



Report of Development Application Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979

APPLICATION DETAILS

Application No.:	DA20/0128
Modification No.:	N/A
Council File No.:	D/2020/0128
Date of Lodgement:	11/03/2020
Applicant:	P Finemore, ET Finemore U2 93 Copland St EAST WAGGA WAGGA NSW 2650
Proposal:	Use of existing internal fitout
Description of Modification:	N/A
Development Cost:	\$0
Assessment Officer:	Sam Robins
Determination Body:	Officer Delegation 7.39
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	27/3/20 - 3/4/20
Advertising:	N/A
Owner's Consent Provided:	Yes
Location:	The subject site is located on the northern side of Copland Street three lots east of the junction with Sutton Street

SITE DETAILS

Subject Land:	93 Copland St EAST WAGGA WAGGA NSW 2650 Lot 22 DP 1097028
Owner:	ET Finemore & P Finemore

DESCRIPTION OF DEVELOPMENT

The applicant seeks permission for the use of existing internal fitout to the first of the three units (unit 1) located at 93 Copland Street.

Internal walls have been constructed to create a reception area, offices work shop and kitchen.

THE SITE & LOCALITY

The site, being Lot 22 DP 1097028, 93 Copland Street East Wagga is located on the

northern side of Copland Street three lots east of the junction with Sutton Street.

The site measures 2120m² and is generally flat contains the warehouse/industrial building and is free of any substantial vegetation. The site has a sewer easement to the front.

The surrounding area is a mix of expected Industrial land uses and vacant lots.

The site is considered flood prone this issue has been discussed in the body of the report.

An inspection of the site was undertaken on 17/3/20 by the assessment officer.

Previous Development Consents

DA06/1043 - approved the construction of four buildings over four different lots with each building containing three tenancies. Of the four buildings approved the two fronting Copland Street have been constructed. This consent approved the use as 'industrial Unit Complex'. The consent included the following advisory note:

Prior to occupation of the warehouse/factory units, the occupants are to submit a development application to Council for determination if deemed required (after consultation with Council's Department Planning and Development Services).

The current tenants 'Viatek' have been in the premises since its construction. The land use is considered consistent with the original approval and not subject to consideration under this application.

SUMMARY OF MAIN ISSUES

Nil

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

For the purpose of determining this development application, the following matters that are of relevance to the development have been taken into consideration pursuant to the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act, 1979.

(a)(i) - The provisions of any environmental planning instrument (EPI)

Local Environmental Plan

Wagga Wagga Local Environmental Plan 2010 (LEP 2010)

The following provisions of the LEP 2010 apply:

Land Use Table

Under the LEP the site is zoned IN1 - General Industrial

The objectives of the zone that would be considered relevant are;

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses*

The land use has not been altered. The application is simply for the use of existing internal fitout and remains consistent with the original approval for the land.

Part 7 - Additional Local Provisions

7.2 - Flood Planning

(1) *The objectives of this clause are as follows:*

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

(2) *This clause applies to:*

- (a) land that is shown as "Flood planning area" on the Flood Planning Map, and*
- (b) other land at or below the flood planning level.*

(3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The site is within the East Wagga Wagga Medium Flood Risk area. However, the application is for use of existing and has no impact on the flood status of the land. All works that have taken place are internal. The application raises no issues under this section of the LEP. No further consideration is required.

7.6 - Groundwater Vulnerability

As the application site falls within this zone as identified as 'Groundwater' of the Water Resources Map, the development would be subject to assessment under this clause.

The objective of this clause is to protect and preserve groundwater sources.

Development consent must not be granted for development specified for the purposes of this clause on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is unlikely to adversely impact on existing groundwater source, and*
- (b) is unlikely to adversely impact on future extraction from groundwater sources for domestic and stock water supplies, and*
- (c) is designed to prevent adverse environmental impacts, including the risk of contamination of groundwater sources from on-site storage or disposal facilities.*

The development is not considered to be detrimental to any of the issues above and therefore

complies with this section of the LEP 2010.

Clause 7.9 - Primacy of Zone B3 Commercial Core

Development consent must not be granted to development on any land unless the consent authority is satisfied that the development maintains the primacy of Zone B3 Commercial Core as the principal business, office and retail hub of Wagga Wagga.

The development is for use of existing internal fitout to an industrial unit that has been in operation since 2007. The use is not of a type that would be appropriate or could be reasonably housed in the CBD. Therefore, it is considered that the development is unlikely to impact on the primacy of the B3 Commercial Core zone of the city.

State Environmental Planning Policies

State Environmental Planning Policy No. 33 - Hazardous and Offensive Development

The development is not defined as a hazardous or offensive industry. No further assessment under this SEPP is required.

State Environmental Planning Policy No. 55 - Remediation of Land

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use.

Clause 7 states the following:

7 Contamination and remediation to be considered in determining development application

(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is:

- (a) *land that is within an investigation area,*
- (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital-land:*
 - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Council is required to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use.

The uses on the site raise no concerns and the application does not propose a change of use. The works have been completed and the site is not listed on Council's potentially contaminated land register. The site is considered suitable for the use. No further investigations are required.

(a)(ii) - The provisions of any draft environmental planning instrument

Draft local environmental plans

N/A

Draft state environmental planning instruments

Draft State Environmental Planning Policy - Remediation of Land

The Draft SEPP was placed on exhibition until 31 March 2018. The SEPP will replace SEPP 55. The Explanation of Intended Effects outlines that the key operation framework of SEPP 55 will remain. Changes in the SEPP relate primarily to land undergoing remediation work. Therefore, for a development such as this, little will change between SEPP 55 and the Remediation of Land SEPP.

(a)(iii) - Any development control plan

Wagga Wagga Development Control Plan 2010

The relevant controls of the DCP have been addressed below.

2.1 Vehicle access and movements

The application involves no changes to the current approved layout. No issues are raised.

2.2 Off-street parking

The use has not been altered and therefore there is no change to the requirements under DA06/1043.

2.3 Landscaping

Given the application is for use of existing internal fitout no landscaping plan is required.

2.4 Signs

No signage has been applied for.

2.5 Safety and Security

Given the proposal is utilising an existing building with a use that's permissible in the zone and requires no additional safety measures, no concerns are raised.

2.6 Erosion and Sediment Control Principles

Given the works have been completed no issues are raised.

4.2 Flooding

Whilst this section of the DCP applies, given the works have been completed and are all internal no issues are raised. No additional conditions need to be applied.

Section 5 Natural Resource and Landscape Management

5.4 Environmentally sensitive land

As mentioned under part 7 of the LEP the land is zoned industrial, surrounded by existing industrial units so the proposal would have no additional impact to the groundwater source in the area.

Section 11 Industrial Development

Industrial development design principles

P1 Development is to be suited to its site in terms of the nature of the use, relationship to adjoining uses and availability of land for industrial development.

P2 Development should be consistent with the principles of Industrial ecology.

The application is for use of existing internal fitout in an existing approved industrial building. The fitout raises no planning concerns and given it is internal and has been completed there are no other relevant objectives or controls of this section that would apply.

(a)(iia) - any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No planning agreement has been entered into under section 7.4.

(a)(iv) - any matters prescribed by the regulations

Matters prescribed by the Environmental Planning & Assessment Regulation 2000 and the Building Code of Australia have or will be satisfied by recommended conditions of consent.

(b) - The likely impacts of the development

Context and setting

Given the works undertaken are internal the site context and setting has not been altered.

Access, transport and traffic

No impact.

Public Domain

No impact.

Heritage

The site is not located with the Conservation Area and not located within close proximity to any Heritage Items. No issues are raised.

Other land resources

The site is not productive agricultural land, has no history of mineral deposits and the development will not result in unreasonable impacts on water supply catchments.

Water

No concerns raised.

Waste

Given the works have been completed no issues re raised.

Soils

As above.

Air and Microclimate

No issues are expected given the nature of the development and the zone in which it is proposed.

Noise and vibration

The works have been completed so there is no construction noise to consider and the use has not been altered as part of this application so is not a consideration.

Safety, security and crime prevention

No issues have been raised with the internal fitout.

Services

The site is fully connected to all services.

Flora and fauna

No vegetation will be removed as part of this application.

Natural Hazards

The site is not considered bush fire prone.

As discussed above, the site is considered subject to flooding in a riverine flood event. The issues surrounding this have been discussed above and considered acceptable.

Social and Economic Impacts

Legalising the works will have a positive economic impact as it will ensure the building has all the correct approvals in place.

Hours of operation

This remains as per previously approved.

Site Design and internal design

No issues are raised. The Building Information Certificate will ensure the works that have been completed are of an acceptable standard for the certificate to be issued.

Construction

N/A

Cumulative impacts

The assessment of the above impacts has shown that the majority of impacts are acceptable and that any issues can be resolved by way of conditions of consent. Therefore the cumulative impact of the development would be considered acceptable.

The Principles of Ecologically Sustainable Development

The following are principles of ecological sustainability:

1 The precautionary principle

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (b) an assessment of the risk-weighted consequences of various options.*

The principle requires decision-making to give the environment the benefit of the doubt.

2 Intergenerational equity

The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (that is, a partnership among all of the generations that may use or expect to benefit from the nation's resources).

3 Conservation of biological diversity and ecological integrity

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

4 Improved valuation, pricing and incentive mechanisms

Environmental factors should be included in the valuation of assets and services:

- (a) polluter pays (that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement), and*

(b) the users of goods and services should pay prices based on the full cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and

(c) environmental goals having been established should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms which enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

The impacts assessed above have concluded that the application would be acceptable with minimal impact on the environment.

(c) - The suitability of the site for the development

Suitability of the site in terms of the likely impacts identified under (b)

The subject site is located within an area that is designated for industrial development. This assessment report has demonstrated that the development is compatible with adjoining uses and that there are no site constraints that would render the site unsuitable for the proposed development.

An assessment of the development against the applicable controls of the Wagga Wagga Development Control Plan 2010 demonstrates that the development will not cause significant adverse impacts on the existing built environment and local character.

(d) - any submissions made in accordance with this Act or the Regulations

Referrals

Internal

Notification

In accordance with the Council's advertising and notification provisions outlined in Section 1.10 of the WWDGP the application was notified for a period of 7 days on the following dates 27/3/20 to 3/4/20 and referred surrounding tenancies. No public submissions were received.

Public Submissions and those from public authorities

Nil

Advertising

N/A

(e) - the public interest

Federal, state and local government interests and general community interests

It is considered that this application will not have a detrimental affect on the public interest.

Other Legislative Requirements

Section 5AA and Part 7 of the *Biodiversity Conservation Act 2016* (Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats)

On 21st November 2017, certain zones of the WWLEP 2010 achieved Biodiversity Certification under the *Biodiversity Conservation Act 2016*, including all Business, Industrial, Residential and Special Infrastructure Zones that were in place at the time of the making of the *Biodiversity Conservation Act 2016*. The subject site falls within an area subject to the Biodiversity Certification Order.

The effect of the Biodiversity Certification, as set out by Section 8.4 of the *Biodiversity Conservation Act 2016* is that:

An assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the Environmental Planning and Assessment Act 1979.

A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the Environmental Planning and Assessment Act 1979, is not required to take into consideration the likely impact on biodiversity of the development carried out on that land.

Therefore, no further consideration of these matters is required.

Section 733 of the Local Government Act 1993

Section 733 of the *Local Government Act 1993* provides that Councils will not incur liability for decisions or omissions concerning flood liable land or land subject to the risk of bushfire. Where required, a risk assessment has been completed and Council will be able to demonstrate that it has acted appropriately in its decision making when defending claims in liability or in circumstances where administrative decisions are challenged.

Flooding Risk Assessment

The development has been considered against the relevant provisions of the WWLEP2010 and DCP. Although the site is identified as being prone to flood no further risk assessment is required as the development raises no concerns.

Bush Fire Risk Assessment

The development has been considered against the relevant provisions of the WWLEP2010 and DCP. A risk assessment is not required as the development is not mapped as being on Bushfire Prone Land.

Council Policies

N/A

Comments by Council's Officers

Council's other relevant officers have reviewed the application in accordance with Council's processing procedures. Relevant comments or requirements are discussed in the body of the report and full details are available on the file.

Development Contributions - Section 7.11/7.12 & Section 64 Local Government Act, 1993 and Section 306 Water Management Act, 2000

Contributions are not required for works of this nature and cost.

Other Approvals

Nil

Conclusion

The development is considered to be satisfactory based on the foregoing assessment. The proposal complies with the requirements of the Environmental Planning and Assessment Act 1979 and Councils Policies. No objections to the proposal were received.

RECOMMENDATION

It is recommended that application number DA20/0128 for Use of existing internal fitout be approved, subject to the following conditions:-

CONDITIONS OF CONSENT FOR APPLICATION NO.

A. SCHEDULE A – Reasons for Conditions

The conditions of this consent have been imposed for the following reasons:

- A.1 To ensure compliance with the terms of the Environmental Planning and Assessment Act 1979 and Regulation 2000.
- A.2 Having regard to Council's duties of consideration under Section 4.15 and 4.17 of the Act.
- A.3 To ensure an appropriate level of provision of amenities and services occurs within the City and to occupants of sites.
- A.4 To improve the amenity, safety and environmental quality of the locality.
- A.5 Having regard to environmental quality, the circumstances of the case and the public interest.
- A.6 Having regard to the Wagga Wagga Development Control Plan 2010.
- A.7 To help retain and enhance streetscape quality.
- A.8 Ensure compatibility with adjoining and neighbouring land uses and built form.
- A.9 To protect public interest, the environment and existing amenity of the locality.
- A.10 To minimise health risk to neighbouring residents and workers.

B. SCHEDULE B – Deferred Commencement Conditions

N/A

C. SCHEDULE C – Conditions

Approved Plans and Documentation

- C.1 The development must be carried out in accordance with the approved plans and specifications as follows.

Plan/DocNo.	Plan/Doc Title	Prepared by	Issue	Date
-	Statement of Environmental Effects	Paul Finemore	-	3/3/20
-	Additional Written information	Paul Finemore	-	23/3/20
-	Ground level plan (as existing)	Submitted by applicant	-	Received 24/3/20
630-2WD	Working Drawing (original layout)	Submitted by applicant	-	Received 24/3/20

The Development Application has been determined by the granting of consent subject to and as amended by the conditions of development consent specified below.

NOTE: Any modifications to the proposal shall be the subject of an application under Section 4.55 of the Environmental Planning and Assessment Act, 1979.

Prior to operation

- C.2 A Building Information Certificate must be obtained from Council, within three (3) months of the date of this Development Approval pursuant to Section 149A of the Environmental Planning and Assessment Act 1979, as amended.

NOTE: An application form has been attached.

General requirements

- C.3 The building must comply with the Fire Safety Schedule, attached.

NOTE: The Fire Safety Schedule supersedes any earlier Fire Safety Schedule and will cease to have effect when any subsequent Fire Safety Schedule is issued.

- C.4 The owner must submit to Council and the NSW Fire Brigade an Annual Fire Safety Statement, each 12 months, commencing within 12 months after the date on which the initial Interim/Final Fire Safety Certificate is issued or the use commencing, whichever is earlier.

D. SCHEDULE D – Activity Approval Conditions (Section 68)

N/A

E. SCHEDULE E – Prescribed Conditions

Conditions under this schedule are prescribed conditions for the purposes of section 4.17 (11) of the Environmental Planning and assessment Act 1979.

- E.1 Fulfilment of BASIX commitments (clause 97A EP&A Reg 2000)

The commitments listed in any relevant BASIX Certificate for this development must be fulfilled in accordance with the BASIX Certificate Report, Development Consent and the approved plans and specifications.

- E.2 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989 (clause 98 EP&A Reg 2000)

- (1) For development that involves any building work, the work must be carried out in accordance with the requirements of the Building Code of Australia.
- (2) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance shall be in force before any building work authorised to be carried out by the consent commences.
- (3) For a temporary structure that is used as an entertainment venue, the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the Building Code of Australia.

NOTE 1: This condition does not apply:

- (a) to the extent to which an exemption is in force under clause 187 or 188 of the Environmental Planning and Assessment Regulation 2000 (the Regulation), subject to the terms of any condition or requirement referred to in clause 187(6) or 188(4) of the Regulation, or
- (b) to the erection of a temporary building, other than a temporary structure to which part (3) of this condition applies.

NOTE 2: In this condition, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application is made for the relevant:

- (a) development consent, in the case of a temporary structure that is an entertainment venue, or
- (b) construction certificate, in every other case.

NOTE 3: There are no relevant provisions in the Building Code of Australia in respect of temporary structures that are not entertainment venues.

E.3 Erection of signs (clause 98A EP&A Reg 2000)

For development that involves any building work, subdivision work or demolition work, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

NOTE 1: This condition does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

NOTE 2: This condition does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Environmental Planning and Assessment Act 1979, to comply with the technical provisions of the State's building laws.

NOTE 3: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained.

E.4 Notification of Home Building Act 1989 requirements (clause 98B EP&A Reg 2000)

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

NOTE: This condition does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Environmental Planning and Assessment Act 1979, to comply with the technical provisions of the State's building laws.

E.5 Entertainment venues (clause 98C EP&A Reg 2000)

If the development involves the use of a building as an entertainment venue, the development shall comply with the requirements set out in Schedule 3A of the Environmental Planning and Assessment regulation 2000.

E.6 Maximum capacity signage (clause 98D EP&A Reg 2000)

For the following uses of a building: a sign must be displayed in a prominent position in the building stating the maximum number of persons permitted in the building if the development consent for the use contains a condition specifying the maximum number of persons permitted in the building:

- (a) entertainment venue,
- (b) function centre,
- (c) pub,
- (d) registered club,
- (e) restaurant.

NOTE: Words and expressions used in this condition have the same meanings as they have in the Standard Instrument.

E.7 Shoring and adequacy of adjoining property (clause 98E EP&A Reg 2000)

If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the building, structure or work from possible damage from the excavation, and
- (b) where necessary, underpin the building, structure or work to prevent any such damage.

NOTE: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

F. SCHEDULE F – General Terms of Approval (Integrated Development)

N/A

Report prepared by Sam Robins

Report approved by: Amanda Gray



Paul O'Brien
Manager Development Assessment & Building Certification

Date: 29/04/2020