

BULAHDELAH HIGHWAY SERVICE CENTRE PLANNING PROPOSAL APPLICATION

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SUMMARY OF REPORT

The purpose of this report is to seek a formal resolution of Council to seek a Gateway Determination from the NSW Department of Planning and Environment to support the processing of this Planning Proposal.

SUMMARY OF RECOMMENDATION

That Council:

1. amend the revised Planning Proposal in accordance with the staff review;
2. seek a Gateway Determination;
3. require the applicant to complete any outstanding studies;
4. undertake government agency consultation;
5. update the Planning Proposal to incorporate the outcomes of the above steps; and
6. exhibit the Planning Proposal concurrently with the Planning Agreement.

FINANCIAL/RESOURCE IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

A Planning Proposal must be considered by Council in a manner consistent with its obligations under the Environmental Planning and Assessment Act (the Act) 1979 and its corresponding Environmental Planning and Assessment Regulation (the Regulation) 2000.

The applicant provided a revised Planning Proposal on 2 August 2018 taking into consideration the changes sought in Council's initial review of the Planning Proposal.

The applicant for the Bulahdelah HSC PP was notified by Council on 21 August 2018 that the submitted documentation now meets its requirements pursuant to Council's Planning Proposals and Development Control Plan Applications Policy.

Once Council has received adequate documentation, it is required to consider the Planning Proposals within 90 days. This means that Council is required to undertake a full assessment of the Planning Proposal and to formally resolve whether to support it or not by 18 November 2018.

The full assessment was completed on 11 September 2018.

BACKGROUND

Council considered a report on this application at its Strategic Committee Meeting on 13 June 2018 where the following was resolved:

1. That Council complete an internal assessment of the planning proposal and bring back a report in relation to seeking a gateway determination.
2. That Council write to the RMS immediately to advise it is reviewing the Great Lakes Highway Service Centre Strategy 2004.
3. That Council note the commitment of the proponents to enter a Planning Agreement for township improvements and that the Planning Agreement be developed with the Chamber of Commerce and community after a gateway determination is issued.

In response to these resolutions the following has occurred:

1. A revised Planning Proposal was lodged by the applicant on 2 August 2018 for Council's consideration (see Annexure A), taking into consideration issues raised when it failed Council's Acceptability test under its *Planning Proposal and Development Control Plan Applications Policy*.

The revised Planning Proposal was assessed by Council's consultant and determined as Acceptable under Council's policy to move onto a full assessment on 21 August 2018.

Due to Council's consultant being unavailable, the full assessment was undertaken by staff and completed on 11 September 2018 (see Annexure B).

2. A letter dated 3 July 2018 was sent to the RMS advising of Council's resolution in regard to reviewing the *Great Lakes Highway Service Centre 2004*. No response has been received.
3. This resolution was noted and taken into consideration when undertaking the full assessment of the Planning Proposal.

DISCUSSION

A detailed assessment of the revised Planning Proposal is included in Annexure B.

All Planning Proposals are now prepared and assessed under a two stage approach. Stage 1 (pre-Gateway) involves an assessment of whether sufficient information is included in the Planning Proposal for Council and DPE to determine whether the application should be supported or not. Stage 2 (post-Gateway) is when outstanding studies are completed, government agency consultation is undertaken (the Planning Proposal is then updated to include the study results and agency consultation), public exhibition occurs and the draft LEP ultimately made [formally termed gazettal] if still supported by Council and DPE.

In summary, the assessment found that there is sufficient information included in the PP to satisfy Council that a HSC is appropriate in this location, subject to off-setting any adverse economic impact via improvements identified in a Planning Agreement post-Gateway.

However, a number of changes are required to be made to the PP by the applicant prior to Council forwarding it to DPE for a Gateway Determination. These changes range from correctly referencing and providing additional justification for this Planning Proposal's compliance with legislation, through to attaching studies to the PP that it relies on to support a HSC in this location.

It should be noted that once Council resolves to support a PP and forward it to DPE for a Gateway Determination that the PP becomes Council's PP (not the applicant's) and hence the standard/quality of the PP is a reflection of Council. If the changes identified in Appendix 2 are undertaken to the PP then staff believe that it is of a sufficient standard to be forwarded to DPE enabling them to decide whether a Gateway Determination should be issued.

The assessment determined that the following work/studies is required in Stage 2:

- Preparation of a water and sewer servicing strategy, to Council's Water Services Division satisfaction;
- Identification of specific actions (and inclusion in a Planning Agreement) for the township of Bulahdelah that can be funded by the applicant/landowner to offset any anticipated adverse economic impact that the HSC may have on the local business community;
- Provision of a bushfire hazard assessment to the satisfaction of the NSW RFS; and
- Assessment of an appropriate buffer distance and means to implement this between the HSC and future dwellings.

The assessment also determined that the following government agency consultation is required prior to public exhibition:

- Referral to the NSW Roads and Maritime Services to identify whether any upgrades of RMS infrastructure would be required as a result of this development;
- Referral of the Aboriginal Cultural Heritage Assessment to OEH for advice on its adequacy in regard to it meeting the OEH guidelines for this type of assessment;
- Referral to Essential Energy and Telstra to confirm that the proposed development can be serviced; and
- Referral to the RFS to confirm assessment criteria for this type of development to comply with the guideline *Planning for Bushfire Protection 2006* and referral of the subsequent study to ensure that the RFS is satisfied with its assessment and any recommendations for the development.

If Council chooses to support a PP and refer it to DPE for a Gateway Determination it also needs to indicate in its supporting resolution whether Council wishes to use its delegations provided by the NSW Minister for Planning to make the plan. If Council uses its delegations it enables a more streamlined processing of the PP, often reducing the timeframe by weeks, if not months. Should Council still support the PP following public exhibition (if using its delegations) Council can seek the draft LEP being made [gazetted] itself, rather than seeking DPE to do this.

Council, in deciding whether to seek to use its delegations for a PP needs to firstly decide whether Council may have a conflict of interest, pecuniary or non-pecuniary. This normally relates to whether Council owns land within the PP or may directly benefit in other ways by the PP proceeding.

It is recommended that Council not seek to utilise its delegations for this PP. This is because Council has a pecuniary conflict of interest in that Council will be negotiating (and including in a Planning Agreement) funding from the developer to cover works and other actions to offset the potential negative economic impacts on the Bulahdelah business community that may be caused by the HSC.

CONSULTATION

Formal consultation has previously been undertaken with the NSW Roads & Maritime Services. Consultation with other identified government agencies will be undertaken following completion of outstanding studies and prior to public exhibition.

Internal consultation on the Planning Proposal has been undertaken with Council's Senior Traffic Engineer, Senior Ecologist and with the Water Services Division.

Wider community consultation will take part during the formal exhibition of the Planning Proposal. The Gateway Determination will direct Council as to how this is to occur for this Planning Proposal.

COMMUNITY IMPACTS

The Planning Proposal has a range of positive (jobs) and negative (pressure on the existing business community through loss of trade and possible job losses) economic impacts.

Mitigation measures to offset negative impacts will be explored by the proponent with the Bulahdelah Chamber of Commerce and the community (in accordance with Council's resolution on 13 June 2018). Council staff will be party to these discussions.

The results of this consultation will be incorporated into a Planning Agreement and reported back to Council for concurrent exhibition with this Planning Proposal.

ALIGNMENT WITH COMMUNITY PLAN/OPERATIONAL PLAN

This report is in alignment with the MidCoast 2030 Shared Vision, Shared Responsibility – Community Strategic Plan 2018-2030 action to *'Provide an environment to grow and strengthen local business and attract new businesses'*.

TIMEFRAME

Council has until 18 November 2018 to resolve to support the Planning Proposal or not, otherwise the proponent can lodge a request for a review of the planning proposal by the NSW Department of Planning and Environment.

BUDGET IMPLICATIONS

The assessment of the Planning Proposal is being funded by the applicant and there is no impact on Council's budget.

There could be budget impacts associated with the implementation of any proposed mitigation measures or ongoing maintenance associated with these. Any such impacts will be detailed in a future report seeking exhibition of a Planning Agreement, following engagement with the community on potential mitigation measures.

RISK CONSIDERATION

The major risks arise from Council not following due process, not maintaining probity or taking too long to consider the Planning Proposal. All of these represent a legal and reputational risk.

These risks have been mitigated by staff following due process, limiting access from the applicant and proponent to staff and Council's consultant involved in the assessment of this application and by seeking that Council resolve this matter within legislative timeframes.

Another risk arises if Council wishes to seek to be the plan making authority for this draft Local Environmental Plan (LEP), enabling Council to bypass DPE in seeking the plan being made.

The risk relates to Council having a direct pecuniary conflict of interest. Not only would Council be supporting this Planning Proposal to enable a Highway Service Centre to be established, but it would also be negotiating with the proponent a monetary contribution that would be included in a Planning Agreement to offset any negative impacts of their development.

This is a pecuniary conflict of interest that will be avoided should Council resolve not to use its delegations for this draft LEP.

RECOMMENDATION

1. That the Bulahdelah Highway Service Centre Planning Proposal (Annexure A) be revised in accordance with the recommendations from the Stage 1 Part B Planning Proposal Assessment (Annexure B).
2. That the revised Bulahdelah Highway Service Centre Planning Proposal be forwarded to the NSW Department of Planning and Environment seeking a Gateway Determination to progress the Planning Proposal.
3. That the Department be advised that Council does not wish to be *the local plan making authority* to make the draft Local Environmental Plan associated with the planning proposal.
4. That should a Gateway Determination be issued, that the additional studies be prepared, government agency consultation undertaken and the Planning Proposal be revised (to reflect the findings of the studies and results of agency consultation) and exhibited in accordance with the Determination.

ANNEXURES

- A: Bulahdelah Highway Service Centre Planning Proposal – 2 August 2018
- B: Stage 1 Part B Planning Proposal Assessment – 11 September 2018