

Planning and Land Use Strategy

IRF22/3305

Gateway determination report

LGA	Maitland City Council
PPA	Maitland City Council
NAME	Anambah House (72 homes, 0 jobs)
NUMBER	PP-2022-3559
LEP TO BE AMENDED	<i>Maitland Local Environmental Plan 2011</i>
ADDRESS	Anambah House, Anambah Road, Anambah
DESCRIPTION	Lot 712 DP1233410, Lots 721 and 722 DP1191240
RECEIVED	05/10/2022
FILE NO.	IRF22/3305
POLITICAL DONATIONS	There are no donations or gifts to disclose.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists.

1. INTRODUCTION

1.1 Site description

Anambah House is located on Anambah Road, Anambah and is approximately 6.7km north west of Maitland (see Figure 1). It is a rural grazing property, including Anambah House constructed in 1889. Anambah House, including gardens, outbuildings and surrounds, is a heritage item of State significance.

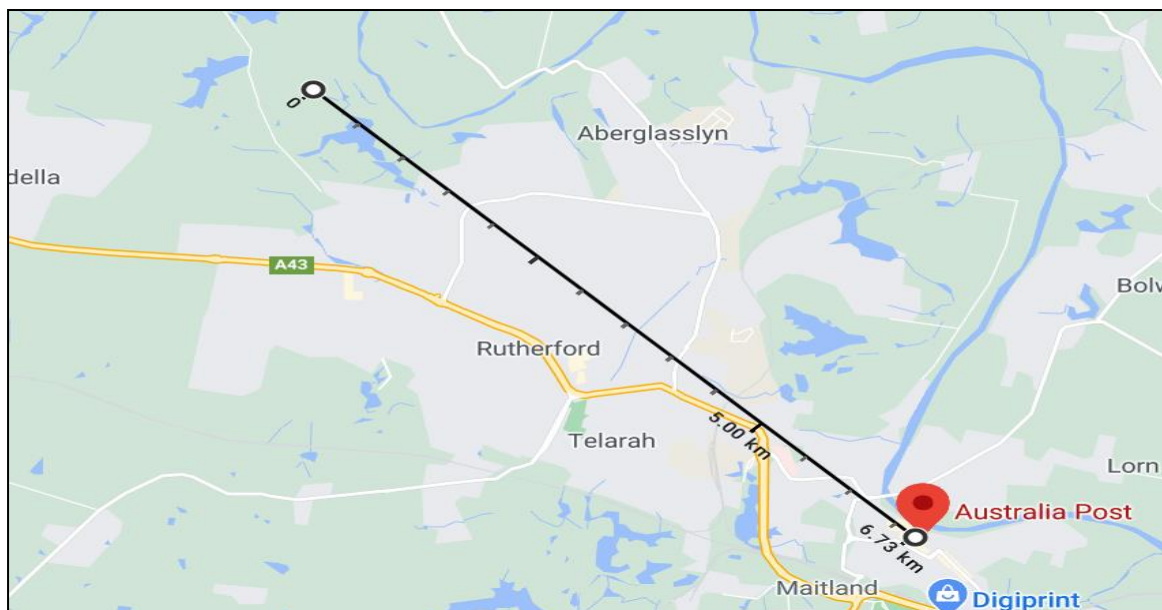


Figure 1: Anambah House location

Anambah House has a frontage to the Hunter River and significant areas of the property are flood prone land. The site includes wetland areas in the northern and southern areas of the property (see Figure 2).



Figure 2: Anambah property boundaries

1.2 Existing planning controls

The site is predominantly zoned RU2 Rural Landscape, with a wetland in the south zoned E2 Environmental Conservation (see Figure 3).

The minimum lot size is 40ha (see Figure 4).

Anambah House and its curtilage is identified on the State Heritage Register. It is also identified as an item of State significance in Schedule 5 and the Heritage map of the *Maitland Local Environmental Plan 2011*.

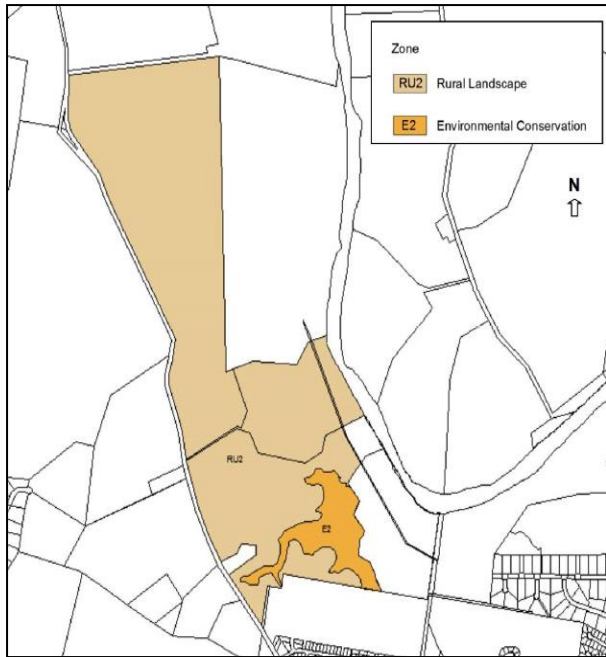


Figure 3: Land Zoning

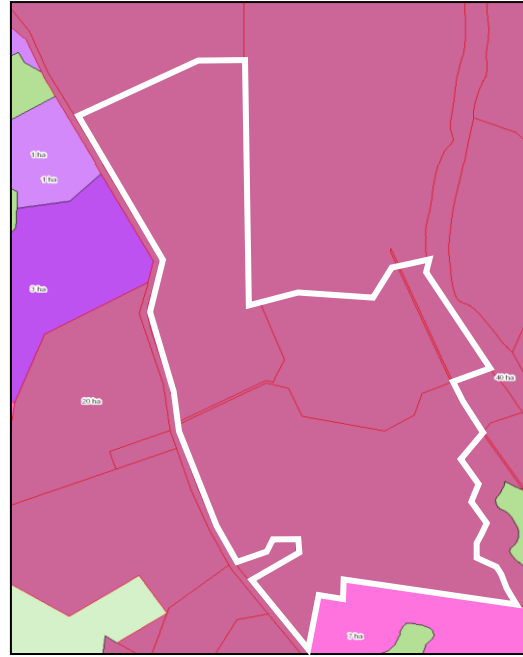


Figure 4: Minimum Lot Size (site outlined white)

1.3 Surrounding area

The site is on the western bank of the Hunter River. To the west across Anambah Road is Rutherford Aerodrome. The land immediately to the west of Anambah Road and adjoining the aerodrome is identified as future employment lands and large lot residential.

The Anambah Road Urban Release Area is to the south east of the property. Across Anambah Road to the north west is the Anambah Urban Release Area identified in the *Maitland Urban Settlement Strategy 2012* and rezoned at the end of 2020 for residential purposes (see Figure 5).

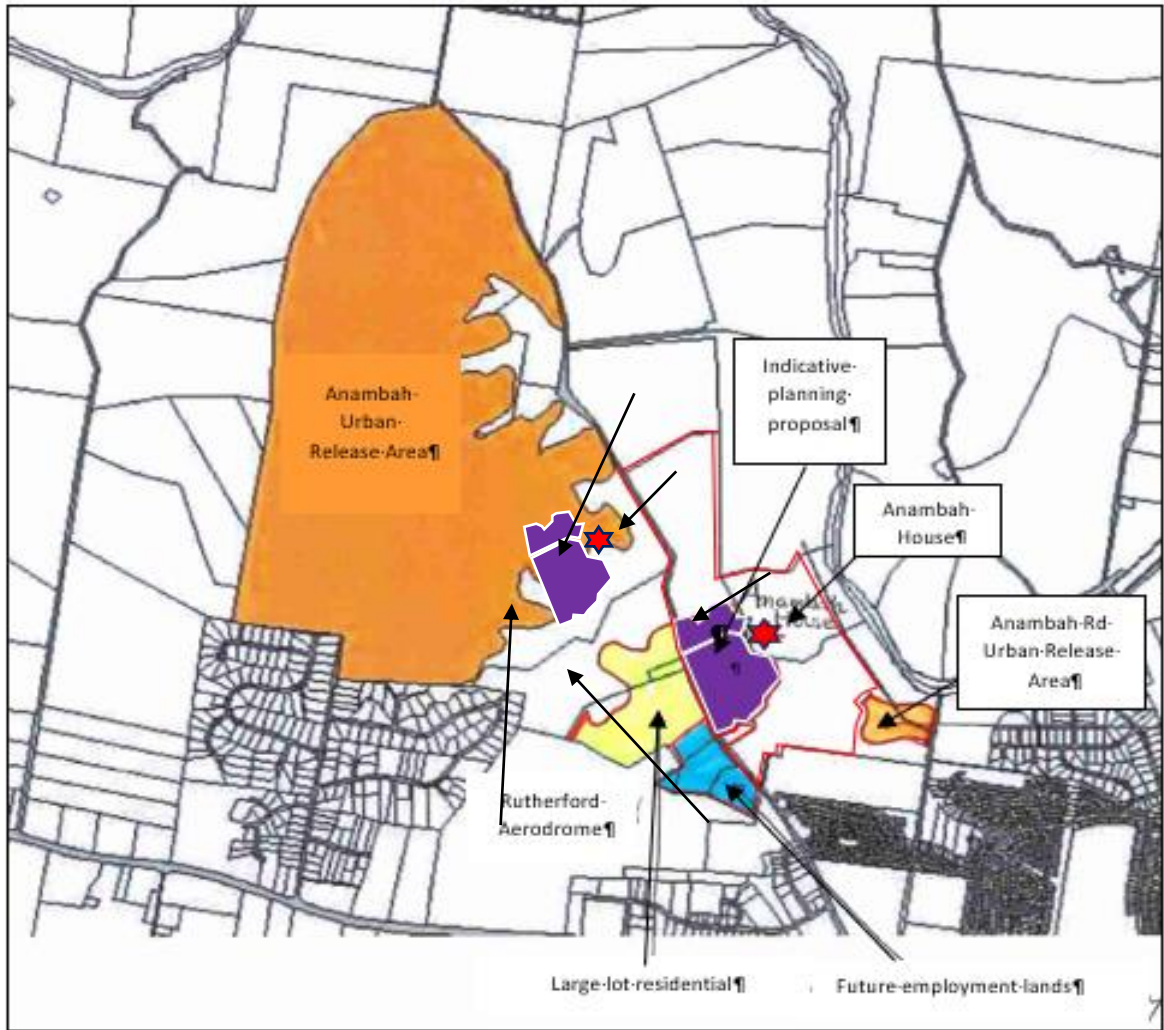


Figure 5: Surrounding area (site outlined red)

2. PLANNING PROPOSAL

2.1 Description of planning proposal

The planning proposal seeks to rezone part of the property to the south west of Anambah House and either side of its access road from RU2 Rural Landscape to R5 Large Lot Residential.

On 10 May 2021, the delegate of the Minister for Planning issued a Gateway determination for an existing planning proposal for the site (PP_2021_MAITL_001_00). Since this time, there has been agency consultation and further analysis undertaken. However, the planning proposal has not yet progressed to public exhibition.

The Gateway determination for the existing planning proposal included conditions. An assessment of the Gateway determination is included in table 1 to identify unresolved issues that need to be considered as part of this planning proposal.

Table : 2021 Gateway determination conditions

Gateway condition	Topic	DPE assessment against condition
1a	Define the curtilage for Anambah House	<p>Partly resolved - A review of the Anambah House curtilage has been undertaken identifying important view lines.</p> <p>The curtilage assessment undertaken in line with Heritage NSW guidelines concluded that a reduced curtilage was more appropriate than that identified in the then Office of Environment and Heritage conservation order.</p> <p>The application to amend the state registered heritage curtilage was made to Heritage NSW on 24 August 2022.</p>
1b	Minimise the impact of the proposed development on significant view lines to and from Anambah House	<p>Partly resolved – The proponent has undertaken work to identify significant view lines and has draft subdivision and dwelling location plans in response.</p> <p>The planning proposal identifies the view corridors and potential mitigation measures, such as planning.</p> <p>Provisions in the development control plan can address landscaping treatments, view corridor protection and lot sizes to address these issues.</p>
1c	Identify subdivision layout and lot sizes	<p>Partly resolved – Draft subdivision and dwelling location plans have been prepared. Will need to be finalised once the amendment to the state registered heritage is approved by Heritage NSW.</p>
1d	Identify dwelling envelopes where required	<p>Partly resolved – Draft subdivision and dwelling location plans have been prepared. Will need to be finalised once the amendment to the state registered heritage is approved by Heritage NSW.</p>
2	Include a height of building map that identifies the maximum height of 8.5 meters	<p>Unresolved – A range of maps need to be added as a condition of the Gateway determination, including: height of building, land zoning and heritage.</p>
3	Draft heritage provisions for Maitland Development Control Plan 2011 are to be prepared and concurrently exhibited with the planning proposal	<p>Partly resolved – Draft provisions have been prepared for the development control plan. Will need to be finalised once the amendment to the state registered heritage is approved by Heritage NSW.</p>

The Department consulted with Council regarding issuing a new Gateway determination for the planning proposal and discontinuing the original 2021 planning proposal, taking into consideration the work that has been completed to address existing Gateway determination conditions. Council agreed with this approach.

2.2 Objectives or intended outcomes

The objectives of the planning proposal are to enable rural residential development, which is identified in the *Maitland Urban Settlement Strategy 2012*. It also intends to protect areas with environmental constraints and ensure future residents have access to local and regional infrastructure.

2.3 Explanation of provisions

The planning proposal seeks the following *changes to the Maitland Local Environmental Plan 2011*:

- rezone 18ha of the site from RU2 Rural Living to R5 Large Lot Residential;
- amend the minimum lot size to accommodate a range of sizes (to be determined);
- amend the heritage map to accurately reflect the heritage item and its amended curtilage; and
- amend the height of buildings map to establish a height of 8.5m to ensure development achieves the Obstacle Limitation Surface for the nearby Rutherford Aerodrome.

Maitland Development Control Plan 2011 will also need to be amended to include provisions for the protection of Anambah House, its curtilage and view lines.

2.4 Mapping

The planning proposal includes maps showing the current zones for the property and the proposed change of zone to part of the property to R5 Large Lot Residential (see Figure 6).

The planning proposal needs to be updated to include maps showing the:

- current and proposed minimum lot sizes;
- current mapped heritage item;
- proposed change to the mapped curtilage of Anambah House; and
- proposed height of building of 8.5m.

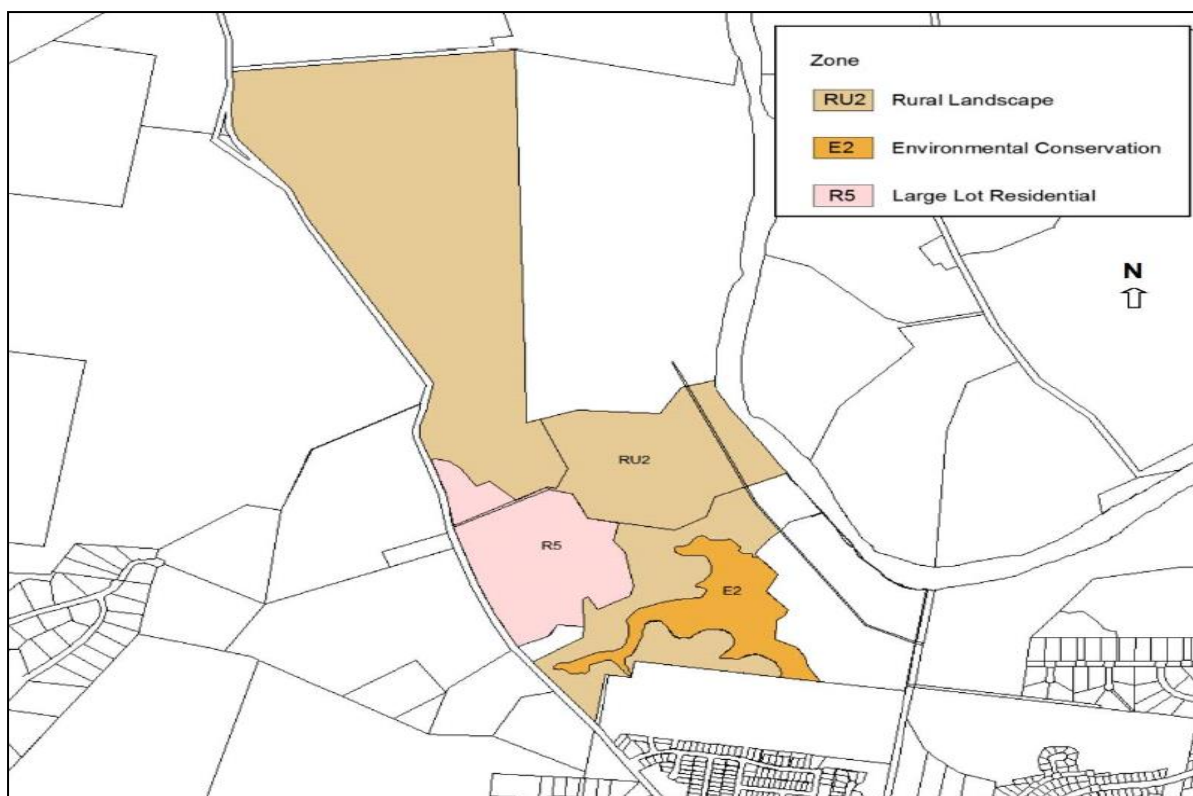


Figure 6: Proposed zoning (site coloured pink and annotated R5)

3. NEED FOR THE PLANNING PROPOSAL

The *Maitland Urban Settlement Strategy 2012* (MUSS) identifies the site as suitable for consideration for urban purposes.

A change in zone and minimum lot size is required as well as clear identification of the heritage curtilage of Anambah House. In addition, controls need to be put in place to limit building height near Rutherford Aerodrome. These changes can only be achieved through a planning proposal that amends *Maitland Local Environmental Plan 2011*.

There will also be several other site-specific controls that will be included within the *Maitland Development Control Plan 2011*.

4. STRATEGIC ASSESSMENT

4.1 Regional

Hunter Regional Plan 2036

The planning proposal will provide diverse housing opportunities on 18ha of land to help achieve the 12,550 homes needed by 2036 for Maitland. This site is close to established services and infrastructure, Maitland town centre and employment opportunities.

The planning proposal achieves the following actions in the *Hunter Regional Plan 2036*:

- Action 21.1 – Promoting development that respects the landscape attributes;
- Action 21.2 – Focuses development to create compact settlements in locations with established services and infrastructure;

- Action 21.6 – Provides greater housing choice by delivering diverse housing, lot types and sizes;
- Action 22.5 – Delivers rural residential development in accordance with a local strategy that:
 - will not impact on important agricultural land, energy, mineral or extractive resource viability or biodiversity values; and
 - occurs on land not needed for urban development.

The development will also help to protect and restore an item of State heritage significance.

Draft Hunter Regional Plan 2041

The draft regional plan recognises that in order to achieve the many public interest intentions of the draft plan, new developments will have to be different. There needs to be greater diversity of housing to improve affordability.

According to Google maps, the site is approximately: 2.8km (around 30 minute walk) from the West Maitland Employment Area comprising speciality stores, industrial uses and green grocers.

The site is well-positioned to a range of day-to-day needs and services, however, there may be scope to promote active transport alternatives for incidental or recreational trips through improvements to footpaths and cycleways. These can be further implemented at the development application stage.

Greater Newcastle Metropolitan Plan 2036

The planning proposal notes the site is not identified in the *Greater Newcastle Metropolitan Plan 2036* as a housing release area. However, it is consistent with the strategies and actions within the Metropolitan Plan in providing additional housing within existing developing areas close to existing jobs and services.

The planning proposal specifically achieves Action 18.1, which requires rural residential development to be supported by a local planning strategy and in locations where:

- the land is unlikely to be required for more intensive urban purposes;
- less intensive development will result in better management of the land; and
- delivery of infrastructure required to service the development is physically and economically feasible.

The area has been identified within the Maitland LSPS 2040+ as suitable for rural residential development.

The planning proposal is in an area not proposed or suitable for intensive urban development, is close to services and will help protect the heritage integrity of Anambah House. The planning proposal demonstrates consistency with Regional Plans and Strategies.

4.2 Local

Maitland +10 (Community Strategic Plan)

The planning proposal states it is consistent with the Maitland +10 Community Strategic Plan's vision and objectives in that it is providing opportunity for urban growth for the needs of a growing population.

Maitland Local Strategic Planning Statement 2040+

The Maitland Local Strategic Planning Statement 2040+ (LSPS) supports rural residential development in locations that cannot be considered for more intensive urban development and as a buffer to rural lands. It also calls for more diverse housing supply.

The LSPS identifies the site as an area for 'Future Investigation' (Figure 7 – black hatching), which is defined as:

The 'future investigation' category included land that has been identified in the Maitland Urban Settlement Strategy as 'category 2' investigation areas where detailed studies and investigations are required to confirm their suitability for future development and this land would logically be developed after 'category 1' lands.

Additional studies will be required to confirm suitability of the site for future development. The required studies are discussed in other sections of this report and will be included as conditions on the Gateway determination.

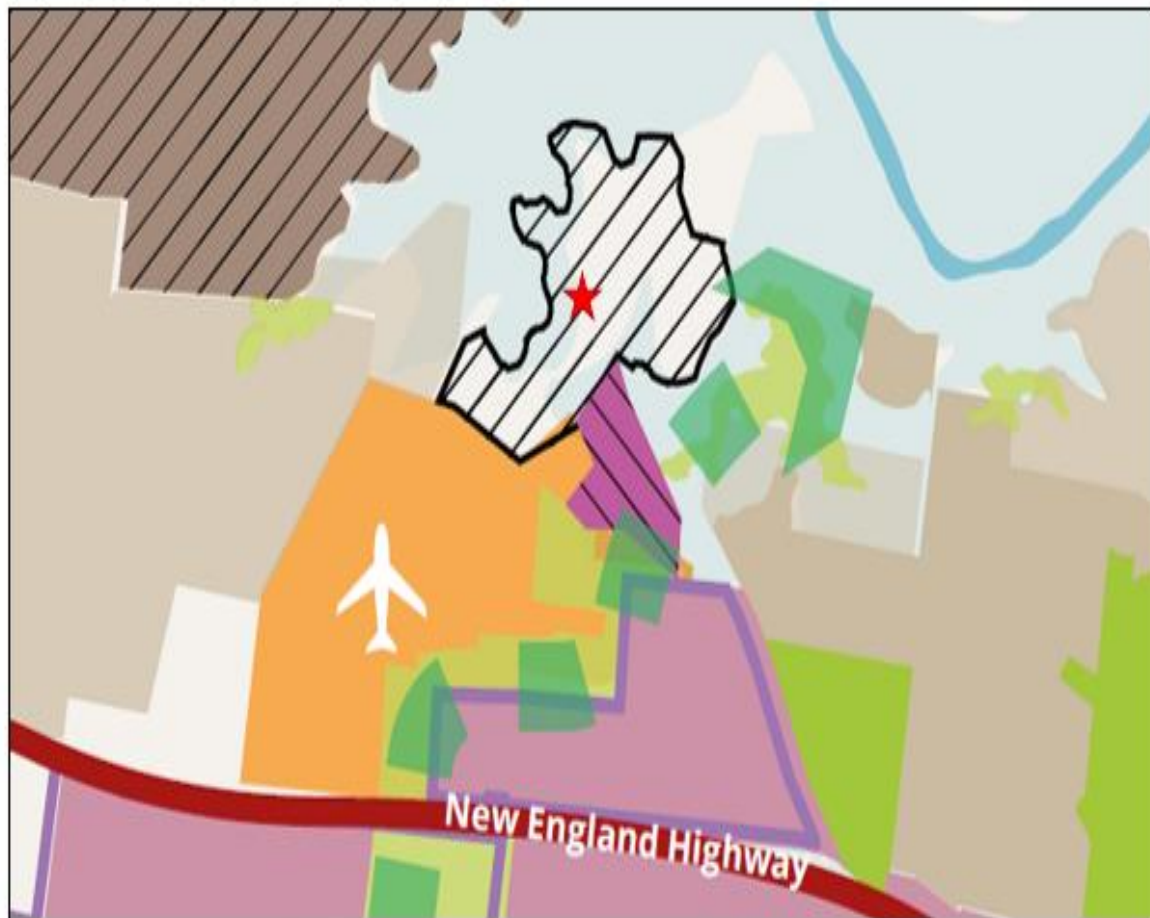


Figure 7: Extract Maitland LSPS map (site identified by red star)

Maitland Urban Settlement Strategy 2012 (MUSS)

The MUSS categorises investigation areas as Category 1 (0-5 years), Category 2 (5-10 years) or Preliminary Investigation Areas (10+ years) to indicate a general sequence for development. The MUSS notes that “Category 1 land is connected with existing urban areas and is expected to be more easily serviced. Category 2 lands would logically be developed after Category 1 land”.

In September 2009, the Department conditionally endorsed the MUSS.

The site is identified as ‘Category 2 Large Lot Residential’ and the MUSS identifies it is out of sequence with intended land release. However, the current MUSS was adopted in 2012 and the recent release of the Anambah Urban Release Area now enables the land to proceed in sequence.

Furthermore, Anambah House is a heritage listed item of State significance and the planning proposal would enable the restoration and conservation of the heritage item.

The planning proposal is consistent with the MUSS and the planning proposal will deliver heritage benefits through the restoration and conservation of Anambah House.

4.3 State environmental planning policies (SEPPs)

The planning proposal will need to be updated to reference the current SEPPs.

SEPP (Primary Production) 2021

The planning proposal states that it is inconsistent with the SEPP as it seeks to rezone land zoned RU2 Rural Landscape to rural residential development. The planning proposal is consistent with SEPP (Primary Production) 2021 as it does not impact State significant agricultural lands.

SEPP (Resilience and Hazards) 2021 Chapter 4 Remediation of Land

This SEPP will apply when a development application is lodged.

A preliminary site investigation report has been prepared in accordance with section 9.1 Ministerial direction 2.6 Remediation of Contaminated Land. The preliminary investigation found that the site was not subject to contamination.

Additional contamination investigations will need to be conducted in support of any future development application for the site.

SEPP (Biodiversity and Conservation) 2021 Chapter 4 Koala Habitat Protection

The planning proposal states an ecological assessment undertaken in November 2017 under the now repealed SEPP 44 concluded the site and/or surroundings did not constitute Koala habitat. It also states the proposed development site and adjoining lands contains no canopy trees or vegetation that may potentially support Koala habitat.

4.4 Section 9.1 Ministerial directions

The planning proposal will need to be amended to correct the titles of the relevant Ministerial directions and place them in the correct order.

5.1 Implementation of Regional Plans

The planning proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036* and the *Hunter Regional Plan 2036*.

The planning proposal is consistent with the direction.

3.2 Heritage Conservation

The planning proposal applies to land adjoining Anambah House, a heritage item of State significance. *Maitland Local Environmental Plan 2011* identifies Anambah House as an item of State heritage significance and it is also listed on the State Heritage Register.

An 'Aboriginal Cultural Heritage Due Diligence Assessment' has been undertaken and a search of the Aboriginal Heritage Information Management System (AHIMS) of Heritage NSW did not identify any objects or places on the site.

A review of the Anambah House curtilage has been undertaken identifying important view lines. The curtilage assessment undertaken in line with Heritage NSW guidelines concluded that a reduced curtilage was more appropriate than that identified in the then Office of Environment and Heritage conservation order.

The planning proposal also states the impacts are exacerbated by proposed lot layout of 2,000sqm lots, which is not considered appropriate. Appropriate lot sizes and dwelling envelopes are to be investigated.

Further heritage assessment is proposed to be undertaken to accurately define the curtilage and inform a proposed lot layout to protect Anambah House and its setting.

On 24 August 2022, an application was made to Heritage NSW to amend the state heritage register curtilage for Anambah House and will need to be processed concurrently with this planning proposal.

Consideration of consistency with the direction will need to occur once this further heritage assessment is completed and consultation with Heritage NSW is completed.

4.1 Flooding

Maitland Local Environmental Plan 2011 includes flood prone land provisions.

The area of the site proposed for rezoning and development is above the flood planning level. However, Anambah Road, which provides access, is affected by flooding. Available flood modelling indicates floodwaters would rise between 15.2m AHD cutting the road for 28 hours (10% AEP event) to 19.5m AHD cutting the road for 40 hours (1% AEP event).

Flood free access will require either upgrades to Anambah Road or negotiated across adjoining land until such time that Anambah Road is upgraded to enable access during floods.

Clause 3)(g) of the direction states:

3) A planning proposal must not contain provisions that apply to the flood planning area which:

(g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency

response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities,

It is understood Council and the proponent have agreed on a way forward with a voluntary planning agreement to provide for flood free access and/or legally binding agreement with adjoining landowner to use their land.

The planning proposal states flood free access requirements will need to be put in place prior to finalisation of the planning proposal. If details are not provided of how this access to be provided, it is recommended the planning proposal not proceed. This is recommendation in the planning proposal is supported by the Department.

Consideration of consistency with the direction will need to occur once consultation with the Biodiversity Conservation Division is undertaken.

4.3 Planning for Bushfire Protection

The site is not bush fire prone land, nor does it adjoin bush fire prone land.

4.4 Remediation of Contaminated Land

A preliminary site investigation report has been prepared in accordance with the direction. It found the site was not subject to contamination. Additional contamination investigations will need to be conducted in support of any future development application for the site.

5.1 Integrating Land Use and Transport

The planning proposal is inconsistent with this direction as it locates residential development over 6km from Maitland and relies on the private vehicle for transport.

A traffic impact assessment was prepared. However, it considered the site in isolation and did not consider the impacts of traffic from the Anambah Urban Release Area. The planning proposal states a revised traffic impact assessment is likely to be required and consultation with Transport for NSW.

Modelling undertaken for the Anambah Urban Release Area 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 Anambah Urban Release Area.

Consideration of consistency with the direction will need to occur once this further assessment is completed and consultation with Transport for NSW is undertaken.

5.3 Development Near Regulated Airports and Defence Airfields

The flight paths of the Rutherford Aerodrome impact on the site. Studies, monitoring and modelling have been undertaken which recommend a maximum building height of 8.5m, satisfying the requirements of the direction for development in operational airspace.

Studies, monitoring and modelling demonstrate that aircraft noise emissions will be within acceptable limits to enable residential development. All land to be developed for housing is below 20 ANEF (Australian Noise Exposure Forecast).

Consultation will be required with the lessee/operator of the Rutherford Aerodrome. This is the Royal Newcastle Aero Club and once this has occurred the planning proposal will be consistent with the direction.

36.1 Residential Zones

The planning proposal states that a revised servicing strategy will be required following issue of a Gateway determination.

Section 5(a) Clause 2(a) of the direction states that a planning proposal must contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it).

It appears this requirement of the direction is outstanding. Consideration of consistency with the direction will occur once the revised servicing strategy is prepared and consultation with Hunter Water is undertaken.

36.2 Caravan Parks and Manufactured Home Estates

The planning proposal is inconsistent with the direction as the proposed change of zone to R5 Large Lot Residential will prohibit caravan parks and manufactured home estates on the site.

The proximity to Anambah House would make the land inappropriate for a caravan park or manufactured home estate.

The inconsistency is justified by the *Maitland Urban Settlement Strategy 2012*, which identifies the site for future large lot residential development, along with consistency with the *Hunter Regional Plan 2036* and *Greater Newcastle Metropolitan Plan 2036*.

9.1 Rural Zones

The planning proposal is inconsistent with this direction as it seeks to rezone a rural zone (RU2 Rural Landscape) to a residential zone (R5 Large Lot Residential).

The inconsistency is justified by its identification as a Category 2 investigation area in the *Maitland Urban Settlement Strategy 2012*.

9.2 Rural Lands

The planning proposal is inconsistent with this direction as it seeks to rezone a rural zone (RU2 Rural Landscape) to a residential zone (R5 Large Lot Residential) and potentially cause fragmentation of rural lands.

The inconsistency is justified by its identification as a Category 2 investigation area in the *Maitland Urban Settlement Strategy 2012*, along with consistency with the *Hunter Regional Plan 2036* and *Greater Newcastle Metropolitan Plan 2036*.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal will increase the demand for open space, recreation, community facilities in the immediate area.

The area is affected by aircraft noise however, the potential impacts are within acceptable standards for residential development. Building design and dwelling location will need to ensure residents' amenity is maintained.

There are few opportunities for public transport, however, approval of the Anambah Urban Release Area will provide the catalyst for improved public transport to Anambah House. The site is approximately 6.7km from Maitland and travel distances are relatively short.

5.2 Environmental

The site has been cleared for agriculture and it is unlikely there will be any impacts on threatened species or their habitats. There are some hollow bearing trees on the site which will require supervision by a qualified ecologist during their removal and water sensitive urban design will be required to protect the wetland on the Hunter River floodplain.

Investigations have not identified any aboriginal objects or places that will be affected by the planning proposal.

5.3 Economic

The planning proposal seeks a residential outcome. However, the subdivision and development of housing will generate construction jobs in the short to medium term.

5.4 Infrastructure

The planning proposal will place additional demands on service provision. Electrical services can be extended to the site.

A revised servicing strategy will be prepared for the site.

Traffic generation from the proposed 70 dwellings will need to be factored into the upgrade of Anambah Road and its intersection with the New England Highway.

6. CONSULTATION

6.1 Community

Maitland City Council has proposed a 28 day consultation period which is considered adequate.

6.2 Agencies

Maitland City Council has proposed to consult with the following agencies:

- Biodiversity and Conservation Division;
- Transport for NSW;
- Hunter Water Corporation; and
- Mindaribba Local Aboriginal Land Council.

Given the issues that need to be addressed for this planning proposal and as identified in section 9.1 Ministerial directions it is considered that the following organisations should also be consulted:

- Heritage NSW; and
- Lessee/operator of the Rutherford Aerodrome – Royal Newcastle Aero Club.

7. TIME FRAME

Council has proposed 9 months for the finalisation of this planning proposal.

However, given the issues yet to be resolved prior to public exhibition, it is considered appropriate to allow 12 months for finalisation of the planning proposal.

8. LOCAL PLAN-MAKING AUTHORITY

Maitland City Council has requested authorisation to use its delegated functions under section 3.36 of the Act to make the plan.

It is appropriate that Council be authorised to be the local plan-making authority as the planning proposal is consistent with regional and local strategic planning for the area and outstanding issues will be resolved prior to public exhibition.

9. RECOMMENDATION


It is recommended that the delegate of the Secretary:

1. agree any inconsistencies with section 9.1 Ministerial directions: 1.1 Implementation of Regional Plans; 6.2 Caravan Parks and Manufactured Home Estates; 9.1 Rural Zones; and 9.2 Rural Lands are minor or justified by the *Maitland Urban Settlement Strategy 2012*, *Hunter Regional Plan 2036* and *Greater Newcastle Metropolitan Plan 2036*; and
2. note consistency with section 9.1 Ministerial directions: 3.2 Heritage Conservation; 4.1 Flooding; 5.1 Integrated Land Use and Transport; 5.3 Development Near Regulated Airports and Defence Airfields; and 3.1 Residential Zones will be achieved when relevant technical studies are completed and consultation undertaken with relevant public authorities and organisations.

It is recommended the delegate of the Minister for Planning and Homes determine the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities/groups:
 - Biodiversity and Conservation Division;
 - Transport for NSW;
 - Hunter Water Corporation;
 - Heritage NSW;
 - Mindaribba Local Aboriginal Land Council; and
 - Owner of Rutherford Aerodrome – Royal Newcastle Aero Club.
3. The following additional studies should be prepared and exhibited with the planning proposal:
 - (a) revised traffic impact assessment;
 - (b) Heritage NSW's response to the request to amend the state heritage register curtilage for Anambah House;
 - (c) a height of buildings map which identifies the maximum building height of 8.5m;
 - (d) a current and proposed heritage map;
 - (e) a current and proposed lot size map; and
 - (f) draft heritage provisions for *Maitland Development Control Plan 2011*.

4. The time frame for completing the Local Environmental Plan is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.
6. The planning proposal should be amended to refer to the correct updated titles of SEPPs and section 9.1 Ministerial directions.



11/10/2022

Dan Simpkins

Director, Central Coast and Hunter Region

Assessment officer: Mark Parker
Principal Planning Officer, Central coast Hunter Region
Phone: 99955286