

Planning and Assessment

IRF21/1706

Gateway determination report

LGA	Maitland
PPA	Maitland City Council
NAME	Additional permitted uses for service station and takeaway food and drink premises at 5-13 Louth Park Road, South Maitland
NUMBER	PP-2021-4400
LEP TO BE AMENDED	<i>Maitland Local Environmental Plan 2011</i>
ADDRESS	5-13 Louth Park Road, South Maitland
DESCRIPTION	Lot 17 and 18 DP 1044795, Lot 6 DP 199882, Lot 1 DP 794525, Lot 1,2, 3 and 4 DP1109043 Lot 1 DP 782596
RECEIVED	29 March 2021
FILE NO.	IRF21/1706
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

1. INTRODUCTION

1.1 Site description

The site comprises nine lots on the corner of Louth Park Road and Les Darcy Drive, South Maitland. The site is generally flat and has a combined area of 4,450m² (**Figure 1**). The site is adjacent to Les Darcy Drive, which connects to the New England Highway. It contains four residential dwellings and associated outbuildings. The site has minimal vegetation in the form of a few scattered trees and managed lawns.



Figure 1 Subject site (outlined red)

1.2 Existing planning controls

The following planning controls apply to the site under the *Maitland Local Environmental Plan 2011*:

Land zoning

- RU1 Primary Production (Figure 2).

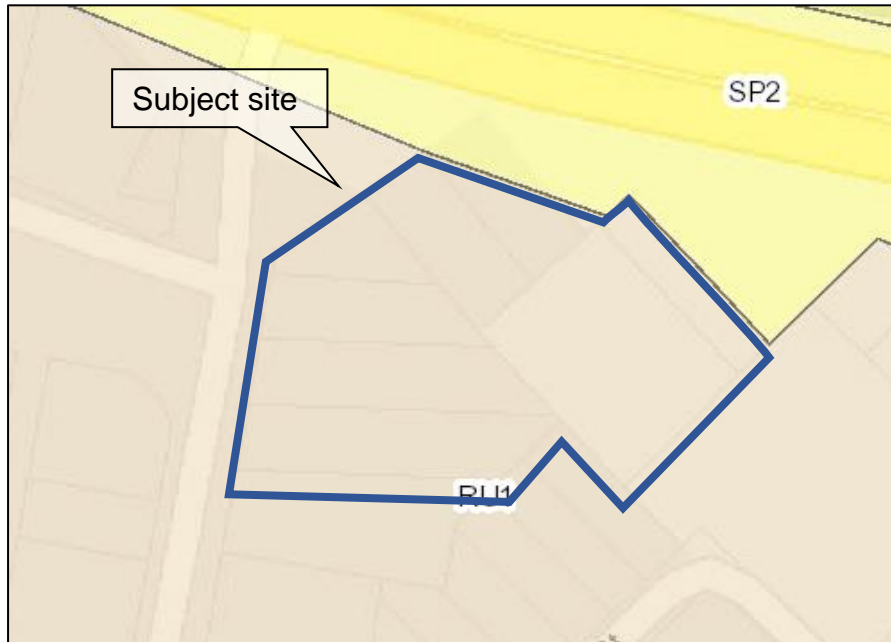


Figure 2 Existing land zoning (site outlined blue)

Minimum lot size

- Minimum lot size is 40ha (Figure 3).

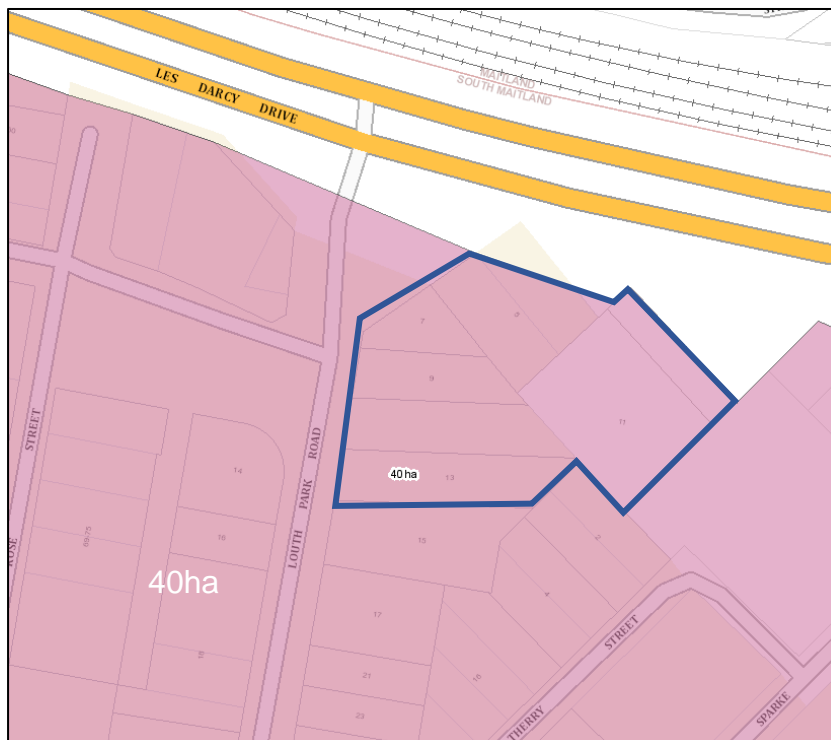


Figure 3 Extract minimum lot size map (site outlined blue)

Heritage

- Located in the Central Maitland Heritage Conservation Area (Figure 4)

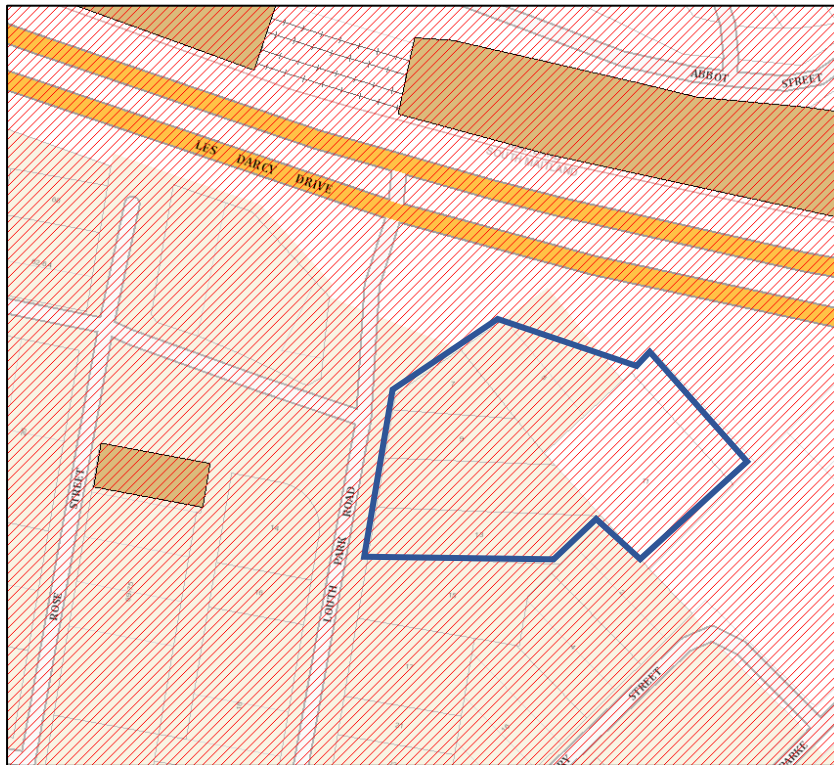


Figure 4 Extract Heritage map (conservation area hatched red)

Flood Planning

- Identified as flood prone and subject to flood planning provisions (Figure 5).



Figure 5 Extract Flood Planning map (site outlined red)

1.3 Surrounding area

The site is approximately 30km north-west of Newcastle and south of the Hunter trainline. The surrounding area includes a range low-density dwellings, service station, bridge club, childcare centre, showground and caravan park (**Figures 6 and 7**).



Figure 6 Locality map (site identified by star)



Figure 7 Land uses in RU1 zone – South Maitland (site identified by star)

The adjoining service station relies on existing use rights. It was constructed under the 2(f) Residential zone under the then *Maitland Local Environmental Plan 2003*. This zone was applied to certain flood prone land that permitted commercial uses. When the *Maitland Local Environmental Plan 2011* was introduced Council made the decision to zone the service station site as RU1 Primary Production as they were not satisfied there was an equivalent zone under the Standard Instrument LEP.

2. PROPOSAL

2.1 Description of planning proposal

The planning proposal seeks to amend the *Maitland Local Environmental Plan 2011* to permit additional uses at the site under the RU1 Primary Production zone. The additional uses sought would apply only to the subject lots and include:

- service station; and
- take away food and drink premises.

The *Maitland Local Environmental Plan 2011* includes a definition of a highway service centre, which may include one or more of the following:

- (a) a restaurant or café;
- (b) take away food and drink premises;
- (c) service stations and facilities for emergency vehicle towing and repairs;
- (d) parking for vehicles; and
- (e) rest areas and public amenities.

Council advised they did not propose a highway service centre as the additional permitted use due to concerns the broader hospitality uses may compete with the city centre and to manage potential amenity impacts on adjoining properties.

The planning proposal would not result in any rezoning or changes to local environmental plan mapping.

2.2 Objectives

The objective of the planning proposal is to facilitate the development of a service station and fast-food outlet on land that adjoins the New England Highway.

2.3 Explanation of provisions

The planning proposal includes the following amendment to the *Maitland Local Environmental Plan 2011*:

- Amend Schedule 1 – Additional permitted uses to include ‘service station’ and ‘take away food and drink premises’ on the site.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report.

The proposed uses are prohibited within the RU1 Primary Production zone. However, Council advise the RU1 Primary Production zone was applied to parts of South Maitland due to the area being flood prone and unsuitable for the land uses permitted under standard residential zones.

Notwithstanding the above, there are existing land uses on and surrounding the site that are prohibited within the RU1 Primary Production zone, including low density residential, residential scale subdivisions below the 40ha minimum lot size, and an existing service station operates on land opposite the site.

The planning proposal notes the additional permitted uses are appropriate to assist in the provision of services and reinforce the role of the New England Highway Corridor as envisaged in Section 3.3.8 of the *Maitland Urban Settlement Strategy 2012*.

4. STRATEGIC ASSESSMENT

4.1 Regional / District

4.1.1 Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* is a 20-year blueprint for the future of the Hunter. The vision is to create a leading regional economy in Australia, with a vibrant metropolitan city at the heart.

The relevant actions for the planning proposal include:

- *Action 4.1 - Enhance inter-regional transport connections to support economic growth;*
- *Action 4.3 - Strengthen and leverage opportunities from the interconnections with other regions, particularly the Pacific Highway, the Golden Highway and the New England Highway; and*
- *Action 4.7 - Enhance the efficiency of existing nationally significant transport corridors and protect their intended use from inappropriate surrounding land uses.*

The planning proposal is consistent with the directions and actions in the *Hunter Regional Plan 2036*.

4.1.2 Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* sets out the strategies and actions to drive sustainable growth across Cessnock, Lake Macquarie, Newcastle City, Port Stephens, and Maitland, which make up Greater Newcastle. The metropolitan plans aims to achieve the vision set out in the *Hunter Regional Plan 2036*.

The relevant Strategy for the planning proposal is:

Strategy No. 23 (Protect major freight corridors) – the planning proposal seeks to provide a compatible land use adjacent to the New England Highway. This will contribute to the prevention of urban encroachment or less compatible land uses in proximity to the highway.

The planning proposal is consistent with the metropolitan plan by enabling development that will service the major freight corridor.

4.2 Local

4.2.1 Local Strategic Planning Statement (LSPS)

The *Maitland Local Strategic Planning Statement (LSPS)* sets out the priorities, actions, and implementation for the strategic growth of the LGA over the next 20 years. The planning proposal is consistent with the LSPS as it provides services along a key transport corridor that is predicted to experience substantial increases in traffic volume over the next 20 years.

4.2.2 Maitland +10 (Community Strategic Plan)

Council has adopted a Community Strategic Plan (Maitland +10) in line with the State's Integrated Planning and Reporting legislation and guidelines. The planning proposal is consistent with the vision and objectives of the Maitland +10 Community Strategic Plan as it provides opportunities for growth within the city to meet the needs of a rapidly growing population.

4.2.3 Maitland Urban Settlement Strategy (MUSS) 2012

The planning proposal notes broad consistency with the strategic growth of the local government area as outlined in the *Maitland Urban Settlement Strategy 2012*.

Section 3.3.8 - Employment corridors highlights the New England Highway Corridor as characterised by a mix of land uses, “including retail/ commercial development, light industrial and large format retail uses, along with a number of schools, parks and community facilities. However, the predominant land use fronting the NEH is residential.”

Importantly, the settlement strategy states the following regarding the future use of the New England Highway Corridor:

The NEH Corridor will continue to reinforce its primary role as a significant corridor for the movement of freight and people, locally, regionally and nationally and to provide appropriate opportunities for business and residential uses which service the users and utilise this highly accessible corridor.

The planning proposal reinforces the role of the Corridor as it enables a business use on land directly adjoining the New England Highway which will service the users of the road and utilise the highly accessible corridor.

The suitability of the site for the additional permitted use is highlighted by its capacity to provide vehicular access off Louth Park Road, thus not interfering with the ongoing function of the New England Highway.

The planning proposal is to be updated to correct the reference to the LSPS. Otherwise, the planning proposal is consistent with the settlement strategy.

4.3 State Environmental Planning Policies (SEPPs)

SEPP (Koala Habitat Protection) 2021

Maitland Local Government Area is listed in Schedule 1 of the SEPP.

A flora and fauna assessment was carried out in October 2018. The assessment concluded the site is not considered “Potential Koala Habitat” due to the number of koala feed trees found in the study area comprise less than 15% of all native trees on the site. Further, the land is not considered to be “Core Koala Habitat” as no evidence of koalas was found on or near the site.

The planning proposal is consistent with the SEPP.

SEPP (Primary Production and Rural Development) 2019

While the site is zoned RU1 Primary Production, the land is not used for agricultural purposes and given the smaller lot sizes could not be used for agricultural land.

The inconsistency with the SEPP is of minor significance and justified.

SEPP No. 55 – Remediation of Land

This SEPP will apply when a development application is lodged.

A preliminary site investigation report has been prepared in accordance with section 9.1 Ministerial direction 2.6 Remediation of Contaminated Land, which is further discussed in Section 4.4 Ministerial directions.

The planning proposal is consistent with the SEPP.

4.4 Section 9.1 Ministerial directions

1.2 Rural Zones

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone.

The planning proposal seeks to permit additional uses on land within the RU1 Primary Production zone. The site and surrounding area are not used for primary production and is generally characterised by smaller lot sizes that are not conducive to ongoing agricultural activities.

The planning proposal is consistent with the Ministerial direction.

1.5 Rural Lands

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone. The site does not have high agricultural value as the historic use has been low density residential.

The planning proposal is consistent with the direction as it will contribute to the economic viability of the land with no loss of agricultural value.

2.3 Heritage conservation

The site is located in the Central Maitland Heritage Conservation Area under *Maitland Local Environmental Plan 2011*.

A statement of heritage impact submitted with the planning proposal states that the area is “historically significant partly due to the surviving examples of rare and modest early housing, and these dwellings do contribute to that significance”. The significance of the dwellings has been diminished due to dilapidation and disrepair. Furthermore, the established subdivision pattern of the areas also been disrupted by various upgrade works to the New England Highway.

An AHIMS search returned no records within 200m of the site. However, the planning proposal indicates that due to the lightweight nature of the structures there may be potential for Aboriginal objects in the area.

Consistency with the direction will be determined following consultation with the Mindaribba Local Aboriginal Land Council.

2.6 Remediation of Contaminated Land

A preliminary site investigation report has been prepared in accordance with section 9.1 Ministerial direction 2.6 Remediation of Contaminated Land. However, the planning proposal does not reference the Ministerial direction.

The preliminary site investigation concluded that:

- potential contamination sources at the site are identified as imported fill materials and hazardous building materials;
- both zinc and benzo(a)pyrene exceeded the adopted ecological investigation level in fill material on the site; and
- if the standard recommendations of the investigation are implemented, the site is considered suitable for commercial/industrial use.

The investigation recommends the preparation of a detailed site investigation and appropriate handling and disposal of soil material and waste.

Consistency with the direction will be determined following completion of the above investigation.

3.4 Integrating land use and transport

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

A traffic impact statement was prepared with the planning proposal. Sidra modelling of the key intersection of the New England Highway and Louth Park Road shows this intersection has spare capacity to accommodate the development flows. The bulk of the demands shall be associated with left turns off the highway, with the majority of drivers to then depart to the south and utilise the local streets or turn left back onto the highway. This is consistent with the operation of the existing service station development on Louth Park Road opposite the site.

The right turn out of Louth Park Road is constrained in the peak periods, with limited demand subsequently recorded. Given this operation, the development is not expected to generate a high demand for this movement, with drivers able to utilise alternate routes to the south of this intersection as observed during the surveys.

Despite this, consultation will need to be undertaken with Transport for NSW as the site adjoins a classified road.

Given the nature of the different traffic generating uses between a service station and take away and food premises it is reasonable to consider these as separate additional permitted uses. This will enable more detailed consideration of how traffic of the proposed uses will interact with the New England Highway.

4.1 Acid sulphate soils

This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the acid sulfate soils maps. The site is mapped as being within a Class 4 Acid Sulphate Soils zone.

Inconsistency with the Ministerial direction is of minor significance as the *Maitland Local Environmental Plan 2011* includes provisions relating to the management of acid sulfate soils.

4.3 Flood prone land

This direction applies when a relevant planning authority prepares a planning proposal that creates, removes, or alters a zone or a provision that affects flood prone land.

The site is located on flood prone land. A qualitative flood assessment was submitted with the planning proposal addressing the direction which found that:

- the flood risk can be appropriately managed with the preparation of a flood emergency response plan, which the planning proposal indicates as required to be prepared pre-determination; and
- the conversion of the existing land use of the site, from a residential to commercial, is considered an improvement to the existing flood risk on site.

Consideration of the flood emergency response plan should be provided prior to determining consistency with the Ministerial direction.

5.10 Implementation of Regional Plans

The planning proposal achieves the overall intent of the *Hunter Regional Plan 2036* and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.

The planning proposal is consistent with the Ministerial direction.

6.3 Site specific provisions

The planning proposal notes that the existing RU1 Primary Production zone has been applied to restrict residential development on flood prone land as the previous 2(f) Residential Zone under the then *Maitland Local Environmental Plan 2003* had no equivalent zone under the Standard Instrument LEP.

The RU1 Primary Production zone, outside of main road corridors adjoining other commercial development, is not considered an appropriate zone for use of a service station.

The planning proposal notes it will permit development for the purposes of a service station and take away food outlet to be site-specific and not apply across the RU1 Primary Production zone.

The planning proposal highlights it:

- does not seek to rezone the site to a commercial zone where a service station would be permitted as it would allow for other development types, such as childcare centres, which would not be appropriate;
- proposes to allow a land use without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended;
- does not include development concept plans or drawings.

The inconsistency with the Ministerial direction is of minor significance and justified.

5. SITE-SPECIFIC ASSESSMENT

5.1 Environmental

The site contains sparse vegetation typical of low-density residential development, including managed grasses and scattered trees. This vegetation is expected to be removed at later stages of the project.

5.2 Economic

The planning proposal would have a minor positive economic impact as it would lead to the development of the land providing a service to users of the adjacent and associated local construction and ongoing service sector jobs.

5.3 Infrastructure

Council advise the site is located within an established residential area. All essential services including telecommunications, electricity, gas, reticulated water, and sewer services can be readily extended to service future development.

Council provides a regular waste/recycling collection service in the area.

6. CONSULTATION

6.1 Community

Council proposes to exhibit the planning proposal for a minimum of 28 days. This is considered appropriate. Due to the scope of the planning proposal, exhibition should commence by December 2021.

6.2 Agencies

Council anticipates that consultation will occur with the following agencies:

- Heritage NSW;
- Transport for NSW;
- Hunter Water Corporation; and
- Mindaribba Local Aboriginal Land Council.

Consultation with Hunter Water Corporation (HWC) is not considered necessary as the planning proposal does not indicate it will impact on any HWC land or assets nor will the proposal place unexpected load on existing water and wastewater infrastructure.

7. TIME FRAME

The recommended timeframe is 12 months to finalise the plan. As there are no mapping changes and relatively minimal consultation and constraints, this is considered adequate.

8. LOCAL PLAN-MAKING AUTHORITY

Given the minor nature of the planning proposal, Council should be the local plan making authority.

9. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree any inconsistencies with section 9.1 directions 4.1 Acid Sulfate Soils and 6.3 Site Specific Provisions are minor or justified; and
2. note that consistency with section 9.1 directions 2.3 Heritage Conservation, 2.6 Remediation of Contaminated Land, 3.4 Integrating Land Use and Transport and 4.3 Flood Prone Land are unresolved and will require justification.


It is recommended the delegate of the Minister of Planning and Public Spaces determine the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Public exhibition should commence by March 2021.
3. Consultation is required with the following public authorities:
 - Transport for NSW; and
 - Mindaribba Local Aboriginal Land Council.
4. The time frame for completing the local environmental plan is 18 months from the date of the Gateway determination.

5. Given the nature of the planning proposal, Council should be the local plan-making authority.



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16/07/2021

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