



City of
Wagga Wagga

Notice of Determination of Development Application

Environmental Planning and Assessment Act 1979

Notice is hereby given of the determination by Council to the following Development Application pursuant to Section 4.18(1) of the Environmental Planning & Assessment Act, 1979.

Application Number:	DA23/0255
Applicant:	LM Brown Po Box 6050 WAGGA WAGGA NSW 2650
Land to be Developed:	534 Gap Hall To Downside Rd DOWNSIDE NSW 2650 Part Lot 5 DP 1143879
Description	New dwelling with attached garage and removal of existing building envelope
Determination:	Approved subject to Conditions
Date of Determination:	24/08/2023
Consent to Operate from:	24/08/2023
Consent to Lapse on:	24/08/2028
Other Approvals:	Nil

On behalf of the Council

Bikash Pokharel
Town Planner

Right of Appeal - Where an applicant is dissatisfied with this determination, the applicant has the right to appeal the decision to the Land and Environment Court within a period of 6 months from the date the decision is notified or registered on the NSW planning portal. An objector has no right of appeal against this determination.

Review of Determination - The applicant may request the Council to review the determination. A determination cannot be reviewed after the period within which an appeal may be made to the Land and Environment Court has expired or, if an appeal has been made against the determination, after the Court has disposed of that appeal.

CONDITIONS OF CONSENT FOR APPLICATION NO. DA23/0255

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
Drawing No. 22042 Sheet 00	Cover sheet and Location Plan	Sewell Design	H_V3	28/06/2023
Drawing No. 22042 Sheet 01	Site Plan, Floor Plan, Elevations, Typical Section, Section Table and BASIX	Sewell Design	H_V3	28/06/2023
Certificate No. 1385288S	BASIX Certificate	Sewell Design Pty Ltd	-	18/05/2023
-	Statement of Environmental Effects	Sewell Design	-	17/05/2023

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

NOTE: Any modifications to the proposal shall be the subject of an application

under Section 4.55 of the Environmental Planning and Assessment Act, 1979.

Requirements before a Construction Certificate can be issued

- C.2 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 \$9,000 must be paid to Council, prior to the issuing of the Construction 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. The applicable rate of CPI at the time of consent is 123.7.

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.3 Prior to the release of the Construction Certificate, the applicant shall:
- i) Provide to Council, for its review and endorsement, a Deed of Covenant pursuant to s88 of the Conveyancing Act 1919 and appropriate plan of subdivision for the deletion of existing building envelope.
 - ii) Submit the endorsed Deed of Covenant and plan to NSW Lands Registry Services for registration and provide a receipt of this lodgement to Council.
- C.4 Prior to the release of the Construction Certificate a Notice of Modification shall be made to Council for the modification of consent DA07/1058 as per below to eliminate any inconsistency between the consents.
- i) Remove all reference to proposed rural dwelling, access to a dwelling, removal of vegetation in relation to the dwelling or the ability to submit a further Development Application to any further stages of the development.
 - ii) Include a specific condition specifying no consent is granted under the consent for a dwelling (including concept approval).
 - iii) Remove the building envelope from the consent.
 - iv) Remove conditions relating to construction works.

The notice shall be made in accordance with Clause 67 of the Environmental Planning and Assessment Regulation 2021.

Prior to making of the Notice, a draft of the Notice shall be provided to Council for review by the Manager of City Development or delegate. Upon completion of this review, Council shall notify the applicant whether the draft Notice is acceptable or not and if so, shall provide details of any amendments required to be included in the final Notice. The applicant is to incorporate any required amendments to the final Notice in accordance with any directions issued by the Council prior to delivering the Notice.

- C.5 Prior to the issue of a Construction Certificate, a geotechnical study must be submitted with the “Application to Install an On-Site Sewage Management System” to determine the suitability of the site with respect to the on-site disposal of waste water. An On-Site Sewage Management System Application together with the geotechnical report shall be assessed and approved by Council prior to carrying out any works on the site.

This study must be carried out by an appropriately qualified geotechnical Soil Consultant, with associated testing being conducted by a NATA registered laboratory. Matters such as geology, stratigraphy (in particular, soil profile and permeability) must be addressed.

The study must also state whether or not the proposed dwelling and the proposed waste water disposal area are located in a position and are of a design and capacity to ensure that all waste water generated from the activities carried out on site can be disposed of on the site without causing nuisance and/or pollution, both in the short and the long term.

NOTE 1: Alterations/modifications to the premise or replacement of disposal areas and or the On-site Sewage Management Systems require a geotechnical soil report to determine if the current system can manage additional loads and/or if the current disposal areas are adequately sized to effectively treat waste water generated by the activities on the premise.

NOTE 2: As a site investigation will need to be undertaken in order to determine the design of the floor slab and/or footings, it is suggested that the required geo-technical study with respect to on-site disposal of effluent be carried out at the same time. This should minimise investigation time and costs.

NOTE 3: The final location of the dwelling on the land may be determined by the findings and recommendations of the required geo-technical study. The location of the dwelling should therefore not be finalised until the results of the geo-technical study are known.

- C.6 Prior to the issue of a Construction Certificate, it must be demonstrated that the On-Site Sewage Management System and its associated disposal area situated more than 40m away from drainage channels, 100m away from rivers, lakes, water body, etc and 250m away from domestic ground water wells.
- C.7 Prior to release of the Construction Certificate, an application to install an On-Site Sewage Management System must be submitted to and approved by Council. The On-site Sewage Management System tank must be installed on the land and the premises connected thereto, in accordance with the provisions of the Local Government Act 1993 Part 1 Approvals and the Local Government (General) Regulation 2005.

NOTE: A Section 68 approval for sanitary plumbing and drainage works must be obtained in conjunction with the On-site Sewage Management System application.

Requirements before the commencement of any works

C.8 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.9 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.10 An approval pursuant to Section 68 (Part F4) of the Local Government Act 1993 shall be obtained from Council prior to installation of the domestic oil or solid fuel heating appliance depicted on the approved plans. The appliance shall be installed in accordance with the provisions of the Building Code of Australia (as defined by the Environmental Planning and Assessment Act 1979) and shall conform with the

Australian Standard for pollution emissions (AS/NZS 4013:2014) and efficiency (AS/NZS 4012:2014).

- C.11 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.12 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.13 Prior to undertaking any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).

- C.14 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.15 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.16 New construction shall comply with section 5 (BAL 12.5) Australian Standard AS3959-2018 "Construction of buildings in bush fire-prone areas" and section 7.5 of "Planning for Bush fire Protection 2019".
- C.17 At the commencement of building works and in perpetuity, an asset protection zones (APZ) of a minimum of 21m from the external wall of the dwelling in all direction shall be maintained.
- APZs associated with the development shall be managed as outlined within Appendix 4 of Planning for Bush Fire Protection 2019 and the NSW Rural Fire Service's document Standards for asset protection zones.
- C.18 The Builder must at all times maintain, on the job, a legible copy of the plans and specifications approved with the Construction Certificate.
- C.19 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.20 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.21 Works shall be undertaken in accordance with the comments provided by Essential Energy which include:
- Any activities in proximity to electrical infrastructure 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.
 - It is the responsibility of the person/s completing any works around power lines to understand their safety responsibilities. SafeWork NSW 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.
 - Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property shall be complied with.

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

- C.22 Prior to the issue of Occupation Certificate an all weather driveway from the property entrance of the development site to the edge of the carriageway must be provided and maintained, having a minimum clear width of 3 metres.

- C.23 Prior to the issue of an Occupation Certificate, the proposed development shall demonstrate compliance with the acceptable solutions relating to water supply for the purpose of bushfire protection required under table 7.4(a) of Planning for Bush Fire Protection 2019.
- C.24 Prior to the release of the Occupation Certificate all gas services are to comply with the acceptable solutions under table 7.4(a) of Planning for Bush Fire Protection 2019.
- C.25 Prior to the release of the Occupation Certificate all electricity services are to comply with the acceptable solutions under table 7.4(a) of Planning for Bush Fire Protection 2019.
- C.26 Prior to issue of an occupation certificate the building number must be displayed in a position clearly visible from the street in letters having a height of not less than 75 mm. The number must be visible against the background on which it is placed.
- C.27 Prior to the release of the Occupation Certificate, the applicant shall provide evidence to Council from NSW Lands Registry Services showing the registration of the Deed of Covenant and amended survey plan confirming deletion of existing building envelope.
- C.28 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.29 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.30 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.31 Landscaping shall be established and maintained to comply with the acceptable solutions under table 7.4(a) of Planning for Bush Fire Protection 2019 and the principles of Appendix 4 of Planning for Bush Fire Protection 2019.
- C.32 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).
 - (e) must be wholly located within the subject site (including footings of any retaining structures)
- C.33 The demolition must be carried out in accordance with the provisions of Australian Standard AS2601-2001: The Demolition of Structures.

Within fourteen (14) days of completion of demolition, the following information shall be submitted to Council for assessment and approval:

- a) an asbestos clearance certificate prepared by a competent person; and
- b) a signed statement verifying that demolition work and the recycling of materials was undertaken in accordance with any Waste Management Plan approved with this consent. In reviewing such documentation Council will require the provision of actual weighbridge receipts for the recycling/disposal of all materials.

NOTE 1: Developers are reminded that WorkCover requires that all plant and equipment used in demolition work must comply with the relevant Australian Standards and manufacturer specifications.

NOTE 2: Demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence".

NOTE 3: Competent Person (as defined under Safe Removal of asbestos 2nd Edition [NOHSC: 2002 (2005)]) means a person possessing adequate qualifications, such as suitable training and sufficient knowledge, experience and skill, for the safe performance of the specific work.

NOTE 4: A licence may be required for some of the tasks described in the document entitled Safe Removal of Asbestos 2nd Edition as requiring a competent person.

- C.34 The existing partially demolished/damaged dwelling that is located within the existing building envelope shall be removed from the site within 3 months from the date of issue of the occupation certificate for the new dwelling.

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