

TRIM 6882

Wollondilly Shire Council
Department of Education



EXECUTIVE SUMMARY

- At its Ordinary meeting of 16 April, 2012, Council made Resolution 83/2012 which included a commitment to:
 - classify proposed Lot 102 in Development Consent No.010.2010.00000479.001 as operational land; and
 - seek urgent heritage listing of the former Menangle School building and a curtilage including the other buildings on the site.

- The most appropriate methods to potentially achieve this Resolution are to:
 - classify the land as 'operational' by a resolution; and
 - list the former Menangle school building and an appropriate curtilage in Schedule 5 to Wollondilly Local Environmental Plan, 2011 (WLEP 2011) as an item of environmental heritage.
- There are no disclosures of political donations made in regard to this proposal.
- Due to the proposal only applying to the Heritage Listing and inline with Council's resolution to urgently attempt to get a heritage listing the normal practice of initial notification was not undertaken.
- It is recommended that Council classify the land as operational subject to a further report and prepare and forward a Planning Proposal to the Minister for Planning and Infrastructure for Gateway determination to amend WLEP, 2011.

BACKGROUND

1. Description of Site and Surrounds

An aerial photo of the site is included in Attachment 1. The former Menangle school building is located within Lot 1 DP 795181 (No.28) Station Street, Menangle. The site is owned by the Department of Education and Training (DET) in conjunction with the adjoining lot to the west. The adjoining lot (Lot 1 DP 420139) contains the former School Principal's residence and separate amenities buildings. The total area of the site (two allotments) is 1.618 hectares.

Adjoining the site to the east is the Southern Rail Line and to the south is the St James Avenue Public Reserve (owned by Council). To the west of the DET owned land are residential allotments. Menangle railway station is north of the site.

The site is within the Menangle Conservation Area.

2. Development History

Development Application D853-07 was submitted to Council on 9 November, 2007 seeking the demolition of the buildings on the site and erection of security fencing. In response to this application Council made Resolution 82/2008 at its Ordinary meeting of 21 April, 2008 which states:

"1. That this matter be deferred and council write to the Minister for Planning seeking approval to refuse the application.

2. That the council write to the local member to seek an audience with the Minister for Planning to lobby on our behalf."

As a result of a meeting on 4 June, 2008, the Minister for Education and Training placed a moratorium on the demolition of the school building.

Development Consent 010.2010. 00000479.001 was issued 21 September, 2011 with concurrence from the Minister received 19 September 2011. The consent is for a boundary adjustment creating a proposed Lot 102 of approximately 2,000 square metres and containing the former school building. The remainder of the DET-owned land is to be contained within proposed Lot 101. The consent has not yet been acted upon.

The DET made representation to the JRPP objecting to the imposition of conditions in Development Consent 010.2010. 00000479.001 including requirements for construction of an accessway and installation of a toilet and pump-out septic system ancillary to the former Menangle school building within proposed Lot 102.

Given that Parts 2, 3 and 4 of Council's Resolution 83/2012 now commit Council to achieve compliance with the contested conditions, DET may no longer object to these conditions. Refer to 'Relevant Considerations' with respect to the potential timing of installation of a toilet, septic pump-out and driveway.

3. Resolution 83/2012

- "1. That Council continue negotiations with the Department of Education for the land swap of the closed road formerly known as Dowle Street for part of the Department of Education land located at Station Street, Menangle known as the old Menangle School site.*
- 2. That Council will construct a new pump-out system to be constructed and located within the property boundaries of proposed Lot 102 as depicted in the submitted development application No.010.2010.00000479.001, and the connection point for the septic system / pump out well(s) be located on the front boundary of proposed Lot 102 (within the proposed right of carriageway area) and that an easement for services be created for the septic system infrastructure within the right of carriageway.*
- 3. That Council will construct a new toilet facility upon proposed lot 102 as depicted in the submitted development application No.010.2010.00000479.001.*
- 4. That Council will construct a bitumen sealed driveway with a minimum 4.0 metres formation and 3.0 metres seal including associated stormwater drainage within the proposed right of carriageway from Station Street to the proposed lot 102 depicted in the submitted development application No.010.2010.00000479.001.*
- 5. That Council classify the proposed lot 102 as depicted in the submitted development application No.010.2010.00000479.001 as operational land.*

6. *That Council investigate opportunities to fund the aim of achieving the maximum land area around the existing four buildings of the 140 year old school as well as maximising the frontage onto Station Street in order to maintain the school heritage landscape.*
7. *That Council urgently attempts to get a heritage listing of the land and the buildings."*

This report discusses how the resolution can best be implemented.

4. Land transfer

Council is currently in negotiation with the land owner, the DET for transfer of part of the subject site to Council's care, control and ownership. The part of the land originally the subject of negotiation was identified as proposed Lot 102 to be created from a boundary adjustment approved with Development Consent 010.2010. 00000479.001.

Proposed Lot 102 contains the former Menangle school building. Proposed Lot 102 does not contain the two amenities buildings and the former principal's dwelling (mentioned in Part 6 to Council's resolution 83/2012).

Further considerations by council staff and DET have determined that the boundary adjustment may not be the best option for future ownership and management of the land. This matter is separately reported to Council.

5. Classification of Land as "Operational Land"

In accordance with Section 27(2), Section 28 and Section 31 to the Local Government Act, 1993:

- (i) land can be classified as 'operational land' by a Council Resolution provided that Resolution is made either:
 - before the Council acquires the land (subject to gaining the consent of the land owner), or
 - within three (3) months of Council acquiring the land.
- (ii) If the three (3) month period elapses then the land is taken to automatically be classified as 'community'.
- (iii) While land remains unclassified:
 - "(a) the land may not be used for any purpose other than that for which it was being used immediately before it was acquired, and
 - (b) the council may not dispose of any interest in the land." (Section 31 to Local Government Act, 1993)

The land is currently unused and must remain unused until Council classifies the land.

(iv) A council must not resolve that land be classified as operational land if:

“(b) the resolution would be inconsistent with any other Act, the terms of any trust applying to the land or the terms of any instrument executed by the donor or transferor of the land.” (Section 31 to Local Government Act, 1993)

A resolution to classify the land ‘operational’ would not be inconsistent with any other Act. There is no trust applying to the land and there are no known instruments executed by the DET for the land at this time.

A public hearing is not required (as a public hearing is only required for reclassification).

In accordance with Section 34 to the Local Government Act, 1993:

- “(1) A council must give public notice of a proposed resolution to classify or reclassify public land.*
- (2) The public notice must include the terms of the proposed resolution and a description of the public land concerned.*
- (3) The public notice must specify a period of not less than 28 days during which submissions may be made to the council.” (Section 34 to Local Government Act, 1993)*

After the land has been classified as ‘operational’ it must be listed in Schedule 4 Part 1 to WLEP 2011.

6. Heritage Listing

Part 7 to Council’s resolution states that heritage protection is sought urgently. Urgent listing is not likely to be possible as explained below. There are two options for heritage listing and these are:

- (i) an Interim Heritage Order; or
- (ii) amendment to WLEP, 2011.

6.1 Interim Heritage Order (IHO)

Council can not place an Interim Heritage Order (IHO) on the former Menangle school building because Council’s delegation for IHOs do not apply to Crown Land nor to places that are within a conservation area identified in a local environmental plan (the site is within the Menangle Conservation Area listed in Part 2 of Schedule 5 to WLEP 2011).

In accordance with Section 24 to the *Heritage Act, 1977*, the Minister (being the Minister for the Environment and Minister for Heritage) can make IHOs for items that the Minister considers may be found to be of State or Local heritage significance. The Minister may receive advice on an IHO from the Heritage Council on such matters. The time taken for such a process is unknown. It would need to be commenced with a request from Council direct to the Minister and the Heritage Council at the same time. The request should be accompanied by a Heritage Significance Assessment prepare by a suitably qualified and experienced person. There is a possibility that the Minister may not agree to the request.

6.2 Amendment to WLEP 2011

Council may make a resolution to amend WLEP 2011 to include the former Menangle school and a suitable curtilage in Schedule 5 'Environmental Heritage'. WLEP 2011 can be amended by a Planning Proposal and subject to the Minister for Planning and Infrastructure supporting the amendment. A Heritage Significance Assessment needs to be prepared in conjunction with a Planning Proposal.

CONSULTATION

1. Council's Heritage Consultant

Council's Heritage Consultant is preparing a Heritage significance assessment for the former Menangle school building. Noting the requirements of Part 6 to Council's resolution:

- (i) the preparation of this assessment by Council's Heritage Advisor will not require additional funding; and
- (ii) a curtilage shall be investigated with the assessment.

2. Council's Manager Governance

Council's Manager Governance is currently negotiating the transfer of land to Council. The potential heritage listing will be dealt with as a separate matter to the transfer and ownership of land. The Manager Governance is aware of this report. (Refer to Report IN1 in this Agenda).

3. Community Consultation

To reduce the potential time taken for amendment to WLEP 2011 by a Planning Proposal, Council may request the Gateway process minimise community engagement requirements as proposed in the 'Relevant Considerations' section of this report.

RELEVANCE TO COMMUNITY STRATEGIC PLAN OUTCOMES

Environment

- A community that is surrounded by a built and natural environment that is valued and preserved
- A community that has opportunities to engage with and actively care about their natural environment

Appropriately retaining and managing heritage items is a means of identifying the value of items and places of significance to the community.

Governance

- A community that is supported through engagement, collaboration and partnerships across government agencies and private business
- A transparent, effective and sustainable Council

There will be opportunity for community engagement with public notice prior to classification and community engagement during the Planning Proposal process.

POLICIES & LEGISLATION

- Environmental Planning and Assessment Act, 1979
- Environmental Planning and Assessment Regulation, 2000
- Heritage Act, 1977
- Local Government Act, 1993

RELEVANT CONSIDERATIONS

1. Classification of Land as 'Operational Land'

As stated above, this requires a Resolution of Council in accordance with Section 27(2), Section 28 and Section 31 to the Local Government Act, 1993 either:

- before the Council acquires the land (provided Council has the consent of DET), or
- within three (3) months of Council acquiring the land.

The resolution will need to accurately identify the land to be classified and this can only be done when negotiations with DET have concluded. Pending the resolution, Council needs to remain aware that:

- (i) the consent of DET is required
- (ii) the site shall remain unused (which also means that the construction of a toilet and septic pump out system and driveway is not consistent with the site remaining unused and any such works should not occur prior to the classification of the land); and
- (iii) Council shall not dispose of any interest in the land pending its classification; and

- (iv) the transfer of the land from the DET must also not involve any instrument or restriction on the title which would be contrary to the classification of the land as operational.

It is recommended that Council give public notice of a resolution to classify the land as soon as the area of land can be accurately described and that, pending consideration of submissions in response to the public notice, make a recommendation regarding the classification of that land.

2. Heritage Listing

Interim Heritage Order

As stated above, Council can request the Minister for Environment and Heritage to make an Interim Heritage Order. The request would need to be accompanied by a Heritage Significance Assessment. As the Minister may seek advice from the Heritage Council, Council could send a copy of the request to the Heritage Council in anticipation.

The time taken for such a request is unknown and the Minister may not support the request.

Regardless of an IHO, the long term means of protecting the heritage significance of the item is to list it in Schedule 5 to WLEP 2011.

Listing in Schedule 5 to WLEP 2011

To potentially include the former school building and a curtilage in Schedule 5 to WLEP 2011, Council Strategic Planning staff can prepare a Planning Proposal in accordance with Section 54 to the Environmental Planning and Assessment Act, 1979. A Planning Proposal will be dependent upon the outcomes of a Heritage Significance Assessment (see below) and can not be finalised at the time of writing this report. Should a draft Planning Proposal be available by the Ordinary Meeting of 18 June, 2012 it shall be provided to Councillors under separate cover

The Planning Proposal needs to be supported by a Heritage Significance Assessment prepared by a suitably qualified and experienced person and prepared in accordance with current guidelines published by the NSW Office of Environment and Heritage (OEH). A Heritage Significance Assessment is currently being prepared by Council's Heritage Consultant. Should it be available by the Ordinary Meeting of 18 June, 2012 it shall be provided to Councillors under separate cover.

To speed up this process Council can:

- (i) request the Gateway process to minimise consultation requirements (recommending consultation only with Department of Environment and Heritage and with the Department of Education and Training)
- (ii) request the Gateway minimise community engagement requirements to a 14 day or 21 day public exhibition period.

In total a Planning Proposal is likely to take a minimum of three (3) months with fast-tracking provisions described above.

3. Funding

Part 6 to Council's resolution 83/2012 seeks investigations into funding which aims to achieve:

"the maximum land area around the existing four buildings of the 140 year old school as well as maximising the frontage onto Station Street in order to maintain the school heritage landscape"

The Heritage Significance Assessment must rely on heritage merit alone and be independent of any financial matters. The Assessment is being conducted by Council's Heritage Advisor as part of this standard role and no additional funds are required at this time. The Heritage Significance Assessment will investigate a suitable curtilage and any street frontage requirements relevant to the heritage value of the former school building and its setting.

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates.

CONCLUSION

Council can make a resolution to classify the land as operational land as soon as the exact description of the land is known and subject to the outcomes of prior public notice of the intended classification. The resolution can be made prior to Council taking ownership of the land or within three (3) months of Council acquiring the land. A further report will need to come to Council when the timing is appropriate.

For the potential long term protection of the former Menangle school building and an appropriate curtilage, Council should prepare a Planning Proposal to potentially include it in Schedule 5 to WLEP 2011.

ATTACHMENTS

1. Aerial photo of the site and surroundings

RECOMMENDATION

1. That Council prepare a Planning Proposal in accordance with Section 55 to the *Environmental Planning and Assessment Act, 1979* to amend Wollondilly Local Environmental Plan, 2011 to include the former Menangle school building and a suitable curtilage in Schedule 5 Environmental Heritage. The former Menangle school building is situated on Lot 1 DP 795181 (No.28) Station Street, Menangle and the curtilage may extend to the adjoining Lot 1 DP 420139 (No.26) Station Street, Menangle.
2. That Council forward the Planning Proposal to the Minister for Planning and Infrastructure for the Gateway process in accordance with Section 56 to the *Environmental Planning and Assessment Act, 1979*.
3. That a further report come to Council regarding public notification and reclassification of land to operational when the land can be specifically identified.

ATTACHMENT 1 -6882 – 18 JUNE 2012

