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**11.2 REQUEST FOR GATEWAY DETERMINATION - 19 SCOTCH CREEK RD, MILLERS FOREST - ADDITIONAL PERMITTED USE**

**FILE NO:** RZ21003

**ATTACHMENTS:** 1. Planning Proposal (under separate cover)

**RESPONSIBLE OFFICER:** Matthew Prendergast - Group Manager Planning & Environment  
Andrew Neil - Manager Strategic Planning  
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**AUTHOR:** Gary Hamer - Senior Strategic Planner

**APPLICANT:** Insite Planning

**OWNER:** Mr. R.J. O'Donohue

**PROPOSAL:** Amendment to Maitland Local Environmental Plan 2011  
Schedule1 – Additional Permitted Uses (APU)

**LOCATION:** Lot 1 DP 721804, 19 Scotch Creek Rd, Millers Forest

**ZONE:** RU1 Rural Zone

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**EXECUTIVE SUMMARY**

*Council received a request to amend Maitland Local Environmental Plan 2011 (MLEP 2011) seeking to allow an additional permitted use (APU) for 19 Scotch Creek Road, Millers Forrest. The purpose of the request is to legitimise an existing use to enable a future development application to upgrade the existing facilities.*

*Through consultation with Maitland City Council, it was established that while the use was listed as an additional use of land within Schedule 3 of the Maitland Local Environmental Plan 1993 (MLEP 1993), a formal development application seeking consent for the use was never lodged. As part of the process involved in the preparation of the MLEP 2011, additional uses of land within Schedule 3 of the MLEP 1993 which had not been acted upon were removed from the LEP. As such, the approved additional use of 19 Scotch Creek Road Millers Forest was not translated to the current MLEP 2011.*

*Council staff have prepared a Planning Proposal to amend MLEP 2011 to add an additional clause to Schedule 1 Additional Permitted Uses enabling use of land at 19 Scotch Creek Road Millers Forest (the subject site) for sand and gravel processing purposes.*

*The Planning Proposal to enable the additional permitted use by way of an amendment to MLEP 2011 is provided as Attachment 1 to this report for Council consideration.*

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## **OFFICER'S RECOMMENDATION**

### **THAT**

- 1. Pursuant to Section 3.34(1) of the Environmental Planning and Assessment Act 1979, Council submits the planning proposal, to the Department of Planning and Environment requesting a Gateway Determination.**
- 2. Following issue of a Gateway Determination, Council undertake consultation with the community and relevant government agencies in accordance with Section 3.34 and Schedule 1 of the Environmental Planning and Assessment Act 1979 and the conditions of the Gateway Determination.**
- 3. Council requests to utilise delegation functions under Section 3.36 of the Environmental Planning and Assessment Act 1979 to make the Plan, following completion of community consultation and adoption of the Planning Proposal.**

## **REPORT**

The purpose of the report is to:

1. Seek endorsement to enable an additional permitted use over Lot 1 DP 721804, 19 Scotch Creek Rd, Miller Forest to facilitate for an existing gravel and sand processing operations as a light industry.
2. Provide a summary of the planning proposal for the site to enable a submission to the NSW Department of Planning and Environment for a Gateway assessment, seeking a Gateway determination.

## **BACKGROUND**

The Planning Proposal has been prepared in response to a request from the landowner, following discussions regarding the existing legal use of the land for the continuation of the present-day operations. It was established that while the proposed use was listed as an additional use of land within Schedule 3 of the *MLEP 1993*, a formal development application seeking consent for the use was never lodged.

As part of the process involved with preparing the *MLEP 2011*, Additional uses of land within Schedule 3 of the *MLEP 1993* which had not been acted upon were removed from the LEP. As such, the one approved additional use of 19 Scotch Creek Road Millers Forest was not translated to the current *MLEP 2011*.

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Figure 1: Site Location

The intent of the Planning Proposal is to enable with development consent the sand processing activities which have historically been undertaken on the subject site.

An amendment to the *MLEP 2011* is required to achieve the strategic intent.

The Planning Proposal was supported by three studies including:

- Traffic Impact Assessment (Intersect Consultants January 2022)

The assessment was carried out in accordance with the guidelines contained within the RTA's Guide to Traffic Generating Developments and includes an assessment of the local road networks capacity to cater for the development within a 10-year horizon period and compliance with Maitland Council's DCP.

Council's Engineering & Design department reviewed the submitted assessment and reported that:

*"The traffic report has not identified any issues that would impact of the continued operation of the facility from a traffic perspective. From a traffic perspective, the traffic report by Intersect Traffic recommends that the proposal can be supported."*

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- Noise Impact Assessment & Acoustic Audit (Reverb Acoustic Consultants January 2022)

A Noise Impact Assessment has been prepared by Reverb Acoustics to establish assessment criteria and conduct compliance monitoring at nearest residential receivers during typical operations of the facility. The site has been in operation for thirty (30) years and to date no noise related issues have occurred concerning nearby residents. Figure 3 indicates the distance of the existing facility to nearby residences. A list of recommendations has been created that if in the event there are no compliant matters should be applied to minimize future disturbances.



Figure 2: Location of nearby residences.

- Preliminary Contamination Assessment (Insite Planning January 2022)

The report documents a Preliminary Contamination Assessment (PCA) of potentially contaminating activities at 19 Scotch Creek Road (subject site). The Investigation Area for this PCA encompasses the eastern and central portions of the subject site which cover the extent of current operations at the site. The site has four potential Areas of Environmental Concern (AEC) that required assessment. (Refer to Figure 3). These included:

- A. Diesel Storage
- B. Decommissioned Aquaculture ponds
- C. Oil storage
- D. Turf farm

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Figure 3: Areas of Environmental Concern (AEC's)

The objective of this assessment is to determine if there are any activities occurring, or having occurred in the past, that could have contaminated the site and impacted on the site suitability for use as a sand and gravel processing industry. In this context it is a site scoping exercise to determine if more intrusive site sampling is required as a second stage to the PCA.

As part of the assessment a review of the past historical uses, approved consent was undertaken to develop an AEC (Area of Environmental Concern).

The outcomes of the study concluded that:

- No sites were listed on the NSW Government PFAS Investigation program within 500m of the site.
- No potentially contaminating activities were identified within 500m of the site part from routine pesticide spraying that is in accordance with the Pesticides Act 1999.
- No ongoing compliance matters have occurred on site regarding contamination on the site.

The site is located within the rural area of Millers Forest that is dominated by a combination of turf farming and agricultural activities.

The Planning Proposal will provide an employment generating development to the wider community and as an existing facility there has been no ongoing issues or compliance matters.

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The proposal provides both strategic merit for the proposal to be forwarded to the Department of Planning and Environment seeking a Gateway Determination.

The Planning Proposal is included as *Attachment 1* to this report.

#### **FINANCIAL IMPLICATIONS**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

#### **POLICY IMPLICATIONS**

This matter has no specific policy implications for Council.

#### **STATUTORY IMPLICATIONS**

This report has regard to the provisions of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning & Assessment Regulation 2000*.

#### **CONCLUSION**

The Planning Proposal seeks to amend *MLEP 2011* to insert an Additional Permitted Use to facilitate the sand and gravel processing activities occurring on the site. Council staff have assessed the information provided and recommend that the Planning Proposal be submitted to the Department of Planning and Environment requesting a Gateway Determination.