

## 8.2 DA0102/2020 - Art Gallery and Tourist Information Centre - 90 Market Street, Mudgee

REPORT BY THE SENIOR TOWN PLANNER  
 TO 11 DECEMBER 2019 ORDINARY MEETING  
 GOV400067, DA0102/2020

### RECOMMENDATION

That Council:

- A. receive the report by the Senior Town Planner on DA0102/2020 - Art Gallery and Tourist Information Centre - 90 Market Street, Mudgee;
- B. approve DA0102/2020 - Art Gallery and Tourist Information Centre - 90 Market Street, Mudgee subject to the following conditions:

### CONDITIONS

### PARAMETERS OF CONSENT

- 1. Development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below except as varied by the conditions herein.

Title/Name	Drawing No/ Document Ref	Revision/Issue	Dated	Prepared by
<b>Architectural Plans</b>				
Site Plan	A010	-	3/10/19	BKA Architecture
Ground Floor Demolition Plan	A50	-	3/10/19	BKA Architecture
Level 01 Floor Demolition Plan	A51	-	3/10/19	BKA Architecture
Ground Floor Plan	A100	B	4/11/19	BKA Architecture
Level 01 Floor Plan	A101	B	4/11/19	BKA Architecture
Ground Floor Plan 1:100	A102	B	4/11/19	BKA Architecture
Elevation Sheet 01	A200	B	4/11/19	BKA Architecture
Elevations Sheet 02	A201	B	4/11/19	BKA Architecture

Elevations Sheet 03	A202	B	4/11/19	BKA Architecture
Sections	A300	-	3/10/19	BKA Architecture
Mood Board	A701	-	3/10/19	BKA Architecture
<b>Landscape Plans</b>				
Design Report and Landscape Design Strategy	02	B	02/10/19	MARA Consulting Pty Ltd
Drawing and Plant Schedule	03	B	02/10/19	MARA Consulting Pty Ltd
Landscape Plan	04	B	02/10/19	MARA Consulting Pty Ltd
Landscape Plan	05	B	02/10/19	MARA Consulting Pty Ltd
Landscape Elevations	06	B	02/10/19	MARA Consulting Pty Ltd
Planting Palette	07	B	02/10/19	MARA Consulting Pty Ltd
<b>Stormwater Plans</b>				
General Arrangement Plan	C-0010	B	09/10/19	BG&E
Stormwater Catchment Plan	C-0300	B	09/10/19	BG&E
Raingarden/Detention Basin Plan, Details and Sections	C-0350	B	09/10/19	BG&E
Erosion & Sediment Control Plan	C-0700	B	09/10/19	BG&E

2. This approval does not provide any indemnity to the owner or applicant under the *Disability Discrimination Act 1992* with respect to the provision of access and facilities for people with disabilities.
3. This development consent does not include approval for any signage for the approved development. A separate Development Consent or Complying Development Certificate may be required for signage, if the signage is not exempt development.
4. This development consent includes approval for:
  - a) The erection of a building and re-use an of an existing building to be used as an information and education facility.
  - b) The construction of 11 on-site car parking spaces.
  - c) The construction of a 6m wide ingress/egress driveway.
  - d) Connection of water, sewer and stormwater services to the development.

## GENERAL

5. All building works, earthworks and pavement works must be carried out in accordance with the provisions of the *National Construction Code*, the *Environmental Planning and Assessment Act 1979* and Regulations and all relevant Australian Standards.
  6. The three peppercorn trees located along the Market Street frontage of the property are to be retained.
  7. All demolition works are to be carried out in accordance with AS 2601-2001 "Demolition of structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, should be handled, conveyed and disposed of in accordance with guidelines and requirements from SafeWork NSW. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.
  8. Notwithstanding the approved plans, the structure is to be located clear of any easements and/or 1.5 metres from any water and sewer mains in accordance with Council Policy.
  9. Costs associated with all development works including any necessary alterations, relocations of services, public utility mains or installations must be met by the developer. The developer is responsible to accurately locate all existing services before any development works commence to satisfy this condition.
  10. A sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building for the use of the building as a function centre.
  11. If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - a) protect and support the building, structure or work from possible damage from the excavation, and
    - b) where necessary, underpin the building, structure or work to prevent any such damage.
- Note - Prescribed condition pursuant to clause 98E of the *Environmental Planning and Assessment Regulation 2000* and Council requirement to preserve the stability of adjoining roads/public places.
12. Any damage which is caused to Council's infrastructure as a result of the proposed development must be repaired immediately to Council's satisfaction and at no cost to Council.
  13. All trafficable pavements are to be constructed and sealed with an impervious surface, either bitumen or concrete, and maintained to the satisfaction of Council at all times.
  14. A total of 11 car parking spaces are to be provided within the site of the development
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and comply with *AS 2890.1: 2004 – Parking facilities – Part 1: Off-street car parking* and the following requirements:

- a) Each parking space is to have minimum dimensions of 5.5m x 2.4m; and
- b) All car parking spaces are to be line-marked and provided with a sealed concrete or bitumen surface and must be maintained in a satisfactory condition at all times.

### **Earthworks**

15. Fill placed in residential or commercial lots shall be compacted in accordance with *AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments*.
16. The only waste derived fill material that may be received at the development site must be:
  - a) Virgin excavated natural material, within the meaning of the *Protection of the Environment Operations Act 1997*; and
  - b) Any other waste-derived material the subject of a resource recovery exemption under cl.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.
17. All earthworks, filling, building, driveways or other works are to be designed and constructed (including stormwater drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.
18. Site works and landscaping must be designed and constructed in such a manner as to have no negative effect on the cross sectional area at any point of the adjacent waterway/drainage feature.

### **PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE**

*The following conditions must be complied with prior to Council or an accredited Certifier issuing a Construction Certificate for the proposed building.*

### **Building**

19. Prior to release of the Construction Certificate, approval pursuant to Section 68 of the *Local Government Act 1993* to carry out water supply, stormwater and sewerage works is to be obtained from Mid-Western Regional Council.
  20. Pursuant to clause 94 of the *Environmental Planning and Assessment Regulation 2000*, the existing building is to be brought into conformity with the following Performance Requirements of the *Building Code of Australia – Volume 1*:
    - a) DP2 – So that people can move safely to and within the building, it must have stairways with slip resistant walking surfaces and suitable handrails where necessary to assist and provide stability to people using the stairway.
    - b) EP4.1 – To facilitate safe evacuation in an emergency, the building must be provided with a system that ensures a level of visibility sufficient to enable exits,
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paths of travel to exits and any obstacles along a path of travel to an exit to be identified; and activates instantaneously upon the failure of an artificial lighting system, to the degree necessary, appropriate to the function or use of the building; and the floor area of the building; and the distance of travel to an exit.

Plans and specifications demonstrating compliance are to be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

21. All building work is to comply with the requirements of the *Disability (Access to Premises – Buildings) Standards 2010*. Details demonstrating full compliance with the Standards, including continuous path of travel from the entrance to the property, are to be submitted and approved as part of any Construction Certificate.
22. The design, construction and fitout of any proposed kitchen, coolroom/s and associated structures must be constructed in accordance with the relevant requirements of:
  - a) *Food Act 2003*;
  - b) *Food Regulation 2015*;
  - c) *Food Standards Australia and New Zealand – Food Standards Code 2003*;
  - d) *AS 4674-2004 for Design, Construction and Fit out of Food Premises*;
  - e) *AS 1668.2-2012 – the use of ventilation and air conditioning in buildings*; and
  - f) *The Building Code of Australia*.

Full details are to be submitted for approval to the Certifier (ie Council or a private Certifier) prior to the issue of a Construction Certificate.

The information that will need to be submitted, includes, but is not limited to, the location of hand-basins, wash-up sinks, any exhaust hoods, floor finishes, wall finishes and ceiling finishes.

### Heritage

23. A board with detailed samples of proposed colours and finishes is to be submitted to and approved by Council prior to the issue of a Construction Certificate.
  24. A photographic archival record of the heritage item, prepared in accordance with the Heritage Council publication *Photographic Recording of Heritage Items using Film or Digital Capture*, including one bound copy, is to be submitted to and approved by Council prior to the issue of a Construction Certificate.
  25. An interpretation plan for the item is to be prepared by a suitably qualified heritage consultant. The plan is to set out recommendations for introduced material and presentation of the fabric which will help to convey the heritage significance of the item to users and visitors. The plan is to be submitted to and approved by Council prior to the issue of a Construction Certificate.
  26. Prior to the issue of a Construction Certificate, details of the installation of the internal lift are to be submitted to and approved by Council. The details of the installation of the lift shall include the following matters:
    - a) Details of footings and connection to the existing ground level floor structure;
    - b) Details of the connection to the upper level floor structure, following the creation of the hole through which the lift will be inserted;
    - c) The lift overrun shall not penetrate the ceiling of the upper level; and
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- d) The design and installation of the lift shall be carried out to minimise the removal of existing building fabric.

Note – structural engineer’s certification will be required to support the application for a Construction Certificate.

### Engineering

27. Prior to the issue of a Construction Certificate, plans showing the levels and details of the car park and any footpath adjustments must be submitted to Council. These plans are to include details of proposed footpath regrading.
28. Prior to the issue of a Construction Certificate, detailed drainage design supported by full and detailed calculations and generally in accordance with the details and layout as provided with the application must be submitted to and approved by Council’s Manager Development Engineering.
29. Consent from Council must be obtained for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993*, prior to the issue of a Construction Certificate.
30. Details of the internal driveway and car parking spaces are to be submitted to and approved by the Certifier (ie. Council or a private Certifier), prior to the issue of a Construction Certificate. These details shall comply with the requirements of *AS/NZS 2890.1:2004 – Parking Facilities – Part 1: Off-street Car Parking* and the relevant conditions of this development consent.

### Contributions and Levies

31. Prior to the issue of a Construction Certificate, the developer shall pay a long service levy at the prescribed rate to either the Long Service Levy Corporation or Council, for any work costing \$25,000 or more.

Note - The amount payable is currently based on 0.35% of the cost of work. This is a State Government Levy and is subject to change.

Note – Council can only accept payment of the Long Service Levy as part of the fees for a Construction Certificate application lodged with Council. If the Construction Certificate is to be issued by a Private Certifier, the long service levy must be paid directly to the Long Service Levy Corporation or paid to the Private Certifier.

32. Prior to the issue of a Construction Certificate, the developer shall obtain a *Certificate of Compliance* under the *Water Management Act 2000*, from Council.

Note – Refer to Advisory Notes in relation to the payment of contributions to obtain a Certificate of Compliance.

### Trade Waste

33. A Construction Certificate for the approved use is not to be issued until any necessary approvals under Section 68 of the *Local Government Act 1993* to *dispose of waste into a sewer of the council (eg liquid trade waste)* have been obtained.

### PRIOR TO THE COMMENCEMENT OF WORKS

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34. No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:

- a) the appointment of a Principal Certifying Authority; and
- b) the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

35. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

**NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE PRIOR TO SUBSEQUENT DISPOSAL AT AN APPROVED WASTE DISPOSAL FACILITY.**

36. Sediment erosion controls shall be installed within the development site, to the satisfaction of the Certifier (ie Council or the Principal Certifier), prior to the commencement of works.

37. A sign must be erected in a prominent position on any work site on which the erection or demolition of a building is carried out:

- a) stating that unauthorised entry to the work site is prohibited;
- b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority for the work; and
- d) the sign shall be removed when the erection or demolition of the building has been completed.

38. If the work involved in the erection/demolition of the building:

- a) Is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- b) Building involves the enclosure of a public place; then

A hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

#### **DURING CONSTRUCTION**

39. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the Plumbing Code of Australia.

40. All mandatory inspections required by the *Environmental Planning and Assessment*

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**Act 1979 and any other inspections deemed necessary by the Principal Certifying Authority are to be notified by the developer (providing no less than 24 hours notice) and carried out during the relevant stage of construction.**

41. Construction work noise that is audible at other premises is to be restricted to the following times:
  - a) Monday to Saturday - 7.00am to 5.00pm
  - b) No construction work noise is permitted on Sundays or Public Holidays.
42. The strength of the concrete used for the reinforced concrete floor slab must be a minimum 25Mpa.
43. The list of measures contained in the schedule attached to the Construction Certificate are required to be installed in the building or on the land to ensure the safety of persons in the event of fire in accordance with Clause 168 of the *Environmental Planning and Assessment Regulation 2000*.
44. The development site is to be managed for the entirety of work in the following manner:
  - a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
  - b) Appropriate dust control measures;
  - c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained; and
  - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
45. All public footways, foot paving, kerbs, gutters and road pavement damaged during the works are to be restored to match existing conditions at the developer's/demolisher's expense.
46. A temporary construction fence is to be provided 2m off the drainage channel, for the duration of the construction phase of the main building. The fencing may be removed when the building is nearing completion to permit landscaping work and construction of the rain garden which is to be located adjacent to the stormwater channel.
47. In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.
48. If historical archaeological remains are found during works, works should immediately cease and the Heritage Branch of the Office of Environment and Heritage should be contacted for further advice, as required under Section 139 of the *Heritage Act 1977*.

#### **PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE**

***The following conditions are to be completed prior to occupation of the building and are provided to ensure that the development is consistent with the provisions of the Building***



***Code of Australia and the relevant development consent.***

49. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.
  50. Prior to the issue of an Occupation Certificate, the following works in relation to access, car parking and associated manoeuvring areas are to be completed:
    - a) Internal car parking spaces and associated manoeuvring areas are to be provided with an all-weather sealed surface.
    - b) The car parking area must be set out and clearly delineated in accordance with the requirements of AS 2890.1:2004 Parking Facilities Part 1: Off-street Car Parking.
    - c) Physical measures, such as wheel stops, shall be provided to ensure parked vehicles do not overhang and obstruct internal footpaths.
  51. Prior to the commencement of use or issue of an Occupation Certificate, the developer must install signage (external and internal) to indicate direction of traffic flow and the entry and exit points. Signage must be provided in accordance with the standards and requirements set out in *AS 1742.1 – 2014 Manual of uniform traffic control devices Part 1: General introduction and index of signs*.
  52. Prior to the commencement of use or the issue of an Occupation Certificate, the developer must construct all stormwater drainage and the proposed detention tank in accordance with the details as shown on the approved drainage plans, showing detention of stormwater runoff.
  53. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate in accordance with Clause 153 of the *Environmental Planning and Assessment Regulation 2000* for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the Fire and Rescue NSW and a copy is to be prominently displayed in the building.
  54. Prior to the issue of an Occupation Certificate, the external finishes of the development must be completed and matching to the approved sample board of colours and finishes.
  55. The approved heritage interpretation plan is to be implemented to the satisfaction of Council's Heritage Advisor, prior to the issue of an Occupation Certificate.
  56. The work listed in the Heritage Asset Conservation Plan, prepared by Urbis Pty Ltd, dated October 2013, Part 4: Capital Works, Table 2, is to be completed to the satisfaction of the Principal Certifying Authority prior to the issue of an Occupation Certificate.
  57. Prior to the issue of an Occupation Certificate, for any buildings on site, the building is to be connected to reticulated water supply, stormwater and sewerage in accordance with the relevant section 68 approval/s.
  58. All plants shown on the approved landscape plan/s are to be planted and all hard landscaping (eg rocks, retaining walls, solid garden bed edging) is to be installed
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prior to occupation of the development and/or commencement of the use.

59. Rainwater tanks with a minimum combined capacity of 10 kL, or as otherwise approved by the detailed stormwater management plan required by a condition of this consent, are to be installed prior to the issue of an Occupation Certificate.
60. Prior to use of the development and/or issue of an Occupation Certificate, all works included in any Trade Waste Approval are to be completed.

#### **OPERATIONAL/ ONGOING CONDITIONS**

61. For every 12 month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement certifying that each specified fire safety measure is capable of performing to its specification.
  62. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of Fire and Rescue NSW. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
  63. The hours of operation of the development are limited to 8am to 10pm, 7 days per week.
  64. All vehicles are required to enter and leave the site in a forward direction at all times.
  65. All line-marking for the on-site car parking spaces and footpath areas are to be maintained in a visible condition, at all times.
  66. All loading and unloading in connection with the premises shall be carried out wholly within the site and at the approved loading dock.
  67. All car parking spaces, loading and unloading areas, vehicle manoeuvring and driveway areas must not be used for the storage of any goods or materials and must be available for their intended use at all times.
  68. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property or roadways, in accordance with Australian Standard 4282 "Control of the Obtrusive Effects of Outdoor Lighting".
  69. Garbage storage areas are to be adequately screened from public view.
  70. No display or sale of goods is to take place from public areas or footpaths fronting the premises.
  71. The development is to be maintained in a clean and tidy manner, at all times.
  72. The café is to be registered with Council as a Class 3 - Food Premises. The premises will be subject to inspections by Council for which a fee will be payable. The application form (Food Registration Form) and further information is available on Council's website [www.midwestern.nsw.gov.au](http://www.midwestern.nsw.gov.au).
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73. The premises shall, at all times, be operated and maintained in accordance with Food Safety Standards 3.1.1, 3.2.2 and 3.2.3 prescribed in chapter 3 of the Australia and New Zealand Food Standards Code.

#### REASONS FOR DECISION

1. The proposed development complies with the requirements of the applicable environmental planning instruments and *Mid-Western Regional Development Control Plan 2013*.
2. The proposed development is considered satisfactory in terms of the matters identified in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.
3. There is sufficient justification for the proposal's variation from the maximum height limit requirement contained in *Mid-Western Regional Local Environmental Plan 2012*.
4. The proposed development satisfactorily addresses the issues raised in objections received in response to public notification of the development, as follows:
  - a) The proposed development will not have an adverse impact on heritage character or aesthetic impact, subject to conditions.
  - b) The loss of some large trees within the grounds will not have a significant impact on the streetscape and the heritage conservation area.

#### ADVISORY NOTES

- 1 The removal of trees within any road reserve requires the separate approval of Council in accordance with the policy "Tree Removal and Pruning – Public Places".
  - 2 The land upon which the subject building is to be constructed may be affected by restrictive covenants. This approval is issued without enquiry by Council as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this approval. Persons to whom this approval is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.
  - 3 Sections 8.2, 8.3, 8.4 and 8.5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) gives you the ability to seek a review of the determination. This request is made to Council and must be made within 6 months after the date on which you receive this notice. The request must be made in writing and lodged with the required fee; please contact Council's Planning and Development Department for more information or advice.
  - 4 If you are dissatisfied with this decision Sections 8.7 and 8.10 of the EP&A Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.
  - 5 To ascertain the date upon which the consent becomes effective, refer to Sections 4.20 and 8.13 of the EP&A Act.
  - 6 To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.
  - 7 This development consent requires a Certificate of Compliance under the *Water*
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**Management Act 2000** to be obtained prior to the issue of a Construction Certificate.

A person may apply to Mid-Western Regional Council, as the water supply authority, for a Certificate of Compliance pursuant to section 305 of the *Water Management Act 2000*.

Please be advised that as a precondition to the granting of a Compliance Certificate:

- a) A monetary contribution in accordance with the following Schedule of Contributions must be paid in full (including indexation, where applicable).

<b>Section 64 Contributions</b>			
<b>The rates shown below are current up to 30 June 2020</b>			
<b>12 Additional Lots (3 credits for existing lots)</b>			
	<i>ET/Unit</i>	<i>Value</i>	<i>Total</i>
<b>Water Headworks</b>	<b>0.716</b>	<b>\$8,548.00</b>	<b>\$6,120.37</b>
<b>Sewer Headworks</b>	<b>0.716</b>	<b>\$3,903.00</b>	<b>\$2,794.55</b>
<b>Total Headworks</b>			<b>\$8,914.92</b>

**Note - Section 64 Developer Contributions are subject to Consumer Price Index increase at 1 July each year. Please contact Council's Planning and Development Department regarding any adjustments.**

## Executive summary

<b>OWNER/S</b>	Mid-Western Regional Council
<b>APPLICANT:</b>	Mid-Western Regional Council
<b>PROPERTY DESCRIPTION</b>	90 Market Street, Mudgee (Lot 113 DP48439)
<b>PROPOSED DEVELOPMENT</b>	Art Gallery and Tourist Information Centre
<b>ESTIMATED COST OF DEVELOPMENT:</b>	\$4,538,000
<b>REASON FOR REPORTING TO COUNCIL:</b>	Council is the owner of the land and the construction value exceeds \$150,000
<b>PUBLIC SUBMISSIONS:</b>	Two

Council is in receipt of a development application that seeks approval for an information and education facility at 90 Market Street, Mudgee (Lot 113 DP48439).

The proposed development seeks to convert the former Cudgegong Council Chambers building and grounds into an art gallery and tourist hub. The proposed development will include an art gallery, tourist information centre and café. The tourist hub will replace the existing tourist information centre located within the existing Council building at 86 Market Street, Mudgee. The tourist hub will provide information services as well as a space to showcase and sell local produce, wares and artworks.

The application has been placed on public exhibition in accordance with Council policy. The exhibition period ended on 8 November 2019 and 2 submissions were received.

As the estimated cost of works for the development is over \$150,000 and Council is the owner of the land, the application cannot be determined by delegated staff – Council is required to determine the application.

The application is recommended for approval.

## Disclosure of Interest

Council is the owner and developer of the land subject to this report.

## Detailed report

### SITE DESCRIPTION

The subject site is located on the corner of Douro Street and Market Street, Mudgee. The site has an area of 3,561m<sup>2</sup> with a frontage of 65.7m to Market Street and a frontage of 54.5m to Douro Street.

The existing building on the site was originally constructed as the Cudgegong Council Chambers. The building is a two storey brick building with a timber verandah attached to the northern façade. This building is listed as a heritage item in *Mid-Western Regional Local Environmental Plan 2012*. The building, with the exception of the rear verandah, will be retained by the proposed development.

Vehicular access to the site is via a driveway from Douro Street. The driveway services an existing bitumen car parking area with 11 car parking spaces.

A number of trees are scattered throughout the grounds of the site.

A concrete lined drainage channel runs in a north-south direction, on the western side of the site.

There is a slight slope across the site – with the north-west corner of the site being the lowest point.



Figure 1 – Subject Site

### PROPOSED DEVELOPMENT

The proposal seeks to develop the site for a regional art gallery and tourist information hub. The main gallery space will be located within the new building addition. The proposed tourist hub will replace the existing tourist information centre, which has outgrown its current premises. The tourist hub will be used to provide tourist information and showcase local produce and wares. A café will be established within the new building, to support the art gallery and information centre. The grounds will also be landscaped throughout.

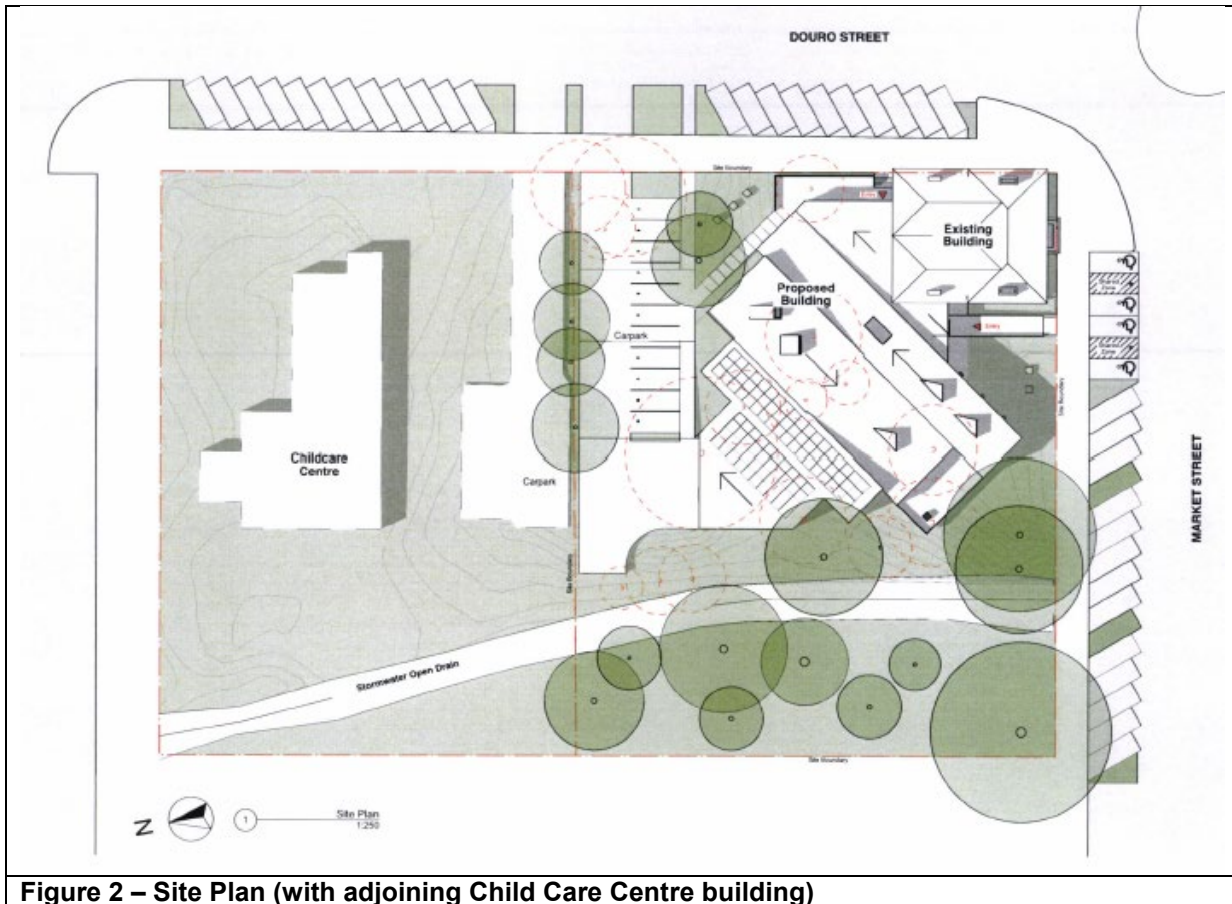
The proposed works and buildings included in this development application are:

- Minor demolition and site clearing works:
  - Demolition of the rear verandah from the existing building;
  - Demolition of the existing car park; and
  - Removal of 16 trees from the site.
  
- Internal fit out of the existing building:
  - The building will be retained in the main part;
  - Minor wall openings will be created for the connection to the new building addition;
  - The existing building has a Gross Floor Area (GFA) of 420.2sqm over two floors;
  - The ground floor of the existing building will be used for the following purposes:
    - 5 x office spaces for the administration and management team of the art gallery and tourist hub;
    - A new kitchenette and lunch room; and
    - A new elevator shaft will be installed in one of the existing rooms at the rear of the building to provide access to the upper floor consistent with the current disabled access standards.
  
  - The upper floor of the existing building will contain:
    - One large gallery/seminar room; and
    - One smaller gallery/breakout room.
  
- New building:
  - The proposed addition will have a Gross Floor Area (GFA) of 716.11sqm;
  - The space will provide a central reception area that opens onto the tourist hub, art gallery, workshop and café;
  - The new building will also include back of house areas including multiple store rooms, loading dock and services located to the rear of the addition; and
  - Separate male and female amenities are to be provided adjacent to the reception area including seven toilets (inclusive of two accessible toilets).
  
- Car parking:
  - Reconstruction of the existing car park in line with the stormwater management plan;
  - Provision of 11 onsite car parking spaces;
  - 22 angled on-street parking spaces along the Douro Street frontage;
  - 13 angled on-street parking spaces along the Market Street frontage; and

- Four 90 degree accessible on-street parking spaces, in the Market Street frontage and located directly in front of the main building entry.
- Stormwater management:
  - Two 5kL above ground rainwater tanks located on the north-western of the site for internal and external reuse;
  - An 89sqm raingarden/detention basin located on the north-western corner of the site between the loading dock and the open stormwater channel; and
  - Network of underground stormwater pipes and surface inlet pits that collect and convey water to the raingarden/detention basin for appropriate discharge to the open stormwater channel on the site.
- Landscaping the open areas of the site.

The main operational factors of the proposed development are summarised as follows:

- Hours of operation for the art gallery, tourist hub, café and associated events is 8am to 10pm, seven days per week.
- Staff:
  - The proposed development will employ 8 to 9 staff on site at any one time, including café operations.
- Security features:
  - Locked doors after hours;
  - Alarm system to be monitored by a security company;
  - CCTV cameras located around the building; and
  - External lighting.
- Deliveries/ Truck Movements:
  - Art gallery and tourist hub:
    - 5-6 small rigid truck movements per month;
    - 1-2 medium rigid truck movements per month; and
    - 4-5 van movements per month.
  - Café:
    - 1-3 van deliveries per day.



**Figure 2 – Site Plan (with adjoining Child Care Centre building)**

### LEGISLATIVE REQUIREMENTS

#### **Biodiversity Conservation Act 2016 (BC Act)**

The Flora and Fauna Report submitted with the application states the following:

*Due to the absence of threatened fauna or flora species or habitat and the absence of any threatened ecological communities listed under the BC Act and/or the EPBC Act, along with the area to be cleared, which is less than 1ha in a minimum lot size of less than 1 ha for DP 48439 (MWRC LEP, 2012), further ecological assessment in consideration of the BCA Act will not be required.*

No further consideration of the BC Act is required for this assessment.

#### **Environmental Planning and Assessment Act 1979 (EP&A Act)**

##### Designated Development

Not applicable.

The proposed development is not identified as designated development, in accordance with Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*.

##### Integrated Development

Not applicable.



The proposed development does not trigger integrated development, in accordance with section 4.46 of the *Environmental Planning and Assessment Act 1979*.

### **Water Management Act 2000**

The drainage channel running through the western part of the site is identified as a first order watercourse. Normally, where works are to be undertaken within 40m of a watercourse, the integrated development provisions of the *Environmental Planning and Assessment Act 1979* would be triggered. However, an exemption exists where the works are being undertaken by a public authority (refer to clause 41 of the *Water Management (General) Regulation 2018*). Council is a public authority, and there is no need to obtain a controlled activity approval in accordance with Section 91 of the *Water Management Act 2000*. In addition, there is an exemption to obtain a controlled activity approval where the waterway is fully concrete lined (refer to clause 28, Schedule 4, Part 2 of the *Water Management (General) Regulation 2018*). The watercourse running through the site is concrete lined.

#### *SECTION 4.15(1) – MATTERS FOR CONSIDERATION - GENERAL*

The application has been assessed in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. The main issues are addressed below as follows.

#### **(a) Provisions of any Environmental Planning Instrument and any draft EPI – 4.15(1)(a)(i) and (ii)**

### **State Environmental Planning Policy No 55 – Remediation of Land**

A review of Council's records and site inspection did not reveal any evidence of a potentially contaminating activity. Accordingly, no further consideration is necessary.

### **State Environmental Planning Policy (Infrastructure) 2007**

(a) Clause 45 – Development likely to affect electricity transmission network.

Not applicable.

(b) Clause 101 – Development with frontage to classified roads.

Both Market Street and Douro Street are identified as classified roads for the purpose of this clause.

The proposed development satisfies the requirements of this clause as follows:

- It is not practicable to provide access to the site from a road other than the classified road. The existing access to the site will be retained and no new accesses to classified roads are proposed;
- The proposed development will not adversely affect the operation of the classified roads;
- The proposed development will not emit smoke or dust;
- The proposed development will result in only a marginal increase in the number of vehicle movements. There is sufficient capacity in the local road network to accommodate the additional vehicle movements; and
- The proposed development will not be adversely impacted upon by potential traffic noise and vehicle emissions from the operation of the classified road.

(c) Clause 104 – Traffic Generating Development

Not applicable.

The proposed development does not involve 200 or more motor vehicles and is not considered to be traffic generating development.

### **State Environmental Planning Policy (State and Regional Development) 2011**

The proposed development has a capital investment value of \$4,538,000. Given the capital investment value is less than \$5 million, the proposed development is not classified as regionally significant development. Consequently, no further consideration of this SEPP is required and the application will be determined as local development.

### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

Not applicable.

This SEPP does not apply to the removal of a vegetation that is ancillary to the development for which development consent is required under Part 4 of the *Environmental Planning and Assessment Act 1979*.

### **Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012)**

The following clauses of the MWRLEP 2012 have been assessed as being relevant and matters for consideration in the assessment of the Development Application.

#### 1.4 Definitions

The proposal is defined as an *information and education facility*. The full definition is reproduced as follows:

*Information and education facility means a building or place used for the providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.*

Various ancillary components of the proposed development may be defined as:

- *Shop* for the sale of art works, local produce and wares;
- *Restaurant or Café* for the café component of the use; and
- *Function centre* for the holding of exhibition opening nights, product launches, art and cultural workshops and art classes.

#### Part 2.3 Zone objectives and Land Use Table/ Permissibility

The land is zoned R3 – Medium Density Residential pursuant to MWRLEP 2012. The proposed *information and education facility* is permissible with the consent of Council in the zone.

Shops, cafes and function centres are normally prohibited in the R3 zone. The application provides the following reasons as to why these use components of the proposed development should be considered ancillary to the main *information and education facility* use and subsequently, permissible development:

- *The art gallery and the tourist hub are the dominant land uses. The events, sales and café are subservient and support the viability of the dominant land uses;*

- *The intended purpose of the facility is for an art gallery and tourist information centre, an integral component of which includes sales of local produce, art and wares;*
- *The intention of the café is to provide food and drinks available for purchase to the patrons of the art gallery and tourist information centre, as well as people attending workshops and classes at the facility. The provision of food and drinks is secondary to the purpose of people attending the art gallery and tourist hub and will operate within the hours of the overall facility;*
- *The café will also be used to cater for events such as opening nights, product launches and as required for specific workshops/classes;*
- *The overall development will function as an integrated facility, with all components subject to the same operating hours; and*
- *The café space is a minor component of the overall facility. This is evidenced by the relatively small size of the café compared to the overall facility. The overall development will have a Gross Floor Area (GFA) of 1,136.51 sqm. The café will have a GFA of 53.63sqm, which is approximately 4.7% of the total GFA.*

It is considered reasonable for the café, shop and function centre components of the use being considered as ancillary to the predominant function of the information and education facility.

The proposal is consistent with the objective of the zone related to providing facilities or services to meet the day to day needs of residents.

#### 4.3 Height of buildings

The maximum building height allowed on the site is 8.5m. The existing building has a height 11m. The new building has a predominant roof height of 8.5m.

The new building has three skylights that sit above the roof of the building and exceed the 8.5m height limit. The skylights generate a building height of 9.1m, 9.1m and 9.5m. The application includes a request to vary from the height limit development standard. This variation request is discussed in clause 4.6 below.

#### 4.6 Exceptions to development standards

The proposed skylights on the roof of the new building exceed the height limit standard required by Clause 4.3 of the LEP. Two of the elevated skylights sit at a height of 9.1m and the third skylight generates a height of 9.5m, exceeding the height standard by 0.6m (7%) and 1m (11.7%) respectively.

The application includes a written request to vary from the development standard, including necessary justification for the variation.

Council needs to be satisfied of the following matters when considering a variation to development standards:

- a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*

Compliance with the development standard is considered to be unreasonable and unnecessary for the following reasons:

- The existing building has a height of 11.5m, which is 3.0m higher than the development standard;
- The roofline of the proposed building, including the skylights, will sit well below the roofline of the existing building;

- The proposed height of the new building will not be out of character within the context of the site and the surrounding development;
- The main roof of the proposed additions will be consistent with the 8.5m height limit, with the exception of the three (3) skylights. The skylights form only a small percentage of the proposed roofing; and
- The height of the proposed skylights provide a height transition between the proposed building additions and the existing building.

b) That there are sufficient environmental planning grounds to justify contravening the development standard; and

It is considered that the following environmental planning grounds justify contravening the development standard:

- The height variation of the skylights does not compromise the environment;
- The proposed skylights do not have an adverse impact on the character of the heritage item on site or neighbouring heritage items;
- The proposed skylights are set well back from the property frontages and do not have an adverse impact on the streetscape or character of the Heritage Conservation Area; and
- The proposed skylights provide an architectural feature to the building. A reduction in height of the skylights would result in a poorer outcome.

c) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The objectives of the development standard set out in clause 4.3(1) are as follows:

- (a) To establish a maximum building height limit to which buildings can be designed in particular locations,*
- (b) To enable infill development that is of similar height to existing buildings and that is consistent with the heritage character of the towns of Mudgee, Gulgong, Kandos and Rylstone.*

It is considered that the proposed development will be in the public interest for the following reasons:

- The vast majority of the main roof of the proposed addition complies with the required 8.5m height limit;
- The skylights that exceed the height limit form only a minor proportion of roof elements in the proposed addition;
- The proposed development provides for the continued maintenance of the heritage item while having minimum impact on the heritage item; and
- The proposed development satisfies the zone objective of providing for the day to day needs of residents.

### 5.10 Heritage Conservation

The proposed development, involving demolition of a part of a heritage item and the erection of a new building in the vicinity of a heritage item, requires development consent in accordance with clause 5.10(2) of the LEP.

In accordance with Clause 5.10(4), Council is required to consider the effect of the proposed development on heritage significance. A Statement of Heritage Impact, submitted with the

application, demonstrates that the proposed works will have minimum impact on the heritage item and that the proposed use will contribute to the ongoing maintenance of the heritage item.

The components of the proposed development that require consideration against this clause are:

- (i) Remove existing verandah from rear of building.

The proposed verandah attached to the rear of the building has been identified as a later addition and its loss is not considered significant.

- (ii) Remove rear door and widen connection to new building.

The proposed removal of the rear door is required to provide a connection to the new building. The door itself is a later addition and does not have any significance in its own right. Widening of the aperture around the doorway will result in the loss of some brickwork. However, this loss is minor and will not have a significant impact on the heritage significance of the item.

- (iii) Remove internal partition wall (lower level).
- (iv) Remove internal partition wall (upper level).

The removal of the internal partition walls are required to open up the circulation area around the proposed lift. Following removal of the walls, the remains of the part wall to be removed will allow for the interpretation of the space as a former office. The removal of part of these internal walls is not considered to have a significant impact on the heritage item.

- (v) Insert lift.

It is proposed to install a lift within one of the former offices within the existing building. The proposed pre-fabricated lift may be installed within the building by creating a hole for the lift on the upper floor level only. The design of the lift does not appear to require penetration into the ceiling for the lift overrun. The proposed lift will provide disabled access to the upper level of the existing building while minimising the impact on the significant fabric in the heritage item. A condition is included in the recommendation requiring details of the lift to be approved prior to the issue of a Construction Certificate.

- (vi) New building.

The proposed new building addition is attached to the rear of the existing building and is set at an angle across the site. The point of connection between the two buildings minimises contact area while providing for access between the two buildings. By angling the building across the site, all four elevations of the existing building remain visible from the surrounding streets. The new building is lower in height than the existing building and has greater setbacks to the front boundary. The edge between the heritage item and the new modern building is clearly discernible. It is considered that the new building forms a practical addition while allowing the existing building to maintain its prominence on the corner of the site. It is considered that the new building does not adversely affect the heritage significance of the heritage item.

Council's Heritage Advisor has examined the proposal and has advised he is of the opinion that the proposed development is sympathetic to the heritage item and the heritage conservation area.

### 6.1 Salinity

A Geotechnical Investigation report, submitted with the development application found that the subsurface soil and groundwater conditions were not affected by salinity.

## 6.2 Flooding

The Stormwater Management Plan submitted with the development application states the following in relation to flooding:

*Mudgee's Local Creeks Floodplain risk Management Study and Plan, ...indicates that the site is flood affected. Flooding resulting from rainfall events over the upstream catchment appears to result in the greatest level of flooding to an estimated level of RL 449.5m AHD in the 1% AEP event. Current architectural drawings of the proposed development ...nominate a minimum Finished Floor Level (FFL) of 451.02m AHD which complies with a FFL freeboard requirement of 500mm above that 1% AEP flood level for all future developments.*

The finished floor level will be approximately 1.5m above the 1 in 100 flood level. The new building will be constructed on concrete footings, with a concrete floor. Wall materials below floor level will be blockwork or compressed fibre cement cladding. In this regard, flood compatible materials are used in the development. The proposed development is not expected to adversely affect flood behaviour and its impacts on neighbouring properties. The proposed development will not reduce the stability of the banks of watercourses. Consequently, it is considered that the proposed development is compatible with the flood constraints present on the site.

## 6.3 Earthworks

The proposal involves only minor earthworks to prepare the site for development. The proposed earthworks will not be significant in terms of the matters for consideration identified in this clause. Conditions have been applied to ensure compliance with the requirements of this clause. Matters to be addressed by conditions would include sediment erosion controls and the quality of fill imported to the site.

## 6.4 Groundwater Vulnerability

The proposed use is unlikely to result in significant pollution. Consequently, the proposed development is unlikely to lead to groundwater contamination, will not have adverse impacts on groundwater dependent ecosystems, and is unlikely to have any significant cumulative impact on groundwater.

## 6.9 Essential Services

All essential services that are relevant to the proposal are available or will be available as a result of the proposed development.

**(b) The provisions of any Development Control Plan or Council Policy – 4.15(1)(a)(iii)**

## **Mid Western Regional Development Control Plan 2013 (the DCP)**

### 4.4 Signs

Not applicable.

The development application does not include any signage.

### 4.5 Commercial Development

This section of the Development Control Plan normally applies to commercial development within Zone B3 Commercial Core. While the subject site is located within the R3 Medium Density

Residential zone, it is considered appropriate to assess the proposed *information and education facility* against the requirements of this section, as they provide the best fit of requirements for the proposed development.

Requirement	Comments
Building setbacks <ul style="list-style-type: none"> <li>• No minimum front boundary setbacks apply.</li> <li>• Side and rear boundary setbacks to comply with the BCA.</li> </ul>	Complies.  The proposed addition has a setback of 0.4m to the Douro Street frontage (measures to the balcony of the café) and 3.8m to the Market Street frontage.  The proposed addition is set back 4.87m from the side boundary and 13.6m to the rear boundary.
Design	Complies.  The development provides windows and doors to the street to encourage interaction between pedestrians and the community building. The building facades are articulated through variations in the building form and materials. The proposed development is sympathetic to the heritage item, without reproducing it. The development addresses both street frontages on the corner block.
Scale, form and height	Complies.  The proposed addition is generally 8.5m high. The minor variation to height limits posed by the skylights has been previously addressed in this report. The proposed development is generally consistent with the heritage character of the Mudgee town centre.
Articulation and façade composition	Complies.  The building façade is articulated through a mixture of roof lines, clad wall elements, glazing and landscaping.
Post supported verndahs and balconies	Not applicable.
Residential – commercial interface	Not applicable.
Utilities and services	Complies.  Water, sewer and drainage is available to the site. A condition will be applied requiring the submission and approval of a trade waste application. The proposed building additions are located clear of the sewer line.
Traffic and Access	Complies.  All vehicles are able to enter and exit the site in a forward direction. Vehicle movement paths will be sealed. All loading and unloading will

	occur within the site and not on the street.
Pedestrian Access	Complies.  Clear, safe and accessible pedestrian access is provided along the Douro and Market Street frontages and through the improved car park at the rear of the building.
Parking	Complies.  Adequate car parking has been provided for the proposed development.
Landscaping	Complies.  Existing trees will be retained in the vicinity of the car park. New plantings will be low maintenance, drought and frost tolerant species.

### 5.1 Car Parking

There is no specific car parking rate for *information and education facilities* in Council's DCP. The application includes a merit assessment demonstrating that the proposed number of parking spaces is sufficient to meet the needs of the proposed development. Conditions are recommended to ensure the proposed number of parking spaces are provided.

### 5.2 Flooding

The proposed development appropriately responds to the flood hazard on the site by including a 1.5m freeboard above the 1% AEP level.

### 5.3 Stormwater Management

A Stormwater Concept Plan has been provided with the application. Rainwater tanks are proposed to collect roof water from the building. Stormwater collected from the carpark will be directed to the on-site detention system adjacent to the on-site drainage channel. The application demonstrates that stormwater may be appropriately managed, in accordance with the requirements of this section of the DCP. Conditions have been imposed requiring compliance with the Stormwater Management Plan submitted with the application.

### 5.4 Environmental Controls

An Aboriginal Heritage Information Management System (AHIMS) search indicated that there are no known Aboriginal sites in the near vicinity of the proposed development.

The site is not identified as bush fire prone land.

The proposed building addition is set back an appropriate distance from the concrete lined drainage channel running through the western part of the site.

Normal business waste management measures will be employed. A condition is recommended requiring trade waste approval for the proposed kitchen.

### **(c) Provisions of any Planning Agreement or Draft Planning Agreement – 4.15(1)(a)(iia)**

No planning agreement applicable.



**(d) Regulations – 4.15(1)(a)(iv)**

Conditions prescribed by the Regulations are applied, where applicable. These conditions include requirements for compliance with the Building Code of Australia, signage for construction sites and excavation near property boundaries.

**(f) The likely impacts of development – 4.15(1)(b)**

***Context and Setting & Site Design and Internal Design***

The proposal is appropriate with regards to the surrounding context and setting.

***Access, transport and traffic***

**Traffic Generation**

The proposed development will have 8-9 staff. It is anticipated that the majority of visitors to the art gallery and tourist information centre will be existing tourist traffic already passing the site. The proposed café is intended to serve only visitors to the art gallery and tourist information centre and is not expected to generate traffic in its own right. In this regard, it is considered that the proposed development will involve only a minimum increase in traffic generation during daytime business hours.

The events and art classes will be conducted during the evening, outside of peak demands on the local traffic network. It is considered that the evening use of the development will not exceed the capacity of the local traffic network.

Traffic generation from the development is not expected to have an adverse impact on peak hour traffic or the functioning, capacity and safety of intersections in the local road network.

**Access**

A 6m wide 2-way access will be provided for the development. The proposed access can comply with Australian Standard AS2890.1- *Parking Facilities – Part 1: Off-street Car Parking*. A condition will be applied to ensure compliance. Both Market Street and Douro Street are sealed roads and provide ready access to the site. The application demonstrates that an 8.8m long Medium Rigid Vehicle can access the load dock and leave the site in a forward direction.

**Car Parking**

The proposed development provides 11 on-site parking spaces. *Mid-Western Regional Development Control Plan 2013* allows for consideration of frontage credits related to parking availability on the street. In this case, the proposed development may count 27 of the on-street parking spaces, being those spaces located directly in front of the property, as contributing to the parking supply for the development. In total, there are **38** parking spaces available for the proposed development.

The proposed development will be serviced by 8-9 staff members. No estimates of the number of visitors to the site have been included in the development application.

Neither *Mid-Western Regional Development Control Plan 2013* (MWR DCP 2013) nor the RTA's *Guide to Traffic Generating Developments* (RTA Guide) provide car parking rates for art galleries, tourist information centres or function centres. It is considered that the most appropriate parking

rates to use for assessment are those for office and commercial development. Various parking rates for office and commercial development are summarised in the following table.

Source	Use	Parking Rate
RTA Guide	Office and Commercial	1:40 m <sup>2</sup> GFA
MWR DCP 2013	Office and Business	1:30 m <sup>2</sup> GFA
MWR DCP 2013	Shop	1:30 m <sup>2</sup> GFA

The most stringent of the above parking rates, being 1:30 m<sup>2</sup>, will be used for this assessment.

The proposed café will operate as an ancillary use to the art gallery and tourist information centre and is not expected to generate its own parking demand. It is expected the guests for the café will be those visiting the art gallery and tourist information centre.

The floor area for the various components of the use has been broken down and summarised in the following table. These areas exclude areas that do not generate parking demand such as store rooms, stairways, toilets and circulation areas.

Component of Use	Floor Area
Gallery (new building)	306 m <sup>2</sup>
Tourist Information Centre	130 m <sup>2</sup>
Office (ground floor, existing building)	122 m <sup>2</sup>
Office/Seminar Room (upper floor)	108 m <sup>2</sup>
Office/Gallery (upper floor)	38 m <sup>2</sup>
<b>Total</b>	<b>704 m<sup>2</sup></b>

Using the car parking rate of 1:30 m<sup>2</sup>, the floor area of 704 m<sup>2</sup> will generate a requirement for 24 car parking spaces. There are 38 car parking spaces available for the development. It is considered that the proposed on-street and off-street car parking will be sufficient to meet the needs of the development.

### **Public Domain**

The development will not impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or pedestrian linkages between public spaces.

### **Utilities**

The proposed development is to be constructed in a built-up area and will have access to water, reticulated sewerage, electricity and stormwater infrastructure available to the site.

### **Heritage**

The Statement of Heritage Impact submitted with the development application indicates that the proposal will have a positive heritage result by retaining the former Cudgegong Council Chambers. The veranda attached to the rear of the building is not considered a significant element and there is no objection to its removal. The single storey building addition minimises its impact on the heritage item by having a lower roof height, incorporating articulation in the design and being set back further from the street than the heritage item.

The link between the building addition and the heritage item minimises the amount of significant fabric to be removed and provides a clear distinction between the old and the new building.

The new lift is proposed in a part of the building that connects to the circulation space of the existing building and is assessed as a feasible and discreet option. Although significant fabric is required to be removed, it will be possible to interpret this space as a former office.

Conditions are included in the recommendation to address detailed matters in relation to heritage conservation.

Council's Heritage Advisor has examined the proposal and supports the proposed development.

***Other land resources***

No impact expected on the conserving and the use of valuable land, such as productive agricultural land, mineral or extractive resources, or water supply catchments.

***Water***

The proposed development includes rainwater tanks. The proposal is not expected to create any water pollution issues, subject to a **condition** for sediment erosion controls during construction.

***Soils***

The proposed development will not have any negative impacts on soils, subject to a **condition** for sediment erosion controls during construction. The site is not mapped as being affected by saline soils. Despite this, a **condition** will be applied to ensure that the concrete used in the floor slab is Class 25 MPa concrete, to resist saline damage. The site is not considered to be effected by unstable soils or contaminants.

***Air and Microclimate***

The development is not expected to impact air quality or microclimatic conditions.

***Flora and Fauna***

There are no threatened fauna or flora species or habitat, or threatened ecological communities, evident on the site.

The proposed development includes the removal of 16 trees. The arborist report submitted with the application indicates that the trees to be removed have either a low or moderate retention value.

The 3 peppercorn trees located on the Market Street frontage were assessed as having a high retention value and are to be retained. A condition has been recommended accordingly.

***Waste***

Construction waste will be addressed by conditions. Effluent will be disposed of via the reticulated sewer system. Bins will be provided on site for office and kitchen waste collection. Waste bin collection will occur at the loading dock.

***Energy***

Not applicable.

***Noise and vibration.***

The proposal is not a use that will generate significant noise, except for a limited duration over the construction phase.

***Natural Hazards***

The site is not identified as being effected by geological/soil instability or bushfire prone.

The site is identified as flood prone. This has been discussed elsewhere in this report with a conclusion stating that the risk is managed by complying with a minimum floor level of 451.02m AHD.

***Technological Hazards***

There are no known risks to people, property or the biophysical environment, resulting from technological or industrial hazards, or building fire risk.

**Safety, security and crime prevention**

The design of the proposed development provides for suitable access control and generally conforms to the principles of Crime Prevention Through Environmental Design (CPTED).

**Economic and Social impact in the locality**

The proposed development will provide employment opportunities during construction and on an ongoing basis.

**Construction**

The impacts of construction activities may be regulated by conditions.

**Cumulative impacts**

There are no known impacts that have the potential to act in unison, in terms of space or time, or owing to their repetitive nature, that would produce an effect greater or different than the sum of the separate parts.

**(g) The Suitability of the Site for the Development – 4.15(1)(c)****Does the proposal fit in the locality?**

Yes. The proposed development fits into the mixed use context within which it sits. There are no hazardous land uses or activities nearby, there are no constraints posed by adjacent developments and there are adequate utilities and transport facilities in the area available for the development.

**Are the site attributes conducive to development?**

Yes. The proposed development is designed to respond to the flood constraints on the site. No adjoining land uses will have an adverse impact on the proposed development. The proposed development will have no impact on any critical habitat, threatened species, populations, ecological communities or endangered habitats on the site.

**(h) Submissions made in accordance with Act or Regulations – 4.15(1)(d)****Public submissions**

The application was advertised and notified in accordance with the provisions of MWRDCP 2013, Section 1.12 Community Consultation. Two (2) submissions were received in response to public notification of the proposed development. The primary concerns raised in submissions are summarised and addressed as follows:

**1. Incompatibility with Heritage Item**

**Staff comment:** The submissions raised the concern that the modern style and size of the art gallery and tourist information centre building clashes with the character of the existing Cudgegong Council Chambers building and its setting.

The assessment of the impact of the proposed development on the character of the heritage item is provided in a previous section of this report. In summary, the assessment indicates:

- The proposed modern building is a good design and responds to the constraints of the site.
- The edge between the heritage item and the new modern building is clearly discernible.
- The modern part of the building is well set back from the street frontages and the heritage item retains its prominence on the corner of the site.
- The modern part of development is lower in overall height than the heritage item.

**2. Loss of Large Trees Within the Grounds**

**Staff comment:** The proposed development will result in the removal of 15 large trees within the building footprint and car parking area. The arborist report and ecological assessment indicates that these trees are not endemic to the area and have low or moderate significance. Seventeen (17) key trees will be retained outside of the building envelope, including the 3 peppercorns trees noted as being of high significance.

**(i) The Public Interest – 4.15(1)(e)**

***Federal, state and local government interests and community interests***

There are no matters other than those discussed in the assessment of the Development Application above that would be considered to be contrary to the public interest.

***Covenants and easements effecting the proposal***

There are no easements over the site.

There is a restriction on the title restricting the use of the land. The use of the land is restricted to community purposes, for the primary purpose of an art gallery. The restriction order allows for ancillary uses where they are subordinate or subservient to the primary community purpose.

**CONSULTATIONS**

***Health and Building***

Council's Health and Building section have recommended conditions to address the detailed building matters. These conditions are incorporated in the recommendation.

***Development Engineer***

Council's Development Engineer has provided conditions to address the detailed engineering matters. These conditions are incorporated in the recommendation.

***Heritage Advisor***

Council's Heritage Advisor has indicated support for the proposed development and has provided conditions which are included in the recommendation.

***Water and Sewer Engineer***

Council's Senior Water and Sewer Engineer has stated that the proposed development requires an approval for discharging trade waste. A condition has been imposed requiring approval of a Trade Waste application.

**DEVELOPER CONTRIBUTIONS**

***Section 7.12 (formerly s94A) Contributions***

Not applicable.

The proposal constitutes public infrastructure to be carried out by or on behalf of a public authority, including Council, and is exempt from developer contributions under the *Mid-Western Regional Contributions Plan 2019*.

***Section 64 Contributions***

The proposed development is located within a water and sewer servicing area and contributions in accordance with Council's Water and Sewer Development Servicing Plans are applicable.

The existing building carries credits for water and sewer contributions. Contributions are payable for the new building. Conditions are included to ensure the payment of necessary contributions.

## Community Plan implications

<b>Theme</b>	<b>Protecting Our Natural Environment</b>
Goal	Protect and enhance our natural environment
Strategy	Ensure land use planning and management enhances and protects biodiversity and natural heritage

## Strategic implications

### Council Strategies

Mid-Western Regional Local Environmental Plan 2012  
Mid-Western Regional Development Control Plan 2013  
Mid-Western Regional Contributions Plan 2019  
Mid-Western Regional Development Servicing Plan

### Council Policies

Not applicable.

### Legislation

Environmental Planning and Assessment Act 1979

## Financial implications

Not applicable.

## Associated Risks

The recommendation of staff is to approve the development subject to conditions provided above. Should Council refuse the development application, the applicant may seek a further review of this decision or appeal through the Land and Environment Court.

ILIJA SUSNJA  
SENIOR TOWN PLANNER

LINDSAY DUNSTAN  
MANAGER, STATUTORY PLANNING

JULIE ROBERTSON  
DIRECTOR DEVELOPMENT

20 November 2019

*Attachments:*

1. Plans of proposed development.
2. Copy of submissions.
3. Comments from Council's Heritage Advisor.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



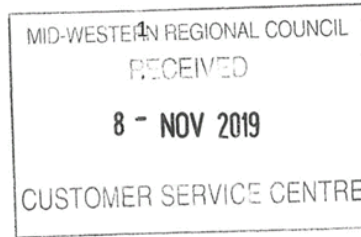








The General Manager,  
Mid-Western Regional Council,  
86 Market Street,  
MUDGEE NSW 2850



7th November, 2019

Dear Sir,

**Alterations and Additions to Existing Building for the purpose of an Art Gallery and Tourist Information Centre**

**Lot 113 DP 48439, 90 Market Street, MUDGEE NSW 2850**

**DA0102/2020**

**Mid-Western Regional Council**



I wish to lodge my objection to the abovementioned Development Application.

I am a 5th generation life-long resident of Mudgee and I have a great appreciation and affection for my hometown's magnificent heritage buildings and its rich history, being the second oldest town west of the Blue Mountains. The stately heritage buildings in the central area of town are a huge asset to this regional country town and they are greatly valued by the community. Our grand heritage buildings are also greatly appreciated by tourists.

In acknowledgment of the importance of preserving our heritage, in 1987 the then State Government, to their great credit, undertook a \$600,000 refurbishment of the Cudgegong Shire Chambers building; after it had been vacant for a considerable number of years. The State Government undertook the refurbishment with great attention to detail and being extremely mindful to match the original paint colours and preserve the integrity of this heritage building. Even the air-conditioning vents were located within the existing fire places so that they would not detract from the heritage integrity.

The Cudgegong Shire Chambers building is one of our grand heritage listed buildings under the Mid-Western Regional Council Local Environment Plan. It has stood proudly in a prominent position on the Corner of Market and Douro Streets since the mid 1880s. On its western side, the Cudgegong Shire Chambers building is set amongst magnificent mature trees and this park-like setting further enhances the streetscape on the approach from the west; also further enhancing the stateliness and elegance of this heritage building.

To the west of the gardens are two more of our locally heritage listed buildings; the Police Station and lock-up building and the Court House. On the opposite corner to the South is the locally heritage listed Parkview Hotel and on the North-east corner is another locally heritage listed building. All of these buildings form part of the Heritage Conservation Zone under the LEP.

On the diagonal (South-East) corner is the picturesque Robertson Park with its magnificent trees and heritage rotunda and war memorial monument.

So, I was greatly dismayed to see the modern building that is being proposed in DA0102/2020 to be built on the Market Street frontage and which has the appearance of an alien structure bursting forth from the side of the magnificent heritage listed Cudgegong Shire Council Chambers.

Whilst the proposed modern art gallery building is not offensive to the eye of itself, it is completely out of place and a blight in this setting amongst the magnificent heritage buildings. It has a rather unfortunate appearance of growing out of the side of the Cudgegong Shire Chambers and its modern angles are such a harsh juxtaposition with the elegant arched windows and stateliness of the Cudgegong Council Chambers building.

The proposed modern art gallery building has the effect of dominating and ruining the streetscape frontage view of the heritage listed Cudgegong Shire Chambers building and its setting; and it has an unacceptable negative impact on the streetscape view of the Heritage Conservation Area.

Furthermore, the erection of the modern-design art gallery building on the Market Street frontage will necessitate the obliteration of several magnificent mature trees that currently grace the gardens to the west of the Cudgegong Shire Chambers. This loss of what is presently a picturesque setting on the Market Street frontage, to be replaced with a dominating modern, angled building would be extremely detrimental to this area of the Heritage Conservation Zone.

It is noted that the Big W building, now standing to the rear of the site of the former Kellett's building, was required to be set back from the street frontage and for the facade of the new building to reflect the architecture of the facade of the original Kelletts building that was destroyed by fire in 1971; in order not to detract from the streetscape view of the heritage buildings in the vicinity.

In summary, taking all of the preceding observations into account, I would draw your attention to the following:

**Adaptive Reuse:** A Federal Department of Environment Heritage report dated 2004 on Adaptive Reuse states: "*the adaptive reuse of a historic building should have minimal impact on the heritage significance of the building and its setting.....Adaptive reuse is self-defeating if it fails to protect the heritage values.*"

Cl.1.2(e)(iv) of MWR LEP is designed to conserve "*the significant visual elements that contribute to the rural character of Mudjee.... such as the main entry corridors into Mudjee*". The proposed modern, angular design of the Art Gallery building will dominate the view of the Cudgegong Shire Chambers building and its present setting amongst mature trees and open space and from the main western approach into town and from the southern (Douro Street) by-pass approach.

This modern, angular structure is aesthetically foreign in design to other properties in this vicinity, a Heritage Conservation Area and is thus not consistent with cl.5.3(4)(a)&(b) of MWR LEP; designed "*to ensure that new development is compatible with the historic architectural character and streetscapes of the Mudjee commercial core area.*"

Both the Council's own LEP and Heritage Conservation Fact Sheet spell out the importance of **conserving the setting and views** of a heritage listed property.

The setting and views of the Cudgegong Shire Chambers is of as much heritage significance as is the building itself.

I would respectfully implore the Council to reject DA0102/2020 and to explore the possibility of siting the new art gallery building to the rear of the Cudgegong Shire Chambers where it would not detract so visibly from the Market Street frontage and setting of the Cudgegong Shire Chambers building and the heritage buildings located in the vicinity.

Siting the new art gallery building to the Douro Street frontage, and to the rear of the Cudgegong Shire Chambers building would also not require the destruction of mature trees and the loss of the garden setting to the west of the Cudgegong Shire Chambers. The garden and trees could remain and become an attractive and tranquil feature to be enjoyed by visitors to the art gallery with the addition of outside seating and garden sculptures.

Yours sincerely,



Carolyne Falson

67 Mulgoa Way,  
Mudgee NSW 2850

**Ilija Susnja**

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**From:** council@midwestern.nsw.gov.au  
**Sent:** Friday, 8 November 2019 8:36 AM  
**To:** Council  
**Subject:** Submission E-Form

Caution: This email originated from outside the organisation.

todaysdate : 08/11/2019

developmentapplicationnumber : DA0102/2020

proposeddevelopment : Art Gallery/Tourist Centre 90 Market Street Mudgee

Emailaddress : pfalson@bigpond.net.au

Yourname : Peter Falson

Address : 67 Mulgoa Way Mudgee

phonenumber : 0429991019

reasonsforsubmission : The design of the new building is quite acceptable. However, the location is not. The new building will dominate and drown the former Cudgegong Council Chambers (CCC). The CCC has a special aesthetic and heritage appeal, being of exceptional construction and enjoying a prominent corner location; its' visual and street appeal further enhanced by the surrounding spacious grounds. The new building is to be sited amidst several authentic and largely unaltered heritage buildings, many being of considerable social importance and dating to Victorian and Colonial times. The new building will have a detrimental effect in terms of heritage significance for this important precinct, contrary to the aims of the LEP. The DA states that the proposed development "will encourage active use and appreciation of the heritage building and surrounding grounds." However, the plans detail that for the most part the CCC will be used as offices! In addition much of the surrounding grounds, presently providing a pleasant background to the impressive CCC, will be taken up by the new building. In summary, a pleasing new structure , but not there! It is disappointing that the complete DA was not put on the Council website for a more comprehensive public viewing of this important proposal; to be built entirely with public money. Also, on 21st October, the Council Facebook site announced a "Sneak Peek" of the proposed building. In response to several negative on-line comments, the Council, on 24th October, responded on-line by saying that this was but a "concept design" and "that the public would have a chance to provide formal feedback on the final design in coming weeks when a DA is lodged." The DA had already been lodged...on 18th October! Most confusing.

politicaldonationsrequirements : Yes

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**PRIVATE AND CONFIDENTIAL - MIDWESTERN REGIONAL COUNCIL**

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**MID-WESTERN REGIONAL COUNCIL  
HERITAGE MEMORANDUM**

**TO:** ILIJA SUSNJA  
**FROM:** HERITAGE AND URBAN DESIGN ADVISER  
**REF:** DA 0102/2020: 90 MARKET STREET, MUDGEE  
**DATE:** 13 NOVEMBER 2019

**Introduction**

The proposal is to adaptively re-use extend the former Cudgegong Shire Chambers as an art gallery and tourist information centre. The existing building is listed in Schedule 5 of the LEP as an item of environmental heritage, is within the Mudgee Heritage Conservation Area, and is in the vicinity of several other listed items. The building occupies only a corner of the site, though it is the most prominent corner.

The application is supported by a competent Statement of Heritage Impact by Elizabeth Evans which in turn is based on a Conservation Management Plan by Urbis. The SOHI includes the following Statement of Significance for the item:

The former Cudgegong Council Chambers is an historic record of the importance of Cudgegong as a separate municipality from 1860, built in in 1882 and in use by Cudgegong Council from 1885. The later layers of use by State government departments from c1979 are also recorded, though this use and associated changes are assessed as been of less significance. The building has architectural significance in the design by the architect Duncan Macfarlane, who designed other public buildings in Mudgee including the CBC Bank. The former Cudgegong Council Chambers is a finely proportioned building and an example of the Victorian Free Classical style with characteristics that include a symmetrical façade, prominent portico, and arched windows with freer and unconventional details of the mouldings both to the portico and label moulds, simple intermediate cornice, bracketed eaves and face brick facade. Its architectural qualities and prominent corner location within sight of the Robertson Park enhance the aesthetic significance of the town centre.

The former Cudgegong Council Chambers is likely to be valued by the local community of Mudgee as an historic public and landmark building in the main street of Mudgee.

The SOHI is accepted for purposes of this assessment, with the added observation that the item's heritage values are also present in its largely intact interior.

**The proposal**

The proposal involves internal alterations, notably the installation of a lift; external alterations at the rear; and a large contemporary complex, on one level but large in scale, angled on the site.

**Assessment: internal alterations**

The proposal requires a lift to be inserted in the middle of a room; the creation of new openings in an internal wall; and the closing up of a wide non-original opening. In earlier discussions the possibility of locating a lift in the corner of this room or on the exterior of the building was discussed. The present location is to be preferred to either of these. Of course any lift will require alteration to heritage fabric, but it will be necessary and indeed desirable for the building to comply with the Premises Standards. This aspect is supported.

**Assessment: external alterations**

The CMP confirms an on-site observation that the back veranda is not original. Its removal is acceptable. The doorway and window are significant fabric but the changes are necessary for the adaptive re-use of the building.

The design of the proposed new and very deep awning on the western side would have required the label moulds over two windows to be removed or obscured. The design has now been modified as suggested in the SOHI 6.2.6 and is considered satisfactory.

**Assessment: extensions**

Clearly a fundamental issue with the proposal is the architectural (visual and spatial) relationship between the existing building and the extensions.

The extensions have a rather larger footprint than the existing building. Consequently there can be no suggestion that it imitate, or even reflect, the heritage item. It must be, as it is, a contemporary element in its own right. That said, it needs to complement, not overwhelm or compete with, the item. In that regard it is considered to succeed.

The item remains visible in three dimensions, and set somewhat apart, thanks to the angling of the extensions. The massing is broken up into several large forms, and the composition is pleasing.

Like most public buildings of its time, the item is large in *scale* (in the sense of the size of building elements in relation to the human body). In particular, the ceilings are quite high. The extensions are actually even larger in scale. For example, the glass wall nearest to Market Street is three times the height of an adult. Such heights are of course necessary when internal areas are large, as they must be in a gallery. This could have been a concern, but the item, being of two storeys, is considerably higher, and is relatively compact, so that the juxtaposition is visually successful,

The simple, strong form of the item is enriched by the colours and texture of the brickwork and the rendered mouldings. The extensions feature unadorned, flat surfaces which again complement the item. The colour scheme appears to be sympatric, though a physical sample board should be required.

**Assessment: proposed use**

The building has not been used for some years. Adaptive re-use is to be encouraged, not only because it usually leads to better maintenance, but because users are able to continue to appreciate an item. Adaptive re-use works best when minimal alterations to internal and external fabric and spaces are required. The proposal will see a public building once more open to the public. The main change, the lift, is necessary for that or any other new use, and will enable disabled people to access the upper floor.

**Recommendation**

The proposal is supported, subject to the following conditions/receipt of satisfactory information:

1. A board with samples of proposed colours and finishes is to be submitted and approved by Council's Heritage and Urban Design Adviser prior to the issue of a Construction Certificate, and the work is to be completed in accordance with the approved sample board before the issue of an Occupation Certificate.



2. A photographic archival record of the heritage item prepared in accordance with the Heritage Council publication *Photographic Recording of Heritage Items using Film or Digital Capture* including one bound hard copy is to be submitted to and approved by Council's Heritage and Urban Design Adviser prior to the issue of a Construction Certificate.
3. An interpretation plan for the item is to be prepared by a suitably qualified heritage consultant. The plan is to set out recommendations for introduced material and presentation of the fabric which will help to convey the heritage significance of the item to users and visitors. The plan is to be submitted to and approved by Council's Heritage and Urban Design Adviser prior to the issue of a Construction Certificate and implemented to the satisfaction of the Adviser before the issue of an Occupation Certificate.
4. The work listed in the Heritage Asset Conservation Plan prepared by Urbis Pty. Ltd. dated October 2013, Part 4: Capital Works, Table 2, is to be completed to the satisfaction of the PCA before the issue of an Occupation Certificate, unless it can be demonstrated that the work had already been satisfactorily completed.