

10.2 PLANNING PROPOSAL TO AMEND 'SCHEDULE 1 - ADDITIONAL PERMITTED USES' OF THE MAITLAND LOCAL ENVIRONMENTAL PLAN TO PERMIT MORTUARIES AND FUNERAL HOMES AT 46-48 BANKS STREET, EAST MAITLAND DESCRIBED AS LOTS 1 ON DP199405 AND DP716770

FILE NO:	RZ15/003
ATTACHMENTS:	1. Planning Proposal 2. Location Plan
RESPONSIBLE OFFICER:	Bernie Mortomore - Group Manager Planning, Environment & Lifestyle Ian Shillington - Manager Urban Growth
AUTHOR:	Rob Corken - Strategic Town Planner
MAITLAND +10	Outcome 6. Built heritage and sustainable development
COUNCIL OBJECTIVE:	6.1.1 To encourage orderly, feasible and equitable development whilst safeguarding the community's interests, environmentally sensitive areas and residential amenity.

EXECUTIVE SUMMARY

Fry Bros Funerals is an established local business in Maitland. The business is currently located on a single lot on the corner of the New England Highway and Banks Street in East Maitland. The business is seeking to expand into the adjoining lot to accommodate business growth and to improve the operation of the business including access.

Both sites are zoned R1 General Residential under the Maitland Local Environmental Plan 2011 (MLEP). Funeral homes and mortuaries are prohibited in that zone. However, the existing use on the existing site is permitted under the existing use rights provisions of the Environmental Planning and Assessment Act 1979. These provisions do not permit the expansion of an existing use into an adjoining site nor allow an expansion of more than 10 percent. Therefore, the existing use rights provisions are not applicable.

It is considered that the proposal has significant merit and that the expansion should be facilitated. However this requires an amendment to the MLEP. Three options to facilitate the proposal have been considered. The most appropriate option is to amend 'Schedule 1 – Additional Permitted Uses' of the MLEP to permit Funeral Homes and Mortuaries on the two lots.

A planning proposal to affect this change has been drafted. It is recommended that the proposal be sent to the Minister for Planning requesting a gateway determination to proceed with the proposal and undertaken community consultation. This is the purpose of this report.

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OFFICER'S RECOMMENDATION

THAT

- 1. Pursuant to s56 of the Environmental Planning and Assessment Act 1979, Council forward 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.**

REPORT

Council has received an application seeking to expand of the Fry Bros Funeral Services business onto the adjoining site in Banks Street, East Maitland. The two lots are zoned R1 General Residential. Funeral homes and mortuaries are not permitted in that zone. A location plan is attached to this report.

The existing operation is permitted by the existing use rights provisions of the Environmental Planning and Assessment Act 1979 and its regulation. However, these provisions do not allow for the expansion of an existing use by more than 10 percent or into another site. Therefore, the existing use provisions cannot be applied to achieve the outcome.

An amendment to the Maitland Local Environmental Plan 2011 is required to permit the business to expand onto the adjoining lot. There are three options that have been considered to achieve this.

- 1. Rezone both lots from R1 General Residential to a business or an industrial zone that permits funeral homes and mortuaries.**
- 2. Add funeral homes and mortuaries to the list of permitted uses in the R1 General Residential zone.**
- 3. Amend 'Schedule 1 - Additional Permitted Uses' of the Maitland Local Environmental Plan 2011 to permit funeral homes and mortuaries on the specified lots.**

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Option 1: Rezone the lots

Council has several strategies that apply to commercial and employment land. The Maitland Centres Strategy 2009 identifies the East Maitland – Melbourne Street/New England Highway as a local renewal corridor. The study suggests that the core of the corridor could grow to provide in the order of 8,000sqm of commercial and retail floor space. The subject sites are not located in the core of the corridor. Therefore, rezoning the site for business purposes is inconsistent with the Maitland Centres Strategy 2009.

The Activity Centres and Employment Clusters Strategy 2010 describes the Melbourne Street Mixed Use Precinct as an 'employment corridor'. It also provides strategic direction for the New England Highway Corridor. The vision for the New England Highway Corridor is:

"The NEH Corridor will continue to reinforce its primary role as a significant corridor for the movement of freight and people, locally, regionally and nationally and to provide appropriate opportunities for business and residential uses which service the users and utilise this highly accessible corridor."

The key policy objectives for development on the New England Highway are:

- Activities fronting the NEH cater for the travelling public, without impacting on its primary function – being an interstate corridor for the movement of goods and people;
- The reduction of the 'ribbon' development and the consolidation of clusters close to existing centres along the NEH;
- Activities along the NEH provide for a range of employment and residential uses, without limiting the vitality and viability of centres and in locations which have accessibility to high frequency public transport routes;
- That residential development located directly fronting the NEH is adequately soundproofed and designed to minimise adverse impacts of noise and pollution.

The Strategy also states:

"While the location on the NEH is desirable for these businesses, in the long term it creates a situation in which commercial/retail development is stretched out along the corridor which can lead to issues with accessibility and impact on the flow of traffic, also the impact on existing centres and their viability. However, to support the role of the NEH as a transport corridor, uses and activities to support the travelling public will continue to be encouraged to develop in this location."

The Maitland Centres Strategy 2009 and the Activity Centres and Employment Clusters Strategy 2010 do not explicitly support the rezoning of the site to business or commercial purposes. The consistent policy is to reinforce existing centres and the

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support travelling-based land uses along the highway. This is not consistent with the strategy. Therefore it is not appropriate to rezone the site to a business zone.

Option 2: Add funeral homes and mortuaries to the list of permitted uses for the R1 General Residential zone

Adding funeral homes and mortuaries to the R1 General Residential zone would mean that they would be permitted (with consent) in all residential areas in Maitland. This is not considered desirable.

Option 3: Amending 'Schedule 1 Additional Permitted Uses' of the Maitland Local Environmental Plan 2011.

This option permits the proposed use on the lots specified. It maintains the integrity of the zone pattern defined by the Local Environmental Plan and the strategic land use policy set by the Centres Strategy and the Activity Centres and Employment Clusters Strategy 2010.

In addition, when the funeral home and mortuary uses cease the permitted uses will remain as those defined in the R1 General Residential zone. This reinforces the integrity of the LEP and the strategic planning documents that inform land use in Maitland.

CONCLUSION

An amendment to Schedule 1 is generally reserved for exceptional circumstances. It is considered an appropriate mechanism in this situation, as:

1. there is significant merit for the use to expand onto the adjoining site and where the existing operation of the business will be approved; and
2. existing use rights cannot be used to achieve the expansion; and
3. there is no strategic basis to amend the land use zone;
4. it is inappropriate to introduce the land uses to the existing zone; and
5. it is appropriate that the sites remain residential when the use ceases.

A planning proposal is required to affect this change to the Maitland Local Environmental Plan. A copy of the draft planning proposal is attached.

FINANCIAL IMPLICATIONS

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

POLICY IMPLICATIONS

This matter has no specific policy implications for Council.

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STATUTORY IMPLICATIONS

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