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| 16STRAT040 | Adoption of Planning Proposal - Amendment to LM LEP2014 - 606 & 608 Fishery Point Road, Morisset - Additional Permitted Use - Service Station    |
| Council Ref: | F2016/01480 - D08026956 |
| Report By: | Senior Strategic Landuse Planner - Gabriele Calcagno   |

Précis:

On 13 April 2015, Council resolved (15STRAT020) to request a Gateway determination from the Department of Planning and Environment, for a Planning Proposal that would include an Additional Permitted Use, for a service station, in Schedule 1 of *Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014),* for land at 606 and 608 Fishery Point Road, Morisset. The Planning Proposal was exhibited from 23 January to 10 February 2016, with feedback received from government agencies only.

This report seeks a resolution of Council to adopt the Planning Proposal, so that the LMLEP 2014 may be amended.

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| **Recommendation:**Council:1. Notes the issues raised by public authorities during the public exhibition period and endorses the amendment to *Lake Macquarie Local Environmental Plan 2014*, as contained in Attachment 1.
2. Requests a Parliamentary Counsel opinion, under delegation provided by the Minister for Planning, under section 59 of the *Environmental Planning & Assessment Act 1979,* for the amendment.
3. Upon receipt of the Parliamentary Counsel opinion, Council makes the Plan pursuant to the Minister’s delegated authority.
4. Provides public notice of its decision in accordance with statutory requirements.
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Background:

The land at 606 and 608 Fishery Point Road, Morisset, is currently zoned RU6 Transition under *LMLEP 2014,* and used for a service station. The use as a service station is prohibited in the RU6 Transition Zone. The LEP amendment would permit a service station with consent, on this site, and any expansion. The proprietor has plans to use 606 Fishery Point Road for a car wash, as part of an expansion of the service station business.

The applicant, in discussion with Council staff, lodged a Development Application (DA) so that it could be jointly exhibited for public comment with this LEP amendment, in accordance with Part 3 Division 4B of the *Environmental Planning and Assessment Act 1979* (*EP&A Act 1979*). This allowed the public to view and comment on the LEP amendment and the DA at the same time, thus ensuring that all issues associated with the proposed expansion of the service station, such as bushfire, contamination, traffic, noise, setbacks and other planning and building requirements could be adequately addressed before proceeding with the LEP amendment.

Council resolved on 13 April 2015 (15STRAT020) to progress a Planning Proposal for 606 and 608 Fishery Point Road, and land to the immediate north of the service station site, Nos 6 and 6A Pulbah Street, to rezone the land to RE2 Private Recreation. Nos 6 and 6A Pulbah Street each contain a Church, and are also zoned RU6 Transition.

The Department of Planning and Environment, in correspondence to Council dated 27 May 2015, suggested that the Church lands be excluded from this Planning Proposal. The Department’s view is that rezoning of the Church lands should occur in the future when all land subject to the Morisset Structure Plan is considered for a rezoning. The Department also suggested that the Planning Proposal include “service station” as an Additional Permitted Use on 606 and 608 Fishery Point Road, rather than rezoning the land from RU6 Transition to RE2 Private Recreation. Councillors were advised of the Department’s advice and Gateway determination by Internal Memo dated 21 January 2016. The Planning Proposal subsequently exhibited included Service Station as an additional permitted use on 606 and 608 Fishery Point Road, Morisset.

Proposal:

It is proposed that Council resolve to adopt the Planning Proposal to amend *LMLEP 2014*, to include Service Station as an Additional Permitted Use to Schedule 1 of *LMLEP 2014,* for 606 and 608 Fishery Point Road, Morisset, as shown in Attachment 1.

Consultation:

The Gateway determination outlined the consultation requirements, including Government agencies to be consulted, public exhibition timeframes, and a completion date for the Planning Proposal of 12 months. Written Authorisation to Exercise the Minister’s Delegation was also provided in the Gateway determination of 1 July 2015.

Given that there were unresolved issues with the DA associated with this amendment, an extension of time for the Gateway determination period of an additional 5 months to complete the Planning Proposal issued by the Department of Planning and Environment. The completion date is now 8 January 2017.

Consultation has occurred with relevant Council departments including Development Assessment and Compliance and Waste Environment and Rangers.

DAC have confirmed that there are no significant outstanding issues that cannot be resolved by the DA process.

The Planning Proposal and DA were exhibited from 23 January to 10 February 2016. No submissions from the public were received.

Comments were received from the following agencies:

Roads and Maritime Services (RMS)

Roads and Maritime Services raised no objection to the amendment or development application as it is considered there will be no significant impact on the nearby classified (State) road network. However, RMS recommends Council consider the following matters:

* Residential development and the Trinity Point development on the Morisset Peninsula east of the location of the service station will increase the volume of traffic using Fishery Point Road. Council should ensure appropriate access arrangements are in place to minimise the impacts of the traffic generated by the development on the local road network;
* Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.

*Planners Comment:*

These matters will be addressed as part of the DA process.

NSW Rural Fire Services

NSW Rural Fire Services have reviewed the information provided and raise no objection to the proposed amendment subject to a requirement that:

* Future development complies with ‘Planning for Bush Fire Protection 2006’. This includes the provision of water, electricity and gas;
* Flammable materials not to be stored between the proposed petrol sales building and the south-western boundary of the site;
* A minimum 1.8 metre high radiant heat shield (eg fence) made of non-combustible materials shall be constructed along the south-western boundary of the site. The bottom of the fence is to be in direct contact with the finished ground level or plinth.
* Arrangements for emergency and evacuation are to comply with section 4.2.7 of *Planning for Bush Fire Protection 2006,* including the preparation of an emergency/evacuation plan consistent with the NSW Rural Fire Service document titled *Guidelines for the Preparation of Emergency/Evacuation plan.*

*Planners Comment*:

These matters will be addressed as part of the DA process.

Local and State Aboriginal Land Councils

Consultation has occurred with the Biraban Local Aboriginal Land Council and the NSW Aboriginal Land Council. No concerns were raised.

Mines Subsidence Board

The Mines Subsidence Board did not object to the proposed LEP amendment or Development Application.

Office of Environment and Heritage (OEH)

The Office of Environment and Heritage did not object to the proposed LEP amendment or Development Application.

Implications:

Policy Implications:

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy provides for future population growth and employment opportunities in the Hunter region. The planning proposal is consistent with the objectives of this strategy, and will assist in the delivery of appropriate development within the Local Government Area.

Draft Hunter Regional plan

The draft Hunter Regional plan provides a series of actions and initiatives to deliver positive outcomes for Lake Macquarie including:

* promoting coordinated land use and infrastructure planning for the Hunter City;
* supporting small business growth and developing renewable energy resources;
* prioritising housing development in existing urban areas; and
* enhancing connections between open spaces and environmental areas.

The Planning Proposal is consistent with the draft Hunter Regional Plan.

Lifestyle 2030 Strategy

The Lifestyle 2030 Strategy is a citywide strategic planning document that informed the preparation of *LMLEP 2014*. It provides the long-term strategic direction for development in the City and describes Council’s policies for managing both private and public development, social, environmental, wellbeing, and governance outcomes. The Planning Proposal is consistent with the Lifestyle 2030 Strategy.

State Environmental Planning Policies (SEPPs)

The Planning Proposal is consistent with the relevant SEPPs as detailed in the Planning Proposal (see Attachment 1).

Section 117(2) Ministerial Directions

The Planning Proposal is consistent with the relevant Ministerial Directions pursuant to Section 117(2) of the *EP&A Act 1979* as detailed in the Planning Proposal (see Attachment 1).

*Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)*

The proposed amendment will ensure that the current use, of a service station, may continue as a permissible use with consent on 606 and 608 Fishery Point Road, Morisset.

Environmental Implications:

Service stations have the potential to cause negative impacts on the immediate and local environment specifically in relation to the potential for on and off-site underground fuel tank leaks, the transportation and defueling of petrol tankers, and the refuelling of vehicles. There is also the potential for liquid fuel gas leaks whilst refuelling takes place, and potential ignition from naked flame or electronic devices.

Environmental Management within Council’s Waste, Environment and Rangers Department have reviewed the Stage 1 Contamination assessment report and are satisfied that the site is suitable for its on-going use as a service station and that the surrounding environment and neighbouring properties are not affected by existing Underground Petroleum Storage Units.

Potential hazards will be addressed as part of the DA process. Compliance with the relative authorities conditions of approval will mitigate potential hazards.

Social Implications:

A crime risk assessment has been submitted with the Development Application, which addresses crime risk at the location and makes recommendations in line with good practice in crime prevention through environmental design. Future development of the affected site will facilitate the provision of local services and employment, benefiting the local community.

Infrastructure Asset Implications:

There are no Infrastructure Implications associated with the adoption of the amendment. Potential Infrastructure requirements associated with the future development of the site will be addressed as part of the DA process and its determination.

Financial Implications:

There are no financial implications with the proposed changes to the *LMLEP 2014*.

Risk and Insurance Implications:

There is minimal risk or insurance implications to Council with the processing of this amendment. The preparation of an amendment to *LMLEP 2014* is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity will be minimised through following the process as established by the *EP&A Act 1979* and *Environmental Planning and Assessment Regulation 2000* as well as Council’s Amending Local Environmental Plan Procedure and Policy.

Options:

1. Council resolves to adopt the Planning Proposal to amend *LMLEP 2014* by including an Additional Permitted Use “service station” to Schedule 1, 606 and 608 Fishery Point Road, Morisset. This is the recommended option.
2. Council does not support the Planning Proposal. This is not the preferred option, as a service station is a prohibited use in the RU6 Transition Zone, and any significant alterations or additions to that use, including a car wash, could not be considered on the site.

Conclusion:

It is recommended that Council resolves to adopt the Planning Proposal and requests Parliamentary Counsel Opinion for Council to Make the Plan pursuant to the Minister’s authorisation to exercise delegation.

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Manager - Integrated Planning - Sharon Pope

Attachments:

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| **1.**  | Planning Proposal - 606 and 608 Fishery Point Road, Morisset |  | D08029788 |