

JOINT REGIONAL PLANNING PANEL ASSESSMENT REPORT

S.96 modification application DA 15/0146.01 to the approved Police Station development, requesting deletion of s.94A contributions, and the addition of a substation with a new wall and signage at 67 Elizabeth Street, Moss Vale

Reference: Development Application 15/0146.01

Panel Reference: 2016STH030

PURPOSE

The purpose of this report is to consider s.96 modification application DA 15/0146.01 to the approved Police Station development, requesting deletion of s.94A contributions, and the addition of a substation with a new wall and signage at 67 Elizabeth Street, Moss Vale.

As this s.96 modification application is lodged on behalf of the Crown, a consent authority cannot refuse consent to a Crown DA except with the approval of the Minister, or impose a condition on its consent to a Crown DA except with the approval of the Applicant or the Minister.

This report recommends the s96 modification application DA15/0146.01 not be supported.

REPORT

DETAILS OF PROPOSAL

Subject Site and Locality

The subject site, Lot 1 DP 198566, 67 Elizabeth Street, Moss Vale, is located on the northern side of Elizabeth Street, Moss Vale. The site is 2033 square metres in area, and contains the existing Police Station, a residence and associated outbuildings.

Directly adjoining the site to the north east and south west are two public carparks. To the rear of the property is the Moss Vale Court House item of heritage. Diagonally opposite the site is Wingecarribee Shire Council Civic Centre. The character of the immediate locality is dominated by public buildings.



Figure 1: Site Location



Figure 2: Aerial Image of Site

History

Development Application 15/0146 which sought development consent for the demolition of the existing Police Station, residence and associated outbuildings, removal of 10 trees, and construction of a new 2 storey Police Station, with 24 onsite parking spaces at Lot 1 DP 198566, 67 Elizabeth Street, Moss Vale, was considered by the Joint Regional Planning Panel at its meeting of 12 April 2016. Development Consent 15/0146 was issued on 26 April 2016, including **Condition 53** which required payment of \$109,449.79 contributions under Council's s.94A Contributions Plan, and payment of \$45,050.49 for stormwater, wastewater, water supply and s.64 water, sewer and stormwater charges.

Details of Proposed modification

The subject s.96 modification application DA 15/0146.01 requests deletion of \$109,449.79 s.94A contributions, and the addition of a substation with a new wall and signage at the approved new 67 Elizabeth Street, Moss Vale.

Condition 53 of Development Consent 15/0146 required payment of \$109,449.79 contributions under Council's s.94A Contributions Plan. Section 4.5 of Council's s.94A

Contributions Plan states that “Council may exempt (or partially exempt) development of the kinds mentioned in 4.5.1 - 4.5.2” which includes “Development by not-for-profit organisations if the Council determines that the development is for an essential community service.”

The Applicant argues that the provision of a Police Station is a development for an essential community service as detailed within **Attachment 2** to this report. The key points of the applicant’s submission are:

At this is a Crown Development Application, the Consent Authority cannot impose a condition of consent except with the approval of the applicant or Minister. The Police Department object to this condition mainly because the upgraded police presence in the locality creates improved social and community facilities as well as providing several community services. The enlarged facility will enable a better police service to the local area.

Clause 4.5.3 of Council’s S94A Contribution Plan enables Council to exempt certain forms of development from the making of a contribution.

In this case, the operation of an effective police service is considered to be an essential community service and on this basis the proposal should be granted an exemption.

The Development Contribution Practice Note dated July 2005 prepared by Planning NSW identifies that Council may elect to exempt particular types of development from the payment of a contribution on the basis of strategic planning, economic or social purposes.

Police Stations are listed as a category of development that would meet the criteria for exemption. This is because in addition to their role as law enforcement officers they:

- Engage Education Development Officers (who attend local schools) and provide community presentation.
- Provide safety and security advice with respect to Development Applications and building advisers by CPTED – Crime Prevention through Environmental Design.
- 24/7 police emergency assistance and response.

The Bowral Sector of The Hume Local Area Command provides 24/7 policing services to the community of the Wingecarribee Shire as one of the three professional emergency services. The NSW Police Forces in a not for profit State Government police agency who’s primary role is crime prevention, community safety and crime detection. The NSW Police provide a vital community service at no cost to the community and a high cost to the government. We aim to provide this vital service in a cost effective manner to the community of NSW.

The building of the new Moss Vale Police Station will bring a 24/7 policing service to the community which they have never had before. Currently there are ad hoc police presence in the area, but the new police station will ensure the local community and businesses have for the first time 24/7 access to police. This increased police presence will assist in crime prevention and community safety in the CBD and also in and around the transport hub. The community have regularly commented on the much extra policing services are needed service for the Moss Vale area.

Modern day policing relies on our government partners and civilian stakeholders. This project provides state of the art facilities for policing, the Courts administration, Corrective Services and lawyers, private and government. The improvement and expansion in technology at our courts allow for greater interaction with prisoners and police and corrective services safety by way of Audio Video Link. This technology allows the opportunity to speed up matters being dealt with to finality and assist in ensuring the safety of our community, the rights of individuals are met and dealt with in a timely manner. Currently the responding technology is not available in police station across the Southern Highlands. The proposed station however will and it will provide facilities for the legal profession to provide advice to prisoners in appropriate confidential rooms.

I can also advise that in all other police station re-developments that I have been involved with, there has been no requirements to make a S94A Contribution.

I submit that the application should be amended by the deletion of Condition 53 on the basis that the Police Service undertake an essential role of law enforcement officers and to facilitate and promote operation of local community services.

STATUTORY PROVISIONS

State Environmental Planning Policies

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The site is located within the Warragamba catchment, which forms part of Sydney's water supply. Water NSW raised no objection to the approved development, subject to conditions. The proposed modification including the addition of a substation with a new wall and signage will have no identifiable impact upon water quality, therefore satisfies the provisions of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

SEPP (Infrastructure) 2007

While State Environmental Planning Policy (Infrastructure) 2007 provides under Part 3, Division 6, Clause 48 that development for the purposes of an emergency services facility may be carried out by or on behalf of a public authority without consent on any land within a prescribed zone, a police station is not characterised as an emergency services facility for the purposes of the SEPP but rather should be characterised as a 'public administration building'. Therefore a development application has been submitted seeking consent for the subject development in accordance with Wingecarribee LEP 2010.

The proposed s.96 modification does not alter the approved development in regard to State Environmental Planning Policy (Infrastructure) 2007.

SEPP 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) addresses remediation of contaminated land by requiring consideration of whether the land is contaminated and, if it is contaminated, whether it can be made suitable for the proposed purpose.

In the assessment of Development Application 15/0146 it was accepted that the site can be made suitable for the proposed use, satisfying the requirements of SEPP 55.

The proposed s.96 modification does not alter the approved development in regard to SEPP 55.

Local Environmental Plans

Wingecarribee Local Environmental Plan 2010

The site is zoned B2 Local Centre under Wingecarribee Local Environmental Plan 2010.

The objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To generally conserve and enhance the unique sense of place of business centre precincts by ensuring that new development integrates with the distinct urban scale, character, cultural heritage and landscape setting of those places.*
- *To provide opportunities for a compatible mix of residential living above retail, commercial, recreational, cultural and community activities at street level.*
- *To ensure that adequate provision is made for infrastructure that supports the viability of business centre precincts, including public car parking, traffic management facilities, public transport facilities, cyclist facilities, pedestrian access paths, amenities, facilities for older people and people with disabilities and general public conveniences.*
- *To maximise the efficient use of land in business centre precincts to promote more compact and accessible places.*
- *To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas.*

The proposed s.96 modification does not alter the approved development in regard to permissibility or objectives of the B2 Local Centre zone.

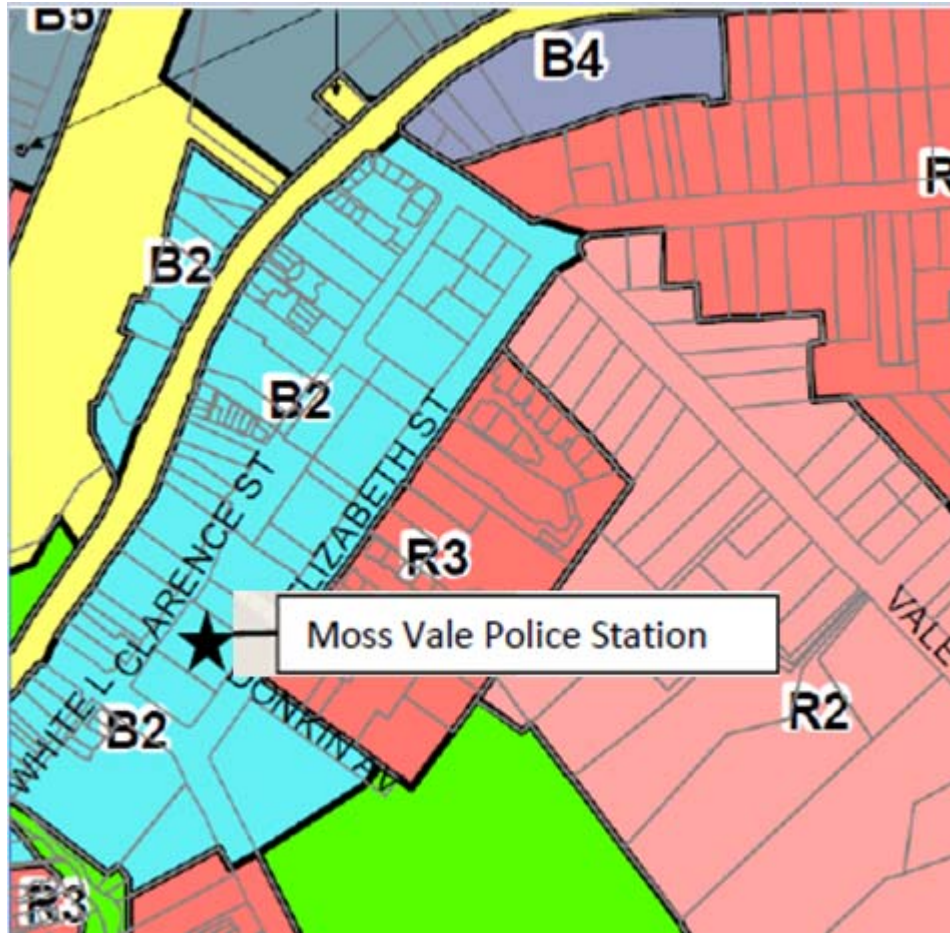


Figure 3: Location of site within B2 Local Centre under Wingecarribee Local Environmental Plan 2010

Development Control Plans

Moss Vale Town Plan Development Control Plan

The proposed addition of a substation with a new wall and signage is consistent with the requirements of the Moss Vale Town Plan Development Control Plan.

Section 79C Evaluation

The matters in Section 79C have been considered as follows:

79C (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

The proposed modification satisfies the requirements of Wingecarribee Local Environmental Plan 2010, and does not alter the approved development in terms of compliance with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy No. 55 – Remediation of Land.

- (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**

Not applicable in this instance (no relevant draft plans).

- (iii) any development control plan, and**

The proposed modification complies with the provisions of the Moss Vale Town Plan DCP.

- (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**

Not applicable.

- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and**

The proposed modification complies with the regulations.

- (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,**

Not applicable.

- (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,**

The proposed modification will not adversely impact the environment, and does not alter social and economic impacts of the already approved Police Station development.

- (c) the suitability of the site for the development,**

The proposed modification does not alter the suitability of the site of the already approved Police Station development.

- (d) any submissions made in accordance with this Act or the regulations,**

No submissions have been received regarding the proposed modification.

- (e) the public interest.**

The proposed modification does not physically alter the approved development in terms of public interest. However the proposed deletion of the \$109,449.79 contributions under Council's s.94A Contributions Plan which would be allocated towards various public

infrastructure improvements identified for the Moss Vale CBD within the S94A Developer Contributions Plan, is not considered to be in the public interest.

CONSULTATION

Internal Referrals

Referrals	Advice/Response/Conditions
Accredited Certifier	Council's Accredited Certifier raises no objection to the proposed modification of the approved development.

Neighbour Notification / Public Participation

The proposed modification was neighbour notified to surrounding properties, and to the two objectors who previously lodged submissions to the original Development Application. No submissions have been received to the proposed s.96 modification application.

SUSTAINABILITY ASSESSMENT

- **Environment**

The proposed modification does not raise any additional environmental impacts to those considered in the assessment of the original Development Application.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The development application has been considered in accordance with WLEP 2010, the Environmental Planning and Assessment Act and any matters relevant to the development.

OPTIONS

The options available are:

Option 1

Approval subject to the draft consent conditions in **Attachment 1** to this report. The consent authority for the s96 Modification cannot impose a condition on its consent to a Crown DA except with the approval of the applicant or the Minister.

Option 2

Not support this s.96 modification application as lodged. The consent authority for the s96 Modification cannot refuse consent to a Crown DA except with the approval of the Minister.

Option 2 is the recommended option to this report.

DISCUSSION OF KEY ISSUES

Requested deletion of s.94A contributions

Development Consent 15/0146 was issued 26 April 2016, including **Condition 53** which required payment of \$109,449.79 contributions under Council's s.94A Contributions Plan.

Section 4.5 of Council's s.94A Contributions Plan states that "Council may exempt (or partially exempt) development of the kinds mentioned in 4.5.1 - 4.5.2" which includes "Development by not-for-profit organisations if the Council determines that the development is for an essential community service."

The provision of a Police Station, and its associated benefits in terms of law and order within the local community, could be considered to be an essential community service.

The applicant has argued the case that the Police Station is an essential community service provided by the NSW Police. A full copy of the applicant's submission in support of removing **Condition 53** of Development Consent 15/0146 is provided by NSW Police within **Attachment 2** to this report.

Council's s94A Developer Contributions Plan states Council may exempt a development from paying the contributions if the development is providing an essential community benefit. In other words Council has a degree of discretion as to whether the proposal is eligible or not for exemption to paying contributions. It is noted that the development of the new Police Station servicing the Wingecarribee Shire and the northern catchment of the Goulburn Local Area Command will increase the traffic and parking demands in and around the Moss Vale CBD. In assessing the development application, Council took into account the floor space usage of the Police Station and subsequent calculation of car parking spaces generated as a result. This led to a reduction in the car parking spaces required for what otherwise would have been required for a commercial building. The s94A Developer Contributions would be allocated towards various public infrastructure improvements identified for the Moss Vale CBD within the S94A Developer Contributions Plan.

In light of the above it is not considered justified that the \$109,449.79 s.94A contribution levied upon the development be waived.

CONCLUSION

S.96 modification application DA 15/0146.01 which requests deletion of s.94A contributions and the addition of a substation with a new wall and signage at 67 Elizabeth Street, Moss Vale is not supported in terms of s.79C of the *Environmental Planning and Assessment Act 1979*, and all relevant environmental planning instruments and Council policies.

It is recommended that S.96 modification application DA 15/0146.01 **not** be supported and referred to the Minister for Planning for determination. A consent authority cannot refuse a development application of the Crown, except with the approval of the Minister, and therefore must refer the matter to the Minister for Planning for determination.

ATTACHMENTS

1. Draft conditions of Consent
2. Applicant's justification for waiving s.94A contribution