

City Strategy Committee Meeting 14 November 2016

**16STRAT049 Morisset (32 Yambo Street) - Proposed Inclusion of Land within
Land Reservation Acquisition Map - Amendment to Lake Macquarie
Local Environmental Plan 2014**

Council Ref: F2015/01746 - D08070402
Report By: Statutory Property Officer - Joanne Marshall

Précis:

Council nominates land it has an interest in acquiring for public purpose by inclusion of such land on the Land Reservation Acquisition map (LRA) map.

The process to place items on the LRA map is to prepare a Planning Proposal to make an amendment to the Lake Macquarie Local Environmental Plan (LMLEP) 2014. If Council supports the Planning Proposal, it is then forwarded to the Department of Planning and Environment (DP&E) for Gateway determination. If approved, the Gateway approval will specify the requirements for public exhibition, and whether Council has delegation to determine the proposed amendment to the Local Environmental Plan.

Council considered a report on the proposed inclusion of 32 Yambo Street, Morisset, within the LRA Map, on 8 August 2016 (16STRAT034), whereby it resolved to proceed with the Planning Proposal and place it on public exhibition.

The DoPE issued Gateway Determination on 8 September 2016 with the requirement for 14 days public exhibition, and provided written authority for Council to exercise its delegation in respect to this plan.

The Plan was exhibited from 19 September to 10 October 2016. One public submission and one government agency submission was received during this time.

This report is to consider the submissions received, and to determine whether to make the Plan under section 59 of the Environmental Planning and Assessment (EP&A) Act 1979.

Recommendation:

- A. That Council:
 - i. considers the submissions received from the landowner and one public authority during the public exhibition period; and
 - ii. endorses the amendment to the Lake Macquarie Local Environmental Plan 2014, as contained in Attachment 4, if after consideration of A(i), it is agreed that Council proceeds with the amendment.
- B. Council requests the Office of the Parliamentary Counsel, under Council's delegation provided by the Minister for Planning under section 59 of the Environmental Planning & Assessment Act 1979, to draft the legal instrument to give effect to the amendment to the planning proposal.
- C. After negotiation and agreement of the final wording of the instrument with the Office of the Parliamentary Counsel, Council makes the Plan pursuant to the Minister's delegated authority.
- D. Council provides public notice of its decision in accordance with statutory requirements.

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Background:

The acquisition of the subject land would enable Council to provide a future town square development, which would contain a new and larger library, and community meeting spaces. The Morisset Town Centre Area Plan and the Morisset Developer Contributions Plan has identified five parcels of land as being the ideal location for the new Morisset Town Square development. These parcels of land are as follows:

79 Dora Street	Old Morisset Post Office	Council acquired in 2015.
77 & 77A Dora Street	Morisset Memorial Hall & Literary Institute	Owned by Trustees of Morisset Memorial Hall & Literary Institute. A heritage assessment study has been undertaken to ensure the heritage value of the hall is reflected appropriately within the proposed development.
73 Dora Street	Vacant land at rear of Police Station	Discussions commenced with Crown Lands.
32 Yambo Street	Vacant land	Privately owned.

It is also envisaged that the Morisset Memorial Hall, which is heritage listed and identified as part of this site, would be accommodated as part of the community facilities to be provided within the new town square development. Council has recently completed a Heritage Assessment Study on the Memorial Hall. The project group for this study consisted of Council staff and community representatives from the Memorial Hall.

Over the past four years, Council has approached the owners of the vacant land at 32 Yambo Street; however, the owners have rejected the previous offers made by Council to purchase the land. Accordingly, it is now proposed to place this land on its Land Reservation Acquisition Map, to indicate Council's desire to purchase and develop this land as part of the future town square development.

Proposal:

The proposal seeks to amend the Lake Macquarie Local Environmental Plan (LMLEP) 2014 as follows:

- Add the subject land to the Land Reservation Acquisition Map
- Amend the table in clause 5.1 to include the following:

Type of land shown on Map

Zone B3 Commercial Core and marked "Community facilities"

**Authority of the State
Council**

- Amend the table in clause 5.1A to include the following:

Column 1

Land

Zone B3 Commercial Core and marked "Community facilities"

Column 2

Development

Community facilities

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Consultation:

Council resolved on 8 August 2016 (16STRAT034) to proceed with the Planning Proposal, and to commence the public consultation process required for this application to proceed. In accordance with the Gateway Determination, the Planning Proposal was to be exhibited for a minimum of 14 days.

An advertisement was published in the Newcastle Herald on 17 September 2016 and in the Lakes Mail on 22 September 2016. Consultation letters were sent to public/government authorities and adjoining owners were notified of the Planning Proposal.

The notification and statutory advertising period has now closed and one public submission was received.

As the land is not yet in Council's ownership, and the submissions received did not request it, a Public Hearing is not required.

Internal:

As part of the process to include the land within the LRA map, this matter was submitted to the relevant Council departments at an internal meeting. Council officers' advice was recorded and included in reports pertaining to the proposed amendment to the LEP.

The land identified for acquisition at 32 Yambo Street was considered by Council officers at a meeting held on 3 December 2015 where the following comment was made:

"In general, no objections to the proposal were raised."

Public/Government Authorities Submissions

In accordance with the Gateway Determination, the Mine Subsidence Board was consulted in respect to the proposal. No objection was raised to the draft amendment to LMLEP 2014, and they requested that architectural plans be submitted to them for consideration. This will be done at Development Application stage.

A letter was also sent to the Awabakal Land Council but no response has been received.

Public Submissions

One public submission was received from the current landowner of 32 Yambo Street (see Attachment 3).

The submission raised the following concerns:

- "We recognised this site as a 'one off' key corner position.... We saw this site as strategically placed as an ideal location for the eventual expansion and relocation of our business "

The landowner states an intention to expand their family business onto this site in the future and have passed up the opportunity to accept another site. Council's records show that the landowner also owns two other commercial sites within the Morisset Centre (with 200m of the subject site).

Council's records also show the owner previously obtained a Development Approval for 32 Yambo Street to construct four new shops in 1991 however, it did not proceed.

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- “We see this as incredibly unfair and bordering on autocracy, given our past preparedness to negotiate the sale of the subject land to Council”.

Over the past four years, Council has negotiated with the owners of the vacant land on several occasions; despite accepting Council’s offer in 2014, the owners withdrew their acceptance and rejected further offers made by Council to purchase the land. At no time during these negotiations has the owner presented an independent valuation for what they consider the land to be worth.

There are sufficient funds in the Section 94 Morisset Development Contribution Plan to fund this proposed acquisition.

Implications:

Policy Implications:

The proposed Planning Proposal has been advertised and notified to all affected parties and authorities in accordance with the Gateway Determination, DP&E’s Guide to Preparing LEP’s and the Environmental Planning & Assessment Act 1979.

The Planning Proposal does not contravene any Council policies. It will enable delivery of the proposed community facility as identified in the Morisset Town Centre Area Plan and Morisset Developer Contributions Plan, both of which have been endorsed by Council.

Environmental Implications:

It is not envisaged that adding this parcel to the LRA Map will have any environmental impacts as the site is currently cleared.

Social Implications:

By adding the land to the LRA Map in LMLEP 2014, this will:

- identify the land for future community uses;
- allow the owner to request that Council purchase the land at any point-of-time in the future, should they want to sell the land;
- facilitate Council’s acquisition of the sites when redevelopment is ready to commence; and
- upon completion, deliver enhanced community facilities and services to the residents of the Morisset and surrounding areas.

If Council does not place the land on the LRA map, and agreement with the owners is not reached, the size and layout of the proposed town square development would be compromised.

The site is ideal for Council’s proposed Town Square project as Council owns the adjoining site and is currently in negotiations for the other adjoining sites. It provides a thoroughfare between Morisset station and the main retail precincts.

Infrastructure Asset Implications:

Council’s Asset Management staff have raised no objections to the proposal, and it is envisaged that adding the land on the LRA map will not have any infrastructure asset implications.

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Council will be responsible for the longer-term asset maintenance of the proposed facility upon completion, should acquisition and redevelopment of the precinct proceed in the future.

Financial Implications:

The financial (capital) implications envisaged are minimal, as acquisition of the land by Council is planned to be funded through the Section 94 Morisset Development Contributions plan. Council's intention to develop a "town square" and community facilities on the site will generate long term recurrent financial obligations which will require further assessment when the development is imminent.

Once the land has been placed on the LRA map and, if the owners wish to commence negotiations, Council will be required to consider acquisition arrangements.

Risk and Insurance Implications:

Should the site not be included on the LRA map, Council faces the risk of not being able to reach agreement with the owner and therefore not be able to deliver the proposed library and community facility already identified in Council's planning documents.

Community concerns have also been raised in relation to the Memorial Hall. Council is actively working with this group to develop a design that maximises the agreement between the parties.

The level of risk associated with the preparation of a Planning Proposal application is minimised by following due processes under the relevant Acts and Council procedures. These actions are covered by Council's professional indemnity insurance as a standard activity.

Options:

1. To proceed as recommended to prepare a Planning Proposal for placing the subject land on the LRA map and amending clause 5.1 & 5.1A of the LMLEP.

This option is favoured as it ensures that Council gets the opportunity to purchase the land when it becomes available or by compulsory acquisition if required.

2. To do nothing.

This option is not preferred as Council may not be successful in acquiring the property if it is listed on the open market, and the owners may seek to improve their land by Development Application or construction, which will increase the cost burden to Council if and when the land becomes available.

Conclusion:

Council has identified the subject land as being important for the proposed development of the new library and town square facility to be provided in the Morisset town centre. Accordingly, now that the statutory advertising period is complete, Council's approval is required to proceed with the final Planning Proposal (see Attachment 4) (for inclusion of the land on the LRA map), to request the Parliamentary Counsel's opinion, and then make the Plan pursuant to the Minister's delegated authority.

Manager Property & Business Development - Kate Cramp

Attachments:

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| 1. Diagram showing land to be included in Land Reservation Acquisition map LMLEP 2014 - 32 Yambo Street, 77 Dora Street and 77A Dora Street Morisset | D07948203 |
| 2. Aerial photograph showing land proposed to be included in Land Reservation Acquisition map LMLEP 2014 - 32 Yambo Street, 77 Dora Street and 77A Dora Street Morisset | D07948369 |
| 3. Submissions received - Amendment to Lake Macquarie Local Environmental Plan 2014 - 32 Yambo Street Morisset | D08085325 |
| 4. Planning Proposal - Final Report to Council - Inclusion of Land within Land Reservation Acquisition Map -32 Yambo Street Morisset | D08089172 |