



city council

PLANNING PROPOSAL

AMENDMENT TO THE MAITLAND LEP 2011

**KYLE STREET
RUTHERFORD**

(LOT 3 DP 790460)

VERSION 5

April 2017



CONTENTS

INTRODUCTION	1
PART 1: OBJECTIVES OR INTENDED OUTCOMES	3
PART 2: EXPLANATION OF PROVISIONS.....	3
PART 3: JUSTIFICATION FOR PROPOSED REZONING.....	3
SECTION A – NEED FOR THE PLANNING PROPOSAL	3
SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK	4
SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT	5
SECTION D – STATE AND COMMONWEALTH INTERESTS.....	8
PART 5: COMMUNITY CONSULTATION	9
PART 6: TIMEFRAMES	12

Version 1.0 –15.11.2016 (For section 55 Council Report)

Version 2.0 (For gateway determination)

Version 3.0 (For exhibition)

Version 4.0 (For s59 request)

Version 5.0 (Request to alter gateway determination)

Tables

Table 1: s117 Directions.	5
--------------------------------	---

INTRODUCTION

This planning proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979. It explains the intended effect of, and justification for the proposed amendment to Maitland Local Environmental Plan 2011 (MLEP 2011) to amend Schedule 1 to include Recreation Facility (Outdoor) – Motorcycling Activities as a permitted with consent use on land at Kyle Street, Rutherford described as Lot 3 DP 790460.

Background

In December 2011 the Maitland Local Environmental Plan 2011 (MLEP2011) was gazetted. The MLEP2011 was drafted in the standard instrument format and the subject site was zoned E3 Environmental Management. Recreation Facility (Outdoor) is a prohibited use in that zone. Therefore, motorcycling activities were not permitted. The site had been used previously for motorcycle activities. However, as the use had been abandoned on the site, existing use rights were forfeited. Motorcycling NSW approached the Council with an interest in the site for motorcycling purposes. Motorcycling NSW is a public company acting as an administrative body of the sport of motorcycling in NSW/ACT, cooperating with state government departments in securing legislation and by-laws for governing the administration and use of motorcycles in NSW/ACT.

In 2014, the Council resolved to make a lease offer to Motorcycling NSW for the use of the site subject to gaining an amendment to the MLEP2011 that permitted the use.

Council officers have discussed the options with the Department of Planning and Environment. It is Council's preferred option to amend schedule 1 of the Maitland Local Environmental Plan 2011 to allow Recreation Facility (Outdoor) – Motorcycle Activities to occur on the subject lot.

A development application addressing the details of the intended use has also been submitted. On receipt of a gateway determination that allows Council will concurrently exhibit the planning proposal and the development application in accordance with section 72K of the Environmental Planning and Assessment Act 1979.

After the planning proposal was exhibited it was discovered that the site is also identified as an urban release area by the Maitland Local Environmental Plan (MLEP) 2011. Clause 6.3 of the MLEP2011 requires that a development control plan be in place that addresses a range of issues before any development application can be determined on the site.

The clause was drafted to inform the planning and development of large release areas. The site is adjacent to the undeveloped Rutherford Employment Area. However, most of the issues listed in the clause are not applicable to this specific site. Therefore, it is proposed to remove the URA designation over the site. This will allow the development application for a motorcycling facility to be determined.



PART 1: OBJECTIVES OR INTENDED OUTCOMES

The objectives of the proposal are;

1. To enable the re-establishment of a motorcycling activities facility on the subject land.

PART 2: EXPLANATION OF PROVISIONS

The planning proposal seeks to:

1. Amend schedule 1 of the Maitland Local Environment Plan 2011 to include Recreation Facility (Outdoor) – Motorcycling Activities as permitted with consent use at 56 Kyle Street, Rutherford described as Lot 3 DP790460.
2. Remove the “urban release area” designation of the site from the Maitland Local Environmental Plan 2011 Urban Release Area Map Series.

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?

No. The planning proposal is not the result of strategic study or report.

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

Council has considered three options to achieve this outcome on the site.

The first option is to add “Recreation Facility (Outdoor)” as a permitted with consent use in the E3 Environmental Management zone. This option is not preferred as it is not appropriate to permit the range of outdoor recreational uses in all E3 Environmental Management zoned areas.

The second option is to rezone the site to a zone that permits “Recreation Facility (Outdoor)” such as RE1 Public Recreation. The site does have significant environmental qualities including Stony Creek. The site is heavily vegetated and adjoins areas of E3 Environmental Management. Therefore this is not considered an appropriate option.

The preferred mechanism is to add the use to Schedule 1 of the MLEP2011. This preserves the environmental zoning and does not undermine the land use permissibility elsewhere in the LGA. It also means that the use can be removed if it ceases in the future.

The URA designation of the site imposes the significant burden of producing a development control plan for the whole of the Rutherford Employment Area. The comprehensive requirements of clause 6.3 are not relevant to the site. The removal of the URA designation of the site removes the requirement to prepare a development control plan.

There is no better way, or alternative way, to achieve the objectives of this planning proposal. The matter requires a Gateway Determination and the planning proposal is the only way to have a Gateway Determination issued.

3. Is there a net community benefit?

No net community benefit test has been undertaken as part of this planning proposal. The recreation facility will contribute to the diversity of recreational facilities in the Maitland LGA. The site is well located to minimise the impact of noise on sensitive land uses. It may also improve riding skills and reduce the extent of motorcycling in public reserves by providing a venue to train and race. Therefore, it is considered that there will be a positive community benefit.

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?

Hunter Regional Plan 2036

This planning proposal supports the following directions and actions of the Hunter Regional Plan 2036:

- Direction 18: Enhance access to recreational facilities and connect open spaces

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

Maitland +10 (Community Strategic Plan)

The proposal supports the following objective of the Council's community strategic plan (Maitland +10);

- Our community and recreation services and facilities meet the needs of our growing and active communities.

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

There are no applicable State Environmental Planning Policies.

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

The following s117 Directions are applicable to the proposal.

Table 1: s117 Directions.

s117 DIRECTIONS		CONSISTENCY AND IMPLICATIONS	
2. ENVIRONMENT AND HERITAGE			
2.1 Environment Protection Zones		Consistent	
The objective of this direction is to protect and conserve environmentally sensitive areas.		The E3 Environmental Management zone will be maintained over the area. Conditions on the lease require the proponent to improve the site by removing various materials that have been dumped or abandoned on the site. The DA will seek to formalise access and parking arrangements. The DA may further require environmental improvements such as additional tree planting to offset the proposed loss of 5-6 trees.	
5. REGIONAL PLANNING			
5.1 Implementation of Regional Strategies		Consistent	
This direction requires a draft amendment to be consistent with relevant state strategies that apply to the LGA.		The proposal is consistent with the Hunter Regional Plan 2036.	
6. LOCAL PLAN MAKING			
6.1 Approval and Referral		Consistent	
The direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.		The LEP will encourage the efficient and appropriate assessment of development.	
6.3 Site Specific Provisions		Consistent	
The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.		No unnecessarily restrictive site specific planning controls.	

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 proposal is supported by an Ecological Assessment undertaken by Peak Land Management. The report does identify potential impacts on the squirrel glider. However, it concludes that the use of disturbed areas and the minimal works required to support the proposal are unlikely to have a significant impact on the population. It acknowledges that the further degradation of the land is a threat that needs to be arrested to ensure that long term sustainability of the population in that location. The report further recommends works to improve the habitat value of the site. These will need to be regulated through the leasing and development assessment process.

There are two ecologically endangered species that occur on the site being the Lower Hunter Spotted Gum Iron Bark Forest and the Lower Hunter Red Gum Forest. The proposal includes the construction of an access track that will involve the clearance of 0.05Ha of vegetation. The track has been located to minimise the impact on large established trees. Informal parking is proposed on a 1.2ha area of the site that contains part of the Spotted Gum Iron Bark Forest. However, the parking area will not require the removal of any of the existing trees and there is minimal existing understorey due to past clearing practices associated with the former use of the site.

The report concludes:

The ecological investigations and assessment of impact on threatened species have found that there is no significant impact on any Threatened species, Endangered Ecological Community, Critical Habitat, or Endangered Populations by the proposed works.

The proposal has been carefully designed to utilise existing disturbed areas, whilst retaining important ecological habitat, wildlife corridors, Stony Creek riparian zone, minimising vegetation removal, and retaining all hollow bearing trees.

In this locality a long term plan should be considered with all landholders in this area including Maitland Saleyards and Motorcycle land to the south, as the future of threatened species such as Squirrel Glider in this area depend on it. Ongoing degradation of land, water, and vegetation, in combination with the cumulative impact from past clearing, will see these species become locally extinct in this area without habitat protection. Any future proposals for removal of vegetation in this area may trigger a Significant Impact and the need for a Species Impact Study for Squirrel Glider, which may not be able to withstand further loss of vegetation.

The following recommendations (in no order of importance) if adopted will improve the biodiversity outcomes for this proposal:

- *Consider permanent protection over remaining native vegetation within the site such as a vegetation protection covenant, and permanent fencing.*
- *Permanently cease all stock grazing over subject site.*
- *Property access road/other services/infrastructure should be located in areas that are generally cleared of native vegetation and require no further clearing of larger trees.*

- *Erect silt fencing round all site works in accordance with council erosion and sediment control policy, and enhance permanent sediment control runoff over the site to capture all sediment and repair outlet erosion over drainage swales.*
- *Noxious weeds including Lantana should be controlled/eradicated where feasible.*

The proposal in the consultant's opinion conforms to the TSC Act 1995 and EP&BC Act 1999 and does not need referring to either NSW Office of Environment and Heritage or Federal Department of Environment, and no SIS is required.

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

There are two other significant environmental issues for the development. These are sediment and erosion control and the other is onsite effluent disposal. The report does address these issues.

Erosion and sediment control

A Draft Erosion and Sediment Control Plan accompanies the proposal and includes recommendations to erect silt fencing and straw bales around site works during construction. In addition the ESCP recommends the following actions to address erosion and sediment control:

- Use of the existing motorcycle track will involve use of the existing disturbed areas; no further areas will be cleared or disturbed apart from minor clearing for site access.
- Areas not to be disturbed will be identified and protected.
- Grassed areas immediately around the track and drainage swales will be regularly monitored and revegetated where it is deemed necessary.
- Areas being rehabilitated must be fenced to exclude access by motorbikes, vehicles and persons.

These will be enforced through DA conditions and leasing arrangements.

On-site Effluent Disposal

There is an existing toilet block on the site. However, there is no evidence of a functional treatment system and Council does not have plans or approvals for a facility on the site. The proposal will formalise a waste water management system for the site. The site is not suitable for a septic system. The effluent disposal assessment prepared by Douglas Partners recommends an aerated wastewater treatment system (AWTS) with a treatment area.

A s68 approval will be required to permit the installation and operation of the AWTS on the site. A copy of the effluent disposal report is attached to this planning proposal.

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

A social impact assessment or an economic impact assessment has not been undertaken for the proposal. It is not considered that it is necessary in this instance. The social and economic impacts are unlikely to be significant.

A positive social impact may result because it will be a club of people sharing a similar interest. It is uncertain how this club differs from the Maitland Motorcycle Club on the adjoining site. However, Motorcycling NSW has indicated that training will be part of the offerings. This may improve motorcyclist safety and may reduce road incidents.

There is unlikely to be an adverse social impact from the activities as the site is located within an industrial area and adjoining the railway line and the livestock salesyards. Therefore, noise and dust impacts on sensitive land uses are unlikely to occur.

The economic impact is likely to be neutral.

SECTION D – STATE AND COMMONWEALTH INTERESTS

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

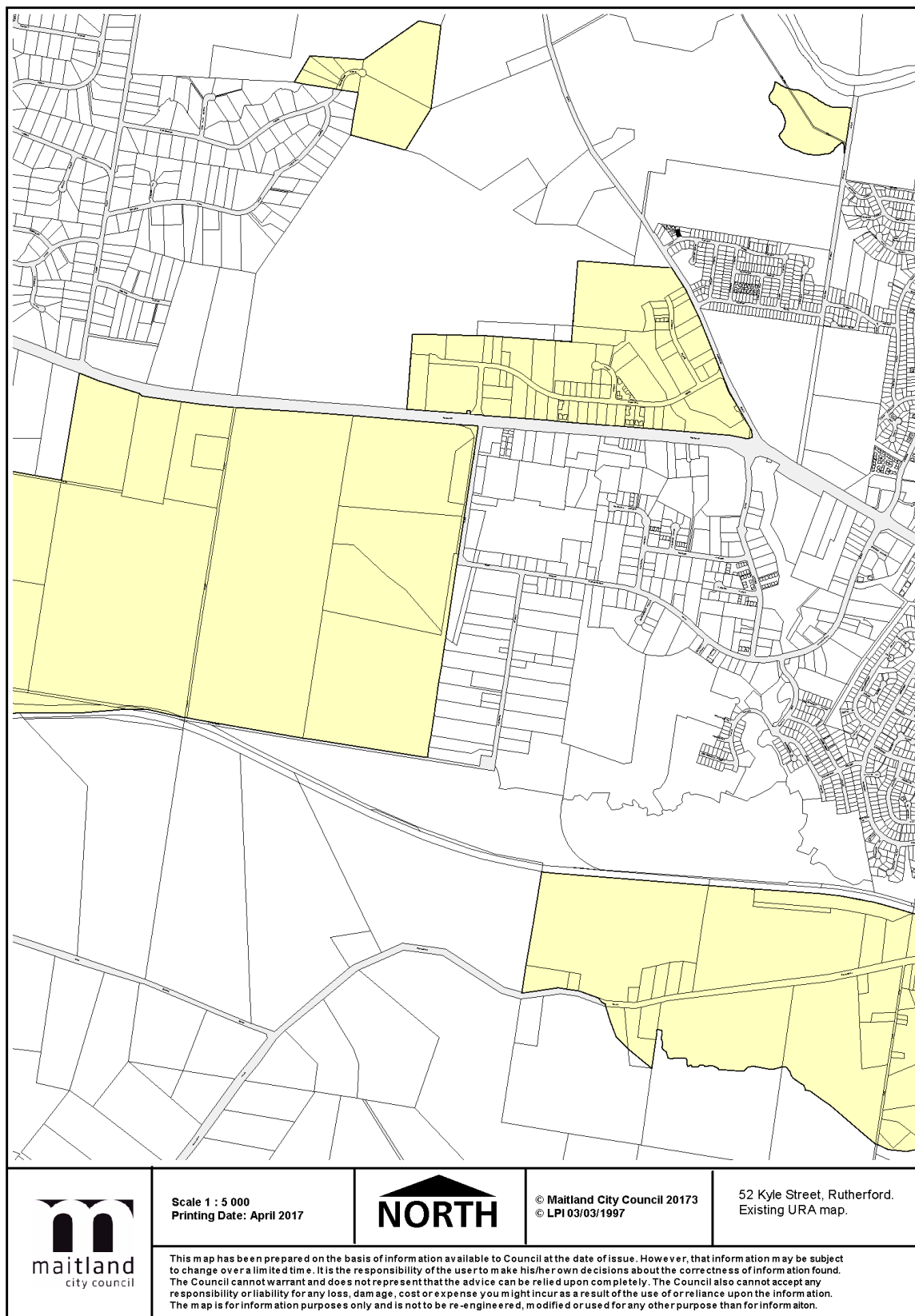
Access to the site is a key consideration. Entry to the site will be provided from the existing entrance off Kyle Street, along a dirt access road that will be shared with the Maitland Motorcycle Club. A short extension will be required between the Maitland Motorcycle Club site and the site. This shared access arrangement is facilitated by the leasing arrangements.

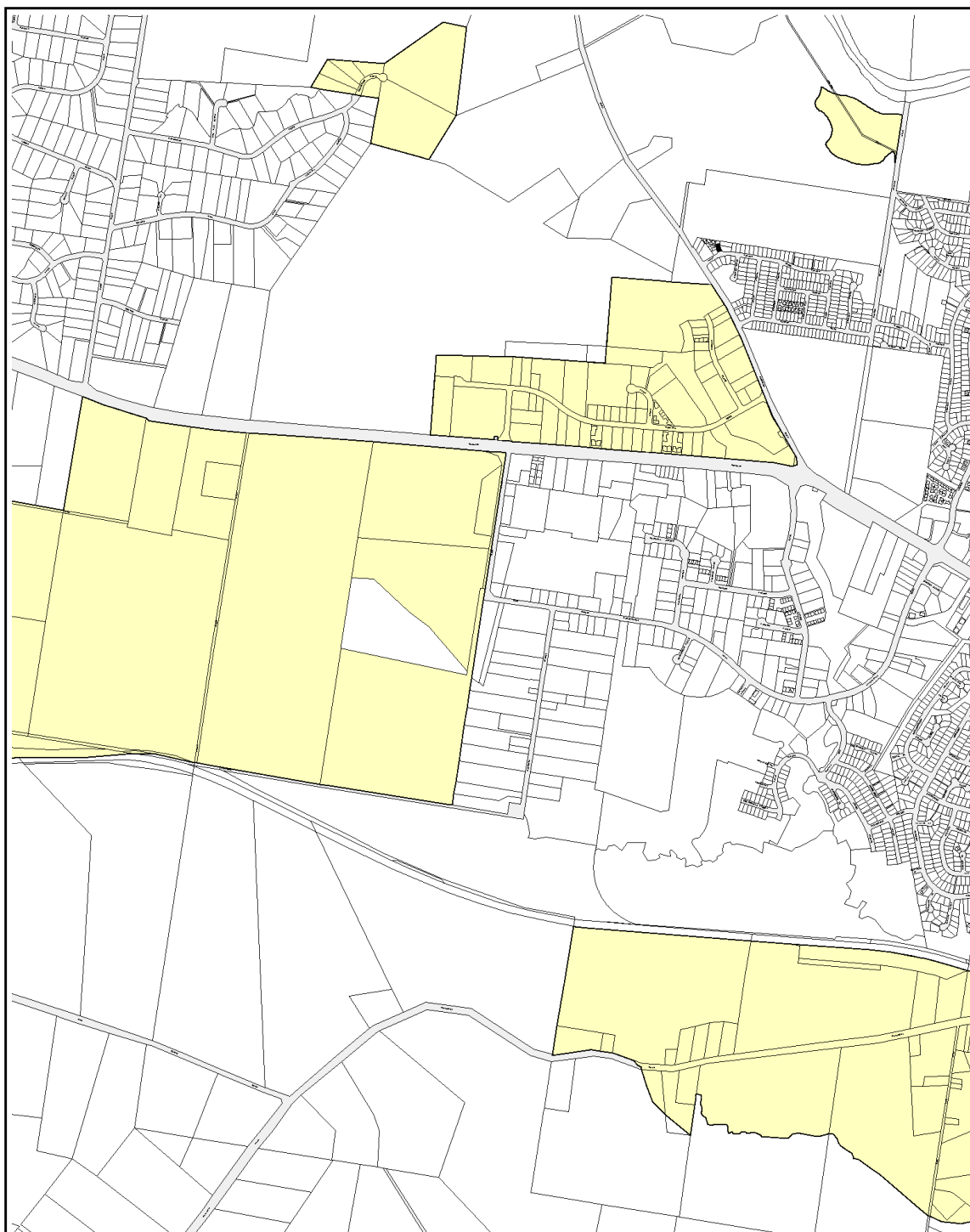
The site is not currently serviced by power, telecommunications or water. It is a condition of the lease that the proponent's pay for all improvements (amenities, sewer, power and water) that are required to service the site.

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

No formal consultation with State and Commonwealth public authorities has been undertaken at this stage for this planning proposal. However, consultation will be undertaken in accordance with the gateway determination.

PART 4: MAPS





Scale 1 : 5 000
Printing Date: April 2017



© Maitland City Council 20173
© LPI 03/03/1997

52 Kyle Street, Rutherford.
Proposed URA map.

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. It is the responsibility of the user to make his/her own decisions about the correctness of information found. The Council cannot warrant and does not represent that the advice can be relied upon completely. The Council also cannot accept any responsibility or liability for any loss, damage, cost or expense you might incur as a result of the use of or reliance upon the information. The map is for information purposes only and is not to be re-engineered, modified or used for any other purpose than for information.



PART 5: COMMUNITY CONSULTATION

Community consultation has been undertaken in accordance with the gateway determination.

No submissions were received.

The proposed change to remove the URA designation over the site does not materially change the intent of the originally exhibited proposal nor does it create a greater impact. There are no implications for any interested party. Therefore Council does not intent to re-exhibit the proposal.

PART 6: TIMEFRAMES

PROJECT TIMELINE	DATE
Anticipated commencement date (date of Gateway determination)	December 2017
Anticipated timeframe for the completion of required studies	N/a
Timeframe for government agency consultation (pre and post exhibition as required by Gateway Determination) (21 days)	N/a
Commencement and completion dates for public exhibition period	February 2017
Dates for public hearing (if required)	N/a
Timeframe for consideration of submissions	March 2017
Timeframe for the consideration of a proposal post exhibition	March 2017
Anticipated date RPA will forward the plan to the department to be made (if not delegated)	June 2017
Anticipated date RPA will make the plan (if delegated)	N/a
Anticipated date RPA will forward to the department for notification (if delegated)	N/a