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Statement of Environmental Effects

for the

Removal of burnt/contaminated/dangerous trees

at

Closebourne Village

365 Morpeth Road, Morpeth

May 2023

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1 INTRODUCTION

1.1 SUMMARY

Site Details	
Address	365 Morpeth Road, Morpeth
Property Description	Lot 4 & 7 DP 270740 (Site)
Local Government Area	Maitland City Council
Current Use	Retirement Village

General Details	
Applicant	LL RV (Closebourne) Pty Ltd
Proposal	Removal of burnt/contaminated/danerous trees
Application Type	Development Application
Level of Assessment	Integrated Development
Consent Authority	Maitland City Council
Key Applicable Codes	Maitland LEP 2011 (MLEP) Maitland DCP 2011 (MDCP)

1.2 REPORT PURPOSE

This Statement of Environmental Effects (SEE) has been prepared to accompany a Development Application (DA) to Maitland City Council (Council) seeking consent for the removal of 11 burnt and/or contaminated trees and Tree #48, which is in severe decline and dangerous.

The purpose of this report is to describe the proposal and review the relevant planning requirements relating to the proposal. It provides an assessment of the proposed development in terms of the Evaluation Criteria prescribed under Section 4.15 of the Environmental Planning and Assessment Act, 1979 (Act).

In the preparation of this SEE, the Site and the locality has been considered, along with the plans and supporting reports.

The merits of the proposal have been considered with reference to the relevant State, Regional and Local Council planning instruments, codes and policies and the proposal is considered worthy of development consent.

1.3 SITE DESCRIPTION & LOCALITY

The whole Site consists of approximately 40Ha of land, comprising a number of lots, bounded by Morpeth Road to the north, Tank Street to the east and rural residential development and dwelling houses to the south and west.

The Site is listed on the NSW State Heritage Register (Item 00375) and includes Closebourne House, Morpeth House and the landscape setting.

The Site is currently being developed and used as a Retirement Village, Residential Lots and Farmlets in accordance with Master Plan (DA08-2335) that was approved on 14 July 2009.

The Master Plan broadly provides for a range of land uses including;

- Nursing home, high care and dementia, plus day respite care, in and around the Closebourne House area, surrounded by curtilage open space;
- Retirement living, including reuse of Morpeth House, village open space, adaptive reuse of Robinson House and Principal Lodge, with up to 277 dwellings; and

- Residential lots (14 residential lots and 21 farmlet lots, in two locations).

The Master Plan has been modified over the years with the most recent Modification approved on 22 February 2022 to increase the number of villas in the Oval Precinct to 14.

This is the current version of the Master Plan.

Condition 4 of the Master Plan, required separate development applications to be lodged and approved for the various stages of development of the Site, including the independent retirement living villas. The vast majority of the approved villas have been approved, constructed and are now occupied.

Location maps showing the Site in a regional and local context and extract from the Master Plan are set out in the following Figures.

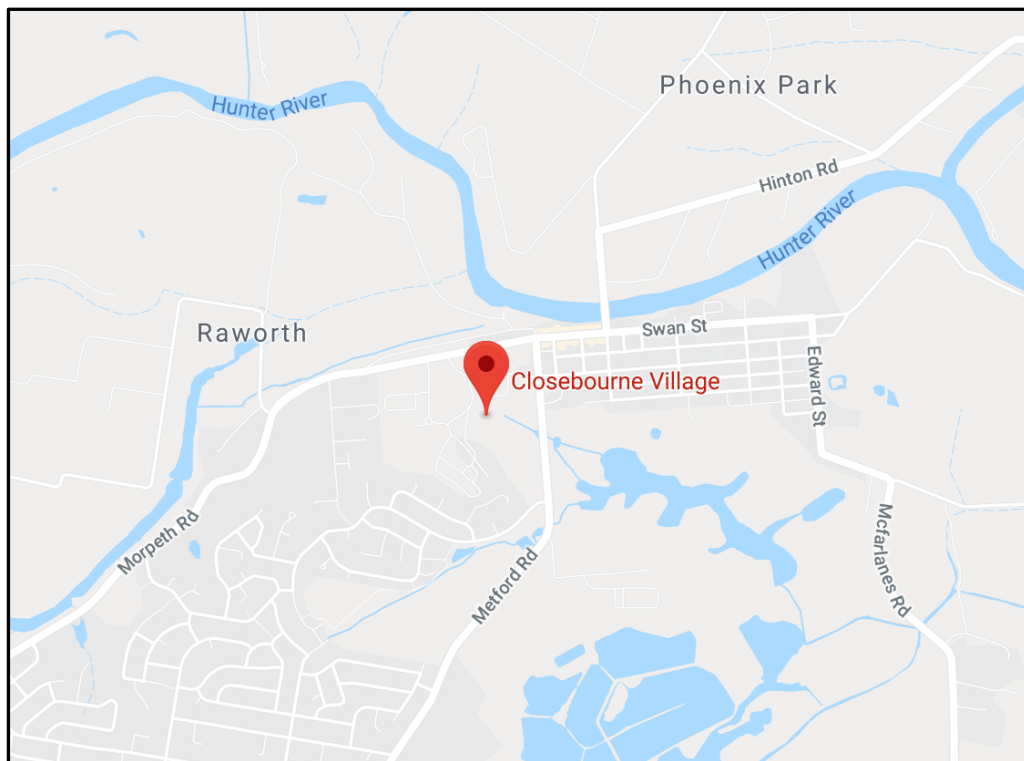


Figure 1 - Regional Context Map

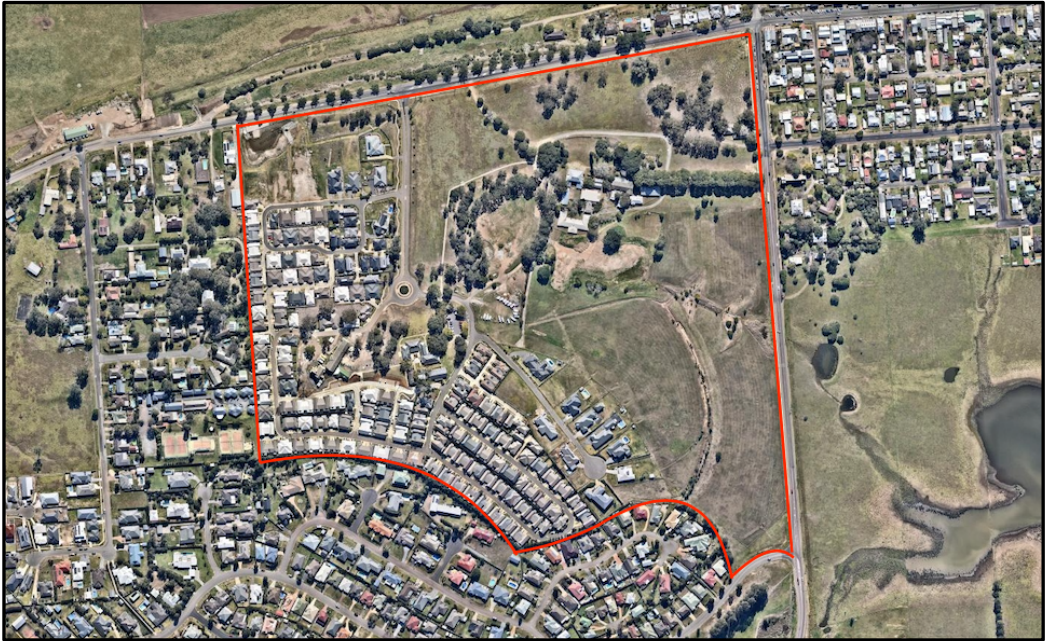


Figure 2 - Aerial Photograph

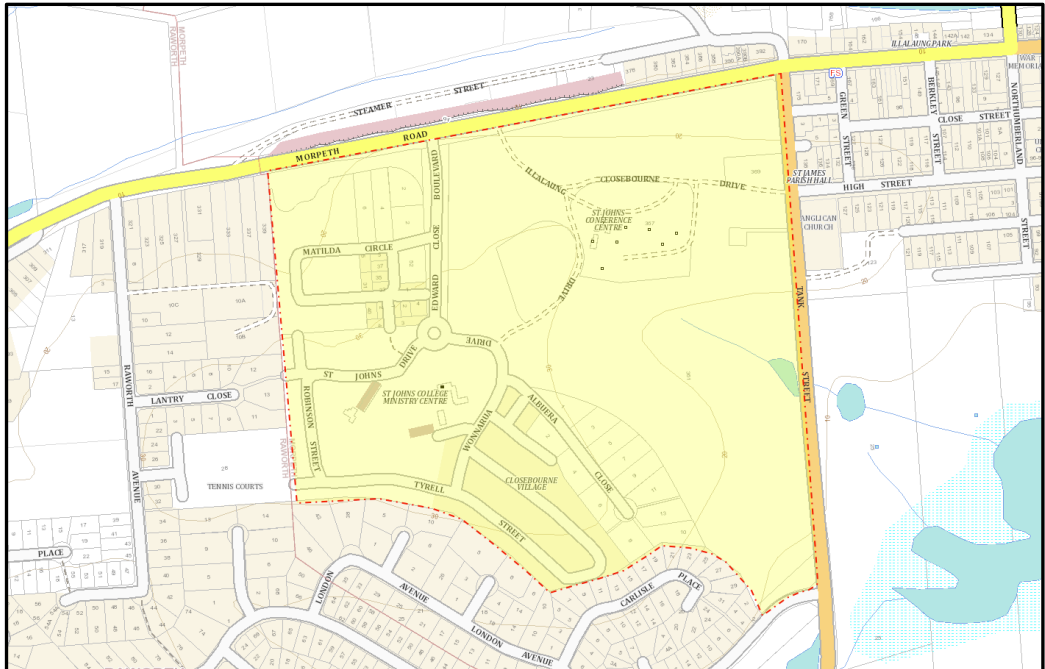


Figure 3 - Subject Site

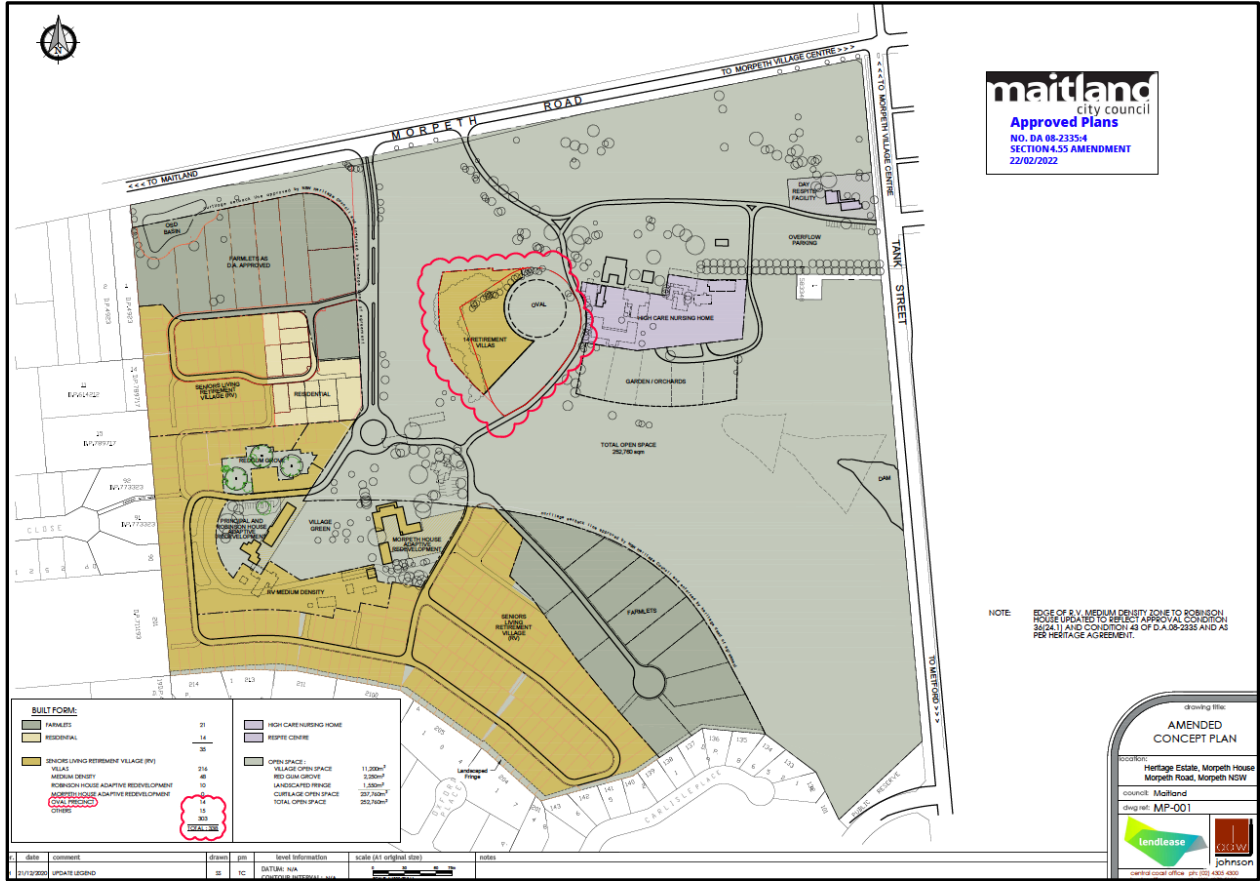


Figure 4 - Current Master Plan

2 DESCRIPTION OF PROPOSAL

The DA seeks consent for the removal of 11 burnt and/or contaminated trees on Lot 4 DP 270740 and Tree #48, which is in severe decline and dangerous, on Lot 7 DP 270740.

The burnt and/or contaminated trees are located adjacent to the tank street cottages which were the subject of an arson attack at approximately midnight on 16 February 2023. The matter was obviously reported to the police who are undertaking investigations to apprehend the perpetrator(s).

The fire destroyed the first (western) building and affected approximately 25% of the second (eastern) building. The effect of the fire was that friable asbestos fibres were dispersed into the air and spread around nearby grounds and into the vegetation, therefore contaminating the area.

A Licensed Asbestos Assessor from Trinitas Group, was promptly engaged to undertake a PVA make safe of the fire affected structures, this included spraying PVA over fire affected materials and to commence a site investigation.

Trinitas Group also prepared a Technical Specification for Asbestos Remediation Works, which is included with this DA.

This Report identifies friable asbestos fibers within 11 identified trees and within the two building structures.

The Report also proposed that the area will be remediated as follows:

- Demolition of the fire-affected structures with the safe removal of debris to an approved receiving facility (estimated at 450t).
- The removal of up to 150mm of asbestos contaminated topsoil and vegetation located in the currently fenced area that has been assessed as contained asbestos material. The contaminated spoil is to be taken to an approved receiving facility (estimated at 900t)
- The felling and removal to an approved receiving facility of 11 trees that may contain asbestos fibres etc. within their canopies (estimated at 11t).

The tree removal is required as it is not possible to thoroughly inspect the canopies of trees, to guarantee that there is no risk to humans of being exposed to asbestos fibre. The option of hosing down the trees was considered; however, there could still be no way of confirming that all the asbestos had been eliminated.

As such, the unfortunate consequence of the fire is that there are 11 trees which are now either burnt and/or contaminated to the point they present a health risk to the residents and community.

LL further commissioned an arborist assessment of the trees by Terras Landscape Architects. The engagement included:

- assessing health, vigour and retention value of the subject trees;
- holding discussions with client and site hygienist (Trinitas Group); and

- determining what impacts the proposed site decontamination works will have on the trees.

This assessment is included with this DA and provides the following conclusion:

Although some of the trees would be suitable for retention following the fire, in order to ensure that the site has been properly decontaminated and the risk of hazard from the presence of asbestos is eliminated, it will be necessary to remove all the trees located within the exclusion area.

Tree 48 should also be removed due its severe state of decline although this tree has not been affected by the fire (note: making the total of 12 trees proposed for removal).

Based on these conclusions the Assessment also makes the following recommendations:

- *It is recommended that approval be sought to remove all trees as nominated above.*
- *As a suggestion, plant one standard tree (45 litre) on the site for each tree removed as compensatory planting with suitable trees able to reach a similar size that matches the existing to ensure that the amenity of the site is maintained. It is suggested that the current trees be replaced with Eucalyptus tereticornis (Forest Red Gum) due to their suitability to the site conditions, the presence of other Forest Red Gums nearby, and to assist in maintaining and enhancing the rural aspects of the site. (Refer Appendix B)*
- *It is recommended that an ecologist be engaged to assess Tree 50 due to its potential to provide habitat for local fauna before removal.*
- *Ensure tree removal work is carried out by or supervised by a qualified tree worker (AQF Level 3 or equivalent) in accordance with the Guide to Managing Risks of Tree Trimming and Removal Work (Safe Work Australia, 2016).*
- *Tree remains to be removed from site to an approved facility that can take asbestos contaminated material.*

Extracts from the plans are provided in the following Figures.



Figure 5 – Aerial View showing trees proposed to be removed



Figure 6 - Extract from Compensatory Planting Plan

3 MATTER FOR CONSIDERATION

3.1 RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS & POLICIES

Section 4.15(1)(a)(i) of the Act requires the consideration of all Environmental Planning Instruments (EPI) relevant to the DA.

Given the nature of the proposal and the obvious safety issues, there are few of the relevant EPIs that are applicable. However, for completeness we provide the following comments in the Table below.

Plan	Comment
Strategic Plans	
Conservation Management Plan (CMP)	<p>The CMP was endorsed by the Heritage Council in 2005 and informed the approved Master Plan.</p> <p>The Trees are damaged and/or contaminated and cannot safely stay in the location.</p>
State Environmental Planning Policies	
State Environmental Planning (Resilience and Hazards) 2021	N/A
Local Planning Instruments	
<i>Maitland Local Environmental Plan 2011</i>	
- <i>Clause 2.3 – Zone objectives and Land Use Table</i>	The Site is zoned R1 General Residential and tree removal is permissible with development consent and in some circumstances, without consent.
- <i>Clause 5.10 – Heritage Conservation</i>	<p>The trees are damaged and/or contaminated and cannot safely stay in the location.</p> <p>In terms of its visual impact, it is adjacent to larger stands of trees and compensatory planting is proposed. Therefore, its removal will have no discernible impact and, therefore, no impact on the heritage significance of the Item.</p>

3.2 RELEVANT DRAFT LOCAL ENVIRONMENTAL PLANS

Section 4.15(1)(a)(ii) of the Act requires Council to consider the Provisions of relevant Draft Environmental Planning Instruments.

We have reviewed the LEP Tracker on Department of Planning website and can find no relevant Draft LEPs relevant for the proposed development.

3.3 DEVELOPMENT CONTROL PLANS

Section 4.15(1)(a)(iii) of the Act requires the consideration of MDCP.

Specifically, Section 4.15(3A) of the Act clarifies the way in which a DCP is to be considered when assessing and determining a development application under Section 4.15 of the Act. This subsection clarifies that:

- If a development application does not comply with standards or performance criteria in the DCP, the consent authority should be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objectives of those standards. Thus, consent authorities should not refuse a development application purely based on non-compliance with a standard in the DCP.
- A consent authority should only consider the standards and performance criteria in a DCP in connection with a specific development application. This is to ensure consent authorities do not refuse development applications purely because it will set a precedent or is contrary to a precedent or established practice of the consent authority.

As such, the consent authority will be required to give less weight and significance to provisions of a DCP than those of an EPI and are not permitted to place determinative weight on DCP controls because of their prior consistent application.

Having said that, we note that this DA is consistent with MDCP and the relevant controls are discussed in the following Table.

Plan	Comment
C.4 Heritage Conservation	<p>The trees are damaged and/or contaminated and cannot safely stay in the location.</p> <p>In terms of its visual impact, it is within a larger stand of trees and compensatory planting is proposed. Therefore, its removal will have no discernible impact and, therefore, no impact on the heritage significance of the Item.</p>
B.5 Tree Management	<p>In accordance with <i>Part 3, Clearing of vegetation on land that contains a Heritage Item</i>, an Arborist Assessment is provided which confirms the trees should be removed for safety reasons.</p>

3.4 PLANNING AGREEMENTS

Section 4.15(1)(a)(iii) of the Act requires consideration of any planning agreement entered into under Section 7.4.

There are no planning agreements or draft agreements included in this proposal.

3.5 REGULATIONS

Section 4.15(1)(a)(iv) of the Act requires consideration of the Environmental Planning Assessment Regulation 2000 (Regs).

The Proposal complies with and is consistent with the relevant provisions of the Regs.

4 LIKELY IMPACTS OF THE DEVELOPMENT

Section 4.15(1)(b) of the Act requires consideration of the likely impact of the development.

4.1 HERITAGE ASSESSMENT

Unfortunately, the trees are damaged and/or contaminated and cannot safely stay in the location.

In terms of its visual impact, it is within a larger stand of trees and compensatory planting is proposed. Therefore, the removal of these trees will have no discernible impact and, therefore, no impact on the heritage significance of the Item.

4.2 AMENITY

There are no amenity impacts that result from the removal of the trees.

4.3 SOCIAL IMPACTS

The removal of the trees contributes to creating a safe environment for the residents and staff of Closebourne Village and will not result in any negative social or economic impacts.

4.4 ECONOMIC IMPACTS

The removal of the trees will generate work for contractors and flow-on multipliers.

On this basis, the proposal will have a positive economic impact.

5 SUITABILITY OF THE SITE

Section 4.15(1)(c) of the Act requires consideration of the suitability of the Site.

The use of the Site as a retirement village is suitable and the proposed removal of the trees will enhance the overall suitability of the Site by improving safety.

6 SUBMISSIONS

Section 4.15(1)(d) of the Act requires assessment of submissions by Council following exhibition.

7 PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires the public interest to be considered.

Issues of public interest relevant to this application will relate to any resulting submissions that are received and can be addressed specifically when they are known.

8 CONCLUSION

This DA seeks consent seeking consent for the removal of 11 burnt and/or contaminated trees and Tree #48, which has been assessed as being in severe decline.

This SEE has assessed the proposal with respect to the key planning issues related to the proposed works and has concluded that it has planning merit, in that it will:

- not adversely impact on the Heritage Significance of the Site;
- be carried in accordance with Australian Standards and Council's conditions;
and

- lead to a safer environment for residents, staff and the general public.

Considering that friable asbestos fibres were dispersed into the trees in question and in the absence of any significant environmental impacts, we submit that the proposed development is worthy of approval by Maitland City Council and we would request that this DA is processed as soon as practicable.



Craig McGaffin
Town Planner – BTP
Lawyer - Dip Law

