



Planning and Strategy Committee of the Whole

12 August 2020

**UNDER SEPARATE COVER
ATTACHMENTS**

ITEMS 7.4 AND 7.5

**QUEANBEYAN-PALERANG REGIONAL COUNCIL
PLANNING AND STRATEGY COMMITTEE OF THE WHOLE**

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QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

- | | |
|--------------|---|
| ITEM 7.4 | MODIFICATION APPLICATION 82/96.A - MODIFICATION OF
EIGHT LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO |
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QPRC



Section 96(2) Matters for Consideration - 82/96.

SECTION 96 MODIFICATIONS – GENERALLY EP&A ACT, 1979

96(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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment:

In regards subclause 'a', 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 that the proposal remains to be for the purposes of an Eight lot Torrens title subdivision.

In regards subclause 'b', Council has referred the proposal to Department of Planning, Industry and Environment – Crown Lands as concurrency agencies under the parent consent. Correspondence was received raising no objection to the proposal as modified.

With regards subclause 'c' and 'd', the application was publically notified from 18 March 2020 to 1 April 2020. One submission was received. The matters raised within this submission are discussed in detail later within this report.

SECTION 79C 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 79C of the Environmental Planning and Assessment Act, 1979 as relevant to the development application:

79C(1)(a) the provisions of:

(i) any environmental planning instrument

While since repealed, at the time of approval of the parent consent and lodgement of the subject modification the *Tallaganda Local Environmental Plan (TLEP) 1991* was the applicable environmental planning instrument. As such, an assessment of the proposal as modified against the relevant provisions of the TLEP 1991 follows:

TALLAGANDA LOCAL ENVIRONMENTAL PLAN 1991

The subject site is zoned 1(a) General Rural zone under the TLEP 1991. The proposed modifications retaining five allotments greater than 40ha in area and three concessional allotments being greater than 2Ha in area involves no changes to the compliance of the development with the relevant provisions of the TLEP 1991 from that of the parent development.

79C(1)(a)(ii) any draft environmental planning instruments

DRAFT QUEANBEYAN-PALERANG LOCAL ENVIRONMENTAL PLAN (QPLEP) 2020

The draft Queanbeyan-Palerang Comprehensive Local Environmental Plan 2020 was recently public exhibited from 1 June 2020 to 30 June 2020. The draft plan has been considered as part of this assessment and the proposed concessional allotments would not be permissible under the draft QPLEP. Nonetheless, as the subject application is for the purposes of a modification only, the draft QPLEP has no effect on Council's ability to grant consent to the subject modification.

79C(1)(a)(iii) any development control plan

TALLAGANDA DEVELOPMENT CONTROL PLAN NO.4 – RURAL 1(A)

While since repealed the *Tallaganda Development Control Plan (TDCP) No.4 – Rural 1(A)* is the applicable development control plan for the purposes of the subject modification application. While the proposed allotments configuration as modified is generally consistent with the relevant provisions of the TDCP No.4, the proposed road standard being a gravel formation would result in a variation to the minimum road construction standard for the purposes of subdivision as established under Section 2.19 of the TDCP No.4. Figure 6 below provides a diagrammatic summary of the requirements of Section 2.19 of the TDCP No.4. Importantly it should be noted for subdivisions involving 8 or more lots, such as the subject development, requires the construction of an 8m wide road formation including a minimum 5.6m wide sealed carriageway.

Despite condition 5 of DA 80/92 requiring road upgrade works to Council's standard for 8 or more lots, as DA 80/92 resulted in only seven lots it should not have triggered the requirement for the sealing of Duckfield Road. However, both DA 82/96 and DA 83/96

resulting eight and ten lots respectively would require sealing of the length of Duckfield road from its intersection with MR79 (Goulburn Road) to each of the proposed allotments.

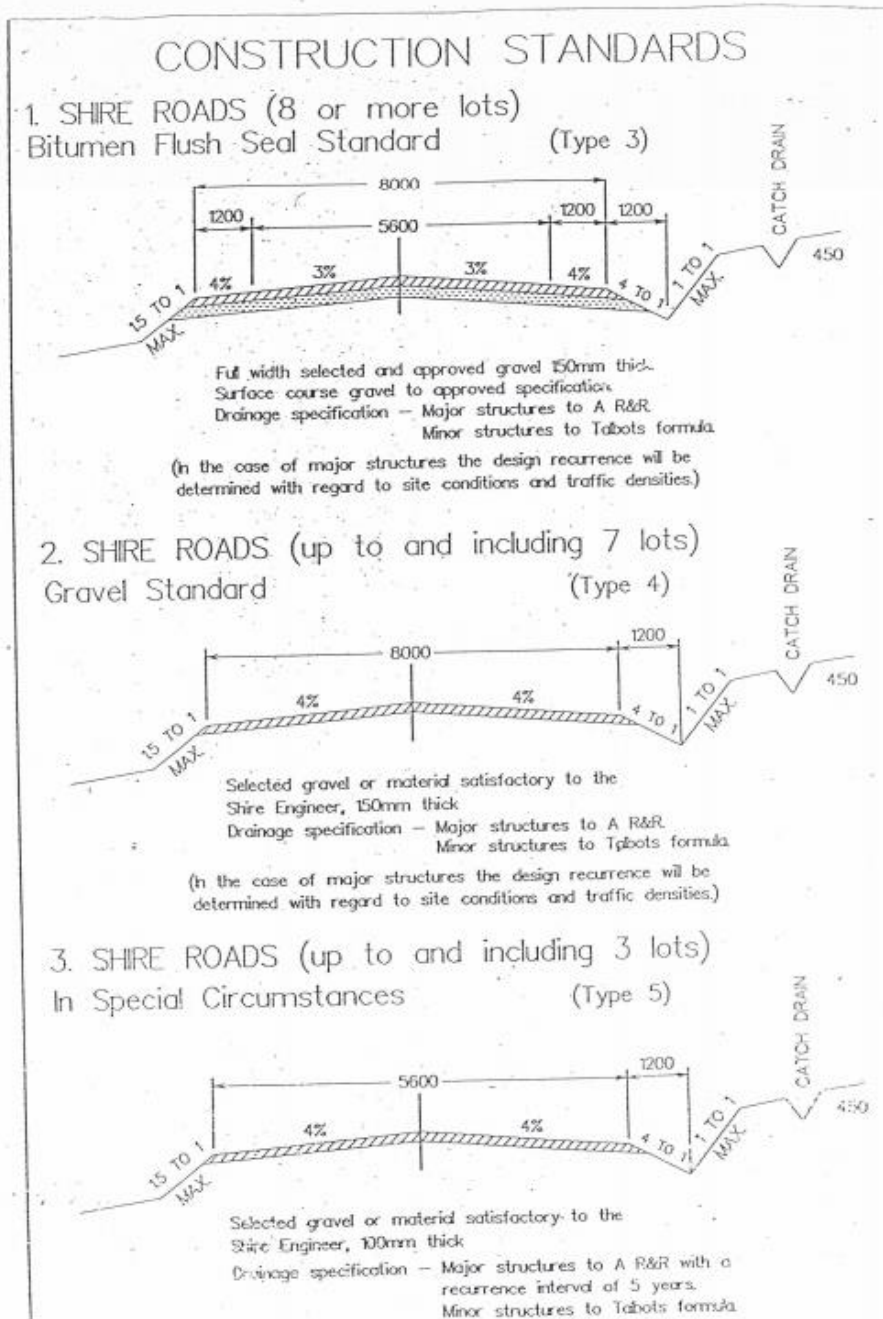


Figure 6: TDCP No.4 Road Standards

In the interest of comparison, if current construction standards were applied to the proposal a minimum 9.2m wide road formation including a 7.2m wide sealed carriageway would be required under Council's Development Design Specification D1 – Geometric Road Design (Urban and Rural).

The Applicant has sought to justify the proposed variation to the road construction standard on the following grounds:

- *The Council approved plans and issued Construction Certificate, regardless of their presentation, do not call up sealing of roads within the subdivision. Enquiries of Former Council Employee Ron Trevallion in fact revealed that "he was working toward the roads*

being gravelled only". He seemed unaware of the need for bitumen sealing of the roads and added that at no stage was bitumen sealing of the roads raised with the applicants. On the basis the applicants proceeded through a number of consultants to design and construct the roads to a gravel standard.

- *Despite the fact that consultant Brian Burge wrote to Council seeking clarification regarding the construction standards including whether bitumen sealing was not required, Council's reply on the issue was silent leading the applicant to believe that based upon previous discussion with Council officers a gravel standard was only required.*
- *Stage 1 road works under Development Consent TSC/80/1996/DA that included the construction of Duckfield Road from the Tarago Road to a gravel only standard and accepted on behalf of Council by former Engineer Manager Ron Trevallion as meeting the conditions of the Development Consent upon completion. The issue of bitumen sealing was not considered or raised at the time.*
- *Discussion with the applicants and their original surveyor reveal they were led to believe that graveling of the roads was all that was required. At no stage was bitumen sealing of the roads discussed with them.*
- *It is acknowledged that due to a succession of a number of technical advisors/ consultants engaged upon this project that the management of the issues is not what it should have been. However it does not alleviate the fact that work has been undertaken with the advice and support of Council officers at the time that has resulted in the road works being constructed to a gravel standard.*

While it is undeniable that if strictly applied Condition 5 of 82/96 would require bitumen sealing of the length of Duckfield Road, Council has not helped itself in that the requirements of the development standard have not been clearly enforced throughout the construction certificate process and the matter has been drawn out over the last 20 years without the matter being resolved despite construction works continuing during this period. This is further complicated by the fact that on several instances Council staff have taken it upon themselves, despite the road standard remaining unresolved, issued written notice of satisfactory completion of works.

In considering the subject modification Council is faced with several options:

1. Enforce Condition 5 of 82/96 which would require the length of Duckfield Road to be sealed at the developers cost. Council's Development Engineer has advised that to retrospectively require the developer to seal the approximately 7km length of Duckfield Road would cost approximately \$840,000;
2. Council accept a reduced construction standard which would result in an 8m wide unsealed gravel carriageway. It is worth noting that in its current state a number of areas of the Duckfield Road measure between 6m to 7m and require widening; or
3. A compromise would be to allow for construction to an 8m wide unsealed gravel carriageway with bitumen sealing of any portion of the road for a minimum of 100m where the near road shoulder (not the centreline) is located 50m from the extremity of an existing dwelling or where the shallow nature of allotments promotes construction of dwellings close to the road such as proposed Lots 1, 2 and 3. This would limit potential impacts of dust upon existing and likely future dwellings along the roadway.

In considering this matter it is appropriate to give weight not only to the impacts of the subject application to the cumulative impact of the subject application with the other development being undertaken by the along Duckfield Road. The two applications yet to be finalised by the developer which include identical road upgrade conditions, 82/96 and 83/96 will result in 18 additional lots along Duckfield Road which is a significant increase in

traffic volumes along the roadway. In supporting a reduction in the construction standard Council will inherit a public asset with a higher than average maintenance requirement. increased As such, it is considered appropriate that condition 5 be retained in its current form and that the sealing of the road way be enforced prior to the issue of a subdivision certificate. Nonetheless, if Council is of a mind to reduce the construction standard it is recommended that option 3 partial sealing be implemented as to minimise the impacts of additional traffic movements upon surrounding residences.

79C(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*.

79C(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 this prescribed matters, the proposed development does not involve the demolition of a building for the purposes of *AS 2601 – 1991: The Demolition of Structures*.

79C(1)(a)(v) any coastal zone management plan

Council is not subject to a coastal zone management plan.

79C(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

Future development of allotments

In general the proposed modification improves the capacity for the allotments to accommodate for future residential development by providing lot boundaries that are more considerate of the topographical constraints of the land. However, given the age of both the parent consent and the subject modification which predate current legislative requirements in relation to bushfire and threatened species any future application for the purposes of a dwelling will need to consider compatibility of the dwelling site with the bushfire risk and flora and fauna present upon the site.

Outstanding Works

In considering the subject modification application, it has been identified that while despite written notice having previously been issued to the developer advising that the required works satisfactorily been completed a number of conditions have not been satisfied including the fencing of the length of Duckfield Road, construction of a minimum 8m wide carriageway, and realignment of the Duckfield Road road reserve to capture the constructed carriageway (see Figure 3 above). Further, a significant period of time has passed since the works were completed resulting in the deterioration of the works.

Road Carriageway

Regardless of the road finish the minimum required carriageway width under TDCP No.4 for Duckfield Road is 8m. When measured at random intervals the existing carriageway

width varies from 6m to 8.2m with the carriageway failing to achieve the required 8m width in numerous instances. As such, regardless of the outcome of the subject modification further upgrade works would be required to satisfy Condition 5 of 82/96.

Fencing

In considering the adequacy of fencing Section 2.32 of the TDCP No.4 establishes minimum standard for fencing being as follows:

2.32 Fencing of the road reserve boundaries along all lots created by a subdivision is to be constructed to a minimum construction standard of 5 Plan wires and 1 barbed wire at top; strainer posts and assemblies at appropriate interval and a steel post every 4 metres. Minimum height of fences to be 1.5m at all times.

When inspecting the fencing works undertaken to date along the length of Duckfield Road it was noted that some areas of the existing Duckfield Road road reserve adjoining vegetated areas of 350 Goulburn Road were unfenced in areas while in other areas fencing comprised of wires stapled to coppers logs, in areas fencing had not been appropriately anchored to corner posts and in others fencing had been rested upon top stays of star pickets without being threaded through the pickets. A complicating factor to this matter is that individual land owners along Duckfield Road have undertaken maintenance works to the boundary fencing since the completion of the initial works and as such Council is unlikely to be in a position to require the developer to undertake further upgrade works to this fencing other than ensuring that the length of the road reserve is fenced.

Road alignment

As previously noted throughout this report, an area of the carriageway of Duckfield Road was constructed outside of the road reserve upon 260 Duckfield Road. Anecdotal evidence upon the Council file suggests that this deviation was undertaken as a private agreement between the developer and the land owner as to increase the separation from the carriageway to existing dwelling upon the property. The situation appears to have deteriorated between the parties to a point whereby each party believes it is the responsibility of the other to undertake the required survey work as to realign the road reserve to capture the carriageway. While Council is a signatory to the dedication of land to Council for the purposes of a public road reserve the costs of undertaking the survey work and preparation and execution of the required administrative documentation should be at the cost of the developer. Any agreement to share or offset these costs between the developer and the landowner is a private matter in which Council has no involvement. Nonetheless, the Subdivision Certificate for 82/96 will not be issued until such time as the alignment has been executed so as to ensure that the physical carriageway is located within a Council owner road reserve.

79C(1)(c) the suitability of the site for the development

The subject modification has no impact upon the suitability site for the purposes of the proposed development.

79C(1)(d) any submissions made in accordance with this Act or the regulations

The application was notified in accordance with Council's Community Engagement and Participation Plan 18 March 2020 to 1 April 2020 with One submission received, raising the following concerns:

1. Road alignment

Concern was raised that the physical carriageway of Duckfield Road falls outside of the road reserve.

Assessing officer's comments: This matter has been discussed in detail previously throughout this report. In brief this is a private matter between the landowner and developer, however a subdivision certificate will not be issued until such time as the alignment has been rectified so as to ensure the carriageway is located entirely within a legal road reserve.

2. Adequacy of fencing

Concern was raised over the adequacy of fencing works undertaken by the applicant along the length of Duckfield Road.

Assessing officer's comments: While Council records indicate that ongoing concerns have been raised over the adequacy of the fencing works and the manner in which they were undertaken by the developer. This is a long standing and complex matter as works have been undertaken since 1997, being over 23 years ago. As such works have aged and private land owners have undertaken their own maintenance works. This makes it difficult for Council to impose further maintenance requirements upon the developer. Nonetheless, to satisfy the requirements of conditions 5 it is appropriate that the developer fence the areas of Duckfield Road where fencing has not been completed.

3. Erosion control

Concern was raised over the adequacy of erosion control measures put in place throughout the development and potential ongoing erosion impacts including the ongoing siltation of an adjoining dam.

Assessing officer's comments: No works are currently being undertaken in relation to the subject application. As such, it is not possible to provide comment on the adequacy of such measures. Any future works will require the implementation and maintenance of appropriate erosion and sediment control measures until stabilisation is achieved.

The dam in question captures water from a culvert under Duckfield Road and partially encroaches within the road reserve. Upgrade works to the road as a result of the proposed development have caused the carriageway to occupy more of the road reserve which has brought the carriageway closer to the dam. Inherently an unsealed gravel road will generate dust and given the proximity of the dam to the carriageway it is unlikely that processes of siltation can be avoided without the carriageway being sealed.

4. Traffic

Concern was raised that the proposed development would result in increased traffic volumes upon Duckfield Road and potential increase risk to pedestrians in the area.

Assessing officer's comments: The subject modification seeks to alter the approved lot configuration and does not change the total number of lots. As such, the proposed

modification is not considered likely to increase traffic volumes from those of the parent development.

5. *Livestock safety*

Concern was raised that the introduction of additional domestic pets associated with future residences upon the allotments would pose a risk to livestock.

Assessing officer's comments: The subject modification seeks to alter the approved lot configuration and does not change the total number of lots. As such, the proposed modification will not increase the number of likely future dwellings within the locality. Nonetheless, all domestic animal owners have legal obligations regarding the keeping of such animals.

79C(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 reduction in road construction standard would burden Council with increased road maintenance cost as traffic volumes increase following the construction of dwellings upon the resulting lots. Accordingly it is considered to be contrary to the public interest to reduce the road construction standard.

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 are applicable to the proposed as modified.

SECTION 94 CONTRIBUTIONS

Section 94 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.

No additional Section 94 Contributions are applicable to the proposed development as modified.

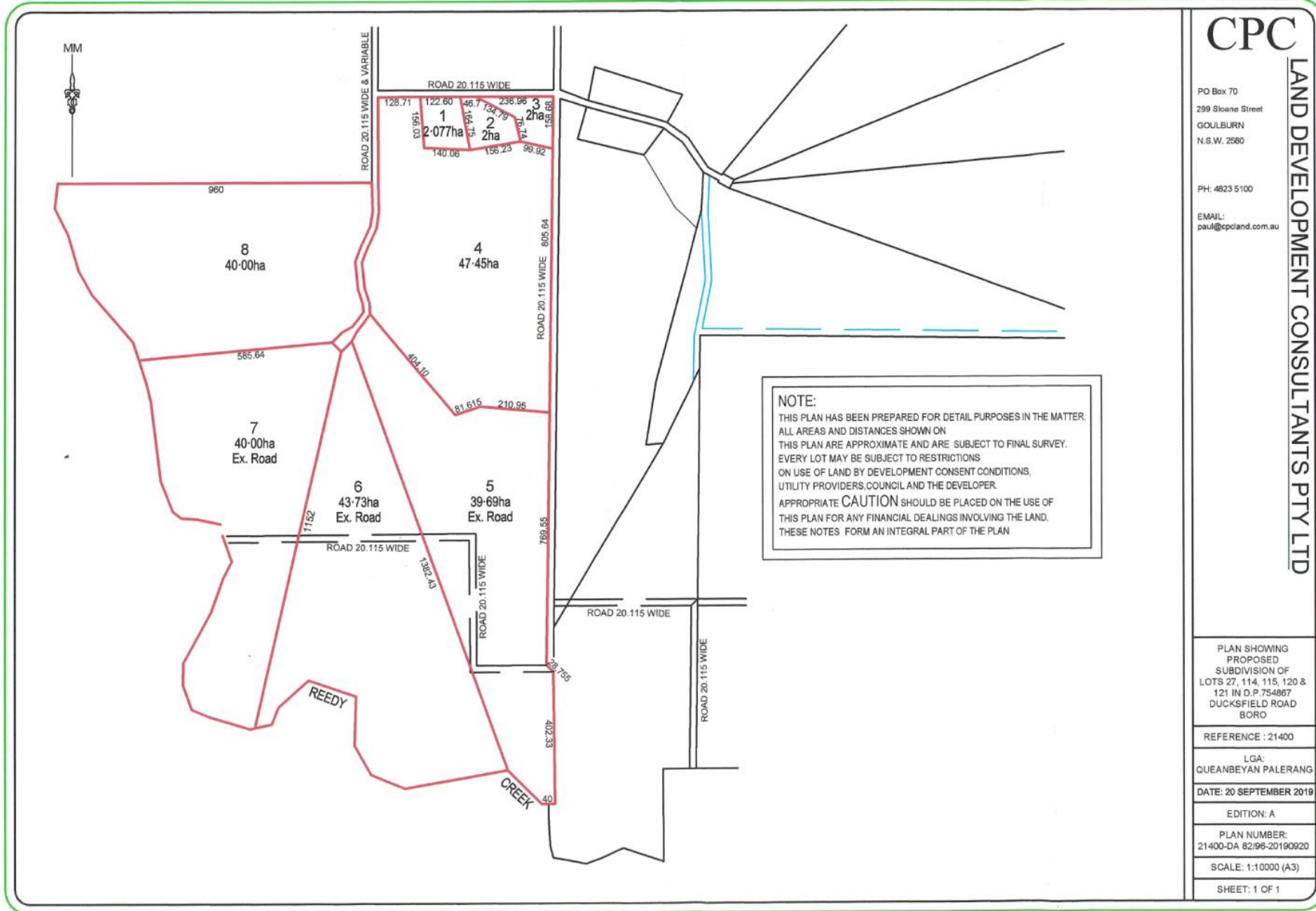
QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

ITEM 7.4 MODIFICATION APPLICATION 82/96.A - MODIFICATION OF
EIGHT LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO

ATTACHMENT 2 DA 82/96.A - MODIFIED LOT CONFIGURATION PLAN - 536
DUCKFIELD ROAD, BORO



CPC
 LAND DEVELOPMENT CONSULTANTS PTY LTD

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QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

ITEM 7.4 MODIFICATION APPLICATION 82/96.A - MODIFICATION OF
EIGHT LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO

ATTACHMENT 3 DA 82/96.A - SUBMISSION - 536 DUCKFIELD ROAD, BORO

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

QPRC
Natural and Built Character

Notice of Application to Modify Development Consent
Development Modifications No 82/96.A and 83/96.A

Dear Sir/Madam

In response to your letter of 12 March 2020 I would like to remind council that there are still ongoing issues from Stage 1 of this development. It would be appreciated that these ongoing issues be addressed before any approval is given for this subdivision modification and any approval is given to the development.

The issues include 1. a land swap where Duckfield Road [REDACTED] land

2. fencing that is inadequate or none existent

3. erosion that has not been controlled,

there are other issues that have been discussed many times. For further information on the problems please look at file held by council.

A few issues that come to mind that will come with the new subdivision is the increase of traffic on Duckfield Road which is not maintained that well, more neighbours that won't control their dogs leading to more dog attacks on our stock and the difficulty crossing the road with the speeding drivers that already inhabit it.

Yours faithfully

[REDACTED]

QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

- ITEM 7.4 MODIFICATION APPLICATION 82/96.A - MODIFICATION OF
EIGHT LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO
- ATTACHMENT 4 DA 82/96.A - 82/96 NOTICE OF DETERMINATION AND
APPROVED PLAN - 536 DUCKFIELD ROAD, BORO

82/96

Gary Richards

Form 7

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

To: Mr J Bunn of: 'St Omer', BRAIDWOOD NSW 2622

being the applicant in respect of Development Application No. 82/96

Proposed: 8 Lot Subdivision

In accordance with Part 4 of the Environmental Planning & Assessment Act 1979, approval is granted for the subdivision of land described as follows:

Portions 27, 121, 115, 114 and 120, Parish of Barnet

The development application has been determined by granting of consent subject to the conditions specified in this notice. The conditions of consent are:

1. The subdivision shall be in accordance with the plans submitted with the application and approved by the Council, except where modified by the following conditions. The approved plan shall not be modified except with a written consent of the Council. An endorsed copy of the approved plan is attached.
2. Prior to the certification and release of the linen plan, the applicant shall pay the fees, charges and contributions to the Council in accordance with the Tallaganda Local Environmental Plan 1991 and other relevant planning instruments, and the adopted Management Plan.

Section 94 Contribution Plan Purpose	Amount to be Paid
Road Works	\$6,800
Bush Fire Suppression	\$3,080

Fees and Charges Purpose	Amount
Gate Entry Inspection Fee	\$440
Road Construction Supervision (Plans required)	\$11,410
Inspection of Intersection Fee	\$360
Subdivision Release Fee	\$40
Fencing Inspection	\$495

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The Road Construction Supervision, Inspection of Intersection and Fencing Inspection Fees (as they are duplicated) shall be payable only once in relation to DA's 80/96, 82/96 and 83/96.

3. Erosion and siltation control measures shall be undertaken to the satisfaction of Council and the Department of Land and Water Conservation in respect of any part of the land where the natural surface is disturbed or earthworks are carried out. Detailed plans and specifications of any soil disturbance works are to be submitted for approval by the Director of Works prior to the commencement of those works.
4. Each allotment shall be provided with a vehicular access constructed, formed, gravelled and recessed to a depth of 15 metres at a position satisfactory to the Director of Works. The access ways shall be provided at the applicants full cost and each access is to incorporate 4.88 metre long concrete pipe of a minimum diameter of 375mm plus 2 masonry headwalls. The access ways shall be gravelled to a depth of at least 75mm thick and at least 3 metres wide, constructed with a smooth, well compacted surface to the satisfaction of the Director of Works. The adjacent road reserve is to be left in a clean and tidy condition after gravelling. Internal access ways shall be formed and drained to a table drain to the satisfaction of the Director of Works.
5. Access to and within the subdivision shall be constructed within a dedicated road reserve from MR79. Such access shall be constructed at the applicants' full cost, prior to the release of the linen plan in accordance with Council's standards and as follows:
 - (a) Provision of concrete pipe culverts, end walls and guide posts. Pipe sizes in accordance with Talbot's formula.
 - (b) Provision of table drains and cutting/fill batters to the satisfaction to the Director of Works.
 - (c) Fencing of all road reserve boundaries from MR79 to the satisfaction of the Director of Works.
 - (d) Arrangement for the supervision of works be the Director of Works or his nominee.
 - (e) A turning circle at the end of each 'No through' road to allow for easy turning of emergency vehicles.

Plans are to be prepared by a suitably qualified person and approved by the Director of Works. Construction shall be to Council's standards for 8 lots or more with Plans and Specifications to the satisfaction of the Director of Works submitted prior to the commencement of any works.

6. The 0.9ha Public Reserve shown on the plan of subdivision shall be deleted and be consolidated with the adjoining 40ha lot.
7. No trees or existing vegetation shall be removed from within 50 metres of any river, 40 metres of a watercourse of 20 metres from land having a slope greater than 1 in 5 except with the written consent of the Council.

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8. Easements for electricity supply purposes shall be created on the final plan of subdivision in favour of Great Southern Energy. Such easements shall be twenty metres wide, or such other width as agreed to by GSE and such easement shall be centred on:
 - (a) all existing power lines which cross the subdivision and where that part of a subdivision will involve freshly surveyed boundaries; and
 - (b) all proposed power lines which the developer is having constructed to provide electricity to the lots within the subdivision; and
 - (c) all proposed power lines within the subdivision for which the developer is not required to make a capital contribution, but which would be required to be constructed in the future to provide power to the boundary of each lot.
9. If noxious plants are present on the land, they shall be controlled to the satisfaction of Council's Weeds Officer prior to the release of the linen plan. A letter indicating the compliance with this condition shall be obtained from the Chief Weeds Officer and submitted with the linen plan.
10. Prior to the certification and release of the linen plan, the applicant shall prepare a Bush Fire Control Plan for submission to and approval by the Director of Works. The Bush Fire Control Plan shall address the following matters:
 - the provision of strategic firebreaks within the land to the satisfaction of Council's Fire Control Officer;
 - the provision of dams and/or other structures to provide emergency water supply in the event of fire;
 - works in accordance with the approved Bush Fire Control Plan, shall be undertaken to the satisfaction of the Director of Works prior to the release of the linen plan.

The reasons for the imposition of the conditions are as set out as follows:

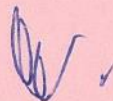
1. To comply with the Tallaganda Local Environmental Plan 1991.
2. To protect and enhance the local amenity.
3. To protect and enhance the local traffic conditions.

Endorsement of date of consent: 21 October 1996

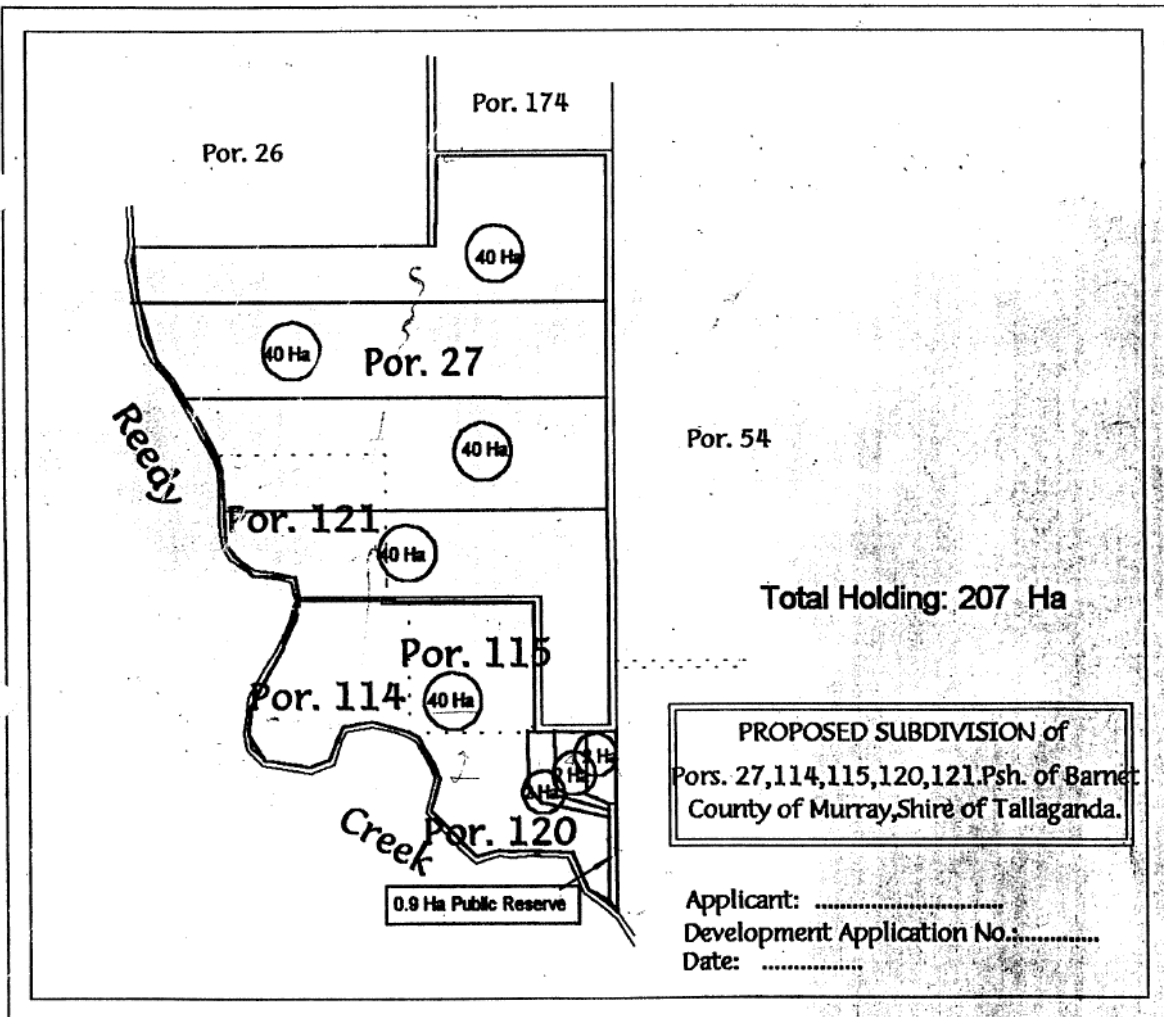
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NOTES:

- (1) To ascertain the date upon which the consent becomes effective refer to Section 93 of the Act.
- (2) To ascertain the extent to which the consent is liable to lapse refer to Section 99 of the Act.
- (3) Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the Land & Environment Court exercisable within 12 months after receipt of this notice.



.....
Signature of behalf of consent authority
(Royce White - Director of Works)
Date: 21 October 1996



QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

ITEM 7.4 MODIFICATION APPLICATION 82/96.A - MODIFICATION OF
EIGHT LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO

ATTACHMENT 5 DA 82/96.A - PREVIOUS COUNCIL REPORT - 536 DUCKFIELD
ROAD, BORO

ITEM 3

SUBJECT	Application to Modify Consent Conditions for DA 80/1996, DA 82/1996 and DA 83/1996 at Duckfield Road		
FILE NO.	DA80/1996 (TSC) DA82/1996 (TSC) DA83/1996 (TSC)	DIVISION/SECTION	Engineering Services

Mr R Bradley indicated that the Development Applications were not combined originally and asked if this item could be deferred until these issues were sorted out.

SYNOPSIS

Council, after considering a report on this matter at its meeting held on 16 February 2004 resolved to defer the item.

The report is re-presented below with extra remarks and an alternative recommendation.

88/2004 MOVED AND ADOPTED that this item be deferred until the Council meeting to be held in Braidwood on 11 May 2004.

ITEM 4

SUBJECT	Development Application 2003/DA-253, Two (2) Lot Subdivision, 80 Hilltop Road, Burra		
FILE NO.	2003/DA-253	DIVISION/SECTION	Corporate and Environmental Services/Planning

SYNOPSIS

Applicant: Peter Williams
Subject Land: Lot 6 DP 247460, 80 Hilltop Road, BURRA
Zone: 1 (d) Rural Residential (YLEP 2002)
Site Area: 16.2 ha
Proposed Development: It is proposed to subdivide the property into two allotments, as shown on the attached sketch plans, incorporating the following areas:

Lot 1: 2.5 Ha
Lot 2: 13.69 Ha

89/2004 MOVED AND ADOPTED that Council approve the subdivision of Lot 6 DP 247460, Number 80 Hilltop Road, Burra into two (2) allotments, subject to the following attached conditions:

Department of Infrastructure Planning and Natural Resource Requirements

1. Water Supply Plan

Implementation of the following Water Supply Plan:

THIS IS PAGE 18 OF THE MINUTES OF AN ORDINARY MEETING NO. 4 OF THE EASTERN CAPITAL CITY REGIONAL COUNCIL HELD IN THE BUNGENDORE COMMUNITY CENTRE, ON TUESDAY 23 MARCH 2004

ADMINISTRATOR

ORDINARY REPORT

29 APRIL 2004

ITEM 3

SUBJECT	Application to Modify Consent Conditions for DA 80/1996, DA 82/1996 and DA 83/1996 at Duckfield Road		
FILE NO.	DA80/1996 (TSC) DA82/1996 (TSC) DA83/1996 (TSC)	DIVISION/SECTION	Engineering Services

SYNOPSIS

Council, after considering a report on this matter at its meeting held on 16 February 2004 resolved to defer the item.

The report is re-presented below with extra remarks and an alternative recommendation.

REPORT

Introduction

The application to modify conditions has been forwarded by Bill Swan and Associates Pty Ltd on behalf of Dennis Domaschenz, the applicant for the three developments. Mr Swan's submission of 8 January 2004 is provided under separate cover as is a copy of the original development consents.

The applications to modify relate to:

- a. Condition 5 of each approval requesting that the access road serving the developments be to a gravel road standard in lieu of the requirement for sealed road standard;
- b. the layout under TSC/82/1996/DA for 8 lots be amended from the approved plan (labeled as Diagram A) to the revised layout labeled as Diagram B;
- c. the layout under TSC/83/1996 DA for 10 lots be amended from approved plan (labeled as plan C) to revised layout labeled as Diagram D.

For reference, Diagram E, a locality plan showing the location of all three developments, the access road(s) serving the proposed developments and the revised subdivision layouts has also been provided.

Previous report to Council meeting of 16 February 2004.

This report, re-presented below, was prepared prior to the proclamation of the new Council and provides a response to matters raised by Mr Swan in his covering letter. It also includes recommendations:

6. Modification of Consent Application; Development Application No's 80/1996 – 7 Lot Subdivision, Lot 144, DP754867, Parish of Barnet, Applicant: A Croker; DA82/1996 – 8 Lot Subdivision, Various Portions, Parish of Barnet, Applicant: J Bunn; DA83/1996 – 10 Lot Subdivision, Lot 54, DP754867, Parish of Barnet, Applicant: Ellision & Head

DA80/1996, DA82/1996, DA83/1996

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Purpose

To seek Council's determination of an application to modify the following conditions of Development consent.

... A copy of the application is attached.

Description of Proposal

The application seeks to modify the following conditions of consent:

TSC/80/1996/DA condition No. 5

".....Construction shall be to Council's standards for 8 lots or more with plans and specifications to the satisfaction of the Director of Works....."

TSC/82/1996/DA Condition No. 5

".....Construction shall be to Council's standards for 8 lots or more with plans and specifications to the satisfaction of the Director of Works....."

TSC/83/1996/DA condition No. 5

".....Construction shall be to Council's standards for 8 lots or more with plans and specifications to the satisfaction of the Director of Works....."

TSC/82/1996/DA condition No. 1

"The subdivision shall be in accordance with the plans submitted with the application and approved by Council except where modified by the following conditions. The approved plans shall not be modified except with the written consent of Council...."

TSC/83/1996/DA condition No. 1

"The subdivision shall be in accordance with the plans submitted with the application and approved by Council except where modified by the following conditions. The approved plans shall not be modified except with the written consent of Council...."

Summary of Considerations

Considerations under Environmental Planning and Assessment Act

In general, the modification relates to two issues:

- Reduce Council requirement for a bitumen seal within an 8metre/80kph formation;
- Modify the approved plans by changing the layout pattern, but maintaining the total approved number of lots.

The Manager of Works report is as follows:

"Council has received a formal application to modify the consent of the three development applications for what is commonly known as the Duckfield Road Estate.

It appears that this has been a long drawn out situation, where work was carried out on the basis of oral approvals and go aheads, without the detailed information we required.

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I acknowledge that Construction Certificates have been issued for all three stages for this development.

The plans that were approved as part of the CC process, fall far below the standard which would be required for any normal engineering works. There have been a number of factors which have contributed to this, mainly the developer and the number of consultants who have been engaged to prepare the works.

There has been no proper documented process in relation to any of the inspections relating to the engineering approvals.

The plans do not show any detailed information, particularly on Stage Two where there is insufficient detail to address what is going to be constructed. The plans which were approved by the CC for Stage Three, are basically a centreline without any details of existing formation or what is proposed to be carried out. There are no detailed long sections, cross sections or engineering designs of structures.

I believe that the real critical issue in this development is that the developer has not had adequate and reasonable engineering input into the design process.

The conditions of consent were all basically the same in relation to the construction standards. It was to be for an 8 Lot or more subdivision, which requires an 8m wide formation with a 5.6m wide seal. This was in place when the subdivision was approved.

Conditions of consent in 1996 required a sealed road 8m wide 5.6m wide seal for greater than 8 Lots.

A modified development control plan for roadworks indicated that a sealed pavement was not necessarily required except for specific reasons if the traffic flow was less than 120vpd.

Council have since taken further steps to indicate that the developments with less than 120vpd should have sealed road access if connecting to a sealed road.

The combined traffic generated by these developments may accumulative affect at 7vpd is in the order of 175vpd which again is greater than that required to trigger a sealed road.

Council have also required the developers, if they are coming off a sealed road to provide a sealed road.

In relation to all the comments on road construction standards on page 2 of Bill Swan and Associates' letter, I have to advise that all of this relates to oral conversations which has not been documented.

The consent conditions were quite specific requiring standard for 8 Lots or more which is a 5.6m wide seal on an 8 metre wide formation.

The letter referred to from Brian Burge sought clarification as to the road standard. It included a requirement for a 5.6m wide seal.

The letter from Bill Swan and Associates does not advise that the letter only referred to the standard of gravel, it did not mention the alignment, horizontal or vertical formation or seal, it only reduced the CBR value for the gravel.

It still gets back to the real situation where Council's conditions of consent complied with the policy at the time of the consent which requires an 8m wide formation with a 5.6m wide seal. At all times since the approval was issued Council's conditions have required greater than

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120vpd road to be sealed. Current Council's policy is to have all subdivisions off a sealed road sealed.

Taking this into account and the statements are only oral and not supported, when discussing this matter with the former Manager of Works, Ron Trevallion, he indicated that he believed the engineering designs were substandard but was pressurised into approving the designs.

The proposal to substitute "construction shall be to Council standards for a gravel road" still leaves a tremendous area of concern.

A preliminary inspection of the area reveals that there are significant issues still to be addressed in relation to the alignment, both horizontal and vertical, formation width, standard of gravel, erosion control measures and access ways which need to be addressed as well as the seal.

From an engineering and works perspective, Council should stick with the original approvals, and require the developer to construct the road to the horizontal and vertical alignment for 80kph, formation width 8m wide with a 5.6m wide seal pavement, to the appropriate pavement design standards for both quality and thickness. Council is to be supplied with certified works as executed plans indicating the work has been to comply with the conditions of development consent.

In regard to the application to modify TSC/82/1996/DA & TDC/83/1996/DA subdivision layout, the following applies:

- No new lots are being created. The developer is applying to reshuffle the lot layout particularly the location of 'concessional allotments'.
- The developer has supplied new Geotech reports for On-site Sewerage Management. All lots have satisfactory sewerage disposal areas. All concessional lots have satisfactory dwelling sites.
- All lots have frontage to a 'proposed' Shire road.
- The proposed 'concessional' lot layout is of concern. Stage 2 [TSC/82/1996/DA] has three concessional allotments fronting the road. The depth to frontage ratio is approx. 1:1. Stage 3 [TSC/83/1996/DA] the three concessionals front the proposed road and have a ratio of 1:2. The maximum depth of these lots is 104 metres which would mean that any of the dwelling sites would be within 100 metres of the road. Therefore dust nuisance could be a problem if the road was gravel."

Summary

The application to modify conditions by way of

Reducing the requirement for a bitumen seal on the proposed road

Revised lot layout.

The Manager of Works recommends that "...the developer constructs the road to the horizontal and vertical alignments for 80kph, formation width 8 metres wide with a 5.6 metre wide sealed pavement.....".

Lot layout modification is very dependent of whether the road is bitumen sealed. The modification for lot layout can be approved providing the public road is bitumen sealed to reduce any dust nuisance on residential activities.

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Recommendation That:

1. Council refuse the application to modify the Development Application consent notice No. 80/1996, 82/1996 & 83/1996, seeking to change condition No. 5 relating to the requirement to bitumen seal the proposed road system.
2. Council approve the application to modify the Development Application consent notice No. 82/1996 & 83/1996, seeking to change the layout of the approvals in respect of condition No. 1.

REASONS FOR CONDITIONS:

Conditions have been imposed in accordance with the requirements of Section 80A of the Environmental Planning and Assessment Act, 1979, in particular having regard to the relevant provisions of Section 79C:

- To comply with the provisions of relevant Environmental Planning instruments (including drafts) regulations and development control plans (S79C(1)(a)(I)-(iii)).
- To ensure that there is no adverse effect caused by the development (S79C(1)(b)).
- To ensure the site is suitable for the development (S79c(1)(c)).
- To protect the public interest. (S79C(1)(e)).

NOTES:

Construction Certificate

Where construction work is proposed development consent is the first step. Before construction commences, a Construction Certificate must be obtained from Council or an accreditation certifier.

Lapsing of Development Consent

Development consent does not lapse if the approved use has actually commenced or the proposed work is physically commenced before the consent lapse date, except where a condition specifies a limit to the duration of the consent.

Right of Appeal

If you are dissatisfied with the decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice.

Charges

Charges are reviewed each financial year. A copy of Council's fees and charges is available free.

Comment

Each of these subdivisions was approved at the same meeting of the old Tallaganda Shire on 21 October 1996.

Condition 5 of each approval required the main access road to each to be constructed to 'Council's standard for 8 lots or more'. While the words 'bitumen sealed standard' do not appear in the approval advice, the requirement for bitumen sealing was described in the DCP for Rural 1(A) areas and was indicated on an accompanying diagram for Type 3 construction standards (see attached Diagram labeled F).

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Up until January 2004 there had not been a formal request to modify this condition nor had Council otherwise provided formal advice that the bitumen sealed standard was not required. Condition 5 (for bitumen sealing) therefore remains as a condition of approval for all applications including for DA 80/96 for which a linen plan has already been released.

As indicated by the files there has been much correspondence and interaction between the applicant and his various agents and various Council staff, many of which have now left Council's employ.

Some confusion does appear to have arisen over the long development period of these subdivisions due to the later amendment of the DCP which now indicates that the standard for 'access to 8 lots or more' will require bitumen sealing if assessed traffic generation exceeds 120 vpd. This equates to greater than 17 lots served based on an allowance of 7 vpd per lot.

Some of the actions and responses by staff suggest that on at least some occasions, they may have been applying the more recent requirements of the DCP and not the requirements for the original approvals. The release of the linen plan for Stage 1 (7 lots) could be evidence of this.

In any case, it is considered that a modification of road access conditions to the latest Council standards is reasonable and equitable. In this regard the latest applicable standard would be the revised standards for the new Eastern Capital City Regional Council presented for approval as a draft elsewhere in this business paper. If not approved the current standards of TSC DCP No. 4 could apply.

In either case the access road(s) from MR 79 to these subdivisions will require construction to a bitumen sealed standard if 18 or more lots in total are to be served. This sealing will be required over a considerable length if the approved 10 lot subdivision (Stage 3) is to achieve 'release of linen plan'.

In accordance with this principle of applying the latest standards a recommendation has been formulated and is included below.

Financial Implications

There are implications for the applicant regarding costs to comply with Council's conditions.

Council will be financially disadvantaged if it allows the construction of low standard roads that do not cater for the traffic impacts of development.

Policy Considerations

Application of Council's latest DCP road standards will ensure a consistent approach to development applications.

Social Implications

Council's road standards are set to promote safe and functional roads.

Environmental Implications

Adoption of road standards that address many environmental concerns is proposed.

RECOMMENDED that:

1. Development consent condition No. 5 for TSC DA 80/1996, TSC DA 82/1996 and TSC DA 83/1996 be modified to:

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5. Access to and within the subdivision shall be constructed within a dedicated road reserve from MR 79. Such access shall be designed and constructed at the applicant's full cost prior to the release of linen plan in accordance with Council's standards as contained in the document ECCRC Road Access Requirements (April 2004) which has been adopted as a draft amendment to Sections 2.10 to 2.19 of TSC DCP No. 4 Rural 1(A) Version 3 (April 2002).

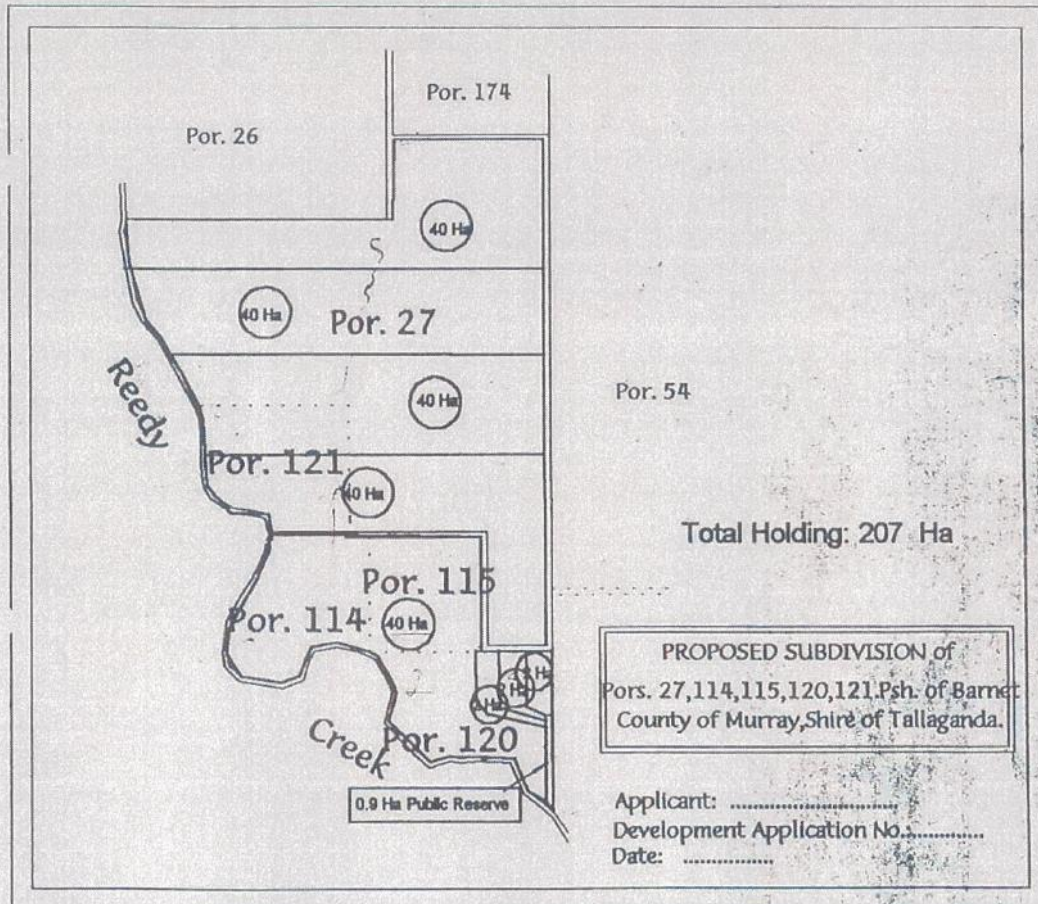
The standard of access roads required shall be Type 7 (bitumen sealed) where 18-39 lots are to be served, Type 4 where 6-17 lots are to be served, Type 3 for 4 or 5 lots, Type 2 for 2 or 3 lots and Type 1 where only 1 lot is served; noting as well the requirement of Note D for sealing of Types 1, 2, 3 and 4 roads over sections where dust impact needs to be addressed.

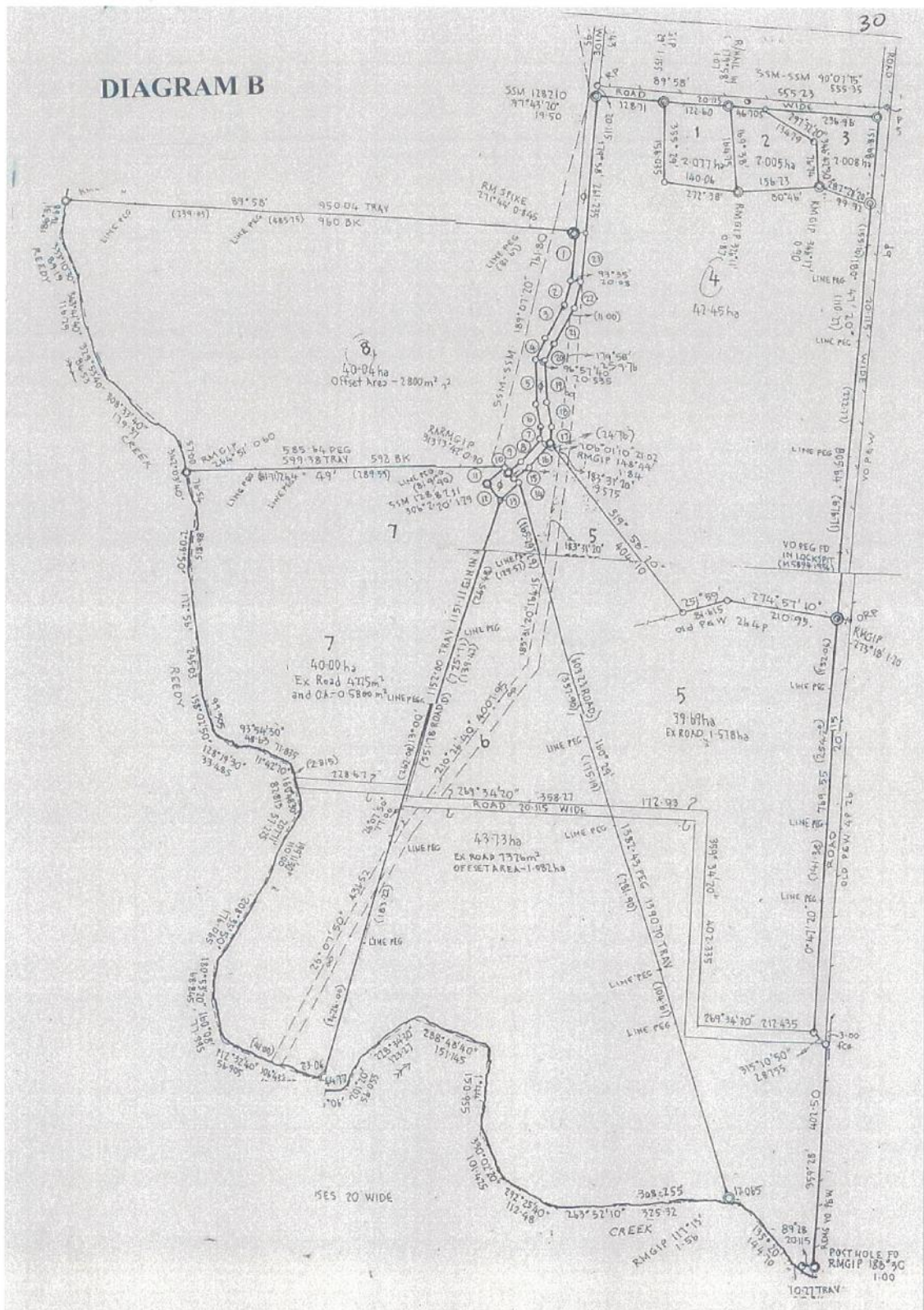
2. Council approve the application to modify the development application consent notice TSC DA 82/1996 and TSC DA No. 83/1996 seeking to change the layout of the approvals in respect of Condition 1.

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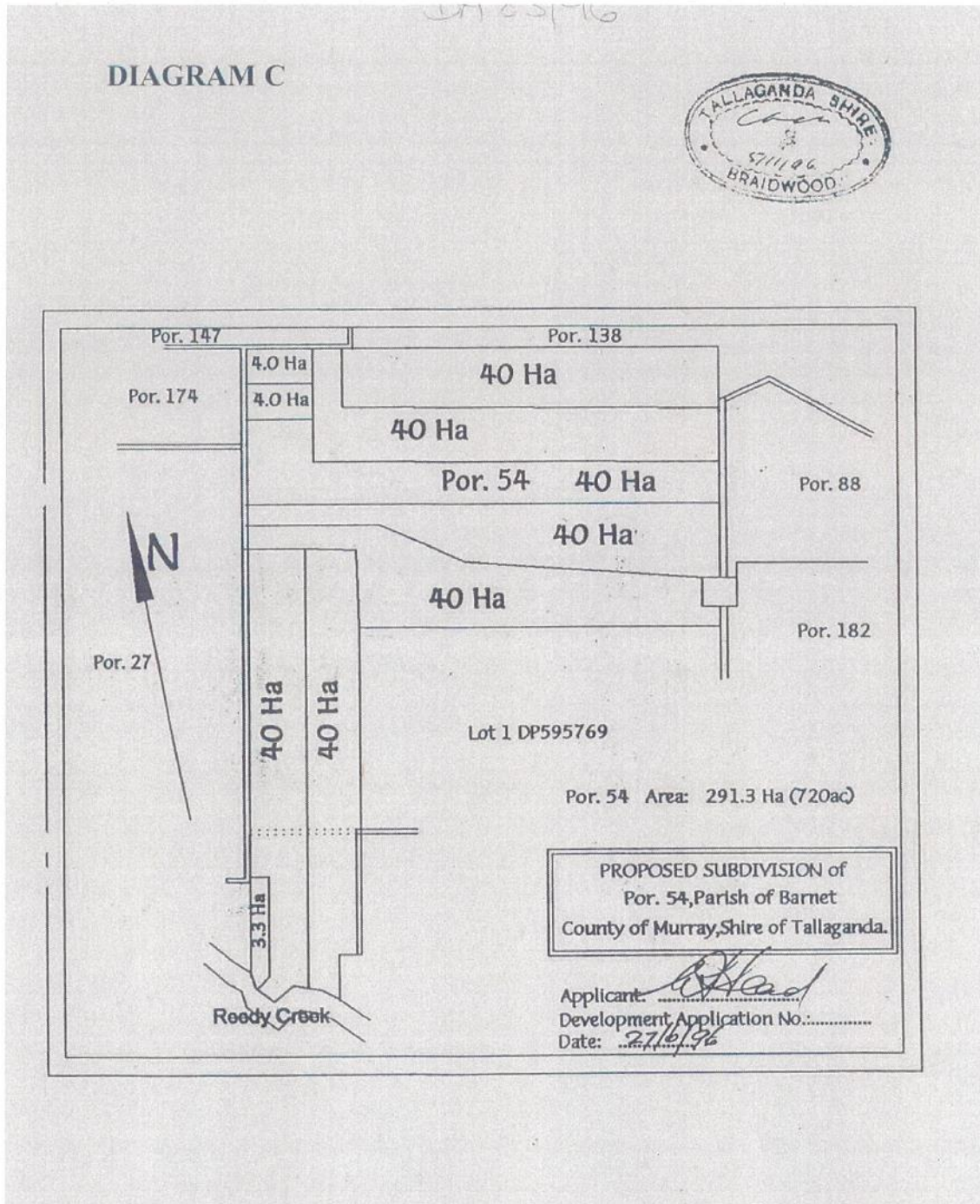
DIAGRAM A

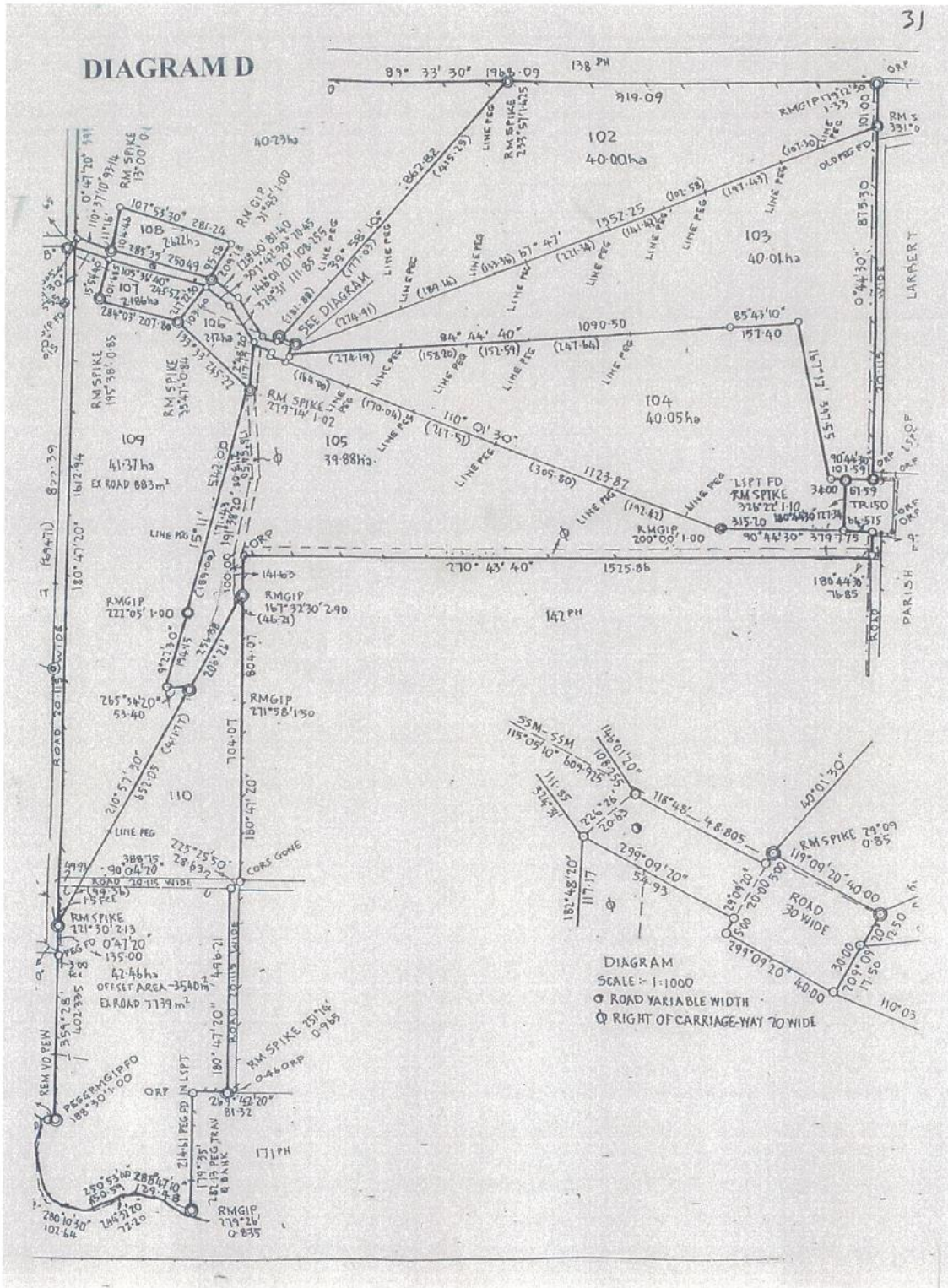




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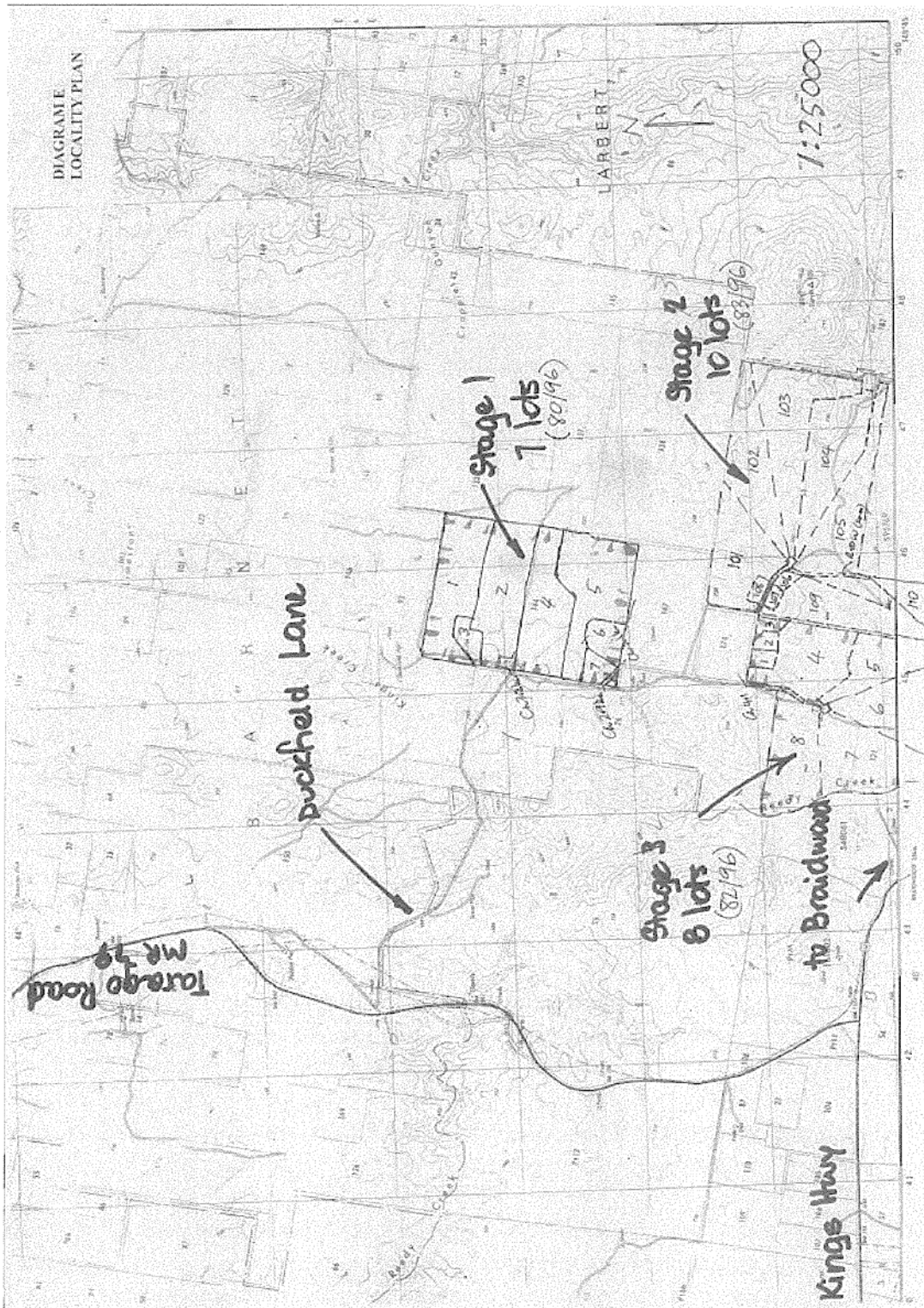
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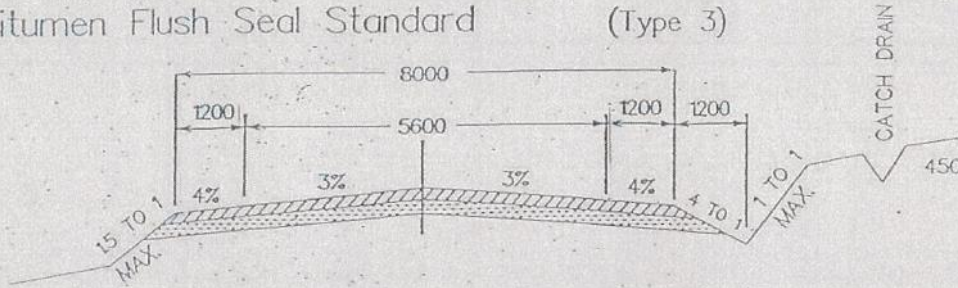
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CONSTRUCTION STANDARDS

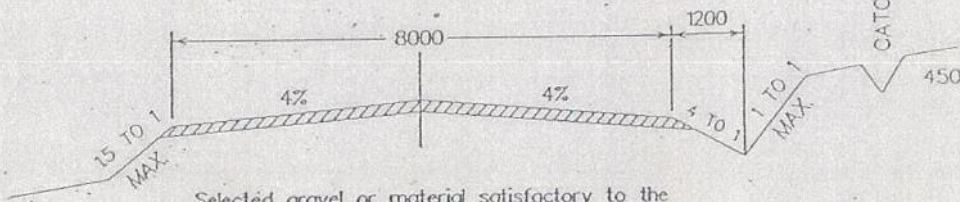
1. SHIRE ROADS (8 or more lots) Bitumen Flush Seal Standard (Type 3)



Full width selected and approved gravel 150mm thick
 Surface course gravel to approved specification
 Drainage specification - Major structures to A R&R
 Minor structures to Taboits formula

(In the case of major structures the design recurrence will be determined with regard to site conditions and traffic densities.)

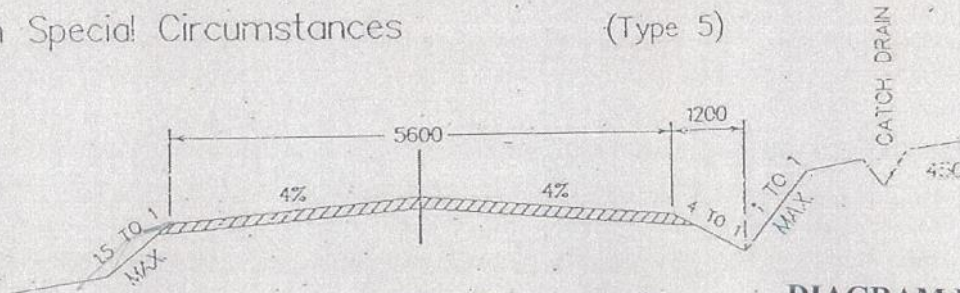
2. SHIRE ROADS (up to and including 7 lots) Gravel Standard (Type 4)



Selected gravel or material satisfactory to the Shire Engineer, 150mm thick
 Drainage specification - Major structures to A R&R
 Minor structures to Taboits formula

(In the case of major structures the design recurrence will be determined with regard to site conditions and traffic densities.)

3. SHIRE ROADS (up to and including 3 lots) In Special Circumstances (Type 5)



Selected gravel or material satisfactory to the Shire Engineer, 100mm thick
 Drainage specification - Major structures to A R&R with a recurrence interval of 5 years

DIAGRAM F

QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

ITEM 7.5 MODIFICATION APPLICATION 83/96.A - MODIFICATION OF
TEN LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO

ATTACHMENT 1 DA 83/96.A - 96(2) ASSESSMENT - 536 DUCKFIELD ROAD

QPRC



Section 96(2) Matters for Consideration - 83/96.A

SECTION 96 MODIFICATIONS – GENERALLY EP&A ACT, 1979

96(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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment:

In regards subclause 'a', 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 that the proposal remains to be for the purposes of a ten lot Torrens title subdivision.

In regards subclause 'b', Council has referred the proposal to Department of Planning, Industry and Environment – Crown Lands as concurrency agencies under the parent consent. Correspondence was received raising no objection to the proposal as modified.

With regards subclause 'c' and 'd', the application was publically notified from 18 March 2020 to 1 April 2020. One submission was received. The matters raised within this submission are discussed in detail later within this report.

SECTION 79C 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 79C of the Environmental Planning and Assessment Act, 1979 as relevant to the development application:

79C(1)(a) the provisions of:

(i) any environmental planning instrument

While since repealed, at the time of approval of the parent consent and lodgement of the subject modification the *Tallaganda Local Environmental Plan (TLEP) 1991* was the applicable environmental planning instrument. As such, an assessment of the proposal as modified against the relevant provisions of the TLEP 1991 follows:

TALLAGANDA LOCAL ENVIRONMENTAL PLAN 1991

The subject site is zoned 1(a) General Rural zone under the TLEP 1991. The proposed modifications retaining seven allotments greater than 40ha in area and three concessional allotments being greater than 2Ha in area involves no changes to the compliance of the development with the relevant provisions of the TLEP 1991 from that of the parent development.

79C(1)(a)(ii) any draft environmental planning instruments

DRAFT QUEANBEYAN-PALERANG LOCAL ENVIRONMENTAL PLAN (QPLEP) 2020

The draft Queanbeyan-Palerang Comprehensive Local Environmental Plan 2020 was recently public exhibited from 1 June 2020 to 30 June 2020. The draft plan has been considered as part of this assessment and the proposed concessional allotments would not be permissible under the draft QPLEP. Nonetheless, as the subject application is for the purposes of a modification only, the draft QPLEP has no effect on Council's ability to grant consent to the subject modification.

79C(1)(a)(iii) any development control plan

TALLAGANDA DEVELOPMENT CONTROL PLAN NO.4 – RURAL 1(A)

While since repealed the *Tallaganda Development Control Plan (TDCP) No.4 – Rural 1(A)* is the applicable development control plan for the purposes of the subject modification application. While the proposed allotments configuration as modified is generally consistent with the relevant provisions of the TDCP No.4, the proposed road standard being a gravel formation would result in a variation to the minimum road construction standard for the purposes of subdivision as established under Section 2.19 of the TDCP No.4. Figure 1 below provides a diagrammatic summary of the requirements of Section 2.19 of the TDCP No.4. Importantly it should be noted for subdivisions involving 8 or more lots, such as the subject development, requires the construction of an 8m wide road formation including a minimum 5.6m wide sealed carriageway.

Despite condition 5 of DA 80/92 requiring road upgrade works to Council's standard for 8 or more lots, as DA 80/92 resulted in only seven lots it should not have triggered the

requirement for the sealing of Duckfield Road. However, both DA 82/96 and DA 83/96 resulting eight and ten lots respectively would require sealing of the length of Duckfield road from its intersection with MR79 (Goulburn Road) to each of the proposed allotments.

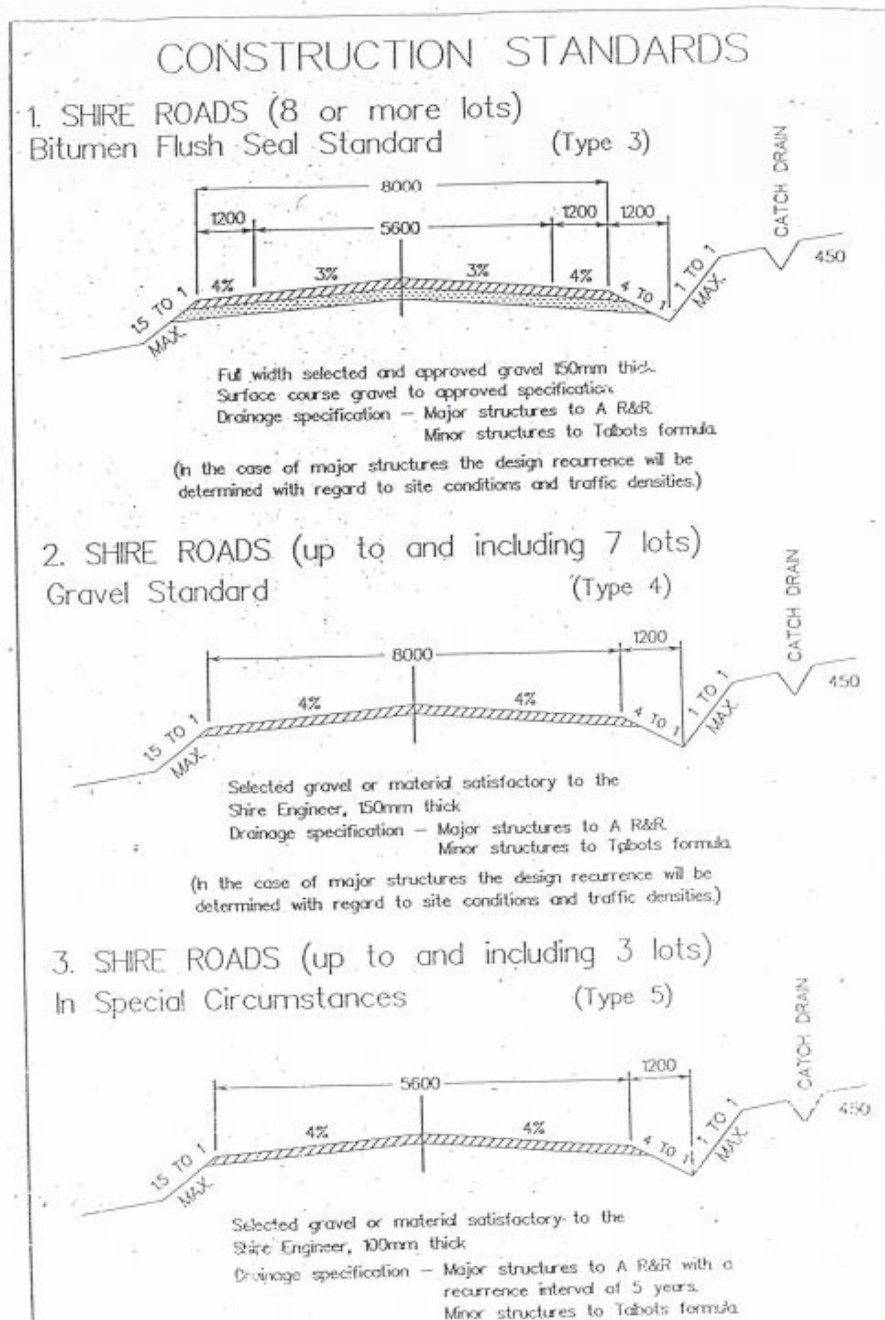


Figure 1: TDCP No.4 Road Standards

In the interest of comparison, if current construction standards were applied to the proposal a minimum 9.2m wide road formation including a 7.2m wide sealed carriageway would be required under Council's Development Design Specification D1 – Geometric Road Design (Urban and Rural).

The Applicant has sought to justify the proposed variation to the road construction standard on the following grounds:

- *The Council approved plans and issued Construction Certificate, regardless of their presentation, do not call up sealing of roads within the subdivision. Enquiries of Former*

Council Employee Ron Trevallion in fact revealed that “he was working toward the roads being gravelled only”. He seemed unaware of the need for bitumen sealing of the roads and added that at no stage was bitumen sealing of the roads raised with the applicants. On the basis the applicants proceeded through a number of consultants to design and construct the roads to a gravel standard.

- *Despite the fact that consultant Brian Burge wrote to Council seeking clarification regarding the construction standards including whether bitumen sealing was not required, Council’s reply on the issue was silent leading the applicant to believe that based upon previous discussion with Council officers a gravel standard was only required.*
- *Stage 1 road works under Development Consent TSC/80/1996/DA that included the construction of Duckfield Road from the Tarago Road to a gravel only standard and accepted on behalf of Council by former Engineer Manager Ron Trevallion as meeting the conditions of the Development Consent upon completion. The issue of bitumen sealing was not considered or raised at the time.*
- *Discussion with the applicants and their original surveyor reveal they were led to believe that graveling of the roads was all that was required. At no stage was bitumen sealing of the roads discussed with them.*
- *It is acknowledged that due to a succession of a number of technical advisors/ consultants engaged upon this project that the management of the issues is not what it should have been. However it does not alleviate the fact that work has been undertaken with the advice and support of Council officers at the time that has resulted in the road works being constructed to a gravel standard.*

While it is undeniable that if strictly applied Condition 5 of 83/96 would require bitumen sealing of the length of Duckfield Road, Council has not helped itself in that the requirements of the development standard have not been clearly enforced throughout the construction certificate process and the matter has been drawn out over the last 20 years without the matter being resolved despite construction works continuing during this period. This is further complicated by the fact that on several instances Council staff have taken it upon themselves, despite the road standard remaining unresolved, issued written notice of satisfactory completion of works.

In considering the subject modification Council is faced with several options:

1. Enforce Condition 5 of 83/96 which would require the length of Duckfield Road to be sealed at the developers cost. Council’s Development Engineer has advised that to retrospectively require the developer to seal the approximately 7km length of Duckfield Road would cost approximately \$840,000;
2. Council accept a reduced construction standard which would result in an 8m wide unsealed gravel carriageway. It is worth noting that in its current state a number of areas of the Duckfield Road measure between 6m to 7m and require widening; or
3. A compromise would be to allow for construction to an 8m wide unsealed gravel carriageway with bitumen sealing of any portion of the road for a minimum of 100m where the near road shoulder (not the centreline) is located 50m from the extremity of an existing dwelling or where the shallow nature of allotments promotes construction of dwellings close to the road such as proposed Lots 106, 107 and 108. This would limit potential impacts of dust upon existing and likely future dwellings along the roadway.

In considering this matter it is appropriate to give weight not only to the impacts of the subject application to the cumulative impact of the subject application with the other development being undertaken by the along Duckfield Road. The two applications yet to be finalised by the developer which include identical road upgrade conditions, 82/96 and

83/96 will result in 18 additional lots along Duckfield Road which is a significant increase in traffic volumes along the roadway. In supporting a reduction in the construction standard Council will inherit a public asset with a higher than average maintenance requirement. Increased. As such, it is considered appropriate that condition 5 be retained in its current form and that the sealing of the road way be enforced prior to the issue of a subdivision certificate. Nonetheless, if Council is of a mind to reduce the construction standard it is recommended that option 3 partial sealing be implemented as to minimise the impacts of additional traffic movements upon surrounding residences.

79C(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*.

79C(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 this prescribed matters, the proposed development does not involve the demolition of a building for the purposes of *AS 2601 – 1991: The Demolition of Structures*.

79C(1)(a)(v) any coastal zone management plan

Council is not subject to a coastal zone management plan.

79C(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

Future development of allotments

In general the proposed modification improves the capacity for the allotments to accommodate for future residential development by providing lot boundaries that are more considerate of the topographical constraints of the land. However, given the age of both the parent consent and the subject modification which predate current legislative requirements in relation to bushfire and threatened species any future application for the purposes of a dwelling will need to consider compatibility of the dwelling site with the bushfire risk and flora and fauna present upon the site.

Outstanding Works

In considering the subject modification application, it has been identified that while despite written notice having previously been issued to the developer advising that the required works satisfactorily been completed a number of conditions have not been satisfied including the fencing of the length of Duckfield Road, construction of a minimum 8m wide carriageway, and realignment of the Duckfield Road road reserve to capture the constructed carriageway. Further, a significant period of time has passed since the works were completed resulting in the deterioration of the works.

Road Carriageway

Regardless of the road finish the minimum required carriageway width under TDCP No.4 for Duckfield Road is 8m. When measured at random intervals the existing carriageway width varies from 6m to 8.2m with the carriageway failing to achieve the required 8m width in numerous instances. As such, regardless of the outcome of the subject modification further upgrade works would be required to satisfy Condition 5 of 83/96.

Fencing

In considering the adequacy of fencing Section 2.32 of the TDCP No.4 establishes minimum standard for fencing being as follows:

- 2.32 Fencing of the road reserve boundaries along all lots created by a subdivision is to be constructed to a minimum construction standard of 5 Plan wires and 1 barbed wire at top; strainer posts and assemblies at appropriate interval and a steel post every 4 metres. Minimum height of fences to be 1.5m at all times.*

When inspecting the fencing works undertaken to date along the length of Duckfield Road it was noted that some areas of the existing Duckfield Road road reserve adjoining vegetated areas of 350 Goulburn Road were unfenced in areas while in other areas fencing comprised of wires stapled to coppers logs, in areas fencing had not been appropriately anchored to corner posts and in others fencing had been rested upon top stays of star pickets without being threaded through the pickets. A complicating factor to this matter is that individual land owners along Duckfield Road have undertaken maintenance works to the boundary fencing since the completion of the initial works and as such Council is unlikely to be in a position to require the developer to undertake further upgrade works to this fencing other than ensuring that the length of the road reserve is fenced.

Road alignment

An area of the carriageway of Duckfield Road was constructed outside of the road reserve upon 260 Duckfield Road. Anecdotal evidence upon the Council file suggests that this deviation was undertaken as a private agreement between the developer and the land owner as to increase the separation from the carriageway to existing dwelling upon the property. The situation appears to have deteriorated between the parties to a point whereby each party believes it is the responsibility of the other to undertake the required survey work as to realign the road reserve to capture the carriageway. While Council is a signatory to the dedication of land to Council for the purposes of a public road reserve the costs of undertaking the survey work and preparation and execution of the required administrative documentation should be at the cost of the developer. Any agreement to share or offset these costs between the developer and the landowner is a private matter in which Council has no involvement. Nonetheless, the Subdivision Certificate for 83/96 will not be issued until such time as the alignment has been executed so as to ensure that the physical carriageway is located within a Council owner road reserve.

79C(1)(c) the suitability of the site for the development

The subject modification has no impact upon the suitability site for the purposes of the proposed development.

79C(1)(d) any submissions made in accordance with this Act or the regulations

The application was notified in accordance with Council's Community Engagement and Participation Plan 18 March 2020 to 1 April 2020 with One submission received, raising the following concerns:

1. Road alignment

Concern was raised that the physical carriageway of Duckfield Road falls outside of the road reserve.

Assessing officer's comments: This matter has been discussed in detail previously throughout this report. In brief this is a private matter between the landowner and developer, however a subdivision certificate will not be issued until such time as the alignment has been rectified so as to ensure the carriageway is located entirely within a legal road reserve.

2. Adequacy of fencing

Concern was raised over the adequacy of fencing works undertaken by the applicant along the length of Duckfield Road.

Assessing officer's comments: While Council records indicate that ongoing concerns have been raised over the adequacy of the fencing works and the manner in which they were undertaken by the developer. This is a long standing and complex matter as works have been undertaken since 1997, being over 23 years ago. As such works have aged and private land owners have undertaken their own maintenance works. This makes it difficult for Council to impose further maintenance requirements upon the developer. Nonetheless, to satisfy the requirements of conditions 5 it is appropriate that the developer fence the areas of Duckfield Road where fencing has not been completed.

3. Erosion control

Concern was raised over the adequacy of erosion control measures put in place throughout the development and potential ongoing erosion impacts including the ongoing siltation of an adjoining dam.

Assessing officer's comments: No works are currently being undertaken in relation to the subject application. As such, it is not possible to provide comment on the adequacy of such measures. Any future works will require the implementation and maintenance of appropriate erosion and sediment control measures until stabilisation is achieved.

The dam in question captures water from a culvert under Duckfield Road and partially encroaches within the road reserve. Upgrade works to the road as a result of the proposed development have caused the carriageway to occupy more of the road reserve which has brought the carriageway closer to the dam. Inherently an unsealed gravel road will generate dust and given the proximity of the dam to the carriageway it is unlikely that processes of siltation can be avoided without the carriageway being sealed.

4. Traffic

Concern was raised that the proposed development would result in increased traffic volumes upon Duckfield Road and potential increase risk to pedestrians in the area.

Assessing officer's comments: The subject modification seeks to alter the approved lot configuration and does not change the total number of lots. As such, the proposed

modification is not considered likely to increase traffic volumes from those of the parent development.

5. *Livestock safety*

Concern was raised that the introduction of additional domestic pets associated with future residences upon the allotments would pose a risk to livestock.

Assessing officer's comments: The subject modification seeks to alter the approved lot configuration and does not change the total number of lots. As such, the proposed modification will not increase the number of likely future dwellings within the locality. Nonetheless, all domestic animal owners have legal obligations regarding the keeping of such animals.

79C(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 reduction in road construction standard would burden Council with increased road maintenance cost as traffic volumes increase following the construction of dwellings upon the resulting lots. Accordingly it is considered to be contrary to the public interest to reduce the road construction standard.

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 are applicable to the proposed as modified.

SECTION 94 CONTRIBUTIONS

Section 94 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.

No additional Section 94 Contributions are applicable to the proposed development as modified.

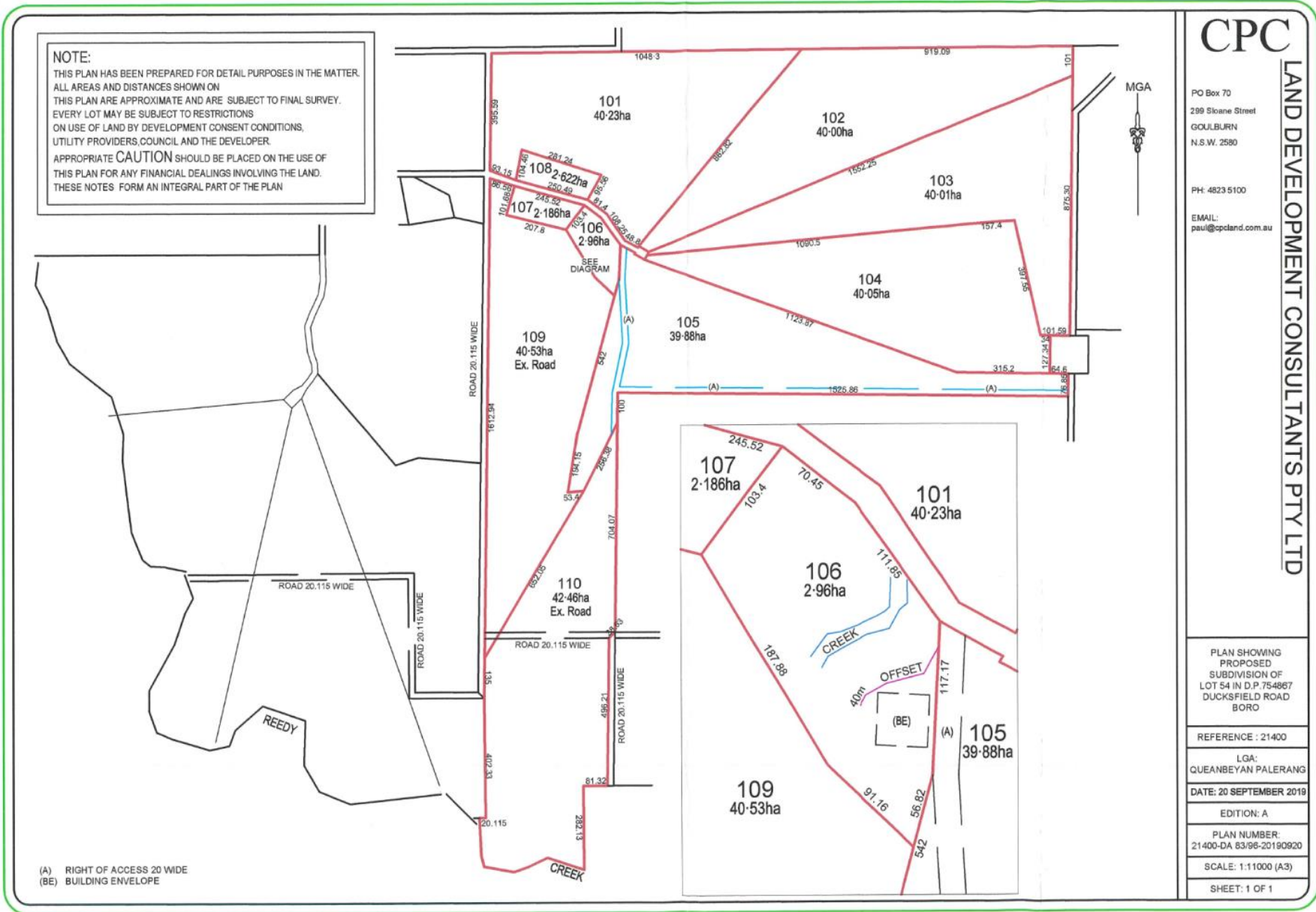
QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

ITEM 7.5 MODIFICATION APPLICATION 83/96.A - MODIFICATION OF
TEN LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO

ATTACHMENT 2 DA 83/96.A - MODIFIED LOT CONFIGURATION PLAN - 536
DUCKFIELD ROAD



CPC

LAND DEVELOPMENT CONSULTANTS PTY LTD

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 299 Sloane Street
 GOULBURN
 N.S.W. 2590

 PH: 4823 5100

 EMAIL:
 paul@cpland.com.au

PLAN SHOWING PROPOSED SUBDIVISION OF LOT 54 IN D.P. 754867 DUCKSFIELD ROAD BORO
REFERENCE : 21400
LGA: QUEANBEYAN PALERANG
DATE: 20 SEPTEMBER 2019
EDITION: A
PLAN NUMBER: 21400-DA 83/96-20190920
SCALE: 1:11000 (A3)
SHEET: 1 OF 1

QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting
Attachment

12 AUGUST 2020

ITEM 7.5 MODIFICATION APPLICATION 83/96.A - MODIFICATION OF
TEN LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO

ATTACHMENT 3 DA 83/96.A - SUBMISSION - 536 DUCKFIELD ROAD

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

QPRC
Natural and Built Character

Notice of Application to Modify Development Consent
Development Modifications No 82/96.A and 83/96.A

Dear Sir/Madam

In response to your letter of 12 March 2020 I would like to remind council that there are still ongoing issues from Stage 1 of this development. It would be appreciated that these ongoing issues be addressed before any approval is given for this subdivision modification and any approval is given to the development.

The issues include 1. a land swap where Duckfield Road [REDACTED] land

2. fencing that is inadequate or none existent
3. erosion that has not been controlled,

there are other issues that have been discussed many times. For further information on the problems please look at file held by council.

A few issues that come to mind that will come with the new subdivision is the increase of traffic on Duckfield Road which is not maintained that well, more neighbours that won't control their dogs leading to more dog attacks on our stock and the difficulty crossing the road with the speeding drivers that already inhabit it.

Yours faithfully

[REDACTED]

QUEANBEYAN-PALERANG REGIONAL COUNCIL

Planning and Strategy Committee of the Whole Meeting Attachment

12 AUGUST 2020

ITEM 7.5 MODIFICATION APPLICATION 83/96.A - MODIFICATION OF
TEN LOT TORRENS TITLE SUBDIVISION - 536
DUCKFIELD ROAD, BORO

ATTACHMENT 4 DA 83/96.A - NOTICE OF DETERMINATION AND APPROVED
PLANS - 536 DUCKFIELD ROAD

83/96

Gary Richards

Form 7

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

To: Ellison & Head Pty Ltd of: PO BOX 3121, WESTON CREEK ACT 2611

being the applicant in respect of Development Application No. 83/96

Proposed: 10 Lot Subdivision

In accordance with Part 4 of the Environmental Planning & Assessment Act 1979, approval is granted for the subdivision of land described as follows:

Portion 54, Parish of Barnet

The development application has been determined by granting of consent subject to the conditions specified in this notice. The conditions of consent are:

1. The subdivision shall be in accordance with the plans submitted with the application and approved by the Council, except where modified by the following conditions. The approved plan shall not be modified except with a written consent of the Council. An endorsed copy of the approved plan is attached.
2. Prior to the certification and release of the linen plan, the applicant shall pay the fees, charges and contributions to the Council in accordance with the Tallaganda Local Environmental Plan 1991 and other relevant planning instruments, and the adopted Management Plan.

Section 94 Contribution Plan Purpose	Amount to be Paid
Road Works	\$8,500
Bush Fire Suppression	\$3,850

Fees and Charges Purpose	Amount
Gate Entry Inspection Fee	\$550
Road Construction Supervision (Plans required)	\$10,110
Inspection of Intersection Fee	\$360
Subdivision Release Fee	\$40
Fencing Inspection	\$445

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The Road Construction Supervision, Inspection of Intersection and Fencing Inspection Fees (as they are duplicated) shall be payable only once in relation to DA's 80/96, 82/96 and 83/96.

3. Erosion and siltation control measures shall be undertaken to the satisfaction of Council and the Department of Land and Water Conservation in respect of any part of the land where the natural surface is disturbed or earthworks are carried out. Detailed plans and specifications of any soil disturbance works are to be submitted for approval by the Director of Works prior to the commencement of those works.
4. Each allotment shall be provided with a vehicular access constructed, formed, gravelled and recessed to a depth of 15 metres at a position satisfactory to the Director of Works. The access ways shall be provided at the applicants full cost and each access is to incorporate 4.88 metre long concrete pipe of a minimum diameter of 375mm plus 2 masonry headwalls. The access ways shall be gravelled to a depth of at least 75mm thick and at least 3 metres wide, constructed with a smooth, well compacted surface to the satisfaction of the Director of Works. The adjacent road reserve is to be left in a clean and tidy condition after graveling. Internal access ways shall be formed and drained to a table drain to the satisfaction of the Director of Works.
5. Access to and within the subdivision shall be constructed within a dedicated road reserve from MR79. Such access shall be constructed at the applicants' full cost prior to the release of the linen plan in accordance with Council's standards and as follows:
 - (a) Provision of concrete pipe culverts, end walls and guide posts. Pipe sizes in accordance with Talbot's formula.
 - (b) Provision of table drains and cutting/fill batters to the satisfaction to the Director of Works.
 - (c) Fencing of all road reserve boundaries from MR79 to the satisfaction of the Director of Works.
 - (d) Arrangement for the supervision of works be the Director of Works or his nominee.
 - (e) A turning circle at the end of each 'No through' road to allow for easy turning of emergency vehicles.

Plans are to be prepared by a suitably qualified person and approved by the Director of Works. Construction shall be to Council's standards for 8 lots or more with Plans and Specifications to the satisfaction of the Director of Works, submitted prior to the commencement of any works.

Access handles serving the east-west aligned lot adjoining Lot 1, DP595769, and its adjoining lot on the same orientation shall be deleted from the plan and replaced with an internal subdivision road servicing both 40ha lots which adjoin Lot 1, DP59576. These roads are to be constructed and dedicated to Council's standards for up to 3 lots according to plans and specifications to the satisfaction of the Director of Works submitted prior to the commencement of works.

-3-

6. No trees or existing vegetation shall be removed from within 50 metres of any river, 40 metres of a watercourse of 20 metres from land having a slope greater than 1 in 5 except with the written consent of the Council.
7. Easements for electricity supply purposes shall be created on the final plan of subdivision in favour of Great Southern Energy. Such easements shall be twenty metres wide, or such other width as agreed to by GSE and such easement shall be centred on:
 - (a) all existing power lines which cross the subdivision and where that part of a subdivision will involve freshly surveyed boundaries; and
 - (b) all proposed power lines which the developer is having constructed to provide electricity to the lots within the subdivision; and
 - (c) all proposed power lines within the subdivision for which the developer is not required to make a capital contribution, but which would be required to be constructed in the future to provide power to the boundary of each lot.
8. If noxious plants are present on the land, they shall be controlled to the satisfaction of Council's Weeds Officer prior to the release of the linen plan. A letter indicating the compliance with this condition shall be obtained from the Chief Weeds Officer and submitted with the linen plan.
9. Prior to the certification and release of the linen plan, the applicant shall prepare a Bush Fire Control Plan for submission to and approval by the Director of Works. The Bush Fire Control Plan shall address the following matters:
 - the provision of strategic firebreaks within the land to the satisfaction of Council's Fire Control Officer;
 - the provision of dams and/or other structures to provide emergency water supply in the event of fire;
 - works in accordance with the approved Bush Fire Control Plan, shall be undertaken to the satisfaction of the Director of Works prior to the release of the linen plan.

The reasons for the imposition of the conditions are as set out as follows:

1. To comply with the Tallaganda Local Environmental Plan 1991.
2. To protect and enhance the local amenity.
3. To protect and enhance the local traffic conditions.

Endorsement of date of consent: 21 October 1996

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NOTES:

- (1) To ascertain the date upon which the consent becomes effective refer to Section 93 of the Act.
- (2) To ascertain the extent to which the consent is liable to lapse refer to Section 99 of the Act.
- (3) Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the Land & Environment Court exercisable within 12 months after receipt of this notice.



.....
Signature of behalf of consent authority
(Royce White - Director of Works)
Date: 21 October 1996

