

DEVELOPMENT ASSESSMENT REPORT – DA190/16 - PROPOSED SHELTERED AREA & RETAINING WALL, LOT 56 DP 791926, MAGPIE HOLLOW ROAD SOUTH BOWENFELS NSW 2790

1. PROPOSAL

Council is in receipt of a Development Application DA190/16 from Lake Lyell Recreation Park for a proposed sheltered area and retaining walls on land known as Lot 56 DP 791926, Magpie Hollow Road South Bowenfels NSW 2790.

The proposal provides for:

- a) Earthworks comprising of fill to achieve a level building platform
- b) The construction of a sheltered area having a floor area of 128m²
- c) The construction of retaining walls (where required)

2. SUMMARY

To assess and recommend determination of DA190/16 with recommendation for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 56 DP 791926
Property Address : MAGPIE HOLLOW ROAD SOUTH BOWENFELS NSW 2790

4. ZONING:

The land is zoned RE1 'Public Recreation' in accordance with Council's current planning instrument, being Lithgow Local Environmental Plan (LEP) 2014.

5. PERMISSIBILITY:

The development being a sheltered area is considered permissible under Lithgow Local Environmental Plan 2014, subject to development consent.

The sheltered area is considered an ancillary use to the existing use being an outdoor recreation area.

5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

Policy 7.1 Filling and Levelling of Land

The proposal provides for associated earthworks to achieve a level building platform. Given a Development Application has been submitted for consideration the provisions of this policy are considered to be satisfied.

Policy 7.5 Notification Of Development Applications

This policy applies to the development, however the following clause does not require Council to notify this particular application:

2. APPLICATIONS FOR WHICH NOTIFICATION WILL NOT BE GIVEN UNDER THIS POLICY

Development applications for the following types of development will not be notified. (NB: Any structure must conform to applicable setback requirements):

- *Single storey dwellings (providing this does not involve demolition of an existing dwelling)*
- *Additions to single storey dwellings that do not involve adding an additional storey to the dwelling*
- *Internal alterations that do not alter the use of a building or its Class under the Building Code of Australia*
- *Carports, pergolas and verandahs in association with a dwelling*
- *Detached garage or shed associated with a dwelling and to be used in conjunction with a dwelling that does not exceed 36 square metres in floor area or 3.6 metres roof ridge height.*
- *Dwellings (up to 2 storey's) and sheds on land zoned RU1 or RU2 land that is greater than 2 hectares*
- *Subdivision creating less than 5 new lots on land zoned RU1 or RU2*
- *Boundary alterations*
- *Strata subdivisions*
- *With the exception of Restricted Premises and Sex Services Premises, Commercial or industrial development comprising non-structural alterations to an existing building*
- *Development involving a change of use that does not involve the change to a Restricted Premises, Sex Services Premises, Food and Drink Premises, Funeral Chapel, Funeral Home or Retail Premises involving the sale of firearms within the meaning of the Firearms Act 1996*
- *Signage*
- *Any other development of a minor nature that, in the opinion of the assessing officer, does not have the potential to create a negative impact on the amenity of the neighbourhood by way of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise.*

Given the isolated nature of the development in respect to residential properties (approximately 700 metres), relatively minor scale of the development and the existing established outdoor recreation use, the development was not notified to adjoining land owners as the development is considered to not have the potential to create a negative impact on the amenity of the neighbourhood.

Policy 7.6 Development Applications By Councillors And Staff Or On Council Owned Land

Clause 1 of this policy states 'That, subject to the exemptions in Part 2 of this Policy, any development application lodged where the applicant is a Councillor or a member of staff, or where a Councillor or member of staff is the owner of the land to which the application relates, or where the development application on Council owned land, that such an application be referred to Council' for consideration and determination.

Accordingly as the proposed development is located on Council land, the application must be determined by Council in accordance with the provisions of this policy.

5.2 FINANCIAL IMPLICATIONS (eg Section 94)

Nil

5.3 LEGAL IMPLICATIONS

Conveyancing Act 1919

The land is burdened by Covenant Restation No. 1 of Section 88b Instrument No. 791926. The proposal is considered to have minimal impact on this restriction as it relates only to access for maintenance of infrastructure.

Environmental Protection and Biodiversity Conservation Act 1991

No federally listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this Act on the proposed development.

Native Vegetation Act 2003

No native vegetation is required to be cleared as a result of this application. Accordingly, there are no legal implications of this act on the proposed development.

Threatened Species Conservation Act 1995

No state listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this act on the proposed development.

Environmental Planning and Assessment Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 79C of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

5.3.1 Any Environmental Planning Instruments

Lithgow Local Environmental Plan 2014

LEP 2014 – Compliance Check		
Clause		Compliance
Land Use table	RE1 Public Recreation	Yes
7.1	Earthworks	Yes
7.3	Stormwater management	Yes
7.7	Sensitive lands	Yes

Comment:

7.1 – Earthworks comprise of fill to achieve a level building platform. Fill will be imported to site and must be certified as uncontaminated (see below for further explanation). The fill will be retained by suitable means (i.e. retaining walls) and will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

7.3 – Stormwater must be disposed of to the satisfaction of Council. A condition will be imposed on the development consent in this regard. Sufficient site area is available to implement an onsite disposal system to ensure minimal impact on adjoining properties, native bushland and receiving waters.

7.7 – The development is considered to have minimal adverse impact on the following:

- a) Any land with slopes greater than 25% - The slope of the subject site and surrounding land is less than 25%.
- b) Any land subject to high erosion potential – the land and its surrounds is well vegetated and does not pose high erosion potential

- c) Any land subject to salinity or impeded drainage – there is no obvious sign of salinity issues on the land and surrounding land. The proposal will not impede surface water drainage.
 - d) Any land subject to regular or permanent inundation – there is no obvious sign of regular or permanent inundation. The land is not mapped as being flood prone.
 - e) Any significant karst environment (including ecological, air quality and movement, water quality, biodiversity, geodiversity, heritage, recreational and sociological values) – The land is used for recreational activities.
- The proposal is considered to have minimal adverse impact on sensitive land.

State Environmental Planning Policy 44 – Koala Habitat Protection

SEPP 44 is applicable to site given that it exceeds 1ha in size and is located within the Lithgow Local Government Area to which the SEPP applies. Part 2 of the SEPP requires Council to consider whether the land the subject of the application retains potential and subsequently core koala habitat.

Comment:

Given that no trees are to be removed as part of the development, and the section of the subject site relevant to the application is devoid of native vegetation it is considered unnecessary to proceed further with SEPP 44 assessment.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

SEPP (Sydney Drinking Water Catchment) 2011 – Compliance Check		
	Clause	Compliance
10	Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes
11	Development that needs concurrence of the Chief Executive	Yes

Comment: The application has been assessed using the Neutral or Beneficial Effect on Water Quality Assessment Tool provided by Water NSW. The development has satisfied NorBE (see assessment report) and is considered to have minimal impact on water quality. Therefore the proposal is considered to satisfy the provisions of this SEPP.

State Environmental Planning Policy No. 55 – Remediation on Land

SEPP 55 – Compliance Check		
	Clause	Compliance
7	Contamination and remediation to be considered in determining development application	Yes
17	Guidelines and notices: all remediation work	Yes

Comment: The applicant will be required to ensure all imported fill is certified as being uncontaminated/suitable for use. A Site Remediation Action Plan and Site Validation Report are required to be submitted where fill cannot be remediated. Suitable conditions will be imposed on the development consent in this regard.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

5.3.3 Any Development Control Plan

Nil

5.3.4 Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

Nil

5.3.5 Any matters prescribed by the regulations that apply to the land

It is considered that as a result of this assessment the development will comply with the provisions of the regulations subject to conditions of consent.

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Adjoining Landuse: The surrounding area is generally for outdoor recreation and electricity generating pursuits with the proposal to be consistent with the surrounding land uses. The proposal will not cause any land use conflicts and the development is permissible within the zone.

Context and Setting: The proposed development will be located within an established outdoor recreation area and will have no major impact on the context and setting of the area. The development has been designed to complement existing features of similar development in the area.

Flora and Fauna: No proposed clearing is required and the development will have no impact on flora or fauna.

Social and Economic Impact: As the proposed development will be generally in keeping with the provisions of the planning instrument and is reasonably compatible with other similar development in the locality, it is expected to have minimal social and economic impact.

Soils: The proposed development will utilise imported fill. Conditions of consent will be imposed to ensure the fill is not contaminated, suitable for design compaction requirements and control erosion and sedimentation impacts on the site. Any site contamination resulting from imported fill will be required to be remediated and validated as part of this development. Suitable conditions will be imposed in this regard.

Water: The proposed development has been assessed using the NorBE tool as required by the *State Environmental Planning Policy (Sydney Catchment Drinking Water) 2011* with a result of satisfied. Therefore with appropriate conditions of consent it is considered that the development will have minimal impact on water.

Waste: A condition of consent will be imposed requiring a suitable lidded waste storage container to be placed onsite for the duration of construction works.

Natural Hazards: The land is known as being partially bushfire prone. The location of the proposal is outside the bushfire prone area. A bushfire risk analyses has been undertaken by Council and a Bushfire Attack Level of LOW (BAL LOW) has been determined. Therefore no bushfire mitigation requirements are considered applicable to the development.

Noise and Vibration: There are no nearby sources of noise or vibration that would impact detrimentally the proposal. The proposal is not expected to cause any additional noise issues in the surrounding area, given it is for recreational use.

Other Land Resources: The development will not impact on the value of the land in terms of agricultural potential or mining as it is zoned for Outdoor Recreation use and adjacent to an established recreation and electricity generating area.

5.3.7 The Suitability of the site for the development

The surrounding land uses are for outdoor recreation and electricity generating pursuits with the size and nature of the development to be consistent with those in the surrounding area. The proposal is compatible with the objectives of the zone and is considered to have minimal impact on the surrounding amenity. Therefore, the site is considered to be suitable for the proposed development.

5.3.8 Any submissions made in accordance with this Act or the Regulations

Nil

5.3.9 The public interest

There have been no issues raised from the public regarding planning issues.

6. DISCUSSION AND CONCLUSIONS

The proposal is considered to generally comply with the relevant provisions of the applicable Environmental Planning Instruments. The proposal is not considered likely to have any significant negative impacts upon the environment or upon the amenity of the locality. As such it is recommended that development consent is issued subject to the conditions outlined below.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT development application DA190/16 is approved subject to conditions set out in Schedule A.

Report prepared by: Ben Young Supervisor: Jim Nichols

Signed:..... Signed:.....

Dated:..... Dated:.....

REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.
- To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities.
- To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure lots are adequately serviced.
- To ensure there is no unacceptable impact on the water quality.
- To ensure compliance with the requirements of the Rural Fire Services.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

Schedule A

Conditions of Consent (Consent Authority)

Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

General Requirements

1. The development shall take place in accordance with the approved development plans containing Council's approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.
2. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
3. That the structure is not to be further enclosed without the prior approval of Council
4. No portion of the structure shall encroach onto the easement. The applicant/owner is responsible for identifying the location of the easement prior to work commencing.

Requirements Prior to Commencement of Work

5. Prior to commencement of any work onsite, a report prepared by a suitably qualified person must be submitted to and approved by Council attesting to any imported fill being uncontaminated/suitable for use and capable of meeting design compaction requirements. All fill must be certified as being Excavated Natural Material (ENM) in accordance with the provisions of the Protection of the Environment Operations Act 1997.
6. Where fill onsite is not suitable for use, a Site Remediation Action Plan prepared by a suitably qualified person is to be submitted to and approved by Council prior to commencement of any work.
7. Any fill onsite that cannot be remediated (if required) must be removed and disposed of to a licensed waste disposal facility in accordance with the approved Site Remediation Action Plan. A Site Validation Report prepared by a suitably qualified person must be submitted to and approved by Council certifying that the site has been remediated and is free of any contaminated fill material prior to work commencing.
8. Prior to commencing any construction works, Council is to be notified at least two days prior of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act in Form 7 of Schedule 1 of the Regulations.
9. To contain soil and sediment on the property, controls are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:
 - a) The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment.
 - b) To prevent the movement of soil off site, a single entry/exit point to the property shall be constructed of 40mm blue metal aggregate or recycled concrete to a depth of 150mm. The length must be at least 5 metres with the width at least 3 metres.Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.

10. Prior to commencement of any building works, a suitable lidded waste container for the deposit of all building rubbish and litter must be provided onsite. The waste container must be emptied at a licensed waste disposal facility when full. All building rubbish and litter must be contained on the building site and the site left clear of waste and debris upon completion of works.
11. Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:
 - a. Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person can be contacted outside working hours.
 - b. Stating that unauthorised entry to the work site is prohibited and
 - c. Showing the name, address and telephone number of the principle certifying authority for the work.

The sign/s are to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

Requirements During Construction

12. Before work starts, toilet facilities must be provided for construction personnel on the site on the basis of 1 toilet for every 20 workers. Amenities are to be installed and operated in an environmentally responsible and sanitary manner. Toilets cannot remain on site for any longer than 12 months, without the further approval of Council.
13. A copy of the stamped and approved plans, development consent and the construction certificate are to be on the site at all times.
14. All work on site shall only occur between the following hours:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm
Sunday and public holidays	No work
15. That the proposed rainwater drains are connected to the existing rainwater disposal system to the satisfaction of Council.
16. An appropriate fence preventing public access to the site shall be erected for the duration of Construction works.

Requirements Prior to Use

17. Prior to the use/occupation of the structure an Occupation Certificate must be issued by the Principal Certifying Authority (PCA). In this regard an application must be lodged with the PCA in conjunction with any request to carry out a final inspection.

Advisory Notes:

AN1. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, compliance certificates are to be issued at significant stages throughout the construction period. These stages are:

- a) Pier holes/pad footings before filling with concrete.
- b) Reinforcing steel in position and before concrete is poured (footings, lintels, beams, columns, floors, walls and the like).
- c) Framing when external wall and roof cladding is in place and prior to internal linings.
- d) Stormwater drainage between building and discharge point (drainage pipes, soakage pits and the like) prior to covering.
- e) Completion of the development and sign off to all conditions of the consent including landscaping,

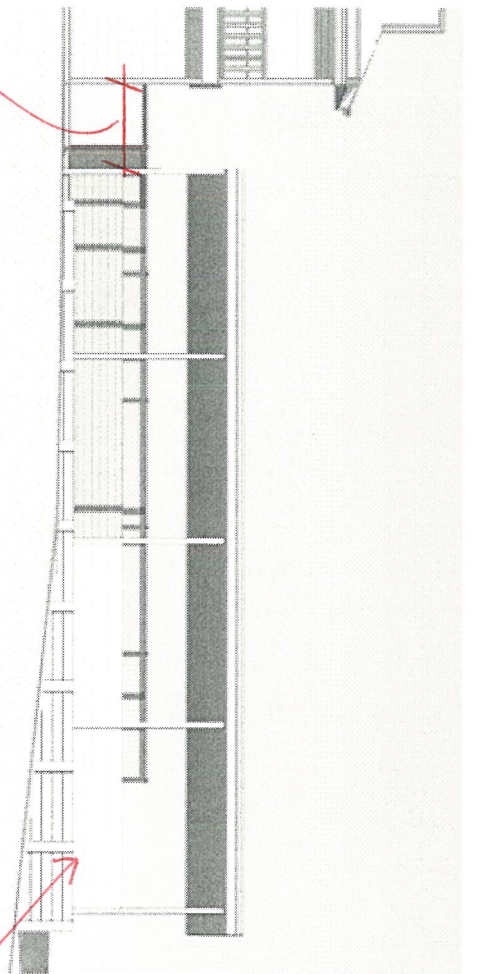
prior to occupation and use.

At each inspection, erosion and sediment control measures and site management will be inspected.

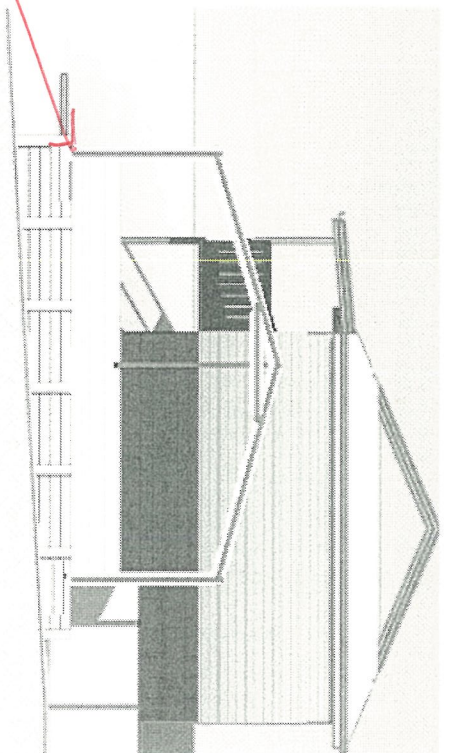
Note: forty-eight (48) hours notice shall be given to Council prior to inspections.

AN2. That stairways and balustrades (including required balustrades atop retaining walls) comply with the following requirements:

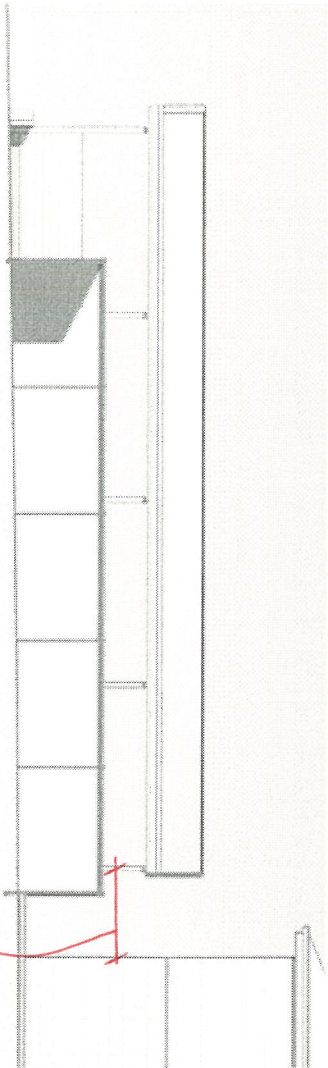
- That the stairway and construction (including flight, landings, goings, risers and the like) shall comply with the requirements of Part 3.9.1 of the Building Code of Australia, Housing Provisions.
- That the balustrades to balconies, more than one metre above the ground, are to comply with the requirements of Part 3.9.2, Building Code of Australia, Housing Provisions. The space between balusters or the width of any opening in the balustrade or the width of any opening in the balustrade is not more than 125 mm except where the space between rails or the height of the opening is not more than 125 mm. Where wire balustrades are used, certification indicating compliance with the Building Code of Australia of is required prior to inspection.
- That the height of balustrades to stairways, must comply with the requirements of Part 3.9.2, Building Code of Australia, Housing Provisions following. The balustrade has a height of not less than 865 mm above the nosing of the stair treads and the floor of the landing, access bridge, retaining wall or the like; and the space between the balusters or the width of any opening in balustrades (including any openable window or panel) is not more than 125mm. Where wire balustrades are used, certification indicating compliance with the Building Code of Australia of is required prior to inspection.



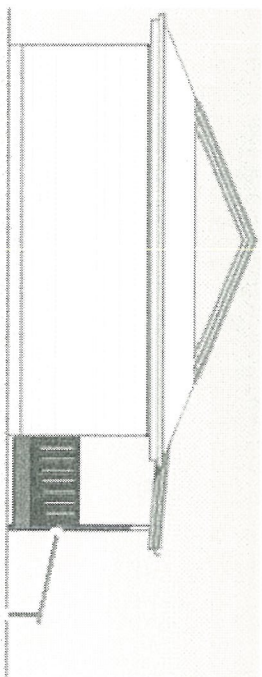
1 - East
1 : 100



2 - North
1 : 100



4 - West
1 : 100



3 - South
1 : 100

PRELIMINARY

CURRENT ISSUE DATE

"Proposed Pergola"

Lake Lyell Recreation Park
LOT 56 Magpie Hollow Rd,
Lithgow NSW 2790

CLIENT:
CONTACT:
DATE: 26.6.18 DRAWN: JZ
SCALE: 1 : 100

PROJECT NO. 21685
REV SHEET 3B A3

