

Planning and Assessment

IRF20/5241

Plan finalisation report

Local Government Area: Maitland City Council

1. NAME OF DRAFT LEP

Maitland Local Environmental Plan 2011 (Amendment No. 26).

2. SITE DESCRIPTION

The proposed Anambah Urban Release Area is located approximately 10km west of Maitland CBD and 3km north of the existing Rutherford employment area. The site is bound to the north and west by rural land, east by Anambah Road and south by Windella rural residential estate and rural lands (figure 1). Vehicle access is provided via Anambah Road.

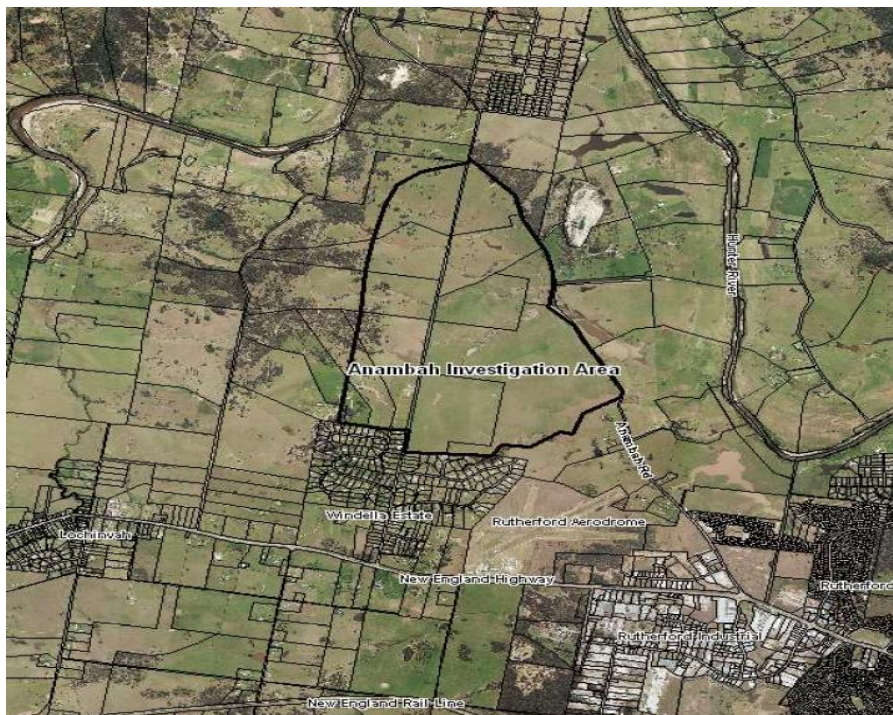


Figure 1 – Site location

The proposed Anambah Urban Release Area comprises eleven (11) allotments within the western corridor of Maitland. It has a total site area of approximately 490 hectares (ha), of which 321 ha is owned by a single landowner.

The Hunter River and several unnamed water courses are located on the eastern side of Anambah Road, with a number of riparian corridors running from west to east across the site flowing into these water courses. The south-eastern section of the site is affected by flooding, with a portion of the site falling below the 1% AEP flood level.

The site is predominantly cleared except for an endangered ecological community in the western section of the site, which contains a Lower Hunter Spotted Gum Ironbark community. This community forms part of a broader vegetation corridor beyond the site. There are also small vegetation patches across the central and northern part of the site.

3. PURPOSE OF PLAN

The draft local environmental plan seeks to deliver around 3,000 residential allotments, a small neighbourhood centre and protection of environmental areas by:

- rezoning the site from RU2 Rural Landscape to predominantly R1 General Residential. Parts of the site will also be rezoned to B1 Neighbourhood Centre, R5 Large Lot Residential, E4 Environmental Living and RE1 Public Recreation (figure 3);
- applying the minimum lot sizes to the following zones:
 - R1 General Residential zone – 450m²
 - B1 Neighbourhood Centre – 450m²
 - R5 Large Lot Residential – 3,000m²
 - E4 Environmental Living –5,000m², 1ha, 2ha, 3ha, 10ha and 100ha;
- inserting new provision (Clause 7.8) to:
 - provide flexibility in the application of the minimum lot size requirements. A total of 450 allotments may be created below the minimum lot size, provided they are located within 200m from a commercial premise, community facility or recreation area; and
 - require the construction of a Western Road Link via Wyndella Road to the New England Highway before the release of more than 1,200 allotments to provide capacity for flood evacuation.
- mapping as an urban release area under Part 6 of the local environmental plan.

Development will be managed through a site-specific development control plan, known as and referred to in this report as the 'Anambah Area Plan'. The draft Anambah Area Plan will provide more detailed development and subdivision controls to manage future staging and respond to development constraints. Maitland City Council has advised it is seeking to concurrently exhibit the draft Anambah Area Plan with the section 7.11 plan in early 2021.

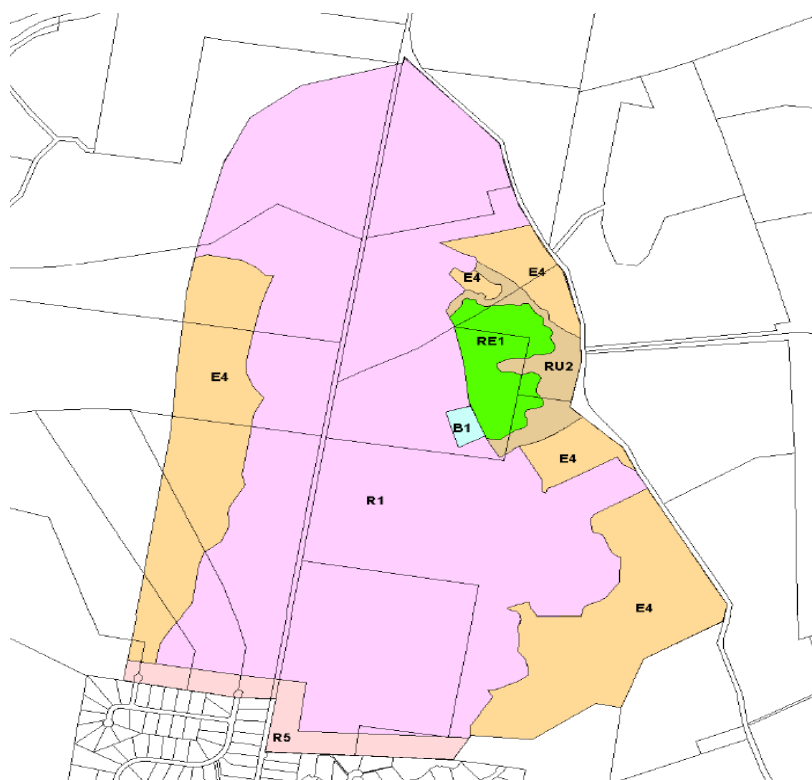


Figure 2 – Proposed zoning

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the State Electorate of Maitland. Ms Jennifer Aitchison MP is the Member for Maitland.

The site falls within the Commonwealth Electorate of Paterson. Ms Meryl Swanson MP is the Member for Paterson.

To the Central Coast and Hunter team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

On 10 July 2012, the Gateway determination was issued subject to conditions (**Attachment B**). The Gateway determination was altered on the following dates:

- 1 July 2013 – to extend the time for completion by 12 months;
- 31 July 2014 – to extend the time for completion by 12 months;
- 13 July 2015 – to extend the time for completion by 12 months; and
- 29 July 2016 – to extend the time for completion by 12 months.

Extensions were granted in response to delays in completion of technical studies and to address issues raised during exhibition that resulted in further investigations and the need to re-exhibit the planning proposal.

On 17 July 2017, Maitland City Council requested the Department of Planning, Industry and Environment make the planning proposal. Since then, the Department worked with relevant parties on the unresolved issues raised by the then Office of Environment and Heritage and Roads and Maritime Services, which is discussed in more detail in Section 7.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, community consultation was initially undertaken by Maitland City Council from 27 November 2014 to 16 January 2015.

In total, 19 submissions were received in the exhibition period, including seven agency submissions, 10 submissions (3 objections) from members of the public and two submissions from internal stakeholders.

The issues raised by members of the public in the exhibition period were:

ISSUE	RESPONSE
Potential impact the planning proposal will have on the rural character and amenity of the area, particularly in relation to Windella Estate	<p>The proposed R5 Large Lot Residential zone minimum lot size was increased from 2,500m² to 3,000m². This will provide a greater transition between the existing large lots of Windella Estate and the proposed Anambah urban release area.</p> <p>The draft Anambah Area Plan identifies a 10m landscape buffer along the common boundary with Windella Estate, which will be managed through a covenant applying to the land.</p>

ISSUE	RESPONSE
Fragmentation and loss of rural agricultural land and a potential oversupply of residential land.	<p>The site was identified in the 2006 Maitland Urban Settlement Strategy and as a 'Preliminary Investigation Area'. In the 2010 update to the Maitland Urban Settlement Strategy the site was progressed to 'Category 1 – Residential'.</p> <p>There is a consistent strategic intent since 2006 considering the site as a future urban release area.</p>
Storm water catchment and drainage issues relating to how stormwater will be directed and detained and the potential impacts for properties downstream.	<p>Storm water will be managed in accordance with Council's manual of engineering standards and NSW Office of Water requirements.</p> <p>A stormwater concept plan identifies existing dams in the water courses will be used, and where required, augmented to manage stormwater quality and quantity from the proposed urban release area.</p> <p>In addition, a preliminary riparian rehabilitation plan has been prepared identifying water courses and general hydrology on the site. The plan seeks to restore the site's water courses for better riparian and drainage functions and vegetation connectivity. The relevant public authority has indicated its support for the riparian rehabilitation plan.</p>
Traffic management in relation to access points in the event of an emergency and the suitability of the proposed emergency access road.	<p>The planning proposal includes a requirement to provide flood free access before the release of more than 1,200 allotments via a proposed Western Link Road that will link the site with the New England Highway at Wyndella Road intersection.</p> <p>Prior to this, emergency access will be provided via River Road, which runs through Windella Estate.</p>
The potential impact the planning proposal will have on Anambah House, a listed heritage item.	<p>To the south of the proposed urban release area is Anambah House, which is listed on the State Heritage Register. Anambah House with its house, billiard room, stables and gardens forming a complete and intact example of a prosperous late 19th century graziers homestead.</p> <p>The draft Anambah Area Plan provides controls that have regard to the aspect and heritage values of Anambah House. Landscaping and screening, appropriate roofing materials and low impact fencing are provided for and will guide future development of the site.</p>

At its meeting of 12 July 2016, Council considered a report on the exhibition and consultation process for the planning proposal. The report addressed submissions received and included recommendations to amend the zone and lot size maps in response to submissions.

Council resolved to re-exhibit the planning proposal for a further 28 days from 21 July 2016 to 18 August 2016, which included notifying all submission makers from the initial exhibition process. At the conclusion of the re-exhibition period, a total of six submissions were received, all from public authorities.

7. ADVICE FROM PUBLIC AUTHORITIES

In accordance with the Gateway determination, Maitland City Council consulted the NSW Rural Fire Service , Local Aboriginal Land Council, Department of Industry, Skills and Regional Development (Resources and Energy Division), Department of Primary Industries (Office of Water), Hunter Water Corporation, Office of Environment and Heritage and Transport for NSW.

Council also consulted the NSW Heritage Council about potential impacts to Anambah House.

NSW Rural Fire Service (RFS)

The agency advised it makes no objection to the planning proposal.

ISSUE	RESPONSE
When determining minimum lot sizes for future subdivisions, dual occupancies and multi-dwelling housing on bushfire prone land, consideration is to be given to the provision of asset protection zones within property boundaries.	<p>The future subdivision will be an integrated development and require RFS approval (bushfire safety authority) before a development application can be approved.</p> <p>The local environmental plan provides a variety of minimum lot sizes to respond to the site constraints. Bushfire asset protection zones are capable of being provided in the property boundaries to comply with the <i>Planning for Bushfire Protection Guidelines</i>.</p>
The future construction of public roads and utility services will need to comply with the relevant guidelines when located on bush fire prone land.	The bushfire risks can be adequately managed at the development application stage in accordance with appropriate guidelines.

Local Aboriginal Land Council

The Mindaribba Local Aboriginal Land Council (LALC) was notified and provided with copies of all the relevant information. Council received no response.

NSW Heritage Council

A visual impact assessment was undertaken by the proponent that addressed the potential impact upon Anambah House, which is located 1km away from the site and is listed on the State Heritage Register.

ISSUE	RESPONSE
The proposed zoning, land use and large residential lots adjoining Anambah House are supported as it will minimise the visual impact of the proposed urban development on Anambah House and its rural setting.	<p>Noted.</p> <p>The draft Anambah Area Plan will include controls to minimise impacts on the visual and scenic amenity of the area.</p>

Department of Industry, Skills and Regional Development (Resources and Energy Division)

The agency raised concerns about the site's proximity to the River Bend Gravel Quarry and Gosforth Hard Rock Quarry, collectively known as the 'Gosforth Quarries'. It advised Council as the consent authority needs to be satisfied the planning proposal would not be subject to significant impacts from the quarrying operations and would not restrict extraction operations of the quarries.

ISSUE	RESPONSE
<p>Transition areas indicate areas that may possibly be impacted by potential activities associated with mining or quarrying operations.</p> <p>Anambah Road is the main service road for the quarries also runs along the eastern boundary of the site.</p>	<p>Council has amended the planning proposal to increase the proposed lot size for that part of the site in proximity to the quarries to 5,000m² to reduce the number of potential residences in this locality.</p> <p>Council is also proposing controls be included in the draft Anambah Area Plan that require demonstration of compliance with relevant noise and dust criteria within the 500m buffer prior to development proceeding.</p> <p>The planning proposal states the quarries development consent DA95/163 (issued in 1998), was limited to 20 years and therefore expires in 2018. On 10 June 2014, Council resolved to extend the life of the quarry for a further 10 years expiring in 2028 (DA95/163).</p> <p>The quarries will be operational until this time and will continue to use Anambah Road.</p>

Department of Primary Industries (Office of Water)

The agency advised it supported the proposal for riparian corridors to incorporate 5m wide low-flow channels with 20-40m wide vegetated riparian corridors. This had been consistent with previous correspondence to the proponent in 2011 and 2012.

ISSUE	RESPONSE
<p>Recommended a vegetation management plan be prepared for the riparian corridors on the site.</p>	<p>The draft Anambah Area Plan includes a requirement that a vegetation management plan be prepared to manage endangered ecological communities and riparian corridors located on the site.</p>
<p>Activities likely to intercept or extract ground or surface water may require licensing or approval under relevant legislation prior to such activities commencing.</p>	<p>Council advised the licencing under the <i>Water Management Act 2000</i> for all large water bodies will occur during the development application assessment process.</p>
<p>Draft structure plan does not show proposed riparian corridors on all of the watercourses on the site.</p>	<p>A riparian rehabilitation plan is proposed for the site that will outline how 1st, 2nd and 3rd order streams will be managed through the proposed core riparian zone widths and vegetated buffers to be regulated by the relevant public authority.</p>

ISSUE	RESPONSE
	<p>The draft Anambah Area Plan also indicates the proposed revegetated riparian corridors will extend to the western border of the site.</p> <p>Implementation and compliance with the vegetation management plan and riparian rehabilitation plan will be addressed in the final Anambah Area Plan, which will ensure that riparian areas are appropriately managed.</p>

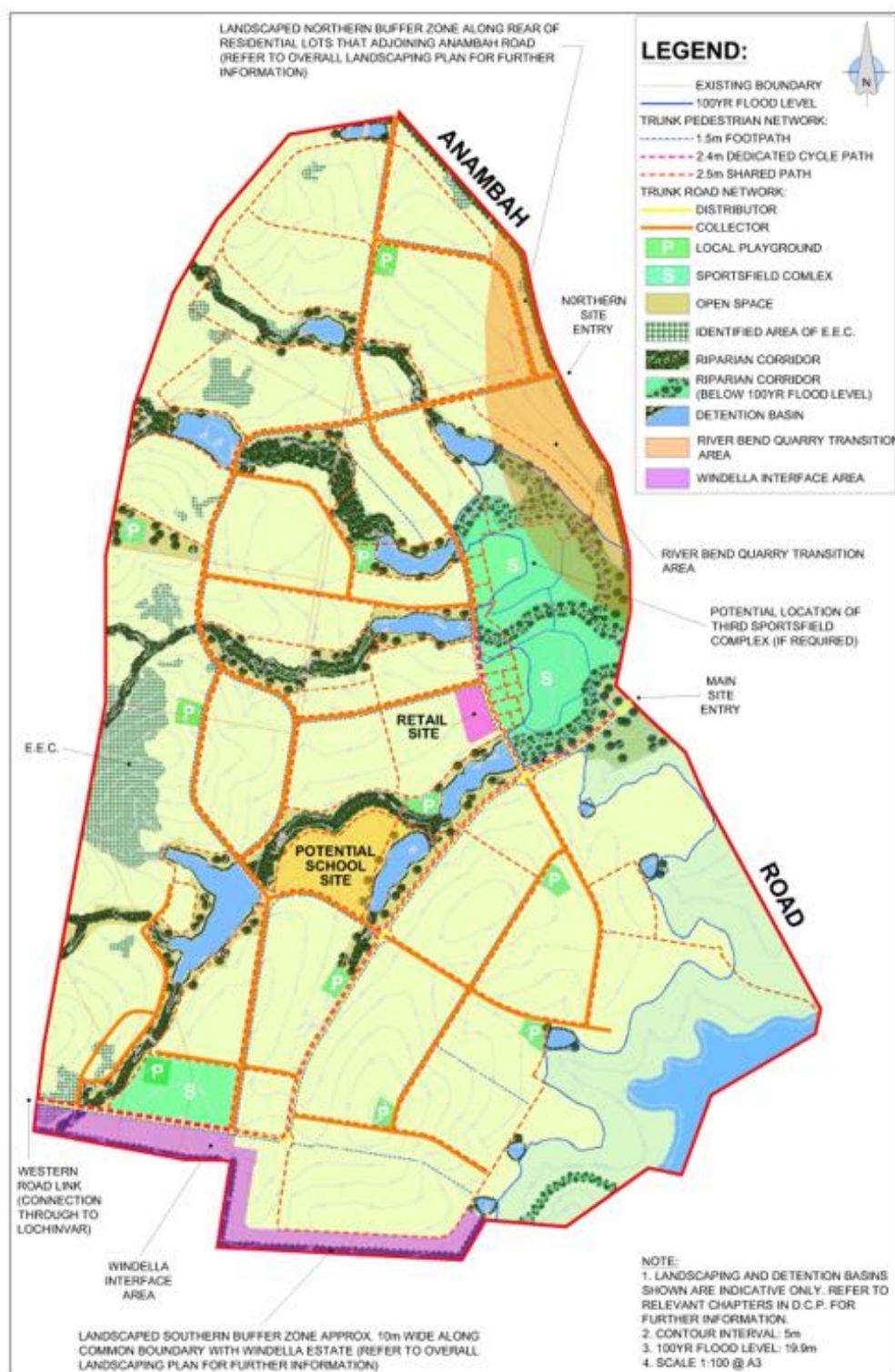


Figure 3 – Draft Anambah Area Plan (Overall Plan)

Hunter Water Corporation (HWC)

The agency advised the planning proposal is in accordance with Hunter Water's growth predications. There is an approved water and wastewater servicing strategy in place, which identifies how the proposed urban release area will be connected to Hunter Water's networks.

ISSUE	RESPONSE
Development of the proposed urban release area will require implementation of the approved water and wastewater servicing strategies.	Noted.

Office of Environment and Heritage (OEH)

The agency objected to the planning proposal due to inconsistencies with the relevant section 9.1 Ministerial directions. This objection is due to the adequacy of information provided regarding flooding, suitability of the proposed E4 Environmental Living zonings and the planning proposals ability to achieve 'an improve or maintain' outcome.

ISSUE	RESPONSE
Areas of high conservation significance fall in the proposed R1 General Residential area, including patches of remnant Lower Hunter Spotted Gum Ironbark Forest Endangered Ecological Community to contain a large number of hollow bearing trees.	<p>Council amended the proposed zoning from R1 General Residential to E4 Environmental Living. This has increased the minimum lot size over this area to 100 ha to avoid fragmentation and minimise disturbance. The planning proposal states any vegetation removal in this area will be offset at the development application stage.</p> <p>In May 2018, the agency advised the Department it supports Council's approach to the protection of endangered ecologically communities on the site.</p>
While the potential archaeological deposits should not impede the rezoning process, further investigation should be undertaken to determine the nature and extent of potential sites.	<p>Council advised further investigation of the potential archaeological deposits is addressed by the draft Anambah Area Plan and will be undertaken at the development application stage. Council's approach is consistent with previous advice from the relevant public authority that the investigations of the potential archaeological deposits should not impede the rezoning process.</p> <p>In August 2018, the agency advised the Department it is satisfied the potential archaeological deposits will be further investigated at the development application stage.</p>
The planning proposal essentially involves intensifying residential development within floodprone area. As such, it requires adequate justification on floodplain	<p>Council advised the proposed zone boundaries and developable areas are based on the latest flood modelling for the Maitland Local Government Area, being the <i>Hunter River Green Rock Flood Study 2010</i>.</p> <p>In May 2018, the agency advised this study only assessed riverine flooding and not local catchment flooding and</p>

ISSUE	RESPONSE
management grounds as such intensification is generally not supported.	<p>cannot be used to determine levels of flooding in the site's minor watercourses.</p> <p>Local catchment flooding was analysed and modelled across the proposed urban release area by ADWJohnson. This flood analysis dated 25 October 2012 advised "the flood characteristics associated with local flooding, that is, flooding generated from rainfall from within the local catchment area upstream of Anambah Road, are minor in comparison with the Regional flood events."</p> <p>In May 2018, the agency advised the proponent has not considered the implications and consequences over the full range of floods. The annual exceedance probability event has been used to derive the floor planning level. The probable maximum flood event does not appear to have been considered. Consequently, the consistency with the relevant section 9.1 Ministerial direction is not demonstrated.</p> <p>Council advised the site will adopt a flood planning level of 20.4m AHD, which is 500mm above the 1% AEP flood event. This is consistent with the section 9.1 Ministerial direction 4.3 Flood Prone Land.</p> <p>Council proposes the rezoning of flood prone land to E4 Environmental Living with a variable lot size ranging from 2ha to 5ha, with a requirement to provide at least 450m² of land above the 1% AEP flood level.</p>
The planning proposal should not place additional and unnecessary requirements on the emergency management agencies, including the State Emergency Services.	<p>Council advised emergency flood access for the first 1,200 lots will be provided via River Road through Windella Estate, which is located above the flood level. The Western Road Link will be required to be constructed before the release of more than 1,200 allotments, which will provide permanent flood free access to the New England Highway.</p> <p>All internal roads will be located above the 1% AEP flood level.</p>

Transport for NSW (including then Roads and Maritime Services)

Advice was provided by both Transport for NSW and the then Roads and Maritime Services. The issues and responses have been consolidated into a single section.

ISSUE	RESPONSE
Future public bus stops should follow the TfNSW's relevant guidelines that the layout of distributor, collector and school access roads are designed to be bus capable to allow future servicing of bus routes.	<p>The draft Anambah Area Plan provides guidance about the future road hierarchy and bus route through the site. This will be resolved at the development application stage.</p>

<p>The traffic and transport study should be updated in consultation with TfNSW and Roads and Maritime Services.</p> <p>The study should identify traffic and transport infrastructure improvements (e.g. upgrade of the intersection of Anambah Road / New England Highway) required to support the proposal with clear timing/triggers based on the various stages of development.</p>	<p>In 2020, TfNSW engaged GHD to update the <i>RMS Rutherford VISSIM Modelling</i> (dated February 2020) to provide the baseline traffic data and determine the capacity of the existing roundabout at the Anambah/New England Highway intersection.</p> <p>The GHD modelling (Attachment E) concluded the existing Anambah/New England Highway roundabout has limited capacity and can accommodate the release of up to 200 to 300 allotments in the proposed Anambah Urban Release Area.</p> <p>The modelling identified a potential interim solution, involving the signalisation of the east bound traffic on the roundabout, would improve its operation and facilitate the release of up to approximately 600-700 lots in the proposed Anambah Urban Release Area.</p> <p>The modelling found that the construction of the Western Road Link provided minimal benefit to the operation of the Anambah/New England Highway roundabout.</p> <p>Ultimately, the modelling determined that full signalisation of the roundabout is required to facilitate the development of the proposed Anambah Urban Release Area.</p> <p>The rezoning proposal will be mapped as an Urban Release Area and will be required to contribute to the provision of State infrastructure before the approval of any future development applications.</p> <p>The Department's Chief Engineer advises the use of clause 6.1 arrangements for designated state infrastructure in the <i>Maitland Local Environment Plan 2011</i> is the most appropriate mechanism to resolving these matters.</p> <p>It is understood that if the proponent decides to proceed with the interim solution on the Anambah Road New England roundabout this will be at the proponent's expense.</p> <p>The development assessment process will determine the number of residential allotments to be released based on the adequacy of existing intersections along the State road network and planned intersection upgrades.</p> <p>Additionally, Council and the proponent have commenced preparation of the draft Anambah Section 7.11 contributions plan. On 7 April 2020, Council confirmed its in-principle support for the inclusion of all required local road and traffic items to be included in Council's contributions plan, with the exclusion of the State Road upgrade requirements.</p>
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8. POST EXHIBITION CHANGES

There have been several post-exhibition changes to improve the planning outcomes for the site. The changes relate to:

- **introduce minimum lot size** - the Department required Council to introduce a minimum lot size of 450m² for the R1 General Residential zone instead of managing future subdivision through its site specific development control plan controls. Applying a minimum lot size is generally consistent with how councils manage the subdivision of residential lands;
- **introduce a clause allowing the creation of smaller lots** - to achieve the planning proposal's intent to permit the creation of smaller residential allotments, a local clause is proposed to enable the creation of up to 450 allotments less than the minimum lot size provided it is located within 200m from a commercial premise, community facility or recreation area;
- **increase of minimum lot size** – the then Office of Environment and Heritage raised concerns the Lower Hunter Spotted Gum Ironbark Forest endangered ecological community was inadequately protected by the proposed minimum lot size of 10ha. In response, Council increased the minimum lot size over this area to 100ha to avoid fragmentation and minimise disturbance. This management approach is supported by the relevant public authority;
- **provision of permanent flood free access** – the initial Traffic/Transport Review in 2012 concluded the western road link would be triggered at the 1,600 lot. Subsequent to consultation and advice from then Roads and Maritime Services, additional traffic assessment was undertaken. The Supplementary Traffic Assessment dated 2018 concluded the lot trigger for the delivery of the western road link is either 1,100 lots or 1,500 lots depending on split of traffic travelling east/west used in the modelling. Additional amendments to the Supplementary Traffic Assessment in 2019, as requested by then Roads and Maritime Services, identifies the proposed of 1,200 lots for the trigger to deliver the western road link.
- **management of potential land use conflict** - In response to concerns by the relevant public authority about the proximity to two quarries, Council extended the E4 Environmental Living zone with a minimum lot size of 5,000m² along the eastern boundary to reduce the number of allotments and potential land use conflicts.

Council's decision to proceed to finalisation without re-exhibiting is supported as the post-exhibition changes do not change the aims and objectives of the planning proposal to deliver residential development in an urban release area and are in response to advice from relevant public authorities.

9. ASSESSMENT

9.1 Section 9.1 Ministerial directions

The Gateway determination issued on 10 July 2012 agreed that inconsistencies with the following directions were of minor significance:

- 1.2 - Rural Lands; and
- 4.1 - Acid Sulfate Soils.

Based on advice from relevant public authorities and post exhibition changes, the planning proposal is now considered consistent with the following relevant section 9.1 Ministerial directions:

- 1.3 - Mining, Petroleum and Extractive Industries;
- 2.1 - Environment Protection Zones;
- 2.3 - Heritage Protection;
- 2.6 - Remediation of Contaminated Land;
- 4.3 - Flood Prone Land;
- 4.4. - Planning for Bushfire Protection; and
- 5.10 - Implementation of Regional Plans.

In regard to the section 9.1 Ministerial direction 2.6 - Remediation of Contaminated Lands, Maitland City Council has considered whether the site is contaminated and formed the opinion that it is suitable for rezoning. Council advises that further geotechnical/contamination assessments will be undertaken at the development application stage for various locations to ensure it is adequately remediated before any residential development occurs.

There are no outstanding inconsistencies which need to be approved by the Secretary's delegate before finalising the planning proposal.

9.2 State environmental planning policies

The planning proposal is consistent with all relevant SEPPs.

9.3 State and regional plans

Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* identifies a projected population increase of 26,650 and an additional 12,550 new dwellings by 2036 for Maitland local government area. The delivery of this housing and population growth is identified as being achieved through the existing urban release areas of Anambah, Aberglasslyn, Gillieston Heights, Bolwarra/Largs, Lochinvar, Thornton North, Louth Park and Farley.

The planning proposal is consistent with the *Hunter Regional Plan 2036* strategic directions by implementing Direction 17 - Create healthy built environments through good design, Direction 19 - Identify and protect the region's heritage, Direction 21 - Create a compact settlement and Direction 22 - Promote housing diversity.

Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* sets out strategies and actions that will drive sustainable growth across the Greater Newcastle Metropolitan area. The planning proposal is consistent with this Plan as it delivers housing in an endorsed urban release area in proximity to jobs and services.

Maitland Urban Settlement Strategy 2011-2021 (MUSS) – 2010 Edition

The Anambah Investigation Area was first identified in the 2006 MUSS as a "*Preliminary Investigation Area*" The 2008 MUSS review elevated the Anambah site to a *Category 2* –

Investigation Area, with the 2010 MUSS review identifying the site as a *Category 1 – Residential Investigation Area*.

Rezoning the site is consistent with Council's adopted land release program to maintain a 10 to 15 year supply of residential lands. The site will be mapped as an urban release area in the local environmental plan so the draft Anambah Area Plan will need to be adopted before any future development/subdivision is approved.

Maitland Local Strategic Planning Statement (LSPS)

Maitland's LSPS was adopted in June 2020. It identifies Anambah as a priority housing release area within the Western Precinct to accommodate future growing population.

The planning proposal is consistent with the LSPS.

10. MAPPING

The planning proposal seeks to amend the following local environmental plan maps:

- zoning;
- lot size; and
- urban release area.

The final maps have been reviewed by Maitland City Council, the Department's ePlanning Team and provided to Parliamentary Counsel (**Attachment Maps** and **Attachment MCS**).

11. CONSULTATION WITH COUNCIL

On 29 October 2020, Maitland City Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment C**).

On 3 November 2020, Council confirmed it supported the draft local environmental plan and raises no objection to the making of the plan (**Attachment D**).

12. PARLIAMENTARY COUNSEL OPINION

On 20 October 2020, Parliamentary Counsel provided the final Opinion that the draft local environmental plan could legally be made. This Opinion is provided at **Attachment PC**.


13. RECOMMENDATION

It is recommended the Minister's delegate as the local plan-making authority determine to make the draft local environmental plan under clause 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* because:

- the planning proposal is consistent with state, regional and local planning strategies, including the *Hunter Regional Plan 2036*, *Greater Newcastle Metropolitan Plan 2036* and *Maitland Urban Settlement Strategy 2011-2021*;
- matters raised by relevant public authorities and during public exhibition have been appropriately addressed;
- the planning proposal delivers housing in close proximity to jobs and services and maximises the use of existing infrastructure; and
- traffic modelling has identified potential infrastructure upgrades to service the proposed urban release area.



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