



12 December 2024

Dear Councillor,

Your attendance is requested at an Extraordinary Council Meeting of the Blayney Shire Council to be held in the Chambers, Blayney Shire Community Centre on Wednesday, 18 December 2024 at 9.30am for consideration of the following business -

- (1) Livestreaming Video and Audio Check
- (2) Acknowledgement of Country
- (3) Recording of Meeting Statement
- (4) Statement of Ethical Obligations
- (5) Apologies for non-attendance
- (6) Disclosures of Interest
- (7) Public Forum
- (8) Reports of Staff
 - (a) Planning and Environmental Services

Mark Dicker
General Manager

Meeting Calendar 2024 / 2025

December

<u>Time</u>	<u>Date</u>	<u>Meeting</u>	<u>Location</u>
6.00pm	17 December 2024	Council Meeting	Community Centre
10.00am	18 December 2024	Extraordinary Council Meeting	Community Centre
2.00pm	20 December 2024	Central Tablelands Weeds Authority Meeting	Bathurst

January

Nil

February

<u>Time</u>	<u>Date</u>	<u>Meeting</u>	<u>Location</u>
10.00am	14 February 2025	Audit, Risk and Improvement Committee Meeting	Community Centre
10.00am	19 February 2025	Central Tablelands Water Meeting	Blayney
2.00pm	21 February 2025	Central Tablelands Weed Authority Meeting	Bathurst
6.00pm	25 February 2025	Council Meeting	Community Centre
8.30am	26 February 2025	Orange360 Board Meeting	Orange
10.00am	27 February 2025	Central NSW Joint Organisation Meeting	Oberon

March

<u>Time</u>	<u>Date</u>	<u>Meeting</u>	<u>Location</u>
6.00pm	24 March 2025	McPhillamys CCC Meeting	Community Centre
6.00pm	25 March 2025	Council Meeting	Community Centre
8.30am	28 March 2025	Country Mayors	Sydney

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HELD ON WEDNESDAY 18 DECEMBER 2024

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LIVE STREAMING OF COUNCIL MEETINGS

In accordance with the Blayney Shire Council Code of Meeting Practice, this meeting will be recorded for the purpose of the live streaming function via our YouTube channel. The audio and visual live stream and recording, will allow members of the public to view proceedings via the Internet without the need to attend Council meetings. The objective of this service is to eliminate geographic and other access barriers for the community wishing to learn more about Council's decision making processes.

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STATEMENT OF ETHICAL OBLIGATIONS

Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

01) DA 55/2023 - HOTEL OR MOTEL ACCOMMODATION, SIGNAGE AND CHANGE OF USE - 62 OSMAN STREET BLAYNEY**Department:** Planning and Environmental Services**Author:** Director Planning and Environmental Services**CSP Link:** 3. Diversify and Grow the Blayney Shire Local and Visitor Economy**File No:** DB.AB.1966**Recommendation:**

That Council grant consent to Development Application 55/2023 subject to the recommended conditions outlined in the attached Section 4.15 assessment report.

Reason for Report:

This report seeks Council consent to Development Application 55/2023 for a hotel or motel accommodation, signage and change of use.

Council engaged independent planning consultants, Currajong Planning, to review and assess this development proposal. A comprehensive Section 4.15 Assessment Report prepared by Currajong Planning is attached.

Notification and public exhibition of the proposed development has been completed in accordance with the requirements of the Blayney Community Participation Plan 2020. Submissions were received as part of that process.

This report should be read in conjunction with the report in the business paper dealing with Building Information Certificate (**BIC-17086**).

Summary of Application

Development Application No.	DA 55/2023
Description of Development	Hotel or motel accommodation, signage and change of use (and as detailed in this report)
Applicant	Rovest Holdings Pty Ltd
Landowner	Rovest Holdings Pty Ltd
Landowner's consent provided	Yes
Local Government Authority	Blayney Shire Council
Determining Authority	Blayney Shire Council

Report

Development Consent No. DA 4/2021 was granted by Blayney Shire Council (**Council**) to Rovest Holdings Pty Ltd on 10 August 2021 for a hotel / motel, signage and subdivision of land on Lot 1 DP 162646, Lot 8 DP 505215, Lot 20 DP 569741, Lots 11-14, Section 13 DP 758121 and Lot 10 DP 1114679. The proposed development involved the following:

- Completion and use of alterations and additions to the former bowling club building to provide a reception area, communal kitchen and laundry, storage rooms and male and female amenities, together with the ongoing use of this area in relation to the proposed motel use of the site.
- Completion and use of the 26 motel accommodation buildings, including completion of necessary works to provide a total of 102 motel rooms (92 single rooms (existing onsite), 4 double rooms (existing onsite) and 6 disabled accessible rooms (to be completed)).
- Completion and use of an at-grade carpark for 81 spaces, including seven (7) disabled accessible spaces, with connection to the public road network via the Church Street entrance.
- Completion and use of necessary utility infrastructure and services, including sewerage, water and electricity supply connections.
- Completion of boundary fencing, garbage bin enclosures, lighting and landscaping.
- Installation of a 1m x 1m illuminated sign along the Church Street frontage to advertise the motel, utilising an existing pylon associated with the former bowling club use.
- Installation of an underground pipeline and easement on Lot 1 DP 718479 to drain stormwater from the development to the Water Street drainage system.

On 2 November 2021, Class 4 proceedings were commenced in the NSW Land and Environment Court (**Court**), challenging the validity of Council's approval under Development Consent No. 4/2021.

On 16 March 2023, Development Consent No. DA 4/2021 was declared invalid by the Court (see *Ogilvie v Rovest Holdings Pty Ltd* (2023) NSWLEC 17). The Court reasons included:

1. Council failed to characterise the modular units correctly as buildings, with the consequence that consent ought to have been sought for the installation of the units under the *Environmental Planning and Assessment Act 1979 (EPA Act)*, and not the *Local Government Act 1993 (LG Act)*.
2. Council failed to consider all relevant mandatory matters required by Clause 6.2 of the Blayney Local Environmental Plan 2012 (**BLEP**).

On 28 June 2023, a hearing was held in Court: *Ogilvie v Rovest Holdings Pty Ltd* (No 2) (2023) NSWLEC67 to address matters related to the Court's discretion to make orders (as a consequence of the finding of invalidity) and costs. At this hearing it was noted that substantial works had already been

carried out at the development site in accordance with Development Consent No. DA 4/2021, with the following being noted:

- August and September 2022 - preparatory works carried out to install the lead-in services at the site, pour the foundations and construct the footings for the modular buildings.
- October 2022 - delivery of 23 modular units to site and craned onto footings.
- November 2022 - construction of concrete verandah slabs.
- December 2022 - connection of modular buildings to utility services (electricity, water supply, sewerage and stormwater) and initial site landscaping.
- January and February 2023 - form car parks (including laying of utility services underneath car park), delivery of two (2) modular units and verandas as well as the upgrading of power, including two power poles and new substation.
- March 2023 - pouring of concrete slab for east part of car park and completion of landscaping.

On 1 May 2023 Rovest Holdings Pty Ltd lodged a new Development Application with Council for hotel or motel accommodation, signage and change of use on Lot 1 DP 162646, Lot 8 DP 505215, Lot 20 DP 569741, Lots 11-14, Section 13 DP 758121 and Lot 10 DP 1114679. Lot 1 DP 718479 also formed part of the new Development Application as it proposed an underground pipe and easement to drain stormwater from the development site to Water Street.

On 28 June 2023, the Court made the following orders:

- (1) The Court declares that the development consent granted by the Second Respondent to the First Respondent on 10 August 2021 (“Development Consent”), in respect of Development Application No. DA4/2020 (“Development Application”) on the site is invalid and of no effect;
- (2) The Court orders that:
 - a) The First Respondent (Rovest Holdings Pty Ltd), by itself and by its employees, servants and agents, is restrained from carrying out any works under or in accordance with the Development Consent.
 - b) Any works carried out purportedly in reliance on the Development Consent are to be demolished and removed from the site within six (6) months from the date of these orders.
 - c) Order (2)(b) is suspended until the Second Respondent (Blayney Shire Council) has determined the applications made as noted above.
 - d) If the Second Respondent determines to issue a Building Information Certificate for the structures erected on, and other

associated works undertaken at, the site and grants development consent to use the structures erected on, and other associated works undertaken at the site for the purposes of a motel or grants development consent for the purposes of some other permissible use, order (2)(b) is discharged.

e) Liberty to apply in the event that:

- (i) The Second Respondent refuses the application for a Building Information Certificate concerning the structures erected on, and other associated works undertaken at, the site and/or development consent to use the structures erected on, and other associated works undertaken at, the site for the purposes of a motel or other permissible use and the First Respondent commences proceedings in the Court to appeal against any such refusal; or
- (ii) The Second Respondent grants a Building Information Certificate concerning the structures erected on, and other associated works undertaken at, the site subject to conditions and/or development consent to use the structures erected on, and other associated works undertaken at, the site for the purposes of a motel or other permissible use subject to conditions and the First Respondent commences proceedings in the Court to appeal against any such condition.

- f) Liberty to apply for any extension of time to comply with order (2)(b), or to vary order (2)(b) in light of any merit findings made as a consequence of the Second Respondent's determination of the Building Information Certificate and/or development applications made by the First Respondent to the Second Respondent and/or any appeal from such determinations.
- g) The exhibits are returned:
- h) except as provided in order (2)(i) below, the First and Second Respondents are jointly liable to pay the Applicant's costs as agreed or assessed; and
- i) costs incurred by the Applicant on and from 7 June 2023 are to be paid by the First Respondent on an as agreed or assessed basis.

Council commenced the processing DA 55/2023 lodged by Rovest Holdings Pty Ltd on 1 May 2023.

It is clear from a review of DA 55/2023 that consent is sought from Council for hotel / motel accommodation, signage and change of use. Importantly, the modular buildings have been properly described in DA 55/2023 as Class 3 buildings under the Building Code of Australia (**BCA**), requiring consent from Council for completion / continued use on the site. The DA 55/2023 documentation also provides further details on stormwater management in and around the development site to allow Council to make a full and proper assessment of Clause 6.2 of the BLEP.

DA 55/2023 has been accompanied by a number of plans, drawings and reports, as follows:

- Benefit Cost Analysis of Motel, prepared by Western Research Institute, dated 16 December 2020.
- Heritage Impact Statement, prepared by Kate Higgins, dated 30 May 2021.
- Development Application Noise Assessment, prepared by Blackett Acoustics – Version A, dated September 2021.
- Stormwater Management Report, prepared by Barker Ryan Stewart – Revision 2, dated 09 December 2021.
- Detailed Civil Engineering Design, prepared by Barker Ryan Stewart – Revision 3, dated 14 December 2021.
- Sewer Capacity Assessment Report, prepared by Barker Ryan Stewart – Revision 2, dated 15 December 2021.
- Certificate of Structural Sufficiency, prepared by Desing Construction Industries, dated 21 December 2022.
- Landscape Plan, prepared by Premise – Revision E, dated 015 July 2024.
- Development Applications Drawings, prepared by Premise – Rev E, dated 15 July 2024.
- Statement of Environmental Effects, prepared by Premise – Rev:004B, dated 27 June 2023.
- Traffic Study, prepared by Premise – Rev 002B, dated 27 June 2023.
- Plan of Management, prepared by Premise – Rev 001H, dated 27 June 2023.
- Fire Safety Strategy Report, prepared by Credwell, dated 8 August 2023.
- Transportable Building Certification, prepared by Calare Civil, dated 1 September 2023.
- Blayney Worker Accommodation – DnT,W measurement Report, prepared by Acoustik, dated 4 October 2023.
- Section J Report, prepared by Credwell Consulting, dated 6 October 2023.
- BCA Assessment Report, prepared by Credwell Consulting, dated 18 October 2023.
- Fire Engineering Report, prepared by Performance Based Consulting – Rev F, dated 5 August 2024.

- Development Application Statement, prepared by Architecture & Access, dated 26 July 2024.

All relevant documents are attached.

The processing of DA 55/2023 has involved notification and advertising of the proposed development from 9 November 2023 to 23 November 2023 in accordance with the Blayney Community Participation Plan 2020.

The attached assessment report records the main findings of the assessment of DA 55/2023 in accordance with the relevant matters for consideration under Section 4.15 of the EPA Act. A summary of the main assessment findings of the report are provided below:

- The scope of the proposed development is clearly articulated in the DA 55/2023 documentation, including a breakdown of the main aspects of the development as follows:
- Completion of site preparation works, including the installation / upgrade of utility services.
- Completion and use of 26 modular buildings comprising a total of 102 rooms.
- Completion and use of an 81-space car park, with access via an existing driveway from Church Street.
- Completion of alterations and additions to a portion of the former Blayney Bowling Club building for use as a motel reception area, an on-site laundry, kitchen, amenity areas and a site office.
- Completion of boundary fencing and landscaping, lighting and garbage bin enclosures.
- Completion of utility services and installations.
- Installation of an illuminated sign on an existing pylon along the Church Street frontage to advertise motel accommodation.
- Installation of an underground pipeline and easement over Lot 1 DP 718479 to drain stormwater from the development to the Water Street drainage system.
- The submitted plans, drawings and reports that have been prepared by the various consultants in support of the proposed development contain sufficient information to allow Blayney Shire Council to make an informed decision on the proposal.
- Notification and advertising of the proposed development has been completed in accordance with the requirements of the Blayney Community Participation Plan 2020. Council received a total of five (5) submissions from members of the public, some of which are objections to the proposal, and others in support of the proposal. An assessment of the issues raised in the submissions has been completed in the Planning assessment report.
- The proposed development is consistent with all relevant environmental planning instruments applying to the site / development, including the BLEP and Blayney Development Control Plan 2018 (**BDCP**).

- Assessment of the proposed development, including all finalised plans, drawings and reports, submissions received, and referral advice from Council planning and engineering staff and heritage advisor concludes the proposal is unlikely to pose unacceptable impacts on the environment and has merit for approval, subject to conditions.
- Draft conditions of consent have been included in the assessment report to address all aspects of the proposed development, including compliance with the approved plans, drawings and reports relating to building code compliance, stormwater, land consolidation and easements, traffic, access and parking, servicing and infrastructure, heritage, outdoor advertising, lighting, landscaping, preservation of natural environment elements and community contributions.

It is the recommendation of the attached Section 4.15 Assessment Report that DA 55/2023 be approved with conditions addressing issues raised in the report.

Risk/Policy/Legislation Considerations:

External advisors were engaged for professional advice and seeking to ensure all legislative obligations were complied with. Council engaged an independent Planning consultant to review and assess the development proposal. Professional assessment of Building Code of Australia compliance was carried out both in-house and with the assistance of an independent BCA Consultant/Fire Engineer. This also included referral to Fire and Rescue NSW, who raised no objections.

Council's specialist Environmental and Planning Lawyers have been engaged throughout the process seeking guidance and to reduce risks to Council. The applicant for the DA has been requested to provide a jurisdictional statement on matters of jurisdiction and compliance with relevant requirements.

A Section 4.15 assessment of the development indicates that the development is acceptable in this instance subject to conditions.

Should Council approve the application, the applicant has rights of appeal to the Land and Environment Court if they are dissatisfied with any conditions imposed. Similarly, should the application be refused, the applicant may appeal to the Land and Environment Court.

Any party may commence proceedings in the Land and Environment Court seeking Judicial Review should they be of the view there has been a breach of the Environmental Planning and Assessment Act.

Budget Implications:

Costs have been incurred in engaging an Independent Planning consultant to undertake the s.4.15 assessment for this application utilising existing budget allocations and review of the application by a Specialist BCA Consultant/Fire Engineer. Costs have also been incurred in engaging Council's Solicitors in seeking guidance throughout the process.

Enclosures (following report)

Nil

Attachments (separate document)

1	Assessment Report	78 Pages
2	BCA Assessment Report	32 Pages
3	Certificate of Structural Sufficiency	1 Page
4	DA Drawings	13 Pages
5	DA Noise Impact Assessment	18 Pages
6	Detailed Civil Engineering Design	23 Pages
7	Development Application Statement	3 Pages
8	DnT,W Measurement Report	12 Pages
9	Fire Engineering Report	18 Pages
10	Heritage Impact Statement	18 Pages
11	Landscape Plan	1 Page
12	Plan of Management	82 Pages
13	Section J Report	28 Pages
14	Sewer Capacity Assessment Report	25 Pages
15	Statement of Environmental Effects	79 Pages
16	Stormwater Management Report	36 Pages
17	Traffic Study	15 Pages
18	Transportable Building Certification	16 Pages
19	Response to Submissions	3 Pages
20	Submissions Received	8 Pages

This matter is considered to be confidential under Section 10A(2) (a) of the Local Government Act, as it deals with personnel matters concerning particular individuals.

02) BIC-17086 - BUILDING INFORMATION CERTIFICATE APPLICATION FOR MODULAR BUILDINGS AND BUILDING ALTERATIONS - 62 OSMAN STREET, BLAYNEY

Department: Planning and Environmental Services

Author: Director Planning and Environmental Services

CSP Link: 3. Diversify and Grow the Blayney Shire Local and Visitor Economy

File No: DB.AB.1966

Recommendation:

That Council, subject to being satisfied development consent can be issued to DA55/2023, issue a Building Information Certificate (**BIC-17086**) for the existing modular buildings (including footings and services) and for the building alterations undertaken on the ground floor of the existing former clubhouse building located at 62 Osman Street, Blayney.

Reason for Report:

For Council to consider and determine BIC-17086 for the existing modular buildings and building alterations at the Premises. This matter is reported to Council as a submission has been received in relation to the BIC Application.

This report should be considered in conjunction with the report prepared to Council in relation to DA55/2023.

History

On 2 November 2021, Class 4 proceedings were commenced in the NSW Land and Environment Court (**Court**), challenging the validity of Council's approval under Development Consent No. 4/2021.

On 16 March 2023, Development Consent No. DA 4/2021 was declared to be invalid by the Court, as recorded in *Ogilvie v Rovest Holdings Pty Ltd* (2023) NSWLEC 17. The Court provided two reasons for its decision, as generally summarised below:

1. Blayney Shire Council failed to characterise the modular units correctly as buildings, with the consequence that consent ought to have been sought for the installation of the units under the *Environmental Planning and Assessment Act* 1979, and not the *Local Government Act* 1993.
2. Blayney Shire Council failed to consider all relevant mandatory matters required by Clause 6.2 of the *Blayney Local Environmental Plan* 2012.

On 28 June 2023, a further hearing was held in the Court: *Ogilvie v Rovest Holdings Pty Ltd (No 2)* (2023) NSWLEC67 to address both discretion and costs.

At this hearing it was noted that substantial works had already been carried out at the Premises in accordance with Development Consent No. DA 4/2022, with the following being noted:

- August and September 2022 - preparatory works carried out to install the lead-in services at the site, pour the foundations and construct the footings for the modular buildings.
- October 2022 - delivery of 23 modular units to site and craned onto footings.
- November 2022 - construction of concrete verandah slabs.
- December 2022 - connection of modular buildings to utility services (electricity, water supply, sewerage and stormwater) and initial site landscaping.
- January and February 2023- form car parks (including laying of utility services underneath car park), delivery of two (2) modular units and verandahs as well as the upgrading of power, including two power poles and new substation.
- March 2023 - pouring of concrete slab for east part of car park and completion of landscaping.

On 1 May 2023 Rovest Holdings Pty Ltd lodged a new Development Application for hotel or motel accommodation, signage and change of use on Lot 1 DP 162646, Lot 8 DP 505215, Lot 20 DP 569741, Lots 11-14, Section 13 DP758121 and Lot 10 DP 1114679. Lot 1 DP718479 also formed part of the new Development Application as it proposed an underground pipe and easement to drain stormwater from the development site to Water Street. An application for a Building Information Certificate was subsequently lodged on 9 June 2023.

On 28 June 2023, the Court made the following orders:

- a) The First Respondent (Rovest Holdings Pty Ltd), by itself and by its employees, servants and agents, is restrained from carrying out any works under or in accordance with the Development Consent.
- b) Any works carried out purportedly in reliance on the Development Consent are to be demolished and removed from the site within six (6) months from the date of these orders.
- c) Order (2)(b) is suspended until the Second Respondent (Blayney Shire Council) has determined the applications made as noted above.
- d) If the Second Respondent determines to issue a Building Information Certificate for the structures erected on, and other associated works undertaken at, the site and grants development consent to use the structures erected on, and other associated works undertaken at the site for the purposes of a motel or grants development consent for the purposes of some other permissible use, order (2)(b) is discharged.

- e) Liberty to apply in the event that:
 - (i) The Second Respondent refuses the application for a Building Information Certificate concerning the structures erected on, and other associated works undertaken at, the site and/or development consent to use the structures erected on, and other associated works undertaken at, the site for the purposes of a motel or other permissible use and the First Respondent commences proceedings in the Court to appeal against any such refusal; or
 - (ii) The Second Respondent grants a Building Information Certificate concerning the structures erected on, and other associated works undertaken at, the site subject to conditions and/or development consent to use the structures erected on, and other associated works undertaken at, the site for the purposes of a motel or other permissible use subject to conditions and the First Respondent commences proceedings in the Court to appeal against any such condition.
- f) Liberty to apply for any extension of time to comply with order (2)(b), or to vary order (2)(b) in light of any merit findings made as a consequence of the Second Respondent's determination of the Building Information Certificate and/or development applications made by the First Respondent to the Second Respondent and/or any appeal from such determinations.
- g) The exhibits are returned:
- h) except as provided in order (2)(i) below, the First and Second Respondents are jointly liable to pay the Applicant's costs as agreed or assessed; and
- i) costs incurred by the Applicant on and from 7 June 2023 are to be paid by the First Respondent on an as agreed or assessed basis.

Blayney Shire Council (**Council**) commenced the processing of the new development application (DA55/2023) lodged by Rovest Holdings Pty Ltd on 1 May 2023 and Building Information Certificate BIC-17086 lodged on 9 June 2023.

Report:

Blayney Shire Council has received BIC-17086 for the existing modular buildings and building alterations undertaken at the Premises.

The modular buildings were installed and the building alterations were done in reliance on the previous development consent for a motel on the Premises that was declared to be invalid by the Court in March 2023.

The owner of the property has since submitted BIC-17086 to regularise the unauthorised buildings. Development Application DA55/2023(PAN-322735) has also been submitted to complete the remaining works to the development and use the buildings as a motel.

BIC-17086 has been processed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (**EPA Act**) and the *Environmental Planning and Assessment Regulation 2021* (**Regulation**). Clause 6.25 of the EPA Act states:-

6.25 Issue, nature and effect of building information certificate

(1) A building information certificate is to be issued by a council only if it appears that—

(a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the [Local Government Act 1993](#)—

(i) to order the building to be repaired, demolished, altered, added to or rebuilt, or

(ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or

(iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or

(b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.

(2) A building information certificate is a certificate that states that the council will not make an order or take proceedings referred to in subsections (3) and (4).

(3) A building information certificate operates to prevent the council—

(a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the [Local Government Act 1993](#) requiring the building to be repaired, demolished, altered, added to or rebuilt, and

(b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, in relation to matters existing or occurring before the date of issue of the certificate.

(4) A building information certificate operates to prevent the council, for a period of 7 years from the date of issue of the certificate—

(a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the [Local Government Act 1993](#) requiring the building to be repaired, demolished, altered, added to or rebuilt, and

(b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.

(5) However, a building information certificate does not operate to prevent a council from making a development control order that is a fire safety order or a building product rectification order (within the meaning of the [Building Products \(Safety\) Act 2017](#)).

(6) An order or proceeding that is made or taken in contravention of this section is of no effect.

In the absence of a BIC being issued, the types of Orders the Council could consider are:

Order No. 3 (*Demolish Works Order*) to demolish or remove a building and **Order No. 5(*Repair Order*)** to repair or make structural alterations to a building, under the Environmental Planning and Assessment Act 1979 are relevant for Council to consider issuing to require that the buildings to be repaired, demolished, altered, added to or rebuilt. The circumstances at when these Orders might be served are:-

Order No. 3(*Demolish Works Order*)

A building—

- requiring a planning approval is erected without approval, or
- requiring approval under the [Local Government Act 1993](#) is erected without approval, or
- is or is likely to become a danger to the public, or
- is so dilapidated that it is prejudicial to persons or property in the neighbourhood, or
- is erected in contravention of this Act.

Order No. 5(*Repair Order*)

The building is or is likely to become a danger to the public or is so dilapidated that it is prejudicial to the occupants, persons or property in the neighbourhood.

The building alterations and modular buildings currently constructed at the Premises were inspected by Council's Senior Building Surveyors on 13 June 2023 and were found to be in good condition, not a danger to the public and not in a dilapidated state.

It is noted that the modular buildings have been certified as being structurally adequate by Calare Civil, but are incomplete, with the following work to be carried out as part of DA55/2023:-

- erection of a verandah to Block 6;
- construction of decks, stairs and ramps to provide access to the entry doors of the bedrooms of the modular buildings;
- Installation of fire safety measures such as a fire detection and alarm system, portable fire extinguishers, sprinklers and hydrants; and
- a proposed addition to Block 24 and a new Block 25 to provide accessible rooms, as well as an accessible path of travel comprising ramps and paths from the public road to the accessible buildings, and throughout the site.

BIC-17086 includes a Survey Report prepared by Craig Jaques & Associates (Orange) Pty Ltd, of the Premises which shows:

1. the position of the 24 modular buildings and associated verandahs on the Premises;

2. footings for the proposed 25th modular building;
3. the former bowling clubhouse where, on the ground floor, building alterations were carried for the proposed motel reception area.

The survey report does not indicate any encroachments with all existing buildings situated within the property.

Architectural Drawings prepared by Premise dated 20 May 2023, show the building alterations that were carried out in the north-east corner of the ground floor in the existing clubhouse building which comprise a reception area, office, toilets, kitchenette, store, laundry and switch room.

In addition to the Survey Report and Architectural Drawings, the applicant has submitted the following documents in support of the BIC and the development application:-

- Building Code of Australia (BCA) Assessment Report by Credwell Building Consultants, Ref No. 230296-BCA-r1, dated 18 October 2023;
- Fire Engineering Report by Performance Based Consulting, Ref No. SYD000681-FER01 Revision F, dated 5 August 2024;
- Section J (Energy Efficiency) Report by Credwell Building Consultants, Ref No. 230396C-J1V3-r2, dated 17 October 2023;
- Acoustic Report by Acoustik (Orange) Acoustic Consultants, Ref. No. 2308.05.Letter.A_r1, dated 4 October 2023;
- Assessment of Snow Loading on Ausco Building Roofs Structural Certification by Premise Australia Pty Ltd, Ref No. GEO009999-220022-C01 R2, dated 27 May 2021;
- Structural Certification for the Modular Buildings by Calare Civil, Ref No. 20220626, dated 1 September 2023;
- Transportable Building Tie Down Chain Tensioning Certification by Calare Civil, Ref No.20220626, dated 9 September 2024; and
- An Access Statement by Architecture & Access (Aust) Pty Ltd, Ref No.AA00838, dated 26 July 2024.

The BCA Assessment Report has identified that the existing modular buildings on the Premises do not comply with the deemed-to-satisfy provisions of the Building Code of Australia in regard to:-

- fire separation of the motel rooms;
- disabled persons access;
- energy efficiency of the modular buildings; and
- sound transmission of the walls separating the motel rooms.

Fire Separation of the Motel Rooms

It is noted that in the modular buildings, the walls separating the rooms do not have a Fire Resistance Level of 60/60/60 as is required under the deemed-to-satisfy provisions of the BCA.

However, the BCA is a performance based building code that allows performance solutions to be designed for buildings to meet the performance clauses in lieu of complying with the prescriptive deemed-to-satisfy provisions.

In this regard, Fire Engineering Reports have been prepared by Performance Based Consulting Pty Ltd for the modular buildings, and these have been peer reviewed by Mr Allan Harriman of Jensen Hughes, a highly experienced and qualified fire engineer who has been independently engaged by Council.

A Final Fire Engineering Report (revision F, dated 5 August 2024) requires the installation of an automatic fire detection & alarm system, an automatic sprinkler system, portable fire extinguishers and a fire hydrant system, based on the advice from Mr Harriman.

These systems will restrict the spread of fire between the rooms, alerting the occupants of the need to evacuate the buildings and allow for fire brigade intervention in the event of a fire in one of the buildings.

The Final Fire Engineering Report was also referred to NSW Fire & Rescue who gave conditional support subject to:-

All additional fire safety measures are to be installed as per Table 12 of PBC's Fire Engineering Report SYD000681-FER01:

- i. Each modular building must be provided with a detection system in accordance with Part E2 and AS 1670.1:2018.*
- ii. A sprinkler head must be installed in each of the bedrooms in accordance with FPAA101D.*
- iii. Portable fire extinguishers must be provided throughout each modular building in accordance with BCA Clause E1D14.*

As the buildings are incomplete, a condition is recommended to be imposed on the development consent to require that the fire safety measures supported by NSW Fire and Rescue are put in place.

Accessibility compliance

The development application plans indicate that six (6) fully accessible rooms will be provided in accordance with the requirements of the BCA, with disabled (wheelchair) access also provided to, and within the reception area on the ground floor of the former clubhouse building.

Wheelchair access will be provided to the entrance doors of the four (4) existing double rooms of Block 24, and to the entrance doors of the existing Blocks 22 & 23 which contain four (4) single rooms each.

The development application proposes an additional four (4) fully accessible rooms in a proposed addition to Block 24 as well as proposed Block 25 which will also contain (two) 2 fully accessible rooms to comply with the number of accessible rooms required by the BCA.

Blocks 1 - 21 will be accessed by stairs to the decks fronting the rooms and whilst the decks being public spaces are not wheelchair accessible, it is considered that adequate disabled persons access is provided to the motel as a whole.

A Development Application Statement by Access Consultants, Architecture and Access (Aust) Pty Ltd indicates that a Performance Solution for access to Blocks 1 -21 will be required to be submitted with the Construction Certificate Application to address compliance with the Performance Provisions of the BCA in regard to disabled persons access.

Energy Efficiency

The Applicant has submitted a Section J Energy Efficiency Assessment by Credwell Consulting Pty Ltd to model the energy performance of the buildings.

The Assessment found that the buildings can comply with the Performance Provisions of Section J of the BCA subject to the provision of a solar panel system with a minimum annual peak output of 134MWh.

A condition is recommended to be imposed on the development consent to require that the modular buildings be upgraded to comply with the Section J Energy Efficiency Assessment.

Sound Transmission of Separating Walls

The floor layout of the modular buildings is that the four (4) rooms each have an ensuite, with two (2) of the separating walls being ensuite to ensuite, and the other separating wall being bedroom to bedroom.

The applicant has submitted an Acoustic Report by Acoustik (Orange) who tested the sound insulation levels of the separating walls. Their assessment found that the ensuite to ensuite separating wall falls up to 23 decibels (dB) below the BCA sound insulation requirement of 45dB, with the bedroom to bedroom result, the shortfall is 4 to 8 dB below the 45dB requirement.

If the ensuite doors are closed, the results are at or above 41dB, 4dB short of the 45dB requirement. The Acoustic Report gives the following justification in their assessment:-

The major purpose of this development is to provide sleeping quarters for workers at the local industry and mines. The accommodation is transient to medium term. Bed rooms only have occupancy for a single individual (apart from the 4 double bedrooms), no additional seating is provided for guests. Rectification works to SOU (sole occupancy unit) walls are not feasible given the portable building construction does not have sufficient space to accommodate modifications. The shortfall in providing sound insulation is noted and the developer is taking the following steps to mitigate the shortfall. The following conditions of occupation will be included in contractual rental agreements:-

- 1. Information is provided to occupants that the accommodation falls short of the NCC (National Construction Code that includes the BCA) requirements regarding sound insulation between rooms*
- 2. Noisy activity in bedrooms is not permitted and especially during sleeping periods noting that shift workers may be sleeping during the day. Primarily the bedrooms are for sleeping and relaxation.*
- 3. Occupants are advised to close ensuite doors when ensuite is not in use to improve sound isolation to adjoining SOU.*
- 4. Signage will be posted in common areas of the development and in rooms regarding noise creation. Loud phone conversations in bedrooms are to be avoided.*

In view of the above, it is considered that the non-compliance with the BCA in regard to sound insulation of the separating walls is an amenity issue and does not affect the safety of the occupants of the modular buildings.

The sound transmission through the separating walls will be similar to that of other accommodation buildings, such as B&B's and farm stays.

BCA Compliance Summary

The modular buildings can be upgraded to conform with the Building Code of Australia with respect to fire safety, energy efficiency and disabled access, with the minor non-compliance with respect to sound insulation of the separating walls being acceptable as the buildings are considered fit for purpose and suitable for use as a Motel.

Submissions

The processing of BIC-17086 has involved notification and public exhibition of the application from 9 November 2023 to 23 November 2023 in accordance with the Blayney Community Participation Plan 2020.

One (1) submission was received as a result of this engagement on the BIC. An assessment of the issues raised in the submission has been completed detailed in Table 1, with a copy of the submission included in Attachment C to this report.

Table 1 – Public Consultation - Submissions Evaluation

Summary of issue raised	Assessment comment / evaluation
Submission 1 - dated 23 November 2023	
Objects to the Development Application and Building Information Certificate on the following basis: The development must comply with the building standards and to be an attraction to town.	The assessment of BCA issues has been well documented in the BIC-17086 & DA 55/2023 documentation, and includes a number of reports by specialist consultancy reports as follows: Transportable Building Certification - Proposed Development, 62 Osman Street, Blayney NSW 2799, prepared

Summary of issue raised	Assessment comment / evaluation
<p>The Fire Safety of Buildings Report prepared by Credwell states:</p> <p>They were not given all information needed to undertake an accurate report into the fire safety of the buildings.</p> <p>The (modular) buildings built by Ausco as portable Modular buildings have not been designed to be used as Class 3 buildings.</p> <p>The Fire Rating Level (FRL) of the Type 2 class construction buildings has not been verified and cannot be confirmed to comply with the requirements of BCA.</p> <p>The FRL of walls between and bounding of a single occupant unit is required to be 60/60/60 for Class 3 buildings and there is no verified fire rated bounding construction between SOU rooms.</p> <p>There is no fireproof wall between separating rooms. The existing walls have no fireproof board Flooring is a lower. As rated than recommended by BCA.</p> <p>Questions raised about compliance with the time specified of (seven seconds) to be able to leave a room in an emergency. In particular, questions how you put a time on emergency exit times when unknown people's lives and health are at risk when every emergency is different.</p>	<p>by Calare Civil Consulting Engineers, dated 1 September 2023.</p> <p>Assessment of Snow Loading on Ausco Building Roofs Structural Certification by Premise Australia Pty Ltd, Ref No. GEO009999-220022-C01 R2, dated 27 May 2021.</p> <p>Transportable Building Tie Down Chain Tensioning Certification by Calare Civil, Ref No.20220626, dated 9 September 2024.</p> <p>BCA Assessment Report (BCA 2022) prepared by Credwell Consulting Pty Ltd, dated 18 October 2023.</p> <p>Section J (Energy Efficiency) Report by Credwell Building Consultants, Ref No. 230396C-J1V3-r2, dated 17 October 2023.</p> <p>Fire Engineering Report by Performance Based Consulting, Ref No. SYD000681-FER01 Revision F, dated 5 August 2024</p> <p>An Access Statement by Architecture & Access (Aust) Pty Ltd, Ref No.AA00838, dated 26 July 2024</p> <p>Blayney Shire Council has engaged Allan Harriman of Jensen Hughes to undertake a technical peer review of the findings of the BCA & Fire Engineering Reports to ensure no further issues apply.</p> <p>Notwithstanding this technical review, a general review of planning related matters has been undertaken to provide a meaningful response to the issues raised in the submission.</p> <p>It should be noted that the modular buildings are "second hand" and appear to have been used previously on other site/s. Accordingly, detailed structural analyses of the buildings have been carried out by professional structural engineers, with BCA assessments by accredited building surveyors and fire</p>

Summary of issue raised	Assessment comment / evaluation
<p>The BCA Compliance Report prepared by Credwell states:</p> <p>They have again not been given all information for BCA.</p> <p>At C2 D11 C1.10 Fire Hazard properties, they state again they have not enough information for fire hazard because buildings were made in 2012 and have no documentation to confirm fire hazard properties have been complied with.</p> <p>They state that the rooms must be 60/60/60 fire rated with bounding walls to comply, with an inspection stating they do not comply.</p> <p>The Transporting Building Certification prepared by Calare Civil, dated 1 September 2023 notes the following:</p> <p>They could not do a rigorous inspection of the walls and bracing could not be completed.</p> <p>Tie down of units clearly states in BCA that a turn buckle must be used in conjunction with a chain to hold down Modular or Transportable buildings, with none on the units displaying such as they sit at the site. The drawings of the foundations only using a chain and a turn buckle to make unit to put pressure on foundation so unit when people inside moving around it doesn't rock the unit and foundations collapse.</p> <p>They could not do a rigorous</p>	<p>engineers.</p> <p>The high level of detail provided in the above reports has been important in allowing Blayney Shire Council to determine general BCA compliance issues at DA Stage to ensure that the building can be upgraded to be used as a Class 3 Motel, as well as whether it should issue a Building Information Certificate for works already undertaken at the Premises.</p> <p>Whilst there are some statements in the Credwell Report providing qualifications relating to limitations of assessment methods used, it is clear that the proposed buildings can be made to comply with the BCA, apart from the sound insulation of the separating walls.</p> <p>The proposed deviations from the BCA Deemed to Satisfy (DtS) provisions are clearly articulated in the Credwell BCA Assessment Report, dated 18 October 2023 as well as Fire Engineering Report by Performance Based Consulting, Ref No. SYD000681-FER01 Revision F, dated 5 August 2024 relating to a number of fire safety performance solutions. The Final Fire Engineering Report was also referred to NSW Fire & Rescue who have given their conditional support subject to:-</p> <p><i>All additional fire safety measures are to be installed as per Table 12 of PBC's Fire Engineering Report SYD000681-FER01:</i></p> <p><i>i. Each modular building must be provided with a detection system in accordance with Part E2 and AS 1670.1:2018.</i></p> <p><i>ii. A sprinkler head must be installed in each of the bedrooms in accordance with FPAA101D.</i></p> <p><i>iii. Portable fire extinguishers must be provided throughout each modular building in accordance with BCA Clause E1D14.</i></p> <p>In addition, consideration of noise</p>

Summary of issue raised	Assessment comment / evaluation
<p>inspection of the walls and bracing could not be completed.</p> <p>The Section J report prepared by Credwell, dated 6 October 2023 notes the following:</p> <p>The occupational density was calculated based on table D2D 18 of BCC2022 which is consistently used throughout modelling the design.</p> <p>The requirement for Type 2 class construction buildings (Hostels, Hotels and Motels) is 15m² per person, with all rooms below this requirement.</p> <p>Some rooms do not meet BCA requirements.</p> <p>All habitual rooms are measured from internal wall to wall, not over full length of the units.</p> <p>There is more to find in this document on how it does not comply to BCA, with the document being too large to undertake a detailed submission.</p> <p>An independent external peer review of the BCA reports are required to ensure that the Applicant's documents are accurate.</p> <p>Council has not followed the guidelines in advertising this DA, with notice of the proposal only being placed in the local paper on 16 November 2023 giving residents that did not receive neighbour notification notice via mail only 6 days to prepare a submission.</p> <p>Noting Council's previous</p>	<p>between sole occupancy units (SOUs) has been undertaken, including onsite noise measurements undertaken by Acoustik on 4 October 2023 as well as measures proposed to control noise to acceptable levels during sleeping periods, including signage to be posted in common areas, and in rooms regarding noise creation and closing ensuite doors.</p> <p>The Calare Civil Consulting Engineers Report dated 1 September 2023 also provides some qualifications relating to limitations around access to certain aspects of the structures (as built) such as internal walls and bracing. Notwithstanding, Calare Civil has provided advice that the modular buildings are considered to be structurally adequate and fit for purpose. They also advise they are in receipt of the inspection certificate by Peter Mackay (from Design Construct Industries) stating that the Ausco buildings had been constructed in accordance with the relevant codes for a region having a higher wind load classification than the subject property. Calare Civil have also stated that the diaphragm effect of the wall sheeting of the buildings provides adequate bracing meeting the required capacity for the subject property. Calare Civil have also inspected the tie-down chains of all of the modular buildings and have found them to be structurally adequate to prevent the buildings from moving off their foundations and comply with current Codes.</p> <p>In relation to the occupational density mentioned in the Section J Report, this is only used for modelling purposes and is not a mandatory requirement. It should be noted that the BCA no longer contains any provisions for minimum room sizes in regard to minimum floor areas required for habitable rooms.</p> <p>Table D2D18 is advisory in the absence</p>

Summary of issue raised	Assessment comment / evaluation
<p>assessment of DA 4/2020, is the Council seeking external help on these applications from the Department of Planning and Environment or other agencies.</p>	<p>of a more suitable means of determining the anticipated number of persons to be accommodated in a building and it is not a minimum floor area requirement. In the case of the Motel, the number of persons is determined by counting the number of beds to be provided in the building, which is shown on the plans. There is no minimum floor area requirement in the Building Code of Australia. Table D2D18 has been used by Credwell in their Section J Energy Efficiency modelling as an estimate of the occupancy density for the buildings. It is used in energy efficiency modelling, and it is a more conservative approach. Council officers have discussed this issue with Allan Harriman, BCA Consultant with Jensen Hughes and he concurs with this interpretation.</p> <p>In relation to comments that Council has not followed the guidelines in the advertising of the BIC and DA 55/2023 it is noted that the relevant guideline is the Blayney Shire Council Community Participation Plan 2020. A section of this plan provides guidelines on the community participation for planning documents, including advertising and neighbour notification of development applications.</p> <p>In accordance with B2 in the Appendix to the plan, the notification period is 14 days (including weekends and public holidays) commencing from the day following the date of the notification letter. In accordance with B3 in the Appendix to the plan, the advertising period is 14 days (including weekends and public holidays) commencing from the date on which the public exhibition notice was first placed in the Local Newspaper.</p> <p>Review of the BIC & DA 55/2023 shows the date of the neighbour notification letter was first published on 9 November 2023 and again on 16 November 2023 in the Blayney Chronical, with submissions</p>

Summary of issue raised	Assessment comment / evaluation
	<p>invited up until 5.00pm Thursday 23 November 2023. Council's neighbourhood notification letter was dated 8 November 2023.</p> <p>All evidence indicates the neighbour notification and advertising periods applied to the BIC & DA 55/2023 were consistent with (actually exceeded) the minimum 14 days prescribed in the Blayney Shire Council Community Participation Plan 2020.</p>

Conclusion

Council has considered the documentation submitted in relation to BIC-170086, the submission received during the notification period and the requirements of the EPA Act and Regulation. Further as noted above, an inspection has been undertaken of the Premises.

Council is satisfied that it is appropriate in the circumstances of this case (and for the reasons detailed in this report) for BIC-17086 to be issued (provided development consent is granted to DA55/2023).

It is noted that the Council report in relation to DA55/2023 recommends that the development application be approved subject to conditions. If granted, this consent will permit further works to be undertaken to the existing building(s)/structures located on the Premises (including in relation to BCA matters) and provide approval for their ultimate use.

The proposed conditions of consent include requirements to obtain a Construction Certificate and an Occupation Certificate prior to the occupation/use of the buildings located on the Premises.

Risk/Policy/Legislation Considerations:

The application for Building Information Certificate has been processed Part 6, Division 6.7 of the Environmental Planning and Assessment Act. Should Council refuse to issue the Building Information Certificate, the applicant may appeal to the Land and Environment Court.

Budget Implications:

External advisors were engaged for professional advice and seeking to ensure all legislative obligations were complied with. Council engaged an independent Planning consultant to review and assess the development proposal who was aware of the BIC application and relationship to the development application. Professional assessment of Building Code of Australia compliance was carried out both in-house and with the assistance of an independent BCA Consultant/Fire Engineer.

Enclosures (following report)

Nil

Attachments (separate document)

1	Survey Plan	1 Page
2	Drawings in Support of BIC	6 Pages
3	Section J Energy Efficiency Assessment	28 Pages
4	BCA Assessment Report	32 Pages
5	Fire Engineering Report	18 Pages
6	Peer Review	11 Pages
7	Response to Peer Review	10 Pages
8	Letter from Fire and Rescue NSW	2 Pages
9	Acoustic Report	12 Pages
10	Installation Certificate for Fire Rated Wall	2 Pages
11	Certificate of Practical Completion	1 Page
12	Waterproofing Certificate for Wet Areas	1 Page
13	Structural Engineer's Certificate	4 Pages
14	Certificate of Structural Sufficiency Design	1 Page
15	Transportable Building Certification	16 Pages
16	Assessment of Snow Loading	3 Pages
17	Statement on Disabled Access	3 Pages
18	Development Application Drawings	13 Pages
19	Rovest Holdings DA Submission Response	3 Pages

03) DA2024/80 - ERECTION OF AN OUTBUILDING (CARPORT) - LOT 2 SECTION 11 DP 758767, 48 CROUCH STREET, NEVILLE

Department: Planning and Environmental Services

Author: Manager Development Assessment

CSP Link: 5. Protect Our Natural Environment

File No: DB.AB.2141

Recommendation:

That Council:

1. Support the variation to the Blayney Development Control Plan 2018, Part C Residential Development C3.3 Garages, Carports, Outbuildings & Sheds in Urban Areas; and
2. Grant consent to Development Application 2024/80 for the Erection of an Outbuilding (Carport) on Lot 2 Section 11 DP 758767, 48 Crouch Street, Neville subject to the draft conditions attached.

Reason for the Report:

For Council to consider and determine Development Application (DA) 2024/80 for the Erection of an Outbuilding (Carport) on Lot 2 Section 11 DP 758767, 48 Crouch Street, Neville.

The application does not comply with the DCP, Part C: Residential Development, C3.3, as the proposed development exceeds the acceptable solution of a 128m² cumulative floor area. The requested variation is outside council staff delegation and therefore is required to be determined by Council.

Report:

GENERAL INFORMATION:

Applicant:	Virginia Turner
Owner:	Virginia Turner
Application No:	DA2024/80
Zone:	R5 Large Lot Residential
Date Received:	6/11/2024
Assessment No:	A3508176
Property:	Lot 2 Section 11 DP 758767
Proposed Development:	DA2024/80 - Erection of an Outbuilding (Carport) - Lot 2 Section 11 DP 758767, 48 Crouch Street, Neville

Council's consent is sought for the erection of an outbuilding (carport), with a proposed floor area of 84m². The carport is for protection of horse floats and other vehicles.

The subject property is located in a R5 Large Lot Residential zone under the Blayney Local Environmental Plan 2012 (BLEP) and contains an existing dwelling house and one (1) outbuilding (shed/garage) and an animal shelter (for horses).

The application does not comply with the DCP, Part C: Residential Development, C3.3, as the proposed development exceeds the acceptable solution of a 128m² cumulative floor area.

The total cumulative floor area for the existing and proposed sheds is 208m², which exceeds the standard by 80m². Surrounding land equating to 1.7ha is in the ownership of the Applicant and Landowner (see map).



Map 1

This land is vacant and used primarily for the keeping of horses. The additional outbuilding based on its location, proximity to the existing dwelling and ancillary use to the residential dwelling will not visually impact the street frontage, the locality or the neighbouring land.

The proposed materials include colorbond roof sheeting, gutter and downpipes with a steel frame. The materials are considered appropriate for the site and locality.

The key consideration is whether the proposed development meets the relevant objectives / performance criteria and acceptable solutions of the Blayney Development Control Plan 2018 (DCP) for an outbuilding in a R5 Large Lot Residential zone irrespective of the exceedance of the cumulative floor area.

THE DEVELOPMENT

The proposed development is for the erection of an Outbuilding (Carport) on the subject land having dimensions of 7m x 12m with a ridge height of 3.618m (3m to the eaves).

The proposed carport will be in line with the front building setback of the dwelling, being 8m from the street frontage and 900mm from the side boundary.

Proposed materials will be steel frame and colorbond roof sheeting.

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

SECTION 4.15(1)(A)(I) – THE PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT (EPI)

Blayney Local Environmental Plan 2012 (BLEP2012)

What is the Zoning of the Land (Clause 2.2):
R5 - Large Lot Residential

Is the development permissible in the zone (Clause 2.3(1)):
Yes

Is the development is consistent with the following objectives of the zone (Clause 2.3(2)):
Yes

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

Any other relevant provisions:

Clause 1.7 Maps

Land zoning:	R5 - Large Lot Residential
Heritage:	The subject site is not situated within a heritage conservation area, and does not contain a heritage item and there are no heritage items located in the vicinity.
Terrestrial biodiversity:	The subject site is not identified as 'biodiversity' pursuant to the councils LEP terrestrial biodiversity mapping

Groundwater vulnerability:	The land is not identified as having groundwater vulnerability pursuant to the LEPs groundwater vulnerability mapping.
Drinking water catchment:	The land is situated within a drinking water catchment
Watercourse:	The subject site is identified on the Riparian Land and Waterways” on the Riparian Land and Waterways Map.
Flood:	The site is situated outside land affected by the LEPs floodwater mapping.
STP Buffer:	The site is situated outside the STP and Waste Depot buffer areas.

Clause 6.2 Stormwater Management

Clause 6.2 requires that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Stormwater will be discharged to the to the ground on the property. The development application was referred to Council’s Infrastructure Services department for review and comment. Stormwater discharge from the development is deemed to be satisfactory. Through referral, assessment and comment from Council’s Infrastructure Services Department, the provisions of this clause have been properly considered and council is satisfied the development is designed to maximise the use of water permeable surfaces on the land. There are no impacts on groundwater or river water and no significant adverse impacts of stormwater runoff on adjoining properties, native bushland or receiving waters.

6.5 Drinking water catchments

Clause 6.5 requires that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is designed to minimise adverse impacts of development on the quality and quantity of water entering drinking water storages.

Given the dwelling is existing on the property and the application is for a carport minimal adverse impacts will be created. No on-site use, storage and disposal of any chemicals will be carried out on the property and the treatment of wastewater is assessed as part of this application.

6.6 Riparian land and watercourses

Clause 6.6 requires that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is designed to minimise adverse impacts of development on the water quality within watercourses, the stability of the bed and banks of watercourses, aquatic and riparian habitats and the ecological processes within watercourses and riparian areas.

Given the dwelling is existing on the property and the application is for a carport minimal adverse impact will be created, further the proposed carport is located approx. 40m from the marked watercourse.

Clause 6.8 Essential services

Clause 6.8 requires that development consent must not be granted to development unless the consent authority is satisfied that any of the services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

Essential services are identified as the supply of water, the supply of electricity, the disposal and management of sewage, stormwater drainage / conservation and suitable vehicle access.

The carport does not need to be serviced by any essential services. Stormwater will be discharged to the to the ground on the property and access will be via the existing driveway. The requirements of clause 6.8 have been considered and the proposal is satisfactory.

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 requires that a consent authority must not consent to the carrying out of development of land unless it has considered whether the land is contaminated; is satisfied that the land is suitable in its contaminated state for the development that is proposed, and if the land requires remediation to be made suitable for the proposed development it is satisfied that the land will be remediated before the land is used for that purpose.

Furthermore, the SEPP requires before determining an application to carry out development that would involve a change of use of land, the consent authority must consider a preliminary investigation of the land concerned. A change of use refers to:

- (a) land that is within an investigation area,
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital - land:

- (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
- (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

The land is not within an Investigation Area. There is no evidence of any previous uses of the land identified in Table 1 of the Contaminated Land Planning Guidelines.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.48 of this SEPP applies to development in the vicinity of electricity transmission lines and requires referral to the relevant service provider if development is within 5m of the infrastructure. The proposed development is not within 5m of power lines.

State Environmental Planning Policies

Are there any relevant state planning policies?

No

SECTION 4.15(1)(A)(II) – ANY PROPOSED INSTRUMENT THAT IS OR HAS BEEN THE SUBJECT OF PUBLIC CONSULTATION UNDER THIS ACT AND THAT HAS BEEN NOTIFIED TO THE CONSENT AUTHORITY

Not Applicable

SECTION 4.15(1)(A)(III) – ANY DEVELOPMENT CONTROL PLAN

Blayney Development Control Plan 2012

Guideline	Objectives	Compliance
C3.1 Use	Garages, carports, sheds, outbuildings and pools/spas are not to be used as a dwelling, habitable room or home business/industry (without approval).	The proposed carport will be used as a non-habitable structures for car garaging ancillary to the use of the dwelling on the property.
C3.2 Visual Impact / Amenity	To ensure that outbuildings and garages/carports: a) Will not dominate views from the street or key public places; b) Will be in keeping with the scale and setting of the relevant land use zone, streets and locality character; c) Will integrate with the dwelling design and	The proposed carport will be located in line with the existing dwelling, 8m from the front boundary, therefore will not dominate the street. The carport will be single storey, in keeping with the existing dwelling on the property and being 900mm from the side boundary of another lot of land owned by the same owner, will not

	<p>surrounding landscaping and buildings;</p> <p>d) Will not significantly impact on the amenity of neighbouring properties.</p>	<p>impact significantly on the amenity of the adjoining properties and comply with the fire separation requirements of the BCA. A condition will be included in the Consent to require the walls and roofing of the proposed building to be low-reflectivity/factory pre-colour coated sheeting.</p>
<p>C3.3 Garages, Carports, Outbuildings & Sheds in Urban Areas</p>	<p>2) Detached Garages/Carports/Sheds/Shipping Containers:</p> <p>a) Should generally be located behind any existing or proposed dwelling or towards the rear of any property;</p> <p>b) Must not exceed a ridge height of 4.8m from existing ground level;</p> <p>c) Must not exceed a cumulative floor area (detached from the dwelling): i) If the lot is < 900m² in size – maximum of 96m² ; ii) If the lot is ≥ 900m² in size – maximum of 128m²</p>	<p>The proposed carport will be located in line with the existing dwelling, 8m from the front boundary therefore it is considered that it will not adversely impact on the streetscape.</p> <p>The carport will be single storey with a ridge height of 3.618 metres this ridge height is less than the maximum allowable height of 4.8 metres. The floor area of the proposed carport will be 84m², the property has an existing Colorbond shed with a floor area of 96m² and horse shelter of approx. 28m². Therefore the cumulative floor area of all shed/ carport structures on the property will be approx. 208m² which exceeds the maximum 128m² in the DCP.</p> <p>This variation to the DCP will have minimal impacts as the owner of this property owns the surrounding vacant land equalling to 17,495m² of land in her ownership, all surrounding land to this block is vacant, therefore there will be no impact to neighbouring properties. Further the carport will be seen minimally from the street as it is located on the</p>

		far side of the dwelling away from the street and the existing Colorbond shed is minimally visible from the street as it is located behind the existing dwelling and established trees.
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In summary, it is considered that the proposal complies with the relevant provisions of the Blayney Development Control Plan 2012 and the proposed variation can be supported.

SECTION 4.15(1)(A)(IIIA) – ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

Not Applicable

SECTION 4.15(1)(A)(IV) – THE REGULATION

There are no matters prescribed by the Environmental Planning & Assessment Regulation 2000 that are relevant to this proposal.

SECTION 4.15(1)(B) – THE LIKELY IMPACT OF THE DEVELOPMENT, INCLUDING ENVIRONMENTAL IMPACTS ON BOTH THE NATURAL AND BUILT ENVIRONMENTAL, AND SOCIAL AND ECONOMIC IMPACTS ON THE LOCALITY

The likely impacts of the development have been considered and are deemed satisfactory.

SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Matters relating to the suitability of the site for this development have been considered and the site is deemed suitable for the development.

Does the proposal fit in the locality?

Yes

Are the site attributes conducive to the development?

Yes

(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THE ACT OR THE REGULATIONS

The development proposal did not require notification under Council's Community Participation Plan 2020.

(E) THE PUBLIC INTEREST

Is the proposal within the Public Interest?

Yes

OTHER LEGISLATIVE REQUIREMENTS

Nil

COUNCILS POLICIES

There are no policies applicable to this application.

COMMENTS FROM INTERNAL REFERRALS

Planning: N/A

Infrastructure Services:

Infrastructure Services did not require any conditions in this consent.

Building:

No Objections - Conditions included

Heritage: N/A.

CONCLUSION

It is recommended consent is be granted subject to the attached draft conditions of consent and consideration of the variation to the control Part C: Residential Development, C3.3 Garages, Carports & Outbuildings of the Blayney Development Control Plan 2018.

Risk/Policy/Legislation Considerations:

The proposed development is permissible with development consent of Council. The proposed development complies with the relevant aims, objectives and provisions of BLEP. A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. Attached is a draft conditions of consent outlining conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

Budget Implications:

Nil

Enclosures (following report)

Nil

Attachments (separate document)

- | | | |
|----------|-----------------------|---------|
| 1 | Conditions of Consent | 3 Pages |
| 2 | Plans | 2 Pages |

04) DA116/2023 - ANIMAL BOARDING AND TRAINING ESTABLISHMENT - 239 CARBINE ROAD, FOREST REEFS

Department: Planning and Environmental Services

Author: Director Planning and Environmental Services

CSP Link: 3. Diversify and Grow the Blayney Shire Local and Visitor Economy

File No: DB.AB.2028

Recommendation:

That Council consent to Development Application 116/2023 for an animal boarding and training establishment at Lot 10 DP 1039236, 239 Carbine Road, Forest Reefs, subject to the recommended conditions of consent.

Reason for the Report:

For Council to consider and determine Development Application (DA) 116/2023 for an animal boarding and training establishment at Lot 10 DP 1039236, 239 Carbine Road, Forest Reefs.

The matter is reported to Council as the application was notified to adjoining landowners in accordance with the Blayney Shire Community Participation Plan 2020 from the 5 October 2023 to 19 October 2024. During this period, 2 submissions were received. The objecting submissions identified a wide range of issues which are addressed in the body of this report.

Report:

GENERAL INFORMATION:

Applicant:	Planning Potential
Owner:	Greg and Helen Board
Application No:	DA116/2023
Zone:	RU1 Primary Production
Date Received:	27/09/2023
Assessment No:	A303953
Property:	Lot 10 DP 1039236
Proposed Development:	DA116/2023 - Animal breeding and boarding establishment at Lot 10 DP 1039236, 239 Carbine Road, Forest Reefs.

PROPOSED DEVELOPMENT

Blayney Shire has received a DA from Planning Potential seeking consent from a proposed development which is described on the application form (PAN-370167) as:

‘Animal boarding and training facility for a maximum of twenty greyhounds only. There is no access to the public and the training and boarding of the animals is undertaken by the landowner’

The DA includes a Statement of Environmental Effects (SEE) prepared by Planning Potential and Site Plan prepared by Planning Potential, dated September 2023. A more detailed description of the proposed development is provided in the SEE and a summary is as follows:

- An existing outbuilding (shed) containing 20 individual kennels constructed of steel fencing and has dimensions of 3000mm (long) x 1200mm (wide) and 1550mm (high), for the kennelling of 20 greyhound dogs. The shed contains a food preparation area, office area and a wood fire heater. The shed is constructed of a sheet metal, with an internal sheet metal lining and insulation in the wall cavity. The roof is of sheet metal construction with an insulation blanket under the roof sheeting. A small exercise yard is located off the shed.
- Existing outdoor day and exercise run (fenced) is located along the northern boundary to the west of the existing access to the site (100m long x 5m wide).
- Proposed hours of operation are Monday to Sunday. The facility runs 24 hours a day, seven days a week. Hours of operation for any onsite daytime activities including exercising, feeding, cleaning would take place between 8:00am to 6:00pm daily.
- The facility is not open to the public for normal animal boarding or kennelling. The animals are owned and trained by the onsite landowners.

The land, the subject of the development, is described in the DA Form as Lot 10 DP 1039236 with the property address to 239 Carbine Road, Forest Reefs (see map 1).



Map 1

Council's unique identification number for the processing of the DA for the proposal is DA116/2023.

DA116/2023 has been processed by Blayney Shire Council in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act) and Environmental Planning and Assessment Regulation 2021 (EP&A Regulation), the Blayney Local Environmental Plan 2012 (BLEP2012), the Blayney Shire Development Control Plan 2018 (BDCP2018) and the Blayney Community Participation Plan 2020 (BCPP2020).

This report provides an assessment of the proposal, as detailed in DA No. 116/2023 and the relevant matters for consideration under Section 4.15 of the EP&A Act. The initial Section 4.15 assessment report was carried out by an external consultant.

A separate Peer Review of the assessment report was also obtained to ensure any perceived conflict was addressed given the original application and Statement of Environmental Effects were prepared by a Council officer prior to their employment at Council and the Section 4.15 assessment report was carried out by a former council officer. The Peer review is attached and is referred to as necessary in this report and proposed conditions of consent have been prepared having regard to comments in the peer review report.

A separate acoustic peer review was also commissioned given issues of noise raised in submissions and the specialised nature of acoustic assessment. The main planning assessment findings are summarised as follows:

- The scope of the proposed development is clearly articulated in the DA 116/2023 documentation.
- The submitted plans, drawings and reports that have been prepared by the various consultants in support of the proposed development contain sufficient information to allow Blayney Shire Council to make an informed decision on the proposal. The peer reviews have assisted in critically reviewing these reports.
- Notification and advertising of the proposed development has been completed in accordance with the requirements of the BCPP2020. Council received 2 submissions from members of the public. An assessment of the issues raised has been completed in this report, with copies of each submission attached.
- The proposed development is consistent with all relevant environmental planning instruments applying to the site / development, including the BLEP2012 and BDCP2018.
- Assessment of the proposed development, including all finalised plans, drawings and reports, submissions received, and referral advice from Council building, environmental health and engineering staff concludes the proposal is unlikely to pose unacceptable impacts on the environment and has merit for approval, subject to conditions.
- Draft conditions of consent have been included in the recommendation to this report to address all aspects of the proposed development,

including compliance with the approved plans, drawings and reports relating to building code compliance, stormwater, traffic, access and parking, servicing and infrastructure, landscaping and preservation of natural environment elements.

It is the recommendation of the Section 4.15 Assessment Report (supported by the Peer review) that DA 116/2023 be approved with conditions addressing issues raised in the report.

EXISTING CONDITIONS

The site is located approximately is on the southern side of Carbine Road, approximately 2.6km from its intersection with Long Swamp Road.

Access to the site is via an existing access point off Carbine Road. The site consists of an existing dwelling, two (2) farm sheds with one shed used for the purposes of boarding Greyhound dogs, exercise yards, water tanks and fenced paddocks. Established landscaping and mature trees are located on the site, surrounding the existing shed and along Carbine Road.

The surrounding locality is typified by agricultural holdings of varying sizes, associated rural dwellings and lifestyle lots.

LEGISLATIVE REQUIREMENTS

Biodiversity Conservation Act 2016 and Fisheries Management Act 1994

Section 1.7 of the EP&A Act 1979 identifies that Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 have effect in connection with terrestrial and aquatic environments.

Having regard to the relevant provisions, an inspection of the subject property and that the proposal does not include the removal of any trees, it is considered that the proposed development is not likely to have a significant effect on any threatened species, population or ecological communities or their habitats.

SECTION 4.15 EVALUATION

Matters for Consideration – General

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the DA:

Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument

Blayney Local Environmental Plan 2012

Part 1 – Preliminary

Clause 1.2 Aims of Plan

The proposed development is considered to be generally consistent with the broad aims of the BLEP2012. Relevant issues are addressed in the body of this report.

Clause 1.7 Maps

Land zoning:	RU1 Primary Production
Lot size:	9.7 HA
Heritage:	N/A
Terrestrial biodiversity:	Yes, addressed in this report.
Groundwater vulnerability:	N/A
Drinking catchment:	N/A
Watercourse:	N/A
Flood:	N/A

Clause 1.9A – Suspension of Covenants, Agreements and Instruments

Clause 1.9A provides that covenants, agreements and other instruments which seek to restrict the carrying out of development do not apply with the following exceptions:

- *a covenant imposed by the Council or that the Council requires to be imposed, or*
- *any prescribed instrument within the meaning of section 183A of the Crown Lands Act 1989, or*
- *any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or*
- *any property vegetation plan within the meaning of the Native Vegetation Act 2003, or*
- *any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or*
- *any planning agreement within the meaning of Division 6 of Part 4 of the Act.*

This clause does not affect the rights or interest of any public authority under any registered instruments. A search of Council's records indicates that the subject property is not affected by any of the foregoing covenants, instruments, agreements or plans.

Part 2 – Permitted or prohibited development

Clause 2.1 Land Use Zones and Clause 2.3 Zone Objectives and Land Use Table

The subject property is zoned RU1 Primary Production. An *Animal boarding or training establishment* is a permissible land use in the RU1 Primary Production zone.

The BLEP2012 defines an animal boarding or training establishment as a *building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses) and includes any associated riding school or ancillary veterinary hospital.*

The proposed development is seeking development consent for an animal boarding and training facility for a maximum of 20 greyhound dogs for commercial purposes.

The objectives of the RU1 Primary Production zone include the following:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To enable function centres, restaurants and appropriate forms of tourist and visitor accommodation to be developed in conjunction with agricultural uses.*

The proposed development is considered to be generally consistent with the foregoing objectives and encourages diversity in primary industry enterprises and systems appropriate for the area whilst minimising conflict between land uses within this zone and adjoining lands.

Part 6 – Additional local provisions

Clause 6.3 Terrestrial Biodiversity

Clause 6.3 requires that development consent must not be granted to development unless the consent authority is satisfied that there is no adverse impact on the condition, ecological value and significance of the land and appropriate measures are proposed to avoid and minimise impacts of the development.

The site is identified as having Biodiversity, on the Terrestrial Biodiversity Map, which is restricted to the road reserve of Carbine Road. The proposed development does not include the removal of any vegetation from the site. The proposal is consistent with the Clause.

Clause 6.8 Essential services

Clause 6.8 requires that development consent must not be granted to development unless the consent authority is satisfied that any of the services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

Water – The site is serviced by an onsite water supply via an existing bore and rainwater tanks.

Electricity – The site is serviced by electricity, managed by Essential Energy.

Disposal of Sewage – The site is serviced by an onsite waste management system, servicing the existing dwelling house.

Stormwater – Stormwater is managed onsite via the existing rainwater tanks and overflow onsite.

Access – The site is serviced by an existing access location off Carbine Road.

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 requires that a consent authority must not consent to the carrying out of development of land unless it has considered whether the land is contaminated; is satisfied that the land is suitable in its contaminated state for the development that is proposed, and if the land requires remediation to be made suitable for the

proposed development it is satisfied that the land will be remediated before the land is used for that purpose.

Furthermore, the SEPP requires before determining an application to carry out development that would involve a change of use of land (specified in subclause 4 of the SEPP), the consent authority must consider a preliminary investigation of the land concerned.

This is supported by a review of the EPA list of sites reported to the EPA as at 1 of September 2020 and the EPA contaminated land register confirms that the site is not listed as a contaminated site, as such the development is considered to satisfy the requirements of clause 7 of SEPP. Land contamination was addressed during the assessment of the original subdivision and dwelling house; therefore, it is considered that no further investigation is warranted for the proposed development.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 - Koala Habitat Protection 2021 is applicable to the proposal. Blayney Shire Council is identified in Schedule 2 of the SEPP as a LGA that is required to consider the proposed development and any impact upon koalas and koala habitat.

The land is generally cleared, with the exception of vegetation along the Carbine Road frontage and road reserve. A specific report has not been provided as the proposed development for an animal boarding and training establishment would be unlikely to impact upon koalas or koala habitat. There is no removal of existing vegetation. The proposal is consistent with the provisions of the SEPP.

Section 4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under the Act and has been notified to the consent authority

Not applicable to this application.

Section 4.15(1)(a)(iii) Any Development Control Plan Blayney Shire Development Control Plan 2018

BDCP 2018 applies to all land within the Blayney LGA and is the relevant DCP for assessment against the proposed development.

The following Parts of the BDCP2018 contain provisions which apply to the proposal:

Part E – Other Land Uses.

Part G – Environmental Management and Hazards.

Table 2 below provides an assessment of the proposed development against the provisions contained in the BDCP 2018.

Table 1 – Blayney DCP Assessment

DCP Ref.	Name of Control	Statement of Consistency	Planning Assessment Comment
Part E – Other Land Uses			
E.4 Animal Boarding & Training Establishments			
E.4.1 Objectives	<p>To ensure that all animal boarding or training establishments:</p> <ol style="list-style-type: none"> 1) Consider site selection to minimise potential conflict with adjoining land uses; 2) Implement best practice with regards to design and management; and 3) Avoid and/or minimise the impacts on the natural environment and rural landscape. <p>Note: Refer to the NSW Department of Primary Industries document, NSW Animal Welfare Code of Practice No.5 – Dogs and Cats in animal boarding establishments when preparing a Development Application.</p>	The development is assessed to be consistent with the DCP objectives.	The proposed development generally satisfies the objectives of E.4 Animal Boarding & Training Establishments. This has been addressed via the site design, layout and compliance with the NSW Department of Primary Industries, NSW Animal Welfare Code of Practice No.5 – Dogs and Cats in Animal Boarding Establishments.
E.4.2 Controls	<ol style="list-style-type: none"> 1) Noise levels from the premises are not to exceed 35dB(A) at the boundary of the property above the existing background levels (or otherwise in accordance with the EPA NSW Industrial Noise Policy 2000) and may require a certificate from a suitably qualified acoustic engineer. 2) No parts of the establishment will be permitted within 200 metres of the property boundary or 500m of the nearest dwelling house (or 	The development is generally assessed to be consistent with the DCP controls. The proposed development does not comply with E.4.2(2). A justification is provided and considered acceptable.	<ol style="list-style-type: none"> 1) A Noise Assessment Report has been prepared by Acoustik. The report concludes the predicted noise emissions do not exceed the trigger levels nominated in the NSW EPA Noise Policy for Industry. 2) The existing shed is located in the north-eastern corner of the site and is within 200m of the property boundary, the proposed development does not comply. Therefore, a Noise Assessment Report is provided and includes an analysis based on the noise impacts of the greyhounds to the nearest residential receptors and concludes that the predicted noise emissions do not exceed the trigger levels nominated in the NSW EPA Noise Policy for Industry.

DCP Ref.	Name of Control	Statement of Consistency	Planning Assessment Comment
	<p>suitable distance being determined by a Noise Assessment Report).</p> <p>3) The applicant must provide a business and management plan that addresses the relevant industry guidelines for the design of these facilities including mechanisms to manage noise etc.</p> <p>4) Establishments must demonstrate there is an adequate water supply and adequate methods for disposal of solid and liquid wastes so these will not impact on adjacent properties or watercourses/ground-water systems.</p> <p>6) Council may require a Sediment & Soil Erosion Plan if an establishment is located near a watercourse or environmentally sensitive area and is likely to result in significant topsoil disturbance from animals.</p>		<p>A peer review carried on Council's behalf be an Acoustic Engineer raised issues with the Noise Assessment Report but concludes subject to the implementation of effective noise management practices, the Proposal would have a low risk of adverse noise impacts on nearby sensitive receivers. The review recommends inclusion of a specific condition of consent should consent be granted.</p> <p>3) The facility has been designed and constructed in accordance with Greyhound Racing NSW licensing requirements. This includes, nutrition, health and wellbeing, housing and environment, transportation, exercise, socialisation and enrichment. An assessment of the NSW Greyhound Code of Practise has been provided in the submitted SEE. Licensing by GRNSW will not be granted if inspection of the approved onsite facilities does not meet licensing requirements.</p> <p>4) The land has a licensed bore which provides access to a reliable water supply. Bore licence certificate number is # 70BL228848 has been issued by NSW Water. Liquid waste is managed through the use of an onsite effluent management system and solid waste is collected on a regular basis, stored and disposed of to an approved waste management facility.</p> <p>5) The nearest watercourse is Flyers Creek which is located approximately 600m to the west. The locality is not known to be environmentally sensitive. Based on the site, location, number of animals and management practises, a Sediment and Soil Erosion Plan is not deemed necessary.</p>
Part G – Environmental Management & Hazards			
Part G3 – Stormwater and Drainage			
G3.1	Application of section	The development is assessed to be	An assessment of the proposed development against the requirements of Section 6.8 of

DCP Ref.	Name of Control	Statement of Consistency	Planning Assessment Comment
		consistent with the DCP controls.	BLEP2012 in this report. The assessment concluded that adequate arrangements for stormwater management have been incorporated in DA 116/2023 documentation. The peer review recommended a condition in relation to ongoing management.
G3.2	Objectives	The development is assessed to be consistent with the objectives for stormwater and drainage.	The proposed development is consistent with the objectives for stormwater and drainage.
G3.3	Stormwater Management	The development is assessed to be consistent with the objectives for stormwater and drainage.	Stormwater is managed onsite via the existing rainwater tanks and overflow onsite.
Part G4 - Flooding			
The site is not mapped as Flood Planning Area. Consideration of Part G4 is not necessary.			
Part G5 - Bushfire			
The site is not mapped as Bushfire Prone. Consideration of Part G5 is not necessary.			
Part G6 – Land Contamination			
G6.1	Application of section	The development is assessed to be consistent with the DCP controls.	Section G6 applies to land within the Blayney LGA and requires assessment.
G6.2	Objectives	The development is assessed to be consistent with the objectives for land contamination.	A detailed assessment of the proposed development against the requirements of the Resilience and Hazards SEPP 2021 has been documented in this report. No further investigation is warranted.
Part G8 – Drinking Water Catchments and Ground Water Vulnerability			
The land is not identified as being within an area affected by vulnerable groundwaters or within a drinking water catchment area.			
Part G9 – Land and Soils			
G9.1	Application of section	The development is assessed to be consistent with the DCP controls.	Site investigations have been completed during the assessment of the subdivision and dwelling house. There is no indication that the site might be affected by geological, soil classification / types

DCP Ref.	Name of Control	Statement of Consistency	Planning Assessment Comment
			or salinity issues that could impact on the proposed development. There are no environmental constraints which are considered to be prohibitive to the proposed development.

Section 4.15(1)(a)(iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements or draft planning agreements relevant for consideration as part of the assessment and determination of this development application.

Section 4.15(1)(a)(iv) The Regulations

Clause 61(1) - Demolition

Clause 61(1) requires that in determining a DA for the demolition of a building, the consent authority must consider the Australian Standard AS 2601—2001: The Demolition of Structures. DA 116/2023 does not seek consent for the demolition of any buildings or structures.

Clause 61(2) – Subdivision Orders

Clause 61(2) requires that in determining a DA for the carrying out of development on land that is subject to a subdivision order made under Schedule 7 to the LG Act 1993, the consent authority must consider the subdivision order, and any development plan prepared for the land by the relevant authority. DA 116/2023 does not involve the carrying out of development on land that is subject to a subdivision order under the LG Act 1993.

Clause 61(3) – Dark Sky Planning Guidelines

Clause 61(3) requires that in determining a DA for development on specified land within Coonamble, Gilgandra, Warrumbungle Shire or Dubbo Regional LGAs, the consent authority must consider the Dark Sky Planning Guideline. Not relevant to this DA.

Clause 61(4) – Manor Houses or Multi-Dwelling housing

Clause 61(4) requires that in determining a DA for the purposes of a manor house or multi dwelling housing, the consent authority must consider the Low-Rise Housing Diversity Design Guide for Development Applications. Not relevant to this DA.

Clause 62 – Consideration of Fire Safety

Clause 62 applies to the determination of a DA for a change of building use for an existing building if the applicant does not seek the rebuilding or alteration of the building. DA 116/2023 does not relate to change of building use for an existing building.

Clause 63 – Temporary Structures

Clause 63 requires consideration when a DA involves the erection of a temporary structure. DA 116/2023 does not relate to erection of any temporary structures.

Clause 64 – Upgrade of buildings

Clause 64 requires consideration when a DA involves the upgrade of existing buildings. DA 116/2023 does not include the upgrade of buildings.

Clause 65 – Sydney Opera House

Not relevant for consideration.

Clause 66 – Contributions plans for certain areas in Sydney

Not relevant for consideration.

Clause 67 – Modification or surrender of development or existing use right

Not relevant for consideration.

Clause 68 – Voluntary surrender of development consent

Not relevant for consideration.

Section 4.15(1)(b) The likely impacts of the development, including environmental impacts both the natural and built environments, and social and economic impacts in the locality

Context & Setting

The site is located approximately 8km south from the main street of the village of Millthorpe and is on the southern side of Carbine Road, approximately 2.6km from its intersection with Long Swamp Road.

The site consists of an existing dwelling, two (2) farm sheds with one shed used for the purposes of boarding Greyhound dogs, exercise yards, water tanks and fenced paddocks. Established landscaping and mature trees are located on the site, surrounding the existing shed and along Carbine Road. No additional landscaping is proposed, due to the existing screening of vegetation.

The surrounding locality is characterised by agricultural holdings of varying sizes, associated rural dwellings and lifestyle lots. The nearest residential receptors are to approximately 348m (228 Carbine Road) to the northeast and approximately 340m (201 Carbine Road) to the east from the proposed shed used for the boarding of the greyhound facility.

Access, Transport and Traffic

Access to the proposed development is via an existing access location off Carbine Road, which was constructed to Councils standard at subdivision stage. An internal driveway provides access from Carbine Road to the shed and exercise area.

Additional future traffic movements generated as a result of any approval will be minimal. The facility is operated solely by the owners of the site, the facility is not open to the public for boarding or training facilities. Excessive movements of the dogs and vehicles will be minimal.

The animals are transported to greyhound races around the state through modified vehicles. The owners use a modified trailer having capacity for six (6) animals at any one time. A van is also used having capacity for four (4) animals at any one time. The animals are contained in travelling cages adapted to the vehicles and are airconditioned to ensure animal welfare measures are adhered to. Vehicle movements associated with animal transportation a maximum of once per week per vehicle. The parking of these vehicles (solely used by the owners of the site) is in an existing shed located onsite.

Utilities & Servicing

The information and plans submitted with DA 116/2023 are sufficient to allow an assessment of the essential service requirements of the proposed development. This is supported by the following assessment of individual services that are connected to the site:

Water – The site is serviced by an onsite water supply via an existing bore and rainwater tanks.

Electricity – The site is serviced by electricity, managed by Essential Energy.

Disposal of Sewage – The site is serviced by an onsite waste management system, servicing the existing dwelling house.

Stormwater – Stormwater is managed onsite via the existing rainwater tanks and overflow onsite.

The existing woodfire heater located in the shed requires an Installation Certificate to confirm that the wood heater complies with Australian Standard AS/NZS2918:2018 - Domestic solid burning appliances – installation. A condition of consent will apply.

Site and Internal Design

The information and plans submitted with DA 116/2023 show a site layout and building design that is consistent with the prevailing planning controls contained in the BLEP2012 and BDCP2018. In addition, the proposed development has been designed to comply with the provisions of the Greyhound Welfare Code of Practice.

The existing shed was approved by Council (DA23/2023) on the 5 April 2023. The existing outbuilding (shed) containing 20 individual kennels constructed of steel fencing for the kennelling of 20 greyhound dogs. The shed is constructed of a sheet metal, with an internal sheet metal lining and insulation in the wall cavity. The roof is of sheet metal construction with an insulation blanket under the roof sheeting, which assists in minimising the noise impacts to adjoining land owners.

The existing outdoor day and exercise runs (fenced) are located along the northern boundary to the west of the existing access to the site. Established landscaping and mature trees are located on the site, surrounding the existing shed and along Carbine Road. No additional landscaping is proposed, due to the existing screening of vegetation.

Natural and Technological Hazards

It is assessed that the site is not affected by natural hazards including flooding or bushfire.

The information submitted in support of the DA 116/2023 has not identified any technological hazards that are likely to impact the proposal. There is a low likelihood of potential contamination at the site of the proposed development.

Safety, Security and Crime Prevention

The information and plans submitted in support of the DA 116/2023 has addressed the guidelines prepared by the then NSW Department of Urban Affairs and Planning, 2001 which identify four Crime Prevention Through Environmental Design (CPTED) principles to be considered in a DA to ensure that developments do not create or exacerbate crime risk.

Waste

Animal waste is proposed to be collected, stored and removed from the site to an approved waste facility. The existing shed and exercise areas will be cleaned daily, as outlined in the SEE submitted in support of the DA 116/2023. The peer review of the assessment concluded that confirmation is needed to demonstrate that the existing onsite septic system is capable of taking the additional load associated with the kennels, based on a presumption that this was designed for dwelling house use only.

A condition of consent is recommended that a suitably qualified person undertakes a check of the septic system and makes any necessary upgrades or installs an additional system within a reasonable timeframe.

The peer review also recommended condition requiring a waste management plan in relation to the ongoing management of liquid waste; hosing down of kennels and run-off from outdoor exercise areas; solid waste management - including storage, collection and disposal of food waste and dog faeces.

Noise and Vibration

A Noise Assessment Report has been prepared by Acoustik. Based on the calculations undertaken for the development; greyhounds in the kennels (daytime and nighttime) and in the open exercise runs, noise emissions would not exceed the levels at residential noise receivers due to greyhounds housed within the kennels during the day and evening. Greyhounds are exercised in the open runs during the day for periods of up to 2 hours at any one time. The animals are always fully supervised.

A peer review carried on Council's behalf by an Acoustic Engineer raised issues with the Noise Assessment Report but concludes subject to the implementation of effective noise management practices, the proposal would have a low risk of adverse noise impacts on nearby sensitive receivers. The review recommends inclusion on an additional condition of consent.

Flora and Fauna

The site is identified as having Biodiversity, on the Terrestrial Biodiversity Map, which is restricted to the road reserve of Carbine Road. The proposed development does not include the removal of any vegetation from the site. No additional measures are required to minimise or mitigate the impacts of the development.

Social and Economic Impact on the Locality

Considering the proposal in the context of the existing rural residential area as well as the previously addressed issues relating to noise, amenity, traffic, safety, security and crime prevention, the proposal would be unlikely to have an unacceptable impact on land-uses, residents or the environment within or surrounding the site.

As a result, adverse socio-economic impacts are assessed to be within acceptable limits and the proposal would result in positive impacts for the wider Blayney community.

Cumulative Impacts

It is assessed that the proposal is likely to make a neutral / positive contribution to the environment. The proposal is considered compatible with the site and its surrounds and does not contribute to having a significant cumulative impact. The proposed development is assessed to have an acceptable cumulative impact.

Section 4.15(1)(c) The suitability of the site for the development

The assessment work presented in the previous sections of this report confirm that the site has the capacity to support the proposed development without creating adverse impact on the site or on adjoining and nearby land-uses.

The assessment work presented in the previous sections of this report confirm that the site has the capacity to support the proposed development without creating adverse impact on the site or on adjoining and nearby land-uses. Conditions of consent are recommended to ensure that impacts appropriately mitigated.

Section 4.15(1)(d) Any submissions made in accordance with this Act or the regulations

The matter is reported to Council as the application was notified to adjoining landowners in accordance with the Blayney Shire Community Participation Plan 2020 from the 5 October 2023 to 19 October 2024. During this period, 2 submissions were received. An assessment of the issues raised in the submissions has been detailed in the Table below, with copies of the submissions included in the Attachment of this report.

Table 2 – Public Consultation - Submissions Evaluation

Summary of issue raised	Assessment comment / evaluation
Submission 1	
Objects to the DA on the following basis:	Animal waste is proposed to be collected, stored and removed from the site to an approved waste facility. The existing shed and exercise areas will be cleaned daily, as outlined in the SEE submitted in support of the DA 116/2023. The peer review report recommends additional conditions.
Flora and Fauna Destruction	The existing shed was approved by Council (DA23/2023) on the 5 April 2023. The proposed development does not include the removal of any trees.
Noise Contamination	A Noise Assessment Report has been prepared by Acoustik. The assessment concludes that the noise emissions do not exceed the trigger levels nominated in the EPA Noise Policy for Industry. A peer review carried on Council's behalf by an Acoustic Engineer raised issues with the Noise Assessment Report but concludes subject to the implementation of effective noise management practices, the Proposal would have a low risk of adverse noise impacts on nearby sensitive receivers. The review recommends inclusion on an additional condition of consent.
Misrepresentation in submitted DA documents	The subject property is zoned RU1 Primary Production. An Animal boarding or training establishment is a permissible land use in the RU1 Primary Production zone. The BLEP2012 defines an animal boarding or training establishment as a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses) and includes any associated riding school or ancillary veterinary hospital. The proposed development is seeking development consent for an animal boarding and training facility for a maximum of 20 greyhound dogs for commercial purposes.
No Compliance with Blayney DCP 2018	The development is generally assessed to be consistent with the DCP controls. The proposed development does not comply with E.4.2(2). A justification, including a Noise Assessment Report accompanies the application and is considered acceptable subject to a specific condition of consent.
Animal Welfare	The information and plans submitted with DA 116/2023 show a site layout and building design that is consistent with the prevailing planning

Summary of issue raised	Assessment comment / evaluation
<p>Quality of Life & Impact on Land Value</p>	<p>controls contained in the BLEP2012 and BDCP2018. In addition, the proposed development has been designed to comply with the provisions of the Greyhound Welfare Code of Practice.</p> <p>The subject property is zoned RU1 Primary Production. An Animal boarding or training establishment is a permissible land use in the RU1 Primary Production zone.</p> <p>The BLEP2012 defines an <i>animal boarding or training establishment as a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses) and includes any associated riding school or ancillary veterinary hospital.</i></p> <p>The proposed development is seeking development consent for an animal boarding and training facility for a maximum of 20 greyhound dogs for commercial purposes.</p>
Submission 2	
<p>Objects to the DA on the following basis:</p> <p><i>We object to this development proposal as a modification of the existing approved development. We submit that there was no intent at any stage for this to be a "rural shed/farm building for storage purposes including tractors and farm equipment" as described on the previous development approval [See DA 2023/0023] and the operators attempted to circumvent council regulations by describing it as such.</i></p> <p>Potential damage to sensitive ecology, habitat and roadside flora</p> <p>Noise</p>	<p>The subject property is zoned RU1 Primary Production. An Outbuilding (Shed) and Animal boarding or training establishment is a permissible land use in the RU1 Primary Production zone.</p> <p>The proposed development does not include the removal of any trees.</p> <p>Animal waste is proposed to be collected, stored and removed from the site to an approved waste facility. The planning assessment peer review report recommends additional conditions to confirm this will be acceptable. The existing shed and exercise areas will be cleaned daily, as outlined in the SEE submitted in support of the DA 116/2023.</p> <p>A Noise Assessment Report has been prepared by Acoustik.</p> <p>A peer review carried on Council's behalf by an Acoustic Engineer raised issues with the Noise Assessment Report but concludes subject to the implementation of effective noise management practices, the Proposal would have a low risk of</p>

Summary of issue raised	Assessment comment / evaluation
Conflict with the RU1 Primary Production Zone objectives/ Impact on Adjoining Development	<p>adverse noise impacts on nearby sensitive receivers. The review recommends inclusion on an additional condition of consent.</p> <p>The proposed development complies with the BLEP2012 and BDCP208. The application is supported by a Noise Assessment Report and the assessment concludes that the noise emissions do not exceed the trigger levels nominated in the EPA Noise Policy for Industry.</p> <p>The proposal is generally consistent with the objectives, encourages diversity in primary industry enterprises, while minimising land use conflict between uses within this zone and adjoining lands. The peer review of the planning assessment came to the same conclusion.</p>

A summary of the main findings of community participation in relation to DA 116/2023 is as follows:

- DA 116/2023 has been notified and exhibited in accordance with Council policy requirements.
- Two submissions were received in relation to the proposed development.
- The issues raised in the submissions have been evaluated individually. The issues do not require amendment to the proposed designs and can be addressed through appropriate conditions.
- There are no grounds to withhold determination of DA 116/2023 on the assessment / evaluation of the issues raised in submissions received.

Section 4.15(1)(e) The Public Interest

The development complies with the BLEP 2012 and Blayney DCP 2018. There are no specific policy statements from either Federal or State Government that are relevant to the proposal, nor any planning studies or strategies that need to be taken into account. There are no covenants, easements or agreements that affect the proposal in the long term. The proposal is assessed to pose no significant detrimental impacts on the public interest.

The public exhibition and notification of DA 116/2023 generated public interest. An evaluation of the issues, comments and concerns raised in submissions has been completed in the above table. There are no outstanding public submissions that have not been assessed. Copies of submissions received are attached.

Blayney Local Infrastructure Contributions Plan 2022

In accordance with Section 5.1 of the Blayney Local Infrastructure Contributions Plan 2022, the plan applies to any development application lodged on or after the date this plan commenced.

The Blayney Local Infrastructure Contributions Plan 2022 identifies that Section 7.12 levies apply to development that is not Type A (residential) or Type B (Heavy Haulage) development and which also has a proposed cost of development in excess of \$100,000. The monetary contribution rates for new development types are shown in Table 6 below:

Table 6 – Contribution Rates

Contribution Type / Development Type	Levy Rate
Section 7.11 Contributions	
Residential accommodation on development resulting in additional dwellings or lots	\$9,296 per dwelling or lot.
Heavy Haulage Development	\$0.52 per ESA per km of regional sealed road \$0.66 per ESA per km of local sealed road \$0.52 per ESA per km of local gravel road
Section 7.12 Levies	
Where the proposed cost of carrying out the development:	
Is more than \$100,000, and up to and including \$200,000.	0.5% of that cost.
Is more than \$200,000	1% of that cost.

Having regard to Table 6, the proposed development may be liable for the payment of a Section 7.12 Contribution if the works already carried out exceed \$100,000. A condition of consent will be recommended.

Peer Review Reports

As previously mentioned, 2 separate peer review reports were commissioned. Andrew Crump Town Planning carried out a peer review of the development assessment. SoundIN Acoustical Engineers carried out a review of the Acoustic Report submitted with the application. Both reviews are attached.

Whilst the planning assessment review concurred with the majority of the assessment, it concluded that additional or revised conditions should be incorporated to any consent. These relate to the provision of Business and Management Plan, a Waste Management Plan, and confirmation that the septic system is suitable. Given the upcoming holiday period, it is suggested that time periods for compliance recommended in a number of conditions by the consultant Planner be modified.

The Acoustic Engineer identified issues of technical adequacy with the noise assessment provided with the application. Notwithstanding these issues the Acoustic Engineer concluded that, subject to the implementation of effective noise management practices, the proposal would have a low risk of adverse noise impacts on nearby sensitive receivers. An additional condition of consent was recommended nominating the appropriate noise levels and providing Council with the authority to direct the applicant to conduct noise monitoring to determine compliance. Should, for example, complaints be

received, Council would be able to direct the applicant to engage a suitably qualified acoustic consultant to conduct noise compliance monitoring and identify mitigation measures to achieve compliance with the noise limits. If mitigation measures are required, the applicant would be responsible for their implementation within a reasonable period.

CONCLUSION

An assessment of the proposal in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979 has been completed, with the main findings summarised as follows:

- The extent of the proposed development is clearly documented in the plans and reports submitted with DA116/2023.
- The proposal has been advertised and notified in accordance with the Blayney Community Participation Plan 2020. The issues raised in submissions received as a result of the exhibition / neighbour notification of DA 116/2023 have been properly considered, and where necessary appropriate conditions have been included in the recommended conditions to be applied to any approval of the proposal.
- The proposed development complies with the relevant aims, objectives and provisions of Blayney Local Environmental Plan 2012 and Blayney Development Control Plan 2018.
- The proposed development is consistent with the requirements of relevant State Environmental Planning Policies.
- The proposed development has been referred to Council's Senior Building Surveyor and Development Engineer with advice being received that the proposal is capable of complying with the Building Code of Australia, Council Engineering Standards and other relevant design standards, subject to appropriate conditions of consent.

To address relevant issues from the assessment of DA 116/2023, a number of conditions are recommended to be included in any determination of the proposal way of approval. It is the recommendation of the Section 4.15 Assessment Report (incorporating the recommendations of the Planning Assessment Peer Review Report) that DA 116/2023 be granted conditional development consent.

Risk/Policy/Legislation Considerations:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act.

Should Council approve the application, the applicant has rights of appeal to the Land and Environment Court if they are dissatisfied with any conditions imposed. Similarly, should the application be refused, the applicant may appeal to the Land and Environment Court.

Any party may commence proceedings in the Land and Environment Court seeking Judicial Review should they be of the view there has been a breach of the Environmental Planning and Assessment Act.

Budget Implications:

Costs have been incurred in engaging an Independent Planning consultant to undertake the s.4.15 assessment for this application. Peer reviews were also carried out by an independent Planner and Acoustic Engineer.

Enclosures (following report)

Nil

Attachments (separate document)

1	Conditions of Consent	4 Pages
2	Site Plan	1 Page
3	Floor Plan	1 Page
4	Statement of Environmental Effects	46 Pages
5	Noise Impact Assessment	15 Pages
6	Assessment Report Peer Review	32 Pages
7	Acoustic Peer Review	4 Pages
8	Redacted Submissions	7 Pages
9	Response to Submissions	15 Pages
10	Unredacted Submissions	8 Pages

This matter is considered to be confidential under Section 10A(2) (e) of the Local Government Act, as it deals with information that would, if disclosed, prejudice the maintenance of law.

05) DA131/2007/1 - MODIFICATION APPLICATION TO AMEND ACCESS POINTS TO PROPOSED LOTS 10 AND 11 OF APPROVED SUBDIVISION - 160 FOREST REEFS ROAD, MILLTHORPE

Department: Planning and Environmental Services

Author: Director Planning and Environmental Services

CSP Link: 3. Diversify and Grow the Blayney Shire Local and Visitor Economy

File No: DB.AB.1998

Recommendation:

That Council consent to a modification to Development Application 131/2007/1 to amend the access location to Lot 10 and 11 to Forest Reefs Road at Lot 6 DP 165683, 160 Forest Reefs Road, Millthorpe, subject to the recommended conditions of consent.

Reason for Report:

To determine an application to modify Development Consent 131/2007 seeking to amend access locations for proposed lots 10 and 11 of the subdivision.

The matter is reported to Council as the application was notified to adjoining landowners in accordance with the Blayney Shire Community Participation Plan 2020 from the 4 August 2023 – 18 August 2023 and 5 July 2024 – 19 July 2024. During this period, 2 submissions were received. The objecting submissions identified a wide range of issues which are addressed in the body of this report.

Report:

GENERAL INFORMATION:

Applicant:	Warren Watts
Owner:	Warren and Amanda Watts
Application No:	DA131/2007/1
Zone:	R5 Large Lot Residential
Date Received:	14/07/2023
Assessment No:	A3510569
Property:	Lot 6 DP 1266663
Proposed Development:	DA131/2007/1 - amend the access location to Lot 10 and 11 to Forest Reefs Road at Lot 6 DP 165683, 160 Forest Reefs Road, Millthorpe.

PROPOSED DEVELOPMENT

Blayney Shire has received a DA seeking a modification to DA131/20207/1 which is described on the application form (PAN - 348019) as:

The current consent requires access to approved Lots 10 and 11 to be provided from the new internal road. With reference to the attached plans, it is proposed to modify the consent to allow access for approved Lots 10 and 11 to be provided from Forest Reefs Road.

The DA includes a Statement of Environmental Effects (SEE) prepared by Peter Basha Planning & Development dated 3 July 2023, Safe Sight Distance Assessment Report, prepared by MJM Consulting Engineers dated 14 June 2024 and Subdivision Layout Plan prepared by Peter Basha Planning & Development, Reference No. 19036, dated the 3 May 2024. A more detailed description of the proposed development is provided in the SEE as follows:

With reference to the attached plans, it is proposed to modify the consent to allow access for approved Lots 10 and 11 to be provided from Forest Reefs Road. The proposed modification is justified generally on the grounds that a new culvert associated with recent road works on Forest Reefs Road will lead to increased flows across the approved subdivision.

In regard to the revised access arrangements for approved Lot 10:

- *There is an existing drainage channel that runs inside and along the eastern boundary of approved Lot 10.*
- *The increased flow as a result of the new culvert on Forest Reefs Road will affect this drainage channel.*
- *Direct access from Forest Reefs Road would avoid the situation where future residents of approved Lot 10 would have to cross the drainage channel.*
- *As confirmed in a recent site inspection with Council staff, there is satisfactory sight distance in both directions along Forest Reefs Road.*
- *The new entrance will be constructed in accordance with Council's normal requirements.*
-

In regard to the revised access arrangements for approved Lot 11:

- *The new work on Forest Reefs Road has raised the level of that road surface. As a result, the new internal road to serve the approved subdivision will also have to be raised to coincide with the Forest Reefs Road.*
- *The raised level of the new internal road will make access into Lot 11 difficult, particularly as there is a need to locate the access as far south as possible so as to avoid the low-lying and wet area in the northern section of that lot.*
- *Direct access to approved Lot 11 from Forest Reefs Road limits the need for future residents to contend with the increased seasonally wet conditions in the northern section; and may encourage future development to remain clear of this area.*
- *The access to approved Lot 11 from Forest Reefs Road would be provided with satisfactory sight distance, sufficient widening and an*

appropriate setback to allow associated vehicles a smooth and safe transition to and from Forest Reefs Road.

- *As confirmed in a recent site inspection with Council staff, there is satisfactory sight distance in both directions along Forest Reefs Road, and the access point would be located just outside the 50km/h speed zone.*
- *There are a number of lots in the immediate vicinity of Lot 11 that already obtain direct access via Forest Reefs Road. In this context, the creation of an additional access off Forest Reefs Road to serve Lot 11 would have a negligible effect on road and traffic amenity.*

The land, the subject of the development, is described in the DA Form as Lot 6 DP 165683 with the property address to 160 Forest Reefs Road, Millthorpe. Councils' unique identification number for the processing of the DA for the proposal is DA131/2007/1.

DA131/2007/1 has been processed by Blayney Shire Council in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act) and Environmental Planning and Assessment Regulation 2021 (EP&A Regulation), the Blayney Local Environmental Plan 2012 (BLEP2012), the Blayney Shire Development Control Plan 2018 (BDCP2018) and the Blayney Community Participation Plan 2020 (BCPP2020).

This report provides an assessment of the proposal, as detailed in DA No. 131/2007/1 and the relevant matters for consideration under Section 4.15 of the EP&A Act. The main assessment findings are summarised as follows:

- The scope of the proposed development is clearly articulated in the DA 131/2007/1 documentation.
- The submitted plans, drawings and reports that have been prepared by the various consultants in support of the proposed development contain sufficient information to allow Blayney Shire Council to make an informed decision on the proposal.
- Notification and advertising of the proposed development has been completed in accordance with the requirements of the BCPP2020. Council received 2 submissions from a member of the public. The submissions received are from the same landowner. An assessment of the issues raised in the submission has been completed in this report, with copies of each submission shown in an attachment to this assessment report.
- The proposed development is consistent with all relevant environmental planning instruments applying to the site / development, including the BLEP2012 and BDCP2018.
- Assessment of the proposed development, including all finalised plans, drawings and reports, submissions received, and referral advice from Council planning and engineering staff concludes the proposal is unlikely to pose unacceptable impacts on the environment and has merit for approval, subject to conditions.

- Draft conditions of consent have been included in the recommendation to this report to address all aspects of the proposed development, including compliance with the approved plans, traffic and access, servicing and infrastructure, the preservation of natural environment elements and community contributions.

It is the recommendation of this Section 4.15 Assessment Report that DA 131/2007/1 be approved with conditions addressing issues raised in the report.

EXISTING CONDITIONS

The land is located on Forest Reefs Road approximately 2km west of Pym Street, Millthorpe. The land relevant to this application is vacant of any built form and contains existing native vegetation along the northern boundary of the site. The land is located in an established R5 Large Lot Residential zone, surrounded by existing dwelling houses and ancillary outbuildings.

The subject DA was issued development consent on the 13 November 2007. The subdivision is a Staged Development, and the proposed modification is proposing to modify the consent to allow access for approved Lots 10 and 11 to be provided from Forest Reefs Road, for Stage 3 of the development consent.

LEGISLATIVE REQUIREMENTS

Biodiversity Conservation Act 2016 and Fisheries Management Act 1994

Section 1.7 of the EP&A Act 1979 identifies that Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 have effect in connection with terrestrial and aquatic environments.

Having regard to the relevant provisions and based on an inspection of the subject property, it is considered that the proposed modification is not likely to have a significant effect on any threatened species, population or ecological communities or their habitats.

SECTION 4.15 EVALUATION

Matters for Consideration – General

In determining a modification application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the DA:

Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument

4.55 Modification of Consents – Generally

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed modification is of minimal environmental impact as it is proposed to modify the consent to allow access for approved Lots 10 and 11 to be provided from Forest Reefs Road instead of a new internal road.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

The proposed modification is substantially the same development as the development for which consent has been issued. The proposal seeks to modify the consent to allow access for approved Lots 10 and 11 to be provided from Forest Reefs Road instead of a new internal road.

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

The matter is reported to Council as the application was notified to adjoining landowners in accordance with the Blayney Shire Community Participation Plan 2020 from the 4 August 2023 – 18 August 2023 and 5 July 2024 – 19 July 2024. During this period, 2 submissions were received. The objecting submission identified a wide range of issues which are addressed in the body of this report.

Blayney Local Environmental Plan 2012

Clause 1.2 Aims of Plan

The proposed modification is considered to be generally consistent with the broad aims of the BLEP2012. Relevant issues are addressed in the body of this report.

Clause 1.7 Maps

Land zoning:	R5 Large Lot Residential
Lot size:	17.2HA
Heritage:	Millthorpe Heritage Conservation Area
Terrestrial biodiversity:	N/A
Groundwater vulnerability:	N/A
Drinking catchment:	N/A
Watercourse:	N/A
Flood:	N/A

Clause 1.9A – Suspension of Covenants, Agreements and Instruments

Clause 1.9A provides that covenants, agreements and other instruments which seek to restrict the carrying out of development do not apply with the following exceptions:

- *a covenant imposed by the Council or that the Council requires to be imposed, or*
- *any prescribed instrument within the meaning of section 183A of the Crown Lands Act 1989, or*
- *any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or*
- *any property vegetation plan within the meaning of the Native Vegetation Act 2003, or*
- *any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or*
- *any planning agreement within the meaning of Division 6 of Part 4 of the Act.*

This clause does not affect the rights or interest of any public authority under any registered instruments. A search of Council's records indicates that the subject property is not affected by any of the foregoing covenants, instruments, agreements or plans.

Part 2 – Permitted or prohibited development

Clause 2.1 Land Use Zones

The subject property is zoned R5 Large Lot Residential. *Subdivision* is a permissible land use in the R5 Large Lot Residential zone, subject to compliance with the minimum allotment size standards.

Clause 2.3 Zone Objectives and Land Use Table

The objectives of the R5 Large Lot Residential zone include the following:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The proposed modification is assessed to be consistent with the objectives for the R5 Large Lot Residential zone.

Part 4 – Principal Development Standards

Clause 4.1 Minimum Subdivision Lot Size

The proposed modification is consistent in size, shape and overall configuration with existing lots in the vicinity of the site. The proposed lots are generally regular in shape and will allow for the practical and efficient layout of planned and future residential development. The proposal is consistent with

the objectives of Clause 4.1 and continues to meet the minimum allotment size for subdivision.

Part 6 – Additional local provisions

Clause 6.1 Earthworks

The objective of Clause 6.1 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Before granting development consent for earthworks, the following issues must be considered:

- *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.*
- *The effect of the development on the likely future use or redevelopment of the land.*
- *The quality of the fill or the soil to be excavated, or both.*
- *The effect of the development on the existing and likely amenity of adjoining properties.*
- *The source of any fill material and the destination of any excavated material.*
- *The likelihood of disturbing relics.*
- *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.*
- *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Changes to the existing landform will be required in order to create a suitable road, vehicular access and infrastructure for the approved subdivision. An assessment of the proposed earthworks against the considerations in Clause 6.1 confirms the following:

- Appropriate searches of the AHIMS database have not identified any recorded Aboriginal cultural heritage items within close proximity of the site.
- The earthworks are sufficiently distanced from existing boundaries and do not create any adverse amenity impacts for neighbouring land-uses or property owners.
- The earthworks will ensure future roads and building blocks are above natural overland surface water drainage flows.
- Any imported clean fill or road base brought onto the site will be sourced from a local supplier and certified as virgin excavated natural material (VENM).
- The earthworks are sufficiently distanced from any existing water ways, drinking water catchments or environmentally sensitive areas.
- Cut and filled areas will be battered back to natural ground level at appropriate grades.

No significant impacts on environmental functions, stormwater drainage, neighbouring uses, cultural or heritage items or features of the surrounding land have been identified. Conditions of consent will apply to ensure

compliance with Councils standards and ensure that appropriate measures are undertaken to avoid, minimise the impact of the development.

Clause 6.2 Stormwater management

Clause 6.2 seeks to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving water.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- *Is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- *Includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- *Avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

No significant impacts on environmental functions, stormwater drainage, neighbouring uses, cultural or heritage items or features of the surrounding land have been identified. Conditions of consent will apply to ensure compliance with Councils standards and ensure that appropriate measures are undertaken to avoid, minimise the impact of the development. This assessment concludes that Council may be satisfied that clause 6.2 has been considered and complied with.

Clause 6.8 Essential services

Clause 6.8 requires that development consent must not be granted to development unless the consent authority is satisfied that any of the services that are essential for the development are available or that adequate arrangements have been made to make them available when required. The information and plans submitted with DA 26/2024 are sufficient to allow an assessment of the essential service requirements of the proposed development. This is supported by the following assessment of individual services that are connected to the site:

Water – The site will be serviced by reticulated water system, managed by Central Tablelands Water.

Electricity – The site will be serviced by electricity, managed by Essential Energy.

Disposal of Sewage – Each allotment will be serviced by an onsite waste management system.

Stormwater – No significant impacts on environmental functions, stormwater drainage, neighbouring uses, cultural or heritage items or features of the

surrounding land have been identified. Conditions of consent will apply to ensure compliance with Councils standards and ensure that appropriate measures are undertaken to avoid, minimise the impact of the development.

Access – The modification is seeking to amend the access locations for Lot 10 and 11 off Forest Reefs Road. Councils Design Engineer assessment findings included *Transport for NSW has conducted a Speed Zone Review of the section of Forest Reefs Road fronting the proposed subdivision. The outcome of this review reduces the speed limit in the area to 60 km/h. This allows the proposed accesses to have sufficient sight distance. The review notes that there are already too many accesses in this section, a major reason for the reduction in the speed limit. Given the reduction in the speed limit to 60, the addition of the two new accesses is still compliant with Transport for NSW technical direction TD 00030:2023 Clarification to speed zone review process and types of speed zones – Amendment to TS 03631:1.0 NSW Speed Zoning Standard.*

Importantly, a Safe Site Distance Assessment has been provided by MJM Consulting Engineers. The assessment recommended relocation of the originally proposed access point for lot 10 to a point further to the west to ensure Safe Intersection Sight Distance. Plans were amended in the process to accommodate this. Sight distance of 200 metres is now available for traffic from the east and 130 metres for traffic from the west. As the speed zone is now 60 kmph these distances comply with the required sight distance of 123 metres. The sight distance for proposed lot 11 comfortably complies.

This assessment concludes that Council may be satisfied that clause 6.8 has been considered and complied with.

State Environmental Planning Policy 55 – Remediation of Land

State Environmental Planning Policy 55 – Remediation of Land (SEPP55) requires that a consent authority must not consent to the carrying out of development of land unless it has considered whether the land is contaminated; is satisfied that the land is suitable in its contaminated state for the development that is proposed, and if the land requires remediation to be made suitable for the proposed development it is satisfied that the land will be remediated before the land is used for that purpose.

Furthermore, SEPP 55 requires that before determining an application to carry out development that would involve a change of use of land (specified in subclause 4 of the SEPP), the consent authority must consider a preliminary investigation of the land concerned.

This is confirmed by a review of the EPA list of sites reported to the EPA as at 1 of September 2020 and the EPA contaminated land register confirms that the site is not listed as a contaminated site, as such the development is considered to satisfy the requirements of clause 7 of SEPP55. Land contamination was addressed during the assessment of the original subdivision, creating each allotment, therefore it is considered that no further investigation is warranted for the proposed development.

State Environmental Planning Policy (Transport and Infrastructure) 2021

There are provisions contained within the Transport and Infrastructure SEPP 2021 which are triggers for the referral of development applications to certain authorities prior to the Council being able to grant consent. With particular regard to the nature of the modification proposed by DA 131/20227/1 no potential trigger for referrals are required to Essential Energy or Transport for NSW.

Section 4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under the Act and has been notified to the consent authority

Not applicable to this application.

Section 4.15(1)(a)(iii) Any Development Control Plan

Blayney Shire Development Control Plan 2018

BDCP 2018 applies to all land within the Blayney LGA and is the relevant DCP for assessment against the proposed development.

The following Parts of the BDCP 2018 contain provisions which apply to the proposal:

Part F – Subdivision. Table 2 below provides an assessment of the proposed development against the relevant provisions contained in the BDCP 2018.

Table 1 – Blayney DCP Assessment

DCP Ref.	Name of Control	Statement of Consistency	Planning Assessment Comment
Part F – Subdivision			
F2.5	Access & Entrances	The development is assessed to be consistent with the DCP controls	<p>The proposed modification application proposes safe, legal accesses to Forest Reefs Road, a public managed and owned road by Blayney Shire Council.</p> <p>A Safe Site Distance Assessment has been provided by MJM Consulting Engineers. The assessment recommended relocation of the originally proposed access point for lot 10 to a point further to the west to ensure Safe Intersection Sight Distance. Sight distance of 200 metres is now available for traffic from the east and 130 metres for traffic from the west. As the speed zone is now 60 kmph these distances comply with the required sight distance of 123 metres. The sight distance for proposed lot 11 comfortably complies.</p>
F4.1	Access & Road Design	The development is assessed to be consistent with	The proposed modification application has provided two access points off Forest Reefs Road and is in accordance with Councils Guidelines

DCP Ref.	Name of Control	Statement of Consistency	Planning Assessment Comment
		the DCP controls.	for Engineering Works.
F4.2	Access to Battle Axe Lots (Limited Road Frontage)	N/A	Assessment not required.
F4.3	Lots for the Purpose of Agriculture	N/A	Assessment not required.

Section 4.15(1)(a)(iia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements or draft planning agreements relevant for consideration as part of the assessment and determination of DA131/2007/1.

Section 4.15(1)(a)(iv) The Regulations

There are no regulations relevant for consideration as part of the assessment and determination of DA131/2007/1.

Section 4.15(1)(b) The likely impacts of the development, including environmental impacts both the natural and built environments, and social and economic impacts in the locality

Context & Setting

The land is located on Forest Reefs Road approximately. The land relevant to the modification application is vacant and contains existing native vegetation along the northern boundary of the site. The land is located in an established R5 Large Lot Residential zone, surrounded by existing dwelling houses and ancillary outbuildings.

Given the land-uses in the immediately surrounding area, it is assessed that the proposed new use will not result in a development scenario that is inconsistent with the with the context and setting of the land.

Access, Transport and Traffic

Access & Traffic

Access to the site is via Fores Reefs Road. The application was referred to Council Design Engineer and the following comments were provided to support the proposed modification. *Transport for NSW has conducted a Speed Zone Review of the section of Forest Reefs Road fronting the proposed subdivision. The outcome of this review reduces the speed limit in the area to 60 km/h. This allows the proposed accesses to have sufficient sight distance.*

The review notes that there are already too many accesses in this section, a major reason for the reduction in the speed limit. Given the reduction in the

speed limit to 60, the addition of the two new accesses is still compliant with Transport for NSW technical direction TD 00030:2023 Clarification to speed zone review process and types of speed zones – Amendment to TS 03631:1.0 NSW Speed Zoning Standard.

The reduced 60 kmph speed zone has now been implemented with signposting in place. The result of this reduced speed zone is a reduction in the safe sight distance requirements for access points onto Forest Reefs Road. Both new access points comply with the sight distance requirement of 123 metres.

Utilities & Servicing

The information and plans submitted with DA 26/2024 are sufficient to allow an assessment of the essential service requirements of the proposed development. This is supported by the following assessment of individual services that are connected to the site:

Water – The site will be serviced by reticulated water system, managed by Central Tablelands Water.

Electricity – The site will be serviced by electricity, managed by Essential Energy.

Disposal of Sewage – Each allotment will be serviced by an onsite waste management system.

Stormwater – No significant impacts on environmental functions, stormwater drainage, neighbouring uses, cultural or heritage items or features of the surrounding land have been identified. Conditions of consent will apply to ensure compliance with Councils standards and ensure that appropriate measures are undertaken to avoid, minimise the impact of the development.

Access – Councils Design Engineer assessment findings included *Transport for NSW has conducted a Speed Zone Review of the section of Forest Reefs Road fronting the proposed subdivision. The outcome of this review reduces the speed limit in the area to 60 km/h. This allows the proposed accesses to have sufficient sight distance. The review notes that there are already too many accesses in this section, a major reason for the reduction in the speed limit. Given the reduction in the speed limit to 60, the addition of the two new accesses is still compliant with Transport for NSW technical direction TD 00030:2023 Clarification to speed zone review process and types of speed zones – Amendment to TS 03631:1.0 NSW Speed Zoning Standard.*

A Safe Site Distance Assessment has been provided by MJM Consulting Engineers. The assessment recommended relocation of the originally proposed access point for lot 10 to a point further to the west to ensure Safe Intersection Sight Distance. Plans were amended in the process to accommodate this. Sight distance of 200 metres is now available for traffic from the east and 130 metres for traffic from the west. As the speed zone is

now 60 kmph these distances comply with the required sight distance of 123 metres. The sight distance for proposed lot 11 complies.

Noise and Vibration

Any noise and vibration impacts experienced by nearby land uses as part of construction phases associated with the proposed development will be temporary. Potential impacts can be managed by limiting construction activities to appropriate daylight hours and not on Sundays or public holidays. Appropriate conditions of consent have been recommended.

The potential sources of noise generated by the proposed development (on an ongoing basis) include onsite services and utilities, noise generated by users of the premise, motor vehicles and the like.

Having regard to the above, the proposed development is assessed to have an acceptable impact in terms of noise and vibration, with identified issues able to be addressed through conditioning of the consent.

Air and Microclimate

Air quality and / or micro-climate impacts are unlikely to be key issues associated with the proposed development. Temporary impacts related to dust emission may occur during construction phases associated with the development, however these are capable of being mitigated through appropriate on-site management of construction processes.

Flora and Fauna

The site is not mapped in BLEP 2012 as containing sensitive terrestrial biodiversity. Section 1.7 of the EP&A Act 1979 identifies that Part 7 of the Biodiversity Conservation Act 2016 has effect in connection with terrestrial environments, and that Part 7A of the Fisheries Management Act 1994 has effect in connection with aquatic environments.

Due to the nature and scale of the proposed development, the industrial setting of the land of the development site, and the site history, it is assessed that the proposed development is not likely to have a significant effect on any threatened species, populations or ecological communities or their habitats.

Construction

All construction work will be undertaken in accordance with Councils conditions of consent. Construction impacts are not anticipated to have an adverse impact on the locality. Erosion and sedimentation control measures would be developed and implemented during construction to minimise any erosion and sedimentation at the site.

Cumulative Impacts

It is assessed that the proposal is likely to make a neutral / positive contribution to the environment. The proposal is considered compatible with the site and its surrounds and does not contribute to having a significant cumulative impact. The proposed development is assessed to have an acceptable cumulative impact.

Section 4.15(1)(c) The suitability of the site for the development

The assessment work presented in the previous sections of this report confirm that the site has the capacity to support the proposed modification without creating adverse impact on the site or on adjoining and nearby land-uses.

The assessment work presented in the previous sections of this report confirm that the site has the capacity to support the proposed development without creating adverse impact on the site or on adjoining and nearby land-uses. Conditions of consent are recommended to ensure that impacts appropriately mitigated.

Section 4.15(1)(d) Any submissions made in accordance with this Act or the regulations

The matter is reported to Council as the application was notified to adjoining landowners in accordance with the Blayney Shire Community Participation Plan 2020 from the 4 August 2023 – 18 August 2023 and 5 July 2024 – 19 July 2024. During this period, 2 submissions were received. The objecting submission identified a wide range of issues which are addressed in the body of this report. An assessment of the issues raised in the submissions has been detailed in the Table below, with copies of the submission included in the Attachment of this report.

Table 2 – Public Consultation - Submissions Evaluation

Summary of issue raised	Assessment comment / evaluation
Submission 1 – Dated 25 August 2023	
Objects to the DA on the following basis:	
Light pollution at night from vehicles leaving and entering the subdivision. The location of the proposed road will cause vehicle headlights to shine on to the residence at 143 Forest Reefs Road. It is proposed to relocate the existing road or alteration to the existing road via Showground Lane.	The subject DA was issued development consent on the 13 November 2007. The subdivision is a Staged Development, and the proposed modification is proposing to modify the consent to allow access for approved Lots 10 and 11 to be provided from Forest Reefs Road, for Stage 3 of the development consent. It is considered that light pollution will be minimal due to the access locations being amended to locations that will not impact adjoining properties, as per the submitted Subdivision Layout Plan.
Sound pollution from vehicles leaving and entering the subdivision.	The subject DA was issued development consent on the 13 November 2007. The subdivision is a Staged Development, and the proposed modification is proposing to modify the consent to allow access for approved Lots 10 and 11 to be provided from Forest Reefs Road, for Stage 3 of the development consent. It is considered that sound pollution will be minimal due to the access locations being amended to locations that will not impact noise to adjoining properties, as per the submitted Subdivision Layout Plan.
Road Safety and Accidents	Councils Design Engineer assessment findings included Transport for NSW has conducted a Speed Zone Review of the section of Forest Reefs Road fronting the proposed subdivision. The outcome of this review reduces the speed

Summary of issue raised	Assessment comment / evaluation
	<p>limit in the area to 60 km/h. This allows the proposed accesses to have sufficient sight distance.</p> <p>The review notes that there are already too many accesses in this section, a major reason for the reduction in the speed limit. Given the reduction in the speed limit to 60, the addition of the two new accesses is still compliant with Transport for NSW technical direction TD 00030:2023 Clarification to speed zone review process and types of speed zones – Amendment to TS 03631:1.0 NSW Speed Zoning Standard.</p>

A summary of the main findings of community participation in relation to DA131/2007/1 is as follows:

- DA131/2007/1 has been notified and exhibited in accordance with Council policy requirements.
- Two submissions were received in relation to the proposed development.
- The issues raised in the submissions have been evaluated individually. The issues do not require amendment to the proposed designs and can be addressed through appropriate conditions.
- There are no grounds to withhold determination of DA131/2007/1 on the assessment / evaluation of the issues raised in submissions received.

Section 4.15(1)(e) The Public Interest

The development complies with the BLEP 2012 and Blayney DCP 2018. There are no specific policy statements from either Federal or State Government that are relevant to the proposal, nor any planning studies or strategies that need to be taken into account. There are no covenants, easements or agreements that affect the proposal in the long term. The proposal is assessed to pose no significant detrimental impacts on the public interest.

The public exhibition and notification of DA131/2007/1 generated public interest. An evaluation of the issues, comments and concerns raised in submissions has been completed in the above table. There are no outstanding public submissions that have not been assessed. Copies of submissions received are included in attachment to this report.

CONCLUSION

An assessment of the proposal in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979 has been completed, with the main findings summarised as follows:

- The extent of the proposed development is clearly documented in the plans and reports submitted with DA131/2007/1.
- The proposal has been advertised and notified in accordance with the Blayney Community Participation Plan 2020. The issues raised in submissions received as a result of the exhibition / neighbour notification of DA131/2007/1 have been properly considered, and where necessary appropriate conditions have been included in the recommended conditions to be applied to any approval of the proposal.
- The proposed development complies with the relevant aims, objectives and provisions of Blayney Local Environmental Plan 2012 and Blayney Development Control Plan 2018.
- The proposed development is consistent with the requirements of relevant State Environmental Planning Policies.
- The proposed development has been referred to Council's Development Engineer with advice being received that the proposal is capable of complying with Council Engineering Standards and other relevant design standards, subject to appropriate conditions of consent.

To address relevant issues from the assessment of DA131/2007/1, a number of conditions are recommended to be included in any determination of the proposal way of approval. The conditions are described in the attachment of this assessment report. It is the recommendation of this Section 4.15 Assessment Report that DA 131/2007/1 be granted conditional approved.

Risk/Policy/Legislation Considerations:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act.

Should Council approve the application, the applicant has rights of appeal to the Land and Environment Court if they are dissatisfied with any conditions imposed. Similarly, should the application be refused, the applicant may appeal to the Land and Environment Court.

Any party may commence proceedings in the Land and Environment Court seeking Judicial Review should they be of the view there has been a breach of the Environmental Planning and Assessment Act.

Budget Implications:

Nil

Enclosures (following report)

Nil

Attachments (separate document)

- | | | |
|---|------------------------------------|---------|
| 1 | Conditions of Consent | 9 Pages |
| 2 | Subdivision Layout | 4 Pages |
| 3 | Safe Site Distance Assessment | 7 Pages |
| 4 | Statement of Environmental Effects | 4 Pages |
| 5 | Redacted Submissions | 9 Pages |
| 6 | Response to Submissions | 1 Page |
| 7 | Unredacted Submissions | 9 Pages |

This matter is considered to be confidential under Section 10A(2) (a) of the Local Government Act, as it deals with personnel matters concerning particular individuals.

06) DA2024/74 - ERECTION OF A SINGLE STOREY DETACHED DWELLING - LOT 8 DP 1090786, 41 CALOOLA STREET, NEWBRIDGE

Department: Planning and Environmental Services

Author: Manager Development Assessment

CSP Link: 5. Protect Our Natural Environment

File No: DB.AB.2133

Recommendation:

That Council:

1. Support the variation to the Blayney Development Control Plan 2018, C4.1 Building Setbacks in rural zones requiring dwellings to have a minimum setback of 50m from the side boundaries; and
2. Consent to Development Application 2024/74 for the Erection of a Single Storey Detached Dwelling on Lot 8 DP1090786, 41 Caloola Street, Newbridge subject to the recommended conditions of consent.

Reason for the Report:

For Council to consider and determine Development Application DA2024/74 for the Erection of a Single Storey Detached Dwelling on Lot 8 DP1090786, 41 Caloola Street, Newbridge

The application does not comply with the Blayney Development Control Plan 2018, C4.1 Building Setbacks in rural zones which requires dwellings to have a minimum setback of 50m from the side boundaries. The requested variation is outside council staff delegation and therefore is required to be determined by Council.

Report:

GENERAL INFORMATION:

Applicant:	Amanda J Sutherland
Owner:	Stephen Kaufman & Amanda Sutherland
Application No:	DA 2024/74
Zone:	RU1 Primary Production
Date Received:	16/10/2024
Assessment No:	A3515785
Property:	41 Caloola Street, Newbridge
Proposed Development:	DA2024/74 - Erection of a Single Storey Detached Dwelling - Lot 8 DP 1090786, 41 Caloola Street, Newbridge

Development Application 2024/74 has been lodged by Amanda J Sutherland (Part Landowner) for the Erection of a Single Storey Detached Dwelling on Lot 8 DP 1090786, 41 Caloola Street, Newbridge.

The subject property is in a RU1 Primary Production zone under the Blayney Local Environmental Plan 2012 (BLEP) and is vacant of any built form; used primarily for grazing purposes. The minimum lot size for a dwelling on rural land is 100 hectares and the subject land has an area of 5.5 hectares.

Whilst this land does not meet the minimum lot size area, the land has been identified as a Dwelling Opportunity Lot whereby it meets the provisions of Clause 4.2A(3)(e) ie is a lot or holding with a size of at least 1.5 hectares on land identified as “*Dwelling Opportunity*” on the *Dwelling Opportunity Map*. Dwelling Opportunity lots were enabled through the update to the 2020 Blayney Settlement Strategy and the subsequent Planning Proposal PP3 which was finalised in 2023 (Amendment 12 of the Blayney LEP 2012).

Approximately 40 identified lots and/or small holdings were identified within 500m of Carcoar, Mandurama, Lyndhurst, Neville, Newbridge and Barry and mapped as having a “dwelling opportunity” on a new Dwelling Opportunity Map.

The dwelling opportunity provision (subject to the submission and approval of a development application) only exists for 5 years (until 1 May 2028).

This application is an allotment identified as being a “Dwelling Opportunity” lot. The request to vary a setback control in the Blayney DCP is due the land size and shape is unable to meet the setback requirements.

The application does not comply with the Blayney Development Control Plan (DCP) 2018, C4.1 Building Setbacks which requires land in the RU1 or RU2 zone to have a setback of 20m from the road frontage with side boundary setbacks requiring a minimum of 50m; irrespective of the size of the holding. The proposed setbacks for the dwelling is 90m from the Caloola Street road frontage and 30m from the sites western (side) boundary. The non compliance to the setbacks relates to western boundary only.

As such, the Applicant has sought Council’s approval for a variation to the acceptable solution.

Based on the rationale set out in the body of the assessment report, it is recommended that the variation should be supported. In summary, it is considered the proposed development is consistent with the aims, objectives, and performance criteria of the BLEP 2012 and the BDCP 2018. Consent is recommended subject to appropriate conditions of consent.

Proposed Development

Consent is sought for the construction of a new dwelling on a vacant rural land parcel that has Dwelling Opportunity in accordance with the Blayney Local Environmental Plan 2012.

The new dwelling is to comprise 2 bedrooms, main with walk-in-robe, main bathroom and laundry, open plan kitchen, dining and lounge and attached verandah.

The proposed dwelling will have a floor area of 128m², verandah of 28.8m² and a front porch of 7.47m²; equating to a gross floor area of 164.27m².

The proposed dwelling will have a 30m setback from the site's western boundary and 90m setback from the Caloola Street frontage. A variation to the DCP controls for side setbacks for dwellings on rural land is requested based on the site constraints of land being the location of the watercourse. Supporting information to justify the variation has been provided with the application.

Proposed materials include selected weathertex cladding, corrugated iron roofing, timber verandah posts, aluminium doors and windows.

Access to the site will be via a new vehicle access point off Caloola Street that has direct frontage to the site.

Section 1.7 – Application of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994

Section 1.7 of the EP&A Act 1979 identifies that Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 have effect in connection with terrestrial and aquatic environments. Having regard to the relevant provisions and based on an inspection of the subject property, it is considered that the proposed development is not likely to have a significant effect any threatened species, population or ecological communities or their habitats.

Section 4.15 Evaluation

Matters for Consideration – General

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument Blayney Local Environmental Plan 2012

Part 1 – Preliminary

Clause 1.2 Aims of Plan

The proposed development is considered to be consistent with the broad aims of the BLEP 2012. Relevant issues are addressed in the body of this report.

Clause 1.7 Maps

Land zoning:	RU1 Primary Production
Lot size:	100 ha; however meets Clause 4.2(3)(e)
Heritage:	Heritage Conservation Area
Terrestrial biodiversity:	Yes, although not within the area applicable to the proposed development
Groundwater vulnerability:	Nil
Drinking water catchment:	Yes
Watercourse:	Nil

Flood:	Nil
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Clause 1.9A – Suspension of Covenants, Agreements and Instruments

Clause 1.9A provides that covenants, agreements and other instruments which seek to restrict the carrying out of development do not apply with the following exceptions:

- a covenant imposed by the Council or that the Council requires to be imposed, or
- any prescribed instrument within the meaning of section 183A of the Crown Lands Act 1989, or
- any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or
- any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or
- any property vegetation plan within the meaning of the Native Vegetation Act 2003, or
- any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or
- any planning agreement within the meaning of Division 6 of Part 4 of the Act.

This clause does not affect the rights or interest of any public authority under any registered instruments. A search of Council's records indicates that the subject property is not affected by any of the foregoing covenants, instruments, agreements or plans.

Part 2 – Permitted or prohibited development

Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of BLEP provides that the Council shall have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives of the RU1 Primary Production zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To enable function centres, restaurants and appropriate forms of tourist and visitor accommodation to be developed in conjunction with agricultural uses.

The proposed development is permitted and is consistent with the zone objectives.

Part 4 – Principal development standards

Clause 4.2A Erection of dwelling houses or dual occupancies on land in certain rural zones

- (1) The objectives of this clause are as follows—
- (a) to minimise unplanned rural residential development,
 - (b) to enable the replacement of lawfully erected dwelling houses or dual occupancies in rural zones.
- (2) This clause applies to land in the following zones—
- (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape.
 - (c) (Repealed)
- (3) Development consent must not be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the land—
- (a) is a lot that is at least the minimum lot size shown on the [Lot Size Map](#) in relation to that land, or
 - (b) is a lot created under this Plan (other than under clause 4.2 (3)), or
 - (c) is a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
 - (d) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (e) is a lot or holding with a size of at least 1.5ha on land identified as “Dwelling Opportunity” on the [Dwelling Opportunity Map](#), or
 - (f) would have been a lot or a holding referred to in paragraph (a), (b), (c), (d) or (e) had it not been affected by—
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose.
- (4) Subclause (3)(e) ceases to have effect at the beginning of 1 May 2028.
- (5) Development consent may be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies if there is a lawfully erected dwelling house or dual occupancy on the land and the dwelling house or dual occupancy to be erected is intended only to replace the existing dwelling house or dual occupancy.
- (6) In this clause—

Dwelling Opportunity Map means the [Blayney Local Environmental Plan 2012 Dwelling Opportunity Map](#).

RU1 land generally requires a minimum of 100ha for the permissibility of a dwelling or further compliance with Clause 4.2A(3).

The subject land has an area of approximately 5.51ha and therefore does not meet the minimum lot size for a dwelling on rural land. The land is however, identified as “Dwelling Opportunity” on the Dwelling Opportunity Map. A DA

has been lodged for a dwelling on this land prior to the cessation of the clause on 1 May 2028.

Therefore, a dwelling is permissible on the land subject to development consent.

Part 5 - Miscellaneous provisions

Clause 5.10 – Heritage Conservation

(1) **Objectives** The objectives of this clause are as follows—

- (a) to conserve the environmental heritage of Blayney,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

The proposed development is for a new dwelling on land situated within the heritage conservation area. The proposal is not in contradiction to the objectives of the clause and will not erode the heritage significance of the locality and HCA.

(2) **Requirement for consent** Development consent is required for any of the following—

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land—
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land—
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

Consent is required as a new building in a heritage conservation area requires development consent.

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

The application has been referred to Council Heritage Advisor for assessment. The following information addresses the heritage assessment of the proposal:

The character, bulk and scale and siting are generally suitable for this particular site, subject to some minor mitigation measures recommended for the heritage conservation area setting and location opposite the former Convent.

- The reduced setback is accepted due to the proximity of the general housing stock forming part of the village and the former Convent located opposite, on the basis that a set of suitable external materials and colours is agreed and that a landscape plan includes sufficient planting of trees and shrubs to allow for reasonable screening and levels of privacy for the properties in the vicinity.

The plan of the building:

- The front of the proposed house faces the street and the includes a porch It is appreciated that the main verandah is not on the front and is on the rear of the building due to the private outdoor space being off that family area. In view of the limited scope for the front porch, it is recommended that the front door include sidelights on each of the door to provide additional prominence and character to the entrance.
- The windows are generally vertically proportioned
- The bulk and from of the building is suitable

An assessment of the external elevations notes the following:

- select corrugated iron roofing and cladding are to be specified
- corrugated galvanised custom orb steel or colorbond in Shale Grey or Windspray
- traditional rolled flashings
- standard unperforated quad gutter – colour to be specified
- circular downpipes to match wall colour
- weathertex selflok 150mm Ecogroove smooth weatherboard with a painted finish is recommended
- for a vertical orientation, Weathergroove natural 150mm is recommended
- paint colours to be nominated for wall cladding
- timber verandah posts are accepted subject to the size for the spacing being ex 150mm square with a suitable colour (paint) finish

- aluminium windows are accepted subject to a suitable powder coat finish being specified.
- wall colours of Bluegum and Windspray are not suitable. Colours should be selected from warm neutrals and include Sugar Cookie, Soft Brown, Raw Canvas, Baked Clay, Natural Milk and Fusion.
- Roofs should be grey such as Shel Grey, Windspray or Southerly. Gutters should be a darker contrasting colour
- Foundation walls below the floor level on rising sites are recommended as Basalt or an earth colour contrasting the wall
- Landscape Plan should include a minimum of three trees to frame the front elevation and presentation to the streetscape and a minimum of one tree to the rear garden for shading. A hedge or shrubs to align with and identify the front boundary. Screening shrubs to align the side and rear boundaries sufficient to allow for screening to and from the outdoor spaces of adjoining properties.
- Trees and species are to be specified on the Landscape Plan.

Generally speaking, the siting, bulk and scale is considered appropriate for the locality. Conditions will be implemented addressing the provision of landscaping, an approved colour schedule and materials prior to the release of the CC consistent with the recommendations provided by the Heritage Advisor.

Part 6 – Additional local provisions

6.3 Terrestrial biodiversity

- (1) The objective of this clause is to maintain terrestrial biodiversity by—
 - (a) protecting native fauna and flora, and
 - (b) protecting the ecological processes necessary for their continued existence, and
 - (c) encouraging the conservation and recovery of native fauna and flora and their habitats.
- (2) This clause applies to land identified as “Biodiversity” on the Natural Resource—Biodiversity Map.
- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—
 - (a) whether the development is likely to have—
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and
 - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—
 - (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

The proposed development does not include the removal of trees or vegetation on the subject property. Removal of vegetation (grass) will be removed but limited to just to the construction site. There is no adverse impact on the condition, ecological value and significance of the fauna and flora on the land.

Clause 6.8 Essential services

Clause 6.8 requires that development consent must not be granted to development unless the consent authority is satisfied that any of the services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

Supply of water	As per BASIX commitments, the development will be serviced by on-site water (rainwater tanks)
Supply of electricity	Mains power is available to the site.
Disposal and management of sewerage	On-site waste-water system for the management of sewage
Stormwater drainage or on-site conservation	Roof water drainage will be conveyed to water tanks for re-use, overland flow will be retained onsite.
Suitable vehicular access	Legal access will be required to be provided by the construction of a new access point off Caloola Street.

Advisory notes are provided regarding telecommunications and electricity.

State Environmental Planning Policies

The following State Environmental Planning Instruments (SEPPs) apply to the Blayney Local Government Area:

- SEPP 65 - DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT
- SEPP BUILDING SUSTAINABILITY INDEX: BASIX 2004
- SEPP EXEMPT AND COMPLYING DEVELOPMENT CODES 2008
- SEPP (HOUSING) 2021
- SEPP (INDUSTRY AND EMPLOYMENT) 2021
- SEPP (PRIMARY PRODUCTION) 2021
- SEPP (PLANNING SYSTEMS) 2021
- SEPP (REPEAL OF OPERATIONAL SEPPs) 2019
- SEPP (RESOURCES AND ENERGY) 2021
- SEPP (RESILIENCE AND HAZARDS) 2021
- SEPP (TRANSPORT AND INFRASTRUCTURE) 2021

The following SEPPs are specifically relevant to the assessment of the proposed development:

State Environmental Planning Policy (Sustainable Buildings) 2022

Regulations under the Act have established a scheme to encourage sustainable residential development (the BASIX scheme) under which: (a) an application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and (b) the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled. (2) The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State. (3) This Policy achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

A BASIX Certificate has been provided for the new dwelling construction, demonstrating that the development can meet the energy, thermal comfort and water targets. Refer to BASIX Certificate number 1763396s.

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 (replaces State Environmental Planning Policy 55 – Remediation of Land (SEPP55)) requires that a consent authority must not consent to the carrying out of development of land unless it has considered whether the land is contaminated; is satisfied that the land is suitable in its contaminated state for the development that is proposed, and if the land requires remediation to be made suitable for the proposed development it is satisfied that the land will be remediated before the land is used for that purpose.

The land is not within an Investigation Area. There is no evidence of any previous uses of the land identified in Table 1 of the Contaminated Land Planning Guidelines. It is unlikely that any contamination is onsite, due to the historical and existing use, no adverse impacts are assessed, and no further investigation is warranted.

State Environmental Planning Policy (Biodiversity and Conservation)

Chapter 3 – Koala Habitat Protection 2020

This policy aims to encourage the proper conservation of natural vegetation that provides habitat for Koalas to ensure their population and range of accessibility is preserved. The Policy meets its objectives by:

- a) Requiring the preparation of plans of management before development consent can be granted in relation to area of core Koala habitat.
- b) Encouraging the identification of areas of core koala habitat; and
- c) Encouraging the inclusion of areas of core koala habitat in environmental protection zones.

The proposed development does not require the removal (clearing) of any native vegetation or further intrusion of timbered areas. Council can be satisfied that the development will not have an impact on koalas or Koala habitat.

Section 4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under the Act and has been notified to the consent authority

Not applicable.

Section 4.15(1)(a)(iii) Any Development Control Plan

Blayney Shire Development Control Plan 2018

As the development is a Class 1a Dwelling the provisions of Part C (Residential Development) and Part G Environmental Management and Hazard applies to this development and the relevant parts are summarised below:

Clause	DCP Comment	Compliance
C4.1 Building Setbacks	<p><u>Setbacks:</u> Dwellings (and attached ancillary buildings) must meet the following minimum setbacks in metres (m) from the lot boundaries Zone RU1 & RU2</p> <ol style="list-style-type: none"> 1) Public road frontage – 20m; 2) Side or rear boundary – 50m 	<p>Comment: The proposed dwelling house is to have a primary setback of 90m from the Caloola Street road frontage which exceeds the setback requirement of 20m.</p> <p>The proposed side boundary setback from the western boundary is 30m which does not comply with the setback requirements of 50m. The proposal meets the setback from the eastern side boundary.</p> <p>The Applicant has submitted a written request to vary to control with planning justification based on the sites topography and location of a watercourse that traverses the site. Regardless of the variation to the control, amenity of the site and surrounding land is not affected by the siting of the new dwelling. The proposal ensures the objective of the control can still be met.</p> <p>For noting, land to the</p>

		<p>immediate west is zoned R5 with land adjoining in the north eastern corner also zoned R5 Large Lot Residential. These allotments are significantly small with many structure already in place on the land.</p> <p>All proposed setbacks are deemed acceptable in this circumstance.</p> <p>A formal request to vary the DCP provision has been provided as a part of the application with reasoning as discussed above acceptable in this circumstance.</p>
C4.2 Building Siting & Buffers	<p><u>1) Environmental Hazards:</u> Buildings must be sited so as to avoid, or if not avoid, mitigate or minimise the impacts from natural hazards (including but not limited to flooding, stormwater hazards, bushfire etc.) or impacts on sensitive environment areas (including but not limited to significant vegetation, biodiversity, watercourses etc.) in accordance with Part G –Environmental Management & Hazards.</p> <p><u>2) Existing Trees:</u> Buildings should be sited so as to minimise disturbance or removal of existing significant trees (including for asset protection zones to minimise bushfire risk) and buildings should be located outside the drip line of any retained trees to protect root structures.</p> <p>3) Buffers: Where dwellings are located adjacent to existing or potential higher impact activities (including, but not limited to agriculture, intensive agriculture, mineral resources etc.) then applicants must address the recommended buffer distances in Part G –Environmental Management & Hazards. If these buffer distances</p>	<p><u>Comment:</u> The proposed dwelling has been designed within the constraints of the subject property. Adequate setbacks have been provided which have been addressed in DCP assessment 4.1. There is a watercourse that traverses the land and the dwelling has been sited to ensure there is no adverse impact upon both the watercourse and the amenity of the area (including adjoining landowners).</p> <p>Biodiversity is mapped as being present on a small portion of the south eastern corner of the site. As the proposal does not seek the removal of any vegetation, impact on biodiversity is considered unlikely.</p> <p>No tree removal is proposed.</p> <p>Based on a site inspection the land, whilst rural does not include intensive agricultural uses that require further</p>

	<p>cannot be met, then there must be additional justification that addresses how impacts will be avoided or minimised.</p> <p><u>4) Dual Occ – N/A</u></p> <p><u>5) Privacy & Amenity:</u> Buildings must be sited to reduce any overlooking of the living rooms and primary private open spaces of adjoining dwellings and appropriately screened to protect privacy, noise separation and residential amenity of adjoining dwellings.</p> <p>If dwellings must be sited in close proximity to adjoining dwellings then privacy measures such as landscaping or screening, offsetting of windows, opaque windows etc. should be utilised.</p>	<p>consideration of buffers and separation distances.</p> <p>No dual occupancy is proposed. Access will be via a single new access point.</p> <p>Based on the proposed setback distances of the new dwelling, amenity of the adjoining land is not adversely impacted.</p> <p>The development complies with the development standards.</p>
C4.3 Visual Impacts	<p><u>1) Ridgelines:</u> Dwelling must be located away from ridgelines or seek to minimise their visual impact on the skyline.</p> <p><u>2) Scale / Colours/ Materials:</u> Building must be designed and constructed to integrate with the surrounding rural landscape and not detract from the rural amenity.</p> <p><u>3) Reflectivity:</u> External materials must have low reflectivity if they are visible from a public road or neighbouring dwelling and there is a reasonable probability of glare affecting driver safety, residential amenity, or the building being too visually intrusive.</p>	<p><u>Comment:</u> The proposal includes a detached single storey dwelling that is less than 9m in height. The proposed site of the new dwelling is not located on a ridgeline and is not excessive in height which ensures visual impact on the skyline and locality is not adversely impacted.</p> <p>The proposed design is acceptable and integrates with the existing character of the locality.</p> <p>Proposed materials include weathertex cladding, iron clad roof sheeting, aluminium doors and windows, timber verandah posts. Proposed materials are considered appropriate for the development and locality. Further specifications and clarifications will be included as a part of conditions to address the Heritage Advisors comments.</p>

		The development complies with the DCP provisions.
C8.1 Site Planning	<p>1) Considers and responds to the topography, climate and natural environment;</p> <p>2) Avoids, or if it cannot avoid, minimises or mitigates against natural hazards and land use conflicts;</p> <p>3) Protects and enhances any heritage items or heritage conservation areas;</p> <p>4) Integrates with the surrounding built form and landscape character; and</p> <p>5) Maintains reasonable residential amenity (for the site and adjacent dwellings).</p>	<p><u>Comment:</u> The proposed dwelling is significantly set back from adjoining property dwellings and road frontage of Caloola Street.</p> <p>The design of the structure maintains the rural aesthetic of the area and integrates into the landscape.</p> <p>The proposed dwelling is not greater than 1 storey in height and does not seek to increase the risk of overlooking.</p> <p>The proposal complies with the DCP setback requirements.</p>
C8.2 Water & Energy Efficiency	A BASIX Certificate may need to be submitted with the Development Application in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 prepared either by an applicant or a suitably qualified consultant.	<p><u>Comment:</u> A BASIX certificate, Certificate was lodged in support of this application.</p>
C8.4 Earthworks	<p>1) Cut and/or fill should be minimised by appropriate site planning, building orientation and design, taking into account the slope of the site, proximity to adjacent properties and environmentally sensitive areas, and access and drainage requirements.</p> <p>2) Cut and/or fill for residential uses that is greater than 1m in depth or closer than 1m to a lot boundary may require additional certification to avoid impacts on adjacent properties.</p> <p>3) Applicants must notify Council if cut and/or fill will result in the net export or import of fill from sites other than the subject site and demonstrate the fill is not contaminated.</p>	<p><u>Comment:</u> The site for the development will only require some earthworks based on the natural ground level. The earthworks are associated with the buildings proposed footprint for the dwelling slab, new access point and internal driveway. Conditions of consent will be included to address soil and sediment erosion and water management.</p> <p>No imported fill is identified in the application or expected from the impact of the proposal.</p>
C8.6 Connection	<p>1) N/A</p> <p>2) N/A</p>	<p><u>Comment:</u> The BASIX indicates the</p>

to Utilities	<p>3) New development must be connected to grid-electricity unless the applicant can demonstrate a sufficiently sized and appropriate alternative (off grid) system to meet the reasonable needs of that type of development.</p> <p>4) N/A</p>	<p>dwelling will be connected to the grid, as no alternative (off grid) system is proposed.</p> <p>Mapping indicates grid electricity network is available in the vicinity of the site.</p>
C8.7 Siting & Visibility of Utilities	<p>1) Utilities should be located underground (particularly in heritage conservation areas or main streets) or utilise existing poles (at the discretion of Council) unless other constraints make this unsuitable.</p> <p>2) Utility boxes and cabinets (e.g. electricity substations, meter boxes etc.) on private land are integrated into the development and screened (where appropriate).</p>	<p><u>Comment:</u> Noted, the development can achieve compliance.</p>
C8.8 Water Tanks	<p>Dwellings that are reliant on rainwater for drinking water must have a minimum tank capacity of 60,000L or the requirements set out in the BASIX Certificate (whichever is greater). Additional capacity may be required for garden watering and other purposes.</p>	<p><u>Comment:</u> Conditions will be included for the minimum provision of water supply in addition to an additional 20 000L to be reserved for fire fighting purposes.</p>
C8.9 On-Site Sewage Management	<p>Where a lot is unable to connect to a reticulated sewage system, the applicant must provide an Effluent (Geo-technical) Report prepared by a suitably qualified geotechnical engineer that supports the design and location of any onsite system in accordance with Council's Development and Building Guide, any relevant Australian Standards, and Part G2.5 On-Site Effluent Disposal of this DCP.</p>	<p><u>Comment:</u> The development site is remote to the reticulated sewer mains, and will therefore be serviced by an onsite system.</p> <p>An effluent management assessment has been provided for the site and included as a part of the supporting application information. Any approval for a new on site effluent management system will be in accordance with the submitted assessment provided by Calare Civil Reference:20240401 and dated 31st October 2024.</p>
C8.11 Solid Waste	<p>Applicants must determine (in consultation with Council) what solid</p>	<p><u>Comment:</u> Caloola Street is serviced by</p>

Management	waste collection services are available, other appropriate method of disposing of solid waste and suitable storage location(s).	Council's waste contractor and upon Final Occupation Certificate for the dwelling, a bin service will be provided.
C8.12 Letterboxes	Separate letterboxes for each dwelling must: 1) Be located where it is easily visible from the road frontage and accessible for Australia Post employees; 2) Be clearly marked with the correct house number; 3) N/A	<u>Comment:</u> Compliance can be achieved, where required.
C8.13 Street Numbering	Each dwelling must have an appropriate street number that is clearly visible from the street (as determined by Council).	<u>Comment:</u> Street numbering will be made available on the front entry gate and clearly visible from Caloola Street and will be conditioned to be finalised prior to Final Occupation Certificate being issued.
G2.5 On-Site Effluent Disposal	Where an on-site effluent disposal system is proposed to manage sewage, the on-site systems must be suitably sized and able to operate on the lot (taking into account the proposed use and its likely liquid waste / effluent production) without impacting on development on the subject lot, neighbouring lots or surface or ground water systems, and don't require excessive vegetation removal.	<u>Comment:</u> A geotechnical report has been prepared by a suitably qualified company suited to the proposed use of the site.

Request for Variation

The Applicant has provided the following justification in support of a request to vary C4.1 Building Setbacks of the Blayney Development Control Plan 2018.

The reason for the proposed dwelling to have a lessened setback of 30m in lieu of the DCP's preferred 50m (C4.1 Large Lot & Rural Dwellings) to the west is due to the proximity of the adjacent watercourse that runs southwest across the site (see site plan.) This watercourse follows the natural slope of the land eventually running into a small creek at the lowest point of the site. The proposed 30m setback allows for the existing watercourse to be undisturbed, & also minimises or eliminates any possible drainage or structural issues to the proposed dwelling. Considering a larger setback will almost certainly impact the watercourse & dwelling. The proposed dwelling

will have a significant 90m setback from the primary road frontage (a minimum 20m/C4.1 Large Lot & Rural Dwellings) & there is also a row of trees on the western boundary (consisting of gum & pine) that runs approx. 60m that screens the adjacent residences, so visual impact to adjoining residences should be minimal.

Council staff support the variation to C4.1 Building Setbacks of the Blayney Development Control Plan 2018. The objectives of the control:

To maximise residential amenity on larger lots with appropriate setbacks from road noise and/or dust and visual and acoustic privacy between adjacent dwellings.

It is considered that the proposed development, despite a variation to C4.1 meets the objectives of the Development Control Plan for development of dwellings on rural zoned land. The proposed setbacks are generous when viewed in context of the site, locality and siting of dwellings on adjoining land. The proposed variation to the sites western boundary addresses topographical features of the site in the location of a watercourse which by meeting the setback compliance would make dwelling construction unachievable and/or impractical.

Part G: Environmental Management and Hazard

Part G3 Stormwater and Drainage	
Objective/Performance Criteria	Assessment Comments
G3.2 Objectives	The proposal can meet the objectives
G3.3 Stormwater Management	Stormwater management can be achieved on site.

Part G6 Land Contamination	
Objective/Performance Criteria	Assessment Comments
G6.2 Objectives	There is no evidence of any previous uses of the land that may have caused any contamination. The site is vacant and has a historical use of grazing. The proposed use is residential. Having regard to all available information it is safe to conclude that there is no evidence of previous contaminating land uses that would require further investigation.

Part G9 Land and Soils	
Objective/Performance Criteria	Assessment Comments
G9.2 Objectives	The proposal can meet the objectives.
G9.3 Naturally Occurring Asbestos	The site is partially mapped to contain naturally occurring asbestos having a “high” asbestos potential. Conditions have been included to assist the landowners and buildings when undertaking construction in the vicinity of this site to comply with government regulations regarding NOA.
G9.4 Erosion and Sedimentation	Appropriate conditions regarding erosion and sediment control are recommended.
G9.5 Other Geological or Soil Related Issues	Not applicable.

Part H: Heritage

Objective/Performance Criteria	Assessment Comments
H5.1 Scale and Form	The proposal has been considered in heritage context with the character, bulk, scale and siting acceptable for the site.
H5.2 Siting	<p>The proposal has been considered in heritage context with the character, bulk, scale and siting acceptable for the site.</p> <p>A variation request has been submitted with the proposal as the proposal does not meet the setback requirements for rural land.</p> <p>The reduced setback is accepted due to the proximity of the general housing stock forming part of the village and the former Convent located opposite, on the basis that a set of suitable external materials and colours is agreed and that a landscape plan includes sufficient planting of trees and shrubs to allow for reasonable screening and levels of privacy for the properties in the vicinity. Conditions will apply.</p>
H5.3 Materials and Colours	The Heritage Advisors assessment provides recommendations for both materials and colours. A condition of consent will be included to address colours and materials to be finalised and approved prior to the release of the Construction Certificate.

H5.4 Doors and windows	Aluminium doors and windows are considered acceptable subject to appropriate colour for powder coating. Setback distance from the road frontage and side boundaries are reasonable and the surrounding locality has a range of housing styles materials and architectural features.
H5.5 Outbuildings	No outbuildings are proposed as a part of the submitted application.
H5.6 Fencing	No changes to fencing are included as a part of this application. Any changes to fencing will be subject to a separate DA.

Section 4.15(1)(a)(iv) The Regulations

Part 4 – Determination of Development Applications - Division 1 of the Environmental Planning and Assessment Regulation 2021 specifies additional matters that must be taken into consideration by a consent authority in determining a development application. Consideration of these matters is included below:

In the case of a development application for the demolition of a building, the provisions of AS 2601

Not applicable to this application.

In the case of a development application for the carrying out of development on land that is subject to a subdivision order made under Schedule 7 to the Act, the provisions of that order and of any development plan prepared for the land by a relevant authority under that Schedule (

Not applicable to this application.

Fire safety and other considerations (Clause 93)

Not applicable to this application.

Buildings to be Upgraded (Clause 94)

Not applicable to this application.

BASIX Commitments

A BASIX Certificate accompanies the application.

Section 4.15(1)(b) The likely impacts of the development, including environmental impacts both the natural and built environments, and social and economic impacts in the locality

- **Context and Setting** - The immediate surrounding land use is a mix of residential land use and rural land use with associated dwellings. The site is situated on the edge of the village zone (of Newbridge). No unacceptable land uses are proposed. The development is compatible with the scale, amenity and character of the surrounding area.

- **Land Use Conflict** - The proposed development will not create land use conflict within the surrounding area as it is an residential use and considered to be consistent with the character of the area.
- **Access and Traffic** – A new access point will be required to be constructed of Caloola Street. Whilst there will be a slight increase in traffic generation, the existing road network is able to accommodate the minor changes.

The proposal has been referred to Infrastructure Services and is deemed acceptable subject to conditions.

No adverse impacts are assessed.

- **Public Domain** - The proposed development will have minimal impact on the public domain within the surrounding area, as it is considered to be consistent with the character of the village area.
- **Utilities** – As the land is identified as having a rural zone, new development will need to be supported by on site provisions of water and effluent disposal. Electricity is in the vicinity of the site and will therefore need to be connected prior to occupation certificate being issued.
- **Heritage** - The proposed development is located within a heritage conservation area and in proximity to a local heritage item. The application was referred to Council's Heritage Advisor with the proposal considered acceptable in a heritage context with the character, bulk, scale and siting for the site. Additional conditions have been included to address some minor issues relating to materials, colours and landscaping.
- **Other land resources** - The proposed development will not have a detrimental effect on productive agricultural land, mineral and extractive resources or water supply catchments. No adverse impacts are assessed.
- **Bushfire** - The subject land is not identified on the Bushfire Prone Land. No adverse impacts are assessed.
- **Surface Water and Groundwater** - The site will involve some earthworks and stormwater will be able to drain to the street via natural overland flow. No adverse impacts are assessed.
- **Soils** - The development will require minor earthworks. No adverse impacts are assessed.
- **Air & Microclimate** - No adverse impacts are assessed.
- **Noise and Vibration** – A condition has been imposed regarding construction hours have been limited to the hours of construction. No adverse impacts assessed.

- **Flora and Fauna** –There are no adverse impacts assessed on the condition, ecological value and significance of the fauna and flora on the land.
- **Waste** - Any waste generated during the construction of the proposed development will be removed off site to an approved waste depot/service.
- **Natural Hazards** - The subject land is not Flood Prone or identified on the Bushfire Prone Land. No adverse impacts assessed.
- **Technological Hazards** - There are no known previous land uses that would indicate the subject land is affected by land contamination. No adverse impacts assessed.
- **Safety Security and Crime Prevention** - The proposal does not pose a safety security or crime prevention risk. No adverse impacts assessed.
- **Social Impact in the Locality** - Due to the type and scale of the proposed development, the social impacts of the development are not significant. No adverse impacts are assessed.
- **Economic Impact in the Locality** - Due to the type and scale of the proposed development, the economic impacts of the development are not significant. The proposal does however continue to support the local economy and provide local housing with the Blayney LGA. No adverse impacts are assessed.
- **Site Design and Internal Design** -. The proposal is consistent with the Blayney Local Environmental Plan 2012 and Blayney Development Control Plan 2018 as discussed above. There is a variation to the side boundary setbacks which is required based on the lot size, shape and onsite constraints. Side boundary setbacks for rural land require a 50m setback. The proposal seeks a 30m setback from the western boundary due to the location of a watercourse. A request to vary the DCP provision has been provided by the Applicant and is supported. The development on the site will not detrimentally affect adjoining land and has been designed with regard to the existing site conditions.
- **Cumulative Impacts** - The proposal is consistent with the Blayney Local Environmental Plan 2012 and Council's Development Control Plan 2018. It is assessed that the cumulative impacts of the proposed development are not such that the application should be refused.

Blayney Local Infrastructure Contributions Plan 2022

In accordance with Section 5.1 of the Blayney Local Infrastructure Contributions Plan 2022, the plan applies to any development application lodged on or after the date this plan commenced.

The Blayney Local Infrastructure Contributions Plan 2022 identifies that Section 7.12 levies apply to development that is not Type A (residential) or Type B (Heavy Haulage) development and which also has a proposed cost of development in excess of \$100,000. The monetary contribution rates for new development types are shown in Table 6 below:

Table 6 – Contribution Rates

Contribution Type / Development Type	Levy Rate
Section 7.11 Contributions	
Residential accommodation on development resulting in additional dwellings or lots	\$9,296 per dwelling or lot.
Heavy Haulage Development	\$0.52 per ESA per km of regional sealed road \$0.66 per ESA per km of local sealed road \$0.52 per ESA per km of local gravel road
Section 7.12 Levies	
Where the proposed cost of carrying out the development:	
Is more than \$100,000, and up to and including \$200,000.	0.5% of that cost.
Is more than \$200,000	1% of that cost.

Having regard to Table 6, the proposed development is liable for the payment of a Section 7.11 levy calculated at the relevant levy for new residential accommodation on development being \$9296 per dwelling or lot (currently). This payment amount is indexed. An appropriate condition of consent has been included in the recommendation to this report requiring payment of this levy prior to the issue of a Final Occupation Certificate.

Section 4.15(1)(c) The suitability of the site for the development

The site is deemed suitable for the proposed development as it meets the requires of both the Blayney LEP 2012 and the Blayney DCP 2018. The development is able to provide suitable access, essential services and amenity to the site with adverse impact to neighbouring land or the locality.

Section 4.15(1)(d) Any submissions made in accordance with this Act or the regulations

In accordance with the Blaney Shire Council Community Participation Plan 2020, the proposed development was neighbour notified to adjoining landowners as the application required a variation to the DCP controls for side boundary setbacks on rural land. No submissions and / or objections were received.

Section 4.15(1)(e) The public interest

The proposed development is considered to be of minor interest to the wider public due to the localised nature of potential impacts. The proposed development is not inconsistent with any relevant policy statements, planning

studies, guidelines etc. that have not been directly considered in this assessment.

CONCLUSION

Consent be granted subject to the attached draft conditions of consent and consideration of the variation to the control C4.1 Building setbacks of the Blayney Development Control plan 2018.

Risk/Policy/Legislation Considerations:

The proposed development is permissible with development consent of Council. The proposed development complies with the relevant aims, objectives and provisions of BLEP. A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. Attached is a draft conditions of consent outlining conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

Budget Implications:

Nil

Enclosures (following report)

Nil

Attachments (separate document)

- | | | |
|---|-----------------------|---------|
| 1 | Conditions of Consent | 8 Pages |
| 2 | Plans | 3 Pages |