



# Report of Development Application

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

### APPLICATION DETAILS

<b>Application No:</b>	DA20/0306
<b>Council File No:</b>	D/2020/0306
<b>Date of Lodgement:</b>	29/06/2020
<b>Applicant:</b>	HL Rath, FJ Rath 44 Balala Cres BOURKELANDS NSW 2650
<b>Proposal:</b>	Shed
<b>Development Cost</b>	19650
<b>Description of Modification:</b>	N/A
<b>Other Approvals:</b>	Nil
<b>Determination Body &amp; Reason:</b>	Officer Delegation 7.39
<b>Assessment Officer:</b>	Amanda Gray

### SITE DETAILS

<b>Subject Land:</b>	127 Lakehaven Dr LAKE ALBERT NSW 2650 Lot 70 DP 1235752
<b>Owner:</b>	HL Rath & FJ Rath

### REPORT

#### Description of Development

This application is for a detached shed with dimensions of 12m x 12m. The shed has a maximum height of 4.7 metres.

#### The Site and Locality

The subject site is legally identified as Lot 70 DP1235752 and is known as 127 Lakehaven Drive. The lot is rectangular shape and extends to 1717sq.m, it is located on the north-western corner of Lakehaven Drive and Main Street. A dwelling has been approved and is under construction.

#### Easements and Covenants

There are no easements on the site.

The land is subject to a number of covenants most of which are not applicable to the application, however there is a developer imposed restriction that limits buildings (other than the main building) to 100m<sup>2</sup>. The proposed development is for a shed with a total area of 144m<sup>2</sup>, therefore the proposed development does not comply. However, where the restriction is imposed by the developer Section 1.9A of the Wagga Wagga Local Environmental Plan 2010 applies. Section 1.9A States:

**1.9A Suspension of covenants, agreements and instruments**

*(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*

The development can therefore be approved regardless of this covenant if considered appropriate against the provisions below.

**Previous Development Consents**

DA20/0081 - Dwelling with attached garage. Approved 30.3.2020

**MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)**

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

**Wagga Wagga Local Environmental Plan 2010**

Under the provisions of the WWLEP 2010 the land is zoned R5 Large Lot Residential.

The development is permissible in the zone (cl. 2.3(1))

The objectives of the R5 zone are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To ensure that the clearing of native vegetation is avoided or minimised as far as is practicable.*

The development is compliant with the relevant provisions of the LEP 2010. The following provisions have been identified for further discussion.

No further clauses have been identified.

**State Environmental Planning Policy No. 55 Remediation of Land**

There is no indication that the site has previously been occupied by any use that could have led to contamination of the site. Furthermore, the land is not identified on Councils register of

contaminated sites.

### **State Environmental Planning Policy (BASIX) 2004**

The proposed development is for a shed therefore a BASIX Certificate is not required.

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

There are a number of state environmental planning policies currently subject to review, including some which have involved consultation and notification. With the exception of the following, none of these are applicable to this application.

### **Remediation of Land SEPP and repeal of State Environmental Planning Policy 55**

The draft SEPP will not impact on the assessment of this application under SEPP 55 with regard to the potential contamination of this site and its suitability for the proposed development.

### **Section 4.15(1)(a)(iii) - The provisions of any development control plan**

#### **Wagga Wagga Development Control Plan 2010**

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

#### **Section 1 - General**

##### **1.10 Notification of a Development Application**

In accordance with the Council's advertising and notification provisions outlined in Section 1.10 of the WWDCP the application was notified to neighbouring properties between 23 and 30 July 2020. No submissions were received during the notification period.

##### **1.11 Complying with the Development Control Plan 2010**

*Whilst all developments should aim to satisfy all controls within the DCP, it is acknowledged that there may be circumstances where it may not be possible to achieve strict compliance.*

*Council may consent to an application which departs from any control, whether a "numeric" or non-numeric control. In such cases, a written submission must be lodged with the Development Application.*

*Where an application involves the variation of one or more controls within the DCP Council staff have delegation to approve variations but limited to the following circumstances;*

- Where adequate justification is provided by the applicant for the number of controls being varied and,*
- Any development, other than development that is for multi dwelling housing, where a variation to any numerical control by greater than 10% is proposed, and*
- Where no objections have been received in relation to any numerical control that is being varied by greater than 10%, and*

- *Where the number of submissions in the form of objections received in response to an advertised or notified development application, is less than 10.*

The application proposes a variation to C3 and C4 of Section 9.4.4 and this is discussed in detail below.

## Section 9 - Residential Development

### 9.4.4 Garages, carports, sheds and driveways

*The relevant objectives and controls of this section are discussed as follows:*

#### Objectives

*O1 Minimise the visual dominance of garages and driveways in the streetscape.*

*O2 Where possible, locate garages so as to assist in protecting dwellings from early morning and late afternoon summer sun.*

#### Controls

*C3 The floor area of an outbuilding on a residential lot must not be more than the following:*

*(a) 8% of the site area if the lot has an area of less than 600m<sup>2</sup>,*

*(b) 8% of the area or a maximum area of 175m<sup>2</sup>, whichever is the lesser, if the lot has an area of at least 600m<sup>2</sup> but less than 4000m<sup>2</sup>,*

The proposal is for a new shed to be built to the side of the existing dwelling towards the rear boundary of the block. The shed extends to an area of 144sq.m which is equal to 8.39% of the block which does not comply with this control.

The applicant has provided written justification for the proposed variation which has been summarised below:

- *The size of the block will allow for a shed of this size, with plenty of yard space left; We will still have significant garden and landscaped areas.*
- *We have a significant set back from the road with no second drive way to the proposed shed.*
- *The shed is smaller than the home so will not be an eye sore and we are planning on landscaping to screen the shed.*
- *We are going to be storing our caravan, boat and classic vehicle in there to eliminate any mess outside the shed.*
- *The proposed shed will blend in with other properties in the subdivision due to them having similar size sheds.*

The above comments are noted and the variation is supported. The proposed shed will not be dominant in the streetscape and sufficient private open space is maintained for the dwelling.

*C4 The total cumulative floor area of all outbuildings on any one property shall not exceed 8% of the site area or a maximum area of 300m<sup>2</sup>, whichever is the lesser.*

The proposed shed will be the only outbuilding on the property. Justification of the proposed variation is discussed above and the proposal is considered acceptable.

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

There is no draft or current planning agreement applicable to this application under Section 7.4 of the *Environmental Planning and Assessment Act 1979*.

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

Matters prescribed by the Environmental Planning and Assessment Regulation 2000 have been satisfied, including the addition of prescribed conditions.

#### **Section 4.15(1)(b) - likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, development**

The likely impacts of the development have been considered and are deemed satisfactory.

#### **Section 4.15(c) - The Suitability of the site for the development Other Approvals**

Matters relating to the suitability of the site for this development have been considered and the site is deemed suitable for the development.

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

Nil.

#### **Section 4.15(e) - the public interest**

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

#### **Other Legislative Requirements**

##### **Section 1.7 of the EPA Act 1979 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)**

The development is in a residential zone and not removing any vegetation; the development will have minimal impact and not impact on any threatened species in the vicinity. No further assessment is required under this section.

#### **Council Policies**

Policy 046 - Processing Development Applications lodged by Councillors, staff and individuals of which a conflict of interest may arise, or on Council owned land.

No declaration has been made that would require action under this policy.

#### **Development Contributions - Section 7.11/7.12 Environmental Planning and Assessment Act 1979 & Section 64 Local Government Act, 1993 and Section 306 Water Management Act, 2000**

Contributions were paid at subdivision stage for a single dwelling on this block, therefore no further contributions are required.

#### **Other Approvals**

None required

### **Conclusion**

The development is considered to be satisfactory based on the foregoing assessment. The proposal complies with the requirements of the Environmental Planning and Assessment Act 1979 and Councils Policies.

### **Recommendation**

It is recommended that application number DA20/0306 for Shed be approved, subject to the following conditions:-

## CONDITIONS

### A. SCHEDULE A – Reasons for Conditions

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

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

### B. SCHEDULE B – Deferred Commencement Conditions

N/A

### C. SCHEDULE C – Conditions

#### Approved Plans and Documentation

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

Plan/DocNo	Plan/Doc Title	Prepared by	Issue	Date
	Site Plan	Cavalier Homes (amended by applicant)		7.2.2020
	Elevations	Best Sheds		19.5.2020
	Floor Plan	Best Sheds		19.5.2020
	Statement of Environmental Effects	applicant		25.6.2020
	Written justification	applicant		20.7.2020

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

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



**Requirements before the commencement of any works**

- C.2 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.3 A CONSTRUCTION CERTIFICATE must be obtained pursuant to Section 6.7 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 the Building Code of Australia PRIOR to any works commencing.

NOTE 1: No building, engineering, excavation work or food premises fitout must be carried out in relation to this development until the necessary Construction Certificate has been obtained.

NOTE 2: YOU MUST NOT COMMENCE WORK UNTIL YOU HAVE RECEIVED THE CONSTRUCTION CERTIFICATE, even if you made an application for a Construction Certificate at the same time as you lodged this 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.4 Prior to works commencing a container must be erected on site for the enclosure of all building 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 a licenced Waste Management Centre.

Materials and sheds or machinery to be used in association with the construction of the building 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: Weighbridge certificates, receipts or dockets that clearly identify where waste has been deposited must be retained. Documentation must include quantities and nature of the waste. This documentation must be provided to Council prior to application for an Occupation Certificate for the development.

NOTE 3: The suitable container for the storage of rubbish must be retained on site until an Occupation Certificate is issued for the development.

C.5 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.6 A Section 68 Approval must be obtained from Council prior to any sewer or stormwater work being carried out on the site.

The licensed plumber must submit to Council, at least two (2) days prior to the commencement of any plumbing and drainage works on site a "Notice of Works".

NOTE: A copy of the Notice of Works form can be found on Council's website.

### **Requirements during construction or site works**

C.7 The Builder must at all times maintain, on the job, a legible copy of the plans and specifications approved with the Construction Certificate.

C.8 All excavation and backfilling associated with the erection/demolition of the building must be properly guarded and protected to prevent them from being dangerous to life or property.

C.9 The concrete slab floor shall be treated against termites in accordance with AS 3660-1 2000 Termite Management:

- a) NON CHEMICAL - where a non chemical treatment (physical barriers) is to be used the applicant shall submit details to Council prior to any work commencing.

- b) CHEMICAL RETICULATION - where a chemical method of treatment is to be used by way of reticulation, details shall be provided to Council for approval prior to installation accompanied by a signed maintenance contract with a Pest Control Operator.

Applicants and owners are to ensure that an annual inspection is undertaken to determine need for treatment.

- c) Upon installation of the method of treatment, a Certificate shall be issued to Council by the licensed installer of the system certifying that the system installed is in accordance with AS 3660-1 and in accordance with any specific requirements of the Council.
- d) A durable notice must be permanently fixed to the building in the electricity meter box indicating:
- i) The method of protection
  - ii) The date of installation of the system
  - iii) Where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label.
  - iv) The need to maintain and inspect the system on a regular basis.

C.10 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 the Office of Environment and Heritage Guidelines.

C.11 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.12 A Compliance Certificate for the plumbing and drainage work identified in Column 1 at the times specified in Column 2 must be obtained from Council.

COLUMN 1	COLUMN 2
Stormwater Drainage	When all external stormwater drainage work is installed and prior to concealment.
Final	Prior to occupation of the building or structure.

### **Requirements prior to issue of an Occupation Certificate or prior to operation**

C.13 An Occupation Certificate, must be obtained pursuant to Section 6.9 of the Environmental Planning and Assessment Act 1979, from either Council or an accredited certifying authority, prior to occupation of the building.

In order to obtain this, the "Final Occupation Certificate" form must be completed and submitted to Council with all required attachments - failure to submit the completed Occupation Certificate Application form will result in an inability for Council to book and subsequently undertake Occupation Certificate inspection.

NOTE: The issuing of an Occupation Certificate does not necessarily indicate that all conditions of development consent have been complied with. The applicant is responsible for ensuring that all conditions of development consent are complied with.

- C.14 A final inspection must be carried out upon completion of plumbing and drainage work and prior to occupation of the development, prior to the issuing of a final plumbing certificate Council must be in possession of Notice of Works, Certificate of Compliance and Works as Executed Diagrams for the works. The works as Executed Diagram must be submitted in electronic format in either AutoCAD or PDF file in accordance with Council requirements.

All plumbing and drainage work must be carried out by a licensed plumber and drainer and to the requirements of the Plumbing and Drainage Act 2011.

NOTE: Additional fees for inspections at the Plumbing Interim Occupancy / Plumbing Occupation stage may apply. This will depend on the number of inspections completed at this stage of the work/s.

- C.15 Prior to the issue of an Occupation Certificate a Water Plumbing Certificate from Riverina Water County Council shall be submitted to Council.

NOTE 1: The applicant is to obtain a Plumbing Permit from Riverina Water County Council before any water supply/plumbing works commence and a Compliance Certificate upon completion of the works. Contact Riverina Water County Council's Plumbing Inspector on 6922 0618. Please be prepared to quote your Construction Certificate number.

### General requirements

- C.16 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).

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

N/A

## E. SCHEDULE E – Prescribed Conditions

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

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

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

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

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

NOTE 1: This condition does not apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N/A

Report Prepared & approved by:



Amanda Gray  
Senior Town Planner

Date: 5.8.2020