



SNOWY MONARO
REGIONAL COUNCIL

BUSINESS PAPER

PUBLIC EXHIBITION COPY

**Ordinary Council Meeting
5 July 2018**

CONFLICTS OF INTEREST

A conflict of interest arises when the Mayor or Council staff are influenced, or are seen to be influenced, in carrying out their duties by personal interests. Conflicts of interest can be pecuniary or non-pecuniary in nature.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of a financial gain or loss.

A non-pecuniary interest can arise as a result of a private or personal interest, which does not relate to money. Examples include friendship, membership of an association or involvement or interest in an activity.

The Mayor or staff member who considers they may have a conflict of interest should read Council Policy.

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Should you be unsure as to whether or not you have a conflict of interest you should err on the side of caution and either declare a conflict of interest or, you should seek the advice of the Director General of Local Government.

The contact number for the Director General of Local Government is 4428 4100.

COUNCIL CODE OF CONDUCT

The Council Code of Conduct is a requirement of Section 440 of the Local Government Act 1993, which requires all councils to have a code of conduct to be observed by the Mayor, members of staff and delegates of the Council attending a Council meeting or a meeting of a committee of Council.

The code of conduct sets out the responsibilities of the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council. The code also sets out how complaints against a Council employee, the Mayor or General Manager are to be made.

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Acknowledgement of Country

Council wishes to show our respect to the First Custodians of this land the Ngarigo, Walgalu, Ngunnawal and Bidjahal people and their Ancestors past and present.

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**ORDINARY COUNCIL MEETING
TO BE HELD IN COUNCIL CHAMBERS, 81 COMMISSIONER STREET, COOMA NSW
2630**

**ON THURSDAY 5 JULY 2018
COMMENCING AT 5.00PM**

BUSINESS PAPER

1. APOLOGIES/REQUESTS OF LEAVE OF ABSENCE

Leave of absence for this meeting was previously granted to Councillors Maslin and Beer .

2. CITIZENSHIP CEREMONY

3. PRESENTATIONS

4. PUBLIC FORUM

- 4.1 Shane Trengrove – DA0014/2016 Rushes Creek Subdivision
- 4.2 Margaret Mackinnon – DA0014/2016 Rushes Creek Subdivision
- 4.3 Richard Hopkins – Concept Plan of Canberra to Eden Railway

5. DISCLOSURE OF INTEREST

(Declarations also to be made prior to discussions on each item)

6. MATTERS DEALT WITH BY EXCEPTION

7. ADOPTION OF MINUTES FROM PREVIOUS COUNCIL MEETING

- 7.1 Ordinary Council Meeting held on 21 June 2018
- 7.2 Closed Session of the Ordinary Council Meeting held on 21 June 2018
- 7.3 Extraordinary Council Meeting held on 28 June 2018

8. DELEGATE'S REPORT (IF ANY)

9. ADOPTION OF COMMITTEE MINUTES/RECOMMENDATIONS

Nil

**10. CORPORATE BUSINESS - KEY DIRECTION 1. SUSTAINING OUR ENVIRONMENT
FOR LIFE**

Nil

**11. CORPORATE BUSINESS - KEY DIRECTION 2. EXPANDING CONNECTIONS WITHIN
THE REGION AND BEYOND**

Nil

12. CORPORATE BUSINESS - KEY DIRECTION 3. STRENGTHENING OUR LOCAL ECONOMY	
Nil	
13. CORPORATE BUSINESS - KEY DIRECTION 4. CREATING SAFER, HEALTHIER AND THRIVING COMMUNITY	
Nil	
14. CORPORATE BUSINESS - KEY DIRECTION 5. ENHANCING OUR HEALTHY, ACTIVE LIFESTYLE	
Nil	
15. CORPORATE BUSINESS - KEY DIRECTION 6. MANAGING DEVELOPMENT AND SERVICE DELIVERY TO RETAIN THE THINGS WE VALUE	
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Nil	
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Nil	
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Nil	
20. QUESTIONS WITH NOTICE	
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<i>Item 22.1 is confidential in accordance with s10(A)(2)(e) of the Local Government Act 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.</i>	
22.2 Proposed Purchase of Property in Cooma	
<i>Item 22.2 is confidential in accordance with s10(A)(2)(dii) of the Local Government Act because it contains information that would, if disclosed, confer a commercial advantage on a competitor of the council and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
22.3 Uncontrolled Disposal of Septic Waste into Council Sewer System	
<i>Item 22.3 is confidential in accordance with s10(A)(2)(c) of the Local Government Act</i>	

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 (f) of the Local Government Act because it contains details of systems and/or arrangements that have been implemented to protect council, councillors, staff and Council property and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

22.4 Proposal for Future of Council Offices in Cooma

Item 22.4 is confidential in accordance with s10(A)(2)(dii) of the Local Government Act because it contains information that would, if disclosed, confer a commercial advantage on a competitor of the council and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

22.5 Therry Street Development

Item 22.5 is confidential in accordance with s10(A)(2)(di) of the Local Government Act because it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

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15.1 DA0014/2016 21 LOT RESIDENTIAL SUBDIVISION RUSHES BAY AVENUE EAST JINDABYNE

Record No:

Responsible Officer:	Director Environment & Sustainability
Author:	Manager Development Assessment
Key Direction:	6. Managing Development and Service Delivery to Retain the Things We Value
Delivery Plan Strategy:	DP6.2.1.1 Ensure that Council's land use planning and development policies enhance liveability.
Operational Plan Action:	OP6.11 Ensure development assessment is undertaken in accordance with adopted Local Environmental Plans, Development Control Plans, Council Policy and State and Federal legislation.
Attachments:	<ol style="list-style-type: none">1. DA0014/2016 Subdivision Plans (<i>Under Separate Cover</i>) ➡2. DA0014/2016 Applicants Response to Council reports, including bushfire and ecological reports (<i>Under Separate Cover</i>) ➡3. DA0014/2016 Correspondence regarding deferral of application and extension of time for further information to be provided (<i>Under Separate Cover</i>) ➡4. DA0014/2016 Request for additional time to provide information March 2018 (<i>Under Separate Cover</i>) ➡5. DA0014/2016 Request from Applicant for Deferred Commencement (<i>Under Separate Cover</i>) ➡6. DA0014/2016 Further request for deferral of application and provision of further information (<i>Under Separate Cover</i>) ➡7. DA0014/2016 Various Correspondance relating to the application (<i>Under Separate Cover</i>) ➡8. DA0014/2016 Statement of Environmental Effects (<i>Under Separate Cover</i>) ➡9. DA0014.2016 Visual Impact Statement (<i>Under Separate Cover</i>) ➡10. DA0014/2016 Traffic Documents and Information Requests (<i>Under Separate Cover</i>) ➡11. DA0014/2016 Flora and Fauna Assessment Trevor Hawkeswood (Part 1) (<i>Under Separate Cover</i>) ➡12. DA0014/2016 Flora and Fauna Assessment Trevor Hawkeswood (Part 2) (<i>Under Separate Cover</i>) ➡13. DA0014/2016 Flora and Fauna Assessment Abel Ecology pages 1- 48 (<i>Under Separate Cover</i>) ➡14. DA0014/2016 Flora and Fauna Assessment Abel Ecology pages 49-96 (<i>Under Separate Cover</i>) ➡15. DA0014/2016 Flora and Fauna Assessment Abel Ecology pages 97-144 (<i>Under Separate Cover</i>) ➡16. DA0014/2016 Flora and Fauna Assessment Abel Ecology pages 145-183 (<i>Under Separate Cover</i>) ➡17. DA0014/2016 Flora and Fauna Assessment Abel Ecology pages 184-219 (<i>Under Separate Cover</i>) ➡

18. DA0014/2016 Correspondance from Council and OEH regarding Flora and Fauna issues on site *(Under Separate Cover)* ➡
19. DA0014.2016 Response from Abel Ecology to OEH *(Under Separate Cover)* ➡
20. DA0014/2016 Response from Abel Ecology to OEH final correspondance of 15/5/2018 *(Under Separate Cover)* ➡
21. DA0014/2016 Confirmation of date of Second Abel Ecology Report being sent to OEH *(Under Separate Cover)* ➡
22. DA0014/2016 OEH Principles for the use of biodiversity offsets in NSW *(Under Separate Cover)* ➡
23. DA0014/2016 OEH Cultural Heritage Response *(Under Separate Cover)* ➡
24. DA0014/2016 Correspondence from JERCs regarding the cultural heritage significance of the site *(Under Separate Cover)* ➡
25. DA0014/2016 Objections *(Under Separate Cover)* ➡
26. DA0014/2016 Applicants Response to Objections *(Under Separate Cover)* ➡
27. DA0014/2016 Submission to Dec 2017 Council meeting from Jindabyne East Residents Committee *(Under Separate Cover)* ➡
28. DA0014/2016 Submissions from DPI Fisheries *(Under Separate Cover)* ➡
29. DA0014/2016 Submissions received May 2018 relating to further information received *(Under Separate Cover)* ➡
30. DA0014.2016 Application Form *(Under Separate Cover)* ➡
31. DA0014/2016 Authority for Last and Maxwell Solicitors to act for Applicant *(Under Separate Cover)* ➡

Further Operational Plan Actions:

Applicant Number:	DA0014/2016
Applicant:	Bottomline Group Pty Ltd
Persons acting for the applicant	Last and Maxwell Solicitors Vision Town Planning Consultants Bob Griffiths Surveyor
Owner:	Bottomline Group Pty Ltd
DA Registered:	6/08/2015
Property Description:	Lot 17 DP 236151 Ph Jinderboine , 1A Jerrara Drive EAST JINDABYNE NSW 2627
Property Number:	101319
Area:	13.86 hectares
Zone:	E3 – Environmental Management

Current Use:	Dwelling house
Proposed Use:	21 lot subdivision for residential purposes
Permitted in Zone:	No – however land is subject to an Additional Permitted Use under the provisions of Schedule 1 of the Snowy River Local Environmental Plan 2013
Recommendation:	<p>That the application be refused for the following reasons:</p> <ol style="list-style-type: none">1. The subdivision lay out as presented in the application does not adequately mitigate, avoid or offset its negative impacts on the threatened species habitat and <i>the endangered ecological community of Snow gum woodland</i> located on site.2. The site proposed within lot 17 to situate the 20 residential allotments is not suitable for this residential density as it does not meet objectives of the E3 Zone being:<ul style="list-style-type: none">• to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; and• to provide for a limited range of development that does not have an adverse effect on those values

EXECUTIVE SUMMARY

The purpose of this report is to seek determination of development application DA0014/2016 for a 21 lot residential subdivision of lot 17 DP236151. The property is zoned E3 – Environmental Management and is the subject of an additional permitted use provision contained within Schedule 1 of the Snowy River Local Environmental Plan 2013.

The application was referred to the Office of Environment and Heritage for advice regarding the potential for threatened species onsite and the endangered ecological community found on the property. The development site is constrained with environmental, scenic, and infrastructure issues.

The application was notified and advertised, and initially 20 submissions were received. Following receipt of additional information, further notification was made and additional submissions were received. A summary of issues raised through both the initial and subsequent submissions is detailed below, and redacted copies of each submission are attached.

The Jindabyne East Residential Committee ('JERC') made submissions which raise concerns regarding the impact of the development on the natural and built environment and the existing residential amenity of the surrounding neighbourhood.

The site is subject to an existing approval for a six lot subdivision which had commenced, with a subdivision certificate being issued in 2011. This approval has therefore not lapsed and can be continued. It should be noted, however, that continuation of the existing approval means that the number of dwellings that could be erected on the lots created, form part of the overall maximum number permitted under Schedule 1 of the LEP (i.e. maximum of 20 dwellings).

Councillors will note that all of the attachments from the previous Council reports are included as attachments to this report, along with correspondence and submissions received since the last report to Council in March, up until 20 June 2018.

After assessment of the application has been carried out it is considered that it does not comply with all relevant provisions of the Snowy River LEP 2013, including the relevant zone objectives for the E3 zone, that need to be satisfied prior to the issuing of a development consent, and when assessed against the further provisions of Section 4.15 (formerly s79C) of the Environmental Planning and Assessment Act 1979 it fails to satisfy all relevant matters for consideration required for approval of a development application.

As such Pursuant to section 4.16(1) (formerly s 80(1)) of the Environmental Planning and Assessment Act 1979 it is recommended that the development application be refused and those that made submissions to the application be notified of Councils decision.

NOTE: Council is able to determine the application otherwise than as shown in the recommendation. If Council determines to do so, it must follow the procedure adopted through resolution 18/18 of 15 February 2018.

RECOMMENDATION

- A. That pursuant to Section 4.16 (formerly Section 80(1)(a)) of the *Environmental Planning and Assessment Act 1979 (as amended)* it is recommended that DA0014/2016 being a Twenty One (21) Lot Torrens Title Subdivision on Lot 17 DP 236151 Ph Jinderboine be refused for the following reasons:
- 1 The subdivision lay out as presented in the application does not adequately mitigate, avoid or offset its negative impacts on the threatened species habitat and the endangered ecological community of Snow gum woodland located on site.
 - 2 The site proposed within lot 17 to situate the 20 residential allotments is not suitable for this residential density as it does not satisfy objectives of the E3 Zone being:
 - to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; and
 - to provide for a limited range of development that does not have an adverse effect on those values
- B. That those persons who made a submission are advised of the determination.

BACKGROUND

The application was lodged with Council in August 2015, since that time a number of additional information requests have been issued by Council, with the applicant requesting further time to provide this information. Two previous reports to Council on 15 February 2018 and 15 March 2018 have recommended refusal of DA0014/2016. The application was deferred by Council on each occasion to enable the applicant (via their consultants) to provide additional information.

Council received a request on 14 February 2018 from Vision Town Planning Consultants (on behalf of the applicant) requesting that the determination of the application be delayed from the meeting on 15 February until the 15 March meeting in order to provide additional information.

Council resolved to defer determination the application and allow the applicant 14 days to provide this information (being 14 days from the date of the Council meeting).

The applicant and Vision Planning Consultants were both advised of the outcome of the meeting verbally on Friday 16 February and then formally in writing on Monday 19 February that they had until close of business on Friday 2 March 2018 to provide the information. Vision Town Planning Consultants acknowledged receipt of Councils correspondence (19/2/2018) and advised that they would “be in contact very shortly to discuss the submission of additional information”.

Correspondence was received on 1 March 2018 which requested a further extension in time to provide the additional information. A response was provided on 1 March to Vision Town Planning Consultants that officers were not able to provide such an extension of time and that the application would be presented again to Council in March with no changes as no further information had been provided.

On 2 March 2018 Council received a further request from Vision Town Planning to extend the time period for the presentation of information and provided reasons for their request. It was also stated that Council officers had not presented OEHL with the final response from Abel Ecology, however, the report from Abel Ecology (dated 26/9/17) had been provided to OEHL via email on the 28th of September. A copy of the covering email was attached to the business paper item for the March 2018 meeting, and following a request, was also provided to the applicant’s solicitor.

The response received from OEHL in January 2018 also took into consideration the document prepared by Abel Ecology in September 2017. Correspondence between the applicant (and the applicant’s consultant) and Council was attached to the report to the March 2018 Council meeting.

On 2 March 2018 Council received correspondence through the Jindabyne East Residents Committee (JERCs) of a submission by Alice Williams (a Walgalu Elder) and a request that this be included in any future reports to Council. This correspondence was also included as an attachment to the report to the March meeting.

Whilst not a referral agency for the development application, on 2 March 2018 DPI Fisheries also provided a submission raising concerns with the development. This was also included as an attachment to the March 2018 report.

At the 15 March 2018 meeting, Council determined to defer consideration of the report following a further request from the applicant, to enable provision of further information. Council requested such information be provided by 6 April 2018.

In an effort to assist the provision and clarification of information, Council staff arranged a conference call with the applicant’s planning and ecological consultants, which was held on 20 March 2018 (referenced in Vision Town Planning’s letter dated 6/4/2018).

At this time, Council staff relayed the concerns raised by OEHL in order to assist the applicants in clarifying the issues raised previously by OEHL, including the suggestion to redesign the subdivision. Clarification was also provided regarding comments about the suggested age of the trees on site. It was clarified that OEHL had made reference to older trees and not had used the specific term “old growth forest” when briefing Council staff before the conference call.

During the conference call the possibility of redesigning the subdivision was discussed. It is noted in the applicants response to the Council reports dated 6/4/2018 the Vision Town Planning Consultants discuss what they view as the impacts of “repositioning allotments”. It was also

discussed that the items listed in the Table from the OEH correspondence from September 2017 be revisited.

Correspondence received following the conference call included the 'correspondence report' from the applicant's consultant. Whilst some of the information included in the 'correspondence report' does not reflect Council staff's recollection of the discussions, the variances are not considered to be critical to Council's consideration of this application.

Councillors will note that there has been a significant amount of correspondence and telephone contact between staff and the applicant's representatives since the February and March Council meetings.

The applicant submitted additional information, including a bushfire assessment, prior to 6 April. The updated information was referred to OEH for comment, and was also notified to parties who had made a prior submission on the DA, thereby providing the opportunity for further submissions.

Staff arranged a meeting with officers from OEH, which was held in Queanbeyan on 1 May. At that meeting, OEH advised that a written response would be provided to Council, which was subsequently received on 15 May 2018. Extracts from the OEH response were provided to the applicant on 16 May 2018, and again included at statement that "*OEH considers the sub division should be re-designed, to adequately avoid the areas of intact snow gum woodland.*"

The applicant's consultants provided comments to Council in relation to the OEH response in correspondence dated 17 May 2018.

Redacted copies of further submissions received following notification of the revised information were provided to the applicant on 18 May 2018, affording the applicant the opportunity of addressing any concerns raised. On 21 May the applicant advised (via Vision Town Planning) that they did not wish submit any information in response to the submissions, and requested that the DA be determined.

At the Council meeting on 7 June 2018 a request was made during the 'questions with notice' section of the meeting for an update on this application. A verbal update was provided at the time. It was also advised that arrangements were being made to enable Councillors not familiar with the area to view the site. The site visit was undertaken on 14 June.

THE PROPOSAL

The proposal is for a 21 lot residential subdivision on an allotment with various identified constraints in East Jindabyne. The land is zoned E3- Environmental Management under the Snowy River Local Environmental Plan 2013 ('SRLEP2013) and is subject to an additional permitted use clause which allows the property to be subdivided for a maximum of 20 dwelling houses. This additional permitted use was the result of a rezoning of the land under the Snowy River Local Environmental Plan 1997.

The process to rezone this parcel of land was lengthy, being undertaken over a period of four years. Below is a summary of the process and the timeline for the rezoning of lot 17:

- 2000 – Snowy River Shire Council received and supported the rezoning application and sent the proposal through to DUAP (Department of Urban Affairs and Planning) who did not
-

support it for various reasons, and advised that Council would need to undertake relevant planning studies identified in the Kosciuszko Regional Environmental Plan (KREP).

- 2000 - the further information was prepared and with Council again supporting the rezoning this information was provided to DUAP
- September 2001 – DUAP and Council agreed not to continue with the proposal for the rezoning until Council had completed a settlement strategy which was in a draft form. Council then advised that the Settlement Strategy was on exhibition
- November 2002 – Planning NSW (formally DUAP) agrees to allow Council to proceed with the amendment to the LEP and the associated consultation with state agencies.
- October 2003 – Council submits draft amendment 6 to Department of Infrastructure Planning and Natural Resources (formally DUAP and Planning NSW)
- April 2004 – Council submits two versions of a draft amendment to Parliamentary Counsel for their comment –one which became the adopted version (seen in the 1997 LEP). The other version was more complex and included subdivision in stages and referred to a community title subdivision of some of the land.
- June/July 2004 – Amendment 6 put on public exhibition
- October 2004 Council resolved to submit the draft amendment to the Minister to be made
- Late in 2004 the amendment was gazetted and Snowy River LEP 1997 was amended to include the following clause:

Snowy River LEP 1997 - Schedule 3 Additional uses

Lot 17, DP 236151, Rushes Bay Avenue and The Old Kosciuszko Road, East Jindabyne—subdivision of the land for residential purposes and the erection of not more than 20 detached dwellings on the land, subject to the Council being satisfied that the subdivision and the erection of any dwellings on the lots so created are designed:

- (a) to minimise the impact of the development on Aboriginal archaeological heritage, and*
- (b) to minimise the visual impact of the development as viewed from nearby residences and Lake Jindabyne, and*
- (c) to minimise stormwater run-off, and*
- (d) to minimise the risk to residents from bushfire.*

When the Snowy River LEP 2013 was published in December 2013 it included (now in schedule 1) an additional permitted use for the same land that, whilst not an exact copy of the LEP 97 clause, had the same effect and requirements of the previous additional use:

Snowy River LEP 2013 - Schedule 1 Additional permitted uses

- 1 Use of certain land at Rushes Bay Avenue and Old Kosciuszko Road, East Jindabyne*
-

(1) This clause applies to land at Rushes Bay Avenue and Old Kosciuszko Road, East Jindabyne, being Lot 17, DP 236151.

(2) Development for the purposes of a subdivision and the erection of not more than 20 dwelling houses on the land is permitted with development consent, if the consent authority is satisfied that the subdivision and the dwellings are designed:

(a) to minimise the impact of the development on Aboriginal archaeological heritage, and

(b) to minimise the visual impact of the development as viewed from nearby residences and Lake Jindabyne, and

(c) to minimise stormwater run-off, and

(d) to minimise the risk to residents from bush fire

Accordingly, in order for Council to consent to a subdivision (and in the future any dwellings proposed on the land) in addition to the usual assessment under the Act and Regulations, the consent authority (Council) must be satisfied that the proposal meets the requirements to:

(a) to minimise the impact of the development on Aboriginal archaeological heritage, and

(a) to minimise the impact of the development on Aboriginal archaeological heritage, and

(b) to minimise the visual impact of the development as viewed from nearby residences and Lake Jindabyne, and

(c) to minimise stormwater run-off, and

(d) to minimise the risk to residents from bush fire

In addition the land is within the Lake Jindabyne Scenic Protection Area and has been mapped as Biodiversity on the Terrestrial Biodiversity Map.

Due to the site being mapped as having biodiversity value the development application was referred to the Office of Environment and Heritage (OEH) for their expert comment in relation to flora and fauna impacts. OEH have provided their comments both to the original information submitted by the applicant and in relation to further information supplied through the course of the assessment of the DA.

The applicant had already referred the application and commenced the process of gaining an Aboriginal Heritage Impact Permit (AHIP) from OEH with respect to the aboriginal cultural heritage found on site. This process is being carried out in parallel to the assessment of the DA.

Due to the concern highlighted through the assessment of the application being in relation to the impact of the development on native flora and fauna (which included threatened species and an endangered ecological community found on the site) a site inspection was carried out with the applicant (and associated consultants), Council staff and staff from the Office of Environment and Heritage (OEH) in June 2016.

Subject Site



The development is proposed on a 13 hectare allotment of land on the eastern side of the current developed land within East Jindabyne. It is accessed via both Rushes Bay Avenue and a road locally referred to as the Old Cooma Road which is within the road reserve of Kosciuszko Road. Whilst the site has two access points only one lot will be accessed via Old Cooma Road with the balance of the lots using Rushes Bay Avenue for access.

The development is proposed to be clustered in the northern portion of lot 17 adjoining Lake Jindabyne and Rushes Bay Gorge. There are the remains of an approved dwelling to the south of the lot accessed via the unsealed Old Cooma Road. An approval has been issued for the replacement of this dwelling.

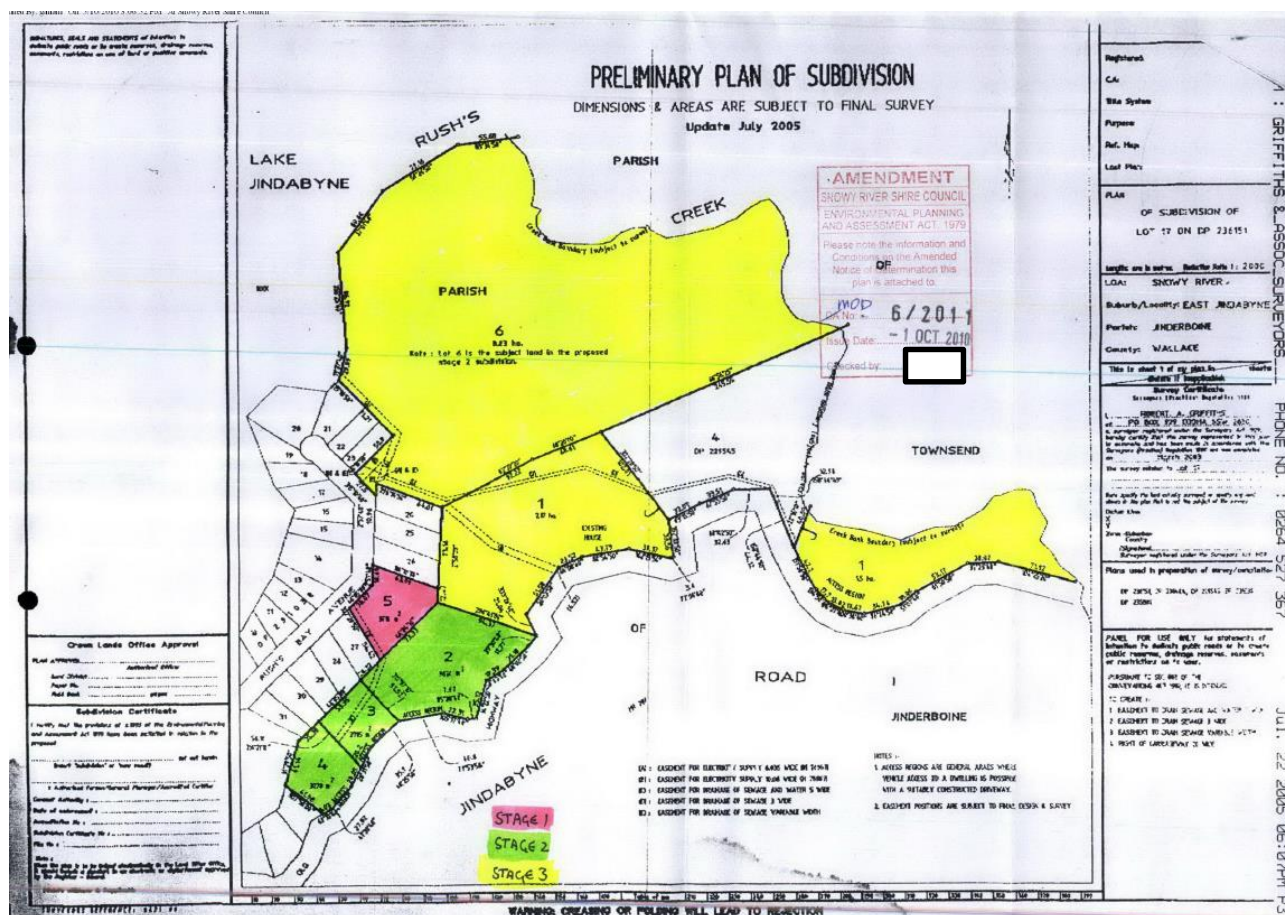
Whilst the land is not mapped as being bushfire prone the SRLEP2013 requires that the applicant consider the impact of fire risk to residents. The applicant has provided a bushfire report which is attached. If approval is obtained for the subdivision, each application submitted for the erection of a dwelling on the land will require further assessment of bushfire risk in relation to each individual dwelling. This will include assessment of required Asset Protection Zones (APZ) which may require removal of vegetation.

Past development applications

DA0003/2007	Subdivision - 16 lots (Subdivision of proposed Lot 6 in proposed subdivision of Lot 17 DP 236151)	Refused
DA0015/2016	Change of use shed to dwelling	Approved
DA0108/2015	Outbuilding	Approved

DA0132/2013	Subdivision	Withdrawn
DA4085/2017	Single Dwelling	Approved
MOD0006/2011	Modification - Stage proposed development into Stage 1 - Lot 5; Stage 2 - Lots 2, 3 & 4; Stage 3 - Lots 1 & 6	Approved
MOD0027/2010	staged development: stage 1 - Lots 3,4 & 5 stage 2 - remainder lots	Approved
DA0011/1999	Stage 1 = amend dwelling to form dual occupancy = home activity: skiing equipment workshop stage 2 = construct a new dwelling-house	Approved
DA0206/2003	8 allotment subdivision (approved for 6 lots)	Approved
SC0010/2011	Subdivision Certificate Stage 1	Approved

Existing approved 6 lot subdivision (DA0206/2003 and amended by MOD0027/2010 and MOD0006/2011)



DA0206/2003 is approved for a six (6) allotment subdivision of Lot 17 DP236151. It has been modified twice the last modification MOD0006/2011 was approved in 2010 restaging the development and allowing lot 5 to be subdivided first in order to activate the approval. A subdivision certificate was issued for stage one being lot 5 and a development lot incorporating the balance of the stages. The issuing of this subdivision certificate commenced DA0206/2003 allowing the DA not to lapse. Whilst the final plan of subdivision has been issued, Lot 5 has not yet been formally created by submission of the certificate and final plan to Land and Property

Information (LPI). There is no time limit allocated by the LPI for this to occur and as such lot 17 DP236151 is still a un-subdivided whole allotment.

This subdivision consent (DA0206/2003) would be surrendered if the DA0014/2016 were to be approved and the applicant chose to carry out that consent. If the recommendation for refusal of DA0014/2016 is adopted this consent for a six (6) lot subdivision would remain attached to the land and able to be continued with in accordance with the approved conditions of consent. Should the subdivision approved by DA0206/2003 be carried out the balance lot (lot 6) may be able to be further subdivided under the additional permitted use provision for up to an additional fifteen lots bringing the total number of lots in a subdivided lot 17 to twenty.

ASSESSMENT UNDER SECTION 4.15 (FORMERLY SECTION 79C)

The application has been assessed against the provisions of the following documents:

State Environment Planning Policies (SEPPs)	<p><u>State Environmental Planning Policy (Rural Lands) 2008.</u></p> <p>When assessing development for the purpose of subdivision for the purposes of a dwelling within Environmental Protection zones such as E3 Council is required to consider the following matters:</p> <ul style="list-style-type: none">(a) the existing uses and approved uses of land in the vicinity of the development,(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d). <p>It is considered that due to the location of the property adjacent and adjoining existing rural residential development that the subdivision</p>
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	would meet the requirements of the SEPP.
Local Environmental Plan (LEP) (including draft LEPs)	Snowy River Local Environmental Plan 2013 ('SRLEP2013')
Development Control Plans	Snowy River Development Control Plan 2013 ('SRDCP2013')

Section 4.15 and EP&A Act Checklist

The suitability of the site for the development:	<p>The proposed development site within lot 17 is not considered to be suitable for the residential density proposed. As it is in an area of the lot which is most likely to impact on surrounding properties, reducing the current residential amenity, impacting existing infrastructure and having the most impact on the EEC found on site.</p> <p>The additional permitted use does not limit the 20 dwellings to the northern area of the lot and there may be better locations for these lots to be located that could better mitigate the impacts of the current proposal.</p> <p>The additional permitted use does not require that the land be developed into 20 lots but for no more than 20 lots with no more than 20 dwellings to be accommodated on the whole of lot 17. Larger allotments with two dwellings (dual occupancies) in a non-clustered fashion, with restrictive building envelopes may be a more suitable outcome if considering the constraints of the site.</p>
The provisions of any environmental planning instrument and draft environmental planning instrument:	<p>The proposal has been assessed against the provisions of all relevant SEPP's and the development has been found to achieve an acceptable level of compliance.</p> <p>The proposal has been examined in detail against the provisions SRLEP 2013 and has been found not to achieve an acceptable level of compliance.</p> <p>Noncompliance is discussed below.</p>
The provision of any development control plan:	<p>The application generally complies with the provisions of Council's relevant development control plans however it's noncompliance with the LEP is discussed below.</p>

Any matters prescribed by the regulations:	The application generally complies with the <i>EP&A Regulation 2000</i> .
Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F:	Does not apply to this application
The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality:	<p>The likely impacts of the development have been considered as part this assessment and it is considered the development will have an unreasonable impact on native flora and fauna found on the site and the applicant has not adequately addressed how these impacts will be avoided, mitigated or offset. Written advice was provided to the applicants by OEH on what would be needed to demonstrate that the development will not have an unreasonable impact.</p> <p>Further consideration of this noncompliance is provided below.</p>
Any submissions made in accordance with the EP&A Act or the regulations:	<p>The application was notified and advertised.</p> <p>Twenty submissions were received within the submission period in 2015 with two additional submissions received post notification in 2017. In April 2018 the applicant provided Council additional information in response to the Council reports presented at the February and March 2018 Council meetings. This information was provided to all those who had made a previous submission. A further nine submissions were received during this second exhibition period in April/May 2018. A copy of all submissions have been included as attachments to this report and a summary of the submissions and consideration of the issues raised can be found below.</p>
The public interest:	It is considered that the development is not in the public interest in its current form as it has impacts on threatened species, an endangered ecological community, surrounding properties, existing infrastructure and has received a considerable amount of submissions raising concern from the community.

Other items of Consideration

S4.15(1)(a)(i) of EP&A Act 1979 ('the Act') any environmental planning instrument (Snowy River Local Environmental Plan 2013)

Under Clause 2.3(2) of the Snowy River Local Environmental Plan 2013 the consent authority (the Council) must have regard to the objectives of the zone when determining a development application in respect to the land within the zone. The development is proposed on land zoned E3-Environmental Management, where the zone objectives are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To provide for a range of compatible rural land uses that do not have an adverse effect on the surrounding land uses or natural values and landscape setting of the area.*
- *To provide for high quality tourist development that is small scale, low impact and sympathetic to the unique landscape setting and scenic qualities of the area, including the approaches to Kosciuszko National Park.*

It is considered that the proposal in its current form, when considering the advice from OEH and DPI Fisheries, has not demonstrated compatibility with the first zone objective, particularly in relation to *"protect, manage and restore"* areas with the values mentioned in the Land Use Table, including the ecological values of the Endangered Ecological Community, nor does it show that the development will not have an *"adverse effect"* as listed in the second objective. The final two objectives relate to rural land uses and tourist development so are not directly applicable in this instance.

Several of the submissions and the advice from DPI Fisheries and OEH highlight the values of the site referred to in the first zone objective. It is considered that the proposal in its present form does not demonstrate that it will *"not have an adverse effect"* on those values. As such the development fails to meet the second zone objective for the E3 zone as described in the Snowy River Local Environmental Plan 2013.

The E3 zone has a minimum lot size for subdivision of 40 hectares. However, the subdivision is permissible only if the Council is satisfied that the subdivision and the dwellings proposed on site will be designed to meet the provisions of Schedule 1 (1) which is an additional permitted use specific to lot 17.

Schedule 1 – Additional Permitted Use (excerpt Snowy River LEP 2013)

1 Use of certain land at Rushes Bay Avenue and Old Kosciuszko Road, East Jindabyne

- (1) This clause applies to land at Rushes Bay Avenue and Old Kosciuszko Road, East Jindabyne, being Lot 17, DP 236151.*
- (2) Development for the purposes of a subdivision and the erection of not more than 20 dwelling houses on the land is permitted with development consent, if the consent authority is satisfied that the subdivision and the dwellings are designed:*
- (a) to minimise the impact of the development on Aboriginal archaeological heritage, and*
-

- (b) to minimise the visual impact of the development as viewed from nearby residences and Lake Jindabyne, and*
- (c) to minimise stormwater run-off, and*
- (d) to minimise the risk to residents from bush fire.*

The application has been submitted for a 21 lot subdivision, however the requirements for the additional permitted use are to provide for not more than 20 dwelling houses on the site. In this case the applicant has argued that the property has an existing entitlement for a dwelling which was erected on the site (it has since burnt down and an approval issued for a replacement building) and that as the clause was written whilst this dwelling existed on site the 20 dwellings are 20 additional to that which already exists. This is not the intent of the clause and it would be reasonable to conclude that the existing dwelling forms one of the 20 dwellings described in the LEP.

Due to this existing approved dwelling on proposed lot 1, the application if approved would need to either remove an allotment from the proposed plan of subdivision (via amalgamation of lots) or render one allotment unable to be used for residential purposes.

The requirement of the additional permitted use for not more than 20 dwellings would, if the subdivision was approved, preclude any purchaser of the proposed lots to erect a dual occupancy on the land. As such, a restriction on the use of the land would be applied through a condition of consent, to limit the erection of only one dwelling on an allotment.

The development in its proposed form is not considered to minimise visual impact when viewed from nearby residences, as it condenses twenty of the twenty one proposed lots in the northern portion of lot 17 in close proximity to the existing dwellings.

Clustering of these dwellings in this location would have an impact on the residential amenity of the existing dwellings adjoining and in close proximity to the development site. The clause requires that Council consider the visual impact of the development not only on adjoining residences but those “nearby”. The applicant has provided some justification of how they intend to mitigate visual impact but much of this (found in their response dated 6/4/2018) is to be “provided prior to construction”. This includes how the lighting of the development, both street and residential light sources may impact on nearby residences (not just adjoining residences).

Whilst the development is screened from Lake Jindabyne by natural vegetation, if the vegetation is to be removed for dwellings to be built on site then further visual impact could occur. The applicant has noted that much of the vegetation to the North West of the development to be used for screening is not on the subject land and that it would substantially add to screening of any views from the lakeside area. It notes that as these trees are not on their land, that these trees will not be removed as part of this development. The potential removal of these trees however is out of the control of the applicant and they cannot be used as justification as to visual screening of the development from the lake. The screening measures to mitigate the visual impact of a development clustered into the lower portion of the allotment need to be wholly within the land owned by the developer.

The special provision requires that Council consider not only the design of the subdivision but also the design of the dwellings to ensure they minimise visual impact, as the additional permitted use refers to “development” which is both subdivision and the erection of not more than twenty

dwellings. In their response dated 6/4/18, the applicant has provided some examples of the types of designs that may be appropriate for the location. Should the development be approved Council may wish to include a requirement for a Development Control Plan which relates specifically to the site to ensure the visual impact of buildings on the site is minimised.

It is considered that the development in its current form does not satisfy the requirement of part (2)(b) of the schedule.

The requirement to 'minimise' stormwater run-off and to 'minimise' the risk in relation to bushfire would require engineering and design solutions, which would be required by conditions if an approval was to be issued.

The applicant has taken steps to address the requirement of part 1(a) by applying for an AHIP through OEH, which is referenced in earlier commentary in this report.

Lake Jindabyne Scenic Protection clause 7.6 of the SRLEP2013

The whole of lot 17 is mapped with the Lake Jindabyne Scenic Protection Area and as such any development must consider clause 7.6 of the SRLEP2013. The statement of environmental effects provided with the application does not address how the development complies with the provision of this clause which states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development will not have an unacceptable visual impact on the scenic quality of the area when viewed from the relevant lake at its full supply level or from a public place, and*
- (b) the development has been designed to prevent any intrusion into the view from the lake at its full supply level.*

And in deciding whether to grant development consent to development on any land to which this clause applies, the consent authority must consider:

- (a) the visual impact of the development when viewed from the relevant lake at its full supply level or from a public place, and*
- (b) whether the design and construction of any new buildings (including ancillary development) prevent any intrusion into the view from the lake and minimises any adverse impacts on the view from the lake and surrounding areas, and*
- (c) the number, type and location of existing trees and shrubs that are to be retained and the extent of landscaping to be carried out on the site, and whether provision has been made for the planting of appropriate native species where the planting would visually screen the development.*

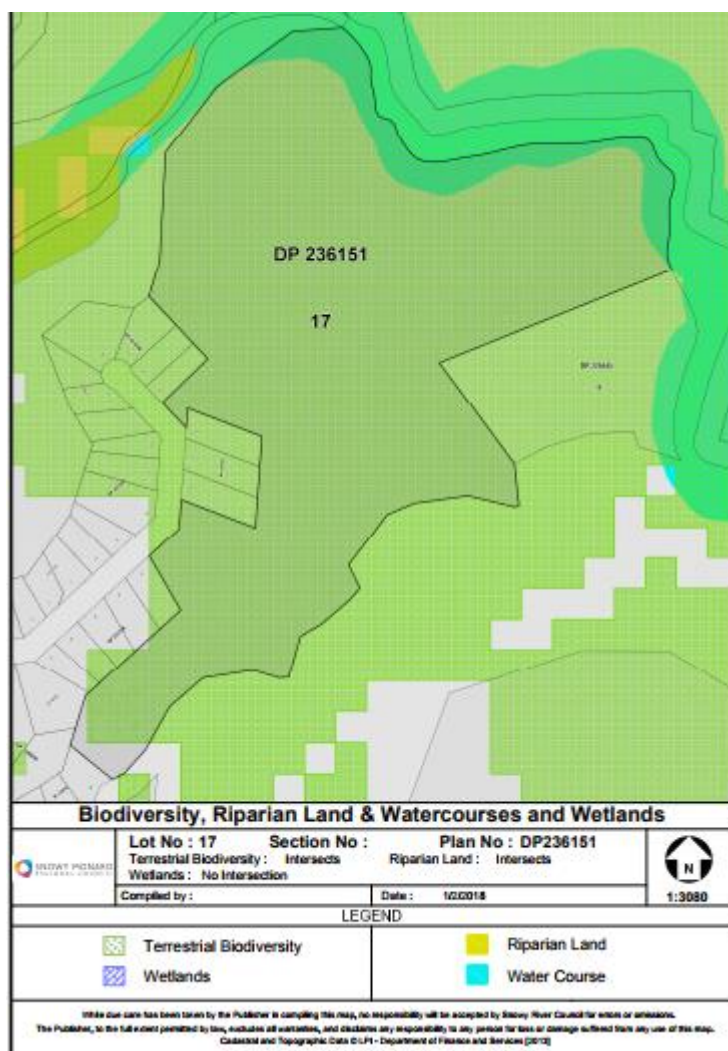
The development as proposed has to some degree taken into consideration the impact of the development when viewed from Lake Jindabyne in the Visual Impact Statement and further discussed in the response provided by Vision Town Planning Consultants 6/4/2018. In this document the applicant provides some indicative styles of housing including colours and materials.

The applicant refers to vegetation on adjoining land that could be used to aid in screening the development from the lake. Caution needs to be taken with this approach as the developer of lot 17 has no control of whether an adjoining land owner may remove vegetation as such any screening needs to be on the subject site. The topography of the land in the location of the development does aid in minimising the visual impact of the development when viewed from Lake

Jindabyne. However by clustering the development into this area it will have a visual impact when viewed from the lake.

The documentation provided with the application does not provide plan detailing the vegetation to be removed as part of the development.

Areas of Mapped Biodiversity Value clause 7.2 of the SRLEP 2013



The development site is mapped as terrestrial biodiversity under the SRLEP 2013 and as such the development application will need to comply with clause 7.2 of the SRLEP 2013. Clause 7.2 requires that before determining a development application for development on land to which this clause applies, the consent authority must consider whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

And that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

In order to ensure that Council was adequately assessing the impact of the development in relation to this clause and the requirement under s4.15(1)(b) of the EP&A Act 1979 Council referred the application to the NSW Office of Environment and Heritage for specialist advice in interpreting the flora and fauna assessments provided with the application. Further discussion as to the issues raised by OEH and the information provided by the applicant are discussed below.

It is considered that the information provided with the application and the additional information received in relation to these matters is not sufficient for Council to be satisfied that the development has been designed and sited and will be managed to avoid any significant adverse environmental impact. This view is supported by the comments provided by OEH, copies of which are attached.

The Tablelands Snow Gum Grassy Woodland endangered ecological community (EEC) has been identified on the subject property. The applicant has not provided adequate measures for avoiding the impact on this EEC nor have they sought to amend the lot layout when these issues were raised.

It is considered that in the case of the subject subdivision the impact could potentially be minimised due to the large area of the lot that is not being used for development which has within it areas of land with less biodiversity value.

It was suggested to the applicant's consultant that redesigning the proposed layout might address concerns raised about the impact on vegetation and the density of development. The applicant provided further information in response to the February and March Council reports, and these responses have been attached. No amendment was made to the proposed lot layout.

It is considered that the development does not satisfy the requirements of this clause to enable approval to be granted.

In the Abel Ecology documentation it was also stated that there were several noxious weed species identified on site, including Chilean Needlegrass and Fireweed. The suggested presence of these two species on this site was of significant concern and Councils Biosecurity Weeds Officers were notified and carried out an inspection of the site. The inspection did not reveal the presence of those two species of noxious weeds. Further inspections should be undertaken in different seasons to ensure these species are not present, or if they are, that urgent eradication action is undertaken. The report notes that the weeds that were present on the site were generally scattered and patchy with no noxious weeds being abundant on the site.

S4.15(1)(b) of EP&A Act 1979 ('the Act') The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality:

Environmental Impacts – Natural Environment

The office of Environment and Heritage (OEH) has provided feedback on this application in five responses on 5/07/2016, 16/09/2016, 20/12/2016, 1/09/2017 and 15/05/2018 which were provided to Council and the applicant (these letters are attached) and have carried out a site inspection with Council officers and the applicant in June 2016.

The most recent advice from OEH (dated 15/05/2018) includes as follows:

There is insufficient information provided to determine the impact, and subsequent offsets required, from the proposed development on the Tablelands Snow Gum Grassy Woodland, an Endangered Ecological Community (EEC) which is listed in the Biodiversity Conservation Act 2016 (BC Act). As previously stated an Assessment of Significance (AoS) undertaken in accordance with the assessment of significance guidelines should also be included. The current AoS does not provide the relevant information as it does not put the development into the local or regional context as required under the guidelines.

The principles of avoid, minimise and offset has been standard process for development assessment in NSW for quite some time, and is now cemented in legislation under the Biodiversity Conservation Act 2016. OEH has previously suggested the proponent use a standard biometric assessment method to determine the impacts and offsets required. The biobanking assessment methodology was suggested as a tool to determine this information, and is considered a transparent, standard process that has been used for other similar developments throughout NSW.

In addition, the assessment of vegetation condition is not adequate. The condition of vegetation on the site needs to be determined across the site. A map should be provided showing the vegetation condition classes as they occur on the site. From our observations at the site inspection on 17 June 2016, we consider that the area that will be directly impacted by the development, has the highest quality Tablelands Snow Gum Woodland, and measures should be taken to avoid this area.

OEH considers that the subdivision should be redesigned, to include larger lot sizes with building envelopes designated. The building envelopes should include all necessary infrastructure and Asset Protection Zones (APZs). All areas outside the building envelopes should also be protected in perpetuity to protect the conservation values of the site. The areas to be used for an offset should also be conserved in perpetuity and managed for their conservation values. OEH recommends that the final plan of subdivision (attached to the section 10.7 planning certificate) should be supported by an instrument under section 88B of the Conveyancing Act 1919 to conserve these areas.

Since their first response to Council in July 2016, OEH has consistently requested the same information be provided. They have advised the applicant and Council that in their opinion the information provided in assessments by Trever Hawkeswood and from Abel Ecology do not adequately address the impact of the development on the endangered ecological community (EEC) of Tablelands Snow Gum Woodland and the threatened species likely to be present on site.

These requests predate the new Biodiversity Conservation Act requirements but are consistent with the OEH "Principles for the use of Biodiversity Offsets"

(<http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm>) which are attached to this report.

Information received by Council from OEH has been forwarded to the applicant. Both the OEH advice and the responses from the applicant have been attached.

Based on the most recent advice to Council from OEH that the development is not suitable as proposed, it is considered that the likely impacts of the development on the natural environment precludes Council from being able to approve this development application pursuant to the requirements of s4.15 of the Act.

Council received two submissions from Department of Primary Industries (Fisheries) raising concerns with the impact the development will have on Key Fish Habitats. These documents have been included as attachments to this report. The application was not formally referred to DPI Fisheries as it did not trigger the requirements of 'integrated development' however the department wished to make comment and as such details were provided to them for this purpose.

In the first correspondence 2 March 2018 DPI Fisheries raised the following concerns:

- Impact of the development on the Aquatic Habitat
- The need for effective Riparian Vegetation Buffers as this was not included in the proposal
- Sediment and Erosion as a subdivision at this location represents a very significant change in land use from what currently exists. Very substantial surface disturbance of the site over many years is necessary in order to complete the development.
- An assessment relating to potential stormwater impacts likely to be generated by development during both construction and operation should be included.
- A stormwater mitigation and management plan addressing the identified impacts should be included as part of the proposal.

The additional information provided by the applicant was forwarded to DPI Fisheries for comment and a response was received dated 11 May 2018. The areas of concern raised in this correspondence were as follows:

- The additional information has not addressed any of the previous issues raised by the department and reiterates previous concerns regarding the development (these are listed above)

The final submission from DPI Fisheries concludes with the following advice

In its current form, and without appropriate assessment and mitigation of potential impacts to the aquatic environment, the proposal represents an unacceptable risk to adjacent water quality and key fish habitat, including a listed Aquatic Endangered Ecological Community. DPI Fisheries does not support Council granting Development Consent until the proponent meets the requirements set out in this and in our previous correspondence provided on 2 March 2018.

SUBMISSIONS

The application was notified and publicly advertised for 30 days, in accordance with relevant DCP requirements and the relevant statutory regulations when lodged in 2015 and 20 objections were

received within the submission period. The applicant was provided a copy of the submissions received within this submission period and was provided an opportunity to respond. A response was received and has been included as an attachment to this report.

Two further submissions were received after the submission period and they have been included in the attachments to this report. The issues in these submissions have been included in the considerations below. One submission was in the form of a presentation to Council in December 2017 by the Jindabyne East Residents Committee. This submission requested clarification to a number of points a response to these has been included separately below.

When further information was submitted by the applicant to respond to issues raised in the February and March 2018 reports to Council further notification was carried out targeting those who made previous submissions on the application. At the conclusion of this second notification period in April/May 2018 Council received nine (9) submissions. Another submission was sent directly to a Councillor, and has also been included. It is understood that some Councillors may have received further emails directly from residents who also provided a separate formal submission to Council, in which case the formal submission is referenced. A redacted copy of the submissions received by Council were provided to the applicant for a response. The applicant's planning consultant advised that they did not wish to prepare a response to these submissions.

The submissions have been summarised below with a consideration of the issues raised. It is acknowledged that submissions raise similar issues, however this is not unusual. Under the requirements of S4.15 of the Environmental Planning and Assessment Act 1979 (the 'Act') Council is required to consider these submissions when assessing a development application.

Submissions Received 2015

1	Object	<ul style="list-style-type: none"> Increased traffic on Rushes Bay Avenue – risk to motorists, cyclists and pedestrians. No footpaths on Rushes Bay Avenue. Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. Improvements in infrastructure would be required. Impact against need, already plenty of residential land available in the area.
2	Object	<ul style="list-style-type: none"> Inappropriate location Intersection with Rushes Bay Ave and Jerrara Drive is dangerous Quiet street with no footpaths safety issues Road is at its limit, no potential available to widen the road Land is of significant natural beauty and is visible as it is high and sloping. 20 lots with dual occupancy not appropriate for this location Extra street lighting Many blocks available at the other end of East Jindabyne, East Jindabyne should grow through Kunama Ridge and Alpine Sands and Tyrolean not in this direction. Plenty of land for sale

3	Object	<ul style="list-style-type: none"> • Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. • Rushes Bay Avenue is narrow and winding with no footpaths • Verges are steep and inaccessible making widening of the road unsuitable. • Due to the nature of the existing lots on Rushes Bay Avenue children use the road currently which is a cul-de-sac as a play space for bikes, skateboards. • Other more accessible areas to develop in East Jindabyne and Tyrolean Village
4	Object	<ul style="list-style-type: none"> • Councils urban land release strategy does not include this land for development. • The development is in an inappropriate location and number of dwellings proposed is excessive. • Ample existing lots in East Jindabyne and Tyrolean Village and additional land areas zoned • Traffic impact assessment in SEE is inadequate • Existing road is narrow and winding no verges and was not designed to allow for the additional traffic 20 dwellings would create. • Intersection with Rushes Bay Ave and Jerrara Drive is dangerous and not suited to construction traffic. • LEP requires that the development minimise impact on visual impact, aboriginal cultural heritage, minimise storm water runoff and fire risk to residents. • Access to the gorge will be blocked by the development as it is currently being accessed through the property. • Areas is used for recreational purposes. • Drainage is not adequately addressed and will have an impact on Rushes Bay having the potential to cause pollution • The development would be at risk from bushfire and issues surrounding potential for evacuation in the event of a fire. • Increase in light glare at night • Changes the semi natural backdrop in Rushes Bay • Reduced property values
5	Object	<ul style="list-style-type: none"> • Traffic assessment provided in the SEE is inappropriate • Rushes Bay Ave the only proposed access to the development it is narrow and winding and the increase in traffic will pose a risk to pedestrians and motorists. • Children use the road to access a bus stop with no footpaths • Intersection with Rushes Bay Ave and Jerrara Drive is dangerous • The increase in traffic will have noise impacts

		<ul style="list-style-type: none"> • No scope to enlarge the road • Increased risk in the event of an emergency • Loss of property values • Area not identified in Councils urban land release strategy • No demonstrated need for the development • Noncompliance with the Snowy River LEP • Street lighting and nighttime glare • Removal of tree cover for structures and hazard reduction • Site is identified as scenic protection • No drainage features proposed • Fire risk • Deficient in the LEP that it does not require development to minimise the impacts of increased traffic or whether existing infrastructure can meet the demand. • No slope analysis in the SEE • Access will be removed through the subject site to Rushes Bay Gorge • No consultation with residents about this proposal for over 10 years and Council must meet and speak with residents as part of the consideration of the proposal • The DA information is not on the website only council offices
6	Object	<ul style="list-style-type: none"> • Increased traffic • Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. • Rushes Bay Avenue is narrow and winding with no footpaths • Speed limit not always observed and no traffic calming • Increase in the number of children using the road • Extra wear and tear on the road • Construction traffic impacts • Traffic issues not sufficiently addressed in the SEE • Land is zoned E3 and not identified as an area for development there are more appropriately zoned areas elsewhere. • Aboriginal cultural heritage study not included with application • Area is gazette Scenic Protection and cost of the existing tree cover will be removed as part of the development of the site. • Increase in light glare at night

		<ul style="list-style-type: none"> • Impacts of stormwater and no details of stormwater filtration and the impact on Rushes Bay • Access will be removed through the subject site to Rushes Bay Gorge • Increased traffic noise • reduced property values • No demonstrated need • Capacity of existing infrastructure • No consultation with residents about this proposal for over 10 years and Council must meet and speak with residents as part of the consideration of the proposal • The DA information is not on the website only council offices
7	Object	<ul style="list-style-type: none"> • Increased traffic • Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. • Rushes Bay Avenue is narrow and winding with no footpaths • No scope to enlarge the road • Traffic noise • reduced property values • Councils urban land release strategy does not identify this land for development. • No demonstrated need • Ample existing approved lots in East Jindabyne and Tyrolean Village and additional land areas zoned for residential development all these are more appropriate areas for development • Area is gazette Scenic Protection and most of the existing tree cover will be removed as part of the development of the site. • Increase in light glare at night • Impacts of storm water on Rushes Bay • Fire risk • Deficient in the LEP that it does not require development to minimise the impacts of increased traffic or whether existing infrastructure can meet the demand. • No slope analysis in the SEE • Access will be removed through the subject site to Rushes Bay Gorge • No consultation with residents about this proposal for over 10 years and Council must meet and speak with residents as part of the consideration of the proposal

		<ul style="list-style-type: none"> The DA information is not on the website only council offices
8	Object	<ul style="list-style-type: none"> Noncompliance with the Snowy River LEP existing tree cover will be removed as part of the development of the site. Street lighting and night time glare Area is gazette Scenic Protection No drainage features proposed to mitigate impacts of storm water on Rushes Bay Fire risk Deficient in the LEP that it does not require development to minimise the impacts of increased traffic or whether existing infrastructure can meet the demand. No slope analysis in the SEE Councils urban land release strategy does not identify this land for development. Traffic assessment provided in the SEE is inadequate Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. Rushes Bay Avenue is narrow and winding with no footpaths No scope to enlarge the road Traffic noise Increased risk for emergency evacuation Loss of property values Access will be removed through the subject site to Rushes Bay Gorge No consultation with residents about this proposal for over 10 years and Council must meet and speak with residents as part of the consideration of the proposal
9	Object	<ul style="list-style-type: none"> Inadequate access to the site via Rushes Bay Avenue Winding narrow road terminating in cul-de-sac Rushes Bay Ave is currently too narrow for two lane traffic to pass safely increase in traffic volume would exacerbate situation and there are bottle necks to traffic flow on the road. Intersection of Rushes Bay Ave and Jerrara Drive problematic Rushes Bay Ave unsuitable for construction traffic No footpath Cars parked on road verge

		<ul style="list-style-type: none"> • Children catching school bus need to walk within the road proper • Existing driveways are steep onto the road. • Increased traffic would have negative residential amenity impacts • Reduction in property value • SEE and flora and Fauna report indicate the land is of poor value for native flora and fauna – this is not the case • Call into question the depiction of the land as former farmland with poor native flora and fauna and limited environmental value • Land is teeming with native wildlife • Many species of creek wildlife and water birds have been seen in the area • The area is one of the few remaining bush land areas that provided access to the lake and provide a vital corridor for native fauna • Area in question is a vital bridge between two large bush land areas surrounding the lower and upper Snowy River valley areas, the proposed development would block this corridor and break the link • Negative impact on rushes Creek from runoff, pollution, human activity . effecting water quality, driving away native fauna. • Impact on trout spawning could be impacted • Issues with the content of the FFS and the SEE • Request that the FFS be assessed independently and that a second environmental impact assessment be commissioned by SRSC. • Planned number of residences exceeds that stipulated in the SRLEP2013 • Land is zoned E3 this contradicts the use of the land for subdivision • Question the process for rezoning of the land and what consultation was undertaken • Concerns with access to documents relating to land use zoning, environmental plans or aboriginal cultural heritage assessment • Large availability of land better suited to this development in the area
10	Object	<ul style="list-style-type: none"> • Rushes Bay Ave and its intersection with Jerrara Drive is dangerous • Traffic assessment provided in the SEE is inadequate • Existing road is not adequate for new development • School bus cannot come down Rushes Bay Ave, children need to walk on the road to the bus stop • Traffic noise • Bushfire risk with only one access point

		<ul style="list-style-type: none"> • Loss of property values • Councils urban land release strategy does not include this land for development • Ample land available in the area • No pollution controls for the development • Abundance of wildlife in Rushes Bay gorge • Lack of DA information on the website
11	Object	<ul style="list-style-type: none"> • No traffic impact assessment in SEE • Traffic issues with Rushes Bay Ave • Lots of amenity and usability of roads • Loss of property values • Ample approved lots in East Jindabyne and Tyrolean, no demonstrated need for development • SEE understates impacts of the development • Site contains habitat areas and there is fauna that is known in the location that is not mentioned in the SEE and detailed report. • Noncompliance with LEP • Visual impacts - much of existing tree cover will be removed, street lighting and intrusive night time glare. • Site is a scenic protection area, development would not achieve the requirement to preserve visual integrity. • No drainage features provided • Fire risk • Deficient in the LEP that it does not require development to minimize the impacts of increased traffic or whether existing infrastructure can meet the demand. • No slope analysis in the SEE development cannot meet the requirements of development on slopes >18% • Blocks traditional access to a local recreation and environmental resource • SEE does not provide measures to protect the gorge from the impacts of residential development such as weed invasion and domestic animals. • Proposal is larger than that put forward in 2005 • Concentrates the pact of the development on Rushes Bay Ave and does not make use of the upper half of the land. • What will the upper area used for the in the future, cumulative impacts of the current proposal and future development need to be considered

		<ul style="list-style-type: none"> • Capacity of existing infrastructure • Land is suitable for lower density development should utilise the upper section of Jerrara Drive for access.
12	Object	<ul style="list-style-type: none"> • Increased traffic and associated risks • Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. • Rushes Bay Avenue is narrow and winding with no footpaths • No scope to enlarge the road • Traffic noise • reduced property values • Council's urban land release strategy does not identify this land for development. • No demonstrated need • Noncompliance with LEP • Area is gazette Scenic Protection and most of the existing tree cover will be removed as part of the development of the site. • Increase in light glare at night • Impacts of storm water on Rushes Bay • Fire risk • Deficient in the LEP that it does not require development to minimise the impacts of increased traffic or whether existing infrastructure can meet the demand. • No slope analysis in the SEE • Access will be removed through the subject site to Rushes Bay Gorge
13	Object	<ul style="list-style-type: none"> • Traffic assessment provided in the SEE is inappropriate • Rushes Bay Ave the only proposed access to the development it is narrow and winding and the increase in traffic will pose a risk to pedestrians and motorists. • Children use the road to access a bus stop with no footpaths • Intersection with Rushes Bay Ave and Jerrara Drive is dangerous • The increase in traffic will have noise impacts • No scope to enlarge the road • Increased risk in the event of an emergency • SEE understates impacts of the development • Flora and Fauna assessment does understates the impact of the development on threatened species and the EEC present on site.

		<ul style="list-style-type: none"> • Issues with Cultural Heritage Assessment • Visual impact of tree removal and street lighting and development is within a scenic protection area • No drainage features presented to mitigate the impacts of stormwater • Fire risk impacted by only one exit • Deficient in the LEP that it does not require development to minimise the impacts of increased traffic or whether existing infrastructure can meet the demand. • No slope analysis in the SEE development cannot meet the requirements of development on slopes >18% • Blocks traditional access to a local recreation and environmental resource Rushes Gorge • SEE does not provide measures to protect the gorge from the impacts of residential development such as weed invasion and domestic animals. • Land is suitable for lower density development should utilise the upper section of Jerrara Drive for access. If lower density development approved, then conditions of consent should allow of retention of public access to Rushes Creek and no street lighting
14	Object	<ul style="list-style-type: none"> • Increased traffic and associated risks and reduced amenity • Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. • Rushes Bay Avenue is narrow and winding with no footpaths • No scope to enlarge the road • Traffic noise • Councils urban land release strategy does not identify this land for development. • No demonstrated need • No assessment in regard to Aboriginal cultural Heritage • Negative visual impacts when structures and vegetation removed • No study of how runoff into rushes bay swimming area will be managed • Bushfire risk • No drainage features proposed to mitigate stormwater runoff • Deficient in the LEP that it does not require development to minimise the impacts of increased traffic or whether existing infrastructure can meet the demand. • No slope analysis in the SEE development cannot meet the requirements of development on slopes >18% • Blocks traditional access to a local recreation and environmental resource

		<p>Rushes Gorge</p> <ul style="list-style-type: none"> • Capacity of existing infrastructure • No consultation with residents about this proposal for over 10 years and Council must meet and speak with residents as part of the consideration of the proposal
15	Object	<ul style="list-style-type: none"> • Suitability of the land under the LEP • Issues for road users including road damage road noise request to divert traffic along Old Cooma Road and away from Rushes Bay Ave for an alternative access to the site. • Will conditions of consent require sealing of Old Cooma Road • Pedestrian access and footpaths • Updated environmental study, archeological study, soil study, social study required. • Is undeveloped land to be reserved for community access • Erosion issues • Study required for impact of development on property values • Overdevelopment in East Jindabyne
16	Object	<ul style="list-style-type: none"> • Issues surrounding proposed sewerage pumping station including noise and location and visual impact • Disturbance to community while construction takes place • Traffic and road issues • Removal of trees • Devalue properties • Environmental impacts on wildlife and birdlife • Access road through existing houses potentially hazardous
17	Object	<ul style="list-style-type: none"> • Rushes Bay Avenue inadequate for existing traffic would not cope with additional traffic • Rushes Bay Avenue is narrow with no footpaths • Vehicles park on the road shoulders • Access into lots is difficult due to slope • Intersection dangerous • Access to the new development should be from Old Jindabyne Road
18	Object	<ul style="list-style-type: none"> • Impacts of the development on adjoining agricultural activities • Building envelopes required on certain lots

		<ul style="list-style-type: none"> Visual impact of infrastructure
19	Object	<ul style="list-style-type: none"> Traffic assessment inadequate Increased traffic and associated risks and reduced amenity Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. Rushes Bay Avenue is narrow and winding with no footpaths No scope to enlarge the road Visual impact of development Stormwater impacts Steep slopes Address of development Development unsuitable for land
20	Object	<ul style="list-style-type: none"> Traffic assessment inadequate Increased traffic and associated risks and reduced amenity Intersection between Rushes Bay Avenue and Jerrara Drive and dangerous. Rushes Bay Avenue is narrow and winding with no footpaths No scope to enlarge the road Visual impact of development Stormwater impacts Council's urban land release strategy does not identify this land for development. No demonstrated need No slope analysis in the SEE development cannot meet the requirements of development on slopes >18% Blocks traditional access to a local recreation and environmental resource Rushes Gorge

There was one submission which stated that they supported the proposal as they intended to purchase one of the parcels of land.

Submissions Received 2018 – the key areas of the submissions have been summarized below

1	Object	<ul style="list-style-type: none"> The additional information does not address two of the four reasons for refusal provided in the Council report. The additional information only addresses the issues of ecology and bushfire danger (of which it is not considered that bushfire is adequately addressed) The information does not address the issues of residential density and visual impact.
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		<ul style="list-style-type: none"> Two other reasons for refusing the application should be inappropriate road access, as Jerrara Drive and Rushes Bay Ave are not designed for increased traffic, no footpaths, the intersection is dangerous Development should be appropriately sited and supported by corresponding infrastructure. No shortage of home sites in East Jindabyne
2	Object	<ul style="list-style-type: none"> Traffic issues, relating to road width, lack of pedestrian paths, additional traffic volume not only on Rushes Bay Avenue but Jerrara Drive and the access onto the Kosciuszko Road. New traffic assessment should be provided. Funding concerns. Detrimental to the environment, no guarantee the native flora and fauna would be protected once the new blocks have been developed. Bushfire concerns Wants Council to <i>“remain steadfast in refusing this development application for the good of the community and the environment.”</i>
3	Object	<ul style="list-style-type: none"> The fire risk report provided by the developers is deficient in a number of areas The developers have rejected the Office of the Environment and Heritage's (OEH) recommendation that they shift the subdivision of Block 6 to the other blocks on Lot 17 that are of low environmental value In their response to the OEH regarding the destruction of endangered flora and fauna, the developers have proposed to provide 'offsets, these areas as “essentially inaccessible cliff face” The visual impact assessment still claims that although much of the vegetation will be removed, the visual impacts are low and comply with the scenic protection rules in the Local Environmental Plan. The claim that vegetation proposed for habitat retention will assist in reducing. visual impact is flimsy given that these areas are not in the most common view lines. The impact of street lighting which substantially intrude on the night sky and would be visible from across the lake has not been addressed. <p>Assessing officer note – this submission refers to “Block 6” which is in reference to the approved subdivision of lot 17 in which the lower portion of the lot which is proposed to be developed in DA0014/2016 is lot 6 in approved subdivision 206/2003.</p>
4	Object	<ul style="list-style-type: none"> Erosion issues on site including a large erosion gully The Ecological Report makes an alarming suggestion that increased development will offset erosion. The author is not qualified to make broad engineering statements a very serious risk that Rushes Creek, which is the only permanent creek on the eastern side of Lake Jindabyne between Tyrolean Village and Lake Kalkite, will become silted and the rock pools will no longer be available for

		<p>wildlife. The Creek is a natural wildlife corridor and should have a broad riparian zone for no development along with the full protection of Block 6.</p> <ul style="list-style-type: none"> • Child safety due to increased access to Rushes Bay Gorge • Bushfire concerns and access during a fire Old Cooma Road is not an acceptable fire access and egress • Visual impact and lake pollution, places in Jindabyne to build 14 houses or more. But there is only ONE Rushes Bay Creek. Block 6 is the perfect place for a public space, for a recreational park and wildlife corridor and for a Tourist Lookout. • Unsuitability of the existing road network <p>Assessing officer note – this submission refers to “Block 6” which is in reference to the approved subdivision of lot 17 in which the lower portion of the lot which is proposed to be developed in DA0014/2016 is lot 6 in approved subdivision 206/2003.</p>
5	Object	<ul style="list-style-type: none"> • If the current development proposal is not spread across the entirety of Lot 17, why it would not lead to further subdivision of Lot 17 on the undeveloped lots and produce more lots than for 20 dwellings allowed for in the LEP. The remaining Lot 1 portions can be pressured for subdivision or development in the future leading to at least 27 lots on the subject area. • Impact would be lessened if the lots were distributed across the lot. • No indication of whether dual occupancies are proposed on site and these may happen without approval. • Areas proposed as environmental offsets for vegetation removed are mostly on private land that will have no effective long-term protection and will degrade or disappear over time. The proposed protection plan assumes that all private landholders will be content to retain this remnant vegetation in perpetuity. This does not recognize that some people will prefer more or less trees and not necessarily native species and usual maintenance by most people will lead to removal of fallen and standing hollow logs and trees. The vegetation management plan will be unenforceable. The proponent does not offer any substantial areas for habitat protection offsets or public access to the gorge which could have been combined to make the development more acceptable. Any development here should be a cat-free subdivision. • Bushfire issues not adequately addressed • Visual impact issues no adequately addressed • Street lighting impacts not addressed • The arguments put forward for not developing the upper part of Lot 17 are contradictory as consent has been issued for the proponent to develop six lots there. • The traffic issue remains unsatisfactorily addressed

		<ul style="list-style-type: none"> The additional documentation does not alter the development proposed and therefore it still fails to meet the intent and the requirements of the LEP and should be refused
6.	Object	<ul style="list-style-type: none"> Huge increase in traffic in East Jindabyne over the past 10 years. Lake access being closed Cars parking in Rushes Bay near the pedestrian access making the road narrow and increases blind spots, any further impact would be devastating School children walking to the bus stop where there are no footpaths is not safe, With this proposed development of which is further away from the bus stop will also be an ongoing issue with more cars and pedestrians making their way to the bus intersection Jerrara and Rushes Bay Ave limited visual around corners and a crest that also is hard to negotiate Rushes Bay Ave has extremely narrow, winding and blind corners which majority of the residents can recall some very near accidents on this corner. Impact of headlights on dwellings in Rushes Bay Avenue with increased traffic. Bushfire evacuation has always been of a concern in the area with only one access out.
7.	Object	<ul style="list-style-type: none"> developers' latest responses (April 6) with regard to the flora and fauna do not address the issues that have been repeatedly raised by the Office of Environment and Heritage over the course of the past 2 years. They have not met the legislative requirements to avoid the negative impacts to the endangered ecological plant community and its biodiversity. The offsets they propose to compensate for this loss are insufficient in size and quality, and are unable to be enforced. The fire report commissioned by the developers concludes that the area is low risk. It ignores the fact that the proposed development area is downwind and adjacent to two pine forests. It wrongly asserts that there are alternative routes for evacuation and emergency service access in event of a fire. An independent fire report is required. This should be assessed by the NSW Rural Fire Service. Not included in the developers' recent submission are solutions to the many other problems with the development application that have been raised by local residents, Council's planning staff and state authorities during the review process. These pertain to roads and traffic, impact on Rushes Creek waterway, adherence to zoning regulations, aboriginal heritage and subdivision layout. The developers have rejected all the OEH's recommendations and instead applied the lowest possible standard of environmental 'protection', namely, offsets. Their application of offsets is unacceptable for two reasons:

		<ul style="list-style-type: none"> • The developers have not met the criteria for use of offsets which are that avoidance of impact and, failing that, mitigation are not possible. In the case of DA0014/2016, as indicated by OEH, there are clear alternatives to subdividing Block 6 for residences which would avoid destruction of the endangered ecological plant community and its associated fauna, i.e., avoid the impact. The developers argue that the option of building on Blocks 1-5 instead of Block 6 is precluded by the former's topography. This argument is not valid: while there are some steep areas on these blocks (their northwest sections), the remaining portions have equal or lesser slopes than most of Block 6. • The quality and location of the offsets proposed by the developers (Correspondence Report from Abel Ecology in April 6 submission) do not meet their required function which is to provide areas that will provide equal or more biodiversity to that lost due to the development, and this in perpetuity (i.e., to result in a net improvement in biodiversity over time', www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm). The offsets that the developers propose are minimal in size Moreover, their nature and location will not fulfil their required function of 'enhancing habitat, reconstructing habitat in strategic areas to link areas of conservation value and increasing buffer zones around areas of conservation value' This is because they are either small slithers of land situated on the sparsely vegetated, steep, rocky and weed-infested edge of the creek, or on the chunk of blackberry and hawthorn-infested land known as Block 5 which is surrounded on one side by a road and the other two sides by houses. While the developers have offered a suitable offset at the north of the site running adjacent to the creek that contains EEC in good condition, this is not large enough to meet the requirement of no net loss of biodiversity as a result of the development • Offsets must be 'enduring and therefore secured under a conservation agreement or as a managed reserve • The fact that the EEC on the proposed development site is not in its original (pre-European) condition simply points further to the need to preserve that which we have left. • By implication from the developers' three arguments bullet-pointed above, and their last-minute concession to include offsets, the developers are implicitly acknowledging that the subdivision will destroy the EEC inside the residential pockets. And yet their two flora and fauna assessments claim that the EEC will not become fragmented and, along with its resident fauna, will not be threatened by the proposed development. Despite the request from OEH for the developers to justify these claims. • The fire report submitted by the developer severely underestimates the fire risk. The report is highly biased. It was undertaken by the same company that prepared the environmental impact report (Abel Ecology) who are in the pay of the developers. As such, it cannot be trusted. An independent fire
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		<p>report should be commissioned. This report should be assessed by the Rural Fire Service whose recommendations Council should then follow.</p> <p>Assessing officer note – this submission refers to “Block 6” which is in reference to the approved subdivision of lot 17 in which the lower portion of the lot which is proposed to be developed in DA0014/2016 is lot 6 in approved subdivision 206/2003.</p>
8	Object	<ul style="list-style-type: none"> • Major concerns about the impact on road safety, traffic and fire risk which have not been addressed. • Rushes Bay Avenue is very narrow and it could be widened, it has a lack of footpaths and has blind curves. • The traffic assessment is out of date and needs to be reviewed • The junction of Rushes Bay Avenue and Jerrara Drive is on a blind hill and curve and thus dangerous to cars and pedestrians. This junction has already been re-engineered to mitigate this risk: we think its current format would not cope with the doubling of traffic due to the development. We doubt whether the developers will be willing to pay for a further upgrade to this junction. • Impact on Jerrara Drive with increased traffic • The cost to the developer of resolving these issues through installing appropriate infrastructure will be so high as to render the proposed development uneconomical. If Council does consent to this development, the developers will then vigorously argue that Council should pay for these upgrades. • proposal is non—compliant with state legislation regarding protection of flora, fauna and waterways. • Fire risk and concerns over the report commissioned by the developer with regard to Bushfire risk. • Approval would contravene Council's own policies and regulations on zoning, governance and civic leadership. • The additional permitted use clause does not negate the requirements for the developer to comply with the objectives of the E3 Zone. Lot 17 should be set aside for the benefit of the community. • The subdivision should be redesigned to distribute the lots based on then landform and vegetation. • The development proposal is inconsistent with Council's own Delivery Plan Strategy of 'Ensuring that Council's land use planning and development policies enhance livability. • This development proposal plans to build 20 houses on green space that was never intended for residential development. • highly questionable process (of rezoning) instigated by the land's previous owners, which applied a special sub-clause to Lot 17 that is highly inconsistent with the objectives of its E3 zoning

9	Object	<ul style="list-style-type: none">This is a response from DPI Fisheries, which has been discussed above, in the environmental impacts of the development.
10	Object (provided directly to Councillor)	<ul style="list-style-type: none">Road access, pedestrian access/infrastructure not sufficiently addressedDevelopment would significantly increase current road/footpath issuesIncreased car movements due to increase of 20 dwellingsSMRC could be liable for any accident due to lack of Council actionSolution to require developer to undertake upgrades to road is not considered satisfactory due to lack of available width; several blind curves; no footpaths so children walk on the road; traffic assessment report is out of date and underestimates traffic numbers; junction of Rushes Bay Ave and Jerrara Drive is on a blind hill and curve and is dangerous; Jerrara Dr is only access so increased usage affects all residents; single access via Jerrara Dr presents insurmountable risk to residents in a bushfire; cost to resolve these issues will be high and render the proposal uneconomical, ratepayers should not have to bear the cost.

As there were similar issues raised in the submissions both in 2015 and 2018 (as a response to additional information provided by that applicant), the response to the submissions will be grouped into issues rather than individually responded to.

Traffic

It is acknowledged that the current state of Rushes Bay Avenue including where it intersects with Jerrara Drive would require upgrades to facilitate the development of additional lots using these roads for access. It would not be reasonable for a development to be approved in this location without further works occurring on the road.

A revised traffic assessment was provided by the applicant after requests from Council. This assessment was provided to Council's Development Engineer who determined that while the revised report lacked sufficient detail there could be an engineering solution with respect to upgrading of Rushes Bay Avenue and the intersection with Jerrara Drive. It was determined that whilst the existing road is very narrow there was sufficient space within the road reserve of Rushes Bay Avenue to widen the road to meet current standards. Such a solution would be conditioned on any development consent and would require any upgrade works to be borne by the developer to service the subdivision.

Appropriateness of Development

Whilst the land is zoned E3- Environmental Management with a minimum lot size of 40 hectares, Lot 17 is subject to an additional permitted use under SRLEP2013 which allows for the lot to be subdivided to accommodate no more than 20 dwellings. This does not include dual occupancy development. For dual occupancies to be approved the subdivision could not be more than 10 lots.

Whilst the land may not form part of an "Urban Release Strategy" it was rezoned by Council to allow for no more than 20 dwellings (once subdivided). Consultation was undertaken by Council at

the time of the rezoning. Details of the earlier rezoning process were addressed earlier in this report.

Dual occupancies would not be permitted on any of the 20 subdivided lots as the maximum density for lot 17 is 20 dwellings. It is acknowledged that there are several subdivisions currently approved and ready for development in the East Jindabyne area. This land supply is a matter related to competition in a market place and not one that Council considers when assessing an application on land that is zone for this purpose.

With respect to the use of the land for recreational purposes and for access to the gorge, this access was over private land without the permission of the land owner. Preventing development on land for this reason is not reasonable, as the land is zoned and able to be developed for another purpose.

Maintaining an access through the land to the lake could be required by Council if an approval was to be issued. Consultants associated with the development have indicated that they would be designing a public access within the subdivision. This however was not shown in the development plans.

Reduction in property values is not considered a relevant consideration in the assessment of an application as no evidence has been provided to support this. The impact of the development on the residential amenity of the surrounding properties has been considered in the assessment of the application against the provisions of s4.15 and is an issue with the proposal. The area of land on which the proposal is to be located is considered unsuitable for the number of dwellings/lots proposed.

Non-conformity to LEP – Special Provision

It is acknowledged in the report that there is non-compliance with the provisions of the additional permitted use for lot 17 in Schedule 1 of the SRLEP2013. The areas of noncompliance are discussed above under the s4.15 assessment section of the report. The areas of noncompliance with the LEP include:

Scenic and visual impacts - Whilst the applicant has provided a visual impact statement for the development it was limited and did not adequately consider all impacts. There was some limited slope analysis however there was no detail of trees to be removed for APZs, dwelling houses and associated subdivision infrastructure. The removal of vegetation will have a visual impact when viewed from Lake Jindabyne and surrounds. The applicant did not consider in the SEE or the visual impact assessment the impact of street lighting other than to state it will not be intrusive. No information on the lighting was provided to evidence the statement that street lighting (and lighting of the premises within the development site) would not have an adverse visual impact on the surrounding environs.

The applicant did provide preliminary engineering drawings (to staff during meetings regarding the application) which dealt with stormwater management on site. Whilst the development application is deficient in this respect it is considered that there would be an appropriate engineering solution to stormwater runoff that could be dealt with, with suitable conditions of consent.

The land was rezoned for the purposes of residential development and as such the current owner does have a reasonable expectation to develop the land in accordance with that provision. The development however must comply with the requirements of the Act in order to be approved.

One submission suggests that the land was previously zoned “*green space which was never intended for residential development*”, however, it was zoned ‘Environmental Protection’ under the 1997 LEP, which listed ‘dwelling houses’ as being ‘permissible with consent’, subject to the zone objectives, and other provisions such as minimum lot size. The 1997 LEP was amended to allow via a special provision for the development of 20 detached dwellings on this site. This rezoning process was lengthy and was carried out in accordance with legislative requirements under the guidance of the Department Planning. The ‘zone objectives’ are different under the 2013 LEP to those contained in the 1997 LEP. Had this land been “green space” it would have had an associated land zoning such as Public or Private Open Space, but this is not the case.

The applicant has provided a bushfire assessment and any future dwellings on the land would need to consider the requirements of “Planning for Bushfire Protection” when lodging an application for development. The land is not mapped as bushfire prone under council’s bushfire prone land map so it does not trigger the requirements of s100B of the Rural Fires Act as ‘Integrated development’ however it is a matter for consideration as part of the special use provision which allows the subdivision to be carried out in this location.

Should the application be approved conditions relating to bushfire would be included. However the clearing that would be required to allow for adequate onsite asset protection zones for each dwelling would further impact on the need to remove native vegetation which is a key consideration in the assessment of the application and may contravene the requirements of the Biodiversity Conservation Act when the individual dwellings are assessed.

The number of residences planned is 21 which does exceed the special provision, this is discussed above in greater detail.

The applicant has provided the necessary Aboriginal cultural heritage assessments directly to OEH for the provision of an AHIP which can be dealt with outside of the development application process.

The further development of proposed lot 1 which is the large residue proposed to be left should DA0014/2016 be approved would not be able to be used for additional dwelling houses under the provisions of the additional permitted use clause. The clause only allows for 20 dwellings to be constructed over the whole of lot 17. This large residue parcel however would be subject to the provisions of the E3 zone and the uses permitted in the table of development for that zone in the SRLEP 2013. As such even though no further residential development would be permitted should DA0014/2016 be approved further “development” could occur for another use permitted in the zone.

Native Flora and Fauna

Council referred all information relating to native flora and fauna impacts from the development to OEH. OEH is not satisfied that the information provided is sufficient to ensure that the impacts can be avoided, mitigated or offset. The concerns raised in the submission regarding the impact of the development on the natural environment of the site have been taken into consideration in the composition of the recommended reasons for refusal.

If an approval was to be issued, conditions would be required to incorporate a Vegetation Management Plan as a restriction on Title in perpetuity. Enforcing the requirements of such a plan would become an on-going matter for Council.

Suitability of existing Infrastructure provision

The limited capacity of existing infrastructure can be dealt with by appropriate upgrades that would need to be undertaken at the expense of the developer to service the subdivision. Should the existing roads, water and sewer and stormwater infrastructure need to be upgraded to facilitate the development it would be done so with the cost borne by the developer.

Additional Issues

Council is currently working towards providing more Information pertaining to development applications on council's website. Council has under taken consultation for this application accordance with the Act, any prior lack of consultation is not relevant for the assessment of this application.

The use of the land for public purposes is not a matter which can be addressed as part of this development application, the land is in private ownership and the owners have a reasonable expectation to be able to develop their land.

Council can determine if that development is suitable for the site but cannot require that it become public reserve without either the agreement of the owner or carrying out an acquisition process (which is beyond the scope this assessment).

Reponses to specific enquires made in a submission by the Jindabyne East Residents Committee at the December 2017 Council Meeting:

1. DA0014/2016 is not the subdivision of proposed lot 6 under DA0203/2006) it is a subdivision of lot 17 and does not relate to the previous approval. Proposed lot 1 in DA0014/2016 has a large area with several parts.
 2. DA0203/2006 is still an active consent as it was commenced by the release of subdivision certificate for lot 5 prior to the lapsing date of the consent.
 3. There is no legal requirement for documents accompanying a DA to be prepared by persons independent of the applicant. It is not unusual for the applicant to prepare all associated documents themselves.
 4. Last and Maxwell provided to Council authorisation from the applicants to allow them to correspond with Council on their behalf with respect to the application.
 5. Council provided to OEH the original FFS and OEH requested further information from the applicant, this resulted in the document authored by Abel Ecology. Council did not appoint an independent assessor however all information relating to flora and fauna was provided to OEH for their comment and guidance due to their technical expertise. This included any new assessments provided by the applicant.
 - 6-11 The environmental impacts of the development and Council and OEHs response to these impacts is addressed elsewhere in this report as is the suitability of the area within lot 17 to develop. It is considered that the development as it is proposed would has an undesirable impact on native flora and fauna and is therefore being recommended for refusal.
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12. there is no infrastructure proposed for the development within 40m of the watercourse and as such no controlled activity approval was required from the Office of Water.
13. the impact of the development with respect to stormwater could be managed through various means, however it is agreed that this was not well addressed by the applicant and it is further reason to refuse the development application.
14. it is considered that the applicant did not adequately address the scenic impact of the development
- 15 – 17 the land was rezoned under the SRLEP97 and the additional use was transferred into the SRLEP2013 as such the additional permitted use exists and the application must be assessed against this. The process that was carried out develop this additional permitted use is not relevant to the assessment of this development application. The details of the process can be found in Council's file relating to the rezoning.
- 18-21 traffic issues and their potential for resolution have been addressed above in the response to submissions. The proposed roads within the subdivision are to be public roads.

CONCLUSION

It is considered that the proposed development does not generally comply with some of the relevant provisions of Section 4.15 of the Act, SRLEP 2013, SRDCP, Codes and Policies, and in having regard to the E3 zone objectives.

In conclusion, it is considered that the proposal has an unacceptable level of impact aesthetically, socially and environmentally having regard to the surrounding natural and built environment and comments from relevant state agencies (OEH) and DPI Fisheries. Accordingly, refusal is recommended.

Council is able to determine the application otherwise than as shown in the recommendation. If Council determines to do so, it must follow the procedure adopted through resolution 18/18 on 15 February 2018.

QUADRUPLE BOTTOM LINE REPORTING

1. Social

A number of objections were received on the grounds that the development would negatively impact the lifestyle of the surrounding residents, it would have an adverse environmental impact, and it would have an unacceptable impact on access road to the site. Whilst there would be engineering solutions to the traffic and road infrastructure impacts the cost of which to implement would be borne by the developer the social impacts of the loss of residential amenity felt by the adjoining residents is more difficult to mitigate with the existing lot layout. The development in its current form and location would impact negatively on the surrounding properties in both visual impact of light shed from houses, street lighting and the removal of trees. These social impacts do contribute towards the determination that the area the subdivision is to be developed is unsuitable for the residential density proposed.

2. Environmental

The environmental impacts of the development have been discussed at length in the body of the report. It is the opinion of Council officers that the environmental impacts of the development in its currently proposed form are significant enough to warrant the recommended refusal of the application. The advice from the Office of Environment and Heritage is consistent with that view. Information provided with the application has not demonstrated that the proposal satisfactorily addresses the two relevant objectives of the E3 zone as listed in the Snowy River Local Environmental Plan 2013.

3. Economic

The economic impacts of the development on Council would be minimal as the works required to upgrade any existing infrastructure including, roads, water and sewerage reticulation and the like would be borne wholly by the developer.

4. Civic Leadership

Due to the number submissions received, the concerns raised by the Office of Environment and Heritage and the community concern regarding the project, the application is referred to Council for determination. This is in accordance with Council policy.

Council has provided the applicant with the opportunity of providing additional information in an attempt to address concerns and issues raised through the earlier reports to Council.

15.2 DEVELOPMENT APPLICATION 10.2003.222.2 - MODIFY CONDITION 5 TO REMOVE S94 FEES

Record No:

Responsible Officer:	Director Environment & Sustainability
Author:	Urban and Rural Planner
Key Direction:	6. Managing Development and Service Delivery to Retain the Things We Value
Delivery Plan Strategy:	DP6.2.1.1 Ensure that Council's land use planning and development policies enhance liveability.
Operational Plan Action:	OP6.11 Ensure development assessment is undertaken in accordance with adopted Local Environmental Plans, Development Control Plans, Council Policy and State and Federal legislation.
Attachments:	<ol style="list-style-type: none"> 1. Notice of Determination - Refused - Draft to Council ↓ 2. 18 11129 Modified Development Consent DA222 03 - 26 Feb 2007 ↓ 3. 18 11128 Approved Plan of 53 Lot Subdivision DA222 03 ↓ 4. 17 35906 Letter - Applicant - Dedication of Public Reserve - 1996 06 24 ↓ 5. 18 11127 Letter to Applicant - Subdivisions at Cooma East - 15 Jan 2009 ↓

Further Operational Plan Actions:

Applicant Number:	10.2003.222.2
Applicant:	Ignazio Mondello
Owner:	Ignazio Mondello
DA Registered:	01/12/17
Property Description:	Monaro Avenue COOMA 2630
Property Number:	Lot: 19 DP: 860066
Area:	
Zone:	R2 Low Density Residential
Current Use:	Residential
Proposed Use:	Residential
Permitted in Zone:	<p>2 Permitted without consent</p> <p>Environmental protection works; Home-based child care; Home occupations</p> <p>3 Permitted with consent</p> <p>Bed and breakfast accommodation; Boarding houses; Car parks; Caravan parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Group homes; Home occupations (sex services); Neighbourhood</p>

	shops; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Roads; Seniors housing; Signage; Water supply systems 4 Prohibited Any development not specified in item 2 or 3
Recommendation:	Refusal

EXECUTIVE SUMMARY

The purpose of this report is to provide Council with the information to make a determination of the proposed modification under the *Environmental Planning and Assessment Act 1979 (the Act)*.

The proposed modification is seeking to amend Condition 5 of the Consent to remove the requirement to pay Section 94 contribution fees on an additional 3 lots.

All Section 94 contribution fees have been applied in accordance with Council's adopted policy at the time and the provisions of Section 94 of the *Environmental Planning and Assessment Act, 1979*.

The position of the applicant is that Section 94 Contributions (as made in the form of public reserves and monetary contributions) for stage 2 were to cover the requirements for any future changes to Stage 2 of the subdivision, including any changes to overall lot numbers following re-subdividing proposed Lot 8. This is incorrect, as Section 94 Contributions are payable on any additional lots. The letters and agreements the applicant has referred to are directly related only to Stage 1 but through various modifications are also relatable to Stage 2. However they clearly do not exempt the applicant from contributions payable for further subdivision. It is therefore considered that the proposed modification has no evidence to support the applicant's request.

This application is being submitted to Council for a decision because it involves an application that has previously been reported to Council issues relating to Section 94 Contributions.

RECOMMENDATION

That Council:

- A. Pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979 (as amended)* it is recommended that modification to DA 222/03 to amend Condition 5 to remove the requirement to pay Section 94 contribution fees on an additional 3 lots, is refused;
- B. If Council decides to make a determination other than as included in the recommendation, it must follow the procedure adopted through resolution 18/18 on 15 February 2018; and
- C. Any person who made a submission is notified according to the regulations.

BACKGROUND

The subject application is part of an ongoing subdivision at Cooma East. On 27 November 1992 DA 94/92 was submitted for a 14 lot (with residue) subdivision. Consent was issued on 11 August 1993 for 19 lots and there has since been numerous modifications made to the original consent. The consent subject to this modification is DA 222/03 (Stage 2) which was for a 50 lot subdivision lodged in June 2003. The following background information of DA 222/03 has been compiled from excerpts of the letter dated 15 January 2009 (**Attachment 3**) and a further detailed investigation of Council's files:

- June 2003, DA 222/03 is lodged.
 - On 7 January 2004, a letter is addressed to applicant advising of the resolution of Council Meeting on 22 December 2003 which included a requirement to provide an area of land adjacent to Lot 52 DP 826184 plus a sum of \$40,000 as contribution to Open Space for Stage 2.
 - Consent is issued for DA 222/03 on 4 February 2004. The consent included Condition 7 which refers to the dedication of land of 1580 square metres plus \$40,000 for improvements in the public reserve. This is clearly stated in the condition as **"...for Stage 2 only"**.
 - In a letter from Williams and Lightfoot dated 18 February 2004, a request was made on the applicant's behalf to delete Condition 7 of the consent for DA 222/03.
 - A report was put to the Council Meeting of 13 April 2004 following the request for Modifications by the applicant regarding various issues including to delete condition 7. The item in relation to Condition 7 was deferred to the next Council Meeting.
 - At the Council Meeting of 10 May 2004 it was resolved that Condition 7 remains.
 - A modified Consent for DA 222/03 was issued on 23 July 2004 where Condition 7 became Condition 5 but otherwise the wording of the condition remained the same.
 - Applicant writes to Council in letter dated 7 February 2005 to confirm they will comply with Condition 5. However the applicant also states that those requirements should also cover the future Stage 3 contributions for Open Space. NOTE: Condition 5 clearly states **"In lieu of Section 94 Contributions for Open Space for Stage 2 only..."**
 - On 4 May 2005 Council advises applicant that a request to vary Condition 5 can only be considered via an Application to Modify an Approval.
 - On 16 August 2005 a modification for DA 222/03 is lodged for road and lot layout changes. There was no request to modify or delete Condition 5.
 - On 30 January 2006 a modification to Consent 222/03 was issued, still containing Condition 5 in its original format.
 - On 26 June 2006 the applicant paid contributions for DA 222/03 including \$40,000 for open space.
 - On 26 June 2007 a modification to Consent 222/03 was issued incorporating the re-subdivision of proposed lot 8 (as indicated in consent dated 4 February 2004) into 4 allotments thus creating a 53 lot subdivision. As part of this modification Condition 5 was modified to include the following:
-

“The applicant shall contribute an additional open space contribution for the additional allotments created by the further subdivision of proposed Lot 8. Such contribution to be equivalent to the contribution applicable at the time of linen release as per Council Contribution Plan (currently \$2184.00 per allotment – being for 3 allotments \$6552.00).”

ASSESSMENT

The application has been assessed against the provisions of the following documents:

State Environment Planning Policies (SEPPs)	Nil
Local Environmental Plan (LEP) (including draft LEPs)	Cooma Monaro Local Environment Plan 2013
Development Control Plans	Cooma Monaro Development Control Plan 2014

SECTION 4.55 (1)

Application:	10.2003.222.2
Officer:	Timothy Pepperell
Date:	26/06/2018
Land:	Monaro Avenue COOMA 2630 Lot: 19 DP: 860066
Zone:	R2 Low Density Residential
Proposal:	Conversion Status
Modification:	Modify Condition 5 – To remove s94 Contribution fees for additional 3 allotments

An assessment has been conducted under the provision of Section 4.55 (1) of the *Environmental Planning and Assessment Act, 1979* ('the Act'). The following matters require the consideration of the Council.

Section 4.55 (1) and EP&A Act Checklist:

This application was submitted as a modification to approved Modified Consent **222/03** dated 26/06/07 (**Attachment 1**)

The applicant is seeking to modify Condition 5 to remove the requirement to pay Section 94 contribution fees on an additional 3 lots.

“Condition 5 – In lieu of Section 94 Contributions for (54 allotments) Open Space for Stage 2 only and in recognition of the variation to recreational reserves indicated in the proposal for the original subdivision (indicated in the previous DCP No.10 now redundant) the applicant shall provide the additional reserve area within Lot 19 DP 860066, being land adjacent to Lot 52 DP 826164 and shown as Proposed Open Space 6(b) on the Development Control Plan Amendment dated 23 December 2003 and having an area of approximately 1580 square

*metres (colour purple on the plan marked 'A' attached). In addition, the applicant shall contribute the sum of \$40,000 towards improvements to be undertaken by Council in the public recreation reserve so created. **The applicant shall contribute an additional open space contribution for the additional allotments created by the further subdivision of proposed Lot 8. Such contribution to be equivalent to the contribution applicable at the time of linen release as per Council Contribution Plan (currently \$2184.00 per allotment – being for 3 allotments \$6552.00).***

Reason: To ensure usable open space is made available as part of the subdivision under the provision of Section 94 of the Environmental Planning and Assessment Act, 1979.

The issue of the provision of public reserves and payment of s94 contribution fees for stages 1 -3 has been disputed by the applicant for some time and has been the subject of several previous Council Reports and Resolutions of Council. The outcomes of those Resolutions have been provided to the applicant on each occasion.

Attachment 3 provides an itemised history of the matter spanning stages 1 – 3 of the subdivision, as written by the Director of Environmental Services (CMSC) in a letter to the applicant dated 15th January 2009. This letter was provided following a further approach to Council by the applicant in November 2008 which again contested several previously clarified aspects regarding the application of Section 94 developer contributions. Items 7 through 23 are particularly relevant to this application.

Note that while there are references to 'Stage 3' in the correspondence, it should be noted that the application for Stage 3 (DA 37/06) was withdrawn at the request of the applicant at the Council meeting on 14 December 2009. For the purposes of the EP& A Act, an application that is withdrawn is taken as '*never to have been made*' (EP&A Regulation, Clause 52).

The basis of the Applicant's objection is that the dedication of land for recreational reserves and the fee of \$40,000 (Paid on 26 June 2006) covers the whole of the development for stage 2, including the additional 3 lots. The applicant makes reference to letters received from Council, dated 21 May 1996 and 24 June 1996, as the basis for their understanding that the dedicated reserves are in lieu of any further monetary contributions (See **Attachment 2**). As per Item 21 of Attachment 3 it is noted that the land referred to as Public Reserves in the letters were only related to DA 94/92 for Stage 1 and do not state that no further contributions are payable as a result of further subdivision. It is acknowledged that the public reserves in question have been modified and altered as a result of previous modifications to stage 1 and stage 2 of the development, however this would not affect the requirement for additional fees as per Condition 5.

Following a detailed review of the development's history it is recognised that there may be some confusion surrounding the issue of Section 94 contributions. To clarify, it is Council's position that all Section 94 contribution fees and land in lieu of contributions were applied to the development as it stood in its original form as a 50 Lot Subdivision. Following the previous modification of DA 222/03, which approved an additional 3 allotments, additional Section 94 Contribution fees were applied in accordance with Council's adopted policy at the time and the provisions of Section 7.11 (previously Section 94) of the *Environmental Planning and Assessment Act, 1979*.

(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

(a) the dedication of land free of cost, or

(b) the payment of a monetary contribution

or both.

As per s 7.11(1) Council is able to apply contribution fees if it is satisfied that demand for public amenities will increase as a result of the development. As the previous modification granted approval for an additional 3 lots it is reasonable to assume that as a result of increasing the lot density in the subdivision further demand for amenities will arise.

The additional fees are justified based on the expected increase in demand on facilities and amenities, therefore it is recommended that Condition 5 remain and the Application to Modify DA 222/03 (to remove the developer contributions for the additional 3 lots) be **refused**.

CONCLUSION

In summary Section 94 Contributions provided by the applicant (public reserves and monetary contributions) for stage 2 were only in relation to the original proposed development (50 Lots) and do not exempt the applicant from contributions payable for further subdivision. It is therefore considered that the proposed modification has no evidence to support the applicant's request and as such this report recommends refusal of the proposed modification.

It should be noted that this assessment only relates to DA 222/03 (Stage 2). Applications received by Council for future stages will be subject to assessment under the relevant legislative provisions and subject to current adopted Council Policies as they apply at that time. This aspect has previously been explained to the landowner and subsequently confirmed in writing.

QUADRUPLE BOTTOM LINE REPORTING

1. Social

If the proposed modification is approved, it will remove developer contributions that would otherwise have provided funds for the improvement of public recreation space /facilities in the locality of the development. The cost incurred would therefore be borne by the broader community.

2. Environmental

The proposed modification will have minimal environmental impact, however it will remove developer contributions that would otherwise have provided funds for the improvement of public recreation space/facilities, in the locality of the development.

3. Economic

The proposed modification will result in economic impact where Council and rate payers incur the cost of improvements to recreation facilities which should have attracted a contribution from the developer.

4. Civic Leadership

In determining this DA Council is demonstrating effective governance by ensuring applications are determined in accordance with adopted Council Policy and State and Federal legislation.

Enquiries Timothy Pepperell
Service Planning – Cooma Office
Our Ref 2003.222.2
Your Ref

Ionazio Mondello

COOMA NSW 2630

Notice of Determination of a Development Application

Issued under the *Environmental Planning and Assessment Act 1979* (the 'Act')

Application Number	10.2003.222.2
Property Description	Monaro Avenue COOMA 2630
	Lot: 19 DP: 860066
Development Description	Conversion Status
Classification	OTHR

Determination

Pursuant to Section 80(1)(a) of the Act

Notice is hereby given of the determination Snowy Monaro Regional Council of Development Application 2003.222.2 relating to the land described above.

The Development Application has been **REFUSED** for the reasons specified below in this Notice.

Authority: Council

Determination Date: _____

Integrated Approval Bodies

Pursuant to Section 93 of the Act

nil

Reasons for Refusal

Development Application 2003.222.2 is refused for the following reason/s:

The proposed modification has no evidence to support the applicant's request.

It would remove developer contributions that would otherwise have provided funds for the improvement of public recreation space /facilities in the locality of the development. The cost incurred would therefore be borne by the broader community.

Advice to Applicant

nil

Notes

- 1) An applicant may request a review of this determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for a review must be lodged within 6 months of the date of this notification. A review under Section 82A cannot be made for Integrated, Designated or Crown Development.
- 2) Section 97 of the Act confers on an applicant or an objector who is dissatisfied with the determination of Snowy Monaro Regional Council, a right of appeal to the Land and Environment Court exercisable within 6 months after receipt of this notice.

On behalf of the above Council:

Timothy Pepperell

Town Planner

for

Peter Smith

Director of Environment and Sustainability

Ron Dakin (RD:CL)
5238.0114/222/03

Form 4

**NOTICE TO APPLICANT OF DETERMINATION OF A MODIFIED
DEVELOPMENT APPLICATION**

Environmental Planning and Assessment Act, 1979

Cooma-Monaro Council

To: I Mondello
of:
COOMA NSW 2630

being the applicant in respect of Development Application No **222/03**. Pursuant to Section 96 of the Act notice is hereby given of the determination by the above Council of the Development Application No **222/03** relating to the land described as follows:

Yareen Road Cooma – Lot 19 DP 860066 being a residential subdivision 53 allotments (including residue and recreation area).

(Incorporating the re-subdivision of proposed lot 8 (as indicated in consent dated 4 Feb 2004) into 4 allotments)

The Development Application has been determined by -

GRANTING OF CONSENT SUBJECT TO THE CONDITIONS SPECIFIED IN THIS NOTICE

- 1 The submission of a suitable subdivision plan for the certification of Council **incorporating the additional 4 allotments**. Such plan to be prepared by a registered surveyor.
Reason: Requirement for registration of a subdivision plan.
- 2 Payment of a linen release fee as required under Council's Fees and Charges. Such figure to be that applicable at the time of linen release, **being the outstanding amount applicable as a result of this amended consent**. – currently \$65.00 **per allotment**.
Reason: In accordance with Council's Fees and Charges.
- 3 Survey costs, correspondence fees, registration fees and the like are the responsibility of the applicant/developer not Council.
Reason: Requirement of Council that all expenses associated with the development are borne by the applicant/developer.
- 4 All lots shall be numbered consecutively on the linen plan.
Reason: Requirement of Council so that lots are identified logically.

- 5 In lieu of Section 94 Contributions for (~~54~~ allotments) Open Space for Stage II only and in recognition of the variation to recreational reserves indicated in the proposal for the original subdivision (indicated in the previous DCP No10 **now redundant**) the applicant shall provide the additional reserve area within Lot 19 DP 860066, being land adjacent to Lot 52 DP 826164 and shown as Proposed Open Space 6(b) on the Development Control Plan Amendment dated 23 December 2003 and having an area of approximately 1580 square metres (colour purple on the plan marked 'A' attached). In addition, the applicant shall contribute the sum of \$40,000 towards improvements to be undertaken by Council in the public recreation reserve so created. **The applicant shall contribute an additional open space contribution for the additional allotments created by the further subdivision of proposed Lot 8. Such contribution to be equivalent to the contribution applicable at the time of linen release as per Council Contribution Plan (currently \$2184.00 per allotment – being for 3 allotments \$6552.00).**
Reason: To ensure useable open space is made available as part of the subdivision under the provision of Section 94 of the Environmental Planning and Assessment Act, 1979.
- 6 Payment of the following headworks charges in respect of water supply **currently \$2471** per allotment created **Current additional contribution level for additional 3 allotments inherent within this consent as modified is \$7413.** Such figure, if unpaid after the end of the current financial year, shall be increased to the figure adopted by Council for the financial year in which the payment is made.
Reason: Requirement of Section 64 of the Local Government Act 1993 with Council having considered the likely increased demand generated by the development.
- 7 Payment of the following headworks charges in respect of sewerage, **\$2014** per allotment created. **The additional contribution for 3 allotments totalling \$6042.** Such figure, if unpaid after the end of the current financial year, shall be increased to the figure adopted by Council for the financial year in which the payment is made.
Reason: Requirement of Section 64 of the Local Government Act 1993 with Council having considered the likely increased demand generated by the development.
- 8 Section 64 Contributions (headworks charges for water supply and wastewater services) have been calculated for single dwellings on each lot. The land included in this development application is zoned **2(B1)** which permits multiple occupancy. **Therefore, additional headworks charges may be applicable for each lot on which multiple occupancies are constructed in the future.** Such charges will be calculated in accordance with the Fees and Charges approved in Council's annual budget in accordance with Section 64 Contributions Plan. Such figure, if unpaid after the end of the current financial year, shall be increased to the figure adopted by Council for the financial year in which the payment is made.
Reason: To ensure all proposed development contributes to their impact on Council's services and are assessed by Council's Section 64 Contributions Plan.
- 9 All existing water mains that will traverse residential and/or private lands shall be abandoned and new mains constructed on existing or proposed road reserve or public reserves.
Reason: To ensure unrestricted access to all water mains and reduce the potential for damage to the mains and damage to private property should a water main fail.
- 10 All water and sewer pipelines rendered obsolete or unused in the new subdivision layout shall be removed and disposed of in a manner acceptable to Council. All easements no longer required shall be extinguished from the title. **Where necessary the seal and signatures of the Council may be applied.**
Reason: To ensure obsolete and unused services do not interfere with the development of lots

created by the subdivision.

- 11 Proposed Lots 21, 22, 23 & 24 shall be redesigned to provide direct access to the internal subdivision road and not Thurrung Street.
Reason: To reduce/remove traffic impact on the existing bailey bridge over the railway line in Thurrung Street.
- 12 The existing communication line running across proposed Lots 21-25 is to be relocated onto the reserve adjacent to the railway with this relocation being at the developer's expense.
Reason: To remove any encumbrance of development of the affected lots.
- 13 The high tension power lines and poles located inside the western boundary of Lot 19 DP 860066 are to be relocated clear of the proposed subdivision works, with this relocation being at the developer's expense.
Reason: To remove an encumbrance of development of the affected lots.
- 14 All stormwater is to be discharged into a stormwater drainage system to be constructed within the road reserve created by this subdivision. The construction of this stormwater drainage system is to be carried out by the developer at full cost. Detail design plans, prepared by a qualified person, for the stormwater drainage system are to be submitted to Council for approval and certification, with no work commencing until such approval and certification is granted by Council. The drainage system is to be designed so as to ensure that the natural waterways into which the system discharges will not be subject to flows greater than that which discharges from the land in its undeveloped state. Where such works create additional discharge, the applicant shall provide where necessary, improvements to existing drainage lines/pipes to accommodate such additional flows. Such works, where earthen drainage lines currently exist, may include the provision of piped stormwater lines to a disposal point agreed by Council.
Reason: To ensure compliance with Council's Development Control Plan No 1 and satisfactory disposal of stormwater.
- 15 All soil stockpiles on-site are to be thoroughly tested for possible contamination prior to any other works on-site. Any resultant contamination is to be treated in accordance with the requirements of the Site Auditor. **No site works shall commence in respect of this amended consent (other than remedial activities associated with the requirements of the Site Auditor) until Council is in receipt of the Site Auditors certification that works associated with the removal of water mains has been rendered satisfactory for residential use of the allotments in the subdivision.**
Reason: To ensure that contamination is removed/treated to comply with Department of Environment and Conservation (formerly EPA) (or its successors) guidelines for residential development.
- 16 The existing and proposed public road extension of Monaro Avenue to Yareen Road shall be designed and constructed/reconstructed in accordance with the provisions of DCP No 1 and Council's Specifications for Engineering Works. This road shall comply with the minimum requirements of the category 'Local Street', including concrete footpath 1.2 metres wide constructed on one side.
Reason: To ensure construction works comply with Engineering Standards.
- 17 The proposed subdivision road from Thurrung Street to Monaro Avenue shall be designed and constructed in accordance with the provisions of DCP No 1 and Council's Specifications for Engineering Works. This road shall comply with the minimum requirements of the category 'Local Street', including concrete footpath 1.2 metres wide construction on one side.

Reason: To ensure construction works comply with Engineering Standards.

- 18 The two proposed cul-de-sacs joining the proposed new subdivision road referred to in Condition 16 shall be designed and constructed in accordance with the provisions of DCP No 1 and Council's Specifications for Engineering Works. This road shall comply with the minimum requirements of the category 'Access Street'.
Reason: To ensure construction works comply with Engineering Standards.
- 19 The proposed new subdivision road from lots 39 and 46 through to Uran Street shall be designed and constructed in accordance with the provisions of DCP1 and Council's Specification for Engineering Works. This road shall comply with the minimum requirements of the category 'Local Street' including concrete footpath 1.2 metres wide constructed on one side.
Reason: To ensure constructed works comply with Engineering Standards.
- 20 Public pathways 3 metres wide shall be constructed from each cul-de-sac head to the nearest available public road or reserve. Such pathways to be bitumen sealed or paved in accordance with Council's Specifications for Engineering Works.
Reason: To comply with Council's Policy.
- 21 Provision of street lighting shall comply with the provisions of Austroads Guide to Traffic Engineering Practice Part 12 Roadway Lighting.
Reason: To ensure construction works comply with Engineering Standards.
- 22 Stormwater drainage shall comply with the provisions of DCP No 1 and Council's Specifications for Engineering Works. The minor system design recurrence interval is five (5) years for Local Streets and Access Streets, ten (10) years for Collector Streets, one hundred (100) years for flows through private property. The major system design recurrence interval is one hundred (100) years. For flows across private property, a defined surcharge path shall be provided, with easements over pipe systems and surcharge paths. Stormwater systems shall be designed to prevent undesirable impacts on downstream pipe and channel systems.
Reason: To ensure construction works comply with Engineering Standards and Council's specifications for engineering works in relation to stormwater drainage (as in Standard Condition E6.5).
- 23 **NO WORK IS TO COMMENCE** until a Construction Certificate is issued by Council or a private Principal Certifying Authority.
Reason: Requirement of the Environmental Planning and Assessment Act and Regulations.
- 24 Works on public roads shall be carried out in accordance with 'Traffic Control at Work Sites' – RTA 1995. For works on public roads or Council reserves, satisfactory evidence of the currency of public liability insurance of not less than \$5 million must be submitted to Council, specifically indemnifying Council against all claims arising from the execution of the works.
Reason: In accordance with Council's Development Control Plan No 1.
- 25 Engineering designs, plans and specifications for the construction/upgrading of the proposed/existing public road/s, prepared in accordance with the requirements of DCP No 1, shall be submitted to and approved by Council's Director of Engineering Services prior to issue of a Construction Certificate.
Reason: In accordance with Council's Development Control Plan No 1.
- 26 Provide for the supply of underground electricity, telephone services and street lighting. Compliance with the requirements of the relevant authorities to be achieved and shown on the

engineering plans submitted for approval. Such facilities to be placed within the footpath verge.

Reason: To provide adequate services to all lots at acceptable standards.

- 27 That arrangements be made with Telstra for the provision of telephone services to the created lots in the subdivision. Written advice to be forwarded to Council of the requirements of the telephone service provider.
Reason: To provide adequate services to the lots.
- 28 The applicant shall nominate, in writing to Council, the preferred name/s for the proposed new public road/s for approval by Council. Road name signs bearing the approved names shall be erected in accordance with the requirements of DCP No 1.
Reason: In accordance with Council's Development Control Plan No 1.
- 29 Soil and water management plans, prepared in accordance with the requirements of DCP No 1 and detailing erosion and sediment control measures to be implemented prior to, during and following construction works, shall be submitted to, and approved by Council prior to issue of a Construction Certificate.
Reason: In accordance with Council's Development Control Plan No 1.
- 30 The following Works-as-Executed records, prepared in accordance with the requirements of DCP No 1, shall be submitted to Council prior to final inspection of the completed works by Council's Director of Engineering Services or his representative:
- (a) Works-as-Executed plans of the constructed works.
 - (b) Certification from a registered surveyor that all pipes/utilities/constructed roads are wholly contained within the respective easements or reserves/road reserves.
 - (c) Road construction details.
- Reason: In accordance with Council's Development Control Plan No 1.*
- 31 For works which are to revert to Council's ownership and control, cash or other acceptable form of security, of not less than 10% of the cost of works undertaken in association with the consent, shall be lodged with Council for a period of at least twelve (12) months to cover maintenance or rectification works during this period. Such period to commence on the day of registration of the subdivision plan at the Land Titles Office.
Reason: In accordance with Council's Development Control Plan No 1.
- 32 Development Control Plan No 27 – Public Water Supply is applicable.
Reason: Development to comply with Council's Policy.
- 33 Each lot created shall be provided with a metered water supply service connection in accordance with Development Control Plan No 27 – Public Water Supply.
Reason: Water supply service shall comply with Council's Development Control Plan No 27.
- 34 Extend the Council water mains to service the proposed development in accordance with Council's Development Control Plan No 27.
Reason: Water supply service shall comply with Council's Development Control Plan No 27.
- 35 A five (5) metre wide reserve shall be dedicated for the 250 diameter water main where it passes through the proposed residential development and such reserve shall be centred over the pipeline OR reroute the trunk water main, at the developer's expense, around the proposed development or by other acceptable means which will exclude the water main from private property.

Reason: To provide unrestricted access to the trunk water main and reduce the potential for property damage should the main fail or be damaged.

- 36 The proposed water main for the proposed subdivision road connecting to Monaro Avenue and Thurrung Street shall be a minimum 150 mm diameter with two (2) connections (one either side) to the 250 mm diameter trunk water main. These new 150 mm diameter water mains shall interconnect with the proposed 150 mm water mains in Thurrung Street and the extension of the existing 150 mm water main in Monaro Avenue.
Reason: To comply with the Cooma Water Supply reticulation network, provide unrestricted access to the water main and reduce the potential for property damage should the main fail or be damaged.
- 37 The extension of the 150 mm water main in Monaro Avenue shall be extended to past the intersection with the proposed 150 mm water main for the proposed new subdivision road.
Reason: To allow the future connection of Stage III subdivision.
- 38 The proposed 100 mm water main on the west side of Monaro Avenue shall interconnect with "tee" pieces to the 150 mm water mains in Thurrung Street and the proposed new subdivision road.
Reason: To comply with the Cooma Water Supply reticulation network and ensure that the developer's requested additional 100 mm water main is adequately serviced.
- 39 The water mains to service the proposed cul-de-sacs roads shall be 100 mm diameter.
Reason: To comply with the Cooma Water Supply reticulation network.
- 40 The 150 mm diameter water main that links between the 250 trunk and 150 mm diameter and reticulation water mains at the southern end of proposed Stage II shall be relocated, at the developer's expense, off Stage II subdivision proposed lots, **OR** alternatively delete the section of Stage II affected by these water mains and include the deleted section in Stage III.
Reason: To ensure unrestricted access to all water mains and reduce the potential for damage to the mains and damage to private property should the water main fail or be damaged.
- 41 All water supply reticulation pipeline fittings (eg hydrants, stop valves, bends, tees etc) shall be Fusion Bonded **coated**.
Reason: To ensure the water main fittings are of an adequate standard.
- 42 Development Control Plan No 28 – Wastewater Drainage is applicable.
Reason: Development to comply with Council Policy.
- 43 Each lot created within this subdivision shall be provided with a separate 150 mm diameter wastewater service connection in accordance with Development Control Plan No 28 – Wastewater Drainage.
Reason: Wastewater drainage service shall comply with Council's Development Control Plan No 28.
- 44 Extend the Council wastewater drainage system to service the proposed development in accordance with Council's Development Control Plan No 28 – Wastewater Drainage.
Reason: Wastewater drainage service shall comply with Council's Development Control Plan No 28.
- 45 Any structure proposed to be erected adjacent to or over a wastewater drainage main shall comply with Council's Development Control Plan No 22 – Building and Planting near

Wastewater Drainage Mains.

Reason: To ensure the integrity of the pipeline and access to the pipeline is not compromised.

- 46 Create drainage, water, sewer and service easements where required and/or as directed by Council free of all costs to Council.
Reason: In accordance with Council's policy and determination.
- 47 A separate development application being submitted for the erection of any dwelling on the subject land and proposed allotments.
Reason: Requirement following consideration of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
- 48 The land shall be developed in accordance with the staging and provisions indicated in Development Control Plan No 6 (as amended) as it applies to this land.
Reason: To comply with the adopted Development Control Plan and staging for the subject land.
- 49 A detail survey plan shall be submitted showing the proposed new road alignment, lot layout and existing services as constructed.
Reason: To ensure that the water and wastewater service as constructed conform to the proposed new road alignment and lot layout.
- 50 The existing 150 diameter water main that traverses the existing land and proposed residential lots, 43 and 44 shall be disconnected by Council staff at the developers cost and abandoned.
Reason: the existing water main will be surplus to the requirements of the water supply system.
- 51 Extend, alter, construct new 150 mm water mains from Monaro Avenue to connect to the existing water main in Montgomery Street in accordance with Council's Development Control Plan No 27 – Public Water Supply. This new water main shall not interconnect to the 100 mm main that traverses the Cooma Little Theatre Property.
Reason: To ensure that the alterations to the water main reticulation network complies with the requirements of Water Supply system.
- 52 No water supply service shall traverse or encroach onto any lot to service another.
Reason: Services to remain wholly within lot it services.
- 53 Existing water supply rising mains, trunk and reticulation pipelines exposed, accidentally or deliberately, during construction shall be protected from damage. Any damage occasioned to any Council service shall be repaired/reinstated to new condition at the applicant's expense.
Reason: Advice to the applicant.
- 54 Existing wastewater rising mains, trunk and drainage pipelines exposed, accidentally or deliberately, during construction shall be protected from damage. Any damage occasioned to any Council service shall be repaired/reinstated to new condition at the applicant's expense.
Reason: Advice to the applicant.

The reasons for the imposition of these conditions are as follows:

- 1 Requirements of the Environmental Planning and Assessment Act and Regulations.
- 2 Requirements of the Building Code of Australia.
- 3 Requirements of Council Codes and Policies.
- 4 Requirements to ensure satisfactory siting, design, drainage, materials and vehicle accommodation.

Notes:

- (1) To ascertain the date upon which the consent becomes effective refer to Section 83 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 the Cooma-Monaro Shire Council a right of appeal to the Land and Environment Court exercisable within 12 months after receipt of this notice.
- (4) This consent has been modified by condition number 1, 2, 5, 6, 7, 8, 9, 10, 11, 15, 41, 52, 53 & 54.

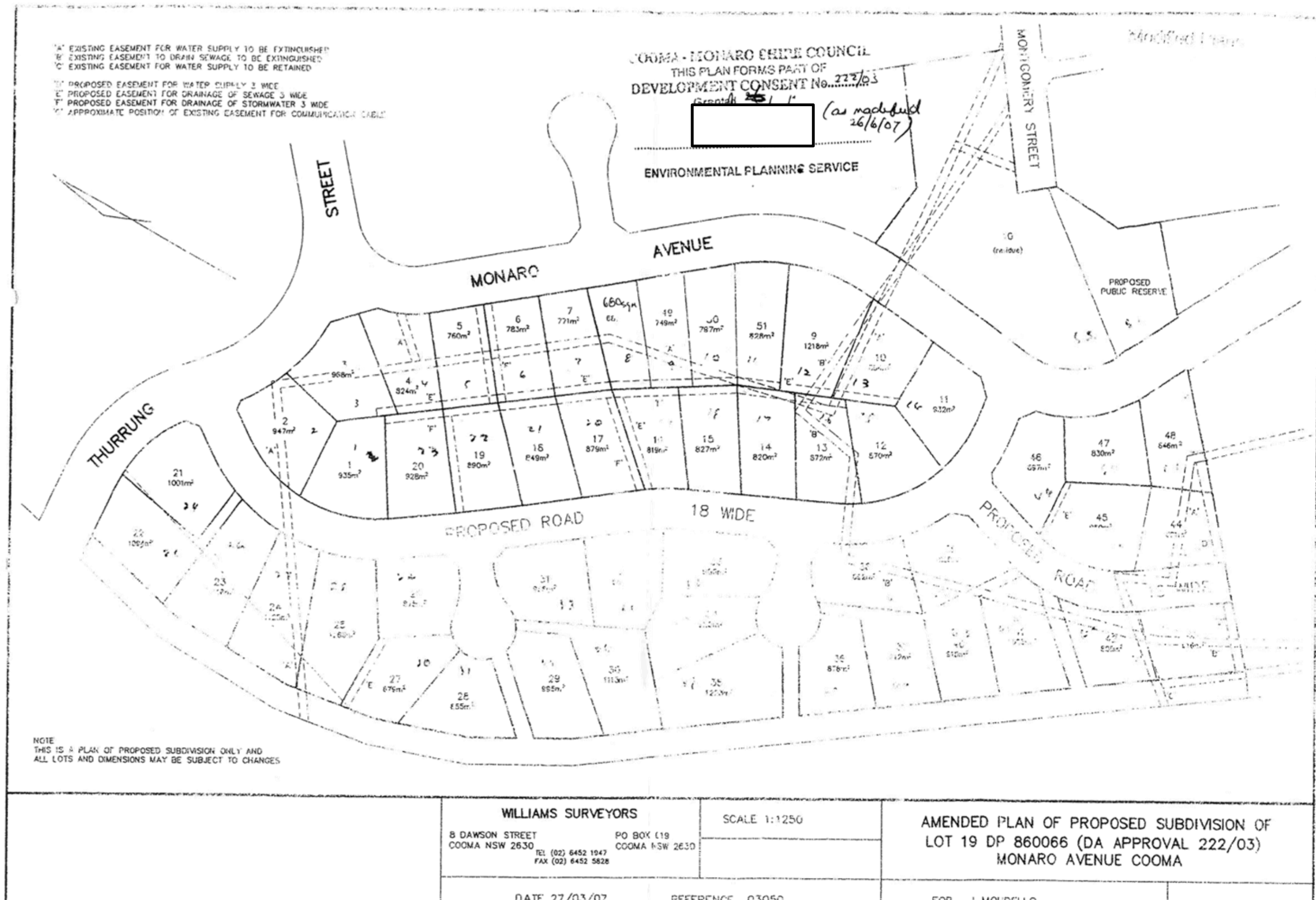
Endorsement Date 4 February 2004

On behalf of the above Council

RON DAKIN
MANAGER OF PLANNING
for
N A WATT
GENERAL MANAGER

Date 26/6/07

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COOMA-MONARO SHIRE COUNCIL

81 COMMISSIONER STREET COOMA
P.O. BOX 714 COOMA N.S.W. 2630

TEL: (064) 50 1777
FAX: (064) 50 1799

OFFICE HOURS: Monday - Friday 8.35AM - 5.00PM

All correspondence to be addressed to the General Manager

Enquiries: Mr Pat Booker (PB:CR)
Our Ref: 1035.30/7094/92
Your Ref: 24 June, 1996

Mr I Mondello
Monaro Constructions
[Redacted]
COOMA NSW 2630

Dear Mr Mondello

DEDICATION OF PUBLIC RESERVE - SUBDIVISION OF LOT 7, DP 246089

As you have been previously advised, Council has accepted an area of 4 621 m² as Public Reserve (Lot 20 created in your Subdivision), subject to requirements, including:

'The removal of all noxious weeds from the land so dedicated as Reserve, and compliance with the Director of Engineering Services for all other associated works.'

The associated works have been assessed as:

- 1 removal of dilapidated fencing between the Reserve and SRA land;
- 2 removal of all dead trees and bushes as well as removal of damaged or broken branches;
- 3 removal of all litter from the Reserve.

These works now become part of your amended consent in lieu of payment of a Section 94 Contribution for recreational facilities.

If you have any queries in relation to the above, please contact Council's Manager Engineering Design, Pat Booker, on (064) 50 1752.

Yours sincerely

[Redacted Signature]

DAVID BYRNE
DIRECTOR OF ENGINEERING SERVICES
for
NEIL WATT
GENERAL MANAGER

"Building a Better Community"



COOMA-MONARO SHIRE COUNCIL

81 COMMISSIONER STREET COOMA
P.O. BOX 714 COOMA N.S.W. 2630

TEL: (064) 50 1777
FAX: (064) 50 1799

OFFICE HOURS: Monday - Friday 8.35AM - 5.00PM

All correspondence to be addressed to the General Manager

Enquiries: Mr Ron Dakin RWD.hd
Our Ref: 5242/7094/92
Your Ref: 21 May, 1996

Mr I Mondello
Monaro Constructions
[REDACTED]
COOMA NSW 2630

Dear Mr Mondello

Re: Acceptance of Lands as Public Reserve - Subdivision Lot 7 DP 246089

At a recent meeting of Council your request for Council to accept certain lands as public reserve in lieu of a monetary contribution required by Condition No. 38, was considered.

The Council accepts, in response to a Section 94 contribution, an area of 2700m² in area public reserve within Lot 7 DP 246089 subject to the following:

- 1 The applicant being responsible for all survey and legal costs.
- 2 The removal of all noxious weeds from the land so dedicated as reserve, and compliance with the Director of Engineering Services for all other associated work.
- 3 Dedication of the public reserve within Lot 7 to be included in the linen plan for 19 lot subdivision.
- 4 Council will accept dedication of the proposed reserve in Lot 8 providing such as indicated by the Director of Engineering Services, is completed on the land.
- 5 That the applicant be advised that in any subsequent approval involving subdivision of land adjoining the proposed public reserve, adjacent to the railway reserve, Council will require the provision of adequate pedestrian access from any new created.

Yours sincerely,

[REDACTED]
RON DAKIN
MANAGER PLANNING
for
NEIL WATT
GENERAL MANAGER

"Building a Better Community"



COOMA-MONARO SHIRE COUNCIL

81 Commissioner Street
(PO Box 714)
COOMA NSW 2630
ABN 19 204 741 100

TEL: (02) 6450 1777
FAX: (02) 6450 1799
council@cooma.nsw.gov.au
www.cooma.nsw.gov.au

OFFICE HOURS: Monday – Friday 8.35am – 5.00pm
All correspondence to be addressed to the General Manager

Enquiries: Peter Smith (PS:NW)
Our Ref: DA 94/92, 222/03, 37/06
Your Ref:

15 January 2009

Mr I Mondello

Cooma

Dear Mr Mondello

Subdivisions at Cooma East – DA's 94/92, 222/03, 37/06

Following the meeting between yourself, Mayor Vin Good, General Manager Mr John Vucic, Director of Engineering Services Mr David Byrne, and myself on 27 November 2008, regarding Section 94 Contributions for the above applications, the following information is provided for your reference:

1. DA 94/92 was submitted on 27 November 1992 and was for the subdivision of Lot 7 DP 246089 originally into 14 lots with residue. This consent was issued on 11 August 1993 for 19 allotments. There have been various modifications to the original consent since that time, and variations to aspects of the approval at different times since the original approval, including concessions granted in relation to the delayed payments of contributions due to financial issues. DCP 10 (adopted by Council on 11 May 1992 following approval of rezoning application made by SMHEA and subsequently amended and adopted by Council on 12 July 1993) applies to this land at that time.
2. A Modified Consent was issued on 5 January 1994 which stated at Condition 38 *"Council does recognise that the current plan includes proposed recreational areas. Stage 1 does not contain any recreational component that Council will accept."* Condition 1 of this consent clearly states that Council would not accept the proposed dedication of land at the corner of Wangie and Thurrung Streets.
3. On 13 May 1996 Council considered a report following representations on 22 February 1996 on your behalf by Williams Lightfoot for the dedication of land in lieu of Section 94 contributions for recreation, originally being Condition 38 of Development Consent 94/92. Correspondence in relation to this issue shows that the application was changed to 19 allotments. The consent and subsequent modification was specifically for the subdivision of Lot 7 DP 246089.
4. Your letter of 10 March 1995 stated that you were willing to consult with Council regarding the provision of public reserves in the subdivision, apparently in lieu of paying monetary contributions.

Cooma-Monaro Shire Council

5. At its meeting of 13 May 1996 Council agreed to accept 2,700 square metres (sq m.) of public reserve within Lot 8 DP 246089 in addition to reserve area provided in Lot 7 DP 246089, in lieu of monetary contributions as required by Condition 38 (subject to conditions).
6. Upon registration of this subdivision (DP 860066) the residue of former Lot 7 became Lot 19 DP 860066. The accepted reserve area previously in Lot 7 DP 246089 became Lot 20 DP 860066, totalling 4,621 sq m. The area of reserve created from within the former Lot 8 DP 246089 becomes Lot 3 DP 860934, having an area of 2,362 sq m.
7. DA 222/03 (Stage 2) is lodged in June 2003. This application is for the subdivision of Lot 19 DP 860066, and is described on the application as a 50 lot subdivision. This proposal requires an amendment to DCP 6 to enable it to proceed. Council adopts the amended DCP on 22 December 2003.
8. Council wrote to you on 7 January 2004 advising of the resolution of Council from its meeting on 22 December 2003 which included a requirement to provide an area of land adjacent to Lot 52 DP 826184 plus a sum of \$40,000 as contribution to Open Space **for Stage 2**.
9. Consent is issued for DA 222/03 on 4 February 2004 being for subdivision of Lot 19 DP 860066 (50 allotments). This consent includes Condition 7 which refers to the dedication of land of approximately 1,580 sq m. in area plus \$40,000 for improvements in the public reserve. This is clearly stated in the Condition as **"..for Stage 2 only"**.
10. On 9 February 2004 you wrote to Council requesting the 10m wide reserve be *"returned to Lot 19 and Lot 3"* and exchanging for 2,500-3,000 sq m. of land plus \$40,000. Your letter is referenced *"Subject: Section 94 Contributions for Open Space – Stage 2 Bella Vista Estate, Cooma East"*. A reply was sent detailing the complicated process required to achieve this in relation to changing the land from "Community" to "Operational" under the Local Government Act.
11. On 18 February 2004 Williams & Lightfoot state in a letter to Council in relation to subdivisions of Lot 7 and 8 DP 246089 *"Both these subdivisions were carried out under DCP10 which at the time required an area equivalent to 10% of the subdivision area to be created as public reserve. The 19 residential allotments created by the two subdivisions have a total area of 18,933 sq m. The total area of public reserve created was 6,983 sq m. being 5,090 sq m. more than the required 10%. Mr Mondello created this additional area in good faith on the understanding from Council that it would be credited to any future subdivisions"*.
NOTE: the area of Lot 7 DP 246089 was 9.24Ha or 92,400 sq m. 10% of this area (as required by DCP10 at the time) is 9,240 sq m. For Stage 1, a total area of 6,983 sq m. was provided, being 2,257 sq m. less than the 10% of the area of Lot 7 DP 246089. These figures exclude the area of Lot 8 DP 246089 (2.1964Ha). The argument put forward by Williams Lightfoot is based on the area of the residential allotments created by the subdivision, not the overall area of the subdivided land. A request was made via Williams & Lightfoot to delete Condition 7 of Consent 222/03 at this time.
12. A report was put to the Council meeting of 13 April 2004 (Note Councillor Kaltoum was Administrator at this time) following the request for Modifications by you

Cooma-Monaro Shire Council

regarding the reserve issue and various other issues. The report clearly sets out the requirements for provision of recreational areas and the reasoning behind Council's condition (Condition No 7 of Consent 222/03). The item in relation to Condition 7 was deferred for consideration at the next Council meeting.

13. At the Council meeting of 10 May 2004, it was resolved that Condition 7 remains. (Note Councillor Kaltoum was Administrator at the time.)
14. A Modified Consent was issued on 23 July 2004. Condition 7 became Condition 5 of the Modified Consent but its content remained unchanged.
15. On 7 February 2005 you wrote to Council stating that you are happy to provide additional land (approximately 1,580 sq m.) and a monetary contribution of \$40,000 as per Condition 5. The letter also states *"However it is our opinion that the provision of this additional open space and the financial contribution towards it should also cover Stage 3 of the overall development"*. NOTE: Condition 5 clearly states *"In lieu of Section 94 Contributions for Open Space **for Stage 2 only...**"*
16. On 4 May 2005 Council wrote to you advising that a request to vary the condition regarding Section 94 Contributions can only be considered via a request for modification.
17. On 16 August 2005 DA 37/06 (subdivision Stage 3) is lodged, being subdivision of Lots 4 and 6 DP 246089, Lot 51 DP 826184, and part of Lot 19 DP 860066. Note that the part of Lot 19 DP 860066 for this stage becomes Lot 102 and Pt Lot 102 DP 1109187 upon registration of the Stage 2 subdivision plan (DP1109187).
18. On 16 August 2005 a modification for DA 222/03 is lodged regarding road modifications and lot layout. This modification requires a further amendment to DCP6. Council agrees to amend DCP6 on 16 January 2006. The report to Council also details amendments to Stage 2, including releasing Stage 2A. There was no request in relation to modification of Condition 5 regarding Section 94 contributions.
19. On 30 January 2006 a modification to Consent 222/03 was issued. This modification still contains Condition 5 and still states that Section 94 Contributions are ***"for Stage 2 only"***.
20. Council adopts revised DCP6 on 13 March 2006. You were advised of this on 10 May 2006.
21. On 15 June 2006 a letter is received from you claiming that in a meeting held with the Manager of Planning, Administrator Kaltoum, and Garth Moxon, it was decided that *"the 10m strip around the railway covers Stage 1 and 2 (Lots 7 and 8) Section 94 contribution. \$40,000 and 1500 sq m. would cover Stage 3 (Lots 4, 6, 51) Section 94 contribution"*. Council's position, as advised to you, is that the \$40,000 and 1500 sq m. was for Stage 2, as per the Conditions of Consent. The letter from you goes on to say *"It is quite clear from your letter dated 21/5/96 that contribution for stage 2 (lot 8) has already been agreed to and no further contribution for that stage is required"*. This is incorrect. Council's letter of 21 May 1996 does not state this at all. Council agreed to the additional reserve land in former Lot 8 DP 246089 combined with the reserve proposed in Lot 7 DP 246089, in lieu of the monetary contribution required by Condition 38 of the Consent issued on 5 January 1994 (DA 94/92). This action followed a request from you - refer to points 3, 4 and 5 above. A further letter to you from Council dated 24 June 1996 clarified this position, and clearly states that this

Cooma-Monaro Shire Council

revised arrangement was for *"Dedication of public reserve – subdivision of Lot 7 DP 246089"*.

22. It is pointed out that during the time Councillor Kaltoun was Administrator, the matter regarding Section 94 contributions was reported to Council on 2 occasions i.e. 13 April 2004 and 10 May 2004, with the outcome being that Council's condition regarding Section 94 Contributions would remain. See points 12 and 13 above.
23. On 26 June 2006 you paid contributions for DA 222/03, including \$40,000 for open space. It is noted that no indexation was applied to this figure, even though the date of consent was 4 February 2004.
24. On 10 July 2006 following your further representations regarding Section 94 Contributions, a report is provided to Council. The recommendation is that the applicant be advised that Section 94 Contributions will be applied for recreation for Stage 3. At the Council meeting the Council resolves *"..that a further \$40,000 contribution will be required to fully satisfy Council's section 94 Open Space requirements for allotments created in Stage 3."* The votes of 2 Councillors were recorded against this resolution. No reasons were provided for the Council's resolution.
25. At the Council meeting of 14 May 2007, Council resolves (5.2) in relation to Section 94 Contributions for Stage 3 *"that due to the questionable validity of Council's decision of 10 July 2006, that Council reconsider this decision prior to any approval being issued."*

In summary, there is no evidence on Council files to support your claim that there was an agreement that the Section 94 Contributions (public reserves and monetary contributions) provided by you for Stages 1 and 2 would in any way absolve you from any requirement in relation to Section 94 contributions for Stage 3.

It is clear from researching Council's files that Council has been very generous in accommodating your many requests for changes to DCP's, deferred payment arrangements, and numerous modifications which have resulted in a more favourable outcome for yourself.

It is noted that on plans submitted by you for the original subdivision (Plan numbers BV-001 dated 16 November 1992 and BV-002 dated 20 February 1993) it clearly shows a parcel of land marked as "6(a)" on BV- 001 and as "Park" on BV- 002 having an area of 10,203 sq m. in addition to various other areas of reserve and open space. This parcel is now fully encompassed by residential allotments created in your Stage 2 subdivision. It could be argued that the areas of land accepted by Council as "Open Space" following your applications and requests would be far less valuable than the 10,203 sq m. shown as "Park" in your original proposal.

Your letter to Council dated 20 November 1992 in support of your initial proposal states as follows *"The areas shown are public open space 6(a), amounting to ten per cent of proposed created lots. It is emphasised however, that the type of development envisaged will provide at least a further ten per cent of private common open space and by its design maintain the existing land-scaped features of developed trees and shrubs of this beautiful site"*.

Cooma-Monaro Shire Council

You did not lodge an appeal to the Land and Environment Court in relation to the Conditions of Consent for DA's 92/94 and 222/03 being Stages 1 and 2. It is suggested to you, that upon issuing a determination of DA 37/06 for Stage 3, if an approval is granted which requires payment of Section 94 Contributions in accordance with Council's adopted policy at the time, if you feel that Council has unfairly levied Section 94 Contributions that you seek to address this issue through the Land and Environment Court in accordance with the appeal provisions available to you under the Environmental Planning and Assessment Act.

You are advised that any recommendation from staff regarding a determination of DA 37/06 will include the requirements of Council's Contributions plans in force at that time, in accordance with Council's adopted policy.

I hope the above information helps to clarify this situation for you. I look forward to you providing Council with all requested information at your earliest convenience to enable a determination of DA 37/06 to be made.

Yours faithfully



Peter Smith
DIRECTOR OF ENVIRONMENTAL SERVICES
for
JOHN VUCIC
GENERAL MANAGER

18.1 COUNCILLOR JOHN CASTELLARI - FLYING OF THE ABORIGINAL FLAG

Record No:

Responsible Officer: General Manager
Author: Councillor John Castellari
Attachments: Nil

Councillor John Castellari has given notice that at the Ordinary Meeting of Council on 5 July 2018, he will move the following motion.

MOTION

That Council demonstrate its respect for the indigenous community by flying the Aboriginal flag wherever and whenever it flies the Australian flag on SMRC buildings and facilities.

BACKGROUND

Federal governments, State governments and the majority of NSW Councils have adopted the practice of jointly flying the Australian flag. This motion brings our new Council into alignment with common national practice and community expectations. With NAIDOC ceremonies commencing this week it is a good time to introduce the practice of joint flag flying.

Clause 9. 1 of Council's Code of Meeting Practice provides as follows:

9.1 Notices of Motion

- (1) *The deadline for lodging notices of motion in writing for inclusion on the business paper for consideration at any meeting of the Council, shall be eleven (11) days prior to the meeting.*
 - (2) *A councillor must give notice of business in writing no later than 4.00pm on the Tuesday that follows the ordinary meeting of council.*
 - (3) *At an Ordinary meeting Councillors may give notice of motions in writing to be listed as matters on the business paper for the next Ordinary meeting of Council.*
 - (4) *The rules applying to the content of Questions also apply to the content of Notices of Motion.*
 - (5) *Councillors are to ensure, where it is intended that staff be asked to carry out some specific defined action, that a Notice of Motion is written in such a way that, if carried, the motion carries such clear and unambiguous direction.*
-

18.2 RECISSION MOTION - COUNCILLOR SUE HASLINGDEN MAYORAL MINUTE

Record No:

Responsible Officer: Director Corporate and Community Services

Author: Councillor Sue Haslingden

Attachments: 1. Motion to Rescind Resolution - Councillor Sue Haslingden [↓](#)

Councillor Suzanne Haslingden has given notice that at the Ordinary Meeting of Council on 5 July 2018, she will move the following motion.

MOTION

That the Council resolution relating to

Minutes: OC_21062018_MIN_983_CLOSED

Item No. 22.6 Discussion Regarding the Barring of a Member of the Public from Council Meetings

22.6 DISCUSSION REGARDING THE BARRING OF A MEMBER OF THE PUBLIC FROM COUNCIL MEETINGS

COUNCIL RESOLUTION

[255/18]

That Council confirms the decision of the Mayor undertaken Sections 226(d) and 226(f) of the Local Government Act 1993, to ban a member of the public from future Council Meetings until further notice.

[Moved Councillor Beer

Seconded Councillor Castellari]

[CARRIED]

PASSED AT THE COUNCIL MEETING HELD ON : 21 June 2018

be and is hereby RESCINDED".

BACKGROUND

Refer to attachment.

Clause 9. 1 of Council's Code of Meeting Practice provides as follows:

9.1 Notices of Motion

- (1) The deadline for lodging notices of motion in writing for inclusion on the business paper for consideration at any meeting of the Council, shall be eleven (11) days prior to the meeting.
- (2) A councillor must give notice of business in writing no later than 4.00pm on the Tuesday that follows the ordinary meeting of council.
- (3) At an Ordinary meeting Councillors may give notice of motions in writing to be listed as matters on the business paper for the next Ordinary meeting of Council.
- (4) The rules applying to the content of Questions also apply to the content of Notices of Motion.
- (5) Councillors are to ensure, where it is intended that staff be asked to carry out some specific defined action, that a Notice of Motion is written in such a way that, if carried, the motion carries such clear and unambiguous direction.

motion sue 1.jpeg

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Confidential Motion

That the Mayoral Minute of Urgency presented during the confidential section of the Council meeting June 21, 2018 be rescinded.

Background

With reference to the Local Govt Act Chapter 4/Part 1: "10 Who is entitled to attend meetings?", it is to be understood that the Chair of the Public Council Meeting on June 21st 2018 acted without due consultation with Council*/councillors/the 'governing body' and did not have a resolution or authorization of Council/councillors, to prevent a member of the public from attending an ordinary meeting of SMRC.

In the discussion Paper: *AUSTRALIAN MAYORS: What Can and Should They Do? A discussion paper September 2012* presented by UTS:GLG/Centre for Local Government and ACELG/Australian Centre of Excellence for Local Government (found at: <https://opus.lib.uts.edu.au/bitstream/10453/42103/3/Australian-Mayors.pdf>) identifies on page 13 of the paper that the designated role of a mayor is:

Principally that of chairperson plus civic/ceremonial duties
Policy role if required between council meetings
Councillors collectively direct council affairs and provide civic leadership
Council* may delegate additional functions.

* As a definition, the local governing body is generally referred to as a council (...a governing body is a group of people that has the authority to exercise governance over an organization or political entity.)

Therefore, the governing body/Councillors of council needs to rescind the motion passed on June 21, 2018 and this body has to have the opportunity to 'collectively direct council affairs and provide civic leadership' on this issue in a transparent, collective and cohesive manner at the next meeting of Council.

Local Government Act 1993 No 30

Historical version for 7 April 2009 to 12 May 2009 (accessed 22 June 2018 at 00:39) Current version
Chapter 4 Part 1

10 Who is entitled to attend meetings?

(1) Except as provided by this Part:

- (a) everyone is entitled to attend a meeting of the council and those of its committees of which all the members are councillors, and
- (b) a council must ensure that all meetings of the council and of such committees are open to the public.

Page 1 of 2

* (2) However, a person (whether a councillor or another person) is not entitled to be present at a meeting of the council or of such a committee if expelled from the meeting:

- (a) by a resolution of the meeting, or
- (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

(3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.

- (e) information that would, if disclosed, prejudice the maintenance of law,
- (f) matters affecting the security of the council, councillors, council staff or council property,
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

(3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

(4) A council, or a committee of a council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Signed Sue Haslingden



22/6/18

Signed John Castellani



22/6/18

Signed



ROBERT STEWART

22/6/18

Date 22 June 2018

18.3 NOTICE OF MOTION - BOMBALA WATER

Record No:

Responsible Officer: Director Corporate and Community Services
Author: Councillor Sue Haslingden
Attachments: Nil

Councillor Suzanne Haslingden has given notice that at the Ordinary Meeting of Council on 5 July 2018, she will move the following motion.

MOTION

That Council consider a generous quarterly one off adjustment in water rates for the residents of Bombala who have been seriously affected by the quality of the water supplied by SMRC.

BACKGROUND

The Bombala community have now initiated two public meetings with SMRC and others to raise their concerns in regards to the quality of the water the Council is supplying.

Samples produced are exemplary of the discolouration and visible condition of the water. Clothing has been produced showing serious staining. There are anecdotal stories of other impacts using the supplied water is causing both the community and household equipment.

Inspection of the water supply plant has resulted in the development of a business proposal to implement urgent upgrades and maintenance systems.

There has been considerable attention now focused on plant and infrastructure upgrades and maintenance schedules, MP John Barilarow has pledged \$15 million on receipt of a proposal from SMRC for these upgrades to the Bombala Plant and to further upgrades at Delegate so that potable water can be supplied there.

But this does not alleviate the impact that the dirty water has had on the community and what they have had to endure. A generous quarterly adjustment is an obvious solution for the community.

Clause 9. 1 of Council's Code of Meeting Practice provides as follows:

9.1 Notices of Motion

- (1) *The deadline for lodging notices of motion in writing for inclusion on the business paper for consideration at any meeting of the Council, shall be eleven (11) days prior to the meeting.*
 - (2) *A councillor must give notice of business in writing no later than 4.00pm on the Tuesday that follows the ordinary meeting of council.*
 - (3) *At an Ordinary meeting Councillors may give notice of motions in writing to be listed as matters on the business paper for the next Ordinary meeting of Council.*
 - (4) *The rules applying to the content of Questions also apply to the content of Notices of Motion.*
 - (5) *Councillors are to ensure, where it is intended that staff be asked to carry out some specific defined action, that a Notice of Motion is written in such a way that, if carried, the motion carries such clear and unambiguous direction.*
-

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22. CONFIDENTIAL MATTERS

In accordance with Section 10A(2) of the Local Government Act 1993, Council can exclude members of the public from the meeting and go into Closed Session to consider confidential matters, if those matters involve:

- (a) personnel matters concerning particular individuals; or
- (b) the personal hardship of any resident or ratepayer; or
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; or
- (d) commercial information of a confidential nature that would, if disclosed;
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law; or
- (f) matters affecting the security of the council, councillors, council staff or council property; or
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege or information concerning the nature and location of a place; or
- (h) an item of Aboriginal significance on community land.

and Council considers that the closure of that part of the meeting for the receipt or discussion of the nominated items or information relating thereto is necessary to preserve the relevant confidentiality, privilege or security of such information, and discussion of the material in open session would be contrary to the public interest.

In accordance with Section 10A(4) of the Local Government Act 1993 the Chairperson will invite members of the public to make verbal representations to the Council on whether the meeting should be closed to consider confidential matters.

RECOMMENDATION

1. THAT pursuant to Section 10A subsections 2 & 3 and Section 10B of the Local Government Act, 1993 (as amended) the following items on the agenda for the Ordinary Council meeting be dealt with in Closed Session for the reasons specified below:

22.1 Legal Actions and Potential Claims Against SMRC as at 31 May 2018

Item 22.1 is confidential in accordance with s10(A)(2)(e) of the Local Government Act 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.

22.2 Proposed Purchase of Property in Cooma

Item 22.2 is confidential in accordance with s10(A)(2)(dii) of the Local Government Act because it contains information that would, if disclosed, confer a commercial advantage on a competitor of the council and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

22.3 Uncontrolled Disposal of Septic Waste into Council Sewer System

Item 22.3 is confidential in accordance with s10(A)(2)(c) of the Local Government Act 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 (f) of the Local Government Act because it contains details of systems and/or arrangements that have been implemented to protect council, councillors, staff and Council property and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

22.4 Proposal for Future of Council Offices in Cooma

Item 22.4 is confidential in accordance with s10(A)(2)(dii) of the Local Government Act because it contains information that would, if disclosed, confer a commercial advantage on a competitor of the council and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

22.5 Therry Street Development

Item 22.5 is confidential in accordance with s10(A)(2)(di) of the Local Government Act because it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

2. The press and public be excluded from the proceedings of the Council in Closed Session on the basis that these items are considered to be of a confidential nature.
3. That the Minutes and Business Papers including any reports, correspondence, documentation or information relating to such matter be treated as confidential and be withheld from access by the press and public, until such time as the Council resolves that the reason for confidentiality has passed or become irrelevant.
4. That the resolutions made by the Council in Closed Session be recorded in the Minutes of the Council Meeting.
5. That upon this recommendation being moved and seconded, the Chairperson invite representations from the public as to whether this part of the meeting should be closed to consider the nominated item.