

8.2 DA0415/2021 - Shop Top Housing (3 Commercial premises and 3 dwellings) - 23 Lewis Street, Mudgee - Lot 1 DP 59498

REPORT BY THE PLANNING COORDINATOR
TO 13 OCTOBER 2021 ORDINARY MEETING
GOV400088, DA0415/2021

RECOMMENDATION

That Council:

- A. receive the report by the Planning Coordinator on the DA0415/2021 - Shop Top Housing (3 Commercial premises and 3 dwellings) - 23 Lewis Street, Mudgee - Lot 1 DP 59498; and
- B. approve DA0415/2021 - Shop Top Housing (3 Commercial premises and 3 dwellings) - 23 Lewis Street, Mudgee - Lot 1 DP 59498 subject to the following conditions and statement of reasons:

CONDITIONS

1. Development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below, except as varied by the conditions herein. Any modification otherwise required to the approved plans will require the submission of a modification application under Section 4.55 of the *Environmental Planning and Assessment Act*.

<i>Title/Name</i>	<i>Drawing No/ Document Ref</i>	<i>Revision/Issue</i>	<i>Dated</i>	<i>Prepared by</i>
Cover Sheet	35200-A00	D	26.08.2021	Barnson
Site Plan	35200-A01	F	26.08.2021	Barnson
Lower Floor Plan	35200-A02	D	26.08.2021	Barnson
Upper Floor Plan	35200-A03	B	18.06.2021	Barnson
Elevation	35200-A04	F	26.08.2021	Barnson
Sections	35200-A05	E	18.06.2021	Barnson
Shadow Diagrams	35200-A06	C	27.05.2021	Barnson
Shadow Diagrams	35200-A07	C	27.05.2021	Barnson
BASIX Certificate	1205619M	-	01 June 2021	Certified Energy 1
Stormwater Management Plan	35200-C04	1	23.08.2021	Barnson
Sewer Reticulation Plan	35200-C06	1	23.08.2021	Barnson
Water Reticulation Plan	35200-C08	1	23.08.2021	Barnson

GENERAL

2. This development consent includes approval for demolition works and construction of Shop top housing, comprising three (3) x 2 bedroom dwellings and three (3) commercial premises. **NOTE: The commercial uses limited by this consent include a Business Premise or Shops only to reinforce the parking requirements of the development. Where building alterations or a change of use is required, a separate**

development consent or complying development certificate must be approved prior to commencing works / the use.

3. This development consent includes approval for the balcony fascia signage and wall sign, as shown on the approved plans. A separate Development Consent or Complying Development Certificate may be required for alternative or additional signage if the signage is not identified as exempt development. The fascia balcony signage is to advertise only the name of the business and product traded from the premises. No approved signage shall be illuminated.
4. The height and construction of the dividing fence may require agreement between the owners of the subject land and the respective owners of adjacent properties. Legal advice should be sought in the case of any doubt.
5. All demolition works are to be carried out in accordance with AS 2601-2001 "Demolition of structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc., should be handled, conveyed and disposed of in accordance with guidelines and requirements from SafeWork NSW. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.
6. Notwithstanding the approved plans, the structure is to be located clear of any easements and/or 1.5 metres from any water and sewer mains in accordance with Council Policy.
7. Costs associated with all development works including any necessary alterations, relocations of services, public utility mains or installations must be met by the developer. The developer is responsible to accurately locate all existing services before any development works commence to satisfy this condition.
8. If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, 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 from possible damage from the excavation, and
 - b) where necessary, underpin the building, structure or work to prevent any such damage.

Note - Prescribed condition pursuant to clause 98E of the Environmental Planning and Assessment Regulation 2000 and Council requirement to preserve the stability of adjoining roads/public places.

9. This consent does not permit commencement of any site works. Works are not to commence until such time as a Construction Certificate has been obtained.
10. No structures or earthworks are permitted to encroach within any easements for the purposes of utility infrastructure as specified in Council's Development Control Plan.
11. All earthworks, filling, building, driveways or other works, are to be designed and constructed (including stormwater drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.

12. All trafficable pavements are to be constructed and sealed with an impervious surface, either bitumen or concrete, and maintained to the satisfaction of Council at all times.
13. All vehicles are required to enter and leave the site in a forward direction at all times. Signage to this effect is to be appropriately located within the site.
14. A minimum of three (3) car parking spaces are to be provided on the site of the development reserved for the purposes of the residential dwellings and comply with *AS 2890.1: 2004 – Parking facilities – Part 1: Off-street car parking* and the following requirements:
 - Each parking space is to have minimum dimensions of 5.5m x 2.4m;
 - Line marking, wheel stop and signage is to be installed as per the relevant Australian Standard;
 - All car parking spaces are to be sealed and must be maintained in a satisfactory condition at all times.
15. Costs associated with all development works including any necessary alteration, relocation of services, public utility mains or installations must be met by the developer. The developer is responsible to accurately locate all existing services before any development works commence to satisfy this condition.
16. The only waste derived material that may be received at the development site must be:
 - a) Virgin excavated natural material, within the meaning of *Protection of the Environment Operations Act 1997*; and
 - b) Any other waste-derived material the subject of a resource recovery exemption under cl.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

17. Prior to release of the Construction Certificate, approval pursuant to Section 68 of the *Local Government Act 1993* to carry out water supply, stormwater and sewerage works is to be obtained from Mid-Western Regional Council.
18. All building work is to comply with the requirements of the Access to Premises Standard.
19. A schedule of existing and proposed fire safety measures is to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
20. A detailed schedule of colours and finishes is to be submitted to and approved by Council's Heritage Adviser prior to the issue of a Construction Certificate. The blended bricks indicated on the elevation drawings are not supported. A monotone brick, in a mid-brown range or other approved tone, or bag and paint finish is to be used.
21. Details of an interpretation panel designed by suitably qualified heritage consultant are to be submitted to and approved by Council's Heritage Adviser prior to the issue of a Construction Certificate.

22. Prior to the issue of any Construction Certificate, or commencement of any site works, the Developer must enter into an arrangement with the relevant Electricity Supply Authority to alter / amend the existing Electric Light Pole (ELP) and any other public electricity supply infrastructure. Alterations to public / street lighting must also be approved by Council as the relevant Road Authority. The Developer must provide for and bear all costs associated with any alteration of electricity services and public lighting arrangements.
23. Prior to the issue of a Construction Certificate, the applicant must provide for approval by the Certifier (i.e. Council or a private Certifier), a detailed pavement and car parking plan showing:
- plan and cross sections of pavement with details of any necessary retaining wall structure,
 - plans to show existing and designed finished surface levels,
 - kerbing for the control of surface stormwater runoff,
 - line-marking,
 - dimensioned car parking spaces,
 - swept path templates,
 - any provision for loading areas for use by the commercial premises,
 - full details of fencing to replace the existing high brick wall on the eastern boundary,
 - any landscaping buffer or screening, and
 - details of any protection for the fence in case of accidental damage to or collision by a manoeuvring vehicle.

Details shall comply with the requirements of *AS/NZS 2890.1:2004 – Parking Facilities – Part 1: Off-street Car Parking* and the relevant conditions of this development consent. Internal driveways are to be configured to ensure that:

- Loading and unloading facilities are to be contained within the site and to be able to cater for largest design vehicle.
 - Safe on-site manoeuvring area for the largest design vehicle.
 - Vehicle movement areas are to be sealed to address environmental impacts.
24. Prior to the issue of a Construction Certificate, the Developer must provide for Council approval a detailed sewer design including long section to ensure that the proposed internal sewer arrangement can provide appropriate grades to drain to the existing internal connection point (boundary riser). The plan must also show a Manhole installed immediately upstream of the existing internal connection point (boundary riser) to provide for maintenance access.

Note: Any proposed work downstream of (and including) the existing boundary riser will effectively be works on 'live' mains. This work on 'live' mains must be undertaken by Council after payment of relevant and quoted Private Works charges.

25. Prior to the issue of a Construction Certificate, the developer shall pay a long service levy at the prescribed rate to either the Long Service Levy Corporation or Council, for any work costing \$25,000 or more.

Note: The amount payable is currently based on 0.35% of the cost of work. This is a State Government Levy and is subject to change.

Note: Council can only accept payment of the Long Service Levy as part of the fees for a Construction Certificate application lodged with Council. If the Construction

Certificate is to be issued by a Private Certifier, the long service levy must be paid directly to the Long Service Levy Corporation or paid to the Private Certifier.

26. In accordance with the provisions of section 7.11 of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Council Contributions Plan 2019*, a contribution shall be paid to Council in accordance with this condition as detailed in the table below. The contribution shall be paid to Council prior to the issue of a Construction Certificate. Contributions are subject to the consumer price index and are payable at the rate applicable at the time of payment.

Section 7.11 Contributions		
3 x Dwellings (minus 1 credit for vacant lot)		
<i>Mudgee Catchment</i>	<i>Per Lot</i>	<i>2 Dwellings</i>
Transport Facilities	\$ 4,379.00	\$ 8,758.00
Recreation and Open Space	\$ 2,199.00	\$ 4,398.00
Community Facilities	\$ 640.00	\$ 1,280.00
Stormwater Management	\$ 462.00	\$ 924.00
Plan Administration	\$ 1,003.00	\$ 2,006.00
TOTALS	\$ 8,683.00	\$ 17,366.00

Note: the contribution amount will be adjusted by the Consumer Price Index, if not paid in the same financial year the development consent was issued or where lots are released in different financial years.

Note: Council's Mid-Western Regional Contributions Plan 2019 is available for perusal at Council's Administration Centre at 86 Market Street, Mudgee or on Council's website www.midwestern.nsw.gov.au under Council Documents/Strategies and Plans.

27. Any unpaid Contributions or charges nominated in the development consent will be indexed to CPI at the beginning of each new financial year.
28. Prior to the issue of a Construction Certificate, the developer shall obtain a *Certificate of Compliance* under the *Water Management Act 2000*, from Council.

Note: Refer to Advisory Notes in relation to the payment of contributions to obtain a Certificate of Compliance.

PRIOR TO THE COMMENCEMENT OF WORKS

29. No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- the appointment of a Principal Certifying Authority; and
 - the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

30. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied

periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE PRIOR TO SUBSEQUENT DISPOSAL AT AN APPROVED WASTE DISPOSAL FACILITY.

31. A sign must be erected in a prominent position on any work site on which the erection or demolition of a building is carried out:
 - a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - c) the name, address and telephone number of the Principal Certifying Authority for the work; and
 - d) the sign shall be removed when the erection or demolition of the building has been completed.
32. Prior to the commencement of any works within the road reserve the Developer must obtain approval under the provisions of Section 138 of the *Roads Act 1993*. Site plans showing all proposed works within the road reserve must be provided with this application. This includes works within the footpath associated with the balcony and any relocation of Council infrastructure. Approved bollards must also be included at the base of all balcony posts to protect from rear parking of vehicles for the life of the development.
33. Prior to the commencement of any works on public land a copy of the Contractor's public liability insurance cover for a minimum of \$20,000,000 (twenty million dollars) is to be provided to Mid-Western Regional Council. Mid-Western Regional Council is to be indemnified against any works carried out by the contractor.
34. The development site is to be managed for the entirety of work in the following manner:
 - a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - b) Appropriate dust control measures;
 - c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained; and
 - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
35. Prior to the commencement of works on site, the applicant shall advise Council's Operations Department, in writing, of any existing damage to Council property.
36. If the work involved in the erection/demolition of the building:
 - a) Is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - b) Building involves the enclosure of a public place; then

A hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed. Where necessary,

signage and devices (e.g. temporary kerb ramps) advising and indicating alternative and DDA compliant pedestrian detours is to be installed and maintained at all times as required.

DURING CONSTRUCTION

37. All building work must be carried out in accordance with the provisions of the National Construction Code, the *Environmental Planning & Assessment Act 1979* and Regulations and all relevant Australian Standards.
38. All mandatory inspections required by the *Environmental Planning & Assessment Act* and any other inspections deemed necessary by the Principal Certifying Authority being carried out during the relevant stage of construction.
39. The requirements of BASIX Certificate number 1205619M issued on 1 June 2021 must be installed and/or completed in accordance with the commitments contained in that certificate. Any alteration to those commitments will require the submission of an amended BASIX Certificate to the Council and/or the Principal Certifying Authority prior to the commencement of the alteration/s.
40. This approval does not provide any indemnity to the owner or applicant under the *Disability Discrimination Act 1992* with respect to the provision of access and facilities for people with disabilities.
41. The footpath and driveway levels are not to be altered outside the property boundary without Council's permission.
42. Switchboards for gas, electricity, etc., must not be attached to the front or street facing elevations of the building.
43. No trees on public property (footpaths, roads, reserves etc.) shall be removed or damaged during construction works including the erection of any fences or hoardings.
44. All public footways, foot paving, kerbs, gutters and road pavement damaged during the works are to be restored to match existing conditions at the Developer's / Demolisher's expense.
45. In the event of any archaeological material being discovered during earthmoving/construction works, all work in that area is to cease immediately and Heritage NSW is to be notified as soon as practicable. Work may only resume upon the authorisation of Heritage NSW.
46. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the Plumbing Code of Australia.
47. The strength of the concrete used for the reinforced concrete floor slab must be a minimum 25Mpa.
48. Metal roof/wall cladding shall be provided in a non-reflective colour scheme such as "Colorbond" steel sheeting.
49. Backflow Prevention to protect against a high risk use will be required on the subject land (at the location of the water meter) in accordance with AS3500 and AS2845. A

separate Backflow Prevention device for fire services at the development, where these are proposed will also be required.

50. The list of measures contained in the schedule attached to the Construction Certificate are required to be installed in the building or on the land to ensure the safety of persons in the event of fire in accordance with Clause 168 of the Environmental Planning and Assessment Regulation 2000.
51. Construction work noise that is audible at other premises is to be restricted to the following times:
 - a) Monday to Saturday - 7:00am to 5:00pmNo construction work noise is permitted on Sundays or Public Holidays.
52. Where it is proposed to import fill, the material shall be certified as free of hazardous materials and contamination and be classified as VENM or ENM under the guidelines of the NSW Environmental Protection Authority by a qualified Geotechnical Engineer. Fill placed in residential or commercial lots shall be compacted in accordance with *AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments*.
53. All stormwater from developed surfaces including overflow from water tank (detention plus retention) is to be discharged to Lewis and Mortimer Street with the use of non-flexible kerb adaptors as per the stormwater management plan prepared by Barnson Drawing Number 35200 – C04 rev 1.
54. The developer is to meet the full cost of water reticulations to service the development plus the cost of connecting to existing services. All water supply work is required to be carried out in accordance with the requirements of Mid-Western Regional Council (as the Water Supply Authority under the *Local Government Act, 1993*) and in accordance with the National Specification – Water Supply Code of Australia.
55. The developer is to meet the full cost of sewer reticulations to service the development plus the cost of connecting to existing services. All sewerage work is required to be carried out in accordance with the requirements of Mid-Western Regional Council (as the Water Supply Authority under the *Local Government Act, 1993*) and in accordance with the National Specification – Sewerage Code of Australia.
56. The Applicant, to re-locate the power pole, will have to meet the requirements of Essential Energy's Contestable Works process. Clearances can be determined through this process. The clearances for the conductor, under worst case conditions, needs to be determined before Essential Energy can state if the pole position is satisfactory. The Applicant should engage, at their own expense, a Level 3 Accredited Service Provider to complete these works. Refer Essential Energy's Contestable Works Team for requirements via email contestableworks@essentialenergy.com.au.
57. The Applicant will also need to engage the services of an Accredited Service Provider to ensure that the service to the proposal complies with the NSW Service and Installation Rules. This may mean that the existing service will need to be re-located/upgraded, at the Applicant's expense. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.

58. The Applicant must comply with SafeWork NSW clearances when constructing the development (this is 3.0 metres for ordinary people, 4.0 metres for scaffolding).
59. The Developer is required to provide for all on-site parking and driveways as shown on approved plans. Pavements must be sealed with an impervious surface (bitumen or concrete) and be drained in accordance with an approved drainage plan. Internal pavements and line-marking must be maintained to the satisfaction of Council at all times.
60. The Developer is required to provide for the line-marking and signage for all on-street car parking immediately adjacent the site in accordance with an approved Line-marking and signage plan. A kerb / pram ramp must also be provided adjacent any Disabled car parking space. Kerb / pram ramps must also be provided in accordance with the requirements of the relevant Australian Standards (AS 1428).

NOTE: The areas of road pavement proposed to be line-marked for on-street parking must be provided with a bitumen re-seal to provide a consistent and uniform surface prior to the application of line-marking. Line-marking is to be installed in accordance with the requirements of relevant standards for both Parking (AS 2890) and Traffic Controls (AS 1742).

PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

61. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.
62. Prior to the issue of an Occupation Certificate all access, car parking and associated manoeuvring areas are to be completed. New sealed access from Mortimer Street is to be constructed in accordance with Council requirements and standards. Separate approval for this work must be obtained under the provisions of Section 138 of the *Roads Act 1993*.
63. The existing access crossovers from Lewis Street and Mortimer Street are to be made redundant and restored to match existing barrier kerb and gutter with nature strip, prior to issue of an Occupation Certificate.
64. The interpretation panel is required to be affixed in the approved location by Council's Heritage Advisor prior to the issue of an Occupation Certificate.
65. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate in accordance with Clause 153 of the *Environmental Planning and Assessment Regulation 2000* for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the Fire and Rescue NSW and a copy is to be prominently displayed in the building.
66. Prior to the issue of an Occupation Certificate, for any buildings on site, the building is to be connected to reticulated water supply, stormwater and sewerage in accordance with the relevant section 68 approval/s.

67. Prior to issue of an Occupation Certificate, all fencing, plantings and hard landscaping (e.g. rocks, retaining walls, solid garden bed edging) is to be installed. Landscaping must comprise low maintenance, drought and frost resistant species.
68. Outdoor drying facilities and letterboxes are to be provided for the dwellings prior to occupation.

OPERATIONAL/ ONGOING CONDITIONS

69. For every 12 month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement certifying that each specified fire safety measure is capable of performing to its specification.
70. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of Fire and Rescue NSW. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
71. The hours of operation of all ground floor premises are limited to :
 - 7am to 7pm, Monday to Friday and
 - 8am to 1pm Saturday.

No operations are permitted on Sundays or Public Holidays.
72. There being no interference with the amenity of the neighbourhood by reason of the emission of any “offensive noise”, vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.
73. All vehicles are required to enter and leave the site in a forward direction at all times.
74. All line-marking for the on-site car parking spaces and footpath areas are to be maintained in a visible condition, at all times.
75. All loading and unloading in connection with the premises shall be carried out wholly within the site and at the approved loading dock.
76. All car parking spaces, loading and unloading areas, vehicle manoeuvring and driveway areas must not be used for the storage of any goods or materials and must be available for their intended use at all times.
77. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property or roadways, in accordance with Australian Standard 4282 “Control of the Obtrusive Effects of Outdoor Lighting”.
78. No display, signage or sale of goods is to take place from public areas or footpaths fronting the premises.
79. All approved signage is to be maintained in good condition at all times.
80. The signage is to be securely affixed and is not to flash, move or be objectionably glaring.

81. The development is to be maintained in a clean and tidy manner, at all times.
82. The balcony above public land must be maintained in a safe condition by the landowner for the life of the development.
83. The bollards located in front of each balcony post must be maintained in a safe condition to protect from rear parking of vehicles for the life of the development. All damaged / unsightly bollards must be replaced immediately at the full cost of the developer.

COUNCIL ADVISORY NOTES

1. This development consent requires a Certificate of Compliance under the *Water Management Act 2000* to be obtained prior to the issue of a Construction Certificate.

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

Please be advised that as a precondition to the granting of a Compliance Certificate, the following is to occur:

- a) A monetary contribution in accordance with the following Schedule of Contributions must be paid in full (including indexation, where applicable):

Section 64 Contributions		
	<i>ET's with Credits</i>	<i>Charge</i>
Water Headworks	1.409 ET	\$12,337
Sewer Headworks	2.408 ET	\$9,625
TOTAL HEADWORKS		\$21,962

Note - Section 64 Developer Contributions are subject to Consumer Price Index increase at 1 July each year.

2. The removal of trees within any road reserve requires the separate approval of Council in accordance with the policy "Tree Removal and Pruning - Public Places".
3. Council has no regulatory authority in regards to dividing fencings under the *Dividing Fences Act 1991* and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
4. The land upon which the subject building is to be constructed may be affected by restrictive covenants. This approval is issued without enquiry by Council as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this approval. Persons to whom this approval is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.

5. Division 8.2 of the *Environmental Planning and Assessment Act* (EP&A Act) gives you the ability to seek a review of the determination. This request is made to Council and must be made within 12 months after the date on which you receive this notice. The request must be made in writing and lodged with the required fee; please contact Council's Development Department for more information or advice.
6. If you are dissatisfied with this decision section 8.7 of the EP&A Act 1979 gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice, pursuant to section 8.10(1)(b).
7. To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.

ESSENTIAL ENERGY ADVICE

1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
2. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.
3. In addition, Essential Energy's records indicate there is electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.
4. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the *Electricity Supply Act 1995 (NSW)*.
5. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.

STATEMENT OF REASONS

The determination decision was reached for the following reasons:

1. The proposed development complies with the requirements of the applicable environmental planning instruments and Mid-Western Regional Development Control Plan 2013.
2. The proposed development is considered to be satisfactory in terms of the matters identified in Section 4.15 of the *Environmental Planning & Assessment Act 1979*.
3. The matters raised within submissions have been addressed in the following manner:
 - Conditions have been imposed to limit hours of operation for the ground floor premises, and
 - Conditions have been imposed to limit construction hours.

Executive summary

OWNER/S	Fergus Corporation Beneficiary Pty Ltd
APPLICANT:	Mr Michael Fergus c/- Barnson Pty Ltd
PROPERTY DESCRIPTION	Lot 1 DP 59498
PROPOSED DEVELOPMENT	Shop Top Housing
ESTIMATED COST OF DEVELOPMENT:	\$2,500,000.00
REASON FOR REPORTING TO COUNCIL:	Councillor Call-up
PUBLIC SUBMISSIONS:	One (1) Submission

Council is in receipt of Development Application DA0415/2021 that seeks approval for the construction of shop top housing (3 commercial premises and 3 dwellings) to be located at 23 Lewis Street MUDGEES NSW 2850, Lot 1 DP 59498, received by Council on 23 June 2021.

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 26 July 2021. During the notification period, one (1) submission was received.

The proposed development has been assessed in accordance with Council's DCP and the LEP. The proposed development is considered generally consistent with Council's planning controls.

The application has been referred to Council for consideration as it was 'called up' by two (2) Councillors during the 5 day memorandum period.

The application is recommended for Approval.

Disclosure of Interest

Nil.

Detailed report

PROPOSED DEVELOPMENT

Development Application DA00415/2021 seeks approval for the construction of shop top housing (3 commercial premises on the ground floor and 3 dwellings at the first floor) to be located at 23 Lewis Street MUDGEES NSW 2850.

The proposed development will enable 3 new commercial premises to be located on the lower level and 3 x 2 bedroom dwellings above each commercial premise. Minor demolition works is required to prepare the site for the development which relates to the existing masonry wall located at the eastern boundary along with the need to relocate an existing electrical pole with attached streetlight at the Lewis and Mortimer Street intersection.

Figures 1 and 2 below provides the site plan and 3D elevations of the proposal with all development plans included as Attachment 1 and 2.

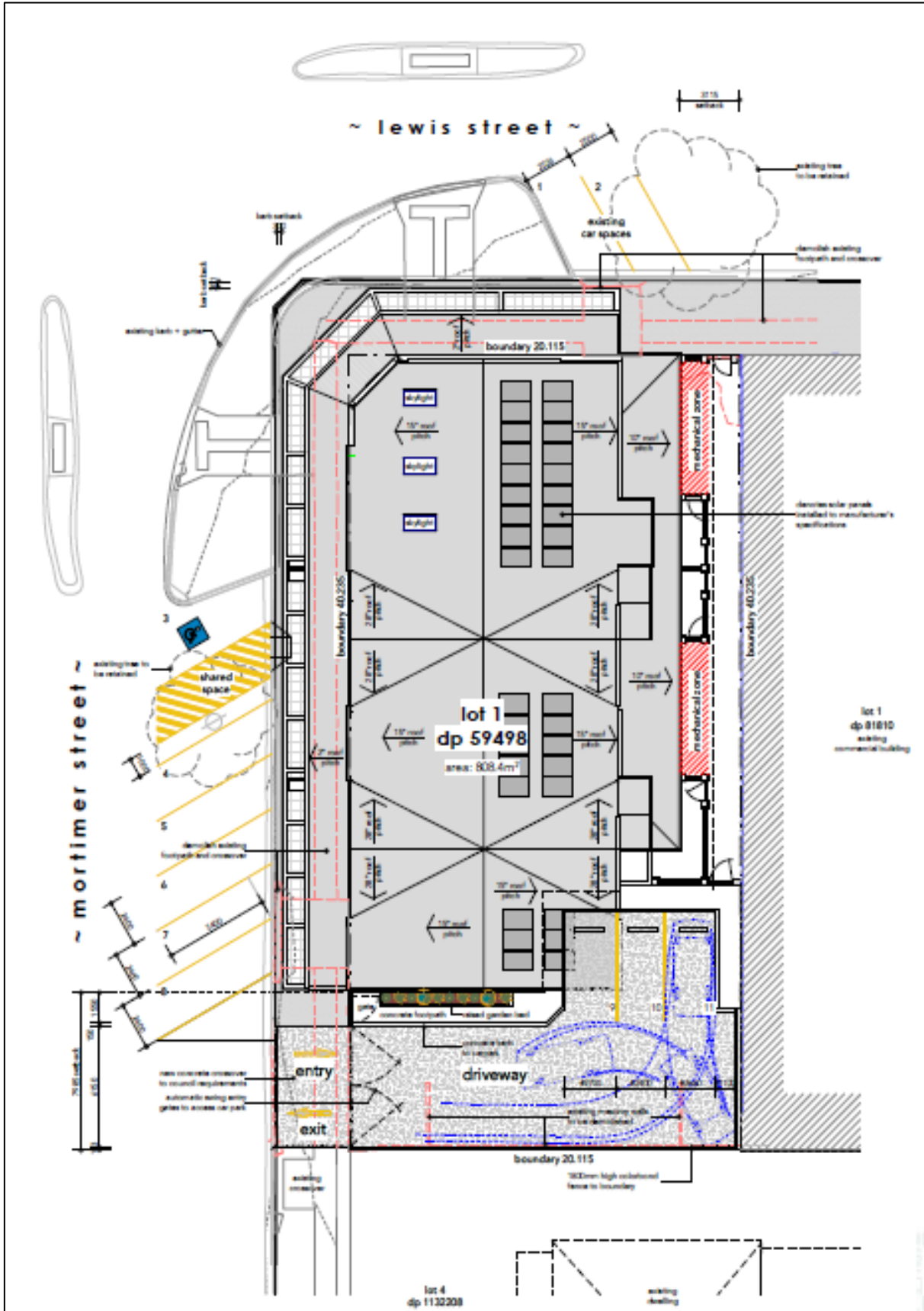


Figure 1: Proposed Development - Site Plan



Figure 2: Proposed Development - 3D Elevations

SITE DESCRIPTION

The subject site is known as 23 Lewis Street, Mudgee legally identified as Lot 1 DP 59498. The site is a corner allotment comprising of 809.4m², with frontage to Lewis and Mortimer Street. The site has previously been occupied by a commercial business being a wholesale car yard (approved under DA75/1993) with a small office and amenities located within a former train carriage positioned to the rear of the site. The site has however sat vacant for a significant period of time.

To the north of the development site is the existing Christian Outreach Centre, along with additional commercial / office premises. To the east and south are existing single storey dwellings. To the west of the site, on the opposite side of Lewis Street, existing developments includes a motel, school and licenced premises.

Figure 3 below demonstrates the location of the site.



Figure 3: Site Plan

LEGISLATIVE REQUIREMENTS

Environmental Planning and Assessment Act 1979

Designated Development

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

Integrated Development

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

ASSESSMENT

The application has been assessed in accordance with **Section 4.15** of the *Environmental Planning & Assessment Act 1979*. The main issues are addressed below as follows.

4.15(1)(a) Requirements of Regulations and Policies

(i) Do any environmental planning instruments (SEPP, REP or LEP) apply to the land to which the Development Application relates?

STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND

The history of the subject site has primarily been for the purposes of a wholesale car yard approved under DA75/1993. The site has been sealed in bitumen to support the development, with no record of mechanical repairs / servicing of vehicles undertaken as part of the retailing of motor vehicles from the site. As a result, there are no identified contamination concerns raised by the redevelopment of the vacant site.

STATE ENVIRONMENTAL PLANNING POLICY NO 64—ADVERTISING AND SIGNAGE

SEPP 64 applies to the proposal as the lower ‘offices’ include signage on the balcony fascia of each premises along with “The Warehouse” displayed on the corner of the brick wall fronting Lewis and Mortimer Street. An assessment has therefore been made pursuant to Schedule 1 of the SEPP, concluding that the proposed signage will complement the building and the streetscape, with no adverse impacts on adjoining land.

Assessment Criteria	Comments	Compliance
1 Character of the area		
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The signage is modest in size, flush mounted (600mm high and 2700mm wide) located above the entry doors to each premise on the balcony fascia, along with one building identification wall sign. Whilst the signage content/ wording has not been provided for the balcony signage (as tenancies have not been secured), conditions are proposed to limit the approved signage and ensure that any future signage is consistent with both the location and character of the area or separate approval is to be obtained for signage which exceeds this requirement.	Yes – to be conditioned.
2 Special areas		
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage does not detract from the amenity or visual quality of the heritage conservation area.	Yes.
3 Views and vistas		
Does the proposal obscure or compromise important	The proposed signage does not obscure or compromise	Yes.

views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers?	important views or the views of other advertisers in this location.	
4 Streetscape, setting or landscape		
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality Does the proposal require ongoing vegetation management?	The proposed signage is considered to be appropriate for the streetscape and is of a modest design to identify both the building and the future tenancies. The signage is not considered to be cluttered or unsightly, nor is the signage proposed to protrude above the building or impact other features of the area.	Yes.
5 Site and building		
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is considered to be compatible with the building and the heritage conservation area of Mudgee.	Yes.
6 Associated devices and logos with advertisements and advertising structures		
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No lighting or any additional platforms are proposed. Conditions will be imposed however to limit the signage to flush mounted signage only with any illumination subject to separate approval of Council.	Yes.
7 Illumination		
Would illumination result in unacceptable glare? Would	No illumination is proposed by the application.	Yes.

<p>illumination affect safety for pedestrians, vehicles or aircraft? Recommended conditions of consent require the signs to comply with relevant Australian Standards. Would illumination detract from the amenity of any residence or other form of accommodation? Can the intensity of the illumination be adjusted, if necessary? Is the illumination subject to a curfew?</p>		
8 Safety		
<p>Would the proposal reduce safety for pedestrians, particularly children, by obscuring sightlines from public areas? Would the proposal reduce safety for any public road?</p>	<p>As the signage is wall / fascia mounted, no safety impacts are identified to pedestrians or the public road network.</p>	<p>Yes.</p>

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposal involves development that requires the issue of a BASIX certificate (limited to the upper dwellings of each premise). The applicant has provided the relevant BASIX certificate and a condition of consent has been included ensuring that the commitments be met as listed in the certificate.

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

Pursuant to clause 45 of the ISEPP, the application was referred to Essential Energy due to impacts identified on electrical infrastructure. Comments received as follows:

Essential Energy notes that existing overhead powerlines are impacted by the proposal:

- (a) *The Applicant, to re-locate the power pole, will have to meet the requirements of Essential Energy's Contestable Works process. Clearances can be determined through this process. The clearances for the conductor, under worst case conditions, needs to be determined before Essential Energy can state if the pole position is satisfactory. The Applicant should engage, at their own expense, a Level 3 Accredited Service Provider to complete these works. Refer Essential Energy's Contestable Works Team for requirements via email contestableworks@essentialenergy.com.au.*
- (b) *The Applicant will also need to engage the services of an Accredited Service Provider to ensure that the service to the proposal complies with the NSW Service and Installation Rules. This may mean that the existing service will need to be re-located/upgraded, at the Applicant's expense. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.*
- (c) *The Applicant must comply with SafeWork NSW clearances when constructing the development (this is 3.0 metres for ordinary people, 4.0 metres for scaffolding).*

Essential Energy also made the following general comments:

If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.

Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.

In addition, Essential Energy's records indicate there is electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.

Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).

Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.

MID-WESTERN REGIONAL LOCAL ENVIRONMENTAL PLAN 2012 (MWRLEP 2012)

The following clauses of Mid-Western Regional Local Environmental Plan 2012 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of Plan

The application is not contrary to the relevant aims and objectives of the plan.

Clause 1.4 Definitions

The proposal is defined in accordance with the MWRLEP 2012 as:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

A retail or business premises is defined as:

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- a. (Repealed)
- b. cellar door premises,
- c. food and drink premises,
- d. garden centres,
- e. hardware and building supplies,
- f. kiosks,
- g. landscaping material supplies,

- h. markets,*
- i. plant nurseries,*
- j. roadside stalls,*
- k. rural supplies,*
- l. shops,*
 - i. specialised retail premises,*
- m. timber yards,*
- n. vehicle sales or hire premises,*
but does not include highway service centres, service stations,
industrial retail outlets or restricted premises.

and

business premises means a building or place at or on which—

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*
- (b) a service is provided directly to members of the public on a regular basis,*
and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

Furthermore, a Commercial Premises is defined as:

Commercial premises means any of the following—

- a. business premises,*
- b. office premises,*
- c. retail premises.*

Comment:

The current floor plans submitted with the application refers to an 'open office' within the ground floor tenancies. As a result, it is recommended that a condition be imposed that the consent be limited to the ground floor uses as "Business Premises and Shops" (which each generate a parking demand of 1 space per 30m² of GFA under the DCP) and also enables compliance to be achieved under clause 6.3 - Active Street Frontage of the LEP 2012 within the B3 zone. Limited hours of operation are also proposed to accommodate such uses on the site.

In addition, a condition is recommended to be imposed that advises a separate Development Application (or Complying Development Certificate) must be obtained where the uses are changed from the above or where alterations and additions to the building are required to accommodate the use (example being a food and drink premises proposed in the future).

Clause 2.2 Zoning of Land to Which Plan Applies

The land is zoned B3 Commercial Core and is therefore subject to the Plan.

Clause 2.3 Zone objectives and Land Use table

The land is zoned B3 Commercial Core pursuant to MWRLEP 2012. The proposal, being Shop top housing and Commercial Premises are permissible with consent in the zone and complies with the relevant objectives.

The objectives of the zone and how the proposal satisfies the objectives is addressed below:

B3 Commercial Core

1. *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

Comment The proposal contributes to the range of land uses available within the CBD area.

2. *To encourage appropriate employment opportunities in accessible locations.*

Comment The proposal will provide for additional employment opportunities in the CBD area.

3. *To maximise public transport patronage and encourage walking and cycling.*

Comment The proposal adds to the consolidation of commercial enterprises in the CBD area, whilst providing housing opportunities in a medium density form. This is expected to encourage walking and cycling, rather than the reliance on private vehicles to access goods and services.

4. *To promote the central business district of Mudgee as the major focus for retail and commercial activity in Mid-Western Regional.*

Comment The proposal will positively contribute to the central business district of Mudgee as the major focus for commercial activity.

5. *To consolidate business development in the Mudgee town centre and avoid unnecessary or inappropriate expansion of business-related land uses into surrounding residential neighbourhoods.*

Comment The proposal will contribute to the central business district of Mudgee as the major focus for commercial activity.

6. *To ensure that new development is compatible with the historic architectural character and streetscapes of the Mudgee commercial core area.*

Comment The proposed works contribute positively to the heritage streetscape in the immediate vicinity. Refer to comments under clause 5.10 below.

7. *To ensure that the form and layout of new development is designed to encourage free pedestrian movement and connectivity within the commercial core.*

Comment The proposal provides for the continued free pedestrian movement throughout the CBD.

Clause 2.7 Demolition requires development consent

In satisfaction of this clause, the development application seeks approval for the demolition of a masonry wall located at the eastern boundary. Conditions have been imposed accordingly.

Clause 4.3 Height of buildings

The subject site is mapped for a maximum height limit of 8.5 metres above existing ground level. The development is proposed at a height of 8.3 metres and therefore complies.

Clause 5.4 Controls relating to miscellaneous permissible uses

The proposal does not include any of the listed uses contained under this clause.

Clause 5.10 Heritage Conservation

As the proposal includes works involving a site within the Heritage Conservation Area, consideration must be given to the relevant heritage significance in accordance with Clause 5.10(4).

The application was considered by Council's Heritage Advisor with a response provided on 10 September 2021 detailed as follows:

The proposal is for a large shop-top housing development on a vacant corner site within the Mudgee Conservation Area. The application is accompanied by a professionally written Statement of Heritage impact which adequately addresses the heritage issues.

The site has been vacant since the late 1990s. It had been occupied by a varying series of buildings and spaces. A single-storey commercial building, originally with posted awnings on the corner, had lost the awnings by the time it was demolished.

The proposed new building reflects a typical two storey Federation hotel or similar building in its massing, proportions and use of awnings. It will enhance the streetscape.

The new building does not purport to be a reconstruction of the original, as it incorporates appropriately contemporary details. Such a design approach requires a light touch or the result can be somewhat awkward. Generally in this case the design is successful, but the recommendations of the applicant's heritage consultant (p. 3 of the SOHI) are supported.

There is no objection to the proposal on heritage grounds. Any consent should be subject to the following conditions:

- A detailed schedule of colours and finishes is to be submitted to and approved by Council's Heritage Adviser before the issue of a construction certificate. The blended bricks indicated on the elevation drawings are not supported. A monotone brick, in a mid-brown range or other approved tone, or bag and paint finish is to be used.*
- In the event of any archaeological material being discovered during earthmoving/construction works, all work in that area is to cease immediately and Heritage NSW is to be notified as soon as practicable. Work may only resume upon the authorisation of Heritage NSW.*
- Details of an interpretation panel designed by suitably qualified heritage consultant are to be submitted to and approved by Council's Heritage Adviser before the issue of a construction certificate, and the panel is to be affixed in an approved location before the issue of an occupation certificate.*

Conditions have been imposed accordingly.

Clause 6.1 Salinity

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

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

Clause 6.3 Earthworks

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

Clause 6.4 Groundwater vulnerability

The site is identified as groundwater vulnerable in accordance with Council's mapping. No broad excavation is needed to facilitate the proposal and no significant impacts upon those matters contained within clause 6.4(3) is expected as a result of the proposed development. Given the extent of excavation, it is considered that the development would not cause groundwater contamination, adversely affect any groundwater dependent ecosystems, will not cumulatively impact potable water supply, and therefore no special measures, or conditions of consent would be considered necessary.

Clause 6.5 Terrestrial biodiversity

The proposal is not located in any area identified as 'Moderate or High Biodiversity Sensitivity'.

Clause 6.7 Active street frontages

The subject site is located within the area mapped as 'Active street frontage' pursuant to the LEP mapping. The proposal will result in all premises on the ground floor facing the street having a use for commercial purposes (limited to office, business or retail premises). Accordingly, the proposal is considered to satisfy this clause.

Clause 6.8 Airspace operations – Mudgee Airport

The proposal will not penetrate the relevant height limits for safe operation of the Mudgee Airport.

Clause 6.9 Essential Services

All essential services that are relevant to the proposal are available or will be available as a result of the proposed development.

Clause 6.10 Visually sensitive land near Mudgee

The land is not located within the area identified within the visually sensitive land map.

4.15(1) (a) Requirements of Regulations and Policies

(ii) Draft environmental planning instruments (EPI)

No draft environmental planning instruments apply to the land to which the Development Application relates.

(iii) Any development control plans

MID-WESTERN REGIONAL DCP 2013

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

Part 4.4 Signs

As discussed under SEPP 64 – Signage, the development includes balcony fascia signs for each ground floor tenancy along with one wall sign at the corner of Mortimer and Lewis Street proposing a building name of "The Warehouse".

The fascia signage is proposed at 600mm x 2700mm and is to be located on the balcony façade of each premises. The wall signage is proposed at the corner of the site and is to be constructed from steel, fixed to the masonry wall of the building.

Part 4.5 Commercial Development

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Building setbacks	
Building setback from the street – no minimum.	Yes
Side and rear setbacks must comply with BCA.	To be conditioned
Signage	
Signage complies with relevant provisions in section 4.4 DCP 2013.	Yes. Refer to relevant section of report.
Design	
Buildings interact with the street.	Yes. Windows incorporated.
On active street frontages, ground level of building used for business or retail premises.	Yes
Building facades are articulated by use of colour, arrangement of elements, or varying materials.	Yes. Varying colours, building proportions and materials are proposed.
Heritage inclusions.	Yes. Heritage impact assessment provided
External plant to be screened from public.	Yes. Condition of consent.
Development on a corner – includes architectural features to address both streets.	Complies.
Landscape buffers to other zones.	The proposed development adjoins the R3 residential zone to the east of the site which is currently occupied by a solid masonry wall proposed to be removed. It is proposed to replace this wall with Colorbond fencing on the boundary with the dwelling to the east. It is not possible to provide a landscape buffer in this location due to the driveway and turning movements required to support the residential dwellings on the first floor. In this regard, the proposed fencing in this location will be required to provide privacy to the dwelling currently

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
	constructed at 74A Mortimer Street. In this regard, the buffer (without additional landscaping) is considered acceptable and is supported in the circumstances of the case.
Scale form and height	
Complies with LEP height controls – 8.5m maximum height.	Yes.
Consistent with existing heritage character of the town centres of Gulgong, Mudgee and Rylstone.	Yes. The proposal has been reviewed by Council’s Heritage Advisor and is considered to be acceptable and consistent with the heritage character of Mudgee.
Mortimer and Church Street, Mudgee	
Maintain the streetscape established in Church Street between Market and Mortimer Streets: – Zero front and side setbacks. – Double storey pattern.	Generally consistent
Provides variance particularly on upper floor levels, every 20-25m.	Variance provided
Articulation and Façade Composition	
Breaks visual bulk with fenestration or change in materials etc.	Extensive fenestration provided.
No excessive blank walls in front façade.	Yes.
Where blank walls are proposed (side or rear), minimise impacts with landscaping, patterning of façade, signage, public art.	Not applicable.
Post supported verandahs and balconies	
Setback a minimum 600mm from the edge of kerb.	No, variation sought of 50% - see justification below.
Compliments the elements of the building.	Yes – well designed and articulated with the main building.
Public liability insurance for works on public land required.	To be conditioned.
Not interfere with the operation of or access to public utilities or infrastructure.	Relocation to occur of electrical pole with street light attached at the full cost of the developer.
Use bollards at the base of posts to protect from rear parking of vehicles.	To be conditioned.
Residential–Commercial interface	

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Landscape buffer to residential boundaries.	As discussed above, the proposed buffer with replacement fencing is considered a more appropriate outcome in this circumstance.
Ground and first floor do not overlook residential properties.	Yes – upper storey windows on the eastern elevation are limited to 2 small bathroom (frosted glass) windows.
Maintain acoustic privacy through the use of acoustic fencing where vehicles movements adjoin property boundaries.	New fencing is proposed in Colorbond to separate the driveway for the private residential parking and the dwelling located at 74A Mortimer Street.
Reduce visual bulk by locating buildings and structures away from residential boundaries, or where buildings are located along residential boundaries ensure sufficient landscaping is provided.	Yes. Sufficient separation to the adjacent residence.
Development does not reduce sunlight available to north facing windows of living areas, private open space or clothes drying areas of adjoining properties to less than 3 hours between 9am and 3pm at winter solstice.	Yes. Shadow diagrams indicate no overshadowing to 74A Mortimer Street.
Utilities and Services	
Building and structures located clear of infrastructure.	Yes – condition to be imposed.
Able to be serviced by water, sewer and waste disposal.	Yes – conditions to be imposed for water and sewer.
Trade waste application required?	Not applicable.
Traffic and Access	
All vehicles must be able to enter and exit the site in a forward direction.	Yes.
All vehicle movement paths are sealed.	Yes - condition to be imposed.
Driveways comply with Australian Standard AS2890.1 Parking Facilities.	Yes – condition to be imposed.
All loading facilities located within the site.	To be conditioned accordingly.
All loading facilities designed to comply with Australian Standards.	Yes.
Application addresses traffic flow and safety issues, e.g. pedestrian, car and truck movements.	Yes. Traffic Impact Assessment provided.

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Pedestrian Access	
Maintain existing covered pedestrian access within town centres.	Covered access extended/retained
Convenient and safe access through parking areas.	Onsite private / gated parking provided for the dwellings a 1 space per unit and on street parking proposed to support the business or shop premises at a rate of 1 space per 30m ² GFA.
Convenient and safe disabled access through parking areas, focus on improving links with existing retail.	Links to other sites not altered.
Parking	
Discussed elsewhere in report.	As noted above, onsite private / gated parking provided for the dwellings a 1 space per unit within a Heritage Conservation Area (3 in total) and on street parking proposed to support the business or shop premises at a rate of 1 space per 30m ² GFA.
Landscaping	
Landscaped areas in car parks should be provided incorporating the use of canopy trees and buffer planting to residential boundaries.	Not applicable – parking area is a private area for the dwellings and not for commercial use.
Landscaping to comprise low maintenance, drought and frost resistant species.	Yes. Condition of consent.

Part 4.7 Tree Preservation Order

No trees to be removed.

Part 5.1 Car Parking

The proposed development includes dwellings and business / shop premises which as required the following rates for parking:

DCP Rate Required	Proposed	Compliance
As the site is located within Mudgee’s conservation area, the applicable car parking rate is one space per two-bedroom flat.	3 x 2 bedroom dwellings = 3 spaces.	Yes.

Business Premises / Shops = one space per 30m ² gross floor area.	325m ² total GFA (excluding stairs and amenities) / 30m ² = 11 spaces.	No – 21% variation sought - plans provide for 8 x site frontage parking spaces (including 1 disabled) and a variation of 3 spaces is sought based on the assessment of available parking within the immediate commercial area including opposite the site with existing pedestrian crossings in place. See discussion on the variation below.
--	--	---

Part 5.3 Stormwater Management

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

Part 5.4 Environmental Controls

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

Variations Sought to the DCP 2013

The applicant seeks a variation to the Development Control Plan 2013 requirements as follows:

- 1) The minimum setback required for post supported balcony's from the kerb (50% variation proposed), and
- 2) The minimum number of parking spaces required by the ground floor businesses (

The justification provided by the applicant in relation to the above matters is provided below.

50% variation to the proposed setback to the kerb for Post Supported Verandahs:

- *There are a number of overhead power lines and water service infrastructure located in the vicinity of the post supported verandah. To ensure that minimal interference/relocation works, the verandah posts require a reduced setback to the edge of the kerb. By situating the verandah closer to the kerb, the proposed works will not traverse or impact upon any of that infrastructure;*
- *The post supported verandah for the Oriental Hotel located opposite to the subject site is built right on the kerb. As such, the proposed reduced setback is consistent with the Oriental Hotel, being a prominent building in the locality; and*
- *The proposed reduction shall not impact on any servicing, trafficability, pedestrian networks, sight lines or any other issues in the area.*
- *The proposed post supported verandah has been integrated with the design of the building, creating areas upstairs for residents and visual interest for the locality.*
- *The verandah structure does not interfere with any access to public utilities or infrastructure and pedestrians will be able to traverse under the awning freely.*
- *Public liability insurance and approval for the works shall be formalised prior to the issue of a Construction Certificate/Occupation Certificate.*
- *Bollards shall be positioned at the base of posts where street carparks are available.*

Staff Comment:

Based on the above justification, the proposed variation is supported in the circumstances of the case. The variation will not cause an impact on pedestrian connectivity or Council assets, and will

retain intersection sight distances in this location. Conditions are recommended that ensure that the bollards are installed to prevent damage to the posts / structure and public liability insurance is obtained for works on public land. Further to this, it is recommended that a condition be imposed that ensures the landowner is responsible for all maintenance of the post supported verandah for the life of the development and immediate replacement of unsightly bollards.

21% variation to commercial premises parking:

- *Of the 11 commercial parking spaces required, 8 spaces are to be accommodated by street parking along the site frontage on Lewis and Mortimer Streets, and another 3 street parking spaces within close proximity to the site.*
- *A Parking Survey was completed as part of this submission, and is provided in the TIA. The survey identifies that there is an availability of 186 car parking spaces within close proximity to the site. During the business time of the day (3pm), 159 parking spaces are occupied within this area. This results in 27 empty spaces available within close proximity of the site during the busiest time of the day;*
- *Given that there is a plethora of available spaces within proximity to the subject site, the shortfall of three (3) spaces is considered very minor. The available parking within this area is capable of catering for the shortfall without any significance impact to parking or traffic in this locality;*
- *The use of street parking is consistent with existing commercial and retail land uses in this area. Similar uses utilise the street parking due to the limited availability of on-site parking that is available. It is considered that the proposed use/s are consistent in terms of traffic generation to other development in the vicinity, and as such, the development would not create any adverse impacts in terms of car parking availability;*
- *Given the relatively small size of the allotment, its central locality and well-designed development, there are a number of site constraints for any additional onsite parking. Therefore it would not be appropriate to enforce strict numerical parking compliance for the site or intended use, nor would it be a good planning outcome;*
- *It is necessary to consider the central location of the development site. Patrons of the commercial tenancies intending to visit the ground floor will often travel by foot to attend the premises. Whilst hard to quantify, it is important to note that there would be a considerable amount of persons attending the site who would not be travelling in a vehicle, thereby not requiring parking services; and*
- *The existing traffic conditions in this area are considered suitable for the proposed use/s and existing operations in the immediate locality.*
- *The abovementioned departure does not intend to undermine the DCP provisions, but rather provide a solution for a permissible development that is suitable for the site/locality, consistent with existing development trends in the area and deemed to be in the public interest.*

Staff Comment:

The Traffic Report provided to support the development has included both parking and traffic surveys based on the existing commercial areas adjacent to the site, ensuring that all residential areas to the east and south of the development are excluded from consideration. The areas where parking surveys were conducted for the assessment are shown in the Figure 4 below. A copy of the traffic report is also included in Attachment 4.

Whilst the subject site benefits from frontage credits totalling 8 spaces due to the location of the driveways associated with the former use, the available parking in the street is also restricted due to two (2) Council street trees. As a result, only 8 x parking spaces (including 1 accessible space with reduction to only one (1) driveway) is capable of being achieved within the site frontages (Lewis and Mortimer Street) to support the development.

The commercial component of the development will have traffic and parking demands which are infrequent and based on hours of operation, in comparison to the first floor dwellings, which have dedicated parking provided onsite, achieving full compliance. As a result, business and retail premises that are required to have an active street frontage within the Commercial Core area of Mudgee do not typically have onsite parking, thus rely upon on street parking, and therefore are unlikely to ever achieve full compliance with the 1 per 30m² DCP parking requirement.

In light of the above, and due to good existing pedestrian links to the frontage of the site (across Lewis Street) enabling safer travel from external parking areas shown in Figure 5 below, the proposed variation of 3 parking spaces (totalling 21%) is supported in the circumstances of the case. The existing CBD parking areas are easily and directly accessible from the development site and have been demonstrated to have up to 27 spaces available during the peak period of the day (3pm).



Figure 4: Parking Survey Locations

Section 7.11 Contributions

MID-WESTERN REGIONAL CONTRIBUTIONS PLAN 2019

Pursuant to Council’s Contributions Plan 2019, the development is proposing residential accommodation comprising of 3 x 2 bedroom dwellings and also 3 x ground floor business premises. As the proposed residential component exceeds the Gross Floor Area of the commercial component, Section 7.11 Contributions are applicable in accordance with the Plan. This has been calculated as follows:

	Per Dwelling Rate	(Credit x 1 vacant lot, debit x 2 Dwellings)
Transport Facilities	\$ 4,379.00	\$ 8,758.00
Recreation and Open Space	\$ 2,199.00	\$ 4,398.00
Community Facilities	\$ 640.00	\$ 1,280.00
Stormwater Management	\$ 462.00	\$ 924.00
Plan Administration	\$ 1,003.00	\$ 2,006.00
Total	\$ 8,683.00	\$ 17,366.00

An appropriate condition has been imposed requiring payment of the contribution.

Section 64 - Water/Sewer Developer Services Charges

In accordance with the Developer Servicing Plans for Water and Sewer (August 2008), the proposed development will require the payment of DC headworks charges calculated as follows by Council's Water and Sewer Department:

- Water ETs with credits: 1.409
- Sewer ETs with credits: 2.408
- Water Section 64 contributions: \$12,337
- Sewer Section 64 contributions: \$9,625

Total contributions payable: \$21,962

An appropriate condition has been imposed requiring payment of the contribution.

4.15(1) (a) Provisions of any Planning Agreement or Draft Planning Agreement – (1)(a)(iii)

No Planning Agreements are applicable.

Regulations –4.15(1)(a)(iv)

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

No matters prescribed by the Regulations impact determination of the Development Application.

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

¹ Including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

(A) CONTEXT AND SETTING

The proposal is appropriate with regards to the surrounding context and setting. The proposed design of the development is consistent with the character of the area and will positively contribute to the streetscape.

(B) ACCESS, TRANSPORT AND TRAFFIC

The implications of additional traffic and suitable access are discussed throughout this report. The proposal is considered appropriate despite a minor variation (3 spaces) sought with respect to onsite/street frontage parking to support the commercial premises to be located on the ground floor. The Traffic Impact Statement has confirmed that the immediate area of Lewis and Mortimer Streets has sufficient parking available to support the future business premises / shops in this location with existing pedestrian links (including a crossing) available.

(C) PUBLIC DOMAIN

The development will not impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or pedestrian linkages between public spaces.

(D) UTILITIES

All relevant utilities are available or can be made readily available to the site at the full cost of the developer.

(E) HERITAGE

As noted within Clause 5.10 of the LEP 2012, the proposal is supported by Council's Heritage Advisor and is unlikely to cause adverse impacts on the heritage conservation area of Mudjee or on nearby Heritage listed items.

(F) OTHER LAND RESOURCES

No impact expected on the conserving and the use of valuable land, such as productive agricultural land, mineral or extractive resources, or water supply catchments.

(G) WATER

No significant impact expected.

(H) SOILS

No significant impact expected. The land is not known to be affected by subsidence, slip or mass movement, subject to contamination, and will not result in significant soil erosion or degradation.

(I) AIR AND MICROCLIMATE

The development is not expected to impact air quality or microclimatic conditions.

(J) FLORA AND FAUNA

Not applicable.

(K) WASTE

The proposal includes waste storage areas within the building to support each use. Kerbside collection is also available in the area.

(L) ENERGY

A BASIX certificate is required for the first floor residences with the commercial spaces required to comply with the National Construction Code.

(M) NOISE AND VIBRATION

The proposed development is limited to residential and business premises / shops which is consistent with the immediate surrounding land uses. The hours of operations (including relevant land uses) have been limited for the ground floor commercial spaces and it is unlikely that such uses will generate significant noise or vibration on surrounding land. In addition, the construction of the building in brick / masonry, with separation of the new access driveway, will provide an acoustic buffer to the existing dwelling located on the eastern boundary of the site. As a result, there are no significantly adverse noise or vibration impacts associated with the proposal.

(N) NATURAL HAZARDS

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

(O) TECHNOLOGICAL HAZARDS

There are no known risks to people, property or the biophysical environment, resulting from technological or industrial hazards, or building fire risk.

(P) SAFETY, SECURITY AND CRIME PREVENTION

Increased passive surveillance as a result of the proposed development.

(Q) SOCIAL IMPACT IN THE LOCALITY

Generally positive with the provision of additional housing and employment opportunities once constructed.

(R) ECONOMIC IMPACT IN THE LOCALITY

Generally positive, with contribution to the construction industry via employment and purchase of local goods and materials.

(S) SITE DESIGN AND INTERNAL DESIGN

Adequate, as discussed throughout this report. The proposed balcony verandah location is considered to be consistent with nearby developments and will enable pedestrian links and major existing services to be maintained in this location.

(T) CONSTRUCTION

To comply with the BCA where relevant.

(U) CUMULATIVE IMPACTS

Nil. There are no known impacts that have the potential to act in unison, in terms of space or time, or owing to their repetitive nature, that would produce an effect greater or different than the sum of the separate parts.

Suitability of Site for Development – 4.15(1)(c)

(A) DOES THE PROPOSAL FIT IN THE LOCALITY?

Yes. There are no hazardous land uses or activities nearby, there are no constraints posed by adjacent developments and there are adequate utilities and transport facilities in the area available for the development.

(B) ARE THE SITE ATTRIBUTES CONDUCIVE TO DEVELOPMENT?

Yes. The site is not subjected to any natural hazards, and the project will not impact any critical habitat, threatened species, populations, ecological communities or endangered habitats on the site.

Submissions made in accordance with Act or Regulations – 4.15(1)(d)

(A) PUBLIC SUBMISSIONS

The application was notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 26 July 2021. During the notification period, one (1) submission was received.

A summary of the concerns raised is provided below with a copy of the submission included as Attachment 5. The applicant also provided a response to the submission made which is included as Attachment 6.

Concern	Comment
On-street parking conflicts with meeting / activity times associated with the Church due to competition with the School (weekdays) and local businesses (weekends).	The proposed development was supported by a Traffic Report which included traffic and parking counts of the immediate area. The parking counts relied upon the existing commercial area of Lewis and Mortimer Streets (excluded all residential areas) which confirmed that there is

	<p>sufficient capacity in the immediate commercial area of the site to accommodate parking to support the development. Further, as a result of the restrictions proposed to the hours of operation (to limit trading on Saturdays and no operations on Sundays) this will enable the concerns of the church to be largely addressed. Commercial shopfront areas do not have dedicated parking for customers reserved in the CBD and it would be unreasonable to require additional or dedicated parking for the commercial component of the proposal in the circumstances of the case.</p>
<p>Impacts of the development – references in the Statement of Environmental Effects do not refer to the ‘place of worship’.</p>	<p>The Statement of Environmental Effects has addressed the legislative requirements of the Act and Regulations. Impacts on the church building have been considered as part of the development assessment process by Council. The assessment has determined that there are no adverse impacts on the church operations or building as a direct result of the development.</p>
<p>Neighbouring noise impacts from church activities impacting on the future residents.</p>	<p>The proposed shop top housing (including the residential component of the development) is permissible with consent in the zone. In the event of ‘offensive noise’ complaints being received by Council, this will require management in accordance with Council’s Complaints Management Policy. It is however unlikely to be caused by internal music or singing being conducted within the brick building of the church.</p>
<p>Noise during construction – noting request to prohibit Sunday works during to church regular meetings.</p>	<p>Council’s standard condition of consent does not permit construction on Sundays. However, it is important to note that temporary changes made by the Minister for Planning and Public Spaces under the <i>Environmental Planning and Assessment (COVID-19 Development— Construction Work Days) Order (No 3) 2021</i>, allows construction works to occur Saturdays, Sundays and public holidays. As a result, when changes to the Order are lifted (proposed on the 31 March 2022), the condition imposed by Council will continue to apply.</p>

(B) SUBMISSIONS FROM PUBLIC AUTHORITIES

The application was referred to Essential Energy with those relevant comments included within the conditions of consent.

The Public Interest – 4.15(1)(e)

(A) FEDERAL, STATE AND LOCAL GOVERNMENT INTERESTS AND COMMUNITY INTERESTS

No significant issues in the interests of the public are expected as a result of the proposed development.

CONSULTATIONS

(A) HEALTH AND BUILDING

Comments have been received from Council's Health and Building Department as follows:

- *The works consist of shop top housing development. It is noted the commercial spaces are not suited for food premises. CC is required – conditions included.*
- *The new works will need to comply with the NCC – condition included.*
- *The Access to Premises Standards apply. Compliance should be achievable to all Ground Floor areas.*
- *In respect to first floor accommodation, Planning have confirmed the use of residences are for long term (class 2) not short term (class 3) therefore. A lift may not be required as there does not seem to be any common areas for the Class SOU's. If they were Class 3, then they would be required to be accessible, thus requiring a lift. Compliance to be assessed and determined at CC stage. Condition included.*
- *There are no onsite parking spaces proposed in relation to the GF commercial use therefore onsite accessible parking is not required. The proposed spaces appear to be tight, recommend to Dev Eng. confirm acceptance of the design.*
- *It should be noted the risk is with the applicant, that should their proposal not comply with the NCC or Premises Standards, they may need to modify the consent accordingly.*
- *A section 68 application is required for the works – condition included.*

(B) TECHNICAL SERVICES

Comments have been received from Council's Development Engineers and Operations Department as follows:

DESIGN

There is an existing high brick wall constructed on the eastern boundary and the proposed driveway is immediately adjacent. There is no landscaping buffer shown or provided and no protection for the wall in case of accidental damage to or collision by a manoeuvring vehicle. Condition imposed.

Site levels shown on the pavement layout suggest that approximately 300mm of fill may be required in the north-eastern corner to ensure pavements can drain toward Mortimer Street. Details of retaining wall, kerbing and fencing will be required.

The proposed internal car parking and driveway arrangement indicates that an existing kerb layback and crossover is to be relocated to the east. Existing layback made redundant by this development must be removed and re-instated with kerb and channel. New kerb and channel must match existing kerb profiles and levels with new crossover constructed to match existing kerb and pavement levels.

An existing kerb layback and crossover located on the Lewis Street frontage made redundant by this development will need to be removed and re-instated with kerb and channel to match existing kerb profiles and levels.

The site has an existing sewer connection with a boundary riser located in the north-east corner of the site.

The Council sewer main in that location (located in the adjoining property) grades down from south to north.

The original civil plans provided indicated a sewer main extension with connection to Council's sewer main located in the Mortimer Street footpath as shown on DWG. 35200-C06 with an extension to the mains to provide for individual internal connections.

Council's W&S referral requires the developer to maintain the existing sewer connection but internal sewer works must include the installation of a Manhole upstream / internally of the existing boundary riser to provide for maintenance access.

Location of the Manhole on the internal sewer essentially deletes any requirement for new sewer connections to 'live' mains that would need to be undertaken by Council as the Water and Sewer Authority.

However, a detailed sewer design including long section is to be provided prior to the commencement of construction to ensure that the proposed internal sewer arrangement can provide appropriate grades to drain to the proposed new connection point must be provided.

Internal drainage works must be undertaken by a suitably licensed plumber.

It is understood that separate conditions / requirements have been provided by the W&S team as regards water supply connections and meters.

Each occupancy (dwelling and commercial premises) should be provided with separate metered connections.

It is noted there is a Power Box on the Mortimer Street footpath. It also appears that affected overhead services are a power pole with light that also has a stay that extends into the land.

The application will need to confirm with Essential Energy any requirements to alter / amend the existing Electric Light Pole (ELP). Evidence of consultation has been provided.

However, any alteration of public electricity infrastructure and public / street lighting should be undertaken prior to the issue of a Construction certificate and the commencement of any works.

All costs associated with any alteration of electricity services and public lighting arrangements must be borne by the developer.

It is apparent that the only onsite parking (3 spaces) is to be reserved for residents.

There is no onsite parking for staff or delivery vehicles associated with the commercial activities. Short term loading activities might be able to be undertaken on site that, subject to timing arrangements, should not have any significant impact on the residential car parking access.

A modified Traffic Impact Assessment Report has been provided that includes a parking study of available car parking in the locality. The parking study suggests that adequate car parking is available to service the commercial aspects of this development.

Drawing 35200-C03 Revision 1 shows a line-marked on street parking arrangement that creates an on street disabled car parking space on the Mortimer Street frontage. This arrangement will require the installation of kerb / pram ramp (shown on the plan) that must be constructed strictly in accordance with the requirements of AS 1428.

On- street car parking spaces are to be line-marked by the Developer in accordance with the requirements of the relevant standard for on-street car parking (AS 2890). Some re-

sealing of pavements may be necessary of car parking areas to facilitate installation of line-marking to an acceptable standard.

WATER AND SEWER

Water Servicing:

Water pressure and flow will be available at the development to adequately service this development.

The size of the water main along Lewis Street is 150mmID, this will be sufficient for the services required on this premises.

Connection of water service to the live main will be undertaken by Council.

Sewer Servicing:

There is sufficient capacity within the sewer system to accept the sewer load from this development.

Sewer is available from the eastern side the lot.

Installation of sewer chamber and connection of sewer to live main will be undertaken by Council.

Section 64:

Water ETs with credits: 1.409

Sewer ETs with credits: 2.408

Water Section 64 contributions: \$12,337

Sewer Section 64 contributions: \$9,625

Liquid Trade Waste:

Liquid Trade Waste is not applicable.

Backflow Prevention:

Backflow Prevention to protect against a high risk use will be required on the customer's side of the water meter according to AS3500 and AS2845.

There will be required a separate Backflow Prevention device for fire services at the development where these are proposed.

(C) HERITAGE ADVISOR

As noted within the assessment of the application against the provisions of Clause 5.10 of the LEP, Council's Heritage Advisor has not raised any objection to the proposal subject to the following conditions which have been included within the recommended conditions of consent:

- *A detailed schedule of colours and finishes is to be submitted to and approved by Council's Heritage Adviser before the issue of a construction certificate. The blended bricks indicated on the elevation drawings are not supported. A monotone brick, in a mid-brown range or other approved tone, or bag and paint finish is to be used.*
- *In the event of any archaeological material being discovered during earthmoving/construction works, all work in that area is to cease immediately and Heritage NSW is to be notified as soon as practicable. Work may only resume upon the authorisation of Heritage NSW.*
- *Details of an interpretation panel designed by suitably qualified heritage consultant are to be submitted to and approved by Council's Heritage Adviser before the issue of a construction certificate, and the panel is to be affixed in an approved location before the issue of an occupation certificate.*

Community Plan implications

Theme	Protecting Our Natural Environment
Goal	Protect and enhance our natural environment
Strategy	Ensure land use planning and management enhances and protects biodiversity and natural heritage

Strategic implications

Council Strategies

Not Applicable.

Council Policies

Mid-Western Regional Development Control Plan 2013.
Mid-Western Regional Contributions Plan 2019.
Mid-Western Regional Community Participation Plan 2019.
Mid-Western Regional Developer Servicing Plan 2008.

Legislation

Environmental Planning & Assessment Act 1979.
Environmental Planning & Assessment Regulation 2000.
Mid-Western Regional Local Environmental Plan 2012.

Financial implications

The Applicant will be required to pay developer contributions in accordance with the Mid-Western Regional Contributions Plan 2019 and Developer Servicing Plans 2008.

Associated Risks

Should Council refuse the Development Application, the applicant may seek a further review of this decision or appeal through the Land & Environment Court.

KAYLA ROBSON
PLANNING COORDINATOR

LINDSAY DUNSTAN
MANAGER, PLANNING

JULIE ROBERTSON
DIRECTOR DEVELOPMENT

21 September 2021

Attachments:

1. Architectural Plans. (separately attached)
2. Civil Plans. (separately attached)
3. BASIX Certificate. (separately attached)
4. Traffic Report. (separately attached)
5. Copy of submission. (separately attached)
6. Applicant Response to further information and Submission. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER