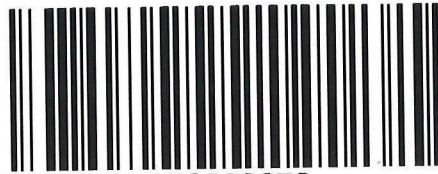


MAITLAND CITY COUNCIL



PNC000259

Our Ref. 103/124 (745033)

Your Ref.

Phone Enquiries: 4934 9700

03 June 2010

Department of Planning
PO Box 1226
NEWCASTLE NSW 2300

Attention: Mr Gary Oakey

Dear Gary,

**RE: AMENDMENT TO MAITLAND LEP 1993
SENIORS LIVING DEFINITION**

Maitland City Council has resolved to prepare an amendment to the Maitland Local Environmental Plan 1993 for the purpose of clarifying the permissibility of seniors housing development in the Maitland local government area. This amendment is considered to be a minor matter arising from the drafting of Amendment No. 100 to Maitland LEP 1993, and as such Council considers that this change could be made under Section 73A of the Environmental Planning and Assessment Act 1979.

A copy of Council's resolution regarding this matter and a Planning Proposal explaining the intended effect of the LEP amendment is enclosed for gateway determination.

If you have any enquiries on this matter, can you please contact me on 49349825 or via email (monicag@maitland.nsw.gov.au)?

Yours faithfully

**MONICA GIBSON
MANAGER CITY STRATEGY**



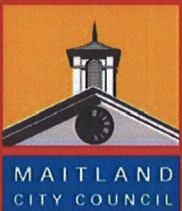
Encl. Planning Proposal – Section 73A matter – Seniors Living – dated 13 May 2010

PLANNING PROPOSAL

Amendment to the Maitland LEP 1993

Section 73A Matter
Correction of cross-reference for Seniors
Housing

Version 1.0
13 May 2010



CONTENTS

PART 1: Objectives

PART 2: Provisions to be included in the EPI

PART 3: Justification for Proposed Rezoning

Section A: Need for proposal

Section B: Policy Context

Section C: Potential Environmental, Social and Economic impact

Section D: Other Government Interests

PART 4: Community Consultation

APPENDIX 1: Council Report and Minutes

Version

Version 1.0 – 13 May 2010, report to Council

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PART 1: OBJECTIVES and BACKGROUND

This planning proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979. The objective of this planning proposal is to correct a wrong cross-reference in the Maitland Local Environmental Plan 1993 that occurred in the drafting of Amendment No. 100.

The cross-referencing error relates to the replacement of a definition of "housing for aged or disabled persons" with "seniors housing". The replacement definition has been gazetted; however the subsequent change to the land use tables did not occur. This means that "housing for aged or disabled persons" is included in the land use tables instead of "seniors housing". It was the aim of Amendment No. 100 that the land use tables be changed to reflect the replacement term.

It is considered that this matter could be an expedited amendment to the Maitland Local Environmental Plan 1993 in accordance with Section 73A of the Environmental Planning and Assessment Act 1979.

PART 2: EXPLANATION of PROVISIONS

The objective of this planning proposal is intended to be achieved by amending the Maitland Local Environmental Plan 1993. The amendment would involve the correction of land use tables to replace "housing for aged or disabled persons" with "seniors housing" wherever it occurs. No change is proposed to the permissibility of this land use.

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 proposal;
- Section B: Policy Context;
- Section C: Potential Environmental, Social and Economic impact; and
- Section D: Other Government Interests.

Section A – NEED for the PLANNING PROPOSAL

1. Resulting from a Strategic Study or Report

The Planning Proposal is not a result of a strategic study or report. It is required to reduce any confusion that may arise from the interpretation of land use tables and definitions in the Maitland Local Environmental Plan 1993.

2. Planning Proposal as best way to achieve the objectives

A Planning Proposal is required to make the proposed change to the Maitland Local Environmental Plan 1993. It is necessary to amend the Maitland Local Environmental Plan 1993 at this time, as the new standard instrument comprehensive LEP is not due to be gazetted until June 2011.

3. Net Community Benefit

There is no significant net community benefit associated with this proposal, and it retains the status quo in relation to permissibility of seniors housing development.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

4. Consistency with Objectives and Actions within Regional Strategies

The applicable regional strategy is the Lower Hunter Regional Strategy.

There is no inconsistency with the objectives or actions of the Lower Hunter Regional Strategy.

5. Consistency with Council's Community Strategic Plan or other Local Strategic Plan

Council is currently preparing a draft community strategic plan in line with the new Integrated Planning and Reporting legislation and guidelines.

There is no inconsistency with any adopted strategic plan of Maitland City Council.

6. Consistency with applicable State Environmental Planning Policies (SEPPs)

There is no inconsistency with any applicable SEPP or draft SEPP.

The new definition of seniors housing is consistent with SEPP – Housing for seniors (2004) and the standard instrument.

7. Consistency with applicable Ministerial Directions for Local Plan making

There is inconsistency with any s.117 Ministerial Direction.

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

8. Impact on threatened species

There is no likelihood of adverse impact on threatened species, populations, ecological communities or critical habitat as a result of this Planning Proposal.

9. Environmental Impact

There is no likelihood of adverse environmental impact as a result of this Planning Proposal.

10. Social and Economic Impacts

There is no likelihood of adverse social or economic impact as a result of this Planning Proposal.

Section D – STATE and COMMONWEALTH INTERESTS

11. Adequate Public Infrastructure

The Planning Proposal will not generate demand for additional public infrastructure.

12. Consultation with State and Commonwealth Authorities

No State or Commonwealth authorities have been consulted with regard to this Planning Proposal. It is not proposed to consult with any authorities due to the minor nature of this proposal.

PART 4: COMMUNITY CONSULTATION

It is considered that this Planning Proposal could be assessed under Section 73A of the Environmental Planning and Assessment Act 1979. As such it is required that no community consultation be undertaken.

Appendix ONE

Council Report and Resolution

10.4 MINOR AMENDMENT TO MAITLAND LEP 1993 - SENIORS HOUSING

File No: 103/124
Attachments: 1. Planning Proposal
Responsible Officer: Leanne Harris - Group Manager Service Planning and Regulation
Author: Monica Gibson - Manager City Strategy

EXECUTIVE SUMMARY

A minor error occurred in the drafting of Amendment No. 100 to Maitland Local Environmental Plan 1993, relating to the definition of seniors housing. The error has no consequential effect for the assessment and determination of development applications. The Department of Planning have given advice that an expedited amendment could be made to the Maitland LEP 1993 to correct the wrong cross-reference.

OFFICER'S RECOMMENDATION**THAT**

1. Pursuant to Section 73A of the Environmental Planning and Assessment Act 1979, an amendment be made to the Maitland Local Environmental Plan 1993 to replace "housing for aged or disabled persons" with "seniors housing" where it occurs.
2. The Planning Proposal in Attachment 1 be forwarded to the Minister for Planning.

COUNCIL RESOLUTION**THAT**

1. Pursuant to Section 73A of the Environmental Planning and Assessment Act 1979, an amendment be made to the Maitland Local Environmental Plan 1993 to replace "housing for aged or disabled persons" with "seniors housing" where it occurs.
2. The Planning Proposal in Attachment 1 be forwarded to the Minister for Planning.

Moved Clr Tierney, Seconded Clr Garnham

CARRIED

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

The division resulted in 13 for and 0 against, as follows:

For: Clr Baker **Against:**

Clr Blackmore
Clr Casey
Clr Fairweather
Clr Garnham
Clr Geoghegan
Clr Humphery
Clr Meskauskas
Clr Mudd
Clr Penfold
Clr Procter
Clr Tierney
Clr Wethered

10.4 MINOR AMENDMENT TO MAITLAND LEP 1993 - SENIORS HOUSING

File No: 103/124
Attachments: 1. Planning Proposal
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OFFICER'S RECOMMENDATION**THAT**

1. Pursuant to Section 73A of the Environmental Planning and Assessment Act 1979, an amendment be made to the Maitland Local Environmental Plan 1993 to replace "housing for aged or disabled persons" with "seniors housing" where it occurs.
2. The Planning Proposal in Attachment 1 be forwarded to the Minister for Planning.

REPORT

Amendment No. 100 to the Maitland Local Environmental Plan 1993 was gazetted and came into force on 25 September 2009.

One of the aims of this housekeeping amendment was to replace the definition of housing for aged or disabled persons with an equivalent definition from the Standard Instrument LEP, but make no change to where this use is permitted or prohibited. It was necessary to change the definition as it referred to a state planning policy that had been repealed and replaced several years ago. There was no desire or need to change where the activity was permitted or prohibited.

The old definition was:

***Housing for aged or disabled persons** means residential accommodation which may take any building form which is used as housing for aged or disabled persons as defined in State Environmental Planning Policy No 5—Housing for Aged or Disabled Persons.*

It was referenced in the land use tables as "housing for aged or disabled persons".

The new definition, as currently included in Maitland LEP 1993 is:

***Seniors housing** means residential accommodation that consists of:*

- (a) a residential care facility, or*

MINOR AMENDMENT TO MAITLAND LEP 1993 - SENIORS HOUSING (Cont.)

- (b) *a hostel, or*
- (c) *a group of self-contained dwellings, or*
- (d) *a combination of these,*
and that is, or is intended to be, used permanently for:
- (e) *seniors or people who have a disability, or*
- (f) *people who live in the same household with seniors or people who have a disability, or*
- (g) *staff employed to assist in the administration of the residential accommodation or in the provision of services to persons living in the accommodation, but does not include a hospital.*

It is currently referenced in the land use tables as "housing for aged or disabled persons".

The definition change was made in the gazetted amendment; however the cross-referencing to the land use tables was not undertaken and the old definition appears in several zones. This creates some confusion with two separate descriptions of the same activity. It does not have any meaningful effect on the assessment of development applications as there is no change to where the activity is permitted or prohibited.

It is therefore proposed to correct the LEP so that the only reference is to "seniors housing".

Provisions exist in the Environmental Planning and Assessment Act 1979 to make corrective changes that are the result of drafting errors via a streamlined LEP process. As the expedited amendments do not have significant adverse impacts on the environment, they can be made quickly and without the need to consult with public authorities or the community. The Department of Planning have given advice that the cross-referencing changes to Maitland LEP 1993 can be considered under the expedited amendment process.

A Planning Proposal that outlines the intended effect of the LEP changes and the justification for the streamlined process is included as Attachment 1 to this report.

CONCLUSION

The minor error in Maitland LEP 1993, relating to the definition of seniors housing, has no consequential effect for the assessment and determination of development applications. An expedited amendment should be made to the Maitland LEP 1993 to correct the wrong cross-reference and reduce the potential for confusion in the description of seniors housing.

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.