

PLANNING PROPOSAL

Amendment to the Maitland LEP 2011

Housekeeping LEP Amendments

**Version 1.0
23.05.13**



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Version

Version 1.0 – 23.05.13 for 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 the provisions of the Maitland Local Environmental Plan 2011 (MLEP 2011) to resolve several housekeeping matters that have been identified in the time since the gazettal of the MLEP 2011 (16th December 2011).

The Housekeeping LEP 2012 has the purpose of resolving minor LEP mapping anomalies, clarifying the status of some heritage items, and ensuring consistency with State government planning provisions.

The Housekeeping LEP 2012 contains a number of items, and they have been individually identified, mapped and listed to clearly illustrate the extent and purpose of each item.

PART 1: OBJECTIVES or INTENDED OUTCOMES

The objectives of this planning proposal are to:

1. Resolve several minor LEP wording and mapping anomalies;
2. Clarify the description and status of some heritage items; and
3. Ensure consistency with State government planning provisions.

PART 2: EXPLANATION of PROVISIONS

The Maitland Local Environmental Plan 2011 is proposed to be amended in order to reflect the changes listed below.

The Maitland LEP 2011 will be amended by:

- (1) amending the written instrument "Permitted without Consent" provisions
- (2) amending sheets LZN 004A, 004B & 006A of the Land Zoning Map
- (3) amending sheets LSZ 004A, 004B, 004C & 006A of the Lot Size Map
- (4) amending HOB map 004D
- (5) amending HER maps 002A, 003, 004A, 006
- (6) amending wording of Schedule 1 (Additional Permitted Uses)
- (7) amending wording of Schedule 5 (Environmental Heritage)
- (8) amending wording of Clause 7.7 Certain Development at Racecourse Road, Rutherford

- ITEM 1 - Home Based Child Care is proposed to be moved from “Permitted without Consent” to “Permitted with Consent” in all relevant zones under the Maitland LEP 2011, given recent advice provided from the NSW Rural Fire Service. Currently there is no mechanism for this use to be assessed as a Special Fire Protection Purpose, which is the way that schools and other sensitive uses are currently assessed. This is viewed as an anomaly and raises safety issues for both Council and the RFS as currently, because no approval is currently required for this use under the Maitland LEP 2011, there is no way for either Council or the RFS to determine whether appropriate safety measures have been incorporated into buildings and land utilised for this purpose.

- ITEM 2 - Lot 6 DP840997 (No. 5) Cabarita Close, Bolwarra Heights to have current Lot Size Map provisions amended. Currently shows minimum lot sizes of both 450m² and 5,000m² over two portions of the site. The zoning for this site is currently R1 General Residential zone. The Lot Size Map will be changed to 450m² for the whole site, as per the original intentions of the Maitland LEP 2011. The map reference (as per the NSW Legislation website) for the LSZ map to be amended is 5050_COM_LSZ_004C_020_20110719.

- ITEM 3 - South Maitland Railway was originally zoned as 5(b) Special Uses Railway zone under the previous Maitland LEP 1993. Under the Maitland LEP 2011 the land comprising South Maitland Railways was zoned consistent with land adjoining the railway, predominantly being RU1 Primary Production zone. This was thought to be an acceptable outcome, with SEPP Infrastructure 2007 to be relied upon for development of railway associated uses. However, Council is currently restricted by the provisions of the Infrastructure SEPP in allowing expansion of some railways uses adjoining the rail corridor, on land previously zoned 5(b) Special Uses Railway under the Maitland LEP 1993 and other suitable land held in ownership by South Maitland Railways Pty Ltd which directly adjoins the rail corridor and has traditionally been utilised for rail related activities. Furthermore, gazettal of the Cessnock LEP 2011 clearly shows the railway corridor beyond the Maitland LGA boundary to the south as SP2 (Railway) zone. This anomaly can be resolved by applying the SP2 (Railway) zone over most of the land previously defined as 5(b) Special Uses Railway under the Maitland LEP 1993, of which the majority of land is currently held in the ownership by South Maitland Railways Pty Ltd. The map references (as per the NSW Legislation website) for the LZN maps to be amended are 5050_COM_LZN_004A_020_20130306 and 5050_COM_LZN_004B_020_20121204. As a result of amending the LZN maps, changes will be required to the relevant LSZ maps. The map references (as per the NSW Legislation website) for the LSZ maps to be amended are 5050_COM_LZN_004A_020_20130306 and 5050_COM_LZN_004B_020_20121204.

The allotments affected by the proposed amendment include:

- o Lots 2, 3 & 4 DP1094495 Junction Street, Telarah
- o Lot 101 DP1147030 Junction Street, Telarah
- o Lot 1 DP995160 Junction Street, Mount Dee
- o Lot 1 DP1094040 Junction Street, Telarah
- o Lot 645 DP862455 Junction Street, Telarah
- o Lot 2 DP198486 Junction Street, Telarah

- o Lot 631 DP1094447 Junction Street, Telarah
- o Lot 1 DP72235 Gillieston Road, Maitland
- o Lot 1 DP998276 Gillieston Road, Gillieston Heights
- o Lot 71 DP1050901 Ryans Road, Gillieston Heights
- o Lot 1 DP998262 Government Road, Gillieston Heights
- o Lot 11 DP61751 Ryans Road, Gillieston Heights
- o Lot 9 DP1094575 Ryans Road, Gillieston Heights
- o Lots 51 & 52 DP1094371 Kiah Road, Gillieston Heights
- o Lot 151 DP1059601 Kiah Road, Gillieston Heights
- o Lot 1 DP998371 Kiah Road, Gillieston Heights
- o Lots 1, 2 & 3 DP1102680 Kiah Road, Gillieston Heights
- o Lot 1 DP998370 Kiah Road, Gillieston Heights
- o Lots 1, 2, 3 & 4 DP998274 Hungerford Lane, Gillieston Heights
- o Part Lot 50 DP975994 Russell Street, Gillieston Heights
- o Lots 1 & 2 DP976895 Cessnock Road, Gillieston Heights
- o Lot 1 DP976896 Cessnock Road, Gillieston Heights
- o Lot 103 DP1161547 Cessnock Road, Gillieston Heights

Not all of the abovementioned allotments are held in the ownership of South Maitland Railways Pty Ltd, however, the majority of the subject allotments are, and the owners of the allotments that are held in separate ownership will be notified of the proposed changes. In any case, the rail corridor was zoned for railway purposes under the Maitland LEP 1993. The proposed changes better reflect the actual alignment of the South Maitland Railway corridor, and affect the same properties as were affected by the previous Maitland LEP 1993 5(b) Special Uses Railway zoning. The only additional allotment to be included in the abovementioned list of properties which was not identified as 5(b) Special Uses Railway zone under the Maitland LEP 1993 is land currently held by South Maitland Railways Pty Ltd, being Lot 101 DP1147030 Junction Street, Telarah.

It should be noted that Lot 11 DP861911 Junction Street, Telarah, being the Hunter Valley Training Company, was affected by the 5(b) Special Uses Railway zoning under the Maitland LEP 1993. This portion of the site that was affected by that zoning is currently zoned IN1 General Industrial zone under the Maitland LEP 2011. It is not proposed to apply the SP2 Infrastructure zone over the subject portion of the site to be consistent with the former 5(b) Special Uses Railway zone, as this area of the site is currently zoned to reflect the activities undertaken at that site, and the rail corridor does not occupy this land.

- ITEM 4 - Lot 22 DP1049668 (No. 61) Sempill Street, Maitland is incorrectly identified as "Riverview", which is a local heritage item identified as I179 under Schedule 5 of the Maitland LEP 2011. "Riverview" is actually located at Lot 1 DP666810 & Lot 1 DP936146 (No. 1) Oakhampton Road, Maitland. Heritage mapping will be changed to correct this anomaly. The map reference (as per the NSW Legislation website) for the HER map to be amended is 5050_COM_HER_004A_020_20111205.
- ITEM 5 - Since the Maitland LEP 2011 became operational, the following heritage items that were listed as being of "local" significance have since been listed on the State Heritage Register:
 - o Dunmore House (Lot 1 DP1005679, Paterson Road, Bolwarra Heights);
 - o "Cintra" & Stables (Lot 1 DP996931 Regent Street, Maitland);
 - o St Peter's Church group (Lots 7-9, Sec 33, DP758374 Banks Street, East Maitland); and
 - o Glebe Gully burial ground (Lot 196 DP755237 off George Street).

Schedule 5 (Environmental Heritage) of the Maitland LEP 2011 lists Dunmore House as I17, "Cintra" and Stables as I173, and St Peter's Church group as I121 and Glebe Gully burial ground as I34. No mapping changes are required as a result of the change in status of these existing heritage items, however, the status of these items will be changed from "local" to "state" under Schedule 5 (Environmental Heritage).

- ITEM 6 - Since the gazettal of the Maitland LEP 2011, Tocal College – C.B. Alexander Campus and Movable Collection (Lots 1, 2 & 3 DP1174183, Lots 1 & 2 DP752474 and Lot 110 DP1040928 Tocal Road, Tocal) has been listed on the State Heritage Register. This item is not currently listed under Schedule 5 of the Maitland LEP 2011, and as such, will now need to be included. The map reference (as per the NSW Legislation website) for the HER map to be amended is 5050_COM_HER_003_040_20110401.
- ITEM 7 - Hedge Rows at Edithville Road & Martins Wharf Road, Duckenfield were identified under the relevant schedule of the Maitland LEP 1993, however they are identified under the Maitland LEP 2011 as Edithville Road only. This is an anomaly and the description that applied under the Maitland LEP 1993 is to be reinstated. The Hedge Rows extend along Martins Wharf Road, between Raymond Terrace Road and Edithville Road. The item is identified as I187 under Schedule 5 of the Maitland LEP 2011. The map reference (as per the NSW Legislation website) for the HER map that the item is identified upon is 5050_COM_HER_006_040_20111125. No mapping change is required on the subject HER map, only a change of property description under Schedule 5 (Environmental Heritage) in the Maitland LEP 2011 written instrument.
- ITEM 8 – Walli House was incorrectly identified as "Wallis House" under the relevant schedule of the Maitland LEP 1993. This anomaly was carried over to Schedule 5 of the Maitland LEP 2011. This is an anomaly and the description will be changed. The item is identified as I148 under Schedule 5 of the Maitland LEP 2011. The map reference (as per the NSW Legislation website) for the HER map that the item is identified upon is 5050_COM_HER_004D_020_20111125. No mapping change is required on the subject HER map, only a change of property description under Schedule 5 (Environmental Heritage) in the Maitland LEP 2011 written instrument.
- ITEM 9 – The address of George and Dragon Hotel is incorrectly identified under Schedule 5 of the Maitland LEP 2011 as 50 Melbourne Street, East Maitland. The address should read 48-50 Melbourne Street, East Maitland. The Lot/DP description is correct and does not require any

amendment under Schedule 5. This is an anomaly and the description will be changed. The item is identified as I148 under Schedule 5 of the Maitland LEP 2011. The map reference (as per the NSW Legislation website) for the HER map that the item is identified upon is 5050_COM_HER_004D_020_20111125. No mapping change is required on the subject HER map, only a change of property description under Schedule 5 (Environmental Heritage) in the Maitland LEP 2011 written instrument.

- ITEM 10 - While the site description for St Helena Cottage is correct, the heritage map under the Maitland LEP 2011 incorrectly maps the adjoining site immediately west of St Helena. This anomaly is to be rectified by changing the relevant map to reflect the correct site, being Lot 200 DP1111493 St Helena Close, Lochinvar. The item is identified as I64 under Schedule 5 of the Maitland LEP 2011. The map reference (as per the NSW Legislation website) for the HER map to be amended is 5050_COM_HER_002A_020_20111124.
- ITEM 11 - Lot 1 DP72883 (No. 69) and Lot 1 DP734100 (No. 73) Swan Street, Morpeth were previously identified under the Maitland LEP 1993 as heritage items of "local" significance. These items were not listed under the Maitland LEP 2011, however their status has not changed and Council proposes to include these sites as items of "local" heritage significance, consistent with their heritage status under the Maitland LEP 1993. The map reference (as per the NSW Legislation website) for the HER map to be amended is 5050_COM_HER_006_040_20111125. The local items are to be identified as I241 and I242 respectively, under Schedule 5 of the Maitland LEP 2011.
- ITEM 12 - Lots 638 & 639 DP262555 John Arthur Avenue, Thornton are proposed to be rezoned from RE1 Public Recreation zone to R1 General Residential zone and to have a minimum lot size of 450m² applied to each allotment. Lot 638 was held in private ownership and was zoned 5(a) Special Uses zone under the Maitland LEP 1993, while Lot 639 was previously reclassified to community land and rezoned to 2(a) Residential zone under the Maitland LEP 1993, however neither site was correctly transferred in the Maitland LEP 2011. This is an anomaly and no further public hearing is deemed necessary, as all due process was followed previously, and it is purely an administrative oversight that the updated zoning amendment (completely finalised under the Maitland LEP 1993 in accordance with the Local Government Act 1993, Environmental Planning & Assessment Act 1979 and *Practice Note 09-003 Classification and Reclassification of Public Land through a Local Environmental Plan*) was not carried over to the Maitland LEP 2011. The map references (as per the NSW Legislation website) for the LZN & LSZ maps to be amended are 5050_COM_LZN_006A_020_20111206 and 5050_COM_LSZ_006A_020_20111130.
- ITEM 13 – The Lot & DP description for land known as 99 Racecourse Road, Rutherford was incorrectly identified under the relevant schedule of the Maitland LEP 2011 at the time of the gazettal. The current land description listed under Clause 7.7 and Clause 6 of Schedule 1 in the Maitland LEP 2011 is Lot 100 DP 109841. This Lot & DP number was carried over to Clause 7.7, and Clause 6 of Schedule 1 of the Maitland LEP 2011, however, the Lot and DP description had changed as a result of a new DP which was issued following land acquisition associated with the Maitland to Minimbah Third Track approval. The property should be identified as Lot 1504 DP1141535 Racecourse Road, Rutherford. No mapping change is required on any map, only a change of property description under Clause 7.7 and Clause 6 of Schedule 1 in the Maitland LEP 2011 written instrument.
- ITEM 14 – Lots 10 & 11 DP644668 Cartwright Street, Gillieston Heights are both incorrectly mapped in the Maitland LEP 2011 as RE2 Private Recreation zone. Both allotments should be mapped as RE1 Public Recreation zone. Lot 10 is owned by Hunter Water Corporation, while Lot

11 is owned by Maitland City Council. The LZN map is proposed to be amended to correct this anomaly. The map reference (as per the NSW Legislation website) for the LZN map to be amended is 5050_COM_LZN_004B_020_20121204.

- ITEM 15 - Lot 12 DP1062775 (No. 10) Elizabeth Street, Telarah is incorrectly identified as "Byrn Glas", which is a local heritage item identified as I235 under Schedule 5 of the Maitland LEP 2011. The "Byrn Glas" itself is actually located immediately North of Lot 12, on land known as Lot 11 DP1062775 (No. 16) Elizabeth Street, Telarah. Heritage mapping will be changed to correct this anomaly, by removing Lot 12 from the subject heritage map and limiting the relevant map colouring to Lot 11 only. An existing dwelling has been approved by Council on Lot 12 in recent years and has no heritage significance. The map reference (as per the NSW Legislation website) for the HER map to be amended is 5050_COM_HER_004A_020_20111205.
- ITEM 16 - Stockland Greenhills stand-alone shopping centre has been approved for expansion and the most recently approved Development Application (DA) allows for a building height greater than that which is currently mapped on the subject HOB map in the Maitland LEP 2011. It is therefore proposed to amend the subject HOB map to reflect a more appropriate building height for the Stockland Greenhills site, which can accommodate the current approved building height allowed for in conjunction with the approved DA for the site. The HOB map is proposed to be amended to include a maximum height of 24 metres. The map reference (as per the NSW Legislation website) for the HOB to be amended is 5050_COM_HOB_004D_020_20110401.

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 the review of the MLEP 2011, following 12 months of the MLEP 2011 being operational. The MLEP 2011 was gazetted on the 16th December 2011. As part of ensuring the accuracy and clarity of comprehensive planning instruments, Council has historically undertaken periodic reviews of its comprehensive LEPs. Given that a number of anomalies have been identified in the MLEP 2011, it was deemed appropriate that following 12 months of the MLEP being operational, a Housekeeping LEP would be prepared to rectify any minor anomalies, in line with the review of previous comprehensive LEPs.

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

Amendment to MLEP 2011 is the only method to achieve the objectives of this planning proposal.

3. Is there a net community benefit?

A net community benefit arises from this planning proposal as it will ensure that Council's adopted principal planning instrument is current and correct by resolving minor anomalies.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

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

The applicable regional strategy is the Lower Hunter Regional Strategy (NSW Dept of Planning) – October 2006. This planning proposal is consistent with the Lower Hunter Regional Strategy, as it involves rectifying anomalies in Council's principal planning instrument. None of the anomalies impact upon the goals or objectives of the LHRS 2006.

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

The subject planning proposal is consistent with the Maitland 2021 Community Strategic Plan and the supporting Delivery Program 2011-2015.

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

There are no existing or Draft SEPPs that would prohibit or restrict the matter contained in the subject planning proposal.

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

There are no current Ministerial Directions that would prohibit or restrict the matter contained in the subject planning proposal.

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?

There will be no impact on any of these matters as a result of this planning proposal.

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

There are no environmental effects likely as a result of this planning proposal.

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

This planning proposal seeks to remove minor anomalies contained within the Maitland LEP 2011. The social and economic effects were addressed during the preparation of the Maitland LEP 2011.

There are no additional social or economic effects as a result of this planning proposal.

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?

No consultation with State or Commonwealth public authorities is proposed for this planning proposal, due to its consistency with adopted strategies and its objective to clarify minor anomalies contained within the Maitland LEP 2011.

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 is undertaken by the local authority. Council has deemed the planning proposal to be low impact and require a 14 day exhibition period.

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 newspaper;
- Exhibition material and relevant consultation documents to be made available at all Council libraries and Council's Administration Building; and
- Consultation documents to be made available on Council's website.

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 proceeding 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.

Project Timeline

The following timeframes are considered approximate, but are included in accordance with the Department's publication "*A Guide to Preparing Planning Proposals*".

- Anticipated Gateway determination date: 11 July 2013
- Timeframe for completion of required technical information: N/A – minor anomalies only
- Timeframe for government agency consultation: 16 August 2013
- Commencement & completion dates for public exhibition: 17 July 2013 – 14 August 2013
- Date of public hearing: N/A – has previously occurred in relation to land at John Arthur Avenue, Thornton
- Timeframe for consideration of submissions: 2 weeks
- Timeframe for consideration of a proposal post-exhibition: 4 weeks
- Date of submission to DOPI to finalise LEP: 25 September 2013
- Anticipated date RPA will make plan: 11 October 2013
- Anticipated date RPA will forward to DOPI for notification: 25 October 2013

Overall, it is anticipated that the Gateway determination would be for at least a 6 month period for this planning proposal, provided that the information outlined in this planning proposal is deemed to be all that is required by the Department in order to process the LEP amendment, and that no public hearing is required.

Appendix ONE

Proposed Draft LEP Amendment Mapping