

JRPP No.	2011HCC026
DA No.	DA 130/2011
Proposal	Residential Subdivision of four (4) lots into two hundred and ninety nine (299) Lots comprising 14 stages
Property	Lots 118, 119, 120 & 121 DP 750924 Almond Street Denman
Applicant	MM Hyndes Bailey & Co
Owner	Sheralex Nominees Pty Ltd
Report by	Ben Oliver

Assessment Report and Recommendation

The purpose of this report is to seek a determination from the Joint Regional Planning Panel on a Development Application proposing a subdivision of land into 299 residential lots.

Proposed Development

The proposal involves a residential subdivision of 4 lots into 299 lots, comprising 14 construction stages. The lot sizes range from 773m² to 2.8ha.

Stages 1 and 2 will be accessed from an extension to Grey Gum Road and will provide a mix of larger lot sizes which extends to stages 4, 5 and 6 around the western and northern edges of the site to address environmental constraints.

Stages 3, 7, 8, 9, 10, 11, 12, 13 and 14 will be accessed from an extension to Almond Street and comprise a more conventional residential subdivision layout.

Referral to Joint Regional Planning Panel

State Environmental Planning Policy (Major Development) 2005 applies to the proposed development pursuant to Clause 13B(1)(f) of the SEPP. In accordance with clause 13F of the SEPP, the Joint Regional Planning Panel is the consent authority for development involving the subdivision of land into more than 250 lots.

Permissibility

The site is zoned RU5 Village pursuant to Muswellbrook Local Environmental Plan 2009 (the LEP). The proposal is categorised as a subdivision and is permissible within the RU5 zone subject to development consent. All required owner(s) consent has been provided.

The proposal is integrated development in accordance with section 91 of the Environmental Planning and Assessment Act 1979 requiring development consent and the following external approvals:

- Controlled Activity Approval from the NSW Office of Water under the Water Management Act 2000.
- Bush Fire Safety Authority from the Rural Fire Service under the Rural Fires Act 1997.
- Concurrence from the Mine Subsidence Board under the Mine Subsidence Compensation Act 1961.

NOTE: At the time of finalising the Assessment Report, the Mine Subsidence Board had not provided their concurrence to the development application, although Council were advised verbally, that a response would be received prior to the application being considered by the JRPP. This matter will be addressed in a supplementary report to the JRPP.

Consultation

The development application was placed on public exhibition for a period of 21 days from 29 June 2011 to 20 July 2011.

In accordance with Section 4 Notification of Muswellbrook Shire Development Control Plan, the application was notified to adjoining landowners and a notice was placed in the local newspaper.

Eight (8) submissions were received from adjoining landowners and the public, all of which raised objections to the development application.

Key Issues

The assessment of the development application has identified the following key issues:

- Compliance with the provisions of clause 6.1 and clause 6.3 of Muswellbrook Local Environmental Plan 2009 and the absence of a comprehensive DCP over the whole of the release area.
- The status of Councils preparation of a DCP over the release area.
- The orderly and logical development of the West Denman Urban Release Area.
- Adequacy of stormwater disposal and the requirement for downstream easements
- The efficient and cost-effective provision of critical infrastructure having regrading to the Denman Water and Sewer Strategy
- Submissions

RECOMMENDATION

The Joint Regional Planning Panel in its function of determining the development application refuse consent to Development Application No. 130/2011 for the proposed Residential Subdivision of four (4) lots into two hundred and ninety nine (299) Lots comprising 14 stages over Lots 118, 119, 120 & 121 DP 750924 Almond Street Denman for the following reasons:

1. Pursuant to Section 79C(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable a proper assessment of the development application in relation to:

- (a) Stormwater Management including the requirement for easements over adjoining land.
- (b) Provision of Water and Sewer Services including the requirement for easements over adjoining land.
- (c) Assessment of traffic impacts on railway crossings.
- (d) Funding arrangements for provision of necessary infrastructure.

2. Pursuant to Section 79C1(a)(i) of the Environmental Planning and Assessment Act 1979, and clause 6.1(2) the Director-General had not certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure and

in the absence of that certification, sub-clause (2) prohibits the Joint Regional Planning Panel from granting consent to the Development Application.

3. Pursuant to Section 79C1(a)(iii) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with clauses 25.2.4 and 25.5 of Muswellbrook Shire Development Control Plan Section 25, in relation to Stormwater Management.

4. Having regard to the above reasons for refusal, the proposal is contrary to the objects of the Environmental Planning and Assessment Act 1979 as specified in Part 1, Section 5(a), which provides for the orderly and proper development of land and ecologically sustainable development.

5. Pursuant to Section 79C(e) of the Environmental Planning and Assessment Act 1979, approval of the development prior to completion of a comprehensive DCP over the whole of the release area, would not be in the public interest.

1. Background

The subject site forms part of the West Denman Urban Release Area which has been identified as an extension to the Denman urban area to provide additional serviced land for housing. The Release Area comprises approximately 133 hectares of land which is wholly in private ownership and includes six separate landowners.

Council anticipates that the Release Area land has the capacity for approximately 600-800 residential lots. Part 6 (Urban Release Areas) of Muswellbrook Local Environment Plan 2009 applies to the land and requires a Development Control Plan to be approved prior to any subdivision of the land, ensuring that any development within the release area, occurs in a logical and cost effective manner and in accordance with a staging plan.

Section 74D(3) of the Environmental Planning and Assessment Act 1979 provides that any such development control plan may be prepared and submitted to the relevant planning authority by the owners of the land to which it applies, or by such percentage of those owners as the environmental planning instrument allows. Muswellbrook LEP 2009 is silent in relation to the latter.

Section 74D further provides that the relevant planning authority may make a development control plan submitted to it under this section, including with such changes as it thinks fit but if the relevant planning authority refuses to make a development control plan submitted to it or delays by more than 60 days to make a decision on whether to make the plan, then the owners may make a development application despite the requirement of the environmental planning instrument concerned for the preparation of a development control plan.

Two of the landowners within the West Denman Urban Release Area, Sheralex Nominees and Denman Property Holdings, have prepared and lodged development control plans with Council. The Draft DCP prepared by Denman Property Holdings applied to the whole of the release area while the Draft DCP prepared by Sheralex Nominees applied only to their land within the release area.

In discussions with the major landowners, Council indicated its preference to project manage the preparation of a comprehensive DCP over the whole of the release area with the assistance of external consultancies and funding from the landowners. In this way, Council would be better placed to apportion costs fairly amongst the stakeholders, balance competing interests and coordinate the process. Unfortunately the fragmented land ownership and lack of communication and cooperation between landowners, did not allow

this preferred approach to eventuate and instead, several of the landowners have committed substantial resources to fund privately commissioned reports to support a DCP which is intended to apply over part or the whole of the release area.

The Draft DCP's were jointly reported to Council at its meeting in May 2011, where it was noted that both of the documents were deficient having regard to the requirements of clause 6.3 of Muswellbrook LEP 2009. Review of the submitted draft DCP's identified the following primary concerns:

- A lack of integration and compatibility between individual subdivision/servicing/staging concept plans.
- The staging of the development and impacts on provision and sequencing of Council services needed to be clarified and include an assessment of required S94 contribution plans or Voluntary Planning Agreements (VPA's) to fund infrastructure.
- No consideration was given to identifying potential areas for future commercial development (small neighbourhood shopping precinct) or preferred locations for required community facilities such as retirement villages, schools, child care centres and the like.

Given the fragmented ownership of the land within the Urban Release Area, it was recommended that Council manage the preparation of the Development Control Plan to ensure a holistic and integrated approach in addressing issues such as staging, infrastructure provisions, traffic hierarchy, open spaces provision and stormwater management. To expedite the preparation of the development control plan Council resolved to engage an external consultant to prepare a DCP over the whole of the release area. All landowners within the release area were advised of Council's decision.

David Crofts of Strategy Hunter was engaged by Council in July 2011 to prepare the DCP in accordance with Clause 6.3(3) of MLEP 2009 and investigate the feasibility of a Section 94 Plan or Voluntary Planning Agreements to fund the required infrastructure. A first Draft of the DCP has been prepared for stakeholder consultation purposes and it is expected that the final version of the DCP will be completed by mid October 2011.

Notwithstanding that a DCP has not been prepared for the release area, the applicant has exercised their right under Section 74D of the EPA Act to lodge a development application on the basis that Council failed to formally reject their submitted Draft DCP within the prescribed 60 day period. The report to the 9th May 2011 Council meeting was outside of the 60 day period. Council concedes that they did not formally reject the Draft DCP's prepared by the landowners, but highlights that the DCP's were reported to Council, where it was noted that they contained insufficient information and Council subsequently resolved to prepare a comprehensive DCP over the whole of the release area.

The subject development application was submitted on 3 June 2011.

2. Site and Locality Description

The subject site is located to the north west of the existing township of Denman on the western side of the rail line. The site is vacant, has an area of 64.75 hectares and is used for light grazing purposes. The land is largely cleared of vegetation, with the exception of an area of remnant vegetation located on the elevated western edges of the site and along defined drainage lines which drain to the east over adjoining private land. The vegetation is part of a contiguous area of vegetation to the north and west of the subject land.

Vehicular access is available from an extension to Almond Street which is a residential precinct and Grey Gum Road which is a rural-residential precinct. West Denman is separated from Denman (to the east) by a rail line used by freight (coal) trains. Road crossings of the railway line are located at Kenilworth Street and Ogilvie Streets. Most of the housing in Denman and the majority of urban services, including the school, hospital and town centre are located on the eastern side of the railway line. The town's urban release areas and leisure facilities, including swimming pool, playing fields and golf course, are all located on the western side of the railway line.

The subject land is not currently serviced by reticulated water and sewerage services and the existing infrastructure will need to be augmented and extended over adjoining private land in accordance with the Denman water and sewer servicing strategy.

The current population of Denman is approximately 1,900 persons. The urban release area, with 600-800 lots and assuming a conservative household occupancy rate of 2.1 persons, has the potential to almost double the existing population of Denman.

Figures 1 & 2 - West Denman Urban Release Area and land ownership



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3. Project Description

The DA has been submitted seeking consent for the following development:

1. Subdivision to create 299 residential lots ranging from 773m² to 2.8ha
2. Bulk earth works
3. Construction of roads, drainage, services, landscaping and open space.

- Concerns with the proposed water and sewer servicing arrangements and consistency with Council's servicing strategy.
- Concerns with lack of consultation with adjoining landowners in relation to the Development Application and preparation of landowner initiated DCP's
- Concerns with the subdivision design and layout and compatibility with other adjoining landowners.
- Concerns with environmental impacts of clearing and land disturbance on flora and fauna.
- Concerns with Potential Bushfire Hazards
- Concerns with increased population resulting from the development and impacts on community services and facilities

Copies of all submissions were forwarded to the proponent and a request was made for additional information on 28 July 2011. A response was received from the applicant on the 29 August 2011.

5 Referrals

External referral (both Integrated and advisory) were issued on the 27 June 2011. The status of the external referrals is summarised in Appendix B.

Internal referrals were received from the following departments within Council.

Community Infrastructure

All infrastructure categories

The infrastructure provision strategy for the subdivision site, including off-site impacts, must be competently planned and integrated with adjoining development and with Council's broader strategies for Denman. The best overall solution is the one that manages the whole suite of infrastructure development in a logical and orderly manner. The best way to do that is under the umbrella of a comprehensive DCP over the whole of the release area, (preferably with agreement from the various owners), with a supporting funding and staging model informed by either a s94 Plan or a set of VPA's. Isolated subdivision applications will not be supported until the infrastructure requirements of the total release area have been addressed by the preparation of a comprehensive DCP.

Size and duration of development – staged release

Given the large number of lots in the subdivision and relatively low take up of residential land, the proper staging and consideration of out-of-sequence staging, is critical to a cost effective and orderly development of the land. In the extended period of construction stages, environmental requirements, technical specification requirements, and s94 Plans will very likely vary, and Council will have limited ability to apply the contemporary requirements. This could result in significantly less requirements on the subject site than others developing in the release area over that period. It could also lead to future financial risk to Council. Therefore, it is preferred that subdivision approvals be released in realistic stages dependent on the availability of services and ability to efficiently service the land. The DCP process that Council has initiated over the whole of the release area will assist in defining the appropriate staging.

Stormwater Management

The subdivision site is located within an urban release area without a formal network of drainage easements or drainage reserves in place. The drainage strategy for the

subdivision site only addresses drainage within its own property boundaries, rather than analysing the complete catchment, integrating with adjoining development and considering the conveyance of water through to Sandy Creek. In the circumstances Council would insist on the acquisition of drainage easements over adjoining land by the respective landowners. The reasons for this are:

- There will be an increase in the volume of runoff, even assuming that the rainwater tanks and re-use scheme is implemented and maintained as proposed over time.
- There has been no analysis of the conveyance capacity or stability of the systems through to Sandy Creek. Should works be later required as a result of upstream development the Council has limited capacity to deal with these matters.
- The applicant has not proposed suitable water quality controls and so it is anticipated that these downstream watercourses could be impacted over time from the nutrients, weeds and sediment and require intervention as a result.

The current subdivision application has not provided sufficient information to confirm that easements can be negotiated. The applicant also proposes a basin on land above the application site, so it is critical to have this covered by any consent and to be covered by suitable easements as well.

The strategy consists of multiple detention basins (7), all designed for water quantity management only. The matter of water quality is not discussed. The so called 'natural second order ephemeral stream' is in fact a barren area with very poor soils and little topsoil. The drain may look well vegetated now but, most of it is grass. In drought times much of that will die back and the more frequent runoff from the urbanised development will be polluted with silt, rubbish and nutrients. That combined with the introduction of many non-native plants will quickly reduce the stream to a weed and exotic plant infested drain. All the basins therefore need to be designed properly as part of an integrated treatment chain, and built in a way that protects the stream. The proposal calls for the three largest basins to be built 'on-line' in the stream (one on property outside the lots subject to the DA). That not only will generate significant works in stream, but also makes it more difficult to say that it is 'natural'. It would be preferable for the degraded nature of the watercourses to be recognised and that the strategy aim at rebuilding a well vegetated stable riparian area with suitable limited artificial works in-stream.

The proposed drainage reserve and associated detention basins are likely to present an unsustainable maintenance burden on Council.

Traffic Management and Walk and Cycle Plans

The proposal does not properly take into account Council's adopted West Denman Traffic Study, nor the Walk and Cycle Plan for Denman. The Traffic Assessment submitted with the subdivision application is limited to only considering the traffic generated by the proposed subdivision and does not address traffic generation impacts and upgrades for the whole of the release area in a coordinated manner. A subdivision of this size needs to link fully to the village in a planned manner, and mitigate any impacts generated elsewhere in the network. The DCP that Council has initiated will assist in clarifying these issues.

Grey Gum Rd was not planned, nor constructed to be a distributor road for the release area. The planned distributor road is Almond Street. The development will ultimately link to Grey Gum Rd, but Almond Street needs to be the primary route. It also must be constructed to an appropriate standard to cater for the generated traffic and

also the heavy vehicle loads associated with the development of the site and the subsequent land use.

In accordance the West Denman Traffic study, the development will need to construct off site intersection works and also the emergency vehicle access through to the Golden Highway to the north. Given the size of the development, and their desire to go ahead of the DCP, they should accept responsibility to fund and construct any infrastructure required. Trigger points for construction need to be determined, but they will not rely on the release area as a whole. Similarly, the Walk and Cycle Plan should be developed for the whole site and provide for the connection to the rest of the planned network.

The issue of impacts to the existing rail crossings at Olgivie and Kenilworth Streets, whether any upgrades of the crossings are required to meet relevant Australian standards for level crossings, the costs associated with any required work and who ultimately pays, have not been satisfactorily resolved as part of this subdivision application. It is noted that the ACLAM assessment requested by the ARTC to enable consideration of this issue has not been completed.

Voluntary Planning Agreement

The VPA offered as part of the application should not rely on the previous very preliminary outdated estimates; but rather be linked to a requirement to develop designs and estimates and have the estimates verified by a Quantity Surveyor; and any land acquisition matters to be fully identified and valued by a Registered Valuer prior to agreeing on any actual dollar figures in the VPA.

Open Space

Council would prefer one local park only and that should be of a suitable size and configuration to cater for the whole area. The park proposed in Stage 9 should be deleted and the one in the general vicinity of Stage 3 and Stage 7 should be made larger and deigned to have ready direct exposure to Almond Street. This should not be located in the riparian area of the watercourse, but rather on land improved for the use.

Water and Waste

Council has a Sewer and Water Servicing Strategy for the West Denman Urban Release Area which includes servicing arrangements for the proposed subdivision site.

Water Reticulation

This subdivision site area is not serviced with a trunk main at present. The capacity of existing DN 100 reticulation main is not sufficient to service any development beyond the end of Grey Gum Road. Council's strategy for water servicing has identified the need for a separate trunk main of 250 mm dia. approximately 1.2kms in length from a location close to reservoir to the end of Grey Gum Road. The reticulation system for the subdivision could then be connected to this main and looped back to the existing DN 100 reticulation main at the end of Almond Street. The Developer has to design, negotiate/establish necessary easements and construct this main to the satisfaction of the Manager, Water and Waste in order to provide the required reticulation system for the proposed subdivision development. At this stage insufficient information has been provided to confirm adequate water servicing arrangements.

Sewer Reticulation

The existing sewer transport system is inadequate to cope with any development from the West Denman Release Area including the subject development. Therefore, Council's sewer strategy is to provide a new carrier main from West Denman (located on private land adjoining the subdivision site) to the Sewer Pumping Station 1 located on Babington Road. The developer is required to design, negotiate/establish easements and construct the carrier main in order to drain sewage from new development into council's system. At this stage insufficient information has been provided to confirm adequate water servicing arrangements.

Environmental Services

The development of the stormwater detention basins will have adverse environmental impacts on the sensitive drainage catchments and these impacts have not been adequately considered in the ecological assessment.

6. Section 79C Considerations

(a)(i) the provisions of any environmental planning instrument

Muswellbrook Local Environmental Plan 2009

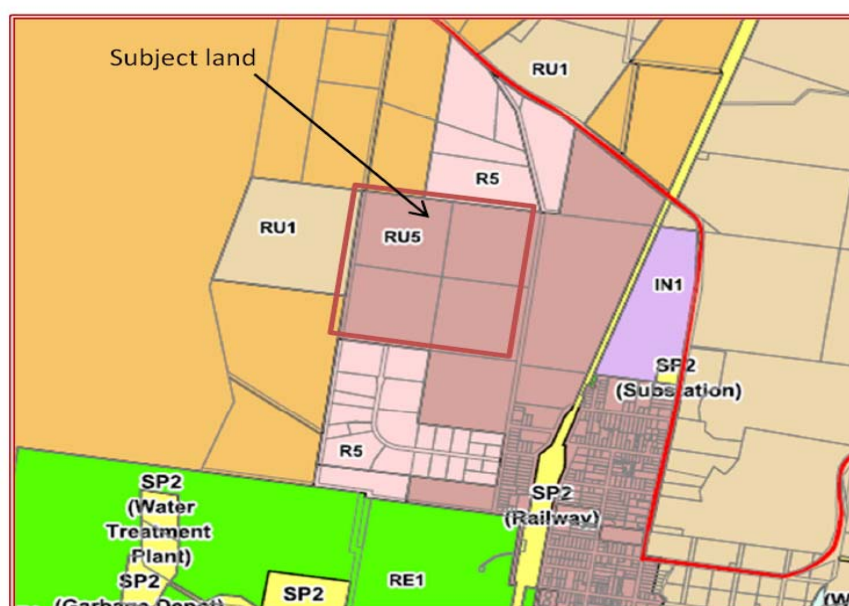
The subject land is zoned RU5 Village under the provisions of Muswellbrook Local Environmental Plan 2009 (MLEP) and the proposed development is permissible with consent. The development of land within the West Denman Urban Release Area is consistent with the zone objectives:

Zone RU5 Village

1 Objectives of zone

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To allow more flexibility in the development of the town of Denman and village of Sandy .*
- *To allow for future development of residential, commercial or low-impact land use within the town of Denman and village of Sandy Hollow.*
- *To ensure that non-residential uses do not result in adverse amenity impacts on residential premises.*
- *To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.*

Figure 4 – Zoning Plan



Part 4 Principal Development Standards

4.1 Minimum Subdivision lot Size

Development Standard	Requirement	Proposal	Compliance
Minimum Lot Size	750m ²	773m ² – 2.8ha	Yes

Comment: All lots within the proposed subdivision are greater than 750m² and satisfy the minimum subdivision lot size.

Part 6 Urban release areas

The urban release area clauses 6.1 through 6.4 are used as part of a 'package' of clauses in the standard instrument to ensure that adequate arrangements are made for the logical development of land and the provision of social and physical infrastructure.

Clause 6.1

The objective of clause 6.1 is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.

Subclause (2) states that :

Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.

Sub-clause (3) is not applicable to this development application and the West Denman Urban Release Area is not land in a special contributions area as defined by section 93C of the Act.

Comment:

Prior to the subject land becoming part of the West Denman Urban Release Area the land was zoned Rural 1(a) under the provisions of Muswellbrook Local Environmental Plan 1985 and the minimum lot size was 40 hectares. At the time of writing this report the Director-General had not certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure and in the absence of that certification, a literal interpretation of sub-clause (2) precludes the Joint Regional Planning Panel from granting consent to the Development Application.

To provide assistance to Council, the Department of Planning & Infrastructure agreed to undertake the necessary consultation with the relevant state agencies to determine the State public infrastructure requirements. At this stage the Department has advised that responses have not been received or properly considered from all the relevant agencies.

The NSW Ambulance Service has indicated that they would like to explore the potential establishment of an ambulance facility as a joint or stand alone venture. However, if an ambulance station is to be located within Denman at some point in the future, it would be preferable to locate the station within or close to the existing Denman town centre, rather than the West Denman Urban Release Area.

Clause 6.2

In accordance with the provisions of clause 6.2: Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required. However, clause 6.2 does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

Comment:

Assessment of the development application has identified concerns with the proposed management of stormwater. The failure to obtain drainage easements over downstream properties raises the concern whether drainage infrastructure can be provided when required to service the proposed development. The applicant's position that the requirement for downstream drainage easements be a "deferred commencement" condition is not supported, because there is no certainty in imposing such a condition that the applicant could obtain the required easements over land that does not form part of this development application.

Council's Department of Water and Waste do not believe that the level of information submitted with the development application is sufficient to be satisfied that the development can be adequately serviced with water and sewer infrastructure.

Clause 6.3

The objective of clause 6.3 is "to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land. In accordance with the provisions of sub-clause (2) development consent must not be granted for development on land in the West Denman Urban Release Area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.

Subclause (3) requires that the development control plan must provide for all of the following:

- (a) a staging plan for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing,*
- (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
- (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
- (d) a network of passive and active recreational areas,*
- (e) stormwater and water quality management controls,*
- (f) amelioration of natural and environmental hazards, including bushfire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*
- (g) detailed urban design controls for significant development sites,*
- (h) measures to encourage higher density living around transport, open space and service nodes,*
- (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
- (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*

Sub-clause (4) is not considered to be relevant to this development application.

Comment:

The applicant submitted a draft development control plan to Council for consideration on 29 March 2011 in accordance with section 74D(3) of the Environmental Planning and Assessment Act 1979 (the Act). The applicant subsequently relied on section 74D(5)(a) of the Act to submit a development application, notwithstanding that a development control plan has not been prepared for the site.

A co-ordinated approach to the development of the land is essential to overcome the multiple ownership of the land and will be critical to the logical and efficient development of the release area. Furthermore, the spatial size of the urban release and relatively low development rates (approximately 10-20 lots per year), means that it is likely to take several decades to develop the land and accordingly the sequencing or staging of development is fundamental to ensure efficient and cost effective development. Proper and well planned staging allows for the efficient provision of new infrastructure and services and seeks to avoid inefficient leapfrogging of development. In this instance it would be a poor planning outcome to allow the subdivision to occur without proper consideration for the most appropriate staging of the total release area. A staging plan should be developed and adopted by Council through the preparation of the DCP, and be adhered to in order to achieve the objectives of ecologically sustainable development and the orderly and economic provision of services. Where development proposals seek to extend infrastructure through undeveloped land, the associated costs should be the responsibility of and at the cost of the developer.

In this instance it is considered that the development application has not adequately addressed the issue of the logical sequencing of development within the urban release area and has not undertaken a detailed analysis of the cost, both to the developer and the Council, of having to leapfrog infrastructure through undeveloped land.

In summary it is considered premature to allow the development of land within the release area, in the absence of a logical and cost effective staging plan which is being developed as part of the Council Development Control Plan and due to be finalised in October 2011.

7.1 Environmentally sensitive land—biodiversity

1. *The objective of this clause is to protect, maintain and improve the diversity of landscapes, including:*
 - (a) *protecting the biological diversity of native fauna and flora, and*
 - (b) *protecting ecological processes necessary for their continued existence, and*
 - (c) *encouraging the recovery of threatened species, communities and populations and their habitats.*
2. *This clause applies to land identified as “environmentally sensitive land—biodiversity” on the Environmentally Sensitive Land Map.*
3. *Development consent must not be granted for development on environmentally sensitive land—biodiversity unless the consent authority is satisfied that the*
4. *development satisfies the objective of this clause and:*
 - (a) *the development is designed and will be located and managed to avoid any potential adverse environmental impact, or*
 - (b) *if a potential adverse environmental impact cannot be avoided, the development:*
 - (i) *is designed and located so as to have minimum adverse impact, and*
 - (ii) *incorporates effective measures to remedy or mitigate any adverse impact caused*

Comment: Part of Lot 119 DP 750924 is classified as containing environmentally sensitive land. The proposed subdivision layout is not likely to have a significant impact in this regard.

State Environmental Planning Policy (Major Development) 2005 (SEPP)

State Environmental Planning Policy (Major Development) 2005 applies to the proposed development pursuant to Clause 13B(1)(f) of the SEPP. In accordance with clause 13F of the SEPP, the Joint Regional Planning Panel is the consent authority for development involving the subdivision of land into more than 250 lots.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

An Ecological Assessment was undertaken by the applicants consultant and it was concluded that the site was not potential or core Koala Habitat. Council has no records of any Koala population within the site or immediate vicinity and no further assessment was considered necessary.

State Environmental Planning Policy No. 55 – Remediation of Land

The use of the land both historically and in recent years is unlikely to have resulted in any ground or water contamination concerns. A visual assessment has noted the absence of any structures or land uses presenting a risk of contamination. The site is not identified on Council's Contaminated Land Register and no further assessment was considered necessary.

State Environmental Planning Policy (Infrastructure) 2007 (SEPP)

The development is classed as traffic generating development pursuant to Clause 104 of the SEPP. As required by this clause the application was referred to the Roads and Traffic Authority (RTA) and Australian Rail Track Corporation (ARTC).

The RTA provided their conditions of consent which require developer funded upgrades to intersections with the Golden Highway. The RTA also requested satisfactory arrangements to be met for state public infrastructure and consideration for agreement to be reached between the developer and the RTA for contributions towards infrastructure. At this stage the applicant has not explained what agreement if any, has been reached with the RTA for the funding of infrastructure.

The ARTC provided the following comments:

In accordance with clause 5.14.1 of the Department of Planning Guidelines and Infrastructure SEPP requirements (refer clause 84): "Where a development involves a new level crossing, the conversion of a private access road across a level crossing into a public road or where the development is likely to significantly increase the total number of vehicles or number of trucks using a level crossing in the vicinity of the development, the Infrastructure SEPP requires that a consent authority must take into consideration:

- The implications for traffic safety including the costs of ensuring an appropriate level of safety having regard to the existing traffic characteristics and any likely change in traffic affecting the crossing as a result of the development, and*
- The feasibility of alternative means of access to the development that does not involve use of level crossings and,*
- Any comments received from the CEO of the rail authority on the proposal.*

The consent authority must not grant consent for the development without the concurrence of the CEO of the rail authority. In determining whether to provide concurrence, the CEO of the rail authority must take into account:

- Any rail safety or operational issues associated with the aspects of the development, and*
- The implications of the development for traffic safety including the cost of ensuring an appropriate level of safety, having regard to existing traffic and any likely change in traffic at level crossings as a result of the development.*

The ALCALM assessment provides the rail authority and the Level Crossing Strategy Council with the required information to adequately assess the impact on the crossing, namely the Golden Highway, Kenilworth Street and Ogilvie Street, as there may be additional treatment and/or additional protection identified for these sites, accordingly please arrange for the attached ALCALM assessment to be completed by the applicant utilising traffic estimates.

Until such time as ARTC has received the ALCALM assessment we cannot provide a final response therefore I am requesting that the determination of the application be deferred pending CEO approval.

Further correspondence was received from ARTC dated 12 September in terms of the following:

It should be noted that any future upgrades to the Kenilworth and Ogilvie Street railway crossings (or any other railway crossings for access to the development site) will have to be funded by either the developer or council as ARTC and the Level Crossing Improvement Program (LCIP) will not fund upgrades due to subdivision of land.

In relation to the ACLAM assessment, the applicant has advised Council that *“arrangements have been put in place for the assessment to be undertaken”*. However, at the time of finalising this report, no ACLAM assessment has been submitted for consideration and no discussions have been entered into between Council and the developer on the likelihood of funding arrangements for upgrades to railway crossings.

(a)(ii) the provisions of any draft environmental planning instrument

There are no draft environmental planning instruments applying to the site.

(a)(iii) any development control plans

Muswellbrook DCP 2009 applies to the development with specific reference to Sections 5 – Subdivision and Section 7 – Village Zones, Section 20 – Erosion and Sediment Control and Section 25 – Stormwater Management.

Generally speaking the proposed subdivision complies with Council's requirements in terms of satisfying the relevant design standards contained in Section 5 and 7 of the DCP, with the exception of stormwater management and the failure to properly address the total stormwater catchment and requirement for easements over adjoining properties. The availability and extension of water and sewer and traffic services to the subdivision site has also not been satisfactorily addressed in the development application.

Draft Development Control Plan

At the time of lodgement of the development application, Council had made a commitment to the preparation of a development control plan (DCP) over the whole of the release area, however no document has been placed on public exhibition. At this stage it is expected that the Draft DCP will be available for exhibition mid October 2011.

(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

The applicant has offered \$17,500 per lot as a *“figure to generate further negotiation in respect of the VPA”*

The proposal by the applicant is not based upon any thorough analysis of infrastructure costs, evidenced by the figure of \$17,500 per lot being offered as a starting point for negotiation.

Despite clause 6.2 of Muswellbrook LEP 2009 not applying to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure, given the size of the urban release area, the likely extended timeframe for its development and the need for a significant extension of reticulated water and sewerage infrastructure to support the proposed development, the funding of that infrastructure, whether by a section 94 or a voluntary planning agreement should be resolved prior to determination of the development application for subdivision of the land.

(a)(iv) any matters prescribed by the regulations

There are no matters prescribed by the regulations that are specifically relevant.

(b) the likely impacts of the development

Council sought advice from the Office of Environment and Heritage in relation to the environmental impacts of the development.

After reviewing the Aboriginal Heritage Due Diligence Assessment submitted with the application, OEH considered that additional cultural heritage information was required prior to providing support for the project application. OEH concluded that: *“Additional investigations should be undertaken in accordance with OEH’s “Code of Practice for the Archaeological Investigations of Aboriginal Objects in NSW”*. It is noted that the applicant disagrees that any further investigations are required at this stage and believe that their assessment satisfies the relevant guidelines, when the reports were commissioned and subsequently completed.

Concerns were also raised by OEH in relation to the threatened species assessment submitted with the development application, particularly in regard to the lack of proper survey work to identify the existence of Pine Donkey Orchard (*Diuris tricolour*). The applicant was given an opportunity to respond and Council received an email from the applicant on the 16 September 2011, advising that a further targeted search had been undertaken and no species of *diuris tricolour* were found on the site.

Having considered the Aboriginal Heritage Due Diligence Assessment and Ecological Assessment and supplementary information, it is reasonable to conclude that the proposal will not have a significant impact on Aboriginal Cultural Heritage or threatened species population, ecological community or its habitat as listed under the Threatened Species Conservation Act 1995.

Generally speaking the social and economic impacts resulting from the new supply of residential land in Denman will be positive and the economic activity from housing construction will also have a positive effect. However the concern with the proposed development is that in the absence of a comprehensive DCP to clarify the appropriate staging of release areas, the provision of service and the funding arrangements for infrastructure, the development may not provide for the most cost efficient, orderly and proper development of the land.

(c) the suitability of the site for development

The subdivision site was zoned RU5 pursuant to MLEP 2009 to permit residential subdivision and housing and it is considered suitable for the proposed development.

However, it was always intended that no development would occur until such time as a comprehensive DCP had been prepared over the whole of the release area. In the absence of a DCP it is considered that approval of the subdivision would be neither prudent nor appropriate.

(d) any submissions made in accordance with this Act or the Regulations

Eight (8) public submissions were received in relation to the application. The issues associated with the key concerns have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

(e) the public interest

The Council has made a genuine commitment to progress the development of the West Denman Urban Release area by preparing a DCP within a definite timeframe. This approach is good planning practice and has been generally supported by the affected landowners and is in the public interest

In the absence of a DCP and a staging plan, there is significant risk that the proposed development could constrain the proper development of land, that would have allowed for the logical and cost effective extension of public infrastructure to service the whole of the West Denman release area. This would be an adverse outcome for Council and not in the public interest.

7. Conclusion

The application pre-empts the outcomes of a proper strategic planning process which has commenced and will be completed shortly. It is considered that the development of the land in the absence of a comprehensive DCP places an unreasonable level of risk on Council and is contrary to the objects of the Environmental Planning and Assessment Act 1979, which aims to provide for the orderly and proper development of land.

The applicant was given the opportunity of withdrawing the application or having the matter deferred subject to the completion of the DCP. However the applicant chose to have the matter determined and it is considered that insufficient information has been submitted to resolve all of the outstanding issues and allow a full and proper assessment of the development.

8. Recommendation

RECOMMENDATION

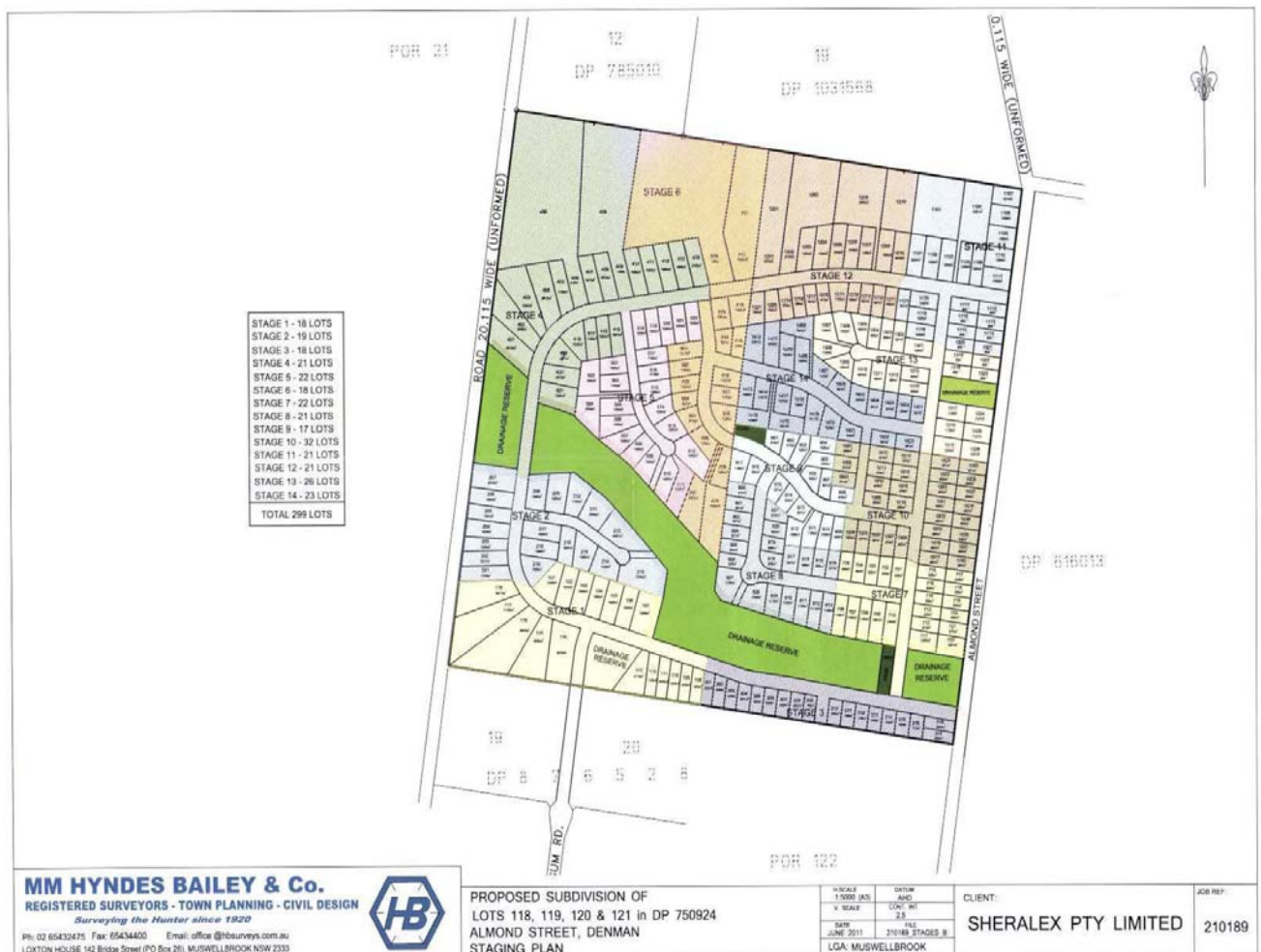
The Joint Regional Planning Panel in its function of determining the development application refuse consent to Development Application No. 130/2011 for the proposed Residential Subdivision of four (4) lots into two hundred and ninety nine (299) Lots comprising 14 stages over Lots 118, 119, 120 & 121 DP 750924 Almond Street Denman for the following reasons:

1. Pursuant to Section 79C(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable a proper assessment of the development application in relation to:
 - (a) Stormwater Management including the requirement for easements over adjoining land.
 - (b) Provision of Water and Sewer Services including the requirement for easements over adjoining land.
 - (c) Assessment of traffic impacts on railway crossings.
 - (d) Funding arrangements for provision of necessary infrastructure.
2. Pursuant to Section 79C1(a)(i) of the Environmental Planning and Assessment Act 1979, and clause 6.1(2) the Director-General had not certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure and in the absence of that certification, sub-clause (2) prohibits the Joint Regional Planning Panel from granting consent to the Development Application.
3. Pursuant to Section 79C1(a)(iii) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with clauses 25.2.4 and 25.5 of Muswellbrook Shire Development Control Plan Section 25, in relation to Stormwater Management.

4. Having regard to the above reasons for refusal, the proposal is contrary to the objects of the Environmental Planning and Assessment Act 1979 as specified in Part 1, Section 5(a), which provides for the orderly and proper development of land and ecologically sustainable development.

5. Pursuant to Section 79C(e) of the Environmental Planning and Assessment Act 1979, approval of the development prior to completion of a comprehensive DCP over the whole of the release area would not be in the public interest.

APPENDIX A – Plan of Subdivision



APPENDIX B – External Referrals

Department /Agency	Reason for Referral	Response received	Comments
NSW Rural Fire Service	Integrated Development under S100B of the Rural Fires Act	S100B issued with conditions of consent	Standard conditions recommended for water and utilities, access and Asset Protection zones in accordance with PBPG.
Office of Water NOW	Integrated referral under Water Management Act	General Terms of Approval issued for the development.	Standard conditions recommended.
Mine Subsidence Board	Integrated referral under Mine Subsidence Compensation Act	Awaiting final comments from the Mine Subsidence Board.	At the time of finalising the Assessment Report, the Mine Subsidence Board had not provided their concurrence to the development application, although Council were advised verbally, that a response would be received prior to the application being considered by the JRPP. This matter will be addressed in a supplementary report to the JRPP.
Roads and Traffic Authority RTA	Referral under SEPP Infrastructure	No objection to proposal subject to conditions regarding intersection upgrades and agreement on funding arrangements between developer and RTA.	At this stage the applicant has not explained what agreement if any, has been reached with the RTA for the funding of infrastructure.
Australian Rail Track Corporation ARTC	Referral under SEPP Infrastructure and as adjoining landowner and in consideration of impacts on 2 existing rail crossings	Request for further traffic assessment on impacts of subdivision on rail crossings – ACLAM assessment. Request for deferral of any approvals until assessment completed and considered. Standard conditions	Applicant has advised that <i>arrangements in place</i> for ACLAM assessment – however no assessment has been submitted to Council. No discussion entered into between Council and the applicant regarding likely funding arrangements for upgrade to railway crossings.

		recommended in relation to noise attenuation and stormwater management.	
Office of Environment and Heritage	Advisory referral in relation to Flora and Fauna impact assessment and Aboriginal Cultural Heritage Assessment	Review undertaken of Aboriginal Cultural Heritage Assessment but it was considered that “ <i>additional cultural heritage information essential, prior to providing support for the project application</i> ”. Further information requested in relation to ecological assessment.	Supplementary information submitted by the applicant adequately addresses concerns regarding ecological assessment.
Dept of Planning & Infrastructure DOPI	Advisory referral in relation to Part 6 MLEP 2009 and State infrastructure requirements	Department consulting with government agencies to determine requirements for state infrastructure.	Consultation is continuing. At the time of writing this report the Director-General had not certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.
Catchment Management Authority CMA	Advisory referral in relation to vegetation impacts	No response received.	Any issues likely arising have been addressed.
Wanaruah	Advisory referral	No response received from Wanaruah LACL. OEH raised some minor concerns with the Aboriginal Heritage Due Diligence Assessment in terms of compliance with the recently released EOH assessment guidelines.	A Due Diligence Assessment was undertaken. All future development applications will be required to undertake an Assessment in accordance with the new guidelines released by OEH.