

COUNCIL ASSESSMENT REPORT

Panel Reference	2019NTH001
DA Number	DA2018/0783
LGA	Clarence Valley Council
Proposed Development	Alterations and additions to Grafton Regional Gallery, including upgrade and partial demolition
Street Address	158 Fitzroy Street, Grafton and 5 Robinson Avenue, Grafton
Applicant/Owner	GeoLINK Consulting/Clarence Valley Council
Date of DA lodgement	20 December 2018
Number of Submissions	Four(4)
Recommendation	Conditional Approval That Development Application DA2018/0783 (JRPP reference No. 2019NTH001) for alterations and additions to Grafton Regional Gallery (including upgrade and partial demolition) on lot B DP359677 and Lot 3 DP38033 be approved subject to the imposition of advices and conditions contained in Schedule 1 attached to this report.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Clause 3 of Schedule 7 – Council related development over \$5 million. Clarence Valley Council is the owner of the subject land. The value of the development is \$5.5 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy No. 55 – Remediation of Land</i> • <i>State Environmental Planning Policy (Infrastructure) 2007</i> • <i>State Environmental Planning Policy (State and Regional Development) 2011</i> • <i>State Environmental Planning Policy (Coastal Management) 2018</i> • <i>Clarence Valley Local Environmental Plan 2011</i> • Clarence Valley Council – Development in Residential Zones Development Control Plan 2011 • <i>Environmental Planning and Assessment Regulation 2000</i> (prescribed matters and conditions under clauses 92, 94, 98(1)(a), 98A(2) and (3), and 98E)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Submissions received during exhibition period (4 of) • Statement of Environmental Effects – Grafton Regional Gallery Upgrade (Ref 3145-1006) prepared by GeoLINK, dated 19 December 2018 (SOEE).
Report prepared by	Scott Lenton, Development Services Coordinator, Clarence Valley Council
Report date	5/3/19

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not Applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (\$7.24)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

**Not at time of
lodgement
with JRPP. Will
be provided
concurrently.**

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Executive Summary

Clarence Valley Council received Development Application, DA2018/0783, from GeoLINK Consulting for alterations and additions to Grafton Regional Gallery (including upgrades and partial demolition) on lot B DP 359677 and lot 3 DP 38033, on 20 December 2018. The key elements of the proposal are:

- Demolition of existing dwelling (and in-ground pool) to the rear of the existing gallery (on Lot 3 DP 38033);
- Demolition of small shed, removal of a mango tree, and gate on the existing gallery lot (Lot B DP 359677);
- Remove western driveway to Fitzroy Street and replace crossover with new kerb and gutter;
- Introduce new seating and landscaping for café in place of removed driveway;
- Upgrade of existing gallery building to provide for:
 - Upgraded toilet and kitchen areas;
 - New studio / workshop;
 - New exhibition space;
 - Upstairs storage area;
- Two-storey addition of gallery building onto rear lot (on Lot 3 DP 38033) to contain additional gallery space and art storage facilities. A lift and stair case will allow second storey access and a plant room is included on the first floor;
- Small addition to east of the existing building (within Lot B DP 359677) to provide delivery area and storage space (including bin storage and garden shed). Above is a plant area with acoustic screen;
- Small first floor addition to existing gallery building to connect to first floor of addition;
- Small ground floor addition to existing gallery building for toilets;
- Additional parking (within existing parking area east of gallery building and two additional car parks at rear of proposed addition, accessed from Robinson Avenue);
- Adjustment of services including relocation of sewer line to the northern boundary of the site;
- An internal walkway would allow internal access between the existing building and proposed addition;
- Installation of solar panels;
- Installation of new gates;
- Introduction of an on-street accessible parking space and loading zone.

A set of architectural plans, plus proposed landscape plans, are attached at Appendix A of the SOEE.

The proposed development constitutes 'regional development' requiring referral to the Joint Regional Planning Panel (Northern Region) (JRPP) for determination as the development is on land owned by Clarence Valley Council and the value of the development exceeds \$5 million (estimated cost \$5.8 million). While Council officers are responsible for the assessment of the DA, the JRPP is the authority to determine the application.

The subject site is zoned R1 General Residential under the Clarence Valley Local Environmental Plan 2011 (LEP). The proposed alterations and additions to the Grafton Regional Gallery, being a defined in the LEP as a 'community facility' is permissible in the zone with development consent.

A detailed assessment has been undertaken against the provisions of the LEP, other relevant Environmental Planning Instruments and the Clarence Valley Council Development in Residential Zones Development Control Plan 2011 (DCP). A detailed assessment is contained in the s79C assessment forming part of this report (see section 4.1). However, a summary of the relevant clauses that list matters the consent authority must be satisfied with as set out in the relevant instruments is contained in the below table.

Environmental Planning Instrument	Clause	Summary / Recommendations
SEPP No. 44 – Koala Habitat Protection	Clause 7: Step 1—Is the land potential koala habitat?	Satisfactory evidence has been provided to determine that the land is not potential koala habitat.
	Clause 8: Step 2—Is the land core koala habitat?	Satisfactory evidence has been provided to determine that the land is not core koala habitat. As such, a Koala Plan of Management is not required to be prepared in accordance with SEPP 44.
SEPP No. 55 – Remediation of Land	Clause 7: Contamination and remediation to be considered in determining development application	Satisfactory evidence has been provided to determine that the subject development is not proposed on land of a type referred to in clause 7(4) and the land is not considered to be contaminated as required to be determined under clause 7(1) of the Policy. The land is considered suitable for the proposed development without any remediation being required.
SEPP 64 – Advertising and Signage	Clause 13: Matters for consideration	No advertising signs or structures proposed.
SEPP (Infrastructure) 2007	Clause 101: Development with frontage to classified road	Not applicable. The proposed development does not have frontage to a classified road.
SEPP (Coastal Management) 2018	Clause 10: Development within coastal wetlands or littoral rainforests area	Not applicable. The subject land is not identified as “coastal wetlands” or “littoral rainforest” on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i> on the subject land.
	Clause 11: Development on land in proximity to coastal wetlands or littoral rainforests area	Not applicable. The subject land is not identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i> .
	Clause 12: Development on land within the coastal vulnerability area	Not applicable. The subject land is not identified as “coastal vulnerability area” on the <i>Coastal Vulnerability Area Map</i> .
	Clause 13: Development on land within the coastal environment area	The subject is mapped as being within the ‘coastal environment area’. The proposed development is not likely to have an adverse impact on any of the matters listed at clause 13(1)(a) to (g). Notwithstanding that, as the development will involve excavation of soil that is likely to not have been previously disturbed through construction of new foundations, installation of ancillary services, and more so excavation to relocate a section of sewer main, standard condition/s consistent with Section 5.9.3 of the SOEE in relation to unexpected finds of Aboriginal objects will be recommended.
	Clause 14: Development on land within the coastal use area	Not applicable. The subject land is not mapped as within the ‘coastal use area’.

	Clause 15: Development in coastal zone generally – development not to increase risk of coastal hazards	The subject land is located within the coastal zone. The proposed development will not increase the risk of any coastal hazards as listed in the definition of coastal hazards in this Policy.
Clarence Valley Local Environmental Plan 2011	Clause 2.6: Temporary use of land	Not applicable. The proposed development is not deemed to be a temporary use.
	Clause 4.1A: Exceptions to minimum lot size for certain split zone lots	Not applicable. No subdivision proposed and the subject land is not subject to this clause.
	Clause 4.1B: Boundary adjustments between lots in certain rural, residential and environment protection zones	Not applicable. No boundary adjustment proposed and the zoning of the subject land is not subject to the clause.
	Clause 4.2A: Exceptions to minimum lot sizes for certain rural subdivisions	Not applicable. No subdivision proposed and the subject land is not subject to this clause.
	Clause 4.2D: Erection of dual occupancies (detached) and secondary dwellings in Zones RU1, RU2, and R5	Not applicable. The proposed development and the subject land is not subject to this clause.
	Clause 4.6: Exceptions to development standards	Not applicable. No exception required for the new works proposed as part of this development. Note: The existing gallery premise exceeds the 9-metre height of buildings limit applicable to the subject land.
	Clause 5.3: Development near zone boundaries	Not applicable. The proposed development site is located within the coastal zone, hence this clause cannot apply to the proposal.
	Clause 5.5: Development within the coastal zone	Repealed. See SEPP (Coastal Management) 2018 earlier.
	Clause 5.10: Heritage conservation	The existing Grafton Regional Gallery site (Lot B) is listed in the LEP as a heritage item. Further, both lots subject to this development proposal are located within the Grafton heritage conservation area as mapped on the Heritage Map under the LEP. The proposed development does not propose to rely in any way on the conservation incentives provisions in subclause 5.10(10) of the LEP, hence there is no applicable provisions of clause 5.10 that requires a consent authority to be satisfied to a particular matter/s prior to granting development consent.
	Clause 6.1: Arrangements for designated State public infrastructure	Not applicable. The subject land is not within an urban release area shown on the urban release area map.
	Clause 6.2: Public utility infrastructure	Not applicable. The subject land is not within an urban release area shown on the urban release area map.
	Clause 7.3: Flood planning	The subject land is located within the 'flood planning area' as shown on the Flood Planning map under the LEP. Hence, the

		<p>determining authority must be satisfied as to the five matters in subclause 7.3(3) of the LEP before granting consent to development.</p> <p>Consideration of the LEP provisions in relation to flood hazard and compatibility are assisted by consideration of provisions in Part D of the applicable DCP and these are considered in more detail in Table 5.3 at Section 5.10 of the SOEE.</p> <p>Comment in relation to satisfaction of each of the five matters in subclause 7.3(3) follows:</p> <ul style="list-style-type: none"> (a) Flood hazard – the proposed development is non-habitable, hence provided design floor levels, building materials and structural design is adequate as demonstrated at Table 5.3 of the SOEE then the development is considered to be compatible with flood hazard at the site; (b) Impacts on flood behaviour and nearby properties – See also ‘Flood effects’ in Table 5.3 of the SOEE. The low velocity of flood waters in the design 1% AEP flood event significantly reduces potential for such adverse effects on flood behaviour and any effects are not likely to be significantly adverse; (c) Manage risk of life from flood – the development is non-habitable and hence, does not add to the risk of life during a flood event. Flood warning times for events large enough to affect the subject land would typically be greater than 2 days enabling adequate time to ensure persons were not present in the development during a flood; (d) Adverse effect on the nearby environment, riparian vegetation, riverbanks or watercourses – The subject land is a significant distance from the Clarence River and any other watercourses and will not have a significant adverse effect on any of the items referred to in this subclause; and (e) Not likely to result in unsustainable social or economic costs to the community as a result of flooding – The design of the development to enhance compatibility with flood hazard as identified at item (a) above,
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		combined with operational evacuation and management of movable assets within the development will significantly reduce the risk of any social and economic costs being unsustainable and it is considered that any such costs are not likely to be unsustainable in the circumstances of the case.
	Clause 7.4: Floodplain risk management	Not applicable. The subject land is not located within the area, nor is the development of a type, nominated by the operation of this clause.
	Clause 7.6: Development on land subject to riverbank erosion	Not applicable. The subject land is not within the area shown on the riverbank erosion planning map.
	Clause 7.7: Drinking water catchment	Not applicable. The subject land is not within the area shown on the drinking water catchment planning map.
	Clause 7.8: Essential services	
	Clause 7.10: Erection of rural workers' dwellings	Not applicable. No rural workers' dwellings proposed.
	Clause 7.11: Workforce accommodation	Not applicable. No workforce accommodation proposed.

The development complies with the standards and requirements of the LEP and is consistent with the relevant objectives. The DA contains requests for variations to the DCP for building height (top plate), setback to side/rear boundary, landscaped area and car parking provision variations. These are discussed in more detail in the Section 4.15(1) Assessment at Section 4.1 of this report. It is recommended that the variations are accepted in the circumstances of the case.

The DA was not required to be referred to any external agencies for comment or provision of general terms of approval.

The development has been duly advertised and notified between 9 January 2019 and 24 January 2019, in accordance with requirements of the *Environmental Planning and Assessment Regulation 2000* and the DCP. Four (4) submissions to the application were received. The main issues raised within the submissions include support for the proposed development and requests for clarification or additional consultation to ensure the new development when completed is compatible with adjacent residential development and occupants and these are discussed in detail within the Section 4.15(1) assessment contained within this report (see section 4.1).

In summary the key issues included in submissions are:

- Support – Volunteer organisations associated with the Gallery show strong support for the proposed development and recognise the value and benefit this upgraded Gallery facility will provide to the local art and wider community, art assets stored on the property, and Gallery visitation; and
- Clarification of details/suggested conditions – Plans submitted with the DA did not contain the level of detail required for some aspects to be properly considered by adjoining property owners/occupants and hence, suggestions have been presented in order to resolve some of these aspects. Some of the items are 'house-keeping' in nature, however it is recognised that they are important matters to provide greater certainty on for the relevant neighbours.

In addition, a neighbouring resident from Robinson Avenue also attended a meeting with Council's Development Services Coordinator to discuss concerns regarding privacy. This person did not make a formal submission. Pre-DA consultation was conducted by the Applicant/owner with landowners/residents potentially affected by the proposed development.

Council's Access Committee was also invited to comment on the proposal in terms of disabled access and accessibility considerations due to the significance of this proposed public building. The Committee met on 20 February 2019 and provided comments for consideration in assessment of the application. In summary, the Committee members agreed that the proposed accessible car parking on-site would be more suitable provided it was compliant, inclusion of a range of accessibility requirements, such as tactile ground surface indicators, other aids for vision impaired persons and a hearing loop were suggested. The Committee would like to see the final design drawings showing relevant accessibility design features before the construction certificate will be issued.

Key issues for consideration in determining this proposal, other than matters presented in public submissions, are considered to be car parking provision, potential impact on heritage values, impact on neighbourhood amenity, DCP variations for building height (top plate), setback to side/rear boundary, landscaped area and car parking provision, and the community benefit of the upgraded and expanded Gallery facility.

The Gallery was first approved by the former Grafton City Council in 1987 when the dwelling-house (Prentice House) at 158 Fitzroy Street was altered and added to for gallery purposes. The development consent included a parking requirement for 12 car parking spaces on-site, conditions to restrict nuisance to neighbours, and required that truck reversing movements for loading/unloading were minimised to limit traffic disruption in Fitzroy Street. Since that time there have been a range of development consents issued for extensions to the Gallery, establishment of a café, use of the courtyard café for functions, and place of public entertainment. Approval for the café in 1995 required the road shoulder in Fitzroy Street to be bitumen surfaced to improve capacity for parking on-street. However, since the original 1987 development consent no additional car parking provision has been required or available on-site even though significant extensions to the original Gallery floor space have occurred. In fact, parking availability has reduced and at present there are eight(8) on-site parking spaces available. Decisions have often given weight to submission that peak parking demands are often outside business hours when greater spare on-street parking availability exists. Functions, use of the cafe and exhibition openings have tended to occur after business hours and this may be in part a management solution to the constrained parking opportunities during business hours when on-street parking is highly sought after by persons accessing employment in the adjacent business centre. The current development proposal shows twelve (12) on-site car parking spaces. One extra space will become available on street with closure of a driveway, while a disabled parking space and a loading zone are shown on-street adjacent to the main driveway. Parking requirements are considered in more detail in the Section 4.15(1) Assessment at Section 4.1 of the report.

The proposed development seeks to provide an improved and more valuable community facility to promote art and culture for residents of the Clarence Valley. The upgraded and expanded facility would offer higher quality standards for storage and display of valuable art assets, including flood-free storage, and offer enhanced capacity to attract and support a variety of art and cultural-related activity and educational opportunities. The development has strong support from The Gallery Foundation and Friends of the Grafton Regional Gallery who are key stakeholders in the Gallery. Neighbours to the proposed development site have also contributed constructive feedback through submissions without stating any objection to the proposal.

Overall, the development is considered satisfactory with regard to key issues, including car parking provision, potential impact on heritage values, impact on neighbourhood amenity, building height (top plate) and other DCP variations to side/rear setback, landscaped area and car parking provision, and the community benefit of the upgraded and expanded Gallery facility, subject to the imposition of suitable conditions of consent to satisfactorily control and enable function of the development. The proposed development has been assessed against the relevant matters for consideration

pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*, including suitability of the site and the public interest, and is considered satisfactory.

It is recommended that the proposed development be approved subject to the conditions listed in Schedule 1 to this report.

Section 1: Recommendation

That Development Application DA2018/0783 (JRPP Reference No. 2019NTH001) for alterations and additions to the Grafton Regional Gallery (including upgrades and partial demolition) on lot B DP359677 and lot 5 DP38033 be approved subject to the imposition of advices and conditions contained in Schedule 1 attached to this report.

The recommendation is provided for the following reasons:

- The development will add capacity for the existing regional art gallery to foster community access to, and appreciation of, various forms of art through in-house and travelling exhibitions and enhanced workshop/meeting facilities;
- The development is designed to achieve the above goal whilst being respectful to, and compatible with, adjoining and nearby development, heritage values and streetscapes;
- The development will not adversely impact on the natural environment or exacerbate natural hazards;
- The development is well located to ensure reasonable access by Clarence Valley residents and visitors alike; and
- The siting of the development adds value to the existing and established regional art centre in the Clarence Valley and utilises existing urban land rather than developing in a location that would be more difficult to access and disperse focus on this significant community facility and what it provides for the community.

Section 2: Site Description & Location

The subject land is located within the Clarence Valley LGA and within the township of Grafton. The site enjoys frontage to Fitzroy Street and Robinson Avenue and is located approximately 300 metres west of the Grafton business district's main street of Prince Street. The Grafton business district extends to within less than 100 metres from the subject land and the site is surrounded by residential development comprising mostly single dwelling-houses and some medium density housing styles.

The section of the subject land fronting Fitzroy Street contains the existing Grafton Regional Gallery in premises original built as a dwelling (Prentice House) and more recent additions that have been constructed over many years. A car parking area for the Gallery occupies the north-east part of that site. The section of the site fronting Robinson Avenue contains an existing single dwelling-house and in-ground swimming pool.

The site is located within the Grafton heritage conservation area and the existing Gallery site is a listed heritage item under the LEP.

The Gallery has operated at this current site since 1987 and has evolved with expansion and associated uses, such as functions and a café/restaurant. The latter has occupied the central courtyard area that provides some buffering of noise from that use to neighbours.

The Fitzroy Street road verge is a common place for persons to park vehicles for long periods while accessing business or employment in the nearby business district. This places added demand on available on-street parking during business hours. However, after business hours the on-street parking is generally available. The Robinson Avenue thoroughfare has less on-street parking capacity and typically receives less parking pressure during business hours despite it being the same distance from the business centre. The Robinson Avenue cul-de-sac generally enjoys a quieter amenity than Fitzroy Street.

Section 3: Details of Proposal

The key elements of the proposal are:

- Demolition of existing dwelling (and in-ground pool) to the rear of the existing gallery (on Lot 3 DP 38033);
- Demolition of small shed, removal of a mango tree, and gate on the existing gallery lot (Lot B DP 359677);
- Remove western driveway to Fitzroy Street and replace crossover with new kerb and gutter;
- Introduce new seating and landscaping for café in place of removed driveway;
- Upgrade of existing gallery building to provide for:
 - Upgraded toilet and kitchen areas;
 - New studio / workshop;
 - New exhibition space;
 - Upstairs storage area;
- Two-storey addition of gallery building onto rear lot (on Lot 3 DP 38033) to contain additional gallery space and art storage facilities. A lift and stair case will allow second storey access and a plant room is included on the first floor;
- Small addition to east of the existing building (within Lot B DP 359677) to provide delivery area and storage space (including bin storage and garden shed). Above is a plant area with acoustic screen;
- Small first floor addition to existing gallery building to connect to first floor of addition;
- Small ground floor addition to existing gallery building for toilets;
- Additional parking (within existing parking area east of gallery building and two additional car parks at rear of proposed addition, accessed from Robinson Avenue);
- Adjustment of services including relocation of sewer line to the northern boundary of the site;
- An internal walkway would allow internal access between the existing building and proposed addition;
- Installation of solar panels;
- Installation of new gates;
- Introduction of an on-street accessible parking space and loading zone.

A set of architectural plans, plus proposed landscape plans, are attached at Appendix A of the SOEE.

No functions, entertainment or advertising signs are proposed as part of the DA. The existing Gallery on Lot B has valid development consent for operation of a place of public entertainment with appropriate limits on hours of operation, maximum person occupancy and other matters. Separate approval will be necessary for any expansion of that use into the extended premises onto what is now Lot 3 DP 38033 to ensure neighbourhood and resident amenity is properly considered. Any advertising signs that are not 'exempt development' will also need to be subject to separate development consent.

Section 4: Statutory Development Assessment Framework

The development is listed as development for which regional panels may be authorised to exercise the consent authority functions of councils under Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.

The proposed development is not declared to be Designated Development under Clause 19, Schedule 3 of the Environmental Planning & Assessment Regulation 2000 (the EP&A Regulation).

The application is not Integrated Development under s4.46 of the EP&A Act. Hence, no agency referrals are required for this purpose.

No referral to RMS is required under the Infrastructure or Mining SEPP.

4.1: S4.15(1) Assessment

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument,

The following State Environmental Planning Policies (SEPP) are relevant to this proposal:

- SEPP 55 – Remediation of Land – Clause 7 requires consideration of whether or not the subject land is likely to be contaminated due to past or present land use. Searches of relevant databases have been completed and results provided in the SOEE (Section 4.54 and Appendix D) and in conjunction with assessment of current and past land-uses in the circumstances can be satisfied that the subject land is unlikely to be contaminated nor require remediation to ensure the suitability of the subject land for the proposed community facility.;
- SEPP (State and Regional Development) 2011 – This development exceeds the estimated value threshold for development on Council owned land as specified in Schedule 7 of this Policy, hence determination of the DA must be made by the Joint Regional Planning Panel;
- SEPP (Coastal Management) 2018 – The subject land is located within the coastal environment area as mapped under this Policy. Hence, clause 13(1) requires seven matters to be considered to determine whether or not the development is likely to have an adverse impact in relation to the ‘coastal environment’. These are considered in some detail at Section 4.5.2 (Table 4.2) of the SOEE and the conclusions or comments in that Table are concurred with. Further, clause 13(2) of the Policy requires prior satisfaction of certain matters before development consent can be granted. In this respect, the potential for impact on Aboriginal cultural heritage while low cannot be fully ruled out and hence, appropriate conditions will be recommended to ensure best practice management of any unexpected finds that could occur during construction of the development, especially excavation of previously undisturbed soil.

Clause 15 of the Policy requires satisfaction of whether or not the development will increase the risk of coastal hazards on the subject land or nearby lands. ‘Coastal hazards’ are defined in the *Coastal Management Act 2016* and that definition is called up by clause 4(2) of the Policy. It is considered that coastal hazards do not affect the part of the coastal zone on which this development is proposed, and hence it can be satisfied that the development as proposed will not increase the risk of such hazards for the land or nearby lands.

The following provisions of the *Clarence Valley Local Environmental Plan 2011* (LEP) are relevant to the proposal:

- **Zone/objectives** – The objectives of the R1 zone are focussed on achieving suitable housing accommodation for local residents, however they do provide scope for non-residential uses that provide facilities or services to meet the day to day needs of residents. The Grafton Regional Gallery is an established community facility the offers access to art, cultural and educational experiences for the residents of the Clarence Valley. The proposed development is considered to be consistent with the relevant zone objective/s;
- **Cl 2.7 – Demolition requires consent** – This DA includes proposed demolition works to the existing dwelling-house in Robinson Avenue, in-ground pool on the same site, removal of shed on Lot B, and ancillary demolition of the existing Gallery premise in order to accommodate the new additions;

- Cl 4.3 – Height – height limit under the Height of Buildings Map is 9.0 metres for the subject land. The entire proposed alterations and additions are below this height. However, sections of roof in the existing development exceed the 9.0 metre height and these non-compliances are existing and do not require further consideration as part of this DA;
- Cl 4.6 – Exceptions to development standards – None are proposed;
- Clause 5.10 – Heritage provisions - The existing Grafton Regional Gallery site (Lot B) is listed in the LEP as a heritage item. Further, both lots subject to this development proposal are located within the Grafton heritage conservation area as mapped on the Heritage Map under the LEP. The proposed development necessitates consideration of the impact of the proposed development on the heritage significance of the existing Gallery and the wider conservation area. The DA is supported by a Statement of Heritage Impact and it is considered that the proposed development will not have an adverse and unacceptable impact on these heritage values with appropriate heritage management strategies employed;
- Clause 7.1 – Acid Sulfate Soils – Class 4 land and hence, excavation or disturbance of soil greater than 2 metres below natural ground surface could adversely affect these soils. No excavation deeper than 2 metres expected and hence, no further assessment required;
- Clause 7.2 – Earthworks – Any earthworks are ancillary to the proposed development and separate consent is not required. Submission of an erosion and sediment control plan consistent with the DCP is recommended to be a condition of any development consent consistent with considerations in this clause of the LEP;
- Clause 7.3 – Flood planning – The proposed non-habitable building will be compatible with flood hazard, will not contribute to loss of life during a flood event, is not expected to adversely affect flood behaviour to the detriment of nearby development, will not contribute to destabilisation of riverbanks or watercourses, nor will it be likely to result in unsustainable social or economic loss as a result of flood event. The development is designed to be compatible with predicted flood hazard and will provide a more secure storage for valuable art assets in a flood event; and
- Clause 7.8 – Essential Services – Any approval of the proposed development is recommended to contain conditions to ensure connection to water, sewer, electricity, roads and ensure proper management of storm water.

(ii) **any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved),**

None applicable.

(iii) **any development control plan,**

Council's DCP for Development in Residential Zones is relevant to the subject land. The table below provides a summary of provisions that are deemed to be directly applicable to the proposed development and comments on how the proposal addresses relevant matters.

Variations are sought to DCP controls in relation to top plate height for the additions adjacent to Robinson Avenue, side/rear setback of the store/delivery area additions, landscaped area and car parking provision. The variations are supported and conditions have been recommended to reduce the impact of variations on the local environment, amenity and neighbours.

The SOEE (at Section 4.4) submitted with the DA also contains a commentary of how the proposal relates to relevant DCP provisions from the Applicants perspective.

Clause	Control	Compliance?
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Part B. Notification and Advertising of DAs	Table B1 – ‘Community facilities’ require advertising and notification.	Completed in accordance with DCP (minimum 14 days).
C.1. Objectives for development in residential zones	Objectives	The overall scale and form of the extensions to the Gallery are more substantial (particularly height and mass) compared to nearby residential development. This necessitates greater attention to siting and design to ameliorate impact on adjacent development, occupants and amenity.
C.4: Streetscape Requirements	Presentation to the street, setbacks, building height, roofing, fences and walls, landscaping.	<p>The existing Gallery development faces Fitzroy Street and changes to how the development is viewed from that street will not be significant. The additions fronting Robinson Avenue, whilst facing the street, present the greatest challenge in terms of being compatible with the streetscape. The Robinson Avenue section of the development does not offer a main point of entry to the facility, and while the design provides this portion of the development with address to Robinson Avenue, the lack of a main entry at this location will assist in reducing impacts on the quieter amenity of Robinson Avenue.</p> <p>The front setback to Robinson Avenue is compatible with adjacent residential dwellings and the streetscape. Side setbacks are compliant for the additions, with the exception of a proposed variation for the side/rear setback from the store/delivery space and plant room (refer to clause C.16 later). The additions are below the LEP height of buildings limit of 9 metres, however the top plate height criteria in the DCP are exceeded and a variation has been sought (refer to clause C.13 later).</p> <p>The overall design of the development has been proposed to ensure functionality for the Gallery requirements with acceptable articulation into the neighbourhood/conservation area and the existing Gallery premise that is a heritage item. A statement of heritage impact has been prepared and the conclusions that the proposed development will not present significant visual impacts to adjacent heritage items or the conservation area with appropriate mitigation strategies is acceptable.</p> <p>Landscaping is proposed and will be required to soften visual impacts of the development.</p>
C5: Building Design	Siting, cut and fill,	The siting of the development, particularly

Requirements	energy efficiency, materials and colours, carports and garages, privacy.	<p>the proposed additions fronting Robinson Avenue provides adequate solar access for adjoining development and private open spaces.</p> <p>Cut and fill is proposed to be minimal.</p> <p>Energy efficiency is not a requirement of BASIX for this development and the design has been proposed to address function for the Gallery more than energy efficiency. Notwithstanding that, the proposal does incorporate solar panels on sections of the existing Gallery and proposed additions roofing and the design of the additions enables natural light entry without compromising privacy for adjoining residents.</p> <p>Details of external building materials and colours will be required prior to issue of the Construction Certificate.</p> <p>No garages or carports are proposed and privacy of adjoining dwellings and private open spaces has been adequately respected by the design and privacy is not compromised by the development provided appropriate fencing of the southern boundary of the car parking area to prevent car light shine and views into living areas of an adjacent dwelling.</p>
C.13: building height	<p>9m maximum building height</p> <p>6.5m maximum top plate height</p>	<p>Yes.</p> <p>No. Variation sought. Top plate heights vary from 7.0 metres to 8.6 metres. The proposed skillion-style roof incorporates a variety of low pitch rooflines to add visual interest to the building as viewed from nearby lands. The siting of the proposed additions enables this increased top plate height without creating unreasonable impacts on solar access of private open spaces for adjoining residential properties. The development is designed to be a more functional Gallery space and this is a key driver for the design, whilst visual and amenity impacts are acceptable.</p> <p>Setback objectives in the DCP seek to ensure building separation to provide for privacy, solar access and reduce apparent bulk of buildings and these objectives are deemed to be satisfied in this circumstance. This variation to top plate heights is supported.</p>
C.16: Setbacks	Front setback of 6 metres.	Yes. No change to setback to Fitzroy Street and a 6.112 metre (consistent with the existing dwelling) to be provided to Robinson Avenue.

	<p>Rear and side setback of 1.5m</p> <p>Setback of 1.5m from services.</p>	<p>No. A variation to the side/rear setback of the proposed store/delivery room and plant area is sought. The northern setback for this part of the proposed development is 0.51 metres requiring a variation of 0.99 metres. The location of this part of the development well away from the adjacent dwelling on land at No 3 Robinson Avenue and without adverse overshadowing impacts limits the adverse impact of this reduced setback. The upper 3 metres of the building at this point is a perforated screen required to reduce visual impact of the plant and related equipment located on the roof of the store/delivery room. Other setbacks comply. This variation to side/rear setback is supported.</p> <p>The development proposes relocation of a sewer main to ensure satisfaction of this requirement. This relocation is deemed to be feasible according to Council's Water Cycle section. An easement over the new sewer main will be required.</p>
C.19: Landscaped Area	Minimum of 45%	<p>The SOEE indicates 42% of the site is landscaped and 'open'. Variation is sought. The existing Gallery site has some soft landscaped areas within the Fitzroy Street setback and adjacent to the eastern driveway, however it comprises 25% of that site. The total new development is proposed to provide 34% of the site area for permeable landscaped area with a further 20% of non-permeable 'landscaping' or hardstand areas.</p> <p>The objective of the landscaped area criteria is not specified in the DCP, however one benefit of landscaping is to provide permeable ground surfaces to enable opportunity for infiltration of rain and surface stormwater compatible with the 'sustainable water' provisions in the DCP. Use of permeable paving or similar treatments on the non-permeable areas comprising 20% of the site, such as the internal driveway, car park and pedestrian access areas (including the café and outdoor area west of the new additions) will be recommended. This complements the intent to provide visual interest and function to outdoor spaces associated with the Gallery redevelopment. It also adds to the 'permeability' of the site and if a 50% allowance is given for the change to permeable paving, then an additional 10% of</p>

		<p>the site could be considered to be landscaped bringing total permeable area to 44% and very close to the 45% standard. A variation is supported given the opportunities to utilise access spaces for stormwater infiltration through appropriate surface and sub-surface treatment and the community benefit of the project.</p>
C.22: Landscaping Plan	Demonstrate plantings and landscaped areas	<p>A detailed concept landscaping plan has been submitted with the DA. Detailed plans showing proposed plantings (on-site and in Robinson Avenue), trees to be retained, surface treatment of pedestrian access/seating spaces and fences will be required with the Construction Certificate. Significant trees within the existing Gallery courtyard and an established Holly tree next to the driveway are being retained. A medium sized mango tree in the existing car park is proposed to be removed. A Queensland Bottle Tree street tree that formerly existed in the Robinson Avenue at that side of the development site failed/fell over due to suspected disease post-lodgement of the DA. A replacement planting (preferably advanced) of that same species should be made to maintain the established avenue of this species and street planting continuity. Landscaping within front setbacks needs to complement and articulate with building design, soften built elements and be compatible with Safer by Design guidelines to reduce potential opportunities for crime.</p>
C.24: Provision of Essential Services	Connection to sewer, electricity, water, telecommunications and suitable road access. Storm water management.	<p>Yes. The subject land is serviced by water, sewer, mains power, telecommunications, sealed roads and underground stormwater infrastructure in adjacent streets. The proposed additions to Robinson Avenue will require relocation of the sewer main and provision of a new easement. This relocation is feasible and has been subject to pre-DA consultation with affected landowners. A detailed Stormwater Management Plan will be required prior to issue of the CC (refer also to C.19 above). Removal of a redundant vehicle access crossing and driveway at the western side of the Fitzroy Street frontage will enable additional parking on-street. Previous development consent for use of the Gallery courtyard for café activities required sealing of the Fitzroy Street road shoulder to enhance utility value for parking. That has fallen into disrepair and a public submission</p>

		has requested that it be re-established (see also Part G later).
C. 25 Development on flood liable land		Yes. Refer to Part D later.
C.27: Development of land with Acid Sulfate Soils	Minimise disturbance to acid sulfate soils	Yes. The land is Class 4 Acid Sulfate Soil where works deeper than 2 metres below natural ground surface could disturb these soil conditions. The earthworks (including sewer relocation works) are not deemed likely to trigger the requirement for any assessment of potential ASS and management.
C.29: Waste Management	Dispose of waste suitably	Yes. A concept waste management plan has been outlined in the SOEE (Section 5.13). A detailed waste minimization plan covering demolition, construction and operational phases of the development will be required to be submitted with the Construction Certificate. Trade waste requirements associated with management of the café activity are also recommended by Council staff.
C.31 – Fences and Walls	<p>Maximum height on street frontages of 1.2 metres</p> <p>Maximum height of side/rear fences behind building line of 1.8 metres.</p>	<p>Yes. Existing fence to Fitzroy to be made good to modify access at existing western driveway for pedestrians and to correct corner post alignment as requested by neighbours to west. No fence proposed at Robinson Avenue frontage.</p> <p>Yes. 1.8 metre high timber lapped/capped paling fences proposed on side and rear boundaries. Timber fences are preferred in the heritage conservation area.</p> <p>All fencing details to be shown in detailed landscaping plans lodged with the Construction Certificate.</p>
Part D. Floodplain Management Controls	<p>Non-habitable buildings to have a floor level no lower than the 1-in-5 year flood level plus freeboard.</p> <p>Development to satisfy other prescriptive criteria in Schedule D3.</p>	<p>Yes. The subject land is not affected by the 1-in-5 or 1-in-20 flood events.</p> <p>The proposal meets the other criteria in Schedule D3, ie flood compatible building materials below 6.4m AHD, structural soundness (engineers report required with the CC), flood effects, evacuation and flood management. First floor will be above the 1-in-100 year flood level providing flood free storage and enhanced security during flood events for the high value art collection and exhibitions housed at the Gallery.</p>

Part F. Heritage Conservation		<p>The proposed development and the impact on heritage significance on the subject land and nearby has been considered in a Statement of Heritage Impact (Appendix B in the SOEE). The conclusions that the development will not adversely impact on heritage significance is concurred with. Management strategies including the roofline design of the new additions, utilising a mix of external building materials and treatments, retention/replacement of street tree plantings and incorporating curtilage in side setbacks of the new additions similar to the existing dwelling fronting Robinson Avenue are proposed. Details of external materials and colours with the CC and management of any relics uncovered during site works are recommended conditions. Potential for Aboriginal objects has been assessed and determined to be low, however standard condition to properly manage any suspected finds should be employed during the project if approved.</p>
Part G. Parking and Vehicular Access Controls	Car parking provision for community facility 1/10 seats or 1/15m ² main assembly area (whatever is the higher)	<p>No. Variation sought and Clause G3 of the DCP enables variations for minor additions or uses that generate parking outside of business hours. Car parking provision associated with the proposed development has been shown on plans submitted with the DA. Twelve (12) on-site parking spaces are shown with 10 accessed from Fitzroy Street and 2 staff spaces off Robinson Avenue. In addition, a disabled parking space and loading space is proposed on Fitzroy Street. Removal of the western driveway crossing on the Fitzroy Street frontage will enable an extra one-space parking opportunity on-street.</p> <p>Eight(8) parking spaces are currently required on-site and are deemed to satisfy parking requirements for the present Gallery use. Additional gallery/exhibition space of 244m² is proposed and that technically requires 17 spaces and four(4) new spaces are proposed. Hence, there is a shortfall of 13 spaces without any alterations to parking as proposed. Generation of an additional on-street space reduces overall shortfall to 12 spaces.</p> <p>Concerns have been raised with the proposal to locate the disabled parking space on the street as the present on-street environment presents challenges to ensure a compliant space whilst on-street parking at this location is in high demand, hence a space at that</p>

location that may not be utilised at all times is not efficient. Frequency of use, or lack thereof, for the loading zone space adjacent to the driveway presents a similar issue. Relocation of the disabled parking space on-site has been suggested by Council officers and Council's Access Committee and this will result in consolidation of two(2) parking spaces (ideally spaces 1 and 2 adjacent to the access driveway) to achieve one compliant disabled parking space. The net result is an overall reduction in parking of 13 spaces once more. The on-street area adjacent to the driveway is already used for public parking and hence, relocating the disabled space and loading zone does not generate any credit other than utilising high value on-street parking more efficiently. There would appear to be capacity to have loading/unloading occur on-site at the front of the new delivery/store room adjacent to the internal car park off Fitzroy Street. This is consistent with the 1987 development consent for the Gallery, recognises that most deliveries are not lengthy or for larger movement of exhibitions are not too frequent and hence, some flexibility consistent with the current operation can be afforded.

Whilst parking and access provision associated with the Gallery and associated uses (café, functions, etc) has been sometimes controversial during consideration of past DAs there is little evidence of ongoing conflict and this may in part be due to management of events, such as exhibition openings, to be held outside of business hours. The new additions to the Gallery space, combined with no public entry off Robinson Avenue, will reduce potential parking conflicts in Robinson Avenue, however it will place some additional strain on parking on the Fitzroy Street side.

Utilisation of the existing on-site parking area during business hours is often low (pers obs), however that would be expected to increase with the additional Gallery space.

In keeping with the 1993 development consent for a café use, as well as a submission from an adjacent strata complex, re-establishing the degraded bitumen surface along the frontage of the existing Gallery site and extending that surface across the front of No 162 Fitzroy Street is recommended to provide an improved all-

		<p>weather parking environment.</p> <p>This variation to car parking provision is supported as evidence suggests that the parking requirements for the Gallery have been satisfactorily achieved since the Gallery was established in 1987 despite the parking provision not being in accordance with standard rates of provision.</p>
	Vehicles to enter and leave in a forward direction	<p>Yes and No. Cars will be able to enter and leave the main on-site car parking area in a forward direction. Parking spaces accessed off Robinson Avenue and any loading area adjacent to the delivery/store additions will not enable this in both directions. For the Robinson Avenue side this situation is deemed to be acceptable due to the existing residential environment and use of those spaces by staff. See earlier discussion regarding loading/unloading and current arrangements on-site.</p>
	Parking Layout and design	<p>The proposed main car park has an acceptable layout in general. Spaces will be required to be delineated and a sign placed adjacent to the driveway in Fitzroy Street to advise that on-site parking exists. One space within the car park is proposed to contain a removable bollard to enable that space to be 'reserved' for vehicular egress via a gate to the adjacent laneway should the need arise during loading/unloading activity. To reduce potential nuisance to the adjacent residential neighbour and to avoid any associated upgrade of the laneway it is preferred the bollard, gate and associated egress opportunity be removed as inconvenience for persons using the carpark can be minimised by loading/unloading of exhibitions occurring outside of business hours. Final design of the carpark should ensure stormwater drainage to the adjacent properties is not exacerbated and where possible the car park could be designed for stormwater detention and treatment.</p>
Part H. Sustainable Water Controls	Stormwater management details	<p>Detailed stormwater management plans demonstrating satisfaction of the relevant criteria in Table H1 and H2 of the Council's DCP for stormwater quality and quantity are required with the Construction Certificate (refer also to Part G earlier). These plans should incorporate permeable surface treatments for access areas. There is potential that once additional permeable surfaces are included the requirements for</p>

		on-site detention may reduce compared to the concept stormwater pre/post runoff analysis submitted with the DA (refer to Appendix C of the SOEE).
Part I. Erosion and Sediment controls	Prevent land degradation and soil erosion	Yes. During the construction phase sediment controls will be implemented to minimise the transport of sediment. Detailed plans of erosion and sediment control will be required with the Construction Certificate.
Part J. Subdivision and Engineering Controls	Connection to Services	The development will be connected to reticulated sewer, water, electricity, telecommunications (see also Clause C.24 earlier).

- (iiiia) **any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,**

Not applicable.

- (iv) **the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,**

Clause 92 of Part 6, Division 8 of the *Environmental Planning and Assessment Regulation 2000* requires the provisions of AS2601 – Demolition of Structures to be considered for any development application involving demolition of a building.

Prescribed matters to consider or prescribed conditions relevant to the proposed development apply pursuant to the following clauses of Part 6, Division 8A of the *Environmental Planning and Assessment Regulation 2000*:

- Clause 92 – proposed demolition needs to consider AS2601 – Demolition of Structures
- Clause 94 – consideration of whether upgrading or expansion to premise requires upgrading to comply with BCA;
- Clause 98(1)(a) – building work to be carried out in accordance with the *Building Code of Australia*;
- Clause 98A(2) and (3) – erection of signs to specify details of the principal certifying authority; and
- Clause 98E – protection for buildings on adjoining land due to excavation extending below foundations of those buildings.

- (v) **Repealed**

- (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 subject land is located in a long-established modified, urban environment. Impacts on the natural environment are minor in general with greatest potential in relation to disturbance of soil associated with relocation of the sewer main and construction of foundations. The built environment will see the greatest change as a result of the proposal with demolition of an existing house in an established streetscape and construction of a substantial replacement building on that same land parcel to accommodate the expanded Gallery facility.

Notwithstanding that, the new building incorporates a variety of design elements, external building materials and colours to limit any adverse visual appearance of the new building.

The design and pre-planning phase of the development has paid due attention to the needs for both the Gallery facility as well as nearby residents. This is demonstrated by the relatively low number and constructive content in the public submissions without objection being stated. The management of the facility would need to continue to uphold the interests of the neighbourhood to ensure ongoing positive relations as the proximity of this facility to residential development provides potential for nuisance without such operational management.

The height of the additions fronting Robinson Avenue creates a significant potential for impacts on residential amenity through loss of solar access, however as the shadow diagrams show the adjoining residential properties in Robinson Avenue will continue to enjoy satisfactory levels of solar access with a minimum of 3 hours of solar access to the majority of private open spaces even in mid-winter.

Operation of the Gallery and associated café require careful management, especially during night time operations. Relocation of the café from the central courtyard to the Fitzroy Street frontage provides added potential for nuisance to neighbours. Hours of operation and management of patronage has been an issue for café/restaurant activities at the Gallery in the past. The previous café and Gallery consent has allowed an 11.00pm closing time and this is typically reserved for functions such as exhibition openings. Typically the Gallery closes at 4pm. However, relocation of the café closer to the street and adjoining residential units warrants review of closing times in association with functions.

Current approval for functions is effective for the existing Gallery premise and any expansion of functions into the expanded facility fronting Robinson Avenue should be subject to separate approval and consultation given the circumstances.

The wider Clarence Valley and visiting community will benefit from construction of this new facility with enhanced access to quality art, culture and educational opportunities whilst the art assets housed in this facility will have more secure and higher standard storage to reduce risk and associated negative economic impacts. Construction of the new buildings with flood compatible building materials below the 1-in-100-year flood level will reduce costs associated with flood damages in future years and contribute to more sustainable economic outcomes for both Council and the community.

Environmental, social and economic impacts are acceptable during the construction phase and expected to be positive with continued good management of the facility.

(c) the suitability of the site for the development,

The Gallery has established a relationship with this neighbourhood, town and Valley having been located in 'Prentice House' for over 30 years. The Gallery facility has evolved with the experience of some ventures leading to a stronger focus on the art and cultural value of this asset. This proposal will further reinforce that focus and established relationship with a higher standard facility that will serve the Clarence Valley community for many years.

The location of the Gallery close to the Grafton business district provides some challenges and opportunities. Management of the Gallery has seemingly adapted to these circumstances to the benefit of the Gallery and the neighbourhood. The Gallery management has actively involved residents in the neighbourhood in preparing this proposal and this appears to have provided additional grounds to support the continued and expanded operation of the Gallery at this location.

Neighbours have provided constructive feedback to ensure that integration of this development onto the site and into the neighbourhood is reasonably positive for them. Some of the requirements in the recommended conditions have been included in direct response to requests

in submissions and to ensure better transition from the current Gallery facility to the expanded community facility now proposed.

The site is considered suitable for the proposed development.

(d) any submissions made in accordance with this Act or the regulations,

Public submissions have been received from four(4) respondents. Two(2) submissions state 'strong support' and two(2) submissions from neighbours present issues that the author/s requested be considered in assessing and determining the DA. No submissions stated that they 'object' to the proposed development. The public submissions are included with this report for the Panel's consideration.

The Friends of the Grafton Regional Gallery and The Gallery Foundation have close ties with the Gallery and are supportive of the value and benefit the proposed development is expected to bring to the Clarence Valley community in terms of access to art and cultural material as well as the enhanced and lower risk storage capacity for the valuable art assets held and/or exhibited by the Gallery.

Written feedback from two(2) neighbours and an informal verbal 'submission' from another neighbour have resulted in recommended changes to relatively minor aspects of the proposed development and confirmed other features, with a focus on issues close to common boundaries with the Gallery site, such as fencing, noise transmission, light nuisance, access and parking. These adjustments and confirmations will improve overall outcomes from this project.

(e) the public interest.

Public submissions provide an insight into public interest of this proposal from the perspective of the neighbourhood and Gallery supporters in the wider art and creative community. At both levels there is genuine support for the Gallery as both a neighbour and a provider of quality art and cultural experience for the wider community. In this regard, the development would appear to be successfully catering for the neighbourhood and broader public interests.

In addition, the capacity to attract a wider variety of exhibitions and ensure safe keeping of art assets on premises adds an economic dimension to the development being in the public interest as it reduces risk to these valuable commodities.

The positive public interest and benefit this proposal promotes provide a key factor in recommending acceptance of variations to the DCP. The experience of this facility existing on the subject land, or part thereof, for 30 years provides further hindsight to confidently recommend this development for approval in the circumstances.

4.2: External Agency Consultation / Comments

Agency	Consultation / Comment
N/A	

4.3: Internal Officer Consultation / Comments

Officer	Consultation / Comment
Development Engineer	Internal referral and discussion. Recommended conditions provided
Building and Environmental	Internal referral. Recommended conditions provided.

Services Coordinator	
Strategic Planner	Internal Referral and discussion. Comments on heritage considerations and recommended conditions provided.
Trade Waste Officer	Internal Referral. Recommended conditions provided.
Environmental Health Officer	Internal referral and discussion. Recommended conditions provided.
CVC Access Committee	Referred to Committee for consideration of accessibility matters and discussed at Committee meeting. Comment provided.

Schedule 1: Draft Advices and Conditions

Advices

1. Demolition work is to be carried out in accordance with AS 2601.
2. Civil Construction Certificate (**Civil CC**) approvals, issued by Council and/or accredited private certifier are required for this development.
 - a A private certifier accredited for Civil Construction under the NSW Building Professionals Act 2005 (Categories B and/or C), may be engaged for all or part of civil works (subdivision and/or on private property) other than public infrastructure water and sewer reticulation works.
 - b Connection to Council drainage, water and sewer systems require the approval of Council under the NSW Local Government Act
 - c Accreditation of private certifiers for public sewer and water reticulation works is not offered under the Building Professionals Act 2005
 - d Works within public road reserves require the approval of the Road Authority as defined in the NSW Roads Act.
 - e A **Civil CC** application to Council for public and/or private property works requires payment in accordance with the Council's adopted 'Fees and Charges'. The application form may be downloaded from Council's website.
3. A completed 'Design Certification Report' with supporting documentation, in accordance with the requirements of **NRDC** must be submitted to Council and/or accredited private certifier with the submission of the **Civil CC** application.

Approval of a **Civil CC** will be current for a period of two years after which time Council may require the alteration to the Engineering Design to comply with current standards. Engineering plans for the **Civil CC** are required in electronic format to be confirmed with Council before lodgement.

4. No civil construction works, including the removal of vegetation or topsoil, shall be commenced until a **Civil CC** has been issued by Council and/or accredited private certifier.

A private certifier who issues a **Civil CC** must forward a copy of the Certificate along with a copy of the approved plans and **ITP** to Council two days before work commences on the development.

Council attendance at any required inspections will be charged in accordance with the adopted 'Fees & Charges' current at the time of the inspections. Payment is required prior to any inspections.

5. To obtain a Certificate of Compliance for water and or sewer works, Council requires completion of any works on Council's water or sewer infrastructure specified as a condition of this consent and payment of contributions in accordance with Section 64 of the Local Government Act, 1993, which applies Section 306 of the Water Management Act, 2000. The application form for a Certificate of Compliance is available on Council's website.

The proposed development has been assessed as contributing an additional 0.73 ET demand on Council's water supply, and an additional 0.73 ET loading on Council's sewerage system-The headworks charges at 2018/19 financial year rates are:

Water Headworks \$4,817.00 x 0.73 additional ET = \$3,516.41

Sewer Headworks \$6,589.00 X0.73 additional ET = \$4,809.97

The contribution(s), as assessed, will hold for a period of 12 months from the date of this approval. Contributions not received by Council within 12 months of the date of this determination will be adjusted in accordance with the adopted Schedule of Fees and Charges current at the time of payment.

Where any works are required on Councils water or sewer infrastructure, as a condition of this consent, they must be completed in accordance with the conditions of consent prior to the release of the certificate of compliance.

6. All building and construction work, which includes subdivision and civil works, which cost \$25,000 or more require the payment of the long service levy prior to a Construction Certificate being issued. The levy is required under the Building and Construction Industry Long Service Payments Act 1986. The total value of works must be included on the Construction Certificate Application form.
7. An inspection of the food premise prior to operation must be conducted by one of Council's Environmental Health Officers.
8. The design and construction of the food premises including fixtures, fittings and equipment must permit the food premises to be effectively cleaned and if necessary sanitised; and

To the extent that is practicable the food premises design and construction must:

- a exclude dirt, dust, fumes, smoke and other contaminants
- b not permit the entry of pests
- c not provide harbourage of pests

9. No construction is to be commenced until a Construction Certificate has been issued.
10. Prior to work commencing on a development the applicant must give notice to Council of their intention to commence work. Such notice shall be in the form of a Notice of Commencement form and must be submitted to Council at least two (2) business days before work commences.
11. Effective measures are to be taken to prevent any nuisance being caused by noise, vibration, smell, fumes, dust, smoke, waste water products and the like at all times.
12. It is the developer's responsibility to make satisfactory arrangements with other property owners affected by the development, and to meet all costs associated with the development.

Conditions

1. The development being completed in conformity with the Environmental Planning & Assessment Act, 1979, the Regulations thereunder, the Building Code of Australia (BCA) and being generally in accordance with plan(s) numbered Job No 18024 (Drawing No A01, A02, A03, A04 and A05), dated 29 November 2018 (Revision D), submitted/drawn by DRA Architects, and Landscape Design Plans, being Drawing No. 3145/01, 3145/02, 3145/03, 3145/04, 3145/05 and 3145/06, prepared by GeoLINK, dated 17 December 2018, as amended in red, or where modified by any conditions of this consent.
2. **Adjoining Building Work** A person who causes an excavation that extends below the level

of the base of the footings of a building on an adjoining allotment of land shall, at their own expense and where necessary:

- a Preserve and protect the building from damage; and
- b If necessary, underpin and support the building in an approved manner, details of which are to be submitted with the application for the Construction Certificate and certified by a professional engineer or an accredited certifier.

The person who causes this excavation must, at least seven (7) days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to this owner of the proposed work. (Note: An adjoining allotment of land includes a public road and any other public place. A building includes a fence).

- 3. Prior to any work commencing involving the disturbance or removal of any asbestos materials the principal contractor shall give two days written notice to the owner or occupier of any dwelling within 20m of the development site of his intention to carry out the work.
- 4. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Clarence Valley Council's Asbestos Policy and the relevant requirements of WorkCover NSW and the NSW Department of Environment & Heritage (formerly the Environment Protection Authority), including:
 - a Work Health and Safety Act 2011 and associated regulations
 - b WorkCover NSW Code of Practice for the Safe Removal of Asbestos
 - c Australian Standard 2601 (2001) - Demolition of Structures
 - d The Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Waste) Regulation 1996.

A copy of Council's Asbestos Policy is available on Council's web site at www.clarence.nsw.gov.au or a copy can be obtained from Council's Customer Service Centres.

- 6. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures. The Work Plan must include the following information (as applicable):
 - a The name, address, contact details and licence number of the Demolisher/Asbestos Removal Contractor
 - b Details of hazardous materials, including asbestos
 - c Method/s of demolition and removal of asbestos
 - d Measures and processes to be implemented to ensure the health & safety of workers and community
 - e Measures to be implemented to minimise any airborne asbestos and dust
 - f Methods and location of disposal of any asbestos or other hazardous materials
 - g Other relevant details, measures and requirements to be implemented as identified in the Asbestos Survey
 - h Date the demolition and removal of asbestos will commence

The Demolition Work Plan must be submitted to Council and the Principal Certifying Authority (PCA) if the Council is not the PCA, not less than two (2) working days before commencing any demolition works involving asbestos products or materials. A copy of the Demolition Work Plan must also be maintained on site and be made available to Council officers upon request.

Note it is the responsibility of the persons undertaking demolition work to obtain the relevant WorkCover licences and permits.

7. Only a WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10 m² of bonded asbestos (or as otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence.
8. On demolition sites involving the removal of asbestos, a professionally manufactured sign must be clearly displayed in a prominent visible position at the front of the site, containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" and include details of the licensed contractor. The sign shall measure not less than 400mm x 300mm and the sign is to be installed prior to demolition work commencing and is to remain in place until such time as all asbestos has been safely removed from the site.
9. Asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 1996. Asbestos waste must be disposed of at an approved waste disposal depot. Copies of all receipts detailing method and location of disposal must be maintained on site and be provided to Council officers upon request, as evidence of correct disposal.
10. An Asbestos Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos removal contractor, building consultant, architect or experienced licensed building contractor), must be provided to Council upon completion of the asbestos related works (prior to an Occupation Certificate being issued), which confirms that the relevant requirements contained in the Asbestos Survey and conditions of consent, in relation to the safe removal and disposal of asbestos, have been satisfied
11. A suitable enclosure shall be provided on site, during construction, for depositing waste materials that could become wind blown. Waste materials shall be disposed of to an approved recycling service or waste depot. No burning of waste materials shall occur.
12. A detailed Waste Management and Minimisation Plan shall be submitted to and approved by Council prior to demolition work commencing. The plan shall include, but shall not be limited to, all stages of the development (demolition, ground excavations, tree/landscape removal, construction and operational phase) the identification of the materials to be re-used, the quantities of waste to be managed as part of the demolition process, and the proposed destination of materials for re-use, recycling or disposal.
13. An easement for sewerage purposes must be created over the Council's sewer mains within any lots in the subdivision.

The width of the easement must be;

- a Where the sewer is less than 1.5 metres depth, the easement width shall be 3.0 metres, except that for sewers which are less than 0.75 metres depth and serving only one residential lot, the easement width may be reduced to 1.5 metres,
- b Where the sewer is between 1.5 metres and 3.0 metres depth, the easement width shall be 5.0 metres,
- c Where the sewer is greater than 3.0 metres depth, the easement width shall be determined by Council following an assessment of maintenance access requirements;

Unless specific approval or direction is given by Council to an alternative easement width having regard to the particular circumstances of the development and the sewer

infrastructure.

The easement shall be located centrally about a line drawn between manholes to an accuracy of 0.15 metres by a registered surveyor and supported by an engineering survey plan showing the dimensions between the sewer line and the extremity of the easement at each point where the easement dissects the boundary of the subdivided lot or lots or any change of direction.

14. Plans of erosion and sediment control (including dust suppression) consistent with Part I of Council's DCP for Development in Residential Zones are to be submitted to and approved by Council prior to issue of the building construction certificate.
15. All on-site visitor parking spaces are to be clearly marked, and a sign or signs conspicuous and legible from the street are to be permanently displayed indicating that visitor parking is available on the site.
16. Prior to demolition of the dwelling the existing water and sewer connections are to be capped off by a licensed plumber.
17. Upon removal of the swimming pool the pool listing in the NSW Swimming Pools Register is to be updated.
18. Appropriate car parking for persons with a disability shall be incorporated in the on site carpark. It is preferred that the accessible car parking space be located at car spaces 1/2 as shown on the approved car parking layout.
19. That a schedule of external finishes and colours are provided to and approved by Council prior to release of the Construction Certificate.
20. An application to discharge liquid trade waste shall be submitted for assessment with the Construction Certificate application. Detailed trade waste drainage plans shall also be submitted with the trade waste application.
21. All sinks and floor wastes in the café kitchen shall contain basket arrestors.
22. The café kitchen drainage shall discharge through a grease arrestor. The volume of the grease arrestor shall comply with Councils trade waste policy.
23. If the use of the proposed kitchenette is commercial or to support the café kitchen as an overflow kitchen during events, the drainage shall also be connected to an adequately sized grease arrestor.
24. The existing grease arrestor shall be decommissioned and removed. A new arrestor shall be installed.
25. The grease arrestor shall be located in an area that is accessible for the pump out contractor.
26. The design and construction of all food preparation and food storage areas shall comply with the requirements of Standard 3.2.3 of Chapter 3 of the Food Standards Code.
27. Detailed plans and elevations of the food preparation and food storage areas shall be submitted to, and approved by the principal certifying authority prior to release of the Construction Certificate. Plans shall include the finishes to floors, walls, ceilings, benches and shelves. Plans and elevations must include the location and type of fixtures, fittings and equipment. Dimensions of all basins (hand wash basins, food preparation sinks and

dishwashing sinks) within the premise must be included within plans submitted.

28. Ensure all service pipes and conduits are concealed within walls or projected off walls to prevent unwanted food accumulations and pest harbourage locations.
29. Mechanical ventilation systems complying with AS1668 are to be installed. The mechanical ventilation systems shall comply with Clause F4.5 of the Building Code of Australia and AS 1668.1 and AS 1668.2 (Mechanical Ventilation and Air Conditioning Code). Full details from a mechanical engineer shall be submitted to the Principal Certifying Authority for approval together with a certificate to certify that the whole system complies, including methods to prevent the spread of fire, and provide the required air changes.
30. Noise emanating from the premises shall not exceed 5 dB(A) above background noise level at any time measured from the nearest affected residential property.
31. **Unexpected Finds**

Attention is directed to the NSW Heritage Act 1977 in relation to the exposure of relics. The Act requires that if; A relic is suspected, or there are reasonable grounds to suspect a relic in the ground, that is likely to be disturbed, damaged or destroyed by excavation, or,

 - a any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation

those responsible for the discovery must notify nominated personnel who will in turn notify the Heritage Council of NSW or its delegate the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss 139, 146.)
32. The road verge along the north side of Fitzroy Street across the frontage of No 158 and 162 Fitzroy Street shall be bitumen surfaced from the edge of the existing road carriageway to the concrete kerb prior to issue of the Occupation Certificate. No street trees shall be adversely impacted by this work.
33. That plans prepared for issue of the Construction Certificate for building and car park works (as applicable) shall be provided to Council's Access Committee for endorsement prior to issue of the Construction Certificate. Such plans shall identify accessible car parking on-site and details of accessibility measures, such as tactile ground surface indicators, other aids for vision impaired persons and a hearing loop.
34. Replace the street tree (Queensland Bottle Tree/*Brachychiton rupestris*) in Robinson Avenue adjacent to the frontage of No 5 Robinson Avenue with a new advanced planting of the same species. Minimum container size shall be 100L.
35. All stormwater falling on the property is to be collected within the property and discharged in accordance with the relevant parts of the applicable Clarence Valley Council Development Control Plans and NRDC.

The Stormwater management plan (SWMP) is to be generally in accordance with the submitted Stormwater Management Plan 18-128-SW Sheet 02 of 02 prepared by McKenzie Burrige & Associates Pty Ltd.

Use of permeable paving or similar treatments on the internal driveway, car park and pedestrian access areas such as the café, outdoor area west of the new additions and any renewed, paved surfaces should be maximized where practical. Measures shall be included in the design of the new car park at Lot B to ensure stormwater impacts on adjoining land do not increase as a result of the development and to even utilise the car park area for

stormwater detention.

36. The existing sewer across Lot 3 DP 38033 (5 Robinson Avenue) is to be relocated clear of the proposed development prior to commencement of any building construction works (not including demolition of the existing house) on Lot 3. This relocation is to be generally in accordance with the Concept Design and Feasibility Plan prepared by Councils Water & Sewer Engineer, dated 10 October 2018. Detailed design of the sewer relocation shall be approved by Council prior to commencement of those works. Upon completion of the relocated sewer and prior to issue of an Occupation Certificate for the building on Lot 3 works-as-executed drawings and specifications suitable for entry into Council's Asset Register shall be provided.
37. The proposed bollard in car parking space 6 and the adjacent gate between Lot B and the un-named laneway shown on Drawing No GROUND FLOOR PLAN A, Drawing No A02, Revision D, dated 29 November 2018, shall be removed. The gate shall be replaced with a solid 1.8 metre high timber, lapped and capped fence.
38. Existing fence to the Fitzroy Street frontage to be made good to modify access at existing western driveway for pedestrians and to correct south-west corner post alignment. Work is to be to the minimum extent necessary to preserve historic fabric and materials.
39. The loading zone shown on the Fitzroy Street road verge shall be moved on-site adjacent to the delivery/store room and car park.
40. That fencing of side and rear boundaries behind the front building line shall be 1.8 metres high and constructed of lapped and capped timber palings. Fence height between the front building line/s and the adjacent street frontages
41. That Lot B DP 359677 and Lot 3 DP 38033 shall be consolidated with evidence of a registered plan prior to issue of the Occupation Certificate.
42. External lighting shall be managed so as not to cause nuisance to adjoining residents.
43. Prior to commencement of replacement fencing along the western boundary of Lot B documentation shall be signed by the Body Corporate of Strata Plan 14227 confirming agreement for how treatment of the ground surface between the proposed fence and the driveway of the Strata Plan will be finished. Where written agreement cannot be achieved then the Applicant shall demonstrate that reasonable efforts to achieve agreement through consultation with the Body Corporate has been made. Where no agreement is obtained the finish of the area shall remain as existing. Any agreed finish is to be completed prior to issue of the Occupation Certificate.
44. Screening shall be installed prior to demolition works along the east and west boundaries of No 5 Robinson Avenue to control dust and privacy impacts to adjoining residents during the demolition and construction phases.
45. Separate development consent shall be obtained prior to use of the new Gallery additions for functions outside of the approved hours of operation.
46. Should any Aboriginal objects or artefacts be uncovered during works on the site, all work is to cease and the NSW Office of Environment and Heritage (OEH) shall be contacted immediately and any directions of OEH complied with.
47. The developer shall inform the Grafton-Ngerrie Local Aboriginal Land Council at least 5 working days prior to commencement of excavation works (including but not limited to the sewer relocation).

48. **Working/Construction Hours** Working hours on the construction project being limited to the following:

7.00 am to 6.00 pm 6 days per week No work permitted on Sundays and public holidays

The builder to be responsible to instruct and control sub contractors regarding the hours of work and the requirements of the Protection of the Environment Operations Act 1997 and Regulations.

49. The hours of operation shall be limited to between 7.30am to 11.00pm Monday to Saturday (inclusive) and 8.30am to 6.00pm Sundays and Public Holidays.
50. All landscaping works are to be completed in accordance with the approved plan prior to the Occupation Certificate being issued.
51. The landscape concept plan submitted with the DA is acceptable. A detailed landscaping plan is to be submitted to Council for approval prior to the release of the Construction Certificate. This plan must comply with the requirements of Council's Residential Development Control Plan and is to indicate:
- a The type of plants to be used (i.e. Shrubs, trees groundcovers, including species if known), including trees to be retained and new plantings;
 - b The purpose of each planting (i.e. shade, privacy etc.);
 - c The edge treatment proposed where garden beds abut grass;
 - d A maintenance programme for the initial 6 months after planting;
- Details of the surface treatment of pedestrian access/seating spaces including maximizing use of permeable pavers; and
- Fencing of the side and rear boundaries with 1.8m high timber fence lapped and capped.
52. The onsite landscaping is to be maintained on a regular basis, to comply with the approved plans.
53. All building construction below 6.4m AHD shall be of flood compatible materials.
54. A Structural Engineers certificate shall be submitted prior to issue of the construction certificate to verify the building will withstand the likely forces imposed on it by a 1:100 year flood event including hydrostatic, hydrodynamic, debris, wave, erosion and scour actions.
55. The development is not to be occupied or used until such time as an Occupation Certificate has been issued.
56. The development is to be connected to all available services (water, sewerage, electricity and telephone) to the satisfaction of Council prior to issue of the Occupation Certificate. Such connections, and any extension of services required to the development, are to be carried out at full cost to the applicant.
57. Prior to commencement of works, a sign must be erected in a prominent position on any work site on which work is being carried out:
- a Stating that unauthorised entry to the work site is prohibited;
 - b Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside of working hours, and
 - c Showing the name, address and telephone number of the principal certifying authority for the work.

Any such sign is to be removed when the work has been completed.

58. A separate Development Application will be required for any advertisements that are not defined as “exempt development”.

59. **Site Safety Management Building** equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.

All excavations and back filling associated with the erection and demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.

60. Where the work is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves enclosure of a public place, the following must be provided:

- a A hoarding or fence must be erected between the work site and the public place.
- b 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.
- c The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- d Any such hoarding, fence or awning is to be removed when the work has been completed.

61. The submission of the 88B Instrument, and one copy thereof, to Council prior to issue of the Occupation Certificate.

62. **Toilet Facilities** are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a A standard flushing toilet, connected to a public sewer, or
- b An approved temporary chemical closet.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

Reasons

- 1. To ensure that the development complies with the *Clarence Valley Local Environmental Plan 2011* and relevant Development Control Plan that are applicable to the proposed development.
- 2. To ensure that the surrounding environment is not detrimentally affected as a result of the development.
- 3. To comply with legislative requirements.
- 4. To ensure works are completed to an appropriate standard and documented.
- 5. To comply with Council’s Section 7.11 Contributions Plans.
- 6. To comply with Council’s Sewer and Water Development Services Plan.

7. To conserve Aboriginal cultural heritage.
8. To ensure that the development is adequately landscaped and maintained, and in accordance with the approved plans.

Section 68 Approvals

The following approvals are issued under Section 86 of the Local Government Act 1993:

- Sewer work/connection
- Water plumbing
- Stormwater work

Attachments

1. Submissions received during exhibition period (4 of)
2. SOEE