

ORDINARY MEETING AGENDA

25 NOVEMBER 2013

Held in the Boorowa Council Chamber, 6-8 Market, Boorowa

GENERAL MANAGERS REPORT

13/161 – PLANNING PROPOSAL NO.1 – SUNDRY AMENDMENTS 2013

Reference: 15.1.2
Responsible Officer: General Manager

PURPOSE

The purpose of this report is to obtain a Resolution of Council to proceed with the abovementioned planning proposal by submitting it to the Department of Planning and Infrastructure for Gateway Determination and subsequent public exhibition.

REPORT

Council at its Meeting on Monday 28 November 2011 considered a report relating to submissions arising from public exhibition of the then draft Boorowa LEP 2012. Council resolved 38 Items relating to the Draft Boorowa LEP 2012. As part of the decision Council resolved to defer and prepare planning proposals for the following items:

- Submission No 3 - re-examination of further lands to form part of Planning Proposal No 1;
- The request in Submission No 13 to form part of Planning Proposal No 2;
- Submissions Numbered 14 and 16 - land known as Carinya Estate (being lands identified and covered in amending LEP's 3 and 4 to Boorowa Shire Council IDO No 1) firstly by identifying such land as Deferred Matter in Draft Boorowa LEP 2012 and secondly be the subject of Planning Proposal No 3 which is to be prepared and reported to Council;
- Staff Submission C - Council amend the proposed zone for the lands identified in the Map attached to Staff Submission C (edged in red), as B2 Local Centre, and further that the lands between the draft and proposed B2 lands be reviewed as Planning Proposal No 4 is to be prepared and reported to Council.

Guidelines for preparation of planning proposals were amended by the Department of Planning and Infrastructure commencing October 2012. Under the new guidelines and on advice from the Department the four items mentioned

ORDINARY MEETING AGENDA

25 NOVEMBER 2013

Held in the Boorowa Council Chamber, 6-8 Market, Boorowa

above can form Planning Proposal No 1 Sundry Amendments 2013 arising from commencement of Boorowa LEP 2012.

A copy of the assessment of the former Submissions Numbered 3, 13, 14, 16 and Staff Submission C are provided in attachment 1 to this report.

The four submissions can be summarised as follows:

Submission No	Former Draft LEP Submission No	Land Location	Submission Request
1.	3. Submitted by: Regan J and T	Ballyryan and Geraldine Roads and Lachlan Valley Way	Rezone land to zone R5 Large lot Residential with minimum lot size of 2 hectares.
2.	13. Submitted by: CPC Land Development Consultants Pty Ltd)	Alloway Road	Rezone land to zone R5 Large lot Residential with minimum lot size of 2 hectares.
3.	14. and 16. Submitted by: Smith R and Osmond O	Carinya Estate approximately 40 km north west of Boorowa township	Rezone land to zone R5 Large lot Residential with minimum lot size of 2 hectares.
4.	Staff Submission C.	Market Street opposite Council Administrative Offices	Rezone land to zone B2 Local Centre

The four submissions have been re-examined in accordance with the Council Resolution of 28 November 2011 (relating to the Draft Boorowa LEP 2012) and Planning Proposal No 1. Sundry Amendments 2013 has been prepared and is provided in attachment 2.

Details of amendments to the written instrument and the mapping forming part of Boorowa LEP 2012 are provided in the Planning Proposal No 1 in the form prescribed by the Department of Planning and Infrastructure.

Assessment of Submission No 1. (former 3 Regan)

ORDINARY MEETING AGENDA

25 NOVEMBER 2013

Held in the Boorowa Council Chamber, 6-8 Market, Boorowa

Land located at Ballyryan, Geraldine Roads and Lachlan Valley Way

Assessment of Submission No 3 (Ballyryan, Geraldine Roads and Lachlan Valley Way) requests rezoning of land to Zone R5 Large Lot Residential. The flood prone nature of the area is a primary issue of concern prior to undertaking a detailed assessment of the proposal. The area is adjacent to an area known to be flood prone based on Council's mapping records.

In respect of the flood potential of the land, the former Water Commission of NSW issued a map showing the impact of the 1952 flood. The Water Commission data advises that the 1952 flood can be considered the 1 in 100 year known as the benchmark flood. Such mapping shows that a major part of the land for proposed rezoning would be inundated to a level unsuitable for residential development. To provide some accommodation for the proposal from landowners, it is suggested that a small area of the land be rezoned from zone RU1 Primary Production to zone R1 General Residential (see mapping). This land appears to be above the 1:100 year known flood level.

In summary it is proposed that the request for rezoning not be supported but that an area of two allotments (see mapping) be supported for rezoning from zone RU1 Primary Production to zone R1 General Residential.

Assessment of Submission No 2
(former 13 Alloway Road CPC Land Development Consultants P/L)

Assessment of Submission No 13 (Alloway Road) requests rezoning of land to zone R5 Large Lot Residential. One major issue that arises at first examination of this proposal is the large area of land and the potential lot yield. It is therefore necessary to undertake a calculation of lot yield if the land was rezoned as requested and then establish current demand for zone R5 land and compare the results to the lot yield of land already in zone R5 around Boorowa Township.

Total area of land requested for rezoning: 92.1645 ha
Minimum lot size of 2 ha

Subtract from the minimum lot size 10% for roads and other infrastructure: 9.2 ha
Lot yield is 82.1645 divided by 2.2ha yields 41 lots.

Current annual demand for land for all residential types for Boorowa LGA is 14 lots and accordingly, the proposed rezoning would yield between 3 and 4 years supply in this zone alone let alone the other R1 and R5 zoned lands adjacent

ORDINARY MEETING AGENDA

25 NOVEMBER 2013

Held in the Boorowa Council Chamber, 6-8 Market, Boorowa

Boorowa. In practice this situation would not occur because the majority of land is required in zone R1 General Residential.

It is considered that, if the rezoning is approved 41 additional lots would not create a major problem with oversupply. This rezoning could be considered as an opportunity rezoning to identify if there is a latent market for land of such zone and minimum lot size.

A detailed assessment has been done in the planning proposal to address normal planning policy issues such as infrastructure (roads water and sewerage services), housing diversity including land use conflicts such as contamination and environmental factors such as flora and fauna.

In summary it is proposed that the request for rezoning be supported for the reasons explained above and the detailed assessment in the planning proposal.

Assessment of Submissions No 3

(former 14 and 16 Carinya Estate Smith and Osmond)

Assessment of Submissions No 14 and 16 relating to Carinya Estate identified that the site has a complex history and initially all the facts of the history need to be clearly established. This issue has three main parts, site circumstances; Council development consent history and legal position including development rights of landowners.

Site inspection was carried out on 29 October 2013. Notices at the entrance to the site provide legal precautions regarding hidden hazards and other warnings. Road access within the subdivision is a private constructed and maintained at the cost of the owners (not Council). The internal access road is in a deteriorated condition and is suitable for access in many sections by 4 WD vehicles only. The site generally has dense bushland with potential bushfire hazard. Several structures utilised as dwellings have been constructed and appear to be regularly occupied. Several sheds appear to be acting as dwellings.

In respect of development consent history, some lots have been sold and dwellings and/or sheds approved and some lots have not been sold and there has been no activity in respect of dwellings or sheds.

A site inspection of the land was conducted and the results are summarised in the following table. Carinya Estate has been subdivided into 31 lots as shown in the table.

ORDINARY MEETING AGENDA

25 NOVEMBER 2013

Held in the Boorowa Council Chamber, 6-8 Market, Boorowa

Lot numbers within Carinya Estate	Status on site Based on site inspection on 29 October 2013 and Council development consent data.
1, 3, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 19, 22, 23, 24, 25, 28, 29, 30, 31,	vacant
6, 8, 11, 18,	gate concrete pad or other sign of activity
2, 20, 21, 26, 27,	Sheds/buildings utilised as a dwelling

A check of Council's records revealed that no development consent has been issued for any dwelling or other building on the land notwithstanding that several dwellings and buildings have been constructed. Enforcement actions may now need to be contemplated.

A legal opinion obtained by Council in 2011 provided a detailed explanation of the issues and the history of the site. In summary the legal opinion suggested that each landowner had a dwelling entitlement based on clause 4.2A(2)(b) relating to dwelling entitlements under the former Boorowa IDO No 1.

The legal opinion did suggest that Council insert a new clause 1.9A(5) regarding an existing covenant on the land. This clause is proposed to read:

"1.9A (5) the provisions of clause 1.9A (1) to (4) above, in suspending all covenants, shall specifically apply to the land known as "Carinya Estate" being lots 1 - 31 in DP 285029"

The isolation of the site, the density of the bush and the lack of ready access to services are all challenges. The bulk of the owners rights to the entitlement to build are enshrined in the past subdivision consent and release of linen/subdivision certificate. Unlawful development (without any consent/application) should not be suffered and will be a "clean up" consequence.

In summary, Carinya Estate appears to have developed to a stage where it is being used as a residential subdivision notwithstanding the sub-standard conditions that exist. It is suggested that the dwelling entitlement on each lot carried forward by clause 4.2A(2)(b) of Boorowa LEP 2012 should continue. As part of this package Council must enforce the conditions of the original subdivision consent.

ORDINARY MEETING AGENDA

25 NOVEMBER 2013

Held in the Boorowa Council Chamber, 6-8 Market, Boorowa

Assessment of Submissions No 4

(Staff Submission C land opposite Council Administration Building Market Street Boorowa)

Staff Submission C relating to land located opposite the Council Administration Building in Market Street has been done in the planning proposal and generally it is considered that the proposal has merit as detailed in the planning proposal.

In essence the land contains generally existing dwellings that are surrounded by commercial and business activities. If the rezoning is successful the residents of the existing dwellings can remain in their dwellings for an unlimited time. Such proposal is normal practice adjacent to a Town Centre.

The process for Planning Proposal No 1 Sundry Amendments 2013 can be summarised as follows:

- Council resolves as indicated in this Report;
- Council's decision is examined by the Department of Planning and infrastructure and a Gateway Determination would be issued by the Department;
- Landowners would be advised of the Gateway Determination after it is issued by the Department;
- Public exhibition and preparation of the relevant parts of the Planning Proposal No 1 would be carried as directed in the Gateway Determination;
- Submissions arising from public exhibition would be considered by a Council Meeting.

It is recommended that Council approve Planning Proposal No 1 Sundry Amendment 2013 and request that the planning proposal be forwarded to the Department of Planning and Infrastructure for issue of the Gateway Determination. The Determination will include complete details of Community Consultation that Council must follow, identify the public authorities that Council must contact during public exhibition. In addition requirements for the two planning studies would be issued by the Department.

STATUTORY PROVISIONS

- Environmental Planning and Assessment Act 1979 sections 53 to 60 as relevant.

ORDINARY MEETING AGENDA

25 NOVEMBER 2013

Held in the Boorowa Council Chamber, 6-8 Market, Boorowa

CONSULTATION

In accordance with standard practice, the Gateway Determination issued by the Department of Planning and Infrastructure will contain details of Community Consultation and consultation with public authorities.

POLICY IMPLICATIONS

There are no policy implications.

FINANCIAL IMPLICATIONS

Budget 2013/2014 covers the cost of preparing the planning proposal.

ATTACHMENTS

Attachment 1 - Submissions made to Draft Boorowa LEP 2012;
Attachment 2 - Planning Proposal No 1 Sundry Amendments 2013

RECOMMENDATION

That Council:

- 1) Prepare Draft Planning Proposal No 1 Sundry Amendments 2013 in respect of the four issues deferred from the Draft Boorowa LEP 2012;
- 2) Submit the Draft Planning Proposal No 1 Sundry Amendments 2013 to the Department of Planning and Infrastructure for Gateway Determination;
- 3) Conduct public exhibition in accordance with the requirements of the Gateway Determination;
- 4) Resolves to carry out any requirements of the Department of Planning and Infrastructure regarding the preparation of planning studies, if any;
- 5) Delegated authority be granted to the General Manager to make any procedural or administrative changes required during the Gateway process.