

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

1. PROPOSAL

Council is in receipt of a Development Application (DA020/19) for a subdivision of 1 lot into 4 lots with 4 new dwellings, one on each newly created lot, 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. Each lot varies in size, all with a similar size of approximately 350m² (range from 354.649m² to 362.170m²).

The subject site is an irregular shaped residential allotment (1,429.14m²) located at the end of Cura Close, Lithgow, being a small cul-de-sac. The property is vacant of any building structures and previously had two large trees remaining on the site (very recently removed).

The property is located approximately 650m to the south-east of the Lithgow Main Street. The allotment is surrounded by a number of 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 and some medium density in the locality.

The subject site is a relatively flat site with some very steep land towards the rear with slopes in excess of 25% and in some sections up to 30% slope (18 degrees). There are also various easements '4m wide and variable' along 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: The subject site viewed from Cura Close, facing north.

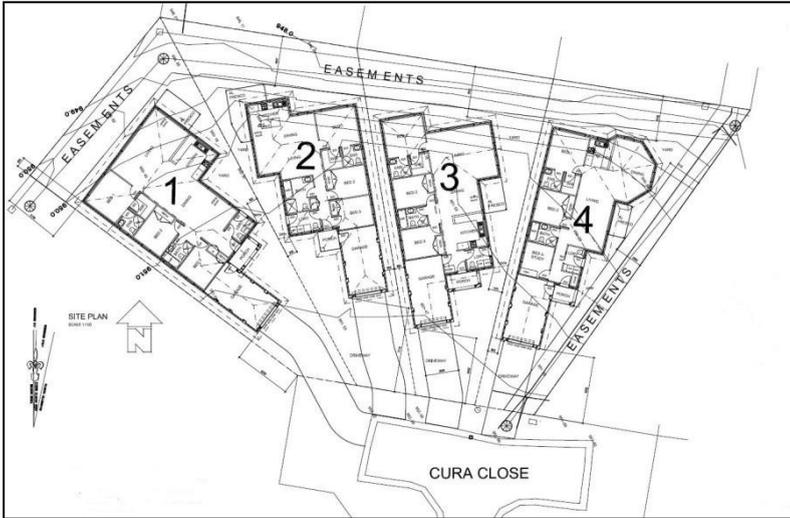


Figure 2: Site Plan and Lot Configuration

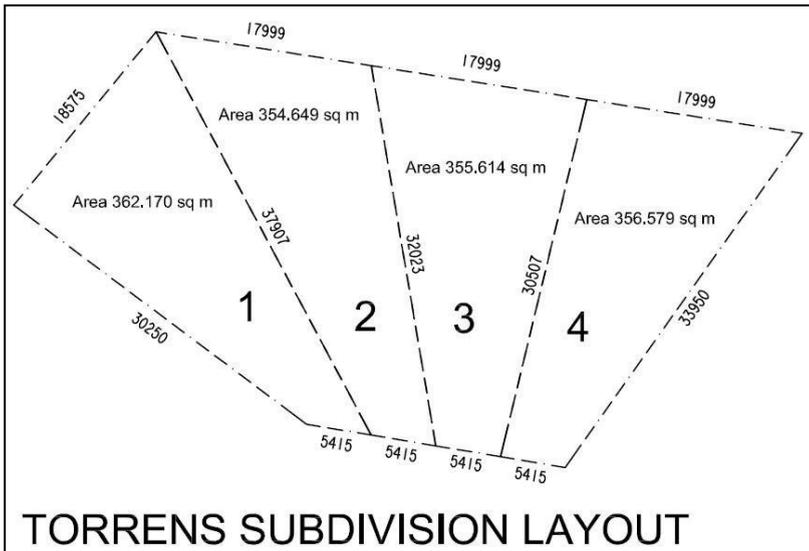


Figure 3: Subdivision Layout Plan

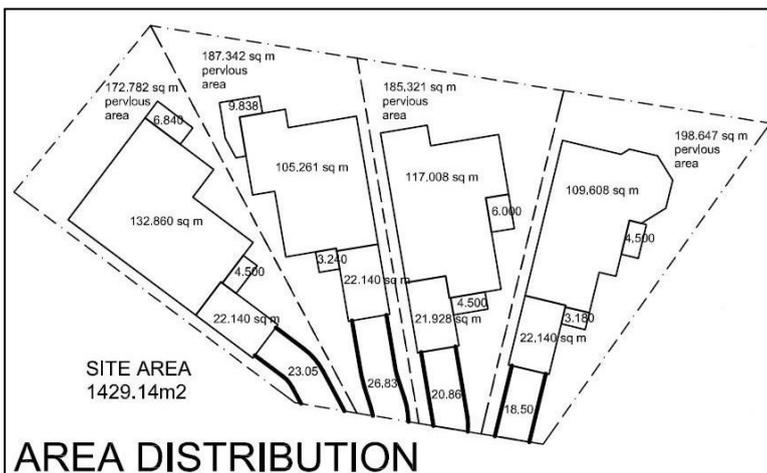


Figure 4: Site Area and Distribution of Buildings

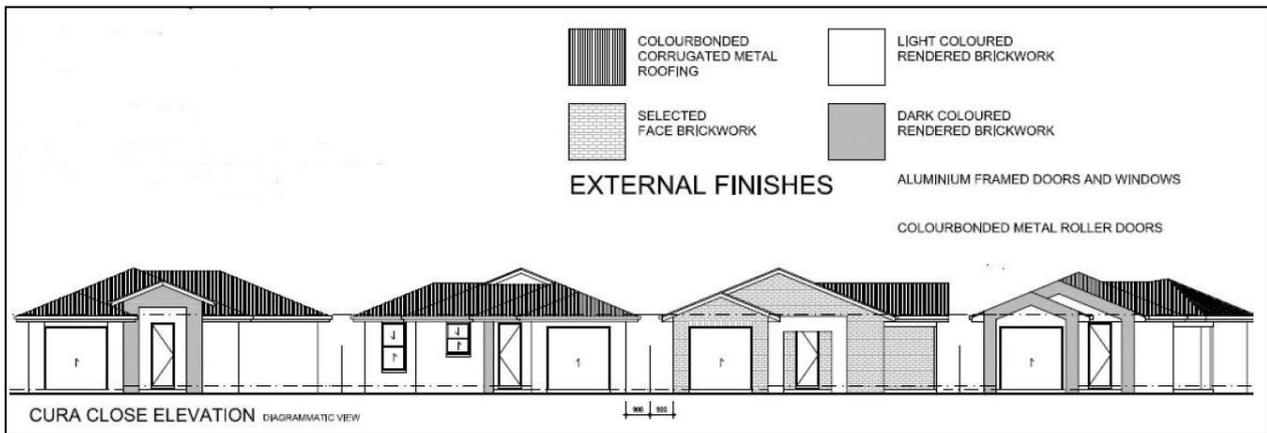


Figure 5: Elevation of Proposal from Cura Close

It should be noted that the front elevation above is not representative of the presentation of the proposed four dwellings to the street. A 3D view is included later in this report.

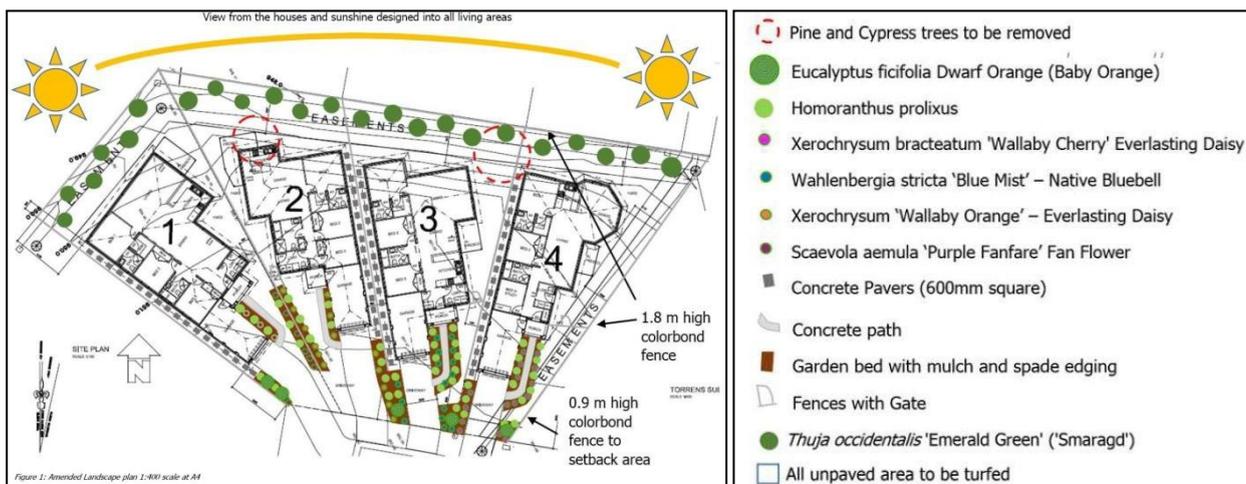


Figure 6: Proposed Landscape Plan

2. SUMMARY

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

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 under *Lithgow Local Environmental Plan (LEP) 2014*.

The subject site is shown below.

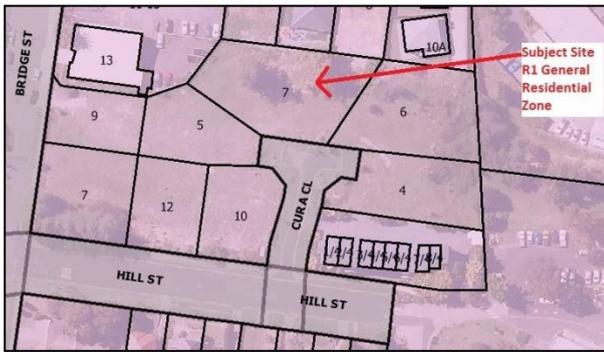


Figure 7: Zoning under Lithgow LEP 2014

5. PERMISSIBILITY: The development being for 4 Torrens title lots 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 below.

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.*

The Minimum Lot Size map is shown below:

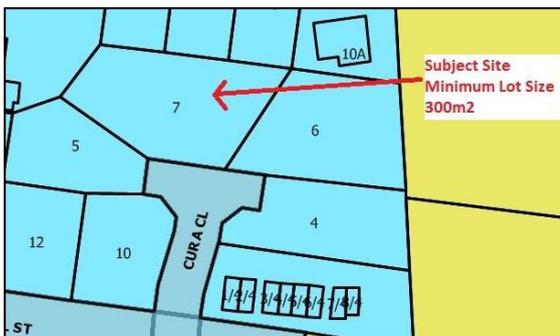


Figure 8: Minimum Lot Size Map under Lithgow LEP 2014

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 300m² as per the Lot Size Map under LEP 2014. Each lot varies in size, all with similar size of approximately 350m² (range from 354.649m² to 362.170m²).

5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

Policy 5.1 Building Over Easements

The subject site contains easements 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.

In response to Council's resolution the applicant has provided an Engineer's report that proposes a different solution for retaining the land along the boundaries of the site. The proposal is to now eliminate the need for any retaining walls by battering the land to a slope of 1 in 4 (25%). The proposal to batter the steeply sloping areas is a significant change from the originally submitted development application.

The proposal is to pier the foundations of the proposed individual dwellings down to below the 'zone of influence' which satisfies this Policy.

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 revised plans submitted 21 August 2019, will require excavation that exceeds 900mm.

Policy 7.2 Subdivision – Release of Subdivision Plans

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

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. As mentioned, amended drawings have been submitted. It is considered that the application need not be re-notified given no submissions have been previously received and the applicant is pressing for determination.

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 would apply if the development were approved.

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

Section 94A (Section 7.12) Development Contributions 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 was previously contaminated, with the previous use being a 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 upon 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."

Irrespective of the restrictions imposed by the covenant clause 1.9A of Lithgow Local Environmental Plan 2014 states:

Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*

In any event 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 integrated under this Act (via Section 91 of the EP & A Act 1979). Accordingly the approval of the Subsidence Advisory NSW (SA NSW) is required prior to Council being in a position to determine the application. Approval from SA NSW has been obtained and therefore it is considered that the proposal will comply with the provisions of this Act.

Telecommunications Act 1997

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
Land Use table	R1 General Residential	Yes
4.1A	Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Yes
7.1	Earthworks	Yes
7.3	Stormwater management	Yes

Comment: The proposed subdivision of land and construction of 4 new dwellings is 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.*

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

SEPP (Building Sustainability Index: BASIX) 2004	
Clause	Compliance

6	Buildings to which Policy applies	Yes
7	Relationship with other environmental planning instruments	Yes
8	Other environmental planning instruments do not apply to BASIX commitments	Yes

Comment: The proposal provides for a BASIX Certificate 994013M dated 7 February 2019, which demonstrates that BASIX requirements have been met.

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. Any previously applicable DCP's that have been repealed can only be used as a guide only to assist in assessment of the application with no determinative weight given to a former DCP in this assessment. To assess carparking requirements, Council's previous Off Street Car parking DCP was referenced though there were no requirements for single dwellings. Therefore, the RTA's Guide to Traffic Generating Developments is the most appropriate measure to assess car parking.

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.

Planning Comment: The proposed development provides for one car space per dwelling with visitor parking stacked on the driveways. This is considered to be a minimum requirement under the RTA Guidelines and thus complies.

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

Nil applicable.

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

There are no other prescribed matters relevant to this application that are called up in Part 6, Division 8 of the Environmental Planning and Assessment Regulation 2000.

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

Lot Size and Overdevelopment of the Site:

An assessment of this application leads to the conclusion that the proposed development is an overdevelopment of the site, taking into consideration the site constraints. Dwellings on smaller lots that satisfy the minimum lot size are not in themselves prohibitive. However, the subject site is irregularly shaped with a narrow street frontage for four dwellings and is constrained on three sides by water and sewer easements of 2.5m to 4m wide and very steep topography at the rear. Whilst retaining walls are now not proposed this still necessitates retaining structures of some form (if wishing to build in steep locations) and involves satisfying Council's Policy 5.1 Building Over Easements. These constraints limit the usable land area for each proposed dwelling requiring the provision of either a site responsive design and/or lots that are somewhat larger than the minimum stipulated in Council's LEP. The steep topography of the land at the rear of the site and the proximity to adjoining residences will cause privacy loss.

Each dwelling provides for an irregular shaped and unusable configuration of private open space areas; due to slope, very narrow shape & aspect. The information submitted to date does not provide any reduction in the built form of any of the dwellings.

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



Figure 9: View from northern boundary of subject site to rear of No.4 Short Street



Figure 10: Steep topography of subject site along northern rear boundary to adjoining neighbours in Short Street

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. A change in built form could reduce the

impact of such privacy loss.

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 there will still be loss of privacy and overlooking from the dwellings into the adjoining residential backyard areas (Short Street neighbours).

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.

AMCORD is the Australian Model Code for Residential Development that can be used as a resource document to assist in development assessment. The provisions therein should not be seen as mandatory or determinative but they provide a valuable benchmark in considering what is good design and what achieves good planning outcomes. In comparison to open space requirements set out in AMCORD, (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 25m² 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 70-72m² per dwelling. While each lot provides a pervious area of between 172m² and 198m², 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 provisions. Specifically each dwelling could provide the following:

Dwelling 1 – Provides an alfresco (covered deck) area of 3.8m x 1.8m and a triangular yard area of 3m x 5m = 15m².

Dwelling 2 – provides a wrap around alfresco (covered deck) area of 3.5m x 1.5m + 1.5m 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=15m²)

Dwelling 4 – provides an alfresco (covered area) 3m x 1.5m and yard area of 3m x 5m =15m² plus other piecemeal areas of yard along the eastern side boundary.

When compared to AMCORD, 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 irregular in size and configuration with a 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 will contribute to poor built form, poor private open space and poor privacy of the proposed dwellings. The proposal does not provide for an adequate lot configuration, size or width.

In comparison to subdivision requirements set out in AMCORD (once again used as a resource guide to assist in assessment) (Element 5.2 Lot Layout, page 153) provide for Lots with an area of between 300m² – 450m², capable of containing a rectangle measuring 9m by 15m. The proposal does not meet this provision 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 as well as poor presentation to the streetscape.

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

Landscaping and Privacy: Whilst it is acknowledged that no private objections have been lodged, 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. The applicant has sought to address this issue through the provision of landscaping within the easement area. The applicant proposes 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 Wastwater 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, it is unlikely that the density of landscaping can be achieved to resolve the concerns. It appears likely that there will still be privacy loss and overlooking from the dwellings into the adjoining residential backyard areas.

The applicant has provided some sectional details and a photo montage of the landscape treatment.

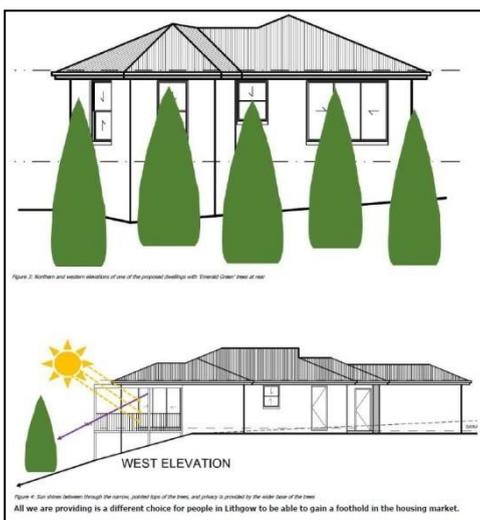


Figure 11: Photo montage provided by applicant

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 will diminish the attractiveness of the streetscape.

The garages are positioned well in front of the proposed dwellings and will dominate views of the dwellings from the street. This in turn will reduce the opportunity for surveillance of the street from dwellings with restriction of views of the buildings from the street. The applicant supplied a three dimensional view as below. The compressed view from the street supports the view that the single dwellings represent an over development. In response to discussions the applicant did include some additional landscaping detail and design elements. However, this has not been able to resolve the impact that is inherent in the overdevelopment.



This design concept fails to address AMCORD provisions (see Element 5.3 Street Setbacks – Carports and Garages, page 158-159) (once again used as a guide 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 surrounding area is generally low density with some scattered medium density. Refer to Figure 12 below, showing single dwellings located to the south of the subject site.

The constraints of the site have been overlooked; these being slope, easements and irregular lot shape. The proposed 4 lots result in very narrow frontages and irregular shaped lots creating difficulties in design of the dwellings. The slope combined with easements hampers the full development potential in this proposed format. Various redesign options would result in the same density and these have been suggested to the applicant and owner.



Figure 12: 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 could 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 access would 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 would 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.

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.

Natural Hazards: The land is not affected by bushfire or flood.

5.3.7 The Suitability of the site for the development

Following comprehensive assessment the development is deemed be unsuitable 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.

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 considered not to be in the public interest with regard to the inadequate consideration of planning issues by the applicant 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 resolved.

6. DISCUSSION AND CONCLUSIONS

Over the past 9 months Council has written to the applicant on a number of occasions as well as undertaken three meetings with the applicant seeking to address these issues in detail. Council officers believe that the additional information and proposal as submitted is not satisfactory to address these fundamental town planning concerns.

The applicant has failed to demonstrate the development would not have an adverse impact on the built environment, therefore it is recommended that the proposal be refused.

7. ATTACHMENTS

Nil.

8. RECOMMENDATION

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

1. The Development Application DA020/19 be **REFUSED** under the Environmental Planning and Assessment Act 1979, Section 4.15 Evaluation due to impacts of over development of the land, privacy and overlooking to adjoining residential properties, bulk and visual impact on adjoining properties, irregular shaped allotments which result in an unattractive and undesirable streetscape, unusable private open space and solar access concerns to private open space areas of each dwelling.

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*

Report prepared by: Paul Cashel

Supervisor: Jim Nichols

Signed:.....

Signed:.....

Dated:.....

Dated:.....