

The Council of the City of Maitland

STATEMENT OF ENVIRONMENTAL EFFECTS

MIXED USE DEVELOPMENT

Lot 81 DP 556632 - 22 PATERSON ROAD MAITLAND

Sarroff, Sarroff & Sarroff Pty Ltd



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**STATEMENT OF ENVIRONMENTAL EFFECTS
MIXED USED DEVELOPMENT
22 Paterson Road Bolwarra**

1. INTRODUCTION

Hill Top Planners have been commissioned by the owners of the subject land to prepare a Statement of Environmental Effects for the undertaking of works and for the regularisation of a commercial premises which has been in operation since 1928. There are no records of any development consents being issued for the premises under either the *NSW Local government Act 1919*, or NSW legislation regularising the use of land, ie. planning legislation. The property to which this SoEE applies is #22 Paterson Road Bolwarra and is locally known as *Sarroff's Shop*, named after the owners of the premises since 1989.

It is proposed to undertake works on the building so as to improve its functionality, being the replacement of the existing toilet and rebuilding of the rear extension so as to mitigate noise impacts. The building has a long history of commercial use and it is proposed to seek formal approval for commercial activities, being: a cafe; a restaurant; and an office (real estate). These uses combined satisfy the definition of a 'mixed use development'. At no time in the history of the building has it been used as a dwelling.

The subject site being described as Lot 81 DP 556632 has an area of 305m² and is zoned R1 General Residential pursuant to *Maitland Local Environmental Plan 1993*. Due to existing use rights Council may approve an alternate land use, provided this is a commercial use as provided for in Division 4.11 of the EPA Act 1979, even if such a use is prohibited in the zone.

The site contains a commercial building located on a major public road which has serviced the local community in various ways since it was constructed in 1928. The building and land use forms part of the rich environmental heritage of Bolwarra. Pursuant to the provisions of the EPA Act 1979, a Development Application is required to be lodged with Council to permit the proposed development.



Figure 1 The Sarroff's General Store and Cafe circ. 2010

2. THE SITE

2.2 Site Characteristics

The site has a frontage to Paterson Road of 11.65m and comprises an area of 303.5m². Located on the front boundary of the site is a single storey weatherboard and iron building which was constructed in 1928, specifically as a commercial shop. A verandah, constructed in 1990 extends over the footpath. Building Permit #446/90 was issued for this structure by Maitland City Council on 24 May 1990. The building accommodates a 20 seat cafe (56m²), a small kitchen (10m²) and a 24m² office (real estate). At the rear of the site is an open area (100m²) forming part of the existing café with a freestanding toilet structure located in the far corner of the site. Adjoining the original building is a 45m² skillion extension incorporating a store room and a cool room.

The site is located at the intersection of Maitland Road and Paterson Road. This section of Paterson Road (MR101) is speed limited to 60kph, has a 19m sealed carriageway, and carries a moderate volume of traffic. The street frontage is kerbed and gutted with a vehicle entrance on the southern side with parking for two stacked vehicles. There is available relatively safe on-street parking for some 20 vehicles within 50m of the site.

The original building is 7.5m in width with a depth of 12.2m. While the building is not heritage listed, it does have architectural merit in as much as it is one of the last remaining original corner stores in Maitland. Attached to the rear is a 6.1m x 7.5m skillion roofed extension (46m²) which includes a storeroom and coolroom. This leads to a small toilet (4m²) located at the rear. Within the paved courtyard (100m²) is one very large camphor laurel tree. There is a 2.4m high timber fence along the southern and western boundaries.

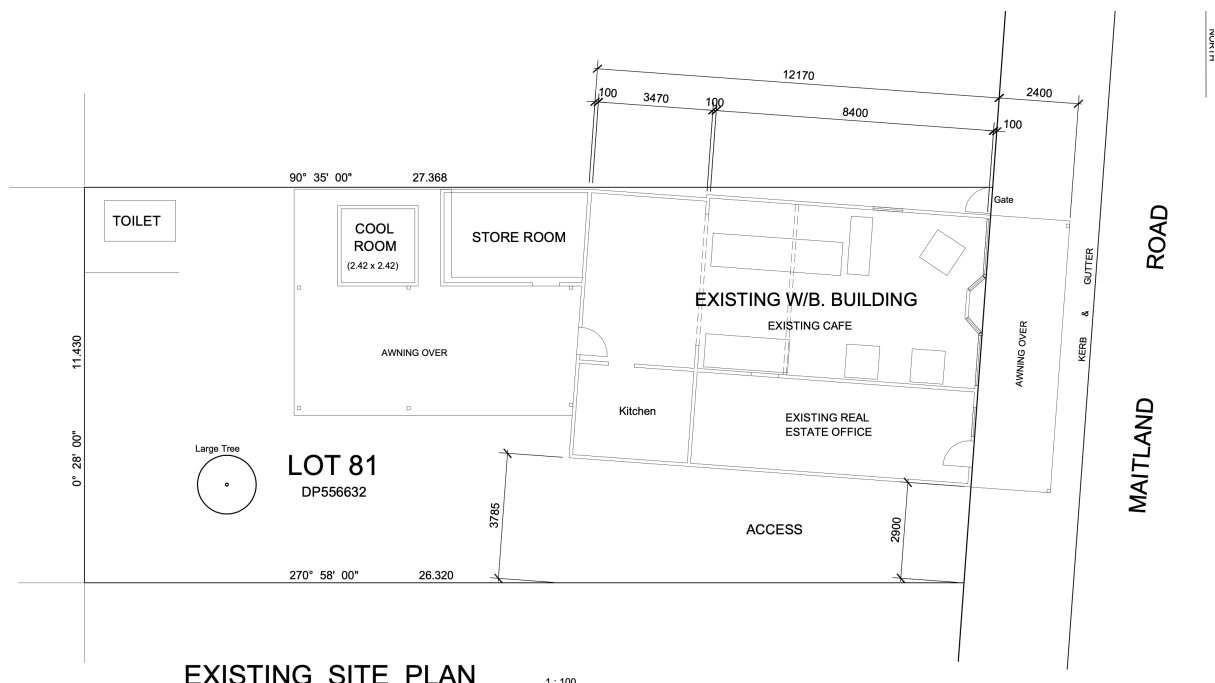


Figure 2 The existing building



Figure 3 Inside of the existing cafe/restaurant



Figure 4 Courtyard of the existing cafe/restaurant

2.2 History of Land use on the Site

Records of ownership of the site, indicate that the building was constructed in 1928 as a commercial shop to serve the local community. Bolwarra Public School was located opposite and this provided ready customers. The school bus stop was outside the shop. The building was a separate structure to the dwelling house located on Lot 8 (2004m²) and was only subdivided off from Lot 8 in 1972 via Development Consent DA 40/72. The registered Deposited Plan shows “WB & Iron Shop”. Since that time the property has been described as Lot 81 DP 556632. The history of the ownership of the property where the building sits is as follows:

1928 – 1956	Hand
1956 – 1972	Heath
1972 – 1976	Hobart
1976 – 1989	Irame Pty Ltd
1989 – Present	Sarroff, Sarroff & Sarroff Pty Ltd

History of the leasehold of the shop is as follows:

1933 – 1956	Mr & Mrs Hand
1965 – 1968	Mr & Mrs Gudis
1968 – 1972	Mr & Mrs Fairhurst
1972 – 1976	Hobart
1976 – 1989	Irame Pty Ltd
1989 – 2006	Mr & Mrs Sarroff
2006 – 2021	Mr & Mrs Pengelly
2021 – 2023	Tammy Shaw
2024 - present	Early Bird & Sweet Basil Pty Ltd

Sarroff's Shop as it has in more recent times been called by locals, has operated as a commercial premises since it was first opened in 1928. It has served a range of product over that time, in particular various foodstuffs for consumption both on and off the premises. The room where the real estate office now lies, was once occupied by the government telephone exchange (1935 – 1967).

Statutory Declarations from *Gaynor Korff* and *David McLean*, both long term residents of Bolwarra, testify as to the existence and activities undertaken at the site from the 1950's till the present. These are provided as **Appendix A**. There is sufficient evidence to conclude that the site supported a commercial land use prior to the Gazettal of the *Northumberland Planning Scheme Ordinance* on 7th December 1960.

3. DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed development comprises the demolition of the rear skillion and toilet (52m²), and the construction of a 3m high masonry wall (90/90/90 fire rated) along the rear portion of the northern boundary being 15m in length and returning 4m along the western boundary. A new structure of 64m² in area is to replace the demolished structures and be mounted off the masonry wall. Located within this structure will be a new toilet (2.1m x 2.3m), cool room (9m²) and store room (15m²).



Figure 5 Rear structure to be demolished and rebuilt with masonry boundary wall

The proposed works will not be visible from Maitland Road. The masonry wall will impact on the amenity of the neighbouring property as this dwelling is setback a distance of some 4.5m to the southern boundary of the property. Being located on the southern side, the wall is unlikely to impact on sunlight entering this property. The biggest impact will be visual as the existing structure comprises a timber wall and fence with a height ranging from 1.9 to 2.6 metres.

The purpose of the masonry wall is to satisfy BCA fire rating requirements for commercial premises along with mitigating noise from outdoor dining activities.

The building will continue to operate as a commercial enterprise, as it has done since 1928. It is considered to meet the definition of a 'mixed use development' as it comprises three definable land uses. The land uses may be characterised as follows:

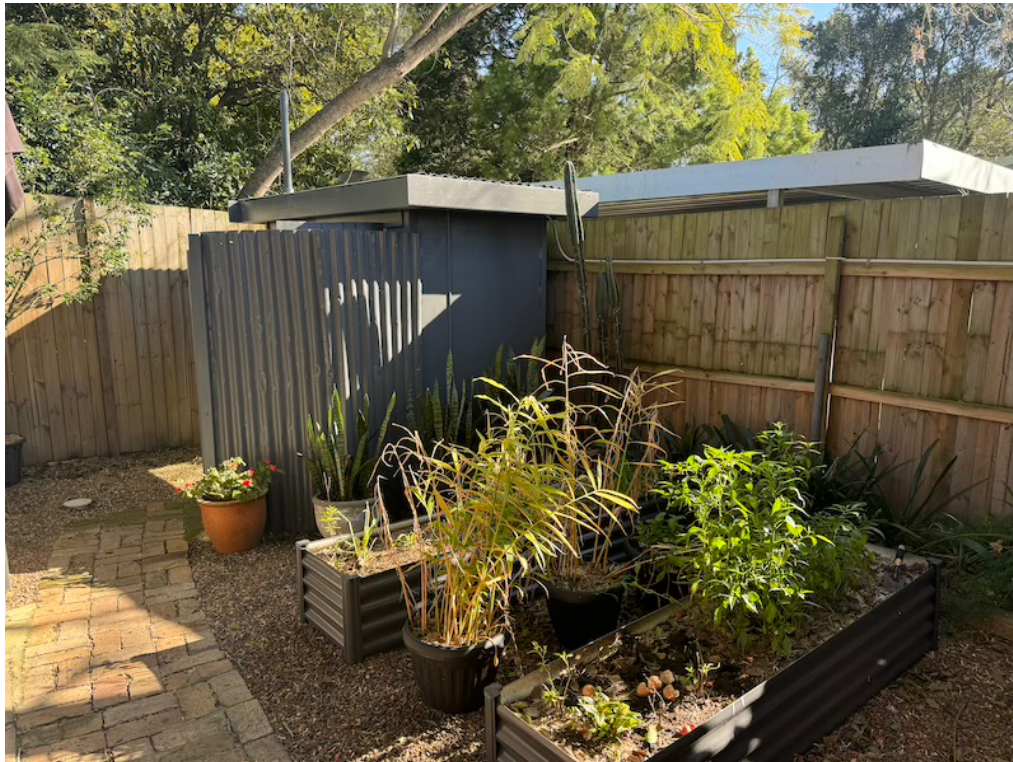


Figure 6 Existing toilet to be replaced

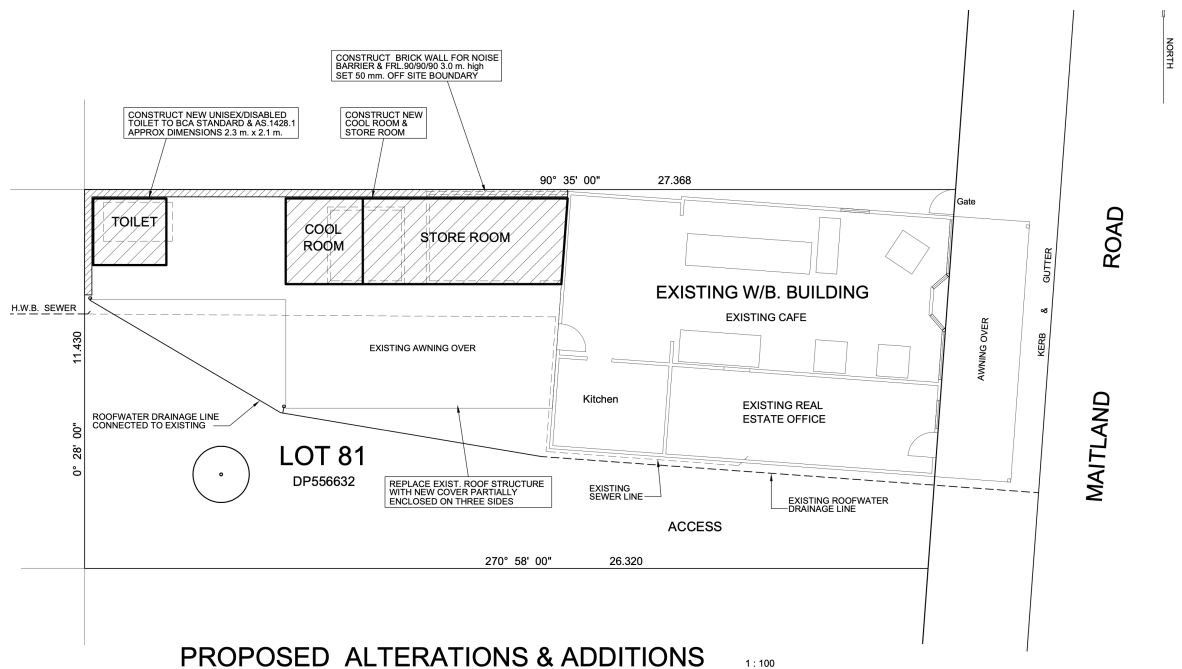


Figure 7 Proposed building works

Cafe and Neighbourhood Shop

This use has operated on the site in various forms since 1928. With the exception of the real estate office, this land use extends over the total site. The cafe provides seating for 20 patrons inside; 30 patrons in the courtyard; and four patrons on the footpath.

The proposed operational details for the Cafe and Neighbourhood Shop are as follows:

Monday to Saturday:-	7.00am – 6.00pm
Sunday:-	7.00am – 2.00pm

The business employs two persons.

Real Estate Office

Located to the left of the Cafe is an office space (24m²) used as a real estate office. The office employs one person.

The proposed operational details for the real estate office are as follows:

Monday to Friday:-	8.00am – 5.00pm;
Saturday:-	8.00am – 12.30pm
Sunday:-	closed

Restaurant & Take Away Food

The restaurant provides seating for up to 50 patrons (20 inside, 30 outside) and operates from 5.00pm. The restaurant employs up to four persons.

The proposed operational details for the restaurant and take away service are as follows:

Monday to Thursday:-	5.00pm – 8.30pm
Friday & Saturday	5.00pm – 9.00pm
Sunday	Closed

4. STATUTORY CONSIDERATIONS

4.1 Maitland LEP 2011

The subject site is zoned R1 General Residential pursuant to Maitland LEP 2011. The subject site is contained within the “Bolwarra Heritage Conservation Area” on the LEP Map. The provisions of the zone are as follows:

Zone R1 General Residential

1 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.

2 Permitted without consent

Home occupations

3 Permitted with consent

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

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

'Neighbourhood shop' is a permissible use in the R1 zone while 'commercial premises' are a prohibited land use. Neighbourhood shop is defined as:-

***neighbourhood shop** means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, but does not include neighbourhood supermarkets or restricted premises.*

Clause 5.4(7) of the MLEP 2011 restricts the size of a neighbourhood shop to 100m².

*(7) **Neighbourhood shops** If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed 100 square metres.*

Based upon the historic use of the site, it is concluded that the current use satisfies the definition of 'commercial premises'. Accordingly, development consent for this use is not required for the continuation of the use (Section 4.68(1) EP&A Act 1979). However, in order to provide certainty to the owner of the property, approval the use of the site as a mixed use development comprising office premises, and restaurant and cafe, is sought.

The site has been continually used as a business enterprise serving, on a regular basis, food and drink, to be consumed both on and off the premises, for in excess of 90 years. This use falls under the land use umbrella of 'commercial premises'.

The uses of cafe, restaurant and office fall within the definitions as provided for in the Dictionary to the MLEP 2011 as at the current date, these being:-

commercial premises means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

mixed use development means a building or place comprising 2 or more different land uses.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

Note—

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

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

Note—

Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.

take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

Note—

Take away food and drink premises are a type of **food and drink premises**—see the definition of that term in this Dictionary.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note—

Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) bulky goods premises,
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note—

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

shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.

Note—

Shops are a type of **retail premises**—see the definition of that term in this Dictionary.

At the date of Gazettal of the Maitland LEP 2011, the definition of restaurant or cafe was:-

As per 2011 Gazetted Instrument

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.

Note—

Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.

From the above it is concluded that the office lies within the definition of ‘office premises’; the cafe falls within the definition of ‘restaurant or cafe’; while the restaurant falls within the definition of ‘restaurant or cafe’. These all fall under the umbrella land use of ‘commercial premise’.

As restaurant or cafes are prohibited uses in the R1 General Residential zone as they fall within the definition of ‘commercial premise’, this application relies on the Existing Use provisions contained in the *Environmental Planning & Assessment Act 1979*.

4.2 Existing Use Provisions

Division 4.11 (formerly Clauses 106-109) of the EPA Act 1979, provide for the change of a lawful existing use to another use, being either a permissible or non-permissible use. Interpretation of this clause is provided in Part 7 of the *Environmental planning and Assessment Regulation 2021*, and in particular Clauses 162 - 167 of the *Regulations*. This clause requires the proponent to obtain development consent for a ‘change of use’. There are no other provisions which provide further interpretive guidance in respect to the assessment of existing use type development. Section 4.67(1)(b) provides is a mechanism which overrides the provisions of the zoning table. The proposed use is required to be assessed on merit in accordance with the provisions of Section 4.15 of the Act.

A detailed overview of the planning legislation which applied to the subject site since 1960 is provided as **Appendix B**. This provides context to the characterisation of the commercial land uses being undertaken on the site and changes to land use definitions over the last 65 years.

Clause 4.67

- (1) *The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:*
 - (a) *the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
 - (b) *the change of an existing use to another use, and*
 - (c) *the enlargement or expansion or intensification of an existing use.*
- (2) *The provisions (in this section referred to as "the incorporated provisions") of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- (3) *An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*
- (4) *Any right or authority granted by the incorporated provisions or any provisions of an*

environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 89 to a development application for consent to carry out prohibited development.

Clauses 162 to 167 of the *Regulations* provides guidance in respect to applications submitted for a change in use of a premises with existing use rights.

Clause 162 – EPA Regulation 2021 – Application of this Part

(1) *The provisions of this Part are provisions in force for the purposes of the Act, section 4.67(1).*

Note—

The Act, section 4.67(2) provides that the provisions in force for the purposes of the Act, section 4.67(1) are taken to be incorporated in every environmental planning instrument.

(2) *In this Part—*

relevant day means—

- (a) *in relation to an existing use referred to in the Act, section 4.65(a)—the day on which an environmental planning instrument having the effect of prohibiting the existing use first comes into force, or*
- (b) *in relation to an existing use referred to in the Act, section 4.65(b)—the day on which the building, work or land being used for the existing use was first erected, carried out or used.*

The relevant day is *Northumberland Planning Scheme Ordinance* Gazetted on 7th December 1960. The land use has been in existence since 1928 and prior to that 1960 provided for the day to day needs of the local community as a commercial premise..

Clause 163 – EPA Regulation 2021 - Certain development allowed

(1) *An existing use may, subject to this Division:*

- (a) *be enlarged, expanded or intensified, or*
 - (b) *be altered or extended, or*
 - (c) *be rebuilt, or*
 - (d) *be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
 - (e) *if it is a commercial use-be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
 - (f) *if it is a light industrial use-be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).*
- (2) *However, an existing use must not be changed under subclause (1) (e) or (f) unless that change:*
- (a) *involves only alterations or additions that are minor in nature, and*
 - (b) *does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and*
 - (c) *does not involve the rebuilding of the premises associated with the existing use, and*
 - (d) *does not involve a significant intensification of that existing use.*
- (3) *In this clause:*
- "commercial use" means the use of a building, work or land for the purpose of commercial premises.*
 - "light industrial use" means the use of a building, work or land for the purpose of light industry.*

The proposed development is sought pursuant to the provisions of Clause 163 (1)(b);

Clause 163(1)(e); and Clause 163(2), in that the proposal is to legitimize the existing commercial uses (office & retail premises) operating on the site.

The proposal to demolish and rebuild the rear section of the building does not increase the trading area of the enterprise. The increase in covered area located between the cool room and the toilet comprises an area of 12m². The existing combined covered area is 142m². The additional covered area comprises an increase of 8.5%.

The existing commercial uses do involve an extension to the hours of operation so as to provide for evening in-house dining and take away. The development does not involve a change of land use.

The proposed development satisfies the objectives of the R1 zone in that the proposal provides facilities and services to meet the day to day needs of local residents.

It is concluded that the proposed development may be lawfully approved by Council.



Figure 8 The building – 23.07.2024

4.3 Heritage Conservation

Heritage

The subject site is located within the *Bolwarra Heritage Conservation Area*. The existing building was first established in 1928. The proposed demolition and rebuilding works are considered to be minor in nature and are not out of character with the existing building or streetscape.

Clause 5.10 provides controls for the assessment of development within a heritage conservation area. Clause 5.10 (4) requires the consent authority to consider the effect of the proposed development on the heritage significance of the item or area concerned.

As the subject site is located with a *Heritage Conservation Area*, The provisions of Clause 5.10 apply to the proposed development.

5.10 Heritage conservation	
<p>(1) Objectives The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> (a) to conserve the environmental heritage of Maitland, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance. 	<p>The replacement of the existing toilet and the proposed rebuilding of the rear extension will result in minimal impact on the heritage values of the site or surrounds. The proposed development satisfies the objectives.</p>
<p>(3) When consent not required However, development consent under this clause is not required if—</p> <ul style="list-style-type: none"> (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development— <ul style="list-style-type: none"> (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or (b) the development is in a cemetery or burial ground and the proposed development— <ul style="list-style-type: none"> (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or (d) the development is exempt development. 	<p>The replacement of the existing toilet and the proposed rebuilding of the rear extension will result in minimal impact on the heritage values of the site or surrounds. The proposed development satisfies the heritage objectives of the Maitland DCP 2011.</p>

4. ENVIRONMENTAL CONSIDERATIONS

4.1 Site Analysis

The premises has been serving the needs of the local community since 1928. The building is of an architectural style in keeping with other buildings in the immediate locality. The site is generally level. Drainage of the roof is directed to the street.

4.2 Access and Parking

There is parking for two cars in the driveway, while there is available on-street parking for in excess of 20 vehicles within 50m of the site. At times, nearby residents have raised concerns about the blocking of driveways which could be addressed by the painting of lines on the pavement to indicate these driveways.

Being located centrally to Old Bolwarra, many locals are in easy walking distance to the site. Based upon the Maitland DCP criteria of one car space per three seats, the activity generates a requirement 17 car spaces (1 space required per 3 seats: $50/3 = 17$).



Figure 8 Driveway with parking for two cars

4.4 Waste Disposal

All waste generated by the activities undertaken on the site (recyclables and general waste) is collected by a private contractor up to twice weekly. Waste is stored in 3 x 260 litre bins stored at the end of the driveway.

4.4 Flora/fauna

No trees are required to be removed to undertake improvements to the building.

4.5 Services

Reticulated telephone, electrical, sewerage and water are available to the site.

4.6 Noise

While the site is located on a main road, ambient noise levels are generally higher than in normal residential areas located away from a traffic generator. In recent times, neighbours have raised complaints regarding the level of noise after 6pm, generally emanating from the rear courtyard. Of most concern appears to be noise generation after 9pm.

The pattern of business activity indicates that with the kitchen closing at 8.30pm most nights, patrons have vacated the premises most evenings by 9pm. The busier evenings of Friday and Saturday nights have the potential to generate noise which may unduly impact on the amenity of neighbouring properties.

The proposed masonry wall and covered area will significantly mitigate noise travelling to the northern neighbour. An extension to the timber fence on the southern boundary has been constructed so as to provide a barrier 2.4m in height.

5. CONCLUSION

The subject site has operated as a commercial premise since 1928. The office, cafe and restaurant comprise a mixed use development and are all uses included in the land use definition of 'commercial premise'. As commercial premises are a prohibited use in the R1 General Residential zone, the proposed land uses may be approved pursuant to the 'existing rights' provisions of the EP&A Act.

The proposed works increase the covered floor area by 8%. The proposed works will provide improved amenities for patrons and assist in mitigating noise impacts associated with outdoor evening dining. The proposed use will not have a significant detrimental impact on the amenity of the area. Being located at the rear of the site, the proposed works will not be visible from the public domain.

The proposal to change the use of the building from one commercial use to another can be lawfully approved by Council pursuant to the provisions of Clause 163 of the *Environmental Planning and Assessment Regulations 2021*.

The proposal will not have a significant environmental impact on the locality or negatively impact on the heritage attributes of the locality.

We recommend that Council consents to the proposal.

Richard Bennett

BTP (UNSW), BLeg S (Macq), MPIA
Certified Practising Planner

18th July 2024

APPENDIX A

STATUTORY DECLARATIONS

22 PATERSON ROAD BOLWARRA

**GAYNOR LYNN KORFF
DAVID JOHN MCLEAN**

STATUTORY DECLARATION

I, GAYNOR LYNN KORFF of 6 Bayswater Road Bolwarra in the State of New South Wales, do solemnly and sincerely declare as follows :-

1. I am 80 years of age.
2. I have resided in the Bolwarra area for the whole of my life and attended Bolwarra Public School.
3. I have been requested by Mr Christopher Sarroff to provide information as to my knowledge of the Bolwarra Store located at 22 Paterson Road Bolwarra, prior to 1960.
4. As a young girl I can recall many visits to the Bolwarra Store which was located opposite Bolwarra Public School.
5. The Store sold a range of merchandise including lollies, pies, biscuits, bread, milk, eggs, meat, butter, vegetables, newspapers and other necessities. It also was the local post office and telephone exchange.
6. Mrs Hands operated the Store at the time and I recall Mrs Gudis operated the Store after Mr Hand passed away.
7. Many a time my friends and I purchased a milkshake and sat down at a table and drank it. They also sold pies and sausage rolls. The Store was a local meeting place. There was a bus stop outside where all the school kids caught the bus to and from school. It operated as the school tuck shop.
8. The Store was open from early morning to late and I can remember my mum asking me to walk to the Store late one summer evening to buy some milk. You could get foodstuffs to take away for dinner if needed.

- 9. The Hands operated their business from the premises and I can recall Mr Hands sitting at a desk in a room off the Store surrounded by papers and ordering goods for the Store.
- 10. During my life I can always remember the Bolwarra Store being open and selling a range of foodstuffs, newspapers, postage stamps, etc with some tables and chairs for customers to sit and enjoy a yarn over a milkshake or a cup of tea, or more recently a coffee.

AND I MAKE this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at: at Bolwarra on 13th October 2023
[place] [date]

[Signature]
[signature of declarant]

in the presence of an authorised witness, who states:

I, PETER STEWART FRY, a Justice of the Peace in and for the State of New South Wales, certify the following matters concerning the making of this statutory declaration by the person who made it: [* please cross out any text that does not apply]

- 1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification¹ for not removing the covering, and
- 2. *I have known the person for at least 12 months OR *I have confirmed the person's identity using an identification document and the document I relied on was

[describe identification document relied on]

[Signature] 19/556
[signature of authorised witness]

13th October 2023
[date]

PETER STEWART FRY J.P. 19/556
105 REGENT ST, MAITLAND NSW

STATUTORY DECLARATION

I, David John Field McLean of 29a Bayswater Road, Bolwarra in the State of New South Wales, do solemnly and sincerely declare as follows :-

1. I am 74 years of age.
2. I have resided in Bolwarra my whole life and attended Bolwarra Public School.
3. I have been requested by Mr Christopher Sarroff to provide information as to my knowledge of the Bolwarra Store located at 22 Paterson Road Bolwarra from my early years till the present.
4. As a young boy I can recall many visits to the Bolwarra Store which was located opposite Bolwarra Public School. It operated like a school tuckshop but also sold a range of goods from food to newspapers, etc.
5. You could purchase a milkshake and sit down at a table and drink it. The store also sold pies, sausage rolls and cakes. The Store was a local meeting place. There was a bus stop outside where all the school kids caught the bus to and from school.
6. The Store was open from early morning to late and I can recall walking to the store to get milk, bread and soft drink in the summer evenings.
7. There was an office off to the side where the proprietors worked.
8. The store has had a few different owners over the years and the range of merchandise sold has changed over time in line with society's needs. The store has always sold food, including milkshakes and there were tables and chairs near the front and out the back where you could eat a pie and drink a milkshake. It was always open late to meet the needs of the locals.

9. I can recall that over the last seventy years the Bolwarra store has been a central feature in the Bolwarra community and reliably supplied staples and foodstuffs. I often called in to the store to buy fruit and vegetables, dried food, milk and eggs, etc. From time to time different owners offered basic meals to consume either inside or take away.

AND I MAKE this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at: Bolwarra on 27th October 2023
[place] [date]

[Signature]
[signature of declarant]

in the presence of an authorised witness, who states:

I, PETER STEWART FRY, a Justice of the Peace in and for the State of New South Wales, certify the following matters concerning the making of this statutory declaration by the person who made it: [* please cross out any text that does not apply]

1. *I saw the face of the person OR ~~*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification¹ for not removing the covering, and~~
2. *I have known the person for at least 12 months OR ~~*I have confirmed the person's identity using an identification document and the document I relied on was~~

[describe identification document relied on]

[Signature] 191556 27th October 2023
[signature of authorised witness] [date]

PETER STEWART FRY J.P. 191556
105 REGENT ST, MAITLAND NSW

APPENDIX B

PLANNING HISTORY 22 PATERSON ROAD BOLWARRA

The following comprises extracts from planning instruments which applied to the subject site since 1960.

1. Pre 1960 – Local Government Act 1919

Prior to 1960, land use control was under the provisions of the Local Government Act 1919. At time of construction in 1933, the land was unzoned.

2. Northumberland County District Planning Scheme Ordinance – Gazetted 7th December 1960

Prior to the *Northumberland County District Planning Scheme Ordinance*, all development in Maitland was undertaken pursuant to the provisions of the NSW Local Government Act 1919. This instrument introduced planning controls in the form of the zoning of land in the Lower hunter Region. The subject site was zoned Residential “A”.

Both ‘shops’ and ‘commercial premises’ were listed in the zoning table as prohibited uses in the Residential “A” zone. These uses were defined as follows:-

“Commercial Premises” means any building or place or portion of a building used or designed for use as an office or for other business or commercial purposes or for the storage of goods in connection therewith, but does not include and educational establishment, a place of assembly, a car repair station, a service station, a motor showroom, a motel, a building designed to be used for industry or a shop, a refreshment room, a hotel, or a transport terminal.

“Shop” means any building or place, or portion of a building used or designed for the purpose of exposing or offering goods for sale by retail, and includes any portion of such building or any such place used for the ordinarily connected with the retail business conducted thereon, but does not include a hotel, motel, a club, a service station, a car repair station or a refreshment room.

From this Instrument it is concluded that the subject premises fell within the land use definition of “commercial premises” and became a non-conforming land use on 7th December 1960.

3. Environmental Planning & Assessment Model Provisions 1970

In 1970 a set of common land use definitions were introduced. Those relevant to this matter were:-

Commercial premises means a building or place used or intended for use as an office or for other business or commercial purposes, but does not include a building or place elsewhere specifically defined in this clause or a building or place used or intended for use for a purpose elsewhere specifically defined in this clause or for a roadside stall.

General store means a shop used or intended for use for the sale by retail of general merchandise whether or not it includes facilities of a post office.

Refreshment room means a restaurant, cafe, tea-room, eating-house or the like.

Shop means a building or place used or intended for use for the purpose of selling, exposing or offering for sale by retail goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause or a building or place used or intended for use for a purpose elsewhere specifically defined in this clause or for a roadside stall.

4. IDO # 6 - City of Maitland 14th April 1972

This instrument was the first standalone planning instrument for Maitland LGA. The subject site was zoned Residential "A" Zone -

2. Residential "A" Zone

Column III – development without consent

Dwelling houses

Column IV – Permissible development with Consent

Development other than that permitted by Column III and Column V

Column V – Development which may not be carried out

Bulk store; car repair station; caravan parks; clubs; commercial premises; forestry; gas holders; generating works; hotels; industries other than home industries; institutions, junk yards; liquid fuel depots; mines; motels; motor showrooms; places of assembly; refreshment rooms; residential buildings; roadside stores; sawmills; service stations; shops other than general stores; stock and sale yards; timber yards; transport terminals; warehouses.

5. Environmental Planning & Assessment Model Provisions 1980

With the introduction of the EP&A Act 1979, a new set of Model Provisions were introduced.

commercial premises means a building or place used as an office or for other business or commercial purposes, but does not include a building or place elsewhere specifically defined in this clause or a building or place used for a purpose elsewhere specifically defined in this clause.

general store means a shop used for the sale by retail of general merchandise and which may include the facilities of a post office.

Special Provisions in respect to General stores

Clause 28 General store

- (1) *A person shall not erect or use a building for the purposes of a general store on an allotment of land within a rural zone, where such allotment has a frontage to a main or arterial road or is less than 800 metres from any other allotment of land on which is erected a shop or a general store.*
- (2) *A person shall not erect or use a building for the purposes of a general store in any zone referred to in subclause (1) of this clause closer to the alignment of a road other than the building line fixed in respect of any adjoining premises or, where no such building line has been fixed, closer to such alignment than the distance generally applying in respect of other premises having frontage to such road.*

refreshment room means a restaurant, cafe, tea room, eating house or the like.

shop means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause, a building or place used for a purpose elsewhere specifically defined in this clause.

6. Maitland LEP 1986

This instrument adopted the Model Provisions of 1980, and introduced a new land use table.

2(a) Residential A Zone

2. Without development consent – *dwelling houses*

3. Only with development consent – *any purpose other than a purpose included in Item 2 or 4.*

4. Prohibited - *Bulk store; car repair stations; caravan parks; clubs; commercial premises; forestry; gas holders; generating works; helipads; heliports; hotels; industries (other than home industries); institutions; junk yards; liquid fuel depots; mines; motels; motor showrooms; places of assembly; recreation establishments; recreation facilities; refreshment rooms; residential buildings; retail plant nurseries; roadside stall; sawmills; service stations; shops (other than general stores); stock & sale yards; taverns; timber yards; tourist facilities; transport terminals; warehouses.*

7. Maitland LEP 1993

This instrument introduced a new land use table and revised land use definitions.

Zone 2(a) Residential

(3) Development allowed without development consent

Dwelling House; Home Based Child Care Establishment.

(4) Development allowed only with development consent

Agriculture; Bed and Breakfast Accommodation; Boarding House; Bushfire Hazard Reduction; Camp and Caravan Sites; Child Care Centre; Communications Facility; Community Centre; Community Facility; Convenience Store; Dual Occupancy; Education Establishment; Exhibition Home; Exhibition Village; Forestry; Group Home; Home Activity; Hospital; Hotel; Motel; Medium Density Housing; Place of Worship; Public Building; Road;

Recreation Area; Recreation Facility; Residential Flat Building; Seniors Housing; Serviced Apartment; Tavern; Tourist Accommodation; Utility Undertaking.

(5) Development which is prohibited

Any development other than development included in Item 3 or 4.

Business premises; office premises; refreshment room; and shop were a prohibited uses in the 2(a) Zone under MLEP 1993.

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 may include, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, medical centres, betting agencies and the like, but does not include sex services premises.

Convenience store means:

- (a) a shop which sells a variety of small consumer goods, and
- (b) is located no closer than 400 metres from commercially zoned land.

Office premises means a building or place used for the purpose of administration, clerical, technical, professional or like activities (except dealing with members of the public on a direct and regular basis or otherwise than by appointment), but does not include a building or place elsewhere defined in this clause.

Refreshment room means a restaurant, cafe, tea room, eating house or the like.

Shop means a building or place used for the purpose of selling items, whether by retail or auction, for hiring of items or for displaying items for the purpose of selling or hiring them (whether the items are goods or materials).

8. Maitland LEP 2011

This instrument introduced a new land use table and revised land use definitions.

Zone R1 General residential

3 Permitted with consent

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

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

commercial premises means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

mixed use development means a building or place comprising 2 or more different land uses.

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

Note—

Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.

As per 2011 Gazetted Instrument

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.

Note—

Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.

take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

Note—

Take away food and drink premises are a type of **food and drink premises**—see the definition of that term in this Dictionary.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note—

Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) bulky goods premises,
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,

- (l) shops,
 - (m) timber yards,
 - (n) vehicle sales or hire premises,
- but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note—

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

shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.

Note—

Shops are a type of **retail premises**—see the definition of that term in this Dictionary.