

ORDINARY MEETING AGENDA

26 June 2024

Held in the Hilltops Council, Young Chambers, 189 Boorowa Street, Young

12.12 - 24/158 - PLANNING PROPOSAL AND VOLUNTARY PLANNING AGREEMENT FOR 2-20 TELEGRAPH ROAD YOUNG - REQUEST GATEWAY DETERMINATION

Responsible Officer: Director Planning

PURPOSE

The purpose of this report is to outline the Planning Proposal for 2-20 Telegraph Road, Young to rezone land to an industrial zone. The report also notes and outlines that as a part of the Planning Proposal the Proponent has provided a Voluntary Planning Agreement to undertake road upgrades to address the infrastructure impacts associated with the rezoning to an industrial zone. The report recommends that the Planning Proposal alongside the draft VPA be sent to the Department of Planning, Housing and Infrastructure to request a Gateway Determination.

RECOMMENDATION

That Council:

- (a) Council endorse an amended Planning Proposal in relation to 2-20 Telegraph Road, Young to amend the Hilltops Local Environmental Plan 2022 in accordance with Council's Assessment Report (Attachment 1), to:
 - (a) Rezone to E3 Productivity Support across the subject land;
 - (b) Remove the Minimum Lot Size applying across the subject land;
 - (c) Amend the Terrestrial Biodiversity mapping layer that applies across parts of the subject land; and
 - (d) Amend the Riparian Corridor mapping layer that applies across parts of the subject land.
- (b) Request a Gateway Determination from the Department of Planning, Housing and Infrastructure in accordance with Section 3.34(1) of the Environmental Planning and Assessment Act 1979, noting Council be authorised as the Local Plan Making Authority under Section 3.36 of the Environmental Planning and Assessment Act 1979;
- (c) Grant delegation to the General Manager to make any necessary changes to the Planning Proposal prior to public exhibition in response to the conditions of the Gateway Determination;
- (d) Upon receipt of a Gateway Determination, place the Planning Proposal on public exhibition pursuant to any requirements of the Determination and Section 3.34(2) of the Environmental Planning and Assessment Act 1979;
- (e) Upon receipt of a Gateway Determination, place the Planning Agreement based on the terms as outlined in the draft Voluntary Planning Agreement (Attachment 2) dated 5 June 2024 for works in kind on public exhibition in accordance with the requirements in Clause 204 of Environmental Planning and Assessment Regulations 2021 concurrently with the Planning Proposal;
- (f) Grant delegation to the General Manager to make any necessary changes to the Planning Agreement prior to public exhibition in response to the conditions of the Gateway Determination; and
- (g) Following the completion of the public exhibition period, a further report be presented to Council for consideration, including the results of public exhibition.

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REPORT/SUMMARY/BACKGROUND

The Proponent, Apollo Fabrication Group (Apollo), own and operate a steel manufacturing premises located on Telegraph Road, Young, NSW. Apollo has submitted a Proponent led Planning Proposal to Hilltops Council to consider an amendment to the Hilltops Local Environmental Plan 2022 to Telegraph Road land holdings, currently owned and controlled by the Apollo Fabrication Group. The Proposed rezoning aims to enable the use of the land for industrial purposes, specifically steel fabrication.

What is a Planning Proposal?

A Planning Proposal is commonly referred to as a rezoning, spot rezoning, or LEP Amendment, and is a proposed amendment to a Local Environmental Plan (LEP).

The Local Environmental Plan (LEP) making or amendment process is set by the NSW Government in accordance with the *Environmental Planning and Assessment Act 1979*. the Overview of the Process from the [Local Environmental Plan Making Guideline](#) (August 2023).

Key assessment considerations are the Proponent's justification of strategic and site-specific merit to State, Regional and Local Planning Legislation, Policies and Strategies, and their assessment of impact that any proposal would have on its surrounding context.

Project Background

A Planning Proposal for the subject land was previously endorsed and referred by the Council in November 2021 to request a Gateway Determination and the Department of Planning & Environment granted a Gateway Determination with Conditions to be addressed before going on public exhibition on 23 March 2022 (PP-2022-163). On 17 February 2023, Council requested an extension of time as all of the Gateway Determination Conditions would not be met before the 23 March 2023, particularly the Condition relating to infrastructure provision – through negotiation and in-principal agreement of a Voluntary Planning Agreement (VPA).

On 16 May 2023, Council was notified that the request for an extension was not supported by the Department of Planning and noted that the Gateway Determination for the Planning Proposal 'should not proceed'. This required a re-lodgement of a Planning Proposal to recommence and progress again.

On 11 July 2023, the Proponent resubmitted a revised Planning Proposal via NSW Planning Portal. The Proposal differed from what was previously submitted in relation to the land being rezoned to the E4 General Industrial Zone rather than previously proposed and supported E3 Productivity Support Zone.

On 21 August 2023, Council requested further information and justification to the following areas of the Planning Proposal:

- Funding for Public Infrastructure and draft Planning Agreement.
- Clarify the explanation of the provisions for the use of the E4 General Industrial Zone in comparison to land uses and objectives of the E3 Productivity Support Zone.
- Riparian Corridor and Terrestrial Biodiversity Mapping and controls to remain across the proposal area.
- Crown Land Ownership and lease details for Lot 11 DP1138027, Lot 12 DP1138027 and Lot 101 DP1274790 and any previous correspondence with Crown Lands on Planning Proposal.
- Further details relating to the above matters addressing the relevant State Environmental Planning Policies and Section 9.1 Ministerial Directions.

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On 11 December 2023, a VPA offer letter was emailed to Council and uploaded to the NSW Planning Portal alongside the updated Planning Proposal and Requested information, justification, on 20 December 2023. The Proponent's final Planning Proposal can be found in **Attachment 2**.

Negotiations from March 2024 to June 2024 refined the draft VPA and on 5 June 2024 an in principal agreement of a works in kind arrangement for the Proponent to deliver associated infrastructure in a draft VPA was agreed to by Apollo and final letter of offer provided to Council on 17 June 2024. The Proponent's Letter of Offer and draft VPA that the Council will consider being placed on public exhibition can be found in **Attachment 3**.

Planning Proposal Details:

The 2-20 Telegraph Road Planning Proposal aims to amend the Hilltops Local Environmental Plan 2022 provisions to allow the use of the land for industrial purposes, specifically steel manufacturing and associated/ancillary activities.

The objective of this Planning Proposal is to provide development permissibility for Apollo Fabrication Group to expand their steel fabrication business activities across their land holdings. This includes lots currently used for steel fabrication and adjoining lots. The existing use right provisions, however, pose strict limitations on greater concentration of activities on site and prohibit expansion onto adjoining sites.

The Proponent proposes to amend the following provisions on the Hilltops LEP 2022 being:

- Amend the Land Zoning Map that applies to the land by changing the zoning from R1 General Residential, RU4 Primary Production Small Lots and RE1 Public Recreation to E4 General Industrial.
- Amend the Lot Size map that applies to the land by removing all minimum lot size provisions

The Proponent has provided a number of specialist reports and studies to support the Planning Proposal being:

1. Urban Design Report	8. Flooding & Infrastructure Services Report
2. Environmental Noise Impact Report	Flooding Advice (including attachments)
3. Environmental Noise Impact Report - Peer Review Final	9. Utility Servicing Feasibility Memorandum
4. Traffic Impact Assessment	10. Attachment: Certified Electrical Design
5. Biodiversity Development Assessment Report	11. Economic Forecast Analysis
6. Detailed Site Investigation	12. Telegraph Road, Young – Response to Council Question (Employment Land Impact)
7. Aboriginal Due Diligence & Historic Heritage Assessment Report	13. Natural Environment Assessment - Victoria Creek
	14. Crown Lands Correspondence Letter (Ref: 23/04742)

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Through Council's assessment, outlined in Attachment 1, the Planning Proposal is to be amended to include the following provisions:

- Amend the Land Use Zone Map from R1 General Residential, RU4 Primary Production Small Lots and RE1 Public Recreation to E3 Productivity Support.
 - Note that minor parts of 20 Telegraph Road (part of Lot 1171 DP754611 and Lot 1154 DP754611) are to remain RE1 Public Recreation due to being Flood Prone Land and not consistent with Ministerial Direction 4.1.
- Amend the Lot Size map that applies to the land by removing all minimum lot size provisions
- Revise the Terrestrial Biodiversity mapping layer that applies across parts of the subject land
- Revise the Riparian Corridor mapping layer that applies across parts of the subject land.

With these amendments, Council considers the Proposal to address the site-specific and strategic merit assessment. Council's rationale is further discussed below and in the Council Planning Proposal Assessment Report found in **Attachment 1**.

Land Use Zoning Amendment:

The previously submitted Planning Proposal included the proposed rezoning to be E3 Productivity Support. However, the Proponent Submitted Planning Proposal changed to be E4 General Industrial zone. With this proposed change, Council requested clarification from the Proponent in a Request for Information on 21 August 2023 noting:

Council requests further detail relating to what further land uses consist with the "long term evolution and innovation" as stated in the Planning Proposal which can be met through the use of the E4 zone and not the E3 zone. The Planning Proposal notes that "the steel fabrication business can currently be characterised under E3 Productivity Support".

The Planning Proposal rightfully notes that the Heavy industry is considered permissible as an innominate use and therefore from Council's perspective given the context of the Proposal, seeking to minimise any potential amenity impacts from more amenity impacting permissible uses is paramount.

The Proponents response noted that the existing facility was defined as general industry in 2012 and noted that:

"While general industry uses are permissible with consent under E3 as an 'innominate use', the first objective of the zone is "to provide a range of facilities and services, light industries, warehouses and offices". The E4 zone's first objective is "to provide a range of industrial, warehouse, logistics and related land uses" which can be more appropriately aligned with general industry. The extinguishing of any existing use rights over the subject land from an LEP amendment could also risk the validity of current consents relating to general industry if the E3 objectives cannot be legally consistent with light industries."

In Council's assessment, with both the E3 Productivity Support and E4 General Industrial zones, permitting land uses associated *current and future use of the land for industrial/steel manufacturing activities proposed by Apollo*, Council considers the E4 zone is a less desirable zone due to permissibility of heavy industry and due to the potential amenity impact on surrounding land uses and context of the land. As noted previously by the Proponent: *The E3 Zone will provide a range of permissible land uses that will accommodate the current and future use of the land for industrial/steel manufacturing activities proposed by Apollo, as well as respecting the surrounding built and natural environment.*

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Therefore, it is recommended that the Planning Proposal be amended so that the Land Use Zone be E3 Productivity Support.

Additionally, although minor in area, the Proposal is not consistent with the Ministerial Directions 3.1 Conservation Zones and 4.1 Flooding. A portion of the lots are affected by the 1:100 year flood extents of Victoria Creek (part of Lot 1171 DP754611 and Lot 1154 DP754611) which are currently zoned a Conservation Zone being RE1 Public Recreation. Given the current zoning and being flood prone, Council notes the Department would be unlikely to support these being rezoned from a Conservation Zone if they are flood prone land.

Terrestrial Biodiversity and Riparian Corridor Mapping Amendment:

In Council's Assessment Report, the amendment of the Terrestrial Biodiversity and Riparian Corridors mapping layers that currently apply to the subject site is required.

The Proponent's submitted supporting report titled: "Natural Environment Assessment – Victoria Creek" notes that the two LEP Layers, Riparian Corridor and Terrestrial Biodiversity are require ground truthing. As below:

- *The LEP Riparian and Sensitive Lands layers are significantly poor and require ground truthing as the areas do not include the waterway centre;*
- *LEP Biodiversity mapping indicates the development site is 95% outside of these zones*

From Council's assessment, supported by the Proponents studies, amendment of the Terrestrial Biodiversity Map is recommended to be include within the Planning Proposal as below. Further discussion about the amendment to the Terrestrial Biodiversity Map is provided in Part 4 Mapping of the Planning Proposal.

The mapping layers have been ground truthed and are recommended to be amended accordingly in Part 4 of the Planning Proposal. The Terrestrial Biodiversity layer being amended from the land and the Riparian Corridor Layer being amended to follow Victoria Creek as per the as per the Proponent's Natural Environment Assessment and NSW Government's Fact Sheet 'Controlled activities – Guidelines for riparian corridors on waterfront land'.

Planning Agreement and Infrastructure provision

The Proponent's Traffic Impact Assessment Report by Spotto Consulting, which supports the Planning Proposal, noted that there is a requirement for:

"The intersection of Telegraph Road with Murringo Road and Whiteman Avenue be modified to incorporated BAL (basic left turn and CHUR(S) (Channelised Right Turn – Short) lane treatments. With Councils requirements as designated Left/right turn and Intersection treatment TfNSW Requirements."

Council has as a part of the Planning Proposal made clear that the change in zoning, from residential and rural zone to a more intensive industrial zone, requires appropriate infrastructure associated with an industrial rezoning. This was clear in the Hilltops 2040 LSPS as a key area to be addressed. Therefore, a Voluntary Planning Agreement being negotiated between Council and the Proponent.

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The Proponent's previous Planning Proposal submission cover letter on 24 November 2022 notes the VPA and Planning Proposal to be exhibited concurrently:

A draft VPA proposal will be forwarded to Council under separate cover to ensure that this matter is dealt with separately and to enable an agreed draft to be exhibited with the Planning Proposal.

On 21 August 2023, Council requested further information and justification relating to the funding for Public Infrastructure and draft Planning Agreement. Specifically:

Funding for public infrastructure and Planning Agreement

- a. Further discussion under Section: 4.1.1. Is there adequate public infrastructure for the Planning Proposal? More than: "Apollo will have separate discussions with Council in relation to an appropriate".*
- b. Planning Agreement that will achieve net public benefit as a consequence of the proposal.*
- c. Council note received offer on 30 June 2023, however offer does not include a contribution amount or works provided .*
- d. Apollo noted in email to Council on 11 July 2023 that they are "working on confirming the contribution number and supporting documentation in the background".*
- e. Council requests a draft Planning Agreement to be provided alongside any proposed contribution amount.*

On 11 December 2023, a VPA offer letter for staged payments for the intersection design for the intersection design, road works, and overall costing for works requested by Council and uploaded to the NSW Planning Portal on 20 December 2024.

On 27 March 2024, Council proposed to negotiate a Works in Kind agreement for the delivery of the infrastructure rather than receive staged payments. From March 2024 to June 2024, as a part of the draft VPA negotiations, Council and the proponent came to an in principle agreement for a works in kind arrangement for the Proponent to deliver the associated infrastructure for an industrial zone.

The draft VPA will be placed on public exhibition concurrently with the Planning Proposal in line with the Planning Agreements Practice Note from the NSW Government. Both the Letter of Offer and draft VPA can be found in **Attachment 3**.

The key elements of the proposed VPA are:

- The Proponent upgrades the intersection of Telegraph Road with Murringo Road and Whiteman Avenue.
- The upgrade would be based on the Preliminary Intersection Design prepared by Arete Survey Solution (Appendix 4 in the Agreement). There is provision for this to be modified as the project goes into detailed design and construction without triggering the re-exhibition of the VPA.
- The timing of the delivery of asset is tied to a milestone that the work must be completed to the Council's satisfaction prior to obtaining any occupation certificate on proposed zoned land for future development that creates additional impact on the use of the intersection.

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- This is expressed in the proposed VPA as the “trigger development” which is defined as:
 - *“any Development on the Land (but excluding the Existing Facility and storage and transportation Development associated with and ancillary to the Existing Facility) which is permissible as a result of the Instrument Change or which benefits from a change to a development standard given effect through the Instrument Change.”*
- The works in kind provided by the Proponent do not count towards the assessment on the developer contributions for future development on the site.

Planning Proposal Assessment:

Council has assessed the Planning Proposal outlined in the Council’s Planning Proposal Assessment Report found in **Attachment 1**.

The key assessment considerations are the Proponent’s justification of strategic and site-specific merit to State, Regional and Local Planning Legislation, Policies and Strategies, and their assessment of impact that any proposal would have on its surrounding context.

The proposal has also been assessed having regard to the relevant State Environmental Planning Policies (SEPPs), Ministerial Directions and relevant guidelines of the South East and Tablelands Regional Plan as detailed within the Council’s Planning Proposal Assessment Report (Attachment 1).

The Proponent contends that the Planning Proposal is consistent with directions issued by the Minister under Section 9.1 of the Environmental Planning and Assessment Act, 1979, with the exception of those relating to rural zones and residential zones. In Council’s assessment inconsistency with Ministerial Directions 3.1 Conservation Zones and 4.1 Flooding requires an amendment to the Land Use Zoning for RE1 Zoned land to remain if it is flood prone land.

The planning proposal is considered to have site specific merit as it addresses amenity within the immediate context of the proposal, infrastructure provision and response to the natural environment.

The Proponent has provided a range of specialist studies to address the immediate context and in relation to maintaining acceptable local amenity around the land specifically in relation to the follow key environmental issues being Noise, Contamination - Site Health & Suitability (DSI), Cultural Heritage and Urban Design. Council’s assessment and recommendation for amendment of the Planning Proposal Land Use Zoning to E3 Productivity Support which will better address the potential for amenity impact of the context of the proposal. The Proponent has addressed key infrastructure provision associated with the industrial rezoning through the offer of draft VPA to deliver through a works in kind agreement. Additionally, the amended inclusion of the Terrestrial Biodiversity layer being amended from the land and the Riparian Corridor Layer being amended to follow Victoria Creek as per the as per the Proponent’s Natural Environment Assessment and NSW Government’s Fact Sheet ‘Controlled activities – Guidelines for riparian corridors on waterfront land’.

As supported by the Proponents Planning Proposal, justified by specialist reports prepared by the Proponent, with the Council’s recommended amendments for the amended Planning Proposal has strategic merit and site-specific merit it is recommended that a planning proposal be forwarded to the Minister for Planning and Public Spaces requesting a Gateway Determination.

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ATTACHMENTS

- Attachment 1 - Council's Planning Proposal Assessment Report - June 2024
- Attachment 2 - Proponent Planning Proposal 2-20 Telegraph Road Young - December 2023
- Attachment 3 - Letter of Offer (17 June 2024) and draft Voluntary Planning Agreement (5 June 2024)

POLICY AND LEGISLATION

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- Local Environmental Plan Making Guideline (August 2023).

COMMUNITY STRATEGIC PLAN LINKAGE

Pillar: Natural Environment: A Nurtured and Protected Environment

- 2A. Maintaining the environmental integrity of the region
- A.5. Protecting and enhancing the beauty of our natural landscapes

Pillar: Economy: A Strong & Robust Economy

- 3.A. Planning and delivering for a thriving and diverse economy for business, tourism and investment
- 3C. Enhancing a diversified economy which encourages business development, investment and fulfilling career opportunities to attract and retain residents, especially young people

Pillar: Infrastructure, Land Management, Assets and Services: Strengthening the Region's Connectivity and Maintenance of Our Assets & Infrastructure

- 5B. The provision and maintenance of quality and efficient social and built infrastructure
- B.1 Provide traffic management solutions to enhance safety and minimise congestion

Pillar: Governance: Effective, Transparent, Collaborative and Proactive Leadership And Governance

- 4.A Working together to achieve our objectives through strong civic leadership
- A.5. Building financial strategic alliances and opportunities with business and industry leaders as well as service and infrastructure agencies

FINANCIAL IMPLICATIONS

- Council entering into a Voluntary Planning Agreement for the delivery of associated infrastructure for an industrial zone.

RISK IMPLICATIONS

- If Council does not request a Gateway Determination from the Department, the Proponent has the ability to request a Rezoning Review
- A Rezoning Review allows a Proponent to request an independent planning panel evaluate and recommend to the Minister whether a proposal should progress to Gateway determination.
- If the recommendation by the Independent Panel is to progress to a Gateway Determination, there is potential that Council would become the Local Plan Making Authority for a Planning Proposal that has not been endorsed by Council.

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CONSULTATION AND TIMING

- The Planning Proposal is intended to be on public exhibition for a minimum period of 28 days or as specified within the Gateway Determination.
- According to the *Planning Agreements Practice Note - February 2021*, Planning agreements must be publicly notified and made available for public inspection before they can be entered into. The EP&A Regulation requires that the notification of a proposed planning agreement occurs at the same time as the planning proposal.
- Community consultation and Agency consultation will be undertaken in accordance with relevant sections of the Act and Regulations. The Gateway determination will confirm the extent and nature of community consultation to be undertaken for the purposes of the Planning Proposal. Agency consultation recommended to include:
 - Transport for NSW;
 - Department of Climate Change, Energy, the Environment and Water
 - Environment Protection Authority; and
 - Crown Land.
- It should be noted that Council is seeking authorisation to exercise its delegation of local plan-making authority under Section 3.36 of the Environmental Planning and Assessment Act 1979, as this planning proposal is considered to be a local matter.