



**Planning and Strategy  
Committee of the Whole**

**AGENDA**

**14 February 2018**

**Commencing at 5:30pm**

**Council Chambers  
253 Crawford St, Queanbeyan**



**On-site Inspections**

Date: Tuesday 13 February 2018

Time: 5.30pm

Location: Outside 62 Ellendon Street Bungendore

Council at its meeting of 23 November 2016 resolved (M/N 295/16) as follows:

The Planning and Strategy Committee of the Whole be delegated authority in accordance with Section 377 of the *Local Government Act 1993* to determine matters pursuant to the:

- *Environmental Planning and Assessment Act 1979*
- *Local Government Act 1993*
- *Swimming Pools Act 1992.*
- *Roads Act 1993*
- *Public Health Act 2010*
- *Heritage Act 1977*
- *Protection of the Environment Operations Act 1997*

**1 APOLOGIES**

**2 PRESENTATION / DEPUTATIONS**

Nil

**3 DECLARATION OF CONFLICTS/PECUNIARY INTERESTS.....1**

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**4 ENVIRONMENT, PLANNING AND DEVELOPMENT**

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Council.....23

**7 NOTICE OF INTENTION TO DEAL WITH MATTERS IN CLOSED SESSION ..24**

**Confidential - Not for Publication**

**8 REPORTS FOR CLOSED SESSION**

8.1 Road Issues - Harold's Crossing.

*".Item 8.1 is confidential in accordance with s10(A) (c)of the Local Government Act 1993 because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.*

8.2 Review of a Representation on a Notice of Proposed Order.

*".Item 8.2 is confidential in accordance with s10(A) (e)of the Local Government Act 1993 because it contains information that would, if disclosed, prejudice the maintenance of law and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.*

**LIST OF ATTACHMENTS –**

***(Copies available from CEO/General Manager's Office on request)***

**Open Attachments**

- Item 4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification  
*Attachment 1 MOD.2017.060 - 62 Ellendon Street, Bungendore - Section 79C Table - Matters For Consideration (Under Separate Cover)*
- Item 6.1 2016 Census and Your Population Forecast Queanbeyan-Palerang Regional Council  
*Attachment 1 2016 Census and your population forecast Queanbeyan-Palerang Regional Council (Under Separate Cover)*

**Closed Attachments**

- Item 4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification  
*Attachment 2 MOD.2017.060 - 62 Ellendon Street Bungendore - Plans (Under Separate Cover)*  
*Attachment 3 MOD.2017.060 - 62 Ellendon Street - Submissions (Under Separate Cover)*
- Item 5.1 Proposed South Tralee Essential Infrastructure Planning Agreement  
*Attachment 1 South Tralee Essential Infrastructure Planning Agreement - Version with agreed changes accepted and outstanding changes shown (Under Separate Cover)*
- Item 8.1 Road Issues - Harold's Crossing.  
*Attachment 1 Council Report April 2017 (Under Separate Cover)*
- Item 8.2 Review of a Representation on a Notice of Proposed Order.  
*Attachment 1 Copy of NOPO 2017/1036 (Under Separate Cover)*  
*Attachment 2 Owner's Representations to NOPO 2017/1036 (Under Separate Cover)*  
*Attachment 3 Revised Survey Plan dated 19 December 2017 (Under Separate Cover)*  
*Attachment 4 Draft Order (Under Separate Cover)*

**ITEM 3    DECLARATION OF CONFLICTS/PECUNIARY INTERESTS**

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The provisions of Chapter 14 of the *Local Government Act, 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions, voting on that matter, and require that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest

**Recommendation**

**That Councillors and staff disclose any interests and reasons for declaring such interest in the matters under consideration by Council at this meeting.**



4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore -  
Modification (Ref: C185559; Author: Thompson/Williams)

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**Summary**

This modification application was originally considered by Council at its meeting of 24 January 2018. At that meeting Council deferred consideration of the application pending the outcome of an onsite meeting to be held on Tuesday 13 February 2018. Other than this brief summary and any considerations emerging from the site inspection, the following report and recommendations remain unaltered from that presented to Council on 24 January 2018.

***Reason for Referral to Council***

The proposed modification application received six submissions on the re-notification of the proposed amended design.

Proposal:	Modification of DA.2016.009 for alterations and additions, so as to modify the plans to include dormer windows and an external stair access to the attic.
Applicant/Owner:	W Gain & G S Gain
Subject Property:	Lots 1 DP 612225 62 Ellendon St, Bungendore
Zoning and Permissibility:	R1 General Residential Zone under Palerang Local Environmental Plan 2014
Public Submissions:	Six (6)
Issues Discussed:	Privacy
Disclosure of Political Donations and Gifts:	Applicant Declared that no Donation or Gift to a Councillor or Staff has been paid (see attachment)

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**Recommendation**

**That Modification Application MOD.2017.060 to modify DA.2016.009 by the inclusion of dormer windows to the attic and construction of an external staircase to access that attic be approved for the following reasons and with amendments to the conditions as shown in Schedule 1 below:**

- (a) The proposed development as modified satisfies the requirements of Section 96(1A) of the Environmental Planning and Assessment Act 1979 as the proposal will not create any additional environmental impact from the parent consent and is substantially the same development.**
- (b) The development is consistent with all relevant requirements of the Palerang Local Environmental Plan 2014.**
- (c) The development satisfies the Palerang Development Control Plan 2015, specifically sections B10- Heritage & C2- Residential Development.**
- (d) Privacy concerns are addressed through obscure glass windows on the south and screening of the existing deck/landing area to the south.**

**Schedule 1 – Amendments to Conditions**

**Amend Condition 1 as follows:**

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**4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)**

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The development referred to in the application is to be carried out in accordance with the original approved plans except as modified by the plans numbered MOD.2016.113, MOD.2017.060 and in accordance with this schedule of conditions.

*Reason: Development is undertaken in accordance with this consent & is used for the approved purpose only.*

**Add new condition.*****Use of Attic Space***

The existing attic space is to remain a non-habitable space and for storage purposes only.

*Reason: Development is undertaken in accordance with this consent & is used for the approved purpose only.*

**Add new condition.*****Privacy – Treatment to Dormer Windows – Southern Elevation***

Prior to the issue of the Construction Certificate (Building) the applicant shall submit to, and have endorsed by Council, a revised dormer window design showing the windows along the southern elevation having:

- Obscure glass over the entire surface of the window; and
- Windows being fixed glass or, in the alternate, bottom opening awning style windows.

*Reason: To reduce privacy concerns to the neighbouring lot.*

**Add new condition.*****Privacy – Treatment to Existing Raised Deck and Proposed Staircase Landing***

Prior to the issue of the Construction Certificate (Building) the applicant shall submit to, and have endorsed by Council, a design for privacy screening on the southern elevation of the existing deck and on the southern and eastern elevations of the proposed staircase landing. The screening shall be a minimum height of 1.8m from the deck/landing surface and shall be constructed in materials and colours that are sympathetic to the heritage character of the existing dwelling.

Screening shall be installed prior to the issue of any Occupation Certificate.

*Reason: To reduce privacy concerns to the neighbouring lot.*

**Add new condition.**

All construction work associated with this development shall be carried out from within the premises unless otherwise authorised by the owners of neighbouring premises.

*Reason: To reduce impacts from construction activities on neighbouring premises.*

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**4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)**

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**Background*****History of the Site***

The proposed site contains a locally heritage listed dwelling (Heritage Item 177) which is thought to have been constructed in the late 1800's and was used as a cobblers shop and later in the early 1900's as a stock agent.

The heritage item is listed for its exposed brick and timber features and noted as an original two bedroom cottage with numerous additions. Council records indicate an application for alterations and additions was approved in 2016 under application DA.2016.009. The application was then later modified under MOD.2016.113 to include the addition of sky lights above the existing attic space.

Prior to the above approval there was a subdivision approval for the lot under application 12/79 which was subsequently registered in 1980. This created the current lot layout, resulting in the existing house located on 62 Ellendon Street being located immediately adjacent to the southern boundary.

***Proposed Development***

The subject modification application seeks the modification of DA.2016.009 under Section 96(1A) of the Environmental Planning and Assessment Act 1979 to include dormer windows in the place of the approved skylights and an external staircase to access the attic area. The specific elements of the modification(s) sought are as follows:

- Installation of four (4) dormer windows on the roof of the existing dwelling. Two are to be located on the northern elevation with normal glazed windows and two are to be located on the southern elevation with obscure glass; and
- Installation of an external staircase to the eastern elevation to access the attic area.

***Subject Property***

The subject land has an area of 689m<sup>2</sup> and is located on Lot 1 DP 612225, 62 Ellendon Street, Bungendore. The land has a frontage to Ellendon Street of approximately 15.2 metres. The site contains minimal slope and has existing landscape vegetation throughout. The site includes two existing sheds on the northern boundary, a carport and some mature trees located in the middle of the lot (see Figure 1 below). The surrounding properties have predominantly a low density residential use and contain similar development relating around residential development.

**4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)**

**Figure 1 - Blue outline – Subject Property**

**Planning Requirements**

Assessment of the application has been undertaken in accordance with Section 96(1A) of the Environmental Planning and Assessment Act (EPAA) 1979.

**Section 96(1A) – Modifications involving minimal environmental impact**

Under Section 96(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) a consent authority may 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.*

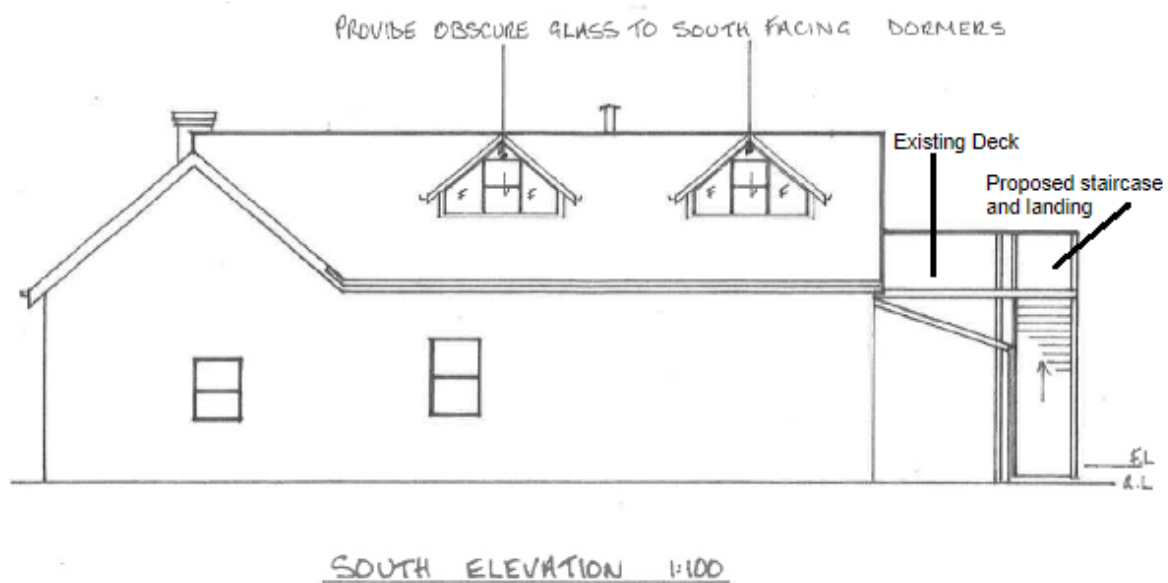
4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)

- 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.

With regard to subclause 96(1A)(a), the proposed development as modified would not create any additional environmental impact from the assessment of the parent consent. The addition of the external staircase to the attic would require small amounts of landscaped grass to be removed, however the environmental impact of this is assessed as neutral to low.

The potential visual impacts from the existing raised deck and proposed landing have been raised as an issue/impact on the adjoining neighbour to the South. Upon inspection of the property and study of approved plans for the properties in question there may be potential for the occupants of the subject property to overlook into a bedroom window of the dwelling to the South. The privacy impacts of the proposed modification are considered in detail under the 'Submissions' section of this report below.

The impacts are mainly caused on the southern and eastern elevations which are shown in Figures 2 and 3 below. The floor layout of the attic is shown in Figure 4.



**Figure 2 – Southern Elevation**

4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)



Figure 3 – East Elevation

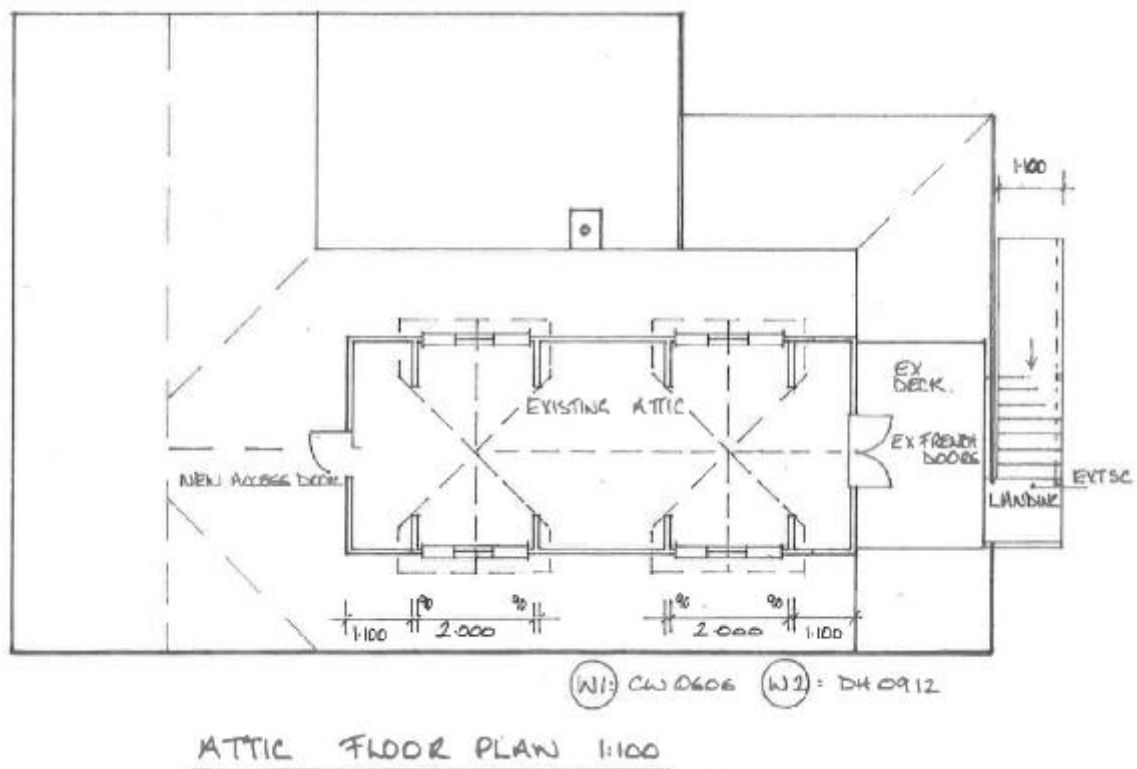


Figure 4 - Attic Floor Plan

**4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)**

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With regard to subclause 96(1A)(b) the development to which the consent as modified relates is considered to be 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. It's considered that the installation of dormer windows and the external staircase is consistent with the original approved alterations and additions development.

The proposed modification removes the internal staircase and relocates this to the eastern external elevation to access the attic area. The proposed dormer windows are an addition to the application, however the original application was for alterations and additions of the dwelling. It's considered that the inclusion of these windows is within the scope of alterations and additions on the house and is substantially the same development. The house remains a residential dwelling with the works done complementing the heritage value.

With regards to subclauses 96(1A)(c) and (d), the subject modification application was notified for a period of 14 days in accordance with the requirements of Part E of the Palerang Development Control Plan 2015. Six (6) submission were received. The matters raised within these submission are considered in the 'Submissions' section of this report below.

Section 96(3) of the Environmental Planning and Assessment Act (EPAA) 1979 requires consideration to be given to the matters referred to in Section 79C(1) of the EPAA 1979. An assessment of the proposed development against the relevant provisions of Section 79C(1) has been carried out. See attached *Section 79C(1) Table – Matters for Consideration* (Attachment 1).

In addition the following planning instruments have been considered in the planning assessment of the subject development application:

1. Palerang Local Environmental Plan (PLEP) 2014; and
2. Palerang Development Control Plan (PDCP) 2015

**(a) Compliance with PLEP 2014**

The development as modified involves no changes to the compliance of the development with the requirements of the Palerang Local Environmental Plan 2014 from that of the parent application (DA.2016.009). For an assessment of the development as modified against the relevant provisions of the Palerang Local Environmental Plan 2014 see attached *79C(1) Table – Matters for Consideration* (Attachment 1).

**(b) Compliance with PDCP 2015**

The development as modified complies with Section B10 and C2 of the Palerang Development Control Plan 2015 which outlines controls on heritage listed development and development of a residential nature. A detailed assessment of the proposed development as modified against the relevant provisions of the Palerang Development Control Plan 2015 is provided in the attached *Section 79C(1) Table – Matters for Consideration* (Attachment 1).

**(c) Other Matters**

Several other matters were raised in submissions. These are dealt with in the "Submissions" section of this report below.

**4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)**

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**Submissions**

In accordance with the requirements of Part E of the PDCP 2015 the subject modification application was notified from 14 August 2017 to 28 August 2017.

The first round of notifications received five submissions outlining their concerns. The applicant was then advised to amend the plans to address the issues raised and to address some heritage advice.

The amended plans were then re-notified from 1 November 2017 to 15 November 2017. Six written submission were received on the re-notification.

The relevant issues raised in submissions included the following:

***Issue:*** *Non-Compliance with Environmental Planning and Assessment Regulation 2000- Clause 51 (The legislative requirement for all relevant parties of a development to sign the development application form is questioned.)*

***Comment:*** The submission outlines that the eaves, gutters and other projections of the existing dwelling on 62 Ellendon Street encroach into Lot 2 DP 612225 by "0.18" on a hand drawn survey plan attached to the rear of a letter by a registered surveyor (R W Elgood). All these encroachments were in existence prior to the approval of the original DA and the proposed modification. Neither the original DA nor the modification proposed any alteration to these encroachments. The proposed works to the dwelling are to be solely within the boundary of Lot 1 DP 612225 (subject Site) with no amendment to the area where the encroachments occur. It is considered that if all works proposed by the DA are located solely within the boundaries of the property only the owners of that property are required to sign the development application form. There is full compliance with Environmental Planning and Assessment Regulation- Clause 51.

***Issue:*** *Modification application is not substantially the same.*

***Comment:*** The development to which the consent as modified relates is considered to be 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. It's considered that the installation of dormer windows and the external staircase is consistent with the original approved alterations and additions development.

The proposed modification removes the internal staircase and relocates this to the eastern external elevation to access the attic area. The proposed dormer windows are an addition to the application, however the original application was for alterations and additions to the dwelling. It's considered that the inclusion of these windows is well within the scope of alterations and additions to a dwelling and is substantially the same development. The house remains a residential dwelling with the works done complementing the heritage value. The proposed modification is considered a substantially the same development to that of the parent consent and satisfies the provisions of section 96(1A).

**4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)**

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*Issue: Overlooking/Privacy Concerns.*

*Comment:* All six submissions outline privacy and overlooking concerns into Lot 2 DP 612225.

There are two potential sources of overlooking identified:

1. From the two dormer windows in the southern elevation an issue which would be exacerbated should the attic be used for some habitable purpose other than storage.

Submissions outline key planning principles of invasion of privacy into private open spaces and effect on amenity from invasion of privacy. The space in the attic area where the dormer windows will be installed is only to be used as a storage area and not a habitable space, although the submitters have provided evidence that the attic has been used for habitable purposes in the past. While Council accepts that no extended occupation of this space is expected it is proposed that a condition of consent be included specifying that the attic space may only be used for non-habitable purposes.

Notwithstanding the above the plans clearly show that the dormer windows on the southern side are provided with obscure glass to alleviate any possible overlooking concerns from inside the attic preventing overlooking regardless of the use of the attic. However, windows can be opened and this reduces the mitigating effect of the obscure glass. To prevent this a condition requiring the windows to be either fixed glazing on the southern side or to be of an awning design (bottom opening) will be imposed.

With a condition requiring obscure glass treatment and fixed glass/awning design of the dormer windows there are no significant impacts on privacy relating to overlooking from the dormer windows.

2. Overlooking from the existing raised deck and new staircase and landing.

The submissions also outline the existing deck and proposed external staircase and landing create an area that looks directly into the bedroom at Lot 2 DP 612225. This is a valid concern given the window on the northern elevation is located approximately 5m away from the common boundary. The deck is pre-existing and the small landing from the staircase will in effect create an increased deck area. While the attic area will be required to be a non-habitable space the existing deck could be used for other purposes. To reduce privacy concerns a condition will be included to provide adequate screening along the southern elevation of the existing deck and along the southern and eastern ends of the new staircase landing. The design of the screening needs to be consistent with the heritage character of the building and area and as such the condition requiring the screening will include a provision that the design must be endorsed by Council (including Councils Heritage Advisor) prior to the commencement of work on this aspect of the building.

The imposition of this condition will ameliorate the privacy impacts caused by the existing deck and new staircase.

*Issue: Impacts on heritage character of the existing dwelling and the area generally.*

*Comment:* Submissions outlined that the proposed development to include dormer windows and the external staircase is unsympathetic to the heritage character of the locally Heritage listed dwelling. The application was referred to the Council Heritage Advisor who provided comment on the development and considered the proposed development consistent with the heritage character of the dwelling and does not compromise the heritage value.

#### 4.1 Modification Application MOD.2017.060 - 62 Ellendon Street, Bungendore - Modification (Ref: C185559; Author: Thompson/Williams) (Continued)

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**Issue:** *Maintenance Issues.*

*Comment:* Ongoing maintenance of the dwelling is raised as a concern by the adjoining property and a number submissions. The building has pre-existed on the boundary since the registration of subdivision 12/79 in 1980 and was constructed in the late 1800's and early 1900's. Ongoing maintenance is expected. Significant impacts on additional maintenance resulting from the additional development are not expected. Concerns about access to maintenance of the dwelling side wall is not an issue resulting from this development. The proposed windows and staircase entry are within the boundaries of Lot 1 DP 612225 and can be maintained from within the boundaries of 62 Ellendon Street. The application can be conditioned so that all construction is to be conducted within the property boundaries. If any additional maintenance is required it is likely to be minor and should be able to be accommodated within whatever arrangements the two neighbours already have in place.

**Issue:** *Consideration of impacts of building on the boundary.*

*Comment:* None of the proposed works are proposed to be undertaken on the boundary. The submitters reliance on this consideration is unfounded.

**Issue:** *Structural/Approval status of existing deck.*

*Comment:* While no work is proposed on the existing deck the new staircase and landing will be attached to it. All work is required to be carried out in accordance with the Building Code of Australia. It will be a matter for the certifier to be satisfied as to the structural adequacy of the design.

### **Conclusion**

The application has been assessed in accordance with the requirements of the Section 96(1A) of the *Environmental Planning & Assessment Act 1979*, the EP&A Act Regulations and Council's policies (Refer to Section 79C(1) Table – *Matters for Consideration* (Attachment 1). The proposed development as modified and with the amendments to the conditions proposed satisfies the requirements of Section 79C(a)(iii) and 96(1A)(a) of the *Environmental Planning and Assessment Act 1979* and Section B10- Heritage and C2- Residential Development of the *Palerang Development Control Plan 2015*.

Subject to the imposition of appropriate conditions the proposed development as modified is compliant with the provisions of the *Palerang Local Environmental Plan 2014*, the development as modified satisfies the requirements of Section 79C(a)(iii) and 96(1A) of the *Environmental Planning and Assessment Act 1979* and the above mentioned sections of the *Palerang Development Control Plan 2015*. As such, it is recommended that Modification Application MOD.2017.060 be approved.

### **Attachments**

- |              |   |
|--------------|---|
| Attachment 1 | MOD.2017.060 - 62 Ellendon Street, Bungendore - Section 79C Table - Matters For Consideration ( <i>Under Separate Cover</i> ) |
| Attachment 2 | MOD.2017.060 - 62 Ellendon Street Bungendore - Plans ( <i>Under Separate Cover</i> ) - <b>CONFIDENTIAL</b>                    |
| Attachment 3 | MOD.2017.060 - 62 Ellendon Street - Submissions ( <i>Under Separate Cover</i> ) - <b>CONFIDENTIAL</b>                         |



**5.1 Proposed South Tralee Essential Infrastructure Planning Agreement (Ref: C17176412; Author: Thompson/Carswell)**

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**Summary**

This report was originally reported to Council's meeting of 13 December 2017 where it was deferred to hold a workshop. Since this time a revised South Tralee Essential Infrastructure Planning Agreement has been submitted by Village Building Company (VBC) which substantially addresses the recoupment issue raised by the former report. A Councillor workshop was held on 31 January 2018 which clarified a number of issues. As a result this report has been amended and is submitted for Council's re-consideration.

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**Recommendation**

**That Council:**

- 1. Note the report on the proposed South Tralee Essential Infrastructure Planning Agreement.**
  - 2. Support the changes to the proposed South Tralee Essential Infrastructure Planning Agreement submitted by Village Building Company in regard to surplus value.**
  - 3. Note the parties differing views on Village Building Company's proposed inclusions/changes for the definitions of Independent Certifier, Practical Completion and Practical Completion Certificate and Clause 19 Completion of Work of the proposed South Tralee Essential Infrastructure Planning Agreement, and concerns regarding time taken to certify works.**
  - 4. Note Village Building Company's offer to secure a solution to this matter outside the local planning agreement process, including the option of resourcing.**
  - 5. Draft an enabling clause for inclusion in the Local Planning Agreement to provide for private certification, notwithstanding the accepted practice of Council staff certifying practical completion of infrastructure works and issuing practical completion certificates.**
  - 6. Delegate authority to the CEO/General Manager to negotiate and enter agreements for alternative means for providing certification services subject to there being no additional cost to Council.**
  - 7. On the above basis, proceed to finalise the draft South Tralee Essential Infrastructure Planning Agreement for endorsement by Council and its exhibition.**
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**Background**

At Council's meeting of 13 December 2017 a report was considered on the South Tralee Local Planning Agreement. Council resolved (Minute No. 412/17) *that this item be deferred to a workshop and further report to Council.*

A Council workshop was held on 31 January 2018 and this amended report is submitted for Council's consideration.

**5.1 Proposed South Tralee Essential Infrastructure Planning Agreement (Ref: C17176412; Author: Thompson/Carswell) (Continued)**

Council has been negotiating with VBC in regard to a Local Planning Agreement to provide water and sewer services to facilitate the development of South Jerrabomberra since April 2017. Whilst some of the differences between the parties have been resolved, others remain including some which require policy direction from Council.

Attachment 1 (the current version of the LPA) represents the current positions of the parties as at January 2018. Where changes have been agreed to by both parties the changes have been accepted and where changes are still outstanding the changes are indicated. In regard to Attachment 1, VBC have redrafted key clauses relating to recoupment (Part 3 of the LPA) to address Council's concerns in relation to when the repayment of surplus values to VBC would take place. However, it needs to be noted that this version of the LPA requires still requires some additional input of information. It also includes changes not previously agreed to by Council, which will require further negotiation. If it proceeds the draft LPA will need review by Council's solicitors.

***Previous Negotiations/Work***

The proposed local planning agreement follows earlier negotiations which resulted in the execution by the former Queanbeyan City Council and Canberra Estates Consortium No.4 Pty Ltd of the South Tralee Urban Development Project Essential Infrastructure Deed on 12 December 2014 with essential infrastructure meaning water and sewer infrastructure.

In the case of the previous local planning agreement it covered a much greater range of infrastructure including land and the full range of infrastructure associated with providing services and facilities for an urban release area or a new community. Examples included land for open space, the embellishment of that open space, land for the Northern Entry Road and its design and construction.

The previous local planning agreement reached the stage where it was resolved on the 22 June 2016 (Minute No. 061/16):

*.... to execute the South Tralee Local Planning Agreement subject to incorporating the recommended changes specified in Attachment 1 to this report and any other minor administrative or housekeeping changes identified noting that the recommended action for Item 29 has been amended to read 'no change be made to LPA as result of this submission.*

The parties continued to communicate on this until VBC advised Council in November 2016 that it was unable to execute the current form of that draft local planning agreement. The refusal of the development applications for the first two stages of South Tralee followed soon after. The previous local planning agreement had an expected dwelling yield for South Tralee of 1,221 dwellings whereas the proposed local planning agreement assumes a reduction to 750 dwellings.

***Previous resolutions relevant to the Local Planning Agreement***

At the same time the previous local planning agreement had been the subject of workshops and other resolutions. The other resolutions included one of 27 April 2016 (Minute No. 120/16) where it was resolved amongst other things:

- 1. That Council agree in relation to any provision requiring repayment of outstanding development contributions by 2036 in the South Tralee Local Planning Agreement that these be limited to those contributions which Council can actually collect.*

**5.1 Proposed South Tralee Essential Infrastructure Planning Agreement (Ref: C17176412; Author: Thompson/Carswell) (Continued)*****Draft Development Servicing Plans for Water Supply and Sewerage for South Jerrabomberra***

During 2015 and 2016 Council had also prepared Development Servicing Plans for Water Supply and Sewerage for the whole of South Jerrabomberra (as opposed to just the South Tralee development) and had exhibited these for public comment from March to April 2016. As a result four written submissions were received which in turn resulted in Council commissioning further work on the cost of infrastructure. These remain in draft form although they could be reactivated with the methodologies being rerun to reflect the reduced dwelling numbers of South Jerrabomberra (1,500 in total compared to the previous estimates of a total of 2,079).

***Changes to Recoupment Provisions***

One of the key points of dispute in the present LPA proposal is when Council would be required to pay VBC for the surplus value of infrastructure provided by the, but required by other developers. Originally it was proposed that these costs be paid to VBC by Council in 2025. There was the potential risk that Council would have to borrow funds to repay the recoupment contributions for the remaining 750 lots in the Forrest/Morrison and Walsh lands if they did not proceed by 2025. This exposed Council to considerable financial risk.

However, as noted above VBC have redrafted key clauses relating to recoupment (Part 3 of the proposed LPA) to address Council's concerns in relation to surplus values.

These are reproduced as follows:

- 23.7 The Parties agree that if Council does not collect Recoupment Contributions from Other Developers within 5 years it will pay the Developer an amount equivalent to the Surplus Value within 36 months of registration of the certificate of subdivision for the 1250<sup>th</sup> residential lot.
- 24.3 Any part of the DSP Surplus Credit Amount attributable to any Deferred Land which, at the end of 36 months from the date of registration of the certificate of subdivision for the 1250<sup>th</sup> residential lot for the Development, the Developer using reasonable endeavours has not used or assigned must be repaid to the Developer by the Council.
- 25.6 If the sum of the Recoupment Contributions made by the Council to the Developer under this clause (not including any interest earned on Recoupment Contributions by the Council) is not less than the Total Surplus Value before the end of 36 months from the date of registration of the 1250<sup>th</sup> residential lot in the Development then the Council shall thereafter have no further obligation to make any payments under this clause.
- 25.7 If the sum of the Recoupment Contributions made to the Developer under this clause (not including any interest earned on Recoupment Contributions by the Council) is less than the Total Surplus Value before as at the end of 36 months from the date of registration of the 1250<sup>th</sup> residential lot in the Development the Council must pay to the Developer the difference between:
- 25.7.1 the sum of the payments made under this clause, and
  - 25.7.2 the component of the Total Surplus Value that, in the opinion of the Council, can reasonably be expected to be recovered by the Council for the works provided by the Developer having regard to the then existing provisions of any DSP or other restriction on the amount likely to be recovered by the Council for the works provided by the Developer.

**5.1 Proposed South Tralee Essential Infrastructure Planning Agreement (Ref: C17176412; Author: Thompson/Carswell) (Continued)**

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25.8 The Council must pay the amount payable under clause 25.7 to the Developer within 60 days of the end of 36 months from the date of registration of the 1250<sup>th</sup> residential lot in the Development.

Generally these now require Council to pay any outstanding developer recoupment contributions for the development of any Deferred Land (ie land outside of VBC's ownership and control and which is not rezoned) at the end of 36 months from the date of registration of the certificate of subdivision for the 1250<sup>th</sup> residential lot for the Development. At this time the surplus value is estimated to be in the order of \$2.5M.

The amended wording of the above clauses address many of Council's previous concerns about its exposure to risk. However, agreement to these changes are not without risk to a future Council. For example the costs of infrastructure could be greater than estimated and consequently the cost of any recoupment contributions. Also the land giving rise to recoupment contributions may be developed at a slower rate than the LPA estimates or not at all. These need to all be considered and balanced against the benefits of having a planning agreement.

Notwithstanding the above, the requirement that recoupment values need not be paid until three years after the 1250<sup>th</sup> lot is a considerable risk reduction and if 1250 lots are actually constructed and released in the South Jerrabomberra there is a strong prospect that not only will the remaining 250 lots be constructed but that they will actually be constructed within the three time period specified.

***Major Difference - Independent Certification***

One major difference between the parties remains. This includes a new definition of Independent Certifier and changes to the definitions of Practical Completion and Practical Completion Certificate which provides for an alternative Independent Certifier to certify infrastructure works rather than Council. This is also the case for changes made to Clause 19 Completion of Works.

It has been a matter of long standing practice that where major infrastructure is constructed which will become a Council asset, the position has been that final practical completion should be certified by Council staff prior to release of the subdivision certificate and final handover.

Council should maintain its position that infrastructure works must be signed off by Council prior to acceptance.

However, VBC have raised the issue of delays in certifying major infrastructure works and their implications. These should be recognised and solutions sought outside of the LPA process. Possible solutions include precertification agreements between the parties for specific items of infrastructure prior to their commencement, service level agreements indicating Council's commitment to providing services or the funding of additional staff resources by VBC at times of the certification of specific items of infrastructure and so on.

Rather than hold up the LPA process it is recommended that the requirements for Council certification remain but that an enabling clause be included in the agreement which allows the General Manager to enter into an agreement with VBC for other arrangements to be negotiated in relation to the certification of Practical Completion of works. The various options available can then be explored outside the LPA process.

**5.1 Proposed South Tralee Essential Infrastructure Planning Agreement (Ref: C17176412; Author: Thompson/Carswell) (Continued)**

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***Other Differences***

Village Building Company have proposed other changes that require further legal advice.

The major issues include:

- Subclause 23.2.2 which is part of Clause 23 Surplus Development Contributions.
- Deletion of part of subclause 27.4 of Clause 27 Acquisition of land required for Work which was inserted on previous legal advice.
- Deletion of a subclause Clause 32 Landowner's Guarantee.
- Clause 37 Indemnity which has been altered substantially.

***Current Development Application***

VBC has recently lodged a development application for 318 residential lots, 10 super lots and residue land for open space, drainage and public roads for South Tralee. The LPA needs to be adopted by Council before the DA can be finalised. As such it is intended that the finalised draft of the LPA will come before Council in the immediate future in order for it to be placed on public exhibition.

**Implications*****Legal***

The proposed South Tralee Essential Infrastructure Planning Agreement needs to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. It has been prepared in accordance with these.

It has also involved both parties obtaining extensive legal advice. However, it is a voluntary agreement and if the parties cannot reach an agreement to sign the LPA then Council will need to fall back to adopting and implementing a Section 64 Developer Contribution Plan for the entire South Jerrabomberra Valley.

***Policy***

This report is seeking Council's guidance on the amended clauses relating to the recoupment provisions as well as on VBC's proposal to introduce independent certification into the works process.

***Asset***

In the event that the proposed South Tralee Essential Infrastructure Planning Agreement proceeds it will provide sewer and potable water infrastructure and land that will become Council assets.

***Strategic***

The proposed South Tralee Essential Infrastructure Planning Agreement provides for the provision of sewer and potable water infrastructure necessary for one of the major urban release areas identified by Council's *Residential and Economic Strategy 2031*. The signing of a local planning agreement or alternatively the adoption of a section 64 developer contribution plan is critical before the determination of the first DA for subdivision can take place.

**5.1 Proposed South Tralee Essential Infrastructure Planning Agreement (Ref: C17176412; Author: Thompson/Carswell) (Continued)**

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***Engagement***

Should the proposed South Tralee Essential Infrastructure Planning Agreement proceed, a minimum period of 28 days community engagement will be required with any feedback being reported to Council for further consideration and if necessary the alteration of this local planning agreement before it is executed.

***Financial***

At this time costs have included the administrative costs associated with negotiations as well as legal advice in the order of \$12,660.

Should Council agree to the changes proposed by VBC in relation to repayment of recoupment contributions, this could potentially oblige Council to pay charges currently estimated to be \$2.5M (in present value) which could only be facilitated through borrowings.

The agreement as proposed by VBC still presents a financial risk to Council.

**Conclusion**

Since April 2017, Council has been negotiating with the VBC in regard to a local planning agreement to provide water and sewer services to facilitate the development of South Jerrabomberra. Negotiations have reached a stage where staff request policy direction to proceed.

This includes VBC's changes which relate to the timing of the payment by Council of any recoupment contributions which is currently estimated at \$2.5M. This is much less than previously estimated but itself is not without risk to a future Council. However on balance it is recommended that Council accept these changes subject to further legal advice.

In addition Council's support is sought to maintain Council's long standing practice that staff should be responsible for certifying major infrastructure that will become Council's assets. Notwithstanding this VBC's concerns about delays need to be recognised and a solution be further explored to agreement outside of the local planning agreement process.

These positions should be conveyed to VBC and if not accepted then it is concluded that this local planning agreement should not be pursued and Development Servicing Plans for Water Supply and Sewerage for the entire South Jerrabomberra be pursued instead.

**Attachments**

- |              |   |
|--------------|---|
| Attachment 1 | South Tralee Essential Infrastructure Planning Agreement - Version with agreed changes accepted and outstanding changes shown ( <i>Under Separate Cover</i> ) - <b>CONFIDENTIAL</b> |
|--------------|---|

5.2 Amendment to Jumping Creek Planning Proposal (Ref: C1810384; Author:  
Thompson/Brown)

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**Summary**

The purpose of this report is to seek the endorsement of Council to vary the current planning proposal being progressed for certain land at Jumping Creek in Queanbeyan. Having regard to the outcome of studies undertaken for the site, and advice from State Government agencies, it is now proposed to no longer proceed with rezoning the deferred areas of land for further residential development. These areas will now be rezoned to E2 Environmental Conservation.

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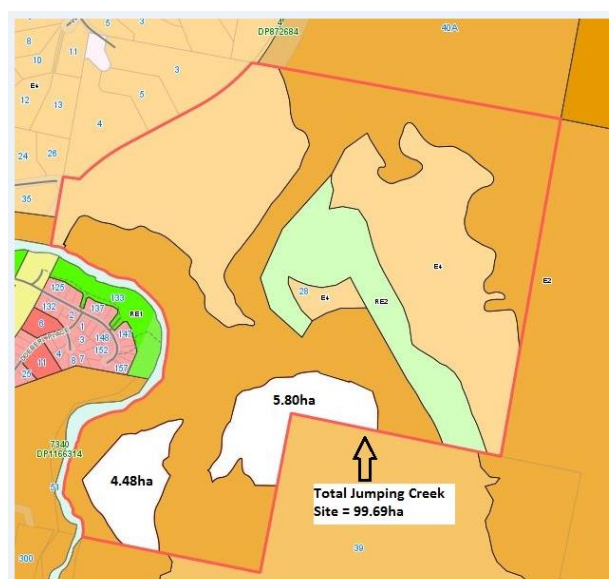
**Recommendation**

**That Council:**

- 1. Agree to the preparation of an amended planning proposal for Jumping Creek as set out in this report, and that this be forwarded to the Department of Planning & Environment seeking a revised Gateway determination.**
  - 2. Agree to continuing discussions with the developers of Jumping Creek in respect of potentially dedicating the environmental and recreational zoned sections of the site to Council in the future.**
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**Background**

Council has been progressing a planning proposal for two portions of the Jumping Creek site since November 2016. Jumping Creek generally was rezoned with the adoption of the *Queanbeyan Local Environmental Plan (LEP) 2012* but two smaller portions of land (shown white in Figure 1 below) were 'deferred' due to concerns about the suitability of the land for residential development. It was agreed at the time that further studies would be undertaken prior to making any final decision as to how those deferred lands would finally be zoned. Accordingly the 'deferred' lands currently remain zoned 1(A) Rural under *Queanbeyan Local Environmental Plan (LEP) 1991*.



**Figure 1 – Jumping Creek Area**

**5.2 Amendment to Jumping Creek Planning Proposal (Ref: C1810384; Author: Thompson/Brown) (Continued)**

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After initial consultations with Council staff and a number of State Government agencies, it was subsequently resolved on 24 August 2016 to formally prepare a planning proposal for these 'deferred' areas and that this be forwarded to the Department of Planning & Environment seeking a Gateway determination. This planning proposal sought to provide for up to 40 additional residential lots to the south of the site. A Gateway determination to proceed with studies and consultation was issued by the Department of Planning & Environment on 10 November 2016.

During subsequent consultations with State agencies, the Rural Fire Service (RFS) raised a number of concerns in respect of the suitability of the areas in terms of potential bushfire risk. The key concern raised by the RFS was the proposal for a single road only to access the 'deferred' areas land from the rest of the Jumping Creek site, and that this presented a risk should the area need to be evacuated due to bushfire. Council staff and the developer acknowledged these concerns and met with staff of the RFS to examine potential options to address these. During these discussions it became apparent that due to the topography of the land, and the potential expense in trying to identify any additional access arrangements to the 'deferred' lands, that little could be done to address the risk.

Council has now received formal advice from the proposed developers of the site (PEET) acknowledging the concerns of the RFS and confirming they no longer wish to proceed with rezoning the 'deferred' areas to E4 Environmental Living. Subsequent discussions between the developers and Council staff have confirmed the land is best suited to long-term protection of its environmental values and should instead be zoned E2 Environmental Conservation. Such a zoning would preclude any residential development.

It is also proposed to include an amendment to the existing RE2 Private Recreation zone, both to refine the existing boundaries of the zone to those areas best suited for any future recreational use, and to zone the land RE1 Public Recreation to provide a future public recreation use such as a park or similar.

*Long Term Management of Balance of Jumping Creek Site*

Should the amended planning proposal proceed, consideration needs to be given as to how the balance of the Jumping Creek site (i.e that portion that is not proposed for residential uses) will be managed into the future.

The developer has now written to the Council seeking advice in respect of the land potentially being dedicated to Council for future ownership and control in the future. Council is generally reluctant to take over the management of residual land from development proposals due to the maintenance liability this can create. In this instance, whilst much of the land has significant environmental values, much of the land is also degraded as a consequence of previous uses of the site. In particular weed management, erosion, water quality and contamination all require significant investment if these problems are to adequately addressed on the site.

However, with appropriate improvements and works to manage the issues discussed above, there may be merit in considering the remaining site for future public ownership. The site has a frontage of approximately 1km to the Queanbeyan River and contains significant environmental, heritage and cultural values that could be of significant interest to the broader community. The potential area to be dedicated to Council could exceed 50ha. It would also give Council long-term ownership of the Jumping Creek tributary itself and the capacity to better manage existing sediment run-off into the Queanbeyan River. Low-impact recreational uses such as walking and cycling may also be appropriate for the site although this would need to be further investigated.



**5.2 Amendment to Jumping Creek Planning Proposal (Ref: C1810384; Author: Thompson/Brown) (Continued)**

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At this time, it is recommended Council staff continue to discuss future management arrangements with the developer with a view to determining what environmental improvements would be required on the site prior to Council agreeing to any future dedication of the land. Any final draft proposal for dedication of the land by the developer will be put to the Council for information and determination prior to any final decisions being made.

**Implications*****Legal***

The proposed approach amending the existing planning proposal is consistent with the legislative requirements of the State Government in respect of progressing draft LEPs.

***Policy***

The existing planning proposal will need to be amended and a new Gateway determination sought from the Department of Planning and Environment. The current draft maps will also need to be amended.

***Environmental***

An amended planning proposal will remove the potential for any further residential development of the deferred lands and would only reduce any potential impacts on the environment.

Future ownership of the site by Council may represent a better long term environmental outcome for the site rather than being held in private ownership into the future.

***Asset***

Further consideration will be given to the environmental, social and economic benefits of agreeing to the dedication of the remainder of the site to Council in the future.

***Social / Cultural***

The proposal in this instance is to significantly scale back the previous proposal and so any impacts on social/cultural values are likely to be lessened. There may be social/cultural benefits in respect of the Council agreeing to dedication of the site in the future however, this is yet to be determined.

***Strategic***

The amended proposal is not considered to be inconsistent with any strategic planning considerations of the Council.

***Engagement***

Numerous State agencies were consulted in respect of the draft plan with Rural Fire Service (RFS) raising significant concerns in respect of bushfire risk. Further consultation requirements with agencies and the community will be determined by the Department of Planning & Environment however, the revised draft plan is likely to be exhibited for a period of 28 days.

**5.2 Amendment to Jumping Creek Planning Proposal (Ref: C1810384; Author: Thompson/Brown) (Continued)**

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***Financial***

Future management of the land if dedicated may have a financial impact however, this is yet to be agreed or determined.

Finalisation of an amended planning proposal is provided for under the relevant project budget.

***Integrated Plan***

Processing this planning proposal is one of the Branch's projects/actions in the Operational Plan 2017-18.

**Conclusion**

The proposed amendments to the planning proposal are considered appropriate and consistent with good planning practice. They are likely to facilitate a better planning outcome for the site than previously proposed.

Further discussions are required to determine the suitability of Council agreeing to dedication of the site in the future and these should continue.

**Attachments**

Nil

**6.1 2016 Census and Your Population Forecast Queanbeyan-Palerang Regional Council (Ref: C1813147); Author: Thompson/Carswell**

**Report**

Council has recently received a presentation pack from its demographic consultant's *id the population experts*, which is attached.

This provides a summary of what the 2016 Census has revealed about recent population trends in the Queanbeyan-Palerang Regional local government area, as well as in the wider region and the State.

Observations include:

- Between 2011 and 2016 the Capital Region population increased by 8,460 people within Queanbeyan-Palerang Regional Council LGA, contributing 38.8% to the total population increase in the Capital Region.
- Queanbeyan-Palerang Regional Council's population was 58,128 in 2016, increasing by 3,284 people, at an average rate of 1.17% pa.
- Queanbeyan-Palerang Regional Council's dwellings were 23,981 in 2016 increasing by 1,907 dwellings, at an average of 381 pa.
- The Census reveals that between 2011 and 2016 Queanbeyan-Palerang Regional Council had:
  - more children than previously forecast
  - more young adults than previously forecast
  - about the same number adults than previously forecast
  - slightly more mature adults than previously forecast
  - about the same number empty-nesters and retirees than previously forecast
  - fewer elderly people than previously forecast.

The presentation also makes the point that over two-thirds of *id's* forecasts are within 2% of the 2016 post-Census ERP and that these are the latest 2016 Census data.

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**Recommendation**

**That the report be received for information.**

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**Attachments**

Attachment 1      2016 Census and your population forecast Queanbeyan-Palerang Regional Council (*Under Separate Cover*)



**7 NOTICE OF INTENTION TO DEAL WITH MATTERS IN CLOSED SESSION**

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It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in Confidential Session. The reports are incorporated in the “confidential” business paper which has been circulated to Councillors.

The *Local Government Act, 1993* requires the General Manager to identify those matters listed on the business paper which may be categorised as confidential in terms of Section 10A of the *Local Government Act, 1993*.

**Recommendation**

**That pursuant to Section 10A of the Local Government Act, 1993 the following items on the agenda for the Ordinary Council meeting be dealt with in Closed Session for the reasons specified below:**

**Item 8.1 Road Issues - Harold's Crossing.**

*Item 8.1 is confidential in accordance with s10(A) (c) of the Local Government Act 1993 because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.*

**Item 8.2 Review of a Representation on a Notice of Proposed Order.**

*Item 8.2 is confidential in accordance with s10(A) (e) of the Local Government Act 1993 because it contains information that would, if disclosed, prejudice the maintenance of law and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.*