



# **Ordinary Meeting of Council**

**16 December 2020**

**UNDER SEPARATE COVER  
ATTACHMENTS**

**ITEMS 9.3 AND 9.5**

**QUEANBEYAN-PALERANG REGIONAL COUNCIL  
ORDINARY MEETING OF COUNCIL**

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# QUEANBEYAN-PALERANG REGIONAL COUNCIL

## Council Meeting Attachment

16 DECEMBER 2020

ITEM 9.3            MODIFIED DEVELOPMENT APPLICATION - 1-2018.A -  
ENTERTAINMENT FACILITY - CINEMA COMPLEX -  
MODIFICATION TO UPGRADE FIRE SERVICES AND  
CONSEQUENT LOSS OF CARPARKING - 30 MORISSET  
STREET, QUEANBEYAN.

ATTACHMENT 1    DA 1-2018.A - SECTION 4.55(2) ASSESSMENT REPORT

# QPRC



## SUMMARY

<b>Proposal:</b>	Entertainment Facility - Cinema Complex; Modification to add pump house, water tank, and fire truck hardstand space
<b>Address:</b>	30 Morisset Street QUEANBEYAN NSW 2620
<b>Property description:</b>	Lot 1 DP 556476
<b>Applicant:</b>	Groundscope Construction Pty Ltd.
<b>Owner:</b>	Sandran Pty Limited.
<b>Date of lodgement:</b>	03/09/2020
<b>Notification period:</b>	11/09/2020 to the 29/09/2020
<b>Submissions received:</b>	Nil.
<b>Assessment officer:</b>	Alex Glouftsis
<b>Zoning:</b>	B3 Commercial Core Zone
<b>Heritage:</b>	N/A
<b>Flood affected:</b>	N/A
<b>Bushfire prone:</b>	N/A
<b>Recommendation of officer:</b>	Approval

## EXECUTIVE SUMMARY

The proposed modification is to include the construction of a pump room, water tank, and hardstand space for fire trucks in the existing car park associated with the existing commercial premises located at 30 Morisset Street, Queanbeyan. As a result of the modification, a reduction of 11 car parking spaces (5 to accommodate the pump room and water tank and 10 for the fire truck hardstand space – with 4 reclaimed in an internal driveway) will be required.

However, 4 car parking spaces are reclaimed within an internal driveway section of the car park, which was deemed appropriate from a manoeuvrability perspective. The result of the proposed modification is an overall further reduction of 11 car parking spaces. Additional to the 17-car parking space variation which was varied and approved under DA 1-2018. Despite this, Council's Development Engineer has raised concerns with manoeuvrability for the hardstand space associated with the fire trucks. And has anticipated a further loss of an additional 5 spaces. A total reduction in parking spaces of 15. A revised car parking plan will be required through a condition on the modified consent. Contributions charges should be adjustment accordingly.

The proposal required notification under the Queanbeyan-Palerang Community Engagement and Participation Plan and was notified from the 11th of September 2020 to the 29th of September 2020. No submissions were received during the notification period.

The proposed modification is recommended for approval subject to the imposition of the recommended conditions of consent. This includes the recommendation that Section 7.11 contribution charges are applied for 11 car parking spaces. The total reduction in car parking resulting from this modification.

## BACKGROUND

DA 1-2018 – Approval for an Entertainment Facility – Cinema Complex and Licensed Bar

The site contains an existing commercial/retail premises (K-Mart Store) on the ground floor. The upper floor was previously used as office space for an NSW State Government Department and Essential Energy.

## DESCRIPTION OF THE SITE AND LOCALITY

The subject site is located at 30 Morisset Street, Queanbeyan and has a legal description of Lot 1 DP 556476.

The subject site is located within the Queanbeyan Central Business District and within the vicinity of the Riverside Plaza Shopping Centre, Woolworths Supermarket, K-Mart, and Crawford Street. The site's primary frontage faces Morisset Street, with additional frontages facing the Woolworths and K-Mart car parking area to the north. The site is currently occupied by a two-storey commercial building, which incorporates a ground floor retail component, which is currently tenanted by K-Mart. The first floor is reserved as office space and was previously tenanted by Essential Energy. Figure 2 below provides an overview of the site and adjoining properties. The site area is approximately 9,135 square metres and rectangular in shape.

The streetscape is generally characterised by a mix of uses, with predominant commercial buildings such as the adjoining Riverside Plaza and Woolworths Supermarket. The streetscape also includes residential buildings, heritage items, and a number of car parking lots that are both public and private.



*Figure 1: Subject Site*

## PROPERTY BURDENS AND CONSTRAINTS

There are no easements or burdens on the land which could affect or be affected by the proposed development.

## **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

The existing approval (DA 1-2018) for the subject site consisted of the following:

Alterations and additions to the existing commercial building located on 30 Morisset Street and a change of use of the first-floor commercial office to an Entertainment Facility. The Entertainment Facility incorporated a cinema, licensed bar, and arcade. Specifically, the proposal comprised of:

- A nine-screen cinema complex (total seating capacity of 1,315 patrons),
- Increased building height from 10m to 20.58 metres,
- A licensed bar and lounge area and associated facilities including ticket office, candy bar, kitchen, staff room, manager's office, bio box and post-mix room and;
- External business identification and advertising signage.

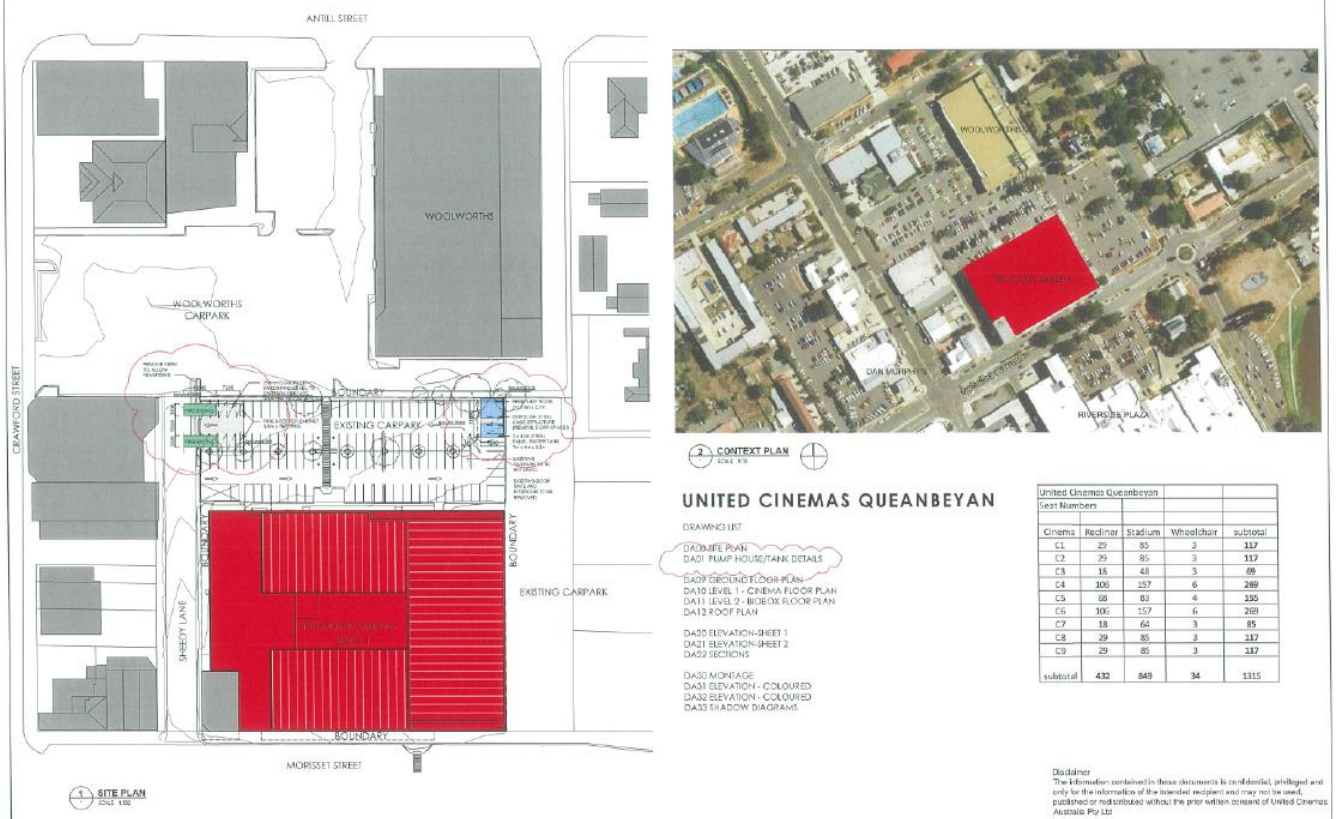
This modification (DA 1-2018.A) includes the following changes to the proposal approved under DA 1-2018:

- Reduction of 11 car parking spaces (15 anticipated with increased widths to fire truck hardstand area) to allow the installation of the following:
  - Pump House
  - Water Tank
  - Fire Truck Hardstand Space

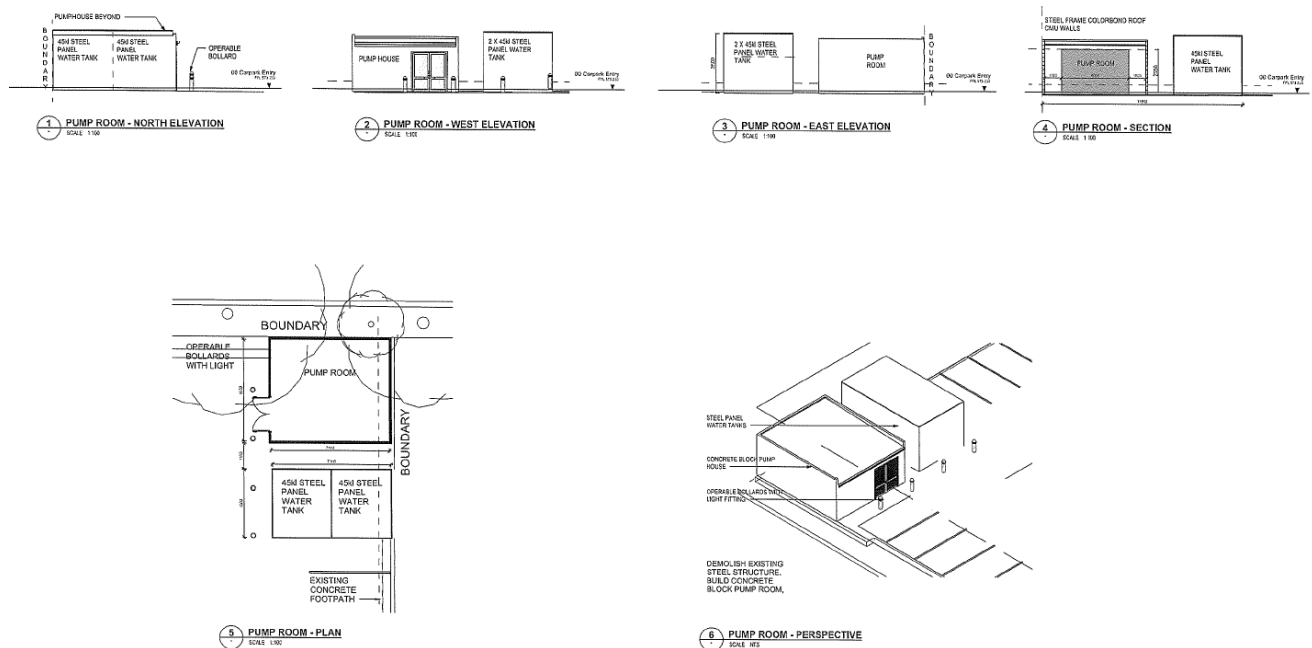
The pump house and water tank result in the loss of 5 car parking spaces. The fire truck hardstand space results in the loss of 10 car parking spaces. This results in a total loss of 15 spaces. However, 4 spaces are reclaimed within a section of the internal driveway, which was deemed appropriate for conversion. Despite this, Council's Development Engineer has stated that the manoeuvrability for the fire truck hardstand space is unlikely to comply with required turning paths. This is likely to result in a loss of 5 spaces. Bringing the total reduction of spaces to 15.



**9.3 Modified Development Application - 1-2018.A - Entertainment Facility - Cinema Complex - Modification to Upgrade Fire Services and Consequent Loss of Carparking - 30 Morisset Street, Queanbeyan.**  
**Attachment 1 - DA 1-2018.A - Section 4.55(2) Assessment Report (Continued)**



**Figure 2 - Amended Site Plan**



**Figure 3 - Pump Room Plans**

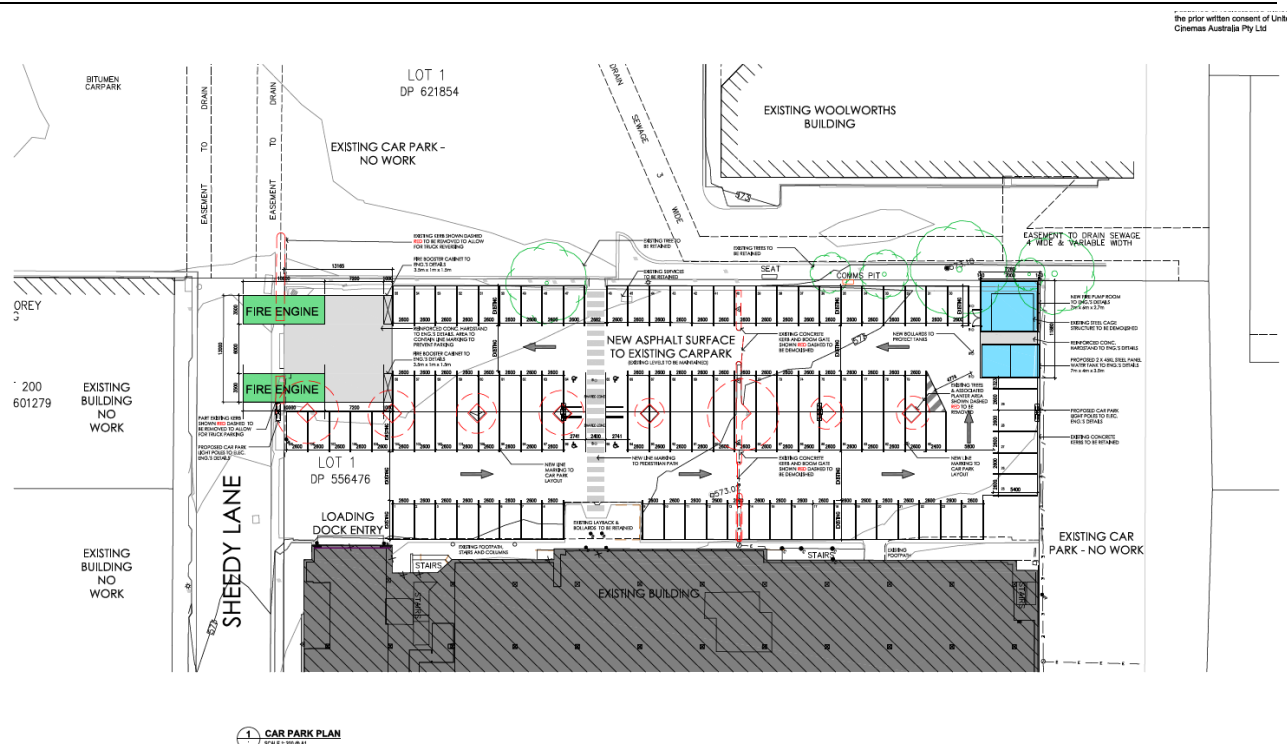


Figure 4 - Detailed Car Parking Plan

## CONSENT AUTHORITY

In accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) the proposal is considered local development and Council is the Consent Authority.

## SECTION 4.10 DESIGNATED DEVELOPMENT – EP&A Act, 1979

The proposal is not designated development.

## SECTION 4.47 INTEGRATED DEVELOPMENT – EP&A Act, 1979

The proposal is not integrated development.

## REFERRALS

### INTERNAL REFERRALS

### Development Engineering Comments

### Previous Developments Approval

The existing building at the site was built in the late 1970s and has been subject to several development application and approvals which have had parking requirements examined. The most recent application which examined parking in significant detail was for the fit out of the ground floor development of the existing building to a retail outlet (currently Kmart) DA 238-2010.

Due to the parking demand for the development exceeding the total number of parking spaces available on site, this currently active approved development concluded based on RMS parking rates for the ground floor development the difference in parking demand from the previous use to the proposed use at the time was 17 parking spaces and two spaces were being deleted, thus Section 94 Contributions for the shortfall of 19 spaces were enforced. It should be noted that the calculated parking demand at the time did not include the existing demand for the first-floor offices and condition 24 of Consent 238-2010 (K-Mart Retail Premises) required 121 parking spaces for the development.

In effect, Council has previously accounted all of the available parking at the site to ground floor development of the site, leaving no available parking spaces for further development. Subsequent to the construction of the K-mart, 50 vehicle spaces at the site have been isolated for the use of one of the first floor office occupants (Essential Energy) and 3 parking spaces have been marked for the use of DEC (NSW State Government Department).



## DCP Requirements

Table 1 in Section 2.2.6 of the Queanbeyan Development Control Plan 2012 stipulates for entertainment facilities within the CBD the generic CBD parking rate of 1 space per 60m<sup>2</sup> be applied to developments categorised as Entertainment Facilities, which the proposal falls under. The floor area of the development is scaled off plans to be 5,740m<sup>2</sup>, which would require 96 parking spaces. Whilst this rate of parking is not considered to be a real reflection of the potential parking generation of the development which comprises just over 1,300 seat cinema, Council has made a conscious decision to “discount” the parking requirements within the CBD in order to promote development within the CBD. The DCP also requires a greater rate of disabled parking spaces to the current rate for shopping outlets. 3-4% of the parking spaces available should be disabled spaces and at least one of the spaces should be next to the facility entry. Based the capacity of the car park, 4 spaces are required and should be shown on the site plan, though are indicated in an appendix of the submitted traffic report.

A Traffic and Parking Assessment for the development was undertaken by McLaren Traffic Engineering and Road Safety Consultants (MTE). The report examines the existing performance of surrounding intersections, the existing on-site parking as well as available off-site parking in the immediate surrounds to the development site and completed a parking demand study. Data for the study was collected from 29-30 September 2017, which unfortunately falls on a long weekend in the ACT, the week prior to the NSW/ACT Labour Day long weekend, during school holidays. Thus traffic volumes within the Council area would be considerably lower than usual as the local population often use this to travel to the coast for first beginning of the summer/start of warmer season – we know from road safety campaigns on Kings Highway this is beginning of the summer peak traffic volumes migrating to the coast. Also 30 Sept was the date of the AFL Grand Final and the following day the NRL Grand Final – which can see residents watching these events and/or travelling to events for these finals rather than normal shopping/parking in the Queanbeyan CBD.

## Parking Generation

The RMS guideline for traffic generating developments does not provide rates for parking demand for Cinema developments. The traffic report uses data which had been collected from a suburban cinema in Sydney in order to predict parking demand based on ticket sales. A direct correlation for ticket sales to seat capacity and consequently parking demand has been assumed for the proposed development to arrive at a requirement of 145 parking spaces, approximately a 1:7 ratio of parking spaces to seating capacity.

This demand was then further reduced taking into account dual usage patterns of patrons, assumed to be 15%, again based on data collected from the suburban Sydney Cinema and again further reduced by 5% for the reduction in patron likely to use public transport to arrive at a Parking requirement of 116 spaces.

Development Engineering do not support the application of the discount due to patronage dual usage and using public transport. There are few restaurants located in the adjacent areas to the proposed development site at present. Thus the rate adopted for dual usage seems ‘too high’ for the behaviour we currently observed Queanbeyan which typically mirrors country town attitudes where the expectation to park as close as possible to the desired destination. This is based on the nature of parking complaints and requests for changed parking that Council generally receives.

Also noting that the survey used a Sydney cinema in Warriewood where residents would have a different conditioned experience to availability/access to parking and potentially used to having to park and walk. A couple of examples of resistance to parking and walking in Queanbeyan recently are:

- Staff working at the NSW Office building on Farrer Place were encouraged to park at the Showground behind Farrer Place instead of using nearby kerbside parking in Farrer Place, Campbell Street and George Street. While the showground parking was

geographically right behind the building due to access they would need to access the parking off Cooma Street and walk down Cooma Street into Lowe Street and turn into Farrer Place (approx. 350m) – Council was resoundingly told that this was too far to park and walk.

- Staff working in Morisset House on Morisset Street were encouraged to use the ‘all day free parking’ at the Bus Interchange at Collett Street instead of the timed parking in Council car parks around Morisset House – it is a 250m walk and it was pointed out that they would be passing coffee house and shopping opportunities and health benefits of the walk – this was also resoundingly not popular in the uptake.

The application of a discount for patron using public transport is considered to be double handling as the collection of data in the first instance is effectively counting the number of patrons using public transport by comparing total ticket sales to vehicles spaces (i.e. sales to patrons arriving on public transport were not excluded from the data set). Thus, applying a 5% reduction would be to assume that a 5% increase in public transport patronage over existing. Given the data is being extrapolated from a suburban Sydney Cinema, it is considered unlikely the rates of public transport participation would increase above the base data level. Further, it should be noted that buses within Queanbeyan do not operate in the evenings on weekends in Queanbeyan and take up of public transport in the locality is generally low.

The report goes on to demonstrate the peak parking demand is expected to be experienced late in the evenings outside of normal business hours. The report presents data collected from the existing car park usage and superimposes the predicted car park demand to show that the existing car park capacity is sufficient to meet predicted demand except for after 6pm on Saturday evenings. Despite the shortfall in on-site parking during this particular time, the report shows there is sufficient off-site parking surrounding the site to meet the short fall of 12 vehicle spaces. It is noted however, the on-street parking referred to in the report is significantly overstated, and the following is noted;

- Morisset Street does not feature 1 hour parking zones on both sides – it features very limited parking within the close proximity because it features bus zones, taxi zones, pedestrian (wombat) crossing with ‘No Stopping’ and a number of driveways. This block has very limited on-street parking
- Collett Street also does not feature unrestricted kerbside parking along both sides of the street – there is a pedestrian crossing with ‘No Stopping’ signs and there is a large driveway into a bus interchange on this street that has a clear zone.
- Crawford Street also features limited parking due to pedestrian refuges, drive-ways, bus zones – there are some marked parking zones but these are limited
- New Taxi Zone has been implemented on Sheedy Lane that has reduced the parking zone

As stated previously, the collection of data for the report was undertaken during a period of low traffic volume, thus the Council Officer undertook a survey of available parking within the Kmart Car Park, excluding the areas designated for offices (64 Available Parking Spaces). The results are presented below;

Day	Time	Spaces Available	Spaces Occupied
Thursday 15 <sup>th</sup> Feb	1300	24	40
	1530	22	42
Friday 16 <sup>th</sup> Feb	0830	34	30
	1230	21	43
	1600	24	40
	1730	36	28
Saturday 17 <sup>th</sup> Feb	1200	24	30

Generally, the QPRC obtained data indicated that approximately 10-12 spaces were additionally occupied compared to the time MTE collected traffic data. This represents 20-30% increase in parking demand. It should be noted that the QPRC data excludes occupancy of area designated DEC and for Essential Energy which the MTE data includes. Given the increase existing parking usage, the parking at the site is likely to be exceeded to a greater extent than anticipated by the MTE report.

### **Traffic Impact**

MTE undertook traffic survey of the surrounding intersections from 29-30 September 2017 to establish the performance of existing intersections surrounding the site. Based on the parking generation modelling mentioned previously and again extrapolating trip generation data from the Suburban Sydney Cinema the performance of the surrounding intersection was predicted. In order to predict the intersection performances, it was assumed 60% of the generation would exit onto Crawford Street, 30% to Antill St and head north and 10% to Morisset Street via Sheedy Lane.

The basis for these assumptions is not communicated. The modelling shows no significant reduction in performance of the surrounding intersections. As previously discussed, the timing of data collection is likely to over-estimate the performance of the surrounding intersection due to lower than usual traffic congestion particularly on Friday afternoon as surrounding intersection experience peak usage around school start and finish times. A peak of traffic is experienced at the roundabout particularly between 8am-8.30 and 3.45pm-4.15pm – where traffic from Collett Street sees a consistent queue of traffic up to 20 vehicles back to Antill Street intersection and around 150 pedestrians cross at the crossing during this time. The bus interchange also encounters peak usage by buses during this time of up to 30 buses arriving and leaving via Morisset St and Collett St and using the roundabout intersection.

### **Conclusion**

Whilst some of the assumptions used and the correlation of parking requirements to ticket sales rather than seating capacity within the traffic report provided are not endorsed by the Council Officer, ultimately, the traffic report provided an in depth analysis of the site and attempted to predict the impact of the proposed development reasonably well, though unfortunate the timing of data collection occurred at time which is seasonally known for many locals to leave town for the holidays. The Council Officer does not agree that parking and ticket data from a suburban Sydney Cinema is akin to that of the proposed Cinema in a Regional area. Further the application of a 20% discount to the parking generation data owing to dual usage patterns and the use of public transport is considered to be double handling as the collection of data in the first place takes into account the use of public transport, in particular given the data is being extrapolated from cinema in a metropolitan area. Notwithstanding this the traffic report arrives at a parking demand, whilst considered to be less than the actual or real parking demand, is greater than the parking requirement recommended within the Queanbeyan DCP of 96 parking spaces.

As discussed previously, the full complement of parking spaces available at the site have previously been assessed and “allocated” to the Kmart development at the site, thus the capacity of the car park has been exceeded based on the existing use of the ground floor of the building on the site. Whilst the MTE traffic report demonstrates there are a number of off-street parking spaces available in close proximity to the site, it did not include the Collet Street Car Park, which is located on the adjacent block to the development. However, the reality is that patrons to the proposed development are likely to impose on adjacent private parking lots of Woolworths and Riverside Plaza prior to utilising street frontages or the Collet Street Car Park as there is a perception in the community the Collet Street Car Park is prone to theft/vandalism and these car parks are simply in closer proximity to the development than the available public parking areas. Given this imposition and whilst the development is considered a favourable development for the township, it none the less represents a severe over-development of the site given it has no additional parking availability to draw upon. For example, the adjacent Woolworths site has a lesser Gross Floor Area, though provides a significantly greater amount of car parking. The same could be demonstrated for the nearby Aldi.

The MTE report found the development to be short of on-site parking by 12 spaces through its analysis of existing usage of the parking superimposed with the predicted generation by the development. Based on Council's own survey, during "normal" periods of operation the availability of parking is likely to be reduced by 20-30%, say 25%. Increasing the shortfall to 15 spaces. Council rejects the application of a 5% public transport reduction and considers the dual usage factor adopted to be generous for the locality and should be reduced to no more than 10%. Thus increasing the total shortfall to 17 parking spaces. Therefore, if the development were to be approved it is recommended that Section 94 (7.11) Contributions for 17 parking spaces are collected in recognition of the parking demand which will be imposed on the surrounding areas.

### Development Engineering Comments Regarding the Modification (Traffic and Parking)

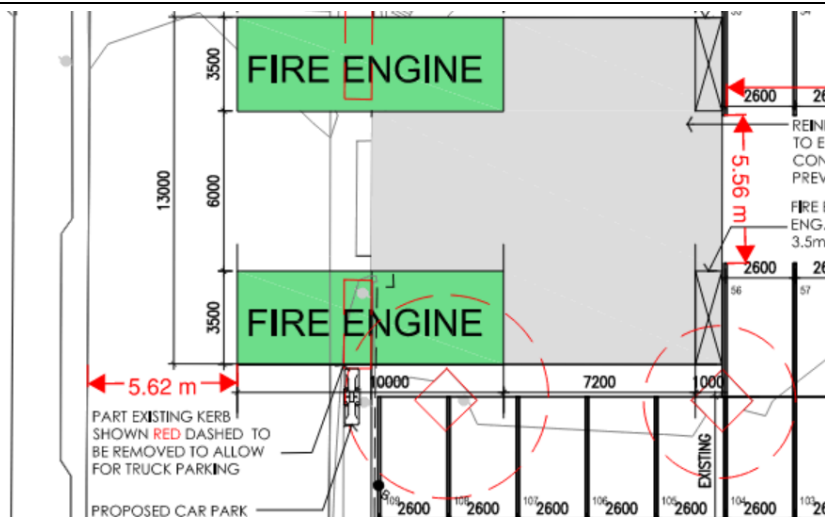
Comments from the original development application assessment are included above. Assessment of the initial application came to the conclusion that the site was short 17 parking spaces generally based on the consultants correlation for cinema usage and temporal study, which was multiplied to account for data collection on a long weekend and assumptions not agreed with relating to public transport usage. The contributions for this short fall in parking spaces was waived by Council (14 March 2018, Planning & Strategy Meeting).

The submitted car park plan indicates the car park fall 8 spaces short of the conditioned 117 spaces of the original development consent. With reference to Table 1.1, the spaces have indicate to be 2.6m consistent with requirement of User Class 3, rather than wider rather than 2.7m wide spaces consistent with user Class 3A which are used for short term high turnover parking in shopping centres. To increase the width of the spaces, one space will be lost from each row of spaces (4 in total).

TABLE 1.1  
CLASSIFICATION OF OFF-STREET CAR PARKING FACILITIES

User class	Required door opening	Required aisle width	Examples of uses (Note 1)
1	Front door, first stop	Minimum for single manoeuvre entry and exit	Employee and commuter parking (generally, all-day parking)
1A	Front door, first stop	Three-point turn entry and exit into 90° parking spaces only, otherwise as for User Class 1	Residential, domestic and employee parking
2	Full opening, all doors	Minimum for single manoeuvre entry and exit	Long-term city and town centre parking, sports facilities, entertainment centres, hotels, motels, airport visitors (generally medium-term parking)
3	Full opening, all doors	Minimum for single manoeuvre entry and exit	Short-term city and town centre parking, parking stations, hospital and medical centres
3A	Full opening, all doors	Additional allowance above minimum single manoeuvre width to facilitate entry and exit	Short term, high turnover parking at shopping centres
4	Size requirements are specified in AS/NZS 2890.6 (Note 2)		Parking for people with disabilities

Further, the fire engine bays only have an apron width of approx. 5.5m which is insufficient for the fire engines to turn into the bays. Swept paths from the Fire Safety Guideline – Access for Fire Brigade Vehicles and firefighters indicates a turn radius of at least 6.5m, thus an apron width to of at least approx. 9m would be required. This will result in a further loss of 4 spaces to shift the fire engine spaces & hardstand area.



Therefore, the total additional loss of parking spaces beyond approved is 15 spaces. Payment for car park contributions for the loss of spaces should be pursued.

## SECTION 4.55 MODIFICATIONS – GENERALLY EP&A ACT, 1979

#### 4.55(2) Modifications Involving Minimal Environmental Impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1), and (2) do not apply to such a modification.”

**Comment:**

Regarding subclause 'a', it is considered that the modification(s) sought as part of this application are of a minimal environmental impact. Despite the reduction in car parking by 11 spaces (16 with increased widths required as a condition of consent for fire truck parking), it is not considered that this will cause a substantial environmental impact on the site and surrounding uses. Surrounding public parking is underutilised and available for use by cinema patrons. Additionally, the traffic impact assessment has identified that adjoining uses are inconsistent with the peak hours of the use associated with this development.

Regarding subclause 'b', Council is satisfied that the development to which the consent as modified relates is substantially the same development for which consent was originally granted. In answering this threshold question, a comparative analysis of the approved development as modified has been undertaken. In this instance there is no material change to the building or any difference in land use from what was approved under DA 1-2018. The modification simply allows sufficient facilities for firefighting purposes associated with the previously approved development.

Regarding subclause 'c' and 'd', the application was required to be notified in accordance with the QPRC Community Engagement and Participation Plan. No submissions were received during the notification period.

#### **SECTION 4.15 CONSIDERATIONS – EP&A Act, 1979**

In determining a development application, the consent authority is to take into consideration the following matters of consideration contained within section 4.15 of the Environmental Planning and Assessment Act, 1979 as relevant to the development application:

##### **4.15(1)(a) the provisions of:**

###### **(i) any environmental planning instrument**

###### **4.15(1)(a)(ii) any draft environmental planning instruments**

There are no applicable draft planning instruments that are or have been placed on public exhibition, to consider as part of this assessment.

###### **4.15(1)(a)(iii) any development control plan**

#### **Queanbeyan Development Control Plan 2012**

The proposed development only presents a change to car parking. As a result, this assessment only considers Part 2, Section 2.2 – Car Parking of the Queanbeyan Development Control Plan 2012. No further reassessment of planning controls under any relevant DCP has been considered. An excerpt/summary of the discussion pursuant DA 1-2018 regarding car parking requirements is provided below:

#### **Car Parking Variation – Excerpt from DA 1-2018**

The proposal seeks to vary the number of car parking spaces required for the development under the Queanbeyan Development Control Plan 2012 (QDCP 2012).

The relevant controls for variations and compliance to car parking under Part 2.2.4 of the QDCP 2012 are:

a) Onsite parking will be required in accordance with the standards of this plan except where good cause can be shown as to why strict compliance is unnecessary.

b) Compliance with the provisions of this plan will not necessarily constitute sufficient reason for consenting to a development application. Each application must be treated on its individual merits in relation to the general principles and the Heads of Consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The main objective of Part 2.2.4 'Variations and Compliance' of the QDCP 2012 is, 'to provide alternative options for the provision of car parking where the general standards cannot be met on the site'. In this instance provision of additional car parking for the development in accordance with the DCP would result in substantial additional costs to the developer, as the site is constrained and would only be able to provide additional parking underground or above the building. Provision of additional car parking for the cinema will detract from the amenity of the area and inhibit opportunities to increase density within the Queanbeyan Central Business District.

Additionally, there is underutilised public parking spaces within 300-500m of the site acknowledging that adjacent private car parks are likely to be utilised in the first instance without permission (Figure 3).



The car parking generation rates for a Cinema are not specified under Part 2 of the QDCP 2012. The closest specified use is an Entertainment Facility which requires 1 space per 60m<sup>2</sup> of gross floor area (GFA). Based on the proposed GFA of 5833m<sup>2</sup> an Entertainment Facility would require the equivalent of an additional 96 car parking spaces under the QDCP 2012.

It is considered that this parking requirement is unreasonable in this circumstance and an assessment of car parking should therefore be based on merit. In this regard the applicant was requested to prepare a Traffic and Parking Impact Assessment that specifically addressed the parking impacts for this development in its proposed location. This fits within part 2.2.4 d) of the QDCP 2012 which states that 'requests for variation' must be supported by information and data to substantiate that an alternative standard is appropriate.

A Traffic and Parking Impact Assessment was prepared by McLaren Traffic Engineering and Road Safety Consultants on behalf of the proponent requesting a variation to the car parking control. In summary the Traffic and Parking Impact Assessment incorporates a peak parking demand occurring on Saturdays when it is calculated that a shortfall of 12 car parking spaces will occur in the existing carpark. This number includes a discount for trips incorporating alternative transport modes and dual usage patterns (patrons incorporating different activities in the same trip).

The study concludes that the existing car park does not provide sufficient on-site parking for the peak demand. However, it recommends that there is sufficient available parking within the surrounding public car parks and on-street parking to satisfy the shortfall.

Council does not agree that the shortfall can be met by on-street parking. A detailed analysis of car parking requirements is provided in the Development Engineering Comments below. It concludes that, not only should the idea of accommodating the shortfall using on-street parking not be supported but that a more reasonable calculation of the parking shortfall is 17 spaces rather than 12.

The results of the Traffic and Parking Impact Assessment and the associated demand study, as well as the assessment undertaken under Section 4.15 of the Act concludes that there is a shortfall of 17 spaces at peak periods of operation of the cinema.

The variation to the car parking requirement for the proposed development is supported despite the shortfall of car parking. In this instance the developer can be charged Section 94 (now 7.11) Contributions in lieu of the shortfall of car parking. This is documented and supported within the Development Engineer's comments.

### **Assessment of Changes Under the Proposed Modification**

The proposed modification includes a further reduction in car parking provided for the development site. The original approval varied the car parking rate by a total of 17 spaces with a further 15 spaces lost due to this modification. This represents a total variation of 32 car parking spaces. However, 4 additional spaces are reclaimed within an internal portion of the car park previously used for traffic to traverse through the middle car park. Despite this, Council's Development Engineer has also flagged that the fire truck hard stand area is insufficient for relevant turning circles and will be required to be extended by virtue of an amended car parking plan to be provided pursuant a condition of consent. Measured minimum widths anticipate a loss of 5 additional spaces. This re-calculates the loss of car parking spaces to a total of 15.

Notwithstanding, due to the additional variation and the potential impact on surrounding Council public car parks, it is considered appropriate that a recommendation is put forward requiring the payment of Section 7.11 car parking contributions for the additional 11 car parking spaces (adjusted to 15 spaces based on Development Engineers comments).

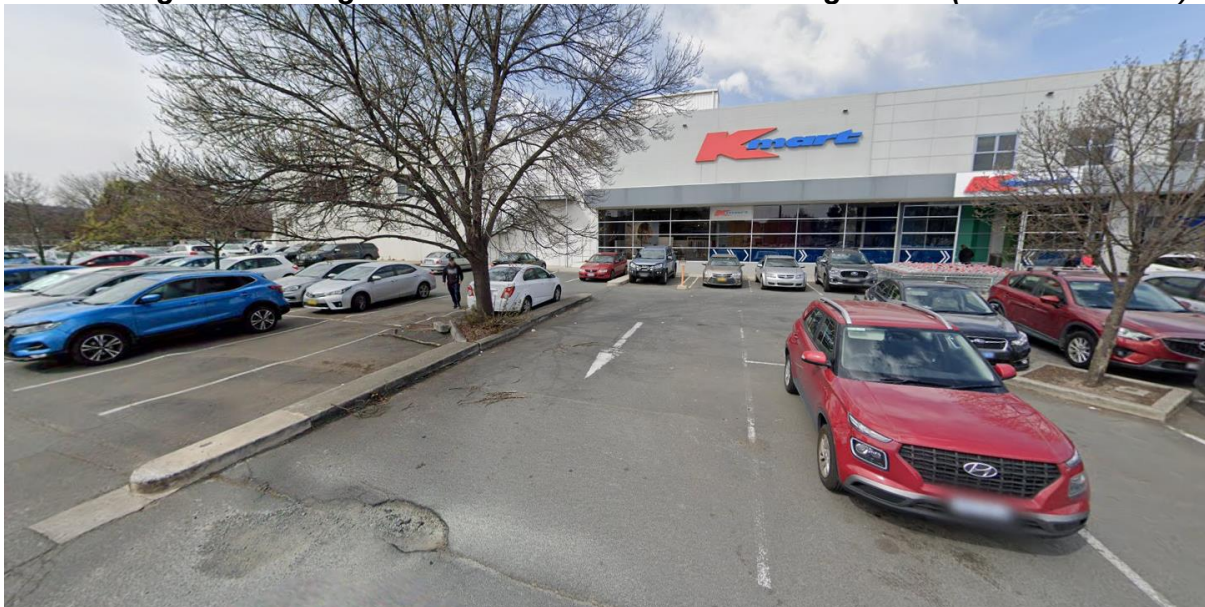
The justification for varying car parking remains relevant from the initial development application (DA 1-2018). A revised Traffic Impact Assessment Report (prepared by McLaren Traffic Engineering) was submitted in support of the modification application. The report reiterates the previous argument under DA 1-2018 regarding peak parking times associated with the use and the utilisation of adjoining public car parking within walking distance of the premises.

The report recommends the relocation of 4 car parking spaces within a portion of the internal driveway servicing the car park and another 5 adjacent the loading dock for the K-Mart retail premises.

The recommendation within the traffic impact report to relocate 5 car parking spaces adjacent to the loading dock of the existing retail premises (K-Mart) is not supported. This is due to the potential to cause reduced functionality to the loading dock, which has the capacity to except deliveries during daytime / core business hours. The application of signage or other means to reduce parking in certain hours is not considered an appropriate solution in this instance due to potential risk.



***Image 1 - Loading Dock Associated with the Existing K-Mart (Retail Premises)***



***Image 2 – Portion of Internal Driveway to be Converted to Four Parking Spaces***

However, the additional 4 car parking spaces to be provided for the site in the location shown in the above image is considered acceptable. The car park will retain adequate manoeuvrability despite the change. Council's Development Engineer has reviewed the dimensions and turning circles associated with these newly created parking spaces and

**4.15(1)(a)(iia) any planning agreement or draft planning agreement**

No planning agreement has been entered into under section 7.4 of the *Environmental Planning and Assessment Act 1979*.

#### **4.15(1)(a)(iv) matters prescribed by the regulations**

Clause 92 of the *Environmental Planning and Assessment (EP&A) Regulation 2000* requires Council to take into consideration Australian Standard AS2601–1991: *The Demolition of Structures*, in the determination of a development application.

Having regard to these prescribed matters, the proposed development does not involve the demolition of a building for the purposes of AS 2601 – 1991: *The Demolition of Structures*.

Should this application be approved, appropriate conditions of consent are included within the recommended to ensure compliance with any relevant regulations.

#### **4.15(1)(a)(v) any coastal zone management plan**

Council is not subject to a coastal zone management plan.

#### **4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

There are no substantial social, economic, and environmental impacts anticipated to be associated with the modification.

#### **4.15(1)(c) the suitability of the site for the development**

The subject site is relatively unconstrained and is considered suitable in its current state for the purposes of the proposed development.

#### **4.15(1)(d) any submissions made in accordance with this Act or the regulations**

The application was not required to be notified in accordance with the QPRC Community Engagement and Participation Plan.

#### **4.15(1)(e) the public interest**

The public interest is served through the detailed assessment of this development application under the relevant local planning controls and legislation and consideration of any submissions received relating to it by Council. The proposed development is not considered to be contrary to the public interest.

### **SECTION 64 CONTRIBUTIONS**

Section 64 of the *Local Government Act 1993* allows contributions to be levied towards the provision of water, sewerage, and stormwater infrastructure.

Section 64 Contributions were applied under DA 1-2018. No further charge is applicable.

### **SECTION 7.11 CONTRIBUTIONS**

Section 7.11 of the *Environmental Planning & Assessment Act 1979* permits councils to require as a condition of development consent, the reasonable dedication of land or the payment of monies, or both, for development that is likely to require the provision of, or increase the demand for public amenities and public services within the area.

Section 7.11 Contributions are proposed to be applied in lieu of the reduction of 11 car parking spaces due to the modification. And are calculated as follows:

Car Parking Contribution = \$11,490.44 per space (subject to CPI increases).

The reduction in car parking spaces is anticipated to be 15 with the submission of a revised car parking plan pursuant to a relevant condition of consent. Upon confirmation of the total spaces a finalised invoice will be issued.

## **CONCLUSION**

The application has been assessed having regard to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* and is considered satisfactory for approval subject to the imposition of the recommended conditions of consent.

# QUEANBEYAN-PALERANG REGIONAL COUNCIL

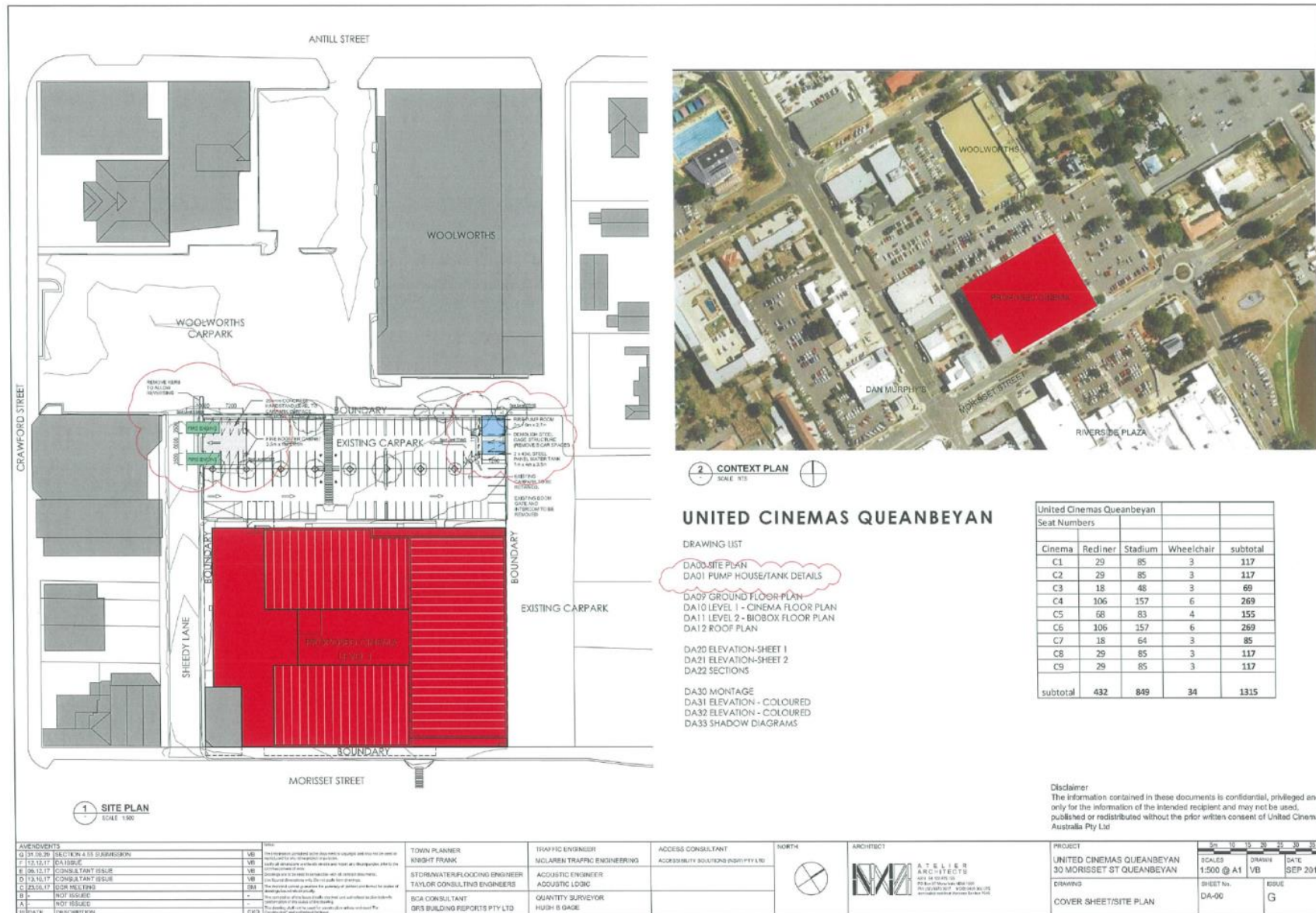
## Council Meeting Attachment

16 DECEMBER 2020

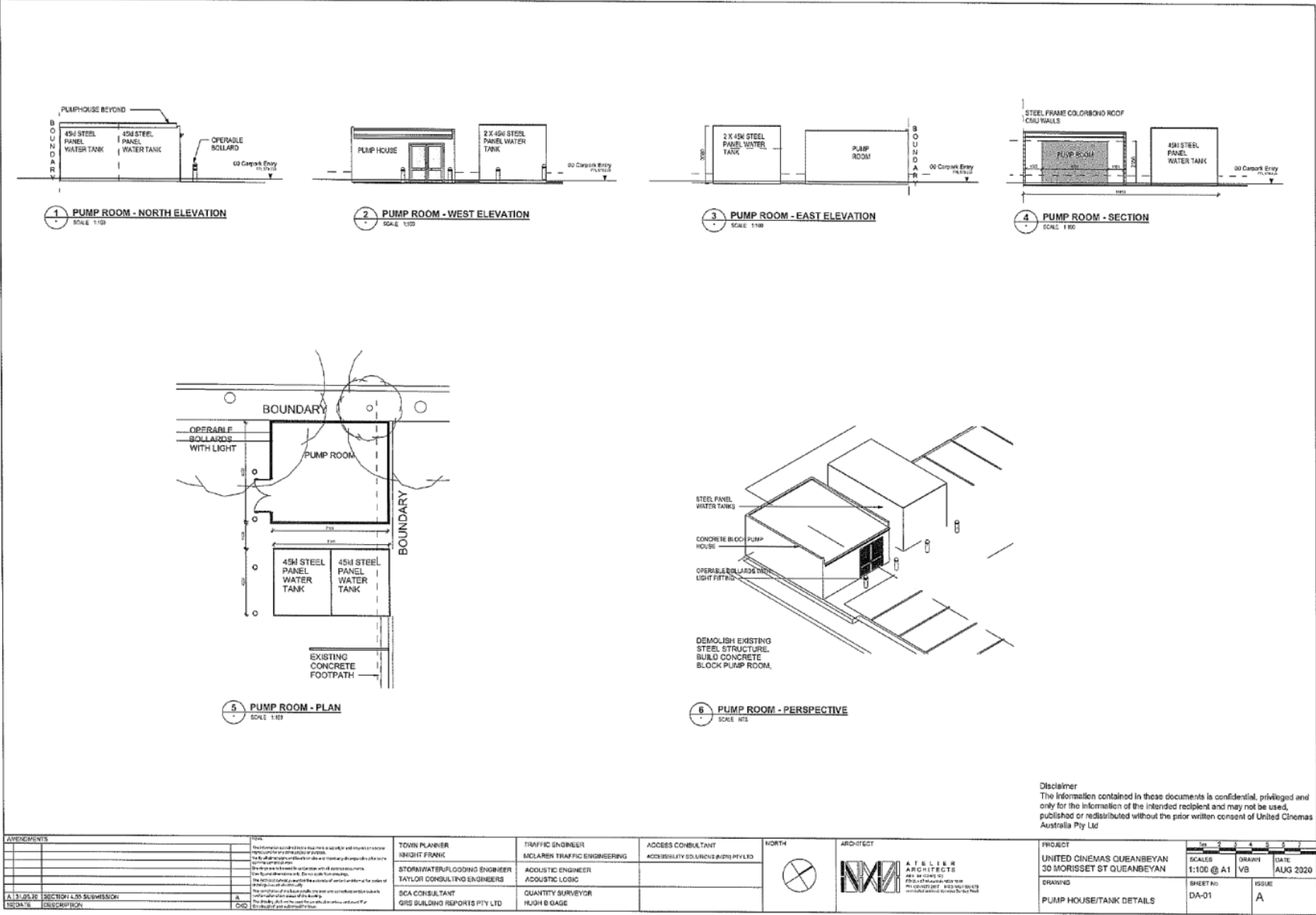
ITEM 9.3            MODIFIED DEVELOPMENT APPLICATION - 1-2018.A -  
ENTERTAINMENT FACILITY - CINEMA COMPLEX -  
MODIFICATION TO UPGRADE FIRE SERVICES AND  
CONSEQUENT LOSS OF CARPARKING - 30 MORISSET  
STREET, QUEANBEYAN.

ATTACHMENT 2    DA 1-2018.A - PLANS - 30 MORISSET STREET QUEANBEYAN









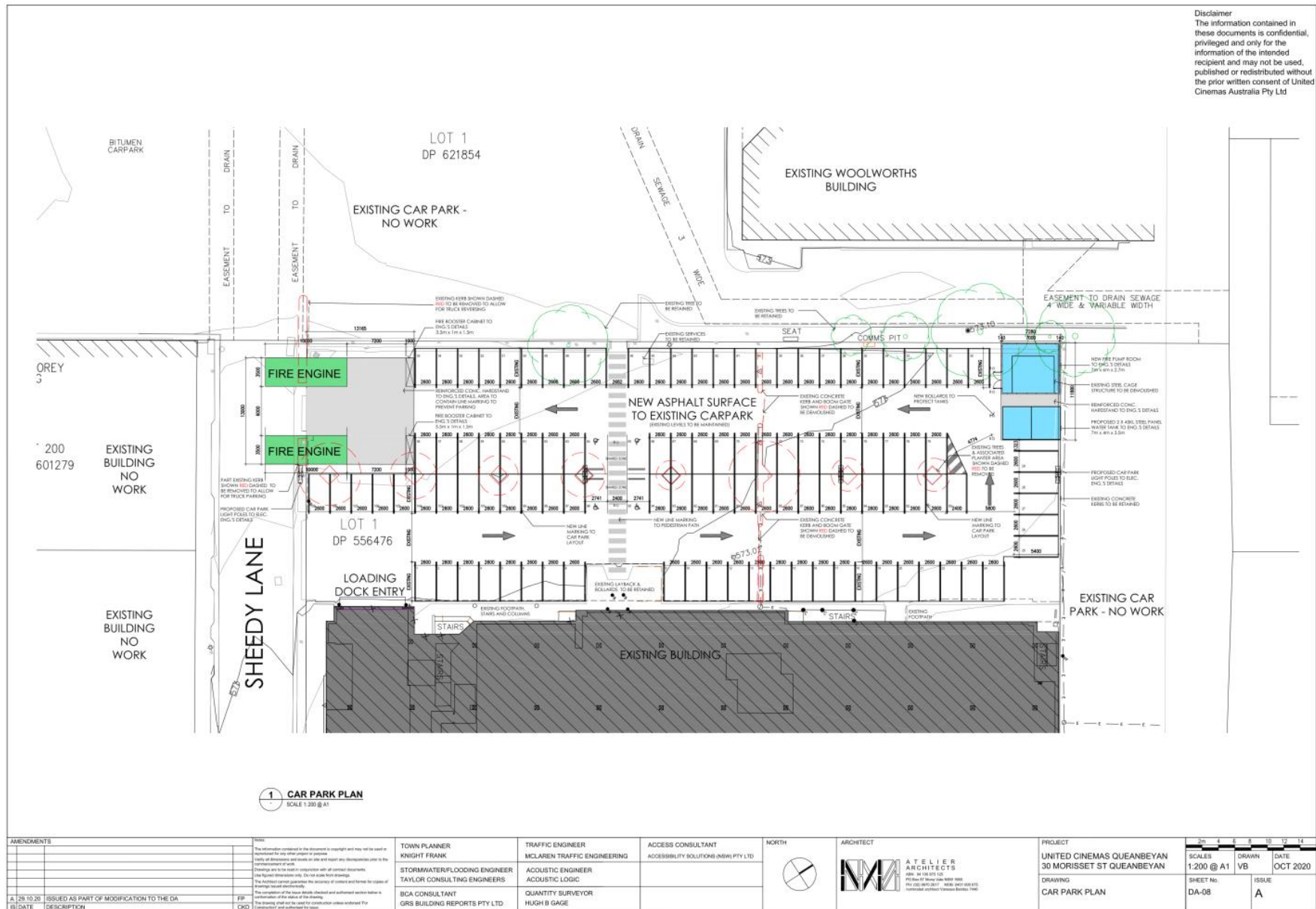
# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**16 DECEMBER 2020**

ITEM 9.3            MODIFIED DEVELOPMENT APPLICATION - 1-2018.A -  
ENTERTAINMENT FACILITY - CINEMA COMPLEX -  
MODIFICATION TO UPGRADE FIRE SERVICES AND  
CONSEQUENT LOSS OF CARPARKING - 30 MORISSET  
STREET, QUEANBEYAN.

ATTACHMENT 3    DA 1-2018.A - DETAILED CAR PARK PLAN - 30 MORISSET  
STREET QUEANBEYAN



# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**16 DECEMBER 2020**

ITEM 9.3            MODIFIED DEVELOPMENT APPLICATION - 1-2018.A -  
ENTERTAINMENT FACILITY - CINEMA COMPLEX -  
MODIFICATION TO UPGRADE FIRE SERVICES AND  
CONSEQUENT LOSS OF CARPARKING - 30 MORISSET  
STREET, QUEANBEYAN.

ATTACHMENT 4    DA 1-2018.A - TRAFFIC IMPACT ASSESSMENT REPORT - 30  
MORISSET STREET QUEANBEYAN



2nd September 2020

Reference: 200260.01FA

MMA Architects  
sent via email  
Attention: Robert Dodgson

**LETTER OF ADVICE FOR THE  
ADDITION OF A PUMP HOUSE, WATER TANK AND FIRETRUCK STANDING AREA FOR THE  
APPROVED CINEMA  
AT 30 MORISSET STREET, QUEANBEYAN**

Dear Robert,

Reference is made to your request to provide Letter of Advice for the Addition of a Pump House, Water Tank and Firetruck Standing Area for the Approved Cinema at 30 Morisset Street, Queanbeyan (Concept Site layout in **Annexure A**). This letter addresses the traffic and parking impacts related to the addition of a pump house in the existing car park.

**1 Approved Development**

The approved cinema consists of 1,315 seats across nine (9) theatres and relies upon a peak of 116 car parking spaces on Saturday evenings. Parking demand associated with the site is satisfied within the off-street car park and an occasional overflow onto the surrounding streets on Saturday evenings. The approved parking demand is summarised in **Table 1**.

**TABLE 1: PARKING CONDITIONS**

Peak Demand Period	Peak Parking Demand	Parking Provision	
		Off-Street Car Park Availability	Overflow Parking <sup>(1)</sup> (required, available)
Friday Evening 8pm	87	101	(0, 178)
Saturday Evening 8pm	116	104	(12, 175)

Note (1): Available overflow parking is on-street adjacent to the site according to car parking surveys completed during the DA stage





## 2 Proposed Changes

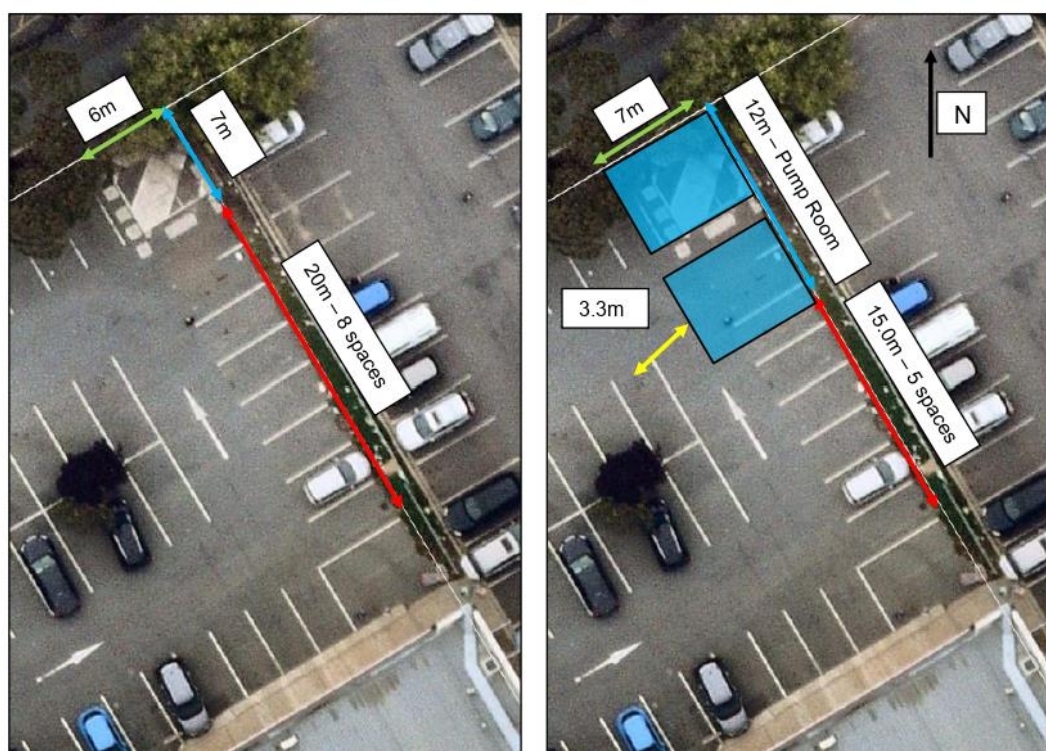
The proposal will lose parking spaces due to the water tanks/pump room as well as the standing area for fire trucks. Each of these sections are explained in the following subsections.

### 2.1 Water Tank / Pump Room

The proposal includes a pump room and two (2) water tanks within the off street car park, as depicted in **Annexure A**. The majority of the pump room and water tanks will replace an existing hardstand area that is not used for car parking; however, a portion of the pump room will encroach upon three (3) existing car parking spaces. The existing and proposed site layout is provided in **Figure 1**.

Existing Site Layout

Proposed Site Layout



**FIGURE 1: EXISTING AND PROPOSED PARKING LAYOUT COMPARISON**

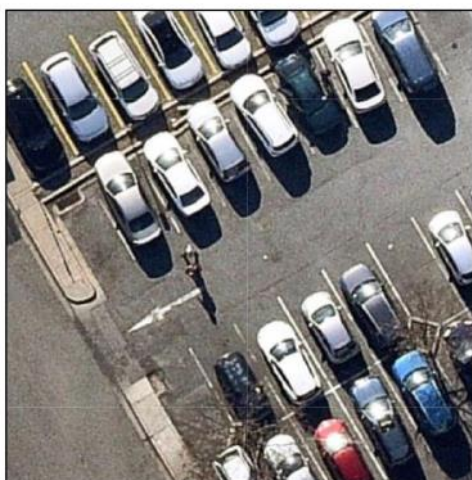
As shown, the pump room encroaches upon three (3) spaces along the eastern boundary, one (1) space along the northern boundary and one (1) adjacent to the Pump Room. In summary, the pump room and water tanks require a total loss of five (5) car parking spaces to maintain compliant vehicular circulation in accordance with AS2890.1:2004. The spaces which must be eliminated as a result of the proposal are shown in **Figure 3**. Swept path analysis has been undertaken (with results shown in **Annexure B**) showing a B99 successfully circulate the car park when those five (5) spaces are removed.

### 2.2 Fire Truck Standing Area

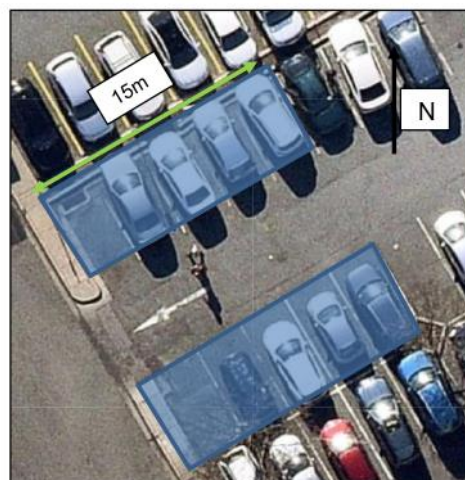
The proposal includes two separate fire truck standing areas within the off street car park, as depicted in **Annexure A**. The areas will take up five (5) spaces each near the intersection with Sheedy Lane. The existing and proposed site layout is provided in **Figure 2**.



Existing Site Layout



Proposed Site Layout



**FIGURE 2: EXISTING AND PROPOSED PARKING LAYOUT COMPARISON**

As shown, the fire truck standing room encroaches upon ten (10) spaces near the exit driveway onto Sheedy Lane.

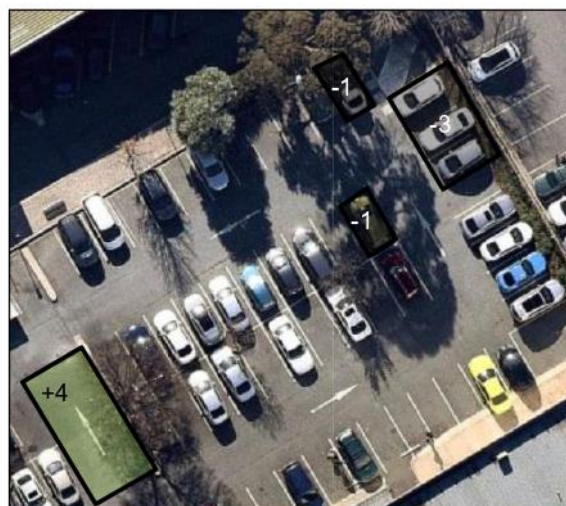
### 2.3 Parking Changes Summary

In addition to these changes, an additional 9 parking spaces can be added in previously unoccupied areas. A summary of the parking changes is shown in **Figure 3**.

Existing Site Layout



Proposed Site Layout



Added Spaces       Lost Spaces

**FIGURE 3: SUMMARY OF PARKING SPACE GAIN AND LOSS**

As shown, the total loss in car parking spaces due to the car park changes is **-6** spaces (-15+9).



### 3 Cinema Car Parking Ramifications

The loss of six (6) off-street car parking spaces will affect the existing approval in terms of its parking provision. The resultant parking demand associated with the cinema development is summarised in Table 1.

**TABLE 2: PARKING CONDITIONS**

Peak Demand Period	Peak Parking Demand	Parking Provision	
		Off-Street Car Park Availability	Overflow Parking <sup>(1)</sup> (required, available)
Friday Evening 8pm	87	101 – 6 = 95	(0, 178)
Saturday Evening 8pm	116	104 – 6 = 98	(18, 175)

Note (1): Available overflow parking is on-street adjacent to the site according to car parking surveys completed during the DA stage

As shown, the development parking demand is satisfied within the off-street car park, and an occasional overflow onto the surrounding streets on Saturday evenings. The off-street car park still satisfies the development's peak parking demand on Friday evenings. The reliance on on-street parking within the adjacent car parking areas increases from 12 to 18 spaces on Saturday evenings, where there is a total of 175 spaces available. This is a minor loss in parking which will not have any adverse impacts on the proposed development or surrounding road network in terms of traffic and parking considerations.

### 4 Summary

The proposed pump room has been assessed in terms of its traffic and parking impacts of the approved cinema development at 30 Morisset Street, Queanbeyan. The proposed pump room/fire truck standing area requires the removal of -15 car parking spaces within the existing off-street car park. Nine (+9) car parking spaces can be replaced within existing vacant areas. Therefore, the total loss in car parking is six (-6) spaces. The alterations to the existing car park shown in Figure 3 must be implemented to maintain compliance with AS2890.1:2004 in terms of car parking dimensions and circulation requirements.

The impacts to the existing off-street car park are minor and will not have an adverse effect on the ongoing operation of the approved cinema or the surrounding road network. In view of the foregoing, the proposed pump room (depicted in Annexure A) is supported, subject to the required changes to the existing car park summarised in Figure 3.

Please contact Mr Daniel Fonken or the undersigned should you require further assistance.

Yours faithfully,

**McLaren Traffic Engineering**

**Craig McLaren**

**Director**

BE Civil, Grad Dip (Transport Engineering), MAITPM, MITE

RPEQ 19457

RMS Accredited Level 3 Road Safety Auditor [1998]

RMS Accredited Traffic Management Plan Designer [2018]

Addition of a Pump House, Water Tank and Firetruck Standing Area for the Approved Cinema

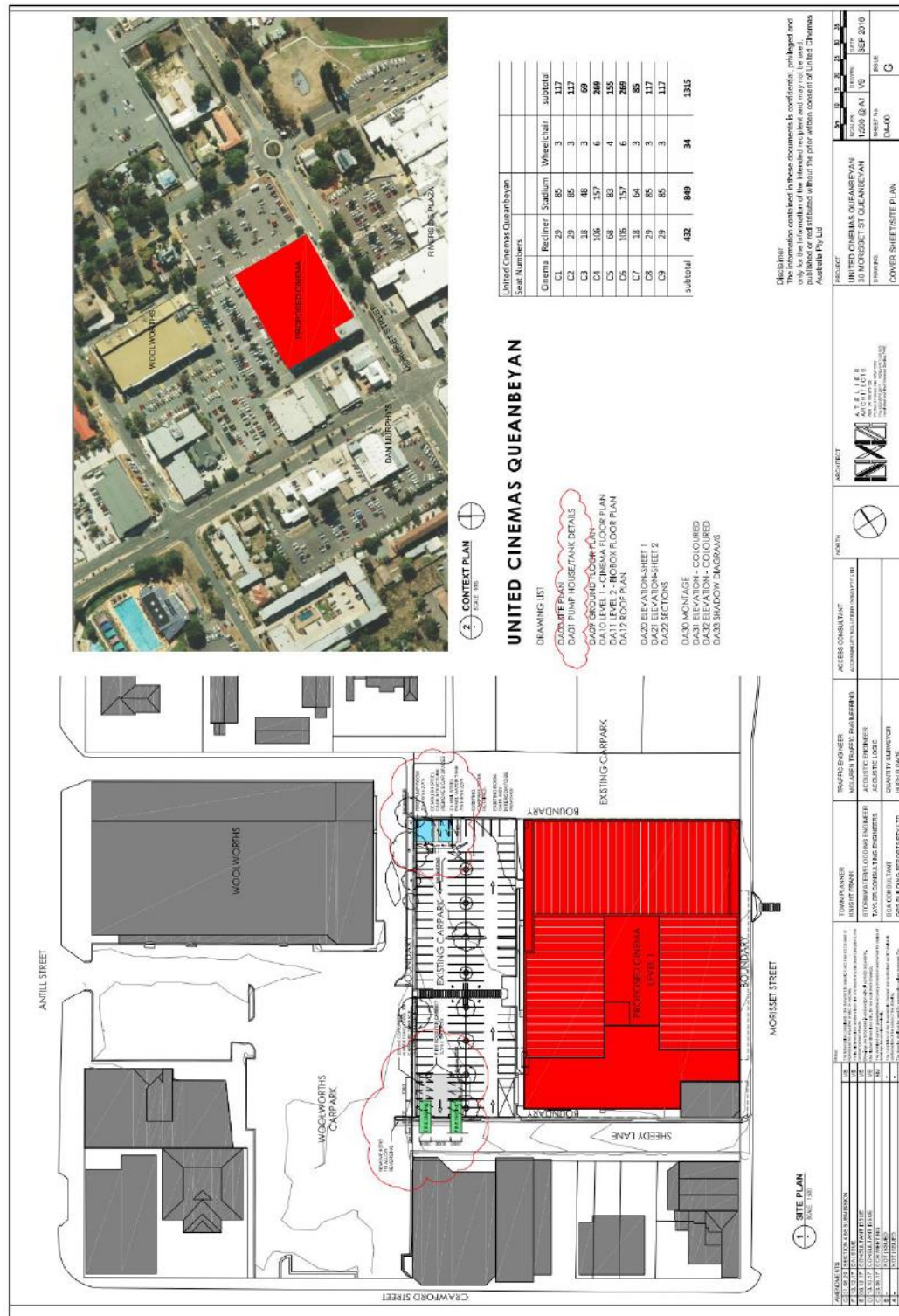
30 Morisset Street, Queanbeyan

200260.01FA - 2nd September 2020

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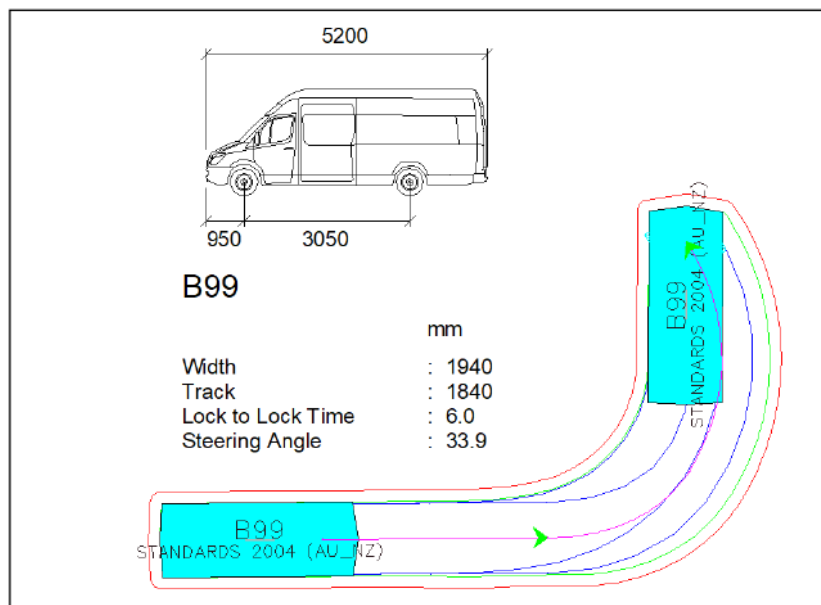
## ANNEXURE A: CONCEPT SITE PLAN



Addition of a Pump House, Water Tank and Firetruck Standing Area for the Approved Cinema  
30 Morisset Street, Queanbeyan  
200260.01FA - 2nd September 2020

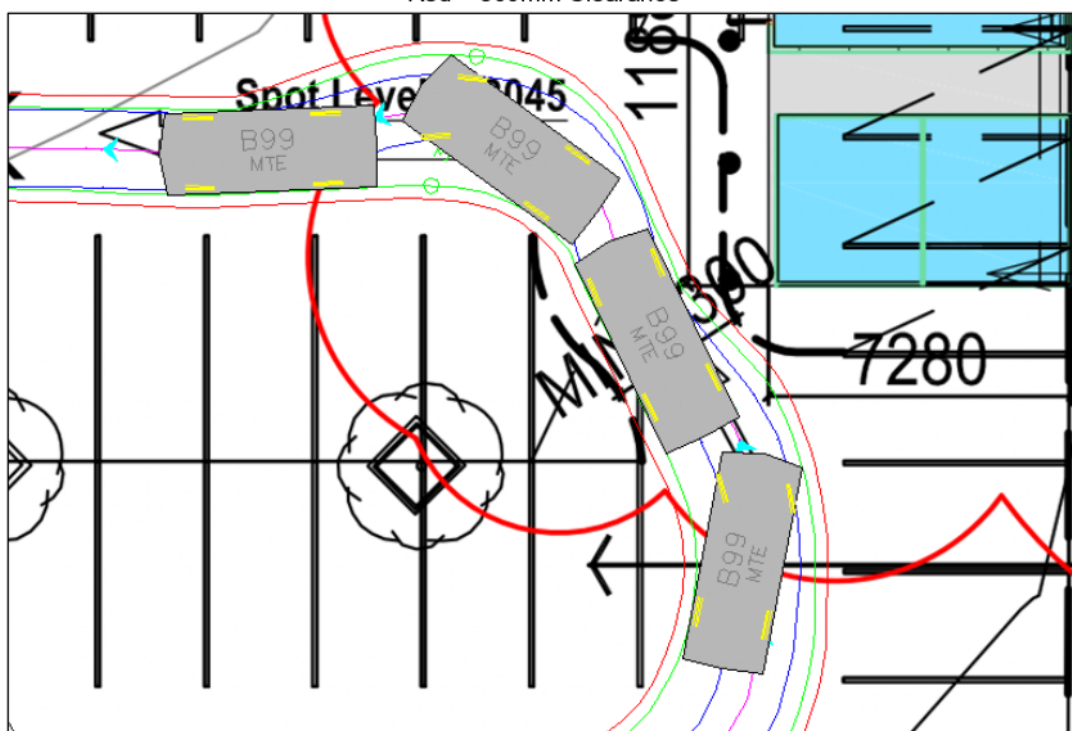
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## ANNEXURE B: SWEEP PATH ANALYSIS



**AUSTRALIAN STANDARD 99.8<sup>TH</sup> PERCENTILE SIZE VEHICLE (B99)**

Blue – Tyre Path  
Green – Vehicle Body  
Red – 300mm Clearance









# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**16 DECEMBER 2020**

ITEM 9.5            AMENDMENT TO BIG ISLAND PLANNING AGREEMENT

ATTACHMENT 1    DEED OF AMENDMENT

## Deed of Amendment

BIG ISLAND MINING PTY LTD (ABN 12 112 787 470)

and

QUEANBEYAN-PALERANG REGIONAL COUNCIL

200996\_3224424\_1

This Deed is made on \_\_\_\_\_ 2020 (**Amendment Deed**) between:

BIG ISLAND MINING PTY LTD (ABN 12 112 787 470) of Level 10, 56 Pitt Street Sydney NSW 2000 (BIM)

and

QUEANBEYAN-PALERANG REGIONAL COUNCIL of 256 Crawford St, Queanbeyan, NSW 2620 (QPRC).

## RECITALS

- A. BIM and QPRC entered into a planning agreement under Section 93F (now Section 7.4) of the *Environmental Planning and Assessment Act 1979* on 15 February 2013 (**2013 Agreement**) for the Development.
- B. Since signing the 2013 Agreement, BIM has yet to complete the Development and has agreed with QPRC to vary the 2013 Agreement on the terms set out in this Amendment Deed and as amended in mark-up in the conformed version of the 2013 Agreement at Annexure A.

## OPERATIVE PROVISIONS

### 1. Definitions and interpretation

#### 1.1 Definitions in the 2013 Agreement

Capitalised terms which are not defined in this Amendment Deed but are defined in the 2013 Agreement have the same meaning in this Amendment Deed as in the 2013 Agreement.

#### 1.2 Interpretation

Unless context requires otherwise, the rules of interpretation set out in the 2013 Agreement apply in respect of this Amendment Deed.

### 2. Operation of Amendment Deed

#### 2.1 Commencement

- a. This Amendment Deed commences on the date that the last party to the Deed executes the Deed.
- b. The last party to execute the deed is to insert the date at the top of this page and, within 5 business day of that date, provide a copy of the executed deed to the other party.

#### 2.2 Amendment of a planning agreement

This Amendment Deed amends the 2013 Agreement in accordance with clause 25C(3) of the Regulation.

200996\_3224424\_1

### **3. Amendment**

#### **3.1 Amendments to the 2013 Agreement**

The 2013 Agreement is amended as shown by the additions and deletions in the marked-up copy of the 2013 Agreement set out in Annexure A to the Amendment Deed.

### **4. Explanatory Note**

#### **4.1 Explanatory Note to Amendment Deed**

Annexure B contains the Explanatory Note relating to this Amendment Deed as required by clause 25E of the Regulation.

200996\_3224424\_1

**EXECUTED** as a Deed.

Executed as a Deed by **QPRC** in accordance  
with Council Resolution [insert] of [date] by:

\_\_\_\_\_  
Signature of [ ]

Chief Executive Officer

\_\_\_\_\_  
Name of [ ] (print)

\_\_\_\_\_  
Signature of [ ]

Mayor of Queanbeyan-Palerang Regional  
Council

\_\_\_\_\_  
Name of [ ] (print)

**SIGNED, SEALED AND DELIVERED** by **BIG  
ISLAND MINING PTY LTD ABN 12 112 787  
470 pursuant to S.127 of the Corporations  
Act** by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary (print)

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**Annexure A – Conformed version of the 2013 Agreement**

DRAFT

200996\_3224424\_1



**Annexure B – Explanatory Note**

DRAFT

200996\_3224424\_1

# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**16 DECEMBER 2020**

ITEM 9.5                      AMENDMENT TO BIG ISLAND PLANNING AGREEMENT

ATTACHMENT 2      ANNEXURE A AMENDED PLANNING AGREEMENT

## PLANNING AGREEMENT

This Planning Agreement (**Agreement**) is made on \_\_\_\_\_ 2013 between:

**BIG ISLAND MINING PTY LTD (ABN 12 112 787 470)** of Level 10, ~~350 Collins~~ 56 Pitt  
Street ~~Melbourne Vic 3000~~ (Big Island)

and

~~QUEANBEYAN-PALERANG~~ REGIONAL COUNCIL of ~~40 Majara Street, Bungendore~~ 256 Crawford  
St, Queanbeyan, NSW 2621 (~~Palerang~~ 2620 (**QPRC**)).

### BACKGROUND

- A. Big Island received Development Consent for Proposal 10-0054 Dargues Reef Gold Project by *Land and Environment Court of New South Wales* on 8 February 2012 to construct and operate the Dargues Reef Gold Mine and associated infrastructure, located at 920 Majors Creek Road, Majors Creek NSW 2622 (the **Development**).
- B. Big Island has agreed to make a Development Contribution for the upgrading by PalerangQPRC of sections of ~~the Braidwood to~~ Majors Creek Road which lies, as at the date of this Agreement, within the Palerang Council-QPRC Local Government Area, in accordance with the terms of this Agreement. These have been made.
- C. Big Island has agreed to make an annual contribution for the ongoing pavement upkeep along that part of Majors Creek Road which lies between the Development and Araluen Road.
- D. Big Island has agreed to make a contribution for the benefit of the Braidwood Communitycommunity (Section 947.11 Contribution). ~~—PalerangQPRC~~ has identified a contribution towards the upgrading of facilities at the Braidwood Recreation Ground as satisfying this condition (being the amount referred to in Clause ~~55~~ (a), Item C).

### OPERATIVE PROVISIONS

#### 1. Planning Agreement under the Act

- (a) The parties agree that this is a planning agreement governed by Subdivision 2 of Division ~~67.1~~ 47 of Part ~~47~~ of the Act.
- (b) Nothing in this Agreement shall be construed as creating a construction contract between the parties within the meaning of s4 of the *Building and Construction Industry Security of Payment Act 1999*. In particular, and for the avoidance of doubt, the parties acknowledge that any construction work carried out by PalerangQPRC, or a third party, under this Agreement is done on behalf of PalerangQPRC.

#### 2. Application of this Agreement

The ~~proposed development~~ Development is located in the Southern Highlands of NSW approximately 60 kilometres south-east of Canberra and 13 kilometres south of Braidwood. The subject of this Agreement is ~~the public road network~~ Majors Creek Road between ~~the Kings Highway at Braidwood~~ Araluen Road and the ~~development site~~ Development at Majors Creek, located within the PalerangQPRC local government area, ~~more specifically identified in Exhibit H to this Agreement~~, and the Community Benefit Contribution.

### 3. Definitions

In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW);

**Affiliate** means any named person or any other person that controls, is under the control of or is under common control with, the named person. As used in this definition, the terms "controls," "under control of" or "under common control with" means the ownership, directly or indirectly, of more than fifty percent of the voting securities of a person or the power to direct the management or policies of a person, whether by operation of law, by contract or otherwise.

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements issued by or on behalf of any Authority which are required by Law for the commencement, carrying out or use of the Work.

**Consent Authority** means the Minister administering the Act;

**CPI** means the All Groups Consumer Price Index (Canberra) issued by the Australian Statistician; Bureau of Statistics.

**CPI Indexed** for an amount, means the amount as adjusted in line with any adjustment in the CPI;

**Development** means the Dargues Reef-Gold Project proposed by Big Island in its major projects application number 10-0054 and any modifications.

**Development Consent** means consent granted under Part 3A of the Act to the Development;

**Development Consent Date** means 8<sup>th</sup> February 2012.

**Development Contribution** means the amount set out in Clause 5(a), Item A;

**Development Entity** means Big Island or an Affiliate of Big Island, that will own the Development;

**Financial Close** means the date on which the Financing Agreements are executed by the Financing Entity and the initial release of funds therefrom are made available to the Development Entity;

**Financing Agreements** means all agreements and documents for the financing of the Development;

**Financing Entity** means collectively, the lender or syndicate of lenders providing the financing for the Development;

**Force Majeure Event** means an event which is beyond the reasonable control of the party affected and which the party has not caused or materially contributed to by its negligent acts or omissions including fire, lightning, explosion, flood, earthquake, riots, natural disaster, sabotage, act of a public enemy, act of God, war (declared or undeclared), blockade, revolution, action or inaction by a Government Authority, radioactive contamination, toxic or dangerous chemical contamination, or force of nature.

It excludes actions arising from Industrial Relations directed solely at the Work.

A party prevented from performing an obligation by an Force Majeure Event must:

- (a) notify the other party within five business days by phone and seven business days in writing of the occurrence of that event and of the effect of that event on the party's ability to perform its obligations under the Agreement; [and](#)
- (b) provide such information as reasonably requested by the other party as to its progress in overcoming the effects of the Force Majeure Event.

**GST** has the same meaning as in the GST Law;<sup>2</sup>

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST;<sup>2</sup>

**Party** means a party to this Agreement, including their successors and assigns;<sup>2</sup>

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*;<sup>2</sup>

**Section 947.11 Contribution** means a community benefit payment towards [public amenities](#) the upgrade of Braidwood Recreation Ground pursuant to section [947.11](#) of the Act, as set out in Clause 5(a), Item C.

**Majors Creek Road** means that part of Majors Creek Road which lies, ~~as at between the date of this Agreement, within the Palerang Council Local Government Area, Development and is set out in Exhibit I;~~ [the intersection with Araluen Road.](#)

**Mine Commencement Date** means the date development of the mine physically ~~starts (at this stage 11 February 2013)~~ [recommenced, being 18 May 2018.](#)

**Work** means the upgrade of specified sections of the local public road network between Braidwood and Majors Creek to address road safety issues and pavement damage that will arise from transport of resources to the mine and the haulage operations of concentrate from the mine.

**Work Commencement Date** means the date [PalerangQPRC](#) will commence any of the Work as specified in ~~5A~~ [Clause 5\(a\) Item A \(i\) —.](#)

#### 4. Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.



- (e) A reference in this Agreement to any law, legislation or legislative provision is a reference to that law, legislation or legislative provision in its form as at the date of this Agreement.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

## 5. Obligations

The Parties' obligations under this Agreement are as follows:

- (a) Subject to Clause 7Z and this Clause 55, Big Island has made, or will make, the following payments to QPRC:

Ref	Payment type	Amount	Timing of Payment
<b>A</b>	Development Contribution:		
(i)	For road upgrading works along the haulage route to/from the mine, including widening of seal over crests and around curves and line marking of Majors Creek Road.	\$559,000 Pavement widening	<del>Paid</del> Invoiced on monthly basis in 6 equal instalments from Work Commencement Date
		\$15,000 Line marking	Payment on completion of workPaid
(ii)	For pavement upkeep during mine construction	\$78,000	<del>Paid</del> Paid within 30 days of Mine Commencement date
	<b>Subtotal</b>	<b>\$652,000</b>	

Ref	Payment type	Amount	Timing of Payment
B	Annual payment towards ongoing pavement upkeep along <u>a</u> haulage route and towards improvements to intersections if possible within <u>that part of Majors Creek Road which lies between the limit of funds the Development and Araluen Road.</u>	\$ <del>78,000</del> 92,820	<u>First payment due on the first anniversary of initial payment Initial payment was made on 30 June 2020. Subsequent payments to be made annually on 1 July thereafter until completion of concentrate shipment from the Development.</u>
C	Section <u>947.11</u> Contribution: Community benefit payment towards upgrade of Braidwood Recreation Ground.	\$ <del>375,000</del> 446,250	<u>Within 4 weeks of tax invoice to be issued by Council after 31 January 2014 On 1 March 2021</u>
D	Payment for disposal of putrescible waste at Braidwood landfill <del>(Strictly no waste to be taken to other Council landfills)</del>	\$120 per tonne New rate to be determined following closure of landfill and replacement with waste transfer station.	<u>invoiced per use, monthly or other period. No longer applicable from 1 July 2020 as facility unable to take waste from the Development</u>

(b) All payments are subject to receipt of a tax invoice from PalerangQPRC pursuant to the GST law.

(c) At or before the date for payment specified in this clause, QPRC will issue a tax invoice to Big Island for payment of the contribution amount owing.

(d) Big Island must pay any invoice issued by QPRC within the later of 14 days of receipt of the tax invoice or the date for payment specified in this clause.

(e) A contribution is not taken to have been made until QPRC has received the full cleared funds in its account.

~~(e)(f)~~ The payment amounts indicated in the table are GST exclusive figures.

~~(d)(g)~~ Big Island agrees that the payments in Clause ~~55~~(a) Item A, ~~55~~(a) Item B and ~~55~~(a) Item C are to be CPI Indexed with effect on and from ~~March 2010~~September 2019 until such time as they are paid. The CPI Indexed amount as at the payment date will be the amount due and payable, ~~noting that the CPI index (Canberra) at March 2010 was 171.7.~~

Palerang

~~(e)(h)~~ QPRC will:

- (i) not commence the Work prior to the date the conditions precedent in clause ~~7~~7 have been satisfied;
- (ii) carry out the Work, in a proper and workmanlike manner;
- (iii) carry out the Work to practical completion within six (6) months of Work Commencement Date;
- (iv) provide tax invoices to Big Island as required and pursuant to GST law; and
- (v) provide, if requested by Big Island, records of financial transactions in respect of the works completed, with such detail as may reasonably be required to satisfy Big Island as to their veracity; ~~and~~.

**6. Application of ~~s93~~s7.4 and ~~s94~~s7.11 of the Act to the Development**

(a) This Agreement does not exclude the application of section 7.24 of the Act to the Development

~~(a)(b)~~ Any benefits provided by Big Island under this agreement ~~must not~~are to be taken into consideration for the purpose of section ~~94(6)~~7.11 of the Act.

~~(b)(c)~~ This Agreement ~~excludes~~does not exclude:

~~1. the application of section 94 of the Act to the extent that it relates to the provision, upgrading or maintenance of public roads; and~~

(i) the application of section ~~94A~~7.11 of the Act; and

(ii) the application of section ~~7.12~~7.12 of the Act to the Development.

**7. Conditions Precedent**

- (a) The parties' obligations under this Agreement are conditional upon the following conditions precedent being fulfilled:
  - (i) Development physically commencing. Meaning the actual commencement of the development of the Mine, including commencement of Access Rd. (Mine Commencement Date)).

**8. Co-operation**

The parties agree to exercise their respective rights under this Agreement only for a bona fide reason and will not do, or omit to do, any act capriciously.

**9. Agreement of the parties**

Where the provisions of this Agreement require the further agreement of the parties in relation to a particular matter, each party will nominate representatives (**Party Representative**) to negotiate in good faith to reach agreement.

#### 10. Dispute Resolution

- (a) If any dispute arises between the parties in relation to the subject matter of this Agreement, the party claiming the dispute must give the other party notice setting out the details of the dispute and the dispute will in the first instance be referred for resolution to the Party Representatives or other representatives of the parties nominated for this purpose. Failing resolution of a dispute within a reasonable time, having regard to its nature and materiality (but in any event within one month), it will be referred to the senior executive of each of the parties with authority to resolve that dispute on its behalf. The senior executives will endeavor to resolve the dispute as soon as reasonably practicable after it is referred to them (but in any event within one month).
- (b) If the parties cannot resolve the dispute within that period, they must refer the dispute to a mediator if one of them requests.
- (c) If the parties to the dispute cannot agree on a mediator within seven days after a request under clause (b), the chairman of [LEADR Resolution Institute](#) (currently of Level ~~9-2/13-15-17 Young Bridge~~ St, Sydney NSW 2000) or the chairman's nominee will appoint a mediator.
- (d) The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a binding decision on a party to the dispute except if the party agrees in writing.
- (e) Any information or documents disclosed by a party under this clause ~~040~~:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the dispute.
- (f) Each party to a dispute must pay its own costs of complying with this clause ~~040~~. The parties to the dispute must equally pay the costs of any mediator.
- (g) A party to a dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses ~~040~~(b) to ~~040~~(d). Clauses ~~040~~(e) and ~~040~~(f) survive termination of the dispute resolution process.
- (h) If a party to a dispute breaches clauses ~~040~~(b) to ~~040~~(g), the other parties to the dispute do not have to comply with those clauses in relation to the dispute.

#### 11. Enforcement

- (a) [Big Island agrees to provide a bank guarantee for the benefit of QPRC in the amount of \\$96,000 \(Security\) to secure the payment by Big Island of the contributions set out in clause 5\(a\).](#)
- (b) [Big Island is to provide the Security to QPRC by 1 March 2021.](#)
- (c) [QPRC may call upon and apply the Security to remedy a failure by Big Island to pay any contribution amount as required by clause 5\(a\).](#)
- (d) [If QPRC calls upon the Security or any portion of it, QPRC may, by written notice to Big Island, require Big Island to provide a further or replacement Security, which, in](#)

total, does not exceed the amount that Big Island is required to provide pursuant to clause 11(a).

(e) QPRC must release and return the Security, or any unused part of it, to Big Island within 10 business days of Big Island making its final payment pursuant to clause 5(a).

(f) If, as the result of Big Island defaulting in its obligations under this Deed, the Council incurs costs or expenses which exceed the amount of the Security then the Council may:

(i) issue an invoice to Big Island for payment of those additional costs; and

(ii) recover those costs as a debt due to it in a court of competent jurisdiction.

#### **11.12. Commencing the Work**

(a) Big Island will notify ~~Palerang~~, QPRC in writing of the Mine Commencement date~~Date~~.

~~Palerang will complete the work in 5A (i) within 10 months after Mine Commencement date~~  
~~Palerang~~

(b) QPRC will commence the road maintenance referred to in 5A (ii) clause 5(a) Item B after payment is received. The work in ~~5A (ii) clause 5(a) Item B~~ is ongoing over a 12 month period.

~~3. Palerang must notify Big Island 21 days prior to the Work Commencement Date of the Work Commencement Date for works in 5A (i). Such notice must clearly state:~~

~~0. the Work Commencement Date (subject always to Clause 7);~~

~~0. the name of the party undertaking the Work; and~~

~~0. the time frame for completion.~~

(c) If for any reason the Work Commencement Date is delayed then ~~Palerang~~QPRC must notify Big Island accordingly.

#### **12. Default and Termination**

~~0. If a party defaults in the performance of any of its material obligations under the Agreement and fails to remedy the default within thirty days' notice in writing from the other party (Non-Defaulting Party), the Non-Defaulting Party may:~~

~~0. by notice, terminate the Agreement; or~~

~~0. suspend payment for the Work.~~

~~0. At any time Big Island may, at its sole discretion, pay to Palerang the Development Contribution adjusted to reflect any amounts already paid and any changes in the Index between the Development Consent Date and the date of payment, in full and final satisfaction of all Big Island's obligations under this Agreement.~~



~~0. Termination or expiration of the Agreement is without prejudice to the accrued rights and obligations of the parties.~~

**18.13. Notices**

(a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (i) Delivered or posted to that Party at its address set out below.
- (ii) Faxed to that Party at its fax number set out below.
- (iii) Emailed to that Party at its email address set out below.

**Council**

Attention: The ~~General Manager~~Chief Executive Officer

Address: 10 Majara Street, Bungendore NSW 2621

Fax Number: (02) ~~6238 1290~~ 6285 6223

Email: councilrecords@palerang@qprc.nsw.gov.au

**Developer**

Attention: ~~Greg Cozens – Project Manager~~Paul Rouse – Director

Address: ~~Dargues Gold Mine~~

~~\_\_\_\_\_~~ C/o UnityBig Island Mining Pty Ltd

~~\_\_\_\_\_~~ Level 10, 350 Collins56 Pitt StreetMelbourne Vic 3000, Sydney NSW 2000

~~Fax Number: (03) 8622 2399~~

~~Email: \_\_\_\_\_~~ greg@cortonaresources.com.au

~~Email: \_\_\_\_\_~~ DGM.Info@divminerals.com.au

- (b) If a Party gives the other Party 3 business ~~days~~days' notice of a change of its address , email, or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (i) If it is delivered, when it is left at the relevant address.
- (ii) If it is sent by post, 2 business days after it is posted.
- (iii) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (d) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

**19.14. Assignment**

- (a) Except as provided below, the negotiated agreement shall not be assignable by Big Island or [PalerangQPRC](#) or their respective successors or permitted assigns without the prior written consent of the other party thereto, which consent shall not be unreasonably withheld.
- (b) Notwithstanding clause [14-114\(a\)](#), Big Island may assign this Agreement without the consent of [PalerangQPRC](#) to a:
  - (i) Development Entity; or
  - (ii) Financing Entity (including assigning via a Development Entity) as security for the Financing Entity under the Financing Agreements or an assignment by the Financing Entity in enforcement of its security,and [PalerangQPRC](#) shall execute any assignment or novation agreement reasonably required by Big Island to give effect to the assignment or novation, provided that [PalerangQPRC](#) shall have the same rights and obligations in relation to the Development Entity or Financing Entity which it had in relation to Big Island.

**20.15. Costs**

Each party is to bear its own costs of preparing, executing, stamping and registering the Agreement.

**21.16. Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters dealt with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**22.17. Governing law and jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

**23.18. No fetter**

Nothing in this Agreement shall be construed as requiring [PalerangQPRC](#) to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**24.19. Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

**25.20. Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

**26.21. Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

**27.22. Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

**29.23. Liability and Indemnity**

Big Island shall not be liable to [PalerangQPRC](#), or to any other person (whether in contract, tort, under statute, at law, in equity or otherwise) for any:

(a) loss of profits;

(b) liability to third parties; or

~~(b)~~(c) without limitation to paragraphs (a) and (b), any indirect, special, incidental or consequential loss or damage,

suffered or incurred in connection with the Work by any person.

**30.24. Force Majeure**

Neither party is liable for delay or failure to perform its obligations pursuant to this Agreement, if such delay and failure is caused by a Force Majeure Event, provided the party has used its reasonable endeavors to overcome or mitigate the effects of the Force Majeure Event. If a

delay or failure to perform its obligations is caused by or is anticipated due to a Force Majeure Event, the performance of that party's obligations will be suspended. If performance is delayed by a Force Majeure Event for more than 3 months and the parties have not agreed upon a revised basis for continuing performance at the end of the delay, then either party may terminate this Agreement by not less than 30 days written notice to the other party.

**31.25. Approvals and Consent**

- (a) Nothing in this Agreement shall be construed to give [PalerangQPRC](#) the power to compel Big Island to carry out the Development.
- (b) The Parties acknowledge that:
  - (i) except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party;
  - (ii) a Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions; and
  - (iii) this Agreement does not impose any obligation on a Consent Authority to:
    - (A) grant an approval under the Act; or
    - (B) exercise any function under the Act in relation to a change in an environmental planning instrument.

**32.26. GST Law**

If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this Agreement and the supply was not priced to include GST, then the Recipient of the supply must pay an additional amount equal to the GST on that supply.

**SIGNED AND DELIVERED by PALERANG COUNCIL by:**

\_\_\_\_\_  
Signature of [ ]

\_\_\_\_\_  
Signature of [ ]

\_\_\_\_\_  
Name of [ ] (print)

\_\_\_\_\_  
Name of [ ] (print)

**SIGNED AND DELIVERED** by **BIG ISLAND  
MINING PTY LTD ABN 12 112 787 470**  
pursuant to S.127 of the Corporations Act  
by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary (print)



Exhibit:

- 1.     Area where Works are required.
- 2.     Road Standards

EXHIBIT I

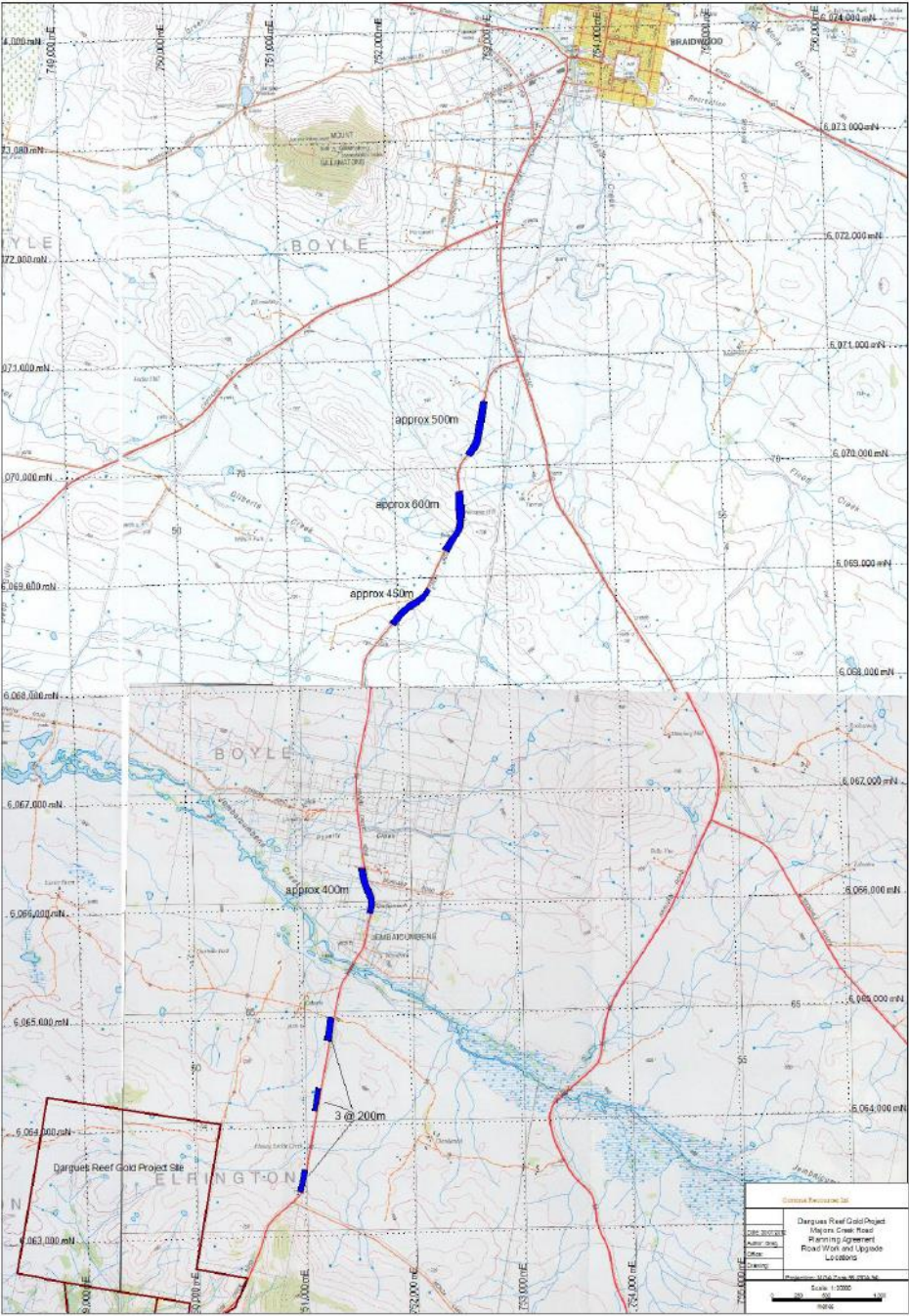


EXHIBIT 2

**PALERANG COUNCIL**

**ROAD ACCESS REQUIREMENTS**

**FOR**

**RURAL, RURAL RESIDENTIAL AND  
ENVIRONMENTAL PROTECTION  
ZONES**

**ADOPTED BY COUNCIL – 27 JULY 2004**

**REQUIREMENTS EFFECTIVE FROM – 17 AUGUST 2004**

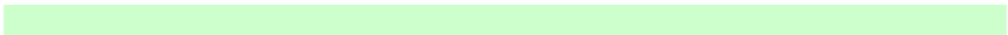


TABLE 2 – RURAL RESIDENTIAL RURAL AND ENVIRONMENTAL PROTECTION ZONE ROAD STANDARD SCHEDULE

<b>ROAD TYPE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
<b>Category/Purpose</b>	<b>Single Lot Access (A)</b>	<b>Residential Access</b>	<b>Residential Access</b>	<b>Local Access</b>	<b>Cul-de-Sac (L)</b>	<b>Cul-de-Sac Local Access (L)</b>	<b>Cul-de-Sac Local Access (L)</b>	<b>Local Access</b>	<b>Collector</b>	<b>Arterial</b>
Nearest Road Type under Previous Standards Y (Yarrowlumla) T (Tallaganda)	1a (+1b)(Y) 7 (T)	2 (Y) 6 (T) 3 (TDCP)	3 (Y) 5 (TS94) 3 (TDCP)	8/9 (Y) 4 & 3 (TS94) 2 (TDCP)	4A1 (Y)	4A2 (Y) 1 (TDCP)	4B (Y)	5 & 10 (Y) 3 & 2 (T)	6 (Y) 2 (T)	7 (Y)
Potential Number of Lots Served	1	2-3	4-5	6-17	1-8	9-17	18-39	40-99	100-300	>300
VPD (aadt)/Lot	7	7	7	7	7	7	7	7	7	7
Potential Traffic Volumes (vpd aadt)	7	8-21	22-35	36-119	1-56	57-119	120-273	274-693	700-2100	>2100
Applicable Zoning Rural Residential (RR) Rural and Other non RR (R)	RR & R	RR & R	RR & R	R	RR	RR	RR & R	RR & R	RR & R	RR & R
Pavement Width (m) <sup>1</sup>	3.0 (with passing bays) (M)	4.7	5.6	7.0	6.5	6.5	7.0	7.5	9.0	10.0
Minimum Verge Widths (C)										
a. Embankments	-	-	-	0.3	0.3	0.3	0.3	0.5	0.5	1.0
b. Cuttings	-	-	-	1.25	1.25	1.25	1.25	1.5	2.0	2.0
Minimum Seal Width Requirements (D)										
a. Lanes (m)	-	-	-	-	1 @ 4	2 @ 2.8	2 @ 3.0	2 @ 3.0	2 @ 3.25	2 @ 3.5
b. Shoulders (m)	-	-	-	-	-	-	-	2 @ 0.5	2 @ 0.5	2 @ 0.5
c. Total (m)	-	-	-	-	4.0 (B)	5.6	6.0	7.0	7.5	8.0
Nominal Road Reserve Width (m) (E) (F)	10	15	15	20	20	20	20	25	30	30
Design of Alignment										
a. General minimum design speed (kph) (G)		40	40	60	60	60	60	70	80	80
b. Desirable minimum horizontal curve radius (m) (H)		-	-	90	90	90	90	150	220	240
Maximum Grade % (I)										
a. If unsealed surface using erosion resistant gravels	15	15	15	12	-	-	-	-	-	-
c. If unsealed surface using sandy decomposed granite	7	7	7	7						
b. If sealed surface	20	20	20	18	16	14	12	12	12	12
Drainage Design Frequency (i)	-	1	2	20	20	20	20	50	100	100
(ii)	-	1	2	10	10	10	10	25	50	50
1 in ..... Years (J)	-	1	2	5	5	5	5	10	20	20
(iii)	-	1	2	2	2	2	2	5	10	10
(iv)	-	1	2	2	2	2	2	5	10	10
Minimum Basecourse Thickness (mm) (K)	75	100	100	150	150	150	150	150	200	200
Design Traffic Loadings (ESAs)										



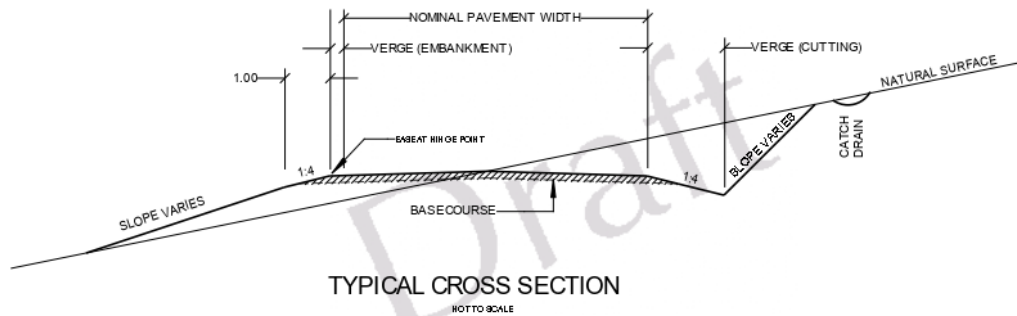
a.	attributable to each lot	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$	$2 \times 10^3$
b.	for maximum lots allowed	$2 \times 10^3$	$4 \times 10^3$	$1 \times 10^4$	$3.4 \times 10^4$	$1.4 \times 10^4$	$3.4 \times 10^4$	$7.8 \times 10^4$	$2 \times 10^5$	$6 \times 10^5$	$1 \times 10^6$
c.	with minimum allowance for through traffic	$2 \times 10^3$	$4 \times 10^3$	$1 \times 10^4$	$3.4 \times 10^4$	$1.4 \times 10^4$	$3.4 \times 10^4$	$8.6 \times 10^4$	$2.2 \times 10^5$	$6.6 \times 10^5$	$1.1 \times 10^6$
<b>VPD</b>	Vehicles per day										
<b>AADT</b>	Average Annual Daily Traffic										
<b>ESAs</b>	Equivalent Standard Axles										
<b>ROW</b>	Right of Way										

NOTES:

- A Design speed, horizontal and vertical geometry not specified for Type 1 road. These roads are to be aligned to minimise impact on, or interference/disturbance of native vegetation (trees, grasses, plants etc) water courses, rock outcrops, archaeological and heritage sites. Vertical geometry is to follow the natural surface and avoid cuts/fills deeper/higher than 0.5 metre as far as practicable. Longitudinal table drains where needed are to be as small as practicable and are to be turned out to level spreaders at 20 metre (max) intervals or terminated at cross drainage culverts/causeways at 50 metre (max) intervals.
- B A 4m bitumen seal will only be accepted if alignment allows 120m or greater sight distance along the pavement from car to car to allow motorists approaching each other sufficient reaction time to safely avoid conflicts by sharing the one lane seal; otherwise a minimum seal of 5.6m wide will be required (e.g. over crests and around tight curves).
- C Verge widths adjacent to carriageway as defined in Typical Cross Section illustrated below. Where not specified in table keep to minimum practicable.
- D Bitumen sealing of Type 1, 2, 3 and 4 roads will be required to address dust impact under the following circumstances:
- a. Where new roads are constructed:
    - (i) on a private road where the centreline of the road is within 50m of the near edge of a building envelope or the walls of an existing or proposed dwelling.
    - (ii) on a public road where the centreline of the road is within 100m of the near edge of a building envelope or an existing or proposed dwelling.
    - (iii) where bitumen sealing is required at more than one location under i or ii above, the bitumen sealing shall be linked between each site if the distance between the edge of sealing at each site is less than 200m.
  - b. Where use is made of existing roads:
    - (i) where any single or staged subdivision or development results in a significant increase in traffic the applicant will be required to construct to a bitumen sealed standard any existing gravel road where any existing residence or building envelope lies within 100m of the centreline of the road(s) over which access is being gained to serve the new subdivision development. A significant increase in traffic shall mean:
 

a) for Type 2 Roads	≥ 1 extra lot
b) for Type 3 Roads	≥ 2 extra lots
c) for Type 4 Roads (not already sealed)	≥ 4 extra lots
d) for Type 5, 6,7,8,9,10 Roads	≥ 25% increase in existing traffic
- E A reduction in the road reserve width may be permitted in flatter terrain if it can be demonstrated that the road formation, cut and fill batters, drainage, lateral clearances at top and bottom of batters of at least 2.5m and necessary horse trails and services can be adequately incorporated within the road boundaries.
- F Stock proof fencing shall be provided along road reserves in accordance with Cl 12 of YSC Rural & Rural Residential DCP (June 2002) and as amended.
- G Lower or higher designs speed may be specified in special circumstances of topographical and/or environmental conservation constraints/circumstances. Road alignments shall be designed so as to ensure a consistent or gradually changing speed environment so that each curve is not incongruous with the adjoining curves thereby 'trapping' unwary drivers. In this regard where terrain or environment dictate a reduction in speed environment, geometric elements connecting the two speed environments should be designed with appropriate design speeds to provide a speed transition between elements of not more than 15-20 km/h. All curves and crests which have a design speed less than the posted speed limit shall be provided with appropriate speed warning signs on each approach.
- H Larger minimum curve radii may be necessary in situations where drivers' lines of sight for stopping sight distance and/or safe sight distances to intersections and property entrances are outside the vegetation clearing zone as detailed in Council's roadside vegetation management policy.

- I Permanent erosion protection, sediment control and revegetation is to be designed and constructed to protect disturbed surfaces along and adjacent to roadsides, table drains and drainage structures in accordance with sound drainage design and environmental conservation principles and practices. For gravel roads, a small increase in maximum grade may be accepted if road over steeper section is finished with a non-erodible or bitumen sealed pavement.
- J Adequate provision shall be made for overtopping in accordance with AUSTROADS 'Bridge Design Code'.
- (i) Bridge Structure with effective waterway area  $> 30\text{m}^2$  )
  - (ii) Major Culvert Structure with effective waterway area  $> 3 < 30\text{m}^2$  )
  - (iii) Minor Culvert Structure with effective waterway area  $< 3\text{m}^2$  ))
  - (iv) Catch Drains
- K Pavement design, materials and construction to be in accordance with AUSSPEC #1, which refers to specific publications.
- L Cul-de-sac Roads shall be provided with end turning circles in accordance with Fig 4A. A 2.5m clearance from top/bottom of cut/fill batters shall be provided.
- M The provision of the driveway is to comply with the requirements for vehicle passing and clear zones adjacent to and above the road, as set out in Planning NSW document, Planning for Bushfire Protection, December 2001, Clause 4.3.2.



# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**16 DECEMBER 2020**

ITEM 9.5                    AMENDMENT TO BIG ISLAND PLANNING AGREEMENT

ATTACHMENT 3    ANNEXURE B EXPLANATORY MEMORANDUM

### Explanatory Note

*Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*  
(Clause 25E)

#### **Draft Amendment Deed amending Planning Agreement**

On 15 February 2013, the Parties entered into a Planning Agreement (**2013 Agreement**) under s 93F (now s7.4) of the *Environmental Planning and Assessment Act 1979 (Act)*. The Amendment Deed proposes to amend the 2013 Agreement pursuant to clause 25C(3) of the EP&A Regulation (**Amended Planning Agreement**).

#### **Parties**

**Queanbeyan- Palerang Regional Council** of 10 Majara St, BUNGENDORE NSW 2620 (**Council**)

**BIG ISLAND MINING PTY LTD** ABN 12 112 787 470 of Level 10, 56 Pitt Street, SYDNEY NSW 2000 (**Developer**)

#### **Description of the Land to which the Draft Amendment Deed and the Amended Planning Agreement apply**

The land comprising the Development is shown in the map at Annexure A to this Explanatory Note titled "Figure 3".

The Draft Amendment Deed and the Amended Planning Agreement also apply to that part of Majors Creek Road which lies between the Development and the intersection with Araluen Road.

The land also includes the Braidwood Recreation Ground located at 1 Kedar Street BRAIDWOOD, NSW.

#### **Description of Proposed Development**

The Development means the Dargues Gold Project proposed by BIM in its major projects application number 10\_0054, which was approved on 8 February 2012, and any modifications.

#### **Summary of Objectives, Nature and Effect of the Draft Amendment Deed**

##### **Objectives of Draft Amendment Deed**

The objectives, nature and effect of the Draft Amendment Deed is to update the 2013 Agreement by clarifying the contributions that have been paid by the Developer to Council, increasing and clarifying the contributions payable by the Developer in connection with the Development, and providing for the provision of a bank guarantee by the Developer to Council to further secure the Developer's payment of contributions under the Amended Planning Agreement.

##### **Nature of the Draft Amendment Deed**

The Draft Amendment Deed is a written agreement between the Parties pursuant to clause 25C(3) of the EP&A Regulation amending the 2013 Agreement, which is a planning agreement under s7.4 of the Act.

The Draft Amendment Deed::

- clarifies the contributions that have already been paid by the Developer to Council;
- amends the annual payment by the Developer towards road infrastructure works by increasing the payment amount and clarifying that the payment is to be put towards ongoing pavement upkeep along a haulage route being that part of Majors Creek Road which lies between the Development and Araluen Road;
- clarifies that s7.11, s7.12 and s7.24 are not excluded from applying to the Development and the contributions payable by the Developer are to be taken into consideration for the purpose of s7.11;
- increases the s7.11 Contribution: Community benefit payment towards upgrade of Braidwood Recreation Ground;
- removes the obligations relating to the disposal of waste at the Council's Braidwood facility, which is no longer able to take putrescible waste;
- requires the Developer to provide a bank guarantee for the benefit of Council to secure the Developer's payment of contributions under the Amended Planning Agreement; and
- removes the default and termination provisions.

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**Assessment of the Merits of the Draft Amendment Deed**

The Draft Amendment Deed provides a positive impact on the public by:

- (a) the provision of increased contributions by the Developer for:
  - the maintenance of part of a haulage route, and
  - the upgrade of the Braidwood Recreation Ground; and
- (b) further securing the Developer's obligations under the Amended Planning Agreement by way of a bank guarantee to Council.

**How the Draft Amendment Deed Promotes the Public Interest and objects of the Act**

The Draft Amendment Deed promotes the public interest and elements of the objects of the Act including those identified in Section 1.3 (c) and 1.3(g) of the Act which seek to promote the orderly and economic use and development of land as well as to promote good design and amenity of the built environment. The Draft Amendment Deed will provide increased contributions towards the maintenance of part of Majors Creek Road which will assist the continued public use of the road as well as an increased contribution towards Braidwood Recreation Ground which will support and service the existing and future population of Braidwood.

**How the Draft Amendment Deed promotes the guiding principles for Councils in section 8A of the *Local Government Act 1993***

By providing a mechanism by which the Council will be provided with monetary contributions for the construction and maintenance of local infrastructure the Draft Amendment Deed promotes the following guiding principles for Councils in section 8A of the *Local Government Act 1993 (NSW)*:

- (i) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers;
- (ii) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (iii) Councils should consider the long term and cumulative effects of actions on future generations.
- (i) Councils should act fairly, ethically and without bias in the interests of the local community

**The impact of the Draft Amendment Deed on the public or any section of the public**

The Draft Amendment Deed will benefit the public and local community as it will increase the contributions payable by the Developer to maintain the quality of that part of Majors Creek Road between the Development and Araluen Road as well as contributing towards improving the Braidwood Recreation Ground for the community benefit of Braidwood.

**Whether the Draft Amendment Deed conforms with Council's capital works program**

Yes. The Draft Amendment Deed conforms with Council's operational plan 2020-2021.

**The planning purpose or purposes of the Amendment Deed**

The Draft Amendment Deed will serve the planning purposes of both maintaining and enhancing local infrastructure including those arising from the impacts of the Development. It is considered that the Draft Planning Agreement provides for a reasonable means by which to achieve these planning purposes given the extent of the statutory tools that are available to Council by which it can deliver the proposed public benefits.

**Requirements before issue of certain certificates**

The Draft Amendment Deed does not specify requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued



### Schedule A

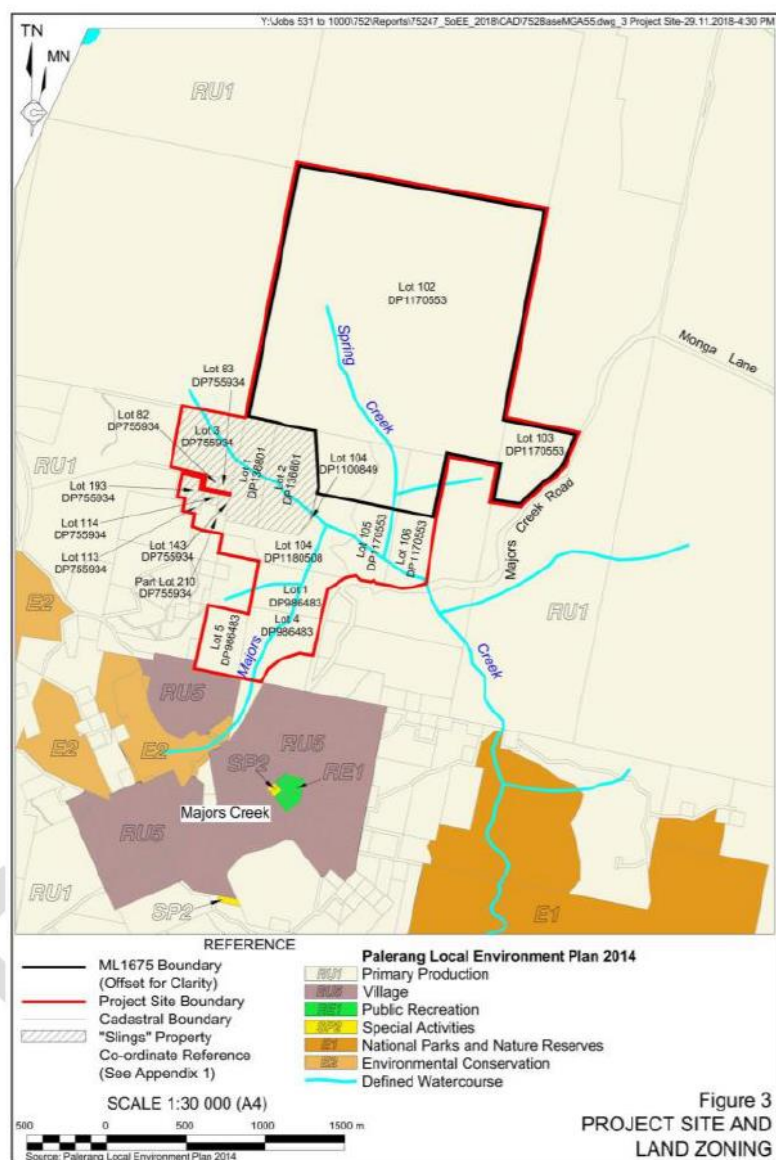


Figure 3  
PROJECT SITE AND  
LAND ZONING

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