



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

APPLICATION DETAILS

Application No.:	DA20/0083
Modification No.:	N/A
Council File No.:	D/2020/0083
Date of Lodgement:	19/02/2020
Applicant:	TJ Hinchcliffe & Associates Pty Ltd Po Box 5497 WAGGA WAGGA NSW 2650 Mr Terrence Hinchcliffe 2 lot subdivision
Proposal:	N/A
Description of Modification:	N/A
Development Cost:	\$5000
Assessment Officer:	Emma Molloy
Determination Body:	Officer Delegation 7.39
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	27 February to 12 March 2020
Advertising:	No
Owner's Consent Provided:	Yes
Location:	The subject site is located on the eastern side of Lakehaven Drive opposite the intersection of Lakesend Place and Lakehaven Drive.

SITE DETAILS

Subject Land:	115 Lakehaven Dr LAKE ALBERT NSW 2650 Lot 71 DP 1246436
Owner:	CL Duff & JJ Duff

PLANNING CONTROLS / STATUTORY CLASSIFICATION

Pursuant to Part 4 (Division 1)

Description of Development

The proposed development seeks consent for a two lot subdivision. The proposal will involve the re-subdivision of a previously consolidated lot (registered by plan of consolidation DA1246436 on 25 September 2018) that will comprise of the same area and dimensions as originally approved by DA11/0293. The proposed lots will front Lakehaven Drive and will have an area of 1327m² (lot 82) and 1326m² (lot 83). Easements to drain both sewer and stormwater will be located in the rear of both lots.

The Site and Locality

The subject site is legally known as Lot 71 DP1246436 and is located at 115 Lakehaven Drive, Lake Albert. The subject site is rectangular in shape and comprises of 2653m². The site has a slight fall from west to east of 500mm.

The surrounding locality is characterised by large lot residential nature with a mix of established and more recently built dwellings.

Easements and Covenants

The subject land contains a sewer and stormwater easement of 2.5 metres on the eastern boundary. The proposed subdivision plan reflects the existing infrastructure.

Previous Development Consents

- DA11/0293 as amended for Residential Subdivision; and
- DA18/0458 for Dwelling, Swimming Pool, Spa & Shed.

The development approved by DA18/0458 for Dwelling, Swimming Pool, Spa and Shed has not commenced. As such a condition of consent will be imposed to require DA18/0458 to be surrendered prior to issue of the Subdivision Certificate.

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

Section 4.15(a)(i) - The provisions of any environmental planning instrument (EPI)

Wagga Wagga Local Environmental Plan 2010

Under the provisions of the WWLEP2010, the subject site is within the R5 Large Lot Residential zone.

The development is permissible with consent.

Part 2 Permitted or prohibited development Land Use

1 Objectives of zone

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.

- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To ensure that the clearing of native vegetation is avoided or minimised as far as is practicable.

The proposed development seeks to re-subdivide a previously consolidated lot that was approved by DA11/0293. As such the proposal is consistent with the above objectives.

2.6 Subdivision - consent requirements

Land to which this clause applies may be subdivided, but only with development consent. By submitting this application this clause has been satisfied.

Part 4 Principal development standards

4.1 - Minimum subdivision lot size

This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent, the size of any lot resulting from a subdivision of land cannot be less than the minimum lot size shown on the map. The minimum lot size is 0.12Ha, the proposed lots are in excess of 1300m² and therefore satisfy this clause.

Part 7 Additional Local Provisions

7.3 Biodiversity

The objectives of this clause are to protect, maintain or improve the diversity of native vegetation. The subject site is identified as “Biodiversity” on the Terrestrial Biodiversity Map. The subject site is void of vegetation. As such the proposed development is not considered to have an adverse impact on biodiversity.

7.5 Riparian Lands and Waterways

The objective of this clause is to protect or improve water quality within waterways. The subject site is identified as “Water” on the Water Resource Map and is within the Lake Albert Catchment. The proposed development reflects the existing character of the locality and as such is not considered to have an adverse impact on water quality or any aquatic or riparian habitats.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No. 55 - Remediation of Land

Clause 7 states that a consent authority must not grant consent unless it has considered whether the land is contaminated and if the land is contaminated, it is satisfied that the land is suitable in its current state for the purpose for which the development is proposed to be carried out. The site has been previously subdivided for a residential purpose and there is no indication that the site has previously been occupied by any use that could have led to contamination of the site. Furthermore, the land is not identified on Councils register of contaminated sites. Accordingly, it is not considered necessary to request any investigation reports on the subject site. The site is therefore considered suitable for the proposed use.

Section 4.15(1)(a)(ii) - Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

State Environmental Planning Policy No 55 - Remediation of Land has been subject to recent public consultation and is currently under review. In addition the Contaminated Land Planning Guidelines are also under review. The proposed changes to the SEPP do not propose to alter the core considerations under Section 7 of the SEPP and as such will have no bearing on this assessment in regards to SEPP 55.

Section 4.15(1)(a)(iii) - The provisions of any development control plan**Wagga Wagga Development Control Plan 2010**

Proposed development complies with the development standards of the Wagga Wagga Development Control Plan 2010 as follows:

Section 1 - General**1.10 Notification of a Development Application**

The proposed development was notified and advertised for a period of 14 days from 27 February to 12 March 2020. No submissions were received.

1.6 Relationship to Other Plans

This section identifies provisions from the Wagga Wagga Development Control Plan 2005 (DCP2005) that are incorporated by reference in the Wagga Wagga Development Control Plan 2010 (DCP2010). The subject site is within the Lake Albert Catchment, as such Chapter 26 of the DCP2005 is relevant to this application.

The density provision contained within chapter 26 is 1 dwelling per 2ha. The density provision for the subject land under the current LEP provisions of 1200 square metres as stipulated on the minimum lot size map. The chapter was aimed at controlling land management on larger rural small holdings within the catchment (with areas of 2 - 40 hectares) for the purpose of improving the quality of run-off entering Lake Albert. This is largely achieved under this chapter by the imposition of Land and Water Management Plans (or Property Management Plans). A Land and Water Management Plan was not required during the original subdivision as the imposition of Land and Water Management Plans over the proposed allotments was not justified given that the majority of the lots within the subdivision are more in keeping with general residential development. Given this it would be inappropriate to require a Land and Water Management Plan for the proposed subdivision.

The Chapter does however identify the importance of sediment and erosion control during construction works. Appropriate conditions will be applied to future consents for dwellings etc which will require the implementation of appropriate sediment and erosion control measures during all construction activity.

Section 2 - Controls that Apply to All Development

2.1 Vehicle Access and Movements

Vehicle access is proposed from the existing access from Lakehaven Drive. Access is consistent with surrounding development with adequate sightlines and access to Lakehaven Drive. As such the proposed development is considered to comply with the objectives and controls within this section.

2.2 Off-street Parking

Both lots have sufficient area to accommodate parking requirements in accordance with the DCP. Parking requirements will be assessed subject to future development on the lots.

2.3 Landscaping

This application does not include the removal of any vegetation. Adequate space for landscaping is available within the proposed lots.

2.5 Safety and Security

Each of the proposed lots have a clearly visible entrance and is easily identifiable within the street. The lot design does not raise any safety or security concerns rather the increase of dwellings within the locality will maximise passive surveillance and as a result security within the locality.

2.6 Erosion and Sediment Control Principles

Earthworks are expected as part of the development. Conditions of consent will be imposed to ensure earthworks do not have an adverse impact on the subject and adjoining allotments.

Section 5 - Natural Resource and Landscape Management

Section 5.3 Native Vegetation Cover

This Section sets out the responsibilities of developers and new landowners in relation to the conservation and establishment of native vegetation. The controls establish minimum native vegetation levels for different rural land capability classes as defined by the Natural Resource Management Plan. The controls within this section apply to land where the minimum subdivision lot size is greater than 0.2Ha, the minimum lot size for the subject site is 1200m² therefore the controls within this section do not apply to the proposed development.

5.4 Environmentally Sensitive Land

The site is identified as a "Sensitive Area" on the natural Resources Sensitivity Map - Biodiversity and as "Sensitive Area" on the on the Natural resources Sensitivity Map - Water. Natural sensitivities have been previously assessed within the LEP section within this report.

Section 7 - Subdivision

7.2.1 Topography, Views and Setting

The proposed subdivision is considered to be responsive to the setting and conditions of the locality. Lots will address Lakehaven Drive in accordance with the controls of this section.

7.2.2 Design for Use and Accessibility

The proposed development does not propose any new roads rather the development will utilise the existing road network which is considered acceptable.

7.2.3 Solar Access, Energy Efficiency, Size and Shape of Lots

The proposed lots have been orientated towards the west to respond to the existing site constraints. Future dwellings will have access to adequate northern light through appropriate design. Lots are rectangular in shape and given their size will be able to accommodate dwellings that will be capable of meeting the development standards within Section 9 of the DCP. As such the proposed lots are considered to comply with the objectives and controls within this section.

7.2.4 Open Space, Parks and the Public Domain

This application is for a two lot subdivision within a previously approved subdivision. The controls within this section relate to new greenfield development and as such are not relevant to this application.

7.2.5 Water Sensitive Urban Design

This section relates to proposals of 10 or more lots and such is not relevant to the proposed development.

7.2.6 Services

The proposed development is for a two lot subdivision within a previously approved subdivision. All essential services are available to the site. Conditions of consent will be imposed to ensure that servicing is designed to meet Council's engineering guidelines.

Section 4.15(1)(a)(iia) - Planning Agreements

No planning agreements have been entered into under Section 7.4.

Section 4.15(1)(a)(iv) - any matters prescribed by the regulations

Matters prescribed by the regulation have been satisfied.

Section 4.15(1)(b) - likely impacts of the development

SECTION 4.15(1)(B) - LIKELY IMPACTS OF THAT DEVELOPMENT

	Satisfactory	Not Satisfactory	Not Relevant	Comment
Context & Setting	x			The proposed subdivision reflects the existing subdivision pattern throughout the locality.
Streetscape	x			Each lot will be identifiable from the street and will follow the predominant subdivision pattern throughout the locality. No adverse impacts have been identified.
Traffic, access and parking	x			Each lot will be accessed from Lakehaven Drive which is considered acceptable.
Public Domain	x			None identified
Utilities	x			The site is within a previously approved subdivision. Evidence that both lots will be

				adequately serviced will be conditioned as part of this consent.
Heritage	x			The subject site is not within the Heritage Conservation Area or a listed item. The site is within a previously approved subdivision as such no adverse impacts have been identified.
Other land resources	x			None identified.
Water Quality & Stormwater	x			None identified.
Soils, soil erosion	x			The subdivision works are unlikely to result in adverse impacts to the subject site or surrounding land. Conditions of consent will be imposed for the dwelling that will mitigate potential impacts to the subject site or surrounding land.
Air and microclimate	x			None identified.
Flora and Fauna	x			The subject site is void of vegetation. No adverse impacts have been identified.
Waste	x			No adverse impacts have been identified.
Energy	x			None identified.
Noise & vibration	x			The subdivision works will not have an adverse impact in terms of noise on the surrounding dwellings. Conditions of consent will be imposed in regards to appropriate construction hours for the subsequent applications for dwellings on the proposed lots.
Hours of operation			x	Not applicable.
Natural hazards - Flooding - Bushfire Prone Area map	x			The subject site is not identified as flood or bushfire prone.
Technological Hazards	x			None identified.
Safety, security and crime prevention	x			The lots will be easily identifiable within the street and will aid in passive surveillance of the locality. No adverse impacts have been identified.
Social impact in locality	x			The proposed development will provide more land for residential development and therefore more economic growth within the city.
Economic Impact in Locality	x			The proposed development will provide further opportunity for continued work for the construction and related industries.
Site design and internal design	x			The proposed lots will be able accommodate dwellings that are well designed in regards to their location including the provision of access to lots, solar access and access to private open space.
Overlooking - overshadowing	x			No concerns raised.
Landscaping	x			Landscaping will be provided after the construction of dwellings.
Construction			x	The proposed development is for subdivision only therefore this section is not applicable.

Private open space	x			The proposed lots will be able to accommodate an ample amount of private open space.
Cumulative Impacts	x			None identified.
Disabled access			x	Not applicable.
Signage				Not applicable.
Setbacks, Building Envelopes	x			The proposed lots are of an appropriate size and are reflective of the surrounding development. No concerns raised.

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 proposed development involves the subdivision of residentially zoned land for a residential purpose. The impacts assessed above have concluded that the development is acceptable with a minimal impact on the environment.

Section 4.15(C) - The Suitability of the site for the development

The subject land located at 115 Lakehaven Drive is considered to be suitable for the proposed development because it is residentially zoned land being subdivided to provide additional residential lots.

Section 4.15(d) - any submissions made in accordance with the Act or the regulation

Referrals - The proposed development was referred to the relevant Council Officer's whom did not raise any concerns. Standard conditions of consent have been imposed.

Notification - The proposed development was notified for a period of 14 days from 27 February to 12 March 2020. No submissions were received.

Public Submissions and those from public authorities
No public submissions have been received at the time of this report.

The proposed development was referred to Riverina Water, no concerns were raised. A condition of consent will be imposed to require a Certificate of Compliance for Water Supply prior to the release of Subdivision Certificate.

Section 4.15(e) - the public interest

The public interest is a broad consideration relating to many issues and is not limited to. Taking into account the full range of matters for consideration under Section 4.15 of the Environmental Planning and Assessment 1979 (as discussed within this report) it is considered that approval of the application is the public interest.

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 have been considered. 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 subject site is not identified as prone to flooding. Therefore, no further assessment is required.

Bush Fire Risk Assessment

The subject site is not identified as bushfire prone. Therefore, no further assessment is required.

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)

(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:

(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or

(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,

(c) in relation to the habitat of a threatened species or ecological community:

(i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and

(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and

(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,

(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),

(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

(2) The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program.

The development is in a residential zone that has been biocertified. The proposed development does not include the removal of any significant vegetation. The development will have minimal impact and not unreasonably impact on any threatened species in the vicinity. No further assessment is required under this section.

As mentioned above there is unlikely to be significant impact.

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

Section 7.11 of the EPA Act, 1979 and the City of Wagga Wagga's Section 7.11 Levy Contributions Plan 2006 enable Council to levy contributions, where anticipated development will or is likely to increase the demand for public facilities. A Section 7.11 contribution of is not payable as contributions were previously charged for the proposed lots as determined in DA11/0293.

Section 64 of the Local Government Act 1993, Section 306 of the Water Management Act 2000 as well as the City of Wagga Wagga's Development Servicing Plan for Stormwater 2007 / Development Servicing Plan for Sewerage 2013 enable Council to levy developer charges based on increased demands that new development may have on sewer and/or stormwater infrastructure. A Section 64 contribution is not payable as contributions were previously charged for the proposed lots as determined in DA11/0293.

Referrals:

Building Surveyor: N/A

Plumbing Inspector: N/A

Subdivision Engineer: Yes, no concerns raised. Standard conditions imposed.

Environmental Officer: N/A

Parks & Recreation Officer: N/A

Other Approvals:

Nil

Conclusion:

An assessment of the application has resulted in this application being supported based on the following grounds:

- The application is for a two lot subdivision in the R5 Large Lot Residential Zone which is permitted with consent.
- The development complies with the requirements of the Environmental Planning and Assessment Act 1979 and will not compromise the outcomes sought for the Wagga Wagga Local Environmental Plan 2010.
- An assessment of the application against the relevant sections of the Wagga Wagga Development Control Plan 2010 demonstrates that the proposed development will not cause any significant adverse impacts on the surrounding natural environment, built environment, infrastructure, community facilities or local character and amenity.

The application is subsequently recommended for approval, subject to conditions.

RECOMMENDATION

It is recommended that application number DA20/0083 for 2 lot subdivision 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	Terrence John Hinchliffe		17.02.2020
	Plan of Subdivision of Lot 71 DP1246436	Terrence John Hinchliffe		6.02.2020

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.

Requirements before a Subdivision Certificate can be issued

- C.2 **Prior to the release of the Construction Certificate the consent given by Council's Notice of Determination of DA18/0458 and dated 25.10.2018 must be surrendered by the submission of a document in accordance with Clause 97(1) of the Environmental Planning and Assessment Regulation 2000.**
- C.3 **A Subdivision Certificate, pursuant to Section 109C of the *Environmental Planning and Assessment Act 1979*, as amended must be obtained from Council, prior to its lodgement with the Lands Titles Office.**

The Final Survey Plan (two paper copies and an electronic copy) must be submitted to Council along with the application for Subdivision Certificate and associated checklist.

NOTE: Council will only consider issuing a Subdivision Certificate in relation to this subdivision when it is satisfied that all conditions of development consent relating to the subdivision have been complied with and the appropriate fee paid.

- C.4 **Prior to the issue of the Subdivision Certificate the following documents shall be submitted to Council to demonstrate that the requirements of the public utility services have been met:-**
- i) Essential Energy: Notification of Arrangement OR Certificate of Acceptance**
 - ii) APA Gas: Certificate of Acceptance**
 - iii) Riverina Water: Certificate of Compliance**
 - iv) Certification from an approved telecommunications provider**

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

N/A

E. SCHEDULE E – Prescribed Conditions

N/A

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

N/A

Report Prepared by:Emma Molloy
Town Planner

Date: 31.03.2020

Report Approved by:Paul O'Brien
Manager Development Assessment &
Building Certification

Date: 1/5/2020