



Report of Development Application

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

APPLICATION DETAILS

Application No.:	DA20/0101
Modification No.:	N/A
Council File No.:	D/2020/0101
Date of Lodgement:	02/03/2020
Applicant:	Peter Fitzpatrick Property And Land Developments PO Box 5668 WAGGA WAGGA BC NSW 2650
Proposal:	Staged Subdivision (Stage 1 - 2 Lot Torrens Title Subdivision, Stage 2 - 5 Lot Community Title Subdivision), Earthworks, Retaining Walls, Landscaping and Service Connection
Description of Modification:	N/A
Development Cost:	\$400000
Assessment Officer:	Steven Cook
Determination Body:	Officer Delegation 7.39
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	4/5/20 - 18/5/20
Advertising:	4/5/20 - 18/5/20
Owner's Consent Provided:	2/3/20
Location:	Eastern side of Boorooma Street, southern side of Messenger Avenue, western side of Phar Lap Place, and northern side of Collin Knott Drive.

SITE DETAILS

Subject Land: 2 Phar Lap PI BOOROOMA NSW 2650
Lot 53 DP 1179795, Lot 54 DP 1179795, Lot 36 DP 1179795,
Lot 37 DP 1179795

Owner: Roman Catholic Church

REPORT

DESCRIPTION OF DEVELOPMENT

The proposal is for a staged subdivision, earthworks, retaining walls, landscaping and service connections.

The subject land comprises 4 existing lots. Stage 1 consists of a consolidation of these lots and re-subdivision into a two lot, Torrens Title subdivision, with Lot 1 being 6677m² at the southern end of Phar Lap Place, and Lot 2 being 17855m² at the northern end. Stage 1 also includes the installation and connection of services for these lots.

Stage 2 comprises a Community Title subdivision of Lot 2, creating five lots (including one common lot), varying between 2325m² and 6747m² in size. In addition, Stage 2 includes the removal of one tree, and the carrying out of substantial earthworks and construction of retaining walls, to support the future development of the site.

The plans show concept drawings for a shopping centre on the site, however, these concept details do not form part of the Development Application, and will not form part of any consent granted.

THE SITE & LOCALITY

The site, currently described as Lots 36, 37, 53 and 54 DP 1179795, 2 and 7 Phar Lap Place, Boorooma, is located on the eastern side of Boorooma Street, southern side of Messenger Avenue, western side of Phar Lap Place, and northern side of Collin Knott Drive. The site was created under DA10/0515 as part of the urban subdivision of the land south of the former Cooramin Street.

To the east of the site is a residential subdivision, however a number of the immediately adjacent lots on the eastern side of Phar Lap Place remain empty with the only development being a childcare centre. The remaining vacant lots are large and capable of housing multi-dwelling development. To the west of the site is Boorooma Street, and beyond, the suburb of Estella, including a large seniors living development. South of the site is the Olympic Highway, and beyond, rural lands, whilst to the north of the site is a seminary.

The site falls to the east and southeast in the order of 10 metres. On the site stands one large tree and a small number of smaller trees, but is otherwise vacant.

SUMMARY OF MAIN ISSUES

Relationship to future development of the site

Impacts on streetscape and adjoining properties from earthworks/retaining walls.

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 (WWLEP) 2010

Under the provisions of the WWLEP 2010 the majority of the land is zoned B2 Local Centre. The objectives of the B2 zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

The proposal, being a subdivision and associated works to facilitate future retail uses, is considered consistent with the objectives of the zone, which seek to further these types of uses.

Clause 2.6 of the plan sets out that subdivisions such as that proposed require the consent of Council. The submission of this application satisfies these clauses.

The development proposes significant earthworks to create future development sites. Clause 7.1A relates to earthworks and is as follows:

(3) Before granting development consent for earthworks, the consent authority must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,

Council's Major Overland Flow Study mapping indicates that the site is subject to only minor overland flows and flooding. Furthermore, this mapping pre-dates the subdivision works in the area, and these subdivision works have altered and managed these flows through the stormwater networks created in conjunction with the development. Further infrastructure will be installed as part of this development to manage stormwater. It is unlikely that the development will have significant detrimental impacts on soil stability.

(b) the effect of the proposed development on the likely future use or redevelopment of the land,

The earthworks are proposed to create more level sites to facilitate future development. The earthworks and retaining walls will 'lock-in' to some extent how this future development will occur, however, any future development will be assessed on its merits and the carrying out of these works without any final development approved is at the developer's own risk. It is noted, however, the

site is large, and so it is considered there will be sufficient opportunity for acceptable design outcomes to be achieved.

(c) the quality of the fill or the soil to be excavated, or both,

The Statement of Environmental Effects states that fill will only be required for vehicle crossovers and services construction. It is recommended that conditions of consent be imposed requiring that any fill imported to the site is either Virgin Natural Excavated Material or Excavated Natural Material.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,

All adjoining properties are separated by road, which will help reduce impacts. Properties in Phar Lap Place will be most impacted through the visual impact of large retaining walls facing Phar Lap place opposite their site. Due to the zoning of the site, and the substantial fall across it, it is likely that any reasonable development of the land for the zoned purpose will result in substantial retaining walls along this elevation.

The impacts of the walls will be softened through the provision of stepped retaining walls incorporating landscaping. It is recommended that conditions of consent be imposed requiring the ongoing maintenance of this landscaping given the important role it will play in managing the visual and streetscape impacts on Phar Lap Place.

Due to the setbacks to adjoining properties, and the orientation of adjoining lots, other impacts such as overlooking and overshadowing are considered unlikely to be significant.

(e) the source of any fill material and the destination of any excavated material,

As noted above, a condition is recommended to ensure that any fill be VENM or ENM. It is recommended that a condition of consent be imposed requiring any excavated material be exported to a location approved for the receipt of the material.

(f) the likelihood of disturbing relics,

Given the disturbed nature of the site, disturbance of relics is considered unlikely.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Impacts on watercourses, drinking water catchments and environmentally sensitive areas have been considered and are unlikely.

Clause 7.3 - 'Biodiversity' applies to land identified as "Biodiversity" on the Terrestrial Biodiversity Map of the WWLEP 2010 and requires that the consent authority take into account a number of matters relating to biodiversity before granting consent.

(3) Development consent must not be granted to development on land to which this

clause applies unless the consent authority has considered the following matters:

- (a) any potential adverse impact of the proposed development on any of the following:*
 - (i) a native vegetation community,*
 - (ii) the habitat of any threatened species, population or ecological community,*
 - (iii) a regionally significant species of plant, animal or habitat,*
 - (iv) a habitat corridor,*
 - (v) a wetland,*
 - (vi) the biodiversity values within a reserve, including a road reserve or a stock route,*
- (b) any proposed measures to be undertaken to ameliorate any such potential adverse impact.*

The site itself contains no significant stands of remnant vegetation.

The site is heavily modified and has been used for agriculture and residential purposes for many years. It is considered that there is minimal biological importance remaining with the land, and as such it is considered that there will be no significant impacts on those matters listed under Clause 7.3.

In addition, the WWLEP 2010 has been bio-certified for the urban area and as such any Development Application located within the certified area is taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.

Clause 7.4 - 'Vulnerable Land' applies to land identified as "Vulnerable Land" on the Vulnerable Land Map of the WWLEP 2010 and requires that the consent authority take into account a number of matters relating to biodiversity before granting consent.

(3) Development consent must not be granted to development that involves the disturbance of soil, including the erection of a building or the undertaking of a work, on the following land to which this clause applies unless the consent authority has considered the potential for any adverse impact on the land-

- (a) land with a slope greater than 25%,*
- (b) land with a high proportion of rock outcropping,*
- (c) land subject to high erosion potential,*
- (d) land subject to soil salinity or impeded drainage,*
- (e) land subject to regular or permanent inundation.*

(4) Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development is consistent with the objectives of this clause and-

- (a) the development is-*
 - (i) designed, sited and managed to avoid any potential adverse impact on the land, and*
 - (ii) unlikely to affect the rate, volume and quality of water leaving the land, or*

- (b) if a potential adverse impact cannot be avoided, that the development-*
- (i) is designed and sited so as to have minimum adverse impact, and*
 - (ii) incorporates effective measures to remedy or mitigate any adverse impact, and*
 - (iii) provides for the rehabilitation of areas to maintain landscape stability, such as revegetation of areas subject to soil salinity and high erosion potential.*

The land does not appear to be land to which 7.4(3) applies. With regard to 7.4(3), it seems that the land would be mapped as “vulnerable land” due to the slope of the site. The development proposes substantial earthworks, with retaining walls, which will minimise impacts such as soil erosion and water runoff. The development is considered consistent with the provisions of Clause 7.4. All relevant matters have been considered.

Clause 7.9 requires that Council consider the impact of developments on the primacy of the Wagga Wagga Central Business area. The development is for a subdivision of land zoned for business purposes. The specific uses have not been proposed at this time, and these uses will have to be assessed against this clause at the time of Application, however, commercial use of the site was accepted at the time of zoning. It is anticipated that future uses will be suburban in nature, such as a supermarket, designed to service the local community’s everyday needs, and as such are unlikely to adversely impact on the primacy of the Wagga Wagga CBD.

Clause 7.11 applies where the consent authority is satisfied that the proposed development will penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Wagga Wagga Airport. The subject site is around 168m below the OLS and as such, Council cannot be satisfied that the development will penetrate the OLS and the clause does not apply.

There are no other provisions of the WWLEP 2010 relevant to the development.

State Environmental Planning Policies

State Environmental Planning Policy No 55 - Remediation of Land

Clause 7 of SEPP 55 requires that:

- (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).*

With respect to this, a Preliminary Site Investigation was submitted with the Development Application. The PSI considered the former uses on the site, and carried out limited sampling where potentially contaminating activities were suspected, namely the footprint of demolished structures and herbicide/pesticide use areas across the site. The report notes that analysis returned contaminant levels below limits of reporting and/or the adopted criteria and that no visual or olfactory evidence of contamination was encountered during inspection of the site or sampling.

The PSI concluded that the site was suitable for the proposed development.

As such, in accordance with the requirements of SEPP 55, Council has considered whether the land is contaminated, and that it is suitable for the proposed development.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 of SEPP (Infrastructure) 2007 requires that Essential Energy be notified where development is “within 5m of an exposed overhead electricity power line”. A 66kV overhead powerline traverses the site, and thus the clause applies. Essential Energy raised no objection and provided comments. The majority of the comments are standard and it is recommended that these be imposed as conditions of consent where relevant.

In addition, Essential Energy provided the following comment:

In reviewing the plans, the site appears to have significant elevation changes. Essential Energy has existing 66kV overhead powerlines traversing Lot 37 in DP1179795. If the ground levels change in the 66kV easement area, particularly under or near the powerlines, the landowner/ developer will need to confirm that the ground clearances for the powerlines meet design requirements. If the easement area becomes trafficable, which the plans indicate, it may mean ground clearance needs to meet the requirements of a roadway and may have to be increased.

The developer is aware of this requirement and it is recommended that this be conditioned, noting that at this time, only earthworks are being proposed.

Clause 101 of the SEPP applies to development with “frontage” to a classified road. The Olympic Highway (Colin Knott Drive) is a classified road, and the southern portion of the site adjoins the highway. In addition, a portion of Boorooma Street (south from the point where the left turn lane from Boorooma Street onto Colin Knott Drive formerly commenced prior to the construction of the roundabout at the corner of Boorooma Street and Messenger Avenue) is a “controlled access road” which is also defined as a classified road. Clause 101(2) requires that:

(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that-

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of-*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

No access to the site is proposed from the classified roads. The development, being for a subdivision and earthworks, is considered unlikely to impact on the safety, efficiency and ongoing operation of the highway or controlled access road. It is unlikely to result in smoke or dust emission, and is unlikely to result in any ongoing traffic generation. Likewise, the nature of the development is such that it is not considered to be of a type sensitive to traffic noise or vehicle emissions.

The SEE states that Clause 104 of the SEPP (i.e. traffic generating development) applies because the development is of a kind listed in the Schedule to the SEPP as being of a kind that the clause applies to. The development type referred to is not stated in the SEE, however, the development is for a subdivision, and the threshold for subdivisions is 50 lots where access is proposed within 90m of a classified road, and 200 lots in other circumstances. It is possible the Applicant is referring to future uses of the site, however, the Development Application is not for any use of the site, and any such uses would be subject to a future Development Application.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP regulates clearing that is not ancillary to development requiring consent. Clearing that is ancillary to development requiring consent is assessed as part of the development assessment process.

(a)(ii) - The provisions of 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 (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

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

1.6 Relationship to other plans

Clause 1.6 of the WWDCP 2010 adopts some of the provisions of the DCP which it replaced - the WWDCP 2005. Relevant to this application, the WWDCP 2010 adopts "controls relating to the layout and details of subdivision" from "Chapter 41 Boorooma". However, only the "proposed subdivision plan" is adopted in the case of Boorooma and not the written controls. Notwithstanding, for completeness, these clauses are addressed following the WWDCP 2010 assessment.

In relation to the provisions of the WWDCP 2010, clause 1.6 states that the incorporated provisions of the WWDCP 2005 are "incorporated by reference in this plan and apply... to the exclusion of all other provisions of this plan". Therefore it is considered likely that there are no controls of the WWDCP 2010 applicable to the development. An alternate view would be that it only applies to equivalent provisions, in which case it would be the case the 'Section 7 - Subdivision' that does not apply to the development. In either case Section 7 would not apply, however, the remaining relevant provisions of the WWDCP 2010 are addressed below.

1.10 - Notification of a Development Application

The application was advertised and notified to adjoining neighbours from 4th May 2020 to 18th May 2020 in accordance with the provisions of the WWDCP 2010. No public submissions were received.

2.1 Vehicle Access and Movement

It is important to note that the Development Application is for the subdivision of the land and for earthworks, not for the future use of the site, which will be subject to a separate Development Application. The controls are assessed in this context.

C1 Access should be from an alternative secondary frontage or other non-arterial road

where possible.

No access to the site is proposed from any arterial roads.

C2 A Traffic Impact Study may be required where adverse local traffic impacts may result from the development. The traffic impact study is to include the suitability of the proposal in terms of the design and location of the proposed access, and the likely nature, volume or frequency of traffic to be generated by the development.

A detailed traffic impact study will be required to accompany large future developments on the site. The suitability of these developments will then be assessed in relation to traffic impacts.

C3 Vehicles are to enter and leave in a forward direction unless it can be demonstrated that site conditions prevent it.

Undeveloped, adequate space is available on site to enable this to occur. It is noted plans submitted with the Development Application show potential future developments on the site, including some concept loading proposals. These proposals appear to indicate vehicles entering the site in a manner other than in a forward direction to access the supermarket loading dock. As stated, the Development Application is not seeking consent for these components and the development is not being assessed in this regard, however, it is recommended that the consent be conditioned so that it is clear these arrangements are not approved, and that any future development must ensure that vehicles can enter and exit the site in a forward direction. It is noted that the proposed earthworks could potentially minimise development alternatives on the site, however, as detailed designs of the future development are not available, detailed assessment by Council cannot occur at this time. Proceeding with the earthworks will be at full risk to the developer, with no guarantee any particular development on the site will be approved.

C4 Provide adequate areas for loading and unloading of goods on site. The loading space and facilities are to be appropriate to the scale of development.

No particular development is proposed at this time and the control is not directly relevant at this time. It is noted that the submitted plans suggest future development may include loading and unloading of goods within public car parking areas. This could potentially be unacceptable, however, as operational details, such as hours of operation and delivery are not provided at this time the suitability of these arrangements cannot be assessed at this time. It is further noted that consent is not being sought at this time for any particular developments on the site. These arrangements will be assessed at the time of any future Development Application being granted, noting that there is no guarantee that any particular proposal would be granted consent

C5 Access driveways are to be located in accordance with the relevant Australian Standard at the time of lodgement of an application.

The Development Application was referred to Council's Traffic Engineer who raised no objection with regard to this. It is recommended that conditions of consent to this end are imposed. Whilst any future development of the land will need to be considered on its merits, and the circumstances of any particular proposal may not make it the case, it is considered generally that an acceptable future development of the land can

be designed utilising these access points.

C6 Ensure adequate sight lines for proposed driveways.

The Development Application was referred to Council's Traffic Engineer who raised no objection with regard to this. Access is considered satisfactory.

2.2 Off Street Parking

The controls in this section are not relevant to subdivisions and earthworks, which have no parking requirements. As noted previously, despite some drawings being provided with the Application, Council is not assessing any future development of the land at this time.

2.3 Landscaping

Landscaping plans are not required for subdivisions under this section.

Notwithstanding, given the nature of the development, and the potential impacts on streetscape, it is considered crucial that some landscaping, particularly along the steep retaining walls along street frontages, is established and maintained from this point in time. Concept plans have been submitted and are considered partially acceptable to soften the impact of the walls and earthworks on the streetscape of Phar Lap Place and Messenger Avenue, however, it is recommended that further landscaping be provided, including moving walls back from the street-property boundary to incorporate a landscaping strip in front of the walls at ground level. It is recommended that a condition of consent be imposed requiring the provision of a detailed landscape plan prior to the release of the Construction Certificate, incorporating additional plantings to achieve more substantial screening of the significant walls to Phar Lap Place. It is also recommended that a further Condition of Consent be imposed requiring that the landscaping along the Phar Lap Place and Messenger Avenue boundaries of the site be established prior to the release of the Subdivision Certificate for Stage 2, and that it be maintained for the life of the development (supported by a Positive Covenant on the title).

2.4 Signage

No signage is proposed.

2.5 Safety and Security

The controls in this section are as follows:

C1 Use good site planning to clearly define public, semi-public and private areas.

The internal site is yet to be assessed. The proposed retaining walls will, however, clearly define the boundaries of the site.

C2 Entries are to be clearly visible and identifiable from the street, and are to give the resident/occupier a sense of personal address and shelter. For non-residential uses, administration offices or showroom are to be located at the front of the building.

No buildings are proposed at this time.

C3 Minimise blank walls along street frontages.

The proposed retaining walls will result in blank walls along street frontages. This is not desirable, however, due to the significant fall across the site, and street frontages on every elevation of the site, this is essentially unavoidable. Further discussion in part (b) of this report recommends lighting upgrades to help address issues associated with this.

C4 Avoid areas of potential concealment and 'blind' corners.

No buildings are proposed at this time. The retaining will result some concealment. Again whilst not desirable, due to the significant fall across the site, and street frontages on every elevation of the site, this is essentially unavoidable. Further discussion in part (b) of this report recommends lighting upgrades to help address these issues.

C5 Provide lighting to external entry areas, driveways and car parks in accordance with the relevant Australian Standards. The lighting is to be designed and sited to minimise spill and potential nuisance to adjoining properties.

Lighting is not proposed at this time, as no development of the lots is proposed, however, as discussed in part(b) of this assessment report, it is recommended that lighting standard/strategy be developed for the site, including lighting of entry and exit points for vehicles and pedestrians, as well as public spaces that adjoin the site, particularly where retaining walls create screen and reduce passive surveillance, and that this plan be incorporated in the community title scheme, with a requirement that future development ensures its delivery.

C6 Planting and fencing is not to reduce the safety of users or compromise areas of natural surveillance.

The retaining walls will create level differences that could reduce natural surveillance. Whilst not desirable, due to the significant fall across the site, the is essentially unavoidable.

C7 Where a site provides a pedestrian through route the access path is to be clearly defined and sign posted, appropriately lit, and have satisfactory visibility.

Not relevant at this time.

C8 Locate public toilets and rest areas to promote their use, and maximise public surveillance without creating visual intrusion.

Not relevant at this time.

2.6 Erosion and Sediment Control Principles

It is recommended that standard conditions of consent be imposed to ensure compliance with this section.

5.4 Environmentally sensitive land

This section applies to land identified as 'biodiversity' on the Terrestrial Biodiversity Map of the WWLEP. There are, however, no controls that apply to land identified as biodiversity, if that land lies within the biocertified area, which the overwhelming majority of this site does.

This section applies to land identified as 'biodiversity' on the Terrestrial Biodiversity Map of the WWLEP. There are, however, no controls that apply to land identified as biodiversity, if that land lies within the biocertified area, which the overwhelming majority of this site does.

The section also applies to land identified on the "vulnerable land" map. The controls call for the submission of a specialist report addressing:

the potential for any adverse impact on land:

- (a) with a slope greater than 25%, or*
- (b) with a high proportion of rock outcropping, or*
- (c) subject to high erosion potential, or*
- (d) subject to soil salinity or impeded drainage, or*
- (e) subject to regular or permanent inundation.*

As discussed in part (a)(i) of this assessment report, the land is not considered to be land of a kind listed above. As such, it is considered unnecessary to require a further specialist report addressing these matters, and that the clause has been adequately addressed under the Statement of Environmental Effects.

10.3 Local Centres

The controls in this section predominantly relate to the built form development on sites in a B2 zone and have limited applicability to the development.

C1 Design to provide an active address to the adjoining residential precinct - avoid blank and unarticulated walls, consider outdoor dining areas or uses that encourage interaction with the street environment.

Whilst buildings are not proposed at this time, the provision of retaining walls along Phar Lap Place and Messenger Avenue will make it difficult for future development to provide an active frontage to these streets. The nature of the site, with significant fall to the east, is such that significant earthworks are necessary to facilitate development on the site, and that retaining walls along these frontages are unavoidable. The walls are proposed to be landscaped to minimise the visual impact.

The site is such that an active frontage for shops could be provided to the Boorooma Street-Messenger Avenue corner of the site, which is considered to be the highest profile corner on the site, and its activation of the greatest public interest.

C2 Setbacks, building design and location - locate building bulk to ensure acceptable setbacks to any adjoining residential land. A landscaped buffer may be required.

No buildings are proposed at this time. The site does not directly adjoin any residential properties.

C3 Design and locate signs to minimise light spill to adjoining or nearby residential land.

No signage or lighting is proposed at this time.

C4 The location of vehicle entrance and exit points is to minimise disturbance to the

functioning of adjoining roads, and avoid directing additional traffic through residential precincts.

Vehicle entry points, and their relationship with the development on the site, will be assessed in detail at the time development is proposed on the site. Whilst any future development of the land will need to be considered on its merits, and the circumstances of any particular proposal may not make it the case, it is considered generally that an acceptable future development of the land can be designed utilising these access points.

C5 Design and location of loading and unloading facilities away from residential properties close to the site and provide adequate screening.

No buildings are proposed at this time and no assessment of loading and unloading facilities can be carried out at this time. This will be assessed in detail in conjunction with any future Development Application for the development of the site.

C6 Provide bicycle parking facilities at a rate of 1 bicycle per 200m² of gross floor area.

N/A at this time.

C7 Locate services and any mechanical vents or equipment away from residential development.

N/A at this time.

C8 Hours of operation are generally not to exceed 6am to 9pm daily. However dispensation may be considered for uses licensed to operate beyond those times, based on individual merits

N/A at this time.

Wagga Wagga Development Control Plan 2005 - Chapter 41 - Boorooma (West)

Clause 41.1.7 of the WWDCP 2005 requires that development occur generally in accordance with the Boorooma Master Plan. The shopping centre site is not identified on the masterplan, and the existing road network approved under DA10/0515 is inconsistent with the masterplan. Therefore it is not possible for any subdivision of this site to be consistent with the masterplan. These matters were considered in the assessment of DA10/0515.

The majority of the controls in this section relate to residential development and are not relevant to the development. The matters that are relevant to a business zone subdivision are addressed below:

41.2.7 Community Facilities requires that:

- *Any application for a neighbourhood retail centre within Boorooma West will refer to the Commercial and Retail Strategy prepared by Leyshon Consulting Pty Ltd.*
- *The proposed commercial site identified within Boorooma West will be of an appropriate size, location, be economically viable, and best serve the needs of the population of both Boorooma West and Estella.*

Neither of these matters are relevant at this time, with the site determined under the WWLEP 2010 zoning process, and DA10/0515, and no physical shopping centre proposed to assess against the retail strategy.

Clause 41.2.8 and 41.2.9 outline stormwater and other servicing requirements. Compliance with the requirements of these clauses can be conditioned through standard conditions.

41.2.11 of the WWDCP 2005 relates to flora and fauna. A 7-part test for the entire Boorooma neighbourhood has previously been undertaken which found residential development would have minimal impact on flora and fauna.

Land contamination is discussed under the SEPP 55 assessment (clause 41.2.12).

Finally, clause 41.2.13 of the WWDCP 2005 requires that subdivision within Boorooma only occur in sequence with the approved staging plan for the locality unless the applicant can “demonstrate how infrastructure can be provided, without increased burden on Council or negative impact upon the community”. The staging plan no longer forms part of the DCP, and notwithstanding, the development is for the resubdivision of an existing site. As such the clause is not relevant.

There are no other provisions of the WWDCP 2005 relevant to this application.

(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) - the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

It is considered that the matters prescribed by the Environmental Planning and Assessment Regulation 2000 have been satisfied.

(b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

Context and setting

The proposed development will result in impacts on the streetscape of Phar Lap Place and Messenger Avenue, and the character of the area, through the introduction of large retaining walls (up to 3.6m in height) along these boundaries. The retaining walls are necessary to facilitate the economic development of the land. The impacts of the retaining walls has been partially softened through the provision of landscaping in the walls, however, it is anticipated that some impact will still occur.

The zoning of the site B2 creates a reasonable expectation that the site will accommodate commercial developments, and due to a myriad of reasons, including commercial/economic reasons, accessibility requirements and practicalities (such as moving shopping trolley's through a car park), these developments need to occur over

a relatively flat site. Due to the substantial slope across the site, the zoning means that it is essentially inevitable that large retaining walls will be required along the lower end of this site to accommodate any reasonable development.

Council's Strategic Planning Section has raised concerns about the lack of activation of the street and made a number of suggestions in regard to this. This included activation below floor level of the supermarket shown on the indicative plans (difficult to achieve in the absence of the specific supermarket proposal, and not directly assessable at this time), lighting detail and more significant landscaping. Landscaping is discussed in part(a)(i) and amended plans are recommended. In regard to lighting, it is considered appropriate, for both safety and security reasons, and because the subdivision could lead to fragmentation of the ownership of the site, that a comprehensive lighting plan be required for the public spaces adjoining the site and access points, particularly those which will be screened and secluded and will lose passive surveillance as a result of the earthworks on the site, and that this lighting plan forms part of the documentation associated with the Community Title Scheme (with a requirement that future development ensures its delivery).

The zoning of the land B2 creates a reasonable expectation that the site will accommodate commercial development and this, combined with the public interest in facilitating the provision of shopping facilities in a rapidly growing residential area of Wagga Wagga without such services is considered significant enough to justify the impacts on streetscape resulting from the retaining walls.

Access, transport and traffic

The Development Application is not seeking consent for any particular development on the site, and despite plans being submitted showing buildings, access and car park layout, and the provision of a traffic study, the proposal is for subdivision and earthworks only. As such, impacts on traffic, transport and traffic are unlikely to be significant.

Notwithstanding, the Development Application does essentially lock in access points to the site. The location of these access points themselves raises no concerns, however, it is noted, as discussed in part(a)(iii), that the concept drawings appear to show delivery vehicles reversing from the street into the loading dock and delivery vehicles in public areas, which is unlikely to be acceptable. Whilst any future development of the land will need to be considered on its merits, and the circumstances of any particular proposal may not make it the case, it is considered generally that an acceptable future development of the land can be designed utilising these access points.

As stated in part(a)(iii) of this assessment report, it is recommended that conditions of consent noting requirement for future development of the land be imposed, such as ensuring all vehicles can enter and exit the site in a forward direction, and to ensure appropriate arrangements are proposed for the movement of delivery vehicles and the loading and unloading of goods.

To ensure maximum flexibility for future development of the site, it is recommended

that a condition of consent be imposed requiring that the documentation of the Community Title Scheme to include provision for reciprocal access rights for each lot, across every other lot, for purposes including parking, access (vehicular and pedestrian), and delivery.

Council's Strategic Planning Section has recommended that provision be made for dedicated access, separated from vehicle entry points, for pedestrians approaching from the east and north-east. This recommendation is considered of benefit and a condition of consent requiring this should be incorporated into the conditions of any consent.

Services

It is recommended that standard conditions of consent regarding servicing be imposed.

Heritage

There are no known items of environmental heritage on the site.

Given the disturbed nature of the site, it is considered that items of Aboriginal Cultural Heritage are unlikely on the site, and in accordance with the Aboriginal Cultural Heritage Due Diligence process, development can proceed with caution. It is recommended that standard conditions of consent relating to Aboriginal Cultural Heritage be imposed.

Natural Hazards

Although the site is not below the 1:100 year flood level, the site is mapped as being located in a 'major overland flow path area'. Indicated flooding is minor and less than 150mm, further noting that subdivision works associated with the previous subdivision of the land have also been carried out, which further manages stormwater flow in the locality.

With the required stormwater infrastructure in place to support water run-off during a major rain/storm event, the risk is considered acceptable. Conditions of consent are recommended to manage the flow of stormwater off site.

Man-Made Hazards

Potential contamination is discussed under the SEPP 55 assessment in Part (a)(i) of this assessment report. The site is considered suitable for the proposed development.

Economic Impact in the Locality

The proposed development will facilitate future development of the land for commercial/business purposes. The uses will result in increased economic activity and job creation in the locality and is considered to result in a positive economic impact in the locality.

Social Impact in the Locality

The proposed development will facilitate future development of the land for commercial/business purposes. The provision of shopping facilities and a

gathering/meeting space in a growing area devoid of such services at present is considered to have a significant positive social impact, by creating a sense of community and meeting the needs of residents.

Other Land Resources

Given the increasing residential development in the area, and the business zoning of the site, it is considered that the site has limited value from a land resource perspective.

Pollution and off-site environmental effects

During construction appropriate measures will need to be implemented to ensure soil erosion and degradation does not occur. It is recommended that a condition of consent be imposed to this end.

Flora and fauna

The vegetation on the site to be removed predominantly consists of boundary plantings and their removal will not have any significant impact on flora and fauna. Flora and fauna matters have been addressed more extensively elsewhere in this report. Further, the site is part of the bio-certified area of the WWLEP 2010.

Noise and Vibration

The proposed subdivision and earthworks themselves are unlikely to result in any increase in the locality. Noise impacts associated with future uses of the site will be considered at the time that Application is made for them.

Energy Impacts

The development incorporates no special energy efficiency measures.

Site Design and internal design

As stated, carrying out these works independently from the further development of the site does reduce the number of design options available to any future development of the land. This is a risk taken by the developer and there is no guarantee any future Development Application will be approved.

Carrying out the works at this time, in a staged approach, is necessary to facilitate development occurring on the site. The negative impacts on site design resulting from carrying out these works at this time is offset by the positive social and economic impacts that would result from the development of a shopping centre in the northern suburbs of Wagga Wagga, and the public interest argument for that occurring.

Construction

There will likely be an increase in noise and dust during construction of the proposed subdivision. In addition there will be potential for other construction related impacts such as erosion. It is recommended that standard conditions of consent be imposed to manage these construction related impacts.

The Principles of Ecologically Sustainable Development

The proposal is considered to comply with the principles of Ecologically Sustainable

Development such as inter-generational equality and conservation of biological diversity and ecological integrity.

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

The proposal is for a business subdivision. The subject site is within an area earmarked for such a use and only limited land has been set aside for these purposes in the northern suburbs of Wagga Wagga. The strategic decision to zone this site B2 determined somewhat the suitability of the site for the development. The site is heavily sloped and does require substantial earthworks, however, this is countered by its accessible location on major roads and public transport routes, and highly visible location from the nearby Olympic Highway.

It is therefore considered that the site is suitable for the proposed development. In addition there are no known specific site constraints that would render site unsuitable.

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

Apart from standard internal referrals, the development was referred to Council's Traffic Engineer and Strategic Planning section as well as Essential Energy and Riverina Water.

Notification

In accordance with the requirements of the WWDCP 2010, the application was notified to adjoining owners from 4th May 2020 to 18th May 2020.

Advertising

In accordance with the requirements of the WWDCP 2010, the application was advertised from 4th May 2020 to 18th May 2020.

Public Submissions and those from public authorities

No public submissions were received.

Essential Energy made a submission which is discussed in part (a)(i) of this assessment report.

(e) - the public interest

The provision of shopping facilities in Wagga Wagga's rapidly growing northern suburbs is of great public interest. Shopping facilities would service the day to day needs of residents, would provide a community focus/hub, and would likely reduce some trips taken over the Gobbagombalin Bridge into the Wagga Wagga CBD, thus reducing pressure on this piece of infrastructure.

The proposed development helps facilitate this development to occur and therefore is considered to be in the public interest. The approach of carrying out earthworks and subdivision up front is not without complication, but is considered a necessary step in ensuring the eventual delivery of shopping services to the locality in future. The public interest in this occurring is considered to be of significant weighting in the assessment of this Application.

Other Legislative Requirements

Section 1.7 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, other than the Harris Road reserve, 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 for the site.

Council Policies

No additional Council policies apply to this development.

Comments by Council's Officers and/or Development Assessment Team

Council's other relevant officers have reviewed the application in accordance with Council's processing procedures. Relevant comments or requirements 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

Section 7.11/7.12

Section 7.11/7.12 of the *Environmental Planning and Assessment Act 1979* and the *Wagga Wagga Local Infrastructure Contributions Plan 2019-2034* enable Council to levy contributions, where anticipated development will or is likely to increase the demand for public facilities. In accordance with the Contributions Plan, as the development is not for residential development, and the cost of the development is over \$100,000, Section 7.12 contributions are payable for the development. Calculations are set out below:

$$\begin{aligned} &0.01 \times \$367,700 \\ &= \$3677 \end{aligned}$$

Section 64

Section 64 of the *Environmental Planning and Assessment Act 1979*, 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 2006 enable Council to levy developer charges based on increased demands that new development may have on sewer and/or stormwater infrastructure.

Sewer and stormwater contributions are not levied for subdivisions of business zoned land. Contributions will be payable at the time that the lots are developed.

Other Approvals

No other approvals have been sought

Conclusion

The development is will result in impacts, particularly from the retaining walls along Phar Lap Place, and to a lesser extent Messenger Avenue. The zoning of the site B2 creates a reasonable expectation that the site will accommodate commercial developments, and due to a myriad of reasons, including commercial/economic reasons, accessibility requirements and practicalities (such as moving shopping trolley's through a car park), these developments need to occur over a relatively flat site. Due to the substantial slope across the site, the zoning means that it is essentially inevitable that large retaining walls will be required along the lower end of this site to accommodate any reasonable development.

RECOMMENDATION

It is recommended that application number DA20/0101 for Staged Subdivision (Stage 1 - 2 Lot Torrens Title Subdivision, Stage 2 - 5 Lot Community Title Subdivision), Earthworks, Retaining Walls, Landscaping and Service Connection 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/Doc No	Plan/Doc Title	Prepared by	Issue	Date
	Planning Report & Statement of Environmental Effects (excluding Appendix D)	Blueprint Planning	1	28/2/20
	Subdivision Plan Stage 1	Eslers Land Consulting	I	17/3/20
	Subdivision Plan Stage 2	Eslers Land Consulting	I	17/3/20
	Retaining Wall Plan - Wall Heights (retaining walls only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	Eslers Land Consulting	I	17/3/20

	Retaining Wall Plan - Section Plan Views (section lines only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	Eslers Land Consulting	I	17/3/20
	Retaining Wall Plan - Section Views - Sheet 6 of 13 (retaining walls and cut and fill only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	Eslers Land Consulting	I	17/3/20
	Retaining Wall Plan - Section Views - Sheet 7 of 13 (retaining walls, and cut and fill only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	Eslers Land Consulting	I	17/3/20
	Retaining Wall Plan - Section Views - Sheet 8 of 13 (retaining walls and cut and fill only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	Eslers Land Consulting	I	17/3/20
	Retaining Wall Plan - Section Views - Sheet 9 of 13 (retaining walls and cut and fill only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	Eslers Land Consulting	I	17/3/20
	Reticulated Service and Infrastructure Plan (service details only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	Eslers Land Consulting	I	17/3/20
	Landscape Plan (boundary plantings and bulk landscape area only and excluding all other elements on plan including buildings, structures, car parking areas, vehicles movement areas and internal landscaping)	Eslers Land Consulting	I	17/3/20
	Landscape Concept Plan: Indicative Sections and Elevations (landscaping, retaining walls and cut and fill only and excluding all other elements on plan including buildings, structures, car parking areas, and vehicles movement areas)	FSLA	A	1/4/20

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.

- C.2 Approval is granted for subdivision, earthworks, retaining walls, works associated with service provision, vegetation removal and boundary landscaping works only. No consent, concept approval, pre-approval or otherwise, is granted to any other work, use or development on the site, including landscaping within the site. No approval is granted to any indicative plans, layouts, access, or delivery arrangements illustrated on any plans or any provision of the Traffic Impact Assessment. Approval of this development does not provide any endorsement of these other matters.

Any future development will be subject to a separate Development Application, and will be assessed fully against all relevant matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Proceeding with the works approved under this consent does not necessarily mean any future proposal will be approved on the site.

- C.3 The approval is for a development to be undertaken in two stages, namely:

- Stage 1 - Two lot Torrens Title subdivision and the installation and connection of services for these lots.
- Stage 2 - Five lot Community Title Subdivision of Lot 2 (created in Stage 1), tree removal, earthworks, construction of retaining walls, and installation and connection of services for these lots.

In accordance with the approved plans. Stage 2 cannot be carried out prior to Stage 1, however, both stages may be carried out simultaneously.

Requirements before a Subdivision Works Certificate can be issued

- C.4 Prior to the issue of Subdivision Works Certificate the applicant must lodge a bond with Council of:-

\$2000 for security deposit on the kerb and gutter and footpath

Plus a non-refundable administration fee as per Council's fees and charges.

NOTE 1: Applicants will be required to contact Council PRIOR to making the payment to arrange a bond (BKG) number. This must be done prior to making payment at Council's customer service desk.

NOTE 2: In lieu of payment, the applicant can with written authorisation from their builder, utilise an ongoing bond should their builder hold and ongoing bond.

NOTE 3: All monetary conditions are reviewed annually, and may change on 1 July each year.

NOTE 4: Works in the form of driveways, kerb and gutter and footpath may require you to obtain a Section 138 Roads Act 1993 approval. Please contact Councils Road Reserve Officer on 1300 292 442 prior to undertaking such works.

NOTE 5: Council will accept a once off security deposit for the kerb and gutter and footpath for applicants who lodge multiple DA's with council. If the applicant has security deposits held by Council for kerb and gutter and footpath at the time of Construction Certificate application, then Council may waive the need for an additional bond to be paid.

NOTE 6: The bond held on the kerb and gutter and footpath is fully refundable upon completion of all works and upon inspection by Council to ensure that any damage to Council infrastructure has been repaired. The bond will not be refunded in the event that damage done to Council's infrastructure is not repaired to the satisfaction of Council. All damage is to be repaired at the full cost of the applicant

C.5 Pursuant to s7.12 of the Environmental Planning and Assessment Act 1979 and the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034, a monetary contribution of \$3677 must be paid to Council, prior to the issuing of the Subdivision Works Certificate. The monetary contribution payable under this condition will be indexed in accordance with Clause 3.2 of the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034 from the endorsed date of this Development Consent until the date of payment.

NOTE 1: Clause 3.2 of the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034 provides for Section 7.12 contributions to be indexed in accordance with annual movements in the March quarter Consumer Price Index (CPI) (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

NOTE 2: The monetary contribution identified above remains applicable if paid within the same financial year as the date of determination. If payment is to be made outside this period, you are advised to contact Council prior to payment being made to determine if CPI increases/decreases have occurred since the date of this consent.

NOTE 3: A copy of the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034, is available for inspection at Council Chambers, corner Baylis and Morrow Streets, Wagga Wagga, or on Council's website.

C.6 Prior to release of the Subdivision Works Certificate, a Construction Management Plan (CMP) shall be submitted to and approved by Council, to the satisfaction of the General Manager or delegate. The plan shall detail:

- Site access,
- Parking areas,
- Storage areas,
- Measures for dust suppression,
- Sediment and erosion control,
- Register of source and certification (in accordance with standards set out in this consent) of fill imported onto the site.

No construction traffic is to enter the site directly from Boorooma Street or the Olympic Highway. Appropriate signage and fencing is to be installed and maintained to give effect to this requirement. This CMP shall be submitted to and approved by Council, to the satisfaction of the General Manager or delegate.

- C.7 Prior to the release of the Subdivision Works Certificate, amended plans addressing the following shall be submitted to and approved by Council, to the satisfaction of the General Manager or Delegate:
- Provision of a landscape strip at ground level between the edge of the road reserve and the retaining walls, where the walls are retaining fill above street level, along the Messenger Avenue and Phar Lap Place elevations of the site. This strip shall be a minimum 1 metre wide.
 - Amended retaining wall locations to accommodate the above requirement.
 - Provision of dedicated pedestrian access to the site, separated from vehicle entry points, for pedestrians approaching the site from the north and north-east.
 - Full plan set removing all buildings, car parks, vehicle movement areas, landscaping areas and any other elements not approved under this consent.
- C.8 Prior to the release of the Subdivision Works Certificate, details of retaining wall finishes, including materials and colours, shall be submitted to and approved by Council, to the satisfaction of the General Manager or Delegate.
- C.9 Prior to the release of the Subdivision Works Certificate, details of how stormwater runoff is to be managed during and after completion of construction on site shall be provided.
- C.10 Prior to the issue of Subdivision Works Certificate the two (2) copies of engineering plans, specifications and calculations in relation to the development together with payment of any relevant fees must be submitted to Council. Full detail of the proposed retaining walls, associated drainage, earthworks and sediment and erosion measures are to be provided. The design of the retaining walls shall be certified by a practising qualified Structural Engineer. The works are to comply with Council's Engineering Guidelines for Subdivision and Developments.
- C.11 A revised and detailed landscape plan and legend for boundary retaining wall landscaping (including the "bulk landscape area") shall be submitted and approved prior to the release of the Subdivision Works Certificate.
- (1) Landscape plan shall be in accordance with Council's Landscape Guidelines and Landscape Application Checklist.
 - (2) A Plant Schedule indicating all plant species, pot sizes, spacings and numbers to be planted within the development shall be submitted with the Landscape Plan. Plant species are to be identified by full botanical name. All plants proposed in the landscape plan are to be detailed in the plant schedule.
 - (3) The landscaping plan shall incorporate the additional landscaped areas as required by this consent, and shall ensure substantial screening of retaining walls retaining fill above street level on the Phar Lap Place and Messenger Avenue elevations of the site.

- (4) No approval is granted for internal landscaping works within the site. Approval is only granted for landscaping works associated with the “bulk landscape area”, boundary retaining walls, and additional areas as required under this consent forward of retaining walls.

NOTE: The provision of landscaping at this time does not necessarily mean that further landscaping will not be required in future development on the site.

- C.12 Prior to the issue of a Subdivision Works Certificate, a dilapidation report is to be undertaken. This shall include clear photos and descriptions of all existing Council infrastructure adjacent to the subject site. A copy of the dilapidation report shall be submitted to and approved by Council.

Requirements before the commencement of any works

- C.13 Prior to works commencing on site, toilet facilities must be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a) a standard flushing toilet connected to a public sewer, or
- b) if that is not practicable, an accredited sewage management facility approved by Council, or
- c) if that is not practicable, any other sewage management facility approved by Council.

NOTE 1: The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced and the toilet facility must not be removed without the prior written approval of Council.

NOTE 2: “Vicinity” in this condition is defined to mean within 50 metres of the subject building site.

NOTE 3: The toilet facilities are to comply with all WORK COVER NSW requirements.

- C.14 Prior to the commencement of works erosion and sediment control measures are to be established and maintained to prevent silt and sediment escaping the site or producing erosion. This work must be carried out and maintained in accordance with Council’s:-

- a) Development Control Plan 2010 (Section 2.6 and Appendix 2)
- b) Erosion and Sediment Control Guidelines for Building Sites; and
- c) Soils and Construction Volume 1, Managing Urban Stormwater

Prior to commencement of works, a plan illustrating these measures shall be submitted to, and approved by, Council.

NOTE: All erosion and sediment control measures must be in place prior to earthworks commencing.

C.15 Prior to works commencing on site:

- i) Council must be notified of any damage to kerb and gutter and footpath fronting the site. The absence of such notification shall indicate that no damage exists and the applicant shall be responsible for the repair of any damage to kerb and gutter or footpath fronting the site.
- ii) Satisfactory protection for existing public infrastructure must be provided and maintained throughout the construction period.

C.16 A Subdivision Works Certificate must be obtained pursuant to Section 6.13 of the Environmental Planning and Assessment Act 1979, as amended, from either Council or an accredited certifying authority certifying that the proposed works are in accordance with Wagga Wagga City Council's Engineering Guidelines for Subdivisions and Developments prior to Stage 2 Subdivision Works Commencing (including any earthworks or retaining walls).

NOTE 1: No building, engineering or excavation work must be carried out in relation to this development until the necessary Subdivision Works Certificate or relevant certificates of approval have been obtained.

NOTE 2: YOU MUST NOT COMMENCE WORK UNTIL YOU HAVE RECEIVED THE SUBDIVISION WORKS CERTIFICATE, even if you made an application for a Subdivision Works Certificate, at the same time as you lodged the Development Application.

NOTE 3: It is the responsibility of the applicant to ensure that the development complies with the provision of the Building Code of Australia in the case of building work, and the applicable Council Engineering Standards in the case of subdivision works. This may entail alterations to the proposal so that it complies with these standards.

C.17 Prior to works commencing a container must be erected on site for the enclosure of all construction rubbish and debris, including that which can be wind-blown. The enclosure shall be approved by Council and be retained on site at all times prior to the disposal of rubbish at Council's Waste Management Centre.

Materials and sheds or machinery linked to construction associated with the subdivision must not be stored or stacked on Council's footpath, nature strip, reserve or roadway.

NOTE 1: No building rubbish or debris must be placed, or be permitted to be placed on any adjoining public reserve, footway, road or private land.

NOTE 2: The applicant must retain weighbridge certificates, receipts or dockets that clearly identify where waste has been deposited. Documentation must include quantities and nature of the waste.

C.18 No works are to take place to any services without prior written approval from the relevant authority.

NOTE: Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au <<http://www.1100.com.au>> or telephone on 1100 before excavating or erecting structures.

Requirements during construction or site works

- C.19 Any proposed site fill must contain only virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the Protection of the Environment Operations Act 1997, or Excavated Natural Material (ENM), as defined by the Excavated Natural Material Order 2014, free from organic matter, and compacted in horizontal layers not more than 250mm thick to 95% of the standard maximum dry density of the soil. A validation certificate shall be provided to Council verifying that the material to be used is free of contaminants and fit for purpose and re-use in residential, commercial or industrial use, prepared by a qualified Geotechnical Engineer. All such works are to comply with Wagga Wagga City Council's Guideline for Subdivision and Developments.

NOTE: Soil density tests from a NATA registered laboratory, and conducted in accordance with Australian Standard 1289, will be required, prior to the issue of a Construction Certificate for the erection of a building or the issue of a Subdivision Certificate.

- C.20 Vehicular access within the road reserve must be constructed to Council standards, at full cost to the developer, by a licensed Council approved contractor. A list of Contractors can be found on Council's website at- <<https://wagga.nsw.gov.au/city-of-wagga-wagga/engineering-services/traffic-and-transport/working-in-a-road-reserve-or-footpath>> Driveway design and grades shall comply with AS2890.1: 2004 (or as amended) and Council's Engineering Guidelines for Subdivisions and Developments.
- C.21 All excavation and backfilling associated with the development must be properly guarded and protected to prevent them from being dangerous to life or property.
- C.22 The permitted construction hours are Monday to Friday 7.00am to 6.00pm and Saturday 7.00am to 5.00pm, excepting public holidays. All reasonable steps must be taken to minimise dust generation during the demolition and/or construction process. Demolition and construction noise is to be managed in accordance with NSW Environment, Energy and Science Guidelines.
- C.23 All earthworks, filling, building, driveways or other works, must be designed and constructed (including stormwater drainage if necessary) so that at no time, will any ponding of stormwater occur on adjoining land as a result of this development.
- C.24 Stormwater drainage must be constructed and maintained so as to provide a 1 in 10 year pipe system, satisfactory overland flow path and not adversely affect adjacent properties.
- C.25 During works, construction vehicles shall access the site as per the approved Construction Management Plan.

- C.26 Electricity infrastructure is located within the property and within close proximity to the property. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.

Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice - Work near Overhead Power Lines and Code of Practice - Work near Underground Assets.

- C.27 Any excavated material removed from the site must only be taken to a site approved for the receipt of such material.
- C.28 All disturbed development areas shall be progressively stabilised and/or revegetated so that no development areas remain exposed to potential erosion damage for a period of greater than 14 days.
- C.29 Any upgrades or alterations to existing Council infrastructure required as a result of the development shall be at the full cost of the applicant. Contact Council's Development Engineer to confirm what approval is required prior to commencing work on any Council infrastructure. Such work includes (but is not limited to) upgrade or connection to sewer or stormwater mains, and alteration of stormwater pits and sewer manhole levels.
- C.30 Where works involve excavation, filling or grading of land, or removal of vegetation, including ground cover, dust is to be suppressed by regular watering until such time as the soil is stabilised to prevent airborne dust transport. Where excessive dust generation is occurring due to high winds and/or dry conditions it may be necessary to temporarily cease operations.
- C.31 The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.
- C.32 If any Aboriginal object is discovered and/or harmed in, on or under the land, all work must cease immediately and the area secured so as to avoid further harm to the Aboriginal object. Heritage NSW shall be notified as soon as practicable on 131 555, providing any details of the Aboriginal object and its location, and no work shall recommence at the particular location unless authorised in writing Heritage NSW.
- C.33 Trees indicated on the submitted plans for removal, shall be removed from the site in accordance with the proposed development. Consent under Council's Tree Preservation Order is not required for removal of the subject trees.

The approved works shall be executed so as to comply with the NSW Work Cover Code of Practice - amenity tree industry 1998 No. 034.

Any works associated with tree removal shall be carried out in Accordance with Australian Standards - AS 4373-2007, Pruning of Amenity Trees.

All tree stumps shall be removed below ground level and the surface area reinstated to prevent potential injury.

All waste material from the subject tree/s shall be removed from site in conjunction with clearing.

Requirements before a Subdivision Certificate can be issued

- C.34 Prior to the release of the Subdivision Certificate a compliance certificate under s306 of the Water Management Act 2000 must be obtained in respect of the development relating to water management works that may be required in connection with the development.

NOTE1: 'Water management work' is defined in s283 of the Water Management Act to mean a 'water supply work', 'drainage work', 'sewage work' or 'flood work'. These terms are defined in that Act.

NOTE 2: Riverina Water is responsible for issuing compliance certificates and imposing requirements relating to water supply works for development in the Council's area. An application for a compliance certificate must be made with Riverina Water. Additional fees and charges may be incurred by the proposed development - please contact Riverina Water to ascertain compliance certificate water supply related requirements. A copy of such a compliance certificate is required prior to release of Subdivision Certificate.

NOTE 3: The Council is responsible for issuing compliance certificates and imposing requirements relating to sewerage, drainage and flood works for development in its area.

NOTE 4: Under s306 of the Water Management Act 2000, Riverina Water or the Council, as the case requires, may, as a precondition to the issuing of a compliance certificate, impose a requirement that a payment is made or works are carried out, or both, towards the provision of water supply, sewerage, drainage or flood works.

NOTE 5: The Section 64 Sewer base figure is \$0
The Section 64 Sewer contribution (updated by the CPI) required to be paid is \$0

NOTE 6: The Section 64 Stormwater base figure is \$0
The Section 64 Stormwater contribution (updated by the CPI) required to be paid is \$0

NOTE 7: Section 64 contributions shall be indexed in accordance with CPI annually at the commencement of the financial year.

NOTE 8: The figures outlined in this consent are based on the current rate of CPI. Please be advised that CPI changes on a regular basis and you are advised to contact Council prior to payments being made, to ensure no further CPI increases/decreases have occurred since the date of this consent.

- C.35 Prior to the release of the Subdivision Certificate for Stage 2, all landscaping on the boundaries of the site, either within or forward of the retaining walls, or within the "bulk landscape area" shall be established on the site.

NOTE: The provision of landscaping at this time does not necessarily mean that further landscaping will not be required in future development on the site.

- C.36 Prior to the release of the Subdivision Certificate for Stage 2, a comprehensive lighting plan shall be developed for public spaces adjoining the site, particularly those footpath areas adjacent to retaining walls, as well as access points to the site, to the satisfaction of the General Manager or delegate. This lighting plan shall form part of the documentation associated with the Community Title Scheme (with a requirement that future development ensures its delivery).

- C.37 Prior to the release of the Subdivision Certificate for Stage 1 and 2 (as relevant), pursuant to Section 88B and 88E (as relevant), the following restrictions as to user, covenants and positive covenants (as relevant), with Council empowered to uplift, shall be written and shown on the submitted Plan of Subdivision over all relevant lots that has the effect of:

- Prohibiting access to and from Boorooma Street and Colin Knott Drive from Lot 1 in Stage 1,
- Prohibiting access to and from Boorooma Street from Lot 2 in Stage 1,
- Prohibiting access to and from Boorooma Street from Lots 4 and 5 in Stage 2,
- For lots created in Stage 2, requiring that all landscaping on the boundaries of the site, either within or forward of the retaining walls, or within the "bulk landscape area" are maintained throughout the life of the development, including the replacement of plants as they die, removal of weeds, and that all plants are pruned and kept well-manicured (where relevant),
- For lots created in Stage 2, permitting access, when further developed in future, across vehicle movement and car parking areas of each and every lot, for purposes including parking, access (vehicular and pedestrian) and deliveries.

- C.38 Prior to the issue of a Subdivision Certificate for Stage 2, certification from a practising qualified Structural Engineer shall be provided to Council, certifying that the retaining walls and associated works have been constructed in accordance with the approved plans.

- C.39 Prior to the issue of a Subdivision Certificate for Stage 2, certification of site fill and compaction results of earthworks shall be provided.

- C.40 Prior to the issue of ant Subdivision Certificate one A1 set of plans and an electronic copy of the Works-As-Executed plans must be submitted to Council and must detail the works as approved by the Subdivision Works Certificate and shall reflect the approved Subdivision Works Certificate plans. The information on the Works-As-Executed plans shall be as specified in Council's Engineering Guidelines for Subdivision and Developments.

- C.41 A Subdivision Certificate, pursuant to Section 6.4 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.42 A fee applies for each quality control inspection as per the approved checklist. The monies are payable at completion of works or prior to the release of the plan of subdivision. Fees will be charged in accordance with Council's current Fees and Charges Schedule.
- C.43 Prior to the issue of the Subdivision Certificate for each stage, 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 (to be made to the Contestable Works Section at Essential Energy)
 - ii) APA Gas: Certificate of Acceptance
 - iii) Riverina Water: Certificate of Compliance
 - iv) Certification from an approved telecommunications provider

General requirements

- C.44 Any earthworks (including any structural support or other related structure for the purposes of the development):
- (a) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and
 - (b) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property, and
 - (c) retained material must have a gradient of at least 5%, and
 - (d) must be constructed in accordance with the approved plans for such work(s).
- C.45 All landscaping on the boundaries of the site, either within or forward of the retaining walls, or within the "bulk landscape area" are maintained throughout the life of the development, including the replacement of plants as they die, removal of weeds, and pruned and kept well-manicured (where relevant).

- C.46 Any future development on the land must ensure that vehicles can enter and exit the site in a forward direction, and that adequate arrangements are in place to ensure delivery vehicles do not conflict with pedestrians and customer vehicles within the site.
- C.47 Wagga Wagga City Councils Engineering Guidelines for Subdivisions and Development shall be referred to for the design of engineering requirements. Any aspect of the design which is not covered in Council's document should reference relevant specifications selected from other sources. Any aspect of the design that is not in accordance or not covered in council's document shall be listed and submitted with the plans for separate approval.

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)


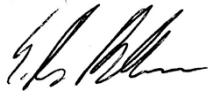
If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (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

<p>Report Prepared & approved by:</p>  <p>Steven Cook Senior Town Planner</p> <p>Date: 13/7/20</p>	<p>Report Reviewed by:</p>  <p>Sam Robins Senior Town Planner</p> <p>Date: 13/7/20</p>
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