

<b>DATE OF ADVICE</b>	02 February 2017
<b>PANEL MEMBERS</b>	Jason Perica, Kara Krason and Michael Leavey
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Cr Bob Geoghegan and Cr Peter Blackmore declared an interest in this matter as they were present when MCC voted to progress this matter to DoP for their consideration.

### **GATEWAY REVIEW**

2016HCC065 - Maitland City Council – GDR\_2016\_MAITL\_001 – at 24 Edward Street, Morpeth (as described in Schedule 1)

Reason for Review: a Gateway determination has been made by the NSW Department of Planning and Environment that the planning proposal should not proceed.

### **PANEL CONSIDERATION AND RECOMMENDATION**

The Panel considered: the material listed at Item 4 and the matters raised and/or observed at meetings and site inspections listed at Item 5 in Schedule 1.

Based on this Review, the Panel recommends that the planning proposal **should not** proceed past Gateway

The decision was unanimous.

### **ADVICE AND REASONS FOR THE RECOMMENDATION**

The matter was not straightforward and the material before the Panel contained many conflicting views. The following provides a summary of the Panel's view on key aspects of the merits of the Planning Proposal in terms of a Gateway determination:

#### **(a) Strategic Merit**

The strategic merit considerations essentially involved three main aspects: the Lower Hunter Regional Strategy (LHRS); the Council's Policy documents and the strategic need for Seniors Housing.

In terms of the LHRS, the Panel was of the view the proposal was not inconsistent with the Strategy. There were certainly objectives relating to heritage conservation in the Strategy, although there are equally objectives relating to housing for older people and accommodating growth in an ageing society in the Hunter Region. The heritage issues are more based on a site-specific considerations than a regional policy basis. There are no specific actions or designations to preclude development on the site on heritage grounds in the LHRS, noting a range of uses are currently permissible on the site. The Panel also noted the proposal is not inconsistent with the new Hunter Regional Plan, although this is yet to be a consideration under the relevant s.117 direction.

In terms of Council's Policy documents, the Panel places greater weight on the Council's decision to add the site to the Maitland Urban Settlement Strategy (MUSS) than the Morpeth Management Plan (MPP). The MUSS is an ongoing document used to identify sites for future growth, whereas the MPP was a document, dating from 2000, which has been largely superseded by subsequent actions (which were wide-ranging and related to a range of actions partly unrelated to planning controls) and, from a planning

viewpoint, the subsequent controls within the current LEP and DCP (the latter of which contains provisions specific to Morpeth). This is not to say the MPP is irrelevant, but that other avenues for a review of the strategic framework for growth exist and have been used. The Panel did agree with the observations and merits identified by the Department of Planning and Environment (DPE) that there would be merit in a more holistic consideration of the framework of planning controls for the “fringe” areas of Morpeth, particularly in light of apparent pressures around the edges of the town and given the town’s important heritage significance. This could be done through a DCP review of the controls applying to Morpeth, with associated documentation.

The case or strategic need for seniors housing was not made in the Planning Proposal. While there may be anecdotal evidence of a market demand for seniors housing through development proposals, there is no evidence of a shortfall of “urban residential land” to be developed for Seniors Housing, nor the wider strategic need to justify the proposal. This is an important aspect for strategic justification, given the important considerations relating to development on the fringes and key entry points to Morpeth relative to historical and existing development.

### **(b) Proposed Use, Heritage Issues and Net Public Benefit**

The proposed change in use would represent a change in the type of uses permissible at the site. While the point is well made by the applicant regarding the little practical difference in visual impacts associated with permissible uses such as a hotel, serviced apartment or caravan park buildings to seniors housing, there is some change in the nature of use. Current and historical permissible uses are more open to wider public use, and this does complement the public uses surrounding the site on the eastern side of Edward Street around the site. While there is some obvious benefit in additional seniors housing, the same or more can be said of more publicly accessible permissible uses, in light of the surrounding land uses and assets. This is not considered a “heritage” issue, despite some cerebral arguments about historic uses.

In terms of net public benefits, the overall benefits can be considered neutral or slightly negative (the former as categorised in the Planning Proposal). This does not favour an isolated approach to changing the planning controls for the site.

The Planning Proposal is not aided by an independent review commissioned by the Council finding negative heritage impacts. Despite this, the Panel did not find the “heritage” issues to be fatal for the proposal. Instead, heritage considerations are largely related to visual impacts on the surrounding setting of the town and this issue remains with the range current permissible development. Indeed the DCP would benefit from more site-specific guidance for appropriate development on the site given the current range of permissible uses.

### **(c) Planning Controls and intended pathway to public exhibition**

The proposal to add a permitted use to the RE2 Private Recreation zone was not favoured by the Panel. This would leave a situation of a permissible use, which is inconsistent with the zone objectives. There was no proposal to zone land to another zone (either fully or partially). Further the Planning Proposal did not include any proposed development standards for the site which the Panel considered may in this instance greatly assist in guiding an appropriate built form and scale of development for the purpose of seniors housing, having particular consideration to the heritage and visual impact matters. The intention to allow the public to visualise the likely future site development footprint and likely scale with a Planning Proposal has merit. However, this would be best achieved through a DCP amendment (managed and prepared by Council), rather than a DA. There was no overall concept for the site before the Panel, although the development towards the front of the site and the development to the rear of the site past the former bowling greens (given likely scenic impacts and issues of

slope/fill) would need careful attention and did not seem to be appropriately addressed in the material before the Panel.

**(d) Site-Specific Considerations**

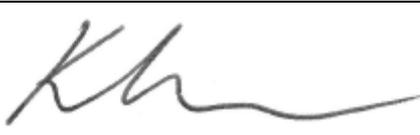
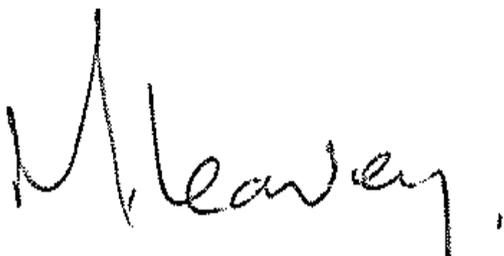
As previously mentioned, due to heritage, visual and character considerations, in addition to topographical site characteristics and constraints, development towards the front of the site and the rear of the site past the former bowling greens would need careful attention. The Panel was of the view that developing up to the edges of currently flood-identified land was not appropriate given other site-specific considerations. This warranted guidance by DCP controls prepared by Council prior to any DA.

It is noted that the DCP provisions for Morpeth contains clear demarcation between residential and fringe areas and change to allow residential development in the fringe areas does involve some precedence (while also accepting some unique characteristics for this site). A careful and holistic approach to guiding new development outside the currently identified residential areas in the DCP is warranted.

**(e) Process/Perceived Conflicts**

The applicant expressed concern with the application for review being considered/subject to an assessment report by DPE staff who were involved in the original Gateway determination. An analogy was given about different staff being involved in a S82A Review to a DA. While the concern was understood, the Panel did not see a conflict in the process to determination given the Panel is independent to both the Council and DPE and in any event the Panel had the benefit in a wide range of opinions about the proposal.

In conclusion, as the Panel’s Operating Procedures are clear on a determination being based on a Planning Proposal as considered by Council, the Panel was unanimous in recommending against the proposal proceeding.

PANEL MEMBERS	
 Jason Perica (Chair)	 Kara Krason
 Michael Leavey	

**SCHEDULE 1**

<b>1</b>	<b>PANEL REF – LGA – DEPARTMENT REF - ADDRESS</b>	<b>2016HCC065 - Maitland City Council – GDR_2016_MAITL_001 – at 24 Edward Street, Morpeth</b>
<b>2</b>	<b>LEP TO BE AMENDED</b>	Maitland Local Environmental Plan 2011
<b>3</b>	<b>PROPOSED INSTRUMENT</b>	The proposal seeks to permit seniors housing with development consent as an additional permitted use.
<b>4</b>	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Gateway review request documentation</li> <li>• Assessment reports by Council staff, independently appointed Council expert reports, Council resolutions and DPE Assessment Report</li> </ul>
<b>5</b>	<b>MEETINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Site inspection: 2 February 2017</li> <li>• Briefing meeting(s): 2 February 2017 <ul style="list-style-type: none"> <li>• Briefing meeting with Proponent: 1.15pm <b>to 2.15 pm</b> Briefing with Department of Planning and Environment (Regional Team) and Council: 2.15 to 3.30pm</li> <li>• Attendance: <ul style="list-style-type: none"> <li>○ Panel members: Jason Perica, Kara Krason and Michael Leavey</li> <li>○ Proponent: Brad Everett and Deb Gordon</li> <li>○ Council: Ian Shillington, David Simm and Brad Carmady (latter independent consultant)</li> <li>○ Department of Planning and Environment: Katrine O’Flaherty and Ben Holmes</li> </ul> </li> </ul> </li> </ul>