

Item 8: Development

8.1 DA0418/2022 - Dual Occupancy and Subdivision - 12 Little Bayly Street GULGONG (Lot 4 Sec 21 DP758482)

REPORT BY THE TOWN PLANNER
TO 19 JULY 2023 ORDINARY MEETING
GOV400103, DA0418/2022

RECOMMENDATION

That Council:

- A. receive the report by the Town Planner on the DA0418/2022 - Dual Occupancy and Subdivision - 12 Little Bayly Street GULGONG (Lot 4 Sec 21 DP758482); and
- B. approve DA0418/2022 - Dual Occupancy and Subdivision - 12 Little Bayly Street GULGONG (Lot 4 Sec 21 DP758482) subject to the following conditions:
 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:	Sheet / Ref	Revision / Issue:	Date:	Prepared by:
Cover Page	-	-	-	Sunrai Designs
Site Plan	611CHA-01	E	07.06.2023	Sunrai Designs
Subdivision and Area Calculations	611CHA-02	D	26.04.2023	Sunrai Designs
Survey Plan	611CHA-03	E	07.06.2023	Sunrai Designs
Floor Plan	611CHA-04	E	07.06.2023	Sunrai Designs
Elevations	611CHA-05	F	27.06.2023	Sunrai Designs
Elevations	611CHA-06	F	27.06.2023	Sunrai Designs
Section	611CHA-07	E	07.06.2023	Sunrai Designs
Perspectives	611CHA-08	E	07.06.2023	Sunrai Designs
BASIX Certificate	1288709S_02	-	26.04.2023	Sunrai Designs

2. For clarity, this development consent provides approval for a dual occupancy (detached), demolition of outbuildings and Torrens Title subdivision (1 into 2 lots), only.
3. This consent does not permit commencement of any site works. Works are not to commence until such time as a Construction Certificate has been obtained and a Principal Certifier appointed.

GENERAL

4. All earthworks, filling, building, driveways or other works are to be designed and constructed (including storm water drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a

result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.

5. Notwithstanding the approved plans the structure is to be located clear of any easements and/or 1.5 meters from any water and sewer mains in accordance with Council Policy.

Reason: To ensure that works / structures do not impact upon Council infrastructure / easements.

6. Fill placed in residential or commercial lots shall be compacted in accordance with *AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments*.
7. The only waste derived fill material that may be received at the development site must be:
 - a) Virgin excavated natural material, within the meaning of the *Protection of the Environment Operations Act 1997*; and
 - b) Any other waste-derived material the subject of a resource recovery exemption under cl.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

PRIOR TO ISSUE OF SUBDIVISION WORKS CERTIFICATE

8. A detailed engineering design is to be submitted to and approved by the Certifier (i.e. Council or a private Certifier) prior to the issue of a Subdivision Works Certificate. The engineering design is to comply with Council's Development Control Plan and the relevant Australian Standards referenced herewith in.

A Subdivision Works Certificate is required for but not limited to the following civil works:

- a) Sewer main extensions; and
- b) Stormwater drainage such as inter-allotment drainage.

No works can commence prior to the issue of the Subdivision Works Certificate.

9. No street tree removal is permitted as part of this consent. If any street tree removal is required, separate approval must be granted from Council's Parks and Gardens department prior to the issue of a Construction Certificate.
10. A Traffic Guidance Scheme (TGS) completed by a "Certified Person" for implementation during works is to be submitted to Council prior to any work commencing.
11. A copy of the Contractor's Public Liability Insurance cover for a minimum of \$20,000,000 (twenty million dollars), is to be provided to Council, prior to issue of the Subdivision Works Certificate. The insurance cover shall include the following:
 - a) Mid-Western Regional Council is to be indemnified against any works carried out by the contractor.
 - b) Public Liability Insurance is to include Mid-Western Regional Council as an interested party
 - c) The copy of the Contractor's public liability insurance cover is to include the Certificate of Currency.

12. All finished surface levels shall be shown on the plans submitted for the Subdivision Works Certificate. Where it is proposed to import fill, the material shall be certified as free of hazardous materials and contamination by a suitably qualified geotechnical engineer. Fill placed in residential or commercial lots shall be compacted in accordance with AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments. The finished surface levels shown on the plan are to demonstrate compliance with the following:
- a) Any retaining walls are to be located a minimum of 0.3m from the boundary;
 - b) The depth of any fill must not exceed 0.6m;
 - c) No cut or fill is to occur within water, stormwater or sewer easements;
 - d) Cut shall not exceed a depth of 1.0m; and
 - e) The finished floor level is to be no higher than 1.0m above natural ground level.
13. An Erosion and Sediment Control Plan is to be submitted to an approved by the Certifier (i.e. Council or a private Certifier) prior to the issue of a Subdivision Works Certificate. the Erosion and Sediment Control Plan for the development is to be prepared and implemented in accordance with the LANDCOM guidelines and requirements as outlined in the latest edition of "Soils and Construction – Managing Urban Stormwater". Points to be considered include, but are not limited to:
- a) Saving available topsoil for reuse in the revegetation phase of the development;
 - b) Using erosion control measures to prevent on-site damage;
 - c) Rehabilitating disturbed areas quickly; and
 - d) Maintenance of erosion and sediment control structures.
14. Prior to the issue of the Subdivision Works Certificate, Council is to be provided with the certified copies of the Electrical and Telecommunications design for the subdivision.
15. Consent from Council must be obtained for all works within the road reserve (driveway works, work required for utilities etc.) pursuant to Section 138 of the Roads Act 1993, prior to the issue of a Subdivision Works Certificate.

PRIOR TO THE COMMENCEMENT OF WORKS (CIVIL)

16. The development site is to be managed for the entirety of work in the following manner:
- a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - b) Appropriate dust control measures;
 - c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
 - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
17. Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to Council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.

18. Prior to the commencement of subdivision works, the following actions are to be carried out:
- a) A site supervisor is to be nominated by the applicant;
 - b) Council is to be provided with two (2) days' notice of works commencing; and
 - c) Council is to be notified in writing of any existing damage to Council's infrastructure.

Note: Failure to comply with these conditions may result in damage to Council's infrastructure. Any damage will be rectified at the applicant's cost.

19. Runoff and erosion controls shall be installed prior to clearing and incorporate:-
- a) diversion of uncontaminated up-site runoff around cleared and/or disturbed areas and areas to be cleared and/or disturbed;
 - b) sediment control fences at the downslope perimeter of the cleared and/or disturbed area to prevent sediment and other debris escaping from the land to pollute any stream or body of water; and
 - c) maintenance of all erosion control measures at maximum operational capacity until the land is effectively rehabilitated and stabilized beyond the completion of construction.

DURING WORKS (CIVIL)

20. The subdivision works are to be inspected by a Certifier (i.e. Council or a private Certifier) to monitor compliance with the consent and the relevant standards of construction, encompassing the following stages of construction:
- a) Installation of sediment and erosion control measures;
 - b) Stormwater and sewer line installation prior to backfilling;
 - c) Inspection as per SWC condition; and
 - d) Practical Completion.
21. The developer is to grant Council unrestricted access to the site at all times to enable inspections or testing of the subdivision works.
22. The footpath and driveway levels are not to be altered outside the property boundary without Council's permission. Driveways installed over public footpaths must match the existing footpath profile.
23. No trees on public property (footpaths, roads, reserves etc.) shall be removed or damaged during construction of the subdivision works including the erection of any fences or hoardings. Trees must be protected by using suitable sturdy fencing and if any damage this must be reported to council's Parks and Gardens prior replacing.
24. The developer shall, at their own expense, engage a registered surveyor to relocate any survey mark that may be disturbed by the development or any associated work. Any information regarding relocation should be supplied to the NSW Land Registry Services and Council.
25. All works are to be constructed at the full cost of the developer, in a manner consistent with Aus-Spec #1 and Council's standard drawings.

26. All public footways, foot paving, kerbs, gutters and road pavement damaged during the works are to be restored with priority to match existing or better conditions at the developer's/demolisher's expense.
27. Inter-allotment drainage is to be provided to remove stormwater from any lots that cannot discharge to the street in accordance with Aus. Spec #1. Easements not less than 1m wide shall be created over inter-allotment drainage in favour of upstream allotments.
28. Stormwater runoff from both the lots is to be conveyed using sealed pipe system to kerb and Gutter available at 45 degree in Belmore Street with the use of non-flexible kerb adaptor.
29. New concrete sealed crossover off from Belmore Street and one bitumen sealed access to existing dwelling is to be constructed in accordance with Council requirements and standards. Separate approval for this work must be obtained under the provisions of Section 138 of the Roads Act 1993.
30. Any existing vehicular crossings not utilised by the development shall be removed and the area restored to match the adjoining section of kerb gutter prior to occupation of the development.
31. The developer is to provide separate water and sewer reticulation services to each allotment within the subdivision.
32. The developer is to extend and meet the full cost of water and sewer reticulations to service the development plus the cost of connecting to existing services. All water supply and sewerage works are required to be carried out in accordance with the requirements of Mid-Western Regional Council (as the Water Supply Authority under the Local Government Act 1993) and in accordance with the National Specification – Water Supply Code of Australia and Sewerage Code of Australia.

Note: Council does not permit other bodies to insert new junctions into 'live' water and/or sewer mains. Please contact Council's Operations Water and Wastewater Department by calling (1300 765 002 or 02 6378 2850 or by emailing council@midwestern.nsw.gov.au to obtain a quote for the connection of sewer (Private Works Order).

33. The developer is to provide a water service and meter for each lot in the subdivision. This includes the payment to Council in accordance with Council's Fees and Charges for the new service to cover the cost of installing both the service and a (20mm meter) on the water main. This fee is subject to an annual increase in accordance with the consumer price index.

Note: Council does not permit other bodies to insert new connections into 'live' water mains.

34. Following completion of any civil works required by this consent, a defect liability bond of (5% of the value of such works) must be lodged with Council for a 2 years period to ensure that any defects in such works are remedied by the developer.

Note - The bond may be provided by way of a monetary deposit with the Council or a bank guarantee to the satisfaction of the Council. The bank guarantee must not specify any time limitations on the operation of the guarantee.

- 35. All road crossings for services and utilities are to cross perpendicular to the road alignment and must be installed prior to the commencement of construction of the base course and kerb and gutter.
- 36. The finished surface level of all nature strips and verges must be graded to fall toward the kerb and channel and formed with a minimum 100mm thick layer of clean topsoil free of stones and other impurities. Nature strips and verges are to be seeded or hydro-mulches with an approved grass prior to the issue of a Certificate of Practical Completion.

PRIOR TO THE ISSUE OF CONSTRUCTION CERTIFICATE (BUILDING)

- 37. Application shall be made to Council under Part B, Section 68 of the *Local Government Act 1993* to carry out Water Supply, Stormwater and Sewerage Works.

The application shall contain details demonstrating compliance with the *Plumbing and Drainage Act 2011* and/or the Plumbing Code of Australia.

The Section 68 application shall be considered and approved by Council prior to the release of a Construction Certificate for the development.

- 38. Prior to the issue of a Construction Certificate, the developer shall pay a long service levy at the prescribed rate to either the Long Service Levy Corporation or Council, for any work costing \$250,000 or more.

Note: The amount payable is currently based on 0.25% of the cost of work. This is a State Government Levy and is subject to change.

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

- 39. 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 these conditions as detailed in the table below. The contribution shall be paid to Council prior to the issue of a Construction Certificate. Contributions are subject to increase in accordance the consumer price index and are payable at the rate applicable at the time of payment.

Section 7.11 contribution rates – Outside Mudgee Catchment	
FY: 2023/2024	
Program	Per 2 or more bed dwelling
	Total \$
Transport facilities	\$ 2,658.00
Recreation and open space	\$ 1,106.00
Community facilities	\$ 699.00
Stormwater management	\$ -
Plan Administration	\$ 1,113.00
TOTAL	\$ 5,576.00

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

40. Prior to the issue of a Construction Certificate, 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.

41. Prior to the issue of a construction certificate, a suitably qualified professionals must prepare a dilapidation report detailing the structural condition of adjoining buildings (if required), asset condition of public land, to the satisfaction of the certifier.

PRIOR TO COMMENCEMENT OF WORKS – BUILDING

42. Application shall be made to Council under Section 138 of the Roads Act 1993 for driveway crossover works within the road reserve.

The application shall contain details demonstrating compliance with:

- a) Council's Access to Properties Policy; and
- b) Australian Standard AS/NZS 2890.1:2004 Parking Facilities – Off-street parking facilities.

The Section 138 application shall be considered and approved by Council prior to the commencement of works.

43. In accordance with the provisions of the Environmental Planning and Assessment Act 1979 construction works approved by this consent must not commence until:

- a) A Construction Certificate has been issued by the Certifier (i.e. Council or an accredited certifier); and
- b) A Principal Certifier has been appointed by the person having benefit of the development consent in accordance with the Environmental Planning and Assessment Act 1979; and
- c) If Council is not the Principal Certifier, notify Council no later than two (2) days before building work commences as to who is the appointed Principal Certifier; and
- d) At least two (2) days before commencement of building work, the person having benefit of the development consent is to notify Council as to the intention to commence building work.

44. Prior to the commencement of works, a sign must be erected in a prominent position on the site on which the proposal is being carried out. The sign must state:

- a) Unauthorised entry to the work site is prohibited.
- b) The name of the principal contractor (or person in charge of the site) and a telephone number on which that person may be contacted at any time for business purposes and including outside working hours.
- c) The name, address and telephone number of the Principal Certifier for the work.

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

45. Prior to works commencing on residential building work within the meaning of the Home Building Act 1989, the Principal Certifier of the development to which the work relates has given the Council written notice of the following information:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i. the name and licence number of the principal contractor; and
 - ii. the name of the insurer by which the work is insured under Part 6 of the *Home Building Act 1989*, unless an exemption is in force in accordance with Clauses 187 and 188 of the *Environmental Planning and Assessment Regulation 2000*.
 - b) in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information required by (a) or (b) becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates has given Council written notice of the updated information.

This condition does not apply in relation to Crown building work that is certified, in accordance with Section 6.28 of the Act, to comply with the technical provisions of the Building Code of Australia.

46. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE.

47. If the work involved in the erection/demolition of the building;
- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - b) involves the enclosure of a public place, then;
 - a hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

48. The developer shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

49. Sediment erosion controls shall be installed within the development site, to the satisfaction of the Certifier (i.e. Council or the Principle Certifier), prior to the commencement of works.

BUILDING CONSTRUCTION

50. All building work must be carried out in accordance with the Building Code of Australia.
51. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the requirements of the Plumbing & Drainage Act 2011 and the Plumbing Code of Australia.
52. Construction work noise that is audible at other premises is to be restricted to the following times:
- a) Monday to Saturday - 7.00am to 5.00pm
- No construction work noise is permitted on Sundays or Public Holidays.
53. All mandatory inspections required by the Environmental Planning and Assessment Act 1979 and any other inspections deemed necessary by the Principal Certifier being carried out during the relevant stage of construction.
54. The strength of the concrete used for the reinforced concrete floor slab must be a minimum 25Mpa.
55. Commitments listed in BASIX Certificate number(s) 1288790S_02 must be installed and/or completed in accordance with the requirements contained in that certificate.
56. Fill material shall not raise the existing surface level within the dedicated easement/s.
57. Fill must not direct stormwater onto adjoining properties and drainage pits for overland flow paths are to be provided.
58. Should any contaminated, scheduled, hazardous or asbestos material be discovered before or during construction works, the applicant and contractor shall ensure the appropriate regulatory authority (e.g. Office of Environment and Heritage (OEH), SafeWork NSW, Council, Fire and Rescue NSW etc.) is notified, and that such material is contained, encapsulated, sealed, handled or otherwise disposed of to the requirements of such Authority.
59. All exposed surfaces of earthworks due to cut and fill must be stabilised by a suitably designed and constructed retaining walls to prevent erosion, scouring and spill over adjoining boundaries. All retaining walls must comply with the requirements as outlined in Council's Development Control Plan 2013 and have a minimum boundary setback of 300mm.
60. In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.

61. All demolition works are to be carried out in accordance with AS 2601-2001 "Demolition of structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, shall be handled, conveyed and disposed of in accordance with guidelines and requirements from SafeWork NSW. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.
62. The development site is to be managed for the entirety of work in the following manner:
 - a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - b) Appropriate dust control measures;
 - c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
 - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

63. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifier appointed for the erection of the building.
64. Prior to use of the development and/or issue of an Occupation Certificate, a satisfactory final inspection report from the Council must be received by the Certifier, verifying that all works have been completed in accordance with the relevant Section 68 (Local Government Act 1993) approval/s.
65. Prior to use of the development and/or issue of an Occupation Certificate, the excavated and/or filled areas of the site are to be stabilised and drained, to prevent scouring onto adjacent private or public property. The finished ground around the perimeter of the building is to be graded to prevent ponding of water, and to ensure the free flow of water away from the building and adjoining properties.
66. Prior to use of the development and/or issue of an Occupation Certificate, all requirements of BASIX Certificate No. 1288790S_02, and the associated plans and specifications approved as part of the Construction Certificate, shall be completed in full.
67. Roof water from the dwelling/s shall be conducted to the water storage tank in accordance with the BASIX requirements. Any additional roof water, and overflow from the water storage tank, shall be conducted to the street gutter / inter-allotment drainage by means of a sealed pipeline having a minimum diameter of 90mm prior to use of the development and/or issue of an Occupation Certificate.
68. Access must be provided to both the dwellings as per the requirement outline in S138 issued from Council.
69. Prior to commencement of use of the development and/or issue of an Occupation Certificate, all approved car parking and associated driveway works are to be completed.

70. The developer is to ensure that any defects in the works other than what has been provided in the dilapidation report, are remedied to Council's satisfaction. Until such time no occupation certificate is to be issued.
71. Outdoor drying facilities and letterboxes are to be provided for each unit prior to occupation of each building.
72. The developer shall contact Council to ensure that the Street Addressing for each dwelling is correctly allocated in accordance with AS4819.
73. A 1.8 metre high screen fence is to be provided to all side and rear boundaries behind the building line prior to occupation of the development. All fencing is to be provided at full cost to the developer.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

74. Under the Environmental Planning & Assessment Act 1979, a Subdivision Certificate is required before the linen plan of subdivision can be registered with 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.

75. 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.
76. The final inspection report shall be submitted to Council with the Subdivision Certificate application.
77. All assets must be constructed and installed accordance to current MWRC Council standards. The Developer shall provide 'Works as Executed' drawings showing the correct location of all key features including but not limited to pipes, manholes, valves, hydrant points and other fittings, pipe bends and take offs, inlet and outlet structures, pits, profile of earth works, runs of pipe work, etc. The information produced by the final survey should accurately locate all works both above and below ground.

The Works as Executed drawings are to be provided in the following format and details required:

- The Applicant must provide to Council a photographic report of all services installations, services connections or any alterations to existing services to be constructed under the SWC or which occur otherwise during construction. All photos need to be labelled and referenced back to the WAE and Asset data spreadsheets.
- Levels must be noted in Australian Height Datum (AHD).
- One set of Work as Executed Drawings in PDF soft and hard copy.
- AutoCAD compatible files in DWG format of WAE constructions.
- MapInfo files of each asset types (pathways/footpaths, water, sewer, storm-water etc) are supplied in individual MapInfo files – not all together in the one in GDA2020 Zone 55/56 of WAE constructions.
- Asset Data Spreadsheets with all the asset details in Excel format. (Council will provide the template Excel sheet)

- **Ensure all WAE assets data in Excel sheets correlate with WAE Drawings, AutoCAD and MapInfo files.**

If any discrepancies or missing data in any format, council will halt the process of obtaining completion certificate until the accurate and amended files are submitted.

All work-as-executed plans shall bear the Consulting Engineer's or Consulting Surveyor's certification stating that all information shown on the plans is accurate.

- 78. Prior to the issue of a Subdivision Certificate, a survey drawing is to be submitted to Council, demonstrating that all private water services, sewer services and water meters are located wholly within the lot that they serve.**
- 79. Prior to Council accepting new sewer infrastructure, a CCTV inspection of all new and modified stormwater assets must be undertaken in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2020. A copy of the CCTV inspection footage and inspection report prepared and certified by a suitably qualified person must be provided to Council prior to the issue of a Practical Completion certificate. An additional CCTV inspection and report of all sewer mains is to be undertaken no greater than 1 month prior to the completion of the "Defects liability Period".**
- 80. Separate water and sewer reticulation services to each lot has to be provided.**
- 81. Prior to issue of the Subdivision Certificate, Council is to be supplied with: A Notice of Arrangements from the appropriate power authority indicating that satisfactory arrangements have been made for provision of electricity supply to the subdivision; and**
- a) 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**
 - b) 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.**
- 82. Underground electricity, street lighting and telecommunications are to be supplied to the Subdivision in accordance with the relevant authority's standards.**
- 83. Prior to the release of the Subdivision Certificate, a defects liability bond of 5% of the construction costs for all civil engineering work (not carried out by Council) or \$2,000, whichever is the greater, shall be lodged with Council. The defects liability bond will be held by Council for a period of 2 years, to ensure that any defects that become apparent during that time are remedied by the developer.**

For the purposes of defining defects liability period, the works are considered to be completed when the subdivision certificate is registered with NSW Land Registry Services.

The bond may be provided by way of a monetary deposit with the Council or a bank guarantee to the satisfaction of the Council. The bank guarantee must not specify any time limitations on the operation of the guarantee.

84. Three metre wide easements, including associated Section 88B instruments, are to be created in favour of Council over any existing or newly constructed water or sewerage reticulation components located within the subject property, or extended through adjoining private properties as a result of this subdivision.

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

Please be advised that as a precondition to the granting of a Compliance Certificate a monetary contribution in accordance with the following Schedule of Contributions must be paid in full (including indexation, where applicable).

Section 64 Contributions (FY 2023/2024)	
Water Headworks	\$3,244.14
Sewer Headworks	\$4,434.00
Total Headworks	\$7,678.14

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).
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 in relation to the application during the notification period.

Executive summary

OWNER/S	Marjorie Bunyan
APPLICANT:	Railene Geddes
PROPERTY DESCRIPTION	12 Little Bayly Street, Gulgong NSW 2852 Lot 4 Sec 21 DP758482
PROPOSED DEVELOPMENT	Dual Occupancy (detached) and Subdivision
ESTIMATED COST OF DEVELOPMENT:	\$543,722
REASON FOR REPORTING TO COUNCIL:	Variations greater than 10% to MWRLEP 2012 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 DA0418/2022 that seeks approval for Dual Occupancy and subdivision, located at 12 Little Bayly Street GULGONG NSW 2852, Lot 4 Sec 21 DP 758482, received by Council on 23 May 2022.

The development proposes to construct a single storey dwelling to face Belmore Street in addition to the existing single storey dwelling fronting Little Bayly Drive to form a detached dual occupancy on the land. It is also proposed to subdivide the land into two lots in accordance with the layout of the development.

The site is located within a residential area within the Gulgong Heritage Conservation area and is also restricted by a building height control limit of 5.0m under the Mid-Western Regional Local Environmental Plan 2012 (MWLEP 2012). The new dwelling will have a maximum height of 5.7m exceeding the standard by 0.7m or 14%. The applicant has satisfactorily demonstrated that the building height control of 5.0m is unreasonable and unnecessary in this case and that there is sufficient environmental planning grounds to vary the standard. The reasoning for this is further discussed in 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 application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days. During the notification period, no submissions were received.

The proposed development has been assessed in accordance with Council's Development Control Plan 2013 (DCP 2013) and the MWRLEP 2012. The proposed development is considered generally consistent with Council's planning controls.

The application is recommended for Approval.

Disclosure of Interest

Nil

Detailed report

SITE DESCRIPTION

The subject site is located within the Gulgong Township located west of Medley Street between Belmore Street and Little Bayly Street. The site is rectangular in shape and 1011m² in size. The site contains an existing dwelling on its southern side adjacent to Little Bayly Street. A number of existing sheds are also located on the site.

The surrounding area is residential in nature consisting of single storey dwellings located within the Gulgong Heritage Conservation Area. Figure 1 shows an aerial image of the site and its surrounds.



Figure 1: Aerial Image of site and surrounds

PROPOSED DEVELOPMENT

It is proposed to develop the land for a detached dual occupancy, retaining the existing dwelling fronting Little Bayly Street as shown in Figure 2.

Details are as follows:

- Erection of a single-storey dwelling to front Belmore Street. The dwelling will contain three bedrooms and be weatherboard clad with colorbond roof. A front verandah will wrap

around the gabled façade. A double garage will be integrated with the dwelling on its north side.

- The existing dwelling on the south side of the site will be retained along with an existing shed. A tree and two sheds will be removed to accommodate the new dwelling.
- Subdivision of the land into two lots in accordance with the layout of the dual occupancy. One lot will be 404m² and the other will be 629m².

A full set of the proposed development plans are available in Attachment 1.

Notification

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 30 June 2022. Following the lodgement of amended plans, the application was re-notified for a further period of 14 days, ending 17 May 2023. During the notification periods, no submissions were received.

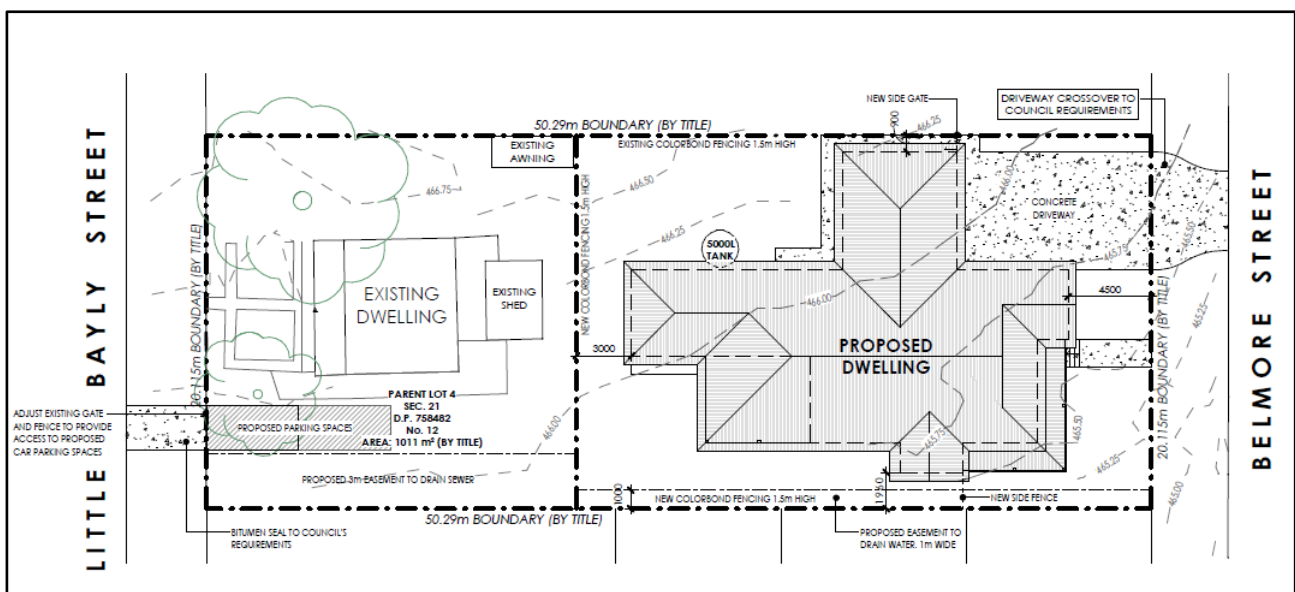


Figure 2: Proposed Site Plan

ASSESSMENT

LEGISLATIVE REQUIREMENTS

Biodiversity Conservation Act 2016 (BC Act)

No requirements. The application includes the removal of one non-native tree and the site is not included on the Biodiversity Values Map.

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

Designated Development

The development proposal is not considered to be Designated Development, in accordance with Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regs).

Integrated Development

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

SECTION 4.15(1) – MATTERS FOR CONSIDERATION - GENERAL

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 native vegetation or koala habitat under this Policy. Therefore, no further consideration of this SEPP is considered necessary.

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

The proposal involves development that requires the issue of a BASIX certificate. The applicant has provided the relevant BASIX certificate and a condition of consent has been included ensuring that the commitments be met as listed in the certificate.

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 identified as 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 (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 a:

Dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

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 proposal, being a detached dual occupancy is permissible with consent in the zone and complies with the relevant objectives.

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 will also require development consent as discussed throughout the report.

Clause 2.7 Demolition requires development consent

In satisfaction of this clause, the development application seeks approval for the demolition of two outbuildings.

Clause 4.1 Minimum subdivision lot size

The proposed subdivision generally meets the objectives of the clause as the proposal will promote further suitable land uses that can be accommodated on the site whilst complying with all the relevant planning controls.

The proposed lots have an area of 404m² and 629m². The minimum lot size pursuant to the mapping is 600m² and therefore compliance with this clause is not achieved. It is proposed to utilise the requirements set out in Clause 4.1B and accordingly the application of this clause is not required.

Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

This clause applies as the land is zoned R1 General Residential.

The **dual occupancy (detached)** is proposed on a site equal to or greater than 800m² (at 1011m²). Accordingly, the proposal complies with this development standard.

Clause 4.1B Exceptions to minimum lot sizes for certain residential development

This clause applies as the land is zoned R1 General Residential.

The proposal involves the erection of a dual occupancy (detached) and a subdivision that will result in a lot size of not less than 400m² for each dwelling. Accordingly, the proposal complies with this development standard and the application of clause 4.1 is unnecessary.

Clause 4.3 Height of buildings

The subject site is mapped for a maximum height limit of 5.0 metres above existing ground level.

The development is proposed at a maximum height of 5.7 metres and therefore does not comply.

The extent of the non-compliance is confined to the main ridgeline that runs along the length of the proposed dwelling as circled in red in Figure 3. The maximum height of the ridgeline varies from 5.2m to 5.7m above ground level due to the fall of the land. A variation of 14% of the standard to accommodate the maximum height of 5.7m is sought under Clause 4.6 of the MWRLEP and is addressed below.

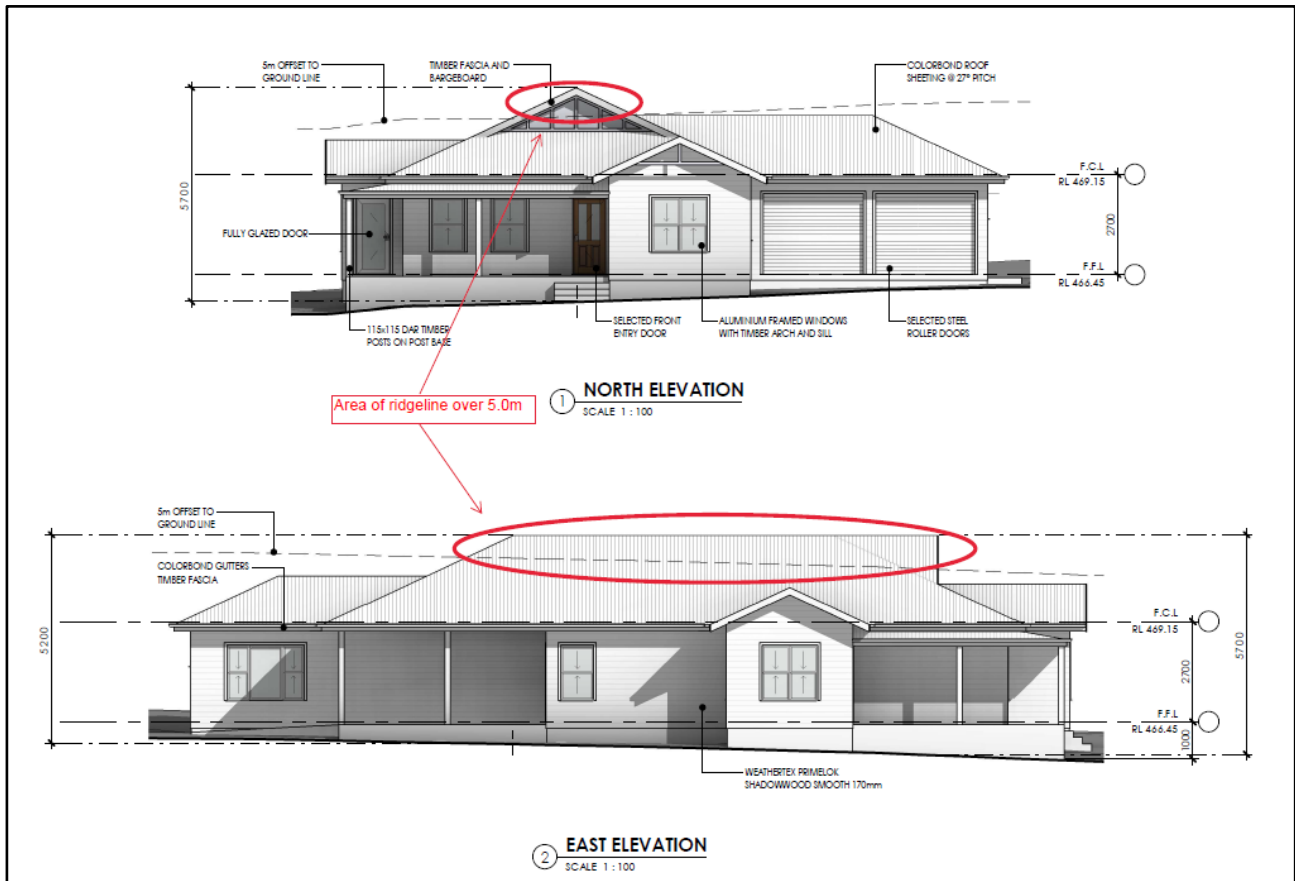


Figure 3: Extract from proposed elevations showing extent of ridgeline over 5.0 metres.

Clause 4.6 Exceptions to development standards

It is proposed to vary Clause 4.3 of the MWLEP to allow for an increase in the maximum height limit of 5.0 metres prescribed in the MWLEP to 5.7 metres. This represents a variation of 14% of the development standard.

The variation to the height limit can be considered under this clause as it is not expressly excluded under any subsection of this clause as follows:

- It doesn't relate to subdivision of the land in a rural or environmental zone (excluded under Subclause 6).
- It doesn't contravene any of the following (excluded under Subclause 8)
 - a) a development standard for complying development.
 - b) a development standard in connection with a commitment set out in a BASIX certificate.
 - c) clause 5.4 (relating to "controls relating to miscellaneous permissible uses).

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 and is summarised 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 written request that the building height standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard as outlined below. A copy of the written request is available in Attachment 2.

In the judgement of *Wehbe v Pittwater Council [2007] NSWLEC 827* (Wehbe) five ways of demonstrating compliance with a development standard is unreasonable or unnecessary were set out. This has been confirmed in subsequent cases including *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* and *Randwick Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* which confirm that adopting the 'Wehbe' principles when assessing a clause 4.6 submission in respect of clause 4.3(2) is an appropriate approach.

In this case, the applicant has utilised the "Wehbe" principle that:

if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)

The applicant argues that despite the breach of the building height control, the proposal achieves the objectives for the building height control in Clause 4.3 and therefore compliance with the standard of 5.0m would be unreasonable and unnecessary. The objectives of Clause 4.3 are as follows:

- to establish a maximum height limit to which buildings can be designed in particular locations.
- to enable infill development that is of similar height to existing buildings and that is consistent with the heritage character of the towns of Mudgee, Gulgong, Kandos and Rylstone.

The written justification provided by the applicant provides the following reasoning for this:

- The specific maximum height limit of 5m overlaps with the heritage conservation area (HCA) that applies to the town of Gulgong and contrasts within other height limits within the Mid-Western LGA that have a height limit of 8.5m applied, including the residential area immediately surrounding the Gulgong HCA.
- The 5m height limit is understood to generally restrict residential development in the Gulgong HCA to single storey, which is in keeping with the general residential streetscape that has historically been established surrounding the commercial core area of the Gulgong and allowed for more prominent buildings, in particular the various churches around the town, to be visually prominent throughout the town and to ensure that the predominately single storey commercial area of Gulgong is also not overwhelmed by elevated two storey residential development.
- The proposed dwelling, being infill development, has been designed with a similar height and form to several immediate surrounding dwellings, which although exceed the 5m height limit (albeit likely to be erected prior to the 5m height limit being implemented) are still single storey in nature. The proposal will also maintain the single storey heritage rhythm of the Gulgong HCA.

The application also meets the R1 General Residential zone objectives as discussed previously in this report and as set out by the applicant in their written justification (refer Attachment 2).

Given the above, the written justification that the Building Height standard of 5.0m is unreasonable and unnecessary as the development will maintain a single storey height and be of a form and design appropriate to the Gulgong Heritage Conservation Area.

In addition, the applicant has also provided an adequate written justification that there is appropriate environmental grounds to justify the variation including the following:

- **The proposed variation still provides for an appropriate outcome with regards to the Gulgong Heritage Conservation Area.**

The applicant notes that the design of the dwelling incorporates a pitch roof that includes a Dutch gable which has been intentionally set to generally match that of higher pitched roofs of contributory dwellings in the immediate area.

The proposed roof pitch will sit lower than that of the adjoining dwelling immediately to the west as a result of its position in a rising section of Belmore Street, where buildings in this part of Belmore Street are incrementally higher as they extend along the street. As such, the proposal will be consistent with the existing streetscape rhythm (despite the non-compliance) by not setting a roof pitch that is higher than that of other dwellings further up the slope.

- **The alternative to the variation proposed would result in a lesser planning outcome.**

The applicant notes that other alternatives to the design of the dwelling have been considered including lowering the pitch of the roof and reducing floor to ceiling heights in order to achieve the 5.0 metre height limit. These considerations did not result in a better planning outcome from a streetscape perspective or internal amenity perspective.

In addition, it is noted that the proposed floor level of the dwelling is required to be set at RL 466.45 to allow for the fall of sewer services to the nearest riser on the property (in Little Bayly Street). Alternative connections were considered including extension of the Council owned sewer line along Belmore Street from Medley Street. This option was not considered as a better outcome as it would involve significant works and impact on 5 established street trees which contribute to the streetscape and the heritage conservation area.

- **The proposal does not result in additional impacts associated with building height.**

Despite the non-compliant building height, the development will not have unreasonable impacts in relation to other aspects generally associated with a higher building form including overshadowing, privacy and building bulk/mass. The applicant notes in their submission that the non-compliant section of the dwelling relates to a pinch point of the ridge of the roofline only which represents only 9% of the overall roof area and is positioned in the centre of the site. Further noting that as a result of the minor extent and location of the non-compliance away from any boundaries there is not expected to be any additional impacts associated with privacy, overshadowing or building bulk that a compliant proposal would be able to resolve. Therefore, it is unnecessary for the proposal to comply with the building height control with regards to these particular issues.

- **The non-compliant elements of the proposal satisfy the relevant matters outlined in section 1.3 of the Environmental Planning and Assessment Act 1979.**
- **The height control breach has no implications for compliance with other key MWRLEP 2012 requirements.**

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. 3 Height of buildings of the MWRLEP 2012. The proposed variation to the height of the building is consistent with the objectives of the zone and development standard as discussed previously in this report. The objectives of the development standard relate predominantly to maintaining single storey development within the Gulgong Heritage Conservation Area. Alternatives to the proposal which would result in a lower building height would not result in a better planning outcome as also discussed previously. Accordingly, the proposed variation is considered to be in the public interest.

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 18-003 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 and requires that:

The Secretary's concurrence may not be assumed by a delegate of council if:

- *The development contravenes a numerical standard by more than 10%; or*
- *The development contravenes a non-numerical standard.*

...

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 the secretary's concurrence can be assumed given the variation of 14% to the building height is being reported to a Council meeting to be considered by Council and will not be determined by council staff under delegation.

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). It is also noted that there are a number of Heritage items in the vicinity of the site.

The objectives of the clause and how the application meets them are as follows:

- To conserve the environmental heritage of Mid-Western Regional Council: The proposal relates to the construction of a new dwelling on a vacant lot. No existing heritage fabric/buildings within the Gulgong Heritage Conservation Area will be removed.*
- To conserve the heritage significance of heritage items and heritage conservations areas, including associated fabric settings and views.*

Comment: Council's Heritage Advisor has provided advice in relation to whether the proposed dwelling will impact on the heritage significance of heritage items in the vicinity of the site and the Gulgong Heritage Conservation Area including associated fabric settings and views, stating that:

"It reflects traditional forms and uses timeless materials, but there is no mock replication of traditional details. It is uncharacteristic of period buildings in its inevitable inclusion of a double garage, but this is set back. Overall it is a sympathetic addition to the conservation area. The application is supported."

- To conserve archaeological sites*

Comment: The site is not identified as an archaeological site, however, a condition will be included to ensure that works cease should any artefacts be uncovered during construction.

(d) *To conserve Aboriginal objects and Aboriginal places of heritage significance.*

Comment: The proposed development will not impact on any known aboriginal objects or aboriginal places of heritage significance. Notwithstanding this, a condition will be included on the consent ensuring that works cease should any aboriginal artefacts be uncovered during construction.

Clause 4 Effect of proposed development on heritage significance.

Clause 4 requires the consent authority to consider the effect of the proposed development on the heritage significance of the item or area concerned. As mentioned above, the proposal is considered to be appropriately designed in terms of its form and materials so not to visually overwhelm neighbouring dwellings. Council's Heritage Advisor has noted that the dwelling will be a sympathetic addition to the heritage conservation area and accordingly is supported.

Clause 5.21 Flood planning

The subject site is not identified as being within the flood planning area in accordance with Council's maps and the Floodplain Study and Management Plan. No further consideration is necessary.

Clause 6.1 Salinity

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

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

Clause 6.3 Earthworks

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

Clause 6.4 Groundwater vulnerability

The site is not identified as groundwater vulnerable.

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 (DCP)

An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

Part 3.1 Residential Development

DEVELOPMENT CONTROL REQUIREMENT	COMMENT / COMPLIES
Attached Dual Occupancy – Minimum 600m ²	Not Applicable
Detached Dual Occupancy – Minimum 800m ²	Complies – lot is 1011m ²
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 – Dwellings will be on lots <900m ² following subdivision. Proposed dwelling will have front setback to Belmore Street of 4.5m and garage setback of 10.5m
Building Side/Rear setback	
Zones R1, R2 and R3 where Lot size is less than 900m ² : 900m	Complies - West – 900mm East – 1960mm
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 – Secondary setback of existing dwelling to Little Bayly St retained.
Building height / design	
Proposed buildings are single story	Complies
The design is not a mirror or duplication for the two dwellings when fronting streets.	Complies
75% of 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
Both dwellings have direct street frontage, i.e. battle-axe arrangements are not permissible	Complies the existing dwelling has frontage to Little Bayly Street and proposed dwelling will have frontage

DEVELOPMENT CONTROL REQUIREMENT	COMMENT / COMPLIES
	to Belmore Street.
Minimum separation of 3 metres between buildings	Complies
The garage door or carport does not exceed 45% of the front elevation	Complies – garage door is 36% of front elevation
All facades with street frontage contain windows	Complies
Street frontage elevations contain minimum 5% openings	Complies
Building is not a transportable or relocated dwelling	Complies
Slope and cut and fill	
The slope of the site does not exceed 15%	Complies
Cut is limited to 1m	Complies – No cut proposed
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.	Complies – Fill is limited to within the building footprint to raise the floor level 250mm above NGL to ensure adequate fall is achieved to the sewer main in Little Bayly Street.
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.	Complies
Cut / fill is clear of any water or sewer easements.	Complies
Open space	
Private open space is located on the Northern or Eastern side of dwellings.	Complies - POS will be on the eastern side of the proposed dwelling (with direct access to living areas). The POS associated with the existing dwelling will be located on the north/eastern side.
Private open space has direct access from main living areas.	Complies
Each dwelling provides a Principal Private Open Space with a minimum of 80m ² and a minimum dimension of 5 metres.	Complies – <u>Proposed Dwelling</u> a total area of 106.25qm is provided on the east side of the proposed dwelling with a minimum dimension of 8.5m x 12.5m. This includes the alfresco area. It is noted that additional POS is also available on the west side of the dwelling. <u>Existing Dwelling</u>

DEVELOPMENT CONTROL REQUIREMENT	COMMENT / COMPLIES
	An excess of 80sqm of POS is available to the existing dwelling with a minimum of 5m.
If alfresco is to be counted as Principal Private Open Space, it must be: located at or near ground level have direct northerly aspect create no more than 25% of principal open space	Complies – Proposed dwelling will have an area of POS on the eastern side 12.5m x 8.5m (total 106.25sqm). This includes the alfresco area of 26.54sqm, which makes up 25%.
Where Principal Private Open Space is located within front set back: located behind suitably landscaped area minimum width of 1.5 metres to the front boundary	Not Applicable
75% of Principal Private Open Space shall receive a minimum of 3 hours sunlight between 9.00am and 3.00pm on 21 June	Complies
Site coverage	
Maximum site coverage of 50%	Complies – site coverage is 30.5%
Parking	
Each dwelling has two car parks with a minimum of one being a garage for each.	Complies – the proposed dwelling will have a double garage and the existing dwelling will retain existing car parking spaces accessed from Little Bayly Street.
Parking and manoeuvring areas are hard stand	Complies
Driveways are located a minimum of 6m from any intersection	Complies
Utilities	
Buildings are located clear of utility infrastructure	Complies
Building is not located within an easement for the purpose of utility infrastructure	Complies
Structures are located a minimum of 1500mm from the centre of water and sewer main	Complies
Details of water supply and sewer reticulation have been provided:	
If available within 500m applicant has proposed connection to reticulated network	Complies
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

DEVELOPMENT CONTROL REQUIREMENT	COMMENT / COMPLIES
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	Complies
Fencing	
1.8 metre high fencing is provided between Principal Private open spaces	Complies – appropriate conditions will be included.
Front fences are open panel, do not exceed 1.2 metres in height and are not of Colorbond material construction	Not Applicable – no front fence proposed.
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	Complies – appropriate condition to be included.
Side and rear fences do not exceed 1.8 metres in height once behind the building	Complies
For corner allotments no fence, structure or landscaping in greater than 1 metre in height is located within the triangle formed by a sight line 12 metres x 6 metres from the intersection of the two street boundaries	Not Applicable
Dividing fences do not affect the flow of surface water with the possibility of causing flooding.	Complies – appropriate condition to be included.
Garages, Outbuildings	
Outbuildings must not negatively affect the amenity of the streetscape or adjoining properties	Not Applicable – no new outbuildings proposed. Existing shed will be retained to the rear of the existing dwelling.
Urban areas where <750m ² : 50m ² maximum shed size	Existing shed to be retained which is less than 50m ²
Max building height of 4.5m from natural ground level to the ridge applies in urban areas where the lot is under 2000m ²	Existing shed to be retained.

Part 4.7 Tree Preservation Order

No trees listed under the Tree Preservation Order are proposed to be removed.

Part 5.1 Car Parking

The new dwelling will be provided with a double garage which meets the requirements of this Part as follows:

2 spaces per dwelling – 1 space to be a garage, 1 space may be provided in a stacked arrangement in front of the garage provided that the space is contained wholly within the site.

Part 5.2 Flooding

Not Applicable

Part 5.3 Stormwater Management

Council's Development Engineer has provided comments and conditions concerning adequate disposal of stormwater.

Part 5.4 Environmental Controls

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

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 MWRC LEP 2012	Yes
All lots have street frontage	Lots will have frontage to Little Bayly Street and Belmore 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	Not applicable, the subdivision does not relate to the creation of vacant lots and will be subdivided to below the minimum lot size under Clause 4.1B. Each lot will be of suitable to accommodate a dwelling considered under this application.
All lots have 16m width at building line in residential and village zones	Yes. Lots will be 20.115m wide and will each accommodate a dwelling.
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
Lots generally rectangular in shape	Lots will both be rectangular in shape.
Lots on southern side of road provide greater frontage width for better solar orientation of future dwelling	Generally achieved.

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
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, existing access to Gulgong retained
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	Not Applicable

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
subdivision certificate and maintained by developer for period of two years	
Street Trees	
Two (2) street trees provided per lot	Not required – existing street trees to be retained.
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	Detailed stormwater plan to be lodged at SWC stage. Concept plan adequate

Contributions

Mid-Western Regional Contributions Plan 2019

Pursuant to Council’s Contributions Plan 2019, the development is proposing a dual occupancy and subdivision which requires the payment of a contributions in accordance with the plan as follows:

**Section 7.11 contribution rates – Outside Mudgee Catchment
 FY: 2023/2024**

Program	Per 2 or more bed dwelling Total \$
Transport facilities	\$ 2,658.00
Recreation and open space	\$ 1,106.00
Community facilities	\$ 699.00
Stormwater management	\$ -
Plan Administration	\$ 1,113.00
TOTAL	\$ 5,576.00

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

Credit 1 x Residential allotment (medium) 650m²-1200m² = 1.0 ET/ unit

Debit 2 x Flat/Unit/Villa (large) >85m² = 0.667 x 2 = 1.334

= 0.334 ET/unit x \$9,713 = \$3,244.14

Sewer Headworks

Credit 1 x Residential allotment (medium) 650m²-1200m² = 1.0 ET/ unit

Debit 2 x Flat/Unit/Villa (large) $>85\text{m}^2 = 1.0 \times 2 = 2.0 \text{ ET/unit}$
 $= 1.0 \text{ ET/unit} \times \$4,434.00 = \$4,434.00$

Total headworks as follows:

Section 64 Contributions

Water Headworks	\$3,244.14
Sewer Headworks	\$4,434.00
Total Headworks	\$7,678.14

A condition has been imposed accordingly.

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

Clause 61 – Additional matters that consent authority must consider

Clause 61(1) requires Council to consider Australian Standard AS2601-2001: *The Demolition of Structures* when consent is sought for demolition of a building. The application includes demolition and compliance with AS2601 has been included as a condition of consent.

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

(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

The impact of the development on the Gulgong Heritage Conservation Area and Heritage Items in the vicinity of the site have been discussed throughout this report. The proposal is considered appropriate.

(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

The vegetation proposed to be removed has been discussed throughout this report.

(k) Waste

Waste service available.

(l) Energy

Not Applicable

(m) Noise and Vibration

Not Applicable

(n) Natural Hazards

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

(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 30 June 2022. Following the lodgement of amended plans, the application was re-notified for a further period of 14 days, ending 17 May 2023. During the notification period/s, 0 submission/s 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, subject to standard conditions.

(b) Technical Services

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

(c) Heritage Advisor

Council's Heritage Advisor has not raised any concerns with the proposal.

Summary

The proposed development complies with the requirements of the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, relevant State Environmental Planning policies, Mid-Western Local Environmental Plan 2012, Mid-Western Regional Council Development Control Plan 2013 and Mid-Western Community Participation Plan 2019 and is therefore recommended for approval subject to the attached conditions of consent.

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 30 June 2022. Following the lodgement of amended plans, the application was re-notified for a further period of 14 days, ending 17 May 2023. During the notification period/s, 0 submission/s were received.

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 further review of this decision or appeal through the Land and Environment Court.

SARAH HOPKINS
TOWN PLANNER

ALINA AZAR
DIRECTOR DEVELOPMENT

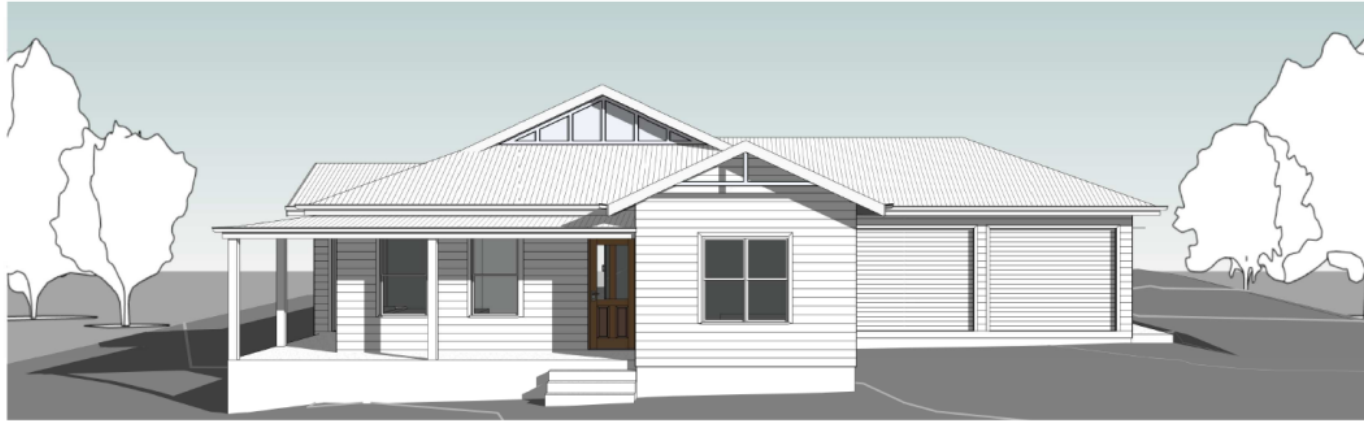
29 June 2023

Attachments: 1. Proposed development plans.
2. Applicant's written request for 4.6 Variation.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER

PROPOSED RESIDENCE
 FOR
DAVID CHALLINOR & STEPHEN MARCHANT
12 LITTLE BAYLY STREET
GULGONG NSW 2852



GENERAL NOTES:

Builder to confirm all dimensions before commencing any works.

If discrepancies occur on plans, designers to be contacted.

All dimensions are in millimetres unless otherwise stated.

Use figured dimensions only. Do not scale from plans.

Site information is based on information supplied by the owner and must be verified by the supplier on acceptance of this plan.

All works shall comply with the National Construction Code (NCC) current Australian Standards, building regulations and statutory approvals. Notify this office of any discrepancies.

These plans should be read in conjunction with project specification and all consultant drawings including but not limited to Structural Engineer and Surveyor.

Soil Classification - refer to Engineers report and soil tests.

SPECIFICATIONS:

WIND CLASSIFICATION - BY ENGINEER

PLUMBING

All plumbing to AS 3500 and must be carried out by a licensed plumber in accordance with the Plumbing Code of Australia (PCA) to comply with the requirements of the Local Authority.

Gutters and Downpipes to be designed and installed in accordance with NCC/BCA Part 3.5.3.

ELECTRICAL

All electrical work shall be undertaken by a licensed electrician and in accordance with AS/NZS 3000.

DRAUGHT SEALING

Provide a seal/draught excluder to the bottom edge of all external doors.

SPECIFICATIONS:

TERMITE PROTECTION

All buildings shall be protected against termite attack in accordance with AS3660.1 and NCC/BCA 3.1.4. Provide a durable barrier in the meter box indicating type of barrier and required inspections.

SMOKE DETECTORS

Smoke detectors shall be installed as noted on the plans and in accordance with AS 3786 and NCC/BCA Vol. 2 Part 3.7.5. They must be hard wired to the electrical supply.

GLAZING

Provide glazing to AS 1288 and NCC/BCA Part 3.6.

LIFT OFF HINGES (LOH)

Provide lift off hinges to the doors on sanitary compartments as indicated on the plans in accordance with NCC/BCA Vol 2 3.8.3.3.

BASIX NOTES:

STORMWATER

Min of 287m² of roof water must be collected in a 5000L rainwater tank and plumbed to:

- a) at least one outdoor tap in the development
- b) all hot water systems in the development

And be installed in accordance with AS3500.

HEATING

1-phase airconditioning (minimum 7.5 star) to be installed in at least one living area and at least one bedroom and must provide for day/night zoning between living areas and bedrooms.

COOLING

Ceiling fans and 1-phase airconditioning (minimum 7.5 star) to be installed in at least one living area and at least one bedroom and must provide for day/night zoning between living areas and bedrooms.

VENTILATION

Bathroom - Install an exhaust fan in the ceiling, not ducted and operate manually
 Kitchen - Install a rangehood over cooktop, duct through roof and operate manually
 Laundry - natural ventilation

HOT WATER

Electric heat pump with a performance of 41 to 45 STCs or better.

LIGHTING

The primary type of artificial lighting is dedicated fluorescent or LED in all 3 bedrooms, living room, dining room, kitchen, all bathrooms, all toilets, laundry and all hallways.

All fittings must only be capable of accepting fluorescent or LED lamps.

AAA RATING

All showerheads minimum rating of 4 star (>6 but <= 7.5L/min)

Toilets to have a minimum rating of 4 Star

Kitchen taps to have a minimum rating of 4 star and Basin taps to have a minimum rating of 4 stars

OTHER

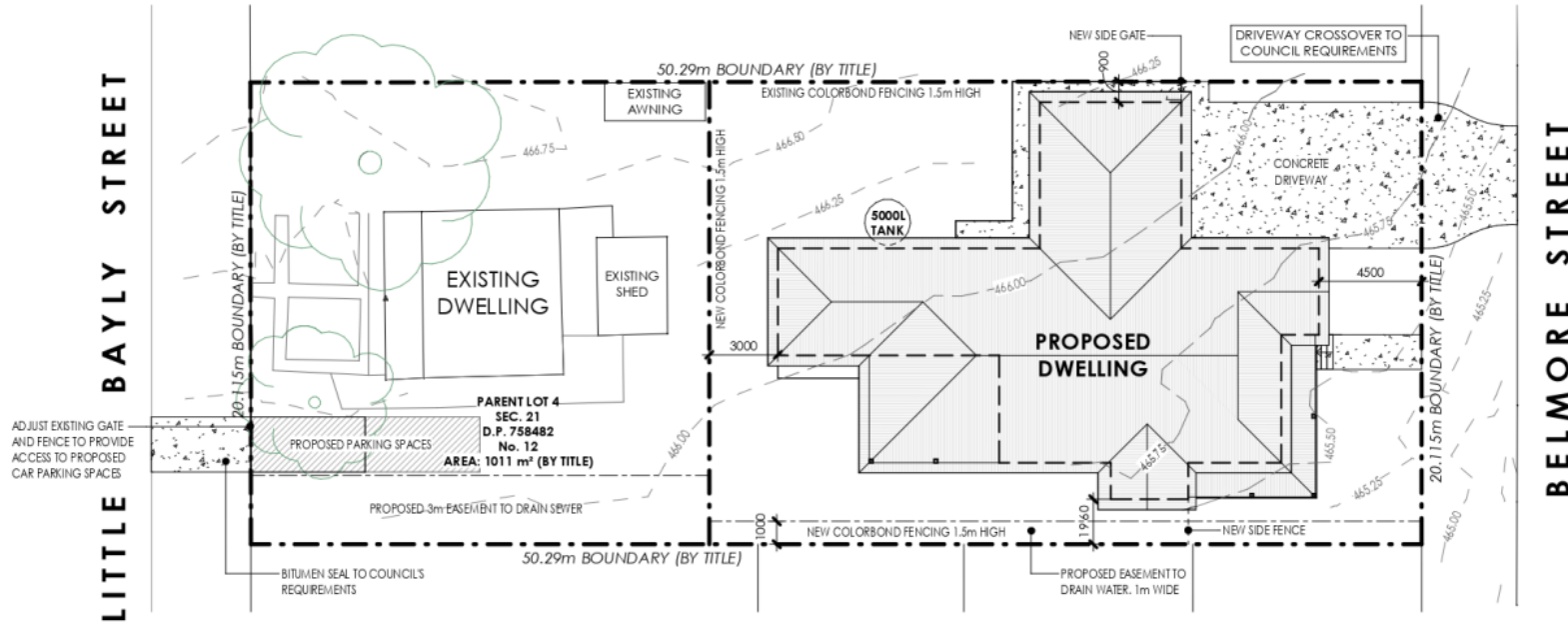
Electric cooktop and electric oven to be installed in Kitchen.
 An outdoor clothes drying line must be installed.

LOW WATER VEGETATION

A minimum of 50 sqm of indigenous or low water species of vegetation must be planted on the site.

GENERALLY

The information found in these notes are by no means the extent of information relating to compliance with BASIX commitments. These notes must be read in conjunction with the full set of plans and elevations outlined on sheet no's 611CHA-00 to 611CHA-08, Issue B (9 sheets) and with the BASIX Certificate pertaining to this property - Certificate No. 12887905.



1 SITE PLAN
 SCALE 1 : 200



- Notes
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Issue	Description	Date
E	HEIGHT LINE	07.06.23
D	RAISE FFL	26.04.23
C	DA ISSUE 1	19.05.22
B	DA ISSUE	14.03.22
A	PRELIMINARY	15.02.22

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Client
 David Challinor & Stephen Marchant

Project
 12 Little Bayly Street
 Gulgong NSW 2852

Title
 SITE PLAN

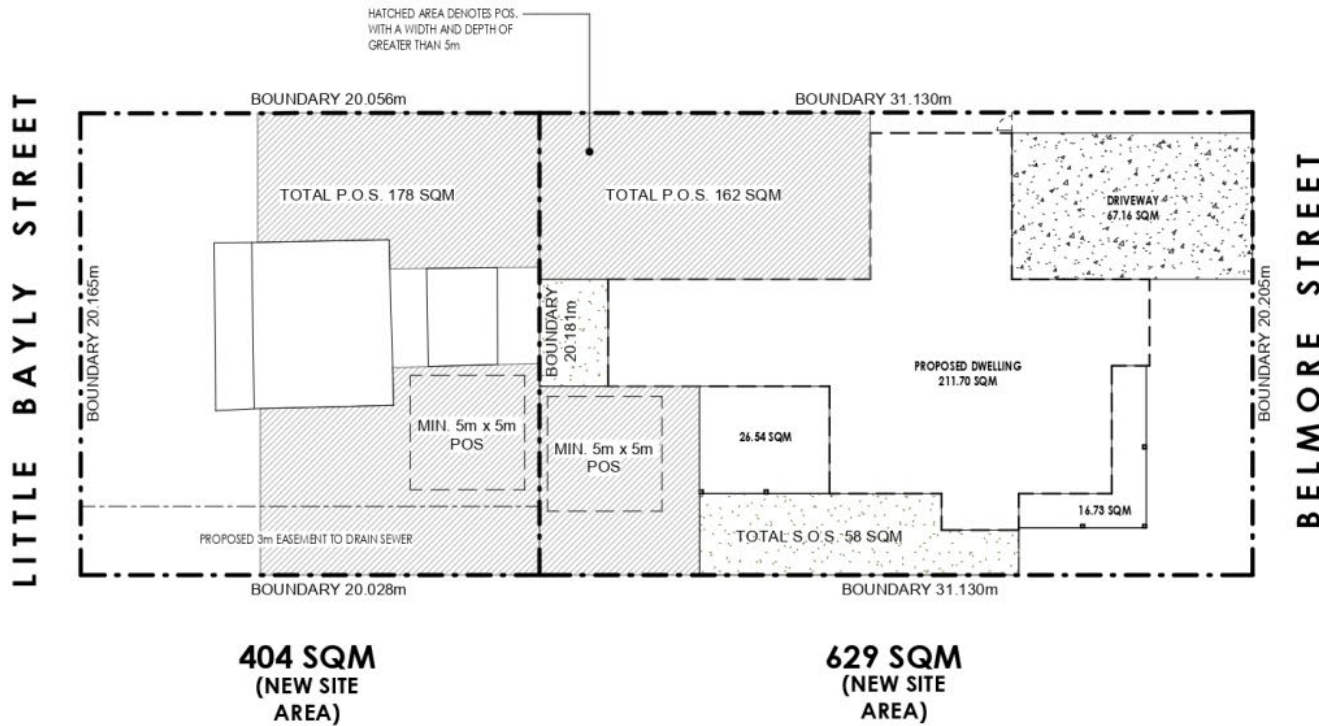
Scale at A3
 1 : 200

Date
 OCTOBER 2021

Drawing No.
 611CHA-01

Drawn
 RG/DW

Issue
 E



1 **AREA CALCULATIONS**
 SCALE 1 : 200



- Notes
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D	RAISE FFL	26.04.23
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 12 Little Bayly Street
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Title
 SUBDIVISION AND AREA CALCULATIONS

Scale at A3
 1 : 200

Date
 OCTOBER 2021

Drawn
 RG/DW

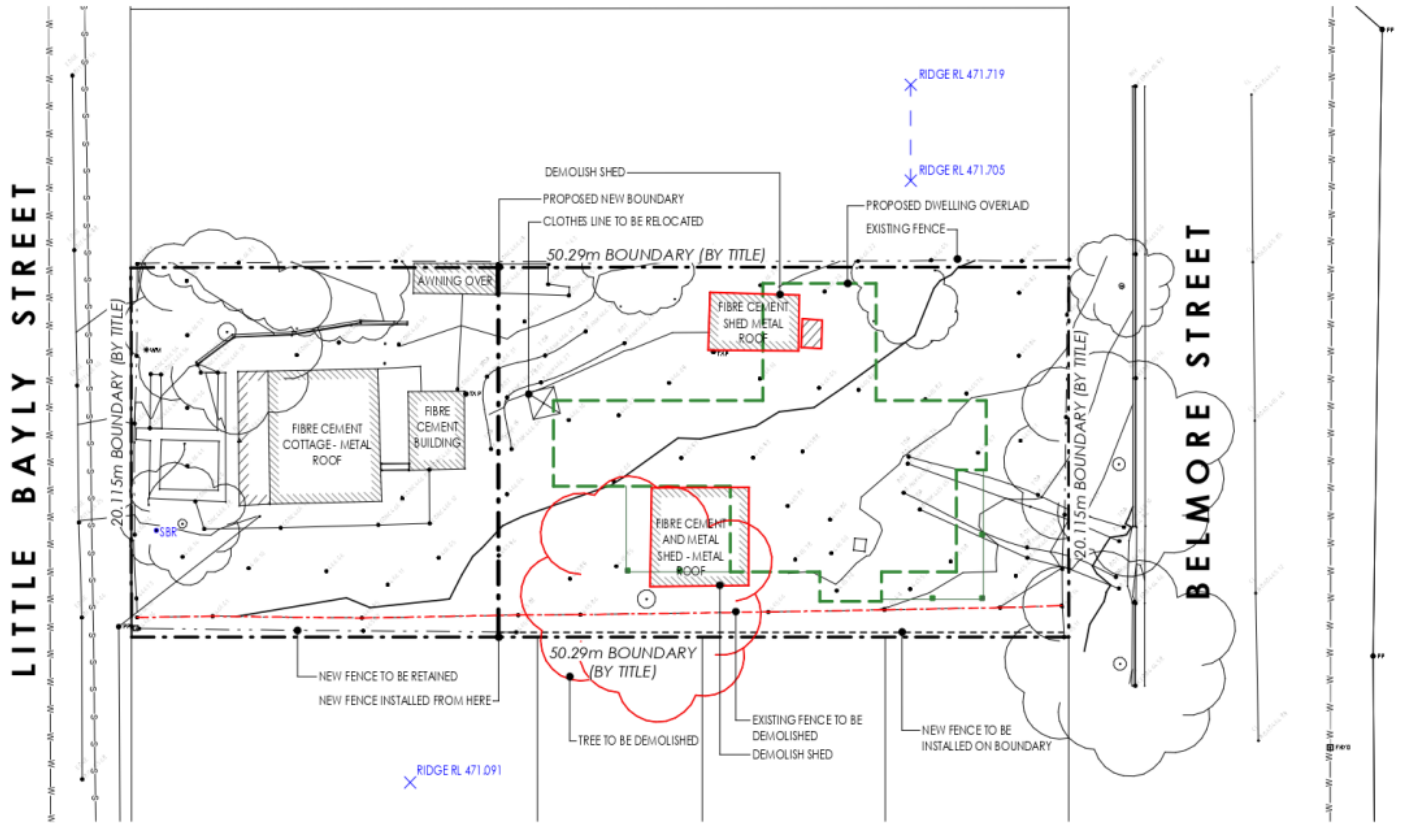
Issue
 D

Drawing No.
 611CHA-02



- Notes**
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LEGEND:
 SBR - SEWER BOUNDARY RISER



1 SURVEY PLAN
 SCALE 1 : 250

Issue	Description	Date
E	HEIGHT LINE	07.06.23
D	RAISE FFL	26.04.23
C	DA ISSUE 1	19.05.22
B	DA ISSUE	14.03.22
A	PRELIMINARY	15.02.22

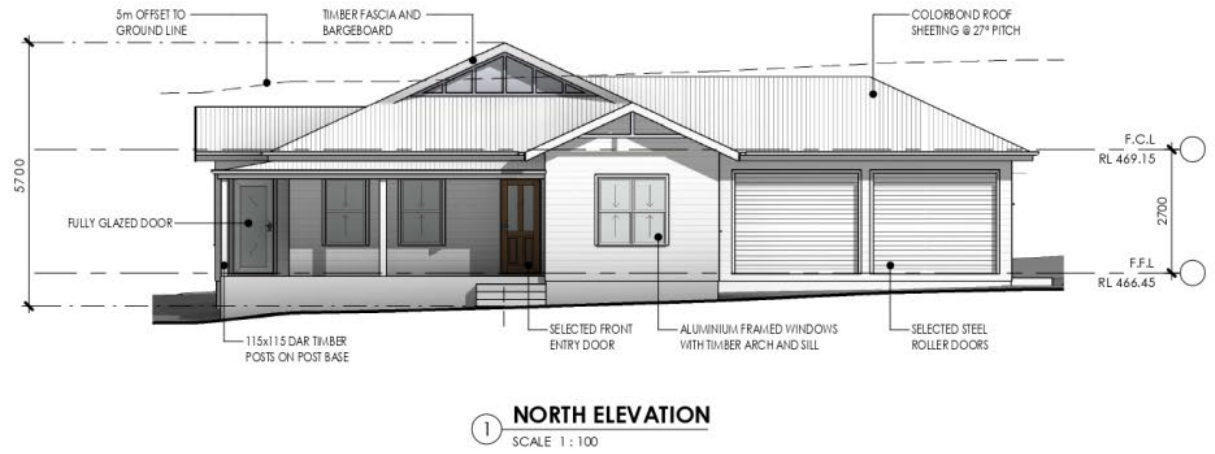
Issue Description Date

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Client David Challinor & Stephen Marchant	
Project 12 Little Bayly Street Gulgong NSW 2852	
Title SURVEY PLAN	
Scale at A3 1 : 250	
Date OCTOBER 2021	Drawn RG/DW
Drawing No. 611CHA-03	Issue E



- Notes**
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Issue	Description	Date
F	ELEVATION HEIGHTS	27.06.23
D	HEIGHT LINE	07.06.23
E	RAISE FFL	26.04.23
C	DA ISSUE 1	19.05.22
B	DA ISSUE	14.03.22
A	PRELIMINARY	15.02.22

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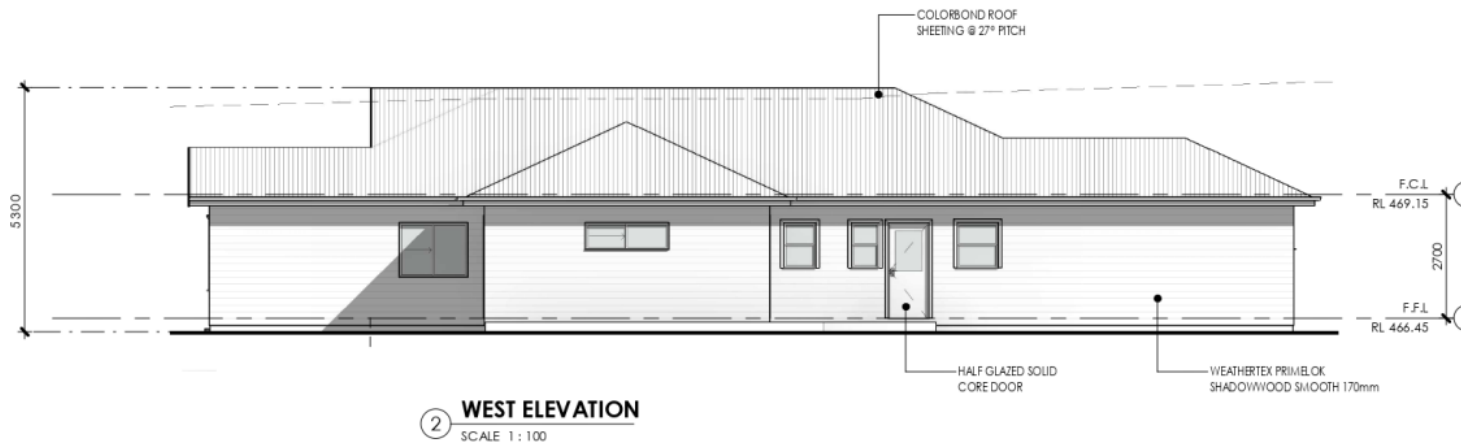
Client
 David Challinor & Stephen Marchant

Project
 12 Little Bayly Street
 Gulgong NSW 2852

Title
 ELEVATIONS

Scale at A3

Date	OCTOBER 2021	Drawn	RG/DW
Drawing No.	611CHA-05	Issue	F



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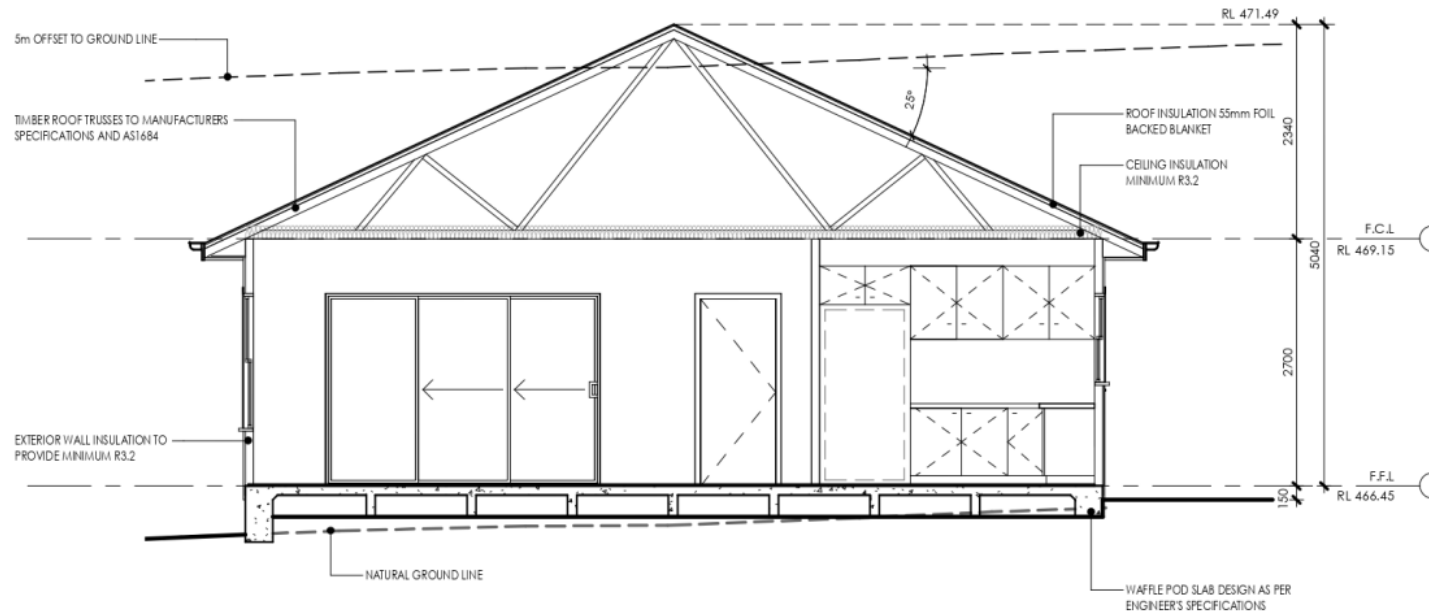
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Client David Challinor & Stephen Marchant	
Project 12 Little Bayly Street Gulgong NSW 2852	
Title ELEVATIONS	
Scale at A3 1 : 100	
Date OCTOBER 2021	Drawn RG/DW
Drawing No. 611CHA-06	Issue F



A SECTION
 SCALE 1 : 50

- Notes**
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Project
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Title
 SECTION

Scale at A3
 1 : 50

Date OCTOBER 2021 **Drawn** RG/DW

Drawing No. 611CHA-07 **Issue** E



- Notes**
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D	RAISE FFL	26.04.23
C	DA ISSUE 1	19.05.22
B	DA ISSUE	14.03.22
A	PRELIMINARY	15.02.22

Issue	Description	Date
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Client David Challinor & Stephen Marchant	
Project 12 Little Bayly Street Gulgong NSW 2852	
Title PERSPECTIVES	
Scale at A3 NA	
Date OCTOBER 2021	Drawn RG/DW
Drawing No. 611CHA-08	Issue D

DREW ROBERTS CONSULTING

4.6 VARIATION WRITTEN REQUEST

Dual Occupancy (detached)

CLIENT: SUNRAI DESIGNS

DATE: 28 JUNE 2023

PROJECT: 2023/57

ABN 87650161139
6 Amos Crescent, Sylvania NSW 2224
drew.roberts.consultant@gmail.com

Clause 4.6 Variation – Building Height

Introduction

The proposal is for the erection of a dwelling house to create a dual occupancy (detached) at 12 Little Bayly Street, Gulgong.

The subject site is identified as having a 5m height limitation under clause 4.3 of Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012) and as shown on the 'Height of Buildings' Map.

The dwelling proposed presents a variation to this requirement due to a minor portion of the ridgeline of the dwelling extending to a height of 5.7m at the worst extent, representing a 14% variation. This variation involves only the ridgeline extending through the centre of the roof that includes only 9% of the actual roof area.

Clause 4.6 of the Mid-Western Regional LEP 2012, Exceptions to development standards provides opportunity for Council to vary the controls where the concurrence of the Secretary has been obtained and the written request adequately addresses the following four items:

- **Strict compliance is unreasonable and unnecessary:** The request must demonstrate that strict compliance with a development standard is unreasonable or unnecessary in the circumstances of the case;
- **Environmental planning grounds:** The request must show that there are sufficient environmental planning grounds to justify contravening the development standard;
- **Public interest:** The variation must demonstrate that the proposal would be in the public interest; and
- **Other matters:** The variation must address whether or not the contravention of the development standard raises any matters of significance for state or regional planning.

This document is a formal request for a variation to the building height development standard under MWRLEP 2012. It has been prepared in accordance with the principles outlined in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).

Strict Compliance Unreasonable and Unnecessary

Under Clause 4.3(2) of MWRLEP 2012 *"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."*

The Initial Action case is referable to the judgement of Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) which sets out five ways of demonstrating that compliance with a development standard is unreasonable or unnecessary. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Randwick Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 have confirmed that adopting the ‘*Wehbe*’ principles when assessing a clause 4.6 submission in respect of clause 4.3(2) is an appropriate approach. It is necessary that the proposal meets one or more of the *Wehbe* principles (although the *Wehbe* principles are not the only basis upon which ‘unreasonable or unnecessary may be demonstrated).

Five ways from the *Wehbe* judgement of demonstrating that compliance with a development standard is unreasonable or unnecessary are:

1. “if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)”
2. “the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary”
3. “the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable”
4. “the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable”
5. “the zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary”

For the purpose of this variation request, only the first of the *Wehbe* principles is relevant.

Despite the breach of the building height control, the proposal achieves the objectives for the building height control in Clause 4.3 as outlined below.

4.3(1)(a):

“to establish a maximum height limit to which buildings can be designed in particular locations.”

Comment: The specific maximum height limit of 5m has been established that overlaps the heritage conservation area (HCA) that applies to the town of Gulgong. The 5m limit is in contrast to other areas in the Mid-Western LGA that have a height limit of 8.5m applied, including the residential area immediately surrounding the Gulgong HCA.

It is understood that the 5m height limit was intended to generally restrict residential development in the Gulgong HCA to single storey, which is in keeping with the general residential streetscape that has historically been established surrounding the commercial core area of the Gulgong.

4.3(1)(b):

“to enable infill development that is of similar height to existing buildings and that is consistent with the heritage character of the towns of Mudgee, Gulgong, Kandos and Rylstone.”

Comment: This particular objective is considered the core reasoning behind the 5m height limit applied to the Gulgong HCA. As noted above, the residential area and residential buildings immediately surrounding the Gulgong commercial area is predominately single storey in nature. This has allowed for more prominent buildings, in particular the various churches around the town, to be visually prominent throughout the town and to ensure that the predominately single storey commercial area of Gulgong is also not overwhelmed by elevated two storey residential development.

The proposed dwelling, being infill development, has been designed with a similar height to several immediate surrounding dwellings, which although exceed the 5m height limit (albeit likely to be erected prior to the 5m height limit being implemented) are still single storey in nature. The proposal will maintain the single storey heritage rhythm of the Gulgong HCA. Refer to comments further on in this statement that discuss the design and circumstances of the site in detail.

Despite the minor height limit breach the proposal also satisfies the R1 General Residential zone objectives, which applies to the site, as noted below:

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

Comment: The proposed dwelling is contributing to the housing needs of the community without resulting in any negative planning outcomes as discussed throughout this statement and also the statement of environmental effects prepared by Sunrai Designs.

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

Comment: The proposed dwelling forms part of a detached dual occupancy that contributes to the housing stock of Gulgong in an appropriate manner and scale. The proposal satisfies all other LEP and DCP controls, suggesting that the density proposed is appropriate. It should be noted that the building height limit has no impact upon the desired densities or type of housing needed within the Gulgong township.

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

Comment: The proposed dwelling will not hinder the site or other surrounding properties from being developed for other purposes that may serve the day to day needs of residents.

Environmental Planning Grounds

Under Clause 4.6(3)(b) of MWRLEP 2012 “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:(b) that there are sufficient environmental planning grounds to justify contravening the development standard”.

It is considered that there are sufficient environmental planning grounds to justify breaching the building height standard in this instance because:

- **The proposed variation still provides for an appropriate outcome with regards to the Gulgong Heritage Conservation Area.**

The design of the dwelling incorporates a pitched roof that includes a dutch gable and several other smaller gables integrated into the design. The pitch has been intentionally set to generally match that of higher pitched roofs of contributory dwellings in the immediate area. An analysis of the immediate streetscape of Belmore Street (the street relevant to the proposed dwelling) has revealed a plethora of older bungalows, cottages and federation buildings that all include steeper pitched roofs of varying styles, which was typical of the era of those dwellings. All of these dwellings contribute to the rhythm of the heritage characteristics of Belmore Street and this pattern of significant heritage fabric is replicated throughout the streets of Gulgong that make up the original township layout.

Without the steeper pitched roof the design would not be in keeping with the immediate heritage fabric and would detract from general overall heritage significance of Gulgong. It should be noted that there are also several examples of recent residential development having been undertaken in the immediate area that include lower pitched roofs, which are generally considered to detract from the heritage fabric. This proposal seeks to avoid that.

It should be noted that the proposed roof pitch will still sit lower than that of the adjoining dwelling immediately to the west. This dwelling is positioned in a rising section of Belmore Street, which rises significantly to the west of the site. All of the dwellings in this part of Belmore Street have incrementally higher built form as they extend along the street, setting the rhythm for the streetscape. The proposal

will still contribute appropriately to this rhythm by not setting a roof pitch that is higher than that of other dwellings further up the slope.

- **The alternative to the variation proposed would result in a lesser planning outcome.**

As discussed above the alternative to the proposed variation would be to simply lower the pitch of the roof. The proposed dwelling has been intentionally designed with the higher pitched roof to be in keeping with the rhythm of Belmore Street and to not further erode the heritage significance of the general area.

Additionally, the other alternatives to the design of the dwelling have been considered that relate to building height including floor to ceiling heights and the setting of the floor level. The floor to ceiling heights have been set at 2.7m, which are considered standard heights for contemporary residential development. In particular the majority of the floor area of the dwelling that sits immediately below the pitch of the roof above is open plan living and dining area, which necessitate an increased floor to ceiling height to match the larger proportion of the room and allow for better amenity of the space.

The proposed floor level, set at RL 466.45 is necessary to allow for the fall of sewer services to the nearest riser on the property, which is located approximately 33m from the nearest wet area of the proposed dwelling in the south-eastern corner of the site. An alternative location for sewer was identified that would involve constructing a new Council owned sewer line within the Belmore Street road reserve a distance of approximately 55m to the nearest sewer line that is located in the Medley Street road reserve. Given the limited space in the road verge this would involve significant excavation works through the root zones of 5 established street trees, which would almost certainly result in the 5 trees having to be removed. These trees contribute significantly to the streetscape and the heritage conservation area and the redirecting of sewer infrastructure to the existing system on Little Bayley Street is considered the preferred outcome.

The presentation of the dwelling to the street as a single storey development is the key element that ensures no additional significant impacts are created.

- **The proposal does not result in additional impacts associated with building height.**

Other impacts generally associated with a higher building form are overshadowing, privacy and building bulk/mass.

The non-compliant section of the dwelling relates to a pinch point of the ridge of the roofline only. This portion of the dwelling represents only 9% of the overall roof area and is positioned in the centre of the site. As a result of the minor extent and location of the non-compliance away from any boundaries there is not expected to be any additional impacts associated with privacy, overshadowing or building bulk that a compliant proposal would be able to resolve. It is unnecessary for the

proposal to comply with the building height control with regards to these particular issues.

- **The non-compliant elements of the proposal satisfy the relevant matters outlined in section 1.3 of the Environmental Planning and Assessment Act 1979.**

This is outlined below:

- *“(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,”* **Comment:** The proposed building has been designed with regard to ecologically sustainable design measures, with the variation not preventing compliance with other legislative requirements and allowing for improved amenity for occupants into the future.
- *“(c) to promote the orderly and economic use and development of land,”* **Comment:** The design of the dwelling has been carefully considered and the issue of non compliance will be not be perceptible as a non compliance as viewed from the street and surrounding development given the existence of other non-compliant buildings in the immediate area combined with the single storey nature of the area. The non compliant area promotes the orderly use of land in that it will have no unreasonable environmental impacts on adjoining properties in terms of visual bulk and scale, views, overshadowing or loss of sunlight.
- *“(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,”* **Comment:** The proposed dwelling has no adverse implications with regard to protecting native vegetation or habitats.
- *“(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),”* **Comment:** The benefits of the design with regards to the Gulgong HCA have been extensively discussed and proven within this statement and also the statement of environmental effects prepared by Sunrai Designs. The proposed building height is considered the most appropriate outcome with regards to the built heritage fabric of the surrounding area.
- *“(g) to promote good design and amenity of the built environment”* **Comment:** Despite the building height breach (and as a result of the breach) the proposed dwelling is of high architectural merit. It has been sensitively designed and incorporates high-quality finishes. The proposed design is considerate in ensuring compatibility with adjacent and surrounding buildings and is presented appropriately when viewed from the street. The appropriate design ensures no unreasonable adverse environmental impacts will result from the proposed works, including in terms of privacy, view sharing, visual intrusion and overshadowing. Given that it will not result in any adverse impacts and will result in a building form that is visually appropriate for its location it will satisfy this object of the Act.

- **The height control breach has no implications for compliance with other key MWRLEP 2012 requirements:**

The proposal is consistent with all other key MWRLEP 2012 requirements. A low footprint is maintained on site. Overall, the design has been refined and considered in striving to achieve compatibility with both the existing streetscape and the future desired built form of the area. It is also noted that the proposal overall is consistent with the objectives of the R1 zone.

Public Interest

Under Clause 4.6(4) of MWRLEP 2012 *“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 (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Secretary has been obtained.”*

This Clause 4.6 variation request is in the public interest because it has been shown to be consistent with the objectives of the building height development standard and the R1 zone. It is understood that concurrence of the Secretary has been obtained.

Other Considerations

Under Clause 4.6 (5) of MWRLEP 2012 *“In deciding whether to grant concurrence, the Secretary must consider: (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

There is considered to be no public benefit in refusing the application (for the reasons stated above) so as to ensure that full compliance with the building height control is achieved, as discussed above. The variation to the development standard does not raise any matters of state or regional significance.

It is understood that concurrence of the Secretary has been obtained.

Conclusion

This submission demonstrates that strict compliance with Clause 4.3 of MWRLEP 2012 is unreasonable or unnecessary in the circumstances of the case because the proposal

achieves both the objectives of the building height clause, which relate primarily to preserving the single storey nature of the Gulgong HCA and the objectives of the R1 zone. This submission also demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. Additionally, the proposal is considered to be in the public interest in that it achieves the objectives of the R1 zone and continues to allow the general area to be single storey in nature.

It is important to note that given the particular circumstances of the site in relation to appropriate sewer connections, the necessary floor to ceiling heights, additional emphasis on quality heritage outcomes and the rising nature of Belmore Street to the west that no precedence is considered to be set that would allow other proposals in the immediate area to also readily contravene the development standard. Other sites would need to also demonstrate identical circumstances exist in which to justify the proposal, which is not expected to occur.

A summary of the key arguments in support of the clause 4.6 variation is as follows:

- The proposed design is complementary to the surrounding streetscape in the Gulgong HCA and achieves:
 - the relevant objectives of clause 1.3 of the Environmental Planning and Assessment Act 1979;
 - the objectives for building heights in clause 4.3 of the LEP; and
 - the objectives of the R1 zone.
- The variation is to ensure that the higher pitched roof lines that are the predominant element within the Gulgong HCA are continued;
- The alternative to the variation proposed would result in a lesser planning outcome;
- The proposed variation does not create adverse visual, privacy or overshadowing impacts; and
- The building height variation has no implications for compliance with other key MWRLEP 2012 and MWRDCP 2013 requirements.

It is notable that this submission demonstrates that both the objectives of the building height clause and the zone objectives are achieved. Achieving these objectives is a higher level of satisfaction than that required in Clause 4.6(4)(ii), which only requires that the proposed development *“will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone...”* In *Moskovich v Waverley Council* [2016] NSWLEC 1015, Commissioner Tuor makes the distinction between the different requirements between clauses 4.6(3) and 4.6(4) and notes the higher standard as being able to demonstrate the objectives of the standard and zone are *“achieved”*.

Accordingly, in light of the above written request it is submitted that the Council will be satisfied that in this instance the development standard can be varied because this

written request has addressed all of the necessary matters contained in clause 4.6(4) of the MWRLEP 2012. Relevantly, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and sufficient environmental planning grounds exist to justify a contravention of the development standard; and the proposed development will be in the public interest as it is consistent with the development standards and the zone.