maitland city council

PLANNING PROPOSAL

AMENDMENT TO THE MAITLAND LEP 2011

Lot 848 of DP 703278 (John Arthur Ave), Part Lot 1538 of DP 832922 and Part Lot 8884 of DP 786883 (Thomas Coke Drive), Thornton.

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INTRODUCTION

This planning proposal has been prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979. It explains the intended effect of, and justification for the proposed amendment to Schedule 4 of the Maitland Local Environmental Plan 2011 (MLEP 2011) and to insert a new Sheet _ (Part Lots) Map Sheet_ RPL_006A

Reclassification of the following Council owned site from Community to Operational land:

- Item: Lot 848 of DP 703278 (John Arthur Ave), Part Lot 1538 of DP 832922 and Part Lot 8884 of DP 786883 (Thomas Coke Drive)

Insert Part Lots Map _ Sheet RPL_006A to the MLEP 2011.

Delegation for making the local environmental plan has not been requested by Council.
Council has previously submitted a Planning Proposal (PP – 2022 – 1301) for this matter. A timeline is presented below as to the milestones achieved to date.

- 30 June 2022 Gateway Determination issued that required the undertaking of a public hearing and referral to Rural Fire Service (RFS). No concerns raised by NSW RFS.
- 5 September 2022 until 3 October 2022 Public Exhibition
- 29 November 2022 Public Hearing
- 11 April 2023 Council report on the outcomes of the public exhibition and public hearing.
- At the meeting of 11 April 2023 Council resolved that:

1. *Council notes the separation of the two reclassification items into separate Planning Proposals.*
2. *Council endorses the Planning Proposal over Lot 21 of DP 541629 (East Maitland) in Attachment 1 and requests that the Minister for Planning make the amendments to the Maitland Local Environmental Plan 2011.*
3. *Council notes the recommendations of the independent facilitators report in Attachment 2*
4. *Council supports in-principle the Letter of Intent made by Landlink to enter into a Voluntary Planning Agreement with Council in relation to the Thornton reclassification item.*
5. *Council request a Gateway Extension for the Thornton reclassification item to enable the negotiation and exhibition of the Voluntary Planning Agreement.*
6. *Council notifies all those who made a submission during the public exhibition and attended the public hearing process.*

Council has undertaken preliminary discussions with the proponent on the content of the Voluntary Planning Agreement (VPA) that forms the justification for the need for the Reclassification via an LEP Amendment.

Public Hearing – Outcomes

Several matters of concern were raised during the Public Hearing including:

- Environmental impacts, including the reclassification would lead to extensive clearing of native vegetation, and the impact on a natural drainage line that runs through the reserve.
- Safety issues due to the proposed access point of the new road conflicting with the existing bus stop and the high level of pedestrian activity in the area, particularly with school children.
- Pedestrian connectivity loss between the bus stop for school children and the residential estate north of the reserve, which is currently not serviced by a bus route.
- Loss of car parking for community use and resulting overflow car parking within local streets, which do not have capacity for additional on-streetcar parking, leading to road safety issues.
- Concerns that the Council is giving away the land for free without any benefit to the local or broader community, and that the construction of the road would impact adjoining residential properties that front Avard Close.
- Criticism that the Council is using the reclassification process as a cheap way to upgrade the access road to the sporting facilities.

As a result of the public hearing, the recommendations to mitigate the communities' concerns and an internal review, Council agreed with the contents below for a draft VPA.

1. Council should enter into a Voluntary Planning Agreement (VPA) with the developer of the subdivision of the land that requires the reserve land for the new road to service the new subdivision, and the terms of the VPA should ensure that:
    a. Council is compensated for the land based on a land valuation process, and the developer must purchase (or otherwise compensate) this land from Council at its market value.
    b. The developer is responsible for providing a new pedestrian linkage from Thomas Coke Drive to the entrance to the Allan and Don Lawrence Fields, at their cost, with the location and design approved by Council and supported by a road safety audit.
    c. The width of the new road should allow parallel carparking for the entire length in which it extends through the current reserve, on both sides, to compensate for the loss of overflow parking within this reserve area, and carparking should be clearly line marked.
    d. The developer should provide drainage as per Council requirements.
    e. The developer should provide a road safety audit in terms of the existing bus stop on Thomas Coke Drive, and if it is deemed unsafe in the context of the new

intersection and additional traffic generation, the developer of the subdivision should be responsible for any costs associated with its relocation.

f. Where existing infrastructure within the reserve is required to be relocated or protected because of the construction of the new road, the developer should be responsible for those costs.

2. Prior to proceeding with the Planning Proposal to reclassify the land, Council should ensure that the intersection onto Thomas Coke Drive is safe and will not result in any congestion issues. The developer should provide a design, Traffic Impact Assessment, and road safety audit.

PART 1: OBJECTIVES OR INTENDED OUTCOMES

The objectives of the proposal are to amend Schedule 4 of the Maitland Local Environmental Plan 2011 to enable the reclassification of Community Land (listed below in Table 1) to Operational Land. The intended outcome for the item in this Planning Proposal are as follows:

- Item 1: reclassify the identified land from Community to Operational for the purpose of legal and practical access to an intended residential subdivision.

PART 2: EXPLANATION OF PROVISIONS

The planning proposal seeks to amend as outlined below:

Item No	Explanations of Provisions
1	• Reclassify the subject land from Community to Operational (Include within Schedule 4, Part 2) • To amend the Land Reclassification (Parts Lot) Map to include this item. • The Land Zoning Map is currently RE1 Public Recreation and will not change.

PART 3: JUSTIFICATION FOR PROPOSED REZONING

In accordance with the Department of Planning's 'Guide to Preparing Planning Proposals', this section provides a response to the following issues:

- Section A: Need for the planning proposal.
- Section B: Relationship to strategic planning framework.
- Section C: Environmental, social and economic impact; and
- Section D: State and Commonwealth interests.

SECTION A – NEED FOR THE PLANNING PROPOSAL

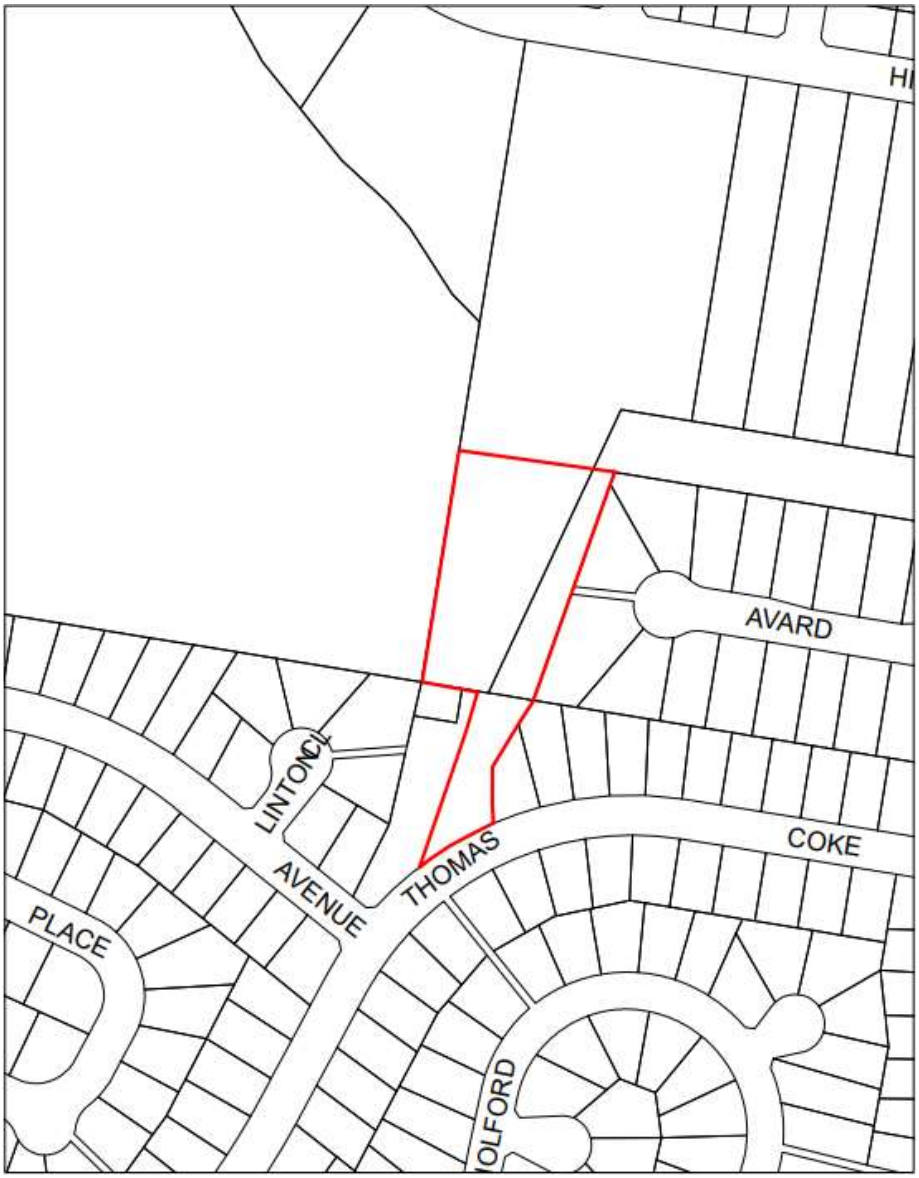
1. Is the planning proposal a result of any strategic study or report?

The planning proposal not been prepared following any outcomes of a study or report relevant to the sites. These properties have been identified as a result of existing (at the time of preparation) development applications that have identified an anomaly as well as a practical/legal access requirements issued as part of GTA's from the NSW Rural Fire service. Necessary background research was undertaken to determine the appropriateness of the reclassification. The rationale and purpose of the Planning Proposal is detailed below.

The purpose of this reclassification is to provide and practical legal access, being a requirement from the NSW Rural Fire Service (RFS) Planning for Bushfire Protection 2019 and a previous condition of development consent (DA11-932). The subject sites are zoned RE1 – Public Recreation under the *MLEP 2011*.

Regarding the existing development application, NSW RFS advised Council on 18 August 2021 that the documentation provided had not satisfactorily addressed the issues relating to access, specifically the provision of a through road. The proposed development can comply with Table 5.3B of "Planning for Bush Fire Protection 2019" but will require redesign of the subdivision layout though and reclassification of Council's reserve to facilitate the construction of the road.

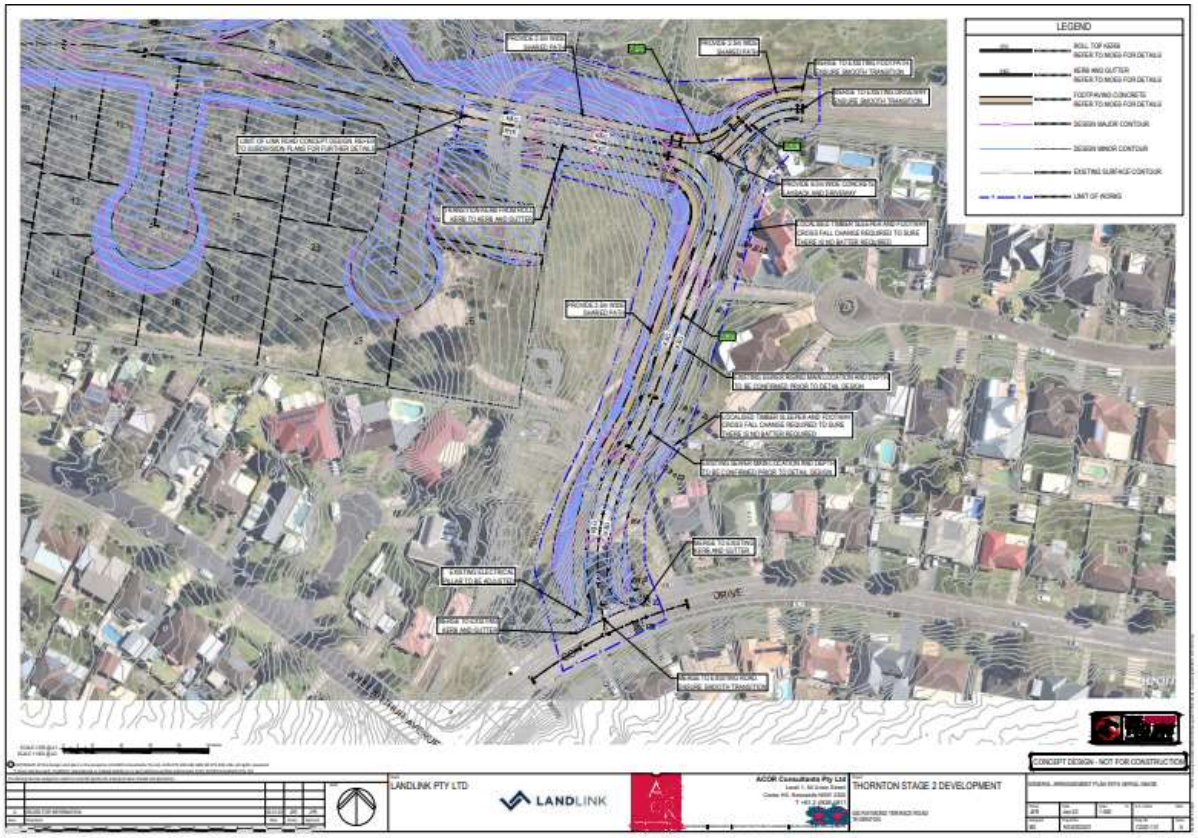
The NSW RFS have advised that they would accept, in the interim, a temporary unfettered road until such a time as the permanent road can be completed to the satisfaction of Council. This will still require reclassification.



Map 2: Subject Site for item 2 – Access handle to proposed residential subdivision

The proposed access road is subject to a previously approved masterplan from Maitland City Council. The RFS had issued General Terms of Approval (GTA) stating that access is to comply with the Planning for Bushfire Protection 2019 guideline, though there is no specific reference to the requirement for a through road. In their assessment of the development application, the RFS have advised that they "would accept no less than a through access to a minimum of a non-perimeter road standard."

Photo 1: Entry to A & D Lawrence Oval from Thomas Coke Drive, Thornton.



Map 3: Proposed access handle.

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

3. **The proposed Planning Proposal amendments are the best option for achieving the intended outcomes. All the properties are classified as Community which under Local Government Act 1993 places limitation and/or restrictions on the use of the land. The item was not acquired for the purpose of development contributions and whilst item 2 forms part of the access handle will not impede the functionality to A & D Lawrence Fields.**

4. **Is there a net community benefit?**

The provision of the planning proposal includes the extinguishment of interests in the land (item 2) and the reasons are set out below:

Item	**Location**	**Existing classification**	**Interests in Land**	**Validation to seek extinguishment of interest**
1	**Lot 848 of DP 703278 (John Arthur Ave), Part Lot 1538 of DP 832922 and**	Community to change to Operational in order to fulfil a GTA issued by	Council Recreation Land known as A & D Lawrence Fields.	Extinguish the proposed reclassification portion of public reserve status

	Part Lot 8884 of DP 786883 (Thomas Coke Drive).	NSW Rural Fire Service for legal and practical access arrangements. Will not impede existing access to A & D Lawrence Fields.	Access handle to the fields	and remove from proposed Plan of Management (POM). The existing A & D Lawrence Oval will remain a public reserve status.

SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

5. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Hunter Regional Plan 2041

This planning proposal supports the following directions and actions of the Hunter Regional Plan 2036. The proposed reclassifications are consistent with the aims and objectives of the Hunter Regional Strategy 2041 (HRP). The Item will enable Council to deliver additional housing supply, consistent with the Strategy 16 – Prioritise Delivery of infill housing opportunities. The associated subdivision comprises of an estimated 25 lots that also within the Growth Corridor for Maitland.

Maitland Local Strategic Planning Statement 2040+

Under 5.0 Local Planning priorities the priority is to *"plan for diverse and affordable housing to meet the needs of our growing and changing community"*.

The proposed LEP for Item 2 will help contribute to this priority by the facilitation and provision of additional housing stock to the housing supply within the Maitland LGA. The proposed LEP will contribute to the Urban Development Program (UDP) that are one of the key actions of the program.

Greater Newcastle Metropolitan Plan

The Plan sets out strategies and actions that will drive sustainable growth across Maitland City communities. Maitland City forms part of the five (5) Lower Hunter Councils that make up Greater Newcastle. Figure 2 identifies Thornton as a Centre, and the draft Planning Proposal will contribute to the housing supply supporting the local economy.

6. **Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

Maitland +10 (Community Strategic Plan)

The proposal supports the following objectives of the Council's community strategic plan (Maitland +10) The planning proposal seeks to ensure that Council delivers on the economic sustainability of the LGA by way of provision of additional housing that is consistent with the long-term strategic planning as well as amending an anomaly that is align with the existing zoning of the land.

Maitland Urban Settlement Strategy (MUSS)

The MUSS provides the broad direction for future urban growth in the Maitland LGA. The Strategy aims to provide both flexibility and certainty by maintaining a generous supply of land for residential growth on several development fronts throughout the Maitland LGA. The item is located within the major urban land release of lands known as Thornton North and contributes to the overall land development program for the LGA. By facilitating the reclassification, the planning proposal will provide the practical and legal accessibility to the site.

7. **Is the planning proposal consistent with applicable state environmental planning policies?**

An assessment of the planning proposal against the relevant SEPPs is provided in the table below. Table 1: Relevant State Environmental Planning Policies.

RELEVANCE	CONSISTENCY AND IMPLICATIONS
State Environmental Planning Policy (Biodiversity)	NA
State Environmental Planning Policy (Industry & Employment)	NA
State Environmental Planning Policy (Precinct Eastern Harbour)	NA
State Environmental Planning Policy (Precinct Western City Parkland)	NA
State Environmental Planning Policy (Precincts Regional)	NA
State Environmental Planning Policy (Precincts Western Sydney)	NA
State Environmental Planning Policy (Primary Production)	NA
State Environmental Planning Policy (Resilience & Hazards)	NA
State Environmental Planning Policy (Resources & Energy)	NA
State Environmental Planning Policy (Transport & Infrastructure)	NA

8. **Is the planning proposal consistent with applicable Ministerial Directions for Local Plan making?**

DIRECTION	CONSISTENCY AND IMPLICATIONS
Focus Area 1 Planning Systems	
1.1 Implementation of Regional Plans	N/A
1.2 Development of Aboriginal Land Council land	N/A
1.3 Approval and referral requirements	N/A
1.4 Site Specific Provisions	N/A
Focus Area 1 Planning System – Place Based	
1.5 Parramatta Road Corridor Urban Transformation Strategy	N/A
1.6 Implementation of Northwest Priority Growth Area Land Use and Infrastructure Implementation	N/A
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan.	N/A
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A
1.10 Implementation of the Western Sydney Aerotropolis Plan	N/A
1.11 Implementation of Bayside West Precincts 2036 Plan	N/A
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	N/A
1.13 Implementation of St Leonards and Crow's Nest 2036 Plan	N/A
1.14 Implementation of Greater Macarthur 2040	N/A
1.15 Implementation of the Pyrmont Peninsula Place Strategy	N/A
1.16 North West Rail Link Corridor Strategy	N/A
1.17 Implementation of the Bays West Place Strategy	N/A
Focus Area 2; Design and Place	

DIRECTION	CONSISTENCY AND IMPLICATIONS
Focus Area 3: Biodiversity and Conservation	
3.1 Conservation zones	N/A
3.2 Heritage conservation	N/A
3.3 Sydney Drinking Water Catchments	N/A
3.4 Application of C3 and C4 and Environmental Overlays in the Far North Coast LEP	N/A
3.5 Recreation Vehicle Area	N/A
Focus Area 4: Resilience and Hazards	
4.1 Flooding	N/A
4.2 Coastal Management	N/A
4.3 Planning for Bushfire Protection	The subject site is identified as Bushfire prone land. The rational for the planning proposal is to enable the facilitation of an access handle that is a requirement issued by the NSW Rural Fire Service. The purpose of this reclassification is to provide and practical legal access, being a requirement from the NSW Rural Fire Service (RFS) Planning for Bushfire Protection 2019 and a previous condition of development consent (DA11-932). The subject sites are zoned RE1 – Public Recreation under the *MLEP 2011*. Regarding the existing development application, NSW RFS advised Council on 18 August 2021 that the documentation provided had not satisfactorily addressed the issues relating to access, specifically the provision of a through road. The proposed development can comply with Table 5.3B of "Planning for Bush Fire Protection 2019" but will require redesign of the subdivision layout though and reclassification of Council's reserve to facilitate the construction of the road.
4.4 Remediation of Contaminated Land	N/A

DIRECTION	CONSISTENCY AND IMPLICATIONS
4.5 Acid Sulfate Soils	The site is identified in Class 5 of Acid Sulfate Soils maps under the Maitland LEP 2011. The proposal is for reclassification only with the zone remaining the same and is not considered an intensification of land uses. The future works will include an access handle to the proposed subdivision that is outlined in *Map 4 Proposed Access Handle.* The function of the existing access way will not change but will be upgraded to Council's satisfaction. Therefore, it is considered that the proposal is consistent with this Direction.
4.6 Mine Subsidence and Unstable Land	N/A
Focus Area 5: Transport and Infrastructure	
5.1 Integrating Land Use and Transport	N/A
5.2 Reserving land for Public Purpose	The planning proposal seeks to reclassify part of an allotment from Community Land to Operational Land. The subject allotment is defined as a 'public reserve' under the Local Government Act 1993. This proposal is inconsistent with this direction as the change in community to operational land will reduce existing reservations of land for public purposes. The proposal does not impede of jeopardise the existing function and operation of A & D Lawrence Oval. The proposed portion seeking reclassification is the existing access handle to the ovals and the reclassification is to enable a future residential subdivision requiring compliance with NSW Rural Fire Service. The access road will remain a public road and dedication to Council.
5.3 Development near Regulated Airports and Defence Lands	N/A
5.4 Shooting Ranges	N/A
Focus Area 6: Housing	

DIRECTION	CONSISTENCY AND IMPLICATIONS
6.1 Residential zones	N/A
6.2 Caravan parks and Manufactured Home Estates	N/A
Focus Area 7: Industry and Employment	
7.1 Business and Industrial zones	N/A
7.2 Reduction in non-hosted short-term accommodation	N/A
7.3 Commercial and retail development along the Pacific Highway, North Coast	N/A
8.1 Mining, Petroleum Production and Energy	N/A
Focus Area 9: Primary Production	
9.1 Rural Zones	N/A
9.2 Rural Lands	N/A
9.3 Oyster Aquaculture	N/A
9.4 Farmland of Regional and State of Significance on the Far North Coast NSW	N/A

SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

9. **Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

   The proposed pathway for the through road to Thomas Coke Drive would not require the removal of any vegetation, it does not impact on any potential critical habitat. Further, there is an existing access road on the land proposed to be reclassified, it is considered that there no adverse environmental impacts.

10. **Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

11. **The proposed pathway for the through road to Thomas Coke Drive would not require the removal of any vegetation, it does not impact on any potential critical habitat. Further, there is an existing access road on the land proposed to be reclassified, it is considered that there no adverse environmental impacts.**

12. **How has the planning proposal adequately addressed any social and economic effects?**

The planning proposal will enable the facilitation of an existing residential development application to be finalised. This will include:

- Provision of additional housing stock for an increasing population:
- Wide variety of lot sizes to increase housing types:
- Provides short terms construction employment
- Provides housing for a larger community near employment and services.

SECTION D – STATE AND COMMONWEALTH INTERESTS

13. **Is there adequate public infrastructure for the planning proposal?**

Yes. The site is part of the existing open space/ Playing fields servicing the Thornton community. The Planning proposal does not compromise the integrity of both the car park or the playing fields. The intended outcome of the VPA will embellish the existing access point, formalise and provide additional car parking and provide pedestrian access.

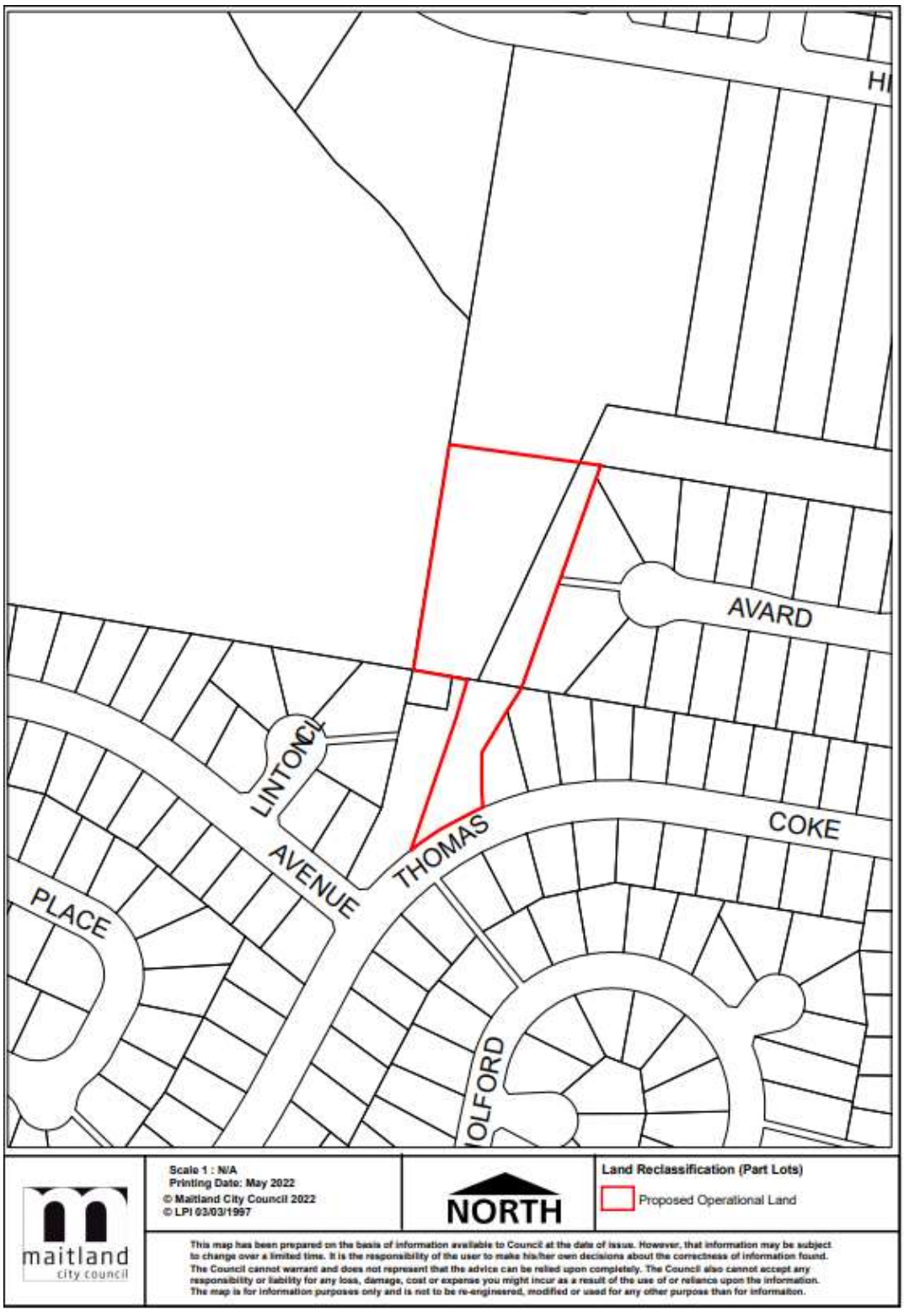
14. **What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?**

No formal consultation with State and Commonwealth public authorities has been undertaken at this stage for this planning proposal. Consultation will occur in accordance with the conditions outlined in the Gateway Determination to be issued for this planning proposal. It is anticipated that NSW Rural Fire Service would be consulted in relation to this planning proposal.

PART 4: DRAFT LEP MAPS

The following Draft LEP maps support the proposal:

Land Reclassification (Part Lot) Map



PART 5: COMMUNITY CONSULTATION

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, and section 29 of the Local Government Act 1993, community consultation must be undertaken by the local authority prior to approval of the planning proposal.

In accordance with Council's adopted Community Engagement Strategy (March 2009), consultation on the proposed rezoning will be undertaken to inform and receive feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the Hunter Post newspaper;
- Exhibition material and relevant consultation documents to be made available at all Council Libraries and Council's Administration Building;
- Consultation documents to be made available on Council's website;
- Notices published on Council's social media applications, for public comment.
- Consultation with any relevant committee or reference groups?

Public Hearing

- In accordance with section 29 of the Local Government Act 1993, a public hearing will was held. The public hearing was conducted on 29 November 2022 in accordance with section 5.5.3 of the Department's LEP guideline.

PART 6: TIMEFRAMES

PROJECT TIMELINE	DATE
Anticipated commencement date (date of Gateway determination)	November 2023
Anticipated timeframe for the completion of required studies	NA
Timeframe for government agency consultation (pre and post exhibition as required by Gateway Determination) (21 days)	NA
Commencement and completion dates for public exhibition period	NA Public Exhibition conducted
Dates for public hearing (if required)	Completed 29 November 2022
Timeframe for consideration of submissions	NA
Timeframe for the consideration of a proposal post exhibition	April 2022 Report to Council
Anticipated date RPA will forward the plan to the department to be made (if not delegated)	November 2023
Anticipated date RPA will make the plan (if delegated)	NA

Anticipated date RPA will forward to the department for notification (if delegated)	December 2023