

Our Natural, Developed and Cultural Environment

Report No. EE46/2010

City Planning



SUBJECT: *ELRINGTON COLLIERY REZONING PROPOSAL*

AUTHOR: *Strategic Landuse Planner - Sarah McMillam*

SUMMARY

This report seeks Council's endorsement to progress the Elrington Colliery spot rezoning proposal through the 'gateway' determination process by preparing a 'Planning Proposal' and referring it to the Department of Planning for consideration.

RECOMMENDATIONS

1. **Council resolve to support the rezoning of land known as the former Elrington Colliery, the spatial extent of which is detailed in the enclosure of this report, to provide opportunity for large lot residential development and the conservation of heritage significant buildings;**
2. **Council prepare a 'Planning Proposal' in accordance with section 55 of the Environmental Planning and Assessment Act 1979 and forward to the Minister for Planning for 'gateway' determination.**

BACKGROUND

On 1 July 2009, changes to the plan-making process under Part 3 of the Environmental Planning and Assessment (EPA) Act came into effect. Under these changes, draft LEPs have been replaced with "planning proposals". A planning proposal sets out the effect and justification for making an LEP. This matter was the subject of Council report EE72/2009 on 16 September 2009.

Essentially, where an LEP is to be made, the following process is now undertaken:

- A planning proposal is prepared by the relevant planning authority. In the majority of cases this is the council or, in certain circumstances, the Minister can appoint the Director General or other prescribed body to be the relevant planning authority including a Joint Regional Planning Panel;
- The planning proposal is forwarded to the Department of Planning and entered into the Department of Planning's on-line register of planning proposals, where progress of the proposed LEP is monitored;
- Following consideration of the planning proposal and the Department of Planning's recommendation, the LEP Review provides its recommendation for the gateway determination to the Minister;
- The planning proposal is then provided to the Minister for a "gateway determination". A "gateway determination" decides:
 - whether a planning proposal is to proceed, and in what circumstances;
 - the length of the community consultation that must be undertaken; and
 - any consultation required with State or Commonwealth Public Authorities.
- At the completion of the community consultation and after the LEP has been drafted, the Minister may make or vary the LEP.

Savings provisions provide that where a council has resolved to prepare a draft LEP (spot rezoning) and the Director General has received notification of the resolution before 1 July

Our Natural, Developed and Cultural Environment

Report No. EE46/2010

City Planning



2009, the spot rezoning will be prepared and made under the previous plan making provisions, but only for the following periods:

- where a section 65 certificate has been issued before 1 July 2009 until 1 July 2010; and / or
- where a section 54 certificate has been issued before 1 July 2009 until 1 January 2011.

The Elrington Colliery rezoning does not satisfy either of the above provisions and therefore can only be progressed through the 'gateway' process.

At its meeting held on 26 May 2010, Council considered Report No. EE26/2010, which outlined amendments to the Environmental Planning and Assessment Regulation 2000 as they relate to draft "amending" LEPs. Prior to making a decision on the Elrington Colliery spot rezoning proposal, Council sought a further report detailing the proposal's history.

REPORT

Council resolved on 18 June 1997 to give 'in principle' support to the proposal which seeks to rezone the site from Rural 1(a) Zone to Rural Residential to allow for the subdivision of approximately thirty two (32) lots and the adaptive re-use of the buildings of the former Elrington Colliery, which is listed on the Hunter Regional Environmental Plan (Heritage) 1989 as an item of local significance.

The proposal to rezone the subject land for large lot residential development is being considered as a mechanism for securing heritage conservation of the former buildings of the Elrington Colliery under the Hunter Regional Environmental Plan (Heritage) 1989. The REP contains provisions which allow Council to consider any proposal for land on which an item of heritage significance is located, which may otherwise be inconsistent with any other policy, where it can be demonstrated that the proposal will promote conservation of the heritage item. Similar provisions are also contained in the draft Local Environmental Plan as Clause 5.10 - Heritage Conservation.

A rezoning request was subsequently lodged in May 2002 utilising the provisions of the Hunter Regional Environmental Plan (Heritage) 1989.

Council progression of the proposal has been delayed pending the requirement for additional information from the proponent. In particular, a Conservation Management Plan (CMP) for the heritage listed colliery buildings has been an outstanding matter since Council initially gave 'in-principle' support to the proposal in 1997.

The following provides a detailed history of Council's consideration of the proposal to date:

18 June 1997 Council resolved to 'support in principle' the adaptive re-use of the former Elrington Industries and their surrounding land for the purposes of rural-residential development and/or appropriate 'low-key' commercial activity, subject to the preparation of a conservation management plan and other background studies.

20 March 2000 DA 8/2000/263/1 for the demolition of items of heritage significance was received and subsequently approved on 23 January 2002, where it was also resolved "...that Council confirm its commitment to a rural-

Our Natural, Developed and Cultural Environment

Report No. EE46/2010

City Planning



residential subdivision of the site, with the identified buildings being demolished."

- 14 May 2002** The rezoning proposal was lodged.
- 27 September 2002** Council's Heritage & Civic Design Manager recommended refusal as the proponent failed to provide a Conservation Management Plan (CMP).
- 25 October 2002** Detailed letter sent to the applicant regarding the requirements for a Conservation Management Plan, advising that the CMP is critical in determining whether the rezoning is appropriate.
- 8 May 2003** Submission on City Wide Settlement Strategy (CWSS) made seeking to have the site identified for rural-residential development due to Council's previous support of the proposal.
- 12 February 2004** Council advised that the matter of further development of this land would be dealt with through a separate rezoning submission.
- 2 May 2006** Council requested written advice from the proponent regarding intention of the site.
- 12 May 2006** The proponent advised that *"... until such time that the land is included within the CWSS, no conservation management plan is to be prepared."*
- 29 May 2006** Correspondence to applicant restating the requirements and advice in previous correspondence (namely 12 February 2004 and 25 October 2002). The correspondence stated that *"...Council has not supported this rezoning through the CWSS and unless the Conservation Management Plan is forthcoming, Council will have no option other than to refuse the application as submitted."*
- 13 June 2006** Proponent advised Council that the information would be submitted within twenty-eight (28) days.
- 17 November 2006** Proponent advised that a report regarding the proposal was to be considered at meeting held on 22 November 2006, with a recommendation that the proposal not be supported due to a lack of information.
- 22 November 2006** At the Council Meeting, Council resolved as follows:
"That the report be deferred pending further information being provided by the applicant"
- 30 November 2006** Council advised the proponent that they had six (6) months to prepare the information before a further report would be presented to Council for determination.
- 23 May 2007** No additional information was received and a report was prepared for the Council Meeting of 23 May 2007. This report was withdrawn at the request of the applicant.

Our Natural, Developed and Cultural Environment

Report No. EE46/2010

City Planning



- 29 May 2007** The applicant requested that the proposal be 'placed on hold' until the adoption of Council's new heritage criteria and the preparation of a Conservation Management Plan.
- 6 June 2007** Council advised the applicant that the proposal would be placed on hold until the final list of heritage items, forming part of the comprehensive LEP had been completed.
- 14 December 2007** Proponent advised of their intention to proceed with the proposal subject to completion of heritage guidelines.
- 21 December 2007** Council advised the applicant that the site was to be included in the draft LEP as an item of heritage significance.
- 21 September 2009** Correspondence to the proponent requesting the Conservation Management Plan and, due to the age of the proposal, Council requested additional investigations to determine the appropriateness of the site for rural-residential development, including flora and fauna, bushfire, contamination and geotechnical assessments.
- 11 December 2009** The proponent lodged a submission to the draft LEP / draft CWSS which sought to have the site included in the draft LEP and the draft CWSS to allow for large lot residential subdivision on the land. This submission also included the additional investigations (as requested in September 2009), and the Conservation Management Plan.

A Conservation Management Plan for the site is yet to be prepared.

In accordance with the 'gateway' procedure, should Council resolve to support the proposal, it will be referred to the Minister for Planning for consideration. The gateway determination will identify any consultation required with State or Commonwealth Public Authorities. It is anticipated that the following agencies would need to be consulted:

- Heritage Office (HO);
- Department of Environment, Climate Change and Water (DECC&W);
- Roads and Traffic Authority (RTA);
- Mine Subsidence Board (MSB);
- Rural Fire Service (RFS); and
- Department of Industry and Investment (DI&I).

CONSULTATION

A meeting was held with the applicant prior to the preparation of the Council report for the purpose of explaining why it was necessary, if the matter is to be progressed, for the rezoning proposal to be transferred into the gateway process.

STRATEGIC LINKS

a. Management Plan

The following goals, objectives and outcomes in Council's Management Plan relate to the Land Use Planning Program:

Our Natural, Developed and Cultural Environment

Report No. EE46/2010

City Planning



Goal: Protect, enhance and promote the natural, developed and cultural environment.

Objectives: Review the Cessnock Local Environmental Plan.

Outcome: Council's assessment and consideration of the rezoning proposal satisfies the aims of Council's Management Plan.

b. Other Plans

Hunter Regional Environmental Plan (Heritage) 1989

The Plan contains provisions which allow Council to consider any proposal for land on which an item of heritage significance is located, which may otherwise be inconsistent with other policy, where it can be demonstrated that the proposal will promote conservation of the heritage item. Similar provisions are also contained in the draft Local Environmental Plan as Clause 5.10 - Heritage Conservation.

STATUTORY IMPLICATIONS

a. Policy and Procedural Implications

Should Council resolve to support the proposal, it will be referred to the Minister for Planning and determined through the 'gateway' process, where the Minister will indicate the following:

- whether the planning proposal should proceed (with or without variation);
- whether the planning proposal should be resubmitted for any reason, such as with additional information;
- the community consultation requirements;
- any consultation required with State or Commonwealth Public Authorities;
- whether a public hearing is to be held on the matter;
- the times within which the various stages of the procedure for the making of the proposed LEP are to be completed;
- whether the function of making the LEP is to be exercised by the Minister of delegated to the Relevant Planning Authority.

b. Legislative Implications

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

SECTION 117 DIRECTIONS

The following s.117 Directions relate to the planning proposal:

2.3 Heritage Conservation

The aim of this planning proposal is to provide opportunity for the conservation of the building associated with the former Elrington Colliery. The Conservation Management Plan details relating to the conservation of these buildings, in particularly the adaptive re-use of the items for residential purposes. In order to ensure conservation outcomes, Council will enter into a

Our Natural, Developed and Cultural Environment

Report No. EE46/2010

City Planning



Voluntary Planning Agreement with the proponent which will detail how the buildings are to be adaptively re-used.

The proposal is considered to be consistent with this Direction.

3.1 Residential Zones

Rural-residential development is generally inconsistent with this Direction as it does not make sufficient use of existing infrastructure and is relatively isolated from existing services. However, the proposal is being considered under the incentives contained within the Hunter REP (Heritage), 1989 as a mechanism for the heritage conservation of significant buildings located on the site, with the Heritage Office anticipated to be consulted during the rezoning process.

3.4 Integrating Land Use and Transport

The planning proposal is not consistent with this Direction. Due to the isolated and dispersed nature of rural-residential development, it will create car-dependant development. However, the proposal is being considered under the incentives contained within the Hunter REP (Heritage), 1989 as a mechanism for the heritage conservation of significant buildings located on the site, with the RTA anticipated to be consulted during the rezoning process.

4.2 Mine Subsidence and Unstable Land

A geotechnical assessment undertaken over the site indicates that the historic underground mine workings pose no threat to future development of the site. It is anticipated that the Mine Subsidence Board will be consulted with during the rezoning process.

4.4 Planning for Bushfire Protection

The site is identified as being bushfire prone land. However, a bushfire report, prepared for the site indicates that bushfire should not be a hindrance to development of the site. It is anticipated that the Rural Fire Service will be consulted with during the rezoning process.

5.1 Implementation of Regional Strategies

The planning proposal is not consistent with the Lower Hunter Regional Strategy, which seeks to provide increased residential densities centred around existing urban areas and minimise the fragmentation of rural land for rural-residential subdivision. However, the proposal is being considered under the incentives contained within the Hunter REP (Heritage), 1989 as a mechanism for the heritage conservation of significant buildings located on the site

c. Risk Implications

In accordance with legislative requirements, this proposal must progress under the 'gateway' process.

d. Other Implications

ENVIRONMENTAL

A flora and fauna assessment undertaken for the site revealed that the site contains threatened ecological communities comprising of the Lower Hunter Spotted Gum Ironbark

Our Natural, Developed and Cultural Environment

Report No. EE46/2010

City Planning



Forest and Hunter Lowland Redgum Forest. The report notes that both of these assemblages are significantly disturbed with sparse canopy and introduced understorey pasture species. The planning proposal seeks to retain the majority of vegetation on site and is therefore unlikely to adversely affect the extent of adversely modify the composition of these communities.

It is anticipated that the Department of Environment, Climate Change and Water will be consulted with on this matter during the rezoning process.

OPTIONS

1. Support the proposed recommendations. Support will allow Council to consider the merits of the rezoning and the DoP to determine its status within the 'gateway' process.
2. Not support the proposed recommendation. A refund of any unexpended fees will be made to the proponent.

CONCLUSION

In order for the Department of Planning to support this proposal under the 'gateway' determination, it must first be satisfied that the use of the site for large lot residential development is a suitable mechanism to conserve the heritage items located on the site as part of the former Elrington Colliery. Should the proposal be found to be inconsistent with heritage conservation initiatives, Council will be unable to continue supporting the proposal due to its inconsistency with the City Wide Settlement Strategy, Lower Hunter Regional Strategy and Ministerial Directions.

ENCLOSURES

- 1** Locality Plan