



IRF22/2562

Gateway determination report – PP-2022-682

Additional permitted use for 19 Scotch Creek Road, Millers Forest

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elder's past, present and future.

This report was compiled on Ku-ring-gai land and is in relation to a site located on Wonnarua Nation land.

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1 Planning proposal

1.1 Overview

Table 1 Planning proposal details

LGA	Maitland Local Government Area
PPA	Maitland City Council
NUMBER	PP-2022-682
LEP TO BE AMENDED	<i>Maitland Local Environmental Plan 2011</i>
ADDRESS	19 Scotch Creek Road, Millers Forest
DESCRIPTION	Lot 1 DP 721804
RECEIVED	12/07/2022
FILE NO.	IRF22/1257
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.

1.2 Objectives of planning proposal

The planning proposal seeks to allow 'light industry' in the form of sand and gravel processing activities for a site located at 19 Scotch Creek Road, Millers Forest zoned RU1 Primary Production under the *Maitland Local Environmental Plan 2011*.

The sand and gravel processing activities are a historical use, formally permissible under the now repealed Maitland Local Environmental Plan 1993. The existing site was not transitioned to the new Local Environmental Plan and whilst remaining operational, is no longer a permissible use.

The planning proposal seeks to amend the *Maitland Local Environmental Plan 2011* by:

- including an additional Schedule 1 permitted use for 19 Scotch Creek Road, Millers Forest to allow 'light industry' as permissible with consent.

This would allow the current business to submit a new development application for facility upgrades to ensure health and safety requirements are being met and the overall operation becomes more environmentally sustainable.

The objectives of the planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend *the Maitland Local Environmental Plan 2011* by:

- including an additional Schedule 1 Additional permitted use:

12 Use of certain land at 19 Scotch Creek Road, Millers Forest

- (1) This clause applies to Lot 1 DP 721804, being 19 Scotch Creek Road, Millers Forest.

- (2) Development for the purposes of light industry for the purpose of sand and gravel processing is permitted with development consent.

Under the *Maitland Local Environmental Plan 2011*, the current RU1 Primary Production land use table is:

RU1 Primary Production Zone objectives
To encourage sustainable primary industry by maintaining and enhancing the natural resource base
To encourage diversity in primary industry enterprises and systems appropriate for the area
To minimise the fragmentation and alienation of resource lands
To minimise conflict between land uses within this zone and land uses within adjoining zones

RU1 Primary Production permitted without consent land uses
Extensive agriculture; Home Occupations; Intensive plant agriculture

RU1 Primary Production permitted with consent land uses
Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Cellar door premises; Dual occupancies; Dwelling houses; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Helipads; Home-based child care; Home businesses; Home industries; Intensive livestock agriculture; Jetties; Landscaping material supplies; Markets; Open cut mining; Plant nurseries; Recreation areas; Roads; Roadside stalls; Rural industries; Rural supplies; Signage; Turf farming; Water supply systems

The planning proposal identifies the historical 'light industry' use of the site as a sand and gravel processing business. Council advised that several other land uses were considered, including 'rural industry' and 'extractive industry' however, neither of these definitions aligned with the use of the site.

Light Industry is defined under *Maitland Local Environmental Plan 2011* as meaning:

'a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes high technology industry, home industry, artisan food and drink industry and creative industry'

The site does not cause fragmentation and alienation of resource lands, nor does it encourage conflict between land uses within adjoining zones as it does not interfere with the amenity of the area and therefore maintains the zone objectives.

The planning proposal contains an explanation of provisions that adequately explain how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The site is located at 19 Scotch Creek Road, Millers Forest, and is located on the corner of Scotch Creek Road and Raymond Terrace Road. It is legally described as Lot 1 DP 721804.

The land is zoned RU1 Primary Production under the *Maitland Local Environmental Plan 2011* and is surrounded by rural housing with a minimum lot size of 40ha. The area is a provider of turf and the surrounding and existing land uses include equestrian centres, horse agistment, small cattle graving, rural housing, and large shed and garage retail businesses.

The allotment is irregular in shape and is approximately 15.18ha in area. The area used for the gravel and sand processing (**Figure 1**, in blue) is approximately 7550m² and includes several buildings, a storage area, light machinery and sand and gravel pits.



Figure 1: 19 Scotch Creek Road, Millers Forest (Source: Planning proposal)

2 Need for the planning proposal

The planning proposal is not the result of a strategic study or report.

Several options were considered by Council:

- a) amending the land use table of the RU1 Primary Production zone,
- b) rezoning the site,
- c) including a new local provision under Part 7, or
- d) including the site and land use activity as an additional permitted use under Schedule 1.

Amending the land use table for the RU1 Primary Production zone to include 'light industry' as a permissible use would have implications across the Maitland local government area and would not be in the public interest. Rezoning the site would have no strategic merit as it would cause land fragmentation, and the inclusion of a new local provision would only be required if planning controls were sought on the operation or extent of any approval granted.

Amending Schedule 1 is therefore the best way to enable the use to continue, and a planning proposal is the only mechanism to allow an additional permitted use under the *Maitland Local Environmental Plan 2011*.

3 Strategic assessment

3.1 Regional Plans

3.1.1 *Hunter Regional Plan 2036*

The following table provides an assessment of the planning proposal against relevant aspects of the *Hunter Regional Plan 2036*.

Table 5 *Hunter Regional Plan 2036* assessment

Regional Plan Objectives	Justification
Direction 8: Promote innovative small business and growth in sector	<p>The planning proposal seeks to permit a small business that specialises in sand and gravel processing, including providing sand for potable water filtration used by Hunter Water and the local community.</p> <p>The planning proposal is consistent with action 8.1 'Implement initiatives to promote small business growth and innovation, particularly in Newcastle City Centre and other strategic centres' as it will enable a small business the ability to lodge a development application for the improvement and upgrade of current facilities which will ensure its growth and ongoing sustainability.</p> <p>The planning proposal is consistent.</p>
Direction 13: Plan for greater land use compatibility	<p>The planning proposal site is a light industry and has been operating on the site for more than 30 years, demonstrating that it does not cause land conflict to adjoining properties or impede surrounding rural and agricultural uses.</p> <p>The planning proposal supports action 13.3 as it seeks to amend planning controls to deliver greater certainty of land use.</p>

Regional Plan Objectives	Justification
	The planning proposal is consistent.

The planning proposal is consistent with the *Hunter Regional Plan 2036*.

3.1.2 Draft Hunter Regional Plan 2041.

The following table provides an assessment of the planning proposal against relevant aspects of the draft Hunter Regional Plan 2041.

Table 4 draft Hunter Regional Plan 2041 assessment

Regional Plan Objectives	Justification
Objective 1: Diversify the Hunter's mining, energy and industrial capacity	The planning proposal seeks to retain a specialised light industrial site that services industry and the community. Whilst the planning proposal does not align with any of the objective 1 actions, it contributes to the diversification of industry by providing sand and gravel processing services. The planning proposal is partially consistent.
Objective 7: Plan for businesses and services at the heart of healthy, prosperous and innovative communities	The planning proposal does not align with any of the strategies under objective 7, but does support local businesses including the construction industry, and therefore supports the local community. The planning proposal is partially consistent

The planning proposal is partially consistent with the draft Hunter Regional Plan 2041.

Greater Newcastle Metropolitan Plan 2036

The following table provides an assessment of the planning proposal against relevant aspects of the *Greater Newcastle Metropolitan Plan 2036*.

Table 5 Greater Newcastle Metropolitan Plan 2036 assessment

Regional Plan Objectives	Justification
Outcome 1: Create a workforce skilled and ready for the new economy	The planning proposal aligns with strategy 7 – 'Respond to the changing land use needs of the new economy', as the site supplies sand to the construction industry for the use in building materials. The construction industry is currently experiencing high growth as urban densities increase as a result of covid and with people more able to work remotely from areas outside main city centres. The planning proposal is partially consistent.

The planning proposal is partially consistent with the *Greater Newcastle Metropolitan Plan 2036*.

3.2 Local Strategies

The planning proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the following strategic direction and objectives:

Local Strategies	Justification
Local Strategic Planning Statement	<p>The aim of the <i>Maitland Local Strategic Planning Statement</i> sets out the 20-year land use vision for the Maitland Local Government Area and provides a clear and comprehensive guide on how future growth and change will be managed.</p> <p>The planning proposal supports Planning Priority 7: ‘Strengthen our local economy through attracting investments, creating jobs and fostering innovation’ as sand and gravel processing supports local businesses including the construction industry for concrete, road construction, asphalt mix, construction fill and the production of materials like bricks, concrete blocks, and piping.</p> <p>The planning proposal is consistent.</p>
Maitland + 10 Community Strategic Plan	<p>The planning proposal is consistent with the ‘Let’s lead together’ theme ‘to work together to be the best our community can be’ as it aims to allow the permissible land use of a local business and employer that supports the local community.</p> <p>The planning proposal is consistent.</p>

3.3 Section 9.1(2) Ministerial directions

The planning proposal’s consistency with relevant section 9.1(2) Ministerial directions is discussed below:

Table 7 9.1 (2) Ministerial direction assessment

Directions	Requirement	Consistent	Reasons for Consistency or Inconsistency
Direction 1.1 Implementation of Regional Plans	This direction provides that all planning proposals should support the visions, strategies, goals and directions of the applying Regional Plans.	Inconsistency of minor significance	The planning proposal promotes the visions and strategies of the <i>Hunter Regional Plan 2036</i> , and extent of any partial inconsistency with the draft <i>Hunter Regional Plan 2041</i> and the <i>Greater Newcastle Metropolitan Plan 2036</i> is considered of minor significance.
Direction 1.3 Approvals and Referral Requirements	This direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Yes	<p>The planning proposal does not require concurrence, consultation, or referral to a Minister or public authority.</p> <p>The planning proposal is consistent.</p>

Directions	Requirement	Consistent	Reasons for Consistency or Inconsistency
Direction 1.4 Site Specific Provisions	This direction aims to discourage unnecessarily restrictive site - specific planning controls	Yes	<p>The planning proposal seeks to enable the sand and gravel processing business to continue operating lawfully. This will also enable lodgement of a development application to upgrade the facilities.</p> <p>The land use was previously identified in Schedule 3 – Additional Land Uses of Maitland Local Environmental Plan 1993 however this was not carried over into Schedule 1 of Maitland Local Environmental Plan 2011 nor was a development application lodged to formalise the use to enable reliance on existing use rights.</p> <p>As this use was previously permitted, the planning proposal is consistent with direction (1)(c) which states that the planning proposal must ‘allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principle environmental planning instrument being amended’.</p> <p>The planning proposal is consistent.</p>
Direction 3.1 Conservation Zones	The direction aims to conserve and protect environmentally sensitive areas.	Yes	<p>The planning proposal is not within an identified conservation zone and does not contain any environmentally sensitive areas.</p> <p>The planning proposal is consistent.</p>
Direction 3.2 Heritage Conservation	The direction aims to help protect and conserve objects, items, places and areas of both indigenous and environmental heritage significance.	Yes	<p>It is unlikely that any items of heritage or indigenous significance are located on the site as it has been extensively disturbed as a result of sand and gravel piling and clearance.</p> <p>The planning proposal is consistent.</p>
Direction 4.1 Flooding	The direction aims to ensure that development of flood prone land is consistent with the NSW Government’s <i>Flood Prone Land Policy</i> and the principles of the <i>Floodplain Development Manual 2005</i> , whilst also ensuring any potential flood	Inconsistency of minor significance	<p>The site is identified as flood prone. The planning proposal is inconsistent with direction 4.1(3)(a) as it creates an additional permitted use within a floodway area.</p> <p>However, there is a longstanding history of the land use on the site, including prior recognition in a superseded local environmental plan as an additional permitted use, and the planning proposal aims to reinstate this by enabling ‘light industry’ under Schedule 1.</p> <p>The inconsistency with the direction is considered minor in significance and any proposed upgrades to the sand and gravel</p>

Directions	Requirement	Consistent	Reasons for Consistency or Inconsistency
	impacts both on and off the subject land are considered.		processing business will be assessed against clause 5.21 – Flood Planning of <i>Maitland Local Environmental Plan 2011</i> through a development assessment process.
Direction 4.3 Planning for Bushfire Protection	The direction aims to encourage the management of bushfire prone areas by discouraging the establishment of incompatible land uses in these areas to ensure the best protection to both life and property.	Inconsistency to be determined	The site is bushfire prone land. Consistency with the direction will be determined following consultation with NSW Rural Fire Service.
Direction 4.5 Acid Sulfate Soils	This direction aims to ensure the avoidance of any significant adverse environmental impacts from the use of land containing acid sulfate soils.	Inconsistency of minor significance	The site is identified as containing Class 3 Acid Sulfate Soils. As the site does not propose to intensify the current land use, nor permit any additional works on the site from current operations, the inconsistency is considered minor in significance.
Direction 9.1 Rural Zones	The direction aims to protect agricultural production value of rural land.	Inconsistency of minor significance	The planning proposal is consistent with direction 9.1(1)(a) as it does not seek to rezone land from a rural zone to a residential, business, industrial, village or tourist zone however it does seek to allow 'light industrial' as an additional permissible use for land at 19 Scotch Creek Road, Millers Forest. As the site has been used for sand and gravel processing for over 30 years, the inconsistency with this direction is considered minor in significance.
Direction 9.2 'Rural Lands'	The direction aims to encourage a variety and choice of housing types close to existing infrastructure and services whilst minimising the impact on the environment and resource lands.	Consistent	The planning proposal is consistent with direction 9.2 (1)(e), (1)(g) and (1)(i) as it aims to promote opportunities for investment in a sand and gravel processing business that has a demonstrated compatibility with adjoining rural land uses and does not cause land fragmentation nor introduce land use conflict. The planning proposal supports the local economic interests of the community and those who utilise the business for their water filtration purposes. The planning proposal is consistent.

3.4 State environmental planning policies (SEPPs)

The relevant SEPPs to the planning proposal are discussed further in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Resilience & Hazards) 2021	Chapter 2 – State and regional development	Consistent	<p>The planning proposal cites the South-east corner of the site is identified within the Coastal Environment Area Map.</p> <p>The site is identified as flood prone land under the <i>Maitland Local Environmental Plan 2011</i> and is identified within a bush fire prone area.</p> <p>Any development applications in relation to the site will need to be referred to Rural Fire Service to confirm consistency.</p> <p>The planning proposal aims to make an existing historical use permissible under Schedule 1 and therefore is consistent.</p>
State Environmental Planning Policy (Primary Production) 2021	Chapter 2: Primary production and rural development	Consistent	<p>The site resides within RU1 Primary Production zoned land but is not identified as State significant agricultural land.</p> <p>The planning proposal is consistent.</p>
State Environmental Planning Policy (Transport & Infrastructure) 2021	Division 1 Consultation 2.10 Consultation with councils – development with impacts on council-	Consistent	<p>The planning proposal does not seek any further development of the existing site or additional land intensification.</p> <p>Any development applications for the site may require consultation with Transport for NSW if an expansion of the</p>

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
	related infrastructure or services. Part 3.7 Generating development controls 3.58 Traffic-generating development		existing business is proposed. The planning proposal is consistent.

4 Site-specific assessment

4.1 Environmental

The planning proposal seeks to include 'light industry' as an additional permitted use on land identified as 19 Scotch Creek Road, Miller Forest and will not impose any environmental impacts or constraints beyond its existing operation.

The site does not contain any critical habitats or threatened species but does contain environmental constraints such as flooding and acid sulfate soils – class 3. Any development application submitted with Council will require further assessment and referral to the NSW Rural Fire Service and Biodiversity and Conservation Division.



Figure 2: Flood planning map FLD006



Figure 3: Acid sulfate soils map ASS006



Figure 4: Bushfire prone land map (Source: planning proposal)

4.2 Social and economic

The site includes a business that supports the rural economy of the local area by employing four people, as well as providing services to the State Government, local community members and industry and therefore provides a social and economic benefit.

4.3 Infrastructure

The proposed additional permitted use will not increase constraints on current infrastructure as the site has already been used for light industrial uses. Any development application for the site should provide a detailed traffic assessment to determine the condition of the current road network to support the business.

4.4 Community

Council did not propose a community consultation period, however an exhibition period of 28 days is considered appropriate.

4.5 Agencies

Council has indicated that Transport for NSW may be required to be consulted on the planning proposal. The planning proposal does not seek any further development of the existing site or additional land intensification. Any development applications for the site may require consultation with Transport for NSW if an expansion of the existing business is proposed. No consultation is required in this instance.

It is however recommended that the NSW Rural Fire Service be consulted for 30 days to determine consistency with direction 4.3 Planning for bushfire protection.

5 Timeframe

Council proposed timeframe of 7 months to complete the local environmental plan.

The planning proposal is categorised as 'standard' under the Local Environmental Plan Making Guidelines (Department, 2021) which includes a 200 working day timeframe post-Gateway.

A condition to the above effect is recommended in the Gateway determination.

6 Local plan-making authority

Council has advised it would like to exercise its functions as Local Plan-Making authority.

Given the scope of the planning proposal, it is recommended that Council be authorised to be the Local Plan-Making Authority.

7 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It supports a small business with a long history of operating successfully and without impact on adjoining properties;
- It was previously identified as an additional permitted use under a previous LEP; and
- It complies with the *Hunter Regional Plan 2036*, *Greater Newcastle Metropolitan Plan 2036* and local strategies for the Cessnock LGA.

8 Recommendation

It is recommended that the delegate of the Secretary:

- agree that the inconsistencies with section 9.1 Ministerial directions 4.1 Flooding, 4.5 Acid Sulfate Soils and 9.1 Rural Zones is minor and justified.
- note that the consistency with section 9.1 Ministerial direction is unresolved and will require justification.

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

1. The planning proposal be updated prior to public exhibition to:
 - a) provide labels and/or a legend explaining the blue and red boundary lines on Figure 1.
 - b) amend the Explanation of provisions to reference the number 12 instead of 10 before 'Use of certain land at 19 Scotch Creek Road, Millers Forest'.
 - c) reference updated Ministerial direction numbering and consistency with direction 1.4 Site specific provisions.
 - d) amend the project timeline.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. The timeframe for completing the LEP is by 26 May 2023.
5. Council be authorised as the local plan-making authority.



13/9/2022

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