



**UNDER SEPARATE COVER
ATTACHMENTS**

**ORDINARY MEETING
13 FEBRUARY 2024**

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City Planning

**DA/2022/1399 FOR STAGED
DEVELOPMENT: STAGE 1 ONE INTO
THREE LOT TORRENS TITLE
SUBDIVISION, TREE REMOVAL, AND
ALTERATIONS AND ADDITIONS TO
EXISTING DWELLING HOUSE
INCLUDING DEMOLITION. STAGE 2
ERECTION OF DWELLING HOUSE.
STAGE 3 ERECTION OF DWELLING
HOUSE AT 69 KENSINGTON ROAD
BOLWARRA**

**Development Plans (Under Separate
Cover)**

Meeting Date: 13 February 2024

Attachment No: 2

Number of Pages: 14



EXISTING
BUILDING



69 KENSINGTON RD BOLWARRA
PROPOSED RESIDENTIAL & PLAN OF SUBDIVISION
DEVELOPMENT APPLICATION

ARCHITECTURAL DA DRAWINGS

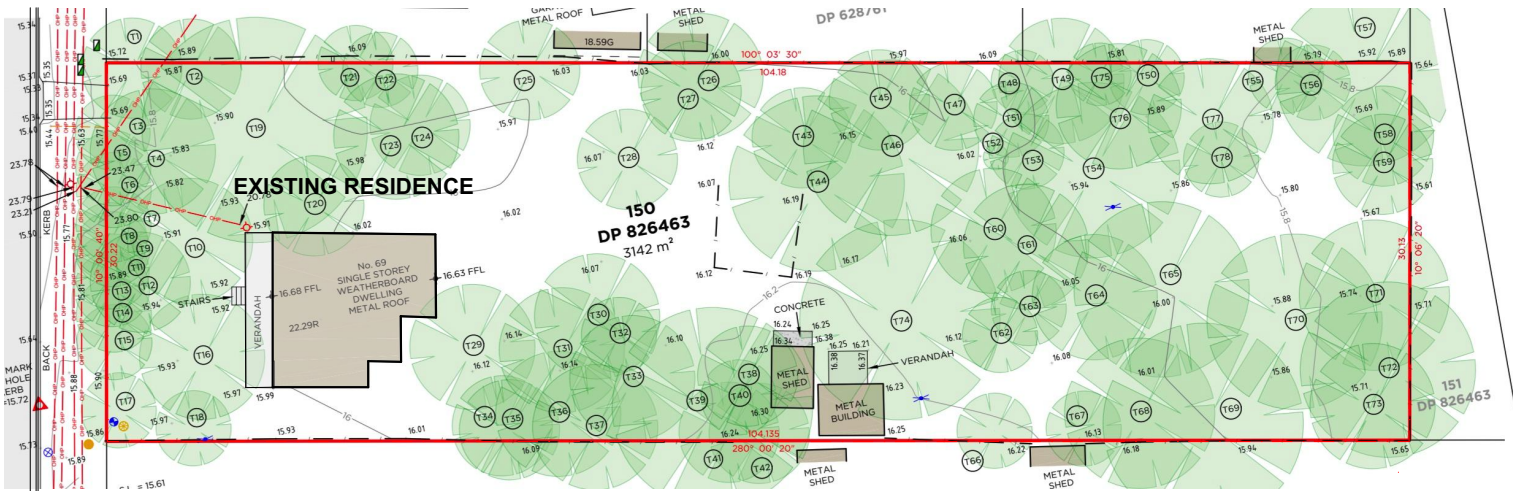
- DA1.1 COVERSHEET & LOCATION PLAN
 - DA1.2 EXISTING SITE PLANS
 - DA1.3 PROPOSED SITE ANALYSIS PLAN
 - DA1.4 SITE MASTERPLAN
 - DA1.5 CONTEXT ANALYSIS
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-
- DA5.1 BUILDING SECTIONS



MMarchitecture	ISSUE		CLIENT	PROJECT	DATE	DRAWING	SCALE	 PROJECT NORTH
	02	REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S						
		21.12.2023	KOBY GROUP	69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DEC 2023	DA1.1 COVERSHEET, PROJECT DETAILS & LOCATION PLAN	NOT TO SCALE	

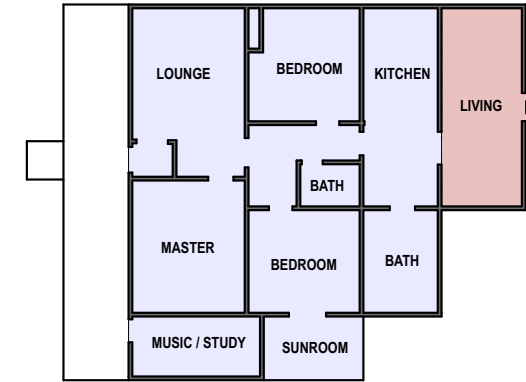
SITE DETAILS

SITE AREA 3142 SQM
LOT 150
DP 826463
ZONE R1

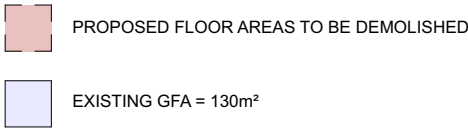


EXISTING SITE /
ROOF PLAN

SCALE 1:500 @ A3

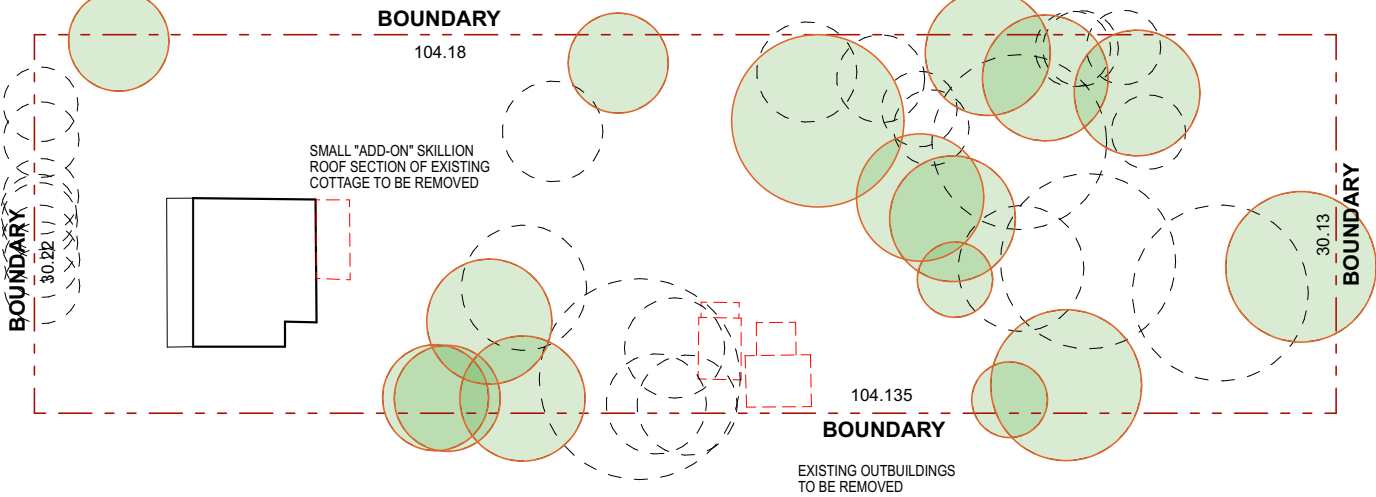


EXISTING RESIDENCE



EXISTING FLOOR PLAN

SCALE 1:200 @ A3



DEMOLITION & TREE REMOVAL PLAN

SCALE 1:500 @ A3



	ISSUE 02 REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S 21.12.2023		CLIENT KOBY GROUP	PROJECT 69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DATE DEC 2023	DRAWING DA1.2 EXISTING FLOOR & SITE PLANS	SCALE VARIES
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SITE ANALYSIS NOTES

BUILT FORM

- 01 PRESERVE AND ENHANCE EXISTING RESIDENCE
- 02 PROVIDE FOR REASONABLE INFILL HOUSING OPPORTUNITIES WITHIN LARGE SITE VOLUME
- 03 PROVIDE BUILDING ENVELOPES ARE RESPECTFUL OF EXISTING RESIDENTIAL PATTERNS AND LANDSCAPING ELEMENTS
- 04 LARGE INTERNAL AND PERIMETER SETBACKS TYPICALLY
- 05 MINIMAL IMPACT TO STREETSCAPE
- 05B SINGLE STOREY BUILT FORM

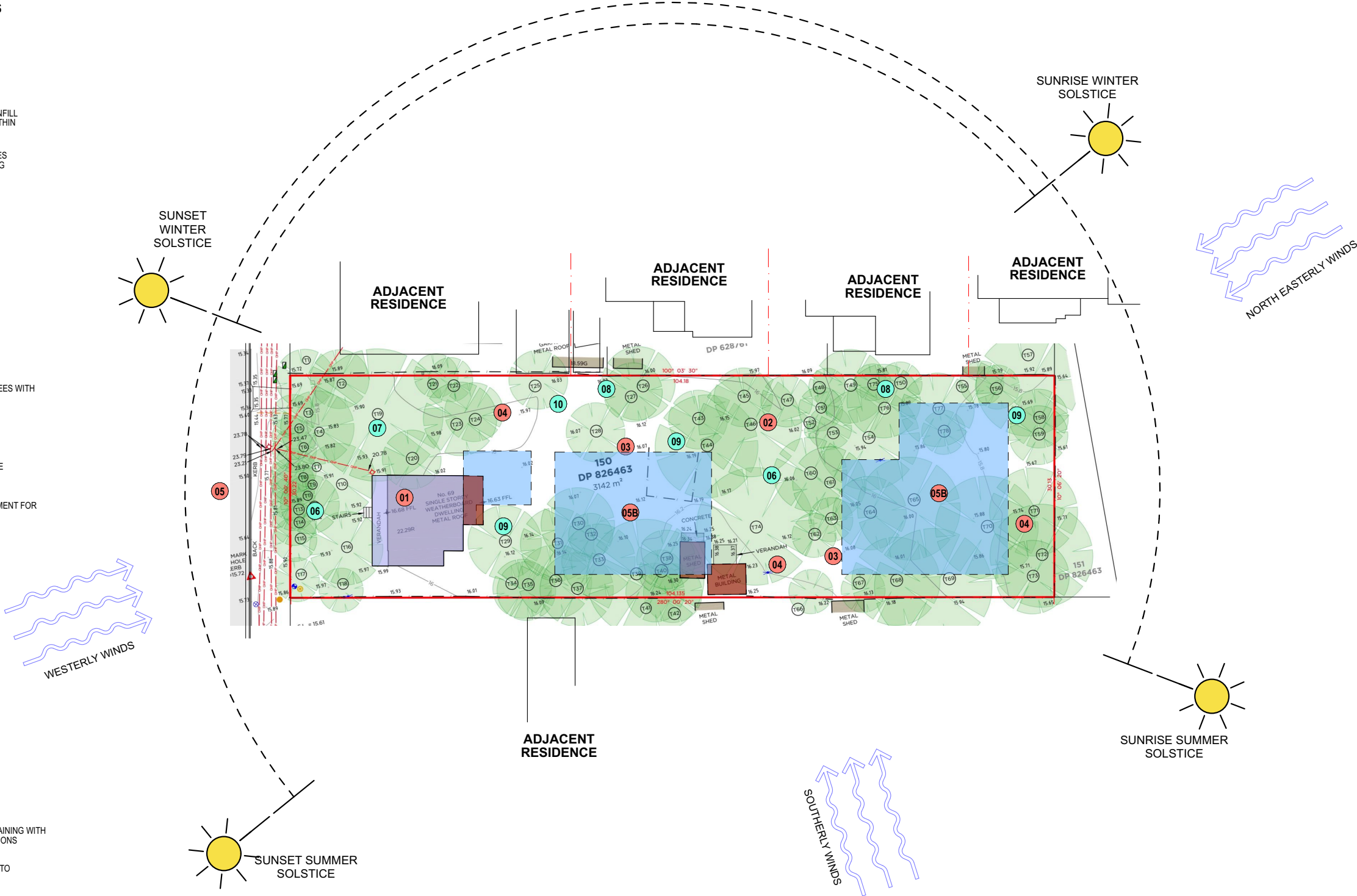
SITE & LANDSCAPING

- 06 PRESERVE LARGE QUANTITY OF EXISTING LANDSCAPE
- 07 FOCUS ON RETENTION OF TREES WITH LARGE CANOPY COVERAGE
- 08 MAINTAIN AND IMPROVE ON LANDSCAPED BOUNDARY CONDITIONS
- 09 IMPROVE PRIVATE LANDSCAPE QUALITY
- 10 ALTERNATE DRIVEWAY ALIGNMENT FOR MAXIMUM TREE RETENTION

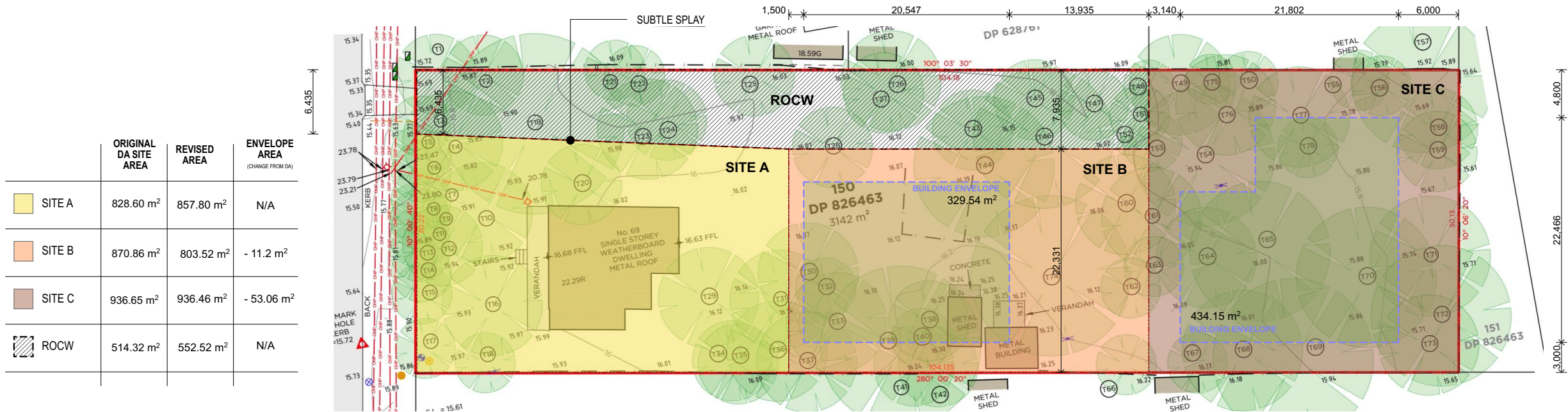
- BUILDING ENVELOPES
- EXISTING RESIDENCE RETAINING WITH MINOR INTERNAL ALTERATIONS
- PROPOSED FLOOR AREAS TO BE DEMOLISHED

SITE ANALYSIS PLAN

SCALE 1:500 @ A3



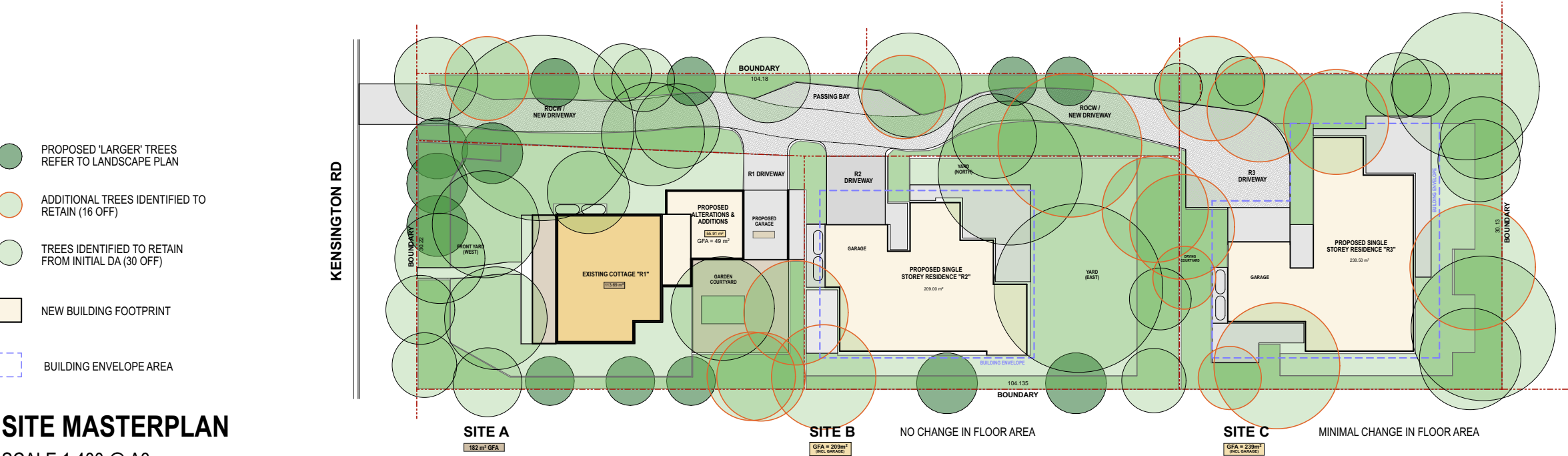
	ISSUE 02 REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S 21.12.2023	CLIENT KOBY GROUP	PROJECT 69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DATE DEC 2023	DRAWING DA1.3 SITE ANALYSIS PLAN	SCALE 1:400 @ A3
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EXISTING SITE PLAN W LOT OVERLAY

SCALE 1:400 @ A3

REFER TO DELFS LASCELLES DRAFT PLAN OF SUBDIVISION



SITE MASTERPLAN

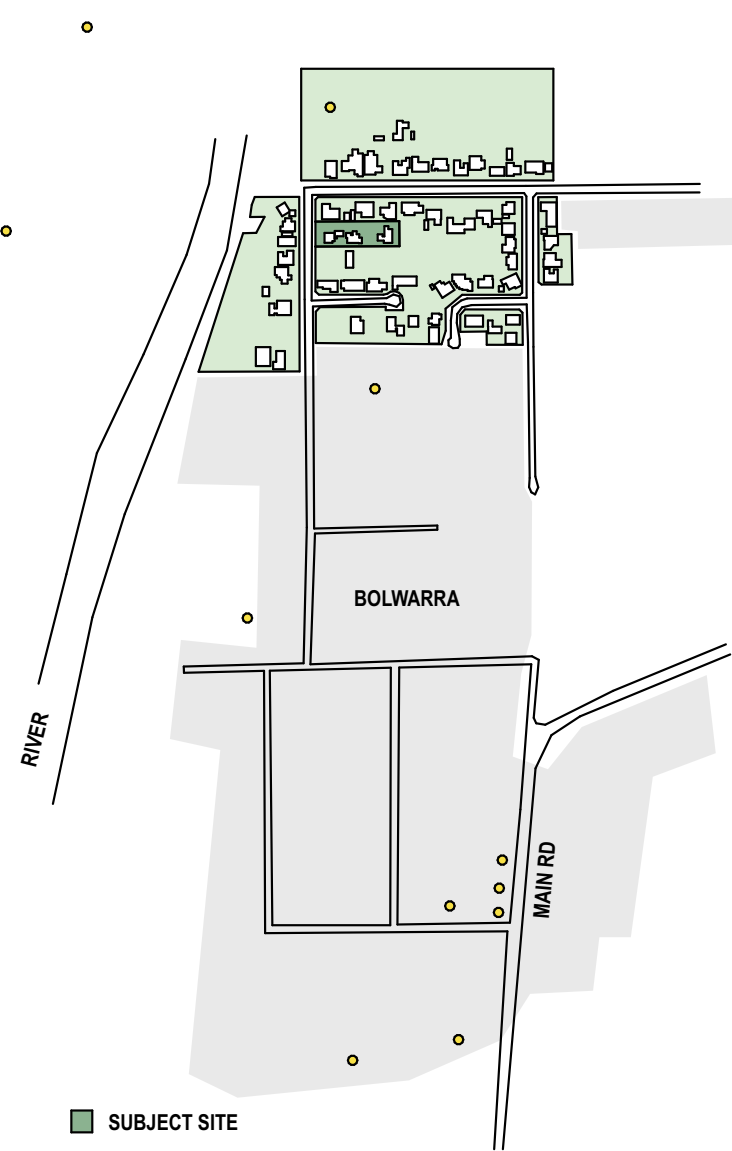
SCALE 1:400 @ A3

MMarchitecture	ISSUE		CLIENT	PROJECT	DATE	DRAWING	SCALE
	02	REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S	KOBY GROUP	69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DEC 2023	DA1.4 BUILDING ENVELOPES & MASTERPLAN	1:400 @ A3
	21.12.2023						
							 PROJECT NORTH



CONTEXT IMAGES

NOTE: PHOTOS FROM IMMEDIATE CONTEXT (NO PARTICULAR ORDER).
COMMON THEMES ARE SINGLE STOREY, PROMINENT LANDSCAPE, GENEROUS SETBACK, MIXTURE OF ARCHITECTURAL LANGUAGES (HIGH BRICKWORK CONTENT), DRIVEWAYS AND GARAGING PROMINENT



BOLWARRA TOWNSHIP DIAGRAM

NOT TO SCALE

NOTES:

PROPERTIES ON THE 'FRINGE' HAVE LARGER LAND SIZE WHICH EQUATES TO MUCH LOWER SITE COVERAGE RATIOS. THE CENTRAL SITE(S) ALL HAVE A VERY SIMILAR SITE COVERAGE AROUND 20-25%. SUBJECT SITE SITS WITHIN THIS RANGE: TAKING INTO ACCOUNT PROPOSED SUBDIVISION & THREE SINGLE STOREY RESIDENCES

PROPOSED BUILDING FOOTPRINTS FOLLOW SIMILAR LAND USAGE / BUILT FORM PATTERNS AND PROVIDE MORE THAN ADEQUATE PRIVATE OPEN SPACE

NO LISTED HERITAGE ITEMS WITHIN IMMEDIATE CONTEXT OF SUBJECT SITE

= 22.2% SITE COVERAGE
[SUBJECT SITE]

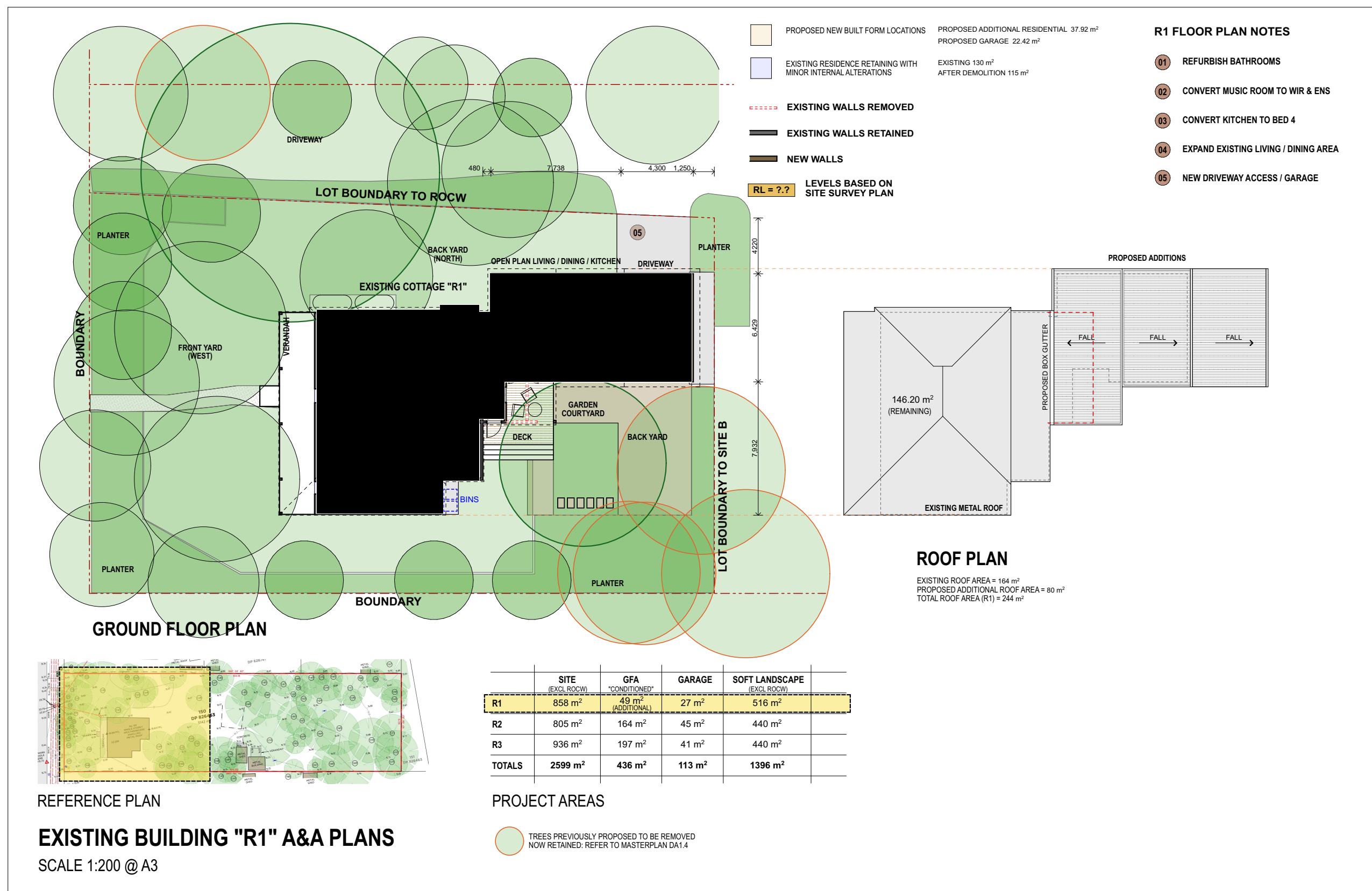
= 13.3% SITE COVERAGE



CONTEXT ANALYSIS (STUDY AREA)

SCALE 1:2000 @ A3

	ISSUE 02 REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S 21.12.2023		CLIENT KOBY GROUP	PROJECT 69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DATE DEC 2023	DRAWING DA1.5 CONTEXT ANALYSIS	SCALE 1:2000 @ A3 PROJECT NORTH
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EXISTING COTTAGE PHOTOS

NOTE: NEW ADDITIONS (INCL GARAGE)
PROPOSED TO USE SAME COLOUR
SCHEME IN REVERSE.

JAMES HARDIE PRIMELINE CLADDING IN
"MANILLA"

WINDOW FRAMES & SUN HOODS IN
"LIGHT STONE"

METAL ROOF TO MATCH EXISTING
(ZINCALUME)

WEATHERBOARD		WINDOW FRAMES
WATTYL-PASCOL		WATTYL - PASCOL
LIGHT STONE		MANILLA
		or
		COLORBOND
		CLASSIC CREAM

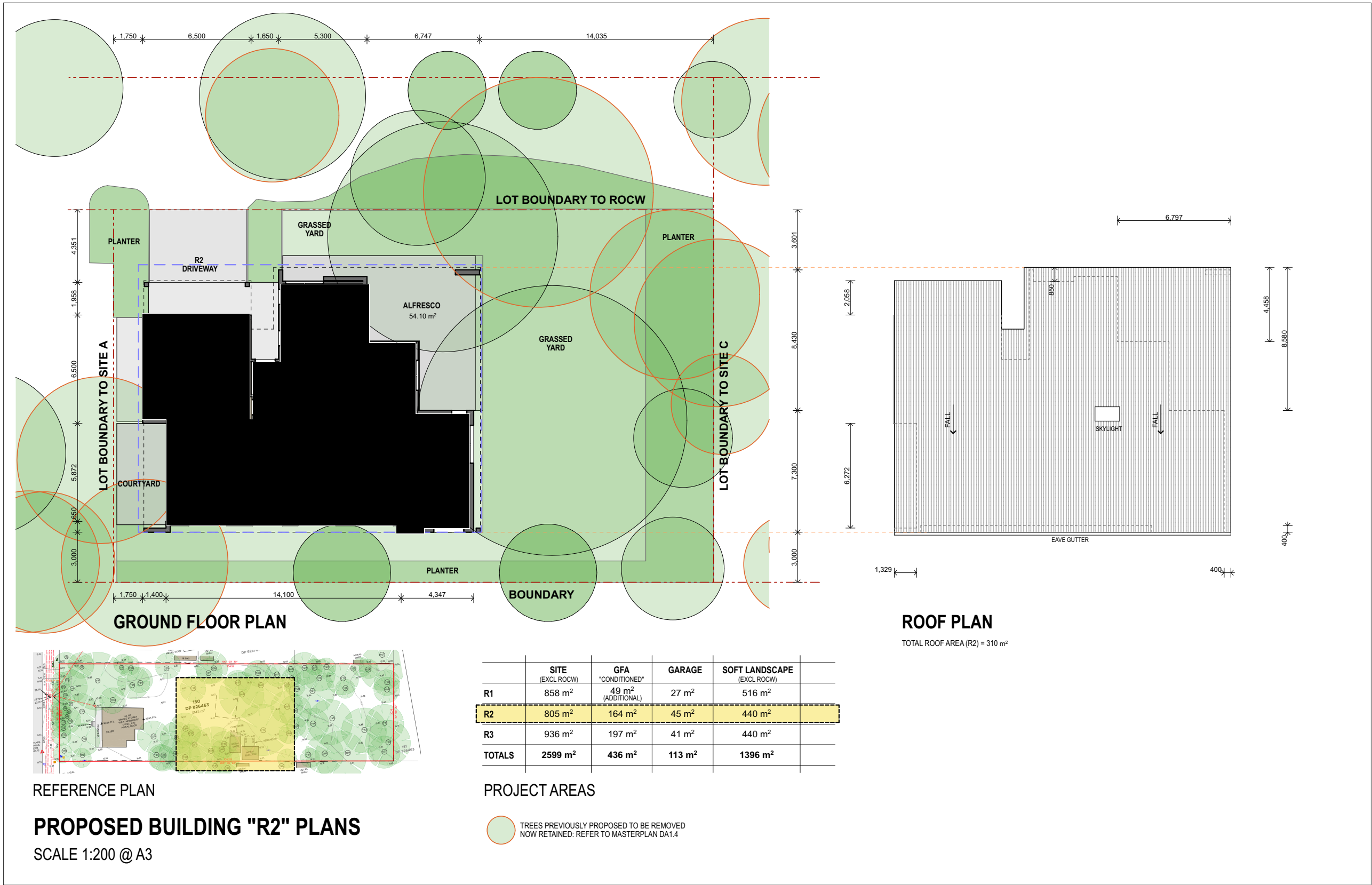
EXISTING BUILDING RE-PAINT



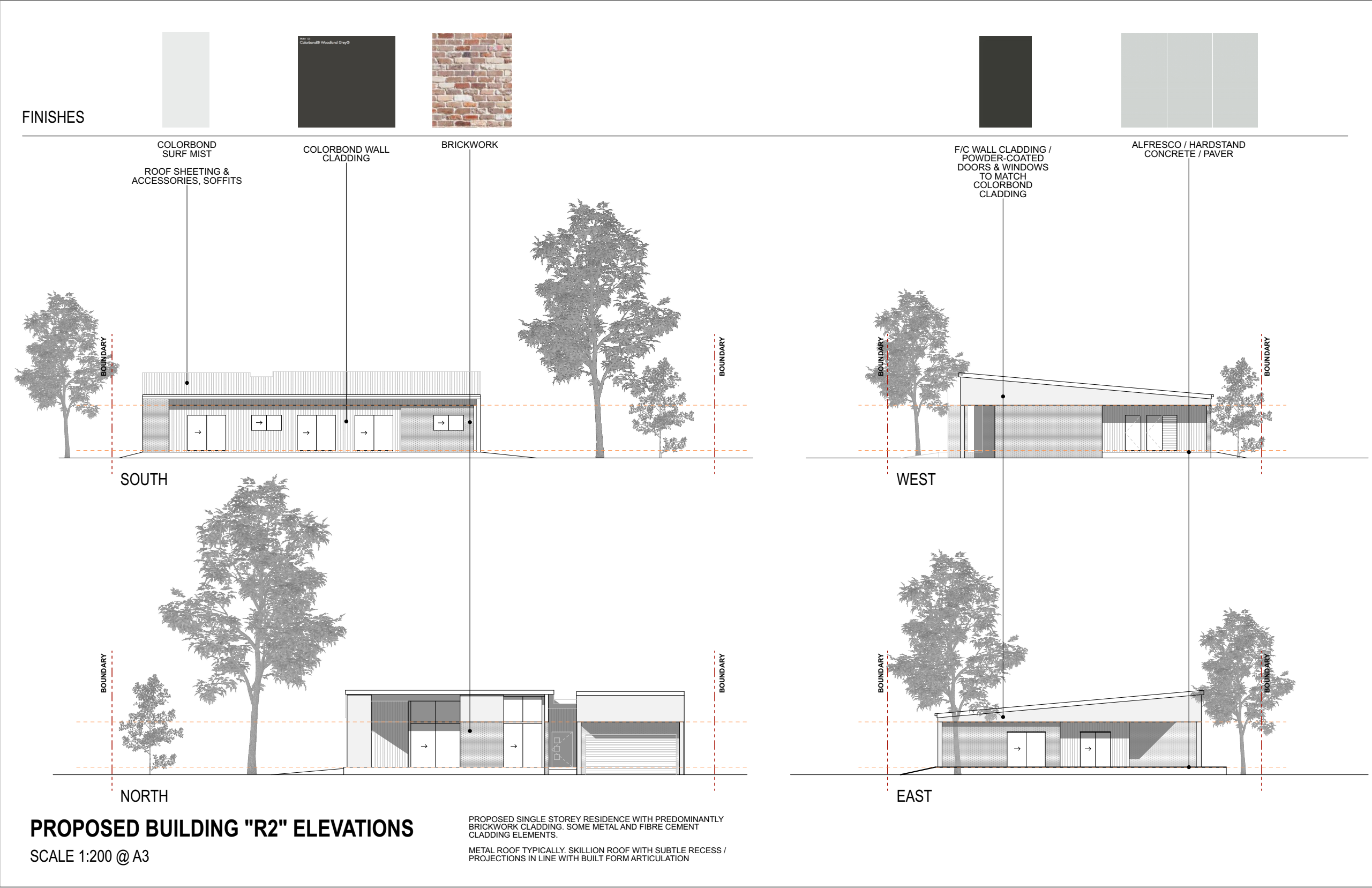
EXISTING BUILDING "R1" A&A ELEVATIONS

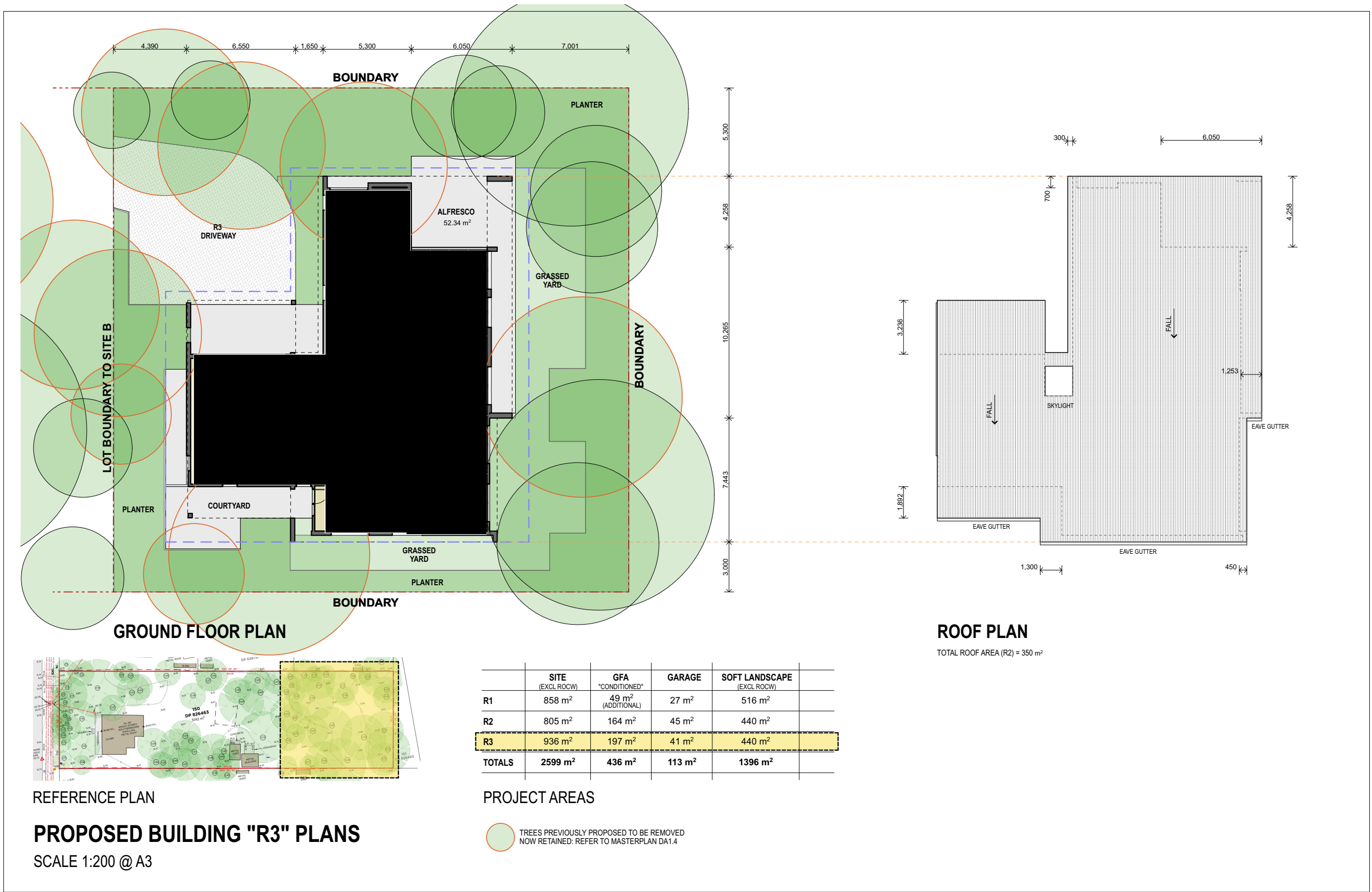
SCALE 1:200 @ A3

	ISSUE		CLIENT	PROJECT	DATE	DRAWING	SCALE	
	02	REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S						
		21.12.2023	KOBY GROUP	69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DEC 2023	DA2.2 EXISTING BUILDING R1 ALTERATIONS & ADDITIONS ELEVATIONS	1:200 @ A3	



MMarchitecture	ISSUE		CLIENT	PROJECT	DATE	DRAWING	SCALE	
	02	REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S						
		21.12.2023	KOBY GROUP	69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DEC 2023	DA3.1 PROPOSED BUILDING R2 PLANS	1:200 @ A3	PROJECT NORTH





	ISSUE 02 REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S 21.12.2023	CLIENT KOBY GROUP	PROJECT 69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION	DATE DEC 2023	DRAWING DA4.1 PROPOSED BUILDING R3 PLANS	SCALE 1:200 @ A3
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COLORBOND WALL CLADDING

BRICKWORK

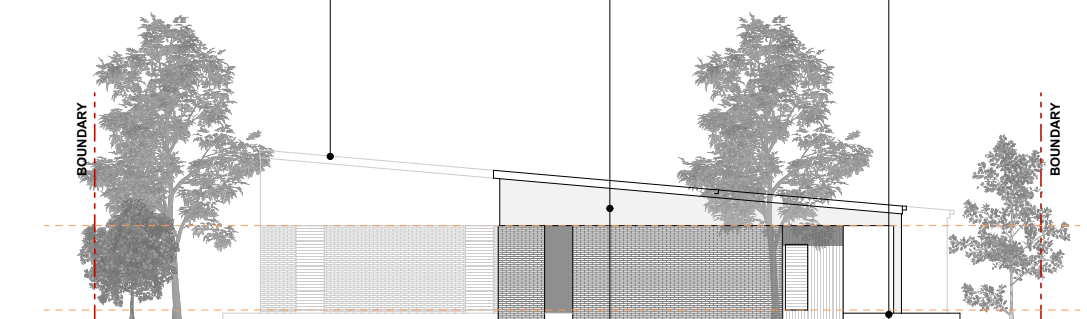
COLORBOND
SURF MIST

ROOF SHEETING &
ACCESSORIES, SOFFITS



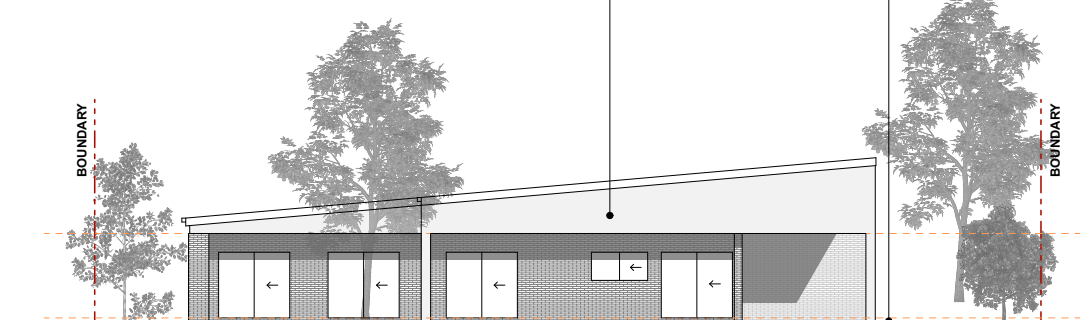
F/C WALL CLADDING /
POWDER-COATED
DOORS & WINDOWS
TO MATCH
COLORBOND
CLADDING

ALFRESCO / HARDSTAND
CONCRETE / PAVER



SOUTH

WEST



NORTH

EAST

PROPOSED BUILDING "R3" ELEVATIONS

SCALE 1:200 @ A3

PROPOSED SINGLE STOREY RESIDENCE WITH PREDOMINANTLY BRICKWORK CLADDING. SOME METAL AND FIBRE CEMENT CLADDING ELEMENTS.

METAL ROOF TYPICALLY. SKILLION ROOF WITH SUBTLE RECESS / PROJECTIONS IN LINE WITH BUILT FORM ARTICULATION



ISSUE	
02 REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S	21.12.2023

CLIENT
KOBY GROUP

PROJECT
69 KENSINGTON RD
BOLWARRA
PROPOSED A & A
AND SUBDIVISION

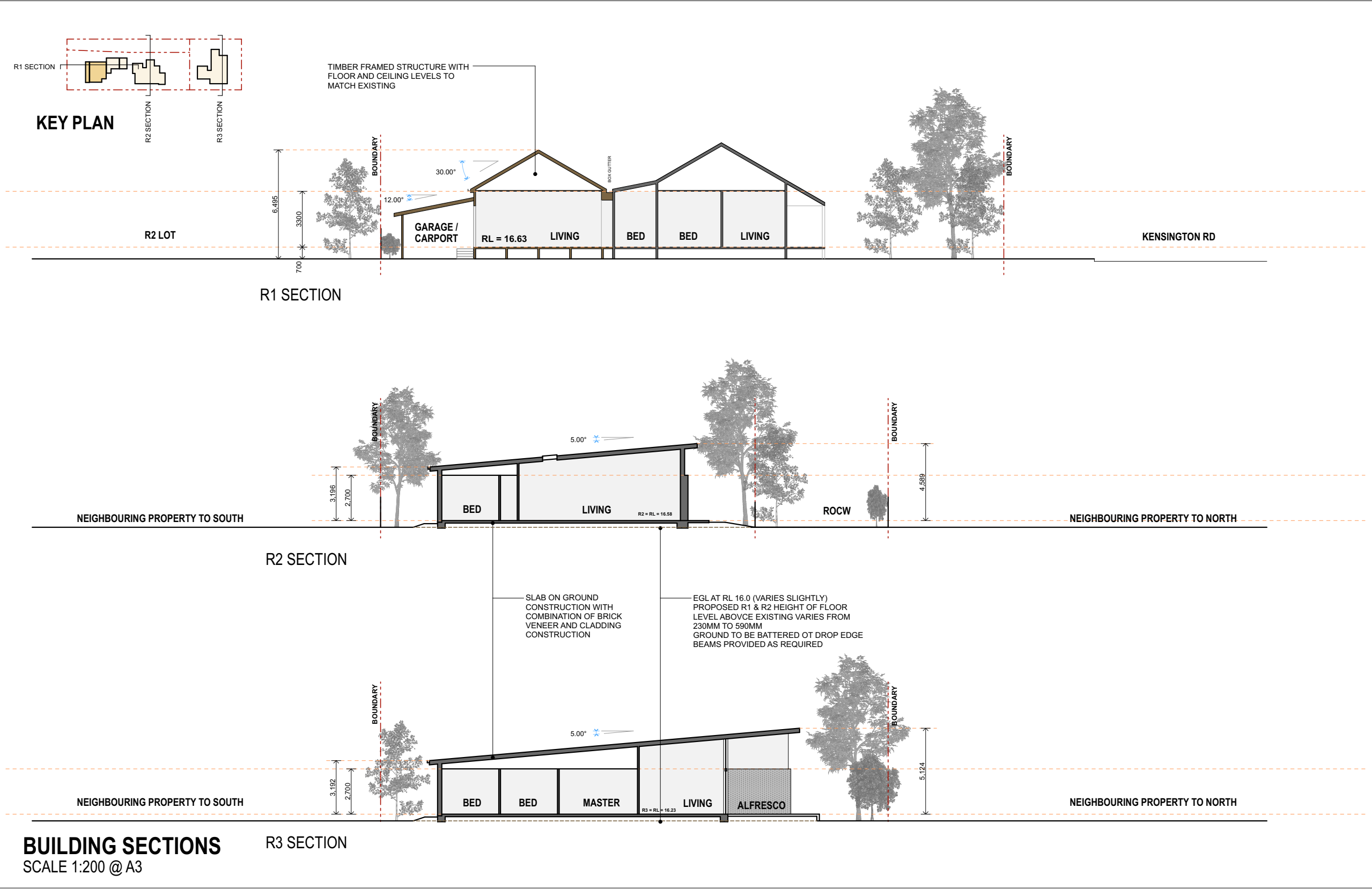
DATE
DEC 2023

DRAWING

**DA4.2
PROPOSED BUILDING R3
ELEVATIONS**

SCALE
1:200 @ A3

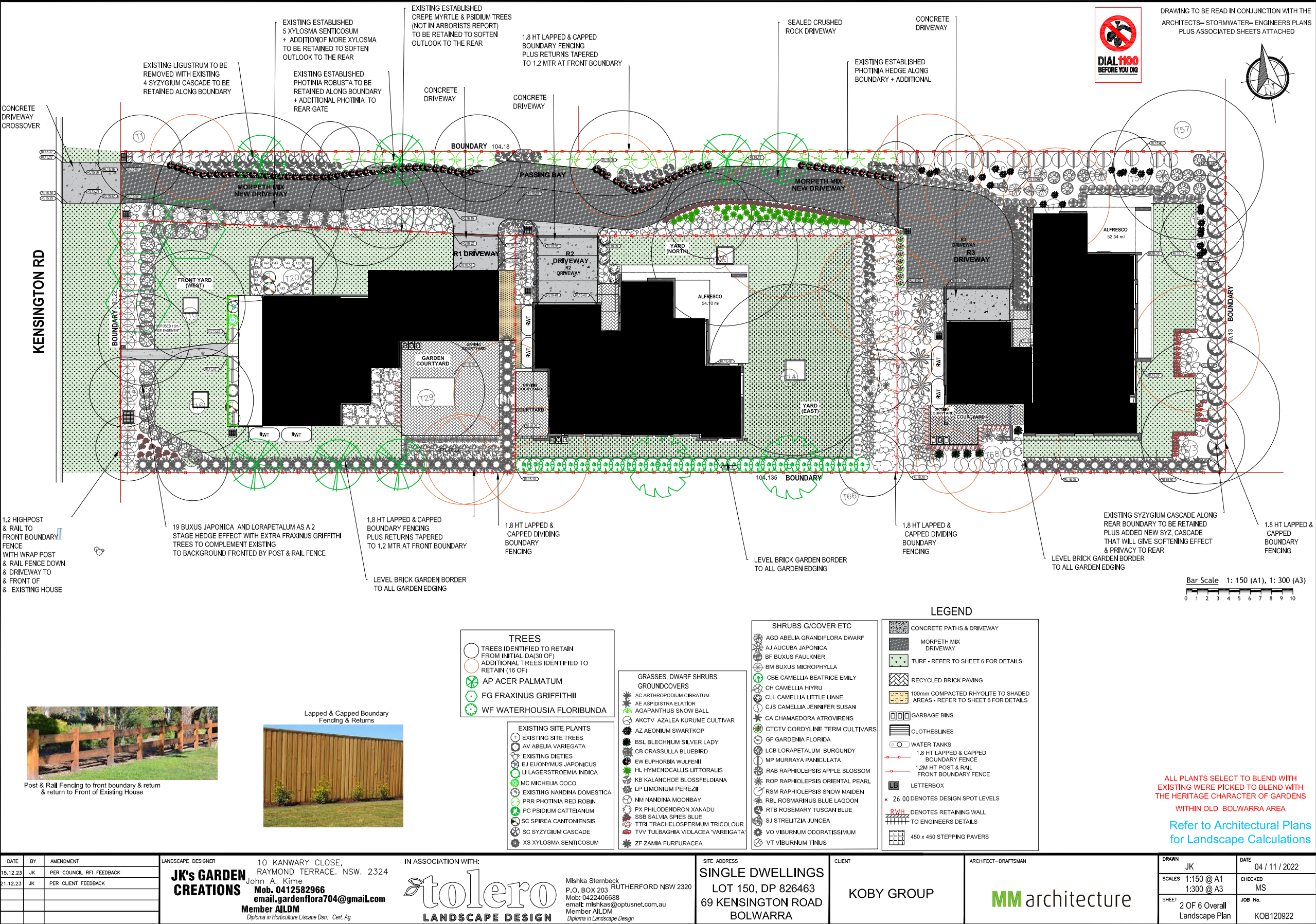




BUILDING SECTIONS
SCALE 1:200 @ A3

R3 SECTION

	<p>ISSUE</p> <p>02 REV TO DA DRAWINGS INCLUDING UPDATED DESIGNS TO R2 & R3, SINGLE DRIVEWAY, RETENTION OF ADDITIONAL TREES RESPONDING TO COUNCIL RFI'S</p> <p>21.12.2023</p>	<p>CLIENT</p> <p>KOBY GROUP</p>	<p>PROJECT</p> <p>69 KENSINGTON RD BOLWARRA PROPOSED A & A AND SUBDIVISION</p>	<p>DATE</p> <p>DEC 2023</p>	<p>DRAWING</p> <p>DA5.1 SECTIONS</p>	<p>SCALE</p> <p>1:100 @ A3</p>
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PRELIMINARY ONLY

THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND AND PROPERTY INFORMATION, SYDNEY.



- (A) - PROPOSED RIGHT OF CARRIAGEWAY VARIABLE WIDTH
- (B) - PROPOSED BUILDING ENVELOPE
- (C) - PROPOSED EASEMENT TO DRAIN WATER 1.5 WIDE
- (D) - PROPOSED EASEMENT FOR SERVICES VARIABLE WIDTH
- (E) - RESTRICTION ON THE USE OF LAND

SURVEYOR
Name: ALEX LASCELLES
Date: 14/12/23
Reference: 21998

PLAN OF SUBDIVISION OF LOT 150 D.P.826463

LGA: MAITLAND
Locality: BOLWARRA
Reduction Ratio 1:300
Lengths are in metres.

REGISTERED

DELFS LASCELLES
CONSULTING SURVEYORS

City Planning

**DA/2022/1399 FOR STAGED
DEVELOPMENT: STAGE 1 ONE INTO THREE
LOT TORRENS TITLE SUBDIVISION, TREE
REMOVAL, AND ALTERATIONS AND
ADDITIONS TO EXISTING DWELLING
HOUSE INCLUDING DEMOLITION. STAGE 2
ERECTION OF DWELLING HOUSE. STAGE 3
ERECTION OF DWELLING HOUSE AT 69
KENSINGTON ROAD BOLWARRA**

**Assessment Report (Under Separate
Cover)**

Meeting Date: 13 February 2024

Attachment No: 3

Number of Pages: 24



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application No:	DA/2022/1399
Proposal:	Staged development: stage 1 one into three lot Torrens Title subdivision, tree removal, and alterations and additions to existing dwelling house including demolition. Stage 2 erection of dwelling house. Stage 3 erection of dwelling house.
Address:	69 Kensington Road BOLWARRA NSW 2320
Lot & DP No:	150/826463
Property No:	29723
Applicant:	Koby Properties No.1 Pty Ltd
Owner:	Koby Properties No.1 Pty Ltd
Author:	Thomas Howell
Site Inspection:	8 February 2023

INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2022/1399 proposing Staged development: stage 1 one into three lot Torrens Title subdivision, tree removal, and alterations and additions to existing dwelling house including demolition. Stage 2 erection of dwelling house. Stage 3 erection of dwelling house. The assessment will provide consideration of the proposal under the *Environmental Planning and Assessment Act 1979*, the Maitland Local Environmental Plan 2011, the Maitland Development Control Plan 2011 and any other relevant legislation, guidelines, and policies of the Council.

Description of Proposed Development

The proposed development proposes a staged development:

- Stage 1: one into three lot Torrens Title subdivision, tree removal, and alterations and additions to existing dwelling house including demolition.
- Stage 2: erection of dwelling house.
- Stage 3: erection of dwelling house.

The particulars of the development works include:

- One into three lot Torrens Title subdivision consisting of:
 - Lot 101: 856m²
 - Lot 102: 800.3m²
 - Lot 103: 1,486m²
- Alterations and additions to the existing dwelling including demolition of small lean-to addition replacing with a single-storey addition at the rear containing open plan living and kitchen, and deck, repurposing of existing floor plan to add ensuite bathroom and walk-in robe and convert existing kitchen to bedroom, and a new attached single garage.
- Extension of existing driveway to service all three lots.

- Erection of a single-storey dwelling on lot 102 containing four bedrooms, two bathrooms, open plan living kitchen, separate laundry and attached double garage.
- Erection of a single-storey dwelling on lot 103 containing four bedrooms, three bathrooms, open plan living kitchen, separate laundry and attached double garage.
- Removal of 31 trees.
- Associated stormwater and landscaping works.

A request for additional information was sent to the applicant 27 April 2023 requesting amendments to the application and further supporting documentation to fully assess heritage concerns raised by Council. A response from the applicant was received 22 May 2023. The amended application was subsequently independently reviewed by a heritage expert. This advice was provided to Council which identified vegetation loss and landscaping, and the proposed two driveways to the Kensington Road frontage as the key heritage issues. The advice has been summarised below:

The amount of vegetation proposed to be removed is not consistent with the conservation policies of the Bolwarra HCA which seeks to retain buildings set within mature landscaped allotments well-concealed behind deep garden frontages accessed via discrete single driveway crossovers. The site and its well-landscaped setting are considered contributory to the HCA and will be impacted by the development. It is suggested that the following be considered to address these concerns:

1. *Substantially increase retention of existing trees to retain planting on the overall site and the related tree canopy by implementing the following:*
 - a. *Consider irregular lot boundaries or an alternative subdivision form/layout that serves to retain more existing trees (incorporate on the subdivision plans proposed easements and 88B restrictions);*
 - b. *Reduce the dwelling sizes and building envelopes, and consider the design of garaging / parking on site to retain more vegetation;*
 - c. *Make alterations to incorporate an alternate driveway alignment which enables greater retention and supplementation of landscaping and screening of the additional residences located off the driveway;*
 - d. *Remove the second driveway to incorporate landscaping in the front setback (whilst also reducing the streetscape impact of appearing as multiple dwellings from the streetscape);*
 - e. *A general increase in landscaping to offset vegetation loss.*
2. *Modify the remaining driveway to be curved or offset and allow adjacent close set screen planting to the Northern side boundary to further limit awareness of additional residences behind the contributory residence;*
3. *Provide a driveway solution that is complimentary to the conservation area (for example sealed gravel and/or Morpeth Mix within the site).*

Additional matters that are to be addressed include:

4. *Remove the sandstone feature within the front setback and provide something more subtle not to emphasise the long drive and development behind;*
5. *Re-design the proposed dwellings to incorporate roof forms that are lower in pitch and profile (more modern style roof forms such as the Californian Case Study);*
6. *Fencing should be of high transparency and low height to enable awareness of the overall site prior to subdivision.*

A further request for information was sent to the applicant on 21 November 2023 based on the advice received in the independent heritage review. Amended plans and documentation was provided by the applicant on 22 December 2023. A summary of the request and the response by the applicant is provided below:

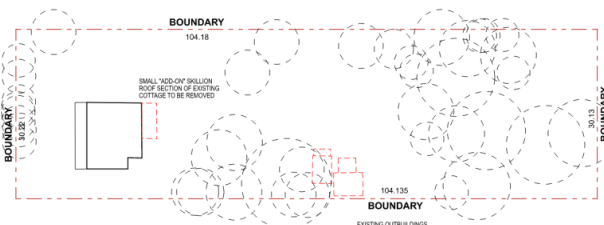
Council request	Applicant response
<p>Increase retention of existing trees by implementing the following:</p> <ul style="list-style-type: none"> Consider irregular lot boundaries or an alternative subdivision form/layout that serves to retain more existing trees; Reduce the dwelling sizes and building envelopes, and consider the design of garaging / parking on site to retain more vegetation; Make alterations to incorporate an alternate driveway alignment which enables greater retention and supplementation of landscaping and screening of the additional residences located off the driveway; Remove the second driveway to incorporate landscaping in the front setback (whilst also reducing the streetscape impact of appearing as multiple dwellings from the streetscape); A general increase in landscaping to offset vegetation loss. 	<p><i>"The proposal has been amended in line with Council's comments with the primary aim to retain as many existing trees as reasonably possible. In particular, those trees that have a large canopy coverage and/or are identified as having a high retention value in the Arborist Report (AEP, 20.12.22). The amendments to the plans include:</i></p> <ul style="list-style-type: none"> <i>Removal of southern driveway in its entirety;</i> <i>Retention of existing driveway providing access to the existing and new dwellings with appropriate rights of way within the battleaxe handle</i> <i>Realignment of the driveway to curve around existing trees allowing greater tree retention and to give a more meandering look from the street;</i> <i>Subsequent amendments to the proposed lot boundaries to reflect changes to the driveway and tree retention (easements are shown in the Draft Deposited Plan and will be included in the 88b instrument);</i> <i>Rationalise the design of the new dwellings to reduce building footprint/envelopes (note building envelopes allow for covered alfresco areas);</i> <i>Removal of any previously proposed standalone structures (eg pool, bbq pavilion);</i> <i>Placement of garages to avoid tree removal where possible;</i> <i>Amendments to the landscaping scheme to focus on increased provision of trees that will provide canopy coverage (particularly within the front setback) and screening.</i> <p><i>The revised proposal allows for an additional 16 trees to be retained across the site (12 of which are moderate to high retention value). This brings the total up to 46 trees earmarked for retention across the site. This equates to 73% tree retention on site excluding the noxious weeds and hazardous trees recommended for removal by the arborist.</i></p> 

Figure 1: originally proposed demolition and tree removal plan (source: DA1.2, revision H, prepared by MM Architecture, dated May 2023)

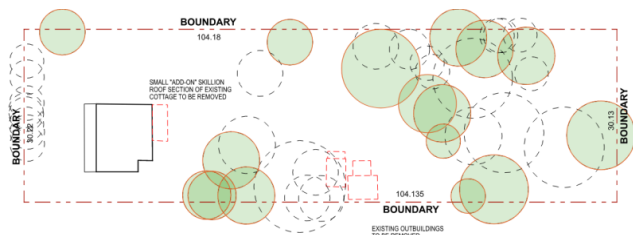


Figure 2: amended demolition and tree removal plan nominating additional 16 trees for retention (source: DA1.2, revision 02, prepared by MM Architecture, dated December 2023)

Modify the remaining driveway to be curved or offset and allow adjacent close set screen planting to the northern side boundary to further limit awareness of additional residences behind the contributory residence.	<i>"...the driveway now curves around existing trees to be retained and is complemented with new screen planting along the northern boundary. The driveway includes a new passing lane 5.5m in width and 8m in length."</i>
Provide a driveway solution that is complimentary to the conservation area (for example sealed gravel and/or Morpeth Mix within the site).	<i>"The driveway will be Morpeth Mix as indicated on the Landscape Plans".</i>
Remove the sandstone feature within the front setback and provide something more subtle not to emphasise the long drive and development behind;	<i>"The sandstone feature has been removed."</i>
Re-design the proposed dwellings to incorporate roof forms that are lower in pitch and profile (more modern style roof forms such as the Californian Case Study)	<i>"The revised architectural approach is to move away from "courtyard houses with dedicated wings" to a more traditional rectangular footprint with some articulation around the garage and entry elements. As a result, they have evolved into L-Shaped plans with simple and effective spatial layouts, living spaces orientated to the north and to the open yard areas. This approach provides a similar residential floor space to the original DA within a more consolidated footprint and allows the retention of additional trees with increased boundary setbacks again allowing greater tree retention. The roof forms have been simplified to a single pitch 5-degree skillion. We feel this is the lowest pitch viable within such a leafy, tree filled site. In conjunction, we have retained a simplified material pallet that is in keeping with the Bolwarra heritage precinct and residential typology that we are looking to deliver: contemporary, low maintenance and environmentally responsive."</i>
Fencing should be of high transparency and low height to enable awareness of the overall site prior to subdivision.	<i>"Front fencing remains at 1.2m high post and rail with high transparency and new two-tiered low level landscaping behind providing a suitable streetscape interface for the conservation area, not dissimilar to other front fencing in Bolwarra. Side and rear boundary fencing is proposed to be solid for practical reasons and to ensure privacy for future occupants. Extensive landscaping along lot boundaries is proposed as detailed on the Landscape Plan. All trees proposed have been selected specifically to compliment the heritage of</i>

the Bolwarra HCA. It is noted that there are no street trees along this portion of Kensington Road due to overhead power lines and underground services. New trees proposed at the front of the site have been selected with regard to the overhead powerlines and are setback within the site appropriately."

The following assessment is based on these amended plans and documentation.

Description of the Land on which the proposal is to be carried out.

The site is known as 69 Kensington Road Bolwarra NSW and has a legal description of Lot 150 in Deposited Plan 826463. The site is rectangular in shape and has a total site area of 3,142m². The site is located on the eastern side of Kensington Road with vehicle access gained via the 30.2m wide frontage to Kensington Road. The site is located within the Bolwarra Heritage Conservation Area and is mapped within the Coastal Use and Coastal Environment Areas prescribed by *State Environmental Planning Policy (Resilience and Hazards) 2021*. The location of the site is represented in Figure 1 below.

Existing improvements on the site include a detached single-storey dwelling house located at the Kensington Road frontage with ancillary structures at the rear. The site is heavily vegetated with several significant trees scattered across the site. The site is located in a well-established residential area predominantly consisting of detached dwelling houses located on various sized allotments.

The site is relatively flat.

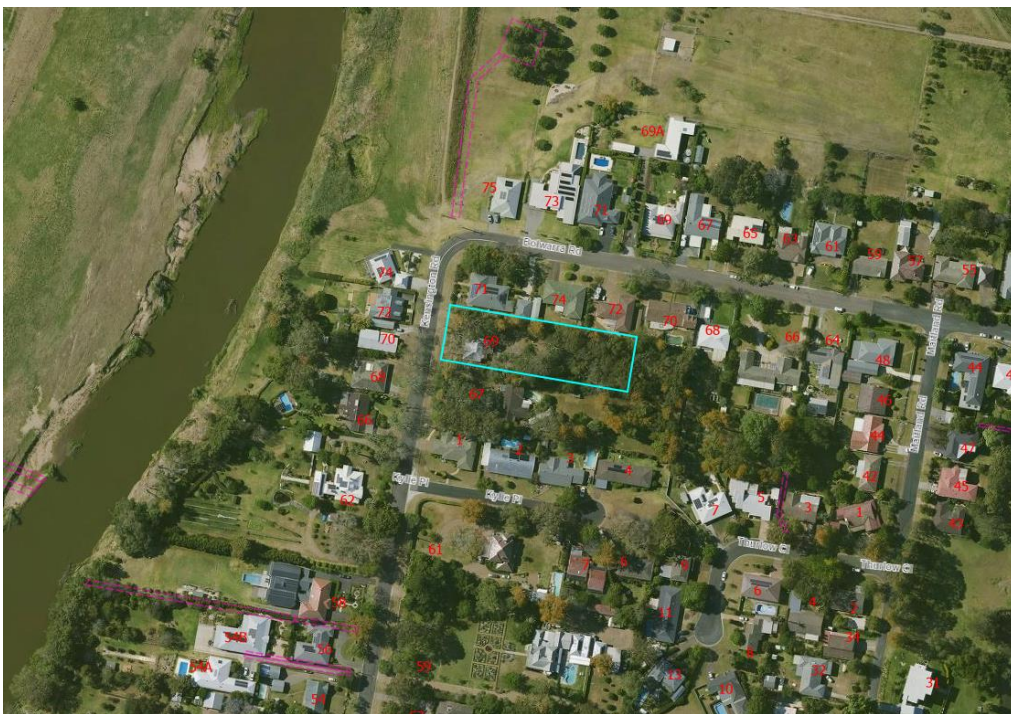


Figure 3: location of subject site (source: Maitland City Council)

A site inspection was undertaken on 8 February 2023 as seen in the images below:



Photo 1: existing frontage to Kensington Road



Photo 2: front elevation of existing dwelling



Photo 3: northern elevation of existing dwelling



Photo 4: rear elevation of existing dwelling



Photo 5: existing ancillary structures proposed to be demolished



Photo 6: rear of existing lot looking west towards Kensington Road

It is noted that the site has since been cleared of some of the undergrowth since these photos have been taken.

PREVIOUS DEVELOPMENT HISTORY

The table below provides a consent history and background context that is a relevant consideration in the assessment of the application.

Previous Consent History			
DA No.	Description of Development	Date Determined	Decision Approved/Refused
SA95/129	Subdivision to create two lots	23 June 1995	Approved

PLANNING ASSESSMENT - 4.15(1) matters for consideration

Development Type

- The proposal is categorised as *local development*, under the Environmental Planning and Assessment Act 1979 (EPA Act).

Contributions

- The proposal attracts a contribution of **\$17,432** under Council's current adopted Section 7.11 Plan

Section 4.15(1)(a)(i) - Provisions of any environmental planning instrument

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The applicant submitted valid BASIX Certificates which lists the commitments to achieve appropriate building sustainability. A condition is recommended to be included in the development consent requiring such commitments to be fulfilled.

Certificate No.: 1359171S_02 Dated: 10 January 2023

Certificate No.: 1359259S_02 Dated: 10 January 2023

Certificate No.: A482141 Dated: 29 November 2022

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The aim of this chapter of the policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objectives of the *Coastal Management Act 2016*.

The subject site has been identified as being located within the 'Coastal Environment Area' and 'Coastal Use Area' maps as prescribed by the SEPP. As such, Section 2.10 and 2.11 of the SEPP need to be taken into consideration in determining the development application. Considering the extent of the proposed works and the separation of the subject site to the coast, the proposal is not deemed to have any adverse impact on the access, overshadowing, amenity, or heritage values of the foreshore.

Chapter 4 – Remediation of land

Clause 4.6 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The proposed development site has no previous record of contamination, nor is it listed on the NSW list of contaminated and notified sites, published by the EPA. The land is not within an investigation area, nor are there any records of potentially contaminating activities occurring on the site. The proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines. As such, the site is considered

suitable for to the proposed development and contaminated land investigation is not warranted in this instance.

A condition has been imposed requiring that any unexpected finds being found on site during works be assessed for being potentially contaminating. If potential contamination is encountered, site works will be ceased, and suitable environmental consultant will be engaged for assessment.

State Environmental Planning Policy (Biodiversity and Conservation) 2021
Chapter 2 – Vegetation in non-rural areas

This chapter of the SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 2.3 of the SEPP provides that Maitland’s Development Control Plan 2011 (DCP 2011) can make declarations with regards to certain matters, and further that Maitland may issue a permit for tree removal.

31 trees are proposed to be removed as part of this application. No vegetation on the adjoining properties or street trees will be adversely impacted by the development. The proposal has been assessed in accordance with the provisions of the SEPP and DCP 2011 and is satisfactory.

Biodiversity Conservation Act 2016 and its Regulation

The *Biodiversity Conservation Act* (“BCA”) 2016 came into force on 25 August 2016, repealing the *Threatened Species Conservation Act 1993*. The purpose of this Act is to maintain a healthy, productive, and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.

BCA 2016 establishes a hierarchy for dealing with the impact of development on biodiversity values, firstly by way of avoidance of impacts, secondly by minimisation of them and lastly for offsets as the last resort.

In accordance with the provisions of the BCA 2016 and *Biodiversity Conservation Regulation 2017*, there are a number of triggers for an assessment under the Biodiversity Offset Scheme (BOS) and preparation of a Biodiversity Development Assessment Report (BDAR):

- 1. Located on the Biodiversity Values (BV) Map

Comment: The site is not identified on the BV Map.

- 2. Exceeds the area clearing threshold

Comment: The site is mapped as containing a minimum lot size of 450m². As such, the clearing threshold associated with the proposed development is 0.25ha. The threshold for clearing is as follows:

Minimum lot size associated with the property	Threshold for clearing above which a BDAR is required
Less than 1 hectare	0.25 hectares or more
1 hectare to less than 40 hectares	0.5 hectares or more
40 hectares to less than 1000 hectares	1 hectare or more
1000 hectares or more	2 hectares or more

The total area of disturbance of native vegetation is less than 0.25ha. The BOS therefore does not apply.

3. The impacts are considered significant under the 5 part test

Comment: No threatened flora species, or threatened ecological communities were identified within the Study Area. As such, no further assessment of serious and irreversible impacts is required.

Maitland Local Environmental Plan 2011

Clause 2.3 – Zone objectives and Land Use Table

The subject land is zoned R1 General Residential under the Maitland Local Environmental Plan 2011 (LEP). The proposed development is defined as subdivision and dwelling house under the LEP which is a type of development permitted with consent.

The objectives of the zoning:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development provides for a variety of housing in a low-impact form consistent with the objectives of the zone.

Clause 2.6 – Subdivision – consent requirements

The development proposal includes one to three lot Torrens title subdivision. Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent. The applicant has sought development consent for the proposed subdivision under the subject development application.

Clause 2.7 – Demolition requires development consent

The proposal includes demolition works to the existing dwelling on the site. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.1 – Minimum subdivision lot size

The site is mapped as a minimum subdivision lot size of 450m². The lots resulting from the proposed one into three lot Torrens title subdivision comply with the minimum subdivision lot size mapped for the site:

- Lot 101: 856m²
- Lot 102: 800.3m²
- Lot 103: 1,486m²

Clause 5.10 – Heritage conservation

The subject site is located within the Bolwarra Heritage Conservation Area ("HCA"), which is listed as item C1 under Schedule 5 of Maitland LEP 2011. The site is also in proximity to one local heritage item Gowan Brae (I10) which is located approximately 119m to the south and separated by three allotments and a public road.

The objectives of Clause 5.10 are as follows: -

- (a) *to conserve the environmental heritage of Maitland,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Prior to granting consent, Council as the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned.

The proposed development is consistent with the objectives of this clause, to conserve the environmental heritage of Maitland and the heritage significance of heritage conservation areas, including associated fabric, setting and views, for the following reasons:

- The proposed allotments cannot be seen from the street, maintaining the current density perception. The defining edge of the HCA is maintained.
- The original allotment remains understandable, and the rhythm and scale of houses on Kensington Road are unchanged.
- The design of the proposed buildings is low scale and simple. The modernist framed houses with low pitch roofs step about site features and provide a better relationship with the natural landscape. The dwellings are suited to retain existing vegetation, limiting the need for extensive paving and manicured lawns unrelated to the natural features of the setting. The resulting dwellings are less prominent from surrounds and merge with the landscape. The retention of large gardens and landscaping is commensurate of surrounding development.
- The proposed development uses neutral materials, finishes and colours appropriate for the immediate streetscapes and greater conservation area.
- The siting of the proposed development mitigates the visual impact of the development on existing view corridors maintaining views of the rural estate. Significant views to heritages items will not be impacted.
- The contemporary design and palette complement the conservation area by not attempting to imitate historic built forms or fabric and avoids mock heritage detailing.
- The garden setting of adjoining contributory buildings will not be impacted.
- The property is not identified as containing an Aboriginal site.

The consent authority has considered the effect of the proposed development through this assessment. It is considered that the proposed development will not have any significant adverse impact on the heritage significance of the heritage conservation area or its associated fabric, setting and views, and can be supported in respect of heritage matters.

Clause 7.1 – Acid sulfate soils

The subject site is not identified as containing Acid Sulfate Soils (ASS).

Clause 7.2 - Earthworks

The level of earthworks proposed to facilitate the development is acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

Section 4.15(1)(a)(ii) - Any draft environmental planning instrument that is or has been placed on public exhibition

There are no draft environmental planning instruments applicable to this proposal.

Section 4.15(1)(a)(iii) - Any development control plan

Maitland Development Control Plan 2011 (DCP)

The following chapters of the Maitland DCP are relevant to the assessment of the proposal:

- Part A – A.4 Notification

- Part B – B.2 Domestic Stormwater, B.5 Tree Management, B.6 Waste Not – Site Waste Minimisation & Management
- Part C – C.4 Heritage Conservation, C.8 Residential Design, C.10 Subdivision
- Part E – E.3 – 1.Bolwarra Heritage Conservation Area

A.4 – Notification

The application was placed on public exhibition for a period of 14 days from 20 January 2023 to 3 February 2023 in accordance with the *EP&A Act*, *EP&A Regs* and Maitland Development Control Plan (“DCP”) 2011. During this time five submissions were received.

B.2 – Domestic Stormwater

A stormwater drainage plan (Reference: 221624, Dwg. No. CIV-001, CIV-010, CIV-020, CIV-021, prepared by: DRB Consulting Engineers, dated: 15/12/2023) has been provided of which demonstrates compliance with the objectives and controls of this chapter.

Rainwater reuse tanks with an on-site detention volume of 4.4m³ per lot has been provided in accordance with the requirements of BASIX and Council's Manual of Engineering Standards (“MOES”). The overflow from the rainwater tanks will be directed to nearby stormwater pits (one on each lot, three within the access handle and an additional pit on at the front boundary on lot 101) before being discharge into the boundary surface inlet pit. The stormwater pit will then convey flows to Council's drainage system along Kensington Road.

Appropriate conditions of consent have been included to ensure the development works comply with relevant provision of Council's MOES.

B.5 – Tree and Vegetation Management

An Arborist Impact Assessment (*Anderson Environmental Planning, December 2022*) has been submitted with the application which has assessed a total of 78 trees within the subject site. Of the 78 trees, 24 were identified as native canopy or lower stratum species that are representative of the original vegetation of the area, 13 were identified as non-local native species (planted) and a further 41 were identified as planted exotic species. The original proposal was lodged requesting the removal of 47 trees across the subject site. Subsequent amendments were made, and an additional 16 trees were proposed to be retained, as represented in the below figures:

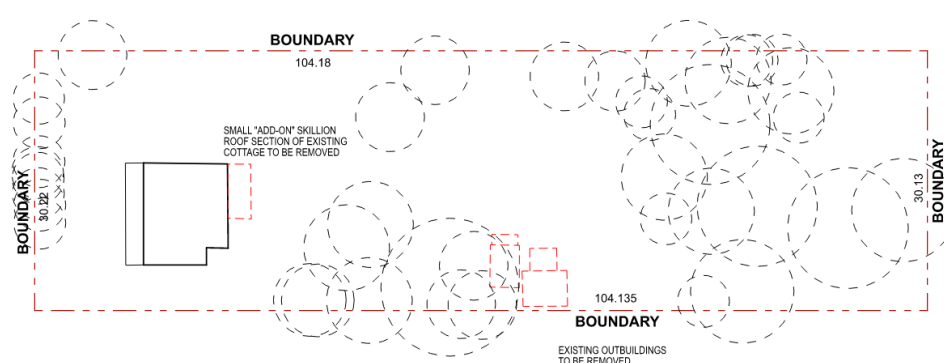


Figure 4: originally proposed demolition and tree removal plan (source: DA1.2, revision H, prepared by MM Architecture, dated May 2023)

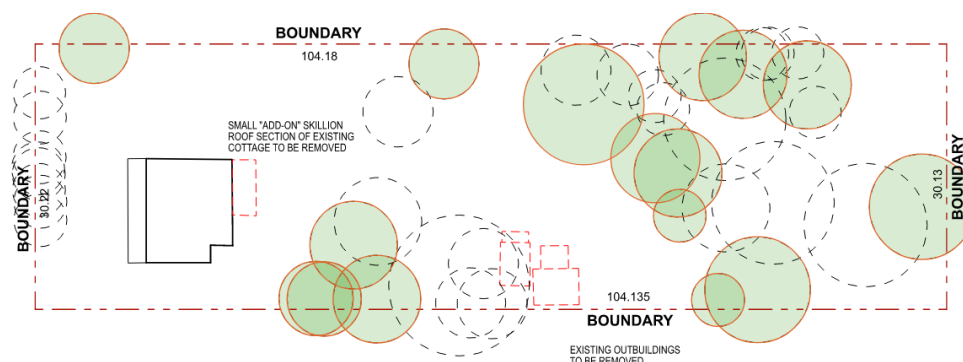


Figure 5: amended demolition and tree removal plan nominating additional 16 trees for retention (source: DA1.2, revision 02, prepared by MM Architecture, dated December 2023)

The Arborist Impact Assessment utilises a methodology combining visual tree assessment, the SULE method (Safe Useful Life Expectancy), and identifying tree retention values for each tree. Utilising these methods the report identified the retention values of each tree within the site, as follows:

- 13 'high'
- 37 'moderate'
- 28 'low'

Of the 31 proposed for removal due to impact of the development footprint, four have a 'high' retention value, 12 'moderate' and 15 'low'. Two additional trees have been proposed for removal due to the identification as being hazardous. Tree removal and protection measures are outlined within the report detailing compliance with relevant Australian Standards. This will be conditioned.

The following performance criteria applies to all vegetation clearing:

- *The amenity of the area is maintained through the preservation of trees and other vegetation.*
- *Habitat and corridor function is maintained.*
- *Trees are managed to minimise risk to person and property.*

As the site is in the Bolwarra Heritage Conservation Area the following additional performance criteria apply:

- *Heritage items and significant trees are retained in the landscape.*
- *The heritage qualities of the area are maintained.*
- *Heritage items and significant trees are protected from works that may damage the tree.*

Overall, the proposed development retains 47 trees across the site including all significant trees identified in Section 4.1 of the Arborist Impact Assessment (T19, T44, T57). Appropriate building setbacks have been incorporated into the development to afford appropriate tree protection zones ("TPZ") and structural protection zones ("SPZ") to each retained tree. In addition, trees T29 and T74 which have been identified as displaying a high level of aesthetic value are retained with the design of the built form. In addition, approximately 150 of the existing shrubs on site are proposed to be retained. The retention of trees and shrubs across the site aids in softening any impact of the built form retaining the landscape character of Bolwarra HCA. A detailed landscape plan and planting schedule include new tree plantings appropriate for residential development.

B.6 – Waste Not – Site Waste Minimisation & Management

A waste management plan was provided with the application of which details the type and amount of waste, and methods for disposal and / or reuse. Management of waste during construction can be addressed by way of conditions of consent.

The development will be serviced by Council's Waste Collection upon occupation.

C.4 – Heritage Conservation

The development footprint is contained within the boundary of Lot 150 DP826463 and allows for retention of the historic cottage. The scheme ensures the existing dwelling fronting Kensington Road, its setting and positive contribution to the HCA is conserved. The application proposes the erection of two new dwelling houses on two new lots at the rear of the exiting site and behind built form of the existing cottage. The design response is commensurate with contemporary infill development within the Bolwarra area and has been informed by defining qualities of nearby historic dwellings. The architectural style of the proposal is deemed complementary to the existing and emerging character of Bolwarra and will contribute positively to the diversity of built fabric in the context.

General Requirements for Alterations and Additions

3.1 Sympathetic Design

The proposed additions to the existing cottage are located at the rear of the structure and behind the established front building line. The proposed addition has been designed to draw on the form and proportions of the original building yet is simplified in detail and form to distinguish between the existing dwelling and the new addition. The additions, whilst viewable from the Kensington Road frontage, are discrete and sit below the ridgeline of the original roof. It is considered that the addition will not unreasonably detract from the streetscape.

3.2 Siting, Setback & Orientation

The proposed additions are sited at the rear of the existing cottage retaining a large landscape front to ensure the landscape character of both Kensington Road and greater HCA area is retained. The additions are adequately setback from each side boundary. No building works are proposed forward of the existing cottage.

3.3 Size & Scale

The addition at the rear of the existing cottage is modest in floor space (49m²) and does not dominate the existing building. The addition is subservient to the existing cottage with a clear delineation between old and new.

3.4 Roof Form & Scale

The proposed roof form reflects the existing roof form in pitch.

3.5 Materials & Colours

The proposal employs neutral colours and complementary materials appropriate for the immediate streetscape and greater conservation area. Existing doors and windows visible from Kensington Road are timber framed and are to be retained. The roof consists of zincalume material to match the existing roof.

3.6 Design of New Detail and Opening

The existing cottage is to remain in its current form with demolition of a small lean-to at the rear to accommodate the addition. No new visible openings are proposed.

3.7 Evidence of Authentic Reconstruction

The development works do not include reinstatement of original features.

3.8 Removal of Unsympathetic alterations and additions

The development works retain the existing closed in-verandah at the southern façade which was added on some time ago. However, the unsympathetic lean-to addition at the rear is to be demolished.

3.9 Services & New Technology

No new services are proposed to the existing façade fronting Kensington Road.

3.10 Landscaping

The existing landscaping and garden to the Kensington Road frontage is maintained and enhanced with removal of overgrown and over-vegetated planting along the street alignment. New plantings have been selected which are suitable for the surrounding heritage area.

3.11 Fences

New post and rail fencing is proposed along the street frontage. There is no existing dominant fence type along this section of Kensington Road with hedging and similar landscaping treatments the predominant streetscape feature. The proposed fencing type is simple, of appropriate scale and transparent to enable the proposed landscaping located behind the fence to integrate the fence into the streetscape.

3.12 Garages, Carports & Sheds

The proposed garage is attached to the dwelling and setback considerably behind the established front building line. The garage is greater than 900mm from the side boundary, is of a lightweight construction (weatherboards) and consists of a simple lean-to style roof. The garage is not viewable from Kensington Road.

General Requirements for New Buildings in Historic Areas

4.2 Siting a New Building

The siting of the development has been well considered with new built form setback behind the existing cottage. The front building line to Kensington Road is retained with the new dwellings obscured from view from the Kensington Road interface. The siting of the new dwellings mitigates any visual impact of the development on existing view corridors conserving views to and from nearby items of heritage significance. Generous gardens with established trees are retained for each new dwelling which is typical of the area.

4.3 Scale

The scale of the development is single storey corresponding with single storey dwellings that typify Kensington Road and the wider Bolwarra heritage area. The ridge heights of the new dwellings sit lower than that of the existing cottage retained to Kensington Road.

4.3 Proportions

The two proposed houses are designed to be single storey with a low-profile roofs in a modernist design to better protect site features and provide a better relationship with the natural landscape. The dwellings are designed to retain existing vegetation, limiting the need for extensive paving and manicured lawns unrelated to the natural features of the setting. The resulting dwellings are less prominent from surrounds and merge with the landscape. The retention of large gardens and landscaping is commensurate of surrounding development.

4.4 Setbacks

Due to the eclectic housing age and typology, there are no consistent building setbacks within the immediate area. The new buildings are setback generously from all property boundaries, are non-obtrusive and provide an acceptable level of separation from adjoining properties.

4.5 Form & Massing

The ridge heights of the proposed dwellings sit lower than that of the existing cottage retained to Kensington Road and are of a scale that is consistent with housing in the immediate vicinity.

4.6 Landscaping

The proposal allows for the retention of landscaping with enhancement planting including construction of a front boundary fence complementary to the established street pattern. The siting, scale and

detailing of the front fence as well as the areas of hedging and turfed grounds ensure the landscape character of both Kensington Road and greater HCA area is retained.

4.7 Detailing

The scheme avoids the introduction of mock heritage detailing which may impact upon interpretation of the new development within the historic context.

4.8 Building Elements & Materials

4.8.1 Doors and windows

All new doors and windows are not visible from Kensington Road. The simple rectilinear openings are compatible with contributory façades within the residential precinct.

4.8.2 Roofs

The roof consists of 'surf mist' metal sheeting consistent with the surrounding contributory buildings.

4.8.3 Paving

The proposed driveway consists of Morpeth mix concrete and meanders towards the rear of the site to retain existing vegetation within northern portion of the site. This reduces the visual impact of excessive hardstand on the public domain.

4.8.4 Walls

The proposal employs neutral colours in keeping with both the immediate streetscape and greater conservation area. The design integrates contemporary materials inspired by traditional built fabric within the streetscape and broader context.

Subdivision of land

General Requirements:

The proposed subdivision maintains the defined edges of the Bolwarra HCA as the subdivision is located behind an existing cottage and significant trees are retained. Whilst there is an increase in density on the block with the addition of two new residential allotments, the two proposed dwellings are not visible from Kensington Road. The dwellings are single-storey with ridges of the roofs lower than that of the existing cottage. Therefore, there is no perceived increase in density. All that is presented is a new post and rail fence to the street and an extension to the existing driveway, leading deep into the block. The siting of the new dwellings mitigates any visual impact of the development on existing view corridors conserving views to and from nearby items of heritage significance as well as retention of rural views from the edge of the HCA. Generous gardens with established trees are retained for each new dwelling in keeping with the exiting rhythm of adjoining dwellings. The setbacks and lot sizes are commensurate to adjoining low-density development to the north, east and west. The proposal allows for the retention of landscaping with enhancement planting ensuring the landscape character of both Kensington Road and greater HCA area is retained.

See comments in Section E.3 of the DCP below for further consideration of the proposed subdivision.

C.8 – Residential Design

3. Development Incorporating Existing Dwellings

The proposed development retains the existing dwelling house at the Kensington Road frontage. The existing dwelling maintains general compliance with all relevant Maitland DCP 2011 requirements in regard to private open space, landscaped area, off-street car parking and setbacks. It has also been assessed that adequate separation is provided between the existing dwelling and the proposed dwellings at the rear maintaining a reasonable level of privacy, amenity, and solar access for future occupation.

4. Bulk Earthworks and Retaining Walls

Some minor fill works are proposed across the site to create a level building pad for the proposed dwellings. No retaining walls are proposed.

5. Street Building Setbacks

6. Side and Rear Setbacks

The development includes the following minimum setbacks:

- Front – the Kensington Road setback remains unchanged by the proposed development. The existing front building line established by the cottage on site is retained.
- Rear – 7m to the face of the wall of proposed building “R3”.
- Sides – 5.3m to the northern side boundary and 3m to the southern side boundary.

All proposed setbacks comply with the minimum numerical requirements of DCP 2011.

7. Site Coverage and Unbuilt Areas

The proposal includes a site coverage of approximately 44.7% which meets the numerical requirements in Table 3 of this control.

8. Building Height, Bulk and Scale

The proposal includes a maximum building height of 6.49m and complies with the maximum height of 8.5m in accordance with Table 4 of this control.

9. External Appearance

The development features design and façade details of which create visual interest whilst maintaining constancy with the established character.

10. Open Space

Private open space complies with the specifications provided in Figure 20 of this control.

13. Landscape Design

A landscape plan and planting schedule was submitted as part of the application demonstrating tree retention across the site with tree removal supplemented with adequate plantings to the front setback and permitter to soften the appearance of the development as viewed from the streetscape or adjoining properties. The retention of trees and shrubs across the site and the additional supplementary planting retains the landscape character of Bolwarra HCA.

14. Fencing and Walls

Fencing is proposed to the Kensington Road frontage. The fencing is 1.2m in height and consists of post and rail which is open and transparent. Whilst there is no dominant fence type along this section of Kensington Road with hedging and similar landscaping treatments the predominant streetscape feature. The proposed fencing type is simple, of appropriate scale and transparent. Proposed landscaping located behind the fence will help integrate the fence into the streetscape.

15. Driveway Access and Carparking

The proposed development was amended as requested to retain the existing driveway crossover location to service all three lots. The proposed driveway is greater than 900mm from each side boundary and the pavement width is greater than 2.7m.

Each dwelling contains more than two bedrooms requiring two parking spaces per dwelling. An attached double garage and driveway is proposed to each new dwelling and an attached single garage is proposed to the existing dwelling. Each garage structure is sited greater than 5.5m from the access boundary allowing additional tandem parking. The proposed parking structures will be conditioned to be consistent with the relevant dimensions and requirements of Australian Standards AS2890.1:2004.

16. Views, and Visual and Acoustic Privacy

The dwelling has been designed to limit visual and acoustic privacy impacts, including implementation of separation distances, privacy screens, offset or opaque windows.

17. Water and Energy Conservation

A BASIX certificate has been provided of which outlines requirements of water and energy conservation. The building design is reflective of BASIX requirements.

18. Stormwater Management

Stormwater management has been proposed in accordance with Chapter B.2 of DCP 2011 and Council's Manual of Engineering Standards.

19. Security, Site Facilities and Services

Mailboxes, clotheslines, and bin storage has been provided in accordance with this control.

C.10 – Subdivision

EC.1 Flora and Fauna

An Arborist Impact Assessment has been provided as part of the supporting documentation demonstrating the removal of 31 trees and retention of 47 trees. Conditions of consent have been included requiring an ecologist to be engaged in the event fauna species are discovered in the trees proposed for removal.

The subdivision is not considered to result in any adverse environmental impact on either site or surrounding allotments including impact to waterways or vegetation corridors.

EC.2 Heritage and Archaeology

The site is mapped within the Bolwarra HCA. It is noted that subdivision is a type of development that should generally be avoided in HCAs. Notwithstanding this, the original allotment is still able to be understood particularly as the streetscape and scale of houses fronting Kensington Road is unchanged. No views of the rural estate are affected and defined edges of the HCA remain intact. As such, it is concluded that the proposed subdivision will not result in any significant impact on the existing heritage character of the site or the wider locality.

See comments in Section E.3 of the DCP below for further consideration of the proposed subdivision.

EC.3 Hazards

The site is not affected by any natural hazard. As such, no further assessment is required.

DC.1 Lot Size and Dimension

The resultant lots both achieve the minimum lot size requirements prescribed by Maitland LEP 2011. The residential lots range from 800.3m² to 1,486m². The proposed allotments follow the natural topography of the site and limits the amount of earthworks and vegetation removal required. A building envelope of at least 15m x 10m is provided for each new vacant lot.

The proposed access handle has a total width of 6.4m, servicing all three new lots.

DC.2 Solar Access and Energy Efficiency

The proposed subdivision has been designed to maximise solar access with building envelopes proposed towards the southern portion of the lot to allow open space orientated towards north and east.

DC.3 Drainage, Water Quality and Soil Erosion

The site does not contain any natural watercourses or drainage lines. A stormwater drainage plan (DRB Consulting Engineers 15/12/2023) has been submitted as part of the supporting documentation. On-site

detention has been provided in accordance with the requirements of BASIX and Council's MOES. The overflow from the rainwater tanks will be directed to nearby stormwater pits before being discharge into Council's drainage system along Kensington Road. Appropriate conditions of consent have been included to ensure the development works comply with relevant provision of Council's MOES.

DC.4 Landscape, Streetscape and Visual Impact

The proposed lot fronting Kensington Road retains the existing cottage with proposed new dwellings erected at the rear of the site and obscured from view from the street interface. All that is presented to Kensington Road is a new post and rail fence to the street. The generous landscaped front yard to the existing cottage is retained and enhanced with new plantings. Therefore, there is no perceived increase in density.

A detailed landscape plan and planting schedule was submitted in support of the application. A new post and rail fencing is proposed along the street frontage. The proposed fencing type is simple, of appropriate scale and transparent. Proposed landscaping located behind the fence will help integrate the fence into the streetscape.

DC.5 Effluent Disposal

All proposed sites can be serviced by Hunter Water Corporation reticulated networks. Evidence to support this will be required prior to the issue of a subdivision certificate. A condition to ensure compliance with this requirement will be included in the determination.

DC.6 Roads and Access, Pedestrian and Cycleways

No roads are proposed as part of this application. All proposed sites will retain existing direct access to a public road (Kensington Road).

DC.7 Crime Prevention

It is considered unlikely that a development of this nature would result in an increase in anti-social behaviour or security risk to the sites or surrounding area. Clear delineation between the public and private spaces is maintained.

DC.8 Site Filling

No extensive earthworks are proposed.

DC.9 Reticulated Services

Both sites are serviced by Hunter Water Corporation reticulated networks. Evidence to support this will be required prior to the issue of a subdivision certificate. A condition to ensure compliance with this requirement will be included in the determination.

C.11 – Vehicle Access & Car Parking

Driveway access and parking has been provided per the requirements of C8.15 (Residential Design) above. A condition of consent requiring the proposed driveways to be constructed in accordance with Council's Standard Drawing SD0008 has been included. All works within the road reserve are subjected to issue of a Section 138 Certificate under the Roads Act 1993 which has also been conditioned.

E.3 – 1. Bolwarra Conservation Area

1.3 Conservation Policies

What to Keep:

- *Well defined edges of the Conservation Area due to floodplain;*
- *Predominating single detached residential character;*
- *Neighbourhood character of shopping precinct;*
- *Existing form of road approaches to the town;*
- *Existing density of development.*

- *Landmark trees, including the large Bunyah Pine at the town's entrance.*
- *Buildings and outbuildings associated with agricultural landuse.*

What to Encourage:

- *Single detached residential dwellings;*
- *Consistent scale and form of residential development, predominately single storey.*

What to Avoid:

- *Medium density development and detached dual occupancy – which are inappropriate because of their scale, design, size of allotment, etc;*
- *Re-subdivision of larger allotments to allow new dwellings in rear or front yards;*
- *Large garages and carports on the street frontage, and details on them which mimic those on the dwelling.*

The subject site was created in the second phase of quarter acre subdivisions of the Bolwarra Estate, in which the original estate was subdivided into large house allotments and offered for general sale under the description "Gentleman's Estate". Until the 1940s the suburb grew gradually on its Victorian allotments, with the addition of houses in masonry and timber. The gentleman's estate character of Bolwarra was augmented at first with the need for housing on flood free land after the devastating floods of 1949 to 1956 then with the 1960s suburban expansion in the district generally, many of the Victorian suburb allotments as well as the farmland on its approach roads were divided into smaller single house blocks. At the end of the 1960s two cul-de-sac subdivisions were made on the northern part in Kensington Road and, in the 1990s and early 2000s to the east side of Paterson Road.

It is noted that the original allotment of the subject site is not intact, as the rear has been cut by a subdivision in the 1970s.

The proposed subdivision maintains the defined edges of the HCA as the subdivision is located behind an existing cottage and significant trees are retained. Whilst there is an increase in density on the block with the addition of two new residential allotments the two proposed dwellings are not visible from Kensington Road. The dwellings are single-storey with ridges of the roofs lower than that of the existing cottage. Therefore, there is no perceived increase in density. All that is presented is a new post and rail fence to the street and an extension to the existing driveway, leading deep into the block. Similar gravel access roads on the allotments of Bolwarra were common in the time before the war, to assist the keeping of stock house allotments. The proposed buildings are of low scale and modernist character, which generally fits with the internal character of the old allotments. By breaking them down into small forms around courtyards, the new dwellings resemble an arrangement of utilitarian buildings. The dwellings do not presume to be grand or Victorian in character.

Whilst the development proposed is a type that should be avoided, the original allotment is still able to be understood, particularly, the rhythm and scale of houses in Kensington Road is unchanged. No views of the rural estate are affected and defined edges of the HCA remain intact. The existing cottage and its garden are not disturbed or crowded in. Generous gardens with established trees are retained for each new dwelling which is typical of the area. For these reasons, the proposed development is considered satisfactory and any negligible impact on the significance of the Bolwarra HCA supportable.

Section 4.15(1)(a)(iia) – Any planning agreement that has been entered under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

- There are no planning agreements, or draft planning agreements.

Section 4.15 (1)(a)(iv) - The regulations (to the extent that they prescribe matters for the purposes of this paragraph)

Demolition is required by the regulations to be completed in accordance with the provisions of *AS2601 -1991: The Demolition of Structures*. Demolition, as nominated on the approved plans, is proposed under this application and appropriate conditions will be included in the consent in this regard.

There are no additional matters prescribed by the regulations for consideration.

Section 4.15 (1)(b) - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Impacts upon the natural and built environment have been discussed in this report in the context of all relevant policies, including Maitland LEP 2011 and DCP 2011 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment.

The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale, and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of Maitland DCP 2011 and as a result the development is unlikely to adversely impact upon adjoining properties.

Section 4.15 (1)(c) - The suitability of the site for the development

The site is located within an R1 General Residential zone and the proposal is permissible. The proposed development creates three allotments which all significantly exceed the 450m² minimum lot size applicable to the site. The subject development is of a bulk and scale consistent with the existing and desired future character of the locality. The development adheres to site constraints and restrictions and does not unreasonably impact upon the surrounding environment. Considerable amendments were made to the proposal to address the heritage concerns. The development is considered a suitable outcome for the subject site.

Section 4.15 (1)(d) - Any submissions made in accordance with this Act or the regulations

Public Submissions

- The proposal was publicly notified/advertised for a period of 14 days in accordance with the Environmental Planning and Assessment Act 1979 and the Maitland Development Control Plan 2011.
- A total of five submissions were received during the exhibition period. All five submissions raised objection to the proposal. A summary of the submissions is provided in the following table:

Review of Submissions	
Issue	Comment
Impact on fauna habitat / tree removal. Incorrect tree identification in the submitted Arborist Impact Assessment	As discussed previously in this report, the development seeks to retain 47 trees across the site including all significant native trees identified in the submitted Arborist Impact Assessment (<i>Anderson Environmental Planning, December 2022</i>). Trees to be removed predominantly include weed species, trees growing too close

	<p>together and trees observed with major health or structural defects. The proposed building envelopes and driveway locations has been considered to enable the preservation of vegetation across the site. In addition, approximately 150 of the existing shrubs on site are proposed to be retained. The retention of trees and shrubs across the site aids in softening any impact of the built form retaining the landscape character of Bolwarra HCA. A detailed landscape plan and planting schedule include new tree plantings appropriate for residential development.</p> <p>The following comments have been provided by the Arborist regarding the quality of the Arborist Impact Assessment:</p> <ul style="list-style-type: none"> • <i>Trees 21 and 25 may have been misidentified. Whilst care is taken to appropriately identify all trees correctly, on occasion exotic / horticultural trees not in flower may be misidentified. However, given that these trees have been correctly identified as exotic, this actually changes nothing with respect to the landscape significance, retention value or impacts.</i> • <i>The recommended retention and or removal of tree(s) is based on the health and encroachment of Tree Protection Zones (TPZs) and Structural Root Zones (SRZs), rather than the origin of the species. Health of the species is also taken into consideration, for example the retention of a tree that will not be impacted on by the development cannot be recommended if the tree is dead / dying or diseased. The origin of a tree plays a limited role when undertaking an impact assessment within an urban environment. Maitland DCP 2011, Part B Environmental Guidelines defines a tree as a long lived woody perennial plant greater than 3m height (or will be at maturity), with one or relatively few main stems or trunks. The DCP does not distinguish between exotics and natives within an urban environment.</i> • <i>The retention of the Privets and Trees 21/25 is solely on the basis of these trees being relatively unimpacted by the proposed development. The Arborist Report was prepared to determine the likely impacts on the trees within the site. The assessment has identified these trees and noted the proposed development does not impact them. The</i>
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	<i>Biosecurity Act 2015 gives Council the authority to notify the owner to remove these trees from the premises, it does not give an arborist the authority to request removal based on the tree's listing under this Act.</i>
Overdevelopment of the site	The proposed development is permissible in accordance with the R1 General Residential zone and is consistent with the objectives of zoning by providing a variety of housing in a low impact built form complementary to the established low-density residential environment. The design of the development has considered the established built form in the area with the design and building setbacks resulting in a positive outcome for a large and currently underutilised site. Further, the proposed subdivision creates three allotments which all significantly exceed the 450m ² minimum lot size applicable to the site. The proposed subdivision creates sufficient land area to each proposed lot to facilitate a design capable of complying with the surrounding context, bulk, height, scale, and siting.
Vehicles exiting in forward direction. Traffic impacts.	<p>The proposed access arrangements to all three lots allow for vehicles to enter and exit the site in a forward direction from the proposed new driveway along the site's northern boundary.</p> <p>The local street network can cater for the minor increase in traffic movements associated with the subject development.</p>
Amenity impacts during construction	The recommended conditions of consent include requirements for the applicant to comply with relevant Australian Standards for demolition, tree removal as well as compliance with the National Construction Code and standard hours of construction. Whilst there will be some impacts experienced in the immediate vicinity of the site during construction works, this is inevitable with any urban development and will be time limited.
Visual impact	The proposed development is single storey in nature and sited behind the existing dwelling. As such, the proposed development will mostly be concealed when viewed from Kensington Road. The development maintains generous setbacks and exceeds the minimum landscaping requirements. A landscape plan and planting schedule was submitted as part of the application demonstrating adequate screen planting to the front, side and rear setbacks to soften the appearance of the development as viewed from the streetscape. The orientation

	and siting of the proposed dwellings allow the neighbouring properties to retain a reasonable level of amenity and privacy. A condition of consent will require the upgrading of existing boundary fence to a height of 1.8m at full cost to the developer. This will further aid in reducing any visual impact of the development viewed from adjoining properties.
Heritage impact / precedence	As discussed previously in this report, the subject site is mapped in the Bolwarra Heritage Conservation Area. Whilst the development proposed is a type that should be avoided under Chapter E.3 'Bolwarra Heritage Conservation Area' under Maitland DCP 2011, the original allotment is still able to be understood, particularly, the rhythm and scale of houses in Kensington Road is unchanged. No views of the rural estate are affected and defined edges of the HCA remain intact. The existing cottage and its garden are not disturbed or crowded in. Generous gardens with established trees are retained for each new dwelling which is typical of the area. Future development applications within the Bolwarra Heritage Conservation Area are subject to merit assessment at the time of the assessment. The proposed development site is unique as it allows the retention of generous setback to the existing cottage fronting Kensington Road.
Sewer connection	Hunter Water correspondence confirms that sewer is available, and the necessary notice of requirements has been issued for the development. Concept design shows the development will connect into the existing sewer main at the front of the property along Kensington Road. An easement over neighbouring properties is not required.
Fencing	As discussed previously in this report, new post and rail fencing is proposed along the street frontage. The proposed fencing type is simple, of appropriate scale and transparent. Proposed landscaping located behind the fence will help integrate the fence into the streetscape. Further, it is noted that there is no dominant fence type along this section of Kensington Road with hedging and similar landscaping treatments a dominant streetscape feature.

Government Agency Submissions

- The proposal is of a type that does not require the Council, as the consent authority, to obtain the concurrence, comments or general terms of approval from another government agency.

Section 4.15(1)(e) - The public interest

The proposal is within the public interest as it will provide additional housing to service the needs of the community, without impeding on the social, economic, built or natural environments. The proposal demonstrates consistency with the zone objectives and Council's development controls. The development will not result in unreasonable burden upon existing infrastructure or services.

OTHER APPROVALS

- The proposal does not require the Council to grant consent under legislation outside of the *Environmental Planning and Assessment Act 1979*.

REFERRALS

- The application was referred internally to Council's:
 - Subdivision and Development Engineering Team
 - Biodiversity Team
 - Development Contributions Team
 who have reviewed the application and have provided support to the application subject to conditions of consent which have been provided in the schedule of conditions.
- The application was also referred internally to Council's Heritage Officer who has reviewed the application raising concerns regarding the proposals impact on the heritage significance of the Bolwarra Heritage Conservation Area and non-compliance with Chapter E.3 'Bolwarra' of Maitland DCP 2011 which lists subdivision and dwellings built at the rear of dwellings as developments that should be avoided.
However, after obtaining an independent heritage review, amendments to the proposal and assessing the application holistically and in accordance with relevant requirements and objectives of the Maitland LEP and DCP 2011, including the zoning objectives of the R1 General Residential zone, minimum lot size map, residential and heritage conservation guidelines for development and supporting documentation provided by the Application, the variations are deemed necessary and supportable. As such, the application has been recommended for approval, as discussed in greater detail in the above report.

ASSESSMENT CONCLUSION

- An assessment of the application has been undertaken against Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979 as amended*. The proposed development is considered acceptable in terms of the relevant matters for consideration under the Act and the development application is recommended for approval.

RECOMMENDATION AND DETERMINATION

- Consent be granted subject to the conditions provided in the attached schedule.

Thomas Howell

Senior Development Planner

City Planning

**DA/2022/1399 FOR STAGED DEVELOPMENT:
STAGE 1 ONE INTO THREE LOT TORRENS
TITLE SUBDIVISION, TREE REMOVAL, AND
ALTERATIONS AND ADDITIONS TO
EXISTING DWELLING HOUSE INCLUDING
DEMOLITION. STAGE 2 ERECTION OF
DWELLING HOUSE. STAGE 3 ERECTION OF
DWELLING HOUSE AT 69 KENSINGTON
ROAD BOLWARRA**

**Recommended Conditions of Consent
(Under Separate Cover)**

Meeting Date: 13 February 2024

Attachment No: 4

Number of Pages: 17

Schedule of Conditions DA/2022/1399**Reason for Conditions**

The following conditions are applied to:

- Confirm and clarify the terms of Council's Approval;
- Identify minor modifications and additional requirements that will result in improved compliance, development and environmental outcomes; and
- Draw to the attention of the applicant and owner their responsibility to comply with the requirements of various legislation including but not limited to the Environmental Planning and Assessment Act, 1979, Local Government Act 1993; relevant Regulations; Building Code of Australia, Australian Standards and Local Policies relating to development works, building construction and protection and enhancement of public health and the environment.

APPROVED PLANS AND DOCUMENTATION

- The development shall be carried out in accordance with the stamped approved plans and documentation as detailed in the following schedule and any amendments arising through conditions of this consent or as shown in red colour on the plans:

Plan Ref No.	Sheet No.	Rev'n No.	Revision Date	Prepared by: (consultant)
Plans / 69 Kensington Road Bolwarra	DA1.1, DA1.2, DA1.3, DA1.4, DA1.5, DA2.1, DA2.2, DA3.1, DA3.2, DA4.1, DA4.2, DA4.3, DA5.1	02	21/12/2023	MM Architecture
Subdivision Plan / 21998	Sheet 1 of 1	-	14/12/23	Delfs Lascelles Consulting Surveyors
Civil Engineering Plans / 221624	CIV-001, CIV-010, CIV-020, CIV021	G	15/12/2023	DRB Consulting Engineers
Landscape Plan / KOB120922	Sheets 1-6 of 6	-	21/12/2023	JK's Garden Creation and Tolero Landscape Design
Arborist Impact Assessment / 2526	-	01	20/12/2022	Anderson Environmental Planning
Waste Management Plan / 69 Kensington Road Bolwarra	-	-	-	Koby Group Pty Ltd

STAGING

- The development shall be undertaken in stages, in accordance with the following:
 - **Stage 1:** One into three lot Torrens title subdivision, tree removal and alterations and additions to the existing dwelling including demolition.
 - **Stage 2:** Erection of dwelling house 1.

- **Stage 3:** Erection of dwelling house 2.

CONTRIBUTIONS & FEES

- Pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979 and the Maitland City Wide Development Contributions Plan 2016, a contribution of \$17,432 shall be paid to the Council.

The contribution is calculated from Council's adopted Development Contributions Plan in the following manner:

Facility	Per 4 BR Unit	Total
	1	2
City Wide Aquatics	\$1,171	\$2,342
Citywide Competition Netball Courts	\$272	\$544
City Wide Recreation & Open Space	\$979	\$1,958
City wide Multipurpose Centre Floor Space	\$768	\$1,536
City Wide Library Floor Space	\$742	\$1,484
City Wide Road & Traffic Facilities	\$3,880	\$7,760
City Wide Cycleways/Shared Paths	\$692	\$1,384
City Wide Plan Management/Administration	\$212	\$424
Total	\$8,716	\$17,432

Any outstanding component of the contribution will be indexed quarterly in accordance with the provisions of the abovementioned Development Contributions Plan. Reviewed rates will apply following release of CPI indices by the Australian Bureau of Statistics for each quarter. Please refer to Council's web page for the current rates applicable.

Payment of the above amount is required prior to issue of the Subdivision Certificate for the development.

The above condition has been applied to ensure that:

- Where the proposed development results in an increased demand for public amenities and services, payment towards the cost of providing these facilities/services is made in accordance with Council's adopted contributions plan prepared in accordance with the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979.
- Council's administration expenses are met with respect to the processing of the application.

Schedule of Conditions relating to Stage 1

CERTIFICATES & REPORTS

- Prior to the issue of the Subdivision Certificate, "house numbering" and "subdivision

certificate" fees, in accordance with Council's *Schedule of Fees and Charges*, shall be paid to Council.

5. **Prior to issue of the Subdivision Certificate**, original plans and/or documents of survey/title, and four copies, shall be submitted to Council.
6. **Prior to issue of the Subdivision Certificate**, a Compliance Certificate under Section 50 of the Hunter Water Act 1991 for this development shall be submitted to Council.
7. The applicant shall submit to Council a "Notice of Commencement" form at least two (2) days **prior to the commencement of construction works**.
8. A Construction Certificate is to be obtained **prior to commencing construction works**. The Construction Certificate application is to include detailed plans and specifications for the construction of the dwelling additions/alterations.
9. The addition, or any portion of the addition, **shall not be occupied until an Occupation Certificate has been issued**.

SUBDIVISION WORKS

10. **Prior to the issue of the Subdivision Certificate for Stage 1**, Morpeth Mix concrete driveway of 3m wide minimum (across the public road reserve and within the "handle" of "battle-axe" lots) and the associated inter-allotment stormwater drainage works to the useable portion of Lot 103 (and inclusive of all three stormwater pits in the "handle") shall be provided in accordance with Council's Manual of Engineering Standards.
11. **Prior to the commencement of construction of the driveway** within the handle and the inter-allotment drainage works, a Subdivision Works Certificate for the works shall be issued, being a design prepared in accordance with Council's Manual of Engineering Standards.
12. **Prior to the commencement of construction of the driveway crossings** on the public road verge, the works shall have been approved by Council. An application form "*Application to Construct Private Works on Footway*" shall be submitted to Council, together with the applicable fee (for each driveway). The driveway crossing shall be 3m wide minimum constructed as a Morpeth Mix concrete slab to "commercial standard".
13. The driveway crossing from the road pavement to the property boundary and the driveway within the access handle shall be constructed in accordance with Council's Manual of Engineering Standards, the Council's DCP, the Australian Standards (AS2890.1) and complied with the following requirements:
 - a) All vehicle movements to and from the development shall be in a forward direction. Reversing movement to the public road is not allowed. An adequate turning area shall be provided.
 - b) Sight triangle of 2m wide x 2.5m inside the property clear of obstructions shall be provided at both sides of the driveway in accordance with Section 3.2.4 of the AS2890.1. Alternatively, the fence and mature height of landscaping within the sight triangles shall be limited to 1m in height.
 - c) The pavement width of the driveway crossing within the road reserve and along the access handle shall be 3m wide minimum.

- d) A passing bay of 5.5m wide by 8m long minimum shall be provided along the access handle providing provision for two vehicles to pass on the driveway as per AS2890.1.
 - e) The driveway across the public road reserve and within the access handle shall be constructed as a Morpeth Mix concrete slab to “commercial standard”.
 - f) Driveway, parking areas, and vehicle turning areas shall be constructed as reinforced concrete.
 - g) Any necessary footway adjustments shall be provided to Council’s satisfaction.
 - h) Turning and passing bay areas must be maintained clear of obstructions, and parked vehicles, and used exclusively for purposes of vehicle access turning for the life of the development. Under no circumstances are such areas to be used for the storage of goods or waste materials.
14. **Prior to the issue of the Subdivision Certificate for Stage 1**, an inter-allotment drainage stormwater pipeline covered by an easement shall be provided to service the existing dwelling, in accordance with Council’s Manual of Engineering Standards. Stormwater runoff from the existing dwelling shall be collected and connected to the new inter-allotment drainage system.
15. No works are permitted to commence on the site without a Subdivision Works Certificate having been issued.
16. **Prior to issue of the Subdivision Certificate for Stage 1**, all necessary civil works required for compliance with this consent and the Subdivision Works Certificate shall be provided in accordance with Council’s Manual of Engineering Standards.
17. **Prior to the issue of the Subdivision Works Certificate**, a construction management plan is to be submitted to and approved by Council. The Plan shall include:
- a) Date, hours, and duration of construction works, and
 - b) Pedestrian and traffic management measures to ensure that the conflicts between the public road and the subject site are mitigated during construction.
 - c) Vehicle movement plan during construction and demolition including access route for construction vehicles, concrete trucks, and machineries.
 - d) Impacts on the road network and parking, and associated control measures.

UTILITY SERVICES

18. Any necessary alterations to public utility installations and adjustments (including survey benchmark, electrical power pole, Hunter Water Corporation Infrastructures and Telstra pit) being at the developer’s expense and to the requirements of both Council and the relevant authority. Approval from these authorities must be obtained prior to the commencement of any works on the site. Noted that all services pits/aboveground services are to be relocated outside the driveway crossings unless otherwise approved by the relevant authority with a trafficable lid.

LAND TITLE

19. A restriction as to user under Section 88B of the Conveyancing Act shall be prepared and submitted to Council in conjunction with the Subdivision Certificate application which gives effect to the following restrictions:
- a) Easement to drain water 1.5m wide on Lot 103.

- b) Easement to drain water 1.5m on Lot 101.
 - c) Easement for services variable width on Lot 103.
 - d) Right of carriageway variable width on Lot 103.
20. The authority empowered to release, vary or modify easements to drain water required by this consent, shall be nominated as "the owners of the lots burdened and benefitted, only with the consent of Maitland City Council".
21. A restriction on the title of proposed lots 102 and 103 shall be created under Section 88B of the Conveyancing Act, which prohibits the erection of a dwelling on the lot, without on-site stormwater detention that complies with the requirements of Council's *"Manual of Engineering Standards"*.
22. A restriction on the title of all lots under Section 88b of the Conveyancing Act 1919, shall be created which restricts the location of all buildings and works, being confined to approved building envelopes, and in accordance with the approved plan pursuant to Condition 1.
23. A restriction on the title of the lots, under Section 88B of the Conveyancing Act 1919, shall be created which restricts the development of the land to that which is approved within this consent (DA/2022/1399).
24. A restriction on the title of all affected lots under Section 88b of the Conveyancing Act 1919, shall be placed requiring the lot owner to protect and preserve the retained trees in accordance with the Demolition & Tree Removal Plan, DA1.2, Issue 2, prepared by MM Architecture, 21/12/2023.
25. The authority empowered to release, vary or modify restrictive and positive covenants required by this consent, shall be nominated as "Maitland City Council".

DEMOLITION

26. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001.
27. In the event of an undisclosed or unidentified contamination being found on-site or any potentially contaminating infrastructure (e.g. underground storage tanks) or soils (e.g. staining, odours, asbestos) being identified during works, a qualified and experienced consultant must inspect, review and advise on remediation or mitigation prior to further construction proceeding. Council must be notified if this occurs and must be provided with any resulting reports and recommendations.
28. Where any demolition, alteration or renovation works encounter asbestos or products containing asbestos, then the materials encountered shall be managed in accordance with the provisions of the NSW Work Cover Authority.

TREE REMOVAL AND TREE PROTECTION

29. The removal of trees shall be undertaken in accordance with the Demolition & Tree Removal Plan, DA1.2, Issue 2, prepared by MM Architecture, 21/12/2023. The removal of the trees

should be carried out by an arborist, or a person suitably qualified in that field.

30. All tree maintenance and pruning works should be carried out by an arborist, or a person suitably qualified in that field in accordance with AS4373 –2007 Pruning of Amenity Trees.
31. Where the trees subject to removal have been identified as ‘habitat trees’ or alternatively may be reasonably expected to provide habitat to native fauna, an ecologist shall be engaged to undertake clearance of any fauna within the subject tree(s) immediately prior to tree removal. Any fauna species discovered in the tree(s) shall be relocated to an appropriate habitat tree within the locality. Any undetected fauna injured as a result of the felling shall be collected by the ecologist and forwarded to WIRES (or the like).
Note: The National Parks and Wildlife Service may provide advice as to a suitably qualified ecologist.
32. **Prior to the issue of a Subdivision Works Certificate**, a Tree Retention Plan must be prepared by a qualified arborist and in accordance with the endorsed Demolition & Tree Removal Plan, DA1.2, Issue 2, prepared by MM Architecture, 21/12/2023. The Tree Retention Plan must identify the Tree Protection Zones for all retained trees onsite and specifications for tree retention as per *Australian Standards - AS 4970-2009 Protection of trees on development sites, unless they have been specifically identified for removal on the approved plans or documentation.*

All reasonable measures shall be undertaken to protect trees and native vegetation on, and adjoining the site, that shall be retained from damage during construction. Such measures shall include, but not be limited to:

- a) Maintaining exclusion fencing around trees and vegetation that adjoins the construction area to minimise damage to vegetation that shall be retained. Exclusion fencing shall be sign posted to warn of its purpose.
 - b) Prohibiting compaction and the placement of fill within five metres of trees and native vegetation that shall be retained. For isolated trees that are to be retained within and immediately adjoining the site, excavation shall be carried out by hand, with all care taken not to damage tree roots. If tree roots greater than 30mm are found during works that need to be severed, they shall be cut with a saw (not ripped) under the supervision of a suitably qualified AQF5 arborist or horticulturalist.
 - c) Keeping all vehicles, construction materials and refuse within areas approved for buildings, structures, access ways and car parks.
 - d) Limiting the number of access points.
 - e) Notifying all contractors, sub-contractors, and personnel of vegetation protection requirements of this condition.
33. **Prior to commencement of works**, a Tree Protection Zone (TPZ) should be established for trees to be retained within close proximity to the construction footprint. The TPZ shall be delineated by a 1.8m interlocking chain wire fence located at the TPZ boundary of trees designated to be retained within close proximity to the works, in accordance with AS 4687.

TPZ fencing must be installed before the commencement of any works. The fencing should not be removed or altered until after the completion of works. Where a TPZ fence cannot be erected around the boundary of a TPZ, for example if it would interfere with a driveway, the fence should be erected at the closest practicable point to the boundary and ground protection measures should be utilised within the remainder of the TPZ.

The TPZ fencing and zone should be certified by the project arborist before construction commences.

34. Tree health and condition should be monitored by the project arborist at regular stages during construction, at practical completion of construction, and after completion.
35. Tree tags should remain in place on retained trees until after tree removal, construction and tree pruning works have been completed.
36. The following activities should be avoided within the TPZ of trees to be retained where practicable:
 - Machine excavation of soil including trenching;
 - Operation of heavy equipment;
 - Stockpiling of soils;
 - Storage of heavy or other equipment;
 - Parking of vehicles; o Wash down and cleaning of equipment;
 - Excavation for silt fencing;
 - Dumping of waste;
 - Change of soil level or gradient; and
 - Covering with concrete, impermeable, or compacted surfaces.
37. Where works are required that encroach into TPZ of trees to be retained, additional protection measures, which include trunk and low branch guards, and ground protection measures should be implemented following guidance in Australian standard AS 4970 – 2009 Protection of trees on development Sites. These works should only be conducted under supervision of the project arborist. The use of “soft” construction methods including manual and vacuum removal of soils is recommended for works conducted within the TPZ of Trees to be retained.
38. Clothing, equipment and boots should be clean and sanitised prior to each site visit to prevent onsite introduction of plant pests and diseases such as Myrtle rust.
39. Vehicles and construction equipment should utilise designated entry and egress points to avoid potential of impacts on Trees to be retained. Where heavy equipment or vehicles are to be moved through a TPZ, ground protection measures should be implemented as stated above.

BUILDING CONSTRUCTION

40. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
41. (1) Building work that involves residential building work (within the meaning of the Home Building Act, 1989) must not be carried out unless the Principal Certifier (PC) for the development to which the work relates:
 - (a) in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number, and
 - (ii) is satisfied that the licence has complied with the requirements of Part 6 of that Act, or
 - (b) in the case or work to be done by any other person;
 - (i) has been informed in writing of the person's name and owner-builder permit,

or

- (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act, 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that part.

HERITAGE

- 42. All workers on the site shall be informed of possible Aboriginal occupation. Should any Aboriginal artefacts be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance in this area is to stop immediately and the National Parks and Wildlife Service of NSW should be informed in accordance with the *National Parks and Wildlife Act 1974*. Further works shall not occur until the necessary approvals/permits have been obtained.
- 43. Should any Aboriginal 'objects' be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment and Heritage must be informed in accordance with Section 89A of the National Parks and Wildlife Act, 1974 (as amended). Works affecting Aboriginal 'objects' on the site must not continue until the Office of Environment and Heritage has been informed. Aboriginal 'objects' must be managed in accordance with the *National Parks and Wildlife Act, 1974*.
- 44. Should any historical relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with section 146 of the *Heritage Act 1977*. Additional assessment and approval may be required prior to works continuing in the affected area(s) depending on the nature and extent on the nature of the discovery.
- 45. The western façade to the existing dwelling fronting Kensington Road and associated details, including weatherboard, timber posts and timber windows, is to be retained and repaired as required. Repainting and replacement like-for-like is acceptable.
- 46. The existing chimney on the northern elevation of the existing dwelling is to be retained and repaired where required.
- 47. Metal roof sheeting is to be of corrugated profile (e.g. custom orb or similar) in a shale grey or zincalume finish.
- 48. The proposed additions are to be constructed in accordance with the approved materials and finishes shown Sheet No. DA2.2, Issue 02, prepared by MM Architecture, dated 21/12/2023.

LANDSCAPING

49. A Landscape Practical Completion Report is to be submitted to the Principal Certifier **prior to the issue of the Occupation Certificate for the existing dwelling**. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.

CONTAMINATION

50. In the event of an undisclosed or unidentified contamination being found on-site or any potentially contaminating infrastructure (e.g. underground storage tanks) or soils (e.g. staining, odours, asbestos) being identified during works, a qualified and experienced consultant must inspect, review and advise on remediation or mitigation prior to further construction proceeding. Council must be notified if this occurs and must be provided with any resulting report and recommendations.
51. Where any asbestos or products containing asbestos are found on-site then the materials encountered shall be managed in accordance with the provisions of the NSW Work Cover Authority.

SITE CONSIDERATIONS

52. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.
53. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the area and constructed so as to deny any flow of water into the building.

***Note:** The submission of a separate Development Application is not required for a retaining wall associated with this approval and indicated on the approved plans.*

A Construction Certificate is required for all retaining walls, details for retaining walls may be included with the Construction Certificate application for the building.

All proposed retaining walls, including any excavation, footings, drainage and backfill shall be contained within the property boundaries. Retaining walls and associated earthworks shall not impede or redirect the natural flow of surface water from adjoining properties in a manner that creates nuisance.

54. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person having benefit of the development consent:

- i) Must preserve and protect the building from damage, and
- ii) If necessary, must underpin and support the building in an approved manner, and

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land. (Includes a public road and any other public place).

55. The Principal Contractor (or Owner/Builder) shall erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifier (PC) for the work. The sign shall also display the name, address and telephone number of the Principal Contractor for the work (or Owner/Builder) and shall state that unauthorised entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
56. Approved toilet facilities are to be provided, at or in the vicinity of the work site on which the work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Toilet facilities in accordance with this Clause must be provided prior to commencement of any works on the site.
57. Unless otherwise approved by Council in writing, all general building work shall be carried out between the hours of:
- a. 7.00am to 6.00pm Monday to Friday
 - b. 7.00am to 5.00pm Saturday
- Any work performed on Sunday's or Public Holidays that may cause offensive noise, as defined under the Protection of the Environment Operations Act, is prohibited. Minor works (such as hand sanding, painting, digging and the like) is permitted between the hours of 9.00am to 5.00pm. Power operated tools are not permitted to be used.
58. Waffle pods, if used in the construction of the building, shall not be delivered to the site unless wrapped or securely tied. The waffle pods are to be secured on-site to prevent scattering by wind. Off-cuts and unused pods must be wrapped in plastic or similar material and removed from the site immediately upon completion of slab construction.
- Note: Where building materials and/or refuse is found to have caused pollution beyond the boundaries of the development site (eg. blown off-site by wind), the Council may issue infringement notices / fines as prescribed under the Protection of the Environment Operations Act 1997.*
59. The site is to be cleared of all building refuse and spoil immediately after completion of the building.
60. No building materials, plant, equipment, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath or outside the boundaries of the development site.
61. Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.
- Note: Where building materials and/or refuse is found to have caused pollution beyond the boundaries of the development site, the Council may issue infringement notices / fines as prescribed under the Protection of the Environment Operations Act 1997.*
62. The property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking".

Schedule of Conditions relating to Stage 2 and Stage 3

CERTIFICATES & REPORTS

63. A Construction Certificate is to be obtained **prior to commencing construction works**. The Construction Certificate application is to include detailed plans and specifications for the construction of the building/structure.
64. The applicant shall submit to Council a "Notice of Commencement" form at least two (2) days **prior to the commencement of construction works**.
65. The development or any portion of the development shall not be used or occupied until an Occupation Certificate or Interim Occupation Certificate has been issued. Where Council is nominated as the Principal Certifier Occupation Certificate applications must be accompanied by the required fee and all associated information and certifications. To ensure occupation or use of the development can occur in a timely fashion, the occupation certificate application should be submitted at the same time as the final inspection is being requested.

BUILDING CONSTRUCTION

66. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
67. (1) Building work that involves residential building work (within the meaning of the Home Building Act, 1989) must not be carried out unless the Principal Certifier (PC) for the development to which the work relates:
- (a) in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number, and
 - (ii) is satisfied that the licence has complied with the requirements of Part 6 of that Act, or
 - (b) in the case or work to be done by any other person;
 - (i) has been informed in writing of the person's name and owner-builder permit, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act, 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that part.
68. The proposed dwellings are to be constructed in accordance with the approved materials and finishes shown Sheet No. DA3.2, DA4.2, Issue 02, prepared by MM Architecture, dated 21/12/2023.

STORMWATER DRAINAGE

69. **Prior to the issue of the Construction Certificate**, the construction details in accordance with Council's Manual of Engineering Standards shall be provided for the following stormwater requirements:
- a) A minimum storage volume of 13.2m³ for on-site detention (OSD) of stormwater (4.4m³ per dwelling including the existing dwelling and noted that the required volume per dwelling is in addition to BASIX requirements) strictly in accordance with the Stormwater Management Plans prepared by DRB Consulting Engineers Ref: 221624 Rev: G Dated: 15/12/23, and
 - b) Maximum permissible site discharge of 43.14L/s in the 1% Annual Exceedance Probability event, and
 - c) Detailed pavement finished surface levels demonstrating 1% conveyance paths to the OSD system/structure, and
 - d) An emergency overland flow path for major storm events, that is directed to the public drainage system, and
 - e) Entrapment of gross pollutants generated from the contributing ground-surface catchment areas.
70. **Prior to issue of the Construction Certificate**, approval under Section 138 of the *Roads Act 1993* is to be obtained from Council for the new stormwater connection across the road reserve. Any damage to the public infrastructures as a result of works including the nature strip, drainage pit, kerb and gutter is to be fully reinstated by the applicant at no cost to Council. The pipe connection to the back of the pit wall shall be cut flushed to the inner wall and externally sealed with a minimum 100mm mortar collar for seal and support.
71. **Prior to issue of the Occupation Certificate**, written confirmation shall be obtained from Council for the satisfactory completion of the Section 138 Approved Stormwater Works.
72. **Prior to Occupation or Operation of the development**, a *Stormwater System Maintenance Procedure Plan* shall be prepared by an engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator and to Maitland City Council for supply of future owners as needed.
73. **Prior to issue of the Occupation Certificate**, the stormwater-control system shall be constructed in accordance with the approved stormwater drainage plan. A qualified engineer shall supply written certification to the PCA and Council that the constructed system including detention volume and discharge rates achieve the consent requirements for detention.
74. Final discharge of collected stormwater runoff shall be piped, in accordance with Council's Manual of Engineering Standards to:
- a) the existing site drainage system,
 - b) the street gutter with a "kerb adaptor" (see Council's Standard Drawing). Stormwater pipes across the footway shall be "100mm sewer grade" and shall be under-bored beneath any existing concrete path, or alternatively by the removal of one complete slab segment between joints and replaced in concrete, dowelled to the existing path and finished similar to the adjoining surface,
 - c) the underground public stormwater line located within the road reserve via the approved connection under Section 138 approval of the Roads Act 1993.

LANDSCAPING

75. A Landscape Practical Completion Report is to be submitted to the Principal Certifier **prior to the issue of the Occupation Certificate for both dwellings**. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.

TREE PROTECTION

76. All reasonable measures shall be undertaken to protect trees and native vegetation on, and adjoining the site, that shall be retained from damage during construction. Such measures shall include, but not be limited to:
- f) Maintaining exclusion fencing around trees and vegetation that adjoins the construction area to minimise damage to vegetation that shall be retained. Exclusion fencing shall be sign posted to warn of its purpose.
 - g) Prohibiting compaction and the placement of fill within five metres of trees and native vegetation that shall be retained. For isolated trees that are to be retained within and immediately adjoining the site, excavation shall be carried out by hand, with all care taken not to damage tree roots. If tree roots greater than 30mm are found during works that need to be severed, they shall be cut with a saw (not ripped) under the supervision of a suitably qualified AQF5 arborist or horticulturalist.
 - h) Keeping all vehicles, construction materials and refuse within areas approved for buildings, structures, access ways and car parks.
 - i) Limiting the number of access points.
 - j) Notifying all contractors, sub-contractors, and personnel of vegetation protection requirements of this condition.
77. **Prior to commencement of works**, a Tree Protection Zone (TPZ) should be established for trees to be retained within close proximity to the construction footprint. The TPZ shall be delineated by a 1.8m interlocking chain wire fence located at the TPZ boundary of trees designated to be retained within close proximity to the works, in accordance with AS 4687.
- TPZ fencing must be installed before the commencement of any works. The fencing should not be removed or altered until after the completion of works. Where a TPZ fence cannot be erected around the boundary of a TPZ, for example if it would interfere with a driveway, the fence should be erected at the closest practicable point to the boundary and ground protection measures should be utilised within the remainder of the TPZ.
- The TPZ fencing and zone should be certified by the project arborist before construction commences.
78. Tree health and condition should be monitored by the project arborist at regular stages during construction, at practical completion of construction, and after completion.
79. Tree tags should remain in place on retained trees until after tree removal, construction and tree pruning works have been completed.
80. The following activities should be avoided within the TPZ of trees to be retained where

practicable:

- Machine excavation of soil including trenching;
- Operation of heavy equipment;
- Stockpiling of soils;
- Storage of heavy or other equipment;
- Parking of vehicles; o Wash down and cleaning of equipment;
- Excavation for silt fencing;
- Dumping of waste;
- Change of soil level or gradient; and
- Covering with concrete, impermeable, or compacted surfaces.

81. Where works are required that encroach into TPZ of trees to be retained, additional protection measures, which include trunk and low branch guards, and ground protection measures should be implemented following guidance in Australian standard AS 4970 – 2009 Protection of trees on development Sites. These works should only be conducted under supervision of the project arborist. The use of “soft” construction methods including manual and vacuum removal of soils is recommended for works conducted within the TPZ of Trees to be retained.
82. Clothing, equipment and boots should be clean and sanitised prior to each site visit to prevent onsite introduction of plant pests and diseases such as Myrtle rust.
83. Vehicles and construction equipment should utilise designated entry and egress points to avoid potential of impacts on Trees to be retained. Where heavy equipment or vehicles are to be moved through a TPZ, ground protection measures should be implemented as stated above.

CONTAMINATION

84. In the event of an undisclosed or unidentified contamination being found on-site or any potentially contaminating infrastructure (e.g. underground storage tanks) or soils (e.g. staining, odours, asbestos) being identified during works, a qualified and experienced consultant must inspect, review and advise on remediation or mitigation prior to further construction proceeding. Council must be notified if this occurs and must be provided with any resulting report and recommendations.
85. Where any asbestos or products containing asbestos are found on-site then the materials encountered shall be managed in accordance with the provisions of the NSW Work Cover Authority.

SITE CONSIDERATIONS

86. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.
87. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the area and constructed so as to deny any flow of water into the building.

***Note:** The submission of a separate Development Application is not required for a retaining wall associated with this approval and indicated on the approved plans.*

A Construction Certificate is required for all retaining walls, details for retaining walls may be

included with the Construction Certificate application for the building.

All proposed retaining walls, including any excavation, footings, drainage and backfill shall be contained within the property boundaries. Retaining walls and associated earthworks shall not impede or redirect the natural flow of surface water from adjoining properties in a manner that creates nuisance.

88. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person having benefit of the development consent:

- i) Must preserve and protect the building from damage, and
- ii) If necessary, must underpin and support the building in an approved manner, and

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land. (Includes a public road and any other public place).

89. The Principal Contractor (or Owner/Builder) shall erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifier (PC) for the work. The sign shall also display the name, address and telephone number of the Principal Contractor for the work (or Owner/Builder) and shall state that unauthorised entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

90. Approved toilet facilities are to be provided, at or in the vicinity of the work site on which the work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Toilet facilities in accordance with this Clause must be provided prior to commencement of any works on the site.

91. Unless otherwise approved by Council in writing, all general building work shall be carried out between the hours of:

- a. 7.00am to 6.00pm Monday to Friday
- b. 7.00am to 5.00pm Saturday

Any work performed on Sunday's or Public Holidays that may cause offensive noise, as defined under the Protection of the Environment Operations Act, is prohibited. Minor works (such as hand sanding, painting, digging and the like) is permitted between the hours of 9.00am to 5.00pm. Power operated tools are not permitted to be used.

92. Waffle pods, if used in the construction of the building, shall not be delivered to the site unless wrapped or securely tied. The waffle pods are to be secured on-site to prevent scattering by wind. Off-cuts and unused pods must be wrapped in plastic or similar material and removed from the site immediately upon completion of slab construction.

Note: *Where building materials and/or refuse is found to have caused pollution beyond the boundaries of the development site (eg. blown off-site by wind), the Council may issue infringement notices / fines as prescribed under the Protection of the Environment Operations Act 1997.*

93. The site is to be cleared of all building refuse and spoil immediately after completion of the

building.

94. No building materials, plant, equipment, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath or outside the boundaries of the development site.
95. Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.
- Note:** Where building materials and/or refuse is found to have caused pollution beyond the boundaries of the development site, the Council may issue infringement notices / fines as prescribed under the Protection of the Environment Operations Act 1997.*
96. The property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking".

ADVICES

The following advices are limited in scope and should not be understood to encompass all areas of responsibility of the consent holder, relating to the development.

- A You are advised that where **underground works** within the road reserve are required or necessary for supply of services (such as water, sewer, electricity, gas), further consent for a "Road Opening" must be obtained from Council.
- B You are advised that prior to construction of the driveway handle, utility services and/or their conduits should be installed along the handle length.
- C You are advised that all works associated with the Subdivision Works Certificate (SWC) for the *inter-allotment drainage and/or driveway handle* require inspections by the Principal Certifier (PC – being Council) as set out in the Manual of Engineering Standards, Fees apply.
- D You are advised that for driveway works on the footway verge, inspection by Council is required (eg formwork & reinforcement). See Council's "Application to Construct Private Works on Footway").
- E The owner should note that the issue of this development consent does not amount to a release, variation or modification by Council of any covenant applicable to this property and that any action taken by the applicant in accordance with the consent which results in any loss or damage by way of breach of the covenant will not be the responsibility of Council.
- F You are advised that any damage to the existing street infrastructure (including landscaping) at the property frontage resulting from construction of your development must be repaired to Council's standards. Where repairs are carried out by Council, the person responsible for the damage shall be held liable for the cost of those repairs.
- G You are advised that where building activity cannot avoid occupation of the public road reserve, (such as, for the erection of hoarding, scaffolding, partial closure) the responsible person must gain separate approval from Council for the occupation.
- H Standard Drawings referred to in this consent may be obtained on Council's website within the document "Manual of Engineering Standards". Note that drawings on the website are revised from time to time.

- I You are advised that in regard to potential soil erosion from the construction site, such pollution of the environment is an offence under the Protection of the Environment & Operations (POEO) Act and may incur infringement fines.
- J You are advised that, in accordance with the EP&A Act, (sec.109F) payment of the building industry Long Service Leave levy, where applicable, must be paid prior to issue of any Subdivision Works Certificate.
- K You are advised to record and notify Council in writing, of any existing damage to the street infrastructure (including landscaping) in the vicinity of proposed works associated with this consent, prior to commencement of construction. The absence of such notification signifies that no damage exists. Where necessary repairs are carried out by Council, the owner of the development property shall be held liable for the cost of those repairs.

City Planning

**DA/2022/1399 FOR STAGED DEVELOPMENT:
STAGE 1 ONE INTO THREE LOT TORRENS
TITLE SUBDIVISION, TREE REMOVAL, AND
ALTERATIONS AND ADDITIONS TO
EXISTING DWELLING HOUSE INCLUDING
DEMOLITION. STAGE 2 ERECTION OF
DWELLING HOUSE. STAGE 3 ERECTION OF
DWELLING HOUSE AT 69 KENSINGTON
ROAD BOLWARRA**

Submissions (Under Separate Cover)

Meeting Date: 13 February 2024

Attachment No: 5

Number of Pages: 10

25/01/2023

[REDACTED]
[REDACTED]
[REDACTED]

The Support Officer

PLANNING ENVIRONMENT & LIFESTYLE

Maitland City Council

Dear Sir/Madam,

We are objecting to the proposed development of:

150/826463-69 Kensington Road BOLWARRA NSW 2320

Applicant KOBY PROPERTIES No Pty Ltd

The proposed large scale removal of bird nesting trees on this block is not in keeping with this heritage area.

Allowing three houses on this block will set precedent for future development in Old Bolwarra.

Hope this objection given some consideration.

[REDACTED]

DOC No.	
REC'D	01 FEB 2023 MCC
FILE No.	
REFER	




25 January 2023


The General Manager
Maitland City Council
285-287 High St.
MAITLAND NSW 2320

Dear Sir

Re: 69 Kensington Road Bolwarra 2320 - D/A /2022/1399

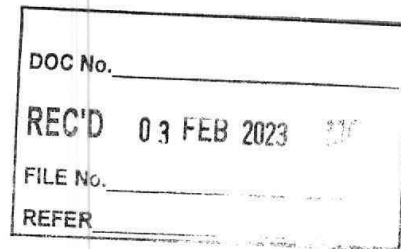
I have briefly perused the documentation for the above development application. 

The plan provides a new driveway/access along the northern boundary of the property for the new allotments R2 and R3. While it may appear obvious that vehicles entering Kensington Road from the property will do so in a forward direction, the plan supplied does not indicate this.

Last Saturday morning, a current occupant of the proposed R1 backed out of the abovementioned driveway and damaged my daughter's car which was parked on the street. 

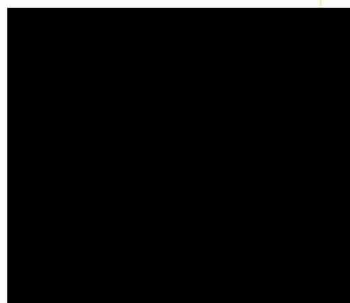
I would not like this to be repeated and request that the Consent Conditions for any Council approval require all vehicles leaving the site via the proposed new driveway on the northern side of the land, to do so in a forward direction.

While you state that Council may not immediately acknowledge receipt of my submission, I would appreciate advice that it has been received and will be considered.



Maitland City Council
285-287 High Street
Maitland. 2320

DOC No. _____
REC'D 30 JAN 2023 MCC
FILE No. _____
REFER _____



Dear Sir,

Re: DA/2022/1399

Please find attached our objections to the proposed development of 69 Kensington Rd. Bolwarra.

Yours faithfully



We refer to the Development Application ref: 2022/1399 lodged by Koby Properties No. 1 Pty Ltd and state that we oppose the proposed development on the following grounds:

- 1) the amenity of the general area will be irreversibly altered;
- 2) the amenity of the area immediately adjacent to the proposed will be irreversibly altered;
- 3) the development will irreversibly affect the habitat of a large number and variety of fauna, including but not limited to a large variety of bird life;
- 4) significant and ongoing disruption of the residents' quiet enjoyment of the existing amenity and
- 5) the historical value of Bolwarra as a specific type of housing will be eroded.

We note, regrettably, that we have received very short notice (12 days only) to consider in a measured way the development application. The following points are preliminary only and we would appreciate more time to properly consider the proposal.

Our concerns, however, are such that we believe that Council should reject this application.

1) and 2)

We have had the opportunity to read the arborist's report and have serious concerns as to its usefulness for the following reasons:

Trees 21 and 25 have been identified as kaffir plums. In our view, that is a clear misidentification because both trees appear to belong to the fiddlewood family, and are most likely to be the florida or caribbean fiddlewood.

Surprisingly, given that it is not a native, the arborist's report recommends that these trees be retained.

The arborist's report recommending that the many broad leaf privet specimens should be retained is also surprising, given that privet is a declared noxious weed in many local councils and is strongly condemned as an invasive weed by the NSW Department of Primary Industries.

██████████ we have researched the species extensively and, while we do not pretend to be arborists, the misidentification of the fiddlewood trees and the recommendation to retain both the fiddlewood trees and the noxious weeds (broad leaf privet) are significant flaws in the report and we are reluctant to accept it.

The recommended removal of so many mature trees (approximately half) is a very substantial erosion of the amenity of both the general and immediate areas. The almost unbroken green aspect of Bolwarra viewed from north of 69 Kensington Rd would be destroyed by the development as proposed.

3)

Given that the arborist's report is possibly less than useful, any comments or recommendations as to fauna which are contained therein cannot be relied on and should be accorded little or no weight. The bird life in the subject property is very prolific and the property is home to or visited by many species. We are concerned that the proposed development would result in the disappearance of many if not most of the birds. By way of example, when we moved to Bolwarra a number of years ago, the river bank adjacent to the levee north of Bolwarra was a haven for literally thousands of finches and wrens. When the bank was cleared of the shrubby weeds, the birds simply disappeared and have not, and certainly will not, return.

Residents who have lived in Bolwarra for decades have told us of sightings of many other species including an echidna on the subject property. We are concerned that the proposed development would result in all of the current bird populations and unknown quantities of small lizards, bats, small marsupials and mammals similarly disappearing.

We expect the site preparation alone (not to mention the construction of a long driveway and two large houses and renovation of a third) will see the disappearance of all fauna from the site with very few, if any, returning even after the passage of years. It is the current green and treed environment which makes Bolwarra such a special place in which to live, not only for the residents but for the native fauna we share it with.

We are not in a position to claim whether there are any important habitats which would be destroyed by the proposal but we would expect that a fuller investigation by a qualified ecologist should be undertaken to determine the question.

4)

The preliminary site-works for the proposed development alone are obviously very significant and likely to last for an extended period of time. This alone, starting with the mechanical removal of a very large number of mature trees, represents a serious disruption of the peaceful amenity of the area which is currently enjoyed by the residents and visitors.

Construction of an extra two substantial houses on the subject property is, in our view, an obvious overdevelopment. Both proposed houses appear to have double garages, the driveway servicing them and located on the northern boundary will severely impact the northern neighbours by way of vehicle noise and pollution. Further, in our opinion, that driveway is located unnecessarily close to the boundary.

In summary, the applicant is asking Council to approve what is obviously a major overdevelopment for this location.

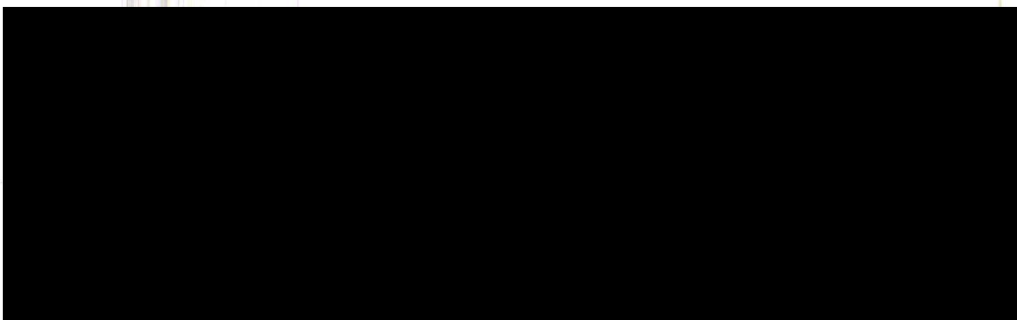
5)

Bolwarra's peaceful and park-like environment is the result of the many substantial and well kept gardens with many trees in the area. It is a significant hallmark of the area and one that is very much appreciated by both residents and visitors, many of whom walk around Bolwarra for exercise and comment that it is like walking through a well maintained garden or park. Maitland Council has played no small part in this.

It would be regrettable if that recognition of Bolwarra's special amenity and ambience was eroded by allowing such a gross overdevelopment on the scale of the subject application and which proposes destruction of habitat, fauna and neighbourhood amenity.

The liveability index of Bolwarra must be one of the highest of any suburb in the Hunter Valley and that liveability is the result, to a large degree, of Council's rejection of overdevelopment proposals.

We hope that Council will continue to reject such proposals as the present application.



Forwarded for your information

Sent from my iPhone

On 27 Mar 2023, at 6:05 pm, [REDACTED] wrote:

Hello Thomas

I refer to previous correspondence and discussions regarding the proposed subdivision proposed for 69 Kensington Road Bolwarra.

I have examined the various documents in relation to the proposal and offer the following comments:

- **Precedents**

As previously advised we were unaware of any precedents since the establishment of the Bolwarra Conservation Area in 2011 for the provision of subdivisions allowing dwellings of three house on the one plot in the eastern side of Kensington Road between Bayswater Road and Bolwarra Road noting subdivision precedents for 2 houses have been approved on the western side of Kensington Road (ie between the road and the river)

Your confirmation of any precedents for 3 dwellings since the Heritage area was established would be appreciated

- **Connection to Reticulated Sewerage System**

As previously advised a previous application for subdivision to 69 Kensington Road required the connection of the sewer to the connection point in our backyard and not to a connection point in Kensington Road. This would require the sewer branch from 69 Kensington Road to traverse south across 67 Kensington Road into the connection point in our backyard. In this regard the developer has advised details will be provided at CC stage however the point of connection needs to be confirmed as it is possible Hunter Water will be required to create an easement across the rear of the block of 67 Kensington Road

- **Front & Side Fencing**

It is noted that the developer has proposed fencing across the front of the block with gates on both driveways proposed. It will be noted that the majority of blocks in Kensington Road, Bolwarra Road and nearby cul de sacs have no front fencing. It is suggested that the provision of the type and height fencing around the property be also reviewed which it is understood to be 1.8m high.

- **Trees**

The proposal submitted by the Developer provides the removal of roughly half the trees on the block due to their height, type condition but also to allow construction of the additional two dwellings. The current Council policy on the management of trees in the Bolwarra Heritage Area imposes very significant conditions on the pruning or removal of trees in the Heritage area (dead,

danger to property etc). From my reading of the policy it does not specifically provide for the clearing of vegetation to allow the construction of dwellings and any clearing is only subject to assessment. It would be appreciated if you could confirm the policy for the clearing of vegetation in Heritage Areas for a subdivision as we have had to submit DA's for simply requesting the pruning of trees next door

- **Impact on surrounding properties**

It is noted that the Impact Statements focus on the heritage impact of the development viewed from the front of the property with no regard to the impact on properties north, south and east of the development. It is considered that the impact on neighbouring properties by the development should also be assessed by the Heritage Consultant

- **Stormwater**

The development application proposes that excess stormwater will be directed to Kensington Road however it is noted that the rear of the block slopes away from Kensington Road.

In addition the Civil plan notes the location and depth of the proposed stormwater drains. Based on a limited knowledge of the standards required it would appear that the gradient in the stormwater drainage system on the northern side of the development is < 1:100 eg 1:162

It would be appreciated if you could advise on the matters raised in relation to the development so that the Heritage impact on the area and surrounding properties can be considered

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Property: DA/2022/1399
Description: 150/826463 – 69 Kensington Road BOLWARRA NSW 2320
Removal, Alterations and additions to Existing Dwelling House,
Construction of a Dwelling House on each New Lot, Swimming
Pool on Rear Lot and Staging (Two Stages)
Applicant: Koby Properties No 1 Pty Ltd
Consent Authority: Maitland City Council

Proposal Objection:

I am making this submission to object to the proposed development of 69 Kensington Road, Bolwarra and subsequent subdivision into 3 separate housing lots for the following reasons:

Tree Removal/Land Clearing:

To facilitate the proposed development, the 3143 square metre block of land requires a considerable number of established trees removed from the block by an arborist. As Bolwarra is a Heritage zoned area there is environmental significance for the area to be preserved. The block in question has a large number of established trees which is home to a diverse range of wildlife. The Bolwarra area has a large number of native birds and other native animals such as fruit bats, possums and echidnas. The clearing and overdevelopment of such a large parcel of land would have a significant impact on the wildlife in the area.

The clearing of trees would also increase the wind speed to the surrounding residential homes. A number of studies including one from the University of British Columbia published in June 2016, has found that the removal of only a small number of trees can double the increase wind speed. The proposed block already has strong winds due to the minimal protection coming from Oakhampton and over the Hunter River. The sudden increase in windspeed as a result of the block being cleared would create potential hazards of all remaining established trees in the area. These hazards include large tree limbs and potentially entire trees falling onto homes. As my block is located directly behind the proposed development and there are large established trees on the property, I have concerns this would create a serious risk to my home and family.

Vehicle and Pedestrian Traffic:

69 Kensington Road, Bolwarra is located approximately 15 metres south from Bolwarra Road, Bolwarra which is a blind 90 degree blind corner with no designated pedestrian access on the road. Since the large development of the Hunterglenn estate in Bolwarra Heights the amount of vehicle traffic and pedestrian traffic has increased significantly on Bolwarra Road, Kensington Road and Paterson Road, Bolwarra. A large amount of pedestrians utilise this particular corner due to the Levee walkway that connects the Hunterglenn Estate to Kensington Road. Bolwarra Public School is located on Bolwarra Road with a pedestrian and vehicles utilising Kensington Road to reach the school as an alternative to negotiating the congested and sometimes

dangerous intersection of Paterson Road and Bolwarra Road, Bolwarra. The development plans provided in the proposal indicate shared a driveway for the three properties located at the far northern side of the block. Having a shared single driveway for three properties so close to a 90-degree blind corner poses a risk to not only pedestrians but other vehicles in the area.

Privacy for residents:

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██████████ Currently there is a small wire fence dividing the properties and dense foliage on the proposed property. According to the plans provided the foliage is to be completely removed and a pool to be placed only meters away from the wire boundary fence. There are insufficient details in the plans to determine if new fencing is to be erected between the properties. If a new fence is not proposed there is little to no privacy for either property. The location of the proposed rear house would be able to see directly into my home and vice versa. A side fence that complies with the conditions of the State Governments exempt development code of 1800mm would need to be erected to negate this issue.

Conclusion:

In conclusion the proposed development at 69 Kensington Road, Bolwarra should be rejected for the aforementioned reason. The development significantly impacts the environmental integrity of the heritage zoned area, increases serious risk of harm to pedestrians, increases risk of motor vehicle accidents and creates privacy concerns with neighbouring residents. The Maitland City Council website promotes the area by stating 'Bolwarra offers its residents a quiet and private lifestyle, Bolwarra offers substantial homes on generous sized blocks, allowing plenty of room to live a comfortable lifestyle.' The subdivision and overdevelopment of the 69 Kensington Road, Bolwarra would go against the community's expectation of Heritage conservation in the area of Bolwarra.

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City Planning

DA/2023/429 FOR ANIMAL BOARDING ESTABLISHMENT AT 138 CESSNOCK ROAD MAITLAND

Planners Assessment Report (Under Separate Cover)

Meeting Date: 13 February 2024

Attachment No: 3

Number of Pages: 13



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application No:	DA/2023/429
Proposal:	Animal Boarding Establishment
Address:	138 Cessnock Road MAITLAND NSW 2320
Lot & DP No:	111/1180907
Property No:	49708
Applicant:	AMS Design & Drafting Pty Ltd
Owner:	Michael John Rinkin and Gina Donna Ricca Rinkin
Author:	Thomas Howell
Site Inspection:	September 2023

INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2023/429 proposing Animal Boarding Establishment. The assessment will provide consideration of the proposal under the *Environmental Planning and Assessment Act 1979*, the Maitland Local Environmental Plan 2011, the Maitland Development Control Plan 2011 and any other relevant legislation, guidelines and policies of the Council.

Description of Proposed Development

The development application proposes an animal boarding establishment. The proposed works include:

- Erection of a building (5.5m x 22.9m) containing 20 kennels and associated exercise yards. The kennels are proposed for the boarding of dogs.
- New sealed carparking areas containing 10 car parking spaces.

The operational details are as follows:

- The facility will be operated by the owners of the property.
- The facility will operate 24 hours, 7 days a week, however pick up and drop off of dogs will only occur between 7am and 11am, and, 3pm and 6pm, 7 days a week..
- The maximum number of customers expected at any one time are to be three, with pick up and drop off of dogs limited to appointment only.
- Storage of equipment and food associated with the facility will be within the existing farm sheds located on the property.

The proposed development was amended 27 September 2023 re-locating the proposed kennel building to the north-east, further away from the shared south-western property boundary. Additional documentation was also provided in support of the application including amended noise impact assessment report, plan of management and details of the existing on-site sewage management system and its capacity to accommodate the proposed development. Additional information was subsequently received 29 November 2023 in response to Council's concerns regarding the gap in findings from the noise impact assessment report. The following assessment is based on these amended plans and documentation.

Description of the Land on which the proposal is to be carried out.

The site is known as 138 Cessnock Road Maitland and has a legal description of Lot 111 in Deposited Plan 1180907. The site is irregular in shape and has a total site area of 12.82ha. Vehicle access to the site is gained via the 52.99m wide frontage to Cessnock Road. The site is mapped as containing flood prone land, acid sulfate soils classes 1, 3 and 4, and bushfire prone land. The site is bounded by Swamp Creek, a mapped watercourse which is identified as containing high biodiversity values, along the northern boundary which also contains Hunter Valley Flood Mitigation Scheme infrastructure. The location of the subject site is represented in Figure 1 below.

Existing improvements on the subject site include a detached single storey dwelling house, detached garage, farm shed and stable, and horse yards located towards the Cessnock Road frontage. The site falls from the Cessnock Road boundary down towards Swamp Creek (north). The site contains vegetation along the creek with the remaining land predominantly cleared for previous pastoral activities. The surrounding area predominantly consists of single dwelling house on larger rural properties supporting a range of agricultural activities.



Figure 1: location of subject site (source: Maitland City Council)

PREVIOUS DEVELOPMENT HISTORY

The table below provides a consent history and background context that is a relevant consideration in the assessment of the application.

Previous Consent History			
DA No.	Description of Development	Date Determined	Decision Approved/Refused
DA14/1608	Removal of six trees	28/07/2014	Approved
DA/2018/1964	Home business and associated signage	01/04/2019	Approved

BUSHFIRE - 4.14 Consultation and development consent—certain bush fire prone land

- The applicant has provided a bushfire report prepared by a BPAD level 3 accredited consultant of which confirms with the relevant specifications and requirements for compliance with PBP.
- Referral to NSW Rural Fire Service is not required.

PLANNING ASSESSMENT - 4.15(1) matters for consideration

Development Type

- The proposal is categorised as *local development*, under the *Environmental Planning and Assessment Act 1979*.

Contributions

- The proposal attracts a contribution of **\$782** under Council's current adopted Section 7.12 Plan.

Section 4.15(1)(a)(i) - Provisions of any environmental planning instrument

State Environmental Planning Policies

State Environmental Planning Policy (Primary Production) 2021

This policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes and to implement measures designed to reduce land use conflicts. The proposal seeks to erect a building for the purposes of dog boarding within the cluster of existing buildings at the Cessnock Road frontage. The remaining large, northern portion of the site remains untouched for pastoral or other agricultural purposes. Assessment of the application does not raise any issues that conflict with the SEPP and does not compromise the ability of the site or surrounding rural land to sustain livestock as development without consent pursuant to the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The aim of this chapter of the policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objectives of the *Coastal Management Act 2016*.

The subject site has been identified as being located within the 'Coastal Environment Area' map as prescribed by the SEPP. As such, Section 2.10 of the SEPP need to be taken into consideration in determining the development application. Considering the extent of the proposed works and the separation of the subject site to the coast, the proposal is not deemed to have any adverse impact on the access, overshadowing, amenity, or heritage values of the foreshore.

Chapter 4 – Remediation of land

Clause 4.6 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The proposed development site has been mapped as being potentially land contaminated with PFAS which covers a large expanse of flood prone land within the Swamp Creek catchment area. The proposed development is located outside the floodplain and is unlikely to contain high concentrations of contaminated soil. Notwithstanding this, the proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines nor does the proposal involve a change to a more sensitive land use. As such, with the imposition of relevant conditions of consent, the land could reasonably be considered as suitable for the proposed land use. No further assessment is considered necessary.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

Section 2.119 applies to development with frontage to a classified road – Cessnock Road is a classified state road. The existing access arrangements from Cessnock Road is to remain untouched by the development works. The volume and frequency of the vehicles using the classified road to access the site is considered to create a negligible impact on the existing traffic network along Cessnock Road. As such, the development is not considered to compromise the effective and ongoing operation and function of Cessnock Road and is considered to meet the objectives of this control. The application was originally referred to Transport for NSW who confirmed that a referral was not considered necessary for this development.

Maitland Local Environmental Plan 2011

Clause 2.3 – Zone objectives and Land Use Table

Under the Maitland Local Environmental Plan 2011 (LEP) the subject land is split zoned RU1 Primary Production at the southern portion of the site fronting Cessnock Road and RU2 Rural Landscape at the northern portion of the site.

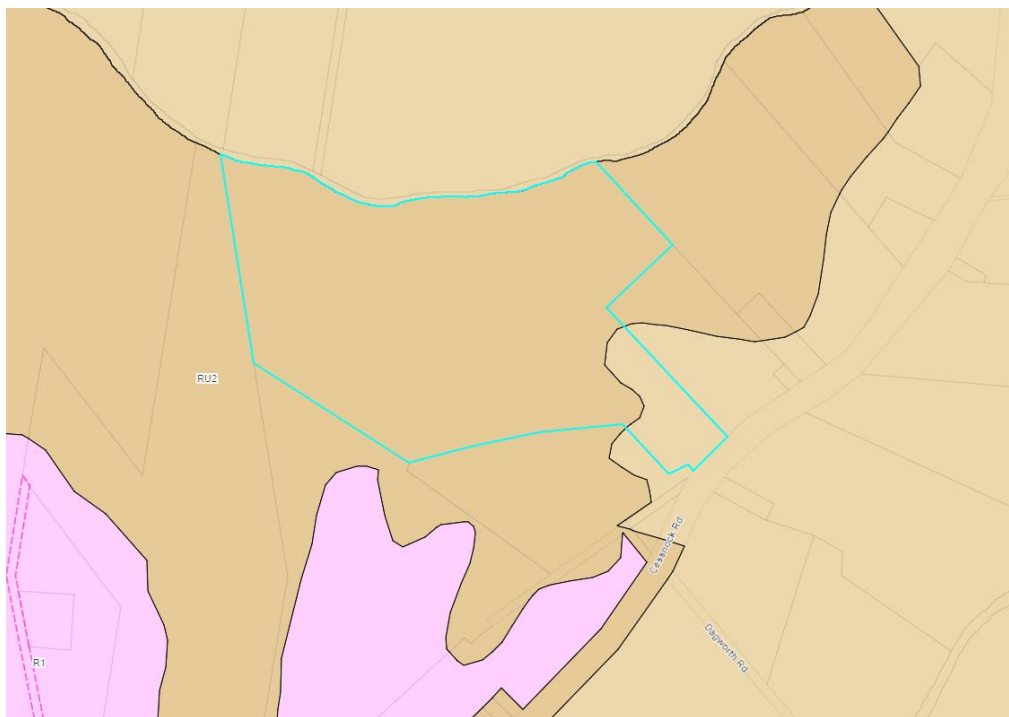


Figure 2: Maitland LEP 2011 zoning map (source: Maitland City Council)

The proposed development is defined as Animal Boarding Establishment under the LEP which is a type of development permitted with consent in both land use zones. The proposed development is wholly contained within the RU1 Primary Production zone.

The objectives of the RU1 Primary Production:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposed development is located within the existing cluster of buildings at the Cessnock Road frontage allowing the entire northern portion of the site to be maintained as agricultural land. The proposed development is a compatible land use that is not likely to impact onto surrounding agricultural uses or amenity of the surrounding rural locality. The rural landscape character and amenity will be retained. The proposal encourages a diverse industry appropriate for the area without creating a land use conflict and is therefore considered to be consistent with the objectives of the zone.

Clause 5.21 – Flood planning

The northern section of the site is shown as ‘flood planning area’ on the flood planning maps of Maitland LEP 2011. The area subject to the 1%AEP flooding event is not currently occupied by buildings. The proposed development is wholly located outside the 1%AEP flooding event and therefore no additional assessment or consideration is required.

Clause 7.1 - Acid sulfate soils

The subject site is mapped as containing Class 1, 3 and 4 Acid Sulfate Soils (ASS) at the northern portion of the site in proximity to Swamp Creek. The proposed development is located within an area not mapped as containing potential ASS. The proposed development works are not undertaken on land that is below 5m of the Australian Height Datum (AHD) nor is likely to lower the watertable by 1m AHD on adjacent ASS classed land.

Clause 7.2 - Earthworks

Development consent is not required under this clause as the earthworks are ancillary to the proposed development works and will be considered as part of the overall assessment. Earthworks associated with creating a level building pad for the proposed kennel building will be undertaken onsite given the topographic nature of the site. A maximum cut of 600mm and a maximum fill of 1500mm are proposed as part of the earthworks. No retaining walls are proposed, instead batters are to be provided. Appropriate conditions will be included to ensure batters are at a maximum grade of 1:4 and do not create any nuisance stormwater flows to adjoining properties. Any additional material required to be exported to the site will be conditioned to be ENM or VENM. Conditions of consent will also be included to ensure sedimentation and erosion controls measures are implemented during the construction phase and best practice measures are implemented. As such, minimal impacts are likely to occur onto the surrounding environment.

Section 4.15(1)(a)(ii) - Any draft environmental planning instrument that is or has been placed on public exhibition

- There are no draft environmental planning instruments applicable to this proposal.

Section 4.15(1)(a)(iii) - Any development control plan

Maitland Development Control Plan 2011 (DCP)

The following chapters of the Maitland DCP are relevant to the assessment of the proposal:

- Part A – A.4 Notification
- Part B – B.3 Hunter River Floodplain, B.6 Waste Not – Site Waste Minimisation & Management
- Part C – C.11 Vehicular Access & Car Parking

Part A.4 Notification

The application was notified and advertised in accordance with Council’s policy from 3 July 2023 to 17 July 2023. The amended proposal was re-notified from 12 October 2023 to 26 October 2023. Two submissions were received by Council during the re-notification period and is discussed under Section 4.15(1)(d) below.

Part B.3 Hunter River Floodplain

The proposed development does not result in any level changes across the site, nor any encroachment of development works into the flood planning area. As such, the proposal is satisfactory with regards to this section of DCP 2011.

Part B.6 Waste Not – Site Waste Minimisation and Management

Management of waste during construction can be addressed by way of conditions of consent. Notwithstanding this, a waste management plan prepared by AusWide Consulting was submitted to Council as part of the supporting documentation. The waste management plan details management of waste during construction as well as the operational waste management procedures for the animal boarding establishment. The details of operational waste servicing are as follows:

- General waste generated from the 20-dog kennel is estimated to be 210L per week. Noting that this can be accommodated by Council's standard kerb side collection.
- All waste is to be bagged and collected from the site to control odour.
- All general waste will be transported to the kerb for Council collection.

The bin storage area is proposed within the proposed kennel building. The storage shed is not visible from Cessnock Road.

For the reasons above, the management of waste is considered acceptable.

Part C.11 Vehicular Access & Car Parking

The proposed site access via the existing crossing on the Cessnock Road frontage is to remain. The driveway access is greater than 5.5m wide and continues for 6m beyond the property boundary to provide provision for two vehicles to pass on the driveway. The proposed development is not considered a traffic generating development as prescribed *SEPP (Infrastructure and Transport) 2021*. Due to the scale of the development, a Traffic Impact Assessment is not required. The proposed development is to be managed on an appointment basis with kennels open to visitors/customers for pick up/drop off during the hours of 7am and 11am, and, 3pm and 6pm, 7 days a week. The maximum anticipated number of customers at the site at any one time is three. It has been assessed that the existing road has capacity to cater for the potential traffic generated as a result of the development. The likely impact is considered negligible when compared to the existing road traffic.

'Animal boarding establishments' are excluded from the parking rates prescribed by DCP 2011. Under DCP 2011, parking for non-defined uses must be provided to satisfy the peak cumulative parking requirements of the development as a whole. The submitted Plan of Management (POM) nominates that it is anticipated that a maximum of three customers are to be on site at any one time. The POM also nominates that staff on site will include the owners of the property. The parking rates can therefore be assumed on a needs-basis as follows:

- Visitor parking: three spaces
- Staff parking: two spaces

The proposed development includes the provision of 10 formalised car parking spaces which is greater than the required and is acceptable. Conditions of consent will be included requiring the all car parking spaces to be designed to meet compliance with AS2890.1, be line marked or signposted. Compliance with this chapter of the DCP is achieved.

Section 4.15(1)(a)(iiia) – Any planning agreement that has been entered under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

- There are no planning agreements, or draft planning agreements which apply to the proposal.

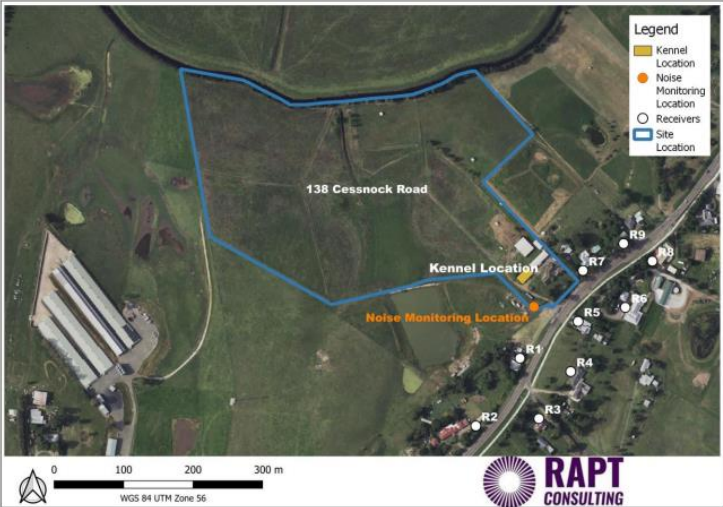
Section 4.15 (1)(a)(iv) - The regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no regulations prescribed under the *Environmental Planning and Assessment Regulation 2021* which apply to this proposal.

Section 4.15 (1)(b) - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

The following table identifies and discusses the relevant matters for consideration in relation to environmental, social and economic impacts associated with the proposal.

Matters for Consideration	Comments
Bushfire	<p>The land is identified as containing bushfire prone land (category 3). A bushfire threat assessment (<i>Firebird ecoSultants Pty Ltd., 22/05/2023</i>) has been submitted with the documentation providing an assessment against the NSW Rural Fire Service document <i>Planning for Bushfire Protection (PBP) 2019</i>.</p> <p>The proposal is defined as being 'commercial development' or 'industrial development', as such in accordance with section 4.14 of the <i>EP&A Act 1979</i> and section 100B of the <i>Rural Fires Act 1997</i> consent can be determined by Council without the need to refer the development application to the RFS. However, Council is to be satisfied that the development conforms to the specifications and requirements of the <i>PBP 2019</i>. Under the provisions of the PBP, applications for development which do not have a residential component only PBP objectives in relation to access, water supply and services, and emergency and evacuation planning apply. The proposal involves the construction of an animal boarding establishment with direct and safe access to a public road (Cessnock Road). Adequate reticulated water is also available on site.</p> <p>As the bushfire threat for the site has been considered and conforms to the specifications and requirements of PBP the proposal is deemed satisfactory.</p>
Context and setting	<p>The subject site is located within an existing rural precinct of Maitland with a mix of single dwellings supporting agricultural activities on various sized allotments.</p> <p>It is noted that DCP 2011 excludes any specific requirements relating to the scale and positioning of animal boarding establishments. Notwithstanding this, Chapter C.8 has been used as a guide for assessment of proposed siting of the kennel building. For land zoned RU1 Primary Production a setback of 20m to a principal street frontage and a setback of 10m to any side or rear boundary is prescribed. The building is setback 43.5m from Cessnock Road reserve, in excess of 300m from the northern boundary adjoining the Swamp Creek and 15m from the southern shared boundary. The overall height of the development is 4.4m to the ridge of the gable roof to natural ground level. Amended plans provided nominate the kennel building to be behind the front building line created by the existing dwelling and within the cluster of existing building on site. The setbacks are considered satisfactory. The kennel building is comparable in size, height and materials to existing farm buildings and sheds within the surrounding area. A condition of consent has been included which will require a 900mm setback to carparking hardstand for the provision of landscaping. The proposed development is compatible with the existing rural character and scale of surrounding development and is unlikely to create any unreasonable amenity impacts on surrounding rural residential properties.</p>

Noise	<p>A Noise Impact Assessment ("NIA") report prepared by RAPT Consulting, dated November 2023, has been submitted with the application. The NIA is set out as follows:</p> <ul style="list-style-type: none"> • general description of the proposal • site survey • noise logging and determination of appropriate project noise criteria • site analysis and potential impacts • noise mitigation strategies and conclusions <p>The report provides a review of residential receivers in proximity to the project which is represented in Figure 3 below:</p>  <p>Figure 3: map of assessed receivers (source: RAPT Consulting, November 2023)</p> <p>A noise logger was used to capture the existing background noise levels to determine the project's minimum intrusiveness noise levels and amenity noise levels as derived from the NSW Environmental Protection Agency's <i>Noise Policy for Industry (2017)</i>. Noise surveys of dogs barking have previously been undertaken by RAPT Consulting which were conducted using a RION NL-42 sound level meter and in accordance with the procedures of AS1217.7:1985, "Acoustics – Determination of Sound Power Levels of Noise Sources – Part 7 Survey Method". The measurements were undertaken with dogs actively and excitedly barking outside in the open environment in their pens in another location in the Hunter Valley. 10 Golden Labrador dogs were inside the specific pen area which has been converted into 20 dogs for assessment purposes.</p> <p>The report provides the following conclusions (noting that for the purposes of the assessment the building walls and roof have been conservatively assumed to be constructed of fibre cement cladding with sheet metal roofing – conditions will require external walls to be sound insulated with 1.8m sound insulated panel fencing also to be installed):</p>
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	<table><tr><th>Receiver ID</th><th>Project Noise Trigger Level Day / Evening / Night dB(A) Leq(15min)</th><th>Predicted Results Day / Evening* / Night dB(A) Leq(15min)</th><th>Comply Y / N</th></tr><tr><td>R1</td><td>53 / 43 / 38</td><td>35 / 11 / 16*</td><td>Y / Y / Y</td></tr><tr><td>R2</td><td>53 / 43 / 38</td><td>27 / 3 / 8*</td><td>Y / Y / Y</td></tr><tr><td>R3</td><td>53 / 43 / 38</td><td>30 / 11 / 16*</td><td>Y / Y / Y</td></tr><tr><td>R4</td><td>53 / 43 / 38</td><td>33 / 14 / 19*</td><td>Y / Y / Y</td></tr><tr><td>R5</td><td>53 / 43 / 38</td><td>36 / 15 / 20*</td><td>Y / Y / Y</td></tr><tr><td>R6</td><td>53 / 43 / 38</td><td>29 / 9 / 14*</td><td>Y / Y / Y</td></tr><tr><td>R7</td><td>53 / 43 / 38</td><td>35 / 13 / 18*</td><td>Y / Y / Y</td></tr><tr><td>R8</td><td>53 / 43 / 38</td><td>27 / 5 / 10*</td><td>Y / Y / Y</td></tr><tr><td>R9</td><td>53 / 43 / 38</td><td>29 / 5 / 10*</td><td>Y / Y / Y</td></tr></table> <p>Figure 4: operational noise assessment results (source: RAPT Consulting, November 2023)</p> <table><tr><th>Receiver ID</th><th>Sleep Disturbance Trigger Level dB(A) Lmax</th><th>Predicted Results dB(A) Lmax</th><th>Comply Y / N</th></tr><tr><td>R1</td><td>52</td><td>31 / 36*</td><td>Y</td></tr><tr><td>R2</td><td>52</td><td>23 / 28*</td><td>Y</td></tr><tr><td>R3</td><td>52</td><td>31 / 36*</td><td>Y</td></tr><tr><td>R4</td><td>52</td><td>34 / 39*</td><td>Y</td></tr><tr><td>R5</td><td>52</td><td>35 / 40*</td><td>Y</td></tr><tr><td>R6</td><td>52</td><td>29 / 34*</td><td>Y</td></tr><tr><td>R7</td><td>52</td><td>33 / 38*</td><td>Y</td></tr><tr><td>R8</td><td>52</td><td>25 / 30*</td><td>Y</td></tr><tr><td>R9</td><td>52</td><td>24 / 29*</td><td>Y</td></tr></table> <p>Figure 5: sleep disturbance results (source: RAPT Consulting, November 2023)</p> <p>The results of the NIA demonstrate that both predicted daytime and night-time operational noise emissions from the project would satisfy the relevant trigger levels at all assessed receivers. A condition of consent will require a noise management plan, as detailed in the NIA, be prepared, and implemented prior to the operation of the development. For the reasons above, the application is considered acceptable with regards to acoustic impacts.</p>	Receiver ID	Project Noise Trigger Level Day / Evening / Night dB(A) Leq(15min)	Predicted Results Day / Evening* / Night dB(A) Leq(15min)	Comply Y / N	R1	53 / 43 / 38	35 / 11 / 16*	Y / Y / Y	R2	53 / 43 / 38	27 / 3 / 8*	Y / Y / Y	R3	53 / 43 / 38	30 / 11 / 16*	Y / Y / Y	R4	53 / 43 / 38	33 / 14 / 19*	Y / Y / Y	R5	53 / 43 / 38	36 / 15 / 20*	Y / Y / Y	R6	53 / 43 / 38	29 / 9 / 14*	Y / Y / Y	R7	53 / 43 / 38	35 / 13 / 18*	Y / Y / Y	R8	53 / 43 / 38	27 / 5 / 10*	Y / Y / Y	R9	53 / 43 / 38	29 / 5 / 10*	Y / Y / Y	Receiver ID	Sleep Disturbance Trigger Level dB(A) Lmax	Predicted Results dB(A) Lmax	Comply Y / N	R1	52	31 / 36*	Y	R2	52	23 / 28*	Y	R3	52	31 / 36*	Y	R4	52	34 / 39*	Y	R5	52	35 / 40*	Y	R6	52	29 / 34*	Y	R7	52	33 / 38*	Y	R8	52	25 / 30*	Y	R9	52	24 / 29*	Y
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R3	52	31 / 36*	Y																																																																														
R4	52	34 / 39*	Y																																																																														
R5	52	35 / 40*	Y																																																																														
R6	52	29 / 34*	Y																																																																														
R7	52	33 / 38*	Y																																																																														
R8	52	25 / 30*	Y																																																																														
R9	52	24 / 29*	Y																																																																														
Stormwater management	A concept stormwater management plan has been provided as part of the application. Detailed plans will be required prior to issue of Construction Certificate. Conditions have been included ensuring stormwater compliance with Council's DCP 2011 and Manual of Engineering Standards.																																																																																
Waste	The proposal will not generate excessive waste and has been supported by an Operational Waste Management Plan (OWMP). Any building waste will																																																																																

	be disposed of by the builder appropriately offsite. The site will continue to be serviced by Council's waste collection services.
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Section 4.15 (1)(c) - The suitability of the site for the development

The site is suitable for the proposed development as it is generally consistent with relevant controls prescribed by both MLEP 2011 and DCP 2011. It is considered that adequate assessment has been undertaken, determining that there will be no adverse or additional impact to the amenity of the natural or built environments as a result of the development. The potential amenity impacts in terms of noise and traffic can be adequately mitigated as outlined within other sections of this report. The proposal is consistent with the zone objectives as the proposal will allow a compatible land use that is not likely to impact onto surrounding agricultural uses and retains the existing rural landscape character of the locality.

Section 4.15 (1)(d) - Any submissions made in accordance with this Act or the regulations

Public Submissions

- The proposal was publicly notified/advertised for a period of 14 days in accordance with the *Environmental Planning and Assessment Act 1979* and the Maitland Development Control Plan 2011.
- A total of two submissions were received during the exhibition period. Both submissions raised objection to the proposal. A summary of the submissions is provided in the following table:

Review of Submissions		
Submission No.	Issue	Comment
1, 2	Safety of driveway access and increase in traffic	The Plan of Management provided with the application nominates that the number of customers expected at any one time is three with anticipated one customer at any one time. Customers are to arrive by appointment only. The existing access via Cessnock Road has been assessed by Council's development engineers as being acceptable, safe and practical for the development. The 6m wide driveway crossing which extends greater than 6m into the depth of the property is sufficient to allow two vehicles to pass on the driveway to reduce any anticipated conflict. The existing road has capacity to cater for the potential traffic generated as a result of the development. The likely impact is considered negligible when compared to the existing road traffic.
1	Noise	As discussed elsewhere in this report, a Noise Impact Assessment (NIA) has been submitted with the application recommending noise attenuation measures be included in the construction of the kennel building which also includes the erection of an insulated panel fence. These construction requirements are

		<p>included as conditions of consent provided under Attachment D.</p> <p>The NIA concludes that both predicted daytime and night-time operational noise emissions from the project would satisfy the relevant trigger levels at all assessed receivers. As such, there will be no significant adverse noise impacts as caused by the development.</p>
1	Odour	<p>As discussed elsewhere in this report, management of odours are to be controlled by the Plan of Management and Operational Waste Management Plan. These include:</p> <ul style="list-style-type: none"> • Daily collection of waste, bagging and disposing into a bin which is to be collected weekly. • Daily cleaning of water and food bowls including disposal of food not consumed. • Kennels to be cleaned weekly and deep cleaned tri-monthly using hose which drains to a pipe that leads to the existing septic tank. • Annual pest control. • 24/7 complaint management procedures <p>It has been concluded that the proposed development is acceptable with regards to potential odour impact.</p>
1	Safety of animals escaping premises and potential for incidents along Cessnock Road as well as within adjoining properties	<p>The proposed facility is to be fenced with dogs to be kept within the kennel or fenced yard at all times.</p> <p>A condition of consent has been included requiring the facility to operate in accordance with; the approved Plan of Management, the 'Guidelines for the Care and Management of Keeping and Breeding Dogs', adopted in September 1996 (updated July 2006) prepared by Dogs NSW and the 'NSW Animal Boarding Establishments', adopted in October 1996 prepared by NSW Agriculture. This will ensure the boarding environment complies with animal welfare standards.</p>
1	Inappropriate development for the area	<p>The development is located within the portion of the site zoned RU1 Primary Production in which 'animal boarding establishments' are permitted with consent. The application has been supported by appropriate consultant</p>

		<p>reports determining that there are to be no adverse amenity impacts to nearby residences subject to the inclusion of conditions provided under Attachment 4.</p> <p>Further, the application has been amended with the proposed kennels re-located away from shared boundaries. This ensures that the kennels are within the cluster of existing buildings which retains the rural outlook from Cessnock Road.</p>
1	Impact on property values	<p>This is not a matter of consideration pursuant to section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

Government Agency Submissions

- The proposal is of a type that does not require the Council, as the consent authority, to obtain the concurrence, comments or general terms of approval from another government agency.

Section 4.15(1)(e) - The public interest

The proposed development will improve the provision of animal services to the community and presents a practical use of available land. The development will not negatively impede upon social, built, economic or natural environments, and has been appropriately designed to mitigate any perceived impacts. The animal boarding establishment will not create land use conflict or unreasonable environmental impacts. Subsequently, the development is considered within the public interest.

OTHER APPROVALS

- The proposal does not require the Council to grant consent under legislation outside of the *Environmental Planning and Assessment Act 1979*.

REFERRALS

- The application was referred internally to Council's Building Surveying Team, Environmental Health Team, Development Engineering Team, and Development Contributions Administrator who have raised no objection to the proposed development subject to the inclusion of conditions which are attached the consent under Attachment 4.

ASSESSMENT CONCLUSION

- An assessment of the application has been undertaken against Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979 as amended*. The proposed development is considered acceptable in terms of the relevant matters for consideration under the Act and the development application is recommended for approval.

RECOMMENDATION AND DETERMINATION

- Consent be granted subject to the conditions provided in the attached schedule.

Senior Development Planner
Thomas Howell

Date: 9 January 2024

City Planning

DA/2023/696 FOR TELECOMMUNICATIONS FACILITY WITH 36.2M HIGH MONOPOLE, ANCILLARY WORKS, FENCING AT 14 MITCHELL DRIVE EAST MAITLAND

Assessment Report (Under Separate Cover)

Meeting Date: 13 February 2024

Attachment No: 3

Number of Pages: 16

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Version 1: Comprehensive

Application No:	DA/2023/696
Proposal:	Telecommunications Facility with 36.2m High Monopole, Ancillary Works, Fencing
Address:	14 Mitchell Drive EAST MAITLAND NSW 2323
Lot & DP No:	311/1031540
Property No:	38994
Applicant:	Stockland Trust Management Ltd
Owner:	The Trust Company Limited
Author:	Mia Gallaway
Site Inspection:	13 November 2023

INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2023/696 proposing Telecommunications Facility with associated works. The assessment will provide consideration of the proposal under the Environmental Planning and Assessment Act 1979, the Maitland Local Environmental Plan 2011, the Maitland Development Control Plan 2011 and any other relevant legislation, guidelines and policies of the Council.

Description of Proposed Development

The proposal involves construction of a telecommunications facility comprising of a:

- 35m High Monopole with antennas mounted on a triangular headframe (total height 36.2m).
- Nine panel antennas mounted to the monopole via the triangular headframe. Six panel antennas (2533mm H x 349mm W x 208mm D) and three panel antennas (717mm H x 408mm W x 189mm D).
- Installation of three outdoor unit (ODU) equipment cabinets to operate the base station in a non-reflective grey colour.
- Ancillary equipment associated with operation of the facility, including remote radio units, cable trays, cabling, safe access methods, electrical works and air-conditioning equipment, coloured pale eucalypt.
- All development will be located within a 4m x 8m fenced compound area (shown in Figure 2 below).
- Minor associated earthworks and fencing, being 2.3 metre tall and barbed wire.

The development will form an integral part of the Telstra mobile network in the East Maitland locality, which will enable Telstra to enhance its mobile network capacity and coverage in this area.

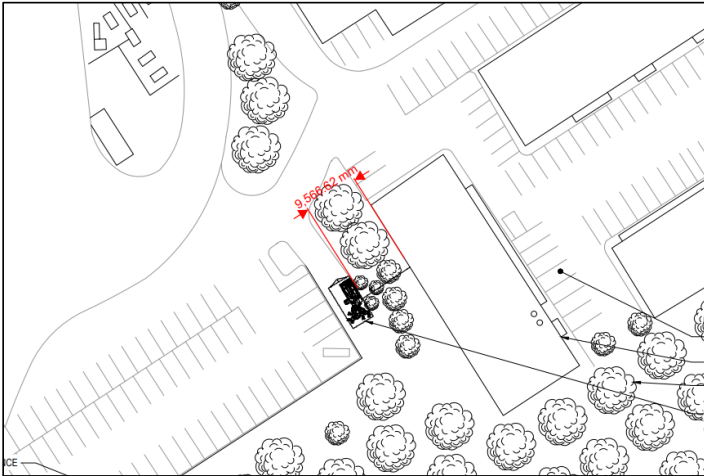


Figure 1 – Proposed site plan, showing location of proposed facility

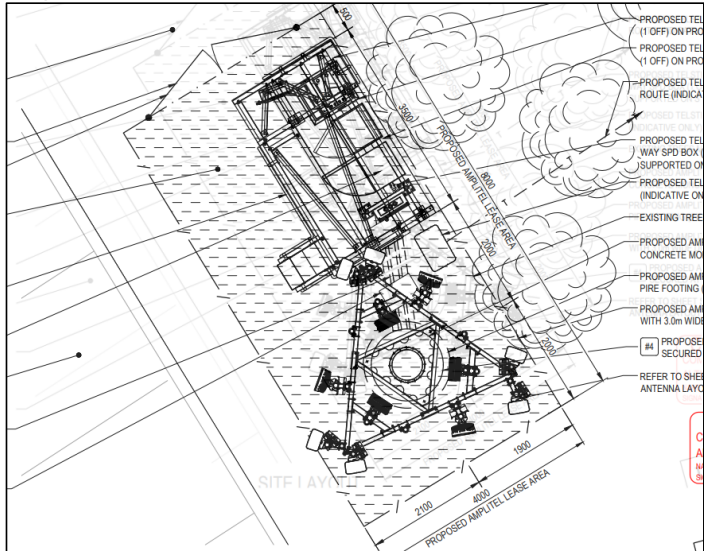


Figure 2 – Proposed site plan, showing details of proposed facility

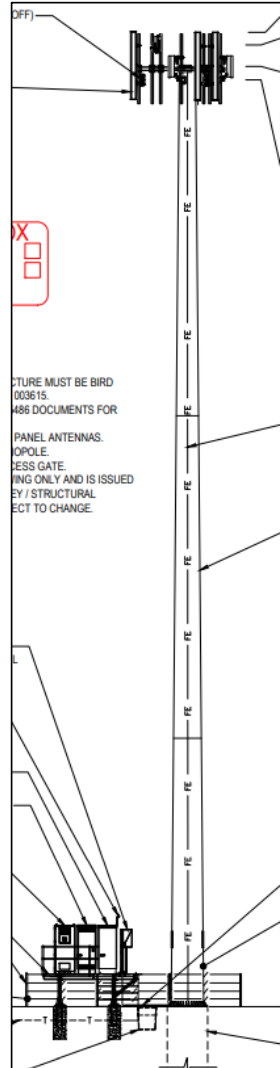


Figure 3 – Proposed western elevation

Description of the Land on which the proposal is to be carried out.

The legal description of the land on which the development is to be carried out is:

311/1031540

14 Mitchell Drive EAST MAITLAND NSW 2323

The site has a total area of 12.38 hectares, and currently houses the Stockland Green Hills Shopping Centre. The proposed location of the development is an unused portion of land between the southeastern corner of the Shopping Centre carpark, and the medical offices on adjacent land at 11 Molly Morgan Drive. This portion of the site comprises grassed area and minor vegetation.

The site is located in East Maitland Commercial area, with surrounding development being commercial businesses to the north, east and west of the site, with residential development located approximately 120

metres to the south off Moss Place. The nearest residential properties are separated by a vegetation strip on the subject site.

The site zoned E2 Commercial Centre, is mapped as bushfire prone (buffer zone), and potentially containing Acid Sulfate Soils (Class 5).

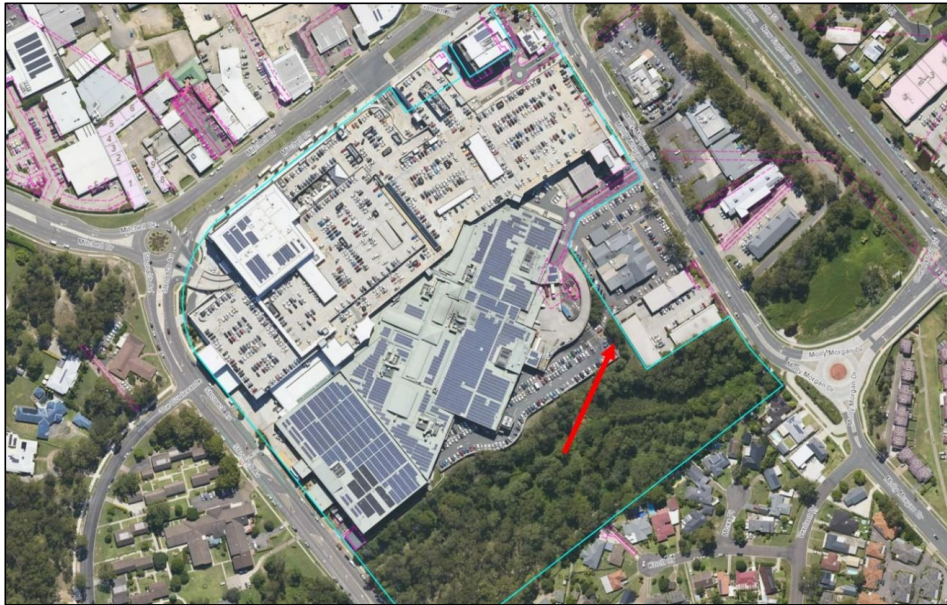


Figure 4: Aerial GIS of subject site (red arrow showing approximate location of facility)

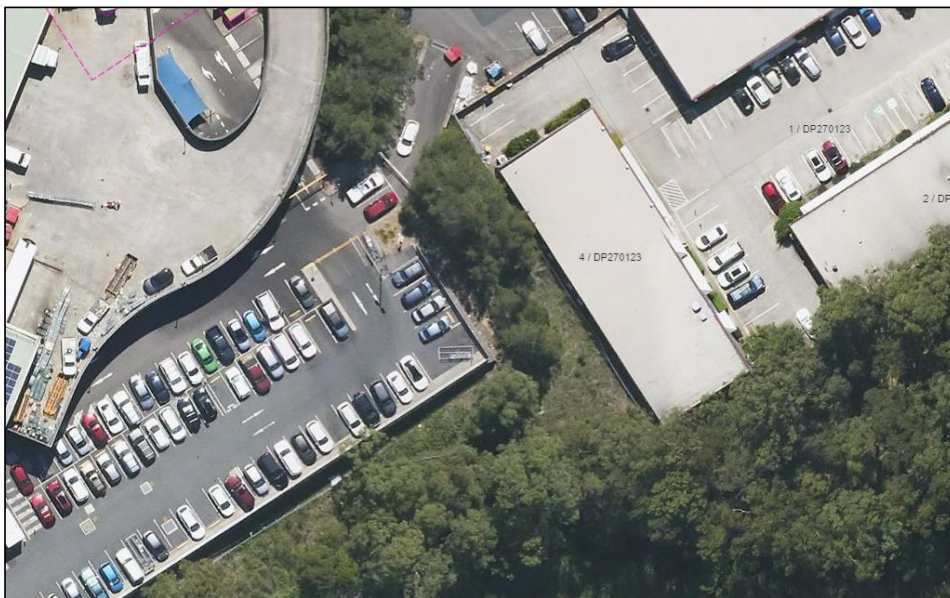


Figure 5: Closer aerial GIS of approximate location of facility



Figure 6: Markup of proposed location of facility

A site visit was undertaken on **13 November 2023** and can be seen in the images below:



Image 1: Subject looking north-east from the carpark



Image 2: Proposed location of development, looking northwest



Image 3: Proposed location of development, looking southeast

PREVIOUS DEVELOPMENT HISTORY

The site has had several historic development and construction applications, relating to commercial premises internally and externally to Greenhills Shopping Centre. None are directly relevant to this proposal.

PLANNING ASSESSMENT - 4.15(1) matters for consideration

Development Type -

- The proposal is categorised as *local development*, under the Environmental Planning and Assessment Act 1979 (EPA Act).

Contributions

- The proposal attracts a contribution of **\$3,324** under Council's current adopted Section 7.12 Plan.

Section 4.15(1)(a)(i) - Provisions of any environmental planning instrument

State Environmental Planning Policies

The following State Environmental Planning Policies (SEPP's) are relevant to the assessment of the proposal:

State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Clause 4.7 of this SEPP requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the proposed infrastructure is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of Chapter 4 of this SEPP.

State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021

Division 21 of the SEPP applies to telecommunications and other communication facilities, establishing the approval regimes for telecommunications in NSW. Division 21 classifies certain telecommunications development that is permitted either without consent, with consent, or is exempt from local environmental approvals. Given the development does not meet the requirements of exempt or complying development (due to it exceeding 25m in height and being located 125m to an R1 Zone) under this SEPP, a DA is required. The subject site is zoned E2 Commercial Centre, under Clause 2.141 of the SEPP notes the development for the purposes of telecommunications facility may be carried out by any person with consent on any land.

NSW Telecommunications Facilities Guideline including Broadband

Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Secretary for the purposes of this clause and published in the Gazette. The Department of Planning and Environment prepared the NSW Telecommunications Facilities Guideline including Broadband (October 2022) (the Guideline) for the purpose of Clause 2.143 of the SEPP to:

- Provide a guide to the State wide planning provisions and development controls for telecommunications facilities in NSW; and
- Provide guidance to assist the facilitation of the roll-out of broadband in NSW.

Principles for the design, siting, construction and operation of telecommunication facilities that apply to proposed telecommunications facilities in NSW have been developed and are contained within this Guideline. The detailed principles and an assessment of each is as follows:

1. **Principle 1:** *Design and site telecommunications facilities to minimise visual impact*

- The requirements listed under (a), (b) and (c) relate to facilities that are located on an existing building or structure and are not applicable to a new freestanding monopole; an assessment against (a), (b) and (c) is therefore not required.
- The ancillary facilities associated with the proposed development will be housed in an equipment shelter constructed of 'pale eucalypt' colour. The proposed site location is surrounded by existing vegetation and is on ground level which is lower than the neighbouring carpark, which is considered to adequately screen the equipment shelter from public view. Requirement (d) has been satisfied in this regard.
- The proposed development is not located in a rural setting, however it is located and designed to respond to its surrounding landscape context, which is discussed in further detail in the below sections of this report. Requirement (e) has been satisfied in this regard.
- The subject site is not heritage listed and not located within a heritage conservation area. An assessment against requirement (f) and (g) is therefore not required.
- Minor vegetation pruning may be required to facilitate the proposed development, however consent is not required. Requirement (h) is satisfied in this regard.
- As the proposed development is for a new facility, the decommissioning and removal of an existing facility and its components is not required. An assessment against requirement (i) and (j) are therefore not required.
- The below principle addresses the reason why facilities have not been co-located in this case. Notwithstanding, the siting and design of the proposed development has been designed to reduce the intrusive visual impacts within the immediate and greater locality (as further discussed in the below sections of this report). Therefore requirement (k) is satisfied in this regard.
- The proposal is compliance with relevant industry design guides. Requirement (l) has been satisfied.
- The applicant has provided a detailed visual impact assessment and completed a detailed alternative sites assessment. Requirement (m) is satisfied in this regard.

2. Principle 2: Co-locate telecommunications facilities wherever practical

- The fibre and power network connections will be taken from the nearest available points underground to the facility. Requirement (a) is satisfied.
- The current proposal has been selected after co-location opportunities have been exhausted. Telstra currently has two macro cell sites servicing the general area within 2km of the proposed location:
 - RFNSA Site # 2323001 located on the new England Highway approximately 1.0km to the south;
 - RFNSA Site # 2323002 located at 123 George Street approximately 1.5km north of the proposed site

Both facilities are unable to be utilised to provide adequate coverage to the East Maitland area. Both sites are at their structural limits and could not support additional equipment, RFNSA site 2323001 is the closest existing Telstra site to the proposal and does not have the required elevation to meet Telstra coverage requirements in the area.

- The need to deliver quality service in the local area in conjunction with the exponential growth in the demand of network data and broadband services (such as tablets, smart phones and data cards) means that services will become poor unless the facility at this location is successfully developed.
- The proposal has been designed to retain the smallest, slimmest and neatest visual profile possible to minimise any visual amenity impacts on the surrounding area while achieving the required coverage.
- Based on the above, the applicant has pursued a new location and structure for the telecommunications. It is considered the requirements of (b), (c), (d), and (e) are satisfied.

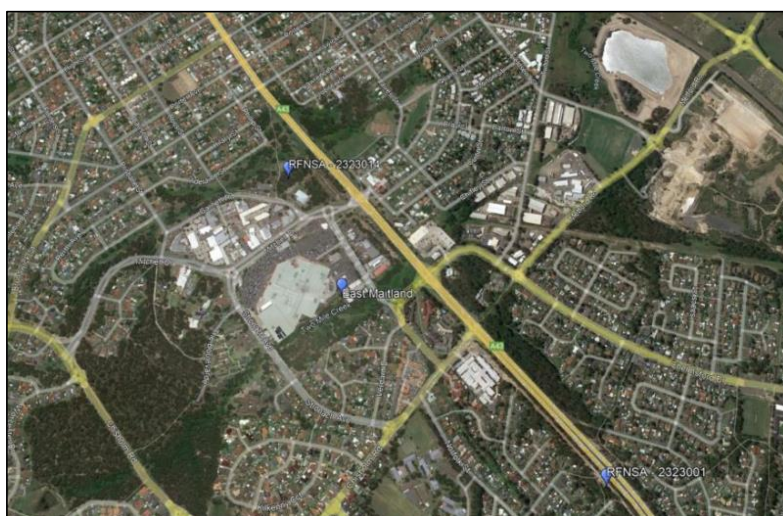


Figure 7 – Potential co-location sites within the locality

3. Principle 3: Meet health standards for exposure to radio emissions

- The proposed installation will comply with the Australian Communications and Media Authority (ACMA) regulatory arrangements with respect to electromagnetic radiation exposure (EME) levels. EME exposure levels from this site have been calculated in accordance with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) standard prediction methodology and report format. The EME report submitted with the application shows that the maximum predicted EME levels will equate to 2.83% of the maximum exposure limit, which is well below the allowable exposure limit under the Australian Standard (100% which is still considered to be safe). Requirement (a) and (b) has been satisfied.

4. Principle 4: Minimise disturbance and risk, and maximise compliance

- The subject site is not located near any airports or Aero Clubs. There are no Obstacle Limitation Surface Plans applicable. Requirement (a) has been satisfied.
- Telstra will operate the radio facility within its own frequency spectrums and the facility will not cause any interference with other networks. All operating antennas will use the frequencies assigned to Telstra. Requirement (b) has been satisfied.
- The proposed development has been designed and will be constructed in accordance with the application manufacture's specifications. Requirement (c) has been satisfied.
- The requirements listed under (d) relate to facilities that are located on an existing building or structure and are not applicable to a new freestanding monopole; an assessment against (d) is therefore not required.
- The proposed development will be located entirely within the boundaries of the subject site, with consent from the property owner. Requirement (e) has been satisfied.
- Requirements (f), (g), (h), (i), (j), (k) and (n) relate to construction being carried out with consideration made to erosion and sediment control, risks to pedestrians or vehicles, construction hours, traffic control measures, open trenching, disturbance to vegetation and restoration of existing facilities removed or damaged during construction. Conditions to this effect have been included in the recommended conditions of consent.
- The proposed development is located on an area that is highly disturbed within close proximity to a shopping centre carpark. No threatened species are expected to be disturbed as no vegetation is proposed to be removed. Requirement (l) has been satisfied.

- A search of the AHIMS has been carried out in respect of the subject site, which determined that no artefacts or items of interest are located on or near the subject site. Requirement (m) has been satisfied.
5. **Principle 5:** Undertake an alternative site assessment for new mobile phone base stations
- An assessment process was undertaken to identify any potential low impact solutions in the area, with a total of 4 alternative sites considered and investigated. This process revealed that due to the surrounding built environment and lack of existing high elevation structures, no low impact solutions were viable. Requirement (a) and (b) has been satisfied.

In summary, the proposed development is consistent with the principles of the NSW Telecommunications Facilities Guidelines including Broadband.

Maitland Local Environmental Plan 2011

The subject land is zoned E2 Commercial Centre under the Maitland Local Environmental Plan 2011 (LEP). The proposed development is defined as Telecommunications Facility under the LEP which is a type of development that is not permissible under the LEP. As mentioned above, Clause 2.143 of the Transport and Infrastructure SEPP notes that development for the purposes of telecommunications facilities may be carried out by any person with consent on any land.

The objective of the E2 zone includes to encourage investment in commercial development that generates employment opportunities and economic growth.

The proposed development seeks to establish telecommunications infrastructure on a site that provides greater coverage and has minimal environmental impacts both on-site and surrounding land. The development is in keeping with the overall objectives of the zone, by providing improved mobile technology to the existing commercial land and surrounding residential areas and is considered compatible with the commercial use of the immediate area.

Due to the size of the proposed development, it is considered that it does not compromise the objectives of the E2 zone. Furthermore, the provision of improved telecommunication services in the locality will benefit both existing and future visitors, residents, and workers on the site and surrounding area.

The following clauses of the Maitland LEP 2011 are relevant to the assessment of the proposal:

Clause 4.3 – Height of buildings

The subject site is identified as having a 24m maximum building height under the Maitland LEP 2011. The application seeks consent for a maximum building height of 36.2m. The structure proposes an exceedance of 12.2m above the 24m building height (50.83% variation). The applicant has submitted a request to vary this development standard in accordance with Clause 4.6 of the Maitland LEP, as discussed below.

Clause 4.6 – Exceptions to Development Standards

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1)):

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The development application includes a written request to vary a development standard in the MLEP in accordance with Clause 4.6.

The relevant development standard and the extent of the proposed variation is:

Development Standard	Proposed Variation	Extent of Variation
Clause 4.3 Height of Buildings	12.2m	50.83%

As the proposed variation is greater than 10%, the development application will be determined by the elected Council (rather than the General Manager or nominated staff under delegation).

Clause 4.6(2) allows a consent authority to grant development consent to a development that contravenes a development standard in accordance with the objectives of the clause.

In determining whether or not to support a variation to the LEP development standard Council is required to be satisfied that:

Clause 4.6(3) requires that the consent authority to be satisfied that the applicant has demonstrated that:

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

In respect to clause 4.6(3)(a), the Clause 4.6 Application states:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because strict compliance is unreasonable given the nature of the telecommunications facility.*
- *The height of the proposed facility is necessary as the nature of telecommunications facilities requires them to protrude above surrounding vegetation and structures. In order to operate effectively, a 'line of sight' needs to be established between antennas and receivers with a minimum of obstacles or interference. The more the interference, the poorer the quality of the signal will be.*
- *Telstra has modelled the proposed site and locality to determine what antenna height they require to provide the necessary coverage to meet the current demand in the area.*
- *Typically, telecommunication facilities exceed the height limit prescribed in LEPs. It is common for these exemptions to be granted as it is generally recognised as necessary.*

In respect to clause 4.6(3)(b), the Clause 4.6 Application states:

- *The proposal is generally in accordance with the objectives of the E2 – Commercial Centre zone.*
- *The proposal is in the public interest as it will support the communication requirements of businesses in the commercial area and residents of surrounding areas.*
- *There is a demonstrated need for the proposed infrastructure in the area. There is a distinct lack of existing telecommunications facilities in the East Maitland region, particularly in the residential area to the west.*
- *The proposal is in accordance with the objectives of the Maitland Local Environmental Plan 2011 and State Environmental Planning Policy (Transport and Infrastructure) 2021, and other State and Federal Legislation, that allow development for the purposes of telecommunications facilities on any land, with consent.*
- *The site has been chosen as its at the rear of the two closest commercial buildings, won't negatively impact on any street frontages or impede pedestrian access to buildings in the area. Additionally, the site is separated and visually screened from nearby residential land uses.*

Clause 4.6(3) requires the consent authority to be satisfied the applicant has adequately addressed the matters set out in clause 4.6(3) of the MLEP listed above. Clause 4.6(4) requires the consent authority to keep a record of its assessment carried out under subclause (3).

The applicant has submitted an application in accordance with the requirements outlined in Clause 4.6 of the MLEP. The submission argues that the proposed development is in keeping with the objectives of the zone and that while the height limit nominated for the site is exceeded, strict compliance is unnecessary due to the nature of the proposed development.

It is acknowledged that the site will be visible from some viewpoints and has potential to cause a visual impact to surrounding properties. A visual impact assessment (VIA) was provided with the application, which details the site will be visually prominent from the commercial area to the north and east of the site. Visual impact is addressed in more detail in section 4.15(1)(b) below.

The proposed structure is considered to be a positive utilisation of the commercial land, as the proposal achieves the objectives of the E2 zoning and provides required infrastructure to the surrounding area. The structure is located at the rear of the Green Hills Shopping Centre, and is visually screened to the west and north by this building, and is not anticipated detrimentally impact the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.

Given the above, there are sufficient environmental planning grounds to justify contravening the development standard, given the nature of the proposed development and the demand for the infrastructure in the local area. The proposed development is consistent with the objectives of clause 4.6 given it will not have a significant visual or overshadowing impact on adjoining properties. In these particular circumstances the variation can be supported.

Clause 7.1 – Acid Sulfate Soils

The subject site is identified as containing Class 5 acid sulfate soils (ASS) and is not located within 500m of adjoining Class 1, 2, 3 or 4 land. The exact detail of the monopole footing will be finalised after a geotechnical investigation has been carried out on the site, post-consent. The bored pier footing for a 35m monopole would typically be 4.5m to 6m in depth. Due to the fact that there is potential for the works associated with the proposed development to result in excavation more than 5m below the natural ground level, a condition of consent has been imposed requiring an assessment of acid sulfate soil potential and requiring treatment if found to be present.

Clause 7.2 – Earthworks

As noted above, excavation to a level of up to 6m below natural ground level is required to establish the monopole footings. In response to the objectives of Clause 7.2, the proposed excavation is satisfactory against the matters for consideration under Clause 7.2(3), as it:

- Will not significantly disrupt or have a detrimental effect on existing drainage patterns and soil stability in the locality of the development;
- Will enable opportunity for the future use of the land;
- Will not require filling of land, however reuse of soil on-site will be restricted to VENM, ENM or any other waste-derived material the subject of a resource recovery exemption;
- Have minimal effect on the existing and likely amenity of adjoining properties;
- Will include restrictions and/or quality assurance requirements relating to the source of any fill material (if required);
- Has a low likelihood of disturbing relics; and
- Has a low likelihood of adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

To ensure this, conditions will be placed on the consent relating to appropriate sedimentation and erosion controls, soil stability, and quality and source of fill.

Section 4.15(1)(a)(ii) - Any draft environmental planning instrument that is or has been placed on public exhibition

There are no draft environmental planning instruments applicable to this proposal.

Section 4.15(1)(a)(iii) - Any development control plan

Maitland Development Control Plan 2011 (DCP)

There are no relevant provisions of the Maitland DCP applicable to this proposal.

Section 4.15(1)(a)(iiia) – Any planning agreement that has been entered under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements, or draft planning agreements.

Section 4.15 (1)(a)(iv) - The regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no regulations prescribed under Section 92 of the Environmental Planning and Assessment Regulation 2000 which apply to this proposal.

Section 4.15 (1)(b) - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

The following table identifies and discusses the relevant matters for consideration in relation to environmental, social and economic impacts associated with the proposal.

Matters for Consideration	Comments
Context and setting	<p>The subject site has been selected, following a site selection process and a detailed analysis of the site against the criteria and principles contained within the Telecommunications Act 1997, the Telecommunications Code of Practice 2018, and the relevant industry code registered by the Australian Communications Authority (ACA).</p> <p>The siting and design of this proposal has taken place in accordance with Section 3 (Planning and Siting) of the Australian Standard, Siting of Radiocommunications Facilities (AS 3516.2). The proposed site and design was selected after an extensive search and analysis of potential candidates and the site was considered to provide an optimal environmental and network solution. The proposed design achieves minimal visual impact while meeting the technical coverage requirements for the site.</p>
Access, Transport and Traffic	<p>Access to the site is via the Stockland Green Hills carpark. The most direct access route to the site for construction and operation is via Molly Morgan Drive entrance to the west of the site. It is anticipated the proposed development would have little impact on the local traffic network of volumes. Once constructed, the facility will operate on an unmanned basis aside from periodic maintenance visits approximately 4-6 times per year or as required in the event of an electrical outage or similar event. The facility will not generate significant vehicle traffic through its ongoing operation.</p>

Flora and Fauna	No vegetation is to be removed as part of this development. Minor pruning has been proposed and a condition of consent has been imposed to ensure that no more than 10% of foliage is pruned and is undertaken in accordance with Australian Standards. It is not considered that the proposal will have any significant impact upon on the flora or fauna within the locality.
Noise and Vibration	The proposal was referred to Councils Environmental Health Officer who identified no issues, and recommended general construction noise conditions which have been imposed.
Safety, Security and Crime Prevention	Public access to the proposed telecommunications facility will be restricted by the enclosed equipment shelter and installation of a compound security fence. Relevant signs will be placed on the site relating to safety and security.
Social and Economic Impacts in the locality	There are no envisaged adverse social or economic impacts associated with the development. The proposal will provide improved mobile phone and mobile broadband coverage and service within the locality and is therefore considered to have a positive social and economic impact within the locality.
Waste management	The proposed facility will be unmanned and will restrict unauthorised access during its operation; therefore no waste will be generated. A condition of consent is to be imposed requiring the removal of any waste resulting from the construction process. No significant impacts with regard to waste are expected as a result of the proposal.
Bushfire Risk	The site is mapped as bushfire prone land (buffer), however, the portion of the site to be developed is not mapped as bushfire prone.
EME and Health	Mobile phone base stations emit electromagnetic energy (EME). It is mandatory that mobile network operators in Australia comply with current and future Australian Radiation protection and Nuclear Safety Agency (ARPANSA) standards for the operation of the proposed facility. The Australian Communications and Media Authority are the regulatory body for compliance with this standard. All telecommunications providers must strictly adhere to Commonwealth legislation and regulations regarding mobile phone and internet facilities and equipment administered by the Australian Communications and Media Authority (ACMA). Using the ARPANSA standard methodology, the applicant has undertaken a compliance report that predicts the maximum levels of radio frequency EME from the proposed development. The maximum EME level has been estimated as being 2.83% of the maximum exposure limit, which is well below the allowable exposure limit under the Australian Standard (i.e. 100% - which is still considered to be safe). The report was referred to Councils Environmental Health Officer for review. No issues were demonstrated with the data provided in the report.
Visual Impacts	Due to the proposal exceeding the mapped maximum building height limit, it is anticipated the site will be visible from the surrounding area. This visibility is mitigated by the location within the Green Hills Shopping Centre site, and surrounding mature vegetation to the south of the site. As detailed in clause 4.6 above, a visual impact assessment was provided in support of the application which details the site is screened to the north and west by the shopping centre itself, however will be visually prominent from the commercial area to the north and east of the site, being within the shopping centre car park, and to the adjacent commercial property carpark.



Image 4: Photomontage showing anticipated view from Stockland Green Hills Carpark looking east towards the structure



Image 5: Photomontage showing anticipated view from adjacent property to the east (Anytime Fitness carpark) off Molly Morgan Drive, looking west towards the structure.



Image 6: View from Moss Place looking north-west towards proposed structure and showing existing mature vegetation

	<p>The nearest residential property is approximately 130m away in Moss Place to the south, and the development is not anticipated to be visible from this location due to existing mature vegetation along two Mile Creek.</p> <p>Based on the photomontages, the visual effects of the of the proposal are mitigated by the combination of the existing vegetation surrounding the proposed location, and the existing commercial character of the area. To alleviate the visual impacts the tower has been designed as a monopole and is proposed to be finished in a recessive colour in order to blend the facility to ensure it is not a feature in the landscape.</p> <p>The visual impacts of the proposal are recognised, however they are not considered to be of significance to warrant refusal of the application.</p>
Cumulative Impacts	<p>There are no envisaged cumulative impacts associated with the development. EME exposure levels are well below the allowable standards and will be subject to ongoing monitoring.</p>

Section 4.15 (1)(c) - The suitability of the site for the development

The applicant has carried out investigations prior to selecting the subject site in terms of existing infrastructure and coverages and against relevant legislation and industry code requirements. The applicant has justified the development against the objectives and requirements of the Maitland LEP 2011 and Infrastructure SEPP. The subject site is considered suitable for the proposal development due to its logical location for range accessibility and target reach, cleared area for construction and suitable access. The subject site is considered suitable for the proposed development.

Section 4.15 (1)(d) - Any submissions made in accordance with this Act or the regulations

Public Submissions

- The proposal was publically notified/advertised for a period of 14 days in accordance with the Environmental Planning and Assessment Act 1979 and the Maitland Development Control Plan 2011.
- There were no submissions received during the exhibition period.

Government Agency Submissions

The proposal is of a type that does not require the Council, as the consent authority, to obtain the concurrence, comments or general terms of approval from another government agency.

Section 4.15(1)(e) - The public interest

The proposal is in the public interest as it will provide an important community benefit by providing access to critical mobile telecommunications services, meeting the community's increasing demand for quality and reliable mobile phone service and significantly improved network coverage and capacity in the area.

The proposed development will provide an improved mobile phone and mobile broadband network in the locality to service both the existing and future community. While some visual impacts are expected as a result of the proposal it is not considered that they are significant given the existing vegetation in the locality and the minimal nature of the development design. The application is therefore considered appropriate in terms of the public interest.

OTHER APPROVALS

The proposal does not require the Council to grant consent under legislation outside of the Environmental Planning and Assessment Act, 1979.

REFERRALS

Development contributions – 7.12 plan applies and has been conditioned accordingly.

Environmental Health – No issues raised and supported with no specific conditions.

Building Surveyor – No issues raised with standard conditions for erosion, rubbish, and hours of work, including standard conditions requiring BCA compliance and CC and OC.

ASSESSMENT CONCLUSION

An assessment of the application has been undertaken against Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979 as amended*. The proposed development is considered acceptable in terms of the relevant matters for consideration under the Act and the development application is recommended for approval.

RECOMMENDATION AND DETERMINATION

Consent be granted subject to the conditions provided in the attached schedule

Development Planner
Mia Gallaway