

ACTION ITEM

ADOPTED

At the ORDINARY Meeting held on 8 September 2009

User Instructions

To view the original Agenda Item, double-click on 'Agenda Report' blue hyperlink above.

Resolved Items Action Statement

Action is required for the following item as per the Council Decision or Resolution Under Delegated Authority.

ITEM: 181 **CP - Application for Rezoning - Part Lot B DP 411701, 130 Windsor Road, McGraths Hill - (85712, 95498)**

Mr Robert Montgomery, proponent, addressed Council.

MOTION:

RESOLVED on the motion of Councillor Calvert, seconded by Councillor Paine.

Refer to RESOLUTION

299 RESOLUTION:

RESOLVED on the motion of Councillor Calvert, seconded by Councillor Paine

That:

1. Council prepare a Planning Proposal, under the provisions of Section 55 of the Environmental Planning and Assessment Act 1979, to rezone land at part Lots A and B DP 411701 (excluding the areas identified for road widening), 126 and 130 Windsor Road, McGraths Hill, from Rural Living to 4(b) Light Industrial zone.
2. The Planning Proposal be forwarded to the Minister requesting that the matter proceed.
3. This draft amendment be progressed separately to the draft Standard Instrument. However, if it is deemed timely and appropriate to do so, it is to be incorporated into the draft Standard Instrument prior to gazettal.

ITEM: CP - Application for Rezoning - Part Lot B DP 411701, 130 Windsor Road, McGraths Hill - (85712, 95498)

REPORT:

Introduction

Council has received a request from Montgomery Planning Solutions, acting on behalf of the landowner, Mr S Bastian, to rezone land at part Lot B DP 411701, No. 130 Windsor Road, McGraths Hill, from Rural Living to 4(b) Light Industrial (or the equivalent zone IN2 Light Industrial in the Standard Instrument). A site specific extension to the current Rural Living zoning of the site was made to the Hawkesbury Local Environmental Plan 1989 in 1995 to permit a "Motor Showroom".

Proposed Development

The application seeks to rezone the land from Rural Living to 4(b) Light Industrial, or the equivalent IN2 Light Industrial zone under the NSW Standard LEP Template. Due to the site specific amendment in 1995 extending the zoning provisions, the land is currently occupied by a boat sales showroom, caravan showroom and truck showroom in accordance with existing approvals for the site.

Description of Site and Surrounds

The subject land is located on the north western corner of Windsor Road and Mulgrave Road, at a distance of 1.5 kilometres from the Windsor Town Centre. The site has a total area of 1.49 Hectares. Access to the site is restricted from Windsor Road and the current vehicular access is via Mulgrave Road.

The land is generally flat with a gentle slope in a northerly direction from Mulgrave Road. The site is currently developed with a number of buildings and display yards. Boats, trucks and caravans are displayed for sale both within buildings and outdoors. The buildings are also used for ancillary offices, accessories showrooms and service workshops associated with the motor showrooms.

A number of land uses surround the subject land. Adjoining to the west and north is the Hawkesbury City Council's McGraths Hill Sewage Treatment Plant. Immediately adjoining the northeast corner of the site is a Service Station, opposite the intersection of Pitt Town Road and Windsor Road. Adjoining to the south is Mulgrave Road with another service station and Windsor High School located on the southern side of Mulgrave Road. On the eastern side of Windsor Road, opposite the subject land, is residential housing on the eastern side of Pitt Town Road and a Hotel on the western side of Pitt Town Road.

The subject site is zoned Rural Living under the provisions of the Hawkesbury Local Environmental Plan 1989. The adjoining land to the west and south, being the Treatment Plant and the School, is zoned 5(a) Special Uses and the Service Station to the east is also zoned Rural Living. The land to the east of Windsor Road is zoned Housing. The land to the south of Windsor High School fronting Windsor Road is zoned 4(b) Light Industrial.

A strip of road widening, approximately 19 metres and variable, exists along the Windsor Road frontage of the site. This area is currently zoned 9(b) Proposed Road, and proposed to be converted to SP2 Infrastructure in the Standard LEP conversion. It is not proposed to change the zoning of the area shown for road widening.

Applicant's Justification of the Proposal

The applicant has provided a submission in support of the proposal. In summary the applicant's justification for the rezoning is:

- identification of competitive opportunities for employment land development;
- projections of future employment land requirements by type over 25 years;
- criteria for the spatial distribution of employment lands;
- strategic planning approach for future employment land provision;
- identification of future investigation areas for industrial and commercial uses;
- an implementation strategy for the investigation areas;
- consideration of infrastructure capacity, identifying limitations/augmentations.

The Employment Lands Strategy has recommended a number of strategies for Council to pursue to address the economic prosperity of the LGA. One of these is to "*Identify appropriate development treatments for gateway areas*" which includes, whilst not specifically any particular site, land along Windsor Road as the entry to Windsor.

Strategy 8 in the Employment Lands Strategy identifies "*Windsor Road, Mulgrave (boulevard treatment with higher amenity showrooms and larger format retailing)*". The proposed change to the zoning from Rural Living to 4(b) Light Industrial is consistent with the Hawkesbury Employment Lands Strategy.

It is recognised that significant retail development in this location is not consistent with the government's centres policy, or with supporting the Windsor Town Centre. In this sense, a number of uses may be appropriate for the site, but, retail uses, ie, shops, should be discouraged at the site. It should be noted that the 4(b) Light Industrial zone, and the IN2 Light Industrial zone, do not permit retail premises (except for service shops, such as food and drink).

Future development of the site would require a higher standard of urban design to ensure an appropriate treatment of the frontage of Windsor Road. This is a requirement of the Employment Lands Strategy and may be controlled via specific amendments to the Development Control Plan when that document is reviewed.

Department of Planning Circulars & Sustainability Criteria

Two Department of Planning Circulars are of particular relevance in considering the current rezoning proposal. They are *Spot rezoning*, dated 15 June 2006 and *Local environmental plan review panel*, dated 16 February 2006.

In the *Spot rezoning* circular the Department's objective to reduce the number of spot rezoning is outlined. The main reasons being:

- *Firstly, the aim is to encourage a planning approach which is fair and transparent, deals with all like cases consistently, and provides for planning decisions with a clear strategic basis.*
- *Secondly, reducing the number of amending LEPs in the planning process reduces the administrative load for councils, the Department and the Parliamentary Counsel.*

The Circular does state that spot rezonings will continue to be considered by the Department. However justification for the rezoning should take into account the public interest and explain the implications of not proceeding with the spot rezoning.

The *Local Environmental Plan Review Panel* circular explains the role of the Department of Planning's LEP Review Panel and identifies the information required to be submitted to the Department.

With respect to Spot rezonings the Circular states:

In particular, the proposed plan must be considered in the context of State and regional policy direction, as well as the site context in terms of compatibility with neighbouring uses and the potential to create an undesirable precedent in terms of other rezoning requests.

Further the Circular states that rezonings unlikely to be supported include:

	DOP Evaluation Criteria	Applicant's Response	Comment in Reply
	surrounding land uses?	<i>complementary with the surrounding land uses. The surrounding uses are a mix of special uses, service stations and light industrial uses.</i>	anomaly that will provide for a more appropriate zone that is compatible with the existing and surrounding land uses.
6.	Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?	<i>The land already has a site specific zone to allow motor showrooms. A reasonable expectation for light industry zoning could be created for the owners of the adjoining service station sites. This would be appropriate, however is a matter for Council.</i>	This matter is discussed below.
7.	Will the LEP deal with a deferred matter in an existing LEP?	No.	Agreed
8.	Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	<i>There have been no other spot rezonings in recent years in the locality.</i>	Agreed

Comments in relation to point 6 above.

This LEP is not likely to create a precedent. The site already enjoys an extension to the zoning provisions to permit motor showrooms. This extension has, in itself, created an expectation for the property owner that light industrial uses may be acceptable on the site. The change in zoning from Rural Living to 4(b) Industrial will be more in keeping with the current uses and the expectations of the owner and the community for the site.

The property immediately adjoining the site to the north-east is currently occupied by a service station that has recently received approval for the addition of a car wash facility. Given the proximity of this service station to the subject site and the fact that the adjoining land to the west falls steeply, is flood prone and occupied by the sewer treatment plant, it is considered appropriate that this adjoining parcel (known as Lot A DP 411701) be included in the current rezoning amendment.

It is considered that the proposed rezoning generally complies with the current Department of Planning guidelines or Circulars. Further, the draft Employment Lands Strategy supports consideration of limited development of this site.

Section 117 Directions

As Council is aware the section 117 Directions under the provisions of the Environmental Planning and Assessment Act 1979 direct Council to consider various matters when preparing a draft local environmental plan.

The following information lists the Section 117 Directions that are considered of relevance to the proposed rezoning.

Direction 1.1 Business and Industrial Zones

The objectives of this direction are to:

- (a) encourage employment growth in suitable locations,
- (b) protect employment land in business and industrial zones, and

The Department of Planning's guidelines *Integrated Landuse and Transport* seeks to improve the integration of landuse and transport planning. The proposed LEP will cater for the protection of the existing development and may provide additional employment opportunities should the site be redeveloped. It is considered that the proposed LEP is consistent with this Direction.

Direction 4.3 Flood Prone Land

The objectives of this direction are:

- a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the ***Floodplain Development Manual 2005***, and
- b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The applicant states that the proposal is not consistent with the Directions and comments as follows:

"The provisions of the draft LEP that are inconsistent are of minor significance.

The hazard is acceptable in terms of industrial use in this location.

It is considered that the inconsistency is justified."

Comment

The proposal is inconsistent with this objective and this inconsistency is of minor significance. The impact that the proposed LEP will have in relation to flooding will be virtually nil when compared to the approved existing uses on the site. Given that there is not likely to be significant increase in the flood risks for the site as a result of this proposed LEP it is considered that the inconsistency is justified.

Standard LEP Template Conversion

As Council is aware the provisions of Hawkesbury LEP 1989 are currently being converted to the associated NSW Standard Template LEP zone. In this regard the new zone for the subject site will be IN2 Light Industrial which is a direct conversion of the existing 4(b) Light Industrial zone contained in the Hawkesbury LEP 1989.

The applicant has proposed either of the zones as the uses permitted in those zones are the same. The option to use an enabling clause to allow certain development on the subject land was used in 1995. That option has raised expectations for the site that additional Light Industrial uses may be suitable. The option of site specific zone extension is no longer recommended as best practice by the Department of Planning as it is contrary to the principle of "simplifying the planning system", and therefore a suitable template zone should be applied should the rezoning proceed.

It is considered that the most appropriate zone for the subject site is the IN2 Light Industrial. It is recommended that Council resolve to amend the zoning for the subject site to 4(b) Light Industrial (under the provisions of the current Hawkesbury LEP 1989) or, should the Standard Instrument conversion be suitably progressed, this application for site specific rezoning be joined with the Template conversion and the zone be IN2 Light Industrial.

Hawkesbury Local Environmental Plan 1989

The relevant aims and objectives of Clause 2 of HLEP 1989 are:

- To provide a mechanism for the management, orderly and economic development and conservation of land with the City of Hawkesbury;

RECOMMENDATION:

That:

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ATTACHMENTS:

AT - 1 Site Plan.