



**UNDER SEPARATE COVER
ATTACHMENTS**

**ORDINARY MEETING
12 MARCH 2024**

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City Planning

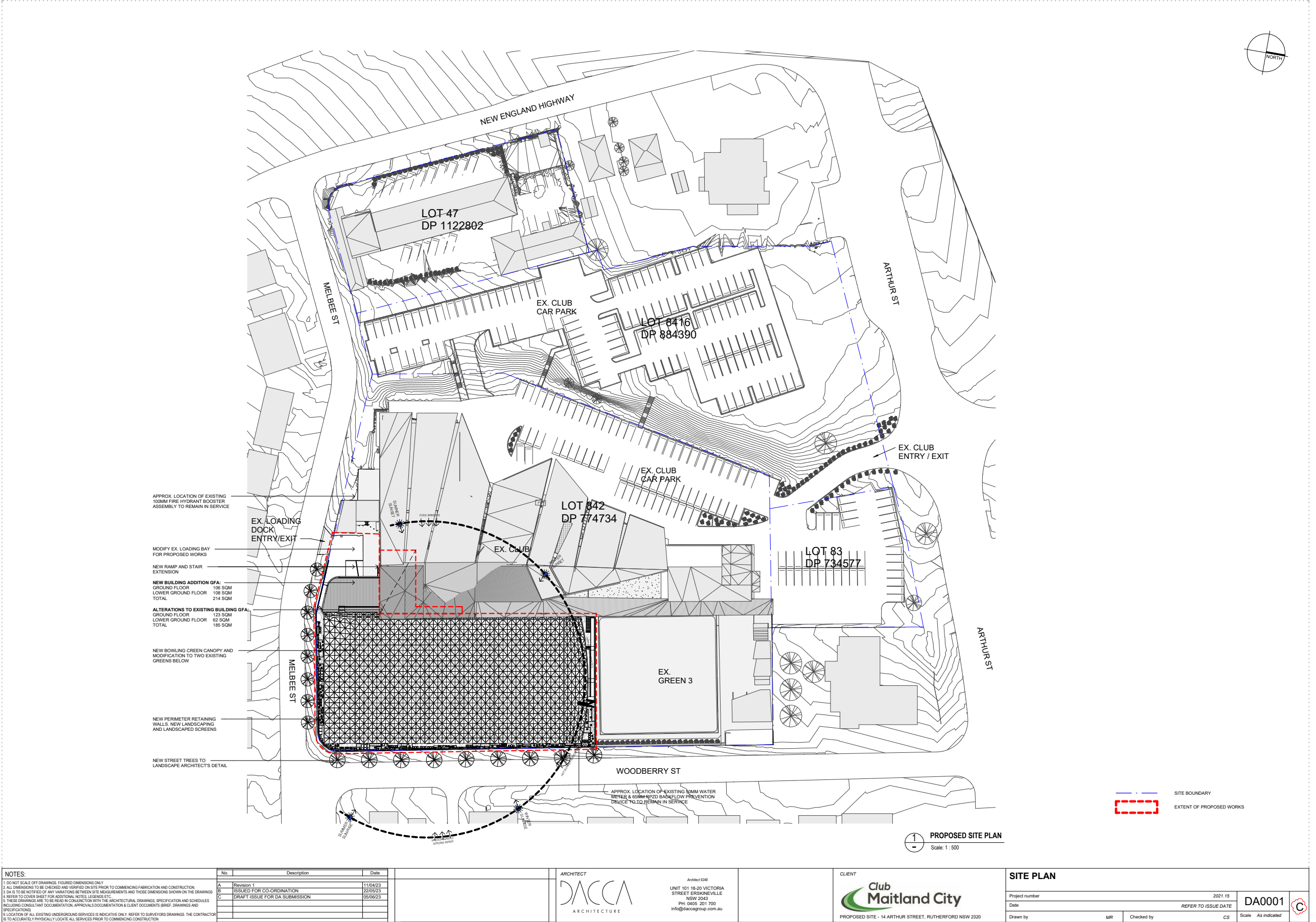
DA/2023/536 FOR ALTERATIONS AND ADDITIONS TO A REGISTERED CLUB AT MELBEE STREET RUTHERFORD

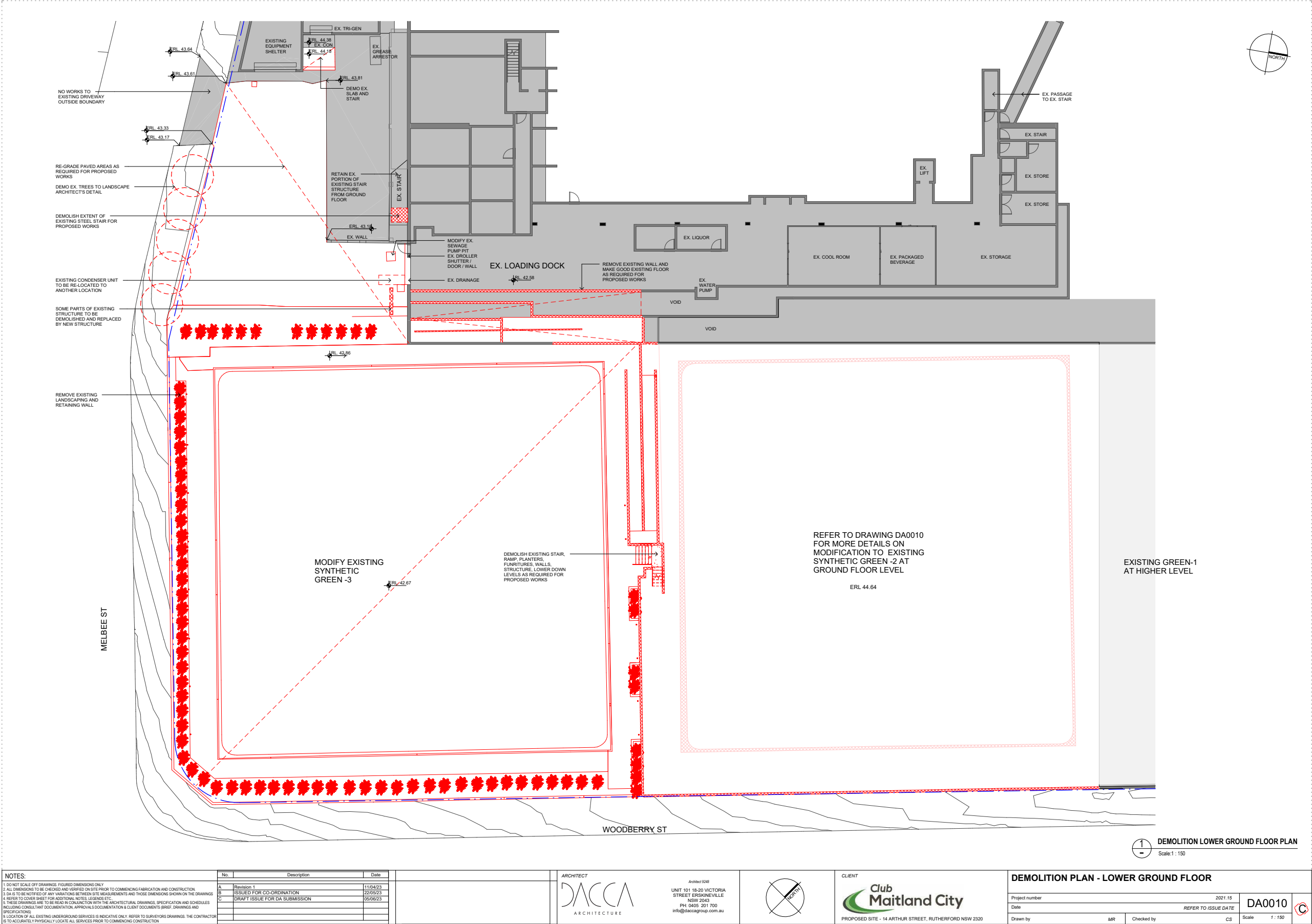
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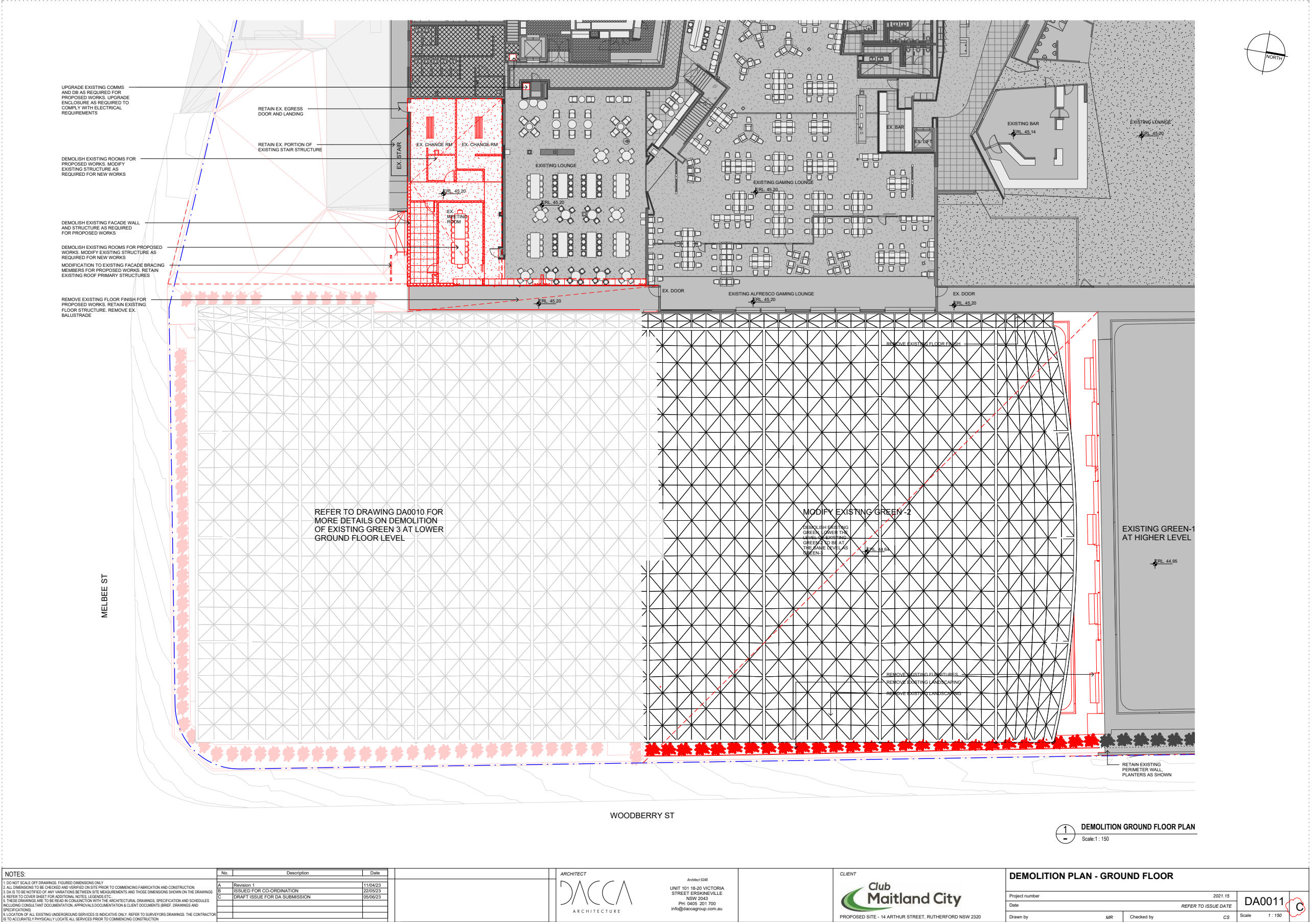
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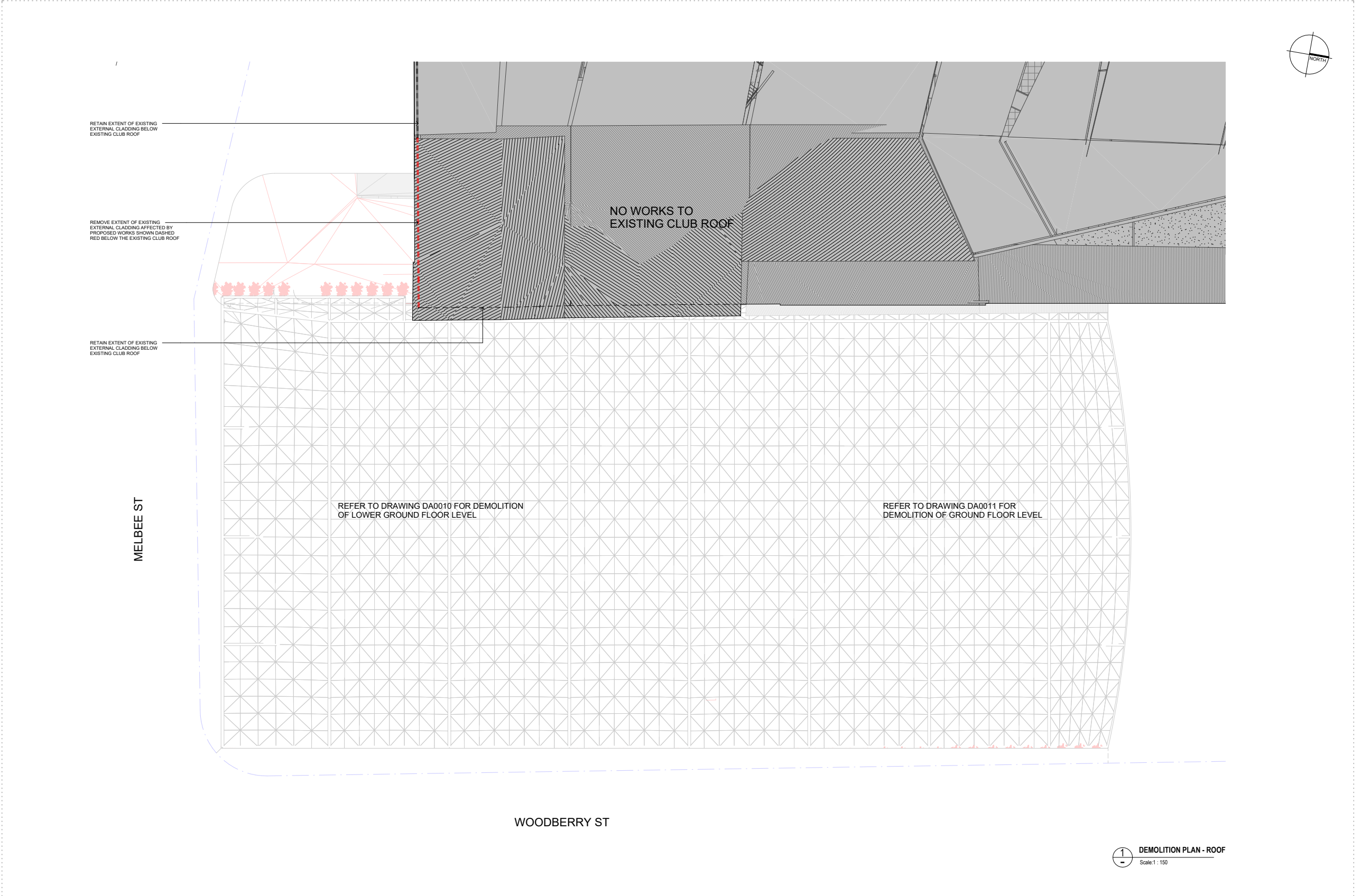
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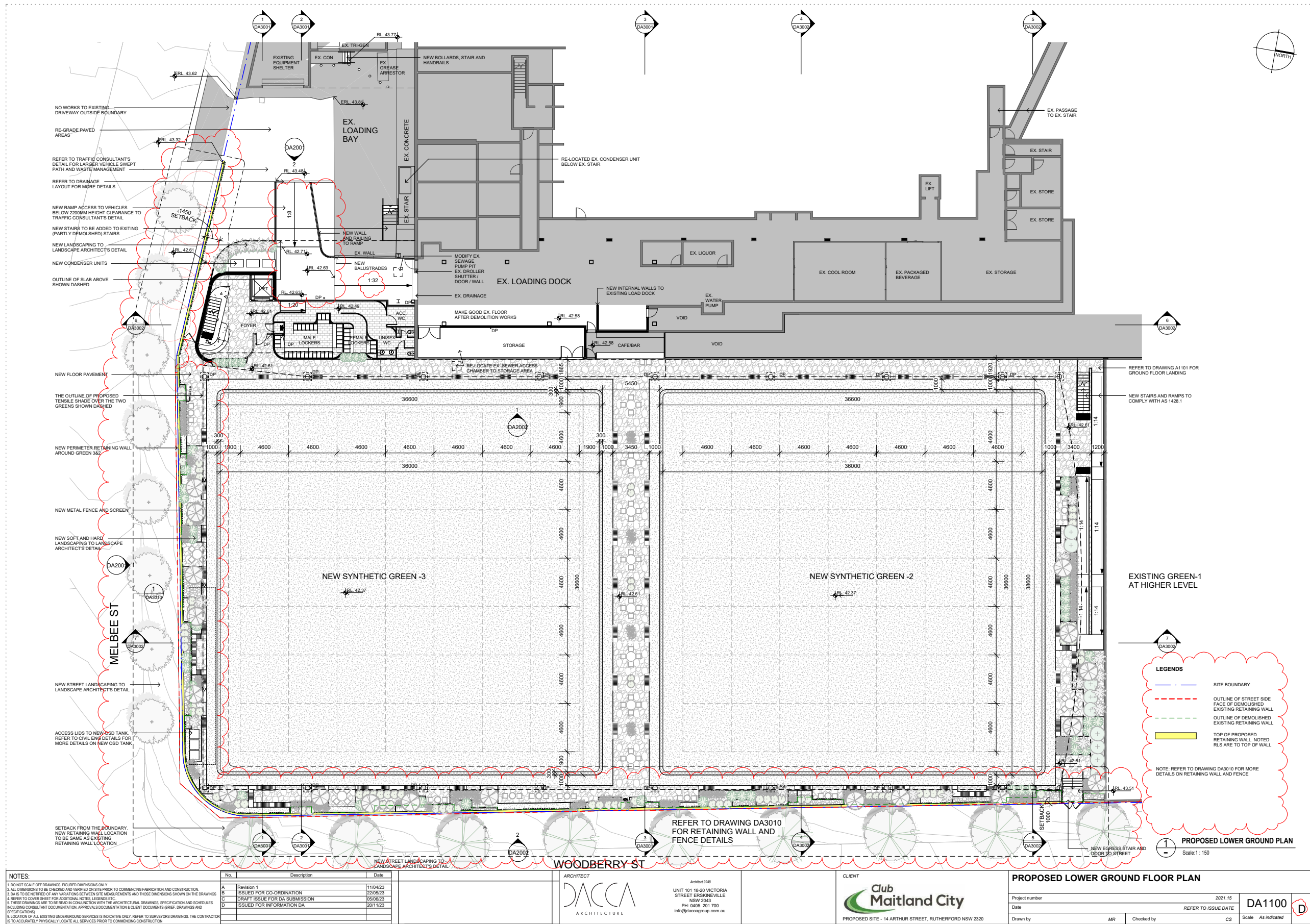


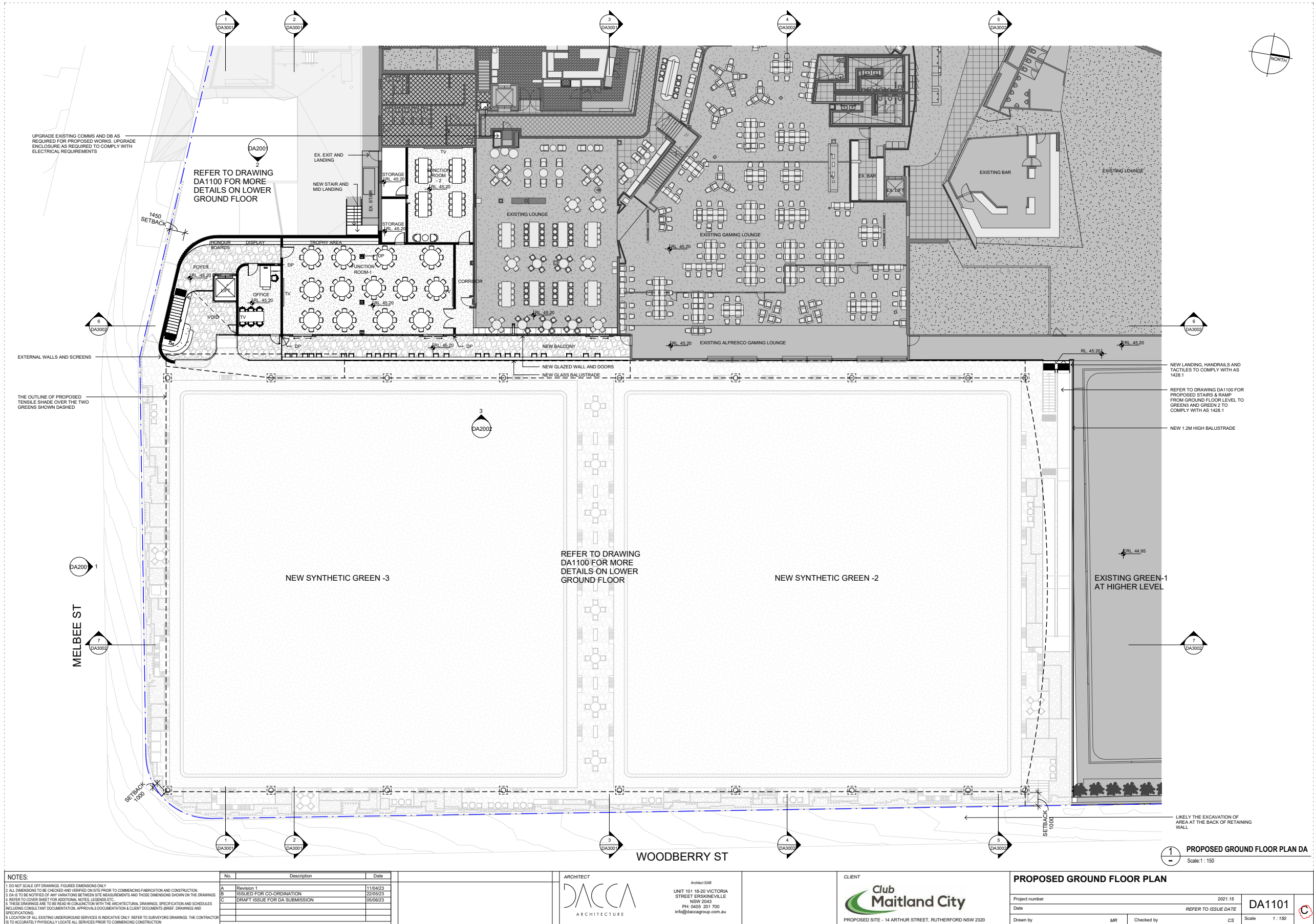











NOTES: 1. DO NOT SCALE OFF DRAWINGS. FIGURED DIMENSIONS ONLY. 2. ALL DIMENSIONS TO BE CHECKED AND VERIFIED ON SITE PRIOR TO COMMENCING FABRICATION AND CONSTRUCTION. 3. DASHES TO BE NOTIFIED OF ANY VARIATIONS BETWEEN SITE MEASUREMENTS AND THOSE DIMENSIONS SHOWN ON THE DRAWINGS. 4. REFER TO COVER SHEET FOR ADDITIONAL NOTES, LEGENDS, ETC. 5. THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE ARCHITECTURAL DRAWINGS, SPECIFICATION AND SCHEDULES INCLUDING CONSULTANT DOCUMENTATION, APPROVALS DOCUMENTATION & CLIENT DOCUMENTS (BRIEF, DRAWINGS AND SPECIFICATIONS). 6. LOCATION OF ALL EXISTING UNDERGROUND SERVICES IS INDICATIVE ONLY. REFER TO SURVEYORS DRAWINGS. THE CONTRACTOR IS TO ACCURATELY PHYSICALLY LOCATE ALL SERVICES PRIOR TO COMMENCING CONSTRUCTION.	No.	Description	Date
	A	Revision 1	11/04/23
	B	ISSUED FOR CO-ORDINATION	22/05/23
	C	DRAFT ISSUE FOR DA SUBMISSION	05/06/23
ARCHITECT DACCA ARCHITECTURE Architect 5048 UNIT 101 18-20 VICTORIA STREET ERSKINEVILLE NSW 2043 PH: 0495 201 700 info@daccagroup.com.au			
CLIENT Club Maitland City PROPOSED SITE - 14 ARTHUR STREET, RUTHERFORD NSW 2320			
DEMOLITION PLAN - ROOF Project number: 2021.15 Date: REFER TO ISSUE DATE DA0012 Drawn by: MR Checked by: CS Scale: 1:150			

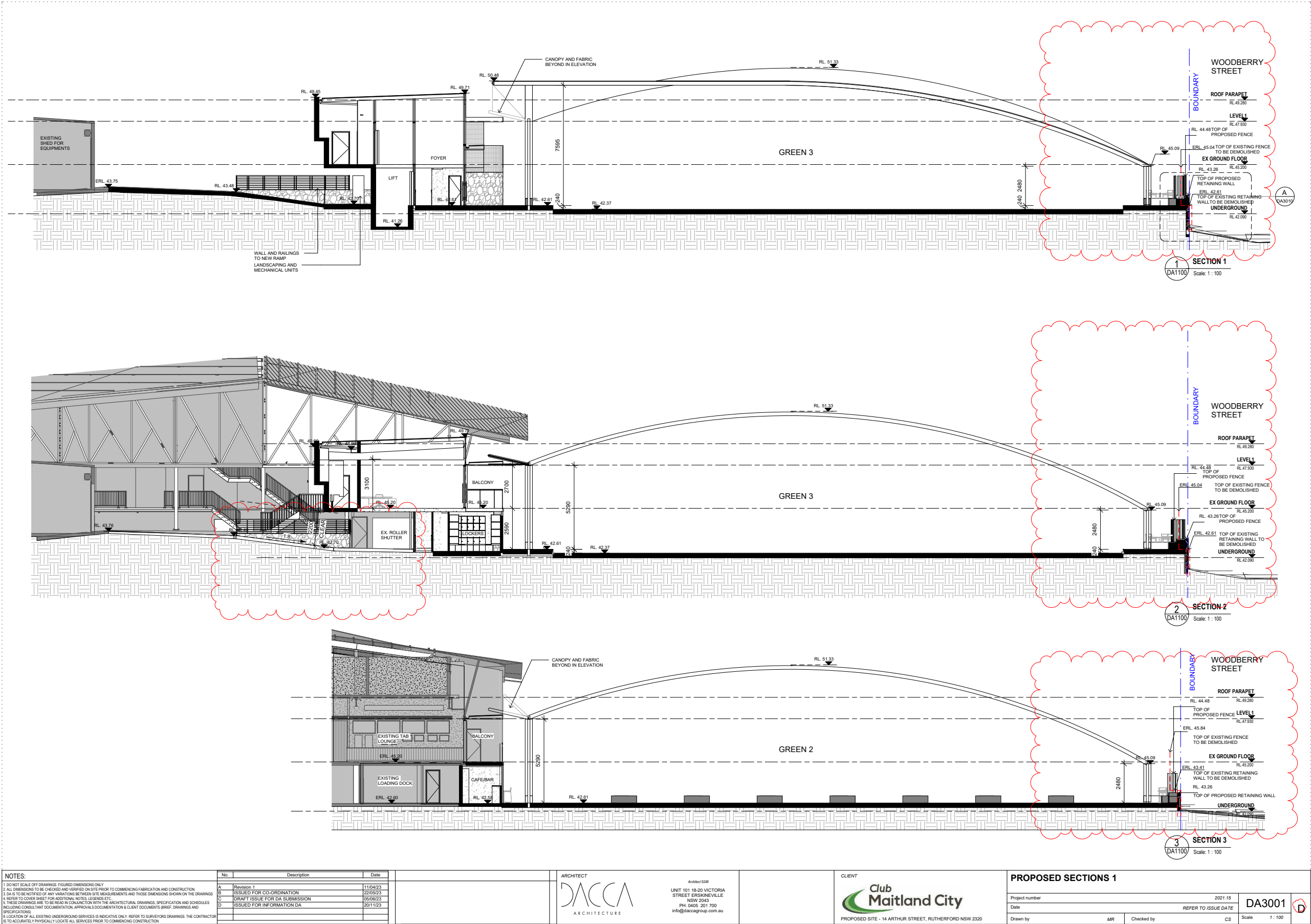


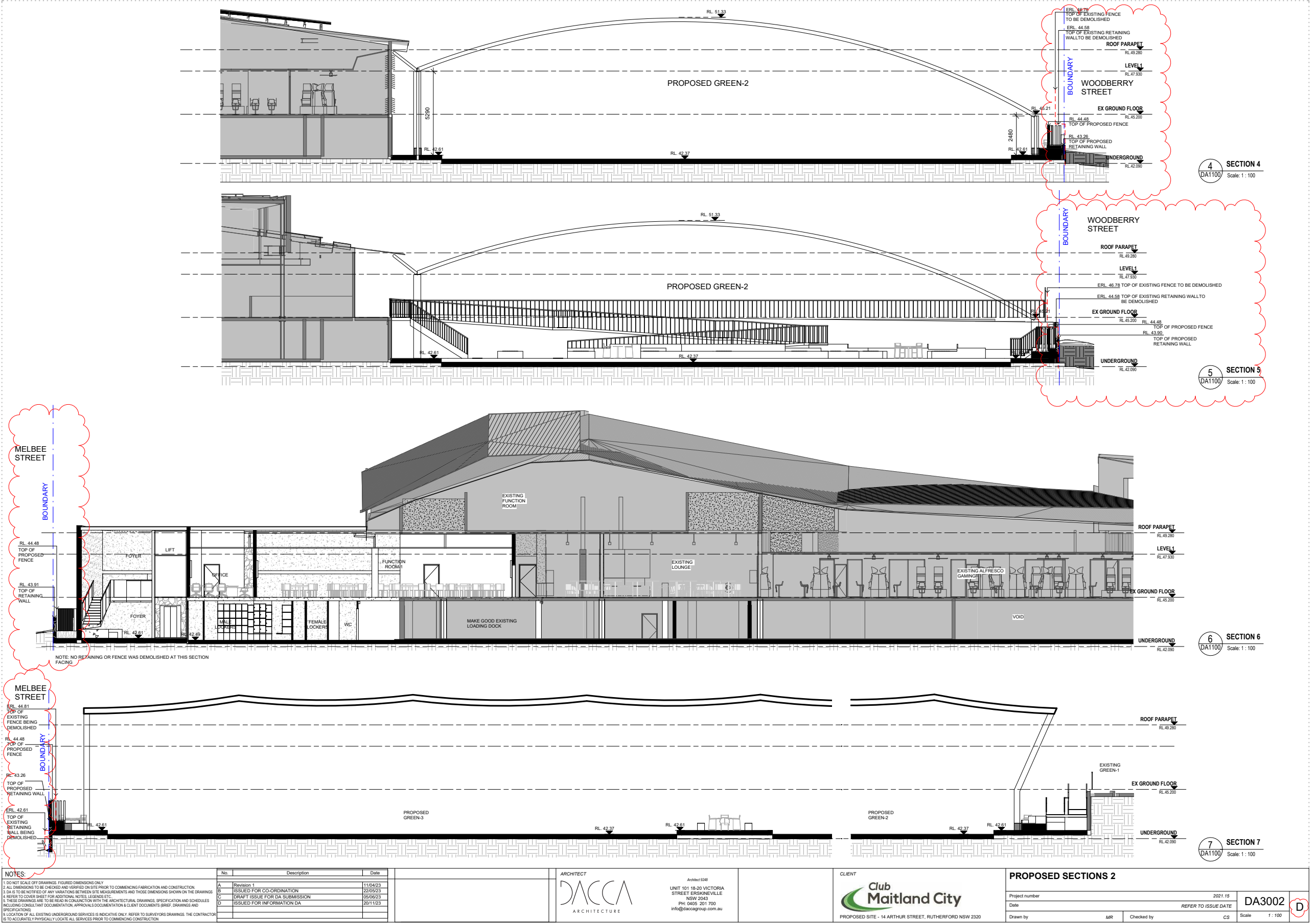


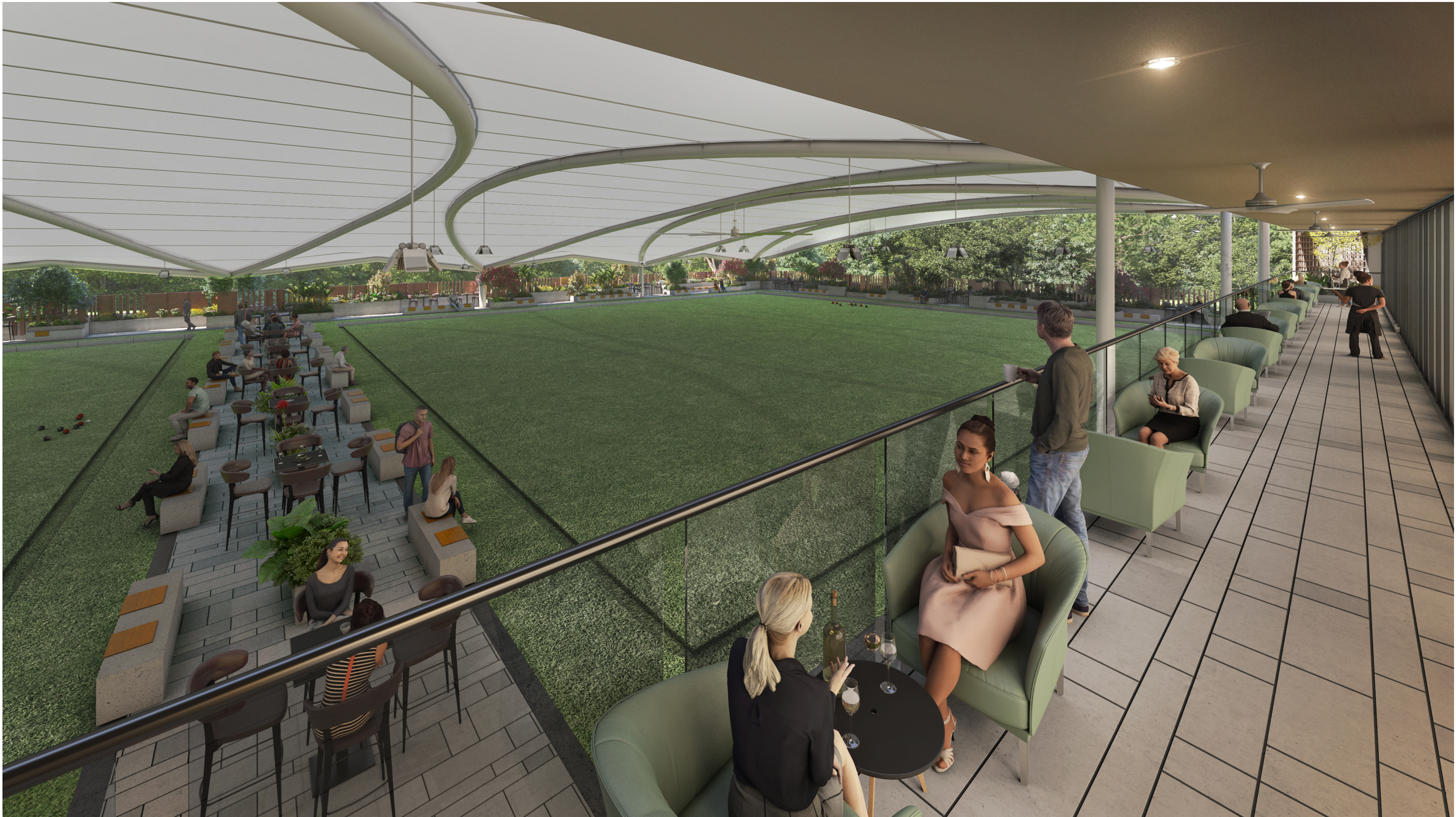


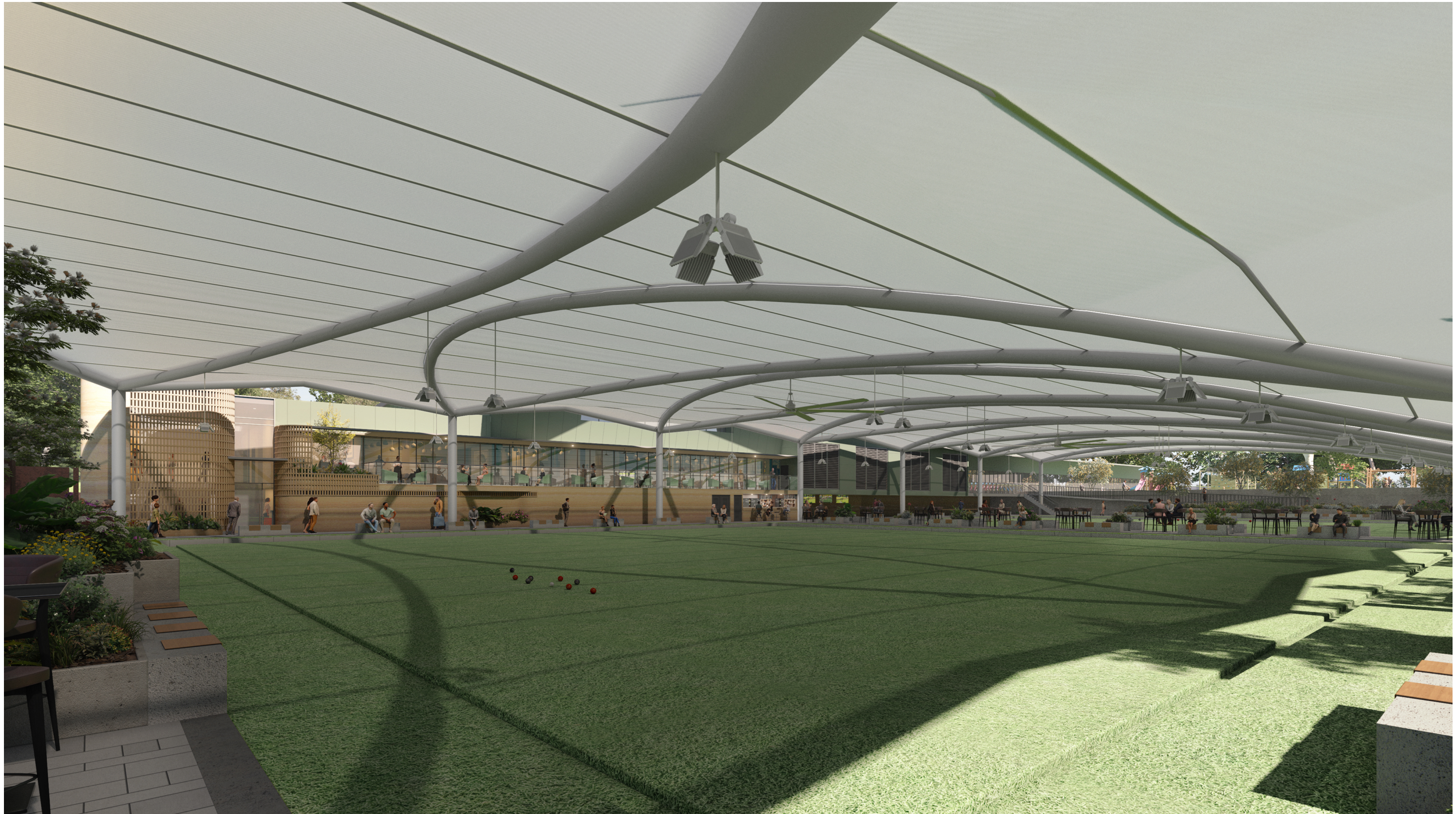


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City Planning

DA/2023/536 FOR ALTERATIONS AND ADDITIONS TO A REGISTERED CLUB AT MELBEE STREET RUTHERFORD

Assessment Report (Under Separate Cover)

Meeting Date: 12 March 2024

Attachment No: 3

Number of Pages: 13



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application No:	DA/2023/536
Proposal:	Alterations and Additions to Registered Club
Address:	Melbee Street RUTHERFORD NSW 2320
Lot & DP No:	842/774734, 8416/884390
Property No:	20474 37016
Applicant:	Hardy Consultant Services Pty Ltd
Owner:	Maitland City Bowls Sports and Recreation Club Limited
Author:	Thomas Howell
Site Inspection:	16 August 2023

INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2023/536 proposing Alterations and Additions to Registered Club. 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 the alterations and additions to a registered club. The proposed works include:

- Demolition of turfed bowling greens '2' and '3', demolition of a small ground floor addition consisting of change rooms and a meeting room at the south-eastern corner of the building and minor demolition works to the existing loading dock at the Melbee Street frontage.
- Removal of 5 x existing bottle brush trees at the Melbee Street frontage.
- Erection of two new synthetic bowling greens in place of the existing turfed bowling greens '2' and '3' proposed for demolition including replacement of existing retaining walls to the property boundaries along Melbee and Woodberry Streets, fencing, new seating areas and benches for players.
- New weatherproof shade canopy over both new bowling greens to a maximum height of 8.9m constructed of metal support columns and canvas fabric.
- New external lighting to bowling greens.
- Erection of a 186m² two-storey addition at the south-eastern corner of the building to replace the addition proposed to be demolished, and consisting of:
 - New female and male lockers, entry foyer, stairwell, lift and ramp to loading dock at the lower ground level.
 - New foyer landing area, lift, office, function rooms, balcony and associated corridors and storage rooms to the ground level.
- Alteration to existing loading dock to accommodate new extension including new ramp.
- Associated stormwater works including on-site detention to manage flows.
- Comprehensive landscaping across the site including planting of 17 new street trees to the Melbee and Woodberry Street frontages.

The application does not propose any changes to the existing operational management of the registered club.

Amended plans were provided 21 November 2023 in response to Council's concerns regarding the siting of new retaining walls in terms of locations and heights of existing retaining walls and grading of proposed ramp servicing the new entry to the existing loading dock. The amended plans provided notate existing locations and heights of retaining walls and have amended the ramp gradient to satisfy AS2890.1:2004 - Parking facilities – off street parking. The following assessment is based on these plans.

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

The site is known as Melbee Street Rutherford and has a legal description of Lot 842 in Deposited Plan 774734. The site is irregular in shape and has a total site area of approximately 1.5ha. The site is a corner allotment presenting a 115.26m wide frontage to Melbee Street and a 138m wide frontage to Woodberry Street. The site is zoned RE2 Private Recreation in which 'registered clubs' are permitted with consent. The site is also mapped as being within a potential mine subsidence area. The location of the site is represented in Figure 1 below.

The site is known as Club Maitland City and is currently occupied and used as bowling club. The site includes a large club facility, located centrally, and flanked by three bowling greens to the east and a large at-grade car park to the west. Vehicle access to the site and its associated carpark is gained via Arthur Street (north) whilst deliveries and services are provided via Melbee Street (south). The site is located with an urban environment, in proximity to New England Highway and is therefore located adjacent to a diverse mix of land uses including large business developments, tourist facilities to the north and west and single detached residential dwellings along the opposite side of both Melbee and Woodberry Streets.

The site is slopes to the southern-eastern corner of the site. No significant vegetation exists across the site.



Figure 1: aerial image of site (source: Maitland City Council)

A site inspection was undertaken **16 August 2023** as seen in the images below:



Photo 1: existing retaining walls from the intersection of Melbee and Woodberry Streets



Photo 2: existing retaining walls to Woodberry Street



Photo 3: approximate location of proposed additions



Photo 4: existing street trees proposed for removal

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
DA/2018/1702	Solar Energy System - Installation of Solar Panels on Existing Registered Club	27/09/2018	Operational Approval
DA02/2441	Erect Carpark Signage	8/08/2002	Operational Approval
DA02/2441:1	Erect Carpark Signage	2/10/2002	Operational Approval
DA02/2442	Use a Shipping Container as a Storage Shed	28/08/2002	Operational Approval
DA03/0988	Removal of Forty Two (42) Trees	13/05/2003	Operational Approval
DA04/0932	Internal Refurbishment	3/05/2004	Operational Approval
DA04/3010	Two (2) Entry Walls Two (2) Signs & B.B.Q. Shed	14/10/2004	Operational Approval
DA05/2194	Garage	19/10/2005	Operational

			Approval
DA06/1092	Redevelopment of Existing Bowling Club	24/10/2006	Operational Approval
DA06/1092:1	Minor Alterations to Approved DA for Club Extensions - Section 96 Modification	12/02/2007	Withdrawn
DA06/1092:2	Section 96(1A) Modification to Existing Approved Bowling Club - Amend Access Carparking Signage Light Poles & Remove Six (6) Trees	12/02/2014	Operational Approval
DA07/2988	Ramp & Retaining Wall	12/12/2007	Operational Approval
DA08/0026	Replace existing Retaining Wall	19/02/2008	Withdrawn
DA12/3492	Demolition of Existing Bus Shed & Additions/Alterations to Registered Club - New Bus Shed & Plant Room for Tri-Generation	7/02/2013	Operational Approval
DA13/2665	Temporary Mobile Kitchen & Temporary Storage Containers	25/11/2013	Operational Approval
DA92/139	Extensions to existing bowling club - function room	21/07/1992	Operational Approval

PLANNING ASSESSMENT - 4.15(1) matters for consideration

Development Type

- Under *Environmental Planning and Assessment Act 1979* ("EP&A Act") the development is classified as Integrated Development. Section 4.46 of EP&A Act requires that approval be obtained from another public authority prior to the granting of consent. General Terms of Approval have been obtained from the Subsidence Advisory NSW under the provisions of Section 22 of the *Coal Mine Subsidence Compensation Act 2017* and are attached to the notice of determination.

Contributions

- The proposal attracts a contribution of **\$72,611** 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 (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.

Five street trees are proposed to be removed as part of this application. No vegetation on the adjoining properties 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.

State Environmental Planning Policy (Resilience and Hazards) 2021Chapter 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 is identified by Council as being potentially contaminated land listing previous potentially contaminating uses occurring on the site including mining and extractive industries. As the proposal does not involve a change to a more sensitive land use the land could reasonably be considered as suitable for the proposed land use. Standard conditions will be imposed detailing protocols 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.

Maitland Local Environmental Plan 2011Clause 2.3 – Zone objectives and Land Use Table

The subject land is zoned RE1 Private Recreation under the Maitland Local Environmental Plan 2011 (LEP). The proposed development is defined as 'registered club' under the LEP which is a type of development permitted with consent.

The objectives of the zoning:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposed development provides for the continued operations of the Club Maitland City Bowling Club which is consistent with the zone objectives. There are no significant changes to the land use, or operational elements of the site as a result of the proposed development, as such, there are no anticipated adverse impacts on the amenity of surrounding land uses.

Clause 2.7 – Demolition requires development consent

The proposal includes demolition works to a portion of the existing building 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 5.10 – Heritage conservation

Clause 5.10 does not apply to the development application as pursuant to Schedule 5 LEP 2011, the subject site is not:

- heritage item of State significance
- heritage item of Local significance
- within a Heritage Conservation Area
- identified archaeological site
- within an Aboriginal place of heritage significance
- within the vicinity of a heritage item

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.5 Tree Management, B.6 Waste Not – Site Waste Minimisation & Management
- Part C – C.1 Accessible Living, C.11 Vehicular Access and Parking, C.12 – CPTED

A.4 – Notification

The application was placed on public exhibition for a period of 14 days from 14 July 2023 to 28 July 2023 in accordance with the *EP&A Act*, *EP&A Regs* and Maitland Development Control Plan (“DCP”) 2011. During this time one submissions was received. This is addressed under Section 4.15(1)(d) below.

B.5 – Tree and Vegetation Management

Five small street trees are proposed for removal due to proximity to proposed works and impacts during the construction. The trees are not considered to be significant and are supplemented by additional street tree planting of 17 trees across the Melee and Woodberry Streets. Conditions have been included ensuring that trees are removed in accordance with Council’s requirements and tree species and size are subject to a Section 138 approval.

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.

Waste generated from the operations of the development will continue to be serviced by a private waste contractor. No changes to the servicing arrangements are proposed.

C.1 – Accessible Living

An Access Report (Jensen Hughes, 14/06/2023) has been provided in support of the proposal. The development has been assessed for compliance with disability access legislation and Council’s requirements to ensure that visitors and staff alike are provided equal opportunities for access to and from the building as well as within the building. The Access Report demonstrates that the fundamental aims of accessibility legislation are achievable within the proposed development, spatial planning and general arrangements of facilities will offer inclusion for all building users, and the proposed architectural plans demonstrate that compliance with current statutory requirements affecting accessibility is achievable subject to detailed design at the Construction Certificate stage. Specific requirements for the detailed design include matters relating to principal pedestrian entrances, bowling greens, accessible toilets, and function room. Conditions of consent will be imposed requiring the development to comply with relevant provisions of the Building Code of Australia.

C.11 – Vehicle Access & Car Parking**Access**

Vehicle access to the site remains unchanged by this proposal. The works include changes to the loading dock to accommodate the proposed building additions. The loading dock is accessed via Melbee Street. A ramp has been provided to allow vehicles to reverse down and unload into the loading dock. Arrangement for waste servicing vehicles remains unchanged by the proposal as waste vehicles do not need to access the existing loading dock as waste is stored at ground level. Amended plans were

required to be provided by the applicant to demonstrate the loading zone and ramp can be designed for a minimum small rigid vehicle (SRV), not restricted to a B99 vehicle, requiring compliance with AS289.02. The grade of the ramp is proposed as 1:8 which is acceptable. However, no revised swept paths have been provided and the clearance height of the ramp is specified as being less than 2,200mm. The proposed design appears can be amended at construction certificate stage to achieve compliance. This is supplemented by a condition of consent requiring that the construction plans are certified by a suitably qualified traffic engineer as being in accordance with AS2890.

Parking

DCP 2011 sets out car parking rates for registered clubs at one space per 10m² of public or licensed floor area (bar, lounge, dining room, games room). DCP 2011 also requires 30 car parking spaces for the first bowling green and 15 spaces for each additional green. The existing development includes a licensed floor area of approximately 3,500m² and operates three bowling greens requiring a total of 417 car parking spaces. The proposed works retain the same number of bowling greens and increases the floor area of the registered club by 186m² requiring an additional 19 car parking spaces.

A total of 251 car parking spaces have been provided within the development and is not proposed to be amended. Whilst it is unclear what the applicable parking rates were at the time of the original DA for the site, it is noted that the existing car park currently operates adequately below the required capacity. A parking survey was conducted on Saturday 06/05/2023 and is analysed in the submitted Traffic Impact Assessment (The Transport Planning Partnership, 14/06/2023). The surveys indicates that the peak parking demand occurred at 7:00pm, where 173 out of 251 spaces were occupied (with 78 spaces vacant). This equates to a peak parking demand of 69%, which indicates that the existing car park at the time was more than adequate to accommodate the existing operations. The existing peak car parking demand currently operates a rate of 4.8 spaces per 100m² (that is, 173 spaces for 3,569m²). Further, based on information provided by the operator, the existing car parking currently operates satisfactory with ample parking capacity consistently available.

As the development is currently operating at a car parking deficiency, and the works propose a negligible increase in total floor area across the site, a variation to the car parking rates is necessary and supportable.

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 applicable to the proposal.

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*. Appropriate conditions have been placed on the consent. There are no other provisions within the *Environmental Planning & Assessment Regulation 2021* relevant to this application.

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 relevant policy, including LEP 2011 and DCP 2011 considerations. In addition, the following environmental impacts are considered below:

Noise

A Noise Impact Assessment ("NIA") report prepared by Acoustic Logic dated 14/07/2023, has been submitted with the application. The assessment was conducted in accordance with guidelines and standards set out by various authorities, including the Independent Liquor and Gaming Authority, the NSW Environment Protection Authority, and Australian Standard AS 1055:2018. These documents outline the procedures for measuring and analysing environmental noise, particularly in the context of construction and operational activities.

The report provides a review of residential receivers in proximity to the project which is represented in Figure 2 below:

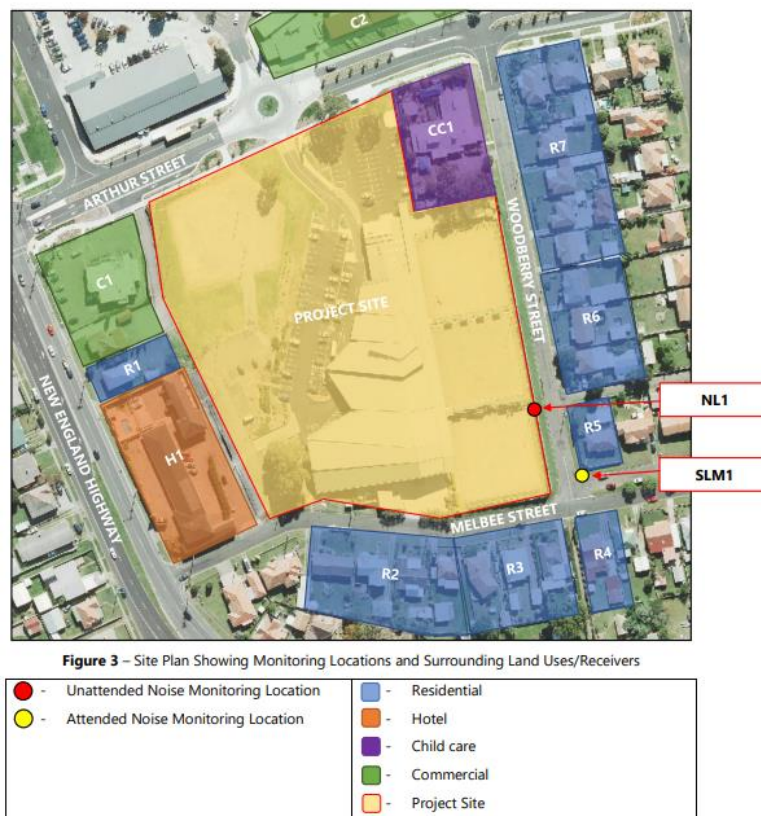


Figure 2: map showing monitoring locations and surrounds (source: Acoustic Logic 14/07/2023))

A noise logger (labelled "NL1" in the above Figure 2) 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 *Noise Policy for Industry* (2017).

Noise predictions from all operational sources (patrons, music noise) were quantified at surrounding residential receivers to the project site. The results of both daytime and night time are able to comply with the required maximum noise levels. The Independent Liquor and Gaming Authority ("ILGA") sets out specific noise criteria for licensed premises and has been used as the principal criteria for residential receivers. Calculations of noise emissions from the project to the nearest affected residential receivers are identified to satisfy the ILGA noise criteria from 7am to 7am assuming noise controls for the project are implemented. These measures include:

- A combined maximum of 30 patrons to remain outside after 10pm (located at the balcony area or between greens and club, no patrons allowed in banks or greens), and no external patrons after 12am.

- Doors and glazing for Function Room 1 (including existing function room adjacent to proposed function room 1) to be minimum 10.38mm glazing (minimum Rw35) with acoustic seals. Doors are to be installed with all gaps minimised. Any other spaces new spaces to be minimum 6.38mm laminate (Rw31) with acoustic seals.
- Windows and doors are assumed to be closed at all times, except for egress and ingress of patrons.
- All new external doors to have automatic closers.
- External disposal of bottles/waste should be done prior to 10pm, but not before 7am.
- Signs are to be displayed at the entrance of the development and in all external areas reminding patrons to minimise noise when departing the premises and when outside in the balcony/greens, especially during evening and night-time.
- That management keep a complaint register on site and that noise complaints are registered (if any) and what course of remedial action has been taken. This register should be stored on site and be accessible at all times.
- Underside of the roof over new external areas to be covered in absorptive lining with minimum NRC 0.95, for at least 50% of ceiling area.

Recommendation of noise controls also include managing noise levels, including:

- Amplified PA system within the Function Rooms is assumed to be limited to background music, creating a spatially averaged sound pressure level of 80dB(A)L10 until 12am, and 75dB(A)L10 after 12am.
- Amplified PA system within the external areas is assumed to be limited to background music and announcements, with the occasional viewing of sports events.
 - Noise levels not to exceed 60 dB(A)L10 at 1 metre away from the speaker.
 - From 10pm-7am, no external PA is allowed to be in use.
- It is recommended that a full acoustic review of the AV system is conducted when design is finalised to make sure compliance with noise levels are achieved.
- No live music is expected at the venue.

Further to the above, the proposed development does not seek any amendment to the current operating hours of the registered club. .

Conditions of consent will be included to ensure the construction and operations of the development can comply with the relevant noise policy and subject to the recommendations outlined in the NIA prepared by Muller Acoustic Consultants.

Retaining walls

Retaining walls are proposed along property boundaries to the entire frontage of Woodberry Street and to most of the Melbee Street frontage from the south-eastern corner at the intersection of Woodberry Street up towards the south-west of the site terminating at the service entrance and loading dock. These retaining walls replace existing breezeblock retaining walls at the same locations. The retaining walls, although proposed in the same location, vary in heights. This height difference accounts for the proposed overall change in levels across the site due to the removal of the two-tiered bowling greens and replacement with new synthetic bowling greens at the same level. The bowling green '2' proposes to change in level from 44.64RL to 42.37RL whereas bowling green '3' proposes to change in level from 42.67RL to 42.37RL. Retaining wall heights along Woodberry Street are significantly reduced by a maximum of 1.2m in some instances, whilst retaining walls along Melbee Street are slightly increased at the south-eastern corner.

The retaining walls are proposed to be clad in stone masonry with landscaping proposed in between and on top of the proposed walls at different sections to aid in softening the impact of the bulk as viewed from the southern adjoining property. Significant tree planting to the Melbee and Woodberry Streets also aid in softening the appearance of the retaining walls and as such the impacts are negligible.

Bulk and scale

The subject site is excluded from the building height map prescribed by LEP 2011. It is also noted that DCP 2011 excludes any specific requirements relating to building heights and siting of new buildings for commercial or recreational developments. Due to the height of the proposed shade structures which is at a maximum of 8.9m from the existing ground level noting that the bowling greens are higher than the natural ground level along the road reserves of Melbee and Woodberry Streets. As such, the proposal is expected to have some visual impact within the locality. The visual impact is not expected to be significant given the design, colours and materials have been chosen to be complementary to the existing clubhouse and surrounding development. The lightweight canvas material of the shade structure and curve of the roof ensures the structure does not appear dominant or excessive particularly as the height of the structure reduces down from the centre of the bowling greens towards the eastern and western elevations to a height of 3.12m. Additional landscaping is proposed in the south and eastern elevations to provide visual relief. This includes a selection of larger trees which will assist in softening the impact of the built form, particularly as viewed from the existing residential areas on the opposite sides of Melbee and Woodberry Streets.

The proposed built form provides adequate building separation to adjoining properties and does not unreasonably impact on the amenity and privacy of adjoining development. As discussed, the landscaping and perimeter planting aids in softening the bulk of the built form when viewed from the public interface. The applicant has provided overshadowing diagrams in support of the application which demonstrates that all existing dwellings that surround the proposed development are able to retain compliant solar access.

External lighting

The proposed development consists of several external activity areas including the new undercover bowling greens, new entry foyer, and landscaped green boundaries; all of which will occasionally be used at night. External lighting is proposed at these locations in accordance with required crime prevention through environmental design (CPTED) principles. It is noted that external lighting installation requires strict management to prevent obtrusive spill lighting into the surrounding community. This spill can negatively affect nearby residents, businesses, and wildlife. Issues include discomfort glare from poorly aimed luminaires and increased night sky brightness from excessive upward light. The development is located within proximity to residential development to the east and south who are considered the most at-risk sensitive receiver. An external lighting assessment prepared by Marine Building Services Engineers dated 09/06/2023 has been provided to assess the proposed development and any potential impact of the external lighting upgrades on the surrounding environment. There are several Australian Standards that apply to managing obtrusive lighting, including:

- AS1158 'Lighting for Roads and Public Spaces'
- AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'
- AS 2560.2:2021 'Sports lighting'

The report concludes that the proposed external lighting can be installed in accordance with the requirements of AS1158, AS4282 and AS2560 and all other applicable standards. Conditions are recommended to ensure that external lighting complies with these requirements and the finding of the external lighting report.

The development is located within a site suitably zoned for the proposed use and is 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 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 subject site is within a zone suitable for the proposed development. The proposal utilises modern building techniques and a design which is complementary to the desired future character of the area. The development adheres to site constraints and restrictions and does not unreasonably impact the surrounding environment. 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.
- One submission was received during the exhibition period. The submission raised objection to the proposal. A summary of the submissions is provided in the following table:

Review of Submissions		
Submission No.	Issue	Comment
1	Location of tree planting along Woodberry Street particularly regarding impact to stormwater lines and safety.	<p>Conditions of consent have been included requiring the applicant to submit a Section 138 Certificate for works within the road reserve, including planting of trees, prior to the works commencing. The condition also stipulates the landscaping works are to be undertaken in accordance with Council's Manual of Engineering Standards which requires a minimum clearance of 1.2m from existing kerbs and associated drainage.</p> <p>The tree species will be approved by Maitland City Council during the Section 138 certificate stage. Maitland City Council approved street tree species are chosen appropriately to ensure safety to pedestrians. Further, a condition of consent requires the developer to maintain the trees for two years before maintenance is given to Council. This helps guarantee that trees are maintained at a reasonable level to not create any safety risk.</p>

Government Agency Submissions

- General terms of approval (GTA's) have been provided by the following government agencies on the basis that the development is classified as integrated development under Section 4.46 of the *Environmental Planning and Assessment Act 1979*. A summary of the requirements of each government agency is provided in the following table:

Government Agency Submissions (GTA's)

Responding Agency	Section/Act under which GTA's are provided	Summary of requirements
Subsidence Advisory NSW	Section 22 of the <i>Mine Subsidence Compensation Act 2017</i>	<ul style="list-style-type: none">Grouting requirements and reporting.Certification of works.

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

The proposal is within the public interest as it will continue to provide recreational services to serve 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 is typical of that within the locality and will not result in an 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 Development Engineering Team, Environmental Health Team, Building Surveying Team, Community Planning Team and Development Contributions Administrator. Subject to recommended conditions of consent no objections were raised.

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: 14 February 2024

City Planning

DA/2023/536 FOR ALTERATIONS AND ADDITIONS TO A REGISTERED CLUB AT MELBEE STREET RUTHERFORD

Recommended Conditions of Consent (Under Separate Cover)

Meeting Date: 12 March 2024

Attachment No: 4

Number of Pages: 13

Schedule of Conditions DA/2023/536**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

1. 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 to this consent or as shown in red colour on the plans:

Plan Ref No.	Sheet No.	Revn No.	Revision Date	Prepared by: (consultant)
<u>Plans / 2021.15</u>				
Site Plan	DA0001	D	28/06/2023	Dacca Architecture
Demolition Plan – Lower Ground Floor	DA0010	C	05/06/2023	
Demolition Plan – Ground Floor	DA0011	C	05/06/2023	
Demolition Plan – Roof	DA0012	C	05/06/2023	
Proposed Lower Ground Floor	DA1100	D	20/11/2023	
Proposed Ground Floor	DA1101	C	05/06/2023	
Proposed Roof Plan	DA1102	C	05/06/2023	
Proposed Elevations 1	DA2001	D	20/11/2023	
Proposed Elevations 2	DA2002	D	20/11/2023	
Proposed Sections 1	DA3001	D	20/11/2023	
Proposed Sections 2	DA3002	D	20/11/2023	
Retaining Wall Details	DA3010	A	20/11/2023	
Landscape Plans / 23948	LP01, LP02	A	06/06/2023	Matthew Higginson Landscape Architecture Pty Ltd
Stormwater Plan / SY232-011	DAC401	C	07/06/2023	van der Meer Consulting
	DAC402	B	19/05/2023	

Noise Impact Assessment / 20230351.1/1407A/R2/BJ	-	2	14/07/2023	Acoustic Logic
Access Assessment Report / 117581	-	1	14/06/2023	Jensen Hughes
External Lighting Report / MN14004	-	1	09/06/2023	Marine Building Services Engineers

GENERAL TERMS OF APPROVAL

2. The General Terms of Approval from state authorities may be complied with prior to, during, and at completion of the development:

The General Terms of Approval are:

- Subsidence Advisory NSW, TBA23-02192, DA/2023/536, dated 19 December 2023.

A copy of the General Terms of Approval is attached to this determination under Schedule 2.

CONTRIBUTIONS & FEES

3. Pursuant to Section 57.12 of the Environmental Planning and Assessment Act 1979 and the Maitland S94A Levy Contributions Plan 2006, a contribution of **\$72,611** shall be paid to the Council.

The above amount may be adjusted at the time of payment in accordance with the provisions of the Maitland S94A Levy Contributions Plan 2006. 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.

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

This 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 and the provisions of section 7.12 of the Environmental Planning and Assessment Act, 1979.

CERTIFICATES

4. The applicant shall submit to Council a "Notice of Commencement" form at least two (2) days prior to the commencement of construction works.
5. **Prior to the commencement of works** an application for a Construction Certificate shall be submitted to, and be approved by, the Accredited Certifier.
6. **Prior to the issue of an Occupation Certificate** all conditions of development consent shall be complied with.
7. **Prior to occupation** of the building an Occupation Certificate shall be issued by the Principal Certifying Authority.

8. **Prior to issue of the Construction Certificate**, a Compliance Certificate under Section 50 of the Hunter Water Act 1991 for this development, shall be submitted to the Accredited Certifier.

DEMOLITION

9. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001.
10. 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.
11. 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.

LANDSCAPING

12. **Prior to the issue of the S138 (under the Road Act) approval** for the trees within the road reserve detailed "landscape plans(s)", in accordance with Council's tree planting guidelines and Manual of Engineering Standards shall be submitted to Council for approval. The plan shall include:
- a) Be designed by a suitably accredited landscape architect.
 - b) Be of a design and construction standard that minimises ongoing maintenance costs to Council
 - c) Street trees shall have a minimum pot size of 45 Litres (desirably minimum height of 1.5m at time of planting)
 - d) include details of the height and spread at maturity (of the approved species).
 - e) be generally in accordance with the Landscape Plans approved by this consent.
13. **Prior to the issue of the occupation certificate**, written documentation shall be provided from council that the street trees as approved under the S138 Roads Act approval (trees within the road reserve) have been installed to the satisfaction of council.
14. **Prior to the issue of the occupation certificate**, the applicant shall provide to Council a copy of a 'landscape maintenance agreement' with a qualified landscape contractor to secure maintenance of street trees for a period of not less than 2 years in accordance with the approved landscape plan. Prior the 2 year period lapsing, the applicant must make provisions with Council for Council to continue maintenance of the street trees.
15. A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority **prior to the issue of the Occupation Certificate**. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications approved under Condition 1 and is to verify that an effective maintenance program has been commenced.
16. All landscaped areas of the development shall be maintained in accordance with the approved

landscape plan. The landscaped areas shall be kept free of parked vehicles, stored goods, waste material, and the like.

ACOUSTIC MEASURES

17. The use and occupation of the premises including all plant and equipment installed therein, shall not give rise to any offensive noise as defined under the *Protection of the Environment Operations Act 1997*.
18. Acoustic treatment is to be implemented in accordance with the recommendations set out in Section 7 of the report prepared by **Acoustic Logic, 14/07/2023 (Ref: 20230351.1/1407A/R2/BJ)**. Written certification from an appropriately qualified acoustic consultant is to be submitted to the Principal Certifying Authority **prior to issue of an Occupation Certificate** verifying that the recommended acoustic treatment has been implemented in accordance with the requirements of the above report. Written confirmation is also to be provided to the Principal Certifier that noise from all mechanical plant and equipment achieves the required acoustic attenuation to comply with the conditions of consent and the requirements of the *Protection of the Environment Operations Act 1997*.

Note: The acoustic consultant may need to be involved during the construction process, in order to ensure that final certification is achieved.

19. The operations of the development are to be undertaken with the noise management recommendations set out in Section 7 of the report prepared by **Acoustic Logic, 14/07/2023 (Ref: 20230351.1/1407A/R2/BJ)**.
20. A letterbox drop shall be undertaken to residential premises within the immediate vicinity of the site at least 48 hours prior to noisy operations or works that may cause noise nuisance. The letter shall include, but not be limited to, the following information: the likely duration of the nuisance; and a 24 hour contact name and number for a person responsible for activities on the site.

WASTE STORAGE

21. Facilities are to be provided in a screened location within the premises for the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements are to be made for regular removal and disposal of same. Full details are to be **included in documentation for a Construction Certificate Application**.

EXTERNAL LIGHTING

22. Lighting is to be provided to all entrances and exits of the premises and is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties. All lighting must comply with AS1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
23. External lighting to the new covered bowling greens and other external areas are to be installed in accordance with recommendations outlined in the endorsed External Lighting Report prepared by **Marine Building Services Engineers, 09/06/2023 (Ref: MN14004)**. All lighting must comply with AS1158 'Lighting for Roads and Public Spaces', AS 4282 'Control of Obtrusive Effects of

Outdoor Lighting' and AS 2560.2:2021 'Sports lighting'.

ACCESS

24. Recommendations outlined in the endorsed Access Report prepared by **Jensen Hughes, 14/06/2023 (Ref: 117581)** are to be complied with. Full details are to be **included in documentation for a Construction Certificate application.**

PLANT EQUIPMENT

25. All redundant services (e.g., satellite dishes etc.) shall be removed if no longer in service. Any roof plant or condenser units shall be located and/or screened such that they will not be visible from a street or public place.

VEHICLE ACCESS

26. **Prior to issue of the construction certificate** for the vehicle access, access ramp and driveway off Melbee Street, certification shall be provided by a suitably qualified traffic engineer certifying that the construction plans comply with the requirements of AS2890. The certification shall cover the access off Melbee Street, the modified loading bay, new ramp access and all vehicle access areas impacted by the approval under this consent.
27. If works are required to the existing driveway cross-over off Melbee Street within the road reserve then **prior to commencement of construction** of the driveway crossing on the public footway 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 appropriate fee (for each driveway).
28. If works are required to the existing driveway cross-over off Melbee Street within the road reserve then **prior to issue of the Occupation Certificate** the driveway layout and profile shall be constructed in concrete (heavy duty), in accordance with Council's Manual of Engineering Standards, which include the retention of (or if damaged reconstruction as plain concrete of) any existing footpath, and with reference to Council's information document "*Footway Crossings (Driveways)*".

STORMWATER DRAINAGE

29. **Prior to 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) On-site Detention (OSD) of stormwater that reduces post-developed discharges to pre-developed discharges for the 1 year, 10% and 1% AEP critical storm events, and strictly in accordance with **drainage plan number SY232-011 by van der Meer Consulting (drawing DAC401 Rev C and drawing DAC 402 Rev B)**, and
 - b) Detailed pavement finished surface levels demonstrating 1% conveyance paths to, and 1% inlet capacity into the OSD tank/structure, and
 - c) Structural certification is required for underground detention systems, 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, nutrients and hydrocarbons generated from the contributing ground-surface catchment areas, and
- f) conveyance where necessary, of stormwater through the site from upstream catchments, (including roads and adjoining properties).

30. **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.
31. **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.
32. **Prior to the issue of the S138 (under the Road Act) approval** for the public stormwater work (stormwater pipes and pit(s) augmentation within the road reserve) as shown on drainage plan number SY232-011 by van der Meer Consulting drawing DAC401 Rev C, a stormwater plan in accordance with Council's Manual of Engineering Standards shall be submitted to Council for approval. The plan shall include:
- a) Construction details of pit(s) augmentation
 - b) Reinforced concrete pipes for all pipes within the road reserve
33. **Prior to the issue of the occupation certificate**, written documentation shall be provided from council that the stormwater drainage works (stormwater pipes and pit(s) augmentation as shown on drainage plan number SY232-011 by van der Meer Consulting drawing DAC401 Rev C) within the road reserve as approved under the S138 Roads Act approval have been installed to the satisfaction of council.

EROSION CONTROLS

34. 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".

RETAINING WALLS/GEOTECHNICAL

35. All retaining walls structural items shall be wholly contained within the development site and designed by a structural engineer.
36. **Prior to the issue of the relevant construction certificate**, a suitably qualified geotechnical engineer shall certify that plans are in accordance with the following geotechnical reports:
- Report on Geotechnical Investigation by Douglas Partners, project 39498.06 and dated March 2015
 - Report on Mine Subsidence Investigation by Douglas Partners, project 39398.08 and dated October 2023.

37. 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.

Where a retaining wall is planned for this purpose and such wall requires consent (refer to State Environmental Planning Policy -Exempt and Complying Development Codes, 2008) plans and specifications of the wall shall be approved by Council and/or an accredited certifier.

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.

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.

38. If an excavation extends below the level of the base of the footings of a building/structure on an adjoining allotment of land, the person causing the excavation to be made.

- i) Must preserve and protect the building/structure from damage, and
- ii) If necessary, must underpin and support the building/structure in an approved manner, and
- iii) Must, at least 7 days before excavating below the level of the base of the footings of a building/structure on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building/structure being erected or demolished.

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).

BUILDING CONSTRUCTION

39. All building work shall be carried out in accordance with the provisions of the Building Code of Australia.
40. All excavations and backfilling shall be executed safely, in accordance with appropriate professional standards and shall be properly guarded and protected to prevent the works from being dangerous to life or property.

41. 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.

SERVICES & EQUIPMENT

42. Upon completion of the building BUT prior to its occupation, a Final Fire Safety Certificate with respect to each critical and essential fire safety measure installed in the building shall be

submitted to Council. Certificates shall be prepared in accordance with Part 11 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation, 2021.

43. A copy of the Fire Safety Schedule and Fire Safety Certificate shall be prominently displayed in the building in accordance with Part 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.
44. A Fire Safety Statement in respect of each required essential and/or critical fire safety measure installed within the building shall be submitted to Council and the NSW Fire Commissioner annually (or at a more frequent interval for supplementary statements).
- Statements shall be prepared and issued in accordance with Part 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation, 2021. Note that monetary penalties may apply for failure to lodge a fire safety statement within the prescribed timeframe.
- Statements to the NSW Fire Commissioner are to be submitted electronically to afss@fire.nsw.gov.au.
- Standard forms and further information for lodging Fire Safety Statements may be downloaded from Council's website.

SITE CONSIDERATIONS

45. 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.
46. If the work:
- i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - ii) involves the enclosure of a public place
- a hoarding or fence must be erected between the work site and the public place.
- If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.
47. A sign must be erected in a prominent position on the work:
- i) stating that unauthorised entry to work site is prohibited, and
 - ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted during work hours.
- Any such sign is to be removed when the work has been completed.
- Note: This condition does not apply to:*
- i) building work carried out inside an existing building, or
 - ii) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
48. Approved toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one

toilet for every 20 persons or part of 20 persons employed at the site. The provision of toilet facilities in accordance with this Clause must be completed before any other work is commenced.

- 49. The site is to be cleared of all building refuse and spoil immediately after completion of the building/structure.
- 50. No building materials, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath.
- 51. Suitable and adequate measures are to be applied to restrict public access to the site and building works, materials and equipment.

ADVICES

The following advice is 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 for necessary for supply of services (such as water, sewer, electricity, gas), further consent for a "Road Opening" must be obtained from Council.
Refer to Council's form: "Application for Registration to Open Roads/Footpaths".
- B** 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.
- C** You (or the owner) are advised to notify Council in writing, of any existing damage to the street infrastructure (including landscaping) along the frontage of the property, 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 property shall be held liable for the cost of those repairs.
- D** You are advised that there may be design matters in relation to the drainage *concept* plan that warrant further attention prior to the issue of the Construction Certificate.
- E** You are advised that, prior to pouring of internal concrete driveways and kerbs, which act as surface depression storage for the stormwater detention, (and/or surfaces which divert runoff to those storage areas), levels should be confirmed, by survey, on formwork and control marks.
- F** You are advised that further consent for a driveway across the footway verge must be obtained. *Inspections* of works (eg formwork & reinforcement **MUST** be carried out by Council. (See Council's "Application To Construct Private Works On Footway"). You should contact Council (ph. 49 34 9700), giving at least 24 hours notice for inspections.
- G** You are advised that the issue of this development consent does not amount to a release, variation or modification by Council of any covenant or easement applicable to this property and that Council will not be held responsible when action on this consent results in any loss or damage by way of breach of matters relating to title of the property.
- H** You are advised that compliance with the requirements of the Disability Discrimination Act,

(DDA) applies to works on this site. It should be noted that compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.

- I You are advised that any proposed advertising signs are subject to a separate Development Application to Council.

Schedule 2 – General Terms of Approval – Subsidence Advisory NSW**Subsidence Advisory**

FN86-01977S0
Our Ref: TBA23-02192
19 December 2023

Maitland City Council
Attn: Thomas Howell
Via NSW Planning Portal

Lot/DP: DP/842/-/774734
Address: MELBEE ST RUTHERFORD
DA: DA/2023/536

Dear Thomas Howell,

General Terms of Approval

I refer to the integrated development application detailed above, referred on 7 July 2023.

The application has been assessed and approval is granted under these General Terms of Approval (GTAs) for the proposed development, subject to the conditions detailed under Schedule 1. The plans stamped with conditional approval are attached (**Tab A**).

These GTAs are issued in accordance with Section 4.47 of the *Environmental Planning & Assessment Act 1979* for the development of land.

These GTAs only apply to the development described in the plans and associated documentation relating to **DA/2023/536** on the referred date.

If the proposed development is amended or the development consent modified, Subsidence Advisory NSW must be notified in order to determine whether any variations to these GTAs are required.

To satisfy the conditions of approval please submit documentation confirming the conditions under Schedule 1 have been met via email to subsidedevelopment@customerservice.nsw.gov.au, quoting reference number TBA23-02192.

Should you have any questions regarding the attached general terms of approval, please contact me on [REDACTED] or at subsidedevelopment@customerservice.nsw.gov.au.

Kind Regards,



Melanie Fityus
Senior Risk Engineer

PO Box 488G, Newcastle NSW 2300

[REDACTED] 24 Hour Emergency Service 1800 248 083
www.nsw.gov.au/subsidence-advisory

SCHEDULE 1
CONDITIONS OF APPROVAL

Application No:	TBA23-02192
DA:	DA/2023/536
Applicant:	MAITLAND CITY COUNCIL
Lot and DP:	DP/842//774734
Site Address:	MELBEE ST RUTHERFORD
Mine Subsidence District:	MAITLAND WEST
Proposal:	SHADE STRUCTURE AND EXTENSIONS TO CLUB BUILDING
Date:	19 DECEMBER 2023

GENERAL	
Plans, Standards and Guidelines	
1.	These General Terms of Approval (GTAs) only apply to the development described in the plans and associated documentation relating to DA/2023/536 and provided to Subsidence Advisory NSW. Any amendments or subsequent modifications to the development renders these GTAs invalid.
2.	This approval expires 5 years after the date the approval was granted if building, engineering or construction work relating to the application has not physically commenced on the land.
PRIOR TO COMMENCEMENT OF CONSTRUCTION	
3.	Proposal to effectively eliminate risk of mine subsidence – NEW BUILDING FOOTPRINT AREA ONLY Submit a proposal by a suitably qualified engineer to effectively eliminate the risk of mine subsidence via the emplacement of grout in the mine voids in accordance with the requirements outlined in Attachment E of the Development Application – Merit Assessment Policy (nsw.gov.au) . Prior to commencing work, the following documentation must be submitted to Subsidence Advisory for acceptance: a) Grout Design ; including grout locations (dimensioned in plan), and design parameters for any residual mine subsidence, if applicable. b) Grout Implementation Plan ; including a site plan, grout locations, proposed bore locations. c) Grout Verification Plan ; showing the location of verification holes.
4.	Grout Verification Output Report On completion of grouting submit a Grout Verification Report in accordance with Attachment E of the Merit Assessment Policy, endorsed by the grout designer and site verification engineer for compliance with the accepted Grouting Plan to Subsidence Advisory for acceptance.

PO Box 488G, Newcastle NSW 2300

02 4908 4300 | 24 Hour Emergency Service 1800 248 083
www.nsw.gov.au/subsidence-advisory

POST CONSTRUCTION	
5.	<p>Certification of Works</p> <p>Upon completion of construction, submit certification from a qualified builder or certifier that confirms construction is in accordance with the plans approved by Subsidence Advisory.</p> <p>Where structural elements identified in the Engineering Impact Statement or Mine Subsidence Structural Engineer Certification Form have been certified by an engineer, details of this certification should be included with the builder/certifier's post construction certification.</p>

City Planning

**DA 2023/909 FOR TWO (2) INTO TWO (2)
LOT TORRENS TITLE SUBDIVISION,
DEMOLITION OF EXISTING GARAGE AND
CARPORT, AND CONSTRUCTION OF TWO
(2) GARAGES AT 15 CARRINGTON STREET,
HORSESHOE BEND**

**Assessment Report (Under Separate
Cover)**

Meeting Date: 12 March 2024

Attachment No: 3

Number of Pages: 22



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Version 1: Comprehensive

Application No:	DA/2023/909
Proposal:	Two (2) into Two (2) Lot Torrens Title Subdivision, Demolition of existing Garage and Carport, and construction of Two (2) New Garages
Address:	15 Carrington Street HORSESHOE BEND NSW 2320
Lot & DP No:	3/1125467, 4/1125467
Property No:	12592 32915
Applicant:	David Cant Surveyors
Owner:	Dewhoz Pty Ltd
Author:	Emilia Marshall
Site Inspection:	19 January 2024

INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2023/909 proposing Two (2) into Two (2) Lot Torrens Title Subdivision, Demolition of existing Garage and Carport, and construction of Two (2) New Garages. 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 a two into two lot subdivision (boundary adjustment), to create the following configuration:

- **Lot 13** - 309m2 retaining existing single storey weatherboard dwelling, and new weatherboard garage. To be known at 15 Carrington Street.
- **Lot 14** - 190m2 retaining existing two storey brick dwelling, and new weatherboard garage. To be known as 1 Russell Street.

The existing weatherboard garage and metal carport are to be demolished, with a new weatherboard garage to be erected in the driveway of each new lot, providing onsite parking for each of the existing dwellings.

Excerpts from the proposed plans are provided in Figures 2 and 3 below.

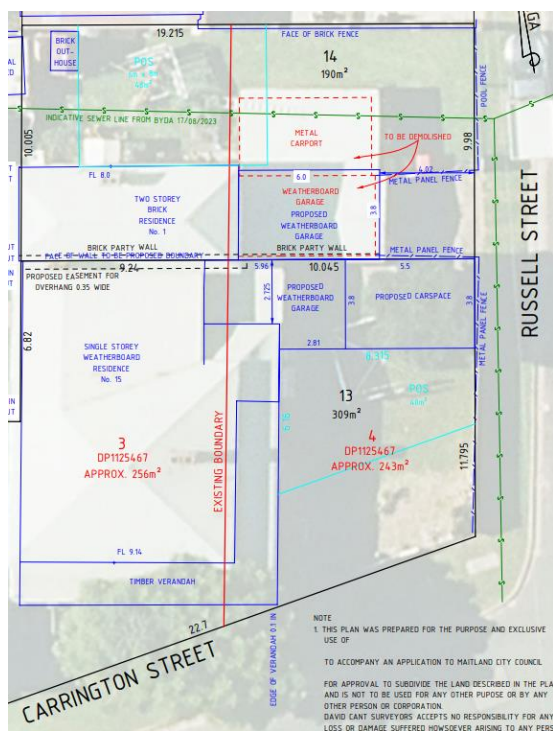


Figure 1 - Proposed plan of subdivision showing existing and proposed boundaries with existing structures

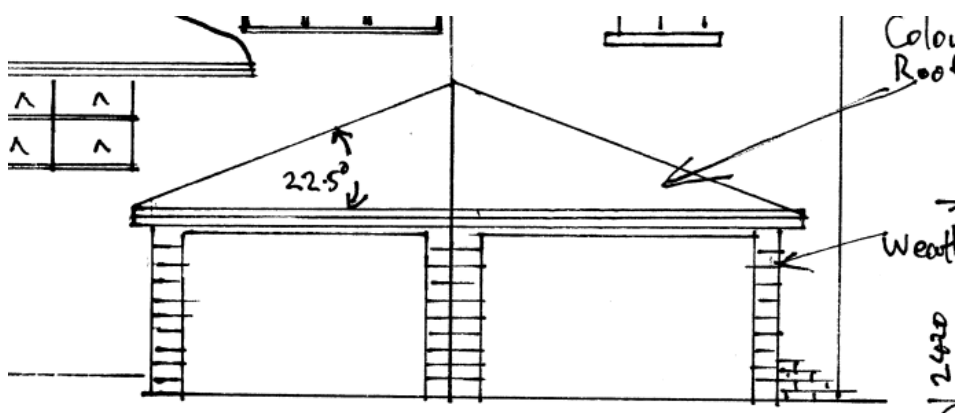


Figure 2 - Proposed weatherboard garages with shared party wall, to be constructed at the new boundary line.



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 Lot 3 and Lot 4 of Deposited Plan 1125467, commonly known as 15 Carrington Street Horseshoe Bend.

The allotments have a combined area of 510m², with existing lot 3 being 262m² and existing lot 4 being 248m². The lots both currently front Carrington Street, with the boundary line running in a north to south direction. An existing dwelling is located on the subject site, that has historically been utilised as two separate domiciles, being the single storey weatherboard residence fronting both Carrington Street and Russell Street, and two storey brick residence fronting Russell Street only.

Existing ancillary structures, including a garage, carport, and brick out-house are located towards the rear property boundary. A colour bond fence separates the existing garage space from the rear yard of the two-storey residence, with a white picket fence situated at the corner of lot 4, fronting Carrington and Russell Street.

The allotment is situated within 200m of central Maitland, and approximately 200m south of the Hunter River. The site is surrounded by residential developments of similar age, siting, scale and design.

An aerial image is provided in *Figure 1* below.



Figure 3 - GIS aerial image



Photo 1 - Existing dwellings viewed from the corner of Russell and Carrington Street



Photo 2 - Existing garage, carport and fencing to be removed and replaced with new driveways and garages



Photo 3 - Existing dwelling 2 from Russell Street, private open space and carparking.



Photo 4 – Existing dwelling 1, fronting Carrington Street, POS provided within front setback.

EVIOUS DEVELOPMENT HISTORY

There are no records of previous development history for this site on Council's electronic records.

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 does not attract a contribution under Council's current adopted Section 7.11 Plan

The proposal does not attract a contribution under Council's current adopted Section 7.12 Plan

The proposal does attract a contribution under the Housing and Productivity Scheme.

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

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021



Chapter 2 – Coastal management

The subject land is located within the Coastal Environmental Area and Coastal Use Area; as such the following general matters are required to be considered when determining an application.

As per Part 2.2, Division 3 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is sufficiently setback from the Hunter River waterbody that it will not result in any adverse impacts.

As per Part 2.2, Division 4 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed development is an appropriate type and design for the riverside location. The proposed use of the site will remain as residential, and in conjunction with the built form, will ensure that the visual amenity of the coast is protected. The building envelope and size of the development is also compatible with the natural setting and will not adversely impact views.

Therefore the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under Part 2.2 and Part 2.3 of this Instrument.

Chapter 4 – Remediation of Land

Clause 4.6 of this Instrument 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 previous and ongoing residential use 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 the SEPP.

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 Two (2) into Two (2) Lot Torrens Title Subdivision, Demolition of existing Garage and Carport, and construction of Two (2) New Garages under the LEP which is a type of development permitted with consent under Clause 2.6 of this instrument. The development adheres to zone objectives by creating a more logical and orderly residential development on existing residential land, to service the housing needs of the community.

Clause 2.6 – Subdivision-consent requirements



Development consent is sought under the provisions of this clause, which states that land may be subdivided but only with development consent.

Clause 2.7 – Demolition requires development consent

Development consent is sought under the provisions of this clause, which states that demolition of a building may be carried out but only with development consent. The proposal includes demolition of an existing weatherboard garage and attached metal carport.

Clause 4.1 – Minimum lot size

This clause outlines that any lot resulting from a subdivision is not to be less than the minimum size shown on the Lot Size Map. In this instance, the lot is subject to a minimum lot size of 450m².

The proposed two into two lot subdivision (boundary adjustment) seeks to create the following allotments:

- Lot 13: 309m²
- Lot 14: 190m²

Both allotments do not achieve the minimum lot size specified under this clause. Subsequently, the applicant has lodged a variation to development standards under Clause 4.6 of the MLEP 2011.

Clause 4.6 – Exemptions to development standards

A Clause 4.6 variation request was lodged by the applicant for Council to consider an exception to this minimum lot size requirement (see *Appendix 2*). A detailed assessment against Clause 4.6 of the MLEP 2011 is contained in Appendix 1 to this report, and summarised below:

In determining whether or not to support a variation to the MLEP development standard Council is required to be satisfied that the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- That there are sufficient environmental planning grounds to justify contravening the development standard.

Compliance with the development standard is unreasonable and unnecessary in this circumstance, given the proposal will respond to and regularise the current site conditions. It is noted that, as existing, the lots do not currently comply with the minimum lot size provision with Lot 3 being 256m² and lot 4 being 243m². The proposal will create lots measuring 309m² and 190m² therefore maintain this non-compliance, with a slight amendment to the percentage variation and orientation of each allotment.

The proposed configuration results in an improved arrangement and orientation of the lots to respond to the existing dwellings of which have been in situ for over 100 years. The proposal, whilst not achieving minimum lot size provisions, is considered a more logical outcome for the site. Further, and as demonstrated throughout this report, the allotments and subsequent dwellings largely comply with the applicable objectives and controls under the MDCP 2011, meaning that the residential quality of the site will be maintained, if not improved, as a result of the proposal.

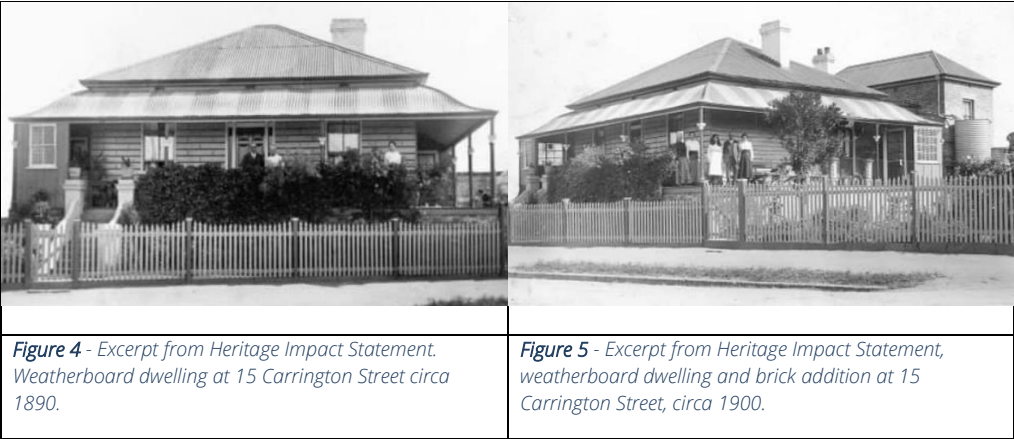


Clause 5.10 – Heritage Conservation

The objective of this clause is to conserve the environmental heritage of Maitland, including the significance heritage conservation areas. Subclause 2 requires any subdivision of land within a heritage conservation area to obtain development consent, and subclause 4 requires the consent authority to consider the effect of the proposed development upon the area concerned, that of which may involve the preparation of a heritage assessment.

A Heritage Impact Statement (HIS) was prepared by the applicant and included a letter from a descendant of the original owner of the property. The existing weatherboard residence features a Victorian era architectural design, estimated construction between 1860's and 1870's, when the Horseshoe Bend area was originally subdivided for the purpose of residential development.

The two-storey brick residence was constructed around 1900, by local builder Lewis Morris. The brick dwelling originally served to house extended family, but since early 21st century, has been occupied independently. The brick dwelling functions with a separate mailing address (1 Russell Street), bin collection, driveway and parking facilities. The weatherboard garage and attached metal carport appear to be a more modern alteration, taking the place of the water tanks (seen in Figure 5). The date of construction of the existing garage and attached carport is unknown but appears post-1930s.



The subdivision seeks to align with the existing structures on site, that of which have been in situ in excess of 100 years. In this way, the proposal is not considered to cause harm to the heritage context, but rather regularise the use of the site and create a more logical outcome, so that the existing dwellings align with the predominant lot layout.

Additionally, when reviewing the arial survey of the immediate locality, the proposal seeks to align the block with the predominant subdivision pattern seen throughout adjacent blocks.

The proposed demolition and replacement garaging is considered to have a positive impact on the Heritage Conservation Area by removing a no contributing structure. The proposed new garages have been designed to compliment the existing building and HCA.



Overall, the proposal will have a positive impact upon the heritage context, built form and character of the Central Maitland Heritage Conservation Area.

Clause 5.21 – Flood Planning

The objectives of this clause is to minimise the flood risk to life and property, allow development that is compatible with flood function and behaviour on the land, avoid adverse or cumulative impacts upon flood behaviour, and enable safe occupation and efficient evacuation during a flood event.

The subject site is affected by high hazard flooding with an applicable flood planning level (FPL) of 10.22m AHD and a velocity of 0.05m/s. It noted that the development involves a two into two lot subdivision (boundary adjustment) of which will amend the current orientation and applicable lot size, but will not increase developable allotments, structures or occupancy. The proposed garaging is to the sited in the same place as the current garaging, and therefore will have a negligible impact upon flood characteristics on or surrounding the subject site.

Subsequently, the development is considered to adhere to the objectives and requirements of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as containing potential class 5 acid sulfate soils. The development does not include excavations below the natural ground level, nor that of which is likely to lower the water table. As such, impacts upon or exposure of ASS is unlikely to occur as a result of the proposal, and an ASS management plan is not required in this instance.

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)

Chapter B.2 – Domestic Stormwater

Both allotments and subsequent dwellings maintain legal point of discharge to the public system via Carrington and Russell Street. Run-off generated from the proposed new garages will be joined with the existing downpipes provided for both residences, with overflow directed to Russell Street, as outlined on the stormwater drainage plan submitted with the applicant.

Chapter B.3 – Hunter River Floodplain

As noted against the provisions of Clause 5.21 above, the subject site is affected by high hazard flooding with an applicable flood planning level (FPL) of 10.22m AHD and a velocity of 0.05m/s. It noted that the development involves a two into two lot subdivision (boundary adjustment) of which will



amend the current orientation and applicable lot size, but will not increase developable allotments, structures or occupancy. The proposed garaging is to be sited in the same place as the current garaging, and therefore will have a negligible impact upon flood characteristics on or surrounding the subject site.

The proposed materials, being cavity brick piers, weatherboard cladding and colourbond roof sheeting are largely consistent with that listed under table 1 (Flood Aware Design Requirements for Residential Development on Flood Prone Land) of this chapter.

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

A waste management plan was submitted with the application outlining the amount of waste anticipated to be generated during demolition and construction works. The dwellings will continue to be serviced by Council's routine waste collection, and the revised lot arrangement will not impede upon this.

Chapter C.4 – Heritage Conservation

Built form – Garages

The provision of this chapter requires new buildings to have regard to established patterns, siting, scale, façade, proportions and detailing of that existing on the site and within the locality. The proposed garages are to be constructed of colourbond roof sheeting and weathertex 'colonial' cladding, with a roof pitch of 22.5 degrees. The garages are located with the same siting of the existing garage and attached carport, with a setback of 4m from the Russell Street frontage, and generally aligned with the established building line. The design and siting of the garages are considered typical of that within the Horseshoe Bend Area and are not of a scale to overwhelm the established structures on site. Subject to conditions, the proposal is considered to adhere to the intent and controls of this chapter.

Subdivision of land

The subdivision seeks to align with the existing structures on site, that of which have been in situ in excess of 100 years. In this way, the proposal is not considered to cause harm to the heritage context, but rather regularise the use of the site and create a more logical outcome. Additionally, when reviewing the aerial survey of the immediate locality, the proposal seeks to align the block with the predominant subdivision pattern seen throughout adjacent blocks.

The proposal does not create additional dwellings or allotments than currently exists on the site, and subsequently will have no impact on density within the locality. Noting the proposal will better align with the existing structures on site, but the rhythm of buildings, views and vistas will not be compromised as a result. The proposal will have no impact upon the landscape quality of the area, nor the curtilage of any heritage items.

Subject to standard conditions for provision of infrastructure and services, and reconstruction of existing kerb and guttering (if and where required), the subdivision will have a negligible impact upon that of the Horseshoe Bend locality.

Chapter C.8 – Residential Design



Open Space, Fencing and Walls

Each dwelling will be provided substantial open space provisions of which exceed the controls listed under this chapter.

Dwelling 1 benefits from approximately 118m² of private open space within the front setback, with minimum principal POS measuring 40m² at 6m x 8m. The area as existing is surrounded by a 1.2m high picket fence and achieves adequate solar access provisions.

Dwelling 2 benefits from approximately 118m² of private open space within the side / rear of the proposed lot, with principal POS measuring 40m², 6m x 8m. The area as existing is surrounded by a 1.8m high brick fence along the northern (side) boundary, with a mix of metal and pool style fencing at the front, rear and surrounding the existing driveways. The proposed POS area for dwelling 2 features a predominately northerly orientation, and subsequently achieves solar access provisions.

Views, and Visual and Acoustic Privacy

There is no change to the built form, siting, or height of the dwellings as existing, and subsequently no anticipated impact upon views, visual and acoustic privacy. It is noted that the existing two storey dwelling features an increased side setback from the neighbouring property to the north, preventing potential of onlooking and overshadowing.

The proposal is supported with a building compliance report of which details that the existing brick party wall between dwelling 1 and dwelling 2 can comply with separation requirements under the NCC.

Security, Site Facilities and Services

The proposed allotments will continue to function by way of waste collection, garbage storage, and mail facilities.

Chapter C.10 – Subdivision

EC.1 – Flora and Fauna

The proposal includes a two into two lot Torrens title subdivision (boundary adjustment). The alignment of boundaries, to reflect the siting of existing dwellings, does not require removal of vegetation or any impacts upon an environmentally sensitive area.

EC.2 – Heritage and Archaeology

The subject site is not identified as a heritage item, or within proximity to any listed items, however it is located within the Central Maitland Heritage Conservation Area. Further, the realignment of boundaries does not constitute any major excavation works requiring subdivision of an archaeological assessment.

EC.3 – Hazards

With the exception of flooding, the subject site is not impacted by any hazards. As noted elsewhere in this report, the development is not increasing the density or changing the way in which the site is utilised (for residential purposes with an existing FFL largely below the FPL). The proposed subdivision will not increase risk of hazard occurrence.



DC. 1 – Design controls

The proposed allotments seek variation to the minimum lot size, and subsequently do not achieve strict compliance with the minimum dimensions listed under this chapter. Despite this, the proposal is considered to facilitate allotments of which can accommodate two independent dwellings, and associated ancillary structures, private open space and the like. The proposal simply reflects the current (built) site arrangement. Further, the existing allotments are also undersized, and therefore also present a non-compliance with these controls.

The subdivision does not require construction of a new road, however does include new driveway crossings to provide independent access to each allotment via Russell Street. The existing landscaping and fencing on site will remain unchanged, with the exception of removal to any of which conflict the with proposed boundary line.

Each allotment achieves direct overflow to the street, and therefore does not require an inter-allotment drainage arrangement, nor will any subdivision works to be undertaken. Standard conditions of consent are to be included requiring evidence of service provision to each allotment, prior to the issue of a subdivision certificate.

Chapter C.11 – Vehicular Access and Car Parking

Dwelling 1 features a three (3) bedroom dwelling, requiring two (2) onsite parking spaces to be provided. Dwelling 2 features a two (2) bedroom dwelling, requiring one (1) onsite parking space to be provided.

A single car garage is proposed within the driveway area of which dwelling. Proposed dwelling 1 will benefit from a single car garage, with enough space available for a tangent (stacked) arrangement. Dwelling 2 benefits from a single car garage only. Both dwellings are considered to adhere to the requirements of this chapter.

Chapter E.3.2 – Central Maitland Heritage Conservation Area

What to Keep:

- Historical pattern of development, lot frontages, depths and sizes, and setbacks to streets;
- Defined edges, to rural/floodplain areas and to commercial precincts;
- Significant vegetation, particularly where it is part of original gardens;
- The original character and status of streets, side streets of laneways in particular to keep residential streets for residential purposes;
- Retain and enhance the original scale and form of existing buildings;
- Front garden areas with minimal hard surface treatment.

What to Encourage:

- Alterations and additions to dwellings that do not necessitate changes to roof form, or are at the rear of the dwelling and not visible from the street;
- Re-instatement of appropriate/original verandahs in accordance with the guidelines in this DCP.

What to Avoid:

- Garages and carports becoming a prominent part of the streetscape;
- Intrusion into original fabric of buildings of significance;
- Second storey additions which are visually prominent from the street frontage or other public viewing places;
- Raising of dwellings above flood levels where there would be a significant impact on the streetscape.



The proposal, whilst amending the lot arrangement, will align the subdivision boundaries with that of the historical built pattern on the site, and is in turn considered to retain and enhance the original scale and form of the existing dwellings. The development will not impede upon the defined edges of the Horseshoe Bend locality and is considered to maintain the original character of Carrington and Russell Streets.

The single car garages are proposed to be sited similar to that of the existing garage and parking structures on site, featuring an increased (4m) setback from Russell Street. The garaging will be largely obscured from the Carrington Street frontage and are not considered an intrusion upon the streetscape nor any key items within the locality.

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 applicable to the proposed development.

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

The following regulations prescribed under the Environmental Planning and Assessment Regulation 2021 apply to the proposal:

Relevant Matters as Prescribed Under the EPA Regulation 2021			
Prescribed Matter	Is the matter relevant to the proposal?		Comment
	Yes	No	
Fire Safety	X		Standard and custom conditions, including the requirement for a BCA compliance certificate to be provided to Council prior to the issue of a subdivision certificate, is included within the conditions of consent.
Demolition	X		Standard conditions, requiring appropriate management of demolition waste, and works to be undertaken per the Australian standard, are included in the conditions of consent.

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 subheadings identifies the relevant matters for consideration in relation to environmental, social and economic impacts associated with the proposal.



Social and Economic Environment

The development seeks to regularise the existing housing stock in the locality. The development will have a positive socio-economic impact, engineering use of local labour, materials and services during construction and subdivision stages, as well as supplementing the housing market should the owner wish to sell the allotments and subsequent dwellings separately. The proposal is not likely to impede negatively on the social and economic environments.

Built Environment

The development includes construction of a new single storey attached garages to service each individual dwelling. The proposal will implement contemporary building techniques during construction and utilises materials and colours complementary to the established built character of the area. The development is considered a suitable siting, form and design for the established built environment.

Natural Environment

The proposal is supported with a stormwater drainage plan of which provides piped overflow to the street. The existing landscaping and vegetation on site will remain in situ. The site is located on a site utilised for residential purposes and is not proposing to impact upon endangered species, nor the flood characteristics of the locality. The proposed development will not negatively impede upon the natural environment.

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

The proposed development is located within an established residential locality and is appropriately designed for the site. The site is located in proximity to existing services, utilities, facilities and community services and subject to sympathetic design and subsequent conditions, will not impede upon the heritage context of the locality. The proposal utilises modern building techniques and a design of which is complementary to the established character of the area. The development adheres to site constraints and restrictions and does not unreasonably impact upon the surrounding environment. 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 not required to be publicly notified/advertised in accordance with the Environmental Planning and Assessment Act 1979 or the Maitland Development Control Plan 2011.

There were no submissions received during the assessment 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 within the public interest as it will provide an improved housing and lot configuration, to service the needs of the community, without impeding on the social, economic, built or natural environments. The proposal generally demonstrates consistency with the zone objectives and Council's development controls. The development is typical of that within the locality, 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

Building Surveyor – A request was issued requiring the applicant prepare and submit a BCA Compliance Report to confirm that the dwellings have fire/acoustic separating wall that will meet the objectives of building codes. It was noted that upgrades to the separating wall may be necessary to bring either or both dwellings to current standard. A BCA Compliance Report was provided, and the application is ultimately supported subject to a condition requiring certification, confirming the development complies with Part H3P1 of the National Construction Code, Volume Two.

Development Engineer – The application was referred to Council's Development Engineers attributed to the flood prone nature of the site. There were no concerns or objections raised to the proposal, noting there is no new dwelling entitlements and there is no change to the hazards as there are no major physical changes to the subject site as approved.

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

Consent be granted subject to the conditions provided in the draft conditions (Attachment 4) to the related Council Report.



Appendix 1 – Council Officer Clause 4.6 Variation Assessment

- (1) *The objectives of this clause are as follows—*
- (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*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment - A variation to the principal development standard of minimum lot size (Clause 4.1) is sought under the provisions of this clause (Clause 4.6). It is noted that Clause 4.1 is not explicitly excluded from the operation of this clause per subclauses (6) and (8) below.

The minimum lot size applicable to the subject site is 450m². The numerical extent of the variation is outlined in the following table.

Allotment	Existing area	Variation (m2)	Variation (%)	Proposed area	Variation (m2)	Variation (%)
Lot 13	256m ²	194m ²	43%	309m ²	141m ²	31.3%
Lot 14	243m ²	207m ²	46%	190m ²	260m ²	57.7%

- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied 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.*

Note—
The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

Comment (a): Compliance with the development standard is unreasonable or unnecessary in this circumstance, considering the proposal seeks to align the allotments with the prevailing site arrangement and built structures. The proposal presents a logical variation, noting the lots as existing also do not achieve compliance with minimum lot size provisions (per the table above).

Comment (b): With assistance of the variation, the boundary adjustment will reflect that of the existing site arrangement, and in turn supplement the way in which the dwellings have functions in excess of 100 years. The proposal does not unreasonably burden infrastructure, increase hazard risk, nor result in substantial social, built, economic or environmental impacts.



Realigning the boundaries does not alter current circumstances of residential living, but it does allow for independent ownership of each structure. Throughout the content of this report, it has been demonstrated that each allotment and subsequent dwelling largely complies with the relevant development standards and controls of various instruments and guidelines, that of which is considered sufficient environmental planning grounds to support the proposed variation.

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).

Comment – This document presents a record of assessment required under the provisions of this clause.

- (5) *(Repealed)*

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not contain land in Zone RU3 Forestry, Zone RU4 Primary Production Small Lots or Zone RU6 Transition.

Comment: The development is situated within a R1 – General Residential zone, and therefore the provisions of this subclause do not apply.

- (7) *(Repealed)*

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 6.2.

Comment: The proposal seeks to vary Clause 4.1 (Minimum Lot Size) of the Maitland Local Environmental Plan 2011. The development does not seek to contravene any of the clauses listed above.



Appendix 2 – Applicant Clause 4.6 Variation Request



Request to vary a development standard

Request to vary clause 4.1 in MLEP 2011

Address: LOTS 3 & 4 DP1125467
15 Carrington Street
Horseshoe Bend

Date: 14/02/2024

Site and proposed development

1. Describe the site.

Please provide the address and describe any features of the site.

The site has an accumulative area of approximately 497 m² with existing Lot 3 being approximately 256 m² (by calculation) and existing Lot 4 being approximately 243 m² (by calculation) with the boundary running in a north-south direction. Lot 3 fronts Carrington Street for approximately 10.97 metres. Lot 4 is a corner lot fronting Carrington Street and Russell Street.

Existing on the site is two attached residences being a single storey weatherboard residence known as No 15 Carrington Street on the south and a two storey brick residence known as No 1 Russell Street on the north together with a weatherboard leanto/garage and brick watercloset.

The site is located within a (R1) General Residential Zone under the Maitland Local Environmental Plan 2011 and has been used for Residential purposes only. These dwellings have been used as separate residences for a very long time.

2. Describe the proposed development.

Please provide details about the proposed development, including land use and works

Boundary Realignment – 2 Lots into 2 Lots.

We propose a boundary realignment so as each dwelling is located wholly within an independent lot. This requires the existing north-south boundary to be turned in an east-west direction to produce: -



- proposed Lot 13 of area to be approximately 309 m² and to contain the whole of the weatherboard residence which faces Carrington Street and currently known as No 15 Carrington Street. This Proposed Lot will be a corner lot having also frontage to Russell Street. A carport is proposed to be erected off Russell Street for off-street parking.
- Proposed Lot 14 of area to be approximately 190 m² and to contain the whole of the two storey residence currently known as No 1 Russell Street. The existing garage is to be upgraded.

Planning instrument, development standard and proposed variation

3. What is the environmental planning instrument/s you are seeking to vary?

Please identify the relevant Local Environmental Plan or State Environmental Planning Policy that you seek to vary.

Maitland Local Environmental Plan (MLEP) 2011

4. What is the site's zoning?

Please identify the land use zone that applies to the site.

R1 – General Residential

5. Identify the development standard to be varied.

Please identify the name of the development standard being varied (for example, minimum lot size, floor space ratio, height of building), its relevant environmental planning instrument clause and the objectives of the development standard.

Clause 4.1 – Minimum subdivision lot size

1) The objectives of this clause are as follows—

- (a) to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,
- (b) to prevent the fragmentation of rural land.

6. Identify the type of development standard.

Please identify if the development standard you are seeking to vary is numeric or non-numeric. For more guidance, see Part A, Chapter 1.3 of this guide.

Numeric



7. What is the numeric value of the development standard in the environmental planning instrument?

This should be specific and address all non-compliance. Please see the relevant environmental planning instrument to determine the numeric value of the development standard for your site.

450m²

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

For example: The proposal exceeds the maximum ____ development standard by ____, which is a percentage variation of ____%.

Proposed Lot 13 (proposed area - 309 m²) exceeds the minimum Lot Size development standard (450 m²) by 141 m², which is a percentage variation of 31%.

Proposed Lot 14 (proposed area - 190 m²) exceeds the minimum Lot Size development standard (450 m²) by 260 m², which is a percentage variation of 57%.

9. Visual representation of the proposed variation (if relevant)

If relevant, provide a diagram or image showing the proposed variation.

N/A.

Justification for the proposed variation

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e). An applicant must satisfy at least one. This list is not exhaustive – there may be other ways available.

a) Are the objectives of the development standard achieved notwithstanding the non-compliance? *(Give details if applicable)*

Yes. The resultant lots will accommodate residential development with sufficient space for offstreet parking and private open space.

b) Are the underlying objectives or purpose of the development standard not relevant to the development? *(Give details if applicable)*



Yes - Lots 3 & 4 DP1125467 have been created in a very old subdivision where both lots created are already under the minimum Lot size. The proposed development only re-aligns the boundaries so as to separate the existing residences. These residences are acting as separate residences with separate addresses.

c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?
(Give details if applicable)

Yes- Separate residential living will be thwarted if compliance was required.

Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard? (Give details if applicable)

No - The residences have functioned as separate lots in the same capacity as the proposed plan of subdivision describes for numerous years as can be seen the separate address of the two dwellings and fencing. Since there will be no change of how the lots are used and there will be a more than the minimum of 6x6 for private open space. Due to this there will be no adverse impact of the residential amenity while increasing the diversity of housing within the suburb.

e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary? (Give details if applicable)

No - Lots 3 & 4 DP1125467 have been created in a very old subdivision where both lots created are already under the minimum Lot size.

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

Note: Environmental planning grounds are matters that relate to the subject matter, scope and purpose of the EP&A Act including the Act's objects (see Part A, Chapter 2.6 of this guide). They must relate to the aspect of the proposed development that contravenes the development standard and not simply promote the benefits of the development as a whole. You must provide substantive justification as to why the contravening the development standard is acceptable.

Compliance with the development standard is unnecessary in the circumstances of this case as the objectives of the standard are achieved notwithstanding non-compliance with the standard.

- Both existing lots are under the minimum standard and both resultant lots will be under the minimum standard.
- The property already contains two residences.

Realigning the boundaries (the development) does not alter current circumstances of residential living. It does allow for independent ownership of the circumstance.



12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

Please provide any other information that you feel is relevant in justifying your proposed variation to the development standard.

Nil else.

Yours faithfully
David Cant Surveyors

David Cant
Registered Surveyor