

JOINT REGIONAL PLANNING PANEL
Meeting of Sydney West, 7 November 2013

JRPP No	2012SYW089
Council DA Number	1610/2012/DA-RS
Local Government Area	Campbelltown City Council
Proposed Development	Airds Bradbury Renewal Project Stage 1 Subdivision to create 184 residential lots and 1 open space lot, with associated subdivision works including construction of new roads, drainage, site regrading and retaining, utility services and landscaping
Capital Investment value	
JRPP Referral Criteria	
	\$12.7M
	Crown application with CIV exceeding \$5M
Street Address	Georges River Road, Riverside Drive and Peppin Crescent
Applicant/Owner	NSW Land and Housing Corporation with Landcom (now UrbanGrowth NSW) as project manager
Number of public submissions	Nil
Recommendation	Approval with Conditions of consent
Report by	Scott Lee, Executive Planner, Government and Special Projects, Campbelltown City Council

Attachments:

1. Department of Planning and Infrastructure Modification of Concept Approval
2. Recommended draft conditions of consent for Stage 1 subdivision

Purpose of the Report

This report relates to the Stage 1 subdivision Development Application for the Airds Bradbury Renewal Project. It is a second addendum report, and should be read in conjunction with the original assessment report that was presented to the Joint Regional Planning Panel at its meeting of 29 August 2013 and the first addendum report presented to the JRPP at its meeting of 25 September 2013.

Background

At its meeting of 25 September 2013, the Panel considered the Airds Bradbury Renewal Project Stage 1 subdivision application for a second time. However it was unable to determine the matter without first receiving further clarification on certain matters and as such, the Panel agreed that a future meeting of the Panel was appropriate and that a further report be provided clarifying the following:

- References the arrangements in the Deed of Agreement relevant to the ongoing status of the Biodiversity Offset Lands.
- Explains clearly how these arrangements in conjunction with other land title measures and arrangements if relevant secure, (if that is the case,) the permanent retention of the offset lands for biodiversity measures, or if that is not the case provides discussion on what could prevent permanent use for that purpose.
- Explains how the position sought by the Panel to secure permanent status of the Biodiversity Offset lands differs from what is now proposed.
- Explains how the measures sought by the Panel to secure permanent status of the Biodiversity Offset lands is in conflict with the Concept Plan Approval.
- Provides legal advice on whether the Panel is able to approve the application under the arrangements now proposed having regard to Schedule 4 Condition 5 of the Concept Approval.

Consideration of issues

The following section of this report provides information and advice on the five issues of concern raised by the Panel.

- References the arrangements in the Deed of Agreement relevant to the ongoing status of the Biodiversity Offset Lands.

There are two Deeds of Agreement and they are consistent in the wording they use to express the ongoing status of the Biodiversity Offset Lands. These lands, whether on site at Airds, or off site at Gilead and St Helens Park, will be subject to initial rehabilitation works and then a period of maintenance to ensure the value of the initial work is maximised.

The NSW Land and Housing Corporation will be entering into a Deed of Agreement with Campbelltown City Council for the biodiversity lands within the Airds Bradbury Renewal Project area and they have already signed a similar Deed with the Minister Administering the Environmental Planning and Assessment Act (Office of Strategic Lands) for the biodiversity offset lands that have been identified at St Helens Park and Gilead.

Both Deeds acknowledge that the biodiversity offset lands must be protected in perpetuity. The Agreement with Council for the on-site lands requires them to be dedicated and titled to Council as public open space. NSWLHC will be responsible for a 5 year maintenance period in order to ensure that the relevant performance targets set out in the Bushland Management Plan are met before Council assumes responsibility. Council believes this period is necessary for these smaller bushland parcels which are more susceptible to external pressures and has been negotiated in the context of the proposed VPA for the project. The Agreement with OSL for the off-site lands, includes a provision that should the land be transferred to another agency, that agency shall be responsible for the Deed of Agreement and that a positive covenant must be recorded on the property. For these lands the Deed currently has a dedicated 2 year maintenance period, as recommended by the Biodiversity Offset Strategy, to ensure attainment of the performance targets of the Bushland Management Plan.

- Explains clearly how these arrangements in conjunction with other land title measures and arrangements if relevant secure, (if that is the case,) the permanent retention of the offset lands for biodiversity measures, or if that is not the case provides discussion on what could prevent permanent use for that purpose.

The Deeds of Agreement are governed by the law in force in NSW. In other words they are a contract and if a situation arose where there was an actual or potential breach, they are legally enforceable by one party on the other.

For the on-site lands at Airds, they will be dedicated and titled to Council as public open space. They are zoned public recreation and as such will be classified as community land. These are all safeguards for the permanent holding of these lands by the Council for the proposed purpose of biodiversity protection.

For the off-site lands (St Helens Park and Gilead), the Deed states that the responsibility of the Minister is to conserve and protect the land in perpetuity. In the event that the ownership from one government agency to another is contemplated, a positive covenant must be recorded on the land. If the land was to be sold out of government ownership, it would require agreement of both parties to the Deed and the land would still be subject to the conditions of the concept plan approval and of the legislation governing the protection of threatened and endangered ecological communities.

For all land covered by the concept approval, the Environmental Planning and Assessment Act provides a legally enforceable compliance regime should breaches of conditions of consent arise. Of course, future Development Applications may be lodged that if approved, could be contrary to the outcomes sought by earlier development consents. A condition of one

development consent cannot preclude the lodgement of a subsequent development application.

- Explains how the position sought by the Panel to secure permanent status of the Biodiversity Offset lands differs from what is now proposed.

Council believes that the combination of the legally binding nature of the Deed of Agreement and the powers to enforce conditions of consent through the Orders regime of the Environmental Planning and Assessment Act, is sufficient to secure the biodiversity offset lands.

The difference sought by the Panel to the condition of consent put forward in Council's assessment report, was the inclusion of the word "permanently" in regards to securing biodiversity outcomes (refer to Condition 6 which now includes the word 'permanently'). Whether the word 'permanently' is used or not in the final wording of the condition, is likely to make no difference in the practical operation of the condition or in the enforcement of the condition if enforcement became necessary.

- Explains how the measures sought by the Panel to secure permanent status of the Biodiversity Offset lands is in conflict with the Concept Plan Approval.

The Concept Plan approval requires three things:

1. Preparation of a biodiversity offset package with input from the Office of Environment and Heritage
2. Approval of that package by the Director General
3. An approved legal mechanism to secure measures of the package

The Panel has not sought anything that is in conflict with the concept plan approval. It has however sought to ensure the 'permanency' of the biodiversity package measures, something that Council, NSWLHC and Urbangrowth support and believe can be done through the legal mechanism of the proposed Deed of Agreement and enforcement of the conditions of relevant development consents.

- Provides legal advice on whether the Panel is able to approve the application under the arrangements now proposed having regard to Schedule 4 Condition 5 of the Concept Approval.

Legal advice on this question has not been provided because the question no longer arises. The Department of Planning and Infrastructure has completed its assessment of the application to modify Schedule 4 Condition 5 and on 22 October 2013 issued an amended condition that now reads:

Prior to the lodgement of any subdivision application relating to Stage 3, a planning agreement must be executed with council in accordance with the letter of offer made by the NSW Land and Housing Corporation to Campbelltown City Council dated 10 October 2013.

Each development application for subdivision for each of the stages must identify how any relevant contributions, or works in kind, required for that stage, will be delivered to be consistent with the terms of the letter of offer dated 10 October 2013 or an executed planning agreement.

While it is still intended to enter into a Planning Agreement, such Agreement is now not required until Stage 3 is being contemplated. This allows alternative ways of securing contributions, including works in kind agreements. The proposed condition of consent for the Airds Stage 1 subdivision that deals with development contributions (Condition 3) reads as follows:

Prior to any subdivision certificate being issued for any lots within Stage 1, a Works in Kind Agreement that establishes the type and value of local infrastructure contributions relevant to the provision of the Stage 1 subdivision, including details of the contributions and the nature of any land dedications or works in kind, is to be finalised between NSW Land and Housing Corporation and Campbelltown City Council.

This condition is now consistent with the contributions condition of the approved concept plan, as amended, and therefore can be supported by the Panel without concern that it could be acting outside of its legal power.

Conclusion

This report has addressed the matters raised by the Panel following its second meeting to consider the Stage 1 subdivision of the Airds Bradbury Renewal Project.

With the approved amended Schedule 4 Condition 5 of the concept approval, a Planning Agreement is not required for Stages 1 or 2 of the Airds Bradbury Renewal Project. The proposed condition of consent for Stage 1 to deal with development contributions through a works in kind agreement is consistent with the amended concept plan condition and is considered to be appropriate.

Given that the Panel has previously indicated that all other matters associated with the Stage 1 subdivision were satisfactory, it is now recommended that the application be approved.

Recommendation

That Development Application 1610/2012/DA-RS (2012SYW089), for Stage 1 subdivision of the Airds Bradbury Renewal Project, be approved subject to the conditions of consent as described in Attachment 2 to this report.