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**SECTION 4.15 EVALUATION**Environmental Planning and Assessment Act 1979 (as amended)

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<b>Development Application No.</b>	DA007/24 PAN 403740
<b>Subject Site</b>	Lot 7 DP263999 1A Caroline Avenue Bowenfels
<b>Proposal</b>	Detached Garage / shed (and removal of existing garage)
<b>Zoning</b>	R1 General Residential
<b>Permissibility</b>	Residential garage / shed ancillary to the existing dwelling is permissible
<b>Cost of Development</b>	\$61,801.00
<b>Applicant</b>	Fernleigh Drafting
<b>Owner</b>	Phillip Peace
<b>Notification</b>	The proposal was neighbour notified in accordance with the Lithgow Community Participation Plan 2020.
<b>Submissions</b>	A petition with twelve (12) signatures was submitted from surrounding residents in support of the proposed development. No objections have been received from the community.
<b>Affiliations and Pecuniary Interests</b>	There are no affiliations or pecuniary interests declared by the applicant
<b>Potential Reportable Donations/Gifts</b>	NIL
<b>Variations sought</b>	Lithgow Development Control Plan 2021 ( <b>DCP</b> ): <u>Part 6.4.7</u> <ul style="list-style-type: none"><li>• Maximum floor area of building and Cumulative outbuilding floor area across site</li><li>• Wall and ridge height</li><li>• Side boundary setback</li></ul>
<b>Site Inspection</b>	Site inspections were undertaken on 20 February 2024 and 27 May 2024
<b>Assessing Officer</b>	Rebecca Nichols
<b>Date of Report</b>	7/11/24
<b>Recommendation</b>	REFUSAL

**Executive Summary**

The objective of the report is to assess and recommend determination of DA DA007/24 PAN 403740.

Council is in receipt of a Development Application for the construction of large metal clad garage/shed located on land located within an R1 General Residential zone under the Local Environmental Plan 2014.

The proposal provides for the building, having a floor area of 128 sq m (reduced from 160 sq m) to be sited 10.2m (increased from 8m) from the curved front road alignment, 900mm from the western side boundary and 2.2m from the existing dwelling on the land. The wall and ridge height are proposed to be 4.2m and 5.172m respectively. A roller door (4.2m high x 3m wide) provides access within the front elevation.

The proposal seeks variations to various development standards that apply under the Lithgow Development Control Plan 2021 (**DCP**) in respect to maximum floor area, wall / ridge heights, minimum side boundary setback, and minimum vehicular access/ driveway / parking which on balance are not supported through a merit-based assessment. The scale of the proposed garage / garage / shed is proportionate and attributable to the garaging of a privately owned over-sized commercial omnibus (currently kept on onsite) and several privately owned cars.

A written request for variation of development controls was submitted, indicating that the garage would be utilised for the storage of several vehicles, including the oversized omnibus. Assessment of the immediate surrounding

residential properties indicates that, should the variations be approved as currently proposed, the garage would exceed the height of neighbouring dwellings and despite the 10.2m setback, dominate the existing dwelling and the streetscape in this vicinity.

Council's Infrastructure Services have noted that the site does not facilitate compliance with development standards under Chapter 2 of the DCP (potential damage to sewage easement, insufficient area to facilitate safe vehicle movements) and are not supportive of the proposal.

Opportunities have been provided to the applicant to redesign the proposal to better address the objectives of the DCP. The applicant has most recently indicated a willingness to reduce the scale of the proposed garage (to the extent of removing a bay) and further to dispose of the omnibus vehicle. The resultant design however remains based on the need to garage the omnibus with an excessive 4.2m wall height and over-sized roller door opening.

Section 4.6(3) of Lithgow Local Environmental Plan provides that "*Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard."*

The proposal seeks variations to several development standards that apply under the DCP in respect to maximum floor area, wall / ridge heights, minimum side boundary setback, and minimum vehicular access/ driveway / parking.

The matters referred to in s. 4.6(3)(a) and (b) have not been satisfied and consequently the proposal cannot be supported.

### **Description of Site and Surrounds**

Lot 7 DP263999  
1A Caroline Avenue Bowenfels

#### **Existing Development**

The existing irregular shaped, relatively level site has an area of 1189m<sup>2</sup>, is prominent within the streetscape due to a curved front road alignment which also adjoins a bus stop. It is significantly constrained by two Easements to drain sewage 2.0m wide that traverse the site and a separate easement to drain sewage 2m wide that traverses the adjoining lot to the west parallel and to the common western side boundary. A stormwater kerb inlet, power pole, communication pit, street tree exist along the road frontage and a large mature tree is located within the rear yard area. A bus stop is located on the adjoining parcel to the north east of the property.

Existing development upon the site comprises of a modest sized single storey brick veneer dwelling and adjacent metal garage (proposed to be removed) and various other ancillary outbuildings / attached structures (refer to aerial photo below).



Fig 1 - Aerial photo showing development within the vicinity and lack of similar large garage developments



Fig 2: More detailed aerial photo of site (arrow indicates approximate location of proposed garage /shed)

### **Proposed Development**

Council is in receipt of Development Application DA007/24 seeking consent for the construction of a metal clad garage / shed at Lot 7 DP263999, 1A Caroline Avenue Bowenfels. The proposal provides for:

- A floor area of 128m<sup>2</sup> (10m x 12.8m)
- Siting up to 10.2m from the front boundary, 900mm from the western side boundary and 2.2m from the existing single storey dwelling;
- External wall height of 4.2m and ridge height of 5.172m;
- A single 4.2m high roller door centrally located within the front elevation; and
- A concrete driveway

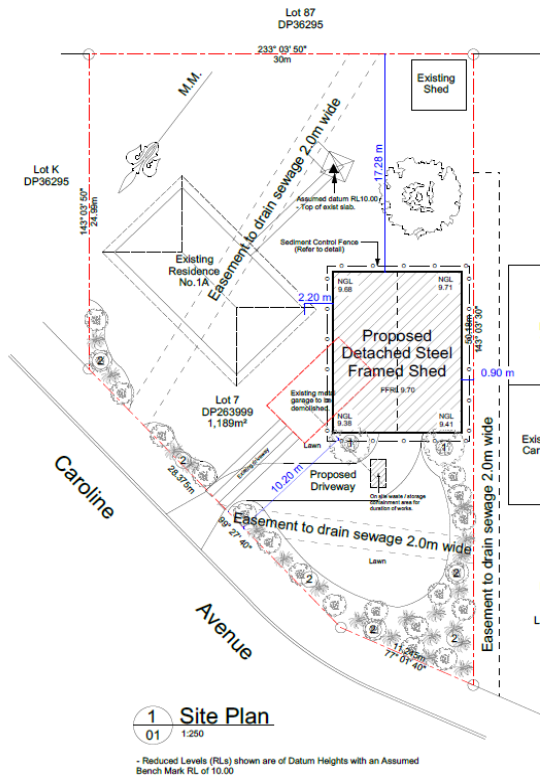


Fig 3: Site plan

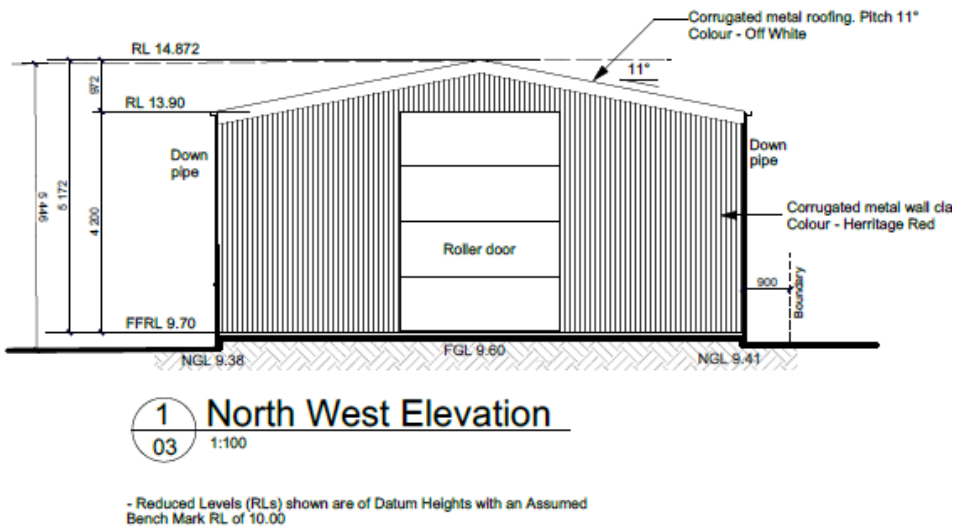


Fig 4: Front elevation of proposed Garage / garage / shed



Fig 5: Photo of showing location of proposed garage / shed

**Referrals**

**Internal Referrals**

The following internal referrals were undertaken as detailed in the table below:

<b>Branch</b>	<b>Matters Considered</b>
Infrastructure Services	Comment and assessment of vehicle access, driveway and parking in accordance with Part 2.5, DCP 2021.
Water and Wastewater	Comments in relation to development over and in the vicinity of the sewer main.
Planning	Comments in relation to the compliance of the proposed garage with Part 6.4.7 DCP 2021.

**External Referrals**

The proposed development did not require concurrence or integrated development approval from any external referral authority under the Environmental Planning and Assessment Act 1979.

**Summary of development correspondence, referrals and action**

<b>Date</b>	<b>Action</b>
24 January 2024	Development Application received
20 February 2024	Neighbour notification
20 February 2024	Referral to infrastructure services, Water and Sewer
1 March 2024	Referral to Planning - Council unable to support the variation to development standards under DCP due to adverse impacts on the subject site and adjoining allotments (wall / ridge heights and side boundary set back.
8 March 2024	Initial 'Further information request' issued seeking relocation clear of the sewer main, redesign / reduction in scale to comply with the DCP. Proposed variations to the DCP required to submitted consistent with objectives under Part 1.6 of the DCP.

9 March 2024	Response from water and sewer
13 March 2024	Response from Infrastructure Services The following matters were raised: <ul style="list-style-type: none"> <li>- Property has a low flood risk</li> <li>- Vehicular access is unsatisfactory as the driveway is not adequate for vehicle manoeuvring of a higher-class vehicle (bus as mentioned in the Statement of Environmental Effects).</li> <li>- The roller door access is not connected to the concrete driveway</li> <li>- The development will be close to easements and various utilities such as sewer easement, stormwater kerb inlet, power pole, communication pit, street tree and bus stop.</li> </ul>
25 March 2024	Amended Statement of Environmental Effects and plans submitted by applicant – reducing size of garage / shed from 160m <sup>2</sup> to 128m <sup>2</sup> and moving the garage / shed to provide a front setback of 8m.
17 April 2024	Referral to Planning
10 May 2024	Application reassigned
2 July 2024	Additional further information request issued seeking the submission of a plan demonstrating how the omnibus can enter and exit the garage / shed wholly within the confines of the front of the property utilising the existing driveway and vehicular access point. A landscaping plan with additional landscaping along the front of the property and the front façade of the garage / shed (and removal of the garden shown in the vicinity of the roller door)
8 July 2024	Amended plan provided for a bus turning circle within the grassed front yard together with proposed landscaping details.
26 July 2024	Referral to Infrastructure services – Response indicated that: <ul style="list-style-type: none"> <li>- The turning plan demonstrated that the bus could not adequately turn within the front yard. Further infrastructure services located within the front yard and on the footpath and pedestrian access to the bus stop on the adjoining property would be impacted.</li> <li>- The access does not comply with Chapter 2.5, DCP.</li> <li>- Grass is unsuitable for a turning circle and the installation of a large concrete turning area suitable for a heavy vehicle would be unacceptable.</li> <li>- The existing access and driveway is not suitable for a commercial vehicle.</li> </ul>
19 August 2024	Written notification issued advising that Council is unable to approve the proposal given that: <ul style="list-style-type: none"> <li>• the vehicular access and turning circle do not comply with the Objectives of Part 2.5 of DCP;</li> <li>• the proposal does not comply with the objectives of Part 6.4.7 of the DCP; and</li> <li>• use of the garage / shed for the garaging of a heavy vehicle was not supported; and</li> <li>• The application should be withdrawn.</li> </ul>
2 September 2024	Further information received from applicant – in lieu of application withdrawal the applicant submitted amended details that purport to show: <ul style="list-style-type: none"> <li>• a front setback increase (from 8m to 10.5m) to address the scale of the building when viewed from Caroline Avenue;</li> <li>• a new concrete driveway to demonstrate that vehicular movements would be clear of and not traverse Council's sewer main</li> <li>• a willingness to consider the offloading or selling of the subject omnibus vehicle, if necessary, to gain approval for the garage / shed and to restrict its use to the garaging of privately owned cars.</li> </ul>
9 September 2024	Response from Infrastructure Services <ul style="list-style-type: none"> <li>- The turning plan demonstrated that the bus could not adequately turn within the front yard. Further infrastructure services located within the front yard and on the footpath and pedestrian access to the bus stop on the adjoining property would be impacted.</li> <li>- The access does not comply with Chapter 2.5, DCP.</li> </ul>

	<ul style="list-style-type: none"> <li>- Grass is unsuitable for a turning circle and the installation of a large concrete turning area suitable for a heavy vehicle would be unacceptable.</li> <li>- The existing access and driveway is not suitable for a commercial vehicle.</li> </ul>
1 November 2024	Telephone discussion with the applicant in relation to the status of the Development Application. The applicant was advised that the Development Application will be going to next Council meeting with a recommendation for refusal as the application was not withdrawn as requested by Council's further information letter. The reasons for refusal were due to the excessive height of the garage and the proposal not being compatible with the surrounding development and R1 General Residential zone. The applicant was advised that the amended site plan did not address the concerns of Council.

Over the past seven months Council has communicated with the applicant on several occasions (see table below) raising access, location and height related concerns in the context of development standards under the DCP. This culminated in Council requesting the withdrawal of the application as the applicant has not satisfactorily justified variations to the DCP / the issues raised in Council's most recent further information request.

### **Statutory Assessment**

In determining a Development Application, a consent authority is to take into consideration the matters of relevance to the development pursuant to section 4.15 of the Environmental Planning and Assessment Act (EP&A Act) 1979 (**EP&A Act**).

### **State Environmental Planning Policies**

Section 4.15(1)(a)(i) of the EP&A Act requires the consent authority to consider the provisions of environmental planning instruments (EPIS), which includes State Environmental Planning Policies (SEPPs). SEPPs applicable to this assessment are addressed in the following sections:

<b>State Environmental Planning Policies (SEPP)</b>	<b>Applicable SEPP</b>
State Environmental Planning Policy (Biodiversity and Conservation) 2021	<b>Applicable</b>
State Environmental Planning Policy (Housing) 2021	Not Applicable
State Environmental Planning Policy (Planning Systems) 2021	Not Applicable
State Environmental Planning Policy (Primary Production) 2021	Not Applicable
State Environmental Planning Policy (Resilience and Hazards) 2021	<b>Applicable</b>
State Environmental Planning Policy (Sustainable Buildings) 2022	Not Applicable
State Environmental Planning Policy (Transport and Infrastructure) 2021	Not Applicable

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

<b>Chapter 6 – Water Catchments</b>	
<b>Relevant Provisions</b>	<b>Comment</b>
<b>6.1 Land to which this Chapter applies</b>	

<b>Chapter 6 – Water Catchments</b>	
<b>Relevant Provisions</b>	<b>Comment</b>
<p>This Chapter applies to land in the following catchments-</p> <p>(a) the Sydney Drinking Water Catchment,  (b) the Sydney Harbour Catchment,  (c) the Georges River Catchment,  (d) the Hawkesbury-Nepean Catchment.</p>	<p>The subject site is located within the Sydney Drinking Water Catchment and as such the provisions of Chapter 6 apply.</p>
<b>Division 2 Controls on development generally</b>	
6.6 Water quality and quantity	A Neutral and Beneficial assessment (NorBe) was undertaken using the online NorBe tool which returned a satisfactory outcome.
6.7 Aquatic ecology	The development does not involve the clearing of any riparian vegetation nor is it near coastal wetlands, littoral rainforests or any naturally occurring water body. The development will therefore not have a direct, indirect or cumulative adverse impact on aquatic ecology.
6.8 Flooding	The property is identified as a Flood Planning area on the Flood Planning Maps in the Lithgow Flood Study Review 2017 and the Flood Hazard Category is Low.
6.9 Recreation and public access	The site is not within close proximity to recreational land uses or foreshores.
6.10 Total catchment management	Given the scale of development, the location and the lack of adverse environmental impacts, the development will not require any consultation with adjacent or downstream LGAs.
<b>6.5 Sydney Drinking Water Catchment</b>	
<p>The objectives of this Part are—</p> <p>(a) to provide for healthy water catchments that will deliver high quality water to the Sydney area while also permitting compatible development, and  (b) to provide for development in the Sydney Drinking Water Catchment to have a neutral or beneficial effect on water quality.</p>	Complies
<b>6.63 Requirement of consistency with NorBE Guideline</b>	
Development consent must not be granted to development on land in the Sydney Drinking Water Catchment unless the consent authority is satisfied the development is consistent with the NorBE Guideline.	Complies
<b>6.64 Concurrence of Regulatory Authority</b>	



<b>Chapter 6 – Water Catchments</b>	
<b>Relevant Provisions</b>	<b>Comment</b>
(1) Development consent must not be granted to development on land in the Sydney Drinking Water Catchment unless the consent authority has obtained the concurrence of the Regulatory Authority.	Concurrence not required.
(2) For the Act, section 3.18(3), the Regulatory Authority must consider the following matters in deciding whether to grant concurrence— (a) the NorBE Guideline, (b) whether the development will have a neutral or beneficial effect on water quality.	
(4) This section does not apply if the consent authority is satisfied the development has no potential impact on water quality.	

Comment:

A Neutral or Beneficial assessment (NorBe) was undertaken using the online NorBE tool and returned a satisfactory outcome. The development has also been assessed against the requirements of Chapter Six of the BandC SEPP and it has been determined that the development would meet the requirements and objectives of the BandC SEPP due to not adversely impacting on water quality and quantity, aquatic ecology, recreation and public access and total Catchment Management.

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

<b>Chapter 4 Remediation of Land</b>	
<b>Relevant Provisions</b>	<b>Comment</b>
<b>4.6 Contamination and remediation to be considered in determining development application</b>	
(1) A consent authority must not consent to the carrying out of any development on land unless— (a) it has considered whether the land is contaminated, and,  (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and  (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The subdivision was created in 1983 for residential purposes. An existing dwelling is located on the property and was approved under BA432/82. No contamination issues have been raised in relation to the residential land.  It is therefore unlikely that the site has experienced any known contamination, is zoned for residential development, contains a dwelling and is being used for residential occupation.
(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying	It is considered that a preliminary investigation is not required

<b>Chapter 4 Remediation of Land</b>	
<b>Relevant Provisions</b>	<b>Comment</b>
the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.	
(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.	Not required and not applicable
(4) The land concerned is— (a) land that is within an investigation area, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital— land— (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).	Not Applicable

Comments:

The subdivision was created in 1983 for residential purposes. An existing dwelling is located on the property and was approved under BA432/82. No contamination issues have been raised in relation to the residential land.

It is therefore unlikely that the site has experienced any known contamination, is zoned for residential development, contains a dwelling and is being used for residential occupation.

**Lithgow local Environmental Plan 2014**

Section 4.15(1)(a)(i) of the EP&A Act requires the consent authority to consider the provisions of EPIs, which includes Local Environmental Plans (LEPs). The Lithgow Local Environmental Plan (LLEP) applies to all land within the Lithgow LGA. An assessment of the development against the relevant sections of the LLEP is provided below

<b>Clause 1.2 Aims of Plan</b>	
<b>Objective</b>	<b>Comment</b>

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,	Not Applicable to the proposed development and R1 General Residential zone
(a) to encourage sustainable and planned development that complements the unique character and amenity of Lithgow and enhances its towns, villages and rural areas,	It is considered that the development does not comply with the objective. The proposed development does not complement the character and amenity of the area due to the excessive height and scale of the proposed garage / shed and its proximity to the neighbouring property. Further, the proposed development does not meet the required DCP controls and objectives for detached garage / sheds.
(b) to provide for a range of development opportunities that contribute to the social, economic and environmental resources of Lithgow in a way that allows the needs of present and future generations to be met by implementing the principles of ecologically sustainable development,	Not Applicable to the proposed development and R1 General Residential zone
(c) to manage, facilitate and encourage sustainable growth and development that	
(i) promotes the efficient and effective delivery of utilities, infrastructure and service and minimises long-term costs to government, authorities and the community, and	Not Applicable to the proposed development and R1 General Residential zone
(ii) protects, enhances and conserves mineral and extractive resources lands, forests and agricultural lands and the contributions they make to the local, regional and State economy, and	Not Applicable to the proposed development and R1 General Residential zone
(iii) allows for the orderly growth of land uses while minimising conflict between land uses in a zone and land uses in adjoining zones, and	Not Applicable to the proposed development and R1 General Residential zone
(iv) encourages a range of housing choices in planned urban and rural locations to meet population growth and the diverse needs of the community, and	Not Applicable to the proposed development and R1 General Residential zone
(v) preserves and protects land that has been identified for future long term urban development from inappropriate fragmentation and development, and	Not Applicable to the proposed development and R1 General Residential zone
(vi) protects and enhances environmentally sensitive areas, ecological systems, areas of high scenic, recreational, landscape or conservation value and areas that have the potential to contribute to improved environmental outcomes, and	Not Applicable to the proposed development and R1 General Residential zone
(vii) protects and enhances places and items of environmental, archaeological, cultural or heritage significance, including Aboriginal relics and places, and	Not Applicable to the proposed development and R1 General Residential zone
(viii) avoids or minimises the impact of development on drinking and environmental water catchments to protect and enhance water availability and safety for human consumption	A Neutral or Beneficial assessment (NorBe) was undertaken for the proposal using the online NorBE tool and returned

and the maintenance of environmental and recreational values, and	a satisfactory outcome. Therefore, the development complies with the objective.
(ix) strengthens and promotes employment land opportunities and appropriate tourism development and growth, and	Not Applicable to the proposed development and R1 General Residential zone
(x) creates resilience to natural hazards through local land use planning.	Not Applicable to the proposed development and R1 General Residential zone

Objective	Comment
<b><i>R1 General Residential zone</i></b>	
• <i>To provide for the housing needs of the community.</i>	Not applicable for the proposed ancillary development.
• <i>To provide for a variety of housing types and densities.</i>	Not applicable for the proposed ancillary development
• <i>To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.</i>	The development is considered consistent with the zone objective.
• <i>To maintain or improve the water quality of receiving water catchments.</i>	The development complies with the zone objective and the NorBE assessment is satisfactory.

LEP Clauses		
Relevant Provisions		Comment
<b>Part 2 Permitted or prohibited development</b>		
2.3	Zone objectives and Land Use Table	The development is considered consistent with the zone objectives.
2.4	Unzoned land	Clause 2.4 does not apply to the development as there is no part of the site that is not zoned.
2.5	Additional permitted uses for particular land	Clause 2.5 does not apply to the development as the development is not located on land identified in Schedule 1
2.6	Subdivision – consent required	Clause 2.6 does not apply to the development as the development is for a subdivision.
2.7	Demolition – consent required	Removal and demolition of the existing garage is included on the application for Development Approval.
2.8	Temporary use of land	Clause 2.8 does not apply as the development does not include temporary use of land.
<b>Part 4 Principal development standards</b>		
4.1	Minimum subdivision lot size	Clause 4.1 does not apply as the development does not include subdivision.
4.2	Rural subdivision	Clause 4.2 does not apply as the development does not include rural subdivisions.
4.3	Height of buildings	Not adopted
4.4	Floor space ratio	Not adopted
4.6	Exceptions to development standards	No variations are being sought to Development standards within the LLEP.
<b>Part 5 Miscellaneous provisions</b>		

<b>LEP Clauses</b>		
<b>Relevant Provisions</b>		<b>Comment</b>
5.3	Development near zone boundaries	Clause 5.3 does not apply as the development is not within 50mm of a zone boundary.
5.4	Controls relating to miscellaneous permissible uses	Clause 5.4 does not apply as the development does not include any miscellaneous permissible uses.
5.5	Controls relating to secondary dwelling on land in a rural zone	Clause 5.5 does not apply as the development does not include a secondary dwelling in a rural zone.
5.9	Dwelling house or secondary dwelling affected by natural disaster	Clause 5.9 does not apply as the development does not include the repair or replacement of lawfully erected dwelling houses and secondary dwellings that have been damaged or destroyed by a natural disaster.
5.10	Heritage conservation	Clause 5.10 does not apply as the development does not include any heritage listed items nor is it within a Heritage Conservation Area.
5.16	Subdivision of, or dwellings on, land in certain rural, residential or conservation zones	Clause 5.16 does not apply as the development does not involve subdivision
5.21	Flood planning	<p>Clause 5.21 applies to this development as it is flood prone land. Council's Development and Compliance Engineer advises that:</p> <ul style="list-style-type: none"> <li>• The flood hazard category for the property is low and there is a low flood risk.</li> <li>• The surface level of the garage / shed is located on land at or above the Flood Planning Level (FPL) with minor overland flow.</li> <li>• The final floor level of the garage / shed is adequate for mitigating the low flood risk 1% AEP or 1 in 100 years flood event of the non-habitable structure.</li> </ul>
<b>Part 7 Additional local provisions</b>		
7.1	Earthworks	The development is proposed to be located on a gently sloping section of the property and will replace the existing smaller garage / shed. The development site has been previously cleared. Minimal earthworks are required to prepare the site. It is considered that any earthworks would not disrupt the drainage patterns, soil or waterways.

<b>LEP Clauses</b>		
<b>Relevant Provisions</b>		<b>Comment</b>
7.3	Stormwater management	The stormwater would be required to be connected into the existing system that discharges into the street gutter.
7.4	Terrestrial biodiversity	The property is not mapped for Biodiversity.
7.5	Groundwater vulnerability	<p>The property is mapped as Groundwater vulnerable.</p> <p>There will be minimal sitework for the preparation of the slab as the land is relatively level. It is considered that these works will have minimal impact on groundwater vulnerability.</p>
7.6	Riparian land and watercourses	The property is not mapped as sensitive land/Riparian land.
7.7	Sensitive lands	The property is not mapped as "Sensitive Land Areas" on the Environmentally Sensitive Areas—Land Overlay Map.
7.8	Development within a designated buffer area	The property is not mapped as "Facilities Buffer Zone" on the Facilities Buffer Zone Map.
7.10	Essential services	<p>The site is connected to reticulated water and sewer. The site has access to electricity and adequate stormwater drainage.</p> <p>Access to the site for vehicles is not considered suitable for the heavy vehicle (bus) to be stored within the garage / shed.</p> <p>The property contains two easements, 2m wide, to drain sewage. In addition, there is an easement located on the adjoining property within 900mm of the proposed garage / shed. The garage / shed is located clear of the easements.</p> <p>The proposal was referred to Council's Executive Manager – water, wastewater and waste who advised that the following conditions shall be imposed:</p> <ol style="list-style-type: none"> <li>1. The proposed development is to be constructed outside of the zone of influence of the Council sewer infrastructure that crosses the property.</li> <li>2. Any connections for stormwater for the proposed development will be made to the existing property connections.</li> </ol>

## Comments

It is considered that the development does not satisfy Objective 1.2 (a) of the LLEP 2014 as the proposed development does not complement the character and amenity of the area due to the excessive wall height of the proposed garage / shed and its location near the neighbouring property. Further, the proposed development does not meet the required DCP controls and objectives for detached garage / sheds.

### **Draft Environmental Planning Instruments (EPI)**

Section 4.15(1)(a)(ii) of the EP&A Act requires the consent authority to consider the provisions of draft EPIs that have been publicly exhibited.

There are no draft EPIs applicable to the site or development.

### **Lithgow Section 7.12 Contributions Plan 2024**

Lithgow Council's Section 7.12 Contributions Plan 2015 does not apply to the development as the residential garage / shed is under \$100,000 and exempt from the contribution under the Plan.

### **Provisions of any Voluntary Planning Agreements**

There are no provisions of any planning agreement or draft planning agreement that has been entered into, or offered to be entered into under section 7.4 of the EP&A Act for this property.

### **Lithgow Development Control Plan 2021 (DCP)**

Section 4.15(1)(a)(iii) of the EP&A Act requires Council to consider the provisions of any development control plan. The development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the DCP. An assessment of the development against the relevant sections of the DCP is fully detailed in the table in Appendix 1

The applicant proposes to vary the following development controls detailed in Part 6.4.7 of DCP:

- Maximum floor area and cumulative floor area
- Wall and ridge height
- Side boundary setback

The applicant has provided the following grounds to justify the granting of DCP variations:

- The garage / garage / shed is required to store four (4) classic cars and a bus (approximately 11m long).
- The owner has already purchased the garage kit.
- The existing garage is not large enough to accommodate the vehicles and currently they are stored on the property and street, degrading the visual aesthetic of the locality.
- The proposed garage will occupy 10.76% of the total site.
- The proposed garage / shed will be obscured by proposed landscape screening which will reduce the overall bulk.
- The 4.2m high roller door is required for ease of access of the bus and the storage of the bus.
- The reduced side set back variation to 900mm will allow the provision of a 2.2m separation distance on the property between the proposed garage and dwelling for vehicular access to the backyard.
- The proposed structure is not inconsistent with other structures in the locality and does not present an adverse precedent if approved.

An assessment of the proposed development under Part 6.4.7 of the DCP revealed the following non-compliances with the Development Controls:

- The proposed 128m<sup>2</sup> garage / shed exceeds the maximum permissible floor area of 100m<sup>2</sup> under the DCP (exceeded by 28m<sup>2</sup>)
- The proposed 900mm side boundary setback does not comply with the required minimum 1.2m setback (applicable to a maximum permissible 3m wall height) as outlined in the DCP
- The proposed wall height of 4.2m exceeds the maximum permissible wall height of 3m detailed in the DCP by 1.2m. The roller door on the front facade is 4.2m high by 3.05m.

- The proposed ridge height of 5.172m exceeds that maximum permissible 4.5m requirement under the DCP by 0.672m.

An assessment of the proposed development against the objectives of Part 6.4.7 revealed the following non-compliances:

- The proposal does not meet objectives 1(a) and (c) due to the excessive height of the garage / shed and reduced side boundary setback. It is considered that the proposed garage / shed will dominate the streetscape and the existing dwelling on site. The adjoining dwelling to the west of the property (1B Caroline Avenue, Lithgow) has a wall height of 2.4m and ground height to ridge height of 4.2m. The proposed garage / shed with its wall height of 4.2m and ridge height of 5.172 is significantly higher, will be prominent and out of character with the existing development and streetscape. The photos below (see Fig 6) show the height of the bus in relation to the existing dwellings. The proposed roller door on the front elevation and front wall height (4.2) will be higher than the height of the bus and the top of the opening will be higher than the wall and portion of the roof height of the dwellings.







Fig 6: Photos showing height of bus in relation to residences nearby

- The scale and location of the garage/ shed does not comply with Objective 1(b) and is not in keeping with surrounding garage / sheds within the R1 General Residential zone, locality and streetscape.
- The industrial scale of the proposal and lack of adequate landscaping does not integrate with or complement the existing dwelling or surrounding residential development
- The proposal does not comply with objective 1(d) and will adversely impact on the amenity of surrounding properties given its height, scale and use to garage an oversized commercial bus. This may result in noise, odour, vibration nuisances. It should be noted that in response to Council's most recent further information request, the applicant has detailed that the owner is willing to consider selling the bus and to use building only for garaging of privately owned cars. The applicant did not reduce the size, wall and ridge height of the garage / shed or the large industrial style roller door. Therefore, the garage / shed would be capable of garaging a large heavy vehicle in the future. Further an amended Statement of Environmental Effects has not been submitted deleting references to the storage of a bus within the garage / shed. Therefore, no formal justification has been lodged in this respect.
- The garaging of a heavy vehicle on the residential property impacts on the sewer easement and stormwater infrastructure located on the property that serves neighbouring and surrounding properties, due to associated loading and maneuvering of the bus to, from and within the property.

The vehicular access and driveway do not comply with the objectives of Part 2.5 of the DCP, for the following reasons:

- The proposed access and driveway are not suitable for a bus.

- The proposed driveway does not provide sufficient room to maneuver the subject bus to enter or exit the proposed garage without using the grassed area.
- The access does not allow for vehicles including the bus to leave the property in a forward direction. This would result in safety issues as appropriate sight lines cannot be maintained and conflict with pedestrians accessing the bus stop located near the property.
- Assessment of previous plans submitted for a proposed vehicular turning circle located within the front yard of the property, demonstrated that there is inadequate circulation space available to navigate, safely turn and maneuver the heavy and lengthy bus vehicle (bus approximately 11m long) to access and exit the garage / shed, as well as leave the property in a forward direction.

In accordance with Part 1.6, DCP, the grounds upon which variations were sought do not fully justify or demonstrate that the objectives of the development standards have been met and do not provide sufficient planning grounds to justify departure from such standards. Further, it has not been demonstrated that the impacts of the non-compliant proposal will not be significantly greater than a compliant proposal or may enhance the outcome and that there is a public benefit from varying the control.

### **Environmental Planning and Assessment Regulation 2021**

Section 4.15(1)(a)(iv) of the EP&A Act requires the consent authority to consider any prescribed matters under the Environmental Planning and Assessment Regulation 2021 (the Regulation). Council has assessed the development in accordance with all relevant matters prescribed by the Regulation.

### **Likely Impacts of the Development**

Section 4.15(1)(b) of the EP&A Act requires the consent authority to consider the likely impacts of that development including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

<b>Head of Consideration</b>	<b>Comment</b>
Natural Environment	It is considered that the development will have minimal impacts on the natural environment. The proposed construction would involve minimal cut and fill, and minimal removal of vegetation.
Built Environment	It is considered that the development will have a negative impact on the built environment and surrounding area for the following reasons: <ul style="list-style-type: none"> <li>• The garage / shed will not complement the existing dwelling.</li> <li>• The garage / shed is taller than existing dwelling and the wall height of 4.2m will be higher than the external wall of the dwelling by at least 1.6m. The ridge height of the garage / shed will sit above the ridge height of the existing dwelling.</li> <li>• There are no garage / sheds in the area located beside (or slightly in front) of the dwelling that are higher than their respective dwellings or that have a wall height of 4.2m or contain a 4.2m high single roller door within the front elevation.</li> <li>• The 4.2m high wall of the proposed garage / shed combined with a 900mm side boundary setback juxtaposed with the adjacent carport on the adjoining property to the west will contrast starkly when viewed from Caroline Avenue.</li> <li>• The roof of the proposed garage / shed will be located above the roof of the adjoining dwelling</li> </ul>
Social Impact	It is considered that if approved the development could have a social impact to the: – <ul style="list-style-type: none"> <li>• Safety of pedestrians and use of bus shelter due to the manoeuvring of the bus on the site.</li> <li>• Wellbeing of surrounding property owners due to noise and vibration from the bus.</li> </ul>
Economic Impact	The development would have minimal economic impact

### **Site Suitability**

Section 4.15(1)(c) of the EP&A Act requires the consent authority to consider the suitability of the site for the development. The site is considered unsuitable for the proposed garage for the following reasons:

Given the excessive height of the proposed garage / shed, the reduced site boundary setback, the non-compliance of the proposed development and the applications failure to comply with or justify variations sought in respect to the aforementioned objectives of the DCP, it is considered that the site is unsuitable.

The site is considered to be significantly constrained given that three (3) Easements to drain sewage limit the location of the proposed garage / garage / shed, together with stormwater drainage culvert, power pole, street tree, and the proximity of the bus stop / service to the vehicle access for the site.

### **Public Participation**

Section 4.15(1)(d) of the EP&A Act requires the consent authority to consider any submissions made in accordance with this Act or the regulations.

Notification Period: 14 days  
Submissions: A petition with 12 signatures was submitted from surrounding residents in favour of the development.

### **Contributions**

#### **Section 7.12 Development Contributions Plan 2015**

Council's Section 7.12 Development Contributions Plan 2015 does not apply to this development given it is for a residential garage / shed development at an estimated cost of 61,801.00.

### **Other Statutory Considerations**

Section 1.7 of the EP&A Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 (BC Act) and Part 7A of the Fisheries Management Act 1994 (FM Act), both in connection with the terrestrial and aquatic environments. Both the BC Act and FM Act must be considered in the assessment of the development.

<b>Statutory Acts</b>	<b>Applicable Acts</b>
Biodiversity Conservation Act 2016	Not applicable
Fisheries Management Act 1994	Not applicable
Environment Protection and Biodiversity Conservation Act 1999	Not applicable

### **Section 1.3 - Objects of the Environmental Planning and Assessment Act 1979**

In determining the development, Council must consider whether the development is consistent with the relevant objects of the EP&A Act which are detailed in section 1.3. Council has fully considered the objects of the EP&A Act which are of relevance to the assessment of the development, including the encouragement of Ecologically Sustainable Development (ESD).

## **The Public Interest**

Given the non-compliance of the proposed development with Part 2.5 and 6.4.7 of the DCP it is considered that the development is not in the public interest, would dominate the streetscape, is not suitable for the R1 General Residential zone and if approved would set a precedent for visually prominent garages within the zone. The proposed garage with a 4.2m wall height and 5.172m ridge height exceeds the maximum designated DCP wall and ridge heights of 3m and 4.5m by 40% and 15% respectively. The exceedance of the maximum wall height for the zone is a considerable variation to the control. Justification provided for the variation of the wall height by the applicant for the storage of a large high heavy vehicle (bus approximately 11m long) in a residential area is not in keeping with such area.

The industrial design of the garage with high walls and ridge and single 4.2m high by 3m wide roller door in the middle of the 10m long front elevation is not in keeping with the existing residential garages in the area.

The proposed 900mm western side boundary setback does not comply with the DCP control of 1.2m for a maximum 3m wall height and is beyond of the scope of wall height parameters and exceeds the maximum designated wall height under the DCP by 40%. The proposed variation to the side boundary setback is not consistent with the intention of the DCP to minimise land use conflicts through siting and increased setbacks for buildings with higher wall heights and is not in the public interest.

## **Discussion and Conclusions**

The application has been assessed under Section 4.55 1(A) of the *Environmental Planning and Assessment Act 1979* and is recommended for refusal for the following reasons:

1. The proposed development does not demonstrate compliance with Clause 1.2(a) Aims of Plan, Local Environmental Plan 2014. The proposed development does not complement the character and amenity of the area due to the excessive height of the proposed garage and its location near the neighbouring property. Further, the proposed development does not meet the required DCP controls and objectives for detached garage / sheds.
2. Council is unable to approve the proposed development and variations to Clause 6.4.7 of the DCP for the following reasons:
  - The excessive wall height and ridge height of the garage is not supported by Council as it would dominate the views of the site/dwelling from the street, the height of the garage does not integrate with the dwelling design, is not in keeping with the scale and setting of R1 General Residential zone, locality and street character and may impact on the amenity of the neighbouring properties.
  - The vehicular access and driveway did not comply with the objectives of Part 2.5 DCP.
  - The variations provided by the applicant to the DCP do not fully justify and demonstrate that the objectives of the controls in Part 2.5 and Clause 6.4.7 have been met and do not provide sufficient planning grounds to justify the departure from such controls. Further, it has not been demonstrated that the impacts of a non-compliant proposal will not be significantly greater than a compliant proposal, or that a non-compliant proposal may enhance the development outcome or that there is a public benefit from varying the control.
3. Given the excessive height of the proposed garage / shed, the non-compliance of the proposed development and the applications failure to justify and demonstrate compliance with objectives of the controls in the DCP, it is considered that the site is unsuitable for the development under Section 4.15(1)(c) of the EP&A Act.
4. The development is not in the public interest as the proposed garage with a 4.2m wall height and 5.172m ridge height exceeds the maximum designated DCP (clause 6.4.7) wall and ridge heights of 3m and 4.5m by 40% and 15% respectively. The exceedance of the maximum wall height for the zone is a considerable variation to the control and would set a precedent for other similar garages. Justification provided for the variation of the wall height by the applicant for the storage of a large high heavy vehicle (bus approximately 11m long) in a residential area is not in keeping with the residential use of the area and existing residential garage / sheds. The proposed variation to the side boundary setback is not consistent with the intention of the DCP to minimise land use conflicts through siting and increased setbacks for buildings with higher wall heights and not in the public interest.

## **Recommendation**

**THAT** Development application DA007/24 be refused for the following reasons:

1. The proposal does not satisfy the Environmental Planning and Assessment Act 1979 Clause 4.15 Evaluation which requires the following matters to be considered:

***Matters for consideration—general***

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

- (a) the provisions of—*
    - (i) any environmental planning instrument, and*
    - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
    - (iii) any development control plan, and*
    - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
    - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
  - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
  - (c) the suitability of the site for the development,*
  - (d) any submissions made in accordance with this Act or the regulations,*
  - (e) the public interest.*
2. Pursuant to the provisions of section 4.15(1)(a)(i) of the EP&A Act, the development does not satisfy Objective 1.2 (a) of the Lithgow Local Environmental Plan 2014 (LLEP) as it does not complement the character and amenity of the area given as is evidenced by the non-compliance with the DCP.
3. Pursuant to the provisions stipulated within section 4.15(1)(a)(iii) of the EP&A Act, the application fails to demonstrate that the design of the proposed garage / garage / shed is consistent with the Objectives and Development Controls, namely Part 2.5 and Part 6.4.7 under Lithgow Development Control Plan (DCP) 2021.
4. The proposal is not considered to be in keeping with the provisions stipulated within section 4.15(1)(b) of the EP&A Act, in that, based on the information submitted, the proposal will result in adverse impacts on the built environment.
5. Pursuant to the provisions stipulated within section 4.15(1)(c) of the EP&A Act, the site is so constrained by three easements to drain sewage, infrastructure related services namely power pole, street tree, stormwater culvert and bus stop as to be considered unsuitable for the current proposal.
6. Pursuant to the provisions of section 4.15(1)(e) of the EP&A Act, approval of the proposal is not considered to be in the public interest, given that the variations sought have not been sufficiently justified under Part 1.6, vehicle access and parking for a heavy vehicle do not comply with Part 2.5 and floor area, wall / ridge height and boundary setbacks do not comply with Part 6.4.7 (Garages, carports, Outbuildings and garage / sheds) under the Lithgow Development Control Plan (DCP) 2021.

## APPENDIX 1

Appendix 1d Applicable DCP Chapters			
<b>Chapter 2 – Site Requirements</b>	<b>X</b>	<b>Chapter 3 – Environment and Hazards</b>	<b>X</b>
Chapter 4 – Heritage		Chapter 5 – Subdivision	
<b>Chapter 6 – Residential</b>	<b>X</b>	Chapter 7 – Commercial and Industrial	
Chapter 8 – Rural and Other Land Uses		Chapter 9 – Pottery Estate Precinct	

Chapter 2 – Site Requirements	
Development Control	Assessment Comments
<b>2.2 Site Analysis, Local Character and Context</b>	
2.2.1 Site Selection	The proposed garage will be located 10.2m from the front boundary and the shed positioned adjacent to the existing dwelling. When viewed from the street, the front façade will be prominent due to the 4.2m high wall height which is significantly higher than the wall height of the existing and neighbouring dwellings.
2.2.2 Site Analysis and Development Response a) The Site topography, climate and natural environment; b) Natural hazards on or near the Site; c) Potential land use conflicts; d) Heritage items or heritage conservation areas; e) Surrounding built form and landscape/streetscape character; and f) Amenity for the Site and adjacent sites (where relevant).	As detailed above, the design and location of the proposed garage/shed is not compatible with the surrounding development and streetscape and may impact on the amenity on adjacent sites.
2.2.3 Local Character and Context	The location of the proposed garage is not in keeping with local character and context due to the height of the garage / shed, the design with a single 4.2m high roller door located on the front façade and the use for garaging a bus (approximately 11m long)
2.2.4 Visually Prominent Sites	The property is not considered a visually prominent site.
Development on a visually prominent site, particularly in rural and/or environmental zones or in heritage conservation areas, is sited and designed to minimise visual and environmental impact by: a) Locating buildings below key ridgelines; b) Responding to the site contours to minimise visually obtrusive changes in the landform; c) Retaining significant vegetation, particularly where it can act as a buffer to development; d) Using a cluster of smaller buildings rather than large single buildings; e) Blending into the existing landform or backdrop with appropriate form and materials; f) Articulating large buildings and/or facades.	The proposed development will not be located on a visually prominent site.
2.2.5 Reflective Materials	Reflective materials are not nominated.

<b>2.3 Slope Response, Earthworks and Retaining Walls</b>	
2.3.1 Earthworks	Minimal earthworks (approximately 500mm cut/fill) are proposed for the construction as the site is generally level. Any earthworks could be battered and stabilised within the property boundaries.
2.3.2 Retaining Walls	No retaining walls are nominated for the proposed development.
<b>2.4 Stormwater Management</b>	
2.4 Stormwater Management	Stormwater generated from the development would be directed into the street gutter via a connection to the existing system (or via a new connection). Any new connection to the street gutter would be subject to Section 68 approval.
<b>2.5 Vehicle Access and Parking</b>	
2.5.1 Guidelines and Standards	Council's Engineer has detailed that the driveway and access is not adequate for vehicle manoeuvring of a higher-class vehicle i.e. bus, as mentioned in the Statement of Environmental Effects.
2.5.2 Vehicle Access and Driveways	
1) Access	<p>The applicant has demonstrated (via the submitted turning circle plan) that the site vehicular access and driveway is unsuitable for the use. The vehicles including the heavy vehicle cannot adequately access the proposed garage / shed and egress to and from the lot in a forward direction. This will impact the safety of the public accessing the nearby bus stop located adjacent to the property.</p> <p>The access to the garage / shed by the heavy vehicle will impact on the stormwater and sewer easement. Further the power pole, stormwater outlet and street tree located within the road reserve may also be impacted.</p>
2) Policy: All works comply with Council Policy – <i>Specification for the construction of driveways, footpath/gutter crossings and foot-paving (as amended)</i> .	Not applicable as the access of the heavy vehicle to the garage / shed does not comply with Part 2.5.2 of the DCP.
3) All weather access: all weather access is required to all development to ensure that emergency services are able to access them at all times.	Emergency services can access the property.
4) Proximity to Intersection(s) and Sight-Lines	Comply
5) Direction of Travel: Vehicle access and egress to/from a lot occurs in a forward direction.	Non-compliance as the bus cannot adequately turn on the property to egress in a forward direction.
6) Access to street	The current access is not suitable for a heavy vehicle.
7) Slope	The slope is compliant.
8) Driveway width:	Plans do not detail the width of the driveway

a) Driveways servicing one (1) to two (2) dwellings or in rural areas are a minimum width of 3.5m b) Shared driveways servicing three (3) or more dwellings (up to eight (8) dwellings) have a minimum width of 4.5m (3.5m carriageway plus landscaping) increasing to 5.5m forward of the front building line or provide for passing bays based on the size of the development/length of driveway. d) Driveways do not dominate the street and provide the minimum width to achieve safety whilst being integrated with the landscape design for the site.	
9) Setbacks/gates (Rural Areas)	Not applicable
2.5.3 Loading/Unloading, Delivery and Servicing Facilities	Not applicable
2.5.4 Parking Location, Design and Circulation	Unsatisfactory for the heavy vehicle – bus (satisfactory for residential vehicles)
2.5.5 On-Site Parking Numbers	Plans demonstrated compliance
2.5.6 Exemptions to Off-Street Car Parking Requirements	Not applicable
2.5.7 Bicycle Parking	Not applicable
<b>2.6 Pedestrian Access, Mobility and Safety</b>	
2.6.1 Accessibility	Not applicable for this development
2.6.2 Pedestrians	Not applicable for this development
2.6.3 Street Numbering and Letterboxes	Not applicable for this development
<b>2.7 Designing for Crime Prevention</b>	
Not applicable	
<b>2.8 Utilities, Easements and Infrastructure</b>	
2.8.1 Connection to Utilities	Existing connections provided to utilities
2.8.2 Building Near Utilities/Easements/Drainage Lines	A sewer and stormwater easement are located on the property. The proposed garage / shed and driveway are located away from the easement.  It has been demonstrated that the heavy vehicle -bus, cannot adequately turn and manoeuvre on the property to adequately access and egress the garage / shed and leave the site in a forward direction. Utilities on the footpath including a power pole, street tree and stormwater culvert may be damaged due to the manoeuvring of the heavy vehicle.
2.8.3 On-Site Sewage Management	Not applicable
2.8.4 Liquid Trade Waste	Not applicable
2.8.5 Re-Use of Waste-Water	Not applicable
2.8.6 Water Supply	Not applicable – reticulated water supply provided.
<b>2.9 Solid Waste Management</b>	
2.9.1 Hazardous Materials and Asbestos	Not applicable
2.9.2 Solid Waste Management Plan – Larger Developments	Not applicable
2.9.3 Waste Storage and Collection – Larger Development	Not applicable



<b>2.10 Amenity / Buffers for Sensitive Uses</b>	
2.10.1 Noise and Vibration	Not applicable
2.10.2 Air Emissions, Odour and Dust	Not applicable
2.10.3 Buffers to Sensitive Land Uses	Not applicable
2.10.4 Buffers and Landscaping	Not applicable
2.10.5 Agriculture and Right to Farm	Not applicable
<b>2.11 Water and Energy Efficiency</b>	
Not applicable	

<b>Chapter 3 – Natural Environment and Hazards</b>	
<b>Development Control</b>	<b>Assessment Comments</b>
<b>3.2 Bushfire Prone Land</b>	
O1. To meet the statutory requirements for bush fire protection in NSW.	The property is not mapped as bushfire prone
<b>3.3 Vegetation Management and Biodiversity</b>	
3.3.1 Vegetation Clearing for Development Requiring Consent.	This section does not apply as there is no vegetation clearing required for this development
3.3.2 Threatened / Endangered Species / Ecological Communities	
3.3.3 LLEP 2014 – Terrestrial Biodiversity	
3.3.4 Clearing NOT Associated with Development (Non-Rural Zones)	
3.3.5 Clearing NOT Associated with Development (Rural Zones)	
3.3.6 Declared Vegetation in this DCP	
3.3.7 Tree Removal Criteria	
<b>3.4 Land and Soil</b>	
3.4.1 Contaminated Land	This section does not apply
3.4.2 Sensitive Land Areas	This section does not apply as the property does not contain steep slopes or shallow soils.
3.4.3 Erosion and Sedimentation	Erosion and sedimentation controls are required for the proposal and are addressed through a condition of consent
3.4.4 other Geological or Soil-Related Issues	Not applicable
<b>3.5 Flood Prone Land</b>	
3.5.1 preliminary Flood Risk Assessment	The property is mapped as flood affected. Council's engineer has advised that based on the flood risk information for the property and the information provided in the Statement of Environmental Effects and site plan, the flood risk is determined as low.
3.5.2 key Controls	The proposed development would not increase the flood hazard rating
3.5.3 Construction Requirements and Flood Proofing	Not applicable
<b>3.6 Ground and Surface Water Protection</b>	
This clause applies to land where the following Clauses of LLEP2014 apply: a) Clause 7.5 – Groundwater vulnerability; and/or b) Clause 7.6 – Riparian land and watercourses;	The property is mapped as Groundwater vulnerable. It is considered that the development with minimal cut and fill, would have minimal impact on ground water. Sediment and erosion controls would be required for the proposed development.
<b>3.7 Mine Subsidence Risk</b>	
1) Any development application in a Mine Subsidence District considers and addresses	The property is not located in the mine subsidence area.

the relevant Guideline(s) for the subject site (as amended) prepared by Subsidence Advisory (SA) NSW.	
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<b>Chapter 6 – Residential Development</b>	
<b>Development Control</b>	<b>Assessment Comments</b>
<b>6.2 General Controls</b>	
6.2.1 Site Analysis and Potential land Use Conflict	A site plan has been provided with the development.
6.2.2 Site Suitability	The site is not suitable for the construction of the proposed residential garage / shed
6.2.3 landscaping and Tree protection	The site plan provided areas of landscaping
6.2.4 Fencing	Not applicable – proposed fencing is not part of this application.
6.2.5 Suitable Design	This clause does not apply as the development is not for a dwelling/dwelling addition.

<b>Chapter 6 – Residential Development</b>	
<b>6.4 Dwellings / Secondary Dwellings (Urban Areas)</b>	
<b>Objectives</b>	<b>Assessment Comments</b>
a.To ensure that garages, carports, garage / sheds and outbuildings do not dominate views of the site/dwelling(s) from the street or key public places.	<b>NON-COMPLIANCE</b> It is considered that the garage / shed will dominate the view of the site from the street as the garage / shed is located within the front yard between the existing dwelling and neighbouring dwelling with attached carport. The high front façade and single roller door will be visible from the street.
b.To ensure that garages, carports, garage / sheds and outbuildings are in-keeping with the scale and setting of the relevant land use zone, locality and street character.	<b>NON-COMPLIANCE</b> It is considered that the proposal is not appropriate for the R1 General Residential zone and its location in the front portion of the property. The 4.2m wall and 5.172m ridge heights exceed the maximum designated wall and ridge heights of 3m and 4.5m under the DCP by 40% and 15% respectively. The exceedance of the maximum wall height by 40% is a considerable variation to the control. Further the proposed single roller door to the front facade will be 4.2m high and 3.05m wide. The height of the roller door exceeds the maximum wall height of 3m as required under the DCP. The wall height of the proposed garage / shed will exceed the wall height of the existing dwelling and surrounding dwellings.  The proposed 900mm side boundary setback does not comply with the DCP control of

	<p>1.2m for a maximum 3m wall height. Given the wall height exceeds the maximum designated wall height under the DCP by 40%, the site boundary setback of 900mm is unsatisfactory. The setback is not consistent with the intention of the planning controls of the DCP to minimize landuse conflicts through siting and increased boundary setbacks for buildings with higher wall heights.</p> <p>The applicant required the higher wall, ridge and roller door heights for the storage of a heavy vehicle (bus), which is approximately 11m in length, within the garage / shed. The size and height of the garage / shed, single roller door on the front façade and the use of the garage / shed for the storage of a heavy vehicle/commercial vehicle do not comply with the DCP, are not in keeping with surrounding development and the R1 General Residential zone. and are not consistent with the height and character intended by the planning controls of the DCP.</p> <p>Detached garage / sheds within this R1 General Residential area are generally of small size and scale suitable residential vehicles and storage. The proposed garage / shed is not consistent with the height, size and setback from the side boundary of the DCP. Given the existing character of the residential area, the excessive height of the garage / shed with a 120m<sup>2</sup> floor area exceeding the required 100m<sup>2</sup> maximum size under the DCP and reduced side setback, will impact the amenity of neighbourhood. The use of the garage / shed for the storage of a commercial vehicle is also not in keeping with the R1 General Residential zone. There are no other garages / sheds in the vicinity that are of this height and size located in the front portion of the property and visible from the street.</p> <p>It should be noted that in response to the final further information letter, the applicant has detailed that the owner will sell the bus if required and that the structure will only be used for cars. The applicant, however did not reduce the size, wall and ridge height of the garage / shed or the large industrial style roller door to comply with DCP</p>
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	requirements. Further an amended Statement of Environmental Effects had not been submitted deleting references to the storage of a bus within the garage / shed. The garage / shed design, height and size lends itself to being used to garage larger commercial vehicle/s.
c.To ensure that garages, carports, garage / sheds and outbuildings integrate with the dwelling design, materials and landscaping.	<b>NON-COMPLIANCE</b> It is considered that the garage / shed does not integrate with the dwelling design due to the height of the garage / shed and its size.
d. To ensure that garages, carports, garage / sheds and outbuildings do not significantly impact on the amenity of neighbouring properties (e.g. shadow, noise etc).	<b>NON-COMPLIANCE</b> The storage of a heavy vehicle on the residential property impacts on infrastructure services located on the property that serves neighbouring and surrounding properties, due to the load of the vehicle and maneuvering of the bus on the property.  The use of the garage / shed for the storage of a commercial vehicle may result in noise, odor and vibration nuisances.
e. To ensure that garages, carports, garage / sheds and outbuildings allow for and protect significant trees, landscaping, and open space areas.	<b>COMPLIANCE</b>
f. To ensure that garages, carports, garage / sheds and outbuildings do not unduly increase the overall site coverage of buildings and impermeable paved areas resulting in impacts on stormwater outcomes.	<b>COMPLIANCE</b>
<b>Development Control</b>	<b>Assessment Comments</b>
6.4.1 Siting and Setbacks	This clause does not apply as the development is not for a dwelling/dwelling addition.
6.4.2 Average Setback of Adjacent Dwellings	This clause does not apply as the development is not for a dwelling/dwelling addition.
6.4.3 Height, Scale and Solar Access	This clause does not apply as the development is not for a dwelling/dwelling addition.
6.4.4 Private Open Space and Landscaping	This clause does not apply as the development is not for a dwelling/dwelling addition.
6.4.5 Noise (Acoustic) and Visual Privacy	This clause does not apply as the development is not for a dwelling/dwelling addition
6.4.6 Building Articulation	This clause does not apply as the development is not for a dwelling/dwelling addition.

6.4.7 Garages, Carports, Outbuildings and Garage / sheds	
<b>Controls</b>	
<p>7. Land use – existing dwelling on the lot or concurrent approval for a dwelling on the same lot.</p> <p>Detached garage / sheds and outbuildings need to be ancillary to a dwelling or have a specific land use nominated for them that is permissible with consent in the relevant land use zone.</p>	<p>There is an existing dwelling located on the property. As the proposed garage / shed has been designed for the storage of a heavy vehicle (bus) it is considered that the proposed garage / shed is not compatible with the R1 General residential zone.</p>
<p>8. Floor area/cumulative floor area shall be in accordance with the table for the lot size.</p>	<p><b>Floor/cumulative floor area - NON-COMPLIANCE</b></p> <p>DCP Control – Maximum floor area -100m<sup>2</sup></p> <p>Proposed size 128m<sup>2</sup> (exceeds DCP control by 28m<sup>2</sup> )</p> <p>Cumulative floor area including existing garage / shed 14m<sup>2</sup> structure shown on area photo – <b>142m<sup>2</sup></b></p> <p><u>Applicant's reasons for variation</u></p> <p>The existing 28m<sup>2</sup> garage is too small to provide for the storage of 4 classic cars and a bus. These vehicles are currently stored within the front of the property. The storage of the vehicles within the garage / shed will improve the amenity of the area.</p> <p><b>NON-COMPLIANCE</b> – The proposed floor area of the proposed garage / shed and existing structure exceeds the DCP by 42m<sup>2</sup> (42%).</p>
<p>9. Amenity – Building height (wall and ridge height) and setback from the boundaries consider the impacts on adjacent properties including, but not limited to: overshadowing, solar access, noise and visual amenity/privacy, colour and visibility, and the requirements of the National Construction Code (NCC) including, but not limited to, fire separation.</p> <p>The maximum ridge height and minimum setbacks for all detached garages/carports/garage / sheds/outbuildings on a lot shall be in accordance with the table.</p>	<p><b>Minimum side setback – NON-COMPLIANCE</b></p> <p>DCP control – 1.2m (3m wall height)</p> <p>Proposed side setback: 0.9m (exceeds DCP control by 300mm)</p> <p><b>Applicant's reasons for variation</b></p> <p>To reduce the level of fill (and height of garage / shed), to allow access to the rear yard and provide a 2.2m clearance beside the existing dwelling.</p> <p><b>Minimum rear setback – COMPLIANCE</b></p> <p>DCP Control – 1.2m</p> <p>Proposed setback: 17m</p>

	<p><b>Maximum Wall height – NON-COMPLIANCE</b></p> <p>DCP control – 3m</p> <p>Proposed: 4.2m (exceeds DCP control by 1.2m)</p> <p><b>Applicant’s reasons for variation</b> The increase in the wall and ridge height is required to store a bus within the garage / shed and not in the front yard.</p> <p><b>Maximum ridge height – NON-COMPLIANCE</b></p> <p>DCP control -4.5m</p> <p>Proposed: 5.172m (exceeds DCP control by 672mm)</p> <p><b>Applicant’s reasons for variation</b> The increase in the wall and ridge height is required to store a bus within the garage / shed and to provide a large enough access roller door.</p>
<p>10. Setbacks for Parking – all enclosed car parking areas have the opening/garage door setbacks a minimum of 5.5m from the front lot boundary of the street they connect to (rear lanes may have reduced setbacks depending on the desired character of the lane) to enable a single vehicle to be parked in the driveway entirely on the lot without interfering with the public domain/footpath and to avoid dominating the street.</p>	<p><b>COMPLIANCE</b></p>
<p>11. Garage door widths/setbacks</p>	<p><b>COMPLIANCE</b></p>
<p>12. Additional carport</p>	<p><b>NOT APPLICABLE</b></p>
<p>13. Carport in front setback</p>	<p><b>NOT APPLICABLE</b></p>
<p>14. Colour/materials</p>	<p><b>COMPLIANCE</b></p>