

## Planning Services

### Plan Finalisation Report

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**Local Government Area:** Maitland City Council

**File Number:** OBJ16/14928

#### 1. NAME OF DRAFT LEP

Maitland Local Environmental Plan 2011 Amendment No. 24 (draft LEP).

#### 2. SITE DESCRIPTION

The planning proposal applies to the Aberglasslyn House and surrounding land to the south and south-west. The surrounding land is currently zoned a mix of R1 General Residential and RU1 Primary Production with a minimum lot size of 450sqm and 40 ha respectively. Part of the land is identified as an Urban Release Area. The RU1 land is mostly cleared farmland while the R1 land has been subdivided and is partly developed.

#### 3. PURPOSE OF PLAN

The planning proposal seeks to protect the heritage significance of Aberglasslyn House and its curtilage through amendments to the Maitland LEP 2011. The amendments include:

- Expand the Local Heritage Item (Aberglasslyn House) to include the driveway (Lot 5 DP255369);
- Implement a Heritage Conservation Area (of local significance) which includes Aberglasslyn House and surrounding land to the south;
- Rezone land in part of the HCA from R1 General Residential and RU1 Primary Production to E3 Environmental Management; and
- Increase the minimum lot size from 450sqm to 40ha for the R1 portion being rezoned to E3.

#### 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.

<b>NSW Government Lobbyist Code of Conduct:</b> There have been no meetings or communications with registered lobbyists with respect to this proposal.
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**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

## 5. GATEWAY DETERMINATION

The Gateway determination issued on 22 December 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions. The proposal is due for finalisation on 29 December 2017.

All Gateway conditions have been adequately complied with. Notwithstanding, condition 1(a) has only been partly addressed because while the PP considers consistency with the Hunter Regional Plan as required by the condition, it does not also specifically refer to section 117 Direction 5.10 Implementation of Regional Plans. This is considered a minor matter which does not hinder finalisation of the plan.

## 6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 19 January 2017 to 18 February 2017.

Four submissions were received and raised various issues. It is considered that Council adequately addressed these concerns in the planning proposal.

The primary issues raised related to uncertainty about the impact on the permissibility of various uses in the E3 land and HCA, the appropriateness of the E3 zone and the 40ha minimum lot size and queries about the accuracy of the heritage description and values of Aberglasslyn House.

Issues	Council's Response
<u>Permissible Uses</u> The submissions requested confirmation about permissible uses, including storage of trucks, agricultural uses and small businesses would be permitted within the HCA and E3 zone.  Other submissions note a covenant on the land already restricts development and that Council should change its controls relating to sheds instead of rezoning the land.	Council advised that many of these uses are permissible in the zone, however, they will now require development consent from Council. Development consent will ensure that the proposals are sympathetic of heritage values and consider the location, scale and design of the proposed development.  The SEPP (Exempt and Complying Development) 2008 has made existing covenants over the land redundant. Most sheds constructed within the proposed HCA were approved under standard controls in that SEPP, and therefore are not controlled by Council.
<u>Subdivision</u> Submissions suggested that the 40ha minimum lot size is not required given most of the land is developed and would be difficult to subdivide.	Council notes that, despite this, the land allowed for a minimum lot size of 450sqm which would result in significantly more lots than are currently developed.
<u>E3 Environmental Conservation</u> Submissions questioned the appropriateness of the E3 Environmental Conservation zone.	The proposal notes that one of the objectives of the E3 zone is to protect the aesthetic values of the land within the zone and the zone recognises the cultural and aesthetic values of Aberglasslyn House.

<u>Heritage Value</u> Submissions questioned the accurateness the heritage items description in the proposal and the impact of development on the item.	The proposal notes that the description is consistent with the State Heritage description and the impact assessment was undertaken by Council, not the owner of Aberglasslyn House.
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## 7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the Office of Environment and Heritage (OEH) in accordance with the Gateway determination. OEH did not object to the proposal however it provided advice regarding several components. Council's response to the matters raised is supported. The issues raised and Council's response is listed below:

Issues	Council's Response
The proposed Heritage Conservation Area, E3 zone and proposed minimum lot size are supported.	Noted.
It is noted that the HCA is inconsistent with the LEP 1993 due to existing development along the southern boundary of the HCA.	Noted.
The local heritage listing for Aberglasslyn House is inconsistent with the State Heritage Register listing which includes the driveway.	Noted. The proposal has been amended to include the Aberglasslyn House driveway (Lot 5 DP255369) in the local heritage listing.
The proposal should amend Schedule 5 to include the HCA.	Noted. The proposal has been amended to include the proposed HCA in Schedule 5 of the MLEP 2011.
The planning proposal incorrectly identifies the zoning of surrounding land.	Noted. The proposal has been amended to correct the zoning errors.

## 8. POST EXHIBITION CHANGES

Council made three minor post exhibition amendments based on comments from OEH.

These amendments do not require further exhibition as they do not change the intent of the planning proposal as exhibited and ensure alignment between the LEP and the State Heritage Register, as well as ensuring compliance with the requirements of the Standard Instrument. The following table identifies the proposed amendments and provides justification for why they should be supported.

Proposed Amendment	Justification
To amend the HER map series to include Lot 5 DP255369 as part of the Aberglasslyn House heritage item listing.	<p>This amendment would result in Lot 5 DP 255369, which contains the Aberglasslyn House driveway, being included in the LEP heritage listing. This amendment was recommended by OEH to provide consistency with the State Heritage Register Listing.</p> <p>This amendment is supported as:</p> <ul style="list-style-type: none"> <li>It does not change the heritage requirements placed on the</li> </ul>

	<p>land as the land is already protected through the Heritage Act and its listing on the State Heritage register;</p> <ul style="list-style-type: none"> <li>• Council advises that the owner of Aberglasslyn House, who owns this parcel, is supportive of the planning proposal;</li> <li>• Would bring the LEP listing in line with the State Heritage Register listing; and</li> <li>• Is consistent with the aims of the proposal.</li> </ul>
To amend Schedule 5 of the Maitland Local Environmental Plan to list the Heritage Conservation Area.	<p>This is an administrative amendment to the Explanation of Provisions, noting that while the Explanation of Provisions recognised the need to update the LEP's heritage map, it omitted the need to also list the HCA in Schedule 5 of the LEP.</p> <p>This amendment is supported as:</p> <ul style="list-style-type: none"> <li>• The exhibited PP clearly showed the intent of the PP to apply a HCA over the affected land;</li> <li>• Is consistent with the requirements of the Standard Instrument; and</li> <li>• Is consistent with the intent of the proposal.</li> </ul>
To amend Schedule 5 – “Property Description” of the Maitland Local Environmental Plan to add Lot 5 DP255369 to the listing for Item: I1 Aberglasslyn House.	<p>This is an administrative amendment resulting from inclusion of Lot 5 DP255369 to include this lot in Schedule 5 in relation to heritage item Aberglasslyn House.</p> <p>This amendment is supported for the same reasons as the change made to amend the HER map to include lot 5 in the heritage item listing.</p>

## 9. ASSESSMENT

Council's planning proposal is supported because it would implement measures to protect the heritage value of Aberglasslyn House which is a heritage item of state significance. Introducing a curtilage around land surrounding the house and adjusting the planning controls to limit development in these areas (particularly complying development and the potential for future subdivision) is consistent with the previous protection afforded to the item in the LEP 1993 and the development outcome envisaged when the adjoining lands were rezoned and developed for residential purposes.

OEH has been consulted and Council has amended the proposal in response to the issues raised. The changes were primarily to ensure consistency with the standard instrument (i.e. list the HCA in Schedule 5, not just on the LEP map) and the State Heritage Register which identifies the driveway to Aberglasslyn House as forming part of the State item.

The proposal is not inconsistent with any Section 117 Direction and it is consistent with the Hunter Regional Plan which recognises the importance of heritage to the region and seeks to ensure that those values are protected (Direction 19). Further Council has adequately addressed community concerns.

### Section 117 Directions

#### 5.10 Implementation of Regional Plans

The planning proposal notes that the amendment is consistent with Direction 19 of the Hunter Regional Plan 2036 (HRP). It is noted that the proposal incorrectly refers to S117 Direction 5.1 Implementation of Regional Strategies, despite referring to the HRP. Notwithstanding, it is agreed that the proposal is consistent with the HRP, and in turn this s117 direction. No further action is required in relation to this direction.

### State Environmental Planning Policies

The proposal is consistent with the relevant SEPPs.

## **10. MAPPING**

The proposal will amend the heritage, land zone and minimum lot size maps. Six maps will be amended including:

- 5050\_COM\_HER\_003\_040\_20170719
- 5050\_COM\_HER\_004A\_040\_20170719
- 5050\_COM\_LSZ\_003\_040\_20170523
- 5050\_COM\_LSZ\_004A\_040\_20170523
- 5050\_COM\_LZN\_003\_040\_20170523
- 5050\_COM\_LZN\_004A\_040\_20170523

## **11. CONSULTATION WITH COUNCIL**

Council was consulted on the terms of the draft instrument (**Attachment E**). Council confirmed on 1 December 2017 that it was happy with the draft and that the Plan should be made (**Attachment F**).

## **12. PARLIAMENTARY COUNSEL OPINION**

On 6 December, 2017 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made (**Attachment PC**).

### 13. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft LEP because:

- The proposal would implement measures to protect the heritage value of Aberglasslyn House which has state heritage significance and its curtilage by limiting the potential for development to occur on the surrounding land which would be inconsistent with its historical setting;
- While currently zoned for residential, Council advises that this land has been subdivided as originally envisaged and so there would be no reduction in residential development as a result of the proposed changes;
- Council has complied with the conditions of the Gateway Determination;
- The proposal is consistent with the Hunter Regional Plan, particularly direction 19 which seeks to protect the region's heritage;
- The proposal is supported by the Office of Environment and Heritage;
- The proposal was publicly exhibited and four submissions were received, and Council has adequately addressed public concerns; and
- The post exhibition amendments are minor and do not change the intent of the planning proposal as exhibited.



**13/12/17**

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**19/12/2017**

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