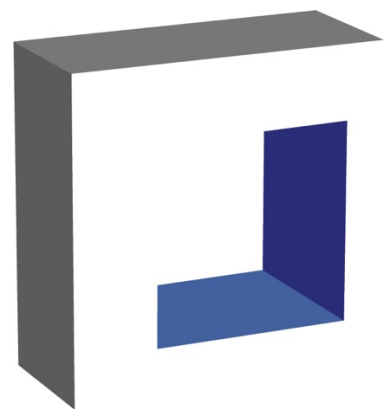


**REVIEW OF DETERMINATION –  
REFUSAL OF DA 2023/832**

**27 LANG DRIVE, BOLWARRA HEIGHTS**

**SECTION 8.2  
REVIEW OF  
DETERMINATION**

**MARCH 2025**



## Document Information

**Client:** SNL Building

**Project:** Section 8.2 Review of Refusal of DA 2023/832

**Author:** WW

**Reviewed by Client:** -

## Document History

Version	Date	Description	Author	Checked
1	07/03/2025	FINAL	WW	-

Wilson Planning Pty Ltd  
ABN 38 517 405 672

### **COPYRIGHT All rights reserved © Wilson Planning Pty Ltd**

This document is copyrighted and may only be used by Council for purposes associated with the subject Development Application (DA) to which it relates to the extent authorised under Section 10.14 of the Environmental Planning and Assessment Act 1979, as amended, for the express purposes of the project the subject of the Statement of Environmental Effects, and may not be otherwise copied, reproduced, distributed or used without the written permission of the authorised authors/publishers.

### **DISCLAIMER**

While every reasonable effort has been made to ensure that this document is correct at the time of writing, it relies of information / documentation provided by others and therefore the authors / publishers disclaim any and all liability done or the consequence of anything done or omitted to be done in reliance upon the whole or any part of this document.



# Table of Contents

<b>1.0</b>	<b>Background.....</b>	<b>1</b>
<b>2.0</b>	<b>Review of reasons for refusal .....</b>	<b>1</b>
<b>3.0</b>	<b>The provisions of any environmental planning instruments .....</b>	<b>2</b>
3.1	Environmental Planning & Assessment Act 1979 (the Act) .....	2
3.1.1	Division 8.2 Review of determination.....	2
3.2	Environmental Planning & Assessment Regulation 2021 .....	3
3.2.1	Clause 244 Review of consent authority’s decision or determination .....	3
<b>4.0</b>	<b>Conclusion .....</b>	<b>4</b>

## 1.0 Background

DA 2023/832 was lodged with Council on 29 September 2023. The original description of the development was:

*‘Demolition of Shed and One (1) into Fifteen (15) Lot Subdivision’*

The DA was refused on 29 January 2025.

We believe that the issue raised in the Council’s Refusal have been satisfactorily addressed and provide a response to the reason for refusal in Section 2.0 of this report.

The development remains substantially the same as originally proposed. The description remains unchanged.

## 2.0 Review of Reasons for Refusal

Council’s Notice of Determination (Refusal) dated 29 January 2025 contains one reason for refusal, as follows:

- 1. The applicant has provided insufficient information to enable proper consideration of the development application in accordance with Clause 36 of the Environmental Planning and Assessment Regulation 2021.*

An internal memo from Kristen Wells dated 29/01/2025 further particularises the insufficient information upon which the DA was refused. The following table contains a summary of the insufficient information raised in the internal memo and provides a response to each.

Insufficient Information	Response
<b>RFI #1 issued 17/11/2023, with a nominated deadline of 26/01/2024</b>	
Item 3. Clause 4.6 variations to Minimum Lot Size provisions	<p>See Clause 4.6 Written Request accompanying this application.</p> <p>Council has previously indicated in correspondence to the applicant that it would consider two undersized lots; however, this would be prohibited by Clause 4.6(6) of Maitland LEP 2011, which only allows one undersized lot in the R5 Large Lot Residential zone.</p> <p>As such, the lot layout has been slightly amended so that only Proposed Lot 9 is below the minimum lot size. This lot has a maximum 9.9% variation.</p>

Item 6. Effluent disposal requirements for the existing dwelling	<p>Proposed Lot 9, which contains the existing dwelling, has an existing septic tank on the boundary between Proposed Lots 9 and 10. This pump out septic system is licensed by Council under the Local Government Act 1993. This septic system is proposed to be decommissioned and removed as part of the subdivision servicing.</p> <p>In terms of sewer servicing, it is proposed to connect all proposed lots, including Proposed Lot 9 and the existing dwelling, to Hunter Water's existing local pressure sewer system and a full sewer servicing strategy and Complex Works Deed will be prepared for Hunter Water after a consent has been granted for the subdivision. This will be in conjunction with the required replacement of the existing 100 UPVC-P12 pressure sewer main within Proposed Lot 9.</p> <p>As such, a sewer pump station is not required to be shown on the Subdivision Plan.</p>
Item 7. Landscape design	See Landscape Plans accompanying this application.
<b>RFI #2 issued 23/01/2024, with a nominated deadline of 29/02/2024</b>	
1.4 Road Construction	A package of civil engineering plans accompanies this application.

There are various other items in the internal memo that are acknowledged as being received by Council but not assessed/reviewed. All of those items also accompany this application, ensuring Council's subject matter experts can assess this information, which should have been done as part of assessment of the DA to ensure there are no further issues raised relating to these items. It is hoped that Council will not now raise new/different issues regarding these items.

## 3.0 The provisions of any environmental planning instruments

### 3.1 Environmental Planning & Assessment Act 1979 (the Act)

#### 3.1.1 Division 8.2 Review of determination

A discussion of the relevant requirements that the consent authority must be satisfied of pursuant to this section of the Act follows.

*8.2(1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division—*

*(a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),*

The applicant is entitled to a review of their application that was refused by Council in February 2025.

*8.3(2) A determination or decision cannot be reviewed under this Division—*

*(a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or*

*(b) after the Court has disposed of an appeal against the determination or decision.*

The appeal period is 6 months (29 July 2025). **It is requested that Council staff expedite their assessment so that the matter can be determined before 29 July 2025.**

*8.3(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

Minor amendments have been made to the plans accompanying the application to facilitate only one lot being undersized, as permitted by Clause 4.6(6).

Additional information that was not previously provided has now been provided for Council's assessment. The development remains substantially the same development as the development described in the original application.

*8.4 After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.*

It is respectfully requested that the Council, after reviewing all of the information accompanying this application, approve the application, subject to appropriate conditions.

## **3.2 Environmental Planning & Assessment Regulation 2021**

### **3.2.1 Clause 244 Review of consent authority's decision or determination**

*(1) An application for review must be—*

*(a) in the approved form, and*

*(b) submitted on the NSW planning portal.*

*(2) An application for review must be submitted on the NSW planning portal no later than—*

*(a) for review of a determination of a modification application by a consent authority—28 days after the determination, or*

*(b) for review of a decision by a council to reject and not determine a development application—14 days after the applicant is notified of the decision.*

The application will be submitted in the approved form to the NSW planning portal. The application refused was not a modification or a rejection.

## 4.0 Conclusion

The information not previously provided has now been prepared and accompanies this application, addressing Council's reason for refusal in its Notice of Determination dated 29 January 2025.

We believe that the proposal is worthy of support and Council's favourable consideration of this application for review is requested.

