

SOUTHERN REGIONAL PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-407
MOD Number	24/1140 (PAN-415744)
LGA	Wingecarribee Shire Council
Proposed Development	S4.56 modification to Development Consent 20/1400 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 Malthouses M1, M2, M3 and M4.
Street Address	2 Colo Street, MITTAGONG Lot 21 DP 1029384
Applicant/Owner	Applicant – The Trustee for the Maltings Property Trust c/- Timothy Chung Owner – Halcyon Hotels Pty Ltd
Date of MOD lodgement	5 April 2024
Number of Submissions	Public Notification <ul style="list-style-type: none"> • Notification: 3 May 2024 – 2 June 2024 <ul style="list-style-type: none"> ○ Seven (7) unique submissions
Recommendation	Approval subject to conditions of consent
Regional Development Criteria (Schedule 6, Clause 2 of State Environmental Planning Policy (Planning Systems) 2021)	Capital Investment Value (CIV) for the original DA exceeded \$30 million (\$68,108,909.00)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979;</i> • <i>Environmental Planning and Assessment Regulation 2021;</i> • <i>State Environmental Planning Policy (Planning Systems) 2021;</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021;</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021;</i> • <i>Wingecarribee Local Environmental Plan 2010; and</i> • <i>Mittagong Township Development Control Plan.</i>
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> 1. Draft Conditions of Consent 2. Architectural Plans 3. Planning Statement 4. Detailed Site Investigation 5. Flora and Fauna Assessment Report 6. Vegetation Management Plan 7. Koala Assessment Report Addenda 8. Plan of Management 9. Heritage Impact Assessment 10. DA Structural Report 11. Structural Concept Design Statement

	12. Stormwater & Flood Management Strategy 13. Demolition and Construction Waste Management Plan
Report prepared by	Andre Vernez – Acting Coordinator Planning Assessment
Report date	5 February 2025

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

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

Conditions

Have draft conditions been provided to the applicant for comment? **No**

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

EXECUTIVE SUMMARY

Council is in receipt of a S4.56 modification application to Development Consent 20/1400 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.

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

The site is zoned R2 Low Density Residential under the provisions of *Wingecarribee Local Environmental Plan 2010* (WLEP 2010). 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 WLEP 2010, and to facilitate the on-going protection of its values. The proposal is to 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.

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)". Under WLEP 2010 both "function centre" and "information and education facility" are not permissible in the R2 zone. The permissibility of these two uses is sought through the provisions of Clause 5.10(10) of WLEP 2010.

The application was publicly notified on one (1) occasion, from 3 May 2024 to 2 June 2024 (30 days). A total of seven (7) unique submissions were received across the notification period. A detailed response to the issues raised in the submissions is provided in this report.

The original application was classed as Integrated Development under s100B of *Rural Fires Act 1997*, as the proposal included development that is for special fire protection purposes, and s91 of *Water Management Act 2000*, as the proposed development involved works on waterfront land and constituted a controlled activity. The modification application has been referred to the approval agencies and amended general terms of approval have been issued by NSW Department of Planning and Environment - Water.

An assessment of the modification application has been undertaken against the following relevant environmental planning instruments:

- *Environmental Planning and Assessment Act 1979*;
- *Environmental Planning and Assessment Regulation 2021*;
- *State Environmental Planning Policy (Planning Systems) 2021*;
- *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*;
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*;
- *Wingecarribee Local Environmental Plan 2010*; and
- *Mittagong Township Development Control Plan*.

The proposed modified development has been assessed against the relevant matters for consideration pursuant to Section 4.56 and Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, including likely impacts, the suitability of the site for the development, and the public interest.

The assessment has found that the proposed development is consistent with the objectives and provisions of the relevant environmental planning instruments. The application is supported by sufficient

information to demonstrate the site remains suitable for the proposed development. The proposal will not result in any adverse impacts on the built or natural environment. The development is therefore considered to be in the public interest.

Considering the above, it is recommended that the Southern Regional Planning Panel determine the modification application pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* by way of approval in line with the recommended conditions of consent outlined in this report.

BACKGROUND

Application Background

The application was lodged with Council on 5 April 2024.

A site inspection and briefing with the Southern Regional Planning Panel (SRPP) was undertaken on 20 August 2024. During the briefing it was noted that the applicant had been requested to address the following matters in a Request for Information (RFI) dated 16 August 2024 (as raised by Council's Heritage Advisor, Development Engineer and Environmental Health Officer).

Heritage

- Detailed structural plans and specifications are required of the proposed / required structural works to strengthen, stabilise and ensure the protection of the retained portions of the buildings, per the recommendations of the submitted structural assessment report.
- The photovoltaic cell array from the northwestern facing roof plane of M2 is required to be deleted and the roof plane reclad per the materials and colour finishes schedule.
- Elevation plans are required to show the vertical height of the retained vestiges of the walls to the former Maltster's Cottage. It is recommended that the vertical height of the retained vestiges allow the retention of door thresholds to aid in the interpretation of the internal configuration and functioning of the former dwelling. This is to be shown on elevation and section plans.
- The proposed tree planting within the internal footprint of the former Maltster's Cottage is required to be deleted.

Contamination

- A Detailed Site Investigation report (DSI) is required and is to be authored and/or approved by a suitably qualified contaminated land consultant who is either a Certified Environmental Practitioner – Site Contamination (CEnvP-SC) or Certified Professional Soil Scientist – Contaminated Site Assessment and Management (CPSS CSAM); and
- A Remedial Action Plan (RAP) is required and is to be authored and/or approved by either CEnvP-SC or CPSS CSAM.

Noise

- A final version of the relevant acoustic advice is required in relation to this application. The submitted letter 'Southern Sheds, M1, M2, Northern Shed and Maltsters House, The Maltings Development - S4.55 Letter of Support' by Acoustic Logic (Ref: 20230457.1/2301A/R0/PF; dated 23/01/2024) is marked as 'DRAFT'.

Flooding

An updated Flood Report and Architectural Plans are required to show amended FFLs to be 624.15m AHD for the Northern Shed. This is to ensure consistency with the Masterplan and to provide sufficient freeboard for habitable buildings. The currently proposed Finished Floor Levels for the Northern Shed in the submitted Flood Report and Architectural Plans are below the FFLs approved as part of the Masterplan DA 20/1400.

In relation to flooding and additional information provided, the applicant was advised on 18 October 2024 that the maximum flood level should consider the flood level across all portions of the proposed

buildings. In this case, at the plant room and services area of the Northern Shed, the flood level is set at 623.74m AHD. Therefore, the minimum Finished Floor Level for the Northern Shed should be 624.24m AHD (623.74m + 0.5m freeboard). The submitted Architectural Plans and Stormwater & Flood Management Strategy Report are required to be amended to reflect the correct floor level.

As detailed in this report, information has been provided by the applicant to address these matters. Council is satisfied these matters have been resolved.

SITE DESCRIPTION

General

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

The site is irregular in shape with an area of approximately 6.6ha and is dissected by Nattai River.

The land has a moderate slope from the east towards the riverbank with a relatively flat area in the southwestern 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 both the eastern and western sides of the river; the ruins of the former company cottage ('Maltster's Cottage'); the remains of former barley stores, engine room, battery room and other ancillary buildings; along with the 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 portion of the site is identified as bush fire prone land. A significant portion of the site is flood prone land.



Figure 1: Aerial Image

The Maltings is listed as a local heritage item and within The Maltings Conservation Area under the *Wingecarribee Local Environmental Plan 2010* (WLEP 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.

Surrounding Locality

The site is surrounded by low density residential uses to the north-east, east and south. These residences are generally screened by dense tree planting.

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 rail corridor (Main Southern line) runs along the north-western boundary of the site. Mittagong Train Station is approximately 1km to the south-west of the site.

DESCRIPTION OF THE DEVELOPMENT

Development Consent 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 Malthouses 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 malthouses 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.

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

The subject 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.

The submitted Planning Statement indicates that further investigation of the structural condition of the building found 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 is to 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 found 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 proposed 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.

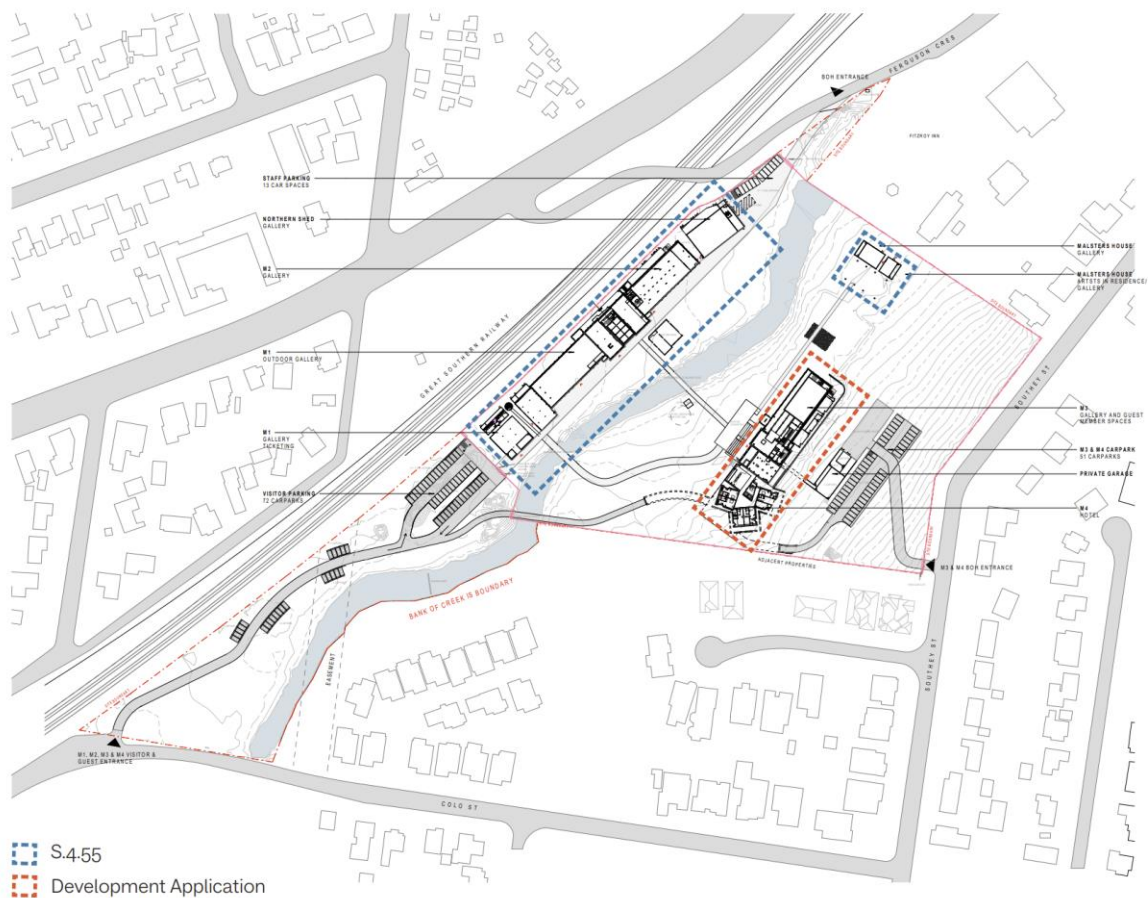
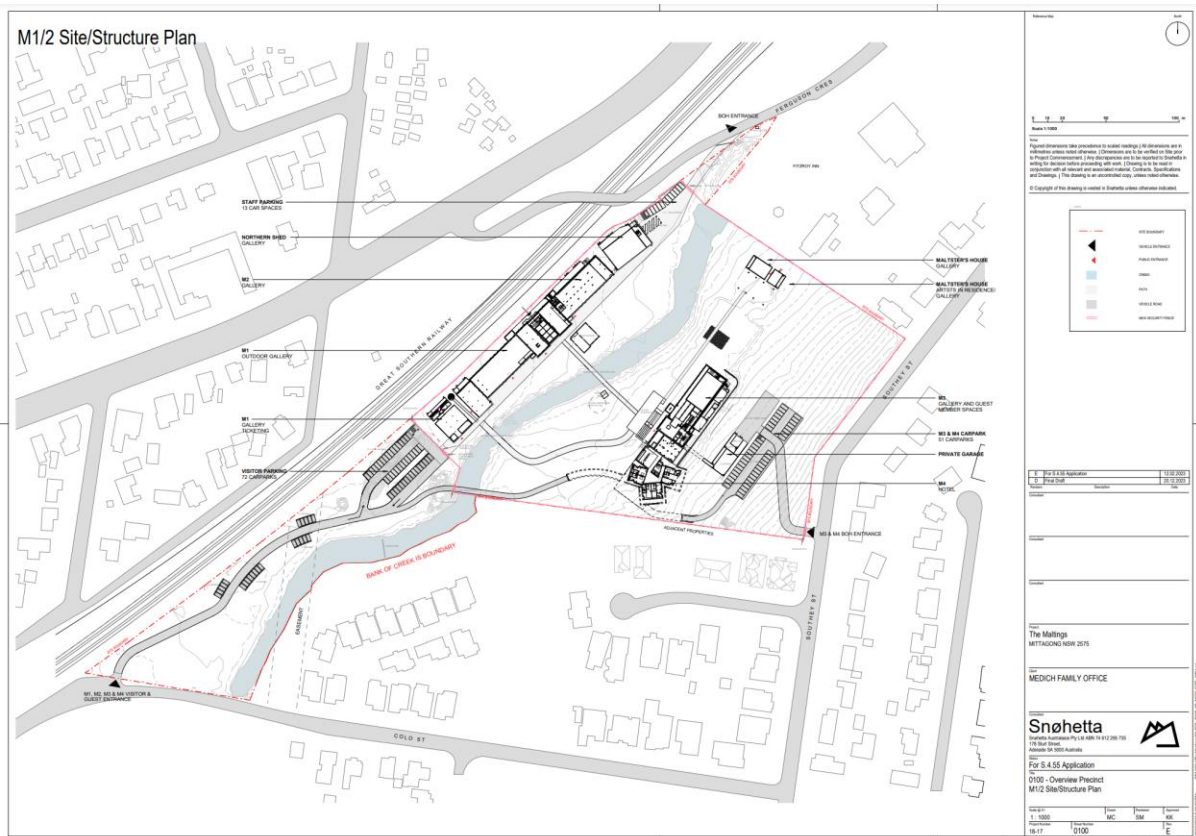
The proposed modification is to maintain the overall form, scale and character of M1/M2 and the Southern Sheds, and retain the roof structures over the machine room of M2 previously identified for demolition.

The Maltster's Cottage has been 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 (2) enclosed rooms for exhibition purposes. Vegetation is to be allowed to grow around the remnants of the former cottage as part of a ruinous landscape. The new interventions are proposed to be sympathetic to the scale and character of the remnant structures.

It is noted that the concurrent amending DA 24/1138 has been 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) is to also be altered to be sympathetic to the changes to M3. Due to the extent of design changes, the above elements are proposed via DA 24/1138.

This section 4.56 modification application focuses on M1, M2, Northern Shed and Southern Sheds along with the Maltster's Cottage. It proposes modification to the following existing conditions of consent including the Section 64 contributions for Stage 1 as per Condition 30 – Water Management Act – Certificate of Compliance:

- 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



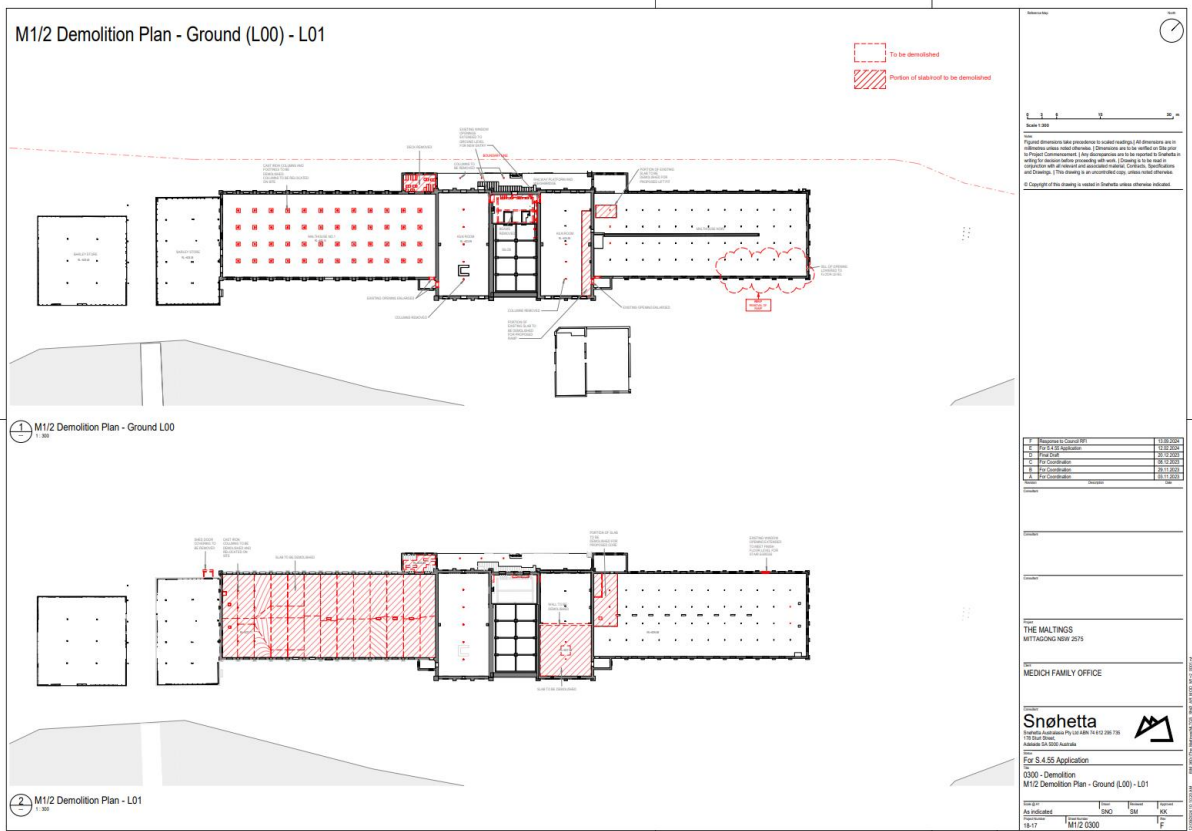


Figure 4: M1/2 Demolition Floor Plan (Ground (L00) – L01)

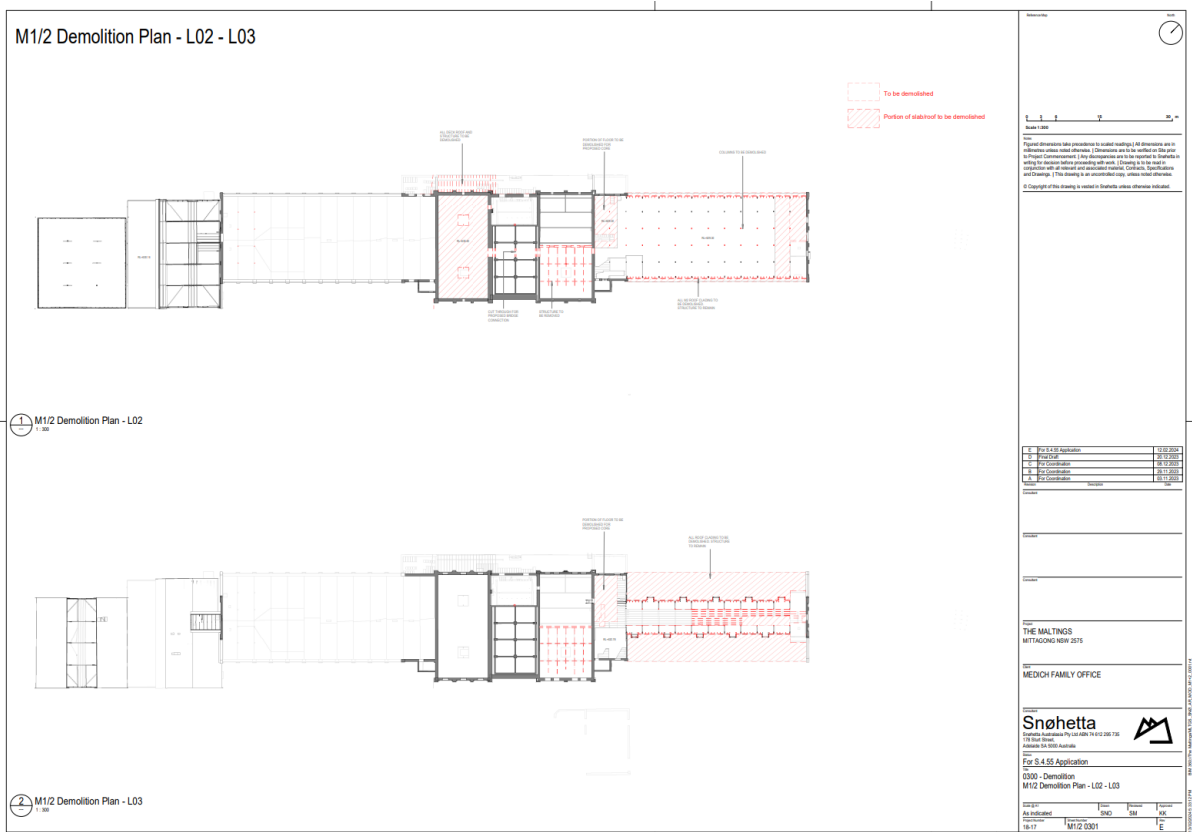


Figure 5: M1/2 Demolition Floor Plan (L02 – L03)

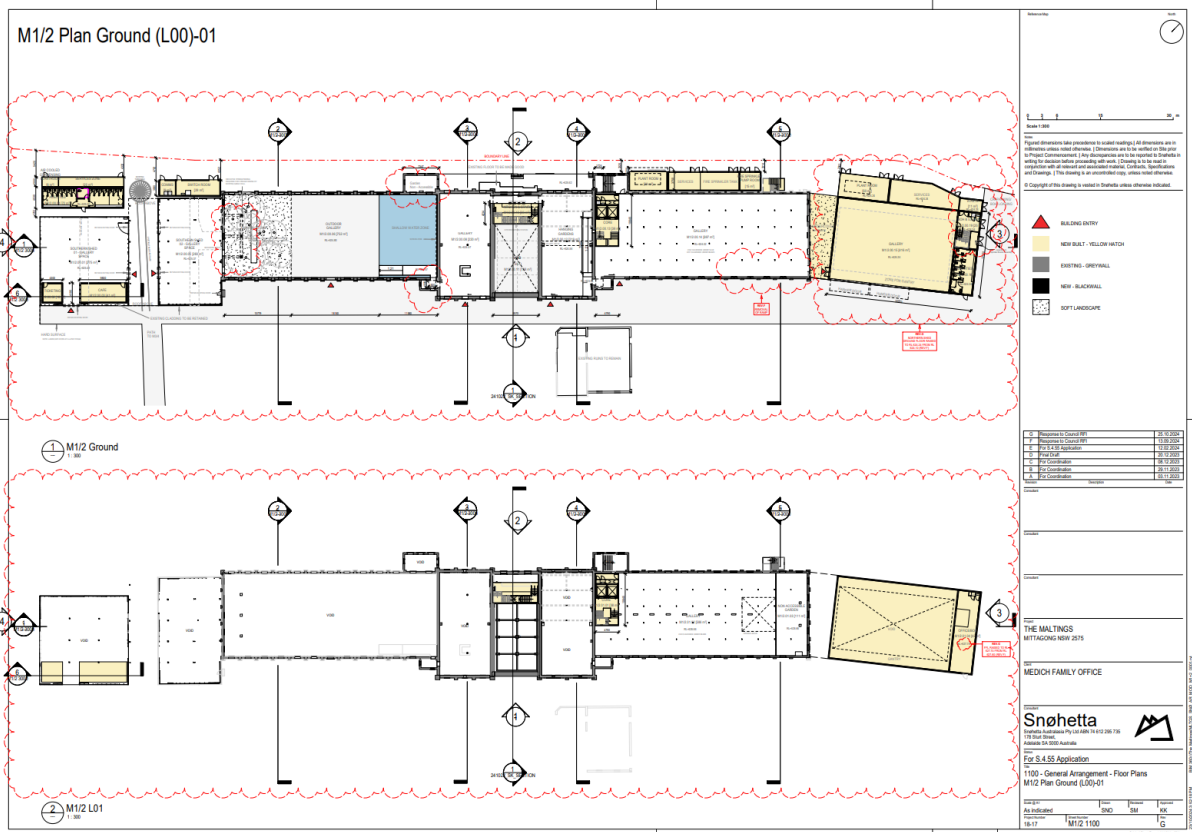


Figure 6: M1/2 Ground Floor Plan (L00 – L01)

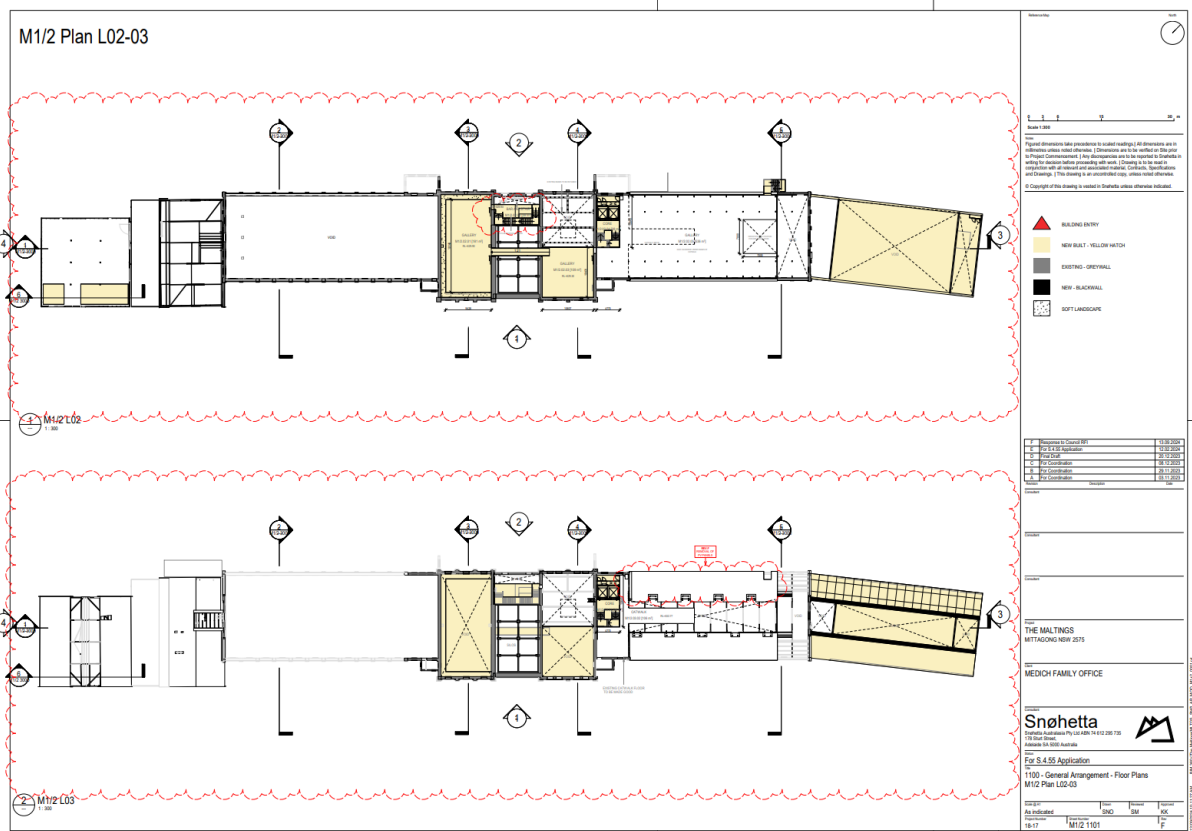
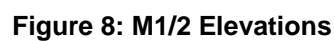


Figure 7: M1/2 Ground Floor Plan (L02 – L03)





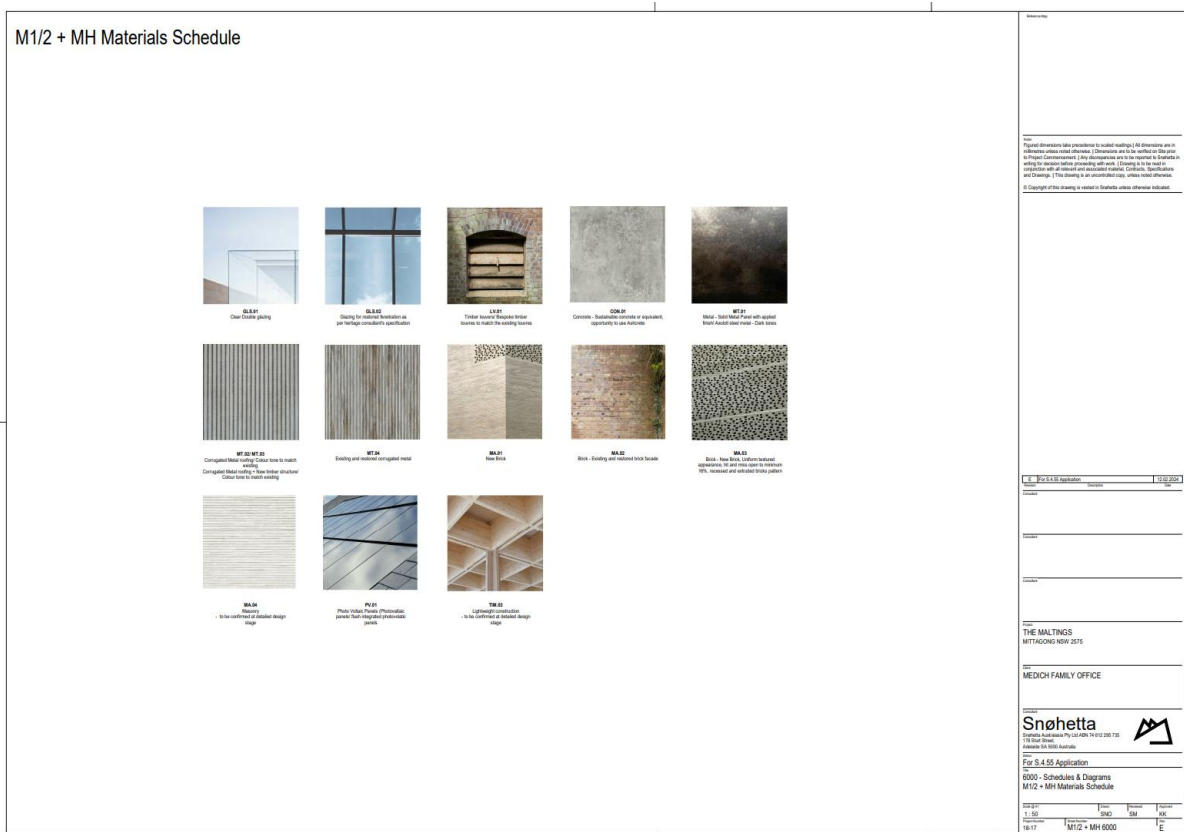


Figure 12: M1/2 + Maltster's House Materials Schedule

Referral Comments:

The modification application was referred to a number of internal and external technical experts as follows:

Environmental Health: Has raised no objection to the proposal subject to conditions. The conditions relate to contamination, noise and food premises. It is noted the majority of these conditions are addressed by the existing consent.

However, the following conditions are recommended to be either modified or inserted to eliminate a few minor inconsistencies in those conditions, remove references to superseded legislation (e.g. SEPP 55) and account for the completion of the DSI:

- 2. Asbestos Management Plan (AMP) (modified)
- 3. Remedial Action Plan (RAP) (modified)
- 4. Section B5 Site Audit Statement or Interim Audit Advice (modified)
- 5. Remediation (modified)
- 6. Validation Report (modified)
- 7. Site Audit Report and Site Audit Statement (modified)
- 8A. Prior Notice of Category 2 Remediation Works (inserted)
- 8B. Notice of Completion of Category 2 Remediation Works (inserted)

Assessment Officer's Comment: These conditions will be included in the attached Consent.

Development Engineer: Has raised no objection to the proposal subject to conditions as follows:

- 40. Off Street Parking Provision – General (modified)
- 127. Geotechnical Risk Assessment Report Compliance (modified)

Assessment Officer's Comment: These conditions will be included in the attached Consent.

Accredited Certifier: Has raised no objection to the proposal. No conditions are recommended.

Assessment Officer's Comment: Noted.

Ecologist: Has raised no objection to the proposal subject to conditions being inserted as follows:

- 56A. Grey-headed Flying Fox Management Plan (inserted)
- 56B. Microbat Management Plan (inserted)
- 56C. Tree Retention Plan (inserted)
- 73A. Habitat Bearing Tree Survey (inserted)
- 110D. Felling Supervision (inserted)
- 110E. Clearing of Existing Vegetation (inserted)
- 110F. Habitat Structures (inserted)
- 110G. Koala Corridor (inserted)

Assessment Officer's Comment: These conditions will be included in the attached Consent.

Heritage Advisor: Has raised no objection to the proposal subject to conditions as follows:

- 22. Heritage Interpretation Strategy and Heritage Interpretation Plan (modified)
- 22A. Building works to comply with BCA - Heritage Buildings (inserted)
- 22B. Pre-emptive structural works to heritage buildings (inserted)
- 22C. Retention of cast iron columns to Malthouse No.1 (inserted)
- 22D. Maltster's Cottage interpretation works (inserted)
- 64A. Heritage site induction ('toolbox talks') (inserted)
- 110A. Reduction of rising damp and salt attack in buildings constructed prior to 1930 (inserted)
- 110B. Temporary storage of materials, equipment and waste during works (inserted)
- 110C. Uncovering of concealed architectural features or detailing (inserted)
- 138A. No painting or rendering of masonry or stone (inserted)

Assessment Officer's Comment: These conditions will be included in the attached Consent.

NSW Rural Fire Service (external referral): No objection subject to compliance with previously issued general terms of approval (dated 28/04/2021). Refer to Condition 139 of the existing consent.

Assessment Officer's Comment: Condition to remain unaltered in the attached Consent.

NSW Department of Planning and Environment - Water (external referral): No objection subject to compliance with general terms of approval (dated 19/08/2024). Refer to Condition 141 of the existing consent.

Assessment Officer's Comment: Condition will be modified in the attached Consent.

Water NSW (external referral): No objection subject to compliance with concurrence (dated 23/08/2024). Refer to Condition 140 of the existing consent.

Assessment Officer's Comment: Condition will be modified in the attached Consent.

Transport for NSW (external referral): No objection subject to compliance with conditions (dated 24/05/2024). Refer to Condition 142 of the existing consent.

Assessment Officer's Comment: Condition will be modified in the attached Consent.

Australian Rail Track Corporation (external referral): No objection subject to the requirements detailed in response dated 07/07/2021 as part of the existing consent are met. Refer to Condition 56 of the existing consent.

Assessment Officer's Comment: Noted.

DPE Biodiversity, Conservation and Science (external referral): Rejected. It is not evidenced that the development is likely to significantly affect threatened species.

Assessment Officer's Comment: Noted.

TYPE OF MODIFICATION (as prescribed by S.4.56):

4.56 Modification by consent authorities of consents granted by the Court

(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.

ASSESSMENT

(a) "substantially the same"

A comparison of the approved and modified development is provided in Table 2 (below) from the Planning Statement submitted with this application:

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:
	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)

The applicant has confirmed in the Statement that the justification for the proposed modifications is 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.*

Following consideration of the nature of and reasoning for changes to the approved design. Council is satisfied that the proposed modification would be substantially the same as the development which was originally approved.

The modified development will result in no significant changes and the proposal is considered to be quantitatively and qualitatively the same as the development as originally approved.

(b) it has notified the application in accordance with—

- (i) the regulations, if the regulations so require, or**
- (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**

The modification application was notified as per the original DA in accordance with Council's Community Engagement Strategy, including to previous objectors (being seven (7) in total).

(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

Each person who made a submission as part of the original DA has been notified of the proposed modification by sending written notice to the last address known to Council of the objector or other person.

(d) Submissions

Seven (7) unique submissions were received by Council and considered as part of the assessment of this application. Refer to comments later in this report.

(1A) S.4.15(1) - relevant considerations

ASSESSMENT UNDER SECTION 4.15 OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979*

The provisions of any EPI, draft EPI; DCP; and the regulations [s4.15(1)(a)]

SEPPs

State Environmental Planning Policy (Planning Systems) 2021 (formerly State Environmental Planning Policy (State and Regional Development) 2011)

In accordance with section 2 under Schedule 6 Regionally significant development of the SEPP, the proposed development subject of the original development application constituted 'regionally significant development' as it had a capital investment value exceeding the \$30 million threshold for general development. Therefore, the consent authority is the Southern Regional Planning Panel.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Chapter 4 of SEPP (Resilience and Hazards) 2021 (section 4.6) requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use.

Council's Environmental Health Officer reviewed the proposal and noted that the following needed to be submitted to Council for the assessment of this application:

- *Detailed Site Investigation report (DSI) authored and/or approved by a suitably qualified contaminated land consultant who is either a Certified Environmental Practitioner – Site Contamination (CEnvP-SC) or Certified Professional Soil Scientist – Contaminated Site Assessment and Management (CPSS CSAM); and*
- *Remedial Action Plan (RAP) authored and/or approved by either CEnvP-SC or CPSS CSAM.*

The Officer also advised that if the application is recommended for approval, there would need to be a condition imposed requiring the RAP to be implemented and Site Validated prior to the issue of a Construction Certificate.

Accordingly, the applicant was requested to provide a DSI as well as a RAP in order to enable Council to properly consider land contamination and remediation matters in determining the subject application.

The applicant submitted a DSI, however, in relation to the requested RAP, they advised that the existing conditions under Development Consent 20/1400 include requirements for the preparation of a Remedial Action Plan (RAP), among other matters. Further, a RAP can be prepared at the post-consent stage consistent with the existing conditions. The requirement for preparing a RAP can be addressed via an appropriate condition of consent.

Following review by Council's Environmental Health Officer, it was determined that the submitted DSI appears to have followed the applicable Guidelines. However, it has not been prepared or approved by an accredited contaminated land consultant.

Given that the previous development consent (20/1400) was granted by the Land and Environment Court and conditioned the preparation of a RAP and its implementation, there is no issue with the same approach being carried over to any consent for this current application. Note any remedial works are to be completed prior to the commencement of any construction works.

Accordingly, the Officer suggested that the contaminated land conditions from Development Consent 20/1400 be adopted with modifications made to eliminate a few minor inconsistencies in those conditions, remove references to superseded legislation (e.g. SEPP 55) and account for the completion of the DSI.

Accordingly, the Officer recommended conditions be imposed in relation to the following as part of any consent granted (dated 2 October 2024).

- *Prior Notice of Category 2 Remediation Works*
- *Notice of Completion of Category 2 Remediation Works*
- *Asbestos Management Plan (AMP)*
- *Remedial Action Plan (RAP)*
- *Section B5 Site Audit Statement or Interim Audit Advice*
- *Remediation*
- *Validation Report*
- *Site Audit Report and Site Audit Statement*
- *Compliance with Environmental Management Plan*

As such, Council is satisfied that the land will be remediated before the land is used for the proposed development and consent is able to be granted in this regard.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

Chapter 2 of SEPP (Biodiversity and Conservation) 2021 contains provisions replacing the former SEPP (Vegetation in Non-Rural Areas), and the aims are (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. This Chapter includes Parts relating to Clearing Vegetation in Non-Rural Areas (Part 2.2); Council Permits for Clearing Vegetation in Non-Rural Areas (Part 2.3); and Approval of Native Vegetation Panel for Clearing Native Vegetation in Non-Rural Areas (Part 2.4).

Relevant further considerations within the Flora and Fauna Assessment (FFA)

Council's Ecologist has noted an original Flora and Fauna Assessment (FFA) was completed by Eco Logical Australia (ELA) and approved circa 2020 through the Land and Environment Court (LEC). Time has passed and therefore ELA completed a re-assessment (submitted with this application). No additional trees are proposed for removal.

Key findings of ELA's 2024 reassessment:

The focus of the re-assessment by ELA was to ensure that the condition of the vegetation, particularly the threatened ecological community had remained the same. The survey also recorded any opportunistic threatened flora or fauna sightings, and any threatened fauna habitat, not previously noted.

The condition of the vegetation onsite had not substantially changed since the previous assessment and the mapped boundaries showing the differences in vegetation communities was deemed accurate.

The key findings were:

- Southern Highlands Shale Woodland (TEC) is still present. Direct impact is small in area – still totalling 0.1 ha, with a further 0.02 ha of exotic vegetation being removed.
- No threatened flora was recorded.
- One significant finding of the field survey was the confirmation of an occupied camp of *Pteropus poliocephalus* (Grey-headed Flying-fox) (GHFF). This species is listed as a vulnerable species under the BC Act and vulnerable under the *Environment Protection and Biodiversity Conservation Act* (EPBC Act). There were approximately 50 to 75 individuals occupying the camp at the time of survey. The Vegetation Management Plan (VMP) was accordingly updated with consideration to the GHFF within the VMP area.
- BV mapping now present.

The assessment covered by ELA is considered adequate and in line with the majority of the context and outcomes from the LEC proceedings. Exceptions relate to the now known GHFF camp, the now present BV Mapping, and the previous omission of detail for the microbat habitat within the existing derelict structures.

Grey-headed Flying Fox (GHFF)

50 to 70 GHFF were recorded occupying a camp within the centre of the site in exotic Willow Trees (*Salix* sp.) approximately 20m from the nearest building (M1). GHFF is listed as Endangered under the State Biodiversity Conservation Act (BC Act) and Vulnerable under the Commonwealth EPBC Act. It is expected that the species is utilising the site on a seasonal basis.

A 5-Part Test under the BC Act concluded that the proposal is unlikely to constitute a significant impact. However, the Commonwealth Significant Impact Criteria was applied to the GHFF and it was concluded that the proposed development may cause a local population of GHFF to decline and therefore referral to the Commonwealth was recommended.

The proposed works do not involve the removal of any of the occupied trees within the camp area of the GHFF and only a small amount (0.1 ha) of potential foraging and sheltering habitat will be removed as part of the proposed works. However, given the camps proximity to the buildings (less than 30m) it is likely activities carried out during construction and post construction may cause a long-term decrease in the size of a population of GHFF.

Mitigation measures listed within the FFA to reduce the impact to the camp included the preparation of a Management Plan for GHFF which would outline how to manage the camp through construction and post-construction.

The conclusions drawn from both the Assessment of Significance and the Significant Impact Criteria are considered appropriate. The recorded bats are likely a tranche of a larger, nearby colony and not a new camp. While ephemeral in nature, this is still important and impacts to such may be considered significant if not properly managed.

A site survey was conducted by Council's Ecologist on the 29th May 2024. No GHFF were present and the *Salix* trees had lost nearly all their leaves. This further supports the statement that the camp is ephemeral and seasonal.

GHFF Management

The GHFF camp is located within exotic riparian vegetation subject to a Vegetation Management Plan (ELA 2024). The Vegetation Management Plan (VMP) has been updated to include consideration to the GHFF within two (2) Willow Trees.

A 20m 'no-work' buffer has been applied around the occupied Grey-headed Flying-fox camp. No weed removal works or revegetation works are to occur within the buffer zone. All trees, including exotic *Salix* sp. will be retained to provide foraging and sheltering habitat for GHFF. The purpose of the buffer zone will be to limit disturbances to the GHFF camp present within the riparian corridor. No works, including weed control or revegetation are to occur within the buffer zone of the GHFF camp.

Annual progress reports are to include monitoring of the GHFF camp. Monitoring results will be provided to WSC. The monitoring will include:

- Date and time of GHFF monitoring (monitoring should occur between October and February).
- Count of individuals.
- Species identification of occupied trees and count of trees.
- Estimated area of occupancy (m²).
- Photo point displaying evidence of occupation or evidence of non-occupation. A baseline photo monitoring point should be established of one of the currently occupied trees. This tree should be used as a basis of displaying occupation or non-occupation of the trees if possible.
- Commentary of the activity levels within the camp and identification of any suspected juveniles to determine if the camp is being used as a maternity camp.

- Results of the GHFF monitoring are recommended to be provided to WSC.
- Results must also be uploaded to BioNet.

Annual monitoring would aim to provide information as to how GHFF are utilising the site. If during the years of monitoring the camp is not being utilised by GHFF there may be scope to include the excluded areas into the VMP management zones. Revision of the VMP to include these areas should be considered in consultation with Wingecarribee Shire Council (WSC).

If annual monitoring report data shows that after several years the camp is not being occupied, there may be scope to revise the VMP to include management actions within the buffer zone, however, this would be subject to consultation with WSC.

GHFF Recommendations

The above inclusions within the VMP are supported. It is however recommended that further measures are included within the proposed Grey-headed Flying-Fox Management Plan (GHFFMP). The GHFFMP must include at a minimum:

- Opportunities to phase out the Salix trees in the instance that annual monitoring identifies GHFF using re-planted established natives or retained natives instead. In this instance, the Salix may be removed and replaced with suitable native tree plantings which GHFF are known to utilise for roosting. Similarly, if GHFF are not recorded for a number of years, the Salix should be replaced with suitable native trees representative of the locally occurring vegetation.
- A restriction must be included that states “active dispersal is not to be used as a management tool for this camp (whether a permanent or temporary gathering)”.
- A no-go zone will be implemented during construction. Maps showing no go areas to be placed in site offices, all staff briefed during toolbox talk or pre-work briefing on the location of the GHFF.
- Measures for chance find procedures and education for site staff, including detail on Australian Bat Lyssavirus.
- Prior to works commencing, a preclearance survey specifically targeting the GHFF must be completed. The survey will identify the extent of the camp, location, size and numbers. A suitably experienced ecologist will then advise on further mitigation measures required.
- On the first day of construction, a suitably qualified ecologist must be present to monitor any GHFF present. If bats in the camp become distressed and do not settle, works must cease until the bats settle. If the GHFF camp continues to become distressed, other mitigation measures such as noise attenuation may be required. This measure should be conducted daily for as long as recommended by the suitably qualified ecologist.
- If individual bats are seen flying consistently during the day, works must cease, and the ecologist will be called to provide further advice.
- Restriction to work hours to avoid flyout and return for the species (i.e. dusk and dawn).
- Install noise barriers or daily/seasonal timing of construction and operational activities to reduce impacts of noise if GHFF individuals are agitated and do not settle during construction. Winter is considered best due to the deciduous nature of the trees the GHFF are utilizing.

The GHFFMP must be approved by Council prior to issue of the Construction Certificate.

Microbats

The substantial derelict structures within the site presents a high potential for microbat usage for roosting. A site inspection by Council's Ecologist confirmed the high suitability of the structures for microbat roosts. To date there has been no targeted survey undertaken for microbats. Suitable habitat is however plentiful in the form of:

- Derelict buildings suitable for roosting.
- Hollow bearing trees suitable for roosting.
- Creeks suitable for foraging.
- Vegetation suitable for foraging.

Access restrictions is the reason provided for no survey to date. Ultrasonic survey would be possible even without access into the derelict building. Regardless, the FFA considered the Study Area as suitable habitat and conducted the assessment accordingly.

*'taking a precautionary approach for the purpose of this assessment it is assumed that the derelict buildings provide potential winter roosting threatened microbat species such as *Miniopterus orianae oceanensis* (Large Bent-winged Bat) which is listed as a vulnerable species under the BC Act. The Greater Broad-nosed Bat (*Scoteanax rueppellii*) is a tree-roosting microbat, however this species has also been known to roost in buildings if no suitable roosts are available. This species is listed as vulnerable under the BC Act.*

*15 Hollow bearing trees were identified in the study area which have the potential to provide suitable roosting habitat for microbats. These species include the Greater Broad-nosed Bat and *Falsistrellus tasmaniensis* (Eastern False Pipistrelle), and. Eastern False Pipistrelle is listed as vulnerable species under the BC Act.'*

Unfortunately, Southern Myotis (*Myotis macropus*) was not considered. This species is known within proximity to the Maltings, within a manmade structure in the form of a culvert. The species is considered highly likely to use the Study Area due to the suitable roosting habitat within the structures, and the suitable foraging resource across the Natai.

The proposed development will not remove any native Hollow-bearing Trees, and minimal native vegetation clearance is proposed, however, the significant mass of derelict structures with strong suitability for numerous threatened microbat species, presents the potential for a significant impact should the impacts not be suitably mitigated.

The FFA recommends that prior to refurbishment of the buildings, inspections are to be undertaken to determine whether microbats are inhabiting the buildings. If microbats are using the buildings, a protocol is recommended to be developed for their relocation.

The FFA states the redevelopment of the buildings would result in the loss of winter roosting habitat for two of the species listed above. However, the buildings are not considered to be breeding habitat for these species. This statement is not considered justifiable in the absence of survey.

Microbat Recommendations:

It is recommended that microbat presence is assumed (including for Southern Myotis), and a Microbat Management Plan (MMP) is prepared. The MMP will include a suitable degree of required survey to further inform management. Prior to issue of CC, a MMP must be prepared, approved by Council and include at minimum:

- Pre-clearance survey over 4 nights per structure, by suitably qualified ecologists utilising ultrasonic recorders, infrared cameras, and diurnal and nocturnal searches of all suitable structures. Evening surveys must be conducted to capture flyouts, including thermal scanning and ultrasonic recording to ID any microbats that may be present. Dusk exit surveys are to be conducted when temperatures are >14°C, in fine weather (i.e. no rain on either day) and preferably from September to April. The results will inform further management, such as exclusion events and where to focus.
A pre-exclusion survey is to take place that identifies likely or potential roost sites, with these sites inspected up close. Visual aids with the ability to detect thermal signatures are useful in these scenarios, with the hot spot of a bat potentially visible even if no direct line of sight is possible. These surveys are to be conducted by an ecologist with demonstrated experience in such work.
- If microbats are recorded, additional habitat must be installed within the Study Area. Additional habitat must be specific to the species recorded. Where suitable, this may be incorporated into the refurbishment of the buildings. Council must provide approval of all proposed habitat and should be consulted in the design process. Consideration must be given around the longevity of additional habitat, thermal stability and likelihood of uptake. The use of plywood boxes is generally discouraged for this project. Installation of replacement habitat must occur three months prior to construction works commencing.

- Should microbats be located, they must be excluded from the building by a suitably experienced ecologist. If exclusion is not successful, translocation may be considered in consultation with Council and relevant State departments.
- A chance find procedure and training module for construction staff must be included within the MMP.
- Ongoing monitoring of supplementary artificial habitat must be included for a minimum of five years, conducted twice a year. The frequency of monitoring will be reconsidered by Council at the end of the 5 year period.

Biodiversity Values Mapping

The originally approved DA was approved through the LEC and at the time (3 March 2020) the Study Area did not contain any Biodiversity Values Mapping (BV Mapping).

The Study Area now contains BV Mapping.

As this application relates to a modification of the DA only, within the same impact footprint, the BV Mapping does not require further consideration.

Vegetation Management Plan

A Vegetation Management Plan was revised by ELA (2024). The primary edit related to the inclusion of measures to buffer and safeguard the areas utilized by the GHFF. Otherwise, the VMP remains largely consistent with that approved via the LEC outcome, being the removal of numerous weeds and re-instatement of Southern Highlands Shale Woodland within the riparian corridor.

The retention of the Salix is somewhat contradictory, with Salix being a Weed of National Significance, however, the retention will allow for the desired continual usage by GHFF. Notwithstanding, annual monitoring of the GHFF and VMP area should be undertaken to allow for flexible management in the future. This may include phasing out of the Salix and replacement with suitable native trees.

The VMP is recommended for endorsement in its entirety.

Koala Assessment Report

A revised Koala Assessment Report Addenda was completed by ELA (2024). The KAR prepared in 2020 and approved through the LEC proceedings is considered suitable.

The Study Area is the northern branch of contiguous Koala habitat connecting through into the Mount Gibraltar Koala population. Maintaining free movement of the Koala is therefore critical. Furthermore, the revegetation of the riparian corridor may encourage wider usage by Koalas, and at a minimum, more arboreal native mammals. The riparian corridor of the Natai River is of strategic importance, and may provide the only link for Koalas and other mammals from the Mount Gibraltar vegetation further north into the Natia National Park. Only minimal connectivity improvements would be required to enhance the corridor link between vegetation to the south of the Study Area, then into the north via treed areas and culverts. The opportunity for a future corridor must not be compromised by the Maltings DA's. Currently, the proposed VMP works will enhance the corridor and are supported by Council. Ensuring Koala friendly fencing is used is key.

Proposal Outcome

The proposal introduces only a small impact on native vegetation, while bringing in the opportunity and funds for revegetation of the riparian corridor of the Natai River and adjacent Southern Highlands Shale Woodland. No threatened flora has been recorded at the site. A Koala Assessment report has been provided to further assess potential impacts, with suitable Koala mitigation measures included, primarily being the revegetation and implementation of Koala friendly fencing.

Concerns have been expressed above with regard to GHFF and microbat habitat, however, should thorough GHFF Management Plans and Microbat Management Plans be prepared and implemented, the proposal will occur under suitable conditions.

Additional Recommendations

The below recommendations are made (further to the above measures for the GHFF and Microbats).

- A Habitat Bearing Tree survey must be undertaken prior to construction commencing. The ecologist must inspect all trees (native and exotic) proposed for removal, aiming to identify hollows, nests, dreys or other fauna habitat. Of note, the Pines contain possum dreys and hollows which must be suitably managed to ensure harm to fauna is minimised as much as possible. Where habitat is being removed, a commensurate habitat replacement must be introduced with a preference for hollows drilled into retained trees rather than only nest boxes.
- Felling supervision of all trees, including exotic pines which are known to provide ample habitat to native arboreal fauna, must be undertaken by suitably qualified ecologists.
- During construction activities, when clearing areas of existing vegetation, earthworks and tree removal should be undertaken with the fauna ecologist or wildlife carer to supervise works. All native timber should be retained, with mulch stockpiled for use within VMP area, all viable seed and genetic material to be collected and all timber cut into logs to be utilised as habitat for native fauna.
- Eucalypts earmarked for removal within the development area should be used as habitat structures within the VMP area. This includes the use of fallen woody debris as habitat or for mulch. Mulch should be free of weed propagules. It is assumed that no native hollow-bearing trees will be removed under the development footprint.
- Preparation of a tree retention plan prior to release of CC. Of note, trees covered by the BV map in the vicinity of M4 must be clearly labelled for protection.
- Tree protection measures are to be implemented as advised by a suitably qualified Arborist.
- Maintenance of a Koala Corridor along the Natai riparian corridor. Fauna friendly fencing must be utilized which would allow for the rare, but potential movement of Koalas along the corridor. It is assumed that there will be minimal fencing within the VMP area. Any fencing installed will be required to be Koala-friendly. This means fencing must allow Koalas to move either under, through or over fencing – or have a suitable alternative route.

Chapter 6 Water catchments

The site is also within the Sydney Catchment and therefore this SEPP is applicable to the assessment of the application. The application is a Module 5 development for the purposes of the Neutral or Beneficial Effect on Water Quality Assessment Guideline and therefore required referral for Water NSW concurrence.

Based on a site inspection and the submitted information, Water NSW considers that the proposed development (as modified) can achieve a neutral or beneficial effect (NorBE) on water quality if appropriate conditions are included in any modified consent and are subsequently implemented.

As such, Water NSW issued an amended concurrence on 23 August 2024 subject to conditions.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Section 2.98 of this SEPP is applicable, given the proposed development is on land that is adjacent to a rail corridor and considered likely to have an adverse effect on rail safety.

The application was referred to the Australian Rail Track Corporation (ARTC) as the rail corridor is vested in or owned by the ARTC.

The ARTC raised no objections with the proposed development (as modified) in advice dated 21 May 2024, provided the requirements detailed in their response dated 7 July 2021 to Development Application 20/1400 are met. This relates to excavation and is subject to Condition 56 of the consent.

The ARTC requested that the Council consider the requirements of *Development Near Rail Corridors And Busy Roads – Interim Guideline* and whether any noise sensitive uses within the development are likely to be adversely affected by rail noise or vibration.

Council has noted that the proposed development is not likely to be adversely affected by rail noise or vibration, given it does not include any residential or other noise-sensitive development.

Section 2.122 of this SEPP is also applicable, given the proposed development is specified in Column 1 of the Table to Schedule 3 being '*Any other purpose that generates 200 or more motor vehicles per hour on a site with access to a road (generally)*'.

The application was referred to Transport for NSW (TfNSW) as required by subsection (4).

TfNSW raised no objections with the proposed development in advice dated 24 May 2024, in terms of the impacts it will have on the state classified road network subject to conditions being included in any consent granted.

TfNSW also noted the following:

- The application proposes alterations and additions as well as changes to the adaptive reuse of Malthouses M1 and M2, the northern and southern sheds and the Maltster's Cottage that form part of the approved Stage 1 component of DA20/1400. Based on the applicant's calculations in the SEE, the changes will result in a reduction of 146m² in the gross floor area of the above buildings (a 2.8% decrease).
- The modified development should not result in a significant intensification of the approved use and as such is not anticipated to significantly alter the vehicle generation at the site.
- The application is not seeking to alter the suggested conditions in the TfNSW advice / letter dated 24 March 2022 which were subsequently included in the Land and Environment Court issued development consent dated 13 May 2022 (i.e. Condition 142 in Annexure 'B' of LEC No. 2021/00228053).
- The application has provided a Plan of Management (prepared by Gyde, dated 29 February 2024). This is separate from and does not fulfil the requirements of Conditions 112 and 142 (3)(c) in Annexure 'B' of LEC No. 2021/00228053; and
- The application has been separately referred to the Australian Rail Track Corporation (ARTC) for comment.

LEPs

Wingecarribee Local Environmental Plan 2010

The proposed development (as modified) is subject to a number of sections under Wingecarribee LEP 2010, and these are discussed as follows

Section	Control	Assessment	Compliance
2.3 Zone Objectives and land use table	<i>Prescribes zone objectives and gives details on permissible and prohibited landuses for each zone.</i>	<p>The site is zoned R2 Low Density Residential under WLEP 2010.</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 this Plan, and to facilitate the on-going protection of its values. The proposal is to conserve and revitalise the heritage</p>	<p>Yes, as per the original DA. The proposed changes are not expected to adversely impact the amenity of the surrounding area.</p> <p>Refer to section 5.10 for further</p>

Section	Control	Assessment	Compliance
		<p>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. The modified development would 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> <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 permissible in the R2 zone. The permissibility of these two uses is sought through the provisions of section 5.10(10) of this Plan.</p>	assessment details.
5.10 Heritage conservation	<p>(4) Effect of proposed development on heritage significance <i>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</i></p>	<p>The subject site is an item of heritage significance, known as 'The Maltings' (Item No. I103), which is listed on Schedule 5 of this Plan.</p> <p>The site is also located within 'The Maltings Heritage Conservation Area' and within the vicinity of the following items of heritage significance listed under Schedule 5 of this Plan:</p> <p>i) 'Nattai Creek Bridge' Ferguson Crescent, Mittagong (Item No. I1885)</p>	Yes

Section	Control	Assessment	Compliance
	<p>(10) Conservation incentives <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> <p><i>(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and</i></p> <p><i>(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and</i></p> <p><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></p> <p><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></p> <p><i>(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.</i></p>	<p>ii) 'Fitzroy Inn (former Oaklands)' 1 Ferguson Crescent, Mittagong (Item No. I099)</p> <p>iii) 'Wandevan house including interiors' 20-24 Southey Street, Mittagong (Item No. I1747)</p> <p>iv) 'Bethel Cottage' 38 Old Hume Highway, Mittagong (Item No. I1849)</p> <p>The site is also located within the vicinity of the following potential items of heritage significance which are currently subject to an Interim Heritage Order (IHO) under the provisions of the <i>Heritage Act 1977</i>:</p> <p>i) 'Murrabrine' 48-50 Old Hume Highway, Mittagong (IHO No. 14)</p> <p>Council has received amended plans and additional information in response to various matters raised during the assessment process to address heritage contentions raised.</p> <p>Recommendations were made in the applicant's Structural Report requiring strengthening works to provide resistance to lateral loads on the retained masonry walls. No details or specifications have been provided as to what works are required to achieve the required strengthening. Consequently, additional information was requested, with the submission of detailed structural plans and specifications detailing the proposed structural works as it was held that the extent of these works must be understood at the DA assessment juncture, rather than prior to the issue of a Construction Certificate.</p> <p>The applicant has responded with an additional Structural</p>	

Section	Control	Assessment	Compliance
		<p>Concept Design Statement by TTW (dated 30 August 2024), which does not provide the required details and specifications of the proposed pre-emptive structural works but provides a summary of the anticipated bracing and other pre-emptive structural works. It is noted the applicant contends that the detailed structural design documentation should be provided at the Construction Certificate stage.</p> <p>Having considered the additional Structural Concept Design Statement, the anticipated pre-emptive structural works are understood in principle, whereby it is accepted that the detailed structural design documentation can be achieved subject to conditions of consent and to the satisfaction of Council prior to the issue of a Construction Certificate. This process will still allow detailed consideration of the structural design documentation, which, if not satisfactory, will prevent the issuance of a Construction Certificate, or, if the additional structural design documentation involves further affectation to heritage fabric, may trigger the requirement for a subsequent modification application.</p> <p>The retention of existing cast iron columns within M1 to aid in the heritage interpretation of the space can be addressed by a condition of consent.</p> <p>The revised architectural plans have removed the photovoltaic cell array from the roof of M2 which is acceptable and satisfies this matter.</p>	

Section	Control	Assessment	Compliance
		<p>The applicant contends that it is not feasible to retain the vertical vestiges of the former Maltster's Cottage. The intention of requiring greater retention of the vertical wall vestiges is that it allows the retention of evidence not only of the original room configuration of the building, but also the placement of window and door openings, which would provide a far greater opportunity for the interpretation of the space. It is now understood that the proposed design seeks to demolish the remaining fabric of the Maltster's Cottage to retain the footings marginally above ground level and the subsequent backfilling with an unknown material to achieve a level courtyard space. This would mean that the former Maltster's Cottage is interpretable via the delineation of the building footprint and configuration of internal walls as a silhouette on the ground. Having reviewed the additional structural documentation, this approach is acceptable, subject to conditions of consent to provide further detail and protection of the retained fabric.</p> <p>The proposed introduction of tree plantings amongst the retained fabric of the footings remains unsupported. The deliberate introduction of tree plantings within the internal footprint of the dwelling will likely contribute to an acceleration of the rate of deterioration and mechanical impacts to the retained fabric (particularly through invasive roots) as well as visually obscuring the ability meaningfully interpret the space. Conditions of consent are recommended to address this matter.</p>	

Section	Control	Assessment	Compliance
		<p>A key component of the proposal is that it relies on the heritage incentive provisions of section 5.10(10) of this Plan. The provisions of this section require there to exist a demonstrated commitment to facilitating the conservation of the heritage item by the granting of consent to a proposed development. The granting of consent to the parent Development Application effectively endorsed the applicant's demonstration that that proposal would facilitate the conservation of the heritage item. Council's Heritage Advisor accepts that the proposed modifications are substantially the same development as previously approved, and that the development overall, presents a very unique and 'once in a lifetime' opportunity to reactivate The Maltings site, ensuring the site is sensitively adapted and 'futureproofed'. Reliance on the provisions of this section is acceptable from a heritage perspective.</p> <p>Subject to the following recommended conditions, the proposal is considered to satisfy the objectives and requirements of this section.</p> <ul style="list-style-type: none"> ▪ 22. <i>Heritage Interpretation Strategy and Heritage Interpretation Plan (modified)</i> ▪ 22A. <i>Building works to comply with BCA - Heritage Buildings</i> ▪ 22B. <i>Pre-emptive structural works to heritage buildings</i> ▪ 22C. <i>Retention of cast iron columns to Malthouse No.1</i> 	

Section	Control	Assessment	Compliance
		<ul style="list-style-type: none"> ▪ 22D. Maltster's Cottage interpretation works ▪ 64A. Heritage site induction ('toolbox talks') ▪ 110A. Reduction of rising damp and salt attack in buildings constructed prior to 1930 ▪ 110B. Temporary storage of materials, equipment and waste during works ▪ 110C. Uncovering of concealed architectural features or detailing ▪ 138A. No painting or rendering of masonry or stone <p>Consequently, the proposed modification application is supported on heritage grounds.</p>	
5.19A Function centres	<i>The consent authority must not grant development consent to development for the purposes of a function centre unless the consent authority is satisfied the development meets the requirements of subsection (2).</i>	<p>The proposed development, as modified by this application is consistent with the provisions of this section given:</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 current approval. • The modified development would complement the environmental and heritage attributes of the site. • Any potential environmental or amenity impacts on the surrounding area can be mitigated and managed by the Plan of Management approved as part of the existing consent. • There are no material changes to the approved vehicular access, parking and servicing arrangements. 	Yes

Section	Control	Assessment	Compliance
		<ul style="list-style-type: none"> Other environmental constraints, such as flooding, bush fire and site contamination are addressed by the existing conditions of consent (modified where necessary). 	
5.21 Flood planning	<i>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development meets the requirements of subsection (2).</i>	<p>Council advised the applicant that the maximum flood level should consider the flood level across all portions of the proposed building. In this case, at the plant room and services area of the Northern Shed, the flood level is set at 623.74m AHD. Therefore, the minimum Finished Floor Level for the Northern Shed should be 624.24m AHD (623.74m + 0.5m freeboard). The applicant was requested to revise the Architectural Plans and the Stormwater & Flood Management Strategy Report to reflect the correct floor level.</p> <p>Based on the applicant's response, it has been noted that the application is seeking a variation to the approved Finished Floor Level for the Northern Shed to 624.24m AHD. The Northern Shed is stated to be a non-habitable building and, therefore, can be situated above the 20% AEP plus freeboard. The updated Architectural Plans (Sheet M1/2 3000) and Flood Report (Table 6-2) have shown that the Finished Floor Level for the Northern Shed (non-habitable structure) is set above the 20% AEP Flood Level of 623.74m AHD plus freeboard.</p> <p>It is noted that the existing consent includes conditions addressing flood planning, namely Condition 134, which requires a Flood Emergency Management and Evacuation Plan to be prepared and implemented during operations.</p>	Yes

Section	Control	Assessment	Compliance
		Given the above, Council has considered the matters listed under subsection (3) and is satisfied with the regard to the provisions of subsection (2).	
7.3 Earthworks	<i>Development consent is required for earthworks that alter the ground level (existing) by more than 600 millimetres.</i>	<p>The matters listed under subsection (3) have been considered in relation to the proposed earthworks.</p> <p>It is noted 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, noting Condition 91 Earthworks, Retaining Walls And Structural Support. No modification is required to this condition.</p>	Yes
7.5 Natural resources sensitivity – water	<i>Provides objectives and controls regarding riparian land or land identified as a “natural waterbody”</i>	<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>The proposed modification would not hinder the ability of the development to meet the objectives of this section. 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. It is noted that 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 would not result in adverse environmental impacts on the</p>	Yes

Section	Control	Assessment	Compliance
		<p>corridor. It is agreed that the approved vegetation management work will regenerate the riparian zone and improve water quality of Nattai River.</p> <p>Given the above, Council has considered the matters listed under subsection (3) and is satisfied that the development is designed, sited and managed to avoid any potential adverse environmental impact.</p>	
7.10 Public utility infrastructure	<i>Development consent must not be granted for development on land to which this clause applies unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.</i>	Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or would be available when it is required.	Yes

DCP's

Mittagong Township Development Control Plan

The subject site and proposed development are subject to the Mittagong Township Development Control Plan (MTDCP).

An assessment of the applicable provisions in the MTDCP is undertaken as follows:

DEVELOPMENT CONTROL PLAN			
SECTION	CONTROL	ASSESSMENT	COMPLIANCE
PART A – ALL LAND			
Section 3 – Biodiversity			
A3.2 Flora & Fauna Assessment	<p>Retain & protect native species, endangered ecological communities, threatened species, Koalas and protect wildlife corridors.</p> <p>Required where the development will potentially impact native vegetation & fauna.</p>	<p>An original FFA was completed by Eco Logical Australia (ELA) and approved by the Land and Environment Court. Given time has passed ELA has completed a re-assessment including a koala assessment.</p> <p>Council's Ecologist has reviewed this with consideration to the original approval, covering largely the same building footprint.</p>	Yes

		<p>No additional trees are proposed for removal.</p> <p>The focus of the re-assessment by ELA was to ensure that the condition of the vegetation, particularly the threatened ecological community had remained the same. The survey also recorded any opportunistic threatened flora or fauna sightings, and any threatened fauna habitat, not previously noted.</p> <p>The condition of the vegetation onsite had not substantially changed since the previous assessment and the mapped boundaries showing the differences in vegetation communities was deemed accurate.</p> <p>The key findings were:</p> <ul style="list-style-type: none"> • Southern Highlands Shale Woodland (TEC) is still present. Direct impact is small in area – still totalling 0.1ha, with a further 0.02ha of exotic vegetation being removed. • No threatened flora was recorded. • One significant finding of the field survey was the confirmation of an occupied camp of <i>Pteropus poliocephalus</i> (Grey-headed Flying-fox) (GHFF). This species is listed as a vulnerable species under the BC Act and vulnerable under the EPBC Act. There were approximately 50 to 75 individuals occupying the camp at the time of survey. The Vegetation Management Plan (VMP) was accordingly updated with consideration to the GHFF within the VMP area. • BV mapping now present. <p>The assessment covered by ELA is considered adequate and in line with the majority of the context</p>	
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		and outcomes from the LEC proceedings. Exceptions relate to the now known GHFF camp, the now present BV Mapping, and the previous omission of detail for the microbat habitat within the existing derelict structures.	
Section 4 – Water Management			
A4.2 Vegetation Management Plan for Riparian Corridors	A VMP is required for any proposed development in the WLEP 2010 Natural Resources Sensitivity Map and adjoining a natural waterbody. VMP requirements are described in Table A below. (A VMP is not required if one is already required as part of a controlled activity approval issued for integrated development in land zoned for urban uses.) Table B provides examples of actions that may meet the objectives of a VMP.	A VMP is required as part of the general terms of approval issued by NSW Department of Planning and Environment - Water. As such, this would be required as part of a condition of any modified consent granted.	Yes
A4.3 Development in Sydney's Drinking Water Catchments	In order to implement Objective (b) above, Council requires compliance with all aspects of the SEPP as they apply to the particular development. Applicants are advised to acquaint themselves with the SEPP as it relates to their development.	Concurrence has been provided by Water NSW and is to be included in any modified consent granted. Council is satisfied the carrying out of the development would have a neutral or beneficial effect on water quality.	Yes
A4.5 Stormwater Management Plan	A Stormwater Management Plan report will be required by Council for all development that will result in: a) An increase in the impervious area of the site, or b) A change in the direction of overland flow The intent of the Stormwater Management Plan is to demonstrate that 'post development	Council's Development Engineer has raised no objection to the Stormwater & Flood Management Strategy submitted with this application.	Yes

	<p>' overland water flows will not exceed 'pre development' flows in terms of:</p> <p>a) Volume, b) Quality (including nutrient content), and c) Direction,</p> <p>The Stormwater Management Plan must be prepared in accordance with Council ' s Engineering Design and Construction Specification.</p>		
A4.6 Erosion and Sediment Control Plans	<p>Where building or earthworks are proposed, an Erosion & Sediment Control Plan must be provided to Council. Plans and all associated works must meet the Neutral or Beneficial Effect test and the water quality objectives using Current Recommended Practices contained in the State Environmental Planning Policy (Sydney Drinking Water Catchment 2011). Reference will also be required to the Landcom publication: Managing Urban Stormwater: Soils and Construction Vol 1, 4th Edition, Landcom, 2004.</p>	<p>An Erosion & Sediment Control Plan was submitted with the original DA and subject to conditions of consent.</p> <p>The concurrence from Water NSW has also addressed this and is to be included in any modified consent granted.</p>	Yes
Section 5 – Flood Liable Land			
A5.3 Flood Liable Land	<p>Development on mapped flood affected land referred to Council' s Development Engineer for review and recommendations.</p>	<p>Council advised the applicant that the maximum flood level should consider the flood level across all portions of the proposed building. In this case, at the plant room and services area of the Northern Shed, the flood level is set at 623.74m AHD. Therefore, the minimum Finished Floor Level for the Northern Shed should be 624.24m AHD (623.74m + 0.5m freeboard). The applicant was requested to revise the</p>	Yes

		<p>Architectural Plans and the Stormwater & Flood Management Strategy Report to reflect the correct floor level.</p> <p>Based on the applicant's response, it has been noted that the application is seeking a variation to the approved Finished Floor Level for the Northern Shed to 624.24m AHD. The Northern Shed is stated to be a non-habitable building and, therefore, can be situated above the 20% AEP plus freeboard. The updated Architectural Plans (Sheet M1/2 3000) and Flood Report (Table 6-2) have shown that the Finished Floor Level for the Northern Shed (non-habitable structure) is set above the 20% AEP Flood Level of 623.74m AHD plus freeboard.</p> <p>Given the above, Council is satisfied with the regard to the provisions of this control.</p>	
Section 7 – Subdivision, Demolition, Siting & Design			
A7.2 Demolition	<p>(a) No demolition may occur on property which is an Item of Heritage, or is located within a Heritage Conservation Area, without the consent of Council.</p> <p>(b) An application for such demolition shall be accompanied by a Landscape Plan, prepared by someone considered by Council to be suitably qualified for such a task.</p>	<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 of Maltster's Cottage, which is to address the requirements in the existing consent.</p>	Yes

A7.3 Site Analysis	This section of the DCP contains various requirement for a Site Analysis to be provided with DAs.	A satisfactory site analysis has been provided.	Yes
A7.4 Cut & Fill	Cut & fill is consistent with LEP & stepping of development to accommodate contours of site.	The proposed modification does not involve any cut and fill.	N/A
A7.5 Shipping Containers	The installation of shipping containers on any site is prohibited unless approval has been for the conversion and subsequent for use as a residential building.	Not applicable.	N/A
A7.8 Principles on Minimum Acceptable Heritage Design	<p>New development is to be compatible with the existing streetscape in terms of materials, textures and colours.</p> <p>Modern materials can be used in a traditional streetscape provided their proportions and details are harmonious within the surrounding development.</p>	<p>A detailed discussion on the heritage aspects of the proposal has been provided earlier in this report (under the LEP section). Subject to recommended conditions, Council's Heritage Advisor has confirmed the proposal is considered to satisfy the objectives and requirements of this Plan.</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>	Yes
A7.9 Alterations to Items of Heritage	Compliant with Clause 5.10 of the WLEP 2010.	As above.	Yes

A7.10 Development within the Vicinity of Heritage Items	<p>Adequately set back to ensure Heritage Item is not dominated by new development.</p> <p>Compatible with architectural elements of nearby Heritage Item.</p> <p>Compatible with the average height, bulk and scale of buildings located on adjoining or nearby land.</p>	<p>As above.</p>	<p>Yes</p>
Section 8 – Safer by Design			
A8.4 Specific Design Requirements	<p>The principles of Safer by Design may be applied to both commercial and residential development.</p> <p>In particular, Council requires all development to demonstrate that it provides:</p> <ul style="list-style-type: none"> a) Well-defined building entrances which are clearly visible from the street. Narrow or splayed entrances are preferable to deep-set entrance ways. b) Internal spaces must be open and visible, eliminating hidden corners. c) Walkways and connecting paths must be open with good visibility. d) Signs and vegetation should be located so that they do not create 'entrapment' points where people are hidden from view. e) On-site garaging must provide clearly defined exit points and be lit at night, both inside the garaging and around the entrance/exit points. Such lighting should be movement-activated lighting that focusses on the access areas. f) Building entrances, walkways, connecting 	<p>The proposed modification would not detract from the principles for crime prevention through environmental design. The modified development is to provide well-defined entries to buildings and parking areas, legible circulation paths with good visibility, and suitably designed landscaping that avoids entrapment points.</p> <p>The design has demonstrated there is ability to meet Safer by Design requirements.</p>	<p>Yes</p>

	paths and garaging must be well lit in accordance with the provisions of Section A8 of this Plan to ensure that such lighting is down-ward focussed and effective without generating glare or annoyance beyond the area being lit.		
Section 9 – Construction Standards & Procedures			
A9.12 Waste Management and Disposal	A Waste Management Plan is required for all demolition works and /or construction works (with a value greater than \$50,000).	An updated demolition and construction waste management plan has been prepared for the subject modification application.	Yes
Section 11 – Outdoor Lighting			
A11.3 Controls	<p>a) Outdoor lighting must be a “full cutoff light fixture”, i.e. a type of fixture with no light emitted above the horizontal and no light dispersion or direct glare to shine above a 90-degree, horizontal plane from the base of the fixture.</p> <p>b) All outdoor lighting fixtures shall be designed, installed, located and maintained to avoid glare on to adjacent properties or streets</p> <p>c) All direct illumination shall be kept within the boundaries of the subject property.</p> <p>d) Accent lighting, when so approved, shall be directed downward on to the building or object and not toward the sky or on to adjacent properties. Direct light emissions shall not be visible above the roof line or beyond the building edge.</p> <p>e) Spotlighting on landscaping and foliage</p>	Condition 136 of the existing consent specifies requirements relating to external lighting. Compliance with this condition would ensure the development will not cause unreasonable light overspill that affects the amenity of the surrounding properties or public places.	Yes

	<p>shall be limited to 150 watts incandescent. The lamp shall be shielded and not create disabling or nuisance glare.</p> <p>f) Timers shall be accurately set to ensure that lighting is used only when natural light is insufficient.</p>		
Section 12 – Development Near Rail Corridors and Busy Roads			
A12.1.3 Controls	<p>Council shall not grant consent to the carrying out of development on any land to which this Clause applies unless it is satisfied that adequate provision has been made to ensure that such development:</p> <p>a) avoids any new direct vehicular access to any relevant road and removes any existing access where alternative rear lane or other access is achievable.</p> <p>b) provides that any essential access to any relevant road be designed so that all vehicles enter and leave the site in a forward direction.</p> <p>c) restricts vehicular access, car parking and loading/unloading facilities to an alternative access, such as a rear lane, where such access is available.</p> <p>d) makes an appropriate Section 94 developer contribution towards the provision of public car parking where only a single frontage to a relevant road is available.</p>	<p>No changes to the vehicular access to the site are proposed.</p> <p>TfNSW raised no objections with the proposed development in advice dated 24 May 2024, in terms of the impacts it will have on the state classified road network subject to conditions being included in any consent granted.</p> <p>Council has noted that the proposed development is not likely to be adversely affected by rail noise or vibration, given it does not include any residential or other noise-sensitive development.</p>	Yes

PART C – RESIDENTIAL ZONED LAND

Section 15 – The Maltings Heritage Precinct

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 existing consent. The proposed modification would retain and conserve selected fabrics of the M1/M2 group and the ruins of Maltster's Cottage (in part) and enhance their setting. There would 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. Subject to the advice provided by Council's Heritage Advisor earlier in this report, 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 would also not affect the setting of Fitzroy Inn nearby.</p>	<p>Yes</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</p>	<p>The proposed modification does not concern the Southey Street frontage of the site. The approved development scheme has incorporated a site planning strategy where the new M5/M6 would be designed as a group surrounded by landscaped areas.</p>	<p>Yes</p>

	contained within a pitched roof space.		
	(c) Vehicular access to the Maltings precinct via Colo Street shall be restricted to access relating to residential development only.	The proposed modification would not change the approved vehicular access arrangements, which provide separate access points for different user groups. Colo Street is to be the main entry point for visitors to the multi-purpose facility at M1/M2, allowing the main visitor parking facility to be located away from the centre of the site. Similarly, the provision of access to the future residential accommodation at M5/M6 via Southey Street would minimise vehicles traversing across the site.	Yes
	(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.	The proposed modification does not change the approved vehicular access arrangements. 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. 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 buildings are located and minimising vehicular traffic traversing across the river. To preserve the setting of the significant buildings, the primary vehicular access needs to be provided from Colo Street and Southey Street. 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 is to also limit the amount of traffic entering	Yes

		the adjoining residential areas to the north, east and south of the site.	
	(e) All car parking and loading/unloading facilities associated with nonresidential development shall be provided within the Maltings precinct.	A site plan has been prepared for the proposed modification that clearly shows the location of car parking along and adjacent to the driveway off Colo Street.	Yes
	(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.	The proposed modification does not seek to change the approved height and scale of the alterations and additions to the M1/M2 group. The amended design for the redevelopment of Maltsters' Cottage would be sympathetic to the retained remnants and domestic character of the former residence. The modified design is to respect the scale and form of the significant buildings on the site.	Yes
	(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:	Refer to the below comments.	Yes
	(h) land or soil contamination, and	<p>The conditions of the existing consent would ensure the site is remediated prior to being used for the purposes encompassed in the proposal.</p> <p>However, Council's Environmental Health Officer has suggested during the assessment process that the contaminated land conditions from consent be adopted with modifications made to eliminate a few minor inconsistencies in those conditions, remove references to superseded legislation (e.g. SEPP 55)</p>	Yes

		and account for the completion of the DSI.	
	(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 conditions of consent.	Yes
	(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.	The proposed modification would not affect the ecological value of the riparian zones of Nattai River and the quality of water flowing from the land into the creek. 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.	Yes

DRAFT INSTRUMENTS

There are no draft Environmental Planning Instruments relevant to the site or proposed development.

REGULATIONS

Building Demolition

Demolition work is proposed and subject to existing conditions of consent.

Fire Safety

Subject to existing conditions of consent.

Upgrading of Buildings

Subject to existing conditions of consent.

Temporary Structures

Not applicable to this proposal.

Deferred Commencement Consent

Not applicable to this proposal.

Modification or Surrender of Development Consent or Existing Use

Modification is sought to Development Consent 20/1400.

Ancillary Development

Not applicable to this proposal.

BASIX

Not applicable to this proposal.

Designated Development

Not applicable to this proposal.

PLANNING AGREEMENTS

No planning agreement or draft planning agreement has been entered into or offered.

CONTRIBUTIONS

It is noted that the contribution rates would be adjusted for Stage 1 of the approved development as per the provisions of Council's Section 64 Development Servicing Plan. This Plan applies to the proposed development, as modified, and developer charges are payable as per Condition 30 Water Management Act – Certificate of Compliance of the existing consent.

The applicant has requested as part of the application that while the 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, that Council consider any potential reduction in the relevant charges under this Plan.

Developer contributions are payable on the proposed modified development the subject of Stage 1 as follows:

- Section 7.11

Not applicable to Stage 1 the subject of this application.

- Section 7.12

Not applicable. The proposed development is not subject to a Section 7.12 Contributions Plan.

- Section 64

Water & Sewer

Multi-Purpose recreational Complex

0.001 Water & Sewer ET rate per sqm

0.001 x 148sqm of reduced GFA = 0.148

33.29 DA approved ET – 0.148 = 33.142 ET to be applied (as shown below).

			Amount
Contributions Levy	Units	Rate	Payable
S64 Sewer Compliance Certificate	1.00	\$255.00	\$255.00
S64 Sewerage (Shirewide)	33.14	\$12,962.98	\$429,619.12
S64 Water Compliance Certificate	1.00	\$255.00	\$255.00
S64 Water (Shirewide)	33.14	\$13,371.28	\$443,151.09
Total			\$873,280.21

Impacts of the Development [s4.15(1)(b)]

Context & Setting

As detailed earlier in this report, the site is irregular shaped within an established residential area, containing a number of buildings in various states of deterioration and disrepair.

The proposal is compatible with the surrounding area and will have minimal impact in regard to adjoining properties and land uses, subject to compliance with the conditions of consent (as modified).

Access, Transport and Traffic

The application does not propose any change to the approved access arrangements from Colo Street, Southey Street and Ferguson Crescent.

TfNSW and Council's Development Engineer have considered the impact of the proposed modified development on the approved traffic and access arrangements and raised no objection subject to conditions being imposed as part of any modified consent granted.

Public Domain

It is considered that the proposal will have a negligible impact on the public domain in terms of:

- Public recreational opportunities in the locality;
- Amount, location, design, use and management of public spaces in and around the development; and
- Pedestrian linkages and access between the development and public areas.

Utilities

The site has adequate utility services to cater for the proposal.

Heritage

The subject site is an item of heritage significance, known as 'The Maltings' (Item No. I103), which is listed on Schedule 5 of the WLEP 2010. The site is also located within 'The Maltings Heritage Conservation Area'.

Council's Heritage Advisor accepts that the proposed modifications are substantially the same development as previously approved, and that the development overall, presents a very unique and 'once in a lifetime' opportunity to reactivate The Maltings site, ensuring the site is sensitively adapted and 'futureproofed'.

Consequently, the proposed modification application is supported on heritage grounds.

Other Land Resources

The proposal will not have any negative impact on:

- Productive agricultural land.
- Mineral or extractive resources.
- Water supply catchments.

Flora and Fauna

The subject site contains trees and other vegetation.

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.

Council's Ecologist has noted an original Flora and Fauna Assessment was completed by Eco Logical Australia (ELA) and approved circa 2020 through the Land and Environment Court (LEC). Time has passed and therefore ELA completed a re-assessment (submitted with this application). While no additional trees are proposed for removal, the reassessment has warranted additional conditions being inserted into the consent (as discussed earlier in this report).

Noise and Vibration

It is considered that the proposal will have a negligible impact in terms of noise and vibration, subject to compliance with existing conditions of consent.

Natural Hazards

The southern portion of the site is identified as bush fire prone land.

The NSW Rural Fire Service has reviewed the submitted amendments and raised no objections subject to compliance with their previous general terms of approval dated 28 April 2021 (issued with the existing consent).

A significant portion of the site is also flood prone land.

Council is satisfied with the regard to the relevant provisions noting the updated Architectural Plans (Sheet M1/2 3000) and Flood Report (Table 6-2) have shown that the Finished Floor Level for the Northern Shed (non-habitable structure) is set above the 20% AEP Flood Level of 623.74m AHD plus freeboard.

Technological Hazards

There is existing contamination on the land.

Following consideration of the submitted documentation, Council's Environmental Health Officer suggested that the contaminated land conditions from Development Consent 20/1400 be adopted with modifications made to eliminate a few minor inconsistencies in those conditions, remove references to superseded legislation (e.g. SEPP 55) and account for the completion of the DSI.

As such, Council is satisfied that the land will be remediated before the land is used for the proposed development and consent is able to be granted in this regard.

Social and Economic Impacts in the Locality

The likely social and economic impacts of the proposal are positive, associated with the future use.

Cumulative Impacts

It is considered there will be no negative cumulative impacts as a result of the proposal.

Waste and Operational Management

It is considered suitable arrangements are proposed in relation to waste management during demolition and construction as well as operation of the development.

Suitability of the Site [S4.15(1)(c)]

The site is considered to remain suitable for the development given the relevant planning matters related to the proposed uses across the site have been considered and addressed throughout the assessment of this application. The modified proposal has been considered by all relevant state agencies and Council and found to be supportable.

The following is noted:

- The contamination aspects given the previous use can be safely managed into the future and pose no risk to human health subject to conditions of consent.
- The uses proposed are reasonable given the scale of the site, consistency with the MTDCP and continued support for adaptive re-use of the historic buildings by State agencies and Council.
- The risk of flooding can be managed and minimised in regard to safety.

Submissions [S4.15(1)(d)]

The application was notified between 3 May 2024 and 2 June 2024.

Seven (7) unique submissions were received (five (5) in objection and two (2) in support).

Issue	Comment
<u>Design</u> <ul style="list-style-type: none">▪ Replacement of gable roof and dormer window heavily impacts heritage significance of building▪ Dilapidated state of existing building holds more heritage value than proposed extensive modification▪ Claims that roof cannot be rebuilt have no sound engineering basis. Council should ensure roof is to be rebuilt to original design.▪ Architectural alteration lacks sympathetic restoration and retention of the original historical foundational elements▪ Plans overshadow and obscure the essence of the historic structures, in particular Malt House 3, rendering the building unrecognisable▪ The unique roofline and dormer windows of Malt House 3 should be restored rather than removed▪ Proposed large extensions of concrete block walls surrounding the structure engulf the original form of Malt House 3, providing no aesthetic qualities to the building and provides no sympathetic heritage value▪ M3 machinery room timber roof, dorms and kiln room porch can be reinstated as per structural report stating these components are only recommended to be removed▪ Opposed to removal of M1 and M2 building interior due to historical items and elements.	<p>The applicant has confirmed that a detailed structural assessment, including on-site investigation and material testing, has been completed following the granting of the original development consent (no. 20/1400). The assessment concludes that some elements previously identified for retention could no longer be retained due to their advanced state of decay, whereas other elements could now be conserved with localised replacements and repairs.</p> <p>For M1, the first-floor slab 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 such, the slab and the columns and footings are proposed to be removed. However, some of the cast iron columns could be salvaged and re-used on the site as interpretation.</p> <p>For M2, the timber roof structures approved to be demolished could now be retained with replacement of individual members and new cladding.</p> <p>For M3, the timber roof structures and the upper floor slab above the kiln room could not be retained due to their advanced state of decay. The new additions are generally contained within the existing building footprints, and the</p>

<ul style="list-style-type: none"> ▪ Design has a strong industrial look, not aesthetically pleasing nor in keeping with other buildings within Wingecarribee Shire ▪ Proposed development provides little recognition to the historical heritage of the Maltings as only some external walls have been preserved ▪ Displeased with overall design of project noting “Soviet era industrial estate” feel ▪ Architectural alteration lacks sympathetic restoration and retention of the original historical foundational elements ▪ Plans overshadow and obscure the essence of the historic structures, in particular Malt House 3, rendering the building unrecognisable ▪ The unique roofline and dormer windows of Malt House 3 should be restored rather than removed ▪ Proposed large extensions of concrete block walls surrounding the structure engulf the original form of Malt House 3, providing no aesthetic qualities to the building and provides no sympathetic heritage value ▪ M3 machinery room timber roof, dorms and kiln room porch can all be reinstated as per structural report stating these components are recommended to be removed but not crucial ▪ Opposed to removal of M1 and M2 building interior due to historical items and elements <p>Note comments also refer to the concurrent DA also under assessment.</p>	<p>materiality of the enclosing walls (being face brickwork) would respect the retained fabric.</p> <p>It is noted the proposal is guided by a heritage impact statement that has examined in detail the values of the site and the conditions of the structures and fabric. Due to the ruinous condition of the existing buildings, restoration to their original or a conjectural form is not considered feasible or desirable. The conservation approach is the result of a conscious decision to work with the fabric that can be retained and add new elements that are contemporary. This is to conserve the values of the item, maintain the materiality and allow the insertion of new forms that co-exist in juxtaposition to the ruined elements.</p> <p>The alterations and additions seek to complement the scale, form, materiality and rustic character of the former industrial buildings, while being contemporary in design so that the new work is distinguished from the retained fabric. This is consistent with the principles of the Burra Charter.</p> <p>A heritage interpretation plan is to be prepared following the granting of consent to the amending development application and the approval of this current section 4.56 modification application, to guide the salvaging and re-use of fabric and artifacts on the site. Note that Condition 22 of the existing consent requires a comprehensive interpretation strategy and plan to be prepared prior to the issue of any Construction Certificate.</p> <p>If the development does not proceed, it is likely that the fabric would continue to deteriorate and eventually to a state where the buildings could not feasibly be retained, with the consequence that the heritage values of the site would be permanently lost.</p> <p>As detailed earlier in this report, subject to recommended conditions, Council’s Heritage Advisor has confirmed the proposal is considered to satisfy the objectives and requirements of section 5.10 of the WLEP 2010 and demonstrates satisfactory consistency with the heritage provisions of the MTDGP. Consequently, the proposed modification application is supported on heritage grounds.</p>
<p><u>Operational Hours & Noise</u></p> <ul style="list-style-type: none"> ▪ Proposed galleries and event spaces have operational hours that give little consideration to residents in the adjoining streets, with potential for events to be held 365 days of the year ending at midnight on weekdays and 1am on weekends 	<p>The existing development consent has approved the following operating hours:</p> <p><i>Maltings 1 and Maltings 2:</i></p> <p><i>Sunday to Thursday: 8am to midnight</i></p>

- Reasonable event times are 10pm for weekdays and 11pm weekends so as to not to disturb residents within certain radius of the site
- Operator has an additional 12 times per year where events can end at 2am, if New Years Eve is excluded from this additional 12 what ceasing time is placed on NYE. Would 1am be acceptable and why not have additional 12 events end at 11pm
- Reports provided by consultants on noise and acoustics state that there is a significant tree density to assist with noise level control, however there are only 6 large gum trees in a single line. This is similar to the pine trees facing Southey St
- Limiting of outdoor music to 10pm provides little comfort as indoor music has no restriction and will permeate outside when doors & windows are open
- Noise allowance is unacceptable as older residents on that St will be impacted

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

The residents' concerns about acoustic amenity are noted. An updated acoustics assessment has been undertaken to support this application. From an acoustic perspective, most of the indoor spaces would be controlled by the building envelope design and have a low risk with respect to noise emission. As for the outdoor areas, noise generated by the patrons would be managed. The outdoor swimming pool, associated plant room, bar and terrace are to be removed from M1, and a new outdoor exhibition space created at the ground level. The other gallery and exhibition areas within M1/M2 are enclosed spaces and the risk of noise impact would remain low and manageable. Noise emission from the new outdoor gallery at M1 is capable of being managed and minimised to an acceptable level through restricting amplified music levels and number of patrons. The outdoor swimming pool and associated terrace are to be relocated to M3. A restaurant and lounge room would also be provided within M3. Noise from the outdoor areas can be managed via the following (as approved):

- Limit operation hours for the outdoor terraces and swimming pool to: 7:00am to 12:00am, Mondays to Saturdays, and 8:00am to 12:00am for Sundays and Public Holidays.
- Limit amplified music level to 75dB(A)L10, and no playing of music in the outdoor areas after 10pm.
- Speakers are to be vibration isolated.
- Control the number of patrons occupying the outdoor areas.
- Barrier or balustrade to the terrace and swimming pool is to be a minimum of 1.2m above the finished floor level.
- Install signage at the entry and exit of the venues reminding patrons to minimise noise when departing the premises, especially after 10pm.
- Deliveries and waste collection are to be completed within the following hours: 7:00am and 6:00pm.
- Disposal of glass bottles must not occur after 10:00pm. The potential noise emission from the development can be managed and mitigated without causing unreasonable impacts at residential boundaries.

	Council's Environmental Health Officer has confirmed that noise related conditions of the existing consent are satisfactory.
<p><u>Traffic Management</u></p> <ul style="list-style-type: none"> Proposed Traffic Management Plan (TMP) for Hotel entry / exit into Southey St should be restricted to left hand entry and left-hand exit as entry / exit point is situated on a bend in the St where there isn't a clear view around the bend TMP for galleries / events parking area at Colo St allows vehicles to enter and exit in either direction, design has potential for considerable vehicular traffic and noise at night for residents Parking entrance will endanger most residents who walk on the road due to there being no footpath on that side of Southey St 	<p>The current proposal provides for in-bound and out-bound traffic of the guests of M3/M4 and service vehicles for M3/M4 at the Southey Street entry. The previous development scheme sought to utilise this access for outbound vehicles only. The approved scheme already allows for both left and right turn movements (refer to Condition 142, item 1 of the existing consent). The change currently proposed is to reduce reliance on Colo Street for vehicular access and would improve the overall traffic flow and distribution. The access design would comply with the provisions of Australian Standard 2890 series.</p> <p>The Traffic Statement submitted with this application concludes that the proposal would meet the relevant requirements of the existing consent.</p> <p>TfNSW and Council's Development Engineer have considered the impact of the proposed modified development on the approved traffic and access arrangements and raised no objection subject to conditions being imposed as part of any modified consent granted.</p>
<p><u>Financial Return</u></p> <ul style="list-style-type: none"> M1 and M2 has been deemed a significant development, not sure if it will have any significant impact to increasing financial returns to greater Wingecarribee community 	Financial return to the local community is not deemed to be a valid planning consideration. Nonetheless, the proposal would generate employment opportunities and encourage tourist activities that would deliver flow-on benefits to the local economy.
<p><u>Surrounding Area</u></p> <ul style="list-style-type: none"> Developer and council should contribute to the infrastructure of the surrounding area as it lacks pedestrian footpaths and access via anything but a vehicle Addition of footpaths to Colo St, Southy St, Bong Bong Rd and Ferguson Crescent would create easier access to the site and increase tourism while also pleasing local residents Colo St park and playground desperately requires upgrade being more than 20 years old, this would encourage visitation in this area The installation of a public basketball court would add to the overall area <p>Note comments also refer to the concurrent DA also under assessment.</p>	The proposal is subject to development contribution requirements under the Wingecarribee Section 7.11 Developer Contributions Plans. The development contributions would be utilised by Council for upgrading and embellishment of infrastructure, including roads, traffic management and open space and recreation facilities in accordance with the relevant plans and strategies adopted by Council.
<p><u>Council Administration</u></p>	This current section 4.56 modification application and amending development application are classified as regionally significant development pursuant to the provisions of <i>State</i>

<p>▪ Concerned with how project has been approved as council is still under administration and there isn't a proper council to make a decision</p> <p>Note comments also refer to the concurrent DA also under assessment.</p>	<p><i>Environmental Planning Policy (Planning Systems) 2021</i>. As such, the application is required to be determined by the Southern Regional Planning Panel who would consider the assessment undertaken by Council.</p> <p>Council has notified and exhibited both applications in accordance with its public consultation policy.</p>
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The Public Interest

[S4.15(1)(e)]

The proposal generally satisfies the prevailing planning controls and facilitates the '*orderly and economic use and development of land*' which is one of the objects of the *Environmental Planning and Assessment Act 1979*.

Accordingly, it is considered that approval of this application is in the public interest.

Conclusion and Recommendation

Following assessment of the modification application, it is considered that all relevant matters have been addressed, and / or conditions imposed to ensure that any potential impacts are negated. It is considered that this report adequately addresses the impacts of the proposal in terms of health, visual amenity, suitability of the site, services and utilities, flora and fauna, traffic, and the many other areas identified above.

The modification application has been assessed in accordance with the matters for consideration under sections 4.56 and 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and all relevant environmental planning instruments and Council policies, and is considered to comply with all relevant items.

It is recommended that the Southern Regional Planning Panel determine the modification application pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* by way of approval in line with the recommended conditions of consent outlined in and attached to this report.