

Tony Polvere  
407/5 Warayama Place  
ROZELLE NSW 2039

Dear Sir,

**Environmental Planning and Assessment Act, 1979**  
**NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Pursuant to Section 4 - 18 (1)(a) of the Act, notice is hereby given of the determination by Council of Development Application No. DA2025-0204 (PAN-493986) for Subdivision of the site into 47 residential lots with associated road and service infrastructure on Lot 1 DP 1017953, Ta-Le 18-50 Mayne Drive WESTDALE.

In the determination of this application Council considered all matters listed under Section 4.15 of the Act. The development application has been determined by way of a refusal of consent for the following reasons:

**Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979**

**Tamworth Regional Local Environmental Plan 2010 (TRLEP 2010)**

- a) On the basis that the development application has failed to satisfy the following requirements of the Tamworth Regional Local Environmental Plan 2010:

Clause 7.14 Essential Services

- i. Clause 7.14(1) of the TRLEP 2010 requires that development consent must not be granted unless the consent authority is satisfied that any of the following services that are essential for the development are available, or that adequate arrangements have been made to make them available when required—
- the supply of water,
  - the supply of electricity,
  - the disposal and management of sewerage,
  - stormwater drainage or on-site conservation,
  - suitable vehicular access.

The proposed subdivision development is not suitably serviced for the following reasons:

- 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.

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

*Note: Clause 7.14 Essential Services came into effect on 16 May 2025 with Amendment No. 27 to the TRLEP 2010. Prior to this date, the clause was still considered during the assessment pursuant to Section 4.15(1)(a)(ii) Environmental Planning and Assessment Act 1979. The proposed instrument was publicly exhibited from 5 June to 5 July 2024 and Chapter 9 of the TRLEP 2010 Phase 1 Planning Proposal 2024 was to insert a new 'Essential Services' Clause.*

### **Section 4.15(1)(a)(iii) Environmental Planning and Assessment Act 1979**

#### **Tamworth Regional Development Control Plan 2010 (TRDCP 2010)**

- b) On the basis that the development application has failed to satisfy the following requirements of the Tamworth Regional Development Control Plan 2010:

##### Subdivision Development Controls

- The development does not provide a satisfactory servicing strategy and preliminary engineering designs in relation to sewer. An extension to sewer infrastructure is required and this is not proposed in the development application.
- Residential lots are to be serviced by gravity sewer and the development has not made provision for this.

### **Section 4.15(1)(a)(iv) Environmental Planning and Assessment Act 1979**

#### **Environmental Planning and Assessment Regulation 2021**

- c) On the basis that the development application has failed to satisfy the following requirements of the Environmental Planning and Assessment Regulation 2021:

- To subdivide the lot and provide appropriate access to the resultant lots the existing Right of Carriageway needs to be dedicated as a public road. There are multiple easements over the same land:

Right of Carriageway 20 Wide DP 1017953 – shown as E

Right of Carriageway 20 Wide DP 1038239 – shown as J

The development does not demonstrate that this dedication can occur without agreement from 51 and 53 Mayne Drive.

The right of way in DP 1058239 benefits Lots 2,3,and 4 while burdening 3,4, and 5. To put that in addresses, the owners of 53, 21-23 and 17-19 Mayne Drive are all burdened by the right of way in this DP, and it benefits 53, 21-23 and 51, so all these parties would need to agree for it be extinguished by agreement.

The proposed public road would be located on the following properties:

- 17-19 Mayne Drive WESTDALE, Lot 5 DP 1038239
- 21-23 Mayne Drive WESTDALE, Lot 4 DP 1038239

The intensification of the use of the right of way as a result of the DA constitutes “development” of the land which is the subject of the right of way. The prospect of intensification is a relevant consideration in the assessment of the DA. In this case the right of way will intensify from being used by 5 lots to being used by 51 lots.

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.

**Section 4.15(1)(b) Environmental Planning and Assessment Act 1979**

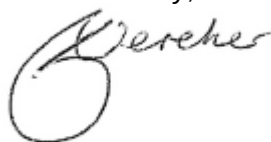
- d) On the basis of the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality:
- i. The large number of proposed residential lots without reticulated sewer in a residential area could pose an environmental health nuisance.
  - ii. The development provides insufficient vehicular access to 51 and 53 Mayne Drive.

**Section 4.15(1)(e) Environmental Planning and Assessment Act 1979**

- e) On the basis that the development application has failed to satisfy the following requirements in the public interest:
- i. The lack of provision of reticulated sewer infrastructure in a residential area where strategic sewerage planning has been planned is not in the public interest. Council’s current sewer strategy for the subject site is gravity sewer system with connection point to Council’s 300mm main.
  - ii. The development would disadvantage the 37 lots with onsite sewerage management systems in comparison to the neighbouring lots in the locality with reticulated sewer. The costs of development are being shifted from the developer to future residents.
  - iii. The development provides insufficient vehicular access to 51 and 53 Mayne Drive.

Under the provisions of Section 8.7 of the Act you may (within six (6) months of receipt of this notice) appeal to the Land and Environment Court against this determination.

Yours faithfully,



Gina Vereker  
**Director, Liveable Communities**

Contact: Jessica Allen (02) 6767 5778 or email: [j.allen@tamworth.nsw.gov.au](mailto:j.allen@tamworth.nsw.gov.au)

Reference: SL/ja/DA2025-0204

26 September 2025