

# Statement of Environmental Effects

Proposed Extension

24 Catherine Street Maitland NSW 2320

21 June 2021

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## 1. The Site

### 1.1. Site description and locality

The site is located at 24 Catherine Street Maitland (Lot 31 DP 1180334) and is located within the residential area of Central Maitland (Figure 1 and 2). The site is bound by Catherine Street at the front and Little Bourke Street at the rear. There are residential dwellings at the lots either side of the site. The site has a gentle slope from the rear towards the front and is 499.9 m<sup>2</sup> in size.

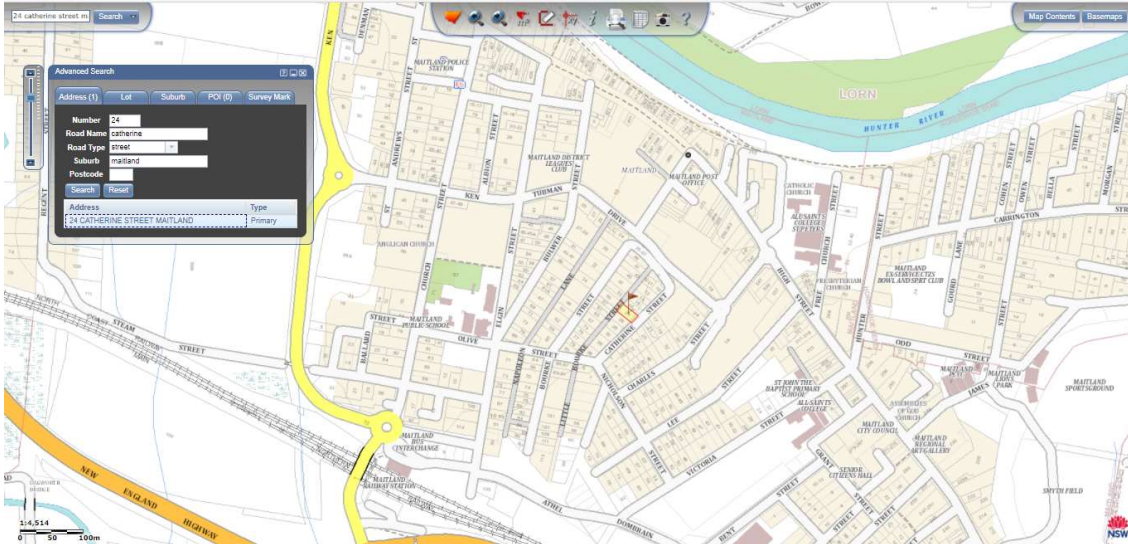


Figure 1 Locality Plan (Source: Six Maps)

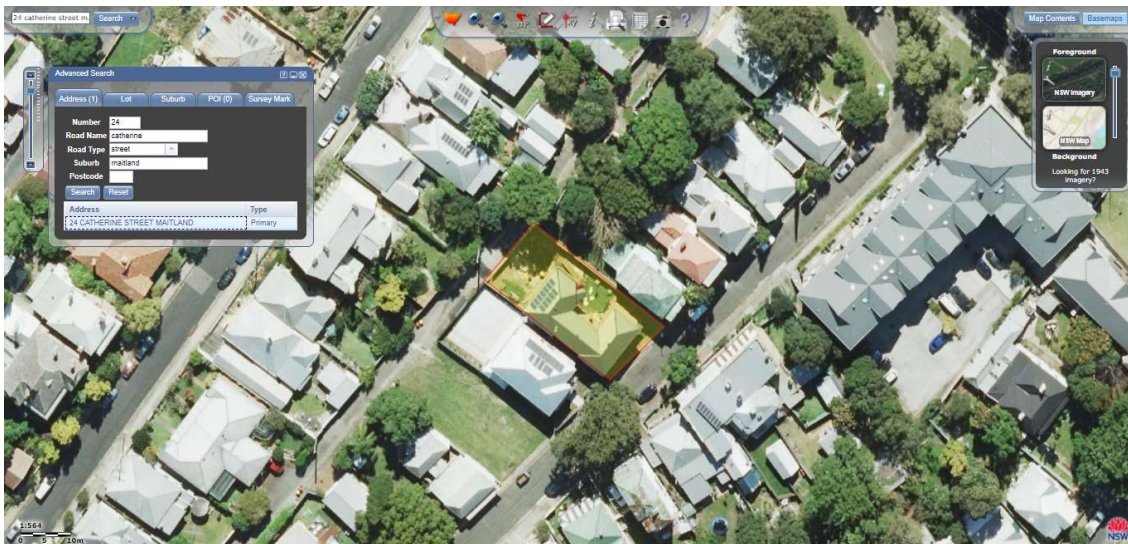


Figure 2 Locality Plan (Source: Six Maps)

### 1.2. Site Analysis

The site currently has a two storey brick residential dwelling built in 2014 and has off street parking accessed from Little Bourke Street. The site has a gentle slope. The south eastern boundary (front) of the site has an RL of 7.24 AHD and the north western boundary (rear) has an RL of 8.50 AHD. Catherine Street is located in a flood prone area of Maitland.

### 1.3. Present and Previous Uses

Currently the site has a two storey brick residential dwelling (Photo 1). The site is understood to have been vacant for many decades before the current dwelling was built in 2014. The site is within the Central

24 Catherine Street Maitland Extension  
Maitland Heritage Conservation Area however the current dwelling is not a listed building or identified as of local heritage significance.



*Photo 1 Street Frontage of 24 Catherine Street (2020)*

#### 1.4. Historic Development Applications

In 2007 the previous owner was granted approval for medium density housing on the site (DA 07-1826). This approval allowed for 2 two storey dwellings to be constructed on the site. The current owner did not proceed with this type of development and lodged a new development application.

The current dwelling was built in 2014 as per DA 13-597 (granted 9 July 2013).

#### 1.5. Previous Applications

##### 1.5.1. DA2020/1021

The purpose of this application was to add a third bedroom to the existing dwelling. The proposal was lodged in October 2020 (DA2020/1021). The application was rejected for a number of reasons (Table 1).

*Table 1 Issues raised from DA2020/1021*

Item	Council's Issues	Applicants Response
1	Application did not include a notification plan	A notification plan was submitted with the next application
2	A full statement of environmental effects is required instead of the proforma submitted	A statement of environmental effects was submitted with the next application

##### 1.5.2. DA2020/1098

The purpose of this application was to add a third bedroom to the existing dwelling. The proposal was resubmitted in November 2020 (DA2020/1098). The applicant was encouraged to withdraw the application as it would most certainly be refused and the application fee would not be refunded. Maitland City Council provided a list of comments (Table 2).

*Table 2 Issues raised from DA2020/1098*

Item	Council's Comments (17 Nov 2020)	Applicants Response
3	Utilize Councils pre-lodgement meeting services	Accept
4	Seek advice from a suitably qualified town planning and architectural/drafts personnel	Completed

5	The proposed extension is considered to visually dominate the character of Little Bourke Street and the residential developments in the immediate surrounding. The bulk & scale of the extension and the resulting outcome is considered excessive to the site, and out of character with the surrounding residential area. Consideration should be given to significantly reducing the floor areas of the internal floor plans on both the ground and upper floor levels to minimize the potential visual impact the proposal would have on the existing dwelling and the neighbouring dwellings.	The ground floor had been reduced by 20%. The first floor had been reduced by 25%.  Post pre-lodgement meeting: the first floor has been removed.
6	A double-storey structure built to the rear boundary is considered to have significant visual impact on the streetscape of Little Bourke Street. A stepped down structure with a recessed upper-floor and a low-height single storey structure for the (ground floor) garage with a splayed driveway design can be considered a suitable alternative.	Post pre-lodgement meeting: the first floor has been removed.
7	Colorbond material along with 'Monument Black' colour is also considered to contradict with the residential character of the locality and visually out of character with the existing dwelling. Subject to being able to withstand the site's flood impacts, suitable alternatives Council considers acceptable in similar situations include weatherboard cladding, brick veneer, painted concrete etc.	Cladding and dark grey (a colour similar to the extension at 26 Catherine Street) has been selected.
8	The additions are considered to be excessive and cause to substantially change the bulk and scale of the existing dwelling. The resulting outcome is also considered to substantially deviate from the residential developments in the immediate area.	The ground floor has been reduced by 20%. The first floor has been reduced by 25%.  Post pre-lodgement meeting: the first floor has been removed.
9	Given the proposed uses for the extension and the space available at the rear setback, it is considered that the proposal is an overdevelopment. It appears that similar development outcomes can be achieved with a scaled-down version by adapting suitable architectural solutions.	Post pre-lodgement meeting: the first floor has been removed.
10	Considerations should also be given to redesigning the roof form to better reflect the existing, with preference for extensions to be integrated with the existing roof form, massing, pitch angle and eaves. Consideration should be given for detached pavilion type roof forms which result in a better outcome in similar cases.	A flat roof concealed by parapet is proposed as per discussions at pre-lodgement meeting.
11	Architectural elements i.e. parapet wall, windows have no reference or relationship to the heritage character of the locality or the existing dwelling design, and is considered an inappropriate design response.	Considered

12	Traditional combinations of materials used in heritage buildings should be considered when designing additions – full Colorbond cladding at the upper-floor level which is visually dominant, is considered inappropriate to the character of the area and is not supported.	Cladding and dark grey (a colour similar to the extension at 26 Catherine Street) has been selected.
13	Additions should employ colour and material schemes which do not detract from traditional colour schemes in the area. You are encouraged to consider the colour schemes that have been used in the buildings in the immediate surrounding, as well as, to refer to Council's style guide and colour schemes, for suitable options.	Cladding and dark grey (a colour similar to the extension at 26 Catherine Street) has been selected.
14	Garages and carports should make reference to any established patterns in the street. Existing rear garages facing Little Bourke Street have a consistent pattern with gabled or hipped roof forms addressing the street. They are also predominantly finished with weatherboard cladding with colour schemes that blend in with the colour schemes of the associated dwellings.	Cladding and dark grey (a colour similar to the extension at 26 Catherine Street) has been selected. A flat roof concealed by parapet is proposed as per discussions at pre-lodgement meeting.
15	Consideration should be given to setting back the garage entrance with a splayed or indented driveway design which is also a common design response in the locality.	Set back to garage entrance has been changed.
16	Bulk earthworks – clarification and additional information is required indicating the earthworks involved within the proposal i.e. regrading or cut & fill.	Additional details on earthworks are included.
17	Side and rear setbacks – rear setback does not comply with the vertical building envelope requirements. Refer to Figure 10 for the building height envelope.	Setbacks have been changed.
18	External appearance - Consideration of the existing character, scale and massing of development in the immediate area, including the surrounding landscape. The proposal lacks appropriate fenestration or street address towards Little Bourke Street, and the proposed external finishes are considered to substantially deviate from the typical residential character. The bulky, box-type design, along with Colorbond cladding depicts the character of typical commercial or office buildings.	Cladding and dark grey (a colour similar to the extension at 26 Catherine Street) has been selected. Post pre-lodgement meeting: the first floor has been removed.
19	No internal habitable floorspace shall be located closer than 3.0m to the property boundary with the laneway	No habitable floorspace is proposed.
20	Garages/carports shall be located no closer than 2.0 metres to the property boundary with the laneway.	The garage is located 1-2m from Little Bourke Street. This is consistent to other dwellings in Little Bourke Street.
21	Where a garage is located closer than 5.5m to the property boundary with the laneway the garage doors shall be fitted with automatic opening devices to allow	The garage will be fitted with automatic opening devices

	continuous movement from the laneway to the garage without obstructing the lane.	
22	Historical or established pattern of development, lot frontages, depths and sizes, and setbacks to streets.	An analysis of developments, colours, textures and setback has been carried out. The proposal is consistent with existing developments.
23	Retain and enhance the original scale and form of existing buildings.	Accepted
24	Second storey additions which are visually prominent from the street frontage or other public viewing places	Accepted
25	Raising of dwellings above flood levels where there would be a significant impact on the streetscape.	Accepted

During the process of withdrawing DA2020/1098 there was some verbal discussion. The applicant made a number of notes on areas to consider (Table 3).

*Table 3 Issues raised from DA2020/1098*

<b>Issue</b>	<b>Issues (from verbal discussion, this is the applicant's interpretation) 13 November 2020)</b>	<b>Applicants Response</b>
26	The design is too modern, too sleek, too urban, too new age	The design is more complex, weathered, mix of textures, mix of designs to be consistent with the existing buildings in Little Bourke Street
27	The design should not be inspired by other buildings in Maitland. For example, Maitland Art Gallery, because they are iconic.	Only existing buildings from Little Bourke Street are referenced
28	Little Bourke Street has significant heritage value and should not be treated as just a laneway	Little Bourke is the main reference point, not Catherine Street
29	The design should be inspired by existing buildings in Little Bourke Street	The design is more complex, weathered, mix of textures, mix of designs to be consistent with the existing buildings in Little Bourke Street
30	The colour and texture should be consistent with other buildings in Little Bourke Street	Only existing buildings from Little Bourke Street are referenced
31	Impacts raised by neighbours (or other objectors) should be given more weight than functionality of the applicants indoor or outdoor spaces	The applicant has considered the objector

### 1.5.3. Pre-lodgement Meeting for DA2021/147

The applicant met with Council on the 14 January 2021 with new designs. Minutes from the pre-lodgement meeting are included, see Appendix A. A summary of issues follows, see Table 4.

*Table 4 Issues raised from Pre-lodgement Meeting*

<b>Issue</b>	<b>Issues</b>	<b>Applicants Response</b>
32	Considerations should be given on how the proposal would present itself to Little Bourke Street, in particular, how the garage extension would relate to the dwelling and address the street. Napoleon Street may present some examples that Council considered acceptable.	Impacts to Little Bourke Street have been considered.



33	Maitland Flood Planning Level applies to the property which is 10.23m AHD at the proposed site. All new habitable spaces appear to be above this level, however, further clarification is required in relation to the use of the dark room which includes a window and a toilet/bath. This can potentially be used as a bedroom, and adequate justification should be provided how this can be avoided.	Considered
34	Clarification needs to be provided in relation to the existing rear fencing, however, at the meeting, the applicant advised that the existing fencing will be retained as-is.	There are no proposed changes to the boundary fence.
35	A bulk earthworks plan is required that responds sensitively to the topography of the land and to restrict and control excessive earthworks.	Updated
36	Council may require further details prior to the issue of a construction certificate to demonstrate the structural integrity of the proposed extension, including the capacity of the proposed materials to withstand the flood characteristics of the site.	This information will be included in the CC application.
37	The submitted draft SoEE contains inadequate information to address the specific clauses and requirements outlined under this DCP provision. It is requested that a response against relevant design standard or requirement, be provided in the SoEE. Particular attention should be given to assessing the proposal against the requirements listed under the following sub-headings of this DCP chapter: <i>C.4 – 4. General requirements for alterations &amp; additions</i> <ul style="list-style-type: none"> <li>○ 4.1 Sympathetic design</li> <li>○ 4.2 Siting, setback and orientation</li> <li>○ 4.3 size &amp; scale</li> <li>○ 4.4 Roof form &amp; shape</li> <li>○ 4.7 Material and colours</li> <li>○ 4.11 Services and new technologies</li> <li>○ 4.13 Fences</li> <li>○ 4.14 Garages, Carports and sheds</li> </ul>	Updated
38	In the event that the proposal only includes a single storey extension with open roof-top space, Council would consider having only 1m setback to Little Bourke Street, as acceptable.	Accepted
39	A single storey structure with an appropriate pitched roof (preferably hipped) is preferred for this location which provides a more appropriate transition and scale from the existing two storey structure. At the most, Council may consider a single storey structure with utilisation of the roof space as an acceptable design solution.	Accepted
40	It is noted that as of 31 <sup>st</sup> December 2020, all development applications must be lodged via NSW Planning Portal. Council is no longer able to accept any other online forms or physical forms of development applications.	Noted.

41	If the development exceeds \$50,000, a BASIX certification outlining the required energy and water commitments, must be submitted with the development application.	Basix is included.
42	The proposal will be advertised and notified. Any submissions received will trigger a report to full Council.	The applicant expects further objections and will respond as Council requires.

#### 1.5.4. Objections to DA2020/1098

During the withdrawal of DA2020/1098, Maitland City Council informed the applicant that one objection had been received. Council forwarded details of the objection to the applicant on 6 January 2021 (Attachment B). The applicant has considered all concerns raised within the objection (Table 5).

*Table 5 Issues raised by DA2020/1098 Objector*

<b>Issue</b>	<b>Concerns</b>	<b>Applicants Response</b>
43	The limited sun during the winter months is concerning. The existing dwelling already shadows our front outdoor spaces, which is why we now have and [sic] outdoor space to sit and enjoy the sun at the rear, but this will now be completely shadowed all day, all winter.	Considered, additional shade diagrams were submitted
44	The choice of Monument (black) colourbond [sic] wall cladding is most concerning. The reflective heat from this 8 metre erection, especially in summer, will no doubt be extreme and could possible [sic] see a rise in our energy costs to try and combat this.	Considered. Changes were made so that materials matched the existing fabric of the building.
45	Privacy is also a factor from the windows facing into our backyard, as is the visual impact the structure will have from our backyard.	Considered. The design was changed to remove the first floor bedroom therefore no windows overlook the backyard.
46	Maitland CBD and surrounding streets are a renown heritage area and looking at new residential developments such as 71 Bulwer street, 49 Lee street, just a couple to name a few, have been built to reflect the characteristics of Maitland and their surroundings.	Considered.
47	The structure proposed in DA/2020/1098 looks more like an industrial or commercial building. The design is so disjointed from the existing dwelling and does not fit in with the heritage style of its surroundings.	Considered. The design was changed to match the existing fabric of the building.
48	The Statement of Environmental Effects dates 1 <sup>st</sup> November 2020 states 'the structure will have limited view from Catherine street and the majority of buildings along Little Bourke street are a mix of outbuildings and garages that range in ages and styles', this is so but they are not a 8 meter black industrial looking structure imposing over the street and neighbours, they blend with the age and style of their dwellings.	Considered. The design was changed to match the existing fabric of the building.
49	The presence of Maitland's heritage character is in all streets not just a select few. The report seems to imply that it doesn't matter what is viewed or built on Little Bourke street, but it does matter.	Considered. Little Bourke Street character has been given the primary focus.

50	Could the proposed erection be more sympathetic in design and materials to the heritage are of Maitland but more importantly to the existing dwelling and surrounding properties that it will impact, as currently the proposed development does not.	Considered. The design was changed to match the existing fabric of the building.
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#### 1.5.5. DA2021/147

The applicant resubmitted the proposal for the ground floor section only. This includes the garage and other unhabitable areas. Council advised the applicant to seek design advice regarding the proposed first floor bedroom before resubmitting. DA2021/147 was granted on the 7 May 2021.

#### 1.5.6. Objections to DA2021/147

Maitland City Council informed the applicant that one objection had been received. Council forwarded details of the objection to the applicant on 16 April 2021. The applicant was not given the opportunity to respond to the concerns raised within the objection (Table 5).

*Table 5 Issues raised by DA2021/147 Objector*

Issue	Concerns
51	The roof top alfresco area being 4m high will have a major impact on our privacy in our backyard and the two rear bedrooms of our property. The alfresco area runs the entire length of our side fence hence having no privacy at all.
52	The construction of the bottom floor is still of the industrial style with little Federation characteristics and a large flat roof. The new DA states the extension will be clad in Colorbond Ironstone, this dark cladding will reflect heat and glare onto us due to its 4 metre height.
53	It appears that the bottom floor is the basis of a second storey dwelling to be constructed in the future. If this occurs it will resemble the original DA that was rejected in November 2020.

#### 1.5.7. Conversations with the Objector to DA2020/1098 (withdrawn) and DA2021/147 (approved).

On the 9 April 2021 the applicant approached the objector in an attempt to understand issues and find some resolutions. There was a short verbal discussion. The applicant understands the core of the issues were regarding the first floor bedroom. This had been removed from the application. The applicant explained the bedroom was needed for an elderly family member.

In conclusion, the conversation on the 9 April 2021 is the primary reason this application has been resubmitted. The applicant believes the objector will benefit from a final decision on this matter. In addition, the applicant now urgently needs the bedroom. This will allow all parties to submit their issues, evidence or commence legal proceedings if required.

#### 1.5.8. Pre-lodgement meeting for this application

The applicant requested a pre-lodgement meeting to discuss this application on 16 May 2021. Council have not yet responded.

#### 1.5.9. Vilification

The applicant has experienced vilification within the neighbourhood since DA2021/147 was approved. The behaviour cannot serve any useful purpose than to degrade the applicant's character and ridicule the development. The applicant feels intimidated by the behaviour. The applicant spoke to Council officers to seek advice. The applicant feels the behaviour impacts on their right to use and enjoy their private property. Council advised the matter should be referred to Police.

### 1.6. The Proposal

The proposed development seeks approval for a single storey extension to an existing residential dwelling (Photo 2-5). The purpose of this application is to add a third bedroom to the existing dwelling to accommodate an elderly family member.



Photo 2. Little Bourke Street: current view looking south (2020)



Photo 3. Little Bourke Street: looking south with new extension



Photo 4. Little Bourke Street: current view looking east (2020)



Photo 5. Little Bourke Street: looking east with new extension

### 1.7. Comparison to previous applications

The proposal differs from previous attempts to gain approval:

1. The proposed roof form is completely different to the previous proposals. The hip roof matches the existing dwelling rather than the previous proposal of a flat roof concealed by a parapet.
2. The proposed external wall materials are completely different to the previous proposals. The external materials will be bricked using the same bricks as the existing dwelling rather than previously proposed cladding.
3. The proposed window facing 26 Catherine Street now include privacy blades.
4. A second storey extension has been approved at 36 Catherine Street setting legal precedent. This gives more clarification on interpretation of current legislation and planning policy.

## 2. Zoning and Planning Controls

### 2.1. Maitland Local Environment Plan 2011

#### 2.1.1. Land Zoning (Clause 2.3)

The site is zoned R1 – General residential, under the Maitland Local Environment Plan (LEP) 2011 (Figure 3). Dwelling house developments are permitted with consent under the Maitland LEP.

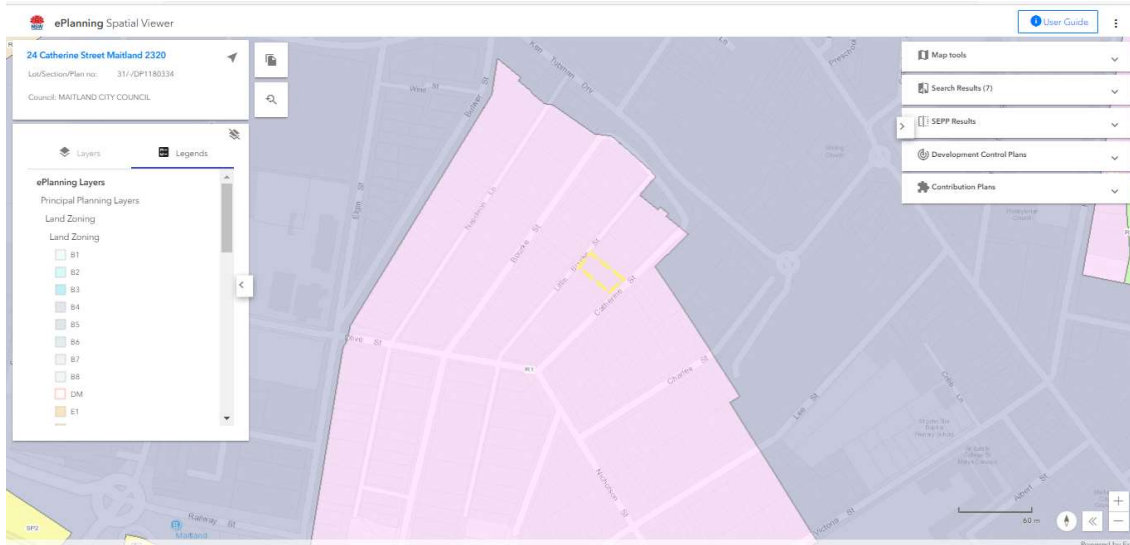


Figure 3 Land Zoning under Maitland LEP 2011 (Source: ePlanning Spatial Viewer)

#### 2.1.2. Heritage (Clause 5.10)

Development consent is required as the extension is a building on land located within a heritage conservation area. The effects of the extension to the area should be considered.

##### 2.1.2.1. Case Law Review

In *Gungar v Canterbury-Bankstown Council*, the applicant was appealing a refusal.<sup>1</sup> The proposed development included demolition of an existing dwelling and construction of 2 two storey dwellings. The proposal was located within the Ashbury Heritage Conversation Area. This area had Inter-War housing style. The basis for the refusal was the proposal was 'out of place with the special character of this area'.<sup>2</sup> The Council preferred a 'sympathetic renewal'.<sup>3</sup> Setbacks were considered however the appeal was dismissed.

In Little Bourke Street there is no one special character rather a mix of styles. The applicant believes Little Bourke Streets special character is diversity. Little Bourke Street has the young, the old, the fresh look, the weathered look, styles that can be labelled and those that are starting a whole new trend.

A sympathetic renewal is not possible as there is no 'before and after' situation as in *Gungar v Canterbury-Bankstown Council*. There is only a vacant area. The focus of sympathetic considerations can only be to the existing mixed building styles in the street. *Gungar v Canterbury-Bankstown Council* sets a precedent that had Little Bourke Street have special character then the applicant would need to be sympathetic to that particular style. Therefore this proposal should make a positive contribution to the diversity of Little Bourke Street.

In *Jays v North Sydney Council*, the applicant was appealing a refusal for alterations and additions to an existing dwelling.<sup>4</sup> The proposal was located within the Edward Street Heritage Conservation Area. The

<sup>1</sup> [2018] NSWLEC 1500.

<sup>2</sup> *Ibid*, 6.

<sup>3</sup> *Ibid*, 48.

<sup>4</sup> [2020] NSWLEC 1595.

24 Catherine Street Maitland Extension existing single storey dwelling is in the centre of a row of terraces in late Victorian workers cottages style. The proposal could be seen from the street and rear lane. It was found that the existing dwelling was part of a group of contributory items.<sup>5</sup> It was 'plainly evident it formed a late Victorian terrace row'.<sup>6</sup> The alterations and additions impacted on the collective significance.<sup>7</sup> The appeal was dismissed.

Unlike in *Jays v North Sydney Council*, the proposed extension here is not part of a group of contributory items. It is not part of a row of dwellings where looking the same as your neighbour is essential, particularly when you are right in the middle of the row. Where a small change, such as a dormer in *Jays v North Sydney Council*, detracts from the contribution made by the terrace row.<sup>8</sup> Therefore the proposed extension should contribute individually. It is part of an area of both dwellings contributing individually as well as some contributing as small groups.

In *Deakin v Hunter Hill Municipal Council*, the applicant was appealing a refusal for a two storey addition to a single storey existing dwelling.<sup>9</sup> This was part of a uniform group of Inter-War dwellings and therefore a contributory item within a conversation area.<sup>10</sup> The proposed addition 'introduces a "pop top" element, which due to its height, bulk and width and additional roof from will be visible and overly dominant, both in terms or the existing cottage and the streetscape'.<sup>11</sup> The proposed extension was located at the rear but clearly identifiable because it was in a contrasting style to the existing Californian Bungalow style.<sup>12</sup> This proposal at 24 Catherine Street does not contribute to the conversation area in the same way. It contributes as an individual as it has no point of reference. It is not part of a group only part of an area.

It was agreed in *Deakin v Hunter Hill Municipal Council* that the proposed extension meet all the numeric controls and statutory requirements and the issues were about character of the design and how it fit into the conversation area.<sup>13</sup> The Council emphasised that most other extensions in the area could not necessarily be taken as precedents as they were approved before the current development control plan was adopted.<sup>14</sup> However, there were three recent approvals. These approvals were 'not so similar to the Californian Bungalow style' but because they at the rear it was the 'favoured design option' in the Development Control Plan.<sup>15</sup>

This is a similar set of circumstances in Little Bourke Street. The proposed extension in this case meets all the numeric controls and statutory requirements. There are other dwellings in Little Bourke Street, such as 9-11 Little Bourke Street and 36 Catherine Street in a similar situation. Therefore the recent approval at 36 Catherine Street should be used as a reference.

During proceedings in *Deakin v Hunter Hill Municipal Council*, the floor plan remained unchanged but some design changes were made. The eave line was lowered to create a sympathetic roof form and some amendments to windows occurred.<sup>16</sup> The appeal was upheld and consent was granted. The proposed extension at 24 Catherine Street has also gone through design changes. The applicant has changed the roof form, external fabric and added privacy blades.

In *Landcorp Australia Pty Ltd V Council of the City of Sydney*, the applicant was appealing the refusal to erect signage on a 17 storey building on Macquarie Street Sydney.<sup>17</sup> The proposed illuminated signage had

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<sup>5</sup> Ibid, 28.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, 17.

<sup>8</sup> Ibid, 34.

<sup>9</sup> [2004] NSWLEC 112.

<sup>10</sup> Ibid, 5.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid, 11.

<sup>13</sup> Ibid, 15.

<sup>14</sup> Ibid, 16.

<sup>15</sup> Ibid, 18.

<sup>16</sup> Ibid, 41.

<sup>17</sup> [2020] NSWLEC 174.

an area of 67sqm. The site was not a heritage item but was within the Macquarie Street Special Character Area. One of the reasons for refusal was that “as a matter of general heritage concern this was a location where there were many heritage items and the area had been identified as a special character area due to the density of heritage items; visible illuminated sign/s would detract from the heritage character of the area”.<sup>18</sup> It was argued that the signage would “do no more than become part of the backdrop” and “this was not a heritage issue but one going to the amenity of the users in a general sense”.<sup>19</sup>

The court found the issue in *Landcorp Australia Pty Ltd V Council of the City of Sydney* to be one of town planning.<sup>20</sup> Therefore the impacts on amenity of adjoining properties, views and vistas were considered.<sup>21</sup> In particular, there was a focus on the illumination of the sign at night being of overbearing nature to users of a neighbouring property.<sup>22</sup> It was found that “whilst the eye may be drawn to the sign from time to time, the consequence of that visibility is that it forms part of the patchwork of night lighting and activities that draw the eye in this vibrant and cosmopolitan locality in which the users of this space reside, such that it will not adversely affect the amenity of the occupants so as to warrant refusal of the DA”.<sup>23</sup>

Like the sign in *Landcorp Australia Pty Ltd V Council of the City of Sydney*, the proposed extension will be seen.<sup>24</sup> The vista in Little Bourke Street is a collection of the rear of buildings, garages and outbuildings. Like in *Landcorp Australia Pty Ltd V Council of the City of Sydney*, the proposed extension would become part of the patchwork of Little Bourke Street. Extensions are a part of the future character of Little Bourke Street, a town planning consideration. Like in *Landcorp Australia Pty Ltd V Council of the City of Sydney*, being part of the backdrop would require consideration of the amenity of users. The users of Little Bourke Street are occupants of the homes. People use the road to access their garages.

It is not uncommon to see people walking Catherine Street or Bourke Street looking at buildings. However its uncertain if tourists enter Little Bourke Street to view the garages at the rear during their historical walks. It’s the amenity of the locals of the area. What impact will an extension have on them as they use the lane to access their property. The applicant argues Little Bourke Street is used as a service area. Accessing properties or taking short cuts for locals through the patchwork of Little Bourke Street. The proposed extension would become part of that patchwork and not adversely impact on the amenity of users.

#### 2.1.2.2. Catherine Street

Catherine Street has a predominantly heritage façade. The extension is located at the rear of the property. There will be limited views of the extension from Catherine Street. The applicant has been asked to only reference heritage styles from Little Bourke Street.

#### 2.1.2.3. Little Bourke Street

Little Bourke Street is used for rear access to homes along both Catherine Street and Bourke Street. The majority of buildings along Little Bourke Street are a mix of outbuildings (behind the main homes) and garages that range in ages and styles (Table 6).

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<sup>18</sup>Ibid, 66.

<sup>19</sup>Ibid, 67.

<sup>20</sup> Ibid, 106.




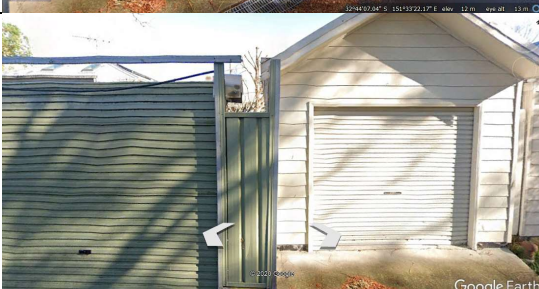
<sup>21</sup> Ibid, 107.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid, 110.

<sup>24</sup> [2020] NSWLEC 174.

Table 6 Styles in Little Bourke Street

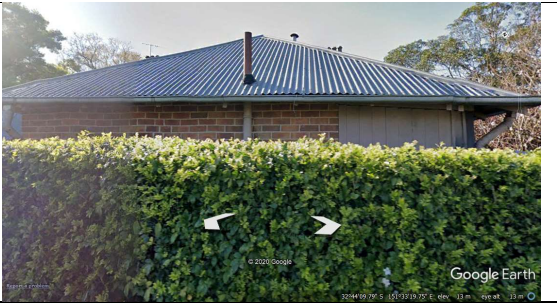
Address with building close to Little Bourke Street	Colour	Material	Photo (Images from Google Earth)
41 Bourke	Unpainted, silver	Wood, metal	
43 Bourke	Silver	Metal	
45 Bourke	White, silver	Metal	
47 Bourke	White, grey trim	Cladding trim	
51 Bourke	White, green	Cladding, metal	



57 Bourke	Silver, cream	Metal, cladding	
61 Bourke	Silver	Metal	
67 Bourke	Cream	Metal	
73-75 Bourke	Red, green trim	Brick trim	
77 Bourke	Silver	Metal	
79 Bourke	Unpainted	Wood	

24 Catherine Street Maitland Extension

81 Bourke	Blue	Cladding	
9-11 Little Bourke	Red	Brick	
12 Catherine	White, cream	Cladding	
14 Catherine	White	Cladding	
26 Catherine	Cream	Brick, cladding	
36 Catherine	Yellow, cream	Brick rendered	

38 Catherine	Red/brown	Brick, cladding	
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External Walls

The proposed extension will be clad in red brick PGH ‘Chisholm’. The brick is similar to the existing dwelling PGH ‘Renoir’ approved under DA 13-597. Renoir is unavailable.

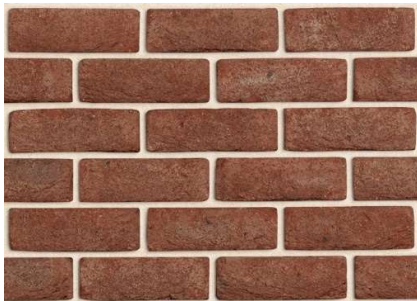


Photo 6 PGH brick ‘Chisholm’

Windows

The windows and doors of the proposed extension will have a trim in Monument. This trim is within the existing dwelling and approved with DA 07-1826.

Roof

The proposed extension will have a hip roof. The roof form will be the same as the existing dwelling.

2.1.3. Acid Sulfate Soils (Clause 7.1)

The site is located with Class 5 (Figure 4). Development consent is not required as the works are within 500 metres of adjacent Class 4 land but it is not below 5 metres Australian Height Datum.

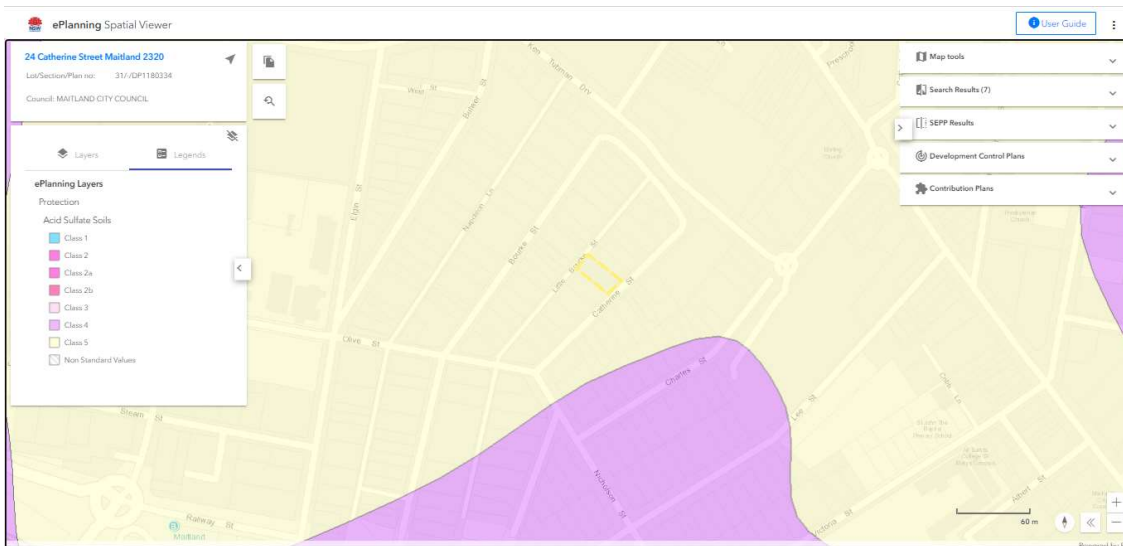


Figure 4 Acid Sulfate Soils under Maitland LEP 2011 (Source: ePlanning Spatial Viewer)

#### 2.1.4. Earthworks (Clause 7.2)

No earthworks are proposed.

#### 2.1.5. Flood Planning (Clause 7.3)

The site is within flood prone area (Figure 5). The extension design is compatible with the flood hazard of the area. The flood event level is RL 10.26 (AHD). The proposal is 50cm above the flood event level.



Figure 5 Flood Planning under Maitland LEP 2011 (Source: ePlanning Spatial Viewer)

## 2.2. Maitland Development Control Plan (DCP) 2011

### 2.2.1. Stormwater (Chapter B.2)

The roof runoff will be collected in the two existing 5,000 litre water tanks as well as the proposed additional 5,000 litre water tank. There are no new driveways or hardstand areas proposed.

### 2.2.2. Hunter River Floodplain (Chapter B.3)

The site is located on an area of the floodplain which would be inundated but with flood water of very low velocity. Due to inundation rather than high velocity flood waters the proposed extension would not impact on nearby buildings or impact on flood behaviour. All habitable floors spaces are above the flood event level.

### 2.2.3. Waste Not – Site Waste Minimisation and Management (Chapter B.6)

A site waste minimisation and management plan has been included with this application.

### 2.2.4. Heritage Conservation (Chapter C.4)

#### 2.2.4.1. Character Assessment

The existing dwelling was built in 2014 (DA 13-597). The dwelling is a two storey residential house (Photo 1). The hip roof is in Colorbond 'Monument'. The bricks are PGH sandstock red 'Renoir'. The façade is asymmetrical with elongated double hung windows. The front door is a double Empire style with Georgian arc window above. The front fence is metal with features to compliment the verandah lacework in the terrace houses opposite (Photo 7). There is a ground floor verandah along the front façade.



*Photo 7 Street Frontage of Fry's Terrace (15-21 Catherine Street) (2020)*

The dwelling adjacent at 18 Catherine Street is a two storey green clad house with hipped roof (Photo 8). The dwelling is not heritage listed. It is likely the dwelling is considerably old. The dwelling is a similar style to 14 and 16 Catherine Street.



*Photo 8 Street Frontage of 18 Catherine Street (2020)*

The dwelling adjacent at 26 Catherine Street (DA-13-2671) was built at the same time as 24 Catherine Street (Photo 9). The dwelling is two storey part brick, part clad in cream colours with hipped roof. A more recent single storey extension exists at the rear clad in dark grey with silver gable roof. The applicant has been unable to obtain the approval for the extension as it was not part of the original approval (Appendix C). Council has provided a photo of the extension to assist with this assessment.



*Photo 9 Street Frontage of 26 Catherine Street (2020)*

### Design Approach

The applicant prefers building the extension contrasting style. The applicant sought design advice as suggested by Council. The applicant was strongly encouraged not to continue to propose any type of contrasting style on a residential building in Maitland. The design consultants acknowledge these architectural designs are successfully applied in other heritage areas however strongly advised not to propose them in Maitland. The applicant was encouraged not to be inspired by any modern buildings Council have constructed (e.g. Art Gallery extension).

The applicant concedes and will only propose a matching design for the extension.

#### 2.2.5. Sympathetic Design (4.1)

The Maitland DCP states there are three sympathetic design aims:

1. To ensure that new alternations and additions respect the architectural character and style of the building and area concerned.
2. To maintain and enhance the existing character of the street and the surrounding locality.
3. To enhance the public appreciation of the area.

To achieve these aims the DCP sets out five requirements for sympathetic design. The following is a response to those requirements:

- *An alternation or addition must consider the characteristics of the existing building and buildings in the surrounding area, and sit comfortably in this context.*

The extension is in the same style as the existing dwelling and therefore sympathetic to the existing dwelling.

The extension is in the same style as the existing dwelling and therefore does not introduce a new style to the surrounding area. The existing style was approved. The style has not had a negative impact on the surrounding area.

The surrounding area is the diverse collection of mostly out buildings and garages along Little Bourke Street. The purpose of Little Bourke Street is as a service lane. It provides access to properties, garage openings and bin collection. Historically this would have been its original purpose. A rear lane would be used for rubbish collection and faecal sludge management. The

applicant argues this purpose remains as the long term direction of Little Bourke Street. The extension should be viewed in this context.

The extension is not part of a collection of contributory items, like the row of terraces in Catherine Street. It is an individual, there are many individual dwellings in Maitland. The existing dwelling is modern, only 7 years old. There are not many modern new builds in Maitland. There is limited vacant land and demolition is rare. The extension will be modern by default. It cannot mimic the historic elements, such as the weathered look or sometimes not so straight features. To do so would be degrading to the real historic dwellings.

- *New work should generally not precisely mimic design and materials of the building, but be recognisable as new work on close inspection.*

The extension is in the same style as the existing dwelling and therefore sympathetic to the existing design. The applicant has been encouraged not to propose new design features.

- *Mock historical details should not be applied as they will not be of any heritage value themselves, and can confuse our understanding between the 'new' and the 'old'.*

No mock historical details are proposed.

- *Alteration and additions should blend and harmonise with the existing building in terms of scale, proportion and materials.*

The addition will use the same fabric as the existing dwelling. The scale, proportion and materials proposed do not negatively impact on the existing dwelling. The design is consistent with Council's design guidelines (Figure 6-8).

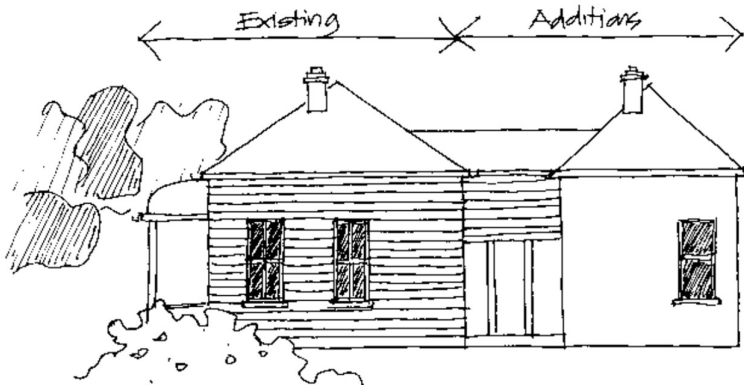


Figure 6 Council Design Guidelines (page 54)



*Figure 7 Current elevation (with approved ground floor addition)*



*Figure 8 Elevation with proposed first floor extension.*

See section 2.2.7 for further analysis of size and scale.

- *Alterations and additions should not require the destruction of important elements such as chimneys, windows and gables.*

Not applicable as no destruction is proposed.

In summary, the applicant proposes a matching style as an appropriate response to sympathetic design. The architectural character and style of the existing dwelling is respected by using the same elements within the extension.

#### 2.2.6. Setbacks (4.2)

The proposed extension meets setback requirements in regard to the adjacent buildings. The rear setback does not impact on any buildings or create any privacy issues. It's common for buildings to be on or near the rear boundary along many of the rear access lanes in Maitland.

The proposed extension must have a setback consistent with existing developments along Little Bourke Street. An analysis of setbacks in Little Bourke Street has been carried out (Table 7). All measurements are approximates as the applicant did not physically access the properties.



Table 7 Setback analysis

Bourke Street side			Little Bourke Street	Catherine Street side		
Address	Building	Setback		Address	Building	Setback
39 Bourke	No	-		9-11 Little Bourke	Yes	2m
41 Bourke	Yes	0m		12 Catherine	Yes	1-2m
43 Bourke	Yes	1.5m		14 Catherine	Yes	1-2m
45 Bourke	Yes	1.5m		16 Catherine	No	-
47 Bourke	Yes	1.5m				
51 Bourke	Yes	1.5m		18 Catherine	No	-
53 Bourke	No	-				
55 Bourke	No	-		<b>Proposed development</b>		
57 Bourke	Yes	0m		26 Catherine	Yes	1m
59 Bourke	Yes	0m				
61 Bourke	Yes	0m		Green Space	N/A	
65 Bourke	-	-				
67 Bourke	Yes	0.5m				
73 Bourke	Yes	2-3m		30 Catherine	No	-
75 Bourke	Yes	2-3m				
77 Bourke	Yes	0.5m				
79 Bourke	Yes	0m		36 Catherine	Yes	2m
81 Bourke	Yes	3-4m		38 Catherine	Yes	0.5m

Therefore the setbacks for this proposed development is consistent with existing buildings along Little Bourke Street and proposed developments.

#### 2.2.7. Size and Scale (4.3)

##### Height

The proposed extension is two storey and the same height as the existing building.

##### Length

The length of the existing dwelling and proposed first floor extension is 27m. Therefore the first floor building length is 84% of the length of the property.

##### Width

The width of the first floor extension is 6m along Little Bourke Street. The first floor building width is 40% of the width of the property along Little Bourke Street (15m).

##### Legal Precedent – Property length and width

###### 9/11 Little Bourke Street

This two storey dwelling is located on SP51856 and built at least 10 years ago. The property has a length of approximately 20m. The width of the property along Little Bourke Street is approximately 15m.

The dwelling is approximately 23m in length. The building length is approximately 75% of the length of the property. The dwelling is approximately 10m wide along Little Bourke Street. The building width is approximately 67% of the width of the property.

It is unclear which legislation and planning policies were in place when approval was given.

###### 36 Catherine Street

Note: all measurements for 36 Catherine Street have been estimated from Appendix D.

This two storey dwelling is located on Lot 35 DP998797. The two storey extension at the rear was approved in March 2021 (DA2020/938). Lot 35 DP998797 has a length of 24.79m and width along Little Bourke Street of 15.665m.

The existing dwelling and the approved extension is approximately 20m in length. The building length is approximately 81% of the length of the property.

The existing dwelling and the approved extension is approximately 7.5m in width along Little Bourke Street. The building width is approximately 48% of the width of the property.

It is noted that Lot 36 DP 1072618 adjacent to the DP 35 DP 998797 is also displayed on the notification plan for DA2020/938. However the notice of determination of DA2020/938 does not place any caveat on Lot 35 DP 1072618. It is assumed DA2020/938 does not limit development on Lot 35 DP 1072618.

In the event at the size and scale assessment did include Lot 35 DP 1072618, the following calculation is included. The existing dwelling and the approved extension is approximately 7.5m in width along Little Bourke Street. The building width is approximately 30% of the length of both lots (25.4m).

#### Comparison

The proposed extension building length and width percentages that are less than or similar to 9/11 Little Bourke Street and 36 Catherine Street (Table 8). Therefore the size and scale of the proposed extension is consistent with existing and recently approved dwellings in Little Bourke Street.

*Table 8 Comparison of building lengths and widths*

	<b>24 Catherine Street (with proposed extension)</b>	<b>9/11 Little Bourke Street</b>	<b>36 Catherine Street (Lot 35 DA 998797 only)</b>	<b>36 Catherine Street (both lots)</b>
% building length of length of property	84%	75%	81%	81%
% building width of width of property along Little Bourke Street	40%	67%	48%	30%

#### *Overall increase in building length*

The extension will increase the first floor building length from 19m to 27m, a 30% increase.

#### *Legal Precedent – Property length and width*

##### 36 Catherine Street

The first floor extension at 36 Catherine Street will increase the first floor building length from 12.5m to 20m, a 38% increase.

#### Comparison

The proposed extension overall building length is less than 36 Catherine Street (Table 9). Therefore the size and scale of the proposed extension is consistent with existing and recently approved dwellings in Little Bourke Street.

*Table 9 Comparison of overall building length*

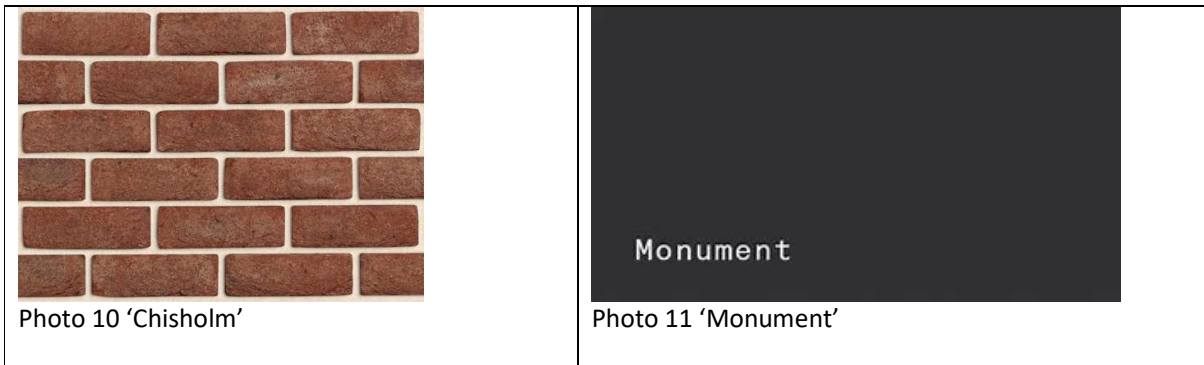
	<b>24 Catherine Street (with proposed extension)</b>	<b>36 Catherine Street</b>
% increase of overall building length	30%	38%

2.2.8. Roof form

The roof of the extension is a hip roof. This roof form is the same as the existing dwelling.

2.2.9. Material and Colours (4.7)

The applicants proposed materials and colour are the same as the existing dwelling. The proposed colour is of the brick is 'Chisholm' (Photo 10). The trim is 'Monument' (Photo 11).



2.2.10. Services and New Technologies

No exhaust vents, skylights, air conditioning ducts and units, solar panels, TV antennae or satellite dishes are being proposed. Any electrical wiring will be concealed internally. Plumbing will be concealed internally or underground.

2.2.11. Fences

There are no proposed changes to the existing fences.

2.2.12. Garages

There are no proposed garages.

2.2.13. Site Coverage

There are no proposed changes to the site coverage.

2.2.14. Building height

The proposed extension is less than 8m high and is not higher than the existing dwelling.

The objector described the previous proposal as an '8 metre erection'. This proposal or any the previous designs did not propose a building height of 8 meters.

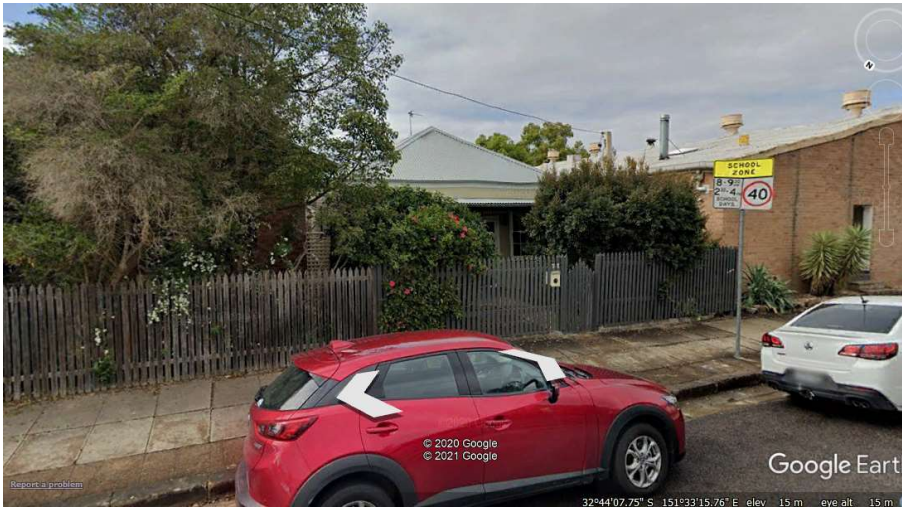
2.2.15. External Appearance

A matching design has been chosen. The external appearance will be the same as the existing building.

The objector suggests the applicant should consider design precedents set by existing dwellings. Stating: *"Maitland CBD and surrounding streets are a renown heritage area and looking at new residential developments such as 71 Bulwer street, 49 Lee street, just a couple to name a few, have been built to reflect the characteristics of Maitland and their surroundings"*.

71 Bulwer Street

The dwelling at 71 Bulwer Street is single storey (Photo 12). It's difficult to view the features of this dwelling from the street. It's possible the dwelling is clad and painted in a cream or light colour. The era is unclear. Therefore the applicant has considered cladding in a light colour within this application.



*Photo 12 Single storey dwelling at 71 Bulwer Street (Image: Google Earth)*

49 Lee Street

The dwelling at 49 Lee Street is two storey (Photo 13). It’s possible the dwelling has been recently built or renovated. The applicant was unable to identify a development application attached to this address. The ground level is constructed with Besser blocks and the first floor is clad and painted white. Therefore the applicant has considered cladding in a light colour within this application.



*Photo 13 Two storey dwelling at 49 Lee Street (Image: Google Earth)*

2.2.16. Sites having a boundary to a laneway

The proposed extension is adjacent to Little Bourke Street. The main pedestrian entry point will remain at Catherine Street. Double garage will provide off street parking.

2.2.17. Views and Visual Privacy

The extension must be on the first floor therefore will likely be seen from the street or neighbouring properties. Visual and privacy impacts have been previously raised. The applicant will discuss both separately and propose a solution. This is a genuine attempt to define the issues and pin point a way forward.

Impacts to visual privacy

Into the bedroom window at 26 Catherine Street

The Council has previously supplied a layout showing the area of visual impact from the bedroom window at 26 Catherine Street (Figure 9).

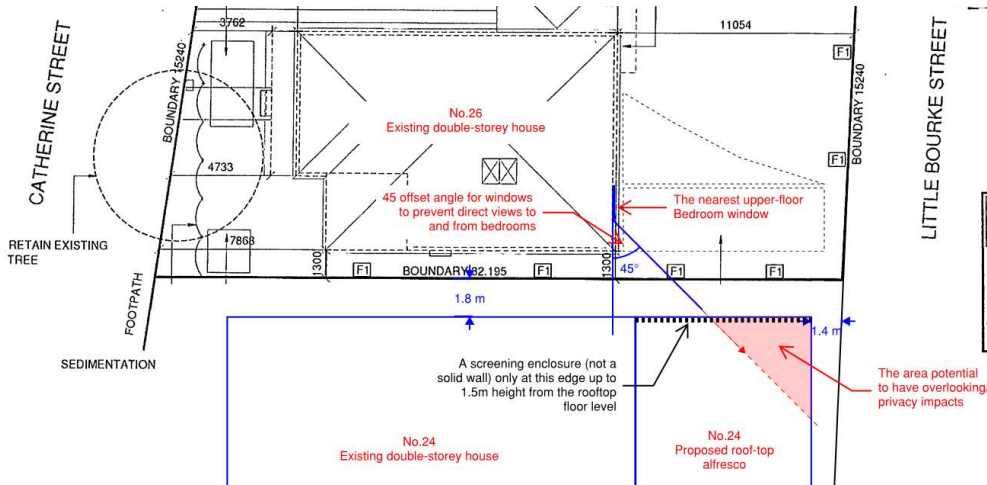


Figure 9 Layout of 26 Catherine Street showing privacy impacts (supplied by Council).

To prevent any visual privacy impacts into the bedroom window at 26 Catherine street, all first floor windows on the SW elevation will have privacy blades installed (Photo 14).



Photo 14 Example of window privacy blades

Into the backyard of 26 Catherine Street

To prevent any visual privacy impacts into the backyard at 26 Catherine street, all first floor windows on the SW elevation will have privacy blades installed.

Impacts to views

From the bedroom window at 26 Catherine Street

The view from the bedroom at 26 Catherine Street is already obstructed by the approved privacy screen (DA2021/147). The extension will not increase the obstruction of the view any further. The view of part of

the trees within the backyard of 53 Bourke Street and 55 Bourke Street was lost during the approval of DA2021/147 (Figure 10). The applicant understands the objector accepted the privacy screen condition and therefore the loss of the view from the bedroom.



Figure 10 area of view from bedroom window at 26 Catherine Street

Trees can still be viewed from the bedroom at 26 Catherine Street. These trees are closer to 26 Catherine Street and have greater viewing potential.

From the backyard of 26 Catherine Street

To assist in understanding the impact to the views from the background of 26 Catherine Street, Council supplied a photo from that backyard (Photo 15).



Photo 15 view from the backyard of 26 Catherine Street (supplied by Council).

The view from the backyard is already partly impacted on by the approved privacy screen (DA2021/147). The extension will impact on the view from the backyard on 3 trees and part of the sky (Photo 16). Tree A is located within the backyard of 51 Bourke Street, tree B and C are located within the backyard of 16 Catherine Street. The areas labelled D is the potential view of the sky to be impacted on.



Photo 16 Potential area of impact to views from backyard of 26 Catherine Street.

Trees surround the backyard of 26 Catherine Street (Figure 11). These trees are closer to 26 Catherine Street and have greater viewing potential. The remaining view of trees (marked as X in figure 11) will not be impacted on.



Figure 11 Locality Plan (Source: Six Maps)

The applicant proposes the loss of the view of trees A, B and C and part of the sky labelled D is minor significance (Figure 12). The justification being the visual sensitivity chosen is low because the trees are further away, are already obstructed by the privacy screen and there are closer trees that can be seen. The landscape impact chosen is moderate because it is a permanent loss.

		Landscape Impact			
		Large	Moderate	Small	Negligible
Visual Sensitivity	High	Major Significance	High Significance	Moderate Significance	Minor Significance
	Medium	High Significance	Moderate Significance	Minor Significance	Not Significant
	Low	Moderate Significance	Minor Significance	Not Significant	Not Significant
	Negligible	Minor Significance	Not Significant	Not Significant	Not Significant

(Landscape Institute and Institute for Environmental Management and Assessment, 2002)

Figure 12 Significance of Impact



## 2.2.18. Water and Energy Conservation

Shadows

The DA2020/1098 public submission (issue 32) raised concerns about shadows. Stating: *“The existing dwelling already shadows our front outdoor spaces, which is why we now have and [sic] outdoor space to sit and enjoy the sun at the rear, but this will now be completely shadowed all day, all winter”*.

Shadow diagrams have been generated for the proposed extension. The applicant has used the layout provided by Council showing the covered areas to identify the principal ground level private open space (Figure 13 Figure 9, Photo 17-18). It is assumed this area meets the criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Housing Code) 2017* [NSW]. That is, it is an area outside a dwelling that:

- (a) is directly accessible from, and adjacent to, a habitable room in the dwelling, other than a bedroom, and
- (b) is at least 3m wide and 3m long, and
- (c) is not steeper than 1:50 gradient.

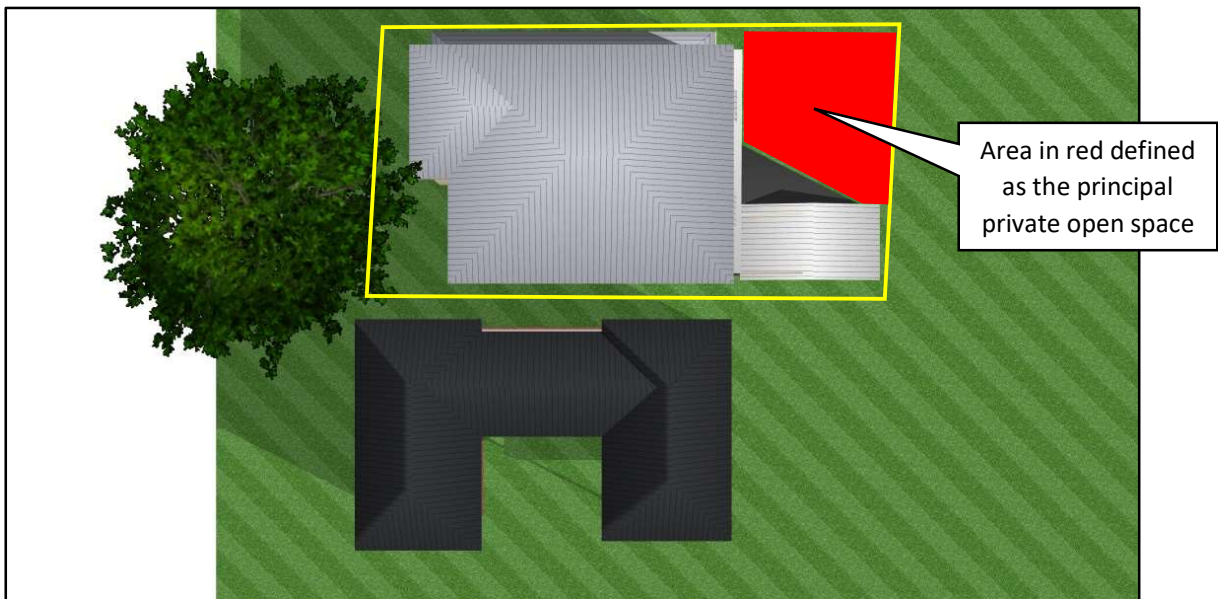


Figure 13 Principal ground level open space within 26 Catherine Street

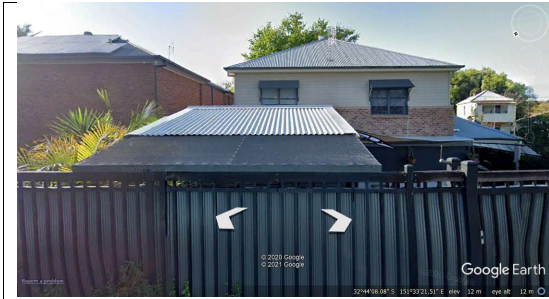


Photo 17 Principal ground level open space within 26 Catherine Street (Image: Google Earth)



Photo 18 Principal ground level open space within 26 Catherine Street (Image: Google Earth)

The shadow from DA 13/597 and DA2021/147 has been generated (Figure 14).

During the winter solstice the proposed extension casts a shadow on part of the principal ground level private open space during part of the day (Figure 15). There is no evidence that the extension would completely shade the principal ground level private open space 'all day, all winter'.

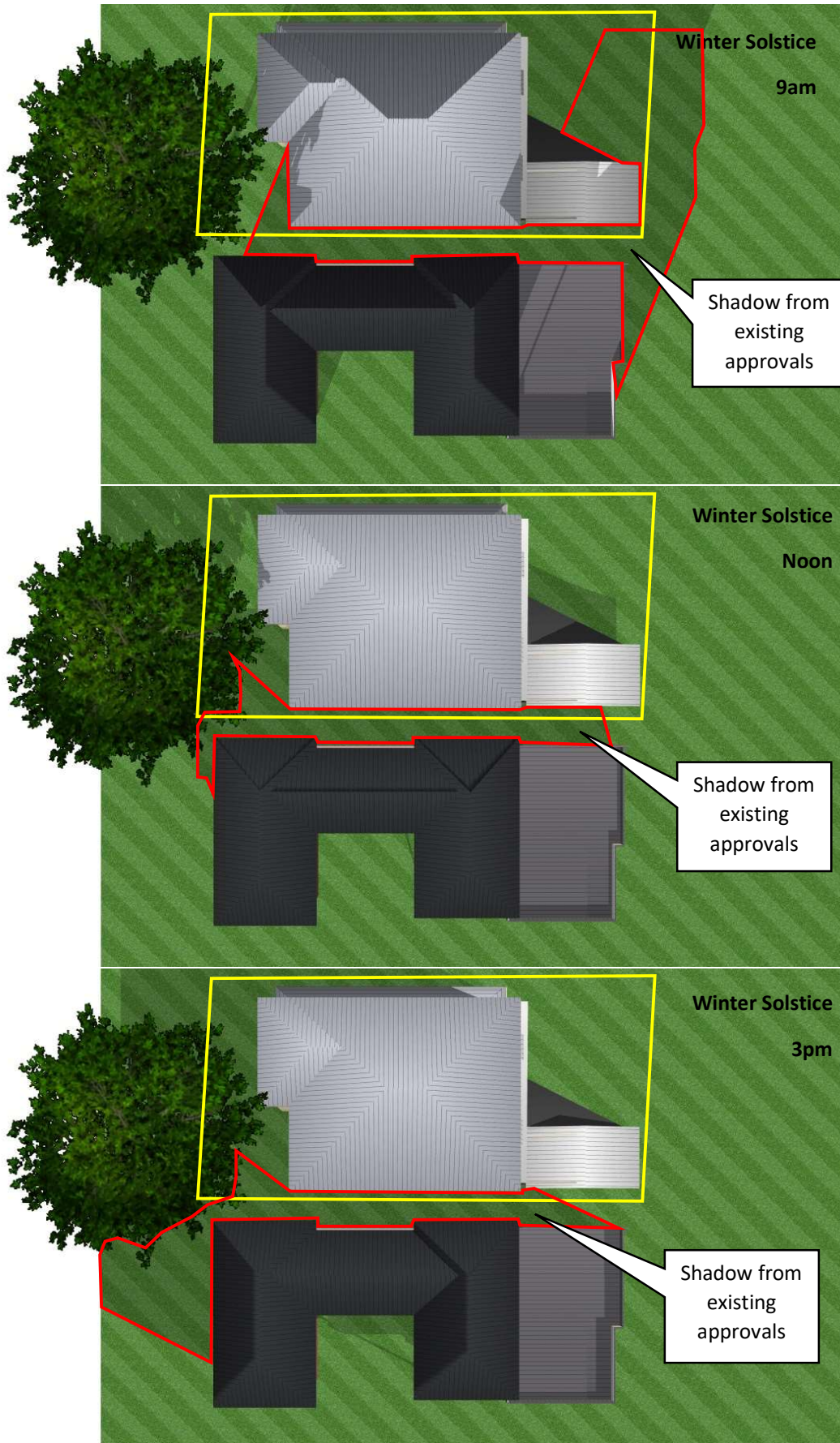


Figure 14 Shadow diagrams with existing approvals on the Winter Solstice

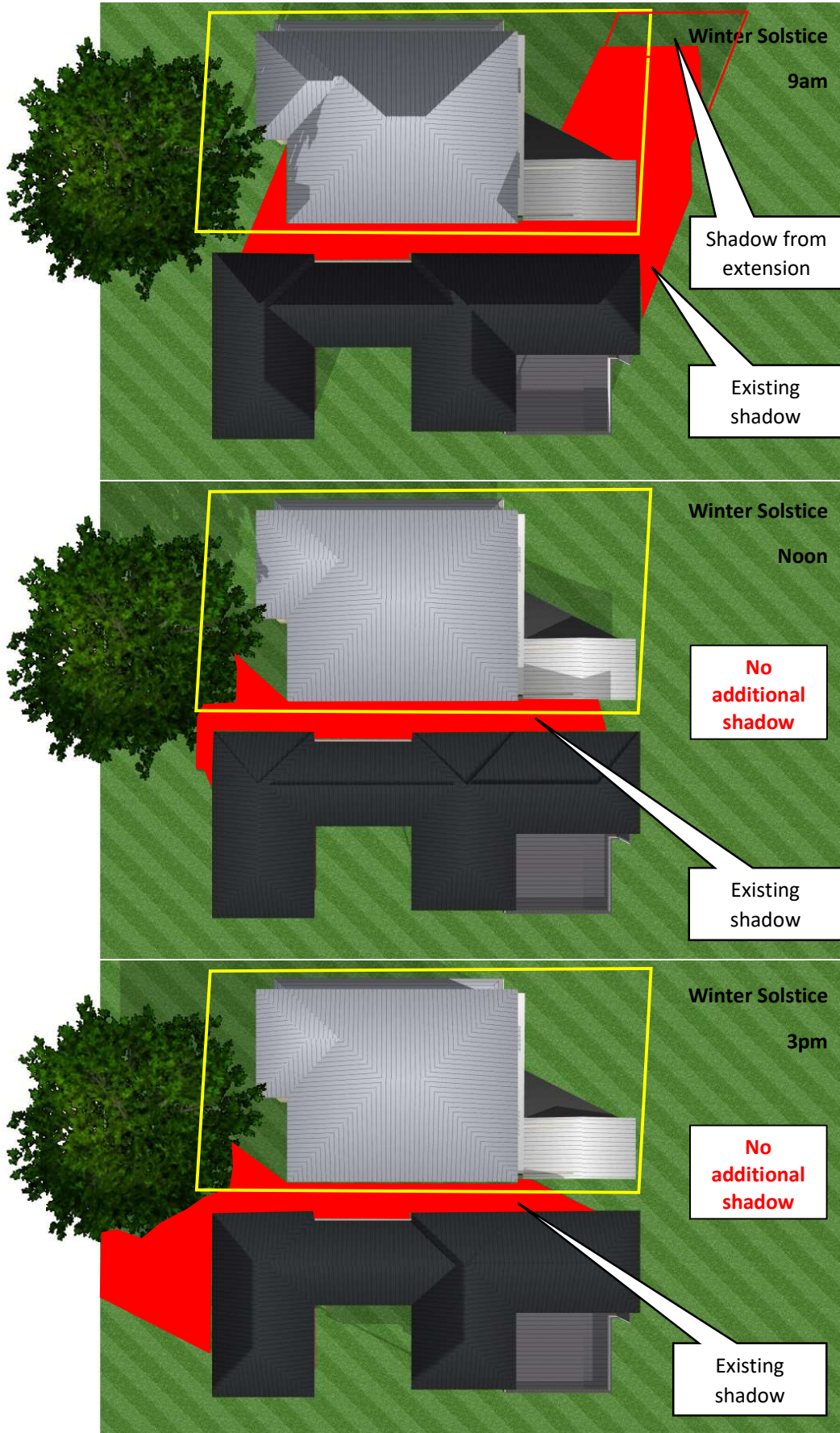


Figure 15 Shadow diagrams on the Winter Solstice

The objector raised concerns regarding shadowing from the existing dwelling. In particular the ground level open space at the front of 26 Catherine Street (Figure 16, Photo 19-20). Shadowing from the existing dwelling was dealt with under DA 13/597 and DA2021/147. However shadow diagrams for the existing dwelling have been generated (Figure 14). This shows that 50% of both the principal area of ground level private open space at the rear and the ground floor open space at the front achieves more than 3 hours sunlight between 9.00am and 3.00pm on the Winter Solstice (June 21). Furthermore the overshadowing by the existing dwelling in both the principal area of ground level private open space at the rear and the ground floor open space at the front is not increased by the proposed extension.

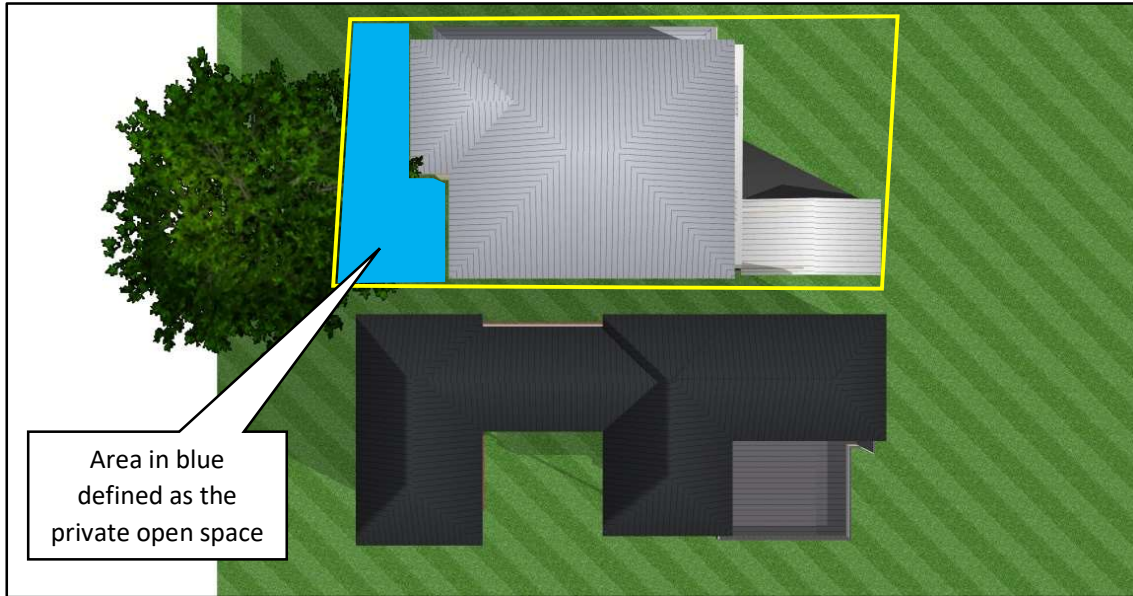


Figure 16 Ground level open space within 26 Catherine Street

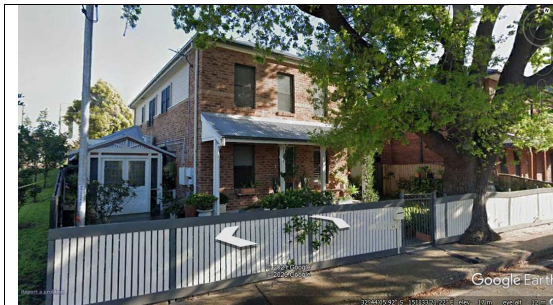


Photo 19 Ground level open space within 26 Catherine Street (Image: Google Earth)

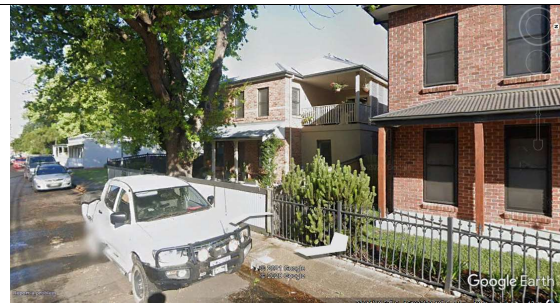


Photo 20 Ground level open space within 26 Catherine Street (Image: Google Earth)

Does the development reduce the sunlight available to windows of living areas that face north to less than 3 consecutive hours between 9.00am and 3.00pm on the Winter Solstice (June 21)	No
Does at least 50% of the principal area of <u>ground level private open space</u> achieve not less than 3 hours sunlight between 9.00am and 3.00pm on the Winter Solstice (June 21). Where existing overshadowing by buildings and fences is greater than this, sunlight should not be reduced by more than 20%	No
Does at least 50% of the principal area of <u>above ground level private open space</u> achieve not less than 3 hours sunlight between 9.00am and 3.00pm on the Winter Solstice (June 21). Where existing overshadowing by buildings and fences is greater than this, sunlight should not be reduced by more than 20%	No
Does at least 50% of the area of communal private open space shall achieve not less than 3 hours sunlight between 9.00am and 3.00pm on the Winter Solstice (June 21). Where existing overshadowing by buildings and fences is greater than this, sunlight should not be reduced by more than 20%.	No

In *Lannan v Inner West Council*, the applicant was appealing the refusal of a two storey extension.<sup>25</sup> The existing dwelling was a single storey late-Victorian cottage, one of a group of six, clad in weatherboards with a pitched roof and rear skillion roof.<sup>26</sup> Some of the neighbouring dwellings had approved two storey extensions.<sup>27</sup> The two storey extension was to provide a main bedroom and ensuite bathroom.<sup>28</sup> The two storey extension at 24 Catherine Street proposes the same purpose.

The Council's reasons for refusal in *Lannan v Inner West Council* was that:

“the proposal will not make a positive contribution to the heritage values of the Birchgrove and Ballast Point Road Heritage Conservation Areas and the Birchgrove Distinctive Neighbourhood. The development is inconsistent with the pattern of the surrounding development and is contrary to the applicable heritage provisions”.<sup>29</sup>

The neighbours joined as parties to the proceedings. The neighbours argued the proposal would have unreasonable amenity impacts “as it reduces the solar access during the winter solstice to the main living area and the north-facing courtyard”.<sup>30</sup>

During proceedings the Council and the neighbour proposed design changes as deferred commencement conditions such as removing the bathroom, setbacks to the first floor wall from the ground floor, window sill heights of 1.5m and privacy screens.<sup>31</sup> The applicant did not accept these conditions as this represented a constructive refusal of the application.<sup>32</sup> The court accepted this as an uncertain outcome that would “send the applicant back to the drawing board”.<sup>33</sup> The court agreed with “the applicant's submission that the addition of a first-floor main bedroom suite to the existing cottage is a reasonable expectation, given that three of the group of six weatherboard cottages include a partial first-floor addition or have obtained

<sup>25</sup> [2020] NSW LEC 1536.

<sup>26</sup> Ibid, 7.

<sup>27</sup> Ibid, 8.

<sup>28</sup> Ibid, 10.

<sup>29</sup> Ibid, 4.

<sup>30</sup> Ibid, 5.

<sup>31</sup> Ibid, 6.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid, 42.

24 Catherine Street Maitland Extension development consent for a partial first-floor addition".<sup>34</sup> The court found that a well-designed addition was possible, however the proposal "is inconsistent with the pattern of built form established by existing additions to cottages within the row and would introduce a discordant element to the row of cottages".<sup>35</sup>

The Court found that the attempts to eliminate any overshadowing to the adjoining had been prioritised however had resulted "in a form that is incompatible with adjoining development".<sup>36</sup> The court recognised the challenges of building on the small allotment and that some amenity impacts are inevitable.<sup>37</sup> The court prefer measuring overshadowing on the equinoxes.<sup>38</sup> The proposed extension at 24 Catherine Street does comply with overshadowing requirements. However the applicant will include additional shadow diagrams on the equinoxes (20 March and 23 September) (Figure 17) rather than just the required Winter Solstice (21 June).

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid, 43.

<sup>36</sup> Ibid, 44.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

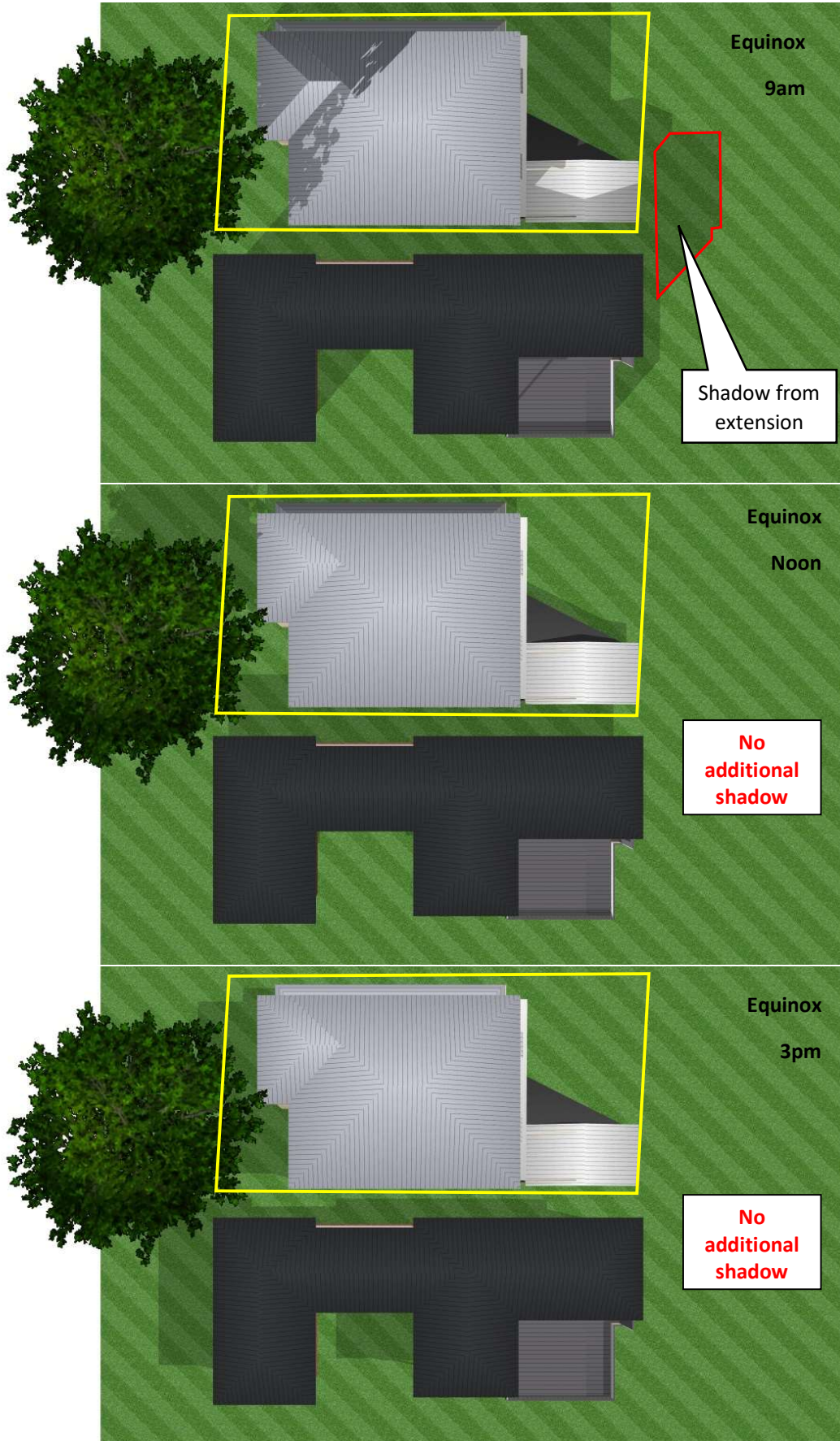


Figure 17 Shadow diagrams on the Equinox



Legal Precedent

The recent approved extension at 36 Catherine Street has similar circumstances to this proposal (Figure 18-19). Shading occurs on the ground floor extension on the adjacent neighbour towards the SW.

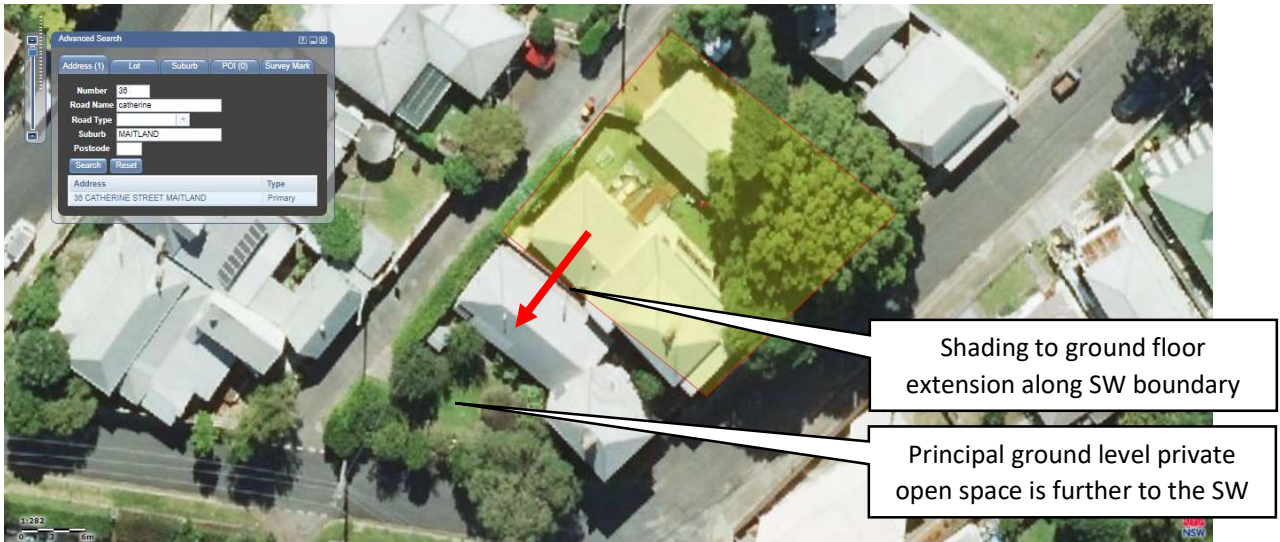


Figure 18 Shading from 36 Catherine Street

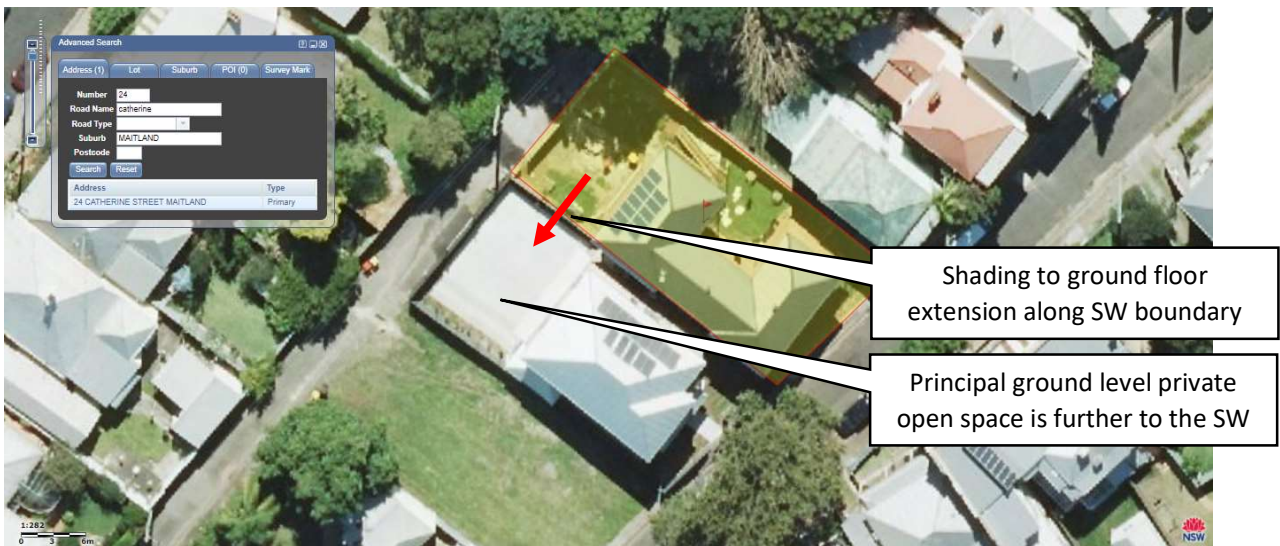


Figure 19 Shading from 36 Catherine Street

## Basix

The proposed extension meets the requirements of Basix. A Basix certificate is included with this application.

### 2.2.19. Vehicular Access and Car Parking (Chapter C.11)

There are no proposed changes to car parking or vehicular access.

### 2.2.20. Central Maitland Heritage Conservation Area B.3(2)

The proposed extension is within a residential area located in the Central Maitland Heritage Conservation Area. The extension is at the rear of the existing dwelling which is not visually prominent from the street frontage (Catherine Street). However the applicant is required to consider the renowned heritage values of Little Bourke Street.

Little Bourke Street has a mix of styles, eras, textures, colours, features, materials, new and old. There is no consistency in the design. There is not one pattern that dominates. There has not been many recent developments, particularly infill developments, that can be used as a precedent.

24 and 26 Catherine Street are the most recent new builds in Little Bourke Street, now 7 years old. The applicant understands 30 Catherine Street has an existing dwelling that was renovated. 36 Catherine Street recently had a two storey extension at the rear approved. The extension at 26 Catherine Street is the most recent single storey infill development along Little Bourke Street (DA-13-2671). Developments in other parts of Maitland are occurring. The objector encourages the applicant to consider developments in Maitland.

All types of developments in Central Maitland Heritage Conservation Area must comply with heritage design standard. The consistent application of these standards by Council throughout Maitland protects the heritage values for everyone to enjoy. The applicant has submitted this application so that the development is consistent with previous developments in the area. This development can also assist others wishing to development as precedents may be set.

The applicant understands that some dwellings were approved in the past under different heritage policies. However some of these buildings change shape and colour over time. The applicant understands all dwellings are to continue to comply with regulations even after approval. Therefore any recent styles, textures and colours are assumed to be complying and available as a precedent.

Gaining consent for a development in Maitland can be difficult because of these standards. It takes time and can be challenging. But development is not banned. Modern developments assist the whole area to continue to evolve. That is developments that continue to consider and define what is acceptable in a conversation area. The applicant shows their respect to the community by submitting this application so that the design can be assessed by the Council and any objectors.

The applicant is realistic and understands development will continue to occur. For example, the vacant backyard area in 18 Catherine Street may one day be developed. The development will likely be two storey because of flood design. This is likely to be seen from 24 Catherine Street. The applicant understands legislation can enable developments in adjacent properties even if it is not to the taste of the applicant.

### 3. Justification

#### 3.1. First Floor Bedroom

The applicant requires the bedroom to accommodate an elderly family member. The existing dwelling only has two bedrooms and is at capacity. The future plans of the applicant and their family are on hold until a decision can be made.

This process began with Council in October 2020. The family are realistic and expected the approval process to be lengthy. The applicant understands the secondary approval required on the existing DA will also be lengthy. If the objector commences legal proceedings at any stage the applicant understands the build will be delayed indefinitely.

Due to the age and ongoing health concerns of the elderly family member accommodation is needed to be available in 2021. Selling is sadly becoming the likely outcome for the family. The applicant understands the new owners can build using the existing approval if they chose to before it expires.

The applicant believes a decision on adding a third bedroom or restricting the dwelling to only two bedrooms will benefit the neighbours. There is clearly hostility in the neighbourhood since proposing the extension. Rather than the neighbours worrying will they or wont they, this application puts the proposal on the table for anyone to raise issues. The applicant is hopeful the vilification will cease regardless of the outcome.

#### 3.2. Future Objections

The applicant understands the primary reason for the previous rejections is because an objector exists. The applicant understands this application will possibly receive another submission. The applicant understands the objector can also take the matter to the NSW Land and Environment Court.

The applicant requests the objector makes the submission in express terms. In particular where the objector disagrees with the methodology used to assess impacts, any assumptions or interpretation of legislation.

In particular could evidence be provided that supports the following claims made by the objector:

- Shadow diagrams that demonstrate the proposal “completely shadowed all day, all winter”.
- The methodology that supports the reflective heat will increase energy costs including causation and cost analysis.
- The significance of referencing 71 Bulwer and 49 Lee street as the relevance is unclear.

The applicant acknowledges the importance of being clear in describing the issues as this will be used as evidence in the NSW Land and Environment Court.

### 4. Conclusion

The applicant requests the Council to consider that the impacts assessed in this report are of acceptable nature to allow the family an additional bedroom (Table 10).

*Table 10 Summary of impacts*

<b>Impact</b>	<b>Level of impact</b>
Loss of view from backyard at 26 Catherine Street	Minor significance

# PRE-LODGE MENT MEETING MINUTES



**Date: 14 January 2021**

**TIME: 10.30AM**

PANEL MEMBERS: KANISHKA GULUWITA (TOWN PLANNER)  
CLARE JAMES (HERITAGE OFFICER)

PROPOSERS: SARAH JARDINE

PARCEL NO: 12706

DESCRIPTION: LOT 31 DP1180334, 24 CATHERINE STREET MAITLAND

## MINUTES

Proposed Use – Alterations and additions to an existing double storey dwelling located within Maitland HCA. Ground floor additions (88m<sup>2</sup>) includes extended double garage with a new staircase, along with a photographic darkroom with a bath. Upper floor additions (76m<sup>2</sup>) include a bedroom with WIR and ensuite, a pantry and an extended alfresco area.

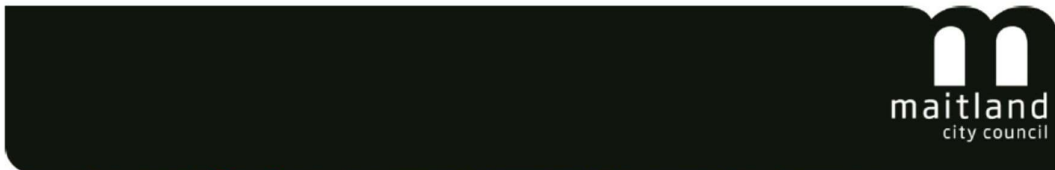
Land Area/ Legal Title: – The site has an area of approximately 499m<sup>2</sup> with frontages of approximately 15.3m (primary) to Catherine Street and 15.2m to Little Bourke Street.

Identified points for discussion:	<ul style="list-style-type: none"> <li>- Building Form, bulk and scale in relation to the existing dwelling and visual impacts on Little Bourke Street</li> <li>- Roof form and materials and relationship with Central Maitland Heritage considerations</li> <li>- Photographic dark room – potential to be used as a bedroom</li> </ul>
Site Constraints:	<ul style="list-style-type: none"> <li>- The subject site is zoned R1 General Residential pursuant to the Maitland Local Environmental Plan (LEP) 2011.</li> <li>- Acid Sulfate Soils – Class 5</li> <li>- Heritage Conservation Area – Central Maitland</li> <li>- LEP 2011 Flood Planning Area</li> <li>- Site having a boundary to a laneway (Little Bourke Street)</li> </ul>

### Previous Applications

DA-07-1826	25.03.2008	Multi-dwelling development	Approved
DA-13-597	09.08.2018	Double storey dwelling	Approved
DA-13-597.1	28.02.2014	Alterations for south-west façade	Approved
DA-20-1021		Alterations and additions to dwelling	Rejected
DA-20-1098		Alterations and additions to dwelling	Rejected

The development approved under DA-07-1826 has never come into fruition.



		Printed Date: July 2020 © Maitland City Council 2020 © LPI 024031997	24 Catherine Street, Maitland
<p><small>This map has been prepared on the basis of information available to Council at the date of issue. However, that information may be subject to change over a limited time. It is the responsibility of the user to make his/her own decisions about the correctness of information found. The Council cannot warrant and does not represent that the advice can be relied upon completely. The Council also cannot accept any responsibility or liability for any loss, damage, cost or expense you might incur as a result of the use of or reliance upon this information. The map is for information purposes only and is not to be re-engineered, modified or used for any other purpose than for information.</small></p>			

General Overall Comments

- Council acknowledges the need for the proposal, as it has been indicated that the growing family requires the addition of a bedroom to the existing two-bedroom dwelling. However, the proposal needs to achieve the right balance between the applicable heritage and flooding requirements.
- Since previous correspondence with Council, the proposal has been amended, and the current version appears to comply with Council's *DCP – C.8 Residential Design* standards i.e. rear and side setbacks, sites having a boundary to a laneway. The floor areas for both ground and upper levels have been slightly reduced from the previous design.
- It is noted that Council Heritage officer was not involved in the previous discussions.
- It is understood that the applicant wishes to discuss about several design options for the proposal with particular reference to roof form, external materials, bulk and scale etc. of the extension.
- Subject to satisfying the applicable heritage considerations, the bulk and scale of the extension needs to be reviewed to minimize visual dominance on Little Bourke Street.
- Subject to the following design considerations and assessment of a development application, Council would consider a variation for the rear setback of not more than 1m.



- The extension is limited to the ground-floor with an option for some use of the roof-top space;
- The extension should appropriately address Little Bourke Street and address the heritage considerations.
- It is advised that the double-storey dwelling at 9 – 11 Little Bourke Street, Maitland, has been approved by Council in May 1992, well before the current DCP Heritage policy was in effect. As such, this should not be considered as a suitable precedent for responding to the Council's current Heritage Policy.
- DA-2020-938 for alterations and additions to the dwelling at 36 Catherine Street, Maitland, is currently being assessed and at this stage, Council is unable to advise on its determination. Should you wish to view the proposal and its details, you are welcome to do so by visiting Council premises. Please note that due to copyright obligations, Council is unable to make copies of the plans or documents submitted under this application.
- Consent DA-13-2671 was granted for a double storey dwelling at 26 Catherine Street, Maitland in October 2013. Subsequently, Council approved a modification to this consent in December 2014, which involved a minor amendment to the fencing designs. Again, you are welcome to visit Council premises and make a request to view the approved plans and documents.

#### Heritage Comments

- Council notes that, in the past, the applicant has made enquiries about extending car parking/ garaging arrangements at the rear of the existing dwelling, and in response to these, Council heritage officer provided comments that are consistent with the below. Further, it is also noted that similar advice has been given to development proposals in the locality i.e. 34-36 Catherine Street; as such, Council has adopted a consistent position in relation to dwelling extensions within Central Maitland Heritage Conservation Area.
- As outlined in *Maitland Adaptive Reuse & Infill Design Guidelines*, the inner city, its streets and laneways were never intended for the contemporary number of vehicles in Central Maitland. The expectation for off-street parking might often be in conflict with other local precinct priorities, including protecting heritage significance. It goes on to state the following, which relates to the concept proposal.
 

*Laneways should not become a continuous wall of high, solid roller shutters, gates and fencing. Visual links must be allowed, created and maintained between private properties and laneways to promote casual surveillance and safety.*
- Double garages should have doors that are subdivided into panels of an appropriate scale and appearance for the laneway character, similar to two doors in appearance rather than as one long horizontal element.
- Developing rooms above garage, in this instance, is not supported as:
  - The form, bulk, height and scale of the building would dominate or compete with existing buildings on the site and neighbouring sites.





- o The resulting building is not an appropriate response to the background character of the laneway.
- It is considered that the footprint of the existing dwelling is substantial in the context of the locality, and the addition of a two-storey structure will result in a building of unacceptable mass and scale.
- A two-storey structure would result in creating a dominant frontage to Little Bourke Street and a 'blinkered thoroughfare' as described above. Little Bourke Street is currently characterised by smaller more modest structures.
- A single storey structure with an appropriate pitched roof (preferably hipped) is recommended for this location which provides a more appropriate transition and scale from the existing two storey structure. At the most, Council may consider a single storey structure with utilisation of the roof space.
- Considerations should be given on how the proposal would present itself to Little Bourke Street, in particular, how the garage extension would relate to the dwelling and address the street. Napoleon Street may present some examples that Council considered acceptable.

#### Building Surveyor comments

- Based on the information provided for the meeting, Council building surveyors have not raised any compliance issues.

#### Planning Comments

- Maitland Flood Planing Level applies to the property which is 10.23m AHD at the proposed site. All new habitable spaces appear to be above this level, however, further clarification is required in relation to the use of the dark room which includes a window and a toilet/bath. This can potentially be used as a bedroom, and adequate justification should be provided how this can be avoided.
- The concept proposal appears to comply with the applicable Residential Design standards of Council DCP, however, the critical issue is meeting the heritage requirements of the DCP, which are provided below.
- The shadow diagrams appear to comply with DCP minimum standards for 3 hour solar access within Private Open Space at the neighbouring property.
- Clarification needs to be provided in relation to the existing rear fencing, however, at the meeting, the applicant advised that the existing fencing will be retained as-is.

#### COUNCIL POLICY - MAITLAND LOCAL ENVIRONMENTAL PLAN 2011 (LEP)

##### LEP Clause 5.10 Heritage

Whilst Council acknowledges that the existing dwelling does not have distinguishable heritage contributory elements, the proposed extensions would be required to relate to the style, materials and scale of the existing dwelling and the immediate surrounds of it. The applicant is encouraged to consider minimising the





need to extend beyond the existing vertical building envelope by introducing sensible architectural solutions, at the upper floor. It is anticipated that this will significantly reduce the bulk and scale of the outcome, reducing the visual impact it would have on Little Bourke Street.

#### LEP Clause 7.2 – Earthworks

A bulk earthworks plan is required that responds sensitively to the topography of the land and to restrict and control excessive earthworks. The plan should indicate the total amount of cut and fill across the entire site with inclusion of existing levels of the land and proposed finishes levels of the land for such works, including the construction of building and those areas of the site external to the building platform. Any cut/fill batters or retaining along the boundary lines shall be clearly indicated in regard to heights and offset to boundaries. Any departures from Council's DCP in this regard should be fully justified, in particular, where retaining is not offset from boundaries and should provide good justification given issues with subsoil drainage and any construction of walls in limited space.

#### LEP Clause 7.3 – Flood Planning

Lot is mapped in the LEP as being flood affected and the development will need to meet the requirements of this clause and the DCP. The site is mapped as inundated to a height of 9.73m AHD with a maximum velocity of 0.05m/s. The proposal does not appear to compromise habitable floor space, however, the development will need to address the flood controls within the Maitland LEP and DCP.

#### COUNCIL POLICY - MAITLAND DEVELOPMENT CONTROL PLAN 2011 (DCP)

##### B.3 – Hunter River floodplain

Council's 100year ARI flood modelling indicates the following parameters for the subject site:

- Flood level at the building site: 9.73m AHD
- Hence, the applicable Maitland flood planning level: 10.23m AHD
- Depth of flood at the building site: 1.67m
- Max. velocity of flood water over the property: 0.05 m/s
- Hazard level: High hazard

Whilst the concept proposal appears to satisfy the site's flood hazard in relation to the siting of habitable spaces, Council may require further details prior to the issue of a construction certificate to demonstrate the structural integrity of the proposed extension, including the capacity of the proposed materials to withstand the flood characteristics of the site.

You are encouraged to consider *Table 1: Flood Aware Design Requirements for Residential Development on Flood Prone Land* provided under Council DCP Chapter B.3, for this purposes.

##### C.4 – Heritage Conservation

The submitted draft SoEE contains inadequate information to address the specific clauses and requirements outlined under this DCP provision. It is requested that a response against relevant design standard or requirement, be provided in the SoEE. Particular attention should be given to assessing the proposal against the requirements listed under the following sub-headings of this DCP chapter:





C.4 – 4. General requirements for alterations & additions

- o 4.1 Sympathetic design
- o 4.2 Siting, setback and orientation
- o 4.3 size & scale
- o 4.4 Roof form & shape
- o 4.7 Material and colours
- o 4.11 Services and new technologies
- o 4.13 Fences
- o 4.14 Garages, Carports and sheds

**C.8 – Residential Design**

The current version of the proposal appears to comply with all relevant design standards under this provision.

In the event that the proposal only includes a single storey extension with open roof-top space, Council would consider having only 1m setback to Little Bourke Street, as acceptable.

**C.11 – Vehicular access and car parking**

Council DCP car parking requirements include minimum 2 on-site spaces for dwellings with more than 2 bedrooms. The proposal appears to comply with this requirement.

**Part E.3.2 – Heritage Conservation Areas – Central Maitland Heritage Conservation Area**

What to keep

- Retain and enhance the original scale and form of existing buildings
- original character and status of streets, side-street and laneways as much as is practicable.

What to encourage

- Alterations and additions to dwellings that do not necessitate changes to roof form, or are at the rear of the dwelling and not visible from the street.

What to avoid

- Garages and carports becoming a prominent part of the streetscape
- Second storey additions which are visually prominent from the street frontage or other public viewing places.



## CONCLUSION

Based on the review of the proposal, the existing dwelling design and the applicable heritage considerations, it is considered that the footprint of the existing dwelling is substantial in the context of the locality, and the addition of a two-storey structure, as proposed, will result in a building of unacceptable mass and scale. A two-storey structure would result in creating a dominant frontage to Little Bourke Street and a 'blinkered thoroughfare' as described above. Little Bourke Street is currently characterised by smaller more modest structures.

A single storey structure with an appropriate pitched roof (preferably hipped) is preferred for this location which provides a more appropriate transition and scale from the existing two storey structure.

At the most, Council may consider a single storey structure with utilisation of the roof space as an acceptable design solution.

### Statement of Environmental Effects (SoEE)

It is requested that a completed copy of the SoEE including an assessment of the proposal against the before-mentioned *Clause C.4 Heritage Conservation* provisions of the DCP, be submitted with a DA. The report should provide justification for any aspects of the proposal that deviates from Council's policies.

### Architectural and/or site Plans

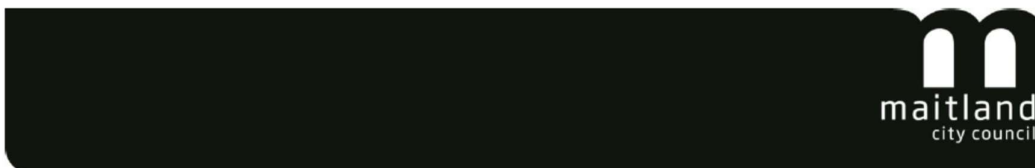
Should include but not limited to;

- Floor plans including proposed finished floor levels, site contours or natural ground levels;
- Floor plans for the existing dwelling, and the proposal in relation to the existing floor layout.
- Building elevations including roof details;
- A site plan showing the proposal in the context of the existing dwelling, property boundaries and site features.
- Erosion and Sediment Control Plan,
- Cut & fill plan or retaining walls, if proposed.
- Waste Management Plan for site preparation, construction and operational phases;
- Landscaping Plan (including fencing or screen planting details)
- Stormwater (drainage) Management Plan indicating how roof runoff will be managed within the site and where it will be discharged to.
- Schedule of colours, materials and finishes for external walls, roofing, window & door frames etc.
- Shadow diagrams showing overshadowing impacts on the adjoining property to the West, and to demonstrate compliance with the relevant DCP standards.

### General – Development Application

- It is noted that as of 31<sup>st</sup> December 2020, all development applications must be lodged via NSW Planning Portal. Council is no longer able to accept any other online forms or physical forms of development applications.
- If the development exceeds \$50,000, a BASIX certification outlining the required energy and water commitments, must be submitted with the development application.





- The proposal will be advertised and notified. Any submissions received will trigger a report to full Council.

Note: these minutes represent outcomes between Council staff and the proponent. They identify key issues discussed, and in no way seek to represent the full discussion undertaken, or the identification of all issues to be addressed in any future development application for the site.

Note any advice provided should not be construed as granting approval, in principle or otherwise, to any proposed activity or development. The determination of any proposal can only be made once a development application has been lodged with the Council and this application comprehensively assessed against all relevant legislation and Council policy.

A handwritten signature in black ink, appearing to read 'Brookli'.

.....  
**CHAIRPERSON**

*NOTE: ANY ADVICE PROVIDED BY THE DCU SHOULD NOT BE CONSTRUED AS GRANTING APPROVAL, IN PRINCIPLE OR OTHERWISE, TO ANY PROPOSED ACTIVITY OR DEVELOPMENT. THE DETERMINATION OF ANY PROPOSAL CAN ONLY BE MADE ONCE A DEVELOPMENT APPLICATION HAS BEEN LODGED WITH THE COUNCIL AND THIS APPLICATION COMPREHENSIVELY ASSESSED AGAINST ALL RELEVANT LEGISLATION AND COUNCIL POLICY*

Appendix B – Objection

18 th November 2020

Maitland City Council  
285-287 High Street , Maitland 2320

Dear Sir/Madam

Re: DA/2020/1098

[REDACTED]

The limited sun during the winter months is concerning. The existing dwelling already shadows our front outdoor spaces, which is why we now have an outdoor space to sit and enjoy the sun at the rear, but this will now be completely shadowed all day, all winter.

The choice of Monument (black) colourbond wall cladding is most concerning. The reflective heat from this 8 metre erection, especially in summer, will no doubt be extreme and could possibly see a rise in our energy costs to try and combat this.

Privacy is also a factor from the windows facing into our backyard, as is the visual impact the structure will have from our backyard.

Maitland CBD and surrounding streets are a renowned heritage area and looking around at new residential developments such as 71 Bulwer street, 49 Lee street, just a couple to name a few, have been built to reflect the characteristics of Maitland and their surroundings.

The structure proposed in DA/2020/1098 looks more like an industrial or commercial building. The design is so disjointed from the existing dwelling and does not fit in with the heritage style of its surroundings.

The Statement of Environmental Effects dated 1st November 2020 states 'the structure will have limited view from Catherine street and the majority of buildings along Little Bourke street are a mix of outbuildings and garages that range in ages and styles', this is so but they are not an 8 metre black industrial looking structure imposing over the street and neighbours, they blend with the age and style of their dwellings.

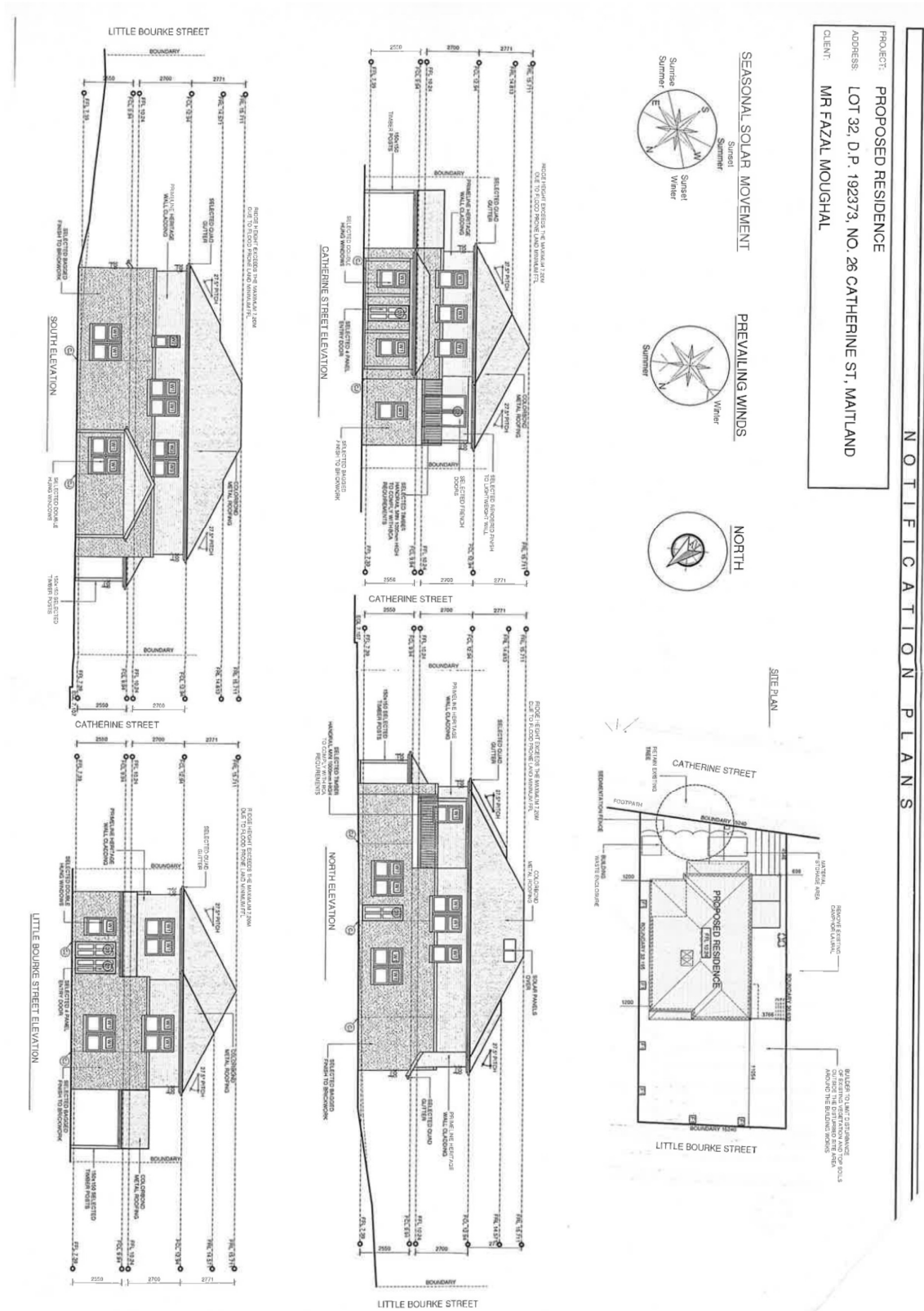
The presence of Maitland's heritage character is in all streets not just a select few. The report seems to imply that it doesn't matter what is viewed or built on Little Bourke street, but it does matter.

Could the proposed erection be more sympathetic in design and materials to the heritage area of Maitland but more importantly to the existing dwelling and surrounding properties that it will impact, as currently the proposed development does not.

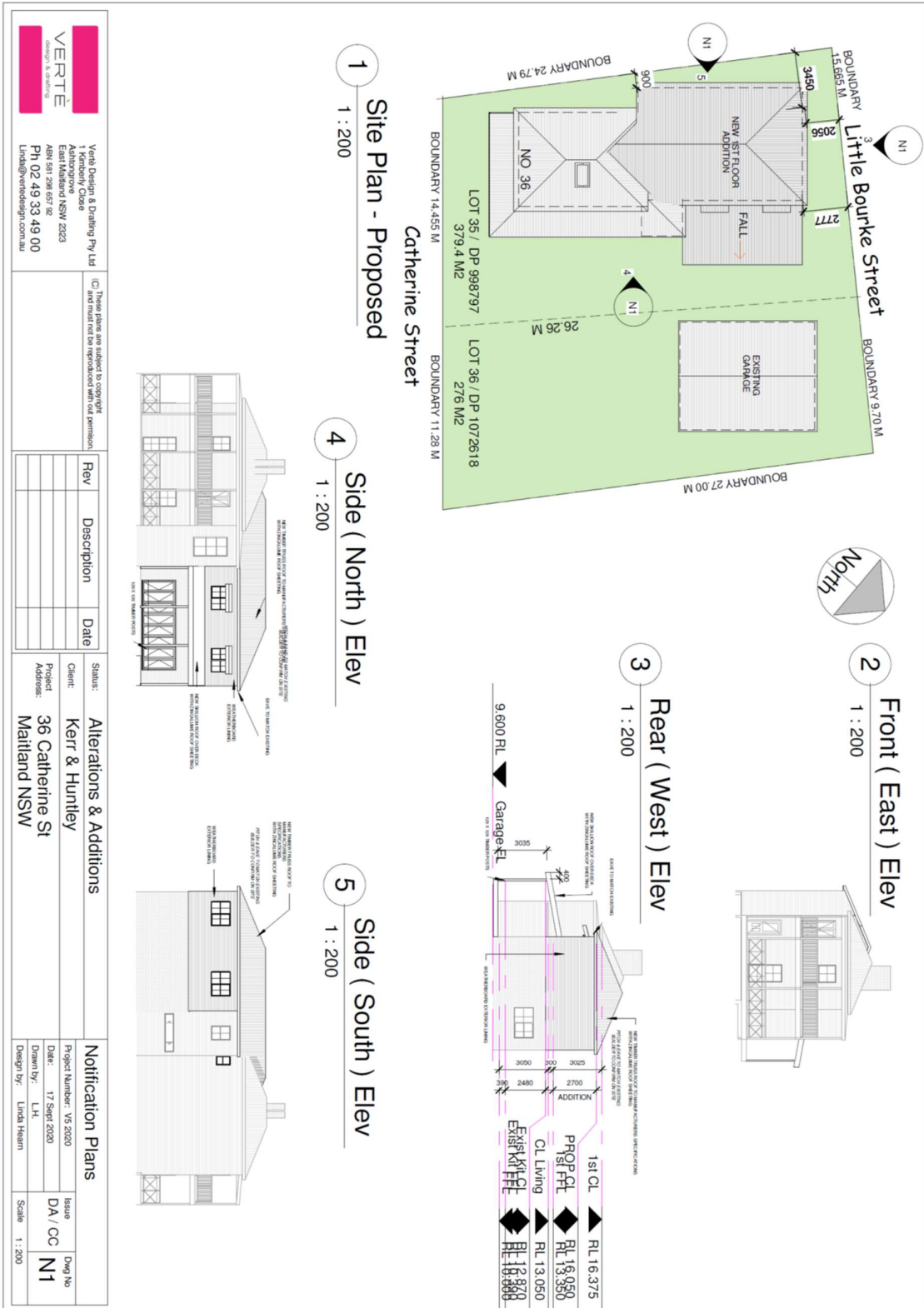
Thankyou for your consideration of our concerns when approving this development.

[REDACTED]

Appendix C – 26 Catherine Street Notification Plan



Appendix D – 36 Catherine Street Notification Plan



1 Site Plan - Proposed  
1 : 200

2 Front ( East ) Elev  
1 : 200

3 Rear ( West ) Elev  
1 : 200

4 Side ( North ) Elev  
1 : 200

5 Side ( South ) Elev  
1 : 200

**VERTE**  
Design & Drafting  
Verte Design & Drafting Pty Ltd  
150/151 The Arcade  
East Maitland NSW 2323  
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Linda@vertedesign.com.au

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Rev	Description	Date

Status: **Alterations & Additions**  
Client: **Kerr & Huntley**  
Project Address: **36 Catherine St Maitland NSW**

Notification Plans		Issue	Draw No
Project Number:	VS 2020	DA / CC	N1
Date:	17 Sept 2020		
Drawn by:	LH		
Design by:	Linda Heam	Scale	1 : 200