

## **8.8 Draft Planning Proposal - 194 Campbelltown Road Denham Court (App No. 24/2018)**

### **Reporting Officer**

Director City Development  
City Development

### **Community Strategic Plan**

| <b>Objective</b>                  | <b>Strategy</b>   |
|-----------------------------------|---|
| 4 Outcome Four: A Successful City | 4.3 - Responsibly manage growth and development, with respect for the environment, heritage and character of our city |

### **Officer's Recommendation**

That Council not support the Planning Proposal request (Application No. 24/2018) to amend the Schedule 1 'additional permitted uses' provisions of Campbelltown Local Environmental Plan 2015 for 194 Campbelltown Road, Denham Court.

### **Executive Summary**

This report relates to a site at 194 Campbelltown Road, Campbelltown which is adjacent to the northbound exit ramp from the M31 Hume Motorway to Campbelltown Road, Denham Court. The site is in an Environmental Living Zone.

Council has previously supported a service station for this site by amending the LEP. This support did not include long vehicles over 7.5 metres in length. Development consent has been issued for a service station consistent with this restriction.

A planning proposal request has now been received to remove the restriction for long vehicles. There are concerns with the use of this site by vehicles over 7.5 metres and it is recommended that Council not support the request.

### **Purpose**

The purpose of the report is to consider a Planning Proposal Request (the Request) to amend the Schedule 1 'additional permitted uses' provisions of Campbelltown Local Environmental Plan 2015 for 194 Campbelltown Road, Denham Court, so as to permit truck access and parking for a service station on the land.

### **History**

The subject site is located at the junction of Campbelltown Road and the Hume Motorway exit ramp at Denham Court, and is zoned E4 Environmental Living under Campbelltown Local Environmental Plan 2015 (CLEP 2015). Service stations are prohibited in the E4 Environmental Living Zone under CLEP 2015.

At its meeting of 17 March 2015 Council supported a planning proposal request for the amendment of Campbelltown (Urban Area) LEP 2002 to permit a service station as an additional permitted use on the subject land, subject to a restriction to deny access to long vehicles over 7.5 metres in length. Campbelltown (Urban Area) LEP 2002 was amended to this effect on 22 May 2015, and the subject clause enabling a service station on the site (without truck access) has been carried over to Schedule 1 of the prevailing instrument CLEP 2015 as follows:

#### **Schedule 1 Additional permitted uses**

##### **17 Use of certain land at 194 Campbelltown Road, Denham Court**

- (1) This clause applies to land at 194 Campbelltown Road, Denham Court, being Lots 73 and 74, DP 22711.
- (2) Development for the purpose of a service station is permitted with development consent, if the service station:
  - (a) does not include a diesel or gas fuelling point for long vehicles (within the meaning of rule 200 of the Road Rules 2014), and
  - (b) is not designed or constructed to be used by such long vehicles, and
  - (c) is designed and constructed to be used by heavy vehicles (within the meaning of the Road Rules 2014) only for the purpose of fuelling, and
  - (d) is not able to be accessed from a freeway.

On 23 November 2017, Council approved Development Application 3253/2015 for a service station development on the site, described as demolition of an existing dwelling and associated structures, removal of trees, construction and operation of a 24 hour service station with ancillary sales of convenience food, car wash, vehicle repair workshop, associated civil and landscaping works. The development consent excluded access for trucks and long vehicles in accordance with the abovementioned additional permitted uses clause.

On 26 July 2018, a construction certificate was issued by a private certifier for the approved service station development. The proponent has undertaken demolition and civil works on the subject land.

On 26 September 2018, the Local Planning Panel considered the subject planning proposal and provided comments as outlined in the body of this report. In response to the comments of the Panel, the proponent submitted a separate S4.55 application on 11 October 2018 to modify Development Application 3253/2015. The modification application is being separately assessed.

## Report

### Site Description

The subject site has an area of 1.241 hectares and is located at the junction of Campbelltown Road and the Hume Motorway exit ramp at Denham Court. The site is surrounded by Campbelltown Road to the west, the Hume Motorway to the east and south, and the Denham Court exit off-ramp from the Hume Motorway to the north.

The subject land is vacant, with bulk earthworks and site benching commenced by the proponent. A construction certificate has been issued by a private certifier for the service station development (DA 3253/2015).



Location Image - 194 Campbelltown Road, Denham Court

### CLEP 2015 - Relevant Provisions

The main provisions of CLEP 2015 that are relevant to the assessment of the subject planning proposal are discussed below.

- **E4 Environmental Living Zone**

The site is zoned E4 Environmental Living under Campbelltown Local Environmental Plan 2015 (CLEP 2015). The objectives of the zone are:

- to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values
- to ensure that residential development does not have an adverse effect on those values
- to conserve the rural and bushland character of land that forms the scenic eastern edge of Campbelltown's urban area
- to protect and enhance areas of scenic value and the visual amenity of prominent ridgelines
- to maintain significant stands of native vegetation and wildlife and riparian corridors
- to ensure the preservation and maintenance of environmentally significant and environmentally sensitive land

CLEP 2015 prohibits a number of land uses within the E4 Environmental Living Zone, including service stations defined as follows:

**service station** means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles
- (b) the cleaning of motor vehicles
- (c) installation of accessories
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration)
- (e) the ancillary retail selling or hiring of general merchandise or services or both

- **Additional Permitted Uses for Particular Land - Clause 2.5**

Clauses 2.5 of CLEP 2015 permits additional land uses for particular sites, over and above those uses identified within the relevant zoning table. Additional permitted uses for nominated sites are identified under Schedule 1 of CLEP 2015.

The subject land is identified under Schedule 1 of CLEP 2015 as follows:

**17 Use of certain land at 194 Campbelltown Road, Denham Court**

- (1) This clause applies to land at 194 Campbelltown Road, Denham Court, being Lots 73 and 74, DP 22711.

- (2) Development for the purpose of a service station is permitted with development consent, if the service station:
- (a) does not include a diesel or gas fuelling point for long vehicles (within the meaning of rule 200 of the Road Rules 2014), and
  - (b) is not designed or constructed to be used by such long vehicles, and
  - (c) is designed and constructed to be used by heavy vehicles (within the meaning of the Road Rules 2014) only for the purpose of fuelling, and
  - (d) is not able to be accessed from a freeway.

### **Description of Planning Proposal Request**

The Planning Proposal Request (the Request) is attached to this report and comprises the following documentation:

1. Submission to Campbelltown City Council - Planning Proposal Request (Amended) - Removal of Restrictions. Land situated at Lot 100 DP 1176622 No 194 Campbelltown Road, Denham Court. Michael Brown Planning Strategies, dated June 2018
2. 'Acoustic DA Assessment' Report – Acouras Consultancy dated 25/06/2018
3. 'Traffic Report for Proposed LEP Amendment for Service Station Site' – Colston Budd Rogers & Kafes Pty Ltd. Dated April 2018 ref: 10909

The Request seeks to amend of the additional permitted uses clause for the subject land under CLEP 2015, by removing the restrictions relating to long vehicles (trucks) accessing a service station on the subject land. In this respect, the proponent has requested that the Schedule 1 clause that permits a 'service station' on the land be amended to read as follows:

### **17 Use of certain land at 194 Campbelltown Road, Denham Court**

- (1) This clause applies to land at 194 Campbelltown Road, Denham Court, being Lots 73 and 74, DP 22711.
- (2) Development for the purpose of a service station is permitted with development consent, if the service station is not able to be accessed from a freeway.

Should the abovementioned restriction on truck access be removed from the LEP amendment, the proponent has advised that their intention is to expand the use of the approved service station (DA 3253/2015) to provide access for truck refuelling and parking activities.

### **Planning Assessment**

#### **• Reasons for Truck Parking Restrictions**

At its meeting of 17 March 2015 Council supported a planning proposal request for the amendment of Campbelltown (Urban Area) LEP 2002 to permit a service station as an additional permitted use on the subject land, subject to a restriction to deny access to long vehicles (trucks) over 7.5 metres in length. Campbelltown (Urban Area) LEP 2002 was

amended to this effect on 22 May 2015, and the subject clause enabling a service station on the site (without truck access) has been carried over to Schedule 1 of the prevailing instrument CLEP 2015.

The decision by Council at its meeting of 17 March 2015 to only support an LEP amendment to permit a service station without truck access followed consideration of traffic and acoustic reports lodged by the proponent at that time which, similar to the current planning proposal, advised truck access could be provided to a service station on the site without causing adverse impacts.

The reasons stated in the Council report of 17 March 2015 to only support an additional permitted use on the site for a service station without truck access are summarised as follows:

- potential to unnecessarily increase the volume of 'passing by' heavy vehicle traffic on the surrounding local roads
- potential increase in road maintenance costs
- increased noise and air pollution
- potential for traffic congestion on both Campbelltown Road and the Hume Motorway associated with trucks queuing for access to the service station site
- potential land use conflict with adjoining rural-residential development and inconsistencies with the objective of the E4 Environmental Living zone
- adverse impacts on the aesthetic and scenic values of the locality

For the above reasons, Council did not assent to the applicant's position and sought legal advice on a mechanism to ensure that a service station at this location would not be utilised by heavy vehicles. The legal advice suggested the inclusion of a prohibition clause similar to that presently included in CLEP 2015.

It is apparent that Council's decision to introduce a land use type which would normally be prohibited had strong regard to the potential land use conflict with adjoining rural-residential development and inconsistencies with the objectives of the E4 Environmental Living zone. As such, there was a clear position made to only permit a limited service station with restricted heavy and long vehicle movements. Accordingly, it is considered that the abovementioned reasons for Council's decision in 2015 to deny truck access for a service station on the site remain valid considerations for the assessment of the current Planning Proposal Request.

### **Campbelltown Local Planning Panel Comments**

A report on the Planning Proposal Request was considered by the Campbelltown Local Planning Panel (the Panel) at its meeting on 26 September 2018. Following its detailed consideration of the proposal, including representation by the proponent at the meeting, the Panel provided the following comments:

- **Panel Considerations and Reasons for Decision**

The panel considered the officers report and inspected the site and was concerned that the original reasons for restricting truck access to the proposed service station were matters that ought to be dealt with at Development Applications stage. The views of the RMS on the removal of the long vehicles restriction imposed in the LEP ought to have been sought prior to approaching Council and the inspection of the site revealed what appeared to be large amounts of fill at a level that appeared to be inconsistent with easy access from Campbelltown Road.

- **Advice of the Panel**

This matter would be best dealt with by utilisation of the provisions of section 3.38 of the *Environmental Planning and Assessment Act, 1979* which provides for a development application to be submitted and assessed concurrently with a planning proposal. The Panel advises Council that it should invite a development application from the applicant in respect of the matter and that the application should be accompanied by a traffic study assessing the suitability of the proposed long vehicle movements and access and egress arrangements.

- **Deferral Issues**

The applicant has been invited to address a number of issues and concerns relating to the proposal, including consideration of the comments provided by the Panel. The response by the applicant to these issues is outlined below.

**Council Resolution 17 March 2015**

As noted above, the Council report of 17 March 2015 states that the reasons behind Council's decision to restrict the provision of refuelling services to heavy vehicles, includes: impacts of additional volumes of heavy traffic on local roads, road maintenance issues, potential traffic congestion from trucks queuing, increased noise and air pollution, inconsistency with objective of zone and potential land use conflict with adjoining rural-residential development.

A copy of the formal response by the applicant to the issues discussed in the Council report of 17 March 2015 is provided at attachment 3.

The general position stated by the applicant is that the issue of heavy vehicles accessing the service station safely is addressed by the RMS approval. Further, the applicant relies upon their traffic consultant's report which states that the proposal would not adversely impact upon the local road network given a predicted additional traffic generation of five to ten trucks per hour at peak times.

The response of the applicant regarding a RMS approval is not accurate as it is a reference to the concurrence of the RMS to the service station plans approved by Council under DA 3253/2015, which did not provide for truck access (vehicles over 7.5 metres long or over 4.5 tonnes GVM). Accordingly, there is no RMS approval for the subject planning proposal and/or a service station design with unrestricted truck access.

The applicant also relies upon statements made in their traffic report (April 2018) to address the concerns of additional heavy traffic volumes on local roads. A main shortcoming of the traffic report is that there are no traffic counts or traffic analysis provided in the report to support the claims that the predicted impacts of five to ten additional vehicles per hour would have no noticeable effects on the operation of the surrounding network.

**Local Planning Panel**

The comments of the Local Planning Panel have been put to the applicant and are considered to be generally unresolved given that no advice from the RMS has been provided, no development application has been lodged for a concurrent assessment under section 3.38 of the *Environmental Planning and Assessment Act 1979*, and the traffic study has not been updated to respond to the issues raised by the Panel.



Notwithstanding, the applicant has responded to the comments of the Panel by submitting a S4.55 application to modify the existing DA approval (DA 3253/2015) for the service station. Whilst this application will be subject to a separate assessment, it is noted that the lodgement of a S4.55 application does not constitute a development application under the *Environmental Planning and Assessment Act 1979* and therefore does not allow for the concurrent assessment under section 3.38 of the Act as requested by the Panel.

### **Conclusion**

The subject site has an area of 1.241 hectares and is located at the junction of Campbelltown Road and the Hume Motorway exit ramp at Denham Court. The land is zoned E4 Environmental Living under the provisions of CLEP 2015.

At its meeting of 17 March 2015 Council supported a proposal to amend the Campbelltown LEP to permit a service station on the site as an additional permitted use, comprising a land use which would in normal circumstances be prohibited in the zone. Council's decision was subject to a restriction that any service station would not accommodate long vehicles (trucks) over 7.5 metres in length. Campbelltown (Urban Area) LEP 2002 was amended to this effect and the additional permitted uses clause for the site has been carried over to the prevailing instrument CLEP 2015.

The reasons behind Council's decision to restrict the provision of refuelling services to heavy vehicles for a service station on the site related to a number of concerns, including impacts of additional volumes of heavy traffic on local roads, road maintenance issues, potential traffic congestion from trucks queuing, increased noise and air pollution, inconsistencies with the objectives of E4 zone, and potential land use conflict with adjoining rural-residential development.

The current proposal requests the amendment of the additional permitted uses clause under CLEP 2015 to remove the restriction on long vehicles (trucks) accessing a service station on the land. A number of concerns have been raised with the applicant regarding the suitability of the proposal, including the reasons outlined by Council in the report of 17 March 2015, and comments provided by the Campbelltown Local Planning Panel.

The information provided by the applicant in response to these concerns is considered to be insufficient for Council to justify altering its position to restrict truck access to a service station on the site. Accordingly, it is considered that there is insufficient merit for Council to support the Planning Proposal Request as submitted by the applicant.

### **Attachments**

1. Planning Proposal Request (distributed under separate cover)
2. Extract from Council Report 17 March 2015 (contained within this report)
3. Applicants response letter 25 July 2018 (contained within this report)
4. Extract from Campbelltown Local Planning Panel Minutes 26 September 2018 (contained within this report)