



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

## APPLICATION DETAILS

Application No.:	DA23/0268
Modification No.:	N/A
Council File No.:	D/2023/0268
Date of Lodgement:	16/06/2023
Applicant:	C Rocks 29 Werribee Road BOURKELANDS NSW 2650
Proposal:	Change of use of existing stable building to dwelling and construction of secondary dwelling, swimming pool and tennis court.
Description of Modification:	N/A
Development Cost:	\$375000
Assessment Officer:	Emma Molloy
Determination Body:	Officer Delegation 7.39
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	Yes, 21 June to 5 July 2023
Advertising:	No
Owner's Consent Provided:	Yes
Location:	The subject site is located at the termination of Evans Street off a right of carriageway from 58 Evans Street.

## SITE DETAILS

Subject Land:	60 Evans St WAGGA WAGGA NSW 2650 Lot 11 DP 1261891
Owner:	RS Vidler & VM Vidler

## PLANNING CONTROLS / STATUTORY CLASSIFICATION

*Pursuant to Part 4 (Division 1)*

### Description of Development

The proposed development seeks consent for a change of use of an existing stable building to dwelling, additions to the existing round yard to include a recreation room and secondary dwelling, inground swimming pool and installation of a tennis court. The works will include:

- Works to the existing stable building to facilitate the change of use including construction of internal walls, openings for windows and doors and construction of an attached verandah on the southern elevation;
- Alterations and additions to the existing round yard to include a gym, activity room with kitchenette and bathroom on ground floor and a second storey addition to include a secondary dwelling and deck;
- Construction of an inground pool with swimming pool, lap pool and spa; and
- Installation of a tennis court with lighting.

The existing driveway and internal vehicle movement area will be retained by the proposed development. An additional internal vehicle movement area will be constructed to provide access along the southern boundary to the garage area proposed in the existing stable building. The application does note the removal of two trees to accommodate the development however the trees as noted in the submitted Statement of Environmental Effects are under 8 metres and therefore do not require consent for their removal.

### The Site and Locality

The subject site is legally known as Lot 11 DP 1261891 located at 60 Evans Street. The site has been previously used for horse training and housing, and currently contains a stable building, yards and training areas. The stable building and round yard will be repurposed as a result of the development. The site is accessed from a right of carriageway over 58 Evans Street. The site is not visible from the streetscape.

The surrounding locality is predominantly residential with single storey dwellings to the east of the development site and a Childcare centre to the south. The Murrumbidgee Turf Club is within proximity of the development site.

### Easements and Covenants

- Easement to drain water along the northern boundary;
- A right of carriageway in benefit of the subject lot over the adjoining lot to the south; and
- Easement to drain sewage on the southern boundary.

### Previous Development Consents

DA185/94 - Proposed Stable Complex and Dwelling;

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

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

### Wagga Wagga Local Environmental Plan 2010

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

The development is permissible with consent.

## Part 2 Permitted or prohibited development Land Use

### 1 Objectives of zone

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

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

The proposed development seeks to change the use of an existing stables to a dwelling. The proposed development achieves the above objectives by providing residential housing that does not unreasonably increase the demand for public services or facilities. Also, by changing the use of the existing stables to a residential use this will minimise the existing conflicts between uses.

#### **Part 4 Principal development standards**

##### **4.2A Erection of dwelling houses and dual occupancies on land in certain residential, rural and conservation zones**

The objectives of this clause are to minimise unplanned rural residential development and enable the replacement of lawfully erected dwellings in residential, rural and conservation zones. Consent must not be granted for a dwelling house on a lot in the R5 Large Lot Residential zone unless the lot is at least the minimum lot size specified on the minimum lot size map. The subject site is not subject to a minimum lot size therefore consent can be granted for a dwelling.

#### **Part 5 Miscellaneous provisions**

##### **5.4 Controls Relating to Miscellaneous Permissible Uses**

###### **(9) Secondary dwellings on land other than land in a rural zone**

The proposed development includes a secondary dwelling. A secondary dwelling must not exceed 60m<sup>2</sup> or 33% of the principal dwelling. The principal dwelling comprises of 1100m<sup>2</sup> in floor area therefore the secondary dwelling may have a maximum floor area of 363m<sup>2</sup>. The secondary dwelling comprises of 135m<sup>2</sup> which complies with this clause.

##### **5.21 Flood Planning**

Portions of the site are identified as within the Flood Planning Area (FPA) for Wagga Wagga Major Overland Flow Floodplain Risk Management Study and Plan (MOFFS). The identified portions are isolated from other areas mapped within the FPA therefore are reflective of the topography of the site rather than flood behaviour. The maximum depth of inundation within the site is 220mm within the north-eastern portion of the site. The proposed development seeks to change the use of an existing building, there are no alterations to the finished floor level proposed however the submitted plans show that the finished floor level is above the level of inundation (300mm) and given that the building itself is existing and any impact to flood behaviour is therefore existing and not impacted by the proposed development no concerns are raised in relation to flooding.

#### **Part 7 Additional Local Provisions**

##### **7.1A Earthworks**

The objectives of this clause are to ensure that earthworks for which consent is required will not have a detrimental impact on environmental functions and processes and to allow earthworks of a minor nature without requiring separate development consent. Earthworks are expected during construction. The earthworks are not considered to have a detrimental

impact on drainage patterns, soil stability or amenity of adjoining properties. Additionally, conditions of consent will be imposed to ensure that adequate measures are put in place during construction to ensure that the proposed development will not have an adverse impact on the subject site or adjoining allotments.

### **7.6 Groundwater Vulnerability**

The objective of this clause is to protect and preserve groundwater sources. The subject site is identified as "Groundwater" on the Water Resource Map. However, the proposed development is not specified for the purposes of this clause as such no further assessment is required.

### **7.9 Primacy of Zone E2 Commercial Core**

The objectives of this clause are to maintain the primacy of Zone B3 Commercial Centre as the principal business, office and retail hub of the Wagga Wagga city centre and to ensure that development does not conflict with the hierarchy of commercial centres, and to strengthen Wagga Wagga's position as an eminent regional centre by creating employment opportunities for tourism, commerce, education, healthcare, culture and the arts. The proposed development is for a change of use to a dwelling and secondary dwelling within a residential area. As such the primacy of the E2 Commercial Centre will be maintained.

### **State Environmental Planning Policies (SEPPs)**

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

Clause 4.6 states that a consent authority must not grant consent unless it has considered whether the land is contaminated and if the land is contaminated, it is satisfied that the land is suitable in its current state for the purpose for which the development is proposed to be carried out. The subject site has been used for horse stabling from at least the 1990s although given the lands proximity to the MTC the land may have been used for grazing or open stabling previously. The land is not listed on Council's potentially contaminated land register and stables are not listed in Table 1 as a potentially contaminating land use. The NSW EPA have a guidance document in regard to Horse Stables whereby the main concern is effluent run off and no ongoing issues with contamination after ceasing the use is identified. Therefore, there are no concerns raised in regard to contamination of the site and the site is considered suitable for the proposed development and no further investigation is deemed necessary.

#### **State Environmental Planning Policy (Building Sustainability Index; BASIX) 2004**

Two compliant BASIX Certificate (Certificate number: 1393490S\_02 and 1329920S) were submitted with the application.

#### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

##### **2.119 Development with frontage to classified road**

The western portion of the site has a frontage towards the Olympic Highway (Moorong Street) The objectives of this section are to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads. Consent must not granted unless where practicable and safe, vehicular access to the land is provided by a road other than the classified road, the safety, efficiency and ongoing operation of the classified road will not be adversely affected and 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 proposed development involves a change of use to dwelling and construction of a secondary dwelling. Access to the site is provided from Evans Street and no access is possible to the Highway from the subject site. Whilst the development is more sensitive to traffic noise or vibration a solid Colourbond fence is located on the boundary which prevents a direct line of sight to the Highway. In addition, the TfNSW data shows less than 20,000 per day and the speed limit within this area of the Highway is 80km/h. The Development Near Rail Corridors and Busy Roads - Interim Guideline does not contain any recommended construction methods where there is not a direct line of sight between the site and the road. Also, the dwelling has been designed with more sensitive uses within the dwelling are located further away from the Highway. Therefore, it is not anticipated that the proposed dwelling will adversely be affected by noise from the Highway.

#### **2.120 Impact of road noise or vibration on non-road development**

This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of TfNSW). As per the comments above the Olympic Highway (Moorong Street) has carries less than 20,000 vehicles per day and therefore this clause does not apply.

#### **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**

No relevant planning instrument under this clause is currently the subject of public exhibition or comment.

#### **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**

Surrounding landowners were notified in accordance with Council policy for a period of 14 days from 21 June to 5 July 2023. No submissions were received.

#### **Section 2 - Controls that Apply to All Development**

##### **2.1 Vehicle Access and Movements**

The site is accessed from a right of carriage way over the adjoining lot to the south. No alterations to the existing arrangement are proposed. Given that the existing arrangement is effectively for a commercial operation where large trucks and trailers enter the site on a regular basis the proposed use will lessen the impact on the carriageway. A vehicle movement area will be provided to access the proposed garage which will line the southern and western boundaries of the site. This is considered acceptable and generally complies with the controls and objectives within this section.

##### **2.2 Off-street Parking**

Off-street parking is provided within attached garage. The proposed development is considered acceptable and complies with the objectives and controls within this section.

## 2.5 Safety and Security

The existing stables and the proposed building are not visible from Evans Street. The access is easily identifiable within Evans Street and provides an acceptable way finding to the site in regard to the constraints of the site.

## 2.6 Erosion and Sediment Control Principles

Conditions of consent will be imposed to ensure the proposed development does not have an adverse impact on the subject site and adjoining allotments.

## Section 4 - Environmental Hazards and Management

### 4.2 Flooding

Portions of the site are identified as within the Flood Planning Area (FPA) for Wagga Wagga Major Overland Flow Floodplain Risk Management Study and Plan (MOFFS). The identified portions are isolated from other areas mapped within the FPA therefore are reflective of the topography of the site rather than flood behaviour. The maximum depth of inundation within the site is 220mm within the north-eastern portion of the site. There are no controls in relation to MOFFS within this section therefore flooding will be further assessed within section 4.15(b) of this report.

## Section 5 - Natural Resource and Landscape Management

### 5.4 Environmentally Sensitive Land

Environmental sensitivities have been previously assessed in Section 7.6 of this report.

## Section 9 - Residential Development

### 9.2.1 Site Layout

The proposed development seeks to reuse the existing stables building, windows will be cut into the existing structure to provide light and ventilation. Living areas have been located to provide solar access from the north. Given that the development seeks to reuse an existing building the development is compatible with the existing built form and given the zoning of the land facilitates residential development the building is also compatible with the desired built form.

The proposed secondary dwelling is located within a two storey structure. Given the size of the site, the secondary dwelling is considered reasonable and whilst different from the underlying built typologies within the vicinity of the subject site. The activity areas have been orientated towards the north and therefore will receive ample light. The development will utilise the existing access. Services and landscaping will be provided to facilitate the residential use of the site.

### 9.3.4 Solar Access

The proposed development will adapt the existing stables building for use as a residential dwelling. The dwelling has been designed to address the constraints of the existing structure. The garage has been located within the western portion of the building in accordance with controls within this section. Living areas will receive ample solar access from the north and whilst private open space has been located on the southern portion of the site to address the constraints of the site.

The secondary dwelling has been designed so that activity areas are located to receive light from the north. A deck is located on the western elevation which will provide some protection from the sun to the master bedroom.



Given the size of the site and location of the buildings the development is not anticipated to result in an adverse impact in regard to overshadowing of the neighbouring lots.

#### **9.3.5 Private Open Space**

An adequate amount of private open space has been provided for both the dwelling and the secondary dwelling. The proposed development is considered to comply with the objectives and controls within this section.

#### **9.3.7 Side and Rear Setbacks**

The subject site is zoned as R5 and therefore requires a 2 metres side and rear setback. All structures are adequately setback in accordance with the control with the exception of the existing stables structure within the north-eastern portion of the site which has a setback of 1.9 metres. Given that this structure is existing and a theatre room is located within this portion of the building with no windows on the eastern elevation, and the existing boundary fencing no adverse impacts on the neighbouring dwellings to the east are likely as a result of the reduced setback. Therefore, the proposed development is considered acceptable and addresses the constraints of the site and effectively reduces the land use conflicts between the stables and the surrounding residential development. The secondary dwelling has been setback within the site to make use of an existing round yard. The round yard is located 4 metres from the boundary which is considered acceptable given the size of the site and the surrounding uses.

#### **9.4.1 Building Elements**

The subject site is not strictly visible from the public domain therefore the location of the secondary dwelling is considered acceptable. The proposed use seeks to reuse an existing building, a verandah and alfresco area have been used on the dwelling to provide a link between internal and external living areas. A sheltered and clearly visible entry to the dwelling and secondary have been provided however it is noted that these will not be visible from the public domain. Given the constraints of the site ancillary components will not be visible from the public domain. The proposed development is considered to comply with the objectives and controls within this section.

#### **9.4.2 Materials and Finishes**

Windows and doors will be cut into the existing structure this will avoid long expanses of a single material and also ensure the building is fit for residential use. The secondary dwelling structure will be clad and glazed which addresses the objectives and controls within this section.

#### **9.4.3 Privacy**

Visual and acoustic privacy are important for good residential amenity. The dwelling raises no concerns given the presence of existing boundary fencing and landscaping. The secondary dwelling does raise some concerns given that the deck area is open on the southern side which has the potential to overlook the play space for the existing childcare centre on the adjoining lot to the south. A condition of consent will be imposed to require screening on the southern elevation. There are also two bedroom windows on the southern elevation which were floor to ceiling. Amended plans were provided by the applicant to raise the height of the windows to prevent full view of the of the neighbouring play space. This is considered acceptable given that the room is a bedroom and a direct view into the play space is not possible when sitting down.

Light have been proposed for the tennis court which may have an impact on the amenity of the adjoining lots. Conditions of consent will be imposed to ensure that no obtrusive light will impact on the adjoining properties or the Olympic Highway.

#### 9.4.4 Garage, Carports, Sheds and Driveways

The dwelling includes a garage on the western elevation which will provide some protection from the sun in accordance with the objectives of this section.

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

No planning agreements have been entered into under section 7.4.

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

Matters prescribed by the regulations have been satisfied.

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

	Satisfactory	Not Satisfactory	Not Relevant	Comment
Context & Setting	x			The proposed development seeks to change the use of an existing stables building and round yard to provide a dwelling and secondary dwelling to the subject site. The land is zoned residential and therefore the new use will remove land use conflicts between the subject site and the adjoining land therefore the development is considered acceptable given the context and setting of the site
Streetscape	x			No adverse impacts have been identified. The subject site is not visible from Evan Street. The western boundary of the site is bound by Moorong Street (Olympic Hwy) however this boundary has an existing solid Colourbond fence and no access therefore the site is not visible from the street.
Traffic, access and parking	x			Vehicular access is available to the site via right of carriageway through 58 Evans Street. The proposed development does not seek to alter this arrangement which is considered acceptable given the new use.
Public Domain	x			No adverse impacts identified.
Utilities	x			All services are connected and available to the site.
Heritage			x	The subject site is not within the Heritage Conservation Area or a listed item. Additionally, the site is not known to contain any items of Aboriginal Cultural Heritage.
Other land resources	x			None identified.
Water Quality & Stormwater	x			The proposed development will be connected to the existing infrastructure.
Soils, soil erosion	x			Conditions of consent will be imposed to ensure the proposed development does not have an adverse impact on the subject site or adjoining allotments.
Air and microclimate	x			Dust is expected during demolition. A condition of consent will be imposed to require demolition to be carried out in accordance with the Australian Standard.
Flora and Fauna	x			No significant vegetation is proposed to be removed. Therefore, no adverse impacts have been identified.
Waste	x			Conditions of consent will be imposed to ensure waste is disposed of in an appropriate manner.
Energy	x			Two compliant BASIX Certificates (1393490S and 1329920S) have been lodged with the application.



Noise & vibration	x			Noise is expected as part of the construction of the proposed development conditions of consent will be imposed to require works to be undertaken within acceptable hours. The subject site does have a frontage towards the Olympic Highway (Moorong Street) however the existing Colourbond fence ensures that there is no direct line of sight. The Colourbond fence will act as a noise barrier. Also, the dwelling has been designed with more sensitive uses located further away from the Highway there are no concerns raised. No concerns are raised in relation to the secondary dwelling given that the dwelling is setback further within the site.
Hours of operation			x	Not applicable.
Natural hazards - Flooding - Bushfire Prone Area map	x			The subject site is identified as prone to inundation in a 1% storm event. The maximum amount of inundation is 220mm in the north-eastern portion of the site which is identified within the FPA. However, the majority of the inundation is within the southwestern portion of the site where inundation is typically between 70mm and 180mm. The submitted plans show a finished floor level of 300mm therefore the secondary dwelling will not be impacted by flooding. The structure may cause some displacement of water however given the size of the site and the nature of the inundation this is considered reasonable.
Technological Hazards	x			Given the works include demolition there is a risk of coming into contact with asbestos. A condition of consent will be imposed to ensure that if any asbestos is found that it be handled and disposed of appropriately.
Safety, security and crime prevention	x			No adverse impacts have been identified.
Social impact in locality	x			The proposed development will contribute to local housing stock and alleviate existing land use conflicts between the stables and the surrounding residential development.
Economic Impact in Locality	x			The proposed development will provide continued work for the construction and related industries.
Site design and internal design	x			The proposed development makes good use of the site and addresses the sites constraints and opportunities. As such the development is considered to be an acceptable inclusion within the locality.
Overlooking - overshadowing	x			No concerns are raised in relation to privacy for the dwelling given its single storey nature and the presence of landscaping. Overlooking concerns were raised with the applicant in regard to overlooking from the deck area and the two bedroom windows located on the southern elevation of the secondary dwelling. The applicant submitted amended plans that decreased the size of these windows which is considered acceptable. Screening on the southern elevation of the deck will be conditioned with further detail to be provided prior to the issue of a Construction Certificate. Lights from the tennis courts may cause light spill into adjoining properties and the

				Highway. Conditions of consent will be imposed to ensure that light is contained within the site.
Landscaping	x			No adverse impacts have been identified.
Construction	x			To comply with the BCA.
Private open space	x			The proposed development provides adequate private open space.
Cumulative Impacts	x			None identified.
Disabled access			x	Not applicable.
Signage			x	Not applicable.
Setbacks, Building Envelopes	x			The proposed development provides appropriate setbacks.

### Section 733 of the Local Government Act 1993

Section 733 of the Local Government Act 1993 provides that Councils will not incur liability for decisions or omissions concerning flood liable land or land subject to the risk of bushfire have been considered. A risk assessment has been completed and Council will be able to demonstrate that it has acted appropriately in its decision making when defending claims in liability or in circumstances where administrative decisions are challenged.

### Flooding Risk Assessment

Matters relating to flooding have been previously assessed against the relevant sections in the LEP and DCP. The above assessment supports the proposed development.

### Bush Fire Risk Assessment

The subject site is not identified as prone to bushfire therefore no further assessment is required.

### The Principles of Ecologically Sustainable Development

*The following are principles of ecological sustainability:*

#### 1 The precautionary principle

*Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*In the application of the precautionary principle, public and private decisions should be guided by:*

- (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (b) an assessment of the risk-weighted consequences of various options.*

*The principle requires decision-making to give the environment the benefit of the doubt.*

#### 2 Intergenerational equity

*The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (that is, a partnership among all of the generations that may use or expect to benefit from the nation's resources).*

#### 3 Conservation of biological diversity and ecological integrity

*Conservation of biological diversity and ecological integrity should be a fundamental consideration.*

#### **4 Improved valuation, pricing and incentive mechanisms**

*Environmental factors should be included in the valuation of assets and services:*

- (a) polluter pays (that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement), and*
- (b) the users of goods and services should pay prices based on the full cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and*
- (c) environmental goals having been established should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms which enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

The proposed development will not result in any anticipated irreversible environmental damage, the proposal utilises an existing residential site and therefore is not considered to impact on biological diversity or ecological integrity. The proposal is consistent with the precautionary principle to the extent that all potential threats to the environment have been identified and assessed. Accordingly, the principles of ESD are considered to have been followed.

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

The subject land located at 60 Evans Street, Wagga Wagga is considered to be suitable for the proposed development because it is residentially zoned land being developed for a residential purpose and is generally in accordance with the WWLEP2010 and WWDCP2010.

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

Referrals - The proposal was referred to the relevant Council officers. No concerns were raised, standard conditions will be imposed.

Notification - Adjoining landowners were notified in accordance with Council policy for a period of 14 days from 21 June to 5 July 2023. No submissions were received.

Advertising - The proposed development was not required to be advertised.

Public Submissions and those from public authorities  
Nil

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

The public interest is a broad consideration relating to many issues. Taking into account the full range of matters for consideration under Section 4.15 of the Environmental Planning and Assessment 1979 (as discussed within this report) it is considered that approval of the application is in the public interest.

#### **Other Legislative Requirements**

#### **Section 1.7 of the Environmental Planning and Assessment 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)**

Section 5AA and Part 7 of the Biodiversity Conservation Act 2016 (Test for determining whether proposed development or activity likely to significantly affect threatened species or

ecological communities, or their habitats)

There are a number of tests to determine whether the proposed triggers the NSW Biodiversity Offset Scheme under the NSW Biodiversity Conservation Act 2016 and results in the need for further assessments or offsets.

1. *Is the subject site identified as an area of outstanding biodiversity value on the biodiversity values map?*

No

2. *Does the amount of native vegetation being removed exceed the biodiversity offsets scheme threshold.*

No native vegetation is proposed to be removed.

3. *Test of Significance - the test to determine whether the proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats.*

The proposed development does not propose the removal of any native vegetation. The site does not contain any recorded endangered flora or fauna on the site of the proposed development, is not anticipated to significantly affect threatened species or ecological communities or their habitats.

Based on the above assessment it is satisfied that the development will not trigger the Biodiversity Offset Scheme and no further evidence is required regarding the proposed vegetation removal.

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

#### **Section 7.11**

Dwellings and secondary dwellings are exempt.

#### **Section 64 Sewer**

Dwellings and secondary dwellings are exempt.

#### **Section 64 Stormwater**

Dwellings and secondary dwellings are exempt.

#### **Referrals:**

Building Surveyor: Yes, no concerns raised. Standard conditions imposed.

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

Environmental Officer: N/A

Parks & Recreation Officer: Yes, standard conditions imposed.

#### **Other Approvals:**

Nil

#### **Conclusion:**

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

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

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

## RECOMMENDATION

It is recommended that application number DA23/0268 for Change of use of existing stable building to dwelling and construction of secondary dwelling, swimming pool and tennis court. be approved, subject to the following conditions:-

## CONDITIONS OF CONSENT FOR APPLICATION NO. DA23/0268

### 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	Camila Rocks Planning & Heritage Services		19.5.2023
1329920S	BASIX Certificate	Energysraters		16.8.2022
1393490S_02	BASIX Certificate	Energysraters		28.8.2023
	Site Plan	Design Hub	H	8.8.2023
	Floor Plan	Design Hub	H	8.8.2023
	Dimensions and Sections	Design Hub	H	8.8.2023
	Elevations	Design Hub	H	8.8.2023

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 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 standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by Council, or
- 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 Prior to works commencing on site:

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

C.7 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.

C.8 A Section 68 Approval must be obtained from Council prior to any sewer or stormwater work being carried out on the site associated with the pool installation.

In sewerage areas all backwash water or water discharged from the pool during emptying must be discharged into Council's sewer in accordance with the requirements of AS/NZS 3500 and the Plumbing Code of Australia.

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

NOTE: If a cartridge filter is proposed, a Section 68 Approval may not be required.

NOTE: Discharge from pools in unsewered areas will be in a method approved by Council.

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

C.9 The Builder must at all times maintain, on the job, a legible copy of the plans and specifications approved with the Construction Certificate.

C.10 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.11 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.12 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.13 All roofed and paved areas including the roofed and paved areas of the Secondary Dwelling must be drained and the water from those areas and from any other drainage conveyed to the existing roofwater drainage system, in accordance with AS/NZS 3500.3.2003 'Stormwater Drainage'.

C.14 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.15 The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.

C.16 All work is to comply with the Building Code of Australia, the Swimming Pools Act 1992 and Swimming Pools Regulations 2018.

NOTE: Prior to the issue of an occupation certificate, the owner of the property shall supply Council with documentary evidence that the completed swimming pool has been registered at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au) <http://www.swimmingpoolregister.nsw.gov.au> as required by the amended Swimming Pool Act.

C.17 A 1.8 metre high boundary fence (as measured from the inside of the fence) or a compliant temporary swimming pool barrier is required where the property boundary fence is used as a part of the swimming pool barrier. This is to have a 900 mm non climbable zone on the inside face of the fence to comply with AS1926.2012 Swimming Pool Safety Standards.

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

- C.18 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.19 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.20 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.21 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.22 All exterior lighting associated with the development must be designed and installed so that no obtrusive light will be cast onto any adjoining property.

**NOTE:** Compliance with Australian Standard AS4282.2019 "Control of the Obtrusive Effects of Outdoor Lighting" will satisfy this condition.

- C.23 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.24 A crane permit will be required for the operation of a crane on a public road.

C.25 The proposed filter and pump must be operated in accordance with the Protection of the Environment Operations (Noise Control) Regulation 2008 which restricts the times of operation. Restrictions apply between 8.00 pm and 7.00 am on weekdays and Saturdays and 8.00 pm to 8.00 am on Sundays and public holidays.

NOTE 1: The swimming pool water, together with the treatment processes and facilities must comply with the requirements of the Public Health Act 2010 and Public Health Regulation 2012.

In this regards -

- pH needs to be between 7.2 and 7.8
- Alkalinity needs to be between 80mg/L and 200mg/L
- Free chlorine needs to be between 3mg/L and 10mg/L
- Combined chlorine needs to be less than 1mg/L
- Cyanuric acid (if used) must be between 30mg/L and 100mg/L

NOTE 2: For all pools in "septic areas", the applicant must ensure that water discharged from the pool does not enter the septic tank or adversely impact on the septic disposal area or enter a drainage line.

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

N/A

## **E. SCHEDULE E – Prescribed Conditions**

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

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

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

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

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

NOTE 1: This condition does not apply:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

For the following uses of a building: a sign must be displayed in a prominent position in the building stating the maximum number of persons permitted in the building if the

development consent for the use contains a condition specifying the maximum number of persons permitted in the building:

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

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

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



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

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

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

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

N/A

<p><b>Report Prepared &amp; approved by:</b></p>  <p>Emma Molloy Senior Town Planner</p> <p>Date: 30.08.2023</p>	<p><b>Report Reviewed by:</b></p>  <p>Amanda Gray Senior Town Planner</p> <p>Date: 30.8.2023</p>
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