

City Strategy Committee Meeting 6 December 2010

10STRAT045 Amendment to Lake Macquarie LEP 2004 - Lot 75 DP 755242 Awaba Street Morisset

Council Ref: RZ/2/2010 - D01870786
Report By: Strategic Landuse Planner - Lucy Larkins

Précis:

This report has been prepared in response to Council's resolution of 28 June 2010 relating to the amendment to Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) for Lot 75 DP 755242, Awaba Street Morisset (10STRAT019).

The report presents a Planning Proposal (Attachment 1) for Lot 75 DP 755242, Awaba Street Morisset, which changes the zone of the land from 10 Investigation to a combination of 2(1) Residential, 2(2) Residential (Urban Living) and a 40 metre wide 7(1) Conservation (Primary) zone.

Council's endorsement of the Planning Proposal is recommended.

Recommendation:

Council:

- A. Endorses the rezoning of Lot 75 DP 755242 Morisset from 10 Investigation to a combination of 2(1) Residential, 2(2) Residential (Urban Living) and 7(1) Conservation (Primary) zones as illustrated in Attachment 2 to this report.
- B. Forwards the Planning Proposal (Attachment 1) dealing with the rezoning of Lot 75 DP 755242 Morisset to the Department of Planning, for Gateway Determination in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).
- C. Resolves to amend DCP No. 1 to include North Morisset Area Plan – Revision 01 as included in Attachment 4 and places the amendment on exhibition for public comment pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and *Environmental Planning and Assessment Regulation*.

Background:

Lot 75 DP 755242, Awaba Street Morisset was proposed to be rezoned from 10 Investigation zone to 2(1) Residential, 2(2) Residential (Urban Living) and 7(1) Conservation (Primary) zones under Amendment No. 41. During public exhibition, the owners of Lot 75 objected to the width of the 7(1) Conservation (Primary) zone corridor believing that the 40 metre distance from Clacks Creek was excessive and that a 20 metre wide 7(1) Conservation (Primary) zone corridor would be more appropriate.

Following public exhibition and consideration of all submissions, Council endorsed Amendment No. 41 to LMLEP 2004, which included a 40 metre wide 7(1) Conservation (Primary) zoned corridor from the centre of Clacks Creek for Lot 75 (09STRAT007). However, Council staff agreed to remove Lot 75 from Amendment No. 41 to enable further consideration of the proposed 7(1) Conservation (Primary) zone boundary on the land without delaying rezoning of the remaining 36 parcels included in Amendment No.41.

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Initial objections from the landowner to the width of the conservation corridor were based on advice from the Department of Water and Energy (DWE), now known as the NSW Office of Water. The NSW Office of Water initially advised the landowner that Clacks Creek was a first order watercourse, which required a 20 metre riparian zone. However, during assessment of the rezoning application, the NSW Office of Water advised Council that Clacks Creek was a 'Class 2 watercourse'. For Class 2 watercourses, the NSW Office of Water requires a 20 metre core riparian zone and an additional 10 metre vegetation buffer on both sides of Clacks Creek. See Attachment 7 for a copy of the correspondence from the NSW Office of Water. The advice from the NSW Office of Water, however, forms only part of the matters that Council staff take into consideration when determining the width of conservation corridors.

The report to the City Strategy Committee Meeting on Monday 21 June 2010 (10STRAT 019) outlined the landowner's preferred option, the option as outlined in Amendment 41, and Council officers' preferred option. The recommendation of the City Strategy Committee was:

- A. Defer the matter pending further information be provided to Council on the permissibility of the 20 metre wide riparian/environmental corridor.
- B. Discuss with applicant the alternative locations.
- C. Address the issues raised in the Public Access by Ian Andrews.

On 18 August 2010, a meeting was held with the landowner and their consultant to discuss alternative locations of the conservation zone boundary and the type and nature of uses that could be permitted in the conservation corridor.

Response to City Strategy Committee Recommendation (10STRAT 019):

- A. Defer the matter pending further information be provided to Council on the permissibility of the 20 metre wide riparian/environmental corridor.**

The role of the proposed 7(1) zoned area on Lot 75 has a dual purpose as both a riparian area and a conservation/habitat corridor.

The 20 metre core riparian area specifically functions as a transition zone between terrestrial and aquatic environments and performs a variety of essential environmental functions including improving water quality and providing riparian habitat. The protection or restoration of a vegetated core riparian area is important to maintain or improve the health of the watercourse and ultimately Lake Macquarie. Department of Water and Energy's *Guidelines for Controlled Activities- Riparian Corridors* (February 2008) recommends 20 metres (on both sides of a watercourse) as the minimum core riparian zone (CRZ) for a Class 2 watercourse. In addition to the 20 metre CRZ, the guidelines recommend an additional vegetated buffer of 10 metres should be provided on either side of the watercourse. This 10 metre vegetation buffer is measured from the outer edge of the CRZ to allow for edge effects.

The role environmental/conservation of this proposed corridor is identified within the Morisset Structure Plan. The Morisset Structure Plan recommends:

- All identified core riparian zones should be retained and enhanced where possible.
- A minimum core riparian zone of 40 metres either side of a creek or the outer boundary of riparian vegetation, whichever is greater, should be preserved.

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- Rehabilitation should occur within and adjacent to riparian zones to strengthen core riparian values.

These principles were included in the Morisset Structure Plan to promote ecologically sustainable development and to facilitate species movement including corridors for Squirrel Glider populations.

Corridor widths need to be sufficient to protect important habitat and incorporate buffers to provide protection from adjacent land uses and associated weeds and disturbance. Scientific evidence confirms that the wider a corridor is the more effective it will be. A corridor width of 80 metres or more is desirable for habitat corridors to be effective in the long-term.

Other factors behind the planning principles outlined within the Morisset Structure Plan, are the existence of Riparian Melaleuca Swamp Woodland Endangered Ecological Community (EEC) situated adjacent to Clacks Creek and the use of the corridor by the Squirrel Glider, a threatened species. The corridor has been identified as being essential to the long-term viability of the Squirrel Glider population in the Morisset area. The EEC requires a 20 metre buffer area to protect the community from edge effects. This buffer is measured from the outer edge of the EEC boundary.

The option for a 20 metre wide riparian/environmental corridor would be inadequate to protect the inherent value of the riparian and habitat corridor.

B. Discuss with applicant alternative locations.

A meeting was held with the landowner and their representative on Wednesday 18 August 2010. Discussion in the meeting focused on:

- a) The landowner's preferred options of a 25 metre or 20 metre wide riparian area to be zoned 7(1) Conservation (Primary) with the commencement of the 2(1) Residential zone outside of the 25 metre or 20 metre area.
- b) Council officers' recommended option of a 7(1) Conservation (Primary) zone boundary at a distance of 40 metres from Clacks Creek, to provide the highest level of zone protection for the riparian corridor, with provisions to allow some infrastructure within the 7(1) zoned area by specific mention in the North Morisset Area Plan. A small reduction in the 7(1) zone width near the unformed Awaba Street is also proposed in this option to improve the development potential of the proposed 2(2) Residential (Urban Living) zoned land.

Following the meeting on 18 August 2010 the landowner submitted a revised zoning option (see Attachment 5) and justification to Council. This revised option is now the landowner's preferred zone layout. It presents a variable width 7(1) Conservation (Primary) zoned area whereby the first half of the 7(1) Conservation (Primary) zone boundary on Lot 75 is 20 metres from the centre of Clacks Creek and then gradually splays to 35m from the centre of Clacks Creek at the northern most point of the property.

A summary of the landowner's justification for this option is:

- This option would deliver a definitive zoning for Lot 75 of 2(1) Residential, 2(2) Residential (Urban Living) and 7(1) Conservation (Primary) zones allowing a clearer understanding of what is a permissible activity in each zone, whilst keeping the integrity of LEP 2004 intact.
- Lot 75 is less than three acres in size and located close to existing services, community facilities and infrastructure, a 40 metre wide 7(1) Conservation

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(Primary) zone corridor on the site may result in development of the site being unviable.

- A large part of the proposed 40 metre wide 7(1) Conservation (Primary) zone is currently cleared land and a 40 metre wide conservation corridor is not strictly adhered to along the length of Clacks Creek.
- The NSW Office of Water requires a 20 metre wide core riparian area and 10 metre vegetated buffer.
- It is considered that the option of a 20 metre wide 7(1) Conservation (Primary) zone corridor splayed to 35m wide on Lot 75 would provide an appropriate riparian and habitat corridor for Clacks Creek when linked to the APZ requirements.

A full copy of the landowner's justification for this latest preferred option is included as Attachment 6 to this report.

The latest option submitted by the landowner is not supported by Council staff based on the reasons outlined within this report.

C. Address the issues as raised in the Public Access by Mr Ian Andrews.

The remaining issues raised in Public Access by Mr Ian Andrews were:

1. *The permissibility of stormwater management facilities, roads and utilities, and Asset Protection Zones (APZs) in any 7(1) Conservation (Primary) zone located outside the 20 metre wide core riparian zone of Clacks Creek.*

Stormwater management facilities, roads, and utilities are permitted uses with consent in the 7(1) Conservation (Primary) zone under LEP 2004. APZs are not separately defined in LEP 2004. The definition and requirements for APZs are contained within the NSW Rural Fire Service legislative document "Planning for Bush Fire Protection 2006." This document outlines that a road can form part of an APZ and as discussed previously, roads are a permitted use in the 7(1) Conservation (Primary) Zone.

While the 7(1) Conservation (Primary) zone permits road and drainage infrastructure with consent, the location of this infrastructure in this zone at the development application stage is usually discouraged to maintain the environmental values of the land and maintain consistency with the objectives and intent of the zone. Amending the North Morisset Area Plan would give certainty and clarify the extent of these works that could be permitted within the existing cleared portion of the outer 20 metre of the proposed 7(1) Conservation (Primary) zoned area on merit. Additionally, it is considered that the construction of these works would be beneficial to the creation of an outer protection zone for bush fire protection purposes.

2. *What mechanism, including changes to the North Morisset Area Plan, would be used to ensure the implementation of such works are favourably considered at the development application stage if they are to be located within a 7(1) Conservation (Primary) zone – such as including a clause in the relevant part of the North Morisset Area Plan to ensure their permissibility.*

A change to the North Morisset Area Plan (See Attachment 4) is proposed for this particular parcel of land. It is important to note that the proposed changes to the North Morisset Area Plan are only applicable to the option recommended in this report.

The first change is to Acceptable Solution A2.1 in the Stormwater Management section. The following statement would be inserted:

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- *Stormwater management facilities are located outside land zoned for conservation, except where such facilities are located:*
 - *within existing cleared areas of the conservation zone, AND*
 - *outside the 20 metre wide core riparian area, AND*
 - *in an area that is easily accessible for inspection and maintenance purposes.**(Refer to maps 6 and 7).*

This statement has been incorporated to clarify that stormwater management facilities may be located in the outer 20 metres of the proposed 7(1) zoned area on Lot 75. The stormwater management facilities may also form part of the APZ.

The second change is to Acceptable Solution A5.1 in the Bushfire Risk Management section. The following wording would be inserted:-

- *Land in conservation zones is not to be cleared for the purposes of creating any part of an APZ except as identified below:*

The outer 20 metres of the land zoned 7(1) Conservation (Primary) on Lot 75 DP 755242 may be used for an APZ, any clearing is kept to a minimum to satisfy the requirements of the NSW Rural Fire Service.

By inserting the above statement, it will allow the outer portion of the 7(1) zoned corridor on Lot 75 to be utilised for part of the APZ to meet the requirements of the NSW Rural Fire Service Planning for Bush Fire Protection 2006.

The final modification is to Acceptable Solution 4.1 and is as follows:

- *Construction of roads within conservation zones is discouraged, however for the purposes of development of Lot 75 DP 755242 only, a small encroachment not exceeding 1000m² in total area within the cleared section of the 7(1) zone on Lot 75 DP 755242 and adjacent Lot 61 DP 755242 would be accepted.*

The above statement will allow for the construction of roads within a total of 1000m² of the existing cleared area of the 7(1) zoned corridor. This will allow the developer to utilise the area constrained by bush fire for the partial construction of roads that can be included in the calculation of the APZ.

The full version of proposed North Morisset Area Plan – Revision 01 is included as attachment 4.

3. *A 40 metre wide conservation corridor is not strictly adhered to along the length of Clacks Creek.*

While a combination of 7(1) Conservation (Primary) and 7(2) Conservation (secondary) zones apply, the minimum dimension of the Clacks Creek conservation corridor, excluding the section passing through Lot 75, is currently 73 metres at one point, while in many locations it is actually wider than 80 metres. Under the recommended zone option for Lot 75, the corridor would still generally be 80 metres in width, narrowing to 71 metres at the southern boundary of Lot 75.

4. *Lot 75 is less than three acres in size and located close to existing services, community facilities, and infrastructure. A 40 metre wide 7(1) Conservation (Primary) zone corridor on the site may result in development of the site being unviable.*

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The North Morisset precinct is in the ownership of 37 different landowners. The existing parcels vary in size and shape. The best subdivision or development outcome will only occur if the separate parcels are developed in a coordinated manner, or a development company consolidates the individual parcels into developable holdings through strategic land purchases. The Area Plan aims to assist this process by providing guidance on the locations of new access roads.

Proposal:

This report proposes that Council endorse the Planning Proposal in Attachment 1 for Lot 75 DP 755242 Awaba Street Morisset. The Planning Proposal includes a 40 metre wide 7(1) Conservation (Primary) zone corridor as measured from the centre of Clacks Creek for Lot 75. This Planning Proposal has been prepared following consultation and consideration of further information as required by Council's resolution of 28 June 2010.

The Planning Proposal will need to be referred to the Department of Planning's 'Gateway' for determination.

If the Planning Proposal proceeds through the Gateway process, staff will need to make changes to draft Lake Macquarie LEP 2011 (draft LMLEP 2011). The anticipated changes to LEP 2004 and draft LEP 2011 are outlined in the Planning Proposal at Attachment 1.

This report also proposes that Council amend Lake Macquarie DCP No.1 - North Morisset Area Plan – Revision 01 as contained in Attachment 4. The North Morisset Area Plan is proposed to be amended to clarify the intention to allow some road and drainage infrastructure to be constructed in the existing cleared portion of the outer 20 metres of the proposed 7(1) zoned on Lot 75.

Consultation:

On 18 August 2010, a meeting was held with the landowner and their consultant in accordance with Council's recommendation to discuss alternative locations for the 7(1) zone boundary.

Further consultation has also occurred with staff from the Development Assessment and Compliance and Sustainability Departments.

Implications:

Policy Implications:

Lifestyle 2020 Strategy

The proposed area of land to be zoned 7(1) Conservation (Primary) will maintain and enhance the biodiversity values of the subject area and Morisset as a whole. The Residential zones will permit the construction of additional dwellings. It is considered that the zones proposed for the site provide a balance between development and conservation outcomes, which are consistent with the values and aims of the Lifestyle 2020 Strategy.

Lake Macquarie Local Environmental Plan 2004 (LEP 2004)

The delineation of the 7(1) Conservation (Primary) zoned area fulfils the objectives of LEP 2004 by promoting balanced development that considers environmental, social, and economic impacts.

The proposed 7(1) Conservation (Primary) zoned area fulfils a riparian function and an important role as a flora and fauna corridor.

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Lake Macquarie Development Control Plan (DCP) No. 1

Future development of Lot 75 will need to comply with the provisions of DCP No.1.

The North Morisset Area Plan, adopted by Council on 12 April 2010 (10STRAT008), provides further guidance on the development of the part of Morisset that has been recently rezoned to allow urban uses. Lot 75, although removed from Amendment 41, was still taken into consideration in the preparation of the Area Plan. Any development proposed for the subject allotment will be assessed against the Area Plan. The recommended by this report includes amending the Area Plan to allow stormwater management facilities, partial road construction, and APZs within the 7(1) Conservation (Primary) zone, subject to certain criteria. North Morisset Area Plan – Revision 01 is included in Attachment 4.

Lower Hunter Regional Strategy and Lower Hunter Regional Conservation Strategy

The subject area has been identified in the Lower Hunter Regional Conservation Strategy as forming a connecting network of important wildlife linkages. Protecting the designated riparian/habitat linkages through the 7(1) zoned area is consistent with the strategy to maintain and enhance the biodiversity value of the corridor.

The Morisset area has been identified as an emerging regional centre in the Lower Hunter Regional Strategy (LHRS). The zoning of part of the site for residential development, as part of a larger residential precinct, meets the objectives of the LHRS.

State Environmental Planning Policies (SEPP) and Section 117 Directions

The proposed rezoning of the land is consistent with relevant SEPP's and section 117 Directions (see Attachment 1).

Morisset Structure Plan

The Morisset Structure Plan is a broad planning document that identifies key planning objectives and outcomes for urban expansion in the Morisset area. The Structure Plan was adopted by Council in November 2008 (08STRAT063) and endorsed by the Director General of Department of Planning in June 2009.

The zoning option for Lot 75, recommended in this report, is consistent with objectives of the Morisset Structure Plan.

Council's Biodiversity Planning Policy for LEP amendments

Council adopted the Biodiversity Planning Policy for LEP amendments on 27 July 2009 (09SP004). It is considered the delineation of the 7(1) Conservation (Primary) zoned area of the site is consistent with this policy. Providing a 40 metre wide conservation zone on Lot 75 will enhance the riparian and habitat corridor of Clacks Creek. This Policy indicates that a minimum corridor width of 150 metres is preferred, however the width is determined on a site-specific basis. Due to previous clearing of land on both sides of Clacks Creek, a corridor width of 150 metres is not achievable and would be inconsistent with the rezoning decisions already made for other land adjoining Clacks Creek. The zoning option recommended in this report would allow rehabilitation of the conservation corridor to restore ecological and riparian function.

Environmental Implications:

The recommended zoning option as recommended by this report will have a positive environmental outcome by protecting and enhancing a conservation corridor that will maintain the biodiversity value of the area and the quality of water entering Clacks Creek.

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Social Implications:

Throughout the rezoning process and discussions with the landowner, the intent has been to achieve a balance between the development viability of the site for future residential development and the retention of a significant environmental/riparian corridor. The recommended approach results in a balanced outcome by enabling future residential development and protection of an environmentally valuable area, which will enhance the residential amenity of the area.

Financial Implications:

There will be no specific financial implications to Council, apart from staff resources to finalise the rezoning of Lot 75.

Risk and Insurance Implications:

The level of risk attached to the proposed zoning of Lot 75 is minimised by following the requirements of the EP&A Act 1979 and the *Environmental Planning and Assessment Regulation 2000*.

Options:

1. Council resolves to support the recommended land use zoning (Attachment 2) and implement the proposed changes in the North Morisset Area Plan – Revision 01 (Attachment 4). This is the recommended option.
2. Council resolves to support the latest land use zoning option submitted by the landowner (Attachment 5). The changes to the North Morisset Area Plan are not required if this option is supported. This is not the preferred option, as it will provide a conservation corridor that protects the riparian area of Clacks Creek, the Riparian Melaleuca Swamp Woodland EEC and vegetation that supports the Squirrel Gliders. If Council resolves to support this option changes will be required to the attached Planning Proposal.
3. Council resolves to make other changes to the Planning Proposal and/or the North Morisset Area Plan. If this option is pursued Council will also need to determine if re-exhibition of the Planning Proposal and Area Plan is required.

Conclusion:

The rezoning of Lot 75 to a combination of 2(1) Residential, 2(2) Residential (Urban Living) and 7(1) Conservation (Primary) zones, as shown in Attachment 1, is recommended. The proposed zoning and associated amendment to the North Morisset Area Plan will facilitate protection of both the riparian area of Clacks Creek and a habitat corridor for Squirrel Glider, while still allowing appropriate development on the proposed residential zone portion of the subject land.

Manager - Integrated Planning - Sharon Pope

Attachments:

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| 1. Planning Proposal for Lot 75 DP 755242 Morisset | D01955529 |
| 2. Rezoning Map - Lot 75 DP 755242 Morisset - Recommended Option | D01955536 |
| 3. Aerial Map - Lot 75 DP 755242 Morisset - Recommended Option | D01797450 |

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| 4. North Morisset Area Plan - Revision 1 | D01955571 |
| 5. Zoning layout as submitted by landowner | D01953043 |
| 6. Submission - Landowner's justification for preferred zoning option | D01955575 |
| 7. NSW Office of Water letter - proposed land zoning - 9 Stockton Street Morisset | D01710467 |