



Report of Development Application

Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979

APPLICATION DETAILS

Application No.:	DA19/0412
Modification No.:	N/A
Council File No.:	D/2019/0412
Date of Lodgement:	12/08/2019
Applicant:	TJ Hinchcliffe & Associates Pty Ltd Po Box 5497 WAGGA WAGGA NSW 2650
Proposal:	Two Lot Subdivision
Description of Modification:	N/A
Development Cost:	\$5000
Assessment Officer:	Amanda Gray
Determination Body:	Delegation
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	1-17 October 2019
Advertising:	Not required
Owner's Consent Provided:	yes
Location:	Existing property on the eastern side of Hampden Avenue approximately 200 metres to the south of the junction with Old Bomen Road.

SITE DETAILS

Subject Land:	411 Hampden Ave CARTWRIGHTS HILL NSW 2650 Lot 2 DP 734976
Owner:	EM Furner & JC Furner

DESCRIPTION OF DEVELOPMENT

The proposed development is for residential subdivision to include 2 new residential lots each extending to an area of 1ha. The existing dwelling will be retained on the lot to the front of the site and the second lot will be established to the rear. A new 10 metres wide access driveway will be created along the northern boundary of the subject site to access the rear block.

Each lot will have a separate driveway from Hampden Avenue.

SITE AND LOCALITY

The site is identified as Lot 2 DP734976 and is known as 411 Hampden Avenue. The site extends to an area of approximately 2 hectares and is located on the eastern side of Hampden Avenue approximately 200 metres to the south of the junction with Old Bomen Road.

The site is bound on all sides by similar sized rural residential blocks. Land to the south has been subdivided into two 1ha parcels under DA15/0426. Land to the rear (east) is currently the subject of an application for residential subdivision into 11 lots (DA18/0510).

There is an existing dwelling located to the front (west) of the site with outbuildings to the rear. There is vegetation in the form of tree screening around the existing dwelling and to the northern boundary of the site.

To the north east of the site approximately 1.1kms away is the Bomen Industrial Sewage Treatment Facility (BISTF), due to the local topography the BISTF is not visible from the application site. To the east and north-east of the subject site is the Bomen Industrial Area. Again the topography screens the subject site and proposed lots from the industrial area, the closest industrial operator is Rodney's Transport on Bomen Road which is approximately 1.1 km away 'as the crow flies'.

The subject site falls within the Special Activation Precinct (SAP) investigation area. A SAP is a dedicated area within regional NSW identified as a place where businesses will thrive. Within this area measures are to be introduced to streamline planning frameworks that will allow for development that creates jobs, attracts investors and fuels economic development. The draft master plan for this area is anticipated to be placed on public exhibition in early 2020

Easements and Covenants

The deposited plan identifies a 2 metre wide easement to the north of the site for 'pipeline'.

Previous Development Consents

Nil

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

For the purpose of determining this development application, the following matters that are of relevance to the development have been taken into consideration pursuant to the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act, 1979.

(a)(i) - The provisions of any environmental planning instrument (EPI) Wagga Wagga Local Environmental Plan 2010

Under the provisions of the Wagga Wagga Local Environmental Plan 2010 (WWLEP) the land is zoned as R5 Large Lot Residential.

The R5 Large Lot Residential zoning of this land was gazetted in 2015 after many reports to the Planning Panel regarding the re-zoning of land within the Cartwrights Hill precinct which was a deferred matter after the adoption of the WWLEP in 2010.

The WWLEP 2010 (Amendment No.13) commenced on 17 February 2015 which resulted in the subject site being zoned as R5 Large Lot Residential subject to a minimum lot size of 1ha. At the same time buffer zones were established to both BISTF and the Bomen industrial area by the re-zoning of land as RU6 Transition Zone.

The objectives of the R5 residential zone are as follows:-

- (i) To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- (ii) To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- (iii) To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- (iv) To minimise conflict between land uses within this zone and land uses within adjoining zones.
- (v) To ensure that the clearing of native vegetation is avoided or minimised as far as is practicable.

The proposed subdivision will allow for the provision of additional housing in a rural setting consistent with the first listed objective.

Notwithstanding the above re-zoning that has occurred it is important that the fourth listed zone objective (*To minimise conflict between land uses within this zone and land uses within adjoining zones*) is considered. Whilst not adjoining, the industrial zone to the east and north-east of the subject site has been declared as a Special Activation Precinct. This precinct will include a freight and logistics port seeking investment, expansion and development of industries within the 1800 ha of land that is zoned as the Bomen Industrial Area. The introduction of additional receptors within close proximity to the industrial area has the potential to result in land use conflicts from industries that may generate noise and/or odour. This is discussed in more detail throughout the report.

There is no native vegetation being removed as part of the subdivision application.

Part 2 Permitted or prohibited development Land Use

Residential Development is permitted with consent in the R5 zone.

Part 3 Exempt & Complying Development

The proposed development is not Exempt or Complying Development. The application is seeking consent.

Part 4 Principal development standards

4.1 Minimum subdivision lot size

- (1) The objectives of this clause are as follows:
- (a) to protect the productive capacity of agricultural land,
 - (b) to maintain viable farm sizes to promote continuing agricultural production,
 - (c) to ensure that rural residential development does not prejudice future urban development,
 - (d) to ensure that subdivision does not unreasonably impact on the natural and environmental values of the area, and will not lead to fragmentation of natural areas.

This clause applies to subdivision of any land shown on the Lot Size Map that requires development consent, the size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land. The minimum lot size identified for the subject site is 1ha. Each of the proposed lots complies with this clause.

The minimum lot size was introduced to this land in 2015 via Amendment No.13 to the WWLEP2010 when the land was re-zoned. The strategic planning approach reflected in the back-zoning of the land from residential to rural residential is consistent with the Industrial Noise Policy preference for land-use controls as a strategy to separate noise-producing industries from sensitive areas, and the minimisation of the number of people potentially exposed to odour and noise impacts.

One of the objectives of this clause is to ensure that rural residential development does not prejudice future urban development. The introduction of additional residential receptors within close proximity to an established industrial area and special activation precinct does raise concerns about the confidence of industries to invest in the area for fear of impacting upon dwellings. An increase in residential receptors may result in onerous requirements upon industry operations at Bomen in the form of site specific planning controls, this will likely undermine the long term viability of the area as an attractive location for enterprise and the creation of local employment opportunities.

Furthermore within the declared Special Activation Precinct it is intended to allow as much development as possible as exempt or complying (in accordance with an approved master plan). Such approvals will be reliant upon certainty that no adverse impacts will occur to residential properties and limiting the number of receptors that can be impacted is an effective way of securing this outcome.

Therefore whilst the minimum lot size is satisfied there are overriding concerns about the impacts of the development on the future development across Bomen which is not consistent with objective (c) listed under this clause.

Part 5 Miscellaneous provisions

5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones

The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential or environment protection zones. When determining applications for the subdivision of land for the purposes of a dwelling, the consent authority must take into account the following matters:-

- (a) the existing uses and approved uses of land in the vicinity of the development,*
- (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).*

As noted throughout the report the development of the Bomen industrial area and the associated Special Activation Precinct is a regional priority and a focus of many strategic documents adopted by Council. Whilst there are approved residential lots within the vicinity of the subject site any additional residential lots within the proximity of Bomen are considered to be incompatible. The development is therefore not consistent with this clause.

Part 6 Urban Release Areas

The proposal is not within an Urban Release Area.

Part 7 Additional Local Provisions

7.8 Cartwrights Hill Precinct-odour and noise assessment

The objective of this clause *is to ensure that any odour and noise impacts from the Bomen industrial area and the Bomen sewage treatment facility are considered in determining the suitability of development within the Cartwrights Hill Precinct.*

The clause states that development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the potential impacts of odour and noise from the Bomen industrial area and the Bomen sewage treatment facility on the development.

A recent odour study has been prepared to examine the potential air impacts from Bomen across the surrounding locality and also specifically on an adjoining development site (42 Old Bomen Road). To assess the likelihood of potential existing and future impacts on the site, air dispersion modelling using the CALPUFF model was used. The model was designed to represent the potential emission sources from within the Bomen industrial area at full capacity when occupied in future, which includes consideration of existing activities such as

the Bomen Industrial Sewage Treatment Facility (BISTF). The modelled emissions do not differentiate between scheduled or non-scheduled activities, but assume that all premises would have in place reasonable odour controls, suitable for operating within an industrial precinct and near a low density or unpopulated area.

The determination of whether an odour is offensive depends on the receiving environment. In the subject scenario odour that may be inoffensive or acceptable within the industrial precinct can become offensive simply due to the receiving area becoming more populated and the context of the receiving environment changing, as would be the case with the proposed residential subdivision.

The modelling predictions identify the subject site as a high risk location where odour and air quality impacts are likely to arise frequently due to emissions from the Bomen Industrial Estate when fully developed. In accordance with the objective of this clause the impact of odour has been considered and is assessed as a high risk zone and therefore not suitable for increased residential development.

The importance of existing industries to the local economy and the future expansion of the industrial estate in accordance with industrial land zoning is highlighted in many different strategic plans and policies. The planned expansion of Bomen has the potential to introduce additional noise generating industries seeking 24 hour operations and freight movements. The introduction of new additional residential receptors will impact on the requirements of industry to comply with both the 'Noise Policy for Industry' intrusive noise levels and where applicable to also comply with the POEO Act to minimise complaints in the context of the EPA's risk-based regulatory approach. The risk of increased noise pollution to the proposed residential receptors is significant given the level of expansion that is planned throughout the Bomen Industrial Estate.

Land to the north of the application site was the subject of an appeal to the Land and Environment Court in *Wilks & anor v Wagga Wagga City Council [2015] NSWLEC 1432*. One of the commissioner's conclusions was "I am satisfied that there are no existing noise or odour impacts on the Land from the BISTF; that there could be no impact of noise or odour on residential development of the Land from the BISTF that would be lawful; and that if the BISTF is to operate at 100% capacity, or to expand, work would be required to ameliorate noise. The evidence is that there are no current plans to expand the BISTF." Since this finding there have been no changes at the plant that would make this conclusion inaccurate, therefore the findings remain applicable to the subject application.

In accordance with clause 7.8 the potential impacts of odour and noise have been considered. Whilst there is no evidence to suggest that the subdivision of land will be adversely affected by the Bomen sewage treatment facility, recent studies commissioned by Council have identified that the subject site will be adversely affected by odour from the Bomen industrial area.

7.9 Primacy of Zone B3 Commercial Core

This clause states that development consent must not be granted to development on any land unless the consent authority is satisfied that the development maintains the primacy of Zone B3 Commercial Core as the principal business, office and retail hub of Wagga Wagga. The proposed residential subdivision is not considered to have any impact upon the primacy of the CBD and therefore this clause is satisfied.

There are no other relevant additional local provisions.

State Environmental Planning Policies

State Environmental Planning Policy No. 55

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on the land. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use.

The site has a history of residential and agricultural land use, agriculture is one of the land uses identified in the SEPP55 guidelines as potentially contaminating. From inspection onsite there is no indication that the site has previously been occupied by any use that could have led to contamination of the site and the land is not identified on Councils register of contaminated sites.

The land has been zoned as residential for many years and has been the subject of other approved applications for residential subdivision as noted earlier in the report. No further investigation reports are required in support of this application.

Section 4.15(1)(a)(ii) The provisions of 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 (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

There are a number of state environmental planning policies currently subject to review, including some which have involved consultation and notification. With the exception of the following, none of these are applicable to this application.

Draft State Environmental Planning Policy - Remediation of Land

The Draft SEPP was placed on exhibition until 31 March 2018. The SEPP will replace SEPP 55. The Explanation of Intended Effects outlines that the key operation framework of SEPP 55 will remain. Changes in the SEPP relate primarily to land undergoing remediation work. Therefore, for a development such as this, little will change between SEPP 55 and the Remediation of Land SEPP.

Whilst there is no draft document yet released, an Explanation of Intended Effect (EIE) has been exhibited regarding the proposed Activation Precincts SEPP. The SEPP is described as a place-based approach to activate strategic locations of State or regional significance that enable economic development and jobs creation. The purpose of the proposed Activation Precincts SEPP is to provide the statutory planning framework for each Special Activation Precinct. The aim of the Activation Precincts SEPP is to support simplified planning processes to streamline development in Special Activation Precincts where it is consistent with an approved Master Plan.

Correspondence received from the Department of Planning notes that the proposal in its current form poses a significant risk to optimising master planning outcomes for the Wagga Wagga Special Activation Precinct.

Section 4.15(1) (a)(iii) - Any development control plan

Wagga Wagga Development Control Plan 2010

Section 1 - General

1.10 Notification of a Development Application

The development was notified to neighbouring properties between 1 and 17 October 2019.

As a result of the notification two submissions were received.

Section 2 - Controls that Apply to All Development

2.1 Vehicle access and movements

The residential lots will be accessed via separate driveways from Hampden Avenue. The existing dwelling will retain the current driveway and a new driveway will be created to the north of the subject site to serve the proposed block to the rear of the site.

2.2 Off-street parking

The size of the proposed lots will allow for sufficient parking to be provided on each proposed lot and for vehicles to enter and exit in a forward direction.

2.3 Landscaping

Each of the lots will allow for sufficient landscaping to be provided on site.

2.4 Signs

No signs are included as part of the application for residential subdivision.

2.5 Safety and security

The final design of each of the lots will include details of fencing and other security details.

2.6 Erosion and Sediment Control Principles

Conditions of consent will ensure that appropriate control measures are put in place during any site works.

2.7 Development adjoining open space

The development does not adjoin any areas of open space.

Section 3 - Heritage Conservation

The subject site is not identified as a heritage item nor is it within a conservation area.

Section 4 - Environmental Hazards and Management

The site is not mapped as being impacted by either flooding or bush fire.

Section 5 - Natural Resource and Landscape Management

The site is not affected by any of the land sensitivity layers on the LEP maps.

Section 6 - Villages

The proposal is for residential subdivision and is not located in a village. Section 6 is not applicable to this development.

Section 7 - Subdivision

The proposal is for residential subdivision, the following controls are applicable to this development.

7.2 Residential and large lot residential subdivision

7.2.1 Topography, views and setting, the lots are generally at the same level and height as the road and neighbouring lots, there are no mature trees being removed to allow for the subdivision and the lots have appropriate access to the road frontage(s).

7.2.2 Design for use and accessibility applies to larger neighbourhood subdivisions with new roads and associated facilities. The controls are not applicable to the two lots that all have proposed road frontage.

7.2.3 Solar access, energy efficiency, size and shape of lots, Control C1, requires the long axis of the block to be orientated east-west. Both lots comply with this control and can therefore be developed with suitable dwelling designs that maximise solar access. The subdivision creates lots that are capable of meeting the development standards set out in Section 9 of the DCP including minimum development area, site cover, landscaped area and private open space. All dwelling applications will also need to comply with BASIX requirements.

7.2.6 Services, Control C1, requires that subdivisions have appropriate arrangements for servicing, the subject site has the ability to be serviced and this will be appropriately conditioned. The existing dwelling has an on-site disposal system the new lot proposes the same.

Section 8 - Rural Development

The proposal is for residential subdivision. Section 8 is not applicable to this development.

Section 9 - Residential Development

The proposal is for residential subdivision. Section 9 is not applicable to this development.

Section 10 - Business Development

The proposal is for residential subdivision. Section 10 is not applicable to this development.

Section 11 - Industrial Development

The proposal is for residential subdivision. Section 11 is not applicable to this development.

Section 12 - Specific Uses and Developments

The proposal is for residential subdivision. There are no specific use or development controls applicable to this development.

Section 13 - Bomen Urban Release Area

The development is not within the Bomen urban release area but is in close proximity to the area that is covered by the controls in this chapter.

The chapter begins by outlining the following vision:- “for the Bomen Industrial Area to be a high-quality and nationally renowned place for transport and logistics based enterprises, well designed and integrated with existing industry that meets the requirements of a targeted range of businesses and supporting activities to complement and nurture a more sustainable City of Wagga Wagga and Riverina Region.”

The zoning of the land within 1.1km of the subject site is IN1 General Industrial which allows for all forms of industry. This would be subject to assessment but the clear intention and vision for the whole area is outlined in this section and reiterates the importance of protecting industrial investment from an increased number of sensitive receptors.

Section 14 - Boorooma Urban Release Area

The proposal site is not within the Boorooma urban release area. Section 14 is not applicable to this development.

Section 15 - Lloyd Urban Release Area

The development is not within the Lloyd urban release area. Section 15 is not applicable to this development.

Section 16 - Gobbagombalin Urban Release Area

The development is not within the Gobbagombalin urban release area. Section 16 is not applicable to this development.

Section 4.15(1)(a)(iiia) - Planning Agreements

There is no draft or current planning agreement applicable to this application under Section

7.4 of the *Environmental Planning and Assessment Act 1979*.

Section 4.15(1)(a)(iv) - any matters prescribed by the regulations

There are no applicable matters prescribed by the regulation.

Section 733 of the Local Government Act 1993

Section 733 of the *Local Government Act 1993* provides that Councils will not incur liability for decisions or omissions concerning flood liable land or land subject to the risk of bushfire. Where required, a risk assessment has been completed and Council will be able to demonstrate that it has acted appropriately in its decision making when defending claims in liability or in circumstances where administrative decisions are challenged.

Flooding Risk Assessment

The development has been considered against the relevant provisions of the WWLEP2010 and DCP. A risk assessment is not required as the development is not mapped as being on flood prone land.

Bush Fire Risk Assessment

The development has been considered against the relevant provisions of the WWLEP2010 and DCP. A risk assessment is not required as the development is not mapped as being on bushfire prone land.

(b) - The likely impacts of the development

Context and setting

The subject site is located within Cartwright's Hill a rural residential area located to the north of the city. The Cartwright's Hill settlement consists of both small and large sized residential lots that are generally located to the south of the subject site. There is a pub with associated hotel located to the north of the site on the corner of Hampden Avenue and a caravan park further to the west on Horseshoe Road.

The subject land is open in nature, there is one existing dwelling and associated outbuildings to the west of the block with the remainder being an open paddock. There are other existing dwellings within proximity to the site along both sides of Hampden Avenue and to the rear on East Street.

Approximately 1.1 km to the north-east of the site is the Bomen Industrial Sewage Treatment Facility (BISTF). This is a Council owned and operated facility which operates under the provisions of an EPA Licence. Beyond BISTF further to the north and east is the Bomen Industrial Estate. Neither the BISTF or the Bomen Industrial Estate are clearly visible from the subject site because of existing topography.

Within the direct setting of the site the proposed subdivision is consistent with the surrounding character however when the wider site context is considered which includes the Bomen Industrial Estate and Special Activation precinct with associated expansion plans the context is not appropriate for residential subdivision that increases the number of

sensitive receptors.

Visual Impact

The site has an open aspect with clear views towards existing residential properties to the east and west. Land to the east rises in gradient to a hill that screens the Bomen Industrial Estate.

Nearby properties will initially be impacted by the presence of construction activity, such development will have a visual impact but the impact is not considered to be significant as the site is utilised for low density rural style living in a comparable character to the surrounding land.

Whilst no residential designs are included as part of this subdivision application it is common for rural residential developments to include significant landscaping to both the individual dwelling and the site boundaries. Landscaping to the boundaries of the subject site will enhance the visual amenity further. Any visual impact whilst apparent is considered to be acceptable.

Site Design and Internal Design

The subdivision layout proposes 1 additional residential lot across the subject site, resulting in two lots of 1ha in size both accessed from Hampden Avenue.

As there is no master plan for Cartwrights Hill, the proposed layout has been informed by the zoning of land as R5 Large Lot Residential. As part of the R5 zoning a minimum lot size of 1ha has been introduced to the locality to minimise the number of residential receptors that can be developed within proximity to the Bomen Industrial Estate.

Future applications for individual dwellings will be subject to further development applications and assessment. In accordance with the LEP the future design of developments will need to take into account and consider *the potential impacts of odour and noise from the Bomen industrial area and the Bomen sewage treatment facility*. Consideration of such matters may be reflected in building solutions, location and orientation of the dwelling on each site and landscaping details.

Access, transport and traffic

The subject site has frontage to Hampden Avenue. The existing driveway will be retained and one additional driveway access will be established to the northern boundary of the block. Given the size of the proposed lots there will be ample space available on each residential lot for vehicles to park clear of the road.

The road network serving the subdivision is well connected to the Olympic Highway and Hampden Avenue providing suitable routes in and out of the city. The increased number of vehicle movements that are anticipated by this development can be accommodated within the local road network without the need for any upgrades to nearby intersections.

Services

As part of the proposed subdivision both lots will be serviced by an on-site sewer system and stormwater will be directed to swale drains. The provision of services from public utility bodies is possible and will be finalised as part of any future subdivision certificate.

Heritage

The site covered by the development application is not within a heritage conservation area and contains no heritage items. There are no known items of aboriginal heritage on the land that is the subject of the current application.

Man Made Hazards

There are no man made hazards that affect the development of this site.

Natural Hazards

The site is not identified as subject to flooding or bush fire.

Construction

The development of the residential lots may result in construction noise and associated disturbance. Construction work is considered to be of a short term impact. Access to the development site is readily available from the road network and hours of work can be appropriately conditioned.

Noise and Vibration

The Noise Policy for Industry is the updated guideline against which new noise generating developments including industries are assessed. The document includes recommended amenity noise levels that are based on a combination of specific developments and all background industrial noise sources across a precinct.

When assessing noise impacts there are two components to be considered which are firstly controlling intrusive noise impacts in the short term from individual premises and secondly maintaining general noise level amenity. When assessing noise amenity all industrial noise sources are to be considered. Specifically for the proposed subdivision all existing and proposed noise sources should be considered when assessing the degree of impact upon the new residential lots.

The impact of noise from an existing industry on a proposed new residential area should be made using the recommended amenity noise level for the residential land use, where impacts exceed the amenity noise level, consideration should be given to how these impacts can be avoided or mitigated, such as modifying the location of the proposed residential development, placing screening land uses in-between the proposed residences and existing industry, or ensuring residences are built in a manner that provides acceptable indoor noise amenity.

It is equally important for land-use planning authorities to ensure that existing and proposed industrial developments are considered when making and/or determining land-use planning instruments and residential development applications.

There are no up to date reports that have assessed the impact of existing and proposed noise impacts from a fully developed Bomen Industrial Area. There are a number of environmental reports that are to be prepared in association with the declared Special Activation Precinct which will include acoustic reports to determine impacts upon the areas surrounding Bomen.

Data used in the 2015 Wilks LEC case focused more on existing noise sources than predicted sources when the precinct was fully developed. The noise experts agreed that some impacts at that time were acceptable but disagreed on others particularly compliance with the noise intrusiveness goals. Without up to date data it is not possible to reliably make any conclusion regarding the impact of noise on the subdivision. However as there were concerns raised in the court case which were based on existing data it can be assumed that additional industries, expansion of existing industries and an expanded 24 hour freight movement hub will all contribute to increased noise and the potential for unacceptable acoustic impacts.

In the court case evidence from 2015 (Wilks & anor v WWCC) it was common ground that the BISTF is required to operate in accordance with its approval, the EIS and the supplementary EIS. In conclusion the Commissioner noted *“that there could be no impact of noisefrom the BISTF that would be lawful; and that if the BISTF is to operate at 100% capacity, or to expand, work would be required to ameliorate noise.”*

There is currently no evidence of expansion plans at BISTF and it can therefore be concluded that based on current operations and current available data there are no detrimental acoustic impacts specifically from this facility.

Odour Impacts

In association with previous planning proposals and expansion of industries there have been a number of studies undertaken to determine the impact of odour from the Bomen Industrial Estate and the BISTF across the area of Cartwright’s Hill.

A recent odour study has been prepared to examine the potential air impacts from Bomen across the surrounding locality and also specifically on an adjoining development site (42 Old Bomen Road). To assess the likelihood of potential existing and future impacts on the site, air dispersion modelling using the CALPUFF model was used. The model was designed to represent the potential emission sources from within the Bomen industrial area at full capacity when occupied in future, which includes consideration of existing activities such as the Bomen Industrial Sewage Treatment Facility (BISTF). The model assumes that all premises would have in place reasonable odour controls, suitable for operating within an industrial precinct and near a low density or unpopulated area.

The modelling predictions identify the subject site as a high risk location where odour and air quality impacts are likely to arise frequently due to emissions from the Bomen Industrial Estate when fully developed. An increased number of sensitive receptors increases the likelihood of complaints being made as more residents are exposed to odour impacts. In turn increased complaints can result in demands being made to industries to amend operational practices and jeopardise investments from industries that by their nature will generate odour emissions.

In the court case evidence from 2015 (Wilks & anor v WWCC) for a residential subdivision to the north of the subject site it was concluded that there were no grounds to refuse the application based on odour pollution. Since that date new modelling has occurred and the results of it indicate that odour is likely to have an unacceptable impact across the subject site when the industrial area is fully developed.

Social and Economic Impacts

The proposal would have a positive social impact as additional residential lots are provided in the suburb of Cartwright's Hill. The subdivision of the site into large residential lots will allow for new development of a similar scale and character to existing developments in the area. The additional residence will result in a minimal increase to the population of Cartwright's Hill but with the potential to contribute to the local community.

All new properties within Cartwright's Hill are subject to a notation on zoning certificates explaining that the area is adjacent to an industrial area and a sewage treatment plant and that they might experience odour and noise from time to time. With this in mind the buyers of the proposed lots are purchasing into an area fully aware of the fact that from time to time there may be increased noise or odour from local industry. Notwithstanding this knowledge this does not prevent future residents from complaining about noise and odour impacts from local industries which subsequently impact upon the social enjoyment and residential amenity to be enjoyed by new residents.

The economic impact of the residential subdivision on the Bomen Industrial Area must also be taken into account in terms of potential positive and negative impacts. The proposed subdivision will also have a positive economic impact as investment in the land occurs and with the construction required to complete the new dwellings. The subdivision will however introduce additional residential receptors to Cartwright's Hill which is within proximity to an industrial area that is predicted to expand and within proximity to existing businesses that have committed to additional investment and expansion.

As key employers for the City of Wagga Wagga the impact of residential development on the continued operation of the industries must be carefully considered. Ongoing complaints may result in uneconomical demands being placed upon industries to provide increased costly mitigation measures or not be able to operate at their intended capacity. There is concern that the economic impact upon industries from new residential receptors within Cartwrights Hill is an impact of concern.

Cumulative Impacts

The cumulative impact of allowing additional residential lots on the subject site and other lots within the Cartwrights Hill precinct is an increase in the number of sensitive receptors within close proximity to the Bomen industrial area.

There is significant land zoned for general and light industrial purposes across the Bomen Industrial Estate which is acknowledged as the key employment and investment growth area in Wagga Wagga. This area also includes the proposed RIFL hub and associated developments. Whilst new industries investing in Bomen will be required to comply with separate legislation regarding pollution and licencing requirements (if applicable) it remains the desired location for all new industry to invest and as noted below remains a key objective of many adopted strategic documents.

The details of how the Special Activation Precinct will be developed and managed are not yet finalised however it is clear that the intention is to fast track investment into the area by speeding up planning processes for the benefit of industries and new businesses. Any new receptors within proximity of the precinct are at risk of increasing noise and odour impacts creating undesirable amenity levels.

Each new receptor increases the risk of complaint which is a cumulative impact upon the success of the Bomen industrial precinct that cannot be supported.

The proposed subdivision does not propose any connection to infrastructure rather relying upon on-site sewage systems and run-off of stormwater that whilst consistent with the area is an added impact upon local amenity to be considered.

The Principles of Ecologically Sustainable Development

The following are principles of ecological sustainability:

1 The precautionary principle

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (b) an assessment of the risk-weighted consequences of various options.*

The principle requires decision-making to give the environment the benefit of the doubt.

2 Intergenerational equity

The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (that is, a partnership among all of the generations that may use or expect to benefit from the nation's resources).

3 Conservation of biological diversity and ecological integrity

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

4 Improved valuation, pricing and incentive mechanisms

Environmental factors should be included in the valuation of assets and services:

- (a) polluter pays (that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement), and*
- (b) the users of goods and services should pay prices based on the full cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and*
- (c) environmental goals having been established should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms which enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

The subdivision of the land into lots that present an average size of 1 residential hectare does not result in any irreversible environmental damage. The proposal is consistent with the precautionary principle to the extent that all potential threats to the environment have been identified and assessed. Accordingly the principles of ESD are considered to have been followed.

(c) - The suitability of the site for the development

Based on the above assessment of the key impacts of development it is considered that the subject site is not suitable for residential subdivision into 1ha lots. Although the land is zoned for residential purposes with a defined minimum lot size this factor is outweighed by the potential impacts on the development from the Bomen Industrial Area, namely noise and odour. Furthermore the risk to investment into one of the region's most significant industrial precincts from increased sensitive receptors is of significant concern.

The site is also not suitable for increased residential development due to varying levels of public interest. There are a number of strategic planning documents that have been adopted by Council that have all been the subject of extensive public consultation. The adoption of plans and documents that include actions and objectives regarding the ongoing expansion of Bomen, investment into businesses and a growth in rail and freight movement are representative of many local bodies and opinions that should not be jeopardised by the proposed subdivision.

(d) - any submissions made in accordance with this Act or the Regulations

Referrals

Standard internal referrals within Council have resulted in a number of suggested conditions if the application is approved. These are general subdivision requirements from both engineering and environmental health.

City Strategy

A detailed internal referral response was received from City Strategy, the key areas of objection raised in submission are detailed below:-

1. Inconsistency with the long term vision and investment in Bomen Industrial Area

The Bomen Industrial Area is a prerequisite for Wagga Wagga's and Regional NSW future economic success and sustainability. Bomen Industrial Area is planned to provide land for economic development and employment growth. Significant investment into infrastructure in the form of new roads have been completed (\$35m) and further works are currently underway to support the expansion of the Bomen Industrial Area.

Council has entered into a Public Private Partnership with Visy Logistics to develop and operate the Riverina Intermodal Freight and Logistics Hub with a \$14.5m funding committed for development of the rail master siding, Visy contributing 70,000 tonnes of freight per annum as the underpinning volume for the success of the terminal. To the west of the terminal is a 60ha proposed industrial precinct, which is paramount to the terminal's success and activating the next stage of growth in Bomen. Council currently has a \$30m application to support this development.

Additional receptors in Cartwrights Hill may impact on the success of this investment and deter future investment opportunities. Additional receptors in this locality will also have a damaging regional

significant impact. Industries need adequate supplies of desirable industrial land protected from encroachment by incompatible uses.

These areas should be carefully protected so they can continue to provide employment and opportunity for city residents long into the future. It for this reason a planning proposal is currently being prepared to prevent additional sensitive receptors around Bomen and in particular the Cartwrights Hill location.

Comment: The strategic importance of the Bomen industrial precinct is noted throughout the assessment report. Many reports and policies adopted by Council prioritise the expansion of Bomen for the benefit of the local and regional economy and this is a critical factor in determining the subject application.

Whilst reference is made in this submission to a new planning proposal this has not yet been presented to Council or the Department of Planning for gateway approval and therefore cannot be relied upon in this assessment.

2. *Inconsistency with strategic intent*

Several planning strategies for the future of Wagga Wagga emphasise the importance of Bomen Industrial Area and the requirement to protect this area such as:-

- NSW Department of Planning and Environment Riverina Murray Regional Plan 2036*
- Wagga Wagga Spatial Plan 2013/2043*
- Draft Activation Strategy*
- Wagga Wagga Integrated Transport Strategy and Implementation Plan*

Comment: A review of the above strategies is included in the public interest section of the report. The importance of Bomen within a regional context is noted throughout the report.

3. *Bomen becoming a Special Activation Precinct*

Department of Planning and Environment and Department of Premier and Cabinet are currently in the process to designating Bomen as a Special Activation Precinct. Bomen would become one of two precincts in NSW identified for their strategic merit that will have streamlined planning processes, supported by further government investment and concierge services for developers.

Encroachment upon Bomen Enterprise Area by sensitive receptors may result in onerous requirements upon industry operations at Bomen in the form of site-specific planning controls that will undermine the long-term viability of the area as an attractive location for enterprise and the creation of local employment opportunities. Teys highlighted the contribution it makes to the local economy and expressed concern that this should not be jeopardised by additional residential subdivision.

Comment: The Bomen Special Activation Precinct was confirmed in January 2019 as a 'dedicated area in a regional location identified by the NSW Government to become a thriving business hub.' Specifically to Bomen the area will 'focus on advanced manufacturing, agribusiness, and freight and logistics.' It is noted that any risk to the success of this project, such as increased sensitive receptors within close proximity is unlikely to be supported.

4. *Inconsistent with Planning Principle Stockland Development Pty Ltd v Manly Council (2004) NSWLEC 472*

The matters of consideration whilst assessing the Stockland Planning Principle to this application

are in relation to the Wagga Wagga Integrated Transport Strategy 2040. The integrated transport plan sets the blue print for transport planning across the LGA for the next 25 years. It was developed over a two year period.

A strong principle developed from the Integrated Transport Strategy was the importance of Bomen Enterprise Area as activity hub for transport and industrial activity. Actions from this strategy are to preserve buffers around Bomen to avoid land use conflict.

Since the previous approval under DA16/0007 (1-101 Old Bomen Road) to the north of the site the following reports have been subject to research and public consultation;

- Riverina Murray Plan 2036 Regional Plan adopted by Minister of Planning.
- Wagga Wagga Integrated Transport Strategy 2040 Adopted
- Draft Activation Strategy 2040 put on public exhibition.

All of these documents encourage the further protection of industrial/employment land in Bomen. These documents would be considered in a judicial process and there is enough precedence for refusal of this application in the NSW LEC.

Comment: The importance of considering other plans and policies that have been adopted by Council is discussed under the public interest section of this report.

5. Noise and Odour

Todoroski Air Sciences has been engaged by Wagga Wagga City Council to undertake a peer review of previous noise and odour assessments for Bomen and Cartwrights Hill. Additional independent assessment advice will also be provided to assist with evaluating the suitability of residential development alongside the existing Bomen Industrial Estate and the possible future industrial development of other areas in the industrial zone.

A preliminary review of previous air quality impact assessments found that it has potential to underestimate the likely separation distance needed to allow the industrial areas to develop without unduly impacting on the proposed new residential areas. Initial modelling indicates that sources of noise and odour would impact land within Cartwright's Hill, therefore allowing additional receptors would not be appropriate.

Comment: The Todoroski report in response to the subdivision application has been discussed earlier in the report and the highlighted impacts are noted as a matter of concern.

6. Public Interest

There have been submissions received objecting to the proposed application. These organisations represent a large portion of the regions work force and regions domestic product.

It is within the public interest to support these industries and allow them to expand and grow to their potential. The Premier has identified Wagga Wagga to reach 100,000 people. It is fundamental that large industries exist to support the population and provide services for the broader region. Further, these industries can only exist in Bomen within the locality and it is important to prevent conflict to ensure the protection of these industries.

Visy Logistics Pty Ltd are part of Visy Group whom are one of the largest private companies in Australia. The commitment they have for Bomen, could transform the city and regional NSW. An open port with direct access to an industrial subdivision is unique to Regional NSW, therefore it would be inappropriate and not within the public interest to jeopardise this through allowing further development in Cartwrights Hill.

Comment: Objections from neighbouring industries and public interest matters are both discussed below.

Notification

The application was notified to neighbouring properties between 1 and 17 October 2019 in accordance with the requirements of the WWDCP.

As a result of the notification two submissions were received.

Advertising

In accordance with the provisions of the DCP the development was not required to be advertised.

Public Submissions and those from public authorities

The grounds of objection received in submissions can be summarised as follow:-

- 1. The proposed development undermines the Strategic importance of Bomen as an industrial area of State and Local significance, placing regional employment, growth and economic participation at risk. There are many examples of ongoing investment into this area from companies such as Teys, RMT and the RIFL project all of which could be jeopardised by the proposed development.*

Comment: Continued investment into Bomen is supported by the recent announcement of the Special Activation Precinct which will allow for faster and easier planning decisions and investment in infrastructure. Technical studies are currently being completed to enable the future developments to proceed. As a major NSW Government investment the importance of this precinct is considered a Council priority and any developments that present a risk to the success of the project are unlikely to be supported.

- 2. The proposal conflicts with objectives of the Riverina Murray Regional Plan 2036, to promote business activities in Industrial and Commercial Areas.*

Comment: See comments above under point 1.

- 3. There are already recommendations not to introduce new receptors into an area that has existing levels of noise and odour that are unacceptable to the Community.*

Comment: Whilst there are no legislative controls in place at this time to prevent additional receptors the legislation does require that the impacts of development are considered and as noted in this report the impacts present a number of concerns.

- 4. Any proposed increase to residential intensity nearby to Bomen conflicts with the objectives of the State Government Funded establishment of Bomen as a Special Activation Precinct.*

Comment: See comments above under point 1.

- 5. Clause 7.8 of the LEP is written to restrict incompatible land uses near Bomen where industry is a priority.*

Comment: An assessment of the application against the provisions of CI7.8 is included earlier in the report.

6. *The Wagga Wagga Spatial Plan identifies land as far north as Charles Sturt University as being in the vicinity of odour and noise from Bomen and in close proximity to major, strategic transport corridors. The residential subdivision proposed will result in increased conflicts which will multiply over time to the detriment of the industrial estate.*

Comment: The issue of land use conflicts has been addressed throughout the report.

7. *The proposal is not in the public interest as it would place additional pressure on existing businesses within the precinct and places planned future investment at risk. Incompatibility such as that proposed cannot be allowed to proceed, as it will result in undesirable outcomes for both the applicant and industry operators.*

Comment: The public interest arguments associated with this development are examined in greater detail below.

8. *One further submission received did not specifically object to the development but noted that the development shall have no impact upon existing easements, accessways, fence lines, tree removal and dust generation.*

Comment: Any development that occurred on site would be subject to standard conditions of construction with regard to impacts on neighbouring properties.

Department of Planning Industry and Environment

Correspondence received with reference to the residential subdivision proposed on land directly to the east of the subject site is equally applicable to the subject application.

The Department believes that the proposal in its current form poses a significant risk to optimising master planning outcomes for the Wagga Wagga Special Activation Precinct and may negatively impact the ability to attract investors and deliver the full potential of the precinct over the 40-year investment cycle.

In the context of the NSW Government's 20 year vision and the long term strategic regional plan for Wagga Wagga, the Department requests that the Council take into consideration the inconsistency between the aspirations of the Wagga Wagga Special Activation Precinct and the proposal for the residential subdivision.

Environmental Protection Authority

New residents normally have an expectation of a relatively odour and noise free environment. Land use conflicts occur when the impacts of off-site air emissions or noise emissions unacceptably affect the health, quality of life or values of other land user types. These conflicts rarely arise in circumstances where appropriate land-use planning, and economically achievable best available technology implemented by industry combine to achieve compatibility between proposed land uses.

When considering applications for residential sub-divisions at Cartwrights Hill Council needs to consider not only the potential for adverse impacts from the Bomen Industrial Area on the proposed sub-division, but also the possible impacts any new sub-division will have on the industries within the Bomen Industrial Area and their ability to expand.

Odour and noise impacts in residential and other sensitive areas may result from inappropriate land use decisions that may have allowed residential areas to grow around an existing odorous or noisy activity. Once land is developed in this way, the range of control measures available to industry may be limited.

Comment: The above comments are noted. As highlighted throughout the assessment report the impact of the additional receptors is of significant concern. These impacts are two way with the receptors placing additional requirements upon industries and the impact of noise and odour from the industries on the sensitive receptors.

(e) - the public interest

The public interest is best served by the consistent application of the requirements of the relevant planning controls and by Council ensuring that any adverse effects on the surrounding area and the environment are avoided.

The proposed subdivision of land for residential purposes within Cartwrights Hill has been the subject of many detailed reports and planning proposals. Over time there has been significant consultation with the local population and adjacent industries and numerous public meetings have been held to ensure that the general community interests have been heard and understood. The current land use zoning and minimum lot size provision within the LEP would not be considered an ideal situation for either landowners or neighbouring industries as the landowners originally sought much greater densities for residential development and the industries wanted less.

Since the current LEP provisions were adopted in 2015 a number of other Council plans and policies have been prepared and adopted. Whilst these documents are not considered as legislation they are of relevance and significance in the determination of the subject application. The key documents are the Riverina Murray Regional Plan 2036, the Wagga Wagga Integrated Transport Strategy and Implementation Plan 2040 and the Community Strategic Plan 2040.

Community Strategic Plan

The Community Strategic Plan (CSP) states that 'We are a city with a number of opportunities.' One of the key objectives is that 'We are a Regional Capital' and a leading freight and logistics centre where business investment is encouraged. The CSP recognises the need to foster and support local business, industry and entrepreneurs to make our economy even stronger. The plan commits to financially supporting businesses and providing services and technology to ensure that they excel.

Wagga Wagga Integrated Transport Strategy 2040

The Wagga Integrated Transport Strategy (WITS) has six key themes one of which is Freight Transport and Logistics. Under this theme an objective is to 'Prioritise Bomen as a major intermodal destination'. Associated projects and desired outcomes are; to enable Bomen Intermodal Hub and industrial area to become a greater strategic asset for Wagga Wagga, the Riverina - Murray region, and Australia; to preserve Bomen from inappropriate development and to provide a buffer around Bomen to prevent land use conflict.

The Inland Rail project will open up Melbourne and Brisbane ports, and the Bomen Industrial Park supported by the Riverina Intermodal Freight and Logistics (RiFL) Hub will be one of the most important freight and logistic destinations and hubs in Australia. Wagga Wagga City Council must ensure that freight and industrial activity can function efficiently to ensure that investment in the area will lead to continued economic development in the region.

The success of these outcomes will be measured and reviewed and whilst some measures may be dependent on funding it is not appropriate to risk the success of others by increasing sensitive land use receptors adjacent to Bomen.

Riverina Murray Regional Plan 2036

Direction 4 of this plan is to 'Promote business activities in industrial and commercial areas.' Reference is specifically made to the fact that ongoing investment and development of the Bomen Business Park will contribute significantly to jobs and economic growth. One of the key actions in this part of the plan is to 'Protect industrial land, including in the regional cities (Bomen, Nexus and Tharbogang) from potential land use conflicts arising from inappropriate and incompatible surrounding land uses.'

Furthermore Direction 17 of this plan is to 'Transform the region into the eastern seaboard's freight and logistics hub' with one of the specific actions being to support the ongoing performance of existing freight and logistics facilities, particularly those in the regional cities of Albury, Wagga Wagga and Griffith.

The importance of protecting the regionally significant industrial area of Bomen is identified in all of these strategic documents and this is a matter of public interest as investment, jobs and livelihoods are all impacted by any incompatible land use developments.

The Strickland planning principle notes the importance of other policy documents that have been adopted following detailed consultation with relevant parties, including the community and the owners of affected land, and reflects outcomes which are within the range of sensible planning options.

In applying this principle it is important to consider the extent, if any, of research and public consultation undertaken during the preparation of the plans, the time during which they have been in force, the extent to which they may have been departed from and the compatibility of the policy with other policies adopted by a council or by any other relevant government agency.

As the documents are all recently adopted there has not been any review to date or analysis of departure from the plans. The key themes and objectives in relation to Bomen are not significantly different to the adopted WWLEP2010 rather the focus is placed more on the importance of Bomen's expansion rather than the protection of residential amenity which clause 7.8 of the LEP relates to.

It is considered that the public interest is compromised by the proposed subdivision to create additional sensitive receptors within close proximity to the Bomen industrial area that has been designated as a Special Activation Precinct. The risk to industry, to investors, to employees and to the amenity of future residents are all matters of public interest that raise concern. This is further reiterated by the correspondence that has been received by the Department of Planning Industry and Environment.

Other Legislative Requirements

Section 1.7 of the EPA Act 1979 and Part 7 of the *Biodiversity Conservation Act 2016* (Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats)

On 21st November 2017, certain zones of the WWLEP 2010 achieved Biodiversity Certification under the *Biodiversity Conservation Act 2016*, including all Business, Industrial, Residential and Special Infrastructure Zones that were in place at the time of the making of the *Biodiversity Conservation Act 2016*. The subject site falls within an area subject to the Biodiversity Certification Order.

The effect of the Biodiversity Certification, as set out by Section 8.4 of the *Biodiversity Conservation Act 2016* is that:

An assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the Environmental Planning and Assessment Act 1979.

A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the Environmental Planning and Assessment Act 1979, is not required to take into consideration the likely impact on biodiversity of the development carried out on that land.

Therefore, no further consideration of these matters is required.

Council Policies

None relevant

Comments by Council's Officers

Council's other relevant officers have reviewed the application in accordance with Council's processing procedures. Feedback from internal referrals has been discussed in detail earlier in the report.

Development Contributions - Section 7.11/7.12 Environmental Planning and Assessment Act & Section 64 Local Government Act, 1993 and Section 306 Water Management Act, 2000

Section 7.11 of the Environmental Planning and Assessment Act 1979 and the Wagga Wagga Local Infrastructure Contribution Plan 2019-2034 enables Council to levy contributions, where anticipated development will or is likely to increase the demand for public facilities. A Section 7.11 contribution will apply to this development that will be put towards the provision of high quality and diverse public facilities to meet the expectations of the residents of the city.

The calculation is calculated using the contribution rate set out in the above plan which is \$10,012 per residential lot.

No CPI is payable as the Plan was adopted in the current financial year (19/20).

Section 64 of the Local Government Act 1993, Section 306 of the Water Management Act 2000 as well as the City of Wagga Wagga's Development Servicing Plan for Stormwater 2007 and/or City of Wagga Wagga Development Servicing Plan for Sewerage 2013 enable Council to levy developer charges based on the increased demands that new development will have on sewer and/or stormwater.

Section 64 (sewer): $\$3538 \times \frac{115.2}{100.5} = \4055.50 per lot

Section 64 (stormwater): $\$1721 \times \frac{115.2}{87.9} = \2255.51 per lot

Other Approvals

None required

Conclusion

The development has been assessed against all applicable elements of the Environmental Planning and Assessment Act 1979, as amended and can be summarised as follows.

Under the applicable planning instrument (WWLEP2010) the land is zoned as large lot residential. The proposed subdivision is permitted in the residential zone and is consistent with the zone objectives and the minimum lot size.

Under the impacts section of the report matters relating to existing and future noise, odour, visual amenity and context have been discussed. There is anticipated to be significant investment into the Bomen Industrial Park associated with the recent designation of the industrial area as a Special Activation Precinct. Increased noise and odour from industries expanding and investing within Bomen have the potential to impact upon nearby residential properties and any future residential properties.

Whilst the presence of existing residential properties in Cartwrights Hill and surrounding the Bomen area is noted, the introduction of new additional properties (receptors) is not considered to be in the public interest. Increased receptor numbers minimise the ability for industries to expand and increases the likelihood of complaints about noise and odour.

Future expansion of the BISTF or development of industry in the BIA would require consideration of the INP criteria, and may require consideration of ameliorative measures for particular industries in order to meet an acceptable level of noise applying the amenity criterion. Furthermore, the application of land-use controls as demonstrated in this application to minimise the number of residential receptors assists in the separation of noise-producing industries and sensitive areas.

In relation to odour, modelling predictions identify the subject site as a high risk location where odour and air quality impacts are likely to arise frequently due to emissions from the Bomen Industrial Estate when fully developed. An increased number of sensitive receptors increases the likelihood of complaints being made as more residents are exposed to odour impacts.

When reviewing the suitability of the site the location, although the land is zoned for residential purposes with a defined minimum lot size this factor is outweighed by the

potential impacts on the development from the Bomen Industrial Area, namely noise and odour. Furthermore the risk to investment into one of the region's most significant industrial precincts from increased sensitive receptors is of significant concern.

As part of the notification process two public submissions have been received to the development. Internal referrals have resulted in an objection from Council's strategic planning team which was addressed earlier in the report.

The key grounds to the submission focus on the strategic importance of the Bomen industrial Estate which is acknowledged and agreed as very significant within the local economy. However any new developments within the industrial estate will be subject to development approval as well as compliance with environmental regulations and standards. The future requirements that may be placed on new industries within the Industrial Estate, the type and location of which is unknown cannot be relied upon as a reason for refusal. The management of new industries and the application of controls and caveats on future residential receptors is a far more appropriate mechanism of minimising land use conflicts in this locality.

The subdivision of the subject land to create additional residential lots is considered to be inappropriate in terms of the current planning context, associated impacts and public interest.

The assessment has been completed in accordance with the requirements of s4.15 of the Environmental Planning and Assessment Act 1979 and is subsequently recommended for refusal.

RECOMMENDATION

It is recommended that DA19/0412 for Two Lot Subdivision be refused, for the following reasons:-

- 1. The proposal is not consistent with the objectives of the R5 Large Lot Residential zone as nominated in the Land Use Table of the Wagga Wagga Local Environmental Plan 2010 as there is considered to be unacceptable conflicts between land uses within adjoining zones.**
- 2. Having regard to the provisions of Clause 7.8 of the Wagga Wagga Local Environmental Plan 2010 the subject site will be adversely impacted by noise and odour from the Bomen Industrial Estate.**
- 3. The proposed development is not in the public interest as it introduces an increased number of sensitive receptors into an area within close proximity to the Bomen Special Activation Precinct. An increase in residential receptors will impact upon the proposed investment, expansion and development of industries within this precinct.**
- 4. The proposed development is not in the public interest as it is inconsistent with a number of strategic documents and policies that have been subject to public consultation and adoption by Council including the Riverina Murray Regional Plan which seeks to “protect industrial land, including in the regional cities (Bomen, Nexus and Tharbogang) from potential land use conflicts arising from inappropriate and incompatible surrounding land uses.’**