2.6 Planning Proposal to amend Orange Local Environmental Plan 2011 - Additional Permitted Use (Carwash) at 2 Hanrahan Place

RECORD NUMBER: 2022/2381

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**EXECUTIVE SUMMARY**

Council is in receipt of a draft Planning Proposal that seeks to amend Schedule 1 of the Orange Local Environmental Plan 2011 to create an Additional Permitted Use (APU) for a car wash facility at land described as Lot 87 DP 1167633, known as 2 Hanrahan Place, Orange.

Diagram

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In 2014 development consent (DA 278/2014(1)) was granted for a liquor outlet on the western end of the site and a Neighbourhood shop, take away food and drink premises and restaurant or caféon the eastern end of the site.

This consent was later surrendered as part of condition 5 of DA 289/2017(1) which gave approval for a *retail premises (shop), (drive-through liquor shop) and business identification signage* at the western end of the site, while the eastern end of the site was to be the subject of a future development application pending further market research.

The applicant now seeks to establish a 4-bay carwash, with 2 vacuum bays and a dogwash on the site, which would occur on the eastern end of the site subject to a DA assessment. The Planning Proposal is required due to the site being zoned SP3 Tourist which does not provide for the form of development. Additionally, the proposed development does not conform readily to the existing standard definitions within the LEP.

In this instance an APU is considered preferable to amending the land use tables, as the latter approach would allow the use in all SP3 zoned land across the city and may not be possible given the lack of a standard definition.

**LINK TO DELIVERY/OPERATIONAL PLAN**

The recommendation in this report relates to the Delivery/Operational Plan strategy “7.1. Engage with the community to develop plans for growth and development that value the local environment”.

**FINANCIAL IMPLICATIONS**

Nil

**POLICY AND GOVERNANCE IMPLICATIONS**

Nil

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| --- |
| **Recommendation**  **That Council resolve to support the Planning Proposal in principal and direct staff to:**   1. **Forward the proposal to the Department of Planning and Environment for a Gateway Determination under Section 3.34 of the Environmental Planning and Assessment Act 1979, and** 2. **Request that the Department provide delegations to Council to formally make the plan, and** 3. **Once a Gateway Determination is received, advise and require the proponent to pay all costs associated with any mapping, additional studies or reports as may be required by the Gateway Determination, and** 4. **Subject to any conditions of the Gateway Determination, proceed to undertake agency consultation and public exhibition, and** 5. **Report back to Council at the conclusion of consultation and exhibition for final determination.** |

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**FURTHER CONSIDERATIONS**

Consideration has been given to the recommendation’s impact on Council’s service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

**SUPPORTING INFORMATION**

In September 2014, Council granted development consent (DA 278/2014(1)) for neighbourhood shops, takeaway food and drink premises and restaurant or café. This DA also related to land opposite the site known as 5 Hanrahan Place.

In November 2017, Council granted development consent (DA 289/2017(1)) for a retail premises (shop, drive through liquor shop) and Business Identification Signage at the western end of the site. Condition 5 of this consent required the surrender of the 2014 consent and indicated that the eastern end of the site would be subject to a future application.

After further consideration of the market requirements the proponent is now seeking to activate the eastern end of the site for a car wash, as a complement to the service station in Hanrahan Place.

**2014 approval**

Graphical user interface, diagram

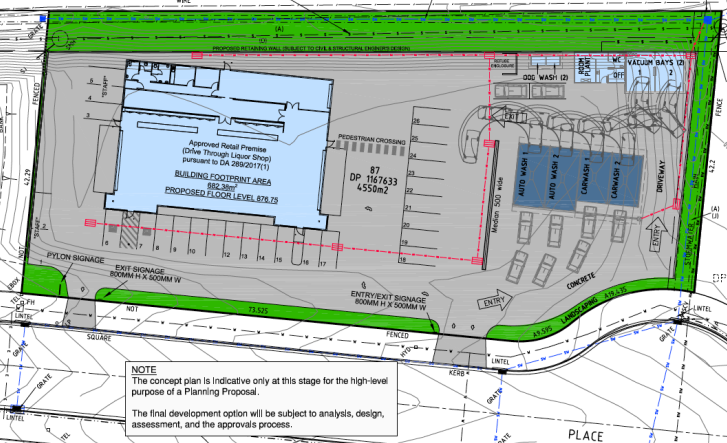
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**2017 approval**

Diagram, engineering drawing

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**Concept plan**



**Need for LEP Amendment and options**

There is no standard definition for a car wash in the LEP dictionary. The use could therefore only be considered in zones that allow “development not specified” in the permitted with consent category. However, the SP3 zone which applies to the land prohibits development not specified. As such the proposed development is currently prohibited and unable to be considered for consent.

The proposal is regarded as a relatively benign and minor form of development. It is located in an area separated from sensitive land uses and proximate to similar land uses that serve the needs of the travelling public. Accordingly, the concept is considered to have site specific merit to support an amendment that would allow assessment of a DA in due course. This report does not provide a merit assessment of a specific design but has considered the use at a conceptual level having regard for the context of the site. The exact design, built form, layout and detailed environmental matters would need to be evaluated as part of a development assessment.

The objective of the proponent is to make a car wash permissible with consent on the land, there are three possible mechanisms that would enable this outcome.

* Amending the land use table of the SP3 zone,
* Rezoning the site to another zone, or
* Creating an additional permitted use (APU) on the site.

**Adjust Land Use Table**

Inserting the use into the permitted with consent section of the land use table for the SP3 zone is not viable for two main reasons. Firstly, the land use table can only contain standard land use definitions and there is no definition for a stand-alone car wash. Secondly, any change to the SP3 land use table would also allow the use at other sites in the SP3 zone, the effects of which would need to be further evaluated.

**Rezone the site**

Changing the land use zone to another zone would in theory allow for the objective. However, given that there is no definition for a stand-alone car wash it has not been included in any of the existing zones. This would limit this approach to those zones where the land use table lists “any development not specified” as permitted with consent. These are known as ‘open zones’ as opposed to closed zones where development not specified is listed as prohibited. Orange LEP 2011 has the following open zones:

B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, IN1 General Industrial, IN2 Light Industrial.

The B zones are not considered appropriate for the site as this would introduce a random collection of higher order retail and commercial uses to the site that are inconsistent with the local hierarchy of commercial centres. The IN zones may have been appropriate however the approved development on the site consists of a drive through bottleshop which is inconsistent with industrial zoning.

**Additional Permitted Use**

APU’s are only meant to be used in rare situations where land use table and zone changes are unable or unlikely to provide a solution. In part this is because the APU mechanism is not intuitive for users of the LEP to anticipate.

However, the site is currently benefitted by being listed as item 2 on the Additional Permitted Uses map and schedule 1 of the LEP. The existing APU was established to enable the drive through bottleshop capped at 600m2. This listing means that anyone doing due diligence on the site will already examine the APU schedule and map. This step will be unchanged should the APU listing be amended.

**Preferred Option**

Of the available mechanisms staff support the use of an APU as the preferred means of achieving the objective. Given the existing APU applying to the site it is anticipated that a Gateway Determination would confirm this view and instruct that the planning proposal take the form of amending the current APU rather than establishing a second APU on the same site, primarily to avoid ambiguity.

The draft Planning Proposal supplied by the proponent has addressed the full range of matters that need to be included and the positions expressed are supported by staff. The main matters relevant to the proposal are outlined below.

**Consistency with SP3 Tourist Zone objectives**

The objectives of the zone applying to the land are:

•  To provide for a variety of tourist-oriented development and related uses.

•  To cater for the needs of the travelling public.

While a car wash is not anticipated to attract tourists, and most customers are likely to be locals, it is clearly relevant to the needs of the travelling public. In this sense the term travelling public need not viewed as exclusively highway or through traffic.

The use proposed is therefore not inconsistent with the intended use of the land under the current SP3 zone.

**Traffic and parking**

The proposal has included a traffic and parking assessment report by Terraffic Pty Ltd. The traffic study has considered the proposal against the previous development consents granted in relation to the site. Particularly DA 278/2014(1) which, although subsequently surrendered, had established that the site could accommodate a commercial building comprising a neighbourhood shop, take away food and drink premises and a restaurant or café with a combined traffic generation measured in vehicle trips per hour (vtph) as shown in the following table.

|  |  |  |
| --- | --- | --- |
|  | Friday Afternoon Peak Period | Saturday Midday Peak Period |
| Previously approved retail shops | 19 vtph | 36 vtph |
| Proposed car wash facility | 8 vtph | 32 vtph |
| Net change in demand | -11 vtph | -4 vtph |

In terms of parking the 2014 consent provided 13 parking bays associated with the commercial building. In contrast the car wash, being a drive through service, is not expected to generate parking demand but will instead require queuing space within the site.

Australian Standard AS/NZS2890.1:2004 clause 3.5 establishes that queue storage should be designed to meet the 98th percentile of demand and the traffic report finds 5 spaces of queue storage would meet this requirement is a 1.5% chance of there being more than 5 vehicles in the queue.

While concept provided in support of the proposal is only for illustration purposes it does demonstrate storage for 7 vehicles is achievable on the site and this may be further enhanced if the site entrance were moved slightly to the west – however the final result will be dependent upon DA assessment in due course.

**Noise generation**

The proposal has included a noise impact assessment (NIA) by SoundIn which has considered both existing residents and currently zoned land. The NIA has been prepared in accordance with the *Noise Policy for Industry* (NPfI)produced by the EPA.

The NPfI recommends the development of project noise trigger levels, which provide a benchmark for assessing a proposal or site. The project noise trigger levels should not be interpreted as mandatory noise criteria but, rather, as noise levels that, if exceeded, would indicate a potential noise impact on the community.

The project noise trigger level is the lower value of the project intrusiveness noise level and the project amenity noise level. The project intrusiveness noise level assesses the likelihood of noise being intrusive above the ambient noise level and is applied to residential receivers only. The project amenity noise level ensures the total industrial noise from all sources in the area does not rise above a maximum acceptable level.

The NIA establishes that a reasonable noise trigger level for the development is 43 dBA and finds that the predicted noise level at sensitive receivers will be approximately 39 – 42 dBA

The site is located midway between existing residential areas. These are indicated in the NIA as R2 (Discovery Hill) and R1 (Leeds Parade) additional future residential receivers have also been identified as NCA1 and NCA2 which correlate to existing zoned but undeveloped land.

A picture containing radar chart

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Table

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The Orange Local Housing Strategy (OLHS) has also identified 264 Leeds Parade, to the north of the subject site, for potential residential rezoning. The NIA has not addressed the specifically addressed the OLHS land, however this land adjoins the NCA1 land and contains the R1 sensitive receiver. The findings of the NIA are therefore considered to be an acceptable proxy for the OLHS land.

However, for completeness Council may request the proponent to update the NIA to specifically consider the OLHS land prior to placing the matter on public exhibition.

**Water – quantity and quality**

The location of the site is adjacent to a dam at the southern end of 264 Leeds Parade. However, along the northern boundary of the site is both a sewer main and a stormwater main that conveys surface water from the neighbouring service station to a point down stream of the neighbouring dam. Stormwater then flows downstream to settlement ponds associated with councils sewage treatment plant.

Local Strategic Planning Statement (LSPS) Planning Priority 15 seeks to: *Manage energy, water, and waste efficiently to ensure a sustainable urban environment.* In response to this the Planning Proposal states:

“Water used in the car wash operation facility would be recovered through the installation of a water recovery system which would treat and enable the reuse of reclaimed water.”

It is reasonable therefore to expect that the DA can be designed and conditioned to both minimise water consumption and protect water quality in terms of any discharge from the site. Any overland flow or other discharge could be captured within Councils existing systems with minimal augmentation required. This matter would be more fully detailed during any DA assessment.

**Planning Proposal guidelines**

The Department of Planning and Environment (DPE) released updated guidelines to preparing planning proposals in September 2022. The main features of the update are

* To categorise proposals into four types; Basic, Standard, Complex and Principle. Under this framework theproposal is a **standard proposal** as it seeks to create or amend an Additional Permitted Use under Schedule 1 of the LEP.
* To define six stages – plus two potential reviews – with anticipated timeframes for each step in the process. **This report, and councils’ resolution, will conclude stage 2**.
* To require that a proposal must consist of a main report that contains or responds to six defined parts and what those parts must contain.

Following is an overview of the stages (with benchmark timeframes) and parts that the draft proposal has provided.

**Stage 1 Pre-Lodgement (50 days)**

Stage 1 includes all preliminary discussions and advice between Council and the proponent and can include preliminary referral to government agencies where a matter is considered likely to be of concern or interest to the agency or where an agencies advice is likely to have a significant bearing on the design or whether the proposal should proceed.

Given the relatively minor nature of this proposal no government agencies have been consulted at this time and the level of Council – Proponent discussions have been minimal.

**Stage 2 Planning Proposal (95 days)**

For privately initiated proposals stage 2 consists of an assessment being undertaken by Council staff culminating with a report to Council to decide whether to support the concept and submit to the Department for a Gateway Determination.

***Rezoning Review***

If a proposal is not supported by Council, or if no decision is made within 95 days (for basic or standard proposals) then a proponent can seek a review by an independent planning panel.

**Stage 3 Gateway Determination (25 days)**

The Department of Planning and Environment assess the strategic and site-specific merit of a proposal and issue a Gateway Determination specifying if the proposal should proceed and whether consultation with various agencies is required.

***Gateway Review***

A proponent may request a review of conditions or determination within 42 days of the Gateway Determination being issued.

**Stage 4 Post-Gateway (50 days)**

Council reviews and actions any conditions of the gateway determination prior to public exhibition.

**Stage 5 Public Exhibition and Assessment (95 days)**

Consultation with the community, authorities and agencies (as required). Review of the proposal to address conditions of the Gateway determination and submissions.

**Stage 6 Finalisation (55 days)**

Final assessment of the proposal and if supported, preparation of the draft amendment, review by parliamentary counsel and finalisation. Once finalised the LEP may be “made” and come into effect.

**Content of Planning Proposals**

The DPE guidelines require that a planning proposal must consist of a main report that contains the following component parts, with any applicable supporting studies or investigations provided as appendices.

**Part 1 Objectives and Intended Outcomes**

A statement of the objectives of the proposed instrument.

Comment: Section 2 of the attached draft Planning Proposal satisfies this requirement.

**Part 2 Explanation of Provisions**

An explanation of the provisions that are to be included in the proposed instrument.

Comment: Section 3 of the attached draft Planning Proposal satisfies this requirement.

**Part 3 Justification of Strategic and Site-Specific Merit**

justification of strategic and potential site-specific merit, outcomes, and the process for implementation.

Comment: Section 4 of the attached draft Planning Proposal satisfies this requirement.

**Part 4 Maps**

existing and proposed maps, where relevant, to identify the effect of the planning proposal and the area to which it applies.

Comment: As the site is already mapped for the existing APU no formal mapping changes are proposed. The attached draft Planning Proposal contains site maps and concept plans to illustrate the intent. These are considered satisfactory for agency consultation and public exhibition purposes.

**Part 5 Community Consultation**

Details of consultation undertaken with Government agencies, council or other authorities, and community consultation that is to be undertaken on the planning proposal post Gateway and during exhibition.

Comment: Section 5 of the attached draft Planning Proposal responds to this requirement. It has been drafted on the assumption of being classed as a minor proposal rather than a standard proposal. However, the exhibition details are identical.

**Part 6 Project Timeline**

Project timeline to detail the anticipated timeframe for the LEP making process

Comment: This has not been detailed in the draft Planning Proposal. A likely timeframe, subject to requirements of a Gateway Determination, is anticipated to consist of the following:

|  |  |
| --- | --- |
| **Stage** | **Timeframe and/or completion date** |
| Consideration by Council | Completed by preparation of this report. |
| Council Decision | 6 December 2022 |
| Gateway Determination | Refer to DPE 12 December 2022  Determination Mid-January 2023 |
| Pre-Exhibition | Mid-January 2023 to Early February 2023 |
| Commencement and completion of public exhibition period | Mid-February 2023 to Mid-March 2023 |
| Consideration of submissions | Mid-March 2023 to Early April 2023 |
| Post-exhibition review and additional studies | Mid-March 2023 to Late April 2023  Anticipate report to PDC May 2023 |
| Submission to the Department for finalisation (where applicable) | Upon Council resolution |
| Gazettal of LEP Amendment | Late June 2023 |

Beyond this, the draft Planning Proposal is supported by appendices containing a Noise Impact Assessment prepared by SoundIn which has been conducted in accordance with the Noise Policy for Industry (NPfI) and a Traffic and Parking Assessment Report prepared by Terraffic Pty Ltd which has evaluated the proposal against relevant industry standards including Clause 3.5 of Australian Standard AS/NZS2890.1:2004 and section 3.11 of the RMS publication “Guide to Traffic Generating Developments” (October 2002).

These appendices are relied upon by the body of the draft Planning Proposal and would form part of any public exhibition materials, along with any other studies or reports as may be required by a Gateway Determination.

**Conclusion**

Overall, the concept of establishing a car wash in north Orange, close to the distributor road, is seen as appropriate and the site selection in Hanrahan Place is logical. Other uses in Hanrahan Place draw and serve similar customers such that there is likely to be positive reinforcement between them. The site at 2 Hanrahan Place is recessed from both the NDR and Leeds Parade both in terms of distance and elevation. As such a car wash facility is unlikely to detract visually from the public realm.

Noise generation could pose an issue for future residential development to the north and south (with the north being somewhat more vulnerable due to the land sloping in that direction). Headlight glare could become an issue for future residents on land to the north for the same reason. It is expected that these matters could be suitably addressed through site design and attenuation measures at the DA stage.

Other sites along or near the NDR would be more likely to generate conflict or impacts.

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**Attachments**

1 Draft Planning Proposal - 2 Hanrahan Place - Car Wash Additional Permitted Use, D22/75363

2 Draft Planning Proposal - 2 Hanrahan Place - Site and Concept Plans, D22/75367

3 Draft Planning Proposal - 2 Hanrahan Place - Acoustic Report, D22/75364

4 Draft Planning Proposal - 2 Hanrahan Place - Traffic and Parking report, D22/75369