

# Attachments Under Separate Cover

12 November 2024

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# **Office of the General Manager**

## **PROPOSED SUBMISSION ON OLG COUNCILLOR CONDUCT AND MEETING PRACTICES DISCUSSION PAPER**

### **OLG Councillor Conduct and Meeting Practices Draft Framework (Under Separate Cover)**

**Meeting Date: 12 November 2024**

**Attachment No: 1**

**Number of Pages: 20**

Office of Local Government



# Councillor conduct and meeting practices

A new framework

September 2024

[olg.nsw.gov.au](http://olg.nsw.gov.au)



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Councillor conduct and meeting practices

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# The need for change – returning local democracy to councils

Strong and thriving communities need effective local government. No other level of government is as close to the issues and people.

Effective local government comes when councillors are visibly in control of their councils. How councillors act and how appropriately and transparently decisions are made at meetings is critical in demonstrating to the community that their elected representatives understand the consequences of their decisions, and then make the best possible decisions they can for their community as a whole.

Unfortunately, the existing councillor conduct framework is not delivering on the need for transparency or the necessary degree of respect in the community for the role that councillors have.

Closed council briefing sessions are being used to make decisions away from the public view. Council debates on issues are too often personal slanging matches, rather than forums for robust but respectful discussions on what is best for the community.

Similarly, we have seen a growth in the number of complaints, often over trivial issues. Data from the Office of Local Government (OLG) has shown there has been 4289 complaints over the last 3 years (2020/21 to 2022/23) through the code of conduct process. Overall:

- 420 were referred for preliminary enquiries and then discontinued
- 136 were investigated as potential pecuniary interest matters
- 102 were investigated as potential misconduct (not pecuniary interest)
- 36 related to public interest disclosures, and
- 2 related to political donations

But of these thousands of complaints, in the years since 2020/21 OLG has:

- taken action against 14 councillors by way of a suspension or reprimand
- referred 4 councillors to the NSW Civil and Administrative Tribunal (NCAT) for misconduct, and
- disqualified and dismissed one councillor on the basis of Independent Commission Against Corruption (ICAC) recommendations

The volume of frivolous complaints is crowding out the ability of the OLG and the sector to adequately deal with councillors who abuse their office or cause serious governance problems. It is critical the framework that governs both the behaviour and meeting practices of councillors ensures the community can observe and comment on the behaviour of councillors, instead of inhibiting the operation and function of local democracy.

## The weaknesses of existing frameworks

The simple, but compelling premise is local councils should be accountable to their community with council staff being accountable to their councillors, through the General Manager. The best way to achieve this aim is for councils to provide strong and effective representation, leadership, planning and decision making. Unfortunately, this simple concept has been lost.

How councillors behave, how they deliberate and the responsibilities they hold should be modelled on how members of Parliament are expected to behave and act. As the governing body, councillors should act fairly, ethically and without bias in the interests of the local community, and they should be responsible employers and provide a consultative and supportive working environment for staff. A criticism made about the current framework for councillor conduct or meeting practices is that they do not reflect local government's status as an independent third tier of government: it allows an unelected State Government official to determine penalties and guilt thus undermining the status of local government.

While most local councils and local councillors do the right thing with the best intent, there are some councillors who are not so motivated. In these cases, the current councillor behavioural framework, as implemented in NSW, does not facilitate the best outcomes or resolve issues.

In relation to complaint management, it is not considered acceptable to create better complaint management pathways for the processing of code of conduct complaints. The current code of conduct simply enables too many complaints about councillors, all too often for political or vexatious reasons.

It is for this reason that the Government has embarked upon a new approach that refocuses the limited resources of the State on those concerns that matter most: serious misbehaviours and attempts by councillors to enrich themselves through their office.

Weaknesses of the current framework include:

- The councillor conduct framework distracts from, rather than enhances, robust democratic debate. Complaints are weaponised for political reasons, or to silence dissent from other elected representatives.
- Councillors and community members report dissatisfaction with the process for resolving code of conduct complaints – being expensive, overly legal, prone to political sparring and not timely, with average timeframes exceeding 12 months and more than 24 months if they are then referred to OLG for further investigation.
- Issues are not being addressed and resolved at the local level – instead complaints are escalated unnecessarily to the State Government to resolve because of the view that public censure from the local council is not a 'strong enough' punishment.
- Communities and councillors report that council decision making is not transparent – with decisions being seen as made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings or councils going into closed sessions for no adequate rationale.
- Bad councillor behaviour is not considered to have been addressed quickly enough and when sanctions are imposed it is too late or of little consequence.
- There is a lack of clarity around OLG's role as the sector regulator – taking too long to resolve matters and not focussing on the important financial and government concerns in the sector, instead spending time focussed on individual councillor behaviour.
- OLG reports challenges in relying on the reports of council conduct reviewers – investigations into councillors need to be done afresh, the process is cumbersome with multiple feedback loops and serious sanctions can only come from suspensions handed down by NCAT.

With so much focus on the bad behaviour of a limited number of councillors there is not enough attention given to the good work that councillors do. The role of a councillor is a noble public service, and the local government behavioural framework should support those who seek to do the right thing and punish those that are not so motivated.



## Options for a better approach

Improving the councillor conduct framework and the meeting practices of councils can be achieved but will require changes to the Local Government Act 1993 (the Local Government Act), as well as updating the various regulations, codes and policies that apply. Some of the work to update the regulations and codes can be done quickly, while others requiring legislative change will take some time.

This paper provides an overview of the proposed new approach to both the councillor conduct framework and meeting practices. The proposals are to:

- Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body,
- Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers,
- Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour,
- Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

These changes are only proposed for councillors and there is no change proposed for the code of conduct for Local Government staff. Feedback from stakeholders is that the existing code of conduct of staff remains fit for purpose and is largely effective.

## Seeking your views

This discussion paper has been prepared to seek the views of the community, key stakeholders and the local government sector about the proposed changes.

Submissions will be accepted to **COB Friday 15 November 2024**.

All input received through this consultation process **may be made publicly available**. Please let us know in your submission if you **do not want** your name and personal details published.

As part of the consultation process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email to send you notifications about further feedback opportunities or the outcome of the consultation.

There may also be circumstances when OLG is required by law to release information (for example, in accordance with the requirements of the Government Information (Public Access) Act 2009). There is a privacy policy located on OLG's website that explains how some data is automatically collected (such as your internet protocol (IP) address) whenever you visit OLG's website. The link to that policy is <https://www.olg.nsw.gov.au/about-us/privacy-policy/>.

Further information about how to make a submission is provided at section 7 of this paper.

# What are the principles of change?

In preparing the proposed reforms the following principles have guided the discussion and the intent of the changes:

- **Council leadership and decision making is paramount** – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interests of the community
- **Freedom of speech** – as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community
- **Transparency and accountability** – as a democracy councils need to hear, consider and debate issues in an open manner
- **Significant penalties should only be imposed by a judicial or quasi-judicial body** – to ensure procedural fairness and thorough testing of allegations, significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal
- **A strong and proportionate local government regulator** – the role of OLG should be to create the framework for local government, ensure councils, joint organisations (JOs), and county councils have the capacity to operate within the framework so that the regulator intervenes as rarely as needed
- **Subsidiarity** – decisions are made at the level closest to those impacted by those decisions
- **Justice is timely and proportionate** – where allegations are made, they should be heard, tested and dealt with as quickly as possible.

## Question

Are we missing anything in the principles of change?

# Potential changes to the code of conduct and oath of office

The key proposed reform for the councillor behavioural framework is to move to a streamlined, aspirational Code of Conduct. This is equivalent to the Code of Conduct framework for NSW Members of Parliament available [here](#) and [here](#).

The aspirational Code of Conduct would clearly and succinctly outline the behavioural expectations of local councillors (approximately 2-3 pages) in easy-to-understand language. It would then be supported by a clearer framework and definitions for misbehaviour of elected officials.

The aspirational Code of Conduct would not set out the definitions of misbehaviour as these would be legislated as explained in later sections of this discussion paper.

Separating the behavioural expectations in a Code of Conduct from definitions of misbehaviour reflects a positive approach to councillor behaviour. The separation also recognises that the majority of councillors want to do the right thing and they should have easy access to the standards expected of them.

The revamped Code of Conduct could also be aligned to the Oath of Office for local councillors ensuring that the behavioural standards and expectations are clear and understood when a councillor takes office. The existing framework can make it difficult to understand the behavioural expectations and standards upon councillors.

Importantly, the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority.

It is proposed to make the new Code of Conduct an aspirational code of expected behaviours instead of enforceable for local councillors.

## Question

**What are the key elements of an aspirational Code of Conduct that should be enshrined?**

## Question

**What are your views about aligning the Oath of Office to the revamped Code of Conduct?**

# Potential changes to the definitions and assessment of councillor misbehaviour

The current Local Government Act defines councillor misconduct as a breach of the Local Government Act or other regulatory provisions, which includes the Code of Conduct. This means that it is difficult for the average person to understand the definition of misconduct as they need to reference several other regulatory instruments and policy documents to determine what constitutes.

It is proposed in the revised framework that misbehaviour will be more clearly defined and articulated within the Local Government Act, with the reference to regulations and other statutory instruments only for further enunciation or explanation.

These definitions, which are described in later sections would cover:

- Pecuniary conflicts of interests, (for example decisions that financially benefit the councillor or a close associate),
- Significant non-pecuniary conflicts of interests (for example where a councillor participates in a decision and a direct advantage/disadvantage is created for a person or company the councillor is friendly with or associated with), and
- Councillor misbehaviour in public office (for example, poor conduct in meetings leading to exclusion by the Mayor or Chair of the Committee).

This will make clearer to all participants in the local government sector what is considered misbehaviour by a local councillor.

The definitions of misbehaviour do not change the other legislative requirements. Communities, residents, workers and fellow councillors expect their elected officials to act in an appropriate and ethical way, including observing workplace health and safety, environmental and criminal laws. If there is an offence or complaint under these other laws, people should

seek redress from the appropriate regulator including SafeWork, Independent Commission Against Corruption or the NSW Police.

The behavioural standards in the revamped Code of Conduct will reinforce the expectation that councillors are community leaders and therefore exemplars of good behaviour. As community leaders it is also expected councillors will meet legislative obligations. Therefore, misbehaviour only needs to be defined as those issues which go to the nature of councillors as elected officials, being conflicts of interest or misbehaviour in public office.

These are the expectations that are upon councillors because of the public trust that is placed in them as elected officials. In this way it more closely reflects, with appropriate adjustments the framework that applies to other elected officials in other levels of Government.

## Conflicts of interest

The first proposed limb of the revised misbehaviour definition is a councillor's failure to manage a conflict of interest.

Management of conflicts of interest is important to ensure that councillors act and are seen to act in the public good, not for private benefit or personal gain. Conflicts of interest arise when there is a conflict, perception or potential of a conflict between an official's private interests and public duty.

The test for pecuniary interests is quite clear as it is an objective test; would a councillor or one of their close associates (spouse, family members), receive a financial benefit as a result of a decision. However, testing whether there is a non-pecuniary conflict of interest is more challenging.

## Pecuniary interests

It is proposed to align the definition of pecuniary interests for NSW councillors with those that are utilised and defined for NSW members of parliament, requiring disclosure of the following interests:

- Real property – property in which councillors have an ‘interest’
- Sources of income – all income over \$500 other than salary of office
- Gifts – all gifts of cumulative value of more than \$500
- Contributions to travel – of value of more than \$250 (including flight upgrades)
- Interests and positions in corporations – eg stocks and shares, directorships
- Positions in unions and professional or business organisations
- Debts – of cumulative value of more than \$500, excluding home loans or debts for goods and services disposed of within a year
- Dispositions of property
- Engagement to provide a service involving use of a councillor’s position and
- Discretionary disclosures.

It is proposed that the interests for disclosure by the councillor are similarly extended to the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member. This extends only to the extent the councillor is aware or should be aware of such interests.

It is proposed there remains an absolute prohibition on a councillor being involved in any matter before council where a pecuniary conflict of interest exists, unless otherwise determined via regulation.

It is also proposed to give extended investigation powers to OLG to investigate and request information on corporate structures such as trust or companies to

determine underlying beneficial ownership and interests.

OLG, as the agency responsible for investigating alleged breaches of pecuniary interests, needs clear powers to compel the production of information and/or records, to ensure that pecuniary interest returns are provided and made publicly available. If there is non-compliance with an OLG direction, which may include the requirement to make a declaration, remedies such as penalty infringement notices (PIN) should be available to ensure cooperation with investigative processes.

### Question

**Is the proposed pecuniary interest framework appropriate? Is anything missing?**

## Non-pecuniary interests

A conflict of interest does not necessarily have to be financial in nature. It could also arise from familial or personal relationships, affiliations or memberships. It is equally important that such conflicts are managed appropriately to ensure that decision making is seen to be transparent and remains in the public interest.

An interested and informed observer should be confident a decision made by a councillor is free from bias or a reasonable apprehension of bias. This means that any concerns about a potentially significant conflict of interest should be declared and appropriately managed.

The nature and breadth of non-pecuniary interests naturally means that the framework for management of such interests is more nuanced, with the management approach often dependent upon the individual circumstances of the case.

It is also important to recognise that councillors, as representatives of their community, reside within their community, so memberships of clubs, congregational

memberships etc should not automatically be seen as conflicts of interest.

If a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then that can be a conflict that should be publicly declared, if the councillor considered it of minor consequence, it wasn't controversial, or the councillor did not hold the casting vote.

Alternatively, if a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then that can be a conflict requiring the councillor to recuse themselves from being involved in the decision-making process if there was a major advantage or disadvantage (or potential for), if it was controversial or the vote of the councillor was critical.

The appropriate test for whether a non-pecuniary interest should be declared is based on an objective test, not in the mind of the individual who is subject to the conflict of interest. The test is whether a reasonable and informed person would perceive that the councillor could be influenced by a private interest when carrying out their official functions in relation to a matter.

Whether the councillor abstains themselves from a decision, or decides to participate, the continued and timely disclosure of interests is critical. Disclosure ensures the community is aware of any potential conflicts and how the councillor is managing and responding to the issue.

Councillors should remain as vigilant about disclosure of non-pecuniary interests as they are about pecuniary interests.

### Question

**Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**

## Property developers and real estate agents

The NSW Government has made a commitment to ensure the conflicts of interest that exist between a councillors' public duties to make decisions on behalf of communities and the private interests that exist in securing a profit as a developer or real estate agent are addressed. A simple change to ban developers or real estate agents from being councillors is not possible as it infringes the right to political free speech implied by the Australian Constitution.

Ordinarily conflicts of interest are managed through declarations and withdrawing from decision making. However, in the case of property development and real estate interests, where so much of what a council does is related to land and the potential for speculation in the changes of land value arising from planning, development and infrastructure decisions, it can be impossible to isolate the precise interests that would drive a councillor's decision.

Without some way of managing these conflicts, the community confidence that planning, development and infrastructure decisions are taken transparently in the public interest will erode. Given the importance of planning, development and infrastructure decisions to resolving the housing crisis, driving the move to net zero through the electrification of the economy and building community resilience to disasters, it is critical to restore confidence.

To address this concern, an alternative means of managing the inherent conflict of councillors undertaking real estate and development business activity is being considered which involves requiring councillors to divest themselves from real estate or development business activities and contractual obligations.

Legislation is being drafted that will:

- identify how developers and real estate agents are identified,
- create the obligation to divest and not enter into real estate or development business arrangements through contracts,
- establish the penalties, including disqualification, where a councillor engages in contractual arrangements with real estate agents or developers,
- ensure there are exemptions so councillors can buy and sell their own property using a real estate agent, and
- create transitional arrangements for the introduction of the new obligations.

### Question

**Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**

## Councillor misbehaviour in public office

The third proposed component of a revised definition of misconduct is misbehaviour in public office.

Misbehaviour in public office would cover behaviour which is inconsistent or outside of the norms of behaviour expected from a councillor, particularly given their role as a community leader. Given the discussion is about behaviour rather than action, there is a much greater degree of interpretation, and it is appropriate that councillors judge their fellow councillors on whether they could be considered to have misbehaved.

There would be three limbs to this proposed misbehaviour definition being conduct that:

- Is unbecoming of a councillor
- Brings council into disrepute; and/or
- Is assessed as being outside the norms and expectations of a sitting councillor.

The first two tests of this framework are established legal concepts with existing case law and precedents.

Unbecoming conduct means behaviour more serious than slight, and of a material and pronounced character. It means conduct morally unfitting and unworthy, rather than merely inappropriate or unsuitable, misbehaviour which is more than opposed to good taste or propriety. Conduct unbecoming refers to the conduct that is contrary to the public interests, or which harms his/her standing of the profession in the eyes of the public. Examples can be referenced in *Oei v The Australian Golf Club [2016] NSWSC 846*.

To bring something into disrepute is to lower the reputation of the profession or organisation in the eyes of ordinary members of the public to a significant extent. It is a higher threshold than the test of bringing an individual into disrepute - (*Zubkov v FINA (2007) CAS 2007/A/1291*).

The third limb of the misbehaviour definition allows consideration of behaviours and actions of a sitting councillor which are considered egregious or problematic that are otherwise not captured by the other elements of the definitions.

As this is a test of appropriate behaviour, the determination of whether the misbehaviour occurred would be undertaken by the peers of the councillor. This would involve the formation of an 'Local Government Privileges Committee' (Privileges Committee) of senior and experienced mayors and ex-mayors from across NSW to meet and assess the complaints made against councillors. The Privileges Committee would be supported by OLG, but decisions would be made by the mayors or ex-mayors on the Privileges Committee who would draw on their expertise as mayors, as well as having served at least two council terms as a councillor.

There would also be an opportunity to apply these principles to poor behaviour in meetings, particularly where a councillor has failed to comply with the directions given by the mayor or Privileges Committee Chair.

### Question

**Is this the appropriate threshold to face a Privileges Committee?**

### Question

**How else can complaints be minimised?**

## Addressing inappropriate lobbying

A number of investigations by the Independent Commission Against Corruption (ICAC) has led to recommendations to put in place measures to address concerns about lobbying of councillors. ICAC has been concerned about councillors having relationships with development applicants that pose a conflict of interest, concerns with councillors meeting with development applicants in private settings to discuss their applications, and concerns about councillors receiving gifts and inducements as part of lobbying activities to improperly influence council decision-making.

Lobbying is an important feature of democratic representative government, and all councillors get lobbied by residents, businesses and community groups. However, inappropriate lobbying that isn't declared presents certain risks and can lead to corrupt behaviour or improper decision-making. On the recommendation of ICAC to address these risks, OLG is developing lobbying guidelines and a model policy on lobbying for councils to adopt that will:

- address how professional lobbyists are identified and the obligations on councils and councillors if they met a professional lobbyist,
- set out inappropriate behaviours when being lobbied,
- identify steps to be taken to ensure transparency,
- require council officials to report inappropriate or corrupt lobbying behaviours to the councils general manager.

The development of lobbying guidelines and a model policy on lobbying will ensure councillors and councils understand these risks and have effective controls in place to address them.

### Question

**What key features should be included in lobbying guidelines and a model policy?**



# Dispute resolution and penalty framework

Consistent with the principles outlined earlier, it is proposed that there be a significant change to the dispute resolution and penalties framework for misbehaviour.

While the overall intent is to reduce the weaponisation of the complaints process and reduce the number of complaints, there is also a need for more timely resolution of matters and ensure that the limited investigation and regulator resources are directed to the more significant misbehaviour matters.

There is also an opportunity to bring the dispute resolution framework more into line with that used in other levels of government.

The approach being proposed is to create clear separation between the process for consideration of conflicts of interest and the processes for consideration of misbehaviour. This has the benefit of removing general managers from being central to the complaint process.

Under the reforms, the investigation of serious conflicts of interest would be put entirely into the hands of OLG. The approach also removes the existing 'two step' process of referrals to conduct reviewers and then OLG.

There would be no investigations of misbehaviour, instead councillors would be required to demonstrate to their peers why their actions, which may have led to the complaint, were appropriate to the circumstances.

To implement these new approaches, changes to the systems and structures of investigation and complaints handling are needed.

## Abolishing the 'two step process'

The existing process for complaints is set out in the Procedures for the Administration of the Model Code of Conduct.

In simple terms, the complaint process involves the general manager or the mayor receiving a complaint, determining whether the complaint is valid and referring the matter to a complaints coordinator within the council, who will in turn appoint an external conduct reviewer. Once the conduct reviewer investigates the issue, interviews the complainant and the subject of the complaint, as well as any other relevant people, provides a report to the council and the council makes a decision, many months can pass.

As it currently stands, if OLG, receives a referral following the council consideration of a complaint, they are then expected to rely on the investigation report of the conduct reviewer to make an assessment. However, investigation reports prepared by conduct reviewers may satisfy the evidentiary standard required for a councillor to be censured but may not satisfy the higher evidentiary standard required to support disciplinary action under the misbehaviour provisions under the Local Government Act, such as suspension or disqualification. OLG's experience is that rarely can it rely on these reports and must instead recommence an investigation process if it decides to pursue the matter.

Instead of this existing two-step process:

- Complaints about conflict of interest matters would be made directly to OLG, and
- Complaints about misbehaviour would be made directly to the Local Government Privileges Committee via a dedicated webform.

Under the proposed approach, there would be no role for privately hired investigators to determine whether the Code of Conduct has been breached.

## Giving OLG the power to issue penalty infringement notices

In order to ensure information is provided to OLG more effectively, it is proposed to enable OLG the discretion to issue penalty infringement notices (PINs) for minor or insignificant breaches of the conflicts of interest declarations. The PINs would be primarily utilised in circumstances where the breach is considered minor or administrative in nature – for example an inadvertent failure to lodge a return of interests.

This change to PINs is designed to allow a quick process for dealing with minor matters to free up limited regulatory resources while still ensuring that sanction for important matters is provided.

Like all other PIN provisions in other NSW legislations there would be the ability for the PIN to be appealed or special circumstances to be considered. Where the breach was considered more serious in nature then it can be referred to an appropriate tribunal or body for more significant punishment.

### Question

**What level of PIN is appropriate?**

## NSW Local Government Privileges Committee

Along with the PIN framework, it is also proposed to create a Local Government Privileges Committee (Privileges Committee) to examine all allegations of misbehaviour in public office. This would replace the existing code of conduct review framework and instead aim to provide a speedy process for resolution and assessment of behavioural complaints against councillors. It also allows for the sector to better govern itself. The Privileges Committee would only examine issues of misbehaviour, not conflicts of interest.

The Privileges Committee would be made up by a group of experienced mayors and ex-mayors from across NSW to ensure that a variety of perspectives and experiences are considered. The Privileges Committee would be supported by a small Secretariat from OLG who could be delegated the power by the Privileges Committee to dismiss matters that are vexatious, trivial, where the Privileges Committee lacks jurisdiction, or where there is an alternative remedy available.

The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome.

Penalties that could be imposed by the Privileges Committee are as follows:

- Censure of the councillor
- Warning of the councillor
- Where referred following misbehaviour in a council meeting, a potential loss of sitting fees
- Referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance.

As noted above if the breach is deemed serious then the Privileges Committee would have the power to refer a matter to the OLG for preparation of a brief for an appropriate tribunal or body.

### Question

**Are the penalties proposed appropriate, and are there any further penalties that should be considered?**

## Referral of significant sanctions to appropriate tribunal or body

Under the existing processes for consideration of complaints, OLG, in particular the Departmental Chief Executive (or their delegate), can suspend a councillor for between 1-3 months with a consequential loss of sitting fees. This creates the situation where a public servant is sitting in judgement on an elected official. Where a greater suspension is appropriate, the Departmental Chief Executive may refer the matter to an appropriate tribunal or body.

To remedy the concerns about whether it is appropriate for an unelected official to stand in judgment on an elected councillor, it is proposed that any significant sanction, such as suspension, significant fine or disqualification from office, can only be undertaken by an appropriate tribunal or body.

This reduces the existing power of the Departmental Chief Executive to impose penalties. It reflects the principle that significant sanctions, including suspension, should only be imposed by a judicial or quasi-judicial body. It also removes the dual roles of the head of OLG, meaning OLG's focus is on preparing the brief of evidence for consideration by the appropriate tribunal or body.

The role of the appropriate tribunal or body would therefore be to look at all serious misconduct matters that have either been referred by the Privileges Committee, appeals from PINs or referrals of conflict of interest matters from the OLG.

### Question

**Are the existing sanctions available under the Local Government Act sufficient?**

### Question

**Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**

# Restoring dignity to council meetings

A council chamber is a chamber of democracy, and the mayor as figurehead represents the authority of that council.

Unfortunately, many council meetings are conducted without the appropriate level of dignity or reverence for tradition that suggests the importance of the debate and the need for civility. Councillors are not expected to agree with each other, in fact debate is encouraged, but the debate should be fair and respectful.

A council meeting, and the council chamber itself, should see meetings conducted with dignity. Unfortunately, there are too many examples where the dignity of council meetings has been lost, either because councillors are not appropriately reverential and respectful, or the manner of debate is lowered by inappropriate chamber design or meeting practices.

## Proposed reforms to the Model Code of Meeting Practice

To restore the prestige and dignity of the council chamber reforms to the meeting code of practice are being developed to support the mayor in exercising their statutory responsibility to preside at meetings and to ensure meetings are conducted in an orderly and dignified manner.

The proposed reforms will confer the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting.

As a further deterrent against disorderly conduct, councillors will also be required to apologise for an act of disorder at the meeting at which it occurs and, if they fail to comply at that meeting, at each subsequent meeting until they comply. Each failure to apologise becomes an act of misbehaviour and will see the councillor lose their entitlement to receive their fee for a further month.

To provide a check against misuse of the power of expulsion and subsequent loss of entitlement of a fee, councillors will be entitled to a right of review.

Councillors will also be expected to stand, where able to do so, when addressing a meeting and when the mayor enters the chamber.

The proposed reforms will also expand the grounds for mayors to expel members of the public from the chamber for acts of disorder and enable the issuing of a PIN where members of the public refuse to leave a meeting after being expelled.

### Question

**Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**

## Banning briefing sessions

A practice has recently developed in local government where councillors receive briefings from staff that are closed to the public.

As an example, development applications should be considered in the public domain. However, councillors receive private briefings from the council planners before they are dealt with in the public forum of a council or committee meeting. Consequently, members of the public impacted by the council's decision have no idea what the councillors have been told or what has been discussed.

To promote transparency and address the corruption risks identified by the Independent Commission Against Corruption (ICAC) that can arise from a lack of transparency, it is proposed that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public.

Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting. This restriction will not apply to mayors. As the leader of the organisation, the mayor needs to have candid conversations with the general manager outside of formal meetings.

To further promote transparency, the proposed reforms will also extend the period that recordings of council and committee meetings must be maintained on a council's website.

### Question

**Are there any other measures needed to improve transparency in councillor deliberations and decision making?**

# How to provide feedback?

This discussion paper has been released through the Office of Local Government's communication channels and on the Government's Have your Say Website.

You can make submissions on this proposed framework by **COB Friday 15 November 2024**. Further information is available on OLG website at <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/councillor-conduct-framework/>.

Submissions can be made online here - <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/councillor-conduct-framework/>

OR

in writing to: [councillorconduct@olg.nsw.gov.au](mailto:councillorconduct@olg.nsw.gov.au)

OR

Locked Bag 3015 NOWRA NSW 2541

Submissions must be clearly labelled "Councillor Conduct Framework Review"

Please direct any inquiries to the OLG's Strategic Policy Unit at [councillorconduct@olg.nsw.gov.au](mailto:councillorconduct@olg.nsw.gov.au) or on (02) 4428 4100.

## Next Steps

Feedback from this consultation process will be carefully analysed and incorporated to finalise the revised councillor conduct framework.

OLG will then look to finalise necessary draft legislation, regulations and materials for implementation of the revised model over the coming year. Consultation will continue with the local government on the implementation of the revised framework.

Information about the progress of the Councillor Conduct Framework Review will be available on the [OLG website](#).

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Office of Local Government

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## **City Planning**

# **DA2022/670 FOOD AND DRINK PREMISES, ALTERATIONS, ADDITIONS AND SIGNAGE AT 416A HIGH STREET MAITLAND**

## **Assessment Report (Under Separate Cover)**

**Meeting Date: 12 November 2024**

**Attachment No: 3**

**Number of Pages: 17**



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application No:	DA/2022/670
Proposal:	Food and Drink Premises, Alterations, Additions and Signage
Address, lot & DP No:	416A High Street Maitland Lot 1 in DP1303034
Applicant:	Skelcon Pty Ltd
Owner:	416 High Street Pty Ltd
Author:	Adrian Quinn
Site Inspection:	12/10/2023

### INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2022/670 proposing food and drink premises, alterations and additions and signage. 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:

- Change of use from warehouse to food and drink premises
  - Capacity of 100 patrons/staff
  - Hours 06:30 – 00:00
- Alterations including:
  - Removal of internal heavy timber floors and support columns (1840s construction approx.),
  - Removal of windows to south elevation and bricking-in of openings,
  - New foundations - underpinning of external walls,
  - New internal steel frame structure,
  - Reinstatement of part of timber first floor and heavy timber columns,
  - New internal concrete slab floor,
  - New door opening to north-eastern wall,
  - Attached awning to north-eastern wall,
  - Food and drink premises fit-out in main building:
    - Bar,
    - Stock and storage room,
    - Service area including seating for 49.
  - New outdoor dining terrace:
    - Demolition of Council fence and removal of hedges from Council land,
    - Making good with new paving and landscaping to edge of levee pavement,
    - Landscaping, including raised planter bed, timber shade trellis and timber privacy screen.
  - Drainage works, above ground rainwater tank.
  - Minor alterations:
    - Brick repair and repointing,
    - Cement render repair/replacement,
    - Window replacement,
    - Door repair and replacement,

- Electrical work, plumbing,
  - Window lintels and sill repairs and replacements,
  - Timber door lintel repair (x 3).
- Additions including:
  - New building containing kitchen, toilets, bin store,
  - Glazed link gallery,
  - External dining area paving and furniture.
- Earthworks:
  - For new footings and underpinning of external walls,
  - For utilities and drainage,
  - Minor cut and fill to achieve appropriate levels and a smooth level transition from building to dining terrace and levee walkway.
- Business/building identification under-awning sign (externally illuminated).
- Operational pedestrian access through Council land:
  - Lot 1 in DP1044531 (Maitland City Council recreational land),
  - Lot 201 in DP1048250, 420 High Street, (Maitland City Council recreational land).

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

The site is 401.6m<sup>2</sup> in size, flat and quadrilateral shaped. The land contains a battle-axe handle and is benefited by a Right of Way to High Street 2.99m wide and height limited to 3.66m. The site drains to a stormwater pit within the levee. The site is a very prominent one within Central Maitland and is located directly adjacent to the Hunter River, with frontage to the levee walkway and river views.

The legal description of the land on which the development is to be carried out is Lot 1 in DP1303034 416A High Street MAITLAND.

Photographs are provided here:

Figure 1. Subject land viewed from the Hunter River levee walkway



Figure 2. Subject building – internal fabric



Figure 3. Internal fabric – 2



Figure 4. Eastern elevation





Figure 5. Southern elevation - windows to be infilled



Figure 6. Aerial View of Subject Land



## DEVELOPMENT HISTORY

The application was lodged in 2022 as “*demolition of warehouse and erection of a 4-storey residential flat building*”. The proposal has been significantly amended under clause 37 of the Environmental Planning and Assessment Regulation 2021 on 10/11/2023 and again on 23/08/2024.

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

Consent history				
DA No.	Description of Development	Date Determined	Decision Approved/Refused	Key Issues
DA/2019/739	Subdivision – boundary adjustment and subsequent strata subdivision	28/10/2019	Approved	Conditions to be carried over into this consent to ensure fire rating is appropriately undertaken.
DA02/2072	Renovations to commercial building	16/09/2002	Approved	Applied to Chambers building fronting High Street
BA97/0681	Refurbishment of existing buildings for professional suites	17/09/1997	Approved	Applied to Chambers building fronting High Street
DA96/1172	Refurbishment and upgrading of heritage buildings	11/11/1996	Approved	Unsure if works affected the subject building.
CA196/0139	Reconstruction of fire damaged building	18/03/1996	Approved	Unsure if undertaken as fire damage still evident.

### Heritage Act 1977

#### ***Interim heritage order:***

An interim heritage order (IHO) was considered by the NSW Heritage Council to potentially list the building on the State Heritage Register and to give Council and Heritage NSW up to one year to assess the item's significance and make a potential listing.

The Heritage Minister may only issue an IHO where the item is at immediate risk. In this case, Heritage NSW advised that the IHO could not be made until consent was granted for demolition. During the assessment process, the applicant amended their proposal away from demolition of the building, and therefore the IHO was not issued. The site remains un-listed and concurrence under this Act is not required.

### Water Management Act 2000

#### ***Section 91:***

The proposal is integrated development and was referred under Section 91 of the *Water Management Act 2000* as development within 40m of the upper bank of the Hunter River.

General Terms of Approval (GTA) were received and have been included in the consent conditions. Subsequent notifications were made on amendment of the proposal and responses from Water NSW indicated that the initial GTAs remained unaltered.

**Section 256:**

Separate certificate of approval was received from the DCCEW Hunter Valley Flood Mitigation Scheme office under Section 256 of the *Water Management Act 2000* as the work constitutes a 'flood work'. The certificate pertained to the location of the works adjacent to the levee, including the impacts of earthworks and footings on the earthen levee and crib wall.

Trees are not permitted under this Act within 10m of the levee where they can fail during storms and floods and weaken the levee. The landscape plan has been confirmed to be compliant with this requirement.

**Environmental Planning and Assessment Act (1979)**

**7.12 Fixed development consent levies**

Council's 7.12 Contributions Plan does not levy contributions for adaptive reuse of heritage items. The proposal is for adaptive reuse of a building of heritage significance (highly contributory, within a heritage conservation area), although not a listed item. While not a listed item, special dispensation has been granted per Council's Contribution Plan (per the Strategic Planning Team) as the building is highly significant and potentially worthy of a heritage listing. The adaptive re-use of this building has been deemed a significant public benefit and the waiving of Section 7.12 contributions for this purpose is supported.

**4.15(1) matters for consideration**

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

**State Environmental Planning Policies**

***State Environmental Planning Policy (Industry and Employment) 2021***

**Signage**

The proposal includes one business/building identification sign. This has been designed to complement the architectural fabric of the building, addressing the levee walkway/shared path and Hunter River, in a modern, understated text-only form (externally illuminated). The sign features black and white colouring, and it is positioned under the new awning. The sign is modest in style and suitable for the MU1 zone, as well as the Maitland Heritage Conservation Area. The signage complies with this policy and the associated Schedule 1 Assessment Criteria.

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

The proposal is within the *Coastal use area* and the *Coastal environment area*. The consent involves alterations and new works that will not have adverse impacts in relation to the requirements for development within these zones, as per this SEPP. The development improves access to the coast though is separated from it by the flood control levee and a significant level difference.

Contamination is not a significant factor as the land is not mapped as being potentially contaminated and is to be used for commercial purposes, with slab on ground and paving. All landscaping beds are elevated. Conditions of consent will require classification of excavated material and will remind the developer of the unexpected finds protocol.

## *Maitland Local Environmental Plan 2011*

### 2.1 – Land use zones

The subject land is zoned MU1 Mixed Use under the Maitland Local Environmental Plan 2011 (LEP). The proposed development is defined as *food and drink premises* under the LEP which is a type of development that is permissible with consent in the zone. The umbrella term has been adopted in this case as the applicant stated their intention to lease the premises to an as-yet unknown suitable operator, upon completion of the works. The term ‘food and drink premises’ maintains flexibility in the consent and is a common approach for commercial buildings. All conditions of consent will still apply irrespective of specific use.

***food and drink premises*** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

**Note—**

Food and drink premises are a type of ***retail premises***—see the definition of that term in this Dictionary.

### 2.3 – Zone objectives and Land Use Table

The proposal is consistent with all zone objectives for the MU1 Mixed Use zone, which are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

The proposed development is considered to be consistent with the zone objectives.

### 5.10 – Heritage conservation

The proposal is located within the Central Maitland Heritage Conservation Area (HCA), listed under Schedule 5 of MLEP 2011. The subject building is a contributory building within the HCA, being a 3-storey 1840s (approximately) Georgian period brick warehouse, originally used for local tobacco storage/processing. The building was later used for storage of wares and building materials after unloading from boats at the former port at the eastern end of High St, i.e. as a ‘bond store’. It was associated for most of the second half of the 19<sup>th</sup>C with the adjoining ‘Wolfe and Gorrick Stores’.

Internal fabric is of note, featuring heavy timber columns and beams, however fires and neglect have caused it to decay and become potentially unstable, leading to the need for structural repairs.

#### ***Interim heritage order***

As previously mentioned, an interim heritage order (IHO) was considered by the NSW Heritage Council to potentially list the item on the SHR and to give Council and Heritage NSW up to one year to assess the item’s significance and make a potential listing. As the applicant amended their proposal away from demolition, the IHO was not made. The site remains un-listed.

#### ***Heritage impact***

Internal fabric is to be removed wholesale, and it is notable that this internal fabric is not protected under Clause 5.10 of the Maitland LEP.



External fabric is to be retained and made good, with the exception of openings on the southern elevation, which are to be demolished and bricked-in. This is acceptable as it assists with fire separation and maintenance and there is very little opportunity to view this elevation, except from the rear of adjoining private property.

Additions are appropriately scaled, positioned and in complementary materials and colours. A glazed link will separate the original structure and new structure which is a suitably modern approach.

New awning and door openings are appropriate in form and material and will not detract from the character of the building. These enable the adaptive re-use and pivot of the building's address away from High St (since completely built-out) and towards the Hunter River.

The new building is appropriately designed and clad in modern arch-clad panelling in a 'rust' tone.

Paving and landscaping is appropriately designed and will enable appreciation of the building and its heritage significant environs.

#### **5.21 – Flood planning**

The site is situated completely above the 1%AEP flood level (1 in 100 year event) however it is between this level and the Probable Maximum Flood (PMF) extent. The proposal is not for residential accommodation, a potentially hazardous or otherwise sensitive land use.

Satisfactory time for advance notice is available for the business' staff and patrons during flood events to avoid or evacuate the area.

The building may not be moved or easily raised in future, though multiple floor levels may be re-established that will be above the PMF level, even if this increases in future under a range of climate change scenarios.

#### **7.1 – Acid sulfate soils**

Class 5 ASS. No management plan required.

#### **7.2 – Earthworks**

Minor site filling is required to level the proposed dining area.

Excavation is required to undertake underpinning works, foundations and drainage. Conditions of consent require that excavations are carried out with shoring sufficient to support neighbouring structures.

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

There is a draft LEP amendment. Nothing within it is of relevance 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:

#### **A.4 – Notification**

The proposal was notified as per this section, once upon lodgement and again on amendment of the proposal.

Seventeen (17) submissions were received in the first round and four (4) were received in the second round after the proposal was significantly amended. These submissions are discussed under section of this report addressing *section 4.15 (1)(d) - Any submissions made in accordance with this Act or the regulations*.

#### **C.1 – Accessible living**

The proposal includes universal step-free access to an accessible and ambulant toilet and both dining areas from the levee walkway.

#### **C.4 – Heritage conservation**

A Heritage Impact Statement (HIS) was submitted as well as extensive information provided on the site's heritage by submitters.

The building is of significance as an early and rare example of industrial architecture (1840 estimate) associated with the Hunter Valley's tobacco industry and later as an import warehouse associated with the growth of the colony (notably building materials and fabrics for 'Wolfe and Gorrick Stores'), with links to Maitland's river port and pre-railway development.

The building is very prominent in the Maitland townscape and its retention is of aesthetic and cultural significance.

Initially the proposed demolition of the building was assessed against NSW Land and Environment Court Planning Principle *Helou v Strathfield Municipal Council [2006] NSWLEC 66* which involved the assessment of the cost to make the contributory building safe. A detailed costing showed that this was not excessive and as such refusal or amendment was required. The applicant subsequently amended the proposal to adaptively re-use the site as food and drink premises.

The proposal now seeks to demolish internal fabric that has been fire and rot damaged, as well as remove remaining windows from the southern (formerly principal) elevation.

A builder's report, supported by a structural engineer, has been supplied to support the removal and partial replacement of internal timber warehouse floors as well as construction of an internal heavy steel frame upon which the brick shell will be supported. Underpinning and a new slab are also required. Given the structural need for these works, the heritage impact is acceptable as it prolongs the life of the structure.

Sawn-off timber joists will be left in the brickwork, indicating the former presence of warehouse floors. The window removal is acceptable as it is a means of complying with the Building Code of Australia and will have minimal appreciable heritage impact as there are very few vantage points from which to view this part of the southern elevation, having been built-out.

Alterations and additions are proposed to create new openings addressing the river with new awning over, to erect a linking structure in glazing with light framing and to erect a new distinctly modern structure containing amenities, kitchen, services and bin room. The yard is of little or no heritage significance having been filled in past to meet the levee crest and is proposed to be soft and hard landscaped as a dining area. Embellishments including a masonry fence and landscaping installed by Council are to be removed to open the courtyard up to the river with views to the Belmore Bridge and river bend.

The new building is appropriately sited and scaled, in pavilion style, allowing views to the original building. It will be clad in arch-clad panelling in vertical profile and copper colour, giving a suitable contemporary yet heritage sympathetic appearance.

The rear elevation (Hunter River elevation) will become the principal entrance and principal elevation, with the front elevation having been built-out long ago and material removed to create a fire barrier upon subdivision.

Remaining fabric will be retained and restored, or replaced like for like, including repointing of bricks, replacement cement rendering of the ground floor river elevation, timber window, sandstone headers/lintels and door repair.

All material choices have been assessed and informed by Council's heritage officer and architect, and include:

- Heavy steel doors
- Arch-clad cladding to new building
- Landscaping design is appropriate
- Signage adopts an appropriate modern-sympathetic aesthetic as simple illuminated lettering in acrylic, mounted under the new awning.

#### *Item 4.5 - Shopfronts*

The proposal is a warehouse with no existing shopfront, however proposes a new shopfront to the Hunter River levee walkway. This is a suitably human-scaled shopfront, similar in form and rhythm of surrounding commercial buildings while allowing indoor-outdoor linkages and views. Glazing is not dominant but is still prominent in the design. The design is suitably detailed for an industrial building with high quality finishes and is an improvement on the existing.

#### *Item 4.6 – Accessibility*

The building will have at-grade access from both the levee and High St. No access is provided to the mezzanine, which is not proposed to be changed to a use that requires wheelchair access. A future stair and elevator have been shown on plans as indicative.

### **C.6 – Signage**

An under-awning sign is proposed.

3D lettering is to be mounted to the underside of the thin profile awning addressing the Hunter River. This is a building identification sign and may be externally illuminated, though no illumination is explicitly proposed.

The sign is appropriate in its distinctly modern appearance, yet high quality in finish and effect. It is sized to fit the proportions of the awning and timber lintel behind it and will therefore not conflict with the heritage significance of the site and building.

### **C.7 – Outdoor dining**

An aim of this DCP chapter is to encourage development that will enable tourism and visitor potential to create an active river frontage. The proposal has direct access in the form of orientation to the river, as well as outdoor dining opportunities fronting the river.

The outdoor dining area is contained within private land and as such will not unduly impact the function of the levee walkway. A >0.5m gap is provided between the proposed outdoor dining area and the adjoining dining area to the west (a raised planter separates both areas).

The land is deemed to be subject to the requirements of Schedule A of this chapter. Schedule A enables outdoor dining areas to be excluded from the requirement for car parking. This concession is made on the basis of the land being within the central mall precinct, where walkability to and from parking venues and where cross usage of businesses is encouraged. No car parking is thereby required for the outdoor dining component of this development.

### C.11 – Vehicular access and car parking

Significant change to vehicular access is not proposed, with the right-of-way within 416A High Street remaining unaffected. The driveway/yard areas are to be built over, though these were never formalised as car parking spaces (with the development pre-dating cars).

Turning and loading remains available on the site for smaller vehicles such as vans for food and drink deliveries and cars for dropping off event and musical equipment.

As previously noted, outdoor dining in Central Maitland does not require car parking under section C.7 Outdoor Dining.

With regard to a change of use proposal, Section 1.2 'Calculation of parking requirements' requires new parking rates stipulated in Appendix A to be considered against parking generated for previous uses.

As per Appendix A, indoor dining seats are calculated at the rate of 1 per 6.5m<sup>2</sup> (with a service area of 128.92m<sup>2</sup>, the parking rate is 19.73 spaces) or 1 parking space per 3 seats (16.3 spaces) (whichever is the greater), where 49 seats are shown on the submitted floor plan.

The past use of the site was for a warehouse. Under Appendix A, a warehouse requires 1 space per 300m<sup>2</sup>, resulting in the need for 2 parking spaces (rounded up), noting an existing warehouse area of 375m<sup>2</sup>.

The Appendix A deficiency will be increased by 18 spaces from 2 to 20 (rounded up).

With no parking able to be provided, strict compliance is unreasonable and unnecessary as it would result in possible refusal of the proposal or the requirement for purchase of land for dedicated car parking, which is onerous, unfeasible and potentially damaging to the fabric and vibrancy of the city centre.

Sharing of parking facilities is a feasible option in this location, with the complementary Riverside Car Park a short walk to the west, already connected by lit path. This approach is supported by an objective of this chapter, which is: *"To acknowledge the traditional lack of parking spaces within areas of historical or architectural significance (Central Maitland, Morpeth) and balance this with the need to facilitate development in order to maintain vitality and vibrancy in such centres."*

A condition of consent requires parking for 6 bicycles on the site (i.e. 3 x racks).

### E.1 – Centres

The proposal is within an existing industrial building within Central Maitland. The proposal to adaptively re-use the 1840s warehouse as a food and drink premises will support the hierarchy of centres (as an iconic destination venue with views of the Hunter River), instate a new and enhanced active street frontage (to the levee) and will very likely result in increased activity (intensification) within the precinct, particularly on foot, where the premises itself has pedestrian/cyclist only access.

Patrons will access the site via the levee walkway and a private dining terrace will be constructed adjacent to the path. Deliveries, grease trap servicing and musical entertainment will still access via the right-of-way from High St – unchanged from the existing scenario.

Waste collection will be by Council on High Street. Waste will be taken out on foot via the driveway to High Street. The driveway is partly within 416A High Street and partly within the neighbouring property (410 High Street), protected under a right of way 2.99m wide and variable (limited in height).

The property is noted to be above the flood planning level for the 1% AEP event.

There are not expected to be significant adverse noise impacts resulting from the proposal, with its impacts on surrounding land uses being mitigated by its orientation and surrounding uses being largely commercial and open space. There are few residential receivers in this part of Central Maitland and if they are constructed in future, they will need to respond to background noise. Dwellings on the opposite side of the river are sufficiently distant and set behind the levee, which acts as a partial noise barrier.

### E.3 (2) Central Maitland Heritage Conservation Area

The proposal complies with the character statement and will improve the heritage character of the precinct (it is one of few older buildings that have a strong address to the Hunter River), acting as a catalyst for further improvements to similar shopfronts within this heritage significant grouping.

The architectural contribution of the building will be maintained and enhanced through new openings, dining terrace and modifications to Council's public domain to open the site to the river. Use of arch-clad cladding on the new building and heavy steel framed doors on the new opening will present a sympathetic yet contemporary shopfront to the river.

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

There are no planning agreements, or draft planning agreements.

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

There are no regulations prescribed under Clause 61 of the Environmental Planning and Assessment Regulation 2021 which apply to this proposal.

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

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

Matters for consideration	Comments
Access	<p><b>Operational</b></p> <p>The application notes that the intent is for the majority of patrons to arrive from the levee walkway. This is acceptable as it is pedestrian/cyclist only access, across Community land belonging to Council and the Crown.</p> <p>The private driveway, part of which is over a right-of-way, will remain as a service access (deliveries, event/band bump-in) and secondary patron access. No intensification of the ROW is anticipated on this basis when compared with the existing warehouse and as such consent is not required from the owner of the burdened lot.</p> <p><b>Construction</b></p> <p>Site construction access is proposed from High Street and from the Riverside Car Park, with trucks driving along the levee walkway. The High Street access requires a hoarding and compound within High Street.</p> <p>Both will require approval from Council – one a s138 Roads Act application and the other a license to use Community land under the Local Government Act.</p>

	Impacts of this have been considered and conditions of consent imposed to rectify pavement damage, minimise disruption of the road and walkway and to have traffic management in place for periods where infrastructure is to be in possession.
Noise	<p>An acoustic report was supplied with the proposal. This supported trading to midnight, including amplified music outside - until midnight.</p> <p>Council's Environmental Health Officer reviewed the report and supported its findings and recommendations. A condition of consent will require that the development is carried out in accordance with this report.</p> <p>Noise impacts may be felt by residents across the river, although the levee on that side provides some protection. Few residential properties surround the site, with many currently vacant or since changed to commercial uses.</p>
Food premises	<p>Sufficient information provided to support the granting of consent – layout appropriate and capable of complying with AS4674.</p> <p>Ventilation is provided and kitchen odour is not considered to be of significant impact given the position within a commercial area and open space adjoining. The stack is appropriately designed and positioned on the new structure.</p> <p>Grease trap is provided outdoors, with servicing able to be carried out by small truck or by extending a hose to a parking space in High St.</p> <p>Waste may be collected up to 3 x weekly on High Street by Council.</p>
Hours of operation	The development proposes to operate 6:30am to midnight 7 days a week. Whilst the acoustic assessment detailed 7am-12am daily operations, it is considered a 6:30am start can be supported. This is acceptable as the site is within a business district and addresses the river predominately. This allows for breakfast trade through to night-time entertainment trade.
Waste	<p>Solid waste is to be stored in a dedicated bin room adjacent to the levee. It is to be moved to High Street for presentation and collection by truck. This can be managed either by Council (3x weekly collections in Central Maitland) or private contractor.</p> <p>A condition of consent will be applied to require placement and removal of bins as close to collection time as possible.</p>
Public domain	Council's hedge and rendered fence is to be removed and replaced with paving and a lower hedge. This is acceptable as it opens the site to the river (a long-standing planning intent of the Council). Conditions of consent will require that these works are approved by Council via license under the Local Government Act.

Social and economic impacts	<p>Adverse impacts of increasing accessibility to alcohol are far offset by the social benefits obtained by the adaptive re-use of a heritage building in an iconic location and the provision of a social gathering space and public-private terrace, including potential for live music, parties and weddings.</p> <p>Crime impacts such as assaults and theft are addressed in the CPTED report. The submitted CPTED report notes that the proposal is highly likely to improve perceptions of safety in the vicinity at night due to the introduction of night-time activity.</p> <p>Economic impacts are such that the development will:</p> <ul style="list-style-type: none"> <li>• Reinforce the Centres hierarchy</li> <li>• Bring activity and jobs to Central Maitland</li> <li>• Bring broader-ranging agglomeration benefits</li> <li>• Increase visitation from further afield.</li> <li>• Make use of existing public investment in public domain and public transport infrastructure</li> </ul>
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#### **Section 4.15 (1)(c) - The suitability of the site for the development**

The site is suitably located within a business precinct, adjacent a café, with river frontage, in a mixed-use zone and previously used as a 3-storey warehouse. The proposal appropriately manages the site's heritage significance and context. The site is suitable for the proposal, subject to archaeology and other conditions being applied.

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

##### ***Public Submissions***

The proposal was publicly notified twice, in accordance with the Environmental Planning and Assessment Act 1979 and the Maitland Development Control Plan 2011.

The original proposal, for demolition of the warehouse and erection of a residential flat building received seventeen (17) submissions, all in objection.

Subsequently amended, the second notification drew four (4) submissions, all in support of the proposal, albeit with some criticism/suggestions.

While all comments were considered, only themes and comments of relevance from the second-round of notification are discussed here:

##### **Submissions Summary**

All four submissions are in support of the revised Development Application, with one submission raising part objection to the proposal. All submissions included some comments and suggestions for consideration in the ultimate design of the proposal. The submitters have commented that the revised project is a much better solution for this contributory building (than the demolition which was originally proposed). It is notable that comments were also received from Heritage NSW however this was not considered a formal submission.

The comments raised by the submission makers have been summarised as follows:

- Doors
  - Leaving the sliding warehouse door on the laneway side visual and a main feature.

- Changing the doors on the levee side to match the sliding door on the laneway side, this could even be swinging doors.
- Use industrial looking doors made from timber, possibly recycled timber.
- Windows
  - Window heads and sills are constructed using Ravensfield sandstone. Alternative supplies need to be similar in colour and texture to be successful.
  - Replacement timber windows need to be detailed to suit the era of the building.
- Kitchen and seating
  - Create more seating outside by putting a two-storey wharf style deck out the front, with timber poles that mirror the poles internally. This would bring some of the internal elements outside and give the building an industrial warehouse / wharf feel.
  - Place the kitchen inside the building on level 2 and then make up for the seating space in a verandah.
  - Put the kitchen inside of the attached Hills Chamber building and attach the 2 building like they were previously.
- Demolition plan
  - It is unclear what 'will' or 'won't' be proposed for the demolition aspect of the proposal.
- Other
  - Sign on the building should have an industrial heritage finish. The current proposed sign takes away from the heritage aspect of the building.
  - The reference to possibly replacing or repairing the cement rendered areas of walling with lime-based render is not supported.
  - Ground floor concrete slab may be covering archaeological information that could provide further detail on the use of this building. Care should be exercised during its removal.
  - Create a stunning shop front to the river. This would set an important example for quality businesses.

**Council response:**

- Doors addressing the Hunter River have been re-specified in steel, industrial type.
- Sign is to remain as proposed – a contemporary illuminated sign on the new awning.
- Arch-clad cladding has been specified for the new building.
- Council's heritage officer has recommended conditioning an archaeological assessment to be undertaken as part of the works.
- All timberwork internally is to be removed. As discussed in this report, the building is not heritage listed and internal fabric is able to be replaced without additional heritage consideration. It is noted that part of one of the floors is to be re-instated.
- A condition of consent will require external elements to be retained or faithfully restored as a first priority or replaced like for like only where retention/restoration has been ruled out by a heritage consultant and builder (e.g. where the condition is very poor).
- A condition will require that only the approved external materials and colours are used, with amendments to this requiring written consent from Council.
- New building has been amended to incorporate bin room and ventilation structures in one substantial structure. Window has been added to the levee walkway elevation to provide an improved address and casual surveillance.

***Government Agency Submissions***

The proposal is of a type that requires Council, as the consent authority, to obtain the comments and general terms of approval from the following government agencies:

- Water NSW – GTAs provided



- Hunter Valley Flood Mitigation Scheme – Certificates of approval provided.

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

The proposal is unlikely to adversely impact any public interest. The proposal is in the public interest on the basis that it provides for adaptive re-use of a significant building and activation of the riverfront in Central Maitland while managing heritage impacts appropriately. It complies with the objects of the EP&A Act.

#### **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 – comment:**

Recommended design amendments were made.  
Standard conditions.

Recommended that fire separation requirements of subdivision consent on neighbouring site be considered – where the two structures adjoin one another and required fire separation per that consent.

##### **Heritage officer – comment:**

Consulted throughout review and design amendment process.

Recommended retention/reconstruction of internal timber floors/columns. Subsequently some of this is to be re-built and some of the timber is to be interpretively re-used on site.

Recommended archaeology conditions.

##### **Architect – comment:**

Consulted throughout review and design amendment process.

Recommended design amendments made.

Specified materials and colours. Supported public domain modifications to enable views to the river and connection of the dining area with the public walkway.

##### **Environmental health officer – comment:**

Reviewed acoustic assessment and design of kitchen, including grease trap location and servicing.

Accepted trade and indoor amplified music until midnight, per the recommendations and assumptions of the submitted acoustic report.

Recommended design amendments were made to the kitchen.

##### **Development engineer – comment:**

Stormwater and access reviewed and acceptable. Recommended against use of the Right of Way for principal operational access.

#### **ASSESSMENT CONCLUSION**

An assessment of the application has been undertaken against Sections 4.55 and 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**

That consent is granted subject to the conditions provided in the attached schedule.

## **City Planning**

# **DA2022/670 FOOD AND DRINK PREMISES, ALTERATIONS, ADDITIONS AND SIGNAGE AT 416A HIGH STREET MAITLAND**

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

**Meeting Date: 12 November 2024**

**Attachment No: 4**

**Number of Pages: 12**

**Schedule of Conditions DA/2022/670****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 Reference	Sheet No.	Revn No.	Revision Date	Prepared by: (consultant)
Existing and demolition plan, 860	DD200	05	23/08/2024	Skelcon
Floor plan, 860	DD201	05	23/08/2024	Skelcon
Site plan/CPTED, 860	DD202	02	23/08/2024	Skelcon
Elevations 1, 860	DD300	05	23/08/2024	Skelcon
Elevations 2, 860	DD301	05	23/08/2024	Skelcon
Sections, 860	DD400	05	23/08/2024	Skelcon
Kitchen details, 860	DD401	04	23/08/2024	Skelcon
Materials, 860	DD501	02	23/08/2024	Skelcon
Stormwater management plan, 23-283	1	B	22/08/2024	Skelton Consulting Engineers
Stormwater details, 23-283	2	B	22/08/2024	Skelton Consulting Engineers
Landscaping plan, GSP230441	L02	B	May 2024	Green Space Planning Co.
Plant schedule and character images, GSP230441	L03	B	May 2024	Green Space Planning Co.

**Documents**

Name	Reference/Revision	Date	Prepared by
Heritage impact statement	Issue 3, Rev A	31/05/2024	Contemporary Heritage
Construction Management Plan	Rev 1	21/08/2024	Skelcon
Noise assessment	MAC232037-01RP1	20/12/2023	Muller Acoustic Consulting
Traffic and parking assessment	23230, A	Jan 2024 (Received 31/01/2024)	Transport and Traffic Planning Associates
Structural engineer's report	-	May 2024	Skelton Consulting Engineers
BCA Assessment report	240361-BCA-r1	29/04/2024	Credwell
Operational waste management plan	15163	30/04/2024	De Witt Consulting
CPTED report	-	20/05/2024	De Witt Consulting

**CERTIFICATES AND FEES**

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

**LANDSCAPING**

6. All landscaping, landscaping structures and paving shall be installed **prior to issue of an Occupation Certificate** and maintained in accordance with the approved plans. The landscaped areas shall be kept free of parked vehicles, stored goods, waste material, and the like. Paving is to be kept in good order and tied-in neatly with Council's paving.

**OPERATIONS**

7. The hours of operation of the activity shall be confined to within 06:30am to Midnight Monday to Sunday.
8. The development must operate in accordance with the approved acoustic impact assessment, reference MAC232037-01RP1, prepared by Muller Acoustic Consulting, dated 20/12/2023. Council may require new noise assessment data and alterations to operations where it is reasonably expected that noise levels exceed the findings of this report and cause nuisance.
9. Garbage bins shall be taken to High St for collection no sooner than 12 hours prior to collection and removed within 3 hours of collection occurring.
10. Unless approved by council in-writing or in a separate consent, venue capacity is not to exceed 100 patrons/staff.
11. **Prior to issue of an Occupation Certificate**, a lighting and CCTV design shall be provided to cover all outdoor areas, to the satisfaction of the Certifier and Maitland City Council. This lighting and CCTV design is to be sufficient to provide adequate surveillance coverage of the outdoor back-of-house and driveway areas of the subject premises at night, and of the dining terrace at night after-hours, without significant adverse impacts on the privacy or amenity of occupants of other properties or the public domain.

**BUILDING CONSTRUCTION**

12. All building work shall be carried out in accordance with the provisions of the Building Code of Australia.
13. 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.

14. 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 Sundays 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.

15. **Prior to issue of a Construction Certificate**, it must be ensured that fire safety requirements relating to DA/2019/739 have been adequately complied with.

#### ARCHAEOLOGY

16. A suitably qualified archaeologist shall be retained to monitor excavation work and any material evidence exposed in the course of the excavation archivally recorded. A report of the recording and monitoring process shall be drafted by the archaeologist in accordance with the guidelines and criteria published by the NSW Heritage Office. A copy of this archival recording shall be forwarded to Council within 3 months of the field recording being completed.
17. All workers on the site shall be informed of possible Aboriginal occupation. Should any Aboriginal artefacts be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance in this area is to stop immediately and the National Parks and Wildlife Service of NSW should be informed in accordance with the *National Parks and Wildlife Act 1974*. Further works shall not occur until the necessary approvals/permits have been obtained.
18. The Applicant must ensure that if substantial intact archaeological deposits and/or State significant relics are discovered, work must cease in the affected area(s) and the Heritage Council of NSW or its delegate must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

#### HERITAGE

19. Existing brickwork and mortar shall be tested for salts and mortar shall be analysed to provide an appropriate mortar mix for repairs. Repairs shall be made to match existing in all aspects and should use existing brickwork located from within the site wherever possible. It may be necessary to source matching bricks from elsewhere however these shall match existing in all aspects. Existing inappropriate mortar repairs should be carefully removed using an oscillating mortar saw and replaced with a more suitable mortar following analysis.
20. Existing renders shall be sampled and analysed in order to determine a suitable mix for repairs. Render repairs should be limited to those elements already rendered and shall not extend to existing brickwork that is not already rendered. Existing renders should be investigated and Where necessary, these rendered sections shall be carefully removed and replaced with a more suitable render following analysis.
21. **Prior to commencement of any excavation works or prior to issue of a Construction Certificate (whichever occurs sooner)**, an Archeological Assessment in accordance with Heritage NSW guidelines shall be prepared by a suitably qualified archaeologist and submitted to and endorsed by Council. A copy of the endorsed archaeological assessment shall also be

submitted to Heritage NSW.

Recommendations of the Assessment and any additional information requirements or investigations shall be provided/carried out **prior to the commencement of any excavation works or prior to issue of a Construction Certificate (whichever occurs sooner)**.

22. A conservation architect shall be retained to document the work to the building and to administer the building contract.
23. Unless otherwise approved by Council in-writing, the underpinning works shall involve the careful non-disturbance or replacement of sandstone wall foundations.
24. Excluding re-pointing with appropriate mortar, there shall be no alteration (including painting or rendering) to any existing face brick work (that is not already rendered).
25. All windows, fascias and barge boards shall be of timber construction.
26. New timber-framed windows on the Hunter River elevation must reference the historic images of the property, being generally double-hung windows consisting of two 6-pane sashes.
27. Three timber lintels at ground floor level, above each of the eastern and southern door openings and one above the central pair of ground floor windows, shall be retained and incorporated into the proposed design in order to integrate interpretation measures into the proposal.
28. Existing rainwater goods shall be replaced with new galvanised steel/to match the original and discharge via approved system away from the building and site.
29. Building upgrades required to comply with the Building Code of Australia shall be designed and undertaken to have as little impact upon the heritage fabric of the building and place as possible.
30. Burglar guards shall be retained in situ or removed. Any retained guards shall be repaired and repainted to match the scheme. If guards are removed then the affected brickwork or mortar shall be made good.
31. Stone sills and window heads shall be retained and monitored. Stone repairs to be undertaken only where required to ensure that the building is sound.
32. Redundant structural bracing, steel channels and ties should be reviewed by the structural engineer and removed if possible **following completion of new structural works**.
33. Unless otherwise approved by Council in-writing, where floor joists are being demolished, cut-off bearers and joists are to remain in-situ within the brick walls.
34. **Prior to issue of a Construction Certificate**, unless otherwise approved by Council in-writing, the following colours, materials and finishes shall be used:

Component	Material	Colour
Eastern and southern doors to principal building	Hardwood	To be determined at CC.

Mezzanine	Existing hardwood retained/re-used	Natural or oiled
Landscape shade structure and bench seats	Existing hardwood re-used	Natural or oiled
New doors on ground level – river elevation	Steel framed, glazed	Bronze colour or black
Roof and rainwater goods	Galvanised steel	Un-painted
Kitchen addition: 1. Principal part 2. Pop-out	1. Arch-Clad clip-tray 25mm standing seam rib, 275mm width panelling, and 2. Arch-clad express system 25mm, 192mm panel width	1. Naturel Antique Copper and 2. Satin black aluminium
Rendered elements	Render mix to match	Natural White
Window lintels and sills	Like for like - Ravensfield sandstone	Like for like - mud-stone colour
Windows	Timber	White
Awning	Thin metal, powdercoat finish	To match door frames
Bricked-up windows	Brick	To match existing
Raised planter	Dry pressed brick or rendered brick	To complement. To be determined at CC stage.
Outdoor paving	Brick paver	To be determined at CC stage

35. A comprehensive and ongoing log of existing service infrastructure lines shall be undertaken throughout the course of the project. The log should be incorporated into a detailed map and provided to Maitland City Council **prior to issue of the Occupation Certificate.**

#### SERVICES & EQUIPMENT

36. 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.
37. 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.
38. 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](mailto:afss@fire.nsw.gov.au). Standard forms and further information for lodging Fire Safety Statements may be downloaded

from Councils website.

#### **SITE CONSIDERATIONS**

- 39.** 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).

- 40.** 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.

- 41.** 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.

The responsible person must gain a separate S138 approval from Council for the hoarding or fencing within the road reserve, fees apply. 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.

- 42.** 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.

- 43.** 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.



44. The site is to be cleared of all building refuse and spoil immediately after completion of the building/structure.
45. Suitable and adequate measures are to be applied to restrict public access to the site and building works, materials and equipment.
46. **Prior to issue of any Construction Certificate**, a controlled activity approval under the Water Management Act 2000 for the proposed building works and construction activities within 40m of the upper bank of the Hunter River shall be provided to Council.

#### VEHICULAR ACCESS AND PARKING

47. All vehicle movements shall be in a forward direction only. No reverse movement onto the public road (High Street/the Levee Mall) is permitted. Waste and other service vehicles shall be parked on the street with access to the site provided on foot.
48. **Prior to issue of an Occupation Certificate**, parking for 6 bicycles shall be provided on-site.
49. **Prior to commencement of operations**, any proposed on-street loading zone for the operation of the development on High Street must be approved by the Council's Local Traffic Committee.

**Note:** Please allow three months from lodgement for the Local Traffic Committee (LTC) process. All recommendations from the committee will be incorporated into the approvals and works.

#### UTILITIES

50. **Prior to issue of any Occupation Certificate**, any necessary alterations to public utility installations shall be at the developer's expense and shall meet the requirements of both Council and the relevant authority. The responsible person must obtain a separate S138 approval (Road Opening Permit) from Council for utility and service works within the road reserve. Fees apply.

#### STORMWATER DRAINAGE

51. **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) Minimum storage volume of 1.53m<sup>3</sup> for onsite detention (OSD) with a maximum permissible site discharge limited to 1.29litres per second for the 1% AEP event and strictly in accordance with drainage plan number (23-283) revision (B) dated (22/8/2024) by (Skelton Consulting Engineers), and
  - b) An emergency overland flow path for major storm events, that is directed to the public drainage system, and
  - c) Entrapment of gross pollutants
52. **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.
53. Following the installation of any roof or hardstand area, final discharge of collected stormwater

runoff shall be piped, in accordance with Council's Manual of Engineering Standards to:

a) The existing site drainage system.

54. Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:
- a) All stormwater drainage and storage systems

The principal certifier must provide a copy of the plans to Council with the Occupation Certificate.

55. **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.

#### EROSION CONTROLS

56. An Erosion and Sediment Control Plan (ESCP) in accordance with Managing Urban Stormwater: Soils and Construction (commonly known as the "Blue Book") prepared by a suitably qualified professional shall be submitted to and approved by the certifier for sites with a disturbed area of less than 2,500m<sup>2</sup>.

#### PUBLIC DOMAIN

57. **Prior to commencement of works to public infrastructure and/or use of the levee walkway for construction access**, a license under the Local Government Act must be obtained from Council for use of Community Land for temporary construction access purposes and for works to demolish the boundary fence, remove public landscaping and install paving and plant a low-growing hedge.
58. The applicant is required to notify Council in writing **prior to commencing building operations** of any existing damage to kerbing and guttering, road pavement, footpath paving, the Levee Mall, and the Riverside Walkway in the vicinity of the subject lot. Failure to provide such notification will indicate that no damage exists, making the applicant liable for the costs associated with repairing any damage to the kerbing and guttering, road pavement, footpath paving, the Levee Mall, and the Riverside Walkway that may be necessary following the completion of the building works.

Note: The restoration charge for the Levee Mall is \$6,750 per m<sup>2</sup>, with a minimum charge for a trench of 1 m<sup>2</sup> for all Levee restoration works. This charge is effective until the end of the 2024/2025 financial year. After that time, the charge will need to be updated according to the MCC's new Fees and Charges Schedule.

59. **Prior to the commencement of any works:**
- a) A Construction Traffic Management Plan, along with a Traffic Guidance Scheme in accordance with the Transport for New South Wales publication "Traffic Control at Worksites," shall be submitted to Council for approval.
- b) Consent under the Roads Act for the approved work zone shall be issued by Council.
- c) All relevant Council fees must be paid.
60. While work is being carried out, no building materials, refuse, or spoil shall be deposited on or

allowed to remain on Council's footpath, road reserve, and/or public land (unless approved within a s138 application).

## DILAPIDATION

- 61. Before the issue of a Construction Certificate**, a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures, public land and roads within a 50m radius to the satisfaction of the principal certifier. Additionally, the report shall cover the following:
- a) High Street/the Levee Mall (extended along the construction access route)
  - b) The Riverside Walk
- If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.
- 62. Before the issue of an Occupation Certificate**, a suitably qualified engineer must prepare a post construction dilapidation report, to the satisfaction of the Principal Certifier, detailing whether:
- (a) after comparing the pre-construction dilapidation report with the post-construction dilapidation report required under this condition, there has been any structural damage to adjoining buildings, structures, public land, and roads; and
  - (b) If there has been structural damage to any adjoining buildings, structures, public land, and roads, whether it is a result of the building works approved under this development consent.
- 63. Before the issue of any occupation certificate**, the principal certifier must provide a copy of the post-construction dilapidation report to the Council (if the Council is not the principal Certifier) and to the relevant adjoining property owner(s). Any rectification works identified by both Council and the Principal Certifier must be completed to Council's requirements and to the satisfaction of Council.

## CONSTRUCTION MANAGEMENT

- 64.** Prior to the issue of any construction certificate, the applicant must provide a Construction Traffic Management Plan for Council approval. The plan must address the following:
- General Requirements**
- Detailed construction traffic management, including proposed truck movements, largest vehicle sizes, estimated frequency, and measures to ensure pedestrian safety. Vehicle access for construction shall be from High Street/the Levee Mall only. No vehicle or crane access is permitted from the Riverside Walk.
  - Designated location for materials and waste within the site with protective fencing.
  - Identified pedestrian and vehicular access points and zones for construction activities.
  - Management of public pedestrian movement in the vicinity.
  - Plan to manage disruptions to local businesses and adjoining properties.
  - Protective measures for onsite and public trees in accordance with AS 4970-2009 (Protection of Trees on Development Sites) and Council requirements.
  - Details of any bulk earthworks to be performed.
  - A schedule outlining the work, including dates, hours, duration, major construction activities, and concrete pours.
  - Equipment to be used during the construction process.
  - Dust, noise, and vibration control measures.

- Location of temporary toilet facilities.
- Coordination with Council's Events Team for the management of any events in The Levee.

**Stage 1: Crane Works (if applicable):**

- Details of the proposed temporary road closure on High Street/the Levee Mall, between Bulwer Street and Elgin Street, for crane operations.
- Information about detours due to the closure of High Street/the Levee Mall for crane works.
- A crane study detailing the type of crane, weight, load and point loads, boom length, required logistical tasks, and assessment of offsite impacts (disruptions, pavement damage, public safety etc.).
- Alternative temporary on-street parking arrangements, including relocating disabled parking spaces impacted by the closure on High Street/the Levee Mall to Bulwer Street.

**Stage 2: Building Works (without crane):**

- Proposed work zone details on High Street/Mall, including dimensions of closure (width, full or partial closure) and its impact on traffic lanes.
- Plans for any hoarding or scaffolding on public places.
- Proposed delineation measures (e.g., cones) and pedestrian safety management.
- Details on a secondary work zone or designated external waiting area (suggest using existing on-street parking at the northern end of Bulwer Street) for delivery vehicles, especially during simultaneous deliveries. The applicant must ensure that a copy of the approved Construction Traffic Management Plan is kept on-site at all times throughout the construction period.

65. The site shall be managed at all times during the construction phase to prevent dust generation from land disturbance activities (e.g., through water spraying, dust suppression, surface sealants, soil binders, wind barriers, and/or dust retardants).
66. Any proposed on-street loading zone for the operation of the development on High Street must be approved by the Council's Local Traffic Committee.

**Note:** Please allow three months from lodgement for the Local Traffic Committee (LTC) process. All recommendations from the committee will be incorporated into the approvals and works.

67. All construction traffic management procedures and systems identified in the approved Construction Traffic Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.

**DEMOLITION AND CONTAMINATION**

68. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001.
69. 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.
70. 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.

71. Recovered timber is to be retained on-site (or stored temporarily off-site) and re-used in re-constructing the floors as close to original as possible. Other timber is to be re-used on site in landscaping structures, fixtures and furniture. You are encouraged to store as many timber columns and beams as possible for future upper floor reconstruction purposes (subject to DA).

#### **FOOD PREMISES FIT-OUT**

72. The premises, including the construction and installation of all equipment, fixtures and fittings must comply with the requirements of The Food Act 2003, Food Regulation 2004, Food Standards Code and Australian Standard 4674 for the Design, Construction and Fit-out of Food Premises. If Council is nominated as the Principal Certifying Authority, details of compliance are to be included in the plans and specifications for the Construction Certificate. Councils Environmental Health Officer is to be given 48 hours-notice to inspect the premises prior to the commencement of the business.

Prior to commencement of trade the business is to be registered with Council.

73. The premises, including the construction and installation of all equipment, fixtures and fittings must comply with the requirements of The Food Act 2003, Food Regulation 2004, Food Standards Code and Australian Standard 4674 for the Design, Construction and Fit-out of Food Premises. If Council is nominated as the Principal Certifying Authority, details of compliance are to be included in the plans and specifications of the construction Certificate. Councils Environmental Health Officer is to be given 48 hours notice to inspect the premises prior to the commencement of the business.

Where Council is not nominated as the Principal Certifying Authority a Certificate from an appropriately qualified person confirming compliance with the above legislation and guidelines is to be provided before the issue of the Occupation Certificate.

Prior to occupation and commencement of trade the business is to be registered with Council.

74. **Prior to commencement of operations** a final inspection is to be undertaken of the food premises by Council's Environmental Health Officer.
75. The premises will be incorporated in Council's Surveillance Program and will be subject to inspections.

#### **EXTERNAL AGENCY REFERRAL CONDITIONS**

##### **DEPARTMENT CLIMATE CHANGE, ENVIRONMENT & WATER - WATER NSW**

76. The development must be carried out in accordance with General Terms of Approval reference: IDAS-2022-10427 issued: 30/01/2023 by Department of Planning and Environment – Water (now Department of Climate Change, Environment and Water).

#### **HUNTER VALLEY FLOOD MITIGATION SCHEME**

77. **Prior to commencement of construction**, a certificate of approval for the development must be granted by the Department of Climate Change, Environment and Water – Hunter Valley Flood Mitigation Scheme under s256 of the Water Management Act.

#### **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 or public 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 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.
- E** 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.

**END CONDITIONS**

## **City Planning**

# **DA2021/1559 PROPOSING DEMOLITION, ONE INTO THREE LOT TORRENS TITLE SUBDIVISION AND TREE REMOVAL AT 3 AND 5 MOORE ROAD BOLWARRA HEIGHTS**

## **Assessment Report (Under Separate Cover)**

**Meeting Date: 12 November 2024**

**Attachment No: 3**

**Number of Pages: 15**

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

*Version 1: Comprehensive*

Application No:	DA/2021/1559
Proposal:	Demolition, One into Three Lot Torrens Title Subdivision and Tree Removal
Address:	3 and 5 Moore Road BOLWARRA HEIGHTS NSW 2320
Lot & DP No:	12/D/977972, 50/1247500
Property No:	20890
Applicant:	Hunter Development Brokerage Pty Ltd
Owner:	Meadow Blue Pty Ltd
Author:	Kristen Wells
Site Inspection:	04/02/2022

### INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2021/1559 proposing Demolition, One into Three Lot Torrens Title Subdivision and Tree Removal. 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 one into three lot subdivision (creating two additional lots), featuring the following:

- Proposed Lot 121 (retaining the existing dwelling), with frontage to Moore Road, 1150.7sqm (1037.7sqm excluding right of access);
- Proposed Lot 122, centrally positioned in the subdivision, 900sqm (753sqm excluding right of access);
- Proposed Lot 123, at the very rear of the subdivision, 1176.1sqm.
- All proposed lots will be accessed via a shared driveway.

Works on site include the retention of the existing dwelling and demolition of all other structures on site, including a detached garage, a carport attached to the main dwelling, concrete slabs, rear shed and remnants of a tennis court. There will be earthworks required across the site to create a fall of the land towards an existing stormwater system. The removal of trees is required as part of the works and is discussed in further detail within the report.



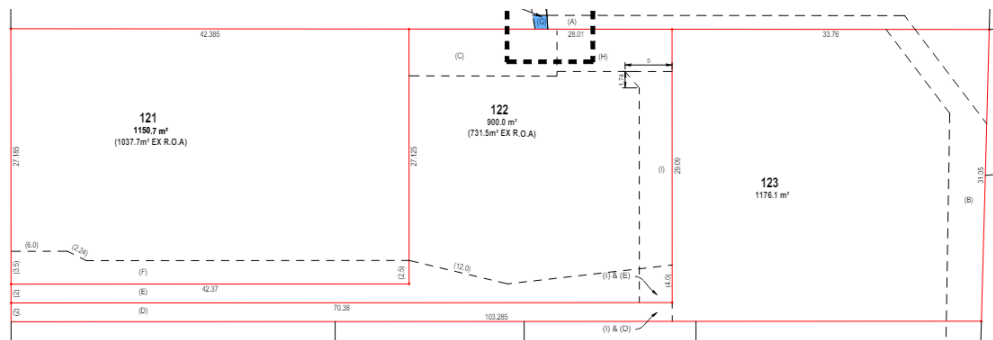


Figure 1: Subdivision Plan

It is acknowledged that the development is proposed over two lots, being 3 Moore Road and 5 Morre Road. The subdivision is proposed almost entirely upon 3 Moore Road. Works on 5 Moore Road are confined to connecting to an existing stormwater pit. Owners consent for the minor works have been received. Unless otherwise specified, this report refers to the subdivision upon 3 Moore Road (Lot 12, Sec D, DP 977972).

The development application is noted to have undergone significant review to ensure that engineering matters (specifically stormwater disposal) meet necessary requirements. A number of iterations to stormwater detail have been made, resulting in the lengthy assessment process.

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

The site is known as 3 Moore Road Bolwarra NSW and has a legal description of Lot 12, Sec D in Deposited Plan 977972. The site is rectangular in shape and has a total site area of 3226.8m<sup>2</sup>. The site is located on the southern side of Moore Road with vehicle access gained via the 31.1m wide frontage to Moore Road. Moore Road is positioned within the northern most portion of Bolwarra, accessed off Tocal Road. The site is located outside of the Bolwarra Heritage Conservation Area and is unconstrained in terms of bushfire, flooding, subsidence and other key issues. The location of the site is represented in Figure 1 below.

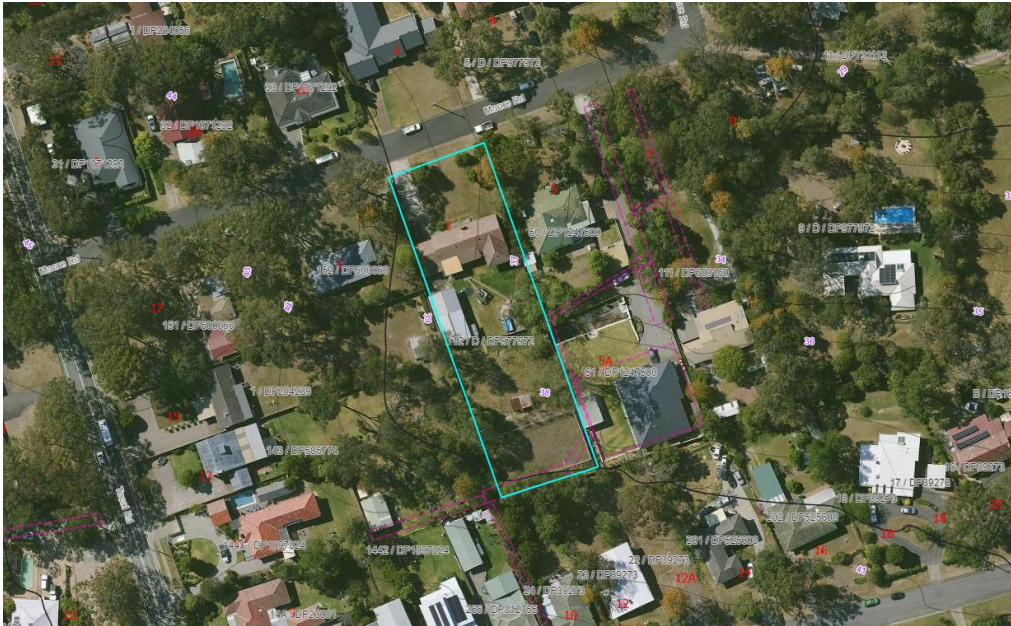


Figure 2: Aerial imagery of the site (Metromap 2023)

Existing improvements on the site include a detached single-storey dwelling house located at the Moore Road frontage with ancillary structures at the rear, including a detached garage, carport, raised concrete slab and remnants of a tennis court. The site consists of scattered vegetation across the site. The property is in a well-established residential area predominantly consisting of detached dwelling houses located on various sized allotments.

Evidence of previous subdivision, where rear allotments are portioned off can be found upon the eastern adjoining allotment, 5 Moore Road. A subdivision was approved in 2016, permitting the apportionment of a rear allotment from a street fronting allotment. This has set a precedent for similar style subdivision in the area.

#### 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	Key Issues
DA11/0359	Removal of One Tree	21/02/2011	Approved	-
DA15/2444	Torrens Title Subdivision - One (1) lot into two (2) lots	26/04/2016	Approved	This approval permitted a two-lot subdivision on the adjoining property (5 Moore Road, Bolwarra). This is evidence of prior approval of creating smaller lots and subdividing the original large lots into smaller allotments. This subdivision creating a rear

				allotment accessed via an access handle.
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#### PLANNING ASSESSMENT - 4.15(1) matters for consideration

##### Development Type

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

##### Contributions

The proposal attracts a contribution of \$17,782.00 under Council's current adopted Section 7.11 Plan.

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

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

###### *Chapter 4 - Remediation of land*

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

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

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

###### State Environmental Planning Policy (Biodiversity and Conservation) 2021

###### *Chapter 2 - Vegetation in non-rural areas*

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

Three (3) trees that would need consent for removal have been included as part of this application. Other trees exist onsite and are required for removal, but these trees do not require consent being either exotic species, citrus trees, or less than 3 metres. All vegetation on site has been inspected by Councils ecologist who made the following comments:

*The trees along the fence (proposed lot 122) appear to be planted and consist of common natives species of Weeping Bottlebrush (Callistemon viminalis), Lily-pilly (Syzygium australis), Black Wattle seedling (Callicoma serratifolia) and Native Peach seedling (Trema tomentosa). However, I have queried one shrub on the property as Netted Bottlebrush (Callistemon linearifolius)... A condition of consent has been imposed regarding this tree.*

*No habitat features present (tree hollows, stick nests, mud nests etc).*

*... Other trees and shrubs on site were exotic including Peppercorn Tree (*Schinus molle*) and Citrus species.*

*The largest tree in the stand is within the neighbouring property. This tree is possibly a Magenta Lily-pily (*Syzygium paniculatum*).*

There is no objection to the removal of trees within proposed lot 122 to facilitate the development. However, the Magenta Lily-Pily on the adjoining lot was raised as an area of concern with the applicant. An Arborist Report has been prepared to consider the level of impact the proposed works would have on the tree. It is noted that there is an extent of earthworks required on the eastern boundary of the subdivision to accommodate the stormwater design. With conditions of consent, it has been confirmed that no impact is likely to be experienced to this tree. The proposal has been assessed in accordance with the provisions of the SEPP and DCP 2011 and is deemed satisfactory.

#### Biodiversity Conservation Act 2016 and its Regulation

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

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

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

1. Located on the Biodiversity Values (BV) Map

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

2. Exceeds the area clearing threshold

**Comment:** The site is mapped as containing a minimum lot size of 450m<sup>2</sup>. As such, the clearing threshold associated with the proposed development is 0.25ha. The threshold for clearing is as follows:

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

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

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

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

#### ***Maitland Local Environmental Plan 2011***

##### Clause 2.3 – Zone objectives and Land Use Table

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

The objectives of the zoning:

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

##### Clause 2.6 – Subdivision – consent requirements

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

##### Clause 2.7 – Demolition requires development consent

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

##### Clause 4.1 – Minimum subdivision lot size

The site is mapped as a minimum subdivision lot size of 450m<sup>2</sup>. The lots resulting from the proposed one into three lot Torrens title subdivision comply with the minimum subdivision lot size mapped for the site:

- Lot 101: 1150.7m<sup>2</sup>
- Lot 102: 900m<sup>2</sup>
- Lot 103: 1176.1m<sup>2</sup>

##### Clause 7.1 – Acid sulfate soils

The subject site is mapped as containing Class 5 Acid Sulfate Soils (ASS). Site works are confined to the portion of the site subject to Class 5 soils, as such, compliance with this clause can be achieved.

##### Clause 7.2 - Earthworks

Separate development consent is not specifically required under this clause as the proposed earthworks are ancillary to the proposed subdivision and will be considered in this assessment. The matters for consideration outlined in subclause (3) are addressed in the discussion of section 4.15(1)(b) of the EP&A Act in this assessment report.

Subclause (3) requires a consent authority to consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*

Comment: Council development engineers have reviewed the civil plans and have determined that the extent of earthworks will not have a detrimental impact on adjoining land.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land,*

Comment: The subdivision is necessary to facilitate the future development of the land for residential purposes.

*(c) the quality of the fill or the soil to be excavated, or both,*

Comment: A condition is to be imposed requiring that fill used on site will be virgin excavated natural material (VNEM) or excavated natural material (ENM).

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*

Comment: Earthworks form part of the development of the subdivision and does not, in itself, impact on the existing and likely amenity of adjoining properties.

*(e) the source of any fill material and the destination of any excavated material,*

Comment: The submitted earthworks plan demonstrates that the site provides for a balanced cut/fill arrangement.

*(f) the likelihood of disturbing relics,*

Comment: A condition of consent is imposed detailing the process involved in artefacts being uncovered.

*(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Comment: The earthworks are unlikely to adversely impact a watercourse, water catchment or environmentally sensitive area.

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

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

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

##### ***Maitland Development Control Plan 2011 (DCP)***

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

- Part A – A.4 Notification
- Part B – B.2 Domestic Stormwater, B.5 Tree Management, B.6 Waste Not – Site Waste Minimisation & Management
- Part C – C.10 Subdivision

##### A.4 – Notification

The application was placed on public exhibition for a period of 14 days from 26 January 2022 to 9 February 2022 in accordance with the *EP&A Act*, *EP&A Regs* and Maitland Development Control Plan ("DCP") 2011. During this time six (6) submissions were received. The submissions are addressed later within this report.

#### B.2 – Domestic Stormwater

A concept civil works plan (Reference: 22152, Dwg. No. 22152C-01 Sheets 1 -13 prepared by: HDB Town Planning and Design, dated 02/07/2024, Rev F) has been provided of which demonstrates compliance with the objectives and controls of this chapter.

The subdivision can connect into an existing pit on the northern adjoining property (5 Moore Road). Owners consent for this connection has been received. The internal driveway will be shaped to ensure stormwater from hardstand area is collected onsite and directed to a series of pits on site, before being discharged into an existing inter-allotment drainage easement.

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

#### B.5 – Tree and Vegetation Management

In lieu of an Ecology Report for the tree removal, Council's ecologist attended the site and inspected trees proposed for removal. The trees are located on the eastern boundary and are in the position where earthworks are necessary to facilitate stormwater requirements.

No significant vegetation was identified as occurring on site. A total of three trees have been found to require consent for removal, with the remaining trees being fruit trees, non-native trees, or shrubs below 3m. The removal of these trees does not require consent. In recognition of this a condition of consent is to be imposed requiring a total of three additional native trees to be planted in place of the removed trees.

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

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

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

#### C.10 – Subdivision

##### *EC.1 Flora and Fauna*

As previously addressed, the subdivision is not considered to result in any adverse environmental impact on either site or surrounding allotments including impact to waterways or vegetation corridors.

##### *EC.2 Heritage and Archaeology*

The site is not mapped within the Bolwarra HCA.

##### *EC.3 Hazards*

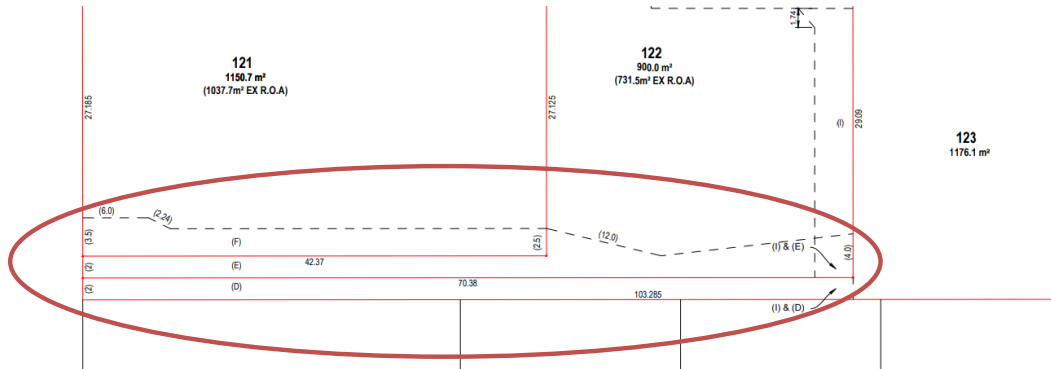
The site is not affected by any natural hazard. As such, no further assessment is required.

##### *DC.1 Lot Size and Dimension*

The resultant lots both achieve the minimum lot size requirements prescribed by Maitland LEP 2011. The residential lots range from 900m<sup>2</sup> to 1176m<sup>2</sup>. The proposed allotments follow the natural topography of the site and limit the extent of earthworks and vegetation removal required. A building envelope of at least 15m x 10m is provided for each new vacant lot.



The proposed access handle has a variable width, typically 6.5m wide for the majority of the handle distance.



A minor variation is required in relation to Clause DC.1.10 which states that "No more than 2 lots may be serviced by a reciprocal right-of- carriageway (ROC) which shall be centrally located within both access handles." All three lots will be accessed via a shared access handle situated on the western boundary.

This variation is worthy of support noting that the access handle will utilise the location of the existing driveway, which is positioned to the west of the existing dwelling that will be retained. An alternative driveway could be provided on the eastern side of the dwelling to enable separate access to the rear two allotments. However, to construct a driveway on this side of the dwelling, removal of significant vegetation would be required (trees in this position are shown in the image below). The placement of a second vehicle crossover onto Moore Road would also have a negative impact on the existing low scale character of the streetscape.



Figure 3: Street view of eastern boundary of 3 Moore Road, as viewed from the street. Cluster of trees that are being preserved are circled.

The minor variation, in this case, allowing all three lots to be accessed via the access handle on the western boundary, is supported. The use of the existing driveway is a better outcome than constructing a second driveway, which would also require further vegetation removal.

No adverse impact is anticipated because of this arrangement.



*DC.2 Solar Access and Energy Efficiency*

The proposed subdivision has been designed to maximise solar access with building envelopes enabling orientation to north and east solar access points.

*DC.3 Drainage, Water Quality and Soil Erosion*

The site does not contain any natural watercourses or drainage lines. A stormwater drainage plan (*HDB Town Planning and Design, 31.01.2024*) has been submitted as part of the supporting documentation. Appropriate conditions of consent have been included to ensure the development works comply with relevant provision of Council's MOES.

*DC.4 Landscape, Streetscape and Visual Impact*

The proposed lot fronting Moore Road retains the existing dwelling with proposed new dwellings erected at the rear of the site and obscured from view from the street interface. Apart from a new driveway to be constructed, the frontage to Moore Road will remain unchanged. The generous landscaped front yard to the existing dwelling is retained. Therefore, there is no perceived increase in density from the public domain.

*DC.5 Effluent Disposal*

All proposed sites can be serviced by Hunter Water Corporation reticulated networks. A sewer line transects the subdivision. Some earthworks will be required in the vicinity of the sewer line. A 'build over asset' application will need to be made with the service provider. Evidence to support this will be required prior to the issue of a subdivision certificate. A condition to ensure compliance with this requirement will be included in the determination.

*DC.6 Roads and Access, Pedestrian and Cycleways*

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

*DC.7 Crime Prevention*

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

*DC.8 Site Filling*

No extensive earthworks are proposed.

*DC.9 Reticulated Services*

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

*C.11 – Vehicle Access & Car Parking*

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

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

There are no planning agreements, or draft planning agreements.

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

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

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

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

The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The subdivision is consistent with the future expected pattern of lot development and will provide for diversity of lot sizes within the area. The proposal will not have any significant social or economic impacts.

The subdivision increases the density of the site from one lots to three lots. The minor increase in traffic is not expected to have a significant impact on the surrounding road network.

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

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

The site is located within an R1 General Residential zone and the proposal is permissible. The proposed development creates three allotments which all significantly exceed the 450m<sup>2</sup> minimum lot size applicable to the site. The development adheres to site constraints and restrictions and does not unreasonably impact upon the surrounding environment. Considerable amendments were made to the proposal to address the stormwater concerns. The development is considered a suitable outcome for the subject site.

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

***Public Submissions***

The proposal was publicly notified/advertised for a period of 14 days in accordance with the Environmental Planning and Assessment Act 1979 and the Maitland Development Control Plan 2011.

A total of six (6) submissions were received during the exhibition period. All six submissions raised objection to the proposal. A summary of the submissions is provided in the following table:

Submission Reference Number	Submission Items	Comment
1, 3, 6	<p><i>No more than 2 lots to be serviced via an access handle.</i></p> <p><i>The driveway is a roadway and should be treated as such.</i></p>	The proposal includes the retention of an existing driveway serving the dwelling, which will be extended to provide vehicle access via a handle for the two proposed lots.

		<p>Provision DC.1.10 of Chapter C.10 of the Maitland DCP 2011 states that “ <i>No more than 2 lots may be serviced by a reciprocal right-of- carriageway (ROC) which shall be centrally located within both access handles.</i>”</p> <p>To address this clause, a second, alternative driveway could be provided on the eastern side of the dwelling to enable for separate access to the rear two allotments. However, to construct a driveway on this side of the dwelling, removal of significant vegetation would be required. The placement of a second vehicle crossover onto Moore Road would also have a negative impact on the existing low scale character of the streetscape.</p> <p>The minor variation, in this case, allowing all three lots to be accessed via the access handle on the western boundary, is supported. The use of the existing driveway is a better outcome than constructing a second driveway, which would also require further vegetation removal. The driveway will also be conditioned to be constructed in a coloured concrete, or ‘Morpeth mix’ design. This will assist to minimising any visual intrusiveness of the driveway.</p> <p>No adverse impact is anticipated because of this arrangement.</p> <p>The driveway will be a shared driveway and not a roadway. Maintenance of the proposed driveway will befall the owners of each lot according to who land ownership according to the title plan, in accordance with standard convention.</p>
1, 2, 3, 4, 6	<p><i>The subdivision is out of character with existing subdivisions in the area.</i></p> <p><i>Quiet character of the area may be impacted. Amenity of the area to be compromised.</i></p> <p><i>Lot size out of character.</i></p>	<p>The proposed subdivision is permissible with consent and is entirely compliant with the development standards within the MLEP, including the minimum lot size requirement of 450sqm. The subdivision is considered to have a positive impact by facilitating housing diversity and accessibility in an existing residential area.</p>
1, 3, 4, 5, 6	<p><i>Flooding issue of downstream properties.</i></p> <p><i>Insufficient stormwater mechanisms; potential for the Council stormwater to overflow.</i></p>	<p>As demonstrated through revised engineering documentation, all stormwater impacts resulting from the proposed subdivision have been modelled and calculated to meet relevant targets.</p> <p>The proposed stormwater works are not anticipated to increase downstream impacts. The post-development flows have been calculated to be less than pre-development for all major storm</p>

	<p><i>The site is stated as not flood affected, but storm events do cause adverse flooding impacts.</i></p> <p><i>Flood impacts to eastern boundary, Lot 123 of particular concern.</i></p> <p><i>Past flood events have scoured the land washed blue gravel downstream.</i></p> <p><i>Adding two more lots with unrestricted flows to the existing system will result in increased stormwater runoff that will overwhelm a system that is currently not working.</i></p> <p><i>The proposed IAD shall be sized to meet appropriate standards.</i></p> <p><i>Erosion measures should be put in place.</i></p>	<p>events, including the 1% AEP storm rate. It is anticipated that the captured stormwater will be connected to the existing Council stormwater piping located in the stormwater easement that crosses the subject site.</p> <p>A positive covenant will be imposed on each new lot to require the provision of future onsite detention systems in association with any future construction (i.e. dwellings). Concept locations for the onsite detention systems have been shown on civil plans.</p> <p>Erosion and sediment control measures will be conditioned within any consent to be issued for this subdivision.</p>
1	<p><i>Compromise of the visual amenity of Moore Road.</i></p>	<p>The proposed additional lots are situated to the rear of the existing dwelling and will be shielded from view from public areas, including Moore Road. The visual amenity of Moore Road is expected to remain uncompromised because of this subdivision.</p>
2	<p><i>Increased density of development will compromise the quiet lifestyle.</i></p> <p><i>Negative impact on social wellbeing of the neighbourhood.</i></p>	<p>The proposal is for an additional two residential allotments only. The specific type and density of development that will be sought on these lots is not known. This can only be considered under separate proposal, where an assessment against relevant planning considerations (including social impacts) will be conducted.</p>
2	<p><i>The existing lot is rented out, further renters may disrupt the neighbourhood.</i></p>	<p>Any future dwellings on the new lots will need separate approval. The rental status of future dwellings is not a relevant planning matter at this time.</p>
3, 4	<p><i>Privacy issues if two storey dwellings or dual occupancies are developed on the subdivided lots.</i></p> <p><i>Building envelopes are shown, but the type of development is not known.</i></p> <p><i>Preference for designated building envelopes, specifying</i></p>	<p>No dwellings are proposed as part of this application. Any future dwellings on the new lots will need to be approved separately and will need to demonstrate compliance with the relevant standards/requirements.</p>

	<i>the types of development that is permitted.</i>	
3	<i>The submitted plans lack detail.</i>	This issue raised with the applicant and adequately addressed by way of provision of revised and additional documents, to the satisfaction of Council.
3, 4	<i>Retaining walls; query the materials of the retaining walls.</i>	The proposed retaining wall will be constructed in accordance with the requirements of the BCA, with a condition being imposed requiring that the walls are constructed in concrete sleepers or similar.
3, 4	<i>Fencing; request for fencing to be place prior to the commencement of works.</i>	Replacement fencing will be required alongside the eastern boundary where earthworks are required. The fence shall be at a height of 1.8m and in colourbond material. The fencing shall be in place prior to the release of the Subdivision Certificate for the development
3	<i>No services for additional residents.</i>	The addition of two further allotments is not expected to overburden existing services in the area. The site has access to electricity, sewer and water. Confirmation from service providers
3	<i>Additional traffic issues.</i>	Overall, the proposed development provides for an additional two residential allotments. The proposed has been assessed against and is supported from a traffic perspective due to the minimal and acceptable impact in the local area.
6	<i>Tree removal (7 trees).</i>	<p>Upon clarification from the applicant, three (3) trees that would need consent for removal have been included as part of this application. Other trees exist onsite and are required for removal, but these trees do not require consent being either exotic species, citrus trees, or less than 3 metres in height.</p> <p>The trees have been inspected and it is concluded that none of the trees contain hollows, habitat for native fauna, or are endangered species.</p> <p>Replacement planting of the three trees is required at a rate of 1:1. This is a condition of consent.</p>

It is also noted that an email from former Councillor Loretta Baker was received during the assessment of this development application (04/02/2022). Former Councillor Baker was contacted by a submission maker, and sent the following comments to the submission maker and the assessing officer:

*"I will be interested to know how you get on. I have a very strong belief that these areas of Old Bolwarra should maintain the streetscape of single detached housing. Moore St is a very small street and has appoint of difference, similar to Lorn and Kensington Rd etc all of which are not suitable for subdivisions. We are currently facing similar problems in Morpeth. Please keep me informed.  
Loretta"*

These comments are noted. The comments have not been considered as a formal submission, but they have been provided in this report for context. Regarding the comments made, the streetscape of single

detached housing is maintained. The additional two lots are positioned to the rear of the existing dwelling and will not be visible from public vantage points. Moore Road is acknowledged to be a 'small street', sharing a similar characteristic to grand, old and established neighbourhoods such as Kensington Road and Lorn. However, this characteristic can be upheld with approval of the additional two lots. The lots are compliant in size and have suitable building envelopes to ensure that quality development (like the established neighbourhoods mentioned) is able to be achieved upon the lots.

#### ***Government Agency Submissions***

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

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

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

#### **OTHER APPROVALS**

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

#### **REFERRALS**

The application was referred internally to Council's:

- Subdivision and Development Engineering Team
- Biodiversity Team
- Development Contributions Team

Each internal officer has reviewed the application and supported approval of the subdivision, subject to conditions of consent which have been provided in the schedule of conditions.

#### **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.