

City of Brisbane

City Council Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director and City Attorney via City Manager

SUBJECT: **Brisbane Baylands General Plan Amendment Case GP-1-18, Related Final EIR and Mitigation Monitoring and Reporting Program, and Ballot Measure Concerning the General Plan Amendment**

DATE: Meetings of July 12 and July 19, 2018

City Council Goals:

- To provide for effective and efficient delivery of City services. (#1)
- To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community. (#2)
- To maintain and improve infrastructure. (#3)
- To promote economic development that stabilizes and diversifies the tax base. (#4)
- To promote transportation opportunities that maximize safety, reliability, enhance circulation and create options, thereby reducing reliance on the use of the automobile. (#5)
- To develop recreational facilities and promote recreation, educational and cultural programs and passive uses related to parks.(#6)
- To develop plans and pursue opportunities to enhance open space. (#7)
- To develop plans and pursue opportunities to protect natural resources.(#8)
- To provide public service that assures the safety of property and citizens residing, working or visiting in Brisbane. (#9)
- To preserve and enhance livability and diversity of neighborhoods. (#14)
- To encourage community involvement and participation. (#15)

Purpose:

To consider following the close of the public hearing on July 19 the Baylands General Plan amendment and related final environmental impact report and provide direction to place the General Plan amendment (if approved by the City Council) on the November 2018 ballot for voter consideration.

Recommendation:

That the City Council on July 19, 2018:

1. Certify the Baylands Final Environmental Impact Report (FEIR) and adopting the Mitigation Monitoring and Reporting Program (MMRP) via adoption of Resolution# 2018-61;
2. Approve General Plan Amendment GP-1-18 and a statement of overriding considerations via adoption of Resolution #2018-62 and direct that the General Plan Amendment be put to the voters at the November 6, 2018 election; and
3. Adopt Resolution#2018-63 placing General Plan Amendment GP-1-18 on the November 6, 2018 ballot for voter consideration.

Background:

On June 7, 2018 the City Council held a public hearing on a proposed Baylands general plan amendment to allow for a range of 1800-2200 residential units and up to 4 million square feet of commercial development on the Baylands. The matter was continued to allow for concerns expressed at the public hearing and by the City Council to be further addressed. The proposed general plan amendment has been revised as discussed below in the discussion section of this staff report.

Discussion:

Tonight's hearing addresses the proposed general plan amendment, Baylands FEIR and proposed ballot measure language and these components are addressed below. Council will take no final action on these matters tonight. The public hearing will be continued to July 19 at which time City Council may take action on these items.

GENERAL PLAN AMENDMENT (GPA)

The proposed general plan amendment (GPA) allows for a range of 1800-2200 residential units and up to 6.5 million square feet (msf) of additional commercial square footage plus 500,000 square feet for hotel use. To implement this land use policy direction, amendments are proposed to the general plan text and land use diagram. The proposed GPA is included as Attachment A to this staff report.

Revisions from June 7 Proposal

Several revisions from the draft GPA presented at the June 7, 2018 are proposed, most notably an increase in the proposed amount of permitted new commercial square footage from 4 million square feet (msf) plus 500,000 square feet for hotel to 6.5 msf plus 500,000 square feet for hotel.

There were several factors that influenced this proposed revision. At the June 7 public hearing the question was raised as to how much commercial and residential development exists in the whole of Brisbane as compared to what is being considered for the Baylands. There are currently approximately 2,050 housing units in Brisbane and approximately 5.8 msf of commercial

development (excluding Recology and PG&E Martin Substation). An additional approximately 1.5 msf of commercial development is entitled but unbuilt.

Taking the current citywide ratio of commercial to residential development into account raised further concerns regarding the project's potential fiscal impacts to the City. While the previous fiscal impact study prepared for the Baylands by the City's consultants suggested that city revenues resulting from 4.5 msf of commercial development would slightly exceed city costs of providing services to and maintaining public facilities at the Baylands, the revenues associated with additional commercial development are seen as prudent in providing an additional fiscal buffer or hedge against the inevitable economic cycles that will occur over the life of any project built on the Baylands.

Lastly there was a concern that sufficient commercial development be permitted that would enable it to be distributed geographically (east/west) across the site in a balanced fashion. As a result of these considerations the general plan amendment now proposes 6.5 msf of new commercial development plus an additional 500,000 square feet for hotel use.

Another proposed change from the June 7 draft relates to newly proposed Baylands Mixed Use Land Use designation and the physical limits of where residential uses would be allowed/prohibited. Under the June 7 proposal, residential uses were permitted only in the northwesterly quadrant of the site bounded by Bayshore Boulevard on the west, San Francisco on the north, the rail line on the east, and future extension of Geneva Avenue on the south. Concerns were raised that limiting the physical footprint where residential development is permitted would result in tall buildings and intense scale of development not appropriate for this area. As a result, the area where residential development is permitted is proposed to be expanded southerly to the line of Main Street (extended). Residential development is still only permitted westerly of the rail line.

The question has been raised as to future residential building heights and forms of housing that might be developed in the future. As proposed, increasing the land acreage available for housing provides design flexibility and the opportunity to accommodate different housing product types and building heights. While final designs and building heights cannot be known with certainty at this time it is likely that overall development generally be 4-5 stories with the potential for some taller buildings (up to 6 stories) height north of the Geneva Avenue extension with the potential for some 3 story buildings south of the Geneva Avenue extension.

Additional opportunities may exist to reallocate density and units across the portion of the site where residential use would be permitted. For example, allowing taller buildings in portions of the site might allow for reduced density and lower buildings elsewhere. The actual form of future residential development will be dependent on a number of factors, such as future land dedications for schools, parks and open space. To the extent that these features reduce the amount of land available for residential development, project-specific densities and building heights are likely to increase. Residential unit size, street design and parking requirements also greatly influence project design and ultimately building heights. All these factors will be taken into account and addressed in the specific plan that will be subject to City review and approval in order to implement the general plan as amended.

Concerns were further expressed at the June 7 meeting that the newly proposed Baylands Mixed Use land use designation could be interpreted as permitting residential uses anywhere within this new designation, including the easterly side of the site. In response to this concern, the revised general plan land use diagram clearly specifies locations within the new mixed use designation where residential uses are permitted and where such uses are prohibited. The proposed general

plan text reiterates the same limitations on permitted/proposed locations for residential development. The City Attorney concurs that the proposed General Plan land use diagram and text provide clear, certain and legally defensible limits on both the amount and permissible location of future residential uses.

General Plan Land Use Diagram

Except for the revision discussed above, no substantial new changes are proposed from the June 7 version of the General Plan Land Use Diagram. Key components include deleting the Northeast Bayshore subarea and incorporating this area into the Baylands to allow for it to be planned comprehensively as part of the larger Baylands area. Another proposed revision is to adjust the boundary between the Beatty and Baylands subareas. Staff believes the future extension of Geneva Avenue is the logical boundary between these two subareas, and the land use diagram and text have been revised since the June 7 hearing to reflect more accurately this intent.

General Plan Text

Aside from creating the new Mixed Use land use designation and establishing the density/intensity of permitted residential and commercial uses as noted above, the proposed GPA includes a number of new policies which are intended to respond to community concerns that have been raised through the Baylands review process to date and ensure that these concerns are addressed in any forthcoming specific plan and development agreement submitted for city review and approval.

The broad topics addressed by the proposed policies are outlined below, and the policies are included in Attachment A.

Remediation

Ensuring that the site is safe for whatever land uses are ultimately approved is of paramount concern. As has been discussed through the public hearing process to date, regulatory authority over site remediation and landfill closure lies with a number of state and county agencies, not the City of Brisbane. While the City is committed to actively participating in the analysis and review of remediation and landfill closure plans, the GPA also sets forth a number of remediation-related policies that will need to be met before the site is developed, including a requirement that all soil materials to be moved or exported from the landfill site be tested prior to issuance of a grading permit. The GPA further requires that landfill closure plans and remedial action plans for the entire site be approved prior to submittal of the required specific plan so the City and community have the opportunity to fully understand how the site will be remediated before the specific plan is considered.

The GPA further requires that a specific schedule for remediation and landfill closure be submitted, along with specific measures to provide the city with the authority to enforce the approved remediation and landfill closure schedule. Other provisions require the developer to demonstrate sufficient financial assurances to ensure the ongoing performance and effectiveness of remediation/landfill closure over time following development approvals.

The GPA also includes a provision specifying that all residential development be designed and remediated to accommodate ground level residential uses and ground level residential-supportive uses such as daycare, parks, playgrounds, and medical facilities. The intent of this requirement is to ensure that both residences and the related support uses necessary to establish a complete community can be safely established at ground level. It is the City's desire to avoid a situation

wherein residential and related uses are restricted to the upper floors of buildings because the sites have not been remediated to a level to safely allow for ground level residential use.

Note that the recommended policy ties the level of cleanup to proposed land use. While areas proposed for residential and residential uses require ground-level residential standard of cleanup, commercial areas may be subject to a different level of cleanup due to the reduced amount of time people are present within commercial areas as compared to residential areas. For example a risk-based remediation standard would require that additional cancer risk for residential and residential supportive uses resulting from contamination cannot exceed one in one million, while commercial standards specify the increased risk not to exceed one in one-hundred thousand. The question has been raised as to why the city cannot impose a residential remediation standard over the entire site irrespective of permitted land use. The City cannot because remediation standards used by the regulatory agencies with authority over remediation are based on land use, and the city does not have the legal authority to impose remediation standards that exceed those required by the state regulatory agencies.

Services/Infrastructure/Facilities

The GPA contains a policy specifying that the city shall approve as part of a specific plan a phasing plan for project infrastructure, facilities and amenities to ensure that the construction of infrastructure and facilities keeps pace with the needs created by development, and that city controls the timing of providing broader community amenities required of the project. The policy further specified that it is the developer's responsibility (not the City's) to pay for all infrastructure and facilities associated with the development.

Fiscal

The GPA specifies that the Baylands development shall be revenue positive to the City of Brisbane during all phases of construction and at project buildout.

Environmental Considerations

A number of proposed GPA policies address issues of environmental concern to the community. These include requirements that a secure water supply to be obtained, key habitats and cultural resources be protected and enhanced, flooding and sea level rise issues be addressed, the project achieve zero net energy or better, and that sustainability principles be incorporated into the forthcoming specific plan.

Project Implementation

As mentioned earlier the GPA requires that a single specific plan and development agreement be prepared for the entire Baylands subarea. The purpose of this requirement is to ensure that future development of the site is understood and evaluated in a comprehensive manner, not in a piecemeal or incomplete fashion. A single specific plan also provides the city with the opportunity to ensure that the project phasing meets the community's needs in regard to timing, development mix (i.e., residential and commercial), geographic distribution of development, and provision of community benefits, among others.

It should further be noted the policy direction established by the General Plan represents only the starting point for the subsequent specific plan required to implement this GPA. This GPA by necessity focuses on broad policy objectives and does not attempt to define how each objective will be implemented at the specific plan or project level. Any specific plan will by necessity be a much finer-grained and detailed planning effort, and as part of that effort the community and City Council will be able to much more definitively establish the manner in which these policy objectives will be achieved.

For example, while the GPA requires the specific plan incorporate a phasing plan it does not prescribe what the actual phasing will be. Since the phasing plan will be part of the specific plan, specific requirements for project phasing can be incorporated into the specific plan. If it is the City Council's direction for commercial development to start in the northern area of the site to maximize transportation opportunities or if the Council wants to direct that that most of the commercial development to occur east of the rail line, these requirements can be incorporated into the specific plan.

The City Council could also require as part of the specific plan that residential uses be located within reasonable walking distance to public amenities such as parks, schools, and open space, and that residential uses be connected to an efficient public transportation system to reduce the need for automobiles.

In regard to housing, while the GPA establishes a range of residential units, it does not specify or prescribe forms of housing. If the City wants to require a workforce housing component, that can be accomplished as part of the specific plan as well .

BAYLANDS FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) AND MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

In order for the City Council to approve GP-1-18 the City Council must make the following findings pursuant to the California Environmental Quality Act (CEQA):

1. The Brisbane Baylands Final EIR, which includes the Draft EIR, revisions to the Draft EIR based on comments and responses to comment on the Draft EIR, and a Mitigation Monitoring and Reporting Program reflecting the Baylands General Plan Amendment have been completed in compliance with CEQA;
2. The Final EIR was presented to the City Council and the City Council has reviewed and considered the information contained in the Final EIR prior to considering its approval of the Baylands General Plan Amendment;
3. The Final EIR reflects the Brisbane City Council's independent judgment and analysis.

Attached Resolution # 2018-61 incorporates the findings required by law. It further elaborates on the lengthy EIR review process and hearings before the Planning Commission and City Council leading to the July 19 hearing and EIR conclusions and findings as they pertain to GP-1-18.

While the land use program of 1800-2200 residential units and 6.5 msf of new commercial development plus 500,000 square feet of hotel was not a specific land use variant or defined project alternative identified in the Baylands FEIR, the land uses and residential and commercial development intensity contemplated by the Baylands General Plan Amendment are within the range of other project variants and alternatives analyzed in the Final EIR. As set forth in Resolution #2018-61, the environmental impacts of the proposed GPA are less than those of the Developer- Sponsored Plan (DSP) scenario evaluated in the Baylands FEIR.

Resolution #2018-61 also incorporates a Mitigation Monitoring and Reporting Program (MMRP) as required pursuant to Section 21081.6 of the *California Public Resources Code* and Sections 15091(d) and 15097 of the *State CEQA Guidelines*. The purpose of the MMRP is to ensure that required mitigation measures are implemented. The MMRP includes the following information:

- **Significant Impact Being Mitigated:** Identifies the nature of the impact addressed in the mitigation measure, and the proposed development scenarios determined to have a significant impact for which implementation of the mitigation measure is required.
- **Mitigation Measure:** Provides full text of the mitigation measure as provided in the Final EIR.
- **Responsibility for Implementation:** Designates the party responsible for implementation of the mitigation measure.
- **Compliance Verification:** Identifies the party at the City responsible for determining compliance with the mitigation measure, and for signing off on its completion.
- **Monitoring Responsibility/Frequency:** Designates the party responsible for monitoring implementation activities, including procedures for documenting and reporting mitigation implementation.
- **Required Documentation:** Defines what documentation will be required to demonstrate/verify the mitigation measure has been successfully implemented.

Overriding Findings of Consideration

As noted in Resolution #2018-61, the Final EIR has identified and discussed significant environmental effects that will occur as a result of GP-1-18. With implementation of the mitigation measures discussed in the EIR, these effects can be mitigated to levels considered less than significant except for significant, unavoidable adverse impacts in relation to aesthetics, air quality, biological resources, noise, population, traffic, and utilities and service systems.

CEQA Section 21081 provides that no public agency shall approve a project for which an EIR has been certified which identifies one of more significant effects on the environment that would occur if the project were carried out unless the agency makes findings that “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.”

The statement of overriding considerations for GP-1-18 is included in Resolution #2018-62. As outlined in the draft resolution, benefits associated with GP-1-18 include the elimination of the existing soil processing operations and related dust, noise, truck traffic, and visual blight, and the creation of a path forward to achieve site remediation and capping of the former landfill in accordance with current standards. Approval of GP-1-18 will further support regional goals to promote housing production in an area with a severe housing shortage and will provide 1800-2200 housing units in a county which has historically under-produced housing. Approval of GP-1-18 will also provide opportunities for wildlife habitat preservation and enhancement, and to achieve restoration of the Railyard Roundhouse, a National Register Historic Landmark and Brisbane cultural resource.

EIR Limitations

It must be recognized that the action to certify the Baylands Final EIR is relevant only to the approval of GP-1-18. Certification of the Final EIR for purposes of approving GP-1-18 does not mean the Final EIR can be used as the sole basis for any other planning approvals. For example the Final EIR clearly identifies studies and actions by other agencies that must precede adoption of any specific plan for the Baylands. Assuming that GP1-18 is approved and a specific plan is subsequently submitted to implement the amended general plan, the proposed specific plan will be the subject of its own environmental review. While a certified Final EIR for GP-1-18 will provide

useful baseline environmental information, it is inconceivable this Final EIR would sufficiently address the environmental impacts of any forthcoming specific plan so as to avoid preparation of a new EIR for the specific plan.

BALLOT MEASURE

Both previous and current City Council members have indicated that they believe Brisbane voters should have the opportunity to vote on a land use proposal for the Baylands that changes the existing land uses currently permitted in the General Plan.

If the City Council adopts Resolution No. 2018-62 concerning the General Plan Amendment, that resolution, in part, provides that the Amendment will not be effective unless the voters approve the Amendment at the November 6, 2018 election. The proposed ballot question that would be presented to the voters would read:

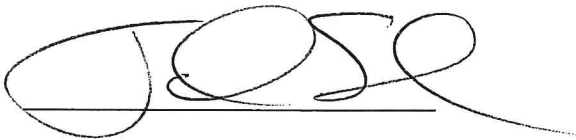
Shall Brisbane's General Plan be amended to permit within the Baylands a range of 1800 to 2200 residences north of an extension of Main Street, and up to 7 million square feet of new commercial development, subject to these restrictions to protect Brisbane: land for housing must be certified safe for ground-level residential use; landfill must be permanently, safely capped; and development must abide by Brisbane's Sustainability Framework principles and produce net positive City revenues?

The General Plan Amendment itself, along with arguments for and against, would be included in the voter pamphlet.

If the voters approve the Amendment, those provisions could not be amended or repealed without a further vote.

Attachments:

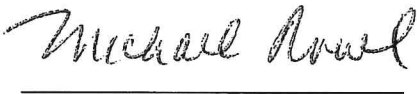
- A. GPA-1-18 Proposed General Plan Text and Land Use Diagram Amendments
- B. Draft Resolution #2018-61 (CEQA findings And MMRP)
- C. Draft Resolution #2018-62 (GPA and Overriding Findings of Consideration)



John Swiecki, Community Development Director



Clay Holstine, City Manager



Michael Roush, City Attorney