

Eales Family Cemetery Reclassification

Proposal Title : **Eales Family Cemetery Reclassification**

Proposal Summary : **To reclassify Eales Family Cemetery from 'Community' to 'Operational'.**

The subject site comprises a small rural family graveyard 52m2 in area, known as the Eales Family Cemetery. The site is the family cemetery of a prominent early settler and agricultural entrepreneur in the Maitland district dating back to the original land grant in 1823. Council are seeking to have the site reclassified to enable its sale. The land is zoned RU1 Primary Production.

PP Number : **PP_2012_MAITL_007_00**

Dop File No : **12/18698**

Proposal Details

Date Planning
Proposal Received : **22-Nov-2012**

LGA covered : **Maitland**

Region : **Hunter**

RPA : **Maitland City Council**

State Electorate : **MAITLAND**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Reclassification**

Location Details

Street : **Eales Road**

Suburb : **Berry Park**

City :

Postcode : **2321**

Land Parcel : **Lot 9 DP 1114951**

DoP Planning Officer Contact Details

Contact Name : **Dylan Meade**

Contact Number : **0249042718**

Contact Email : **dylan.meade@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Josh Ford**

Contact Number : **0249349729**

Contact Email : **JoshF@maitland.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :			
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :			

Supporting notes

Internal Supporting Notes : Maitland City Council had prepared an amendment to the Maitland LEP 1993 (Amendment 102), under the former Part 3 of the Environmental Planning and Assessment Act 1979. This amending LEP sought to reclassify three allotments of community land within the LGA, owned by Council. One of these allotments was the subject site. Council were seeking to have the site reclassified to enable its sale.

Following submission of the draft amendment at section 68, a member of the Eales Family contacted the Department in writing. This questioned Council's ownership of the site and thus validity of the reclassification and requested that action to reclassify the site cease. Although the matter of ownership is not one in which the Department has a role there was concern over progressing the matter in light of the uncertainty.

Council subsequently supplied information relating to ownership, however the matter was unable to resolved to the satisfaction of Legal Branch. Due to pressure to finalise the LEP for the remaining matters, it was recommended that the Minister defer the matter. At the time Legal Branch were of the opinion that the matter would be captured by the savings and transitional arrangements, however subsequent advice indicated that this is not the case.

In 2011, Maitland City Council requested advice on the appropriate course of action to finalise the matter. The summary of advice (attached) indicated that the Certificate of Title for the subject land is both qualified and limited, and if Council's ownership was found to be false, the matter could be clarified through consideration in court.

Council has since received independent advice on the ownership of the site, and advises that it is '...satisfied all legal ownership can be proven, and that there is no reason why the reclassification should not proceed.' The Eales family have not made any further challenge to Council's ownership.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives provided states that the intent of the planning proposal is to:**

- **Reclassify the site from community to operational land;**
- **Provide certainty to Council and the prospective purchaser that the classification of the land is consistent with the site; and**
- **Ensure that the site can be accessed by the descendent's of the late John Eales.**

The statement of objectives is supported, however it is noted that maintaining access for the Eales family will not be achieved through this proposal but separately through changes to the property title.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions states that the intent will be achieved through an amendment to Maitland LEP 2011 by inserting the property description in Part 1, Schedule 4.**

The explanation of provisions is supported.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA : **2.3 Heritage Conservation**

* May need the Director General's agreement

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council proposes to exhibit the planning proposal for a minimum of 14 days.**

As the proposal intends to reclassify land, a 28 day exhibition consistent with 'A Guide to Preparing Local Environmental Plans', is recommended.

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Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **Maitland LEP 2011 was gazetted on 16 December 2011.**

Assessment Criteria

Need for planning proposal : **The land unsuitable for community classification as it is wholly surrounded by the adjoining owner's land, is inaccessible by the public, and is only 51m2 in area. The site is impractical for Council to manage.**

Council advises that it intends to allow continued access to the site for members of the Eales family that are identified in a legal deed. The deed currently allows access to the cemetery via an easement. Council proposes to relocate the easement to a more suitable location such as over the adjoining landowners driveway.

Council is satisfied all legal ownership can be proven, and that there is no reason why the reclassification should not proceed at this time.

Consistency with strategic planning framework : **LOWER HUNTER REGIONAL STRATEGY**
The planning proposal is minor, and there are no objectives from the Lower Hunter Regional Strategy which are considered relevant.

S.117 DIRECTIONS

The planning proposal is considered consistent with all relevant s.117 directions.

The subject site adjoins a lot containing a heritage item of local significance (Berry Park). The reclassification will not impact upon this item, and the proposal is considered consistent with s.117 Direction 2.3 Heritage Conservation.

However, the site itself is the family cemetery of a prominent early settler and agricultural entrepreneur in the Maitland district dating back to the original land grant in 1823. Given the historic nature of the cemetery and the significance to the Eales family, consultation with the Heritage Branch of the Office of Environment and Heritage is considered appropriate. Members of Eales family have also raised the possibility of ownership of the site passing to the National Trust. Consultation with the National Trust is also considered appropriate.

SEPPs

The planning proposal is considered consistent with all relevant SEPPs.

Environmental social economic impacts : **ENVIRONMENTAL**
There are no environmental impacts associated with the proposal.

SOCIAL

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The proposal will result in loss of community land in Maitland. However, the land is currently inaccessible to members of the public and is surrounded by a private land.

There will be no affect on the ability of the Eales family to access the cemetery as an easement will be maintained.

ECONOMIC

There will be positive benefit for residents of Maitland through sale of Council owned land that is unusable by the community.

Assessment Process

Proposal type :	Minor	Community Consultation Period :	28 Days
Timeframe to make LEP :	6 Month	Delegation :	RPA
Public Authority Consultation - 56(2)(d)	Office of Environment and Heritage Other		

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
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Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.3 Heritage Conservation**

Additional Information : **The Planning Proposal should proceed subject to the following conditions:**

- 1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:**

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- (a) the planning proposal is classified as not of low impact as described in A Guide to Preparing LEPs (Department of Planning 2012) and must be made publicly available for 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning 2012).

2. Council is to notify members of Eales family, that have previously made a submission to Maitland LEP 1996 (Amendment 102), of the exhibition of this planning proposal.

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage - Heritage Branch

The public authority is to be provided with a copy of the planning proposal and any relevant supporting material. The public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

4. Council is to notify the National Trust of Australia of the exhibition and the intent to sell the site.

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 6 months from the week following the date of the Gateway determination.

Supporting Reasons :

Council is satisfied that legal ownership issues are resolved. The community classification of the land is unsuitable, and it is considered that there is no reason why the reclassification should not proceed at this time. If the ownership was found to be invalid, the subsequent reclassification by the Minister would be void and have no affect. It is considered appropriate to proceed based on Council advice and noting that finalisation of the reclassification does not impinge upon other avenues open to the Eales family.

Signature:



Printed Name:

KOFLACHERTY

Date:

29-11-12