



MAITLAND CITY COUNCIL



PNC000313

Our Ref. 103/132 (750978)

Your Ref.

Phone Enquiries: 4934 9700

08 July 2010

Department of Planning
PO Box 1226
NEWCASTLE NSW 2300



Att: Gary Oakey

RE: REQUEST FOR GATEWAY DETERMINATION TO AMEND MAITLAND LEP 1993 – THORNTON NORTH STAGE 2 URBAN RELEASE AREA

At its meeting 22 June 2010, Council resolved to endorse a planning proposal for the purpose of a residential zone and environmental protection zone for various lots within the Thornton North Urban Release Area Stage 2. Pursuant to Section 56(1) of the Environmental Planning and Assessment Act 1979, a planning proposal is enclosed for submission to the Minister for Planning.

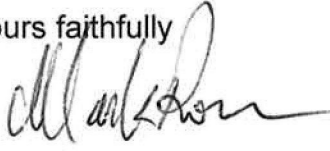
The planning proposal has been prepared in accordance with "A guide to preparing a planning proposal" and the requirements of Section 55 of the Act.

As explained in the background statements of the planning proposal, this matter has previously been considered by the Department in the format of an LEP amendment under the repealed Part 3 of the Act. No change to the strategic objective of the proposal is intended, however it is the intention of preparing the planning proposal to transfer the draft plan into the new plan-making provisions. This is consistent with the Department of Planning's Planning Circular PS 10-002.

In accordance with previous correspondence with the Department of Planning, Council wishes to continue to undertake this proposal separately to the preparation of the comprehensive Maitland LEP 2011. Therefore, we request that this proposal to amend the Maitland LEP 1993 for the purpose of residential and environmental conservation outcomes proceed to a gateway determination.

If you have any questions, or require further information to assist in your assessment of this planning proposal, please contact Mark Roser or Monica Gibson on 49349700 or via email markr@maitland.nsw.gov.au.

Yours faithfully

per 

MONICA GIBSON
Manager City Strategy

Enclosed: Planning Proposal
Council Report 22 June 2010

**9.2 AMENDMENT TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 -
THORNTON NORTH URBAN RELEASE AREA STAGE 2**

File No: 103/132
Attachments: 1. Planning Proposal
Responsible Officer: David Evans - General Manager
Author: Monica Gibson - Manager City Strategy

EXECUTIVE SUMMARY

A draft local environmental plan has been prepared for the Thornton North urban release area (Stage 2) in accordance with Council's resolution on 11 September 2007, directions from the Department of Planning and other statutory requirements. The purpose of this report is to inform Council of the results of the environmental assessment and consultation involved in preparing the draft plan and to propose that the draft plan be submitted to the Department of Planning for certification for public exhibition.

The draft plan is generally consistent with the Thornton North Structure Plan, with the boundaries of the residential and environmental zones determined through detailed environmental assessment. Statutory changes since the adoption of the Structure Plan, including threatened species listings, biobanking and other environmental statutes has necessitated detailed ecological assessment and discussions with Dept of Environment, Climate Change and Water (DECCW). The draft plan includes an environmental zone over the north-south green corridor shown in the Structure Plan and established in the Stage 1 rezoning. This corridor will form part of a package of environmental controls that will ensure that the ecological significance of the Thornton North area will be recognised through a balance of on-site and off-site conservation measures.

The draft plan is also consistent with the Maitland Urban Settlement Strategy and the Lower Hunter Regional Strategy. Minor variations and inconsistencies with state planning policies and directions are all fully justified as a result of this compliance with adopted and endorsed strategies.

A planning proposal enclosed with this report explains the intent of the draft plan, and has been prepared to convert Council's resolution into the reformed planning system. Without this change, the draft plan would need to be completed before 1 January 2011 or would lapse. In total, the draft plan for Stage 2 aims to provide for 2,500 additional dwellings, supported by local and regional plans to deliver utility and key community infrastructure in sequence with new development. A development control plan will also be prepared to support the neighbourhood planning principles for the Thornton North urban release area.

OFFICER'S RECOMMENDATION**THAT**

- 1. The draft local environmental plan for the Thornton North urban release area (Stage 2) be endorsed as rezoning the land to Zone 2(a) Residential and Zone 7(c) Environment Protection (General), as detailed in the attached planning proposal.**

AMENDMENT TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - THORNTON NORTH URBAN
RELEASE AREA STAGE 2 (Cont.)

2. **Pursuant to Section 55 of the Environmental Planning and Assessment Act 1979, the draft local environmental plan for the Thornton North urban release area (Stage 2) be submitted to the Department of Planning for a Gateway Determination.**
3. **A further report by presented to Council following the public exhibition period, to demonstrate compliance with the gateway determination and to provide details of any submissions received during that process.**

REPORT

The purpose of this report is to:

- Present a draft local environmental plan for Thornton North Stage 2
- Detail the consultation and investigations undertaken to prepare the draft plan
- Explain and justify the intended effects of the draft plan
- Outline the next steps for the draft plan.

This report should be read in conjunction with the Planning Proposal included as **Attachment 1** to this report.

BACKGROUND

The Thornton North investigation area was identified by the Maitland Urban Settlement Strategy as a Category 1 site requiring more detailed structure planning in 2001. Council prepared and adopted the Thornton North Structure Plan in 2003 and subsequently has prepared the Thornton North urban release area local environmental plan and Stage 1 rezoning, Thornton North Section 94 Development Contributions Plan and Thornton North Area Plan. The objective of each of these plans was to provide for a well-serviced new residential area of approximately 5,000 dwellings over a 15 – 20 year timeframe.

In September 2007, Council resolved to prepare a local environmental plan (LEP) for Stage 2 of the Thornton North urban release area. This LEP covers more than 350 hectares of rural land, including areas of remnant native vegetation, riparian corridors and open/ cleared pastures. There are 30 parcels and 25 landowners in the boundaries of this LEP. The cooperation of the majority of these landowners has resulted in substantial investigations being undertaken, in accordance with the requirements of Council, state and public authorities and the directions of the Department of Planning.

Planning system reforms

Since Council's resolution to prepare the draft plan, the NSW planning system has undergone various reforms. Most significant to this draft plan is the reform of the plan-making system and the repeal and replacement of Part 3 of the Environmental Planning and Assessment Act 1979. As this draft plan was commenced under the previous plan-making provisions it is protected by savings and transitional provisions until 1 January 2011. However, it is the intention of preparing the planning proposal to transfer the draft plan into the new plan-making provisions. This is consistent with the Department of Planning's Planning Circular PS 10-002.

AMENDMENT TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - THORNTON NORTH URBAN
RELEASE AREA STAGE 2 (Cont.)

DRAFT LOCAL ENVIRONMENTAL PLAN

The objectives of the draft plan are:

- To enable residential development for approximately 2,500 dwellings, and
- To protect areas of high ecological significance for threatened flora and fauna species, and
- To ensure that future residents have access to adequate local and regional infrastructure, and
- To require further detailed development plans to be prepared prior to the approval of development applications.

In response to these objectives, the following amendment is proposed to the Maitland Local Environmental Plan 1993:

- Rezoning of land from Zone 1(b) Secondary Rural Land to Zone 2(a) Residential and Zone 7(c) Environmental Protection (General) - see appendix 2 of planning proposal

This land is located within the Thornton North urban release area (via Maitland LEP 1993 Amendment No. 86). Therefore Part 12 of the Maitland LEP 1993 applies to the site including the satisfactory arrangements clauses for utility and regional infrastructure as well as the clause requiring a DCP to be in force.

The planning proposal (**Attachment 1, pg. 5**) outlines how these provisions would transfer into the draft Maitland LEP 2011.

PUBLIC AUTHORITY CONSULTATION

The following public authorities have been consulted regarding the preparation of the draft plan:

- (former) Department of Primary Industries
- NSW Roads and Traffic Authority
- Mindaribba Local Aboriginal Land Council
- (former) Department of Environment and Water
- NSW Rural Fire Service
- Department of Environment, Climate Change and Water

Copies of the correspondence from these authorities are contained in appendix 9 of the planning proposal.

No objections to the draft plan were raised by these authorities. The comments raised by certain public authorities in relation to infrastructure, development controls and land uses are addressed by the provisions of Part 12 of the Maitland LEP 1993 (satisfactory arrangements, DCP) and by the endorsement of the Maitland Urban Settlement Strategy.

More detail regarding the comments of DECCW are outlined in the following section on biodiversity.

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Ongoing discussions with utility infrastructure providers has been occurring since the adoption of the Thornton North Structure Plan and mechanisms are in place to ensure that adequate servicing and capacity exists for water, wastewater, recycled water, energy and telecommunications. Therefore, these public authorities were not specifically consulted regarding the preparation of this plan.

ENVIRONMENTAL STUDIES

A suite of environmental studies were undertaken to inform the preparation of the draft plan. These studies were prepared in accordance with Council's adopted protocol for Local Environmental Studies, and funded by the proponents for the rezoning.

The matters that were specifically investigated for the Stage 2 lands include:

- Biodiversity and impact on threatened flora and fauna
- Air quality, especially particulates from clay extraction activities
- Site contamination from past agricultural and rural uses
- Acoustic assessment, especially from motor vehicles, trains and clay extraction activities
- Drainage and stormwater management
- Bushfire hazard
- European and aboriginal cultural heritage

In the majority, the constraints to residential development presented by these matters can be addressed through appropriate development controls to be contained in the Thornton North Area Plan, and through assessment of applications for subdivision and development. Infrastructure servicing and the suitability of new residential development will also be assessed during the application of Council's adopted Section 94 plan and potential regional infrastructure contributions.

Ecological impacts

Current environmental legislation in NSW requires the net maintenance or improvement of biodiversity to be achieved as a result of development. This can be achieved through improving/ maintaining biodiversity on-site, off-site, or a combination of measures. All conservation outcomes require detailed investigation, evaluation and ongoing management.

The ecological assessment report submitted with the rezoning identifies that an adverse impact on threatened species and ecological communities is likely to occur if native vegetation is removed from areas proposed to be rezoned as residential land. Two endangered ecological flora communities and eleven threatened fauna species are likely to be adversely affected, with a range of effects including displacement from the site to loss of foraging, seasonal foraging and breeding habitat.

Consultation with DECCW has been undertaken with regard to the likely adverse effects and a copy of DECCW's response is included in appendix 7 of the planning proposal. DECCW supports the rezoning in principle as it is consistent with the objectives of the Lower Hunter Regional Strategy and the Thornton North Structure

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Plan, however considers that it is "unlikely to achieve an "improve or maintain" outcome for biodiversity values." Whilst it is preferable for Council, DECCW and the landowners to deal with these matters at a rezoning stage, DECCW considers that "outstanding biodiversity offsetting matters could be dealt with post gazettal of the LEP through subsequent development applications under Part 4 of the EP&A Act." This would be through Section 79B of the Environmental Planning and Assessment Act, which states that:

S79B (3) Development consent cannot be granted for:

- (a) development on land that is, or is part of, critical habitat, or*
 - (b) development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat,*
- without the concurrence of the Director-General of the Department of Environment, Climate Change and Water, or if a Minister is the consent authority unless the Minister has consulted with the Minister administering the Threatened Species Conservation Act 1995*

This approach will require Council as the consent authority, to ascertain whether a development application is likely to significantly affect a threatened species or ecological community. The test of significance is outlined in Section 5A of the Environmental Planning and Assessment Act 1979 and is a matter for consideration in all development applications. If the test of significance identifies that the development is likely to have a significant affect on threatened species, then consultation will take place with DECCW and a more detailed environmental report would be prepared. The result of this assessment may be a biodiversity offset package that includes some on-site or off-site conservation.

Ongoing discussions between Council, DECCW and the landowners have not been able to finalise an offsetting package, however amendments have been made to the draft rezoning plan in response to DECCW's suggestions. Larger areas of the highest condition vegetation have been incorporated into the 7(c) zone and there has been a widening of the north-south green corridor. This corridor will also be reinforced by reference and mapping in the Thornton North Area Plan.

Therefore, it is considered that the objectives of the draft plan to protect areas of high ecological significance can be achieved, whilst ensuring that suitable biodiversity offsets will be achieved through the assessment and determination of future development applications.

CONSISTENCY WITH STATE AND LOCAL STRATEGIES, POLICIES AND DIRECTIONS

The draft plan is consistent with the Lower Hunter Regional Strategy, Maitland Urban Settlement Strategy, most State environmental planning policies and Ministerial Directions for local plan-making. The detail of the consistency with these documents is outlined in Section B of the planning proposal.

Minor inconsistencies arise from the rezoning of rural land to a residential zone, however these are fully justified as the Maitland Urban Settlement Strategy is an endorsed local strategy. There is also a minor inconsistency that arises as Council has not yet adopted acid sulfate soil provisions into the Maitland LEP. However this will be undertaken with the Maitland LEP 2011 and the impact on the Thornton North area is minimal and can be mitigated as the risk of acid sulfate soils is low.

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CONSULTATION

If Council resolves to forward the planning proposal to the Department of Planning seeking a Gateway determination, the next step is for the Department to consider the proposal and make a determination. The Gateway determination will specify the time in which the plan is to be completed and gazetted, and will confirm the consultation methods for the draft plan.

In accordance with the Department of Planning's guidelines, the draft plan would be considered to be a low impact proposal as it is consistent with the strategic planning framework, has no infrastructure servicing issues and is neither a principal LEP nor reclassification LEP. A low impact proposal would be publicly exhibited for 14 days. Further details regarding the consultation process are contained in Part 4 of the planning proposal.

CONCLUSION

The draft plan for Thornton North Stage 2 is the continuation of the coordinated release of land in accordance with Council's adopted strategies including the Maitland Urban Settlement Strategy and the Thornton North Structure Plan, together with the support of the Lower Hunter Regional Strategy. Detailed environmental assessment has resulted in a draft plan that protects areas of high ecological significance for threatened flora and fauna species, with additional offsetting outcomes to be assessed during development applications. Local and regional infrastructure necessary to support the growing population has been identified and mechanisms established in the Maitland LEP 1993 have been successfully applied to the Stage 1 development of Thornton North.

It is therefore recommended to Council that the draft rezoning plan and planning proposal be submitted to the Department of Planning for their consideration and a gateway determination, prior to formal community consultation.

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 with this matter under the Local Government Act 1993 or Environmental Planning & Assessment Act 1979.

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RELEASE AREA STAGE 2 (Cont.)

General Manager's Reports

AMENDMENT TO MAITLAND LOCAL ENVIRONMENTAL PLAN 1993 - THORNTON NORTH URBAN RELEASE AREA STAGE 2

Planning Proposal

Meeting Date: 22 June 2010

Attachment No: 1

Number of Pages: 55