

# **DEVELOPMENT ASSESSMENT REPORT – DA114/18 - PROPOSED SUBDIVISION 1 LOT INTO 3, BARTON AVENUE WALLERAWANG NSW 2845**

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## **1. PROPOSAL**

Council is in receipt of a Development Application DA114/18 for a subdivision of 1 lot into 3 lots on land known as Lot 20 DP 1217065, Barton Avenue, Wallerawang.

The property currently contains an area of 61.47ha and is vacant of building structures.

Lot 1 is proposed to be privately sold as per Council's resolution dated 25 September 2017 for future development. Lot 2 is proposed to be located on its own title and currently contains a lease agreement with the Department of Education. This parcel of the land is used as a sports oval for the Wallerawang Public School (Lot 22 DP830058). Proposed Lot 3 is the residue lot and will remain owned by Council at this stage.

Lot 1 is proposed to contain an area of 17.5ha, Lot 2 is proposed to contain an area of 0.51ha and Lot 3 is proposed to contain an area of 43.3ha. The property has a frontage to Barton Avenue, Forest Ridge Drive and Lyon Parade.

The property is restricted by easements for transmission lines, access and pipelines. The property adjoins the Wallerawang Public School, the Wallerawang indoor sport and recreation centre, and residential dwellings. Lake Wallace and the Lake Wallace recreational park is located adjacent to the property on Barton Avenue.

The property is shown in the photo below:



### **Past Applications**

DA198/17 Access and Boundary Adjustment with Lot 1 DP 371568- Subdivision Certificate Issued

## 2. SUMMARY

To assess and recommend determination of DA114/18 with recommendation for approval subject to conditions.

## 3. LOCATION OF THE PROPOSAL

Legal Description : Lot 20 DP 1217065  
Property Address : BARTON AVENUE WALLERAWANG NSW 2845

**4. ZONING:** The land is zoned R5 Large Lot Residential in accordance with Council's current planning instrument, being Lithgow Local Environmental Plan (LEP) 2014.

**5. PERMISSIBILITY:** The development being a 'subdivision' is permissible under Lithgow Local Environmental Plan 2014, subject to development consent as per Clause 4.1 below.

### **4.1 Minimum subdivision lot size**

*(1) The objectives of this clause are as follows:*

*(a) to minimise the cost to the community of:*

- (i) fragmented and isolated development of rural land, and*
- (ii) providing, extending and maintaining public amenities and services,*

*(b) to ensure that the character and landscape setting of an area is protected and enhanced by any development,*

*(c) to promote development on appropriately sized lots and to ensure access to available essential services.*

*(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

*(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

*(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

*(4A) Despite any other provision of this clause, land identified as "Area 1" or "Area 2" on the Lot Size Map may not be further subdivided.*

The minimum allotment size shown on the Lot Size Map is 800m<sup>2</sup>. Lot 1 is proposed to contain an area of 17.5ha, Lot 2 is proposed to contain an area of 0.51ha and Lot 3 is proposed to contain an area of 43.3ha. The development is permissible in the zone and complies with Clause 4.1 above.

## 5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

### **Policy 7.2 Subdivision – Release Of Subdivision Plans**

*1. Council will endorse subdivision certificates prior to completion of subdivision works only on the following basis:*

*a) Subdivision works must be substantially complete. "Substantially complete" means that all civil works have been completed including roads, water supply, sewerage and drainage. Minor outstanding works refers to installation of street signage, final rectification/seeding of excavations & batters and landscaping.*

*b) Works as executed plans must have been submitted to Council and accepted.*

c) Security for incomplete works must be provided to Council prior to the endorsement of the subdivision certificate, either by cash deposit or unconditional bank guarantee.

d) The amount of the security must be 100% of the estimated cost of completion of the outstanding works.

2. The General Manager is authorised to determine the amounts of security deposits for outstanding subdivision work and to release security upon satisfactory completion and to vary the time periods for completion of works as deemed necessary.

3. The General Manager is authorised to decline to allow bonding of outstanding subdivisions works where the deferred completion of works would not be in the best interest of Council and the community.

4. The owner of the land to which the subdivision relates must provide written authority allowing Council to enter the site and make all necessary arrangements to have outstanding works completed within six (6) months of the date of the subdivision certificate.

5. The General Manager may sub delegate any function under this policy including the issue of a Subdivision Certificate.

**Comment:** on completion of the subdivision and to Council's satisfaction that the conditions on the consent have been undertaken, the applicant will be required to submit a subdivision certificate for the development.

### **Policy 7.5 Notification Of Development Applications**

The development is not defined as being exempt under Council's Notification Policy. Therefore the following clause applies:

#### **5. Who will be notified under this Policy and how long is the notification period?**

5.1 Except for specified types of development outlined in 6.3 below, written notice of a development application will be given to landowners adjoining the Lithgow City Council Policy 7.5 – Notification of Development Applications land on which the development is proposed for a period of 14 calendar days. For the purposes of this policy adjoining land is land that directly abuts the subject site; shares a common boundary; or is situated directly opposite to the site where separated by a road, pathway or driveway.

The proposal was notified to surrounding landowners and placed on display for a period of 14 days. The development therefore complies with Council's Policy.

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

*Development Applications on Council owned land* requires Development Applications on Council land to be referred to the elected Council for consideration and determination and that no aspect of the development is dealt with under delegated authority. Given Council's ownership of this land the proposal is reported to Council for determination.

The provision of the sale of Council land has previously been reported to Council as per Item 37 Confidential-Closed Report: Ordinary Meeting of Council held 25 September 2017 – Proposed Sale of Council Land. The following resolution was made:

**ITEM 37 CONFIDENTIAL - CLOSED REPORT - ECDEV - 25/09/17 - PROPOSED SALE OF COUNCIL LAND**

**RESOLVED**

**THAT:**

1. Council agree to enter into direct negotiation with Timberfix Pty Ltd for the disposal of Part Lot 20 DP 1217065 as identified in Survey Drawing 4\_5088 OPT 1b CEH dated 14/7/17 for the purchase price of \$1,100,000 (incl GST).

2. Council enter into a conditional contract of sale with Timberfix Pty Ltd pending the registration of the necessary plan of subdivision.

3. Timberfix Pty Ltd to meet all associated subdivision and legal costs.

4. Timberfix Pty Ltd be advised that the sale of the land in no way relieves the proponent of its obligations to obtain development consent for both the subdivision of the land and future development thereon.

5. All proceeds from the sale of the land be held as a restricted asset for future strategic asset acquisition.

**MOVED:** Councillor R Thompson **SECONDED:** Councillor S Ring.

**CARRIED**

**Policy 7.7 Calling In Of Development Applications By Councillors**

This application has been called in pursuant to Policy 7.7 "Calling in of Applications by Councillors" Item 3 that states:

3. Should written notice, signed by a minimum of one (1) Councillor, be received by the General Manager prior to determination of a development application or development application/construction certificate, the application shall not be determined under delegated authority but shall be:

- Reported to the next Ordinary Meeting for the information of Council that the development application or development application/construction certificate has been "called in"; and
- Reported to an Ordinary Meeting of Council for determination.

The application has been called in by Clr Wayne McAndrew.

The application was called in by Clr Wayne McAndrew and reported at Council's Ordinary Meeting 25 June 2018.

The application was reported at the Ordinary Meeting of Council held 24 September 2018 with the following procedural motion:

**PROCEDURAL MOTION**

*THAT the item be deferred and an onsite meeting with the residents, Councillors and staff be held prior to the item being brought back to Council.*

An onsite meeting was held on 20 November 2018 with the residents, Councillors and Council staff.

## **5.2 FINANCIAL IMPLICATIONS**

### **Section 94A (Section 7.12) Development Contributions Plan 2015**

The Section 94A plan **does not** apply to this development given it is for a subdivision.

### **Water Management Act 2000**

This financial implication applies to the development as the development creates an additional load on Council's water or sewer systems.

Council's '*Development Servicing Plans for Water Supply and Sewerage August 2018*' was adopted by Council at Council's Ordinary Meeting dated 27 August 2018.

The DSPs have been prepared in accordance with the 2016 Developer Charges Guidelines for Water Supply, Sewerage and Stormwater issued by the Minister for Lands and Water, pursuant to section 64 of the LG Act 1993, exercising its function under section 306 (3) of the *Water Management Act, 2000*.

Under the Water Management Act 2000, Section 305, an application for Certificate of Compliance must be submitted to Council. This Act states:

- (1) A person may apply to a water supply authority for a certificate of compliance for development carried out, or proposed to be carried out, within the water supply authority's area.*
- (2) An application must be accompanied by such information as the regulations may prescribe.*

Therefore Councils Section 64 Contributions under Local Government Act 1993 for headwork charges for Lot 1 will be required to be paid prior to the release of the Subdivision Certificate release.

Following condition would be included in the condition of consent:

- An application shall be submitted to Council for the supply of a Certificate of Compliance under Section 305 of the Water Management Act. A Subdivision Certificate shall not be issued until such time as the contributions (for Lot 1) applicable to release the Certificate of Compliance are paid in full to Council. These contributions may be found in the Lithgow Council Fees and Charges or any applicable document adopted by Council in relation to contributions under Section 64 of the Local Government Act 1993 at the time of payment.*

You are to note that the current headwork charges for the 2018-2019 period is within Council's '*Development Servicing Plans for Water Supply and Sewerage August 2018*' adopted by Council on 27 August 2018.

## **5.3 LEGAL IMPLICATIONS**

### **Conveyancing Act 1919**

The property is restricted by easements for transmission lines, access and pipelines. These easements will be required to remain on the new deposited plan.

### **Local Government Act 1993**

Council requires applicants for subdivisions to obtain a written Section 68B application for connection to Council's water and sewer supply. As there will be no future developments for 2 of the 3 lots a Section 68 application is not required. 1 Lot is to be owned privately and separated from the Council owned lots. At this stage it is unknown what the future developments on this lot will occur. As such it will be conditioned on the consent that a Section 68 application will be required to be submitted to Council for any future development on the allotment.

### **Rural Fires Act 1997**

The development may be considered to be integrated under this act (via Section 4.46 of the EP & A Act 1979). Accordingly the approval of the Rural Fire Service is required prior to Council being in a position to determine the application. Recommendations from the Rural Fire Service have been obtained and it is considered that subject to conditions of consent the development will comply with the provisions of this Act.

### **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 4.15 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
<b>Land Use table</b>	R5 Large Lot Residential	Yes
<b>4.1</b>	Minimum subdivision lot size – 800m <sup>2</sup>	Yes
<b>7.3</b>	Stormwater management	Yes
<b>7.5</b>	Groundwater vulnerability	Yes
<b>7.7</b>	Sensitive lands	Yes

**Comment:** The proposed subdivision of land is consistent with the zone objectives. The objectives of the zone are:

#### ***1 Objectives of zone***

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- To limit development to areas in reasonable proximity to the settled town centres of Lithgow, Wallerawang and Portland to strengthen settlement hierarchy.*
- To maintain or improve the water quality of receiving water catchments.*

The development proposes to subdivide the property for future development. The subdivision is not expected to impact services or facilities in the area as all services

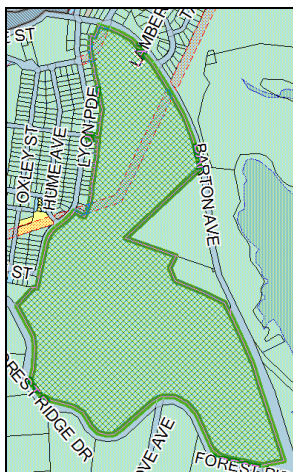
exist within the vicinity of the property. Water quality would be maintained and not impacted upon as no building structures are proposed as part of this application.

The property is surrounded by residential and recreational uses and is unlikely to increase the demand for services or public facilities.

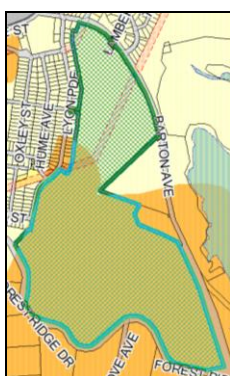
As no structural developments are involved with this application, drainage runoff will not be impacted upon. Drainage will continue to flow towards Lake Wallace. Interallotment drainage will be designed for future developments.

Lot 1 is proposed to contain an area of 17.5ha, Lot 2 is proposed to contain an area of 0.51ha and Lot 3 is proposed to contain an area of 43.3ha. As such the proposed lots are above the minimum allotment size of 800m<sup>2</sup>.

The property is identified as containing ground water vulnerability. Groundwater dependent ecosystems would not be impacted upon by the development as the landscape of the property is proposed to remain. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. Water vulnerability is mapped below:



The property is identified as being sensitive land. The location of the development has a slight slope that is less than 25%. The land is not subject to high erosion potential, salinity, impeded drainage or expected to be subject to regular or permanent inundation. The development is designed, sited and will be managed to avoid significant adverse environmental impact. The sensitive land map is shown below:



The land is deemed suitable for the proposal and is considered to comply with Council's LEP 2014.

**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.

Many of the trees listed within Schedule 2 of the SEPP are common within the Lithgow Local Government area, however core koala habitat within this area is rare, with only 12 koala sightings ever reported on private land within the LGA.

**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
<b>10</b> Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes

**Comment:** The application is required to be assessed using the Neutral or Beneficial Effect on Water Quality Assessment Tool as below. Given the development satisfies this assessment the development complies with the SEPP.

NEUTRAL OR BENEFICIAL EFFECT ON WATER QUALITY ASSESSMENT TOOL

**General Information:**

Council Name	Lithgow City
Date	10 May 2018
DA Number	DA114/18
Assessing Officer	Lauren Stevens
Development Class	Subdivisions <3 lots sewer

**Assessment Summary:**

NorBE Status:	<b>Determined</b>	User Outcome:	<b>Satisfied</b>
System Outcome:	<b>Satisfied</b>	Determination date:	<b>10/05/18</b>
Determination outcome:	<b>Granted</b>		

**Pre- Assessment Checklist:**

Located within Sydney drinking water Catchment	Yes
Is development consistent with any existing SCA 88B Instruments on title?	N/A
Crown perpetual leasehold land?	No
Water quality impact identifies?	No
Concentration of flow of water?	No



Flow of water impeded?	No
Discharge of pollutants?	No
Any other matter?	No
Documentation is completed?	Yes
Does Water Cycle management Study meet SCA/Council requirements?	Yes

**Condition**

*Effective erosion and sediment controls shall to be installed prior to any construction activity and shall prevent sediment or polluted water leaving the construction site or entering any natural drainage system or stormwater drain. The controls shall be regularly maintained and retained until works have been completed and groundcover established.*

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 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4?

Nil.

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

There are no demolition works, rebuilding or extension of the building is proposed as part of this application.

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 property adjoins the Wallerawang Public School, the Wallerawang indoor sport and recreation centre, and residential dwellings. Lake Wallace and the Lake Wallace recreational park is located adjacent to the property on Barton Avenue.

The development being a subdivision with no building structures is consistent with the surrounding land uses and will not cause any land use conflicts. The development is therefore permissible within the zone.

**Services:** The Statement of Environmental Effects states that the purpose of the subdivision is not for residential development but for the sale of part of the land to facilitate further development in the area. As the servicing requirements for future developments and the design of future developments are unknown at this point, it is

requested that conditions relating to service connections not be included in the conditions of consent.

It is proposed that a covenant be placed on the title of Lot 1 stating that any future development cannot commence until such time that the land is connected to Council's utilities.

Conditions will be placed on the consent that a Section 68 application is required for water and sewer services to be connected for future developments. Council's Water and Sewer Officers have commented and conditioned that a bond will be required for works to be carried out. These conditions are found later in this report.

Electricity and telecommunication facilities are located within the vicinity of the property. Council's standard condition of consent requires notification of arrangement from telecommunication and electrical authorities. The fibre ready pit and pipe legislation states that the entire frontage of any development is required to contain fibre ready pit and pipe to all lots. There are no provisions for residue lots or the provision for notification to a single lot in a plan. It is requested that notification of arrangement for telecommunication services and electrical services is not included in the consent conditions as it only relates to Lot 1 in which the future development at this stage is unknown.

**Context and Setting:** The proposed development will be located within an established residential 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.

**Access/traffic:** It is recommended that any future development on proposed Lot 1 would be obtained via Barton Avenue for any future development proposed for the Lot. As Lot 2 is leased by the Department of Education for the Wallerawang Public School that is located on the adjoining allotment, Lot 22 DP830058, access to the school exists and a new access driveway is not required.

Lot 3 is proposed to be the residue lot and be retained by Council. At this stage the land is proposed to be vacant. Access driveways would be assessed and constructed as per future development applications.

It is expected to be a minimal traffic increase as no construction work is proposed as part of the proposed subdivision.

**Heritage:** The property is not heritage listed under Schedule 1 of the LEP. However, the property is located within proximity to the Wallerawang Main Street and located adjacent to the Wallerawang Junction Railway Station that is a heritage listed item under Council's LEP 2014. The heritage item and conservation area is shown on the map below:





The development was referred to the Rural Fire Service (RFS) for comment. These comments are found later in this report.

**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 noise issues in the surrounding area, given it is for subdivision with no construction work.

**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 residential use and adjacent to an established residential/recreation area.

#### 5.3.7 The Suitability of the site for the development

The surrounding land uses are for residential and recreational 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

The proposal was sent to Rural Fire Service, Endeavour Energy, Transgrid, Council's Water & Wastewater Officer, and Engineers for commenting with recommendations detailed below. The proposal was also sent to surrounding landowners and placed on public display in Council's Administration Building for a period of 14 days with four submissions received which are summarised below.

#### **RURAL FIRE SERVICE (RFS)**

Reference is made to Council's correspondence dated 11 May 2018 seeking general terms of approval for the application for integrated development in accordance with the Environmental Planning and Assessment Act 1979.

The New South Wales Rural Fire Service (NSW RFS) has considered the information provided. This response is a bush fire authority issued under Section 100B of the Rural Fires Act, and is issued without any specific conditions.

## **ENDEAVOUR ENERGY**

Endeavour Energy's Strategic Property Section have provided the following advice regarding the easements/electricity infrastructure relevant to Development Application DA114/18 at Barton Avenue Wallerawang.

### Endeavour Energy (EE).

*As shown in the site plans from Endeavour Energy's G/Net master facility model EE have the following existing electrical assets within Lot 20 DP1217065:*

- 1. 66kV Overhead Feeder 817 in the north-eastern corner, within an existing easement in favour of EE.*
- 2. 11kV Overhead Power Lines and Underground Cables (Lidsdale Feeder T831) inside the Barton Avenue frontage with no existing easements.*

*An existing vacant easement running in an east-west direction is also in favour of EE that used to contain the former Lithgow to Orange 66kV Transmission Line. Subject to further investigation and application by the developer, potentially this easement may be able to be released in accordance with EE's Company Policy 9.2.4 "Network Easement Release" ie. must be confirmed as being considered to be redundant or obsolete and an assessment of monetary value.*

### Other Authorities (Overhead Power Lines)

*Feeder 944 and 94X are owned by TransGrid.*

*Feeder 944 is located within an easement that is in favour of EE. There are investigations under way for that section of easement to be transferred to TransGrid. Nonetheless, it is expected that equally TransGrid would have reservations about the subdivision/use of the easement area.*

### Requirements

*All the existing easements have been identified on the Proposed Subdivision Plan and noted on the title.*

*EE's existing overhead and underground 11kV assets that are not protected by easements, especially the underground (not visible, nor easily identified) assets within Proposed Lot 2 which one would assume will be developed in the near future.*

*EE requires easements be created over these assets in proposed Lots 1 & 2 which should be included as a Council condition of the DA consent. This is consistent with EE's Property Tenure Guidelines that are published by Network Connections Branch which are applied to all new subdivision applications that are submitted to Network Connections.*

*EE's easements, rights and restrictions, covenants etc. must be retained over the effected lots and the new easements etc. created in accordance with the requirements of NSW Land Registry Services (LRS).*

Although Endeavour Energy's 11 kV Overhead Power Lines and Underground Cables traversing the site are not held under easement, they are protected assets under the Electricity Supply Act 1995 (NSW) Section 53 'Protection of certain electricity works'. The owner or occupier of the land cannot take any action by reason of the presence or operation of the electricity works in, on or over the land ie. they cannot remove

the electricity infrastructure from the property. These protected assets are managed on the same basis as if an easement was in existence.

In accordance with Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights', Table 1 – 'Minimum easement widths':

- The 11 kV Overhead Power Lines traversing the site requires a minimum easement width of 9 metres ie. 4.5 metres to both sides of the poles/centre line of the conductors.
- The 11 kV Underground Cables traversing the site requires a minimum easement width of 3 metres ie. 1.5 metres to both sides of the centre line of the cable ducts which are assumed has no concrete protection unless proven otherwise.

Subject to the resolution of the foregoing, Endeavour Energy's has no objection to the Development Application. Its further recommendations and comments are as follows:

• ***Earthing***

The construction of any building or structure (including fencing, signage, flag poles etc. whether temporary or permanent) that is connected to or in close proximity to Endeavour Energy's electrical network is required to comply with Australian/New Zealand Standard AS/NZS 3000:2007 'Electrical installations' to ensure that there is adequate connection to the earth. Inadequate connection to the earth places persons and the electricity network at risk.

• ***Safety Clearances***

In the absence of easements, any future proposed buildings, structures, signage etc. whether temporary or permanent, must still comply with the minimum safe distances/clearances for voltages up to and including 132,000 volts (132kV) as specified in:

- Australian/New Zealand Standard AS/NZS 7000 – 2016: 'Overhead line design'
- 'Service and Installation Rules of NSW' which can accessed via the following link to the NSW Resources & Energy website:

<https://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/rules>

Different voltages are kept at different heights, the higher the voltage, the higher the wires are positioned on the pole. Similarly, the higher the voltage, the greater the required building setback. These distances must be maintained at all times to all buildings and structures ie. including signage, fencing, temporary site sheds, etc. and regardless of the Council's allowable building setbacks etc. under its development controls, allowance must be made for the retention of appropriate/safe clearances.

• ***Easement Management/Network Access***

The following is a summary of the usual/main terms of Endeavour Energy's electrical easements requiring that the land owner:

- Not install or permit to be installed any services or structures within the easement site.
- Not alter the surface level of the easement site.

- Not do or permit to be done anything that restricts access to the easement site without the prior written permission of Endeavour Energy and in accordance with such conditions as Endeavour Energy may reasonably impose.

Endeavour Energy's preference is for no activities or encroachments to occur within its easement areas. If any proposed works or activities (other than those approved/certified by Endeavour Energy's Network Connections Branch as part of an enquiry/application for load) will encroach/affect Endeavour Energy's easements/protected assets, contact must first be made with the Endeavour Energy's Easements Officer, Jeffrey Smith, on direct telephone 9853 7139 or alternately email [Jeffrey.Smith@endeavourenergy.com.au](mailto:Jeffrey.Smith@endeavourenergy.com.au)

Please also refer to the attached copy of Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights' for further details regarding encroachments and activities in easement areas.

It is imperative that the access to the existing electrical infrastructure adjacent and on the site is maintained at all times. To ensure that supply electricity is available to the community, access to the electrical assets may be required at any time.

• ***Vegetation Management***

The planting of large trees in the vicinity of electricity infrastructure is not supported by Endeavour Energy. Suitable planting needs to be undertaken in proximity of electricity infrastructure. Only low growing shrubs not exceeding 3.0 metres in height, ground covers and smaller shrubs, with non-invasive root systems are the best plants to use. Larger trees should be planted well away from electricity infrastructure (at least the same distance from overhead power lines as their potential full grown height) and even with underground cables, be installed with a root barrier around the root ball of the plant. Landscaping that interferes with electricity infrastructure may become a potential safety risk, cause of bush fire, restrict access or result in the interruption of supply. Such landscaping may be subject to Endeavour Energy's Vegetation Management program and/or the provisions of the *Electricity Supply Act 1995* (NSW) Section 48 'Interference with electricity works by trees' by which under certain circumstances the cost of carrying out such work may be recovered.

• ***Prudent Avoidance***

The electricity network is operational 24/7/365 ie. all day, every day of the year. The electricity industry has adopted a policy of prudent avoidance by doing what can be done without undue inconvenience and at modest expense to avert the possible risk to health from exposure to emissions from electricity infrastructure such as electric and magnetic fields (EMF) and noise which generally increase the higher the voltage ie. Endeavour Energy's network ranges from low voltage (normally not exceeding 1,000 volts) to high voltage (normally exceeding 1,000 volts but not exceeding 132,000 volts/132 kV). In practical terms this means that when designing new transmission and distribution facilities, consideration is given to locating them where exposure to the more sensitive uses is reduced and increasing separation distances. These emissions are generally not an issue but with Council's permitting or encouraging development with higher density, reduced setbacks and increased building heights, new development can impact on existing electricity infrastructure. Where development is proposed in the vicinity of electricity infrastructure, Endeavour

Energy is not responsible for any amelioration measures for such emissions that may impact on the nearby proposed development.

• ***Dial Before You Dig***

Before commencing any underground activity the applicant is required to obtain advice from the ***Dial Before You Dig 1100*** service in accordance with the requirements of the *Electricity Supply Act 1995* (NSW) and associated Regulations. This should be obtained by the applicant not only to identify the location of any underground electrical and other utility infrastructure across the site, but also to identify them as a hazard and to properly assess the risk.

• ***Public Safety***

Workers involved in work near electricity infrastructure run the risk of receiving an electric shock and causing substantial damage to plant and equipment. Endeavour Energy's public safety training resources, which were developed to help general public/workers to understand why you may be at risk and what you can do to work safely are available via Endeavour Energy's website via the following link:

<http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw+homepage/communitynav/safety/safety+brochures>

• ***Emergency Contact***

In case of an emergency relating to Endeavour Energy's electrical network, the applicant should note the Emergencies Telephone is 131 003 which can be contacted 24 hours/7 days.

**NSW DEPARTMENT OF PLANNING & ENVIRONMENT-DIVISION OF RESOURCES & GEOSCIENCE, GEOLOGY SURVEY OF NSW**

Reference is made to Council's letter dated 11 May 2018 requesting advice for a subdivision at Lot 20 DP1217065 at Barton Avenue, Wallerawang.

GSNSW has no mineral resource issues to raise with this application.

GSNSW notes that the proposed subdivision southern boundary is located within the transition area buffer for Wallerawang Quarry approximately 1km distance from the subject area. The quarry is covered by Mining Lease (ML) 1633 and is operated by Walker Quarries Pty Ltd extracting coarse aggregate for construction material.

The Wallerawang Quarry was identified in the NSW State-wide Mineral Resource Audit (MRA) conducted in accordance with S117 D1.3 of the *Environmental Planning and Assessment Act 1979*. GSNSW supplied information relating to the Lithgow LGA as a data package to council in September 2015.

Should Council propose changes to Lot 3 of the subdivision, GSNSW suggest that the Wallerawang Quarry be consulted.

**TRANSGRID**

No comment was received from Transgrid, therefore it is assumed that they have no comment to the application. Transgrids easements are located on Council's land and will not be impacted upon by the subdivision.



## **COUNCIL'S WATER & WASTEWATER OFFICER**

Further to recent discussions and review of previous assessment Council's Water and Sewer Officer provides the following updated assessment and conditions:

- **NOTES OF ASSESSMENT**

- a) The applicant has provided no concept plan of how these lots can be serviced.
- b) There is an existing gravity sewer main available at the western boundary of Lot 1 and water main located in Lyon Parade. Water could be provided to the allotment from this location. However Sewer would only provide limited accessibility via gravity as per the original proposal. Given the site has the possibility of future subdivision the proposed sewer connection to provide a service purely for the purpose of subdivision may be considered unreasonable and would possibly not facilitate any future connection.
- c) Lot 2 services are not required as this land is being used as a sporting oval in connection with the school which has existing services.
- d) Lot 3 is the residue lot, no services available.

Therefore, there is no objection to the proposal given the following conditions of consent:

1. Section 68 Approval shall be required for all Water and Sewer works prior to release of a Construction Certificate for future developments proposed for Lot 1.
2. The Lots, as part of the proposed subdivision, are to be unserved for water and sewerage. Upon future applications relating to the use of the land being created on proposed Lot 1, Council will provide appropriate connection/s to the allotment at full cost to Council. Prior to providing a connection Council will require the provision of the below condition to be met.
  - a) The applicant shall provide a full Water and Sewer Design Plan for the future development of Lot 1. Approval under *Section 68 of the Local Government Act 1993* will be required prior to the release of the Construction Certificate/Subdivision Works Certificate. Design is to include, longitudinal sections for each main, minimum depth and cover, maximum depth, grade, chainage, inverts, size, depths, manholes, manhole numbers, manhole depths, pipe velocity, proposed material and positions of junctions and dead ends for all Lots created as part of any future subdivision.

## **COUNCIL'S ENGINEERS**

Reference is made to the Development Application in regard to Council's Planners referral and provides the following comments:

No stormwater drainage works are proposed as part of this development. Any issues regarding stormwater from neighbouring developments can be addressed during the design stage for any future development should it occur.

1. The approved access point for Lot 1 is to be from Lyon Parade. No access to the lot is to be obtained from Barton Avenue for the subdivision.

2. Part of the property known as Cannelite Street will remain in Council ownership and be dedicated as a public road. This section of the road will be required to be formed and upgraded as part of any future development application submitted to Council.

### **PUBLIC SUBMISSIONS**

During the notification period four submissions were received with the following concerns:

1. There is a major sewer line that runs parallel to the rear of the houses along Lyon Parade and there is no mention of any easement for access to that line for maintenance.
2. Future developments would impact views from properties within Lyon Parade.
3. A small section of the property is known as Cannelite Street. This is not indicated on the plans as a public street. This area services access to 2 properties, provides access to the rear properties along Lyon Parade, provides access to sewer manholes behind the dwellings and access for fire rescue services.
4. Devaluation of properties on the corner of Lyon Parade and Cannelite Street.
5. The stormwater from properties within Lyon Parade on the eastern side flows into proposed Lot 1 with no containment.

### **Applicant's Response**

*1. The sewer line is covered by the provisions of Section 59A of the Local Government Act 1993 which states:*

#### ***59A Ownership of water supply, sewerage and stormwater drainage works***

- a) Subject to this division, a council is the owner of all works of water supply, sewerage and stormwater drainage installed in or on land by the Council (whether or not the land is owned by the Council).*
- b) A Council may operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things necessary or appropriate to any of its works to ensure that, in the opinion of the Council, the works are used in an efficient manner for the purposes for which the works were installed.*
- c) The provisions of this section have effect despite anything contained in Section 42 of the Real Property Act 1900.*
- d) An easement does not give the Council any more rights to access and maintain these assets than they already have under this provision of the Local Government Act 1993.*

*2. No development is proposed as part of this application. The adjoining properties do not have an easement for views over the subject land. Due to the slope of the land, any future development is unlikely to interrupt views from adjoining neighbours unless it was of a considerable size. If any residential development of this scale is proposed in the future as part of later development applications, then the adjoining neighbours should be invited to submit any comments on that development as part of Council's Consent process. As no development is proposed for this development, no views will be impacted.*

*3. No part of the development has a frontage to Cannelite Street. Cannelite Street comes to a T-intersection with Lyon Parade. While the kerb and gutter along Lyon Parade turns into the subject land no public road exists in this location.*

*4. The value of adjoining properties is not a valid planning consideration and should not be taken into account when considering this application. The development is not likely to impact the values of the surrounding properties.*

*5. No development is proposed as part of this application and as such, any stormwater that enters the subject land will not have an adverse effect on the development. If future development is to take place, the impact of the stormwater must be considered as part of the design and construction of that development. This would be done as part of the design and construction of that development. This would be done as part of any normal engineering design which accompanies development where construction is to take place.*

**Council Officer's Comment:**

1. The development was referred to Council's Water and Sewer Officer for comment. An easement will be created over Council's sewer main located at the rear of the properties along Lyon Parade. This would be conditioned on the consent.

2. No building structures have been proposed as part of this application. The property has a steep downwards slope towards Lake Wallace. As such any future development would be on a lower elevation to the existing dwellings along Lyon Parade. Any future development would be required to be designed and oriented to have minimal impact to the surrounding environment.

3. The small section off Lyon Parade that is known as Cannelite Street is proposed to remain as a Council owned land. This was agreed upon by the proposed new owners of the land of the land and Council.

4. Land valuations are not assessed by Council as it is unknown.

5. As no structural developments are involved with this application, drainage runoff will not be impacted upon. Drainage will continue to flow towards Lake Wallace. Interallotment drainage will be designed for future developments.

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 DA 114/18 is approved subject to conditions set out in Schedule A.

Report prepared by:

Supervisor:

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 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.

#### **ADMINISTRATIVE CONDITIONS**

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans listed in the approval and any further information provided during the process unless otherwise amended by the following conditions.
2. That the a Subdivision Certificate Application, release fee, Registered Surveyors Plans (original & 11 copies) along with associated 88B instrument if applicable, be submitted to Council for finalisation following the compliance with all conditions of this consent.
3. Part Lot 20 DP1217065 Barton Avenue that adjoins Lyon Parade is to remain in Council ownership and be dedicated as a public road. This section of the road will be required to be formed and upgraded as part of any future development application submitted to Council. The area is shown in red on the plans
4. The approved access point for Lot 1 is to be from Lyon Parade. No access to the lot is to be obtained from Barton Avenue for the subdivision.

#### ***Section 64 Contributions***

5. An application shall be submitted to Council for the supply of a Certificate of Compliance under Section 305 of the Water Management Act. A Subdivision Certificate shall not be issued until such time as the contributions (for Lot 1) applicable to release the Certificate of Compliance are paid in full to Council. These contributions may be found in the Lithgow Council Fees and Charges or any applicable document adopted by Council in relation to contributions under Section 64 of the Local Government Act 1993 at the time of payment.

You are to note that the current headwork charges for the 2018-2019 period is within Council's '*Development Servicing Plans for Water Supply and Sewerage August 2018*' adopted by Council on 27 August 2018.

#### ***Erosion and Sediment Controls***

6. Effective erosion and sediment controls shall to be installed prior to any construction activity and shall prevent sediment or polluted water leaving the construction site or entering any natural drainage system or stormwater drain. The controls shall be regularly maintained and retained until works have been completed and groundcover established.

#### ***Environmental Protection***

7. Prior to the issue of the Subdivision Certificate, Council is to be provided with a report from Upper Macquarie County Council indicating:
  - Noxious plants are under adequate management; or
  - Noxious plant management has been undertaken and adequate control measures are in place; or
  - Noxious plants are not a concern for the property

### **Water and Sewer Requirements**

8. Section 68 Approval shall be required for all Water and Sewer works prior to release of a Construction Certificate for future developments proposed for Lot 1.
9. The Lots, as part of the proposed subdivision, are to be unserved for water and sewerage. Upon future applications relating to the use of the land being created on proposed Lot 1, Council will provide appropriate connection/s to the allotment at full cost to Council. Prior to providing a connection Council will require the provision of the below condition to be met.
  - a) The applicant shall provide a full Water and Sewer Design Plan for the future development of Lot 1. Approval under *Section 68 of the Local Government Act 1993* will be required prior to the release of the Construction Certificate/Subdivision Works Certificate. Design is to include, longitudinal sections for each main, minimum depth and cover, maximum depth, grade, chainage, inverts, size, depths, manholes, manhole numbers, manhole depths, pipe velocity, proposed material and positions of junctions and dead ends for all Lots created as part of any future subdivision.

### **ENDEAVOUR ENERGY REQUIREMENTS**

#### **Easements**

10. *Endeavour Energy requires easements be created over all assets in proposed Lots 1 & 2 this includes:*
  - *All existing easements identified on the Proposed Subdivision Plan and noted on the title.*
  - *Endeavour Energy's existing overhead and underground 11kV assets that are not protected by easements, especially the underground (not visible, nor easily identified) assets within Proposed Lot 2.*

*Endeavour Energy's easements, rights and restrictions, covenants etc. must be retained over the effected lots and the new easements etc. created in accordance with the requirements of NSW Land Registry Services (LRS).*

Although Endeavour Energy's 11 kV Overhead Power Lines and Underground Cables traversing the site are not held under easement, they are protected assets under the *Electricity Supply Act 1995* (NSW) Section 53 'Protection of certain electricity works'. The owner or occupier of the land cannot take any action by reason of the presence or operation of the electricity works in, on or over the land ie. they cannot remove the electricity infrastructure from the property. These protected assets are managed on the same basis as if an easement was in existence.

In accordance with Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights', Table 1 – 'Minimum easement widths':

- The 11 kV Overhead Power Lines traversing the site requires a minimum easement width of 9 metres ie. 4.5 metres to both sides of the poles/centre line of the conductors.
- The 11 kV Underground Cables traversing the site requires a minimum easement width of 3 metres ie. 1.5 metres to both sides of the centre line of the cable ducts which are assumed has no concrete protection unless proven otherwise.

#### **Earthing**

11. The construction of any building or structure (including fencing, signage, flag poles etc. whether temporary or permanent) that is connected to or in close proximity to Endeavour Energy's electrical network is required to comply with Australian/New Zealand Standard AS/NZS 3000:2007 'Electrical installations' to ensure that there is adequate connection to the earth. Inadequate connection to the earth places persons and the electricity network at risk.

### ***Safety Clearances***

12. In the absence of easements, any future proposed buildings, structures, signage etc. whether temporary or permanent, must still comply with the minimum safe distances/clearances for voltages up to and including 132,000 volts (132kV) as specified in:
- Australian/New Zealand Standard AS/NZS 7000 – 2016: 'Overhead line design'
  - 'Service and Installation Rules of NSW' which can be accessed via the following link to the NSW Resources & Energy website:

<https://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/rules>

Different voltages are kept at different heights, the higher the voltage, the higher the wires are positioned on the pole. Similarly, the higher the voltage, the greater the required building setback. These distances must be maintained at all times to all buildings and structures ie. including signage, fencing, temporary site sheds, etc. and regardless of the Council's allowable building setbacks etc. under its development controls, allowance must be made for the retention of appropriate/safe clearances.

### ***Easement Management/Network Access***

13. The following is a summary of the usual/main terms of Endeavour Energy's electrical easements requiring that the land owner:
- Not install or permit to be installed any services or structures within the easement site.
  - Not alter the surface level of the easement site.
  - Not do or permit to be done anything that restricts access to the easement site without the prior written permission of Endeavour Energy and in accordance with such conditions as Endeavour Energy may reasonably impose.

Endeavour Energy's preference is for no activities or encroachments to occur within its easement areas. If any proposed works or activities (other than those approved/certified by Endeavour Energy's Network Connections Branch as part of an enquiry/application for load) will encroach/affect Endeavour Energy's easements/protected assets, contact must first be made with the Endeavour Energy's Easements Officer, Jeffrey Smith, on direct telephone 9853 7139 or alternately email [Jeffrey.Smith@endeavourenergy.com.au](mailto:Jeffrey.Smith@endeavourenergy.com.au)

Please also refer to the attached copy of Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights' for further details regarding encroachments and activities in easement areas.

It is imperative that the access to the existing electrical infrastructure adjacent and on the site is maintained at all times. To ensure that supply electricity is available to the community, access to the electrical assets may be required at any time.

### ***Vegetation Management***

14. The planting of large trees in the vicinity of electricity infrastructure is not supported by Endeavour Energy. Suitable planting needs to be undertaken in proximity of electricity infrastructure. Only low growing shrubs not exceeding 3.0 metres in height, ground covers and smaller shrubs, with non-invasive root systems are the best plants to use. Larger trees should be planted well away from electricity infrastructure (at least the same distance from overhead power lines as their potential full grown height) and even with underground cables, be installed with a root barrier around the root ball of the plant. Landscaping that interferes with electricity



infrastructure may become a potential safety risk, cause of bush fire, restrict access or result in the interruption of supply. Such landscaping may be subject to Endeavour Energy's Vegetation Management program and/or the provisions of the *Electricity Supply Act 1995* (NSW) Section 48 'Interference with electricity works by trees' by which under certain circumstances the cost of carrying out such work may be recovered.

### ***Prudent Avoidance***

15. The electricity network is operational 24/7/365 ie. all day, every day of the year. The electricity industry has adopted a policy of prudent avoidance by doing what can be done without undue inconvenience and at modest expense to avert the possible risk to health from exposure to emissions from electricity infrastructure such as electric and magnetic fields (EMF) and noise which generally increase the higher the voltage ie. Endeavour Energy's network ranges from low voltage (normally not exceeding 1,000 volts) to high voltage (normally exceeding 1,000 volts but not exceeding 132,000 volts/132 kV). In practical terms this means that when designing new transmission and distribution facilities, consideration is given to locating them where exposure to the more sensitive uses is reduced and increasing separation distances. These emissions are generally not an issue but with Council's permitting or encouraging development with higher density, reduced setbacks and increased building heights, new development can impact on existing electricity infrastructure. Where development is proposed in the vicinity of electricity infrastructure, Endeavour Energy is not responsible for any amelioration measures for such emissions that may impact on the nearby proposed development.

### ***Dial Before You Dig***

16. Before commencing any underground activity the applicant is required to obtain advice from the ***Dial Before You Dig 1100*** service in accordance with the requirements of the *Electricity Supply Act 1995* (NSW) and associated Regulations. This should be obtained by the applicant not only to identify the location of any underground electrical and other utility infrastructure across the site, but also to identify them as a hazard and to properly assess the risk.

### ***Public Safety***

17. Workers involved in work near electricity infrastructure run the risk of receiving an electric shock and causing substantial damage to plant and equipment. Endeavour Energy's public safety training resources, which were developed to help general public/workers to understand why you may be at risk and what you can do to work safely are available via Endeavour Energy's website via the following link:

<http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw+homepage/communitynav/safety/safety+brochures>

### ***Emergency Contact***

18. In case of an emergency relating to Endeavour Energy's electrical network, the applicant should note the Emergencies Telephone is 131 003 which can be contacted 24 hours/7 days.