

REZONING REVIEW

RECORD OF DECISION

HUNTER AND CENTRAL COAST JOINT REGIONAL PLANNING PANEL

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| DATE OF DECISION | 2 November 2017 |
| PANEL MEMBERS | Jason Perica (Chair), Michael Leavey, Kara Krason, John MacKenzie |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | Jason Dunn declared a conflict of interest and chose not to participate, as he has previously been involved in this matter as a member of Council. |

REZONING REVIEW

2017HCC024 – Newcastle – PGR_2017_NEWCA_001_00 at 505 Minmi Rd, Fletcher (AS DESCRIBED IN SCHEDULE 1)

REASON FOR REVIEW:

The council has notified the proponent that the request to prepare a planning proposal has not been supported

PANEL CONSIDERATION AND DECISION

The Panel considered: the material listed at Item 4 and the matters raised and/or observed at meetings and site inspections listed at Item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument **should not** be submitted for a Gateway determination because the proposal has:

- ☐ not demonstrated strategic merit
- ☒ has demonstrated strategic merit but not site specific merit

The decision was split 3:1, with the majority agreeing that proposal does not have site specific merit, and therefore should not proceed to gateway. Mr Leavey voted to generally support the proposal (see below).

REASONS FOR THE DECISION

The Panel was unanimous that in terms of wide strategic merit, insofar as the strategic policy context supported a form of residential development and environmental conservation, having regard to the regional and local policy context, and the wider surrounding context. However, there was a difference in view regarding the type of predominant form of residential housing, with Mr Perica and Mr Leavey of the view the strategic (and surrounding) context favoured pockets of smaller residential land (zoned Low Density R2) and larger areas of Environmental E2 zoning, appropriately linked to surrounding habitat/vegetated corridors, whereas Ms Krason and Mr MacKenzie favoured the majority of residential land to be in the form of Environmental Living (E4), and larger areas of Environmental E2 zoning, appropriately linked to surrounding habitat/vegetated corridors. Mr Perica was willing to use his casting vote to favour the wider strategic merit of the proposal.

In terms of the site-specific merit, the Panel members had differing views. However, all were of the view that the Voluntary Planning Agreement (VPA), Conservation Agreement and environmental offset package should be redone with the Office of Environment and Heritage (OEH), given the lapse of time and subsequent legislative changes (with updated liaison with other relevant agencies). Similarly, the Flora, Fauna and Threatened Species Assessment and Bushfire Threat Assessment reports should be updated given the length of time since they were prepared. The role of Council as a party to the VPA also needed to be clarified.

In terms of site-specific considerations, Councillor Mackenzie was of the view that whilst the proposal sought to achieve a balance between residential growth and ecological integrity, the proposed layout did not reflect the findings from the environmental and archaeological research conducted for the site. The proposed residential zoning in the south-west section of the site imposed directly on the high value ecological areas, including a significant cluster of habitat trees, and the location of heritage-significant Aboriginal sites. In addition, the continuity of the biodiversity corridor linking the Blue Gum Hills to the Green Corridor would be disrupted by the current layout, and specifically the residential area to the north-eastern part of the site. Whilst it is acknowledged by Cr Mackenzie that the site is not in the Green Corridor specifically, it is one of the few remaining sites in the vicinity that provides the opportunity to maintain an ecologically viable linkage. Beyond layout considerations, Cr Mackenzie felt that the existing E4 Zoning captured the objectives of the proposed development sufficiently, and could be amended to achieve the desired residential and environmental balance. Both the site-specific and regional connectivity environmental values of the site would be best served by the low impact residential development intended by the E4 Zoning, subject to a change in the current minimum lot size. Cr Mackenzie felt that given the proposed offset strategy would not deliver 'like for like' outcomes, a reassessment under more recent offset standards was appropriate. The extent of the changes to site design were considered too significant in this case to proceed to Gateway with the current proposal.

Ms Krason was of the view the proposal could be considered as consistent with Greater Newcastle 2036 Strategy as the site is located within the broadly mapped growth area, however the site could also fall within the objects of the strategy in terms of the need to protect biodiversity. Further, on strategic merit grounds, the two areas of the site proposed to be rezoned to R2 adjoined similarly zoned land, however the status of any development approvals and the timeframe for development to occur on the Coal and Allied land was unknown and therefore uncertain. While aligning residential growth immediately adjoining existing urban generally makes strategic sense on a number of grounds, this must also be considered in the context of a site's individual merits and/or constraints. In the circumstances of this case, the subject site is heavily vegetated and has high environmental values. Accordingly, Ms Krason considered the existing site zoning E4 Environmental Living is an appropriate zone as it does not preclude residential development but recognises the site's environmental conservation value in relation to biodiversity and sustainability values in addition to its bushland character. Ms Krason felt the objectives of the E4 zone which aim to provide for low impact residential development in areas with special ecological, scientific and aesthetic values; ensure residential development does not have an adverse effect on those values; and conserves the bushland character and the biodiversity or other conservation values of the land; were appropriate for this site. Ms Krason was of the opinion that the area immediately adjoining existing residential development which is categorised mainly as being of low to medium ecological value may have some potential for a denser form of residential development within the E4 zone, through a change to the development standards (minimum lot size). There are examples within other LGAs where E4 zones exist in suburban areas with lot sizes of 650m² and above. Ms Krason had concerns over the south-western proposed residential area given this area is mapped as high ecological value and contains the indigenous pad locations. Should the adjoining land be redeveloped to the boundary in the future as identified in the supporting documentation, a revision of the subdivision size within the E4 zone may also be considered appropriate for part of this area provided environmental considerations are able to be satisfactorily addressed. Given the length of time since the infrastructure and servicing strategies were prepared and the change in the local area since that time, Ms Krason considered that any future planning proposals should include updated reports in this regard.





Mr Leavey was of the view the proposal has strategic merit and could proceed for Gateway consideration, with recommended gateway conditions requiring (prior to exhibition) an updated environmental assessment to be undertaken against current legislative requirements, and preparation of an updated VPA/ Conservation Agreement/ Offset Package with OEH, noting this may result in some adjustment to zone boundaries as the planning proposal progresses. In supporting the proposal proceeding, Mr Leavey was of the opinion the proposed residential development on part of the land is consistent with current Regional and Local Strategies, and has support from OEH through a negotiated conservation/ offsets agreement. Mr Leavey was also of the opinion the proposal is consistent with the zoning of land on either side of the site, and will enable connectivity between these adjoining lands as well as areas to the north, and the site has access to services and infrastructure for residential development as proposed. Mr Leavey

also noted an identical proposal had been previously been supported by Council staff and received Gateway support, and felt that any changes arising from an updated environmental assessment could be considered as part of the ongoing refinement of the planning proposal, as envisaged in the “Guide to Preparing Planning Proposals”.

Mr Perica was of the view the underlying concept plan which drove the proposed zoning and Planning Proposal needed some relatively significant change in order to be supported, on site-specific grounds. Specifically, he was concerned that there should be better environmental linkages reflected in the zoning in the north-east portion of the site, across Minmi Road (while retaining the road connection to the north across Minmi Road as proposed), the various aboriginal and ecological constraints did not favour the south-western residential zone to extend as far south as proposed, and in the eastern portion of the south-western proposed R2 zoning, generally according with the aboriginal “Pad 3” location, there should be a local recreational park reflected in zoning which catered for the new site population and may also assist in bushfire co-ordination. These changes would likely change the footprint and yield in the order of 30-50%, which is significant.

Mr Perica contemplated using his casting vote in favour of supporting the proposal proceeding to Gateway, with these matters/concerns addressed as recommended “conditions” of a Gateway Determination (amongst others). However, apart for the degree of change, the following further considerations gave rise to Mr Perica not supporting the proposal proceeding to Gateway:

- (a) The changes may be such that the revised Planning Proposal may be acceptable to the Council, who is newly elected and has not considered the Planning Proposal formally;
- (b) There would be some benefit in the Council being the Relevant Planning Authority (RPA) given a Planning Agreement is involved in which the Council was an intended prior signatory at draft stage (although it may be that Council is not a required party as no land is proposed to be dedicated to Council and no s94 offset is sought); and
- (c) The differing views within the Panel is such that it may not be an appropriate RPA in this instance.

| PANEL MEMBERS | |
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|  Jason Perica |  Kara Krason |
|  Michael Leavey |  John MacKenzie |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DEPARTMENT REF - ADDRESS | 2017HCC024 – Newcastle – PGR_2017_NEWCA_001_00 505 Minmi Rd, Fletcher |
| 2 | LEP TO BE AMENDED | Newcastle Local Environmental Plan 2012 |
| 3 | PROPOSED INSTRUMENT | The proposal seeks amend Newcastle LEP 2012 to rezone land from E4 Environmental Living to R2 Residential and E2 Environmental Conservation, including associated revised Lot size and height controls. |
| 4 | MATERIAL CONSIDERED BY THE PANEL | <ul style="list-style-type: none"> Rezoning review request documentation Briefing report from Department of Planning and Environment |
| 5 | MEETINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> Site inspection: 2 November 2017 <ul style="list-style-type: none"> Panel members in attendance: Jason Perica (Chair), Michael Leavey, Kara Krason, Clr John MacKenzie Department of Planning and Environment (DPE) staff in attendance: James Shelton Briefing meeting with Department of Planning and Environment (DPE): 2 November 2017 at 1:15 pm <ul style="list-style-type: none"> Panel members in attendance: Jason Perica (Chair), Michael Leavey, Kara Krason, Clr John MacKenzie DPE staff in attendance: Ben Holmes and James Shelton Briefing meeting with Council: 2 November 2017 at 2 pm <ul style="list-style-type: none"> Panel members in attendance: Jason Perica (Chair), Michael Leavey, Kara Krason, Clr John MacKenzie DPE staff in attendance: Ben Holmes and James Shelton Council representatives in attendance: Shannon Turkington, Patricia McCarthy Briefing meeting with Proponent: 2 November 2017 at 2:45 pm <ul style="list-style-type: none"> Panel members in attendance: Jason Perica (Chair), Michael Leavey, Kara Krason, John MacKenzie DPE staff in attendance: Ben Holmes and James Shelton Proponent representatives in attendance: Stephen Barr and Brett Stein |