

Item 8: Development

8.1 DA0203/2021 - Hotel or Motel Accommodation - 38 Perry Street and 82 Gladstone Street, Mudgee

REPORT BY THE PLANNING COORDINATOR
TO 21 APRIL 2021 ORDINARY MEETING
GOV400088, DA0203/2021

RECOMMENDATION

That Council:

- A. receive the report by the Planning Coordinator regarding Development Application DA0203/2021 - Hotel or Motel Accommodation - 38 Perry Street and 82 Gladstone Street, Mudgee;
- B. approve the removal of the street tree in front of the ingress driveway to the proposed development; and
- C. approve DA0203/2021 - Hotel or Motel Accommodation - 38 Perry Street and 82 Gladstone Street, Mudgee subject to the following conditions and Statement of Reasons:

CONDITIONS

PART 1 – DEFERRED COMMENCEMENT CONDITIONS

1. This is a deferred commencement condition in accordance with Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* and this consent shall not operate until the following matters have been completed, to the satisfaction of Council.
 - a) The Applicant must provide to Council detailed design and documentation for the proposed re-alignment of the existing sewer and demonstrate that the proposed modification is capable of meeting Council's minimum grade requirements for sewer with a fall of no less than 1% and having no detrimental effect on flow rates and the ongoing operation of Council's existing infrastructure.
 - b) Amended Plans for the development must be submitted to and approved by Council, detailing how the re-aligned sewer main will be protected and made accessible for Council maintenance at all times. The amended plans may incorporate any of the following design solutions (but not limited to):
 - (i) Provision of a 3m wide easement over the sewer mains line. This will require amendments to Units 1 to 3 in terms of width, such that these units will be set back from the boundary by 3m; or

- (ii) **Securing an easement (on Title) to allow the re-routing of the sewer mains line through the adjoining property/s to the west at Lot 12 DP1217725 and Lot 10 DP1217725. The easements will need to be registered with the NSW Land Registry Services, to satisfy the deferred commencement condition; or**
- (iii) **Encasement of the sewer mains line in concrete, allowing the existing design to be maintained.**

Evidence that will sufficiently enable Council to be satisfied as to the compliance with the above matters must be submitted to Council within twenty-four (24) months of the date of determination.

If sufficient evidence of the satisfaction of the above matters is not received by Council within this timeframe, the consent will lapse pursuant to Section 4.53(6) of the *Environmental Planning and Assessment Act 1979*.

If sufficient evidence of the satisfaction of the above matters is received by Council within the above nominated timeframe, Council will notify the applicant/developer in writing of the date the development consent becomes operative. This consent will become operative subject to the following conditions of consent.

The development consent will lapse 5 years after it becomes operative, in accordance with Section 4.53 of the *Environmental Planning and Assessment Act 1979*.

PART 2 – CONDITIONS OF CONSENT

PARAMETERS OF CONSENT

- 1. Development is to be carried out in accordance with the following plans endorsed with Council’s Stamp as well as the documentation listed below, except as varied by the conditions herein.**

Title/Name	Drawing No/ Document Ref	Revision/Issue	Dated	Prepared by
Existing and Proposed Site Plan	31758-A01	D	15/03/21	Barnson
Overall Floor Plan	31758-A02	D	15/03/21	Barnson
Floor Plans – Bedroom Layouts	31758-A03	B	15/12/20	Barnson
Elevations and Section	31758-A04	B	15/12/20	Barnson
Erosion and Sediment Control	31758-A05	C	01/02/21	Barnson

Notes				
Existing House (Unit 12) Floor Plan and Elevations	31758-A06	A	01/02/21	Barnson
Proposed Site Plan	31758-C02	C	09/02/21	Barnson
Pavement Plan	31758-C03	B	09/02/21	Barnson
Stormwater Management Plan	31758-C04	C	09/02/21	Barnson
Roof Drainage Plan	31758-C05	A	09/02/21	Barnson
Stormwater Notes and Details	31758-C06	A	22/12/20	Barnson
Sewer Reticulation Plan	31758-C07	B	09/02/21	Barnson
Sewer Notes and Details	31758-C08	A	22/12/20	Barnson
Water Reticulation Plan	31758-C09	B	09/02/21	Barnson
Water Notes and Details	31758-C10	A	22/12/20	Barnson
Fire Hydrant Coverage Plan	31758-C11	B	09/02/21	Barnson

The plans approved in accordance with Part 1 – Deferred Commencement Conditions, shall supersede the above-mentioned plans to the extent of any inconsistency.

2. This consent does not permit commencement of any site works. Works are not to commence until such time as a Construction Certificate has been obtained and the appointment of a Principal Certifier.
3. This approval does not provide any indemnity to the owner or applicant under the *Disability Discrimination Act 1992* with respect to the provision of access and facilities for people with disabilities.
4. This development consent does not include approval for any signage for the approved development. A separate Development Consent or Complying Development Certificate may be required for signage, if the signage is not exempt development.
5. This approval includes approval for:
 - a) Demolition of the existing dongas (12 rooms) located on the northern side of the site.
 - b) Demolition of the existing garage on Lot 1.

- c) Construction of 11 hotel rooms, comprising nine (9) one-bedroom apartments and two (2) two-bedroom apartments (subject to changes approved by the Deferred Commencement conditions).
- d) Refurbishment of the existing dwelling to a three-bedroom hotel suite.
- e) The construction of on-site car parking spaces.
- f) Construction of a 9m wide access from Gladstone Street to serve as the vehicle entrance into the site.
- g) Upgrading the existing 5.2m wide access to Gladstone Street to serve as the vehicle exit for the site.
- h) Connection of water, sewer and stormwater services to the development.
- i) Removal of the street tree located in front of the ingress driveway for the proposed development.

GENERAL

- 6. All building works, earthworks and pavement works must be carried out in accordance with the provisions of the *National Construction Code*, the *Environmental Planning and Assessment Act 1979* and Regulations and all relevant Australian Standards.
- 7. All building work is to comply with the requirements of the Access to Premises Standard.
- 8. All demolition works are to be carried out in accordance with AS 2601-2001 "Demolition of structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, should be handled, conveyed and disposed of in accordance with guidelines and requirements from SafeWork NSW. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.
- 9. Notwithstanding the approved plans, the structure is to be located clear of any easements and/or 1.5 metres (or a lesser distance if approved by Council) from any water and sewer mains in accordance with Council Policy.
- 10. If the development involves any 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 is a prescribed condition pursuant to clause 98E of the *Environmental Planning and Assessment Regulation 2000* and Council requirement to preserve the stability of adjoining roads/public places

- 11. All trafficable pavements are to be constructed and sealed with an impervious surface, either bitumen or concrete, and maintained to the satisfaction of Council at all times.
- 12. The number of car parking spaces to be provided within the site of the development must be no less than the number of Hotel or Motel rooms to be constructed. The car parking spaces must:

- a) **Comply with AS 2890.1: 2004 – Parking facilities – Part 1: Off-street car parking and the following requirements;**
 - b) **Each parking space is to have minimum dimensions of 5.4m x 2.5m;**
 - c) **The disabled car parking spaces and associated shared area are to be in accordance with the provisions of AS 2890.6:2009 – Parking facilities – Part 6: Off-street parking for people with disabilities;**
 - d) **Line marking, wheel stop and signage has to be installed as per the relevant Australian Standard;**
 - e) **Off-street visitor parking is to be encouraged by the placement of prominent signs indicating the availability of visitor parking; and**
 - f) **All car parking spaces are to be line-marked and provided with a sealed concrete or bitumen surface and must be maintained in a satisfactory condition at all times.**
13. **Internal driveways are to be constructed and configured to ensure that:**
- a) **Loading and unloading facilities (to be contained within the site and to be able to cater for largest design vehicle).**
 - b) **Safe on-site manoeuvring area for the largest design vehicle.**
 - c) **Vehicle movement areas are to be sealed with a bitumen or concrete pavement to address environmental impacts.**
 - d) **All vehicles must be able to enter and leave in a forward direction. Signage to this effect is to be appropriately located within the site.**
 - e) **The number of access points from a site to any one street frontage is limited to 1 ingress and 1 egress.**
 - f) **Driveways must be provided in accordance with AS2890.1 Parking Facilities.**
 - g) **The loading area is to be provided behind the building line at the side or rear of the building.**
14. **All external plant, such as air-conditioning units, is to be screened from view of the street or adjoining residential properties.**
15. **In accordance with *Mid-Western Regional Development Control Plan 2013*, Council does not permit the following types of development over an existing sewer main or easement for sewer/stormwater drainage:**
- a) **Erection of permanent structures;**
 - b) **Cut or fill of land;**
 - c) **The planting of trees; or**
 - d) **Concrete structures.**
16. **Footing design must ensure that footings extend below the zone of influence to ensure that no load is placed on existing or proposed infrastructure.**
17. **Fill placed in residential or commercial lots shall be compacted in accordance with AS3798-2007 *Guidelines on Earthworks for Commercial and Residential Developments*.**
18. **The only waste derived fill material that may be received at the development site must be:**

- a) **Virgin excavated natural material, within the meaning of the *Protection of the Environment Operations Act 1997*; and**
 - b) **Any other waste-derived material the subject of a resource recovery exemption under cl.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.**
19. **All earthworks, filling, building, driveways or other works are to be designed and constructed (including stormwater drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.**
 20. **All stormwater runoff from roof and developed surfaces is to be controlled in such a manner so as not to flow or discharge over adjacent properties. Methods of disposal of excess stormwater including overflow from tank must also include adequate provision for prevention of erosion and scouring.**
 21. **Costs associated with all development works including any necessary alteration, relocation of services, public utility mains or installations must be met by the developer. The developer is responsible to accurately locate all existing services before any development works commence to satisfy this condition.**
 22. **Any damage which is caused to Council's infrastructure as a result of the proposed development must be repaired immediately to Council's satisfaction and at no cost to Council.**
 23. **Where required, the Developer must provide for the construction, and obtain a Construction Certificate Approval for a mains extension necessary to provide a suitably located and metered hydrant for fire-fighting purposes sufficient to meet Building Code of Australia requirements.**
 24. **Where main extension or alteration of services is required, the Developer must meet the full cost of water and sewerage reticulations to service the development plus the cost of connecting to existing services. All water and sewerage works are required to be carried out in accordance with the requirements of Mid-Western Regional Council (as the Water Supply authority under the *Local Government Act 1993*) and in accordance with the *National Specification – Water and Sewerage Codes of Australia*.**

PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

25. **Prior to release of the Construction Certificate, approval pursuant to Section 68 of the *Local Government Act 1993* to carry out water supply, stormwater and sewerage works is to be obtained from Mid-Western Regional Council.**
26. **Consent from Council must be obtained for all works within the road reserve, including removal of the street tree, pursuant to Section 138 of the *Roads Act 1993*, prior to the issue of a Construction Certificate. The accesses are to be designed and constructed in accordance with Council's Access to Properties Policy.**
27. **Prior to the issue of a Construction Certificate, the following heritage related items are to be submitted to and approved by Council:**

- a) Amended plans and elevations replacing decorative barge boards and fascias with simple rectangular section boards;
 - b) Details of the joinery used in the doors and windows of the new building. The joinery is to be timber and simply detailed;
 - c) Details of the metal fence to be erected along the front of the new building. Details at a scale of 1:5 or larger should be included. The metal fence is to be without traditional cast spear points; and
 - d) A schedule of external colours and finishes is to be submitted. "Windspray" is the preferred colour for corrugated steel roofing. The schedule shall include work proposed on the existing dwelling.
28. Prior to the issue of a Construction Certificate, the following fencing details are to be submitted to and approved by Council:
- a) Provision of a screen fence with a minimum height of 1.8m along the western and northern boundaries of the site (please note, the existing fence may be used to satisfy this condition where it is 1.8m in height); and
 - b) Provision of a 1.8m high timber screen fence along the eastern boundary of the property, where the property adjoins other residential properties. No gates are to be provided in this fence.
29. Prior to the issue of a Construction Certificate, details shall be submitted to the Principal Certifier demonstrating that any earthworks, including any structural support/s, for the purposes of the development will not cause damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot.
30. Prior to the issue of a Construction Certificate, amended plans must be submitted to and approved by Council demonstrating that structures are located at least 1500 mm away from the centreline of any sewer pipe (or a lesser distance as approved by Council), and such that the structures do not encroach into an easement. The footing for the wall must be of sufficient depth to extend below the Zone of Influence to ensure no additional loading is placed on the sewer pipe.
31. Prior to the issue of a Construction Certificate, the developer must arrange for a detailed drainage design, supported by calculations, that demonstrates that all stormwater runoff from the site can be captured in a suitably sized temporary storage tank. Stormwater runoff captured in the tank must then be pumped using a dual / redundancy pump arrangement to discharge stormwater runoff to the gutter in Gladstone Street or other approved discharge point. A Music modelling report is to be submitted to ensure that the stormwater discharge to Council's drainage system complies with quality requirements as specified in the *Mid-Western Regional Development Control Plan 2013*. The design must be prepared by a suitably qualified consultant and submitted to Council for approval.
32. Drainage design must also include a plinth or footing with a minimum height of 100mm along western, northern and eastern boundary fencing to ensure no surface runoff discharges over adjoining properties. All impervious surfaces must be graded to ensure that all runoff is directed to the drainage pit for temporary storage prior to pump out to the Gladstone Street kerb and channel.
33. A detailed Engineering Design of Sewer Extensions is to be submitted to and approved by Council prior to the issue of a Construction Certificate. The Engineering

Design is to comply with *Mid-Western Regional Development Control Plan 2013, Guidelines and Standards.*

Note - the existing concrete sewer lid within the proposed parking area has to be replaced with a trafficable lid. Please contact Council's Water and Sewer department in relation to this matter.

- 34. All documentation supporting the application for the Construction Certificate (for alteration of sewer mains) must be submitted in electronic format with a hard copy covering letter and a completed Construction Certificate Application Form to Council. A fee payable at this juncture shall only be for a Construction Certificate in accordance with Council's current Fees and Charges.**
- 35. A Traffic Management Plan (TMP) completed by a certified person for implementation during the works is to be submitted to Council for assessment and approval by Council prior to the issue of the Construction Certificate.**
- 36. Prior to the issue of a Construction Certificate, a Survey Plan for consolidation of the Lots must be submitted to Council for approval. The consolidation shall consolidate Lot 1 DP730123 and Lot 2 DP730123 into a single allotment. The Plan of Consolidation must be accompanied by all relevant section 88B documentation and the easement is to be vested in Council's favour free of charge. All costs associated with the preparation the plan and documentation and the registration of documents are to be borne by the Applicant. The Plan of Consolidation is to be registered with the NSW Land Registry Services. The Plan of Consolidation is to include the following:
 - a) Easements over the sewer mains line diversion, within the boundaries of the subject site, to be constructed as part of the approved development. The easement is to have a minimum width of 3 metres, unless otherwise agreed to by Council.**
 - b) A Restrictive Covenant, or similar instrument, to provide for the ongoing operation and maintenance of the pumps required for the proposed stormwater infrastructure on site.****
- 37. Prior to the issue of a Construction Certificate, the developer shall pay a long service levy at the prescribed rate to either the Long Service Levy Corporation or Council, for any work costing \$25,000 or more.**

Note - the amount payable is currently based on 0.35% of the cost of work. This is a State Government Levy and is subject to change.

Note – Council can only accept payment of the Long Service Levy as part of the fees for a Construction Certificate application lodged with Council. If the Construction Certificate is to be issued by a Private Certifier, the long service levy must be paid directly to the Long Service Levy Corporation or paid to the Private Certifier.

- 38. The developer shall obtain a *Certificate of Compliance* under the *Water Management Act 2000*, from Council.**

Note – refer to Advisory Notes in relation to payment of contributions to obtain a Certificate of Compliance.

39. In accordance with the provisions of Section 7.12 of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Contributions Plan 2019*, a levy based on the value of works shall be paid to Council in accordance with this condition for the purpose of local infrastructure, prior to issue of a Construction Certificate.

The value of works is to be calculated in accordance with Section 2.9 and the procedure outlined in Section 4.3 of the Plan. A report regarding value of works and any necessary certification is to be submitted to Council. Council will calculate and advise of the levy amount following submission of the documents.

Note – based on the proposed cost of works being \$1,357,000, it is estimated that the contribution amount will be \$13,570.

Note – the contribution amount will be adjusted by the Consumer Price Index, if not paid in the same financial year the development consent was issued.

Note – *Mid-Western Regional Contributions Plan 2019* is available for perusal at Council's Administration Centre at 86 Market Street, Mudgee or on Council's website www.midwestern.nsw.gov.au under Council Documents/Strategies and Plans.

PRIOR TO THE COMMENCEMENT OF WORKS

40. No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- a) the appointment of a Principal Certifying Authority; and
 - b) the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

41. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.
NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE
42. Sediment erosion controls shall be installed within the development site, to the satisfaction of the Certifier (ie. Council or the Principal Certifier), prior to the commencement of works.
43. A sign must be erected in a prominent position on any work site on which the erection or demolition of a building is carried out:
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;

- c) the name, address and telephone number of the principal certifying authority for the work; and
- d) the sign shall be removed when the erection or demolition of the building has been completed.

44. If the work involved in the erection/demolition of the building:

- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- b) building involves the enclosure of a public place; then

A hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

45. The street tree located on Gladstone Street and directly in front of the ingress driveway for the Hotel or Motel Accommodation development is to be removed at the developer's cost, in accordance with the following requirements:

- a) Following removal of the tree, the remaining stump and roots are to be ground down to a depth of no less than 300mm below existing pavement and all pavement material and exposed roots are to be excavated for an area no less than 3 metres x 3 metres and depth of 300mm.
- b) The road pavement is to be replaced by a stabilised base material compacted on layers not greater than 150mm thick and achieve a minimum 98% MDD as defined in AS1289.5.4.1 – 1993. When pavement has been constructed to match existing surface levels and grades, a two-coat bitumen flush seal 14/7mm (double double) is to be applied. Seal must extend no less than 500mm beyond the extent of new pavement to ensure overlap preventing water penetration.

Note – prior to the commencement of the above work, the Developer must obtain separate approval under Section 138 of the *Roads Act 1993*.

- 46. Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to Council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.**
- 47. Prior to the commencement of any construction, appropriate erosion control, dust control and silt collection measures must be put in place. These controls must be to the satisfaction of Council and to relevant engineering standards. Such erosion control, dust control and silt collection measures must remain onsite and be maintained to the satisfaction of Council for the duration of the construction period.**
- 48. Any soil / water retention structures are to be constructed prior to the bulk stripping of topsoil to ensure sediment from the whole site is captured.**

DURING CONSTRUCTION

- 49. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the Plumbing Code of Australia.**

50. All mandatory inspections required by the *Environmental Planning and Assessment Act 1979* and any other inspections deemed necessary by the Principal Certifying Authority are to be notified by the developer (providing no less than 24 hours' notice) and carried out during the relevant stage of construction.
51. Construction work noise that is audible at other premises is to be restricted to the following times:
 - a) Monday to Saturday - 7.00am to 5.00pm
 - b) No construction work noise is permitted on Sundays or Public Holidays.
52. The strength of the concrete used for the reinforced concrete components must be a minimum 25Mpa.
53. The list of measures contained in the schedule attached to the Construction Certificate are required to be installed in the building or on the land to ensure the safety of persons in the event of fire in accordance with Clause 168 of the *Environmental Planning and Assessment Regulation 2000*.
54. All stormwater is to discharge to the street gutter with the use of non-flexible kerb adaptors.
55. The development site is to be managed for the entirety of work in the following manner:
 - a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - b) Appropriate dust control measures;
 - c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained; and
 - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
56. All public footways, foot paving, kerbs, gutters and road pavement damaged during the works are to be restored to match existing conditions at the Developer's/Demolisher's expense.
57. In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.
58. If historical archaeological remains are found during works, works should immediately cease and the Heritage Branch of the OEH should be contacted for further advice, as required under Section 146 of the *Heritage Act 1977*.
59. All construction related traffic shall utilise the existing access to Gladstone Street. No construction traffic is to traverse via Lot 1 SP50014 (ie. 36 Perry Street) to Perry Street to access the site.
60. The developer is to grant unrestricted access to the site at all times to enable inspections or testing of the works.

61. Following completion of any infrastructure works to be vested in Council, work-as-executed plans (WAE) are to be submitted to Council following the completion of the works, one set of Works As Executed Drawings in PDF format, AutoCAD compatible files in DWG format, MapInfo files (MGA GDA94 Zone 55/56) and completed Asset Data Template spreadsheets in MS Excel format, are to be submitted to Council. All Works As Executed plans shall bear the consulting engineer's or consulting surveyor's certification stating that all information shown in the plans are accurate.
62. The footpath and driveway levels are not to be altered outside the property boundary without Council's permission.

PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

63. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.
64. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate in accordance with Clause 153 of the *Environmental Planning and Assessment Regulation 2000* for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the Fire and Rescue NSW and a copy is to be prominently displayed in the building.
65. Prior to the issue of an Occupation Certificate, the following works in relation to access, car parking and associated manoeuvring areas are to be completed:
 - a) Internal car parking spaces and associated manoeuvring areas are to be provided with a sealed concrete or bitumen surface.
 - b) The car parking area must be set out and clearly delineated in accordance with the requirements of AS 2890.1:2004 Parking Facilities Part 1: Off-street Car Parking.
 - c) 'Entry only' and 'exit only' signs are to be placed near each respective access into the development. Signage must be provided in accordance with the standards and requirements set out in *AS 1742.1 – 2014 Manual of uniform traffic control devices Part 1: General introduction and index of signs*.
 - d) A sign is to be located at the internal approach to the exit warning of pedestrians.
 - e) Pavement marking indicating direction of flow is to be provided.
66. Prior to the issue of an Occupation Certificate, all stormwater drainage works must be completed to Council's satisfaction. The proposed stormwater pit must be fitted with dual / redundancy pumps to pump water to the kerb in Gladstone Street.
67. Prior to the issue of an Occupation Certificate, the external finishes of the development must be completed and matching to the approved schedule of external colours and finishes.
68. Prior to the issue of an Occupation Certificate, for any buildings on site, the building is to be connected to reticulated water supply, stormwater and sewerage in accordance with the relevant section 68 approval/s.

OPERATIONAL/ ONGOING CONDITIONS

69. For every 12 month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement certifying that each specified fire safety measure is capable of performing to its specification.
70. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of Fire and Rescue NSW. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
71. All vehicles are required to enter and leave the site in a forward direction, at all times.
72. All line-marking for the on-site car parking spaces and footpath areas are to be maintained in a visible condition, at all times.
73. All loading and unloading in connection with the premises shall be carried out wholly within the site.
74. All car parking spaces, loading and unloading areas, vehicle manoeuvring and driveway areas must not be used for the storage of any goods or materials and must be available for their intended use, at all times.
75. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property or roadways, in accordance with Australian Standard 4282 "Control of the Obtrusive Effects of Outdoor Lighting".
76. Garbage storage areas are to be adequately screened from public view.
77. The development is to be maintained in a clean and tidy manner, at all times.

STATEMENT OF REASONS

1. The proposed development complies with the requirements of the applicable environmental planning instruments and *Mid-Western Regional Development Control Plan 2013*.
2. The proposed development is considered satisfactory in terms of the matters identified in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.
3. The proposed development satisfactorily addresses the issues raised in objections received in response to public notification of the development, as follows:
 - a) Suitable conditions are imposed requiring fencing along the eastern boundary.
 - b) The proposed development will not have an adverse impact on the retaining wall along the western boundary.
 - c) It is considered that the fence on the western boundary is in reasonable condition and does not require replacement.

OTHER APPROVALS

Not applicable.

ADVISORY NOTES

1. The removal of trees within any road reserve requires the separate approval of Council in accordance with the policy "Tree Removal and Pruning - Public Places".
2. The land upon which the subject building is to be constructed may be affected by restrictive covenants. This approval is issued without enquiry by Council as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this approval. Persons to whom this approval is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.
3. Division 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) gives you the ability to seek a review of the determination. This request is made to Council and must be made within 6 months after the date on which you receive this notice. The request must be made in writing and lodged with the required fee; please contact Council's Development Department for more information or advice.
4. If you are dissatisfied with this decision section 8.7 of the EP&A Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.
5. To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.
6. This development consent requires a Certificate of Compliance under the *Water Management Act 2000* to be obtained prior to the issue of a Construction Certificate.

A person may apply to Mid-Western Regional Council, as the water supply authority, for a Certificate of Compliance pursuant to section 305 of the *Water Management Act 2000*.

Please be advised that as a precondition to the granting of a Compliance Certificate, either of the following is to occur:

- a) A monetary contribution in accordance with the following Schedule of Contributions must be paid in full (including indexation, where applicable); or

Section 64 Contributions			
Hotel or Motel Accommodation (credit for existing development)			
	<i>ET</i>	<i>Value/ET</i>	<i>12 Hotel Units</i>
Water Headworks	0.1	\$8,689.00	\$868.90
Sewer Headworks	0.125	\$3,967.00	\$495.88
Total Headworks			\$1,364.78

- b) The adjustment of existing services or installation of new services and meters, as required, in compliance with *Australian Standard 3500: National Plumbing and Drainage Code*. All costs associated with this work shall be borne by the Developer.

Note - Section 64 Developer Contributions are subject to Consumer Price Index increase at 1 July each year. Please contact Council's Planning and Development Department regarding any adjustments.

Essential Energy

7. Prior to any demolition works commencing, any service line/s to the property must be disconnected.
8. The Applicant will need to engage the services of an Accredited Service Provider to ensure adequate provision of power is available for the Hotel or Motel Accommodation in accordance with NSW Service and Installation Rules. The Applicant's Level 2 Electrician will be able to advise on these requirements. Further, any work to the existing service line to the property will need to be completed by a suitably qualified Level 2 Accredited Service Provider (Electrician) to comply with the NSW Service and Installation Rules.
9. Essential Energy's records indicate there is electricity infrastructure located within the property and within close proximity to the property. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as *ISSC 20 Guideline for the Management of Activities with Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.
10. Prior to carrying out 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)*.
11. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around power lines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice – Work near Overhead Power Line* and *Code of Practice – Work near Underground Assets*.

Executive summary

OWNER/S	Woolpack Mudgee Hotel Pty Ltd
APPLICANT:	Mr Jamie Fitzgerald
PROPERTY DESCRIPTION	38 Perry Street and 82 Gladstone Street, Mudgee (Lots 1 & 2 DP730123)
PROPOSED DEVELOPMENT	Hotel or Motel Accommodation
ESTIMATED COST OF DEVELOPMENT:	\$1,357,000
REASON FOR REPORTING TO COUNCIL:	Development is on land owned by a Councillor
PUBLIC SUBMISSIONS:	Two

Council is in receipt of Development Application DA0203/2021 that seeks approval for Hotel or Motel Accommodation, located at 38 Perry Street and 82 Gladstone Street, Mudgee (Lots 1 & 2 DP730123), received by Council on 23 December 2021.

The application has been placed on public exhibition in accordance with Council's *Community Participation Plan 2019*. The exhibition period ended on 5 February 2021 and two (2) submissions were received.

As the proposal involves land that is owned by a Councillor, the application cannot be determined by delegated staff – Council is required to determine the application.

The application is recommended for approval.

Background

SUBJECT SITE

The subject site is located at the corner of Perry Street and Gladstone Street in Mudgee. The site comprises two lots with a combined area of 3,189 m². The Paragon Hotel occupies the south-east corner of Lot 2 DP730123. The Paragon Hotel is listed as a local heritage item. At the rear of Lot 2 are 12 dongas used for short term accommodation. There is an existing dwelling located on Lot 1 DP730123. This dwelling will be incorporated into the proposed Hotel or Motel Accommodation development.

The site is located on the boundary of a commercial and residential zone (Figure 1). Part of the site is zoned R3 Medium Density Residential and part of the site is zoned B3 Commercial Core. Development to the north, west and south of the site is generally used for residential purposes. Kanandah Retirement Village is located to the north-west of the site. Mudgee Soldiers Club is located to the north-east of the subject site. The uses to the east of the site are predominantly commercial.



Figure 1: Subject site

PROPOSED DEVELOPMENT

The proposed development involves:

- Demolition of the existing dongas (12 rooms) located to the rear of the site;
- Removal of existing vegetation, consisting of small trees, shrubs and grasslands;
- Demolition of the existing garage on Lot 1;
- Construction of 11 hotel rooms, comprising nine (9) one-bedroom apartments and two (2) two-bedroom apartments. The hotel rooms are designed similar to row or terrace housing. The hotel rooms will be constructed using concrete floor slabs, rendered brick walls and Colorbond roof sheeting. Each hotel room will have landscaping within the front courtyard;
- Refurbishment of the existing dwelling to a three-bedroom hotel suite;
- Reception for the proposed Hotel or Motel Accommodation shall be managed by the Paragon Hotel staff. Prospective guests will pick up keys from the Paragon Hotel and arrange check-in/departure with the Hotel facility. Cleaners currently employed by the Paragon Hotel will also service the rooms;
- Provision of 12 on-site parking spaces, two (2) of which will be dedicated as disabled spaces, along with asphaltic concrete manoeuvring areas with a turning bay at the northern end;
- Construction of a 9 metre wide concrete access driveway from Gladstone Street to act as the vehicle entry into the hotel development;
- Upgrading the existing 5.2 metre wide access from Gladstone Street to function as a vehicle exit for the proposed hotel development;
- Provision of landscaping throughout the new development. A landscaping plan will be submitted to Council for approval prior to the issue of a Construction Certificate;
- The existing sewer line traversing through the site shall be re-routed to suit the proposed development;
- Stormwater shall be managed via a proposed pump out pit and rising main that will be directed to Gladstone Street;
- Provision of fencing throughout to suit the site development; and
- Consolidation of lots.

It is noted that the consolidation of lots is required to enable construction of the row of 11 hotel rooms, which traverse the existing boundary. A condition requiring consolidation of the lots prior to issue of the Construction Certificate is included in the recommendation.

The proposed development has been assessed in accordance with *Mid-Western Regional Development Control Plan 2013* and *Mid-Western Regional Local Environmental Plan 2012*. The proposed development is considered generally consistent with Council's planning controls.

Disclosure of Interest

Nil.

Detailed report

LEGISLATIVE REQUIREMENTS

Environmental Planning and Assessment Act 1979 (EP&A Act)

Designated Development

The proposed development is not identified as designated development, in accordance with Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regs).

Integrated Development

The development proposal is not considered to be Integrated Development, in accordance with section 4.46 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Biodiversity Conservation Act 2016

The proposed development involves clearing of a small group of trees located near the eastern boundary and centre of the property. The area of these trees is 200m². The area clearing threshold is 2,500 m² or more. No part of the site is marked as having biodiversity values on the Biodiversity Values Map. Consequently, the need for a Biodiversity Development Assessment Report is not triggered by this application.

SECTION 4.15(1) – MATTERS FOR CONSIDERATION – GENERAL

The application has been assessed in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. The main issues are addressed below as follows.

(a) Provisions of any Environmental Planning Instrument and any draft EPI – 4.15(1)(a)(i) and (ii)

State Environmental Planning Policy No 55 – Remediation of Land

A review of Council's records and site inspection did not reveal any evidence of a potentially contaminating activity. Accordingly, no further consideration is necessary.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 – Electricity transmission network

The proposed development involves works carried out within 5m of an exposed electricity line and triggers this clause. This clause requires that the application be referred to Essential Energy and Council to take into consideration any comments made by Essential Energy. Essential Energy provided the following comments in relation to the proposed development:

Strictly based on the documents submitted, Essential Energy has no comments to make as to potential safety risks arising from the proposed development.

Essential Energy has also provided general comments. The relevant general comments have been incorporated into the Advisory Notes section of the recommendation.

Other Clauses

Not applicable.

It is noted that the proposed development:

- Is not located near a rail line or classified road; and
- Will not trigger the Traffic Generating Development thresholds.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The need for a BASIX certificate is applicable to Building Code of Australia (BCA) Class 1 and 2 developments. The proposed Hotel or Motel Accommodation is Class 3 in accordance with the BCA. Accordingly, BASIX certificates are not required for the proposed development.

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

This Policy was gazetted on 25 August 2017 and has been considered in the assessment of the subject application.

Authority to clear vegetation under this Policy is not required. The vegetation to be removed is not declared by a Development Control Plan to be vegetation that Part 3 applies, and the vegetation to be removed does not exceed the biodiversity scheme thresholds.

Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012)

The following clauses of the MWRLEP 2012 have been assessed as being relevant and matters for consideration in the assessment of the Development Application.

1.2 Aims of Plan

The proposed development is not contrary to the relevant aims and objectives of the plan.

1.4 Definitions

The proposal is defined in accordance with the MWRLEP 2012 as a:

Hotel or motel accommodation means a building or place (whether or not a licensed premises under the *Liquor Act 2007*) that provides temporary short-term accommodation on a commercial basis and that-

- (a) Comprises rooms or self-contained suites, and
- (b) May provide meals to guests or the general public and facilities for parking of guests' vehicles,

But does not include backpacker's accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

2.2 Zoning of Land to Which Plan Applies

The land is zoned B3 – Commercial Core and R3 – Medium Density Residential and is therefore subject to the Plan.

2.3 Zone objectives and Land Use Table

Part of the site is zoned B3 – Commercial Core. Hotel or Motel Accommodation is permissible with the consent of Council in Zone B3. The remainder of the site is zoned R3 – Medium Density Residential. Hotel or Motel Accommodation is prohibited in Zone R3. The majority of the proposed Hotel development is located on that part of the site zoned R3. Regardless, Clause 5.3 of MWRLEP 2012 allows Council to consider uses that are permissible in an adjacent zone, where the development occurs within 50m of the zone boundary.

The objectives of Zone B3 Commercial Core, along with a comment demonstrating how the proposal satisfies these objectives, is provided below:

1. *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

Comment: The proposal contributes to the range of land uses available within the downtown area.

2. *To encourage appropriate employment opportunities on accessible locations.*

Comment: The proposal will provide for additional employment opportunities in the downtown area.

3. *To maximise public transport patronage and encourage walking and cycling.*

Comment: The proposal adds to the consolidation of commercial enterprises in the downtown area, which is expected to encourage walking and cycling and the use of public transport to a central location.

4. *To promote the central business district of Mudgee as the major focus for retail and commercial activity in Mid-Western Region.*

Comment: The proposal will contribute to the central business district of Mudgee as the major focus for commercial activity.

5. *To consolidate business development in the Mudgee town centre and avoid unnecessary or inappropriate expansion of business-related land uses into surrounding residential neighbourhoods.*

Comment: The proposal will contribute to the central business district of Mudgee as the major focus for commercial activity.

6. *To ensure that new development is compatible with the historic architectural character and streetscapes of the Mudgee commercial core area.*

Comment: The proposed development will contribute positively to the heritage streetscape in the immediate vicinity. Refer to comments under clause 5.10 below.

7. *To ensure that the form and layout of new development is designed to encourage the free pedestrian movement and connectivity within the commercial core.*

Comment: The proposal provides for the continued free pedestrian movement throughout the CBD.

The objectives of Zone R3 Medium Density Residential, along with a comment demonstrating how the proposal satisfies these objectives, is provided below:

1. *To provide for the housing needs of the community within a medium density residential environment.*

Comment: It is considered that the proposed development is not inconsistent or incompatible with housing development within the neighbourhood.

2. *To provide a variety of housing types within a medium density residential environment.*

Comment: It is considered that the proposed development is not incompatible with the provisioning of a variety of housing types in the neighbourhood, appearing as single

storey terrace houses, located behind existing development – not readily visible from the street.

3. *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: The proposal is not expected to hinder other possible permissible land uses within the immediate area.

4. *To encourage higher-density residential development that is sympathetic to and compatible with the existing character of the Mudgee Heritage Conservation Area.*

Comment: The proposed development is not inconsistent with this objective as it is compatible with the existing character of the Mudgee Heritage Conservation Area.

2.7 Demolition requires development consent

In satisfaction of this clause, the development application seeks approval for the demolition of the existing dongas and the garage near the existing dwelling.

4.3 Height of buildings

The subject site is mapped for a maximum height limit of 8.5m above existing ground level. The development is proposed at a height of 5.445m and therefore complies.

4.6 Exceptions to development standards

Not applicable.

5.3 Development near zone boundaries

The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone. By subclause (2), the clause applies to so much of any land that is within the relevant distance of a boundary between any two zones, the relevant distance being 50m.

In this instance the proposed Hotel or Motel Accommodation development is located in the R3 zone and is prohibited. However, the location of the development is wholly within 50m of the zone boundary with the adjacent B3 zone and therefore can be considered under this clause.

Clause 5.3(4) prescribes a pre-condition to Council exercising its power to grant development consent. Council must be satisfied that:

- (a) *The development is not inconsistent with the objectives of the development in both zones, and*
- (b) *The carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of the land.*

Both (a) and (b) must be satisfied.

In considering (a) it is considered that the term 'not inconsistent with' should be given a similar interpretation to the phrase "consistent with". The phrase "consistent with" has generally been

interpreted by the Court as meaning not antipathetic, nor incompatible or inconsistent with (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21 ('Schaffer') and Hospital Action Group Association Inc v Hastings Municipal Council (1993) 80 LGRA 190).

As such, for Council to be satisfied that the development is not inconsistent with the zone objectives, it is not necessary for the Applicant to demonstrate that the development promotes or is ancillary to the objectives of both zones, nor even that it is compatible: Schaffer.

When applying the test of compatibility, on balance, it is considered that the development is not inconsistent with the zone objectives, which generally indicate the need for residential development in a medium density environment. While the Development may not meet or promote the R3 Medium Density zone objectives, this is not the test. It is not antipathetic to the zone objectives.

In considering (b) it is considered that the proposed Hotel or Motel Accommodation is compatible with the neighbouring residential uses and fits in as an appropriate side business to the Paragon Hotel. The infrastructure within the neighbourhood has the capacity to accommodate the proposed development. It is considered that the proposed development is an efficient and timely development of the land to the rear of the Paragon Hotel. There are serviced apartments and Hotel or Motel Accommodation developments within close proximity to the site.

Following on from the above, considering the zone objectives, the objectives of this clause and the general expected impact of the proposal it is considered warranted to allow the permissibility of the Hotel or Motel Accommodation utilising clause 5.3.

5.10 Heritage Conservation

Clause 5.10(2) requires development consent for:

- Demolishing a building within the heritage conservation area; and
- Erecting a building on land within the heritage conservation area.

Clause 5.10(4) requires the consent authority to consider the effect of the proposed development on the heritage significance of the item or area concerned.

Demolition

The proposal involves the demolition of a modern garage at 82 Gladstone Street, associated with the existing dwelling and the removal of 12 dongas from the rear of the site.

The garage and the dongas do not contribute to the heritage significance of the Paragon Hotel, and there is no objection to their removal.

Hotel or Motel Accommodation

Council's Heritage Advisor provided the following comments in relation to the proposed Hotel or Motel Accommodation development:

The alterations to the house are acceptable, as is its use as part of the complex.

The new building is located away from the hotel, is of one storey, is well articulated and well proportioned, and is broadly acceptable. The main concern is the use of traditional details on a 21st century building: an approach that can be termed "mock replication." The result is that either the detailing looks incongruous or that it is confusing, or could be in the future when the age of the land and new building could be uncertain. The arches over the doors and windows work well visually and may be retained but other details need to be simplified.

... It is recommended that the drawings also be revised as follows:

1. *The decorative barge boards and fascias should be changed to simple rectangular section boards.*
2. *The doors, windows and associated joinery should be timber, but simply detailed.*
3. *The metal fence should be simply detailed without traditional cast spearpoints. Details at a scale of 1:5 or larger should be included.*
4. *A schedule of external colours and finishes should be submitted, noting that "Windspray" is the preferred colour for the corrugated steel roofing. The schedule should include work proposed on the existing house.*

Council's Heritage Advisor is satisfied that the general form of the Hotel or Motel Accommodation development is compatible with the character of the Heritage Conservation Area, subject to further details (outlined above) being approved by Council prior to the issue of a Construction Certificate. These matters have been addressed by conditions.

Removal of Street Tree

There is an existing street tree located in front of the existing driveway for the existing dwelling facing Gladstone Street. This tree is the same species as the other street trees in the near vicinity and forms one tree in a line of street trees along the street. The tree is an important part of the streetscape in the Heritage Conservation Area. However, the tree is located in an impractical location directly in front of an existing double driveway. The tree removal is required to mitigate against traffic safety issues resulting from the proposed Hotel or Motel Accommodation development.

This matter has been discussed with Council's Parks Technical Officer who concedes that while the tree forms an important part of the streetscape, it is not practical to retain the tree in this location. A condition will be included in the recommendation to address removal of the street tree to ensure appropriate rectification works to the road pavement are undertaken.

It is considered that the effect of the proposed development on the adjoining heritage item and heritage conservation area is satisfactory.

6.1 Salinity

The proposal only involves minimal earthworks and is not expected to significantly increase the process of salinisation.

Additionally, as the proposal involves a concrete slab, a condition of consent has been included requiring the slab to be designed appropriately to minimise the impacts of salts in the ground on the building.

6.3 Earthworks

The proposal involves only minor earthworks to prepare the site for the development. The works are not expected to generate any significant impacts as listed in Clause 6.3(3). Conditions of consent have been included to ensure any earthworks related to activities are carried out appropriately and minimise impacts upon neighbouring properties.

6.4 Groundwater Vulnerability

The site is identified as groundwater vulnerable in accordance with Council's mapping. No broad excavation is needed to facilitate the proposal and no significant impacts upon those matters contained within clause 6.4(3) is expected as a result of the proposed development. Given the

extent of excavation, it is considered that the development would not cause groundwater contamination, adversely affect any groundwater dependent ecosystems, will not cumulatively impact potable water supply, and therefore no special measures, or conditions of consent would be considered necessary.

6.8 Airspace operations – Mudgee Airport

The proposal will not penetrate the relevant height limits for safe operation of the Mudgee Airport.

6.9 Essential Services

All essential services that are relevant to the proposal are available or will be available as a result of the proposed development, subject to appropriate conditions.

Draft Environmental Planning Instruments

No draft Environmental Planning Instruments apply to the land to which the Development Application relates.

(b) The provisions of any Development Control Plan or Council Policy – 4.15(1)(a)(iii)

Mid-Western Regional Development Control Plan 2013 (the DCP)

Part 4.5 Commercial Development

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Building setbacks	
Building setback from the street – no minimum	Yes. The proposed Hotel or Motel Accommodation is set well back from the street.
Side and rear setbacks must comply with BCA	Yes. The proposed Units 1 to 11 are set back 1.031m from the boundary, in compliance with BCA requirements.
Signage	
Signage complies with relevant provisions in section 4.4 DCP 2013	Not applicable.
Design	
Buildings interact with the street	Not applicable. New building located within rear part of site. No changes to the façade of the existing dwelling or pub.
On active street frontages, ground level of building used for business or retail premises	Not applicable.
Building facades are articulated by use of colour, arrangement of elements, or varying materials	Yes.
Heritage inclusions	Yes. Heritage impact assessment provided.
External plant to be screened from public	Yes. Condition of consent.

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Development on a corner – includes architectural features to address both streets	Not applicable.
Landscape buffers to other zones	Landscaping provided.
Scale form and height	
Complies with LEP height controls – 8.5m maximum height	Yes. Proposed height of 5.445m.
Consistent with existing heritage character of the town centres of Gulgong, Mudgee and Rylstone	Yes.
Mortimer and Church Street, Mudgee	
Maintain the streetscape established in Church Street between Market and Mortimer Streets: – Zero front and side setbacks – Double storey pattern	Not applicable.
Provides variance particularly on upper floor levels, every 20-25m	Not applicable.
Articulation and Façade Composition	
Breaks visual bulk with fenestration or change in materials etc	Extensive fenestration provided.
No excessive blank walls in front façade	Yes.
Where blank walls are proposed (side or rear), minimise impacts with landscaping, patterning of façade, signage, public art	Not applicable.
Residential–Commercial interface	
Landscape buffer to residential boundaries	Landscaping and fencing provided to boundary of adjoining residences.
Ground and first floor do not overlook residential properties	Yes.
Maintain acoustic privacy through the use of acoustic fencing where vehicle movements adjoin property boundaries	Noise report states that no noise attenuation measures are required.
Reduce visual bulk by locating buildings and structures away from residential boundaries, or where buildings are located along residential boundaries ensure sufficient landscaping is provided	Yes. Sufficient separation to the adjacent residence.
Development does not reduce sunlight available to north facing windows of living areas, private open space or clothes drying areas of adjoining properties to less than 3 hours between 9am and 3pm at winter solstice	Yes.
Utilities and Services	
Building and structures located clear of infrastructure	Generally yes. Deferred commencement conditions recommended to address the design of the sewer main extension and buildings.
Able to be serviced by water, sewer and waste disposal	Yes.
Trade waste application required?	Not applicable.
Traffic and Access	
All vehicles must be able to enter and exit the site in a forward direction	Yes.
All vehicle movement paths are sealed	Yes. Condition.
Driveways comply with Australian Standard AS2890.1 Parking Facilities	Yes.
All loading facilities located within the site	Yes.

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
All loading facilities designed to comply with Australian Standards	Yes.
Application addresses traffic flow and safety issues, e.g. pedestrian, car and truck movements	Yes.
Pedestrian Access	
Maintain existing covered pedestrian access within town centres	Not applicable.
Convenient and safe access through parking areas	Yes.
Convenient and safe disabled access through parking areas, focus on improving existing retail links with	Access to disabled parking spaces is considered to be safe.
Parking	
Discussed elsewhere in report	Yes.
Landscaping	
Landscaped areas in car parks should be provided incorporating the use of canopy trees and buffer planting to residential boundaries	Landscape areas shown on site plan. Condition for landscaping plan.
Landscaping to comprise low maintenance, drought and frost resistant species	Can be conditioned.

Part 4.7 Tree Preservation Order

The trees on the site are not listed in the tree register included in this chapter. The consent of Council is not required, under the DCP, to remove any trees not identified in the register.

Part 5.1 Car Parking

The DCP car parking rate for Hotel and Motel Accommodation is 1 space per unit, plus 2 spaces per 3 employees. Calculation of car parking is provided in the table below.

Use	Provision	Measure/Gross	PARKING
Rooms	1 space / 1 room	12 rooms	12
Staff	2 spaces / 3 staff	3 staff * assumed	2
		TOTAL	14

Table 1: DCP Parking Provision Calculation

The applicant, in compliance with the DCP, has provided a total of 14 spaces, comprising 12 spaces on-site, and is allocated 2 frontage credits directly out the front of 82 Gladstone Street – for staff, in accordance with the DCP.

Notwithstanding compliance with the DCP, the applicant has indicated that cleaning staff will arrive after check-out and before check-in times and can therefore utilise the unit's vacant space for the short-term period of stay – and will unlikely need to use the street frontage credits.

In considering car parking, it is important to note, there are 12 dongas used for short-term accommodation to be demolished as part of the proposed development. These dongas were approved under Development Consent DA0066/2014. The approved plans indicated the provision of 12 car parking spaces for the dongas (no parking available/ or dedicated to the Pub). The proposed Hotel or Motel Accommodation development will replace the existing development, with the same number of accommodation units, and the same number of on-site car parking spaces, resulting in essentially the same amount of traffic loadings/movements, as existing/approved.

In relation to the Pub, there is no specific car parking rate for pubs in the DCP. Where the pub is located within the B3 Commercial Core zone, a car parking study is required. A Traffic and Parking Assessment Report (the Report) was submitted with the application, to ensure adequate car parking is available. The Report describes car parking surveys that were conducted between 5pm and 9pm on a Friday and Saturday in November 2020. The car parking survey counted the number of car parking spaces that were used on the subject site and also on-street parking spaces within 200m of the subject site.

The Report provided a count of on-street parking spaces available within 200m of the site (ie within one block from the site) and demonstrated that there is ample on-street parking to accommodate the peak usage periods of the Pub. More specifically, it was shown that there are approximately 180 to 185 spare on-street parking spaces, after parking has been taken up by the Pub patrons and other uses in the vicinity.

As demonstrated by the Report, it is considered that there is ample on-street parking spaces to cater for the needs of the existing Pub and on-site spaces for the proposed Hotel or Motel Accommodation development are in accordance with Councils DCP. Accordingly, car-parking provisioning is considered acceptable.

Part 5.3 Stormwater Management

A Stormwater Concept Plan has been provided with the application. Stormwater is proposed to be directed to a pump out pit located in the northern part of the site to be pumped out to Gladstone Street. The application demonstrates that stormwater may be appropriately managed, in accordance with the requirements of this section of the DCP. Conditions have been imposed requiring the submission and approval of a detailed stormwater management plan. The proposed pump-out arrangement has been supported by Council's Development Engineer.

Part 5.4 Environmental Controls

The considerations listed in this part are not applicable to the proposed development.

(c) Provisions of any Planning Agreement or Draft Planning Agreement – 4.15(1)(a)(iia)

No planning agreement applicable.

(d) Regulations – 4.15(1)(a)(iv)

No matters prescribed by the Regulations impact determination of the Development Application.

(e) The likely impacts of development – 4.15(1)(b)

Context and Setting & Site Design and Internal Design

The proposal is appropriate with regards to the surrounding context and setting.

Access, transport and traffic

Traffic generation from the development is not expected to have an adverse impact on peak hour traffic or the functioning, capacity and safety of intersections in the local road networks.

The proposed accesses into the site appear to comply with the relevant Australian Standards and will cater for the size of vehicles expected to use the site.

There are a sufficient number of off-street parking spaces to service the needs of the proposed Hotel or Motel Accommodation. There are a sufficient number of on-street parking spaces to service the needs of the existing Pub.

Utilities

The proposed development is to be constructed in a built-up area and will have access to water, reticulated sewerage, electricity and stormwater infrastructure available to the site.

Heritage

The site is located in a heritage conservation area and the Paragon Hotel is listed as a heritage item. The demolition of an existing garage and the dongas to the rear of the site will have no impact on the significance of the heritage conservation area. The proposed Hotel or Motel Accommodation units are generally compatible with the heritage conservation area and Paragon Hotel. Further details, such as a schedule of external colours and finishes, will be approved as part of a Construction Certificate application.

Council's Heritage Advisor has advised:

The site has not been assessed as having archaeological potential requiring an excavation permit. However, it is a requirement under s.146 of the *Heritage Act 1977* that if any relics are encountered during excavation, the Heritage Council must be notified. A reminder to this effect should be included in the conditions.

A condition addressing this matter is included in the recommendation.

Other land resources

No impact expected on the conserving and the use of valuable land, such as productive agricultural land, mineral or extractive resources, or water supply catchments.

Water

The proposal is not expected to create any water pollution issues, subject to a condition for sediment erosion controls during construction.

Soils

No significant impact expected. The land is not known to be affected by subsidence, slip or mass movement, or contamination. The proposal will not result in significant soil erosion or degradation.

Air and Microclimate

The development is not expected to impact air quality or microclimatic conditions.

Flora and Fauna

There are no significant impacts associated with the removal of trees on the site and one street tree.

Waste

Waste service available.

Energy

Electricity is to be connected to the proposed hotel development. The energy needs of the development is not expected to place significant demands on the local infrastructure capacity/operation.

Noise and vibration.

The proposal is not a use that will generate significant noise, except for a limited duration over the construction phase.

A noise assessment report was submitted with the application. The noise assessment examined the noise impacts from the Paragon Hotel to the proposed hotel units and from the hotel units to nearby residential receivers. The conclusion of the Noise Assessment Report includes the following:

The results of the assessment demonstrate that noise emissions from the project to the nearby sensitive receivers are predicted to achieve the relevant NPI criteria for all assessment periods at each assessed receiver location.

An assessment of maximum noise levels demonstrated that noise emissions from the proposal are predicted to remain below the EPA trigger levels for sleep disturbance at all receiver locations.

The results of the noise intrusion assessment to the proposed serviced apartments from the Paragon Hotel demonstrates that internal noise levels are predicted to achieve the recommended design noise levels within each of the units.

Based on the noise assessment results, there are no noise related issues which would prevent the approval of the project. The results of the assessment show compliance with the relevant operational criteria and internal design noise levels without ameliorative measures being required.

Natural Hazards

The development site is not identified as bushfire prone or flood prone and there are no known subsidence, slip or mass movement issues.

Technological Hazards

The development site is not identified as bushfire prone or flood prone and there are no known subsidence, slip or mass movement issues.

Safety, security and crime prevention

Increased passive surveillance as a result of the proposed development.

Economic and Social impact in the locality

Generally positive.

Construction

The impacts of construction activities may be regulated by conditions.

Cumulative impacts

Nil. There are no known impacts that have the potential to act in unison, in terms of space or time, or owing to their repetitive nature, that would produce an effect greater or different than the sum of the separate parts.

(f) The Suitability of the Site for the Development – 4.15(1)(c)

Does the proposal fit in the locality?

Yes. There are no hazardous land uses or activities nearby, there are no constraints posed by adjacent development and there are adequate utilities and transport facilities in the area available for the development.

Are the site attributes conducive to development?

Yes. The site is not subjected to any natural hazards, and the project will not impact any critical habitat, threatened species, populations, ecological communities or endangered habitats on the site.

(g) Submissions made in accordance with Act or Regulations – 4.15(1)(d)

Public submissions

The application was advertised and notified in accordance with the provisions of *Mid-Western Regional Community Participation Plan 2019*. The submission period ended on 5 February 2021. Two (2) submissions were received.

The issues raised in the submissions are summarised and addressed as follows:

Fencing adjacent to residential unit development to the east

Comment: The submission requests that a 1.8 metre high timber fence be erected along the eastern boundary of the subject site and that this fence be erected prior to the commencement of construction works. No access is to be available from Perry Street as they do not want passing traffic affecting the adjoining residential units. No pedestrian gate should be provided in the fence. A condition may be applied requiring the provision of a 1.8 metre high timber fence along the eastern boundary. This will not affect the proposed vehicle movement through the proposed development.

Impact on retaining wall along the western boundary of the site

Comment: The submission from the adjoining aged care facility requests that Council consider the impacts of the proposed development on the retaining wall near the western boundary of the site. The proposed development will appropriately manage stormwater and direct stormwater discharge to Gladstone Street – thereby minimising any stormwater impacts on the existing retaining wall. In relation to the structural loads on the retaining wall, a condition may be applied requiring engineering design of the footing of the main hotel building to be submitted to and approved by Council, prior to the issue of a Construction Certificate.

Replacement of fence along western boundary

Comment: The submission requests that replacement of the fence along the western boundary be considered. A site inspection of the property revealed that the existing Colorbond fence is in reasonable condition and is of an adequate height to preserve the privacy of development on either side of the fence. Accordingly, it is considered unreasonable to mandate the replacement of the fence.

The applicant lodged amended plans/details during the assessment process. However, the changes were not considered significant enough with regards to implications on adjoining neighbours and re-notification of the proposal was not considered necessary.

(h) The Public Interest – 4.15(1)(e)

Federal, State and local government interests and community interests

There are no matters that would be considered to be contrary to the public interest.

CONSULTATIONS

Development Engineer

Council's Development Engineer has provided conditions to address the detailed engineering matters. These conditions are incorporated in the recommendation.

Council's Development Engineer has raised concerns with the minimum information provided in relation to the design of the sewer and recommends that a deferred commencement consent be issued.

Health and Building Surveyor

Council's Health and Building Surveyor has not raised any concerns with the proposal, subject to standard conditions.

Heritage Advisor

Council's Heritage Advisor has provided comments to the effect that in general, the heritage impact of the proposal is acceptable. Conditions are recommended to address detailed heritage matters.

DEVELOPER CONTRIBUTIONS

Section 7.12 Contributions

Pursuant to the *Mid-Western Regional Contributions Plan 2019*, the development is proposing Hotel or Motel Accommodation and has a proposed cost of development of \$1,357,000. The Section 7.12 contribution payable is 1.0% of the cost of development (ie. \$13,570). A condition will be applied requiring the payment of the relevant contribution.

Section 64 Contributions – Water and Sewer Headworks

In accordance with the Developer Servicing Plans for Water and Sewer (August 2008), the proposed development will require the payment of headworks charges for water and sewer. An advisory note will be applied identifying the amount of these headworks charges. Council's Senior Water and Sewer Engineer has calculated the applicable developer charges and applied credits for the existing approved development on site.

Community Plan implications

Theme	Protecting Our Natural Environment
Goal	Protect and enhance our natural environment
Strategy	Ensure land use planning and management enhances and protects biodiversity and natural heritage

Strategic implications

Council Strategies

Mid-Western Regional Local Environmental Plan 2012
Mid-Western Regional Development Control Plan 2013
Mid-Western Regional Development Servicing Plan
Mid-Western Regional Contributions Plan 2019
Mid-Western Community Participation Plan 2019

Council Policies

Not applicable.

Legislation

Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2000

Financial implications

Section 7.12 developer contributions will be collected in accordance with the *Mid-Western Regional Contributions Plan 2019*.

Associated Risks

Should Council refuse the development application, the applicant may seek a further review of this decision or appeal through the Land & Environment Court.

ILIJA SUSNJA
PLANNING COORDINATOR

LINDSAY DUNSTAN
MANAGER, PLANNING

30 March 2021

- Attachments:*
1. Architectural Plans. (separately attached)
 2. DA0203-2021 Photo of Street Tree. (separately attached)
 3. DA0203-2021 Submission 1. (separately attached)
 4. DA0203-2021 Submission 2. (separately attached)
 5. 200553.01FC - Traffic and Parking Impact Assessment - February 2021. (separately attached)
 6. MAC201164-01RP1V1 - Noise report. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER