

Maitland LEP 2011 Amendment - Fireworks Storage Millers Forest

Proposal Title : **Maitland LEP 2011 Amendment - Fireworks Storage Millers Forest**

Proposal Summary : **To make a hazardous storage establishment an additional permitted use on land at Miller's Forest, where the use would otherwise be prohibited within the RU1 Primary Production zone.**

PP Number : **PP_2012_MAITL_004_00** Dop File No : **12/10467**

Proposal Details

Date Planning Proposal Received : **25-Jun-2012** LGA covered : **Maitland**

Region : **Hunter** RPA : **Maitland City Council**

State Electorate : **MAITLAND** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **Alnwick Road**

Suburb : **Millers Forest** City : **Maitland** Postcode : **2324**

Land Parcel : **Lot 20 and 21 DP 836869**

DoP Planning Officer Contact Details

Contact Name : **Katrine O'Flaherty**

Contact Number : **0249042707**

Contact Email : **katrine.o'flaherty@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Josh Ford**

Contact Number : **0249349729**

Contact Email : **joshf@maitland.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Lower Hunter Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	40.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

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 : **The proposal will strengthen an existing business which currently employs up to three employees.**

Adequacy Assessment**Statement of the objectives - s55(2)(a)**

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

Comment : **The objectives adequately explain that the intent of the planning proposal is to permit an additional use, hazardous storage establishment (fireworks storage), on land zoned RU1 Primary Production where the use would otherwise be prohibited. It is noted that this use is currently prohibited across the whole of the Maitland LGA.**

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

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

Comment : **The explanation of provisions indicates that the planning proposal is to be delivered through an amendment to Schedule 1 of the Maitland LEP 2011. This amendment will identify both the use and the land upon which it would be considered permissible with consent.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

**1.2 Rural Zones
1.5 Rural Lands
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions**

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

SEPP No 33—Hazardous and Offensive Development

SEPP No 55—Remediation of Land

SEPP No 64—Advertising and Signage

SEPP (Rural Lands) 2008

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

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

A locational map is provided for context however no mapping is required to facilitate the LEP amendment.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The proposal is considered a low impact proposal and Council have recommended a 14 day exhibition period. Although the proposal will facilitate the use of the land for a hazardous storage establishment, this requires consent and any development application will be subject to the normal public exhibition process. It is considered that 14 days exhibition of the planning proposal is adequate.

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 LEP 2011 was gazetted on 16 December 2011.

Assessment Criteria

Need for planning proposal :

1. A facility for the storage of fireworks currently exists on the site and is looking to expand operations. The use is considered equivalent to the standard instrument definition 'hazardous storage establishment' defined in the Maitland LEP 2011, and this use is not permitted anywhere within the LGA. This planning proposal is a direct outcome of Council and the proponent recognising the need to both formalise the existing development and enable a development application to be lodged for the expansion.

2. The proposed amendment is considered the most effective and timely method available to achieve the objectives and intended outcomes of the proposal. It is considered that the proposal is of benefit to the local community and economy and therefore that it is desirable to resolve the proposal as quickly as possible to allow a development application to be considered.

A range of alternative options to facilitate the development have been considered in preparing this planning proposal.

- Use of an existing zone which permits hazardous storage establishment.

This use is not currently permitted within any zone in the Maitland LEP 2011 and therefore the application of an existing zone, which permits this use, is not an option. Council considered the permissibility of heavy industry uses in the recent preparation of their standard instrument LEP. Council decided that, given the range of uses on existing industrial land within the LGA, the lack of large undeveloped industrial sites and the availability of heavy industry sites in adjoining LGA's, heavy industry uses, including hazardous storage establishments, were not appropriate for the LGA.

- Inclusion of hazardous storage establishment as permitted with consent within an existing zone.

Hazardous storage establishment means a building or place that is used for the storage of goods, materials or products and that would, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including for example measures to isolate the building or place from existing or likely future development on other land in the locality), pose a significant risk in the locality to a) to human health, life or property, or b) to the biophysical environment.

The use could potentially be included within an existing rural or industrial zone. Maitland LEP 2011 includes two rural zones, RU1 Primary Production, which is the sites current zone and generally correlates with the floodplain and is therefore flood affected land, and RU2 Rural Landscape. Together these rural zones cover more than 45% of the LGA. The entire group term 'Industry', which includes general, heavy and light industry, is prohibited within these zones. Preparation of the Maitland LEP 2011 identified that industry uses were not appropriate in the rural zones due to the lack of adequate infrastructure, sensitivity of the environment and existence of other non-compatible uses. Inclusion of hazardous storage establishment within either of these zones would open a large portion of the LGA to these uses and would represent a significant policy shift for Council who had previously determined that such uses were not appropriate in the LGA at all. The use is potentially incompatible with the flood prone nature of the RU1 zone and with the uses permitted without consent in both zones, including home-based child care and intensive plant agriculture. The use is also incompatible with other uses permitted with consent and potentially attracting large numbers of people, including tourist related uses, recreation facilities, information or education facilities and places of public worship.

Maitland LEP 2011 includes only the IN1 General Industrial zone which prohibits this and other heavy industry uses. The use is inconsistent with the current range of existing uses, the nature of the IN1 zone, which provides for business and employment opportunities and is incompatible with other permitted uses which include liquid fuel depots and educational establishments. The distribution of the IN1 zone within the LGA is such that it is in close proximity to other business zones where a broader range of uses are permitted. It is highly unlikely that a suitable site for a hazardous storage establishment could be found on this land and it is therefore considered inappropriate to suggest that this use would be permissible.

Inclusion of this use, particularly given the risks that are associated with it, within any existing zone within the LGA would represent a shift in the policy of Council and would

apply to a large portion of the LGA or on land where in reality such a use could never be approved. It is considered that requiring this use to be included in an existing zone would result in significant delays to the progression of the proposal, require considerable additional investigation and would generate significant concern amongst the community. Given the value of progressing with the proposal quickly, to allow the lodgement of a development application, the additional time that this approach would involve is considered undesirable.

- Introduction of a new zone, with the use permissible and application of the zone to the site.

There is the potential to introduce a whole new zone into the Maitland LGA where this use could be permissible with consent and apply this new zone solely to the 40 hectare parcel.

It is considered likely that standard zone IN3 Heavy industrial would be considered the most appropriate zone and in fact hazardous storage establishments are mandated to be permitted with consent in this zone. Other uses that are also mandated as permitted with consent include Depots; Freight transport facilities; General industries; Hazardous storage establishments; Heavy industries; Offensive storage establishments; Warehouse or distribution centres

However given the relative isolation of this site it is considered inappropriate to apply an industrial zone, broadening the range of uses that may be undertaken, due to the lack of infrastructure and likely traffic movements that these uses would generate. Although a development application for the expansion of the facility is required, it has been operating within the constraints of the existing infrastructure for some time. The ability of these other uses to operate within these same constraints is unclear and presents the false impression regarding the development capability of the site.

Furthermore introduction of this zone would be inconsistent with council's policy which, recently stated through gazettal of the new standard instrument LEP, indicates that these uses are not appropriate for the LGA. The introduction of this zone is also likely to generate the need for additional investigation, an expectation that the zone may apply to other sites and additional community concern regarding the potential uses. It is considered that the additional time involved in taking this approach is undesirable.

3. Although no formal net community benefit test has been undertaken, it is considered that there is community benefit in providing the opportunity to formalise the existing use and enable consideration of an expansion. A development application is required to be considered and approved before an expanded storage facility can be licensed. If approved, the expanded facility will result in a reduction in truck movements transporting fireworks to the site because of the increased storage capacity and greater security of the economic benefits that the existing facility and its employment opportunities provides.

Consistency with strategic planning framework :

State Framework

The proposal has been reviewed for consistency with relevant SEPP's, the following specific comments are made;

SEPP Rural Lands 2008: Council has indicated that the proposal is consistent with SEPP Rural Lands because it is a small, fragmented site with little potential for extensive agricultural production due to the extent of vegetation on the site. The use of the site for the storage of fireworks does not impact upon the surrounding rural land and does not result in the permanent loss of the land's agricultural potential. It is considered that the proposal is consistent with this SEPP.

SEPP 33 Hazardous and Offensive Development: The proposal, for a hazardous storage establishment is consistent with this SEPP. Council indicates that any subsequent development application may be required to comply with the SEPP, this is only the case for any development that constitutes a potentially hazardous or offensive industry.

SEPP 55 Remediation of Land: Council indicates that the site is suitable for the storage of fireworks above the surface of the land.

The proposal has been reviewed for consistency with relevant s117 directions, in particular it is noted that the proposal, proceeding as an additional permitted use and not as a rezoning, avoids a number of potential inconsistencies. In particular the following specific comments are made;

- **Direction 1.2 Rural Zones:** This direction does not apply because the proposal, in its current form, is not seeking to rezone the land.
- **Direction 1.5 Rural Lands.** The proposal is considered consistent with this direction because it is consistent with the Rural Planning Principles by seeking to maintain an economic activity within a rural area that is compatible with the surrounding rural environment.
- **Direction 4.1 Acid Sulfate Soils:** The proposal is inconsistent with clause 6 of this direction because the site has been identified as containing Class 5 acid sulfate soils and proposes to intensify land uses, however no study assessing the appropriateness of the change has been provided. The Director-General's delegate may consider that this inconsistency is justified (under clause 8b) as of minor significance, because the land is identified as Class 5 only and the provisions of the Maitland LEP 2011 provide for the management of this issue at the development stage.
- **Direction 4.3 Flood Prone Land:** The subject site contains land identified by Council as flood prone. The proposal is inconsistent with clause 6c of the direction because it will permit increased development of the land. However it is noted that the use is existing and has been operating without impacting upon or being impacted by flooding in the area and it therefore appears that the specific use of fireworks storage may not be incompatible with the flood prone environment. The Director-General's delegate may consider that this inconsistency is justified (under clause 9b) as of minor significance because the additional development is strictly limited. The issue of flooding can be addressed through the development assessment process.
- **Direction 4.1 Bushfire Protection.** It is noted that the proposal is consistent with this direction because the subject site is not identified as bushfire prone land. However Council have indicated that, due to the explosive nature of the proposed use, consultation with the NSW Rural Fire Service regarding the proposal is desirable.
- **Direction 5.1 Regional Strategies:** The proposal is considered consistent with the LHRS and this direction because it seeks to maintain employment opportunities. Because the proposal is not seeking to rezone the land, and there is merit in this particular use being isolated from other land uses, it is considered that its location is also consistent with the LHRS objective to minimise land use conflict and appropriately locate employment land.

- **Direction 6.1 Approval and Referral:** Council have indicated that this s117 direction will apply because, due to the hazardous nature of the use, it is required to refer to Workcover the proposal and/or subsequent development application. It is considered that referral during exhibition of the proposal may occur for consultation purposes and referral of any subsequent development application to Workcover is for the purposes of other legislation e.g. Explosives Act 2003. As such there does not need to be a specific referral to Workcover as part of the planning proposal or LEP amendment and this direction does not apply.
- **Direction 6.3 Site Specific Provisions:** This direction applies because the planning proposal allows a particular type of development to be carried out on the site (clause 3). However the proposal is consistent with this direction because, consistent with clause 4c, it allows that use without imposing any development standards or requirements other than those which are already within Maitland LEP 2011.

Regional Framework

The proposal is for a site specific use and involves matters at a greater level of detail than considered through the Lower Hunter Regional Strategy (LHRS). Council have indicated that the proposal can be considered consistent with the LHRS Sustainability Criteria because it seeks to minimise the risk of conflicting land uses by locating the development within the rural area. It is considered that the proposal can be viewed as consistent with the LHRS, because it seeks to maintain employment opportunities within the region and does not permanently change the rural character of the site.

Local Framework

The proposal does not conflict with any proposals for land release contained within the endorsed Maitland Urban Settlement Strategy 2008. Council have indicated that, although not specifically identified, the proposal is considered sufficiently consistent with the intent of Council's Community Strategic Plan and, because it will not result in any significant loss of agricultural productivity, consistent with the Maitland Rural Strategy 2005.

Environmental social
economic impacts :

The site is largely cleared, with remaining vegetation operating as a visual buffer for the existing development. The concept proposal indicates that the additional storage may be accommodated within the current site and it is not expected to have significant impact upon the remaining vegetation.

Matters of flooding, acid sulphate soils, contamination and bushfire risk have been considered in the planning proposal and will be further considered as part of any future development assessment.

The potential social and economic impacts of the proposal are considered positive. In particular it is considered that there is community benefit in providing the opportunity to formalise the existing use and enable consideration of an expansion. If approved, the expanded facility will result in a reduction in truck movements transporting fireworks to the site because of the increased storage capacity and greater security of the economic benefits that the existing facility and its employment opportunities provides.

Assessment Process

Proposal type :	Minor	Community Consultation Period :	14 Days
Timeframe to make LEP :	12 Month	Delegation :	DG
Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service Other		

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

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

If no, provide reasons : **The matter should proceed with consultation with Workcover as part of the exhibition of the Planning Proposal.**

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
09.05.12_PP_Fireworks Storage_Millers Forest.doc	Proposal	Yes

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**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Additional Information : **It is recommended that:**
The Director General as delegate of the Minister for Planning and Infrastructure determine, under section 56(2) of the EP&A Act, that an amendment to the Maitland Local Environmental Plan 2011 be undertaken to amend Schedule 1 to provide for a hazardous storage establishment (fireworks storage) as an additional permitted use on Lot 20 and 21 DP 836869, subject to the following conditions;

- 1. 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 14 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 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).**
- 2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:**
 - NSW Rural Fire Service**
 - Workcover****Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each 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.

3. 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).

4. That the Executive Director, as delegate of the Director General determine that the proposal's inconsistency with s117 directions 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified as of minor significance, under clause 8b and 9b respectively, for the reasons contained within this report.

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

Supporting Reasons :

The proposed amendment to Schedule 1 is considered the most effective and timely method available to achieve the objectives and intended outcomes of the proposal. A range of alternative options to facilitate the development have been considered in preparing this planning proposal. These options would represent a change in council policy, would require additional investigation, would potentially permit a range of other uses that are unlikely to be achievable upon the site and would result in lengthy delays to the proposal, jeopardising the progression of the development assessment process and the ongoing operation of the business.

Signature:



Printed Name:

Maurice Gibson

Date:

28 June 2012