

October 2022



Statement of Environmental Effects

252 Henry Lawson Drive Bombira – Proposed Residence



REFERENCE	21-882
TITLE	Statement of Environmental Effects
SUBTITLE	252 Henry Lawson Drive Bombira – Proposed Residence
PREPARED BY	O’Ryan Geospatial Pty Ltd
LANDHOLDER/S	Andrew & Gemma Denniss
APPLICANT	Andrew Denniss
SITE ADDRESS	252 Henry Lawson Drive Bombira NSW 2850
LOT/SECTION/DP	Lot 1/-/DP1166658

VERSION	COMMENT	DATE
1.0	Draft for Client Review	13/10/2022

DISCLAIMER

O’Ryan Geospatial (O’Ryan), is responsible for the preparation, contents and information provided within this report and declare that there is no current benefit nor expect to have a beneficial interest in the study area of this project and will not benefit from any of the recommendations outlined in this report.

The preparation of this report has been in accordance with the project brief provided by the client and has relied upon the information, data and results provided or collected from the sources and under the conditions outlined in the report.

O’Ryan accepts no liability for the accuracy or completeness of the data and information provided to it by, or obtained by it, from any third parties, even if that data has been incorporated into or relied upon for generating this report.

This report has been produced by O’Ryan using information that is available to the client as at the date stated within this report and cannot be relied upon in any way if situations at the subject site changes. O’Ryan is under no obligation to update the information contained within the report at any time.

This report has been prepared on behalf of and for the exclusive use of the O’Ryan client and is subject to and issued in connection with the provisions of the agreement between O’Ryan and its client. All information contained within this report are prepared for the exclusive use of the client to accompany this report for the land described herein and are not to be used for any other purpose or by any other person or entity. No reliance should be placed on the information contained in this report for any purposes apart from those stated therein. O’Ryan accepts no responsibility for any loss, damage suffered or inconveniences arising from, any person or entity using the plans or information in this study for purposes other than those stated above.

TABLE OF CONTENTS

1 INTRODUCTION..... 5

1.1 GENERAL 5

1.2 SITE ANALYSIS AND CONTEXT 5

 1.2.1 Site Identification 5

 1.2.2 Site Description 6

 1.2.3 Surrounding Development..... 8

1.3 LANDUSE 8

2 PROPOSED DEVELOPMENT 9

2.1 DWELLING 9

2.2 SHED 10

2.3 STORAGE AREA / STAFF AMENITIES 10

2.4 SERVICES AND EASEMENTS 12

 2.4.1 Easements and Restrictions..... 12

 2.4.2 Sewer and Water..... 12

 2.4.3 Electricity..... 12

 2.4.4 Telecommunications 13

 2.4.5 Access..... 13

 2.4.6 Stormwater 13

 2.4.7 Firefighting 13

3 EP&A ACT PART 4.15 (A) – STATUTORY 14

3.1 PART 1.7 – APPLICATION OF BC ACT AND FM ACT 14

3.2 DESIGNATED DEVELOPMENT 15

3.3 PART 4.46 INTEGRATED DEVELOPMENT 15

3.4 STATE ENVIRONMENTAL PLANNING POLICIES (SEPP)..... 16

3.5 LOCAL ENVIRONMENTAL PLAN (LEP) 17

 3.5.1 Zoning and Permissibility 18

 3.5.2 Dwelling Entitlement..... 19

 3.5.3 Heritage Conservation..... 22

 3.5.4 Flood planning..... 22

 3.5.5 Salinity..... 22

 3.5.6 Earthworks 22

 3.5.7 Groundwater vulnerability..... 22

 3.5.8 Terrestrial Biodiversity..... 22

 3.5.9 Essential services..... 22

 3.5.10 Visually Sensitive Land Near Mudgee 23

3.6 PROPOSED INSTRUMENTS..... 23

3.7 DEVELOPMENT CONTROL PLAN (DCP) 23

3.8 SECTION 7.4 - PLANNING AGREEMENTS..... 24

3.9 MATTERS PRESCRIBED UNDER THE EP&A REGULATIONS 24

4 EP&A ACT PART 4.15 (B) – ENVIRONMENTAL 24

4.1 CONTEXT AND SETTING 24

4.2 PRIVACY, VIEWS AND SOLAR ACCESS..... 24

4.3 HERITAGE 25

4.4 ACCESS, TRANSPORT AND TRAFFIC 25

4.5 SOILS AND WATER 26

4.6 FLORA AND FAUNA..... 26

4.7 AIR QUALITY AND NOISE..... 26

4.8 HAZARDS 26

4.9 CUMULATIVE IMPACTS..... 27

STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence



5	EP&A ACT 4.15(C-E) - SITE SUITABILITY	27
5.1.1	Is the proposal suitable for the locality?	27
5.1.2	Is the site appropriate for the proposed development?	27
5.1.3	Is the proposal in the public's interest?	27
6	CONCLUSION	28

FIGURES

FIGURE 1	SITE LOCATION – 251 CHURCH STREET MUDGEES NSW.....	5
FIGURE 2	MOTEL ACCOMMODATION AND SECOND FLOOR RESIDENCE	6
FIGURE 3	AERIAL IMAGERY	7
FIGURE 4	PROPOSED DWELLING FLOOR PLAN.....	9
FIGURE 5	PROPOSED SHED	10
FIGURE 6	PROPOSED STORAGE / STAFF AMENITIES AREA.....	11
FIGURE 7	MWRC SERVICES.....	12
FIGURE 8	ESSENTIAL ENERGY NETWORK INFORMATION PORTAL	13
FIGURE 9	HIGH BIODIVERSITY VALUE LAND	14
FIGURE 10	LAND ZONING.....	18

TABLES

TABLE 1	INTEGRATED DEVELOPMENT CHECKLIST	15
TABLE 2	– STATE ENVIRONMENTAL PLANNING POLICY (SEPP) EVALUATION.....	16
TABLE 3	– DCP EVALUATION	23

1 INTRODUCTION

1.1 GENERAL

O’Ryan Geospatial Pty Ltd (O’Ryan) has been engaged to prepare a Statement of Environmental Effects (SEE) report to evaluate the proposed development against the relevant legislative, environmental and planning requirements. Specifically, this report has been prepared to address the likely impacts of the development on the environment in accordance with the requirements of the Environmental Planning & Assessment Act (EP&A) Act 1979 and the associated statutory instruments.

1.2 SITE ANALYSIS AND CONTEXT

1.2.1 SITE IDENTIFICATION

The subject site is known as 252 Henry Lawson Drive Bombira NSW 2850 and has a legal description of Lot 1 in DP1166658. The subject site is located approximately 4.6km north of the township of Mudgee, as shown below in Figure 1.

The site is accessed from an unnamed road contiguous to the northern boundary of the site. The unnamed road is formed for approximately 100m in length and intersects with Henry Lawson Drive approximately 70m west of the site entrance. No site entry impediments have been identified (e.g. dogs or locked gates).

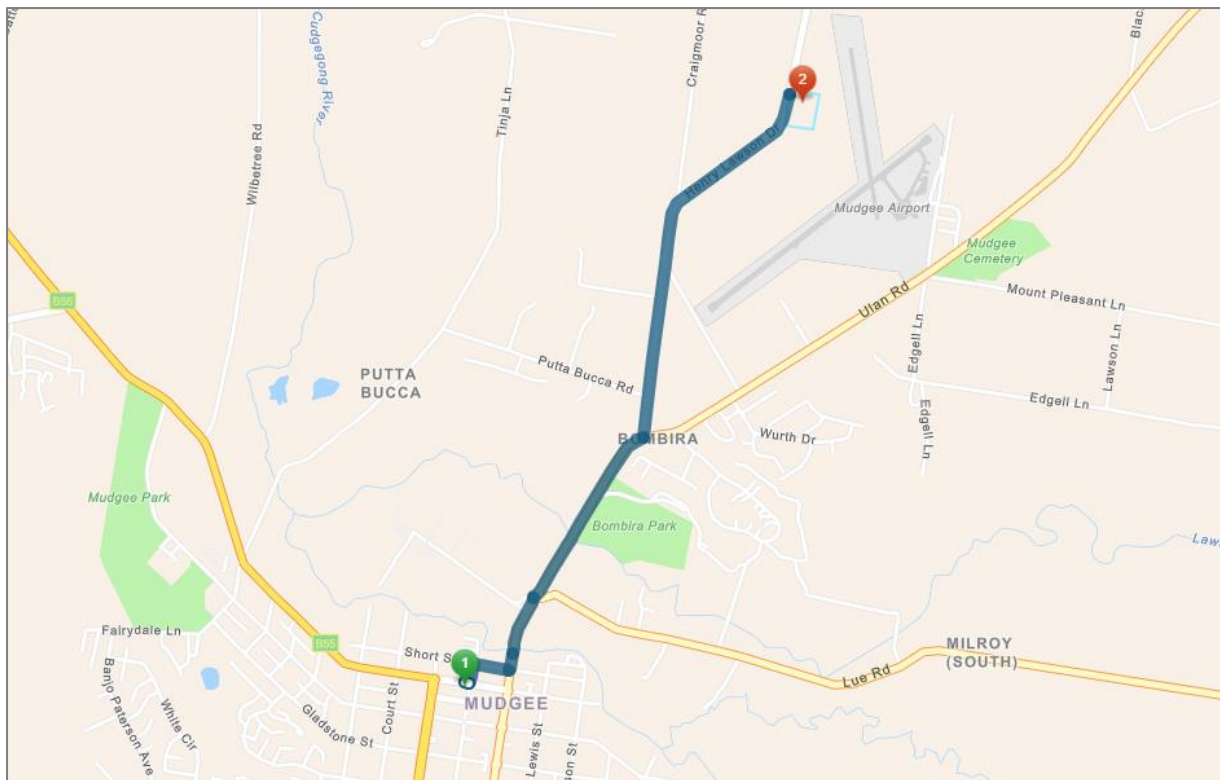


Figure 1 Site Location – 251 Church Street Mudgee NSW

STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence

1.2.2 SITE DESCRIPTION

The subject site is a rural property comprised of a single allotment with a total area of 3.99 Ha. The site is generally rectangular in shape, with approximate dimensions of 180m by 220m. The site is accessed from an unnamed road along the northern boundary and shares frontage with Henry Lawson Drive along the western boundary. An overview of the subject site is shown in Figure 3.

The terrain can be described as uniform and generally flat. There are no permanent watercourses located within the subject site. One (1) first Strahler order watercourse is located approximately 50m southeast of the property boundary. The site does not contain any prominent landforms, such as ridgelines or crests, and an examination of the site did not identify any notable rock outcrops.

The site has been cleared of vegetation, which is consistent with the historic agricultural land use. Contemporarily, the site is comprised of managed grasslands interspersed with small clusters of mature trees. A limited extent of the vegetation isolated to the northeast corner of the site is identified as being of high biodiversity value on the Biodiversity Values (BV) map.

The site was extensively developed in the period between 1987 – 2000. The most notable development is a commercial motel accommodation currently operating under the name “Vineyard Motor Inn”. The motel is a 2-storey brick and timber structure comprised of a first-floor motel and 2nd-floor residence (shown below in Figure 2). Other notable built features include a cellar-door and storage building, gravel car parking area, swimming pool and a metal shed. The development history is further explored in Section 1.3.

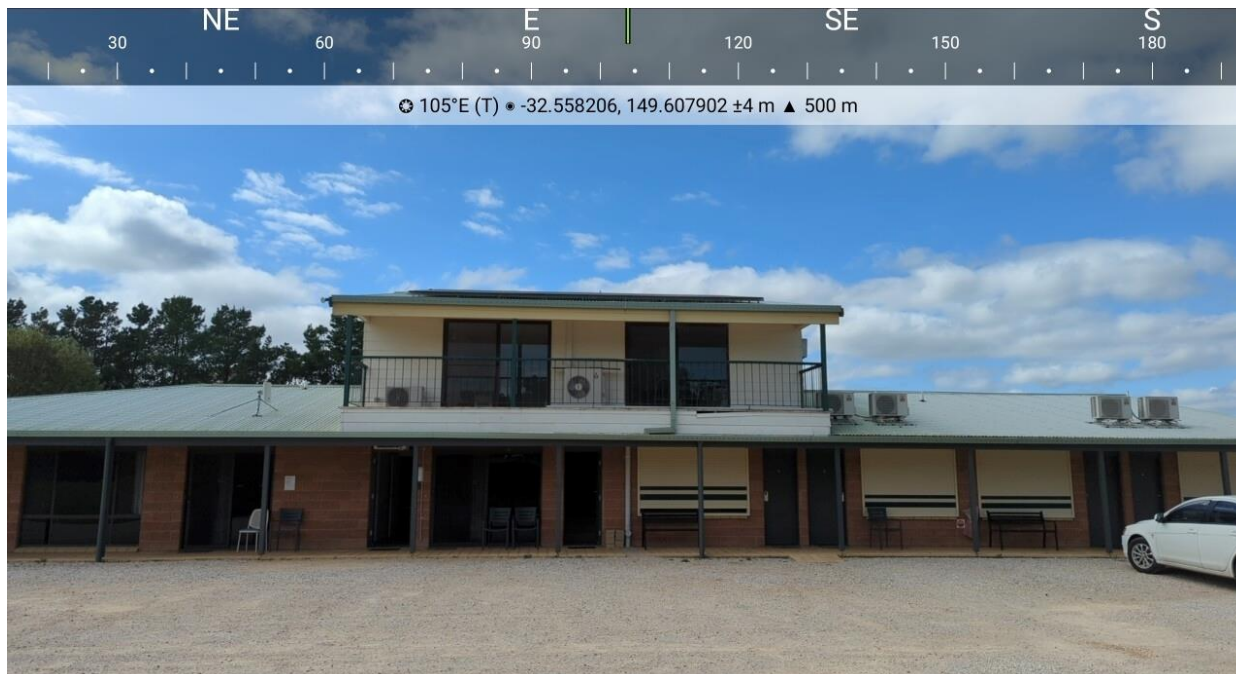




Figure 2 Motel Accommodation and Second Floor Residence

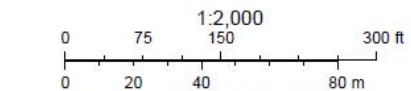
STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence



13/05/2022, 09:22:55

-  Subject Site (Lot 1/-/DP1166658)
-  NSW_Land_Parcel_Property_Theme_Lot - Lot



© Department of Customer Service 2020, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community. Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

ArcGIS Web AppBuilder

© Department of Customer Service 2020 | © Department of Customer Service 2021 | © Department of Finance, Services & Innovation 2018 | Esri Community Maps Contributors, Spatial Services, Geoscape, Esri, HERE, Garmin, METI/NASA, USGS |

Figure 3 Aerial Imagery

1.2.3 SURROUNDING DEVELOPMENT

The entirety of the western-most boundary, approximately 228m, has frontage with Henry Lawson Drive. The northern boundary is contiguous with the aforementioned unnamed road, which is a formed road with an approximate length of 110m. The eastern and southern boundaries border lot 2/-/DP1166658, which is used for agricultural purposes.

The broader locality is comprised of a mixture of rural properties primarily practising viticulture coupled with tourism industries including cellar door premises, distilleries and accommodation. Other notable development includes the Mudgee regional airport, with the subject site being located approximately 250m from the airport boundary and 600m from the runway.

1.3 LANDUSE

An examination of the NSW Historic Imagery Viewer was undertaken to track changes to the land use of the subject site over time. A total of five (5) aerial photographs were examined, which spanned a period of 30 years between 1964 and 1994.

The earliest available images from 1964 and 1980 depict a cleared but undeveloped site that appeared to be used for low-intensity agricultural purposes such as grazing. Imagery from January 1988 shows the transition from livestock grazing to viticulture, with the site remaining otherwise undeveloped.

A building search of the subject site conducted in January 2022, attached as Appendix E, indicates that the bulk of the site's development occurred in the period between 1987 and 2000. DA42/87 (associated with building approval BA188/88) approved the construction of a tourist facility, more specifically a motel premises, to operate at the site. Historic imagery from November 1990 depicts the building construction and Council records note that the final inspection for the facility was completed in August 1991. Several ancillary developments occurred shortly afterwards, including the approval of a storage shed (BA190/89) and swimming pool (BA431/90).

The building search shows the approval of DA118/97 and combined building permit BA112/93 which relate to the approval of a 2nd Floor Private Residence, being a 109m² second-floor extension to incorporate a 3-bedroom dwelling. The 2nd-floor extension is evident in imagery from 1994 and the council records show the final inspection was completed in December 1996. Further consideration of the 2nd-floor private residence is undertaken in Section 3.5.2 of this report.

Further site intensification was evident in the proceeding period, which primarily consisted of buildings/ land uses supplementary to the original tourist facility. DA231/97 and BA112/98 were approved in 1998 to allow the addition of a restaurant/café and M350/00 approved in March 2000 approved a cellar door wine sales and storage building. The final improvements to the site found in the building search were DA0493/2006 and associated construction certificate CCC0315/2006, which approved the establishment of a shed.

The site is not identified on the NSW EPA list of notified sites or contaminated land record of notices. Examination of the historical imagery and the NSW EPA registers suggests that the historical use of the land is unlikely to have resulted in land contamination.

2 PROPOSED DEVELOPMENT

The proposed development involves a 4-bedroom single-storey weatherboard dwelling, a 7m by 2.9m residential swimming pool and a 3-bay metal shed with an attached lean-to/awning.

This report presents two development pathways under which the proposed dwelling may be approved. The preferred option is the approval of the dwelling as a replacement of the 2nd-floor residence under clause 4.2A(4) of the *Mid-Western Regional Local Environmental Plan 2012* (MWR LEP). An alternative approval pathway as a manager’s residence ancillary to the motel accommodation is also explored. See section 3.5.1 of this report for further evaluation of the approval pathways.

2.1 DWELLING

The proposal seeks development consent for the erection of a single-storey weatherboard dwelling with a Colorbond steel roof. The proposed dwelling is a 4-bedroom building with a 7m by 2.9m swimming pool, attached garage, pergola and alfresco areas. Appendix A shows the proposed site layout and building designs while Appendix B outlines the BASIX requirements. An excerpt of the proposed floor plan is provided below in Figure 4.

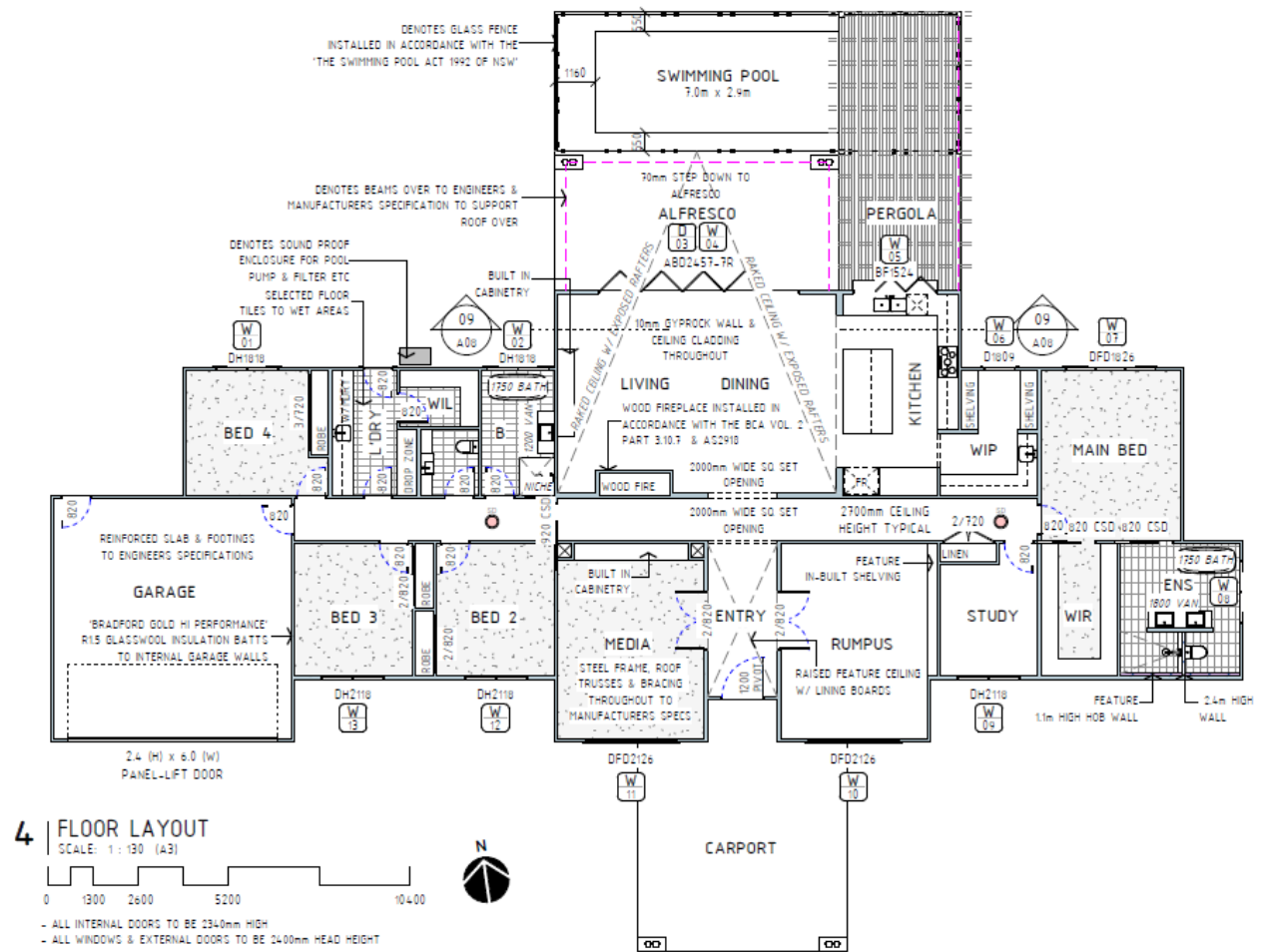


Figure 4 Proposed Dwelling Floor Plan

2.2 SHED

This development application also seeks approval to establish an 8m by 20m metal shed positioned 14m west of the proposed dwelling. The shed includes a 40,000L capacity rainwater tank for potable water supply. Certified structural plans of the proposed shed are provided in Appendix C and a simplified plan is shown below in Figure 5.

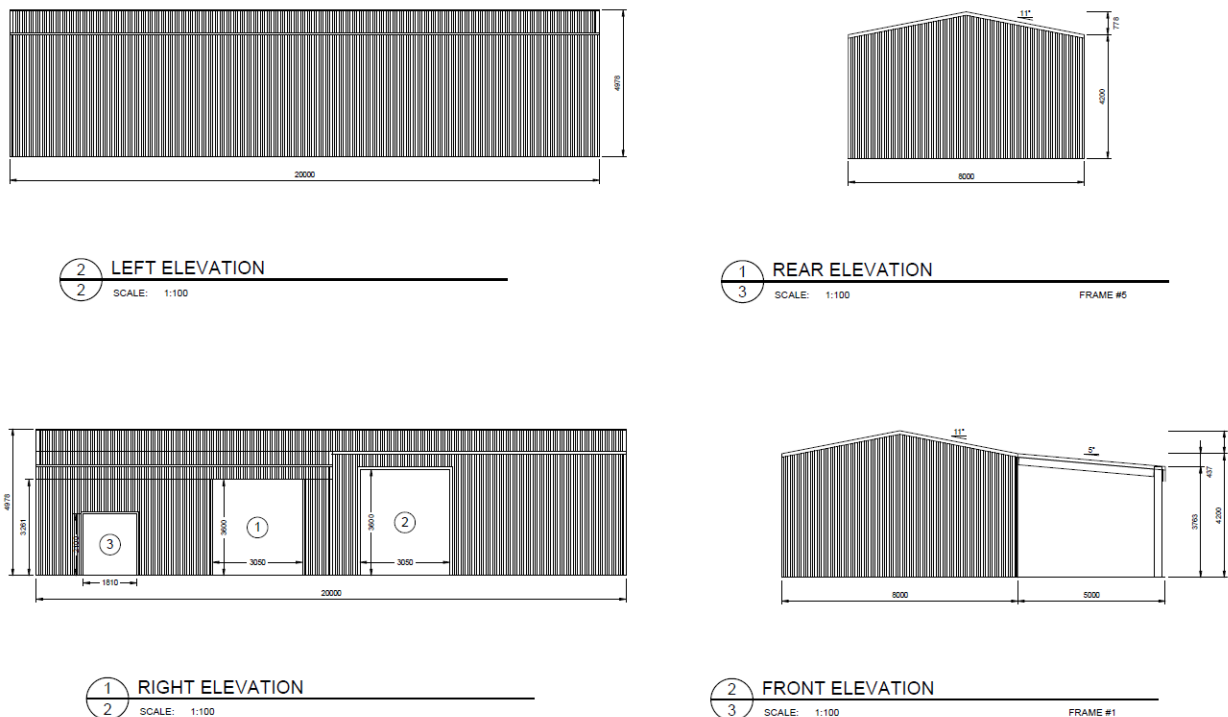


Figure 5 Proposed Shed

2.3 STORAGE AREA / STAFF AMENITIES

The proposal seeks to replace an existing residence located on the second floor of the motel accommodation. The landholders have identified operational constraints with the use of the second floor, namely the adverse impact of noise on downstairs rooms. This proposal therefore seeks to convert the second floor to a storage area for the motel accommodation and amenities for occasional use by staff. A markup of the areas for storage/staff amenities is shown below in Figure 6.

STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence

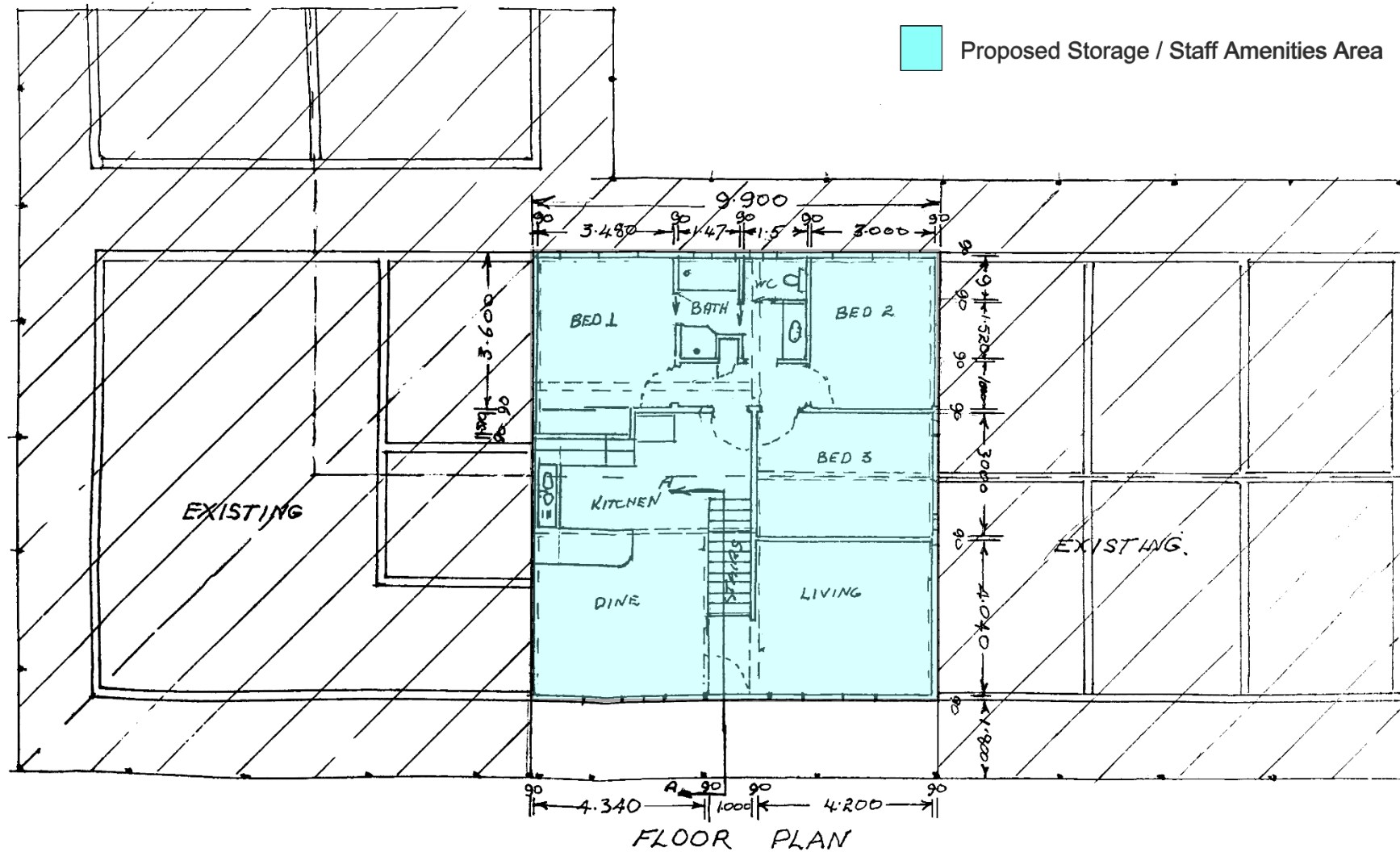


Figure 6 Proposed Storage / Staff Amenities Area

2.4 SERVICES AND EASEMENTS

2.4.1 EASEMENTS AND RESTRICTIONS

Examination of the deposited plan and title did not identify any easements that are likely to preclude or restrict the proposed development.

2.4.2 SEWER AND WATER

The subject site is a rural property located at the furthestmost extent of the Mudgee water supply network. An excerpt of the MWRC services is shown below in Figure 7, which indicates that water supply is available on Henry Lawson Drive for connection to the dwelling. The site is located outside the Mudgee sewerage network. An effluent management system is proposed for the dwelling (attached as Appendix D).



Figure 7 MWRC Services

2.4.3 ELECTRICITY

The subject site includes an established dwelling connected to the electrical supply grid. The electricity provider for the Mudgee region is Essential Energy (EE). The EE Network Information Portal shows a low-voltage electrical pole that supplies the property, with an excerpt provided in Figure 8. In this instance, the landholder is seeking to provide electricity through a combined solar collector/battery system with a backup generator to be installed in the proposed shed.

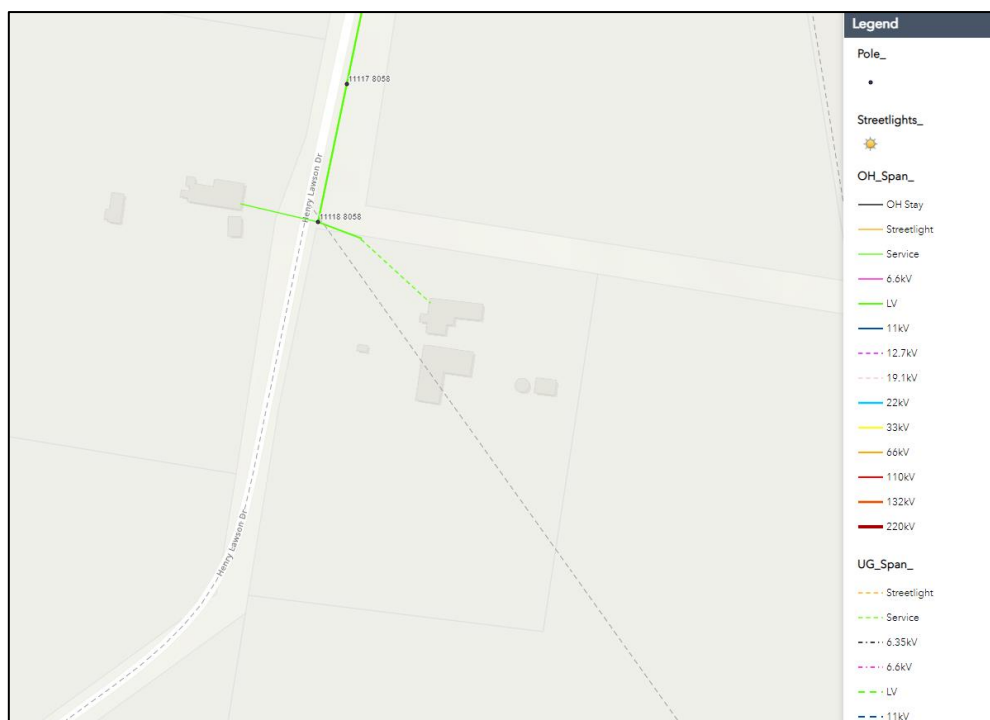


Figure 8 Essential Energy Network Information Portal

2.4.4 TELECOMMUNICATIONS

The NBN rollout map indicates that NBN broadband is available to the subject site, with the technology used being NBN fixed wireless. It is anticipated that the proposed dwelling can be connected to telecommunication services without the installation of fibre-ready facilities.

2.4.5 ACCESS

The proposed dwelling will be accessed by the existing driveway onto Henry Lawson Drive via an unnamed road. Henry Lawson Drive is a 2-lane sealed road maintained by Mid-Western Regional Council. The existing driveway access onto the unnamed road and Henry Bayly Drive shortly thereafter are of adequate condition for the minimal volume of localised traffic generated by the proposed development and no access crossover upgrades are proposed.

2.4.6 STORMWATER

The proposed development will result in a minor increase of stormwater from an increased impervious surface area. A 40,000L rainwater tank is proposed to capture and reuse stormwater generated from roof surfaces. Overflow from the rainwater tanks and surface water can be discharged to the paddock.

2.4.7 FIREFIGHTING

The proposed dwelling is located more than 90m from the nearest fire hydrant (per the MWRC service diagrams). It is anticipated that MWRC will include consent conditions requiring the provision of a suitable water supply for firefighting purposes. It is proposed that part of the 40KL rainwater tank be retained as a dedicated water supply for firefighting purposes.

3 EP&A ACT PART 4.15 (A) – STATUTORY

The NSW Planning system operates under the statutory requirements outlined by the Environmental Planning and Assessment Act 1979 (EP&A Act). This section of the report evaluates the proposed development against the relevant statutory obligations.

3.1 PART 1.7 – APPLICATION OF BC ACT AND FM ACT

Section 1.7 of the Act refers to Part 7 of the *Biodiversity Conservation Act 2016* (BC Act) and Part 7A of the *Fisheries Management Act 1994* (FM Act). These Acts require consideration of the impact of the development on the terrestrial and aquatic environments. The Acts reference four triggers under which development is assessed by the Biodiversity Offset Scheme (BOS).

Does the development occur on land mapped on the BV Map?

The subject site does contain vegetation identified by the NSW Biodiversity Values Map (BV Map) however the disturbance area is situated over 150m from the mapped vegetation and no clearing is proposed. An excerpt of the BV map is shown below in Figure 9.



Figure 9 High Biodiversity Value Land

Does the development exceed the clearing threshold?

The clearing threshold for the subject site, having a minimum lot size of 20Ha, is 0.5Ha. The proposed development, which involves a dwelling, shed and driveway is anticipated to result in a disturbance area of approximately 1000m². The anticipated clearing or disturbance is therefore well beneath the 0.5Ha threshold.

Is the development likely to have a significant impact on a threatened species?

The development is unlikely to significantly affect threatened species, endangered ecological communities, or habitats. In this regard:

- The earliest available aerial imagery taken in 1964 shows the subject site cleared of native vegetation. Minimal regeneration of native vegetation has occurred in the intervening period.
- No tree clearing is proposed during the subdivision of the site.
- The areas of disturbance are not located in proximity to sensitive waterways and the development is generally considered unlikely to give rise to water quality issues.
- The disturbance area is not identified on the Mid-Western Regional LEP 2012 maps as having “moderate” or “high” terrestrial biodiversity.

Is the development proposed in an area of outstanding biodiversity value?

The subject site is not categorised as an area of Outstanding Biodiversity Value and does not trigger entry into the BOS under this provision.

3.2 DESIGNATED DEVELOPMENT

The Environmental Planning and Assessment Regulations (EP&A Regulation) provide provisions for certain large-scale or offensive development to be categorised as designated development. With reference to Schedule 3 of the EP&A Regulation, the proposed development is not categorised as designated development.

3.3 PART 4.46 INTEGRATED DEVELOPMENT

Certain types of development require additional approvals or licenses to be obtained under other Acts as part of the carrying out of a development. The approvals under Part 4 Division 4.8 Section 4.46 of the EP&A Act have been examined and described below in Table 1.

Table 1 Integrated Development Checklist			
Act	Provision	Approval Description	(Y/N)
<i>Coal Mine Subsidence Compensation Act 2017</i>	s22	Works within a mine subsidence district	N
<i>Fisheries Management Act 1994</i>	s144	Permit for aquaculture	N
	s201	Permit to dredging	N
	S205	Permit to damage marine vegetation	N
	s219	Permit for structures within waterways	N

STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence

<i>Heritage Act 1977</i>	s58	Approval involving a state heritage item	N
<i>Mining Act 1992</i>	ss63, 64	Grant of mining lease	N
<i>National Parks and Wildlife Act 1974</i>	s90	Aboriginal heritage impact permit	N
<i>Petroleum (Onshore) Act 1991</i>	s16	Production lease	N
<i>Protection of the Environment Operations Act 1997</i>	ss43(a), 43(b), 47, 48, 55	EPL for scheduled developments	N
	ss 3(d), 55, 122	EPL for non-scheduled activities	N
<i>Roads Act 1993</i>	s138	Consent for works within a road reserve	N
<i>Rural Fires Act 1997</i>	s100B	Bushfire protection approval	N
<i>Water Management Act 2000</i>	ss89, 90, 91	Water management or activity approval	N

3.4 STATE ENVIRONMENTAL PLANNING POLICIES (SEPP)

State Environmental Planning Policies (SEPPs) are planning instruments under the EP&A Act that regulate development in a state-wide context. The applicable SEPPs for the subject site and proposed development have been identified and are explored below in Table 2.

Table 2 – State Environmental Planning Policy (SEPP) Evaluation

SEPP	Description
SEPP (Biodiversity and Conservation) 2021	<ul style="list-style-type: none">- Evaluation of the Biodiversity Offset Scheme (BOS) required under Part 2 of the SEPP has been explored in Section 3.1 of this report.- The proposed development does not contain trees listed under the MWR DCP Section 4.7 – Tree Preservation Order.- Chapter 4 Koala Habitat 2021 applies to RU4 zoned land in the MWR LGA. The proposal does not include tree removal or clearing. The proposed development will therefore have low or no impact on Koalas or their habitat.
SEPP (Building Sustainability Index: BASIX) 2004	<ul style="list-style-type: none">- Not applicable

STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence

SEPP (Exempt and Complying Development Codes) 2008	<ul style="list-style-type: none">- The proposal does not appear to comply with the exempt or complying development codes.
SEPP (Housing) 2021	<ul style="list-style-type: none">- Not applicable.
SEPP (Industry and Employment) 2021	<ul style="list-style-type: none">- Not applicable.
SEPP No 65 Design Quality of Residential Apartment	<ul style="list-style-type: none">- Not applicable.
SEPP (Planning Systems) 2021	<ul style="list-style-type: none">- Not applicable.
SEPP (Precincts—Regional) 2021	<ul style="list-style-type: none">- Not applicable.
SEPP (Primary Production) 2021	<ul style="list-style-type: none">- Not applicable.
SEPP (Resilience and Hazards) 2021	<ul style="list-style-type: none">- The SEPP requires the planning authority to consider the potential of land contamination at the site under assessment. The NSW historic imagery viewer examination indicates that the subject site has been extensively cleared since 1964 and remained undeveloped until the early 1990s.- The site is not listed on the NSW EPA public register of known contaminated sites. The current and historical land uses are considered unlikely to have resulted in land contamination.- The proposal does not involve a hazardous or offensive industry.
SEPP (Resources and Energy) 2021	<ul style="list-style-type: none">- Not applicable.
SEPP (Transport and Infrastructure) 2021	<ul style="list-style-type: none">- Not listed under Schedule 3 – Traffic Generating developments to be referred to TfNSW- Access is not proposed via a classified road.

3.5 LOCAL ENVIRONMENTAL PLAN (LEP)

The subject land is located within the Mid-Western Regional Council LGA. The relevant sections of the *Mid-Western Regional Local Development Plan 2012* (MWR LEP) have been referenced in this report. The applicable LEP map sheets are identified as 006H.

3.5.1 ZONING AND PERMISSIBILITY

The subject site is zoned RU4 Primary Production Small Lots under the MWR LEP Land Zoning Map Sheet LZN_006H. Refer to Figure 10 below.

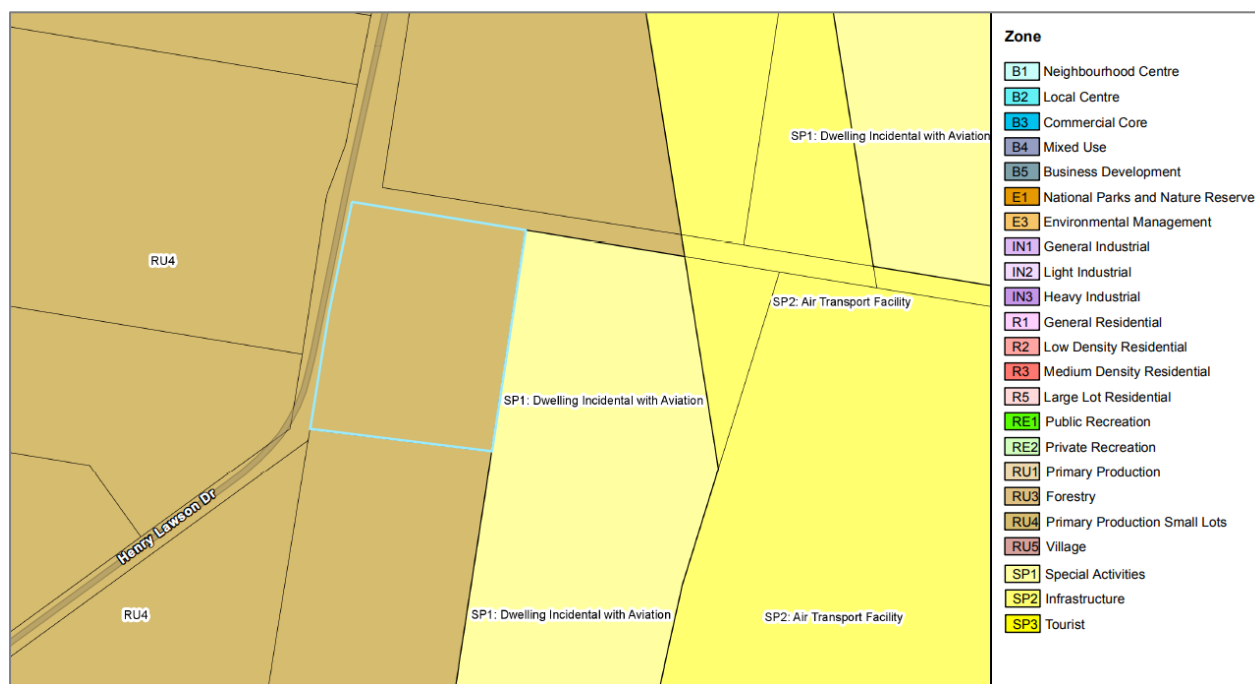


Figure 10 Land Zoning

The proposed land use is for a dwelling house. A dwelling house is defined in the MWR LEP:

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

dwelling house means a building containing only one dwelling.

Dwelling houses are a form of residential accommodation

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following—

- (a) attached dwellings,
- (b) boarding houses,
 - (baa) co-living housing,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
 - (faa) (Repealed)
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers’ dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

Comment: Dwelling houses are permitted with development consent in the RU4 zone.

3.5.2 DWELLING ENTITLEMENT

The site has a minimum lot size (MLS) of 20 Ha under the MWR LEP Lot Size Map Sheet LSZ_006H. No additional lot size provisions apply to the land and the proposal is not a strata or community title subdivision. Clause 4.2A of the MWR LEP applies:

- (1) *The objectives of this clause are as follows—*
 - (a) *to minimise unplanned rural residential development,*
 - (b) *to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones,*
 - (c) *to control rural residential density affected by historical subdivision patterns in Zone R5 Large Lot Residential.*
- (2) *This clause applies to land in the following zones—*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU4 Primary Production Small Lots,*
 - (c) *Zone RU5 Village,*
 - (d) *Zone R5 Large Lot Residential,*
 - (e) *Zone E3 Environmental Management.*
- (3) *Development consent must not be granted for the erection of a dwelling house or dual occupancy on land in a zone to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the land—*
 - (a) *is a lot that is at least the minimum lot size shown on the [Lot Size Map](#) in relation to that land, or*
 - (b) *is a lot or holding that existed before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or*
 - (c) *is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (d) *is an existing holding that is not within Zone R5 Large Lot Residential, or*
 - (e) *would have been a lot or a holding referred to in paragraphs (a)–(d) had it not been affected by—*
 - i. *a minor realignment of its boundaries that did not create an additional lot, or*
 - ii. *a subdivision creating or widening a public road or public reserve or for another public purpose, or*
 - (f) *is, in the case of land within 500 metres of land within Zone RU5 Village, a lot that has an area of at least 5 hectares, that has a sealed road frontage and that is connected to the sealed road network, or*
 - (g) *is a holding within Zone R5 Large Lot Residential that has an area of at least 5 hectares, that has all weather access, including all weather vehicular access, to which adequate services provided by public utility undertakings are available and that is suitable for the on-site disposal of domestic wastewater, or*
 - (h) *is a former holding, or*
 - (i) *is a former rural lot that has an area of at least 40 hectares.*

Note— A dwelling cannot be erected on a lot created under clause 9 of [State Environmental Planning Policy \(Rural Lands\) 2008](#) or clause 4.2.

- (4) *Development consent may be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.*

Comment - Approval Under Clause 4.2A(4):

The deposited plans (DP) show the subject site is 3.99Ha, which is well-beneath the MLS required for a dwelling entitlement under clause 4.2A(3) of the MWR LEP. In this instance, the application seeks to replace an existing residence located on the second floor of the motel accommodation and approval on that basis is explored herein.

A pre-lodgement meeting held in February 2022 indicated initial support by Council for the replacement of the second-floor residence with a new dwelling under MWR LEP clause 4.2A(4). Concerns were subsequently raised by the duty planner in May 2022 (see Appendix F) over the language of the development consent, specifically that the approval was for “DA118/93 – Motel Extension (Residential Dwelling)”. This language raised the possibility that the original residence was approved as an ancillary use to the motel accommodation (e.g. as a caretaker’s residence).

Further investigations were subsequently conducted to evaluate whether the combined development consent (DA118/93) and building permit (BA183/93) approved the second-floor residence as an ancillary or separate land use. The following findings support the characterisation of the second-floor residence as a separate land use:

- The original hardcopy development application was examined and while sparse in detail, the application listed the proposed development as a “private dwelling”. The application did not contain language that would imply an ancillary use e.g. “caretaker’s residence” or “manager’s residence”.
- The development consent (DA119/93) did not include any conditions relating to the use of the dwelling, nor did the conditions imply the basis of the approval was as an ancillary use to the motel accommodation.
- The subject site was formerly held in conjunction with Lot 2 DP1166658 for a total size of 19.96 Ha (calculated from the current DP). The site was historically zoned 1(a1) under LEP 11 and had an MLS of 20Ha. The property size and MLS at the time of the application would reasonably allow for approval of the second-floor residence without reliance on an ancillary use argument.

The above findings strongly imply that the second-floor residence was originally approved as a separate land use to the motel accommodation. Under this interpretation, the replacement of the second-floor residence with the proposed dwelling may proceed under clause 4.2A(4) of the MWR LEP:

- (4) Development consent may be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.*

Comment – Approval as an Ancillary Use

Should the above arguments justifying the interpretation of the second-floor residence as a separate land use prove unsatisfactory, it is proposed that the application proceed as a manager’s residence ancillary to the dominant motel accommodation land use instead. The planning circular titled “How to characterise development” has been referenced below to justify the approval under this basis:

STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence



1. *Is the component going to serve the dominant purpose of the development or is it independent?*

Comment: The dominant use of the site is a motel accommodation. The purpose of the development would be to provide onsite accommodation for the motel managers (the current landholders) and their families.

2. *What is the amount of land to be used for a certain component, relative to the amount of land proposed to be used for other purposes? If the amount of land is relatively small, it is more likely to be ancillary.*

Comment: The total floor area of the proposed dwelling and shed is less than 1000m², which is insignificant compared to the total site area of 3.99Ha.

3. *Evidence of a purpose that is inconsistent with the dominant purpose is likely to undermine a claim that a component is ancillary.*

Comment: The proposed development would allow the conversion of the current second-floor residence into a combined storage and staff amenities area (for occasional use only) to reduce the impact of noise on the downstairs rooms. The relocation of the residence would therefore have a net benefit to the dominant land use.

4. *If the component is temporary, it is more likely to be ancillary; if it is regular (that is, will constitute an ongoing use for a long period of time), it is likely to be an independent use*

Comment: The proposed use is not temporary as the intended outcome is to provide accommodation for a manager and their family to improve day-to-day operations (e.g. reduce commute times and provide outside business hours site supervision) which are inherently perpetual in nature.

5. *If the component goes beyond what is reasonably required in the circumstances for the development to implement the dominant purpose, it is likely to be an independent use (regardless of whether it has ancillary qualities).*

Comment: The proposed dwelling will replace the 2nd-floor residence (approximately 109m²) in favour of a larger 4-bedroom house (290m² living space area and 438m² total footprint). The size of the proposed dwelling is not inconsistent with a typical family home and considered reasonably sized for a manager and their family.

6. *Related components of a development are likely to have an ancillary relationship, although this is not necessarily determinative of such a relationship.*

Comment: The proposal is not inherently related to the motel accommodation but does support its operation by providing onsite accommodation for a manager or caretaker.

7. *Physical proximity of the component to the rest of the development is likely to be evidence of an ancillary relationship, although again not necessarily determinative.*

Comment: The proposed dwelling is located onsite but adequately offset to reduce the impact of noise on the occupants of the motel accommodation.

Characterisation of the land use as ancillary to motel accommodation has been adequately rationalised. Should Council deem that the second-floor residence was originally approved as an ancillary use to the motel accommodation, approval of the proposed dwelling as a replacement manager's residence is considered reasonable.

3.5.3 HERITAGE CONSERVATION

The subject site is located outside the Mudgee heritage conservation area and does not contain an item of local or state heritage significance listed under Schedule 5 of the MWR LEP. No Aboriginal sites or places of heritage significance are located within the subject site or within a 200m radius of the site boundaries. No further heritage assessment under clause 5.10 of the MWR LEP is considered warranted.

3.5.4 FLOOD PLANNING

The subject site is not identified as flood affected by the MWR LEP flood planning map. The property is not within the extent of the Mudgee Flood Study 2021 prepared by WMA Water. The subject site is not considered low-lying land and is not located in proximity to any significant watercourses, suggesting the site is not affected by flooding.

3.5.5 SALINITY

The proposed development is not identified as being affected by high salinity and is otherwise unlikely to influence salinity processes. Further consideration of MWR LEP clause 6.1 is not considered warranted.

3.5.6 EARTHWORKS

The proposal is expected to result in minor earthworks during the installation of services and establishment of the building/shed slabs. Cut and fill works resulting from the proposal are expected to be of a limited depth and extent, which is unlikely to result in an adverse environmental impact. Consideration of soil erosion and sedimentation is explored in section 4.5.

3.5.7 GROUNDWATER VULNERABILITY

The subject site contains land identified as groundwater vulnerable on the MWR LEP maps. The proposed development does not involve groundwater extraction or an activity likely to result in groundwater contamination. Further consideration of MWR LEP clause 6.4 is not considered warranted.

3.5.8 TERRESTRIAL BIODIVERSITY

The subject site does not contain vegetation identified as “moderate” or “high” terrestrial biodiversity on the MWR LEP sensitivity biodiversity map. Consideration of potential biodiversity impacts as a result of the proposal is explored in section 4.6. The proposal is generally considered satisfactory in relation to terrestrial biodiversity as described by MWR LEP clause 6.5.

3.5.9 ESSENTIAL SERVICES

The objective of MWR LEP clause 6.9 is to ensure that services that are essential for the proposed development are available or that adequate arrangements have been made to make them available. Essential services include:

- (a) *the supply of water,*
- (b) *the supply of electricity,*

STATEMENT OF ENVIRONMENTAL EFFECTS

252 Henry Lawson Drive Bombira – Proposed Residence



- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or onsite conservation,*
- (e) *suitable road access.*

Comment: Section 2.4.1 of this report describes the proposed arrangements for the provision of services to the development.

3.5.10 VISUALLY SENSITIVE LAND NEAR MUDGEES

The subject site is not identified as “visually sensitive land” under clause 6.10 of the MWR LEP, therefore the provisions of clause 6.10 do not apply to the proposed development.

3.6 PROPOSED INSTRUMENTS

No proposed instruments have been identified or considered in the preparation of this report.

3.7 DEVELOPMENT CONTROL PLAN (DCP)

Compliance with the Mid-Western Regional Development Control Plan 2013 (DCP) requirements is discussed below. Section 6.1 Rural Dwellings has been referenced in Table 3. Further comments are provided below each table section where a variation to the development standards occurs.

Table 3 – DCP Evaluation		
Provision	(Y/N)	Comment
Primary Production Small Lots	N/A	<ul style="list-style-type: none">- The subject site is zoned RU4 Primary Production Small Lots.- The subject site has an existing use as a tourist facility and a dwelling has been approved for the site in the past.- This proposal seeks to replace the existing dwelling and no changes to the land use are proposed.
Former Rylstone LGA	N/A	<ul style="list-style-type: none">- The site is not identified as being within the former Rylstone LGA.
Services	N/A	<ul style="list-style-type: none">- The subject site is not within 500m of an R1 General Residential zone
Village Zones	N/A	<ul style="list-style-type: none">- The subject site is not within 500m of an RU5 village zone- The site is already connected to the potable water supply network
Building setbacks	Y	<ul style="list-style-type: none">- Setbacks are shown on the site plans attached as Appendix A.- The proposed dwelling and shed achieves a front setback of 60m, side setbacks of 20m or greater and rear setbacks of 50m.
Outbuildings	N	<ul style="list-style-type: none">- The subject site is less than 5 Ha, and a maximum outbuilding size of 150m² applies.- The development application includes a metal shed (see Appendix C). The enclosed footprint of the shed is 160m² which is a 10m² exceedance of the DCP discretionary standard.

Variation Request – Outbuildings:

The proposed development includes the construction of a metal frame shed with an attached open lean-to/awning. The enclosed footprint of the shed is 160m², which is a 10m² or 6.67% variation to the DCP discretionary standard.

The proposed shed location is well-screened from public spaces, and the minor increase in the visual bulk of the development is considered unlikely to impact the locality significantly. Given the minor variation proposed (less than 10%), it is requested that the variation to the DCP standard be accepted under delegation.

3.8 SECTION 7.4 - PLANNING AGREEMENTS

No draft or existing volunteer planning agreements have been made or are proposed for the subject site or development.

3.9 MATTERS PRESCRIBED UNDER THE EP&A REGULATIONS

Clause 92 outlines additional matters that the consent authority must consider. The application does not involve demolition works, and no other matters have been identified.

4 EP&A ACT PART 4.15 (B) – ENVIRONMENTAL

In determining a development application, the consent authority considers the relevant environmental impacts of the development under Section 4.15 of the *Environmental Planning and Assessment Act 1976*. This section considers the likely impact of the proposed development on the built and natural environments as well as the social and economic impacts within the locality per Section 4.15(1)(b) of the Act and Section 5.4 of the Mid-Western Regional Council Development Control Plan 2013 (MWR DCP).

4.1 CONTEXT AND SETTING

The broader locality is comprised of a mixture of rural properties primarily practising viticulture coupled with tourism industries, including cellar door premises, distilleries and accommodation. Other notable development includes the Mudgee regional airport, with the subject site being located approximately 250m from the airport boundary and 600m from the runway.

4.2 PRIVACY, VIEWS AND SOLAR ACCESS

The proposed development involves the establishment of a single-storey dwelling house and metal shed within the southern extent of the subject site. The proposed development adopts substantial offsets to the property boundaries, protecting privacy and solar access.

The subject site is not identified as “visually sensitive land” nor associated with any visually prominent landscape features e.g. crests or ridgelines however the site is located within a locality used for tourism primarily in conjunction with viticulture e.g. cellar door premises. To maintain and protect the visual amenity and rural character of the locality, the proposed dwelling and shed have been offset from the other built features of the site to reduce the perceived visual bulk.

4.3 HERITAGE

The subject site is not located within the Mudgee heritage conservation area and does not contain an item of state or local heritage significance identified by Schedule 5 of the LEP.

An assessment of the potential impact on items of Aboriginal heritage significance has been undertaken in accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales. Section 8 of the code has been considered below:

Step 1 - Will the activity disturb the ground surface?

Earthworks are limited to minor upgrades to internal access tracks and the establishment of the building pad for the dwelling and shed. The site has been extensively cleared in the past and used for an extensive period for agricultural purposes. The majority of the site can be reasonably considered historically disturbed land.

Step 2a - Search the AHIMS Database

A search of the AHIMS database was conducted for both existing portions in October 2022 (Appendix G). No Aboriginal sites or places were recorded within a 200m radius of the property boundaries.

Step 2b - Activities in areas where the landscape features indicate the presence of aboriginal objects

The subject site is not located in the proximity of any exposed outcrops, caves or watercourses. The landscape features present do not suggest an increased prevalence of Aboriginal objects.

Step 3 - Can you avoid harming the object or disturbing the landscape features?

Yes, no Aboriginal objects or places are located in proximity to the subject site and no sensitive landscape features have been identified.

Code of Practice Part 8 Assessment Outcome

The outcome of the part 8 assessment of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales indicates that the applicant can proceed with caution without applying for an Aboriginal Heritage Impact Permit (AHIP). The owner (the applicant) is aware that if an Aboriginal Object is identified while undertaking any activities, they must stop work, notify the appropriate authorities, and possibly apply for an AHIP.

4.4 ACCESS, TRANSPORT AND TRAFFIC

The MWRC Access to Properties Policy requires all properties to have legal access. The existing property access will be maintained and an internal access track to the dwelling site will be constructed.

The existing property access is located on the northern boundary of the subject site onto an unnamed road. The unnamed road intersects with Henry Lawson Drive, approximately 70m west of the property entrance. Line of sight upon entry/egress to the unnamed road and Henry Lawson Drive appears to be adequate for the speed zone.

The proposed development involves the replacement of an existing residence and it is considered unlikely to result in a significant increase in the volume of traffic generated by the site.

4.5 SOILS AND WATER

Potential soil impacts due to the proposed development may occur through increased exposure of soils due to vegetation stripping and general site disturbance during the installation or construction of services, internal access tracks and building pads. Exposed soils can result in erosion and offsite sediment transport however the limited disturbance area is not anticipated to have any substantial or long-term effects.

No drainage depressions or watercourses are located within the subject site and only one low Strahler order watercourse is located in the adjoining property. The property boundary is greater than 40m from the watercourse and an approval under the Water Management Act 2000 for activities occurring on waterfront land is not required.

The proposed development involves a relatively minor scale of disturbance likely to result in a minor localised impact. The proposed development is considered highly unlikely to result in offsite impacts. Council may specify mitigation methods established by the document “Managing Urban Stormwater: Soils and Construction” issued by Landcom (2004) and the provisions of the MWR DCP.

4.6 FLORA AND FAUNA

Examination of the NSW Historic Imagery viewer indicates that the subject site was extensively cleared of vegetation sometime before 1964 for agricultural purposes. Presently, the site is comprised of managed grasslands interspersed with a few scattered trees.

Limited extents of the vegetation located in the northeast corner of the site are identified as high biodiversity vegetation on the biodiversity values map (BV Map). The proposed development is not situated in proximity to the identified vegetation and no tree-clearing is proposed.

4.7 AIR QUALITY AND NOISE

The proposed development is not associated with ongoing polluting activities that are likely to impact air quality or the microclimate. Noise generated by the proposed development will be minimal and limited to a brief period during construction.

4.8 HAZARDS

The subject site is not identified as bushfire-prone land on the maps issued by the NSW Rural Fire Service (NSW RFS). General firefighting measures are considered in section 2.4.7 of this report.

The subject site is not identified as flood-affected land in the MWR LEP flood maps. The site is not considered low-lying land and is not located in proximity to any major watercourses. The overall likelihood of flooding is considered negligible and no specific mitigation strategies are considered warranted.

4.9 CUMULATIVE IMPACTS

Cumulative impacts result when individual impacts of a development interact or accumulate to result in environmental degradation. The following typical scenarios have been considered:

- Temporal crowding involves a series of impacts occurring closely together in time such that the initial impact has not yet dispersed before the next impact occurs
- Spatial crowding occurs when impacts occur closely together in space such that the impacts overlap
- Compounding effects occur when a range of impacts interact and result in a combined impact greater than the sum of the separate effects.

The development is unlikely to result in any of the above scenarios, given the relatively minor nature of physical works. As such, the development is considered satisfactory with regard to cumulative impacts.

5 EP&A ACT 4.15(C-E) - SITE SUITABILITY

The site's suitability has been considered in the context of the site location, surrounding development, proposed use and potential environmental impacts per section 4.15(c) of the EP&A Act. This section also considers the interests of the public per sections 4.15(d)&(e) of the Act.

5.1.1 IS THE PROPOSAL SUITABLE FOR THE LOCALITY?

The proposed development involves the replacement of an existing residence located on the second floor of the motel accommodation and no other land use changes are proposed. The implications on the development on the locality are relatively minor and land use conflict is considered unlikely.

5.1.2 IS THE SITE APPROPRIATE FOR THE PROPOSED DEVELOPMENT?

The subject site is a historically cleared rural property north of Mudgee. The environmental impacts occurring as a result of the subdivision are considered minimal. The site's terrain is generally conducive to housing development and appears to support the proposal.

5.1.3 IS THE PROPOSAL IN THE PUBLIC'S INTEREST?

There are no features of this proposal which could be interpreted as detrimental to the public interest. The proposal is simply relocating an approved residence to a new location within the subject site to reduce the impact of noise on the operation of the motel accommodation. The proposed development will be of a consistent form and scale as other residences in the wider locality and is considered unlikely to result in a significant change to the scenic quality of the area.

6 CONCLUSION

This report assesses the proposed development and, where relevant, provides supporting information that outlines how the proposal will achieve consistency with the zone's objectives and how environmental impacts, if any, will be mitigated. It is recommended that the proposed residence, pool and shed be approved on the following basis.

- The proposal is considered acceptable in terms of the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*
- The proposal is permitted with consent and is consistent with the land use objectives of the RU4 Primary Production Small Lots.
- The proposal complies with the relevant provisions of the *Mid-Western Regional Local Environmental Plan 2012* and the *Mid-Western Regional Development Control Plan 2013*
- The proposed development would not conflict with adjoining land uses and is generally considered suitable for the subject site and its surroundings.

Overall, the development meets the standards expected for the location and proposed use. Further environmental assessment is not warranted under the *Environmental Planning and Assessment Act 1979*. Mid-Western Regional Council can assess and determine this application based on this document and supporting plans.