



Report of Development Application

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

APPLICATION DETAILS

Application No.:	DA22/0029
Modification No.:	N/A
Council File No.:	D/2022/0029
Date of Lodgement:	19/01/2022
Applicant:	C Rocks 29 Werribee Rd BOURKELANDS NSW 2650
Proposal:	Proposed use of site for temporary events (20 per year) including additional parking area and use of existing pergola, amenities block and shipping container
Description of Modification:	N/A
Development Cost:	\$175400
Assessment Officer:	Sam Robins
Determination Body:	Section 1.10 of the Wagga Wagga Development Control Plan 2010 requires any application that is the subject of 10 or more objections to be referred to Council for determination.
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal Essential Energy Licencing Police
Adjoining Owners Notification:	9/2/22 to 23/2/22 and 1/7/22 to 15/7/22
Advertising:	N/A
Owner's Consent Provided:	Yes
Location:	The subject site is Lot 1 DP 829597, 85 Hillary Street, North Wagga. The land is located on the northern side of Hillary Street approximately 400m from the junction with Byrnes Road.

SITE DETAILS

Subject Land:	85 Hillary St NORTH WAGGA WAGGA NSW 2650
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Lot 1 DP 829597
CA Lofts & NM Lofts

Owner:

DESCRIPTION OF DEVELOPMENT

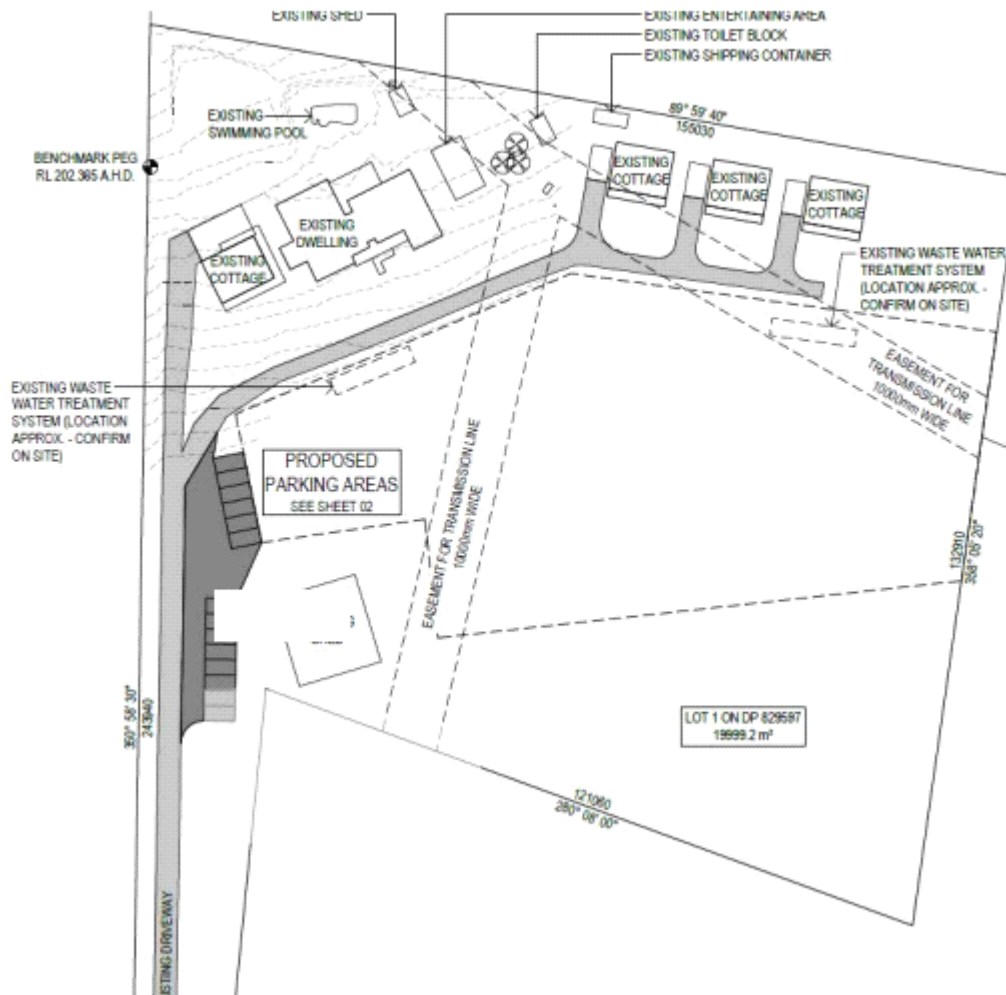
The application seeks consent for the following:

- Temporary events on site for no more than 20 days each year (see further details below)
- Use of existing amenities block located towards the northern boundary, immediately east of the pergola. The amenities block is approximately 13.5m².
- Use of existing shipping container for storage located along northern boundary. The shipping container measures 15m².
- Use of existing Pergola (48m²) with fireplace and retaining walls.
- Parking area along eastern side of access driveway for 11 cars. Proposed to be compressed gravel topped with road base.

The Statement of Environmental Effects (SEE) includes the following details regarding the events:

- 1) Duration of Temporary use as a function centre:
 - i) In place while the proponents own the property
 - ii) If the property is sold, then the future owner(s) are to apply for their own temporary use
- 2) 20 events to be held each year, with a maximum of 6 night events, and the following conditions:
 - i) Maximum of 2 night or evening/twilight events within a 4-week period
 - ii) Night event, means:
 - Held on a Friday night, Saturday night or the night preceding a public holiday
 - Music ceases at 11pm
 - Events to cease by 12pm
 - iii) Evening/twilight event means:
 - Held on any night of the week
 - Events with music:
 - (1) **Music** ceases at 8pm during non-daylight saving time periods, and 9:00pm during daylight saving time periods
 - (2) **Events** to cease by 8:30pm during non-daylight saving time periods, and 9:30pm during daylight saving time periods
 - (3) Events where music is not requested or is background music which is provided and controlled by the owners using their speaker system, such as for a dinner party or corporate event, to cease by 10pm
 - iv) Day event means:
 - Held on any day of the week
 - Events to cease by 7pm
- 3) Noise management:
 - i) Music to be limited to a small ensemble, acoustic, speaker/sound system
 - ii) Aim is to target functions where background music is the focus, not 'dancing' music
 - iii) Plant hedges and/or screening plants on fence lines as a noise barrier for the adjoining property owners that are located behind the property and to the east (the side of the property where the vineyard is). The use of vegetation for noise attenuation has been studied and debated, with a summary article here: <https://www.agroengineering.org/index.php/jae/article/view/889/773>
- 4) Community engagement:
 - i) Hold a minimum one community engagement session with adjoining property owners each year to monitor any adverse impact
 - ii) Work collaboratively on solutions, where required

The SEE also states that the owners will require the accommodation to be booked in order to hold events at the site.



Background on the application

Initially the application was lodged for a capacity of 120 people with events on Fridays, Saturdays and days before public holidays to cease at midnight with all other events limited to 11pm. The application also included a large carparking area. The application was notified on this basis and six (6) objections were received.

Along with the objections, Council staff raised a number of concerns with the application. It was suggested in the additional information letter that the application be withdrawn based on these concerns. Given Council can't force withdrawal, the letter also provided details of what must be lodged if the applicant wished for a full consideration of the application and determination to be made.

The applicant provided additional information that included the revised event details provided above. A full assessment of the application has been undertaken based on

the revised information submitted.

THE SITE & LOCALITY

The subject site is Lot 1 DP 829597, 85 Hillary Street, North Wagga. The land is located on the northern side of Hillary Street approximately 400m from the junction with Byrnes Road.

The site is accessed off a narrow access handle and opens up into a 2ha block to the rear. The site rises steeply from Hillary Street. As the access handle widens into the main block a shed is located immediately to the east of the driveway. The driveway continues north and services the main dwelling and four tourist and visitor accommodation villas located along the northern boundary of the site. The site contains sporadic vegetation and two transmission easements for overhead power.

The land is zoned RU4 Primary Production Small Lots. Whilst the surrounding land varies in zone from RU4 to RU1 and RU6, the immediately surrounding properties are similar small holdings with dwellings. As you move further east and south the land transitions into more traditional extensive agricultural land. Wider afield to the north is Bomen. To the west is the village of North Wagga.

Whilst not mapped as bushfire prone land, the land immediately west has potential to be considered a grassland. This issue has been discussed later in the report. A very minor portion of the access to the site and the north-eastern corner of the lot is mapped as within the Flood Planning Area (FPA), this issue has been discussed later in the report.



A site visit was undertaken on 10/2/22 by the assessing officer.

EASEMENTS AND COVENANTS

The site contains both north-south and east-west transmission easements measuring 10m wide. Both the amenities block and the pergola are within the easement. This issue has been discussed below.

PREVIOUS RELEVANT DEVELOPMENT CONSENTS

DA12-0258 - New two bedroom building within an existing tourist and visitors accommodation

ADA08-0120 - Proposed 4 x holiday cottages - reconsideration of conditions of consent.

DA180/97 - Proposed 4 x holiday cottages

BA273/74 - Stables and storage

DA157/96 - four holiday cottages - only two approved

SUMMARY OF MAIN ISSUES

Compliance with Clause 2.8 of the Wagga Wagga Local Environmental Plan 2010. Amenity Impacts.

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) Local Environmental Plan

Wagga Wagga Local Environmental Plan 2010 (LEP 2010)

The following provisions of the LEP 2010 apply:

Part 2 Permitted or prohibited development

2.8 Temporary use of land

(1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.

(2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 20 days (whether or not consecutive days) in any period of 12 months.

(3) Development consent must not be granted unless the consent authority is satisfied that-

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the

commencement of the use.

(4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.

(5) Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

There are a number of issues to discuss with regards to this clause.

Sections (4) and (5) are not relevant as they relate to the temporary use of dwellings as sales offices.

The use being applied for would be considered a 'function centre' and is defined in the LEP as follows:

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

Within the RU4 land under the Land Use Table, function centres are listed as a prohibited land use. Under section (2) of clause 2.8 above, a function centre can be considered on this land for a maximum period of 20 days in a 12 month period *Despite any other provision of this Plan*. Given the applicant has applied for 20 days the proposed use can be considered under this clause.

With regard to the buildings, it's important to first note that this clause relates to the use of the land and therefore any buildings that form part of the application under this clause must already be existing lawfully approved or exempt buildings associated with the current use of the land or otherwise can only be assessed for use for a 20 day period in association with the temporary use as a function centre. Given structures need a use for their entire lifespan it would not be possible for Council to grant that use for the remaining 345 days of each year under this clause. In other words, the pergola, amenity block and shipping container would need to be approved for use under a separate Development Application as structures ancillary to the existing buildings/operations on site before they could be considered for use in association with a function centre for 20 days in a 12 month period.

Based on this, the pergola, amenities block and shipping container cannot be supported under this clause of the LEP.

Given the structures are already erected on site, further enforcement action will be undertaken subsequent to the determination of this application that requires the structures to be removed, a development application lodged for 'use of existing structures in association with the dwelling and tourist and visitor accommodation on

site' or a combination of both.

It should be noted that the pergola and shipping container appear structures that could be reasonably argued to be ancillary to the existing operations on the site. The amenities block does not appear to be ancillary. However, this is for consideration under a separate application. Any application will also be required to address the fact that the pergola and amenities block have been built/placed within the 10m wide electricity easement and Essential Energy have raised concerns that have not been adequately addressed under this application.

With regard to the direct assessment of the temporary use, section (3) is relevant. Assessment under (3) has been carried out below:

(3) Development consent must not be granted unless the consent authority is satisfied that-

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

Excluding the structures that have been discussed above, the use of the land would not prejudice the subsequent carrying out of development on the land in accordance with this clause, as the use is only for 20 days in any 12 month period and has no lasting impacts on the land at the completion of each event. The proposal would be considered to comply with (a).

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

Before assessing the impacts of the proposal it's critical to understand what is meant by 'the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood.' In this regard, the Land and Environment Court has found that this test is a higher threshold than that conventionally applied to the assessment of an ordinary development application given the development for which consent is being sought is otherwise prohibited. The test is not that the impacts are acceptable, the test is that the development will not adversely impact, and this is a much higher test. It is more difficult for a development to have 'no adverse impact' than 'an acceptable' impact.

The proposal would create the following impacts. The issues associated with the impacts and whether Council staff consider them to be 'not adverse' has been discussed below:

- Noise

The SEE states that the music will be limited to small ensemble, acoustic, speaker sound system with the target functions having background music as opposed to 'dancing' music. The SEE also makes the following statement:

'...Given the level of noise potentially able to be generated from the site under the

current approval for tourist accommodation, as well as existing land uses in the vicinity related to the Bomen industrial precinct and turf farm adjoining, the addition of limited temporary events of the nature proposed by the proponent is not considered likely to adversely affect nearby properties. The proposed development has been significantly scaled down as a result of submissions in response to the original notification of the development, with the night events limited to 6 events each year. Events will also be spread out on the calendar to ensure there is no period where there is a cluster of events that may cause a nuisance to neighbours.

The proposed events area, under the pergola, is directly adjacent to the proponent's home therefore any intrusive noise will be addressed by the proponent before it becomes a nuisance to other dwellings in the vicinity.

The impact of noise has been addressed in detail earlier in this report however we reiterate that the proponent lives on the site and will be encouraging the types of events that would be compatible with a residential area, such as those detailed earlier in the report. Daytime, corporate, low key events that enable a group of people to gather and enjoy the rural setting of the site are the primary focus of the proposed development...'

A Noise Impact Assessment (NIA) was not requested by Council staff as it was considered that not only would it be extremely difficult to demonstrate that there would be no adverse impact from a noise impact perspective, even if the NIA demonstrated this was possible, all the additional impacts discussed throughout the report individually and cumulatively would result in an adverse impact and thus result in the application being recommended for refusal. Council staff did not consider it appropriate to place that added cost onto the applicant when the other impacts would result in a recommendation for refusal regardless of the outcome of the NIA.

Without the NIA Council staff would take the view that the noise of additional cars arriving and leaving at the same time, the noise associated with groups of people arriving and leaving at the same time, the noise associated with up to 50 people engaging in conversation and the noise associated with music, all in such close proximity to residential properties would create an impact that would not be consistent with the everyday noise output in this environment and would undoubtedly be audible at surrounding properties. There have been objections that have raised this concern and noted that music has been audible during previous events. Based on this, the potential noise impacts are considered to be adverse.

- Traffic, additional vehicles using the site, noise, lights and wear and tear to local roads

The application includes 11 spaces to cater for the additional 32 persons (18 people associated with the existing tourist and visitor accommodation make up the remaining number to 50). The application also states that most events would arrange for visitors to the site to be transported by minibus.

Whilst conditions on any consent granted could limit the number of vehicles visiting the site and/or require minibus transport, this is both very difficult to manage and

enforce and still results in a traffic situation that would be increased from the current situation and therefore causes an additional impact. A number of submissions have raised concerns with traffic impacts, particularly related to noise, dust and impact on the road network through additional traffic. Whilst Council staff do not believe there would be an adverse impact on the road network or an adverse dust impact given the driveway, parking area and Hillary Street are all sealed. The traffic noise of cars coming and going particularly late at night in very close proximity to neighbouring properties would cause an adverse noise and light spill issue.

- Odour - if food is provided at the event, plus additional impact of temporary toilets for events.

Whilst there would be odour associated with events through the preparation of food and the use of amenity facilities. It is unlikely to be adverse given what exists on site currently and the small scale of the events. Whilst not a reason to refuse the application in its own right, the odour impacts do need to be considered when impacts are considered cumulatively.

- Waste - control of litter

As above, under odour, there will be additional waste associated with events. However, waste is easily managed by way of conditions of consent to ensure the impact would not be considered adverse. Again, the cumulative impact would need to be considered. It should be noted that private waste collection as stated in the SEE would be inconsistent with the normal practices in surrounding properties. However, the existing tourist and visitor accommodation does allow for this property to be considered somewhat unique in this locality.

- Security and safety

Safety and security are a concern for any event and especially events that have alcohol available. Whilst the owner will not be providing or selling alcohol, the events have the ability to supply their own. Allowing 50 people onto a site that is close to neighbouring properties no doubt increases the risks to surrounding properties. This issue has been raised in the submissions and would be considered an adverse impact.

- Cumulative impacts

Based on the above assessment, individually the noise, traffic and safety and security impacts would be considered to adversely impact on the amenity of the neighbouring properties. Cumulatively, the impacts would be even greater.

Whilst the applicant has substantially reduced the proposal and put forward a number of options for managing the impacts of the events, it remains the view of Council officers that the temporary events would cause an adverse impact and therefore the proposal does not meet the provisions of this clause and should be recommended for refusal.

It should also be noted that whilst extensive management measures could be put in place it is not considered good practice to manage unreasonable and adverse impacts through management plans. Management plans should be utilised to ensure acceptable impacts remain acceptable, or in this case 'not adverse'. It is also extremely difficult to monitor and police events as they are usually finished by the time Council staff have received complaints and visited the site.

Ultimately function centres have been prohibited in the zone as they are considered to likely cause an unreasonable impact and not meet the objectives of the zone. Therefore, approving a function centre, albeit for a temporary time frame (20 days in a 12 month period), would need to clearly demonstrate that there are none of these impacts associated with function centres occurring, and in this instance the applicant has not been able to do this.

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

The temporary use would not adversely impact on environmental attributes or features of the land and would not increase the risk or natural hazards such as bushfire or flooding. The proposal would be considered to comply with (c).

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Excluding the structures that have been discussed above, the use of the land would not unreasonably impact on the ability of the land to be restored to a condition in which it was before the commencement of the use. The proposal would be considered to comply with (d).

Land Use Table

Under the LEP the site is zoned RU4 - Primary Production Small Lots

The objectives of the zone that would be considered relevant are;

- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

As mentioned above, function centres are prohibited in the RU4 zone but the use can be considered under clause 2.8 above.

With regards to the consideration of the objectives, the temporary use of the site as a function centre would be inconsistent with the second and third objectives as it does not encourage and promote diversity and employment opportunities in relation to

primary industries and it will cause conflict with adjoining properties.

It should also be noted here that the tourist and visitor accommodation approved on site is now prohibited under the LEP and is therefore reliant on Existing Use Rights. Any application for an intensification of this use (such as a pergola, shipping container and toilet block associated with the tourist and visitor accommodation) would need to address this issue.

Part 5 Miscellaneous provisions

5.21 Flood planning

(1) The objectives of this clause are as follows-

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development-

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters-

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to*

*life and ensure the safe evacuation of people in the event of a flood,
(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.

(5) In this clause-

Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.

flood planning area has the same meaning as it has in the Floodplain Development Manual.

Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

The entry to the property and the south-eastern corner of the property is located within the FPA for a riverine event. Given the discussion above around the structures and the impacts of the event itself resulting in the application not being supported, a detailed assessment of this section is not required. However, what should be noted is that the flood impacts on the property would not warrant a reason for refusal of this application. A Flood Evacuation Plan could be provided to appropriately address any concerns and ensure the relevant objectives of this clause were met.

For reference, the parking area, pergola, amenities block and shipping container are all well clear of the FPA.

Part 7 - Additional Local Provisions

7.3 - Biodiversity

This clause applies to land identified as "Biodiversity" on the Terrestrial Biodiversity Map. The site is developed and whilst the structures have issues as discussed above, they are not located in any areas of concern when it comes to biodiversity. The use itself is temporary and within the developed area of the site. Therefore, there are no impacts on any of the areas considered under section (3) of this clause.

Clause 7.9 - Primacy of Zone B3 Commercial Core

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 development is for temporary use of the site as a function centre. Whilst function centres are permissible in the CBD, approval outside of the CBD would not unreasonably compromise the primacy of the commercial core. No issues are raised under this clause.

State Environmental Planning Policies***State Environmental Planning Policy (Resilience and Hazards) 2021***

Clause 4.6 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. A site inspection identified that the land is currently used for residential and tourist and visitor accommodation land uses. Aerial photography confirmed the previous use of the land was agriculture.

There is no permanent change of use of the land proposed. Whilst agriculture is identified as a potentially contaminating land use there is no indication that the site is contaminated and it is not on Councils register of contaminated sites.

A preliminary investigation is not necessary for this development. The land is suitable for the proposed development.

State Environmental Planning Policy (Transport and Infrastructure) 2021***Division 5 Electricity transmission or distribution******Subdivision 2 Development likely to affect an electricity transmission or distribution network.******2.48 Determination of development applications-other development***

(1) This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following-

(a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,

(b) development carried out-

(i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or

(ii) immediately adjacent to an electricity substation, or

(iii) within 5m of an exposed overhead electricity power line,

(c) installation of a swimming pool any part of which is-

(i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or

(ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,

(d) development involving or requiring the placement of power lines

underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.

(2) Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must-

(a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and

(b) take into consideration any response to the notice that is received within 21 days after the notice is given.

The site contains easements for electricity purposes, being overhead powerlines, and therefore it was referred to Essential Energy for comment. Essential Energy's first response was received on 9/3/22 and raised safety concerns with the proximity of the development (pergola and amenities block) to the existing powerlines.

The revised information (which included additional information on the compliance with Essential Energy's concerns) was submitted to Essential Energy. Comments were received on 1/7/22 stating that the additional information does not address the safety concerns or clearance distances of the development.

As discussed above, the structures cannot be supported under this application and will be the subject of further enforcement action after determination of the application. This will either result in the removal of the structures or the lodgement of a separate application. Any application will be required to appropriately address Essential Energy concerns.

State Environmental Planning Policy (Primary Production) 2021

There are no relevant considerations under this SEPP for development of this nature.

(a)(ii) - The provisions of any draft environmental planning instrument

Draft local environmental plans

N/A

Draft state environmental planning instruments

Nil

(a)(iii) - Any development control plan

Wagga Wagga Development Control Plan 2010

The relevant controls of the DCP have been addressed below.

1.10 Notification of a development application

The application was notified in accordance with the DCP for a period of 14 days on two separate occasions due to revised information being received. The first period was from 9/2/22 to 23/2/22 and the second was from 1/7/22 to 15/7/22.

2.1 Vehicle access and movements

The application does not propose any change to the existing arrangements. The site

has one access point off Hillary Street. The traffic movements are minor enough that there would not be any safety concerns raised and no requirement for a traffic study. All vehicles can enter and exit in a forward motion and the site has more than adequate space for loading/unloading of goods onsite. The proposal appropriately addresses the relevant controls of this section of the DCP.

2.2 Off-street parking

The following controls of this section are relevant to this development:

C1 Parking is to be provided in accordance with the table below. For uses not listed, similar land uses should be used as a guide in assessing car parking requirements.

The table provides the following provision for function centres:

- 1 space/10m² GFA or 1 space/3 seats whichever is greater.

The table has no provision for the temporary use of land. The SEE includes the following discussion:

'...The proposal is generally consistent with the objectives. The existing driveway will not be altered under this proposal. The parking table does not address temporary events however, for function centres, requires 1 space per 10m² GFA or 1 space per 3 seats, whichever is greater. As the events area is outdoors, the GFA calculation will not be appropriate. All events will be capped at 50 people and generally 18 of those people will be staying on the site. Car parking is therefore to be calculated for the additional visitors (32) therefore 11 car spaces would be required. Most events would be arranged so that external visitors to the site are transported in a mini bus, to reduce traffic and the need for additional parking...'

Council staff are comfortable with the argument created for the number of spaces provided. The cottages have adequate formal and informal parking, and the additional 11 spaces would be considered adequate to address this control.

C2 The design and layout of parking is to be in accordance with the relevant Australian Standard at the time of lodgement of an application.

This could be conditioned if the application were to be supported.

C3 Parking spaces are to be provided for disabled persons. Accessible parking spaces to comply with the relevant Australian Standard at the time of lodgement of an application.

The SEE states that accessible parking is available opposite the pergola. This is not clear on the plans. However, as per above, compliance with standards could be conditioned if the application were to be supported.

C4 For mixed use developments, the parking required is the total of requirements for each use. Variations can be considered where it can be demonstrated that the peak demand for each land use component is staggered or that development as a whole generates less parking than separable parts.

The proposal does not compromise the parking for the tourist and visitor accommodation. No issues are raised.

Controls C9, 10 and 11 relate to planting trees in carparks and sight lines not being compromised by those plantings. Given the existing vegetation on site additional plantings would not be required.

2.3 Landscaping

Not required for the temporary use of land as a function centre. The SEE states that the owners are prepared to plant hedging along fence lines to reduce impacts. Whilst landscaping will reduce certain impacts it would not be to a degree that would alter any of the assessment throughout this report. Landscaping should not be utilised to make impacts acceptable that otherwise would not be as this is rarely successful and very difficult to maintain and enforce. Landscaping should only be utilised to reduce the impact of borderline acceptable impacts.

2.4 Signage

No signage is proposed.

2.5 Safety and security

The controls of this section generally relate to the suitability of a new building in relation to its safety and security design. The proposal does not raise any concerns when assessed against the controls.

As discussed above, there are safety and security issues associated with events. Whilst mitigation measures such as management plans, limited hours of operation, security personnel and the like can be put in place to reduce the risk, approving events in this location will always result in increased risk to the safety and security of the neighbouring properties.

2.6 Erosion and Sediment Control Principles

There are no building works proposed, therefore no sediment and erosion issues are raised.

Section 4 Environmental Hazards and Management

4.1 Bushfire

Whilst not mapped as bushfire prone land a site inspection has identified that the land to the west would be considered a grassland and therefore a bushfire threat to the property. In this instance the development would be classed as 'other development'. Section 8 of the PBP2019 is therefore relevant:

8.1 Introduction

In order to comply with PBP the following conditions must be met:

- *satisfy the aim and objectives of PBP outlined in Chapter 1;*
- *consider any issues listed for the specific purpose for the development set out in this chapter; and*
- *propose an appropriate combination of BPMs.*

The aim and objectives are as follows:

The aim of PBP is to provide for the protection of human life and minimise impacts on property from the threat of bush fire, while having due regard to development potential, site characteristics and protection of the environment. More specifically, the objectives are to:

- *afford buildings and their occupants protection from exposure to a bush fire;*
- *provide for a defensible space to be located around buildings;*
- *provide appropriate separation between a hazard and buildings which, in combination with other measures, prevent the likely fire spread to buildings;*
- *ensure that appropriate operational access and egress for emergency service personnel and occupants is available;*
- *provide for ongoing management and maintenance of BPMs; and*
- *ensure that utility services are adequate to meet the needs of firefighters.*

8.3.8 Outdoor events in bushfire prone areas

This section has the following list of considerations for outdoor events:

- *holding events outside the gazetted bush fire danger period for the area;*
- *areas of accommodation should be strategically located to ensure maximum time to warn and evacuate people who may be sleeping and slow to respond. This also ensures that highly flammable and combustible materials, such as tent fabric, vehicle fuels and gas cookers are in areas that will not facilitate the spread of fire;*
- *a Bush Fire Emergency Management and Evacuation Plan must be prepared that is acceptable to relevant stakeholders, including crowd management and security. It should be consistent with the NSW RFS document: A guide to developing a bush fire emergency management and evacuation plan;*
- *access and egress routes for emergency services and patrons in the event that evacuation is required;*
- *a refuge building of suitable capacity to contain all participants and staff that complies with the NSW RFS Neighborhood Safer Place Guidelines (see www.rfs.nsw.gov.au <<http://www.rfs.nsw.gov.au>>);*
- *an open air bush fire emergency assembly area capable of accommodating all participants and staff that complies with the NSW RFS Neighborhood Safer Place Guidelines (see www.rfs.nsw.gov.au);*
- *a suitable method of staging evacuation, ensuring that evacuation flow is directed through different stages/areas of the site, moving from areas of higher risk to lower risk;*
- *expected evacuation timeframes;*
- *on severe or higher fire danger rating days the event will not proceed;*
- *advance warning to patrons identifying that the event is located on BFPL and giving advice on any fire restrictions;*
- *ability to cease and override P.A. and audio systems throughout the site to*

- announce emergency warnings, alerts or safety information, which can be clearly heard from all areas of the site; and*
- a prescribed ratio of trained fire wardens to participants.*

A suitable package of other protection measures should be proposed based on individual event characteristics which considers the following:

- bulk water supplies on site that are specifically allocated to firefighting purposes;*
- unobstructed APZs of suitable width surrounding the site along the boundaries adjacent to the bush fire threat. Slashing of grassed areas needs to occur in the lead-up to the event and maintained throughout its duration;*
- emergency management planning during the event organisation stage to be undertaken in consultation with the NSW RFS and all other relevant stakeholders; and*
- fires for cooking and heating in approved fire places only and addressed by a Fire Management Plan.*

Given the nature of the events, the number of events and the amount of people involved, there is not considered to be a risk to life and property that cannot be appropriately managed by way of increased bushfire protection measures. In this instance a *Bush Fire Emergency Management and Evacuation Plan* would ensure the proposal satisfactorily addresses the aim and objectives of PBP. This could be conditioned on a consent if granted.

4.2 Flooding

Whilst this section of the DCP applies, as discussed above, only a small section of the site is flood prone and this is well clear of the event area and structures. No flooding issues are raised that would result in refusal of the application.

Section 5 Natural Resource and Landscape Management

5.4 Environmentally sensitive land

This issue has been addressed under Clause 7.3 of the LEP above, given the proposal, no issues are raised.

(a)(iia) - any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No planning agreement has been entered into under section 7.4.

(a)(iv) - any matters prescribed by the regulations

61 Additional matters that consent authority must consider

(7) In determining a development application for development on land to which Wagga Wagga Local Environmental Plan 2010 applies, the consent authority must consider whether the development is consistent with the Wagga Wagga Special Activation Precinct Master Plan published by the Department in May 2021.

The subject site is not located within the Special Activation Precinct Whilst in close proximity the nature of the development is not one that would cause any unreasonable impacts to the SAP that require further consideration.

(b) - The likely impacts of the development**Context and setting**

With specific regard to the structures, whilst the pergola and shipping container would not be considered out of context and setting the amenities block would. It is acknowledged that the amenities block is not visible from the public road, however it is visible from neighbouring properties and not considered something that is expected or necessary on a permanent basis on lots of this size and for this use.

With regard to the temporary use, the immediately surrounding area generally consists of single residential dwellings on lots between 2-4ha. Whilst this property is unique in that it has approved tourist and visitor accommodation, a function centre, albeit temporary, would be considered to be out of context and setting. Assessment throughout the report has demonstrated that the development would result in adverse impacts on the adjoining properties that are a direct result of the proposed use.

Concerns have also been raised about the potential conflict that could eventuate between traditional farming practices and activities that are expected and encouraged in the vicinity and the proposed use. Riding motor bikes, spraying weeds or moving livestock are all examples of activities that would cause direct conflict with a wedding ceremony for example. The preferred and predominant land use should not be compromised by a land use that would otherwise be prohibited if it were not limited to 20 days in a 12 month period.

Access, transport and traffic

As discussed above, whilst the proposal would comply with the controls of the DCP, the additional traffic associated with the events would cause impacts by way of noise and light spillage that would cause an adverse impact on the neighbouring properties and warrant refusal of the application.

Noise and vibration

The noise impacts have been discussed in detail above. The impact would be considered adverse and warrant refusal of the application.

Natural Hazards

The site is bush fire and flood prone. The issues have been discussed above. If consent were to be granted these issues could be resolved by way of conditions of consent relating to management and evacuation plans.

Waste

Any impacts could be mitigated to a level that would not result in adverse impacts from waste.

Water

The site is adequately serviced, no issues are raised.

Soils

No issues are raised.

Air and microclimate

Odour issues have been discussed above. Whilst there will be some impact, on its own it would not warrant refusal of the application.

Services/Utilities

The site is adequately serviced. The issues around the separate amenities building have been discussed above.

Flora and fauna

No vegetation is proposed to be removed or impacted by this application.

Heritage

The subject site has no heritage significance. The proposal will not adversely impact the heritage significance of any items near the site.

Safety and security

This issue has been discussed in detail above. The increased risk to safety and security of neighbouring properties would be considered an adverse impact and warrant refusal of the application.

Public domain

No issues raised.

Social and Economic Impacts

There are both positive and negative social impacts associated with the proposal.

Positive:

The development will provide diversity in the function centres available in the city. It provides additional opportunities for people to meet/gather and partake in whatever function is being held. Providing opportunities for social interaction is a positive impact of such proposals.

Negative:

A number of objections have been received that raise concerns. Whilst not all concerns raised are valid, a number of issues, such as traffic, noise and safety and security would cause impacts on the neighbouring properties. The impacts have the potential to negatively affect people's way of life on these properties and have potential to cause social tensions in a small local community.

The economic impacts are generally positive as it would provide competition to other event venues in the locality helping to keep market prices competitive. Will provide employment and business for hire companies and other industries associated with event venues.

Cumulative impacts

As discussed throughout the report, there are a number of potential impacts that result in the application being recommended for refusal. There are also a number of potential impacts that whilst individually would not be considered 'adverse', cumulatively they have potential to increase impacts to adverse levels.

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 proposed development would result in the temporary use of land as a function centre with the use of existing pergola, amenities block and shipping container. The development would not result in unreasonable ecological impacts.

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

Suitability of the site in terms of the likely impacts identified under (b)

The site is currently zoned RU4 Primary Production Small Lots. The assessment throughout the report has determined that the development will cause adverse impacts thus demonstrating the site unsuitable for the proposal.

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

Referrals

Internal

Essential Energy

Licencing Police (Licenced Premises Reference Group)

Notification and advertising

In accordance with the Council's advertising and notification provisions outlined in Section 1.10 of the WWDGP the application was notified for a period of 14 days between 9/2/22 and 23/2/22, 6 objections were received. Revised information was submitted and the application was renotified for a period of 14 days between 1/7/22 and 15/7/22, 13 objections were received. Of the 13, 3 made a submission during the original notification period. A summary of the issues raised and commentary on these issues is as follows:

Issue: Land is RU4 not commercial and should not be used for commercial purposes.

Comment: As discussed under clause 2.8 of the LEP above, the temporary use of the land for events is permissible and therefore can be considered on the land.

Issue: Functions increase security risks for neighbouring properties.

Comment: The issue of safety and security has been discussed above.

Issue: Noise impacts

Comment: Noise impacts have been discussed above.

Issue: Existing approval for tourist and visitor accommodation not being complied with.

Comment: Non-compliance with existing consents is not a matter for consideration under this application.

Issue: Existing rural land uses will impact on the functions and cause conflict.

Comment: This issue has been discussed above.

Issue: Is there a need for another function centre in North Wagga

Comment: Whether the business is needed is not a consideration under the planning assessment.

Issue: Traffic impacts (noise, dust, impact on road network etc)

Comment: The issue of traffic impacts has been discussed above.

Issue: How will any restrictions (such as number of events) be monitored

Comment: If approval were to be granted conditions of consent would be imposed that would include a limit of number of events, numbers of attendees, hours, noise etc. The owner would be responsible for ensuring the conditions are complied with. Should Council receive complaints that conditions are not being met appropriate investigations will be undertaken and relevant enforcement action taken.

Public Submissions and those from public authorities

Essential Energy comments have been addressed in the report.

Whilst no formal response was received from the LPRG a meeting was held where no issues were raised that the police felt could not be addressed via a Venue and Security Management Plan that could be imposed on any consent granted. It should be noted that the Police are not making an assessment on whether the safety and security impacts are adverse. Their assessment is that any impacts can be appropriately managed. As discussed above, there is a more stringent test applied under clause 2.8 of the LEP.

(e) - the public interest

Federal, state and local government interests and general community interests

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.

Council have received 13 objections relating to the proposed development. Whilst not all issues raised are considered relevant, the assessment above has found that several issues raised would result in adverse impacts to the neighbouring properties.

The proposal does not comply with the LEP and is considered to be out of character in the context and setting.

It is considered that the proposal is not in the public interest and therefore refusal is recommended.

Other Legislative Requirements

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)

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 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.

Given no vegetation is proposed to be removed a test of significance is not required.

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.

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 has been completed, no further action is required.

Bush Fire Risk Assessment

The development has been considered against the relevant provisions of the WWLEP2010 and DCP. A risk assessment has been completed, no further action is required.

Council Policies

Nil

Comments by Council's Officers

Council's other relevant officers have reviewed the application in accordance with Council's processing procedures.

Development Contributions

No contributions are required for a development of this nature.

Other Approvals

Nil

Conclusion

The proposed development results in a number of impacts that have been discussed throughout the report. The development of a function centre for temporary use in this location is out of character with the locality and causes adverse impact on the amenity of the neighbouring properties.

RECOMMENDATION

It is recommended that application number DA22/0029 for Proposed use of site for temporary events (20 per year) including additional parking area and use of existing pergola, amenities block and shipping container be refused for the following reasons:-

1. The development has the potential to cause adverse amenity impacts on the neighbouring properties and is therefore not considered to be in the public interest. Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.
2. The proposed structures (pergola, amenities block and shipping container) would not be considered 'temporary use of land' and therefore cannot be considered under clause 2.8 of the Wagga Wagga Local Environmental Plan 2010. Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
3. The proposal would have detrimental social and amenity effects on the land and therefore does not comply with clause 2.8(1) of the Wagga Wagga Local Environmental Plan 2010. Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
4. The development would result in an adverse noise impact on the amenity of the neighbourhood and would therefore not comply with clause 2.8(3)(b) of the Wagga Wagga Local Environmental Plan 2010. Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
5. The development would result in an adverse traffic impact on the amenity of the neighbourhood and would therefore not comply with clause 2.8(3)(b) of the Wagga Wagga Local Environmental Plan 2010. Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
6. The development would result in an adverse safety and security impact on the

amenity of the neighbourhood and would therefore not comply with clause 2.8(3)(b) of the Wagga Wagga Local Environmental Plan 2010. Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.

7. The cumulative impacts of noise, traffic, safety and security, odour and waste would result in an adverse impact on the amenity of the neighbourhood and would therefore not comply with clause 2.8(3)(b) of the Wagga Wagga Local Environmental Plan 2010. Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
8. The proposal is out of character with the context and setting of the area. Environmental Plan 2010. Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
9. The site is not suitable for the proposed development. Environmental Plan 2010. Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
10. The pergola and amenity building have not appropriately addressed the safety concerns or clearance distances from the electricity infrastructure on site. Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.