

City Strategy Committee Meeting 11 June 2013

13STRAT020 Amendment to Lake Macquarie LEP 2004 - Lot 478 DP 755242, Dora Street, Morisset

Council Ref: RZ/2/2009 - D02887343
Report By: Strategic Landuse Planner - Heath Dennerley

Précis:

Council has received a request from Ausgrid to amend Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) to facilitate low-density residential development on the former 'Energy Australia Crew Depot' site at 1 Dora Street, Morisset. A review of strategic land use policies has been undertaken and the request is considered to have merit.

This report seeks a resolution of Council to support preparation of the LEP amendment and to rezone the land from zone 10 Investigation (Urban and Employment/Conservation) to zone 2(1) Residential, and to forward the Planning Proposal (Attachment 1) for a Gateway determination. The Gateway will set the public exhibition period, consultation requirements, and timeframes for finalisation of the amendment.

Recommendation:

Council:

- A. Requests a Gateway Determination from the Department of Planning and Infrastructure pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) in relation to the Planning Proposal at Attachment 1;
- B. Places the Planning Proposal on exhibition, subject to the outcome of the Gateway determination; and
- C. Notifies stakeholders and affected landowners of the Gateway determination and public exhibition period, as required.

Background:

Ausgrid (formerly Energy Australia) has previously used the subject land for an operations depot. The site ceased to be used for depot purposes in September 2008. Consequently, the site is now surplus to the requirements of Ausgrid.

The land is approximately 1,568m² in size and is zoned 10 Investigation (Urban and Employment/Conservation) under LMLEP 2004. The applicant has requested an amendment to LMLEP 2004 to allow residential development on the site. The landowner has indicated their intention to proceed with a subdivision application to divide the lot into two similarly sized lots of approximately 784m² if rezoned.

The most important ecological issue affecting the land is the role the site may play in habitat connectivity within the broader Morisset area, specifically for Squirrel Gliders. This issue is addressed in *the Squirrel Glider Review* (Fallding, M P & Smith, A P 2008) which focuses on habitat requirements to maintain a viable population of Squirrel Gliders.

According to Fallding and Smith (2008) the subject site does not constitute a habitat fragment for the Squirrel Glider, but is classified as a 'Movement Corridor' for Squirrel

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Gliders between surrounding major and minor habitat fragments. Council's Sustainability Department have reviewed the proposal and confirmed that development of the land may potentially affect long-term Squirrel Glider movement in the locality.

The Morisset Structure Plan 2008 and the Lake Macquarie Native Vegetation and Corridors Map do not classify the site as a movement corridor or as a major or minor habitat fragment. The subject land is identified as a potential urban release area in the Structure Plan, subject to the resolution of biodiversity issues. Residential development would be desirable on the subject land as it is located in close proximity to public transport routes and the Morisset town centre, and will therefore make more efficient use of existing infrastructure and services.

The subject land is relatively small in size and the habitat present within the site is heavily disturbed open forest (that could almost be classified as cleared land). The Preliminary Ecological Assessment (dated 22 September 2008) submitted by the applicant indicates that the few remnant canopy tree species would be suitable as a foraging resource for mobile species such as birds and bats, and in its current state, is likely to be of limited connectivity value for Squirrel Gliders. For these reasons, it is not considered appropriate to apply a 7(3) Environmental (General) zoning to the site.

Retention of a habitat corridor that forms part of current development consent on the adjoining subdivision (Lot 488 DP 755242), together with the retention of mature remnant trees on the site will provide adequate protection for the preservation of the Squirrel Glider corridor in the locality. Retention of the vegetation can be achieved through appropriate conditions of consent being applied to future development applications associated with the site. The anticipated residential development proposed for the site would not be Complying Development if it required tree removal, unless Council issued an approval for the tree removal.

The subject land has previously been used for 'depot purposes' by a public authority responsible for providing electricity supply for the community. A combined Phase 1 and Phase 2 Environmental Site Assessment was prepared for the site by Golder Associates. Council's Waste and Environment Rangers (WER) department have reviewed the studies and advised that the primary contaminants of concern were below the relevant thresholds and there is no groundwater contamination, acid sulphate or asbestos issues for the site.

Proposal:

It is proposed that Council resolves to prepare and support an amendment to Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) by rezoning Lot 478 DP 755242 from zone 10 Investigation (Urban and Employment/Conservation) to zone 2(1) Residential to enable development of the land for low-density residential purposes. A Planning Proposal outlining the proposed changes has been prepared and is provided in Attachment 1.

Squirrel Glider habitat will be adequately protected through the insertion of a notation in Council's property database. The notation would require any future development application related to the site be referred to Council's Environmental Planner to assess the extent of vegetation to be retained on the eastern portion of the site.

Consultation:

Relevant departments within Council were consulted during the preparation of the Planning Proposal, including Sustainability, Community Planning, Development

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Assessment and Compliance (DAC), Asset Management, and Waste, Environment and Rangers (WER).

Sustainability

Council's Sustainability department have reviewed the proposal and indicated that future impacts of development of the land can be minimised to ensure long-term Squirrel Glider connectivity in the locality. This issue is addressed as a component of the Environmental Implications – Flora and Fauna section below.

Community Planning

There are no major concerns from Community Planning in regards to the proposed rezoning. The proposed rezoning does not impact upon Council owned/controlled community land.

Development Assessment and Compliance (DAC)

The site is identified as bushfire prone land pursuant to the Lake Macquarie Bushfire Prone Land Map 2011. A preliminary Bushfire Threat Assessment report prepared for the site recommends a 25-metre Asset Protection Zone (APZ) for a Class 1 or 2 building along the northern boundary of the site. At present, the entire recommended APZ is cleared.

Further to the recommendations in the preliminary Bushfire Threat Assessment report, Council's Development Assessment and Compliance department propose that a Bushfire Report that addresses the proposed site in its current state be prepared at the development application stage. Consultation with the NSW Rural Fire Service will be undertaken following Gateway determination.

Asset Management

Council's Transportation Planning section have indicated that issues relating to traffic and parking can be adequately addressed at development application stage. The Roads and Maritime Services (RMS) will be consulted if requested by the Gateway determination.

Waste and Environment Rangers (WER)

Golder & Associates prepared a Combined Phase 1 and 2 Environmental Site Assessment in November 2008 to assess potential contamination.

Council's Waste and Environment Rangers department reviewed the Phase 1 and 2 Environmental Site Assessment and advise that, while some asphalt and fibro cement was found on the site, all samples were below the relevant contamination thresholds, and WER consider the site to be suitable for the intended 2(1) Residential Zone.

As the subject land is approximately 500-metres from the Morisset town centre and 100-metres adjacent to a major railway network, WER advise that noise and vibration from the rail corridor will need to be addressed as part of any future development application.

External Consultation

Consultation with State and Commonwealth public authorities, neighbouring residents, community interest groups, and other community members will be undertaken in accordance with the Gateway Determination.

Implications:

The following implications are based on the Planning Proposal in Attachment 1.

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Policy Implications:

Lower Hunter Regional Strategy (LHRS)

The site is located in Morisset which is identified as an emerging major regional centre in the LHRS. Rezoning the site to 2(1) Residential Zone would be consistent with the LHRS to the extent that it would provide housing in close proximity to local jobs, open/recreational space, public transport and services, and not adversely impact on the biodiversity value of the region.

Lifestyle 2030 Strategy (LS 2030)

The proposed rezoning is consistent with LS 2030. As the site is substantially cleared it will have a minimal impact on the environment. Retention of habitat trees will be addressed at development application stage. It will also ensure that undeveloped Greenfield sites are not disturbed in accommodating the demand for housing by reusing the degraded and disturbed land previously used as a works depot. Furthermore, the draft Lake Macquarie Local Environmental Plan (LMLEP) 2013 would provide housing in close proximity to local bus routes, the Morisset train station, a proposed future cycle way, and the Morisset town centre.

State Environmental Planning Policies (SEPPs)

Relevant SEPPs have been considered in the preparation of the Planning Proposal (refer to Attachment 1). The Planning Proposal is consistent with these SEPPs.

Section 117(2) Ministerial Directions

The Planning Proposal is consistent with the relevant Ministerial Directions made pursuant to Section 117(2) of the *EP&A Act 1979*. A table commenting on the relevant directions is included in the Planning Proposal in Attachment 1.

Morisset Structure Plan

The Morisset Structure Plan is a strategic planning document that identifies key planning objectives and outcomes for urban expansion in the Morisset area. The subject land is identified in a potential urban release area in the plan, subject to resolution of biodiversity issues. The planning proposal is consistent with the objectives of the Morisset Structure Plan. A table commenting on relevant principles is included in the planning proposal in Attachment 1.

Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) / Draft Standard Instrument Local Environmental Plan 2013 (LMLEP 2013)

The Planning Proposal in Attachment 1 considers both LMLEP 2004 and draft LMLEP 2013. The 10 Investigation (Urban and Employment/Conservation) zone under LMLEP 2004 (RU6 Transition zone under draft LMLEP 2012), is an interim zone pending further site investigations to determine the preferred land use. A number of preliminary investigations have been completed on the site which considered a range of land use opportunities and constraints, and led to the recommended zone applied to the amendment proposal.

Although dwelling houses are a permitted land use in the 10 Investigation (Urban and Employment/Conservation) zone under the LMLEP 2004, rezoning the site to 2(1) Residential to allow residential development will provide clear planning intent for use of

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the land and resolve the 10 Investigation (Urban and Employment/Conservation) Zone on the site.

Lake Macquarie City Council Social Plan 2009 – 2014 (Social Plan)

The proposed LEP Amendment meets the objectives of the Social Plan 2009 – 2014 by providing an opportunity for well-located housing that is connected, sustainable, and accessible to public transport and town centre services and facilities.

Environmental Implications:

The site is comparatively free of environmental constraints and is suitable for residential development, as demonstrated in the Planning Proposal. Environmental impacts not addressed elsewhere in this report are summarised below.

Flora and Fauna

The *Squirrel Glider Review* prepared by Fallding and Smith (2008) indicates that the site forms part of a 'movement corridor' for Squirrel Gliders between the surrounding major and minor habitat fragments.

It is considered that retention of a habitat corridor that forms part of current development consent on the adjoining subdivision (Lot 488 DP 755242), together with the retention of mature remnant trees on the site, will provide adequate protection for the preservation of the Squirrel Glider corridor in the locality.

Council's Sustainability Department recommend that tree canopy cover (or the potential to replace native tree canopy) on part of the land should be retained in the future management of the land. Retention of the vegetation can be achieved through appropriate conditions of consent being applied to future development applications associated with the site.

Flooding

The site has not been identified as being prone to flooding. Council will determine whether a site-specific flood study is necessary for localised flooding post-gateway determination at the development application assessment stage.

Visual

According to the Lake Macquarie Scenic Management Guidelines 2013, the land is rated as having a moderate to low Scenic Quality Rating. Future visual impact of any development on the land will be addressed at the Development Application stage and demonstrate that the design achieves integration with surrounding land uses and built form.

Geotechnical

The site is not identified as having any significant geotechnical constraints. The subject land is located within the West Lake Mine Subsidence District and consultation with the Mine Subsidence Board will be undertaken following Gateway Determination.

Heritage

The site does not contain and is not within proximity to any known heritage items. The site is not identified in the Lake Macquarie Local Environmental Plan 2013 Sensitive Aboriginal Landscape Map.

Social Implications:

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The proposed 2(1) Residential zone will have a positive social impact on the local community. The draft Amendment would provide housing in close proximity to local bus routes, the Morisset train station, schools, shops, community facilities, medical facilities, open space, recreational facilities, and a proposed future cycle way. The proposal will contribute to the growth of an existing centre and suburban residential area that will in turn support the function and capacity of the existing movement systems and public infrastructure.

Financial Implications:

There will be no specific financial implications for Council apart from staff resources being involved in the processing of the LEP amendment in accordance with Council's LEP amendment process. The applicant will be required to enter into a standard LEP Amendment Agreement with Council following submission of the Planning Proposal to the Gateway.

Infrastructure Asset Implications:

Due to the small scale of the proposal, it is considered that future development of the site will have a minimal impact on Council's infrastructure assets.

The site is well serviced in terms of access to public infrastructure. Public transport is available in close proximity to the site including the Morisset Train Station and a local bus route which links to larger centres and transport nodes. Connections to the electricity, water, sewerage, and telecommunication network will be funded by the developer and will be addressed at the development application (DA) stage. These services are already located in the area and will be augmented as necessary in consultation with service providers. It is not anticipated that the Planning Proposal will significantly influence the existing levels of service and capacity of the local road network.

Risk and Insurance Implications:

The risk associated with preparing a Planning Proposal is minimised by following the process outlined in the *EP&A Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, and Council's Amending Local Environmental Plan Procedure.

Options:

1. Council resolves to support the Planning Proposal to rezone the site to zone 2(1) Residential to enable development of the land for low-density residential purposes, and to request a Gateway Determination. This is the recommended option.
2. Council resolves to Amend LMLEP 2004 to rezone the subject to part 2(1) Residential, and part 7(2) Conservation (Secondary) Zone over the eastern boundary of the site to address the potential long term Squirrel Glider habitat connectivity issues. This is not the preferred option as the potential impacts of the proposal on the habitat corridor are anticipated to be minor in nature. It is considered that the habitat corridor on adjoining land, together with the retention of mature remnant trees on the site, will provide adequate protection for the preservation of the Squirrel Glider corridor in the locality. Furthermore, the 7(2) Conservation (Secondary) Zone would not be consistent with the adjoining residential land zoning north of the site.
3. Council resolves not to support the Planning Proposal and does not prepare a draft amendment to LMLEP 2004. This is not the preferred option as the proposal would enable residential development in a well-serviced location and resolve the 10 Investigation (Urban and Employment/Conservation) Zone on the site.

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Conclusion:

It is recommended that Council support the preparation of an Amendment to LMLEP 2004 as set out in the Planning Proposal in Attachment 1. Integrated Planning has undertaken internal consultation and considered a number of options to allow low-density residential development on the site. Amending LMLEP 2004 by rezoning Lot 478 DP 755242 from 10 Investigation (Urban and Employment/Conservation) Zone to 2(1) Residential Zone is the preferred option.

It is recommended that Council resolve to request a Gateway determination from the DoPI to enable the Planning Proposal to progress.

Manager - Integrated Planning - Sharon Pope

Attachments:

1. Planning Proposal - Lot 478 DP 755242 Dora Street Morisset D02947138