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WALES & ASSOCIATES
URBAN DESIGN PARTNERS

Ref: #051/2024
7th November 2024

The General Manager
Central Coast Council
P.O. Box 20
WYONG 2259

Dear Sir,

**SECTION 4.55(1A) MODIFICATION TO DA/48230/2015
Demolition, Restoration & Conservation of Existing Heritage Building For Retail &
Commercial Use & Construction of Two Residential Units & Verandah
#68 Railway Street at Woy Woy**

This application has been prepared by Wales & Associates on behalf of Bruce Kerr Pty Limited is made to Central Coast Council (Council), seeking amendment to DA/48230/2015 Part 1 dated 18th May 2016 and subsequently amended on the 12th January 2017 (ie: DA/48230/2025 Part 2) which is approved as:-

“Demolition, Restoration & Conservation of Existing Heritage Building For Retail & Commercial Use & Construction of Two Residential Units & Verandah”

The amendment is sought pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification arises from a review of the structural requirements during the construction phase resulting in the minor changes described in the submission.

This submission describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in Section 4.55(1A) of the Environmental Planning & Assessment Act and is supported by the amended **Architectural Plans** prepared by *Michael Standley & Associates* (see attached).

1.0 THE SITE

The development application DA/48230/2015 Part 1 (as modified) relates to land known as #68 Railway Street at Woy Woy legally described as Lot 12 in DP1009830 (see **Figure 1** for aerial image). The site is gently sloping on the corner of Railway Street and Charlton Street land which has been developed for commercial and residential development consisting of one (1) commercial shop and two (2) residential units.

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The site is subject of a detailed development approval (DA/48230/2015 Part 1) dated the 18th May 2016 for partial demolition, restoration and conservation of existing heritage building for retail and commercial use together with the construction of two residential units. This was subsequently amended by DA/48230/2015 Part 2 dated 12th January 2017. The site is occupied by the existing heritage building know as Mrs Wilson’s Shop and two residential units as shown in *Figure 2*.

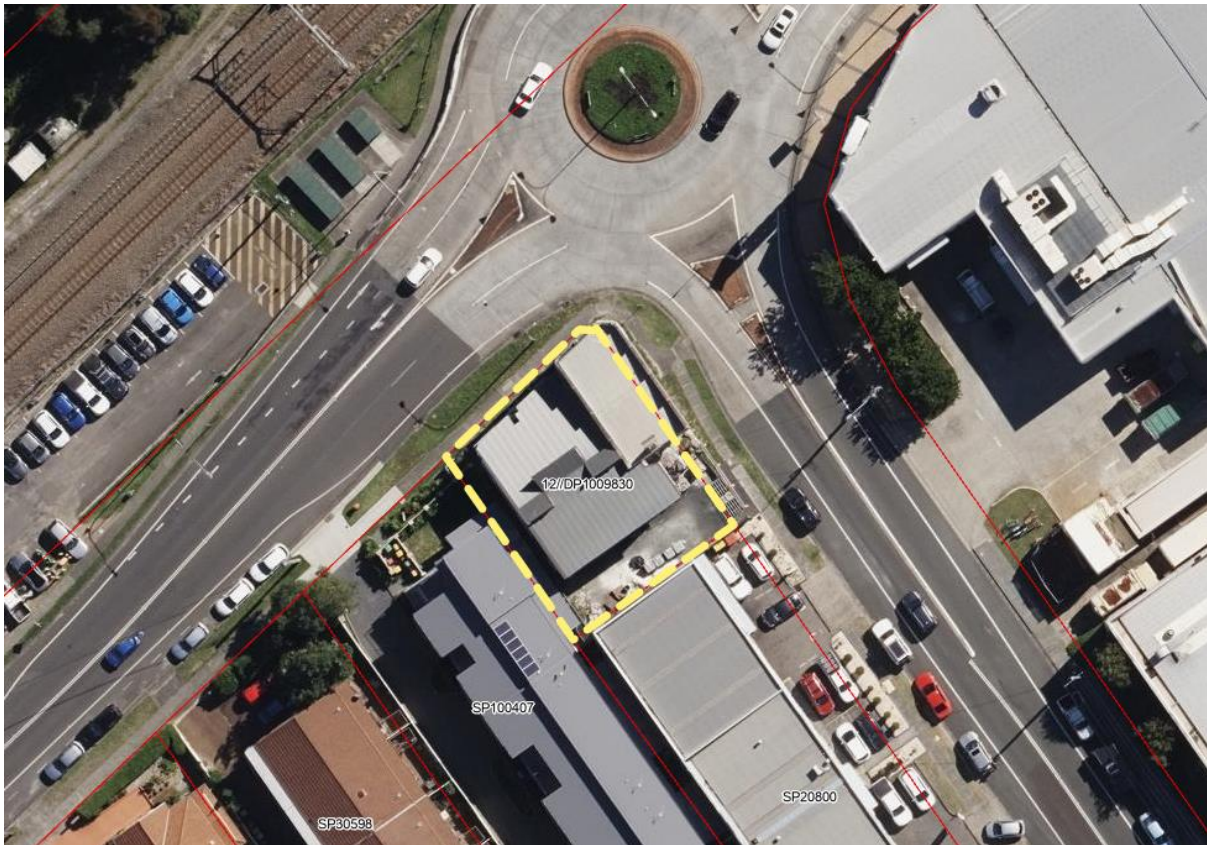


Figure 1
Aerial Photograph
(image courtesy of NSW Department of Planning – Spatial Viewer)

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3.



Figure 2
Image showing the existing commercial/residential development
 (image courtesy of Google Earth Pro)

2.0 BACKGROUND

On the 18th May 2016, Central Coast Council granted consent for the alterations and additions to the partial demolition, restoration and conservation of existing heritage building for retail and commercial use together with the construction of two residential units. This was assessed under DA/48230/2015 Part 1. This was amended by way of DA/48230/2015 Part 2 dated 12th January 2017 as shown in **Table 1**.

Table 1
Recent Development Consent History

Application	Description	Approved
DA/48230/2015 Part 1	Partial demolition, restoration and conservation of existing heritage building for retail and commercial use together with the construction of two residential units	18 th May 2015
DA/48230/2015 Part 2	Modification to delete Condition #3.5	12 th January 2017

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3.0 PROPOSED MODIFICATIONS TO THE DEVELOPMENT

3.1 *General*

This modification application proposes the following amendments to the approved development as shown in **Table 2**. The modification arises from a review of the structural requirements during the construction phase resulting in the minor changes described in the submission. The proposed modifications to the approved architectural plans seek to include:-

Drawing No. 1357:A3: 101

- (i) in order to support the cantilevered balcony, a steel structure was required within the building. These steel and brick columns support cantilevered beams to enable the elimination of the original columns on the footpath;
- (ii) extent of balcony amended
- (iii) stair modified to comply with BCA 2016 Amendment 1, Cl D3.3 (a) (ii);
- (iv) front door changed to single door in lieu of double door;
- (v) proposed new stair complying with BCA 2016 Amendment 1. Part D;
- (vi) proposed WC under stair;
- (vii) existing internal walls proposed to be demolished;
- (viii) proposed cabinets; and
- (ix) gate relocated

Drawing No. 1357:A3: 102

- (i) new shower room relocated because there is insufficient headroom over proposed complying stair;
- (ii) extent of balcony amended to suit steel cantilevered structure;
- (iii) minor adjustment to floor level;
- (iv) balcony floor level amended to suit cantilevered steel structure. The steel structure had to be located below the existing 300mm deep floor joists;
- (v) new stair complying with BCA 2016 Amendment 1; and
- (vi) steps at doors for access to balcony

Drawing No. 1357:A3: 201

- (i) awning/balcony lowered 330mm in order accommodate cantilevered steel beams under the internal floor to enable the elimination of the original columns on the footpath. Detail of balcony balustrade amended. Sign boards lowered in unison with the balcony, the lower edge of the boards will be minimum 2790mm above ground level which exceeds the minimum of 2.6 metres required by Cl. 2.15.2.4 of Central Coast DCP 2022;
- (ii) in order to support the cantilevered balcony, a steel structure was required within the building. These steel and brick columns support cantilevered beams to enable the elimination of the original columns on the footpath;
- (iii) front door changed from double doors to single door in order to comply with BCA 2016 Amendment 1, Part D2;

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- (iv) first floor level (front part) reduced by 30mm to match surveyed level of existing building. Ground Floor front raised to RL2.05m AHD to match rear portion of building.

Drawing No. 1357:A3: 202

- (i) electrical meter board added;
- (ii) mail boxes added;
- (iii) raked top to wall to match original building detail;
- (iv) gate detail amended
- (v) awning/balcony lowered 300mm in order accommodate cantilevered steel beams under the internal floor to enable the elimination of the original columns on the footpath. Detail of balcony balustrade amended. Sign boards lowered in unison with the balcony, the lower edge of the boards will be minimum 2790mm above ground level which exceeds the minimum of 2.6m. required by Cl. 2.15.2.4 of Central Coast DCP 2022;
- (vi) in order to support the cantilevered balcony, a steel structure was required within the building. These steel and brick columns support cantilevered beams to enable the elimination of the original columns on the footpath;
- (vii) front door changed from double doors to single door in order to comply with BCA 2016 Amendment 1, Part D2;
- (viii) first floor level (front part) reduced by 30mm to match surveyed level of existing building. Balcony floor reduced by 330mm to accommodate steel structure (see vi and vii above). Ground Floor raised to RL2.05m AHD to match rear portion of building;
- (ix) power connection pole added; and
- (x) render band was existing and has been restored but was not shown on the original DA drawing.

Drawing No. 1357:A3: 203

- (i) brick header arches above rear doors deleted as they were not present on the original doorways. Doors now show with the top half glazed;
- (ii) awning/balcony lowered 330mm in order accommodate cantilevered steel beams under the internal floor to enable the elimination of the original columns on the footpath. Detail of balcony balustrade amended. Sign boards lowered in unison with the balcony, the lower edge of the boards will be minimum 2790mm above ground level which exceeds the minimum of 2.6 metres required by Cl. 2.15.2.4 of Central Coast DCP 2022;
- (iii) ground Floor front raised to RL2.05m AHD to match rear portion of building. The ground floor rear is actually RL2.05m AHD.

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Table 2
Proposed Modifications and Environmental Assessment
Architectural Plans

Modification	Assessment of Environmental Impact
Drawing No. DA00 (REV A) "Cover Page".	Drawing No. DA00 (REV A) remains unchanged
Drawing No. DA01 (REV A) "Site Plan".	Drawing No. DA01 (REV A) remains unchanged
Drawing No. DA101 (REV A) "Ground Floor Plan" is a new plan to partly replace Drawing No. DA02 (REV A) "Ground Floor Plan"	<p>The appended Architectural Plans prepared by <i>Michael Standley & Associates</i> are generally consistent with the approved plans. Drawing No. DA02 (REV A) has been partly replaced to show:-</p> <ul style="list-style-type: none"> (i) no change to the approved residential units; (ii) internal steel structure to support cantilevered beams to enable the elimination of the original columns on the footpath; (iii) extended balcony over footpath; (iv) modified stair to comply with BCA 2016 Amendment 1, Cl D3.3 (a) (ii); (v) front door changed to single door in lieu of double door; (vi) proposed new stair complying with BCA 2016 Amendment 1. Part D; (vii) proposed WC under stair; (viii) existing internal walls to be demolished; (ix) proposed new cabinets; and (x) relocated gate
Drawing No. DA102 (REV A) "First Floor Plan" to replace Drawing No. DA03 (REV A) "First Floor Plan"	<p>The appended Architectural Plans prepared by <i>Michael Standley & Associates</i> are generally consistent with the approved plans. Drawing No. DA03 (REV A) has been partly replaced to show:-</p> <ul style="list-style-type: none"> (i) no change to the approved residential units; (ii) new shower room relocated due to insufficient headroom over proposed complying stair; (iii) extent of balcony amended to suit steel cantilevered structure; (iv) minor adjustment to floor level; (v) balcony floor level amended to suit cantilevered steel structure. The steel structure had to be located below the existing 300mm deep floor joists; (vi) new stair complying with BCA 2016 Amendment 1; and (vii) steps at doors for access to balcony

Table 2
Proposed Modifications and Environmental Assessment
Architectural Plans
 (continued)

Modification	Assessment of Environmental Impact
Drawing No. DA04 (REV A) "Roof Plan"	Drawing No. DA04 (REV A) remains unchanged
Drawing No. DA201 (REV A) "Railway Street Elevation" to replace Drawing No. DA05 (REV A) "North Elevation – Railway Street"	<p>The appended Architectural Plans prepared by <i>Michael Standley & Associates</i> are generally consistent with the approved plans. Drawing No. DA05 (REV A) has been partly replaced to show:-</p> <ul style="list-style-type: none"> (i) no change to the approved residential units; (ii) awning/balcony lowered 330mm in order accommodate cantilevered steel beams under the internal floor to enable the elimination of the original columns on the footpath. Detail of balcony balustrade amended. Sign boards lowered in unison with the balcony, the lower edge of the boards will be minimum 2790mm above ground level which exceeds the minimum of 2.6 metres required by Cl. 2.15.2.4 of Central Coast DCP 2022; (iii) internal steel structure to support cantilevered beams to enable the elimination of the original columns on the footpath; (iv) front door changed from double doors to single door in order to comply with BCA 2016 Amendment 1, Part D2;
Drawing No. DA202 (REV A) "Charlton Street Elevation" to replace Drawing No. DA06 (REV A) "East Elevation – Charlton Street"	<p>The appended Architectural Plans prepared by <i>Michael Standley & Associates</i> are generally consistent with the approved plans. Drawing No. DA06 (REV A) has been partly replaced to show:-</p> <ul style="list-style-type: none"> (i) no change to the approved residential units; (ii) the electrical meter board added; (iii) the mail boxes added; (iv) the raked top to wall to match original building detail; (v) amended gate detail; (vi) the awning/balcony lowered 300mm in order accommodate cantilevered steel beams under the internal floor to enable the elimination of the original columns on the footpath. (vii) amended balcony balustrade detail;

Table 2
Proposed Modifications and Environmental Assessment
Architectural Plans
(continued)

Modification	Assessment of Environmental Impact
Drawing No. DA202 (REV A) "Charlton Street Elevation" to replace Drawing No. DA06 (REV A) "East Elevation – Charlton Street (continued)	<ul style="list-style-type: none"> (viii) sign boards lowered in unison with the balcony. The lower edge of the boards will be minimum 2790mm above ground level. This exceeds the minimum of 2.6 metres required by Cl. 2.15.2.4 of Central Coast DCP 2022; (ix) the internal steel support structure (required to support the cantilevered balcony). These steel and brick columns support cantilevered beams to enable the elimination of the original columns on the footpath; (x) the front door changed from double doors to single door in order to comply with BCA 2016 Amendment 1, Part D2; (xi) the first floor level (front part) reduced by 30mm to match surveyed level of existing building. Balcony floor reduced by 330mm to accommodate steel structure. Ground Floor raised to RL2.05m AHD to match rear portion of building; (xii) the power connection pole added; and (xiii) the render band that was existing and has been restored. This was not shown on the original DA drawing.
Drawing No. DA07 (REV A) "West Elevation"	Drawing No. DA07 (REV A) remains unchanged
Drawing No. DA203 (REV A) "South Elevation" to replace Drawing No. DA08 (REV A) "South Elevation"	<p>The appended Architectural Plans prepared by <i>Michael Standley & Associates</i> are generally consistent with the approved plans. Drawing No. DA08 (REV A) has been partly replaced to show:-</p> <ul style="list-style-type: none"> (i) the brick header arches above rear doors deleted as they were not present on the original doorways. Doors now show with the top half glazed; (ii) the awning/balcony lowered 330mm in order accommodate cantilevered steel beams under the internal floor to enable the elimination of the original columns on the footpath.

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Table 2
Proposed Modifications and Environmental Assessment
Architectural Plans
(continued)

Modification	Assessment of Environmental Impact
Drawing No. DA203 (REV A) "South Elevation" to replace Drawing No. DA08 (REV A) "South Elevation" (continued).	(iii) the amended detail of balcony balustrade. (iv) the sign boards lowered in unison with the balcony. The lower edge of the boards will be a minimum 2790mm above ground level. This exceeds the minimum of 2.6 metres required by Cl. 2.15.2.4 of Central Coast DCP 2022; and (v) the Ground Floor front raised to RL2.05m AHD to match rear portion of building. The ground floor rear is actually RL2.05m AHD.
Drawing No. DA09 (REV A) "Section AA"	Drawing No. DA09 (REV A) remains unchanged
Drawing No. DA10 (REV A) "Section BB"	Drawing No. DA10 (REV A) remains unchanged
Drawing No. DA11 (REV A) "Shadow Diagrams"	Drawing No. DA11 (REV A) remains unchanged
Drawing No. DA12 (REV A) "Swept Path A"	Drawing No. DA12 (REV A) remains unchanged
Drawing No. DA13 (REV A) "Swept Path B"	Drawing No. DA13 (REV A) remains unchanged
Drawing No. DA14 (REV A) "Swept Path C"	Drawing No. DA14 (REV A) remains unchanged
Drawing No. DA15 (REV A) "Swept Path D"	Drawing No. DA15 (REV A) remains unchanged

3.2 Plan Modifications

The following modifications are proposed as shown in **Table 3**:-

Table 3
Amendments to Approved Plans – Architecturals

Plan Title	Sheet No.	Issue	Date
Cover Page (Eeles Trelease Architects)	DA00	A	12 th August 2015
Site Plan (Eeles Trelease Architects)	DA00	A	12 th August 2015
Site Plan (Eeles Trelease Architects)	DA02	A	12th August 2015
Ground Floor Plan (Michael Standley & Associates Pty Limited)	DA101	A	6th November 2024

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Table 3
Amendments to Approved Plans – Architecturals
(continued)

Plan Title	Sheet No.	Issue	Date
First Floor Plan (Eeles Trelease Architects)	DA03	A	12 th August 2015
First Floor Plan (Michael Standley & Associates Pty Limited)	DA102	A	6th November 2024
Roof Plan (Eeles Trelease Architects)	DA04	A	12 th August 2015
North Elevation – Railway Street (Eeles Trelease Architects)	DA05	A	12 th August 2015
Railway Street Elevation (Michael Standley & Associates Pty Limited)	DA201	A	6th November 2024
East Elevation – Charlton Street (Eeles Trelease Architects)	DA06	A	12 th August 2015
Charlton Street Elevation (Michael Standley & Associates Pty Limited)	DA202	A	6th November 2024
West Elevation (Eeles Trelease Architects)	DA07	A	12 th August 2015
South Elevation (Eeles Trelease Architects)	DA08	A	12 th August 2015
South Elevation (Michael Standley & Associates Pty Limited)	DA203	A	6th November 2024
Section AA (Eeles Trelease Architects)	DA09	A	12 th August 2015
Section BB (Eeles Trelease Architects)	DA10	A	12 th August 2015
Shadow Diagrams (Eeles Trelease Architects)	DA11	A	12 th August 2015
Swept Path A (Eeles Trelease Architects)	DA12	A	12 th August 2015
Swept Path B (Eeles Trelease Architects)	DA13	A	12 th August 2015
Swept Path C (Eeles Trelease Architects)	DA14	A	12 th August 2015
Swept Path D (Eeles Trelease Architects)	DA15	A	12 th August 2015

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4.0 PLANNING ASSESSMENT

4.1 *Environmental Assessment*

Section 4.55(3) of the EP& A Act requires the consent authority to “take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application”.

The Statement of Environmental Effects submitted as part of original development application addressed:-

- (i) the site description;
- (ii) a full description of the proposal;
- (iii) the present use of the land;
- (iv) the assessment of the relevant planning standards under the Gosford Local Environmental Plan 2014 (in force at the time the consent was issued);
- (v) the assessment of the relevant DCP controls under the Gosford DCP 2013 (in force at the time the consent was issued); and
- (vi) any potential environmental impacts

Notwithstanding, the following review of the relevant planning instruments and development controls is made.

4.1.1 Gosford Local Environmental Plan 2014

The following assessment is made in relation to the relevant clauses within the Gosford LEP 2014 as detailed in **Table 4**.

Table 4
Compliance with Gosford LEP 2014

Clause	Comment	Compliance
<u>Clause 2.7</u> – Demolition requires development consent	Demolition is permissible.	YES
<u>Clause 4.3</u> – Height of Buildings	The maximum building height is 11 metres. The building height will not alter as a result of the modification.	YES
<u>Clause 4.4</u> – Floor Space Ratio	The maximum floor space ratio is 0.85 to 1. There is no change to the floor space ratio.	YES
<u>Clause 5.10</u> – Heritage Conservation	The site is heritage listed and is supported by the attached Statement of Heritage Impact prepared by <i>John Carr Heritage Design</i> .	YES

Table 4
Compliance with Central Coast LEP 2014
 (continued)

Clause	Comment	Compliance
<u>Clause 5.21</u> – Flood Planning	As the property is encoded as being affected by the 1% AEP storm event, the required minimum floor level is RL2.45m AHD. The proposed modification does not alter or impact on the approved minimum floor levels noting that the commercial component is approved at RL2.05m AHD.	YES
<u>Clause 6.2</u> – Public Utility Infrastructure	The subject site is fully serviced by a range of public utilities including water, sewerage, power and telecommunications. The amendment does not impact of the available public utilities.	YES
<u>Clause 7.1</u> – Acid Sulfate Soils	The subject site is Class 2 and Class 3 acid sulfate soils. However, the proposed amendment does not impact on the soil classifications.	YES

4.1.2 Gosford Development Control Plan 2014

The following assessment is made in relation to the relevant clauses within the Gosford Development Control Plan 2014 (which was in force at the time of the original consent) as detailed in *Table 5*:-

Table 5
Compliance with the Gosford DCP 2013

Clause	Comment	Compliance
Part 2 – Scenic Quality and Character		
<u>Chapter 2.1</u> – Character	The proposed modifications do not alter or impact on the required character provisions.	YES
<u>Chapter 2.2</u> – Scenic Quality	The proposed modifications do not alter or impact on the required scenic quality provisions.	YES
Part 3 – Specific Controls for Development Type		
<u>Chapter 3.3</u> – Multi Dwelling Housing and Residential Flat Buildings	The proposed modifications do not alter or impact on the residential component of the approved development.	YES

Table 5
Compliance with the Gosford DCP 2013
 (continued)

Clause	Comment	Compliance
Part 3 – Specific Controls for Development Type (continued)		
<u>Chapter 3.7</u> – Advertising Signage	Sign boards have been lowered in unison with the balcony. The lower edge of the boards will be minimum 2790mm above ground level which exceeds the minimum of 2.6 metres required by Cl. 3.7.7.3 (v) of Gosford DCP 2013.	NO
Part 4 – Centres		
<u>Chapter 4.2</u> – Peninsula Centres	The proposed modifications do not impact on the provisions Clause 4.2.4 – Future Development within the Peninsula Centres (Vision) nor those clauses relating to building form, building height, building articulation, internal and external amenity or heritage.	YES
Part 6 – Environmental Controls		
<u>Chapter 6.1</u> – Acid Sulfate Soils	The proposed modifications do not impact on the existing soil classifications.	YES
<u>Chapter 6.3</u> – Coastal Frontage	The proposed modifications do not impact on the coastal frontage provisions.	YES
<u>Chapter 6.3</u> – Erosion Sedimentation Control	The proposed modifications do not impact on the requirements for erosion and sedimentation control.	YES
<u>Chapter 6.7</u> – Water Cycle Management	The proposed modifications do not impact on the approved stormwater design.	YES
Part 7 – General Controls		
<u>Chapter 7.1</u> – Car Parking	The proposed modifications do not impact nor change the approved parking arrangements or parking demand.	YES
<u>Chapter 7.2</u> – Waste Management	The proposed modifications do not impact nor change the approved waste management arrangements.	YES

Consequently, the assessment of the proposal against Section 4.55(3) remains largely unchanged with respect to the above considerations given:-

- (i) the proposed modifications maintain general compliance with the applicable environmental planning instruments and policies in force at the time that consent was granted, including the Gosford LEP 2014 and Gosford DCP 2013;
- (ii) the impacts of each discrete element of the proposed modification has been assessed in **Table 1** (above). Cumulatively, these impacts are consistent with those envisaged under DA/48230/2015 and subsequent modification on the 12th January 2017 because:-
 - the proposed modifications will not materially alter the nature of the development. The use forming the approved development remains unchanged because of this application (ie: *Demolition, Restoration & Conservation of Existing Heritage Building For Retail & Commercial Use & Construction of Two Residential Units & Verandah*);
 - the building envelope remains the same and is consistent with the approved plans;
 - the building does not significantly alter impacts on views or adjoining neighbour amenity to that which has already been approved;
 - the building remains visually consistent with that approved in terms of architectural language and materiality. The façade presentation of the building to the Railway Street and Charlton Street remains generally the same;
 - the proposal does not result in a detrimental impact on surrounding (approved) land uses, or the public domain along Railway Street of Charlton Street; and
 - the vehicle and pedestrian access arrangements for the site have been retained and generally maintain compliance with the current approval under DA/48230/2015 (as modified)
- (iii) consent was originally granted on the 18th May 2016 and amended on the 12th January 2017 whereby the site remains suitable for the proposed use, inclusive of the modifications sought by this application;
- (iv) there are no modifications proposed that would contravene the public interest. The proposal will in fact continue to meet a growing demand for high-quality commercial and residential floor space. The proposal continues to facilitate the activation of the site, create local employment through the construction process and deliver a high-quality commercial and residential premises that specifically meets the growing needs of the local residential catchment

4.2 *Minimal Environmental Impact*

Section 4.55 (1A)(a) of the EP&A Act requires the consent authority to be “*satisfied that the proposed modification is of minimal environmental impact*”. Given the reasons outlined in Section 4.1 above, no further environmental impacts are expected to arise because of this modification.

4.3 *Substantially the Same Development*

Section 4.55(1A)(b) of the EP&A Act requires the consent authority to be:-

“satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”.

The NSW Land and Environment Court has established several precedents as to what may be considered as being “substantially the same development” and what should be factored into the consideration of this basic threshold test. Principles drawn from the various judgments include that:-

- (i) the term “substantially” means “essentially or materially having the same essence”;
- (ii) when a consent authority makes a determination as to whether a development is substantially the same, it is a question of fact and degree and is not a question of law;
- (iii) the term to “modify” means to “alter without radical transformation”;
- (iv) in comparing the approved development and the development as proposed to be modified it is necessary to undertake a qualitative and quantitative assessment of the developments in their proper context; and
- (v) to undertake a numeric or quantitative assessment of the modification only in the absence of a qualitative assessment would be flawed.

These considerations apply to the modification of a development through design modifications as well as amendments to conditions that impact the nature of the proposal.

Consideration of the substantially the same development test should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of the impacts of the developments. In these respects, the modified scheme should be *“essentially or materially”* the same as that originally approved.

It is also **instructive to note** the NSW Land & Environment Court’s decisions in *Realize Architecture (1) and (2)* which are a reminder for local Councils that it is important not overly focus on the “Quantitative” (numerical) differences as they appear in isolation and that it is entirely acceptable for there to be large numeric differences approved through the modification pathways that exist in s4.55 and s4.56 of the EP&A Act . Councils should take a more holistic and balanced approach to the test.

Equally, in the Court’s decision in *Realize Architecture (1) and (2)* are a reminder that for the purpose of interpreting the words and phrases of the “substantially the same” test in s4.55 and s4.56 of the EP&A Act as to their meaning, there is a real freedom for applicants/proponents and consent authorities to put forward whichever formula or test they consider to be most relevant and helpful. The decision is then one that can be an “instinctive” one which “need not be articulated expressly” (*Realize Architecture (2)* at [30])

In our view, there can be no doubt that the modified development will be substantially the same as the development as originally approved by the Council on the 18th May 2016 and amended on the 12th January 2017. When examining the approved plans compared to the proposed plans, the Consent as modified will result in a development that is substantially the same as the development as approved by the Consent before modification in terms of footprint, dimensions, height, site coverage, view impacts and in all other material respects.

The differences are listed in Section 3.1 – General.

This will result in an improved design with no significant adverse environmental impact.

An assessment of the qualitative and quantitative elements of the development approved and as proposed to be modified are provided below.

4.3.1 *Qualitative Comparison*

The proposal is substantially the same development, in a qualitative sense, as set out below (responses in *italics*):-

- (i) How is the appearance of the existing building to be changed when viewed from public places? *The appearance will be similar between the building approved by the existing Consent when viewed from both Railway Street and Charlton Street.*
- (ii) To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places? *No change to the landscaping as approved by the Consent is proposed by the modification.*
- (iii) To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area? *The site is heritage listed and is supported by the attached Statement of Heritage Impact prepared by John Carr Heritage Design. The proposed modification remains consistent to that approved by the Council.*
- (iv) What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved? *The proposal involves minor modifications but does not appreciably impact on the approved works. The attached plans show the proposed modifications which are also listed under Section 3.1 – General in this submission.*
- (v) What is the extent, if any, of any proposed change to the use of the building? *The proposed use of the building is unaltered.*
- (vi) To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located? *The modifications do not propose any significant changes to the building façade or envelope as seen from either Railway Street or Charlton Street and generally maintains the approved streetscape appearance. The proposal remains generally consistent with that approved under the Consent.*
- (vii) To what extent, if any, are the existing access arrangements for the building proposed to be altered? *No change to access arrangements is proposed.*

- (viii) To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development? *Outlook from within the approved commercial component of the building will generally be the same as that approved by the Council.*
- (ix) Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure? *Not applicable.*

4.3.2 Quantitative Comparison

The proposal is substantially the same development, in a qualitative sense, as set out below (responses in *italics*):-

- (i) To what extent is the site coverage proposed to be changed? *There is no change to the approved site coverage.*
- (ii) To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal? *No change to the approved numerical controls is proposed as a result of the modifications.*
- (iii) To what extent is the building envelope proposed to be changed? *No significant change to the building envelope as approved by the Consent is proposed.*
- (iv) To what extent are boundary setbacks proposed to be changed? *No change to the boundary setbacks as approved by the Consent are proposed.*
- (v) To what extent will the present numerical degree of landscaping on the site be changed? *No substantive change to the landscaping as approved by the Consent is proposed.*
- (vi) To what extent will the existing floor space ratio be altered? *The total GFA remains unaltered. The approved floor space ratio does not change.*
- (vii) To what extent will there be changes in the roof form? *The roof form generally remains the same and is consistent with the plans as approved by the Consent.*
- (viii) To what extent will there be alterations to car parking/garaging on the site and/or within the building? *There is no change to the car parking numbers or access arrangements.*
- (ix) To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development? *No change is proposed to the existing landform by any cut and/or fill.*
- (x) What relationship does the proportion of the retained building bear to the proposed new development? *There is no significant change to the retained building proportions. The retained area of the building as approved by the Consent is generally the same as the proposed development as modified.*

4.3.3 Conclusion

The modifications will not result in any significant additional social and environmental impacts as previously assessed for the approved development. The Council describes the original proposal for which the Consent was granted as follows:-

“Demolition, Restoration & Conservation of Existing Heritage Building For Retail & Commercial Use & Construction of Two Residential Units & Verandah”

The current modification proposes no substantive change to the above descriptions.

Council's attention is drawn to the relevance of the planning principle in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*. It is noted that what is proposed is not a new development application, but an application to modify an existing Consent. Ipso facto, if the planning principle in *Coorey* is relevant at all to this case, the comparison that is to be made is between the existing Consent and the modifications proposed. In other words, the consideration relates to whether the modified "commercial and residential building" will constitute alterations and additions to the "commercial and residential building" approved by the existing Consent, or a new building.

The proposal is for the same modifications to the "commercial and residential building" in the same location and in substantially the same dimensions as the for the modifications to the "commercial and residential" as approved in the Consent.

The planning principle in *Coorey* confirms that "*the greater the overall extent of departure from the existing position, the greater the likelihood the proposal should be characterised as being for a new building*" and requires a qualitative and a quantitative analysis of the relevant issues. This is set out previously under Qualitative and Quantitative Comparison.

5.0 NOTIFICATION AND SUBMISSIONS

As the proposed amendment is minor and submitted under Section 4.55(1A) of the EP&A Act, it is anticipated the application will not require public exhibition. In the event any exhibition is carried out, per Section 4.55(2)(c) and (d), any submissions received will need to be considered by Council in the assessment of the application.

6.0 CONCLUSION

This Section 4.55(1A) modification application to DA/48230/2015 and subsequent amendment dated 12th January 2017 seeks minor changes to the approved plans and changes to the Conditions of Consent. It is proposed to amend Condition #1.1 so as to:-

- (i) retain Drawing No. DA00 (REV A);
- (ii) retain Drawing No. DA01 (REV A);
- (iii) amend Drawing No. DA02 (REV A) and replace with Drawing No. DA101 (REV A);
- (iv) amend Drawing No. DA03 (REV A) and replace with Drawing No. DA102 (REV A);
- (v) retain Drawing No. DA04;
- (vi) amend Drawing No. DA05 (REV A) and replace with Drawing No. DA201 (REV A);
- (vii) amend Drawing No. DA06 (REV A) and replace with Drawing No. DA202 (REV A);
- (viii) retain Drawing No. DA07;
- (ix) amend Drawing No. DA08 (REV A) and replace with Drawing No. DA203 (REV A); and
- (x) retain Drawing No. DA09 (REV A);

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- (xi) retain Drawing No. DA10 (REV A);
- (xiv) retain Drawing No. DA11 (REV A);
- (xv) retain Drawing No. DA12 (REV A);
- (xvi) retain Drawing No. DA013 (REV A);
- (xvii) retain Drawing No. DA14 (REV A);
- (xviii) retain Drawing No. DA15 (REV A);

Having regard to the above, it is our view that Central Coast Council may modify DA/48230/2015 (as amended) pursuant to Section 4.55(1A) of the Environmental Planning & Assessment Act because the proposal represents substantially the same development for which the consent was granted and suitably mitigates environmental impacts.

Yours faithfully,

A handwritten signature in dark ink, appearing to read "Matthew Wales", with a horizontal line underneath it.

Matthew Wales
General Manager