

Planning and Providing Our Infrastructure

Item: 13.08

Subject: PLANNING PROPOSAL TO REZONE LAND AT FERNBANK CREEK FOR TOURISM AND ENVIRONMENTAL MANAGEMENT

Presented by: Development & Environment, Matt Rogers

Alignment with Delivery Program

5.4.1 Plan settlements to accommodate a range of compatible land uses that meets projected population growth for new and existing developments.

RECOMMENDATION

That Council:

1. Endorse the draft Local Environmental Plan amendment as described in the report.
2. Take the necessary steps under Sections 58 and 59 of the Environmental Planning and Assessment Act 1979 to finalise Local Environmental Plan 2011 (Amendment No 24) as attached to the report.
3. Enter into the Hastings Estate and Koch Planning Agreement relating to Lot 1 Deposited Plan 222740, Lot 229 Deposited Plan 754434 and Lot 1 Deposited Plan 318920, Fernbank Creek Road, Fernbank Creek.
4. Write to those who made a submission to the proposal to thank them for their contribution and provide information on Council's decision.

Executive Summary

This report relates to the land at Fernbank Creek Road. It includes Cassegrain winery and adjoining land to the east (as shown below) and proposes that the land in question change from its existing rural zone to a Special Purpose (Tourist) zone and Environmental Protection zone.

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Following liaison with State Government agencies and ongoing negotiations with the proponents in relation to provision of infrastructure, minor changes have been made and the proposal has been exhibited. A copy of the Planning proposal as exhibited is included as Attachment 3.

A draft planning agreement has also been exhibited, which provides certainty in relation to the provision of water, sewer, road infrastructure and revegetation in conjunction with development of the subject land.

Three submissions have been received, one in support of the proposal, one expressing concern and one agency submission with no in-principle objection.

This report seeks approval to finalise the amendment under delegation.

Discussion

A proposal to undertake a grouped amendment to Port Macquarie-Hastings Local Environmental Plan (LEP) 2011 to rezone land at Fernbank Creek Road, Port Macquarie and Oxley Highway, Wauchope was considered and supported by Council in March 2012. Due to differences in status between investigations, the grouped amendment was separated in 2013 into two stand alone LEP amendments.

After considering the report at the Ordinary Council meeting held in March 2012, Council adopted a recommendation relating to rezoning of land at Fernbank Creek to permit tourism related development ancillary to the existing Cassegrain Winery

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operations. A copy of the Council Report and Minute is included as Attachments 1 and 2.

A copy of the Planning Proposal as exhibited is included as Attachment 2. It includes the following Appendices:

- Existing Map Sheets
- Site Identification Map
- Replacement Map Sheets in Draft
- Gateway Determination
- Government and Agency consultation responses
- Exhibited Draft Voluntary planning Agreement

Authorisation to proceed with an amendment to the Port Macquarie-Hastings LEP 2011 for the subject land was issued by the Department of Infrastructure and Planning on 20 May 2013. Consultation with the NSW Rural Fire Service (RFS), Office of Environment and Heritage (OEH) and Transport NSW - Roads and Maritime Services (RMS) was required.

The Office of Environment and Heritage and the Rural Fire Service have indicated no in-principle objection to the proposal. However, the initial concept drawings supporting the proposal have not been endorsed by the RFS due to inconsistency with asset protection zone (APZ) requirements for Special Fire Protection Purpose (SFPP) developments as required under *Planning for Bushfire Protection 2006*.

This information was communicated to the applicant and additional hazard assessment has been undertaken to demonstrate that the bushfire risk for future tourism development on the site is manageable. In this regard, all future applications for SFPP development will be required to comply with the requirements of Planning for Bushfire Protection 2006 and be supported by the RFS.

The details of the submission from the Office of Environment and Heritage are included in the summary of submissions for community engagement below.

Roads and Maritime Services have advised that the intersection of Fernbank Creek Road, Sancrox Road and the Pacific Highway is considered to have reached capacity and that in the interest of maintaining safety and efficiency of the classified road, RMS do not support any further potential for traffic generation and or demand for road related infrastructure prior to completion of the upgrade of the Pacific Highway to improve State and Regional Transport links.

The Planning Proposal (Attachment 3) was publicly exhibited for a period of 28 days minimum from 4 July 2014 to 4 August 2014 consistent with the Gateway Determination issued by the Minister. Website exhibition resulted in 159 unique visits. 70 visitors took action to gain more information and 51 people accessed or /downloaded documents including:

- the Planning Proposal
- Proponent submission,
- Flora and Fauna assessment
- Archaeological Assessment
- Acoustic Advice

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- Bushfire Hazard Assessment
- Stormwater Management.

A total of three (3) submissions have been received in response to public exhibition of the Planning Proposal; one written letter from a resident of Fernbank Creek Road expressing concern in relation to the status of Fernbank Creek Road, one written letter of support from consultants acting on behalf of the proponents and one agency response, which can be described as having no in-principle objection to the proposed rezoning. The submissions are summarised in the community engagement section of the report and copies are included as Attachments 4 - 6.

The issue raised in the letter of objection relates to the status of Fernbank Creek Road and concerns about increased traffic along Fernbank Creek Road as a result of an improved tourism facility.

As part of the planning proposal the landowners have offered to enter into a voluntary planning agreement with Council to restrict development of the land until the Pacific Highway deviation has been completed, or otherwise, until Sancrox Road intersection has been upgraded.

Public notice of the proposed Hastings Estate and Koch Planning Agreement between Council and Hastings Estate Pty Ltd and PJ & CJ Koch was provided in connection with the proposal. No submissions were received in relation to the planning agreement.

The Planning Agreement will provide for:

- Planting of koala food trees
- Payment of monetary development contributions
- Provision of water supply and sewerage services
- Upgrading of part of Fernbank Creek Road in conjunction with development of the land
- Intersection upgrade works prior to development of the land.

Council is required to comply with *A Guide to Preparing LEPs (Department of Planning 2009)* in finalising the proposal. In this respect, the Minister has delegated his plan making powers to Council in respect of the Planning Proposal and the plan is required to be finalised by 20 November 2014. It is recommended that Council take the necessary steps to finalise the Planning Proposal consistent with legislative and administrative requirements.

Options

Consistent with Section 58 of the Environmental Planning and Assessment Regulation 2000, after considering the submissions, Council may:

1. Approve the draft plan in the form it was publicly exhibited, or
2. Approve the draft plan with such alterations as the Council sees fit, or
3. Request the Minister to determine that the draft plan not proceed.

For the reasons described in the report it is recommended that Council approve the draft plan for finalisation.

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Community Engagement & Internal Consultation

As discussed above, the Planning Proposal and Planning Agreement have been publicly exhibited and 3 submissions have been received.

A comprehensive summary of submissions is detailed in the following table:-

Submission Public	Issue
<p>1. Arthur Wehlow Fernbank Creek Road, Fernbank Creek.</p>	<p>The author questions whether Council is concerned about the current status of Fernbank Creek Road and notes the increased level of traffic already evident when special functions or events are held at the winery. The submission goes on to express concern in relation to:</p> <ul style="list-style-type: none"> ○ the current status of unsealed sections of Fernbank Creek Road, noting parts of the road are hazardous and narrow and subject to inundation during flood events; ○ the inevitability of significantly more traffic in both directions along unsealed sections of Fernbank Creek Road as a consequence of an improved tourism facility, including a motel and RV Park; and ○ requests consideration of upgrading beyond the immediate frontage of properties to be developed having regard for the relatively small section of road that would remain unsealed following redevelopment;
<p>Response/Comment:</p>	<p>The concern to the proposal is noted.</p> <p>Staff have advised the author of the extent of new road works to be undertaken by the Roads and Maritime Services as part of the impending Pacific Highway duplication and Sancrox Interchange works and discussed Council’s road improvement requirements for any new or future tourism development within the precinct secured under the Draft Voluntary Planning Agreement with the landowners. In this respect, construction of Fernbank Creek Road along the full frontage of Hastings Estate land, including Lot 229 DP754434 and partial construction along the frontage of the Koch taking into account the level of development proposed on the Koch land is required.</p> <p>Completion of these works will not result in upgrading of the remaining .6km of unsealed road as it is unreasonable to require that the owner’s of the subject land undertake that work in conjunction with future development of the subject land. The upgrade</p>



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		of Fernbank Creek Road is a matter for consideration by Council in future works programmes, or otherwise in conjunction with any future development proposals for other land on Fernbank Creek Road.
Submission - Agency		Issue
2.	Office of Environment and Heritage (OEH)	<p>No in-principle objection. The Office advises that the exhibition documents have been reviewed consistent with the statutory responsibilities of the Office relating to biodiversity, Aboriginal and historic heritage, National Parks and Wildlife Estate, flooding and estuary management and the Gateway Determination issued by the Minister Planning and Environment. The following comments have been provided:</p> <ul style="list-style-type: none"> ○ As a consequence of the relatively undisturbed and mature condition of the tall open forest occurring on the site and proposed for E3 zoning, OEH considers that the vegetation can be characterised as Swamp Sclerophyll Forest on Coastal Floodplain Endangered Ecological Community (EEC). ○ OEH recommends application of zone E2 Environmental conservation instead of E3 Environmental Management with additional protection afforded to the EEC through a buffer or transition zone between the EEC and areas proposed to be zoned for tourism as indicated in preliminary consultation.
	Response/Comment:	<p>Noted .</p> <p>Initial planning included consideration of the application of zone <i>E2 Environmental Conservation</i> over the central vegetated drainage channel together with a transition zone to provide a buffer to the swamp forest. However, Council has subsequently identified zone <i>E3 Environmental Management</i> as the appropriate level of protection applicable to private land. Zone <i>E2 Environmental conservation</i> is reserved for land held in public tenure. The need for additional asset protection zones for special fire protection purpose developments will provide separation between tourism related development and swamp forest areas.</p>
3.	King and Campbell on behalf of Hastings Estate and P & C Koch	<p>Support on behalf of the landowners for:</p> <ul style="list-style-type: none"> ○ Rezoning of the land from <i>RU1 Primary production</i> to <i>SP3 Tourist and E3 Environmental Management</i> ○ Proposed <i>Lot Size and Height of Building</i> controls



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		<ul style="list-style-type: none"> ○ The Planning Agreement relating to the provision of Water Supply and Sewerage Services, Road works and Environmental Management Land.
	Response/Comment:	Support noted

Planning & Policy Implications

Council has been required to follow the procedures set out by the NSW government in preparing the Planning Proposal including *A Guideline for the preparation of local environmental plans* and *A Guide to preparing planning proposals*.

The Minister has delegated the plan making functions under section 59 of the EP&A Act to Council in respect of the planning proposal. Under the delegations, Council staff will carry out the necessary steps to finalise the draft amendment to the Map Sheets.

The landowner offer and Planning Agreement in relation to provision of water supply, sewerage services, road works, establishment of koala food trees, and arrangements for payment of water supply, road, sewer and open space contributions have been reviewed by Council's solicitors.

The Planning Agreement has been publicly notified in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 and no issues have been raised as a result of community engagement.

Financial & Economic Implications

The preparation of the plan has been undertaken by Council's Strategic Planning section in consultation with other sections of Council, State agencies and the NSW Department of Planning and Environment within existing operational budgets.

Fees consistent with Council's adopted fees and charges schedule have been paid in relation to the planning proposal. Requirements to service the site have been included in the Planning Agreement and there are no significant financial implications for Council as a result of the proposal.

The LEP amendment is expected to have a positive tourism impact by increasing localised cultural, food and wine tourism capability, creating additional destination and place making opportunities and generating ongoing economic effects around the existing winery in general.

Attachments

- 1 [View](#). Cassegrain Winery Ordinary Council Agenda Report_28032012
- 2 [View](#). Cassegrain Winery Ordinary Council Min_28032012
- 3 [View](#). Cassegrain Winery Planning Proposal Exhibition Version
- 4 [View](#). Cassegrain Winery_Submission Wehlow
- 5 [View](#). Cassegrain Winery Submission Office of Environment and Heritage
- 6 [View](#). Cassegrain Winery Submission King and Campbell on behalf of Client

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Mr John Ross OAM, Hastings Estate Pty Ltd, addressed Council in support of the recommendation and answered questions from Councillors.

Mr Scott Marchant, King and Campbell Pty Ltd, on behalf of the landowner, addressed Council in support of the recommendation.

RESOLVED: Turner/Sargeant

That Council:

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3. Enter into the Hastings Estate and Koch Planning Agreement relating to Lot 1 Deposited Plan 222740, Lot 229 Deposited Plan 754434 and Lot 1 Deposited Plan 318920, Fernbank Creek Road, Fernbank Creek.
4. Write to those who made a submission to the proposal to thank them for their contribution and provide information on Council's decision.

CARRIED: 9/0

*FOR: Besseling, Cusato, Griffiths, Hawkins, Intemann, Levido, Roberts, Sargeant
and Turner*

AGAINST: Nil