

## Planning Services

### Plan Finalisation Report

**Local Government Area:** Maitland

**File Number:** OBJ17/09444

#### 1. NAME OF DRAFT LEP

Maitland Local Environmental Plan 2011 Amendment No.28 (draft LEP).

#### 2. SITE DESCRIPTION

The planning proposal applies to land at Lot 90 DP 785244 Anambah Road, Anambah (the site). The site is a minor extension to the existing urban boundary in the Anambah Road area, see figures 1 and 2.



Figure 1: Aerial photo of site

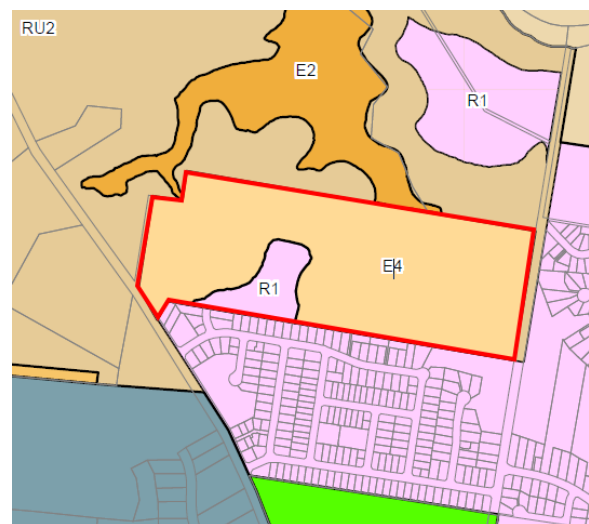


Figure 2: Proposed LEP zone map

#### 3. PURPOSE OF THE PLAN

The planning proposal has these three objectives:

- To rezone the subject site to permit residential development
- To protect public views to the rural land surrounding the site
- To respond to the heritage and flooding constraints affecting the site

The draft LEP implements these objectives by:

- rezoning land at the site fronting Anambah Road from RU2 Rural Landscape to R1 General Residential and E4 Environmental Living
- reducing the minimum lot size for the R1 General Residential portion from 40ha to 450m<sup>2</sup>
- reducing the minimum lot size for the E4 Environmental Living portion from 40ha to 7ha.

The proposal will create around 23 residential lots and 2 additional dwellings on large lots in the proposed E4 zone.

#### 4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Maitland Electorate. Jennifer Aitchison MP is the State Member for Maitland.

Meryl Swanson MP is the Federal Member for Paterson.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** A political donation disclosure statement has not been provided and there are no known political donations.

#### 5. GATEWAY DETERMINATION

The Gateway determination issued on 17 August 2017 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The proposal was due for finalisation by 24 August 2018. Due to an error in not mapping the site in the Urban Release Area, delays have been experienced in finalising the proposal.

A Gateway alteration will be issued to extend the proposal to 17 October 2018 and to amend the planning proposal description to include mapping the site as an urban release area to apply a consistent approach to similar sites in the Maitland LGA and the Lower Hunter region.

The planning proposal satisfies the conditions of the Gateway determination, as altered.

#### 6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 31 August 2017 to 14 September 2017. Three submissions were received from community members who raised these two main issues:

1. The Royal Newcastle Aero Club operates out of the Rutherford Aerodrome. Concern for the impact on the continued operation of the club as the rezoning encroaches the ANEF noise contour.
  - Council advised that the continued operation of the Club will not be compromised by the proposed rezoning as the resulting development will not encroach upon the adopted ANEF contours. Noting the resulting development is no closer than adjoining residential land to the south.
2. Concerns for the loss of views and agricultural productive lands, and for the retention of rural amenity over the proposed E4 Environmental Living zoned land.
  - Council states that the proposed minimum lot size of 7ha in the E4 zone, provides for two additional dwellings to be constructed on flood free land adjoining the

proposed residential zone which is an appropriate location having regard to visual impact and amenity issues.

The Department is satisfied that Council has adequately considered the issues raised in submissions.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult the relevant Local Aboriginal Land Council (LALC) in accordance with the Gateway determination.

Council has consulted the LALC and no comments were received.

## **8. POST-EXHIBITION CHANGES**

The initial Departmental assessment of the proposal did not recognise the need to map the site as an urban release area (URA) and it was not a requirement of the Gateway determination which was an error. Mapping the site as an urban release area would be consistent with the Departments approach to similar sites in the Maitland LGA and the Lower Hunter region.

The Department requested on 16 August 2018 that Council map the site as an URA. This requirement will activate Part 6 (Urban release areas) of the Maitland LEP for this site which will have the effect of:

- requiring arrangements to be made for designated state public infrastructure which is typically made as a financial contribution,
- requires public utility infrastructure to be available before consent is granted, and
- ensuring a development control plan is in place to guide development in a logical and cost effective manner.

This has occurred as a post exhibition change. Council has determined in consultation with the land owner that there was no need to re-exhibit the proposal with the new URA map (**Attachment F**).

## **9. ASSESSMENT**

The proposal is a logical extension of the existing urban boundary in the area which is within the identified Growth Area in the Hunter Regional Plan and Newcastle Greater Metropolitan Plan 2036 and is consistent with Council's local planning strategy.

The environmental and natural hazard impacts, and infrastructure implications were addressed at Gateway determination stage and assessed as adequate. The proposal has considered the visual impacts from the state heritage item Anambah House and addresses these impacts through DCP provisions.

The issues raised in the public submissions, being aerodrome noise and the management of rural amenity through the E4 Environmental Living zone have been considered and satisfactorily addressed.

The Delegate of the Secretary agreed that any inconsistency with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands and 4.3 Flood Prone Land were justified in accordance with the terms of the Directions on 17 August 2017. The draft LEP is consistent with the relevant SEPP's.

## 10. MAPPING

The following maps have been prepared to implement the changes proposed in the Planning Proposal. The maps and map cover sheet have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

- Land Use Zone - from RU2 Rural Landscape to R1 Residential and E4 Environmental Living.
- Lot Size Map - reduce the minimum lot size for the R1 General Residential portion from 40ha to 450m<sup>2</sup>, and reduce the minimum lot size for the E4 Environmental Living portion from 40ha to 7ha.
- The proposal was initially not recognised as being required to be mapped as a URA and this map is now included, and the Map Cover Sheet updated.

## 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the Act (**Attachment D**). Council confirmed on 5<sup>th</sup> and 11<sup>th</sup> July 2018 that it was happy with the draft and that the Plan should be made (**Attachment E**).

## 12. PARLIAMENTARY COUNSEL OPINION

On 6 July 2018 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. The new Urban release area map and Map Cover Sheet were also endorsed by the Department and PCO, with the Departments legal office confirmed that the PC opinion is still current until 6 January 2019.

This Opinion is provided at **Attachment PC**.

## 13. RECOMMENDATION

That the Director Regions, Hunter as delegate of the Minister:

1. **agree** under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* (the Act), to alter the Gateway determination for planning proposal no. PP\_2017\_MAITL\_004\_00 as set out in the **Alteration of Gateway** determination (**Attachment C**) which involves an amendment to the planning proposal description and the extension of the timeframe to complete the proposal with the two proposed changes shown under;

Description - to rezone land at Anambah Road, Anambah, from RU2 Rural Landscape to part R1 General Residential and part E4 Environmental Living, and map the site as an Urban release area (approximately 25 dwellings)

Condition 7. The timeframe to complete the LEP is to be 17 October 2018;

2. **agree** under schedule 1, clause 4 of the Act that no additional community consultation is required;

3. **note** the planning proposal (**Attachment A**), and the Gateway determination (**Attachment B**);

4. **note** Parliamentary Counsel's Opinion that the draft LEP can legally be made and no changes have been made to the draft LEP since obtaining this Opinion (**Attachment PC**);
5. **note** the LEP maps (**Attachment Maps**), which have been approved by the Department's ePlanning Team and provided to Parliamentary Counsel;
6. **make** the draft LEP under section 3.36(2)(a) of the Act, by signing the instrument (**Attachment LEP**) and supporting Map Cover Sheet (**Attachment MCS**) respectively; and
7. **sign** the letter to Maitland Council (**Attachment Council**) advising of this decision.



10 October 2018  
**Monica Gibson**  
**Director Regions, Hunter**  
**Planning Services**

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## Attachments

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<b>Attachment</b>	<b>Title</b>
<b>A</b>	Planning proposal
<b>B</b>	Gateway determination
<b>C</b>	Gateway alteration
<b>D</b>	Section 3.36(1) consultation with Council
<b>E</b>	Council's comments on draft LEP
<b>F</b>	Post exhibition advice
<b>PC</b>	Parliamentary Counsel's Opinion
<b>LEP</b>	Draft LEP
<b>MCS</b>	Map Cover Sheet
<b>Maps</b>	LEP Maps
<b>Council</b>	Letter to council advising of the decision