

Item No: 2.2
Title: Request to prepare a Planning Proposal for 437 Wards Hill Road, Empire Bay
Department: Environment and Planning



14 September 2021 Ordinary Council Meeting

Reference: F2020/00039 - D14809412
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Recommendation

- 1 That Council prepare a Planning Proposal in relation to Lot 1 DP 610629, 437 Wards Hill Road, Empire Bay, to amend the Central Coast Local Environmental Plan, when it comes into effect, to:**
 - (a) zone the subject land to E3 Environmental Management;**
 - (b) apply the minimum lot size of 20 Ha;**
 - (c) apply the Additional Permitted Use of "caravan park" to the land.**
- 2 That Council submit the Planning Proposal to the Minister for Planning and Public Spaces in accordance with Section 3.35(2) of the Environmental Planning and Assessment Act 1979, requesting a Gateway Determination, pursuant to Section 3.34 of the Environmental Planning and Assessment Act 1979.**
- 3 That Council request delegation for Council to finalise and make the draft Local Environmental Plan, pursuant to Section 3.36 of the Environmental Planning and Assessment Act 1979.**
- 4 That Council prepare appropriate Development Control Plan provisions to support the development of the land subject to this Planning Proposal.**
- 5 That Council undertake community and public authority consultation in accordance with the Gateway Determination requirements, including the concurrent exhibition of the draft Development Control Plan.**

Report purpose

To consider a request to prepare a Planning Proposal to zone Lot 1 DP 610629, 437 Wards Hill Road, Empire Bay from 7(c2) Conservation and Scenic Protection (Rural Small Holdings) under Interim Development Order No. 122 – Gosford (IDO 122) to E3 Environmental Management under the Central Coast Local Environmental Plan and include an Additional Permitted Use for the purposes of a Caravan Park on the same land.

Executive Summary

This Planning Proposal seeks to enable the regularisation of the long-term caravan park use on the site. This will avoid the need for the displacement and relocation of existing long-term residents.

The Land and Environment Court has determined that the existing caravan park development on Lot 1 DP 610629 has existing use rights for short-term accommodation only. The Court of Appeal confirmed this decision. Consequently, long-term or permanent accommodation is currently prohibited on the site. However, the site has development consent for this use, but the validity of which is now in question.

The site is an existing Deferred Matter (DM) site and will not be rezoned when the Central Coast Local Environmental Plan (CCLEP) comes into effect.

To deliver the intended outcome, it is recommended to zone the land to E3 Environmental Management, and include an Additional Permitted Use (APU) for a "caravan park", where it can be demonstrated that land proposed for long term accommodation is located outside the areas identified as high hazard flood level.

The Planning Proposal was considered by the Local Planning Panel on 19 August 2021 and was supported in principle.

Background

The caravan park has existed on the subject land since 1980 when development consent was issued for 26 caravan sites which were not to be used for permanent accommodation. In 1983 another development consent was issued for an additional 33 caravan sites to be used on a short-term basis. When these consents were issued, caravan parks were a permitted use in the zone at the time.

In 1983, Sydney Regional Environmental Plan No 6 – Gosford Coastal Areas zoned the land so that "caravan parks" became a prohibited use. The use of the site approved under the consents of 1980 and 1983 accordingly became an "existing use" under the Environmental Planning and Assessment Act 1979 (EPA Act).

In 2006 Council issued Development Consent to change the use of all existing sites from short-term to long-term accommodation.

In 2017 Council refused a development application for a further 48 long term sites on the basis that: "The site for the purpose of additional caravan sites for long-term accommodation

is not consistent with the existing use rights applicable to the land, which exist only for short-term caravan park accommodation.”

The owner took the matter to the Land and Environment Court where the Court found that the site does not benefit from existing use rights for long-term accommodation. However, the decision and consequential appeal to the Court of Appeal did not expressly offer an opinion as to the validity of the 2006 consent.

Current Status

The site comprises 68 long-term accommodation sites which may not have valid consent, and which are located on land subject to flooding. The request to prepare a Planning Proposal seeks to address these matters by zoning the land from 7(c2) Conservation and Scenic Protection (Rural Small Holdings) under IDO 122 to E3 Environmental Management under the CCLEP, applying “caravan park” as an APU on the subject lot and specifying that existing and future dwellings are not to be located within High Hazard flood levels.

Report

The request seeks to zone the land to E3 Environmental Management within the Central Coast Local Environmental Plan and include an additional permitted use of “caravan park”.

Most of the existing dwellings on the site are affected by flooding. Under the exhibited draft Central Coast Development Control Plan (CCDCP) Chapter relating to Floodplain Management it is proposed that caravan parks could be considered where supported by appropriate studies and other required information on flood liable land where the Hazard Levels in the Probable Maximum Flood (PMF) are considered low hazard (i.e. H1, H2, H3). It should be noted that this is a draft document only and now that the accompanying mapping has been completed is expected to be placed on exhibition later this year.

Therefore, it is proposed that the APU will seek to relocate those existing dwellings out of high hazard areas (i.e. H4, H5, H6) and not permit new dwellings or structures within these high hazard areas.

The Planning Proposal has strategic planning merit for the following reasons:

- The proposed zone of E3 Environmental Management is considered suitable for this site due to it being affected by the physical constraint of flooding. The minimum lot size applicable to the E3 zone is 20 Ha which will not permit further subdivision of the land.
- The APU within the Planning Proposal will not seek to regularise existing development which is located in high hazard flood levels but will enable the relocation of these buildings, and any new development, to areas outside the high hazard flood levels.

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- The Planning Proposal will permit long-term affordable accommodation on the land, thus assisting with meeting the needs of the local community in this locality.
- Even though the land is currently affected by flooding, the Planning Proposal and accompanying DCP, will ensure no new dwellings would be adversely affected by floodwaters.

An assessment of the proposal has been undertaken to inform this recommendation, as detailed in Attachments 1 and 2. As the Proposal has strategic merit it is recommended that a Planning Proposal be prepared and forwarded to the Minister for Planning and Public Spaces for a Gateway Determination.

Consultation

Government agency and public consultation requirements will be detailed in the Gateway Determination and conducted accordingly.

Financial Considerations

At its meeting held 19 October 2020, Council resolved the following:

1108/20 That any motions put before Council for the remainder of this term of Council that have financial implications require the Chief Executive Officer to provide a report on how those additional costs will be met.

The following statement is provided in response to this resolution of Council.

Adoption of the staff recommendation has no budget implications for Council. The direct cost to Council is the preparation of the planning proposal which will be charged as per Council's fees and charges on a cost recovery basis.

Link to Community Strategic Plan

Theme 3: Green

Goal F: Cherished and protected natural beauty

G-F1: Protect our rich environmental heritage by conserving beaches, waterways, bushland, wildlife corridors and inland areas, and the diversity of local native species.

G-F2: Promote greening and the wellbeing of communities through the protection of local bushland, urban trees, and expansion of the Coastal Open Space System (COSS).

Theme 4: Responsible

Goal I: Balanced and sustainable development

R-I2: Ensure all new developments are well planned with good access to public transport, green space and community facilities and support active transport.

R-I3: Ensure land use planning and development is sustainable and environmentally sound and considers the importance of local habitat, green corridors, energy efficiency and stormwater management.

R-I4: Provide a range of housing options to meet the diverse and changing needs of the community and there is adequate affordable housing.

Risk Management

There have been no risks identified to the natural and built environment associated with the proposed amendment to the CCLEP, about seeking a Gateway Determination.

Options

- 1 Support the Recommendation as the Planning Proposal has strategic merit. **This is the Recommended Option.** The basis for this recommendation is:
 - The Planning Proposal zones the land to an appropriate zone under the CCLEP;
 - the Planning Proposal permits long-term accommodation on the site outside those areas identified as high hazard flood level;
 - The Planning Proposal will enable future additional affordable housing to be located on the site to satisfy the accommodation needs of the community;
 - the vegetation on the land will be protected.
- 2 Refuse to support the Request for a Planning Proposal (Not Recommended). Should the Planning Proposal not be supported, the current long-term residents on the site may have to be relocated and an opportunity will have been missed for the provision of additional affordable housing in the southern area of the LGA.

Critical Dates or Timeframes

The Department of Planning, Industry and Environment (DPIE) are implementing strict Gateway Determination timeframes, requiring the exhibition of a Planning Proposal within 12 months, and finalisation within 24 months of the date of issue of a Gateway Determination.

Attachments

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| 1 | Planning Proposal Assessment Report | Provided Under Separate Cover | D14737860 |
| 2 | Planning Proposal Strategic Assessment | Provided Under Separate Cover | D14737868 |
| 3 | Local Planning Panel Advice | Provided Under Separate Cover | D14811012 |