

AMENDED ITEM



Item No: 2.1
Title: Planning Proposal Authority for rezoning proposals and SEPP Aboriginal Land
Department: Innovation and Futures

24 August 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14121285
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Summary

The purpose of this report is to consider whether Council should continue to maintain the role of Planning Proposal Authority (PPA) with respect to the following Planning Proposals on land owned by the Darkinjung Local Aboriginal Land Council (DLALC) at Wallarah, Lake Munmorah and Doyalson. Due to the current biodiversity status of these lands and the remaining gateway determination deadline to resolve outstanding planning matters, this report recommends that Council should not seek to retain the role of PPA for these proposals and that the Department of Planning, Industry and Environment (DPIE) be requested to instead appoint an alternate PPA.

Due to the complex biodiversity, threatened species and infrastructure issues which exist on these sites, progression of these planning proposals has been challenging and protracted for all parties involved. Given the importance of the MOU between Council and DLALC, it is considered that appointing an alternate PPA (such as DPIE or the Regional Planning Panel) would be beneficial to cushion this ongoing local relationship as distinct from the technical agency coordination required at a State Government level.

Recommendation

- 1 That Council request the Chief Executive Office to advise the Acting Group Deputy Secretary for the Department of Planning, Industry and Environment that it does not seek to retain the role of Planning Proposal Authority for the following Planning Proposals and that an alternate Planning Proposal Authority be appointed for the following proposals:**
 - a Lots 1, 2 and 3 DP 1156997 (380 Motorway Link Rd) Wallarah. RZ/14/2014 (PP_2016_CCOAS_005_01).**

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- b Lot 642 DP 1027231, Lot 644 DP 1027231 & Lot 100 DP 1044282, (405-415 Pacific Highway Lake Munmorah, 2 Kanangra Drive, Lake Munmorah and 425 Pacific Highway) Crangan Bay, RZ/12/2014 (PP_2015_WYONG_002_01).***
 - c Lots 107-111 DP 755245, Lots 191-193 DP 1032847 & part Lot 204 DP 1117900, (425 Bushells Ridge Rd, Bushells Ridge and 10 Wyee Road) Doyalson, RZ/4/2014 (PP_2016_WYONG_005_001)***
- 2 That Council request the Chief Executive Officer to arrange a meeting involving Council staff and the Department Planning, Industry and Environment to discuss:**
- a operational arrangements to transfer the planning proposals listed in Resolution 1 from Council to an alternate Planning Proposal Authority; and***
 - b planning proposal processes related to biodiversity certification and Strategic Conservation Planning for the Central Coast.***
- 3 That Council request the Chief Executive Officer to advise the applicant of the decision.**

Background

The Darkinjung Local Aboriginal Land Council (DLALC) lodged a multi-site rezoning proposal with the former Wyong Shire Council in June 2014. These proposals sought to facilitate residential and employment development and conservation outcomes on five sites in the northern part of the Central Coast. Due to the complexity of the multi-site rezoning proposal, Council separated the project into site specific proposals. Of these five original proposals, there are only three proposals remaining where Council is currently the Planning Proposal Authority (PPA). These are located on land at Wallarah, Lake Munmorah and Doyalson. These proposals are shown in Figure 1.

A PPA is responsible for the progression of the Planning Proposal, generally from seeking the Gateway Determination from the DPIE, through to plan making, inclusive of undertaking consultation with public agencies and the community.

The former Wyong Shire Council resolved to support the Wallarah Planning Proposal on the 13 May 2015 and a Gateway Determination was issued on 9 December 2016.

The former Wyong Shire Council resolved to support the Lake Munmorah Planning Proposal on 26 November 2014 and a Gateway Determination was issued on 19 February 2015.

The former Wyong Shire Council also resolved to support the rezoning of land at Doyalson but deferred any decision on Bushells Ridge. The proponent submitted a pre-Gateway review request for the rezoning proposal at Bushells Ridge and the proposal was referred to the Joint Regional Planning Panel (JRPP) for advice. The JRPP recommended that the proposal be

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submitted for a Gateway determination. Given the proximity of Bushells Ridge to the Doyalson, Council were advised to consider combining the sites into a single Planning Proposal. A proposal for the combined lands was issued a Gateway determination in April 2016. On 5 May 2020 the DLALC requested that the Bushells Ridge component be removed from the Planning Proposal, which has been undertaken.

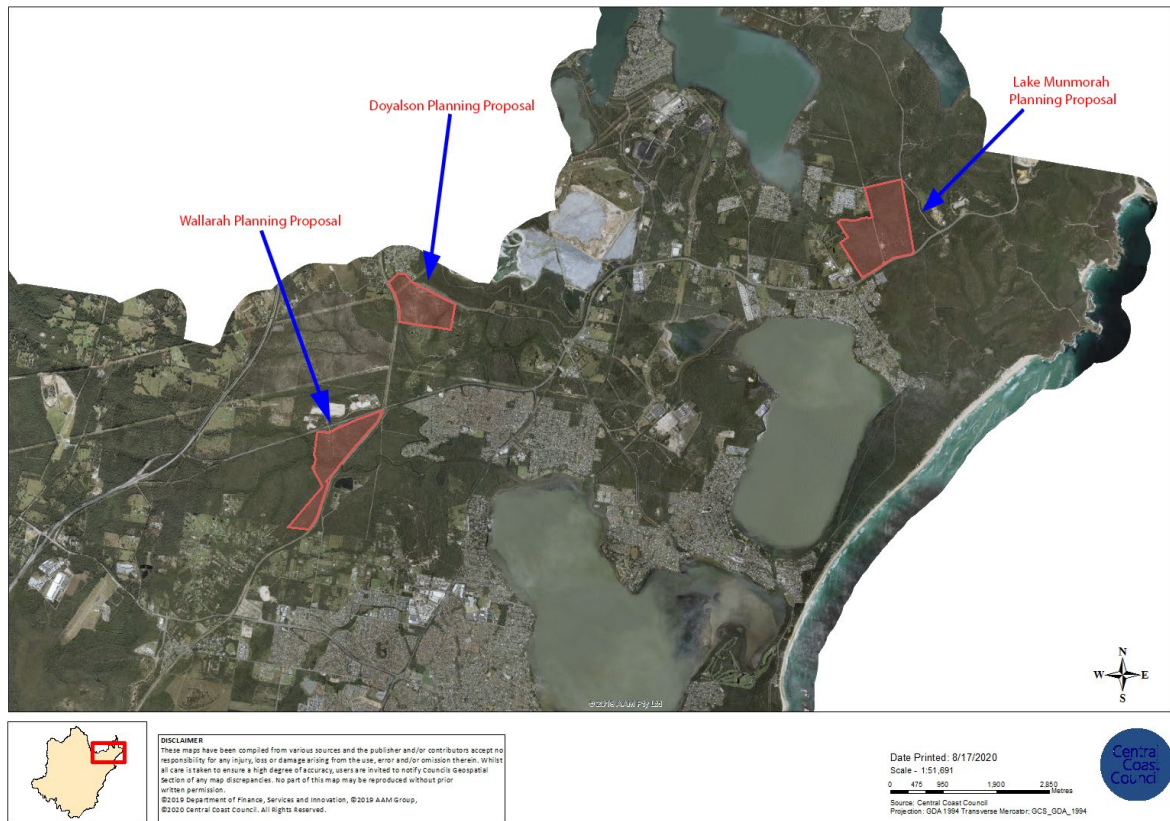


Figure 1. Locality map showing the location of land subject to DLALC Planning Proposals in northern Central Coast

In February 2019 the Department of Planning, Industry and Environment (DPIE) released a suite of planning mechanisms to enable improved governance, empowerment, strategic and more efficient land use for land holdings in the ownership of Local Aboriginal Land Councils (LALCs).

The suite of legislation includes alternative process pathways for Planning Proposal requests lodged by or on behalf of a LALC. Darkinjung LALC and the Central Coast were chosen as the pilot group for implementation of this legislation. The DPIE developed an Interim Development Delivery Plan (iDDP) specific to DLALC landholdings.

The iDDP is a strategic document that identifies the first stage of the Darkinjung development pipeline and is the first interim development delivery plan given effect under the Section 9.1 Ministerial Direction 5.11 Development of Aboriginal Land Council land.

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The iDDP is required to be considered when Planning Proposals are prepared by a PPA. The iDDP provides detailed guidance for sites identified through a land audit and rapid strategic assessment. By requiring Planning Proposals to consider the iDDP, it is intended that the first stage of the DLALC development pipeline will support economic and social opportunities for DLALC and its community. The iDDP approved by the DPIE is published on the Department's website.

The *Aboriginal Land Rights Act 1983* was passed by the NSW Parliament to establish a network of Aboriginal Land Councils to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of their ongoing disadvantage. The *Aboriginal Land Rights Act 1983* recognizes that land is of spiritual, social, cultural and economic importance to Aboriginal people.

In 2016, the NSW Parliament's Standing Committee on State Development Inquiry into Economic Development in Aboriginal Communities recommended that the planning system needed to better accommodate the aspirations of the *Aboriginal Land Rights Act 1983*. The Central Coast Regional Plan 2036 (CCRP) includes a direction to strengthen the economic self-determination of Aboriginal communities (Direction 6) to support implementation of the NSW Government plan for Aboriginal Affairs, Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE). The CCRP recognizes that encouraging Aboriginal people to gain economic benefit from their land will support broader regional development, biodiversity and social outcomes.

The iDDP nominates four sites within the Central Coast Local Government Area (LGA) which could utilise the planning mechanisms made available to LALCs:

- Site 1, Lot 642 DP 1027231 (405-415 Pacific Highway) Lake Munmorah, Lot 644 DP 1027231 (2 Kanangra Drive), Lake Munmorah and Lot 100 DP 1044282 (425 Pacific Highway) Crangan Bay
- Site 2, Lots 1-3 DP 1156997 (380 Motorway Link Road) Wallarah
- Site 3, Lot 481 DP 1184693 (250 Reeves Street) Somersby
- Site 4, Lot 512 DP 727686 (148 Woy Woy Road) Kariong

Proposals related to Wallarah and Lake Munmorah are identified within the iDDP whilst the Doyalson site is excluded. However, the Doyalson site is identified for future inclusion in a future approved DDP. It should also be noted that on 11 November 2019, Council resolved that it did not seek to be the PPA for the Planning Proposals on Site 3 - Somersby or Site 4 - Kariong.

The DLALC and Central Coast Council signed a Memorandum of Understanding (MOU) on 2 August 2018. The MOU signed between both parties agrees to the following:

- *Fostering effective, respectful two-way communication between Darkinjung LALC and Council;*

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- *Reconciliation between Aboriginal and non-Aboriginal peoples;*
- *Promoting and understanding of the custodial obligations, spiritual and cultural ties of Aboriginal people while also recognizing relevant legislation and statutory processes which Central Coast Council must comply with in respect to Darkinjung land;*
- *Establishing and empowering a joint indigenous co-ordination Committee comprising of the Darkinjung LALC Chairperson, Deputy Chairperson and Chief Executive Officer and two board members, Central Coast Council's Mayor, Deputy Mayor, two Councilors and Chief Executive Officer. The committee will coordinate joint projects and possible oversight of any issues associated with the agreement.*

Council received a letter from the Acting Group Deputy Secretary for the DPIE on the 28 July 2020 concerning the progression of rezoning proposals identified within the iDPP. This letter requested a response by Council within 21 days to confirm timeframes for the completion of these planning proposals.

On 14 August 2020, Council requested an extension of time to respond to the letter from the Department of Planning, Industry and Environment. The extension of time was granted to allow for the matter to be considered by Council on the 24 August 2020.

This report is to enable Councilors to consider whether to retain its role as a Planning Proposal Authority or to transfer the PPA role to the DPIE for the listed planning proposals. It should be noted that Council's Planning Proposal Authority powers are not affected for any other current or future Planning Proposals.

The Sites

Lake Munmorah Planning Proposal

This proposal is located on Lot 642 DP 1027231 (405-415 Pacific Highway) Lake Munmorah, Lot 644 DP 1027231 (2 Kanangra Drive), Lake Munmorah and Lot 100 DP 1044282 (425 Pacific Highway) Crangan Bay is shown in Figure 2.

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Figure 2: Lake Munmorah Planning Proposal

The primary frontage of the site is the Pacific Highway; however it also straddles Chain Valley Bay Road and has a secondary frontage on Kanangra Drive. The site ranges in height from approximately 54m AHD at the corner of Pacific Highway Kanangra Drive, sloping predominantly north-west to approximately 4m AHD along the valley floor occupied by Karignan Creek. Adjoining land with the south-west is occupied by St Brendan's School. Land opposite the site to the east (across Kanangra Drive) is in public ownership and predominantly vegetated land with some clearing evident.

Land directly south of the subject site (across the Pacific Highway) is zoned E1 National Parks and under the ownership and management of NSW National Parks and Wildlife Services. The site is currently zoned E3 Environmental Management and E2 Environmental Conservation under *Wyong Local Environmental Plan 2013* (WLEP 2013).

The objective of this proposal is to rezone part of the site to R2 Low Density Residential. Those areas not identified as having development potential are proposed to retain conservation zonings or be zoned for E2 Environmental Conservation. The intended outcome of the proposal is to enable future residential development of the subject site and protection of environmentally significant areas.

The Lake Munmorah Planning Proposal is being progressed towards public exhibition, however there have been delays in obtaining and assessing some supporting studies from the applicant, which has meant that some of the earlier project milestones have been delayed.

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There are still several matters which are required to be finalised before the plan can be publicly exhibited covering:

- Confirmation of matters to be included in State Voluntary Planning Agreement concerning Pacific Highway/Chain Valley Bay Road intersection upgrade.
- Planning Agreement covering local infrastructure with Council.
- Completion of Aboriginal Cultural Heritage Assessment (ACHA).
- Resolution of biodiversity matters and the response to the Regional Biodiversity Corridor traversing the site. The implications for impacting this corridor relate to both strategic outcomes in the North Wyong Shire Structure Plan, Central Coast Regional plan 2036 and the draft Great Lake Munmorah Structure Plan.
- Resolution of matters related to flooding and traffic studies.
- Development of a Site-Specific Development Control Plan.

Due to the need to complete these reports, undertake community consultation and report the matter back to Council, it will not be possible to finalise this project by the 30 September 2020 Gateway Determination deadline.

Wallarah Planning Proposal

This proposal is located on Lots 1-3 DP 1156997 (380 Motorway Link Road) Wallarah (see Figure 3) and comprises an area of approximately 87 hectares (ha). The site is located to the south-west of the Doyalson Link Road, north-west of the Sydney-Newcastle Railway, approximately three kilometres west of Blue Haven.

The site is accessed from the Link Road Motorway. The site adjoins Crown Land. Activities on land on the opposite side of the Link Road to the north are operated to manufacture bricks and tiles by Boral Montoro, and the Charmhaven Sewerage Treatment Plant is located to the east of the site.

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Figure 3 – Wallarah Planning Proposal Site

The subject sites are currently zoned RU6 Transition. The objective of this proposal is to rezone areas of the subject site identified as having capacity for future development potential from RU6 Transition to IN1 General Industrial (approximately 42 ha) and E2 Environmental Conservation (approximately 45 ha). The intended outcome of the proposal is to enable future industrial development of the subject site and protection of environmentally significant areas.

The Wallarah Planning Proposal was placed on public exhibition between 31 January and 28 February 2020. Following public exhibition, additional time was required to resolve an objection with Transport for NSW which was subsequently resolved on 22 July 2020. Council received the ACHA report on the 27 July 2020, which is in the process of being reviewed.

The original Gateway timeframe, which expired on 20 May 2020, has not been met. An extension to this timeframe has been sought which has not yet been granted. This gateway extension was sought to enable sufficient time to enable resolution of outstanding matters with the proposal and enable a report to be considered by Council on the results of the public exhibition process and determine whether or not the plan should be made.

Doyalson Planning Proposal (which formerly included Bushells Ridge component)

This proposal is located on land to the south of Bushells Ridge and Wye Road, directly south of Wye as shown in Figure 1. The site is approximately 60 hectares in area and is currently

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zoned RU6 – Transition and E2 Environmental Conservation under WLEP 2013. The rezoning originally included land at Bushells Ridge which has been removed from the current rezoning proposal as a result of a request from the applicant.

The objective of this proposal is to rezone land from RU6 – Transition and E2 Environmental Conservation to R2 Low Density Residential and B1 Neighbourhood Centre.

The majority of the supporting studies to advance this proposal have not been provided to date. The proposal will require resolution of several issues relating to biodiversity, threatened species, Aboriginal heritage, traffic, infrastructure, servicing and urban design (including relationship of this site to Wyee Village in Lake Macquarie City Council).

A Gateway extension for the subject proposal was issued on 7 January 2020 by DPIE which expires 2 May 2021. The proponent has requested the proposal be amended to apply only to the area known as Doyalson. Council has sought an amended Gateway determination from DPIE and is currently waiting for it to be issued.

Once an amended Gateway Determination has been issued the proponent will be required to undertake the required studies for the amended proposal. Due to the necessity to complete several outstanding studies relevant to the proposal, complete agency and community consultation, it is unlikely that the Planning Proposal will be completed by 2 May 2021 deadline.

Transfer of Planning Proposal Authority Role

Council have been working towards resolution of the key issues for the planning proposals outlined in this report since 2015. As the PPA, Council is responsible for ensuring that the studies and technical reports to support the proposal are completed to an appropriate level of adequacy, undertaking agency and community consultation and making any final recommendations to make these plans.

Consultation

If Council resolves to support an alternate PPA being appointed, Council will still be actively involved with these proposals in various roles. Council will be a key stakeholder for consultation and will have an opportunity to make submissions on these planning proposals. Additionally, Council staff would still be working closely with DPIE staff to provide expert advice on matters relating to these proposals. It is also expected that some of these proposals would still require site specific Development Control Plan Chapters and Planning Agreements to manage local infrastructure impacts, which Council would be responsible for completing.

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Financial Impact

Should Council continue to be the PPA, the progression of the proposals would be managed utilising existing staff resources. The costs of privately initiated planning proposals are recouped as part of Council's Fees and Charges.

Link to Community Strategic Plan

Theme 4: Responsible

Goal I: Balanced and sustainable development

R-13: 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.

Interim Local Strategic Planning Statement

The Interim Local Strategic Planning Statement (LSPS) was adopted by Council on 29 June 2020 and came into effect on 21 August 2020.

The Interim LSPS acknowledges the Darkinjung Delivery Framework and the development potential of the sites in the iDDP and *State Environmental Planning Policy (Aboriginal Land) 2019*.

In finalising the LSPS later in 2020, Council will be looking to further progress opportunities for genuine engagement, understanding and inclusion with Indigenous community stakeholders across the Central Coast to progress a range of outcomes, strategies and solutions. The specific LSPS actions and timeframes will be further developed in conjunction with Indigenous Communities.

Risk Management

In seeking to appoint an alternate PPA for the three planning proposals mentioned in this report, Council will be able to better manage its relationship with the DLALC and work towards achieving economic self-determination of Aboriginal peoples and the expectations and needs of the broader community vision and values.

Critical Dates or Timeframes

Council have been asked to respond to the DPIE letter dated 28 July 2020 within a 21-day timeframe, confirming timeframes for the Wallarah and Lake Munmorah Planning Proposals to be determined. An extension to this timeframe has been granted to respond to this matter following Council's request, to allow for Council consideration of this matter on 24 August 2020.

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If Council resolves not to determine the matter or resolves to retain the role of PPA for these proposals, Council staff will prepare a response to the DPIE letter outlining the reasons why the original Gateway Determination timeframes were not met and would provide updated project milestones. If DPIE was to accept this response, Council would continue to be the PPA and would continue to manage these proposals. As the PPA, Council would ultimately be required to consider a report on whether these plans should be made or not, after the plans have been publicly exhibited and community feedback considered.

Conclusion

Council has an opportunity to respond to DPIE and request an alternate PPA be appointed to complete the assessment of the Lake Munmorah, Wallarah and Doyalson Planning Proposals. In relinquishing this role for these sites, Council can focus on the principles outlined in the Memorandum of Understanding between DLALC and Central Coast Council.

It will also enable Council to advocate for technical agency coordination at the State Government level in seeking to resolve the complex biodiversity, threatened species and infrastructure issues which exist on these sites within the planning proposal processes.

Attachments

Nil