

<b>JRPP No:</b>	2011NTH014
<b>DA No:</b>	DA10-0128
<b>PROPOSED DEVELOPMENT:</b>	Application for section 96(1A) modification for demolition of existing buildings and erection of nine temporary modular buildings & ancillary works
<b>APPLICANT:</b>	Caldis Cook Group, Level 2, 45 Chippen Street, CHIPPENDALE NSW 2008
<b>REPORT BY:</b>	Murray Amos, Senior Strategic / Development Officer, Moree Plains Shire Council

## **Assessment Report and Recommendation**

### **SUMMARY:**

Development Application No. DA10-0128 for demolition of existing buildings and erection of nine temporary modular buildings & ancillary works on Lot 1 DP 631314 & Lot 1 DP 665969, 60-68 Frome Street, Moree was approved by Council on 3<sup>rd</sup> December 2010.

The Development Application comprises Crown Development.

The proposed Section 96(1A) modification has been referred to the JRPP under clause 89(2) of the EP&A Act 1979. The applicant proposes to delete Condition number 14 of Council's consent which requires payment of Section 94A levies.

This application has been assessed in accordance with Section 79(c)(1) of the Environmental Planning & Assessment Act 1979.

### **RECOMMENDATION:**

**That the proposed Modification under Section 94(1A) be Refused for reasons outlined in this report.**

## **REPORT**

### **BACKGROUND:**

The purpose of this report is to seek a decision from Council on a proposed Section 96(1A) modification of DA10-0128 for the demolition of existing buildings and erection of nine temporary modular buildings & ancillary works on Lot 1 DP 631314 & Lot 1 DP 665969, 60-68 Frome Street, Moree. This Development Application was approved by Council on 3<sup>rd</sup> December 2010.

The subject allotment is zoned 3 Business under Moree Plains Local Environmental Plan 1995 (LEP).

A locality plan is attached as **Appendix 'A'**, the approved plans as **Appendix 'B'**, the approved Statement of Environmental Effects as **Appendix 'C'**, a letter from United Group

as **Appendix 'D'**, email from Paul Di Donato of Caldis Cook Group as **Appendix 'E'**, Council's original consent as **Appendix 'F'** and the Section 96 form as **Appendix 'G'**.

Council's consent for DA10-0128 includes a condition to require payment of Section 94A levies in accordance with Council's Section 94A Developer Contributions Plan (Attached as **Appendix 'H'**).

### **Applicant and Owner**

The applicant is Caldis Cook Group and the owner is the State Property Authority & NSW Police.

## **PLANNING CONSIDERATIONS**

Consideration has been given to the range of planning matters as prescribed by Section 79(c) of the Environmental Planning and Assessment Act 1979 with those requiring the consideration of the Council reported below.

## **LOCAL ENVIRONMENTAL PLAN**

### **Moree Plains Local Environmental Plan 1995**

The proposed site is zoned 3 Business under Moree Plains Local Environmental Plan 1995.

The proposed redevelopment is permissible within the 3 Business zone with Council consent.

### **Zone Objectives – Zone 3 Business**

The objectives of the zone are:

- (a) to encourage the development and expansion of business activities which will contribute to economic growth and employment opportunities within the area;  
**The proposal is a redevelopment of the Moree Police Station site and is considered to comply with this objective.**
- (b) to facilitate the establishment of retail, commercial and professional services to meet the needs of the community and which are compatible with the surrounding environment;  
**The proposal will provide a suitable police facility for the town of Moree.**
- (c) to maintain and enhance the role of the Moree town centre as the major centre for retail, commercial and professional services for the area and for associated uses;  
**The proposal represents an upgrade to the existing police facility and is considered to comply with this objective.**
- (d) to provide office employment in locations close to other town centre facilities including Government offices and community services;  
**The development site is located close to town centre facilities.**

- (e) to provide low intensity retail, commercial and tourist activities on the fringe of the town centre of Moree which will not prejudice the commercial viability of the core retail localities in the town of Moree;  
**This objective is not relevant to the proposal.**
- (f) to provide neighbourhood business centres meeting the day to day needs of surrounding residential precincts;  
**This objective is not relevant to the proposal.**
- (g) to provide non-commercial development where such development is compatible with the commercial character of the locality;  
**It is considered that the proposed development is compatible with the character of the locality.**
- (h) to provide carparking to meet the needs of commercial areas;  
**The proposal complies with Council's DCP 2008 in relation to car parking requirements.**
- (i) to provide for development that maintains the town character of Moree and Mungindi and is in sympathy with existing development in terms of the following:
  - (i) setbacks
  - (ii) building bulk and scale
  - (iii) visual amenity
  - (iv) heritage significance
  - (v) townscape and streetscape character
  - (vi) existing service infrastructure
  - (vii) land capabilities.**The proposal is sympathetic to existing development and would contribute to the town character of Moree.**

## **Draft Moree Plains Local Environmental Plan 2010**

Council is obligated to consider the proposal in relation to Draft LEP 2010.

Under Draft LEP 2010 the subject site is zoned B3 Commercial Core.

The proposed redevelopment is permissible in the B3 Commercial Core zone with Council consent.

### **Zone Objectives – Zone B3 Commercial Core**

The objectives of the zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.  
**The proposed redevelopment will provide improvements to an existing police facility.**
- To encourage appropriate employment opportunities in accessible locations.  
**The proposed site is close to Moree's CBD and is readily accessible.**

- To maximise public transport patronage and encourage walking and cycling.  
**The proposed site is in an accessible location.**
- To maintain and enhance the role of the Moree town centre as the major centre for retail, commercial, administrative, service, cultural and professional services for the region.  
**The proposal is considered to enhance the role of Moree town centre as the administrative centre for police within the shire.**
- To encourage core retail uses in the central CBD, and the facilitation of supporting uses as close as practicable to the CBD.  
**The proposed site is suitably located close to the CBD.**
- To provide for non-commercial development in conjunction with commercial and retail development where such development is compatible with the commercial and retail development and the character of the locality.  
**It is considered that the proposal would be compatible with existing development in the area.**
- To recognise and protect the art deco character of the Moree CBD.  
**The proposal is considered to be sympathetic to Moree's Heritage Conservation Area, which is located adjacent.**

In summary, the proposal is consistent with the provisions of Draft Moree Local Environmental Plan 2010.

## DEVELOPMENT CONTROL PLAN

### Moree Plains Shire Council DCP 2008

#### Chapter 5 – Moree & Environs Flood Plain Development & Management

The proposed site is located on flood-prone land according to this chapter.

The building floor height is required to be minimum 150mm above the 1% Annual Exceedance Probability event, which is a level of 209.25AHD. The proposed floor height is 210.50 AHD which is compliant with the requirements of this chapter.

## DISCUSSION

Council's Section 94A Development Contributions Plan was adopted on 5<sup>th</sup> May 2006. The Plan *'applies to applications for development consent and applications for complying development certificates to be made by or under Part 4 of the Environmental Planning and Assessment Act, 1979 (Act) in respect of development on land to which the Plan applies.'*

### **1.8 Council may require payment of the levy as a condition of development consent**

*Subject to any direction of the Minister under section 94E of the Act which is in force from time to time, this Plan authorizes the Council to grant consent to development to which this Plan applies subject to a condition requiring the applicant to pay to the Council a levy of 1% of the proposed cost of carrying out the development, provided that the Council does not also impose on the consent a condition pursuant to section 94 of the Act.*

A draft consent was provided to the applicant on 22<sup>nd</sup> November 2011 in accordance with clause 89 of the EP&A Act 1979. The draft consent includes a requirement for payment of Section 94A levies in Condition number 14. The applicant's response is provided as **Appendix 'D'** and requests, among other things, that Condition number 14 be removed from the consent. The applicant claims that requesting NSW Police to provide a Section 94 contribution is precluded by the EP&A Act and is unenforceable by Council.

Council's Section 94A Development Contributions Plan addresses exemptions as follows:

**1.11 Are there any exemptions from the levy authorised by this Plan?**

*Council may exempt the following kinds of developments from the levy authorised to be imposed under this Plan:*

*-a development by a registered charity, community organisation or service club that will, in the opinion of the Council, provide a material public benefit to the Moree community.*

*For such claims to be considered, any such development will need to include a comprehensive submission arguing the case for an exemption and include details of the mechanism ensuring that such development is, and will remain in the form proposed.*

Crown development is not identified as being exempt from Section 94A levies under this Plan. As there are no potential exemptions for Crown development Council staff are obligated to apply the levy in accordance with the Plan. Further, Council staff do not consider that there is any legislation which specifically prohibits the use of Section 94A for Crown developments. This matter has been discussed with the Tamworth branch of the Department of Planning and they have concurred that Section 94A can legally be applied to Crown developments. As a result Council staff remain of the view that Condition number 14 should remain part of the consent.

The applicant was advised that the matter of removing or otherwise of Condition number 14 from the consent would need to be determined by a JRPP. The applicant advised Council staff that works for the development were required to commence as soon as possible to meet construction deadlines and that delaying the approval for JRPP review of the matter was not ideal.

Following discussions between the applicant and Council staff, the applicant undertook to provisionally accept Council's draft conditions to allow the issue of a consent. The applicant accepted the draft conditions noting that the requirement for Section 94A were not supported (see **Appendix 'E'**). The rationale behind this was that a Section 96 application would be lodged at a later date to remove Condition number 14 without holding up construction works.

## **CONCLUSION**

Council staff consider that Section 94A levies should apply to the proposal in the absence of specific exemptions for Crown development. As a result it is considered that Condition number 14 should remain as part of Council's consent.