

6. REPORTS TO COUNCIL - ITEMS FOR DETERMINATION

6.1 Draft Planning Proposal to rezone part of Bywong and Wamboin

MOVED (Hicks/Schweikert)

That:

1. Council endorse the draft planning proposal to rezone part of Bywong and Wamboin from E4 Environmental Living to R5 Large Lot Residential subject to:
 - a. Those 15 lots proposed to be split zoned being submitted as R5 Large Lot Residential zone only.
 - b. The inclusion of extensive agriculture as a permitted use without consent.
2. The draft planning proposal be forwarded to the NSW Department of Planning, Industry and Environment (DPIE) seeking a Gateway determination under Section 3.34 of the *Environmental Planning and Assessment Act, 1979*.
3. Subject to Council receiving a Gateway Determination Council endorse the planning proposal for public exhibition, following the receipt of NSW Government agency submissions and providing any changes required to the planning proposal, as a result of agency consultation, are minor.

AMENDMENT (Overall/Brown)

That:

1. Council endorse the draft planning proposal to rezone part of Bywong and Wamboin from E4 Environmental Living to R5 Large Lot Residential subject to those 15 lots proposed to be split zoned being submitted as R5 Large Lot Residential zone only.
2. The draft planning proposal be forwarded to the NSW Department of Planning, Industry and Environment (DPIE) seeking a Gateway determination under Section 3.34 of the *Environmental Planning and Assessment Act, 1979*.
3. Subject to Council receiving a Gateway Determination Council endorse the planning proposal for public exhibition, following the receipt of NSW Government agency submissions and providing any changes required to the planning proposal, as a result of agency consultation, are minor.

The amendment (of Crs Overall and Brown) was WITHDRAWN.

The Mayor vacated the chair and left the Chambers at 6.30pm and returned at 6.31pm.

During discussion Cr Schweikert raised a point of order and referred to sections of the Code of Meeting Practice that relate to acts of disorder and bringing the Council into disrepute. Cr Schweikert also referred to sections of the Code of Conduct that relate to intending to prevent the proper or effective function of the

Council or deliberately seek to impede the business of Council at a meeting. Cr Schweikert believed that Cr Harrison was deliberately impeding the business of the meeting by speaking for such a long time and requested the Mayor ask him to stop. The Mayor ruled against the point of order.

The motion (of Crs Hicks and Schweikert) was amended, PUT and CARRIED.

PLA004/20

RESOLVED (Hicks/Schweikert)

That:

1. Council endorse the draft planning proposal to rezone part of Bywong and Wamboin from E4 Environmental Living to R5 Large Lot Residential subject:
 - a. Those 15 lots proposed to be split zoned being submitted as R5 Large Lot Residential zone only.
 - b. The inclusion of extensive agriculture as a permitted use without consent pursuant to Schedule 1 of the PLEP 2014 as it applies to the planning proposal.
2. The draft planning proposal be forwarded to the NSW Department of Planning, Industry and Environment (DPIE) seeking a Gateway determination under Section 3.34 of the *Environmental Planning and Assessment Act, 1979*.
3. Subject to Council receiving a Gateway Determination Council endorse the planning proposal for public exhibition, following the receipt of NSW Government agency submissions and providing any changes required to the planning proposal, as a result of agency consultation, are minor.

For: Crs Biscotti, Bray, Hicks, Overall, Schweikert and Taylor

Against: Crs Brown, Harrison, Noveska and Winchester

Crs Biscotti, Bray, Harrison, Hicks, Noveska, Overall, Schweikert, Taylor and Winchester declared an interest in the following item.

6.2 Exhibition of Draft Queanbeyan-Palerang Comprehensive Local Environmental Plan 2020

PLA005/20

RESOLVED (Schweikert/Harrison)

That:

1. Council exhibit draft Queanbeyan-Palerang Local Environmental Plan 2020, following approval from NSW Department of Planning, Industry and Environment to do so.
2. A report be bought back to Council on any submissions received during the exhibition period.

The resolution was carried unanimously.

6.1 Draft Planning Proposal to rezone part of Bywong and Wamboin (Ref: ;
Author: Thompson/Hogg)

File Reference: PJT0061

Summary

The purpose of this report is to seek Council's endorsement to forward a draft planning proposal to amend the *Palerang Local Environmental Plan 2014* to the NSW Department of Planning, Industry and Environment seeking a Gateway determination. The planning proposal seeks to rezone certain land at Bywong and Wamboin from E4 Environmental Living zone to R5 Large Lot Residential zone.

Recommendation

That:

1. Council endorse the draft planning proposal to rezone part of Bywong and Wamboin from E4 Environmental Living to R5 Large Lot Residential subject to those 15 lots proposed to be split zoned being submitted as R5 Large Lot Residential zone only.
 2. The draft planning proposal be forwarded to the NSW Department of Planning, Industry and Environment (DPIE) seeking a Gateway determination under Section 3.34 of the *Environmental Planning and Assessment Act, 1979*.
 3. Subject to Council receiving a Gateway Determination Council endorse the planning proposal for public exhibition, following the receipt of NSW Government agency submissions and providing any changes required to the planning proposal, as a result of agency consultation, are minor.
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Background

In October 2018, Council engaged independent consultants, AQ Planning and Biosis, to conduct a review of the application of the E4 Environmental Living land-use zone in Bywong and Wamboin (the study area). Following a comprehensive survey of the biodiversity values of the study area during November and December 2018, consultant reports (Attachments 2 and 3) were prepared and subsequently presented to the Council meeting of 22 May 2019. At that meeting Council resolved to (Minute No. 163/19):

1. *Receive the consultants' reports.*
2. *Retain land identified in the consultants' reports as being wholly or predominantly Class 1 or 2 as E4 Environmental Living zone.*
3. *Prepare a planning proposal to rezone land identified in the consultants' reports as being wholly or predominantly Class 3 land as R5 Large Lot Residential zone. The planning proposal should give consideration to minimising split zonings and fragmentation and isolation of zone boundaries.*
4. *Not include amending the Palerang Local Environment Plan (PLEP) Clause 6.3 map "Terrestrial Biodiversity" to include the consultants Class X mapped lands for the following reasons:*
 - a. *the consultant's report refers to Class X land as having "potential" to contain native grasslands and or habitat of a critically endangered species rather*

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than establishing that the Class X mapped land contains native grasslands and or habitat of a critically endangered species.

- b. inclusion of Class X as incorporated in the Terrestrial Biodiversity Map and Clause 6.3 of the PLEP would apply to both land within the E4 Environmental Living zone as well to land within the R5 Large Lot residential zone*
 - c. the existing provisions of the PLEP already require adequate consideration of the impacts on biodiversity*
 - d. Implementation of the Class X layer would be unwieldy and unnecessary and will result in greater complexity for residents and greater cost when lodging development applications.*
- 5. Reference in the Planning Proposal that it is Council's assessment that a Local Housing Strategy can be dispensed with in this case as no change to the minimum lot size or density of development is proposed.*
 - 6. Prepare the Planning Proposal as a separate proposal and if finalised in time be amalgamated with the Queanbeyan-Palerang Local Environment Plan (comprehensive LEP).*

Council subsequently instructed AQ Planning to proceed with the preparation of a draft planning proposal in accordance with the above resolution, having regard to the requirement to minimise split zoning and fragmentation and isolation of zone boundaries.

The draft planning proposal was received by Council in November 2019 and forms Attachment 1 to this report.

Provisions of the draft planning proposal

The planning proposal seeks to rezone parts of E4 Environmental Living zone identified in the BIOISIS Report (Attachment 3) as being wholly or predominantly Class 3 land (low biodiversity value) to the R5 Large Lot Residential land use zone.

Land identified as being wholly or predominantly Class 1 or 2 (high biodiversity value and medium biodiversity value) land is proposed to be retained as E4 Environmental Living zone.

In accordance with the 22 May 2019 resolution the planning proposal has given consideration to minimising split zonings and fragmentation and isolation of zone boundaries.

The facilitation or retention of biodiversity corridors was also considered in determining appropriate R5 Large Lot Residential zoned land.

To minimise zone fragmentation and isolation only those lots within areas of greater than 5 adjoining lots of predominantly Class 3 zoned land have been proposed as R5 Large Lot Residential zone. As noted in the planning proposal, under the provisions of clause 2.6 of *Palering Local Environment Plan 2014* the minimum lot size within the study area is six hectares. The planning proposal (p11) advises that "a minimum of five adjoining lots would therefore result in an area of at least 30 hectares for R5 zoned land, which is considered of sufficient size to avoid isolated R5 zoned land areas, and a suitable area for specific land uses within the R5 zone."

The consultant's report indicates that split zonings have been minimised and only proposed where lots adjoin a proposed R5 Large Lot Residential zone (where land is wholly or predominantly Class 3 land) and met the following criteria:

- a) More than 51% of the lot is Class 3 with the balance Class 2: or
- b) More than 66% of the lot is Class 3 with the balance Class 1.

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However, in circumstances where the lot met the above criteria, but was isolated or fragmented, it has not been proposed as a split zone lot and retained as E4 Environmental Living zone.

As a result of the consultants deliberations, 766 lots will be retained as E4 Environmental Living zone, 407 lots will be wholly rezoned to R5 Large Lot Residential zone and 15 lots are proposed to be zoned both E4 Environmental Living zone and R5 Large Lot Residential zone. Attachment 4 shows the location of the lots proposed to be rezoned to R5 Large Lot Residential zone and the 15 lots proposed to be partially rezoned to R5 Large Lot Residential zone (dual zone lots).

However, staff do not support the recommendation to create split zoned properties. Such properties cause complex administrative processes when Council provides advice and planning certificates and creates confusion for owners. While appropriate for some large properties or where properties have legacy issues new properties with split zones should not be created for rural residential style development.

It does not appear that any of the 15 lots contain a majority area of Class 1 land and are mostly contiguous with other land proposed to be the R5 zone. As such it is recommended that all 15 lots be rezoned to R5 Residential Large Lot zone.

The draft planning proposal does not seek to amend any other provisions of *Palerang Local Environmental Plan 2014* (including the minimum lot size controls) which are applicable to the study area.

Implications***Legal***

This planning proposal will comply with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulations 2000* and will amend the provisions of *Palerang Local Environmental Plan 2014*.

Lawfully commenced land uses that become prohibited uses under the proposed R5 Large Lot Residential zone will be able to continue under Division 4.11 Existing uses of the *Environmental Planning and Assessment Act, 1979*. However, there are some land uses that are currently permissible without consent in the E4 Environmental Living zone (such as extensive agriculture) which may require development consent (and the associated cost of a development application) for those properties proposed to be rezoned R5 Large Lot Residential.

Councillors should be aware that the DPIE retains the discretion to object to the issue of a Gateway Determination or to place conditions on a Gateway Determination that are so onerous to meet that it may no longer be practical or viable to proceed with the Planning Proposal. Should this be the case the matter will be bought back to Council for consideration.

Policy

This planning policy is required to have regard to a series of Section 9.1 Ministerial Directions which represent government policy in regard to land use planning matters. These are addressed in Section B of the draft planning proposal (Attachment 1). The planning proposal is inconsistent with the following directions:

- Direction 2.1 Environmental Protection Zones
- Direction 3.4 Integrating Land Use and Transport
- Direction 4.4 Planning for Bushfire.

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However, these inconsistencies are considered to be justified and are discussed in greater detail in section B of the planning proposal.

Development within the study area will also be subject to the controls within the *Palerang Development Control Plan 2015*.

Environmental

Environmental matters focusing on biodiversity issues have been considered in the environmental assessment report supporting the planning proposal.

Sustainability

The planning proposal does not seek to amend the minimum lot size controls currently applicable within the subject area and is not likely to result in additional residential development. The proposal is unlikely to impact energy, fuel or water consumption or increase levels of waste creation.

Strategic

The planning proposal is not considered to be inconsistent with any strategic plans adopted by Council.

Engagement

Before the Planning Proposal can be exhibited a Gateway Determination must be issued by DPIE. However, in order to streamline the planning proposal process, it is recommended that, unless the NSW Government agencies require significant changes to the planning proposal, the proposal is put on public exhibition as soon as the agency submissions are received. If Council endorse this recommendation, the next report to Council regarding this planning proposal will be (pending the Gateway determination) a report on the outcome of the public exhibition and will include both government agency and public consultation feedback.

It is intended to exhibit the draft planning proposal for a period of 28 days or as required by the Gateway determination.

Financial

The preparation of the planning proposal forms Stage 2 of a project to review the E4 Environmental Living land use zone in Bywong and Wamboin. At the 10 October 2018 Planning and Strategy meeting Council allocated a budget of \$100,000 (excl GST) to this project (PLA 128/18). At this stage approximately \$74,200 has been expended.

Resources (including staff)

Council engaged an independent planning consultant (AQ Planning) to prepare the draft planning proposal. In addition this project has involved one staff member on a full time/part time basis (as required by the stage of the project) with other staff participating as required.




Conclusion

The draft planning proposal seeks to rezone, from E4 Environmental Living zone to R5 Large Lot Residential zone, parts of Bywong and Wamboin that meet certain criteria. The criteria established by the independent consultants will result in 407 lots being rezoned to R5 Large Lot residential Zone. The proposal also recommends that 15 lots be split zoned. This is not supported by staff. As such the 15 lots are recommended to be rezoned R5 Large Lot Residential zone.

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With the above changes it is recommended that the draft planning proposal be endorsed and forwarded to the Department of Planning, Industry and Environment with a request for a Gateway determination.

Attachments

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| Attachment 1 | Planning Proposal - Wamboin and Bywong (<i>Under Separate Cover</i>) |
|  Attachment 2 | AQ Planning Report (<i>Under Separate Cover</i>) |
|  Attachment 3 | Biosis - Biodiversity Values Assessment (<i>Under Separate Cover</i>) |
|  Attachment 4 | Map Showing Location of Proposed Split Zoned Lots - E4/R5 (<i>Under Separate Cover</i>) |