

To: Southern Regional Planning Panel
Subject: PPSSTH-407 – MOD24/1140 (PAN-415744) – Council Response to Panel Request – 2 Colo Street, Mittagong
Date: 24/02/2025

Council provides the following response to the Panel's email request dated 17 February 2025, following the determination briefing on 12 February 2025.

1. What was originally approved / what is being amended

The original application purported to seek:

- Detailed development consent for a range of works on the site and (seemingly separately)
- Concept Approval for Buildings M5 and M6

However, the Court has seemingly approved:

- Concept Approval for the development of the entire site (including Stage 1 and Buildings M6 and M6) and
- Detailed development consent for the range of works which form Stage 1 under the Concept Approval

This is because only one consent was granted (not two separate consents) and the courts approval (at paragraph 16) only grants approval to a Concept development application. The Court's Instrument of Consent describes the proposal as a:

Concept Development for 'the Site' (being the entire site), together with detailed Stage 1 Approval for Malthouses M1 – M4.

This is also clearly articulated in condition 9. The provisions of the Environmental Planning and Assessment Act, 1979 allow for Concept Applications to be made which include detailed applications for the first stage of development under the Concept Plan (but do not make provision for approval of a separate application on land separate to that on which the Concept Plan is approved.

The State of Environmental Effects (SEE) which accompanies the modification application currently under consideration describes the modification application as follows:

This section 4.56 modification application seeks to amend the detailed development for stage 1 as approved by the Land and Environment Court. Specifically, the modification relates to the alterations, additions and adaptive re-use of Maltings M1, M2, the Southern Sheds (Shed 1

and 2) and the Maltster's Cottage, in conjunction with adjustments to the design of the Northern Shed.

There is no mention of the need to amend the Concept approval issued by the Court. It is possible that the Concept Approval as it relates to Stage 1 is identical to the detailed development application for Stage 1 and subsequently there is no distinguishing one from the other. Under these circumstances the current proposal which seeks to amend Stage 1 is also likely to automatically amend the Concept Approval.

However, to ensure the Panel has clarity around the modification being sought, and to enable the Panel to be 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 by the LEC, please clarify and confirm.

- the development for which consent was originally sought and then granted by the LEC.*
- the nature of the modification to the consent currently being sought.*
- that the proposed modification does not alter the fundamental elements of the original development for which consent was granted to the extent that it is no longer substantially the same.*

Council's response:

The applicant has provided clarification and confirmed the development for which consent was originally sought and then granted by the LEC and the nature of the modification to the consent currently being sought, in advice dated 24 February 2025 (forwarded to the Panel).

In relation to the fundamental elements of the original development, and considering the applicant's advice, Council confirms that the modified development would remain substantially the same. This has been addressed in Council's Assessment Report.

In response to question 1, we respond as follows, adopting the Panel's three points as the basis for our response.

1. The development for which consent was originally sought and then granted by the LEC

The development for which consent was sought is summarised in paragraph 2 of the judgment of Halcyon Hotels Pty Ltd v Wingecarribee Shire Council [2022] NSWLEC 1221 as follows:

- 1. detailed development consent for buildings M1 to M4 to accommodate a range of uses in multi-purpose spaces suitable for a range of cultural uses including art, exhibitions, functions, recreation activities and performances as well as a hotel with associated ancillary uses and ground improvements including landscaping, parking and vehicular access;*
- 2. site works including rehabilitation of the riparian corridor along the Nattai River and conservation works to support the adaptable re-use of heritage items on the Site;*
- 3. demolition of the ruins of the Malter's Cottage and construction of a multi-purpose space;*
- 4. concept approval for proposed buildings M5 and M6 to accommodate the following potential uses:*
 - a) residential accommodation;*

- b) tourist and visitor accommodation; and/or
- c) seniors living development.

Conditions 9 and 12 of Annexure B to the judgment – the conditions of consent - confirm that consent was granted for both Stage 1 detailed development for Maltings 1 to 4 and the Maltster's Cottage, and a concept development for Maltings 5 and 6, being the future stage 2 of the development.

Conditions 9 and 12 are extracted below, with our emphasis in **bold**.

Condition 9

Development consent is granted to concept development application No.201/1400 **that sets out a concept proposal** pursuant to section 4.22 of the Environmental Planning and Assessment Act 1979 for the development of the land known as 2 Colo Street Mittagong (Lot 21 SP 1029384) (herein after referred to as the site) **together with a detailed proposal comprising Stage 1 of the application.**

The detailed works in Stage 1 of the application comprise the Maltings 1 to 4 and redevelopment of Maltster's Cottage.

As part of the overall concept development application (as set out in the concept development application plans) **the future Stage 2 of the development of the site will comprise the Maltings 5 and 6.** Development consent is not granted pursuant to this consent for the construction of the Stage 2 works (Maltings 5 and 6), noting that these works are subject to future development applications.

This development consent does not approve any future use as part of the concept development application for the development of the site and shown as Stage 2 (Maltings 5 and 6).

Note: For the avoidance of doubt, nothing in this concept approval prohibits the submission of a future Stage 2 development application for a prohibited purpose in reliance on the heritage conservation provisions in clause 5.10(10) of the LEP

Condition 12 – Staging of development – Concept development consent and Stage 1 DA

Notwithstanding any other condition of this consent, the consent permits separate Construction Certificates and Occupation Certificates to be issued for the approved development in stages, provided that all conditions of consent relevant to the development incorporated within each stage have been complied with prior to the release of the Construction Certificate or Occupation Certificate for that stage.

The development is to be carried out in the following stages:

- **Detailed development application Stage 1 (Maltings 1 to 4 and redevelopment of Maltster's Cottage);**
- **Stage 2 DA (Maltings 5 and 6) – proposed as part of the concept development application. Any development to be the subject of a development application lodged in the future**

Reason: To ensure the staging of the development is consistent with legislative requirements.

A review of the approved plans establishes that the concept development approval essentially comprises:

- a) detailed Stage 1 development consent for Maltings 1 to 4; and*
- b) concept development consent for Maltings 5 and 6.*

Given this, the concept approval as it relates to Stage 1 is, in effect, the Stage 1 detailed development consent.

The Applicant concurs with the views expressed by the Panel in the comments on this point, as follows:

... the Concept Approval as it relates to Stage 1 is identical to the detailed development application for Stage 1 and subsequently there is no distinguishing one from the other. Under these circumstances the current proposal which seeks to amend Stage 1 is also likely to automatically amend the Concept Approval.

2. The nature of the modification to the consent currently being sought

*The nature of the modification as sought by MOD 24/1140 is summarised at page 1 of the Section 4.56 Modification Report prepared by Gyde Consulting dated 1 March 2024 (**Modification Report**), as including:*

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

A detailed summary of the nature of the modifications sought is included at Part 4 (pages 11 – 15) of the Modification Report, and is appropriately described in Council's Assessment Report dated 5 February 2025, as detailed in Table 2 on page 16, and as discussed on pages 15-17.

3. No alteration of fundamental elements – substantially the same

The Applicant is of the view that the development as sought to be modified is substantially the same development as that approved by the Land and Environment Court on 13 May 2022.

In support of this position, the Applicant refers to the discussion at Part 5.2 (pages 18 – 19) of the Modification Report, which concludes that the proposed modification does not change

the nature, essence and substance of the original approved development in any material manner.

The Applicant also concurs with the conclusion expressed in Council's Assessment Report dated 5 February 2025 (page 17) that:

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 development as originally approved.

2. Additional matters

Following consultation with the applicant, Council provide a revised set of draft conditions which take into consideration the panels views as outlined below:

- *The Panel notes that:*
 - *The power to modify a development consent must be exercised in relation to the particular modification sought; and*
 - *The consent authority can only modify or impose additional conditions where they sought by the applicant or they **relate directly to the modification being sought or its impacts** (i.e. the Panel cannot impose new conditions, or modify an existing condition, if the modification being sought does not cause an impact requiring the new or modified condition),*

To ensure the panel can be confident that any changes to conditions meet these requirements, please identify those amended/new conditions which are sought by the applicant or directly related to the modification being sought and those conditions which are proposed to be "updated" by Council.

- *provide a clear summary in the draft modified instrument (i.e. on the front page) of the changes being sought.*
- *Amend Conditions 2, 4, 6, and 7 to remove text "to be submitted to the satisfaction of Council" to be replaced with the text "to be submitted to Council".*
- *Delete Conditions 8A and 8B.*
- *Condition 11 – Plans and Documents - This condition should list all the plans and technical reports which apply to any approval that might be granted. As currently drafted, it is not clear which reports and plans apply to the entire Concept Approval, and which only apply to the Stage 1 development. The Condition needs to be updated to include all the new plans and technical reports that form part of the modification. For example, the Modification Planning Report effectively modifies the detailed approved plans in the original SEE (which is listed in the condition) and therefore should also be included in any modified approval. Given the overlap between plans and reports that relate to the Concept approval (including Maltings 5 & 6) as opposed to the Stage 1 approval, it might be easiest to otherwise leave the existing table as is, and add additional text to Condition 11 as follows:*

The plans and technical reports listed in the table above are modified and superseded by the details provided in the following plans and technical reports submitted as part of modification 24/1140 and only as they relate to the detailed development of Stage 1.

- *Condition 22C should be retained but the following text added at the end of the first paragraph: "unless otherwise approved by Council in the Heritage Interpretation Strategy and Heritage Interpretation Plan required by Condition 22".*
- *Condition 40 should be retained, and Condition 11 be amended to identify the correct date of the plan referenced.*
- *Condition 48 – Interpretation of Malster's Cottage should be retained but consider adding additional wording as follows, "except where modified by Condition 22D of this consent".*
- *Conditions 55B and 73A can be included if they arise from matters sought by the applicant / relate directly to the modification but should be amended to enable the applicant's ecologist to determine the suitability of nesting boxes as an appropriate microbat management measure.*
- *Condition 73 is a duplicate and should be deleted.*
- *Condition 110G – It is unclear whether a Koala Corridor is proposed as part of the modification application or what has changed since the original approval to warrant this condition .Requires clarification.*
- *References to appropriate contributions to be corrected.*

Please provide a clean copy of the revised draft conditions and a copy showing tracked changes and upload a copy of the original consent granted by the LEC (for which the modification is being sought).

Final draft conditions

As detailed earlier in this memo, comments were provided by the applicant on 24 February 2025 and forwarded to the Panel.

The following table addresses each of the relevant conditions and the requirements of the Panel.

Whilst it is acknowledged that the applicant only proposed to alter Conditions 11, 40, 127, 139, 140 and 141 of the consent at lodgement of this application, the conditions that are to be imposed (modified / inserted) have resulted from detailed assessment and technical input and are considered to relate directly to the modifications being sought or their impacts.

It is also noted that the conditions in the following table have been adjusted where possible to respond to the applicant's requirements.

| Condition | Comments made by applicant | Council response | Final comments |
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| Condition 2 Asbestos | It is our understanding that the surface clearance certificate | The condition does <u>not</u> mention 'further | <u>Applicant response:</u> Disagree. |

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| <p>Management Plan</p> | <p>issued by SafeWork NSW does not require further assessment by Council, it should be for Council's record only.</p> | <p>assessment' of the certificate by Council.</p> <p>What the condition says is that the certificate shall be <i>submitted to the satisfaction</i> of Council's Environmental Health Officer (EHO).</p> <p>This will allow Council's EHO to make sure that the submitted certificate refers to the whole and correct area, issued by a duly qualified person and <i>in accordance with section 429 of the Work Health and Safety Regulation 2017</i>.</p> <p>A hypothetical condition requiring the certificate to be submitted 'for Council's record only' will <u>not</u> allow Council to reject a certificate if it has obvious errors.</p> <p><u>Council recommendation:</u> No change.</p> | <p>The modification does not alter the asbestos management aspect of the approved development.</p> <p>Accordingly, we do not believe Council is empowered to amend this condition.</p> <p>The original condition 2 does not require the clearance certificate to be submitted to Council's satisfaction. In fact, the current condition does not require submission of the clearance certificate to Council at all.</p> <p>Council does not have a role to review or assess clearance certificate issued by SafeWork NSW. It should be submitted to Council for record keeping only.</p> <p><u>Council recommendation:</u></p> <p>Condition 2 to be modified to remove text "to be submitted to the satisfaction of Council" to be replaced with the text "to be submitted to Council".</p> |
| <p>Condition 4 Section B5 Site Audit</p> | <p>It is the role of the Accredited Auditor to audit the RAP and to</p> | <p>Similar to the above comments, a hypothetical condition</p> | <p><u>Applicant response:</u></p> <p>Disagree.</p> |

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| <p>Statement or Interim Audit Advice</p> | <p>determine whether the site can be made suitable for the intended use. It is our understanding that the Interim Audit Advice or Section B5 Site Audit Statement is for Council's record and not for their further assessment or approval.</p> | <p>requiring the Section B5 Site Audit Statement or Interim Audit Advice to be submitted 'for Council's record only' will <u>not</u> allow Council to reject a Section B5 Site Audit Statement or Interim Audit Advice if it has obvious errors.</p> <p><u>Council recommendation:</u> No change.</p> | <p>The modification does not alter the remediation aspect of the approved development.</p> <p>Accordingly, we do not believe Council is empowered to amend this condition.</p> <p><u>Council recommendation:</u></p> <p>Condition 4 to be modified to remove text "to be submitted to the satisfaction of Council" to be replaced with the text "to be submitted to Council".</p> |
| <p>Condition Validation Report 6</p> | <p>It is our understanding that the Validation Report does not require further assessment or approval by Council, the Report should be for Council's record only.</p> | <p>Similar to the above comments, a hypothetical condition requiring a Validation Report to be submitted 'for Council's record only' will <u>not</u> allow Council to reject a Validation Report if it has obvious errors.</p> <p><u>Council recommendation:</u> No change.</p> | <p><u>Applicant response:</u></p> <p>Disagree.</p> <p>The original condition does not require the Validation Report to be submitted to the satisfaction of Council. It only requires the report to be "provided to Council".</p> <p>Council does not have a role to review or assess the Validation Report. Council is not empowered to interfere with the statutory role of the auditor. It should be for Council's record keeping only.</p> |

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| | | | <p><u>Council recommendation:</u></p> <p>Condition 6 to be modified to remove text "to be submitted to the satisfaction of Council" to be replaced with the text "to be submitted to Council".</p> |
| <p>Condition 7 Site Audit Report and Site Audit Statement</p> | <p>It is our understanding that the Site Audit Report and Site Audit Statement do not require further assessment or approval by Council, they should be for Council's record only.</p> | <p>Similar to the above comments, a hypothetical condition requiring a Site Audit Report (SAR) and Site Audit Statement (SAS) to be submitted 'for Council's record only' will <u>not</u> allow Council to reject a SAR/SAS if it has obvious errors.</p> <p><u>Council recommendation:</u> No change.</p> | <p><u>Applicant response:</u></p> <p>Disagree.</p> <p>The original condition only requires a copy of the Site Audit Report and Site Audit Statement to be "provided to Council".</p> <p>Council does not have a role to review or assess SAR and SAS. Council is not empowered to interfere with the statutory role of the auditor They should be submitted to Council for record keeping only.</p> <p><u>Council recommendation:</u></p> <p>Condition 7 to be modified to remove text "to be submitted to the satisfaction of Council" to be replaced with the text "to be submitted to Council".</p> |

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| Conditions 8A Prior Notice of Category 2 Remediation Works | <p>This condition does not appear to be relevant, as approval of the remediation works are sought in the original DA.</p> | <p>Prior Notice of Category 2 Remediation Works and Notice of Completion of Category 2 Remediation Works are statutory requirements under sections 4.13 and 4.14(2), respectively, of <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>. For that reason they may be removed as conditions of consent.</p> <p><u>Council recommendation:</u> Condition 8A to be deleted.</p> | <p><u>Applicant response:</u></p> <p>Agreed.</p> <p><u>Council recommendation:</u></p> <p>Condition 8A to be deleted.</p> |
| Condition 8B Notice of Completion of Category 2 Remediation Works | <p>This condition does not appear to be relevant, as approval of the remediation works are sought in the original DA.</p> | <p>As above.</p> <p><u>Council recommendation:</u> Condition 8B to be deleted.</p> | <p><u>Applicant response:</u></p> <p>Agreed.</p> <p><u>Council recommendation:</u></p> <p>Condition 8B to be deleted.</p> |
| Condition 11 Development in Accordance with Plans and Documents | <p>Drawing number M1/2 000 (Cover Sheet + Drawing Index) should be Revision G.</p> <p>The version number for the Access Report should be Revision 05.</p> | <p>There is no objection to updating this condition to reflect the relevant documentation details.</p> <p><u>Council recommendation:</u> Condition 11 to be modified.</p> | <p><u>Applicant response:</u></p> <p>Agree that Condition 11 is to be modified. The Applicant has provided comments to Council under separate cover, refer Attachment A.</p> <p><u>Council recommendation:</u></p> |

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| | | | Condition 11 to be modified. |
| Condition 22C Retention of cast iron columns to Malthouse No.1 | <p>The condition requires the first two full rows of cast iron columns (comprising eight in total) within the ground floor of M1 to be retained in-situ. The condition should allow for circumstances where the deterioration of particular columns may not warrant retention. It is suggested that wordings be included to address the above, for example "where the condition and integrity of the columns are suitable and safe for retention based on advice from a qualified structural engineer".</p> | <p>It is considered the existing wording of the condition 'as is' to be acceptable and appropriate. The applicant's suggested amendments would open the condition up to interpretation, creating a very real risk of none of the columns being retained were they to obtain structural advice stating that retention is not feasible, even if in fact, retention is entirely possible.</p> <p>The condition requires the retention of the first two rows of the cast iron columns as a means of interpretation of the building and site overall, which feeds into the required heritage interpretation of the site. The reason why the first two rows were specified is that it allows for the retention of a meaningful portion of the columns so that their relationship to each other and the masonry skin of the building can be meaningfully appreciated and understood. Grouping them together at one end also still allows for a reasonable</p> | <p><u>Applicant response:</u></p> <p>Disagree.</p> <p>We acknowledge Council's intent to protect the heritage values of existing structural elements and fabric within M1, which aligns with the objectives of the project.</p> <p>We also maintain that flexibility should be provided in the condition of consent, especially when the structural condition and integrity of the columns and associated foundation are yet to be verified following demolition of the slab above.</p> <p>We therefore request that Condition 22C be removed and replaced with a requirement to retain the cast iron columns in the heritage interpretation strategy / plan, which is required to be approved by Council prior to the issue of a construction certificate (see Condition 22).</p> <p>This would allow further structural</p> |

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| | | <p>'activation' of the interior of the building, clear of obstructions.</p> <p>The condition also obligates the applicant to ensure their retention and protection as part of the conservation of the site to sensitively balance the new development with positive conservation outcomes.</p> <p>In any case, Council's Heritage Advisor has confirmed that were the applicant to obtain further structural advice to cogently demonstrate that retention was not feasible, and Council was to agree to the same, then there is no reason why a further modification application could not be considered to revise or otherwise delete the condition.</p> <p><u>Council recommendation:</u> No change.</p> | <p>assessment to be carried out to confirm which columns are structurally adequate and safe to be retained in-situ, and whether any columns should be relocated and positioned elsewhere within the site for interpretation purposes.</p> <p>Condition 22C is too rigid and does not allow appropriate alternatives.</p> <p><u>Council recommendation:</u></p> <p>No change.</p> <p>It is understood that the Applicant is wanting the condition to be more flexible and allow for retention based on the engineer's further advice. In particular, the Applicant has indicated that they seek the condition to be worded in a manner that would allow the removal of the cast iron columns and use in the heritage interpretation strategy / plan.</p> <p>Interpretation comes in different forms and can be executed in a variety of different means. Often heritage interpretation is left to</p> |
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| | | <p>installing plaques and information panels that convey messages and themes. This can be aided by the incorporation of salvaged elements into new artwork installations or 'as they are' but aided with signage to explain what the viewer is looking at. Context is very important in interpretation and one of the best forms of interpretation is to leave items or elements in-situ as this allows their context, function, purpose, use etc to be best understood.</p> <p>Removing the columns and being reinterpreted, say, in another location on the site, would risk obscuring the ability to understand what the elements are, their relationship to the building proper and to each other. There is no certainty what the heritage interpretation strategy or plan would propose for the site or for the columns for that matter, and if the wording of condition 22C was to be revised to leave it to the heritage interpretation strategy / plan to</p> |
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| | | <p>determine what and how much gets salvaged, but with the caveat of the structural assessment, there is no guarantee that any of the cast iron columns would be salvaged and interpreted.</p> <p>Conditions of consent are intended to provide a clear framework that explains what is required, when it is required and who is responsible for achieving that. Council remains of the view that the condition should remain as is. This does not prevent the Applicant from undertaking the development and obtaining further structural advice. If at that juncture, the advice is that some of the columns cannot be salvaged, and or they are not structurally capable of being retained as stand-alone elements in-situ, there is still opportunity for a s4.55 mod to amend the condition at that juncture. This could then be tied in with a modified condition for the heritage interpretation strategy / plan to</p> |
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| | | | incorporate the salvageable columns. |
| Condition 40 Off Street Parking Provision – General | The condition should refer to the correct date of the current site plan, number 0100, M1/M2 Site Plan, Revision E, dated 12.02.2024, prepared by Snohetta. | <p>The condition correctly references the date of the current site plan as 12/02/2023.</p> <p>However, it is noted that the date for the plan referenced in the table under Condition 11 is incorrect.</p> <p><u>Council recommendation:</u> No change to Condition 40.</p> <p>Condition 11 to be modified.</p> | <p><u>Applicant response:</u></p> <p>Noted and agreed.</p> <p>(The site plan's reference is 0100 (Rev E), dated 12.02.2023.)</p> <p><u>Council recommendation:</u></p> <p>No change to Condition 40.</p> <p>Condition 11 to be modified.</p> |
| Condition 48 Interpretation of the Maltster's Cottage | <p>Condition 48 currently reads as follows:</p> <p>48. Interpretation of the Maltster's Cottage</p> <p>Remnants of the 1907 Maltster's Cottage and garden shall be retained and integrated into the new Exhibition Building and its immediate setting to interpret the historical significance and use of the building as part of the former Maltings industrial complex. As the building is severely damaged and unstable, elements to be retained shall be</p> | <p>Condition 48 is an existing condition which requires the retention and protection of the remnants of the Maltster's Cottage and integrated into the new exhibition building. It requires details to be provided to Council for approval prior to a Construction Certificate.</p> <p>Council has received a design as part of the modification application, which has been reviewed and considered acceptable subject to Condition 22D which requires design changes to the proposed interpretation</p> | <p><u>Applicant response:</u></p> <p>Disagree.</p> <p>Council's comments point to the fact that the current design for the former Maltster's Cottage as part of the modification application "is considered acceptable subject to Condition 22D".</p> <p>The proposed design and interpretation of the former Maltster's Cottage and garden are documented in the modification drawings, which are referenced in Condition 11. The proposed development is</p> |

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| | <p>capable of interpretation without reconstruction. Details are to be provided to Wingecarribee Council for approval prior to the release of the construction</p> <p>Reason: <i>To ensure that the historical significance of the site is recognised and preserved for future generations.</i></p> <p>The proposed modification includes a design that addresses the requirements of Condition 48. This condition is also superseded by requirements in the newly inserted Condition 22D, which reads as follows:</p> <p>22D. Maltster's Cottage interpretation works (inserted by 24/1140)</p> <p>Prior to the issue of a Construction Certificate, amended plans are to be submitted to the satisfaction of Council demonstrating the following:</p> <p>a) The trees</p> | <p>response to the ruins, by deleting the trees and providing specifications of the proposed fill material.</p> <p>Council's Heritage Advisor does not see the two conditions as mutually exclusive, and both are still required. Were Condition 48 to be deleted, then there is no obligation for the applicant to retain the ruins and incorporate into the new exhibition building. In turn, this would make Condition 22D effectively redundant.</p> <p>Condition 48 prescribes that the ruins are to be protected and interpreted and a design submitted to Council for approval. Condition 22D fine-tunes the submitted proposal.</p> <p>Council's Heritage Advisor had considered possibly amalgamating Conditions 48 and 22D but upon further reflection, did not consider there to be any utility in doing so.</p> <p>However, to provide clarification and remove any potential ambiguity, it is recommended that additional wording (i.e.</p> | <p>required to be implemented in accordance with the approved plans and supporting documents.</p> <p>The above would mean that Condition 48 is redundant and should be removed to avoid confusion.</p> <p><u>Council recommendation:</u></p> <p>Condition 48 to be modified.</p> <p>Council's previous comments remain. Put simply, it is Council's understanding that Condition 48 requires the retention and protection of the remnants of the Maltsters cottage, while Condition 22D fine-tunes the submitted plans that seek to satisfy Condition 48. The incorporation of tree plantings within the remaining wall vestiges is of concern as the trees introduce a high risk of damage to the retained fabric of the Maltster's cottage through invasive roots. Further detail is also required on the type of fill proposed between the wall vestiges as this is not detailed in the</p> |
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| | <p>within the footprint of the retained footings of the Maltster's Cottage are to be deleted. No landscaped plantings are to be introduced within the footprint of the former dwelling.</p> <p>b) Details are to be provided of the nominated fill material.</p> <p>c) The fill material is to be separated by a geotextile fabric membrane to provide protection to retained heritage fabric.</p> <p><i>Reason:</i> <i>Heritage conservation.</i></p> <p>Condition 48 should be deleted.</p> | <p>'except where modified by Condition 22D of this consent') be inserted into Condition 48.</p> <p><u>Council recommendation:</u> Condition 48 to be modified.</p> | <p>proposed design. So basically, the submitted design does not satisfy Condition 48.</p> |
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| <p>Condition 56B Microbat Management Plan</p> | <p>The second dot point states, in relation to the provision of additional habitat, that "The use of plywood boxes is generally discouraged for this project":</p> <ul style="list-style-type: none"> • 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. <p>However, the existing Condition 55 provides for the provision of hollows or nest boxes for any natural hollow</p> | <p>Council's Ecologist has confirmed that when drafted, the MMP should also include procedural guidance around avoiding exclusion during breeding periods if bats are present at this time.</p> <p>The applicant notes that timber boxes are acceptable under Condition 55, but Condition 56B states that use of timber is discouraged.</p> <p>The Ecologist would support that timber boxes are discouraged for bats, as the aim of this condition is bats utilising the building. Timber will not be the best option. Condition 55 targets different habitat features, for which plywood boxes may be suitable, as different taxa are targeted. Condition 55 specifically concerns bats in buildings.</p> <p>In general, it is favourable to replace or add additional bat habitat in the same or similar form to what they are confirmed as using. That is where the recommendation from incorporating bat roost sites into the building design stems from. The MMP will outline this, as well as</p> | <p><u>Applicant response:</u></p> <p>Council's comments appear to suggest that the second dot point in Condition 56B relates to bats utilising the existing building as habitat.</p> <p>If this is the case, then the sentence "<i>The use of plywood boxes is generally discouraged for this project</i>" should be reworded to point to the specific circumstances and species (Microbats) where plywood boxes are not preferred, so as to avoid conflict or potential confusion with applying Condition 55.</p> <p><u>Council recommendation:</u></p> <p>Condition 56B to be modified.</p> <p>Regarding the sentence "<i>the use of plywood boxes is generally discouraged</i>". This wording may be amended to "<i>The use of plywood boxes is generally discouraged as a default for the provision of compensatory habitat for microbats roosting in artificial structures. Other materials, preferably consistent with roost sites to be</i></p> |
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| | <p>removed by the development.</p> <p>Condition 55 reads as follows:</p> <p>55. Erection of Nesting Boxes</p> <p>Hollows or nest boxes are to be installed on a one for one basis for any natural hollow removed by the development.</p> <p>Nest boxes are to be constructed of appropriate durable materials (e.g. painted marine ply, native hardwood or similar) and fixed to recipient trees with stainless steel screws, wire or similar. All nest boxes are to be erected prior to any clearing occurring on the development site.</p> <p>The Consulting Ecologist must identify suitable locations to erect hollows/nest boxes that minimise the risk of vandalism and maximise the likelihood of occupation by native fauna. To replace nest hollows lost, at least 1 large nest box per tree</p> | <p>provide a mechanism to confirm where bats are roosting, if they are present at all.</p> <p><u>Council recommendation:</u> No change.</p> | <p><i>impacted, should be considered. The use of plywood boxes may be deemed suitable if sufficient justification is provided in the MMP, with the justification to outline other materials that were considered".</i></p> |
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| | <p>removed shall be erected at least 5 metres high within retained vegetation at the rear of the property within the retained native trees.</p> <p>Reason: To provide an equivalent replacement for any natural hollow to be removed.</p> <p>The suitability of providing nesting boxes and/or hollows should be subject to the project ecologist's advice depending on the specific location, species and conditions of trees and environmental conditions. As such, Condition 56B should be revised to allow flexibility rather than having a presumption against the use of nesting boxes, through deleting the wordings "The use of plywood boxes is generally discouraged for this project".</p> | | |
| Condition 73 Traffic Control Plan | <p>This existing condition is not proposed by Council for amendment. However, it is a duplicate of Condition 63 and should be removed.</p> | <p>Council agrees that Condition 73 is a duplicate of Condition 63 (Traffic Management Plan).</p> <p><u>Council recommendation:</u></p> | <p><u>Applicant response:</u></p> <p>Agreed.</p> <p><u>Council recommendation:</u></p> <p>Condition 73 to be deleted.</p> |

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| | | Condition 73 to be deleted. | |
| Condition 73A Habitat Bearing Tree Survey | <p>Condition 73A currently reads as follows.</p> <p>73A. Habitat Bearing Tree Survey (inserted by 24/1140)</p> <p>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.</p> | <p>Council's Ecologist has confirmed that if plywood is to be used for replacement nest boxes, ply must be at least 25mm thick, with entrance holes similar to habitat features being removed, or designed to target fauna to be impacted. The nest box type is to be informed by the project ecologist, which inherently provides some flexibility in what is required.</p> <p><u>Council recommendation:</u> No change.</p> | <p><u>Applicant response:</u></p> <p>Disagree.</p> <p>The modification proposal does not involve any additional clearing of native vegetation beyond what has been approved.</p> <p>Council's comments suggest that the use of nest boxes would be appropriate provided they are of a specific configuration or construction. Specifically, they <i>"must be at least 25mm thick, with entrance holes similar to habitat features being removed, or designed to target fauna to be impacted. The nest box type is to be informed by the project ecologist, which inherently provides some flexibility in what is required"</i>.</p> <p>It is requested that the following sentence be reworded:</p> <p><i>"Where habitat is being removed, a commensurate habitat replacement must be introduced with a preference for</i></p> |

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| | Same issue as above, flexibility for using nest boxes or hollows should be allowed, depending on the advice of the project ecologist. | | <p><i>hollows drilled into retained trees rather than only nest boxes based on advice from the project ecologist.</i></p> <p>An advisory may be inserted to note that if nest boxes are proposed, then their design and construction are to be advised by the project ecologist.</p> <p><u>Council recommendation:</u></p> <p>Condition 73A to be modified.</p> <p>Updated wording from the applicant may be used, but recommended wording would read <i>"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 based on advice from the project ecologist. Compensatory hollows or nest boxes should be similar in size and dimension to hollows being removed."</i></p> |
| Condition 110G Koala Corridor | Council's assessment states that: "the proposed VMP works will enhance the | Council's Ecologist sees no issue with the wording of this condition. | <p><u>Applicant response:</u></p> <p>The applicant has no issue with providing</p> |

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| | <p>corridor and are supported by Council. Ensuring Koala friendly fencing is used is key" (p. 23).</p> <p>The proposal will rehabilitate the riparian zone of Nattai River within the site. The design scheme seeks to maintain an open landscape around the buildings. The condition should clarify that should any fencing be installed, then it needs to be koala friendly. The title to the condition and the reference to "Koala Corridor" may imply other works to establish a Koala Corridor (depending on how it is defined) that are out of scope.</p> | <p><u>Council recommendation:</u> No change.</p> | <p>koala friendly fencing, if fencing is to be installed in the riparian area.</p> <p>However, it is unclear whether the term "Koala Corridor" is a defined term or implies certain works other than koala friendly fencing to be undertaken along the Nattai riparian corridor.</p> <p>If the intent is to allow free movement of koalas along the Nattai riparian corridor, then the condition should simply state this intent.</p> <p>The condition is proposed to be reworded as follows:</p> <p><i>Koala Fencing</i></p> <p><i>Where fencing is proposed along the Nattai riparian corridor, then koala friendly fencing must be utilised which would allow for the rare, but potential movement of koalas along the corridor. This means any fencing must allow koalas to move either under, through or over fencing, or have a suitable alternative route.</i></p> |
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| | | | <p><u>Council recommendation:</u></p> <p>Condition 110G to be modified.</p> <p>The updated wording provided by the applicant is satisfactory. No issues are raised.</p> |
| <p>Condition 140 Concurrence – Water NSW</p> | <p>Reference to the following drawings and documents should be updated to reflect the current version:</p> <p><u>Drawings</u></p> <ul style="list-style-type: none"> • 1100 – M1/2 Plan Ground (L00), Revision G, dated 25.10.2024 • 1101 – M1/2 Plan L02-03, Revision F, dated 13.09.2024 • 1102 – M1/2 Plan Roof, Revision F, dated 13.09.2024 • 1801 – M1/2 GFA Plans, Revision E, dated 12.02.2024 • 2000 – M1/2 Elevations (Exterior), Revision G, dated 25.10.2024 • 3000 – M1/2 Sections, Revision G, dated 25.10.2024 <p><u>Documents</u></p> <ul style="list-style-type: none"> • Stormwater & Flood Management Strategy, Issue D, dated 24/10/2024 (note: the figures within | <p>The revisions to the submitted documentation were not considered to cause any additional impact on water quality, as such the application was not required to be re-referral Water NSW for updated concurrence, including reference to the current version of relevant drawings and other supporting documents.</p> <p><u>Council recommendation:</u> No change.</p> | <p><u>Applicant response:</u></p> <p>Council's explanation is noted. It is our understanding that Council did not refer the amended plans (submitted in response to Council's RFI) to Water NSW.</p> <p>To avoid risk in implementing the proposal, Council should insert an advisory note in the consent that it has considered the amended drawings (referenced in Condition 11) and determine that there would be no additional effects on water quality, and that any updating of plan reference in Condition 140 is deemed unnecessary by Council.</p> <p><u>Council recommendation:</u></p> <p>No change.</p> |

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| | <p>the Stormwater & Flood Management Strategy currently referred to in the condition should also be updated).</p> <p>Utilities Servicing Assessment, Issue E, dated 28/08/2024</p> | | <p>The revisions to the submitted documentation were not considered to cause any additional impact on water quality, as such the application was not required to be re-referral Water NSW for updated concurrence, including reference to the current version of relevant drawings and other supporting documents.</p> |
| <p>Condition 141 General Terms of Approval – Department of Planning and Environment – Water</p> | <p>The condition has included reference to the following documents that are unrelated to the project and should be removed or superseded with the application documents:</p> <ul style="list-style-type: none"> • Statement of Environmental Effects, prepared by Calibre, dated 1/07/2020 • Station St Menangle – Stage 2, Road and Drainage Design Plan | <p>This relates to an approval issued by the Department of Planning and Environment – Water. Council is unable to amend the referenced documentation in Schedule 1 without consulting the Department. Regardless, removing or superseding the relevant documents is not considered necessary.</p> <p><u>Council recommendation:</u> No change.</p> | <p><u>Applicant response:</u></p> <p>The two documents in the general terms of approval issued by DPE – Water contain an error by referring to documents unrelated to the project. Council should have reviewed this matter and requested the terms of approval be updated during the assessment process. This did not occur.</p> <p>If Council forms the view that removing the incorrect reference is unnecessary, then an advisory note should be inserted in the consent to avoid potential issues with implementing the consent.</p> |

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| | | | <p><u>Council recommendation:</u></p> <p>No change.</p> <p>This relates to an approval issued by the Department of Planning and Environment – Water. Council is unable to amend the referenced documentation in Schedule 1 without consulting the Department. Regardless, removing or superseding the relevant documents is not considered necessary.</p> |
| <p>S7.11 Contributions Sheets Follow:-</p> | <p>The title "S7.11 Contributions Sheets Follows" should be revised as the Notice of Payment relate to Section 64 levies.</p> <p>The notice should be addressed to: Colliers on behalf of Maltings Holdings Pty Ltd.</p> | <p>Council agrees to the suggested changes.</p> <p><u>Council recommendation:</u> The title 'S7.11 Contributions Sheets Follows' to be modified.</p> <p>The relevant notice of payment is to be addressed to the applicant, The Trustee for the Maltings Property Trust c/- Colliers.</p> | <p><u>Applicant response:</u></p> <p>Agreed.</p> <p><u>Council recommendation:</u></p> <p>The title 'S7.11 Contributions Sheets Follows' to be modified.</p> <p>The relevant notice of payment is to be addressed to the applicant, The Trustee for the Maltings Property Trust c/- Colliers.</p> |

In summary, Conditions 8A, 8B and 73 in the draft determination are to be deleted.

The title 'S7.11 Contributions Sheets Follows' in the draft determination is to be modified to include reference to S64. The relevant notice of payment is to also be modified to be addressed to the applicant, The Trustee for the Maltings Property Trust c/- Colliers.

Conditions 2, 4, 6, 7, 11 (the table), 48, 56B, 73A and 110G in the draft determination are to be modified.



Andre Vernez
Acting Coordinator Planning Assessment
Date: 24 February 2025

Attachments

- Revised Draft Conditions (Tracked Changes & Clean Copies).
- Original Consent granted by LEC.