

**JOINT REGIONAL PLANNING PANEL
(Southern Region)**

JRPP No	JRPP Reference Number – 2016STH004
DA Number	466-2015
Local Government Area	Queanbeyan-Palerang Regional Council
Proposed Development	Subdivision of Stage 2 of South Tralee creating 238 residential lots, 3 open space lots, 1 school lot, ancillary infrastructure and local services.
Street Address	360A Lanyon Road, Tralee NSW 2620
Applicant/Owner	Canberra Estates Consortium No. 4 / Village Building Company <u>Note:</u> Village Building Company is the project manager for Canberra Estates Consortium No. 4.
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	Pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979, the Capital Investment Value of the proposed development exceeds \$20 million and as such the determining authority is the Joint Regional Planning Panel (Southern Region).
List of All Relevant s79C(1)(a) Matters	<p>s79C(1)(a)(i):</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No 55 – Remediation of Land. • State Environmental Planning Policy (Infrastructure) 2007. • State Environmental Planning Policy (State and Regional Development) 2011. • State Environmental Planning Policy (Rural Lands) 2008 • Queanbeyan Local Environmental Plan (South Tralee) 2012 (as amended). • Queanbeyan Local Environmental Plan 1998 (as amended). <p>s79C(1)(a)(ii):</p> <ul style="list-style-type: none"> • None <p>79C(1)(a)(iii):</p> <ul style="list-style-type: none"> • Queanbeyan Development Control Plan 2012. • South Tralee Development Design Guidelines.

	<p>79C(1)(a)(iii):</p> <ul style="list-style-type: none"> • Draft South Tralee Local Voluntary Planning Agreement. <p>s79C(1)(a)(iv):</p> <ul style="list-style-type: none"> • None. <p>s79C(1)(a)(v):</p> <ul style="list-style-type: none"> • None.
Recommendation	Refusal
Report by	AQ Planning (Planning Consultant)
Council Co-ordinator	Jacinta Tonner, Planning Team Leader
Report date	22 March 2017

Assessment Report and Recommendation

Executive Summary

Development Application 466-2015 seeks approval to subdivide land for 238 new residential allotments at what is known as Stage 2, South Tralee identified as Stage 2 on the Staging Plan 257819.09-004 approved as part of the Urban Concept Release Development Application.

Pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979, the Capital Investment Value of the proposed development exceeds \$20 million and as such the determining authority is the Joint Regional Planning Panel (Southern Region).

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken.

The application is recommended to be refused as clauses 6.1 and 6.2 of Queanbeyan Local Environmental Plan (South Tralee) 2012 have not been met. The proposed development is not in the public interest in accordance with Section 79 (C) (1)(e) to approve in its current form as it will not facilitate the development of an urban release area in a manner that is in accordance with the relevant statutory and policy framework. The proposed development is considered to be inconsistent with the aims of the Queanbeyan Local Environmental Plan (South Tralee) 2012 particularly Clause 1.2(b) as the timely provision of physical and social infrastructure has not been demonstrated. The proposed development has areas of non-compliance with South Tralee Development Guidelines, May 2015 and cannot be determined as further information was required and has not been forthcoming to determine compliance as requested by Council.

Refusal is recommended on the following grounds:

- a. The proposed development contravenes the objects of the Act listed at Section 5 - Objects, specifically objects (a)(i) and (a)(ii) in that it does not promote the orderly and economic use and development of land or provide the required utility services;
- b. The proposed development is inconsistent with Clause 1.2(b) of the Queanbeyan Local Environmental Plan (South Tralee) 2012 as the timely provision of physical and social infrastructure has not been demonstrated;
- c. The proposed development is inconsistent with Clause 1.2(c) of the Queanbeyan Local Environmental Plan (South Tralee) 2012 as the proposed development does not manage environmentally sensitive lands adequately;
- d. The proposed development does not satisfy *Clause 6.1 – Arrangements for designated State public infrastructure* of the Queanbeyan Local Environmental Plan (South Tralee) 2012 as the NSW Department of Environment and Planning has not certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the subject land;

- e. The proposed development does not satisfy *Clause 6.2 — Public utility infrastructure* of the Queanbeyan Local Environmental Plan (South Tralee) 2012. Council is not satisfied that the 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 it is required;
- f. The applicant has not provided the additional information requested by Council on 12 July 2016 in accordance with Clause 54 of the Environmental Planning and Assessment Regulation 2000 to enable Council to complete the development assessment process to determine the extent to which the application is able to comply with South Tralee Development Guidelines, May 2015;
- g. Pursuant to Section 79C(1)(e) of the Act the proposed development is not in the public interest to approve in its current form as it will not facilitate the development of an urban release area in a manner that is in accordance with the relevant statutory and policy framework.

Adequate arrangements for the provision of public utility infrastructure (water and sewer) that is essential for the proposed development have not been made, and satisfactory arrangements for the provision of designated State public infrastructure has also not been made.

Further, the developer has advised that it is unable to execute the Draft Local Voluntary Planning Agreement (VPA) for South Tralee negotiated with Council.

Background

Integrated Development Application 263-2013 was approved by the JRPP on 18 May 2015 as a staged development application in accordance with section 83B of the Environmental Planning and Assessment Act 1979 for the conceptual development of the South Tralee urban release area. This concept application did not seek approval to carry out any works, rather, the general layout and land use as identified in the submitted Master Plan and other associated plans. Subsequent detailed development applications (DAs) will be lodged for five separate subdivision and construction stages.

The application the subject of this report is for Stage 2.

Required Infrastructure and Agreements

South Jerrabomberra Water and Sewer Servicing Infrastructure Strategy

A Review of Environmental Factors (REF) under Part 5 of the Act for the South Jerrabomberra Water and Sewer Servicing Infrastructure Strategy, (for the provision of water and sewer infrastructure on behalf of Council), has been submitted to Council for consideration and was publicly exhibited in September 2016. The REF has been reviewed by Council staff and consultants. Subsequently, several issues identified by staff were forwarded to the developer to address.

The REF has not been determined and the developer has advised Council that it is unable to make adequate arrangements for the availability of water supply and

sewerage public utility infrastructure. This is an essential piece of required infrastructure for Stage 2 development and without it public utility infrastructure remains unavailable.

Northern Entry Road

To service urban development at South Tralee a new road ("the Northern Entry Road") will run from Jerrabomberra through the areas known as Poplars, North Tralee and Environa, to the northernmost part of South Tralee.

- The concept design for this road was approved by Queanbeyan City Council in October 2014 (DA 175-2013).
- The application for Stage 1 of the Northern Entry Road, which includes the bridge over Jerrabomberra Creek, was approved in December 2015 (DA 117-2014).
- The application for Stage 2, which includes the section of road from South Tralee to Jerrabomberra Creek, was approved in December 2015 (DA 393-2015).
- The application for Stage 3 (DA 128-2016), which includes the section of road from Jerrabomberra Creek to the suburb of Jerrabomberra, has not been determined by Council pending the submission of additional information by the applicant.

Construction of Stage 2 of the Northern Entry Road commenced in early 2016, however, works have since been halted by the developer.

Draft Local Voluntary Planning Agreement (VPA)

A Draft VPA has been negotiated between the developer (Village Building Company) and Council and placed on public exhibition from 24 April to 27 May 2016. It includes matters such as the provision of community facilities; open space provision and embellishment; roads, water and sewer infrastructure; affordable housing; water and energy savings initiatives; monetary contributions; ecological offsets and administration.

Council resolved on 22 June 2016 to execute the South Tralee Local Planning Agreement, incorporating some amendments recommended as a result of five submissions made during the period of public exhibition. However, this VPA has not been executed and the developer has advised Council that it is unable to execute the VPA in its current form.

Draft State Planning Agreement (SPA)

The developer lodged a Draft SPA with the NSW Department of Planning and Environment (DPE). This covers the entire South Tralee development area approved under the Concept Development and includes land for a public school (within Stage 2) and monetary contribution to facilitate secondary access to South Tralee (and South Jerrabomberra) from the ACT.

The SPA has not progressed beyond the negotiating stage. The DPE has identified that the costs of the cross border road and traffic impacts will need to be resolved before being able to determine a State Infrastructure Contribution amount, and

therefore being able to agree and execute a SPA. The DPE has advised that until there is an executed planning agreement between the Minister for Planning and the developer in relation to the provision of designated State public infrastructure, no satisfactory arrangements certificate can be issued.

The developer has advised Council that they are currently unable to make the necessary satisfactory arrangements for the provision of State public infrastructure (Appendix A).

Proposed Development

On the 23 November 2015 Development Application 466-2015 was lodged for the subdivision of 238 new residential allotments at what is known as Stage 2, South Tralee on the Staging Plan 257819.09-004 approved as part of the Urban Concept Release Development Application.

The proposed development application includes:

- Design of 238 new residential blocks varying in lot size from 330m² - 800m²
- Associated road access, local utilities and bus set down/parking area
- One new stormwater pond with the buffer area adjacent to Hume
- 3 open space lots
- Landscaped streetscape and verges
- Local sewer and water services
- Identified school site (no works proposed on site)
- Ancillary Infrastructure and Local Services
- Asset Protections Zones

The Stage 2 layout consists of 238 residential blocks in the most southern part of South Tralee release area. The Stage 2 design also makes provision for a future 2ha school site, open space areas including a sports field and associated parking areas.

The proposed development was advertised as Integrated Development from 18 December 2015 to 22 January 2016. Adjoining property owners and occupiers were also notified by mail. No written public submission were received during this period. Government Agency submissions were received from ACT Government, NSW Office of Environment and Heritage, John Holland Rail, NSW Rural Fire Service, NSW Police, NSW Planning and Environment and Canberra Airport.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken. The application is recommended to be refused.

Infrastructure

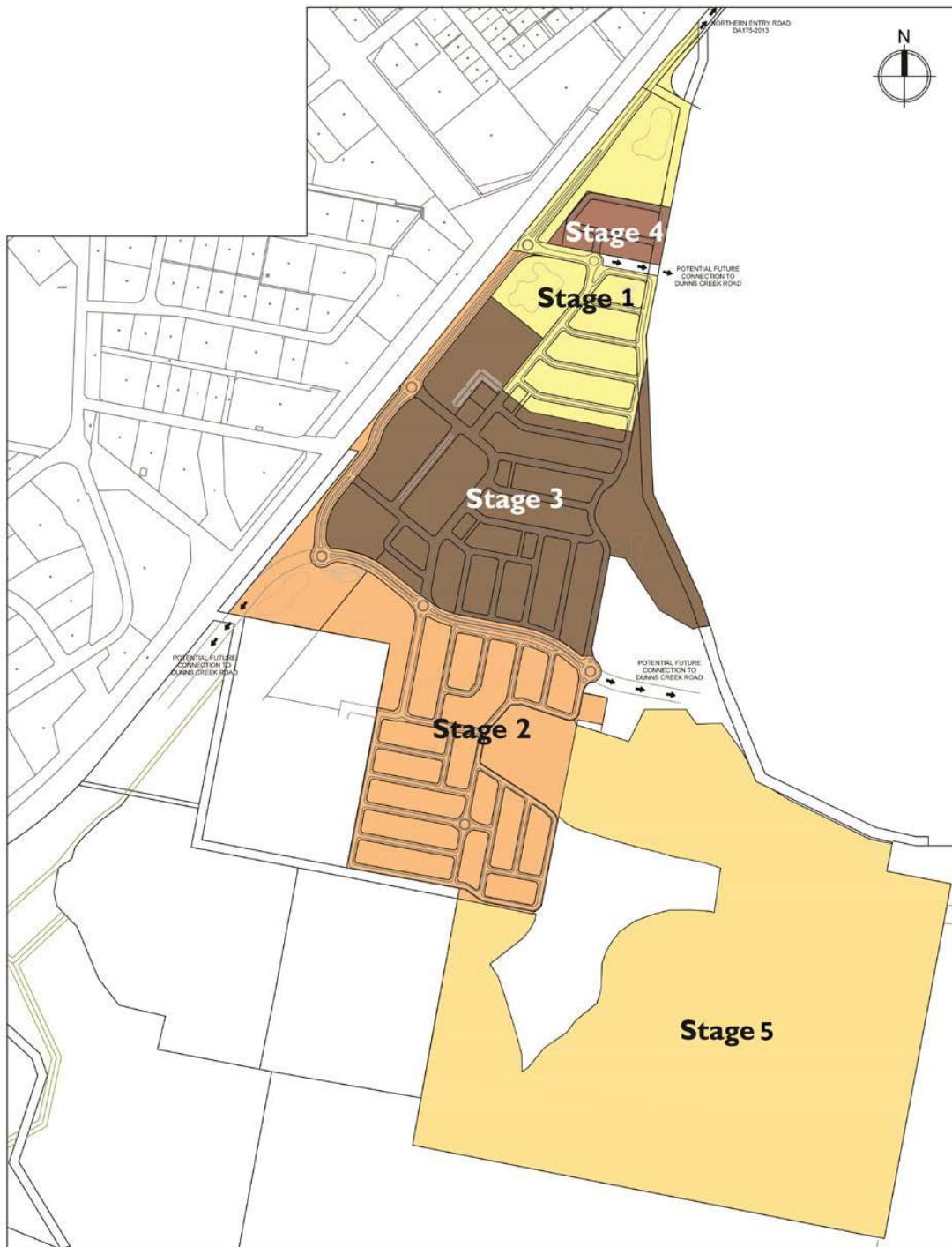
Engineering drawings, the Master Plan and other associated plans submitted with this Stage 2 DA conceptually outline the provision of infrastructure in South Tralee. The provision of trunk potable water and sewer related infrastructure is the subject of an application under Part 5 – Environmental assessment of the *Environmental Planning and Assessment Act 1979*. This means that the infrastructure will be constructed by or on behalf of Council. However, this application has not been determined and the developer has advised Council that it is unable to make the necessary arrangements for the availability of water supply and sewerage public utility infrastructure.

Site and Surrounds

South Tralee is located within the wider South Jerrabomberra urban release area, 8km from Queanbeyan city and 16km south-east of Canberra City. South Tralee comprises approximately 180Ha of land currently zoned mainly for urban development, but with a large area also zoned for environmental conservation. It is bounded by the currently disused Goulburn-Bombala railway, the ACT and Hume Industrial Estate to the west and north-west, and grazing properties to the south, east and north-east (Environs, Tralee Station, and Forrest/Morrison). Lands to the south have been identified as future urban release areas.

The proposed Stage 2 subdivision is located in the southern extent of the South Tralee urban release area and consists of approximately 35.6 ha of land (Figure 1).

Figure 1 – Approved Staging Plan



The site has the following characteristics.

- To the west and north-west the site is bound by the Goulburn/Bombala railway corridor, the ACT and the Hume Industrial Estate. Land uses in Hume include warehouses, factories, heavy and light industry and business park developments. Also within the ACT, but in the vicinity of the site is the Mugga Lane Resource Management Centre (Landfill).
- Part of the land to the south and south-west is bound by grazing property identified as future urban release areas. Land to the east is largely land zoned E2 identified as Stage 5 within the Approved Concept Plan for South Tralee.
- An intermittent creek line traverses the land subject to residential development. It flows from the south to the north west. Erosion due to creek flows is evident on adjoining land to the west.
- Land subject to residential development has a mix of gently sloping terrain with grades of 5-15% and then steeply sloping terrain with grades of 15 – 25%. Substantial earthworks are proposed to make it suitable for residential development.
- The 3.3ha open space area to the east is steeply sloping with a rise of 25 m and the open space area and school site to the west is gently undulating with a 5m contour difference.
- At its extreme, the variation in elevation across the site (excluding the access road) from the westernmost edge to the south-easternmost edge part of the land to be developed is approximately 72m. The adjoining E2 zoned land continues to rise to a section of ridgeline that forms part of a regional system of undeveloped ridges and hills.
- Vegetation within Stage 2 comprises degraded agricultural pastures, areas of native grassland and woodland with high conservation value, isolated native trees, and scatterings of exotic trees and shrubs.
- Access is currently from an unsealed track from Hume in the ACT. Development consent 175-2013 issued in October 2014 is for the concept design for a new road connection from Jerrabomberra to South Tralee (The Northern Entry Road) subsequent consents have been issued for various stages of the Northern Entry Road construction.

The following reports and plans were submitted by the applicant and used throughout the planning assessment. Note: Superseded reports and plans are not referenced.

- Statement of Environmental Effects South Tralee Stage 2 Subdivision Works prepared by Knight Frank Town Planning (November 2015).
- Engineering Drawings prepared by Calibre (Appendix 3 to Statement of Environmental Effects South Tralee Stage 2 Subdivision Works November 2015).
- Structure Plan, Master Plan and associated Development Structure Plans prepared by Peter Andrews + Associates Pty Ltd (November 2014).
- Engineering Infrastructure Report Concept prepared by Calibre (November 2015).
- Landscape Drawings by Redbox Landscape Architects (November 2015).
- South Tralee Stage 2 Subdivision Works Noise and Air Assessment prepared by Wilkinson Murray (December 2015).
- South Jerrabomberra - South Tralee Traffic Report prepared by ARUP Pty Ltd (November 2013).
- Bushfire Protection Assessment for the South Tralee Stage 2 Development Application prepared by Australian Bushfire Protection Planners Pty Limited (November 2015).
- South Tralee Aboriginal Cultural Heritage Assessment prepared by Navin Officer Heritage Consultants Pty Limited (November 2015) and Addendum Report (February 2016)
- South Tralee Detailed Site Investigation prepared by SMEC (July 2015).
- Ecological Assessment of Stage 2 South Tralee by Kevin Mills and Associates (November 2015) and Addendum Report (February 2016)
- Tralee Conservation Reserve Provisional Management Plan For Stage 2 Conservation Land by Kevin Mills and Associates (November 2015).
- Crime Prevention Through Environmental Design Report prepared by Knight Frank Town Planning (November 2015).
- South Tralee Release Area Development Guidelines prepared by CBRE and Peter Andrews + Associates Pty Ltd (January 2014).
- Geotechnical Assessment Report prepared by Douglas Partners (August 2015).
- South Tralee Strategic Social Plan prepared by GHD (November 2013).

Strategic Context

Queanbeyan Residential and Economic Strategy 2006 – 2013 (the Strategy)

The aim of the Strategy is to identify sufficient employment and residential land to meet future demand for the next 25 years, while achieving an appropriate balance of conservation, housing and employment development. The Strategy is a macro level document endorsed by both the Minister for Planning and Council that informs the preparation of other planning instruments, agreements, policies and studies. This Strategy is also adopted in the NSW Planning and Environment's *Sydney Canberra Corridor Regional Strategy 2006 - 2031*.

South Tralee is one of a number of sites in South Jerrabomberra that were identified in the Strategy as being suitable for residential or employment lands development. The Strategy identified the capacity for 10,000 new dwellings in Queanbeyan over 25 years and enough employment land to create a competitive surplus. The Strategy was also informed by the findings and commentary of the Queanbeyan Land Release Inquiry.

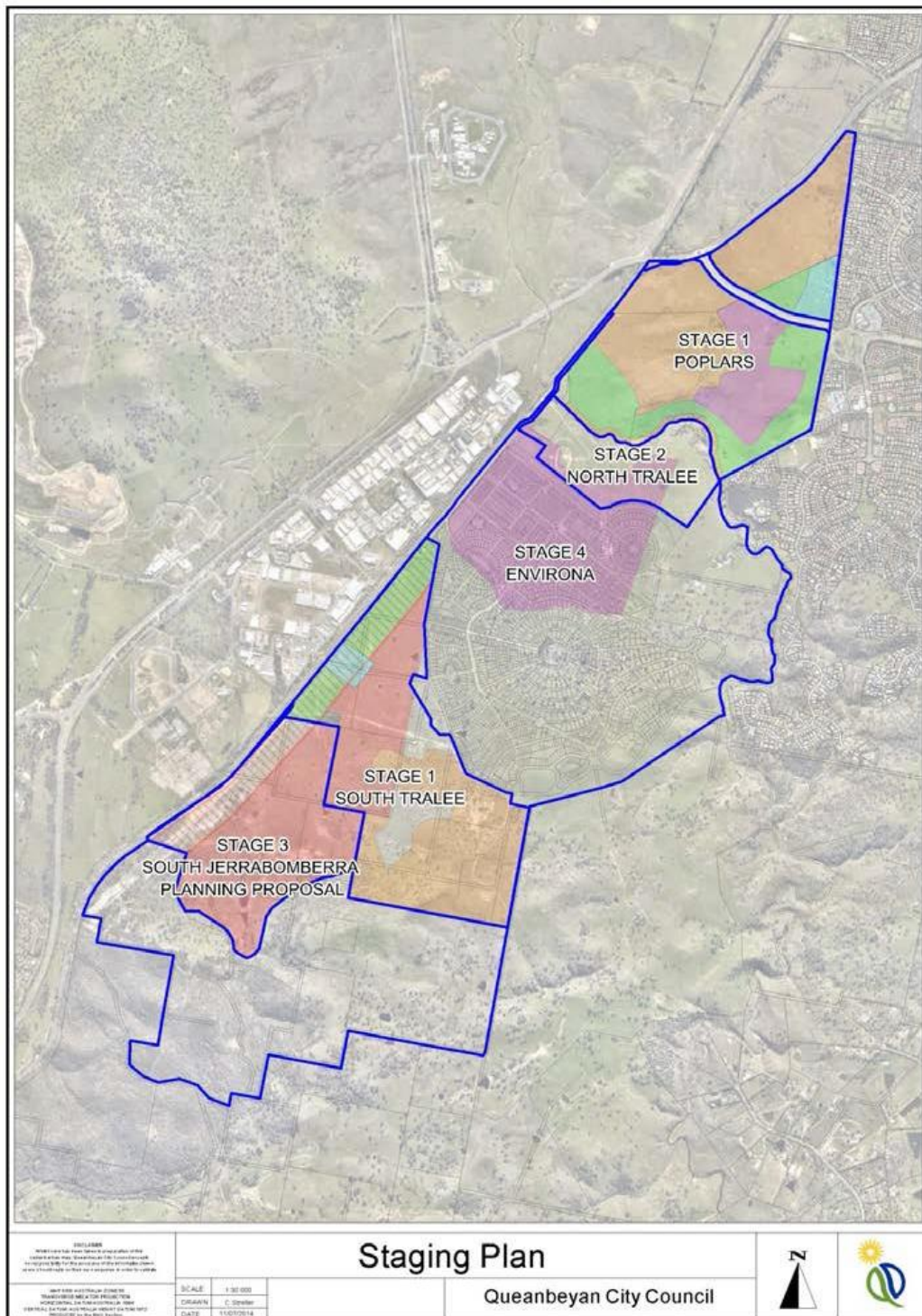
The Strategy identified two major development fronts:

1. Googong – a new town development South East of Queanbeyan containing 5,550 dwellings and a town centre; and
2. South Jerrabomberra – incorporating a number of development fronts with the potential for at least 4,700 dwellings and containing land for community facilities and commercial development adjacent to the existing Jerrabomberra local centre.

In addition to the residential development areas identified above, the Strategy also proposed up to 130 hectares of employment land to address the shortage of suitable employment land in Queanbeyan. The Strategy was endorsed by the NSW Government in April 2007, with a revised Strategy being endorsed in December 2008 (the Addendum Report). The revised Strategy took into account the new Australian Noise Exposure Forecast (ANEF) prepared by Canberra Airport using a practical ultimate capacity model. As a result of the new ANEF maps, development in South Jerrabomberra was shifted so that no residential development would occur in the 25 and greater ANEF contour, while the amount of development in the 20- 25 ANEF range was reduced to approximately half of the 4,700 dwellings.

The South Tralee area was identified as a Stage 1 priority release area within South Jerrabomberra, in addition to the employment land areas of the Poplars and North Tralee – refer to Figure 2 below. Only South Tralee and the Poplars have been re-zoned to this point.

Figure 2 – Staging Plan for South Jerrabomberra

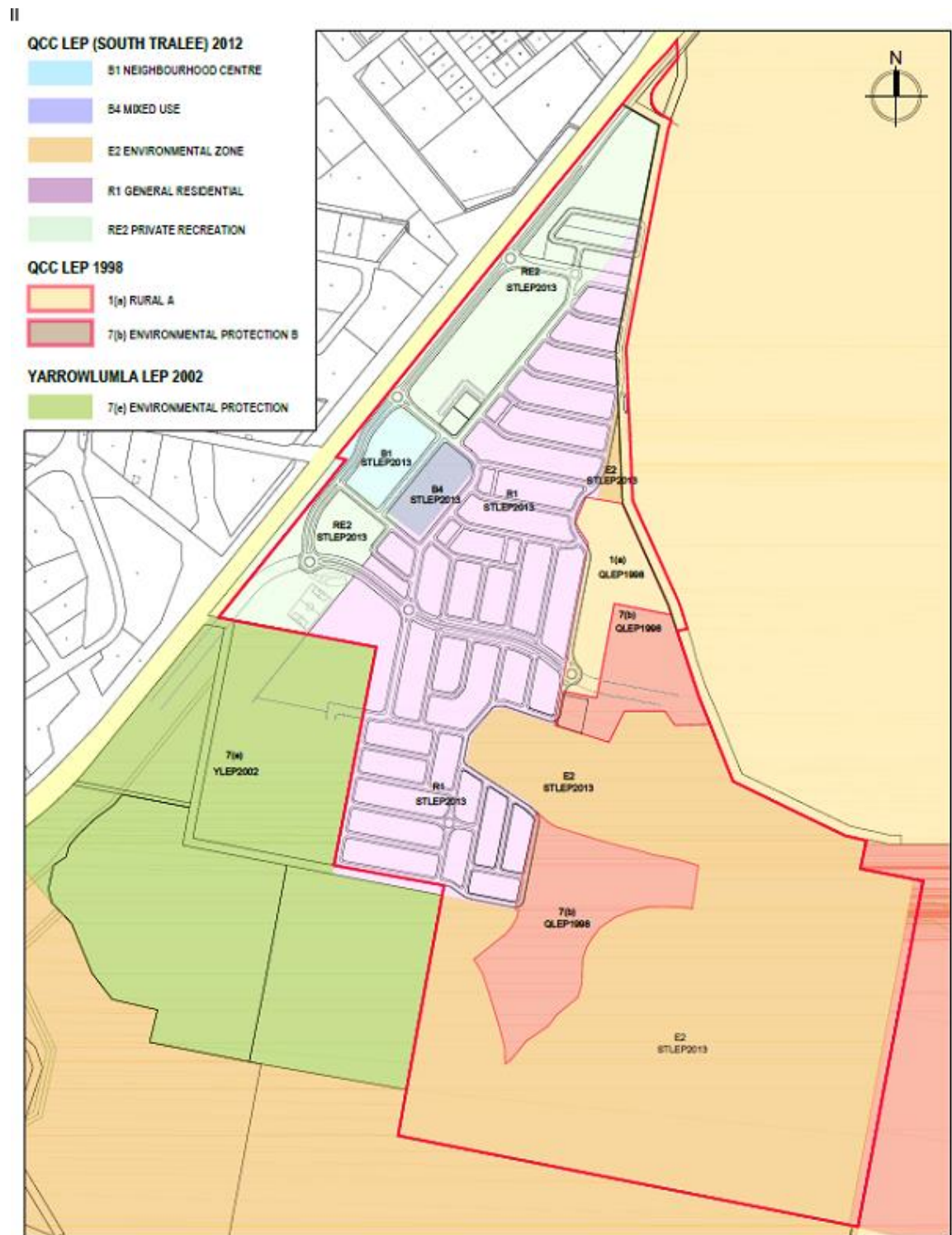


Queanbeyan Local Environmental Plan (South Tralee) 2012

The Queanbeyan Local Environmental Plan (South Tralee) 2012 (the LEP) was gazetted in November 2012 with the primary aim of making local environmental planning provisions for land known as South Tralee. A large area of land in South Tralee originally recommended to be re-zoned for residential development was deferred due to constraints posed by aircraft noise, while a smaller portion was also deferred to allow for the completion of further ecological studies in the adjoining Environa lands. These areas retain their land use zones under the Queanbeyan Local Environmental Plan 1998 (as amended).

Figure 3 below shows the current zoning of the South Tralee part of the South Jerrabomberra urban release area (outlined in red), as well as a large area of land to the south of South Tralee currently zoned under the Yarrowlumla Local Environmental Plan 2002.

Figure 3 – South Tralee Zoning



South Jerrabomberra Structure Plan

The South Jerrabomberra Structure Plan 2013 was endorsed by the DPE in May 2014. The purpose of the Structure Plan is to inform the development of South Jerrabomberra over a 25 year period, specifically in its provision of infrastructure, and to aid it being delivered in a logical and efficient manner. It is not a statutory document however it represents Council's and the DPE's preferred direction for development and infrastructure provision within South Jerrabomberra.

The Structure Plan's maps show the preferred options in relation to the provision of such services as electricity, gas, telecommunications water and sewerage and road links. The maps also show areas broadly identified for residential, commercial, community, educational, employment, open space and recreation and environmental conservation. The maps also show Canberra Airport's current Ultimate Practical Capacity Australian Noise Exposure Forecasts (ANEFs) which were endorsed for technical accuracy by Air Services Australia in June 2008.

The Structure Plan outlines the indicative main infrastructure requirements for South Tralee, including: the initial construction phase; short term (to provide for interim development); and longer term (to provide for the ultimate proposed development). Other public infrastructure / facilities identified include:

- Sporting fields.
- Regional Park/Bushland.
- Multipurpose community centre.
- Playgrounds and open space.
- Skateboard Park.
- Tennis Courts.
- Hardcourts (basketball/netball).
- Community Hall – Stage 1
- Park and Ride (Transit Hub).
- Telecommunications.
- Emergency Services Centre.
- Potential Local police/ambulance Station.
- Potential primary school (public).
- Potential High School (public).

The Structure Plan approved under the Concept Development was generally consistent with the original Structure Plan and is now identified in the South Jerrabomberra Development Control Plan as the adopted Structure Plan for South Tralee.

The proposed Stage 2 development of South Tralee includes a lot for an identified school site (no works proposed on site), and bus set down/parking area at sports field. This is generally consistent with the Concept Development approved Structure and Master Plan.

Development Control Plans (DCP) and Development Guidelines

The South Jerrabomberra Development Control Plan (SJDCP) includes South Tralee and that was adopted by Council on 11 February 2015.

The SJDCP is not applicable to any of the DAs that are lodged as part of the staged development of South Tralee (including the subject application). For this Stage 2 DA the parts of the site identified in the South Tralee LEP are subject to the South Tralee Development Guidelines. Parts of the site not identified in the South Tralee LEP (deferred from the rezoning) are subject to the relevant provisions of the Queanbeyan Development Control Plan 2012 (QDCP).

Future applications outside of the scope of the Staged Development will be subject to the South Jerrabomberra Development Control Plan.

Dunn's Creek Road and Access to the ACT

Dunn's Creek Road is identified in Council's adopted 'Googong and Tralee Traffic Study' (2031) as a sub-arterial link road between the Tralee and Googong urban release area, but would not likely be required before a 2031 planning horizon.

As part of the assessment of the Concept Development the location of the Dunn's Creek Road reserve was approved to be altered to a location with flatter terrain more conducive to construction of a major road link and the provision of the road on an alignment that is directed toward the Isabella Drive / Monaro Highway intersection in the ACT. This road is within Stage 2. Also, the preferred location for the future road access into the ACT was identified as being through Sheppard Street in the northern part of South Tralee, not further to the south through Isabella Drive. If this access was to be agreed to by the ACT Government then this could instead form part of the Dunn's Creek Road sub-arterial link.

The two possible locations of the future Dunn's Creek Road sub-arterial link within South Tralee approved under the Concept Development were subsequently reflected in an amendment to the LEP Local Clauses Map gazetted in February 2016. The Map now identifies two "Arterial Road Areas" corresponding with the areas approved in the Concept Development.

Note: In February 2016 the ACT Government advised Council that it supported the Sheppard Street connection as the initial access point into the ACT and accepted that a connection via Isabella Drive to the Monaro Highway may be required in the longer term.

Local Voluntary Planning Agreement

A Draft VPA has been negotiated between the developer and Council and placed on public exhibition from 24 April to 27 May 2016. It includes matters such as the provision of community facilities; open space provision and embellishment; roads, water and sewer infrastructure; affordable housing; water and energy savings initiatives; monetary contributions; ecological offsets and administration.

Council resolved on 22 June 2016 to execute the South Tralee Local Planning Agreement, incorporating some amendments recommended as a result of five submissions made during the period of public exhibition. However, this VPA has not

been executed and the developer has advised Council that it is unable to execute the VPA in its current form (Appendix A).

State Planning Agreement

Before determining subsequent DAs for Stages that involve the subdivision of land at South Tralee, the applicant must obtain certification from the Secretary of the Department of Planning and Environment (DPE) that satisfactory arrangements for the provision of designated State and Territory public infrastructure in relation to the site have been made.

Council requested the DPE issue certification of satisfactory arrangements for the provision of designated State public infrastructure for Stage 2 of South Tralee. This has not been received. The DPE has advised Council that in order to issue this certification a State Voluntary Planning Agreement (SPA) between the developer and the DPE has to be finalised (executed) (Appendix B).

The applicant has advised Council that they are unable to meet the terms required by the DPE to progress the SPA (Appendix A). Therefore, the DPE is unable to issue certification of satisfactory arrangements. (Refer to detailed discussion later in this Report under Clause 6.1 of the South Tralee LEP).

Statutory Assessment

Assessment of the subject Development Application has been undertaken in accordance with the *Environmental Planning and Assessment Act 1979* ("the Act"), as amended, specifically including:

- a) Section 4B – Subdivision of land;
- b) Section 5 – Objects;
- c) Section 5A - Significant effect on threatened species, populations or ecological communities, or their habitats;
- d) Section 79C – Evaluation;
- e) Section 80 – Determination;
- f) Division 2A – Special procedures concerning staged development applications, which includes;
 - a. Section 83A – Application of this Division,
 - b. Section 83B – Staged development applications,
 - c. Section 83C – Staged development applications as alternative to DCP required by environmental planning instruments,
 - d. Section 83D – Status of staged development applications and consents;
- g) Section 91A – Development that is integrated development; and
- h) Section 94 – Contribution towards provision or improvement of amenities or services.

Section 4B - Subdivision of land

For the purposes of the Act, subdivision of land means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. This application proposes the subdivision of land for residential development, open space, and roads and a school lot (no works proposed).

Under Clause 2.6 of the Queanbeyan Local Environmental Plan (South Tralee) 2012 subdivision requires development consent.

Section 5 – Objects

The objects of the Act are:

(a) *To encourage:*

- (i) *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *The promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) *The protection, provision and co-ordination of communication and utility services,*
- (iv) *The provision of land for public purposes,*

- (v) *The provision and co-ordination of community services and facilities, and*
- (vi) *The protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *Ecologically sustainable development, and*
- (viii) *The provision and maintenance of affordable housing, and*
- (b) *To promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *To provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The proposed development does not satisfy all of the objects of the Act, specifically those listed as subsections (a)(ii) and (a)(iii), as it does not promote the orderly and economic use and development of land or provide the required utility services.

Section 5A - Significant effect on threatened species, populations or ecological communities, or their habitats

The consent authority is required to determine if the proposed development and its consequential actions are likely to have a significant effect on threatened species, populations or ecological communities, or their habitats.

Relevant Background

A number of ecological studies were commissioned to inform the rezoning of the land under the South Tralee LEP. The majority of the south-east section of South Tralee (partially within Stage 2) is zoned E2 – Environmental Conservation. All of the deferred land is zoned 7(b) Environmental Protection B and 1 (a) Rural A under the Queanbeyan LEP 1998. Most of this land was originally recommended for a residential zoning, however, this was deferred due to aircraft noise considerations.

A detailed assessment against Section 5A was conducted as part of the assessment of the Concept DA. This included the submission of numerous reports from the applicant's environmental consultant, and consultation between Council and the Office of Environment and Heritage. This assessment should be referred to for further background for all subsequent stages. Issues satisfactorily addressed included: native tree retention; the retention of habitat for pink-tailed worm lizards; impact on habitat for the golden sun moth; and impacts of road works and other infrastructure on deferred lands and E2 land.

Conditions relating to environmental management were imposed on the Concept Development approval. Those relating to Stage 2 include:

Relevant conditions of DA 263-2013

D1.SUBMIT MANAGEMENT PLAN FOR CONSERVATION LAND

Prior to the determination of any Development Application for Stage 2 of the development of South Tralee as identified on the approved Staging Plan, a detailed Management Plan for the ongoing management and conservation of the lands zoned E2 – Environmental Conservation in South Tralee (not including the small triangular northern portion of E2 zoned land), must be submitted to, and endorsed by, Queanbeyan City Council.

If, due to subsequent modifications, the staging of the development is altered, the Management Plan must be submitted to, and endorsed by, Queanbeyan City Council prior to the determination of any development application for the development of South Tralee that includes the E2 zoned land described.

REASON: To ensure the potential impacts of the development on environmentally sensitive land are satisfactorily addressed and mitigated through the implementation of an on-going Management Plan.

The applicant submitted a Conservation Management Plan (CMP) applying to a small 3.3ha of land zoned E2 Environmental Conservation under the South Tralee LEP. The CMP does not include the larger 78 hectares of land zoned E2 Environmental Conservation within the wider South Tralee development, identified as Stage 5 in the Concept Plan. The OEH advised that in order to satisfy Condition D1 of DA 263-2013, the CMP must include the larger portion of land to ensure the conservation areas are adequately maintained over the life of the development and provide a long term holistic management approach to protect the habitat of the Golden sun moth (GSM) and Pint tailed worm lizard (PTWL). Following discussion with the developer, OEH and Council's planning staff it was agreed that a revised CMP would be submitted to encompass the whole of the E2 land but certain works would be staged. As the revised CMP remains outstanding Condition D1 has not been satisfied.

Section 5A Assessment

When deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats, each of the factors listed below must be taken into account, as well as any assessment guidelines. The 'Threatened Species Assessment Guidelines' published by the NSW government are the relevant guide.

- a) *in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction;*

The proposed development of Stage 2 of South Tralee is not likely to have an adverse impact on the life cycle of a viable local population of vulnerable or threatened species. Known habitat for vulnerable and threatened species is conserved in the large portion of the site zoned E2 – Environmental Conservation.

- b) *in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction;*

There are no endangered populations known to exist within Stage 2.

- c) *in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed;*

- i. *is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
- ii. *is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction;*

The areas of the site that meet the criteria for Box-Gum Woodland or Natural Temperate Grassland endangered ecological communities are located within the large section of E2 – Environmental Conservation zoned land (partially within the Stage 2 boundary). Conservation of these communities within this zone will ensure that their local occurrence is protected and not placed at risk of extinction.

- d) *in relation to the habitat of a threatened species, population or ecological community;*
 - i. *the extent to which habitat is likely to be removed or modified as a result of the action proposed,*
 - ii. *whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and*
 - iii. *the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality;*

Known habitat for threatened species, the Golden sun moth and the Pink tailed worm lizard, exists within South Tralee development area zoned E2 (Stage 2 and 5). The land zoned E2 – Environmental Conservation (partially within the Stage 2 boundary) and the larger area zoned E2 – Environmental Conservation (within the Stage 5 boundary) is to be incorporated into the CMP to ensure the known habitat is managed over the life of the development.

The primary purpose of the E2 zoned land within South Tralee is to protect habitat of threatened species and the CMP provides the means to achieve this. Through appropriate management key threatening processes to the habitat can be reduced.

As the revised CMP remains outstanding this factor in Section 5A(d) is not adequately satisfied.

- e) *whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly);*

The subject land does not contain any registered critical habitat.

- f) *whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan; and*

There are no recovery plans or threat abatement plans relevant to the land within the Stage 2 boundary.

- g) *whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.*

A key threatening process is a process listed under the *Threatened Species Conservation Act 1995* which threatens, or may have the capability of threatening, the survival or evolutionary development of a species, population or ecological community.

Key threatening processes that may form a part of the actions proposed to facilitate the development of South Tralee were assessed under the Concept DA and satisfactorily addressed. Conditions of consent were imposed to address issues relating to the management and conservation of the E2 – Environmental Conservation zoned land for Stage 2 of the South Tralee development. This has previously been discussed.

In summary, the proposed development of Stage 2 of South Tralee is unlikely to have a significant effect on any threatened species, populations or communities listed under the *Threatened Species Conservation Act 1995*, or their habitats, and the preparation of a Species Impact Statement (SIS) is not required. However a revised CMP remains outstanding.

Section 79C – Evaluation

Clause 1 – Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) The provisions of:

- (i) Any environmental planning instrument, and*
- (ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) Any development control plan, and*
- (iiia) Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) The regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) The suitability of the site for the development,

(d) Any submissions made in accordance with this Act or the regulations,

(e) The public interest.

Section 79C – Evaluation (cont)

Clause (1)(a)(i) – Any Environmental Planning Instrument

The following environmental planning instruments have been considered in the planning assessment of the subject Development Application:

- a) State Environmental Planning Policy No 55 – Remediation of Land.
- b) State Environmental Planning Policy (Infrastructure) 2007.
- c) State Environmental Planning Policy (State and Regional Development) 2011.
- d) State Environmental Planning Policy (Rural Lands) 2008
- e) Queanbeyan Local Environmental Plan (South Tralee) 2012 (as amended).
- f) Queanbeyan Local Environmental Plan 1998 (as amended).

State Environmental Planning Policy No 55—Remediation of Land

The objectives of this Policy are summarised as follows:

- To provide for a state wide planning approach to the remediation of contaminated land; and
- To promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Pursuant to the *Clause 7 - Contamination and remediation to be considered in determining development application*, the consent authority must consider:

- a) *Whether the land is contaminated; and*
- b) *If the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.*

In the course of assessing the Concept Development (DA 263-2013) several areas of environmental concern (AECs) within South Tralee were identified and relevant conditions imposed. AEC 7 – Disturbed Soil Area is located within Stage 2.

As part of this Stage 2 DA the applicant has submitted additional information relating to land contamination. Council's Environmental Health Officer has assessed the proposed Stage 2 development and their comments are summarised below.

Environmental Health Officer's Comments

The initial assessment of information submitted resulted in the applicant being requested to submit unequivocal evidence that the land is capable of being remediated to the extent required for the proposed land uses. Additional information regarding site remediation was subsequently submitted in a letter from the applicant's consultants (SMEC), and a Site Auditor appointed.

I can confirm that the letter provided by SMEC dated 24 December 2015 meets the requirements of the request for confirmation that the site is capable of being remediated. Specifically the letter concludes by stating that:

As the volume of material has been determined, and suitable remediation options are available, SMEC considers that the site will be suitable for the proposed development, once the remediation works have been completed and endorsed by the appointed Site Auditor, Tim Chambers.

This wording satisfactorily addresses Council's requirement for an unequivocal statement that the site is capable of being remediated for its proposed uses.

Having regard to the above I believe Council is in a position to satisfy its obligations under Clause 7 of SEPP 55 that the site is capable of being remediated. In the event that approval is issued this will allow a deferred commencement approval to be issued until such time as an appropriate Remediation Action Plan (RAP) can be developed to achieve the required level of remediation.

Given the above I see no reason from a contaminated site point of view why the application can be approved subject to the deferred commencement and other conditions previously advised.

State Environmental Planning Policy (Infrastructure) 2007

This Policy provides a planning regime the provision of services and infrastructure in NSW, outlines requirements for consent authorities to consult with relevant public authorities during the assessment of Development Applications, and outlines provisions for various types of exempt and complying development.

Clauses of the Policy relevant to this DA are:

- Clause 85 – Development immediately adjacent to rail corridors;
- Clause 87 – Impact of rail noise or vibration on non-rail development; and

Rail Corridors

The subject site adjoins the currently disused Goulburn-Bombala railway corridor. The corridor separates the site from the Hume industrial area in the ACT. Although the railway is currently disused, it could be reactivated in the future and therefore should be considered as a potential constraint to development. The rail corridor is zoned SP2 – Infrastructure (Railway) under the South Tralee LEP. The land use zones in South Tralee are such that the majority of residential and other sensitive land uses will be setback at least 200m from the rail corridor, outside of the Visual and Acoustic Buffer Land identified on the Local Clause Map of the South Tralee LEP. Noise abatement measures will likely be required for the use of land in the Visual and Acoustic Buffer, particularly for more sensitive uses. Noise abatement measures could involve the erection of acoustic mounds and fencing and treatments to the built form.

Pursuant to Clause 85 of the Policy the development application was referred to John Holland Rail (JHR) as the rail authority requiring notification of development that may have an adverse effect on rail safety. Pursuant to sub-clause 85 (2)(b) before determining the development application the consent authority must take into consideration:

1. Any response to the notice; and
2. Any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.

JHR advised Council on 20 July 2016 that as the disused rail corridor is unfenced Council shall require lots that adjoin corridor to be fenced.

JHR would require access to the corridor through adequate access gates and entrances.

State Environmental Planning Policy (State and Regional Development) 2011

This Policy identifies development for which Joint Regional Planning Panels (JRPPs) are to exercise specified consent authority functions.

The capital investment value (CIV) of the proposed development is \$53.74 million (>\$20 million). Clause 20 of this Policy references Schedule 4A of the *Environmental Planning and Assessment Act 1979*, which states that where the capital investment value of the development exceeds \$20 million and the proposed development must be determined by the Joint Regional Planning Panel – Southern.

State Environmental Planning Policy (Rural Lands) 2008

This Policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes and identifies Rural Planning and Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State.

Part 2 - Rural Planning Principles

The Rural Planning Principles are focussed on the protection of rural lands, natural resources and promoting appropriate opportunities for rural housing and lifestyle. No residential allotments are proposed within the 1 (a) Rural A zone. Therefore, the Rural Planning Principles are not considered to be applicable to the proposed development.

Part 3 - Rural subdivisions and dwellings

Except for a round-a-bout at the most north eastern corner of the proposed development the Stage 2 DA does not include the subdivision of the land zoned 1 (a) Rural A. This roundabout is on land zoned 1(a) Rural A under the Queanbeyan Local Environmental Plan 1998 and was approved in the Concept Development Approval.

Part 4 - State significant agricultural land

The site is not identified as being State significant agricultural land.

Queanbeyan Local Environmental Plan (South Tralee) 2012

The Queanbeyan Local Environmental Plan (South Tralee) 2012 (the South Tralee LEP) was gazetted on 9 November 2012. The South Tralee LEP applies to the majority of the subject site.

Part 1 – Preliminary

Clause 1.2 – Aims of the Plan

The particular aims of the plan are as follows:

- (a) to rezone certain land at South Tralee to achieve an economically, environmentally and socially sustainable urban development,*
- (b) to facilitate the orderly growth of the South Tralee urban release area in a staged manner that promotes a high level of residential amenity and the timely provision of physical and social infrastructure, through appropriate phasing of the development of land,*
- (c) to identify, protect and manage environmentally and culturally sensitive areas within South Tralee,*
- (d) to provide appropriate residential densities and a range of housing opportunities consistent with the environmental capacity of the land,*
- (e) to create a diverse town centre that caters for the retail, commercial, and service needs of the local community,*
- (f) to ensure development has regard to the principles of ecologically sustainable development.*

The proposed development is considered to be inconsistent with the particular aims of the LEP, specifically,

- (b). The proposal does not facilitate the orderly growth of South Tralee as essential public utility and State public infrastructure is unable to be provided and
- (c) The proposal does not manage environmentally sensitive areas adequately.

Clause 1.4 – Definitions

The proposed development includes the following land uses as defined in the LEP's dictionary:

- 'Roads',
- 'Recreation facilities (outdoor)';
- 'Recreation areas' and

Note: The proposed development is also defined as the subdivision of land. Refer to clause 2.6 later in this Report.

Clause 1.6 – Consent authority

As provided for under Schedule 4A of the *Environmental Planning and Assessment Act 1979*, the Joint Regional Planning Panel is the consent authority for the purposes of the LEP.

Clause 1.9A – Suspension of covenants, agreements and instruments

The proposed development does not require the suspension of any covenants as specified.

Part 2 – Permitted or prohibited development and Land Use Table

Clause 2.1 – Land use zones and Clause 2.3 – Zoning of land to which Plan applies

This land is zoned under both the Queanbeyan Local Environmental Plan (South Tralee) 2012 and the Queanbeyan Local Environmental Plan (QLEP) 1998. However, the South Tralee LEP applies to the majority of the subject site.

The applicable land use zones under the South Tralee LEP 2012 are:

- R1 – General Residential.
- RE2 – Private Recreation
- E2 – Environmental Conservation
- B1 – Neighbourhood Centre

Clause 2.3 requires the consent authority to have regard to the objectives of the zone when determining a development application. The objectives of each applicable land use zone are listed below as well as a discussion of the proposed development's consistency with the objectives.

R1 – General Residential

- a) *To provide for the housing needs of the community.*
- b) *To provide for a variety of housing types and densities.*
- c) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- d) *To ensure that buildings with non-residential uses have a bulk and scale that is compatible with the zone's predominantly residential character.*
- e) *To promote walkable neighbourhoods and a sense of community.*
- f) *To ensure that where possible, development maintains existing bushland.*
- g) *To encourage medium to high density housing located in close proximity to the town and village centres.*

A large portion of the South Tralee urban release area is currently zoned R1.

Residential subdivision is proposed comprising 238 residential allotments ranging in size from 330m² to 800m² with ancillary road and local services infrastructure.

In accordance with Clause 2.6 of the South Tralee LEP, land to which the LEP applies may be subdivided with development consent. Roads are a permitted form of development (without consent) in the R1 zone.

The proposed development is considered to be inconsistent with the objectives of the R1 zone, specifically, objective (a) as the proposal does not provide for the

housing needs of the community given that adequate arrangements for public utility infrastructure essential to the provision of housing is unable to be provided.

RE2 – Private Recreation

- a) *To enable land to be used for private open space or recreational purposes.*
- b) *To provide a range of recreational settings and activities and compatible land uses.*
- c) *To protect and enhance the natural environment for recreational purposes.*

The RE2 zone covers a 200m wide strip of land that runs parallel to the site's border with the railway corridor, the ACT and Hume Industrial Estate. It correlates with the Visual and Acoustic Buffer Land identified on the Local Clauses Map.

Within the RE2 zoned lands, consent is sought for a sub-arterial road, a car parking and bus drop off/pick up area, multi-use sports field and playground, detention ponds and associated landscaping.

'Roads', 'Recreation facilities (outdoor)'; 'Recreation areas' are all permissible with consent in the RE2 zone.

The proposed development is considered to be generally inconsistent with the objectives of the RE2 zone, specifically:

objective (a) as the proposal does not enable land to be used for private open space or recreational areas given that adequate arrangements for public utility infrastructure essential to the provision of such areas is unable to be provided and

objective (c) as the proposed development does not adequately demonstrate that the natural environment is protected and enhanced for recreational purposes.

E2 – Environmental Conservation

- a) *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- b) *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- c) *To protect threatened species, rivers, creeks and gully ecosystems within Queanbeyan.*
- d) *To identify and protect escarpment areas that enhance the visual amenity of Queanbeyan and possess special aesthetic or conservational value.*
- e) *To protect water quality by preventing inappropriate development within catchment areas.*

A large portion of the South Tralee urban release area is zoned E2, concentrated in the south-east area of the site (within Stage 2 and 5). A proposed local ('edge') road (Road 27 and Road 5) traverses the western and northern boundary of the E2 zoned lands. Roads are permitted (with consent) in the E2 zone. Additional information regarding roads and associated bulk earthworks remains outstanding to clarify the impact on the E2 zoned land.

As discussed previously in the report the revised CMP remains outstanding.

For these reasons the proposed development is considered to be inconsistent with the objectives of the E2 zone.

B1 – Neighbourhood Centre

- a) *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- b) *To provide the opportunity for small scale non-residential uses that will provide goods and services to meet the day-to-day needs of people who live and work in the surrounding neighbourhood.*
- c) *To provide for active retail, business or other non-residential uses at street level.*

Though most of the proposed development is on land zoned R1, E2 and RE2, a road provides access to the proposed Stage 2 subdivision. Works proposed in the B1 Zone in this DA is the construction of Road 1. It is noted that 'Roads' are permitted (without consent) in the B1 Zone.

The proposed road is considered to be consistent with the objectives of the B1 zone.

Clause 2.5 – Additional permitted uses

Not applicable.

Clause 2.6 - Subdivision

This clause states that the subdivision of land is permissible with development consent. The proposed development includes the subdivision of land to create 238 residential lots, 3 open space lots, and 1 school lot.

Clause 2.7 – Demolition requires development consent

No demolition is proposed.

Clause 2.8 – Temporary use of land

Not proposed.

Part 3 – Exempt and complying development

No exempt or complying development is proposed.

Part 4 – Principal development standards

Clause 4.1 – Minimum subdivision lot size

The objectives of this clause are as follows:

- (a) to ensure that lots created are sensitive to land, heritage and environmental characteristics (including water quality, native fauna and flora and places or items of Aboriginal or European heritage value),*
- (b) to ensure lots created do not adversely impact on the functions and safety of main roads,*
- (c) to provide lots with areas and dimensions that enable the appropriate siting and construction of a building and associated works to minimise and avoid the threat of natural hazards (including bush fire, soil instability and*

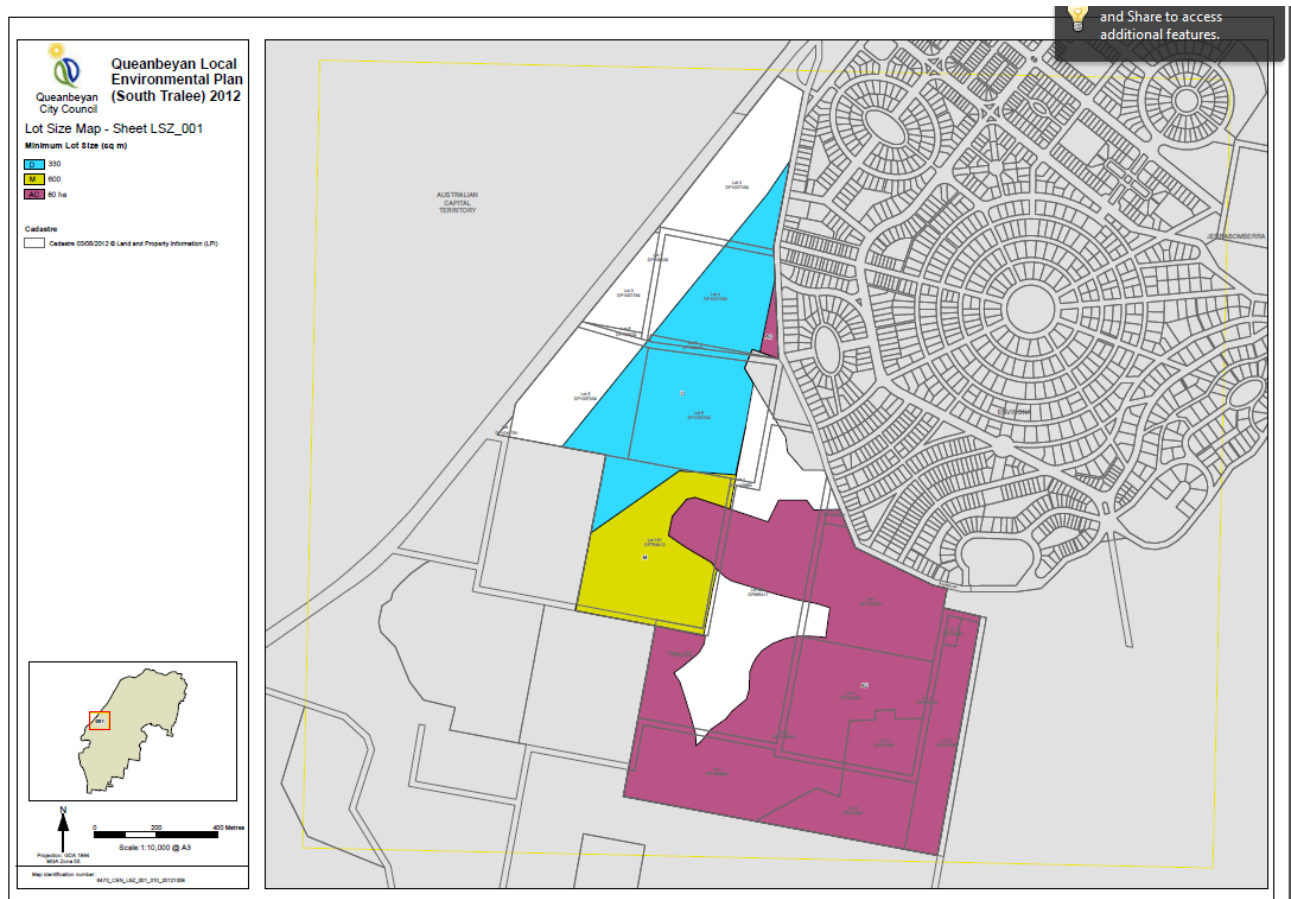
flooding) and to protect significant vegetation and prominent or significant landscape qualities, and

(e) to create lots that are compatible with the existing predominant lot pattern or desired future character of the locality and to minimise likely adverse impacts on the amenity of adjoining developments.

The proposed development has been assessed against the objectives of Clause 4.1 as being generally satisfactory. Due regard has been given to the environmental constraints on the land, lot sizes and dimensions are appropriate for siting of structures, and the proposal is compatible with the desired future character of the locality. However, at this stage the lots are not capable of being serviced with water and sewer and the applicant has formally advised Council that it is unable to make adequate arrangements for the availability of water supply and sewerage public utility infrastructure – refer to discussion under clause 6.2 of the LEP.

The land subject to residential subdivision (zoned R1 – General Residential) is identified on the Minimum Lot Size Map as having two minimum lot sizes of 330m² and 600 m² (Figure 4)

Figure 4 – Minimum Lot Size Map



The proposed development generally complies with the minimum lot size map.

There are some residential lots that straddle the 330m² and 600m² boundary. Additional information remains outstanding justifying the variation of the lot sizes.

Though Council is not fundamentally opposed to reducing the lot size a reasonable justification must be presented to Council.

There is no minimum lot size for part of the land zoned RE2 – Private Recreation where a sports field and an area of open space is proposed in the western portion of Stage 2.

The portion of the site zoned E2 – Environmental Conservation has a minimum lot size of 80Ha. 1 x open space area of 3.3ha and 1x playground of 4194m² is proposed. These are less than the required minimum lot size. While these lots do not meet the minimum lot size they are contiguous to the larger E2 land of 78 ha (Stage 5). It is the applicant's intention to dedicate this land to Council and is likely that a consolidation of lots is required (should consent be granted) at the Construction Certificate (Subdivision) stage.

Clause 4.1A - Exceptions to minimum subdivision lot size

This clause permits the subdivision of land within 200m of any land zoned B4 - Mixed Use to create lots with a minimum size of 170m². The proposed Stage 2 development does not propose any lots of 170m² and therefore this clause does not apply.

Clause 4.3 Height of buildings and Clause 4.4– Floor space ratio

The proposed development does not involve the erection of any buildings, therefore, these two clauses do not apply.

Clause 4.6 – Exceptions to development standards

The proposed development does not involve any exceptions to development standards.

Clause 5.1 - Relevant acquisition authority

The land is not subject to acquisition.

Clause 5.2 - Classification and reclassification of public land

The land is not public land that is proposed to be classified or reclassified.

Clause 5.3 - Development near zone boundaries

No development permitted under the provisions of this clause is proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

No miscellaneous permissible uses are proposed.

Clause 5.8 - Conversion of fire alarms

The conversion of fire alarms is not proposed.

Clause 5.9 - Preservation of trees or vegetation

This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council. As there is currently no DCP applicable to South Tralee this clause does not apply to this DA.

Clause 5.9AA - Trees or vegetation not prescribed by development control plan

This clause applies to any tree or other vegetation that is not of a species or kind prescribed for the purposes of clause 5.9 by a development control plan made by the Council.

The ringbarking, cutting down, topping, lopping, removal, injuring or destruction of any tree or other vegetation to which this clause applies is permitted without development consent. The approved Concept development identified existing trees and vegetation on the land within Stage 2 that will be removed to facilitate urban development.

Clause 5.10 - Heritage conservation

The objectives of this clause are as follows:

- a) *To conserve the environmental heritage of South Tralee,*
- b) *To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- c) *To conserve archaeological sites,*
- d) *To conserve Aboriginal objects and Aboriginal places of heritage significance.*

Development consent is required for any of the following:

- a) *Demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
 - (i) *a heritage item,*
 - (ii) *an Aboriginal object,*
 - (iii) *a building, work, relic or tree within a heritage conservation area,*
- b) *(Altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*
- c) *Disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
- d) *Disturbing or excavating an Aboriginal place of heritage significance,*
- e) *Erecting a building on land:*
 - (i) *on which a heritage item is located or that is within a heritage conservation area, or*
 - (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*

f) *Subdividing land:*

(i) *on which a heritage item is located or that is within a heritage conservation area, or*

(ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

Background

Several heritage investigations have been conducted in recent years that include the area of land known as South Tralee and have identified several European and Aboriginal sites / objects. A detailed summary of these is contained in the Assessment Report prepared for the Concept development.

European Heritage

No items of European heritage are included with the Stage 2 DA the subject of this report.

Aboriginal Heritage

Aboriginal objects were known to exist at South Tralee prior to the lodgement of the subject development application – (refer to detailed discussion of Aboriginal cultural heritage in the Assessment Report prepared for the Concept development).

As such this Stage 2 DA was referred to the NSW Office of Environment and Heritage (OEH) as Integrated Development under Section 91(2)(a) of the *Environmental Planning and Assessment Act 1979*. An Aboriginal Cultural Heritage Assessment Report was submitted with and assessed by the OEH.

The OEH advised Council on 15 April 2016 that an Aboriginal Heritage Impact Permit (AHIP), under section 90 of the National Parks and Wildlife Act 1974 can be issued subject to conditions. The OEH identified minor revisions required to the Stage 2 addendum archaeological technical report before the AHIP can be issued.

Clause 5.12 - Infrastructure development and use of existing buildings of the Crown

The LEP does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown. No existing buildings of the Crown exist on the land.

Part 6 – Urban release areas

Clause 6.1 - Arrangements for designated State public infrastructure

The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State and Territory public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land. The proposed development is located within the South Tralee urban release area as identified on the Urban Release Area map.

Sub-clause 6.1(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 [Secretary] 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.

Note: As advised by the Department of Planning and Environment (DPE), satisfactory arrangements certification was not required for the Concept Development approval (DA 263-2013) as it did not involve any actual subdivision of land.

Upon receipt of this Stage 2 DA Council requested the Department of Planning and Environment (DPE) to issue certification of satisfactory arrangements for the provision of designated State public infrastructure for Stage 2 of South Tralee. This has not been received. The DPE has advised Council that in order to issue this certification a State Voluntary Planning Agreement (SPA) between the developer and the DPE has to be finalised (executed).

The applicant has advised Council that they are unable to meet the terms required by the DPE to progress the SPA. Therefore, the DPE is unable to issue certification of satisfactory arrangements – refer to detailed discussion below.

Draft State Voluntary Planning Agreement

The applicant has been negotiating a Draft State Voluntary Planning Agreement (SPA) with the DPE. This Draft SPA covers the entire South Tralee development approved under Concept Development approval 263-2013 and includes land for a public school (within Stage 2) and monetary contribution to facilitate secondary access to South Tralee (and South Jerrabomberra) from the ACT. The applicant's original offer to enter into a SPA with the DPE included calculations to indicate that that at the release of the 670th residential lot within South Tralee the development would have a Surplus Value, and that there would be no impediment to the DPE issuing satisfactory arrangements for the first 670 lots.

In letter to the applicant dated 9 November 2016 the DPE advised that in order to finalise the terms of the SPA clarity is required in relation to the applicant's ability to dedicate the site nominated for future education purposes (within Stage 2), and the scope and cost of the road works that will be needed to support the traffic that will be generated by the proposed development. Further, the DPE is not able to offer a development contribution payment trigger linked to the 670th lot because the road requirements and cost estimates are not sufficiently clear to accurately confirm that the land for future education purposes will provide a sufficient offset for the overall State infrastructure contributions for those stages. The location and scope of the future road requirements remain unknown at this stage.

Following receipt of the DPE's above advice, the applicant wrote to Council on 17 November 2016 and stated:

The DPE has advised that the preconditions of the SPA have been amended from the position previously advised in August 2015. The DPE has identified that the costs of the cross border road and traffic impacts will need to be resolved before being able to determine a State Infrastructure Contribution amount, and therefore being able to agree and execute a SPA with VBC [the applicant].

Further:

At this time, VBC is unable to make the necessary satisfactory arrangements for the provision of State public infrastructure for the purpose of clause 6.1 of the Queanbeyan Local Environmental Plan (South Tralee) 2012.

...VBC is advising QPRC [Council] of its inability to provide the requested additional information required by QPRC to finalise the development assessment process for the Stage 1 and 2 Development Applications.

Given that certification of satisfactory arrangements has not been issued by the DPE, the consent authority (JRPP) cannot grant development consent to the proposed development.

Clause 6.2 - Public utility infrastructure

Pursuant to sub-clause 6.2(1), 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 it is required.

The applicant prepared the South Jerrabomberra Water and Sewer Servicing Infrastructure Strategy for the provision of water and sewer infrastructure to South Jerrabomberra on behalf of Council. A Review of Environmental Factors (REF) under Part 5 of the Act has been submitted to Council for consideration. This REF identifies the potential environmental impacts of proposed trunk water supply and sewer infrastructure required to service future development within South Jerrabomberra, in particular the South Tralee.

The REF has been reviewed by Council staff and consultants, and was publicly exhibited in September 2016. However, the REF has not been determined and the developer has advised Council that it is unable to make adequate arrangements for the availability of water supply and sewerage public utility infrastructure.

In the applicant's letter dated 17 November 2016 it is stated that:

At this time, VBC is unable to make...adequate arrangements for the availability of water supply and sewerage public utility infrastructure under clause 6.2.

...VBC is advising QPRC [Council] of its inability to provide the requested additional information required by QPRC to finalise the development assessment process for the Stage 1 and 2 Development Applications.

Council is not satisfied that adequate arrangements have been made to make available the public utility infrastructure that is essential for the proposed development. Therefore, the consent authority (JRPP) cannot grant development consent to the proposed development.

Clause 6.3 - Development control plan

The objective of this clause 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.

Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the specified matters has been prepared for the land.

The South Jerrabomberra Development Control Plan (SJDCP) includes South Tralee and that was adopted by Council on 11 February 2015. However, the SJDCP is not applicable to any of the DAs that are lodged as part of the staged development of South Tralee.

This Stage 2 DA was lodged as part of a Staged Development Application pursuant to section 83C of the Act. The Concept Development consent included the approval of the South Tralee Development Guidelines (Guidelines). These contain the information required to be included in a DCP by the South Tralee LEP.

Condition A4 of the Concept Development consent (263-2013) states:

Any subsequent development application for any of the five individual stages referred to in Condition A2 must be generally consistent with the South Tralee Development Guidelines contained in Schedule 2 of this Development Consent (the Development Guidelines). The Council may approve a departure from the Development Guidelines if it is satisfied that the departure is of a minor nature only or the applicant has demonstrated that the underlying objective of the particular guideline will be satisfied notwithstanding the departure and will result in a better, more logical, design outcome.

REASON: *To ensure that subsequent Stages of development at South Tralee are considered subject to the provisions South Tralee Development Guidelines.*

For the Stage 2 DA the parts of the site identified in the South Tralee LEP are subject to the Guidelines. Parts of the site not identified in the South Tralee LEP (deferred from the rezoning) are subject to the relevant provisions of the Queanbeyan Development Control Plan 2012 (QDCP).

Clause 6.4 - Relationship between Part and remainder of Plan

A provision of Part 6 of this Plan prevails over any other provision of this Plan to the extent of any inconsistency. In the context of this DA there are no inconsistencies between this Part and the other relevant provisions of the LEP.

Part 7 – Additional local provisions

Clause 7.1 – Earthworks

The objective of this clause are to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

This Stage 2 DA was accompanied by a geotechnical assessment, engineering designs for stormwater management, a soil, water and vegetation management plans, an existing slope plan and a proposed design contours plan post earthworks.

The proposed development includes site grading earthworks across the site to form suitable grades for roads, drainage and future dwellings. Site grading plans and slope analysis plans have been submitted.

Geotechnical Assessment

A Geotechnical Report prepared by Douglas Partners was submitted with the development application. This report examines the suitability of the site for the required earthworks and future built form, and included sub-surface testing. While the surface and sub-surface conditions of the site is considered to be generally suitable by Douglas Partners, some constraints were identified that relate mainly to the site becoming saturated following rainfall events. This in turn could result in adverse construction conditions particularly relating to draining the site and infiltration resulting in limited construction vehicle access.

Existing Slope and Proposed Design Contours

Based on the Slope Analysis provided by the applicant, driveway access should be able to be provided to each individual lot and a suitable building site provided. Localised cut and fill may need to be implemented at individual sites for driveways to comply with the grade requirements of Councils Vehicular Access Design Specification and for the preparation of building foundations.

There are a number of allotments with steep embankments that would otherwise require retaining at the time of dwelling construction. A condition has been recommended to be imposed (should consent be granted) requiring retaining walls to be designed at the Construction Certificate (Subdivision) stage.

Stormwater Management

South Tralee is located within three identified stormwater catchments – the Central, Raws and Sheppard's catchments. Stage 2 is within the Central catchment and drains west towards the ACT/NSW border.

The proposed stormwater management concept plan shows the creation of one catchment basin. It is designed to detain post development flows within the site so that discharge across the railway line and into the ACT is kept to pre-development flow rates at existing discharge locations.

Council's Development Engineer has assessed the proposed stormwater management concept and states that the overall Concept stormwater drainage layout should function as intended as is appropriately linked to existing stormwater drainage infrastructure down-stream of the development. Suitable on-site detention and water treatment measures are proposed. Whilst this is the case, additional information has been requested that provide detail on how the overland flow coming into the development site is to be appropriately conveyed to an underground system. Several conditions have been recommended to be imposed (should consent be granted), requiring some issues to be addressed at the Construction Certificate (Subdivision) stage.

Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

Drainage patterns and soil stability of land in the Stage 2 site are unlikely to be disrupted or detrimentally effected by the proposed earthworks provided that the recommendations of Council's Development Engineer are complied with.

(b) the effect of the development on the likely future use or redevelopment of the land,

The proposed development, and the earthworks required to facilitate it, are generally in accordance with the desired future character and use of the site as envisioned in the South Tralee LEP and various strategic planning policies.

(c) the quality of the fill or the soil to be excavated, or both,

As far as is practical, excavated material will be reused on-site in accordance with the recommendations of the submitted Geotechnical Report, however, it is likely that some material will need to be brought onto the site, and some excavated material will need to be removed off-site. This is because the Geotechnical Report states that the topsoil and underlying layer is not considered to be suitable for use in engineering applications, however, the soils beneath this appear suitable.

The quality of any fill that may be required to be exported or imported can be controlled by the imposition of appropriate conditions and from the submission of additional detailed information during the Construction Certificate (Subdivision) stage.

(d) the effect of the development on the existing and likely amenity of adjoining properties,

With some minor design adjustments the proposed development, and the earthworks required to facilitate it, should not adversely affect the existing and likely amenity of adjoining properties. Drainage patterns of adjoining properties will remain largely unaltered. Access to adjoining properties through the site will be maintained at all times during subdivision and infrastructure works.

(e) the source of any fill material and the destination of any excavated material,

Refer to previous comments under sub-clause (c).

(f) the likelihood of disturbing relics,

The impacts on relics of the proposed development of the South Tralee urban release area, and the earthworks required to facilitate it, have been considered previously as part of the assessment of the Concept Development and in this Report in relation to European and Aboriginal heritage.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

The drainage lines of the site are part of the upper catchment of Jerrabomberra Creek. The site is not subject to inundation by flood

waters and there are no riparian corridors or perennial watercourses. The proposed development, and the earthworks required to facilitate it, will not have an adverse impact on any waterway, drinking water catchment or environmentally sensitive area provided that appropriate conditions are imposed.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Appropriate measures can be conditioned should development consent be granted.

Clause 7.2 – Airspace operations

This clause requires development that will penetrate the Obstacle Limitation Surface (OLS) for the Canberra Airport to be referred to the Commonwealth Department of Infrastructure and Regional Development.

The OLS for the site is 720m AHD. The highest land is 715m AHD and it is possible that some future built form in Stage 2 will penetrate the OLS or possibly require the use of cranes that will temporarily penetrate the OLS. Subsequent staged DAs for the subdivision of land that will result in built form penetrating the OLS (or if they include built form that will penetrate the OLS) will need to be referred to the Commonwealth.

In regard to an OLS assessment the Commonwealth Department of Infrastructure and Regional Development received an application by Canberra Airport on 13 September 2016 and advised Council on 10 November 2016 that:

In accordance with Regulation 14, I approve the controlled activity of the intrusion of the subdivision within Tralee into prescribed airspace for Canberra Airport to a maximum height of 740 metres AHD.

In accordance with Regulation 14(1)(b), I impose the following conditions on my approval:

- *The structures in the subdivision must not exceed a maximum height of 740 metres AHD or 20 metres AGL, inclusive of vents, chimneys, aerials, antennas (of whatever type), lighting rods etc.*
- *Separate approval in accordance with the Regulations must be sought for any crane operations or other structures within this Tralee site which will exceed the height of 740 metres AHD or 20 metres AGL.*

Clause 7.3 – Development in areas subject to aircraft noise

The objectives of this clause are:

(a) to prevent certain noise sensitive developments from being located near the Canberra Airport and its flight paths,

(b) to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,

- (c) to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing safe and efficient operation of that airport.*

Before determining a DA relating to any land subject to the South Tralee LEP the consent authority:

- (a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*
- (b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and*
- (c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.*

The development of Stage 2 of the South Tralee urban release area will result in an increase to the number of dwellings and people affected by aircraft noise. However, changes to the originally proposed rezoning ensured that housing in South Tralee would be restricted to areas outside of the Australian Noise Exposure Forecast (ANEF) 20 – 25 contour levels for the Canberra Airport. Any future DA that includes built form will need to demonstrate how compliance with AS 2021—2000 and the objectives of this clause have been satisfied. The South Jerrabomberra DCP contains detailed Aircraft Noise Assessment Guidelines that provide suggested measures for development (particularly dwellings) to be able to comply with AS 2021—2000.

Future development within the Visual and Acoustic Buffer Land will also be subject to additional noise abatement considerations as discussed below under Clause 7.4.

Clause 7.4 - Land adjoining Hume Industrial Area and Goulburn/Bombala Railway Line

This clause applies to land identified as “Visual and Acoustic Buffer Land” on the LEP’s Local Clauses Map. The buffer is a 200m wide strip of land adjoining the Hume Industrial Estate and the Goulburn/Bombala Railway Line. It includes the land within Stage 2 that is zoned RE2 – Private Recreation and B1 – Neighbourhood Centre.

The objectives of this clause are:

- (a) minimise the impact of any noise, vibration or other emissions on the land to which this clause applies, and*
- (b) require certain land uses on the land to which this clause applies to include, or to be the subject of, appropriate noise mitigation measures.*

Before determining a DA relating to any land subject to the South Tralee LEP the consent authority must assess the following matters:

- (a) the impact of any noise from any nearby land uses, having regard to any noise attenuation measures proposed,*

- (b) the visual impact that any nearby land uses would have on the proposed development,
- (c) the impact that noise and other emissions from any nearby industrial land uses and associated activities would have on the proposed development.

Only, roads, open space and drainage basins are proposed within the Visual and Acoustic Buffer. These are not considered to be land uses that are sensitive to noise, or the visual impact of the nearby industrial land. To improve the visual amenity of the open space areas, screen planting is proposed along the boundary of the site with Hume.

Clause 7.5 - Land in vicinity of proposed arterial roads

This clause applies to the land identified as “Arterial Road Area” on the Local Clauses Map. There are two Arterial Road Areas shown on the Map. Figure 5 below is an extract of the Local Clauses Map showing the Arterial Road Area within Stages 1 and 2.

Figure 5 – Arterial Road Area.

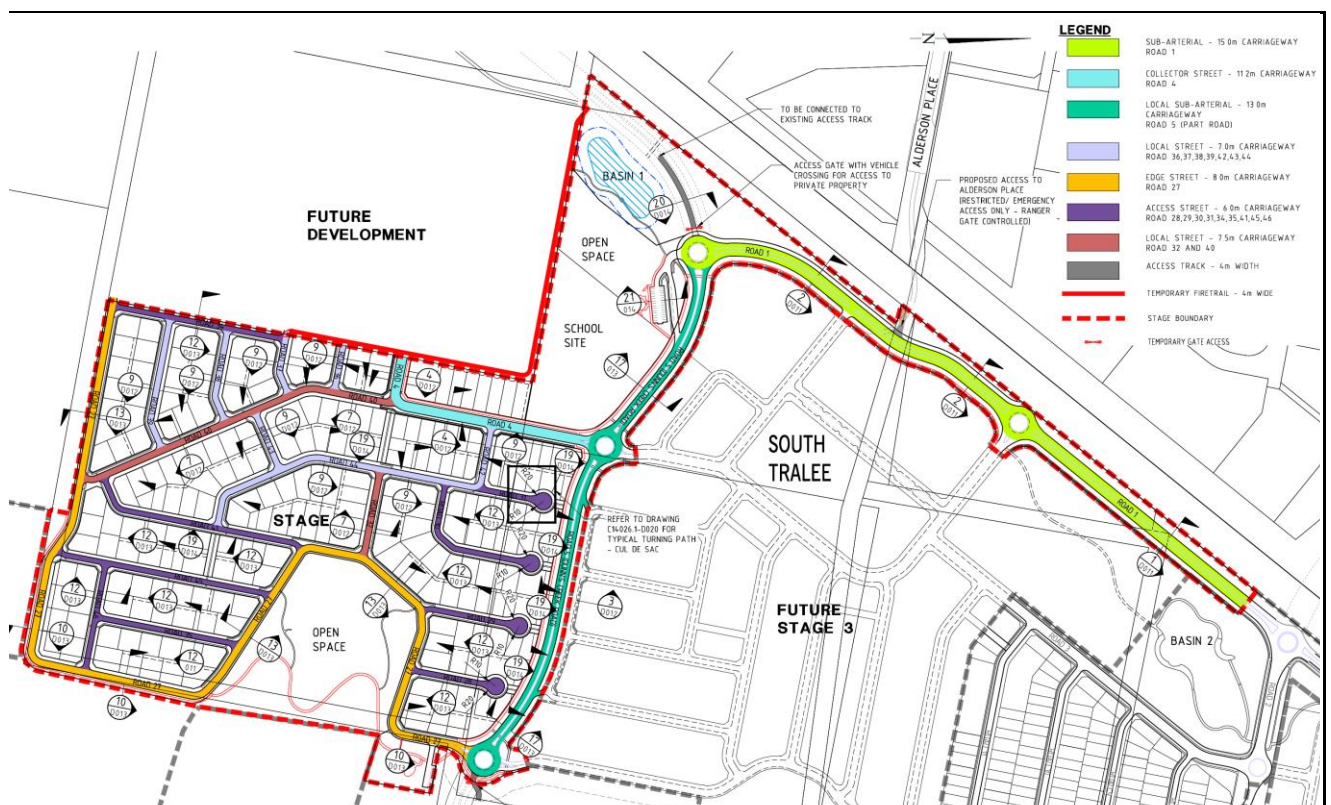


The location of proposed Road 5 (Dunns Creek Road) corresponds with the Arterial Road Area within Stage 2. At this stage Road 5 is proposed to function as a collector street.

Road 5 connects to an intersection with Road 1 (the Northern Entry Road). The intersection with Road 1 will allow for future access to the ACT via Sheppard Street and into Stage 1. Road 5 has the potential to be extended to the east past the intersection with Road 21 and into Dunn's Creek Road.

Figure 6 below shows the proposed road hierarchy.

Figure 6 – Proposed Road Hierarchy



The objectives of Clause 7.5 are:

- (a) to minimise any visual or acoustic impacts on development proposed in the vicinity of the land to which this clause applies,*
- (b) to ensure that development proposed in the vicinity of that land will not compromise, restrict or otherwise prevent the future use of that land as an arterial road.*

Development consent must not be granted for development within 30 metres of the land to which this clause applies unless the consent authority has considered the following:

- (a) the impact of noise, vibrations and other emissions on the development from any construction associated with an arterial road and from its ongoing use as an arterial road, and*

A request has been made to the applicant to provide additional information regarding the Dunns Creek Road extension and duplication, particularly in relation to the off-set distances used in the acoustic assessment and the location of proposed noise walls and fences on properties fronting Dunns Creek Road.

This information has not yet been provided by the applicant and as such a proper detailed assessment has not been able to be finalised.

- (b) if the development is a subdivision, whether the development would prejudice or otherwise restrict the construction or operation of an arterial road (including the provision of any public utility infrastructure).*

The proposed subdivision will not prejudice or restrict the construction or operation of an arterial road. The proposal has been assessed by Council's Development Engineer who has advised that the alignment of Road 5 is designed such that it can be duplicated in the future.

Queanbeyan Local Environmental Plan 1998

The Queanbeyan Local Environmental Plan 1998 (the Queanbeyan LEP) was gazetted on 16 October 1998. The Queanbeyan LEP applies to a small part of land within the proposed development.

Zoning and Permissibility

Part of the Stage 2 development extends over land zoned 1(a) Rural A and 7(b) Environmental Protection B under the Queanbeyan Local Environmental Plan (QLEP) 1998.

Proposed works with the 1(a) Rural A zone include a round-a-bout on the most north eastern edge of Stage 2. 'Roads' are permissible with consent in this zone.

Proposed works within the 7(b) Environmental Protection B zone include a park on the eastern side of Stage 2, roads and associated infrastructure. 'Recreation facilities' are permissible with consent in this zone.

Whilst 'recreation facilities' are permitted with consent in the 7(b) zone roads are not similarly identified. 'Utility undertakings' are permissible though, and encompass road construction. However such undertakings are to be carried out 'by or by authority of any Government department, or in pursuance of any Commonwealth or State Act'. In this circumstance the 'authority' of Council will be required to construct these roads on the developer's behalf.

The location of the proposed roadway occurring within the 7(b) zoned lands was approved as part of the South Tralee Development Concept – Staged Development Application (DA 263-2013). The proposed development is considered to satisfy the relevant provision of the Queanbeyan LEP.

Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instruments

No draft environmental planning instruments apply to the site.

Section 79C(1)(a)(iii) – Any Development Control Plan

South Tralee Development Guidelines apply to the land that has been approved as part of South Tralee Urban Concept and land that is zoned under the South Tralee LEP.

A request has been made to the applicant to provide additional information to assess the application against the provisions of South Tralee Development Guidelines. These include but are not limited to:

- Subdivision Design, Lot Orientation and Layout
- Bushfire Management, Asset Protection Zones (APZ) and encroachments
- Landscaping, Open Space and sporting facilities
- Public Road Design and Streetscape including:
 - Issues relating to the sizing and location of sewer, stormwater and water mains;
 - Road and drainage related infrastructure being located outside the stage boundaries, concept approval area and on neighbouring property;
 - The potential for restricted access to properties due to traffic calming and intersection priority measures;
 - Dead end roads (Roads 4, 27 and 36) without appropriate turning treatments;
 - Inappropriately located bus stops; and
 - In-sufficient detail of how the proposed bus interchange will function;
- Dunns Creek Road extension and duplication, particularly in relation to the off-set distances used in the acoustic assessment and the location of proposed noise walls and fences on properties fronting Dunns Creek Road
- Stormwater Management, WSUD and Flooding and concerns associated with the filling of the creek at the southern boundary of the development site and the location of the proposed stormwater main directly under the road infrastructure.

The applicant advised (Appendix A) that as the necessary satisfactory arrangements for the provision of designated State public infrastructure and public utility infrastructure under clauses 6.1 and 6.2 of South Tralee LEP cannot be satisfied the requested additional information would not be provided. Council is therefore unable to complete a proper detailed assessment of the proposed subdivision against the Guidelines.

Queanbeyan Development Control Plan 2012

A detailed assessment of the uses and likely infrastructure works on land subject to this DCP was carried out under the Concept Development application, and the relevant provisions satisfied. There have been no changes to what was conceptually approved under the Concept Development – the construction of a road within an existing road reserve. The proposed development is considered to satisfy the relevant provisions of this DCP.

Section 79C(1)(a)(iv) Any Planning Agreement

The subject site, and South Tralee as a whole, is not subject to any planning agreements. While a Draft Local Voluntary Planning Agreement (VPA) between the developer and Council has been negotiated and placed on public exhibition, it has not been executed and the developer has advised Council that it is unable to execute the VPA in its current form.

The developer has lodged a Draft State Planning Agreement (SPA) with the NSW Department of Planning and Environment (DPE) for the entire South Tralee development area. The SPA has not progressed beyond the negotiating stage and the developer has advised Council that they are currently unable to make the necessary satisfactory arrangements for the provision of State public infrastructure.

Section 79C(1)(a)(iv) – The Regulations

No matters prescribed in the Regulation are relevant in the consideration of the subject application.

Section (1)(a)(v) – Any Coastal Zone Management Plan

The site is not subject to any Coastal Zone Management Plan.

Section 79C(1)(b) – The Likely Impacts of the Development

No further comment is made in relation to the likely impacts of the development as Council assessment is unable to be completed without submission of the requested information and without the provision of designated State public infrastructure and public utility infrastructure.

Section 79C(1)(c) – The Suitability of the Site for the Development

No further comment is made in relation to the likely impacts of the development as Council assessment is unable to be completed without submission of the requested information and without the provision of designated State public infrastructure and public utility infrastructure.

Section 79C(1)(d) – Any Submissions made in relation to the Development

The application was publicly notified and exhibited as integrated development from 18 December 2015 to 22 January 2016 and adjoining property owners and occupiers were notified by mail. No written public submission were received during this period.

(a) External Referrals

NSW Rural Fire Service

The NSW Rural Fire Service provided a bush safety authority as required under section 100B of the Rural Fires Act 1997 and was issued subject to conditions.

Certain conditions require a redesign of aspects of the subdivision design, temporary Asset Protection Zones lawfully obtained, and positive and temporary positive covenants placed on specified lots.

Additional information remains outstanding for Council to assess the extent to which the proposal is able to satisfy the RFS conditions.

NSW Police

NSW Police provided CPTED assessment advice on 17 March 2016. Proposed development was identified as low-crime risk and no concerns or objections were raised to Appendix 12 (CPTED Assessment) submitted by the applicant with DA 466/2015.

Appropriate conditions of consent were recommended by NSW Police.

NSW Office of Environment and Heritage (OEH)

The OEH advised Council on 15 April 2016 that an Aboriginal Heritage Impact Permit (AHIP), under section 90 of the *National Parks and Wildlife Act 1974* can be issued subject to conditions. The OEH identified minor revisions required to the Stage 2 addendum archaeological technical report before the AHIP can be issued.

Council has advised the applicant of outstanding biodiversity issues raised by NSW Office of Environment and Heritage on 24 May 2016.

OEH have requested a revised Conservation Management Plan (CMP) that addresses all the land zoned E2 – Environmental Conservation as identified in Condition D1 of DA 263/2013. This issue has yet to be resolved.

ACT Government

The ACT Government advised Council on 10 February 2016 that no additional comments or issues are raised in regard to the proposal.

Canberra Airport and Commonwealth Department of Infrastructure and Transport

A controlled activity approval was issued on 10 November 2016 subject to conditions.

John Holland Rail

John Holland Rail (JHR) advised Council on 20 July 2016 that as the disused rail corridor is unfenced Council shall require lots that adjoin corridor to be fenced.

JHR would require access to the corridor through adequate access gates and entrances.

NSW Department Planning and Environment (DPE)

Council requested the DPE to issue certification of satisfactory arrangements for the provision of designated State public infrastructure for Stage 1 of South Tralee. This has not been received. The DPE has advised Council that in order to issue this certification a State Voluntary Planning Agreement (SPA) between the developer and the DPE has to be finalised (executed).

The applicant has advised Council that they are unable to meet the terms required by the DPE to progress the VPA. Therefore, the DPE is unable to issue certification of satisfactory arrangements for the provision of designated State public infrastructure for Stage 1 of South Tralee.

(b) Internal Referrals

Building Surveyor

Council's building surveyor has reviewed the proposed development and as no building works are proposed no comments are provided.

Development Engineer

Many of the Development Engineer's comments have been incorporated into the discussion on various issues previously in this report.

The proposed road network and provision of services is generally supported, albeit, with numerous details requiring further consideration and/or refinement at Construction Certificate (Subdivision) stage subject to the requested additional information being provided. Furthermore, details shown on the submitted civil engineering drawings that are the subject of the Part 5 application for trunk water and sewer are recommended to either be removed or be clearly marked as not forming a part of the subject application.

The Development Engineer is not prepared to give a final acceptance of the proposed development until such time as satisfactory information is submitted by the applicant as outlined previously in this report.

Parks and Conservation Services

Council Parks and Conservation services has advised of concerns in regard to the proposed size of proposed school lot and adjoining park.

In general, Parks supports the landscape concepts and elements. Plant species are acceptable and playground locations and styles meet requirements.

Parks cannot endorse the proposed sports facilities in this proposal. Single, standalone sports fields are difficult to manage and do not meet community needs. A single field lacks capacity and is unviable for a sports club. Council's preferred position is for clustered fields or larger sporting hubs. Additionally, this single field appears to not have lighting or any form of change rooms, toilet facilities or canteen. These would be essential for any club to use the field.

This is the field mentioned above, which is proposed to second as the school sports and playground during school hours and community out of hours. An irrigated natural turf field cannot sustain this usage load and the community will not have access to school toilets or other amenities.

Section 79C(1)(e) – The Public Interest

The proposed development is not in the public interest to approve in its current form as it will not facilitate the development of an urban release area in a manner that is in accordance with the relevant statutory and policy framework.

Adequate arrangements for the provision of public utility infrastructure (water and sewer) that is essential for the proposed development have not been made, and satisfactory arrangements for the provision of designated State public infrastructure has also not been made.

Further to the above, the developer has advised that it is unable to execute the Draft Local Voluntary Planning Agreement (VPA) for South Tralee negotiated with Council. This agreement included such matters as the provision of community facilities; open space provision and embellishment; roads; and ecological offsets. A Section 94 Plan to enable the levying of contributions from the developer for the increase in demand for public amenities and services created from the development of South Tralee services is not yet completed for South Jerrabomberra (including South Tralee).

There is currently no mechanism in place for the developer to contribute to the increase in demand for public amenities and public services created from the development of South Tralee. Therefore, it is not in the public interest to approve the proposed development.

Division 2A – Special procedures concerning staged development applications, which includes

Section 83A – Application of this Division

This Division applies to staged development applications and to consents granted on the determination of those applications.

Section 83B – Staged development applications

A staged development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may also set out detailed proposals for the first stage of development.

Pursuant to Subsection (2) the approved Concept Development (DA 263-2013) was requested to be treated as a staged development application. Subsequent detailed development applications (DAs) were identified to be lodged for five separate subdivision and construction stages. The application the subject of this report seeks approval to subdivide land and carry out associated works within Stage 2 of South Tralee in accordance with the Concept Development approval.

Section 83D – Status of staged development applications and consents

This Section states that while any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.

The proposed development of Stage 2 of South Tralee is inconsistent with the Concept Development approval and the relevant conditions of consent imposed on development consent 263-2013, specifically Condition A5 and Condition D1.

Condition A5 INFRASTRUCTURE

The infrastructure and facilities listed in the letter from the Applicant offering to commence negotiations for a Voluntary Local Planning Agreement (December 2013) as amended by the Applicants letter of 24 March 2015, and any additional infrastructure included in any Local Planning Agreement negotiated and executed between Council and the Applicant, are to be provided for the development.

REASON: To provide essential infrastructure and facilities to meet the needs of the urban development.

As previously discussed, the developer has advised that it is unable to execute the Draft Local Voluntary Planning Agreement (VPA) for South Tralee negotiated with Council. Therefore, the infrastructure and facilities identified in the VPA will not be provided.

Condition D1. SUBMIT MANAGEMENT PLAN FOR CONSERVATION LAND

Prior to the determination of any Development Application for Stage 2 of the development of South Tralee as identified on the approved Staging Plan, a detailed Management Plan for the ongoing management and conservation of the lands zoned E2 – Environmental Conservation in South Tralee (not including the small triangular northern portion of E2 zoned land), must be submitted to, and endorsed by, Queanbeyan City Council.

If, due to subsequent modifications, the staging of the development is altered, the Management Plan must be submitted to, and endorsed by, Queanbeyan City Council prior to the determination of any development application for the development of South Tralee that includes the E2 zoned land described.

REASON: To ensure the potential impacts of the development on environmentally sensitive land are satisfactorily addressed and mitigated through the implementation of an on-going Management Plan.

As previously discussed, a revised CMP that incorporates the E2 zoned land within the South Tralee development (Stage 2 and 5) remains outstanding and Condition D1 has not been satisfied.

Section 91 – What is “integrated development”?

The proposed development required referral as Integrated Development to the NSW Office of Environment and Heritage (OEH) under Section 90 of the *National Parks and Wildlife Act 1974* as the site contains known Aboriginal objects. The OEH issued their General Terms of Approval in relation to Aboriginal cultural heritage matters on 15 April 2016.

In addition the proposed development required referral as Integrated Development to the NSW Rural Fire Service as a small portion of the land is Bushfire Prone. A bushfire safety authority under Section 100B of the Rural Fires Act 1997 has been issued subject to conditions.

Section 94 Contributions

A Section 94 Plan to enable the levying of contributions from the developer for the increase in demand for public amenities and services created from the development of South Tralee is not yet completed. While the existing Queanbeyan Section 94 Contributions Plan does technically apply to South Tralee, it does not provide for the

collection of contributions for facilities specific to the wider South Jerrabomberra urban release area.

Conclusion

The proposed development has been assessed under Section 79C of the *Environmental Planning and Assessment Act 1979* including the relevant provisions of Queanbeyan Local Environmental Plan (South Tralee) 2012, Queanbeyan Local Environmental Plan 1998, Queanbeyan Development Control Plan 2012, and the South Tralee Development Guidelines. The proposal does not satisfy all of the provisions of these instruments and policies as detailed throughout this Report and in the Recommendation below.

Village Building Company (VBC), on behalf of the applicant Canberra Estates Consortium No. 4 advised Queanbeyan-Palerang Regional Council on 17 November 2016 that VBC is unable to execute the current form of the draft Voluntary Planning Agreement, and that the draft State Planning Agreement is unable to be agreed and executed.

VBC also advised that as it is unable to make the necessary satisfactory arrangements for the provision of designated State public infrastructure and adequate arrangements for the availability of water supply and sewerage public utility infrastructure under clauses 6.1 and 6.2 of Queanbeyan Local Environmental Plan (South Tralee) 2012. It is also unable to provide the requested additional information required by Council to finalise the development assessment process for Stage 2 Development Application.

A copy of this advice is included as Appendix A.

Under the Queanbeyan Local Environmental Plan (South Tralee) 2012, the consent authority must not grant development consent to proposed developments that do not satisfy the requirements of *Clause 6.1 – Arrangements for designated State public infrastructure* and *Clause 6.2 – Public utility infrastructure* of the Plan.

In this regard the application is recommended to be refused as clauses 6.1 and 6.2 of Queanbeyan Local Environmental Plan (South Tralee) 2012 have not been met, the proposed development is not in the public interest in accordance with Section 79 (C) (1)(e) to approve in its current form as it will not facilitate the development of an urban release area in a manner that is in accordance with the relevant statutory and policy framework, the proposed development is considered to be inconsistent with Clause 1.2(b) of Queanbeyan Local Environmental Plan (South Tralee) 2012 as the timely provision of physical and social infrastructure has not been demonstrated, and Clause 1.2(c) of Queanbeyan Local Environmental Plan (South Tralee) 2012 as the proposal does not manage environmentally sensitive areas adequately, and areas of non-compliance with South Tralee Development Guidelines, May 2015 are unable to be determined as further information was required to determine compliance as requested by Council.

Recommendation

1. Pursuant to Section 80(1)(b) of the *Environmental Planning and Assessment Act 1979* (the Act) the subject Development Application (DA 466-2015) be refused development consent on the following grounds:
 - a. The proposed development contravenes the objects of the Act listed at Section 5 - Objects, specifically objects (a)(i) and (a)(ii) in that it does not promote the orderly and economic use and development of land or provide the required utility services;
 - b. The proposed development is inconsistent with Clause 1.2(b) of the Queanbeyan Local Environmental Plan (South Tralee) 2012 as the timely provision of physical and social infrastructure has not been demonstrated;
 - c. The proposed development is inconsistent with Clause 1.2(c) of the Queanbeyan Local Environmental Plan (South Tralee) 2012 as the proposed development does not manage environmentally sensitive lands adequately;
 - d. The proposed development does not satisfy *Clause 6.1 – Arrangements for designated State public infrastructure* of the Queanbeyan Local Environmental Plan (South Tralee) 2012 as the NSW Department of Environment and Planning has not certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the subject land;
 - e. The proposed development does not satisfy *Clause 6.2 — Public utility infrastructure* of the Queanbeyan Local Environmental Plan (South Tralee) 2012. Council is not satisfied that the 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 it is required;
 - f. The applicant has not provided the additional information requested by Council on 12 July 2016 in accordance with Clause 54 of the Environmental Planning and Assessment Regulation 2000 to enable Council to complete the development assessment process to determine the extent to which the application is able to comply with South Tralee Development Guidelines, May 2015;
 - g. Pursuant to Section 79C(1)(e) of the Act the proposed development is not in the public interest to approve in its current form as it will not facilitate the development of an urban release area in a manner that is in accordance with the relevant statutory and policy framework.

Adequate arrangements for the provision of public utility infrastructure (water and sewer) that is essential for the proposed development have not been made, and satisfactory arrangements for the provision of designated State public infrastructure has also not been made.

Further, the developer has advised that it is unable to execute the Draft Local Voluntary Planning Agreement (VPA) for South Tralee negotiated with Council.

2. That the NSW Office of Environment and Heritage be notified of the Panel's decision.

Appendix A

Letter from Village Building Company

17 November 2016

Mr Peter Tegart
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Dear Peter

Further to our discussions in relation to the South Tralee development within the South Jerrabomberra Urban Release Area, Village Building Company (VBC) is in receipt of correspondence from the Department of Planning and Environment (DPE) in relation to the terms of the draft State Planning Agreement (SPA). A copy of this correspondence is attached to this letter.

The DPE has advised that the preconditions of the SPA have been amended from the position previously advised in August 2015. The DPE has identified that the costs of the cross border road and traffic impacts will need to be resolved before being able to determine a State Infrastructure Contribution amount, and therefore being able to agree and execute a SPA with VBC.

In addition, I confirm our verbal advice that VBC is unable to execute the current form of the QPRC draft Voluntary Planning Agreement. The costs imposed on the South Tralee component of the release area under this proposed agreement are inequitable in the context of the release area and are unable to be afforded by a single development. VBC will be unable to raise external finance to fund the upfront infrastructure to support the entire South Jerrabomberra release area.

Given that the balance of the South Jerrabomberra release area is nearing a rezoning approval, we understand that the most effective mechanism to deliver the local infrastructure required to support development by multiple landowners, including VBC, is through an appropriate Section 94 Contributions Plan for local infrastructure other than water supply and sewerage infrastructure, and an appropriate Development Servicing Plan for water supply and sewerage infrastructure. We understand the existing Section 94 Plan that currently applies to the whole of the South Jerrabomberra Urban Release Area will require an amendment to the works schedule. The amended plan would include the identified local infrastructure requirements for this area and is capable of being endorsed and implemented within six months.

At this time, VBC is unable to make the necessary satisfactory arrangements for the provision of designated State public infrastructure for the purposes of clause 6.1(1) of *Queanbeyan Local Environmental Plan (South Tralee) 2012*. The same also applies to the making of adequate arrangements for the availability of water supply and sewerage public utility infrastructure under clause 6.2(1) of that plan. As such, VBC is advising QPRC of its inability to provide the requested additional information required by QPRC to finalise the development assessment process for the Stage 1 and 2 Development Applications.

Yours sincerely



Travis Doherty
Chief Executive Officer



Ms Claire Gilligan
The Village Building Company Pty Ltd
PO Box 178
Mitchell ACT 2911

16/14476

Dear Ms Gilligan

Re: Draft Planning Agreement, Jerrabomberra Urban Release Area

I am writing in response to your request in relation to the current status of a proposed voluntary planning agreement over The Village Building Company's site in the Jerrabomberra Urban Release Area (VPA).

As discussed, in order to finalise the terms of the VPA, clarity is required in relation to the Village Building Company's ability to dedicate the site nominated for future education purposes, and the scope and cost of the road works that will be needed to support the traffic that will be generated by the proposed development. These requirements relate to minimum safety and community development requirements and cannot be compromised.

The Department recognises your concern about the time it may take to determine these matters. Therefore, as per our letter to you on 20 August 2015, we are willing to work with you to explore options to timetable the payment of development contributions to an appropriate later stage of development, when the exact quantum of the infrastructure scope and costs are known. This may include accepting the dedication of the future education site as an off-set for the overall financial contributions for the initial stages.

However, in trying to help you resolve this matter, we remain committed to ensuring that the appropriate contributions will be provided overall. The Department is not able to offer a development contribution payment trigger linked to the 670th lot because the road requirements (and a broad estimate of likely costs) are not sufficiently clear to accurately confirm that the land for future education purposes will provide a sufficient offset for the overall State infrastructure contributions for those stages. As you know, the location and scope of the future road requirements remain unknown at this stage.

I recommend that we meet to discuss this matter, review the current situation, and to discuss any recent changes to your proposal and their impact on State infrastructure requirements.

I look forward to continuing to working with you to finalise this development proposal and to provide housing, employment and infrastructure to the Queanbeyan area.

Should you have any further enquiries, please contact John Borg at the Department on (02) 9274 6226.

Yours sincerely



Martin Reason

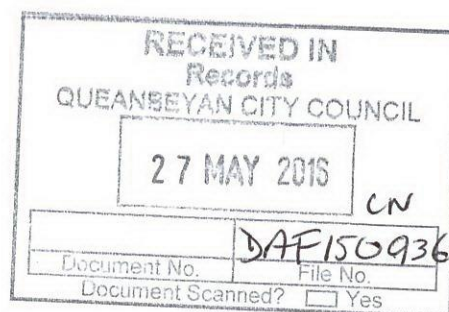
Director, Transport and Strategic Infrastructure Planning

Appendix B

Letter from Department of Planning and Environment



Mr Peter Tegart
The General Manager
Queanbeyan City Council
PO Box 90
Queanbeyan NSW 2620



16/06053

LB

Att: MJ Thompson, Director, Environment, Planning and Development

Dear Mr Tegart

**REQUEST FOR SATISFACTORY ARRANGEMENTS CERTIFICATION – DA276/2015
AND DA446/2015**

I am writing in regards to Queanbeyan City Council's correspondence, dated 20 and 21 April 2016, requesting satisfactory arrangements certification for DA276/2015 and DA446/2015.

The subject development applications are located within the South Tralee urban release area.

DA276/2015 (Stage 1, South Tralee) proposes the subdivision of land into 106 residential lots, three super lots, two open space lots, ancillary infrastructure demolition, façade rectification of shearer's cook house and woolshed, and a temporary sales office.

DA446/2015 (Stage 2, South Tralee) proposes the subdivision of land into 238 residential lots, three open space lots, one school lot, and ancillary infrastructure and local services.

As you are aware, clause 6.1 of the *Queanbeyan Local Environmental Plan 2012* requires that development consent must not be granted for the subdivision of land in an urban release area unless the Secretary 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 land.

As there is no executed planning agreement between the Minister for Planning and the developer in relation to the land subject to the development applications, satisfactory arrangements certificates for DA276/2015 and DA446/2015 cannot be issued to council.

Until such time that the developer enters into a planning agreement towards the provision of designated State public infrastructure, no satisfactory arrangements certificates can be issued.

The developer has been informed of the need to enter into a planning agreement prior to satisfactory arrangements certification being issued for any development applications.

Should you have any further enquiries, please contact Yasmin Campbell, at the Department on 02 9228 6226.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Liz Develin', with a stylized flourish at the end.

Liz Develin
Deputy Secretary
Growth, Design and Programs

23 MAY 2016