
SECTION 4.15 EVALUATION

Environmental Planning and Assessment Act 1979 (as amended)

Development Application No.	DA169/24 (PAN- 491734)
Subject Site	Lot 1 DP 221773, 31 Malvern Street, Lithgow
Proposal	Alterations and additions to dwelling, demolition of shed
Zoning	R1 General Residential – LEP 2014
Permissibility	A dwelling is permitted with consent in the R1 zone as per the land use table of the Lithgow LEP 2014.
Cost of Development	\$423,500.00
Applicant	Tom Evangelidis
Owner	Tom Evangelidis
Notification	Notification was undertaken as per the Lithgow Community Participation Plan with no submissions received.
Submissions	Nil.
Variations	Nil.
Site Inspection	16 April 2025
Responsible Officer	Mark Hitchenson, Navigate Planning
Recommendation	Refusal

Executive Summary

Objective of Report: To assess and recommend determination of DA169/24 with recommendation for refusal.

The subject Development Application was lodged with Council on 2 December 2024, seeking consent for alterations and additions to a dwelling and demolition of an existing garage.

The subject land is not identified as a heritage item in the Lithgow LEP 2014, however it is directly associated with the heritage item "Wenvoe" on the adjoining lot at 26 Ordnance Avenue, Lithgow and is considered to be part of that heritage item. The application was referred to Council's Heritage Advisor who has raised concerns with the impact of the proposed development on the heritage significance of the building. Alternative concepts for more appropriate development of the site were provided to the applicant. The applicant has disagreed with the suggested alternatives and has proposed no changes to the development as lodged.

It is recommended that the application be refused for the following reasons:

- The proposed development does not appropriately respond to the unique heritage significance of the site in its relationship to the adjoining Wenvoe.
- The proposed development has not been appropriately located and designed to minimise impacts on the heritage significance of the site.
- The proposed development does not appropriately integrate with the existing built form and landscape of the site and the adjoining associated lot and therefore will have detrimental impacts on the heritage significance of the site.
- The proposed development does not comply with the provisions of clause 5.10 of the Lithgow Local Environmental Plan 2014.
- The proposed development does not comply with the heritage provisions of the Lithgow Development Control Plan 2021.
- Given the heritage impacts, it is considered that the proposed development is not suitable for the site.
- Given the heritage impacts, it is considered that the proposal is not in the public interest.

Pursuant to the Lithgow Community Participation Plan, neighbour notification was undertaken with no submissions received.

Description of Site and Surrounds

The subject site is formally known as Lot 1 DP 221773, 31 Malvern Street, Lithgow.

The site is a regular shaped property with a site area of 1079m². The property currently contains a dwelling, garage and sheds. The subject dwelling on Lot 1 is directly and historically related to a larger dwelling on the adjoining Lot 2, 26 Ordnance Avenue, Lithgow, as it was originally used as a gardener's cottage.

Heritage Inventory Sheet I263 regarding Wenvoe explains:

*"The wealthy owner of Bracey's department store in Lithgow, H E S Bracey (known as Major Bracey), a local magistrate and twice mayor, bought eight lots on the corner of Ordnance Avenue and Malvern Street and in 1913 commissioned the prominent Sydney architects Spain, Cosh and Dods to **build Wenvoe on lots 1 and 2**: the house was completed in 1914. It contained three major downstairs rooms, four principal bedrooms, maid's accommodation, a huge attic and a substantial cellar. In the garden there was a substantial building to house vehicles with a gardener's flat attached."*

Adjoining and adjacent properties consist predominantly of residential allotments. The site has frontage and access to Malvern Street.



Figure 1: Location of the Proposed Development

Proposed Development

Council is in receipt of Development Application No. DA169/24 seeking consent for alterations and additions to a dwelling and demolition of an existing garage. The alterations to the dwelling include demolition of some internal walls, demolition of later additions to the original dwelling and demolition of an attached garage. The additions consist of a new building with a linked connection to the original dwelling. The new building will contain a bedroom with ensuite, combined kitchen/dining/living area and a single car garage. The roof is a skillion roof and extends over the existing pathway to the original dwelling. The proposal involves the removal of two small shrubs.

Summary of Events

Date	Action
29 June 2023	Pre-lodgement email advice provided by Council; outlining in summary (in relation to heritage):

	<ul style="list-style-type: none"> • The property is in association with Lot 2 DP221773 and is defined as being heritage listed under the Lithgow Local Environmental Plan 2014. • Demolition and Reconstruction of Fibro Garage - Council's records and past heritage reports do not specifically address the fibro garage. It is assumed that the garage has little to minimal heritage significance. Therefore, additional information is to be submitted with any future development application addressing the year, if known, of the construction of the garage and if it contains heritage significant. • Demolition, Reconstruction and Extension to the cottage including new verandah - Council's records and the previous heritage report clearly identifies that the previous extensions that you propose to remove and replace, does not form part of the original fabric of the cottage. • As you are aware, the property is defined as being heritage listed under the Lithgow Local Environmental Plan 2014. Therefore, any proposed development is required to undertake a heritage assessment. The heritage assessment is to take into consideration, design, scale, façade, materials, form, building fabric, location and colours, the existing and proposed use of the site, etc. • The Heritage Report is to further contain: • A conservation management strategy or plan be submitted with any application outlining/consisting of: <ul style="list-style-type: none"> a) Research of the site history, b) Constraints and opportunities specifically in relation to design, c) Conceptual options/usability of the site, d) Site Analysis, • Any proposed buildings/additions should consider containing a cluster of roof designs rather than one whole section. This may help with the streetscape presentation. • A landscape consultant is to be considered for the streetscape presentation, privacy and potential noise impacts. • Without knowing, the full history and extent of the proposed development, Council is unable to determine the suitability of the development on the property. Once additional heritage information is known, Council recommends that you contact Council to arrange the pre-lodgement meeting to discuss the potential impacts and requirements in more detail.
2 December 2024	The application was lodged on the NSW Planning Portal (PAN-491734).
4 December 2024	Request for additional information in relation to access and existing sheds located over a property boundary.
5 December 2024	Applicant provided amended plans addressing the RFI.
25 March 2025	Preliminary advice on the DA from Council's Heritage Advisor provided to the applicant for a response.
16 April 2025	Site Inspection held with applicant and Council's Heritage Advisor to discuss the heritage concerns.

24 April 2025	Revised response from Council's Heritage Advisor provided to applicant for a response.
26 April 2025	Applicant responded to advise that no changes to the proposed development would be made.

Referrals

Internal Referrals

Branch	Comment
Council's Heritage Advisor	See below.

External Referrals

Agency	Comment
DPE-Water	NA – No construction work is proposed to be undertaken within 40m of a water course.
Rural Fire Service	NA – the subject land is not bushfire prone.
Subsidence Advisory	NA.
WaterNSW	The property is located within the Sydney Water Catchment area, however the proposal can comply.
Endeavour Energy	NA.

Council's Heritage Advisor's comments

Council's Heritage Advisor considered the plans submitted with the development application, including the site plan and perspective sketch shown below.

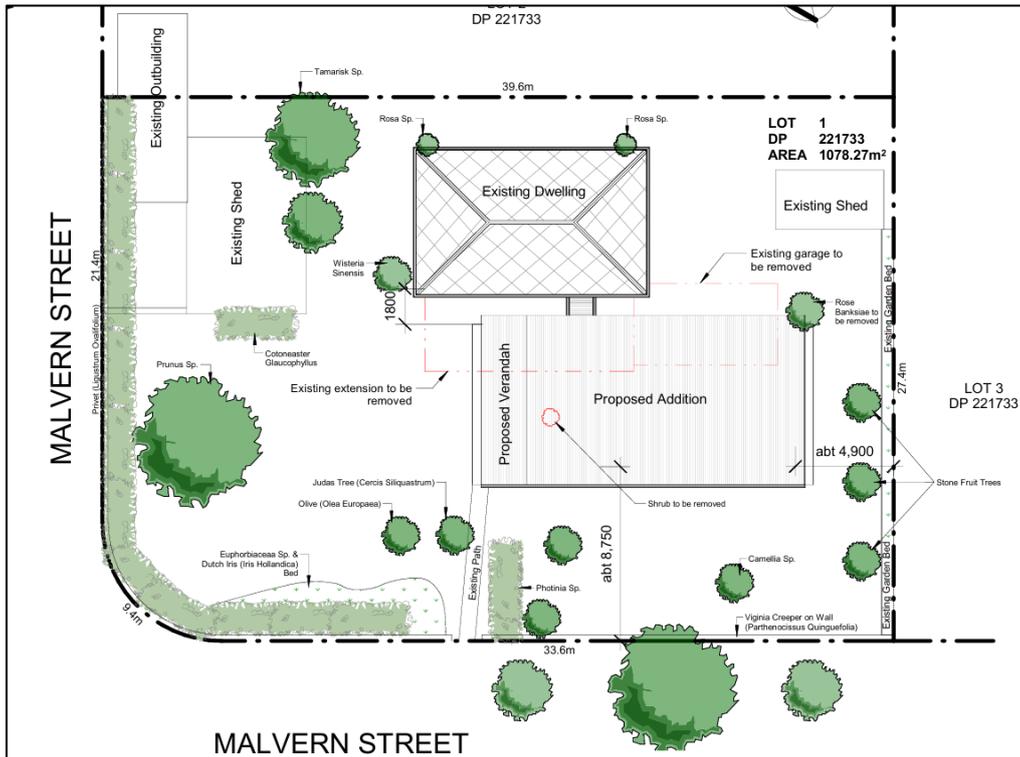


Figure 2: Proposed Site Plan



Figure 3: Perspective Sketch

The concerns raised with this design relate to the location and scale of the proposed addition relative to the located and scale of the existing dwelling that forms part of the Wenvoe heritage item. Specifically, Council's Heritage Advisor has stated that:

- The siting of the proposed DA additions on the western side of the cottage obstructs use and views of the cottage.
- The bulk and scale of the proposed DA additions results in a building footprint larger and bulkier than that of the cottage.
- The form and character of the proposed DA additions places an overtly intrusive-looking building into a period setting and streetscape.

Council's Heritage Advisor has also raised concerns with the heritage impact statements provided with the development application, as follows:

- The report states that the property is not heritage listed. However, the owner was formally advised as part of the Pre-lodgement Advice in 2023 that not listing the site was an administrative error and the site is part of the adjoining heritage listed Wenvoe.
- The report states that there is no need to undertake the recommended "site analysis, local character & context analysis" as part of a statement of heritage impact. The report has misunderstood the requirements of the LEP that states Council may require a heritage management document to be prepared that assesses the extent to which the proposed development would affect the heritage significance of the heritage item..." Also, the 2023 Pre-lodgement Advice advised that a range of architectural documentation would be required to determine if the development will have impact on the streetscape or adjoining buildings. etc. Also, the Lithgow DCP 2021 includes specific recommendations as part of the early design and site planning process to address site and character.
- The report states that the Lithgow DCP 2021 objectives and controls for heritage items do not apply to development in the vicinity of a heritage item. However, the DCP states that the general objectives and controls apply to development on and in the vicinity of heritage items. Section 4.3 includes a range of applicable objectives and controls for the proposed development at Wenvoe, such as, "design and character", "scale and form", "siting and setbacks", "materials and finishes", "roofs and chimney" etc.

Based on the above, the processes undertaken to design the proposed development are considered flawed and have led to an inappropriate development outcome.

Council's Heritage Advisor provided the following alternative options to address the concerns with the application. The key design approach applied to the sketches are:

- To site the additions on the southern side of the cottage to avoid intruding onto the front façade.
- To delete the proposed 'internal' garage to reduce the bulk and scale. A double garage already exists on the northern side of the cottage.
- To retain the subtle link between old and new.
- To retain the currently proposed layout for the kitchen, living and dining area which is one of the principal improvements in family life. A pantry and laundry are located on the southern side with external access, if required.
- To place the bedrooms and bathroom within the existing cottage. The sketch suggests a two bedroom cottage for a small family with a large bedroom on the northern side and attached ensuite.
- A single car space on the eastern side of the cottage together with dense planted screening to reduce the visual impact from Wenvoe.

The roof form is suggested as a hipped roof to respond to the cottage but slightly lower ridgeline to retain the cottage's visual prominence. The external materials have yet to be explored but at this early stage suggest exploring a mix of corrugated metal sheeting, weatherboard and glass to suggest more of a modest outbuilding in general character and avoid competing with the cottage and Wenvoe in face-brickwork. Garden plantings and landscape screening. The investigation of external finishes and detailing of windows, doors, pergola's etc requires a skillful separate consideration.

The sketches show that a modest two-bedroom cottage with all modern lifestyle amenities can be achieved without a major intervention into the cottage, the garden and the Wenvoe grounds more generally. The sketches show that some visual impact is inevitable but with modest design intentions, careful siting and considered landscape screening a reasonable balance may be achievable.

At this stage, Sketch 2 is the preferred heritage outcome as the building setback reduces the visual impact from the main driveway and the off-set in alignment allows the cottage slightly more prominence when seen from the house. However, its success relies on the proposed garden and landscape screening on the eastern and western sides of the addition.

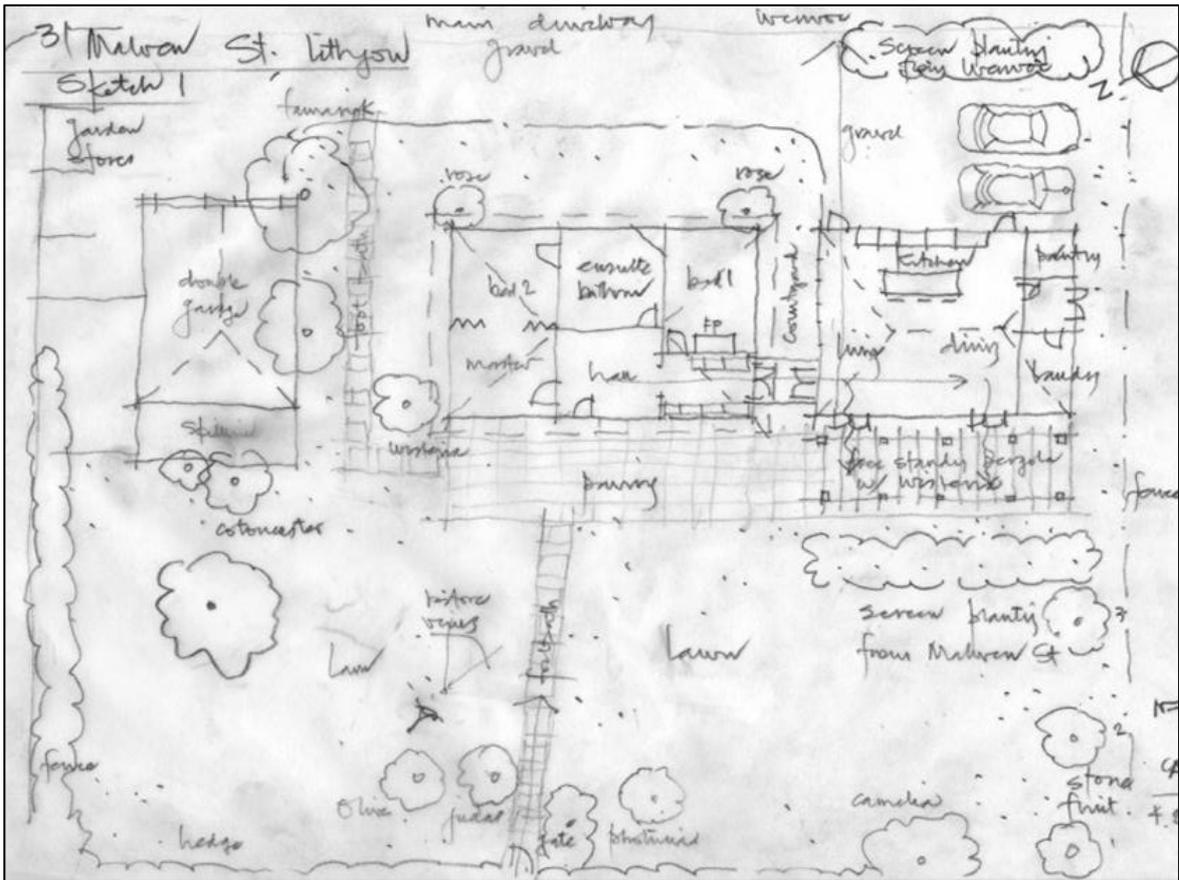


Figure 4: Council's Heritage Advisor's Sketch 1

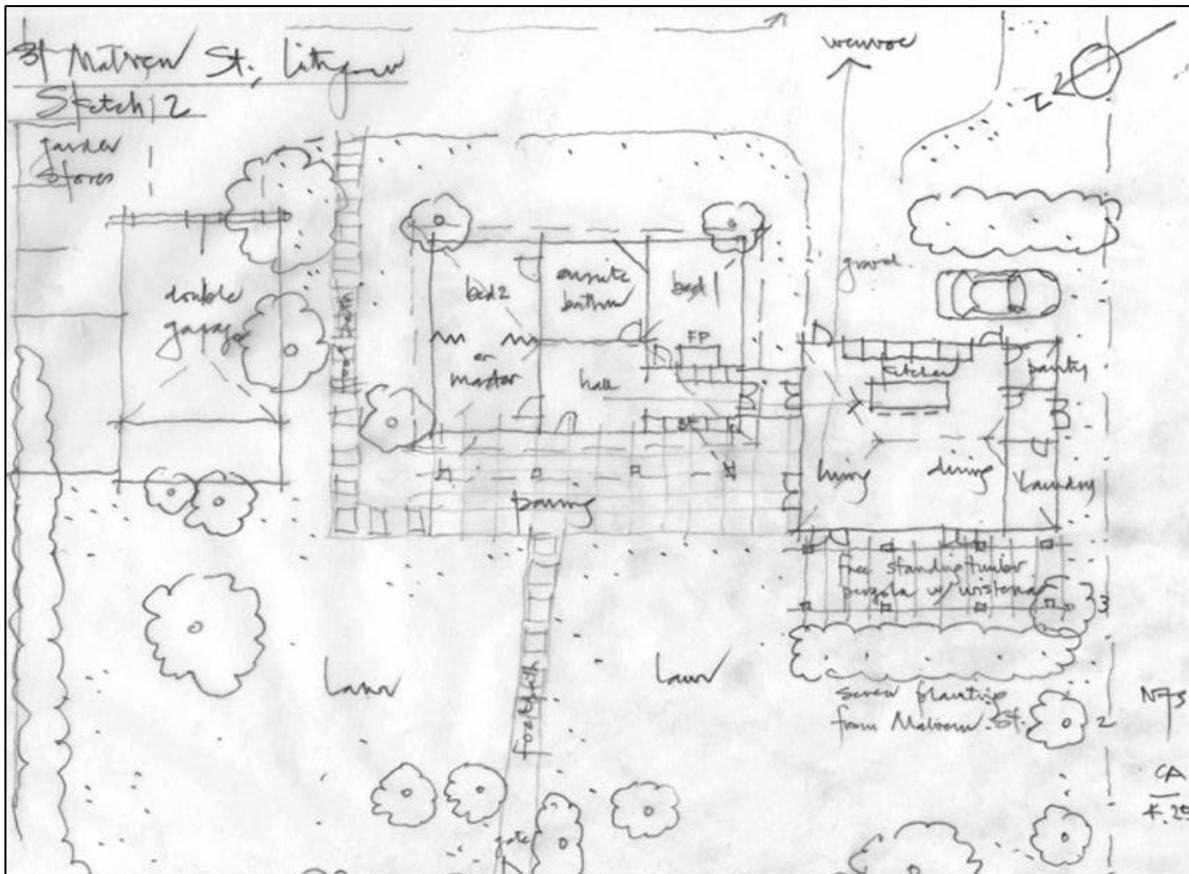


Figure 5: Council's Heritage Advisor's Sketch 2 (preferred)

The applicant was provided with and responded to the Heritage Advisors comments and recommendations. The following table outlines the applicant's response and the assessment planners' comments.

Applicant's Response	Assessment Planner's Comments
<p>Totally alter the outlook from the main house looking over the rear garden and cottage. My design offers little change to the current aspect.</p>	<p>The subject site has three frontages and the existing dwelling is partly visible from the Malvern Street to the west. It is considered preferable that the whole of the dwelling retain its relationship with the Malvern Street frontage. There is also a symmetry to the current development of the whole site (including 22 Ordnance Avenue) with the two main buildings located along a central axis and with a pattern between Ordnance Avenue and Malvern Street as follows: open space, building, open space, building, open space. Minor structures such as sheds and garages are located to the northern and southern sides of the site. The Heritage Advisor's alternative options continue this pattern. It is considered that maintaining this symmetry and pattern is preferable to trying to avoid any visual link between Wenvoe and the addition. Sketch 2 reduces the visual link such that it would be similar to the visual link to the existing garage proposed to be demolished.</p>
<p>Creates a lack of privacy between the cottage and main house My design offers complete privacy from the main house to the cottage (as there is now). I will remind you that there are two separate lots and the advisor should have acknowledged this in his design recommendation.</p>	<p>Detailed design of a proposed addition as suggested by Council's Heritage Advisor can address any privacy concerns. While there are two lots, the whole site should be considered as one in terms of heritage impact. The Heritage Advisor's sketches show all new built form on the subject lot. In sketch 1, it appears that parking may be located on the other lot, however a right of carriageway is already proposed on part of that other lot for access purposes.</p>
<p>Has a greater impact on the neighbours – by placing the structure only 1.5 meters away from the fence line. My design sees a 4.9-meter buffer.</p>	<p>Any revised plans submitted by the applicant would be notified to the adjoining landowner for comment. The setback as proposed by Council's Heritage Advisor would comply with Council's Development Control Plan.</p>
<p>Ignored our need for a garage we currently have two, my design reduces this to one.</p>	<p>The site contains two existing buildings that can or are being used as garages. One of these is proposed to be demolished, however the other will remain. The provision of a new garage in the addition resulted in the addition being out of scale with the existing dwelling. There needs to be a balance between the desire for additional garage space and the heritage impact of the development. It is considered that the Heritage Advisor's alternative options provide a better balance than the applicant's proposal.</p>
<p>Offers a detrimental visual impact from the only aspect that is visible from Malvern St (thanks to a hip roof and being squeezed closer to the fence line. He advises planting hedges to minimise visual impact on his design (multiple locations), yet the same measure could have been suggested to my design to ease the street impact. With my roofline the main house still remains visible from Malvern st (and hedging would hide my design) his suggestion will block the view of</p>	<p>It is acknowledged that the applicant's proposal has a lesser impact on the visual link to Wenvoe than the Heritage Advisor's alternative options. This is due to the suggestion that the roof form be hipped. This is just a suggestion. An alternative lower roof form could be explored to reduce the loss of a visual link between Malvern Street and Wenvoe.</p>

the main house and not be hidden by any degree of hedging (see photo).



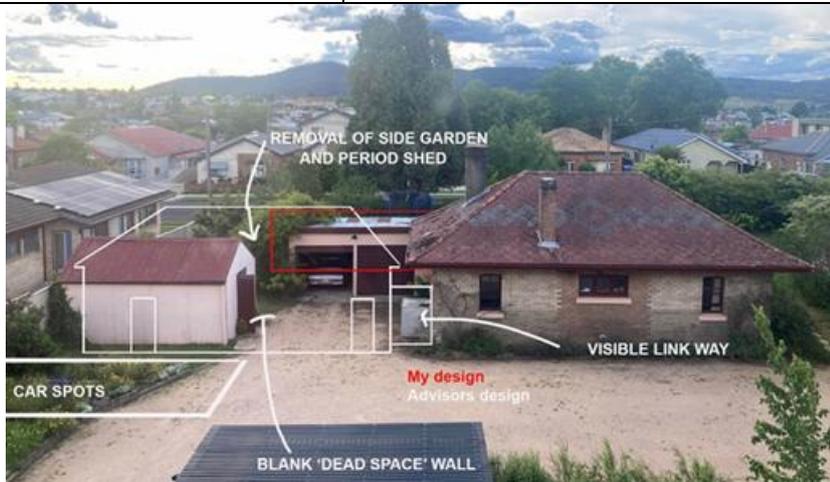
An important aspect for myself was to retain the charm of the current outlook from the main house. No sense of anything modern or imposing. I don't even allow parking in the rear yard for this reason. He advises to change the aspect looking back from the main house and seeks to squeeze the extension into a parcel of land that would look visually unbalanced from both Malvern St and the rear of the main house. His design also removes the side garden, the shed and some vegetable plots for parking (these parking spots would be visible from most of the rear garden of the main house).

As noted above, it is considered that sketch 2 will provide a similar visual outlook from Wenvoe as the existing outlook with an existing garage in the location of the suggested addition.

The loss of some garden space, a shed and the visibility of parking spots from Wenvoe are, on balance, not considered to have a significant impact on the site's heritage significance when compared to the applicant's proposal.

The design clearly shows the advisors lack of need for privacy (for both the inhabitants of the main house and the cottage). By placing two doors facing the main house and a link way that is clearly visible from the main house. An expansive wall is to be expected in between these two doors facing the main house creating a bizarre 'dead' space. The modern linkway would be totally visible when in use. See photo below.

The applicant's photo below is based on the Heritage Advisor's sketch 1. Sketch 2, which is preferred would have a lesser visual impact as the addition is set further to the west and will be in a similar alignment to the existing garage to be demolished.



<p>Poor result for the neighbours. I took great consideration for the only neighbours effected from the proposed extension. I achieved this by placing the design well away from the fence line (4.9m) That would guarantee there will be no light loss and with the addition of hedges (I have already planted) will provide a decent buffer. His design places the structure 1.5 meters from the fence line, that will result in the hedge receiving no light (and have to be removed) It also means there is no area for a water tank (so this would be placed at the front of the house facing the street? or the rear of the house facing the main house?). He has doors on the side of the building facing the neighbours opening with a now 1.5 meter gap. Doors to nowhere. His design also suggests the car to be placed in the elements (not undercover or in a garage) close to the neighbour's property. Can you imagine the noise pollution from starting a car in the morning that close to their property's rear sunroom? Those car spots would be visible from the rear gardens of the main house.</p>	<p>As noted above, any revised plans submitted by the applicant would be notified to the adjoining landowner for comment.</p> <p>The issues raised in this comment can be addressed through detailed design.</p>
<p>The increase in living floor space in my design is just 15sqm from the current floor space.</p>	<p>Noted. However, due to the addition of the garage in the applicant's design, the building addition is considered too large having regard to the scale of the existing dwelling.</p>
<p>Mentioning the footpath is hardly an important heritage consideration (the majority of the footpath stays intact.</p>	<p>Council's Heritage Advisor noted that the existing main entry approach to the cottage from the gate and footpath was an important aspect of its character. While the proposed additions had tried to retain the approach and alignment of the pathway and the existing entry door, the scale, form and proximity to the pathway would compromise the existing appealing character. The Heritage Advisor's comments are supported.</p>
<p>The advisor notes – 'The cottage was entirely habitable and reasonably well-presented despite minor repairs and maintenance required. Particularly the issue of cross-flow of subfloor ventilation needed to be addressed in the large bedroom at the northern end. A brief inspection at the time indicated blocked and potentially inoperative subfloor vents which needed to be addressed'</p> <p>That comment conflicts with all advice from building professionals. If air cannot flow through it becomes in-affective (otherwise vents would not be on both sides). The later addition removes the ability for air to pass through. The advisor is 100% incorrect. To suggest the place is perfectly liveable I find is wrong. I explained that we lived there and our health was being compromised. Sunken</p>	<p>The Heritage Officer's comments acknowledged that minor repairs and maintenance would be required. The Heritage Advisor's comments are supported.</p>

floors, water leaks and dampness/mould don't constitute a liveable environment.	
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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.

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:

- Conveyancing Act 1919
- Biodiversity Conservation Act 2016,
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2022,
- State Environmental Planning Policy (Resilience and Hazards) 2021,
- Lithgow Local Environmental Plan (LEP) 2014,
- Lithgow Development Control Plan (DCP) 2021.

Conveyancing Act 1919

There are no easements or restrictions affecting the property.

Biodiversity Conservation Act 2016

The proposal has been assessed in relation to clearing of native vegetation and the Biodiversity Offset Scheme threshold under the provisions of this Act. The proposal involves the removal of two small shrubs and therefore the works proposed do not require any further biodiversity assessment under this scheme.

It is considered that the development would have no significant impact on Biodiversity and is not likely to affect threatened species or ecological communities.

Council officers have assessed that the application does not trigger the area or map thresholds of the Biodiversity Offset Scheme (BOS) as follows:

- Minimal clearing is proposed as part of this application and therefore further does not exceed 0.25ha as per the Biodiversity Act.
- The site is not identified on the Biodiversity Values Map.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Part 6.5 Sydney Drinking Water Catchment	
Relevant Provisions	Comment
6.61 Requirement of neutral or beneficial effect on water quality	
(1) Development consent must not be granted to development relating to any part of the Sydney Drinking Water Catchment unless the consent authority is satisfied the carrying out of the development would have a neutral or beneficial effect on water quality. (2) For the purposes of determining whether the carrying out of the development would have a neutral or beneficial effect on water quality, the consent authority must, if the development is development to which the NorBE Tool applies, undertake an assessment using the NorBE Tool.	A NorBE assessment has been undertaken. Council can be satisfied that the development will have a neutral or beneficial effect on water quality.

State Environmental Planning Policy (Sustainable Buildings) 2022

A BASIX Certificate has been submitted with the development application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land	
Relevant Provisions	Comment
4.6 Contamination and remediation to be considered in determining development application	
<p>(1) A consent authority must not consent to the carrying out of any development on land unless—</p> <p>(a) it has considered whether the land is contaminated, and,</p> <p>(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</p> <p>(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.</p>	<p>Council is satisfied that the land is not contaminated under Chapter 4 as the property has been utilised primarily for residential purposes. Council can be satisfied that the location of the development has not previously or is currently being used by any activities as specified under Table 1 of the contaminated land planning guidelines. The land is considered to be suitable for the proposed development.</p>

Lithgow Local Environmental Plan (LEP) 2014

Clause 1.2 Aims of Plan	
Objective	Comment
(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,	Not applicable – the proposed development is a permissible land use.
(a) to encourage sustainable and planned development that complements the unique character and amenity of Lithgow and enhances its towns, villages and rural areas,	Does not comply – it is considered that the proposed development does not appropriately respond to the unique heritage significance of the site in its relationship to the adjoining Wenvoe.
(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,	Complies – the proposed development facilitates improved living arrangements for the existing residents.
(c) to manage, facilitate and encourage sustainable growth and development that—	Refer to below comments.
(i) promotes the efficient and effective delivery of utilities, infrastructure and service and minimises long-term costs to government, authorities and the community, and	Complies – the proposed development is considered to appropriately manage the necessary utilities, infrastructure and services required.
(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 - the proposed development relates to residential development in an existing urban area.
(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	Complies – the proposed development is considered unlikely to result in land use conflict.
(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	Complies – the proposal facilitates the ongoing residential use of the land.
(v) preserves and protects land that has been identified for future long term urban development from inappropriate fragmentation and development, and	Not applicable – the site is within an existing urban area.
(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 – the site is not within or near an environmentally sensitive area.
(vii) protects and enhances places and items of environmental, archaeological, cultural or heritage significance, including Aboriginal relics and places, and	Does not comply – it is considered that the proposed development does not appropriately respond to the unique heritage significance of the site in its relationship to the adjoining Wenvoe.
(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 and the maintenance of environmental and recreational values, and	Complies – the development will have a neutral or beneficial impact on water quality.
(ix) strengthens and promotes employment land opportunities and appropriate tourism development and growth, and	Not applicable – the development is in an existing residential area.
(x) creates resilience to natural hazards through local land use planning.	Not applicable – the site is not located in an area identified as bush fire prone or flood prone.

Characterisation

Pursuant to the Lithgow LEP 2014, the proposed use is defined as a dwelling, which is defined below:

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Zone of Land R1 General Residential

Permissibility A dwelling is permitted with consent in the R1 General Residential zone.

Zone Objectives

Objective	Comment
R1 General Residential	
<ul style="list-style-type: none"> To provide for the housing needs of the community. 	Complies – the development facilitates the ongoing residential use of the land.
<ul style="list-style-type: none"> To provide for a variety of housing types and densities. 	Complies- the proposed development facilitates improved living arrangements for the existing residents.
<ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	Not applicable to the proposed development.
<ul style="list-style-type: none"> To maintain or improve the water quality of receiving water catchments. 	Complies – the development will have a neutral or beneficial effect on water quality.

LEP Clauses		
Relevant Provisions		Comment
Part 2 Permitted or prohibited development		
2.3	Zone objectives and Land Use Table	Complies – a dwelling is permitted with consent in the R1 General Residential zone; and the development is in keeping with the objectives of the zone.
2.4	Unzoned land	Not applicable.
2.5	Additional permitted uses for particular land	Not applicable.
2.6	Subdivision – consent required	Not applicable – subdivision not proposed.
2.7	Demolition – consent required	Demolition is proposed. Appropriate conditions of consent would be applied if development consent is granted.
2.8	Temporary use of land	Not applicable – temporary use of land not proposed.
Part 4 Principal development standards		
4.1	Minimum subdivision lot size	Not applicable – subdivision not proposed.
4.2	Rural subdivision	Not applicable – subdivision not proposed.
4.3	Height of buildings	Not adopted.
4.4	Floor space ratio	Not adopted.
4.6	Exceptions to development standards	No exceptions to the development standards have been applied for as part of this Development Application.
Part 5 Miscellaneous provisions		
5.3	Development near zone boundaries	Not applicable.
5.4	Controls relating to miscellaneous permissible uses	Not applicable.
5.5	Controls relating to secondary dwelling on land in a rural zone	Not applicable.
5.9	Dwelling house or secondary dwelling affected by natural disaster	Not applicable.

LEP Clauses		
Relevant Provisions		Comment
5.10	Heritage conservation	Does not comply – it is considered that the proposed development does not appropriately respond to the unique heritage significance of the site in its relationship to the adjoining Wenvoe.
5.16	Subdivision of, or dwellings on, land in certain rural, residential or conservation zones	Not applicable.
5.21	Flood planning	Not applicable.
Part 7 Additional local provisions		
7.1	Earthworks	Complies – Minimal earthworks are required for building foundations. The proposed development will have no significant impact on soils. There is no reason to believe the site would be affected by contamination. Conditions of consent will be imposed to control erosion and sedimentation impacts on the site and therefore it is considered there will be minimal impacts on soils.
7.3	Stormwater management	Stormwater is proposed to be directed via a water tank to the existing stormwater system on site. As such the development is not considered likely to adversely affect the water quality of the receiving waters and is satisfactory for the development subject to conditions on the consent.
7.4	Terrestrial biodiversity	Not applicable.
7.5	Groundwater vulnerability	The subject land is mapped as groundwater vulnerable. The proposed development is unlikely to have any significant impact on groundwater.
7.6	Riparian land and watercourses	Not applicable.
7.7	Sensitive lands	Not applicable.
7.8	Development within a designated buffer area	Not applicable – the site is not mapped as being located within a designated buffer area.
7.10	Essential services	Complies - The development will have connections to all essential services.

Draft Environmental Planning Instruments (EPI)

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

Provisions of any Voluntary Planning Agreements (VPA)

There are no VPAs that relate to the site or development.

Lithgow Development Control Plan (DCP) 2021

Applicable DCP Chapters			
Chapter 2 – Site Requirements	X	Chapter 3 – Environment & Hazards	X
Chapter 4 – Heritage	X	Chapter 5 – Subdivision	
Chapter 6 – Residential	X	Chapter 7 – Commercial & Industrial	
Chapter 8 – Rural & Other Land Uses		Chapter 9 – Pottery Estate Precinct	

Chapter 2 – Site Requirements	
Development Control	Assessment Comments
2.2 Site Analysis, Local Character & Context	
2.2.1 Site Selection	Does not comply – It is considered that the proposed development does not appropriately respond to the unique heritage significance of the site in its relationship to the adjoining Wenvoe.
2.2.2 Site Analysis & 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.	Does not comply –It is considered that the applicant has not appropriately located and designed the proposed additions to minimise their impact on the heritage significance of the site.
2.2.3 Local Character & Context	Does not comply – It is considered that the proposed development does not appropriately integrate with the existing built form and landscape of the site and the adjoining associated lot and therefore will have detrimental impacts on the heritage significance of the site.
2.2.4 Visually Prominent Sites	Not applicable – the subject site is not considered to be visually prominent.
2.2.5 Reflective Materials	Complies - Non-reflective materials proposed.
2.3 Slope Response, Earthworks & Retaining Walls	
2.3.1 Earthworks	Complies - The proposed development will have no significant impact on soils. There is no reason to believe the site would be affected by contamination.
2.3.2 Retaining Walls	Not applicable.
2.4 Stormwater Management	
2.4 Stormwater Management	Complies – Stormwater from the addition will be connected via a rainwater tank to the existing stormwater system on site. As such the development is not considered likely to adversely affect the water quality of the receiving waters and is satisfactory for the development subject to conditions on the consent.
2.5 Vehicle Access & Parking	
2.5.1 Guidelines & Standards	Complies - access to the property is existing from Malvern Street. A right of carriageway is proposed over the existing access on the adjoining associated lot to ensure legal access.
2.5.2 Vehicle Access & Driveways	Complies – Refer to the above comment.
1) Access	Complies – Refer to the above comment.
2) Policy: All works comply with Council Policy – <i>Specification for the construction of driveways, footpath/gutter crossings and foot-paving (as amended).</i>	Complies – Refer to the above comment.
3) All weather access: al weather access is required to all development to ensure that emergency services are able to access them at all times.	Complies – Refer to the above comment.
4) Proximity to Intersection(s) & Sight-Lines	Complies- Existing.

5) Direction of Travel: Vehicle access and egress to/from a lot occurs in a forward direction.	Complies – Refer to the above comment.
6) Access to street	Complies – Refer to the above comment.
7) Slope	Complies – Refer to the above comment.
8) Driveway width: 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.	Complies – Refer to the above comment.
9) Setbacks/gates (Rural Areas)	Complies – Refer to the above comment.
2.5.3 Loading/Unloading, Delivery & Servicing Facilities	Not applicable.
2.5.4 Parking Location, Design & Circulation	Not applicable.
2.5.5 On-Site Parking Numbers	Complies – The proposal includes a single car garage with room for an additional vehicle in the driveway. However, it is noted that the proposed garage adds significantly to the bulk and scale of the addition and contributes to its negative impact on the heritage significance of the site.
2.5.6 Exemptions to Off-Street Car Parking Requirements	Not applicable.
2.5.7 Bicycle Parking	Not applicable.
2.6 Pedestrian Access, Mobility & Safety	
2.6.1 Accessibility	Not applicable.
2.6.2 Pedestrians	Not applicable.
2.6.3 Street Numbering & Letterboxes	Complies – existing.
2.7 Designing for Crime Prevention	
Not applicable to the proposed development.	
2.8 Utilities, Easements & Infrastructure	
2.8.1 Connection to Utilities	Complies - The site is connected to all available utilities. Therefore, it is considered that the proposal will be adequately serviced.
2.8.2 Building Near Utilities/Easements/Drainage Lines	Not applicable.
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. The site is connected to reticulated water supply.
2.11 Water & Energy Efficiency	
No Applicable	

Chapter 3 – Natural Environment & Hazards	
Development Control	Assessment Comments
3.2 Bushfire Prone Land	
01. To meet the statutory requirements for bush fire protection in NSW.	Not applicable.
3.3 Vegetation Management & Biodiversity	
3.3.1 Vegetation Clearing for Development Requiring Consent	Complies – The proposal does not trigger the Biodiversity Offset Scheme and will not have a

	significant impact on threatened species or endangered ecological communities.
3.3.2 Threatened/ Endangered Species/ Ecological Communities	Complies – The proposal will not have a significant impact on threatened or endangered species or ecological communities
3.3.3 LLEP 2014 – Terrestrial Biodiversity	Not applicable.
3.4 Land and Soil	
3.4.1 Contaminated Land	Complies - The proposed development will have no significant impact on soils. There is no reason to believe the site would be affected by contamination.
3.4.2 Sensitive Land Areas	Not applicable.
3.4.3 Erosion & Sedimentation	Complies – Minimal earthworks are proposed to be undertaken for building foundations.
3.4.4 other Geological or Soil-Related Issues	Not applicable.
3.6 Ground & Surface Water Protection	
This clause applies to land where the following Clauses of LLEP2014 apply: a) Clause 7.5 – Groundwater vulnerability;	The subject land is mapped as groundwater vulnerable. The proposed development is unlikely to have any significant impact on groundwater.

Chapter 4 – Heritage & Cultural Conservation	
Development Control	Assessment Comments
4.3 General Controls – Development of Heritage Items/Places & within Heritage Conservation Areas	
4.3.2 Design and Character	Does not comply – It is considered that the applicant has not satisfactorily demonstrated that the proposed additions appropriately respect the heritage significance of the site. The proposed addition is located between the heritage building and Malvern Street and is of a scale, form and design that is considered inconsistent with the existing built form. Council’s Heritage Advisor has advised that the form and character of the proposed DA additions which places an overtly intrusive-looking building into a period setting and streetscape.
4.3.3 Scale and Form	Does not comply – It is considered that the location and design of the proposed addition will dominate the original form of the existing building. While much of the site boundary contains vegetation that screens the building (and over time this screening will increase), the visual dominance from within the site is also important to consider. Council’s Heritage Advisor has advised that the bulk and scale of the proposed DA additions which results in a building footprint larger and bulkier than that of the cottage
4.3.4 Sitting and Setback	Does not comply – While the front setback of the addition is consistent with adjoining buildings in Malvern Street, the setback is considered inappropriate having regard to the heritage built form and landscape character of the site. Council’s Heritage Advisor has advised that the siting of the proposed additions on the western side of the cottage will obstruct use and views of the cottage.
4.3.5 Detailing	Does not comply – Window and door openings in the proposed addition are not considered to be compatible with the position, size and proportions of original doors and windows in the original building. Council’s Heritage Advisor has noted that the investigation of external finishes and detailing of windows, doors, pergola’s etc requires a skilful separate consideration.
4.3.6 Materials, Finishes and Colour Schemes	Complies in part – The proposed additions use a mix of materials, including face brick to match the original building and colorbond in

	dark colours as a contrast. Council Heritage Advisor has noted that the external materials have yet to be explored but at this early stage suggest exploring a mix of corrugated metal sheeting, weatherboard and glass to suggest more of a modest outbuilding in general character and avoid competing with the cottage and Wenvoe in face-brickwork.
4.3.7 Roofs and Chimneys	Does not comply – The plans show the removal of one of two existing chimneys. However, the applicant has advised that this is an error. Should the application be approved, a condition could be applied to ensure retention of both chimneys.
4.3.8 Verandahs and Balconies	Does not comply – The proposed additions include a large awning over the existing pathway to the original building that adds to the bulk and scale of the development that will compete with the visual appearance of the original building. Council’s Heritage Advisor has advised that the proposed additions had tried to retain the approach and alignment of the pathway and the existing entry door but the scale, form and proximity to the pathway would compromise the existing appealing character.
4.3.9 Garages, Carports, Car Spaces and Driveways	Does not comply – It is considered that the proposed garage adds significantly to the bulk and scale of the addition and contributes to its negative impact on the heritage significance of the site.
4.3.10 Fences	No new fencing is proposed and no existing fencing is affected by the proposed development.
4.3.11 Gardens, Garden Elements and Swimming Pools	Complies in part – No significant landscape features such as trees or hedges are affected by the development, however it is considered that the location of the proposed addition will negatively impact on the landscaped setting of the original building.
4.3.12 Access and Mobility	Complies – The proposal does not affect access and mobility.
4.3.13 Commercial Properties	Not applicable.
4.3.14 Service and New Technologies	Complies – There are no concerns regarding services and utilities for the proposed addition.
4.4 Specific Controls – Heritage Conservation Areas	
Not applicable.	

Chapter 6 – Residential Development	
Development Control	Assessment Comments
6.2 General Controls	
6.2.1 Site Analysis & Potential land Use Conflict	Complies in part - Consideration has been given to the site topography and natural environment, along with any potential hazards on or near the site. However, it is considered that the proposal does not appropriately respond to the existing built form and heritage of the site.
6.2.2 Site Suitability	Complies - The development is permissible in the zone and complies with the zone objectives. The development is consistent with surrounding land uses being for residential purposes.
6.2.3 Landscaping & Tree Protection	Complies – The proposal involves the removal of two small shrubs. The design of the development ensures the retention of a number of larger trees on the site.
6.2.4 Fencing	No changes to existing fencing is proposed.
6.2.5 Sustainable Design	A BASIX Certificate has been submitted with the development application. Given the orientation of the site, the proposal is considered acceptable in relation to solar access. Adequate cross ventilation has been accommodated in the design. The proposal is considered acceptable in relation to sustainable design.

Chapter 6 – Residential Development	
Development Control	Assessment Comments
6.4 Dwellings / Secondary Dwellings (Urban Areas)	
6.4.1 Siting & Setbacks	Complies – The proposed addition complies with the front and side boundary setback controls and is consistent with the adjoining dwelling. However, the setback is considered inappropriate having regard to the heritage built form and landscape character of the site.
6.4.2 Average Setback of Adjacent Dwellings	Complies.
6.4.3 Height, Scale & Solar Access	Complies – The proposed additions are single storey and considerably less than the maximum wall and roof height controls.
6.4.4 Private Open Space & Landscaping	Complies – The proposed additions will ensure adequate private open space remains on the site for the dwelling. The private open space area is to the north of the dwelling ensuring good solar access will be provided. The site will retain more than 20% landscaped area.
6.4.5 Noise (Acoustic) & Visual Privacy	The proposal is single storey and is considered satisfactory with regard to acoustic and visual privacy.
6.4.6 Building Articulation	Complies. While the proposal is acceptable in relation to the building articulation controls, as noted above, there are heritage concerns with regard to the design of the proposed development. The site is a corner lot, and the design will address both street frontages, however with existing landscaping, the proposal will not be visible from much of the street frontage.
6.4.7 Garages, Carports, Outbuildings & Sheds	Complies – While the proposal is acceptable in relation to the garage controls, as noted above, there are heritage concerns with regard to the scale of the development including the addition of a garage to the proposed addition.

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.

Head of Consideration	Comment
Natural Environment	Based on the information submitted, an assessment of the proposal and a site inspection, the development is considered unlikely to result in adverse impacts on the natural environment.
Built Environment	As outlined elsewhere in this report, the proposed development is not considered to be in keeping with the heritage significance and character of the site.
Social Impact	The proposed development facilitates the ongoing use of the land for residential purposes. No adverse social impacts are anticipated as a result of the proposal.
Economic Impact	No adverse economic impacts are anticipated as a result of the proposal.
Natural Hazards- Bushfire	The subject land is not bushfire or flood prone.

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. As outlined in this report, there are heritage concerns with the location, scale and design of the proposed addition. While some development of the site would be suitable to minimise heritage impacts, it is considered that the development as proposed is not suitable for the site.

Public Participation

Pursuant to the Lithgow Community Participation Plan, neighbour notification was undertaken with no submissions received.

Contributions

Section 7.12 Development Contributions Plan 2024

Council's Section 7.12 Development Contributions Plan 2024 does not apply to this development given it is for alterations and additions to a dwelling.

The Public Interest

The public interest is best served by the orderly and economic use of land for permissible uses and that does not impact unreasonably on the use and development of surrounding land. While the proposed development is unlikely to have unreasonable impacts on the use and development of surrounding land, it is considered that the proposed development will have negative impacts of the heritage significance of the site. For this reason, it is considered that the proposal is not in the public interest.

Discussions and Conclusions

The proposal is considered to be inconsistent with the heritage requirements of the Lithgow Local Environmental Plan 2014 and the Lithgow Development Control Plan 2021. While the proposal is not expected to result in any significant negative impacts upon the environment or upon the amenity of the locality, it is considered that the proposal will have detrimental impacts on the heritage value of the heritage item Wenvoe. The proposed development is therefore recommended for determination by way of refusal for the reasons outlined below.

Attachments

Schedule A- Conditions of consent.

Recommendation

THAT Application DA169/24 is refused for the following reasons.

- The proposed development does not appropriately respond to the unique heritage significance of the site in its relationship to the adjoining Wenvoe.
- The proposed development has not been appropriately located and designed to minimise impacts on the heritage significance of the site.
- The proposed development does not appropriately integrate with the existing built form and landscape of the site and the adjoining associated lot and therefore will have detrimental impacts on the heritage significance of the site.
- The proposed development does not comply with the provisions of clause 5.10 of the Lithgow Local Environmental Plan 2014.
- The proposed development does not comply with the heritage provisions of the Lithgow Development Control Plan 2021.
- Given the heritage impacts, it is considered that the proposed development is not suitable for the site.
- Given the heritage impacts, it is considered that the proposal is not in the public interest.

Mark Hitchenson

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Navigate Planning



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Development Manager