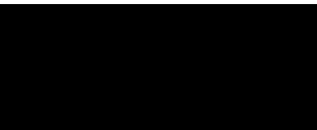


10th November 2025

General Manager
Tamworth Regional Council
PO Box 555
Tamworth NSW 2340



Re: Section 8.3 Review - DA/2025-0204 (PAN-493986) for Subdivision of the site into 47 residential lots with associated road and service infrastructure on Lot 1 DP 1017953, 18-50 Mayne Drive WESTDALE, 18-50 Mayne Drive, Westdale

Pursuant to Section 8.3 of the *Environmental Planning and Assessment Act 1979* (the **Act**) Council is requested to review a determination for refusal of DA/2025-0204 (PAN-493986) as detailed in Notice of Determination dated 29 September 2025. Key details of the determination are as follows:

Development Consent No:	DA/2025-0204
Property Address:	Lot 1 DP 1017953 18-50 Mayne Drive WESTDALE, 12-14 Birnie Avenue, Lidcombe
Description:	Subdivision of the site into 47 residential lots with associated road and service infrastructure
Determination:	REFUSED
Determination Date:	29 September 2025

Pursuant to the provisions of Section 8.2(1)(a) of the Act the determination by Council to refuse development consent for DA/2025-0204 is identified as being a decision that is subject to review if so requested by an applicant and pursuant to the provisions of Section 8.3(2)(a) of the Act the review can proceed because no appeal has been made to the NSW Land and Environment Court and the period within which any appeal may be made to the Court has not expired.

In requesting this review, the proposed development is supported by the following amended plans and reports:

- Amended Plan of Subdivision
- Legal advice re provision of sewer
- Legal advice re access and s88K proceedings
- Owners Consent from 51 and 53 Mayne Drive

In accordance with the provisions of Section 8.3(3) of the Act, the development application has been amended as detailed in the accompanying amended Plan of Subdivision. The amendment relates to the proposed public road now being sited completely along the Right of Carriageway. Development is considered substantially the same development because it is only a minor adjustment to the road alignment. When considering the question of 'substantially the same development' the NSW Land and Environment Court considers a qualitative and quantitative analysis between the original development and the modified development is required to determine if the modified development is substantially the same development as the original development application. The Court has also emphasised that a change to an 'essential feature' of a development may result in the development not being considered 'substantially the same'.

Having due consideration to a qualitative and quantitative analysis between the original development and the modified development, there is a very clear and compelling argument that the proposed modifications will not change the most important/essential parts of the proposed development.

The proposed modifications do not introduce any new impacts and will improve the severity of known impacts, particularly in relation to access.

The Notice of Determination provides reasons why Council refused the DA. The following provides a summary of the three (3) reasons for refusal (shown in **bold** and *italics*) and a response to how the reasons for refusal have been adequately addressed.

1. ***The development does not provide suitable sewerage disposal for the majority of the lots through connection to Council sewer. Reticulated sewer is required for all lots, except the lot that contains the land zoned RU4 with a minimum lot size of 40ha (proposed lot 121). The development only proposes reticulated sewer for 9 of the 46 lots required.***

Response:

Council's requirements for the provision of sewer is detailed in the Tamworth Regional Development Control Plan (TRDCP) 2010 and requires on-site sewer management facilities "when developing lots where the Lot Size Map specifies a minimum area of 4000m² or greater" and "reticulated sewer is required where the Lot Size Map specifies a minimum lot size of up to 4000m²".

The Lot Size Map specifies a minimum area of 4000m² or greater for the site and subsequently, in compliance with the provisions of TRDCP 2010, the proposal provides on-site sewer management facilities.

Tamworth Regional Council On-site Wastewater Management Plan identifies land area with a size greater than 4,000m² as acceptance criteria for allotments classified Level 1 where a

'Suitable Design Solutions' approach can be used for determining the size of commonly installed On-site Wastewater Systems.

All of the lots in the proposed subdivision have a site area greater than 4,000m² and in accordance with Council's adopted DCP provisions and Council's adopted On-site Wastewater Management Plan, the proposal can be serviced by on-site sewer management facilities.

Council officers have indicated the provisions in the DCP are not correct and need to be changed to clarify the existing subjective inconsistencies with controls relating to the provision of on-site sewer management. However, no clear justification has been provided for why lots greater than 4,000m² in site area do not satisfy the legislative requirements of cl7.14(1)(c) of the Act that adequate arrangements have been made for the disposal and management of sewerage.

The existing DCP was adopted by Council on 12 October 2010 (15 years ago). The existing guidelines relating to sewer have been in operation for all this time without complication and an expressed need to have them changed.

Legal advice from HWL Ebsworth Lawyers dated 26 May 2025 is provided that in summary concludes:

- Council interpretation of the requirements are the DCP are not correct. The subdivided lots will be 4,000 square metres and accordingly an on-site sewer system is permitted.
- The objectives of the LEP requires Council to be satisfied that there are services and that they are adequate. The services being submitted to Council by our client clearly show that services will be available and such services will adequately service the subdivided lots.
- An easement over neighbouring property is not practical given that the neighbouring property owner will not permit it and it is unlikely a section 88K application will be successful when even our client can show the Court that there is an alternative available other than an easement over the neighbouring land.

Additional legal advice from HWL Ebsworth Lawyers is attached in relation to 'Access and Section 88K Proceedings' to gain the easement. This advice details the significant cost and time associated with procuring the easement and reinforces how the provision of gravity sewer to the entire development is not a viable option.

Pursuant to the provisions of s4.15 of the Environmental Planning and Assessment Act 1979, Council must have consideration to the relevant provisions of the existing DCP. This is a 'fundamental element' of the evaluation process of any development application. This evaluation process does not provide for consideration of any draft DCP or any suggestion the requirements of the DCP are not correct and should not be considered.

Section 4.15(3A)(a) of the Act requires Council not to require more onerous standards with respect to that aspect of the development that complies with those standards in the DCP. In this subsection, 'standards' include performance criteria such as those that relate to the provision of sewer. The development complies with the existing standards for on-site sewer management and there should be no requirement for the provision of more onerous gravity sewer.

Notwithstanding the question of whether there is compliance with the sewer standards, there is no requirement for strict adherence to the provisions of the DCP where an alternative

solution would meet the DCP objectives. Zhang v Canterbury City Council (2001) 115 LGERA 373 did not require (and nor has any subsequent judicial decision) that DCP provisions be strictly adhered to but rather that the provisions or standards in the DCP be taken into consideration.

The existing DCP remains current and the provisions of this DCP must be considered when assessing a development proposal.

Giving due weight to the legislative requirements for evaluating a development application and the lack of any amending DCP, we respectfully request Council give fair and due consideration to the requirements of the sewer provisions in the existing DCP that clearly support the provision of on-site sewer management on lots where the Lot Size Map specifies a minimum area of 4000m² or greater.

Legal access to the development cannot be provided without agreement from 51 and 53 Mayne Drive.

Response:

Legal access to the development can now be provided with accompanying agreement from the owners of 51 and 53 Mayne Drive.

With this agreement, the existing Right of Carriageway can be dedicated as a public road and as detailed on the amended Plan of Subdivision, the public road can remain in alignment with the entire length of the Right of Carriageway.

Owner's consent must be provided from all the owners of the land impacted by the intensification of the use of the right of way.

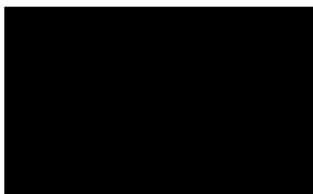
Response:

Owners consent is now provided from all the owners of the land impacted by the intensification of the use of the right of way including 51 and 53 Mayne Drive.

Having resolved the issue of owners consent, we respectfully request the review of the determination be conducted by the council (not a delegate) in accordance with the provisions of s8.3(4)(a) of the Act and discussions with Council's General Manager and Mayor.

We look forward to Council's review of the determination for refusal of DA/2025-0204 having due regard to the comments provided in this request for a review.

Yours sincerely



Director