

PLANNING PROPOSAL

Amendment to the Maitland LEP 2011

**Reclassification of Lot 9 DP1114951
(Eales Family Cemetery), Berry Park**

**Version 1.0
30.10.12**



**MAITLAND
CITY COUNCIL**

CONTENTS

INTRODUCTION	3
PART 1: OBJECTIVES OR INTENDED OUTCOMES	3
PART 2: EXPLANATION OF PROVISIONS	3
PART 3: JUSTIFICATION FOR PROPOSED REZONING OR LEP AMENDMENT	4
Section A – NEED for the PLANNING PROPOSAL	4
Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK	6
Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT	9
Section D – STATE and COMMONWEALTH INTERESTS	9
PART 4: COMMUNITY CONSULTATION	10
Appendix 1 LOCATION MAP	
Appendix 2 COUNCIL REPORTS & RESOLUTIONS – 10th July 2007 & 13th October 2009	
Appendix 3 REPORT OF PUBLIC HEARING – Reclassification Matters LEP	

Figures and Tables

Table One: Relevant State Environmental Planning Policies

Table Two: Relevant s.117 Ministerial Directions

Version

Version 1.0 – s.55 Report to Council

INTRODUCTION

In accordance with cl. 55 of the Environmental Planning and Assessment Act 1979, this planning proposal has been prepared to allow for the reclassification of Lot 9 DP1114951 Eales Road, Berry Park. The site is known as Eales Family Cemetery. The location of the site is shown in **Appendix 1 – Location Map**.

In 2009, prior to the existence of the Gateway planning process, a Draft LEP amendment was prepared for miscellaneous reclassification items, which also involved a public hearing for those items. The reclassification of the subject site was included in that Draft LEP at that time. Following public exhibition and a public hearing, advice from the NSW Department of Planning at the time was to exclude the subject item from the Reclassification Matters LEP, given uncertainty surrounding the historical ownership of the site. The Reclassification Matters LEP was then gazetted without the inclusion of the subject site. Council has reviewed the historical ownership of the site and maintains that all due process has occurred throughout time, which can now enable Council to pursue the reclassification of the land from "community" to "operational" purposes in accordance with the Local Government Act 1993.

This report covers a number of matters including the history of the proposal, relevant local and state planning/environmental policies to be considered, environmental issues requiring consideration, and government agencies that are likely to be notified during the consultation process.

PART 1: OBJECTIVES or INTENDED OUTCOMES

The objectives of this planning proposal are:

- *To reclassify the subject site from "community" to "operational" land in accordance with the Local Government Act 1993;*
- *To provide certainty to Council and the prospective purchaser that the classification of the land is consistent with the nature of the site; and*
- *To ensure that the subject land can continue to be accessed by the designated descendants of the late John Eales.*

PART 2: EXPLANATION of PROVISIONS

The objectives of the proposed amendment will be achieved through an alteration to Schedule 4 of the Maitland Local Environmental Plan 2011. No additional maps or amendments to existing maps will be necessary as part of this planning proposal.

The Maitland Local Environmental Plan 2011 is proposed to be amended by:

- (1) inserting the following under Part 1 of Schedule 4:

Part 1 Land classified, or reclassified, as operational land - no interests changed

Column 1	Column 2
Locality	Description
Berry Park	Lot 9 DP1114951 (Eales Family Cemetery)

PART 3: JUSTIFICATION for PROPOSED REZONING

In accordance with the Department of Planning's 'Guide to Preparing Planning Proposals', this section provides a response to the following issues:

- Section A: Need for the planning proposal;
- Section B: Relationship to strategic planning framework;
- Section C: Environmental, social and economic impact; and
- Section D: State and Commonwealth interests.

Section A – NEED for the PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

The planning proposal has been prepared in order to reclassify the land from "community" to "operational" purposes in accordance with the Local Government Act 1993. Council resolutions have been passed which support this approach, given that the site is land-locked, is only approximately 51m² in area, and is wholly surrounded by the adjoining landowner's residence, formal gardens and other ancillary structures that exist within the adjoining site. It is impractical to maintain the site as "community" land, since the subject land is a private family cemetery that only certain Eales family members can access. The general public cannot access the site, therefore the "community" classification of the land is inappropriate. Arrangements are to be put in place that will allow continued access to the site for the relevant Eales family members identified in a legal deed that has allowed access to the cemetery via an easement to date.

There is considerable history associated with the ownership of this site, which was raised during a previous attempt to reclassify the site from "community" to "operational" purposes in 2010. Public exhibition and a public hearing took place, however, one submission maker questioned the process by which Council acquired the site at an auction for unpaid rates in 1982. Following exhibition of the Draft LEP, and the public hearing, the Department of Planning requested that the site be withdrawn from the Draft LEP on the basis that they were not certain that the ownership issue had been resolved to a point that the LEP amendment could be legally endorsed. Council resolutions relating to this previous attempt to reclassify the site are included as **Appendix 2**.

Following further investigations into the history of ownership, acquisition and what ultimately resulted in the sale of the land to the current owner (Maitland City Council), Council is satisfied that the history of ownership is certain and that no trusts or interests will be changed or will need to be discharged. An easement currently provides access to certain Eales family members who are nominated in a deed relating to the site. The adjoining landowner on Lot 8 has expressed a desire to purchase the site and relocate the easement to a more appropriate location on the adjoining Lot 8, which would allow for the nominated Eales family members to continue accessing the cemetery on Lot 9. It is proposed that the existing deed could be amended to identify a location for an easement in an alternative location, likely to be over the landowner's

existing driveway on Lot 8.

There were no known trusts or interests associated with the land when Council purchased the site at an auction for unpaid rates in 1981. As reflected in the legislation that applied at that time (the Local Government Act 1919 – Section 602), nothing prevented Council from purchasing the site, irrespective of the fact that it was the sole bidder. The site is a small isolated lot of just 51m² comprising a private family cemetery and therefore the site held little interest to developers.

A history of the ownership/registration of deeds pertaining to the site is provided below:

- 27/5/1914 - Title Book 1032 No.700 established Burial Ground and Right of Way (ROW) from Road (now Eales Road) to burial ground. Burial Ground excluded from sale of farm on same date and remains in the names of the Executors & Mortgagees of the Estate of John Gresley Eales.
- 19/9/1981 - Council offered (under due process) the land comprising the burial ground for sale by Public Auction for unpaid overdue land rates. The successful bidder at the auction was Maitland City Council with a bid of \$1010 (permissible under section 602 of the LGA 1919 at the time).
- 25/1/1982 - Council executed Old System Title Conveyance Book 3497 No. 30 (registered 10/2/1982). Conveying the land described in the 1914 Deed (including the benefit of the Right of Way) to Council in fee simple.
- 1993 - Local Government Act 1993 required all Councils to classify Council owned land as either "operational land" or as "community land" (which was held to provide a community service). The land was classified "community land" as general cemeteries were considered a community based operation. However the Eales Burial ground should not have been classified as "community" land as it was not a general burial ground and could not be legally accessed by the public because of the defined legal users of the Right of Way.
- 2007 - Council received advice from Harpers Somers O'Sullivan that they were completing identification surveys for the current owner of the land surrounding the burial ground (the land that was conveyed away by the Estate of John Gresley Eales in 1914). The Right of Way was not physically in place and was not physically in place when the adjoining owner purchased Lot 8. There was evidence that Council had conveyed too much land in 1982, that also affected the title of the adjoining site (Lot 8).
- 2007 - Council investigated the claim that too much land had been prescribed to the burial ground. Council had reiterated the wording of the 1914 deed. However, the 1914 deed had a word description and a plan. The scale of the plan did not relate to the word description and the physical monuments on-site confirmed that the Surveyor's contention was right and a corrective deed was necessary to adjust size of the land. The Right of Way was unaffected.
- 30/5/2007 - Council registered a corrective Deed with Land Titles Office clarifying the dimensions of the Burial Ground (Book 4518 No.165). The Registrar General advised that the title would be converted to Torrens Title.
- 28/6/2007 - Registrar issued Folio of the Torrens Title Register 9/1114951 to MCC. The 2nd schedule of the Title recites:
 1. Reservations and Conditions in the Crown Grant(s)
 2. Qualified Title - Caution Under section 28J of RP Act 1900
 3. Limited Title - Limitation pursuant to section 28T(4) of RP Act 1900

4. Right of carriageway 3.05 metres wide is appurtenant to the land described.
(NB. The Qualified and Limited Title are standard notations of the Registrar. Qualified to the last deed particulars and Limited in that the boundaries of the land have not been investigated by the RG, ie no survey).

Council resolutions from 24th April 2007, 10th July 2007 & 13th October 2009 have been included under **Appendix 2**. These resolutions highlight the intentions of Council in reclassifying the subject site, including arrangements regarding access to the site, and the proposed sale of the land to the adjoining landowner, whose site entirely surrounds the subject site.

The site is wholly located within a larger allotment that is privately owned. The site retains a private family cemetery but is owned by Council and is currently classified "community land" within the meaning of the Local Government Act 1993. The reason for the reclassification to "operational" land is that there is no demonstrable reason why Council should own a private burial plot, the land-locked nature of this site and the unusual arrangements that have been in place regarding access to this site, as well as the context of its surrounding land uses. The proposed reclassification will enable the site to be offered for sale to the adjoining landowner, as per the Council resolution from the Ordinary Council meeting of 24 April 2007. No change is proposed to the zoning of the land, and it will remain as RU1 Primary Production zone under the Maitland LEP 2011.

A copy of the public hearing that was held for the previous attempt at reclassification of the site is included as **Appendix 3**. It should be noted that the public hearing that took place at the time was undertaken in accordance with the Department's Practice Note PN09-003, titled "Classification and Reclassification of Public Land through a Local Environmental Plan". This practice note remains current, however based on advice from the Department's regional office, a public hearing will be required as part of this planning proposal. It should be noted that the reason the previous LEP amendment was not endorsed due to the Department's concerns regarding the legal ownership of the site. This was triggered by a submission at the time of exhibition of the Draft LEP which raised issue with legal ownership of the site, and the public hearing also allowed an opportunity for the submission maker to raise their concerns regarding this issue. The previous Draft LEP followed all due process and the subject site was removed from the Draft LEP (Reclassification Matters) at the request of the Department, because of the legal ownership issue prior to the Draft LEP being gazetted. This is the reason for lodging a planning proposal at this point in time, to finalise the reclassification given that Council is satisfied all legal ownership can be proven, and that there is no reason that the reclassification should not proceed. The finalisation of this matter will provide certainty to Council, the adjoining landowner and the Department.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

It is considered that an amendment to the Maitland LEP 2011 through the Gateway process and preparation of this planning proposal is the most effective way of achieving the objectives of this planning proposal.

3. *Is there a net community benefit?*

The rezoning proposal does not include a determination of Net Community Benefit, since no NCB test was undertaken by the proponent. The site is isolated and access does not currently exist to the site for the general public in any case.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Lower Hunter Regional Strategy (NSW Dept of Planning) – October 2006

The LHRS 2006 provides regional context in planning for population growth within the Lower Hunter region.

The subject planning proposal relates to a small land-locked site of approximately 51m² in size, that accommodates a private family cemetery. The proposal involves the reclassification of land from "community" to "operational" purposes within the meaning of the Local Government Act 1993. The site is not to be rezoned as part of this planning proposal. As such, the proposal is insignificant in relation to the objectives of the LHRS 2006.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The subject planning proposal is consistent with the Maitland 2021 Community Strategic Plan and the supporting Delivery Program 2011-2015.

The site is a small land-locked site which accommodates a private family cemetery. The site is not specifically identified in any of Council's land use strategies or strategic plans.

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are no existing or draft SEPPs that would prohibit or restrict the proposed rezoning, as outlined in this planning proposal. An assessment of relevant SEPPs against the planning proposal is provided in the table below.

SEPP	Relevance	Consistency and Implications
SEPP (Rural Lands) 2008	This SEPP outlines aims and objectives for rural land use planning, with a focus on limiting fragmentation of rural land and protecting rural land for broad scale agricultural uses.	This SEPP is relevant since the site is currently zoned for rural purposes under the Maitland LEP 2011. Nothing in this plan is inconsistent with the objectives of this SEPP. The planning proposal only involves the reclassification of the site from "community" to "operational" land.

Table One: Relevant State Environmental Planning Policies

7. Is the planning proposal consistent with applicable Ministerial Directions for Local Plan making?

An assessment of relevant s.117 Directions against the planning proposal is provided in the table below.

Ministerial Direction	Aim of the Direction	Consistency and Implications
EMPLOYMENT and RESOURCES		
1.2 Rural Zones	To protect the agricultural production value of rural land.	The proposal is consistent with this direction, since the land already accommodates a private family cemetery and the proposal only involves the reclassification of the subject land from "community" to "operational" purposes, and does not propose rezoning of the land.
1.5 Rural Lands	To protect the agricultural production value of rural land, and to facilitate the orderly and economic development of rural lands for rural and related purposes.	The proposal is consistent with this direction, since the land already accommodates a private family cemetery and the proposal only involves the reclassification of the subject land from "community" to "operational" purposes, not any rezoning of the land.
ENVIRONMENT and HERITAGE		
2.3 Heritage Protection	To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	The subject land adjoins a known item of European heritage significance, since the subject site is surrounded by Berry Park. Berry Park is identified as a local heritage item under the Maitland LEP 2011. The heritage provisions contained under the Maitland LEP 2011 are not proposed to be amended as part of the subject planning proposal. However, consultation is likely to be required with the National Trust and NSW Heritage Branch.
HOUSING, INFRASTRUCTURE and URBAN DEVELOPMENT		
N/A		
HAZARD and RISK		
4.1 Acid Sulphate Soils	To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	The land is not known to be affected by Acid Sulphate Soils (ASS), however information and mapping relating to ASS in the area is limited. In any case, the land accommodates a private family cemetery and the proposal only involves the reclassification of the subject land from "community" to "operational" purposes.
4.3 Flood Prone Land	Directions aims to reduce the risk of flood and to ensure that the development of flood prone land is consistent with NSW Flood Prone land	The portion of the site proposed to be reclassified is located above the 1:100 year flood level. In any case, the land accommodates a private family cemetery and the proposal only involves the reclassification of the subject land from

Ministerial Direction	Aim of the Direction	Consistency and Implications
	policy.	"community" to "operational" purposes.
REGIONAL PLANNING		
N/A		
LOCAL PLAN MAKING		
N/A		
METROPOLITAN PLANNING		
N/A		

Table Two: Relevant s.117 Ministerial Directions

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The subject site is devoid of native vegetation that could accommodate native flora and fauna. The subject land accommodates a private family cemetery and retains manicured garden vegetation only.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proposal will not have any significant environmental impacts, as the proposal only involves the reclassification of a small, isolated parcel of land that accommodates a private family cemetery.

10. How has the planning proposal adequately addressed any social and economic effects?

The planning proposal will generally achieve positive social outcomes for the residents adjoining the site, and designated Eales family members who will retain continued legal access to the site.

Section D – STATE and COMMONWEALTH INTERESTS

11. Is there adequate public infrastructure for the planning proposal?

The proposal only involves the reclassification of the subject site from "community" to "operational" purposes within the meaning of the Local Government Act 1993. The land accommodates a private family cemetery, and therefore there will be no additional demands placed on public infrastructure as a result of the proposal.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

NSW Department of Planning – Heritage Branch

The NSW Heritage Branch will be consulted given that a heritage item of local significance (Berry Park) exists adjacent to the site. The subject site is a private family cemetery for the Eales family. John Eales was a prominent settler that resided at Berry Park, and is buried in the Eales family cemetery at the site. The planning proposal does, however, only look to reclassify the site and no rezoning of the land is proposed. In this regard, it is anticipated that the Heritage Branch can provide only limited advice since the physical character of the landscape will not change as a result of the reclassification.

National Trust

DoPI have previously stated that the National Trust will need to be consulted regarding this proposal, given previous dialogue has occurred between Council and the National Trust regarding this matter.

PART 4: COMMUNITY CONSULTATION

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, this planning proposal must be approved prior to community consultation being undertaken by the local authority. Council deems that the planning proposal is of low impact. The planning proposal should therefore be exhibited for a minimum of 14 days.

In accordance with Council's adopted *Community Engagement Strategy (March 2009)*, consultation on the proposed rezoning will be to inform and received limited feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the local newspaper;
- Exhibition material and relevant consultation documents to be made available at the Thronton Library and Council's Administration Building;
- Consultation documents to be made available on Council's website; and
- Letters, advising of the proposed rezoning and how to submit comments will be sent to adjoining landowners and other stakeholders that Council deem relevant to this rezoning proposal.

At the close of the consultation process, Council officers will consider all submissions received and present a report to Council for their endorsement of the proposed rezoning before proceed to finalisation of the amendment.

The consultation process, as outlined above, does not prevent any additional consultation measures that may be determined appropriate as part of the 'Gateway' determination process.

Appendix ONE

Location Map



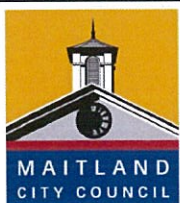
Scale 1 : NTS
Printing Date: October 2012

NORTH

© Maitland City Council 2012
© LPI of NSW 2012

**LOCALITY MAP
LOT 9 DP1114951,
EALES ROAD,
BERRY PARK**

This map has been prepared on the basis of information available to Council at the date of issue. However, that information may be subject to change over a limited time and should therefore be verified with Maitland City Council



Scale 1 : NTS
Printing Date: October 2012

NORTH

© Maitland City Council 2012
© LPI of NSW 2012

**LOCALITY MAP
LOT 9 DP1114951,
EALES ROAD,
BERRY PARK**

This map has been prepared on the basis of information available to Council at the date of issue. However, that information may be subject to change over a limited time and should therefore be verified with Maitland City Council

Appendix TWO
Council Reports and Resolutions
[24 April 2007, 10 July 2007 & 13 October 2009]

**10.7 AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 -
RECLASSIFICATION MATTERS LEP**

File No: 103/124

Attachments:

1. Draft Reclassification Matters LEP
2. Draft LEP Maps
3. Report from Public Hearing
4. Planning Instrument and Ministerial Directions
5. Draft Maitland LEP Submissions

Responsible Officer: Leanne Harris - Group Manager Service Planning and Regulation
Monica Gibson - Manager City Strategy

Author: Josh Ford - Strategic Town Planner

EXECUTIVE SUMMARY

A draft local environmental plan has recently been exhibited in accordance with Council's resolutions of 24 February 2009 and 28 April 2009 for three (3) parcels of land which are currently owned by Maitland City Council and held as community land.

The plan involves the reclassification of three (3) parcels of land to operational status so that they can be disposed of by Council. The draft LEP also includes the rezoning of certain land from 6(a) Public Recreation to 2(a) Residential.

This report addresses the outcomes of the public exhibition and plan-making process.

OFFICER'S RECOMMENDATION

THAT pursuant to the NSW Environmental Planning and Assessment Act 1979, a report be submitted to the Director General of the Department of Planning requesting that the Minister for Planning make Maitland Local Environmental Plan 1993 (Amendment No. 101 – Reclassification Matters), as shown in Attachment 1 to this report.

PROCEEDINGS IN BRIEF

THAT the recommendation be adopted with the exclusion of Evelyn Crescent and Taylor Avenue.

(Moved Clr Meskauskas, Seconded Clr Mudd)

The Mayor in accordance with Section 375A of the Local Government Act 1993 called for a division.

The division resulted in 6 for and 7 against, as follows:

For:	Clr Baker	Against:	Clr Fairweather
	Clr Blackmore		Clr Garnham
	Clr Casey		Clr Geoghegan
	Clr Meskauskas		Clr Humphery
	Clr Mudd		Clr Penfold
	Clr Wethered		Clr Procter
			Clr Tierney

The motion when put to the meeting was declared lost.

A motion was then moved that the recommendation be adopted.

(Moved Clr Procter, Seconded Clr Humphery)

The Mayor in accordance with Section 375A of the Local Government Act 1993 called for a division.

The division resulted in 10 for and 3 against, as follows:

For:	Clr Baker	Against:	Clr Casey
	Clr Blackmore		Clr Meskauskas
	Clr Fairweather		Clr Mudd
	Clr Garnham		
	Clr Geoghegan		
	Clr Humphery		
	Clr Penfold		
	Clr Procter		
	Clr Tierney		
	Clr Wethered		

COUNCIL RESOLUTION

THAT pursuant to the NSW Environmental Planning and Assessment Act 1979, a report be submitted to the Director General of the Department of Planning requesting that the Minister for Planning make Maitland Local Environmental Plan 1993 (Amendment No. 101 – Reclassification Matters), as shown in Attachment 1 to this report.

Moved Clr Procter, Seconded Clr Humphery

CARRIED



**Draft Maitland Local Environmental Plan 1993
(Amendment No ##)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under
the *Environmental Planning and Assessment Act 1979* (## Ref ##)

Minister for Planning

Maitland Local Environmental Plan 1993 (Amendment No. ##)

Amendments

Schedule 1

Schedule 1 Amendments

[1] Clause 4 – Interpretation

At the end of the definition of 'The map' in clause 5(1), insert:

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 1

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 2

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 3

[2] Clause 51 – Classification and Reclassification of Public Land as Operational

Insert in alphabetical order in Schedule 4, under Part 3 Interests changed:

Column 1	Column 2	Column 3
Locality	Description	Trusts etc not discharged
Thornton		
Evelyn Crescent	Land to be excised from Lot 431 DP260916, as shown heavy black on Sheet 1 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Nil.
Berry Park		
Eales Road	Lot 9, DP 1114951, as shown edged heavy black on Sheet 3 Eales Road of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Right of way for the beneficiaries of the Estate of Frederick Eales

Maitland Local Environmental Plan No ##

Amendments

Schedule 1

Thornton

John Arthur
Avenue

Lot 639, DP 262555, as shown edged
heavy black on Sheet 2 of the map
marked "Maitland Local Environmental
Plan 1993 (Amendment No XX)" –
*Maitland Local Environmental Plan
1993*
(Amendment No. XX)

Nil.



11/1113
307.5329;3

Scott Montroy
19 Rous Street
EAST MAITLAND NSW 2300

**RE: POTENTIAL CHANGES ON HIGH STREET APPROACHES TO NEW ENGLAND
HIGHWAY, EAST MAITLAND.**

Mr Montroy

I write in reply to your representations to Maitland City Council with regard to the layout of lanes on approach to Traffic Control Signals on High Street approach to New England Highway, East Maitland. Delay in reply is regretted.

On 1 November 2011 a new organisation called Roads and Maritime Services (RMS) was formed to replace the Roads and Traffic Authority and NSW Maritime. Roads and Maritime Services will focus on service delivery, concentrating on delivering the key tasks of building and maintaining road infrastructure and the day-to-day compliance and safety for roads and waterways.

Following consideration of your concerns by RMS, it is advised that there are currently no concerns over the layout or performance at the approaches from High Street to the New England Highway. A detailed crash history has been considered and there were no injury crashes associated with the current turn arrangements.

It is further advised that High Street is a local road under the management of Maitland City Council and any line marking changes are a matter for Council to consider, however the impact on the signals needs to be considered.

Your interest in this matter is appreciated.

Yours sincerely,

Ken Saxby
Road Safety & Traffic Services Manager

**10.7 AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 -
RECLASSIFICATION MATTERS LEP**

File No: 103/124

Attachments:

1. Draft Reclassification Matters LEP
2. Draft LEP Maps
3. Report from Public Hearing
4. Planning Instrument and Ministerial Directions
5. Draft Maitland LEP Submissions

Responsible Officer: Leanne Harris - Group Manager Service Planning and Regulation
Monica Gibson - Manager City Strategy

Author: Josh Ford - Strategic Town Planner

EXECUTIVE SUMMARY

A draft local environmental plan has recently been exhibited in accordance with Council's resolutions of 24 February 2009 and 28 April 2009 for three (3) parcels of land which are currently owned by Maitland City Council and held as community land.

The plan involves the reclassification of three (3) parcels of land to operational status so that they can be disposed of by Council. The draft LEP also includes the rezoning of certain land from 6(a) Public Recreation to 2(a) Residential.

This report addresses the outcomes of the public exhibition and plan-making process.

OFFICER'S RECOMMENDATION

THAT pursuant to the NSW Environmental Planning and Assessment Act 1979, a report be submitted to the Director General of the Department of Planning requesting that the Minister for Planning make Maitland Local Environmental Plan 1993 (Amendment No. 101 – Reclassification Matters), as shown in Attachment 1 to this report.

PURPOSE OF THIS REPORT

The purpose of this report is for Council to consider the draft local environmental plan and endorse a submission to the Minister for Planning to make the plan. Council is to provide the following information to the Department of Planning in accordance with Section 68 (4) of the NSW Environmental Planning and Assessment Act 1979 (as in force on 1 July 2009):

- (a) a copy of all submissions
- (b) the report of any public hearing
- (c) the draft local environmental plan and the reasons for any alterations made to the plan

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

- (d) a statement
- i. to the effect that the provisions of Section 66 and 67 (relating to public exhibition and submissions) and this section (relating to public involvement in the preparation of the draft plan) have been complied with
 - ii. specifying the environmental planning instruments and directions under Section 117 (relating to Ministerial Directions for LEP making) that have been taken into consideration
 - iii. giving details of any inconsistency between the draft plan and any instrument or direction and the reasons justifying the inconsistency, and
 - iv. giving details of the reasons justifying the exclusion of provisions of the draft plan or exclusion from the application of the draft plan or any land.

Each of these matters is addressed in this report.

BACKGROUND

The details of each of the sites to be rezoned and/or reclassified are as follows:

- (i) Lot 431 DP260916, a public reserve fronting Evelyn Crescent and Taylor Avenue, Thornton
- (ii) Lot 9 DP1114951 Eales Road, Berry Park – a landlocked parcel surrounded by 380 Duckenfield Road, Berry Park
- (iii) Lot 639 DP262555 – a drainage reserve next to 58 John Arthur Avenue, Thornton.

Evelyn Crescent, Thornton

The reason for reclassification of the site at Evelyn Crescent, Thornton arose when Council was approached by a consortium to seek approval for the construction of a medical facility at the site. The rezoning and reclassification of the subject portion of land will enable the portion of land to be offered for sale, in accordance with Council's Ordinary Meeting resolution of 24 February 2009. Given that the land is entirely classified as "Community" in accordance with the Local Government Act 1993, it must be reclassified as "Operational" before the land can be sold. As only a portion of the site is considered to be suitable for development, the reclassification will apply to part of the site, with the remainder of the site remaining zoned for public recreational purposes. The portion of the site to be reclassified will also be rezoned to 2(a) Residential which is consistent with the adjoining land uses and zoning, whilst also permitting medical facilities in accordance with the State Environmental Planning Policy – Infrastructure (2007).

Eales Road, Berry Park

The site at Eales Road, Berry Park is wholly located within a larger allotment that is privately owned. The site retains a private burial plot but is owned by Council and is currently classified "Community Land" within the meaning of the Local Government Act 1993. The reason for the reclassification to "Operational" land is that there is no demonstrable reason why Council should own a private burial plot, the land-locked nature of this site and the unusual arrangements that have been in place regarding access to this site, as well as the context of its surrounding land uses. The proposed

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

reclassification will enable the site to be offered for sale to the adjoining landowner, as per the Council resolution from the Ordinary Council meeting of 24 April 2007. No change is proposed to the zoning of the land, and it will remain as 1(a) Prime Rural Land.

John Arthur Avenue, Thornton

At its meeting of 28 March 2006, Council approved the investigation 'in principle' of a proposal that Council land (being the site at John Arthur Avenue) may be included in plans for a new housing subdivision to provide a new public access road. The site is classified as "Community" land within the meaning of the Local Government Act 1993 and was dedicated to Council to operate as a drainage area, with no public recreational purpose. Preliminary investigations have established that the drainage function of the site can continue without the community land classification. The land is of an irregular shape and has limited potential for community purposes such as public recreation, the reclassification is sought to enable the sale of the land for a higher order use, such as an access road. This land is proposed to be rezoned to 2(a) Residential to more appropriately reflect its potential use and the existing adjoining land uses. The rezoning and reclassification of the site will enable the land to be offered for sale.

PUBLIC EXHIBITION OF DRAFT LOCAL ENVIRONMENTAL PLAN

Certificates to exhibit the draft plan were received from the Department of Planning on 16 December 2008 (John Arthur Avenue, Thornton and Eales Road, Berry Park) and 11 May 2009 (Evelyn Crescent, Thornton).

The draft local environmental plan was publicly exhibited from 17 July 2009 to 14 August 2009. Public notice was made in the Maitland Mercury on Thursday 16 July and Monday 20 July 2009, as well as notices in Council's Admin Building, City Library and on Council's website. Information regarding the draft plan was sent to the landowners adjoining the land affected by the draft LEP and those interested parties who had previously written to Council concerning matters contained within the draft LEP. All notices stated that written submissions would be received until 14 August 2009. These actions ensured that all the provisions of Section 66 and 67 of the Environmental Planning and Assessment Act 1979 were complied with.

PUBLIC SUBMISSIONS

A total of ten (10) public submissions were received during the exhibition period. Six (6) of these submissions related to the site at Evelyn Crescent, Thornton and four (4) submissions related to the site at Eales Road, Berry Park. There were no submissions received in relation to the site at John Arthur Avenue, Thornton.

Evelyn Crescent, Thornton

A total of six (6) submissions were received during the exhibition period relating to Evelyn Crescent, Thornton. One submission included a petition against the construction of a medical centre at the subject site.

A summary of the points raised in the submissions is provided below.

Loss of trees and wildlife/scenic amenity

A flora and fauna study was prepared for the whole of the site. The study concluded that some limited removal or disturbance of vegetation will not have a significant

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

impact on the environmental qualities of the site. While vegetation within the public reserve is fairly established, it retains a limited and heavily disturbed understorey, and various walking trails exist which have impacted upon the understorey. The loss of scenery and amenity will be limited in the context of the total area of the reserve and the vegetation that will remain at the site. Furthermore, the site is not part of the identified Greening Plan corridor. In any case, reclassification and rezoning of the subject portion of the site has been limited to minimise disturbance.

Increased traffic movements, controls & carparking

Most of these issues relate to the potential use of the site as a medical centre. These matters would be considered and assessed against Council's carparking policies and traffic controls should a development application be made.

However, the portion of the site to be reclassified and rezoned is considered best to address Taylor Avenue as it is a local collector road that has been designed to cater for traffic in the locality.

Loss of privacy and security

The proposed portion of land to be reclassified and rezoned has been chosen based on Council's effort to minimise impacts upon adjoining landowners, whilst also retaining as much of the public reserve as possible for continued practical use. The design, layout and requirements for any proposed medical centre or other building, including those related to privacy, would be subject to a future DA for such a use at the site. Adjoining landowners would have an opportunity to comment on such issues at the time of exhibition of the DA.

Description of site

The land is located between Evelyn Crescent, Taylor Avenue and Triggs Close. Council's property information records list the address of the site as Evelyn Crescent, Thornton. These details were included in the notification of the rezoning proposal.

Council improvements

Limitations placed on Council's financial functions and management mean that Council's budget for improvements to community land is limited. The site is classified as "urban bushland" under the Greening Plan 2002. It would be unreasonable to expect Council to finance significant improvements to the subject site considering the classification of the land. The land does not comprise open space and therefore high level maintenance or improvements are unwarranted in this instance.

Community recreation impacts

It should be noted that the portion of land to be reclassified and rezoned forms an area of approximately 2,000m², while the total area of the site is approximately 11,660m². This means that the community will be able to utilise the remaining 9,660m² if the subject portion of land is reclassified and rezoned. The remaining area is still considered to be a significantly sized parcel in terms of public land in the locality of Thornton.

Devaluation of properties

There is no evidence to suggest that the existing public reserve adds value to the existing residential dwellings facing the site, particularly given the nature of the land

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

which restricts its use. Hence, any argument that a future proposed building or use of the site will devalue adjoining properties cannot be justified. It should be reiterated that any future building or use of the portion of land to be reclassified and rezoned will be subject to DA assessment to ensure that the design and use of the development is suitable for the locality.

Impact on draft Centres Strategy

Given the history of this particular matter and the investigations undertaken by the landowners of the existing Thornton Medical Centre in attempting to find a suitable commercial site in the locality, assessing the impact of the proposal in conjunction with the draft Centres Strategy is considered unreasonable and unjustified in this instance. The proposal will not be detrimental to the viability of Thornton town centre, as the centre currently operates in a viable manner and the Thornton Medical Centre currently exists in Bunbury Street, adjacent to the subject site.

Eales Road, Berry Park

A total of four (4) submissions were received during the exhibition period relating to the site at Eales Road, Berry Park.

A summary of the points raised in the submissions is provided below.

Authority to make LEP

Council is the sole owner of the subject site. The subject land at Eales Road, Berry Park was transferred to the ownership of Maitland City Council in January 1982 after Council won an auction resulting from unpaid rates, pursuant to the then Local Government Act 1919, Section 602. As such, Council maintains a right to create the LEP and does not require approval from any other party in regards to the right to reclassify the site.

Access to the site

Council acknowledges that a Right of Way (easement) exists between Eales Road and the subject site at Berry Park. The easement currently permits access to certain beneficiaries of the Estate of Frederick Eales, as identified in the Eales Family deed of 1914. Council has stated in its resolution of 24 April 2007 that legal access for the identified beneficiaries would be maintained if the land is offered for sale. The resolution included the following:

- (b) *Legal access to the Eales Family cemetery be maintained for the benefit of the same persons as provided for in the original Eales Family deed of 1914 but that the right of access may be legally provided for in a different location or in a different manner than described in the Eales Family deed of 1914*

Discharge of Trusts

The reclassification of the subject site will require the retention of the trust / encumbrance associated with the existing Right of Way benefitting the site. The Governor of NSW is required to discharge (either in part or in full) any trusts associated with public owned land before that land can be rezoned or sold. This is a requirement outlined under LEP Practice Note – *Classification and Reclassification of Public Land through a Local Environmental Plan* issued by the Department of Planning in June 2009.

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

A formal request will be made to the NSW Governor, through the NSW Minister for Planning, for the discharge of any trusts attributed to the site, with the exception of the legal access provisions that need to be retained for those beneficiaries outlined in the Eales Family deed of 1914. These access provisions will need to remain in some form as a condition of the sale of the land.

Heritage

The subject site is surrounded by a rural property of historical significance, which was inhabited by the late John Eales. The subject site, known commonly as the Eales Family Cemetery, is the resting place of John Eales, who was a prominent figure in the early days of Maitland's settlement. In Council's resolution of 24 April 2007, it was stated that:

- (c) *The sale contract and if required the supporting transfer documents detail the site will be maintained as a cemetery and a site of regional heritage significance in perpetuity.*

Council thereby resolved to protect the heritage significance of the site in perpetuity, as a condition of the future sale of the land.

John Arthur Avenue, Thornton

There were no submissions received for this site during the exhibition of the draft Reclassification Matters LEP.

The submissions received for the sites at Evelyn Crescent, Thornton and Eales Road, Berry Park have not resulted in any changes to the draft LEP.

The submissions have been considered for the site at Eales Road, Berry Park and changes are proposed to be incorporated in the draft LEP to enable appropriate access arrangements to be retained.

PUBLIC HEARING

A public hearing was required in accordance with Section 29 of the *Local Government Act 1993* for this draft LEP since the draft LEP related to the reclassification of Council owned land. The relevant provisions of the Environmental Planning and Assessment Regulation 2000 were adhered to during the notification period for the public hearing.

The public hearing was held on 30 September at Maitland Town Hall. The public hearing was undertaken in accordance with the relevant provisions of the Local Government Act 1993 (notably section 47G) and Environmental Planning and Assessment Act 1979.

Application to speak was made by four (4) persons for the matter at Evelyn Crescent, Thornton. All speakers spoke against the reclassification and rezoning of the subject portion of the site. Three (3) persons applied to speak on the matter relating to Eales Road, Berry Park. Two (2) speakers spoke against the reclassification, while one (1) person spoke for the reclassification of the site.

No persons spoke in relation to the site at John Arthur Avenue, Thornton.

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

An independent chairperson, Mr Jim Davies, presided over the hearing. Mr Davies prepared a report detailing the issues raised by each speaker and presented this report to Council within 4 days of the public hearing, in accordance with best practice guidelines. A copy of the report prepared by Mr Davies is included with this report as Attachment 3.

DRAFT LOCAL ENVIRONMENTAL PLAN

Council may make alterations to the draft local environmental plan arising from its consideration of submissions or for any other purposes. In this instance, some alterations are proposed to the draft LEP following a review of submissions and further information regarding the reclassification of certain land. The main alteration will be the inclusion of wording in the draft LEP to ensure that legal access can be retained for those benefitted by an existing Right of Way which provides access to the Eales Family Cemetery which is located at Eales Road, Berry Park.

RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS AND DIRECTIONS

A list of the planning instruments and Ministerial Directions considered in the preparation of the draft plan is included as Attachment 4 to this report. This list was included with the public exhibition material and copies of each document were available for viewing at the library and the Council administration building during the public exhibition period.

INCONSISTENCIES BETWEEN DRAFT PLAN AND INSTRUMENT/ DIRECTION

Two inconsistencies with Ministerial Directions for Local Plan Making were identified in the preparation of the draft local environmental plan. Both inconsistencies involved Section 117 Ministerial Direction 6.2 – Reserving Land for Public Purposes, for sites at Evelyn Crescent, Thornton and John Arthur Avenue, Thornton. The justification for these inconsistencies was outlined to the NSW Department of Planning (DoP) during the Section 64 assessment stage of the draft LEP. As outlined under the Section 65 Certificate for the draft LEP, both inconsistencies were agreed to by DoP.

EXCLUSION OF PROVISIONS OR AREAS

No land is recommended to be removed or excluded from the operation of the draft plan, nor is any provision to be limited in its application to the subject land.

FINANCIAL IMPLICATIONS

This matter has no direct financial impact upon Council's adopted budget or forward estimates. However, should the subject sites be reclassified, it is anticipated that the parcels of land would each be sold. In this regard, Council would gain revenue from the sale of the subject sites identified in the draft Reclassification Matters LEP.

POLICY IMPLICATIONS

This matter has no policy implications for Council as the draft LEP is consistent with the objectives of Council's adopted strategic planning policies, as well as being consistent with development controls for urban development.

STATUTORY IMPLICATIONS

The procedures for the preparation of a Local Environmental Plan under Part 3 of the NSW Environmental Planning and Assessment Act 1979 have been adhered to.

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)**Discharge of Trusts**

As discussed earlier in this report, the reclassification of the sites involved with the draft LEP will require the removal of any trusts or encumbrances associated with the subject sites. The Governor of NSW is required to discharge any trusts associated with public owned land before that land can be rezoned or sold. A formal request will be made to the NSW Governor, through the NSW Minister for Planning, for the extinguishment of any trusts and encumbrances associated with the subject sites. A request for the preservation of existing access arrangements to the Eales Family Cemetery will be submitted as part of this process.

CONCLUSION

The draft local environmental plan for Reclassification Matters has been prepared in order to reclassify three (3) publicly owned sites from "community" land to "operational" land within the meaning of the Local Government Act 1993.

Submissions received during the public exhibition have been considered and no alterations to the draft LEP are proposed as a result of the submissions.

It is recommended that Council submit the draft LEP to the Department of Planning with a request that the Director General for the Department of Planning furnish a report to the Minister for Planning to make the plan.

Service Planning and Regulation Reports

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP

Draft Reclassification Matters LEP

Meeting Date: 13 October 2009

Attachment No: 1

Number of Pages: 4



**Draft Maitland Local Environmental Plan 1993
(Amendment No ##)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under
the *Environmental Planning and Assessment Act 1979* (## Ref ##)

Minister for Planning

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

Maitland Local Environmental Plan 1993 (Amendment No. ##)

Clause 1

Maitland Local Environmental Plan 1993 (Amendment No ##)

under the

Environmental Planning and Assessment Act 1979

1 Name of PlanThis plan is *Maitland Local Environmental Plan 1993 (Amendment No ##)*.**2 Aims of plan**

This plan aims to:

- (a) This plan aims to rezone certain land in Evelyn Crescent, Thornton from Zone 6(a) Public Recreation to Zone 2(a) Residential under the provisions of the *Maitland Local Environmental Plan 1993*,
- (b) Reclassify the subject portion of land to be zoned 2(a) Residential from community land to operational land within the meaning of the *Local Government Act 1993*,
- (c) Rezone certain land in John Arthur Avenue, Thornton to 2 (a) Residential and reclassify from community land to operational land within the meaning of the *Local Government Act 1993*, and
- (d) Reclassify certain land at Berry Park from community land to operational land within the meaning of the *Local Government Act 1993*.

3 Land to which plan applies

- (1) Parts 2(a) & (b) of this plan apply to part of Lot 431 DP260916 Evelyn Crescent, Thornton, as shown edged heavy black on Sheet 1 of the map marked "Maitland Local Environmental Plan 1993 Draft (Amendment No ##)", deposited in the office of Maitland City Council.
- (2) In respect of the aim referred to in clause 2(c), this plan applies to Lot 639, DP 262555 John Arthur Avenue, Thornton, as shown edged heavy black on Sheet 2 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" deposited in the office of Maitland City Council.
- (3) In respect of the aim referred to in clause 2(d), this plan applies to Lot 9, DP 1114951 Eales Road, Berry Park, as shown edged heavy black on Sheet 3 of map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" deposited in the office of Maitland City Council.

4 Amendment of Maitland Local Environmental Plan 1993

Amendments are set out in the following schedule.

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

Maitland Local Environmental Plan 1993 (Amendment No. ##)

Amendments

Schedule 1

Schedule 1 Amendments**[1] Clause 4 – Interpretation**

At the end of the definition of 'The map' in clause 5(1), insert:

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 1

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 2

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 3

[2] Clause 51 – Classification and Reclassification of Public Land as Operational

Insert in alphabetical order in Schedule 4, under Part 3 Interests changed:

Column 1	Column 2	Column 3
Locality	Description	Trusts etc not discharged
Thornton		
Evelyn Crescent	Land to be excised from Lot 431 DP260916, as shown heavy black on Sheet 1 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Nil.
Berry Park		
Eales Road	Lot 9, DP 1114951, as shown edged heavy black on Sheet 3 Eales Road of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Right of way for the beneficiaries of the Estate of Frederick Eales

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

Maitland Local Environmental Plan No ##

Amendments

Schedule 1

ThorntonJohn Arthur
AvenueLot 639, DP 262555, as shown edged
heavy black on Sheet 2 of the map
marked "Maitland Local Environmental
Plan 1993 (Amendment No XX)" –
Maitland Local Environmental Plan
1993
(Amendment No. XX)

Nil.

Service Planning and Regulation Reports

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP

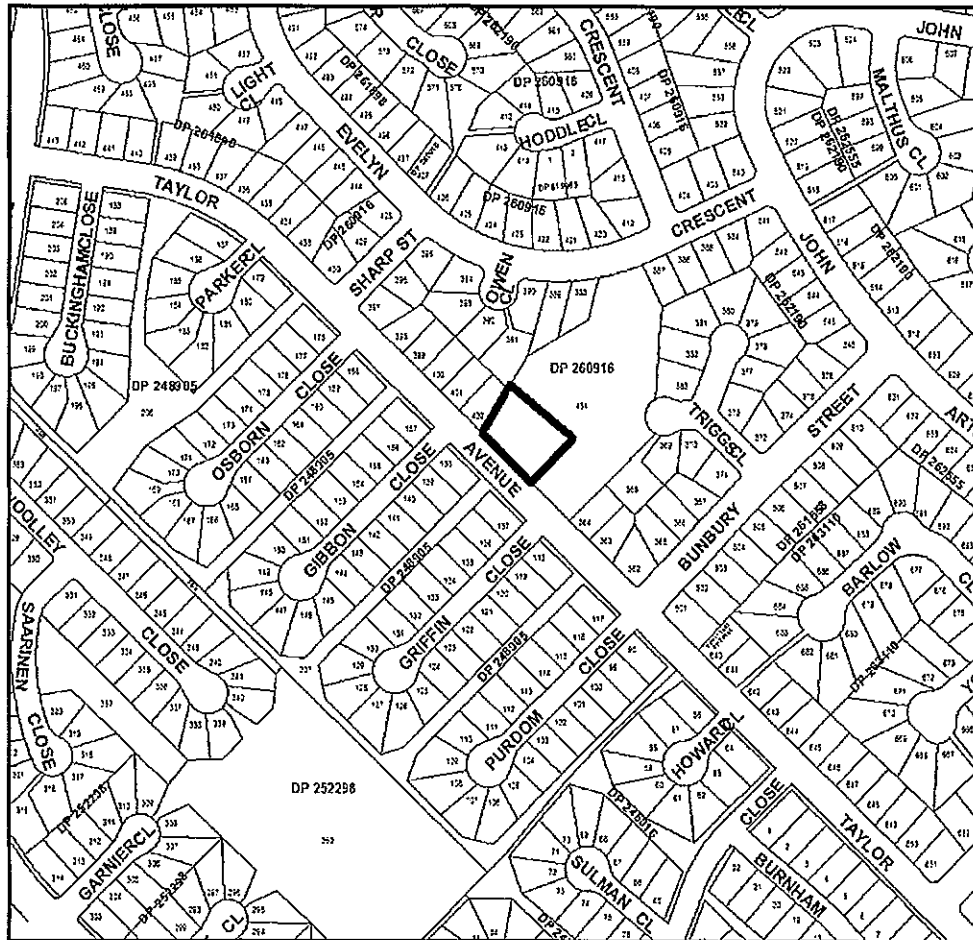
Draft LEP Maps

Meeting Date: 13 October 2009

Attachment No: 2

Number of Pages: 3

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)



2(a)

2(a) Residential & Operational

SHEET 1 OF 3



SCALE 1 : 4 000
LOCALITY: THORNTON

PARISH: ALNWICK
COUNTY OF: NORTHUMBERLAND

© Maitland City Council 2009
© NSW Department of Lands 2009

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979
MAITLAND
LOCAL ENVIRONMENTAL PLAN 1993
DRAFT (AMENDMENT No:)

DRAWN BY: D MURRAY	DATE: 14.07.09
SUPERVISING DRAFTSPERSON:	
PLANNING OFFICER: J FORD	DATE: 14.07.09
COUNCIL FILE No: RZ08001	
DEPT FILE No:	
CERTIFICATE PLAN NUMBER:	
CERTIFICATE ISSUED UNDER SEC 65 E.P.A. ACT 1979	DATE:
PUBLISHED IN GOVERNMENT GAZETTE OF	No:

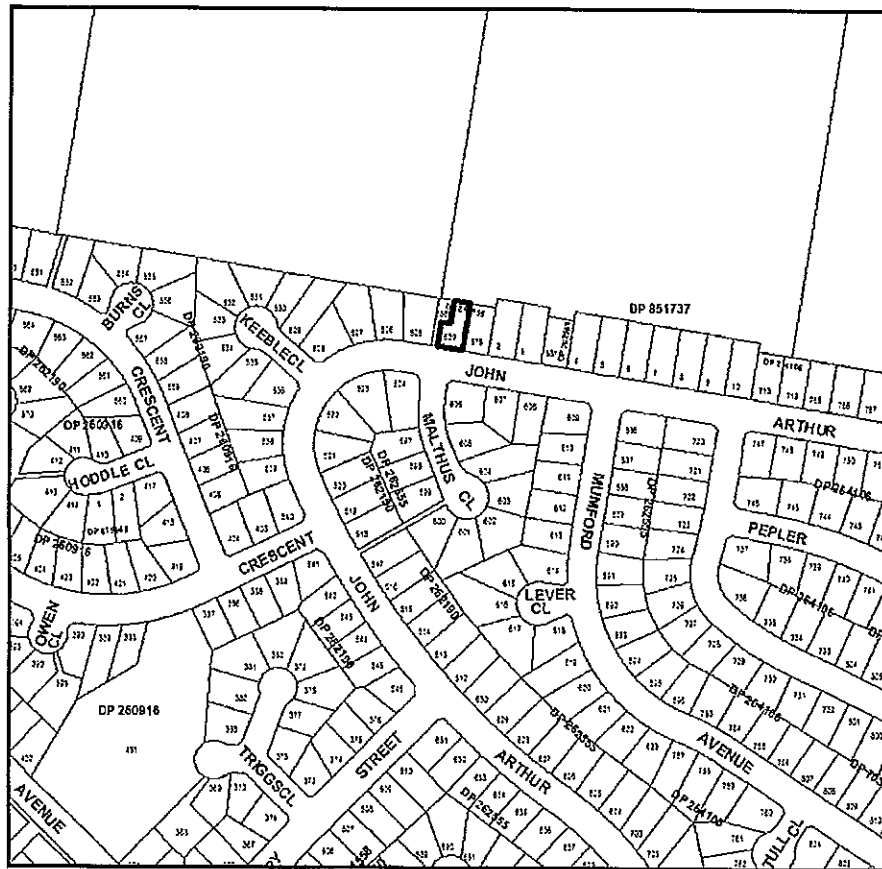
STATEMENT OF RELATIONSHIP WITH OTHER PLANS

AMENDS MAITLAND L.E.P. 1993

CERTIFIED IN ACCORDANCE
WITH THE ENVIRONMENTAL
PLANNING & ASSESSMENT
ACT 1979, AND REGULATIONS
AS AMENDED

GENERAL MANAGER DATE

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)



OPERATIONAL LAND
& 2(a) RESIDENTIAL

SHEET 2 OF 3



SCALE 1 : 4 000
LOCALITY: THORNTON

PARISH: ALNWICK
COUNTY OF: NORTHUMBERLAND

© Maitland City Council 2009
© NSW Department of Lands 2009

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979
MAITLAND
LOCAL ENVIRONMENTAL PLAN 1993
DRAFT (AMENDMENT No:)

DRAWN BY: D MURRAY	DATE: 14.07.09
SUPERVISING DRAFTSPERSON:	
PLANNING OFFICER: J FORD	DATE: 14.07.09
COUNCIL FILE No: RZ103/124	
DEPT FILE No: N06/00095	
CERTIFICATE PLAN NUMBER:	
CERTIFICATE ISSUED UNDER SEC 65 E.P.A. ACT 1979	DATE:
PUBLISHED IN GOVERNMENT GAZETTE OF	No:

STATEMENT OF RELATIONSHIP WITH OTHER PLANS

AMENDS MAITLAND L.E.P. 1993

CERTIFIED IN ACCORDANCE
WITH THE ENVIRONMENTAL
PLANNING & ASSESSMENT
ACT 1979, AND REGULATIONS
AS AMENDED

GENERAL MANAGER DATE

Service Planning and Regulation Reports

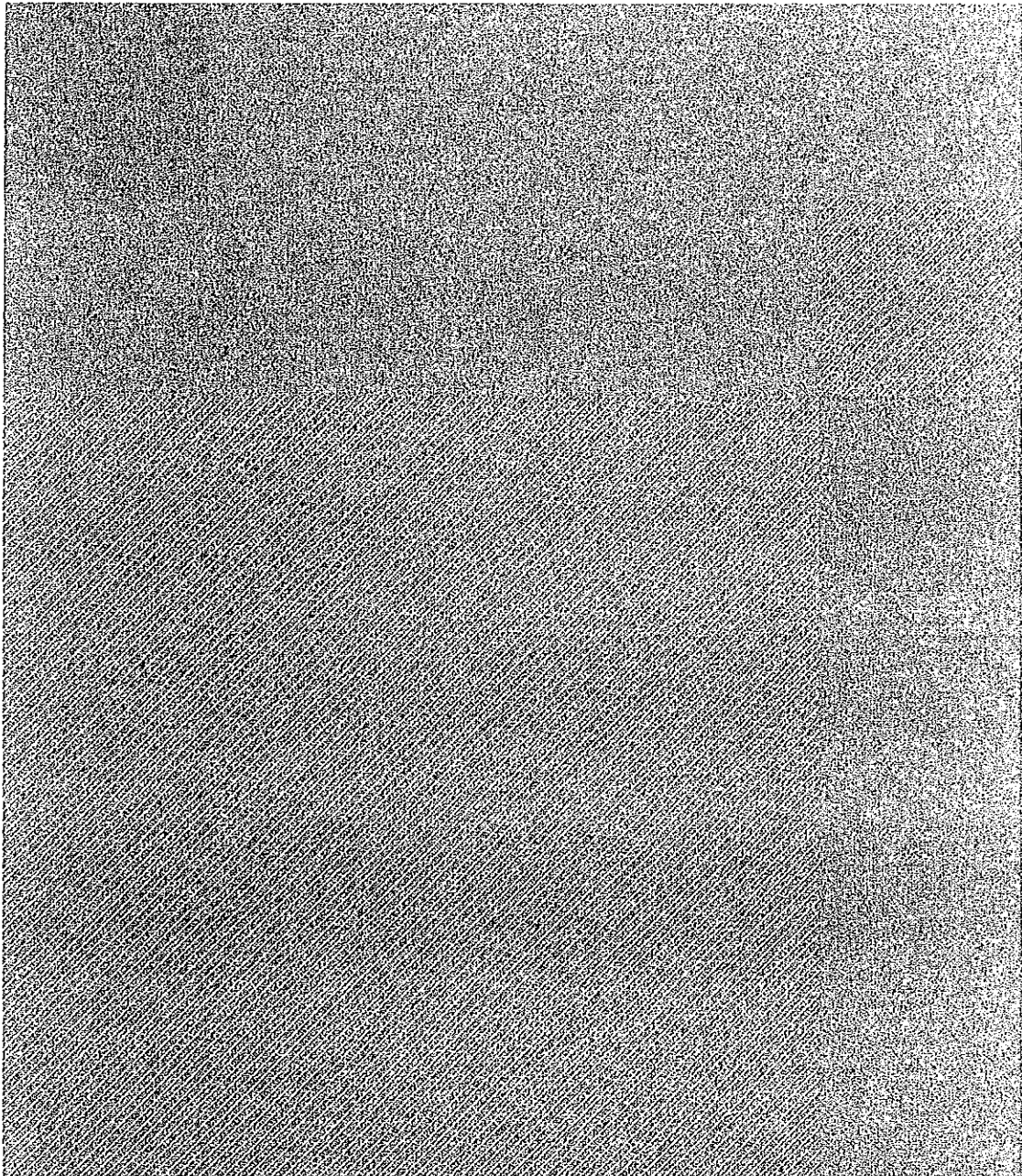
AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP

Report from Public Hearing

Meeting Date: 13 October 2009

Attachment No: 3

Number of Pages: 12



**Report on a Public Hearing
Held for a draft LEP
Proposing to Reclassify and
Rezone Land at Thornton and
Berry Park
Maitland City Council**

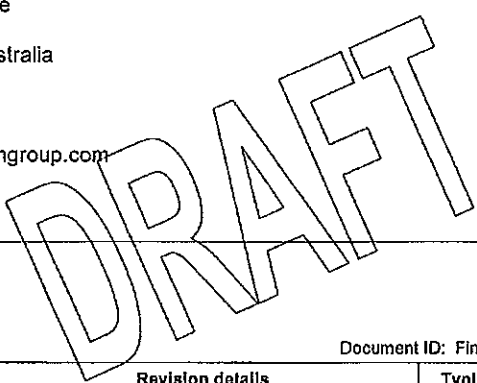
Report ref:
4XXXX-001
1 October 2009
Revision 1

aurecon

Document prepared by:

Aurecon Australia Pty Ltd
ABN 54 005 139 873
Advanced Technology Centre
Callaghan
New South Wales 2308 Australia

T: +61 2 4941 5415
F: +61 2 4941 5489
E: newcastleatc@ap.aurecongroup.com
W: aurecongroup.com

Document control			 			
			Document ID: Final Report MCC Reclass LEP 061009.doc			
Rev No	Date	Revision details	Typist	Author	Verifier	Approver
0	021009	First Draft	jmd	JMD	AL	AL
1	061009	Final	jmd	JMD	AL	AL

A person using Aurecon documents or data accepts the risk of:

- Using the documents or data in electronic form without requesting and checking them for accuracy against the original hard copy version.
- Using the documents or data for any purpose not agreed to in writing by Aurecon.

Contents

1.	Introduction	1	Appendix A
2.	The draft local environmental plan	2	Draft Maitland Local Environmental Plan 1993
3.	Record of the Public Hearing	3	(Amendment No ##)
3.1	Evelyn Crescent, Thornton	3	Exhibited by Council from July 17 to August 14, 2009
3.2	Eales Road, Berry Park	3	

DRAFT

1. Introduction

This is a report prepared for Maitland City Council by Aurecon pursuant to section 57 of the Environmental Planning and Assessment Act, 1979, following the facilitation of a public hearing for the Council by Aurecon's Mr Jim Davies, Senior Planner, pursuant to section 29 of the Local Government Act.

The public hearing was held regarding a draft local environmental plan to reclassify and rezone certain land in the City. The public hearing was held at 5.30pm on September 30, 2009, at the Maitland Town Hall. The plan had been placed on public exhibition between July 17 and August 14, 2009.

This report documents the issues raised by members of the public who spoke at the hearing.

Maitland City Council's brief to Aurecon did not require analysis of the issues, nor did it require any commentary on matters raised by speakers at the public hearing. Aurecon's brief was to simply assist Council with preparations for the meeting, to chair the meeting and to record issues raised at the hearing in a report.

Notice was given regarding the hearing by Council and people were invited by that notice to make a written request to speak at the hearing. Seven people did so and spoke at the hearing.

2. The draft local environmental plan

Council prepared and exhibited a draft local environmental plan, to amend the Maitland Local Environmental Plan 1993, for two parcels of land at Thornton and one parcel at Berry Park. A copy of the exhibited plan is attached at **Appendix A**.

In summary, the draft LEP proposes to reclassify and rezone the two parcels of land in Thornton and reclassify one parcel of land at Berry Park.

Evelyn Crescent, Thornton

The land in question is part of a public reserve that fronts Taylor Avenue and extends northward to Evelyn Crescent and Triggs Close. The proposal comprises rezoning the land to residential and reclassifying the land from community to operational (thus enabling its disposal and use for another purpose) to allow its sale for development as a medical centre. The residential zoning allows development of a medical centre provided Council first approves a development application. This may occur only after the land is rezoned.

John Arthur Avenue, Thornton

The land at John Arthur Avenue is also a public reserve and is proposed to be rezoned and reclassified to allow its sale and inclusion in a subdivision of land to the north, which Council plans to release for urban development in the near future. The principal purpose of this process is to enable development of the land as a road, which will connect John Arthur Avenue with the new development to the north when it occurs.

Eales Road, Berry Park

This site is a small parcel of land off Eales Road, Berry Park and is surrounded by a privately-owned rural property. The land is the site of a historic burial plot for the Eales family, John Eales Snr being one of the pioneers of the Maitland district and the Hunter region.

Except for a right-of-access enjoyed only by Mr Eales's descendants, the land is ostensibly land-locked.

The draft plan proposes reclassification from community to operational to enable its sale. It is understood the owner of the property that surrounds the subject land wishes to acquire it from Council.

3. Record of the Public Hearing

Set out below are the issues raised by the speakers at the public hearing. Speakers only addressed the Evelyn Crescent, Thornton and Eales Road, Berry Park sites.

3.1 Evelyn Crescent, Thornton

Issues raised by four speakers regarding this land were:

- a) Letters of concern and a petition have been sent to Council before exhibition of the draft LEP.
- b) The land was originally set aside as a public reserve and some residents chose to buy land next to it for the amenity the reserve would provide. Council was specifically asked to consider this.
- c) The site, off Taylor Avenue, is not appropriate for a medical centre, although additional medical facilities in Thornton would be supported.
- d) Loss of part of the reserve will have an environmental impact in that it will reduce the habitat of local birdlife.
- e) The medical centre would effect the privacy and general well-being of adjoining residents and value of nearby residences.
- f) There will be after-hours security issues associated with the medical centre.
- g) Questioned whether other parts of the reserve may be sold for development.
- h) There will be a loss of bush views and amenity, with a two storey building on the site.
- i) Approximately 100 trees will be felled for the medical centre, there being over 500 in the reserve.
- j) The proposal would cause environmental destruction.
- k) Loss of trees will contribute to loss of shade and global warming.
- l) Some residents are shift workers who rely on the peace and quiet afforded by the reserve during the day.
- m) Night-lighting associated with the medical centre would be disruptive.
- n) The medical centre will reduce traffic and pedestrian safety, especially for school children in the area. These children must cross Taylor Avenue, already a busy "arterial" street, when going to and from school.

- o) A real estate agent advised one of the speakers that the proposed medical centre would devalue residential property.
- p) The proposal constitutes a "change of the rules".
- q) Although parking would be provided on the site, the medical centre would still cause traffic and parking problems in its vicinity.
- r) Development of the site for a medical centre may impact the viability of the Thornton town centre.
- s) A medical centre should be located in the town centre, rather than the site proposed.
- t) The proposal may reduce the effectiveness of Council's draft retail hierarchy, which nominates Thornton as one of four town centres in the Maitland City local government area.
- u) Dispersal of commercial activity away from designated centres could undermine the critical mass of services needed to sustain centres.

3.2 Eales Road, Berry Park

Issues raised by three speakers about this parcel are set out below:

- a) Legal issues concerning the land are complex. Family members are allowed to visit the land, with the permission of the owner of the land that surrounds the gravesite.
- b) There is no reason to "flog off" the site; there is no valid reason for the reclassification.
- c) The land is visited by members of the Eales family to pay their respects to their ancestors.
- d) The proposal, to sell the land and maintain access for the family via a right of way, is "an extreme measure".
- e) Refurbishment (of the graves) requires the co-operation of the owner of the surrounding land.
- f) The reason for this reclassification proposal is unknown.
- g) Trying to resolve the matter has been met with obstruction and avoidance, dealing with Council has been difficult.
- h) The proposal represents "riding roughshod" over individual and family rights.
- i) Resolving the matter with the co-operation of other parties would be preferred.

- j) Reclassification must consider history which is of a high value and precious to the Eales family.
- k) Determination of the proposed reclassification is a moral question for Council.
- l) Access - once forgone or denied - will not come back.
- m) An agreement by the current owner (of the surrounding property) or generation cannot be guaranteed in the future. Such a guarantee should be provided and the land vested in Council or the Heritage (National) Trust.
- n) The Eales family site is of local historical significance.
- o) Legal access for the Eales family should be maintained or created and maintained for the public in perpetuity.
- p) Excellent care of the graves by the owners of the surrounding property was acknowledged.
- q) Concern was expressed regarding new (future) ownership of the surrounding property and those new owners not being as empathetic as current owners concerning access for the Eales family over their land to the gravesite.
- r) Access was only ever provided for the Eales family by John Eales Snr.
- s) There is no, and nor has there been, any public access to the gravesite. Therefore the reclassification of the land would not deny any public right.
- t) Current owners of the surrounding property have improved the gravesite since 1986.
- u) There has been no desecration of the graves, unlike occurrences in some public cemeteries. This is due to the Eales' graves being within the curtilage of the house on the property that surrounds the gravesite.
- v) Burials could extend beyond 1871, back to the 1830s.
- w) There should be no public access and the Eales family should maintain access to the gravesite.

Appendix A
Draft Maitland Local Environmental Plan
1993 (Amendment No ##)

Exhibited by Council from July 17 to
August 14, 2009

Appendix A



Draft Maitland Local Environmental Plan 1993 (Amendment No ##)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under
the *Environmental Planning and Assessment Act 1979* (## Ref ##)

Minister for Planning

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

Maitland Local Environmental Plan 1993 (Amendment No. ##)

Clause 1

Maitland Local Environmental Plan 1993 (Amendment No ##)

under the

Environmental Planning and Assessment Act 1979

1 Name of PlanThis plan is *Maitland Local Environmental Plan 1993 (Amendment No ##)*.**2 Aims of plan**

This plan aims to:

- (a) This plan aims to rezone certain land in Evelyn Crescent, Thornton from Zone 6(a) Public Recreation to Zone 2(a) Residential under the provisions of the *Maitland Local Environmental Plan 1993*,
- (b) Reclassify the subject portion of land to be zoned 2(a) Residential from community land to operational land within the meaning of the *Local Government Act 1993*,
- (c) Rezone certain land in John Arthur Avenue, Thornton to 2 (a) Residential and reclassify from community land to operational land within the meaning of the *Local Government Act 1993*, and
- (d) Reclassify certain land at Berry Park from community land to operational land within the meaning of the *Local Government Act 1993*.

3 Land to which plan applies

- (1) Parts 2(a) & (b) of this plan apply to part of Lot 431 DP260916 Evelyn Crescent, Thornton, as shown edged heavy black on Sheet 1 of the map marked "Maitland Local Environmental Plan 1993 Draft (Amendment No ##)", deposited in the office of Maitland City Council.
- (2) In respect of the aim referred to in clause 2(c), this plan applies to Lot 639, DP 262555 John Arthur Avenue, Thornton, as shown edged heavy black on Sheet 2 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" deposited in the office of Maitland City Council.
- (3) In respect of the aim referred to in clause 2(d), this plan applies to Lot 9, DP 1114951 Eales Road, Berry Park, as shown edged heavy black on Sheet 3 of map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" deposited in the office of Maitland City Council.

4 Amendment of Maitland Local Environmental Plan 1993

Amendments are set out in the following schedule.

Schedule 1 Amendments**[1] Clause 4 – Interpretation**

At the end of the definition of 'The map' in clause 5(1), insert:

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 1

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 2

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 3

[2] Clause 51 – Classification and Reclassification of Public Land as Operational

Insert in alphabetical order in Schedule 4, under Part 3 Interests changed:

Column 1	Column 2	Column 3
Locality	Description	Trusts etc not discharged
Thornton		
Evelyn Crescent	Land to be excised from Lot 431 DP260916, as shown heavy black on Sheet 1 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Nil.
Berry Park		
Eales Road	Lot 9, DP 1114951, as shown edged heavy black on Sheet 3 Eales Road of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Right of way for the beneficiaries of the Estate of Frederick Eales

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

Maitland Local Environmental Plan 1993 (Amendment No. ##)

Clause 1

ThorntonJohn Arthur
Avenue

Lot 639, DP 262555, as shown edged
heavy black on Sheet 2 of the map
marked "Maitland Local Environmental
Plan 1993 (Amendment No XX)" –
*Maitland Local Environmental Plan
1993*
(Amendment No. XX)

Nil.

Service Planning and Regulation Reports

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP

Planning Instrument and Ministerial Directions

Meeting Date: 13 October 2009

Attachment No: 4

Number of Pages: 5

SECTION 66(1)(b)
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979
PUBLIC EXHIBITION OF A DRAFT LEP

Pursuant to Section 66(1)(b)(ii) of the Environmental Planning and Assessment Act, 1979 Council is required to publicly exhibit a copy of any State Environmental Planning Policy, Regional Environmental Plan or relevant direction under Section 117 (Ministerial Directions for Local Plan making) applying to the land to which the draft Local Environmental Plan is intended to apply.

The following policies, plans and directions which apply and are relevant to the draft LEP are indicated below. Those policies, plans or directions that are indicated substantially govern the content and operation of the draft LEP and any submission made in respect of the draft plan should be made having regard thereto.

Copies of the above documents will be made available for inspection during the exhibition period by consulting the **Appendix to LEP Exhibitions** folder, available from the Customer Services counter or Library staff. Alternatively, these documents are available to view on www.legislation.nsw.gov.au or www.planning.nsw.gov.au

For further information relating to any aspect of the draft LEP, please contact the City Strategy team on 4934 9700.

Matters in housekeeping amendment

- 1. *Reclassification of land (community to operational) – Eales Road, Berry Park***
- 2. *Reclassification of land (community to operational) and rezoning – John Arthur Avenue, Thornton***
- 3. *Reclassification of land (community to operational) and rezoning – Evelyn Crescent, Thornton***

Environmental Planning Instruments	Relevant to draft LEP?
Standard Instrument (Local Environmental Plans) Order 2006	All matters
SEPP No. 1 – Development standards	No matters applicable
SEPP No. 4 – Development without consent and miscellaneous exempt and complying development	All matters

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

SEPP No. 10 – Retention of low-cost rental accommodation	No matters applicable
SEPP No. 14 – Coastal wetlands	No matters applicable
SEPP No. 15 – Rural landsharing communities	No matters applicable
SEPP No. 22 – Shops and commercial premises	No matters applicable
SEPP No. 32 – Urban consolidation (redevelopment of urban land)	Matter 2
SEPP No. 55 – Remediation of land	No matters applicable
SEPP No. 60 - Exempt and complying development	All Matters
SEPP No. 65 – Design quality of residential flat building	Matter 2
SEPP No. 71 – Coastal protection	No matters applicable
SEPP - Building Sustainability Index (BASIX) 2004	Matter 2
SEPP – Housing for seniors or people with a disability 2004	Matter 2
SEPP – Infrastructure 2007	All Matters
SEPP – Major projects 2005	All Matters
SEPP – Mining, petroleum production and extractive industries 2007	Matter 2
SEPP – Rural lands 2008	No matters applicable

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

Ministerial Directions for Local Plan Making	Is draft LEP relevant & consistent?
1.1 Business and industrial zones	No matters applicable
1.2 Rural zones	Yes – Matter 1
1.3 Mining, petroleum production and extractive industries	No matters applicable
1.4 Oyster aquaculture	No matters applicable
1.5 Rural lands	No matters applicable
2.1 Environmental protection zones	Yes – All matters
2.2 Coastal protection	No matters applicable
2.3 Heritage conservation	Yes – All matters
2.4 Recreation vehicle areas	Yes – All matters
3.1 Residential zones	Yes – Matters 2 & 3
3.2 Caravan parks and manufactured home estates	Yes – All matters
3.3 Home occupations	Yes – All matters
3.4 Integrating land use and transport	Yes – Matters 2 & 3
3.5 Development near licensed aerodromes	No matters applicable

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

4.1 Acid sulphate soils	Yes – Matter 1
4.2 Mine subsidence and unstable land	No matters applicable
4.3 Flood prone land	No matters applicable
4.4 Planning for bushfire protection	No matters applicable
5.1 Implementation of regional strategies	Yes – All matters
5.2 Sydney drinking water catchment	No matters applicable
5.3 Farmland of state and regional significance on the NSW far north coast	No matters applicable
5.4 Commercial and retail development along the Pacific Hwy, North Coast	No matters applicable
5.5 Development in the vicinity of Ellalong, Paxton and Millfield	No matters applicable
5.8 Second Sydney Airport; Badgerys Creek	No matters applicable
6.1 Approval and referral requirements	Yes – All matters
6.2 Reserving land for public purposes	Yes – Matters 2 & 3 Matter 2 is inconsistent * see note 1 Matter 3 is inconsistent * see note 2
6.3 Site specific provisions	No matters applicable

Note 1

The draft LEP reduces land zoned for recreational purposes in the Maitland local government area. The loss of recreational land is considered to be of minor significance both within the local and citywide area (site is 465m² and is only used for drainage purposes). Substantial new areas of recreational land will be made available within the Thornton North urban release area (approximately 40 hectares) which will be developed for passive and active recreational functions. There is a major existing recreational facility (Allan and Don Lawrence Oval – 9ha) within 500 metres of the site.

It is considered by Council that the land does not serve a useful recreational function and the drainage matters can be adequately

Note 2

The inconsistency with this direction can be justified on the basis that there is sufficient public land remaining in the locality which can serve the same purpose as the subject land. A large oval and recreational facility exist just 500m to the south-east of the subject land along Taylor Avenue, while public open space exists just 180m south-west of the subject land beyond Taylor Avenue. Public open space is also located approximately 1.1km east of the subject land, along Thomas Coke Drive. The availability of a number of other public open space and recreation areas within the immediate locality provides further impetus to permit the proposed rezoning. Furthermore, the proposed rezoning of just 2,000m² of a 1.16Ha parcel of community land represents a small portion of an overall estimated 43Ha of urban bushland within the Maitland LGA (upon community land only), as identified within the Maitland Recreation and Open Space Strategy, 2004 (MROSS). In any case, the MROSS identifies the subject land as being too small to facilitate any significant recreation potential (see p.30 of MROSS).

Service Planning and Regulation Reports

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP

Draft Maitland LEP Submissions

Meeting Date: 13 October 2009

Attachment No: 5

Number of Pages: 18

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

REF RZ08-001

29 July 2009.

Dear General Manager,

SCANNED

Attached is a petition against the building of a medical centre in the Taylor Avenue reserve in Thornton. These signatures are from people whose land adjoins the reserve or face the reserve. Now, they realise Maitland City Council's plans to rezone reserve land to residential classification so that a medical centre can be built there.

Aside from taking down trees, which are home to many birds, the traffic on Taylor Avenue will be increased again, there will be parking issues on such a busy road, people will lose privacy in their yards, and there are concerns about after hours security.

I am a resident of 33 Taylor Avenue. We are directly impacted because the proposed rezoned land runs down our complete property line. We will lose the scenery that we have loved so much for 27 years. I'm sure if the Council Members were in our position, they would be equally opposed.

Regards,

Barbara J. Neville

Barbara Neville
33 Taylor Avenue
Thornton
PH. 49662493

DOC No. 685410		
REC'D	13 AUG 2009	MCC
FILE No.	RZ 08001	x
REFER	Gibson, Ford	

685285

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

PETITION AGAINST THE CONSTRUCTION OF A MEDICAL CENTRE ON TAYLOR AVE. RESERVE

NAME	SIGNATURE	STREET ADDRESS	COMMENTS
P. Eym	Patly Eym	10 Evelyn Cres Thornton	No way
J Henderson	J Henderson	8 Evelyn Cres Thornton	No
M. Iceton		4 Evelyn Cres Thornton	NO
Dean Paten		30 JOHN ARTHUR AVE THORNTON	YES, BUT IN ANOTHER LOCATION
1 Bilio to	2 griffin close Thornton		no
510 Duwen		2 GIBSON CROSS	NO
Debbie Durkan		2 Gibson Close Thornton	NO
Elley Main		35 Taylor Avenue	No
Moula Manalaw		35 Taylor Avenue	NO
Karen Stemp		43, Taylor Ave	NO
H. PARROTT		1 OWEN CL	No
Michele Hirsch		1 Gibson Cl Thornton	NO
BARBARA NEVILLE		33 TAYLOR AVE.	SOMEWHERE ELSE
D. Neville		33 Taylor Ave	Bad life!

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

PETITION AGAINST THE CONSTRUCTION OF A MEDICAL CENTRE ON TAYLOR AVE. RESERVE

NAME	SIGNATURE	STREET ADDRESS	COMMENTS
H. Neville	<i>H. Neville</i>	14 Blakewell Rd, Thornton	We want to keep it as it is.
P. Barth	<i>P. Barth</i>	31 Taylor Ave, Thornton	Too busy
D. Holmes	<i>D. Holmes</i>	6 BUNBURY STREET THORNTON	NOT ENOUGH PARKING.
Y. JAMES	<i>Y. JAMES</i>	5 TRIGGS CLOSE THORNTON	QUIET AREA WILL BE COMPROMISED WITH SUCH AN INFLOX OF PEOPLE & VEHICLES
* L. McCreath	<i>L. McCreath</i>	4 Triggs Close	Wildlife affected. Children affected. Quiet area. Too Busy.
S. Border	<i>S. Border</i>	3 Triggs Cl.	Me and my 4 brothers grew up in the park and have fond memories
W. Irwin	<i>W. Irwin</i>	12 Triggs Cl.	Keep as a reserve. Concerned about traffic. We need a bigger medical centre. Surely it could go somewhere else affecting less people, residents and environment.
K. Rae	<i>K. Rae</i>	10 Triggs close Thornton	Not enough room in small streets. KEEP THE PUBLIC RESERVE.
S. CREW	<i>S. CREW</i>	7 TRIGGS CLOSE, THORNTON	phone: 49663236 ALISON*
A. McDonald	<i>A. McDonald</i>	6 Triggs Close Thornton	Why this area? crown land? why are we as residences given answers?
R. McDonald	<i>R. McDonald</i>	6 TRIGGS CL THORNTON	Reserve should be kept as is. Traffic concerns
G. Guldrie	<i>G. Guldrie</i>	39 Taylor Ave Thornton	I Don't believe the reserve is the right place
A. Lord	<i>A. Lord</i>	20 Evelyn Cres Thornton	Please leave reserve as is!!
J. Brown	<i>J. Brown</i>	4 Owen Cl. Thornton	

SCANNED

R & J GIBSON

16 Corsair Crescent, CRANEBROOK NSW 2749

PH: 02 47 302483 FAX: 02 47 306949

29 July 2009

The General Manager
Maitland City Council
PO Box 220
MAITLAND NSW 2320

DOC No.	686839
REC'D	11 AUG 2009 MCC
RZ 08/001	M Gibson T. Ford

REF: RZ08-001

Dear Sir/Madam

AMENDMENT TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993
RECLASSIFICATION OF PUBLIC LAND

My husband and I are owners of 2 Gibbon Close, Thornton and as such will be directly affected by the reclassification of Evelyn Crescent, Thornton from Public Recreation to the proposed Zone 2(a) Residential and then to operational land.

Our understanding, there is a possibility of a medical centre being built on the land, hence the rezoning. However, irrespective of whether there is a possibility of a medical centre being built or not, as our property is directly opposite the proposed rezoning, we VERY STRONGLY OBJECT to the rezoning of the land from Public Recreation.

I note the letter and Draft Local Environmental Plan has Evelyn Crescent, Thornton yet the sheet 1 of 3 also enclosed, had the area being on Taylor Avenue not Evelyn Crescent.

../2

-2-

If the area is re-zoned to 2(a) Residential then to operational we will LOSE PRIVACY, there will be an INCREASE IN TRAFFIC, and there is the concern of SECURITY AND PARKING.

LOST PRIVACY

Being directly opposite the proposed rezoned land, will ensure all privacy in the home will be a thing of the past.

The security of the home will be jeopardized and no doubt cars will be parked out front and possibly on our side lawn. Noise from cars starting up and being driven away at all hours all the time is abhorrent and will ensure that the quiet residential area we bought into is no longer. Please note if the medical centre is open at night and people arrive and leave in cars, the headlights will beam straight into the front of our home as they leave.

INCREASE IN TRAFFIC

The home is in a very residential area and although the other end of Taylor Avenue has the shops, park, school etc. most of the traffic at this time, tends to stay down that end leaving our end very quiet – one of the reasons we bought the property.

SECURITY

A medical centre is open at varying hours – this can be at night and weekends let alone daytime. With more people around, there is more likelihood of louts/druggies etc being around too. It is of very real concern for families in the area.

PARKING

We have never seen when a commercial building has been built, that there is enough parking. Our concern is where are people likely to park if there is not enough parking spaces? Yes, in the street! Where in the street? Right in front of our home!

../3

-3-

All of the objections we have listed previously would apply, even if there is no medical centre, from any change to the zoning as even 2(a) Residential could have: Convenience Store, Exhibition Village, Hospital, Hotel, Motel, Public Building or a Tavern just to name a few. This would impact severely on the surrounding area.

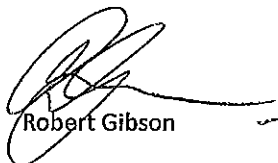
The proposed rezoning would allow developments of excessive density and be out of character with the surrounding low density neighborhood. Will result in excessive removal of trees, will unduly impact on the amenity of the surrounding neighborhoods and will be contrary to the resident's wishes.

Rather than re-zoning and changing the site for commercial interests why not improve the site, where families can enjoy being outdoors and not far from home.

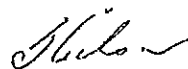
When another meeting is held with residents and council we would appreciate being advised, and not at the last moment, as we would need to travel to attend.

I look forward to your reply and hope that you take our objections to the proposed re-zoning into consideration.

Yours sincerely



Robert Gibson



Jennifer Gibson

C:\CIVIL\council\doc.pdf

6th August 2009
The General Manager
Maitland City Council
PO Box 220
Maitland NSW 2320

DOC No.	
REC'D	07 AUG 2009 MCC
FILE No.	
REFER	

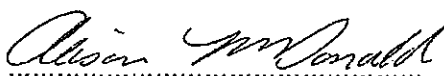
Dear Sir/Madam

**Re Amendment to Maitland Local Environmental Plan 1993
Reclassification of Public Land.**

I wish to make a submission of objection to this draft plain in the following way:

1. As a resident of Triggs Close, Thornton for 28 years I can only wonder how many more trees in the City of Maitland you plan to remove? As your council is one of the highest in our state of NSW. The sound of birds gone, children stopped from enjoying riding their bikes and just having fun.
2. Concerns of privacy to our neighbours' who are more affected than we are.
3. Traffic control in Taylor Avenue. One of the busiest roads in the suburb. How safe will it be for families crossing the road to the Medical Centre?
4. If the re-zoning goes ahead can the Council guarantee that no other development will be made in this reserve as when we purchased our land all those years ago we were told that it would remain a reserve and no development would be made between Taylor Avenue and Evelyn Crescent?
5. We realize that Thornton has grown somewhat since first coming to the area and that we certainly do need a bigger Medical Centre, but please take into consideration the three families which I feel that will be highly affected.

Regards,



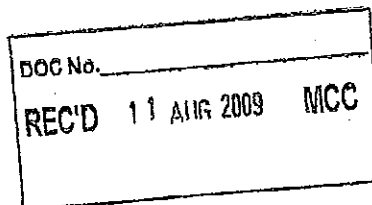
Alison McDonald
6 Triggs Close
Thornton NSW 2322

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

C:\CIVIL\council\doc.pdf

20/07/09

The General Manager,
Maitland City Council
P.O. Box 220
Maitland NSW 2320



Dear Sir/Madam

RE: AMENDMENT TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993
RECLASSIFICATION OF PUBLIC LAND.

REFERENCE NO. RZ08-001

I wish to advise that I Jeff McGrath and my wife Lisa McGrath plan to object to the planned amendment to the Maitland Local Environmental Plan 1993. Rezoning certain land in Evelyn Crescent, Thornton from Zone 6(a) Public Recreation to Zone 2(a) Residential.

The land in question has been a park for the last 28 years in which children play and local residents use as a public thoroughfare. Our house faces the park to which you plan to build on. Maitland council has obviously not considered the immediate affect that this building will have on our residence and the residence of people who live adjacent to this planned development.

- The children will have nowhere to play due to the removal of play equipment
- The cutting down of at least 120 trees contributing to global warming
- Traffic that will be entering and leaving the surgery. ie noise
- Lighting that will greatly affect our privacy at night
- The extra heat in summer against our property due to the cutting down of trees
- The total loss of privacy in general for all residence around the park
- The loss of wild life that breeds in the park.
- The devaluation of properties facing this building

All these issues need to be addressed. This development will greatly affect the lives of every one around this reserve so common sense needs to prevail.

Jeff McGrath

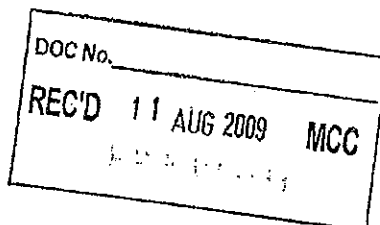
Lisa McGrath

4 Triggs Close
Thornton, 2322

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

C:\CIVIL\council\doc.pdf

9 August 2009



Garry Goldie
39 Taylor Avenue
Thornton NSW 2322
(02) 49662728

Maitland City Council

Re: Proposed Development for a Medical Centre at Taylor Avenue Thornton

Dear General Manager,

My name is Garry Goldie I have lived at 39 Taylor Avenue, Thornton for 28 years. I oppose the draft to change our reserve which we hoped would be developed as a more attractive park rather than a commercial addition.

Objections:

1. Loss of a public reserve which gives an environmental contrast in a residential area
2. Taylor Avenue is already a busy main road in Thornton and this addition will cause much more traffic and congestion in the street
3. Within 0.5km of a school zone
4. Parking problems outside my home and those nearby

Regards

Garry Goldie

R 208 - 001

1 of 4

R.O.I.

PROPERTIES

The General Manager
Maitland City Council
PO Box 220
Maitland NSW 2320

Attention: Josh Ford, City Strategy

14 August 2009

Dear Josh,

RE: Evelyn Crescent, Thornton (RZ08001)

I refer to our conversation yesterday regarding Council's proposal to reclassify Evelyn Crescent, Thornton (RZ08001) to be operational and rezone part of the land for residential purposes. We are aware that the reclassification of the land is with the intention to sell all or part of the land to doctors for the purposes of a medical centre.

We do not have an objection to the rezoning or the reclassification of the land pursue rather we object and have serious concerns regarding the intention and the resulting impact on relevant and significant work being done across the Local Government Area regarding centres within the City of Maitland.

As you are no doubt aware, Thornton has been identified in the Draft Maitland Centres Strategy as one of only four Town Centres across the LGA. This Town Centre is to be characterised as a *"shopping and business centre for the sub-region"* and will include:

- 1 or 2 supermarkets
- 80 – 150 specialty shops and non retail services such as banks, health professional services, community services/facilities and offices
- Recreational facilities

Strategic planning is in an advanced stage with regard to a retail hierarchy within Maitland and we recognize the opportunity/risk associated with an inappropriate allocation of a medical practice outside of an identified Town Centre. It is also worth considering the nature of health care across the state and country which is being debated of late ie. expanding medical practices (especially in regional areas) to provide a full range of medical services and offer multidisciplinary medical care. The collocation of this facility with other community services, retail services (such as Pharmacy and professional services) and public transport is vital to the viability of the Town Centre and also would facilitate the best care and sustainable management of the community.

ROI PROPERTIES PTY LTD ABN 81 589 443 761 ACN 057 432 149

Sydney Office: Level 7, 1 Newland Street • P O Box 175 • Bondi Junction NSW 1355 • T. 02 9388 9799 • F. 02 9388 9177

Newcastle Office: Level 1, 27 Centenary Road • P O Box 497 • Newcastle NSW 2300 • T. 02 4929 5922 F. 02 4929 5977
www.roi-group.com.au

August 14, 2009

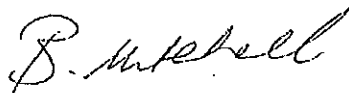
We believe the allocation of the Evelyn Crescent site for the purpose of an expanded medical practice would undermine the viability of the Town Centre as a critical mass of services is required for preeminence of the centre within the retail hierarchy.

A medical practice and associated uses would normally be located in a town centre and we respectfully request Council seriously consider the implications of enabling the intended expansion of the medical practice to Evelyn Crescent rather than encouraging and facilitating the establishment of an appropriately sized and serviced location for the medical practice within the Town Centre consistent with the objectives and outcomes of the Draft Centers Strategy.

We would be most willing to discuss this issue with Council further and ROI reserves the right to provide additional submissions throughout the reclassification and rezoning process. We also request that we are notified of any public hearing or development of the proposal throughout the process.

Please feel free to call me on 0414 557 531 should you wish to discuss any of the above.

Kind regards



Briony Mitchell
Planning & Project Manager

CC Monica Gibson, Manager City Strategy

C:\CIVIL\council\doc.pdf

Maitland & District Historical
Society IncorporatedP.O. BOX 333,
MAITLAND. 2320Your Reference 103/124
12/07/2009

DOC No. _____

REC'D 14 AUG 2009 MCC

103/124

The General Manager,
Maitland City Council,
PO Box 220, MAITLAND. 2320.**Re: Reclassification of Land at Berry Park.**

Dear Sir/Madam,

I write on behalf of the above Society, and on behalf of Ms June Vile, who is currently ill and unable to respond to your letter of 14th July.

At our August meeting it was resolved that we should again emphasise to Council that continued access to this significant cemetery is our main concern. We concede that the current occupier of the land has cared for the site and has recognised its heritage value. However, the present owner is only mortal or he may choose to sell his property, in either case the question of access may arise again.

We are therefore asking that Council resolve that the members of the Bales family and interested members of the public should have access to these graves in perpetuity. As members of this Historical Society and Maitland citizens we believe that this is a fair and reasonable resolution.

We as a Society make this submission because of our sincere belief that this site is of great significance both to the local citizens and those beyond and has already been recognised as such by the Heritage Council of NSW.

Concerning the last paragraph of your letter, this Society is non-political and does not make nor has it made any political donations.

Yours truly,

Lloyd Bevan,
Secretary.

C:\CIVIL\council\doc.pdf



Raymond Terrace & District Historical Society Inc.

Established 1971

Linking yesterday with tomorrow

Affiliated with:
Royal Australian Historical Society
Museums Australia

PO Box 255
Raymond Terrace, 2324

DOC No.	
REC'D	04 AUG 2009 MCC
FILE No.	
REFER	

2 August 2009.
Heritage Officer.
Ms Clare James.
Maitland City Council
PO Box 220
Maitland NSW 2320

Dear Ms James,

A meeting of the Raymond Terrace Historical Society Committee requested me to write to you concerning the proposed transfer of ownership of the land on which the historic Eales family cemetery is located, to the developer Hilton Grugeon. The Society feels that the historic nature of the land will be lost if the ownership is transferred to the land developer, and we strongly trust that the Council will take the appropriate steps to ensure that this important historical fragment of land is maintained for all of the community, both today, and well into the future.

The Maitland City Council has always shown a strong conviction in maintaining local history, and it is our hope that this issue is resolved in a positive way.

Yours sincerely

F. Clark

Faye Clark
Hon. Secretary,
Raymond Terrace Historical Society.
Ph 49 876435
Email: clarkys@bigpond.net.au

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

C:\CIVIL\ccouncil\doc.pdf

THE NATIONAL TRUST of AUSTRALIA (NEW SOUTH WALES)

ABN 82 491 958 802



NATIONAL TRUST

WATSON ROAD
OBSERVATORY HILL
SYDNEY NSW 2000GPO BOX 518
SYDNEY NSW 2001
www.nsw.nationaltrust.org.auT: 02 9258 0123
F: 02 9251 1110

DOC No. _____
REC'D 07 AUG 2009 MCC
FILE No. _____
REFER _____

The General Manager
Maitland City Council
PO Box 220
MAITLAND NSW 2320

5 August 2009

Dear Mr Evans

Your Reference: 103/124

Attention: MONICA GIBSON

Re: RECLASSIFICATION OF EALES CEMETERY

AMENDMENT TO LOCAL ENVIRONMENTAL PLAN 1993: RECLASSIFICATION OF PUBLIC LAND

Thank you for your letter of 17 July 2009 inviting comment on this proposed amendment. The sole concern of the National Trust in this matter is the proposal for Eales Family Cemetery, ie Lot 9, DP1114951 at Berry Park. The issue is the imminent removal of existing protection for the heritage values of this site.

As referenced in our letter of 31 March, 2009, Maitland Council adopted on 24 October 2000 a 5-point resolution which could form an effective and sensible basis for protection of this valuable place. We again attach a copy of the relevant resolution for your consideration in the current circumstances.

Unless Council first adopts some such clear proposal for the future of the Eales Family Cemetery the National Trust must strongly oppose the intentions of the LEP amendment in this regard, especially the intention of Schedule 1 Part [2] to discharge "any trusts or encumbrances" on the site. Such discharge without first setting in place effective replacement protections is in our view completely at odds with Council responsibilities in the matter.

Issues currently ignored include the necessary fencing of Lot 9; the continuing access for Eales family descendants, which is part of the site's heritage value; and the question of future responsibility for monitoring, maintenance and conservation of the cemetery.

As previously advised, we do not oppose change of status outright, but the current proposal for Lot 9 is so incomplete that it should be rejected.

Yours sincerely

Graham Quint
Advocacy Manager

Protecting our Australian heritage through advocacy, conservation and education

AMENDMENTS TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - RECLASSIFICATION MATTERS LEP (Cont.)

C:\CIVIL\council\doc.pdf

TELEPHONE: (02) 4934 9700

FACSIMILE: (02) 4933 3209

DX 21613 MAITLAND

EMAIL: mcc@maifland.nsw.gov.au

WEB ADDRESS: www.maitland.nsw.gov.au

All correspondence should
be addressed to
General ManagerP.O. BOX No. 220,
MAITLAND, N.S.W. 2320Administration Building,
MAITLAND, N.S.W.

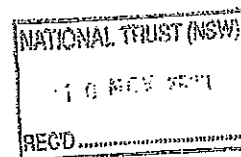
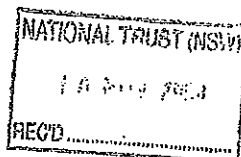
Our Ref. JS:LT:RZ20002

Telephone Enquiries:

James Shelton
4934 9830

Your Ref.

November 8, 2000

National Trust of Australia
GPO Box 518
SYDNEY NSW 2001

Dear Sir/Madam

RE: RECLASSIFICATION OF EALES CEMETERY

Council at its meeting dated Tuesday 24th October 2000 considered the proposal to reclassify the Eales Family Cemetery. I wish to advise you that the resolution of Council was "THAT:

1. Council support the Local Environmental Plan amendment to reclassify Part Lot 8 off Eales Road, Berry Park (Eales Family Cemetery) as operational land;
2. The Local Environmental Plan amendment be referred to the Department of Urban Affairs and Planning with a request that the Minister make the plan.
3. Prior to the transfer of the land to the surrounding land owner, a separate deed be drawn up to provide exactly what rights are given and to whom, with the intention of providing on-going access and burial rights to the Eales family.
4. The surrounding land owner commission suitably qualified professionals to undertake the preparation of a Conservation Management Plan for the cemetery in consultation with a representative of the Eales family. The Conservation Management Plan shall be endorsed by Council in consultation with the National Trust and NSW Heritage Office prior to the transfer of the land.
5. That Council Investigate the inclusion of the cemetery on the State Heritage Register."

Should you require any further information, please contact either James Shelton on 49 349 830 or Peter Cameron on 49 349 848.

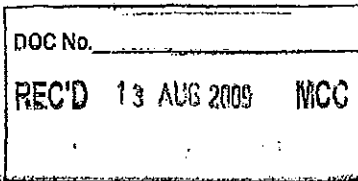
Yours faithfully

James Shelton
Town Planner

J:\WORD\LETTERS\JAMES\reclassification of eales cemetery.doc

C:\CIVIL\council\doc.pdf

General Manager,
Maitland City Council,
P.O. Box 220,
Maitland, NSW. 2320.



86 Plimsoll Street,
Greenslopes,
Qld. 4120.
11 August, 2009.

1

Dear General Manager,

**Proposal To Reclassify The EALES FAMILY CEMETERY Site
At Berry Park (Ref: 103/124)**

Thank you for your letter of 14 July, inviting comment on the Draft LEP. This approach is a significant improvement on past events, and the courtesy is appreciated. Having said that, we object to this proposal on behalf of all members of the Eales Family. Elements of our objection are detailed below.

From the outset the proposal lacks transparency. Whilst the proposal states an aim, that aim is strictly limited to this isolated and singular event, and fails to provide any indication of a clear and up-front purpose or reason for wanting to achieve the reclassification.

This action by the council appears to be a re-run of a similar, but abortive, and equally secretive exercise that was attempted during the latter part of 2007. The ultimate objective on that occasion was to transfer the Eales Family Cemetery and its right of access to the owners of the surrounding land: Hilton and Bev Grugeon. Whether it is a requirement of the governing legislation or not, it would be totally appropriate for the Council to make its ultimate objective clear in the interests of openness and transparency, and for the benefit of ALL of the ratepayers that it has an obligation to fairly represent.

This sort of approach continues to fuel community disquiet and suspicion.

Fortunately, that previous attempt failed because of failings in the manner in which the Council transferred the land to itself for unpaid rates some years previously.

Council subsequently advised in their letter of 29 November:

"Council now has advice that in respect of the parcel of land known as Eales' Cemetery at Berry Park, Council has no equitable title to the land but, instead, holds its legal title on trust for the true owner. Transfer of the title can be made on determination of the true owner. Council will not be taking action to determine the true owner, as this is a matter for the Eales".

I would like to point out that proving entitlement after so much time has elapsed over 5 generations is a very complex and costly task. We undertook the exercise, using the writer as an example to prove a part ownership in the misguided comfort that Maitland City Council would be honouring the contents of its letter of 29 November, 2000, or at least communicating with us if it were not happy with the situation. Council subsequently reneged on its earlier agreement, and started the process all over again. Whilst I do acknowledge that Councillors and Council Officers have great demands placed on them, and that they have far more serious issues than this to deal with, I nevertheless do not believe that there has been anything like a reasonable approach adopted in dealing with us in respect of this matter. The number of FOI applications that our legal representatives have had to make bear testimony to that. In fact, all councils do have a responsibility to accommodate historic/heritage matters. In this case, there are additional sensitivities because it involves human remains and access for future generations.

C:\CIVIL\council\doc.pdf

2

Whilst it is past history, the issue of unpaid rates on the Cemetery is something that should never have been an issue, in that, even if they were justifiable, we do not believe that Council made more than a token effort to track down a member of the Eales family to secure payment, and, further, the Council resolution of 25 August, 1981 clearly shows that Council was putting the land up for sale in order to buy the land itself, rather than to recoup the small amount of outstanding rates.

Through changes to the title, the clear intention of our forebears was to exclude the graveyard from all future sales of the surrounding land, and for the graveyard to remain in the ownership of the Eales family in perpetuity. We firmly believe that the Eales family remains the true owner as agreed by Maitland City Council in its letter of 29 November, 2000.

We are therefore of the view that:

The land is improperly in the Council's hands as it has been advised;

Council has no power to classify the land one way or the other, and should not purport to do so;

Council is clearly wanting to reclassify the land to facilitate its sale;

Council cannot impose any effective obligation on any new owner to either provide access or maintain the cemetery;

The best resting place for the title to the cemetery is in the National Trust, or alternatively in the Council, but not in the hands of the adjoining owner;

This is the Eales Family Cemetery which the family wish to retain and to retain access to.

It could be said that we would not be in the current predicament had John Eales & Co. chosen to have themselves buried in the local cemetery. One suspects that there weren't a lot of options when John Eales Senior died in 1871. Whatever, we respect their decisions, and would ask others to do likewise.

The issue of past attempts by Maitland City Council to reclassify the subject land and sell it to Hilton and Bev Grugeon forces me to spell out my concerns about the possible impacts of similar such action in the future.

It is now more than ten years since my wife, older daughter and I first visited Berry Park - at my late father's suggestion. We were cordially greeted by Bev Grugeon, and she has continued to welcome us on all subsequent visits. We are very appreciative of Bev's welcoming approach.

For his part, Hilton has made a point of saying that he and Bev are always happy to see us, and fully recognizes our rights of access to the graveyard, which we also appreciate.

Unfortunately, there have been a number of very testing episodes that have cast serious doubt over our future access to the graveyard. Furthermore, even with the best of intentions, no individual can afford the security of tenure that either the National Trust or a committed Council can.

Any assertion of abandonment of the graveyard is not accurate. It is not uncommon for there to be lapses in continuity within families. Surely our efforts over the past ten years or so

C:\CIVIL\council\doc.pdf

3

don't constitute abandonment. A lapse on the part of one generation should not preclude subsequent generations from the right of access to the graves of their forebears.

Legal and other issues aside, the elements of MUTUAL CO-OPERATION, UNDERSTANDING, AND GOODWILL have been glaringly absent from deliberations thus far.

Surely it's about time all parties gave genuine and impartial consideration to all of the aspects of this issue.

There are numerous stakeholders whose needs and wishes should be taken into consideration. The following spring to mind: THE EALES FAMILY (PAST AND PRESENT)

THE GRUGEON FAMILY

COMMUNITY

MAITLAND CITY COUNCIL

Whilst many of the issues have been aired over time, most have been handled in an adversarial manner. That approach is simply not going to resolve the underlying issues. It is more likely to entrench them.

Clearly, the multitude of vested interests is proving to be the stumbling block.

It is for this reason that we feel that the best compromise would be achieved via National Trust or continuing Council involvement.

We are not engaged in a development issue here with millions of dollars at stake.

Nor is this some kind of transaction involving the sale or exchange of goods and chattels.

THIS IS A MORAL ISSUE THAT HAS AT ITS HEART THE HUMAN REMAINS OF AT LEAST ONE ICONIC CHARACTER, AND WE SHOULD THEREFORE BE GRATEFUL FOR WHAT WE HAVE INHERITED, SHOW A BIT OF RESPECT, AND HONOUR THEIR WISHES.

In conclusion, I would like to make the point clearly and unequivocally that we bear no malice toward any member of the Grugeon Family. Equally, members of the Grugeon Family might care to do a bit of soul searching to determine what their feelings might be were the positions reversed. We would certainly welcome their involvement, and respect their particular circumstances.

I for one will be bitter, and other members of the wider Eales Family at least particularly disappointed if this reclassification proceeds and the graveyard is sold off.

One bright spot in this sorry saga is that on more recent occasions David Evans has given time and consideration to my personal approaches. I particularly appreciated the time he afforded me for a meeting on 9 September, 2007, and felt that for once there was a positive, open, and constructive approach adopted in relation to this issue.

We sincerely hope that those entrusted with the responsibility for making decisions in this matter are able to walk away with a clear conscience in the end.

Yours faithfully,


Greg Eales.

9.4 FINANCE AND ADMINISTRATION**9.4.1 PROPOSED RECLASSIFICATION OF LAND AT BERRY PARK**

File No: P27904

Attachments: LOCATION PLAN

Responsible Officer: Graeme Tolhurst
Group Manager Finance and Administration

Author: Frank Shrimpton
Property and Risk Management Coordinator

EXECUTIVE SUMMARY

On 24 April 2007 Council resolved to commit to the process of reclassifying the Council owned land at Berry Park which contains the Eales Family Cemetery. The NSW Department of Planning requires the resolution of Council to contain specific wording to advance this matter.

OFFICER'S RECOMMENDATION**THAT:**

1. A draft environment plan under Section 54 of the Environment Planning and Assessment Act, 1979 be prepared in respect to the land known as part Lot 8 of the Berry Park Subdivision, off Eales Road Berry Park to reclassify the property from community land to operational land in accordance with Section 27 of the Local Government Act, 1993.
 2. The Department of Planning be advised of Council's decision in accordance with section 54(4) of the Environmental Planning and Assessment Act, 1979.
 3. The draft plan be exhibited:-
 - For a period of 28 days and a public hearing be conducted as required by the Environment Planning and Assessment Act, 1979 and the Environment Planning and Assessment Regulations, 2000,
 - In accordance with the Best Practice Guidelines published by the Department of Urban Affairs and Planning in January 1997 titled "LEPs and Council Land-Guidelines for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council".
 4. A further report be presented to Council for consideration following the statutory consultation and public exhibition process.
-

PROPOSED RECLASSIFICATION AND REZONING OF LAND AT BERRY PARK (Cont.)**REPORT**

At its meeting on 24 April 2007 Council resolved to commit to the process of reclassifying the Council owned land at Berry Park which contains the Eales Family Cemetery from community land to operational land. The original report detailed the requirements to commit to the proper process of reclassification.

The Department of Planning requires that specific wording in relation to the Environment Planning and Assessment Act, 1979 and the Environment Planning and Assessment Regulations, 2000, be included in the resolution of Council and unfortunately the first resolution did not meet these requirements.

It is the recommendation of this report that the amended resolution be carried to meet the Department's requirements.

FINANCIAL IMPLICATIONS

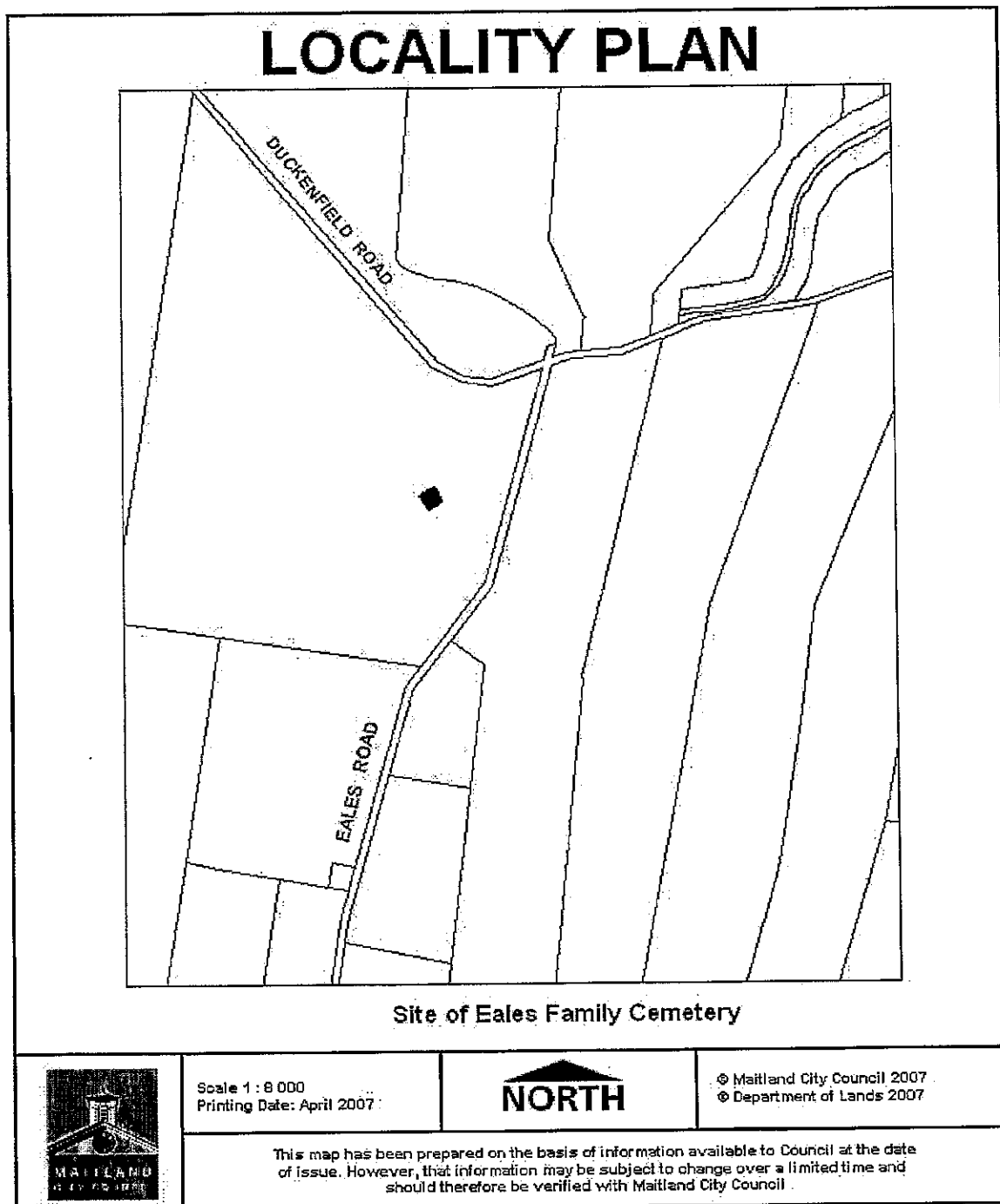
This matter has no direct financial impact upon Council's adopted budget or forward estimates.

POLICY IMPLICATIONS

This matter has no specific policy implications for Council.

STATUTORY IMPLICATIONS

There are no statutory implications under the Local Government Act 1993 with this matter.



9.4 FINANCE AND ADMINISTRATION**9.4.1 PROPOSED RECLASSIFICATION OF LAND AT BERRY PARK**

File No: P27904

Attachments: LOCATION PLAN

Responsible Officer: Graeme Tolhurst
Group Manager Finance and Administration

Author: Frank Shrimpton
Property and Risk Management Coordinator

EXECUTIVE SUMMARY

On 24 April 2007 Council resolved to commit to the process of reclassifying the Council owned land at Berry Park which contains the Eales Family Cemetery. The NSW Department of Planning requires the resolution of Council to contain specific wording to advance this matter.

OFFICER'S RECOMMENDATION**THAT:**

1. A draft environment plan under Section 54 of the Environment Planning and Assessment Act, 1979 be prepared in respect to the land known as part Lot 8 of the Berry Park Subdivision, off Eales Road Berry Park to reclassify the property from community land to operational land in accordance with Section 27 of the Local Government Act, 1993.
2. The Department of Planning be advised of Council's decision in accordance with section 54(4) of the Environmental Planning and Assessment Act, 1979.
3. The draft plan be exhibited:-
 - For a period of 28 days and a public hearing be conducted as required by the Environment Planning and Assessment Act, 1979 and the Environment Planning and Assessment Regulations, 2000,
 - In accordance with the Best Practice Guidelines published by the Department of Urban Affairs and Planning in January 1997 titled "LEPs and Council Land-Guidelines for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council".

PROPOSED RECLASSIFICATION AND REZONING OF LAND AT BERRY PARK (Cont.)

- 4. A further report be presented to Council for consideration following the statutory consultation and public exhibition process.**

PROCEEDINGS IN BRIEF

A motion was moved to adopt the officer's recommendation.

(Moved Clr Humphery, Seconded Clr Way)

An amendment was moved that the matter be withdrawn for the following reasons:

1. Clarification of ownership;
2. Opportunity for council to seek advice;
3. Opportunity for further discussion between the parties.

(Moved Clr Keating, Seconded Clr White)

The amendment was withdrawn.

The motion when put to the meeting was declared carried.

COUNCIL RESOLUTION**THAT:**

- 1. A draft environment plan under Section 54 of the Environment Planning and Assessment Act, 1979 be prepared in respect to the land known as part Lot 8 of the Berry Park Subdivision, off Eales Road Berry Park to reclassify the property from community land to operational land in accordance with Section 27 of the Local Government Act, 1993.**
- 2. The Department of Planning be advised of Council's decision in accordance with section 54(4) of the Environmental Planning and Assessment Act, 1979.**
- 3. The draft plan be exhibited:-**
 - For a period of 28 days and a public hearing be conducted as required by the Environment Planning and Assessment Act, 1979 and the Environment Planning and Assessment Regulations, 2000,**
 - In accordance with the Best Practice Guidelines published by the Department of Urban Affairs and Planning in January 1997 titled "LEPs and Council Land-Guidelines for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council".**

PROPOSED RECLASSIFICATION AND REZONING OF LAND AT BERRY PARK (Cont.)

- 4. A further report be presented to Council for consideration following the statutory consultation and public exhibition process.**

Moved Cllr Humphery, Seconded Cllr Way

CARRIED

EALES FAMILY CEMETERY BERRY PARK-LAND TITLE AND OFFER TO PURCHASE.

File No: P27904

Responsible Officer: Graeme Tolhurst
Group Manager Finance and Administration

Author: Frank Shrimpton
Property and Risk Management Coordinator

EXECUTIVE SUMMARY

Council has received advice that the description of land in the old system Conveyance held by Council is incorrect and requires adjustment. Additionally Council has received an enquiry regarding the possible sale of this site .

OFFICER'S RECOMMENDATION

THAT Council move into Confidential Session to discuss this item under the terms of the Local Government Act 1993 Section 10A(2), as follows:

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

Appendix THREE

Report of Public Hearing – Reclassification Matters LEP



**Report on a Public Hearing
Held for a draft LEP
Proposing to Reclassify and
Rezone Land at Thornton and
Berry Park
Maitland City Council**

**Report ref:
4XXXX-001
1 October 2009
Revision 1**

āurecon

Document prepared by:

Aurecon Australia Pty Ltd
ABN 54 005 139 873
Advanced Technology Centre
Callaghan
New South Wales 2308 Australia

T: +61 2 4941 5415
F: +61 2 4941 5489
E: newcastleatc@ap.aurecongroup.com
W: aurecongroup.com

Document control						
				Document ID: Final Report MCC Reclass LEP 061009.doc		
Rev No	Date	Revision details	Typist	Author	Verifier	Approver
0	021009	First Draft	jmd	JMD	AL	AL
1	061009	Final	jmd	JMD	AL	AL

A person using Aurecon documents or data accepts the risk of:

- Using the documents or data in electronic form without requesting and checking them for accuracy against the original hard copy version.
- Using the documents or data for any purpose not agreed to in writing by Aurecon.

Contents

1.	Introduction	1	Appendix A
2.	The draft local environmental plan	2	Draft Maitland Local Environmental Plan 1993
3.	Record of the Public Hearing	3	(Amendment No ##)
3.1	Evelyn Crescent, Thornton	3	Exhibited by Council from July 17 to August 14, 2009
3.2	Eales Road, Berry Park	3	

DRAFT

1. Introduction

This is a report prepared for Maitland City Council by Aurecon pursuant to section 57 of the Environmental Planning and Assessment Act, 1979, following the facilitation of a public hearing for the Council by Aurecon's Mr Jim Davies, Senior Planner, pursuant to section 29 of the Local Government Act.

The public hearing was held regarding a draft local environmental plan to reclassify and rezone certain land in the City. The public hearing was held at 5.30pm on September 30, 2009, at the Maitland Town Hall. The plan had been placed on public exhibition between July 17 and August 14, 2009.

This report documents the issues raised by members of the public who spoke at the hearing.

Maitland City Council's brief to Aurecon did not require analysis of the issues, nor did it require any commentary on matters raised by speakers at the public hearing. Aurecon's brief was to simply assist Council with preparations for the meeting, to chair the meeting and to record issues raised at the hearing in a report.

Notice was given regarding the hearing by Council and people were invited by that notice to make a written request to speak at the hearing. Seven people did so and spoke at the hearing.

2. The draft local environmental plan

Council prepared and exhibited a draft local environmental plan, to amend the Maitland Local Environmental Plan 1993, for two parcels of land at Thornton and one parcel at Berry Park. A copy of the exhibited plan is attached at **Appendix A**.

In summary, the draft LEP proposes to reclassify and rezone the two parcels of land in Thornton and reclassify one parcel of land at Berry Park.

Evelyn Crescent, Thornton

The land in question is part of a public reserve that fronts Taylor Avenue and extends northward to Evelyn Crescent and Triggs Close. The proposal comprises rezoning the land to residential and reclassifying the land from community to operational (thus enabling its disposal and use for another purpose) to allow its sale for development as a medical centre. The residential zoning allows development of a medical centre provided Council first approves a development application. This may occur only after the land is rezoned.

John Arthur Avenue, Thornton

The land at John Arthur Avenue is also a public reserve and is proposed to be rezoned and reclassified to allow its sale and inclusion in a subdivision of land to the north, which Council plans to release for urban development in the near future. The principal purpose of this process is to enable development of the land as a road, which will connect John Arthur Avenue with the new development to the north when it occurs.

Eales Road, Berry Park

This site is a small parcel of land off Eales Road, Berry Park and is surrounded by a privately-owned rural property. The land is the site of a historic burial plot for the Eales family, John Eales Snr being one of the pioneers of the Maitland district and the Hunter region.

Except for a right-of-access enjoyed only by Mr Eales's descendants, the land is ostensibly land-locked.

The draft plan proposes reclassification from community to operational to enable its sale. It is understood the owner of the property that surrounds the subject land wishes to acquire it from Council.

3. Record of the Public Hearing

Set out below are the issues raised by the speakers at the public hearing. Speakers only addressed the Evelyn Crescent, Thornton and Eales Road, Berry Park sites.

3.1 Evelyn Crescent, Thornton

Issues raised by four speakers regarding this land were:

- a) Letters of concern and a petition have been sent to Council before exhibition of the draft LEP.
- b) The land was originally set aside as a public reserve and some residents chose to buy land next to it for the amenity the reserve would provide. Council was specifically asked to consider this.
- c) The site, off Taylor Avenue, is not appropriate for a medical centre, although additional medical facilities in Thornton would be supported.
- d) Loss of part of the reserve will have an environmental impact in that it will reduce the habitat of local birdlife.
- e) The medical centre would effect the privacy and general well-being of adjoining residents and value of nearby residences.
- f) There will be after-hours security issues associated with the medical centre.
- g) Questioned whether other parts of the reserve may be sold for development.
- h) There will be a loss of bush views and amenity, with a two storey building on the site.
- i) Approximately 100 trees will be felled for the medical centre, there being over 500 in the reserve.
- j) The proposal would cause environmental destruction.
- k) Loss of trees will contribute to loss of shade and global warming.
- l) Some residents are shift workers who rely on the peace and quiet afforded by the reserve during the day.
- m) Night-lighting associated with the medical centre would be disruptive.
- n) The medical centre will reduce traffic and pedestrian safety, especially for school children in the area. These children must cross Taylor Avenue, already a busy "arterial" street, when going to and from school.
- o) A real estate agent advised one of the speakers that the proposed medical centre would devalue residential property.
- p) The proposal constitutes a "change of the rules".
- q) Although parking would be provided on the site, the medical centre would still cause traffic and parking problems in its vicinity.
- r) Development of the site for a medical centre may impact the viability of the Thornton town centre.
- s) A medical centre should be located in the town centre, rather than the site proposed.
- t) The proposal may reduce the effectiveness of Council's draft retail hierarchy, which nominates Thornton as one of four town centres in the Maitland City local government area.
- u) Dispersal of commercial activity away from designated centres could undermine the critical mass of services needed to sustain centres.

3.2 Eales Road, Berry Park

Issues raised by three speakers about this parcel are set out below:

- a) Legal issues concerning the land are complex. Family members are allowed to visit the land, with the permission of the owner of the land that surrounds the gravesite.
- b) There is no reason to "flog off" the site; there is no valid reason for the reclassification.
- c) The land is visited by members of the Eales family to pay their respects to their ancestors.
- d) The proposal, to sell the land and maintain access for the family via a right of way, is "an extreme measure".
- e) Refurbishment (of the graves) requires the co-operation of the owner of the surrounding land.
- f) The reason for this reclassification proposal is unknown.
- g) Trying to resolve the matter has been met with obstruction and avoidance, dealing with Council has been difficult.
- h) The proposal represents "riding roughshod" over individual and family rights.
- i) Resolving the matter with the co-operation of other parties would be preferred.

- j) Reclassification must consider history which is of a high value and precious to the Eales family.
- k) Determination of the proposed reclassification is a moral question for Council.
- l) Access - once forgone or denied - will not come back.
- m) An agreement by the current owner (of the surrounding property) or generation cannot be guaranteed in the future. Such a guarantee should be provided and the land vested in Council or the Heritage (National) Trust.
- n) The Eales family site is of local historical significance.
- o) Legal access for the Eales family should be maintained or created and maintained for the public in perpetuity.
- p) Excellent care of the graves by the owners of the surrounding property was acknowledged.
- q) Concern was expressed regarding new (future) ownership of the surrounding property and those new owners not being as empathetic as current owners concerning access for the Eales family over their land to the gravesite.
- r) Access was only ever provided for the Eales family by John Eales Snr.
- s) There is no, and nor has there been, any public access to the gravesite. Therefore the reclassification of the land would not deny any public right.
- t) Current owners of the surrounding property have improved the gravesite since 1986.
- u) There has been no desecration of the graves, unlike occurrences in some public cemeteries. This is due to the Eales' graves being within the curtilage of the house on the property that surrounds the gravesite.
- v) Burials could extend beyond 1871, back to the 1830s.
- w) There should be no public access and the Eales family should maintain access to the gravesite.

Appendix A
Draft Maitland Local Environmental Plan
1993 (Amendment No ##)

Exhibited by Council from July 17 to
August 14, 2009

Appendix A



Draft Maitland Local Environmental Plan 1993 (Amendment No ##)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under
the *Environmental Planning and Assessment Act 1979* (## Ref ##)

Minister for Planning

Maitland Local Environmental Plan 1993 (Amendment No ##)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This plan is *Maitland Local Environmental Plan 1993 (Amendment No ##)*.

2 Aims of plan

This plan aims to:

- (a) This plan aims to rezone certain land in Evelyn Crescent, Thornton from Zone 6(a) Public Recreation to Zone 2(a) Residential under the provisions of the *Maitland Local Environmental Plan 1993*,
- (b) Reclassify the subject portion of land to be zoned 2(a) Residential from community land to operational land within the meaning of the *Local Government Act 1993*,
- (c) Rezone certain land in John Arthur Avenue, Thornton to 2 (a) Residential and reclassify from community land to operational land within the meaning of the *Local Government Act 1993*, and
- (d) Reclassify certain land at Berry Park from community land to operational land within the meaning of the *Local Government Act 1993*.

3 Land to which plan applies

- (1) Parts 2(a) & (b) of this plan apply to part of Lot 431 DP260916 Evelyn Crescent, Thornton, as shown edged heavy black on Sheet 1 of the map marked "Maitland Local Environmental Plan 1993 Draft (Amendment No ##)", deposited in the office of Maitland City Council.
- (2) In respect of the aim referred to in clause 2(c), this plan applies to Lot 639, DP 262555 John Arthur Avenue, Thornton, as shown edged heavy black on Sheet 2 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" deposited in the office of Maitland City Council.
- (3) In respect of the aim referred to in clause 2(d), this plan applies to Lot 9, DP 1114951 Eales Road, Berry Park, as shown edged heavy black on Sheet 3 of map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" deposited in the office of Maitland City Council.

4 Amendment of Maitland Local Environmental Plan 1993

Amendments are set out in the following schedule.

Schedule 1 Amendments

[1] Clause 4 – Interpretation

At the end of the definition of 'The map' in clause 5(1), insert:

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 1

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 2

Maitland Local Environmental Plan 1993 (Amendment No. ##) – Sheet 3

[2] Clause 51 – Classification and Reclassification of Public Land as Operational

Insert in alphabetical order in Schedule 4, under Part 3 Interests changed:

Column 1	Column 2	Column 3
Locality	Description	Trusts etc not discharged
Thornton		
Evelyn Crescent	Land to be excised from Lot 431 DP260916, as shown heavy black on Sheet 1 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Nil.
Berry Park		
Eales Road	Lot 9, DP 1114951, as shown edged heavy black on Sheet 3 Eales Road of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan 1993</i> (Amendment No XX).	Right of way for the beneficiaries of the Estate of Frederick Eales

Thornton

John Arthur Avenue	Lot 639, DP 262555, as shown edged heavy black on Sheet 2 of the map marked "Maitland Local Environmental Plan 1993 (Amendment No XX)" – <i>Maitland Local Environmental Plan</i> 1993 (Amendment No. XX)	Nil.
-----------------------	---	------