

## DE21.5 Update - 'Legacy' Planning Proposals - Timing and Progression - NSW Government Direction

**HPERM Ref:** D21/936

**Section:** Strategic Planning

**Approver:** Robert Domm, Director - City Futures

**Attachments:**

1. DPIE Gateway termination cover letter 15/12/2020
2. Gateway termination - LP407 Badgee deferred areas, Sussex Inlet
3. Gateway termination - PP006 Halloran Trust, Culburra Beach
4. Gateway termination - LP145.1 Nebraska Estate, St Georges Basin
5. Gateway termination - PP007 Inyadda Drive, Manyana
6. Gateway termination - PP005 Warrah Road, Bangalee

### Reason for Report

- Provide an update on the outcomes arising from Council's resolution of 1 December 2020 (MIN20.887); and
- Obtain direction on the progression/timing of the five (5) 'legacy' Planning Proposals (PPs).

### Recommendation (Item to be determined under delegated authority)

That Council

1. Acknowledge that the Gateway determinations for the Planning Proposals (PPs) in question were terminated by the NSW Department of Planning, Industry & Environment (DPIE) on 15 December 2020.
2. Continue to progress each PP as follows:
  - a. Warrah Road, Bangalee (PP005): seek a new Gateway determination immediately and if the outcome is favourable, place the PP and supporting documentation on public exhibition.
  - b. Halloran Trust Land, Culburra (PP006): seek a new Gateway determination at the appropriate point once potential development footprint is more fully resolved in consultation with the proponent and DPIE.
  - c. Nebraska Estate, St Georges Basin (LP145.1): seek a new Gateway determination at the appropriate point once the policy is adopted that will help resolve the tenure and management of the proposed E2 land (as per Council resolution MIN20.885) to help secure certification for the new planning controls under Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017.
  - d. Badgee Lagoon Deferred Areas, Sussex Inlet (LP407): seek a new Gateway determination for each 'deferred' area at the appropriate point, subject to considering a new PP request that will include land adjacent to the northern deferred area and an accompanying overall draft Biodiversity Certification Assessment Report (BCAR).
  - e. Inyadda Drive, Manyana (PP007): seek a new Gateway determination at the appropriate point once the outcome of the proponent's upcoming referral under the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) is known.
3. Receive further reports on the above matters as appropriate.

4. Receive a future report on revising/updating Council's Planning Proposal Guidelines once DPIE has updated it is relevant guidelines and the revised Planning Proposal process is clearer.

### Options

1. Seek new Gateway determinations for each PP at the appropriate point.

Implications: This is the recommended approach. DPIE will only consider issuing a new Gateway determination for each PP if there is certainty that it can be completed within one to two years maximum. Each PP in question has different issues. The report recommendations seek to provide direction on each PP, while allowing any key issues to be appropriately resolved before seeking a new Gateway determination. In some cases, a further Council report may be required. The Warrah Road PP (PP005) is the most advanced of the five PPs and should be able to be finalised in less than 12 months.

2. Seek new Gateway determinations for each PP now.

Implications: This is not recommended as DPIE has stated that PPs will only be supported if they can be completed within one to two years maximum. Except for the Warrah Road PP (PP005) which is exhibition-ready, until key issues have been resolved, the risk of not being able to complete the PPs within two years is considered too high.

3. Not seek new Gateway determinations

Implications: This option would only be appropriate if, for some reason, Council no longer supports or wants to progress a PP and this has not been indicated to date. Substantial work has been invested by the proponents and Council in all the PPs in question, and as such this option is not recommended.

### Background

As reported to Council on 1 December 2020, a letter from DPIE dated 1 October 2020 stated that Council's five 'legacy' PP's were to be finalised by the end of the year (2020). A copy of the Council report can be viewed [here](#). The report included an update on the status of each PP and key issues. The report suggested that Council consider withdrawing each PP and requesting new Gateway determinations for each at the appropriate point.

In response, Council resolved to (MIN20.887):

1. *Receive the report for information.*
2. *Defer this item to:*
  - a. *Request an extension of time from Dept of Planning Industry and Environment to seek further advice, including but not limited to the existing expert reports that have been prepared for the applications.*
  - b. *Request an urgent meeting with the Hon Shelly Hancock MP Member for South Coast and The Hon. Robert Stokes MP to discuss the NSW Government Direction on these Planning Proposals.*

Council staff wrote to the NSW Department of Planning, Infrastructure & Environment (DPIE) requesting an extension of time to the 31 December 2020 deadline.

Letters were sent to The Hon Shelly Hancock MP and then to The Hon Robert Stokes MP seeking the resolved meeting. These requests were unsuccessful and a meeting with the NSW Minister for Planning & Public Spaces has not been secured.

Correspondence subsequent received from DPIE, dated 15 December 2020, declined Council's extension request and terminated all five of the Gateway determinations (via amended Gateways). DPIE's letter and the associated Gateway alterations/terminations is provided as **Attachments 1 to 6**.

In summary:

- The extension of time to the 31 December 2020 deadline was not granted.
- All five Gateways have now been terminated.
- Council is encouraged to submit PPs for new Gateway determinations at the appropriate point once any outstanding issues have been addressed/resolved.
- Work carried out to date, including studies, will be considered should a new Gateway be sought.

## Conclusion

Unfortunately, Council's representations in this regard have been unsuccessful. As such there is a need to consider and resolve how the PPs will now move forward. This will require requests for new Gateway determinations to be submitted at the appropriate point in the process for each. When these are issued, each PP will then need to be finalised within 1 to 2 years. This is the recommended approach.

## Community Engagement

Although there has been some community engagement to date on these PPs, none have been 'formally' exhibited at this point (as the pre-exhibition conditions of the Gateway determinations have not been addressed).

The community has also not had the opportunity to provide feedback on DPIE's decision to terminate the Gateways for these PPs. Existing Council resolutions in respect of each PP support the progression of the specialist studies and ultimately public exhibition.

Should the recommendations of this report be adopted, and DPIE issues new Gateway's when sought, the community will be engaged as part of the subsequent formal exhibition process for each PP.

## Policy Implications

Previously PPs were allowed to proceed based on a minimal level of information relevant to the matter/site/issue, in accordance with DPIE's [Planning Proposal Guidelines](#).

DPIE has made it clear that PPs will now have to be finalised within one to two years maximum. This is likely to mean that more comprehensive supporting documentation will be required prior to seeking Gateways for new PPs. Council will need to assess any new PP requests more closely when received. Council's current Planning Proposal Guidelines will also need to be revised as a priority once DPIE's guidelines are updated.

DPIE has also flagged its intention to look at the next tranche of older PPs that are still to be finalised and work with Council on how they will be resolved. This may result in future reports to Council on any applicable PPs.

## Financial Implications

Four of the five PPs are proponent-initiated and hence funded by the proponent in accordance with Council's Planning Proposal Guidelines and the applicable fees and charges. The 'Major PP' fee which applies to these PPs covers up to 80 hours of staff time. If new Gateways are requested, this fee structure will be carried over.

Council took out a \$200,000 loan in 2006 to fund the Nebraska Estate rezoning investigations and to be paid off by the landowners over 10 years through a special rate.

There is currently \$65,240 in the Nebraska Estate special rate budget. Any funds remaining at the conclusion of the PP/DCP process would then be carried over to any infrastructure upgrade projects.

**Risk Implications**

The outcome, nature and content of any new Gateway determination is unknown. However, four of the five PPs have a strategic basis (key Gateway requirement) as they are specifically identified in an adopted/endorsed strategy. The other PP (Inyadda Drive, Manyana) site is already zoned for development, and is justified by the fact that the PP is seeking to reduce the overall development footprint and provide a better environmental outcome.