

Amendment 17 to Maitland LEP 2011 - 30 Swan Street Morpeth (~10 dwellings)

Proposal Title : **Amendment 17 to Maitland LEP 2011 - 30 Swan Street Morpeth (~10 dwellings)**

Proposal Summary : **The planning proposal seeks to amend Maitland LEP 2011 to rezone the subject land from Zone RU1 Primary Production to part Zone R1 General Residential and part Zone E2 Environmental Conservation; and amend the corresponding Lot Size Map from a minimum lot size of 40 ha to 450 sq.m within the Zone R1 General Residential.**

PP Number : **PP_2015_MAITL_004_00** Dop File No : **15/14612**

Proposal Details

Date Proposal Lodged with DOP : **27-Oct-2015** Date Proposal Uploaded to Public Website : **13-Nov-2015**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **None**

Gateway Determination

Decision Date : **11-Nov-2015** Gateway Determination : **Passed with Conditions**

Due Date of LEP : **18-Aug-2017**

Implementation

Implementation Start Date : **18-Nov-2015** Exhibition Duration : **44**

Agency consultation consistent with recommendation : **Yes**

If No, comment :

OFFICE OF ENVIRONMENT AND HERITAGE

The Gateway determination (as altered) required agency referral to the Office of Environment and Heritage (OEH). On 12 February 2016, OEH responded with no objection to the proposal, however OEH has recommended that consideration be given to:

- The significance of the Morpeth Conservation Area and measures to maintain and enhance its character;
- Developing a subdivision pattern and development guidelines that reflect the character of the Precinct, Conservation Area and adjacent residential properties;
- The potential for any historic archaeology or relics that may be uncovered by future excavation or ground disturbance; and
- Larger lot sizes to allow views through the subject site to maintain a visual relationship with the farmland and the river.

Council provided a response to each recommendation as follows:

- The site is located within the Morpeth Heritage Conservation Area and development will be subject to comprehensive development controls applying to the precinct;
- Councils existing DCP will be amended to include the site within the 'residential precinct'. Council considers the development controls adequate to facilitate appropriate design outcomes for the site;
- A condition of development consent relating to archaeology and relics will be

applied to future subdivision and development approvals; and

- Council does not consider it necessary to increase the lot size given that existing development controls (e.g. requirement of one 2.5-3.5 metres side setback) adequately achieve views between buildings to the river and farmland.

Council's response is considered adequate. Notwithstanding, the Department has made further recommendations for future proposals later in this report.

Agency Objections :

No

If Yes, comment :

Documentation consistent with Gateway :

Yes

If No, comment :

COUNCIL'S REQUEST FOR DRAFTING

On 17 March 2016, the Department received Council's request for finalisation of the proposal (draft LEP).

The Department placed the assessment of the proposal on hold, pending the Hunter and Central Coast Joint Regional Planning Panel's advice for the Gateway Review of the 24 Edward Street, Morpeth Planning Proposal. The Panel's advice was provided on 15 February 2017.

COMPLIANCE WITH GATEWAY DETERMINATION (as altered)

The Gateway determination issued 13 November 2015 determined the proposal should proceed, and provided written authorisation for Council to exercise delegation to make the plan. Council subsequently requested not to exercise delegation and hence delegation was revoked in an Alteration of Gateway on 1 December 2015.

The Gateway determination letter noted that there are a number of proposals for development within the Morpeth area and encouraged Maitland City Council to consider the cumulative impacts of its decisions on the heritage significance of Morpeth. Council's consideration of the cumulative impacts on heritage significance is discussed below.

Notwithstanding, the draft LEP has been assessed and the conditions of the Gateway determination have been satisfied.

COUNCIL'S CONSIDERATION OF CUMULATIVE IMPACTS

While the final Planning Proposal submitted on 17 March 2016 adequately responds to matters raised in the Gateway determination letter, Council's subsequent decision to support a Planning Proposal to allow seniors housing at 24 Edward Street, Morpeth raised questions regarding the consideration of cumulative impacts of development proposals on Morpeth's fringe.

The Department placed the finalisation of the draft LEP on hold until the Joint Regional Planning Panel (the Panel) provided advice on the Gateway Review of the Edward Street proposal. The Panel recommended that the proposal should not proceed past Gateway, supporting the original Gateway determination. The Panel cited 'issues relating to new development on the fringe of Morpeth and entry points relative to Morpeth's historical and existing development' and offered guidance to the Department that 'a holistic approach to guiding new development outside the current residential areas is warranted'. The Panel's advice on the Edward Street proposal has been considered in the finalisation of this draft LEP.

Council views:

Council are of the opinion that the rezoning proposed under the draft LEP will have minimal adverse impact on the historic setting of Morpeth Heritage Conservation Area and to local heritage items in the vicinity. Council are also of

the opinion that the proposed development of the site for residential purposes does not expand the boundaries or extend beyond the curtilage of the exiting township in this instance.

Department views:

The matter has been further considered by the Department and Council's view is supported. Morpeth township is an east-west rectangular block or grid road layout which creates a distinct east-west rectangular urban form. Development in Morpeth has largely been contained within the curtilage set by the 1840s town plan, except for departures that follow major roads or exit routes from the township.

The draft LEP does not encroach beyond the existing rectangular boundary or historic curtilage, instead the proposal fills an existing gap in the rectangular urban landscape. The draft LEP differs from the Edward Street Planning Proposal in that the subject site is wholly located within the curtilage of the distinct rectangular urban landscape. Conversely, the Edward Street proposal was entirely outside the existing development pattern and sought to alter the shape of the existing development boundary.

Unlike the Edward Street proposal site, this site has also been extensively developed in the past. Between 1870 and 1953 the site formed the terminus of the Morpeth branch railway, and since the 1970s it has been used for a residential purpose. Allowing the site to again be developed, and for residential, aligns with its past and present use. The Edward Street site by comparison has historically been used for open space and recreation purposes.

The draft LEP would maintain Morpeth's historic connection to its rural surrounds. An important view corridor across the site would be protected by an E2 zone, with views through the remainder of the site to be managed through DCP setback provisions. This is considered appropriate, noting that the current view corridor is an unreasonable control in a heritage context for a site that has been extensively developed previously.

Given these circumstances, and noting the advice of OEH and the Panel, the Department is satisfied that the draft LEP would not adversely affect the heritage values of Morpeth, and would not create an adverse precedent for other potential development sites.

Notwithstanding, the Department remains concerned about the potential of other development proposals to cumulatively undermine Morpeth's heritage values. A holistic review of the strategic planning framework, as supported by the Panel, is merited and is discussed further below under the heading 'Recommendation'.

COMMUNITY CONSULTATION

The Gateway required a minimum of 28 days community consultation. The Planning Proposal was exhibited for 6 weeks from 17 December 2015 until 29 January 2016. Council has advised that five public submissions were made on the proposal. The issues raised relate to negative impacts on heritage, community benefits and impacts, visual impacts, timing of letters and Council meetings, trees, personal loss and contamination issues. Similar representations were also made on behalf of several objectors to the Minister's Office by the local State member.

Council's response to the representations is considered adequate.

POST EXHIBITION CHANGES

No post exhibition changes were made to the Planning Proposal.

CONSISTENCY WITH HUNTER REGIONAL PLAN (October 2016)

The proposal was received prior to the publication of the Hunter Regional Plan. Nonetheless, the proposal was assessed against the draft Plan in Council's final proposal and considered to be consistent. The proposal is generally consistent with the Hunter Regional Plan 2036, particularly Direction 19 which seeks to protect the region's heritage.

CONSISTENCY WITH S117 DIRECTIONS

Council's proposal is consistent with all relevant s117 Directions except as discussed below.

In the Gateway determination issued 13 November 2015, the Minister's Delegate accepted as minor the proposals inconsistency with s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils, and 4.3 Flood Prone Land. No further approval is required for these Directions.

5.10 Implementation of Regional Plans

Council did not consider s117 Direction 5.10 Implementation of Regional Plans as the proposal was lodged prior to the release of the Regional Plan and changes to the Minister's Local Planning Directions which occurred on 13 January 2017. Nonetheless, the proposal is not inconsistent with the Regional Plan and therefore consistent with the s117 Direction.

CONSISTENCY WITH SEPPS

The Planning Proposal is consistent with all relevant State Environmental Planning Policies, except for potential inconsistencies with the Rural Planning Principles (Clause 7) contained in State Environmental Planning Policy (Rural Lands) 2008. The proposal to rezone the land from rural to residential is potentially inconsistent with the SEPP. However, the Planning Team Report supporting the Gateway justified and considered this inconsistency as minor.

MAPS

The map sheets and map cover sheet has been checked by the Department's GIS team and the regional office and are considered suitable for finalisation.

LOBBYIST CODE OF CONDUCT

The Regional Team is unaware of any meetings with lobbyists.

COUNCIL CONSULTATION

On 20 January 2017, Council accepted the terms of the draft instrument.

FINAL PC OPINION

The PC Opinion was issued on 23 January 2017. No changes have been made to the instrument since the Opinion was issued.

RECOMMENDATION

It is recommended that the finalisation of the draft LEP proceed for the following reasons:

- The site is located wholly within the historical curtilage of Morpeth township and falls within an identified gap in the existing rectangular urban landscape;
- The site is used for residential purpose and is located on a predominantly residential street;
- Council has advised that a site contamination report has identified that the site can be suitably remediated for residential purpose;
- Council considers the development controls adequate to facilitate appropriate design outcomes for the site and adequately achieve views between buildings to the river and farmland;

- OEH do not object to the proposal and Council have responded to its recommendations;
- The conditions of the Gateway determination have been satisfied;
- Supporting heritage studies suggest that the proposal will not adversely compromise the heritage values of Morpeth township;
- Council are of the opinion that the rezoning will have minimal adverse impact on the historic setting of Morpeth Heritage Conservation Area or local heritage items in the vicinity of the proposal; and
- The proposal would not create an adverse precedent for other potential development sites in Morpeth.

Notwithstanding, the Department recommends that a holistic approach be implemented for future development proposals in Morpeth due to number of proposals for land outside of existing residential areas and the existing rectangular development pattern. This would provide certainty regarding future development opportunities and Morpeth's heritage values, particularly for Morpeth's fringe areas. For example, this may be achieved through a review of the strategic planning framework, a review of the Morpeth Management Plan, or preparation of a plan that focuses on heritage values of Morpeth. Any review may also inform possible changes to Council's LEP or DCP where necessary. This should be raised with Council should the draft LEP be made.

LEP Assessment

Date Received from RPA : 17-Mar-2016

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP : 01-Jan-2017

Determination Date :

Determination Decision :

Notification Date :