

## Planning Services

### Plan Finalisation Report

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**Local Government Area:** Maitland

**File Number:** OBJ16/15107

#### 1. NAME OF DRAFT LEP

Maitland Local Environmental Plan 2011 Amendment No. 27 (draft LEP).

#### 2. SITE DESCRIPTION

The planning proposal (**Attachment A**) applies to land at 56 Kyle Street, Rutherford, Lot 3 DP 790460 ('the site'). The site is adjacent to the Rutherford Employment Area in a semi-rural area. It is accessed from an unsealed access road from Kyle Street, and contains partly cleared native vegetation, where there is the existing motorcycle track. Stoney Creek runs along the northern boundary of the site.

The site is currently zoned E3 Environmental Management.



Figure 1 – Subject site showing Rutherford employment area locality

#### 3. PURPOSE OF PLAN

The draft LEP seeks to:

- amend Schedule 1 of the Maitland Local Environmental Plan ('LEP') 2011 to include 'Recreation Facility (Outdoor) – Motorcycling Activities' as permitted with consent at 56 Kyle Street, Rutherford; and
- remove the 'Urban Release Area' designation over the site.

No additional lots, dwellings or jobs will be generated by this planning proposal.

#### 4. STATE ELECTORATE AND LOCAL MEMBER

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

Meryl Swanson MP is the Federal Member for Paterson.

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

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

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

#### 5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 12 December 2016 (**Attachment B**) determined that the proposal should proceed subject to conditions.

A Gateway Alteration (**Attachment C**) was issued on 9 May 2017, which included removal of the Urban Release Area (URA) designation on the site under the Maitland LEP 2011. Council considered that the URA designation imposed unreasonable burden on the site given the proposed use as a motorcycling facility. Council was required to undertake additional community consultation as a condition of the Gateway Alteration.

The proposal is due for finalisation on 11 June 2018.

#### 6. PUBLIC CONSULTATION

In accordance with the Gateway determination, the first round of community consultation was undertaken by Council from 24 February 2017 to 10 March 2017. The proposal was amended post exhibition and re-exhibited from 7 July 2017 to 20 July 2017.

No submissions were received for either exhibition period.

#### 7. ADVICE FROM PUBLIC AUTHORITIES

Council was not required to consult with any agencies in accordance with the Gateway determination and no comments were received from any agencies.

## 8. POST EXHIBITION CHANGES

No changes have been made to the planning proposal since it was last exhibited. The proposal is consistent with the Gateway Alteration issued on 9 May 2017.

## 9. ASSESSMENT

The planning proposal has merit because it will allow, with consent, use of the site for motorcycling activities whilst preserving its environmental zoning and maintaining land use permissibility elsewhere throughout Maitland LGA. Environmental and ecology matters have been adequately investigated and can be appropriately managed at DA stage.

The proposal will enhance access to recreational facilities to meet the needs of the growing and active communities, in line with Direction 18 of the Hunter Regional Plan 2036 and the Maitland +10 (Community Strategic Plan).

### Section 117 Directions

#### *2.1 Environment Protection Zones*

The Gateway determination required Council to address inconsistency with Section 117 Direction 2.1 Environment Protection Zones by identifying the impact of the proposed car park and access way on endangered ecological communities and clarifying the extent of vegetation clearing proposed on the site.

Two ecologically endangered species exist on the site; the Lower Hunter Spotted Gum Iron Bark Forest and the Lower Hunter Red Gum Forest. The planning proposal and accompanying development application has designed the access track and car park to reduce the impact on existing trees, however 0.05ha of vegetation clearing will occur. This accounts for approximately 5-6 trees. The informal car park is proposed on a 1.2ha area of the site, which contains Spotted Gum Iron Bark Forest and minimal vegetation understorey. Tree removal is not required in this parking area. The Ecological Assessment recommends various management actions to improve environmental values on the site. These can be addressed at DA stage.

It is considered that the likely impacts resulting from the planning proposal are justified by the Ecological Assessment. The Secretary's Delegate should agree that any inconsistency with Direction 2.1 is justified in accordance with the terms of the Direction and that no further approval is required in relation to this Direction.

### State Environmental Planning Policies

The draft LEP is considered to be consistent with the relevant SEPPs and no additional requirements for the SEPPs were outlined in the Gateway determination.

In conclusion, it is recommended to make the draft LEP because:

- the planning proposal is consistent with the objectives of the Hunter Regional Plan 2036 and local Maitland Plans;
- the proposal was publicly exhibited twice and no submissions were received;
- any inconsistencies with Section 117 Direction 2.1 Environmental Protection Zones are considered to be justified; and

- the proposal will allow, with consent, use of the site for recreation whilst preserving its environmental zoning and maintaining land use permissibility elsewhere throughout Maitland LGA.

## 10. MAPPING

The proposal will amend the following Urban Release Area Map:

- 5050\_COM\_URA\_002A\_020\_20170825.

The Department's ePlanning team has reviewed the map and confirmation has been given that it is correct and has been sent to Parliamentary Counsel.

## 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument on 16 January 2018 (**Attachment D**). Council confirmed on 15 February 2018 that it was happy with the draft and that the Plan should be made (**Attachment E**).

## 12. PARLIAMENTARY COUNSEL OPINION

On 21 February 2018 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at (**Attachment PC**). No changes have been made to the proposal since obtaining this Opinion.

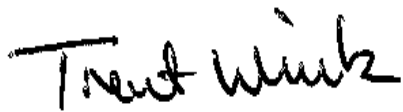
## 13. RECOMMENDATION

As delegate of the Secretary:

1. **determine** that the draft LEP's inconsistency with Section 117 Direction 2.1 Environmental Protection Zone is justified in accordance with the terms of the Direction.

As delegate of the Minister:

1. **note** the planning proposal (**Attachment A**), the Gateway determination (**Attachment B**) and the Gateway alteration (**Attachment C**);
2. **note** Parliamentary Counsel's Opinion that the draft LEP can legally be made and no changes have been made to the draft LEP since obtaining this Opinion (**Attachment PC**);
3. **note** the LEP maps (**Attachment Maps**), which have been approved by the Department's ePlanning Team and provided to Parliamentary Counsel;
4. **make** the draft LEP under section 3.36 of *Environmental Planning and Assessment Act 1979* (the Act), by signing the instrument (**Attachment LEP**) and supporting Map Cover Sheet (**Attachment MCS**) respectively; and
5. **sign** the letter to Maitland Council (**Attachment Council**) advising of this decision.



1/3/2018

**Trent Wink**  
**A/Team Leader**



2/3/2018

**Monica Gibson**  
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**Planning Services**

#### Attachments

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Attachment	Title
<b>A</b>	Planning proposal
<b>B</b>	Gateway determination
<b>C</b>	Gateway alteration
<b>D</b>	Section 59(1) consultation with Council
<b>E</b>	Council's comments on draft LEP
<b>PC</b>	Parliamentary Counsel's Opinion
<b>LEP</b>	Draft LEP
<b>MCS</b>	Map Cover Sheet
<b>Council</b>	Letter to council advising of the decision