

PLANNING PROPOSAL

Amendment to the Maitland LEP 2011

**Amendment to Schedule 1 of the Maitland
LEP 2011- Additional Permitted Use
(Fireworks Storage)**

**Version 1.0
29 May 2012**



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Version

Version 1.0 – 29 May 2012 for Section 55 report to Council

INTRODUCTION

In accordance with Section 55 of the Environmental Planning and Assessment Act 1979, this planning proposal has been prepared to amend Schedule 1 of the Maitland Local Environmental Plan 2011 (MLEP 2011) to seek an additional permitted use for the purposes of fireworks storage at Lot 20 & 21 DP836869, Alnwick Street, Millers Forest.

The planning proposal has been prepared as Kaboom Fireworks operates from the subject site, which is currently zoned RU1 Primary Production under the MLEP 2011. In order for Kaboom Fireworks to increase their maximum storage quantities on their Workcover licence, Workcover first requires Kaboom Fireworks to obtain development approval from Maitland City Council. Workcover currently regulates the storage of fireworks under the Explosive Act 2003 and Explosives Regulation 2005, in conjunction with the Occupational Health & Safety Regulation 2001. Fireworks storage is best defined as a *hazardous storage establishment* under the MLEP 2011. *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:

- (a) to human health, life or property, or
- (b) to the biophysical environment.

The RU1 Primary Production zone does not permit the proposed use and therefore the planning proposal seeks an additional permitted use at the site. The justification for the additional permitted use includes:

- Council does not view the introduction of a new industrial zone as a logical nor sensible means of dealing with a niche land use, particularly since a new industrial zone could introduce certain mandated heavy industrial land uses that Council did not support during preparation of the MLEP 2011;
- The site is located in a rural area which, given the nature of the proposal, is likely to provide more appropriate buffers in the event of an emergency than if the use was located in an industrial area where adjoining land uses could also be put at increased risk and could result in greater human risk;
- The storage of fireworks is a niche land use and Council is not aware of any other proposal such as this one. Council does not want to encourage a proliferation of hazardous storage establishments throughout the Maitland LGA, therefore an additional permitted use would confine this type of use to the subject site;
- The current regulation of the site by Workcover reflects the specialised nature of the use and demonstrates that the location of the site (outside an industrial area) is not an impediment to the use of the land for the intended niche purpose.

PART 1: OBJECTIVES or INTENDED OUTCOMES

The objectives of this planning proposal are to permit an additional permitted use in order to accommodate a fireworks storage enterprise at the subject site. The proposal includes above ground storage of fireworks and does not involve any manufacturing onsite.

The intended outcome of the planning proposal is to amend Schedule 1 of the MLEP 2011 for an additional

permitted use (fireworks storage) at Lots 20 & 21 DP 836869 Alnwick Street, Millers Forest. A location map is provided as **Appendix 1**.

PART 2: EXPLANATION of PROVISIONS

It is proposed to amend the Maitland Local Environmental Plan 2011 through an alteration to Schedule 1 – Additional Permitted Uses.

The Maitland Local Environmental Plan 2011 is proposed to be amended by inserting the following wording under Schedule 1:

8 Use of certain land at 37 and 45 Alnwick Street, Millers Forest

- (1) *This clause applies to Lots 20 & 21, DP 836869, being 37 and 45 Alnwick Street, Millers Forest.*
(2) *Development for the purpose of a hazardous storage establishment (fireworks storage) is permitted with consent.*

PART 3: JUSTIFICATION for PROPOSED LEP AMENDMENTS

In accordance with the Department of Planning'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
- 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?

This planning proposal is a result of a request by the applicant to amend Schedule 1 of the MLEP 2011 to permit a hazardous storage establishment (fireworks) at the site. Currently the site is utilised by Kaboom Fireworks and Workcover requires Council approval before an increase in maximum quantities of storage can be approved under the licence held by Kaboom Fireworks. Council agrees that the best way to achieve this outcome is by an amendment to Schedule 1 of the MLEP 2011.

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

It is considered that an amendment to Schedule 1 of the MLEP 2011 is the best way to achieve the intended outcomes of the planning proposal. Council is of the opinion that introducing a new industrial zone to accommodate the proposed niche land use is unnecessary and could result in land use planning issues for

the wider Maitland LGA, including the potential introduction of a range of mandated permissible uses that could see a proliferation in undesirable types of heavy industry throughout the Maitland LGA. Council was made aware of the potential for undesirable heavy industrial type land uses that could be established within the Maitland LGA at the time of preparing the MLEP 2011, and subsequently resolved to include only two industrial zones in the MLEP 2011 for this very reason. In any case, preparing a spot rezoning for the purpose of accommodating an industrial zone on the subject land would not be appropriate for a rural area. Amending Schedule 1 of the MLEP 2011 will prevent the introduction of a new industrial zone, whilst allowing an existing use to be expanded, subject to gazettal of the proposed LEP amendment and future DA approval.

3. Is there a net community benefit?

The community has grown to expect pyrotechnic displays on certain festive/celebratory occasions. Storage of fireworks is required in order to cater for such pyrotechnic displays. The ability to store fireworks locally in order to cater for local demand at festive times is deemed to be a benefit to the local community, ensuring that supplies are available locally for festive displays and other local events where pyrotechnic displays are required.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional strategy?

Lower Hunter Regional Strategy 2006

The LHRS 2006 maintains a strategic regional focus on large land release areas, centres and employment land. The planning proposal is for a site specific use that requires an amendment to Schedule 1 of the MLEP 2011. Nonetheless, the proposal is considered to be consistent with Appendix 1 of the Sustainability Criteria listed under the LHRS 2006. That is, while the criteria essentially exist for LEP amendments involving land release, centres and employment land, the notion of avoidance of risk is critical to this proposed amendment. Element 5 – *Avoidance of risk* states under the *measurable explanation of criteria* that “*Avoidance of land use conflicts with adjacent existing or future land use as planned under relevant subregional strategy.*” (LHRS 2006, p. 45). The proposal has been prepared with risk avoidance at the core of the decision to proceed with the LEP amendment as an amendment to Schedule 1 for an additional permitted use. The location of the site in a rural area allows the site to achieve the appropriate buffers required to ensure that, in the event of an explosion, risk to life and property can be minimised, as opposed to allowing the proposed fireworks storage establishment to operate in an industrial zone where risk to life and property is increased significantly.

5. Is the planning proposal consistent with the local council’s Community Strategic Plan, or other local strategic plan?

The Community Strategic Plan, Maitland 2021, was adopted by Council on 22 February 2011. The Delivery Plan 2011-2015, detailed Council’s strategies and actions to assist in meeting outcomes outlined in Maitland 2012. This document establishes clear links to the ten year community strategic plan, Maitland 2021. Council has developed an associated Resourcing Strategy covering the assets, people, financial requirements and time required to deliver strategies. This planning proposal is most relevant to objective 7.2.1 of the Delivery Plan 2011-2015, “*To ensure land and housing choice is consistent with forecast demographic demand*”.

Maitland Rural Strategy 2005

The subject land is a small lot which does not support any extensive primary production or agricultural activities at present. The land retains stands of vegetation and due to the connectivity of linear vegetation stands between cleared areas within the site, the potential for any type of any extensive agricultural production is highly limited. There will be no significant loss of agricultural productivity as a result of the proposed additional permitted use for fireworks storage. The proposal only involves storage (no manufacturing) at the site, which will not result in any detrimental impacts on adjoining rural land or introduce land use conflicts in the locality, therefore the proposal is not inconsistent with the Maitland Rural Strategy 2005.

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are no existing or draft SEPPs that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant SEPPs against the planning proposal is provided in the table below.

SEPP	Relevance	Consistency and Implications
SEPP No. 64 - Advertising and Signage	Aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.	Any future DA for the fireworks storage establishment will need to demonstrate compliance with the standards of this SEPP.
SEPP No. 55 – Remediation of Land	Provides state-wide planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.	The site is currently zoned RU1 Primary Production under the Maitland LEP 2011. The proposal aims to permit an additional use at the site, with the intended future use involving the storage of fireworks above the surface of the subject land. The proposal is not inconsistent with SEPP 55.
SEPP (Rural Lands) 2008	This SEPP outlines aims and objectives for rural land use planning, with a focus on limiting fragmentation of rural land and protecting rural land for broad scale agricultural uses.	This SEPP is relevant since the site is currently zoned RU1 Primary Production under the Maitland LEP 2011. Given the small, fragmented nature of the site, nothing in this plan is inconsistent with the objectives of this SEPP.
SEPP 33 – Hazardous and Offensive Development	This SEPP outlines aims and objectives associated with planning for hazardous and offensive development, with a focus on ensuring mitigation measures are considered in planning for such proposals.	This SEPP applies since the proposed LEP amendment involves planning for a hazardous storage establishment (for the purpose of fireworks storage), which will require a future DA.

Table One: *Relevant State Environmental Planning Policies*

7. Is the planning proposal consistent with applicable Ministerial Directions for Local Plan Making?

An assessment of consistency with relevant Ministerial Direction for Local Plan making (s.117) against the planning proposal is provided in the table below.

Ministerial Direction	Aim of the Direction	Consistency and Implications
EMPLOYMENT and RESOURCES		
1.1 Business and Industrial Zones	Planning proposal not affected by this Direction.	
1.2 Rural Zones	To protect the agricultural production value of rural land.	The subject site is small and fragmented. It currently serves no purpose for extensive agricultural production and does not meet the objectives of the RU1 Primary Production zone as outlined under the MLEP 2011. The proposal is not inconsistent with this direction, since the zone will not be changed. Furthermore, the proposal will allow a more productive use of the site.
1.3 Mining, Petroleum Production and Extractive Industries	Planning proposal not affected by this Direction.	
1.5 Rural Lands	To protect the agricultural production value of rural land, and to facilitate the orderly and economic development of rural lands for rural and related purposes.	The subject site is small and fragmented. It currently serves no purpose for extensive agricultural production and does not meet the objectives of the RU1 Primary Production zone as outlined under the MLEP 2011. The proposal is not inconsistent with this direction, since the zone will not be changed. Furthermore, the proposal will allow a more productive use of the site.
ENVIRONMENT and HERITAGE		
2.1 Environment Protection Zones	Planning proposal not affected by this Direction.	
2.3 Heritage Protection	Planning proposal not affected by this Direction.	
2.4 Recreation Vehicle Areas	Planning proposal not affected by this Direction.	
HOUSING, INFRASTRUCTURE and URBAN DEVELOPMENT		
3.1 Residential Zones	Planning proposal not affected by this Direction.	
3.2 Caravan Parks and Manufactured Home Estates	Planning proposal not affected by this Direction.	

Ministerial Direction	Aim of the Direction	Consistency and Implications
3.3 Home Occupations	Planning proposal not affected by this Direction.	
3.4 Integrating Land Use and Transport	Planning proposal not affected by this Direction.	
HAZARD and RISK		
4.1 Acid Sulphate Soils	Direction aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	The Maitland LEP 2011 identifies the site as potentially being affected by Class 5 ASS. The site is currently zoned RU1 Primary Production under the Maitland LEP 2011. The proposal involves above ground fireworks storage, subject to a future DA. Further investigation of this issue could be undertaken at the DA stage if deemed necessary.
4.2 Mine Subsidence and Unstable Land	Planning proposal not affected by the Direction.	
4.3 Flood Prone Land	Directions aims to reduce the risk of flood and to ensure that the development of flood prone land is consistent with NSW Flood Prone land policy.	The subject site is completely inundated during the 1:100 year flood event. Any DA for the future intended use of the site for fireworks storage will need to consider appropriate fireworks magazine storage, bunding and other safety/security measures to ensure that any fireworks to be stored at the site can be appropriately secured and flood proofed in the event of a flood. The proposal is consistent with this direction as the matter is of minor significance in this instance and appropriate containment measures can be confirmed at the DA stage.
4.4 Planning for Bushfire Protection	Planning proposal not affected by this Direction.	
REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	Direction requires a planning proposal to be consistent with the relevant State strategies that apply to the LGA.	The planning proposal is considered consistent with the principles in the Lower Hunter Regional Strategy, particularly those principles associated with avoidance of risk and the minimisation of land use conflicts (LHRS p. 45).
LOCAL PLAN MAKING		
6.1 Approval and Referral	Direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development	The planning proposal does not affect the objectives of this Direction and will be consistent with this requirement. Given the nature of the proposal, referral to Workcover (as the licencing/ regulating agency for fireworks storage) will be necessary in this case.

Ministerial Direction	Aim of the Direction	Consistency and Implications
6.2 Reserving Land for Public Purpose	Planning proposal not affected by this Direction.	
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	This direction applies to the proposal, given that the purpose of the LEP amendment is to amend Schedule 1 of the MLEP 2011 to enable the site to be utilised for the storage of fireworks. The proposal relates to an additional permitted use, being a <i>hazardous storage establishment</i>, as defined under the MLEP 2011. A <i>hazardous storage establishment</i> is not permitted in the RU1 Primary Production zone, however the proposal is considered to have merit since: ▪ Council does not view the introduction of a new industrial zone as a logical nor sensible means of dealing with a niche land use, particularly since a new industrial zone could introduce certain mandated heavy industrial land uses that Council did not support during preparation of the MLEP 2011; ▪ The site is located in a rural area which, given the nature of the proposal, is likely to provide more appropriate buffers in the event of an emergency than if the use was located in an industrial area where adjoining properties could also be put at greater risk and could result in greater risks to life; ▪ The storage of fireworks is a niche land use and Council is not aware of any other proposal such as this one. Council does not want to encourage a proliferation of hazardous storage establishments throughout the Maitland LGA, therefore an additional permitted use would confine this type of use to the subject site; ▪ The current regulation of the site by Workcover reflects the specialised nature of the use and demonstrates that the location of the site (outside an industrial area) is not an impediment to the use of the land for the intended niche purpose. While the proposal contains an indicative concept layout, detailed development plans will

Ministerial Direction	Aim of the Direction	Consistency and Implications
		be provided as part of a DA for the intended use in the future.
METROPOLITAN PLANNING		

Table Two: Relevant s.117 Ministerial Directions

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

8. 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 proposal relates to amending the MLEP 2011 to enable a specific land use at the subject site. The proposal involves use of the site for the storage of fireworks. While the site does contain some Endangered Ecological Communities, these are contained in relatively linear stands of vegetation. Storage areas will need to be located in a way that considers the vegetation within the site when planning for appropriate locations to store fireworks. A future DA will contain greater detail about the proposed land use and would need to address any matters relating to biodiversity issues generally.

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

The proposal involves amending the MLEP 2011 to enable an additional permitted use at the site, for the purposes of storing fireworks. A concept plan is included with the proposal (see **Appendix 2**) which details the likely areas for the storage of fireworks within the site. The concept plans illustrate that the necessary buffers/separation distances can be accommodated within the subject site. Any future detailed DA plans will need to identify precise separation distances required for storage buffers, including between individual fireworks storage areas and between each individual fireworks storage area and the subject property boundaries, to clarify that the separation distances shown on the concept plan can indeed be wholly accommodated within the site. Furthermore, any future DA will need to address matters including (but not limited to) flooding and the security/flood proofing of fireworks within the site during flood events, visual impact of storage areas, operational movements relating to transportation of fireworks, and general security measures that are proposed to be employed at the site to ensure fireworks are secured from the general public. It should be noted that Workcover are the regulatory/licensing authority in relation to fireworks generally and Workcover will need to be consulted at both the Gateway and DA assessment stages.

10. How has the planning proposal adequately addressed any social and economic effects?

There are no significant social or economic effects as a result of this planning proposal. The proposal involves amending Schedule 1 of the MLEP 2011 for the purposes of an additional permitted use at the site. The community has grown to expect pyrotechnic displays on certain festive/celebratory occasions. Storage of fireworks is required in order to cater for such pyrotechnic displays. The ability to store fireworks locally in order to cater for local demand at festive times is deemed to be a benefit to the local community, ensuring that supplies are available locally for festive displays and other local events where pyrotechnic displays are required.

Section D – STATE and COMMONWEALTH INTERESTS

11. Is there adequate public infrastructure for the planning proposal?

There is no additional demand generated for public infrastructure as a result of this planning proposal.

12. What are the view of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Workcover

The proposal involves amending the MLEP 2011 to enable the storage of fireworks at the subject site. Workcover currently regulate the storage of fireworks via the Explosives Act 2003 and Explosives Regulation 2005. The Occupational Health & Safety Regulation 2001 also applies to fireworks storage. **Appendix 3** provides further information from Workcover's website regarding fireworks storage and transportation. It will be essential that Workcover are consulted regarding the subject planning proposal.

NSW Rural Fire Service (RFS)/NSW Fire Brigades

The subject site retains linear stands of vegetation that are not mapped as bushfire prone. However, given the nature of the intended use of the site, it is considered appropriate that the RFS or NSW Fire Brigades are notified of the intention to amend the MLEP 2011 for the intended purpose of a *hazardous storage establishment*. In the interests of ensuring emergency responses are appropriate, Council acknowledges that the responding authorities (in the event of an emergency occurring at the site) should be contacted to be made aware of the proposal. This can at least assist with any emergency planning for these authorities should they need to attend the site in an emergency.

PART 4: COMMUNITY CONSULTATION

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, this planning proposal must be approved prior to community consultation being undertaken by the local authority. Given that the proposal relates to a site specific additional permitted use in a rural area, Council deems that the planning proposal is of low impact. The planning proposal should therefore be exhibited for a minimum of 14 (fourteen) days.

In accordance with Council's adopted *Community Engagement Strategy (March 2009)*, consultation on the proposed rezoning will be to inform and received limited feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the local Hunter Post newspaper;
- Exhibition materials and relevant consultation documents to be made available at the Thornton and East Maitland libraries, and Council's Administration Building;
- Consultation documents to be made available on Council's website; and
- Letters, advising of the proposed LEP amendment and how to submit comments will be sent to adjoining landowners and other stakeholders that Council deem relevant to this planning proposal.

At the close of the consultation process, Council officers will consider all submissions received and present

a report to Council for their endorsement of the proposed LEP amendment before proceed to finalisation of the amendment.

The consultation process, as outline above does not prevent any additional consultation measures that may be determined appropriate as part of the 'Gateway' determination process.

Appendix ONE

Locality Map

Appendix TWO

Concept Plan – Site Layout

Appendix THREE

Workcover Information – Regulation & Licencing of Fireworks