

STATEMENT OF ENVIRONMENTAL EFFECTS

CONSTRUCTION & OPERATION OF
FOUR BUSINESS PREMISES UNITS

12 DAY STREET, EAST MAITLAND, NSW 2323
(LOT 100, DP1291498)



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EXECUTIVE SUMMARY

Perception Planning Pty Ltd has been engaged by Brad Lantry (the client) to prepare a Statement of Environmental Effects (SEE) for the construction of four Business Premises Units at 12 Day Street, East Maitland, NSW 2323 (LOT: 100 DP: 1291498) (**'the site'**). The site is located within the Maitland LGA within East Maitland, immediately west of the East Maitland Railway Station. The site currently contains a derelict dwelling and some remnant vegetation.

The site adjoins the Hunter River Hotel to the north and has a mix of nearby uses, including vacant public recreation land immediately south, the East Maitland Railway Station immediately east, and residential land to the west. While the subject site is zoned R1, land immediately, north, east & south of the site each hold their own respective zonings being MU1 Mixed Use, SP2 Railway & RE1 Public Recreation respectively. Accordingly, the subject site is considered an orphan site in terms of its current zoning.

The proposed development seeks to construct four business premises units totalling 173.90m², 173.90m², 173.90m², & 210.50m² in floor area respectively. The Business Premises Units will each be leased out for individual businesses. The following works are also proposed in association with the construction of the Business Premises Units:

- Demolition of the existing derelict dwelling on the site
- Removal of existing vegetation on the site
- Access construction to Day Street
- Carpark Construction (11 parking spaces including 1 accessible parking space & a turning bay).
- Landscaping

The proposed development is consistent with the Maitland Local Environment Plan 2011 (MLEP) and Maitland Development Control Plan 2011 (MDCP). Where non-compliances exist, management or mitigation measures have been provided. The proposed development will contribute to the existing area by meeting the range of zone objectives applicable to the subject site & subject application as required through Clause 5.3. the proposed development will ultimately serve to meet the needs of the community in proximity of the subject site. Accordingly, the proposed development will positively contribute to the character and function of East Maitland, activating what is currently an unoccupied and heavily constrained parcel of land.

The key factors as to why the proposed development should be considered acceptable include;

- The orphaned R1 zoned site can rely on Clause 5.3 of the MLEP which facilitates the proposed use as being permissible with consent on the subject site;
- The proposed development is considered consistent with the existing character of the locality and will further contribute to the establishment of the East Maitland Area;
- The development can suitably manage or mitigate environmental impacts;
- The proposed development results in an orderly and economic use of what is currently a parcel of land containing a derelict dwelling & unmanaged vegetation;

- The development is appropriately designed to address the heritage conservation provisions of the East Maitland Heritage Conservation Area and will not detract from the existing heritage significance of the area; and
- The proposed development will have significant positive economic and social impact on the surrounding community and broader Local Government Area by creating short term construction jobs, long term employment through proposed businesses, and opportunities for additional businesses to enter the area to service the needs of the community.

This SEE will expand on those matters that have been summarised above to assist Council in completing a detailed assessment of the proposal development. We look forward to Councils determination of this matter.

TERMS AND ABBREVIATIONS

AHIMS	Aboriginal Heritage Information Management System
BDAR	Biodiversity Development Assessment Report
EPA	Environment Protection Authority
EP&A Act	Environmental Planning & Assessment Act 1979
EPI	Environmental Planning Instrument
DA	Development Application
DCP	Development Control Plan
LGA	Local Government Area
PSI	Preliminary Site Investigation
SEPP	State Environmental Planning Policy
SEE	Statement of Environmental Effects

PLANS AND SUPPORTING DOCUMENTATION

This SEE is supported by the following plans and documentation:

Appendix	Document	Prepared by
1.	DCP Compliance Table	Perception Planning
2.	Site Survey	Delfs Lascelles
3.	Architectural Plan Set	Sorensen Design & Planning
4.	Civil Engineering Design	DRB
5.	Statement of Heritage Impact	Contemporary Heritage
6.	Legal Advice	SWS Lawyers
7.	Arboricultural Impact Assessment	Mark Bury Consulting
8.	Waste Management Plan	Perception Planning
9.	Hunter Water Stamped Plans	Hunter Water Corporation
10.	AHIMs Search Results	Perception Planning
11.	DBYD Search Results	Perception Planning

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1 BACKGROUND

1.1 PURPOSE

The purpose of this Statement of Environmental Effects (SoEE) is to assist Council in their assessment and determination of the proposed development. It is also prepared to assist the community in understanding the proposed development and how it will fit within the context of East Maitland's Heritage Conservation Area.

This SoEE has been prepared in coordination with Brad Lantry (the client) and other sub-consultants to demonstrate the relevant matters associated with the proposed development. The SoEE examines the existing site conditions, how the proposed development relates to the location and the environment, as well as the planning merits of the development with respect to the relevant legislation, regulations and other requirements. The SoEE examines the applicable site attributes and the specifics of the development proposal that are appropriate to the development application stage. The SoEE seeks to provide all the relevant data to give a suitable level of certainty to the consent authority that the proposal will have a positive impact on the immediate area and the wider surrounds.

This SoEE has been prepared in accordance with best practice principles, applicable aspects of the Development Assessment Framework and the Department of Planning and Infrastructure's (now the Department of Planning and Environment) guide to the *Environmental Planning and Assessment Act (EP&A Act) 1979 (s4.15)*.

The objectives of this SoEE are as follows:

- To provide a description of the site, existing development and the surrounding locality;
- To provide a description of the proposal and the key issues;
- To provide a discussion of the relevant Environmental Planning Instruments (EPI)s; and
- To provide an assessment of the potential environmental impacts, having regard to the matters for consideration pursuant to the EP&A Act (s4.15) and other State, Regional and Local environmental planning policies and guidelines.

1.2 SITE DETAILS

Site Characteristics	
Property Address	12 Day Street, East Maitland (FIGURE 2)
Legal Description	Lot: 100 in Deposited Plan: 1291498
LGA	Maitland City Council
LEP Map Reference	004D
Zoning	R1: General Residential
Lot Area	1557m ²
Primary Site Access	Day Street (direct road frontage)
Current Use	Residential
Site Constraints	<ul style="list-style-type: none"> ▪ Flood Planning Area ▪ East Maitland Heritage Conservation Area Significance: Local ▪ Acid Sulfate soils Class 5 ▪ Minimum Lot Size 450m²
Certificate of Title, DP and 88B instrument	A copy of the Certificate of Title, DP and 88B Instrument are provided at (APPENDIX 1). There are no significant easements identified on Deposited Plan 1291498.

1.3 SITE DESCRIPTION

The site is located at 12 Day Street, East Maitland ('the site') legally identified as (Lot 100 DP: 1291498 and measures 1,557m² in area (**FIGURE 1**). The site is located within the suburb of East Maitland, within the Maitland Local Government Area (LGA) and has frontage to Day Street, which is accessible via the Classified Road, Melbourne Drive approximately 80m north. The subject site is located immediately west of the East Maitland Railway Station.

The subject site currently holds a derelict dwelling and some remnant vegetation. The topography is varied with the natural fall of the property to the drainage line to the south of the site. Vegetation generally consists of non-native ornamental species. Day Street forms the western boundary.

A Before You Dig Australia search was conducted on 14 June 2023, the results are contained in **APPENDIX 2**. The search determined:

- Overhead reticulated power is available;
- Reticulated water is located within Day Street and a sewer main is located along the rear boundary of the site;
- High Pressure gas line present in Day Street; and
- Telecommunications, including NBN is connected to the site.

To the north comprises Hunter River Hotel and car park. Vacant RE2 land containing a drainage channel is located to the south and on the opposite side of Day Street is Duke's Restaurant and Bar. The mixed-use commercial strip of Melbourne Street is located approx. 100m to the northwest. Photos of the site and surrounding development are provided below.



Figure 1 – Aerial image of subject site (Source: Nearmaps, 2023)

1.4 CURRENT USE AND EXISTING DEVELOPMENT DETERMINATIONS

The site has a current and historic residential use, however, is highly flood prone and in close proximity to the rail corridor. Use of the site for a commercial purpose would provide a more practical development outcome as a result of these environmental constraints.

There is no recorded information in relation to development approvals available on the public Development Application Tracker. The Maitland City Council Development Application Tracker website also showed no recorded recent approvals.

No known compliance matters exist over the site which would pose issues for the proposed development.

2 DESCRIPTION OF THE DEVELOPMENT

2.1 PROPOSED DEVELOPMENT

The proposed development application seeks consent for the construction of four business premises units and associated car parking & infrastructure, as demonstrated within the architectural plans provided in **Figures 2 – 5** and **Appendix 3**. The key components of the proposed development include the following:

- a. Demolition of the existing single-story weatherboard and brick dwelling
- b. Removal of site vegetation, per the attached Arboricultural Impact Statement
- c. Construction of four business premises units (Units 1 - 4) totalling 732.2m² in area
 - Unit 1: 173.9m² ground floor area, 88.43m² mezzanine area
 - Unit 2: 173.9m² ground floor area, 88.43m² mezzanine area
 - Unit 3: 173.9m² ground floor area, 88.43m² mezzanine area
 - Unit 4: 210.5m² ground floor area, 117.76m² mezzanine area
- d. Construction of driveway access from Day Street.
- e. Construction of car park (11 parking spaces including 1 accessible space, plus a turning bay).
- f. Landscaping to Day Street & south-eastern boundary.
- g. Placeholder signage (Subject to future DA once tenants are arranged)
- h. Pedestrian Access Ramp

The proposed four business premises units are intended to be leased out to businesses that will service the needs of the local community. Such uses include hairdressers, electricians and plumbers. The proposed units will provide office space to meet with members of the public to facilitate the provision of services, while also providing sufficient space to store goods and materials associated with each respective business. Each respective use that uses the proposed units will need to meet the business premises definition prior to occupation.

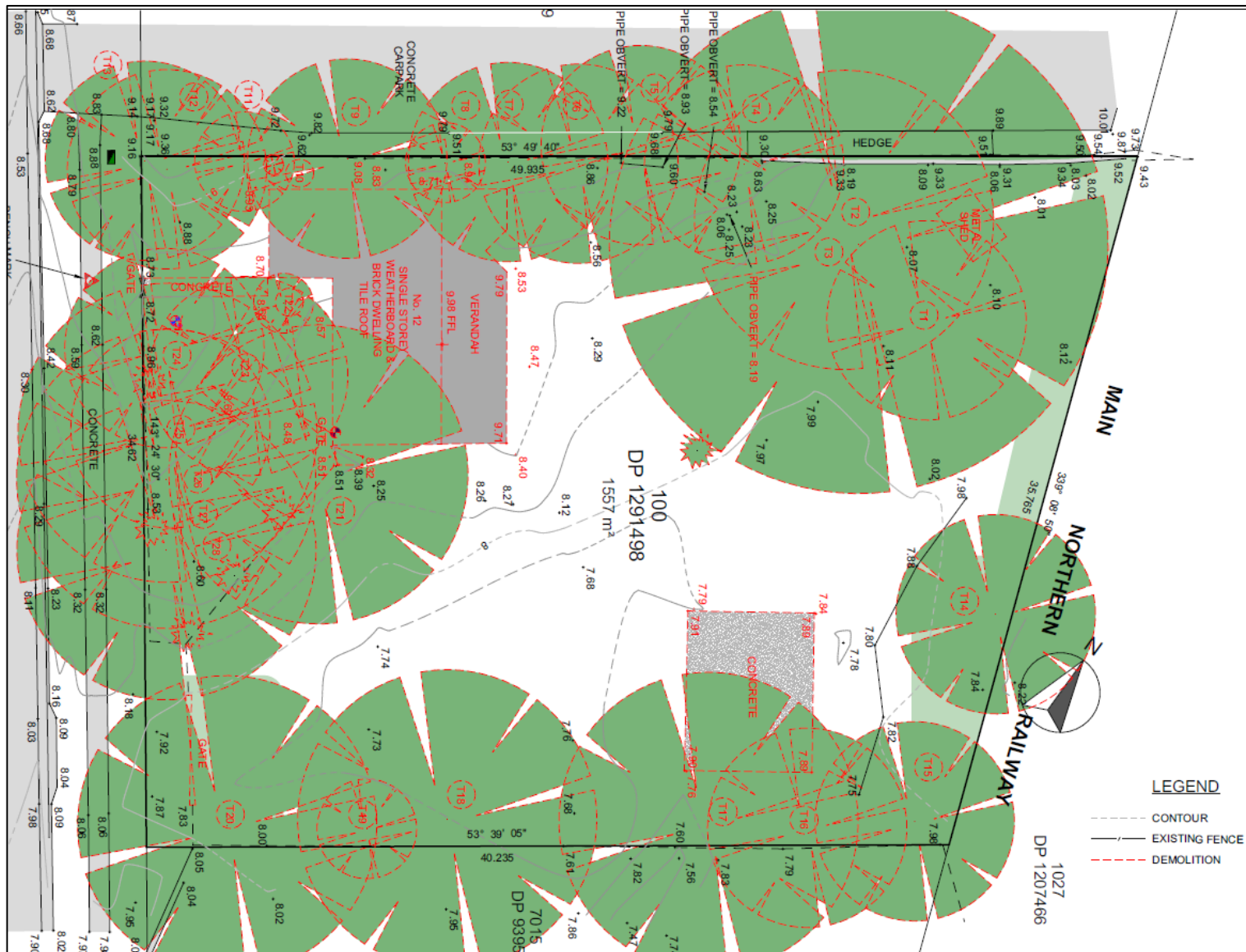


Figure 2 – Proposed Demolition Plan (Source: Sorensen Design, 2023)

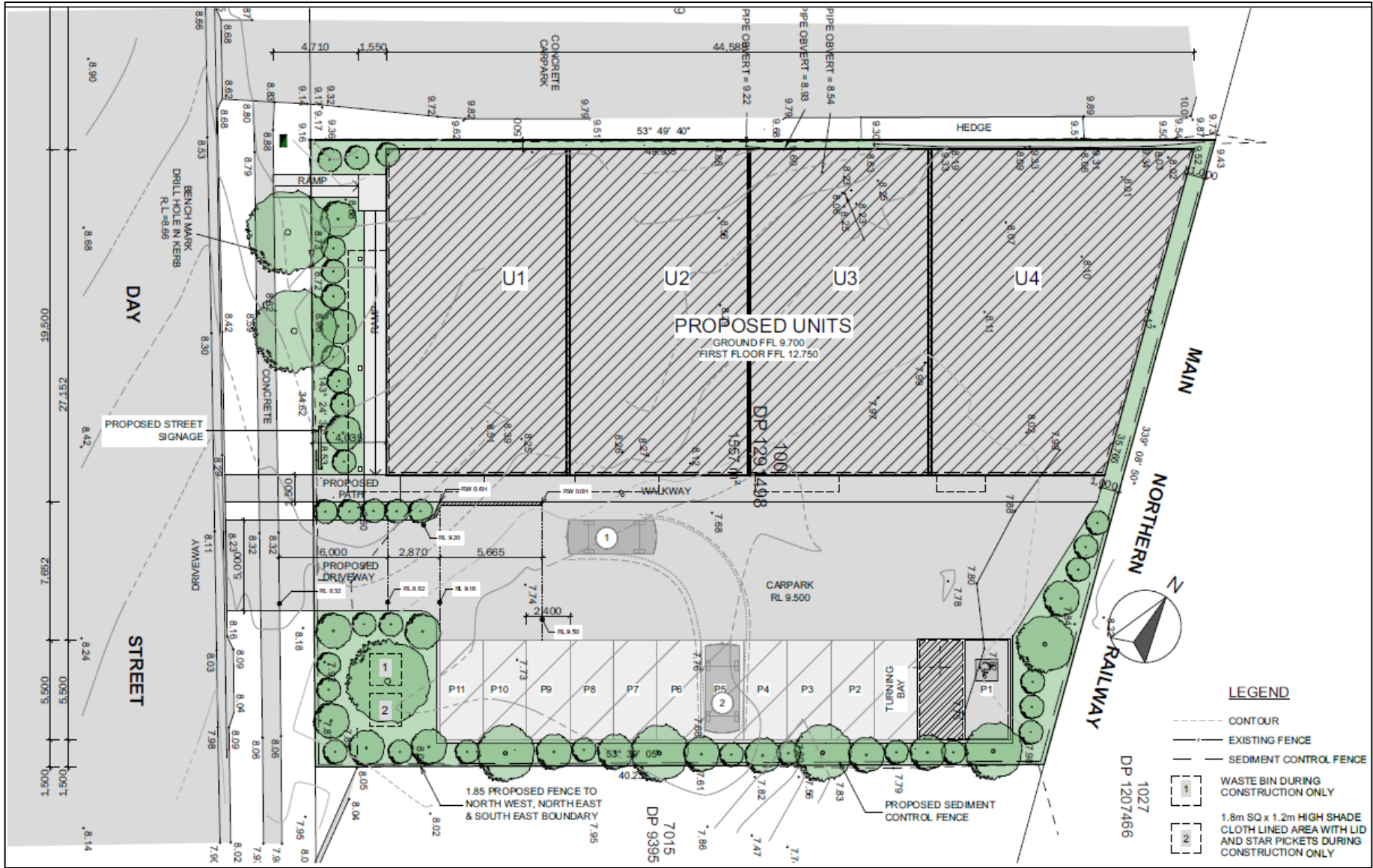


Figure 3 – Proposed Site plan (Source: Sorensen Design, 2023)



Figure 4 – Proposed Development - Day Street Elevation (Source: Sorensen Design, 2023)



Figure 5 – Proposed Development – South-eastern Elevation (Source: Sorensen Design, 2023)

3 PLANNING CONTROLS

3.1 ACTS

The following Acts are considered relevant to the proposed development:

3.1.1 Biodiversity Conservation Act 2016

The purpose of the Biodiversity Conservation Act 2016 (BC Act) is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development. The subject site is not mapped as containing Biodiversity Value the NSW Biodiversity Values and does not occur within an Area of Outstanding Biodiversity Value (ABOV). The proposed development does require the removal of 28 trees. The subject trees are not identified as having any biodiversity value within the existing East Maitland Area. Mark Bury Consulting's Arboricultural Impact Assessment provides a summary of those trees proposed for removal. None of the listed species are identified as threatened entities, or form endangered ecological communities. Significantly, the subject site is not identified as being core Koala Habitat, nor is it identified as being an Area of Regional Koala Significance per the NSW SEED Mapping (see **figure 6** below). There are also no recorded sightings of Koalas within a 3.5km radius of the subject site per NSW SEED mapping (see **figure 7** below).

Accordingly, the proposed removal of vegetation on the subject site is not considered to result in an adverse outcome in terms of loss of biodiversity values. Furthermore, it is proposed that suitable vegetative species be selected for landscaping planting to offset the loss of vegetation associated with the proposed development. These trees are to be of species that will be more compatible the proposed development on the subject site.

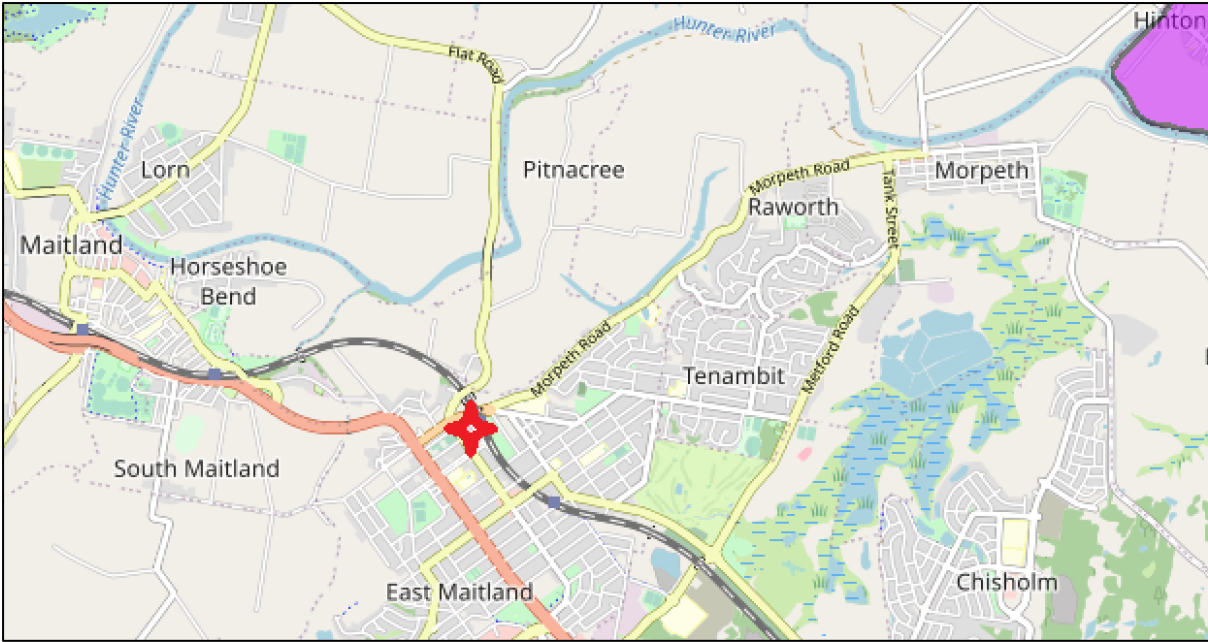


Figure 6 – Areas of Regional Koala Significance (Source: NSW SEED Mapping)

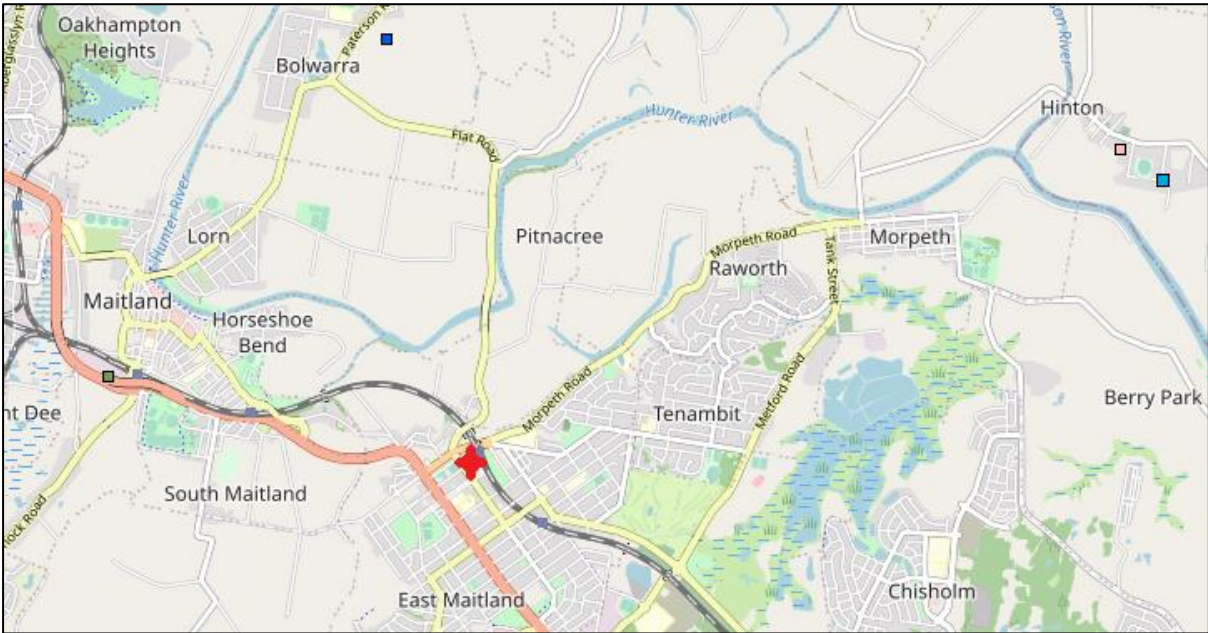


Figure 7 – Koala Species Sighting Records (Source: NSW SEED Mapping)

3.1.2 Hunter Water Act 1991 (HW Act)

The subject site is not located within a Drinking Water Catchment. To this effect, a referral to HW is not required under Section 51 of the HW Act. Stamped plans in accordance with Section 49 of the HW Act are provided as **Appendix 9** to this application.

3.1.3 Environmental Planning and Assessment Act 1979

The Environmental Planning and Assessment Act 1979 (EP&A Act) is the principal planning and development legislation in NSW and is applicable to the proposed development. Section 4.15 of the EP&A Act specifies the matters which a consent authority must consider when determining a DA. The relevant matters for consideration under Section 4.15 are addressed in further detail in separate sections of this SEE below.

- **Section 4.46 – What is integrated development?**

Integrated development is development (not being State significant development or complying development) that, in order for it to be carried out, requires development consent and one or more of the approvals listed within **Table 2** below. The proposed development does not trigger any of the provisions listed within Table 2 below, and accordingly, is not integrated development.

Table 1 - Integrated development

Integrated development	Proposed Development	
Fisheries Management Act 1994	<ul style="list-style-type: none"> ▪ s 144 ▪ s 201 ▪ s 205 ▪ s 219 	N/A
Heritage Act 1977	<ul style="list-style-type: none"> ▪ s 58 	N/A – East Maitland Heritage Conservation area is not listed the NSW State Heritage Register.
Coal Mine Subsidence Compensation Act 2017	<ul style="list-style-type: none"> ▪ s 22 	N/A – Subject site not located within a Mine Subsidence District.
Mining Act 1992	<ul style="list-style-type: none"> ▪ s 63, 64 	N/A
National Parks & Wildlife Act 1974 (as amended)	<ul style="list-style-type: none"> ▪ s 90 	N/A
Protection of the Environment Operations Act 1997	<ul style="list-style-type: none"> ▪ ss 43(a), 47, 55 ▪ ss 43(b), 48, 55 ▪ ss 43(d), 55, 122 	N/A
Roads Act 1993	<ul style="list-style-type: none"> ▪ s 138 	N/A
Rural Fires Act 1997	<ul style="list-style-type: none"> ▪ s 100B 	N/A – Subject site is not identified as bushfire prone land.
Water Management Act 2000	<ul style="list-style-type: none"> ▪ ss 89, 90, 91 	N/A

3.2 STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

The following SEPPs are considered relevant to the proposed development:

3.2.1 State Environmental Planning Policy (Resilience & Hazards) 2021

SEPP Resilience & Hazards 2021 Chapter 4 Remediation of Land provides a State-wide planning approach to the remediation of contaminated land. Clause 4.8 of SEPP Resilience & Hazards 2021 provides that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land subject to the development is contaminated. Where the land is contaminated a consent authority must determine if the land is suitable in its contaminated state for the development, or alternatively determine that the land would be suitable once remediated.

A review of the Environment Protection Authority (EPA) contamination register confirms that no contamination, the subject of regulation by the EPA, is identified on the site. Given the historic use of the site has been residential in nature, there is no evidence that contaminating activities have historically occurred on site. To this effect, it is considered unlikely that there is any contamination on the site in need of remediation prior to development.

3.2.3 State Environmental Planning Policy (Biodiversity & Conservation) 2021

SEPP Biodiversity & Conservation 2021 Chapter 4 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. This SEPP applies to land identified within Schedule 1.

The SEPP applies to the Maitland Local Government Area (LGA). In accordance with Section 4.10, Maitland Council is not prevented from granting consent to the subject DA as the land is not considered core Koala Habitat. Review of the NSW Government's SEED Mapping indicated no koala sightings within 3.5km of the subject site over the last 50 years, with the subject site also not identified as being located within an area of Regional Koala Significance. Accordingly, removal of the vegetation on the subject site is not anticipated to have any impact on Koala Habitat or species.

3.2.3 State Environmental Planning Policy (Transport & Infrastructure) 2021

SEPP Transport & Infrastructure 2021 is to facilitate effective delivery of infrastructure to the State and to identify matters to be considered in the assessment of developments adjacent to types of infrastructure.

The proposed development is not in the vicinity of a pipeline corridor and therefore does not trigger referral to any pipeline operator pursuant to Clause 66C. The proposed development is located greater than 5m from any overhead powerline and therefore does not trigger referral to the electricity supply authority pursuant to Clause 45 (1) (b) (iii). The development is not classified as traffic generating development in accordance with Schedule 3.

Division 15 Railways, subdivision 2, development in or adjacent to rail corridors and interim rail corridors – notification and other requirements applies if the development –

- (a) *is likely to have an adverse effect on rail safety, or*
- (b) *involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
- (c) *involves the use of a crane in air space above any rail corridor, or*
- (d) *is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*

The proposed development, while being located adjacent to the Main Northern Railway Corridor, is not considered to have any adverse effect on rail safety, does not involve metal finishes in proximity to electric train, no cranes will operate above the railway corridor, nor is it located within 5m of overhead electrical lines used in association with the railway.

The proposed development is also not identified as potentially being negatively affected by rail noise or vibration listed within clause 2.100 of the Transport & Infrastructure SEPP.

Accordingly, the proposed development does not trigger any provisions within this SEPP.

3.3 LOCAL ENVIRONMENTAL PLAN (LEP)

The following parts of the Maitland LEP 2011 apply to the proposed development:

- **Clause 2.3 – Zone Objectives and Land Use Table**

The subject site is zoned as R1 – General Residential. The Zone Objectives of the R1 General Residential Zone are as follows:

Objectives of Zone

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

The following land use table specifies development that is permissible with consent in the R1 General Residential Zone:

R1 General Residential Zone – Land Use Table
Permitted without consent <i>Home occupations</i>
Permitted with consent <i>Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Home-based child care; Home industries; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Residential flat buildings; Respite day care centres;</i>

Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shop top housing; Tank-based aquaculture; Any other development not specified in item 2 or 4

Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Entertainment facilities; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Jetties; Local distribution premises; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Registered clubs; Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewage treatment plants; Sex services premises; Signage; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Wharf or boating facilities; Wholesale supplies

The proposed development seeks consent for the construction and operation of four business premises units, which are not permissible with consent in the R1 Zone. The proposed business premises units are best characterised as follows:

Business premises means a building or place at or on which—

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes funeral homes, goods repair and reuse premises and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

Note — Business premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

Accordingly, the proposed development relies on Clause 5.3 of the MLEP to establish the proposed development's permissibility.

- **Clause 5.3 – Development near zone boundaries**

The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone. This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 20 metres. The proposed development relies on Clause 5.3 of the MLEP to enable development permissible with consent in the adjacent MU1 Mixed Use zoning on the subject site (Commercial Premises). The relevant MU1 Zone objectives and Land Use Table are presented below:

Objectives of Zone

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

MU1 Mixed Use Zone – Land Use Table
Permitted without consent <i>Home industries</i>
Permitted with consent <i>Amusement centres; Attached dwellings; Boarding houses; Car parks; Centre-based child care facilities; <u>Commercial premises</u>; Community facilities; Entertainment facilities; Function centres; Home-based child care; Hostels; Information and education facilities; Light industries; Local distribution premises; Medical centres; Multi dwelling housing; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Vehicle repair stations; Any other development not specified in item 2 or 4</i>
Prohibited <i>Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Open cut mining; Recreation facilities (major); Residential accommodation; Resource recovery facilities; Rural industries; Sewerage systems; Sex services premises; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies</i>

The proposed development also relies on Clause 5.3 of the MLEP to enable development permissible with consent in the adjacent RE1 Public Recreation zoning on the subject site (Car Park). A visual demonstration of how both the MU1 & RE1 land use zonings have been applied to the subject site is provided within **Figure 7** below and within the Architectural Plan set (**Appendix 3**). The relevant RE1 Zone objectives and Land Use Table are presented below:

Objectives of Zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

RE1 Public Recreation Zone – Land Use Table
<p>Permitted without consent <i>Environmental facilities; Environmental protection works</i></p>
<p>Permitted with consent <i>Aquaculture; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Information and education facilities; Jetties; Kiosks; Markets; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Roads; Signage; Water recreation structures; Water supply systems</i></p>
<p>Prohibited <i>Any development not specified in item 2 or 3</i></p>



Figure 7 – Clause 5.3 Flexible Zone Boundary extents (Source: Sorensen Design & Planning, 2023)

Clause 5.3 stipulates that development consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that—

- (a) the development is not inconsistent with the objectives for development in both zones, and*
- (b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.*

Accordingly, in addressing subclause (a), the proposed development is assessed against the objectives of each respective zone (R1 General Residential, MU1 Mixed Use & RE1 Public Recreation) as follows:

R1 General Residential Zone Objectives

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

Planning Comment: The proposed development is considered to be consistent with the objectives of the R1 General Residential Zone as it will enable businesses to enter the area that will provide services to meet the needs of residents in the East Maitland locality. It is not considered to be inconsistent with the further objectives of the R1 Zone in that it will not necessarily remove the opportunity for additional residential housing in the area, given the significant site constraints of flooding and noise/vibration being located adjacent to the Main Northern Railway rail corridor.

MU1 Mixed Use Zone Objectives

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Planning Comment: The proposed development is clearly consistent with the objectives of the MU1 Mixed Use zone in that it will facilitate the entry of additional businesses into the area, generating local employment opportunities. The proposed development provides an attractive street frontage to Day Street, effectively activating what is currently an underdeveloped lot containing a derelict dwelling. The proposed development is considered to be consistent with adjoining land uses, being far more compatible with adjoining land uses than a residential development of the site.

RE1 Public Recreation

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

Planning Comment: The proposed development is considered to meet the objectives of the RE1 Public Recreation zone by providing compatible land uses with the adjoining RE1 Recreational land. The proposed development is considered to be compatible with the recreational setting as it will not reduce the amenity of the area by means of noise or air pollution, effectively maintaining the value of the RE1 zoned land. The proposed development is not considered to be inconsistent with the further objectives of the RE1 Public Recreation Zone.

Addressing subclause (b) of Clause 5.3, the following assessment is provided in respect of the proposed development's land use compatibility, infrastructure capacity, and other planning principles demonstrating the merit of the proposed development from a planning perspective.

Planning comment: The subject site's development for the purpose of business premises units is considered to demonstrate compatibility with the context of the subject site for the following reasons:

- Adjoining development to all boundaries of the subject site are non-residential uses, comprising a restaurant/tourist & visitor accommodation to the west, the Hunter River Hotel to the north, the East Maitland Railways Station to the East, and Public recreation land to the south. Accordingly, development of the subject site for commercial purposes is more fitting than residential development of the site.
- The costs to attenuate residential land from the rail corridor could be excessive and commercial is a more appropriate land use adjacent to the rail corridor that is less sensitive to the noise associated with the rail line.
- Commercial development of the subject site is more compatible with the existing flood hazard on the subject site.
- Services are available for connection to the subject site, as evidenced through the DBYD results (**Appendix 11**).
- Given the subject site is considered an 'orphan' R1 zoned site, residential development of the site is not considered to necessarily be the most efficient/suitable use of the land, whereas commercial development of the subject site demonstrates far greater land use compatibility with adjoining uses.

Finally, Clause 5.3, subclause (3)(a) stipulates that the clause does not apply to land in Zone RE1 Public Recreation. Through pre-DA Correspondence with Maitland Council, it was determined that independent legal advice should be obtained which sets out that this subclause does not prevent the proposed development from relying on uses permissible in RE1 zoned land from being used on the subject site (zoned R1). SWS Lawyers provide the following in respect of the proposed development, which sets out why land uses within the RE1 can be used on the subject site through Clause 5.3 of the MLEP:

7. We are instructed that Council have raised concerns with the permissibility of applying the RE1 uses to the Property through this clause, due to subclause 3(a) stating that this clause is not applicable to land in RE1 zoned land.

8. We have been instructed to provide advice in relation to the permissive operation of clause 5.3 and whether the provision is available to be relied upon in relation to the proposed development.

...

13. In our opinion, taking into account the ordinary principles of statutory construction and reading whole of the "Development near zone boundaries" provision, clause 5.3(3) actually prohibits the exact reverse position to that advocated by Council.

14. The facultative use of the clause 5.3 only operates through the lens of the "land" the subject of the proposed development. That interpretation accords with a purposive reading of the provision in the context of the whole provision, not just subparagraph (3).

15. The syntax and grammar in Clause 5.3(2) is very specific, in that it addresses the "land" and its relationship to the adjoining "zoning". The subject "land" can harvest, if you like, the permissive uses listed in an adjoining zoning, to the relevant distance extent allowed (i.e. 20m).

16. Subparagraph (3) then excludes certain "land" not "zonings" per se. It can only be read as "land" in that zoning (including coastal zone) or "land" proposed to be development for the purposes of sex services or restricted premises. It is the "land" that is excluded not the permissive use under those zonings or circumstance. That is why each of the three exclusions under subparagraph (3) are framed as: "land in..."; "land within..."; and "land proposed to be developed for the purpose of...".

17. On a proper construction, the facultative provision clause 5.3 does not apply if the "land", being the subject site or land the subject of a development proposal, falls within any of the descriptions set out in subparagraph (3)(a) through to (c). If the subject "land" is not any of those exclusions then subparagraph does not apply and the facultative permissive use can be sourced from any zoning, including RE1, C2, C3 and W1 zonings.

18. It would be open to an applicant, to seek to rely on a permissive use for the Property sought from the adjoining zones, which in this case are somewhat unusual in number: B4, RE1 and SP2 zones. Notwithstanding the above, the orphaned R1 Residential zoned Property would be good candidate for a rezoning in any event to B4.

Planning Comment: The above advice from SWS Lawyers supports the proposal to use RE1 Permissible land uses on the subject site (car park). Accordingly, the proposed development in its current layout iso the subject site is considered to be a permissible and efficient development of the subject site.

Summary

For the reasons set out above and summarised below, the proposed development fulfils the relevant provisions of *Clause 5.3 Development near zone boundaries*:

1. The proposed development aligns with objective of this clause in that it comprises a development that is more compatible with site constraints when adjoining one permissible land uses are enabled.
2. The proposed development complies with the relevant 20m flexible zone boundaries when measured from the northern (MU1) & southern (RE1) boundaries (see figure 7 above).
3. The subject land/proposed development is not land/development to which clause 5.3 does not apply.
4. The proposed development is established as being consistent/not inconsistent with R1, MU1 & RE1 zone objectives.
5. The proposed development is desirable given its land use compatibility with surrounding non-residential land uses.

- **Clause 5.10 – Heritage conservation**

The objective of this clause is to conserve the environmental heritage of Maitland. The subject site does not contain any items of heritage significance, though it is identified as being located within the East Maitland Heritage Conservation Area. In accordance with subclauses 5.10 (2)(a)(iii) & (2)(e)(i), the proposed development requires development consent as it proposes demolition of a building in a heritage conservation area in addition to proposing the erection of a building in a Heritage Conservation Area. In accordance with subclause (5), the subject development application is supported by a Statement of Heritage Impacts which assesses the extent to which the proposed development would impact the heritage significance of the area (**Appendix 5**).

A search of the Aboriginal Heritage Information Services (AHIMS) database (3 July 2023) and did not identify the subject lot as containing any Aboriginal sites or places as shown in **Appendix 10** within a 50m buffer area.

- **Clause 5.21 – Flood Planning**

The objectives of this clause are to minimise the risk of flood events impacting life or property and to avoid adverse or cumulative impacts on flood behaviour and the environment. This clause requires development in the flood planning area be compatible with the flood function and behaviour on the land. The proposed development has been designed to be compatible with the existing flood hazard over the subject site, as set out within Section 4.2.3 of this report.

- **Clause 7.1 – Acid Sulphate Soils**

The objective of clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. The proposed development is located within the area identified as containing Class 5 ASS. The proposal will not involve

works that would likely lower the watertable below 1m on nearby Class 1, 2, 3 or 4, ASS lands. Accordingly, the submission of an Acid Sulfate Soil Management Plan is not necessary for the purposes of the proposed development.

- **Clause 7.2 – Earthworks**

The proposed development will involve filling of the subject site, enabling development of the site that is compatible with the existing flood hazard. The proposed development is supported by a Stormwater Management Plan that demonstrates that the proposed earthworks will not have a detrimental effect on existing drainage patterns from the site (see **Appendix 4**). The proposed earthworks are not considered to have any negative impacts in terms of amenity or any watercourses/existing environmentally sensitive areas. Any material that is proposed to be imported from the subject site will consist of Excavated Natural Materials (ENM) or other certified material. Accordingly, the development complies with the requirements of this clause of the MLEP.

3.4 DEVELOPMENT CONTROL PLAN (DCP)

Consideration of compliance and/or consistency with the relevant provisions of the Maitland DCP 2011 is provided in the Table of Compliance provided at **Appendix 2**. The Table of Compliance identifies that the proposed development demonstrates compliance with the relevant provisions of the DCP or overarching objectives where variations are proposed.

4 LIKELY IMPACTS OF THE DEVELOPMENT

The likely impacts of the proposed development and constraints affecting the subject site have been explored throughout this SEE. The following sections detail the major potential impacts and constraints in greater detail, in accordance with Section 4.15(1) of the EP&A Act 1979.

4.1 BUILT ENVIRONMENT

4.1.1 CONTEXT, SETTING AND VISUAL IMPACT

The proposed development has demonstrated consistency with the surrounding locality and will meet the objectives of the applicable zoning, serving to further develop the East Maitland Heritage Area. The proposed business premises units will be fitting with the area and has been designed in respect of the existing heritage significance of the locality. Furthermore, the proposed form and materials are in keeping with existing prominent buildings along Day Street. Accordingly, it is contended that the proposed business premises units will have a positive visual contribution to the area.

4.1.2 ACCESS, TRANSPORT AND TRAFFIC

Access to the site is proposed via Day Street. The proposed access and carpark area has been designed to meet Australian Standard AS2890.1. The proposed development's parking provisions vary from the Maitland DCP's parking rate applicable to the business premises provision of 1 space per 40m². The current design proposes a shortfall of 7 parking spaces from the Maitland DCP Parking rate provisions. This is a variation of 39%. Given the context of the subject site being in close proximity to the residential area it is intended to service, as well as largely unused on-street parking on Day Street being available, this variation is considered justifiable. The proposed development is considered to provide suitable vehicular access and parking provisions and will not result in transport or traffic impacts within the existing East Maitland Heritage Conservation Area.

4.1.3 PUBLIC DOMAIN

The proposed development will not have any negative impacts on any public domain. It will effectively contribute to the existing East Maitland Heritage Conservation Area, providing additional opportunities for new businesses to enter the area.

4.1.4 SERVICES

Essential services (reticulated water, sewage & electricity) are available in proximity to the subject site and available for connection (refer to DBYD results at **Appendix 11**). Connection to the essential services will be completed during construction.

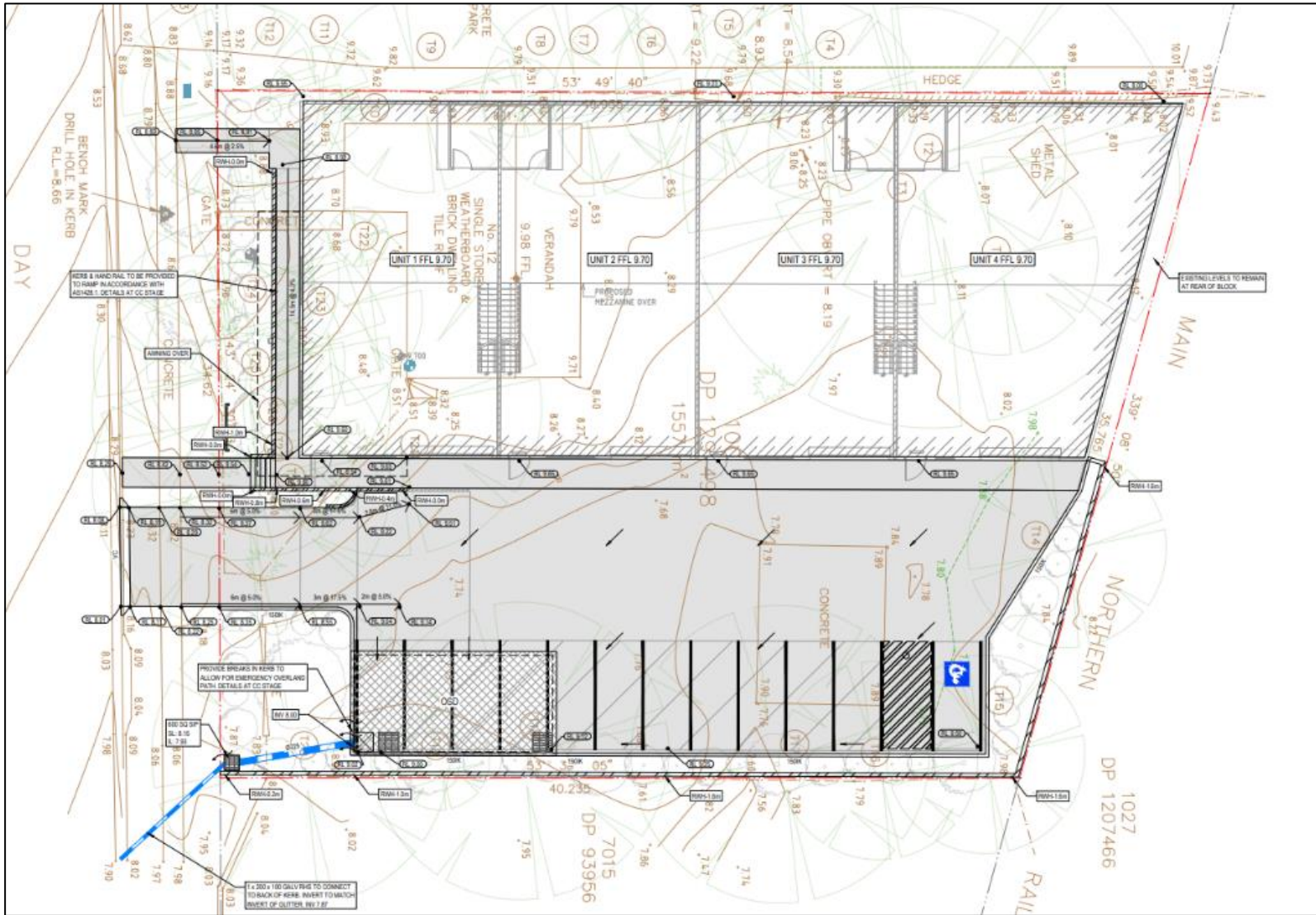
4.1.5 NOISE AND VIBRATION

Construction noise will be as per normal construction times and processes and will cease once construction is completed. No incompatible or adverse noise impacts have been identified as unacceptable in this location, with the proposed commercial use considered to be compatible with the adjacent Main Northern Railway line. Accordingly, there are no significant ongoing noise and vibration impacts anticipated as a result of the development.

4.1.6 STORMWATER

A stormwater drainage plan has been prepared and contained in **Appendix 4**. Stormwater is to be managed on the site in accordance with the stormwater philosophy included within this stormwater drainage plan.

Figure 4 – Stormwater Drainage Plan



4.1.7 SAFETY, SECURITY AND CRIME PREVENTION

The proposed development has been assessed against the *Crime Prevention Through Environmental Design Principles* (CPTED). There is suitable passive surveillance from the public domain with views to the building and parking area from Day Street. The proposed landscaping will utilise low lying shrubs and mature trees. Tree branches should be no lower than 2m from natural ground level and shrubs to be maintained to a height of 50cm to ensure suitable sight lines can be achieved. It is considered that risk to life & property as a result of criminal activity has been minimised where possible.

4.2 NATURAL ENVIRONMENT

4.2.1 ECOLOGICAL

The physical works that will result from the proposed development will involve minor earthworks and associated demolition works. The proposed demolition works will include the removal of 28 trees. The trees proposed for removal are not identified as holding any significant ecological value, and accordingly, are proposed for removal, as supported by the Arboricultural Impact Assessment attached (**Appendix 7**).

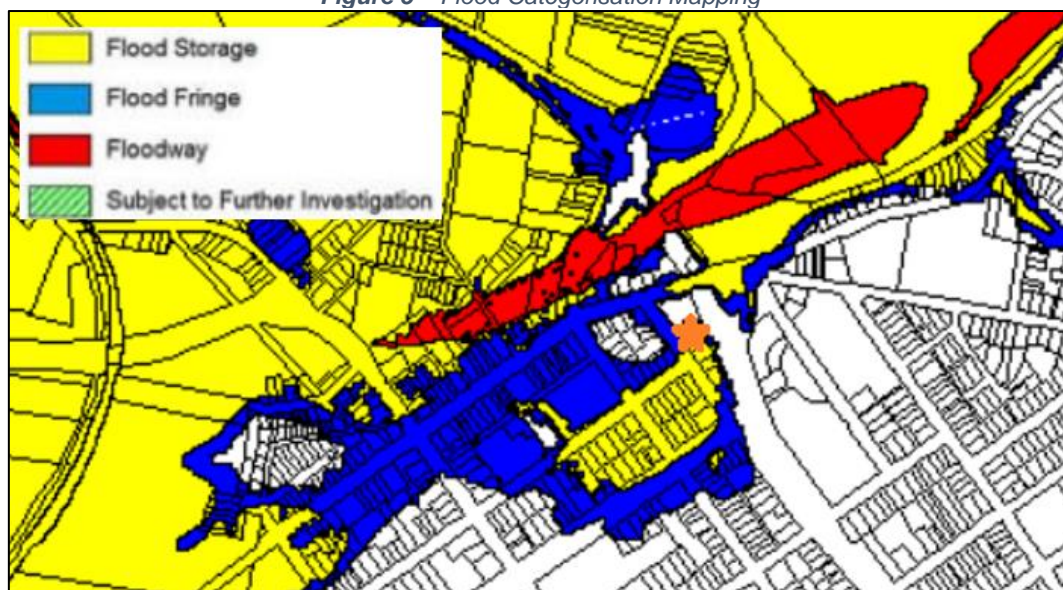
4.2.2 ARCHAEOLOGY

A search of the Aboriginal Heritage Information Services (AHIMS) database (3 July 2023) and did not identify the subject lot as containing any Aboriginal sites or places as shown in **Appendix 10** within a 50m buffer area. The site is also not identified within Schedule 5 of the LEP as containing any items or places of heritage significance. If artifacts are discovered during the demolition phase, then they will be managed in accordance with the regulations.

4.2.3 FLOODING

Subject site is shown as flood fringe/flood storage. The proposed development has been designed to be constructed above the Flood Planning Level. The proposed development is otherwise considered to be compatible with the flood hazard on the subject site.

Figure 5 – Flood Categorisation Mapping



4.3 SOCIAL AND ECONOMIC

There are no anticipated adverse economic or social impacts as a result of the proposed development. Rather, the proposed development is considered to have substantial social and economic benefits within East Maitland. Namely, the proposed development will create direct jobs in the form of construction of the development, as well as enabling 4 additional businesses to enter the area, creating further additional jobs. Furthermore, the development will serve to activate what is currently an isolated and heavily constrained site.

4.4 SUITABILITY OF THE SITE

The application design includes all elements required under the relevant planning instruments and policies and there are negligible anticipated adverse impacts on the locality as a result of the development. This development is permissible under the LEP and has addressed all relevant concerns through this SoEE.

The proposed industrial development is consistent with the existing industrial development of the area and is not anticipated to have any adverse impacts on surrounding properties or amenity of the locality. Accordingly, the proposed development is a suitable use of the site.

4.5 PUBLIC INTEREST

The subject site is located within the existing East Maitland Heritage Conservation Area. The site has access to all relevant services and the proposed development is an appropriate use of the subject land. The application includes all elements required under the relevant planning instruments and policies and there are no anticipated negative impacts on the locality as a result of the development. To this extent, the site is suitable for development.

The proposal represents additional job creation in the locality to service the diverse needs of the community. The proposed development is in keeping with surrounding area and accordingly, the proposed development is in the public interest.

5 CONCLUSION

This SEE demonstrates that the proposed development at 12 Day Street, East Maitland is within the public interest, from a social, economic, and environmental perspective. The proposed business premises units are a suitable option for the development of the site. All relevant matters have been addressed through this SEE.

The key reasons why the proposed development is appropriate are as follows;

- The orphaned R1 zoned site can rely on Clause 5.3 of the MLEP which facilitates the proposed use as being permissible with consent on the subject site;
- The proposed development is considered consistent with the existing character of the locality and will further contribute to the establishment of the East Maitland Area;
- The development can suitably manage or mitigate environmental impacts;
- The proposed development results in an orderly and economic use of what is currently a parcel of land containing a derelict dwelling & unmanaged vegetation;
- The development is appropriately designed to address the heritage conservation provisions of the East Maitland Heritage Conservation Area and will not detract from the existing heritage significance of the area; and
- The proposed development will have significant positive economic and social impact on the surrounding community and broader Local Government Area by creating short term construction jobs, long term employment through proposed businesses, and opportunities for additional businesses to enter the area to service the needs of the community.

It is considered that the proposal will have no significant impacts on surrounding properties or the environment. Given the extensive positive social and economical impacts associated with the proposed development, the proposed development should be supported by Maitland City Council.

We look forward to Council's determination of this matter.

If we can provide any further information or clarity, please do not hesitate to contact us.



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