



# maitland

city council

## **Planning Proposal**

### **AMENDMENT TO THE MAITLAND LEP 2011**

11 Metford Road, East Maitland  
Lot 1 DP 1274406

Version 1.2  
25 January 2022  
Post Exhibition Version



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## INTRODUCTION

This planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979*. It explains the intended effect of, and justification for a proposed amendment to *Maitland Local Environmental Plan 2011* (MLEP 2011) to add an additional permitted land uses to Lot 1 DP1274406 being 11 Metford Road East Maitland (the subject site). The additional permitted use is for *Animal Boarding or Training Establishment*. The intent of the proposal is to reinstate the land use as a permissible use on the subject land for the purposes of operating an animal boarding establishment.

The subject site is located on the eastern side of Metford Road.

A locality plan is included as **Attachment A** and a plan showing the existing zoning is included as **Attachment B**.

A planning proposal has therefore been drafted which seeks to amend the MLEP 2011 to allow for the additional permitted use for the site.

## PART 1: OBJECTIVES OR INTENDED OUTCOMES

The intended outcome of this planning proposal is to allow for the subject site to be utilised for an animal impound facility.

Since the 1960s the site historically was used as a public administration building for Council rangers (for administrative purposes) and an animal shelter in conjunction with a contracted agreement with the RSPCA. Animals would be held at the subject site prior to being claimed by the owner or relocated to the RSPCA facility in Rutherford. The subject site is now being pursued as a primary animal impound facility for Maitland City Council.

The current zoning of the site restricts the uses due to the public recreation zone having a closed zone under the Maitland Local Environmental Plan (LEP) 2011 (Standard Instrument LEP). Prior to the Standard Instrument, the Maitland LEP 1993 identified the subject site as a 5(a) Special Uses Zone. This zoning allowed '*development as indicated on the map and any development ordinarily incidental or ancillary to*'. A snippet of the map is shown below:



Figure 1: Maitland Local Environmental Plan 1993

Previous to the LEP 1993, the use on the subject site was also permissible under the LEP 1986 which enabled development consent for commons under the 6(c) Open Space (special purposes zone).

When the Standard Instrument was gazetted the subject site and land immediately adjacent to the site was zoned RE1 due to it being considered local open space and used for a public purpose. Given public administration buildings were permissible in this zone, this was considered an acceptable zone to transition to under the implementation of the standard instrument. However, as the future intended outcome for the subject site is to provide an animal impound facility, reliance on the use being ancillary to the existing approval as a Public Administration Facility (DA2021/353) is not considered appropriate. The outcome for the site is to provide for an additional permitted use on the site explicitly for the purposes of *Animal Boarding* to reinstate animal impound operations on the site. As such the planning proposal requests the following be listed under Schedule 1 Additional permitted uses in the Maitland Local Environmental Plan 2011:

***Use of certain land at 11 Metford Road, East Maitland***

- (1) This clause applies to Lot 1 DP 1274406, being 11 Metford Road, East Maitland.*
- (2) Development for the purpose of animal boarding or training establishment is permitted with development consent.*

## **PART 2: EXPLANATION OF PROVISIONS**

The subject site is situated to the east of Metford Road and is currently zoned RE1 Public Recreation. The total site area is 5,743m<sup>2</sup> and contains the existing administration facility (timber cottage), animal holding facilities, small shed, cattle yard, fencing, hardstand and paddocks. This RE1 Public Recreation zone was placed on the area due to the surrounding land to the north, east and west being zoned 6(a) under the LEP 1993.

Under the LEP 1993 the site was zoned 5(a) Special Uses and the comparative zone under the Standard Instrument was SP1 Special Activities. It was determined SP1 zones were for special land uses that are not provided for in other zones (i.e., SP1 Cemeteries). Given the RE1 zone included public administration buildings as permissible with consent it was determined during the transition phase to the LEP 2011 the subject site be zoned RE1 as it would continue to enable a range of community facilities, public utilities and compatible land uses on the site.

The proposed additional land use is considered an effective way to enable the site to continue to function and reinstate previous permissible uses on the site. While there is currently no commercial activity associated with the existing facility, going forward, should the land be predominately used for the boarding of animals the additional land use would mean the site would not be burdened by the existing permissibility restrictions associated with the land use zoning. The proposed additional land use is an effective way in which an appropriate land use can continue to operate and function in this location.

The proposal will not involve any amendments to the LEP maps.

Figure 2 below shows the existing zoning for the site.



Figure 2: Existing zoning RE1 Public Recreation of subject site

## PART 3: JUSTIFICATION FOR PROPOSED REZONING

In accordance with the Department of Planning and Environment's *'Guide to Preparing Planning Proposals'*, this section provides a response to the following issues:

- Section A: Need for the planning proposal;
- Section B: Relationship to strategic planning framework;
- Section C: Environmental, social and economic impact; and
- Section D: State and Commonwealth interests.

### SECTION A – NEED FOR THE PLANNING PROPOSAL

#### 1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the result of any strategic study or report. It has been submitted to reinstate the long held strategic position of the site as Council's animal impound facility. The additional permitted use will not only reflect the current needs of Council but also allow the rehoming of animals should this option be pursued in the future.

The RE1 Public Recreation zone was implemented in this area in the Maitland Local Environmental Plan 2011 as public administration buildings are permissible with consent and the subject site would be able to continue its existing uses on the site. Should Council pursue expanding operations in the future enabling this additional use on the site will assist in facilitating animal care such as animal boarding on the site.

The site is located in excess of 500m of any residential housing or conflicting land use. There is a recent approval in place for the (DA2021/353) to upgrade the existing buildings and works on the

site which will assist in mitigating any visual and acoustic impacts. The additional permitted use is considered a practical use of available land enabling animal management services to the community without creating land use conflict or unreasonable environmental impacts.

**2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The subject site has an existing approval for the alterations and additions to the existing public administration facility and is seeking to future proof the site to enable a future increase in the capacity of the animal housing facility. Animal boarding is a permissible use under the rural zones, however spot rezoning the site is not considered the best way of achieving the intended outcome. The site does not meet the objectives of either rural zone and the rural zones do not allow public administration buildings as a permissible use. As a result, the additional permitted land use option is the most appropriate one for the efficient and economical use of the subject site.

**SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK**

**3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies?)**

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. This vision will be delivered through four goals, as follows:

- a leading regional economy in Australia
- a biodiversity-rich natural environment
- thriving communities
- greater housing choice and jobs.

The most relevant actions from the Hunter Regional Plan include:

- **Action No. 13.3** - Amend planning controls to deliver greater certainty of land use (p.35);

- **Action No. 21.1** - Promote development that respects the landscape attributes and the character of the metropolitan areas, towns and villages (p.54);

- **Action No. 23.5** - Focus commercial and retail development within existing centres and transport hubs and ensure that locations for new centres are integrated with existing or planned residential development; do not undermine existing centres; encompass high quality urban design; and consider transport and access requirements (p.58).

The planning proposal is generally consistent with the actions of the Hunter Regional Plan to focus commercial development within existing locations and provide greater certainty of land use.

#### Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* (GNMP) sets out the strategies and actions that will drive sustainable growth across the five (5) Local Government Areas of Cessnock, Lake Macquarie, Newcastle City, Port Stephens and Maitland, which make up Greater Newcastle. The Plan aims to achieve the vision set out in the HRP – for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

*- Strategy No. 7 – Respond to the changing land use needs of the new economy. The proposal seeks to provide a primary location for animal impound operations in Maitland. This will build capacity for new jobs in the area on a site that already has facilities which can be regenerated and revitalised to meet the future needs of the growing Maitland community.*

The planning proposal is generally consistent with this action of the Greater Newcastle Metropolitan by proposing an additional permitted use in a location which already provides a public administration building for ranger activities. The location is considered suitable in terms of its context, setting and access for subsequent pound activities and animal boarding.

#### **4. Is the planning proposal consistent with Council's Community Strategic Plan or other local strategic plan?**

##### Maitland +10 (Community Strategic Plan)

Maitland City 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 considered consistent with the vision and objectives of the Maitland +10 Community Strategic Plan as it provides our community with facilities to meet the needs of our growing city. for growth within the city to meet the needs of a rapidly growing population by adapting the existing facilities and uses on the site. The proposal will also ensure Council provides a service with the best possible value and outcome for the community.

##### Maitland Urban Settlement Strategy (MUSS) 2012

The Maitland LSPS sets out the broad strategic aims for the strategic growth of the LGA over the next 20 years. The proposal is not inconsistent with these aims.

#### **5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Council has undertaken an assessment of the planning proposal against all relevant State Environmental Planning Policies (SEPPs) and a summary is provided in the table below.

Table 1: Relevant State Environmental Planning Policies.

| RELEVANCE   | CONSISTENCY AND IMPLICATIONS  |
|---|---|
| <b>STATE ENVIRONMENTAL PLANING POLICY NO. 55 – REMEDIATION OF LAND (SEPP 55)</b>  | <b>CONSISTENT</b>   |
| This SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. | The subject site is zoned for public recreation purposes, with no history to suggest or expect land contamination. It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area and the continued use as a public administration facility is not listed as a possible contaminating use, per Table 1 of the Guidelines. |
| <b>STATE ENVIRONMENTAL PLANING POLICY (KOALA HABITAT PROTECTION) 2021</b>   | <b>CONSISTENT</b>   |
| The SEPP requires any development application to be determined by Council must be consistent with an approved koala plan of management that applies to the land.    | Council's ecologist has advised that the subject site does not contain suitable habitat for koalas', and that no koala plan of management applies to the land.  |

## 6. Is the planning proposal consistent with applicable Ministerial Directions for Local Plan making?

Council has undertaken an assessment of the planning proposal against all relevant Section 9.1 Directions and found that it is generally consistent with the following applicable Directions:

Table 2: Relevant Section 9.1 Directions.

| DIRECTION  | CONSISTENCY AND IMPLICATIONS   |
|--|--|
| <b>4. HAZARD and RISK</b>  |  |
| <b>4.1 Acid Sulfate Soils</b>  | <b>Consistent</b>  |
| When this Direction applies:   | This direction applies as the whole of the subject land is mapped as potentially containing 'Class 5 land' on the Acid Sulfate Soils (ASS) Map and is in close proximity to adjacent class 3. When considering the Acid Sulfate Soils Planning Guidelines, the proposed use is unlikely to require works that involve significant amounts of excavation, drainage or groundwater extraction as such the proposal is not anticipated to expose or impact upon ASS. If required, an acid sulfate |
| 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 Planning Maps. |  |
| What a relevant planning authority (Council) must do if this Direction applies:  |  |

| DIRECTION   | CONSISTENCY AND IMPLICATIONS   |
|---|--|
| <p>The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.</p> <p>A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director-General prior to undertaking community consultation in satisfaction of section 57 of the Act.</p> | <p>soils study can be undertaken prior to undertaking public exhibition.</p> |

| 4.3 Flooding  | Inconsistency Justified   |
|---|---|
| <p>When this Direction applies:<br/>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.</p> <p>What a relevant Planning Authority (Council) must do if this Direction applies:</p> <p>A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).</p> <p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a</p> | <p>The subject site is mapped as partially flood prone land, affecting the lot intermittently along the rear. The flood planning level being 5.89m AHD and velocity at 0.01 m/s. The site features a gradual sloping topography from 8.2m AHD at the Metford Road frontage, to 4.8m AHD at the southern and eastern rear corners of the site. As such approximately the rear half of the site is impact by the 1 in 100 year.</p> |

## DIRECTION

Residential, Business, Industrial, Special Use or Special Purpose Zone.

A planning proposal must not contain provisions that apply to the flood planning areas which:

- a) Permit development in floodway areas,
- b) permit development that will result in significant flood impacts to other properties,
- c) permit a significant increase in the development of that land,
- d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or
- e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.

A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

## CONSISTENCY AND IMPLICATIONS



Figure 3: Council's flood data system (WaterRIDE) showing 1 in 100 year flood levels

It is noted the site will not contain habitable space and has flood free egress via Metford Road to the north. Given the low hazard and velocity levels any future development is anticipated to have a negligible impact upon flood characteristics of the subject and surrounding allotments.

Council has undertaken desktop analysis utilising Council's flood data system (WaterRIDE) of the flooding risk and believe the flood risk is minimal. Any risk can be appropriately managed and will not create a significant adverse impact on the existing flood behaviour both on the subject site or on adjacent properties.

| DIRECTION   | CONSISTENCY AND IMPLICATIONS   |
|---|--|
| <p><b>4.4 Planning for Bushfire Protection</b></p> <p>When this Direction applies:</p> <p>This direction applies when a relevant planning authority prepares a planning proposal that will affect or is in proximity to land mapped as bushfire prone land.</p> <p>What a relevant planning authority (Council) must do if this Direction applies:</p> <p>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of Schedule 1, clause 4 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) have regard to Planning for Bushfire Protection 2019,</li> <li>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</li> <li>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</li> </ul> <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> <li>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum: <ul style="list-style-type: none"> <li>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</li> <li>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</li> </ul> </li> <li>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in</li> </ul> | <p><b>Consistent</b></p> <p>The site has vegetated land interfacing three of its boundaries (north, east and south). To the west is an existing golf course on the other side of Metford Road. As such, a portion of the land is identified as bushfire prone land.</p>  <p>Figure 4: Bushfire mapping identifying a small portion at the rear of the site as bushfire prone land.</p> <p>The intent of the proposal is to reinstate the land use as a permissible use on the subject land for the purposes of operating an animal boarding establishment.</p> <p>Council staff have undertaken a desktop review of the bushfire risk in accordance with Planning for Bushfire Project 2019. The site is afforded adequate access and egress for emergency service personnel and occupants along Metford Road, and has sufficient defendable space and separation distance between the vegetated areas and the building currently occupying the site.</p> <p>It is noted future development on the site would be classified as non-residential development and the buildings likely to be Class 5-8. Any future development will be subject to a development application and would need to consider AS3959 and the NASH Standard as well as the following objectives:</p> |

| DIRECTION   | CONSISTENCY AND IMPLICATIONS   |
|---|--|
| <p>consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p> | <p>-to provide safe access to/from the public road system for firefighters providing property protection during a bush fire and for occupant egress for evacuation;</p> <p>-to provide suitable emergency and evacuation (and relocation) arrangements for occupants of the development;</p> <p>-to provide adequate services of water for the protection of buildings during and after the passage of bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building; and</p> <p>- provide for the storage of hazardous materials away from the hazard wherever possible.</p> <p>The bushfire protection measures for the commercial development (animal boarding) will depend on the scale of the development and will be subject to a future development application.</p> |

## 5. REGIONAL PLANNING

### 5.10 Implementation of Regional Plans

#### Consistent

When this Direction applies:

This direction applies as the Hunter Regional Plan 2036 applies to the Maitland LGA.

This direction applies when a relevant planning authority prepares a planning proposal.

The proposal is considered to be consistent with the goals, directions and actions of the Hunter Regional Plan 2036.

What a relevant planning authority (Council) must do if this Direction applies:

Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

## 6. LOCAL PLAN MAKING

### 6.3 Site Specific Provisions

#### Consistent

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

The Planning Proposal allows for the proposed development, being animal boarding, to be carried out on the subject site. This does not alter the permissible development types in the zone as it is site specific, and the proposed land use is generally not a desired outcome in the zone. The Planning Proposal does not seek to

What a relevant planning authority must do if this direction applies.

| DIRECTION   | CONSISTENCY AND IMPLICATIONS  |
|---|---|
| <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p>   | <p>rezone the site to a rural zone where animal boarding would be permitted as the site and its existing operations would be inconsistent with the zone objectives.</p>   |
| <p>(a) allow that land use to be carried out in the zone the land is situated on, or</p>  | <p>The Planning Proposal 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.</p> |
| <p>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</p> | <p>No detailed drawings are contained within the planning proposal.</p>   |
| <p>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p>                               | <p>The Planning Proposal is consistent with c) above and is therefore consistent with this direction.</p>   |
| <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>   |   |

## SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

### **7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The site is cleared and does not contain any significant areas of vegetation.

### **8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

#### Flooding

The subject site is mapped as partially flood prone land, affecting the lot intermittently along the rear. The flood planning level being 5.89m AHD and velocity at 0.01 m/s. The site features a gradual sloping topography from 8.2m AHD at the Metford Road frontage, to 4.8m AHD at the southern and eastern rear corners of the site.

It is noted the site will not contain habitable space and has flood free egress via Metford Road to the north. Given the low hazard and velocity levels any future development is anticipated to have a negligible impact upon flood characteristics of the subject and surrounding allotments.

#### Archaeology and Heritage

A search of the Aboriginal Heritage Information Management System (AHIMS) did not reveal any aboriginal sites or places on the subject site.

### **9. How has the planning proposal adequately addressed any social and economic effects?**

The planning proposal is unlikely to have any significant adverse social or economic impacts. The proposed additional permitted use will maximise the development potential of the land and will provide local employment opportunities, both during construction and operation.

## **SECTION D – STATE AND COMMONWEALTH INTERESTS**

### **10. Is there adequate public infrastructure for the planning proposal?**

#### Access, Transport and Traffic

The subject land has frontage to Metford Road, the site already has parking availability and ingress/egress already provided from Metford Road. Upgrades to this driveway can be undertaken and determined in a future development application.

#### Infrastructure Services

The subject site is serviced by reticulated water, electricity as a public administration building already exists and is utilised on the site. Any upgrades to utility provision is not expected to create any adverse impacts.

#### Other Public Infrastructure

Council provides a regular waste/recycling collection service in the area and to the site this will continue. Public transportation is available to the site via a short walk (15mins) to the nearest bus stop in Tenambit.

## **PART 4: MAPPING**

The proposal will not involve amendments to the LEP maps.

## **PART 5: COMMUNITY CONSULTATION**

The Gatewayed Determination dated 27 October 2021 specified that the Planning Proposal must be publicly exhibited for a minimum of 28 days. Community consultation has undertaken in accordance with the requirements of the Gateway Determination and Schedule 1 Community participation requirements of the *Environmental Planning and Assessment Act 1979*.

The Planning Proposal was on public exhibition from 9 December 2011 to 27 January 2022 to accommodate the exclusion period between 20 December and 10 January within Schedule 1 of the *Environmental Planning and Assessment Act 1979*. The Planning Proposal and the supporting documents were available for inspection at Council's Administration Centre, on Council's website, and on the NSW Planning Portal.

Council received no submissions during the exhibition period.

## PART 6: TIMEFRAMES

| PROJECT TIMELINE  | DATE           |
|---|----------------|
| Gateway Determination   | October 2021   |
| Timeframe for government agency consultation                            | Dec - Jan 2021 |
| Commencement and completion dates for public exhibition period          | Dec - Jan 2022 |
| Timeframe for consideration of submissions                              | January 2022   |
| Anticipated date RPA will forward the plan to the department to be made | February 2022  |
| Anticipated date for publication  | April 2022     |