

Planning and Assessment

IRF20/5491

Gateway determination report

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|---------------------------------|--|
| LGA | Maitland |
| PPA | Maitland City Council |
| NAME | Hydro (Gillieston Heights) - Eastern Precinct (300 dwellings) |
| NUMBER | PP_2020_MAITL_001_00 |
| LEP TO BE AMENDED | <i>Maitland Local Environmental Plan 2011</i> |
| ADDRESS | Various lots on the eastern side of Cessnock Road, south of Gillieston Heights |
| DESCRIPTION | Lots 1 and 2 DP 302745, Lots 1 and 2 DP 601226 and Lot 1 DP311179 |
| RECEIVED | 27 November 2020 |
| FILE NO. | IRF20/5491 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required. |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal. |

1. INTRODUCTION

1.1 Site description

The site includes various lots on eastern side of Cessnock Road, south of Gillieston Heights. The site is around 43.5 hectares and is partly flood affected. Access to the site is via Cessnock Road. The site contains some bushland following the eastern flood plain boundary of the site that adjoins wetland areas.



Figure 1: Subject site

1.2 Existing planning controls

The site is zoned RU2 Rural Landscape and E2 Environment Conservation with a minimum lot size of 40ha. The land has no building height provisions.



Figure 2a: Existing zones

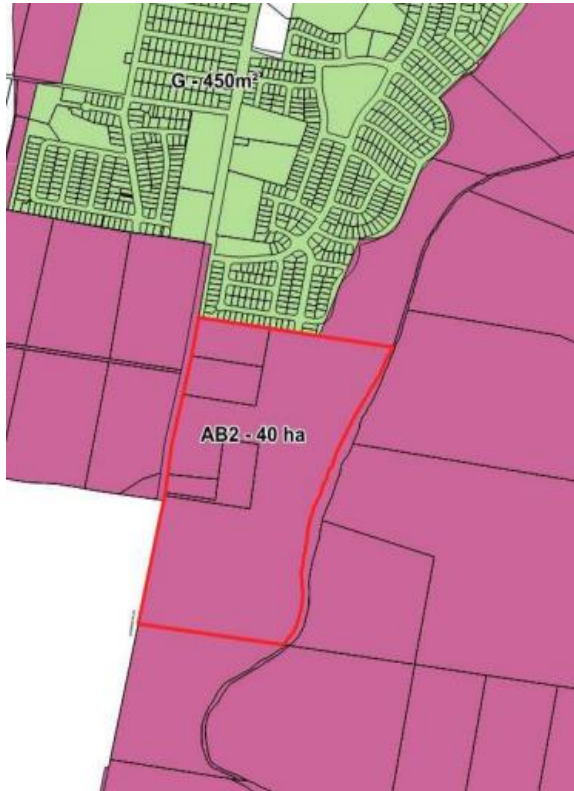


Figure 2b: Existing minimum lot size

1.3 Surrounding area

The site adjoins existing residential land to the north at Gillieston Heights and rural land to the south and further east, reflective of the flooding characteristics and previous land uses.

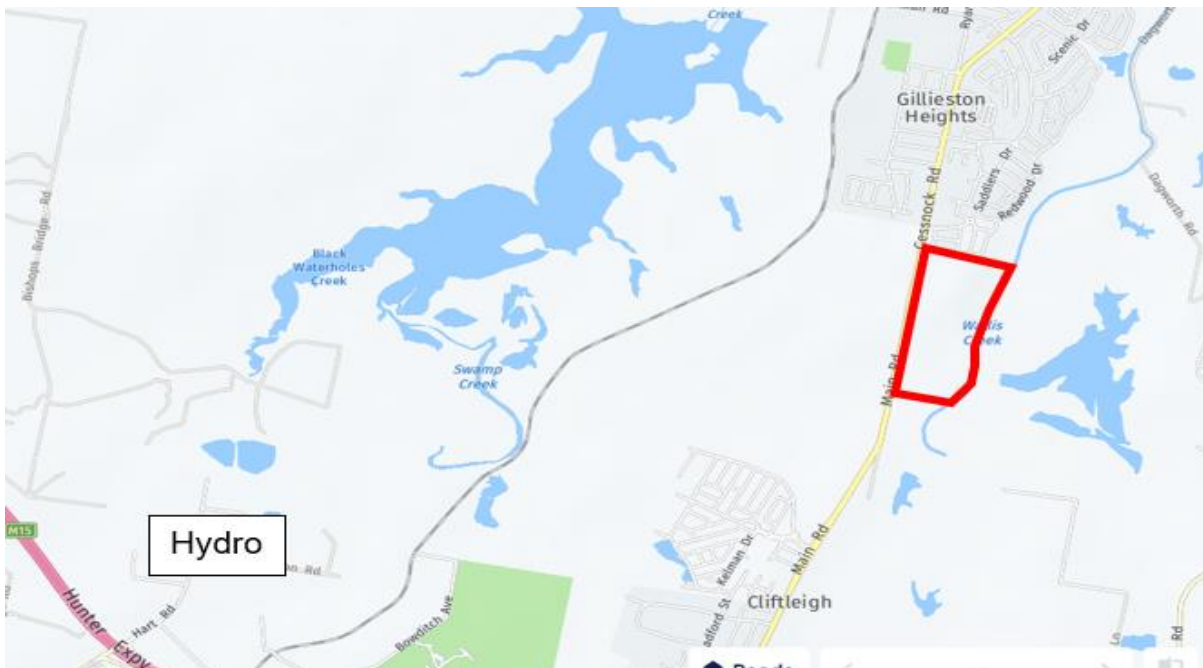


Figure 3: Local context

To the western of the site fronting Cessnock Road is a separate planning proposal that will also extend the urban area of Gillieston Heights further south (PP_2020_MAITL_002_00). This planning proposal is being considered separately.

2. PROPOSAL

2.1 Description of planning proposal

The planning proposal seeks to rezone the site to permit residential development and manage land with environmental values allowing for the completion of the existing Gillieston Heights Urban Release Area.

On 23 March 2016, the delegate of the Minister for Planning issued a Gateway determination (PP_2016_MAITL_001_00) for an existing planning proposal for the site. Since this time, there has been agency consultation and further analysis undertaken. However, the planning proposal has not yet progressed to public exhibition.

In September 2017, site studies were provided to Council that addressed a proposed zone and subdivision outcome for the site. This included proposed rezoning of the site from RU2 Rural Landscape to E3 Environmental Management and R1 General Residential. The existing E2 Environmental Conservation was proposed to remain unchanged.

The 2016 Gateway determination was subject to conditions, and an assessment of the conditions is included in Table 1 to identify any unresolved issues that need to be considered as part of the planning proposal.

Table 1: 2016 Gateway determination conditions

| Gateway Condition | Topic | DPIE assessment against conditions |
|-------------------|-------------------------------------|---|
| 1(a) | Flooding | Resolved - The Wallis and Swamp Fishery Creeks Flood Study has been completed and has confirmed the flood levels to determine the zone boundaries. |
| 1(b) | Flood Free Access Strategy | Resolved – A flood free access strategy has been completed. It will be included as part of the development control plan for the site. |
| 1(c) | SEPP 55 (Section 9.1 Direction 2.6) | Superseded - Matters of contamination are now assessed under Section 9.1 Ministerial direction 2.6 - Remediation of contaminated land. |
| 1(d) | Agricultural Lands study | Resolved - An agricultural lands study has been completed, and the planning proposal updated to reflect assessment against section 9.1 Ministerial directions. |
| 1(e) | Lower Hunter Regional Plan | Superseded - The <i>Lower Hunter Regional Plan 2006</i> has been superseded and the new planning proposal has been updated to comply with the <i>Hunter Regional Plan 2036</i> and <i>Greater Newcastle Metropolitan Plan 2036</i> . |
| 1(f) | Heritage | Unresolved - Resolution of Aboriginal cultural heritage remains outstanding. |
| 1(g) | Noise, Vibration, (Amenity issues) | Resolved - The proposed zones have been confirmed and the development control plan for the site will manage impacts at the development application stage. |

| Gateway Condition | Topic | DPIE assessment against conditions |
|-------------------|--------------------------------|--|
| 1(h) | Eastern land | Partly resolved - Further studies have been undertaken, noting the Aboriginal Cultural Heritage analysis methodology was incomplete. |
| 1(i) | Traffic - Cessnock Road | Partly Resolved - Transport for NSW (TfNSW) is drafting a Main Road 195 corridor strategy that considers traffic modelling and capacity analysis to address the requirements of this condition. |
| 1(j) | Amend PP statements on traffic | Resolved – planning proposal updated. |
| 1(k) | Confirm zone boundaries | Resolved – the zone boundaries have been confirmed. |

Maitland City Council undertook consultation as part of the 2016 planning proposal in June 2020. This included consultation with the following public authorities:

Table 2: Responses from consultation on 2016 planning proposal

| AGENCY | RESPONSE |
|--|---|
| Biodiversity Conservation Division | Advised it will not provide comment on the planning proposal until the biodiversity conservation assessment report is submitted to the agency. |
| Department of Primary Industries | No issues or concerns raised. |
| State Emergency Services | No response provided. |
| NSW Rural Fire Service | No comments relating specifically to the proposed zoning. |
| Transport for NSW | No response provided. |
| Heritage NSW | The due diligence assessment is not sufficient to address the impacts of the proposal on Aboriginal cultural heritage. An Aboriginal cultural heritage assessment report should be undertaken in consultation with relevant Aboriginal parties. The outcomes of this assessment should inform the planning proposal for consistency with the relevant section 9.1 Ministerial direction. |
| Mindaribba Local Aboriginal Land Council | The site forms part of a known highly significant Aboriginal cultural landscape. For the Local Aboriginal Land Council to assess all potential places, objects and areas within this landscape an Aboriginal cultural heritage assessment should be undertaken, in conjunction with recognised Aboriginal knowledge holders. |

| AGENCY | RESPONSE |
|--|---|
| Subsidence Advisory NSW | The site is no in a mine subsidence district. The agency also advised records indicate the site is not undermined by coal workings. |
| Hunter Water Corporation | No response provided. |
| Department of Industry (Resources and Geosciences) | No response provided. |

The Department consulted with Council regarding issuing a new Gateway determination for the planning proposal and discontinuing the 2016 planning proposal, taking into consideration the work that has been completed to address the original Gateway conditions. Council agreed to the approach.

2.2 Objectives or intended outcomes

The objectives of the proposal are to:

- identify the Gillieston Heights South urban release area;
- enable residential development;
- protect and manage areas of environmental constraints; and
- Ensure that future residents have access to adequate local and regional infrastructure.

The objectives are clear and do not require updating.

2.3 Explanation of provisions

The planning proposal outlines the proposed changes to the *Maitland Local Environmental Plan 2011* and they are clear and adequate for community consultation. In summary the proposal seeks to:

- zone the site from RU2 Rural Landscape to R1 General Residential, E2 Environmental Conservation and E3 Environmental Management (Figure 4a);
- amend the minimum lot size to reflect the proposed zoning (Figure 4b); and
- map the area as an urban release area.

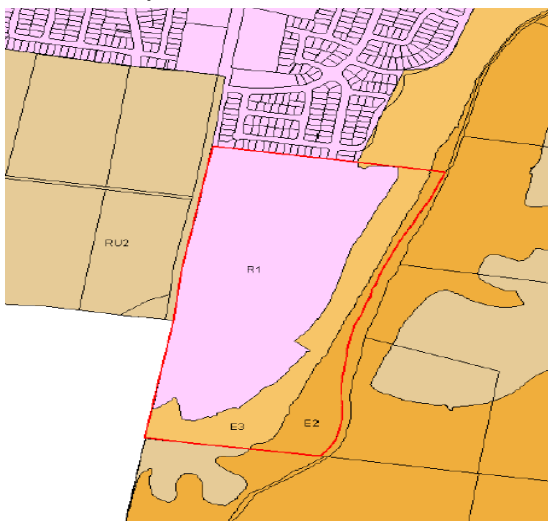


Figure 4a: Proposed zones

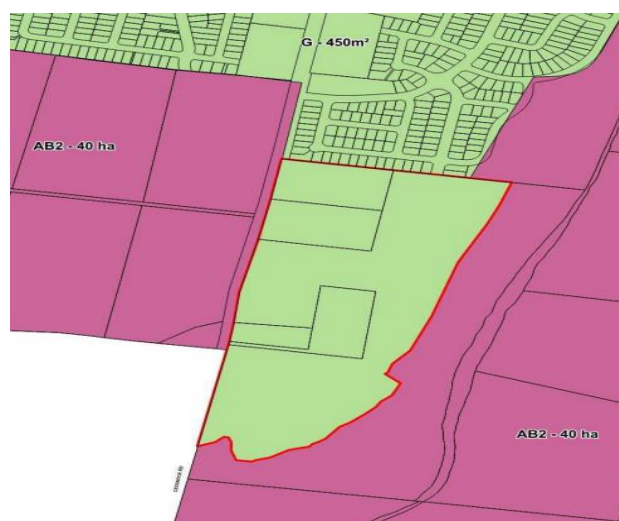


Figure 4b: Proposed Minimum lot size

2.4 Mapping

The planning proposal includes maps that show the current and proposed controls that are suitable for community consultation.

The proposal includes amendments to the following local environmental plan maps:

- Land Use Zoning;
- Lot Size; and
- Urban Release Area.

3. NEED FOR THE PLANNING PROPOSAL

The site was identified in the *Maitland Urban Settlement Strategy 2012* as being suitable for consideration for urban purposes, consistent with the sequencing and release of land as identified in the Strategy.

The 2016 Gateway determination agreed to the need for the planning proposal. The planning proposal is consistent with regional and local planning strategies including the *Hunter Regional Plan 2036*, *Greater Newcastle Metropolitan Plan 2036*, *Maitland Urban Settlement Strategy 2012* and *Maitland Local Strategic Planning Statement (LSPS)*.

4. STRATEGIC ASSESSMENT

4.1 Regional

Hunter Regional Plan 2036

The proposed rezoning is consistent with the *Hunter Regional Plan 2036*.

The proposal is consistent with the following actions:

| Actions | Description | Consistency |
|---------|---|-------------|
| 14.1 | Identify terrestrial and aquatic biodiversity values and protect areas of high environmental value | Yes |
| 16.1 | Manage the risks of climate change and improve the region's resilience to hazards | Yes |
| 16.2 | Review and consistently update floodplain risk and coastal zone management plans | Yes |
| 18.1 | Facilitate more recreational walking and cycling paths | Yes |
| 18.2 | Deliver connected biodiversity-rich corridors and open space areas for community enjoyment | Yes |
| 21.2 | Focus development to create compact settlements in locations with established services and infrastructure, including the Maitland Corridor growth area | Yes |
| 21.4 | Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses | Yes |
| 21.6 | Provide greater housing choice | Yes |
| 21.7 | Promote new housing opportunities in urban areas to maximise the use of existing infrastructure | Yes |

| Actions | Description | Consistency |
|---------|---|-------------|
| 26.1 | Align land use and infrastructure planning to maximise the use and capacity of existing infrastructure and the efficiency of new infrastructure | Yes |
| 26.4 | Coordinate the delivery of infrastructure to support the timely and efficient release of land for development | Yes |
| 26.5 | Ensure growth is serviced by enabling and supporting infrastructure. | Yes |

Greater Newcastle Metropolitan Plan

The *Greater Newcastle Metropolitan Plan 2036* sets out strategies and actions that will drive sustainable growth across Greater Newcastle, which includes Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens Council's.

The site is identified in the *Greater Newcastle Metropolitan Plan 2036* as a housing release area, adjacent to the existing Gillieston Heights Urban Release Area.

The planning proposal is consistent with the following strategies:

| Strategy | Description | Consistency |
|----------|--|-------------|
| 11 | Create more great public spaces where people come together | Yes |
| 12 | Enhance the Blue and Green Grid and the urban tree canopy | Yes |
| 14 | Improve resilience to natural hazards. | Yes |
| 20 | Integrate land use and transport planning | Yes |
| 23 | Protect major freight corridors | Yes |

4.2 Local Community Strategic Plan

The planning proposal is consistent with the Community Strategic Plan having regard to the key themes of:

- Proud people, great lifestyle – sense of place, local services;
- Our built space – planned, timely and integrated infrastructure, safety and accessibility and affordable housing;
- Our natural environment – managing impacts on the environment, natural resources and flood risks; and
- A prosperous and vibrant city – local character.

Maitland Local Strategic Planning Statement (LSPS)

Council acknowledge the proposal is the best way achieve the outcomes as proposed in the Local Strategic Planning Statement. The planning proposal is consistent with the Local Strategic Planning Statement.

Maitland Urban Settlement Strategy 2012 (MUSS)

The site is identified in the MUSS 2012 for urban expansion consistent with the sequencing and release of urban land for the Gillieston Heights locality. The site forms part of the remaining developable land in the Gillieston Heights locality.

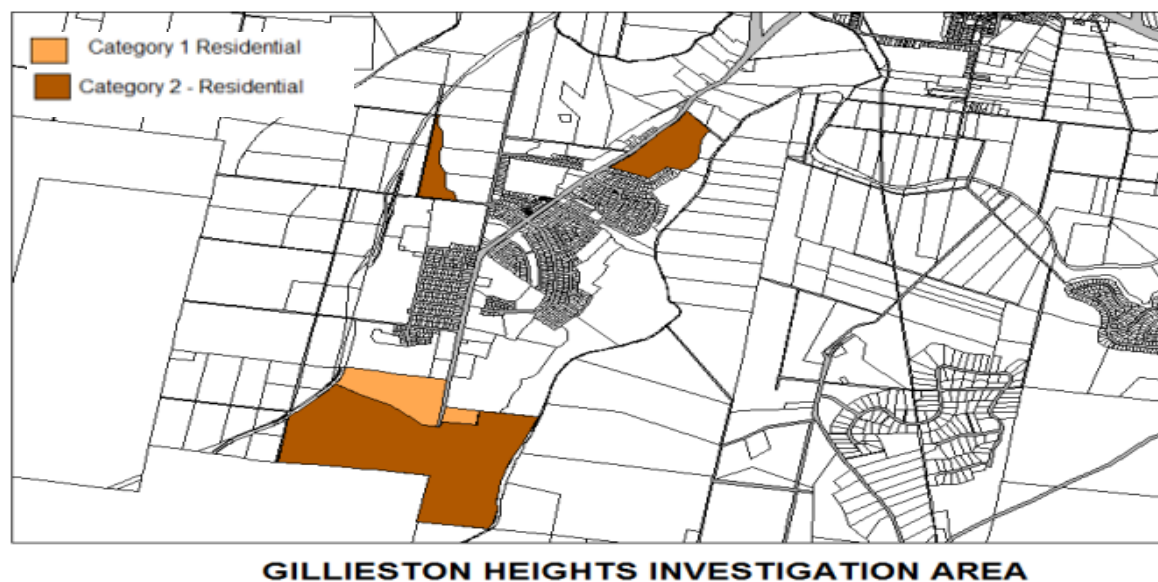


Figure 6: Extract from Maitland Urban Settlement Strategy

4.3 State environmental planning policies (SEPPs)

The planning proposal assesses the consistency with the applicable state environmental planning policies.

State Environmental Planning Policy (Koala Habitat Protection) 2019

The planning proposal states the area supporting trees on the site is proposed to be zoned E3 Environmental Management, and the remainder of the site does not support vegetation suitable for Koala habitat.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

The planning proposal states a site assessment has identified there is no State significant agricultural land and is considered average quality grazing land only.

The future urban use of the land was identified in the *Greater Newcastle Metropolitan Plan 2036* and the *Maitland Urban Settlement Strategy 2012*.

4.4 Section 9.1 Ministerial Directions

Council provides a compressive assessment against applicable section 9.1 Ministerial directions. The following assessment includes directions where the planning proposal justifies its potential inconsistency or is inconsistent.

Directions 1.2 Rural Zones and 1.5 Rural Lands

The planning proposal is inconsistent with these directions.

However, the inconsistency is justified as the site is identified in the *Greater Newcastle Metropolitan Plan 2036* and *Hunter Regional Plan 2036*.

Appendix A states that a planning proposal may be inconsistent with the terms of certain Ministerial Directions if it is in accordance with the actions of the *Greater Newcastle Metropolitan Plan 2036*.

2.1 Environment Protection Zones

The direction states the planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

The planning proposal is consistent with the objectives of this direction as it proposed to maintain the existing E2 Environmental Conservation zone on the site, and extend the existing E3 Environmental Management zone south from the northern boundary.

An Ecological Assessment report is included in the planning proposal and identified that there were no threatened flora or fauna species identified on the site.

2.3 Heritage Conservation

The planning proposal is inconsistent with 4(c) of this direction as the Aboriginal cultural heritage study, including the necessary level of consultation, is incomplete. An Aboriginal cultural heritage due diligence assessment has been undertaken and the planning proposal states a search of AHIMS identified no Aboriginal objects or places on the site.

Heritage NSW advised Council that a due diligence report is not sufficient to assess the impacts on Aboriginal cultural heritage and the planning proposal is not consistent with this direction.

As the outcomes of this work may influence the planning proposal and land use zone boundaries, assessment against this this direction is necessary prior to exhibition.

Council advised that an Aboriginal cultural heritage assessment report will be prepared prior to the exhibition of the planning proposal.

Consistency with this direction will be assessed once complete and prior to finalisation.

2.6 Remediation of Contaminated Land

A phase 1 preliminary report identified areas of the site to be used for urban purposes relating to former poultry farm operations.

Some residual contamination may be present as a result of the past activities, thus in accordance with clause 5 of the direction, a Phase 2 investigation consistent with the 'Managing Land Contamination Planning Guidelines' is necessary.

Depending on the findings of the Phase 2 assessment, a remedial action plan may also be required prior to finalisation. An assessment for consistency with this direction will be undertaken prior to the finalisation of the local environmental plan.

3.4 Integrating Land Use and Transport

Transport for NSW has advised it is preparing a Main Road 195 corridor strategy and undertaking modelling for the Hart Road interchange, including investigation of a potential connection between M15 and MR195.

Council is also preparing a site specific development control plan.

The planning proposal is potentially consistent with this direction, and an assessment for consistency will be undertaken the above analysis being undertaken by Transport for NSW is completed.

4.2 Mine Subsidence and Unstable Land

The proposal is consistent with this direction as consultation with Subsidence Advisory NSW has been undertaken and the site has not been mapped as having undermining.

4.3 Flood Prone Land

A small part of the site in the east and south portion of the site is affected by flooding during a 1:100 ARI flood event, it is not proposed to zone the flood affected land for urban purposes.

The planning proposal states the development of the proposed urban area in conjunction with the development of the adjoining Hydro planning proposal would facilitate access for Gillieston Heights that is above the 1:100 ARI flood event.

The planning proposal states advice from Biodiversity Conservation Division is that it is satisfied the issues raised relating to flooding and flood risk have been addressed.

4.4 Planning for Bushfire Protection

The planning proposal is potentially inconsistent with this direction. No bushfire threat assessment has been carried out for the site.

The planning proposal states a small portion of the site is bushfire prone, and it is not proposed to zone this portion for urban purposes. Council considers measures to mitigate bushfire can be achieved and addressed through the subdivision development application process, where approval from NSW Rural Fire Service will be required.

It is proposed to include consultation with NSW Rural Fire Service as a condition of the Gateway determination. Consideration of consistency with the direction will be undertaken following consultation with the relevant public authority.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal has considered social and economic impacts. It is likely to have an overall positive social impact. While difficult to quantify, Council conclude that there is a positive net community benefit from the planning proposal considering new housing at different price points to support the creation of additional jobs.

Council identified the need for quality public transport, greater connectivity between development areas and additional community facilities as a result of this planning proposal. The planning proposal will provide homes close to jobs and existing infrastructure aligning with the Department's policies and regional plans.

5.2 Environmental

As assessed in Section 4.4 of this report there are a number of environmental matters relevant to the planning proposal relating to contamination, biodiversity, heritage and bushfire impacts.

An ecological assessment report was submitted with the planning proposal. The report identified remanent vegetation on site commensurate with the State listed

vulnerable ecological community of Lower Hunter Valley Dry Rainforest. The report also found there were no threatened flora and fauna species on the site.

It is proposed to zone this area of the site E3 Environmental Management. The objectives of the E3 Environmental Management zone under the *Maitland Local Environmental Plan 2011* are to protect, manage and restore areas with ecological, scientific, cultural or aesthetic values; provide for a limited range of development that does not have an adverse effect on those values; and to maintain and improve the connectivity of habitat between remnant areas of vegetation.

The report recommended a vegetation management plan should be prepared to guide vegetation management works in the environmental zone and any retained vegetation in the development area.

Council advised the residue lot being the E2 Environmental Conservation and E3 Environmental Management zoned areas will not have a dwelling house entitlement and will most likely be attached to a proposed residential lot where a dwelling is permitted.

Council's assessment of environmental impacts notes the various specialist studies that address the key environmental attributes of the site. These include:

- Archaeological due diligence report
- Ecological flora and fauna report
- Preliminary contamination assessment
- Preliminary geotechnical assessment
- Acoustic assessment report
- Traffic assessment report
- Wallis and Swamp Fishery Creeks Flood Study

5.3 Economic

The holistic planning outcomes across the whole Hydro site within both the Maitland and Cessnock local government areas includes significant job creation opportunities and flow on effects for the economy.

This planning proposal provides homes close to jobs within the Greater Newcastle Metropolitan area. The construction of homes and infrastructure will generate economic benefits.

5.4 Infrastructure

Transport for NSW in correspondence to Council has raised objection to the planning proposal on the grounds the traffic assessment is out of date.

There are processes currently underway to resolve a number of traffic and transport matters. In particular drafting of the Cessnock Road (MR195) corridor strategy by Transport for NSW is nearing completion and this will satisfy the need to determine the consolidated access points along MR195 and staging/development thresholds for upgrades.

The above processes will ensure matters are addressed as part of finalisation of the local environmental plan and enable infrastructure and development contribution matters to be resolved at a subdivision or development application stage.

6. CONSULTATION

6.1 Community

Council propose to undertake community consultation in accordance with their Community Participation Plan. While the requirements are for a minimum of 28 days, the consultation period may occur during the Christmas period, thus be extended in accordance with Council policy. This approach is considered appropriate

6.2 Agencies

Public agency consultation has already occurred for the existing planning proposal.

Consultation with Heritage NSW, Mindaribba Local Aboriginal Land Council and NSW Rural Fire Service is required during the public exhibition period.

7. TIME FRAME

Council have proposed a six (6) month timeframe to complete the LEP process. A 12 month timeframe is recommended to provide additional time should any part of the process be delayed such as resolving transport related matters and the Aboriginal cultural heritage assessment.

The Department encourages Council to publicly exhibit the planning proposal as soon as possible given agency consultation is largely complete.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority.

There remain several inter-related matters that will be required to be resolved prior to finalisation, including TfNSW's MR195 corridor strategy and Aboriginal cultural heritage assessment. These also relate to several potential inconsistencies with section 9.1 Ministerial directions.

Given these matters, it is not proposed to make Council the local plan-making authority.

9. CONCLUSION

Gateway determination (PP_2016_MAITL_001_00) has been issued for this site, and the strategic and site specific merits of the proposal have been supported since 2016.

The current planning proposal recognises the previous work undertaken by Council for PP_2016_MAITL_001_00 and as outlined in Table 1 the majority of the Gateway determination conditions have been resolved.

The planning proposal is consistent with state, regional and local planning policies and strategies, and implements the intention of parts of these strategies through the creation of strategically located dwellings and conservation lands.

10. RECOMMENDATION


It is recommended the delegate of the Secretary:

1. **agree** that any inconsistencies with following section 9.1 Ministerial directions are minor or justified:

- 1.2 Rural Zones;
 - 1.5 Rural Lands;
2. **note** that the consistency with following section 9.1 Ministerial directions is unresolved and will require justification
- 2.3 Heritage Conservation;
 - 2.6 Remediation of Contaminated Land;
 - 3.4 Integrating Land Use and Transport; and
 - 4.4 Planning for Bushfire Protection.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to exhibition of the planning proposal an Aboriginal cultural heritage assessment report is undertaken in line with relevant guidelines and code of practice.
2. Prior finalisation of the local environmental plan:
 - (a) comments in Transport for NSW's correspondence to Maitland City Council dated 15 May 2020 are addressed; and
 - (b) consideration is given to a phase 2 contamination report.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the following public authorities:
 - Heritage NSW;
 - Biodiversity Conservation Division
 - Mindaribba Local Aboriginal Land Council; and
 - NSW Rural Fire Service.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should be the local plan-making authority.



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1/12/2020

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