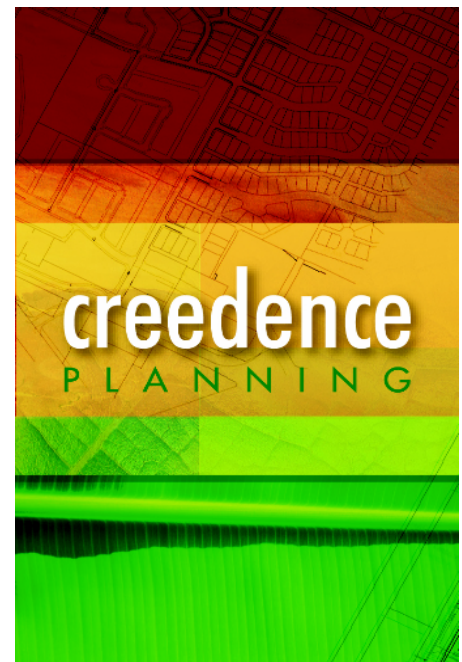


# STATEMENT OF ENVIRONMENTAL EFFECTS



96A Lawes Street, East Maitland

proposed  
change of use  
to  
recreation facility (indoor)

September 2022

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# 1. summary for all stakeholders

This Statement of Environmental Effects ('SEE') has been prepared by Creedence Planning on behalf of Core Collective Pilates and is submitted to Maitland City Council in support of a development application ('the subject DA') seeking consent for a change of use at 96A Lawes Street, East Maitland ('the subject premises') to a recreation facility (indoor) for the purposes of conducting Pilates classes.

This introductory section of this report is a transparent presentation of the salient detail of the document. It summarises the details of the proposal, identifies any non-compliances with planning controls and other pertinent merit assessment information to provide the consent authority assessment officer, other stakeholders and interested parties with a quick understanding of the proposal. This includes any identified potential impacts on the surrounding built and natural environment, including neighbouring properties. Non-compliances are justified. Any proposed mitigation measures to any identified impacts or reasons why these impacts are considered minor or reasonable are explained. It is hoped that this summary will assist the reader to fully understand the proposal and address any concerns they may have.

This SEE has been prepared with reference to the site plan / floor plan prepared by Creedence Planning and attached as **Annexure 2**. Other reference material attached to this report include photos of the site and surrounds in **Annexure 1** and a Site Waste Management & Minimisation Plan in **Annexure 3**.

It is the position of Creedence Planning that the proposal is well-suited to be carried out at the subject premises and fits reasonably within its site and surrounds without causing any undue harm or hardship to the amenity or functionality of surrounding properties or, generally to the wider natural or built environment. The proposed use reasonably complies with the applicable planning provisions, with the exception of the following:

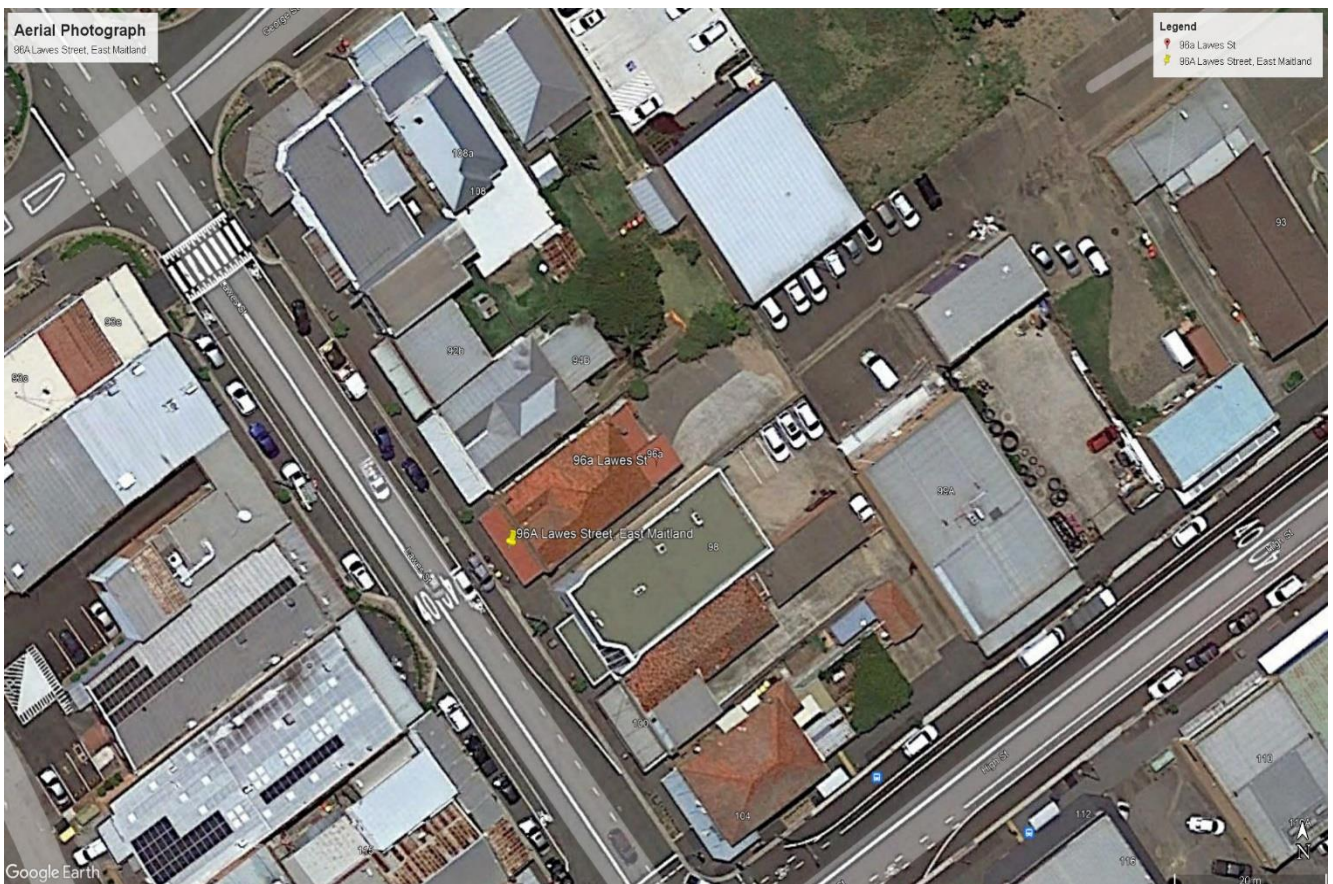
- The provision of a continuous path of travel to the premises, accessible toilet and parking. As the proposal is a change of use only with no building work proposed to the existing premises, a variation to strict enforcement of these requirements is sought on the grounds of undue hardship (refer to **Section 6.1** of this report) and;
- The proposal does not comply with the minimum DCP parking provision resulting in a parking shortfall of 4 car spaces. A variation is sought to this control on the basis of a range of mitigation measures and conditions, including the limited size of classes, interval time in-between classes to prevent overlapping of parking demand, over 60% of classes being offered out of peak business hours, and, local public parking vacancy rates, availability of on-street parking and public transport options available to future clients. Refer to **Section 5.1.1** of this report for detailed discussion.

Having assessed the proposal against all of the relevant considerations, Creedence Planning has concluded that, on balance, the subject development is worthy of a conditional approval and, accordingly, it is recommended to the consent authority for such consent to be granted.

## 2. site analysis

### 2.1 the site and subject premises

The site upon which the subject premises is located is known as 96 Lawes Street, East Maitland ('the site'). The legal description of this land is Lot 1 in DP 343321. The site is located on the north-eastern side of Lawes Street between High Street and George Street. The site location is indicated in the aerial photograph below in **Figure 1**.



**Figure 1:** Site Location and Aerial Photo Map (Source: Google Earth Pro 2022)

The site is rectangular in shape and has a frontage of approximately 14m to Lawes Street. The total area of the site is approximately 537.5m<sup>2</sup>. The site is relatively flat and contains a single storey, part brick / part timber clad commercial building with a tiled roof. This building has been divided into two commercial tenancies with the subject of this development application being the front tenancy of this building, known as 96A Lawes Street, East Maitland and referred to in this report as the subject premises.

The subject premises is currently vacant. It is understood that it was previously used for retail purposes. The subject premises has a typical shopfront design with a brick parapet front wall and floor to ceiling windows across most of the front façade. The entry door is centrally located with two steps from footpath level. There is also a suspended awning over the footpath spanning the width of the

front façade. There is no significant vegetation on the site. The gross floor area ('GFA') of the subject premises is approximately 75sqm.

There is a rear tenancy identified as 96B Lawes Street which is not the subject of this development application.

The rear of the site is part hard-paved and part gravel surface. It is used as a carpark with vehicular access to Lawes Street via a 2.78m wide concrete driveway running parallel and adjacent to the south-east property boundary. There is no ground line-marking of the car spaces in the rear carpark, however, line marking indicated by blue tape on the north-western side boundary fence indicates that there is sufficient space for a total of six car parking spaces in the onsite carpark with a total of two car spaces being allocated to the subject premises. The parking spaces allocated to the subject premises are the front two parking spaces in the rear carpark.

The property is zoned B2 Local Centre under Maitland Local Environmental Plan 2011 ('MLEP 2011'). The existing commercial building on the site is not listed as a heritage item under this planning instrument. The site is also not located in the vicinity of any listed heritage item or within any heritage conservation area. It is not identified as being flood prone land or bushfire prone. It is located within a Class 5 Acid Sulfate Soils area.

Photos of the site and surrounds are included in **Annexure 1**.

## **2.2 the locality and adjoining properties**

East Maitland is a local commercial centre located adjacent to the main northern railway line within the Local Government Area ('LGA') of Maitland. Lawes Street provides the main north-west / south-east axis through this local centre. This local centre is surrounded by R2 Low Density Residential zoned land. The portion of Lawes Street in which the subject site is located is a commercial street with B2 Local Centre zoned land on both sides of this street for two street blocks. It is generally characterised by one and two storey commercial buildings.

The property adjoining the subject site to the north-west is 94 Lawes Street, East Maitland. This adjoining property contains a single storey commercial building containing two commercial tenancies at the front and also possibly a dwelling at the rear. Adjoining the site to the south-east is 98 Lawes Street, East Maitland. This property contains a single storey commercial building.

Adjoining the rear of the subject site is the rear portion of 99 High Street, East Maitland. This adjoining land is utilised for the purposes of a public carpark. This public carpark also occupies the rear of No's 91-97 High Street and the entirety of No.89 High Street. Vehicular access/egress for this public carpark is from High Street. This public carpark has a total of 59 car spaces including an accessible parking space.

## **2.3 background**

Historically, it would appear that the existing building on the site was developed and used as a commercial premises in the front of the building and dwelling at the rear.

There is no known previous development consent solely applying to the subject premises known as 96A Lawes Street, East Maitland and located at the street frontage of the site.

A development application (DA 09-2277) was approved on 3 November 2009 for the change of use of the rear of the premises, known as 96B Lawes Street, East Maitland, from an existing dwelling to a psychiatrist consulting room.

## **3. the proposal**

The subject DA seeks development consent for the use of the subject premises as a recreation facility (indoor). More specifically, it is proposed to use the subject premises to carry out Reformer Pilates classes. Consent is not sought to carry out any physical building work under the subject DA. Management details of the proposed Pilates classes are as follows:

- Proposed hours of operation are as follows:
  - Mondays to Thursdays: 6am – 7.30pm;
  - Fridays: 6am – 6pm;
  - Saturdays: 7am – Midday.
- Notwithstanding the above hours of operation sought, the actual timetable for classes, which typically will run for 45 minutes, would not involve the business operating continuously within the proposed hours of operation. The timetable of Pilates classes below is indicative and may change in the future but within the limits set by the proposed hours of operation.

<b>Indicative Pilates Class Timetable</b>					
<b>Mondays</b>	<b>Tuesdays</b>	<b>Wednesdays</b>	<b>Thursdays</b>	<b>Fridays</b>	<b>Saturdays</b>
6am	6am	6am	6am	6am	
7am	7am	7am	7am	7am	7am
8.30am	8.30am	8.30am	8.30am	8.30am	8am
9.30am	9.30am	9.30am	9.30am	9.30am	9am
10.30am	10.30am	10.30am	10.30am	10.30am	
3.30pm	3.30pm	3.30pm	3.30pm		
4.30pm	4.30pm	4.30pm	4.30pm		
5.30pm	5.30pm	5.30pm	5.30pm		
6.30pm	6.30pm	6.30pm	6.30pm		

**Table 1: Indicative Pilates Class Timetable**

- It should be noted that there is no overrun of any two classes with at least 15 minutes between each class to allow for a changeover of clients;
- The maximum number of clients in each class is 10 with only 1 instructor/staff member. Staff are rostered on for a full block of classes (eg morning block / afternoon block);
- There is one existing toilet on the premises available for clients and staff;
- The operator works closely with clinical and rehabilitation Pilates centres and often provides referrals for any clients that may have injuries or disabilities of a nature that may be better suited to these alternate services;
- Typically, clients using the Pilates classes will also utilise other businesses nearby after their classes, such as cafes and shops.

## **4. environmental planning instruments**

Environmental planning instruments applicable to the assessment of the proposal and requiring detailed discussion are listed below.

### **4.1. State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4 of this SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

The site is not known to be an investigation area. There is no evidence to suggest that the site has historically been used for a purpose that is likely to have resulted in contamination of the land and, the proposed use as a recreation

facility (indoor) is not a more sensitive use than likely previous retail uses of the subject premises.

Consequently, under the terms of Clause 4.6 of Chapter 4 of this SEPP, a preliminary contamination investigation is not warranted.

#### **4.2. State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The aim of this Policy is to protect ecology and biodiversity and drinking water catchment. None of the chapters of this SEPP are applicable in the assessment of the subject proposal.

#### **4.3. State Environmental Planning Policy (Industry and Employment) 2021**

The aim of this Policy relevant to the Site is to ensure any signage is compatible with the desired amenity and visual character of an area, that it provides effective communication in suitable locations and is of high quality design and finish and, to regulate signage design.

No signage is proposed as a part of the subject development application, thus, this SEPP is not applicable.

#### **4.4 Maitland Local Environmental Plan 2011 ('MLEP 2011')**

The provisions of MLEP 2011 that require a discussion or response for the purposes of assisting the assessment of the subject DA are listed in **Table 2** below.



MLEP 2011 Clause Provision	Discussion	Compliance / Performance
<b>Part 1 - Preliminary</b>		
Clause 1.2 – Aims of Plan	The proposed development application is not inconsistent with any of the relevant aims of MLEP 2011.	Yes
Clause 1.4 - Definitions	The proposed use as a Pilates studio best fits under the definition of <b>"recreation facility (indoor)"</b> which is defined as: <i>"a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club."</i>	Yes
<b>Part 2 – Permitted or Prohibited Development</b>		
Clause 2.2 - Zoning of Land to which Plan Applies	The subject site is zoned <b>B2 Local Centre</b> .	N/A
Clause 2.3 - Zone Objectives and Land Use Table	The proposed use of the subject premises as a recreation facility (indoor) is permissible within the B2 Local Centre zone.  The proposal is not inconsistent with any of the relevant objectives of the B2 zone.	Permissible, with consent.  Consistent with zone objectives.
<b>Part 4 – Principal Development Standards</b>		
Clause 4.3 - Height of Buildings	The maximum permitted height applicable to the site is 8m. However, no new building work is proposed under the subject DA and the existing single storey commercial building in which the subject premises is located complies with this standard.	N/A
Clause 4.4 - Floor Space Ratio ('FSR')	The maximum permitted FSR applicable to the site is 2:1. However, no new building work is proposed under the subject DA and the existing building in which the subject premises is located complies with this standard.	N/A
<b>Part 5 – Miscellaneous Provisions</b>		
Clause 5.10 - Heritage Conservation	Clause 5.10 does not apply to the development application as pursuant to sch.5, pt.1 of MLEP 2011, the subject site is not identified as being: <ul style="list-style-type: none"> <li>i. A heritage item of State significance</li> <li>ii. A heritage item of Local significance</li> <li>iii. within a Heritage Conservation Area</li> <li>iv. an identified archaeological site</li> <li>v. within an Aboriginal place of heritage significance</li> <li>vi. within the vicinity of a heritage item</li> </ul>	N/A
<b>Part 7 – Additional Local Provisions</b>		
Clause 7.1 - Acid sulfate soils	The site is identified as containing Class 5 Acid Sulfate Soils, however, no work is proposed under	N/A

<b>MLEP 2011 Clause Provision</b>	<b>Discussion</b>	<b>Compliance / Performance</b>
	the subject DA, thus an ASS Management Plan is not a relevant consideration in this instance.	
Clause 7.2 - Earthworks	No earthworks are proposed.	N/A

**Table 2: MLEP 2011 Compliance Table**

## 5. development control plans

### 5.1. Maitland Local Environmental Plan 2011 ('MDCP 2011')

The provisions of MDCP 2011 that require a discussion or response for the purposes of assisting the assessment of the subject DA are listed below.

<b>DCP Ref</b>	<b>DCP Requirement</b>	<b>Proposal</b>	<b>Complies?</b>
<b>Part B</b> <u><b>Environmental Guidelines</b></u>  <b>B6 – Waste Not – Site Waste Minimisation &amp; Management</b>	<b>5.2. Commercial Developments and Change of Use</b> - Waste area should provide separate containers for separation of waste from recyclables. - A completed Site Waste Management & Minimisation Plan ('SWMMP') shall accompany the DA. - The SWMMP shall indicate the location of area that waste and recycling bins will be stored.	Relevant Council bins will be utilised for waste and recyclables, as detailed in the SWMMP attached as <b>Annexure 3</b> which indicates the bin storage area is to be located at the rear of the site.	Yes
<b>Part C</b> <u><b>Design Guidelines</b></u>  <b>C1 – Accessible Living</b>	<b>3. Design Guidelines</b> <b>3.1 Planning Principles</b> - Ensure land uses which provide a service likely to attract a larger proportion of people with a disability, adequately provide for the needs of these people.	The proposal is for Reformer Pilates classes using Pilates reformer machines. This form of Pilates is generally more intense and more dynamic than mat based Pilates as it adds resistance to the exercises via the use of the springs which form part of the machine. Given the nature of the Pilates classes being conducted, it is not suitable for all types of people with disabilities. This business works closely with clinical and rehabilitation Pilates centres and, in circumstances where potential clients needs are not met by the service offered by this business, a referral to alternative centres that would better meet their needs is provided. Given this, the service provided in this proposal is not considered to be a land use likely to attract a larger proportion of people with a disability.	N/A. This Planning Principle does not apply to the subject proposal.

DCP Ref	DCP Requirement	Proposal	Complies?
	<p>- Continuous path of accessible travel to and within a building is the primary principle.</p> <p>- The secondary principle is the provision of car parking and other amenities.</p> <p>- Ensure that all existing commercial buildings are upgraded to meet the primary principle over time.</p>	<p>The subject premises is accessed from the Lawes Street footpath by two steps up to the internal floor level. An accessible path of travel is not achieved currently. Refer below to <b>Section 6.1</b> of this report where it is argued that, on the grounds of unjustifiable hardship, it would not be reasonable in this instance to enforce this provision.</p> <p>The subject premises includes two parking spaces on the site but does not include an accessible car space. There is an existing toilet in the premises but it is not an accessible toilet. As detailed in <b>Section 6.1</b> of this report, it would not be reasonable in this instance to enforce these provisions on the ground of unjustifiable hardship.</p>	<p><b>No</b>, existing historical non-compliance. Strict enforcement of this provision would cause unjustifiable hardship, variation requested. Refer to <b>Section 6.1</b> of this report.</p> <p><b>No</b>, existing historical non-compliance. Variation requested on the grounds of unjustifiable hardship. Refer to <b>Section 6.1</b> of this report.</p>
<p><b>C11 – Vehicular Access &amp; Car Parking</b></p>	<p><b>2. General Requirements</b>  <b>2.2 Calculation of Parking Requirements</b></p> <p>- Minimum required car parking for proposed use is 7.5 car spaces per 100sqm GFA.                      - The calculated minimum car parking requirement for the proposed use is 6 car spaces. Refer to <b>Section 5.1.1</b> below for details of how this calculation was made.</p>	<p>The subject premises has a GFA of approximately 75sqm.</p> <p>The lease for the proposed use allows for the use of 2 on-site parking spaces, being the 2 front car spaces within the rear carpark.</p> <p>This does not comply with the DCP control generating a parking shortfall of 4 car spaces under the terms of MDCP 2011.</p>	<p><b>No</b>, a variation to the DCP control is sought in this instance. Refer to <b>Section 5.1.1</b> of this report below for details.</p>
<p><b>Part E Special Precincts</b>  <b>E1 - Centres</b></p>	<p><b>3. All Centres</b>  <b>3.1 Active Frontages</b></p> <p>- The provisions of section 3.1 apply to the subject site as it is identified in Figure 4 of Part E of MDCP 2011 as an active frontage.                      - Ground floor levels shall not be used for residential purposes in zones B1 Neighbourhood Centre and B2 Local Centre.                      - Active frontages shall consist of one or more of the following:</p> <ul style="list-style-type: none"> <li>- shop front;</li> <li>- commercial and residential lobbies;</li> <li>- café or restaurant;</li> <li>- public building if accompanied by an entry from the street.</li> </ul>	<p>The proposal is consistent with this requirement.</p> <p>The subject premises incorporates a shop front street façade. Whilst the proposed use is not that of a retailing use, it is nonetheless a permissible use in the zone. Moreover, the proposed Pilates classes will be visible from the street, providing visible street level activity and interest to</p>	<p>Yes</p> <p><b>Not specifically</b>, however, this DCP control cannot prevent a permissible use under MLEP 2011</p>

DCP Ref	DCP Requirement	Proposal	Complies?
	<p>- Minimum of 80% of the ground floor level front façade shall be clear glazed.</p> <p>- The reflexivity index for glass shall not exceed 20%.</p> <p>- Restaurants and cafes shall provide openable shop fronts where practical to the public domain.</p>	<p>passers-by and allowing passive surveillance of the street by clients and staff. Relevant objectives are therefore achieved.</p> <p>As demonstrated in Photos 1 &amp; 2 in <b>Annexure 1</b> to this report, most of the front façade of the subject premises is glazed.</p> <p>Achieved.</p> <p>Not applicable to the proposal.</p>	<p>and it is noted that relevant objectives of this control are nonetheless satisfied.</p> <p>Yes</p> <p>Yes</p> <p>N/A</p>
	<p><b>3.3 Awnings</b></p> <p>- Continuous shelter is to be provided from weather for the full extent of the active street frontage.</p> <p>- Awnings to be horizontal, consistent with streetscape and no less than 2.7m above existing ground level.</p>	<p>An existing awning is provided over the footpath in front of the subject premises which complies with these requirements.</p>	<p>Yes</p>
	<p><b>3.6 Pedestrian Entries and Access</b></p> <p>- Compliance with AS1428 – <i>Design for Access and Mobility</i>.</p>	<p>As detailed in <b>Section 6.1</b> of this report, the proposal does not involve building works and is for a change of use only, consequently, it is submitted that to require upgrading works to comply with this requirement would constitute unjustifiable hardship.</p>	<p><b>No</b>, unjustifiable hardship, refer to <b>Section 6.1</b> of this report.</p>
	<p><b>3.7 Parking, loading and servicing</b></p> <p>- Car parking to be in accordance with Part C11 of the DCP.</p> <p>- Garage doors and loading docks to be located at rear of the premises.</p> <p>- Signage is to be provided directing visitors to the premises to the car parking areas.</p>	<p>Refer to <b>Section 5.1.1</b> of this table for discussion.</p> <p>No garage doors existing or proposed. The proposed use will not generate a need for a loading dock.</p> <p>Should this be considered necessary, this could be required as a condition of consent. It is not considered necessary given the small size of the classes, this could be promoted directly to clients in promotional material or client communications.</p>	<p><b>No</b>, refer to <b>Section 5.1.1</b> below for discussion, variation sought.</p> <p>N/A</p> <p>Not considered necessary for this scale of development.</p>

DCP Ref	DCP Requirement	Proposal	Complies?
	- All vehicles must be able to enter and leave in a forward direction.	This is achieved.	Yes
	- Loading and manoeuvring areas for service vehicles shall be separated from car parks and pedestrian paths.	No significant demand for loading/unloading activities will be generated.	N/A
	<i>3.10 Waste Management</i> - A waste management plan for the construction and ongoing occupation of the development is to be provided.	A waste management plan has been submitted and is attached as <b>Annexure 3</b> . No construction work is proposed.	Yes
	<i>3.11 Vehicular Access</i> - Minimise vehicular crossovers.	A single existing vehicle crossover is utilised.	Yes
	- Access and egress to be in a forward direction.	Achieved, as existing.	Yes
	- Access and egress designed such that vehicles have clear line of sight of pedestrians and cyclists.	Achieved, as existing.	Yes

**Table 3: MDCP 2011 Compliance Table**

### 5.1.1 Car Parking

Section C11 of MDCP 2011 requires a minimum on-site car parking provision of 7.5 car spaces per 100sqm of GFA. The subject premises has a GFA of approximately 75sqm thus, if this numerical requirement were to be rounded up, this would generate a parking demand of 8 car spaces for the proposal.

However, the GFA of the subject premise is significantly less than 100sqm thus, it is not considered reasonable to apply a 'rounding up' principle in this instance. Moreover, it is noted that the parking requirement is "7.5 car spaces per 100sqm of GFA." It does not state that the parking requirement is "7.5 car spaces for the first 100sqm or part thereof", which is often used in the wording of DCP controls that are intended to be rounded up for premises smaller than 100sqm.

Consequently, if the applicable rate of 7.5 car spaces per 100sqm of GFA were to be proportionally reduced to 0.75 car spaces per 10sqm of GFA and applied to the 75sqm GFA of the subject premises, the required parking would be 5.63 car spaces, which, when rounded up (in accordance with Part (c) of Clause 2.2 of Section C11 of MDCP 2011) would generate a parking requirement of 6 car spaces.

The lease for the proposed use allocates 2 on-site parking spaces for the exclusive use of this business. This would result in a parking shortfall of 4 car spaces under the terms of the provisions of MDCP 2011.

It is noted that the relevant objectives of Section C11 of MDCP 2011, as detailed in Clause 1.4 are as follows:

- *to ensure adequate provision of off-street parking to maintain the existing levels of service and safety on the road network;*
- *to detail requirements for the provision of parking and loading/unloading facilities in association with development in the City of Maitland;*
- *to provide a consistent and equitable basis for the assessment of parking provisions;*
- *to facilitate design of parking areas, loading bays and access driveways which function efficiently;*
- *to ensure that parking areas are visually attractive and constructed, designed and situated so as to encourage their safe use.*

It is further noted that Clause 2.1 of Section C11 of MDCP 2011 sets out the general principles in determining the parking and traffic requirements for development. The relevant principles are as follows:

- *the minimum standards as set out in this plan;*
- *the likely demand for off-street parking generated by the development;*
- *the availability of public transport in the vicinity to service the proposed development;*
- *the probable mode of transport to be used by employees and/or customers;*
- *the likely peak times of the proposed development.*

The applicant has been allocated 2 on-site parking spaces under the terms of their lease. Accordingly, a variation to the DCP control in relation to the car parking shortfall of 4 car spaces is sought on the basis of the following:

- The maximum size of Pilates classes has been restricted to a maximum of 10 clients and 1 instructor. The proposal is a small, local business that will be relying on local clientele, a reasonable proportion of whom are anticipated to live within walking distance from the subject premises;
- The business operator is committed to encouraging clients who do drive to Pilates classes to car-pool or share rides whenever possible;
- The locality is reasonably well serviced by public transport. The nearest bus stops are located around the corner from the site on High Street and within an easy 60m walking distance. Victoria Street train station is a 578m walk from the site. It is anticipated that some Pilates class attendees will utilise public transport;
- At least 15 minutes has been provided in the Pilates Class Timetable (see **Table 1** earlier in this report) with the intention to ensure that there is no doubling-up of clients parking in the local area during the change-over from one class to the next.
- It should also be noted that 26 (60.5%) of the total 43 Pilates classes offered in the indicative timetable occur outside the core business hours of most other businesses in the East Maitland local town centre (assumed to be 9am to 5pm Mondays to Fridays). By its very nature, part of the business model of the Pilates classes service provided is to provide the

service in times that would allow clients to attend classes either before or after their normal working hours. It is anticipated that the primarily “off-peak” nature of any parking demand the proposed use will generate will assist in alleviating any potential additional pressure on the demand for on-street and public parking in the locality;

- There are two public car parks within easy walking distance from the site. A survey taken by the author of this report of parking availability within these public car parks during the “peak” period when proposed Pilates classes would coincide with normal business hours within the East Maitland local town centre, has generated the following results in **Table 4** below.

<b>Public Carpark Survey</b>			
	<b>Total No. of Parking Spaces</b>	<b>No. of Vacant Car Spaces</b>	<b>Vacancy Rate</b>
<b>Public Carpark #1</b> (Located opposite subject site behind IGA with vehicular access/egress off George Street) – parking survey undertaken @10.30am on 29/08/2022	69 car spaces	8 car spaces	11.6%
<b>Public Carpark #2</b> (Located behind the site and with vehicular access/egress off High Street) – parking survey undertaken @11.30am on 29/08/2022	59 car spaces	11 car spaces	18.6%

**Table 4: Public Carpark Survey Table**

- With reference to the vacancy rate results in **Table 4** above, it is considered that there is currently a reasonable level of public parking available within the East Maitland town centre during normal business hours when there is an overlap with 39.5% of the total Pilates classes proposed to be offered. A survey was not undertaken of the vacancy rate of public on-street parking however, multiple on-street parking vacancies in proximity to the site were observed throughout the site inspection period undertaken between 10am and Midday on 29/08/2022. The above results indicate that the availability of publicly available car parking in East Maitland is not a critical cumulative problem that would warrant the refusal of the subject development application on the grounds of car parking provision.
- The objectives of Section C11 of MDCP 2011 and the relevant assessment principles of this section listed on page 13 of this report have been taken into account in the compilation of the above reasons for the proposed car parking variation.

For the above reasons, the proposed car parking provision variation to the DCP control is considered to be reasonable in the circumstances.

## 6. other relevant legislation

All legislation relevant in the assessment of the subject DA, other than the *Environmental Planning & Assessment Act, 1979* ('EPA Act' which is addressed in Parts 5, 6, 7 & 8 of this report) is addressed in this section.

### 6.1 the Disability Discrimination Act, 1992 ('DDA')

The object of the DDA is to eliminate, as far as possible, discrimination against persons on the ground of their disability and to ensure, as far as practicable, that such persons have the same rights to equality before the law as the rest of the community and, to promote recognition and acceptance with the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

With reference to the provisions of Section C1 – *Accessible Living* in MDCP 2011 and referred to above in **Table 3**, the requirements to provide an accessible path of travel to the subject premises, accessible toilet and accessible parking are not able to be complied with by the subject proposal due to the existing non-compliance of the subject premises and the additional cost that would be involved in achieving compliance. Under the particular set of circumstances, unjustifiable hardship would be imposed on the applicant, should these requirements be strictly enforced.

The reasons why it is considered that unjustifiable hardship applies in this case are as follows:

- The subject premises has been selected for the particular proposed use specifically because it is fit for the intended purpose in its existing condition without the need for any building work to be carried out. The subject development application is for a change of use only, no building work is proposed to be carried out as a part of this development application.
- As detailed above in **Table 3**, in comments relating to the provisions of Section C1 of MDCP 2011, the particular style of Pilates offered by the proposed business would not be suitable for people with mobility disabilities. Consequently, a referral service to an appropriate Pilates operator who better meets the needs of people with mobility disabilities is provided.
- Given:
  - the nature of the use proposed to be carried out offers a service that requires a certain level of physical ability/mobility. Due to the very nature of the service offered, this business cannot, and should not,



- provide its services to people not physically able to use its reformer Pilates machines, and;
- the fact that the most appropriate service this business can provide to mobility impaired persons is to refer them to Pilates services that cater specifically to their abilities and needs, and;
- to require upgrading of the subject premise to cater for mobility impaired persons would not benefit the business or its clients but would add significant cost to establishing the business at the subject premises, which does not currently include building work, and;
- the current economic climate, including the increased cost and availability of building materials, difficulty finding builders and tradespersons to undertake the building work,

It is likely that requiring the applicant to undertake work to make the premises more accessible will add a disproportionate additional cost and possible delays in the establishment of the business without providing any immediate benefit to the clientele likely to be using and needing to access the proposed business.

It is therefore requested that the accessibility requirements of Section C1 of MDCP 2011 not be strictly enforced in this instance on the grounds of unjustifiable hardship.

## **7. section 4.15 assessment**

### **7.1. 4.15(a)(i) provisions of any environmental planning instrument.**

Refer to **Section 4** of this report.

### **7.2. 4.15(a)(ii) provisions of any draft environmental planning instrument**

We are not aware of any draft environmental planning instruments that would have any direct application in the assessment of the subject proposal or introduce issues that have not already been addressed in this report.

### **7.3. 4.15(a)(iii) provisions of any development control plan.**

Refer to **Section 5** of this report.

### **7.4. 4.15(a)(iiia) provisions of any planning agreement or draft agreement**

None applicable.

### **7.5. 4.15(a)(iv) the regulations**

No other matters are relevant under this heading.

**7.6. 4.15(b) the likely impacts of the development, including environmental impacts on both the natural and built environment, and social and economic impacts in the locality.**

The likely impacts of the proposal from an environmental point of view are likely to be minimal. Any noise generated from the proposed use is considered to be not inconsistent with what could reasonably be anticipated within a local commercial area. Noise sensitive land uses have not been identified immediately adjoining and at the front of the adjoining sites fronting Lawes Street. No building work is proposed.

The use of a currently vacant commercial premises is considered to have a positive economic impact locally as the proposed use will attract customers to the locality who may also use other businesses nearby. The increased activity and passive surveillance of the footpath area immediately in front of the subject premises will have positive social and public safety impacts within the street.

Adjoining properties are unlikely to suffer any detrimental impacts from the proposed use and, being commercially zoned properties, will benefit from a new business bringing customers into the locality and activating the street edge.

**7.7. 4.15(c) the suitability of the site for the development.**

The zoning of the site permits the proposed use and the size and location of the subject premises is ideal for Pilates classes of the scale proposed. The locality generally is well serviced with public and on-street parking as well as public transport nodes including bus stops and a train station within walking distance. The site is therefore considered to be highly suitable for the proposed development.

**7.8. 4.15(d) any submissions made.**

Should any submissions be received in response to any notification process and Council requires a response to the issues raised in these submissions, such a response can be provided at Council's request.

**7.9. 4.15(e) the public interest.**

The proposal will result in the utilisation and revitalisation of an existing vacant commercial premises, providing positive economic, social and public safety impacts on the surrounding built environment, as discussed in more detail above. It is considered that the development will be in the public interest.

## **8. CONCLUSION**

Having addressed all of the relevant considerations for assessment for the proposed change of use at 96A Lawes Street, East Maitland and noting the DCP non-compliances relating to accessibility and car parking, it has been concluded that these non-compliances are reasonable in the circumstances of the case and that the subject premises is highly suited to the proposed use. The proposal is small scale but would increase local commercial vibrancy within the locality and greater passive surveillance of the footpath and street, including during off-peak times.

No significant adverse impacts on the built and natural environment are anticipated to result from the proposal. On balance, the proposal is considered to be worthy of approval and is recommended to Maitland City Council for conditional development consent.

### **This report was prepared and checked by:**

Gordon Edgar  
BA, MURP(Syd), MPIA

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# ANNEXURE 1



## PHOTOGRAPHS OF THE SITE AND SURROUNDS

96A Lawes Street, East Maitland

proposed  
change of use  
to  
recreation facility (indoor)

### **Creedence Planning**

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**Photo 1:** Looking NE from opposite side of Lawes St toward the subject premises (centre) at 96A Lawes Street, East Maitland. (Photo by author, August 2022)



**Photo 2:** View of subject premises from footpath (photo by author, August 2022)

**Photo 3:** Interior view of subject premises from front southern corner (Photo by author, August 2022)

**Photo 4:** Interior view of kitchenette and bathroom (Photo by author August 2022)



**Photo 5:** View from driveway towards street showing rear access door to subject premises at centre left off entry porch and entry to 96B Lawes Street up the stairs and to the right (photo by author August 2022)



**Photo 6:** View from rear of site towards street showing driveway, rear of 96B Lawes Street and rear paved and gravelled driveway/parking area (photo by author August 2022)



**Photo 7:** View of parking spaces at the rear of the site. Parking space locations are marked by vertical blue lines on side boundary fence. The front 2 spaces are allocated for use in association with the proposal (Photo by author August 2022)



**Photo 8:** Public Carpark #1 with access/egress off High Street and vacant spaces evident in foreground and centre (Photo by author 10.30am 29/08/2022)





**Photo 9:** View of the Public Carpark #2 looking towards High Street. Vacant car spaces evident on left (Photo by author 11.30am 29/08/2022)



**Photo 10:** General streetscape view of Lawes Street opposite the site, note availability of on-street parking centre right (Photo by author August 2022)

# ANNEXURE 2



## SITE PLAN / FLOOR PLAN

**96A Lawes Street, East Maitland**

**proposed  
change of use  
to  
recreation facility (indoor)**

### **Creedence Planning**

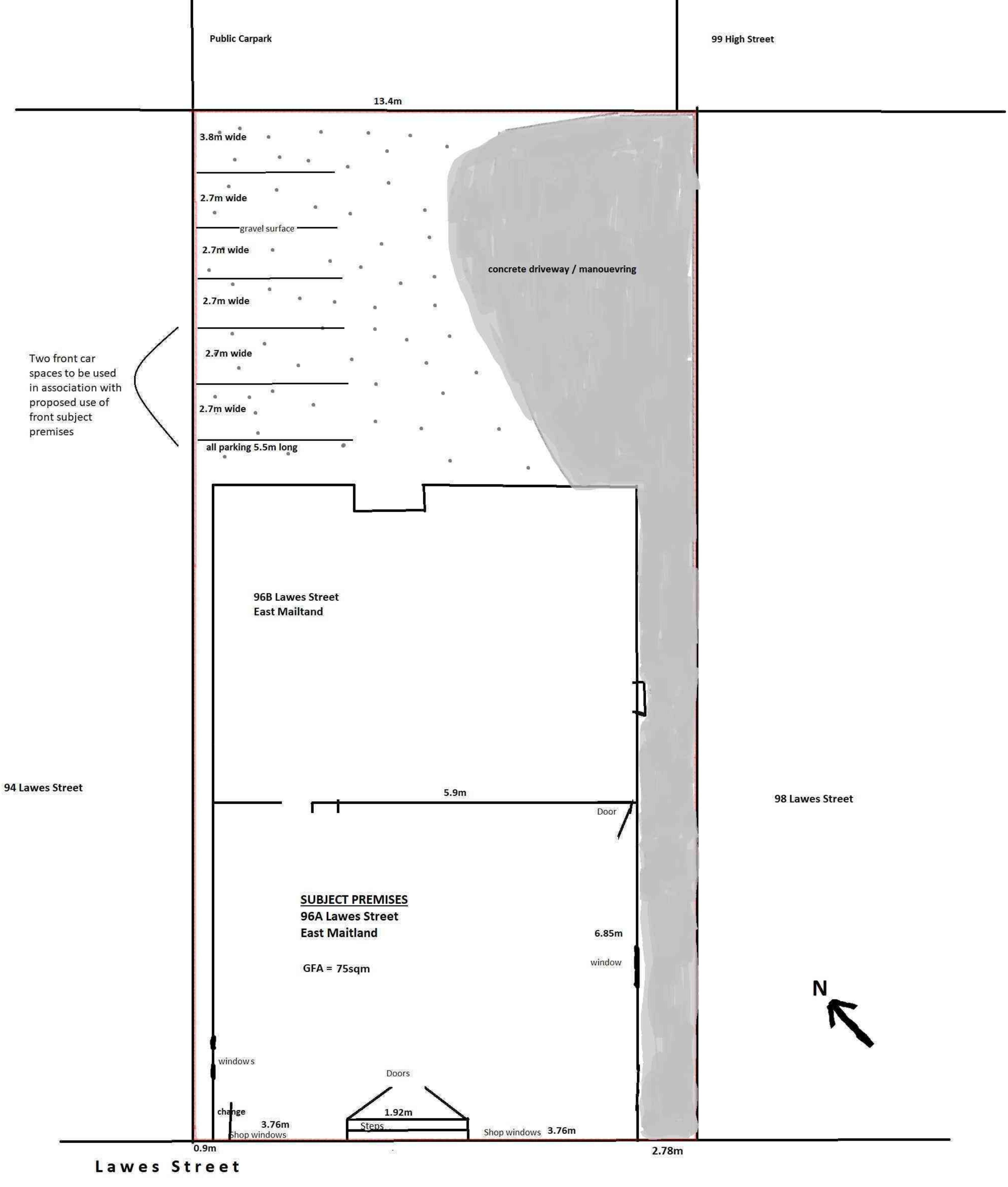
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# 96A Lawes Street, East Maitland

## Site and Floor Plan

Proposed Change of Use to recreation facility (indoor)

DA01

5/09/2022

Drawn by Creedence Planning

NOTE  
Not to scale, use figured dimensions

