

3 HAWKS NEST GOLF COURSE PLANNING PROPOSAL APPLICATION

Report Author Richard Pamplin, Special Projects Coordinator

File No. / ECM Index S1694/06

Date of Meeting 27 February 2019

Authorising Director Paul De Szell, Acting Director Planning and Natural systems

SUMMARY OF REPORT

The purpose of this report is to seek a formal resolution of Council to seek a Gateway Determination from the NSW Department of Planning and Environment to support the processing of a Planning Proposal to rezone land adjoining the Hawks Nest Golf Club from RE1 Public Recreation to R3 Medium Density Residential.

SUMMARY OF RECOMMENDATION

That Council:

1. Seek a Gateway Determination on the attached Planning Proposal;
2. Require the applicant to complete any outstanding studies;
3. Undertake government agency consultation;
4. Update the Planning Proposal to incorporate the outcomes of outstanding studies and agency consultation; and
5. Exhibit the Planning Proposal concurrently with the proposed Planning Agreement.
6. Draft and make the Local Environmental Plan amendment in the event that no objections are received.

FINANCIAL/RESOURCE IMPLICATIONS

All the work associated with the planning proposal is being funded by the developer under Council's Release Area Program.

LEGAL IMPLICATIONS

A Planning Proposal (PP) must be considered by Council in a manner consistent with its obligations under the Environmental Planning and Assessment Act 1979 and its corresponding Environmental Planning and Assessment Regulation 2000.

The applicant provided a revised Planning Proposal on 3 September 2018 taking into consideration the changes sought in Council's initial review of the Planning Proposal dated 9 April 2018.

The applicant was notified by Council on 29 October 2018 that the submitted documentation now meets its requirements pursuant to Council's Planning Proposals and Development Control Plan Applications Policy. This notification was subject to the applicant submitting a revised Biodiversity Development Assessment Report (BDAR) addressing a number of outstanding matters.

Once Council has received adequate documentation, it is required to consider the Planning Proposal within 90 days. Council received the revised BDAR on 21 December 2018, meaning that Council is required to undertake a full assessment of the Planning Proposal and to formally resolve whether to support it or not by 21 March 2019.

ATTACHMENTS

A: Hawks Nest Golf Course Planning Proposal – as amended by Local Consulting

This attachment has been circulated electronically to the Councillors and Senior Staff, however it is publicly available on Council's website.

BACKGROUND

Location

Lot 1 DP 1234229 Sanderling Avenue, Hawks Nest (see Map 1 below).



Map 1: *Hawks Nest Golf Course Planning Proposal site*

The site is currently zoned RE1 – Public Recreation under the Great Lakes Local Environmental Plan (LEP) 2014 and is approximately 1.5ha in size.

As can be seen from Map 1, the site is undeveloped and mostly vegetated. The site has been under-scrubbed in more recent times as it is considered to be regrowth as a result having previously been sand mined. The site is situated behind the dunes fronting Bennetts Beach and the informal carpark at the end of Sanderling Avenue. Sanderling Avenue in this location (beyond the Gold Club access) is an unsealed road.

Ownership

The site was originally Crown Land which was then subject to a successful land claim by the Karuah Local Aboriginal Land Council. The land was then sold to Core Property Developments Pty Ltd/Leric Group Pty Ltd (Core/Leric).

Processing of the Planning Proposal

Now that the land is in private ownership, the current zoning of RE1 – Public Recreation is inappropriate and a more appropriate zone should be found for the land.

Applicant

The applicant is Brett Phillips from Lands Advisory Services Pty Ltd (LANDSAS), Newcastle.

Process for Preparation of Planning Proposal

Council engaged independent consultants, Locale Consulting, to review and process the Planning Proposal submitted by the proponents. The cost of the consultants is being funded by the proponents.

Reason for rezoning

The golf club is currently facing challenging financial circumstances as the existing clubhouse is unfit for purpose and costly to maintain. The ability of the club to raise funds for a new clubhouse are limited.

Part of the adjoining Hawks Nest Golf Club land (Lot 1 DP 868540 which is 1.8ha in size) is currently zoned R3 – Medium Density under Great Lakes LEP 2014, with the remainder of the golf course land zoned RE2 - Private Recreation. The golf club went through an expression of interest process to partner with a developer to create a co-ordinated development approach that would assist in funding a much needed new clubhouse in exchange for the developer being able to establish a medium density development on their land which would complement and support the golf club.

The Hawks Nest Golf Club ultimately partnered with Core/Leric to pursue the development proposal. The developer identified the need for additional medium density land to be rezoned to make the development partnership a viable proposition. The adjoining land, then owned by the Karuah Local Aboriginal Land Council, was seen as a logical and necessary addition to the developable area.

The draft Planning Proposal states that the suggested LEP amendment will assist the Club's continued financial security, which will have a positive economic impact for the community by maintaining and increasing the local tourism offering. The proposal will also increase the local permanent population of Hawks Nest and support new and existing commercial activity.

While the financial situation of the Golf Club is a consideration in determining the merits of the Planning Proposal, the rezoning must also demonstrate planning merit in its own right. This has been demonstrated by the attached PP.

Economic impact

The Economic Assessment attached to the Planning Proposal estimates the development cost of the project being \$116M. It also estimates that 230 direct jobs will be created during construction, with a total of around 1,000 jobs when flow-on benefits are taken into consideration.

The total economic output of the project is estimated at \$330M, including \$800,000 in local retail expenditure.

Post-construction estimates of 44 new jobs generated in Tea Gardens/Hawks Nest as a result of the increase in population have been predicted.

DISCUSSION

Planning Context

While the site is not included in any State, regional or local strategy for consideration for future urban zoning, it adjoins the existing settlement and until the successful land claim was part of a much larger foreshore site. The site is flat and within walking distance of commercial areas and associated services. There is a demand for well located medium density development in Hawks Nest.

Due to the unique circumstances associated with the golf club and the locational suitability of the site, it is believed that Strategic Merit can be demonstrated to the NSW Department of Planning and Environment (DPE) for this Planning Proposal, a necessary planning requirement for it to receive a positive Gateway Determination.

Draft LEP amendment

The following changes are proposed in the Planning Proposal:

- amend the zoning from RE1 – Public Recreation to R3 – Medium Density Residential;
- impose a maximum Floor Space Ratio of 1:1;
- amend the Height of Buildings from 8.5m to 12m;
- impose a minimum dwelling density of 30 dwellings/ha; and
- impose a minimum lot size of 1,000m².

The above are the standard development controls for the R3 – Medium Density zone in Great Lakes LEP 2014, consistent with the neighbouring golf course land and are considered appropriate for this location.

Main rezoning issue

Due to the presence of vegetation on the site Council required consideration of this issue pre-Gateway.

A Biodiversity Development Assessment Report (BDAR) was prepared and included as an attachment to the Planning Proposal. This report confirms the disturbed nature of the site, that previous sandmining occurred until the 1980's and the vegetation types currently present on the site.

No endangered ecological communities were found on the site. The BDAR concludes that credits can be purchased from the State to offset clearing of the land. While this accords with State legislation, Council's Senior Ecologist has stressed the need to provide local environmental offsets to provide additional habitat locally rather than just purchasing credits that will lead to offsets being established elsewhere in the State.

The applicant is happy to consider providing local environmental offsets elsewhere within the golf course and to have this included in a Planning Agreement. These offsets will be finalised post-Gateway and included in the proposed Planning Agreement which will be reported separately to Council for exhibition.

The Planning Proposal is considered acceptable from an ecological impact perspective.

Outstanding studies

The Detailed Assessment indicates that the following studies are required to be undertaken/completed post-Gateway:

- site contamination report;
- acid sulfate soils study; and
- revision of the Stormwater Management Report.

The Planning Proposal, as amended by Locale Consulting, includes the requirement to undertake/complete these studies.

Agency consultation

The Planning Proposal recommends consultation with the following government agencies post-Gateway, following completion of outstanding studies and prior to public exhibition:

- Essential Energy;
- Telstra & NBN Co;
- NSW Office of Environment and Heritage (OEH) [for ecology, Aboriginal cultural heritage and European heritage];
- NSW Roads & Maritime Services; and
- NSW Rural Fire Service.

This is considered satisfactory for this Planning Proposal.

Proposed Planning Agreement

The Proponent (developer/landowner) have offered to enter into a Planning Agreement with Council to fund the following:

- local environmental offsets within the golf course;
- the establishment of the "John Davis Memorial Walk" along Sanderling Avenue, the walk will include landscaping, walkways, seating and interpretative signage;
- capital contribution towards improvements to the Tea Gardens Hawks Nest Surf Life Saving Club building and/or surf lifesaving equipment; and
- capital contribution to the "Michael Rowe Walk" that forms the Hawks Nest section of the "Tops to Myall Heritage Walking Trail".

The funding of the above by the developer is supported and will be further detailed in a report to Council post-Gateway seeking concurrent exhibition of a Planning Agreement with the Planning Proposal.

Use of delegations

Council has been issued with plan making delegations from the NSW Minister for Planning in regard to processing Planning Proposals. What this effectively means is that Council can bypass DPE following exhibition of the Planning Proposal to seek the LEP amendment to be made (formally called gazettal). For this to occur Council needs to resolve to use these delegations and the Gateway Determination needs to then confirm that Council can use these.

In deciding whether to request to use its delegations Council must decide whether it has a potential or actual conflict of interest in the Planning Proposal.

For this Planning Proposal the only possible conflict arises with regard to the proposed Planning Agreement and its benefits to Council.

As the proposed Planning Agreement would only deal with local environmental offsets, street/walkway/walking trail improvements and non-development related items requested by the applicant (building upgrades or equipment purchases for the Tea Gardens Hawks Nest Surf Life Saving Club), there is no conflict of interest existing in regard to processing this PP, as these actions are either a direct result of the proposed development or requested for inclusion by the proponent. As such, it is appropriate to ask the Minister to permit Council to use its plan making delegations.

CONSULTATION

Formal consultation with identified government agencies will occur post-Gateway, prior to public exhibition.

Internal consultation on the draft Planning Proposal has been undertaken with Council's Senior Ecologist, Manager Planning & Assets (Water Services), Water Quality & Estuary Management Program Coordinator, Development Engineer (includes traffic and stormwater quantity referrals), Team Leader Environmental Health (contamination and waste management referrals) and Coastal Management Coordinator.

Wider community consultation will occur during the formal exhibition of the Planning Proposal. The Gateway Determination will direct Council as to how this is to occur for this Planning Proposal, though Council's standard minimum 28 day exhibition period is usually granted by the State.

COMMUNITY IMPACTS

The positive impacts of the Planning Proposal and the development it will provide include:

- financial benefits to the Hawks Nest Golf Club;
- a much needed new clubhouse for the golf club;
- additional housing to cater for demand close to services and the beach;
- a funding boost to the local economy;
- establishment of the John Davis Memorial Walk along Sanderling Avenue;
- upgrade of Sanderling Avenue; and
- funding contribution to the Michael Rowe Walk.

The negative impacts of the Planning Proposal include:

- loss of vegetation, though this is proposed to be locally offset; and
- additional traffic, though road and intersection upgrades can be made to account for this.

The Planning Proposal is seen as having a clear overall positive community impact and is recommended for support on this basis.

ALIGNMENT WITH COMMUNITY PLAN/OPERATIONAL PLAN

Processing of Planning Proposals to rezone land is core business for Council.

This particular Planning Proposal is in alignment with the following actions from the MidCoast 2030 Shared Vision, Shared Responsibility – Community Strategic Plan 2018-2030:

- provide an environment to grow and strengthen local business and attract new businesses;
- support a diverse housing mix that provides choice and meets the needs of our community;
- optimise land use to meet our environmental, social, economic and development needs; and
- develop and promote our region as an attractive visitor destination offering products and experiences that meet the needs of our visitors and residents.

TIMEFRAME

Council has until 21 March 2019 to resolve to support the Planning Proposal or not, otherwise the applicant can lodge a request for a review of the planning proposal by the NSW Department of Planning and Environment.

RISK CONSIDERATION

The major risks arise from Council not following due process, not maintaining probity or taking too long to consider the Planning Proposal. All of these represent a legal and reputational risk.

These risks have been mitigated by staff following due process, limiting access from the applicant to staff and Council's consultant involved in the assessment of this application and by seeking that Council resolve this matter within legislative timeframes.

This report recommends that Council seek to use the NSW Planning Minister's delegation to be the plan making authority for this draft Local Environmental Plan (LEP) amendment, enabling Council to bypass DPE in seeking the plan being made [formally called gazettal]. The risk to Council of this is minimal as a legislated process is followed in this regard.

The negotiation associated with a Planning Agreement to accompany exhibition of the Planning Proposal would not represent a risk to Council (a conflict of interest with the processing of this Planning Proposal) as long as Council only seeks to include items directly attributable to the Planning Proposal (for example, local environmental offsets) or includes additional items requested by the applicant (for example, a cash contribution to the Tea Gardens Hawks Nest Surf Life Saving Club for building works or equipment purchase).

RECOMMENDATION

1. That the Hawks Nest Golf Course Planning Proposal as amended by Locale Consulting (Attachment A) be forwarded to the NSW Department of Planning and Environment seeking a Gateway Determination to progress the Planning Proposal.
2. That the Department be advised that Council wishes to be *the local plan making authority* to make the draft Local Environmental Plan associated with the planning proposal.
3. That Council note the commitment of the applicant to enter into a Planning Agreement for improvements and local environmental offsets for Hawks Nest, following a positive Gateway Determination for the Planning Proposal.
4. That should a positive Gateway Determination be issued, that the additional studies be prepared, government agency consultation be undertaken and the Planning Proposal be revised (to reflect the findings of the studies and results of agency consultation) and exhibited concurrently with the proposed Planning Agreement in accordance with the Determination.
5. In the event no objections are received to the exhibited planning proposal, that the associated Local Environmental Plan amendment be drafted and made without referral back to Council.