

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-205 – DA 2023/435
PROPOSAL	Group Home (Transitional), Associated Landscaping, Retaining Walls and Demolition of Existing Structures
ADDRESS	Lot 2 DP1285515 10A Park Street EAST MAITLAND NSW 2323
APPLICANT	Housing Plus
OWNER	Housing Plus
DA LODGEMENT DATE	06/06/2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 5, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Private infrastructure and community facilities over \$5 million (Group Home)
CIV	\$5,016,000 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 Maitland Local Environmental Plan 2011
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Statement of Environmental Effects by Premise, Rev: A, dated: 10/05/2023 Flood Impact Assessment, by Burke Engineering Services Pty Ltd, Reference: J3671, Rev: 02, dated: 12/02/2024 Water Sensitive Urban Design Report, by Barnson, Reference: 40560 ER01_B, dated 02/02/2024 Livable Housing Design Certificate, Reference: 220013_Maitland_U_03, dated 17/07/2023

	<ul style="list-style-type: none"> • Waste Management Plan, by Darren Wooding (Housing Plus), dated 06/09/2023 • Demolition Work Plan, by Darren Wooding (Housing Plus), date: 20/07/2023 • BASIX Certificate, Cert. No.: 1369808M, Version 3.0, dated: 05/06/2023 • NatHERS Certificate, Cert. No.: 0008689490, dated: 04/06/2023 • Hunter Water Minor Works Deed, Reference: 2022-1953/2, dated: 24/03/2023 • Geotechnical Report, by Regional Geotechnical Solutions, Reference: RGS33442.1, dated: 13/02/2023 • Cost estimate report, by Walton Smith Consultants, Reference: 150/2023, dated: 04/04/2023 • Owners Consent, dated: 09/05/2023
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	NO
SCHEDULED MEETING DATE	26 March 2024
PLAN VERSION	<ul style="list-style-type: none"> • Architectural Plans, by Housing Plus, Rev B, dated: 14/02/2024 • Civil Engineering Plans, by Barnson, Rev: D, dated: 13/02/2024 • Landscaping Plan, by DA Landscape Plans, Reference: D1358, dated: 01/12/2023. • Retaining wall plan, by Barnson, Rev A, dated: 06/07/2023 • Driveway Details, by Barnson, Rev: A, dated: 04/10/2023 • Survey Plan, by Rennie Golledge Pty Ltd, Rev: 2, dated: 12/05/2019 • Hunter Water Service Location Plan, dated: 28/11/2022 • Minor Works Sewer Location Plan, by DGP Water, Reference: 2022-001-025, dated: 20/12/2022
PREPARED BY	Emmilia Marshall (Senior Development Planner)
DATE OF REPORT	15 March 2024

EXECUTIVE SUMMARY

The proposal seeks consent for a Group Home (Transitional), associated landscaping, retaining walls and demolition of existing structures. Specifically, the proposal involves:

- Site preparation and early works including minor earthworks and demolition of existing structures;
- Construction of eight (8) independent living units;
- Main building comprising of communal living, dining and kitchen areas, entry and reception space, office, conference room and two (2) consulting rooms;
- A suspended driveway and carpark structure provides six (6) onsite parking spaces (including one (1) accessible space), storage shed and bin storage area;
- Associated landscaping of communal open space including tree planting, paving and walkways.

The development is permitted with consent in the R1 – General Residential zone pursuant to the *Maitland Local Environmental Plan 2011*.

The site fronts Park Street to the south-west. The allotment is a regular shape measuring 1775m² in area, with a steep but gradual sloping topography from north-east (rear) to the south-west (front). The site is burdened by an easement to drain water 3m wide of which runs diagonally across the front of the allotment. This easement is also an overland flood path and subject to localised flooding during large storm events.

A number of key matters were identified and discussed at a pre-lodgement meeting held in April 2023. Upon lodgement of the application, it appears several of the items discussed and requested during the pre-lodgement meeting were not addressed, and an initial request for further information, echoing the pre-lodgement meeting minutes, was issued. Some of the information was provided by the applicant prior to the Panel's kick-off briefing held in August 2023. A further panel briefing was held in November 2023 to discuss the key outstanding issue, being the impact of the suspended carpark and driveway on the 3m wide drainage easement, overland flow path and subsequent localised catchment flooding. A meeting was held with the applicant, their engineers and Council in early December to further discuss the level of detail required to address this impact.

Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application cannot be supported. The key issue(s), noted above, have not been resolved satisfactorily through amendments to the proposal, despite ongoing consultation and five (5) formal requests for further information. The potential impact upon flood characteristics and stormwater behaviour as a result of the suspended driveway and carpark structure remains unknown. Further, the siting, external appearance, CPTED elements and landscaping associated with the architectural design are largely dictated by the suspended carpark and driveway structure, raising concerns with regard to site suitability and public interest.

Consequently, the development is recommended for refusal pursuant to Reg 36 of the Environmental Planning and Assessment Regulation 2021.

1. THE SITE AND LOCALITY

1.1 The Site

The development is located in the suburb of East Maitland, positioned south-east of the Maitland City Council Local Government Area, approximately 3.5km east of the Maitland Town Centre. The development site is identified as Lot 2 DP 1285515, 10A Park Street, East Maitland. The development site is surrounded by an established residential area, with a number of multi-dwelling housing developments bordering the southern boundary. The development site is south-west of Newcastle Street (New England Highway) and a local sporting field sits directly adjacent the Park Street frontage. The boarder of the East Maitland Heritage Conservation Area is situated to the north, ending at Newcastle Street (New England Highway). Figure 1 shows a locality plan of the development site.



Figure 1 - Locality Plan (GIS aerial image)

The site fronts Park Street to the south-west. The allotment is a regular shape measuring 1775m² in area, with a 25.775m front boundary, 70.305m northern side boundary, 60.79m southern side boundary and 24.825m rear boundary. The development site features a steep but gradual sloping topography from north-east (rear) at 22.47m AHD to south-west (front) at 18.40m AHD. Attributed to an existing drainage easement across the front of the site, the low point of the allotment is 17.53m AHD.

The development site is currently benefited by an easement for access 1.2 wide (footway) over adjoining Lot 1 DP 1285515, to Newcastle Street (New England Highway). The site is burdened by an easement to drain water 3m wide of which runs diagonally across the front of the allotment, and an easement to drain water 1m wide (benefiting lot 1) of which runs adjacent to the northern side property boundary,

connecting into the 3m wide drainage easement at the front of the site. Figure 2 provides an excerpt of the Deposited Plan.

The development site does not contain any established vegetation however is largely unmaintained and features overgrown grass and remnant shrubbery. Existing metal sheds and attached awning, proposed for demolition, sits in close proximity to the southern side property boundary.

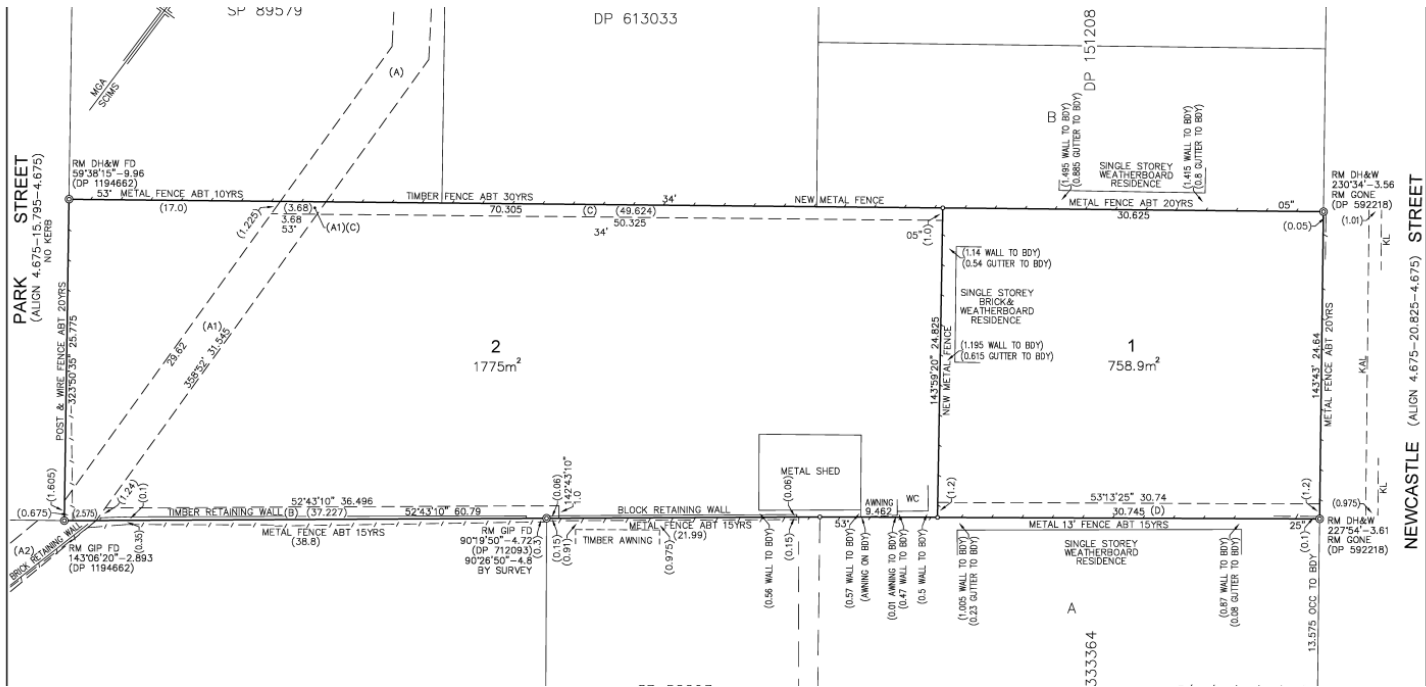


Figure 2 - Deposited Plan

The table below shows site photographs taken on Monday 10th July 2023.

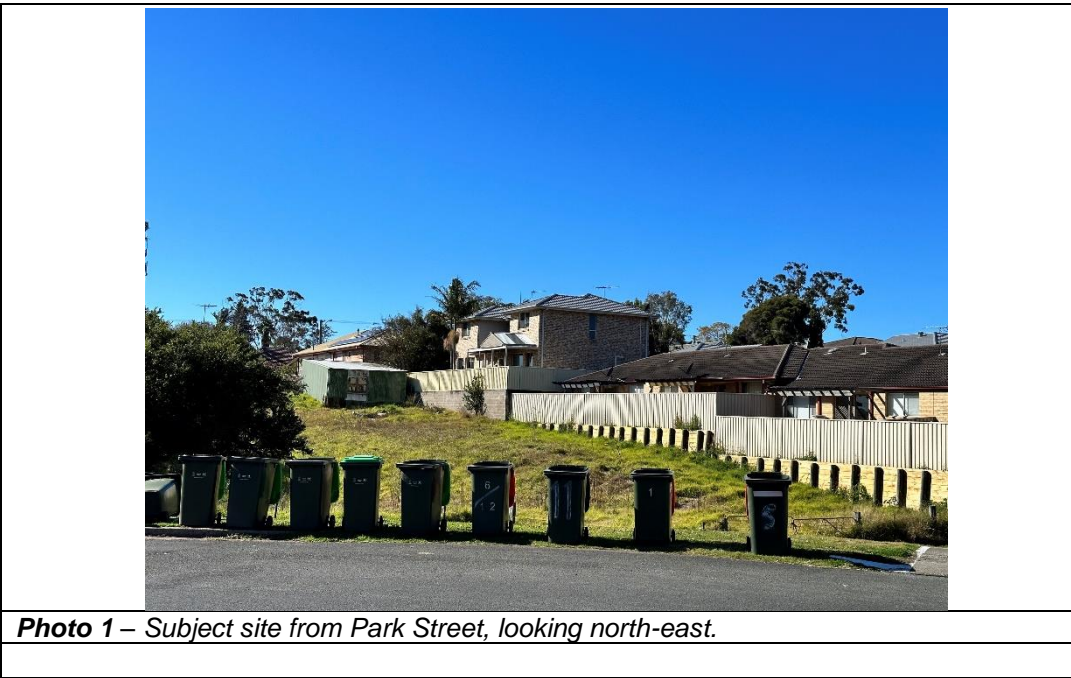


Photo 1 – Subject site from Park Street, looking north-east.



Photo 2 – Subject site and neighbouring MDH development at 12 Park Street



Photo 3 – Subject site looking north



Photo 4 – Subject site looking north-east



Photo 5 – Existing utilities, retaining and fencing



Photo 6 – Existing SWD pit fronting 12 Park Street

The site is zoned R1 – General Residential, with a minimum lot size of 450m² under the Maitland Local Environmental Plan 2011 (MLEP 2011), and is mapped as Class 5 Acid Sulfate Soils.

1.2 The Locality

The development is located in the suburb of East Maitland, positioned south-east of the Maitland City Council Local Government Area, approximately 3.5km east of the Maitland Town Centre. Newcastle Street (New England Highway) is towards the north-east of the site. The area is characterised by general residential development of varying densities, including but not limited to single dwellings on average allotments, dual occupancies, and higher density multi-dwelling housing developments.

The East Maitland Town Centre is 350m to the east and Greenhills Commercial Centre is approximately 1.1km south of the subject site. The Maitland Railway Line is situated 550m east of the development site. A local park is situated fronting Brisbane Street, adjoining Park Street, approximately 330m from the site frontage.

The development site is connected to the road network via predominantly local roads, with the exception of Newcastle Street (New England Highway) to the north-east. Vehicular access to the site is provided by Park Street, with access via William Street (north), Brisbane Street (west) and Rous Street (south).

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for a Group Home (Transitional), associated landscaping, retaining walls and demolition of existing structures. Specifically, the proposal involves:

- Site preparation and early works including minor earthworks and demolition of existing sheds and attached awning.
- Construction of eight (8) independent living units as follows:
 - Two (2) attached studio units,
 - One (1) 1-bedroom unit,
 - Two (2) attached 1-bedroom units,
 - One (1) 1-bedroom unit at the ground floor of the main building and
 - Two (2) 2-bedroom units at the first floor of the main building.
- Main building comprising of communal living, dining and kitchen areas, entry and reception space, office, conference room and two (2) consulting rooms.
- The main building is connected to the five (5) independent living units at the rear of the site by communal outdoor areas, including stairs and ramp access ways.
- A suspended driveway and carpark structure provides six (6) onsite parking spaces (including one (1) accessible space), storage shed and bin storage area.
- Associated landscaping of communal open space including tree planting, paving and walkways.

The development is defined by the applicant as a 'core' and 'cluster' model, the 'cluster' comprises of the eight (8) independent living units and the 'core' provides the shared facilities for residents including communal lounge, dining, kitchen, outdoor

recreation and administration spaces. The administration area includes reception and waiting room, office space, consultation rooms and a multi-purpose room.

Table 1: Development Data

Control	Proposal
Site area	1775m ²
GFA	815.88m ²
FSR (retail/residential)	None applicable.
Clause 4.6 Requests	No
No of apartments	Eight (8)
Max Height	6.75m (No LEP Height Control)
Landscaped area	320m ²
Car Parking spaces	Six (6) – One (1) accessible space and turning bay
Setbacks	Front – 23.5m (to building line) and 15.8m (to suspended carpark structure). Rear – 1.689m Side (north) – 3.1m Side (south) – 1.6m Second storey front – 22.06m Second storey rear – 29.54m Second storey side (north) – 2m Second storey side (south) – 9.3m

2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 6 April 2023 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- **Development classification:** It was acknowledged that the predominant classification of a Group Home is a use permitted with consent in the R1 – General Residential Zone. The applicant was asked to clarify whether the ‘Reception / Office / Conference / Consulting Rooms’ are ancillary to the Group Home use or separately defined uses. It was requested that the applicant consult with Planning Circular PS 13-001. Operational details of the residents support activities were also requested.
- **Existing development consent:** An existing consent applies to the land, being DA/2019/839 - Multi-Residential Housing (5 Dwellings), One (1) into Two (2) Lot Torrens Title Subdivision and One (1) into Five (5) Lot Strata Title Subdivision. It is noted the Torrens title subdivision has been completed, and therefore the development consent has been commenced. Advice is required with any DA as to the remaining development in terms of a partial surrender of the development consent having regard to the current proposal.

- **Transport:** Due to the low socio-economic aspect of likely residents with limited or no availability of private vehicles, access to a bus stop and other forms of transport is required.
- **Impact on drainage channel:** The proposed encroachment to the drainage channel (floodway) is to be addressed, such that the proposed works do not create a worsening effect on neighbouring properties. An Engineer report by a chartered professional assessing the impacts of the proposed development is required.
- **Easements:** The development site is burdened by a number of easements. The design of the proposed development must not impede or contravene the provisions of the easements as burdening the property. Advice is required from a solicitor addressing the proposed works in relation to the easements (that is where works encroach or obstruct an easement).
- **Existing footway access:** Access via the easement to Newcastle Street is to be addressed, noting the current design does not propose to use the easement. Further, Council has CPTED concerns with the easement both as a pedestrian passageway and where it is not utilised.
- **Earthworks:** Details of any proposed cut, fill and retaining walls is required. All retaining walls are to be offset from property boundaries.
- **Street presentation:** The presentation to the street is impacted by the waste bin storage structure and the security fencing. The development is to ensure a streetscape presentation compatible with the existing and future character of the locality.
- **CPTED:** A Crime Prevention Through Environmental Design report is to be provided. The report is to be prepared by a suitably qualified and independent consultant.

It is noted that majority of the matters raised in the Pre-Lodgement meeting were not addressed upon lodgement. An initial request for further information was issued following lodgement of the application of which sought clarification on the above matters.

The development application was lodged on 6 June 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
6 June 2023	DA lodged
14 June 2023	Exhibition of the application
23 June 2023	Request for Information from Council to applicant (1) <ol style="list-style-type: none"> 1. Cost of works 2. Surrender of existing development consent 3. Clarification of proposed use 4. Operational management details 5. Accessibility Audit / Report 6. CPTED Report 7. Clarification on use of existing easement to Newcastle Street 8. Street frontage and presentation 9. Retaining wall details 10. Works within / surrounding the 3m wide drainage easement.

29 June 2023	Re-exhibition of the application
20 July 2023	Applicant response to Request for Information
2 August 2023	Panel briefing
15 August 2023	Request for Information from Council to applicant (2) <ol style="list-style-type: none"> 1. Comments from HCCRPP Kick-Off Briefing, including - detailed cross sections, privacy and amenity impacts of upper level balconies, and details to address stormwater and localised flooding. 2. Parking and vehicular access 3. Stormwater management and localised flooding issues 4. Retaining walls 5. Landscaping 6. Waste management and collection 7. Accessibility 8. Justification for waiving of S7.11 Contributions
5 October 2023	Amended plans lodged and accepted by Council under Reg 38(1) of the <i>Environmental Planning and Assessment Regulation 2021</i> ('2021 EP&A Regulation') on 9 October 2023.
9 October 2023	Applicant provided written summary of response to Request for Information.
11 October 2023	Request for information from Council to Applicant (3) <ol style="list-style-type: none"> 1. Evidence for request to waive development contributions
23 October 2023	Request for Information from Council to Applicant (4) <ol style="list-style-type: none"> 1. Flood Report 2. Removal of structures and landscaping from overland flow path.
9 November 2023	Applicant provided Response to Request for Information (4)
22 November 2023	Request for Information from Council to Applicant (5) <ol style="list-style-type: none"> 1. Flood Report
23 November 2023	Applicant provided information to support waiving of Development Contributions (RFI 3)
28 November 2023	Second briefing with Panel
5 December 2023	Council (Planning and Engineering) meeting with Applicant (including consulting Engineers) to discuss outstanding issues (Localised flooding)
13 February 2024	Applicant provided Response to Request for Information (5)

26 March 2024	Pre-Determination Briefing.
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At the Kick-Off Briefing with the Hunter Central Coast Regional Planning Panel on 2 August 2023 the following key issues were identified by Panel for consideration:

- The Panel is supportive of the proposed use and function but will need to make sure the development complies with the planning framework and responds to the constraints of the site in terms of stormwater management, built form, site suitability and relationship to adjoining properties.
- Stormwater and flooding are of critical importance. There is clearly an overland flow path affecting the site and the engineering response needs to be clear and detailed. The issue of flood free access needs to be understood, particularly given the transient nature of the residents. The Panel encourages the applicant and their engineers to meet with Council as a matter of priority to resolve any outstanding issues and to review the details in relation to the previous approval for the multi dwelling housing on this site. Consideration also needs to be given to the proposed landscaping and compatibility with the high hazard floodway constraint over parts of the site.
- The Panel needs clarity on the permissibility issue and proper characterisation of the community facilities.
- The Panel require detailed cross sections with RLs that clearly demonstrate the relationship of the proposed development to existing buildings on the lower side.
- The Panel question the upper-level balconies being built close to the boundary.

At the subsequent Panel briefing on 28 November 2023, Council advised that the information provided to date did not satisfy localised flooding issues. It was noted that if these matters could not be resolved, Council would not be in a position to recommend approval.

A meeting was held between Council, the Applicant and their various consultants on Tuesday 5 December 2023, to discuss the outstanding issues and reiterate to the applicant the level of detail which is required to be included in the revised information. The information was provided to Council on 16 February 2024 after several weeks of actively following up with the applicant.

2.3 Site History

An existing consent applies to the land, being DA/2019/839 - Multi-Residential Housing (5 Dwellings), One (1) into Two (2) Lot Torrens Title Subdivision and One (1) into Five (5) Lot Strata Title Subdivision. The application was approved by the elected Council on 10 November 2020. A S4.55(1A) modification to implement staged construction (stage 1 - subdivision and stage 2 - multi-dwelling housing) was approved under delegated authority on 13 September 2021.

The parent allotment, being 199 Newcastle Street, East Maitland, was subdivided into two (2) allotments, now known as 199 Newcastle Street and 10A Park Street, East Maitland. It is noted that the Torrens title subdivision was endorsed by Council on 19 May 2022. Subject to approval of DA/2023/435, a partial surrender of DA/2019/839 will be required.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (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), and*
 - (iii) *any development control plan, and*
 - (iiia) *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, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is not considered to be:

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)
- Crown DA (s4.33)

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*

- *Maitland Local Environmental Plan 2011*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 3: Diverse Housing Secondary dwellings, Group Homes, Co-living housing, build-to-rent housing, Housing for Seniors and people with a disability, short-term rental accommodation, manufactured home estates and caravan parks.	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 of Schedule 6 as it comprises a Group Home.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
Proposed Instruments	No compliance issues identified.	Y
LEP	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 - Height of Buildings • Clause 4.4 – Floor space ratio • Clause 7.1 – Acid sulfate soils • Clause 7.2 – Earthworks 	Y
DCP	Chapter A4 – Community Participation Chapter B6 – Waste Not: Site Waste Minimisation and Management Chapter C1 – Accessible Living Chapter C8 – Residential Design Chapter C11 Vehicular Access & Traffic Chapter C12 – Crime Prevention through Environmental Design.	Y/N

Consideration of the relevant SEPPs is outlined below:

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

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the

performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1139640M_02 prepared by Northrop Consulting Engineers Pty Ltd dated 29 September 2020 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy (Housing) 2021

The Development Application has been lodged under the provisions of Clause 61(1)(b) of the SEPP (Housing 2021) which permits Group Homes with consent. In addition it is noted that the subject land is zoned R1 General Residential under the Maitland Local Environmental Plan 2011, which lists Group Homes as being permissible with consent in the R1 zone.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5 of Schedule 6 of the Planning Systems SEPP as the proposal is development for a Group Home of which exceeds \$5 million estimated development cost. Accordingly, the Hunter Central Coast Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')* have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The proposed development site has history of being used for residential development which is not identified as a potentially contaminating land use in the SEPP 55 – Remediation of Land Planning Guidelines.

The nearest contaminated site found under EPA contaminated land register is approximately 660m away, and the nearest contaminated site on Council's records is located in excess of 175m south-east, on the opposite side of the New England Highway.

Based on the foregoing, it is considered that the site is unlikely to be contaminated.

Maitland Local Environmental Plan 2011

The relevant local environmental plan applying to the site is the *Maitland Local Environmental Plan 2011* ('the LEP').

The aims of the LEP include:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to facilitate ecologically sustainable development of land and natural assets,
- (b) to protect and maintain the extent, condition, connectivity and resilience of natural ecosystems, native vegetation, wetlands and landscapes, including those aspects of the environment that are matters of national environmental significance within Maitland in the long term,
- (c) to properly plan and protect human-made resources of Maitland including buildings, structures and sites of recognised significance which are part of the heritage of Maitland,
- (d) to protect, enhance or conserve the natural resources of Maitland including the following—
 - (i) areas of high scenic rural quality,
 - (ii) productive agricultural land,
 - (iii) habitat for listed threatened species and endangered ecological communities,
 - (iv) minerals of regional significance,
- (e) to create liveable communities which are well connected, accessible and sustainable,
- (f) to provide a diversity of affordable housing with a range of housing choices throughout Maitland,
- (g) to allow for future urban development on land within urban release areas and ensure that development on such land occurs in a co-ordinated and cost-effective manner,
- (h) to concentrate intensive urban land uses and trip-generating activities in locations most accessible to transport and centres, strengthening activity centre and precinct hierarchies and employment opportunities,
- (i) to ensure that land uses are organised to minimise risks from hazards including flooding, bushfire, subsidence, acid sulfate soils and climate change,
- (j) to encourage orderly, feasible and equitable development whilst safeguarding the community's interests, environmentally sensitive areas and residential amenity.

The proposal is consistent with some of the before mentioned aims, as the proposal providing alternative and diverse housing stock to assist vulnerable members of the community, within a centralised location. The proposal is situated within a well-established, and largely unconstrained, residential area and makes use of currently undeveloped land.

Despite this, the proposed design presents implications with regard to localised flooding and stormwater drainage. The development application does not present a design or use which demonstrates consistency with subclause (i), being minimization of risks from hazards.

Zoning and Permissibility (Part 2)

The site is located within the R1 – General Residential zone pursuant to Clause 2.2 of the LEP.

According to the definitions in Clause 1.4 (contained in the Dictionary), the proposal satisfies the definition of Group Home (transitional) which is a permissible use with consent in the Land Use Table in Clause 2.3, and under the provisions of Clause 61(1)(b) of the SEPP (Housing 2021), as detailed above.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

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

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The development is for a group home comprising of eight (8) independent living units to support housing diversity and stock within the locality.
- The proposal offers diversity within the typology of independent living units.
- The development includes communal living spaces and subsequent community and support services associated with the use as a group home.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	450m ²	No subdivision proposed.	N/A
Heritage (CI 5.10)	The consent authority must, before granting consent to the carrying out of development in an Aboriginal place of heritage significance consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement).	The development site is not deemed to be a place of Aboriginal Place of Heritage Significance having regard to an AHIMS search.	Y
Acid sulfate soils (CI 7.1)	Class 5: works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	The proposed development works are not located within 500m of adjacent Class 1, 2, 3 or 4 land.	Y
Earthworks (CI 7.2)	Development Consent is required for earthworks unless the works are ancillary to other development for which development	The earthworks are ancillary to the proposed group home subject to this development application.	Y

	consent has been given.	<p>Earthworks associated with completion of the development including minor levelling and retaining walls with maximum height of 1.2m.</p> <p>All the earthworks will be conditioned to comply and tested as per AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments. Conditions of consent will also be included to ensure sedimentation and erosion controls measures are implemented during the construction phase and best practice measures are implemented. As such, minimal impacts are likely to occur onto the surrounding environment.</p>	
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The proposal is considered to be generally consistent with the LEP.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

- Draft Remediation of Land SEPP.

Furthermore, there are no applicable Draft EPIs with regard to the MLEP 2011.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Maitland Development Control Plan 2011* ('the DCP')

The following chapters of the MDCP are relevant to the assessment of the proposal:

- *Part A – A.4 Notification.*
- *Part B – B.2 Domestic Stormwater, B.6 Waste Not – Site Waste Minimisation & Management.*
- *Part C – C.1 Accessible Living, C.8 Residential Design, C.11 Vehicular Access & Car Parking, C.12 CPTED.*

Table 6 below provides a summary of relevant provisions of MDCP 2011, with a detailed assessment available at **Attachment B**.

Table 5: Consideration of DCP controls

Maitland DCP 2011 controls		
Control	Consideration	Comply
A.4 Notification	<p>The application was initially placed on public exhibition for a period of 14 days from 20 June 2023 to 04 July 2023 in accordance with the <i>EP&A Act</i>, <i>EP&A Regs</i> and M DCP 2011.</p> <p>Following clarification of the estimated cost of works, and subsequent determining body, the application was placed on public exhibition for a period of 28 days from 05 July 2023 to 02 August 2023 in accordance with the <i>EP&A Act</i>, <i>EP&A Regs</i> and M DCP 2011.</p> <p>During this time no submissions were received.</p>	Y
B.2 Domestic Stormwater	<p>A stormwater strategy, flood impact assessment (localised catchment flooding) and civil engineering details inclusive of a stormwater management plan was submitted and amended throughout the assessment.</p> <p>Initial assessment resulted in a request for further information, raising concerns with the suspended driveway design and subsequent impact upon the stormwater drainage easement and subsequent localised catchment floodway.</p> <p>The flood impact assessment and civil design has not adequately addressed the level of impact. The development as proposed includes columns and long retaining walls which are proposed within the floodway, and the extent of information provided does not include flood modelling to demonstrate a negligible impact upon stormwater and flooding characteristics. From the information provided, the extent of impact is unclear.</p> <p>Additionally, the proposal lacks details of permissible site discharge for all storm (10%, 5%, 2% and 1% AEP) events, and does not include rainwater harvesting within the design.</p>	N
B.6 Waste Not - Site Waste Minimisation	<p>A Waste Management Plan and Demolition Plan was submitted with and amended throughout the assessment, outlining waste types, quantities, and disposal methods, with specific conditions of consent addressing waste management during demolition and construction.</p>	Y

& Management	<p>An Operational Waste Management Plan, prepared by Housing Plus (applicant), was also provided, detailing waste management for the group home, including additional hardstand area within the proposed driveway cross over to be utilised as a collection point.</p> <p>Council's Waste Officer has reviewed as acceptable subject to appropriate conditions ensuring compliance with relevant guidelines, and provisions for waste storage and vehicle access on-site.</p>	
C.1 Accessible Living	An Access Report has been provided to support the proposal demonstrating compliance with disability access legislation and Council's requirements to ensure equal access opportunities for residents and staff. Detailed design adjustments have been identified and required to be undertaken to achieve full compliance with accessibility standards. These matters could be conditioned for.	Y
C.8 Residential	<p>With the exception of landscaping, carparking and driveway design, that of which is proposed to respond to site specific constraints (easement and overland flow path / floodway), the development largely complies with the provision of this chapter.</p> <p>It is acknowledged that the development presents a limited visual interest within the streetscape, attributed to increase front setback, no front landscaping, and a suspended carpark structure of which dominates the frontage.</p>	Y
C.11 Vehicular Access & Car Parking	<p>The proposal largely complies with the provision of this chapter. A site specific suspended carpark design has been proposed, and the design incorporates sufficient manoeuvring, pedestrian access, forward ingress and egress, and onsite parking provisions.</p> <p>The structural details / loading details the carpark is suitable for a medium vehicle, however there is nothing that relates this to a type of vehicle. Signage may be required to restrict vehicles over a certain size, or structural design amended accordingly.</p>	Y
C.12 CPTED	CPTED design criteria was addressed in the submitted Statement of Environmental Effects, but not by way of a CPTED Report. Concerns remain as to access and space management as it relates to the proposed suspended driveway and carpark structure. Current information is contradicting and it is unclear as to the fencing or access	N

	deterrents proposed at the front of the site and under the proposed carpark.	
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The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered. The applicant provided evidence by way of company extract and constitution to demonstrate that the provider is a not-for-profit company.

Upon review of the documents and proposal by Council's Development Contributions Officer, Council agrees to the waiving of s7.11 contributions which would ordinarily apply to the development. This decision has been made in accordance with Clause 3.9 of the 2016 City Wide Development Contributions Plan based on the company being a registered charity/not for profit organisation and the development providing a community service for victims of domestic and family violence.

Should the development be subject to a change of use in the future, to a for-profit medium density development (or similar), a review of this decision would be triggered and contributions likely levied under any subsequent development application.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- Appropriate conditions of consent could be included to ensure demolition works comply with all relevant Australian Standards including AS2601-1991 'The Demolition of Structures'.

Section 62 (consideration of fire safety) of the 2021 EP&A Regulation are relevant to the proposal. These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting** – The proposal is considered to be generally consistent with the context of the site, in that the proposed group home appears as a multi-dwelling housing development and presents a suitable scale. The development is located within

an existing residential area and is benefited by high walkability to local shops, schools and public transport.

- **Access and traffic** – The proposed development is not of a scale or type anticipated to generate a large volume of traffic and is anticipated to have a negligible impact upon the local road network. Access to the site is provided by way of suspended driveway and carpark structure.
- **Public Domain** – The development does not present well to the streetscape, attributed to a large stormwater drainage easement and overland flow path of which results in a large front setback. This is further exacerbated by the site's limited street frontage as existing. In this way, the development is not considered to negatively impact the public domain, but it does not improve the public domain either.
- **Topography** – The development includes minor cut and fill works (+/-2m) and retaining walls along the side and rear property boundaries. The extent of works are not anticipated to impede upon future development or uses of the subject or neighbouring allotments. Standard conditions can be imposed relating to soil, erosion and sediment controls.
- **Utilities** – A minor works deed and notice of requirements from Hunter Water Corporation (Reference: 022-1953, dated: 2/12/2022) was provided with the development application of which outlines requirements for sewer upgrades. Standard conditions can be imposed for evidence of service connection, including sewer, water, electricity and telecommunications, prior to the issue of an occupation certificate.
- **Noise and vibration** – Construction noise is anticipated to be a standard level and able to be conditioned. The site is anticipated to operate in line with a multi-dwelling housing development and is subsequently not anticipated to generate any additional noise impacts. In any case, standard conditions could be imposed to mitigate potential and perceived noise impacts upon neighbouring properties.
- **Natural hazards** – The proposed development has the potential to impact upon the catchment flooding and stormwater characteristics of the subject and neighbouring allotments, attributed to the 3m wide drainage easement and overland flow path at the front of the site. A flood impact assessment (Reference: J3671, Rev 1 – dated: 07/11/2023 and Rev 2 – dated: 12/02/2024) was prepared by the applicant during the assessment of the development application. The applicant was also requested to remove all structures and landscaping from the floodway to limit potential impacts upon flood characteristics. Columns and long retaining walls are proposed within the floodway that may impact the stormwater flow regime through the area. Further flood modelling is required to determine the level of impact. The information provided within the flood impact assessment is hydraulic modelling of which does not adequately capture characteristics and behaviour of flood water. The extent of impact as a result of various structures within the floodway, remains unclear.
- **Safety, security and crime prevention** – The development was not supported with a CPTED report, but the SOEE (Prepared by: Premise, dated: 10/05/2023) provides some commentary on crime prevention and security. Council requested a CPTED Report as part of the initial request for information. This information has not been forthcoming. Concerns remain as to potential unauthorised access and opportunity for concealment under the proposed suspended driveway and carpark structure.

- **Social impact** – The proposed use of a transitional group home to service members of the community who are displaced as a result of domestic violence, is considered a positive impact. The proposal would provide additional temporary housing within the locality, and additional community services for temporary residents.
- **Economic impact** – The proposed development would provide job creation both during the construction and operational phases of the proposal.
- **Site design and internal design** – The internal design of the site presents a good outcome for residents and staff, with adequate open space, solar access, landscaping and amenity. As discussed elsewhere in this report, the frontage of the development is largely constrained and subsequently the development does not present positively within the streetscape.

Accordingly, it is considered that the proposal has the potential to adversely impact upon the localised flooding and stormwater management within the locality. The information currently available to Council does not adequately define or model the extent of this impact.

3.3 Section 4.15(1)(c) - Suitability of the site

The proposed use and scale of the development is considered suitable within the residential locality. By way of ongoing operational management, it is not anticipated that the development would have adverse impacts as a result of the proposed use. The proposed group home is considered a positive economic and social outcome of the site, and presents sound internal amenity for potential future residents and employees.

However, the 3m wide easement and subsequent localised flooding affecting the frontage of the site results in constrained driveway and carpark design, of which limits the development's streetscape potential. Further, the impact upon flood characteristics and stormwater behaviour remains unknown due insufficient information provided within the flood impact assessment. Resultantly, it is unclear whether the subject site is conducive to the proposed design and subsequent use.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.5 Section 4.15(1)(e) - Public interest

The extent of impact resulting from the proposed suspended carpark and driveway remains unknown. In this regard, the development may not be considered in the public interest, with the potential to impact upon the immediate and broader stormwater drainage catchment.

Whilst the proposed use and internal site design is supported, and considered a positive social and economic outcome, it is questioned as to whether existing site constraints and unknown extent of impact warrant the proposal unsuitable in its current form. Subsequently the development cannot be considered within the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) N/A			
Referral/Consultation Agencies			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	<ul style="list-style-type: none"> Supply of electricity – Standard advice on engaging an electrical professional to design and determine the type of connection to apply for. Proximity to network assets - Workcover Code of Practice 2006 – Work Near Overhead Powerlines outlines the minimum safety separation requirements between these mains / poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Clearance to 'As Constructed' Development assessed to be compliant - The existing overhead mains may require relocating should the minimum safety clearances be compromised during construction, this relocation work is generally at the developers cost. 	Y
Integrated Development (S 4.46 of the EP&A Act) N/A			

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Catchment flooding:</p> <p>A natural floodway exists at the front of the property that conveys stormwater from the upstream catchment. The design has not demonstrated the extent of impact nor limited encroachment on this area. Long retaining walls and structural columns are proposed within the floodway that may impact the stormwater flow regime through the area. Further demonstration of this impact is to be detailed with appropriate flood modelling. The hydraulic modelling provided with the flood impact assessment is not sufficient in demonstrating the extent of impact.</p> <p>Stormwater drainage design:</p> <p>It appears only onsite detention is provided. Rainwater harvesting should be incorporated into the design as used in calculation for water quality. Further, details on proposed detention volume remains outstanding, including calculation of permissible site discharge for the 10%, 5%, 2% and 1% AEP storm events.</p> <p>Vehicular access:</p> <p>The design of the carpark and driveway is considered acceptable and largely compliant with Council's provisions with the exception of the following:</p> <ul style="list-style-type: none"> • Guardrail and fencing details for driveway, of which ensure adequate clearance is provided for vehicles, • Structural details from a Chartered Professional Structural Engineer of the proposed suspended • Driveway of which confirm that the suspended driveway is to be designed to cater for the largest vehicle that may use the site, i.e. removalist or delivery truck, mini bus. The loading talks about a medium vehicle, but there is nothing that relates this to a type of vehicle. Signage may be required to restrict vehicles over a certain size, or structural design amended. 	N
Building	<p>Subject to standard conditions the development has the ability to comply with the National Construction Code and Fire Safety provisions. The development is interpreted as comprising Class 3 and Class 1a construction. The commercial and industrial conditions will suffice in this instance</p>	Y

Community Planners	Upon minor amendments to the proposed accessible unit, the design appears largely compliant from an accessibility perspective.	Y
Waste	the waste collection area is adequate to accommodate the waste vehicles. Prior to service commencement, the property owner is required to sign an indemnity form to allow collection vehicles use of the driveway.	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the DCP/Council's Community Participation Plan from 29 June 2023 until 2 August 2023. The notification included the following:

- Notification listing on Council's website.
- Notification letters sent to adjoining and adjacent properties (approx. 30 individual properties).

No submissions were received during the notification period or assessment period.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

Stormwater drainage easement and localised flooding

The proposed development has the potential to impact upon the catchment's flooding and stormwater characteristics of the subject and neighbouring allotments.

The site is not impacted by river flooding but is impacted by localised stormwater catchment flooding, attributed to a 3m wide drainage easement and overland flow path of which traverses the front of the site. The impact of localised flooding on upstream neighbours is known, with water levels reported at 19.2m within the rear courtyard of 10 Park Street. This detail has been communicated to the applicant.

The proposal seeks to install permanent structures within the drainage easement, including retaining walls and support columns for the suspended driveway. Concern has been raised by Council staff relating to the potential impact these structures may have on the water levels and movement associated with localised flooding incidents. The structures may cause these waters to displace or otherwise alter the flood characteristics at this site and beyond. The applicant has been requested to remove structures within this easement, or to provide evidence determining what impact these structures will have on the stormwater flows.

The applicant has provided flood modelling for the site; however the information provided within the submitted flood impact assessment is hydraulic modelling of which does not adequately capture characteristics and behaviour of flood water.

Figure 3 below shows the location of the retaining walls and support columns within the floodway. The extent of impact as a result of these structures within the floodway, remains unclear. This has been the key, ongoing issue with the proposal, and has been raised since pre-lodgement and within requests for information made pursuant to Reg 36 of the Environmental Planning and Assessment Regulations 2021. This has thereby not been adequately addressed.

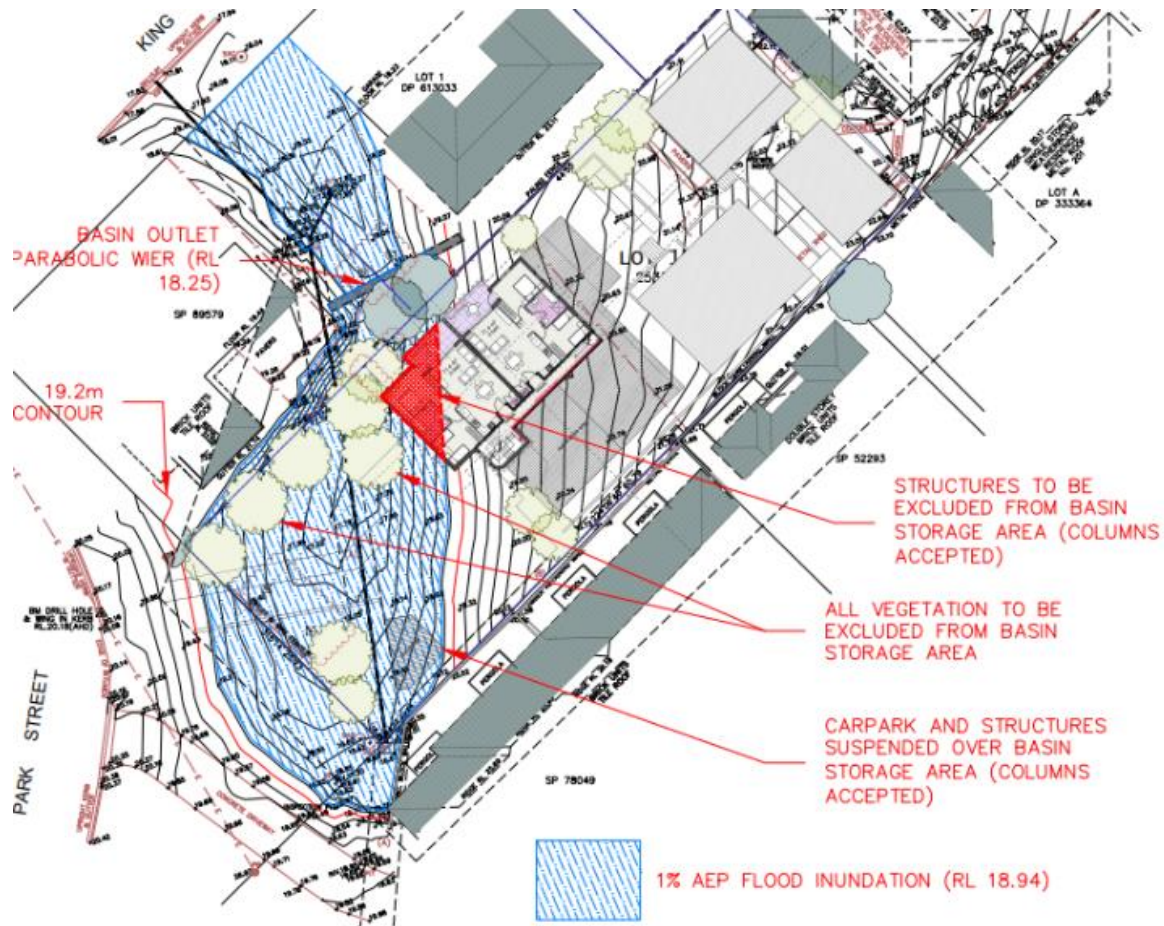


Figure 3 - Site plan excerpt showing structure in relation to flood inundation.

Safety, security and crime prevention

The development was not supported with a CPTED report, but the SOEE (Prepared by: Premise, dated: 10/05/2023) provides some commentary on crime prevention and security. Concerns remain as to potential unauthorised access and opportunity for concealment under the proposed suspended driveway and carpark structure.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

It is considered that the key issues as outlined in Section 6 have not been resolved satisfactorily through amendments to the proposal. The potential impact upon flood

characteristics and stormwater behaviour as a result of the suspended driveway and carpark structure remains unknown. The draft reasons for refusal, of which outline the extent of insufficient information, are contained in **Attachment A**.

7. RECOMMENDATION

That the Development Application DA 2023/435 for Group Home (Transitional), Associated Landscaping, Retaining Walls and Demolition of Existing Structures at 10A Park Street, East Maitland, be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft reasons for refusal
- Attachment B: Tables of Compliance (DCP Assessment)
- Attachment C: Architectural Plans