Annexure Background.

Development Assessment Report

DA05-2024 Pan 491212

This application has been referred to the Western District Planning Panel for assessment and decision.

The referral has been made because Council wishes to refuse the application on the grounds identified within the Assessment Report.

Such a refusal (or imposition of conditions without the consent of the applicant) on a Crown owned application cannot be dealt with by Council and must be referred to the Western District Planning Panel.

On the surface, this application was originally processed on the assumption that the matter would most likely be approved based on the Council’s LEP and DCP, but it quickly became obvious that the Councillors themselves and others from within the Community considered the demolition of one house to be replaced with two new houses was far from an ideal outcome for both the community and the funding authorities that fund the Aboriginal Housing Office.

Had this application been on one of several available vacant lots, the construction of two new dwellings would have been greatly appreciated by the Community and Council.

The fact that one functional house was to be demolished, and two new ones created would mean only two dwellings are created. Council is firmly of the opinion that there are alternatives available that would result in three dwellings instead of only two.

Council is effectively arguing that decisions made in Sydney about housing in Brewarrina is not a satisfactory situation, especially when there is a need for as many houses as possible in the Community.

Council will endeavour to expand on these observations with a little more research but as it is not a decision that Council can make and will need to argue its case to the Panel.

In the preliminary hearing, it was indicated that I needed to address the assessment requirements under the Act being mainly S4.15 – (Evaluation).

On behalf of Council’s position, I note the following items under this section that provides a justifiable consideration of the reason why Council elected to resolve not to approve the Development.

[*Environmental Planning and Assessment Act 1979*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1979-203).

S4.15

(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, and

(e)  the public interest.

In Council’s view, the social impact of the development, while substantially positive,

does not exclude Council from considering the negative impact of removing a

substantial dwelling that would potentially provide a better social outcome, for

the Aboriginal community overall, and specifically for some individuals.

It may well have been short on Aboriginal Housing Office standards but it could well have

been a short term solution to another existing overcrowded situation in a different house.

High Aboriginal Housing Standards are sensible and desirable but right now, Brewarrina and most

other locations are in a housing Crisis and for the fraction of the cost of a new house, shelter and

independence for another family in the short term.

Council’s view is further supported by the following legislative imperatives, being:

1. SEPP (Sustainable Buildings) Housing 2022, which Council believes should consideration for

State Government bodies such as Aboriginal Housing.

Specifically, Cl 47 (**Reduction of available or affordable Housing)** of the policy

* (2)  In determining whether to grant development consent, the consent authority must take into account the *Guidelines for the Retention of Existing Affordable Rental Housing*, published by the Department in October 2009 and the following—
* (a)  whether the development will reduce the amount of affordable housing in the area,
* (b)  whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,
* (c)  whether the development is likely to result in adverse social and economic effects on the general community,
* (d)  whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,
* (e)  the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,

Further, when we look at the Act itself

**4.15**   **Evaluation**

1. **Matters for consideration—general**

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

(a)  the provisions of—

(i)  any environmental planning instrument, and

(ii)  any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii)  any development control plan, and

(iiia)  any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv)  the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v)    (Repealed)

that apply to the land to which the development application relates,

(b)  the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c)  the suitability of the site for the development,

(d)  any submissions made in accordance with this Act or the regulations,

(e)  the public interest.

(d) and (e) immediately above does, in my opinion allow Council to consider the issue of loss of;

Existing Affordable Housing. Further,

(d) allows Council to consider the Objectives of the Act Clause 1.3

* (a) To promote the social and economic welfare of the community.
* (b)To facilitate ecological sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning **and assessment**
* (d) to promote and delivery and maintenance of affordable housing
* (i) to promote the sharing of responsibility for environmental planning and assessment between the different levels of government in the State
* (j) to provide increased opportunity for community participation in Environmental planning and assessment.

**Summary**

Council has applied both the general and many specifics considerations above to the decision it made to refuse the application.

The situation now appears to be that the Planning Panel will now approve the Development Application and issue a consent (or direct Council that it approve the application subject to proposed Conditions approved by the panel?)

The conditions Council would request on the Development Consent are:

1. The mandatory conditions required under consents issued via the E-Portal.
2. The following attached conditions in relation to Councils normal requirements.

Council now faces the need to address the partial but substantial demolition already carried out, in the sense that:

* There was no consent issued for the demolition,
* On a site check on the 30th May 2025 the site was unsecure,
* There were timber parts that had protruding nails laying around.
* We do not know if the demolition was carried out by a licensed operator.
* We do not know where the Asbestos was disposed of and no consent was issued to use the Brewarrina tip site.

## **General Conditions**

|  | **Condition** |
| --- | --- |
| **Condition Number 1.** AHO: Accepted | **Condition Name: Water and sewerage connections.** |
| You must lodge a S68 (Local Government Act) application for sewerage connection, treated water supply, untreated Water supply, Kerb crossing and storm water discharge if to street.  You may also have to pay standard fees for some of these connections if there is not already a connection to the property boundary.  You are required to either use the existing sewer connection for one or both of the new connections, or seal the existing effluent connection to the satisfaction of Council.  All connections and supply line (other than Raw Water supply) are to be made by a qualified Plumber/Drain layer, or Council’s technical service Staff. |
| ***Condition Reason:*** Maximise treated water supplies and sewerage connections cost recovery for Council, for works carried out to facilitate the development and control of Public Health issues associated with this activity. |
| **Condition Number 2.** AHO: Accepted | **Condition Name Changes to proposal** |
| The development, the subject of this consent, to be carried out in accordance with the submitted and approved plans and specifications, in accordance with any conditions of this consent and in accordance with the provisions of Brewarrina Local Environmental Plan, the *Local Government Act 1993* and *Regulations* and the *Environmental Planning & Assessment Act 1979* and *Regulations*. No alteration to the approved plans is permitted during construction (unless there are compliance requirements necessary under the BCA and there is no major extension of the building footprint) unless separately approved by Council. A Copy of the approved plans is to be on-site at the time of each inspection. |
| *Condition Reason: To ensure that the development is carried out in accordance with the terms of Council’s approval.* |
| **Condition Number 3.** | **Condition Name: Commencement before consent issued** |
| No work to be commenced prior to Development Consent being issued. |
| ***Condition Reason:*** Comply with the requirements of the Environmental Planning and Assessment Act |

## **Building Work**

## **Before Issue Of A Construction Certificate**

**Before Building Work Commences**

|  | **Condition** |
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| **Condition Number 5.** AHO: Accepted | **Condition Name: Construction Certification.** |
| Council does have a Registered Building Certifier.  You must provide Council with a Construction Certificate or equivalent Government Construction Certification before work commences. |
| ***Condition Reason:*** Mandatory Legislative requirement. |
| **Condition Number 6.** AHO: Accepted | **Condition Name: Commencement of work** |
| Two days before any site work, building work or demolitions begins, the applicant must forward the “notice of commencement” form to Council; and notify adjoining owners that the work will commence. |
| ***Condition reason:*** to ensure compliance with the Environmental Planning and Assessment Act 1979. |

**During Building Work**

|  | **Condition** |  |  |
| --- | --- | --- | --- |
| **Condition Number 7.** AHO: Accepted | **Condition Name: Council Infrastructure** |  |  |
| The owner shall be responsible for repairing any damage caused to Councils infrastructure, land or assets in the vicinity of the subject site as a result of works, associated with the development |  |  |
| ***Condition reason:*** To ensure protection of Council infrastructure and community facilities. |  |  |
| **Condition Number 8.** AHO: Accepted | **Condition Name Noise** |  |  |
| Building work involving the use of electric or pneumatic tools or other noisy operations shall be carried out only between 7.00 am and 6.00 pm on weekdays and 8.00 am to midday Saturdays. No building operations shall be carried out on Sunday’s public holidays or outside the stated times, however provided there are no neighbors complaining, Council may allow some variations where circumstances warrant this. |  |  |
| ***Condition reason:*** To prevent undue noise affecting the amenities of the neighbourhood. |  |  |

|  | **Condition** |
| --- | --- |
| **Condition Number 9.** AHO: Accepted | **Condition Name Storage of materials on Public Land.** |
| The storage of materials or the placement of sheds is not permitted on footpaths, roadways, or in reserves. |
| ***Condition reason:*** to ensure public safety. |
| **Condition Number 10.** AHO: Accepted | **Condition Name** |
| Rubbish and building materials must be contained in a suitable and effective enclosure within the site to prevent windblown material from escaping |
| ***Condition reason:*** to ensure public safety |

|  | **Condition** |
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| **Condition Number 11.** AHO: Accepted | **Condition Name: Waste removal** |
| All building waste being transported for disposal must be covered and secured to prevent any material escaping during transit. |
| ***Condition reason:*** To protect the natural and built environment |
| **Condition Number 12.**  AHO: Accepted | **Condition Name Stamped Approved plans on site.** |
| The builder must at all times maintain on the work site a legible copy of the approved plans specification and conditions of consent. |
| ***Condition reason:*** to ensure that all persons having responsibility for the site are aware of the terms of approval. |
| **Condition Number 13.**  **AHO: Remove this condition** | **Condition Name: Work carried out without Development Consent.** |
| The applicant is to provide the Brewarrina Shire Council with a detailed explanation regarding the Demolition already carried out without consent and in particular:   1. Who carried out the Demolition? 2. Was the work done in accordance with the legislation pertaining to Asbestos removal? 3. Where was the Asbestos disposed of? |
| ***Condition reason:*** To protect the natural and built environment |