

Report of Development Application

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

APPLICATION DETAILS

Application No.:	DA20/0147
Modification No.:	N/A
Council File No.:	D/2020/0147
Date of Lodgement:	25/03/2020
Applicant:	Profinance Properties Pty Limited Po Box 156 MAIN BEACH QLD 4217
Proposal:	Stormwater Main
Description of Modification:	N/A
Development Cost:	\$55000
Assessment Officer:	Steven Cook
Determination Body:	Officer Delegation 7.39
Other Approvals	Controlled Activity Approval pursuant to s91 of the Water Management Act 2000.
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	23/4/21-21/5/21
Advertising:	23/4/21-21/5/21
Owner's Consent Provided:	24/3/21
Location:	Northern side of Hammond Ave, approximately 125m east of Koorinal Rd.

SITE DETAILS

Subject Land:	115 Hammond Ave EAST WAGGA WAGGA NSW 2650 Lot 15 DP 842485
Owner:	Profinance Properties Pty Limited

REPORT

DESCRIPTION OF DEVELOPMENT

The proposal is for the construction of a 115m stormwater main and associated infrastructure, with a headwall into the Murrumbidgee River.

The development involves no other works.

THE SITE & LOCALITY

The site of the development, being Lot 15 DP 842485, 115 Hammond Ave, East Wagga Wagga, is located on the northern side of Hammond Ave, approximately 125m east of Koorringal Rd. Works are also proposed within the Crown Land property immediately to the north of the site associated with the Murrumbidgee River which is not further legally described.

The part of the site subject to the development is within the rear, or northern third of the allotment, and the Murrumbidgee River immediately adjacent to the site.

The front portion of the site is developed and contains an industrial shed, whilst the rear section of the site, to which this Development Application applies, is undeveloped, and contains a scattering of vegetation, increasing in density towards the river bank. The land associated with the Murrumbidgee River contains the river and associated banks and riverine vegetation.

The locality more generally contains industrial and highway corridor uses to the south, whilst to the north (beyond the river), and north-east rural uses prevail. A caravan park is located in close proximity to the site to the west, and beyond that, a depot and infrastructure associated with the water reticulation network for the city.

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

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

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

Local Environmental Plan

Wagga Wagga Local Environmental Plan 2010

Under the provisions of the WWLEP 2010 Lot 15 is split across three zonings, whilst the land associated with the river is subject to a fourth. No development is proposed within land associated with two of the zonings on Lot 15 and they need not be further considered, with all works within the part of the site zoned RU1 Primary Production. The river land is zoned W1 Natural Waterways.

The proposed development is for a 'water reticulation system', which is defined as follows:

'water reticulation system' means a building or place used for the transport of water, including pipes, tunnels, canals, pumping stations, related electricity infrastructure and dosing facilities.

The development is for infrastructure used for the transport of water, in this case, stormwater. Water reticulation systems are a type of 'water supply system'. Water supply systems are permitted with consent in the RU1 and W1 zones. If any doubt exists that the development is for a 'water reticulation system', there are provisions under *State Environmental Planning Policy (Infrastructure) 2007* which make

stormwater management systems permitted with consent on any land. This is discussed further in the relevant section of the report.

The objectives of the RU1 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To foster strong, sustainable rural community lifestyles.*
- *To maintain the rural landscape character of the land.*
- *To allow tourist and visitor accommodation only where it is in association with agricultural activities.*

The proposed infrastructure, whilst not directly furthering these objectives, is also not directly inconsistent with them. The proposed development will not hinder future development from achieving compliance with these objectives. The development is considered acceptable in this regard.

The objectives of the W1 zone are as follows:

- *To protect the ecological and scenic values of natural waterways.*
- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- *To provide for sustainable fishing industries and recreational fishing.*

A biodiversity assessment has been submitted with the subject Development Application demonstrating impacts of the development are acceptable. Therefore, the development is considered consistent with the first objective. The provision of stormwater infrastructure on the river bed is not inconsistent with the use of the river in an urban environment and provides for the controlled discharge of stormwater from adjacent land to the river system. The development is only of a small scale, thus it is considered that the development will not have an adverse effect on the natural values of the Murrumbidgee River. Finally, it is considered that the development is unlikely to impact on fishing in the river. The development is considered to be consistent with the objectives of the W1 zone.

The site is subject to flooding in a 100-year flood event and as such clause 7.2 of the WWLEP 2010 applies. Clause 7.2(3) states that:

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development-
(a) is compatible with the flood hazard of the land, and

(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and

(c) incorporates appropriate measures to manage risk to life from flood, and

(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and

(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Given the nature of the development, being for stormwater infrastructure, the development is considered to be consistent with the matters listed in this clause. With regard to 7.2(3)(d) it is recommended that standard conditions of consent be imposed to protect vegetation, and to protect and manage erosion. It is noted that the development requires a controlled activity approval under the Water Management Act 2000 from the Natural Resource Access Regulator (NRAR) for development on waterfront land. These matters have been further addressed under the General Terms of Approval for this proposal, which have been issued by NRAR. These are discussed in further detail in part(d) of this assessment report. Furthermore, detailed biodiversity assessments were also prepared for the development which demonstrate impacts on biodiversity are acceptable.

Clause 7.3 applies to land identified as “Biodiversity” on the ‘Terrestrial Biodiversity Map’ of the WWLEP 2010. Part of the site, being the land associated with the Murrumbidgee River reserve is as mapped as such and so the clause applies. Clause 7.3 requires that:

(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.

(4) Development consent must not be granted to 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 designed, sited and managed to avoid any potential adverse environmental impact, or

(b) if a potential adverse impact cannot be avoided, the development-

(i) is designed and sited so as to have minimum adverse impact, and

- (ii) incorporates effective measures so as to have minimal adverse impact, and*
- (iii) mitigates any residual adverse impact through the restoration of any existing disturbed or modified area on the site.*

No mature trees would be removed as a result of the development, with disturbance limited to 0.09ha of understorey and mid storey vegetation. One threatened species, a roosting and breeding camp of Grey-headed Flying-fox (*Pteropus poliocephalus*) was observed within the development site. As the development includes land mapped as High Biodiversity Value under the NSW Biodiversity Values Map, the proposal triggers the Biodiversity Offset Scheme (BOS) under the Biodiversity Conservation Act 2016 and a Biodiversity Development Assessment Report (BDAR) was prepared. The BDAR identified that the following offset credits were required for the development:

- *1 Ecosystem credit for impacts to PCT 5 -River Red Gum herbaceous-grassy very tall open forest wetland on inner floodplains in the lower slopes sub-region of the NSW South Western Slopes Bioregion and the eastern Riverina Bioregion*
- *1 Species credit for impacts to Grey-headed Flying-fox recorded within the development site.*

It is noted that the BDAR concluded, under an assessment of significance carried out for the Grey-headed Flying-fox, that there is unlikely to be a significant impact on the species as a result of the proposed development.

Given the limited scale of works, and the provision of offset credits under the Biodiversity Conservation Act 2016, and the conclusions under the BDAR, Council can be satisfied that the development is consistent with the matters set out in 7.3(4). All relevant matters under Clause 7.3 have been considered.

Clause 7.5 applies to land identified as "Waterway" on the 'Water Resources Map' of the WWLEP 2010. Part of the site, being the land associated with the Murrumbidgee River reserve, and land within 40m of the top of the riverbank is as mapped as such and so the clause applies. Clause 7.5 requires that:

(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 on any of the following-*
 - (i) water quality within the waterway,*
 - (ii) aquatic and riparian habitats and ecosystems,*
 - (iii) stability of the bed, shore and banks of the waterway,*
 - (iv) the free passage of fish and other aquatic organisms within or along the waterway,*
 - (v) habitat of any threatened species, population or ecological community,*
- (b) whether or not it is likely that the development will increase water extraction*

*from the waterway for domestic or stock use and the potential impact of any extraction on the waterway,
(c) proposed measures to ameliorate any potential adverse impact.*

(4) Development consent must not be granted to 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 designed, sited and managed to avoid any potential adverse environmental impact, or

(b) if a potential adverse impact cannot be avoided, the development-

(i) is designed and sited so as to have minimum adverse impact, and

(ii) incorporates effective measures so as to have minimal adverse impact, and

(iii) mitigates any adverse impact through the restoration of any existing disturbed area on the land.

As noted above, an extensive biodiversity assessment was carried out for the development, with significant impacts not assessed as likely, and offset credits required. Furthermore, the Development Application was referred to NRAR as Integrated Development, and GTAs were issued. Standard conditions of consent regarding sediment and erosion control have been proposed. Together, Council can be satisfied that the development is consistent with the matters set out in 7.5(4). All relevant matters under Clause 7.5 have been considered.

Clause 7.6 applies to land identified as "Groundwater" on the 'Water Resources Map' of the WWLEP 2010, however the development is not of a kind specified in the clause to which it applies.

Clause 7.9 requires that Council consider the impact of developments on the primacy of the Wagga Wagga Central Business area. The development is stormwater infrastructure only. The development will not introduce new competing uses to uses in the CBD. It is considered that the proposed development will not negatively impact on the primacy of the Wagga Wagga Commercial Core Area.

There are no other provisions of the WWLEP 2010 relevant to this 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 SEPP 55, agriculture is a potentially contaminating land use. The use of the land, however, is not changing, and as such the site is considered suitable for the proposed development.

State Environmental Planning Policy (Koala Habitat Protection) 2020

Part of the site is zoned RU1. As such SEPP (Koala Habitat Protection) 2020 applies to that part of the site (but not the part of the site zoned W1). The site contains 'potential koala habitat' by virtue of the tree species present on site. However, it is understood a resident population of koalas is not considered present in the Wagga Wagga area and as such it is considered that the site does not meet the definition of 'core koala habitat'.

Therefore, pursuant to clause 9(3)(a), if Council is satisfied "that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application".

State Environmental Planning Policy (Koala Habitat Protection) 2021

The Koala SEPP 2021 applies to the W1 zoned portion of the site.

Clause 18 of the Koala SEPP 2021 states that:

A development application made in relation to land, but not finally determined before this Policy applied to the land, must be determined as if this Policy had not commenced in its application to the land.

The SEPP was commenced in March 2021 and therefore was made after the Development Application was lodged. As such the application must be determined as if the policy had not commenced its application to the land.

If this land was assessed under the Koala SEPP 2020, it is considered that the assessment would be consistent with that for the RU1 zoned land.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 of the SEPP applies to the development as the site has frontage to a classified road. 101(2) states 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.

The development, being for stormwater infrastructure, does not require ongoing access to the land, does not result in emissions, does not generate traffic, and is not of a type that is sensitive to the matters set out in 101(2)(c). Therefore it is considered that Clause 101(2) provides no impediment to the development.

Clause 111A of the SEPP states that:

Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.

This clause therefore removes any doubt that the development is permitted on the site.

(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)

There are no draft environmental planning instruments relevant to the proposed development.

(a)(iii) - Any development control plan

1.10 - Notification of a Development Application

The application was notified to adjoining neighbours from 23rd April 2021 to 21st May 2021 as Nominated Integrated Development and in accordance with the provisions of the WWDCP 2010. No public submissions were received.

2.1 Vehicle Access and Movements

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

The development is for stormwater infrastructure only and does not generate the need for vehicular access. Access to the site is existing.

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.

The scale of the development is such that a Traffic Impact Study is not considered necessary.

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

Vehicles are able to enter and exit the site in a forward direction.

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.

Adequate area exists on site for the loading and unloading of goods.

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

Access is existing and no new driveways are proposed.

C6 Ensure adequate sight lines for proposed driveways.

Access is existing and no new driveways are proposed.

2.2 Off-street parking

There are no parking requirements for this type of development.

2.3 Landscaping

There are no landscaping requirements for developments of this kind.

2.4 Signage

No signage is proposed.

2.5 Safety and security

The controls in this section are not relevant to developments of this type.

2.6 Erosion and Sediment Control Principles

It is recommended that standard conditions of consent relating to sediment and erosion control be imposed.

4.2 Flooding

This section contains controls that relate to flooding on a precinct basis. However, given the nature of the development, there are no controls that are directly relevant, as they relate to matters such as evacuation, flood affection, floor levels, and structural soundness, which are not applicable to underground infrastructure. All matters in section 4.2 have been considered in full.

5.4 Environmentally Sensitive Land

The controls in this section require the submission of various specialist reports addressing the various environmentally sensitive land mapped areas. It is considered that the BDAR assessment satisfies the intent of these controls.

8.1 Development in rural areas

C1 Uses are to be compatible with the character of the locality in terms of buildings, structures and the nature of operations.

Use of the land is unchanged with the development being for infrastructure only.

C2 Provide adequate buffer areas and setbacks to minimise potential conflicts with adjoining lawful land uses. Where there is potential for a conflict between land uses, priority will be given to the existing productive use.

Use of the land is unchanged.

C3 Use landscaping and other screening options to help integrate new uses and developments into the rural landscape.

N/A to this development.

C4 Uses must be capable of operating within capacities of available existing services.
No new uses are proposed.

C5 Provide adequate facilities for additional traffic in terms of vehicle access and movements, parking areas, and loading and unloading of goods.

The development is unlikely to result in additional traffic once established.

C6 In the case of larger projects Council may require the applicant to demonstrate that the roads in the locality are of satisfactory construction and condition to accommodate the size, weight and volume of vehicles that could be generated by the use, and that the local traffic conditions are suitable.

The scale of the development is not significant and roads in the locality are considered acceptable to accommodate the development.

C7 Provide satisfactory arrangements for storage and disposal of waste.

Noted.

Rural buffers and land use conflicts

C8 Locate dwellings to minimise conflicts with activities associated with primary production, so as to not interfere with the ability to farm adjoining or adjacent land.
No dwellings are proposed.

C9 A dwelling house and all ancillary development on a lot in the following zones must have a setback from the boundary with a primary road that is not a classified road of at least the following:

(a) If the lot is in Zone RU1, RU2 or RU6 - 50m

No dwellings are proposed.

C10 A dwelling house and all ancillary development on a corner lot must have a setback from a boundary with a secondary road that is not a classified road of at least the following:

(a) If the lot is in Zone RU1, RU2 or RU6 - 10m

No dwellings are proposed.

C11 A dwelling house or outbuilding must have a setback of at least 250m from a boundary with adjoining land being used for any of the following:

(i) Forestry

(ii) Intensive livestock agriculture

(iii) Intensive plant agriculture

(iv) Mines and extractive industries

(v) Railway lines

(vi) Rural industries

No dwellings are proposed.

C12 Variations to the minimum setback can be considered where it can be shown that the agricultural potential of the land will be protected taking into account alternative measures such as landscaping or other relevant factors.

N/A.

8.3 Rural dwellings

No dwellings are proposed.

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

(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 is unlikely to have any significant impacts on the context and setting of the locality. The development is for underground infrastructure, which results in minimal vegetation disturbance. On-ground impacts are unlikely to be appreciable, particularly in the long term.

Access, transport and traffic

The proposed development is unlikely to result in any significant increases in traffic generation in the locality, and the existing road network is considered sufficient to support the development.

Access is existing.

Services

The development provides servicing itself. It does not require any further servicing.

Heritage

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

An Aboriginal Cultural Heritage Due Diligence assessment in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW' was carried out by the Applicant. It concluded that due to the disturbed nature of the site works can proceed with caution. Council has considered this assessment and its conclusions are considered reasonable. It is recommended that standard conditions of consent relating to unexpected finds be imposed on any consent.

Natural Hazards

The land is identified as being flood prone, however, it is considered, due to the nature of the development, that impacts on or as a result of flooding are unlikely to be significant, and that the development is therefore suitable on the site.

The land is not mapped as such, but it is considered that the site has potential to contain a grassland bushfire hazard. The proposal is for infrastructure only, and as such, no conditions of consent are required in this regard.

Man-Made Hazards

Potential contamination is discussed under SEPP 55 in part(a)(i) of this assessment report.

Economic Impact in the Locality

The proposed development is unlikely to have any significant economic impact in the locality.

Social Impact in the Locality

The proposed development is unlikely to have any significant social impacts in the locality.

Other Land Resources

Use of the land remains unchanged. As such, the proposed development is unlikely to significantly adversely impact on land resources.

Pollution and off-site environmental effects

The development is unlikely to result in significant pollution or off-site environmental effects. Standard conditions of consent regarding sediment and erosion control have been recommended.

Flora and fauna

No mature trees would be removed as a result of the development, with disturbance limited to 0.09ha of understorey and mid storey vegetation. One threatened species, a roosting and breeding camp of Grey-headed Flying-fox (*Pteropus poliocephalus*) was observed within the development site. As the development includes land mapped as High Biodiversity Value under the NSW Biodiversity Values Map, the proposal triggers the Biodiversity Offset Scheme (BOS) under the Biodiversity Conservation Act 2016 and a Biodiversity Development Assessment Report (BDAR) was prepared. The BDAR identified that the following offset credits were required for the development:

- *1 Ecosystem credit for impacts to PCT 5 -River Red Gum herbaceous-grassy very tall open forest wetland on inner floodplains in the lower slopes sub-region of the NSW South Western Slopes Bioregion and the eastern Riverina Bioregion*
- *1 Species credit for impacts to Grey-headed Flying-fox recorded within the development site.*

It is noted that the BDAR concluded, under an assessment of significance carried out for the Grey-headed Flying-fox, that there is unlikely to be a significant impact on the species as a result of the proposed development.

Given the limited scale of works, and the provision of offset credits under the Biodiversity Conservation Act 2016, and the conclusions under the BDAR, Council can be satisfied that the impacts of the development on flora and fauna are acceptable.

Noise and Vibration

The proposed development is unlikely to substantially impact on noise or vibration in the locality.

Energy Impacts

The development is unlikely to result in any significant energy impacts.

Site Design and internal design

The design of the development is considered acceptable and raises no concerns.

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

There are no known specific site constraints that would render site unsuitable. Impacts are assessed as being acceptable, with conditions of consent recommended where appropriate to manage the development. It is therefore considered that the site is suitable for the proposed development.

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

Apart from standard internal referrals, the development was referred to NRAR (as Integrated Development), Crown Lands and Riverina Water.

Notification

The application was notified to adjoining neighbours for 28 days from 23rd April 2021 to 21st May 2021 as Nominated Integrated Development and in accordance with the provisions of the WWDCP 2010, and the Environmental Planning and Assessment Act and Regulations.

Advertising

The application was advertised 28 days from 23rd April 2021 to 21st May 2021 as Nominated Integrated Development and in accordance with the provisions of the WWDCP 2010, and the Environmental Planning and Assessment Act and Regulations.

Public Submissions and those from public authorities

No public submissions were received. Submissions were received from NRAR, Crown Lands and Riverina Water.

Natural Resource Access Regulator

The Development Application was referred to NRAR as Integrated Development, as the development proposes works on 'waterfront land' (as defined by the Water Management Act 2000), and thus a Controlled Activity Approval is required under that Act. NRAR provided General Terms of Approval (GTAs) which must be included in any Development Consent issued by Council for this development.

Crown Lands

Crown Lands provided a response that indicated that they were uncertain why the Development Application was referred to them. It was clarified with Crown Lands that the referral was a condition of their land owners' consent (the river being Crown Land). No further response was provided by Crown Lands.

Riverina Water

Riverina Water advised that the proposed infrastructure:

Will need to cross an existing 450mm AC raw water main running east-west across the property. This water main is located within an easement.

This main was installed in 1969 and will need to be identified prior to the construction work and suitably protected during the construction work to avoid any unnecessary damage or conflict.

Riverina Water can advise the contractor of specific protection requirements.

It is recommended that a condition of consent be imposed to ensure consultation with Riverina Water occurs prior to the commencement of work.

(e) - the public interest

The proposed development complies with relevant planning controls. No unreasonable impacts have been identified. The development is therefore not considered contrary to the public interest.

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)

The development is across two zones on land that is not bio-certified (RU1 and W1). As such the Biodiversity Conservation Act 2016 applies.

It was identified that development site contains an area of land mapped as High Biodiversity Value under the NSW Biodiversity Values Map. Thus, the proposal triggers the Biodiversity Offset Scheme (BOS) under the Biodiversity Conservation Act and a BDAR must be prepared.

The executive summary of the BDAR stated that:

*The proposal requires the removal of up to 0.10 ha of PCT 5 - River Red Gum herbaceous-grassy very tall open forest wetland on inner floodplains in the lower slopes sub-region of the NSW South Western Slopes Bioregion and the eastern Riverina Bioregion. One threatened species, a roosting and breeding camp of Grey-headed Flying-fox (*Pteropus poliocephalus*) was observed within the development site. Impacts to these species have been minimised and no mature trees would be removed. 0.09ha of understorey and mid storey disturbance would occur within roosting habitat.*

The offset credit requirements for the proposal are;

- *1 Ecosystem credit for impacts to PCT 5 -River Red Gum herbaceous-grassy very tall open forest wetland on inner floodplains in the lower slopes sub-region of the NSW South Western Slopes Bioregion and the eastern Riverina*

Bioregion

- *1 Species credit for impacts to Grey-headed Flying-fox recorded within the development site.*

Impacts to federally listed species have been considered and an assessment of significance was undertaken for the Grey-headed Flying-fox. Potential impacts are considered unlikely to be significant and no referral is considered necessary to the Federal Department of Environment and Energy.

Consideration has been given to avoiding and minimising impacts to biodiversity throughout each phase of the proposal. Mitigation and management measures will be put in place to adequately address impacts associated with the proposal, both direct and indirect.

The retirement of the credits generated will be carried out in accordance with the NSW Biodiversity Offsets Scheme under the Biodiversity Conservation Act 2016. With the retirement of credits and effective implementation of the mitigation measures, the proposal is consistent with the requirements of the BAM.

It is considered that the BDAR has been appropriately prepared, being prepared by an accredited assessor, and that all relevant matters under the Biodiversity Conservation Act 2016 have been considered in full via the BDAR. Conditions of consent will be required to be imposed to secure the required offset credits. Furthermore, it is recommended that conditions of consent that relate to the mitigation measures set out in the BDAR be imposed. This includes restrictions on the timing of works.

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.

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 of the Environmental Planning and Assessment Act 1979 and the *Wagga Wagga Local Infrastructure Contributions Plan 2019-2034* enables Council to levy contributions, where anticipated development will or is likely to increase the demand for public facilities.

In accordance with Clause 1.6 of the plan, the development is not of a kind to which the plan applies, being neither 'residential accommodation' (or a subdivision for residential accommodation), nor being over \$100,000 in value.

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 2013 enable Council to levy developer charges based on increased demands that new development may have on sewer and/or stormwater infrastructure.

S64 Sewer:

The site is not within a Sewer DSP area and no contribution is payable.

S64 drainage:

The site is not within a Stormwater DSP area and no contribution is payable.

Other Approvals

No other approvals have been sought

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 DA20/0147 for Stormwater Main be approved, subject to the following conditions:-

CONDITIONS OF CONSENT FOR APPLICATION NO. DA20/0147

A. SCHEDULE A – Reasons for Conditions

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

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

B. SCHEDULE B – Deferred Commencement Conditions

N/A

C. SCHEDULE C – Conditions

Approved Plans and Documentation

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

Plan/DocNo.	Plan/Doc Title	Prepared by	Issue	Date
	Statement of Environmental Effects	MJM Consulting Engineers	Final	23/3/20
C1	Drainage Plan	MJM Consulting Engineers	P5	17/3/21
C2	Environmental Plan	MJM Consulting Engineers	P3	17/3/21
C3	General Detail Sheet	MJM Consulting Engineers	P1	17/2/20
C4	Drainage Long Section	MJM Consulting Engineers	P1	17/2/20
C6	Existing Services Plan	MJM Consulting Engineers	P3	17/3/21
	Biodiversity Development Assessment Report	NGH	Finalv 1.0	26/3/21

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 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:-

- Development Control Plan 2010 (Section 2.6 and Appendix 2)
- Erosion and Sediment Control Guidelines for Building Sites; and
- 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.3 Prior to the commencement of works a revised site plan shall be submitted to Council for approval, to the satisfaction of the General Manager or delegate, that indicates that stormwater drainage is treated through a Gross Pollutant Trap (GPT), prior to it being discharged to the Murrumbidgee River.
- C.4 Prior to the commencement of works, consultation with Riverina Water shall occur to identify the location of the existing 450mm AC raw water main running east-west across the property and to ensure that it is suitably protected during the construction work. Evidence of satisfactory consultation with Riverina Water shall be supplied to Council, to the satisfaction of the General Manager or delegate, prior to the commencement of works. Measures to protect the infrastructure shall be implemented in accordance with this consultation.
- C.5 Prior to the commencement of works, mitigation measures set out in Section 8 of the Biodiversity Development Assessment Report shall be established, including temporary fencing and signage. Evidence of the establishment of these measures shall be supplied to Council, to the satisfaction of the General Manager or delegate, prior to the commencement of works.
- C.6 Prior to the commencement of works the class and number of ecosystem credits in the table below must be retired to offset the residual biodiversity impacts of the development.

The requirement to retire credits in this condition may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C)

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of this condition must be provided to Council prior to the commencement of works.

Impacted plant community type	Number of ecosystem credits	IBRA subregion	Plant community type(s) that can be used to offset the impacts from development
5 - River Red Gum herbaceous-grassy very tall open forest wetland on inner floodplains in the lower slopes sub-region of the NSW South Western Slopes Bioregion and the eastern Riverina Bioregion	1	Inland Slopes, Bogan-Macquarie, Bondo, Capertee Uplands, Capertee Valley, Crookwell, Hill End, Kerrabee, Lower Slopes, Murray Fans, Murrumbateman, Orange, Pilliga, Talbragar Valley and Wollemi. or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site	5 - River Red Gum herbaceous-grassy very tall open forest wetland on inner floodplains in the lower slopes sub-region of the NSW South Western Slopes Bioregion and the eastern Riverina Bioregion

NOTE: The prices of credits in the BAM-C are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

- C.7 Prior to the commencement of works the class and number of species credits in the Table below must be retired to offset the residual biodiversity impacts of the development.

The requirement to retire credits outlined in this condition may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the BAM Credit Calculator (BAM-C)

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of the table must be provided to Council prior to the commencement of works.

Impacted species credit species	Number of species credits	IBRA subregion
Grey-headed Flying Fox	1	Anywhere in NSW

NOTE: The prices of credits in the BAM-C are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

- C.8 All existing trees within the property of the proposed development shall be protected from all construction works.

All care must be taken to protect existing trees to be retained from damage, including street trees and trees located adjacent to the proposed development. The developer shall identify all trees to be retained prior to commencement of construction works.

A Tree Protection Zone (TPZ) shall be constructed for all existing trees to be retained within the development in accordance with Australian Standards - AS 4970-2009 Protection of Trees on Development Sites.

Construction of Tree Protection Zone's, shall be completed and inspected by Council's Supervisor of Tree Planning and Management, prior to the commencement of any site works. Contact can be made by phoning 1300 292442 during normal business hours.

Removal, relocation or disruption of the Tree Protection Zone fencing will be considered as a breach of this consent. TPZ fences shall remain in place until the end of construction.

If damage of any sort should occur to any protected trees / vegetation within the development, contact shall be made with Council's Supervisor of Tree Planning and Management to determine what remedial action should be taken. Throughout the construction period regular inspections of protected trees shall be carried out to ensure trees retained are of good health and vigour.

- C.9 Prior to the commencement of works, an application is required to be lodged for an Activity Approval under Section 68, Part B - 4, 5 and 6, of the Local Government Act 1993 for any stormwater works.

NOTE: Prior to the commencement of works a works bond may be required to be lodged with Council for public infrastructure works. Refer to Council's Section 68 Activity Approval Application Guide for detail.

- C.10 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.11 During works any existing redundant internal stormwater lines and discharge points shall be de-commissioned and the upstream stormwater lines diverted to the newly constructed stormwater main.
- C.12 The mitigation measures set out in Section 8 of the Biodiversity Development Assessment Report shall be complied with at all times, including restrictions on works during the Flying-fox maternity season. 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 by Heritage NSW.

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

- C.13 Prior to the operation of the infrastructure, an easement, in favour of Council, to the satisfaction of the General Manager or delegate, shall be created over the infrastructure.

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)

Controlled Activity Approval from Natural Resource Access Regulator (NRAR) pursuant to Section 90 of Water Management Act 2000

F.1 Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Natural Resources Access Regulator, and obtained, for a controlled activity approval under the Water Management Act 2000.

- A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents relating to Development Application DA20/0147 provided by Council to Natural Resources Access Regulator.
- B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Natural Resources Access Regulator, Parramatta Office, must be notified in writing to determine if any variations to the GTA will be required.

F.2 A. The application for a controlled activity approval must include the following plan(s): Stormwater Outlet Design Plan.

- B. The plan(s) must be prepared in accordance with Natural Resources Access Regulator's guidelines located on the website <https://www.industry.nsw.gov.au/water/licensing-trade/approvals/controlledactivities>.

Report Prepared & approved by:Steven Cook
Senior Town Planner

Date: 28/7/21

Report Reviewed by:Cameron Collins
Development Assessment Coordinator

Date: 28/7/2021