

## The City in its Broader Context

### 2 Biodiversity Conservation on the former AirServices land, Cranebrook

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**Requested By:** Councillor Prue Guillaume

**Strategic Program Term Achievement:** *Council's agreed strategies, where they relate to planning provisions, are implemented through the new Citywide Penrith Local Plan and Penrith Development Control Plan.*

**Critical Action:** *Develop the Citywide Penrith Local Plan and Development Control Plan by March 2009, as agreed with the Department of Planning.*

#### **Purpose:**

*Councillor Guillaume requested a report to Council on the progress on its resolution of 4 August 2008 and, in particular, efforts to lobby the State Government to acquire the site and Council's pursuit of an environmental conservation zoning. The report recommends the information be noted, and that optimum biodiversity outcomes through acquisition of the site are pursued.*

#### **Executive Summary**

- The former AirServices site was sold by the Federal Government to Infracorp Limited in late 2004. The initial rezoning application for this site was received in September 2006.
- A pilot study of the site, using draft bio-banking criteria, was undertaken during 2007, together with the Department of Environment and Climate Change.
- The Department of Planning undertook an assessment of the site, in the broader context of its potential role in the Metropolitan Development Program, between November 2007 and December 2008.
- In August 2008, Council resolved to pursue conservation of the site's unique assemblage of vegetation communities, through a number of actions. Those actions have all been progressed, and the status of each is outlined below.
- In February 2009 Council received advice from the Department of Planning that consideration of the proposed rezoning in the context of the Metropolitan Development Program would not be progressed, and that the matter was being referred to Council for consideration and inclusion in Stage 2 of the Local Plan (Penrith LEP 2010).

## Background

An application for rezoning was received in September 2006. The initial rezoning proposed approximately half the site for conservation and half for development, with rural-residential development of up to 180 dwellings, on lot sizes averaging 4000m<sup>2</sup>, but generally ranging from 1500m<sup>2</sup> to 8000m<sup>2</sup>.

Council's assessment of the rezoning application was subsequently deferred while the proponent participated in the Department of Environment and Climate Change (DECC) BioBanking Pilot Scheme. The Department of Planning (DoP) then advised that the proponent should also prepare a Sustainability Assessment so that the proposal could be considered by the Land Supply CEOs Group for consistency with the Metropolitan Development Program (MDP), prior to being permitted to proceed to the LEP preparation stage. The proposal was lodged with the Department of Planning in November 2007.

The proposal was subsequently referred to Council for assessment and comment. The proposal outlined in the Sustainability Assessment report had evolved significantly from the original scheme. Whilst the 90 hectares of conservation area was retained, the scale and intensity of residential development had greatly increased. The scheme included up to 740 dwellings, grouped into three precincts with lot sizes of 350m<sup>2</sup>, 350m<sup>2</sup>-600m<sup>2</sup> and 2000m<sup>2</sup>+

A response to the DoP regarding the proposal was considered at the Policy Review Committee meeting on 19 November 2007. The report recommended that in relation to this site:

- the residential densities now proposed for the site are inappropriate, and should be reviewed in the context of the role of this land as a 'transition' to the City's rural areas and the nature of surrounding development
- the conservation values of the site are no longer only tied to the extent of urban development, as more recent initiatives such as the Growth Sector Biodiversity funding have provided alternatives
- Council vigorously oppose any consideration of listing the site on the MDP, until all identified issues have been resolved
- Council oppose any declaration of the site's rezoning as a Part 3A matter.

At that meeting, in addition to receiving the report, Council resolved that:

1. For the reasons outlined in this report, Council request the Department of Planning not to proceed with the submission of the rezoning proposals for consideration by the Metropolitan Development Program Land Supply CEOs group
2. Council formally oppose the listing of the sites on the Metropolitan Development Program or their consideration as a Major Project under Part 3A of the Environmental Planning and Assessment Act
3. Council request further dialogue with the Department of Planning in relation to the process for securing rezonings outside of the existing Local Planning framework and statutory arrangements

The Minister for Planning advised Council in late February 2009 that the proposal would be held in abeyance and not be further considered for inclusion on the Metropolitan Development Program, and that the matter will be returned to Council for its consideration. The Minister advised that:

*“It has come to my attention that ... Council has more formally adopted a position in August 2008 whereby it will seek, in the first instance, to rezone the site for Environmental Conservation purposes and it will seek to lobby the State Government to purchase the site. As a result of Council’s resolution, I have requested that assessment of the Metropolitan Development Program proposal be held in abeyance.*

*Council should now proceed to determine a zoning outcome for the site as part of its Stage 2 Principal LEP preparation. If Council determines that a portion of the site should be zoned for urban purposes it will remain important that the Sustainability Criteria under the Metropolitan Strategy are addressed. If this is the case, Council should seek the Department of Planning to re-activate the current Metropolitan Development Program proposal, which addresses the Sustainability Criteria, for the purposes of assessing the merits of any proposed urban zoning on the site.”*

The landowner recently submitted a revised proposal which comprises:

- A variety of housing and employment opportunities, including 4-stages of aged care, cluster housing, and large lot housing, over a total area of 71.5ha (up to 428 dwellings).
- An increase in the area proposed to become a ‘Nature Reserve’ (a total of 100ha) for dedication to the Department of Environment and Climate Change (DECC), with provision of funds through the development for the establishment of the reserve
- Stormwater and flood mitigation treatment within 9.5ha of riparian zone land to achieve improved water quality treatment of upstream flows
- Conservation of a greater proportion of the threatened plants in a Cranebrook Nature Reserve.

Councillors have been previously advised of this proposal. As a formal rezoning application, Council officers must assess the proposal and make a recommendation to Council on whether or not the proposal should proceed. This process has to be managed in parallel with that of giving effect to Council’s policy position of pursuing the optimum biodiversity outcomes through acquisition for a Nature Reserve. The manner in which this has been conveyed to the landowner is described later in this report.

### **Biodiversity Conservation actions since August 2008**

At its Ordinary Meeting of 4 August 2008, Council considered a status report on Fernhill and the former AirServices (Infracorp IFC Capital) sites. Council resolved to receive the report, and endorsed four actions to achieve the biodiversity conservation of the site. The status of each action is outlined below.

2. *Council lobby the State Government to acquire the Infracorp site, and dedicate it as a Nature Reserve under the National Parks and Wildlife Act, to conserve its unique assemblage of vegetation communities.*

The Deputy Premier (and Minister for Climate Change and the Environment) was advised of Council’s resolutions regarding the site at the State Government’s Community Cabinet visit to Penrith in October 2008. The Deputy Premier and the Director General of DECC were provided copies of the Issue Paper, and were briefed by the (then) Director City Planning and Local Planning Manager on the matter.

Council’s Issues Paper emphasised that the State Government has an opportunity to work with the Federal Government to access the currently available \$15 million to create a Cumberland Conservation Corridor. This would require additional funds (at least \$7.5 million) from the State to acquire the site and dedicate it as a Nature Reserve.

Since that time Council's officers have had several discussions with DECC seeking progress on this matter. In addition, IFC Capital was requested by Council to enter into discussions with DECC over the possibility of all, or part, of their site being acquired for nature conservation purposes.

To pursue resolution of this aspect, Council officers met with the DoP and DECC officers on 30 March to discuss the options for achieving biodiversity conservation of the site through Stage 2 of the Local Plan (Penrith LEP 2010).

Following that meeting, Council formally wrote to DECC, advising that it proposes to zone the site *E1 National Parks and Nature Reserves*, which imposes an obligation on DECC to acquire the site. This zone cannot be applied unless the relevant State Government agency or Department agrees to acquire the site, so a formal response is required from DECC prior to exhibiting the draft Stage 2 Local Plan.

In terms of potential funding sources for acquisition, it is understood through discussion with Federal Government officers that there may be some potential for the \$15 million reserved by the Federal Government for the Cumberland Plain Woodland Corridor to be directed to this site. The local Member David Bradbury, has recently written to Council indicating his intention to advocate for the potential use of the Commonwealth's \$15 million for the Cumberland Plain Woodland Corridor.

3. *Council make a submission to the NSW Scientific Committee requesting that the vulnerable threatened species on the Infracorp site be listed as endangered populations under the Threatened Species Act.*

The submission to the NSW Scientific Committee requesting that the vulnerable threatened species on the site be listed as endangered populations under the Threatened Species Act requires the assistance of a flora consultant to prepare. Now that the proposal is no longer being considered by the DoP for inclusion on the Metropolitan Development Program, the selection and appointment of a consultant with the necessary expertise in the ecology of *Dillwynia tenuifolia* and *Grevillea juniperina* is underway, with quotes expected shortly.

4. *Council pursue options for a Zone E2 Environmental Conservation zoning for the site through Stage 2 of the Penrith Local Plan.*

Ultimately all lands in the City, including this site, must have a standard 'model LEP template' zone applied through the Penrith Local Plan process. To achieve the desired biodiversity outcomes, the most appropriate zone options are as follows:

- ***E1 National Parks and Nature Reserves*** – this zone applies to land that is currently a Nature Reserve or National Park, and also identifies land that is to be reserved under the National Parks and Wildlife Act 1974, to protect the environmental significance of that land.
- ***E2 Environmental Conservation*** – this zone applies to vegetation and wildlife corridors, riparian land and other environmentally sensitive areas. This zone allows only limited uses and does not usually apply fully to privately owned land.

As noted above, Council has formally asked for DECC's response to the proposed application of an *E1 National Parks and Nature Reserves* zone to the site. An E1 zone achieves conservation of the biodiversity across the whole site.

An alternative option, also raised by Council in its resolution, is the application of an E2 Environmental Conservation zone. This could be applied across the whole site, or to part of the site. Dwellings are not permitted in the E2 Environmental Conservation zone. Acquisition of the site is not required under the relevant legislation where an E2 zone is applied. Council officers are of the view that this zone should only be considered if the Federal and State Governments cannot, between them, agree on appropriate terms with the landowner about the site's acquisition.

IFC Capital has been advised that the revised site plans and proposal, submitted in March 2009, are not consistent with Council's adopted policy position regarding the site and cannot therefore be supported. The landowner has also been advised that if it wishes to pursue a rezoning for the site, any future proposal should respond to Council's resolutions of 4 August 2008, and align with Council's policy directions.

5. *Council seek, with the owners and appropriate authorities, urgent maintenance of the site to protect its unique ecological values, including a clean up of the site as soon as possible.*

IFC Capital has been pro-active in trying to prevent rubbish dumping on the site, by liaising with police and the RID squad, but without a constant on site presence it has been difficult to deter dumpers. Council officers were advised in February 2009 that the site clean up had been completed, and mounds created to limit access to the property.

## **Conclusion**

Council's resolutions of 4 August 2008, which aimed to achieve optimum biodiversity outcomes on the former AirServices site, have been advanced.

A formal response from the Department of Environment and Climate Change will provide a basis for applying either an *E1 National Parks and Nature Reserves* or *E2 Environmental Conservation* zone across the land. This land must be included in Stage 2 of the Local Plan, and preparation for this component of the draft Penrith LEP 2010 has commenced. As this process advances, Council will be advised of the outcomes of any further discussions with the landowner, and the State or Federal Governments, regarding this land.

Whilst there have been discussions with the relevant State and Federal Government departments, a formal meeting with their senior representatives is required to resolve the acquisition of the site.

## **RECOMMENDATION**

That:

1. The information contained in the report on Biodiversity Conservation on the former AirServices land, Cranebrook be received
2. Council write to the Department of Environment and Climate Change, requesting that it enter into urgent negotiations with the Federal Government to identify funds that may be directed to acquiring this site
3. Council seek an urgent meeting with senior representatives of relevant Departments in both the State and Federal Governments, to clarify their policy positions in relation to this site.