

Amendment to Maitland LEP 2011 - 30 Swan Street Morpeth

Proposal Title : **Amendment to Maitland LEP 2011 - 30 Swan Street Morpeth**

Proposal Summary : **The planning proposal seeks to amend Maitland LEP 2011 to rezone the subject land from Zone RU1 Primary Production to part Zone R1 General Residential and part Zone E2 Environmental Conservation; and amend the corresponding Lot Size Map from a minimum lot size of 40 ha to 450 sq.m within the Zone R1 General Residential.**

PP Number : **PP_2015_MAITL_004_00**

Dop File No : **15/14612**

Proposal Details

Date Planning Proposal Received : **27-Oct-2015**

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 : **30 Swan Street**

Suburb : **Morpeth**

City : **Morpeth**

Postcode : **2321**

Land Parcel : **Lot 3 DP 237264 being Zone RU1 Primary Production**

DoP Planning Officer Contact Details

Contact Name : **Susan Blake**

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RPA Contact Details

Contact Name : **Rob Corken**

Contact Number : **0249349784**

Contact Email : **rob.corken@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 :

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) :	0.70	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	10
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes : Council resolved at its Ordinary Council Meeting held on 22 September 2015 to support the lodgement of the planning proposal to the Department requesting a Gateway Determination.

Council submitted the planning proposal to the Department on 6 October 2015. Additional information was sought from Council with regards to the Visual Assessment, implications of broader development within Morpeth on the heritage significance of the town and Council's intentions regarding the review of this heritage significance. The final information for assessment of the proposal was received on 27 October and it is this date that the proposal is considered adequate.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

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

Comment : The statement of objectives adequately identifies the intended outcomes of the proposal:

1. rezone part of the subject site to permit residential development
2. protect the public views to the rural land through an environmental zoning
3. respond to the heritage, contamination and flooding constraints affecting the site.

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

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

Comment : The planning proposal seeks to amend the Maitland LEP 2011 by:

1. rezoning land from Zone RU1 Primary Production to part R1 General Residential and part E2 Environmental Conservation.
2. amend the Lot Size Map from a minimum lot size of 40 ha to 450 sq.m within the Zone R1 General Residential.

The explanation of provisions is supported.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

2.3 Heritage Conservation

3.1 Residential Zones

3.3 Home Occupations

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

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 55—Remediation of Land

SEPP (Infrastructure) 2007

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 : **The planning proposal includes the existing and proposed land zone and lot size maps.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has proposed a minimum 28 days for public consultation. Although this proposal is relatively minor, the issue of development in Morpeth and its impact on heritage more broadly warrants an extended period of consultation. The Department supports Council's proposed public exhibition period.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

PROJECT TIMELINE

Council's timeline nominates the planning proposal's completion within eight (8) months after the Gateway Determination. It is considered that a nine (9) month completion timeframe is appropriate which requires that the planning proposal be completed by July 2016.

DELEGATED AUTHORISATION

Council has accepted plan-making delegations for planning proposals. It is recommended that Council's authority to exercise delegations in this instance be granted.

It is recommended that the General Manager of the Hunter and Central Coast Region

exercise his delegations for this matter.

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 Standard Instrument was published 16 December 2011.**

Assessment Criteria

Need for planning proposal :

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

Council advises that during a review of the local strategic plan Maitland Urban Settlement Strategy (MUSS) in 2012, Council received a submission from the land owners of 30 Swan Street, Morpeth, requesting the Council consider the site as 'an urban expansion site in the Maitland Urban Settlement Strategy'. The site was assessed by Council against the assessment criteria specified in Table 11 of the MUSS. Council determined that the proposal met the urban extension site criteria, as it was non-residential zoned land, located within or adjoining land zoned residential, and it was subsequently included in the Maitland Urban Settlement Strategy 2012.

The planning proposal assessment process will enable due consideration of the opportunities and constraints of the land for rezoning to residential purposes.

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

To permit residential development on the land, it requires an amendment to the Maitland LEP 2011. A planning proposal is considered the most effective and timely method available to achieve the objectives of the proposal.

3. Is there a net community benefit?

The planning proposal will facilitate future residential development on the edge of existing residential area of Morpeth. The site is not identified as a heritage item on the Maitland LEP 2011- Heritage Schedule, however the site is within the Morpeth Heritage Conservation Area as being locally significant.

The planning proposal process will assess the constraints and attributes of the site and proposed development to determine if there is a net benefit to the community.

Consistency with strategic planning framework :

LOWER HUNTER REGIONAL STRATEGY 2006(LHRS)

The Lower Hunter Regional Strategy (LHRS) seeks to provide new dwellings within the region, including as urban infill. The site is located on the edge adjoining Morpeth, which is identified within the LHRS as an existing urban area.

Morpeth is known for its historic and cultural importance, and its surrounding rural landscapes contribute to Morpeth's identity. The LHRS recognises that all places, precincts and landscapes of cultural heritage significance are identified and protected in planning instruments. Development opportunities created as a result of land zonings and densities need to protect or be compatible with the underlying heritage values of the place.

As discussed the planning proposal is supported by a Statement of Heritage Significance and a Visual Impact Assessment (which has been peer reviewed). The planning proposal is consistent with the LHRS as it seeks to facilitate the development of the land, whilst maintaining the heritage values of Morpeth including its rural curtilage and views to and from the historic village.

Maitland +10 (Community Strategic Plan)

Council notes that the proposal supports its community strategic plan's objectives by ensuring the built space is well planned, integrated and timely to meet the needs of the community, whilst also maintaining the unique built heritage. Council indicates the proposal seeks to manage the natural environment and resources as well as the potential impacts for a growing community.

Maitland Urban Settlement Strategy (MUSS)

The site is identified in Table 12: Urban Infill and Extension Sites of the MUSS. Council notes the site was included as a result of a comprehensive, city wide review of suitable sites for investigation for urban extension. The planning proposal will examine the potential for developing the land for residential purposes.

Morpeth Heritage Conservation Area (Maitland LEP, DCP and Plan of Management)

The site is not identified as a heritage item on the Maitland LEP 2011- Heritage Schedule, however the site is within the Morpeth Heritage Conservation Area. The heritage assessment of the town of Morpeth has identified the Conservation Area as of state, regional and local significance. As a result, a Statement of Heritage Impact and a Visual Impact Assessment was prepared to assess the impact of the proposal on the heritage values of the site and conservation area. These have been independently peer reviewed.

Statement of Heritage Impact (SHI)

The subject land was formerly the site of the ultimate terminus of the branch railway between East Maitland and the river port of Morpeth, and played an important part in the economic and social development of the Maitland district and the town of Morpeth in particular. The closure of the railway was followed by the demolition of the structures from the site, and in the 1970s the construction of a dwelling and tennis court. The SHI states that as a result of the changes made to the site, the heritage values to which the site was associated, has been so altered as to have considerably degraded its heritage significance, to the extent that its past historic importance is no longer legible. The survival of the pad of the 5-ton capacity jib crane, and also the footings of the brick goods sheds, does little to retrieve this situation, although these items do provide some limited and specialised evidence of the historical association of the place. Consequently, it was recommended in the SHI that these items, and any potential items identified during future excavations of the site will need to be assessed as part of the development application process. There is also a historic mile post and marker plaque along Swan Street, and although not within the boundaries of the subject site, the SHI indicates this item should be protected from disturbance during any activities associated with any future development application.

Visual Impact Statement (VIS) and Peer Review (PR)

The site is presently characterised by one individual two storey circa 1970s residence, tennis court and open lawn areas, and is otherwise of a rural appearance. It is surrounded to the west by an industrial special precinct and south, along the entire length of Swan Street by detached residential development. To the north and east of the site is rural land or rural activities. The PR report notes that the predominant open character of the site may have contributed to the actual and perceived visual connection with rural lands to the north, and may have given rise to the location of the views 'corridors' in the Maitland DCP - Part E Special Precincts Heritage Conservation Areas View Corridors Map, one of which appears to cover the entire subject site. The VIS and PR suggest that this view corridor is an unreasonable control on a site that has had extensive development in the past, and development of the site was restricted in present times because of the existing zoning applied to the site and the resultant low scale and low intensity built forms have allowed incidental views to the rural surrounds from this part of Swan Street.

It was recommended in the PR that the most important heritage view axes down Swan and from the end of Edward Street across part of the subject site and to the north and north-west should be protected. Consequently the planning proposal has mapped this locality as an E2 Environmental Conservation zoning.

It is considered that the heritage values to which the site was associated have been altered and do not appear legible on the surface of the site. Any potential items identified during future excavations of the site will need to be assessed as part of the development application process. The proposed subdivision is of a scale that can interact appropriately with the local historical context and the E2 Environmental Conservation zoning will preserve the view of rural land from an important heritage viewpoint

State Environmental Planning Policies

SEPP (Infrastructure) 2007

The SEPP aims to facilitate the effective delivery of infrastructure across the State. The proposal is considered consistent with the SEPP as it proposes to use existing services and infrastructure available in the locality. Additionally, any applicable matters can be addressed as part of a future development application.

SEPP (Rural Lands) 2008

Consistency with the SEPP's Rural Planning Principles (cl.7) and Rural Subdivision Principles (cl.8) is required by S117 Direction 1.5 Rural Lands. Rezoning the land from rural (RU1) to residential (R1) is potentially inconsistent with several principles of the SEPP. These matters are addressed in the assessment below in relation to S117 Directions.

SEPP 55 Remediation of Land

In accordance with SEPP 55, when land is identified as contaminated, the planning authority must be satisfied that the land is suitable in its contaminated (or suitable after remediation) for the purposes for which the land in the zone concerned is permitted to be used.

The proponent has provided a Preliminary and Detailed Contamination Assessment which identified contamination on the site associated with the previous uses. The site was formerly used as a train terminal and uncontrolled fill was historically placed across the site in conjunction with levelling of the site to accommodate the rail line. Contaminants on the land include arsenic and lead.

The proponent has also submitted a Remediation Action Plan which demonstrates the site can be adequately remediated for residential purposes. Remediation and the suitability of the site for residential purposes will need to be fully assessed as part of any future development application. Consequently, the proposal is consistent with this SEPP.

S117 Directions

1.2 Rural Zones and 1.5 Rural Lands

The proposal is inconsistent with S117 Direction 1.2 and Direction 1.5 as it rezones existing rural land for residential purposes, and will change the minimum lot size by increasing the

permissible density of the land.

The site and locality is not identified as highly productive agricultural and, consequently the change from agricultural uses will not result in significant loss of productive agricultural land or the opportunity for sustainable rural activities. Council considers that the site will not support a viable agricultural enterprise without causing some significant impact on the adjoining residences. The proposed residential uses are consistent with the surrounding land uses within the locality, and, due to the existing size of the parcel will not create additional rural fragmentation. This position is supported. Consequently, the Secretary's delegate may agree that the inconsistency with S117 Directions 1.2 Rural Zones cl.5(d), and 1.5 Rural Lands cl.6(b) is of minor significance.

2.1 Environment Protection Zones

The proposal is consistent with this S117 Direction as the proposal does not reduce the environmental protection standards that apply to the land as provided under Maitland LEP 2011.

2.3 Heritage Conservation

The AHIMS database does not identify any items of significance on site, and there are no listed heritage items identified within or directly adjoining the site under the Maitland LEP 2011. However, the locality has many items of heritage significance. The subject land is located within the Morpeth Heritage Conservation Area, as identified in Maitland LEP 2011 as having local significance. Consequently a Statement of Heritage Significance and a Visual Impact Assessment has been prepared in support of the proposal. These documents have been independently reviewed which also support the proposed rezoning. The Maitland LEP 2011 and Council's DCP particularly the chapter on Special Precincts - Heritage Conservation Area, the National Parks and Wildlife Act 1974, and Heritage Act 1977, also contains legislative provisions and mechanisms to protect heritage items and aboriginal cultural significant items. Therefore, any future development application will further consider the impacts of the proposed development on the identified heritage significance within this locality. The proposal is consistent with this S117 Direction.

3.1 Residential Zones

The proposal is consistent with this S117 Direction as it encourages the provision of housing, and makes efficient use of existing infrastructure and services in the location.

3.3 Home Occupations

The proposal is consistent with this S117 Direction as there is no proposed change to the home occupation provisions.

3.4 Integrating Land Use Transport

Council considers that the land is well located to support the surrounding residential development and to provide high levels of accessibility to existing road and public transport networks. The proposal is consistent with this S117 Direction.

4.1 Acid Sulfate Soils

The site is identified on Council's Acid Sulfate Soils Map as containing Class 5 Acid Sulfate Soils (ASS). Council notes that the Preliminary Contamination Assessment Report found that as the disturbance of the soil 2m below the surface is unlikely, further assessment of acid sulfate soils is not considered necessary. The land can be managed as part of any future development application using provisions within clause 7.1 Acid Sulfate Soils of Maitland LEP 2011. Any inconsistency with this S117 Direction is therefore considered to be of minor significance.

4.3 Flood Prone Land.

Council has identified that a small portion to the rear of the subject site is positioned below the 1 in 100 year flood level, with the majority of the site above this flood level. Future development would be subject to the provisions of Maitland LEP 2011 cl. 7.3 Flood Planning Provisions, and Council's DCP which includes flooding controls developed in accordance with the Flood Planning Manual. Consequently, the Secretary's delegate may agree that the inconsistency with S117 Direction cl.9(b) is of minor significance.

5.1 Implementation of Regional Strategies

The proposal is not inconsistent with the aims and objectives of the Lower Hunter Regional Strategy. The proposal will provide additional infill residential development on the edge of town whilst still maintaining the heritage and cultural significance of Morpeth including its rural curtilage and views to and from the historic village.

Environmental social
economic impacts :

Environmental

The site was formerly used as a train terminal and for railway purposes. Uncontrolled fill was placed across the site to accommodate the rail line. Consequently, the proponent has provided a Preliminary and Detailed Contamination Assessment and has submitted a Remediation Action Plan, which demonstrates the site can be remediated for residential purposes.

The site is predominately cleared, and it is unlikely that any threatened species, populations or ecological communities or their habitats will be adversely affected as a result of the proposed rezoning.

Social and Economic

The proponent has undertaken assessments relating to heritage and visual impacts, and these reports have been peer reviewed. There will be some loss of existing private views by residents opposite the site. Council has identified that a public view corridor from the Edward Street intersection will be protected. Any future development application will need to fully assess and address the impact of the proposal on the heritage conservation significance of the locality.

Due to the scale of the proposal, it is unlikely the proposal will have significant adverse social or economic impacts, but will provide benefits to the local economy through developing the land for residential purposes at the construction and settlement phase.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
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Timeframe to make LEP :	9 months	Delegation :	RPA
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Public Authority
Consultation - 56(2)(d)

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

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

If no, provide reasons :

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

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Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

The Developer Contribution Team provided confirmation via email on 20 October 2015 that this site should not be identified as an urban release area. The site is only capable of producing approximately 10 lots due to flooding constraints, is located on the edge of an existing village and was not mapped as part of the draft Lower Hunter Special Infrastructure Contribution Determination.

Documents

Document File Name	DocumentType Name	Is Public
20150810_Planning_Proposal_Morpeth_Extension_Site_gateway.pdf	Proposal	Yes
20150922_Council_Minutes.pdf	Study	Yes
Appendix5_Swan_Street_VIS_peer_review_final_20May2015.pdf	Study	Yes
Appendix7_Preliminary_Contamination_Assessment.pdf	Study	Yes
Appendix6_Aboriginal_&_Historic_Heritage_Desktop_Due_Dilligence_Assessment.pdf	Study	Yes
Appendix8_Swan_Street_Morpeth_Detailed_Contamination_Assessment_rev3.pdf	Study	Yes
Appendix9_Swan_Street_Morpeth_Remediation_Action_Plan_rev3.pdf	Study	Yes
Appendix_4_Statement_of_Heritage_Impact.pdf	Study	Yes
Maitland_City_Council_06-10-2015_Request_for_Gateway_determination_30_Swan_St_Morpeth.pdf	Proposal Covering Letter	Yes
20141222_Visual_Impact_Assessment.pdf	Study	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
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements

Additional Information :

The Planning Proposal should proceed 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 a minimum of 28 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 5.5.2 of A Guide to Preparing LEPs (Planning & Infrastructure 2013).

2. No consultation is required with public authorities under section 56(2)(d) of the EP&A Act.

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).

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Supporting Reasons :

3. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Maitland City Council has identified the need for this amendment to progress a rezoning identified in the Maitland Urban Settlement Strategy. The planning proposal is the most appropriate mechanism to examine the potential to permit residential development over this land.

A 9 month timeframe to finalise the planning proposal is recommended to complete all needed assessments and exhibition.

The Minister delegated his plan making powers to Council in October 2012. Council has accepted this delegation. The proposal is of local significance and issuing delegations to Council is appropriate.

It is considered that the heritage values to which the site was associated have been altered and do not appear legible on the surface of the site. Any potential items identified during future excavations of the site will need to be assessed as part of the development application process. The proposed subdivision is of a scale that can, through existing planning controls, interact appropriately with the local historical context and the E2 Environmental Conservation zoning will preserve the view of rural land from an important heritage viewpoint.

Signature:



Printed Name:

K O'Flaherty

Date:

13/11/15