

PD 3.1. PD410001 - Conferta Avenue, Tallawong Planning Proposal - amendment to Clause 5.1 and Land Reservation Acquisition Map

Director: Glennys James, Director Planning & Development
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File: F20/1362

Division is required

Previous item PD3.1 - PD400038

Topic Planning Proposal at 2-12 Conferta Avenue, Tallawong to remove Council as the acquisition authority for the land

Analysis The Planning Proposal will amend Clause 5.1 and the Land Reservation Acquisition Map in Appendix 6 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 by removing Council as the acquisition authority for the land. The land is identified as public space on the Indicative Layout Plan for the Tallawong Station Precinct, but is not zoned for that purpose.

We have agreed with the landowner in principle that the future public space can remain in private ownership, with public access in perpetuity and the landowner being responsible for ongoing maintenance. Full public access will be secured by a Voluntary Planning Agreement between the landowner and Council. The size of the public space will not reduce.

Attachment/s 1. Report considered at Council's 9 December 2020 Ordinary Meeting [**PD410001.1** - 44 pages]

Report Recommendation Endorse the draft Planning Proposal at attachment 1 and forward it to the Department of Planning, Industry and Environment requesting a Gateway Determination to amend Clause 5.1 and the Land Reservation Acquisition Map in Appendix 6 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 as described in PD400038.

Committee Recommendation 1. Endorse the draft Planning Proposal at attachment 1 and forward it to the Department of Planning, Industry and Environment requesting a Gateway Determination to amend Clause 5.1 and the Land Reservation Acquisition Map in Appendix 6 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 as described in PD400038.
2. It is noted that Messrs. G Colbran and A Sutherland, interested parties, were received by the Planning, Development, Historical & Assets Committee meeting between 7.20pm and 7.47pm.

COMMITTEE DIVISION:

Supported: Cr Israel, Cr Collins and Cr Griffiths.

Against: Cr Camilleri.

Key reasons

1. Background

- a. Council previously considered a report on this matter at its meeting of 9 December 2020 (PD400038) and resolved to defer the matter. The previous report and draft Planning Proposal are included at attachment 1 to this report.
- b. This report addresses the matters raised in discussion at the 9 December 2020 Ordinary Meeting.

2. Zoning and land reservation are not a direct match but can be compatible

- a. The land is zoned B4 Mixed Use under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the Growth Centres SEPP) and is identified on the Land Reservation Acquisition (LRA) Map as to be acquired by Council.
- b. The land in question has been zoned B4 Mixed Use in recognition of the need for land use flexibility and function within a town centre, with its location directly adjacent to a new Metro train station. When the town centre was planned it was recognised that a town square was required at ground level, hence its identification on the LRA Map, and that flexibility needed to be retained for how the land is used above or below ground level, and within the public space. An alternative RE1 Public Recreation zoning would not have provided the ability to plan and design how land is used within a town centre location directly opposite a railway station, reducing potentially good and innovative design outcomes.
- c. A business zoning of land for public space purposes is unique to town centre environments. There are 2 public space areas in the town centre on the northern side of the Metro that are zoned B2 Local Centre, where Council is also identified as the acquisition authority on the LRA map. This is an identical situation to the subject open space on the southern side on the Metro on Conferta Avenue that is zoned B4 Mixed Use.

3. Parking

- a. Councillors raised concern at the Ordinary Meeting that the developer would introduce paid parking underneath the open space, which they could not do if the site was in Council ownership. The location of the site within a town centre, its close proximity to rail transport infrastructure and relationship with retail and commercial development mean that restrictive parking is appropriate. Without restrictive parking, it would effectively become unrestricted commuter car parking, preventing those who need to access the commercial and retail shops at Tallawong from having suitable parking. This is contrary to the public interest. In addition, the parking will also be utilised for the residential apartments on the adjoining site. Commuter parking would also bring a significant volume of vehicles to the entire area, thus increasing congestion and reducing amenity. Therefore, restricted parking at this site is on balance considered appropriate.
 - b. There are other examples of parking being delivered beneath open space,
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including the Rouse Hill Town Centre and within Council's Warrick Lane development in the Blacktown CBD. Warrick Lane will have a carpark underneath the public space and adjoining commercial buildings. It is important to recognise that spaces within this carpark will be associated with commercial and retail occupiers, and that Council, should it wish to, could also sell, or enter a commercial arrangement with a private company to manage the carpark. Like the Warrick Lane development, the Planning Proposal at Conferta Avenue still delivers public space at ground level, albeit in a different ownership arrangement. The Conferta Avenue space is, however, on land owned by the developer and not by Council, and that this proposal allows for the early delivery of the public space asset for enduring community use.

4. The public space

- a. Councillors also raised concern that it would lose control of the space and therefore not be able to use it for other purposes, such as a library or other community opportunities. The public space is required to achieve the intent of the Indicative Layout Plan that was prepared for the Precinct – not being for normal open space or public recreation purposes. Further, given the shortfall of open space across the North West Growth Area (NWGA) and the site's town centre location, future potential use of the site for activities other than as ground level public space is not desirable. Retaining the site as publicly accessible open space in private ownership achieves the needs of the community by providing an essential asset at an appropriate and planned location.
- b. Council's library strategy does not identify Tallawong as a location for a future library. Rather, the library strategy identifies a future need for new libraries at Marsden Park and Riverstone. Likewise, a site for a community facility has already been identified outside the town centre that services both the Tallawong and Riverstone communities. Accordingly, there are no plans or need for a community facility directly within the Tallawong Centre.

5. Benefits to Council

- a. There is a substantial cost saving should Council not acquire the land. Land zoned B4 within the Tallawong Centre and with a 26 m height limit was \$750 per square metre, equating to approximately \$2.66 million. However, accounting for current land value in 2021, the cost of land in this location is estimated at about \$1,000 per square metre, or up to \$3.5 million to acquire the land for public space purposes.
- b. In addition to acquisition costs, there are also savings on embellishment to deliver the open space. Section 7.11 Contributions Plan No. 22W - Rouse Hill (Works) identifies the site as Reserve Number 1072 and would include: "paved area, playground, pathway, fencing and landscaping works" which would have an estimated cost of \$2,186,000 to be delivered between 2030 and 2035. In addition to the financial saving, the open space is also delivered far earlier than would otherwise be possible if provided by Council. This ensures that the Tallawong community has access to a town square at the beginning of the centre's development, thus supporting its ongoing viability and as a destination to access commercial and retail uses. Cumulatively with land value, this represents a saving to Council of approximately \$5,686,000.
- c. There are also substantial maintenance cost savings to Council as there is no need to increase the maintenance budget to account for the additional maintenance of the public space. This reduces resourcing pressures on our maintenance teams.
- d. An additional potential benefit to Council is the removal of liability if an accident or

injury occurs in the town square. The landowner in this instance would be responsible for incidents that occur in the park and any associated liability risk.

6. Good design benefits

- a. Retaining the public space in private ownership also creates improved design outcomes as the public space is provided in an integrated manner with the commercial, retail and residential buildings. This also ensures the delivery of the space far ahead of the scheduled 2030 – 2035 delivery time should Council be required to provide the space. Construction on the Tallawong Station Precinct South is anticipated to commence this year, pending determination of the State Significant Development Application by the NSW Government. If the developer did not provide the town square, the centre would suffer as there would be no meeting place or breakout place for future residents, thus potentially slowing down the establishment of Tallawong. It would also potentially lead to lost opportunities for buildings to address the space, creating future design and surveillance issues, along with a square with poor amenity and poorly resolved interfaces to surrounding development. Early delivery allows for a unified design response and may also stimulate other development opportunities in Tallawong, thus enhancing a sense of place, employment opportunities and housing diversity across Blacktown City.
- b. Design of the space by the developer allows for the possibility of higher quality embellishment than is possible with the minimum contributions allowed by Council to be levied under Contributions Plan No. 22. Our City Architect's Office, Recreation Planning and Design, and Open Space Maintenance teams are involved in negotiating the design of the public space area, its embellishment and maintenance schedule, to ensure this meets or exceeds the standards applied to our own open space assets.
- c. The open space is also within a high-profile location within the town centre, directly opposite the Tallawong Metro Station and in between a shopping centre, commercial premises and residential apartments. The future Body Corporate owner of the land will have a vested interest in maintaining the open space to a high standard to attract customers, in addition to commercial tenants and residents attracted by the benefits of living directly within a town centre.
- d. Retaining the open space in private ownership also facilitates a better design for the basement carparking servicing the shopping centre and residential apartments, achieving a better outcome for the end users in terms of circulation and ease of access. Basement carparks would have been built regardless to service these developments, however, retention of the ground level space in private ownership enables the basement carpark to continue underneath the space instead of going around land not owned by the developer. The land identified for the space is zoned B4 Mixed Use, which permits carparks. Critically, this zoning was applied in recognition of the inherent flexibility that is required within a town centre location.

7. Securing public access and ongoing maintenance

- a. Protecting the space for public access and use in perpetuity is achieved by a Voluntary Planning Agreement (VPA) and associated Landscape Operation Maintenance Plan (LOMP). These documents are currently being negotiated with the site's developer, Deicorp, and will be reported to Council for resolution to proceed to public exhibition when prepared. This approach has been successfully applied within the Rouse Hill Town Centre, which has operated successfully in this way since its opening in the mid-2000s.
- b. Importantly, a VPA is prepared under the provisions of Part 7 of the Environmental

Planning and Assessment Act 1979 (Act) and Part 4 of the Environmental Planning and Assessment Regulation 2000 (Regulation). This provides a legal framework for the VPA and requires, amongst other matters, the agreement to:

- be registered to the land
 - have a mechanism to resolve disputes
 - include enforcement procedures in the event of a breach of the agreement.
- c. The draft VPA is still being negotiated, however there are several aspects, consistent with the aforementioned points, that are relevant to help understand how Council's interests will be safeguarded in perpetuity.
- d. The VPA and LOMP will be linked to the property title. Importantly, under the terms of the agreement, neither the VPA nor the LOMP can be removed from the property title unless Council agrees. The VPA will also include dispute resolution provisions that set the framework for working through and resolving any potential dispute. There will also be a mediation framework where an independent facilitator would help find resolution of the potential issue or issues if they arise. Council staff are currently negotiating with the proponent to ensure that the dispute resolution procedures are workable for both parties.
- e. Enforcement procedures are also currently under negotiation and staff will ensure that Council's fiscal interests are protected. It is noted that the enforcement procedures could include a bond or guarantee to cover any potential breach by the applicant, or other negotiated matters. It may also be possible to include within the VPA enforcement costs that the developer would be liable for if the agreement is breached. If included within a VPA, this could be drafted in such a way to protect Council against any fee resultant from Court action, as the developer will be required to pay any cost Council incurs. It may also be possible to negotiate with the developer for penalties to be paid to Council if the agreed maintenance standards are not achieved within the open space area. These, however, will be subject to negotiation with the developer.
- f. Implementing the obligations committed to by the developer in the VPA is the LOMP. This document provides the detailed maintenance regime and standards to ensure the open space is appropriately maintained in perpetuity. The standards within the LOMP will satisfy Council's minimum maintenance requirements. In other words, it will be of similar scope to maintenance plans Council applies to open space assets under its care and control.
- g. The LOMP is being negotiated concurrently with the VPA and will be reported to Council as a package. While the LOMP currently provides maintenance requirements and a schedule, it is possible that it could be improved by including a requirement that a Review Committee be formed. This would ensure that there is an ongoing and continued dialogue between the applicant and Council in perpetuity, and that both parties need to agree to any maintenance changes. This could also be included as a condition of the VPA.

End of report
