

Planning & Development.

MinuteNumber:

Council Meeting Date:

Report Number: SD300112

Director City Strategy & Development Author: O'Dwyer K., Taylor T.

ITEM: <#>

SUBJECT:

SD300112 - Proposed amendment to Clause 41A of the Blacktown Local Environmental Plan 1988 to permit the development of a service station at 291-293 Rooty Hill Road North, Plumpton.

DIVISION REQUIRED: ☐ Yes

FILE NUMBER: RZ-10-2224

BLACKTOWN CITY 2025 VISION

Strategy: Urban living and infrastructure

SUMMARY OF REPORT:

1. Council is in receipt of an application to amend Blacktown Local Environmental Plan (BLEP) 1988. The application relates to Lots 1 and 2, Section 2, DP 5094, 291 - 293 Rooty Hill Road North, Plumpton. The site is zoned 2(b) Residential. The proposal is for an amendment of Clause 41A of BLEP 1988 to permit the development of a service station, incorporating a convenience store and other associated facilities.
2. Reforms to the *Environmental Planning and Assessment Act 1979*, commencing in July 2009 to fast-track the assessment and processing of local environmental plans mean that should the proposal proceed, it will need to be forwarded to the Minister for Planning seeking a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*. Council can otherwise resolve that the proposal not proceed, and it would therefore not be forwarded to the Minister for Planning.
3. A Planning Proposal has been prepared by the Stevens Group on behalf of the owner which stipulates the aim and any impacts of the proposed LEP amendment.
4. Attachments to this report are:
 - Attachment 1 - Location plan
 - Attachment 2 - Aerial photo
 - Attachment 3 - Applicant's Planning Proposal for the proposed development of a service station/convenience store and associated facilities on

Lots 1 and 2 , Section 2, DP 5094, 291-293 Rooty Hill Road
North, Plumpton

RECOMMENDATION:

1. Council resolve that the applicant's Planning Proposal to allow for the development of a service station, incorporating a convenience store and associated facilities, at 291-293 Rooty Hill Road North, Plumpton is not supported and is not to proceed to the Minister for Planning for a Gateway Determination.
2. The applicant be advised of Council's decision.

REPORT:

1. Background

- a. There was a service station on this site that was established prior to Blacktown Local Environmental Plan (BLEP) 1988 coming into effect and which operated under "existing use rights" until around 2003 when the activity ceased and the tanks were removed. In accordance with the provisions of the Environmental Planning and Assessment (EP & A) Act 1979, existing use rights have lapsed as the activity has not been operating for more than 12 months.
- b. It should be noted that approval was given in 1993 (DA-92-310) for the redevelopment of the (then) existing service station to make modifications including the addition of a convenience store. Correspondence in Council's property file for this property states that this approval was never acted upon and subsequently lapsed.
- c. The site is currently used as a storage yard for scrap metal and lawnmower parts, which is a use that is not permitted under the current zoning of 2(b) Residential. Council issued an Order in February 2009 to require the owner to cease using the premises as a storage yard.
- d. The adjacent site at 295 Rooty Hill Road North contains a lawn mower repair business that was approved in October 1989 (DA-89-500). At the time there had been a farm machinery repair business operating on the site and the lawn mower repair business was approved as a change of use of the premises. A further application to upgrade the premises was approved in February 1993 (DA-92-379).
- e. The applicant wishes to develop a new service station, incorporating a convenience store and associated facilities, on the subject site which is a prohibited use in the 2(b) Residential zone. The applicant is therefore seeking an amendment to Clause 41A of BLEP 1988 to permit the development of a "service station" on the site. It is noted that BLEP 1988 defines a "service station" as including convenience store trading.

2. LEP Amendment Process

- a. In July 2009, the NSW Government introduced reforms to the EP & A Act to expedite the assessment and processing of Local Environmental Plans (LEPs).
- b. An integral part of the new planning reforms and amending an LEP is the preparation of a "Planning Proposal" (section 55 of the EP & A Act). The Planning

Proposal stipulates the intent, benefits and any impacts of the proposed LEP amendments as well as compliance with relevant State Government Growth Strategies, Ministerial Directions and State Environmental Planning Policies.

- c. The initial step in making an LEP is for the relevant Planning Authority, in this case Council, to formally consider the Planning Proposal and decide whether or not to proceed. The Planning Proposal sets out the justification for preparing an LEP. Section 5 of this report discusses the merits of this particular Planning Proposal.
- d. If Council decides to proceed, the next step in the process is to forward Council's resolution and Planning Proposal to the Minister for Planning seeking a "Gateway Determination". The Determination will stipulate whether the Minister for Planning supports the amendment to proceed to the next stage and, if so, it will detail the requirements for any further technical studies, consultation with government authorities (Section 56 of the EP & A Act) and public exhibition timeframes (Section 57 of the EP & A Act).
- e. Should Council resolve that the Planning Proposal should not proceed, the Proposal would not be forwarded to the Minister for Planning for the Gateway Determination.
- f. Section 58 of the EP & A Act includes a provision that the relevant planning authority may, at any time, vary its proposal as a consequence of its consideration of submissions and request at any time the Minister to determine that the matter not proceed. Verbal advice from the Department of Planning, however, suggests that this may not automatically occur if Council has already made an initial assessment that the proposal is worthy of support.
- g. After the exhibition of the proposal and consideration of submissions, the Planning Proposal may be amended. In this situation a further report would be forwarded for Council's consideration. If Council varies the proposal it must inform the Minister for Planning who may issue a revised Gateway Determination, depending on the nature of the variation.

3. Details of the Subject Site

- a. The subject site comprises two separate allotments identified as Lots 1 and 2, Section 2, DP 5094, located at 291-293 Rooty Hill Road North, Plumpton. A location plan is held at **Attachment 1**, and an aerial photo is held at **Attachment 2**.
- b. The total area of both lots combined ('the site') is 2023m². The site has a 40.23m frontage to Rooty Hill Road North which is an arterial road controlled by the Roads and Traffic Authority. Adjoining the site to the north is a lawnmower sales and repair business. Residential dwellings adjoin the site to the west and south, with the property on the southern boundary separated from the site by a public footpath, which provides access from Rooty Hill Road North, to Paradise Close.
- c. Opposite the site are medium density residential dwellings and a large area of vacant land that is zoned 2(a) Residential.
- d. The site is relatively flat and does not contain any vegetation. A dilapidated, graffiti-covered building is located on the site. Fencing consists of a combination of timber boarding and metal, much of which is topped by barbed wire.

4. The Planning Proposal

- a. The Stevens Group, on behalf of the owner, has submitted a Planning Proposal seeking an amendment to Clause 41A of BLEP 1988 to include a specification that a service station can be developed, with consent, on the subject site. A copy of the Planning Proposal is at **Attachment 3**.
- b. Clause 41A is a site-specific 'enabling' clause that provides for specific activities on specified sites to be developed with consent. The development of a service station on the site can only be achieved by way of an amendment to BLEP 1988 given the site's 2(b) Residential zoning, as service stations are prohibited in this zone.
- c. Clause 41A is worded as follows:

"Nothing in this plan prevents a person, with the consent of the council, from carrying out, on land described in Column 1 ["Land"] of the following Table, development for a purpose specified in relation to that land in Column 2 ["Development"] of that Table, subject to such conditions, if any, as are specified in Column 2 of that Table."

- d. An alternative mechanism to permit the development of a service station on the site would be to rezone it 3(a) General Business zone, which includes service stations as development permitted with consent. This mechanism has not been proposed by the applicant. In any case this is not likely to be supported for the reasons outlined in 5 vi. below.
- e. The applicant has submitted plans and information with the Planning Proposal, showing that the proposal incorporates:
 - 3 Fuel dispensing bowsers
 - Underground fuel storage tanks
 - A 166m² convenience store
 - Parking for 8 vehicles including 1 accessible space
 - A fuel canopy of 225m² (9m x 25m)
 - An LPG exchange bottle cage
 - Ice vending machine
 - Direct access & exit from Rooty Hill Road North
 - Hard stand manoeuvring area
 - A single pylon sign/price board
 - Landscaping
 - Utility services
- f. The following information is included with the Planning Proposal:
 - Stormwater Drainage and Engineering Plans
 - Landscape Concept
 - Traffic Impact Assessment
 - Acoustic Assessment
 - Site Survey
 - CPTED (Crime Prevention Through Environmental Design) Assessment
 - Site Validation Report (relating to site contamination)

5. Assessment of the Planning Proposal

- a. It is considered that the Planning Proposal **should not be supported** for the

following reasons:

- i. BLEP 1988 lists service stations as a prohibited activity in the 2(b) Residential zone.
- ii. As the site is zoned 2(b) Residential, neighbours are likely to have an expectation that future development would be residential rather than commercial.
- iii. The proposal is likely to impact upon adjoining residential neighbours in terms of the level of activity on the site (car and people movements), the proposed 2.4m high acoustic fence along the western boundary which adjoins 3 residential properties, and the general commercialisation of the site. The applicant has not indicated the hours of trade that they propose, however the noise report is based on 24 hour trading.
- iv. There were concerns about the previous service station raised by adjoining residents in the past, including complaints of petrol odour and noise.
- v. The DoP has indicated that they do not generally support specified uses of sites in LEPs, rather they should be zoned appropriately. This method of rezoning is likely to become redundant in Council's new LEP (to be exhibited later in 2011), as it is not supported by the DoP.
- vi. The site is not an obvious candidate for rezoning to a business zone such as 3(a) General Business, thereby permitting commercial use of the site including that of a service station, (noting that this option has not been proposed by the applicant). Not only is the site adjacent to residential housing, there is an existing convenience store 400m to the north on Rooty Hill Road North, and Plumpton Marketplace is 1.5km away. Plumpton Marketplace contains a supermarket and petrol station and is proposed to be zoned 'local centre' in the new LEP. In addition, any rezoning to a commercial use would need to be carefully assessed in terms of the proposed commercial hierarchy for the city, and any economic impacts that may be detrimental to the local community. This would normally require the submission and analysis of a retail needs assessment.
- vii. Adding activities to Clause 41A creates an issue for Council's new LEP currently being prepared in accordance with the State Government's *Standard Instrument LEP*, as Council would need to find an appropriate new zone for the site. In this case, it is unlikely that Council staff would recommend rezoning the site to B1 Neighbourhood Centre (which would be the closest appropriate zone available under the *Standard Instrument LEP*), for the reasons outlined in vi above.
- viii. Alternatively, Council can retain the residential zoning of the site for the new LEP, and leave an approved service station to rely on existing use rights. However, if a newly approved service station is left to rely on existing use rights for it to remain, it is questionable as to whether it is actually appropriate for it to be established in the first place.
- ix. Residential would be the best future use of this site as this would be in accordance with the majority of the surrounding area.
- x. Council should utilise its powers pursuant to Part 6 of the EP & A Act to enforce the cessation of the present illegitimate use of the site as a storage yard.

6. Conclusion

- a. The applicant is seeking an amendment to Clause 41A of BLEP 1988 to permit the development of a service station at 291-293 Rooty Hill Road North.
- b. Analysis of the proposal has determined that the proposed amendment to BLEP 1988 is not appropriate, as the use of site-specific 'enabling' clauses is now a redundant approach that is not supported by the DoP.
- c. The proposed use of the property may cause adverse effects on adjoining properties.
- d. Rezoning the site to 3(a) General Business is not considered appropriate given the location which is adjoining residential properties and in an area already served by adequate commercial activities.
- e. It is **recommended** that the subject amendment to BLEP 1988 **not be progressed** to the Minister of Planning for a Gateway Determination.

RECOMMENDATION:

1. Council resolve that the applicant's Planning Proposal to allow for the development of a service station, incorporating a convenience store and associated facilities, at 291-293 Rooty Hill Road North, Plumpton is not supported and is not to proceed to the Minister for Planning for a Gateway Determination.
2. The applicant be advised of Council's decision.

ATTACHMENTS:

Attachment 1 - Location plan



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Attachment 2 - Aerial photo



A2SD300112.PDF

Attachment 3 - Applicant's Planning Proposal for the proposed development of a service station and associated facilities on Lots 1 and 2, Section 2, DP 5094, 291-293 Rooty Hill Road North, Plumpton



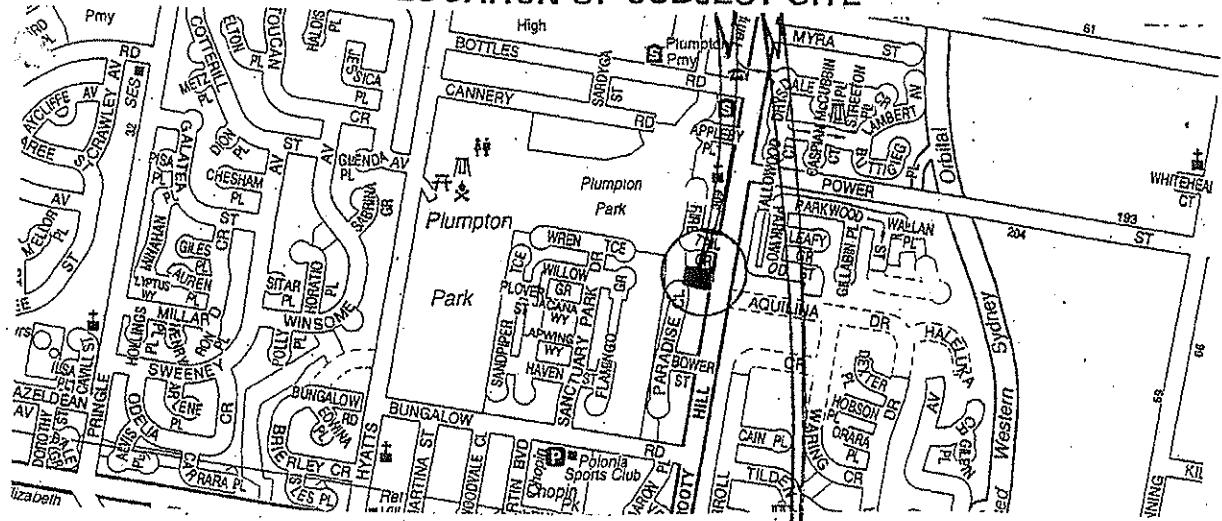
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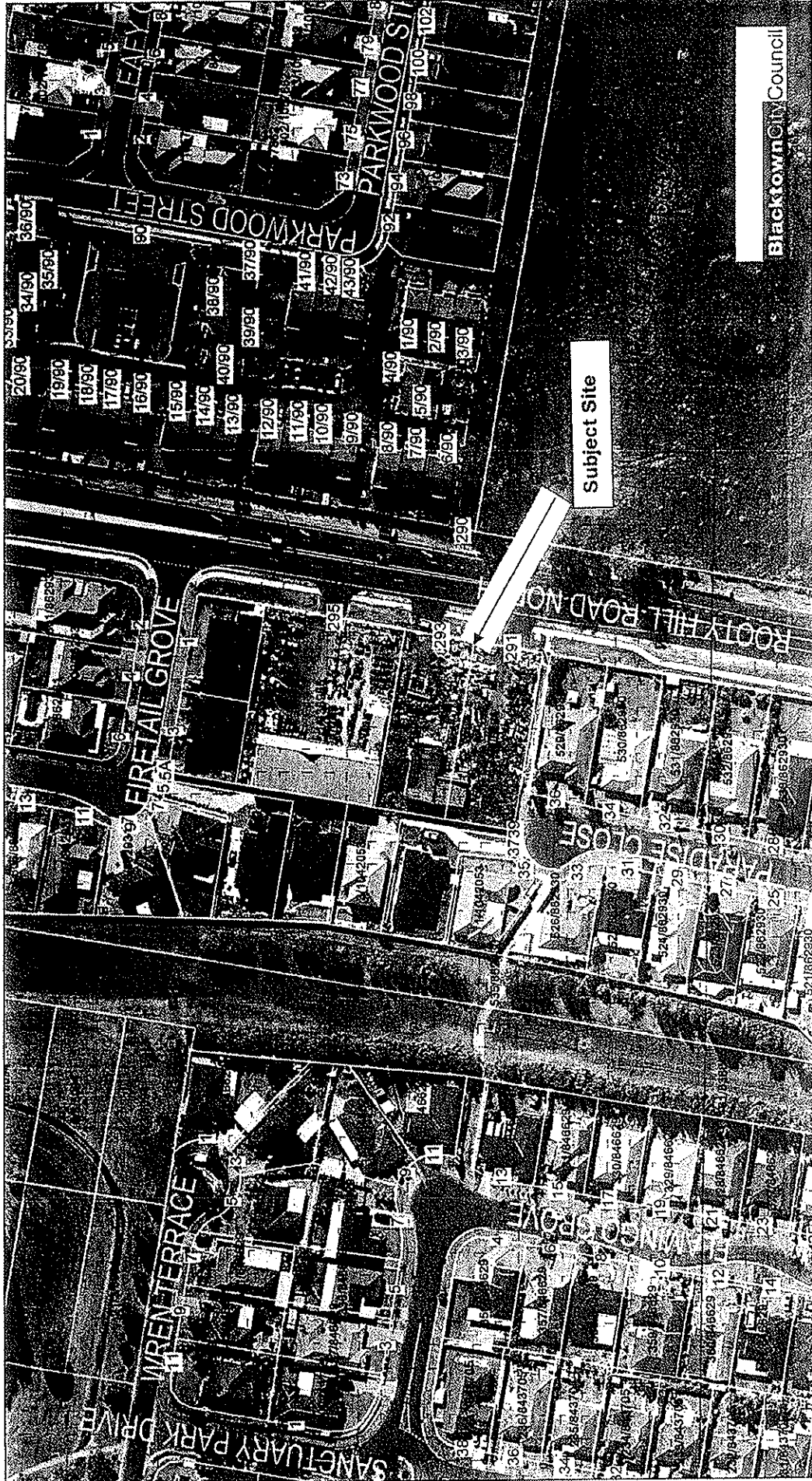
COUNCIL RESOLUTION:

Create Action:

Murray Manning
8
DCSD

LOCATION OF SUBJECT SITE





Blacktown City Council

Subject Site

AIR PHOTO IMAGE

Produced by Blacktown City Council.

Plot Date: 19/11/2010

Air Photo Date: Feb, 2008.

