

Statement of Environmental Effects

Section 4.55 (1A) Modification to
DA 2020/909 for demolition of existing building,
construction of new commercial building (Office Premises
and Associated Site Works, Carparking and Alterations
to Existing Building – Clause 4.6 Variation
13 Mitchell Drive East Maitland
15 Mitchell Drive East Maitland



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1 INTRODUCTION

The following Statement of Environmental Effects has been prepared to assist Maitland Council in the processing of the attached proposed modification to DA 2020/909, 13 and 15 Mitchell Drive East Maitland.

On 11th May 2021, Maitland City Council approved DA2020/909 for the Demolition of Existing Building, Construction of New Commercial Building, (Office premises) and Associated Site Works, Carparking and Alterations to Existing Building – Clause 4.6 Variation.

The land is zoned B3 Commercial Core pursuant to Maitland Local Environmental Plan (LEP) 2011. The proposed modification is consistent with Council's objectives as contained within the LEP and the development principles contained within the Maitland Development Control Plan 2011.

This modification proposes to remove the second storey of the approved new commercial building thereby reducing the proposed height of the building to 10.75m. No changes to the footprint of the building are proposed as part of this modification.

The site is mapped as containing a maximum building height of 8m within the Maitland LEP 2011 and in accordance with DA2020/909, approval was granted by Council for a building height of 15.335m to the top of the roof of the building and 16.8m to the top of the plant room at its greatest point of variation, which results in a variation of 8.8m to the mapped building height. This modification is a minor variation to the building height permitted under the Maitland Local Environmental Plan 2011.

The proposal complies with the mapped floor space ratio for the site pursuant to Clause 4.4 of Maitland LEP and generally complies with Maitland DCP 2011.

The proposed building has been architecturally designed to complement the streetscape and minimises visual impacts given its location at the rear of the site. The proposed modification has significantly reduced the building height from the previously approved building proposed on site.

The modified design promotes a high-quality contemporary design that will not look out of context in this environment and is compatible with the mass and bulk of the surrounding area and adjoining buildings. The modified design now seeks a minor variation to the maximum building height requirements included in the Maitland LEP and DCP.

This report is structured to facilitate a logical understanding of the proposed development, an identification of the key issues, and a summary assessment of the proposed development including justification to warrant the maximum height variation. The development proposal has taken into account the Environmental Planning and Assessment Act 1979, the Maitland Local Environmental Plan 2011 and the Maitland Development Control Plan 2011.

2 LOCALITY



Figure 1 – Locality Plan (Source: Six Maps 2020)



Figure 2 – Existing commercial buildings on site on Mitchell Drive East Maitland



Figure 0 – Stockland's Greenhills Shopping Centre and Maitland Mutual Building opposite the site.



Figure 4 – Entrance to Stockland's Greenhills Shopping Centre opposite the site.



Figure 5 – Stockland Green hills opposite the site.

The land is located on Mitchell Drive East Maitland, opposite the Stockland's Greenhills Shopping Centre. The site covers an area of 4883m². Access to the site is provided directly from Mitchell Drive, East Maitland. Refer to locality plan above and photos of site below.

The site is not subject to flooding. The site is not located in a Heritage Conservation Area and does not contain an item of Heritage Significance. There are no known geotechnical hazards associated with this site. The land is not affected by Mine Subsidence. The site is not located in a bushfire prone area.

3 THE PROPOSAL

This modification proposes to remove the second storey of the approved new commercial building thereby reducing the proposed height of the building to 10.75m.

On 11th May 2021, Maitland City Council approved DA2020/909 for the Demolition of Existing Building, Construction of New Commercial Building, (Office premises) and Associated Site Works, Carparking and Alterations to Existing Building – Clause 4.6 Variation. The new commercial building has not been constructed.

The modification will not increase the footprint of the approved building. No changes to the car parking layout are proposed.

No changes to the proposed use on site is proposed as a result of this application.

4 ACCESS AND TRAFFIC

No changes to pedestrian amenity, vehicle access, vehicular parking or deliveries are proposed as a result of this modification. Traffic generation is likely to be reduced as a result of less GFA.

Additional car parking will be line marked on the existing concrete pavement as shown on the plans attached.

A total of 102 car parking spaces are proposed on site. The plans attached include a calculation of the car parking requirements for this development. The proposal requires 56 car parking spaces. 102 car parking spaces will be provided.

5 WASTE

The proposed modification is not expected to generate large quantities of waste. A waste management plan is attached to the plans submitted to Council.

6 HAZARDOUS SUBSTANCES

The proposed modification to the existing facility will not store any hazardous substances.

7 PLANNING CONTROLS AND ZONING COMPLIANCE

7.1 Section 4.55 Amendment Justification

It is considered that the modifications to the development can be undertaken via a s4.55 amendment. Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulation, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (iii) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The s4.55 (1A) modification application is considered to be of minimal environmental impact as it is only a minor change to the original consent. The change includes reducing the height of the approved Commercial Building by removing the second storey. The GFA of the building will therefore be reduced as a result.

No changes to the footprint of the approved building are proposed. Minor changes to the external appearance of the approved building are proposed as a result of removing the second storey.

There are no new environmental issues created by this amendment.

This Section 4.55(1A) application is therefore appropriately considered to be relatively minor in nature. No environmental impacts are expected to occur as a result of this modification.

With regard to the threshold test of being “substantially the same development”, the following is noted:

1. The proposed land use is permissible in the zone.
2. The GFA is reduced as a result of this proposal.
3. Minor changes to the external façade of the building are proposed.
4. No changes to the footprint of the building are proposed.
5. Sufficient parking is available on site to cater for the proposed modification.

Thus, it is submitted that the development as proposed to be modified will be substantially the same as that previously approved by Council.

7.2 Regional Environmental Plan

Hunter Regional Strategy 2036

The subject land is included in the Hunter Regional Plan 2036 as a Strategic Centre and Growth Area. The proposal seeks consent for redevelopment and refurbishment of the site as new and existing commercial buildings and meets the requirements of the Hunter Regional Plan 2036.

7.3 Maitland Strategies

Maitland City Council Activity Centres and Employment Clusters Strategy 2010

The Activity Centres and Employment Clusters Strategy 2010 is based on a set of key principles to strengthen the viability of the activity centres and employment clusters to support the Maitland community.

The site is located within the Greenhills Stand-Alone Shopping Centre and Surrounds Retail Precinct. The proposal for a commercial building will contribute to employment opportunities within the local Maitland Community and the wider regional community.

7.4 Integrated Development

Pursuant to Section 4.46 the EP and A Act 1979, this development application is not integrated development.

7.5 State Environmental Planning Policies

The following State Environmental Planning Policies are relevant to the assessment and consideration of this development application.

SEPP (Infrastructure) 2007

Clause 104 of the SEPP (Infrastructure) 2007 outlines the requirements for traffic generating development applying to new premises of the relevant size or capacity, or an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity. The proposed development is defined as office premises pursuant to Maitland LEP 2011. The size of the proposed office building and its location and proximity to a classified road does not require referral to the RMS. The site is located on the northern side of Mitchell Drive approximately 300 metres south west of the New England Highway.

7.6 Maitland Local Environmental Plan 2011

The subject site is zoned B3 Commercial Core pursuant to Maitland LEP 2011. A copy of the zoning map is shown below.



Figure 6 - Zoning Map

The objectives of the zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

- *To recognise Council’s preferred hierarchy of activity centres and precincts, by ensuring that existing and future development—*
 - (a) at Greenhills continues to promote the regional significance of this retail precinct, and*
 - (b) at Central Maitland supports the integration and inclusion of business development to reinforce its significance as a major regional centre.*

The proposed modification is in accordance with the objectives and provisions of the B3 Commercial Core zone as follows:

- The development proposes a commercial land use to serve the needs of the local and wider community.
- The proposed development will encourage employment opportunities directly opposite the Greenhills Shopping Centre.
- The development is located within convenient distances to public transport and in close proximity to the residential areas to provide service and employment opportunities.
- The proposal is not retail in nature and supports and reinforces Council’s hierarchy of activity centres and precincts by ensuring existing and future development is located opposite the Greenhills main shopping centre district.

The proposal is defined in Maitland LEP 2011 as office premises which 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.

The proposal for office premises on the site is a permissible land use within the zone with Council consent. The use of the site for office premises meets the objectives of the zone.

The following LEP clauses are relevant to the proposal.

Clause 4.3 – Maximum Building Heights

Clause 4.3 of Maitland LEP refers to Maximum Building Heights and is defined as follows:

(1) The objectives of this clause are as follows—

(a) to ensure that the height of buildings complements the streetscape or the rural character of the area in which the buildings are located,

- (b) to protect the heritage character and significance of buildings and avoid an adverse effect on the integrity of heritage items,*
- (c) to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The site is mapped on the Height of Buildings Map pursuant to Maitland LEP 2011 as containing a maximum building height of 8m. The modification proposes to reduce the height of the building from that originally approved by Council to 10.75m at its highest point representing an exceedance of 2.75m above the maximum building height. The variation is exacerbated by the crossfall of the existing car park and the topography of the site.

A request to vary the development standard in accordance with Clause 4.6 of the Maitland LEP 2011 is significantly less than that previously approved by Council.

Clause 4.4 - Floor space ratio

Clause 4.4 of Maitland LEP refers to Floor space ratio and is defined as follows:

- (1) The objectives of this clause are as follows—*
- (a) to ensure development is compatible with the streetscape and character of the area by providing an appropriate correlation between the size of a site and the extent of any development on that site.*
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The site is mapped as containing a Floor Space Ratio (FSR) of 2.0:1. The proposal will result in a FSR of 0.455:1 and therefore complies with this standard. The proposed development being a commercial development is compatible with the streetscape and character of the area by providing an appropriate correlation between the size of the site and the extent of the proposed development on site.

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Maitland LEP 2011 seeks to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. In determining whether or not Council can support a variation to the development standard contained within the LEP, Council is required to be satisfied that:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

- That there are sufficient environmental planning grounds to justify contravening the development standard.
- The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and,
- The contravention of the development standard does not raise any matter of significance for State or regional environmental planning and maintains a public benefit.

An application to vary a Development Standard (Maximum Building Height Clause 4.3) pursuant to Clause 4.6 of Maitland LEP 2011 is minor and significantly less than the height originally approved by Council.

It is concluded that the clause 4.6 objection is justified and there are sufficient environmental planning grounds to warrant the variation.

Clause 5.6 - Architectural Roof Features

Clause 5.6 of Maitland LEP refers to Architectural Roof Features and is defined as follows:

- (1) *The objectives of this clause are as follows—*
 - (a) *to enable an innovative and flexible approach to roof design.*
- (2) *Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*
- (3) *Development consent must not be granted to any such development unless the consent authority is satisfied that—*
 - (a) *the architectural roof feature—*
 - (i) *comprises a decorative element on the uppermost portion of a building, and*
 - (ii) *is not an advertising structure, and*
 - (iii) *does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - (iv) *will cause minimal overshadowing, and*
 - (b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

This clause allows an architectural roof feature to exceed or cause a building to exceed the height limit set by clause 4.3 of Maitland LEP 2011. The proposed development incorporates an architectural roof feature on the southern elevation which exceeds the 8m maximum building height and contains the plant room.

The proposed architectural roof feature meets the requirements of clause 5.6 of the Maitland LEP 2011

including:

- Comprises a decorative element on the uppermost portion of the building;
- Is not an advertising structure;
- Does not include floor space area and is not reasonably capable of modification to include floor space area; and,
- Will cause minimal overshadowing.

This area will include the plant room and is fully contained within the building design and will contain the lift lobby. The height extension improves the presentation of the building by providing variation to the roof height from the main height of the building. The area is articulated from the remainder of the building giving the building some variation and interest to this elevation.

The space will be used for signage but is not an advertising structure. Signage will be a building identification sign and will be contained within the roof feature.

The proposed development meets the requirements of clause 5.6 of the Maitland LEP 2011.

7.7 Maitland Development Control Plan 2011

The Maitland Development Control Plan (DCP) 2011 provides all relevant guidelines to enable preparation of a DA for assessment by Council. The proposed modification complies with Maitland DCP 2011. Sufficient parking is available on site to cater for the proposed modification. Refer to Site Information Table included in Plans attached.

Impact from this proposed use such as noise, air quality, traffic and car parking have been taken into consideration to minimise conflict between land uses within the zone and with adjoining zones. The proposal will not have an adverse impact on the other land uses.

The proposed modification meets the provisions contained within the Maitland DCP 2011.

8 LIKELY IMPACTS OF THE DEVELOPMENT

The proposed modification to remove the second storey from the approved commercial building on site is likely to reduce any impacts in this location as a result of reducing the mass, bulk, scale and size of the proposed development.

No adverse impacts are expected as a result of this modification.

Sufficient car parking will be provided on site with no changes to the proposed car parking arrangement or existing access from Mitchell Drive.

All vehicles will be able to enter and exit the site in a forward direction. All car parking will be provided on site.

The proposed modification is considered compatible with the existing building on site and the adjoining area.

The proposal will not affect the visual, acoustic, recreational or social amenity of any neighbouring property or business.

The proposal will not cause excessive overshadowing within the subject or adjoining lots.

The proposal will not create any negative impacts on the public domain within the locality.

The proposal will not affect any flora or fauna on site. No clearing is proposed. No changes to the footprint of the existing building are proposed.

The proposal will not create or permit any adverse impacts on air or microclimate of the area. The development will not create any adverse impacts on the soil, surface water or ground water of the area.

The modification will not create any additional adverse noise impacts in the area or adverse impacts from the generation of waste.

The proposed development will not create any additional negative impacts on the environment or the locality.

9 SUITABILITY OF THE SITE FOR THE PROPOSAL

The site has been assessed as being suitable for the proposed modification for the following reasons:

- The amendment entails the removal of the second storey of the proposed office building approved on 11th May 2021 (DA2020/909).
- The GFA of the proposed building will be reduced.
- The site is suitably located and consistent with the existing building and adjoining development in the immediate area in Greenhills Shopping Centre;
- The proposal was approved by Council pursuant to DA2020/909 and the proposed modification is substantially the same development as originally approved.
- There are sufficient car parking spaces on site to cater for the proposed amendment.
- No changes to the existing building footprint are proposed.

- No environmental impacts are anticipated as a result of the proposed amendment.
- The proposal is considered suitable for this site.
- The proposal will have no adverse impacts on the locality including traffic impacts or environmental impacts;
- The proposal will have no cumulative impacts; and,
- The development will not have any adverse impacts on the adjoining area.

It is determined that the site is suitable for development as proposed in this S4.55 (1A) application.

10 CUMULATIVE IMPACTS

The proposed commercial premises was approved by Maitland City Council on 11th May 2021.

The proposed changes are considered minor in nature.

The site contains an existing commercial use. No foreseeable cumulative impacts are expected as a result of the proposed modification.

11 THE PUBLIC INTEREST

The proposed amendment provides a positive impact to the area by reducing the height, size, scale and bulk of the approved commercial building on site.

The proposed modification satisfies both the provisions of Maitland LEP 2011 and Maitland DCP 2011 and is therefore considered to be in the public interest.

12 SUMMARY

On 11th May 2021, Maitland City Council approved DA2020/909 for the Demolition of Existing Building, Construction of New Commercial Building, (Office premises) and Associated Site Works, Carparking and Alterations to Existing Building – Clause 4.6 Variation.

It is now proposed to remove the second storey of the approved new commercial building thereby reducing the proposed height of the building to 10.75m. No changes to the footprint of the building are proposed as part of this modification.

The changes proposed are compatible with the intent and application of the original consent. The main intent of the s4.55 application is that the proposed changes to which the application modifies is substantially the same development as the development for which the consent was originally granted. Therefore, it is appropriate that the amendments should be undertaken in accordance with Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979.

Overall, it is considered that the proposed modification is consistent and substantially the same as the original consent and therefore, warrants the support of Maitland City Council.