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### **10.3 PLANNING PROPOSAL TO AMEND MAITLAND LOCAL ENVIRONMENTAL PLAN 2011 - 24 EDWARD STREET MORPETH**

<b>FILE NO:</b>	<b>RZ14007</b>
<b>ATTACHMENTS:</b>	<b>1. Department's Letter &amp; Gateway Determination 2. Previous Report 3. Planning Proposal (under separate cover)</b>
<b>RESPONSIBLE OFFICER:</b>	<b>Bernie Mortomore - Group Manager Planning, Environment &amp; Lifestyle</b>
<b>AUTHOR:</b>	<b>Ian Shillington - Manager Urban Growth</b>
<b>MAITLAND +10</b>	<b>Outcome 6. Built heritage and sustainable development</b>
<b>COUNCIL OBJECTIVE:</b>	<b>6.1.1 To encourage orderly, feasible and equitable development whilst safeguarding the community's interests, environmentally sensitive areas and residential amenity.</b>

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#### **EXECUTIVE SUMMARY**

*The Department of Planning and Environment has resolved not to approve a gateway determination to permit seniors housing as an additional permitted at 24 Edward Street Morpeth. The reasons for the refusal are that the proposal is inconsistent with the heritage values of Morpeth. Under the provisions of the Environmental Planning and Assessment Act 1979, there is a gateway appeal process available to both Council and the proponent. Based on Council's decision to support the planning proposal, Council may decide to request a gateway review. The gateway review is generally undertaken by the Joint Regional Planning Panel (JRPP).*

*The Department has recommended that a review of the Morpeth Management Plan MMP be considered by Council. This review would be undertaken in consultation with OEH and the community. The Department has requested that this review be undertaken due to this proposal and a number of additional rezonings and urban development proposals previously proposed or planned at Morpeth. A decision to undertake a review of the MMP could be considered by Council after the outcomes of the Edward Street planning proposal and any subsequent gateway review are completed.*

#### **OFFICER'S RECOMMENDATION**

#### **THAT**

- 1. Council note the decision of the Department of Environment and Planning to**

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**refuse the gateway request for the planning proposal to permit seniors housing as an additional permitted at 24 Edward Street Morpeth.**

- 2. Council request a review of the gateway determination for Edward Street Morpeth by the Joint Regional Planning Panel.**

## **REPORT**

Council considered a report on the planning proposal to permit senior housing as an additional permitted use at 24 Edward Street Morpeth at its meeting of 8 December 2015. Council approved the following resolution as recommended in the report:

- 1. Pursuant to s56 of the Environmental Planning and Assessment Act 1979, Council forwards the attached planning proposal to the Minister for Planning requesting a gateway determination.**
- 2. Council undertakes community consultation in accordance with the gateway determination.**
- 3. If no submissions are received during the exhibition period, a request is sent to the Minister for Planning to make the amendment in accordance with s59 of the Environmental Planning and Assessment Act 1979.**
- 4. If submissions are received during the exhibition period a report is presented back to Council for consideration.**

The Council report and planning proposal was prepared by independent planning consultant Brad Carmady whose report stated the following (in summary):

*The land has been identified by a recent Council resolution as an urban infill and extension site in the Maitland Urban Settlement Strategy. The site may therefore be investigated for urban purposes subject to consideration of broad planning objectives. The planning proposal has been revised from the residential rezoning previously considered by Council. This report addresses the strategic merit of the site for this purpose. There are a number of constraints affecting development of the site, in particular related to heritage, that require the future development to respond sympathetically to the heritage attributes of the locality and be of a high design standard. The proponent is yet to provide supporting information that addresses these matters, instead recommends that a concurrent development application address detailed design.*

Following Council's resolution, the planning proposal was forwarded to the Department of Planning and Environment on 15 December 2015 requesting a gateway determination.

The Department has completed its assessment of the proposal and has determined that the gateway request be refused. The reasons stated for the refusal include the following:

1. The planning proposal does not adequately demonstrate that the site may be developed without undermining the heritage values of the Morpeth Heritage Conservation Area.
2. Insufficient evidence has been provided to demonstrate that the proposal will be consistent with the Lower Hunter Regional Strategy which requires development opportunities created by land use zonings (permitted seniors housing) are compatible with the underlying heritage values of the place (Morpeth).

A copy of the Department's letter dated 9 June 2016 and Gateway Determination is attached.

Council noted in its report dated 8 December 2015 that the proponent states that they intend to lodge detailed plans with a development application that would be assessed and publically exhibited concurrently with the planning proposal after a gateway determination has been granted. It was therefore proposed that a detailed assessment of the heritage and urban design implications of the proposal would be considered in an integrated way at the planning proposal stage with the development application post gateway. A copy of Council's report is attached.

Under the provisions of the Environmental Planning and Assessment Act 1979, there is provision for either Council or the proponent to request a review of a gateway determination. If the gateway determination is either to not proceed or to resubmit the planning proposal, the council or proponent has 40 days from being notified by the department to request a review. There are no fees associated with a gateway review.

If Council or the proponent request a gateway review, they must provide the Department with the following information:

- A completed application form
- A copy of the planning proposal and supporting information as submitted to the Gateway
- Justification for why an alteration of the Gateway determination is warranted, including, where relevant, responses to issues raised by the original gateway decision maker, and
- If relevant, disclosure of reportable political donations under section 147 of the Act.

Given the Council's previous decision to support the planning proposal, Council can decide to request a gateway review for 24 Edward Street. The review of the gateway would be undertaken by the Joint Regional Planning Panel/PAC. The Department has informed Council that additional time to prepare an application for a gateway review beyond the 40 day period will be granted if this is required.

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The Department have also stated in their letter that it was noted “that there are several other proposals for urban development within the conservation area which may adversely affect those same heritage values and may have difficulty in demonstrating consistency with the Morpeth Management Plan (MMP)”.

The Department has stated also that given the various proposals before the Council “this would seem to be an appropriate opportunity for Council to review the directions of the MMP, and to determine whether its guidance remains relevant for current and future proposals”. The Department requests that any review occur in consultation with the community and the Office of Environment and Heritage (OEH).

Other previous and existing proposals either before Council or the Department in Morpeth include:

- Planning proposal at 30 Swan Street Morpeth to rezone land from RU1 primary Production to R1 General Residential and E2 Environmental Conservation - this proposal has been publically exhibited and has been forwarded to the Department for final determination. This proposal was supported by an independent heritage assessment.
- Urban extension site at James Street Morpeth - Council resolved on 22 March 2016 to include this site as an urban extension site in the Maitland Urban Settlement Strategy. A planning proposal to rezone the land has not been lodged at this stage.
- Two development/site compatibility certificate applications for seniors housing at Little James Street Morpeth have also been previously lodged with the Council or the Department. Council resolved on 27 November 2007 to refuse a DA for the proposal and on 8 September 2015 not to support the site compatibility certificate application lodged on the site.

In light of the continuing pressure for new urban development proposals in Morpeth, and the Department’s request for a review, in addition to the age of the MMP (2000), it may be appropriate that Council initiate such a review. However, the overall principles of the MMP are considered to be sound. The review would include a community consultation phase and would be undertaken in consultation with OEH and the Department of Environment and Planning.

The review of the MMP would also consider the outcomes of any review of the gateway decision for Edward Street, as well as the implications of other previous or recent planning and development proposals at Morpeth. It is proposed that Council should further consider undertaking a review of the MMP after any review of the gateway determination for Edward Street is completed.

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### **CONCLUSION**

The Department of Planning and Environment has resolved not to approve a gateway determination to permit seniors housing as an additional permitted at 24 Edward Street Morpeth. The reasons for the refusal are based on the proposal being inconsistent with the heritage values of Morpeth. As there is a gateway appeal process available to both Council and the proponent, it is recommended that this option be considered. A potential review of the Morpeth Management Plan could be considered by Council in future following completion of a review of the gateway determination for Edward Street.

### **FINANCIAL IMPLICATIONS**

There are no specific financial implications with this matter.

### **POLICY IMPLICATIONS**

The proposed review of the gateway determination for Edward Street Morpeth may have implications for any subsequent review of the Morpeth Management Plan and subsequent amendment of the Maitland DCP 2011 as it applies to Morpeth.

### **STATUTORY IMPLICATIONS**

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