

Business Paper

LATE REPORTS ORDINARY COUNCIL MEETING

**ALBY SCHULTZ MEETING CENTRE,
COOTAMUNDRA**

6:00PM, Tuesday 27th October, 2026

Administration Centres: 1300 459 689

LATE REPORTS

Order Of Business

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5 MAYORAL MINUTES

5.2 MAYORAL MINUTE - ESTABLISHMENT OF COOTAMUNDRA PARKRUN - FINANCIAL ASSISTANCE AND USE OF JUBILEE PARK

DOCUMENT NUMBER	485259
AUTHORISING OFFICER	Abb McAlister, Mayor
REPORTING OFFICER	Abb McAlister, Mayor
ATTACHMENTS	Nil

RECOMMENDATION

That Council:

1. Acknowledges and commends the efforts of the Cootamundra parkrun organising group in progressing a free, weekly, community-based five-kilometre walking, jogging and running event in Cootamundra, recognising its potential to improve community health and wellbeing, encourage physical activity, strengthen social cohesion, promote volunteerism and support local economic activity.
2. Approves financial assistance of up to \$6,600 towards the establishment of Cootamundra parkrun, with the final contribution limited to the verified funding shortfall following confirmation of establishment costs, the \$4,000 Inland Rail grant and any other external funding secured.
3. Approves the allocation of the financial assistance outlined in point 2 from Council's internally restricted Southern Phone Sale Proceeds Reserve attributable to Cootamundra, subject to confirmation of sufficient available and uncommitted funds and completion of necessary budget adjustments in accordance with Council's financial management requirements.
4. Provides in-principle support for the use of Jubilee Park, Cootamundra, as the proposed venue for the establishment and ongoing operation of Cootamundra parkrun, subject to:
 - (a) Receipt of a formal written application from parkrun Australia or its authorised representative;
 - (b) Confirmation of proposed course alignment and satisfactory completion of relevant site-specific risk and safety assessments;
 - (c) Provision of evidence of appropriate public liability insurance, including confirmation of the reported \$20 million cover and its applicability to the proposed event; and
 - (d) Compliance with applicable statutory requirements and Council policies governing use of public recreational land, pedestrian safety, accessibility and ongoing public access.
5. Authorises the General Manager, or delegate, to facilitate and issue the necessary written landowner consent for the proposed use of Jubilee Park, subject to satisfactory completion of the requirements outlined in point 4 and any other applicable statutory or administrative requirements.

- 6. Requests that Council officers work collaboratively with the Cootamundra parkrun organising group and parkrun Australia to facilitate the proposed course inspection and assessment scheduled for Saturday, 7 November 2026, and assist in progressing necessary approval arrangements to enable the earliest practicable commencement of the event.**

Reason for consideration by Mayoral Minute

I bring this matter forward for consideration at the October Ordinary Council Meeting because a regional parkrun ambassador is scheduled to attend Cootamundra on Saturday, 7 November 2026 to inspect and map the proposed Jubilee Park course, before Council's next Ordinary Meeting on 26 November 2026. An early decision on financial assistance and in-principle landowner support would provide clarity to the volunteer organising group and assist with progressing the formal establishment process. The proposal has advanced materially since its initial approach to Council earlier this year. I consider its timing warrants Council's consideration at this meeting, subject to the requirements of the adopted Code of Meeting Practice.

Background and rationale

Overview

The proposed establishment of Cootamundra parkrun offers a community-led opportunity to promote physical activity, public health, social inclusion and community participation through a free, weekly five-kilometre event. The proposed event would commence at 8:00 am each Saturday and welcome walkers, joggers, runners, families and volunteers of differing ages and abilities. At present, residents generally need to travel to neighbouring regional centres such as Wagga Wagga, Yass or Cowra to participate in an established parkrun.

History and progress

The organising group initially sought assistance through Council's Annual Community Donations process in May 2026, when the proposal was at an early stage and was unsuccessful. Further correspondence was sent in June and July 2026. Since then, the initiative has progressed: Mr Phil Nott, the proposed Event Director, has brought together six volunteers who are expected to share Run Director duties; the group has engaged with parkrun Australia and been assigned a regional ambassador; and a provisional five-kilometre course of approximately three laps at Jubilee Park and surrounds has been identified.

The organisers advise that the course is designed to avoid road and driveway crossings. A regional ambassador is scheduled to inspect, map and document the course on 7 November 2026, providing an opportunity for the volunteer group to discuss event requirements. The course remains subject to parkrun Australia's approval and appropriate landowner consent.

Establishment costs and funding

The initial establishment cost provided by the organising group was \$8,600. Mr Nott has since advised that this is likely to have risen to approximately \$10,600, subject to formal confirmation. The one-off establishment payment is expected to cover an automated external defibrillator, first aid equipment, volunteer vests, finish tokens, course signage and other necessary event equipment and arrangements.

The group reports securing a \$4,000 grant from Inland Rail and has other funding applications under consideration. Against the indicative \$10,600 total, a remaining amount of up to \$6,600 is sought from Council. Council's actual contribution would be capped at the confirmed shortfall after accounting for all external support. The contribution is intended to assist with establishment only;

the event would thereafter operate as a free, volunteer-supported parkrun rather than a Council-operated service.

Southern Phone Sale Proceeds Reserve

It is proposed that Council's contribution be met from the internally restricted Southern Phone Sale Proceeds Reserve attributable to Cootamundra. Council's decision of 29 October 2019 (Minute No. 399/2019) provided for sale proceeds from its Southern Phone Company shareholding to be reserved for projects in the Cootamundra area. The proposed initiative would provide a recreational and community wellbeing benefit in Cootamundra. The allocation remains subject to confirmation of the reserve's current uncommitted balance and all necessary financial approvals.

Landowner consent and risk management

The organising group has identified Jubilee Park as its preferred location. parkrun Australia is expected to seek written landowner consent directly from Council. In-principle support would not substitute for assessment of the final course, applicable public land requirements or risk and safety controls. Organisers report public liability insurance of up to \$20 million under parkrun's arrangements; the precise cover, relevant documentation and any continuing Council responsibilities must be confirmed before consent is issued.

Community benefits

The proposed event may support preventative health and regular exercise, foster social interaction and belonging, create meaningful volunteering opportunities and encourage positive use of Jubilee Park. A local parkrun may also attract visiting participants who spend time at local cafes, bakeries, accommodation providers and shops. As a recurring weekly event, it offers the prospect of enduring community benefit from a comparatively modest, once-only contribution.

Conclusion

The organisers have materially advanced their proposal since their initial approach to Council, including securing external funding and progressing the proposed course towards inspection. Consideration at this meeting would allow Council to clarify its support before the scheduled 7 November assessment while retaining the necessary financial, statutory and operational safeguards.

7 GENERAL MANAGER'S REPORT

7.4 SUSTAINABLE DEVELOPMENT

7.4.4 4.55(1) APPLICATION TO MODIFY DA 2023/116/3

DOCUMENT NUMBER	484474
REPORTING OFFICER	Lauren Dawes, Acting Manager Sustainable Development
AUTHORISING OFFICER	Roger Bailey, Interim General Manager
RELEVANCE TO COMMUNITY STRATEGIC PLAN	2. A region for the future 2.2 A thriving region that attracts people to live, work and visit
FINANCIAL IMPLICATIONS	There are no Financial implications associated with this report.
LEGISLATIVE IMPLICATIONS	There are no Legislative implications associated with this report.
POLICY IMPLICATIONS	There are no Policy implications associated with this report.
ATTACHMENTS	1. Assessment Report ↓ 2. Modification Statement ↓ 3. Approved SOHI ↓

RECOMMENDATION

That Council approve in part, modification application DA 2023/116.3 for Lots 1, 2 and 3 DP 1322201, 37 Annie Pyers Drive, Gundagai NSW 2722, being a section 4.55(1) modification to DA 2023/116 to delete conditions 9(d), 9(e), and 33(4), as follows:

1. That conditions 9(d) and 9(e) be deleted.
2. That the proposed deletion of condition 33(4) be refused, and condition 33(4) be retained, for the following reason: the setting of the relocated Dog on the Tuckerbox Memorial, a local heritage item under the *Gundagai Local Environmental Plan 2011*, has not been detailed or assessed, and the condition is the only mechanism in the consent for that assessment to occur, having regard to clause 5.10(4) of the *Gundagai Local Environmental Plan 2011* and section 4.15(1)(b) and (e) of the *Environmental Planning and Assessment Act 1979*.
3. That all other conditions of DA2023/116, as modified, remain unchanged.

Introduction

On 17 September 2024, the Southern Regional Planning Panel granted deferred commencement consent to DA 2023/116 for the redevelopment of the Dog on the Tuckerbox site. The approved development includes the demolition of existing buildings, construction of three buildings, relocation of the Dog on the Tuckerbox Memorial, a play area, staged car parking, and associated works and subdivision. The operational consent was issued on 19 June 2025.

Modification Application DA 2023/116.3 was lodged by The Dott Developments Pty Limited on 14 October 2026. It seeks to delete Conditions 9(d) and 9(e), which require a bank guarantee for each stage of the car park works, and Condition 33(4), which requires a detailed design for the new wishing well associated with the Memorial and its immediate surrounds before the issue of a construction certificate. The application is made under Section 4.55(1)(b) of the Act, on the basis that the modification will have no environmental impact.

Council is the owner of part of the land, including the land on which the Memorial will be located. Under the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels, the application is therefore reported to Council for determination. Section 4.55A requires the application to be determined within 14 days of lodgement. The application was lodged shortly before the close of the business paper, and this report is provided as a late report so the application can be determined within that timeframe.

The full assessment report is provided as Attachment 1.

Discussion

Conditions 9(d) and 9(e)

Conditions 9(d) and 9(e) require a conditional bank guarantee, equal to the full value of the works within the road reserve, for each stage of the carpark, to be held until each stage is satisfactorily completed. The guarantee is a security mechanism of the kind permitted under Section 4.17(6) of the Act. It does not regulate the siting, design, or staging of the car park, which remain controlled by the balance of Condition 9.

The carpark land remains a public road vested in Council. Council has resolved to close the road and sell the land to the developer, and a contract of sale has been entered into. The contract provides Council with adequate protection for works undertaken on the land before the transfer is registered. Where further protection is warranted, it can be required through the Section 138 Roads Act 1993 approval needed for each stage under Condition 9(c), in which Council acts as both roads authority and landowner. Security under Section 4.17(6) is directed to protecting the property of the Consent Authority, and would no longer be appropriate once the land is transferred.

The deletion of Conditions 9(d) and 9(e) does not alter the built form, use, or operation of the development, and it is considered that it will have no environmental impact. The deletion of these conditions is supported.

Condition 33(4)

The Dog on the Tuckerbox Memorial is a local heritage item under the Gundagai Local Environmental Plan 2011, held in high esteem by the people of Gundagai and the wider community. The Memorial and the land on which it will remain are owned by Council.

The approved Statement of Heritage Impact supports the relocation of the Memorial in principle, but neither it nor the approved plans detail how the Memorial will be presented in its new location. The arrangement of the statue, plinth, and inscribed tablet, the placement of the associated commemorative plaques, and the design of the immediate surrounds, including the water feature that will replace the existing wishing well, have not been resolved or assessed. Conditions 2, 4, and 83 and the positive covenant protect the Memorial itself, public access, and maintenance, but none controls the design of its setting. Condition 33(4) is the only mechanism in the consent for that assessment to occur.

The applicant contends that the condition is uncertain and that fundraising is not a planning purpose. It is accepted that the current wording lacks sufficient certainty, but this goes to the

wording of the condition rather than the need for it. The applicant was invited to amend the application to clarify the condition rather than delete it and declined to do so.

Without the design detail the condition requires, Council cannot be satisfied that the effect of the development on the heritage significance of the Memorial and its setting has been properly considered. It cannot be concluded that the deletion of Condition 33(4) would have no environmental impact, and its deletion is not supported.

Council-related development

Council's Managing Conflicts of Interest: Council-related Development Policy treats modification applications as council-related development, whereas the Act does not. Applying the policy to this application would require procedures, including public exhibition, that would prevent determination within the 14-day period required by Section 4.55A. As a policy cannot override legislation, the application has been assessed in accordance with the Act. This is explained in detail in the assessment report.

Determination other than in accordance with the recommendation

Schedule 1, clause 20 of the *Environmental Planning and Assessment Act 1979* requires the reasons for a planning decision to be published. Should Council resolve to determine the application other than in accordance with the recommendation, the reasons set out in the assessment report would not support that decision, and the resolution must state the reasons on which Council's decision is based.

Should Council resolve to approve the deletion of Condition 33(4), Council must be satisfied under Section 4.55(1)(b) that the modification will have no environmental impact. The reasons stated in the resolution must identify the basis on which Council has reached that state of satisfaction.

Risk

Risk if determined as recommended

The applicant may appeal the refusal of the deletion of Condition 33(4) to the Land and Environment Court. This risk is mitigated by the reasons for refusal being grounded in Clause 5.10 of the Gundagai Local Environmental Plan 2011, and by the applicant having been invited to amend the application to clarify the condition rather than delete it.

The deletion of Conditions 9(d) and 9(e) removes the bank guarantee as a form of security for works on the car park land. This risk is managed through the contract of sale and the Section 138 Roads Act 1993 approvals required for each stage under Condition 9(c).

Determining the application at this meeting ensures it is determined within the 14-day period required by Section 4.55A of the Environmental Planning and Assessment Act 1979.

Risk if the deletion of Condition 33(4) is approved

If Council approves the application in full, including the deletion of Condition 33(4), the design of the relocated Dog on the Tuckerbox Memorial's setting would not be subject to any further assessment or approval under the consent. The arrangement of the statue, plinth, and tablet, the placement of the commemorative plaques, and the design of the surrounds and water feature would be determined by the developer without Council's review.

The Memorial is a Council-owned heritage item held in high esteem by the community, and there is a reputational risk to Council if the presentation of the relocated Memorial is not appropriate to its significance or does not meet community expectations. Any remaining influence Council has over the design would depend on its role as landowner rather than on the consent.

To approve the deletion under Section 4.55(1)(b), Council must be satisfied that the modification will have no environmental impact. The setting of the Memorial has not been detailed or assessed, so there is no evidence before Council on which that satisfaction can be based. A determination made without that basis may be open to challenge in the Land and Environment Court.

Financial

The deletion of Conditions 9(d) and 9(e) removes the bank guarantee requirement. Council's financial interest in works on the car park land remains protected through the contract of sale and the Section 138 approvals.

OLG 23a Guideline consideration

Nil

DEVELOPMENT ASSESSMENT REPORT

*Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)*



DATE OF REPORT COMMENCEMENT:

15 October 2026

COUNCIL OFFICER COMPLETING DEVELOPMENT ASSESSMENT:

Lauren Dawes

DEVELOPMENT REFERENCE:

DA 2023/116.3 (PAN-679834)

DEVELOPMENT ADDRESS:

37 Annie Pyers Drive GUNDAGAI NSW 2722

DEVELOPMENT LOT / SEC / PLAN:

Lots 1, 2 & 3 DP 1322201

OWNER(S):

The Dott Developments Pty Limited (Lot 1 and 3 DP 1322201)
Unit 6,161 London Circuit
Canberra ACT 2601

Cootamundra-Gundagai Regional Council (Lots 2 and 3 DP 1322201)

APPLICANT:

The Dott Developments Pty Limited
Unit 6, 161 London Circuit
Canberra ACT 2601

PROPOSED DEVELOPMENT:

This application seeks approval for a Proposed Section 4.55 (1) Modification to DA 2023/116 seeking deletion of the following conditions of the existing consent:-

- Condition 9(d); and
- Condition 9(e)

The conditions are detailed below, provided in context where the condition has multiple elements. The condition portions proposed for deletion is highlighted for ease of reference.

9	<p>Approval and staging requirements for works within road reserve</p> <p>a) Works with Road Reserve: Prior to the commencement of any work or undertaking of any activities within the road reserve the proponent must obtain approval under section 138 of the Roads Act 1993.</p> <p>b) Staging of Development: The development of the car park must be carried out in accordance with a staged approach. The car park shall be developed in distinct stages. The staging plan must be submitted to and approved by Council prior to the release of any construction certificate. The staging plan must include a works program detailing timelines proposed for the construction of each carpark stage.</p>
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- c) **Approval of Each Stage:** Each stage of the carpark is subject to separate approval in accordance with section 138 of the Roads Act 1993 (NSW). Prior to commencing work on any stage, the Applicant must obtain the necessary approvals from the Roads Authority as specified under section 138 of the Roads Act 1993.
- d) **Conditional Bank Guarantee Requirement:** For each stage of the car park development including but not limited to associated drainage and ancillary works, a conditional bank guarantee must be provided to secure the performance of obligations related to that stage prior to any associated works being undertaken. The bank guarantee must:
- i. Be from a registered Australian financial institution.
 - ii. The value of the bank guarantee shall be calculated as the full value of the works within the road reserve relevant to the proposed stage, as described in the relevant section 138 approval and as agreed upon by Council. The value shall be supported by an independent quantity surveyors report.
 - iii. Remain in place until the satisfactory completion of each stage and any associated conditions.
 - iv. Conditions of the bank guarantee must enable council to access the funds for the purpose of completing or rectifying the works:-
 - A. In the event that the works have not been undertaken within the agreed upon works program; or
 - B. The works do not comply with relevant approvals and standards require rectification.
- e) **Submission and Release of Guarantees:** Prior to the commencement of each stage, the proponent must submit the bank guarantee to the council for approval. The bank guarantee for a completed stage will be released upon satisfactory completion of all requirements and obligations for that stage, as determined by Council as the Roads Authority and landowner.
- f) **Compliance and Inspections:** The proponent must ensure that each stage of the carpark complies with all relevant conditions of consent, legislation, and standards. Council as the Roads Authority and landowner reserves the right to inspect the work at any time to ensure compliance
- g) **Notification of Completion:** Upon completion of each stage, the proponent must notify Council in writing and provide any required documentation to confirm that the stage has been completed in accordance with the approved plans and conditions.

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Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)



Condition reason: To require minor amendments to the plans endorsed by the consent authority following assessment of the development.

- Condition 33(4)

The condition is detailed below, provided in context noting it has multiple elements. The condition portion proposed for deletion is highlighted for ease of reference.

33	Design Amendments
	<p>Before the issue of a construction certificate, amended plans showing the following must be submitted to Council's satisfaction:</p> <ol style="list-style-type: none"> Redesign of the parking that includes: <ol style="list-style-type: none"> Staged construction of the carpark to council's satisfaction. Incorporation of maximised landscaped area. Incorporation of the Dog on the Tuckerbox Recreational Trail into the design. Turning circle analysis demonstrating that a 12.5m waste transfer truck can safely enter, load, turn around and exit the Waste area/Bins location without traversing off the paved area. Analysis must include all movements between Annie Piers Drive and the Waste Area/Bins location. All T intersections shall be designed in accordance with Austroads Guide to Road Design Part 4A. Of particular note the approach road shall be as close to 90 degrees as possible. Sealed footpaths of at least 1.5m wide shall be installed between the Coach Parking and the development. Sealed footpaths of at least 1.5m wide shall be installed between the caravan parking and the development. Traffic signage in accordance with Australian Standard 1743, 1744 and 1742.2, and 1742.15 and corresponding TfNSW supplements All line in accordance with TfNSW Delineation Part 1 to 19. Car parking shall be removed from within 7.5m of pedestrian crossings on both the approach and departure side of the crossing. No Stopping (R5-400) signs shall be installed 7.5m from pedestrian crossings to prohibit any stopping within this area. Any accessible carparking removed shall be reinstated outside of the 7.5m exclusion zone. Where alterations to existing open drainage are proposed, modifications must include adequate supporting drainage infrastructure to ensure proper disposal of captured water and prevent scouring. Pavement designs prepared by a suitably qualified Engineer. Vehicle trafficable areas must have a sealed surface, such as sprayed bitumen, asphalt, or concrete. Proposed location(s) for electric vehicle (EV) charging car parking spaces including: <ol style="list-style-type: none"> Specific locations within the parking area designated for EV charging.

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Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)



- b. Number of EV charging spaces to be provided.
- c. Design and layout of the EV charging spaces, ensuring compliance with relevant standards and guidelines.
3. Detailed plans of the proposed pergola including materials and colour selections.
4. **A detailed design for the new wishing well associated with the Dog on the Tuckerbox statue and immediate surrounds. The design must be suitable for its intended purpose to the satisfaction of Council.**
5. Landscaping plans which retain trees T15, T17 and T18.
6. Detailed design of the proposed waste storage area including appropriate screening measures.

The certifier must ensure the construction certificate plans and specifications confirm compliance with the amended plans as agreed upon by Council.

Condition reason: To require minor amendments to the plans endorsed by the consent authority following assessment of the development.

SITE:

The subject site is known as the Dog on the Tuckerbox (DOTT) site and is located in an area known as the '5 Mile Precinct', which represents its distance from the township of Gundagai.

At the time of the consent issued for the original development under DA 2023/116, the site comprised Lot 2 in DP 160191 and Lot 529B in DP 203601 known as 37 Annie Pyers Drive and part of Council's road reservation fronting Annie Pyers Drive. Following granting of consent, three allotments were created which comprises Lots 1, 2 & 3 DP 1322201.

The site contains key structures, comprising the following:

- Kiosk building: Located on Lot 2 in DP 160191. The kiosk building was erected 1956. It comprises a simple brick and tile building with a café / kiosk and public toilets.
- Dog on the Tuckerbox Memorial: Located on Lot 2 in DP 160191. It is a listed heritage item in Gundagai Local Environmental Plan 2011. The memorial comprises the statue of the Dog on the Tuckerbox and is surrounded by a 'wishing well'.
- Limestone Inn ruins: Located on Lot 2 in DP 160191. These are included in the listed heritage item in Gundagai Local Environmental Plan 2011. They are the remains of Joseph Carberry's Limestone or 'Five Mile' Inn built in 1851.
- Service Station: Located on Lot 529B in DP 203601. The service station was constructed around 1961. It is no longer used and remains vacant. The service station includes a small retail area, forecourt and Underground Petroleum Storage System (UPSS). It is understood that the service station stopped operation around 2016. There are several trees located on this part of the site, comprising exotic and native species.
- Covered awning connecting service station and kiosk building;
- Metal roofed structure containing an industrial relic;

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*Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)*



- Small metal 'doggy toilet' building;
- Car parking areas;
- Old dam;
- Tuckerbox photo stage;
- Essential Energy electricity supply assets; and
- Other minor ancillary structures such as fencing and seating.

The area is a mix of comprising service station and fast food to the south of the subject site and rural paddocks with scattered residential associated with the rural land.

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Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)



Figure 1 – Location plan – Gundagai Township as a whole (NSW Six Maps)

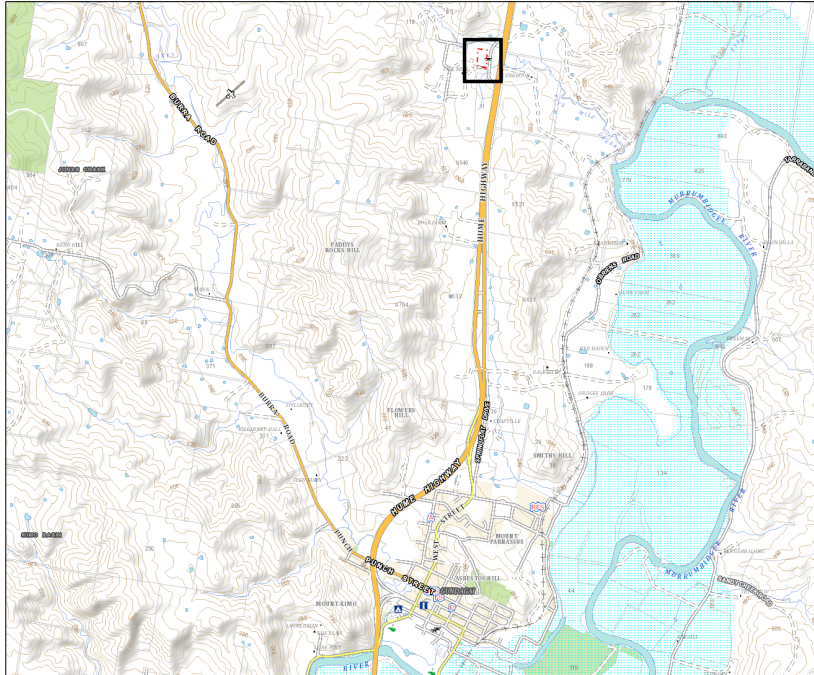
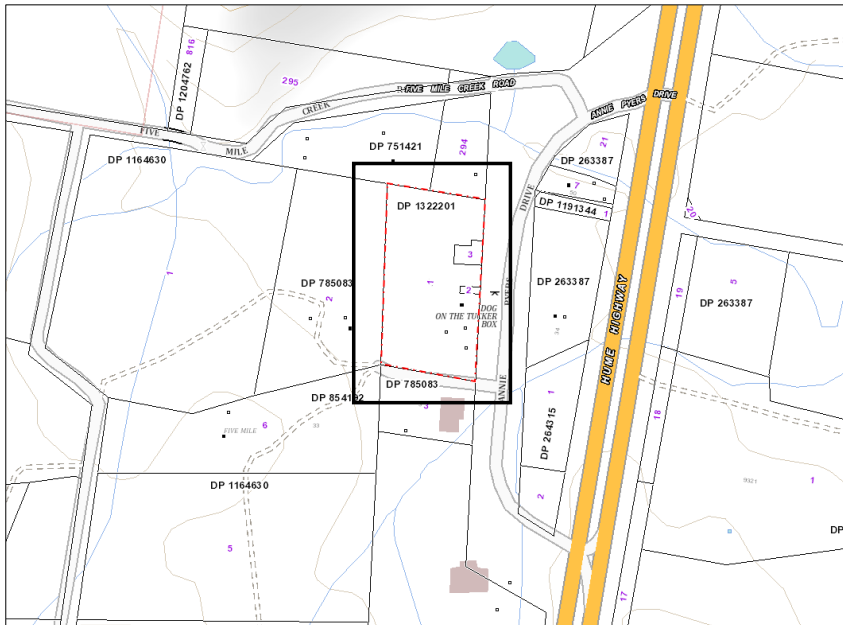


Figure 2 – Location plan – Gundagai (NSW Six Maps)



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*Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)*



Figure 3 – Aerial view – Location plan – ‘5 Mile Precinct’ comprising service station and fast food to the south of the subject site (NearMaps)



Figure 4 – Aerial view – Location plan (NearMaps)



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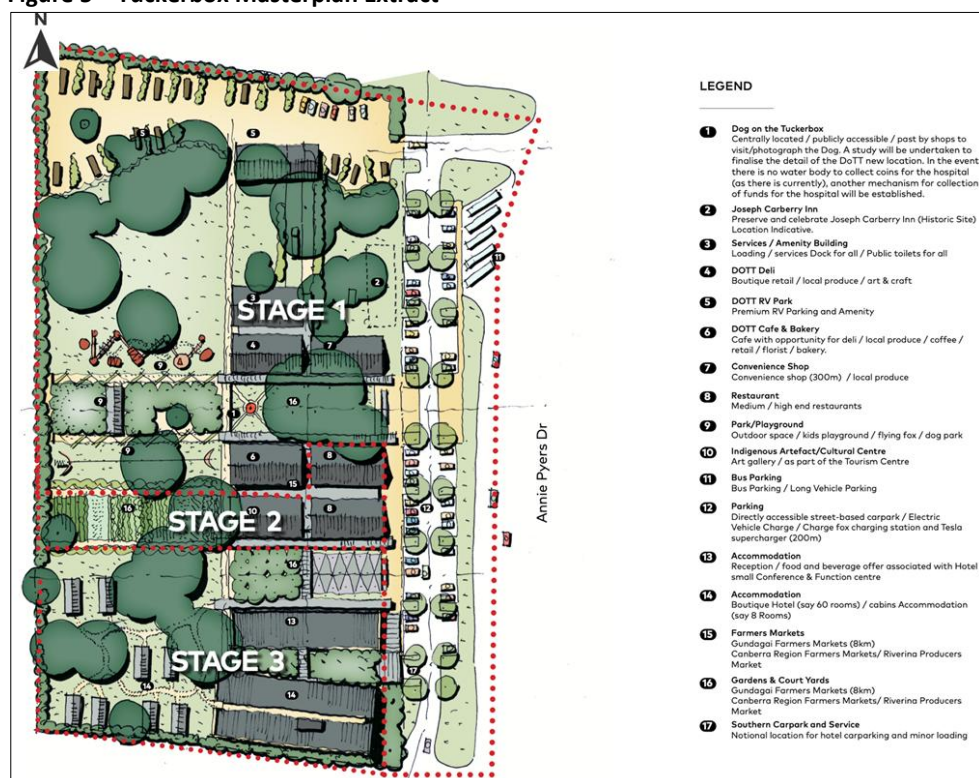
Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)



PREVIOUS DEVELOPMENT PROPOSALS AND DECISIONS:

There is a history of the site including development of a Development Control Plan for the 5 Mile precinct, including the Dog-on-the-Tuckerbox site in 2007 and adoption of the Draft Dog on the Tuckerbox Masterplan in 2021.

Figure 5 – Tuckerbox Masterplan Extract



On 17 September 2024, DA 2023/116 was granted a deferred commencement consent by Southern Regional Planning Panel for development to be constructed in 3 stages involving:

- demolition of existing buildings;
- construction of 3 buildings (approval for use for food and drink premises and shop subject to separate subsequent consent);
- relocation of Dog on Tuckerbox Memorial;
- construction of play area;
- construction of car parking;
- sewer treatment works;
- stormwater works;
- tree removal works;
- earthworks;
- landscape works; and

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- subdivision to create three allotments of 25,162 sqm, 210 sqm and 1,250 sqm.
- The subject approval is for the construction of the 3 buildings only – their respective land use approvals are to be determined and subject to subsequent development consents.
- The deferred commencement provides 4 years to submit information that ensures that outstanding matters relating to potable water are appropriately addressed prior to the issue of an active consent.

Notice of Operational Consent was issued on 19 June 2025.

GENERAL REQUIREMENTS OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979:

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

The proposed modified development relates to changes to conditions only and has no impact on consideration of vegetation clearing or impacts on the nearby waterway.

2.22 Mandatory community participation requirements

As per Table 6 of the Statewide Community Participation Plan which came into effect on 1 September 2026, the application is excluded from public exhibition.

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Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)



Table 6: Development types excluded from public exhibition

Development types excluded from public exhibition ⁹
<ul style="list-style-type: none"> Ancillary development to existing residential accommodation (such as but not limited to pools, sheds, pergolas and carports) Bed and breakfast accommodation Change of use (excluding a change of use to a registered club or pub, and excluding any development that adjoins, or is located on, land in a residential zone) Demolition Dual occupancy (up to two storeys) Attached dwelling (up to 5 dwellings) Dwelling house (up to two storeys) Multi dwelling housing (up to 5 dwellings) Secondary dwelling Exhibition home Extensive agriculture Farm building Home business Home industry Home occupation Industrial retail outlet Infrastructure facility in the Alpine region¹⁰ Internal and external alterations and additions (excluding residential accommodation) Internal and external alterations and additions to existing residential accommodation resulting in no more than two storeys Kiosk Repair and maintenance of recreation infrastructure, lifting facility, or snow-making infrastructure in the Alpine region Roadside stall Rural worker's dwelling Signage (excluding where it adjoins or is in a residential zone) Subdivision of land resulting in no more than 5 new lots Subdivision of land that is subject to an existing development consent for its current use. Temporary structure Tree removal on private land Applications to modify a development consent made under section 4.55(1) of the EP&A Act Applications to modify a development consent made under section 4.55(1A) of the EP&A Act Applications to modify a development consent made under section 4.56(1) of the EP&A Act with minimal environmental impact Applications to modify a development consent made under section 4.55(2) of the EP&A Act where the development the subject of the consent is specified in this Table

⁹ Where a word or expression used in the Table is defined in the Dictionary to the standard instrument set out in the Standard Instrument (Local Environmental Plans) Order 2006, that definition applies to the word or expression as used in the Table.

¹⁰ As defined in Schedule 4A to State Environmental Planning Policy (Precincts – Regional) 2021.

In determining whether Table 6 applied assessment has been applied to whether the application is a council-related development application. The EP&A Act and Council's *Managing Conflicts of Interest: Council-related Development Policy* (the Policy) answer that question differently.

The EP&A Act

The EP&A Act defines a council-related development application as follows:

council-related development application means a development application, for which a council is the consent authority, that is—
(a) made by or on behalf of the council, or

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(b) for development on land, other than a public road within the meaning of the [Local Government Act 1993](#)—

- (i) of which the council is an owner, a lessee or a licensee, or
- (ii) otherwise vested in or under the control of the council.

Note—

Land vested in or under the control of the council includes public land within the meaning of the [Local Government Act 1993](#).

The definition depends on the meaning of “development application”:

development application means an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate.

Section 4.55(4) provides that:

The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

A modification application seeks to modify an existing consent rather than to obtain consent, and its approval is taken not to be the grant of consent. A modification application is therefore not a development application.

Managing Conflicts of Interest: Council-related Development Policy

The Policy is based on the sample policy published by the Department of Planning and Environment with the *Council-related Development Application Conflict of Interest Guidelines*. Its definitions differ from those in the EP&A Act and have the effect of treating modification applications as council-related development applications. The relevant definitions are set out below.

Council-related development is a development application, for which Council is the consent authority, that is:

- made by, or on behalf of, the Council; or
- for the development on land of which the Council is an owner, a lessee or a licensee; or otherwise vested in, or under, the control of Council.

Application means an application for consent under Part 4 of the Act to carry out development, and includes an application to modify a development consent.

Resolution of the inconsistency

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A Council policy cannot override legislation. The Policy can be applied to the extent that it is consistent with the EP&A Act, but not where it would prevent compliance with the Act.

For the subject section 4.55(1) application, applying the Policy's procedural requirements, such as public exhibition, would prevent Council from determining the application within the 14 days required by section 4.55A and section 118A. In addition, section 4.55(1) applications are not required to be notified. **The EP&A Act therefore prevails, and the application has not been treated as a council-related development application.**

It should be noted that a section 4.55(1A) application was lodged prior to the 1 September 2026 introduction of the Statewide Community Participation Plan and that that application is not subject to the 14 day determination requirements of section 4.55A and section 118A, accordingly, the application has been assessed as Council-Related Development Application in accordance with Council's adopted *Managing Conflicts of Interest: Council-related Development Policy*. The inconsistency in the instance of that application did not give rise to a breach of the EP&A Act.

4.5 Designation of consent authority

The development is not state significant; however, the original development was regionally significant. The proposed Section 4.55(1) application may be determined by Council as per the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels* given Council is a landowner.

4.10 Designated development

Schedule 3 of the EP&A Regulation defines the various types of designated development, but the application does not meet any of the criteria and therefore is not designated.

4.13 Consultation and concurrence

If required by an environmental planning instrument, this section requires Council to consult with or obtain the concurrence of the subject authority. No consultation was required having regard to the changes to requirements from 1 July 2026.

4.14 Consultation and development consent—certain bush fire prone land

Development consent cannot be granted for the carrying out of development on bush fire prone land unless Council is satisfied that the development conforms to *Planning for Bush Fire Protection*, or has been provided with a certificate by a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

The original application included Bushfire Assessment Report. The proposed modification to the development, does not impact on the recommendations of the bushfire report or conditions required by the Consent in relation to bushfire protection. The development is not for residential or rural residential purposes and is not for a special fire protection purpose, therefore, no referral to the NSW RFS was required.

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4.22 Concept development applications

The development is not a concept development (development undertaken in stages).

4.33 Determination of Crown development applications

The development is not a Crown development.

4.36 Development that is State significant development

The development is not State significant development (of a size, type, value or with impacts deemed to be significant).

4.46 Integrated development

The development is not integrated development (requires consent or an approval from another government agency).

4.55 Modification of consents - generally

The proposal constitutes a modification under Section 4.55(1) of the Environmental Planning and Assessment Act, 1979. Council pursuant to Section 4.55(1), the consent authority may consider an application to amend development consent provided that, inter alia:

(1) Modifications involving minor error, misdescription or miscalculations or of no environmental impact A consent authority may, on application by the applicant or another person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent—

(a) to correct a minor error, misdescription or miscalculation, or

(b) if satisfied the proposed modification has no environmental impact.

Comment:

The application as submitted has been sought on the basis that the proposed deletion of conditions has no environmental impact in accordance with subclause (1)(b). This means that the modification must not introduce any new negative environmental impacts, including increases to the severity or distribution of an existing environmental impact. If any new environmental impacts arise, the modification cannot proceed under section 4.55(1), even if it would result in improvements overall, or in other areas. The EP&A Act does not define the phrase “no environmental impact”. Accordingly, the meaning of the phrase is to be informed by established principles of NSW planning law and the ordinary meaning of the words.

In accordance with the Guideline published by DPHI. In determining whether a modification involves “no environmental impact”, the consent authority should have regard to whether:

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- any elements of the environment could be affected, including amenity, air quality, biodiversity, Aboriginal cultural heritage, water, soils, environmental heritage, and economic and social factors;
- the modification could affect elements of the environment that were not previously assessed;
- the location, extent, intensity or distribution of impacts would change, even if overall impacts are reduced; and
- additional or updated environmental assessment would be required to understand the impacts of the modification.

The applicants submission details the following with regard to environmental impact:

Condition	Why there is no environmental impact
9(d), 9(e)	These are financial security provisions. Deleting them does not change what is built, where, how, or to what standard. The road reserve works remain subject to section 138 approvals for each stage (Conditions 9(a) and (c)), an approved staging plan and works program (9(b)), Council inspection (9(f)), completion documentation (9(g)) and repair of any damaged public infrastructure at no cost to Council (Condition 28).
33(4)	The water feature and its location are set by the approved documents. Deletion removes an uncertain approval step only. It does not change any physical element of the development.

Consideration of conditions 9(d) and (e)

Subclauses (d) and (e) do not regulate the development itself. They are a financial security mechanism of the kind permitted by s4.17(6) of the EP&A Act. The siting, design, staging, drainage, s138 requirements, compliance, inspection and completion obligations in (a), (b), (c), (f) and (g) are all unaffected. The car park, as assessed and approved, is the same car park after the modification. The guarantee only operates if the works are not carried out in accordance with the consent. That is a compliance contingency, not an impact of the development as approved.

The application seeks to delete Condition 9(d) and (e), which require a bank guarantee for each stage of the car park. The guarantee is a security mechanism under section 4.17(6) of the Act and does not regulate the development itself. The siting, design, staging and remaining requirements of Condition 9 are unaffected.

The land on which the car park is to be constructed remains a public road vested in Council. Council has resolved to close the road and sell the land to the developer, and a contract of sale has been entered into. Until the transfer is registered, Council retains ownership of the land and its responsibilities as roads authority.

Where additional protection is warranted, it can be required through the approval under Section 138 of the *Roads Act 1993* that Condition 9(c) requires for each stage of the works. In granting those approvals, Council acts as both roads authority and landowner, and can

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impose conditions that respond to the specific works proposed in each stage. The Section 138 approvals are a more appropriate mechanism for these matters than a condition of development consent. This is particularly so because security under Section 4.17(6) of the *Environmental Planning and Assessment Act 1979* is directed to protecting the property of the Consent Authority, and would no longer be appropriate once the land is transferred to the developer.

As the risk the guarantee addressed is managed through the contract of sale and the section 138 approvals, Council is satisfied that the modification will have no environmental impact. The modification is substantially the same development as originally approved and deletion of conditions 9(d) and (e) is supported.

Consideration of condition 33(4)

The application seeks to delete Condition 33(4), which requires a detailed design for the new wishing well associated with the Dog on the Tuckerbox Memorial and its immediate surrounds to be provided to Council's satisfaction before the issue of a construction certificate.

The applicant contends that Condition 33(4) is uncertain, that fundraising is not a planning purpose, that the stated reason for the condition has been satisfied, and that the setting of the Memorial is otherwise protected by the consent. It is accepted that the requirement for the design to be "suitable for its intended purpose" lacks sufficient certainty, and that the condition as currently worded should not require a fundraising function. These concerns go to the wording of the condition, however, rather than to the need for it.

The Dog on the Tuckerbox Memorial is listed as a local heritage item under the *Gundagai Local Environmental Plan 2011*. Its statement of significance identifies the Memorial as symbolic of the district's pioneers and the teamsters who camped at the Five Mile, as a fine example of the work of Frank Rusconi, and as an item held in high esteem by the community. The Memorial comprises the bronze statue and its plinth, which bears the inscribed tablet by Brian Fitzpatrick.

The site also has a history of commemorative additions associated with the Memorial, including plaques unveiled in 1956 and 1982 and the "Pioneer's Wishing Pool" plaque. The State Heritage Inventory records that a wishing well was established in 1932, the year the Memorial was unveiled, to collect donations for the hospital. While the existing structure is not the original, the association between the Memorial and the wishing well dates from 1932.

The approved Statement of Heritage Impact (Heritage 21, 25 January 2024) assesses the relocation of the Memorial in principle and concludes that the Memorial will remain the central feature of the site. Neither approved plans or the SOHI provide any detail of how the Memorial will be presented in its new location. The arrangement of the statue, plinth, and tablet, the placement of the associated commemorative plaques, and the design of the immediate surrounds, including the water feature proposed to replace the existing wishing well, have not been resolved or assessed.

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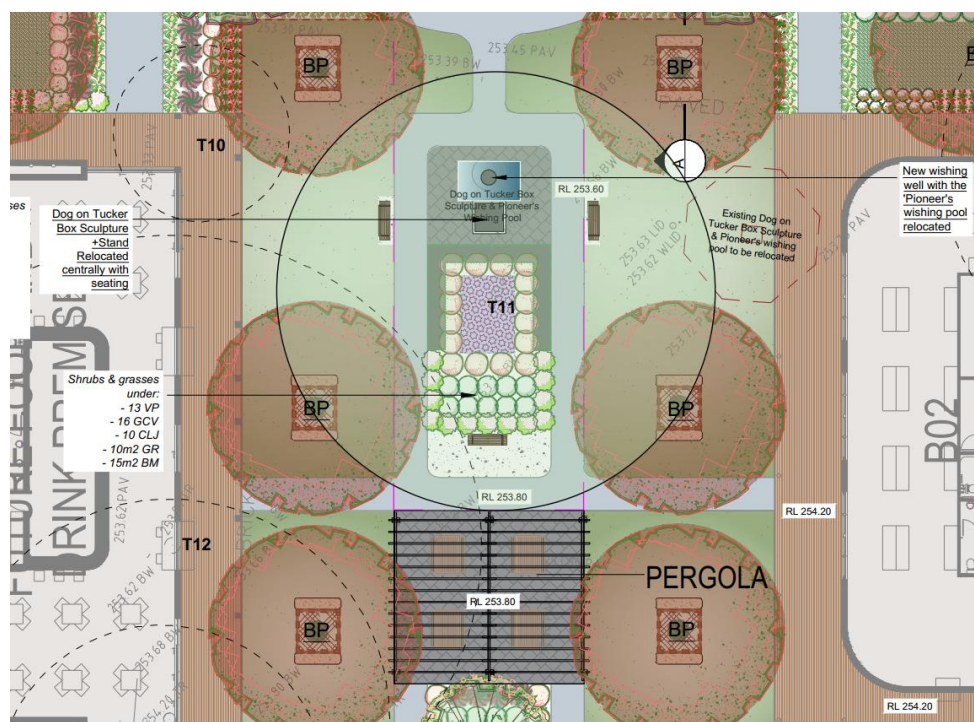


Figure 6 - Extract from approved landscaping plan showing extent of plan details for memorial and immediate surrounds

The water feature is not considered to hold heritage significance in its own right. As part of the immediate setting of the relocated Memorial, however, its design, together with that of the surrounding paving, landscaping, and seating, will determine how the Memorial is presented and experienced. Without that detail, Council cannot be satisfied that the presentation of the Memorial will be appropriate to its heritage significance.

Conditions 2, 4, and 83 and the positive covenant protect the Memorial itself, public access, and ongoing maintenance. None of these controls the design of the Memorial's setting at its new location. Condition 33(4) is the only mechanism in the consent that provides for the setting of this local heritage item to be designed, assessed, and agreed before construction.

The Memorial and the land on which it will remain are owned by Council. As landowner and custodian of the Memorial, Council has a direct and legitimate interest in how the item is presented, beyond its role as consent authority for the purposes of the modification. The Memorial is one of the district's most recognised landmarks and is held in high esteem by the community, and its relocation will be closely observed. The community can reasonably expect that the relocated Memorial will be presented with a standard of design and care that reflects its significance, and Council requires sufficient detail to confirm that this expectation will be met.

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It is accepted that it would not ordinarily be the responsibility of a private development to provide for the collection of donations. In this instance, however, the requirement relates to the presentation of a Council-owned heritage item rather than the operation of a private development, and reflects an association between the Memorial and donations to the hospital that dates from 1932.

In accordance with DPHI's modification guidelines, the applicant was advised of the assessment position and invited to amend the application to clarify the wording of Condition 33(4) rather than delete it. The suggested alternative wording is set out below. The applicant declined to amend the application.

4. Detailed design of the setting of the relocated Dog on the Tuckerbox Memorial, including:

- a) plans and elevations showing the statue, plinth and inscribed tablet in their relocated position, and the immediate surrounds, including paving, landscaping, seating and the water feature;*
- b) the location and arrangement of the commemorative plaques associated with the Memorial, including the 'Pioneer's Wishing Pool' plaque;*
- c) materials, finishes and colours of the surrounds and water feature/wishing well; and*
- d) provision of the wishing well for the receipt of public donations to Gundagai Hospital.*

The design must not detract from the heritage significance or presentation of the Memorial.

The design of the setting of the relocated Memorial has not been detailed or assessed. Deleting Condition 33(4) would remove the only opportunity for that assessment, and for Council, as landowner, to confirm that the presentation of the Memorial is appropriate to its heritage significance and consistent with community expectations. It cannot be concluded that the modification would have no environmental impact, and deletion of the condition is not supported.

Section 4.55(3) states:

(3) In determining an application for a modification of a consent under this section, the consent authority must take the following into consideration—

- (a) the matters referred to in section 4.15(1), but only so far as the matters are of relevance to the application,*
- (b) the reasons given by the consent authority for the grant of the consent sought to be modified, but only so far as the reasons are of relevance to the application.*

Comment:

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In accordance with Section 4.55(3) there would no unmanageable environmental, social or economic issues arising from the proposed changes. The approved and modified development generally complies with the requirements of the relevant environmental planning instruments does not create unreasonable environmental impacts to adjoining development. Therefore, there are no additional adverse environmental impacts as a result of the modification including amenity, privacy, noise, traffic and security and the proposed modification is satisfactory with respect to Section 4.55 of the Environmental Planning and Assessment Act, 1979.

Conditions 9(d) and 9(e)

Conditions 9(d) and 9(e) were imposed to protect Council's interests, as owner of the land, in respect of works carried out on the car park site before the land is transferred to the developer. That purpose is now met by the contract of sale and will continue to be met through the Section 138 *Roads Act 1993* approvals required for each stage under Condition 9(c). Deleting the conditions does not alter the built form, use, or operation of the development, and raises no additional environmental, social, or economic impacts, including in respect of amenity, privacy, noise, traffic, or security. The development as modified remains consistent with the relevant environmental planning instruments, and the deletion of Conditions 9(d) and 9(e) is satisfactory with respect to Section 4.55 of the Act.

Condition 33(4)

Condition 33(4) was imposed to ensure that the setting of the relocated Dog on the Tuckerbox Memorial is designed and agreed before construction. That reason remains relevant. Under Section 4.15(1)(a), the Memorial is a local heritage item under the *Gundagai Local Environmental Plan 2011*, and Clause 5.10 requires Council to consider the effect of development on the heritage significance of the item and its setting. The design of that setting has not been detailed or assessed, and no other condition of consent provides for it.

The likely impacts of deleting the condition under Section 4.15(1)(b) cannot be determined without that detail, and the public interest under Section 4.15(1)(e) is served by ensuring that a Council-owned item held in high esteem by the community is presented in a manner appropriate to its significance. The deletion of Condition 33(4) is therefore not satisfactory with respect to Section 4.55 of the Act and is not supported.

SECTION 4.15 CONSIDERATIONS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979:

4.15(1)(a)(i) The provisions of any environmental planning instrument:

State Environmental Planning Policies (SEPPs) and deemed SEPP's

The following SEPPs are relevant to the development.

SEPP (Biodiversity and Conservation) 2021

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Chapter 2 - Vegetation in non-rural areas

The proposed modification does not propose any changes to vegetation and further assessment under this policy is not required. No modifications are proposed which would alter compliance with the policy.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of land

The approved application and this proposed modification do not propose any changes that will require further consideration of land contamination. No modifications are proposed which would alter compliance with the policy and no further investigation is warranted.

SEPP (Planning Systems) 2021

Chapter 4 Concurrences and consultations

- *Division 7 Transport*, requires referral to the rail authority, for development compromising:
 - *Section 4.22* - development in or near rail corridors that is likely to have an adverse effect on rail safety, places a metal finish on a structure and the corridor is used by electric trains, use of a crane in the air space above the corridor, within 5 m of an exposed overhead power line used for railway purposes and infrastructure, penetration of the ground to a depth of 2 m or greater, within a rail corridor or within 25 metres of a rail corridor,
 - *Section 4.23* - access via a level crossing,
 - *Section 4.30* and Schedule 7 (Traffic generating development), does not apply, as the type/and or scale of the works is not identified in the Schedule.

The proposed modification is not required to be referred to Transport for NSW as it does not trigger a referral requirement that did not apply to the original development application, nor does it change a condition of consent that was imposed because of a previous referral.

- *Section 4.31 (Electricity infrastructure)* requires referral to the electricity supply authority, for development comprising:
 - penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
 - development within or immediately adjacent to an easement for electricity purposes
 - development immediately adjacent to an electricity substation
 - development within 5m of an exposed overhead electricity power line

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- installation of a swimming pool any part of which is within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level,
- installation of a swimming pool any part of which is within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool
- involving or requiring the placement of power lines underground.

The development as proposed to be modified does not meet this criteria, so no formal referral to Essential Energy was required.

- *Section 4.32 (High pressure pipelines)* requires referral to the pipeline operator, for development compromising:
 - within the licence area of a pipeline for gas
 - within 20m of the centreline of a pipeline
 - within 20m of land the subject of an easement for a relevant pipeline.

The development as proposed to be modified does not meet this criteria, so no formal referral to APA Group, was required.

Local Environmental Plan (LEP)

The applicable LEP is the Gundagai LEP 2011, and the relevant provisions of the LEP are discussed as follows.

1.2 Aims of Plan

The development as approved and proposed to be modified is not inconsistent the aims of the LEP.

1.4 Definitions

The development was granted approval to construct three (3) new buildings for future intended use as *food and drink premises* and a *shop and kiosk*, and undertake associated ancillary works. The proposed modification does not alter the use of the development from approved.

1.6 Consent authority

The proposed Section 4.55(1) application may be determined by Council as per the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels given Council is the landowner.

2.1 Land use zones

The site is zoned SP3 – Tourist, and the proposed development is permitted in the zone with consent.

2.3 Zone objectives

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The development as approved and proposed to be modified is not inconsistent the objectives of the zone.

2.7 Demolition requires development consent

Demolition works form part of the original approved application.

5.10 Heritage conservation

Located on the site is a small commercial building, ruins of the 'Limestone Inn' and the 'Dog on the Tuckerbox Memorial', which is a locally listed item (I3) on the Gundagai Local Environmental Plan 2011.

The following Statement of Significance is available for the site on the State Heritage Inventory:

The Dog on the Tuckerbox Memorial is symbolic of Gundagai's pioneering past and the hardworking teamsters who camped at the Five Mile in the 19th century. The Dog entered into Australian folklore through an anonymous teamster's song published as 'Bullocky Bill' c.1880 and was further popularised by Jack Moses in his 1920 version. The sculpture was produced by Frank Rusconi for the 1932 Back to Gundagai Celebrations as a symbol of the district's pioneers and is evidence of the community's efforts to promote its history and culture. The memorial is a fine example of Rusconi's work and evidence of the skill of the talented monumental mason and sculptor. The item is held in high esteem by the people of Gundagai as well as the wider community as a symbol of the spirit of the district's pioneers, as well as of the hardworking teamsters who stopped at the Five Mile'.

The following Statement of Significance was extracted from the Heritage Inventory Sheet for the Limestone Inn Ruins:

The remains of the Limestone Inn or Australian Arms (sometimes known as the 'Five Mile' Inn due to its location) is able to demonstrate vernacular construction using local materials. It is significant for its association with a robbery committed in 1861 by John Malloy, alias Walsh or 'Jack in the boots'. It is possible that the remains of the inn and site can yield information about the operation of inns in the Gundagai Shire in the mid-19th century.

Whilst the Limestone Inn ruins remain in situ, the Dog on the Tuckerbox statue was shifted to its current position in 1950s. Therefore, its significance lies less in its current location and more in its physical form and association with the place generally.

Council's heritage consultant, Noel Thomson, has prepared advice on the original development and its potential impact on heritage significance and was supportive of the proposal subject to conditions.

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Assessment of the modification

Clause 5.10(4) requires the Consent Authority to consider the effect of the proposed development on the heritage significance of the heritage item concerned.

The deletion of Conditions 9(d) and 9(e) relates to security for works on the car park land and has no effect on the Memorial, the Limestone Inn ruins, or their settings.

The deletion of Condition 33(4) does bear on the heritage significance of the Memorial. The approved Statement of Heritage Impact (Heritage 21, 25 January 2024) assesses the relocation of the Memorial in principle but does not detail how the Memorial will be presented at its new location, including the arrangement of the statue, plinth, and tablet, the placement of the associated commemorative plaques, and the design of the immediate surrounds and water feature. Condition 33(4) provides for that detail to be prepared, assessed, and agreed before the issue of a construction certificate. **Without it, Council cannot be satisfied that the effect of the development on the heritage significance of the Memorial and its setting has been adequately considered. The deletion of Condition 33(4) is therefore not supported under Clause 5.10.**

The proposed modification does not alter the extent of works or ground disturbance, and the approved development remains appropriate in terms of Aboriginal cultural heritage.

5.21 Flood planning

The land is not in the flood planning area.

6.1 Biodiversity protection

The proposed modification does not alter the development's compliance with this clause, and no further consideration is required.

6.2 Land protection

This clause applies to land identified as "sensitive land" on the *Natural Resources Sensitivity Land Map*, but the site is not mapped as being affected, and accordingly this clause is not applicable.

6.3 Water protection

The proposed modification does not alter the development's compliance with this clause, and no further consideration is required.

6.5 Earthworks

The proposed modification does not alter the development's compliance with this clause, and no further consideration is required.

6.6 Essential Services

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The proposed modification does not alter the development's compliance with this clause, and no further consideration is required.

4.15(1)(a)(ii) The provisions of any draft environmental planning instrument:

State Environmental Planning Policies (SEPPs)

There are no draft SEPP's which relate to this development.

Local Environmental Plan (LEP)

There are no draft LEP's which apply to this land.

4.15(1)(a)(iii) The provisions of any development control plan:

The former Gundagai Shire Council did not have a Development Control Plan (DCP).

4.15(1)(a)(iiia) Any planning agreement or draft planning agreement:

The developer has not entered into a planning agreement, nor has offered to enter into a draft planning agreement in relation to this application.

4.15(1)(a)(iv) Matters prescribed by the Regulations:

Council has considered the following matters as prescribed by Regulations:

Section 61 (Additional matters for consideration): -

- demolition was approved as part of the original application which is to comply with AS 2601,
- the development is not for the carrying out of development on land that is subject to a subdivision order made under Schedule 7 to the Act,
- the development is not located within the local government area of Coonamble, Gilgandra, Warrumbungle Shire or Dubbo Regional (to which the Dark Sky Planning Guideline applies),
- the development does not pertain to a manor house or multi dwelling housing (terraces),
- the development is not land to which the Penrith LEP applies to,

Section 62 (Consideration of fire safety)

- the development is not for a change of building use for an existing building.

Section 63 (Considerations for erection of temporary structures)

- the development is not for a temporary structure.

Section 64 (Consent authority may require upgrade of buildings)

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- the development does not involve the rebuilding, enlargement or extension of an existing building.

Section 65 (Special provision relating to Sydney Opera House)

- the development does not relate to the Sydney Opera House.

4.15(1)(b) The significant likely impacts of that development:

Context and Setting:

The deletion of Conditions 9(d) and 9(e) does not alter the built form, siting, or scale of the approved development, and has no effect on its relationship with the surrounding context and setting. The deletion of Condition 33(4), however, would remove the only requirement for the setting of the relocated Dog on the Tuckerbox Memorial to be designed and assessed. As the Memorial is a local heritage item and a defining feature of the site's character, its presentation is integral to the context and setting of the development, and the deletion of this condition is not supported.

Access, Transport and Traffic:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Public Domain:

The deletion of Conditions 9(d) and 9(e) does not affect the design or delivery of works within the public domain, as works on the car park land will continue to require approval under Section 138 of the *Roads Act 1993* for each stage in accordance with Condition 9(c). The Dog on the Tuckerbox Memorial and the land on which it will remain are owned by Council and accessible to the public, and the immediate surrounds of the Memorial form a key part of the public domain within the site. Condition 33(4) ensures that the design of this space, including paving, landscaping, seating, and the water feature, is resolved to Council's satisfaction before construction. Its deletion is not supported.

Utilities:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Heritage:

The deletion of Conditions 9(d) and 9(e) has no effect on the Dog on the Tuckerbox Memorial, the Limestone Inn ruins, or their settings. The approved Statement of Heritage Impact supports the relocation of the Memorial in principle but does not detail how it will be presented at its new location. Condition 33(4) is the only mechanism in the consent for the setting of this local heritage item to be designed and assessed, and its deletion is not supported, as discussed under Clause 5.10 of the *Gundagai Local Environmental Plan 2011*.

Other Land Resources:

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The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Water:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Soil:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Air and Microclimate:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Flora and Fauna:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Waste:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Energy:

The modification will not alter the impact on the energy needs or current supply of the development.

Noise and Vibration

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Natural Hazards:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Technological hazards

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Safety, security and crime prevention

No change is proposed to the existing security measures.

Social Impacts in the Locality:

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It is not considered that the modification will change the original assessment regarding social impact.

Economic Impact in the Locality:

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Site Design and Internal Design:

The proposed modification does not alter the approved site layout, building design, or internal design of the development. The deletion of Conditions 9(d) and 9(e) raises no site or internal design considerations. Condition 33(4) relates to the design of the Memorial's immediate surrounds within the site, and its retention ensures that this element of the site design is resolved before construction.

Construction Matters:

The modification does not require further construction on the site.

Cumulative impacts

The deletion of Conditions 9(d) and 9(e) will not result in any cumulative impact different from or greater than that of the approved development. With Condition 33(4) retained, the modified development as recommended for approval will not give rise to any cumulative impacts beyond those considered in the assessment of the original application.

4.15(1)(c) - The suitability of the site for the development:

Does the proposal fit in the locality ?

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Are the site attributes conducive to development ?

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

4.15(1)(d) - Any submissions made:

No submissions have been received. Public exhibition of the application was not required.

4.15(1)(e) - The public interest:

There are no planning strategies, studies, or State or Federal Government policy statements that apply to a development of this nature. The deletion of Conditions 9(d) and 9(e) does not contravene the public interest, as Council's interests as landowner remain protected through the contract of sale and the Section 138 *Roads Act 1993* approvals. The public interest is served by retaining Condition 33(4), which ensures that the Dog on the Tuckerbox Memorial,

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a Council-owned heritage item held in high esteem by the community, is presented in a manner appropriate to its significance. The modification as recommended for approval in part is therefore consistent with the public interest.

OTHER MATTERS:

Section 7.11 and 7.12 Contributions Policies:

Section 7.12(2) of the EPA Act, states that “a consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 7.11”. Accordingly, Council can only require payment of either a 7.11 or 7.12 contributions.

Section 7.12 Contributions Plans

The proposed modification does not affect the assessment of this matter under the original application, and no further consideration is required.

Section 64 water and sewer contributions policies:

There are no water or sewer contribution plans that apply to the former Gundagai LEP.

Disclosure of political donations and gifts:

The application and notification process did not result in any disclosure of Political Donations and Gifts.

FINANCIAL IMPACTS:

Nil impacts for Council

POLICY IMPACTS:

The application has not been assessed as a council-related development application under Council’s *Managing Conflicts of Interest: Council-related Development Policy*. Although Council is the owner of the land on which the Dog on the Tuckerbox Memorial is located, and of the car park land, the definition of council-related development in the policy is inconsistent with the definition under the *Environmental Planning and Assessment Act 1979* and associated Regulation. Applying the policy definition would have required the application to be assessed in a manner that does not comply with other requirements of the Act. To the extent of that inconsistency, the Act prevails over the policy, and the application has been assessed in accordance with the Act.

ORGANISATIONAL IMPACT:

Nil

RISK MANAGEMENT IMPACTS:

Nil

LEGAL ISSUES:

Nil

CONCLUSION:

DEVELOPMENT ASSESSMENT REPORT

Pursuant to the *Environmental Planning & Assessment Act 1979*
Section 4.15 (as amended)



The application has been assessed against the relevant matters under Section 4.55 and Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. The deletion of Conditions 9(d) and 9(e) is appropriate, as the matters those conditions address are adequately managed through the contract of sale and the Section 138 *Roads Act 1993* approvals required under Condition 9(c). The development as modified remains substantially the same development as originally approved.

The deletion of Condition 33(4) is not supported, as the setting of the relocated Dog on the Tuckerbox Memorial has not been detailed or assessed, and the condition is the only mechanism in the consent for that assessment to occur. It is therefore recommended that the application be approved in part.

RECOMMENDATION:

Determination:

That Council approve in part Modification Application DA 2023/116.3 as follows:

- **Application No.:** DA 2023/116.3
- **Property:** Lots 1, 2 and 3 DP 1322201, 37 Annie Pyers Drive, Gundagai NSW 2722
- **Development:** Section 4.55(1) modification to DA 2023/116 to delete Conditions 9(d), 9(e), and 33(4)
 1. That Conditions 9(d) and 9(e) be deleted.
 2. That the proposed deletion of Condition 33(4) be refused, and Condition 33(4) be retained, for the following reason: the setting of the relocated Dog on the Tuckerbox Memorial, a local heritage item under the *Gundagai Local Environmental Plan 2011*, has not been detailed or assessed, and the condition is the only mechanism in the consent for that assessment to occur, having regard to Clause 5.10(4) of the *Gundagai Local Environmental Plan 2011* and Section 4.15(1)(b) and (e) of the *Environmental Planning and Assessment Act 1979*.
 3. That all other conditions of DA 2023/116, as modified, remain unchanged.

SCHEDULE 1, DIVISION 4, CLAUSE 20 - REASONS FOR THE DECISION:

This section of the Act requires public notification of certain decisions, including the date of the decision, the reasons for the decision, and how community views were taken into account in making the decision.

The reasons for the decision are:

- the development as modified remains permissible in the zone and is not inconsistent with the zone objectives;
- the deletion of Conditions 9(d) and 9(e) will not result in adverse impacts on the natural or built environment, infrastructure, community facilities, or local character and amenity, as the matters those conditions address are managed through the contract of sale and the Section 138 *Roads Act 1993* approvals required under Condition 9(c);

DEVELOPMENT ASSESSMENT REPORT

*Pursuant to the Environmental Planning & Assessment Act 1979
Section 4.15 (as amended)*



- the development as modified remains consistent with the relevant environmental planning instruments;
- the development as modified is substantially the same development as originally approved; and
- the deletion of Condition 33(4) is not supported, as the setting of the relocated Dog on the Tuckerbox Memorial, a local heritage item, has not been detailed or assessed, and the condition is the only mechanism in the consent for that assessment to occur.

The application was not required to be notified under the Stawide Community Participation Plan, and no submissions were received. Community views were taken into account through the original assessment of the development, and through consideration of the high esteem in which the Memorial is held by the community, as recorded in its statement of significance.

DEVELOPMENT ASSESSMENT SIGNING OFFICER:

Lauren Dawes

26 October 2026

The General Manager
Cootamundra-Gundagai Regional Council
PO Box 420
COOTAMUNDRA NSW 2590

Application to modify Development Consent DA 2023/116 (PAN-367363) under section 4.55(1) of the Environmental Planning and Assessment Act 1979 – deletion of Conditions 9(d), 9(e) and 33(4) – 37 Annie Pyers Drive, Gundagai

1. Introduction

ARB Planning acts for DOTT Developments Pty Ltd, the applicant under Development Consent DA 2023/116. This letter accompanies an application under section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify the consent by deleting:

- **Condition 9(d)** – conditional bank guarantee for each stage of the car park;
- **Condition 9(e)** – submission and release of those guarantees; and
- **Condition 33(4)** – detailed design of the new wishing well.

No other condition, approved plan or document is proposed to change. The modification involves no physical change to the approved development.

A separate application under section 4.55(1A) is lodged concurrently to delete Condition 43 (Management of heritage items). The two are lodged separately because they rely on different statutory tests.

The application is made under section 4.55 as amended by the *Environmental Planning and Assessment Amendment (Planning System Reforms) Act 2025*, with the relevant provisions in force from 21 March 2026. Section 4.55(5) confirms a consent may be modified under section 4.55(1), (1A) or (2) where the modification relates only to a condition and involves no physical change to the approved development.

2. The development consent

Item	Detail
Consent	DA 2023/116 (PAN-367363) – deferred commencement consent
Date of determination	17 September 2024 (lapses 17 September 2029)
Consent authority	Southern Regional Planning Panel
Applicant	Brendan Price
Land	37 Annie Pyers Drive, Gundagai – originally Lot 2 DP 160191 and Lot 529B DP 203601; now subdivided under Subdivision Certificate SC2023/116 dated 9 October 2025
Landowner	Cootamundra-Gundagai Regional Council contracts exchanged for sale to the developer. Signed owners consent from the applicant is attached.
Development	Staged development including demolition, construction of three buildings, relocation of the Dog on the Tuckerbox Memorial, play area, car parking, sewer and stormwater works, tree removal, earthworks, landscaping and three-lot subdivision
Heritage	Dog on the Tuckerbox Memorial – local heritage item I3, Schedule 5, Gundagai LEP 2011 (listed on Lot 2 DP 160191). This is the only listed heritage item on the site. The Limestone Inn ruins are not a listed heritage item.

3. Proposed modification

Delete the following conditions in their entirety:

Condition	Current wording (extract) – proposed for deletion
9(d)	“Conditional Bank Guarantee Requirement: For each stage of the car park development including but not limited to associated drainage and ancillary works, a conditional bank guarantee must be provided to secure the performance of obligations related to that stage prior to any associated works being undertaken.” Sub-clauses (i)–(iv) set out the issuer, value (full value of works within the road reserve, supported by an independent quantity surveyor’s report), duration and Council’s rights of access to the funds.
9(e)	“Submission and Release of Guarantees: Prior to the commencement of each stage, the proponent must submit the bank guarantee to the council for approval. The bank guarantee for a completed stage will be released upon satisfactory completion of all requirements and obligations for that stage...”
33(4)	“A detailed design for the new wishing well associated with the Dog on the Tuckerbox statue and immediate surrounds. The design must be suitable for its intended purpose to the satisfaction of Council.”

Conditions 9(a), (b), (c), (f) and (g), and the remainder of Condition 33, are unchanged.

4. Modification pathway – section 4.55(1)

Section 4.55(1) allows a consent to be modified where the consent authority is satisfied the modification will have **no environmental impact**. The Department’s practice note *Modifications under section 4.55 of the EP&A Act* (March 2026) explains this means the modification must not introduce any new negative environmental impact, or change the location, extent, intensity or distribution of an existing impact.

Each deletion meets that test:

Condition	Why there is no environmental impact
9(d), 9(e)	These are financial security provisions. Deleting them does not change what is built, where, how, or to what standard. The road reserve works remain subject to section 138 approvals for each stage (Conditions 9(a) and (c)), an approved staging plan and works program (9(b)), Council inspection (9(f)), completion documentation (9(g)) and repair of any damaged public infrastructure at no cost to Council (Condition 28).
33(4)	The water feature and its location are set by the approved documents. Deletion removes an uncertain approval step only. It does not change any physical element of the development.

Timing. Under section 4.55A, an application under section 4.55(1) must be determined within 14 days of lodgement.

Pathway check. Consistent with the practice note, we ask that Council advise within 7 days of submission if it considers any part of this application does not meet the section 4.55(1) criteria, so the applicant can decide how to proceed before the application is determined.

5. Conditions 9(d) and 9(e) – bank guarantees

5.1 Purpose of the condition

The stated reason for Condition 9 is “to safeguard and protect the Council and the community from potential financial risks or incomplete works.” Clause (e) refers to Council acting “as the Roads

Authority and landowner". The guarantees secure the full value of works within the road reserve for each car park stage.

5.2 Grounds for deletion

1. **The applicant's financial commitment is already secured with Council.** The applicant has exchanged contracts to buy the relevant land from Council. The full purchase price is held in Council's solicitors' trust account, and settlement is expected. An additional bank guarantee for the full value of each stage duplicates a commitment already demonstrated to Council.
2. **Council's landowner interest is changing.** Clause (e) relies partly on Council's role as landowner. On settlement, Council will no longer own the car park land. A consent condition should not continue to impose landowner-based security after that interest ends.
3. **Road works are controlled through the Roads Act.** Each car park stage in the road reserve needs its own section 138 approval under Conditions 9(a) and (c). Council, as roads authority, assesses and approves those works stage by stage, and can set conditions on each approval. The consent does not need to duplicate that control.
4. **The remaining conditions secure completion and quality.** Conditions 9(b), (f) and (g) require an approved staging plan and works program, allow Council to inspect at any time, and require completion documentation for each stage. Condition 28 requires any damaged public infrastructure to be repaired at no cost to Council, and allows Council to recover the cost if it is not.
5. **The requirement is disproportionate.** A guarantee for the full value of the works, supported by an independent quantity surveyor's report and held until each stage is complete, ties up significant capital at the same time as the purchase price is held by Council. It adds cost and delay to the Stage 1 car park without adding protection that Council does not already have.

5.3 Environmental impact

Deletion does not alter the design, location, construction standard or staging of any works. It introduces no new environmental impact and does not change the extent or distribution of any existing impact.

6. Condition 33(4) – wishing well

6.1 Background

The wishing well is a later addition around the Memorial that has collected donations for Gundagai Hospital. The approved Statement of Heritage Impact (Heritage 21, 25 January 2024) finds that the wishing well and surrounding landscaping make minimal contribution to the significance of the Memorial. In response to Council's request for information, the approved SoHI confirms the proposal is to demolish the existing wishing well, build a new water feature in front of the relocated Memorial, and retain the 'Pioneer's Wishing Pool' plaque in front of the Memorial.

6.2 Grounds for deletion

1. **The condition is uncertain.** It requires the design to be “suitable for its intended purpose”, but that purpose is not stated in the condition, its reason or the approved documents. The applicant has sought clarification from Council several times, most recently by email to Trevor Dando on 14 August 2026, asking whether Council requires water, a particular design or an ongoing fundraising function. No substantive response has been received from Council. A condition whose requirements the applicant and certifier cannot identify, satisfy or enforce.
2. **Fundraising is not a planning purpose.** To the extent the condition seeks to secure a charitable fundraising function, that is not a planning purpose and does not fairly and reasonably relate to the development. How the operator conducts voluntary fundraising is a matter for the operator. The applicant intends the new feature to continue to allow voluntary donations to Gundagai Hospital via a locked box coin donation.
3. **The stated reason for Condition 33 is already met.** The reason given is “to require minor amendments to the plans endorsed by the consent authority”. The form and location of the water feature are already set out in the approved documents. No amendment is needed.
4. **The Memorial's setting remains protected** by the approved plans (Condition 2), the Public Access Plan (Condition 4), the no-fencing requirement between Lots 1 and 2 (Condition 83), and Positive Covenant 1 of the s88B instrument. That covenant binds the owner of Lot 1 in perpetuity to preserve, enhance and maintain the Memorial, allow public access at all times, and allow Council to inspect the Memorial and its surrounds and enforce the covenant through work orders.

6.3 Environmental impact

Deletion does not change what will be built, where, or how. It introduces no new impact on heritage, amenity, social or economic factors and needs no further environmental assessment.

7. Section 4.55(3) considerations

The matters in section 4.15(1) are relevant only to the extent they relate to the deletions. No planning instrument, development control plan or planning agreement provision is engaged by removing financial security or an uncertain design-approval step. The likely impacts, site suitability and public interest are unchanged because the approved works, their standard and their heritage protections are unchanged.

The Panel's reasons for approval were that the development is appropriate and that impacts can be managed through appropriate conditions. That remains the case.

8. Protections that remain in place

Protection	Effect
Conditions 9(a) and 9(c)	Section 138 Roads Act approval for each car park stage before works start
Condition 9(b)	Staging plan and works program approved by Council before any Construction Certificate
Conditions 9(f) and 9(g)	Council inspection at any time; written notice and documentation on completion of each stage
Condition 28	Repair of damaged public infrastructure at no cost to Council, with Council able to recover costs

Conditions 2 and 33 (other sub-clauses)	Approved plans, including the new water feature, and remaining design amendments
Conditions 4 and 83	Public access to the Memorial during works; no fencing between Lots 1 and 2
s88B Positive Covenant 1	Perpetual preservation, enhancement and maintenance of the Memorial; Council inspection, work orders and step-in rights; public access at all times

9. Conclusion

Deleting Conditions 9(d), 9(e) and 33(4) involves no physical change to the approved development and no environmental impact. The road works remain controlled by the Roads Act approvals and the rest of Condition 9, and the Memorial's setting remains protected by the approved plans, other conditions and the registered s88B covenant.

We therefore request that Council modify DA 2023/116 under section 4.55(1) by deleting Conditions 9(d), 9(e) and 33(4), leaving the remainder of the consent unchanged.

Please contact me on 0409 861 842 or arbplanning@outlook.com if you require anything further.

Yours faithfully,

Anthony Blood
Director
ARB Planning

STATEMENT OF HERITAGE IMPACT

Proposed Development at 37 Annie Pyers Drive Gundagai



Job No. 10204
January 2024

Heritage21
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Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

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Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai**Acknowledgement of Country**

Heritage 21 wishes to acknowledge the Traditional Owners of country throughout Australia and recognise their continuing connection to land, waters and community. We pay our respects to them and their cultures and to elders both past and present.

Cover page: Subject site at 37 Annie Pyers Drive, Gundagai looking to The Dog On The Tuckerbox Memorial.
(Source: Heritage 21, 24 December 2022)

The following table forms part of the quality management control undertaken by Heritage 21 regarding the monitoring of its intellectual property as issued.

Issue	Description	Date	Written by	Reviewed by	Issued by
1	Draft report (D1) issued for comment – Job 9798.	04.08.2023	AC	EM	AC
2	Draft report (D2) issued for comment – Job 9798.	21.08.2023	AC	EM/ AP	AC
3	Report issued (RI) – Job 9798.	22.08.2023	AC	EM/AP	AC
4	Draft report (D1) issued for comment in response to RFI.	25.01.2024	AC/SA	EM	SA
5	Report issued (RI).	25.01.2024	AC/SA	-	SA

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Job No. 10204 – RI

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

1.0 INTRODUCTION

1.1 Background

This Statement of Heritage Impact ("SOHI" or "report") has been prepared on behalf of The DOTT Developments Pty Ltd, the owner of the site, to submit a development application for a new development at 37 Annie Pyers Drive, Gundagai ("the site"). This report has been amended to address a request for additional information sent by Cootamundra-Gundagai Regional Council on 16 November 2023.

1.2 Site Identification

The subject site is located at 37 Annie Pyers Drive, Gundagai which falls within the boundaries of the Cootamundra-Gundagai Local Government Area (LGA) and comprises the following lots:

- Lot 2 DP 160191; and
- Lot 529B DP 203601

As depicted in Figure 1 below, the site is located on the western side of Annie Pyers Drive which is adjacent to the Hume Highway. The subject site comprises a large field with a small commercial building, ruins of the Limestone Inn, and the Dog on the Tuckerbox Memorial. The setting and topography of the site will be more fully described in Section 3.0 below.



Figure 1. Aerial view of the site, which is highlighted in yellow (Source: NSW Spatial Services, "SIX Maps," accessed 26 July 2023 <http://maps.six.nsw.gov.au/>, annotated by Heritage 21).

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

1.3 Heritage Context

1.3.1 Heritage Listings

The subject site **is** listed as an item of environmental heritage under Schedule 5 of the Gundagai Local Environmental Plan 2011 ("GLEP"). It **is not** listed on the NSW State Heritage Register, the National Heritage List, the Commonwealth Heritage List, the National Trust Register (NSW), or the former Register of the National Estate.¹

The details of the listings follow:

Statutory List – Legislative Requirements				
List	Item Name	Address	Significance	Item No.
Gundagai Local Environmental Plan 2011	Dog On The Tuckerbox Memorial	37 Annie Pyers Drive, Gundagai NSW 2722	Local	I3

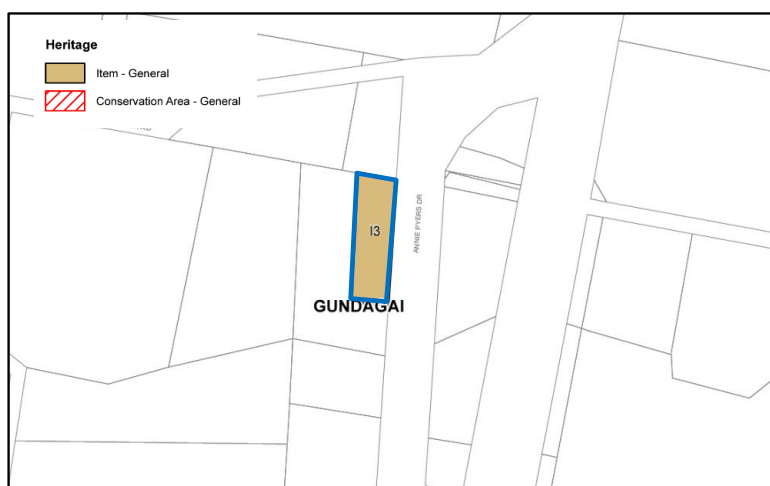


Figure 2. Detail from Heritage Map HER_007A. The site is outlined in blue, heritage items shaded brown and heritage conservation areas are hatched red (Source: NSW Legislation Online, <https://www.legislation.nsw.gov.au/maps>, annotated by Heritage 21).

The subject site **is not** located within the boundaries of a heritage conservation area listed under Schedule 5 of the GLEP 2011.

¹ The Register of the National Estate ceased as a statutory heritage list in 2007, but it continues to exist as an inventory of Australian heritage places.

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

1.3.2 Heritage Items in the Vicinity

There are no heritage listed items or heritage conservation areas situated in the vicinity of the subject site.

1.4 Purpose

The subject site is a heritage item which is listed under Schedule 5 of the GLEP 2011. Sections 5.10(4) and 5.10(5) of the GLEP 2011 require Cootamundra-Gundagai Regional Council to assess the potential heritage impact of non-exempt development, such as the proposed works (refer to Section 5.0), on the heritage significance of the abovementioned heritage item and, also, to assess the extent (whether negative, neutral or positive) to which the proposal would impact the heritage significance of that heritage item. This assessment is carried out in Section 0 below.

Accordingly, this SOHI provides the necessary information for Council to make an assessment of the proposal on heritage grounds.

1.5 Methodology

The methodology used in this SOHI is consistent with *Statements of Heritage Impact* (1996) and *Assessing Heritage Significance* (2001) published by the Heritage Division of the NSW Office of Environment and Heritage and has been prepared in accordance with the principles contained in the most recent edition of *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance* (2013).

1.6 Authors

This Statement of Heritage Impact ("SOHI" or "report") has been prepared by Aidan Conlon and Sandra Saravolac, reviewed by Emily McSkimming and overseen by Paul Rappoport, of Heritage 21.

1.7 Limitations

- This SOHI is based upon an assessment of the heritage issues only and does not purport to have reviewed or in any way endorsed decisions or proposals of a planning or compliance nature. It is assumed that compliance with non-heritage aspects of Council's planning instruments, the BCA and any issues related to services, contamination, structural integrity, legal matters or any other non-heritage matter is assessed by others.
- This SOHI essentially relies on secondary sources. Primary research has not necessarily been included in this report, other than the general assessment of the physical evidence on site.
- It is beyond the scope of this report to address Indigenous associations with the subject site.
- It is beyond the scope of this report to locate or assess potential or known archaeological sub-surface deposits on the subject site or elsewhere.
- It is beyond the scope of this report to assess items of movable heritage.

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

- Any specifics regarding views should be assessed by a view expert. Heritage 21 does not consider itself to be a view expert and any comments in this report are opinion based.
- Heritage 21 has only assessed aspects of the subject site that were visually apparent and not blocked or closed or to which access was not given or was barred, obstructed or unsafe on the day of the arranged inspection.

1.8 Copyright

Heritage 21 holds copyright for this report. Any reference to or copying of the report or information contained in it must be referenced and acknowledged, stating the full name and date of the report as well as Heritage 21's authorship.

2.0 HISTORICAL CONTEXT

2.1 Local History

The following local history of Gundagai was extracted from the Gundagai Jail and Courthouse Conservation Management Plan:

Gundagai is situated on the Murrumbidgee River at the foot of Mt Parnassus, 387 km south-west of Sydney. It is located just off the Hume Highway about halfway between Yass and Holbrook at an elevation of 225 m. Prior to European occupation the Wiradjuri Aborigines were the local tribe. It is thought the town's name derives from the Aboriginal word 'gundabandoobingee' which has unconvincingly been interpreted as meaning 'cut with a hand-axe behind the knee'. Today Gundagai still holds great cultural significance for the Indigenous people of Australia.

The first known whites in the area were explorers Hamilton Hume and William Hovell who passed through on their way to Port Phillip Bay in 1824. The first European settlers arrived around 1826. Gundagai was officially discovered by white people in 1829, when Captain Sturt from the British Colony stumbled across this small area. A cairn on the northern riverbank (in the Gundagai River Caravan Park) denotes the spot at which he crossed the river. When Captain Sturt came down the Murrumbidgee river in 1829 he found Henry O'Brien at Jugiong, William Warby at Mingay and the Stuckey Brothers, Peter and Henry at Willie Ploma and Tumblong. Officially they were beyond the bounds of settlement, which meant that the Government was not obliged to protect them. They had followed in the footsteps of the Hume and Hovell expedition and found wonderful grazing along the river. A settlement gradually grew at the river crossing on the low-lying alluvial flats on the northern side of the Murrumbidgee, Gundagai was gazetted in 1840. By 1843 there were four hotels, a post office, several stores, a school, a blacksmith, 20 houses and a number of tents. The first flood hit the town in 1844 and prompted debate but no action and by 1852 about 300 people were living in close proximity on the river flat, some having purchased lots from the Government which would not replace land inundated during the 1844 flood. The reason for the slow increase in population was that Gundagai was regularly hit by floods. Despite several big floods across the flats, and warnings from the aborigines, people stayed near the river because of the proximity to water. Gundagai was finally moved to the new location on higher ground after a flood virtually destroyed the settlement in 1852, destroying 71 buildings and killing 173 of the 400 residents (the greatest national disaster until the Victorian Bushfires of 2010). On the evening of the 24th of June 1852, a great flood swept down the Murrumbidgee valley with many settlers taking refuge in the lofts of their houses. The river rose ever higher, and with the dawn came the horrifying spectacle of just how much damage had been wrought. The punt that carried the freight across the river set out to rescue people but capsized, tipping out the terrified occupants. The aboriginals Yarri and Jackey Jackey took their canoes out into the torrent to rescue people in trees. Even as the settlers came to grips with their grief and loss, another flood swept away what was left in 1853.

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

Sometime around 1859, gold was discovered in the hills surrounding Gundagai. As miners swelled the population, this created jobs for people as miners and as the town began to get richer and commerce expanded, there were schools, churches and a hospital built. In 1867, Prince Alfred Bridge was built, the first bridge over the Murrumbidgee -one of the longest in NSW and replaced the earlier ferry service. This was very significant to the people of Gundagai as it allowed them to expand the town to areas where the floods wouldn't be able to reach them as easily. There was a railway built in 1886, followed by the railway bridge in 1902 and the twin bridge enabled the extension of the line to Tumut, which was opened in 1903.²

2.2 Site Specific History

The following site-specific history was extracted from the NSW State Heritage Inventory:

Gundagai is probably best symbolised by the Dog on the Tuckerbox memorial. The Dog on the Tuckerbox entered into Australian folklore through an anonymous teamster's song. A version of the song appeared in the Gundagai Times in the 1880s. Titled 'Bullocky Bill', and in the form of a poem, it shows admiration for a hardy and stoic teamster who becomes bogged at Nine Mile Creek, which was a teamster's meeting place on Muttama Creek. Jack Moses wrote a new version of the poem in the 1920s. The popularity of the song inspired the commissioning of a statue for the Back to Gundagai Celebration in 1932 [Butcher 2002: 211].

The bronze sculpture was the idea of the Gundagai sculptor, Frank Rusconi, who also made it. The plinth on which it stood bears a tablet inscribed with a tribute to the pioneers, written by the Sydney journalist, Brian Fitzpatrick [RNE Place Id 103763]. The sculpture is considered to be Rusconi's best-known work [Kerr in Serle 1988: 481].

A nation-wide competition was held for the most suitable inscription for the monument. The lines written by Brian Fitzpatrick read,

*Earth's self upholds this monument,
To conquerors who won her when
Wooing was dangerous and now
Are gathered unto her again.*

The statue is located at the site of an old camping ground and as stated in the famous verse, 'five miles from Gundagai'. It is dedicated to the pioneers to whom a faithful dog was also a good friend. The Right Hon JA Lyons, Prime Minister, unveiled the monument in 1932. The site also includes the ruins of Joseph Carberry's Limestone or 'Five Mile' Inn built in 1851. At present, it is a popular rest area for travellers on the Hume Highway. Annie and Andy Pyers

² Noel Thomson Architecture, *Gundagai Jail and Courthouse: Conservation Management Plan*, prepared for Gundagai Shire Council, 2012.

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

opened a kiosk at the Five Mile in 1932 and they constructed at the wishing well to collect donations for the hospital [Butcher 2002: 211-2].

In 1950 after the kiosk's sale the monument was moved back a short way from the increasingly busy highway. A new kiosk was built in 1956 [Butcher 2002: 211-2]. A plaque honouring Jack Moses was unveiled by JJ Cahill, the Premier of NSW at the Five Mile Kiosk on 24 April 1956.

A referendum held in 1976 decided that 'The Dog' should remain at its traditional spot, not moved into Gundagai as had been suggested to the Tourist Advisory Committee [The True Story of Gundagai's (Dog on the Tucker Box) c.1982].

Students from Canberra College of Advanced Education stole the Dog on the Tucker Box on 22-23 October 1981. The statue was recovered at the Campus, returned to the site and bolted more securely to its base. The unveiling of a plaque by Sir James Rowland, Governor of NSW on 28 November 1982 celebrated the 50th Anniversary of 'the Dog'. It coincided with the release of a record by the Howie Brothers featuring a song titled 'He's Been There for Fifty Years'.

The site is listed on the Register of the National Estate as an Indicative Place.³

Unless otherwise stated, the images below have been sourced from the NSW Government's Historical Imagery Viewer. Note the absence of trees in the early aerial images and increasing number of plantings around the site between 1991 and 1997.



Figure 3. 1961 aerial view of the site.



Figure 4. 1971 aerial view of the site.

³ Heritage NSW, "The Dog on the Tuckerbox Memorial," State Heritage Inventory, Heritage ID: 1680082, accessed 31 July 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1680082>.



Figure 6. 1991 aerial view of the site.



Figure 8. Latest Google Maps aerial view of the site. (Source: Google Maps, accessed 24 January 2024, <https://www.google.com/maps/>).

3.0 PHYSICAL EVIDENCE

3.1 The Setting

The site is located at 37 Annie Pyers Drive, Gundagai. The town of Gundagai is located approximately 317 kilometres south-west of the Sydney CBD.

Annie Pyers Drive is a long, sealed road with a bend on the northern and southern ends. The road runs parallel to the Hume Highway and provides access to the Dog On the Tuckerbox Memorial, shop and the adjacent residential dwellings. The road is located in a rural area surrounded by cleared rolling hills. To the south of the memorial is a petrol station and a fast-food restaurant. The main town of Gundagai is situated approximately 6.6 kilometres south of the subject site.

3.2 Physical Description

The subject site comprises the Dog On The Tuckerbox Memorial, a small commercial building and outbuilding constructed in 1956, a former service station building, and the ruins of the Limestone Inn constructed in 1851. These buildings and memorial are situated on a large, rural property located on the western side of Annie Pyers Drive, the primary access road to the site from the Hume Highway. The memorial and the shop are linked by a brick paved courtyard and sitting area. The shop is a simple, utilitarian brick masonry building with a flat roof and large entry doors on its primary façade. To the north-west of the memorial are the ruins of the Limestone Inn. Signage and interpretation panels are placed adjacent to the relevant areas, providing historical information and significance statements pertaining to the Dog On The Tuckerbox Memorial and the Limestone Inn ruins. To the south of the memorial is the now-vacant former service station building. This building has a flat roof and large windows along its primary façade. It appears that the building has not been repurposed since its closure.

3.3 Condition and Integrity

The subject site is in relatively good condition. The Dog On The Tuckerbox Memorial appears to have retained its integrity since its installation. The ruins of the Limestone Inn are not well preserved and are covered with leaf litter from surrounding trees. The existing buildings on the site are utilitarian, mid-century structures and are in good condition; however, these buildings are not considered to possess heritage significance.

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

3.4 Images

The following photographs have been taken by Heritage 21 at the site inspection undertaken on 24 December 2022, unless stated otherwise.



Figure 9. External view, facing east, showing the Dog on the Tuckerbox Memorial, wishing well, courtyard, later addition shop building and mature trees.



Figure 10. External view, facing north, showing courtyard, landscaped gardens, interpretation signage, mature trees and Annie Pyers Drive (far left).



Figure 11. External view, facing west, showing rear of the later addition shop, connective awning, outbuilding and grassy field.



Figure 12. External view, facing south, showing disused service station building, gravel road, grassy field and mature trees.



Figure 13. External view, facing north-east, showing rear of the later addition shop, connective awning, outbuilding, mature trees and grassy field.



Figure 14. External view, facing west, showing fenced off area, corrugated metal awning, grassy field and mature trees.

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai



Figure 15. External view, facing northeast, showing, corrugated metal awning, fenced off area, grassy field and mature trees.



Figure 16. External view, facing north, showing wagon, dirt area, fenced off area containing Limestone Inn ruins and mature areas.

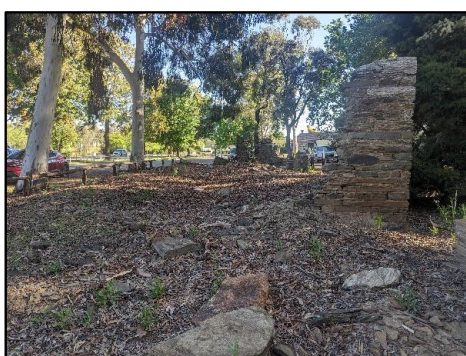


Figure 17. External view, facing south, showing the Limestone Inn ruins, mature trees and Annie Pyers Drive (in distance on left).



Figure 18. External view, facing south, showing fenced off area containing ruins of the Limestone Inn and mature trees.



Figure 19. External view, facing south, showing grassy field, lot boundary fence and Annie Pyers Drive (left).

4.0 HERITAGE SIGNIFICANCE

In order to assess the impact of the proposed works on the heritage significance of the subject site, it is necessary to first ascertain the heritage significance of these places. Accordingly, a Statement of Significance for the subject site is provided below (refer to Section 4.1.1). The significance of this place will form part of our considerations in the assessment of heritage impact, undertaken in Section 6.0 below.

4.1 Established Significance

4.1.1 The Subject Site (Item I3)

The following Statement of Significance is available for the site on the State Heritage Inventory:

The Dog on the Tuckerbox Memorial is symbolic of Gundagai's pioneering past and the hard-working teamsters who camped at the Five Mile in the 19th century. The Dog entered into Australian folklore through an anonymous teamster's song published as 'Bullocky Bill' c.1880 and was further popularised by Jack Moses in his 1920 version. The sculpture was produced by Frank Rusconi for the 1932 Back to Gundagai Celebrations as a symbol of the district's pioneers and is evidence of the community's efforts to promote its history and culture. The memorial is a fine example of Rusconi's work and evidence of the skill of the talented monumental mason and sculptor. The item is held in high esteem by the people of Gundagai as well as the wider community as a symbol of the spirit of the district's pioneers, as well as of the hardworking teamsters who stopped at the Five Mile'.⁴

The following Statement of Significance was extracted from the Heritage Inventory Sheet for the Limestone Inn Ruins:

The remains of the Limestone Inn or Australian Arms (sometimes known as the 'Five Mile' Inn due to its location) is able to demonstrate vernacular construction using local materials. It is significant for its association with a robbery committed in 1861 by John Malloy, alias Walsh or 'Jack in the boots'. It is possible that the remains of the inn and site can yield information about the operation of inns in the Gundagai Shire in the mid-19th century.⁵

Heritage 21 would like to note that the current location of the Dog on the Tuckerbox is not the original location of the statue. According to the Heritage Inventory Sheet for the site, "In 1950 after the kiosk's sale the monument was moved back a short way from the increasingly busy highway." This information establishes that the proposed relocation of the memorial would not alter its original location. Similarly, it is likely that the wishing well and landscaping surrounding the Memorial was constructed in the 1950s, along with the shop and courtyard. A statement of

⁴ Heritage NSW, "The Dog on the Tuckerbox Memorial," State Heritage Inventory, Heritage Item ID: 1680082, accessed 31 July 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1680082>

⁵ Heritage NSW, "Archaeological Site (Limestone Inn)," State Heritage Inventory, Heritage Item ID: 1680288, accessed 31 July 2023, <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1680288>

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

significance is not available for the wishing well and landscaping, however in our view, these elements have minimal contribution to the significance of the Dog on the Tuckerbox Memorial as later additions.

5.0 WORKS PROPOSED

5.1 Proposal Description

The proposed development would include:

Demolition

- Demolition of c. 1956 shop, outdoor courtyard and the wishing well around the Dog on the Tuckerbox;
- Demolition of shop outbuilding;
- Demolition of covered awning;
- Removal of interpretation signage;
- Demolition of former service station;
- Removal of fencing;
- Removal of covered outdoor seating areas; and
- Demolition of carparking and pavements.

Construction

- Construction of a food and drink premises (Building 01);
- Construction of a retail premises (Building 02);
- Construction of a food and drink premises (Building 03);
- Construction of a retail premises (Building 04);
- Construction of a retail premises (Building 05);
- Construction of pub premises (Building 06);
- Construction of pub premises (Building 07); and
- Construction of new water feature to replace the existing wishing well.

Landscaping

- Removal of 24 trees.

Subdivision

- Amalgamation of current lots on site and re-subdivision of the site into 3 separate lots.

Relocation

- Relocation of the Dog on the Tuckerbox Memorial, with associated plaques.

5.2 Drawings

Our assessment of the proposal is based on the following drawings prepared by SN Architects, received by Heritage 21 on 21 January 2024, and landscape drawings prepared by Conzept

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Landscape Architects received by Heritage 21 on 25 January 2024. These are reproduced below for reference only; the full set of drawings accompanying the development application should be referred to for any details.

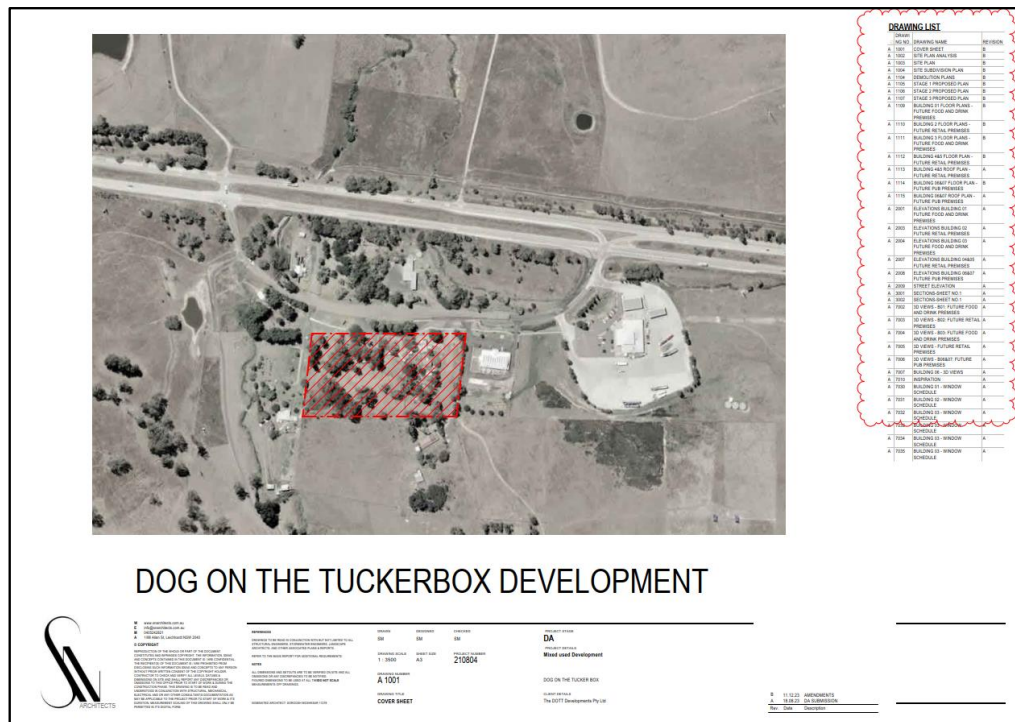


Figure 20. Cover Sheet

[illegible]

Figure 21. Site Analysis Plan

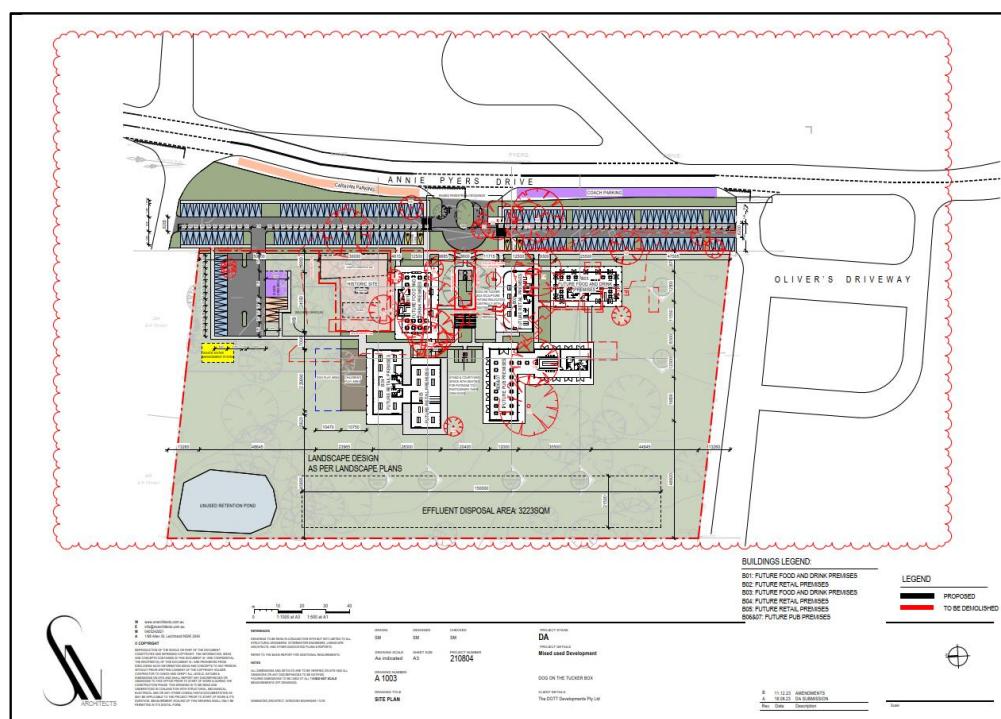


Figure 22. Site Plan

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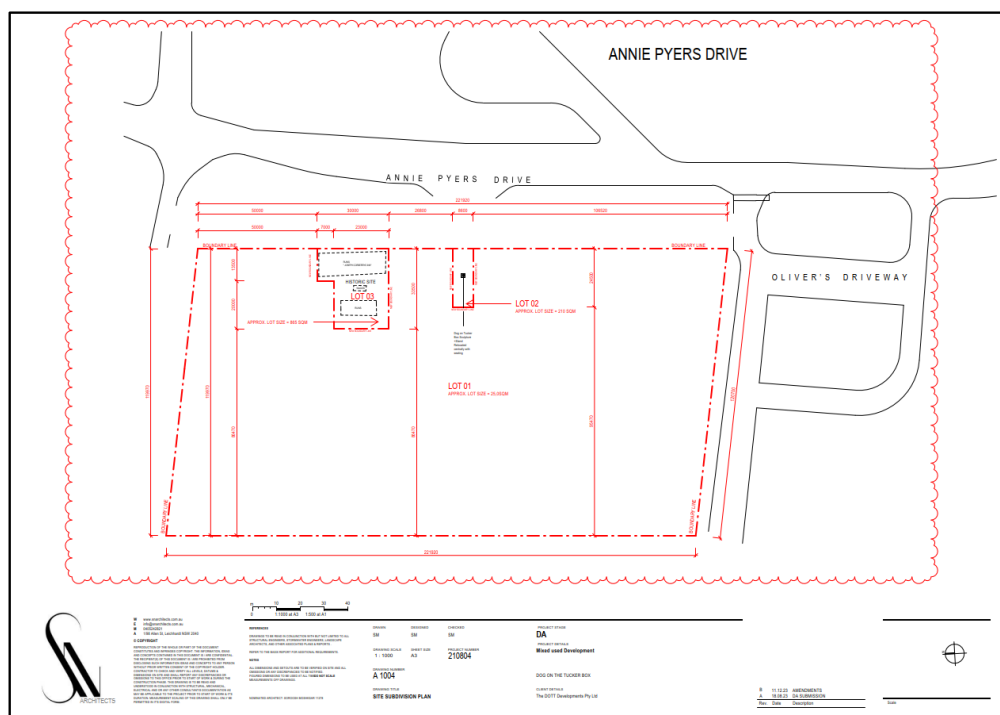


Figure 23. Site Subdivision Plan

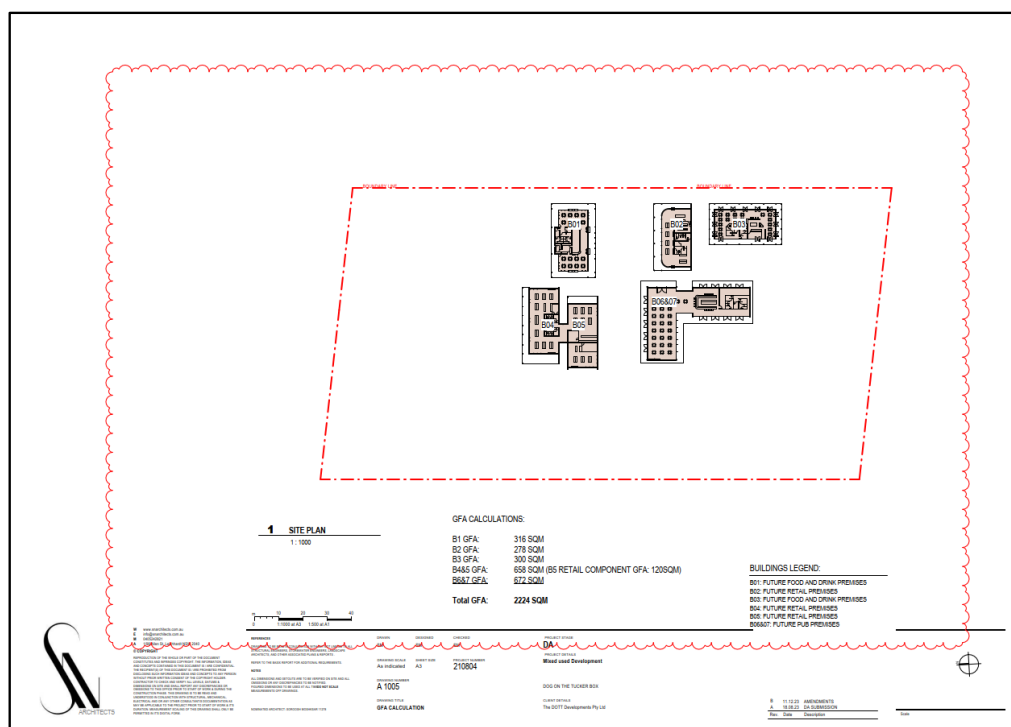


Figure 24. GFA Calculation

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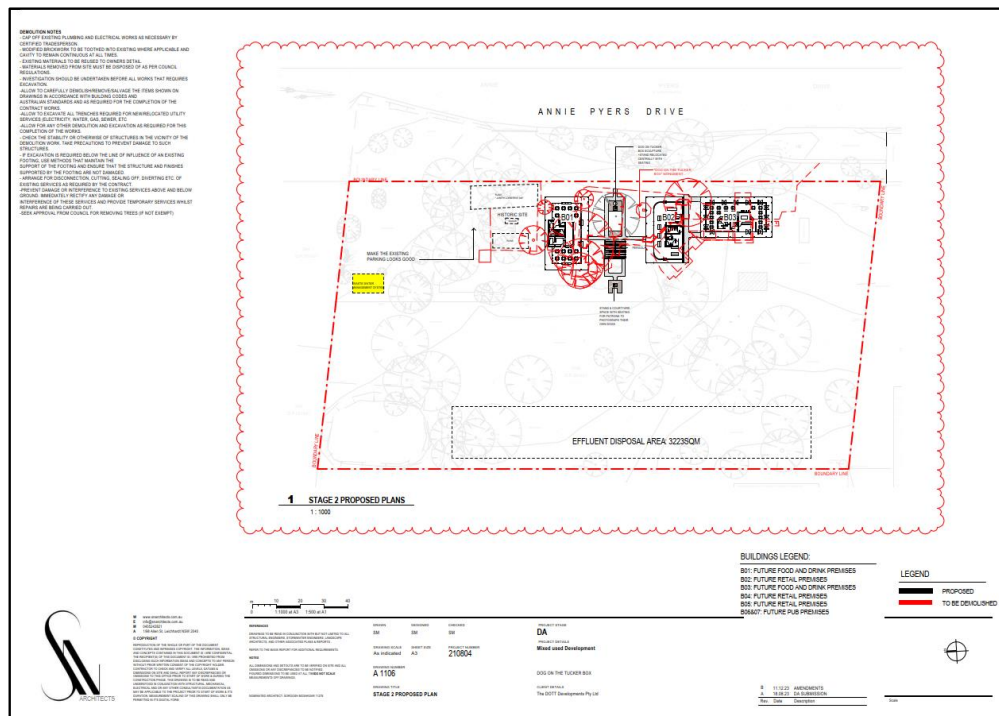


Figure 27. Stage 2 Proposed Plan

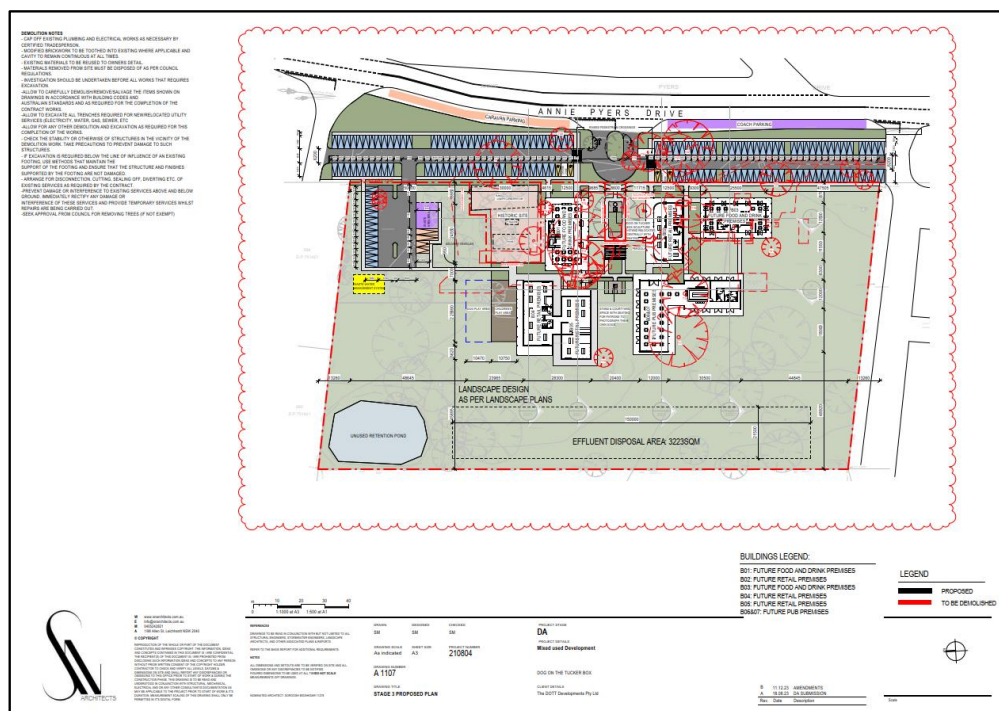


Figure 28. Stage 3 Proposed Plan

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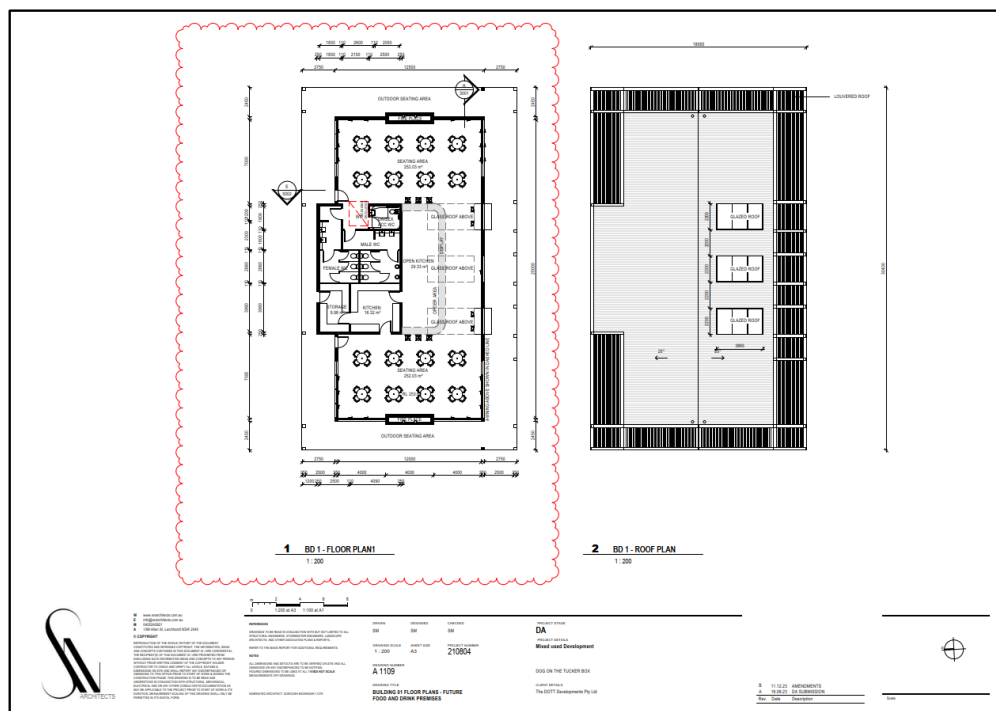


Figure 29. Building 01 Floor Plans – Future Food and Drink Premises

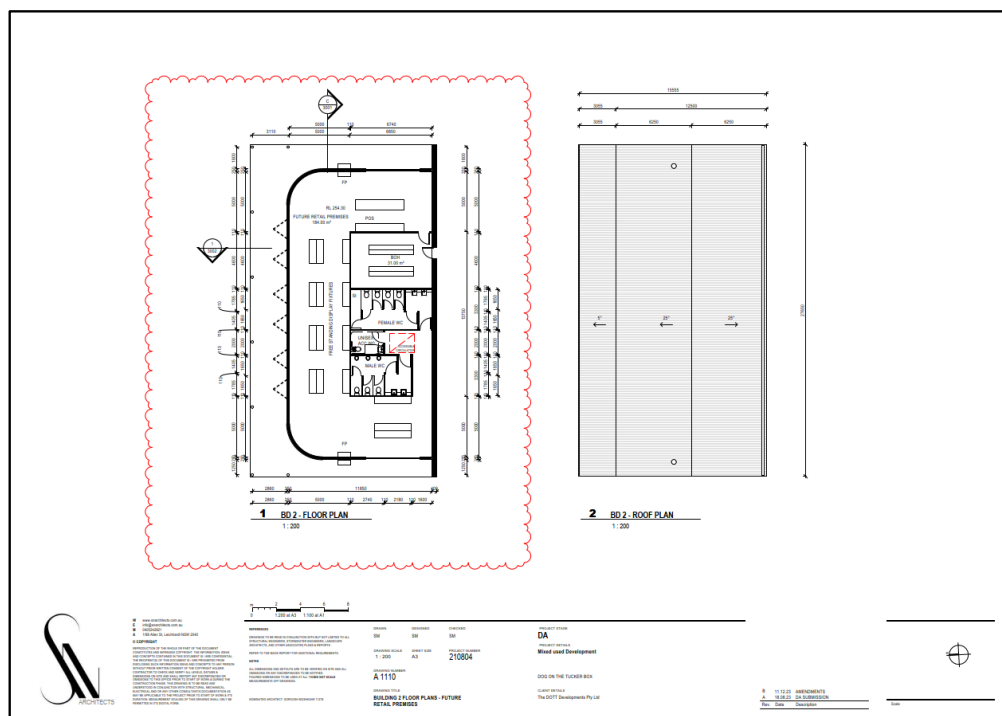


Figure 30. Building 02 Floor Plans – Future Retail Premises

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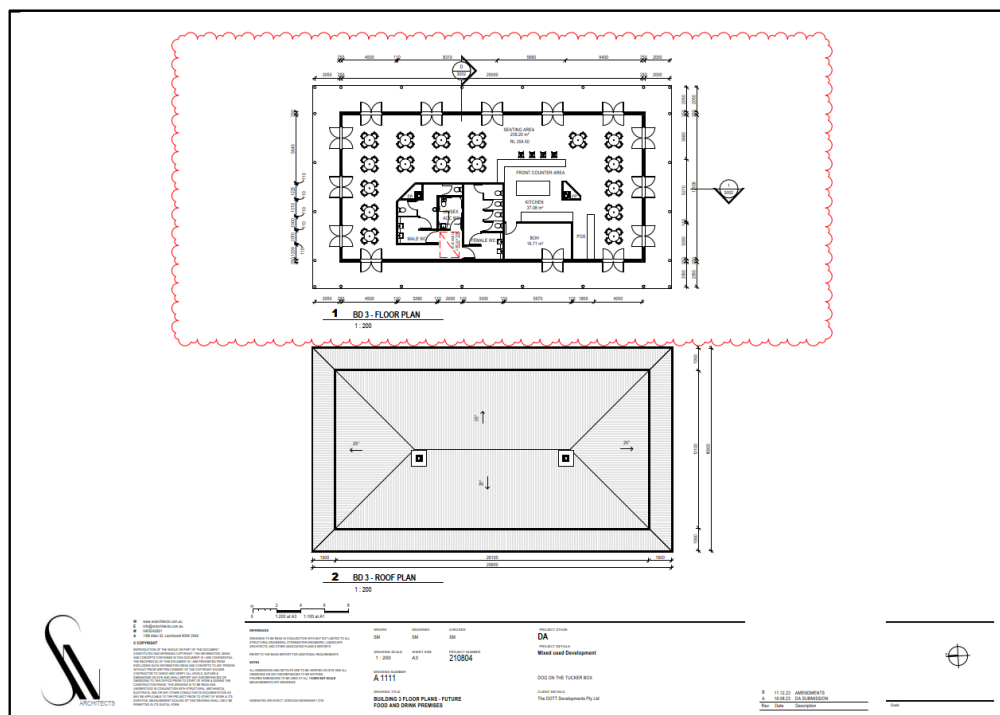


Figure 31. Building 03 Floor Plans – Future Food and Drink Premises

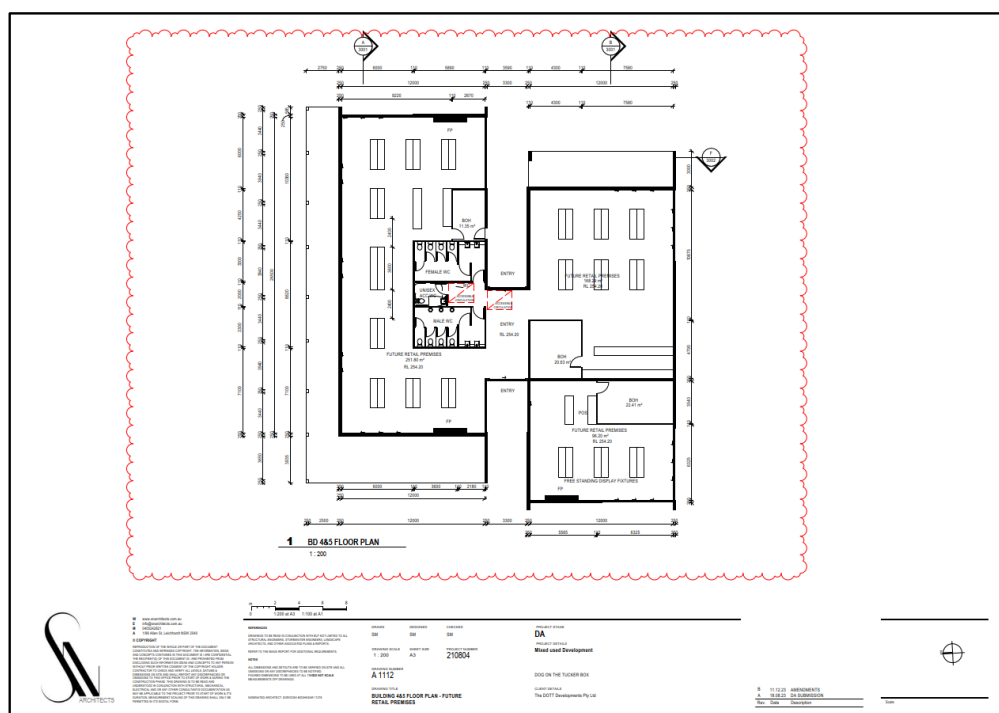


Figure 32. Building 04 and 05 Floor Plans – Future Retail Premises

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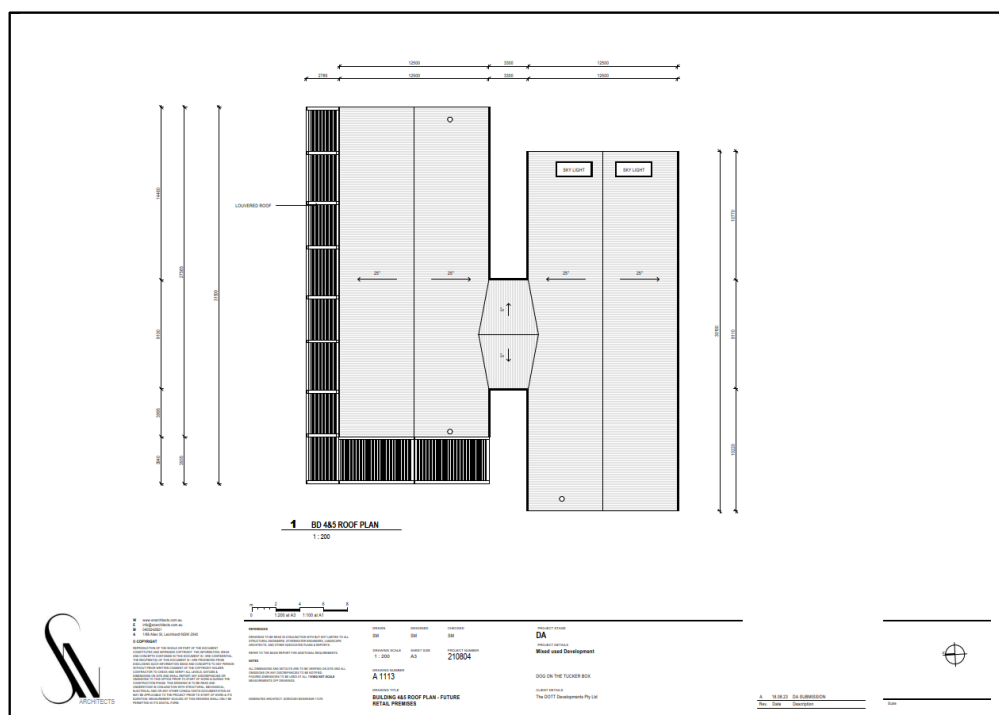


Figure 33. Building 04 and 05 Floor Plans – Future Retail Premises

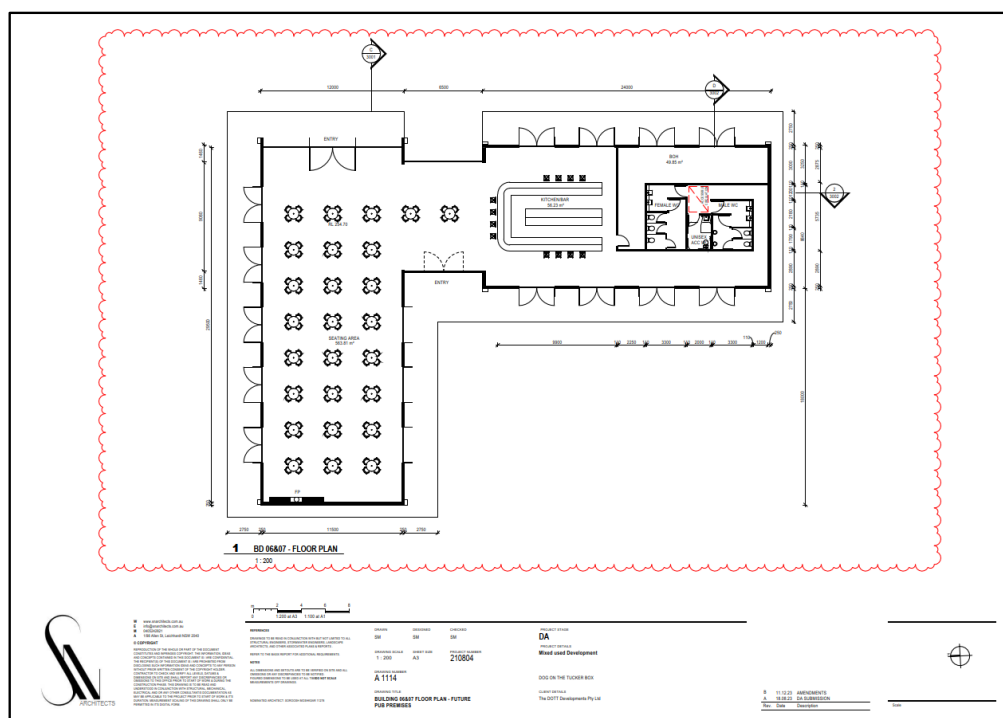


Figure 34. Building 06 and 07 Floor Plans – Future Pub Premises

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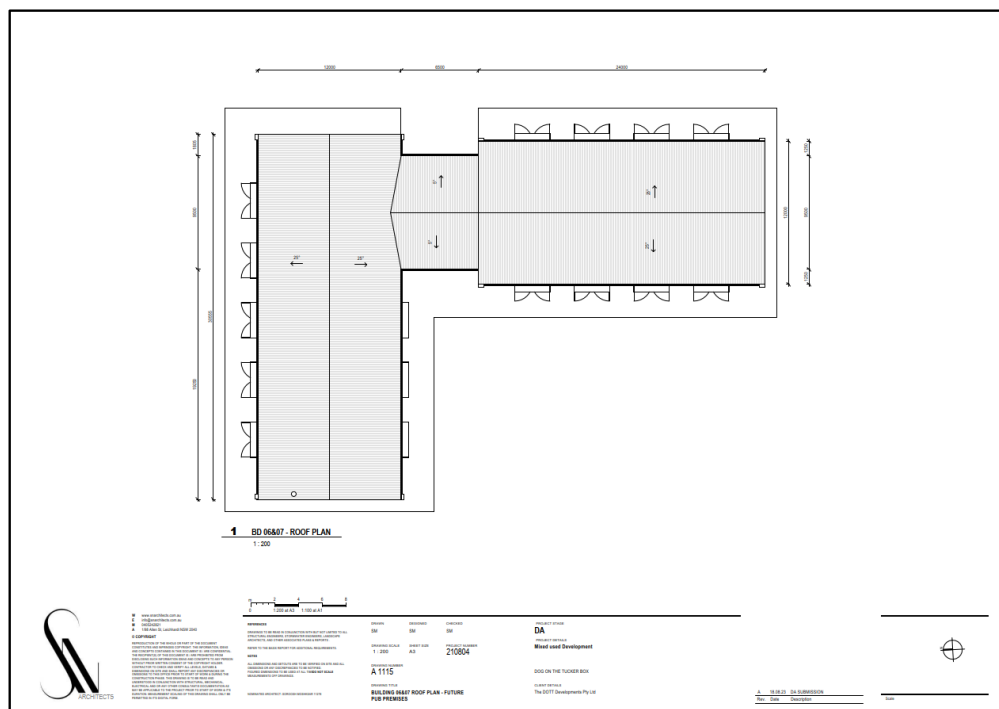


Figure 35. Building 06 and 07 Roof Plans – Future Pub Premises

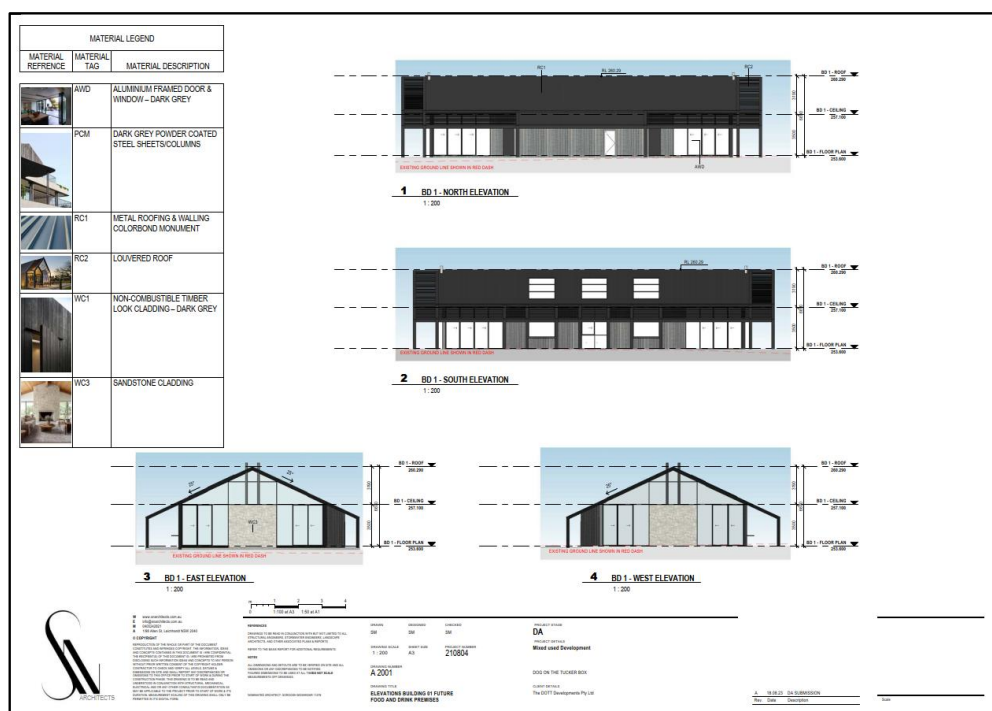


Figure 36. Elevations Building 01 – Future Food and Drink Premises

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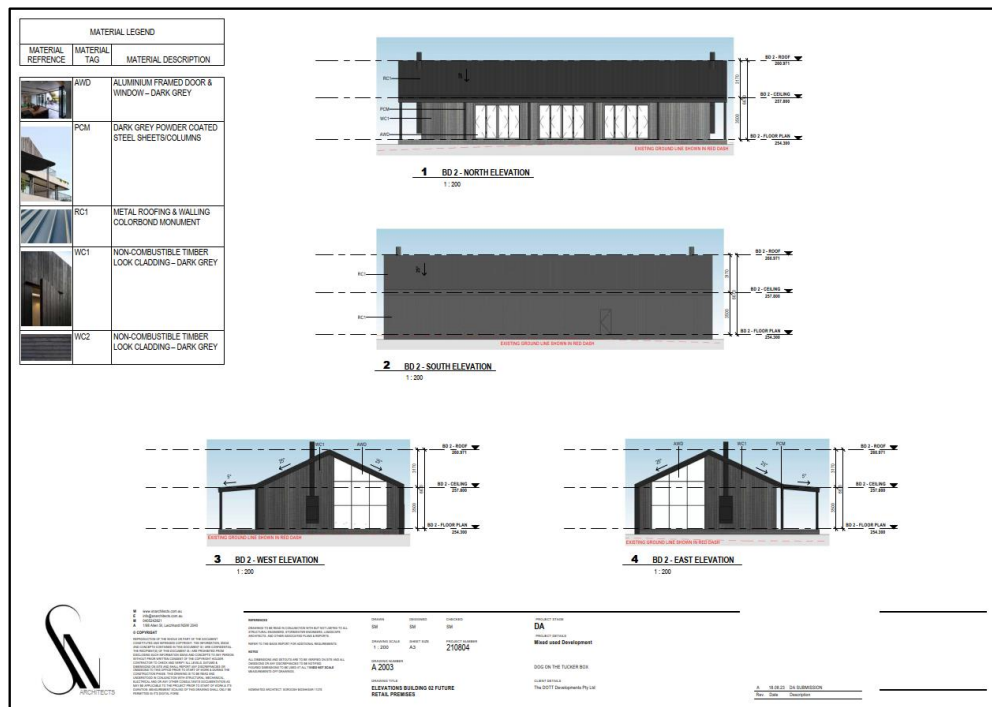


Figure 37. Elevations Building 02 – Future Retail Premises

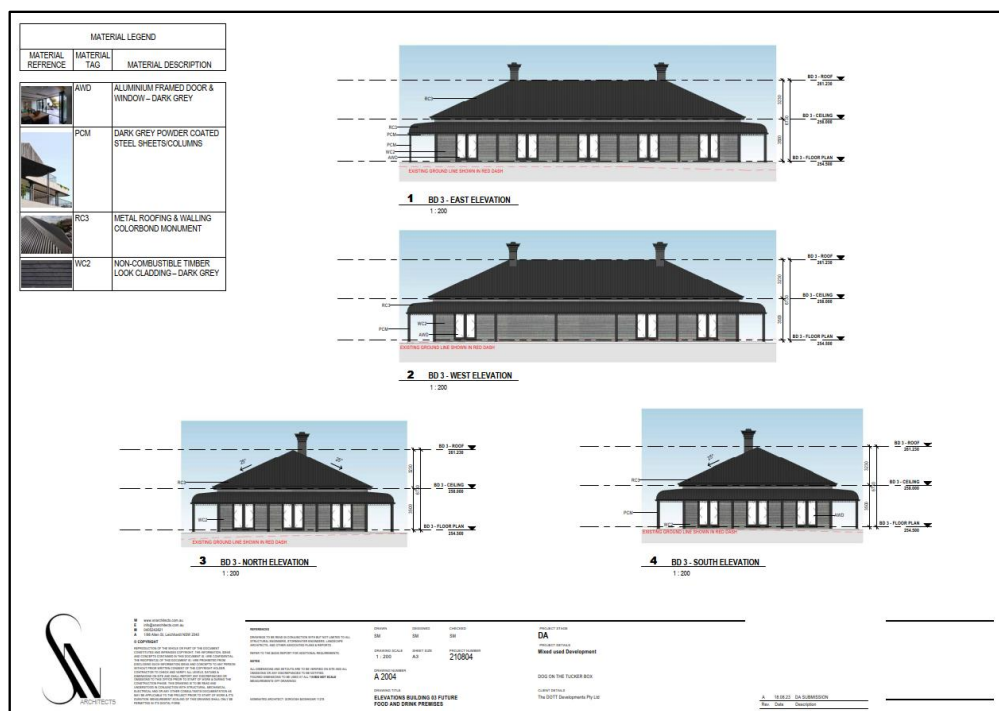


Figure 38. Elevations Building 03 – Future Food and Drink Premises

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Figure 39. Elevations Building O4 and O5 – Future Retail Premises

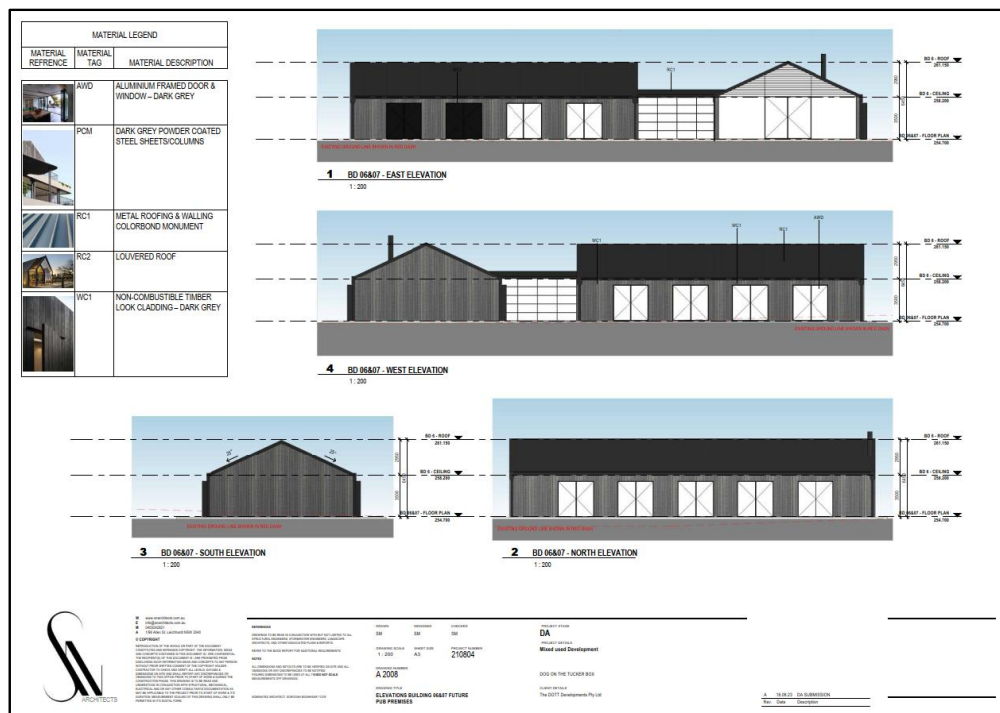


Figure 40. Elevations Building O6 – Future Pub Premises

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A SECTION A-A
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B SECTION B-B
1:200

C SECTION C-C
1:200

BUILDINGS LEGEND:
 B01: FUTURE FOOD AND DRINK PREMISES
 B02: FUTURE RETAIL PREMISES
 B03: FUTURE FOOD AND DRINK PREMISES
 B04: FUTURE RETAIL PREMISES
 B05: FUTURE RETAIL PREMISES
 B06A: FUTURE RETAIL PREMISES
 B06B: FUTURE PUB PREMISES

Scale: 1:200

North Arrow

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 210854
 A3001
 3000 THE SUMMIT

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D SECTION D-D
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E SECTION E-E
1:200

F SECTION F-F
1:200

BUILDINGS LEGEND

- B01 FUTURE FOOD AND DRINK PREMISES
- B02 FUTURE RETAIL PREMISES
- B03 FUTURE FOOD AND DRINK PREMISES
- B04 FUTURE RETAIL PREMISES
- B05 FUTURE RETAIL PREMISES
- B06 FUTURE PUB PREMISES

DA
Ward and Development
2000 ON THE TURNER BOULDER
The BOTT Development Pty Ltd

SECTION SHEET NO. 1

1 BUILDING 01 - VIEW 01

2 BUILDING 01 - VIEW 02

3 BUILDING 01 - OVERVIEW

DA
Master and Development
 2020 ON THE TURNER BOX
 10/20/2020
 The 2020 Development P/L Ltd

REVISIONS

NO.	DATE	DESCRIPTION
1	10/20/2020	ISSUED FOR PERMIT
2	10/20/2020	ISSUED FOR PERMIT
3	10/20/2020	ISSUED FOR PERMIT
4	10/20/2020	ISSUED FOR PERMIT
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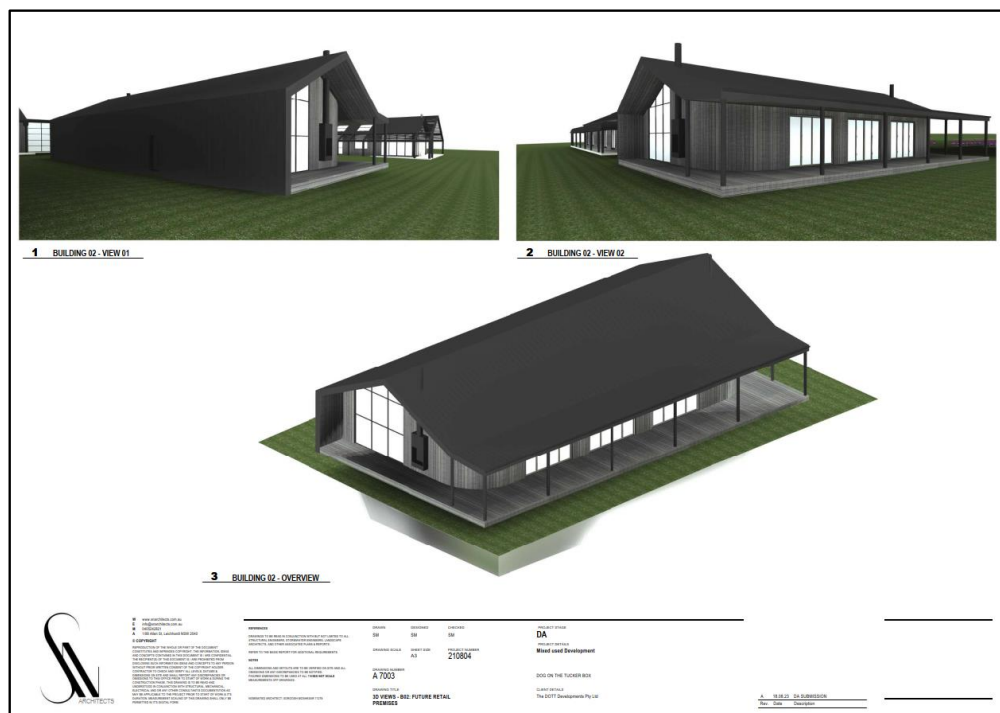


Figure 45. Building 02 3D Views – Future Retail Premises

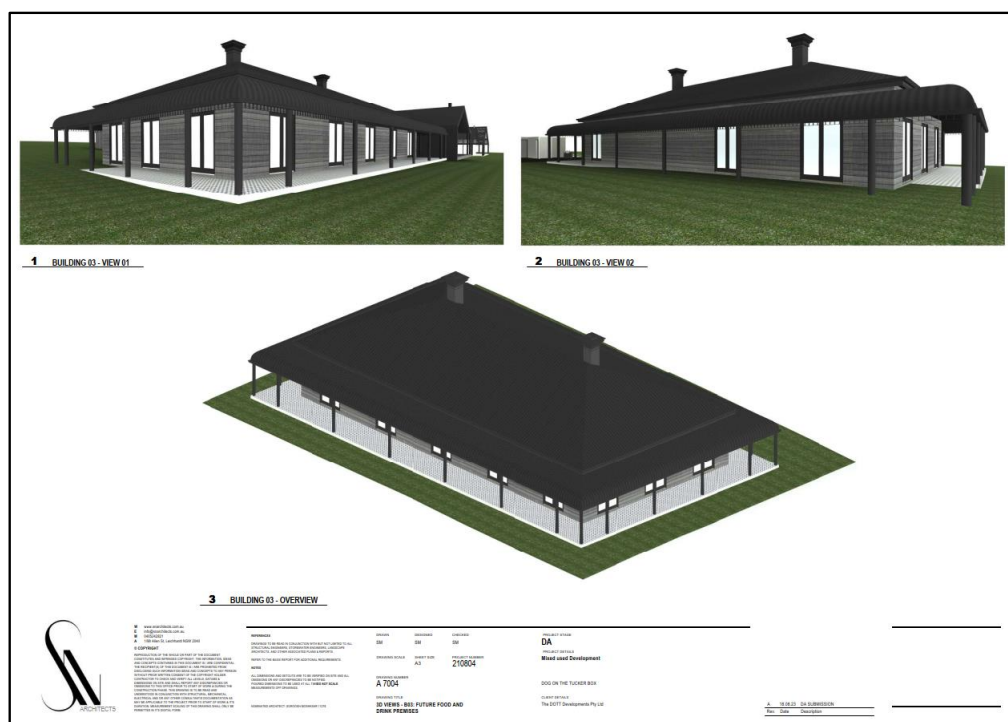


Figure 46. Building 03 3D Views – Future Food and Drink Premises

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Figure 47. Building 04 and 05 3D Views – Future Retail Premises

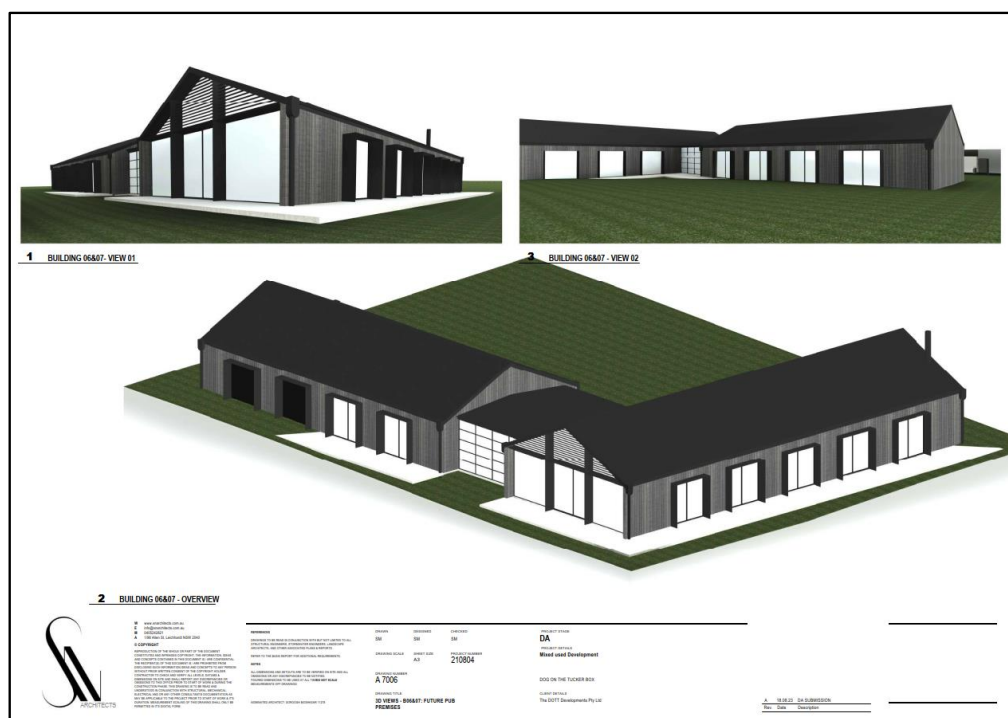


Figure 48. Building 06 and 07 3D Views – Future Pub Premises

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Figure 49. Site – 3D Views

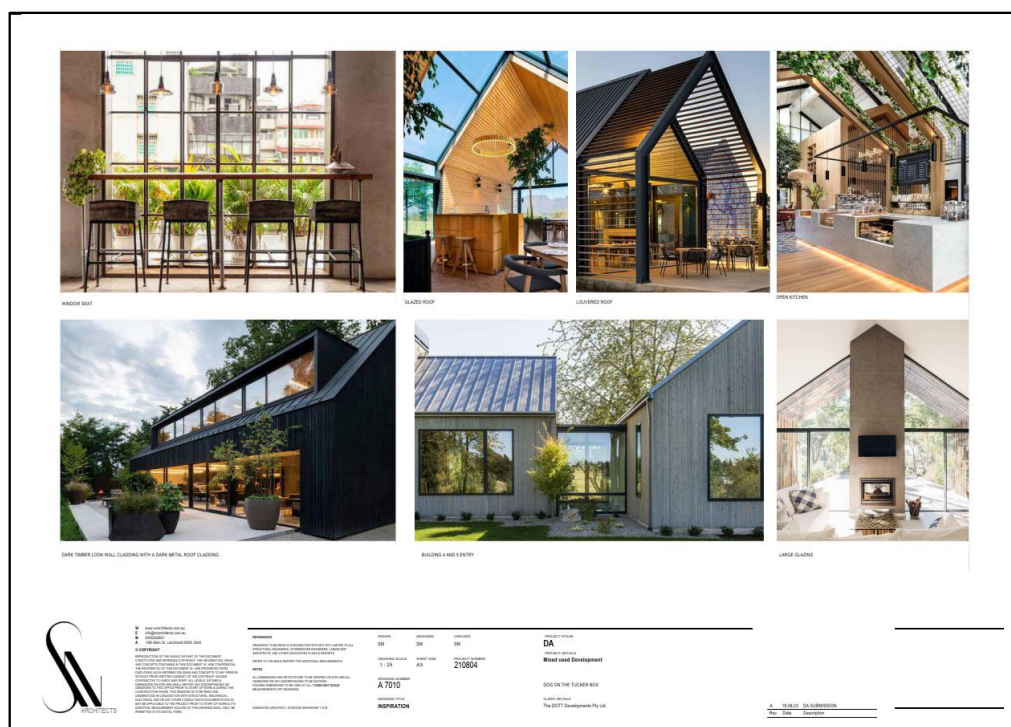


Figure 50. Inspiration

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Figure 51. Hardscape Plan

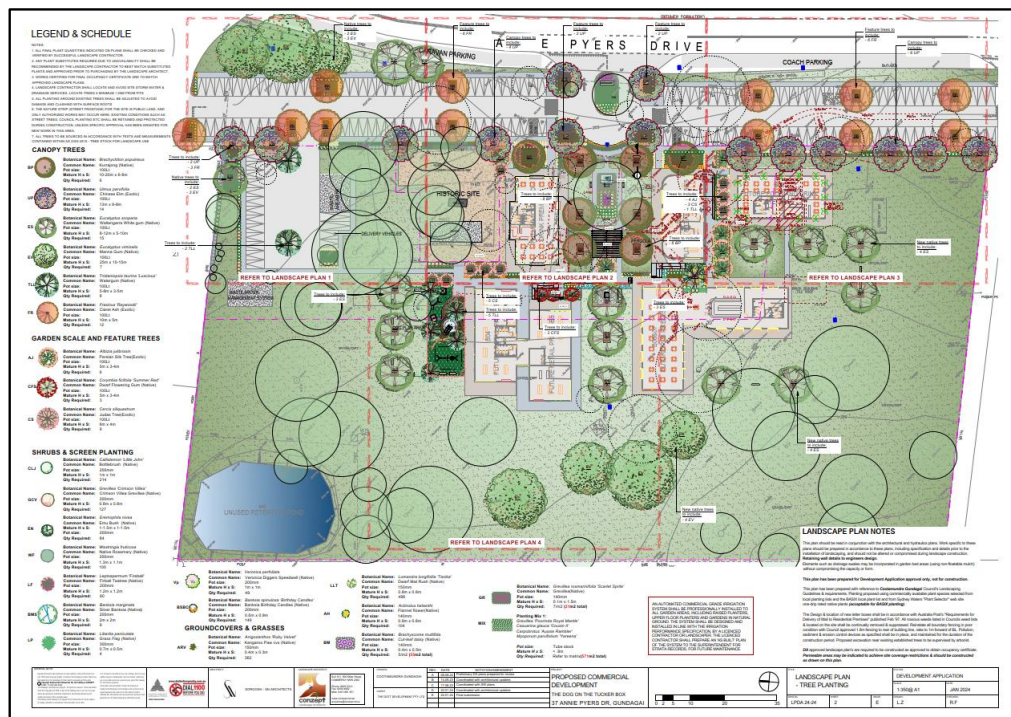


Figure 52. Landscape Plan – Tree Planting

[illegible]

ANNIE PYERS DRIVE

RAVAN PARKING

HISTORIC SITE

PERGOLA

REFER TO LANDSCAPE PLAN 4

REFER TO LANDSCAPE PLAN 3

LEGEND & SCHEDULE

CANOPY TREES

Symbol	Botanical Name	Common Name	Quantity
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77	Shorea robusta	Shorea robusta	1
78	Shorea robusta	Shorea robusta	1
79	Shorea robusta	Shorea robusta	1
80	Shorea robusta	Shorea robusta	1
81	Shorea robusta	Shorea robusta	1
82	Shorea robusta	Shorea robusta	1
83	Shorea robusta	Shorea robusta	1
84	Shorea robusta	Shorea robusta	1
85	Shorea robusta	Shorea robusta	1
86	Shorea robusta	Shorea robusta	1
87	Shorea robusta	Shorea robusta	1
88	Shorea robusta	Shorea robusta	1
89	Shorea robusta	Shorea robusta	1
90	Shorea robusta	Shorea robusta	1
91	Shorea robusta	Shorea robusta	1

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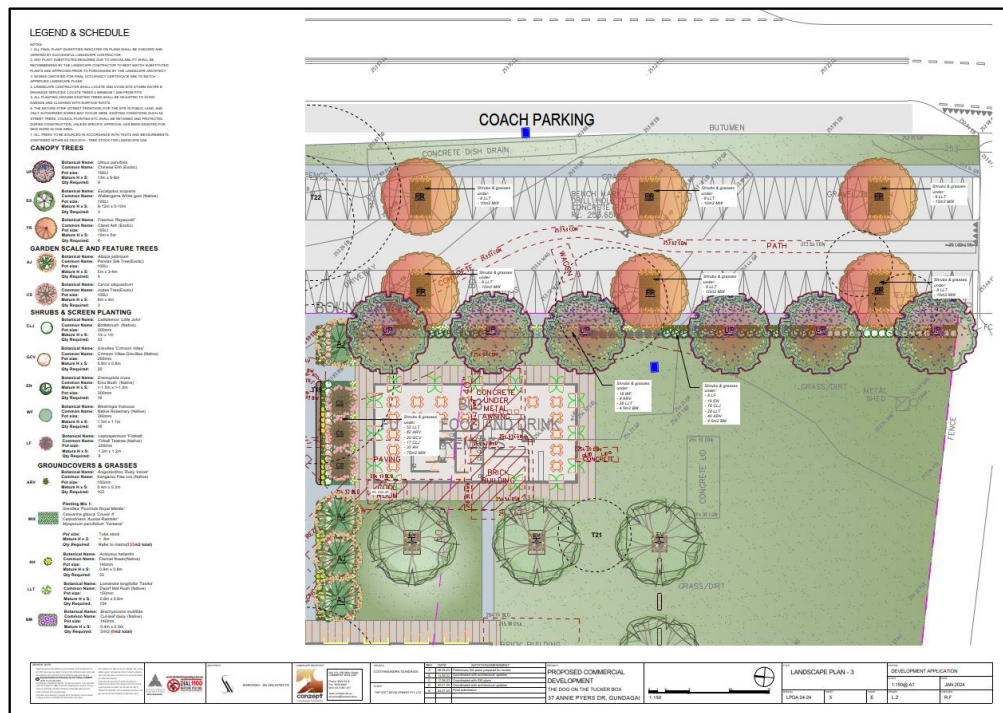


Figure 55. Landscape Plan 3

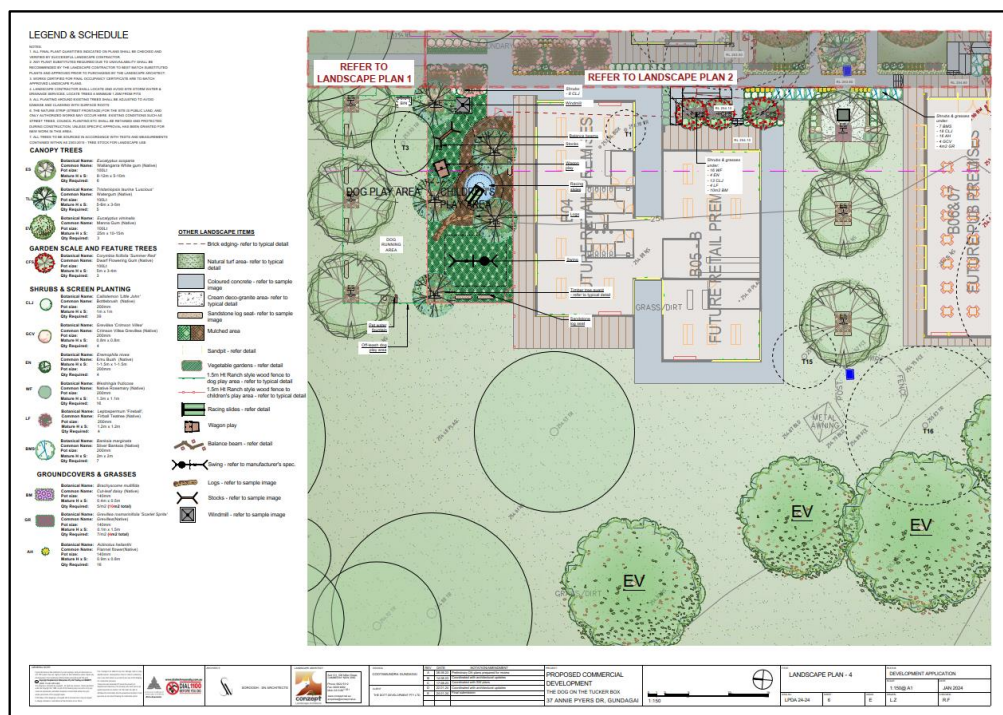


Figure 56. Landscape Plan 4

[illegible]

SLIDE ON MOUND - FRONT ELEVATION
SCALE: 1/8"

SLIDE ON MOUND - SECTION ELEVATION
SCALE: 1/8"

BALANCE BEAMS TYPICAL DETAIL
SCALE: 1/8"

2 BAY SWING BY WILLPLAY - PRODUCT CODE: SW-011
SCALE: NTS

TYPICAL RANCH STYLE WOOD FENCE DETAIL
SCALE: 1/8"

SECTION AA
SCALE: 1/8"

PLANT SELECTION GRID:

LEGEND:

PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION
PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION	PLANT SELECTION

PROPOSED COMMERCIAL DEVELOPMENT
THE DOCK ON THE RUCKER BOCK
OF ANNE PYERS DR., SUNDERLAND

DETAILS 2

ITEM	QTY	UNIT	PRICE
1	1	EA	1.2
2	1	EA	1.2

DEVELOPMENT APPLICATION

DATE	2024
BY	RF

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6.0 ASSESSMENT OF HERITAGE IMPACT

6.1 Heritage Management Framework

Below we outline the heritage-related statutory and non-statutory constraints applicable to the subject site including the objectives, controls and considerations which are relevant to the proposed development as described in Section 5.0 above. These constraints and requirements form the basis of this Heritage Impact Assessment.

6.1.1 Gundagai Local Environmental Plan 2011

The statutory heritage conservation requirements contained in Section 5.10 of the *Gundagai Environmental Plan 2011* (“GLEP”) are pertinent to any heritage impact assessment for future development on the subject site. The relevant clauses for the site and proposal are outlined below:

- (1) Objectives
- (2) Requirement for consent
- (4) Effect of proposed development on heritage significance
- (5) Heritage assessment

6.1.2 Development Control Plan for the 5 Mile Precinct, including the Dog on the Tuckerbox site 2007

Our assessment of heritage impact also considers the heritage-related sections of the 5 Mile Precinct Development Control Plan 2007 (“FMPDCP”) that are pertinent to the subject site and proposed development. These include:

7. Matters to be considered by Council in assessing development applications

- i. Environmental and heritage context
- iv. Architectural and landscape design quality
- ix. Relationship to neighbouring properties and Hume Highway
- xii. Existing development

6.1.3 Cootamundra Shire Council Development Control Plan 2013

Note – Although the Cootamundra Shire Council DCP does not strictly apply to the subject site, a merit assessment against the heritage related provisions contained in the DCP has been included for the purpose of including a discussion of the specificities pertaining to the heritage impact of the proposed works.

Chapter 7 – Heritage Requirements*Objectives***Performance Criteria***General Requirements**Subdivision**Commercial and Retail Development**Demolition**Colours**Setting**Scale, mass & form**Proportion**Car parking, garages & other structures***6.1.4 NSW Office of Environment & Heritage guidelines**

In its guidelines for the preparation of Statements of Heritage Impact, the NSW Office of Environment & Heritage provides a list of considerations in the form of questions aiming at directing and triggering heritage impact assessments.⁶ These are divided in sections to match the different types of proposals that may occur on a heritage item, item in a heritage conservation area or in the vicinity of heritage. Below are listed the considerations which are most relevant to the proposed development as outlined in Section 5.0 of this report.

Demolition of a building or structure

- *Have all options for retention and adaptive re-use been explored?*

⁶ NSW Heritage Office, "Statements of Heritage Impact," in *NSW Heritage Manual* (Paramatta: Department of Planning and Environment, 1996), <https://www.environment.nsw.gov.au/research-and-publications/publications-search/statements-of-heritage-impact>.

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- *Can all of the significant elements of the heritage item be kept and any new development be located elsewhere on the site?*
- *Is demolition essential at this time or can it be postponed in case future circumstances make its retention and conservation more feasible?*
- *Has the advice of a heritage consultant been sought? Have the consultant's recommendations been implemented? If not, why not?*

Major partial demolition (including internal elements)

- *Is the demolition essential for the heritage item to function?*
- *Are particular features of the item affected by the demolition (e.g. fireplaces in buildings)?*
- *Is the detailing of the partial demolition sympathetic to the heritage significance of the item (e.g. creating large square openings in internal walls rather than removing the wall altogether)?*
- *If the partial demolition is a result of the condition of the fabric, is it certain that the fabric cannot be repaired?*

Major additions (see also major partial demolition)

- *How is the impact of the addition on the heritage significance of the item to be minimised?*
- *Can the additional area be located within an existing structure? If not, why not?*
- *Will the additions tend to visually dominate the heritage item?*
- *Are the additions sited on any known, or potentially significant archaeological deposits? If so, have alternative positions for the additions been considered?*
- *Are the additions sympathetic to the heritage item? In what way (e.g. form, proportions, design)?*

Subdivision

- *How is the proposed curtilage allowed around the heritage item appropriate?*
- *Could future development that results from this subdivision compromise the significance of the heritage item? How has this been minimised?*
- *Could future development that results from this subdivision affect views to, and from, the heritage item? How are negative impacts to be minimised?*

New landscape works and features (including carparks and fences)

- *How has the impact of the new work on the heritage significance of the existing landscape been minimised?*

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- *Has evidence (archival and physical) of previous landscape work been investigated? Are previous works being reinstated?*
- *Has the advice of a consultant skilled in the conservation of heritage landscapes been sought? If so, have their recommendations been implemented?*
- *Are any known or potential archaeological deposits affected by the landscape works? If so, what alternatives have been considered?*
- *How does the work impact on views to, and from, adjacent heritage items?*

Tree removal or replacement

- *Does the tree contribute to the heritage significance of the item or landscape?*
- *Why is the tree being removed?*
- *Has the advice of a tree surgeon or horticultural specialist been obtained?*
- *Is the tree being replaced? Why? With the same or a different species?*

6.1.5 Cootamundra-Gundagai Regional Council RFI – Heritage contentions

The following contentions were raised in the request for additional information by Cootamundra-Gundagai Regional Council, received by the client on 16 November 2023 (DA 2023/116):

8. Heritage

It is noted that the heritage aspects, namely the relocation of the Dog on the Tuckerbox Memorial and the Limestone Inn ruins and the impact of the development have been addressed in the Statement of Heritage Impact prepared by Heritage 21 submitted as part of the Development Application. However, the following information is required to complete the heritage assessment component of the application:

Clarification of intention for Wishing Well and archival recordings:

A 'wishing well' has been later constructed around the DOTT Memorial c1980 and has collected funds for the Gundagai Hospital, which is a valuable resource to assist patients in the Residential Aged Care section of the hospital. With the proposed 'relocation' of the DOTT Memorial, there are no details on how this is to occur nor clarification on the 'wishing well'. It is noted that archival recordings (drawings and photographs) are required to be undertaken prior to any work/relocation commencing.

Removal of trees- Heritage assessment landscaping/trees on the site in current or historic form:

The removal of 19 trees on and surrounding the site and current landscaping does have a major visual impact on the site and in part its heritage significance. It is noted that the SOHI prepared by Heritage 21 states that; "In our view, these trees do not contribute to the heritage significance of the subject site their removal, while regrettable, would facilitate a sympathetic development that would encourage public engagement with the subject site." There is no heritage assessment of the landscaping/trees on the site in their current form or historical form, consequently there is insufficient information to make an assessment of the impact of the proposed removal of trees and landscaping.

'traditional' vs 'contemporary' styles", materials and colours when compared against objectives and controls of Gundagai LEP and relevant DCP:

After a review of the DA documentation-Architectural Drawings prepared by SN Architects and note the consistent 'contemporary' theme/typology across various buildings over the site, except building 3 (at the southern end) where this has a 'traditional' style incorporates corrugated profile cladding to the roof, horizontal boards to walls with a 'bullnose' verandah with fretwork

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wrapping around the building, this is very confusing for the context of the site and other buildings and has not been addressed in the SOHI. - see extract below - Generally 'contemporary' style buildings appropriate, however, "Dark" tones make an architectural statement and overall site context with DOTT should be considered:

/ Figure 2 SN Architects Drg A7007 site isometric/SD view

Heritage impact of Proposed subdivision:

Another aspect of the documentation (drg A1004) is that there appears to be a proposal for the 'subdivision' (new allotments) for the Dog on the Tuckerbox Memorial (at its new location) and the Limestone Inn ruins and the amalgamation of the current 2 sites/allotments into one for the new development. It is noted that the issue of the proposed 'subdivision' for the items (DOTT Memorial and the Inn Ruins) that have heritage significance and the impact this may have on those heritage items has not been addressed in the SOHI.

6.2 Heritage Impact Assessment

Below we assess the impact that the proposed development would have upon the subject site. This assessment is based upon the Historical Context (refer to Section 2.0), the Physical Evidence (refer to Section 3.0), Heritage Significance (refer to Section 4.0) and the Proposal (refer to Section 5.0).

6.2.1 Summary

The subject site is a local heritage item, listed under Schedule 5 of the *Gundagai LEP 2011*. It is not located within a heritage conservation area, nor is it within the visual catchment of any heritage items.

The proposal comprises the demolition of the existing later-addition structures, wishing well and landscaping constructed in the mid-twentieth century, the removal of 24 mature trees, the construction of six single-storey buildings that would be used for commercial and gastronomic purposes, and a new water feature to replace the existing wishing well. Further, the proposal includes the relocation of the Dog on the Tuckerbox Memorial and associated 'Pioneer's Pond' plaque from its current location.

The proposed buildings would be of modest scale and would visually relate to the height and bulk of surrounding residential dwellings. The proposed buildings would sympathetically combine traditional and contemporary forms and would incorporate sympathetic, contemporary fabric and materials including glazed windows, timber-look cladding and corrugated metal roofing. The surrounding area of Gundagai features a mixture of traditional and contemporary style buildings, integrated with the rural landscape to create diversity amongst them. Traditional features such as the bullnose verandah, horizontal cladding, and fretwork allows the site to possess a range of varying elements that draws in both traditional and contemporary architectural features. Further,

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the proposal introduces a dark colour scheme, making the buildings recessive and contemporary additions to the rural environment in which the subject site is situated. The contrast between the rural landscape, contemporary buildings, traditional elements, dark colour scheme and colourful landscaping plan aims to create cohesion on the site and increase visitation to, and visibility of the site.

The proposed buildings would be arranged around the Dog on the Tuckerbox Memorial which would be relocated to a central courtyard. This would ensure that the visual focus of the site would be the Dog on the Tuckerbox Memorial statue, and the proposed commercial buildings would facilitate public engagement with the monument. The new proposed location for the Dog on the Tuckerbox Memorial would be in line with the existing location and would be set north of its existing location. The proposed central location of the Memorial within the courtyard would ensure that the statue retains its visual prominence within the existing site. The existing location of the Memorial does not contribute to its heritage significance as this location is not the original location. According to the Heritage Inventory Sheet for the site, the monument was moved back from its original location as the Hume Highway became increasingly used. This information establishes that the proposed relocation of the statue would not alter its heritage significance as it is currently not positioned in its original location. Thus, it is the opinion of Heritage 21 that the relocation of the Memorial would not alter its heritage significance and this relocation would not alter its accessibility to the general public driving along Hume Highway.

The proposal would not involve any alterations to the significant archaeological remains of the Limestone Inn constructed in 1851. These significant remains would be retained in their existing location. Heritage 21 is of the opinion that the potential increase in public engagement with the subject site would aid in developing better understanding of the Limestone Inn amongst the general public visiting the site.

The proposal also involves the amalgamation of the current lots of the site, and re-subdivision of the site into 3 separate lots. The Dog on the Tuckerbox Memorial statue would be separated into one lot, the Limestone Inn ruins into one lot, and the remainder of the site into one lot. The proposed subdivision would have minimal impact on the Inn ruins and the statue as their changed curtilage would not impact on the heritage values of the site. We also believe that the reduced heritage curtilage for Dog and the Tuckerbox Memorial statue would be adequate to retain the values and significance of the item.

In general, Heritage 21 is of the opinion that the proposed works would be sympathetic to the heritage significance of the site, would be an incentive for a potential increase in public engagement with the site and would encourage an understanding and knowledge of the historical context and cultural importance of the site.

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6.2.2 Impact Assessment against the Gundagai LEP 2011

The statutory heritage conservation requirements contained in Section 5.10 of the *Gundagai LEP 2011* are pertinent to any heritage impact assessment for future development on the subject site.

We assess the proposal against the relevant clauses below.

CLAUSE	ASSESSMENT
(1) Objectives	The proposal entails work to a site listed as a heritage item under Schedule 5 of the <i>Gundagai LEP 2011</i> . It is our general assessment that the proposed height, scale, massing and materials proposed, and proposed subdivision (as detailed in Section 5.0 above) would not engender a negative impact on the heritage significance of the subject heritage item, including its contributory fabric and general setting.
(2) Requirement for consent	This Development Application is lodged to Council to gain consent for the works proposed to a heritage item listed under Schedule 5 of the <i>Gundagai LEP 2011</i> .
(4) Effect of proposed development on heritage significance	This Statement of Heritage Impact accompanies the Development Application in order to enable the Cootamundra-Gundagai Regional Council, as the consent authority, to ascertain the extent to which the proposal would affect the heritage significance of the subject site. This report has been amended to address an RFI received by the client from Cootamundra-Gundagai Regional Council.
(5) Heritage assessment	

6.2.3 Development Control Plan for the 5 Mile Precinct, including the Dog on the Tuckerbox site 2007

CHAPTER 7 - Matters to be considered by Council in assessing development applications	
Objectives	Assessment
i. Environmental and heritage context <i>Applications for development within the precinct should demonstrate capacity to enhance its heritage associations, its value as a tourism attraction, and its landscape setting in this prominent Hume Highway location.</i>	<p>The proposal would include the relocation of the Dog on the Tuckerbox Memorial which would be moved to a central courtyard surrounded by several proposed commercial and gastronomic buildings. In our view, this relocation and the proposed arrangement of the buildings would ensure that the Dog on the Tuckerbox Memorial is retained as a central feature of the site and would encourage incidental public engagement with the heritage of the site. The current location of the statue is not the original location, and as such, would not be negatively impacted by being relocated.</p> <p>Further, the proposed buildings would incorporate sympathetic contemporary design and would include sympathetic dark colour scheme that would be recessive to the rural environment and tastefully contrast the green vegetation and landscaping and rolling hills surrounding the site.</p>

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	Heritage 21 is of the opinion that the proposed works would entice the public to visit the subject site and engage with the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.
Objectives	Assessment
<p>iv. Architectural and landscape design quality</p> <p><i>Because of the historic, environmental and tourist attractions of the Five Mile Precinct, and its location on Australia's busiest national highway, Council expects the highest possible quality in architecture and landscape design. No mature tree is to be removed without the permission of Council.</i></p>	<p>The proposed development would include sympathetic contemporary design that would incorporate traditional building forms in a contemporary manner. The proposed buildings would be constructed using sympathetic materials including timber-look cladding and corrugated metal roofing that would complement the heritage fabric of the site and would ensure that new fabric would be distinguishable from heritage fabric.</p> <p>Further, the proposal includes a sympathetic colour scheme that would be recessive to the rural environment in which the subject site is located. This colour scheme would draw attention to the rural context and tastefully contrast the green vegetation and rolling hills surrounding the site.</p> <p>In our view, the proposed buildings would generate new interest in the subject site and the proposed sympathetic design would entice visitors travelling on the Hume Highway to visit the site, use the proposed contemporary facilities and engage with the heritage significance of the site.</p> <p>This proposal seeks permission from Cootamundra-Gundagai Regional Council to remove trees on site.</p>
Objectives	Assessment
<p>ix. Relationship to neighbouring properties and Hume Highway</p> <p><i>The site is exposed to heavy traffic levels and is prominent in the approach views from the north and south, and from nearby properties. Thousands of vehicles and their occupants pass by each day. Council seeks to encourage designs which will recognise these relationships and enhance the overall visual attractiveness of the precinct.</i></p>	<p>As discussed above, the proposal would incorporate sympathetic design and a sympathetic dark colour scheme that would be recessive to the rural context of the site and would tastefully contrast the surrounding green vegetation and rolling hills.</p> <p>The proposed buildings would ensure the subject site is distinguishable from northern and southern view lines and would entice visitors travelling on the nearby Hume Highway to visit and engage with the site. The proposed contemporary architectural style of the buildings would elevate the stature of the subject site while ensuring the Dog on the Tuckerbox Memorial is retained as the central feature of importance for the site.</p> <p>It is our view that the proposal would facilitate incidental public engagement with the subject site while providing visitors and tourists with contemporary facilities that would meet the expectations of modern lifestyles.</p>
Objectives	Assessment

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<p>xii. Existing development</p> <p><i>In the case of proposals which involve the use of existing structures and facilities or additions and alterations to such structures and facilities, the council seeks to discourage development or uses which have the potential to degrade or adversely affect the visual environment and general setting of the site.</i></p>	<p>The proposal would involve the relocation of the Dog on the Tuckerbox Memorial from its current location to the north.</p> <p>The Memorial would be relocated to a more central location at the site and would be accompanied by sympathetic landscaping that, in our view, would enhance the heritage significance of the site. Further, Heritage 21 is of the opinion that this proposed relocation, and the associated proposed landscaping would entice visitors to engage with the site and its heritage significance.</p> <p>The proposed central location of the Dog on the Tuckerbox Memorial would encourage incidental public engagement with the heritage fabric at the site.</p> <p>As discussed above, the current location of the Dog on the Tuckerbox Memorial does not contribute to the heritage significance of the Memorial as the current location is not the original. Existing history supports the proposed relocation of the memorial as its current location is not the original position of the statue.</p> <p>The proposal would not involve any alteration to the Limestone Inn ruins, which are located on the subject site. In our opinion, the proposal would entice tourists and visitors to the site and the proposed contemporary development would facilitate public engagement with the heritage fabric at the subject site, including the Limestone Inn ruins, while providing facilities that would meet the expectations of modern lifestyles.</p>
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6.2.4 Impact Assessment Against the CSCDCP 2013

CHAPTER 7 - Heritage	
General Objectives	
Objectives	Assessment
<p>1. To ensure that new development, including the adaptive re-use of heritage buildings, and alterations and additions, are compatible with and respectful of recognised heritage values and the historic context.</p>	<p>The original heritage fabric located at the subject site is limited to the Dog on the Tuckerbox Memorial and the ruins of the Limestone Inn.</p> <p>The later addition buildings and landscaping at the subject site, constructed in the mid-twentieth century, in our view, do not contribute to the heritage significance of the site.</p> <p>The proposed development would incorporate sympathetic contemporary design and sympathetic materials including timber-look cladding and corrugated metal roofing. Further, the proposal would include a sympathetic dark colour scheme that would be recessive to the rural environment and tastefully contrast the green vegetation</p>

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	<p>and rolling hills surrounding the site.</p> <p>The proposal would include the relocation of the Dog on the Tuckerbox Memorial which would be moved to a more central location on the site. The proposed commercial buildings would be arranged around the Memorial which, in our view, would improve incidental public engagement with the Memorial.</p> <p>Heritage 21 is of the opinion that the proposed works would entice the public to visit the subject site and engage with the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.</p>
CHAPTER 7 - Heritage	
Performance Criteria	
General Requirements	Assessment
<i>The fabric of heritage items and places, including landscaping and vegetation that contributes to heritage significance, is conserved</i>	<p>In our view, the landscaping surrounding the subject site, particularly the Dog on the Tuckerbox Memorial and the Limestone Inn ruins, including the patio, and gardens, does not contribute to the heritage significance as it is a later addition and not considered to contribute importance to the cultural significance of the site. Therefore, Heritage 21 is of the opinion that this landscaping does not warrant conservation or retention.</p> <p>The current location of the Dog on the Tuckerbox Memorial is not the original location of the monument. The proposed relocation would be in line with the history of the subject site and the new location would ensure that the memorial is accessible to all people driving past on the Hume Highway.</p> <p>Thus, it is the opinion of Heritage 21 that the proposed relocation of the Dog on The Tuckerbox Memorial would not engender a negative impact to the heritage fabric or the heritage significance of the subject site. The proposed relocation would not involve any alterations to the Memorial or the Limestone Inn ruins.</p>
<i>New development, including alterations and additions to a heritage item and development within the Cootamundra; Stockinbingal and Wallendbeen Heritage Conservation Areas, demonstrates an understanding of the heritage significance and context of the place</i>	<p>The proposed development would include sympathetic contemporary design and materials that would incorporate traditional building forms in a contemporary manner. Further, the proposal includes a sympathetic colour scheme that would be recessive to the rural environment in which the subject site is located. This colour scheme would draw attention to the rural context and tastefully contrast the green vegetation and rolling hills surrounding the site.</p> <p>The proposal, which includes six buildings for commercial and gastronomic purposes would surround the Dog on the Tuckerbox Memorial. In our view, the proposed buildings arrangement would contribute to an increase in incidental public engagement with the heritage fabric at the subject site.</p>

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<p><i>New development, including alterations and additions to a heritage item and development within the Cootamundra; Stockinbingal and Wallendbeen Heritage Conservation Areas, retains the visual setting and streetscape and landscape character that contributes to heritage significance</i></p>	<p>The subject site is located within a rural setting with minimal, low-density development.</p> <p>The proposal would include the construction of several buildings designed in a sympathetic contemporary architectural style.</p> <p>The dark colour scheme would be recessive to the visual setting and would draw attention to the heritage features located at the site.</p> <p>The proposed buildings would be situated in a means that would improve incidental public engagement with the heritage features located at the site, including the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.</p>
<p><i>New development, including alterations and additions to a heritage item and development within the Cootamundra; Stockinbingal and Wallendbeen Heritage Conservation Area respects the historical context, the scale and proportion of buildings, and the overall setting</i></p>	<p>In our view, the proposed buildings would be of appropriate scale and proportion and would visually relate to the surrounding residential development in the vicinity of the subject site.</p> <p>The proposed buildings would incorporate a sympathetic contemporary design and colour scheme that would ensure the development is distinguishable from original heritage fabric and features located at the site.</p> <p>The proposal would include the construction of six commercial and gastronomic buildings which would entice visitors to the subject site and potentially improve public engagement with the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.</p>
Subdivision	Assessment
<p><i>To retain the development and subdivision pattern of conservation areas including their characteristic rhythm and spacings of built form;</i></p> <p><i>To retain significant curtilages, views and vistas and landscape elements associated with individual heritage items; and</i></p> <p><i>To retain significant curtilages, views and vistas and landscape elements associated with individual heritage items.</i></p>	<p>The proposal involves the amalgamation of the current site and re-subdivision into three separate lots. While the subdivision would alter the original subdivision pattern of the site, we believe that the proposed change in curtilage of the heritage items would be reflective of the heritage value associated with the Limestone Inn ruins and the statue itself. The subdivision of the site would allow the Inn ruins and statue to possess their own immediate curtilage as reflected by the proposed subdivision, and allow the heritage items to retain their heritage value and significance. The subdivision would also allow the items with heritage value to be differentiated from the new buildings on the site and allow for careful management and conservation of these significant items.</p> <p>As stated above, the proposed subdivision of the site would reflect an appropriate curtilage around the items, which is limited to the immediate boundaries of the heritage sites themselves. The current landscaping on site does not contribute to the heritage significance of</p>

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

	<p>the statue or the Inn ruins, and as such, would not be negatively impacted by the re-subdivision of the site.</p> <p>The proposal does involve changing the subdivision pattern of the site; however, the heritage item is not located within a heritage conservation area.</p>
Commercial and Retail Development	Assessment
<i>To ensure that commercial development respects the established streetscape, and the patterns of development, including setbacks, siting, landscape settings, car parking, height, dominant ridge line and building envelope by displaying architectural "good manners" and respecting the significant characteristics of nearby and adjoining development.</i>	<p>The proposed development would be situated in a rural setting and would be sympathetic to the surrounding environment.</p> <p>The proposed works would incorporate sympathetic design and materials and, in our view, would be of an appropriate bulk, scale and height.</p> <p>Further, the proposal would incorporate a sympathetic colour scheme that complements the rural landscape and its natural colours.</p>
Demolition	Assessment
<i>To retain original buildings that preserve the historical integrity of conservation areas and heritage items.</i>	<p>The proposed demolitions pertain to later addition structures constructed in the mid-to-late twentieth century.</p> <p>The integrity of the heritage fabric at the subject site including the Dog on the Tuckerbox Memorial and the Limestone Inn ruins would be retained.</p>
Colours	Assessment
<i>To ensure that external colours provide consistency and harmony in conservation areas and for heritage items.</i>	<p>In our view, the proposed dark colour scheme of the proposed buildings would be sympathetic to the heritage significance of the site as it would clearly distinguish newly constructed fabric from original heritage fabric, especially the Limestone Inn ruins.</p> <p>Further, the recessive colour would draw attention to the heritage fabric on the site and to the vibrant colours of the rural environment in which the site is located.</p>
Setting	Assessment
<i>To provide an appropriate visual setting for heritage items and buildings within conservation areas, including landscaping, fencing and car parking;</i>	<p>The proposal would be sympathetic to the visual setting of the heritage items as it would incorporate traditional building forms in a contemporary manner and a sympathetic colour scheme that would ensure the proposed development would remain recessive to the surrounding rural landscape.</p> <p>Heritage 21 is of the opinion that the car parking directly in front of the central courtyard and the memorial should be removed to maintain view lines to and from the heritage item.</p> <p>The proposed buildings, which would be used for commercial purposes, would be situated around the heritage items. This would</p>

Statement of Heritage Impact 37 Annie Pyers Drive, Gundagai

	facilitate incidental public engagement with the heritage fabric at the subject site.
<i>To ensure that new development respects the established patterns in the streetscape, including setbacks, siting, landscaped settings, car parking and fencing.</i>	<p>The subject site is situated in a rural area with low density residential development of small to medium scale and proportion.</p> <p>The proposal would respect the rural context of the site and would not alter established setbacks or streetscape patterns.</p> <p>Although the proposal does involve the removal of 19 mature trees on the site, in our view, these landscaping works would be necessary in improving the amenity of the site and facilitating public engagement with heritage significant fabric.</p>
Scale, mass and form	Assessment
<i>To ensure that the scale of new development is in harmony with the streetscape and that it does not dominate existing heritage items, nor reduces their contribution to the existing pattern of development.</i>	<p>The proposal is of a modest scale and would visually relate to the scale of adjacent residential dwellings.</p> <p>The proposal would comprise of six, single storey detached buildings constructed in a sympathetic contemporary architectural style. The proposal would incorporate a sympathetic colour scheme that would be recessive to the rural environment in which the subject site is located.</p> <p>In our view, the scale of the proposal is necessary in that it would reinvigorate the subject site by facilitating an increase in public engagement with heritage fabric and by providing contemporary commercial facilities and amenities for tourists and visitors.</p>
Proportion	Assessment
<i>To ensure that new development respects the proportions of elements of existing heritage fabric; and;</i> <i>To ensure that new development has regard to the architectural character and style of the Item or conservation area setting.</i>	<p>The proposed works would be of an appropriate proportion and would comprise of multiple, detached single storey buildings which would be utilised for commercial and gastronomic purposes. The proposed buildings would respect the rural environment in which the subject site is located and would mirror the scale and proportions of the residential properties in the site's vicinity.</p> <p>The proposed arrangement of the buildings would ensure that the Dog on the Tuckerbox Memorial and the Limestone Inn ruins are consistently in view. In our view, this proposed building arrangement would improve incidental public engagement with the subject site.</p>
Car parking, garages and other structures	Assessment

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<p><i>To allow for reasonable on-site car parking while retaining the character and significance of the conservation area or heritage item.</i></p>	<p>The proposal includes the construction of a car park at the front (eastern) boundary of the subject site.</p> <p>This carpark would improve public access to the site which would facilitate incidental public engagement with the heritage features at the site, namely the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.</p> <p>Heritage 21 is of the opinion that the carparking directly in front of the Dog on the Tuckerbox Memorial should be removed from the design to ensure that view lines to and from the heritage item are maintained. It is important that the Memorial be viewable from Annie Pyers Drive and the Hume Highway.</p>
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6.2.5 Impact Assessment Against the NSW Office of Environment & Heritage guidelines

As acknowledged in Section 6.1.4, the NSW Office of Environment & Heritage has identified a list of considerations in the form of questions aiming at directing and triggering heritage impact assessment. Below, we assess the proposal against the most pertinent of these questions.

Question	Assessment
Demolition of a building or structure	
<i>Have all options for retention and adaptive re-use been explored?</i>	The proposed demolition works would be limited to later addition, mid-twentieth century structures that, in our view, do not contribute to the heritage significance of the subject site.
<i>Can all of the significant elements of the heritage item be kept and any new development be located elsewhere on the site?</i>	The proposed works would not involve the demolition of any significant fabric at the subject site. The proposal would not involve the demolition or removal of the Dog on the Tuckerbox Memorial or the Limestone Inn ruins, which are considered significant heritage fabric. The Dog on the Tuckerbox memorial would be relocated within the subject site ensuring that its continues to be located within the subject site.
<i>Is demolition essential at this time or can it be postponed in case future circumstances make its retention and conservation more feasible?</i>	As discussed above, the proposed demolition would not pertain to any significant fabric located at the subject site and would be limited to later-addition structures constructed in the mid-twentieth century.
<i>Has the advice of a heritage consultant been sought? Have the consultant's recommendations been implemented? If not, why not?</i>	Yes, the applicant has sought the advice of Heritage 21 in the planning and proposal stage. Heritage 21's advice to retain all significant fabric has been incorporated in the proposal.
Major partial demolition (including internal elements)	
<i>Is the demolition essential for the heritage item to function?</i>	No, the proposed demolition would allow for the proposed construction of six commercial and gastronomic buildings which would improve the amenity of the site. This would, in our view, potentially increase public engagement and public appreciation of the subject site.
<i>Are particular features of the item affected by the demolition (e.g. fireplaces in buildings)?</i>	No, the proposed works would not involve the demolition of any heritage fabric located at the subject site.

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Question	Assessment
<i>Is the detailing of the partial demolition sympathetic to the heritage significance of the item (e.g. creating large square openings in internal walls rather than removing the wall altogether)?</i>	<p>The proposed demolition would be limited to later addition structures and would not involve original significant fabric.</p> <p>The proposed demolition would allow for the construction of six commercial and gastronomic facilities that would aim to entice tourists and visitors to the subject site which would increase incidental public engagement with heritage features located at the site, namely the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.</p>
<i>If the partial demolition is a result of the condition of the fabric, is it certain that the fabric cannot be repaired?</i>	<p>The proposed demolition would not be due to the condition of the fabric and would be intended to provide space for new, contemporary structures that would be sympathetic to the heritage significance of the subject site and the rural environment in which it is located.</p>
Major additions (see also major partial demolition)	
<i>How is the impact of the addition on the heritage significance of the item to be minimised?</i>	<p>The proposal would comprise of six single-storey detached buildings constructed in a sympathetic contemporary architectural style and would incorporate a sympathetic colour scheme that would be recessive to the rural environment in which the subject site is located.</p> <p>The proposed relocation of the Dog on the Tuckerbox Memorial would not engender a negative impact to the heritage fabric on the site and would place the memorial in an area that would increase incidental public engagement with the heritage fabric at the site.</p> <p>The proposal would not alter or negatively impact the Limestone Inn ruins. The proposal would allow for adequate and appropriate space between the heritage fabric and the proposed new constructions.</p>
<i>Can the additional area be located within an existing structure? If not, why not?</i>	<p>No, the proposal includes the construction of six detached buildings intended for commercial use and could not be located within any existing structure located on the site.</p> <p>The proposed new buildings would be of appropriate scale and in our view, would invite tourists and visitors the site which would improve incidental public engagement with the subject site, particularly the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.</p>

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Question	Assessment
<i>Will the additions tend to visually dominate the heritage item?</i>	<p>In our view, the proposal would incorporate sympathetic design, colour schemes and materials that would be recessive to the surrounding rural area and would draw attention to the significant heritage features located at the site.</p> <p>The proposed relocation of the Dog on the Tuckerbox Memorial would move the memorial to a central location in the courtyard area of the proposed buildings. In our view, this relocation would ensure that the Dog on the Tuckerbox Memorial is the visual focus of the subject site and would encourage public engagement with the monument and an understanding of the heritage significance of the site.</p> <p>Thus, it is the opinion of Heritage 21 that the proposed works would not visually dominate the subject site.</p>
<i>Are the additions sited on any known, or potentially significant archaeological deposits? If so, have alternative positions for the additions been considered?</i>	<p>The Limestone Inn ruins have been identified by Cootamundra-Gundagai Regional Council to be of potential archaeological significance at the local level.</p> <p>The proposal would not include alterations to the Limestone Inn ruins and the proposed buildings would be sited an adequate and appropriate distance away from the ruins.</p>
<i>Are the additions sympathetic to the heritage item? In what way (e.g. form, proportions, design)?</i>	<p>The proposed buildings are sympathetic to the heritage significance of the subject site for the following reasons:</p> <ul style="list-style-type: none"> • The proposed buildings would include a sympathetic design that incorporates traditional forms in a contemporary manner. • The proposed buildings would be constructed with sympathetic materials in a sympathetic colour scheme that is recessive to the surrounding rural environment in which the subject site is located. • The proposed buildings would be of modest scale and would visually relate to the surrounding residential development. • The proposed buildings would be arranged to surround the Dog on the Tuckerbox Memorial which would be relocated to the centre of the planned site. This would ensure that the visual focus of the site would be the Memorial. Further, Heritage 21 is of the opinion that the

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Question	Assessment
	proposed commercial buildings would facilitate incidental public engagement with this heritage.
Subdivision	
<i>How is the proposed curtilage allowed around the heritage item appropriate?</i>	The proposed subdivision would confine the curtilage of the historic item to their immediate boundaries. The surrounding landscape and environment do not contribute to the heritage significance of the site, and as such, we have deemed a reduced curtilage to be appropriate for these items. Both the Inn ruins and the statue would alter their current curtilage; however it would be more reflective of the associated importance and significance with these items.
<i>Could future development that results from this subdivision compromise the significance of the heritage item? How has this been minimised?</i>	The proposed subdivision would facilitate the development contained in this application. Heritage 21 would strongly recommend that the historic items (Inn ruins and the statue) continue to be managed by the current owner after subdivision to ensure their continued conservation. This would ensure that the items receive continued care and monitoring despite the subdivision of the site.
<i>Could future development that results from this subdivision affect views to, and from, the heritage item? How are negative impacts to be minimised?</i>	The development contained in this application has proposed an enticing reinvigoration of the site to increase public visitation to the site. The development would impact views to the site, however Heritage 21 is of the opinion that the impact would be positive. By creating an environment with extensive landscaping, a dark colour scheme for the new buildings, and the Dog on the Tuckerbox statue as the central focal point of the site, the views from Hume Highway would be improved.
New landscape works and features (including carparks and fences)	
<i>How has the impact of the new work on the heritage significance of the existing landscape been minimised?</i>	<p>The proposal would include the removal of trees situated on the site. In our view, these trees do not contribute to the heritage significance of the subject site and their removal would facilitate a sympathetic development that would encourage public engagement with the subject site.</p> <p>The relocation of the Dog on the Tuckerbox Memorial would not engender a negative impact to heritage fabric and in our view, this relocation would ensure the Memorial would be central to the site and would ensure the public's continuous engagement</p>

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Question	Assessment
	with the site while being provided with contemporary commercial and gastronomic facilities.
<i>Has evidence (archival and physical) of previous landscape work been investigated? Are previous works being reinstated?</i>	<p>In our view, the existing landscaping does not contribute to the heritage significance of the subject site.</p> <p>The proposed tree removal is a necessary landscaping work that would create space for the proposed construction of sympathetic buildings that would entice visitors to the site and encourage public engagement with the significant heritage fabric at the site, including the Dog on the Tuckerbox Memorial and the Limestone Inn ruins.</p> <p>In our view, the landscaping works, including the fountain, surrounding the Dog on the Tuckerbox monument, are dated and detract from the heritage significance of the subject site. The proposed demolition and removal of these landscaping features would not engender a negative impact to the subject site.</p>
<i>Has the advice of a consultant skilled in the conservation of heritage landscapes been sought? If so, have their recommendations been implemented?</i>	To our knowledge, the advice of a heritage landscaping consultant has not been sought by the client.
<i>Are any known or potential archaeological deposits affected by the landscape works? If so, what alternatives have been considered?</i>	<p>The proposal includes the removal of two medium-sized trees at the southern side of the Limestone Inn ruins. The Limestone Inn ruins have been identified by Cootamundra-Gundagai Regional Council as being of potential archaeological significance.</p> <p>In our view, the proposed removal of these trees would mitigate potential risk of damage to the ruins in the event that tree branches fall on to the area. Further, this proposed tree removal would protect the Limestone Inn ruins from leaf litter build up, which could potentially engender a negative impact to the condition and integrity of the heritage fabric.</p>
<i>How does the work impact on views to, and from, adjacent heritage items?</i>	There are no heritage items or heritage conservation areas in the vicinity of the subject site.
Tree removal or replacement	

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Question	Assessment
<i>Does the tree contribute to the heritage significance of the item or landscape?</i>	In our view, the trees proposed for removal do not contribute to the heritage significance of the subject site as they are not part of original landscaping plans. They are not considered to be intrinsic to the Dog on the Tuckerbox story which is the basis for the cultural heritage of the subject site.
<i>Why is the tree being removed?</i>	The proposed tree removal would create space for the construction of the proposed buildings which, in our view, would enhance the heritage significance of the subject site and entice tourists and visitors to engage with the subject site, namely the Dog on the Tuckerbox Memorial and the Limestone Inn Ruins.
<i>Has the advice of a tree surgeon or horticultural specialist been obtained?</i>	An arborist report has been written for the proposed removal of the trees. Refer to arborist report and RFI addendum report for further detail.
<i>Is the tree being replaced? Why? With the same or a different species?</i>	The trees proposed for removal would be replaced with native and exotic species. The native species would complement the Australian landscape and aim to reinvigorate the site. Refer to landscape plans for further detail.

6.2.6 Impact Assessment Against the Cootamundra-Gundagai Regional Council RFI – Response to additional information pertaining to heritage

Contention	Assessment
<i>Clarification of intention for Wishing Well and archival recordings</i>	<p>The wishing well was initially referred to as a fountain in this report. This has since been altered to accurately reflect the components of the site. The intention of the proposal would be to demolish the existing wishing well/fountain and construct a new water feature in front of the new position of the Dog on the Tuckerbox statue. The introduction of a new water feature would remain sympathetic to the presentation of the Dog since the wishing well's construction around the statue. The 'Pioneer's Wishing Pool' plaque should be retained and positioned in front of the Dog, in a similar fashion to its current position.</p> <p>A Photographic Archival Recording prior to and after the proposed works has been recommended as the proposal would involve the demolition of existing structures and landscaping on the site. As these proposed works would alter the site's current presentation significantly, it has been suggested that an archival recording be compiled to document these significant changes.</p>
<i>Removal of trees – Heritage assessment landscaping/trees on the site in current or historic form</i>	The potential effects of the removal of the trees on the site have been mitigated by the introduction of extensive landscaping. Refer to the landscaping plan lodged with the DA for further detail. The arborist report submitted with the DA, as well as the addendum to the report prepared by Mark D. McCrone in response to the RFI, identifies the trees on the site, including their respective conditions. While the loss of the trees would be an undesirable outcome, many of the trees that

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	<p>have been proposed for removal have been identified as being in fair or poor condition.</p> <p>While the trees contribute to the rural setting in which the Dog is positioned, the introduction of landscaping and tree species would ensure that the loss of the mature trees would be mitigated, and the visual impact reduced. The tree species selected to replace the mature trees mostly comprise native species, complementing the environment and authentically reflecting the nature of Australian landscapes.</p> <p>Further, aerial imagery as noted in Section 2.2 of this report shows that most of the trees on site were planted after the erection of the Dog on the Tuckerbox statue. Heritage 21 believes that the trees proposed for removal possess little significance in the context of the site. As their removal has been proposed to create further community and public engagement with the site and the statue, the landscaping would aim to mitigate the visual impact of their removal and create a reinvigorated environment for the attraction.</p>
<i>'traditional' vs 'contemporary' styles, materials and colours against objectives and controls of Gundagai LEP and relevant DCP</i>	<p>The proposed Building 03 gestures traditional built forms and elements, such as bullnose verandahs, fretwork, and Georgian-style architecture. However, the building would present as a new, contemporary building through the use of dark hues and colour scheme, as well as contemporary features such as horizontal cladding and metal roofing. Heritage 21 is largely supportive of the form and design of Building 03, however we would strongly recommend that the chimneys in their current form be altered to reflect a contemporary style, or be removed in their entirety. This would allow the site to gesture traditional built forms and elements, while maintaining a contemporary presentation on the site.</p> <p>Heritage 21 is of the opinion that the contrast in colour between the buildings and the bright and diverse landscaping would create a balance of hues and tones on the site, overall complementing the heritage item and its environment.</p>
<i>Heritage impact of proposed subdivision</i>	<p>The proposal involves the amalgamation of the current site and re-subdivision into three separate lots. The subdivision would alter the original subdivision pattern of the site, however Heritage 21 is of the opinion that the proposed change in curtilage of the heritage items would be reflective of the heritage value associated with the Limestone Inn ruins and the statue itself. The subdivision would allow the heritage items to retain their heritage value and significance, and allow the items with heritage value to be differentiated from the new buildings on the site. It would also allow for careful management and conservation of these significant items. The current landscaping on site does not contribute to the heritage significance of the statue or the Inn ruins, and as such, would not be negatively impacted by the re-subdivision of the site.</p>

7.0 CONCLUSION & RECOMMENDATIONS

7.1 Impact Summary

The NSW Office of Environment & Heritage's guidelines require the following aspects of the proposal to be summarised.⁷

7.1.1 Aspects of the proposal which respect or enhance heritage significance

In our view, the following aspects of the proposal would respect the heritage significance of the subject site:

- The proposal would retain the ruins of the Limestone Inn.
- The proposal would include sympathetic design that would be of modest scale and design and would visually relate to the surrounding residential.
- The proposal would incorporate sympathetic traditional and contemporary forms.
- The proposal would include the demolition of later-addition buildings constructed in the mid-twentieth century. Heritage 21 is of the opinion that these demolition works would be necessary in improving the amenity of the site and facilitating public engagement with heritage significant fabric.
- The proposal would include sympathetic colour schemes that would be recessive to the rural environment in which the subject site is located.
- The proposed buildings would be used for commercial and gastronomic purposes which would entice the public to visit the sight and would potentially improve public engagement with the subject site.

7.1.2 Aspects of the proposal which could have detrimental impact on heritage significance

In our view, there are no aspects of the proposal which could be detrimental to the significance of the subject site. The neutral impacts of the proposal have been addressed above in Section 7.1.1. Recommendations are provided in Section 7.2 below as further mitigation measures.

7.1.3 Sympathetic alternative solutions which have been considered

Heritage 21 provided heritage advice to the applicant which has been incorporated in the final proposal as described in Section 5.0. This regarded:

- Heritage 21 advised that the proposal not include any works pertaining to the Limestone Inn ruins.
- Heritage 21 also advised that the car park located directly in front of the pathway to the Dog on the Tuckerbox Memorial be relocated, which was actioned in the plans submitted in

⁷ NSW Heritage Office, "Statements of Heritage Impact."

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response to the RFI from Council.

This advice has been incorporated into the proposal as there are no proposed works pertaining to the Limestone Inn ruins situated at the subject site and the carpark has been relocated.

7.2 Recommendations

To ensure maximum conservation of the significance of the subject site, Heritage 21 also recommends the following:

- A photographic archival recording of the site before and after completion of the proposed works.
- Heritage 21 would recommend that revised drawings for Building 03 be submitted to Council reflecting the altered design of the chimneys in contemporary style or removed in entirety. This can be a condition of consent of the DA and be a requirement prior to the construction certificate being issued.

7.3 General Conclusion

Heritage 21 is therefore confident that the proposed development complies with pertinent heritage controls and would engender a neutral impact on the heritage significance of the subject site. We therefore recommend that Cootamundra-Gundagai Regional Council view the application favourably on heritage grounds.

8.0 SOURCES

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