



18 May 2015

NSW Department of Planning & Environment
Hunter Regional Office
PO Box 1226
NEWCASTLE NSW 2300

Dear Sir/Madam

Request for Gateway Determination

At its ordinary meeting 12 May 2015, Council resolved that:

Pursuant to s56 of the Environmental Planning and Assessment Act, 1979, Council prepare a Planning Proposal 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 DP 716770.

The attached planning proposal supports the amendment to the Maitland Local Environmental Plan 2011 in relation to the subject land.

Council requests that the Department now consider the proposal and issue a Gateway Determination pursuant to s56 of the Environmental Planning and Assessment Act, 1979. A 6 month LEP timeframe would be appropriate for this amendment.

If you have any questions, or require further information to assist in your assessment of this planning proposal, please contact Steve Daniels, Strategic Town Planner on (02) 4934 9729 or steved@maitland.nsw.gov.au

Yours faithfully



Steve Daniels
Strategic Town Planner





city council

Planning Proposal

AMENDMENT TO THE MAITLAND LEP 2011

46 and 48 Banks Street, East Maitland

Version 1.0

20 April 2015



CONTENTS

INTRODUCTION	1
PART 1: OBJECTIVES OR INTENDED OUTCOMES	2
PART 2: EXPLANATION OF PROVISIONS.....	2
PART 3: JUSTIFICATION FOR PROPOSED REZONING.....	2
SECTION A – NEED FOR THE PLANNING PROPOSAL	2
SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK	5
SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT	7
SECTION D – STATE AND COMMONWEALTH INTERESTS	8
PART 4: COMMUNITY CONSULTATION	9
PART 6: TIMEFRAMES	10

Version 1.0 – 20.04.2015 (For Section 55 Council Report)

Tables

Table 1: s117 Directions.	5
--------------------------------	---

INTRODUCTION

This planning proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979. It explains the intended effect of, and justification for the proposed amendment to Maitland Local Environmental Plan 2011 (MLEP 2011) to amend 'Schedule 1 - Additional Permitted Uses' to permit the expansion of the existing funeral home and mortuary into 46 Banks Street.

The subject sites are currently zoned R1 General Residential under the Maitland LEP2011.

The sites have a combined area of 1,351m².

The sites are owned by Fry Bros Funerals who have been operating a funeral home and mortuary from the premises at Lot 1 DP 716770 – 48 Banks St. The use is an existing use. An expansion of the operation is proposed into the adjoining site, Lot 1 DP 199405, 46 Banks St.

The site contains a residential building and ancillary buildings. The site has vehicular access from the New England Highway, at the rear of 48 Banks St.

The proposal will improve the operation of the business by providing rear of site access and to allow for the exit of vehicles in a forward direction onto the New England Highway. At present, vehicles reverse onto the New England Highway across the footpath from the building.

It is considered that the proposal has significant merit.

Funeral homes and mortuaries are prohibited development in the R1 General Residential zone. Existing use rights do not allow for the expansion of the use more than 10% or over an additional lot.

A number of options have been considered to permit the use to extend into the adjoining lot. It is considered that the most appropriate mechanism is to amend 'Schedule 1 - Additional Permitted Uses' of the Maitland Local Environmental Plan 2011. This is the preferred option as there is no strategic basis to rezone the site to a business or industrial zone and it is not appropriate to permit funeral homes and mortuaries in the R1 General Residential. It is also considered appropriate that if, and when the use ceases that the site remain residential.

The proposal will require a development approval. Discussions with Council's Development Assessment Team have occurred.

PART 1: OBJECTIVES OR INTENDED OUTCOMES

The objectives of the proposal are;

1. To enable the expansion of the existing 'Fry Bros Funerals' business (funeral home and mortuary) onto Lot 1 DP 716770 (48 Banks St).
2. To ensure the focus of commercial development remains in the core of the Melbourne Street Mixed Use Precinct.
3. To preserve the integrity of Council's strategic planning policy.

PART 2: EXPLANATION OF PROVISIONS

The planning proposal seeks to amend 'Schedule 1 - Additional Permitted Uses' of the Maitland Local Environmental Plan 2011 to add the following additional permitted use:

8. Use of certain land at 46 and 48 Banks Street, East Maitland

- (1) This clause applies to Lot 1 DP 199405 and Lot 1 DP 716770 being 46 – 48 Banks Street, East Maitland.
- (2) Development for the purpose of a funeral home and mortuary is permitted with consent.

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?

No. The planning proposal is not the result of any strategic study or report; it was submitted on behalf of the owners of the funeral home and mortuary business to accommodate expanding operations of the business.

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

It is considered that the proposal has significant merit. It is an existing use that has operated at the site since 1989. The proposal will also improve the existing operation allowing vehicles access to the rear of the building and to enter and leave the site in a forward direction.

The expansion of the business cannot be achieved using existing use rights provisions provided under the Environmental Planning and Assessment Act 1979 and its Regulation, as the floor area of the proposed shed is greater than 10% and the proposal expands into another lot.

The mechanisms available to achieve the expansion are:

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.

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 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.

It is acknowledged that the use of Schedule 1 should be 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.

3. Is there a net community benefit?

No net community benefit test has been undertaken as part of this planning proposal. However, there is significant merit in allowing the expansion of this existing business into the adjoining site. Fry Brothers is an established, local business that provides a necessary service to the community. There is unlikely to be any significant, additional impact for the expanding operation.

Therefore, the net community benefit is likely to be neutral or positive.

SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

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

Lower Hunter Regional Strategy (NSW Department of Planning and Infrastructure) 2006

There are no relevant considerations in the Lower Hunter Regional Strategy 2006.

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

Maitland +10 (Community Strategic Plan)

There are no relevant considerations in the Council's community strategic plan (Maitland +10).

Maitland Urban Settlement Strategy (MUSS) 2012

Council's MUSS identifies the New England Highway Corridor, as an employment corridor. The relevant statements are:

Existing uses located along the NEH include retail/commercial development, light industrial and large format retail uses... However, the predominant land use fronting the NEH is residential.

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 opportunity for business and residential uses which service the users and utilise this highly accessible corridor.

The other strategic land use policies that are relevant to the proposal are the Maitland Centres Strategy 2009 and the Activity Centres and Employment Clusters Strategy 2010. These have been discussed previously.

The proposal is not inconsistent with the strategic directions provided by Council's strategic planning policies.

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

There are no state environmental planning policies that apply to this development.

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

Table 1: s117 Directions.

s117 DIRECTIONS

CONSISTENCY AND IMPLICATIONS

1. EMPLOYMENT AND RESOURCES

s117 DIRECTIONS	CONSISTENCY AND IMPLICATIONS
1.1 Business and Industrial zones	Consistent
The objectives of this direction are to: (a) encourage employment growth in suitable locations, (b) protect employment land in business and industrial zones, and (c) support the viability of identified strategic centres	The proposal is consistent with this direction as it does not propose to extend the business zone outside the Melbourne Street Mixed Use Precinct. The site will be retained as R1 General Residential. When the schedule 1 use ceases to exist, the site will be maintained as residential. This approach reinforces the strategic hierarchy of the existing centres.
2. ENVIRONMENT AND HERITAGE	
2.3 Heritage Conservation	Consistent
The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	The site is within the East Maitland Heritage Conservation Area and in close proximity to three heritage items. There is no heritage impact by permitting the expansion of the use across into the adjoining site. Any building works or change to the structure will be assessed as part of the development application.
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT	
3.4 Integrating Land Use and Transport	
The objectives relate to the location of urban land and its proximity to public transport infrastructure and road networks, and improving access to housing, employment and services by methods other than private vehicles.	The proposal will be located on the New England Highway. There are four bus services (179/180, 181, 182, 183) that are in close proximity of the site. The 182 route runs along Newcastle Street. The East Maitland and Victoria Street Stations are within 1km of the site. The site is relatively well serviced with public transport.
6. LOCAL PLAN MAKING	
6.1 Approval and Referral	
The direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The proposal meets the objectives of this direction.
6.2 Reserving Land for Public Purposes	
The direction aims to facilitate: (i) the provision of public services and facilities by reserving land for public purposes; and (ii) removal of reservations of land for public purposes where land is no longer required for acquisition.	Not applicable.

6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	Not applicable.
---	-----------------

7. METROPOLITAN PLANNING**7.1 Implementation of the Metropolitan Plan for Sydney 2036**

The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.	Not applicable.
--	-----------------

SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT**8. 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?**

Not applicable.

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

The site is included in the East Maitland Heritage Conservation Area. The site is opposite the 'Lands Office' (141 Newcastle Street, local significance), in the vicinity of 'Red Lion Inn' (38 Banks Street, local significance) and 'Matthew Talbot Hostel' (36 Banks Street, local significance).

The planning proposal will have no impact on the heritage of the area or the site. The proposed development will be subject to the Council's development controls when the application for the development and any construction is lodged.

Acid Sulfate Soils

The site is identified on the Maitland LEP 2011 Acid Sulfate Soils (ASS) Maps as having the probability of containing Class 5 ASS. Any future proposals for the site will be required to adequately address clause 7.1 in the Maitland LEP 2011 where works are likely to disturb ASS.

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

The planning proposal is unlikely to have any adverse social and economic effects. It does facilitate the expansion of an established local business in its current location. Therefore, there is likely to be a positive economic effect for the business itself.

SECTION D – STATE AND COMMONWEALTH INTERESTS

11. Is there adequate public infrastructure for the planning proposal?

Yes. There is adequate public infrastructure to service the proposed development.

12. 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 Road and Maritime Services would be consulted in relation to this planning proposal.

PART 4: COMMUNITY CONSULTATION

Community consultation will be undertaken in accordance with the requirements of the Gateway Determination.

As this is considered a minor planning proposal a 14 day exhibition period is proposed.

This planning proposal will be updated to report on the outcomes of the consultation.

PART 6: TIMEFRAMES

PROJECT TIMELINE	DATE
Anticipated commencement date (date of Gateway determination)	Mid-May 2015
Anticipated timeframe for the completion of required studies	N/a
Timeframe for government agency consultation (pre and post exhibition as required by Gateway Determination) (21 days)	Mid-June 2015
Commencement and completion dates for public exhibition period	July 2015
Dates for public hearing (if required)	N/a
Timeframe for consideration of submissions	August 2015
Timeframe for the consideration of a proposal post exhibition	August 2015
Anticipated date RPA will forward the plan to the department to be made (if not delegated)	September 2015
Anticipated date RPA will make the plan (if delegated)	N/a
Anticipated date RPA will forward to the department for notification (if delegated)	N/a