



GYDE

Section 4.56 Modification

2 Colo Street, Mittagong

Submitted to Wingecarribee Shire Council
On behalf of Maltings Holdings Pty Ltd

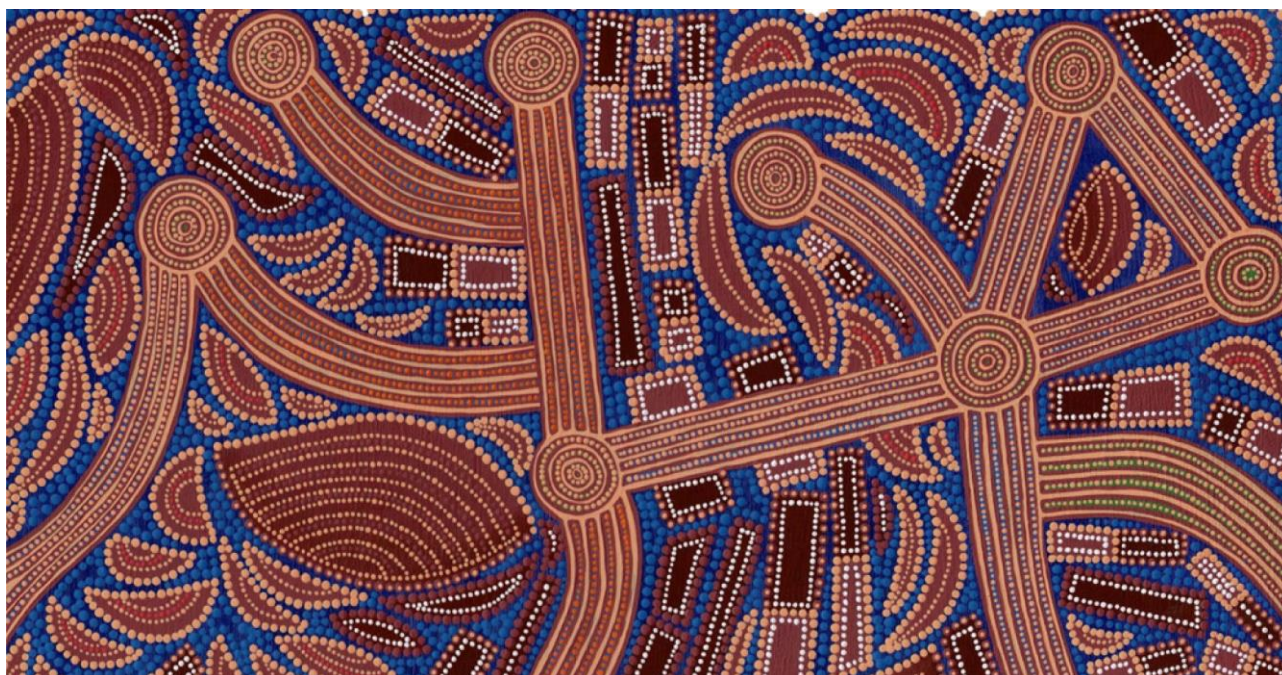
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Acknowledgment of Country

Gyde Consulting acknowledges and pays respect to Aboriginal and Torres Strait Islander peoples past, present, Traditional Custodians and Elders of this nation and the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander people. We recognise the deep and ongoing connections to Country – the land, water and sky – and the memories, knowledge and diverse values of past and contemporary Aboriginal and Torres Strait communities.

Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.



Towards Harmony by Aboriginal Artist Adam Laws

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Project: Modification Application
Report Version: Final

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Contents

1. Introduction.....	1
2. The Site.....	4
3. Approved Development	8
3.1 Overview of approved development	8
3.2 Redevelopment of Maltster's Cottage	8
3.3 Access and circulation	9
3.4 Car parking.....	9
3.5 Hours of operation.....	10
4. Proposed Modification.....	11
4.1 Overview of modification	11
4.2 Details of modification/s	11
4.3 Justification of the modification	14
4.4 Conditions to be modified.....	14
5. Statutory Considerations	18
5.1 Overview	18
5.2 Substantially the same development (section 4.56(1)(a))	18
5.3 Notification (section 4.56(1)(b), (c) and (d))	19
5.4 Section 4.15(1) Considerations (section 4.56(1A))	20
6. Section 4.15(1) Assessment – (Section 4.56(1A))	21
6.1 Environmental planning instruments.....	21
7. Conclusion	64

Figures

Towards Harmony by Aboriginal Artist Adam Laws	ii
Figure 0 Artist's impression of the outdoor gallery at M1 (source: Snohetta)	2
Figure 1 Aerial map showing the subject site (outlined in red) (data source: NSW Planning Portal)	4
Figure 2 Bird's eye view of the Southern Sheds, M1, silos and M2 (from left to right).	6
Figure 3 South-eastern elevation of the M1/M2 complex.....	6
Figure 4 The first floor slab of the M1 machine room, with the kiln room and enclosure to the silos behind.....	6
Figure 5 The first floor slab and gabled wall of the M1 machine room, with the Southern Sheds in the background.	6
Figure 6 Bird's eye view of the roofs to the silos, M2 kiln room and machine room (from left to right).	6
Figure 7 The vaulted concrete soffit, cast iron columns and sandstone/concrete/brick footings at the undercroft of the M1 machine room.	6
Figure 8 The ruins of the Maltster's Cottage, viewing north-east.....	7
Figure 9 The remains of the verandah and external walls to the Maltster Cottage.	7
Figure 10 Bird's eye view of the subject site looking east, with M1/M2, the railway line nad Ferguson Crescent in the foreground.....	7
Figure 11 Bird eye view of the subject site looking south-east, with the Southern Sheds, M1 and the railway line in the foreground.	7
Figure 12 Excerpt of the Sydney Drinking Water Catchment Map to the SEPP (Biodiversity and Conservation) (source: NSW Legislation website).....	23

Figure 13	Excerpt of the Land Zoning Map (data source: NSW Planning Portal)	29
Figure 14	Excerpt of the Lot Size Map (data source: NSW Planning Portal)	30
Figure 15	Excerpt of the Heritage Map (data source: NSW Planning Portal)	30
Figure 16	Excerpt of Natural Resources Sensitivity Map (data source: NSW Planning Portal)	34
Figure 17	Validated vegetation communities on the site (source: Eco-Logical)	41
Figure 18	Excerpt of the Biodiversity Values Map (data source: NSW Planning Portal)	43
Figure 19	Riparian land on the site (source: Eco-Logical)	45
Figure 20	Location of re-assessed trees within proximity to Maltster's House (source: Eco-Logical)	46
Figure 21	Excerpt of the Bushfire Prone Land Map (data source: NSW Planning Portal)	48
Figure 22	Excerpt of the Heritage Map (data source: NSW Planning Portal)	51
Figure 23	Significant views from outside the site (source: CMP)	60
Figure 24	Significant views within the site (source: CMP)	60
Figure 25	Shadow diagrams illustrating the impacts in mid-winter	62

Tables

Table 1	Approved car parking provision	9
Table 2	Details of the modification	11
Table 2	Development statistics	13
Table 3	Assessment against relevant provisions in Chapter 4 of the SEPP (Biodiversity and Conservation)	21
Table 4	Assessment against relevant provisions in Chapter 6 of the SEPP (Biodiversity and Conservation)	23
Table 5	Assessment against relevant provisions in SEPP (Transport and Infrastructure)	27
Table 6	Assessment against relevant provisions in Wingecarribee LEP 2010	28
Table 8	Assessment against relevant provisions in Wingecarribee DCP	35
Table 9	Heritage listing of the site	50
Table 10	Heritage items in the vicinity to the site	50

Glossary and Abbreviations

Term/Acronym	Description
AS	Australian Standards
BCA	Building Code of Australia
BC Act	<i>Biodiversity Conservation Act 2016</i>
CEMP	Construction Environmental Management Plan
Council	Wingecarribee Council
CPTED	Crime Prevention through Environmental Design
DA	Development Application
DCP	Development Control Plan
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
The Regulations	Environmental Planning and Assessment Regulations 2021
ESD	Ecologically Sustainable Development
FSR	Floor Space Ratio
GFA	Gross Floor Area
INP	Industrial Noise Policy
LALC	Local Aboriginal Land Council
LEP	Local Environmental Plan
LGA	Local Government Area
NCC	National Construction Code
SEPP	State Environmental Planning Policy
WSUD	Water Sensitive Urban Design

1. Introduction

This statement has been prepared for Maltings Holdings Pty Ltd by Gyde Consulting (Gyde) to accompany an application under section 4.56 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) to modify development consent number 20/1400 that applies to 2 Colo Street, Mittagong (the subject site). The consent was granted with respect to a concept development application (DA) for adaptive reuse of the site for a mixed-use development, including a detailed proposal for alterations and additions to the existing Malthouses M1, M2, Southern Sheds and M3, construction of a new Northern Shed and a hotel to be known as M4, redevelopment of the former Maltster's Cottage and associated site and landscaping works. The approved uses encompass function centre, information and education facility, recreation facility (indoor), hotel or motel accommodation, restaurant, pub in conjunction with potential residential accommodation, including seniors housing, and hotel or motel accommodation to be developed at a future stage and known as M5/M6.

The DA was approved by the NSW Land and Environment Court on 13 May 2022.

This modification application seeks approval for the following changes:

- Deletion of the approved swimming pool, terrace and bar on level 1 of M1.
- Demolition of the first floor slab to the machine room of M1 and conversion to an outdoor gallery / exhibition space with water features.
- Provision of a café and ticket office within Southern Shed 1.
- Minor revision to the design of the Northern Shed.
- Various amendments to the interior layout within the M1/M2 complex and adjustments to the back-of-house facilities and plant rooms. A higher degree of conservation of existing fabric within M2 will be achieved, with all levels of the building retained.
- Amendment to the design for the redevelopment of Maltster's Cottage.
- Provision of more design details relating to off-street car parking and access.

This Planning Statement includes the following appendices:

- Plan of Detail and Levels, prepared by Veris Australia
- Architectural drawing set, prepared by Snohetta
- Planning Application Report, prepared by Snohetta
- Statement of Changes to Plans (M1/M2/Maltster's House), prepared by Snohetta
- Heritage Impact Statement, prepared by Paul Davies Pty Ltd
- Sustainability Report (M1 & M2, Maltster's House), prepared by E-LAB
- Arboricultural Impact Assessment Addenda, prepared by Eco-Logical
- Flora and Fauna Assessment Report, prepared by Eco-Logical
- Koala Assessment Report Addenda letter, prepared by Eco-Logical
- Vegetation Management Plan, prepared by Eco-Logical
- Bushfire Advice, prepared by Peterson Bushfire
- Traffic and Transport Impacts – Statement of Advice, prepared by SLR
- Acoustic Letter of Support (Southern Sheds, M1, M2, Northern Shed and Maltsters House), prepared by Acoustic Logic
- Building Code of Australia 2022 Capability Statement (Building M1, M2 & Maltsters House), prepared by Group DLA
- Building Code of Australia 2022 Report (Building M1-M2 + MH), prepared by Group DLA
- Access Report (Building M1 + M2 + MH), prepared by Group DLA

- Fire Engineering advice (M1 and M2), prepared by Credwell
- Geotechnical Investigation, prepared by EI Australia
- Structural Report (Malthouses 1, 2 and Maltsters House), prepared by TTW
- Review of Civil Engineering Report, prepared by J Wyndham Prince
- Utilities Servicing Assessment, prepared by J Wyndham Prince
- Stormwater and Flood Management Strategy, prepared by J Wyndham Prince
- Soil and Water Management Plan, prepared by J Wyndham Prince
- Demolition and Construction Waste Management Plan, prepared by Waste Audit
- Operational Waste Management Plan, prepared by Waste Audit
- CIV Estimate Report (M1, M2, MH), prepared by MBM

The purpose of this statement is to describe the proposed amendments, review the current planning regime applicable to the site and the proposal, and assess the degree of compliance and environmental effects of the development.

A detailed description of the proposal is provided in Section 4. The relevant matters for consideration and an assessment against the applicable planning controls are provided in Section 5 and 6.

The proposed modifications have been designed to respond to the conditions and constraints of the fabric and structural elements of the existing buildings and their broader setting. The modifications would facilitate the on-going protection and interpretation of the heritage values of the site. The proposal would not result in any significant additional environmental, social or economic impacts when compared to the original approved development. Any potential impacts can be adequately mitigated by the existing conditions of consent, or conditions proposed to be altered to reflect the modified scheme. As such, approval of the application is warranted and within the public interest.

Project vision



Figure 0 Artist's impression of the outdoor gallery at M1 (source: Snohetta)

The adaptive reuse of The Maltings site is a one-in-a-generation opportunity to revitalise the now derelict ruins of the former malthouses, due to the prolonged exposure of the heritage buildings to environmental conditions as well as vandalism.

The project involves the transformation of the disused industrial complex dating from the 19th and 20th century into a unique, globally focused art gallery showcasing the MIIA Foundation's art collection. The project will provide a hotel of distinguished quality accompanying the gallery and exhibition uses. The development will reimagine the intricate history of the site, embracing its role as a place of profound cultural significance.

IIA has an emphasis on the collection and exhibition of the most innovative contemporary art practice in the 21st century. Working with leading Australian artists, as well as those who are forging new international currents, MIIA has greatly enhanced access to, and a deeper understanding of, contemporary art in Australia.

The proposal, when completed, will become an iconic destination for art and cultural pursuits in the Southern Highland region. The galleries and exhibition halls will be publicly accessible. The proposal is also expected to generate significant economic and social benefits for the broader community.

The vision for The Maltings has evolved through a collaborative effort with the client, the Medich Family, and insights from the consultant team. While the overarching concept and design principles remain consistent with the approved development application, their interpretation has been adjusted to better align with the now enhanced understanding of the conditions of the site and the existing building fabrics.

The proposal outlined in the supporting documents will undergo further refinement as part of the detail design process at the post-consent stage.

2. The Site

The subject site is legally described as Lot 21 in DP 1029384, 2 Colo Street, Mittagong, and is commonly known as “The Maltings”.



 Site

Figure 1 Aerial map showing the subject site (outlined in red) (data source: NSW Planning Portal)

The site is irregular in shape and has a land area of 66,626m² (approximately 6.6ha). It has frontage to Ferguson Crescent to the north-west, Southey Street to the south-east and Colo Street to the south. The site is located at the south-eastern edge of the Mittagong township, approximately 1km to the north-east of Mittagong train station and approximately 100m to the south-east of Old Hume Highway (a State road). It is approximately 120km south-west of Sydney within the Wingecarribee Shire local government area (LGA).

The site is dissected by Nattai River and the riparian zone is generally in a degraded condition, with banks that are highly eroded, lack native trees and shrubs, and intruded by exotic woody and herbaceous weeds. The land has a moderate slope from the east towards the river bank with a relatively flat area in the south-western portion. It contains both remnant native and exotic vegetation, weeds and cleared areas. Established tree planting is primarily found on the edges of the site and along Nattai River.

A number of buildings in various states of deterioration and disrepair are located on the site. They comprise the former malthouses (“Malthouses M1, M2 and M3”) on either side of the river; the ruins of the former company cottage (“Maltster’s Cottage”); the remains of the former barley stores, engine room, battery room and other ancillary buildings; bitumen surfaces and bridges over Nattai River. Access to the site is provided from Colo Street, Southey Street and Ferguson Crescent. A threatened ecological community, being Southern Highlands Shale Woodland (SHSW), is identified within the south-western part of the site that is subject to statutory protection. The southern half of the site is identified as bushfire prone land. A significant portion of the site is flood-prone land and is subject to Council’s flood related development controls.

The site is adjoined by low density residential uses to the north-east, east and south. These residences are generally screened by dense tree planting. A rail corridor (Main Southern line) runs along the north-western boundary of the site. The historic Fitzroy Inn guest house, which is listed as a local heritage item, is located to the north-east of the site fronting Ferguson Crescent.

A variety of tourist and visitor accommodation as well as open space and recreational facilities, such as Mittagong Oval, Mittagong Swimming Centre and the Highlands Golf Club, are located on the north-western side of Old Hume Highway.

The Maltings is listed as a local heritage item and within The Maltings Conservation Area under the Wingecarribee Local Environmental Plan (LEP) 2010. It is identified as a major turn of the century industrial complex associated with the growth and centralisation of the brewing trade in NSW.



Figure 2 Bird's eye view of the Southern Sheds, M1, silos and M2 (from left to right).



Figure 3 South-eastern elevation of the M1/M2 complex.



Figure 4 The first floor slab of the M1 machine room, with the kiln room and enclosure to the silos behind.



Figure 5 The first floor slab and gabled wall of the M1 machine room, with the Southern Sheds in the background.



Figure 6 Bird's eye view of the roofs to the silos, M2 kiln room and machine room (from left to right).



Figure 7 The vaulted concrete soffit, cast iron columns and sandstone/concrete/brick footings at the undercroft of the M1 machine room.



Figure 8 The ruins of the Maltster's Cottage, viewing north-east.



Figure 9 The remains of the verandah and external walls to the Maltster Cottage.



Figure 10 Bird's eye view of the subject site looking east, with M1/M2, the railway line nad Ferguson Crescent in the foreground.



Figure 11 Bird eye view of the subject site looking south-east, with the Southern Sheds, M1 and the railway line in the foreground.

3. Approved Development

3.1 Overview of approved development

Development Application No. 20/1400 was granted by the NSW Land and Environment Court on 13 May 2022 for:

Concept development application for the alterations and additions to and the adaptive reuse of the Site for the purposes of a mixed use development together with a development application for consent to stage 1 of the development for the alterations and additions and adaptive re-use of Maltings M1, M2, M3 and M4.

Specifically, the approved DA includes the following components:

Detailed development proposal – stage 1

The detailed proposal constitutes stage 1 of the development and includes:

- Alterations and additions to the existing maltings known as Maltings 1 (M1) and Maltings 2 (M2) and the barley stores / sheds (Southern Sheds) on the western side of Nattai River. The additions include the construction of a new shed immediately to the north-east of M2 (Northern Shed). These buildings will contain a variety of multi-purpose spaces for art, culture, exhibitions, performances and functions. A swimming pool and bar will be accommodated within M1. The multi-purpose spaces are also designed to allow use as a private gymnasium if required; however, this will not be operated as a commercial gymnasium for the general public.
- Alterations and refurbishment to the existing Maltings 3 (M3) on the eastern side of the river, and construction of a new Maltings 4 (M4) to its immediate south to create a unified building for use as a hotel, restaurant, exhibition and ancillary purposes.
- Partial demolition of the ruins of Maltster's Cottage with retention of the foundation and construction of a multi-purpose building in its place.
- Upgrades to the grounds including improved vehicular and pedestrian access, car parking, landscaping, selective tree removal and replacement planting.
- Repairs to existing bridges and weirs and construction two new bridges.
- Rehabilitation of the riparian corridor along Nattai River, including stabilisation of the river banks, removal of weeds and revegetation.

Concept development proposal – stage 2

The concept proposal constitutes stage 2 of the development and includes:

- Building footprints and envelopes for new buildings to be known as Maltings 5 (M5) and Maltings 6 (M6) on the eastern side of the river to accommodate the following potential uses:
 - Residential accommodation,
 - Tourist and visitor accommodation, and/or
 - Seniors living.

Works associated with stage 2 of the development have not been approved and will be subject to separate development application/s.

3.2 Redevelopment of Maltster's Cottage

The approved drawings show that Maltster's Cottage will be redeveloped as a building containing an exhibition space with ancillary amenities.

However, Condition 48 of the development consent requires remnants of the cottage and garden to be retained and integrated into the new building with interpretation of their historic significance as part of the Maltings industrial complex.

Condition 48 reads as follows:

48. Interpretation of the Maltster's Cottage

Remnants of the 1907 Maltster's Cottage and garden shall be retained and integrated into the new Exhibition Building and its immediate setting to interpret the historical significance and use of the building as part of the former Maltings industrial complex. As the building is severely damaged and unstable, elements to be retained shall be capable of interpretation without reconstruction. Details are to be provided to Wingecarribee Council for approval prior to the release of the construction [certificate.]

Reason: To ensure that the historical significance of the site is recognised and preserved for future generations.

This modification seeks to address the above condition and includes a re-design of the redevelopment of Maltster's Cottage. This condition will be maintained to allow the consent authority to further review the design details at the construction certificate stage.

3.3 Access and circulation

The site planning arrangement takes advantage of the multiple access points to and from the property and allows appropriate separation of access dependent on the types of users and occupants. The three access points are as follows:

- Colo Street will provide access for the majority of the visitors to M1/M2 and hotel guests of M3/M4.
- Southey Street will be used for the outbound hotel guests of M3/M4, the future residents of M5/M6, and as a secondary access if required (the concurrent amending DA would alter this arrangement to allow Southey Street to be used for inbound guests' access to M3/M4).
- Ferguson Crescent will be used for staff and back-of-house deliveries only. No public or visitor access is proposed.

Internally, a bridge will connect the driveway off Colo Street to the basement car park of M4. This will be used by hotel guests. Pedestrian access will be provided from all road frontages. A system of internal pathways will be provided for circulation between buildings and facilities within the site.

This modification does not seek any changes to the access and circulation arrangements.

3.4 Car parking

The development incorporates on-site car parking for the various uses as follows:

Table 1 Approved car parking provision

Type	Location	Number of spaces
M1 formal parking	At grade, to the immediate south of M1 and along driveway off Colo Street	74 (changed to 72 including 2 accessible spaces)
M2 back-of-house parking	At grade, to the immediate north of the Northern Shed	15 (changed to 12 standard spaces + 1 accessible space to accommodate turning paths for service vehicles)
M3 and M4 formal parking	At grade, to the east of M3/M4 in the area that will be occupied by M5/M6 in the future; these spaces will be relocated to the basement of M5/M6 when they are developed	46 (changed to 46 standard spaces + 1 accessible space, plus a new private garage with 4 spaces = 51)
M4 basement parking	Basement, below M4	4 (including 1 accessible space) (no change)

Type	Location	Number of spaces
		Total approved 139 (currently proposed 14)

The indicative parking provision for the future M5/M6 is approximately 82 spaces, inclusive of the parking for M3/M4 that will be relocated to the basement when M5/M6 is developed. A detailed parking assessment will be submitted with any future DA for Stage 2 of the development (M5/M6).

This modification seeks minor changes to the car parking provision as a result of the design development process. An updated site plan has been prepared to clearly show the location and distribution of the on-site car parking.

3.5 Hours of operation

The approved hours of operation are specified in Condition 135 of the development consent, which provides:

Maltings 1 and Maltings 2

Sunday to Thursday: 8am to midnight

Friday and Saturday: 8am to 1am the following morning

In addition, up to 10 times in any 12-month period, the premises will operate until 2am (the following morning), including on New Year's Eve.

Maltings 3 and Maltings 4

24 hours a day, every day of the week

4. Proposed Modification

4.1 Overview of modification

This section 4.56 modification application seeks to amend the detailed development for stage 1 as approved by the Land and Environment Court. Specifically, the modification relates to the alterations, additions and adaptive re-use of Maltings M1, M2, the Southern Sheds (Shed 1 and 2) and the Maltster's Cottage, in conjunction with adjustments to the design of the Northern Shed, which are the results of the design development process and additional structural investigations.

The approved design includes a new swimming pool and terrace bar on level 1 within the former machine room of M1. Further investigation of the structural condition of the building finds that the concrete slab at this level cannot be retained due to the degree of corrosion, which in many areas extend to the full depth of the slab. As such, this slab is proposed to be demolished. The existing brick enclosing walls and gable will continue to be retained, with new bracing to strengthen and stabilise the structures. The ground floor area below will be converted to an open-air exhibition space.

The approved scheme originally envisaged removal of the timber roof structures above the Great Hall in M2. Further investigation finds that part of the existing roof frame could be retained where the roof sheeting is present. Localised replacement of timber members and structural reinforcement could be undertaken.

There are also updates to the design of the approved Northern Shed and the adaptation of the Southern Sheds, which will contain the main entrance, a ticketing office and a cafe.

The modification will maintain the overall form, scale and character of M1/M2 and the Southern Sheds, and retain the roof structures over the machine room of M2 previously identified for demolition.

The Maltster's Cottage is redesigned in response to Condition 48 of the existing consent. The amended design seeks to conserve part of the fabric of the former cottage (foundation) and create a canopy structure with two enclosed rooms for exhibition purposes. Vegetation will be allowed to grow around the remnants of the former cottage as part of a ruinous landscape. The new interventions will be sympathetic to the scale and character of the remnant structures.

A concurrent amending DA will be prepared with respect to Maltings M3 and M4. The approved development scheme sought to retain the timber roof structures of M3. Based on further investigations, the timber roof as well as most of the concrete slabs could not be retained due to their poor condition. The revised design seeks to introduce a contemporary extension characterised by inter-locking volumes and masonry materials as a reference to the retained fabric. In addition, the façade design for the new hotel (M4) will also be altered to be sympathetic to the changes to M3. Due to the extent of design changes, the above elements will be pursued via an amending DA that is separate to the subject modification.

This section 4.56 modification will focus on M1, M2, Northern Shed and Southern Sheds along with the Maltster's Cottage. It requires modification to the existing conditions of consent, which will be detailed in Section 4.4 below.

4.2 Details of modification/s

The details of the modification proposed in this application are illustrated in the amended architectural drawing set, Planning Application Report (design report) and Statement of Changes prepared by Snohetta Architects. A summary of the proposed modifications is provided in **Error! Reference source not found.2**.

Table 2 Details of the modification

Component	Details
Southern Sheds	<ul style="list-style-type: none"> Retain the Southern Sheds for use as gallery spaces. Insert new a ticketing office and a café within Shed 1.

Component	Details
	<ul style="list-style-type: none"> • Provide amenities and back-of-house facilities to the west. • Remove the originally proposed additional levels and new construction from Shed 2. • Remove the ramped access from Shed 2 to M1. • Retain and make good the external claddings.
M1	<p><u>Ground level:</u></p> <ul style="list-style-type: none"> • Remove the cast iron columns and sandstone / concrete footings. The columns will be salvaged for reuse on site as appropriate. • Convert the ground level to an outdoor gallery, with filling to match the former ground floor level and a new shallow reflective pond. • Make good the railway platform to the west. • Provide new stairs access with a small kitchen to the west of the silos. <p><u>Level 1:</u></p> <ul style="list-style-type: none"> • Demolish the concrete slab due to its severe deteriorated state. <p><u>Level 2:</u></p> <ul style="list-style-type: none"> • Demolish the slab above the kiln room due to constructability consideration. • Simplify the cut-through access to the silos. • The new gallery above the kiln room is reduced in height. • Realign the footbridge across the silos that links with M2.
M2	<ul style="list-style-type: none"> • Relocate the lift core to minimise demolition. • Provide building services and equipment to the west of the building. <p><u>Level 1:</u></p> <ul style="list-style-type: none"> • Preserve most of the floor and columns. • The originally proposed hanging garden will remain as a gallery with the inclusion of a ramp for equitable access. <p><u>Level 2:</u></p> <ul style="list-style-type: none"> • Preserve most of the floor. • Remove the two central rows of columns to improve usability of the space. <p><u>Level 3:</u></p> <ul style="list-style-type: none"> • Partially retain the catwalk for use as back-of-house and staff facilities. <p><u>Roof:</u></p> <ul style="list-style-type: none"> • Retain most of the roof structures, including dormer windows, and install new roof cladding.
Northern Shed	<ul style="list-style-type: none"> • Provide a covered space in between the Northern Shed and M2. • Increase the height of the shed to match the M2 gable wall. • Provide two large hanger doors on the eastern elevation with views towards the river. • Locate new amenities and back-of-house and loading facilities to the north. • Provide building services and equipment to the west of the building.
Maltster's House	<ul style="list-style-type: none"> • Demolish most of the structures due to their deteriorated state. • Retain the building foundation.

Component	Details
	<ul style="list-style-type: none"> Construct a gallery and an artist in residence gallery, with a light weight canopy over the new elements and remnants of the former cottage.
External	<ul style="list-style-type: none"> Change the visitor car parking bays along the driveway off Colo Street to 90-degree angled spaces. Adjust the entry to visitor car park to the south of the M1/M2 complex to retain trees. Provide accessible car spaces in the above car park. Remove the originally proposed pavilion in front of M2 and allow the structures to remain as ruins.

A comparison of the approved and modified development is provided in Table 2.

Table 2 Development statistics

Statistic	Approved Development	Proposed Development
Maximum height of building	Southern Sheds: as existing	Southern Sheds: as existing
	M1: no change to overall height	M1: no change to overall height
	M2: no change to overall height	M2: no change to overall height
	Northern Shed: 10.255m	Northern Shed: 13.553m (to match the existing gable wall height of M2)
	Maltsters Cottage: N/A in approved drawings	Maltsters Cottage: 5.25m
Maximum RL	Southern Sheds: RL635.88 / RL634.65 to the existing roof pitches	Southern Sheds: RL635.47 / RL634.65 to the existing roof pitches
	M1 kiln room – new gallery: Approx. RL637	M1 kiln room – new gallery: RL635.91
	Roof of silos: RL644.83	Roof of silos: RL644.47
	Roof to M2 kiln room: RL641.02	Roof to M2 kiln room: RL640.84
	Roof to M2 “Great Hall”: RL637.13	Roof to M2 machine room: RL636.32
	Northern Shed: RL633.90	Northern Shed: RL636.61
	Maltster’s Cottage: N/A	Maltster’s Cottage: RL630.26
GFA	M1/M2 group:	M1/M2 group:

Statistic	Approved Development	Proposed Development
	4,869m ² Maltster's Cottage: 217m ²	4,754m ² Maltster's Cottage: 184m ²
FSR	0.076:1 (0.154:1 for entire development inclusive of M3/M4)	0.074:1 (0.157:1 for entire development inclusive of M3/M4)
Number of car parking spaces	M1/M2: 72 visitor parking 15 staff parking	M1/M2: 72 visitor parking (including 2 accessible spaces) 13 staff parking (including 1 accessible space)

4.3 Justification of the modification

The justifications of the proposed modification are as follows:

- The proposed changes are the outcomes of the design development process that involves further detailed investigation of the existing structures and materials, including their condition and capability to withstand additional loading. This is critical to ensuring the stability, integrity and safety of the retained fabric and the new interventions. These investigations establish that some of the fabric that was previously intended to be retained is not capable of further life, and conversely, some elements proposed to be removed are sufficiently sound to be retained. The purpose of the current application is to respond to the structural and material conditions, which are now better understood and to amend the development scheme to 'best-fit' the heritage buildings and their values.
- The retention of the timber roof to the machine room of M2 with localised and selective replacement of structural members will deliver a positive heritage outcome. The conservation of the roof structures will contribute to the overall integrity of the architectural features and expression of M2. The replacement of the metal roof sheeting is due to the advanced corrosion of the existing cladding.
- The demolition of the first floor slab within the machine room of M1 is due to its state of deterioration and degradation, rendering it unsuitable to be retained and reused. Notwithstanding, the retention of the existing brick enclosing walls will allow the original scale and character of the building to be appreciated. The conversion of the ground floor level to an outdoor exhibition space will facilitate the on-going use, activation and maintenance of the building.
- The redesign of the Maltster's Cottage redevelopment is to address a condition of consent that requires retention and interpretation of the remnants of the former cottage. The new design will satisfy the intent and requirements of the condition and allow the new additions to be sympathetically integrated with the historic fabric and landscape elements.
- The Southern Sheds will continue to be retained, with less internal changes to Shed 2 than the approved scheme, which would deliver a positive conservation outcome.
- The new Northern Shed is similar to the approved scheme with minor design changes and would have a neutral impact on the heritage significance of the complex.

4.4 Conditions to be modified

To facilitate the modifications described in Section 4.2, this application seeks to alter the following conditions of consent:

- Condition 11 – Development in Accordance with Plans and Documents
- Condition 40 – Off Street Parking Provision – General
- Condition 127 – Geotechnical Risk Assessment Report Compliance
- Condition 139 – RFS s100B Bushfire Authority

- Condition 140 – Water NSW Requirements
- Condition 141 – Natural Resources Access Regulator requirements

The reasons for the modification of each condition is provided below:

Condition 11 – Development in Accordance with Plans and Documents

Condition 11 is proposed to be amended to make reference to the revised drawings and supporting documents. The existing condition reads as follows:

The development must be implemented generally in accordance with the approved plans and supporting documents set out in the following table except where modified by any conditions of development consent.

All “future” buildings that are proposed to be erected on the site must be contained wholly within the building envelopes shown in the plans, and all future work on the site must be in accordance with the plans and with the requirements of the following documents, except as amended by the conditions of this consent:

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Plan of Detail & Levels at The Maltings, Mittagong		Veris	16-Jan-20
Architectural and Landscape Plans	A000 (G), A002 (E), A030-A031 (G), A040 (I), A200-201 (K), A203 (D), A210 (M), A211-213 (L), A220 (D), A300 (I), A400 (H), A860 (F), A861 (C), A1000 (G), A1001-1002 (F)	Snøhetta	
Malthouse 5 + 6	A000, A200-202, A30, A1000 (A)	Snøhetta	14-May-20
Civil & Structural Engineering Report		ARUP	1-May-20
Arboricultural Impact Assessment		Eco Logical Australia	22-May-20
Aboriginal Archaeological Survey Report		Kayandel Archaeological	8-May-20
DA Report - Acoustics		ARUP	12-May-20
Building Code of Australia Summary Report	F	Group DLA	27-Apr-20
Building Code of Australia Capability Statement	A	Group DLA	28-Apr-20
Bushfire Assessment		Peterson Bushfire	30-Apr-20
Access Planning Review		Group DLA	27-Apr-20
Stage 1 Preliminary Site Investigation		JK Environment	17-Apr-20
Sustainability Vision		Atelier Ten	6-May-20
Fire Engineering DA Support		Performance Based Consulting	7-May-20
Flood Level Info from 2014 Flood Study		-	n.d.
Flora and Fauna Assessment Report	1	Eco Logical Australia	30-Apr-20
Geotechnical Assessment		JK Geotechnics	16-Apr-20
The Maltings Koala Assessment Report		Eco Logical Australia	29-Apr-20

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
<i>SD Illustrative Landscape Plan</i>		<i>Snøhetta</i>	<i>5-May-20</i>
<i>DA Cost Plan</i>		<i>MBM</i>	<i>28-Apr-20</i>
<i>Soil & Water Management Plan & Notes</i>		<i>J. Wyndham Prince</i>	<i>29-Apr-20</i>
<i>Utilities Servicing Assessment</i>		<i>J. Wyndham Prince</i>	<i>23-Apr-20</i>
<i>Landscape Management Plan</i>		<i>Snøhetta</i>	<i>May-20</i>
<i>Conservation Management Plan Vol 2</i>	<i>Draft 2</i>	<i>Paul Davies Architects</i>	<i>12-May-20</i>
<i>Heritage Impact Statement</i>	<i>Draft 2</i>	<i>Paul Davies Architects</i>	<i>May-20</i>
<i>Statement of Environmental Effects</i>	<i>7</i>	<i>Elton Consulting</i>	<i>21-May-20</i>
<i>Archaeology Response</i>		<i>Kayandel</i>	<i>18-Dec-20</i>
<i>Demolition Plans</i>	<i>A122-124, A151-155 (F)</i>	<i>Snøhetta</i>	<i>14-Dec-20</i>
<i>Design Drawings</i>	<i>A310 (J), A410 (I)</i>	<i>Snøhetta</i>	<i>14-Dec-20</i>
<i>Bushfire Response Letter</i>		<i>Peterson Bushfire</i>	<i>16-Dec-20</i>
<i>Vegetation Management Plan</i>	<i>5</i>	<i>Eco Logical Australia</i>	<i>22-Dec-20</i>
<i>Conservation Management Plan</i>		<i>Paul Davies</i>	<i>Dec-20</i>
<i>Heritage Response Letter</i>		<i>Paul Davies</i>	<i>n.d. (Dec 20)</i>
<i>Measured Drawings (Maltster's Cottage)</i>	<i>MD01-MD05 (P1)</i>	<i>Paul Davies</i>	<i>11-Jan-21</i>
<i>Concept Methodology – New Work and Interventions</i>		<i>Paul Davies</i>	<i>Dec-20</i>
<i>Services Response Letter</i>		<i>J. Wyndham Prince</i>	<i>18-Dec-20</i>
<i>Maltster's Cottage Conjectural Form</i>	<i>MD01-MD05 (A)</i>	<i>Paul Davies</i>	<i>20-Jan-21</i>
<i>Render, Imagery Document</i>		<i>Snøhetta</i>	<i>20-Jan-21</i>
<i>Plan of Management</i>		<i>Elton Consulting</i>	<i>17-Feb-21</i>
<i>Landscape Plans</i>	<i>A500 (E), A501 (D), A502 (D), A503 (E), A504 (D), A505 (E), 506 (D)</i>	<i>Snøhetta</i>	
<i>Landscape Plan (Vegetated Riparian Zone)</i>		<i>Snøhetta</i>	<i>n.d. (Dec-20)</i>
<i>Traffic Impact Assessment</i>	<i>2</i>	<i>Cardno</i>	<i>12-May-20</i>
<i>Updated Site Plan</i>	<i>A003 (J)</i>	<i>Snøhetta</i>	<i>19-May-21</i>
<i>Stormwater and Flooding Management Strategy</i>	<i>D</i>	<i>J. Wyndham Prince</i>	<i>May-21</i>
<i>Riparian Corridor Bank Stabilisation Concept Plan</i>		<i>Tooker and Associates</i>	<i>7-Jun-21</i>
<i>Property Report (Crown Lands)</i>		<i>Mark Groll</i>	<i>5-May-21</i>
<i>Traffic Technical Memorandum</i>	<i>2</i>	<i>Cardno</i>	<i>22-Dec-20</i>
<i>Traffic Technical Memorandum</i>	<i>1</i>	<i>Cardno</i>	<i>8-Jun-21</i>
<i>Vehicle Bridge Elevation</i>	<i>SD-A530</i>	<i>Snøhetta</i>	<i>-</i>

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
<i>Interim Audit Advice Letter No. 1 – Review of Preliminary Site Investigation and Detailed Site Investigation, the Maltings: 2 Colo Street, Mittagong</i>		Rowena Salmon	22 March 2022
<i>Detailed Site Investigation</i>		JK Environments	22 March 2022
<i>Memorandum from SLR Consulting Australia Pty Ltd</i>	610.30708-M03-v0.1- 20220302.docx	SLR Consulting Australia Pty Ltd	2 March 2022

Reason: To ensure the development is carried out in accordance with the approved plans and documentation.

The drawing and document references will be revised based on the latest documentation relating to the modification.

Condition 40 – Off Street Parking Provision - General

This condition requires 139 off-street car parking spaces to be provided on the site. It makes reference to a site plan prepared by Snohetta as part of the original DA. An administrative change is proposed to change the drawing reference to the current site plan, which contains more refined design details.

Condition 48 – Interpretation of the Maltster's Cottage

Condition 48 currently reads as follows:

Remnants of the 1907 Maltster's Cottage and garden shall be retained and integrated into the new Exhibition Building and its immediate setting to interpret the historical significance and use of the building as part of the former Maltings industrial complex. As the building is severely damaged and unstable, elements to be retained shall be capable of interpretation without reconstruction. Details are to be provided to Wingecarribee Council for approval prior to the release of the construction

Reason: To ensure that the historical significance of the site is recognised and preserved for future generations.

The condition is proposed to be maintained to allow the consent authority to review the detailed design for Maltster's Cottage at the construction certificate stage.

Condition 127 – Geotechnical Risk Assessment Report Compliance

This condition is proposed to be amended to refer to the current geotechnical report.

Condition 139 – RFS s100B Bushfire Authority

Condition 139 is a concurrence condition imposed by NSW Rural Fire Service pursuant to the Rural Fires Act 1997. Part 1 of the condition refers to the previous Vegetation Management Plan (VMP), which has since been updated to support the current applications. The condition should be amended to refer to the current VMP.

Condition 140 – Water NSW Requirements

Condition 140 is a concurrence condition imposed by Water NSW pursuant to the provisions of the *Water Management Act 2000*. The condition makes reference to specific documents submitted with the original DA. The condition should be amended to refer to the relevant documents for the subject modification.

Condition 141 – Natural Resources Access Regulator Requirements

Condition 141 is a concurrence condition imposed by the Natural Resources Access Regulator (NRAR) pursuant to the provisions of the *Water Management Act 2000*. Schedule 1 to the condition makes reference to specific documents submitted with the original DA. The above schedule to the condition should be amended to refer to the relevant documents for the subject modification.

5. Statutory Considerations

5.1 Overview

Section 4.56 of the EP&A Act confers on a consent authority the power and discretion to modify a consent granted by the Land and Environment Court. The relevant provisions of the EP&A Act state:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
 - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The matters prescribed under Section 4.56 of the EP&A Act are addressed below.

5.2 Substantially the same development (section 4.56(1)(a))

Principles and tests have been developed through judgements by the Land and Environment Court, which provide guidance to decision-making in planning and development matters.

- a) The phrase “substantially the same development” has been held to mean “essentially or materially or having the same essence” as defined by Pearlman C J in *Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor* (1999) NSWLEC 251. Accordingly, the issue is concerned with the substance of the proposal relative to the substance of the development as originally approved.
- b) The comparative task required by the test above “does not merely involve a comparison of the physical features or components of the development as currently approved and modified... Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper context (including the circumstances in which the development consent was granted)”, as quoted in *Moto Projects v North Sydney Council* (1999) 106 LGERA 29.

In this regard, the proposed modification does not change the nature, essence and substance of the original approved development in any material manner as:

- The proposed modifications are consistent with the approved development in terms of the predominant land uses to be accommodated within the subject M1, M2, Northern Shed, Southern Sheds and Maltster's Cottage, being for art and cultural activities, exhibitions, performances, functions and recreation (i.e. a private gymnasium, if required, in the exhibition space) in a variety of multi-purpose spaces. These uses are best defined as "function centre", "information and education facility" and "recreation facility (indoor)". The removal of the swimming pool, outdoor terrace and bar components do not substantially alter the principal purposes of the buildings for which the consent was originally granted.
- The form, bulk and scale of the approved alterations and additions at M1/M2 and Southern Sheds will remain substantially unchanged. The removal of the deteriorated concrete slab within M1 would not materially change the architectural character of the building as perceived externally, as the enclosing walls will be retained. The footprints of M1, M2 and Southern Sheds will remain unchanged, with minor adjustments to the footprints for the Northern Shed, plant rooms and back-of-house facilities.
- The partial retention of the timber roof structures of M2 would deliver an improved conservation outcome through the preservation of additional historic fabric in its original form and assembly, with selective replacements and structural reinforcement.
- The silos and associated roof feature at the centre of the complex will remain as the tallest element and the primary focal point. The overall form, profile and key architectural features of the retained buildings will continue to be conserved in the development.
- The redesign of the Maltster's Cottage would result in a built form and spatial arrangement that are different from the approved drawings. Notwithstanding, the redesign is to satisfy the express requirements of Condition 48 of the consent to retain and integrate the remnants of the cottage into the new works and setting for interpretation of its historic significance. The new canopy and exhibition rooms will allow sympathetic integration with the remnant fabric and the landscape setting. The proposed function of the new floor space for the exhibition and display of artwork is consistent with the approved development. The modification meets the intent and design and conservation requirements of Condition 48. Nevertheless, this condition is to be retained to allow the consent authority to review the design details at the post-consent stage.
- The modifications will not alter the material and essential physical features of the approved development, nor will it change the primary uses to be accommodated in the buildings.
- Due to the removal of the bar element and demolition of the first floor slab, the modified development will accommodate a lesser amount of floor area than that in the approved scheme. The modification would not result in an intensification of the approved uses that would adversely affect the surrounding areas.
- The environmental impacts, in terms of overshadowing, outlook, views, noise, light spill and traffic generation (as discussed in Section 6 below), as a result of the modified design are comparable to those originally approved in the consent. The amenity of the adjoining properties would continue to be protected with any potential impacts mitigated through compliance with the existing conditions of consent.
- There will be an enhanced heritage conservation outcome due to the retention of additional historic fabric, which will be sympathetically integrated into the new work, and the increased capacity for interpretation particularly for the former Maltster's Cottage.

The detailed development, as proposed to be modified, will remain substantially the same development for which the consent was originally granted.

5.3 Notification (section 4.56(1)(b), (c) and (d))

Wingecarribee Shire Council (Council) will coordinate notification and consider any submissions in accordance with its *Community Engagement Strategy*.

5.4 Section 4.15(1) Considerations (section 4.56(1A))

Section 4.56(1A) of the EP&A Act requires that in determining an application for the modification of a development consent, the consent authority must take into consideration the matters referred to in section 4.15(1) of the Act as are of relevance to the development the subject of the modification application.

The matters for consideration under Section 4.15(1) of the EP&A Act are considered in Section 6 of this Statement.

6. Section 4.15(1) Assessment – (Section 4.56(1A))

The environmental assessment matters relevant to the proposed modification under Section 4.15(1) (a), (b), (c), (d) and (e) of the EP&A Act are addressed below:

6.1 Environmental planning instruments

The environmental planning instruments relevant to the site and the proposed modification are addressed in the following sections; they are:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Wingecarribee Local Environmental Plan 2010*

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

The relevant provisions of the SEPP (Biodiversity and Conservation) are addressed as follows:

Koala habitat protection

Chapter 4 of the SEPP applies to the Wingecarribee LGA, which falls within the Central and Southern Tablelands and Central Coast koala management areas.

Table 3 Assessment against relevant provisions in Chapter 4 of the SEPP (Biodiversity and Conservation)

Clause	Provisions	Comments
4.9 Development assessment process – no approved koala plan of management for land	<p>(1) <i>This section applies to land to which this Chapter applies if the land—</i></p> <p>(a) <i>has an area of at least 1 hectare (including adjoining land within the same ownership), and</i></p> <p>(b) <i>does not have an approved koala plan of management applying to the land.</i></p> <p>(2) <i>Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.</i></p> <p>(3) <i>If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application.</i></p> <p>(4) <i>If the council is satisfied that the development is likely to have a higher level of impact on koalas or koala habitat, the council must, in deciding whether to grant consent to the development application, take into account a koala assessment report for the development.</i></p> <p>(5) <i>However, despite subsections (3) and (4), the council may grant development</i></p>	<p>The proposed modification amends the design of the alterations, additions and adaptation to the M1/M2 group and Maltster's Cottage. The works in question are primarily confined to the footprints of the already built upon areas. The design changes do not result in any further vegetation removal or alter the approved landscape design.</p> <p>The following considers the provisions of the SEPP in the context of the approved development and proposed modification.</p> <p>The subject site has a land area of approximately 6.6 ha and there is no approved koala plan of management applying to the land.</p> <p>A Flora and Fauna Assessment Report, dated 30 April 2020, and a Koala Assessment Report, dated 29 April 2020, both prepared by Eco-Logical Australia, accompanied the original DA.</p> <p>The Flora and Fauna Assessment finds that:</p> <ul style="list-style-type: none"> • The site does not contain any core koala habitat. • The site contains only limited amounts of potential koala habitat in the southern portion, where remnant native vegetation is present. This vegetation has been subject to on-going disturbance. • There are feed tree species, such as Monkey Gum, Sydney Peppermint, White-topped Box and Narrow-leaved

Clause	Provisions	Comments
	<p><i>consent if the applicant provides to the council—</i></p> <p><i>(a) information, prepared by a suitably qualified and experienced person, the council is satisfied demonstrates that the land subject of the development application—</i></p> <p><i>(i) does not include any trees belonging to the koala use tree species listed in Schedule 3 for the relevant koala management area, or</i></p> <p><i>(ii) is not core koala habitat, or</i></p> <p><i>(b) information the council is satisfied demonstrates that the land subject of the development application—</i></p> <p><i>(i) does not include any trees with a diameter at breast height over bark of more than 10 centimetres, or</i></p> <p><i>(ii) includes only horticultural or agricultural plantations.</i></p>	<p>Peppermint, mainly in the southern portion of the site.</p> <ul style="list-style-type: none"> There were 103 previous records of koala within 5km of the site in the past 18 years leading to year 2020. The remaining areas of the site contain very limited habitat value as they are cleared, dominated by exotic vegetation or occupied by buildings. There is no connectivity to suitable habitats nearby due to the presence of roads, railway line and residential development. <p>The Koala Assessment concludes that:</p> <ul style="list-style-type: none"> Koalas may use the site for foraging on an intermittent basis. The site is unlikely to be significant to the local population for breeding or dispersal across the landscape. The report has considered the management and protection of koalas and their habitat and has addressed all direct and indirect impacts of the proposed development on this species. <p>Impacts on native vegetation will predominantly occur among degraded vegetation or at the periphery of cleared land. Approximately 0.1ha of understorey vegetation of the Southern Highlands Shale Woodland (SHSW) will be impacted. This will not result in direct loss of koala habitat but modification of habitat only.</p> <p>The approved development also involves revegetation of 0.65ha of SHSW (according to the updated Vegetation Management Plan due to the need to protect certain willow trees where a camp of Grey-headed Flying-fox has been found) and assisted regeneration of 0.2ha of SHSW, which would result in a net increase of koala habitat.</p> <p>An updated Vegetation Management Plan has been prepared to ensure on-going protection of vegetation on the site.</p> <p>An addendum letter, dated 8 February 2024, prepared by Eco-Logical Australia, confirms that there are no changes to the condition of the vegetation present on the site. The updated Flora and Fauna Assessment, dated 27 February 2024, confirms the above findings.</p> <p>The proposed works at M1, M2, Northern and Southern Sheds and Maltster's Cottage will mainly utilise the existing building pads. The footprints for M1/M2 and Southern Sheds will remain unchanged. There are only minor adjustments to the footprints of the new Northern Shed, plant and back-of-house areas. The redevelopment of Maltster's Cottage will occur in and adjacent to the area of the ruins. No additional trees are proposed for removal. As such the conclusions of the Koala Assessment Report (2020) continue to be valid. The</p>

Clause	Provisions	Comments
		modification will not result in any increased impact on any potential koala habitat.

Water catchments

The subject site is within a sub-catchment area of the Sydney Drinking Water Catchment and is identified on the Sydney Drinking Water Catchment Map (Sheet 015) to the SEPP. Accordingly, the provisions of Chapter 6 'Water catchments' apply to the proposal.

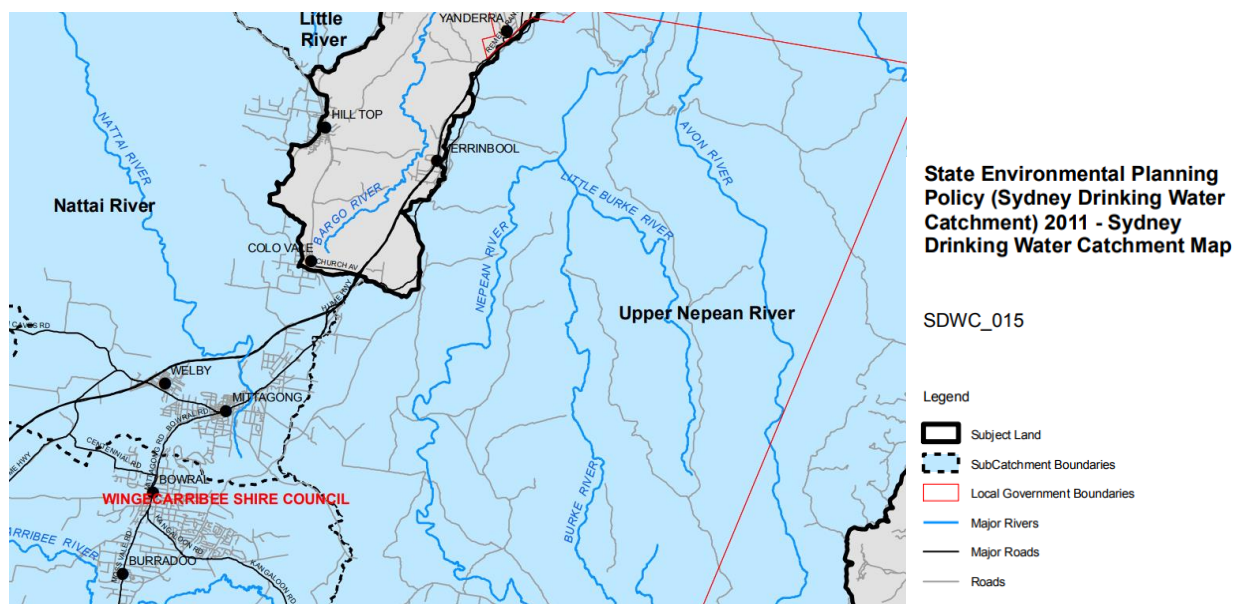


Figure 12 Excerpt of the Sydney Drinking Water Catchment Map to the SEPP (Biodiversity and Conservation) (source: NSW Legislation website)

The relevant provisions of the SEPP are addressed in the table below.

Table 4 Assessment against relevant provisions in Chapter 6 of the SEPP (Biodiversity and Conservation)

Clause	Provisions	Comments
6.6 Water quality and quantity	<p>In deciding whether to grant development consent to development on land in a regulated catchment (note: this includes Sydney Drinking Water Catchment), the consent authority must consider the following:</p> <p>(b) whether the development will have an adverse impact on water flow in a natural waterbody,</p> <p>(c) whether the development will increase the amount of stormwater run-off from a site,</p> <p>(d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,</p> <p>(e) the impact of the development on the level and quality of the water table,</p> <p>(f) the cumulative environmental impact of the development on the regulated catchment,</p> <p>(g) whether the development makes adequate provision to protect the quality and quantity of ground water.</p>	<p>An updated Stormwater and Flood Management Strategy, prepared by J Wyndham Prince, supports the subject modification application.</p> <p>The proposed works at M1, M2, Northern and Southern Sheds, as modified, will be generally contained within the existing or approved building footprints, and the redevelopment of Maltster's Cottage utilises the existing building pad with minor extension by the canopy (relative to the overall site area).</p> <p>The proposal only involves minor increase to the finished ground levels of the buildings.</p> <p>The approved development incorporates various stormwater treatment and re-use measures, which will remain.</p> <p>The modification will not adversely affect the quality of water draining into Nattai River. It will not result in any significant change to the</p>

Clause	Provisions	Comments
	<p>[note: part (a) is omitted as it does not apply to land within the Sydney Drinking Water Catchment]</p> <p>Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures the impact on water flow in a natural waterbody will be minimised.</p>	<p>quantity of overland flow as compared to the approved development.</p>
6.7 Aquatic ecology	<p>In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following:</p> <p><i>(a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,</i></p> <p><i>(b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—</i></p> <p><i>(i) a controlled activity approval under the Water Management Act 2000, or</i></p> <p><i>(ii) a permit under the Fisheries Management Act 1994,</i></p> <p><i>(c) whether the development will minimise or avoid—</i></p> <p><i>(i) the erosion of land abutting a natural waterbody, or</i></p> <p><i>(ii) the sedimentation of a natural waterbody,</i></p> <p><i>(d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,</i></p> <p><i>(e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,</i></p> <p><i>(f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.</i></p> <p>Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—</p> <p><i>(a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,</i></p> <p><i>(b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,</i></p> <p><i>(c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,</i></p>	<p>The proposed modification would not result in adverse impacts on terrestrial, aquatic or migratory animals or vegetation.</p> <p>The original DA incorporates rehabilitation work within the riparian zone of Nattai River and constitutes a “controlled activity” under the <i>Water Management Act 2000</i>. Concurrence was received from Water NSW and the general terms of approval have been incorporated in the conditions of consent.</p> <p>The approved development includes the staged removal of weeds and revegetation with native species along the riparian zones, which would stabilise the river banks and reduce sedimentation. A revised Vegetation Management Plan (VMP, dated 20 February 2024, has been prepared to guide the above works. In particular, the revised VMP recommends the establishment of a buffer zone around those willow trees where the vulnerable species, Grey-headed Flying-fox were found during the January 2024 inspection. This is to protect the habitat for this species.</p> <p>The proposed stormwater treatment measures comprise a combination of the following to protect the aquatic ecology of the receiving waterways:</p> <ul style="list-style-type: none"> • Grassed swales adjacent to Nattai River to capture, direct and provide primary treatment of runoff from the developed site. • Bioretention areas to provide treatment of the runoff from the newly developed areas of the site. • Permeable pavement for car spaces. • Rainwater tanks to capture roof water run-off for re-use. <p>The proposed modification will not result in any adverse impacts on water quality of natural watercourses.</p>

Clause	Provisions	Comments
	<p>(d) <i>the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,</i></p> <p>(e) <i>the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.</i></p>	
6.8 Flooding	<p>The consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.</p> <p>Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not:</p> <p>(a) <i>If there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or</i></p> <p>(b) <i>Have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems.</i></p>	<p>The proposed modification would not affect flood behaviour and overland flow pattern across the site.</p> <p>Measures for treatment of stormwater are outlined in the paragraphs above.</p>
6.9 Recreation and public access	<p>In deciding whether to grant development consent on land in a regulated catchment, the consent authority must consider:</p> <p>(a) <i>The likely impact of the development on recreational land uses in the regulated catchment, and</i></p> <p>(b) <i>Whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.</i></p> <p>Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—</p> <p>(a) <i>the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,</i></p> <p>(b) <i>new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,</i></p> <p>(c) <i>if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.</i></p>	<p>The site is zoned R2 Low Density Residential under the Wingecarribee LEP 2010 and is not identified for acquisition by a public authority for public recreation purposes.</p> <p>The proposed development will offer new opportunities for public access to the waterfront land via a system of pathways, improved site landscaping and rehabilitated and stabilised riparian zones.</p> <p>The proposed modification will not affect future public access to the waterfront land.</p>
6.11 Land within 100m of natural waterbody	<p>In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—</p> <p>(a) <i>the land uses proposed for land abutting the natural waterbody are water-dependent uses, and</i></p>	<p>The land uses in the approved development, as modified by this proposal, are not water-dependent uses. However, the development will improve the environmental quality of the riparian zones and the natural waterbody of Nattai River. New opportunities for public access to the waterfront land will also be created. No conflicts between land uses will result.</p>

Clause	Provisions	Comments
	<i>(b) conflicts between land uses are minimised.</i>	
6.61 Requirement of neutral or beneficial effect on water quality	Development consent must not be granted to development relating to any part of the Sydney Drinking Water Catchment unless the consent authority is satisfied the carrying out of the development would have a neutral or beneficial effect on water quality.	The updated Stormwater and Flood Management Strategy prepared by J Wyndham Prince incorporates stormwater quality analysis using the MUSIC model (Model for Urban Stormwater Improvement Conceptualisation) to assess the potential nutrient reduction benefits of the proposed stormwater treatment devices. The analysis concludes that the proposed modification will not result in additional impacts on water quality. Also see comments below.
6.63 Requirement of consistency with NorBE Guideline	Development consent must not be granted to development on land in the Sydney Drinking Water Catchment unless the consent authority is satisfied the development is consistent with the NorBE Guideline (<i>Neutral or Beneficial Effect on Water Quality Assessment Guideline 2022</i> , published by Water NSW).	A Stormwater and Flood Management Strategy has assessed the proposal against the NorBE Guideline and confirms that: <ul style="list-style-type: none"> For pollutant loads, the total suspended solids (TSS), total phosphorus (TP) and gross pollutants will achieve the reduction targets required by the SEPP. The post-development pollutant concentrations for total phosphorus and total nitrogen (TN) will be less than that in the pre-development scenario, and a neutral or beneficial effect will be achieved.
6.64 Concurrence of Regulatory Authority	Development consent must not be granted to development on land in the Sydney Drinking Water Catchment unless the consent authority has obtained the concurrence of the Regulatory Authority.	Water NSW has issued concurrence and general terms of approval as part of the original DA. The modification does not alter the site layout, staging or external works that will have an impact on water quality.

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

The proposed development relating to the M1/M2 group and Maltster's Cottage, as modified by this application, has a capital investment value (CIV) of \$25,826,520. The modified development is not regionally significant development as its CIV is under \$30 million having regard to section 2.19 and section 2 of Schedule 6 of the SEPP.

Pursuant to section 2.6 and section 13 of Schedule 1 to the SEPP, development for information and education facilities, including museums and art galleries, having a CIV of more than \$30 million is identified as state significant development. The CIV for the modified development (M1/M2 group and Maltster's Cottage) is less than the above threshold.

Based on the above, it is expected that Council will be the consent authority for this modification application.

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

The object of Chapter 4 of the SEPP is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Under section 4.6(1) of the SEPP, a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated; if the land is contaminated, it is suitable in its contaminated state for the intended purposes of the development; and if the land requires remediation, it is remediated before the land is used for the intended purposes.

Section 4.6(2) further provides that the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned in accordance with the contaminated land planning guidelines.

A preliminary site investigation and a detailed site investigation have been completed regarding the proposed development, which confirm that the site is suitable for the land uses described in the proposal, subject to remediation, validation and auditing. Specific conditions have also been incorporated in the development consent regarding site remediation.

The site will be remediated and made suitable for the purposes of the proposed development in satisfaction of the provisions of the SEPP.

Further details are provided in Section 6 of this statement.

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

The aim of Chapter 2 of the SEPP is to facilitate the effective delivery of infrastructure across the State.

The site is located adjacent to a rail corridor; Part 2.3, Division 15, Subdivision 2 of the SEPP is relevant to the proposed development.

The relevant provisions are addressed in the table below.

Table 5 Assessment against relevant provisions in SEPP (Transport and Infrastructure)

Clause	Provisions	Comments
2.98 Development adjacent to rail corridors	<p>Section 2.98(1) applies to development on land that is in or adjacent to a rail corridor and is likely to have an adverse effect on rail safety.</p> <p>Section 2.98(2) sets out requirements for the consent authority to notify the rail authority and to consider any response received and any guidelines issued by the Secretary for the purposes of the section.</p> <p>However, the above requirements are overridden by the provisions of section 2.98(3) in circumstances where the development is on land adjacent to a rail corridor vested in or owned by the Australian Rail Track Corporation (ARTC).</p>	The proposed development is on land adjacent to a rail corridor vested in or owned by the ARTC. A referral to the rail authority is not required.
2.99 Excavation in, above, below or adjacent to rail corridors	Section 2.99 applies to development involving the penetration of ground to a depth of at least 2m below ground level (existing) on land within 25m of a rail corridor.	<p>The proposed modification does not include any excavation to a depth of at least 2m within 25m of the rail corridor.</p> <p>The existing Condition 56 in the development consent requires the submission of plans to ARTC for approval prior to any works being undertaken, should any excavation be required within 25m of the rail corridor.</p>
2.100 Impact of rail noise or vibration on non-rail development	<p>This section applies to development on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration:</p> <ul style="list-style-type: none"> (a) Residential accommodation, (b) A place of public worship, (c) A hospital, (d) An education establishment or centre-based child care facility. 	The proposed modification does not concern with any uses identified in section 2.100.

Clause	Provisions	Comments
2.122 Traffic-generating development	<p>"Traffic-generating development" within the meaning of section 2.122 is identified in Schedule 3 to the SEPP.</p> <p>Sub-section (4) requires that the consent authority consider any submission from RMS, the accessibility of the site concerned, and any potential traffic safety, road congestion or parking implications of the development.</p>	<p>The proposed development has been determined to be "traffic-generating development" within the meaning of section 2.122 and Schedule 3, this is understood to be relating to: <i>Any purpose that generates – 200 or more motor vehicles per hour – site with access to a road (generally)</i></p> <p>The existing conditions of consent have incorporated specific requirements stipulated by Transport for NSW.</p>

State Environmental Planning Policy (Sustainable Buildings) 2022 (SEPP Sustainable Buildings)

The SEPP (Sustainable Buildings) 2022 came into effect on 1 October 2023 and applies to the whole of NSW. The SEPP incorporates the former SEPP (Building Sustainability Index: BASIX) 2004 (now repealed) and stipulates sustainability standards for residential and non-residential development.

The savings and transitional provisions under section 4.2(f) of the SEPP state that the policy does not apply to "an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal on or after 1 October 2023, if the development application for the development consent was submitted on the NSW planning portal before 1 October 2023".

The original DA was lodged with Council in 2020. As such, the SEPP does not apply to the subject modification application.

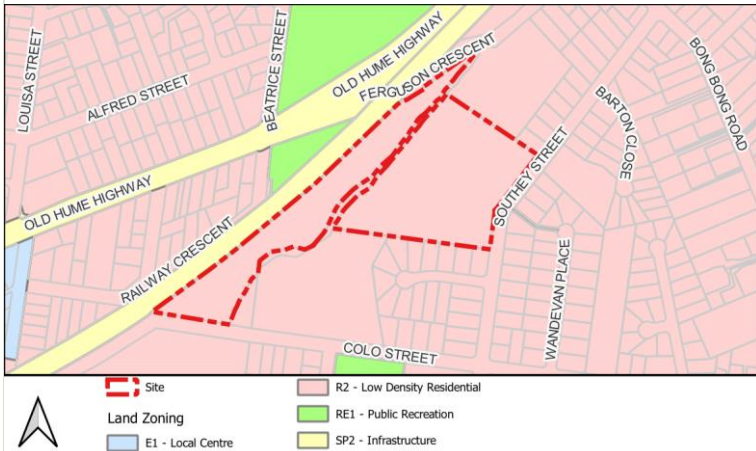
A Sustainability Report, dated 2 February 2024, prepared by E-LAB accompanies the subject modification. The sustainability initiatives outlined in this report are discussed in Section 6 of this statement.

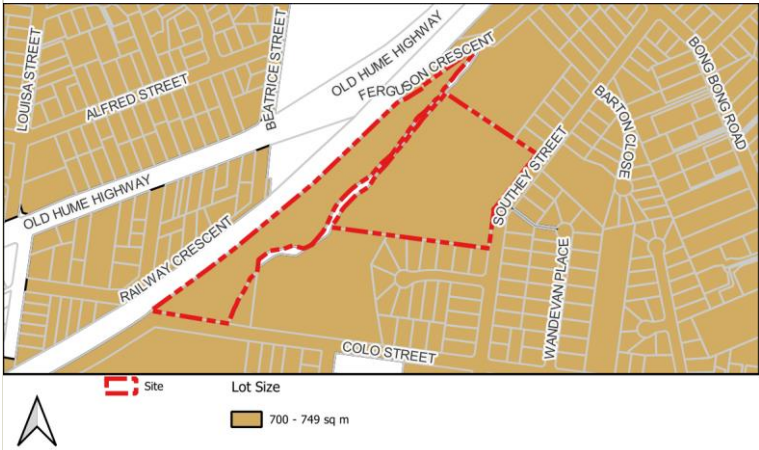
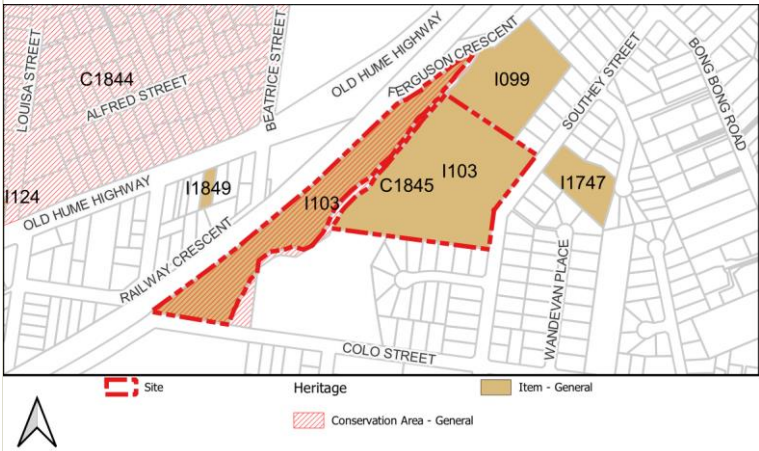
Wingecarribee Local Environmental Plan 2010

The principal local planning instrument applying to the site is the *Wingecarribee Local Environmental Plan 2010* (LEP). The key planning controls are addressed in the table below. The proposed modification would not result in any non-compliance with the relevant provisions of the LEP.

Table 6 Assessment against relevant provisions in Wingecarribee LEP 2010

Clause	Comments	Compliance
1.2 Aims of Plan	<p>The proposed modification is consistent with the aims of the LEP.</p> <p>In particular, the proposed development, as modified by this application, will promote the use of land for arts and cultural activities and will conserve and enhance the ecological integrity, heritage and environmental significance of the Wingecarribee Shire.</p>	Yes
2.1 Land use zones	The site is zoned R2 Low Density Residential pursuant to the Land Zoning Map of the LEP.	-----

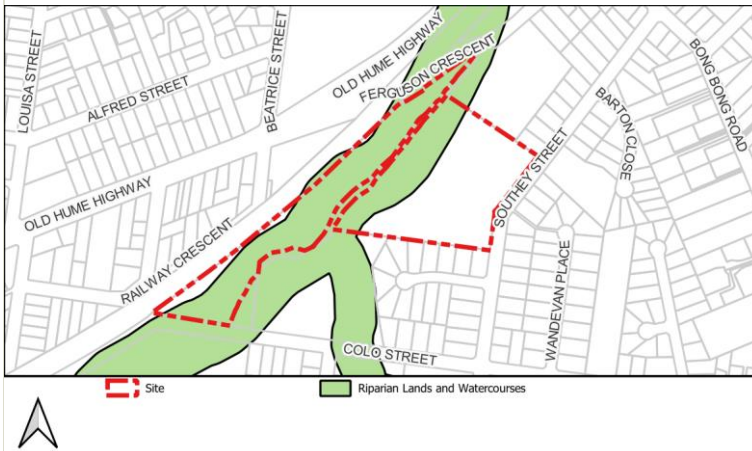
Clause	Comments	Compliance
	 <p>Figure 13 Excerpt of the Land Zoning Map (data source: NSW Planning Portal)</p>	
2.3 Zone objectives and Land Use Table	<p>The objectives of the R2 Low Density Residential zone and land use table are extracted below.</p> <p>Objectives of zone</p> <ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. <p>Permitted without consent Environmental protection works; Home-based child care; Home occupations</p> <p>Permitted with consent Bed and breakfast accommodation; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Home businesses; Home industries; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Roads; Seniors housing; Serviced apartments; Signage; Tank-based aquaculture</p> <p>Prohibited Any development not specified in item 2 or 3</p> <p>The proposed development, as modified by this application, seeks to adaptively re-use the site, which is listed as a heritage item and within a conservation area under Schedule 5 of the LEP, and to facilitate the on-going protection of its values. The proposal will conserve and revitalise the heritage buildings on the site that have been left in a derelict condition for decades and deliver significant environmental benefits through rehabilitation of the riparian land.</p> <p>The modified development does not inhibit the potential of other land within the R2 zone to provide for the housing needs of the community or to provide facilities or services to meet their day to day needs. The proposal would indirectly contribute to the above via the decontamination and remediation of the site, which is located in close proximity to established residential areas.</p>	-----

Clause	Comments	Compliance
	<p>The modification concerns with the adaptive re-use of the M1/M2 buildings, Southern Sheds and Maltster's Cottage, in conjunction with the construction of the new Northern Shed. The proposed land uses are defined as "function centre", "information and education facility", and "recreation facility (indoor)". Both function centre and information and education facility are not ordinarily permissible in the R2 zone. The permissibility of these two uses is sought through the provisions of clause 5.10(10) of the LEP (refer to discussions below).</p>	
4.1 Minimum subdivision lot size	<p>The size of any lot resulting from a subdivision of land is not to be less than 700 m² pursuant to the Lot Size Map to the LEP.</p>  <p>Figure 14 Excerpt of the Lot Size Map (data source: NSW Planning Portal)</p> <p>No subdivision is proposed.</p>	Not applicable
5.10 Heritage conservation	<p>The site is subject to the following heritage listing under Schedule 5 of the LEP:</p> <ul style="list-style-type: none"> • The Maltings – Southey, Colo and Ferguson Streets, I103 • The Maltings Conservation Area, C1845 <p>The Heritage Map to the LEP is extracted below:</p>  <p>Figure 15 Excerpt of the Heritage Map (data source: NSW Planning Portal)</p> <p>The objectives of this clause are to conserve the environmental heritage of Wingecarribee, heritage items, conservation areas,</p>	Yes

Clause	Comments	Compliance
	<p>archaeological sites and Aboriginal objects and Aboriginal places of heritage significance.</p> <p>Before granting any consent, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned.</p> <p>A Conservation Management Plan was prepared in support of the original development application. An updated Heritage Impact Statement has also been prepared to accompany the subject modification application and amending DA. The proposed development, as modified, will enable the conservation and adaptive re-use of the significant fabric of the remnant buildings, landscape and setting.</p> <p>Specifically, the subject modification amends the design of the Maltster's Cottage redevelopment. The revised design seeks to retain additional fabric of the former residence, integrate the contemporary built form and exhibition spaces with the historic remnants along with new but sympathetic landscaping, and interpret the historic significance of the cottage as a coherent part of The Maltings complex.</p> <p>The modification also seeks to retain additional timber roof structures of M2, which will deliver a positive conservation outcome. The proposed demolition of the first floor slab at M1 is due to its advanced state of deterioration, and the conversion of the ground floor area to an outdoor exhibition space would not detract from the heritage value of the building.</p> <p>The existing Southern Sheds will continue to be retained.</p> <p>The design changes to the new Northern Shed are minor in nature and would have a neutral impact on the heritage values of the complex.</p> <p>An Aboriginal Archaeological Survey Report was prepared to accompany the original DA. The site contains two areas of potential archaeological deposits (PADs) and archaeologically sensitive landforms. The modification relates to areas within the existing development footprints and cleared land and would not affect the PADs and the sensitive landforms. The existing conditions of consent will ensure the Aboriginal cultural values and any objects discovered will be protected.</p> <p><u>Conservation incentives</u></p> <p>Sub-clause (10) sets out provisions relating to conservation incentives, as follows:</p> <p><i>The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—</i></p> <ul style="list-style-type: none"> <i>(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and</i> <i>(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and</i> <i>(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and</i> <i>(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and</i> <i>(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.</i> 	

Clause	Comments	Compliance
	<p>The proposed development, as modified by this application, remains consistent with the above provisions as:</p> <ul style="list-style-type: none"> • The proposal is predicated upon uses that best suit the heritage values of the place. The cultural significance and attributes of the site do not warrant a typical suburban residential form of development. • Subdivision for low density residential development is permissible for the site. However, to properly conserve the heritage values of the large scale industrial complex, a holistic approach to protecting and revitalising the site as a precinct is necessary. • The proposed land uses are viable and appropriate to the architectural form, spatial character and fabric of the heritage building group, allowing a high degree of conservation to occur. The proposal would also allow the core part of the site consisting of the large scale maltings buildings, remnant landscaping and the river to be conserved as a whole entity. • The new uses are reasonable to enable the on-going usage and activation of the place and to fund the necessary conservation and repair works. • The new architectural elements have been designed to be distinctive and separate from the heritage fabric. The changes are introduced in a manner that minimises loss of significant fabric and respects the spatial qualities, setting and views across the site. • Due to the ruinous state of the site, extensive reconstruction of lost fabric is not considered an appropriate or feasible option. The conservation approach is to design around the heritage values of the site to tell a layered story of hope, decline and abandonment amid new uses that focus on cultural achievements. • The proposal would halt the further deterioration of the remnant buildings, which are at risk of irrecoverable loss. • The proposal will allow public access and appreciation of the heritage item. <p>The modified development is consistent with the conservation policies established in the approved Conservation Management Plan and will not detract from the heritage values of the site. Condition 74 of the existing consent, which requires on-going compliance and implementation of the CMP, will continue to apply to the development, as modified.</p>	
5.19A Function centres	<p>Sub-clause (2) provides that the consent authority must not grant consent for development for the purposes of a function centre unless it is satisfied that the development:</p> <p><i>(a) will not result in the clearing of native vegetation, and</i></p> <p><i>(b) will be carried out having regard to the management of biodiversity outcomes set out in a biodiversity assessment report, and</i></p> <p><i>(c) will complement the rural or environmental attributes of the land and its surrounds, and</i></p> <p><i>(d) will not adversely affect the agricultural productivity of adjoining land, and</i></p> <p><i>(e) will not adversely affect the amenity of the neighbourhood, and</i></p> <p><i>(f) will be serviced by adequate access roads taking into account the scale of the development, and</i></p>	Yes

Clause	Comments	Compliance
	<p><i>(g) will provide for access to adequate wastewater systems to service the land without having an adverse impact on the water quality of the area, and</i></p> <p><i>(h) will have adequate provision for stormwater management measures to service the land without having an adverse impact on the water quality of the area, and</i></p> <p><i>(i) if the function centre has a gross floor area of more than 500 square metres—will not be carried out in an isolated area that is accessed by traversing—</i></p> <p style="padding-left: 40px;"><i>(i) through rugged and heavily timbered country, or</i> <i>(ii) along bushland for more than 200 metres on a dead-end road, and</i></p> <p><i>(j) will address the potential impacts of bushfires and floods, and</i></p> <p><i>(k) will not create a land use conflict due to visual impact or impact on noise, traffic, privacy or other amenities, and</i></p> <p><i>(l) will provide for, or will be subject to a management strategy for minimising the development's impact on the natural environment or neighbourhood amenity that will provide for, the following—</i></p> <p style="padding-left: 40px;"><i>(i) measures to remove threats of serious or irreversible environmental damage,</i> <i>(ii) mechanisms for monitoring and reviewing the effect of the development on the amenity of the neighbourhood, including impact on noise or traffic.</i></p> <p>The proposed modification is consistent with the above provisions as:</p> <ul style="list-style-type: none"> • The modification does not involve any further vegetation clearing beyond what has been approved as part of the original DA. Rehabilitation of the riparian zones of Nattai River and revegetation and landscape improvements will be undertaken as per the approved proposal. • The modified development will complement the environmental and heritage attributes of the site. • Any potential environmental or amenity impacts on the surrounding can be mitigated and managed. • There are no material changes to the approved vehicular access, parking and servicing arrangements. Further details on these aspects relating to the modification are provided in the application. • Other environmental constraints, such as flooding, bushfire and site contamination are addressed by the existing conditions of consent. 	
5.21 Flood planning	<p>The objectives of the clause are to minimise the flood risk to life and property; allow development on land that is compatible with the flood function and behaviour on the land; avoid adverse or cumulative impacts on flood behaviour and the environment; and enable the safe occupation and efficient evacuation of people in the event of a flood. Issues relating to flooding have been considered and assessed as part of the original DA. The modified development will not exacerbate or alter the flood behaviour. The development will continue to be subject to the flood management requirements of the conditions of consent. Refer to further discussion in the later part of this report.</p>	Yes
7.3 Earthworks	<p>The objectives of the clause are to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features on surrounding land,</p>	Yes

Clause	Comments	Compliance
	<p>and to allow earthworks of a minor nature without separate development consent.</p> <p>The proposed modification does not involve significant earthworks. The existing conditions of consent are adequate to manage and mitigate any impacts of earthworks associated with the modified development.</p>	
7.5 Natural resources sensitivity - water	<p>The objectives of the clause are to maintain the hydrological functions of riparian land, waterways and aquifers.</p> <p>The site is identified on the Natural Resources Sensitivity Map as containing a Category 1 Environmental Corridor (within 50m from the top of stream bank on each side).</p>  <p>Figure 16 Excerpt of Natural Resources Sensitivity Map (data source: NSW Planning Portal)</p> <p>Sub-clause (4) provides that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</p> <p>(a) <i>the development is designed, sited and managed to avoid any potential adverse environmental impact, or</i></p> <p>(b) <i>if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or</i></p> <p>(c) <i>if that impact cannot be minimised—the development will be managed to mitigate that impact.</i></p> <p>The proposed modification will not hinder the ability of the development to meet the objectives of this clause. The modification relates to design changes that will occur within the existing development footprints and cleared areas.</p> <p>A large part of the site and the existing buildings encroach upon the Environmental Corridor. The land within the corridor is already disturbed and suffers from varying degrees of degradation. The proposed works within this land are to facilitate adaptive re-use and upgrade of the heritage buildings and to rehabilitate the riparian zone.</p> <p>The siting and design of the new development will not result in adverse environmental impacts on the corridor. The approved vegetation management work will regenerate the riparian zone and improve water quality of Nattai River.</p>	Yes
7.10 Public utility infrastructure	<p>This clause applies as the site is zoned R2 Low Density Residential under the LEP.</p> <p>Sub-clause (2) provides that development consent is not granted for development unless the Council is satisfied that any essential public</p>	Yes

Clause	Comments	Compliance
	<p>utility infrastructure is available, or that adequate arrangements have been made to provide that infrastructure.</p> <p>Essential utility services and civil infrastructure will be provided for the development. Refer to Section 6 of this statement for details on utilities and servicing.</p>	

Proposed instruments

There are no draft environmental planning instruments that would raise matters directly relevant to the proposal.

Development control plan

Wingecarribee Development Control Plans

The Mittagong Township Development Control Plan (DCP) contains provisions that are relevant to the site and proposal; these are addressed in the table below. The proposed modification will remain consistent with the relevant provisions of the DCP.

Table 7 Assessment against relevant provisions in Wingecarribee DCP

Provisions	Comments
Mittagong Township Development Control Plan	
Part A All Land	
<p>Section 3 Biodiversity</p> <p>A flora and fauna assessment is required for a DA where the site:</p> <ul style="list-style-type: none"> Contains native vegetation; Contains remnant native trees; Is adjacent to native vegetation; Contains sensitive environmental areas likely to contain important habitat resources for fauna, such as watercourses, wetlands or swamps, and rocky outcrops, caves or cliffs. <p>If the site exceeds 1 ha, the flora and fauna assessment is to identify whether 'potential koala habitat' or 'core koala habitat' is present.</p>	<p>Impacts on biodiversity are discussed in detail in Section 6 of this statement.</p> <p>A flora and fauna assessment (updated in 2024) and koala assessment have been carried out.</p>
<p>Section 4 Water Management</p> <ul style="list-style-type: none"> A vegetation management plan (VMP) is required for any development identified in the Natural Resources Sensitivity Map of the Wingecarribee LEP 2010. Development on land within the Sydney drinking water catchment areas must satisfy the provisions of the SEPP (Sydney Drinking Water Catchment) 2011. A water cycle management study is required for development within drinking water catchments. A stormwater management plan is required for development that will result in an increase in the impervious area of the site or a change in direction of overland flow. An erosion and sediment control plan is required for development involving building or earth works. 	<p>Parts of the site has been identified as Riparian Lands and Watercourses on the Natural Resources Sensitivity Map to the Wingecarribee LEP.</p> <p>Updated Vegetation Management Plan, Stormwater and Flood Management Strategy and Soil and Water Management Plan have been prepared to support the subject modification and related amending DA.</p> <p>A detailed discussion about the proposal's consistency with the provisions of the SEPP (Biodiversity and Conservation) and the Wingecarribee LEP regarding water management has been provided earlier.</p>

Provisions	Comments
<p>Section 5 Flood Liable Land</p> <p>This section of the DCP sets out controls for development on flood affected land.</p> <p>The controls seek to manage the risk to human life and damage to property caused by flooding through controlling development on flood prone land.</p>	<p>A detailed discussion about flood management is provided in Section 6 of this statement.</p> <p>The proposal has incorporated adequate flood management measures.</p>
<p>Section 6 Vegetation Management and Landscaping</p> <p>This section of the DCP sets out controls for management of vegetation, including significant trees.</p> <p>The controls seek to preserve the amenity, biodiversity, ecology and heritage value of the Mittagong township through the reservation of trees and other vegetation.</p>	<p>A detailed discussion about biodiversity, including management of vegetation, is provided in Section 6 of this statement.</p>
<p>Section 7 Subdivision, Demolition, Siting and Design</p> <ul style="list-style-type: none"> Any application for demolition of a heritage item or a building within a heritage conservation area must be accompanied by a landscape plan, which identifies any cultural planting and its heritage value. Where cut and fill is required, the development must be stepped to accommodate the contours of the site. In relation to alterations to heritage items, Council is to be satisfied that the development: <ul style="list-style-type: none"> Is sympathetic to the retained elements of the heritage item and its setting. Retains as much of the existing building fabric as possible. Minimises modification to original door or window openings, spacings and proportions. Removes any unsympathetic building elements, additions or accretions. Reinstates original architectural elements. Retains natural surface finishes, or applies colour schemes that reflect the relevant historical period. In relation to development within the vicinity of heritage items, Council is to be satisfied that the development will: <ul style="list-style-type: none"> Remain compatible with the average height, bulk and scale of buildings on the adjoining or nearby land. Seek unification with existing built forms on adjoining or nearby land. 	<p>The proposal includes partial demolition of the heritage buildings on the site, primarily due to the degree of deterioration of specific components and fabric. A landscape plan was prepared in support of the original DA; the proposed modification does not affect the overall layout and landscape design strategy for the site.</p> <p>This modification includes an amended design for redevelopment Maltster's Cottage, which is to address the requirements in the existing consent.</p> <p>The proposed modification does not involve any cut and fill.</p> <p>A detailed discussion on the heritage aspects of the proposal has been provided earlier (in the LEP section) and will be further considered in Section 6 of this statement.</p> <p>The proposed modification will partially retain the timber roof structures at M2, which were previously identified for removal. The modification involves demolition of the first floor slab at M1 due to its advanced state of deterioration. The modification will not alter the original window or door openings except for access and other proposed functions as part of the adaptation.</p>
<p>Section 8 Safer by Design</p> <p>The DCP sets out principles and requirements for crime prevention through environmental design to promote the safety and security of development:</p> <ul style="list-style-type: none"> Well-defined building entrances. Internal spaces are open and visible. Walkways and connecting paths are open with good visibility. Signs and vegetation are located so that they do not create 'entrapment' points. 	<p>The proposed modification does not detract from the principles for crime prevention through environmental design.</p> <p>The modified development will provide well-defined entries to buildings and parking areas, legible circulation paths with good visibility, suitably designed landscaping that avoids entrapment points.</p>

Provisions	Comments
<ul style="list-style-type: none"> On-site garaging provides clearly defined exit point and be lit at night. Building entrances, walkways, connecting paths and garage are well lit. 	
<p>Section 9 Construction Standards and Procedures</p> <p>A waste management plan is required for all demolition works and construction works (with a value greater than \$50,000).</p>	<p>An updated demolition and construction waste management plan has been prepared for the subject modification and the related amending DA.</p>
<p>Section 11 Outdoor Lighting</p> <p>This section of the DCP sets out controls relating to outdoor lighting.</p> <ul style="list-style-type: none"> Outdoor lighting must not cause light dispersion or direct glare above a 90-degree, horizontal plane from the base of the fixture. All outdoor lighting fixtures are designed, installed, located and maintained to avoid glare on to adjacent properties or streets. All direct illumination shall be kept within the boundaries of the subject property. Accent lighting shall be directed downward onto the building or object and not toward the sky or the adjacent properties. Spotlighting on landscape and foliage shall be limited to 150 watts incandescent. Timers shall be accurately set to ensure that lighting is used only when natural light is insufficient. 	<p>Condition 136 of the development consent specifies requirements relating to external lighting. Compliance with this condition will ensure the development will not cause unreasonable light overspill that affects the amenity of the surrounding properties or public places.</p>
<p>Section 12 Development Near Rail Corridors and Busy Roads</p> <p>Development is to:</p> <ul style="list-style-type: none"> Avoid any new direct vehicular access to road and remove any existing access where alternative rear lane or other access is achievable. Allow all vehicles to enter and leave the site in a forward direction. Restrict vehicular access, car parking and loading / unloading facilities to an alternative access, such as a rear lane. 	<p>No changes to the vehicular access to the site are proposed.</p>
Part B Business Zoned Land	
<p>Section 4 On-site Car Parking</p> <p>The DCP sets out requirements for the provision and design of car parking.</p> <p>In particular, it requires that full details of anticipated vehicle sizes, volumes and frequency of delivery and other service vehicles to be provided in a DA.</p>	<p>The proposed modification does not alter the approved car parking provision.</p> <p>The design revisions to the alterations and adaptive re-use of M1, including conversion of the ground floor level to an outdoor exhibition space and removal of the terrace bar and swimming pool, as well as the re-design of Maltster's Cottage, will not result in any material changes to the traffic generation capacity of the development.</p>
<p>Section 5 Loading Facilities and Waste and Resource Recovery</p> <p>The DCP sets out requirements relating to loading and unloading facilities for non-residential development.</p>	<p>Loading and unloading facilities will be provided adjacent to the Northern Shed, with access provided from Ferguson Crescent.</p>

Provisions	Comments
<p>Section 10 Tourist and Visitor Accommodation</p> <p>The objectives of this part of the DCP are to ensure development for tourist and visitor accommodation:</p> <ul style="list-style-type: none"> Is appropriate to the locality and contribute to the supply of a range of accommodation types throughout the shire. Shall not adversely impact on the amenity of the surrounding area. Shall provide a satisfactory level of health, safety, comfort, amenity and facilities for both workers and visitors. 	<p>Not applicable. Changes to the approved hotel accommodation in M4 form the subject of a separate, amending DA.</p>
Part C Residential Zoned Land	
Section 15 The Maltings Heritage Precinct	
C15.2 Preferred Development Outcomes	
<p>Objectives:</p> <p>(a) residential flat buildings, multi dwelling housing and detached housing accommodation mixed with recreation, tourism, light industrial, and limited small scale specialty retail uses.</p> <p>(b) The cultural heritage significance of the former Maltings industrial complex will be conserved as part of any adaptive redevelopment and reuse of the complex.</p> <p>(c) development around the perimeter of The Maltings precinct should remain compatible with the existing streetscape character and spatial pattern of development in adjoining existing detached housing neighbourhoods.</p>	<p>The proposed modification does not concern with residential accommodation, which will be subject to detailed design as part of the future stage of M5/M6.</p> <p>The proposed modification will protect the heritage values of The Maltings and facilitate its adaptive re-use.</p> <p>The proposed modification includes adjustments to the location of outdoor plant room and equipment. These building services are oriented away from the front elevation of the M1/M2 group and will not obstruct significant views within the site. The plant and equipment are visible from the railway corridor and will not affect the existing streetscape of Colo Street, Southey Street and Ferguson Crescent.</p>
C15.3 Additional Development Controls	
<p>(a) Any development, including subdivision, within the Maltings precinct shall be consistent with the recommendations of a Conservation Management Plan for the site, approved by the Council, and which provides for the adaptive reuse of the Maltings buildings and site, ensuring:</p> <p>(i) the retention, stabilisation and enhancement of the remaining fabric and setting of the former Maltings industrial complex,</p> <p>(ii) the protection of prominent view corridors across the site to the former industrial buildings that have a landmark significance,</p> <p>(iii) the retention of significant landscape elements,</p> <p>(iv) the siting, design, and construction of new buildings and other structures that complement the visual prominence, architectural character and heritage significance of the former industrial buildings, and</p> <p>(v) the protection of the setting and heritage significance of the Fitzroy Inn.</p>	<p>A Conservation Management Plan (CMP) has been prepared and approved to guide the adaptive re-use and conservation of the remnant buildings on the site. The CMP is referenced in Condition 11 of the development consent.</p> <p>The proposed modification will retain and conserve selected fabrics of the M1/M2 group and the ruins of Maltster's Cottage and will enhance their setting.</p> <p>There will be no impact on any significant views and sightlines across the site as a result of the modification.</p> <p>The modification does not alter the approved landscape design for the site.</p> <p>The modification does not diminish the heritage significance of the M1/M2 group and Maltster's Cottage in terms of siting, architectural character and spatial relationship between built elements and the landscape.</p> <p>The modification will not affect the setting of Fitzroy Inn nearby.</p>
<p>(b) The existing pattern of low density detached houses on separate allotments, that front Southey Street, shall be extended along the Southey Street frontage of the Maltings neighbourhood, ensuring that no development is higher than 2 storeys with the second storey being contained within a pitched roof space.</p>	<p>The proposed modification does not concern with the Southey Street frontage of the site. The approved development scheme has incorporated a site planning strategy where the new M5/M6 will be designed as a group surrounded by landscaped areas.</p>

Provisions	Comments
(c) Vehicular access to the Maltings precinct via Colo Street shall be restricted to access relating to residential development only.	<p>The proposed modification does not change the approved vehicular access arrangements, which provide separate access points for different user groups.</p> <p>The designation of Colo Street as the main entry point for visitors to the multi-purpose facility at M1/M2 is a logical decision, which would allow the main visitor parking facility to be located away from the centre of the site.</p> <p>Similarly, the provision of access to the future residential accommodation at M5/M6 via Southey Street will minimise vehicles traversing across the site.</p>
(d) Vehicular access to any non-residential development or public car parking associated with same, shall be made via the Old Hume Highway, where such vehicular access arrangements do not compromise the safety or efficiency of the Old Hume Highway and the local road network.	<p>The proposed modification does not change the approved vehicular access arrangements.</p> <p>The use of Ferguson Street as the main entry for non-residential visitors / patrons is not feasible due to the constrained geometry of the driveway and limited space for parking at the northern end of the site.</p> <p>The approved access arrangements serve to protect the heritage values of the site. This is achieved by avoiding large parking areas at the centre of the site where the significant maltings buildings are located and minimising vehicular traffic traversing across the river.</p> <p>To preserve the setting of the significant maltings buildings, the primary vehicular access needs to be provided from Colo Street and Southey Street.</p> <p>Colo Street has a relatively flat terrain, which would minimise the degree of cut and fill to create off-street car parking. The use of Colo Street for patrons / visitors will also limit the amount of traffic entering the adjoining residential areas to the north, east and south of the site.</p>
(e) All car parking and loading/unloading facilities associated with non residential development shall be provided within the Maltings precinct.	A site plan has been prepared for the current application that clearly shows the location of car parking along and adjacent to the driveway off Colo Street.
(f) Any new building or structure within the neighbourhood and not physically associated with the stabilisation or restoration of the former industrial buildings, shall be restricted to 2 storeys.	<p>It is acknowledged that this control serves to minimise impact from future development through limiting its scale. The proposed modification does not change the approved height and scale of the alterations and additions to the M1/M2 group.</p> <p>The amended design for the redevelopment of Maltsters' Cottage will be sympathetic to the retained remnants and domestic character of the former residence.</p> <p>The modified design will respect the scale and form of the significant buildings on the site.</p>
(g) the end use of development within the Maltings precinct shall not place at risk the health and safety of occupants or visitors, given any potential:	See comments below.
(h) land or soil contamination, and	Appropriate site investigations have been completed. The existing conditions of consent will ensure the site will be remediated prior to being used for the purposes encompassed in the proposal.

Provisions	Comments
(i) the structural adequacy of, and presence of any potentially harmful construction materials within, existing buildings and structures within the Maltings neighbourhood.	Issues regarding structural adequacy and site remediation (including hazardous building materials) are addressed in the existing conditions of consent.
(j) Any development within the Maltings neighbourhood shall incorporate improvements to the ecological value of the foreshores and adjoining riparian zones of Nattai Creek and the quality of water flowing from land within the Maltings precinct, into the Creek.	<p>The proposed modification will not affect the ecological value of the riparian zones of Nattai River and the quality of water flowing from the land into the creek.</p> <p>The approved development seeks to rehabilitate the riparian corridor through the removal of weeds, revegetation with native species and stabilisation of the banks to reduce sedimentation. The vegetation management and landscape works are expected to improve the water quality of Nattai Creek. The revegetation work across the site would also improve connectivity of wildlife corridors in the area.</p>

Development contributions

The following *Wingecarribee Section 7.11 Developer Contributions Plans* apply to the proposed development, as modified by this application.

- Roads and Traffic Management Facilities
- Resource Recovery Centre
- Central Library Facility
- Section 7.11 Administration
- Open Space and Recreation Facilities

The modified development will continue to be subject to the requirements of Condition 29 - *Section 7.11 Contributions* of the existing consent. It is noted that the contribution rates will be adjusted as per the provisions of the contribution plans.

Council's *Section 64 Development Servicing Plan – Water and Sewer Development Servicing Plan (2017)* applies to the proposed development, as modified, and developer charges are payable as per Condition 30 – *Water Management Act – Certificate of Compliance*.

While it is noted that the Section 64 Plan does not set out exemptions for private developments, in light of the public benefits of the project in revitalising and conserving an iconic local heritage item and expected flow-on positive economic and social impacts, it is requested that Council consider any potential reduction in the relevant charges under this plan.

Planning agreement

There is no planning agreement proposed as part of this modification.

Environmental Planning and Assessment Regulation

The relevant matters specified in the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation), including demolition and compliance with the Building Code of Australia (BCA), have been addressed in the existing conditions of consent, which are proposed to be maintained. A BCA report and capability statement have been prepared to support the subject modification. The report states that the provisions of the BCA can be complied with through meeting the deemed-to-satisfy provisions and formulating performance solutions.

Environmental, social and economic impacts and site suitability

Consideration of the environmental, social and economic impacts and site suitability for the modified development are discussed below:

Biodiversity and ecology

Requirements concerning biodiversity and terrestrial and aquatic ecology are stipulated in various legislation at both State and Commonwealth levels, which is discussed in the following paragraphs.

Biodiversity Conservation Act 2016 (BC Act)

A Flora and Fauna Assessment, dated 30 April 2020, was prepared by Eco-Logical in support of the original DA. An updated Flora and Fauna Assessment, dated 27 February 2024, also prepared by Eco-Logical accompanies the subject modification and the related amending DA.

A field survey by a qualified ecologist was completed in October 2019. A further inspection of the site was carried out in January 2024 to reassess the conditions of the vegetation and confirm the validity of the original study. The recent inspection finds that the conditions of the vegetation have not significantly changed, and the mapped boundaries of the vegetation communities are accurate.



Figure 17 Validated vegetation communities on the site (source: Eco-Logical)

The inspections confirm that a vegetation community known as Southern Highlands Shale Woodland (SHSW) is present in the southern part of the site. SHSW is listed as an endangered ecological community under Part 2 of Schedule 2 to the BC Act. SHSW is also listed as a critically endangered ecological community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Approximately 0.1 ha of SHSW and 0.02 ha of exotic vegetation will be removed as part of the approved development. The current applications do not involve any additional clearing of native vegetation.

One significant finding of the recent field survey is the identification of an occupied camp of Grey-headed Flying-fox (GHFF), which is listed as a vulnerable species under the BC Act and the EPBC Act. There were approximately 50 to 75 individuals occupying the camp at the time of the survey. The GHFFs were observed roosting among the exotic Willows along the riparian corridor. These exotic trees are approximately 20-25m from the nearest building (M1). The proposed modification does not involve removal of any additional native

or exotic vegetation. Both the updated Flora and Fauna Assessment and updated Vegetation Management Plan have recommended mitigation measures to minimise adverse impacts on this species.

The Biodiversity Offsets Scheme (BOS) is triggered by developments, projects or activities that meet certain thresholds for significant impacts on biodiversity (or on an opt-in basis). Development assessed under Part 4 of the EP&A Act that is likely to significantly affect threatened species will require a biodiversity development assessment report (BDAR) pursuant to section 7.7 of the BC Act if the impacts either:

- Exceed the BOS threshold under section 7.4 of the BC Act. The *Biodiversity Conservation Regulation 2017* (BC Regulation) establishes threshold levels for when the BOS will be triggered. The threshold consists of two elements:
 - Whether the amount of native vegetation being cleared exceeds an area threshold. The area threshold varies depending on the minimum lot size (shown on the Lot Size Maps under the relevant LEP) or actual lot size (where there is no minimum lot size specified in the relevant LEP). The area threshold applies to all proposed clearing of native vegetation associated with a development proposal, regardless of whether it is undertaken across multiple lots. The current threshold is set out below (source: Department of Planning and Environment):
- | Minimum lot size associated with the property | Threshold for clearing, above which the Biodiversity Assessment Method (BAM) and offsets scheme apply |
|---|---|
| Less than 1 ha | 0.25 ha or more |
| 1 ha to less than 40 ha | 0.5 ha or more |
| 40 ha to less than 1000 ha | 1 ha or more |
| 1,000 ha or more | 2 ha or more |
- Whether the impacts occur in an area mapped on the Biodiversity Values Map (BV Map). The BV Map identifies land with biodiversity values as defined by section 7.3(3) of the BC Regulation. The BOS applies to any clearing of native vegetation and other biodiversity impacts prescribed by section 6.1 of the BC Regulation on land identified on the BV Map.
 - Are carried out on an Area of Outstanding Biodiversity Value (AOBV); or
 - Are likely to significantly affect threatened species, ecological communities and their habitats according to the test under section 7.3 of the BC Act.

Evidence relating to the triggers for the BOS threshold and a test of significance (where relevant) are required when submitting the application.

Assessment:

The paragraphs below assess the modification against the potential triggers for BOS:

- The Minimum Lot Size Map under the Wingecarribee LEP 2010 identifies a minimum subdivision lot size of 700m² for the site. The corresponding threshold for clearing of native vegetation is 0.25 ha. The proposed clearing is only approximately 0.1 ha of SHSW in moderate to good condition and approximately 0.02 ha of exotic vegetation. Approximately 0.9 ha of SHSW and 1.2 ha of native and exotic vegetation will be retained on the site. The updated Flora and Fauna Assessment confirms that BOS does not apply to the proposal.
- At the time of the original Flora and Fauna report (2020), the site was not affected by the Biodiversity Values Map (BV Map). However, the BV Map has since been updated and the southern part of the site is currently identified on the map as having biodiversity values. Refer to Figure 18 below.

The proposed modification relates to design changes to M1, M2, Northern and Southern Sheds, as well as Maltster's Cottage, where their footprints are outside of areas with biodiversity values on the BV

Map. The proposal does not involve any additional clearing of native vegetation beyond what has been approved. As such, a BDAR is not required and the BOS does not apply to the subject application.

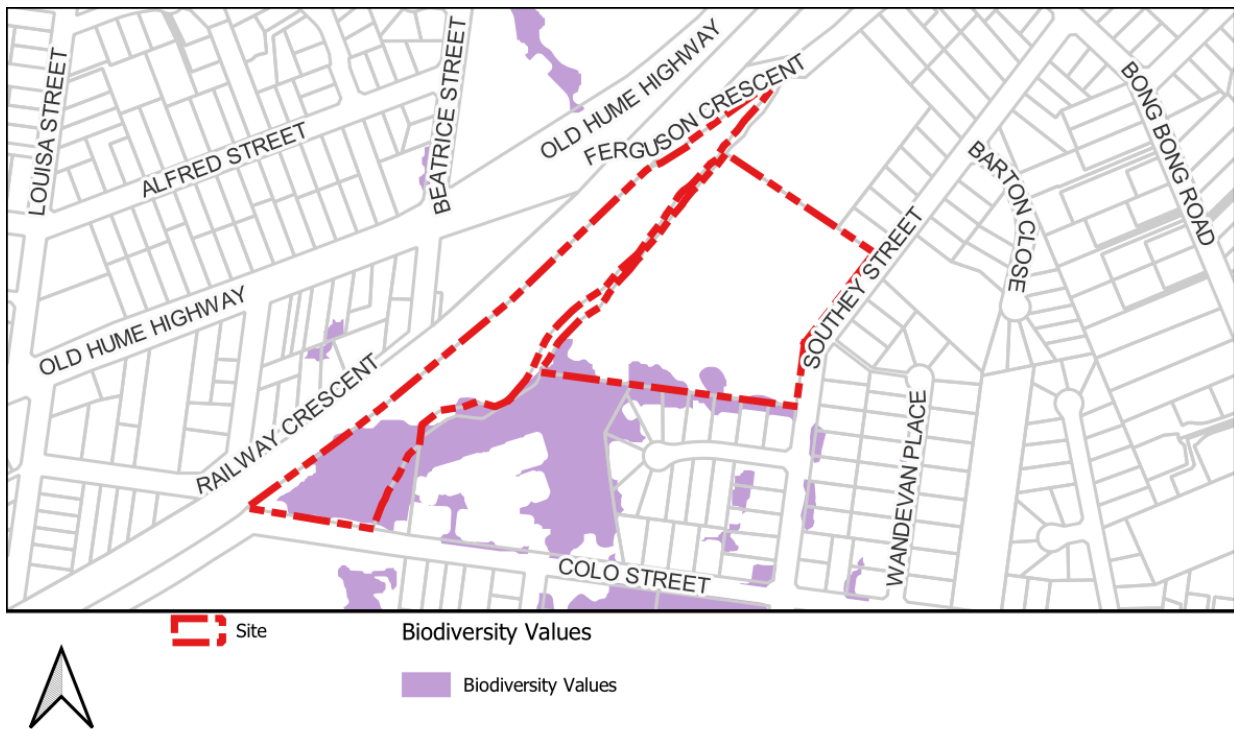


Figure 17 Excerpt of the Biodiversity Values Map (data source: NSW Planning Portal)

- The section 10.7 planning certificate (dated 8 December 2023) obtained from Council states that the site is not in an area of outstanding biodiversity value under the BC Act.
- Tests of significance under section 7.3 of the BC Act was undertaken for the following threatened ecological communities and threatened species:
 - Southern Highlands Shale Woodland (SHSW)
 - Eastern False Pipistrelle
 - Large Bent-winged Bat
 - Greater Broad-nosed Bat
 - Grey-headed Flying-fox.

The assessments conclude that the proposed development is unlikely to have a significant impact on any threatened ecological community or species above as:

- The area of vegetation to be impacted is small.
- There is no critical habitat to be impacted for the above species.
- The proposal will not fragment or isolate any fauna habitat.
- Large amounts of similar habitat are available within the site and adjacent areas.
- The habitat is likely to be used in a transitory nature as no key breeding habitat is likely to be present within the site.

The full details of the tests of significance are in the Appendix to the Flora and Fauna Assessment.

Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) (EPBC Act)

The primary objects of the EPBC Act are to protect the environment, especially matters of national environmental significance (MNES), and to promote ecologically sustainable development, among other things.

The following communities / species are identified as matters of national environmental significance:

- Southern Highlands Shale Woodland (SHSW), which falls under the 'critically endangered' category; and
- Grey-headed Flying-fox (GHFF), which falls under the 'vulnerable' category.

If a development is likely to have a significant impact on MNES, it may be considered to be a 'controlled action' requiring assessment and approval by the Commonwealth.

SHSW is found in the southern part of the site and the development involves removal of 0.1 ha of this community. The native and exotic vegetation on the site may provide potential foraging and sheltering habitats for GHFF. As such, the Significant Impact Criteria apply to both SHSW and GHFF.

Following consideration of the administrative guidelines for determining a significant impact under the Act, Eco-Logical considers that the proposed development may cause a local population of the GHFF to decline and a referral to the Commonwealth Department of the Environment and Energy is recommended for this matter. Eco-Logical also considers that the 0.1 ha of SHSW to be removed represents a small, already disturbed area of the community and the scale of impact is minor; a referral to the Commonwealth is not necessary for this matter.

The appendix to the Flora and Fauna Assessment contains full details of the evaluation against the Significant Impact Criteria.

Water Management Act 2000 (WM Act)

The objects of the WM Act are to provide for the sustainable and integrated management of the water resources of the State for the benefit of both present and future generations.

The Dictionary of the WM Act provides a definition of 'waterfront land', which encompasses land within 40m from the highest bank of any river, lake or estuary. The proposed development involves works on waterfront land and constitutes a 'controlled activity', and the original DA was referred to the Natural Resources Access Regulator (NRAR) for approval pursuant to section 91 of the WM Act. The development was classified as integrated development under the EP&A Act.

The riparian zone of Nattai River is in a generally degraded condition with a mixture of exotic and remnant native vegetation and both man-made and natural landform. The creek exhibits a range of conditions, including weirs, shaped banks, filled land, pools and shallows. The approved development includes remediation works on 'waterfront land' of Nattai River.

The approved development footprints, which comprise works at the Southern Shed, M1, M2, the proposed Northern Shed, the redevelopment of Maltster's Cottage and M3 along with landscaping, encroach onto waterfront land for Nattai River and the unnamed tributary. The approved new buildings of M4, and the future M5 and M6 are located outside of the riparian and waterfront land.

A controlled activity approval was granted by NRAR with the terms of approval incorporated in the existing development consent.

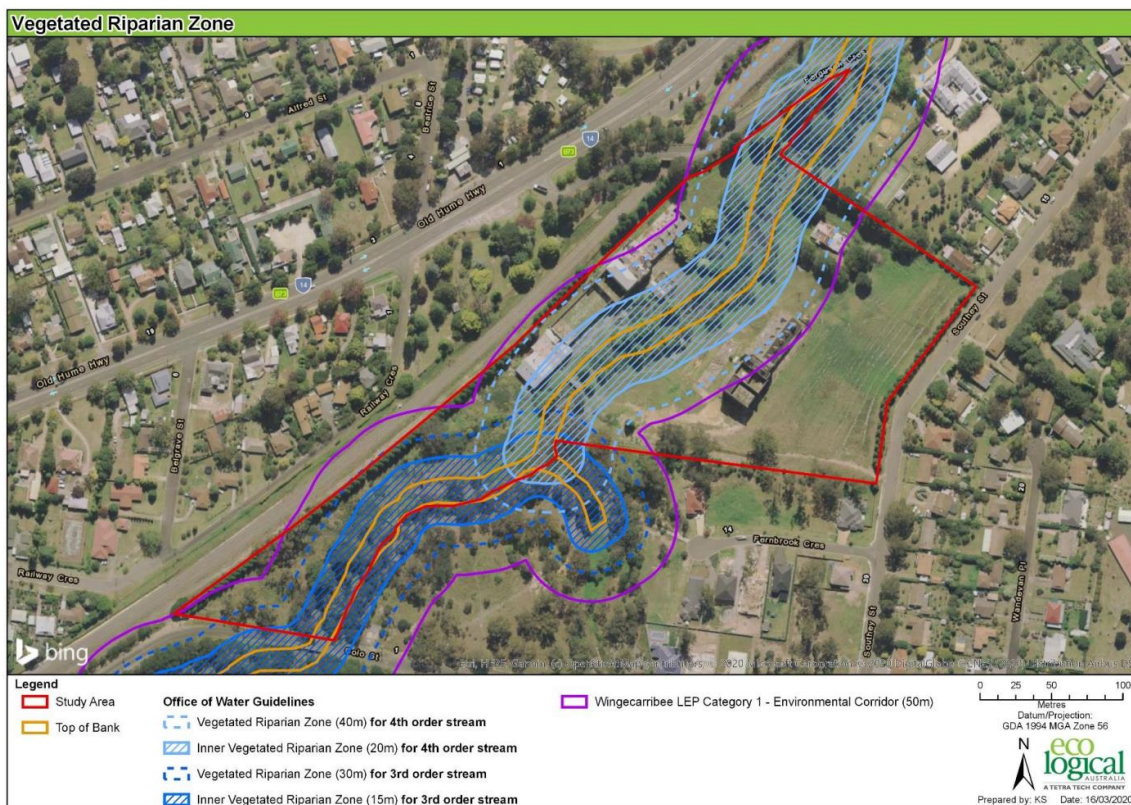


Figure 19 Riparian land on the site (source: Eco-Logical)

The proposed modification includes the following changes, which are either located away from the riparian zone or would have minimal environmental impacts on the waterfront land:

- Minor changes to the footprints of the Southern Shed, where the approved back-of-house area will be converted to toilet facilities separate to the main shed structures;
- Creation of a walkway in between the proposed Northern Shed and M2;
- Relocation of water tanks and outdoor plant and equipment, all of which will be confined to the north-western side of the M1/M2/sheds building group.
- Re-design of the Maltster's Cottage development.

An updated Vegetation Management Plan (VMP) has been prepared for the site to guide future vegetation works. The VMP incorporates strategies to improve the environmental quality of the riparian zone through staged / part removal of exotic species and revegetation with native species; conserving cultural planting that has heritage values; and preserving the meadow and introducing native ground covers. The updated VMP recommends the establishment of a 20m buffer zone around the Willow trees where GHFF have been found. The aim of the buffer zone is to limit any disturbance to the GHFF camp, so that the exotic tree species within the riparian corridor can continue to provide an important foraging and sheltering resource for this vulnerable species.

The modified development would continue to meet the objectives of the WM Act and improve the water quality from overland flow into Nattai River and its tributary.

Fisheries Management Act 1994 (FM Act)

The objects of the FM Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations. The Schedules to the Act list key threatening processes and threatened species, among other matters. The Act sets out requirements for permits in relation to harm to protected marine vegetation (sea grass, macroalgae, mangroves and saltmarsh), dredging, reclamation or

obstruction of fish passage on or adjacent to key fish habitats. The above includes direct and indirect impacts, whether temporary or permanent.

The Flora and Fauna Assessment finds that a key fish habitat is identified along Nattai River in the mapping supporting the FM Act. No obstruction to fish passage, dredging or reclamation is expected to occur as part of the proposed development. The proposed modification relates to the M1, M2, North and South Sheds and Maltster's Cottage and does not involve any works that would affect the key fish habitat. A permit under the FM Act is not required.

The potential impacts on koala habitat or potential koala habitat has been discussed in section 6 of this report.

Tree retention

An Arboricultural Impact Assessment, dated 22 May 2020, prepared by Eco-Logical accompanied the original DA.

The approved development will retain the majority of the high-valued trees on the site. The new roadways and building footprints have been sited to minimise encroachment and impact on significant trees, and as a result will only require limited removal of trees.

The report confirms that no trees will be removed for the adaptive re-use of M1/M2 group. Trees in the vicinity of Maltster's Cottage that are assessed to be insignificant will be removed.

An arborist's addendum letter, dated 21 February 2024, prepared by Eco-Logical supports the subject modification and the related amending DA. To validate the key findings of the previous Arboricultural Impact Assessment, a qualified arborist inspected trees in the vicinity of M3, M4 and Maltster's Cottage on 16 January 2024.



Figure 20 Location of re-assessed trees within proximity to Maltster's House (source: Eco-Logical)

The report finds that while some of the exotic trees near Maltster's Cottage appear to be in similar conditions to the previous inspection, a number of exotic trees (all *Cupressus macrocarpa*) show signs of fair to poor (trees 261-267, 258 and 259) or very poor health or are virtually dead (trees 268-272). Most of these trees were identified in the original Arboricultural Impact Assessment as having high retention value for their landscape quality.

The proposal does not seek to remove these trees. However, given their poor state of health, it is likely that they would require removal at a future stage. Regardless, these trees are exotic species and their removal will not constitute any clearing of native vegetation. No native trees (including two individual *Acacia decurrens* near the house) are proposed for removal.

The design of the Northern Shed has been adjusted. The building is located close to two exotic trees (tree 31 *Liquidambar styraciflua* and tree 34 *Cupressus macrocarpa*), which have high retention value for their landscape quality as identified in the original Arboricultural Impact Assessment. These trees may need to be pruned or removed to accommodate the new building. Since they are exotic species, any removal does not constitute clearing of native vegetation.

Other changes to the approved development are contained within the building footprints of the M1/M2 group and would not involve any tree removal.

Flooding and stormwater

An updated Stormwater and Flood Management Strategy, dated February 2024 and prepared by J Wyndham Prince accompanies the subject modification and the related amending DA. The report presents the results of investigations relating to the performance and feasibility of stormwater and flood management strategies proposed for the site.

Nattai River traverses the site and conveys flows from a contributing catchment of 675 ha. A substantial portion of the site is located below the flood planning level (the level of a 1% annual exceedance probability (AEP) plus 500mm freeboard). The approved development does not include any habitable floor space below the flood planning level.

The site experiences significant flooding under existing conditions with mainstream flooding breaching the river banks in the 10% AEP event. According to the Nattai River Flood Study (dated 2014, by Catchment Simulations Solutions, commissioned by Council), the site receives approximately 116m³/s of flow during a 1% AEP storm event, which results in a peak flood level of 624.42m AHD. This inundates a large portion of the site, including the existing M1 and M2 buildings on the west bank. 'Mainstream' flooding generated by flows within Nattai River accounts for a significant proportion of the flood affectation. There are overland flows entering the site from Southey Street to the east, which create visible flooding in the area around the existing M3 building and the proposed M5 and M6 buildings. This takes the form of sheet flow in the order of 0.0 to 0.2m in depth and 0.5m/s in velocity.

The existing Southern Sheds, M1, M2 and M3 are affected by flooding in the 1% AEP event. The new M4 is proposed to be located clear of flooding, while M5 and M6 will be within minor overland flow path from Southey Street.

The majority of the existing finished floor levels (FFLs) of the buildings will be maintained, meaning that no material changes to the surrounding flood levels would occur. There will be minor levelling of the floor levels within M1 and M2. There are no habitable uses proposed for the ground floor level of M1, M2, Northern and Southern Sheds and Maltster's Cottage, so as to be compatible with the expected 1% AEP flood inundation over the FFL.

Based on J Wyndham Prince's assessment, raising the ground floor level of M1 (outdoor gallery) would have insignificant impact on the Nattai River floodplain. The proposed modification to M1, M2, Northern and Southern Sheds and Maltster's Cottage will not affect the existing flood behaviour across the site.

The development will continue to be subject to the stormwater management requirements specified in the existing conditions of consent.

The potential impacts on water quality due to the site's location within the Sydney Drinking Water catchment has been discussed in section 6.1 above.

Bushfire

The site is identified as 'bush fire prone land' according to the bush fire prone land map (refer to Figure 18). A Bushfire Assessment, dated 30 April 2020, prepared by Peterson Bushfire was submitted with the original DA.

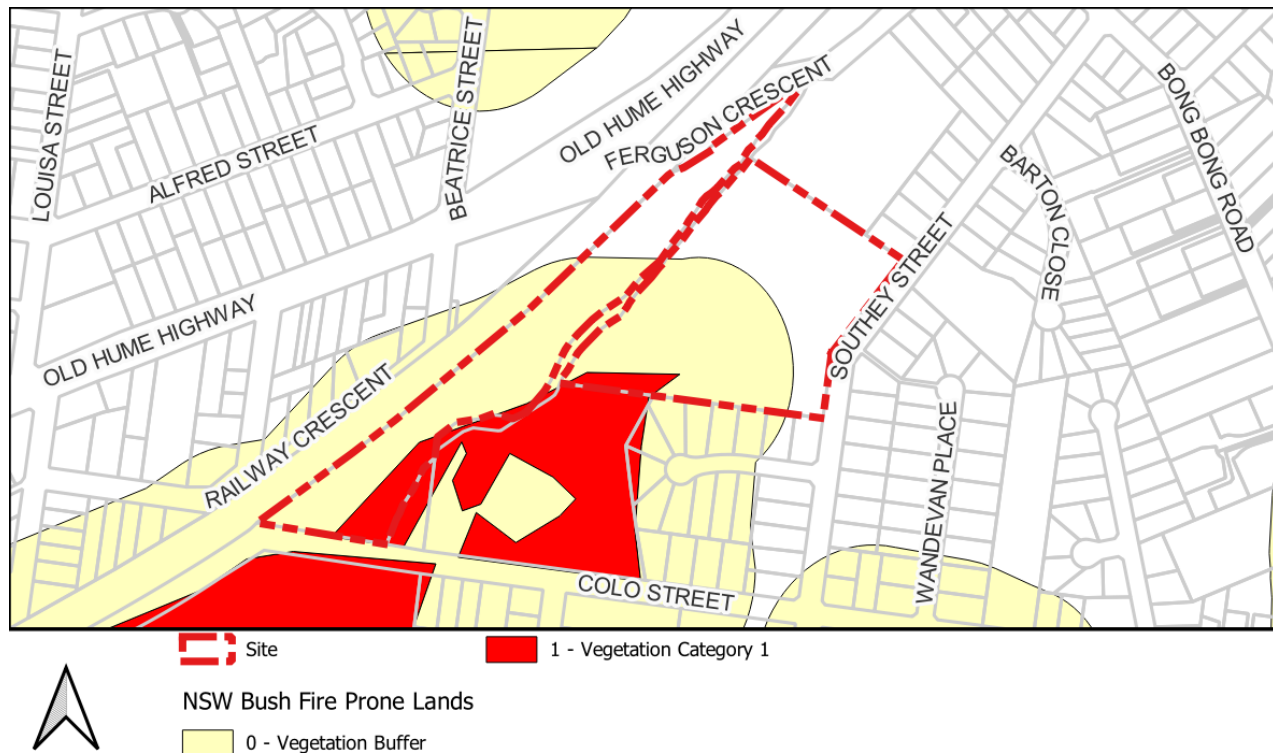


Figure 18 Excerpt of the Bushfire Prone Land Map (data source: NSW Planning Portal)

The proposed development falls within the definition of 'special fire protection purposes' under section 100B of the *Rural Fires Act 1997* (RF Act) as it includes hotel or motel accommodation and seniors housing (in concept form as part of the future M5/M6). The approved development was integrated development under section 4.46 of the EP&A Act and section 100B of the RF Act, and a bush fire safety authority was obtained from NSW Rural Fire Service (RFS). The general terms of approval issued by RFS has been incorporated in the development consent.

A Bushfire Advice letter, dated 15 February 2024, prepared by Peterson Bushfire, accompanies the subject application. The letter advises that the proposed changes to the M1/M2 complex and Maltster's Cottage are minor in the context of the approved building footprints and will not affect the bushfire protection measures recommended in the 2020 bushfire assessment and requirements in the bush fire safety authority issued by RFS. The provisions in the above bushfire assessment and terms of approval by RFS remain valid.

The modified development will continue to be subject to the conditions regarding establishment of asset protection zones, construction standards, provision of internal access roads, connection to water and utility services, and preparation of an emergency management and evacuation plan.

Contamination

The site has a history of agricultural, industrial and railway related operations involving the use of chemicals and fill materials for site levelling, and hence is considered to have contamination potential. According to Council's section 10.7 planning certificate, the site is not significantly contaminated land pursuant to the *Contaminated Land Management Act 1997*.

A Stage 1 Preliminary Site Investigation (PSI), dated 17 April 2020, was carried out by JK Environments. The report concludes that the historical land uses and potential sources of contamination identified would not preclude the proposed development, subject to the completion of a detailed site investigation, remediation action plan, hazardous building materials survey and asbestos management plan. The site can be made suitable for the proposed development, subject to implementation of the recommendations in the above additional assessments.

Subsequent to the above, JK Environments undertook a Detailed Site Investigation (DSI), dated 2 June 2022. The scope of the DSI included a review of the PSI, a walk-over site inspection, soil sampling from 60 in-situ locations, sampling from seven fill stockpiles, ground water sampling from eight monitoring wells and surface water sampling from three locations along Nattai River. The sampling exercise did not target all potential sources of contamination as their locations were largely inaccessible during the investigation. JK Environments is of the opinion that the site can be made suitable for the proposed development, subject to the preparation of an asbestos management plan, data gap investigation, remediation action plan and site validation assessment.

The proposed modification involves removal of the approved swimming pool and bar from the first level of M1, and conversion of the plant room at the ground floor to exhibition space. The proposal does not result in a fundamental change to the approved land uses in the M1/M2 building group.

The existing conditions of consent include detailed site remediation requirements. The modified development will continue to be subject to these requirements to ensure the site will be remediated, validated and audited to be suitable for the proposed uses.

Geotechnical consideration

A Geotechnical Assessment, dated 16 April 2020, prepared by JK Geotechnics accompanied the original DA. The report provided an assessment of the suitability of the site for redevelopment addressing aspects of excavation, ground water, shoring design, footing design and earthworks. It included preliminary advice on the geotechnical aspects to inform the proposed civil and structural design. The report recommended that a detailed geotechnical investigation must be carried out prior to preparing any contract documents and specifications.

A Geotechnical Investigation, dated 23 January 2024, prepared by EI Australia, has been prepared to inform the subject modification and the related amending DA. EI Australia has assessed the site surface and subsurface conditions at 5 boreholes and 18 test pits. The site would be suitable for the proposed works, subject to the recommendations in the report, including demolition, excavation, ground water management, footing construction and site preparation. It also recommends:

- Additional geotechnical investigations for the future M5/M6 area
- Long-term groundwater monitoring and seepage modelling
- Stability assessment of temporary batters
- Dilapidation surveys
- Design of working platforms (if required) for construction plant by a qualified geotechnical engineer
- Classification of all excavated materials to be transported off site
- Geotechnical inspections of all new footings / piles by a qualified geotechnical engineer before concrete or steel are placed to verify their bearing capacity and the in-situ nature of the founding strata
- On-going monitoring of groundwater inflows into the bulk excavation

The existing conditions of consent stipulate requirements for a geotechnical report detailing the foundation conditions of the site and solutions for consideration by a structural engineer, prior to the issuing of a construction certificate for the relevant building works. The modified development will continue to be subject to the above requirement.

European heritage

A Conservation Management Plan (CMP), dated December 2020, prepared by Paul Davies, was submitted with the original DA and approved as part of the existing consent. An amended Heritage Impact Statement (HIS), dated February 2024, also prepared by Paul Davies, has been prepared to support the subject modification application and associated amending DA.

The existing heritage listing of the site under Schedule 5 of the Wingecarribee LEP 2010 is as follows:

Table 8 Heritage listing of the site

Suburb	Item name	Address	Property description	Significance	Item no.
Mittagong	The Maltings	Southey, Colo and Ferguson Streets	Lot 21, DP 1029384	Local	I103
Mittagong	The Maltings Conservation Area	-----	-----	Local	C1845

The site is located in the vicinity of the following heritage items:

Table 9 Heritage items in the vicinity to the site

Suburb	Item name	Address	Property description	Significance	Item no.
Mittagong	Nattai Creek Bridge	Ferguson Crescent	Nattai Creek	Local	I1885
Mittagong	"Fitzroy Inn" (former "Oaklands")	1 Ferguson Crescent	Lot 16, DP 1005636	Local	I099
Mittagong	"Wandevan" house including interiors	20-24 Southey Street	Lot 8, DP 1201829	Local	I1747

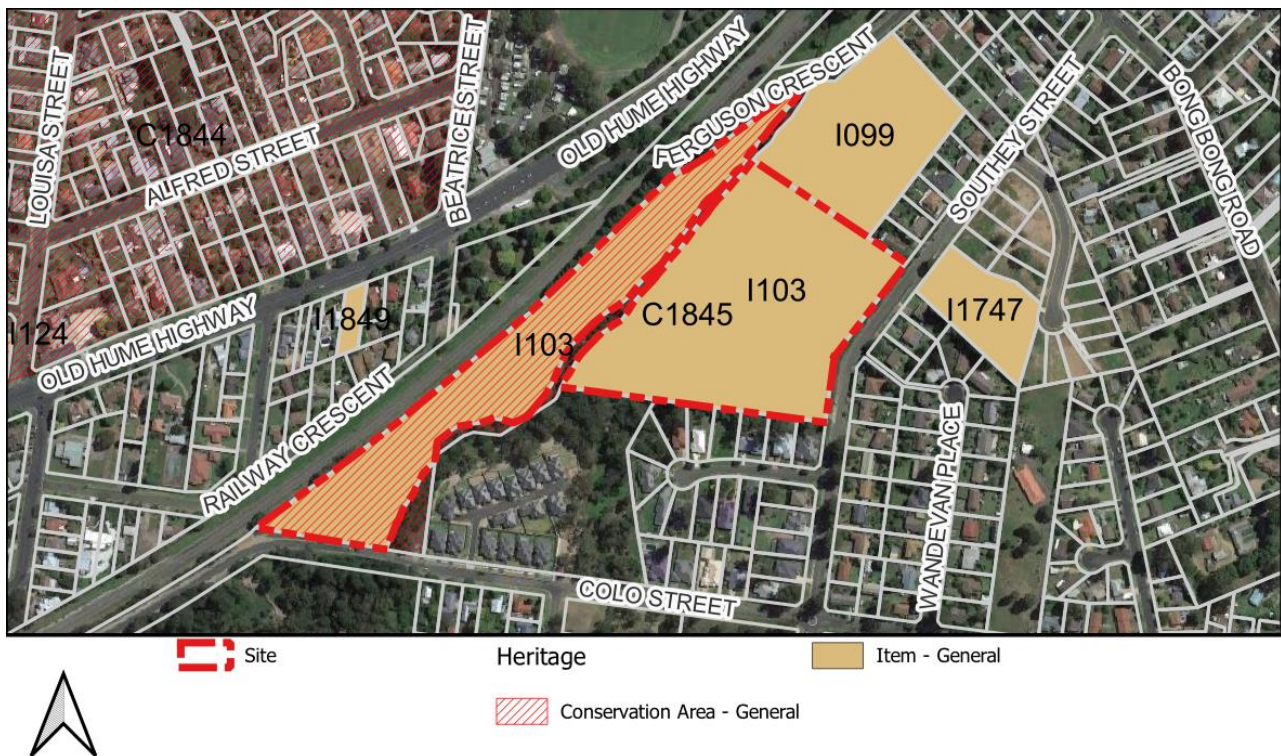


Figure 19 Excerpt of the Heritage Map (data source: NSW Planning Portal)

The maltings complex on the site is currently in a ruinous state and is set in a deteriorated landscape. The heritage values of the site pertain to the historical use and physical elements remaining from that use, including the remnant architectural form, and disposition and setting around Nattai River. The malthouses are a major specimen of masonry industrial architecture of the Federation era and are of great aesthetic appeal for their design, detailing and setting. The buildings are significant as a ruin that has existed for over 40 years and is a local landmark. The group is the only major maltings complex in NSW outside of Sydney. It is also a rare example of a rural maltings complex designed around an English landscape concept.

Since the original development consent was issued, more detailed work has taken place, including detailed structural and material analyses of the various remaining elements of the site. That work has established that some of the fabric that was intended to be retained is not capable of further life, and that conversely some elements proposed to be removed are sufficiently sound to be retained.

The proposed modification does not alter the heritage conservation approach adopted in the approved development scheme, as outlined below.

- *A particular difficulty of working with a site that is in an advanced state of ruin is to develop an approach to the site that manages heritage values, re-use and severe fabric deterioration. Restoration of the buildings is not feasible or actually possible, nor is it desirable given the very advanced state of decay. What remains after many years of deterioration due to weather exposure, stripping out of contents and interiors, removal of the working elements of the place and extensive vandalism are building shells in various degrees of decay. (Page 4 of HIS)*
- *The design decision has been to work with the ruined form and not to attempt reconstruction to an earlier either known or a conjectural form. However, it is noted that several elements in M1 and M2, such as roof forms, will be reinstated but not to their early detail. (Page 6 of HIS)*
- *The design intent has also been to work with what fabric can be retained and then to add new elements that are contemporary and which do not involve recreation of earlier forms. This maintains the values of the ruin, conserves the materiality and allows the addition of new forms that are in part adaptation but which are largely new work to exist in juxtaposition to the ruined elements. (Page 6 of HIS)*

- *There is no attempt to recreate heritage or rebuild long lost elements. Existing elements will be conserved, repaired, will have minor fabric replacement where needed to ensure the lieft of the surrounding elements but the proposal does not involve 'reconstruction' as it is defined in the Burra Charter. (Page 6 of HIS)*
- *When a building complex has deteriorated to the stage that the Maltings has reached, any concept of 'reconstruction' or 'restoration' is not realistic. The approach that has been developed is to maintain the place, in part, as a ruin, to recover some parts of the buildings by adding new roofs and rebuild remnant roofs and to insert new built elements within the existing spatial arrangement of the buildings as well as provide some new elements on the site. (Page 15 of HIS)*
- *The adaptation is to make new linkages, add stairs and lifts, create access corridors, enclose open areas with new elements and open up some areas to accommodate new uses so that the buildings have viable uses that are in part enclosed and in part open. The proposal also reinstates stairs which are almost all missing and adds lifts and services along with compliance with current codes. (Page 15 of HIS)*
- *New work is clearly new work whether it is a new inserted room, a new roof or a new window frame within or adjacent to an opening. The concept of retaining the ruin extends through all aspects of the site and the fabric. The re-use and adaptation of the ruined buildings and features is the major aspect of site interpretation (noting that other interpretation is proposed) as the ruin. People who use the site will explore the ruin as much as use the facilities. (Page 15 of HIS)*

The proposed modification is consistent with the above conservation approach and will protect the heritage significance of the site as:

- Due to the extensive damage and deterioration, Maltster's Cottage is not recoverable and has to be replaced with a new interpretative structure with reference to the historical form. The modification seeks to manage the ruin by conserving the remnant foundation while adding new elements, being a canopy and exhibition rooms. The new building will maintain a domestic scale at the same location as the earlier house and allow an intimate garden to be established to interpret its former spatial arrangement and character. It will also provide for public access and engagement as part of the adaptation of the site. The modification addresses the specific requirements of Condition 48.
- The first floor slab at M1 is not structurally adequate to accommodate new loads and the integrity of the supporting columns and footings could not be relied upon to enable a new use. As the upper floors were destroyed by fire, the slab has been exposed to weather. Based on further investigation, the slab is not considered to be adequate for retention and is proposed to be removed. As such, the approved swimming pool, terrace and bar at the first level will no longer be pursued. Some of the cast iron columns could be salvaged and re-used on the site as interpretation.
- The brick outer walls to the ground and first floors at M1 will be retained, in part. The ground floor space will be utilised as an outdoor exhibition space, in lieu of a plant room for the previously approved swimming pool. The existing footprint, form and materiality of M1 will be retained. This is consistent with the overall conservation approach for the site with the retention of ruinous building structures while opening up areas for appropriate new uses.
- As part of the design development process, it has been found that timber roof form and structures at M2 can be retained, with selective replacement of structural members and new roof sheeting. This change serves to retain additional fabric and the existing roof form and will deliver a positive conservation outcome. While this involves reconstruction of part of the roof, which has suffered from deterioration, the new material will be identifiable upon close inspection. The modification will remain consistent with the Burra Charter in terms of conservation processes.
- The modification will be consistent with the scale and massing under the existing approval, and will not affect any significant views to and within the site.

The modified development will continue to the subject to the conditions of consent, including the commissioning of a heritage architect to supervise the detailed design and construction, the preparation of an interpretation plan and a schedule of conservation works, and the undertaking of a photographic survey.

Aboriginal heritage

An Aboriginal Archaeological Survey report, dated 8 May 2020, prepared by Kayandel Archaeological Services was submitted with the original DA.

A search of the Aboriginal Heritage Information Management System (AHIMS) was undertaken for an area of 14km by 14km, square centred upon the subject site (with a 1km buffer). A total of 106 Aboriginal sites are registered within the search area. There is no record of any Aboriginal item within the subject site. An Aboriginal site was identified in proximity to the corner of Colo Street and Evans Street.

There are two areas of potential archaeological deposit (PAD) associated with the creek line identified on the subject site. Archaeologically sensitive landforms are also identified in the eastern parts of the site, which have the potential to contain artefact bearing deposits.

The report concludes that the proposed development may have an impact on the two PADs and archaeologically sensitive landforms.

The proposed modification relates to M1, M2, Northern and Southern Sheds and Maltster's Cottage, where their building footprints are outside the identified PADs and archaeologically sensitive landforms. The modification is not expected to result in any additional impact on the Aboriginal heritage values of the site beyond the approved development scheme.

The modified development will continue to be subject to the conditions of consent, which stipulate requirements for an Aboriginal cultural heritage assessment, consultation with the Aboriginal community, test excavation, an Aboriginal Heritage Impact Permit (AHIP) and management and notification of unexpected finds.

Structural assessment

A Civil and Structural Engineering Report, dated 1 May 2020, prepared by ARUP accompanied the original DA. The report provides concept structural design advice having regard to the proposed uses, design approach and conservation requirements. The advice is based on the principle to "minimise intervention and maximise the use and authenticity of existing material and framing where this can be effectively revitalised" (p. 7).

The report found that the existing Southern Shed appears to have inherent stability; however, it is unlikely to comply with current building codes and would require upgrades and additions. In relation to the M1/M2 buildings, the report concluded that a comprehensive structural investigation, survey, condition assessment and analysis of the existing load paths and element capacities are required to determine strengthening and remedial works and to ensure structural adequacy for the proposed uses.

Following the approval of the original DA, further investigations of the structural conditions of the buildings, including inspection and material testing, have been undertaken. A Structural Report, dated 6 February 2024, prepared by TTW, has been prepared to support the subject modification.

The assessment advises that the following components may be retained, with repair works to remediate defects:

- Masonry walls
- Piers and footings
- Concrete silos
- M2 concrete slabs, steel / cast iron columns and structural timbers (subject to repairs and selective replacement)
- Stores (Southern Sheds) 1A/1B timbers and steel (subject to strengthening)

The assessment recommends the following components not to be retained:

- Roof cladding to M1 and M2
- Vaulted slabs in M1 and associated embedded beams

- Selected deteriorated structural timbers in M2 and fire damaged roof

Design amendments to the approved DA scheme are required as certain elements originally proposed to be retained have now been found to be unfeasible due to their advanced deterioration; whereas specific components previously envisaged for demolition can be retained and conserved. In particular:

- The original approval sought to retain the vaulted concrete slab for the first level within the machinery room of M1. The additional structural investigation finds that the slab soffit (arches) is in poor condition with significant water ingress, staining, efflorescence and areas of cracking observed. Significant deterioration is also displayed in the concrete slabs within the kiln room of M1. The exposed flanges of the supporting steel beams to these slabs also exhibit severe corrosion. Given their extremely poor condition, re-use of the beams and level 1 slab in its entirety are not structurally feasible. The cast iron columns and footings are also to be removed as they are no longer required to support the slab above. Some of the columns may be re-purposed and relocated within the site for interpretation purposes.
- As for the machinery room within M2, some of the timber structural elements, including roof framing, may be re-used with selected replacement. The previous design assumed a high likelihood that the roof timbers would be in too dilapidated a state to be re-used. Further investigation confirms that those parts of the roof structures that are protected by the remaining roof cladding can be re-used. The roof framing, including trusses, will require modification and strengthening to facilitate removal of the central columns and to enable the installation of photovoltaic cells.
- The existing Maltster's Cottage is in very poor condition and has low level of intactness. The cottage was severely damaged by fire and decay and is prone to collapse. To address the conditions of consent, this modification seeks to retain the foundation of the cottage for the purposes of heritage interpretation. On this basis, the ruins will be partially retained. A pavilion style roof will extend over the ruins and new gallery and workshop buildings constructed.

The report recommends the carrying out of a holistic review of the structures to resist lateral loads, particularly the freestanding masonry walls and gable at M1, footings, and timber framing at the Southern Sheds.

The new structural elements are required to be designed and certified in accordance with the National Construction Code (NCC) and referenced Australian Standards. Where any existing building elements cannot be upgraded to achieve compliance with the NCC, such as seismic loading for existing unreinforced masonry, performance solutions will be sought.

The modified development will continue to be subject to the structural adequacy and building code compliance requirements in the conditions of consent.

Civil engineering

A Review of Civil Engineering Report, dated 7 February 2024, prepared by J Wyndham Prince, accompanies the subject application and the related amending DA. The report provides a peer review of the Civil & Structural Engineering Report, dated 1 May 2020, prepared by ARUP. Specifically, it reviews the civil engineering items, being road design, pavement and bulk earthworks, in the context of the proposed amendments to the approved development scheme.

The report advises that the internal roads and car parks are required to meet relevant Australian Standards and technical specifications. The internal roads would need to cater for the largest vehicles servicing the site, which in this case will be a 10.2m long vehicle. The proposed development may include a range of pavement treatments for the roads and parking areas; the paving needs to attain a 25-year design life.

The above matters can be addressed in detail at the construction certificate stage.

The review also provides updated estimates of bulk earthworks associated with the access roads, which would be less than the original estimates provided by ARUP.

Building code and fire engineering

A Building Code of Australia (BCA) Report, dated 27 February 2023, prepared by Group DLA, accompanies the subject modification application.

The report provides a preliminary assessment of the proposed development against the Building Code of Australia 2022. It concludes that the modified development is capable of satisfying the BCA through compliance with the deemed-to-satisfy provisions and formulation of performance solutions. Specific matters, including fire resistance, access and egress, services and equipment, health and amenity and energy efficient, can be addressed in detail at the construction certificate stage.

A Fire Engineering advice, dated 20 February 2024, prepared by Credwell has also been prepared. The advice identifies areas that do not meet the deemed-to-satisfy provisions of the BCA and recommends performance-based fire engineering solutions.

The existing conditions of consent contain requirements for compliance with the Building Code of Australia. The above matters can be addressed at the construction certificate stage.

Accessibility

An Access Report, dated 27 February 2024, prepared by Group DLA accompanies the subject application. It provides an accessibility compliance assessment of the development against the *Disability (Access to Premises – Buildings) Standards 2010*, the BCA (2022) and Australian Standards adopted by reference, and the objectives of the *Disability Discrimination Act 1992* (DDA) to ensure adequate access provisions for people with a disability.

The report concludes that the proposed design is capable of complying with the statutory accessibility requirements. This will be achieved through compliance with the deemed-to-satisfy provisions and performance requirements of the BCA. Further development and refinement of the design, such as landscape, pedestrian access and linkages, internal fit-out, stairs, walkways, ramps, lifts, sanitary facilities and other facilities and features will be addressed at the construction certificate stage.

The existing conditions of consent contain requirements relating to compliance with the BCA and DDA and provision of access for people with a disability. The modified development will be subject to these requirements, which can be addressed in detail at the construction certificate stage.

Utilities and servicing

A Utilities Servicing Assessment, dated 7 February 2024, prepared by J Wyndham Prince, accompanies the subject modification and the related amending DA.

The report finds that the site is within reasonably close proximity to service mains for sewer, potable water, electricity, gas and National Broadband Network (NBN). The site has Telstra and Optus mobile coverage, and Telstra landline is present in the surrounding streets. Sewer and water systems modelling using Wingecarribee Shire Council's network information and expected loadings from the proposed development confirms that sewer capacity and water supply are available. No significant impediments are envisaged to service the site; the servicing could also be staged.

Traffic, parking and access

The original DA was supported by a Traffic Impact Assessment, dated 12 May 2020, and supplementary technical memorandums dated 22 December 2020 and 8 June 2021, all prepared by Cardno. A Traffic and Transport Impact Statement of Advice, dated 28 February 2024, prepared by SLR accompanies the subject modification and the related amending DA.

The modification will remove the approved swimming pool, terrace and bar from M1. These facilities will be relocated to M3. An outdoor gallery will be created through conversion of the approved plant room for the pool at the ground level of M1. The modification will maintain the principal use of M1, M2, Northern and Southern Sheds and Maltster's Cottage as exhibition spaces and venues for bespoke functions.

Findings of previous traffic assessment

The original traffic assessment considered that traffic associated with the use of the M1/M2 group and Maltster's Cottage is likely to have cross-over with that related to the hotel at M3/M4. The future residential accommodation at M5/M6 is subject to detailed design and a further traffic assessment as part of a separate DA.

The previous assessment also noted that the DCP does not stipulate parking rates that correspond to the proposed uses at M1/M2. The parking provision for M1 and M2 has been determined having regard to the flexible uses across the site and the need to avoid overspilling during day-to-day operations (i.e. excluding special events). During business-as-usual operations, there would be low levels of visitors for small scale exhibitions at the galleries or bespoke functions held at M1/M2. The proposed parking provisions would be sufficient to cater for the expected demand, which is estimated to be 150 persons travelling by private vehicles with an occupancy rate of 2 persons per vehicle.

Assuming concurrent usage of M1/M2 that results in a maximum capacity of 400 persons, there is potential for up to approximately 37 vehicles overflowed onto the public road. Notwithstanding this, there is sufficient capacity in Colo Street west of the site to accommodate the additional parking demand generated by the development without detrimentally affecting the amenity of the surrounding residences.

Statement of Advice by SLR

The Statement of Advice considers that the design amendments proposed in the modification and amending DA are unlikely to result in any significant change to the traffic generating capacity and parking demand of the development.

The modified development will continue to be subject to the relevant conditions of consent, including:

40. Off Street Parking Provision – General

139 off-street car parking spaces suitably marked in accordance with Site Plan prepared by Snohetta; drawing number SD-A003; revision I; dated 04/05/2020 with minimum dimensions in accordance with Australian Standard AS2890.1 Off Street Car Parking. Details shall be submitted to the Accredited Certifier prior to the issue of a Construction Certificate showing compliance with this condition.

Reason: To ensure adequate parking and access.

112. Traffic Management Plan (TMP)

The applicant shall prepare a TMP that includes, for events where the occupancy of the M1 and M2 buildings combined exceed 200 persons, details on the on-site traffic management measures to be implemented to preclude significant traffic (more than 50% of the site occupants of the M1 and M2 buildings) exiting the site between 3pm and 6pm on a weekday (excluding public holidays). The TMP shall be provided to Council for approval prior to the issue of an Occupation Certificate.

Reason: To comply with the general terms of approval issued by TfNSW

Condition 142 Transport for New South Wales

3. Prior to issuing the Occupation Certificate for the Stage 1 buildings (M1, M2, M3 and M4), the developer must:

(c) Prepare a Traffic Management Plan (TMP) that includes, for events where the occupancy of the M1 and M2 buildings combined exceed 200 persons, details on the on-site traffic management measures to be implemented to preclude significant traffic (more than 50% of the site occupants of the M1 and M2 buildings) exiting the site between 3pm and 6pm on a weekday (excluding public holidays). The TMP shall be provided to Council for approval.

4. For the life of the development:

(a) No events are to finish between 3pm to 6pm on a weekday (excluding public holidays) where the total attendance numbers associated with the use of the M1 and M2 buildings combined are greater than 200 persons.

Subject to the above conditions, the modified development is unlikely to result to affect the capacity of the local road network and level of service of the nearby intersections.

The proposal has included 140 on-site car parking spaces and satisfies the requirements of Condition 40; the break-down and location are as follows:

- M1/M2 car park: 72 spaces
- M1/M2 staff car park: 13 spaces
- M3 basement car park: 4 spaces
- M3/M4 car park and private garage: 51 spaces

SLR advises that the parking provision would be adequate and a new traffic impact assessment would not be necessary. The design of the car park would meet the requirements of Australian Standard 2890.1.

Based on the provisions of the BCA relating to parking for people with a disability, 1 accessible space for every 50 car parking spaces or part thereof (up to 1,000 parking spaces) is required. The site plan shows the provision of 4 accessible parking spaces for a total of 140 in the whole development, which would satisfy the BCA requirements.

Council's DCP does not specify motorcycle and bicycle parking provisions. The existing consent conditions do not prescribe any quantum of bicycle parking provision. SLR recommends bicycle parking to be provided for staff members. Details on bicycle parking can be prepared at the construction certificate stage.

Vehicular access

Minor changes to the use of the three access points to various components of the development are proposed:

- The Colo Street driveway will provide access for the majority of visitors to M1/M2, as well as the hotel guests of M3/M4.
- Southey Street will be used by the hotel guests of M3/M4 and staff as well as service vehicles for M3/M4. This entry was originally envisaged for outbound traffic of hotel guests. The amended arrangement would relieve reliance on the Colo Street entry. Future access to M5/M6 will also be obtained from Southey Street, subject to further assessment as part of a separate DA.
- Ferguson Crescent will continue to be used by staff and deliveries only. No visitor access is proposed from this street.

Internally, a bridge connection is provided for vehicular access from the Colo Street car park to the basement car park at M3/M4. This will be for use by hotel guests only and sign-posted.

SLR has undertaken swept path analysis (refer to Appendix H of the Statement of Advice). The analysis indicates that all driveways have sufficient width for the 10.2m long rear-loading refuse collection vehicle. The Ferguson Crescent access will be able to accommodate infrequent emergency vehicles, such as a 12.5m long fire truck.

Pedestrian access is provided from all road frontages, with internal links across Nattai River and pathways through the landscaped gardens on the site.

Acoustic impact

An Acoustics report, dated 12 May 2020, prepared by ARUP accompanied the original DA. The report considers the acoustic aspects of the construction and operation of the development, conducts a quantitative assessment of the potential noise impacts on surrounding sensitive receivers, and identifies mitigation or management measures to control noise and vibration.

The report identifies the primary operational noise sources from the site with potential impacts on the surrounding noise sensitive uses, which are:

- Mechanical plant and equipment
- Outdoor patron areas
- Internal function spaces
- Loading docks
- Vehicle movements on the site

From an acoustic perspective, most of the indoor spaces will be controlled by the building envelope design and will have a low risk with respect to noise emission. As for the outdoor areas, noise generated by the patrons will need to be managed.

The proposed modification includes the removal of the outdoor swimming pool, associated plant room, bar and terrace from M1, and the creation of a new outdoor exhibition space at the ground level.

A Letter of Support, dated 23 January 2024, prepared by Acoustic Logic, concludes their peer review of the aforementioned acoustic report (by ARUP). The gallery and exhibition areas are enclosed spaces and the risk of noise impact will still remain low and manageable. As the swimming pool, terrace and bar have been removed, a key contributor to noise emission has been removed. Potential noise emission from the outdoor gallery at M1 can be managed through restricting amplified music levels and number of patrons.

The modified development will continue to be subject to the conditions of consent that specify requirements for controlling noise from mechanical plant and equipment and maximum noise levels at residential boundaries. In addition, potential noise emission will be mitigated by the management measures outlined in the Plan of Management and the operation hours conditions in the consent.

Waste management

An Operational Waste Management Plan, dated February 2024, prepared by Waste Audit has been prepared to support the subject modification and the related amending DA. The plan sets out the following details for waste management during the operational phase of the development:

- Storage facilities – size, construction, equipment and number and type of bins
- Collection vehicles – type, specification and servicing frequencies
- On-site handling and management practices
- Collection and loading processes
- On-going management, monitoring and reporting systems

A centralised, enclosed waste storage area will be provided at the rear of the new Northern Shed, which will have capacity to accommodate waste generation from the gallery, exhibition, café and ancillary uses at the M1/M2 group, including general wastes, recyclables and organic wastes. Service vehicles will access the storage facility via the driveway off Ferguson Street.

Waste materials from Maltster's Cottage will be transferred to the storage facility to the east of M3/M4 (adjacent to the new private garage).

A Demolition and Construction Waste Management Plan, dated February 2024, prepared by Waste Audit has been prepared to support the subject section 4.56 modification and related amending DA. It sets out the following details relating to the minimisation and management of construction and demolition wastes:

- Types and volumes of materials that can be re-used or recycled.
- Types and volumes of materials that are necessary to be disposed at landfills.
- Management and monitoring procedures, including processes for handling hazardous wastes.

Plan of management

A revised Plan of Management (PoM), prepared by Gyde, accompanies the subject section 4.56 modification and associated amending DA.

The PoM provides a framework for the management and operation of the premises and aims to achieve a satisfactory level of amenity and safety for the occupants and the surrounding community. The management measures set out in the PoM address the following aspects:

- Hours of operation
- Operational procedures for licensed premises
- Security
- Public liability
- Patron management
- Accommodation management
- Gallery management
- Waste management
- Noise and vibration management
- Traffic and parking
- Evacuation and emergency closing
- Signage strategy
- Rail corridor environs
- Swimming pool operation
- Incident reporting
- Complaint handling

Sustainability

The SEPP (Sustainable Buildings) 2022 was made in August 2022 and came into force on 1 October 2023. The savings provisions of the SEPP state that the policy does not apply to an application for modification of a development consent, if the development application was submitted on the NSW planning portal before 1 October 2023. The original DA was lodged on 10 June 2020 and as such the SEPP does not apply to the subject modification application.

A Sustainability Report, dated 2 February 2024, prepared by E-LAB accompanies the subject modification. The report sets out the sustainability strategies for M1/M2, Northern and Southern Sheds and Maltster's Cottage, addressing the following aspects:

- Energy systems and efficiency
- Thermal comfort
- Carbon reduction and elimination
- Climate change
- Water efficiency
- Materials and waste efficiency
- NCC BCA – Section J Energy Efficiency compliance

Refer to the Sustainability Report for details.

Views and visual amenity

Views to significant buildings on the site are primarily obtained from the nearby public realm, including from the railway corridor, Old Hume Highway, overbridge and entry gate on Ferguson Street and entry gate on

Southey Street. Although there is a clearer view of the maltings buildings at the Southey Street gate, it was not intended or planned as an important vista. There are limited views to the site from the surrounding residences due to the dense vegetation along the property perimeter.

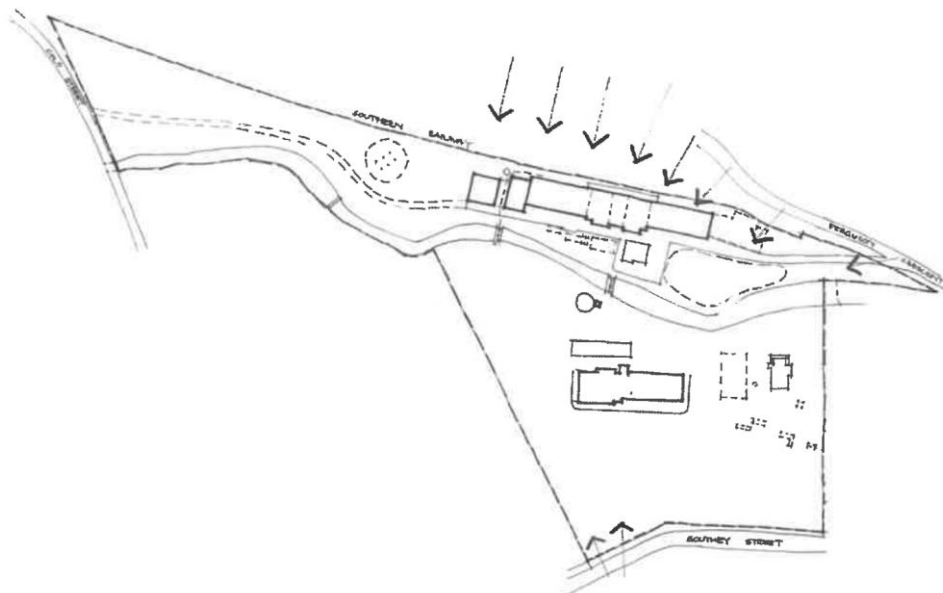


Figure 203 Significant views from outside the site (source: CMP)

The existing buildings have remained within an expansive landscaped setting and the significant views from within the site comprise:

- Views between the major buildings cross Nattai River and over largely open land;
- Views to the major buildings from the open space; and
- Views along the creek line.

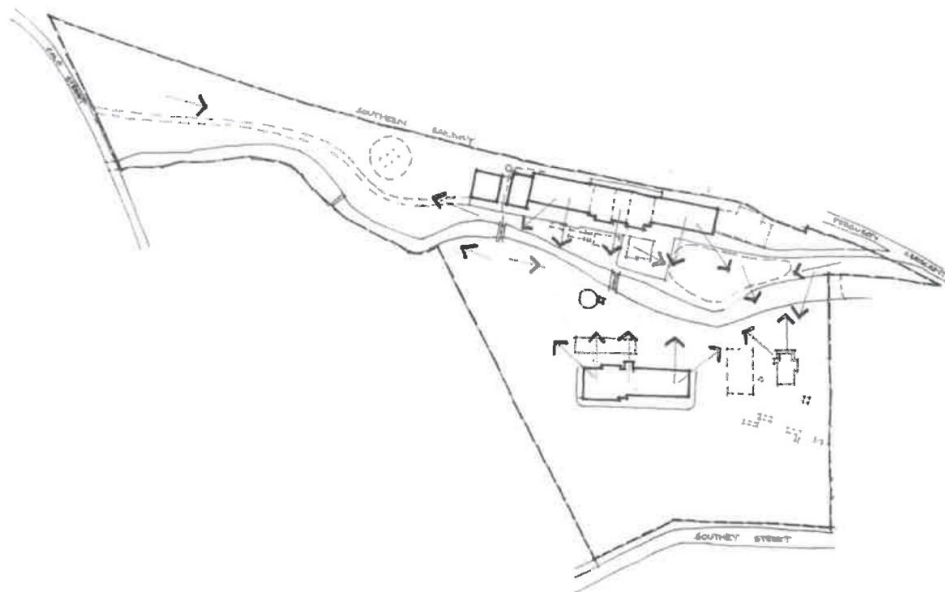


Figure 2421 Significant views within the site (source: CMP)

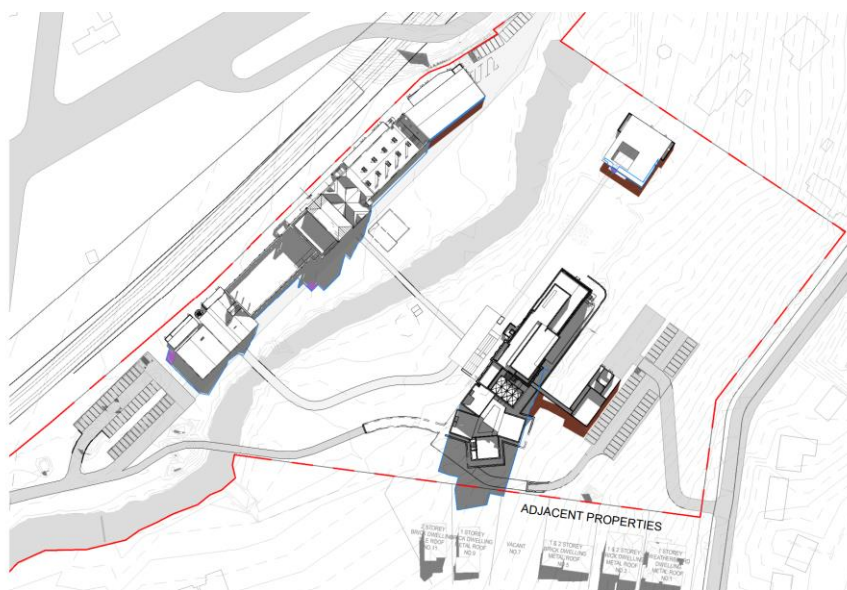
The proposed modification will not alter the height profile of the M1/M2 complex, apart from a small extension above the M1 kiln room. The works associated with the removal of the first floor slab at M1, the design adjustments to the Northern Shed and the reconstruction of Maltster's Cottage would not affect the visual relationship between the remnant buildings and their landscape setting. These works would have limited visibility from outside the site. As such, the modification would not result in any material change to the views and visual amenity of the site and surrounding land.

Overshadowing

The amended design for the M1/M2 building group and Maltster's Cottage will not cause any overshadowing of the adjoining residential properties in mid-winter. The shadow diagrams below illustrate the shadows that will be created by the development, including additional (brown) and reduced (purple) shadows when compared to the original approved scheme. All shadows from the M1/M2 group and Maltster's Cottage will be contained within the site.



Shadows at 9am, 21 June



Shadows at 12noon, 21 June



Shadows at 3pm, 21 June

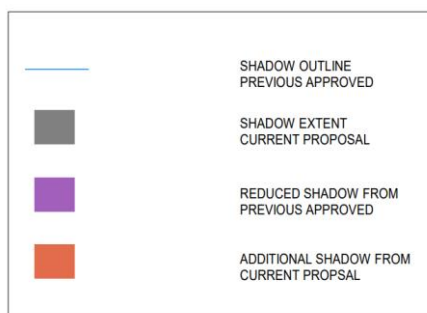


Figure 25 Shadow diagrams illustrating the impacts in mid-winter

Economic and social impacts

The proposed development, as modified by this application, would deliver positive social and economic impacts as follows:

- The adaptive re-use, conservation and activation of a heritage item, which if not carried out as part of the proposed development, would lead to the continued deterioration, degradation and ruination of the buildings and surrounding landscape, and ultimately to a degree at which the heritage values would be lost and irrecoverable.
- The conservation and rehabilitation of the vegetation and landforms of the riparian zones to Nattai River, and improvement to the water quality to the creek and the broader drinking water catchment.
- The remediation and decontamination of the site, which is located in close proximity to established residential communities.
- The accommodation and promotion of art and cultural activities on a revitalised historic site in close proximity to Mittagong town centre, which would become an iconic destination upon completion.
- The provision of a mixed-use development that will create jobs and enhance tourism in the Mittagong area with positive flow-on benefits to the local economy.
- Any amenity impacts arising from the use and operation of the development can be adequately mitigated and managed.

Suitability of the site

The suitability of the site for the proposed development was established by the granting of consent to the original DA by the NSW Land and Environment Court.

Reasons given by the consent authority

Section 4.56(1A) of the EP&A Act provides that in determining an application for the modification of a development consent, the consent authority must consider the reasons for the granting of the consent that is sought to be modified. The development consent was granted by the Land and Environment Court on 13 May 2022.

The Court's judgement states that the parties to the Class 1 appeal participated in a section 34 conciliation conference and reached an in-principle agreement regarding the granting of consent to the DA, subject to conditions. Commissioner Chilcott has considered jurisdictional matters in relation to the permissibility of the proposed development, the provisions of the Wingecarribee LEP 2010, the Rural Fires Act 1997, the Water Management Act 2000, the Biodiversity Conservation Act 2016, relevant SEPPs, and the matters specified under section 4.15 of the EP&A Act.

Commissioner Chilcott was satisfied that the parties' decision was one that the Court could have made in the proper exercise of its functions as required by section 34(3) of the Land and Environment Court Act 1979. In disposing of the proceedings in accordance with the parties' decision, the Commissioner also noted that he has not made any merit assessment of the issues that were originally in dispute between the parties.

Having regard to the above, there are no outstanding matters that would hinder the approval of the subject modification application.

Submissions

Any submissions in response to the public exhibition of the subject modification application will be considered by the consent authority.

The Public Interest

The proposed development, as modified by the subject modification application, will be within the public interest.

The proposal is consistent with the provisions of relevant legislation and the statutory controls prescribed in the applicable SEPPs and the Wingecarribee LEP 2010. Any deviation from the guidance in the Wingecarribee DCP is justified and is a considered response to facilitate a better planning outcome.

The proposal will result in positive environmental, social and economic impacts and warrants approval by the consent authority.

7. Conclusion

The subject section 4.56 application seeks to modify the development consent for DA/2020/1400 granted by the NSW Land and Environment Court in relation to 2 Colo Street, Mittagong, commonly known as “The Maltings”. The proposal amends the design of works associated with the adaptive re-use of Maltings M1, M2, the Southern Shed and the Maltster’s Cottage, and the new Northern Shed, which are the result of the design development process.

The assessment presented in this statement and the accompanying documentation conclude that the modified proposal is:

- Substantially the same development for which the consent was originally granted;
- A suitable and desirable outcome for the site that meets the relevant heads of consideration under section 4.56 of the EP&A Act;
- Consistent with the aims, objectives and provisions of the applicable environmental planning instruments and controls;
- Satisfactory having regard to the mitigation of potential environmental and amenity impacts on the surrounding land; and
- Within the public interest.

The proposal has been carefully formulated to halt the progressive deterioration of the ruinous and derelict buildings on the site and to conserve, revitalise and interpret the historic fabric that is capable of retention. The modification has been informed by additional investigation and will facilitate the protection and adaptive re-use of the heritage item and rehabilitation of the landscape and natural features on the site. The proposal is expected to deliver significant public benefits at the community and shire level and warrants approval by the consent authority.

Should you require any further clarification or information in respect to this application, please contact Simon Ip, Associate Director on 9071 1896 or the undersigned on 9071 1859.



Mark Schofield
Director