

**10.4 REQUEST TO CONSIDER LAND AT 24 EDWARD STREET, MORPETH  
DESCRIBED AS LOT 72 DP755205 FOR INCLUSION IN THE MAITLAND  
URBAN SETTLEMENT STRATEGY AS AN URBAN INFILL AND EXTENSION  
SITE**

**PROPONENT: MORPETH LAND COMPANY PTY LTD**

|                             |                                                                                                                                                                                                                                                                                                                                                                                           |
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| <b>FILE NO:</b>             | <b>RZ14/007</b>                                                                                                                                                                                                                                                                                                                                                                           |
| <b>ATTACHMENTS:</b>         | <ol style="list-style-type: none"><li>1. Locality Plan</li><li>2. Rezoning Application (under seperate cover)</li><li>3. Peer Review of Statement of Heritage Impact (under seperate cover)</li><li>4. EJE Peer Review of RLA Heritage Report</li><li>5. Planning Response to Peer Review Morpeth 2015</li><li>6. Council response to proponent's review of Richard Lamb report</li></ol> |
| <b>RESPONSIBLE OFFICER:</b> | <b>Bernie Mortomore - Group Manager Planning,<br/>Environment &amp; Lifestyle<br/>Ian Shillington - Manager Urban Growth</b>                                                                                                                                                                                                                                                              |
| <b>AUTHOR:</b>              | <b>Rob Corken - Strategic Town Planner</b>                                                                                                                                                                                                                                                                                                                                                |
| <b>MAITLAND +10</b>         | <b>Outcome 6. Built heritage and sustainable<br/>development</b>                                                                                                                                                                                                                                                                                                                          |
| <b>COUNCIL OBJECTIVE:</b>   | <b>6.1.1 To encourage orderly, feasible and equitable<br/>development whilst safeguarding the community's<br/>interests, environmentally sensitive areas and<br/>residential amenity.</b>                                                                                                                                                                                                 |

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**EXECUTIVE SUMMARY**

*Council has received a request to rezone land at 24 Edward Street, Morpeth from RE2 Private Recreation to R1 General Residential on the basis that the site can be defined as an urban infill and extension site. However, Council cannot consider a rezoning proposal before a site's inclusion in Maitland Urban Settlement Strategy. Council has an established process to review urban extension and infill sites as part of the annual report prepared for the MUSS. This request is outside this process. However, the request for inclusion in the MUSS has been assessed against the relevant Council policies.*

*The Maitland Urban Settlement Strategy allows Council to consider rezoning sites adjoining urban areas that:*

- 1. have an area less than 15 hectares; and*
- 2. yield less than 50 residential lots; and*
- 3. meet the specified criteria in s5.5, Table 11 of that strategy.*

*An assessment against this criteria and other relevant Council policy has been*

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*undertaken. The proposal is not supported on the basis that:*

- 1. There is no demonstrable need for residential land in this location.*
- 2. There is 20+ years of locally available land to satisfy projected growth.*
- 3. The proposal is inconsistent with the Community Strategic Plan, the Maitland Local Environmental Plan, the Maitland Development Control Plan and the Morpeth Management Plan.*
- 4. The proposal risks undermining the function of the Morpeth Common/Ray Lawler Sports ground complex adjoining the site.*
- 5. The proposal will irreparably undermine the heritage significance of the 1840 Morpeth Town Plan and set precedence for other compromises to the town bounds.*
- 6. There is no community benefit from the proposal.*
- 7. Morpeth's significant visitor economy may be adversely affected.*

*In addition, the arguments to support the site's inclusion and subsequent rezoning to residential on the basis that equivalent built outcomes on the site can occur (such as a manufactured housing estate or serviced apartments) are invalid. Any application is subject to assessment against the Maitland Local Environmental Plan 2011, the Maitland Development Control Plan 2011, the Morpeth Management Plan and ultimately the decision of the Council. The expert heritage advice provided to Council does not prohibit the development of the site. However, any development should be historically relevant, i.e. consistent with its use historic use for recreation and community purposes and sensitive to the surrounding context. The RE2 Private Recreation land use zone is the most appropriate zone to achieve this.*

*Council has consistently protected the rural curtilage and historical setting of Morpeth. This was most recently demonstrated at its meeting of 8 September 2015 where Council resolved to request that the Site Compatibility Certificate (SCC) not be issued for Duke Street, Morpeth because of adverse impacts on the rural curtilage and historical setting of Morpeth. The Department of Planning and Environment refused the SCC on 25 September 2015. The subject site is considered to be as important in maintaining the open curtilage and historic setting. Resolving to include the site in MUSS for residential purposes would be inconsistent with the recent Council resolution and the Department's decision regarding Duke Street.*

*Council recently supported the preparation of a planning proposal for the site at 30 Swan Street, Morpeth. This decision should not infer support for rezoning the subject site. The two sites are fundamentally different. The Swan Street site is listed in the MUSS as an urban extension and infill site, it is used for residential purposes and the proposal will extend residential uses between two, existing residences. In comparison, the subject site is not listed in the MUSS, it has never been used for residential purposes and it is surrounded by recreational uses. Council's expert heritage advice supports the rezoning of the Swan Street site for residential purposes but opposes any change to residential at the subject site.*

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*A further report will be prepared to address the request to prepare a planning proposal to rezone the land.*

## **OFFICER'S RECOMMENDATION**

- 1. That Council refuses to include the site as an urban infill and extension site in the Maitland Urban Settlement Strategy.**

## **REPORT**

### **BACKGROUND**

Council has received a request to rezone land at 24 Edward Street, Morpeth from RE2 Private Recreation to R1 General Residential on the basis that the site can be defined as an urban infill and extension site. However, Council cannot consider a rezoning proposal before a site's inclusion in Maitland Urban Settlement Strategy. To be included in the MUSS the site must first, satisfy the definition for an urban extension and infill site and secondly, meet all the assessment criteria listed in table 11 of MUSS.

An assessment of the proposal and the supporting material has been undertaken. The site satisfies the definition of an urban extension site as it is less than 15 hectares in area. However, the proposal does not satisfy any of the criteria that are required to be met. A detailed assessment against these criteria is provided below.

### **MAITLAND URBAN SETTLEMENT STRATEGY – URBAN EXTENSION AND INFILL CRITERIA**

Criterion 1: Need - The rezoning proposal must clearly demonstrate a specific local and/or LGA wide need for the particular development or land use. This must be in relation to matters such as:

1. Predicted future population growth;

Based on the current growth rate of 2.2% per annum, there is over 20+ years supply of zoned land ready for development. The MUSS commits Council to maintaining a 10-15 year supply of land. There is no need for the development to satisfy predicted future population growth.

2. A clear net-community benefit;

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No net community benefit assessment accompanied the proponent's submission. However, the introduction of residential uses alongside the sports ground risks undermining the functioning of that community facility. Impacts from lighting, noise, dust and projectiles are not compatible with residential uses. The loss of the site to residential will also sterilise the site for future private recreation-type or other compatible uses. This is considered an opportunity-cost to the community.

The proposal will undermine the heritage significance of Morpeth Common and the township and risks undermining the important economic contribution Morpeth's heritage brings to the town and the region.

For these reasons the proposal will have a clear negative impact on the Morpeth community.

3. Economic benefit; and

There is no significant economic benefit from the development. A small amount of short-term construction will result from the proposal. A small increase in population (~50-60 people) may make a minor contribution to the Morpeth economy. However, in the 2014/2015 financial year Morpeth businesses and organisations generated \$70 million in gross revenue. Of this, 29.4% or \$20 million was generated from the 'visitor economy' sector. This sector is the most important economic contributor for Morpeth. Tourism is supported by the heritage quality and reputation of Morpeth. Therefore, any compromise to the town's heritage significance risks undermining the important contribution tourism makes to the local and regional economy.

4. Identified shortfall in supply of the land use being proposed at a local and/or regional level.

The MUSS provides two levels of consideration: LGA wide and sectors (East, Central and West). The last annual review of the MUSS presented to Council in February 2015 calculates that there is more than 20 years supply of residential land zoned available across the LGA. This is based on a growth rate of 2.2% per annum. Morpeth is in the Eastern Sector defined in the MUSS. Within this sector there is also more than 20 years supply of zoned, residential land available for development. The site is 1.2km from the Thornton North Urban Release Area (URA). Thornton North will yield around 5,500 lots. Only 9% of the URA has been developed.

There is no identified shortfall in supply. In fact, there is at least a 5-year surplus of residential land across the LGA and in the Eastern Sector (i.e. in

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excess of Council's policy of 10-15 years supply of residential land). Local demand for housing will be met by the Thornton North Urban Release Area.

Criterion 2: Opportunities - Through the preparation of an acceptable site analysis, the rezoning proposal must demonstrate the opportunities and respond appropriately to factors, including, but not limited to:

- the physical ability of the site to accommodate additional residential and/or commercial development;

The site can physically accommodate additional residential or commercial development.

- greater densities to be accommodated on site, while maintaining a high-quality design outcome;

The submission includes several concept plans that illustrate built form outcomes. These give no consideration to the heritage constraints that would be imposed on any built form on the site. All of the concept plans presented are inconsistent in layout and density with the immediate and greater Morpeth residential area. The development does not address the street and the interface with the sportsground is undesirable.

Morpeth's existing density is 11p/p/h with an average household size of 2.0 persons. Over an area of 2,200m<sup>2</sup> the proposal will increase the density of the site to 39 - 47p/p/ha (23-30 residences).

The concept plan layout is inconsistent with the surrounding area and the resulting density is inconsistent with the existing Morpeth township.

- site consolidation for multiple uses, where appropriate; and

Not applicable.

- a justified correlation with the established need for the proposed development.

There is no strategic justification for the rezoning. There is no demonstrated need.

Criterion 3: Constraints - Through the preparation of an acceptable site analysis, the rezoning proposal must identify the constraints, and respond appropriately to factors, including, but not limited to:

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- lot configuration

The proposed lots of the concept plan are inconsistent with the pattern of the surrounding development.

- urban design

The supporting material includes concept proposals for a re-locatable housing estate and for dwellings. Any development on the site would require development approval. Therefore, the indicative designs are speculative and invalid. However, the designs do highlight key urban design challenges that have not been met. These include how the development addresses the street and the interface with the Morpeth Common and Ray Lawler Sports ground recreation complex. All of the speculative development proposals included with the proponent's application have limited design merit.

- heritage

Morpeth is a distinct urban entity in a rural landscape. The township has a clearly defined edge and is the same size and shape as planned for in 1840. Few changes have occurred since then. This is a fundamental heritage quality of the township. However, Morpeth has many other heritage qualities that collectively contribute to the overall local, regional and state significance of the township.

Council has developed and maintained a strong policy framework to consistently protect the township from inappropriate development and from compromises to the town's bounds starting in 1982 with the Morpeth Conservation Heritage Study. Subsequent development controls and management plans have reinforced these protections. Council's commitment to the protection of Morpeth's heritage was recently reinforced with its formal objection to the request for a site compatibility certificate (SCC) for Duke Street. The Department of Planning and Environment upheld the objection and refused the SCC on 25 September 2015.

Morpeth Conservation Heritage Study 1982

The Morpeth Conservation Heritage Study included a detailed statement of [heritage] significance. The study includes a description of character of Morpeth. The following is a summary of those qualities that are relevant to this proposal.

- **A distinct urban entity in a rural landscape:** Morpeth has a clearly defined edge and a distinctive form in a rural setting. The town is the same size

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and shape as indicated in the earliest known plan (1840) with few changes. It is clearly separate from other urban areas, and is also visible as an entity in the landscape from surrounding areas and from several approach roads.

- **Founding and siting:** The eastern boundary of the common is part of the eastern boundary of the original grant.
- **An uncommon and distinctive pattern of streets and allotments** different from the government town standards of the time; a skillful adaption of the standard dimensions for government towns to the topography, following the principles underlying the planning of towns in the colony...
- **Rural surrounds with many barns and houses from the nineteenth century**  
Morpeth has a grid layout of three major streets with lands between, and 5 minor cross streets. The dimensions of these major streets, distances between intersection and depth of the allotments, are significantly different from the standard dimensions. It is likely that the concept for the layout evolved from the time of the first sale, in 1834 up to 1840 from which date a plan survives which shows the whole of the town as it is now.

#### Maitland Heritage Survey Review 1992

In 1992 Council commissioned the Maitland Heritage Survey Review. The review identified potential items of heritage significance across the whole local government area. In relation to Morpeth the review states:

“Morpeth’s social significance is in its continued function as a town, retaining its mid-19<sup>th</sup> century layout, form and character...”

The consistent low scale of development and a fine townscape derived from the relative intactness of its surviving original buildings and wide grid pattern of streets and the clear definition of urban edge against river and rural land combine to create a unique sense of place with high aesthetic value.”

#### Morpeth Management Plan 2000 (MMP)

In 2000, the Council adopted the Morpeth Management Plan as a blueprint for the future of Morpeth. The plan provides a framework for long term management and decision-making and informed the DCP provisions for Morpeth. The first ‘overarching principle’ of the plan is: “Understanding and sustaining Morpeth and its surrounding rural area...”

An objective under 4.1.4 - Subdivision of the MMP is “To maintain the setting of a village within an open rural landscape.” To achieve this, the MMP policy states:

- No building on the perimeter land (i.e. James Street etc) allowed on the axis of the streets (so as to maintain views).

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- No non-rural development on surrounding land.
- Maintain and enhance areas of planting along the approaches to Morpeth and the surrounding landscape as a 'green belt'.

Section 4.3.1 of the MMP provides policies on the management of Morpeth Common (that includes the former bowling club site). It acknowledges that the Common "is a major component in the historic character of Morpeth and sensitive conservation management is required to retain its character while ensuring residential and visitor amenity and value."

The MMP requires Council to ensure nearby uses (to Ray Lawler Reserve) have minimal impacts by including criteria to achieve an unobtrusive design for any new building on or near the bowling club site.

Section 4.3.4 of the MMP discusses the importance of the rural surrounds and acknowledges these as an integral part of the history of Morpeth. The objectives of the MMP are:

- To retain and protect the rural use of surrounds
- Morpeth continues as a separate and distinct component in the landscape.

To achieve this, the MMP recommends retaining the rural zoning around Morpeth.

The MMP reviewed the statement of [heritage] significance prepared in 1982 against revised criteria published in 1999. The review determined that the statement remained valid. Morpeth was determined to be of state, regional and/or local significance for a variety of reasons including the following that are relevant to this planning proposal:

- As a privately founded town whose layout is a skillful adaption of the standards for government towns to the circumstances of the site
- For its uncommon evidence of the impacts of European settlement on the natural character of the landscape
- As an uncommon example of a town whose road layout and extent has changed little since the mid-19th century and has developed and maintained a clear edge and distinctive form in its rural setting

Morpeth's heritage significance is strongly informed by the layout of the town including its blocks and streets and also its rural setting. These qualities are reflected in the assessments supporting Morpeth's heritage significance and have resulted in a policy framework that has successfully protected these qualities to date. The following figures illustrate the how Council policy has protected Morpeth's heritage significant in terms of street hierarchies, town layout and its rural setting.

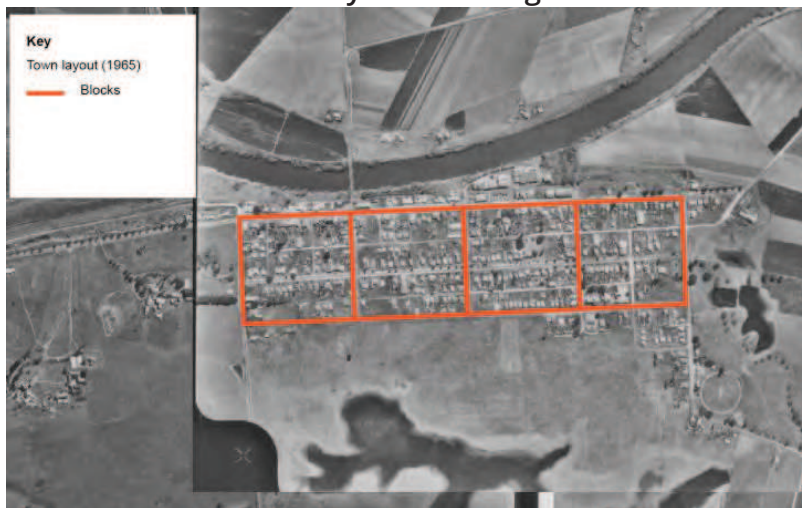
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### Town layout

The original town plan (1840) was influenced by two major influences – the river and Lt Edward Charles Close's theories of town planning. The 1840 plan shows block structure planned in the 1840s.



The 1965 aerial shows that with minor exception, the town of Morpeth remains structured around the 4 blocks of the 1840s plan. The exceptions are justified on the basis that these were (relatively) highly trafficked routes into and out of the township thereby encouraging the spill of development along these routes. This is of heritage significance in itself as it acknowledges the route to the Hinton Ferry that no longer exists.



The 2014 aerial illustrates how little change to the structure of Morpeth has occurred over the 50 years since 1965.

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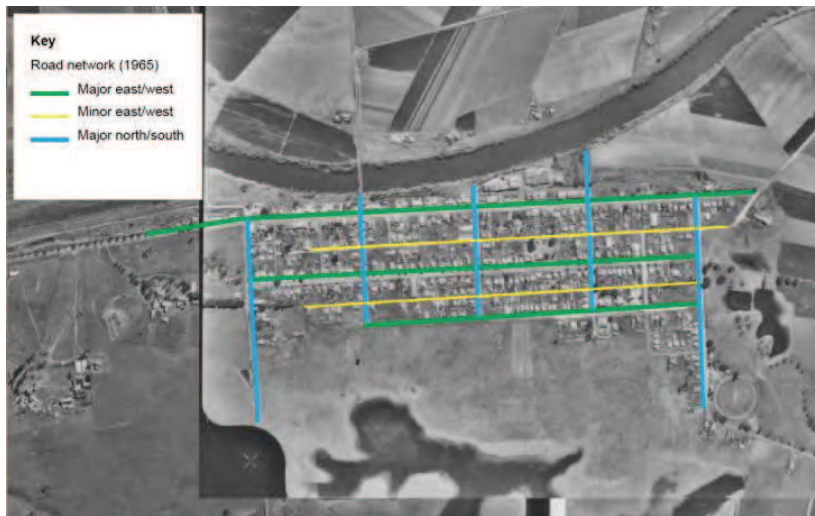


### Street hierarchy

A clear street hierarchy exists in Morpeth. The development pattern and original street layout by Close was simpler than the pattern now in existence. However, the fundamental hierarchy and alignment clearly remain today. A comparison between the 1965 and 2015 aerial photos illustrates that no significant changes to the street layout have occurred over the 50 year period.



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### Rural setting

Morpeth is described as a distinct urban entity in a rural landscape. This is a fundamental quality of the township and its heritage significance. Despite some minor encroachment into the rural buffer from the southwest, the town remains distinctly surrounded by a rural, open space buffer. The closest general residential land is 350m from the closest point of the edge of Morpeth and large lot residential is 280m from the edge of Morpeth.

The following image illustrates the encroachments into the rural setting that have occurred over the 50 years from 1965 to 2014. It is clear that the township of Morpeth remains encircled by its rural surroundings.

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In summary, the fundamental heritage qualities of Morpeth have been successfully protected. Over the 50 years since 1965, Council policy has effectively maintained the town layout, the street layout and town bounds. The town clearly remains as a distinct entity surrounded by open, rural land.

Statement of Heritage Impact – EJE Heritage (2014) (Attachment 3)

The proponent employed EJE Heritage to prepare a Statement of Heritage Impact (SHI) to assess the impact of the proposal. A copy of the SHI is attached to this report (Attachment 3).

The SHI concludes that the site is identified with the sporting history of Morpeth. However, it is not associated with a particular event, person or group of persons of special significance to the local area and the clubhouse is not of itself historically or architecturally significant.

The SHI states that the proposed rezoning and its consequent use for residential housing are compatible with the MUSS2012. The rezoning would provide for a diverse range of residential housing opportunities, and allow the

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introduction of design elements sympathetic to, and consistent with, surrounding urban settlement patterns.

Peer Review of EJE Statement of Heritage Impact – Richard Lamb and Associates (2015) (Attachment 4)

Council engaged Dr Richard Lamb of Richard Lamb and Associates (RLA) to peer review the EJE Heritage Report and to advise Council if the conclusions were valid. A copy of the peer review is attached to this report (Attachment 4).

The RLA Peer Review found the SHI prepared by EJE lacking on several grounds. Furthermore, RLA did not agree with many of the claims that were made by EJE about the significance of the site.

The review states that the potential built form is likely to disrupt views to and from the site. Furthermore, that residential development would be out of character as the site has never been residential. It has always been part of the rural fringe used for recreational uses since 1883 when it was resumed for that purpose.

The review does not prohibit development on the site. It advocates the re-use of the site for a historically more relevant use rather than residential which it has never been.

The proponent has provided both a planning and heritage response to the peer review provided by Dr Richard Lamb and Associates (Attachments 4 and 5). A summary of the main points and Council's response is outlined at Attachment 6. Nothing in the responses has caused a change to the recommendation not to include the subject site in the MUSS as an urban extension and infill site.

- Flooding

The site is affected by flooding. However, the proposed development footprint is above the 1% ARI level for the site.

- Environmental factors

Not applicable

Criterion 4: Location context - Through the preparation of an acceptable site analysis, the rezoning proposal must identify the constraints and opportunities of the location, and respond appropriately to factors, including, but not limited to:

- proximity to public transport;

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The 184 bus service runs past the site. There are 6 services weekdays, 3 services on Saturday and 2 services on Sunday.

- proximity to existing centres;

The site is approximately 1.3 kilometres from town centre.

- relationship to surrounding land uses;

The site is surrounded by Morpeth Common and Ray Lawler Park. The sportsground is used for a variety of regular sporting activities and it is an important community facility. The Morpeth Oval complex is used throughout the year by the Tenambit/Morpeth District Cricket Team and the Morpeth Schoolboys Rugby League Team for training and competition purposes.

Sports grounds generate a number of impacts that are inconsistent with sensitive land uses such as residential. Ray Lawler Park is lit with field lighting. Therefore, light impacts are likely to occur. Sports activities are typically noisy. This is not consistent with a sensitive land use such as residential. Traffic movement causes dust and congestion. These are likely to cause conflict with neighbours. Finally, there is a risk of projectiles causing damage to persons or property from sports such as cricket. Any damage sustained to private property from a sporting activity such as a smashed window is borne by the player. It is unreasonable to burden a sports team and their players with additional risk of financial loss by introducing an incompatible land use to the site.

The residential use of the site may undermine the operation of the adjoining sports field by introducing a sensitive land use to a use that generates noise, light and potential projectiles.

- proximity to existing areas of ecological significance.

The site adjoins the Hunter River floodplain and the Morpeth Common.

**Criterion 5: Potential Impacts** - The rezoning proposal must clearly demonstrate the potential impacts of the proposed development/land use and how these impacts will be mitigated. Issues for consideration include, but are not limited to:

- the potential impact on the existing streetscape and character, including;

The use is setback from the streetscape. However, the outlook from the street will be impeded by a significant built form and fencing. The concept plans

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accompanying the proposal are inconsistent with the existing built form and lot layout of the surrounding area.

- heritage of the location;

A detailed assessment of the heritage impact has been provided above.

- the potential impact on the environment and biodiversity value of the location;

An appropriately designed development is unlikely to adversely impact the environment or affect the biodiversity.

- the potential impact on the surrounding properties (particularly the adjoining properties), including the existing residents and tenants; and

The recreational use of the adjoining sport field is not compatible with the proposed residential use. This is discussed above.

- in relation to commercial development, the potential economic impact to existing centres and commercial development.

In 2014/2015 financial year Morpeth businesses and organisations generated \$70 million in gross revenue. Of this, 29.4% or \$20 million was generated from the 'visitor economy' sector. This sector is the most important economic contributor for Morpeth. Tourism is supported by the heritage quality and reputation of Morpeth. Therefore, any compromise to the town's heritage significance risks undermining the important contribution tourism makes to the local and regional economy.

#### Criterion 6: Consistency with Council Strategies & Policies

##### Community Strategic Plan – Maitland +10

The following are the relevant objectives from the Maitland CSP:

PROUD PEOPLE, GREAT LIFESTYLE - Our community and recreation services and facilities meet the needs of our growing and active communities.

The proposal to introduce residential land within the Morpeth Common/Ray Lawler Sportsground recreation area will adversely impact the sustainability of the sportsground by introducing a sensitive land use to impacts from noise, lighting, dust and projectiles.

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**OUR BUILT SPACE** - Our infrastructure is well-planned, integrated and timely, meeting community needs now and into the future. Our unique built heritage is maintained and enhanced, coupled with sustainable new developments to meet the needs of our growing community. Across the city, diverse and affordable housing options are available for our residents throughout all life stages.

Infill and urban extension development is strongly supported by the Maitland Urban Settlement Strategy because it typically utilises existing infrastructure. Housing diversity is also supported. However, the benefit of infill and extension development and housing diversity has to be weighed against other objectives and interests of the community and Council. In the instance, the impact on the functioning of the Morpeth Common/Ray Lawler Sportsground recreation area and the adverse impact on Morpeth's heritage is considered to be greater than any benefit of the site for residential purposes.

**A PROSPEROUS AND VIBRANT CITY** - A unique sense of identity and place is found within our villages, suburbs, towns and City Centre.

Morpeth's built form and rural setting is essential to the town's identity. Any compromise to the Morpeth's heritage risks undermining its unique sense of identity and place.

#### Delivery Program

The proposal also runs contrary to a number of objectives from the delivery plan including:

"1.1.2 To enhance and promote the city's rich built and social heritage"

"3.2.3 To re-invigorate and consolidate Morpeth's position as one of the Hunter's premier tourism destinations"

"6.1.2 To encourage and implement progressive urban design, sensitive to environmental and heritage issues"

#### Maitland Urban Settlement Strategy 2012

The MUSS 2012 is the over-arching framework for urban growth to achieve an appropriate balance between the goals of economic, community and ecological prosperity. It examines the wider implications of new urban development, including effects on servicing, existing land uses, environmental values and the historic and rural character of the City.

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Urban infill and extension is an important part of the MUSS. It is important because it typically utilises capacity in existing infrastructure and reduces the extent of greenfield required to meet growth. However, it should occur only where there are minimal impacts and not at the detriment of any other objective/s for the site or area. To assess this, the MUSS provides a list of criteria that must be met. The assessment undertaken for this proposal against the criteria clearly demonstrates that the proposal does not meet any of the criteria. Therefore, the site should not be included as an urban infill and extension site in the MUSS.

#### Maitland Local Environmental Plan 2011

The site is zoned RE2 Private Recreation under the MLEP2011. The site is within a heritage conservation area and alongside a site with a heritage item: the Grandstand.

Clause 5.10 (4) Effect of proposed development on heritage significance, states:

*The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This sub clause applies regardless of whether a heritage management document is prepared under sub clause (5) or a heritage conservation management plan is submitted under sub clause (6).*

Although the above LEP provision applies specifically where a development application is being assessed by the Council, it nonetheless points to the fact that, even where the land may not be rezoned, and a use permissible within the zone is being proposed, careful consideration of the development in the context of the site's history and setting is a major factor that needs to be taken into account in determining whether any proposal is suitable for the site.

The Statement of Heritage Impact prepared by EJE Heritage supports the proposal to rezone the land to residential. However, Council's expert heritage consultant does not support EJE Heritage's claims that residential development of the site is appropriate. In addition, this Council Report provides additional detailed analysis of heritage impacts in the context of adopted Council policies. It demonstrates that the proposal does not maintain and will seriously impact on the heritage significance of the township.

The RE2 Private Recreation zone permits with consent, a number of uses including: Camping grounds; Caravan parks; Child care centres; Community facilities; Entertainment facilities; Function centres; Hotel or motel

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accommodation; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Serviced apartments.

The proponent has argued that some of these uses, such as a manufactured-housing development or serviced apartments would have a comparable built form to the concept of residential development. Therefore the rezoning to R1 General Residential is appropriate. However, any development of the site is subject to assessment against the Maitland Local Environmental Plan and Development Control Plan, and ultimately the consent of the Council. The assumption that any alternative development outcome would be supported on the site is pre-emptive and is no justification to allow permanent residential development.

#### Maitland Development Control Plan (MDCP)

The site falls within the Morpeth Heritage Conservation Area and is subject to the controls of the MDCP.



Maitland Development Control Plan 2011: Morpeth Heritage Conservation Area



Maitland Development Control Plan 2011: Rural Outskirts Precinct

The MDCP recognises the importance of the Morpeth's heritage including:

"It's clearly defined edge and a distinctive form in a rural setting. The town is the same size and shape as indicated in the earliest known plan (1840) with few changes."

"Its formal, regular layout"

"Morpeth has a grid layout of three major streets with lanes between, and five minor cross streets."

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Morpeth is of state, regional and local significance.

The site falls within the 'Rural Outskirts Precinct' that includes the Morpeth Common and the riverside.

The DCP states:

"The Rural Outskirts Precinct contains the Morpeth Common and sports ground as a recreational space and the rural plains that surround the township of Morpeth. This land is zoned a combination of rural and recreational and defines the edge of the town as located on a natural ridge above the river and surrounding flood prone land.

The specific character of this precinct is defined by its open rural nature that supports predominately open pasture. The only buildings associated with this land are isolated barns and rural dwellings and those associated with the Morpeth Sports ground in the form of the grandstand and adjacent Morpeth Bowling Club."

The DCP aims to: "To maintain the setting of the village within an open rural landscape. To achieve this, the DCP requires:

1. There should be no non-rural (i.e. residential or commercial) development on surrounding rural and vacant land. Areas directly adjoining the urban township are affected by this policy and include, but not limited to ... allotments to the east of Edward Street, and holdings on the northern side of the River.  
..."

The site is east of Edward Street.

The proposal is inconsistent with Council's strategies and policies.

Criterion 7: Urban extension or urban infill development in and around centres.

The development of this site for residential development would be inconsistent with the existing character, scale and density of development within Morpeth. The proposed density of 25-30 residences (39-47 persons per hectare) would be significantly greater than the current density of development in Morpeth.

Implications for inclusion in the Maitland Urban Settlement Strategy

The proponent will argue for the inclusion of the site in the MUSS 'as a first step' with a commitment to addressing the detail as part of a planning proposal. However,

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there are a number of serious implications for including the site in the MUSS. If Council supports the inclusion of the site in the MUSS it means that Council agrees that the proposal meets the criteria in Table 11 of the MUSS for urban infill and extension. From the assessment provided above, the proposal does not comply with any of the criteria. Allowing the site to be included as an urban extension and infill development site undermines the criteria that have been rigorously applied to all other previous requests. It will be difficult for Council to justify refusing any future urban infill and extension proposals based on inconsistency against urban infill and extension criteria.

Inclusion in the MUSS and a successful rezoning of the site to residential will extinguish the protection of the Morpeth's historic bounds that have been robustly upheld to date. This jeopardises a fundamental principle and provides a precedent for other proposals to rezone land outside of Morpeth's bounds. Despite some minor breaches, the integrity of the 1840 plan has been maintained and the town still exists within a rural setting.

#### Duke Street, Morpeth

Council has consistently protected the rural curtilage and historical setting of the village of Morpeth. This was most recently upheld at its meeting of 8 September 2015 where Council resolved to request that the Site Compatibility Certificate (SCC) not be issued because of adverse impacts on the rural curtilage and historical setting of the village of Morpeth. The Department of Planning and Environment refused the SCC on 25 September 2015.

The reasons for refusing to issue a SCC were:

- The site is not considered suitable for more intensive development, due to its location within the Morpeth Heritage Conservation Area.
- The development is of bulk, scale, built form and character not compatible with the existing and future uses in the vicinity of the development, and
- Council's analysis identifies a range of significant impacts on the heritage setting and values of the village of Morpeth that could not be reasonably and effectively mitigated.

The former Morpeth Bowling Club site is considered to be of at least the same, if not a greater level of importance with respect to maintaining the open curtilage of the village and containing the village to its existing significant urban development footprint. To support the inclusion of the Edward Street land into the MUSS and its subsequent rezoning would be inconsistent in terms of the key principles the Council has adhered to in its decision making with respect to the expansion of development onto land around the perimeter of the village.

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### 30 Swan Street, Morpeth

At its meeting dated 22 September Council resolved to prepare a planning proposal to rezone land at 30 Swan Street, Morpeth. The subject site is fundamentally different and cannot be compared to subject site. The first difference between the two sites is that Swan Street is specifically listed in the MUSS as an urban extension and infill site. Therefore, Council can consider an application to rezone the land. The second major difference is that the Swan Street site is primarily residential. The proposal represents a minor extension along the street of residential uses between existing residences. In comparison, the Edward Street site is not listed in the MUSS, it has never been used for residential purposes (other than the Common's caretaker's residence) and it is surrounded by recreation uses.

In addition, the expert heritage advice provided to Council by Dr Richard Lamb supports the rezoning of the Swan Street site to residential but opposes any change to R1 General Residential to allow the residential use of the Edward Street site.

### **CONCLUSION**

Urban infill and extension development is an important strategy in the Maitland Urban Settlement Strategy and it is generally encouraged. However, urban infill and extension must have merit and it should not occur at the expense of other important qualities, such as heritage. Council has adopted a rigorous assessment process to ensure that an urban infill and extension proposal is appropriate. To be included in the MUSS as an urban infill and extension site a proposal must meet the criteria listed in Table 11. The request by Morpeth Land Company Pty Ltd has been assessed against the criteria. The proposal does not comply with any of the criteria. In addition, the proposal offers no community benefit and only a minor economic benefit to the township. There is no demand for additional local or regional residential land because the Thornton North Urban Release Area is 1.3km from the site.

If supported, the inclusion of the proposal in the MUSS will undermine the established process of considering sites on a strategic, annual basis, against the latest demographic and development data, and with an opportunity for the community to review the proposals. It will also undermine the value of the assessment criteria because agreeing to include the proposal in the MUSS means that Council has determined that the proposal complies with the criteria. For these reasons, it is recommended that the proponent's request for inclusion as an urban extension and infill site in the MUSS is refused.

Council has consistently protected the rural curtilage and historical setting of Morpeth. This was most recently demonstrated in its objection to the Site Compatibility Certificate for Duke Street. Resolving to include the site in MUSS for residential purposes is inconsistent this resolution and the Department's decision regarding Duke Street.

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The proponent has also pre-emptively submitted a request to rezone the land from RE2 Private Recreation to R1 General Residential. The Council report scheduled for 22 September 2015 was withdrawn by Council at the request of Morpeth Land Company because the report dealt with both the request for inclusion in the MUSS and the planning proposal. This was considered contrary to an agreement to place the planning proposal on hold whilst the MUSS proposal was being addressed. Therefore this report has been re-presented to deal solely with the application for inclusion in the MUSS. Another report is now required to address the request to prepare the planning proposal.

### **FINANCIAL IMPLICATIONS**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

### **POLICY IMPLICATIONS**

Council has an established policy to consider requests for consideration of urban infill and extensions sites as part of the annual report of the Maitland Urban Settlement Strategy. Therefore, if this request is supported, it is recommended that Council make a specific exception for Morpeth Land Company Pty Ltd in this instance, so that the annual review process remains intact and this does not create precedence for future, out-of-cycle, requests.

The proposal is inconsistent with Council's Community Strategic Plan, Maitland Urban Settlement Strategy 2012, Maitland Local Environmental Plan 2011, Maitland Development Control Plan 2011 and the Morpeth Management Plan.

### **STATUTORY IMPLICATIONS**

There are no statutory implications under the Local Government Act 1993 with this matter.