

**Special Report of the Director City Strategy to Ordinary Council
Meeting
28 July 2014**

14SP036 Planning Proposal - 5 Birkwood Close, Charlestown

Council Ref: RZ/2/2013 - D06908540

Report By: Student Land Use Planner - Hyuk Lee

Précis:

Council resolved on 13 May 2013 to support the draft Amendment to rezone 5 Birkwood Close, Charlestown from open space to low density residential and environmental purposes. Following the Gateway Determination, the proposal was exhibited from 28 January to 28 February 2014.

The purpose of this report is to seek a resolution of Council, to forward the planning proposal to the Minister for Planning and Environment, so the LEP amendment for the rezoning can be made.

Recommendation:

Council:

- A. Notes the issues raised during public exhibition and endorses the revised Planning Proposal for draft Amendment to Draft Lake Macquarie Local Environmental Plan 2014, as contained in Attachment 1.
- B. Notifies NSW Planning and Environment of Council's resolution, pursuant to the provisions of the *Environmental Planning and Assessment Act 1979*, and requests the Secretary to make arrangements for drafting of the Plan.
- C. Notifies the proponent, landowners, and those who made submissions during the exhibition period, of Council's and the Secretary's decision.
- D. Place a public notice in local newspapers of the Secretary's decision.

Background:

On 30 January 2013, City Plan Services submitted a request (on behalf of the Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle) to rezone Lot 1943 DP 704476, being No. 5 Birkwood Close, Charlestown, from the current open space zone to A low density residential zone. The site is approximately 1.5 hectares in size and is used as open space by St. Mary's High School. The Diocese had identified the site as having development potential for housing for seniors, socially disadvantaged, such as those with a mental or physical disabilities, or low-income earners.

Council resolved on 13 May 2013 (13STRAT015) to support the draft Amendment to rezone 5 Birkwood Close, Charlestown from open space to low density residential and environmental purposes.

Following the Gateway Determination, the following studies were completed:

- Geotechnical Assessment;
- Phase1 Site Contamination Assessment;

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- Flora and Fauna Assessment; and
- A Flood Study.

The results of the studies informed the proposed zones in the Planning Proposal, with approximately 1.1 ha to be rezoned for residential purposes, and approximately 0.4 retained for environmental purposes.

The residential zoning reflects current directions from the Department of Planning and Environment, that local schools should have the same zone as surrounding land. The Diocese intends to retain the sports fields and only consider development on the excess land they own.

During the exhibition, six public submissions and two submissions from government authorities were received. No changes are proposed to the planning proposal as a result of these submissions.

Proposal:

It is proposed that Council endorses the Planning Proposal in Attachment 1, to amend Draft Lake Macquarie Local Environmental Plan 2014 (DLMLEP 2014), to rezone 5 Birkwood Close, Charlestown from an open space zone to R2 Low Density Residential and E2 Environmental Management (Secondary).

Consultation:

Internal Departments

Community Planning have advised the subject site is not required for recreation purposes, as suitable land for recreational needs in the locality have been identified. Consequently, the subject site is not included in the Council's Draft Recreation and Open Space Plan.

Council's Community Planner for Ageing and Disabilities Services, Transport Planning Coordinator, Sustainability and Development Assessment and Compliance Departments have no objection to the rezoning.

Government Agencies

NSW Trade and Investment have noted that an adjoining parcel, being Lot 63 DP 718183, is Crown land reserved for Public Recreation (R98042) and Lake Macquarie City Council is the appointed reserve trust manager. Community Planning have reviewed the proposed rezoning and concluded that there will be no adverse effect on the adjoining Crown Reserve Lot 63 DP 718183.

The Rural Fire Service (RFS) notes that there may be limited opportunity for retention of existing vegetation on the site if it was to be developed, and have raised no objection to the proposed zoning. Any future development of the land must consider and comply with the provisions of RFS Policy Document, Planning for Bush Fire Protection 2006. Furthermore, an appropriate asset protection zone must be provided in relation to the vegetation/bushfire hazard to the west and within the southern part of the subject site. These matters can be addressed at development application stage.

Mine Subsidence Board has no objection to the proposed rezoning.

Community Consultation

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The Planning Proposal was placed on public exhibition for 32 days from 28 January 2014. Six submissions were received. The issues raised and planning responses are provided below.

- *Possible reduction in Open Space area*

Concerns have been raised that the proposal will reduce the open space available for the members of the community and students for recreation and add pressure to other recreation land in Charlestown. Submissions note that the land was initially sold to the school with the intention of recreational use and should therefore not be rezoned for residential purposes.

The subject site is in private ownership and comprises approximately 1.5 ha, which St. Mary's High School currently uses as open space. The proponent aims to develop approximately 0.6 ha for residential purposes, retain the existing sports field of approximately 0.5 ha for school use and approximately 0.4 ha for environmental management.

Community Planning is preparing a Draft Recreation and Open Space Plan, which incorporates the Charlestown and Mount Hutton area. The subject site has not been identified for inclusion in the draft plan and Community Planning has advised it is not required. Council staff have identified several parks located within a 2 km radius of the subject site including Sylvia Grozdanovski Park, Charlestown Park, Windsor Park and Riawena Park. There is also extensive, quality bushland at Awabakal Nature Reserve and Glenrock Nature Reserve which is within a five minute drive from the subject site.

As Council does not have plans to acquire the land for recreational purposes, the open space zone, which implies Council does intend to acquire the land in the future, is inappropriate.

Current directions from the Department of Planning and Environment is that local schools should have the same zone as surrounding land. Nearby schools, such as Charlestown South Public School and St. Paul's Primary School, are both zoned for low density residential development consistent with adjoining zones.

- *Site unsuitable for aged persons and/or people with disability*

Concern has been raised that the subject site is not suitable for residential development, particularly for aged people, due to steep gradients and lack of footpaths and the site is greater than 450m to the local shops. Council's Community Planner for ageing and disability services advises that the location of the subject site is suitable for seniors. In addition, the site is located within 450m walking distance of the Pacific Highway and Gateshead Local Neighbourhood Centre when accessed via Creek Bridge. Paved pathways to connect the development with existing paved footpaths leading to the nearby bus stops will be considered at the development application stage.

- *The site will be used for public housing*

There were also concerns that the proponent intends to use the land for public housing. Under the R2 Low Density Residential zone (Draft LMLEP2014) development of public housing is permissible. The site is relatively small and if this use was proposed, only a limited number of dwellings could be accommodated, so it is unlikely that this form of housing would create unacceptable social issues in this location.

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- *Increase in Traffic Congestion*

Concern has been raised that the proposal will increase the traffic congestion and related noises in surrounding areas of the subject site. As the only vehicular access to the site is via Birkwood Close, the cul de sac would need to be extended to allow vehicular access to the site. Council's Transport Planning Coordinator has advised that, on the basis of seven additional standard sized residential lots, approximately 30 vehicular movements per day along the local streets might be generated by the development. As the surrounding area is zoned for low housing densities, capacity does exist within this local road network with the overall environmental amenity of these roads being retained. Council's Transport Planning Coordinator Traffic advises that traffic impacts can be adequately addressed at development application stage.

- *Urban runoff and flooding*

Concern has been raised that future development will result in an increase in urban runoff and flooding. The Sustainability Department have reviewed the Flood Study and agree that the site is not currently subject to flooding and a future development application would need to be accompanied by a detailed stormwater management plan. Draft Development Control Plan (2014) requires stormwater management to minimize impacts of site runoff.

- *Existing vegetation on the site provides important habitat and linkages for wildlife*

Concern has been raised that the existing vegetation on the site provides important linkages for wildlife. The Sustainability Department recognise the southern portion of the subject land has high biodiversity value and the land will be zoned E2 Environmental Management to protect the area. In addition, the Biodiversity Study conducted by Eco Logical Australia concluded the impact of the development on biodiversity, including the Hollow Bearing Trees, will not be significant. Council staff have recommended the retention of key habitat trees, which will be addressed at the development application stage.

- *Proposal conflicts with SEPP 19 – Bushland in Urban Areas*

The general aim of this Policy is to protect and reserve bushland within urban areas because of its value to the community as part of the natural heritage, aesthetic value and its value as a recreational, educational and scientific resource. The amount of vegetation that will be potentially lost involves approximately 0.2 hectares, however key habitat trees are nominated to be retained in any subsequent development application process. It is considered that social and economic benefits for the community, from an increase in the variety and choice of housing types near a major Centre and existing community facilities, outweighs the value of the existing vegetation. This is further outlined in the Planning Proposal.

- *Inadequate survey of the threatened species*

Concern has been raised that the threatened species, particularly the *Tetratheca juncea* (Black Eyed Susan), were not adequately surveyed. The *T. juncea* survey was conducted in accordance with Council's Flora and Fauna Survey Guidelines (2012) that require one survey during the peak flowering season. This is also clearly outlined in the Lake Macquarie *T. juncea* Planning and Management Guidelines (2014), "*The accepted method of assessment for T. juncea is to conduct one survey during the peak flowering period that has now been confirmed to be mid- September to mid- October*" (LMCC Flora

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and Fauna Survey Guidelines, 2013:128). The Sustainability Department are satisfied that the *T.junceae* survey was adequately undertaken.

Concern has been raised that the survey in regard to the Glossy Black Cockatoo and its habitat was also inadequately conducted. While the ecologist who completed flora and fauna surveys for the site did not visually identify the Glossy Black Cockatoo, they acknowledge its presence is 'likely'. They noted however, the feeding trees *Allocasuarina* were small and the loss of these would not affect the habitats of these cockatoos living in the surrounding areas.

- *Loss of amenity and overshadowing*

Concern has been raised that the residential development will result in loss of amenity and overshadowing for the current residents. The 8.5m height limit under R2 Low Density Residential (Draft LMLEP2014) zoning is compatible with the surrounding development, many of which are two storeys in height. Subsequent development applications for buildings on the site will be assessed against Council's Draft Development Control Plan (2014) ensuring consistent height and setback to avoid privacy or overshadowing impacts.

- *Proposed E2 Environmental Management zone (Secondary) (Draft LMLEP2014) should be extended*

Concern has been raised that the proposed E2 Environmental Management zone (Secondary) should be extended to include areas of fill that were dumped in the wetland area to extend the sporting field to its current size. This would enable the wetland to be extended to its previous extent. The Sustainability Department have indicated that the extent of the proposed E2 Environmental Management zone (Secondary) is considered appropriate. The sporting field will act as a buffer to the residential development.

- *Development Application should be lodged in conjunction with Rezoning Application*

Concern has been raised that the development application should be lodged in conjunction with rezoning application to limit the possibility of expanding its residential development. The subject site will have the same permissible uses, minimum lot size, floor space ratio and height as surrounding lots in the area. There are provisions in the Environmental Planning and Assessment Act 1979 (*EP&A Act 1979*) for the assessment of a joint rezoning and development application (Division 4B, section 72I-72K), but there is no obligation for the proponent to make an application. The proposed rezoning is consistent with the adjoining zoning and the same planning controls and development guidelines will apply.

- *Existing residents were not notified*

Concern has been raised that not all residents within a reasonable distance of the site were notified. It is standard practice to notify all landowners immediately adjoining the subject site and place an advertisement in the local newspaper. On 24 January 2014 letters were sent to 28 adjoining landowners advising of the proposal. A notice was placed in the Newcastle Herald on 25 January 2014 and Newcastle Post – Lake Macquarie Edition on the week beginning 27 January 2014.

- *The Contamination Report included studies on the wetland area and the oval, which indicates the whole site is being considered for residential development.*

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State Environment Planning Policy No.55 - Remediation of Land requires that Council consider the possible contamination of the whole site being rezoned irrespective of the zone being considered.

Implications:

Policy Implications:

Lower Hunter Regional Strategy (LHRS)

The LHRS has identified Charlestown as a Major Regional Centre with a concentration of business, higher order retailing, employment and professional services via consolidation. The subject site is located in close proximity and has good accessibility to the Charlestown Major Regional Centre where employment, retail and other services such as public transport and schools are located. The proposal is consistent with the strategy.

Lifestyle 2030 Strategy (LS2030 Strategy)

LS2030 Strategy provides long-term direction for the development of the City of Lake Macquarie and describes Council's high-level policies for managing private and public development. The Planning Proposal is consistent with Lifestyle 2030 Strategy's overall Strategic Directions. These include:

- A well Designed, Adaptable and Liveable City – The Proposal will allow the provision of land for residential and conservation uses within an established residential area with good accessibility to existing services and facilities. The site is within walking distance of a local neighbourhood centre and public transport services along the Pacific Highway linking to Charlestown Regional Centre to the north.
- A well Serviced and Equitable City –The proposal would allow for comfortable travel as a pedestrian, cyclist or by public or private transport due to its close proximity to Gateshead and Charlestown Regional Centres. In addition, the subject land is readily accessible to existing major road networks such as the Pacific Highway or the Newcastle Inner City bypass as well as frequent public transport services, reducing the reliance on private vehicles and reducing traffic congestion. Existing sewer and water infrastructure will ease the development of the area and save costs.

State Environmental Planning Policies (SEPPs)

It has been determined that the Planning Proposal is consistent with the relevant SEPPs, and no issues have been identified. Details of relevant SEPPs are contained within the Planning Proposal in Attachment 1.

Section 117(2) Ministerial Directions

The Planning Proposal is inconsistent with two Ministerial Directions made pursuant to Section 117(2) of the *EP&A Act 1979*, which are direction 3.2 – Caravan Parks and Manufactured Home Estates and direction 6.2 – Rezoning Land for Public Purposes. However, the inconsistency is of minor significance and Council has received concurrence from the Director General of the Department of Planning and Environment for this minor consistency with both directions.

Standard Instrument Draft Local Environmental Plan 2014 (Draft LMLEP 2014)

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As the Council's Standard Instrument Draft LMLEP 2014 is close to finalisation, the Planning Proposal in Attachment 1 proposes amendments to Draft LMLEP2014.

Lake Macquarie Community Plan 2008 – 2018

This Plan provides an overview of five key focus areas for action and short, medium, and long-term objectives, directions, and progress indicators. The proposal satisfies the objective, *"The city's economy prospers, under managed growth that enhances the quality of life while balancing employment and environmental objectives."* The rezoning of the site will allow for increased housing opportunities within an established urban area that is well serviced with community facilities and is in close proximity and accessible to neighbourhood, town and regional centres as well as employment opportunities.

Environmental Implications:

A Flood Study as well as a Flora and Fauna Assessment were undertaken as a Gateway requirement and conclude that the site is suitable for the proposed zones.

A Phase 1 Contamination Assessment Report was completed by GHD and concluded *"the property has a low potential for contamination under residential land use for the unfilled area, with a higher risk within the filled areas and any areas of dumped material."* The report has identified small isolated areas of fill which together total approximately 0.1 ha that may be contaminated from materials such as refrigerator and car parts. Council's Principal Environmental Officer has reviewed the Contamination Assessment Report and stated that a Phase Two Assessment will be required at any development application stage to determine the extent of contamination.

Social Implications:

The Planning Proposal will facilitate residential development within walking distance of a school and a neighbourhood centre providing services such as post office, newsagent, food shops and other services. It is also a 450 metre walk to the Pacific Highway which provides frequent public bus services north to Charlestown and Newcastle, and south to Belmont and Swansea.

Infrastructure Asset Implications:

The Planning Proposal relates to privately owned land. Due to the small scale of the proposal, it is considered that future development of the site will have minor impact on Council's infrastructure assets.

Financial Implications:

There are no major financial implications resulting from the Planning Proposal. The applicant entered into a standard LEP Amendment Agreement with Council and the applicant has paid the appropriate LEP amendment fees for the work undertaken to date.

Risk and Insurance Implications:

The risk associated with preparing a Planning Proposal is minimised by following the process outlined in the *EP&A Act 1979*, the *Environmental Planning & Assessment Regulation 2000* and the Council's LEP Amendment Procedure.

There are no particular insurance implications for Council. Processing rezoning requests is a standard Council activity covered by existing insurances.

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Options:

1. Council resolves to support the Planning Proposal to rezone the site from a public open space zone to R2 Low Density Residential and E2 Environmental Management (Secondary) under Draft Lake Macquarie Local Environmental Plan 2014. This is the recommended option.
2. Council resolves not to support the Planning Proposal to rezone the site from a public open space zone to R2 Low Density Residential and E2 Environmental Management (Secondary) under Draft Lake Macquarie Local Environmental Plan 2014. This is not the recommended option as the school has indicated the land is surplus to their needs and it is an opportunity to provide further housing in close proximity to Charlestown's major shopping centre.

Conclusion:

It is considered that the Planning Proposal is consistent with relevant strategic planning documents.

It is recommended that Council resolve to support the proposal and the Department of Planning and Infrastructure to enable the Planning Proposal to progress.

Manager - Integrated Planning - Sharon Pope

Attachments:

1. Post Gateway Planning Proposal - 5 Birkwood Close Charlestown D07059110