CESSNOCK
PROPERTY ADDRESS:	LOT 1 DP 1164334 AND LOT 2 DP 1164334
ZONE (CURRENT):	RU2 - RURAL LANDSCAPE
ZONE (PROPOSED):	R2 - LOW DENSITY RESIDENTIAL AND E2 - ENVIRONMENTAL CONSERVATION
OWNER:	CESSNOCK LAND P/L
APPLICANT:	JAMIE BOSWELL ON BEHALF OF WINTON PARTNERS BELLBIRD

The purpose of this report is to provide an update on the current status of the Bellbird Heights Planning Proposal and make a recommendation as to an appropriate course of action for the future management of this Planning Proposal.

The Planning Proposal is a modified rezoning request that was originally lodged with Council in 2005. The proposed rezoning was transitioned into the Gateway in 2010, but was not progressed so that more detailed investigations could be undertaken. The Department of Planning and Infrastructure requested that the Planning Proposal be resubmitted once these further investigations and studies had been completed.

The report seeks Council's endorsement to submit a modified Bellbird Heights Planning Proposal to the Department of Planning and Infrastructure for a "Gateway" determination. If so endorsed, a Development Control Plan (DCP) and a Section 94 Contributions Plan /Voluntary Planning Agreement (VPA) for local infrastructure requirements would be required to be considered, developed and exhibited with the Planning Proposal.

RECOMMENDATION

That Council:

- Forward the Planning Proposal for Bellbird Heights to rezone land from RU2 - Rural Landscape Zone to R2 - Low Density Residential and E2 - Environmental Conservation to the Department of Planning and Infrastructure for a "Gateway" determination.**



2. Request that further investigations be undertaken as part of the “Gateway” process in relation to the following matters:
 - Contaminated land study and remediation plan, if relevant;
 - Mapping of constraints and hazards;
 - The physical and financial feasibility of servicing the land;
 - Conservation of environmentally sensitive areas of land;
 - Bushfire assessment and protection measures.
3. A Development Control Plan be prepared to address design, conservation and management measures that will reduce any negative impacts related to the proposed development.
4. Request a twelve (12) month extension to complete the Planning Proposal and finalise the supporting Development Control Plan and infrastructure contribution and biodiversity requirements.
5. That a separate report be presented to Council detailing the final content of the draft Plan and supporting documentation prior to public exhibition.

BACKGROUND

The rezoning proposal was lodged with Council in May 2005. The proposal was not supported due to being constrained by past mine workings and there being other less constrained sites able to meet anticipated supply in the longer term. At this time, the (then) Department of Planning advised Council that the proposal should not be pursued until after the release of the Lower Hunter Regional Strategy.

Following the release of the Lower Hunter Regional Strategy in 2006, the site was identified as a ‘proposed urban area’.

A locality plan is provided as Enclosure 1.

Council first considered the rezoning proposal at its meeting held 7 February 2007, where it resolved to commence the rezoning of the site to allow urban development. However, the Planning Proposal did not progress due to an unresolved objection from the Department of Resources & Energy (Mineral Resources).

On 24 December 2010 the Bellbird Heights Planning Proposal was transitioned into the ‘Gateway’, subject to the further consideration of the following matters:

- Mine subsidence and site contamination, as identified within the preliminary investigations reports and Council’s planning proposal;
- Need for and nature of mechanisms to address incompatibility between the proposed residential development and current mine operations identified by Industry and Investment NSW and Council;
- The necessary environmental offsets for the proposed development, including the offsets to be achieved both on and off the site.

Our Natural, Developed and Cultural Environment

Report No. EE116/2012

Strategy and Sustainability



Upon resolution of these issues a Planning Proposal was to be lodged with the Department of Planning and Infrastructure and Council given direction on how to proceed with the Planning Proposal, including any consultation requirements.

On 8 December 2011, the Cessnock Planning Panel considered the Bellbird Heights Planning Proposal under Report PPEE72/2011 and resolved:

1. *That the Planning Proposal not proceed; and*
2. *That Council advise the Department of Planning and Infrastructure of the decision not to proceed with the proposal; and*
3. *That the Proponent be invited to lodge a new Planning Proposal when it is demonstrated by documentary evidence that conflicts with adjoining landuses can be resolved – specifically ongoing mining operations.*

With the repeal of the Cessnock Planning Panel on 27 January 2012, Council reconsidered the Bellbird Heights Planning Proposal through the transitional provisions of the Repeal Order, and on 21 March 2012 under Report EE15/2012 resolved:

Council may reconsider the Planning Proposal on the basis that:

- *The Proponent undertake to provide the documentation and studies that have previously been requested by the Department of Planning and Infrastructure; and*
- *The Planning Proposal is again reported to Council, at which time Council can consider forwarding the Proposal to the Department of Planning and Infrastructure for a Gateway Determination; and*
- *Adjoining landholders are notified that Council is considering the planning proposal.*

Following ongoing meetings and discussion, the Proponent submitted on 5 November 2012 supplementary information and a revised land zoning concept. A copy of this correspondence is provided as Enclosure 2.

While a reduction in land area has modified the objection of the Department of Resources and Energy, there still remains a number of unresolved issues relating to this Planning Proposal, most notably the management of the area proposed for residential development immediately adjoining the active mine emplacement area.

The investigations and consultations for this Planning Proposal have been lengthy but have now progressed to an extent that the modified Planning Proposal can be sent to the 'Gateway'. However, this will not meet the timeframe outlined in the Gateway Determination for completing the draft LEP by 24 December 2012.

Should Council resolve to proceed with the modified Planning Proposal, a twelve (12) month extension to complete the Planning Proposal, finalise the supporting Development Control Plan and Section 94 Contributions Plan / Planning Agreement(s) for biodiversity and local infrastructure requirements will also need to be made.



REPORT/PROPOSAL

The following issues relate to the documentation and studies requested by the Department of Planning and Infrastructure regarding the Planning Proposal and the additional information provided by the proponent addressing these issues.

1. Mine Subsidence and Contamination

Information submitted with the Proposal concludes that the development area under the revised re-zoning plan is over land where no mining has been undertaken, concluding that no mine subsidence issues exists and that the Mine Subsidence Board has no requirements. This land also coincides with a development approval for an aged care facility and existing approval supports the suitability of the proposed residential zone land with respect to mine subsidence.

The additional information submitted with the Proposal also indicates that any potential contamination relates to the area which Austar Mine is currently undertaking emplacement works (Lot 2 DP1164334), concluding that this area is not proposed to be rezoned for residential use and that there is no contamination with respect to the revised planning proposal development area.

Austar Mine has a statutory obligation to rehabilitate this area in accordance with their Mines Operation Plan which they are continuing to progress. However, while the preliminary assessment does not recommend further investigation into contamination of the land subject to the coal washery, further investigation of this area is required to satisfy SEPP 55 - Remediation of Land. It is recommended that these impacts be fully investigated and documented and that, prior to rezoning, more confidence be provided that the site will be capable of development should it be affected by contamination.

2. Incompatibility between proposed residential use and current mine operations

The Bellbird Heights Precinct is identified in the City Wide Settlement Strategy (2010) as a future urban area with an anticipated yield of 700. However, Department of Resources & Energy previously held objections to the rezoning of the subject site for residential purposes, due to the presence of Mining Lease (ML) 1345 over part of the site, and potential impacts on the mining operations of Austar Coal Mine. Following a review of on-site constraints, the yields for Bellbird Heights Precinct have been revised down to 305 lots.

Information submitted with the revised proposal advises that as the development area to be rezoned R2 - Low Density Residential coincides with the approval area for an aged care development, existing approval supports the suitability of the proposed residential zone land with respect to any perceived land use conflicts.

The change in the number of lots is considered to be appropriate in this regard following a review of on-site constraints. Increases in potential yields from other candidate areas with improved servicing availability will need to be investigated to help to off-set the reduction lot yield from this site.

It is proposed to retain the RU2 - Rural Landscape Zone for that part of the land where it is identified that further discussion / investigations are necessary with the Proponent and key

Our Natural, Developed and Cultural Environment

Report No. EE116/2012

Strategy and Sustainability



Government Agencies to resolve on site issues, particularly where constraints may restrict future development of land for residential purposes.

An E2 - Environmental Conservation zone is proposed to manage on site environmental considerations.

While the Department of Resources and Energy confirms that there are no coal resources under the site, there are concerns that residential development will be in conflict with the use of the site for mining purposes. The Austar Mine operates 24 hours a day, 7 days a week and there is concern that the haulage road could cause dust and noise pollution for future residents.

A noise consultant report was undertaken on 25 July 2012 to survey the current noise conditions relating to the mine emplacement work being undertaken by Austar Mine and concluded that the acoustic assessment during approximately 10:00am and 11:30am will be well below acceptable industrial noise levels. However, the report does not address the wider issues of incompatibility between the proposed residential land uses and current mine operations.

The Mine Operation Plan (MOP) for ML1345 is current until 2015, with a requirement that the subject area be rehabilitated prior to any mine closure. Therefore mining emplacement and rehabilitation activities on Lot 2 are not planned to cease until at least 2015. However, advice from Department of Resource and Energy (Mineral Resources) (at meeting 29 July 2009) is that this Mine Operation Plan is subject to change at any time and could include use of other parts of the ML, and it would need to be part of a Planning Agreement to ensure it is enforceable.

Austar Mine initially opposed the rezoning, yet have since removed this objection and an agreement is in place between the Proponent and Austar to manage any noise and dust issues related to the emplacement if they arise. As part of that agreement is the provision for each party to share costs for the construction and removal of any noise attenuation barrier if required. Yet it should be noted that the need for such a barrier, the height required and the practicality of installing an effective barrier have not been provided to Council, and hence the Proponent needs to provide adequate proof and details prior to any rezoning. At this stage the management of the mining operations to prevent any impact to future residents has not been detailed.

The extent of any effect, and relevant protection or mitigation measures, needs to be investigated and documented prior to rezoning the protection measures to be incorporated into the amending LEP and / or associated Development Control Plan.

Council will seek to consult formally with the Department of Resource and Energy (Mineral Resources) on these matters should the Planning Proposal progress and incorporate any recommendations into proposed amendments to Cessnock DCP (2010) needed to facilitate the proposed development.

3. Environmental Offsets

Information submitted with the Planning Proposal concludes that the primary change in the Planning Proposal is associated with the environmental zoning associated with the site. The intention is to now zone approximately two thirds of the site as an E2 - Environmental

Our Natural, Developed and Cultural Environment

Report No. EE116/2012

Strategy and Sustainability



Conservation Zone, with the balance zoned R2 - Low Density Residential or retaining the RU2 - Rural Landscape zone, which would be subject to a future Planning Proposal when MOP finish in 2015.

The Office of Environment and Heritage (OEH) are generally supportive of the proposed land use zoning outcomes for biodiversity and will be in a position to provide further advice during the formal consultation phase of the Planning Proposal.

A critical issue for the success of this Planning Proposal is how any environmental offset is managed. It is not considered appropriate that this land be transferred to Council because of ongoing cost considerations. While the ownership and management arrangements for the offset land are not in place at this time it is considered acceptable to progress the Planning Proposal to Gateway determination, as the negotiations between the Proponent and the OEH will be ongoing.

A copy of the Bellbird Heights Planning Proposal is provided as Enclosure 3.

OPTIONS

1. Support the proposed recommendation. This will continue progression of the Bellbird Heights Planning Proposal through 'Gateway'. However, Council will need to request an extension for the completion of the Planning Proposal from the Department of Planning and Infrastructure as provisions for local infrastructure requirements and biodiversity offsets remain outstanding and will need to be negotiated and finalised.
2. Not proceed with the Planning Proposal for the following reasons:

(To be provided by Council).

This will conclude Council's consideration of this Planning Proposal.

CONSULTATION

Further to Council's resolution under Report EE15/2012 on 21 March 2012, adjoining landholders were notified that Council was considering the Bellbird Heights Planning Proposal.

Ongoing consultation with Department of Planning and Infrastructure (DoP&I) and the Department of Resource and Energy (DRE) (Mineral Resources) in the re-consideration of the Bellbird Heights Planning Proposal.

STRATEGIC LINKS

a. Delivery Program

Nil.

Our Natural, Developed and Cultural Environment

Report No. EE116/2012

Strategy and Sustainability



b. Other Plans

Nil.

IMPLICATIONS

a. Policy and Procedural Implications

Amendments to Cessnock DCP (2010) will also be needed to facilitate the proposed development. The form and final (draft) content of this amendment will follow consultation with all relevant public authorities and completion of the supporting studies.

b. Financial Implications

A site specific Contributions Plan and / or a Voluntary Planning Agreement towards the provision of local facilities and services applicable to the future development of this site will need to be considered, developed and exhibited with the Planning Proposal. Contributions will be levied as part of any development application to subdivide following rezoning of this site.

c. Legislative Implications

This report has regard to the provisions of the *Environmental Planning & Assessment Act* and its Regulations.

d. Risk Implications

The risk implications of the Proposal are considered by the Report.

e. Other Implications

Nil.

CONCLUSION

The Bellbird Heights Planning Proposal represents a land release area identified in the Lower Hunter Regional Strategy. The Council's endorsement for the preparation of a Planning Proposal as detailed in this report will enable the Planning Proposal to progress to a 'Gateway' determination by the Department of Planning and Infrastructure.

Proceeding to the Gateway will enable the Planning Proposal to be developed and refined through further investigation, assessment of impacts (and measures to reduce these), and planning of services, and enable the land to come on line for its identified use in a timely manner.

These include requirements that a Development Control Plan be prepared that incorporates provisions relating to flora and fauna conservation, soil erosion and sediment control, drainage and water management, bushfire risk management, remediation of land contamination (if required), the physical and financial feasibility of servicing the land, subdivision, staging of development and appropriate construction types and methods in

Our Natural, Developed and Cultural Environment

Report No. EE116/2012

Strategy and Sustainability



relation to mine subsidence and soil compaction issues prior to approval of any development application for the subject site.

These studies will form the basis for assessing the Planning Proposal and would be professionally reviewed by Council Officers. Where required, independent studies will be undertaken to validate information to allow the full implications of the proposed rezoning to be considered and addressed.

ENCLOSURES

- | | | |
|---|------------------------------------|----------|
| 1 | Locality Plan | 1 Page |
| 2 | Proponent's letter 5 November 2012 | 38 Pages |
| 3 | Planning Proposal | 31 Pages |