

Our Ref: 103/155 (1146538)

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Robert Corken

16 November 2015

Department of Planning and Environment
PO Box 1226
NEWCASTLE NSW 2300

Att: Ben Holmes

Dear Mr Holmes

REQUEST TO CONSIDER AN AMENDMENT TO THE MAITLAND LOCAL ENVIRONMENTAL PLAN 2011 UNDER 73A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Council has recently discovered that there is an error in the Maitland Local Environmental Plan 2011. The error relates to an area along Melbourne Street, East Maitland that is currently shown as B6 Enterprise Corridor but was rezoned from B6 to B4 Mixed Use on 4 July 2014. That rezoning is amendment 8. A copy of plans showing the correct zone and the erroneous zone are attached to this letter.

On investigation, it appears that the error has occurred during amendment 13 that rezoned land at Wallis Street, East Maitland from RU1 Primary Production to R1 General Residential and E2 Environmental Conservation. That amendment was published on legislation website on 19 December 2014.

The two amendments share a common LZN map sheet series; specifically LZN_004D. The maps supplied for amendment 13 did not include the change to the Melbourne Street precinct. A copy of each map is attached to this letter.

It is Council's opinion that the error can be corrected under the provisions of 73A of the Environmental Planning and Assessment Act 1979 as:

1. it will correct an obvious error consisting of a misdescription,

The area was rezoned to B4 – Mixed use from B6 – Enterprise Corridor in July 2014 and the affected map sheet was amended to reflect that change. In December 2014, an amendment of the same map sheet was made. However, this amendment related to a single property in Wallis Street, East Maitland and did not affect any of the properties targeted in the previous amendment. In the process of amending the map sheet to accommodate the Wallis Street amendment the amendment to Melbourne Street was omitted. This resulted in returning the zone to B6 – Enterprise Corridor.

This is an obvious error that consists of a misdescription of the zone along Melbourne Street. It is noted that a reference in 73A(2) includes an amendment of an instrument or replacement of a map adopted by an instrument.

2. it addresses matters in the principal instrument that are of minor nature, and

It is considered that this amendment is of a minor nature as: the amendment is wholly consistent with the previously amendment; the change of the zone from B4 to B6 was positively received by the landowners of the affected properties. No adverse submissions were received during the formal exhibition period and only a single supportive submission was received; and no substantive development approvals have been made or determined during the period that the zone has reverted to B6 Enterprise Corridor.

3. it will not have any significant adverse impact on the environment or adjoining land.

The change will not have any adverse impact on the environment or adjoining land.

The change required is to amend LZN_004D to replace the B6 Enterprise Corridor zone along Melbourne Street to B4 Mixed Use consistent with amendment 8. Amendment 8 was publically exhibited for a period of 28 days. A single submission in support of the change to B4 Mixed Use was received during the exhibition period.

The mapping error has been in place since 19 December 2014. During that 11 month period Council has received and determined two development applications.

1. Subdivision (Realignment of boundaries: 4 lots to 3 lots)
2. Change of Use - Office and Storeroom (Commercial Premises) and signage.

Both of these are permissible development in the B6 and B4 zones.

It is not intended to again seek the views of the landowners because:

1. the amendment was only made last year (2014). Therefore, the outcomes of the formal consultation and exhibition are current and remain relevant.
2. during the exhibition period only one formal submission was received. This submission was supportive of the change.

Council requests that the Department issue a gateway determination agreeing to address the error under 73A of the Act. Council is also willing to take delegation for this matter.

If you wish to discuss this matter please contact Rob Corken on 02 4934 9784 or at rob.corken@maitland.nsw.gov.au.

Yours sincerely

Bernie Mortomore
GROUP MANAGER PLANNING, ENVIRONMENT AND LIFESTYLE