

Item 8: Development

8.1 Development Application DA0350/2022 for Subdivision of Land (1 into 2 lots) at 74 Inglis Street, Mudgee NSW 2850 Lot 2 DP817235

REPORT BY THE TOWN PLANNER AND MANAGER, PLANNING
TO 20 JULY 2022 ORDINARY MEETING
GOV400098, DA0350/2022

RECOMMENDATION

That Council:

- A. receive the report by the Town Planner and Manager, Planning on the Development Application DA0350/2022 for Subdivision of Land (1 into 2 lots) at 74 Inglis Street, Mudgee NSW 2850 Lot 2 DP817235; and
- B. approve Development Application DA0350/2022 for Subdivision of Land (1 into 2 lots) at 74 Inglis Street, Mudgee NSW 2850 Lot 2 DP817235 subject to the following conditions:

APPROVED PLANS

1. The 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 listed herein and/or any plan notations:

Title / Name:	Drawing No / Document Ref	Revision / Issue	Date:	Prepared by:
Proposed Subdivision Over Lot 2 DP817235, known as 74 Inglis Street Mudgee	Job No. 22-930 Sheet 1 of 1	0	14/12/2021	Oryan Geospatial

GENERAL

2. This consent approves a Torrens Title Subdivision – 1 into 2 lots.
3. New lot boundaries are to be located at least 900mm away from the side and rear of any existing structure to meet the minimum setback requirements.

PRIOR TO THE ISSUE OF SUBDIVISION CERTIFICATE

4. Under the *Environmental Planning & Assessment Act 1979*, a Subdivision Certificate is required before the linen plan of subdivision can be registered with the NSW Land Registry Services;

Note: The fee to issue a Subdivision Certificate is set out in Council's Fees and Charges and the application is to be made by way of submission via the NSW Planning Portal.

5. A linen plan and associated documentation is to be submitted to Council for approval and endorsement by the General Manager, or an appropriate delegate via the NSW Planning Portal;
6. Prior to the issue of Subdivision Certificate, the applicant is to provide separate water and sewer reticulation services to each allotment within the subdivision. The connection point to ensure that the connection is within the lot must be shown on the plan and must be submitted along with subdivision certificate;

Note: Council does not permit any other bodies to insert new junctions into 'live' sewer/water mains

7. Prior to the issue of a subdivision certificate, a survey drawing is to be submitted to Council, demonstrating that all private water, stormwater and sewer services are located wholly within the lot that they serve;
8. Prior to issue of Subdivision Certificate, applicant must carry out appropriate investigation to confirm the location of the sewer main. The sewer main must be protected by an easement of no less than 3m in width which will be minimum 1.5m on the either side of the sewer main;
9. Sewer easements of minimum 3m in width, including associated Section 88B instruments, are to be created in favour of council over any existing sewerage reticulation components located within the subject property;
10. Prior to issue of the *Subdivision Certificate*, Council is to be supplied with:
 - a) A certificate of acceptance from the appropriate power authority indicating that satisfactory arrangements have been made for provision of electricity supply to the subdivision; and
 - b) Satisfactory evidence that arrangements have been for the installation of fibre-ready facilities to all individual lots so as to enable fibre to be readily connected to any premises that may be constructed on those lots. This will need to include confirmation in writing from the carrier that they are satisfied that the fibre ready facilities are fit for purpose; and
 - c) Satisfactory evidence (usually by way of an agreement with a carrier) that arrangements have been made for the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots.

11. Electricity and telecommunications are to be supplied to the Subdivision in accordance with the relevant authority's standards;

12. 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;
13. In accordance with the provisions of section 7.11 of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Contributions Plan 2019*, a contribution shall be paid to Council in accordance with this condition as detailed in the table below. The contribution shall be paid to Council prior to the issue of a Subdivision Certificate for the relevant stage or number of lots to be created. Contributions are subject to increase in accordance the consumer price index and are payable at the rate applicable at the time of payment.

	2 New Lots (1 x credit for existing Lot)
Transport facilities	\$4,511.00
Recreation and open space	\$2,266.00
Community facilities	\$660.00
Stormwater management	\$476.00
Plan administration	\$1,034.00
Total	\$8,947.00

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

Note – Council’s 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.

14. 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.*
15. Any unpaid Contributions or charges nominated in the development consent will be indexed to CPI at the beginning of each new financial year.

ADVISORY NOTES

1. This development consent requires a *Certificate of Compliance* under the *Water Management Act 2000* to be obtained prior to the issue of a Subdivision 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*, a monetary contribution in accordance with the following *Schedule of Contributions* must be paid in full (including indexation, where applicable).

Section 64 Contributions

2 x residential allotments (small) at 0.75 ET/units each and credit for existing lot (1 x residential allotment (medium) at 1.0 ET/unit)	
Water Headworks	\$4,511.50
Sewer Headworks	\$2,059.50
Total Headworks	\$6,571.00

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.

2. 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";
3. 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;
4. 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 12 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;
5. If you are dissatisfied with this decision section 8.7 of the EP&A Act gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice, pursuant to section 8.10(1)(b); and
6. To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.

STATEMENT OF REASONS

The determination decision was reached for the following 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 to be satisfactory in terms of the matters identified in Section 4.15 of the Environmental Planning & Assessment Act 1979; and
3. No submissions were received during notification of the application.

Executive summary

OWNER/S	Luke and Anna Cossetto
APPLICANT:	Luke Cossetto
PROPERTY DESCRIPTION	74 Inglis Street, Mudgee NSW 2850 Lot 2 DP817235
PROPOSED DEVELOPMENT	Subdivision of land (1 into 2 lots)
ESTIMATED COST OF DEVELOPMENT:	\$40,000
REASON FOR REPORTING TO COUNCIL:	Variations greater than 10% to a MWRLEP 2012 numerical standard are to be reported to Council to obtain the concurrence of the Secretary of the Department of Environment and Planning.
PUBLIC SUBMISSIONS:	Nil

Council is in receipt of Development Application DA0350/2022 that seeks approval for Subdivision of land (1 into 2 lots), located at 74 Inglis Street MUDGEE NSW 2850, Lot 2 DP 817235, and received by Council on 17 March 2022.

The subject site is located within a residential area on the corner of Douro Street and Inglis Street with the Wallerawang Gwagegar Railway line located to the north-east of the site. Lyons Lane also adjoins the site to north and north-east of the site. The site itself is 1135m² in size and contains an existing dwelling and garage accessed off Douro Street. An aerial of the subject site and surrounds is provided in Figure 1.

The application proposes to subdivide the land into two lots as follows:

- Lot 1 will be 600.23m² in size and will contain the existing dwelling,
- Lot 2 will be 534.67m² in size and will contain the existing shed.

The proposal includes a variation to the minimum lot size of 600m² prescribed in the Mid-Western Local Environmental Plan 2012 (MWRLEP 2012). Lot 2 will be 534.67m² representing a 10.93% variation to the development standard requirement. A copy of the proposed subdivision plan is provided in Attachment 1.

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 17 May 2022. During the notification period, no submissions were received.

In accordance with the requirements of the MWRLEP 2012, the applicant has satisfactorily demonstrated that the minimum lot size of 600m² is unreasonable and unnecessary in this case by demonstrating that the dwelling located on the undersized lot is able to achieve the development standards for "Residential Development" under Council's Development Control Plan (DCP) including sufficient private open space and the provision for car parking given the recent approval for a new 5m driveway access from Douro Street (Reference: S138.0091/2022). Figure 2 shows the layout of Proposed Lot 2 containing the existing dwelling. As such the proposed variation is supported and discussed in detail within the body of this report.

As the application involves a variation to a MWRLEP 2012 standard that is greater than 10%, the application is required to be determined at a Council meeting in order to gain concurrence by the Secretary of the Department of Environment and Planning for the variation.

The proposed development is considered otherwise generally consistent with Council's Development Control Plan and the Mid-Western Regional Local Environmental Plan 2012. The application is recommended for Approval.



Figure 1: Aerial Image of subject site and locality.

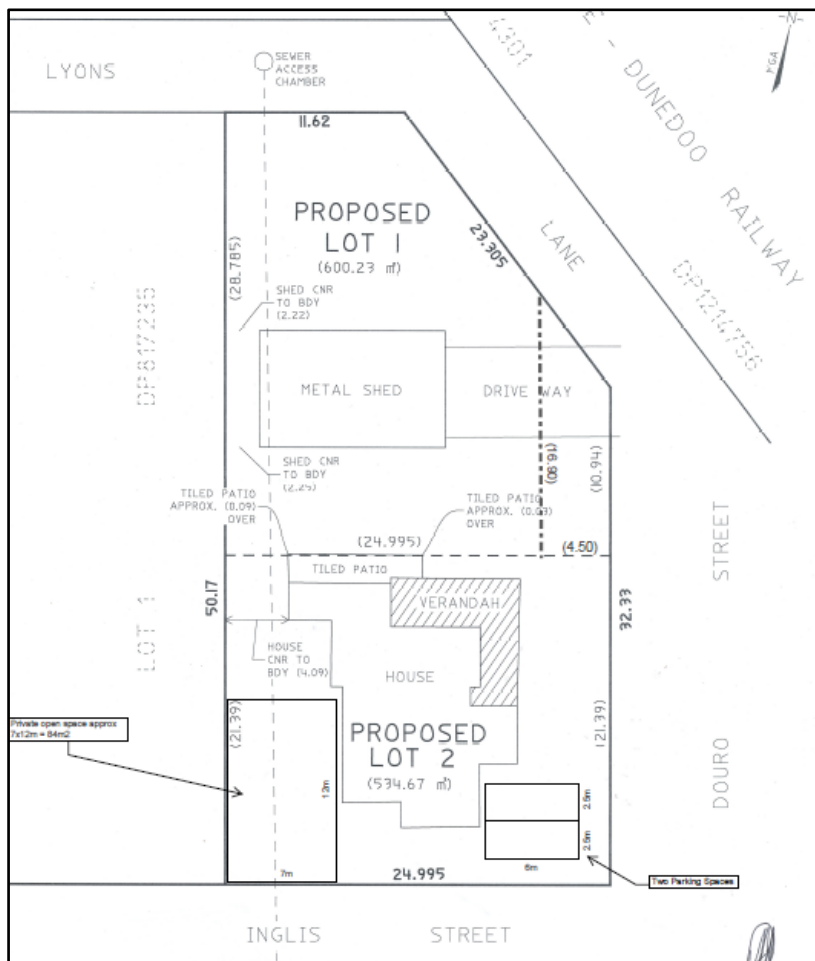


Figure 2: Extract of proposed subdivision plan showing location of private open space and parking within Lot 2.

Disclosure of Interest

Nil

Detailed report

Background and previous approvals

The subject site contains an existing dwelling and double garage accessed from an existing crossover to Douro Street. A photo of the subject site as viewed from Douro Street is provided in Figure 3.

On 8 December 2021, Council approved a Section 138 (S138.0078/2022) for a second driveway crossover to the subject site. The sketch provided with the application indicated that the crossover was to be from Inglis Street and would be 5 metres wide.

Following approval of S138.0078/2022 above, a second Section 138 application (S138.0091/2022) was lodged and approved by Council on 22 December 2021. This application changed the location of the second crossover to the southern end of the Douro Street frontage. Significantly, the proposed subdivision relies on this new crossover to provide onsite car parking to Proposed Lot 2 containing the existing dwelling. Whilst this crossover has been approved, no new crossovers have been constructed at the time of writing.



Figure 3: Photo of subject site from Douro Street frontage. A new crossover has been approved under S138.0091/2022 on the southern end of the Douro Street frontage.

Designated Development

The development proposal is not considered to be Designated Development, in accordance with Schedule 3 of the Environmental Planning and Assessment Regulation 2021 (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 & Assessment Act 1979 (EP&A Act).

Assessment

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

4.15(1)(a) Requirements of Regulations and Policies

(i) Do any environmental planning instruments (SEPP, REP or LEP) apply to the land to which the Development Application relates?

State Environmental Planning Policy (Biodiversity And Conservation) 2021

The proposed development will not require removal of vegetation or koala habitat under this Policy. Therefore, no further consideration of this SEPP is considered necessary.

State Environmental Planning Policy (Industry And Employment) 2021

The proposed development does not involve Advertising or Signage nor is impacted by any other requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

State Environmental Planning Policy (Planning Systems) 2021

The proposed development is not a State or Regionally Significant Development nor is impacted by any other requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

State Environmental Planning Policy (Precincts-Regional) 2021

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

State Environmental Planning Policy (Primary Production) 2021

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

State Environmental Planning Policy (Resilience and Hazards) 2021

Pursuant to section 4.6 of the Policy, a site inspection and a search of council's records did not reveal any potentially contaminating activities upon the site. Accordingly, no further consideration is necessary

State Environmental Planning Policy (Resources and Energy) 2021

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Pursuant to section 2.48, the development will not have impact on underground electricity power lines, distribution pole or tower. There are no electrical easements that constrain the subject site and therefore no further consideration of this SEPP is considered necessary.

MID-WESTERN REGIONAL LOCAL ENVIRONMENTAL PLAN 2012 (MWRLEP 2012)

The following clauses of Mid-Western Regional Local Environmental Plan 2012 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of Plan

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

Clause 1.4 Definitions

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

- **Subdivision** – as defined in s6.2 of the *Environmental Planning and Assessment Act 1979*

Clause 2.2 Zoning of Land to Which Plan Applies

The land is zoned R1 General Residential and is therefore subject to the Plan.

Clause 2.3 Zone objectives and Land Use table

The land is zoned R1 General Residential pursuant to MWRLEP 2012. The objectives of the zone and how the proposal satisfies the objectives is addressed below:

R1 General Residential

1. *To provide for the housing needs of the community.*

Comment The proposal will contribute to the housing needs of the community.

2. *To provide for a variety of housing types and densities.*

Comment The proposal will contribute to the variety of housing types and densities within the R1 zone.

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.

Clause 2.6 Subdivision – consent requirements

As the proposal involves subdivision this requires development consent under this Clause as discussed throughout the report.

Clause 4.1 Minimum subdivision lot size

The proposed lots have an area of 534.67m² and 600.23m². The minimum lot size pursuant to the mapping is 600m². Subsequently, the applicant has addressed clause 4.6 (discussed below) to justify the proposed variation.

Clause 4.6 Exceptions to development standards

It is proposed to vary Clause 4.1 of the MWRLEP 2012 to reduce the minimum lot size in relation to Lot 2 from 600m² to 534.67m², representing a variation of 10.33% to the development standard. The development standard to be varied states the following:

(3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified the correct approach to the consideration of clause 4.6 requests as follows:

- Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.
- The first opinion of satisfaction in clause 4.6(4)(a)(i) is whether the clause 4.6 request has adequately addressed the matters required to be demonstrated in clause 4.6(3). Those matters are:
 - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - that there are sufficient environmental planning grounds to justify contravening the development standard.
- The consent authority does not have to directly form the opinion of satisfaction regarding these matters, but only indirectly form the opinion of satisfaction that the written request has adequately addressed these matters.
- The second opinion of satisfaction in clause 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.

- The consent authority must be directly satisfied that the clause 4.6 request adequately addresses the matter in clause 4.6(4)(a)(ii), which is not merely that the proposed development will be in the public interest, but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone.
- The final precondition in clause 4.6(4) that must be satisfied is that the concurrence of the Secretary of the Department of Planning and Environment has been obtained.

Given the above, an assessment has been made taking into consideration the above points and the requirements of Clause 4.6 as follows:

1. Clause 4.6(4)(a)(i)

The consent authority satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in clause 4.6(3) being:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

The applicant has provided an appropriate justification that the minimum lot size standard is unreasonable and unnecessary in this case and that there are sufficient environmental planning grounds to justify contravening the development standard. The reasons (as summarised by the applicant in their report) are as follows. A full copy of the report is available in Attachment 2.

1. The site is relatively flat, environmentally unconstrained and able to accommodate new residential development without negative impacts on adjoining properties.
2. The existing dwelling will maintain good amenity, access and car parking, private open space and solar access on Lot 2 as proposed.
3. New residential development on the subject lot can easily be serviced with electricity, water and sewer services, and has adequate access.
4. The proposed development will not affect the character of the area or create any land use conflicts.
5. The development is consistent with the predominant lot pattern in the local area where there are numerous examples of similar subdivisions of lots with three road frontages.
6. The development is consistent with the objectives of Clause 4.1 Minimum Subdivision Lot Size.
7. The development is consistent with the objectives of the R1 General Residential zone.

In addition to the above it is also acknowledged that the land may be subdivided to below the minimum lot size of 600sqm under a different pathway of the MWRLEP. This would require the land to be developed for a detached dual occupancy and then subsequently subdivided to a lot at least 400 square metres in size in accordance with the requirements of Clause 4.1B "Exceptions to minimum lot sizes for certain residential development" of the MWRLEP.

2. Clause 4.6(4)(a)(ii)

The consent authority satisfied that the proposal will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.

Comment:

It is proposed to vary Clause 4.1 Minimum Subdivision Lot Size of the MWRLEP 2012. The applicant has provided an appropriate response to how the proposal meets the objectives of this Standard which incorporates the following (refer to Attachment 2 for a full assessment):

1. *to ensure that subdivision of land occurs in a manner that promotes suitable land uses and development,*

Comment The proposed subdivision will result in a new lot for future residential development that is greater than 600m² in size and therefore complies with the minimum lot size requirement. The proposed lot that is less than 600m² in size will contain the existing dwelling. The dwelling will be centrally located on the proposed lot, will have adequate setbacks to all boundaries, a good amount of private open space and solar access and opportunity for car parking.

The proposed subdivision is also consistent with the predominant subdivision pattern in the local area where there are numerous examples of lots with three road frontages having been subdivided in a similar manner and with lot sizes less than 600m².

2. *to minimise any likely impact of subdivision and other development on the amenity of neighbouring properties,*

Comment Proposed Lot 2 will contain an existing dwelling and proposed Lot 1 will be vacant and likely to be developed for residential purposes. This lot will meet the minimum lot size of 600m² and is able to be developed without impacting the amenity of neighbouring properties, including the dwelling on proposed Lot 2 and the adjoining land to the west at 76 Inglis Street, Mudgee.

3. *to ensure that lot sizes and dimensions are able to accommodate development, consistent with relevant development controls,*

Comment The proposed subdivision will result in a new lot for future residential development that is greater than 600m² in size and therefore complies with the minimum lot size requirement. The subdivision therefore promotes future residential development that can be designed to comply with all relevant development controls.

The existing dwelling on proposed Lot 2 also complies with relevant development controls, including private open space, site coverage, solar access and there is capacity for provision of on-site car parking given the approval of a Section 138 application for a new access from Douro Street.

4. *ensure that rural lands are not fragmented in a manner that threatens either their future use, or the use of neighbouring land, for agricultural production,*

Comment This objective is not relevant to the proposed development as the subject land is not rural land.

5. *to ensure that subdivision does not have an inappropriate impact on the natural environment,*

Comment The proposed dwelling will have no negative impact on the natural environment as the land is relatively flat, no native vegetation is required to be cleared, it is not proximate to any watercourse and is able to be serviced with all essential utilities.

6. *to maximise the economic potential of, and provide for more intensive, small lot agricultural uses in, areas that are able to access commercial quantities of irrigation water.*

Comment This objective is not relevant to the proposed development as the subject land is not rural land.

Below is an assessment against the objectives of the zone R1 General Residential:

1. *To provide for the housing needs of the community.*

Comment The proposed subdivision will facilitate additional housing opportunities in an accessible location.

2. *To provide for a variety of housing types and densities.*

Comment The proposal will contribute to the variety of housing types and densities within the R1 zone. In addition to a single dwelling, the MWRLEP 2012 provides for the opportunity for higher density development through the application of clauses 4.1A and 4.1B. The proposed subdivision creates a lot that could take advantage of these LEP provisions, however this will be the subject of further consideration and detailed design and a future development application.

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

Comment The proposed subdivision creates lots of sufficient size that could be developed for a range of permissible land uses specified in the R1 General Residential Zone, subject to development consent.

Given the above, the proposal is considered to be consistent with the objectives of Clause 4.1 and the zoning of the land R1 General Residential. The proposed variation to the minimum lot size is therefore considered to be in the public interest in this case.

3. Clause 4.6(4)

Council must be satisfied is that the concurrence of the Secretary of the Department of Planning and Environment has been obtained.

Comment

The Secretary's concurrence may be assumed in accordance with Planning Circular PS 20-002 issued on 5 May 2020 which states:

all consent authorities may assume the Secretary's concurrence under:

- *Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plan) Order 2006 or any other provision of an environmental planning instrument to the same effect, or*
- *State Environmental Planning Policy No 1 – Development Standards.*

However the assumed concurrence is subject to conditions:

- In relation to “**Numerical and non-numerical development standards**” the circular states that the Secretary's concurrence may not be assumed by a delegate of council if:
 - The development contravenes a numerical standard by greater than 10%; or
 - The variation is to a non-numerical standard.

The circular further states that “the purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation”.

In this case as it is proposed to vary the minimum lot size by more than 10% and is being considered at a Council meeting. Accordingly, the secretary's concurrence can be assumed.

4. Clause 6

Relates to variations to the minimum lot size for Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition,

Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

Comment: Not applicable - the land is zoned R1 General Residential.

5. Clause 8

Requires that development consent cannot be granted in relation to a development standard for complying development, in connection to a commitment set out in a BASIX certificate or Clause 5.4

Comment: The variation does not relate to any development standards excluded by Clause 8.

Clause 5.4 Controls relating to miscellaneous permissible uses

The proposal does not include any of the listed uses contained under this clause.

Clause 5.10 Heritage Conservation

As the proposal includes works involving a site within the Heritage Conservation Area, consideration must be given to the relevant heritage significance in accordance with Clause 5.10(4). The proposal relates to subdivision with no building works proposed. Accordingly, the impact upon the heritage conservation area is considered to be minimal with no further consideration necessary.

Clause 5.21 Flood planning

As shown in Figure 4, the development site is mapped as being impacted by Probable Maximum Flooding (PMF) events. An assessment against the requirements of Clause 5.21 is as follows:

The development is compatible with the flood hazard of the land, and

Comment Under the Mudgee Flood Study 2021 the site is impacted by Probable Maximum Flooding (PMF) events and is identified as having a Low Flood Risk. The proposal, being a subdivision, is identified as a compatible land use in accordance with the Urban Floodplains Matrix contained within the Mid-Western Development Control Plan 2013.

(b) The development will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and

Comment The proposal, being a subdivision will have minimal to no effect on the increase of potential flood affectation of other development or properties.

(c) The development will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

Comment The proposal will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes.

(d) The development incorporates appropriate measures to manage risk to life from flood, and

Comment The flood hazard under the Mudgee Flood Study 2021 is "Generally safe for people, vehicles and buildings" accordingly no additional measures are considered necessary to manage risk to life from flood.

(e) The development will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Comment The proposal will not have any adverse effects on the environment.

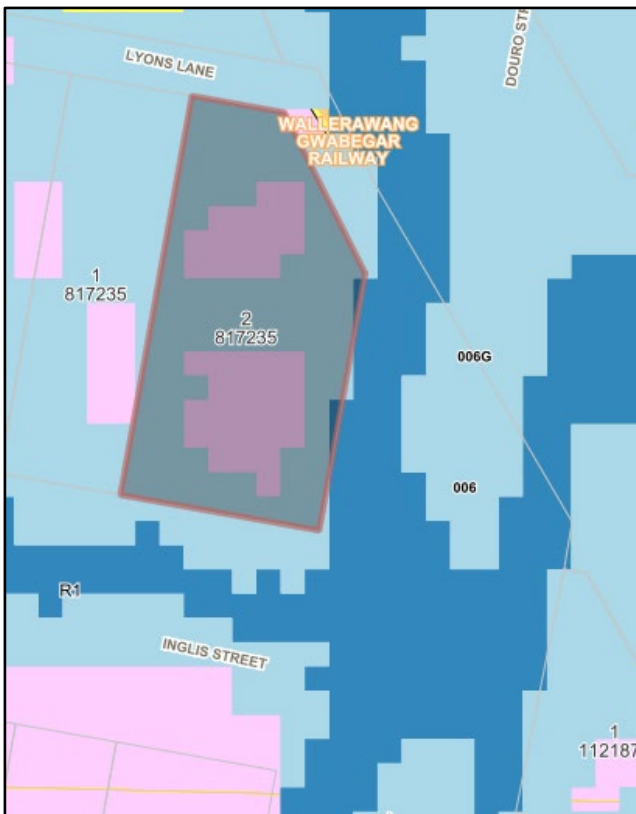


Figure 4: Extract from Mudgee Flood Study 2021.
Light Blue = PMF Dark Blue = Overland (Source: Intramaps)

Clause 6.1 Salinity

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

Clause 6.3 Earthworks

The proposal is for a use only and does not involve any earthworks. Accordingly, no further consideration of this clause is necessary.

Clause 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.

Clause 6.5 Terrestrial biodiversity

The proposal is not located in any area identified as 'Moderate or High Biodiversity Sensitivity'.

Clause 6.7 Active street frontages

Not applicable. The site is not located within the area mapped as 'Active street frontage'.

Clause 6.8 Airspace operations – Mudgee Airport

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

Clause 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.

Clause 6.10 Visually sensitive land near Mudgee

The land is not located within the area identified within the visually sensitive land map.

4.15(1)(a) Requirements of Regulations and Policies

(ii) Draft environmental planning instruments (EPI)

No draft environmental planning instruments apply to the land to which the Development Application relates.

(iii) Any development control plans

MID-WESTERN REGIONAL DEVELOPMENT CONTROL PLAN 2013

An assessment is made of the relevant chapters and sections of the Mid-Western Regional Development Control Plan 2013 (DCP, 2013). Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

Part 2.1 Residential Development

DEVELOPMENT CONTROL REQUIREMENT	COMMENT / COMPLIES
Building Setback from the street	
Zones R1, R2 and R3 where Lot size is less than 900m ² : 4.5m and 5.5m to the garage	Complies – subdivision will not alter existing setback of dwelling to Douro Street.
Building Side/Rear setback	
Zones R1, R2 and R3 where Lot size is less than 900m ² : 900m	Complies – the new boundary will be set back a minimum of 1.7m from the existing dwelling. A condition will be included to ensure minimum setbacks are achieved.
Building Secondary Frontage for corner lots setback	
Zones R1, R2 and R3 where Lot size is less than 900m ² : 0m for garages in laneways 2m to side boundary	Complies – subdivision will not alter existing setback of dwelling to Inglis Street.
Building height / design	
Proposed buildings are single story	No impact
75% of private open space and internal living areas shall receive at least three hours effective sunlight between the hours of 9.00am and 3.00pm on 21 June (Winter solstice)	Complies
Principal Private Open Space with a minimum of 80m ² and a minimum dimension of 5 metres.	Complies – private open space available on the south western side of the existing dwelling which is 110sqm in size and has a minimum dimension of 6.5m – refer to Figure 2 for details of location.
The garage door or carport does not exceed 45% of the front elevation	No impact
All facades with street frontage contain windows	No impact
For corner allotments no fences, structures or landscaping exceeding 1 metre in height are to be located within the triangle	No impact

DEVELOPMENT CONTROL REQUIREMENT	COMMENT / COMPLIES
formed by a sight line 12 metres x 6 metres from the intersection of the two street boundaries.	
Building is not a transportable or relocated dwelling	No impact
Parking	
Provision for parking of two vehicles behind the building line including at least one space undercover.	No parking is currently provided onsite within proposed Lot 2 containing the existing dwelling. A Section 138 has already been issued for the creation of a new crossover to Douro Street at the southern boundary of the lot (refer Figure 2 for details) which provides for access to the site and provision of parking onsite for two vehicles.
Utilities	
Buildings are located clear of utility infrastructure	No impact
Building is not located within an easement for the purpose of utility infrastructure	No impact
Structures are located a minimum of 1500mm from the centre of water and sewer main	No impact
Details of water supply and sewer reticulation have been provided:	No impact - existing dwelling connected to reticulated services and condition to be included for separate services to be provided to vacant lot.
If available within 500m applicant has proposed connection to reticulated network	Not applicable
Where no water supply is available, applicant has provided a minimum 60,000 litres which includes a minimum of 20,000 litres reserved for firefighting purposes	Not applicable
Where no reticulated sewer is present, the applicant has proposed onsite disposal in accordance with Section 68 of the Local Government Act 1919	Not applicable
If reticulated services have not been proposed the site is a minimum of 5ha in size	Not applicable
All storm water flows to a gravity system	Complies
Buildings are not located in the path of overland flow	Not applicable
Fencing	
Front fences are open panel, do not exceed 1.2 metres in height and are not of Colorbond material construction	No impact
Side fences located in front of the building line are open panel or a combination of open panel and masonry columns to match the front fence and do not exceed 1.2 metres in height	No impact
Side and rear fences do not exceed 1.8 metres in height once behind the building	No Impact
Dividing fences do not affect the flow of surface water with the possibility of causing flooding.	No impact
Access	
All weather two wheel drive access	Complies
Driveways to be located a minimum of 6m from an intersection.	A Section 138 has been approved for the proposed access/driveway location.
For rural area the minimum sight distances is 250m in the 100km/h speed zone and 180m for the 80km zone	Not applicable
Where the driveway exceeds a slope of 6% appropriate erosion and sediment control is to be incorporated into the design of the access.	Not applicable – the slope does not exceed 6%

DEVELOPMENT CONTROL REQUIREMENT	COMMENT / COMPLIES
Garages, Outbuildings	
Outbuildings must not negatively affect the amenity of the streetscape or adjoining properties	Not applicable
Urban areas where <750m ² : 50m ² maximum shed size	Not applicable
Max building height of 4.5m from natural ground level to the ridge applies in urban areas where the lot is under 2000m ²	Not applicable
Ridgelines	
Development roofline must not project above the ridgeline where visible from any public road or place.	Not applicable
Slope and cut and fill	
The slope of the site does not exceed 15%	Complies
Cut is limited to 1m	Not applicable
Fill is limited to 600mm and is made up of clean fill and is accompanied by a geo-technical assessment demonstrating compaction complies with Australian Standards.	Not applicable
Any cut and fill has been provided with retaining wall including drainage and is set back a minimum 300mm from the allotment boundary.	Not applicable
Fill does not direct stormwater onto adjoining properties and drainage pits for overland flow paths have been provided.	Not applicable
Cut / fill is clear of any water or sewer easements.	Not applicable

Part 7.1 Urban Subdivision

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Applies to	
Land zoned residential; village zones; rural residential lots up to 2 hectares	Land is zoned Residential
Lot size	
Minimum lot size as determined by MWRLEP 2012	Variation to the minimum lot size, referred to throughout the report
All lots have street frontage	All lots have frontage to Douro Street
Lots increase in size relative to slope as follows: – 0-10 degrees: 600m ² – 10-15 degrees: 700m ² – 15-20 degrees: 800m ² – >20: subdivision prohibited	Approximately 4 degrees
All lots have 16m width at building line in residential and village zones	Yes. Lots are of ample size and dimension
Battle-axe handles in R1, R3 and RU5 Village have width of 4m	Not applicable
Battle-axe handles in R2 and R5 residential zones have width of 6m	Not applicable
Lot Design	
For infill subdivision lot orientation maximises solar access and takes account of existing pattern of development	Yes. Achieves adequate solar access.
For new release subdivision lot orientation maximises solar access by maximising north-south lots	Not applicable
For new release subdivision east-west orientated lots have increased width and midpoint	Not applicable

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Lots generally rectangular in shape	Lots are generally rectangular in shape with Lot 2 to contain an existing dwelling and Lot 1 of sufficient size and shape to accommodate a building envelope
Lots on southern side of road provide greater frontage width for better solar orientation of future dwelling	Not applicable
Corner lots have sufficient area to allow dual occupancy and independent utility connection points	Not applicable
Street Layout and Design	
Traffic Impact Statement submitted for 5+ lots	Not applicable
Traffic Impact Statement submitted for all subdivisions where new road required	Not applicable
Subdivision integrates with existing residential area	Yes
New roads must provide “through road” connections to surrounding roads and road heads where they exist in the locality	Not applicable
Where cul-de-sac treatment unavoidable, pedestrian linkages between streets provided	Not applicable
Multiple cul-de-sacs and “no through roads” discouraged	Not applicable
Maximum number of lots in cul-de-sac is 12 lots	Not applicable
Subdivision >80 lots should not require backtracking	Not applicable
Road Standards for New Development	
Urban Road Standards required	Not applicable
1 x 1.2m footpath, barrier kerbing	Not applicable
Commercial and Industrial Subdivision roads: 22m road reserve, 13m carriageway, 2 x 4.5m nature strip, 1 x 1.2m footpath, barrier / rollover kerbing	Not applicable
Cycle ways and footpaths	
Cycle ways and pedestrian networks included in new subdivisions	Not applicable
If subdivision site identified in Council cycle way plan or pedestrian strategy, subdivision needs to respond to strategy	Not applicable
New subdivisions provide direct, convenient and safe access to major facilities	Yes, subdivision layout will extend to the existing connections to Mudgee
Cul-de-sacs may be required to include 10m wide shared overland flow/pathway	Not applicable
Developer to provide contribution to Council for installation of cycle ways and footpaths prior to release of subdivision certificate	Not applicable
Open Space	
Greenfield sites >20 lots ensure that lots are <400m from local park, playground or passive open space	Not applicable
Where on-site detention basins double as open space, must include raised level area which incorporates playground or fitness equipment etc. and shading landscaping	Not applicable
Landscaping	
Landscape plan provided, detailing treatment of public domain	Not applicable
Land dedicated as public reserve top soiled, levelled, turfed prior to release of subdivision certificate and maintained by developer for period of two years	Not applicable
Street Trees	
Two (2) street trees provided per lot	Existing street trees on Inglis Street to be retained. Due to the space available,

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
	No further street tree required to Douro Street.
Developer provides levy to Council to provide these trees after 80% of works carried out	Not applicable
Utility Services	
Servicing plan submitted showing provision of underground electricity, sewer, water, drainage and telecommunications to the development	Lots to be connected to reticulated water, sewer, electricity and telecommunications
Evidence of consultation with relevant authorities submitted with application	Not applicable (small subdivision)
Drainage	
As per Section 5.3 Stormwater and Drainage	Stormwater drainage to be provided in accordance with Council requirements.

Part 4.7 Tree Preservation Order

No trees to be removed.

Part 5.1 Car Parking

Not applicable – it is noted that the existing dwelling is able to provide car parking onsite given approval has been obtained for a new crossover from Douro Street.

Part 5.2 Flooding

The development site is mapped as being impacted by Probable Maximum Flooding (PMF) events under the Mudgee Flood Study 2021 and categorised as a low flood risk.

Under the Urban Floodplains Matrix, subdivision is considered to be suitable development within low flood risk areas. The matrix also requires Council to consider the impact of the development on flooding elsewhere. In this case, the development relates to subdivision only with no building works proposed and is therefore is considered unlikely to have any impact on existing flood behaviour. The impact of future development of Lot 1 on flooding behaviour will be assessed at such time as an application is lodged.

Part 5.3 Stormwater Management

Proposed Lot 2 is already connected to Council’s stormwater infrastructure, a condition will be included to ensure that existing services are located within the lot they serve. Stormwater from future development on Lot 2 will be required to be provided at that time to Council requirements.

Part 5.4 Environmental Controls

All the relevant considerations have been discussed elsewhere in this report or dealt with through conditions of consent.

Section 7.11 Contributions

Mid-Western Regional Contributions Plan 2019

Pursuant to Council’s Contributions Plan 2019, the development is proposing the subdivision of the land creating one additional lots which requires the payment of a contribution in accordance with the plan as follows:

Section 7.11 contribution rates – Inside Mudgee

	2 New Lots (1 x credit for existing Lot)
Transport facilities	\$4,511.00

Recreation and open space	\$2,266.00
Community facilities	\$660.00
Stormwater management	\$476.00
Plan administration	\$1,034.00
Total	\$8,947.00

An appropriate condition has been imposed requiring payment of the contribution

Section 64 - Water/Sewer Developer Services Charges

In accordance with the Developer Servicing Plans for Water and Sewer (August 2008), the proposed development will require the payment of DC Headworks charges calculated as follows:

Water Headworks

Debit 2 x Small Residential Allotment (<650m²) = 2 x 0.75ET/unit = 1.5ET/unit
 Credit 1 x Medium Residential Allotment (650m² – 1200m²) = 1.0 ET/unit

Total = 0.5ET/unit @ \$9,023 ET/unit = \$4,511.50

Sewer Headworks

Debit 2 x Small Residential Allotment (<650m²) = 2 x 0.75ET/unit = 1.5 ET/unit
 Credit 1 x Medium Residential Allotment (650m² – 1200m²) = 1.0 ET/unit

Total = 0.5ET/unit @ \$4,119 ET/unit = \$2,059.50

Section 64	
Water Headworks	\$4,511.50
Sewer Headworks	\$2,059.50
Total Headworks	\$6,571.00

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

No Planning Agreements are applicable.

Regulations –4.15(1)(a)(iv)

Environmental Planning and Assessment Regulation 2021

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

Likely impacts of the development – 4.15(1)(b)¹

¹ Including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

(a) Context and Setting

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

(b) Access, Transport and Traffic

The implications of additional traffic and suitable access are discussed throughout this report. The proposal is considered appropriate.

(c) Public Domain

The development will not impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or pedestrian linkages between public spaces.

(d) Utilities

All relevant utilities are available or can be made readily available to the site.

(e) Heritage

As there is no proposed development, impact upon the relevant heritage significance will be minimal.

(f) 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.

(g) Water

No significant impact expected.

(h) Soils

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

(i) Air and Microclimate

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

(j) Flora and Fauna

Not applicable.

(k) Waste

Waste service available.

(l) Energy

Not applicable.

(m) Noise and Vibration

Not applicable.

(n) Natural Hazards

The site is identified as flood prone. This has been discussed elsewhere in the report with a conclusion stating the proposed development is categorised as having a low flood risk and the development will have minimal impact on flooding within the surrounding area.

(o) Technological Hazards

There are no known risks to people, property or the biophysical environment, resulting from technological or industrial hazards, or building fire risk.

(p) Safety, Security and Crime Prevention

Increased passive surveillance as a result of the proposed development.

(q) Social Impact in the Locality

Generally positive.

(r) Economic Impact in the Locality

Generally positive.

(s) Site Design and Internal Design

Adequate as discussed throughout this report.

(t) Construction

To comply with the BCA where relevant.

(u) 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.

Suitability of Site for Development – 4.15(1)(c)

(a) Does the proposal fit in the locality?

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

(b) 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.

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

(a) Public Submissions

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 17 May 2022. During the notification period, no submissions were received.

(b) Submissions from Public Authorities

No submissions were sought or received from public authorities.

The Public Interest – 4.15(1)(e)

(a) Federal, State and Local Government interests and Community interests

No significant issues in the interests of the public are expected as a result of the proposed development.

Consultations

(a) Health and Building

Council's Health & Building Surveyor has not raised any concerns with the proposal.

(b) Technical Services

Council's Development Engineer has not raised any concerns with the proposal subject to standard conditions.

Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning

Strategic implications

Council Strategies

Not applicable

Council Policies

Mid-Western Development Control Plan 2013
Community Participation Plan 2019
Mid-Western Regional Contributions Plan 2019

Legislation

Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulations 2021
Mid-Western Regional Local Environmental Plan 2012

Financial implications

Not applicable

Associated Risks

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

SARAH HOPKINS
TOWN PLANNER

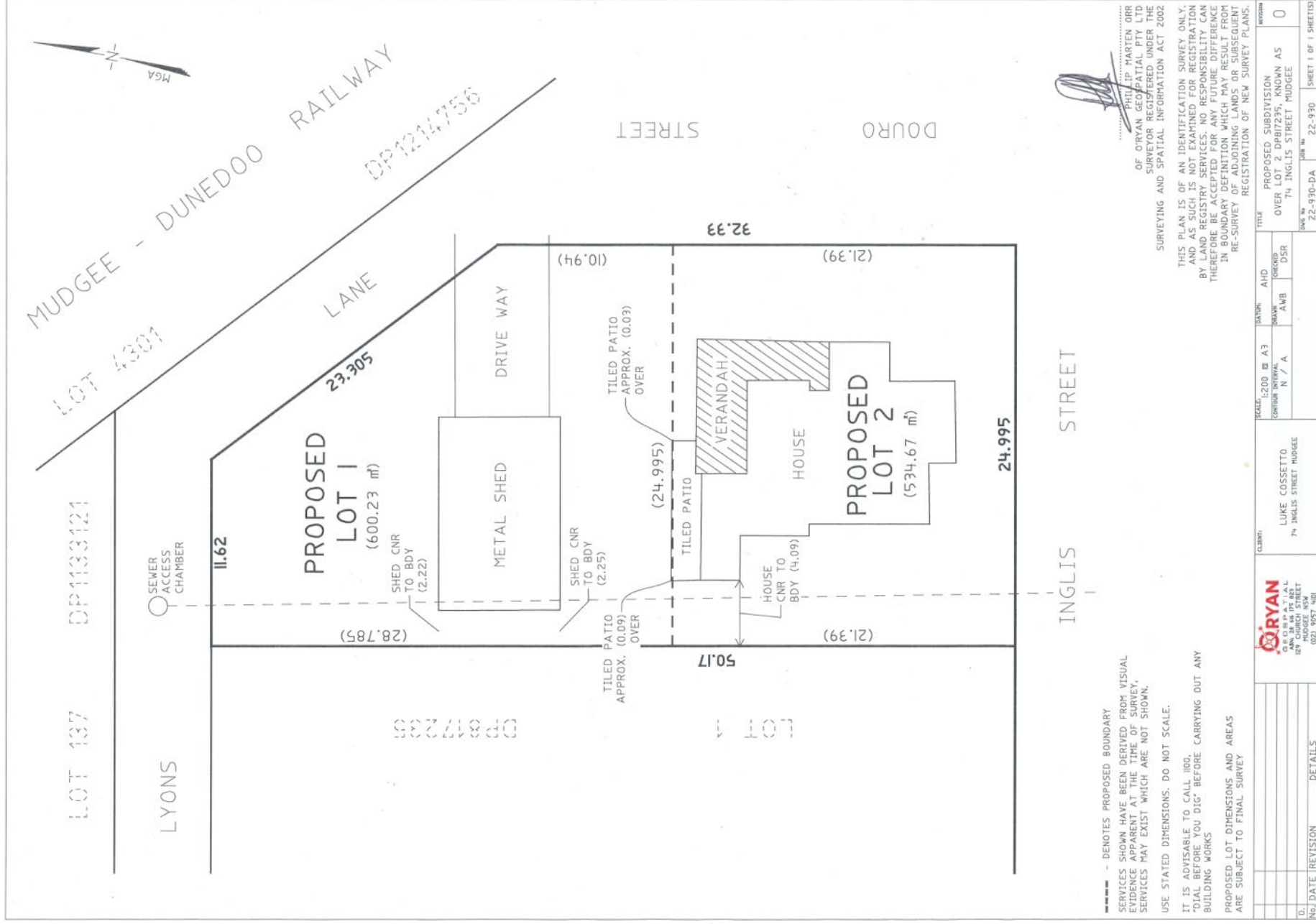
ALINA AZAR
ACTING DIRECTOR DEVELOPMENT

24 June 2022

Attachments: 1. Proposed Subdivision Plan.
2. Applicant Report - Exception to Development Standard Report.

APPROVED FOR SUBMISSION:

SIMON JONES
DIRECTOR COMMUNITY



--- DENOTES PROPOSED BOUNDARY
 SERVICES SHOWN HAVE BEEN DERIVED FROM VISUAL EVIDENCE APPARENT AT THE TIME OF SURVEY. SERVICES MAY EXIST WHICH ARE NOT SHOWN.
 USE STATED DIMENSIONS. DO NOT SCALE.
 IT IS ADVISABLE TO CALL 1100. "DIAL BEFORE YOU DIG" BEFORE CARRYING OUT ANY BUILDING WORKS
 PROPOSED LOT DIMENSIONS AND AREAS ARE SUBJECT TO FINAL SURVEY

PHILIP MARTEN ORR
 OF ORRYAN GEOSPATIAL PTY LTD
 SURVEYOR REGISTERED UNDER THE SURVEYING AND SPATIAL INFORMATION ACT 2002

THIS PLAN IS OF AN IDENTIFICATION SURVEY ONLY. AND AS SUCH IS NOT EXAMINED FOR REGISTRATION BY LAND REGISTRY SERVICES. NO RESPONSIBILITY CAN THEREFORE BE ACCEPTED FOR ANY FUTURE DIFFERENCE IN BOUNDARY DEFINITION WHICH MAY RESULT FROM RE-SURVEY OF ADJOINING LANDS OR SUBSEQUENT REGISTRATION OF NEW SURVEY PLANS.



		CLIENT: LUKE COSSETTO 74 INGLIS STREET MUDGEE		SCALE: 1:200 OR A3 CUSTOMER: N/A		DATE: AHD DRAWN: AHB CHECKED: DSR		TITLE: PROPOSED SUBDIVISION OVER LOT 2 DP817239, KNOWN AS 74 INGLIS STREET MUDGEE		DRAWN No: 22-930-DA		JOB No: 22-930		SHEET 1 OF 1 SHEETS	
No.	DATE	REVISION	DETAILS												

EXCEPTION TO DEVELOPMENT STANDARD REPORT

74 Inglis Street, Mudgee



Navigate Planning

17 March 2022

1 INTRODUCTION

This report supports a development application for a two lot subdivision on land at Lot 2 DP 817235, 74 Inglis Street, Mudgee (the subject land).

The subject land is 1135m² in size and has three road frontages, being Douro Street, Inglis Street and Lyons Lane. The land contains a dwelling in the southern part of the site near Inglis Street and a large shed in the northern part of the site with access from Douro Street.

The development application proposes to subdivide the land into two lots, with the shed located on proposed Lot 1 and the existing dwelling on proposed Lot 2. The purpose of the subdivision is for future residential development on proposed Lot 1 replacing the existing shed. Proposed Lot 1 will have an area of 600.23m² and proposed Lot 2 will have an area of 534.67m².

The location of the subject land is shown in the map below.



2 RELEVANT DEVELOPMENT STANDARDS

The subject land is zoned R1 General Residential under the Mid-Western Regional Local Environmental Plan 2012. The land has a minimum lot size of 600m².

Subdivision of land must comply with clause 4.1 of the MWRLEP 2012, which is as follows:

4.1 Minimum subdivision lot size

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure that subdivision of land occurs in a manner that promotes suitable land uses and development,*
 - (b) *to minimise any likely impact of subdivision and other development on the amenity of neighbouring properties,*
 - (c) *to ensure that lot sizes and dimensions are able to accommodate development, consistent with relevant development controls,*
 - (d) *to ensure that rural lands are not fragmented in a manner that threatens either their future use, or the use of neighbouring land, for agricultural production,*
 - (e) *to ensure that subdivision does not have an inappropriate impact on the natural environment,*
 - (f) *to maximise the economic potential of, and provide for more intensive, small lot agricultural uses in, areas that are able to access commercial quantities of irrigation water.*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- (3A) *Despite subclause (3), if the consent authority is satisfied that each lot is, or will be serviced by a water reticulation system and sewerage system—*
 - (a) *land identified as “Area A” on the Lot Size Map may be subdivided to create lots of at least 2,000 square metres, or*
 - (b) *land identified as “Area B” on the Lot Size Map may be subdivided to create lots of at least 4,000 square metres.*
- (3B) *Despite subclause (3), if the consent authority is satisfied that each lot is, or will be serviced by a water reticulation system, land identified as “Area D” on the Lot Size Map may be subdivided to create lots of at least 2 hectares.*
- (4) *This clause does not apply in relation to the subdivision of any land—*
 - (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
 - (b) *by any kind of subdivision under the Community Land Development Act 1989.*

The subject land has a minimum lot size of 600m². Therefore, at least 1200m² is required for a two lot subdivision that complies with the development standard. At 1135m² in size, subdivision of the land will result in at least one lot less than the minimum lot size.

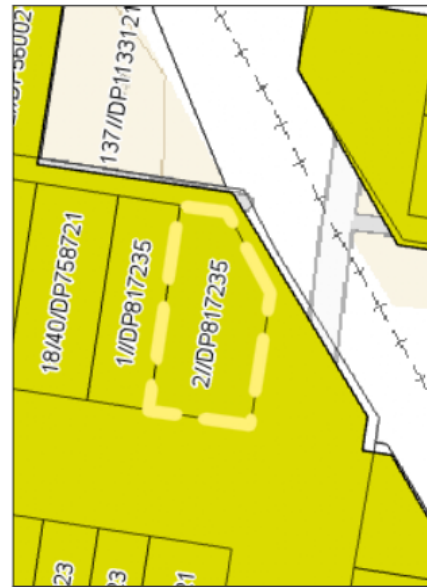
The subject land is not identified on the Lot Size Map in Areas A, B or D. The proposed subdivision is not a strata or community title subdivision.

Therefore, the development standard that the applicant seeks to vary is the minimum lot size of 600m², as referred to in clause 4.1 (3) of the MWRLEP 2012.

Extracts of the LEP 2014 Land Zoning and Minimum Lot Size Maps are provided below.



LEP 2014 Land Zoning Map



LEP 2014 Minimum Lot Size Map

Development can be approved despite non-compliance with a development standard under clause 4.6 of LEP 2014. Clause 4.6 is as follows:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
 - (a) *the consent authority is satisfied that—*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

3 RELEVANT CASE LAW

There are a number of Land and Environment Court cases that provide guidance in the preparation of written requests to justify non-compliance with a development standard under clause 4.6 of Local Environmental Plans, including:

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Brigham v Canterbury–Bankstown Council [2018] NSWLEC 1406.

Wehbe v Pittwater Council [2007] NSWLEC 827.

Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248.

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90.

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

In *Initial Action Pty Ltd v Woolhara Municipal Council [2018] NSWLEC 118*, Commissioner Preston summarised (from *Wehbe v Pitwater Council [2007] NSWLEC 827*) five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary (under clause 4.6(3)(a)), as follows:

- *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.*

The above ways to establish that a variation from a development standard is well founded are included in the Department of Planning’s Guide to Varying Development Standards 2011.

The Commissioner also stated that an applicant does not need to establish all of the ways and that establishing only one way may be sufficient.

In relation to clause 4.6(3)(b), the Commissioner stated that the grounds relied on by the applicant in the written request must be “environmental planning grounds” by their nature, being grounds that relate to the subject matter, scope and purpose of the EPA Act. The environmental planning grounds must be “sufficient”, in order “to justify contravening the development standard”, so that the consent authority can be satisfied that the written request has adequately addressed this matter. The Commissioner clarified that “*the focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.*”.

In relation to clause 4.6(4)(a)(ii), the Commissioner stated that the consent authority must be satisfied that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

4 JUSTIFICATION FOR EXCEPTION TO DEVELOPMENT STANDARD

As stated above, clause 4.6 of LEP 2014 requires a written justification for non-compliance with a development standard to demonstrate that:

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) there are sufficient environmental planning grounds to justify contravening the development standard.

Council must also be satisfied that the development is in the public interest.

The following issues are relevant considerations in determining whether the proposed development can be approved, despite non-compliance with the minimum lot size development standard:

- the objectives of clause 4.1 of MWRLEP 2012,
- the objectives of the R1 General Residential zone; and
- the relevant environmental planning grounds.

4.1 Clause 4.1 Objectives

This section of this report seeks to demonstrate that compliance with the relevant development standard is unreasonable or unnecessary in this case as the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

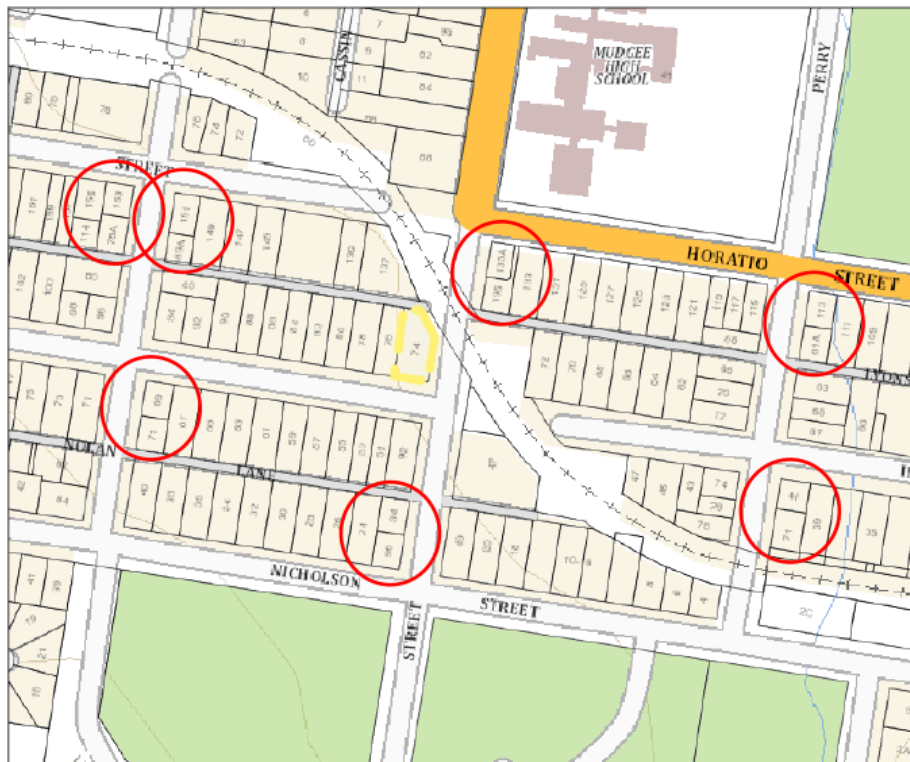
The objectives of clause 4.1 are outlined below, along with comments relating to the proposed development.

- (a) *to ensure that subdivision of land occurs in a manner that promotes suitable land uses and development,*

Comment – The proposed subdivision will result in a new lot for future residential development that is greater than 600m² in size and therefore complies with the minimum lot size requirement. The proposed lot that is less than 600m² in size will contain the existing dwelling. The dwelling will be centrally located on the proposed lot, will have adequate setbacks to all boundaries, a good amount of private open space and solar access and opportunity for car parking.

The proposed subdivision is also consistent with the predominant subdivision pattern in the local area where there are numerous examples of lots with three road frontages having been subdivided in a similar manner and with lot sizes less than 600m². The following map identifies 6 similar examples within 300m of the subject land. As indicated in the table that follows the map, all of these lots are less than 600m² in size.

Based on the above, the proposal is considered to achieve objective (a).



Map showing lots with three road frontages that have been subdivided similar to the current development proposal.

Table identifying size of lots identified in the above map

Land	Area	Zone	MLS
135 Horatio Street	575m ²	R3	600m ²
135A Horatio Street	439m ²	R3	600m ²
94 Douro Street	505m ²	R1	600m ²
96 Douro Street	505m ²	R1	600m ²
69 Inglis Street	513m ²	R1	600m ²
71 Court Street	498m ²	R1	600m ²
151 Horatio Street	534m ²	R1	600m ²
63A Court Street	386m ²	R1	600m ²
153 Horatio Street	468m ²	R1	600m ²
78A Court Street	542m ²	R1	600m ²

- (b) *to minimise any likely impact of subdivision and other development on the amenity of neighbouring properties,*

Comment – The proposed Lot 1 which will be the subject of future residential development can be developed without impacting the amenity of neighbouring properties, including the dwelling on proposed Lot 2 and the adjoining land to the west at 76 Inglis Street, Mudgee.

Based on the above, the proposal is considered to achieve objective (b).

- (c) *to ensure that lot sizes and dimensions are able to accommodate development, consistent with relevant development controls,*

Comment – The proposed subdivision will result in a new lot for future residential development that is greater than 600m² in size and therefore complies with the minimum lot size requirement. The subdivision therefore promotes future residential development that can be designed to comply with all relevant development controls.

The existing dwelling on proposed Lot 2 also complies with relevant development controls, including private open space, site coverage, solar access and there is capacity for provision of on-site car parking.

Based on the above, the proposal is considered to achieve objective (c).

- (d) *to ensure that rural lands are not fragmented in a manner that threatens either their future use, or the use of neighbouring land, for agricultural production,*

Comment – This objective is not relevant to the proposed development as the subject land is not rural land.

- (e) *to ensure that subdivision does not have an inappropriate impact on the natural environment,*

Comment – The proposed dwelling will have no negative impact on the natural environment as the land is relatively flat, no native vegetation is required to be cleared, it is not proximate to any watercourse and is able to be serviced with all essential utilities.

Based on the above, the proposal is considered to achieve objective (e).

- (f) *to maximise the economic potential of, and provide for more intensive, small lot agricultural uses in, areas that are able to access commercial quantities of irrigation water.*

Comment – This objective is not relevant to the proposed development as the subject land is not rural land.

As outlined above, it is considered that the proposed development will comply with the objectives of clause 4.1 of MWRLEP 2012 and therefore compliance with the minimum lot size development standard is unreasonable or unnecessary in this case. This satisfies clause 4.6(3)(a) of LEP 2014.

4.2 R1 Zone Objectives

The objectives of the R1 zone and comments in relation to the proposed development are provided below:

Objective 1 – To provide for the housing needs of the community.

Comment – House prices in Mudgee have risen significantly over the last few years. Increasing supply of housing, for both owner/occupier and rental, is one of the means of dampening house prices. Providing housing in good locations, close to schools, shops and services is important to meeting the needs of the community, not just for housing, but for accessible housing. The proposed subdivision will facilitate additional housing opportunities in a very accessible location and it is considered that the proposal is consistent with this objective.

Objective 2 – To provide for a variety of housing types and densities.

Comment – The Mid-Western Regional Local Environmental Plan 2012 provides for a variety of housing types and densities through the application of clauses 4.1A and 4.1B. These clauses facilitate a range of housing types in certain circumstances. The proposed subdivision creates a lot that could take advantage of these LEP provisions, however this will be the subject of further consideration and detailed design and a future development application. It is therefore considered that the proposed subdivision is consistent with this objective.

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

Comment – The Mid-Western Regional Local Environmental Plan 2012 provides for a range of other land uses to be permissible with consent in the R1 General Residential zone. The proposed subdivision creates a lot that could be used for any of the permissible land uses, subject to development consent. No decision has yet been made as to the future use of the land. While residential development of some form is likely to be the preferred use, the creation of a lot that could be used for a variety of permissible purposes is consistent with this objective.

As outlined above, it is considered that the proposed development will comply with the objectives of the R1 General Residential zone. This adds to the argument that compliance with the minimum lot size development standard is unreasonable or unnecessary in this case.

4.3 The Relevant Environmental Planning Grounds

This section of this report seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the relevant development standard.

4.3.1 *The capacity of the subject land to accommodate residential development*

The subject land is relatively flat, with a slight slope to the north. A dwelling exists in the southern part of the lot and a large shed is located in the northern part of the site with access from Douro Street. Following the demolition of the garage/shed (as part of a future development application) a vacant lot over 600m² in size will be available to accommodate residential development. The lot contains one tree that does not require removal in order to facilitate residential development. The lot is otherwise unencumbered by any natural features or hazards. All services are available to the site to connect future residential development.

There will also be no detrimental impacts on the amenity of the locality from the residential development of the subject land, as:

- A dwelling on the lot can be sited and oriented to avoid privacy impacts.
- A dwelling on the lot can be developed with no significant overshadowing impacts on adjoining properties.
- A dwelling can be erected in a manner that fits with the character of the area.
- No land use conflicts will result from the subdivision or additional residential development on the land.

4.3.2 *Potential Precedent*

As outlined in section 4.1 above, the proposed subdivision is consistent with the predominant lot pattern in the local area. Therefore, there is no new precedent that approval of the development application would set. The precedent for corner lot subdivision creating lots less than the minimum lot size has already been set.

4.3.3 *The Public Interest*

In broad terms, the provision of additional housing in the existing urban area of Mudgee is in the public interest to combat rising prices and to minimise the need for additional greenfield housing on the outskirts of town. More specifically, it is in the public interest to provide additional housing in locations where existing services are available and there will be minimal amenity and environmental impacts.

The proposed subdivision provides for additional residential development in a location that is within walking distance of schools and the Mudgee Town Centre. The site has adequate existing road frontage to facilitate residential development in a variety of potential forms.

The site has a north-south orientation such that any residential development can be undertaken on the land without causing significant overshadowing of adjoining properties. The existing dwelling on the land which would be located to the south of future residential development will maintain good solar access to the private open space area and to the front porch.

Based on the above, it is considered that there are sufficient environmental planning grounds to justify contravening the minimum lot size development standard. This satisfies clause 4.6(3)(b) of MWLEP 2012.

5 CONCLUSION

The proposed two-lot subdivision on the subject land at 74 Inglis Street, Mudgee is a development that can comply in all respects with Council's requirements, except for the fact that one of the proposed lots is less than the minimum lot size development standard.

This report seeks to justify the non-compliance with clause 4.1 of the Mid-Western Regional Local Environmental Plan 2012 under clause 4.6 of that Plan.

An exception to the minimum lot size development standard is considered justified for the following reasons:

1. The site is relatively flat, environmentally unconstrained and able to accommodate new residential development without negative impacts on adjoining properties.
2. The existing dwelling will maintain good amenity, access and car parking, private open space and solar access on Lot 2 as proposed.
3. New residential development on the subject lot can easily be serviced with electricity, water and sewer services, and has adequate access.
4. The proposed development will not affect the character of the area or create any land use conflicts.
5. The development is consistent with the predominant lot pattern in the local area where there are numerous examples of similar subdivisions of lots with three road frontages.
6. The development is consistent with the objectives of clause 4.1.
7. The development is consistent with the objectives of the R1 General Residential zone.

For these reasons, it is considered unreasonable and unnecessary to require compliance with the minimum lot size standard in this case. This report outlines the environmental planning grounds that justify approval of the modification despite the non-compliance. The public interest is served by the approval of a development application that in all other respects complies with relevant LEP objectives and provisions and has minimal to no environmental or amenity impacts.