

**Aberglasslyn Heritage Control Area Amendment 22 Maitland LEP 2011**

Proposal Title : **Aberglasslyn Heritage Control Area Amendment 22 Maitland LEP 2011**

Proposal Summary : **To reinstate and expand the heritage conservation area around the state heritage significant Aberglasslyn House and amend the zone and minimum lot size of land within this area.**

PP Number : **PP\_2016\_MAITL\_004\_00**      Dop File No : **16/14928**

**Proposal Details**

Date Planning : **16-Dec-2016**      LGA covered : **Maitland**  
 Proposal Received :  
 Region : **Hunter**      RPA : **Maitland City Council**  
 State Electorate : **MAITLAND**      Section of the Act : **55 - Planning Proposal**  
 LEP Type : **Policy**

**Location Details**

Street :  
 Suburb :      City :      Postcode :  
 Land Parcel : **Lot 3/DP255369, 92 ABERGLASSLYN LANE ABERGLASSLYN (Entire lot), Lot 3/DP1124849, 36 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 1909/DP1162515, 56 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 1912/DP1162515, 50 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 1902/DP1162514, 70 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 1905/DP1162514, 64 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 2705/DP1163947, 26 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 2805/DP1169721, 16 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 2902/DP1169722, 8 COCKATOO RIDGE ABERGLASSLYN (Part lot), Lot 3900/DP1220527, SANDPIPER CIRCUIT ABERGLASSLYN (Part lot)**

**DoP Planning Officer Contact Details**

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**RPA Contact Details**

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**DoP Project Manager Contact Details**

Contact Name :  
 Contact Number :  
 Contact Email :

### Land Release Data

|                                       |                                           |                                                            |            |
|---------------------------------------|-------------------------------------------|------------------------------------------------------------|------------|
| Growth Centre :                       |                                           | Release Area Name :                                        |            |
| Regional / Sub<br>Regional Strategy : | <b>Lower Hunter Regional<br/>Strategy</b> | Consistent with Strategy :                                 | <b>Yes</b> |
| MDP Number :                          |                                           | Date of Release :                                          |            |
| Area of Release (Ha)<br>:             |                                           | Type of Release (eg<br>Residential /<br>Employment land) : | <b>N/A</b> |
| No. of Lots :                         | <b>0</b>                                  | No. of Dwellings<br>(where relevant) :                     | <b>0</b>   |
| Gross Floor Area :                    | <b>0</b>                                  | No of Jobs Created :                                       | <b>0</b>   |

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

### Supporting notes

Internal Supporting Notes :

External Supporting Notes : **Council initially requested a Gateway Determination for this proposal on 9 November 2016. Further information was sought and received on several occasions. The most recent additional information was received on 16 December 2016 and it is this date that the proposal is considered adequate.**

### Adequacy Assessment

#### Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The PP clearly explains that it is to amend the provisions of Maitland LEP 2011 in relation to the curtilage of Aberglasslyn House to protect its heritage significance.**

#### Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The PP clearly states that it includes amendment to;**

- 1. Reinstate and expand the heritage conservation area to include Aberglasslyn House and its curtilage by mapping the land in the HER map series.**
- 2. Rezone parts of the land from RU2 Rural Landscape and R1 General Residential to E3 Environmental Management.**
- 3. Amend the lot size map for parts of the R1 zoned land to be rezoned to E3 from 450m2 minimum lot size to 40ha.**

**The PP clearly explains the impact on each lot affected.**

The explanation of provisions should also reflect the inclusion of the Aberglasslyn Heritage Conservation Area within Schedule 5 of the LEP.

**Justification - s55 (2)(c)**

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

**1.2 Rural Zones**

\* May need the Director General's agreement

**1.5 Rural Lands**

**2.3 Heritage Conservation**

**3.1 Residential Zones**

**3.3 Home Occupations**

**5.1 Implementation of Regional Strategies**

**6.1 Approval and Referral Requirements**

**6.3 Site Specific Provisions**

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**N/A**

e) List any other matters that need to be considered :

**The following s117 direction IS also relevant to the proposal;**

**5.10 Implementation of Regional Plans**

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

**Council should update the PP to address the two outstanding s117 directions to demonstrate the consistency or otherwise with these directions.**

**Mapping Provided - s55(2)(d)**

Is mapping provided? **Yes**

Comment :

**The boundary proposed for the Heritage Control Area does not appear to correspond with the Heritage Control Area which applied under Maitland LEP 1993 clause 39A, neither does it correspond with curtilage studies (Ken Taylor, November, 1995 and Jill Sheppard, 2006).**

**Consultation with OEH regarding the precise boundary of the HCA to be mapped is recommended as a condition of the Gateway determination and would inform the mapping prior to exhibition.**

**Community consultation - s55(2)(e)**

Has community consultation been proposed? **No**

Comment :

**Council has not specified a period of consultation. As a proposal that is introducing a new policy approach to the management of heritage (i.e. the use of the E3 Environmental Management zone) a 28 day exhibition period is recommended.**

**Additional Director General's requirements**

Are there any additional Director General's requirements? **No**

If Yes, reasons :

**Overall adequacy of the proposal**

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

## **Proposal Assessment**

### **Principal LEP:**

Due Date :

Comments in relation to Principal LEP : **Maitland Standard Template LEP was published 6 December 2011.**

### **Assessment Criteria**

Need for planning proposal :

The curtilage of Aberglasslyn House had been previously protected under Maitland LEP 1993. Translation of this protection into the Standard instrument was deemed unnecessary with the commencement of the Maitland LEP 2011 and establishment of provisions within the relevant development control plan. However recent development has demonstrated that the current planning controls are inadequate to ensure the necessary protection.

Council has indicated that recent exempt and complying development (presumably under the provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)) has resulted in outbuildings and sheds showing above the ridge/ horizon when viewed from the state significant Aberglasslyn House.

Clearer definition of the visually sensitive landscape setting is required in conjunction with a more effective planning control framework and associated rigorous assessment under Section 79(C) of the Environmental Planning and Assessment Act.

Although land may be expressly excluded from the Codes SEPP, Council has suggested an alternative approach which is considered a timely solution to an existing problem. This alternative approach can only be effected by an amendment to the Maitland LEP 2011 via a planning proposal.

Consistency with strategic planning framework :

**HUNTER REGIONAL PLAN (HRP)**

The HRP does not specifically refer to Aberglasslyn House but direction 19 recognises the need to identify and protect the region's heritage. The Maitland narrative recognises the challenges posed by strong population growth and need to balance this growth against the constraints of the LGA. The PP is considered to be consistent with this intention.

**LOWER HUNTER REGIONAL STRATEGY (LHRS)**

The LHRS is to be superseded by the HRP however for now it remains relevant due to s117 direction 5.1 being in place (soon to be repealed).

The PP is consistent with the LHRS because it aligns with the recognition of the significance of cultural heritage in the region as described in the Heritage chapter and is consistent with the intention to regularly review the scope and quality of statutory heritage protection.

**MAITLAND +10 COMMUNITY STRATEGIC PLAN**

The PP indicates that the proposal is consistent with Council's community strategic plan and specifically the objective to maintain and enhance the LGA's unique built heritage.

**STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)**

Council has not identified any relevant State Environmental Planning Policies  
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is a relevant SEPP because its operation will be limited by the proposal. In particular no complying development will be able to be undertaken within the Heritage Conservation Area and the provisions of the Rural Housing Code will not be able to be exercised on the E3 land. Council has justified this limitation due to the need to protect the state heritage significance of the Aberglasslyn House. Council has indicated that the land is not currently used for rural purposes and that the future limitation on the use of this land is consistent with Council's strategic intention. Extensive agriculture remains permissible within the E3 zone. The Department looks to encourage the use of exempt and complying development wherever feasible to simplify development approval process and save applicants time and money. However the SEPP provides for the exclusion of its application in certain circumstances, including those where there is heritage significance. As such it is considered that the proposal is not inconsistent with the intentions of the SEPP. Council will be encouraged to clarify this policy approach within the PP prior to public exhibition and consider its broader application through future strategic work.

**SECTION 117 MINISTERIAL DIRECTIONS**

**1.5 Rural Lands**

This Direction aims to protect the agricultural productivity of land and ensure orderly rural economic development. The proposal is consistent with this Direction because, although it is rezoning rural land to environmental, this is in response to the constraints on the land and retains the provision for the use of the land for extensive agriculture which is permissible within the zone.

**2.3 Heritage Conservation**

This Direction aims to ensure that effective heritage protection controls are included in Local Environmental Plans. The proposal reintroduces the concept of a Heritage Control Area around Aberglasslyn House however the precise delineation of this boundary should be subject to further consideration by OEH.

In particular clarification regarding the need for Lot 5 DP 255369, being the, about 500m, driveway approach to Aberglasslyn House from Aberglasslyn Lane to be included in the HCA is required. Consistency with this direction will be determined following consultation with OEH.

**3.1 Residential Zones**

The proposal will reduce the residential zoned land area and is therefore inconsistent with this direction. However the existing subdivision pattern, including sizes and configuration of the affected lots has resulted in all dwellings being located outside of the proposed Heritage Control Area. The remoter parts of affected yards were not intended as dwelling sites and in these areas outbuildings will now be controlled. This inconsistency is therefore

considered as of minor significance.

### 6.3 Site Specific Provisions

Council has indicated that this direction applies and that the proposal is inconsistent with the direction because it maps the area as a Heritage Conservation Area. However the PP does not provide for a particular development to be carried out and therefore does not impose any additional standards on new development. Therefore technically this direction is not triggered. However the PP does apply additional standards (through the heritage conservation area expansion) on existing development where it remains permissible in the E3 zone. This matter is considered in relation to s117 direction 1.5 and 3.1.

### 5.10 Implementation of Regional Plans

This PP is considered consistent with this direction because the Hunter Regional Plan recognises the need to identify and protect the region's heritage and this proposal facilitates that protection. Council will be required to update the PP to reflect consideration of this direction.

The PP is considered consistent with all other relevant s117 directions.

Environmental social  
economic impacts :

### Environmental Impacts

The proposed E3 zone is anticipated by Council to facilitate more effective protection of views to and from the villa's landscaped setting, particularly development that is encroaching that setting from the south, known as Cockatoo Ridge. The use of the zone for these purposes is considered consistent with the objectives of the zone which include; To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; and To provide for a limited range of development that does not have an adverse effect on those values.

### Social Impacts

Aberglasslyn House is acknowledged as being of State significance (NSW Heritage Register). Within NSW it has associations with early-settler pastoralists and architect John Virge. It demonstrates some fine masonry skills in its first building phase. Such design and high-quality artisanal techniques are of significant social value to the community of NSW and the added protection that this proposal provides will have beneficial social impacts. As a consequence of the heritage conservation area and proposed E3 zoning private landholders will be limited in their ability to undertake exempt and/or complying development. In particular no complying development will be able to be undertaken within the Heritage Conservation Area and the provisions of the Rural Housing Code will not be able to be exercised on the E3 land. Limitations will also be placed on perceived ability to subdivide some land. Council has justified this based on the need to protect the curtilage of the state significant heritage house. Council will be encouraged to clarify this policy approach within the PP prior to public exhibition and consider its broader application through future strategic work.

### Economic Impacts

Protection of such scenic landscapes, as that within which Aberglasslyn House sits, can contribute 'positive externalities' to both regional tourism and the local residential market, sustainable only if these markets do not become parasitic on heritage items by grabbing a view for surrounding lounge-rooms or adapting the setting for inappropriate activities. Other grand houses have provided the sets for Australian cinema and television, such as Anambah House for the film 'Country Life' and 'Camelot', a heritage-listed property located at Kirkham on the outskirts of Camden, for the TV series 'A Place to call Home'. As a consequence of the heritage conservation area and proposed E3 zoning private landholders will be limited in their ability to undertake exempt and/or complying development. Consideration of such development, where it remains permissible will require development assessment. There will be some restrictions to subdivision that will be introduced, although such subdivision would have been subject to development assessment and may have been restricted due to impacts on the heritage item.

## Assessment Process

Proposal type : **Precinct** Community Consultation Period : **14 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

**No internal consultation required**

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

## Documents

| Document File Name | DocumentType Name | Is Public |
|--------------------|-------------------|-----------|
|--------------------|-------------------|-----------|

## Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Additional Information : **This planning proposal should proceed subject to the following conditions:**

- 1. Prior to exhibition Council is to amend the planning proposal to;**
  - \* refer to section 117 Direction 5.10 Implementation of Regional Plans and include Council's assessment of consistency with that direction; and**
  - \* detail the intended use of the E3 Environmental Management zone for areas of heritage**

significance within the LGA, including comment on its consistency with the policy of Maitland City Council and likely future usage and consistency with state policy.

2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for a minimum of 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Environment 2016).

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act;

- Office of Environment and Heritage (State Heritage item)

The public authority is to be provided with a copy of the planning proposal and any relevant supporting material prior to public exhibition and any advice incorporated into an updated Planning Proposal and associated mapping. The public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

In the covering letter:

The Secretary should agree that the PP's inconsistency with s117 direction 3.1 Residential Zones is of minor significance. Further work in relation to direction 2.3 Heritage Conservation is still required.

Plan-making delegation should not be given.

Supporting Reasons : The concept of Heritage Control Area (HCA) across the southern visual catchment of Aberglasslyn House is supported.

As an item of State heritage significance, listed in the NSW State Heritage Register, referral to OEH is conditioned in the Gateway.

Signature:



Printed Name:

K O'Flaherty

Date:

21/12/2016