

DEVELOPMENT ASSESSMENT REPORT – DA141/19
Demolition of Existing Service Station and Erection of New
Service Station
1106 Great Western Highway, Bowenfels (Lot 5 DP 13247)

Council is in receipt of a Development Application DA141/19 lodged on 12 August 2019 that seeks development consent for the demolition of an existing service station and the construction of a new service station sales building and associated development on land at 1106 Great Western Highway, Bowenfels (corner of Tweed Road) identified as Lot 5 DP 13247.

The subject land comprises an irregular shaped parcel located on the north-western corner of the Great Western Highway and Tweed Road. The site has an area of approximately 2386.5m² and currently contains an existing and operating service station located at the Great Western Highway frontage. The land and its context are illustrated in the image below.



The originally submitted development application sought consent for the demolition of the existing service station, workshop and canopy and the construction of a new service station consisting of a new 180m² retail space and new canopies over the fuel pumps. The new development would have involved the establishment of a contemporary service station facility with 24 hour operation including the service of pre-packaged foods and convenience retail services. Parking for 9 vehicles was included with vehicular access from both Great Western Highway and Tweed Road. Standard signage was also included in the original proposal.

On 15 September 2020, the applicant submitted revised design drawings for the proposal that substantially reduced the size and scale of the development. The revised design essentially

retains the existing building on the site and involves the refurbishment of the existing structure. The revised design involves the expansion of the existing service station retail area into the now disused mechanical workshop on the site. Under the revised design, no changes are proposed to the exterior areas with the current canopy and fuel bowsers to remain.

2. SUMMARY

To assess and recommend determination of DA141/19. The recommendation is for refusal for the reasons outlined in this report.

3. LOCATION OF THE PROPOSAL

Legal Description: Lot 5 DP 13247
Property Address: 1106 Great Western Highway, Bowenfels

4. ASSESSMENT

The development application was initially submitted on 12 August 2019 seeking consent for the full redevelopment and expansion of the existing service station and involved an expansion of the development towards the rear of the site. As part of the assessment of the original submission, Council staff undertook a preliminary assessment of the proposal and referrals were made to various government agencies. A number of aspects of the development were identified as requiring further information to enable an appropriate assessment. This included:

- Stormwater treatment and management details,
- Acoustic assessment,
- Traffic, parking and access information, and
- A number of other design details inadequately detailed in the submitted DA.

Some additional information was submitted by the applicant addressing the information requested, however, this was insufficient to adequately address the items identified.

The original application was also subject to public notification with the development application placed on public exhibition and notification of the proposal given to surrounding landowners. In response, 6 submissions of objection were received (see further detail later in this report). In addition to the above, the development application was called in by Council by resolution (19-274) at its Ordinary Meeting held on 23 September 2019. At this meeting Council resolved to call the application in for determination by Council at a subsequent meeting and that an on-site meeting will be held with Councillors, staff, objectors and the applicant.

On 15 September 2020 amended drawings were submitted for the proposal which substantially reduced the extent and scale of the development, essentially involving the refurbishment of the existing building and facilities, including new signage and 24hr operations. Insufficient supporting documentation has been provided with the revised design to address the essential components of the proposal and how it differed from the originally submitted documentation. In response, several requests have been made of the applicant to provide the additional required documentation without a satisfactory response.

Because of the above and the insufficient information submitted to support the proposal, the application is unable to demonstrate the development would not have an adverse environmental impact and does not adequately address the potential social and economic

impacts in the locality or the suitability of the site for the development. Because of this Council is unable to assess the application in accordance with the requirements of clause 4.15 of the *Environmental Planning and Assessment Act 1979*.

5. ZONING: The land is zoned R1 General Residential in under the *Lithgow Local Environmental Plan 2014* (LEP) as illustrated in the map extract below:



6. STATUTORY REQUIREMENTS

6.1 PERMISSIBILITY

Although a 'service station' is a prohibited land use in the R1 General Residential zone under the LEP provisions, the service station is an "existing use" under the provisions of section 4.65 of the *Environmental Planning and Assessment Act 1979*. Section 4.65 defines an "existing use" as follows:

4.65 Definition of "existing use"

In this Division, existing use means—

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) the use of a building, work or land—*

- (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

The Act further provides for the continuation of existing uses in section 4.66 as follows:

4.66 Continuance of and limitations on existing use

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises—*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*
- (3) *Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

Under the provisions of the *Environmental Planning and Assessment Regulation 2000* an existing use can be expanded or altered subject to development consent as follows:

Part 5 Existing uses

43 Development consent required for alteration or extension of buildings and works

- (1) *Development consent is required for any alteration or extension of a building or work used for an existing use.*
- (2) *The alteration or extension—*
 - (a) *must be for the existing use of the building or work and for no other use.*

Based on the above, the established service station on the site is defined as an existing use and Council's records show that it was constructed prior to 1990 and has continued in use as a service station since the prohibition of the use in the LEP. As such, development consent can be granted to the alteration and expansion of the service station despite the prohibition of the use in the LEP.

6.2 POLICY IMPLICATIONS (OTHER THAN DCPs)

Policy 7.5 Notification Of Development Applications (Repealed during the assessment process – now known as Lithgow Community Participation Plan)

Council's Policy 7.5 applied to all land within the Lithgow Local Government Area (LGA) and was in force at the time of lodgement of the application. The development application was subject to public exhibition for 28 days with written notification of the proposal given to adjoining/adjacent property owners.

During the notification period 6 submissions were received. These submissions are outlined later in this report.

Policy 7.7 Calling In Of Development Applications By Councillors

This application has been called in pursuant to Policy 7.7 "Calling in of Applications by Councillors".

Item 3 that states:

3. Should written notice signed by a Councillor be provided to the General Manager prior to determination of a development application, the application shall not be determined under delegated authority but shall be:

- Reported to the next available Ordinary Meeting for the information of Council that the development application or development application/construction certificate has been 'called in'; and*
- Reported to a Meeting of Council for determination where the application is in a state that it can be determined.*

The application was called in by Councillor Wayne McAndrew.

The call in report was presented at the Council Meeting held 23 September 2020, with the following resolved:

19-274 RESOLVED

THAT:

- 1. The calling in of Development Application DA141/19 be noted.*
- 2. Administration organise an onsite meeting.*

Due to the identified deficiencies in the application and the recommendation for the refusal of the application, the onsite meeting is considered unnecessary and has not been undertaken.

6.3 FINANCIAL IMPLICATIONS

None.

6.4 LEGISLATIVE COMPLIANCE

Local Government Act 1993

A Section 68 Application (S68102/19) for connection to Council's Water and Sewer services was submitted with the development application. Given that limited information has been submitted for assessment of the development application, the associated S68 application is unable to proceed.

Environmental Planning and Assessment Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

Any Environmental Planning Instruments

Lithgow Local Environmental Plan 2014

LEP 2014 – Compliance Check		
Clause		Compliance
Land Use table	R1 General Residential	No
7.1	Earthworks	Yes
7.3	Stormwater management	Yes
7.5	Groundwater vulnerability	Yes

Comment: The land is within the R1 General Residential zone under the *Lithgow Local Environmental Plan 2014* (LEP). The objectives of the R1 zone are:

1 Objectives of zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain or improve the water quality of receiving water catchments.*

The subject land is surrounded by a mixture of residential uses and a church, with a highway frontage. The service station provides a service that meet the day to day needs of the surrounding residents. In summary, the proposed development, being a continuation and expansion of an established existing use is generally an acceptable use of the land and is not inconsistent with the zone objectives.

State Environmental Planning Policy No 33—Hazardous and Offensive Development

This SEPP requires that any 'potentially hazardous or offensive development' be assessed using a preliminary hazard analysis. For this development, safety precautions will need to be undertaken for the site specifically relating to the refuelling of trucks and vehicles. Due to the changes in the submitted application and proposal details, and the identified information deficiencies, the requirements of this SEPP have not been fully assessed and it cannot be determined whether compliance with its requirements will be achieved.

State Environmental Planning Policy No 55—Remediation of Land

The land has been investigated for potential contamination and assessment details submitted with the development application. This assessment has concluded that there is no evidence of significant soil or ground water impacts. The assessment also states that the site is considered suitable for the current and continued use of the site as a service station.

State Environmental Planning Policy No 64—Advertising and signage

The proposed signage is compatible with the character of the area and generally consistent with the established use of the site.

The development proposes the following signage:

- 1 x pylon sign,
- 4 x canopy fascia signs (internally illuminated),
- 1 x fascia sign on retail building,
- 2 x poster boards on retail building.

The signage and design will not detract from the surrounding developments and will be consistent with the existing theme on the site. There are no expected impacts on views or vistas of the area. The proposed signage will not obscure other advertising and will not create clutter. The size and scale of the proposed signs will be similar and will replace the existing signs on the site.

The signage is not expected to present a distraction to motorists and is no visually dominant, conveying simple business identification logos and petrol pricing information consistent with legislative requirements for service stations and compatible with standard signage presentation for similar premises

The signage will not provide distractions or safety issues for road users, pedestrians or obscure sightlines from public areas. The proposal has been referred to Transport for NSW for assessment and meets the requirements of the SEPP.

State Environmental Planning Policy (Infrastructure) 2007

SEPP (Infrastructure) 2007 – Compliance Check		
Clause		Compliance
Division 5 Electricity transmission or distribution		
Subdivision 2 Development likely to affect an electricity transmission or distribution network		
45	Determination of development applications—other development	Yes
Division 17 Roads and traffic		
Subdivision 1 Road infrastructure facilities		
96	Development permitted with consent	Yes
Subdivision 2 Development in or adjacent to road corridors and road reservations		
101	Development with frontage to classified road	No
104	Traffic-generating development	No
Schedule 3	Traffic generating development to be referred to the RTA	Yes

Electricity transmission and distribution – clause 45 of this SEPP requires development to consider potential impacts on electricity infrastructure. The development is within proximity to electricity infrastructure owned by Endeavour Energy the application has been referred to that agency for comment. Endeavour Energy’s comments have been received with no objections.

Roads infrastructure – Clause 101 of the SEPP applies to development with a frontage to a classified road (Great Western Highway) and the development application has been referred to Transport for NSW (TfNSW) for review and comment. TfNSW have identified several deficiencies in the original proposal and has advised they are unable to support the proposal in its current form. The revised design submitted by the applicant has not been referred to TfNSW due to the insufficient information provided in support of the revised design. Having regard for the above, the application cannot be supported and has not addressed the requirements of this SEPP.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The subject land is within the Sydney Drinking Water Catchment and is subject to the requirements of this SEPP. The original application was referred to Water NSW for concurrence under the SEPP provisions. Water NSW have granted approval to the original design subject to conditions. The amended proposal has not been referred to Water NSW for concurrence due to the insufficient information submitted.

Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

Any Development Control Plan

Nil.

Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4?

Nil.

Any matters prescribed by the regulations that apply to the land

The development proposal can generally achieve compliance with applicable regulations.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Adjoining Land Uses: The surrounding area contains low density residential and associated uses. The proposed change to 24-hour operation is expected to have an impact on the surrounding residential properties particularly in relation to social movements, noise and visual (lighting) impacts.

Impacts such as light spill, increased noise, additional vehicular and social movements are expected to result from the proposal which will potentially negatively impact on the amenity of surrounding residential dwellings. Some of these impacts were addressed by the applicant in the original application submission but insufficient details have been submitted to address the potential impacts of the amended design. Based on this, the extent of potential impacts to adjoining properties is unclear and insufficient details on how these will be addressed and mitigated have not been provided. For this reason, the application is not supported.

Context and Setting: The development is located within an established residential area with a highway frontage. The proposal originally sought to substantially increase and expand the size of the service station which would have resulted in additional impacts on the locality. The revised design scales back the previous expansion proposal and seeks to utilise the existing building footprint involving a refurbishment of the existing shop and mechanical workshop.

The information submitted with the revised design does not adequately address the potential impacts and the applicant has not provided sufficient information to enable an assessment on the impacts of the development on the surrounding locality or its suitability for the site. For this reason, the application is not supported.

Noise: An acoustic report was undertaken for the development and submitted with the application. The report states that air-conditioning and refrigeration plant is contained in the service bay on the northern side of the shop. A 2.2m high acoustic fence is proposed on the northern property boundary to reduce noise impacts on the adjacent residential building. A 1.8m high acoustic fence is proposed on the south western property boundary to reduce noise impacts on residences along Outer Crescent and Landa Street.

Insufficient details have been provided to address the acoustic impacts of the proposal and the potential increased noise impacts on adjoining residential properties. In the absence of adequate information to assess these impacts and identify how these will be mitigated, the proposal is expected to result in an unreasonable negative impact on the amenity of the locality and is not supported.

Access/traffic/carparking: The original proposal involved a substantial expansion of the service station and related increased traffic generation and truck movements. The original proposal was referred to Transport for NSW for comment and concurrence under the legislative requirements. As stated above, TfNSW did not support the original proposal due to the increased traffic movements and insufficient details provided in the original submission. Additional information was requested from the applicant in this regard but has not been submitted.

The amended design will utilise the existing driveways from Tweed Road and the Great Western Highway. The amended plans also show a service yard to be located on the property. The amended design has not been submitted with sufficient supporting documentation addressing changes to traffic movements and truck access to enable its referral to TfNSW for review and updated comments. For this reason, the application is not supported.

The Suitability of the site for the development

In general, the expansion and upgrade of an existing use is an acceptable land use outcome providing the relevant impacts of a proposal are addressed and considered. In the circumstances, however, due to the deficiencies in the information submitted and the insufficient details submitted in support of the amended design, the suitability of the site for the development proposed cannot be assessed. For this reason, the application is not supported.

Any submissions made in accordance with this Act or the Regulations

The original proposal was referred to Water NSW, Transport for NSW, Endeavour Energy, Council's Building Officer, Water & Wastewater Officer, Environmental Officer and Engineering Officer for comment.

Responses from these referrals have been received based on the original proposal with a number of matters requiring further information identified. The applicant has been notified of the additional information required on several occasions and has not sufficiently addressed the identified deficiencies to enable the application to be supported.

The applicant revised the design during the assessment process, substantially reducing the extent and scale of the proposal. Insufficient information has been submitted in support of the revised design to enable an adequate assessment or the referral of the revised design to referral agencies and officers for comment.

The original application was also placed on public exhibition in accordance with the Council's notification policy (in force at the time of lodgement). This involved the notification of surrounding landowners of the application and the provision of application documentation for public viewing at Council's customer service counter. The public exhibition period was 28 days and 6 submissions were received raising objections to the proposal.

The issues raised in the submissions are summarised as follows:

- The 24/7 operations will create additional noise impacts from trucks and vehicle movements, social noise from people using the outdoor dining area and using the facility.
- The development would encourage more trucks to stop and disruptions from inappropriate anti-social behaviour.
- The proposed operations will create additional rubbish and hazardous material to the area.
- The development will create a place where people would congregate.
- Additional traffic movements and foot traffic utilising the entrance on Tweed Road throughout all hours of the day and night,
- The safety of the intersection of Tweed Road and the Great Western Highway with no designated turning lane,
- Materials, finishes and configuration of proposed 2.2m solid fencing and/or retaining walls,
- Impacts from trucks and increased traffic movements on Great Western Highway accesses and adjoining properties,
- Impacts to the existing footpath from current truck movements/access,
- New building will be highly visible from Tweed Road and will reduce the sale value of the properties,
- Increase light pollution from the signage and noise pollution from an increase in traffic movements,
- Increased foul odours (chemical smell).

The applicant has been requested to submit additional information to address a number of the issues raised above and has failed to adequately respond to this request.

The revised design received from the applicant is not supported by sufficient information to address the changes in the design, what impacts will be altered and how these are proposed to be mitigated. Because of this, the amended application has not been re-notified or re-exhibited. A number of requests have been made of the applicant to provide this information. Because of this, the impacts of the proposal have not been addressed and cannot be assessed and the application cannot be supported.

The public interest

Due to the numerous deficiencies in information submitted and the applicant's failure to adequately respond to Council's requests, the application in its current form cannot be supported and its favourable determination would not be in the public interest. Because of this, the application is recommended for determination by way of refusal.

7. DISCUSSION AND CONCLUSIONS

The original application has been identified as having a number of information deficiencies to enable a full and competent environmental assessment under the requirements of the *Environmental Planning and Assessment Act 1979*. A number of requests were made to the applicant requesting additional information in support of the proposal which has not been provided.

An amended design has been submitted by the applicant which is not supported by sufficient information to enable its full assessment, referral to agencies or public notification. The applicant has been requested to provide this information to enable the finalisation of the assessment but has not responded to Council's request. Due to the deficiencies identified, the application in its current form cannot be supported and is recommended for refusal.

7. ATTACHMENTS

Nil.

8. RECOMMENDATION

THAT development application DA 141/19 be determined by way of refusal for the following reasons:

1. Insufficient information has been submitted in support of the development application to enable a full assessment of the proposal under the requirements of section 4.15 of the *Environmental Planning and Assessment Act 1979* and in accordance with Part 1 of Schedule 1 of the *Environmental Planning and Assessment Regulation 2000*.
2. The traffic generating characteristics of the development have been inadequately addressed and the proposed vehicular access arrangements for the development are unacceptable; and
3. Transport for NSW (RMS) have not given support to the proposal in accordance with clauses 101 and 104 of *State Environmental Planning Policy (Infrastructure) 2007*; and
4. The impact of the development on the amenity of the surrounding locality cannot be determined due to the lack of sufficient information to enable a full assessment and evaluation of potential environmental impacts,
5. Insufficient detail has been submitted in support of the development in relation to its design, how negative environmental impacts have been identified, how these will be mitigated and the suitability of the site for the development, and
6. Approval of the development due to the deficiencies identified in the application is not in the public interest.

Report prepared by: Lachlan Sims, Team Leader Development

Signed:.... 5/02/2021