



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

APPLICATION DETAILS

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| Application No.: | DA22/0725 |
| Modification No.: | DA22/0725.01 |
| Council File No.: | D/2022/0725 |
| Date of Lodgement: | 17/08/2023 |
| Applicant: | SP Stanley 108 Brindabella Dr TATTON NSW 2650 |
| Proposal: | Use of Existing Shed and Removal of Building Envelope |
| Description of Modification: | N/A |
| Development Cost: | \$19800 |
| Assessment Officer: | Emma Molloy |
| Determination Body: | Council - variation to numerical control in which a submission has been received. |
| Other Approvals | Nil |
| Type of Application: | s8.2 Review of Determination |
| Concurrence Required: | No |
| Referrals: | Internal |
| Adjoining Owners Notification: | Yes, 21 to 28 September 2023 |
| Advertising: | Not required |
| Owner's Consent Provided: | Yes |
| Location: | The subject site is located on the northern side of Brindabella Drive, on the corner of Brindabella Drive and Cradle Court. |

SITE DETAILS

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| Subject Land: | 108 Brindabella Dr TATTON NSW 2650 Lot 335 DP 1247818 |
| Owner: | SP Stanley & VL Stanley |

PLANNING CONTROLS / STATUTORY CLASSIFICATION

Pursuant to Part 4 (Division 1)

Description of Development

Development Consent DA22/0725 for Use of Existing Shed and Removal of Building

Envelope was refused by Council under delegation (Cadet Town Planner) on 14 June 2023. The application was refused for the following reasons:

1. The fill under the building results in an increased building height, which increases the bulk and scale of the structure, and results in impacts on the amenity of properties to the west and north of the site. The development is therefore inconsistent with the matter for consideration under Clause 7.1A(3)(d) of the Wagga Wagga Local Environmental Plan 2010.
2. The development does not comply with Controls C3 and C6 of Section 9.4.4, and is inconsistent with Objectives O1 of Section 9.2.2 and O1 of Section 9.4.4 of the Wagga Wagga Development Control Plan 2010. Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.
3. Due to the size, height, bulk and scale of the shed, the development is out of character with the context of the setting of the area and unreasonably impacts on the streetscape of Brindabella Drive and Plumpton Road and amenity adjoining properties. Wagga Wagga Local Environmental Plan 2010. Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
4. The development is not in the public interest as it has the potential to create an undesirable cumulative impact of large free-standing detached structures that dominate the streetscape and impact on the amenity of adjoining properties throughout the local government area. Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

An application has now been lodged under Division 8.2 of the Environmental Planning and Assessment Act 1979 (the Act) to review the determination of DA22/0725. The relevant provisions under Section 8.3 (of Division 2) of the Act are addressed below:

- (2) A determination or decision cannot be reviewed under this Division-*
(a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or
(b) after the Court has disposed of an appeal against the determination or decision. The determination of this review will be within the allowable period.

The request for review has been lodged within the specified period being six months.

- (3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

The applicant has elected to seek the review based on the original submitted plan. As no amendments have been made to the application as specified in the original application, it is satisfied that it is entirely the same development. The amended Statement of Environmental Effects includes more detailed information and a response to the reasons of refusal.

- (4) The review of a determination or decision made by a delegate of a council is to be conducted-*
(a) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or
(b) by another delegate of the council who is not subordinate to the delegate who

made the determination or decision.

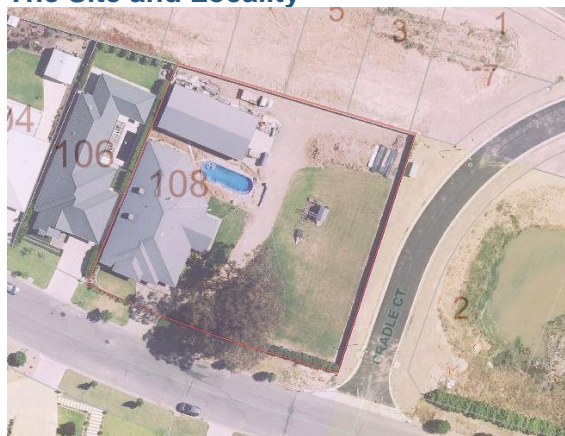
The review is being undertaken by a delegate of the Council who is not subordinate to the delegate who determined the original application.

Notification Requirements

For Reviews under Section 8.2 The original application was notified to adjoining neighbours in accordance with the provisions of the DCP 2010. One submission was received. The submission was signed by two parties which included the landowners to the west and north.

For Reviews of Determination, the DCP 2010 states that: As a minimum, Section 82A applications to review a previously determined development application will require re-notification to those people who may have previously made submissions to the original application. The review application has been referred in accordance with these provisions. The notification period commenced on 21 September and concluded on 28 September 2023. No further submissions were received. It should be noted that the landowners have since changed as land associated with an approved subdivision to the north has been sold.

The Site and Locality



The subject land is known as Lot 224 DP1247818 located at 108 Brindabella Drive, Tatton. The site is located on the corner of Brindabella Drive and Cradle Court. The site is square in shape and measures 3072m².

The site is burdened by a building envelope that is registered on the deposited plan. The building envelope size and shape follows the previous LEP zoning boundary on the land. The site previously had a mix of R1 and C2 (previously E2) zoning and the envelope was used to protect the C2 zone. The zoning has since been amended and the site is now all R1 zoning.

There are a mix of densities in the locality. To the west are residential dwellings on standard block sizes, adjoining to the north is a newly established subdivision with new dwellings to be constructed in the near future. To the east and west are established large lot residential lots with established dwellings.

Easements and Covenants

- The subject land contains a Building Envelope located across the western side of the property.
- A 4m wide easement to drain sewage and stormwater is located across the rear of

the site.

No concerns are related in the removal of the building envelope given that the envelope was reflective of the previous zoning of the land and now is effectively considered to be redundant.

Previous Development Consents

- DA13/0431 - Dwelling and Garage
- DA17/0144 - Use of existing Shed (refused)
- CDC22/0227 - Fibreglass inground swimming pool
- DA22/0726 - Use of existing under fence retaining wall and associated fill.

DA17/0144 was refused as the shed was located outside the building envelope within the former E2 (now C2 - Environmental Conservation) where it was not permissible to erect a shed. Compliance action was commenced on refusal of the application however no further action was taken. The land has since been rezoned and therefore the shed can be considered on merit.

Review of Assessment

A review of the original assessment with respect to the matters required to be considered under Section 4.15(1) of the Act is provided below.

Section 4.15(a)(i) - The provisions of any environmental planning instrument (EPI)

Wagga Wagga Local Environmental Plan 2010

Under the provisions of the WWLEP2010, the subject site is within the R5 Large Lot Residential zone.

The development is permissible with consent.

Part 2 Permitted or prohibited development Land Use

1 Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure co-ordinated and cost-effective provision of physical, social and cultural infrastructure in new residential areas.

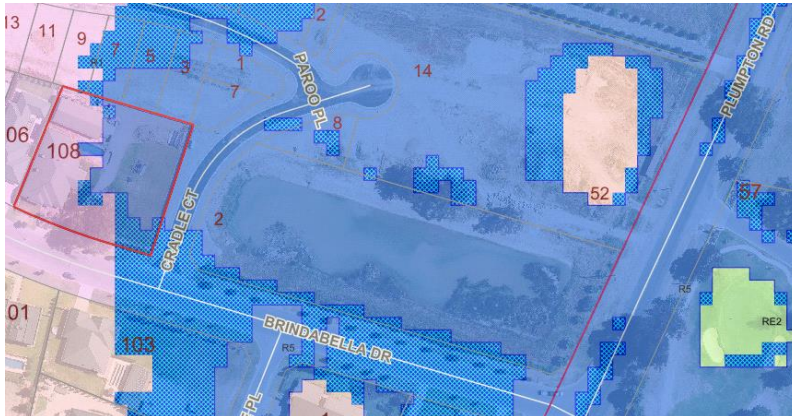
The development was for the use of an existing shed which was built without consent. The shed is used as an ancillary structure to the existing dwelling onsite and therefore permissible with consent. A shed is considered to be consistent with the above objectives.

Part 5 - Miscellaneous Provisions

5.21 Flooding

The subject site is located within the Flood Planning Area (FPA) in regard to the Wagga Wagga Major Overland Flow Floodplain Management Study and Plan (MOFFS). The shed itself is located within the mapped area and therefore is likely to have resulted in displacement of water however the impact is considered reasonable given the following:

- the shed has been constructed on the fringe of the mapped area where there is considerable space to the east for the water to flow (as shown below);
- road infrastructure (Cradle Court) with curb and guttering has been constructed to the east of the development site which may have resulted in changes to the overland flow path; and
- an existing dam is located further to the east which is used as a catchment for overland flow (as shown below).



Whilst it is noted that the shed is effectively an illegal structure, the structure itself as been located in an area where the impacts on flood behaviour and the risk to life and property has been minimised in accordance with the objectives of this clause.

Part 7 - Additional Local Provisions

7.1A Earthworks

The previous assessment noted that there was fill placed under the shed during its construction and that the fill results in an amenity impact to the lot to the west. The objectives of this clause are 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. The subject development is for the use of an existing shed and removal of a building envelope. Before granting development consent, the consent authority must consider the following matters:

- the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- the effect of the proposed 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 proposed 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 watercourse, drinking water catchment or environmentally sensitive area.*

A site inspection has been conducted however it is unclear if there is indeed fill in the location of the shed. Information provided by the applicant states that sand was placed in

preparation of the slab being installed and the site inspection indicated that there is a site cut in this location (see below).



In addition as the shed has been constructed in a location within the site that is on the fringe of the MOFFS affected area. (a) above requires that the consent authority consider:

the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality

The site contains a cut along the western boundary which was approved as part of the construction of the dwelling and by locating the shed in this location, the impacts on drainage have been mitigated.

(d) also requires Council to consider:

the effect of the proposed development on the existing and likely amenity of adjoining properties,

As the shed is already constructed the impact to the adjoining properties is existing. The site cut does lessen the impact of the structure on the adjoining property to a reasonable impact as demonstrated below.



Therefore, the shed is considered to be consistent with the matters identified for the purposes of this clause.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 4.6 states that a consent authority must not grant consent unless it has considered whether the land is contaminated and if the land is contaminated, it is satisfied that the land is suitable in its current state for the purpose for which the development is proposed to be carried out. The subject site was subdivided for residential use and is not identified on Council's contaminated land register. As such the subject site is considered to be suitable for the proposed development and no further investigation is deemed necessary.

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

No relevant planning instrument under this clause is currently the subject of public exhibition or comment.

Section 4.15(1)(a)(iii) - The provisions of any development control plan Wagga Wagga Development Control Plan 2010

Proposed development complies with the development standards of the Wagga Wagga Development Control Plan 2010 as follows:

Section 1 - General

1.10 Notification of a Development Application

Surrounding landowners were notified in accordance with Council policy for a period of 7 days from 21 to 28 September 2023. No submissions were received during the notification period. Submissions raised during the original assessment will be considered later in this report.

1.11 Complying with the Wagga Wagga Development Control Plan 2010

The controls in the DCP support the Guiding Principles of the Plan and principles and objectives within the various sections. Except as varied elsewhere in this Plan, all Development Applications, Section 96 Applications and Section 8.2A Applications should

aim to satisfy all stated objectives and controls.

Whilst all developments should aim to satisfy all controls within the DCP, it is acknowledged that there may be circumstances where it may not be possible to achieve strict compliance.

Council may consent to an application which departs from any control, whether a “numeric” or non-numeric control. In such cases, a written submission must be lodged with the Development Application.

Where an application involves the variation of one or more controls within the DCP Council staff have delegation to approve variations but limited to the following circumstances:

- Where adequate justification is provided by the applicant for the number of controls being varied;
- Any development, other than development that is for multi dwelling housing, where a variation to any numerical control by greater than 10% is proposed; and
- Where no objections have been received in relation to any numerical control that is being varied by greater than 10%, and • Where the number of submissions in the form of objections received in response to an advertised or notified development application, is less than 10.

The application proposes a variation to C3 of Section 9.4.4 of the DCP. A submission was received during the assessment of the original application. Therefore, the application is required to be determined by Council. The variation will be assessed in the relevant section of this report.

Section 2 - Controls that Apply to All Development

2.1 Vehicle Access and Movements

Access is provided from Brindabella Drive. The proposed development does not seek to alter the existing access which is considered acceptable and generally complies with the controls and objectives within this section.

2.2 Off-street Parking

Off-street parking is provided within the existing garage accessed from Brindabella Drive which is considered acceptable and satisfies the objectives and controls within this section.

2.5 Safety and Security

The site has a clearly defined entrance with no blank walls along the street frontage or areas of potential concealment. In addition, the proposed shed will provide additional secure storage within the site. The proposed development is considered to comply with the objectives and controls within this section.

Section 4 - Environmental Hazards and Management

4.2 Flooding

The subject site is within the FPA for MOFFS, the controls within this section are in regard to Riverine Flooding only and therefore cannot be considered in regard to the nature of inundation of the subject site. The impact of MOFFS will be further assessed in section 4.15(b) of this report.

Section 9 - Residential Development

9.2.1 Site Layout

The proposed development is located within the south western portion of the site. The shed is located on the fringe of the area identified within the FPA for MOFFS thus addressing the characteristics of the site. Also, the shed has been located behind the dwelling which avoids underutilised space in accordance with the controls within this section.

9.2.2 Streetscape

The shed is located behind the existing dwelling therefore the shed is not visible from Brindabella Drive. However, the site has been through some recent changes as a result of a neighbouring subdivision to the north. This has resulted in the site being located on the corner of Brindabella Drive and Cradle Court with a Colourbond fence located on the Cradle Court frontage. Given the size of the shed, the shed is visible from Cradle Court and given that land further east along Brindabella Drive is undeveloped the shed is visible from Plumpton Road as well. The existing Colourbond fence does provide a screen between the roads and therefore the views of the structure are reasonable and reflective of most corner lots with sheds located in the rear yard within the R1 General Residential zone.

9.3.2 Site cover

Site cover is the proportion of a site that is occupied by buildings, garages and other structures. The verandah and portico are not considered to be site cover under this section. The maximum site cover for a lot greater than 1500m² is 30%. The following calculations demonstrate compliance with this control:

Dwelling and shed = 623.5m²
Area of allotment = 3072m²
Site cover = 20.29%

9.2.3 Corner lots and secondary facades

This section of the DCP relates to corner sites. The controls are relevant to dwellings proposed on these sites and not necessarily sheds or ancillary structures. Secondary frontages are encouraged to be attractive in order to contribute to the neighbourhood character. The shed is located within the north-eastern portion of the site in the rear yard 34 metres from the Cradle Court frontage. A Colourbond fence has also been constructed along the Cradle Court which does provide screening to the shed. This is considered acceptable and reflective of most corner lots with outbuildings located within the rear yard.

9.3.4 Solar Access

A solar diagram has been lodged on lodgement of the review. The diagram shows the impact on the neighbouring lot to the west during June and March. The majority of the impact is at 9 am in June over the pool and alfresco. Considering that the impact is at its worst during winter when the pool is not in use and the alfresco area contains a wall facing the boundary (which includes a storage area for the pool pump and a small bathroom) the impact is considered reasonable.

9.3.7 Side and Rear Setbacks

The existing shed is setback 4 metres from the rear boundary and 34 metres from the eastern boundary. The shed is setback 950mm from the western boundary. Whilst there are no specific controls within this section in terms of a numerical setback within the R1 General Residential zone, the 950mm setback does result in an impact to the neighbouring lot to the west. The impact is due to the height of the structure being 4.8 metres. The structure is bulky as shown in the photographs above but is reasonable given that the maximum height allowable for an outbuilding within the DCP is 4.8 metres and the impact on solar access has

been assessed and considered reasonable in accordance with the objectives of this section.

9.4.2 Materials and Finishes

The proposed shed will be constructed from Colourbond which is consistently used for outbuildings therefore no concerns are raised.

9.4.3 Privacy

Visual and acoustic privacy are important for good residential amenity. The proposed development does not raise any concerns. The existing boundary fencing and landscaping provides an adequate screen between the lots.

9.4.4 Garages, Carports, Sheds and Driveways

Design of garages, carports, sheds and driveways must contribute in a positive way to the streetscape and character of the locality. The relevant objectives and controls are as follows:

O1 Minimise the visual dominance of garages and driveways in the streetscape.

The shed is located to the rear of the dwelling therefore the shed is not visible from Brindabella Drive. The lot has been through a series of changes which has resulted in the lot being located on the corner of Brindabella Drive and Cradle Court. The shed is visible from Cradle Court however a Colourbond fence has been constructed along this frontage which does provide a screen. This is characteristic of most corner lots with outbuildings located within the rear yard.

O2 Where possible, locate garages so as to assist in protecting dwellings from early morning and late afternoon summer sun.

The shed is located within the north-western portion of the site. The shed is located behind the dwelling and therefore does not provide any protection for the dwelling. The shed does however provide some protection over the remaining yard space in the late afternoon as demonstrated on the submitted solar diagrams.

C3 The floor area of an outbuilding on a residential lot must not be more than the following:

- (a) 8% of the site area if the lot has an area of less than 600m²,*
- (b) 8% of the area or a maximum area of 175m², whichever is the lesser, if the lot has an area of at least 600m² but less than 4000m²,*

(c) Lots greater than 4000m² will be considered on their merits.

The shed is 200m² and the lot has an area of 3072m². As the shed is over 175m² and therefore does not comply with this control. Written justification was provided by the applicant on lodgement of the review which included:

The shed has no streetscape impacts and is considered to be appropriate in size in relation to the size of the subject allotment. It is also noted that the shed only covers 6.5% of the site whilst the DCP allows for a site coverage of 8% to smaller blocks. It is requested that given that the shed presents no streetscape impacts to Brindabella Drive.

The site itself is an anomaly to the other lots on the northern side of Brindabella Drive. The shed is large but not uncharacteristic with other sheds within the locality. Whilst it should be noted that most other sheds are located within R5 zoned land the land size in some cases is smaller than the subject site. It is noted that the shed would have benefited from a larger

setback from the western boundary the shed has been located on the fringe of the MOFFS affected area as previously discussed however the impacts resulting from the location have been assessed as acceptable. The shed results in an acceptable amount of private open space available to the dwelling and does not result in underutilised space within the rear yard. Therefore, the shed is not considered to be an unreasonable inclusion within the site or the wider locality.

C4 The total cumulative floor area of all outbuildings on any one property shall not exceed 8% of the site area or a maximum area of 300m², whichever is the lesser.

The site contains two outbuildings, the shed subject to this assessment and a smaller shed located to the south (as shown on the submitted plans). The smaller shed has been constructed in accordance with the exempt provisions and does not require consent. The two outbuildings have a cumulative area of 208m² resulting in 6.7% of the site area which complies with the above control.

C6 The height of an outbuilding or the alterations and additions to an existing outbuilding on a lot must not be more than 4.8m above ground level (existing). The building shall be single storey construction with a maximum roof pitch of 27 degrees or steeper to match the roof pitch of the house.

The information submitted plans state that the shed is 4.8 metres in height with complies with the above control.

9.4.6 Changing the Landform - Cut and Fill

Earthworks have been carried out within the site including a retaining wall along the western boundary to contain a site cut and an additional retaining wall to contain fill along the northern boundary which have been approved. The previous assessment did raise some concerns in regard to fill being located within the slab for the shed however no evidence of fill was found on inspection of the site and the information provided on lodgement of the review stated that there was not any fill used as part of the construction of the shed, rather a sand screed was used. Given that the shed is existing it is difficult to determine if in fact fill was used as part of construction as shown in the photos above.

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

No planning agreements have been entered into under section 7.4.

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

Matters prescribed by the regulations have been satisfied.

Section 4.15(1)(b) - likely impacts of the development

| | Satisfactory | Not Satisfactory | Not Relevant | Comment |
|-------------------|--------------|------------------|--------------|--|
| Context & Setting | x | | | The subject site is an anomaly to the other development located on the northern side of Brindabella Drive. This has resulted from the neighbouring subdivision to the north of the development site. The site is large and whilst the location of the shed does impact on the neighbouring development to the west, the site cut and design of the alfresco area of the lot to the |

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| | | | | west does mitigate the impact. A Colourbond fence also provides a screen. Therefore, the shed is not considered unreasonable. |
| Streetscape | x | | | The shed is not visible from Brindabella Drive. The shed is visible from Cradle Court however a the Colourbond fence provides a screen to the structure which is considered acceptable. |
| Traffic, access and parking | x | | | The development is for the use of an existing shed used by the residents of the existing dwelling, the shed is accessed via the existing driveway through the rear yard space which does not raise any concerns. |
| Public Domain | x | | | No adverse impacts identified. |
| Utilities | x | | | All services are connected and available to the site. |
| Heritage | | | x | The site is not located within the heritage Conservation Area or is a listed item within schedule 5 of the LEP. The site is not known to be a place of Aboriginal Significance or contain any items of Aboriginal Significance. |
| Other land resources | x | | | None identified. |
| Water Quality & Stormwater | x | | | The shed is connected to an existing water tank. Overflow from the tank is then piped to the existing stormwater infrastructure. |
| Soils, soil erosion | x | | | The application seeks the approval of the use of an existing shed, as the shed is constructed no further impacts to soil erosion are likely. |
| Air and microclimate | x | | | No adverse impacts have been identified. |
| Flora and Fauna | x | | | No vegetation is proposed to be removed. |
| Waste | x | | | No adverse impacts identified. |
| Energy | x | | | No adverse impacts have been identified. |
| Noise & vibration | x | | | The submitted Statement of Environmental Effects states that the shed is used on conjunction with the existing dwelling. No concerns are raised in regard to the use. |
| Hours of operation | | | x | Not applicable. |
| Natural hazards - Flooding - Bushfire Prone Area map | x | | | The subject site is identified within the FPA for MOFFS and prone to inundation in a 1% storm event. The shed has been sited to mitigate impacts on flooding as addressed earlier in this report. |
| Technological Hazards | x | | | None identified. |
| Safety, security and crime prevention | x | | | The shed provides secure storage for household items. No concerns are raised in regard to CEPTED principles. |
| Site design and internal design | x | | | The location of the shed addresses the constraints of the site by locating the shed where it is least impacted by overland flow. The shed allows for the maximum amount of private open space available to the dwelling within the eastern portion of the site and isn't characteristic with other sheds located within the locality. |
| Overlooking - overshadowing | x | | | The shed does impact on the private open space within the neighbouring lot to the west. The shed overshadows the pool and alfresco. The alfresco area has been designed with a solid wall facing the eastern boundary which houses the pool pump and a small bathroom. Therefore, the impact is considered reasonable. |
| Landscaping | x | | | No adverse impacts have been identified. |

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| Construction | x | | | The shed is already constructed without approval. No critical stage inspections have been undertaken therefore Council cannot certify the structure only approval for its use. |
| Private open space | x | | | The site contains adequate space for private recreation. |
| Cumulative Impacts | x | | | None identified. |
| Disabled access | | | x | Not required a shed ancillary to the dwelling. |
| Signage | | | x | Not applicable. |
| Setbacks, Building Envelopes | x | | | The application seeks to remove the building envelope as stipulated in the 88B instrument for the subject site. The building envelope is related to the previous zoning of the site which included both R1 and C2 (previously E2) zones. The zoning has since changed to R1 over the entirety of the site and therefore the removal of the building envelope does not raise any concerns as it is no longer relevant to the subject site. |

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 have been considered. 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

Matters relating to flooding have been previously assessed against the relevant sections of this report. The above assessment supports the application.

Bush Fire Risk Assessment

The subject site has not been identified as bushfire prone therefore no further assessment is required.

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 development does not result in any anticipated irreversible environmental damage, the shed utilises an existing urban site and therefore is not considered to impact on biological diversity or ecological integrity. 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.

Section 4.15(C) - The Suitability of the site for the development

The subject land located 108 Brindabella Drive, Tatton is considered to be suitable for the development given that the structure is ancillary to the existing dwelling and provides secure storage for household items.

Section 4.15(d) - any submissions made in accordance with the Act or the regulation

Referrals - The proposal was referred to the relevant Council officers. No concerns were raised, standard conditions will be imposed.

Notification - Adjoining landowners were notified in accordance with Council policy for a period 7 days from the 21 to 28 September 2023. No submissions new submissions in relation to the review were received. Submissions were received during the notification of the original application and will be addressed below.

Advertising - The proposed development was not required to be advertised.

Public Submissions and those from public authorities

One submission with two signatures was received by Council in regard to DA22/0725. The submission raises concerns in regard to the size, height and statements made in the Statement of Environmental Effects lodged as part of DA22/0725.

1. Size and height.

The size of the shed is 200m². C4 within section 9.4.4 of the DCP limits the size of shed to either 8% of the subject site or 175m² whichever is the lesser where the lot is between 600m² but less than 4000m². The control is within the DCP and can be varied and

considered on merit. Written justification was provided on lodgement of the application. The variation has been considered on merit and supported for the following reasons:

- The site itself is an anomaly to the other lots on the northern side of Brindabella Drive. The shed is large but not uncharacteristic with other sheds within the locality. Whilst it should be noted that most other sheds are located within R5 zoned land the land size in some cases is smaller than the subject site.
- It is noted that the shed would have benefited from a larger setback from the western boundary the shed has been located on the fringe of the MOFFS affected area as previously discussed however the impacts resulting from the location have been assessed as acceptable.
- The shed results in an acceptable amount of private open space available to the dwelling and does not result in underutilised space within the rear yard.

The height of the shed was also raised in the objection stating that the shed is 5 metres in height with approximately 500mm of fill underneath the shed which results in the shed being 5.5 above finished floor level. The submitted plans show that the shed is 4.8 metres in height. A site inspection was carried out and evidence of fill was not found rather the site has a cut along the western boundary which would reduce the height of the shed when viewed from the neighbouring lot to the west. The shed is also setback 4 metres from the northern boundary which provides adequate separation to reduce the impacts on the lots to the north.

2. Response to previous Statement of Environmental Effects

The submission raised concerns in regard to various statements made in the Statement of Environmental Effects which included permissibility, zone objectives, prominence of the structure within the streetscape, character, inconsistent with the surrounding land uses and use of the shed.

The application is for use of an existing shed and removal of a building envelope in regard to the 88B instrument for the subject site. The building envelope was required as the lot did have a split zone. The zoning of the land has since changed and the requirement for the building envelope is not relevant to the site with the current zoning. A shed is considered ancillary to the existing dwelling and is used for domestic storage therefore permissible and consistent with the objectives of the zone. The shed is large however the site is also an anomaly on the northern side of Brindabella Drive. It is noted that the shed would have benefited from a larger setback from the western boundary but the shed has been sited to avoid impacts to the overland flow path. The structure has been screened by the construction of a Colourbond fence located on the eastern and northern boundaries. The DCP allows for a shed to be 4.8 metres in height and therefore any shed of the height would have a similar impact regardless of the overall size of the shed. The site itself is out of character with the predominant subdivision pattern of the northern side of Brindabella Drive and therefore is more reflective of the surrounding R5 large residential lots on the southern side of Brindabella Drive which contain large sheds within rear yards. The use of the shed is for storage of household items however given the concerns raised over its use a condition will be imposed to restrict the use of the shed.

Section 4.15(e) - the public interest

The public interest is a broad consideration relating to many issues. Taking into account the full range of matters for consideration under Section 4.15 of the Environmental Planning and Assessment 1979 (as discussed within this report) it is considered that approval of the application is not contrary to the public interest.

Other Legislative Requirements

Section 1.7 of the Environmental Planning and Assessment 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)

Section 5AA 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)

There are a number of tests to determine whether the proposed triggers the NSW Biodiversity Offset Scheme under the NSW Biodiversity Conservation Act 2016 and results in the need for further assessments or offsets.

1. *Is the subject site identified as an area of outstanding biodiversity value on the biodiversity values map?*

No

2. *Does the amount of native vegetation being removed exceed the biodiversity offsets scheme threshold.*

No native vegetation is proposed to be removed.

3. *Test of Significance - the test to determine whether the proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats.*

The proposed development does not propose the removal of any native vegetation. The site does not contain any recorded endangered flora or fauna on the site of the proposed development, is not anticipated to significantly affect threatened species or ecological communities or their habitats.

Based on the above assessment it is satisfied that the development will not trigger the Biodiversity Offset Scheme and no further evidence is required regarding the proposed vegetation removal.

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

The site was previously subject to contributions at subdivision stage. No further developer contributions are required.

Referrals:

Subdivision Engineer: Yes, no concerns raised. Standard conditions imposed.

Other Approvals:

Nil

Conclusion:

An assessment of the application has resulted in the application being supported on the following grounds:

- The application is for the use of an existing shed and removal of the building envelope in the R1 General Residential zone which is permitted with consent.
- The development complies with the requirements of the Environmental Planning and Assessment Act 1979 and will not compromise the outcomes sought within the Wagga Wagga Local Environmental Plan 2010.
- An assessment of the review against the relevant provisions within the Wagga Wagga Development Control Plan 2010 (DCP) demonstrates that the proposed development does not cause any significant adverse impacts on the surrounding natural environment, built environment, infrastructure, community facilities or local character and amenity. In addition, the variation to controls within the DCP has been justified and assessed.

The application is subsequently recommended for approval, subject to conditions.

RECOMMENDATION

It is recommended that application number DA22/0725.01 for Use of Existing Shed and Removal of Building Envelope be approved, subject to the following conditions:-

It is recommended that application number DA22/0725.01 to modify Development Consent DA22/0725 for Use of Existing Shed and Removal of Building Envelope be approved subject to the following conditions:-

It is recommended that application number DA22/0725.01 for Use of Existing Shed and Removal of Building Envelope be refused for the following reasons:-

It is recommended that DA22/0725.01 to modify Development Consent DA22/0725 for Use of Existing Shed and Removal of Building Envelope be refused for the following reasons:-

CONDITIONS OF CONSENT FOR APPLICATION NO.

Right click & select OR delete if NO deferred commencement consents

A. SCHEDULE A – Reasons for Conditions

The conditions of this consent have been imposed for the following reasons:

- A.1 To ensure compliance with the terms of the Environmental Planning and Assessment Act 1979 and Regulation 2000.

- A.2 Having regard to Council's duties of consideration under Section 4.15 and 4.17 of the Act.
- A.3 To ensure an appropriate level of provision of amenities and services occurs within the City and to occupants of sites.
- A.4 To improve the amenity, safety and environmental quality of the locality.
- A.5 Having regard to environmental quality, the circumstances of the case and the public interest.
- A.6 Having regard to the Wagga Wagga Development Control Plan 2010.
- A.7 To help retain and enhance streetscape quality.
- A.8 Ensure compatibility with adjoining and neighbouring land uses and built form.
- A.9 To protect public interest, the environment and existing amenity of the locality.
- A.10 To minimise health risk to neighbouring residents and workers.

B. SCHEDULE B – Deferred Commencement Conditions

N/A

C. SCHEDULE C – Conditions

Approved Plans and Documentation

- C.1 The development must be carried out in accordance with the approved plans and specifications as follows.

| Plan/DocNo. | Plan/Doc Title | Prepared by | Issue | Date |
|-------------|--|---|-------|-----------|
| | Statement of Environmental Effects | CAF Building & Town Planning Consulting | | 8.08.2023 |
| A01 | Site Analysis Plan | CK Design & Drafting | | 5.08.2023 |
| A02 | Floor Plan, North Elevation | CK Design & Drafting | | 5.08.2023 |
| A03 | South Elevation, East Elevation and West Elevation | CK Design & Drafting | | 5.08.2023 |
| A04 | June 9am, June 12pm | CK Design & Drafting | | 5.08.2023 |
| A05 | June 3pm, March 9am | CK Design & Drafting | | 5.08.2023 |
| A06 | March 12pm, March 3pm | CK Design & Drafting | | 5.08.2023 |

The Development Application has been determined by the granting of consent subject to and as amended by the conditions of development consent specified below.

NOTE: Any modifications to the proposal shall be the subject of an application under Section 4.55 of the Environmental Planning and Assessment Act, 1979.

Requirements before a Building Information Certificate can be issued

- C.2 Prior to the release of the Building Information Certificate for the shed, the applicant shall:
- i) Provide to Council, for its review and endorsement, a Deed of Covenant pursuant to s88 Conveyancing Act 1919 and appropriate plan of subdivision for the removal of the building envelope.
 - ii) Submit the endorsed Deed of Covenant and plan to NSW Lands Registry Services for registration, and provide a receipt of this lodgement to Council.
- C.3 Within three months of this consent, the applicant shall provide Council with evidence of the registration of the Deed of Covenant required under Condition C.2 of this consent by the NSW Land Registry Services.
- C.4 A Building Information Certificate must be obtained from Council within 3 months of the date of this consent pursuant to Division 6.7 of the Environmental Planning and Assessment Act 1979, as amended.

General requirements

- C.5 The building/shed must not be used for commercial or industrial purposes of storage of goods associated with industrial or commercial undertakings.

D. SCHEDULE D – Activity Approval Conditions (Section 68)

- D.1 N/A

E. SCHEDULE E – Prescribed Conditions

Conditions under this schedule are prescribed conditions for the purposes of section 4.17 (11) of the Environmental Planning and assessment Act 1979.

- E1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989 (clause 69 EP&A Reg 2021)
- (1) It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the Building Code of Australia.
 - (2) It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the Home Building Act 1989, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences.
 - (3) It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with the Building Code of Australia, Volume 1, Part B1 and NSW Part I5.
 - (4) In subsection (1), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the relevant date.

- (5) In subsection (3), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made.
- (6) This section does not apply-
 - (a) to the extent to which an exemption from a provision of the Building Code of Australia or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, or
 - (b) to the erection of a temporary building, other than a temporary structure to which subsection (3) applies.
- (7) In this section -
 relevant date has the same meaning as in the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, section 19.

E2 Erection of signs (clause 70 EP&A Reg 2021)

- (1) This section applies to a development consent for development involving building work, subdivision work or demolition work.
- (2) It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out-
 - (a) showing the name, address and telephone number of the principal certifier for the work, and
 - (b) showing the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.
- (3) The sign must be-
 - (a) maintained while the building work, subdivision work or demolition work is being carried out, and
 - (b) removed when the work has been completed.
- (4) This section does not apply in relation to-
 - (a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or
 - (b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

E3 Notification of Home Building Act 1989 requirements (clause 71 EP&A Reg 2021)

- (1) This section applies to a development consent for development involving

residential building work if the principal certifier is not the council.

- (2) It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following-
 - (a) for work that requires a principal contractor to be appointed-
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer of the work under the Home Building Act 1989, Part 6,
 - (b) for work to be carried out by an owner-builder-
 - i. the name of the owner-builder, and
 - ii. if the owner-builder is required to hold an owner-builder permit under the Home Building Act 1989-the number of the owner-builder permit.
- (3) If the information notified under subsection (2) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the principal certifier has given the council written notice of the updated information.
- (4) This section does not apply in relation to Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

E4 Entertainment venues (clause 72 EP&A Reg 2021)

- (1) The requirements specified in this section are conditions of development consent for the use of a building as an entertainment venue.
- (2) During a stage performance at an entertainment venue, there must be at least 1 suitably trained person in attendance in the stage area at all times for the purpose of operating, if necessary, a proscenium safety curtain, drencher system and smoke exhaust system.
- (3) If a proscenium safety curtain is installed at an entertainment venue, there must be no obstruction to the opening or closing of the curtain and the curtain must be operable at all times.
- (4) When a film is being screened at an entertainment venue, there must be at least 1 person in attendance at the entertainment venue who is trained in-
 - (a) the operation of the projectors being used, and
 - (b) the use of the fire fighting equipment in the room in which the projectors are installed (the projection room).
- (5) If the projection room is not fitted with automatic fire suppression equipment and a smoke detection system, in accordance with the Building Code of Australia, the person required by subsection (4) to be in attendance must be in the projection suite in which the projection room is located during the screening of a film.
- (6) A member of the public must not be present in the projection suite during the screening of a film.
- (7) An entertainment venue must not screen a nitrate film.

- (8) An emergency evacuation plan must be prepared, maintained and implemented for a building, other than a temporary structure, used as an entertainment venue.
- (9) The emergency evacuation plan must specify the following-
 - (a) the location of all exits, and fire protection and safety equipment, for the part of the building used as an entertainment venue,
 - (b) the number of fire safety officers that must be present during performances,
 - (c) how the audience will be evacuated from the building if there is a fire or other emergency.
- (10) A fire safety officer appointed to be present during a performance must have appropriate training in evacuating persons from the building if there is a fire or other emergency.
- (11) In this section-
exit has the same meaning as in the Building Code of Australia.

E5 Maximum capacity signage (clause 73 EP&A Reg 2021)

- (1) This section applies to a development consent, including an existing development consent, for the following uses of a building, if the development consent contains a condition specifying the maximum number of persons permitted in the building-
 - (a) an entertainment venue,
 - (b) a function centre,
 - (c) a pub,
 - (d) a registered club,
 - (e) a restaurant or cafe.
- (2) It is a condition of the development consent that a sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building.

E6 Shoring and adequacy of adjoining property (clause 74 EP&A Reg 2021)

- (1) This section applies to a development consent for development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor.
- (2) It is a condition of the development consent that the person having the benefit of the development consent must, at the person's own expense-
 - (a) protect and support the building, structure or work on adjoining land from possible damage from the excavation, and
 - (b) if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation.
- (3) This section does not apply if-

- (a) the person having the benefit of the development consent owns the adjoining land, or
- (b) the owner of the adjoining land gives written consent to the condition not applying.

E7 Fulfilment of BASIX commitments (clause 75 EP&A Reg 2021)

It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled-

- (a) BASIX development,
- (b) BASIX optional development, if the development application was accompanied by a BASIX certificate.

E8 Deferred commencement consent (clause 76 EP&A Reg 2021)

- (1) A development consent with a deferred commencement, as referred to in the Act, section 4.16(3), must be clearly identified as a “deferred commencement” consent, whether by using the expression, referring to that section or otherwise.
- (2) A deferred commencement consent must clearly distinguish between-
 - (a) conditions that relate to matters about which the consent authority must be satisfied before the consent can operate (the relevant matters), and
 - (b) other conditions.
- (3) A consent authority may specify the period within which the applicant must produce sufficient evidence to the consent authority to enable it to be satisfied about the relevant matters.
- (4) If the applicant produces evidence in accordance with this section, the consent authority must notify the applicant whether it is satisfied about the relevant matters.
- (5) If the consent authority does not notify the applicant within 28 days after the applicant produces the evidence, the consent authority is taken to have notified the applicant, on the day on which the period expires, that it is not satisfied about the relevant matters.
- (6) Subsection (5) applies for the purposes of the Act, section 8.7 only.

E9 Conditions for ancillary aspects of development (clause 77 EP&A Reg 2021)

- (1) If a consent authority grants development consent subject to a condition referred to in the Act, section 4.17(2) in relation to an ancillary aspect of the development, the consent authority may specify the period within which the ancillary aspect must be carried out to the satisfaction of the consent authority or a person specified by the consent authority.
- (2) The applicant may produce evidence to the consent authority, or to the person specified by the consent authority, sufficient to enable the consent authority or the person to be satisfied in relation to the ancillary aspect of the development.

- (3) For the purposes of the Act, section 4.17(3), the relevant period is the period of 28 days after the applicant's evidence is produced to the consent authority or a person specified by the consent authority.

E10 Conditions for State significant development (clause 78 EP&A Reg 2021)

A development consent may be granted subject to a condition referred to in the Act, section 4.17(4A) or (4B) only if the development is State significant development.

E11 Review conditions-the Act, s 4.17(10C) (clause 79 EP&A Reg 2021)

- (1) A development consent that is granted subject to a reviewable condition may, as referred to in the Act, section 4.17(10B), be granted subject to a further condition (a review condition) if the development consent relates to the following kinds of development-
 - (a) an entertainment venue,
 - (b) a function centre,
 - (c) a pub,
 - (d) a registered club,
 - (e) a restaurant or cafe.
- (2) A development consent that is subject to a review condition must contain the following-
 - (a) a statement that the development consent is subject to the review condition and the purpose of the review condition,
 - (b) a statement that the consent authority will carry out the reviews,
 - (c) when, or at what intervals, the reviews must be carried out.
- (3) The consent authority must give written notice to the operator of a development that is subject to a review condition at least 14 days before carrying out a review.
- (4) The consent authority may notify other persons of the review as it considers appropriate.
- (5) The consent authority must take into account submissions that are received from any person within 14 days after notice of a review is given to the person.

E.1 N/A

F. SCHEDULE F – General Terms of Approval (Integrated Development)

F.1 N/A