

# **DEVELOPMENT ASSESSMENT REPORT – DA020/19 - PROPOSED SUBDIVISION - 1 LOT INTO 4 and 4 DWELLINGS, LOT 6 DP 1250061, 7 CURA CLOSE LITHGOW NSW 2790**

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## **1. PROPOSAL**

Council is in receipt of a Development Application (DA020/19) for a subdivision of 1 lot into 4 lots and 4 new dwellings on land known as Lot 6 DP 1250061, 7 Cura Close LITHGOW NSW 2790.

The proposal includes the subdivision of Lot 6 DP 1250061 into 4 Torrens title lots with the construction of 4 new dwellings on each lot. Each lot varies in size, all with a similar size of approximately 350m<sup>2</sup> (range from 354.649m<sup>2</sup> to 362.170m<sup>2</sup>).

The subject site is an irregular shaped residential allotment (1,429.14m<sup>2</sup>) located at the end of Cura Close, Lithgow, that being a small cul-de-sac. The property is vacant of any building structures and has two large trees remaining on the site.

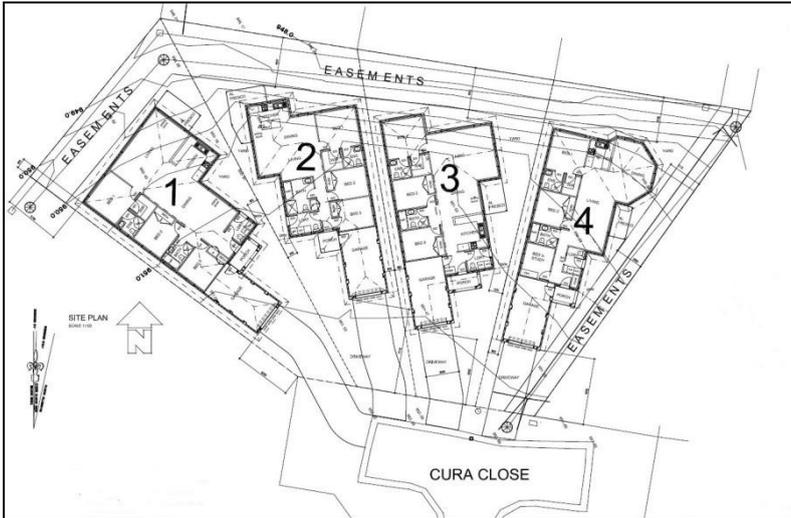
The property is located approximately 650m walking distance to the south-east of the Lithgow main street. The allotment is part of a number of currently vacant lots that were previously part of the former Lithgow Hospital site that was demolished in the early 2000's. The land was then subdivided into 8 lots. There is a variety of development forms surrounding the subject site, with residential to the north and north-east, single dwellings to the west and east and vacant land to the south.

The subject site is a relatively flat site with some steep land towards the rear with slopes in excess of 25% and in some sections up to 30% slope (18 degrees). There is also a drainage easement which affects approximately 4-4.5m of the north, east and western side boundaries of the land.

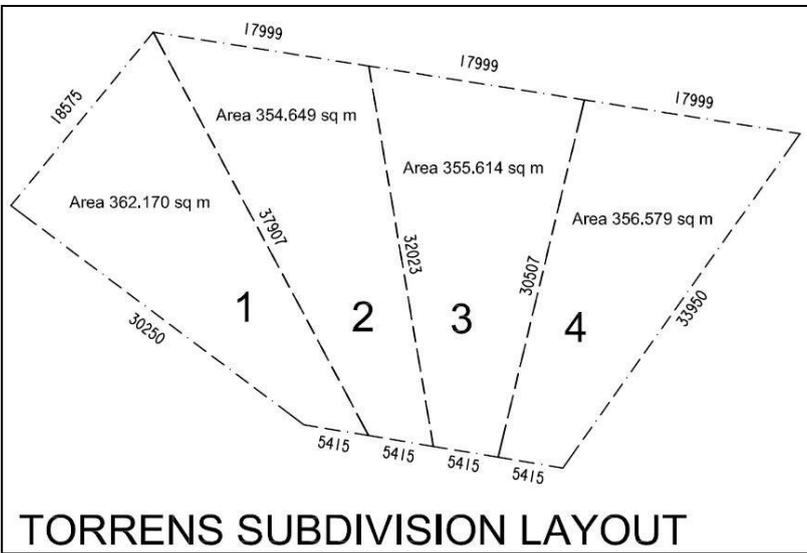
Access to the site is via Cura Close, a sealed cul-de-sac.



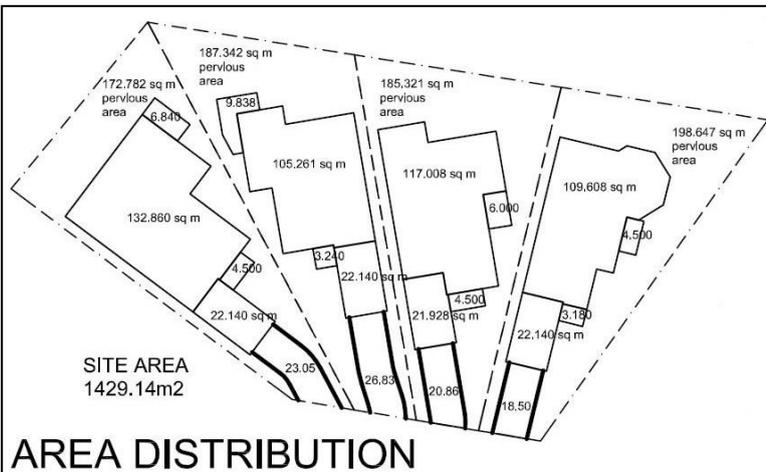
**Figure 1: View of the subject site standing on Cura Close, facing north.**



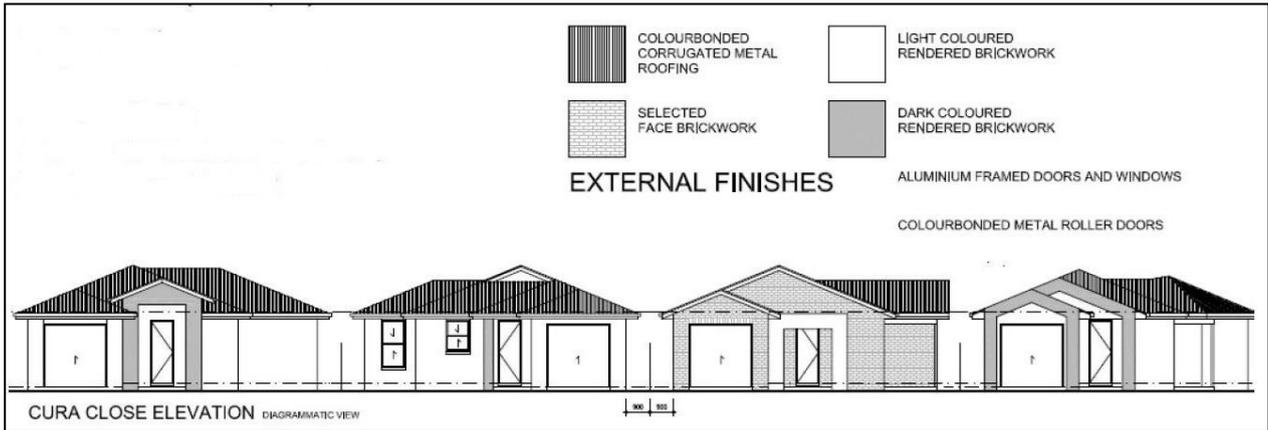
**Figure 2: Site Plan and Lot Configuration a**



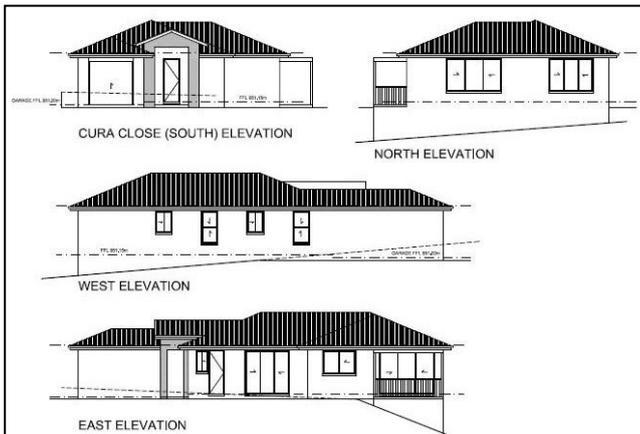
**Figure 3: Subdivision Layout Plan**



**Figure 4: Site Area and Distribution of Buildings and Hard Surfaces**



**Figure 5: Elevation of Proposal from Cura Close**



**Figure 6: Unit 1 Elevations**



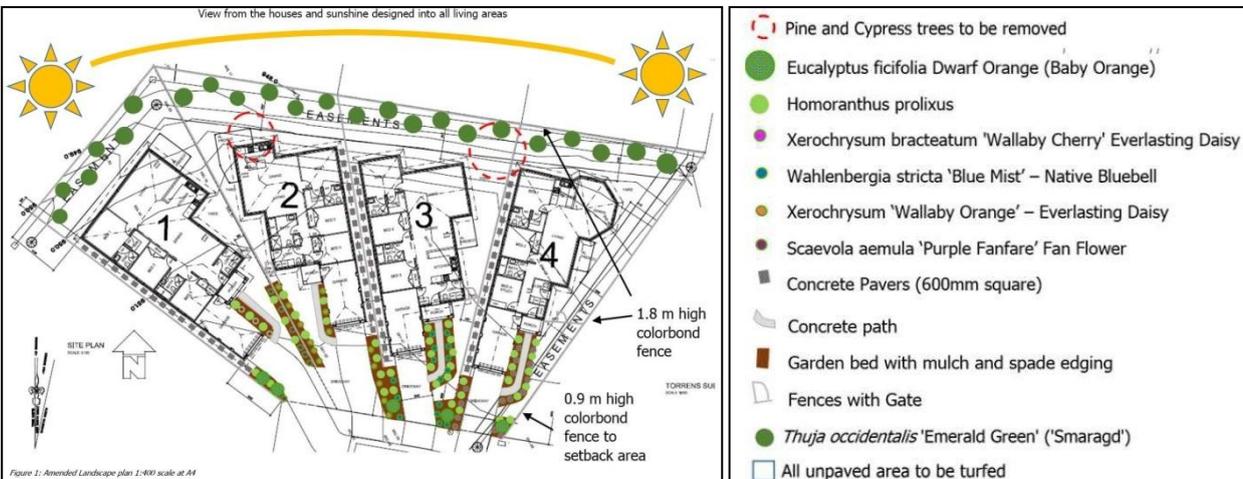
**Figure 7: Unit 2 Elevations**



**Figure 8: Unit 3 Elevations**



**Figure 9: Unit 4 Elevations**



**Figure 10: Proposed Landscape Plan**

## **2. SUMMARY**

To assess and recommend determination of DA020/19. The recommendation is for refusal.

Council has sought the applicant to submit the following additional information:

### **1. Lot size and over development**

Council has concerns that the proposed development is an over development of the site, considering the difficult site constraints that affect the land. The subject site is heavily constrained over three sides by water and sewer easements and steep topography. These constraints limit the usable land area for each proposed dwelling. The steep topography of the land and the proximity to adjoining land owner's also present privacy and solar access concerns.

Each dwelling provides for an irregular shaped and unusable configuration of private open space area.

The information submitted 20 February 2019 does not provide any reduction in the built form of any of the dwellings. The amended landscaping, while providing privacy to adjoining land owners, will reduce the amount of solar access available to the private open space areas of each dwelling.

With a reduction in dwellings and allotments, more appropriate and usable private open space areas could be achieved with good solar access while also providing for suitable landscaping for privacy to adjoining properties.

Council requested that consideration be given to the reduction of the built form and the number of proposed lots to a maximum of 2 residential lots and dwellings to address the above concerns.

### **2. Landscape Plan**

Consultation has occurred with Council's Water and Wastewater Officer who has reviewed the Landscaping Plan. While Council's Water and Waste Officer finds the proposed trees acceptable except for two proposed trees covering existing manholes, concern is raised together with the above matters of overdevelopment of the site. The large pine trees at maturity will provide privacy screening to neighbouring property to the north, however solar access to the open space areas of each dwelling will be compromised.

### **3. Retention of land along the north and north-eastern boundary (rear boundary)**

Further information needs to be provided to detail how the land will be retained in this section of the site, noting the steep topography and Council's policy with regard to no built structures being permissible within the sewer and drainage easements. The applicant has not provided any sectional details or proposed methods of land retention in these areas of the site. Concern is raised with the proximity of the proposed dwellings to the boundary of the easements. There is the high possibility that the proposed dwelling structures and future retaining walls will impact the zone of influence of the sewer and drainage pipes contained within the easement. Particular reference is given to the alfresco area of Dwelling 2 and the rear of Dwelling 4.

Over the past 5 months Council has written to the applicant on a number of occasions as well as undertaking two meetings with the applicant seeking to address these issues in detail. The applicant has not been forthcoming to provide Council with this additional detail. Therefore no further assessment can be undertaken. Council believes that the information submitted has not been satisfactory to adequately address Council's concerns.

As the above information has not been adequately provided, the applicant has not been able to demonstrate the development would not have an adverse impact on the environment; this includes both the natural and built environments in the locality. The applicant has also not been able to demonstrate compliance with the *Environmental Planning and Assessment Act 1979 Section 4.15 Evaluation* as well as *The Building Code of Australia* and *Lithgow Council's Local Environmental Plan 2014*; therefore it is recommended that the development be refused.

### 3. LOCATION OF THE PROPOSAL

Legal Description: Lot 6 DP 1250061  
Property Address: 7 Cura Close LITHGOW NSW 2790

**4. ZONING:** The land is zoned R1 General Residential in accordance with *Lithgow Local Environmental Plan (LEP) 2014*.

The proposed residential allotments are to be located within the R1 General Residential Zone as shown below.



**Figure 11: Zoning under Lithgow LEP 2014**

**5. PERMISSIBILITY:** The development being for 4 Torren title subdivision with each lot containing a single dwelling (defined below), is permitted with consent on land zoned R1 General Residential under LEP 2014 provided that the land complies with the requirements of Clause 4.1.

#### Definition

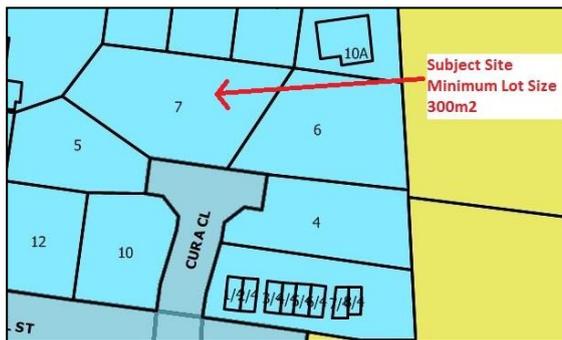
**dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

#### Clause 4.1

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

- (1) *The objectives of this clause are as follows:*
  - (a) *to minimise the cost to the community of:*
    - (i) *fragmented and isolated development of rural land, and*
    - (ii) *providing, extending and maintaining public amenities and services,*
  - (b) *to ensure that the character and landscape setting of an area is protected and enhanced by any development,*
  - (c) *to promote development on appropriately sized lots and to ensure access to available essential services.*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

Council's Minimum allotment size map is shown below:



**Figure 12: Minimum Lot Size Map under Lithgow LEP 2014**

The development being a subdivision of land in R1 General Residential Zone is permissible for 4 lots under Clause 4.1 as each lot meets the minimum lot size (MLS) of 300m<sup>2</sup> as per the Lot Size Map under LEP 2014. Each lot varies in size, all with similar size of approximately 350m<sup>2</sup> (range from 354.649m<sup>2</sup> to 362.170m<sup>2</sup>).

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

### **Policy 5.1 Building Over Easements**

The subject site contains an easement for sewer and stormwater drainage at the rear of the site, along the western, northern and eastern side boundaries. The proposed dwelling structures are proposed to be built outside of this easement area.

Due to the steep topography of the site, Council has requested the applicant to provide information on how the land within the easement areas will be retained; including details of any retaining structures. Concern is also raised with the proximity of the proposed dwellings to the easement and the possible impact of the dwelling footings within the zone of influence of the pipes located within the easement.

Council has been unable to undertake further assessment in relation to these concerns due to limited information being submitted with the application. It is therefore unknown whether the easement would be impacted by the proposed subdivision and new dwellings.

### **Policy 7.1 Filling and Levelling of Land**

Council's Policy 7.1 is applicable to all land within the Lithgow Local Government Area (LGA) and is raised where excavation or the depth of fill exceeds 900mm. The construction of the dwellings will not require fill or excavation that exceeds 900mm, however, there has been no information submitted with regard to the treatment of the land at the rear of the site, which contains steep topography or how this area will be retained. It is highly likely that some form of retaining wall will be required in this area of the site. No further assessment could be undertaken with regard to this issue due to limited information being submitted.

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

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

- a) Subdivision works must be substantially complete. "Substantially complete" means that all civil works have been completed including roads, water supply, sewerage and drainage. Minor outstanding works refers to installation of street signage, final rectification/seeding of excavations & batters and landscaping.*
- b) Works as executed plans must have been submitted to Council and accepted.*
- c) Security for incomplete works must be provided to Council prior to the endorsement of the subdivision certificate, either by cash deposit or unconditional bank guarantee.*

- d) *The amount of the security must be 100% of the estimated cost of completion of the outstanding works.*
2. *The General Manager is authorised to determine the amounts of security deposits for outstanding subdivision work and to release security upon satisfactory completion and to vary the time periods for completion of works as deemed necessary.*
3. *The General Manager is authorised to decline to allow bonding of outstanding subdivisions works where the deferred completion of works would not be in the best interest of Council and the community.*
4. *The owner of the land to which the subdivision relates must provide written authority allowing Council to enter the site and make all necessary arrangements to have outstanding works completed within six (6) months of the date of the subdivision certificate.*
5. *The General Manager may sub delegate any function under this policy including the issue of a Subdivision Certificate.*

The following condition would have been placed on the consent if approved:

*That a Subdivision Certificate Application be lodged to Council for approval.*

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

This policy applies to all applications as below:

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

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

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

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

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

3. *Should written notice signed by a Councillor be provided to the General Manager prior to determination of a development application, the application shall not be determined under delegated authority but shall be:*
- *Reported to the next available Ordinary Meeting for the information of Council that the development application or development application/construction certificate has been 'called in'; and*
  - *Reported to a Meeting of Council for determination where the application is in a state that it can be determined.*

The application has been called in by Councillor Steve Ring and Councillor Cassandra Coleman with the call in report reported at the Ordinary meeting of Council dated 27 May 2019 (re-Convened 11 June 2019); Min No. 19-132.

## **5.2 FINANCIAL IMPLICATIONS**

### **Water Management Act 2000**

This financial implication may apply if the development is an additional load on Council's water or sewer systems. I.e. **new allotments being created**, Hospitals, Schools, Public Toilets,

Hotels, Motels, Caravan Parks, Flats/Units/Dual Occupancy, Clubs, Commercial Development & Industrial Developments.

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

***Division 5 Developer contributions to the construction of works***

***305 Application for certificate of compliance***

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

Therefore Council's Section 64 Contributions under The Local Government Act 1993 for water and sewer connections would be required to be paid prior to the release of the Subdivision Certificate if the application is approved.

It is to be noted that due to the existing credits of the previous development of the Hospital on the site, there is a credit for one allotment, for contributions. Therefore the proposal would be required to be charged for 3 lots for Section 64 Contributions.

The following condition could be included in the condition of consent:

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

The proposal will meet the requirements of the Water Management Act 2000 subject to conditions of consent.

Due to the recommendation for refusal, no condition is proposed.

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

The Section 94A (Section 7.12) plan applies to this development given it is for subdivision and 4 dwellings at an estimated cost of \$913,456.00, using the below levies:

<b>Estimated cost of development</b>	<b>Levy applicable</b>
\$0 to \$100,000	0%
\$100,001 to \$200,000	0.5%
\$200,001 and over	1%

Therefore, the following condition of consent should apply to the development is approved:

- Prior to the issue of a Construction Certificate the applicant shall pay to Council a Section 94A (Section 7.12) contribution of \$9134.56, in accordance with the Lithgow City Council Section 94A (Section 7.12) Development Contribution Plan 2015. It is advised that the level of contribution in this plan may be adjusted at the time of actual payment, in accordance with the provisions of the Lithgow City Council Section 94A Development Contribution Plan 2015.*

Due to the recommendation for refusal, no condition is proposed.

**5.3 LEGAL IMPLICATIONS**

***Contaminated Land Management Act 1997 No 140***

The subject site previously held contamination issues, with the previous use being for the old hospital. However these matters were resolved at the previous subdivision stage, where a condition was included in this past consent requiring soil testing. There are no further issues with regard to contamination.

### ***Conveyancing Act 1919***

A S88B Instrument exists for the site, with a number of easements for drainage, sewer, water supply and electricity. There are also 2 restrictions on the use of the land relating to:

Restriction No.4 –relates to fencing, the proposed subdivision and dwellings does not affect this restriction.

Restriction 5 –relates to the construction of buildings, parking of trucks and motor vehicles on the land, excavation materials and noisy trade or business carried out on the lots. The proposed subdivision and dwellings does not affect these restrictions.

Restriction 5 (1.1) states:

*"Any building to be erected on each lot burdened shall have a minimum of 60% masonry, cement render or like construction on the surfaces which front Bridge Street, Hill Street or Cura Close. In calculating the total area of surface fronting either street, any glazed area is not be included in the calculation."*

The proposed new dwellings satisfy these restrictions with the dwellings proposed to be brick veneer construction.

### ***Environmental Protection and Biodiversity Conservation Act 1991***

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

### ***Local Government Act 1993***

If this application is approved, the applicant must obtain a written Section 68 application for connection to Council's water and sewerage supply. This must be lodged and approved prior to commencement of any work on site and shall be at full cost to the applicant.

The Section 68 application requires the submission of all detailed engineering drawings/design, specifications and any applicably supporting information for the proposed works. All conditions of the Section 68 Approval must be complied with prior to the release of the Subdivision Certificate/Occupation Certificate.

Due to the recommendation for refusal, no condition is proposed.

### ***Mine Subsidence Compensation Act 1961***

The development is considered to be integrated under this Act (via Section 91 of the EP & A Act 1979). Accordingly the approval of the Mine Subsidence Board is required prior to Council being in a position to determine the application. Approval from the Mine Subsidence Board has been obtained and is discussed later in this report and therefore it is considered that the proposal will comply with the provisions of this Act.

### ***Telecommunications Act 1997***

It is recommended that consent authorities adopt the following model condition when issuing development consents for subdivision as per Planning Circular 17-005 (17.11.17) -Conditions of consent for fibre-ready facilities and telecommunications infrastructure, as below:

- Prior to the issue of the Subdivision Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:
  - (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
  - and
  - (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.
 (Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).

Due to the recommendation for refusal, no condition is proposed.

### ***Environmental Planning and Assessment Act 1979***

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

#### 5.3.1 Any Environmental Planning Instruments

#### ***Lithgow Local Environmental Plan 2014***

LEP 2014 – Compliance Check		
Clause		Compliance
<b>Land Use table</b>	R1 General Residential	No
<b>4.1A</b>	Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Yes
<b>7.1</b>	Earthworks	No
<b>7.3</b>	Stormwater management	Yes

**Comment:** The proposed subdivision of land and proposed construction of 4 new dwellings are not consistent with the zone objectives. The objectives of the zone are:

#### *Objectives of the R1 General Residential Zone*

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maintain or improve the water quality of receiving water catchments.

The proposed subdivision would allow lots to be developed for residential purposes. The development is surrounded by residential uses; however privacy impacts to the adjoining properties is unknown due to limited information submitted with the application.

It is also unknown if the development will impact services in the area due to the location of sewer and drainage easements and no information relating to retaining walls being submitted.

Water quality would be maintained and not be impacted upon. The development was referred to WaterNSW whose comments are found later in this report.

Clause 7.1 Earthwork – The applicant has not provided relevant information with regard to the retention of land at the rear of the proposed allotments/dwellings that contains steep terrain.

Therefore an assessment was unable to be undertaken with regard to the impact of the proposal and any detrimental impacts upon the drainage patterns or soil stability of the land within this area.

***State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004***

SEPP (Building Sustainability Index: BASIX) 2004		
Clause	Compliance	
6	Buildings to which Policy applies	Unknown
7	Relationship with other environmental planning instruments	Unknown
8	Other environmental planning instruments do not apply to BASIX commitments	Unknown

**Comment:** The proposal provides for a BASIX Certificate 994013M dated 7 February 2019, which demonstrates that BASIX requirements have been met. However, due to the unknown impacts from the proposed landscaping on the solar access of the dwellings a full assessment of compliance with this SEPP could not be undertaken.

***State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011***

SEPP (Sydney Drinking Water Catchment) 2011 – Compliance Check		
Clause	Compliance	
10	Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes

**Comment:** The application was referred to WaterNSW for concurrence under the SEPP. Approval has been granted by WaterNSW, refer to comments further in the report.

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

Nil.

5.3.3 Any Development Control Plan

There were no DCP’s applicable at the time of lodgement of the application. Council’s previous DCP’s that have been repealed and are used as a guide only to assist in assessment of the application.

To assess carparking requirements, Council’s previous Off Street Carparking DCP and the RTA’s Guide to Traffic Generating Development (October 2002) was utilised as part of the assessment process and is detailed below:

***Lithgow Off Street parking DCP***

Off Street Parking DCP		
Clause	Compliance	
6	Car Parking Standards	
	Duplex’s – 1 enclosed garage plus 1 visitor car parking space per 3 bedroom unit	No, 8 spaces required, the proposal provides for 1 car space per dwelling.

***RTA’s Guide to Traffic Generating Development (October 2002)***

***5.4.1 – Residential Dwelling Houses***

*A dwelling house is a building containing one, but no more than one dwelling.*

*A minimum of one parking space (preferably two) is recommended for dwelling houses. If there is dual occupancy on a residential lot, a minimum of two parking spaces is recommended.*

#### **5.4.2 Medium density residential flat buildings.**

*A medium density residential flat building is a building containing at least 2 but less than 20 dwellings. This includes villas, town houses, flats, semi-detached houses, terrace or row houses and other medium density developments. This does not include aged or disabled persons' housing.*

*The recommended minimum number of off-street, resident parking spaces is 1 space for each unit, plus an additional 1 space per each 5 x 2 bedroom unit or part thereof. Also, an additional 1 space per each 2 x 3 or more bedroom unit or part thereof is recommended.*

*An additional one space per each five units for visitor parking or part thereof is recommended.*

**Planning Comment:** The proposed development provides for one car space per dwelling. This is considered to be a minimum requirement under Council's previous DCP and the RTA Guidelines.

However, the garages are located at the front of the dwellings fronting the cul-de-sac. There are no spaces available for additional visitor spaces for any of the dwellings due to the limited length of the driveways. On-street parking is also limited due to Cura Close being a cul-de-sac. The proposed car parking is not considered to be ideal for 4 x 3 bedroom dwellings with the potential for more than one vehicle per dwelling on average.

As such the development does not comply with Council's former off Street Car Parking DCP or RTA's Guide to Traffic Generating Development (October 2002).

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

Nil applicable.

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

The development has been forwarded to Council's Building Officer for assessment under appropriate regulations. It is considered that as a result of this assessment the development will comply with the provisions of the regulations subject to conditions of consent.

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

**Lot Size and Overdevelopment of the Site:** The surrounding area is generally for residential pursuits with the proposal not considered to be consistent with the density and scale of surrounding residential land uses. While the proposed subdivision meets the minimum lot size of 300m<sup>2</sup>, the majority of land within this immediate locality minimum sized lots are between 700m<sup>2</sup> to 1200m<sup>2</sup> as follows:

- 4, 6 and 8 Short Street immediately to the north of the subject site contain a site area of approximately 700m<sup>2</sup>.
- 10 and 10A Short street, a dual occupancy development contain a site area of approximately 1000m<sup>2</sup>;
- 6 Cura Close – vacant land – 1,200m<sup>2</sup>
- 5 Cura Close – vacant land – 780m<sup>2</sup>
- 4 Cura Close – vacant land – 990m<sup>2</sup>
- 10 Hill Street – vacant land – 775m<sup>2</sup>

The proposal provides for residential lots between 350m<sup>2</sup> to 360m<sup>2</sup>, which is well below the surrounding land sizes and would be considered to be out of character with the adjoining residential properties. This reduction in lot sizes could result in land use conflicts with other residential development in the surrounding area considering the potential for privacy and solar access impacts. These impacts are due to the constraint of the land containing steep topography to the north.

Figure 2 and 3 below demonstrate the privacy concerns from the rear of subject site (northern boundary) to adjoining residential properties rear yard in Short Street.



**Figure 13: View from northern boundary of subject site to rear of No.4 Short Street**



**Figure 14: Steep topography of subject site along northern rear boundary to adjoining neighbours in Short Street**

The proposal is considered to be an over-development of the site, noting the difficult site constraints that affect the land. The site is heavily constrained over three sides by water and sewer easements and steep topography to the north and north-east. These constraints limit the usable land area for each proposed dwelling. Council has requested the applicant on numerous occasions to provide further information on how the land will be retained in this area; however this has not been forthcoming from the applicant. Council staff have strong concerns that the proposed dwellings may impact the zone of influence of the pipes contained within the easements, noting the close proximity of the dwellings to the easement and the need for land retention at the rear. Further the impact of the development on the drainage patterns, soil erosion and soil stability are unable to be determined. Lack of information has resulted in Council staff, not being able to undertake a full assessment of these issues.

The steep topography at the rear of the land and the proximity of the development to adjoining land owners presents privacy and solar access concerns. From site inspections, standing at the

rear (northern and north-eastern section) of the subject site, the topography of the land is very steep sloping and one can view the entire backyard areas of each of the dwellings (No.4,6,8 and 10A Short Street), even with the provision of a 1.8m colourbond fence along the rear (northern boundary). A reduction in built form and number of lots could reduce the impact of such privacy concerns.

The applicant provided a landscaping plan that indicates the northern and western elevations proposed to be landscaped with *Thuja occidentalis* 'Emerald Green' ('Smaragd'), an upright growing conifer growing to a maximum height of 5m. With the provision of this landscaping, sporadically planted along the boundaries, considering the 50% grade in topography at the rear of the subject site, there is likely to be some degree of privacy and overlooking from the dwellings into the adjoining residential backyard areas (Short Street neighbours).

Irrespective of Council receiving no objections from adjoining land owners, Council has an obligation to ensure that the issues of privacy, solar access is not compromised and that earthworks are unlikely to have a negative impact on adjoining land owners and the stability of land on the subject site.

**Private Open Space:** Each dwelling provides for an irregular shaped and unusable configuration of private space area for each dwelling. None of the dwellings provide for usable open space areas, with the open space areas being 'left over' sections of land between the dwelling buildings. The open space areas do not provide for dimensions which are useable to accommodate outdoor recreational needs.

As a guide only, Council's previous South Bowenfels DCP stipulated private space to be:

- *at ground level of at least 8m by 4m directly connected to a living area; and*
- *no steeper than 1 in 10 gradient;*
- *minimum of 100m<sup>2</sup> of open space per dwelling;*
- *where possible should be located on the northern side of the dwelling;*
- *landscaped front yards, drying areas, parking and access areas and garbage receptacles are not considered as open space areas;*
- *patios, decks, balconies and the like at or near ground level may only be counted when they are not enclosed by the line of the roof of the building.*

The proposed open space areas provided by the proposal do not achieve any of the above criteria.

In comparison to open space requirements set out in AMCORD (used as a guide only to assist in assessment), (Element 5.7 private Open Space, page 177) for dwellings with a site density of 40 dwellings per ha or less, the acceptable solutions comprise:

- At ground level
  - Total minimum area of 20% of the site area with a minimum dimension of 3.0m.
  - One part with an area of 25m<sup>2</sup> with a minimum dimension of 4m and directly accessible from a living area of the dwelling.
  - A maximum gradient of 1 in 10.
  - Screening provided (minimum 1.8m) where necessary to ensure privacy to users of the open space.

The total minimum area of open space required under AMCORD for each dwelling would range between 70-72m<sup>2</sup> per dwelling. While each lot provides a pervious area of between 172m<sup>2</sup> and 198m<sup>2</sup>, it does not meet the other provisions of dimension size, gradient and location off the

living area of the dwelling. A large proportion of this pervious area is contained within the drainage easements which is steeply sloping land and not considered to be an acceptable solution for open space provision.

The proposal does not achieve any of these AMCORD requirements.

Dwelling 1 – Provides an alfresco (covered deck) area of 3.8m x 1.8m and a triangular yard area of 3m x 5m = 15m<sup>2</sup>.

Dwelling 2 – provides a wrap around alfresco (covered deck) area of 3.5m x 1.5m + 1.5m x 2.2m and piecemeal areas of yard on the southern side of the dwelling (triangular dimensions 2.8m x 5m and 2m x 3m)

Dwelling 3 – provides an alfresco (covered area) 2m x 3m and yard area (triangular dimensions 3m x 5m=15m<sup>2</sup>)

Dwelling 4 – provides an alfresco (covered area) 3m x 1.5m and yard area of 3m x 5m =15m<sup>2</sup> plus other piecemeal areas of yard along the eastern side boundary.

The proposal does not provide adequate and useable private open space.

**Lot Configuration, Size and Frontage Width:** New allotments should be regular in shape, with an orientation and alignment that allows for future buildings to have adequate street frontage, optimises solar access, provides for adequate private open space located behind the building line of future dwellings and allow for parking and stormwater measures to be accommodated wholly within the allotment.

The proposed lots are considered to be irregular in size and configuration with long, north-south orientation. The lots contain an average frontage width of 5.4m, in comparison with the current lot width of approximately 21m. The proposed lot widths are likely to contribute to problems with the built form, the provision of private open space, privacy and solar access of the proposed dwellings.

In comparison to subdivision requirements set out in AMCORD (used as a guide only to assist in assessment) (Element 5.2 Lot Layout, page 153) provide for Lots with an area of between 300m<sup>2</sup> – 450m<sup>2</sup>, capable of containing a rectangle measuring 9m by 15m. The proposal does not meet this requirement and provides for splayed lots with narrow lot frontages, splaying to a wider rear area. This in turn affects the building configuration and is unable to achieve adequate private open space.

The proposal does not provide for an adequate lot configuration, size or width.

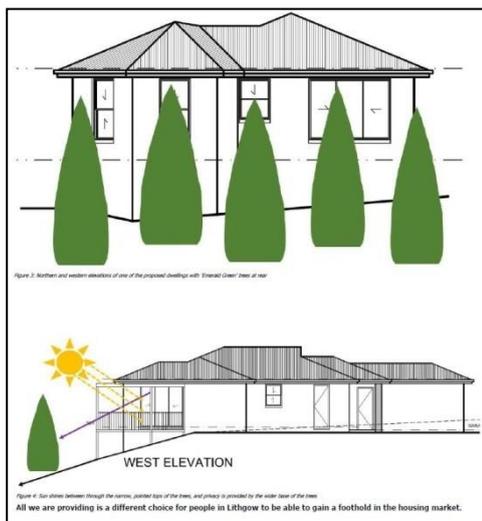
**Landscaping and Privacy:** A major concern with this proposal is the negative privacy impacts that these proposed dwellings will have on adjoining residential properties to the north along 4-10 Short Street. Also the privacy concerns relating to the existing childcare centre and medical centre located at 15 Bridge Street that adjoins proposed Dwelling No.1. The applicant has addressed this issue through the provision of landscaping within the easement area. The applicant has chosen to plant a number of *Thuja occidentalis* 'Emerald Green' – 'Smaagd', semi dwarf cultivar/pyramid shaped conifer, growing to a mature height of approximately 5m.

No objection has been raised by Council's Water and Wastewater Division, with the placement of these trees in the easement, so long as the trees are not planted in close proximity to existing manholes.

While the landscaping is likely to alleviate a small degree of privacy and overlooking to adjoining neighbours, there will still be a degree of privacy and overlooking from the dwellings

into the adjoining residential backyard areas (Short Street neighbours) due to the steep topography of the site. Concern is also raised in relation to the impact that the proposed landscaping will have on solar access to the proposed residential allotments. Due to the orientation of the allotments in a north –south orientation, the solar access to the open space areas and the living areas of each dwelling will be compromised.

The applicant has provided some sectional details and photo montage of how the landscape treatment will not affect the solar access to the dwelling. These diagrams have not been drawn to scale and therefore an assessment cannot be undertaken on this documentation and cannot be seen to be a true representation on how the proposed landscape treatment will affect solar access to the proposed dwellings.



**Figure 15: Photo montage provided by applicant**

**Overshadowing and Solar Access:** The applicant has failed to supply Council with shadow diagrams to support the proposed dwellings and therefore Council is unable to determine the impact that each dwelling will have on the adjoining properties in terms of solar access. Further, the impact of the proposed landscaping on the solar access to each of the proposed dwellings is undetermined.

### **Design Elements of the Dwelling – Carports and garages**

The applicant has failed in the design of the new dwellings to locate the garages on the site in an appropriate location. The proposed location is likely to diminish the attractiveness of the streetscape. The garages have been positioned to sit well in front of the proposed dwellings and will dominate views of the dwellings from the street. This design concept fails to address AMCORD requirements (see Element 5.3 Street Setbacks – Carports and Garages, page 158-159) (used as a guide only to assist in assessment) to ensure that garages do not dominate the street appearance. This in turn will reduce the opportunity for surveillance of the street from dwellings with restriction of views of the buildings from the street.

**Context and Setting:** The proposed development will be located within an established residential area and will have major impacts on the context and setting of the area. With reduced lots sizes in comparison to other adjoining lots as detailed above, the allotments are considered to be an over development of the land. The placement of 4 dwellings over the site would be similar to a medium density style development occurring on the land. This is considered to be out of character of the predominantly single dwelling nature of development in the area. Refer to Figure 16 below, showing single dwellings located to the south of the subject site.



**Figure 16: Existing single dwellings located in Hill Street**

**Services:** The development will have connections to Council's reticulated water and reticulated sewer services. Additionally, there is access to electricity and telecommunication services nearby. Therefore, it is considered that the proposal will be adequately serviced.

**Access:** The proposal will gain access from Cura Close and it has been assessed and considered that subject to conditions of consent that the assess will be adequate for the development.

**Heritage:** The subject land and surrounding lands are not affected by heritage.

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

**Social and Economic Impact:** The proposed development is not considered to be compatible with the other similar development within the locality due to the increase in the number of allotments as compared with other similar surrounding development. With the increase in allotments, the proposal is likely to generate a greater need for social services and facilities within the area.

**Soils:** There is no reason to believe the site would be affected by acid sulphate soil or contamination problems. Previous contamination has been dealt with during the previous subdivision works.

The applicant has not provided relevant information with regard to the retention of land at the rear of the proposed allotments/dwellings that contains steep terrain. Therefore an assessment was unable to be undertaken with regard to the impact of the proposal on whether it would have any detrimental impacts upon the drainage patterns or soil stability of the land within this area. Further, noting the existing drainage and sewer easements also contained within this area of the site, Council has been unable to make a full assessment of the impact of the proposal on infrastructure.

**Water:** The application was referred to WaterNSW for concurrence under the SEPP. Approval has been granted by WaterNSW, as required by the *State Environmental Planning Policy (Sydney Catchment Drinking Water) 2011* with the proposal achieving a neutral or beneficial effect. Therefore with appropriate conditions of consent it is considered that the development will have minimal impact on water.

Due to the recommendation for refusal, no condition is proposed.

**Air and Microclimate:** There will be no significant impact on air or microclimate. However, a condition of consent can be imposed requiring that dust suppression be used during construction works to minimise impacts on the surrounding area.

Due to the recommendation for refusal, no condition is proposed.

**Waste:** Waste during construction will be to a licenced facility as per conditions of consent if approved. Given the development is for residential use, once an Occupation certificate has been provided a garbage service will be available for domestic use.

Due to the recommendation for refusal, no condition is proposed.

**Natural Hazards:** The land is not known to be affected by bushfire or flood.

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

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

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

The development is deemed to be not suitable for the site due to impacts of over development of the land, privacy and overlooking to adjoining residential properties, irregular shaped allotments which result in unusable private open space and solar access concerns to private open space areas of each dwelling.

Due to insufficient information submitted throughout the assessment process, Council officers have not been able to adequately assess the suitability of the development for the site.

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

The proposal was sent to Subsidence Advisory NSW, Endeavour Energy, Water NSW, Council's Building Officer, Water & Wastewater Officer and Engineers for commenting. The proposal was also sent to surrounding landowners and placed on public display in Council's Administration Building for a period of 14 days with no submissions received.

Due to the recommendation for refusal, no conditions have been included in this assessment report.

#### 5.3.9 The public interest

The proposed development is not considered to be in the public interest with regard to the inadequate consideration of planning issues that have been raised as part of the assessment of the application; the potential resultant impacts; and the fact that not all impacts have been able to be assessed given that requested information has not been forthcoming.

## **6. DISCUSSION AND CONCLUSIONS**

Council has requested the applicant to submit the following additional information:

### **1. Lot size and over development**

Council has concerns that the proposed development is an over development of the site, considering the difficult site constraints that affect the land. The subject site is heavily

constrained over three sides by water and sewer easements and steep topography. These constraints limit the usable land area for each proposed dwelling. The steep topography of the land and the proximity to adjoining land owner's also present privacy and solar access concerns.

Each dwelling provides for an irregular shaped and unusable configuration of private open space area.

The information submitted 20 February 2019 does not provide any reduction in the built form of any of the dwellings. The amended landscaping, while providing privacy to adjoining land owners, will reduce the amount of solar access available to the private open space areas of each dwelling.

With a reduction in dwellings and allotments, more appropriate and usable private open space areas could be achieved with good solar access while also providing for suitable landscaping for privacy to adjoining properties.

Council requested that consideration be given to the reduction of the built form and the number of proposed lots to a maximum of 2 residential lots and dwellings to address the above concerns.

## **2. Landscape Plan**

Consultation has occurred with Council's Water and Wastewater Officer who has reviewed the Landscaping Plan. While Council's Water and Waste Officer finds the proposed trees acceptable except for two proposed trees covering existing manholes, concern is raised together with the above matters of overdevelopment of the site. The large pine trees at maturity will provide privacy screening to neighbouring property to the north, however solar access to the open space areas of each dwelling will be compromised.

## **3. Retention of land along the north and north-eastern boundary (rear boundary)**

Further information was sought to detail how the land will be retained in this section of the site, noting the steep topography and Council's policy with regard to no built structures being permissible within the sewer and drainage easements. The applicant has not provided any sectional details or proposed methods of land retention in these areas of the site. Concern is raised with the proximity of the proposed dwellings to the boundary of the easements. There is the high possibility that the proposed dwelling structures and future retaining walls will impact the zone of influence of the sewer and drainage pipes contained within the easement. Particular reference is given to the alfresco area of Dwelling 2 and the rear of Dwelling 4.

Over the past 5 months Council has written to the applicant on a number of occasions as well as undertaking two meetings with the applicant seeking to address these issues in detail. The applicant has not been forthcoming to provide Council with this additional detail but has requested the application be determined. Therefore, no further assessment can be undertaken. Council believes that the information submitted has not been satisfactory to adequately address Council's concerns.

As the above information has not been adequately provided, the applicant has not been able to demonstrate the development would not have an adverse impact on the environment; this includes both the natural and built environments in the locality. The applicant has also not been able to demonstrate compliance with the *Environmental Planning and Assessment Act 1979 Section 4.15 Evaluation* as well as *The Building Code of Australia* and *Lithgow Council's Local Environmental Plan 2014*; therefore it is recommended that the development be refused.

## 7. ATTACHMENTS

Nil.

## 8. RECOMMENDATION

**THAT** development application DA 020/19 is **REFUSED** for the following reasons:

1. Insufficient details were submitted for Council to formally assess the development under the *Environmental Planning and Assessment Act 1979, Section 4.15 Evaluation*, which states:

***(1) Matters for consideration—general***

- (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,*
- (e) the public interest*

In this circumstance Council was unable to determine the environmental and construction impacts of the proposed development, has deemed the development not suitable for the site due to impacts of over development of the land, privacy and overlooking to adjoining residential properties, irregular shaped allotments which result in unusable private open space and solar access concerns to private open space areas of each dwelling.

Report prepared by:

Supervisor:

Signed:.....

Signed:.....

Dated:.....

Dated:.....