

Regional panel reference No.	2013SYW092
DA No.	010.2012.0000052.001
Proposed development	Subdivision of two lots into three lots
Applicant	Brookfield Johnson Controls on behalf of NSW Police Force
Report by	Regional Panels Secretariat
Report date	8 November 2013

Crown DA Summary Report

This Crown development application (DA) has been referred to the Sydney West Joint Regional Planning Panel (regional panel) under section 89 of the *Environmental Planning and Assessment Act, 1979* (EP&A Act).

The applicant is taken to be the Crown for the purposes of Part 4, Division 4, of the EP&A Act, as it is a public authority (not being a council).

Section 89(1)(b) of the EP&A Act states that a consent authority must not impose a condition on its consent to a Crown DA, except with the approval of the applicant or the Minister. In this case, Wollondilly council has resolved to impose a condition on the DA which the applicant does not approve of.

If the regional panel does not determine the DA within 50 days, the DA may be referred to the Minister for Planning and Infrastructure for determination.

1. EXECUTIVE SUMMARY AND BACKGROUND

On 17 October 2012, UGL Services on behalf of NSW Police Force (proponent) lodged the DA with Wollondilly Council (council) which proposes subdivision of two lots into three lots. On 1 July 2013, Brookfield Johnson Controls took over the management services contract from UGL Services and subsequently assumed responsibility for the DA on behalf of NSW Police Force.

On 15 May 2013, council wrote to the proponent advising that council recommended that the DA be approved subject to conditions. The draft conditions of consent included the provision of a right-of-carriageway over the proposed Lot 2 to the rear of proposed Lot 3.

On 24 June 2013, the proponent advised council in writing that they were not agreeable to condition 2(2) which provided for the right-of-carriageway, and would like this condition to be omitted.

On 18 July 2013, council responded to the proponent advising that the only way condition 2(2) would be omitted is if the proponent submitted an amended plan providing alternate access provisions. However, council's traffic engineers were not in support of this.

No amended plan has been submitted by the proponent. Council maintains alternative access provisions from Argyle Street would have unreasonable impact on traffic flows. The proponent maintains the right-of-carriageway in unnecessary as the proposed Lot 3 already has existing access off of Argyle Street with a driveway, and the right-of-carriageway would have a negative impact on the development potential of proposed Lot 2.

The applicable planning controls are the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Wollondilly Local Environmental Plan 2011* (LEP) and the *Wollondilly Development Control Plan 2011* (DCP).

Council has prepared an assessment report for the panels consideration which concludes that the DA be approved subject to the conditions as proposed in the report (see **Attachment: Council Assessment Report**).

The proponent has provided comment on the report which responds to the reasons for refusal within the assessment report (see **Attachment: Proponent Response to Council Assessment Report**).

2. SITE DESCRIPTION AND PROPOSED DEVELOPMENT

The site is located at the corner of Margaret and Argyle Streets, known as 82-86 Argyle Street, Picton. The formal description of the site is Lot 1 DP 829645 and Lot 2 DP 212204. Refer to **Figure 1** below.

Refer to council's assessment report (see **Attachment: Council Assessment Report**) for a full description of the site and surrounding locality and a description of the proposal.



Figure 1 – Site 1 Location
Source: Six Maps, NSW Land & Property Information

3. VIEWS OF COUNCIL

An assessment of the application has been undertaken in accordance with the provisions of the EP&A Act and all matters specified under section 79C(1).

The views of council assessment staff are summarised below.

3.1 Council - Assessment Report

The council assessment report recommended the application be approved subject to the draft conditions of consent. This includes clause 2(2) which the proponent does not approve of:

2(2) A right-of-carriageway shall be provided over Proposed Lot 2 to the rear of Proposed Lot 3 to ensure the existing access to Margaret St can be retained.

Further, Clause 4(4) makes reference to 2(2) making it also a clause which the proponent does not approve of as it states:

4(4) A Section 88B Instrument shall be prepared which provides for Restrictions on the subject land in accordance with conditions 2(1) and 2(2) of this consent and shall also provide a restriction that Proposed Lot 3 shall not have direct vehicular access to Argyle Street.

The restriction shall also contain a provision that it may not be released, varied or modified without the consent of Council."

Council is of the view that this right-of-carriageway is necessary to create the new allotments as a current driveway from Margaret Street provides access through proposed Lot 2 to the rear of the proposed Lot 3. Though the proponent notes that there is no intention for future use of this driveway, council is of the opinion that access to proposed Lot 3 from Argyle Street only would have an unreasonable impact on the traffic flows in Argyle Street.

4. VIEWS OF THE PROPONENT

The proponent has responded to the council assessment report. The proponent notes that both access points on Margaret Street and Argyle Street have been in place since 1963.

The proponent is of the view that the right-of-carriageway is not necessary to create Lot 3 as it currently has established access from Argyle Street. Further, the right-of-carriageway would limit the development potential of proposed Lot 2 and almost certainly restrict any possibility of proposed Lots 1 and 2 being developed as one site should this ever be desired.

The proponent notes that an amended plan is not necessary for assessment as the current plan before council shows the concrete drive from Margaret Street to Proposed Lot 3 as an indication of its existence and not as an indication that Proposed Lot 3 would be serviced by it. With this in mind, any deletion of Clause 2(2) and references to it is not dependent on an amended plan.

The proponent is of the view that proposed Lot 3 causing unreasonable impact on traffic flows in Argyle Street due to the sole use of its Argyle Street driveway is immaterial as the driveway has been in existence and use since 1963. Continued use of the driveway should not be restricted as a condition of consent for this DA. Further detail is provided by the proponent in their letter dated 7 November 2013(see **Attachment: Proponent Response to Council Assessment Report**).

5. SUMMARY OF KEY ISSUES

Council is of the view that the right-of-carriageway across proposed Lot 2 is essential for the creation of proposed Lot 3. Council indicates sole access to proposed Lot 3 from Argyle Street would result in an unreasonable impact on the traffic flows in Argyle Street. Council requested an amended plan should the proponent wish for the deletion of clause 2(2) to be considered by council.

The proponent is of the view that the right-of-carriageway is not necessary as proposed Lot 3 has existing access from Argyle Street and there is no intention for future use of the existing driveway from Margaret Street. Further, the right-of-carriageway would limit the development potential of proposed Lot 2 and also create a constraint on proposed Lot 1. It would limit any possibility of future development of proposed Lots 1 and 2 together as one site and have a negative impact on the frontage to Margaret Street. The proponent indicates that an amended plan is not required for the deletion of Clause 2(2) and any references to it as the current plan submitted with the DA only indicates the existence of the driveway across proposed Lot 2 and does not indicate that it is intended for use.

6. CONCLUSION

Council has provided an assessment report to the regional panel recommending that the panel approve the DA subject to the draft conditions of consent.

The proponent has provided a detailed response to the council assessment report and the issues raised by council for proposing the right-of-carriageway. The proponent maintains its position that the DA is consistent with the applicable planning controls, that Clause 2(2) and any references to it are unnecessary and unwarranted.

Pursuant to section 89 of the EP&A Act, if the regional panel wishes to impose a condition that is not agreed to by the applicant, or to refuse consent, the regional panel must refer the DA to the Minister for Planning and Infrastructure. Should the applicant agree to the imposition of conditions the regional panel may proceed to determine the application without referral to the Minister.

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LIST OF ATTACHMENTS

- **Attachment: Council Assessment Report**
- **Attachment: Proponent Response to Council Assessment Report**
- **Attachment 1: Subdivision and Locality Plan**
- **Attachment 2: Subdivision Plan**
- **Attachment 3: Plan of Subdivision**
- **Attachment: Map**