

***COUNCIL ASSESSMENT REPORT**

Panel Reference	PPWES 38
DA Number	DA2020/37
LGA	Federation Council
Proposed Development	Stage 1 108 lot Subdivision and Concept Development (495 Lots total)
Street Address	Lots 1&2, DP 1082130, Lots 69, 70 ,71, 74, 75, 76, 77, 78 DP 752290; Lot 2, DP 600973; and Lots 6&7, DP 253594 North Street and Tocumwal Road, Mulwala
Applicant/Owner	Applicant – Andrew Mott – North East Survey Design Owner – Hezem Pty Ltd
Date of DA lodgement	15 August 2020
Total number of Submissions Number of Unique Objections	• 2 • 1
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	2. General development over \$30 million Development that has a capital investment value of more than \$30 million
List of all relevant s4.15(1)(a) matters	ACTS Biodiversity Conservation Act 2016 ENVIRONMENTAL PLANNING INSTRUMENTS State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (Vegetation Non Rural Areas) 2017 State Environmental Planning Policy (Koala Habitat Protection) 2021 State Environmental Planning Policy 55 – Remediation of Land Murray Regional Environmental Plan No.2 – River Murray Corowa Local Environmental Plan 2012 DEVELOPMENT CONTROL PLAN Corowa Development Control Plan 2012. OFFER TO ENTER INTO DRAT PLANNING AGREEMENT UNDER SECTION 7.4 OTHER DOCUMENTS Federation Council Engineering Guidelines. Federation Council Community Participation Plan. Federation Council Long Term Financial Plan 2021-2031 Federation Council Developer Levy
List all documents submitted with this report for the Panel's consideration	• Concept Development Plan Tocumwal Street, Mulwala, Drawing M1941-ODP V16 11 August 2021 • Residential Subdivision Tocumwal Street, Mulwala – Gleason M1941 – V1 undated – typical Cross-sections • Residential Subdivision Tocumwal Street, Mulwala – Gleason M1941 – V1 undated – Park Area • Concept Development Plan Tocumwal Street, Mulwala, Drawing M1941-ODP V6 11 August 2021 – Overall Servicing Plan • Concept Development Plan Tocumwal Street, Mulwala, Drawing M1941-ODP V3 11 August 2021 - Servicing Plan Stages 1-4. (108 Lots) 25 January 2021 • Concept Development Plan Tocumwal Street, Mulwala, Drawing M1941-ODP V13 11 August 2021 - Stages 1-4. (108 Lots) 25 January 2021 • Statement of Environmental Effects Tocumwal Road and North Street, Mulwala Concept Development Application for Subdivision and Detailed DA for 108 Lots – August 2021 by Habitat Planning Revision C. • Biodiversity Development Assessment Report - Tocumwal and Savernake Road, Mulwala Subdivision- March 2021 Project No. 21-129 By NGH • Aboriginal Due Diligence Assessment Tocumwal and Savernake Road, Mulwala Subdivision, May 2021 Project No. 21-129 by NGH • Traffic Engineering Tocumwal Road, Mulwala. Proposed Subdivision of Land. Traffic Impact Assessment by TTM 22 May 2020. • Concept Development Plan , Tocumwal Street, Mulwala. Option 9 Drawing M1941 - ODP V11 20 11/2019 – Stormwater Catchment Plan. • Stormwater Management Strategy M1941 – Proposed Residential Development, Tocumwal Road, Mulwala. November 2019 by North East Survey Design. • Riverland Gardens Estate & Tocumwal Road Development, Mulwala. Report on Hydraulic Modelling and Water Supply Upgrade Requirements for 236 and 496 Lot Residential Developments April 2020, Revision 1 by Development Outcomes and North East Survey Design.

Clause 4.6 requests	Nil
Summary of key submissions	Nil
Report prepared by	Susan Appleyard
Report date	27 October 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Yes

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

No

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EXECUTIVE SUMMARY

The proposal is for a Stage 1 108 lot Subdivision and Concept Development (495 Lots total) on 87.47 hectares in area and encompassing a total of 13 lots. The site is located approximately 1km to the north east of the Mulwala CBD and addresses North Street to the south, Savernake Road to the West and Tocumwal Road to the north. The site has been cropped for a number of years and is flat with remanent vegetation on site.

The subject land is zone R1 – General Residential under Corowa Local Environmental Plan 2012 and subdivision is permitted with consent in accordance with provisions of clause 4.1 Minimum Subdivision Lots Sizes, which for the General Residential Zone is 550 square metres.

The application was formally lodged 11 September 2020 and was exhibited from 16 September to 14 October 2020 2 submissions from the one author were received during the exhibition period. 17 November 2020 a request for additional information was made to the applicant, the request was followed up on the 17 February 2021.

21 June 2021 a mediation session was held with the applicant regarding the issues raised in the objection and essential service issues that had been assessed for the development by Council officers, initial discussions regarding a Voluntary Planning Agreement

23 July 2021 Panel Briefing defined the need to the applicant/developer to make an offer for a Voluntary Planning Agreement to Council by the end of August 2021 – Offer received 10 August 2021 and for all other outstanding information to be provided to council by 5 August 2021.

The key issues regarding the development are the provision of Essential Services, notably limited capacity in Council's existing water and sewer reticulation networks to service the proposed development, provision of adequate information regarding road access in the streets surrounding the development; the environmental impact of the proposed development due to inconsistencies between the Biodiversity Development Assessment Report and the Stormwater Management Strategy and Stormwater Catchment plan plus no detail on the required earthworks for the stormwater detention basin proposed.

The offer for a Voluntary Planning Agreement was presented to Federation Council at the 28 September 2021 Council meeting, at which it was resolved to reject the offer, a rescission motion was considered at the 19 October 2021 Council meeting and the Council resolved to enter into negotiations regarding the offer.

As there is no Planning Agreement currently in place the panel will need to consider in determining the application it's obligations in accordance with Section 2.26 of the Environmental Planning and Assessment Act 1979.

The Independent Planning Commission or a Sydney district or regional planning panel must not exercise a function that will result in the making of a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council.

Given the information provided and the offer made to Council, the recommendation with regard to section 2.26 of the EP&A Act is that the panel should assess the application such that the development might reasonably be expected to have, a significantly adverse financial impact on a Council.

Given the inconsistencies in documentation regarding environmental impact and the potential for adverse financial impact with no formal voluntary planning agreement in place it is considered that the development is not in the public interest

The recommendation is to refuse the application as the application does not satisfy the requirements of the following:

1. Corowa Local Environmental Plan 2012, the following clauses:

7.1 – Earth Works

7.3 - Stormwater management

7.9 – Essential Services

2. Corowa Development Control Plan 2012, Section 2.17(1) Subdivision Objectives of Corowa Development Control Plan 2012:

- Road layout
- Road pavement
- Stormwater drainage
- Site works (e.g. cut & fill)
- Water reticulation
- Sewerage system

3. The environmental impact of the development cannot be determined due to inconsistencies between documents as required under section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979; and

4. The development is not considered to be in the public interest in accordance with section 4.15(1)(e) as the environmental impact of the development cannot be determined and the development might reasonably be expected to have, a significantly adverse financial impact on a Council.

THE SITE AND LOCALITY

1.1 The Site

The site comprises 87.47 hectares in area and encompasses a total of 13 lots, being Lots 1&2, DP 1082130, Lots 69, 70, 71, 74, 75, 76, 77, 78 DP 752290; Lot 2, DP 600973; and Lots 6 & 7, DP 253594. The site is located approximately 1km to the north east of the Mulwala CBD and addresses North Street to the south, Savernake Road to the West and Tocumwal Road to the north.

The site has been cropped for a number of years and is flat with remanent vegetation on site.



Figure 1: Proposed Development Site in proximity to CBD



Figure 2: Aerial of Development Site.

1.2 The Locality

The site is located on the edge of the R1 General Residential zone and surrounded by the following development types:

Direction	Zoning	Lot Size
North	R2 – Low Density Residential – Riverland Gardens Estate 239 Lots	Minimum lot size in development 4000m ²
East	R1 – General Residential	Range from 565m ² to 4.08 hectares
South	R1 – General Residential	Range from 543m ² to 1.38 Hectares and includes a Strata Subdivision of over 40 lots with sizes under 400m ²
West	Railway Corridor IN1 – General Industrial	Railway corridor used seasonally and industrial area is 70 metres from the western boundary of the site.

The road network surrounding the development is defined as the following:

Road Name	Current Classification	Status
Tocumwal Road	Regional Road	Made – will require upgrades
North Street	Local	Partially made will require upgrade and remainder of road to be made and will change to a collector road
Savernake Road	Local Distributor Road	Will remain local distributor road
Corowa Road intersection – Savernake Road	Local Distributor Road onto Regional road (Corowa Road)	Intersection upgrades will be required and North Street will need to be made.
Corowa Road intersection with North Street	Collector Road onto Regional Road (Corowa Road)	Intersection upgrades

1.3 Mulwala

Mulwala has a population of 2161 people with an average of 2.2 people per household 1.7 vehicles per household. (census 2016). The proposed development will see an increase of 50% to Mulwala's population and the addition of at minimum 2970 vehicle movements per day. (RMS Guide to Traffic Generating Development).

The town is serviced by a Sewerage Treatment Plant approximately 2.7 km to the south of the site with an equivalent person capacity of 7840. A water treat plant located 3.1km to the south of the site with 10 megalitre a day capacity or 110 litres a second during the peak summer season and there is capacity at the plant to increase to 130 litres a second.

Mulwala is a border town with Yarrawonga. Yarrawonga provides the vast majority of services to the residents of Mulwala.

Mulwala is also a Summer Season tourist destination with the summer population averaging 3690 additional people during the peak season.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal is for a Concept Development for residential Subdivision development with a total of 495 Lots and detailed Stage 1 approval for 108 Lots.

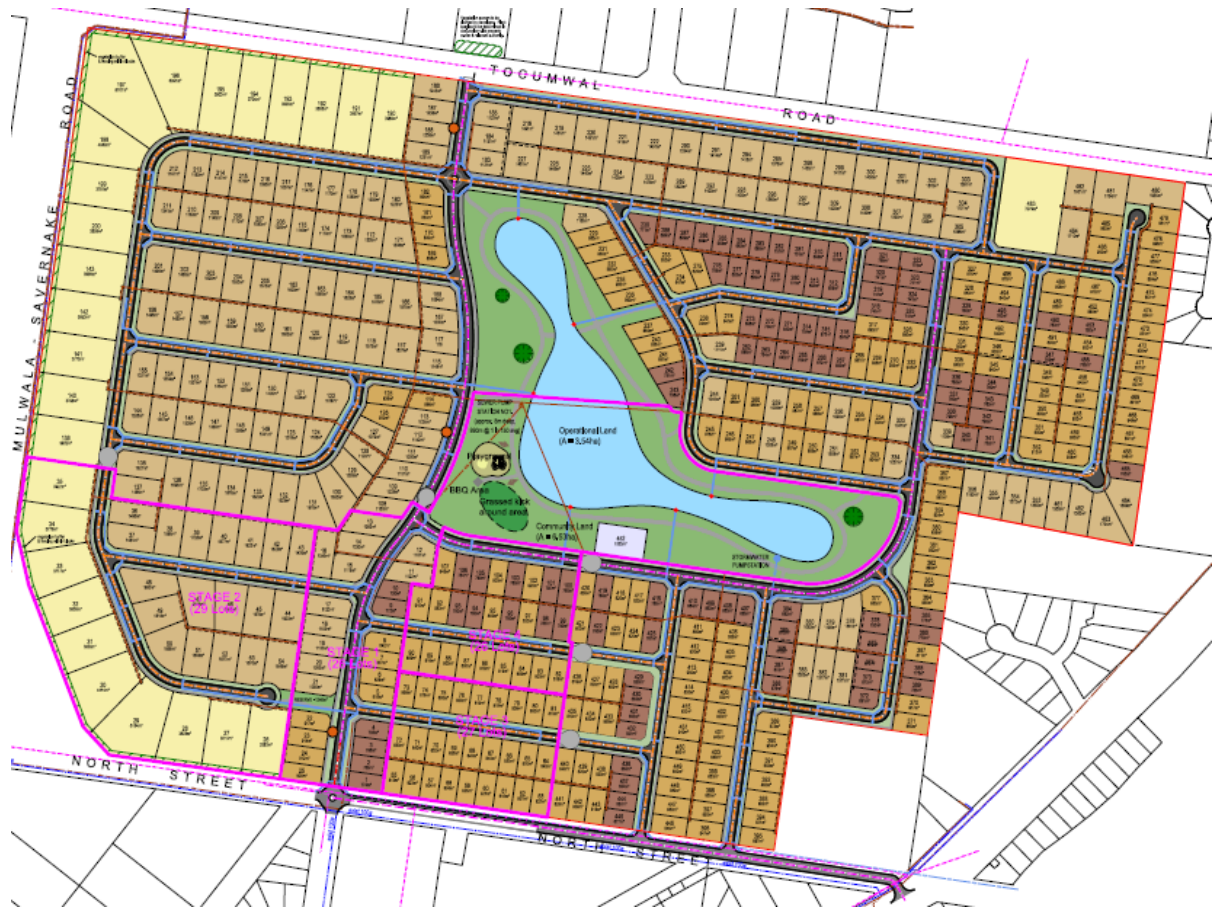


Figure 3 – Proposed Development Footprint. Stage 1 outlined in pink.

3. Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 27 May 2020 where various issues were discussed, fees for the application were paid by the applicant in April 2020 prior to the CIV value of the proposed development being defined and the pre - lodgement assessment having been completed. As a result the application was formally rejected and fees were attempted to be refunded to the applicant.

The following concerns regarding the initial application were noted:

- The capital investment value of the development
- A water servicing report for the development
- Electronic copies of all documentation for exhibition and referral via the NSW Planning Portal.
- Ensure all plans have the same number of lots and overall layout
- Ensure that at all stages larger vehicles, i.e. school bus and garbage truck can exit the site safely.

The last part of the information was received 11 September 2020 CIV value agreed and application formally lodged on Council system.

Table 1: Chronology of the DA

Date	Event
11 September 2020	Development application formally lodged and registered
16 September 2020	Application commence public exhibition by way of notification to adjoining and adjacent landowners, site notice on North Street and advert in the local media and on Council's website. All documents were made available on the council website.
15 September 2020	DA referred to external agencies and internally
17 November 2020	Request for Information from Council to applicant. Second request for additional information 17 February 2021.
24 February 2021	Amended plans and additional information lodged with Council between 24 February and 24 May 2021.
21 June 2021	A mediation session was held with the applicant, the objector and the Council staff. The outcome of the mediation with the objector is outlined in section 4.9 of this report. The mediation between the applicant and council regarding requested additional information is dealt with in section 4.5.
23 July 2021	Panel briefing requesting that the applicant make a formal offer to enter into a Voluntary Planning Agreement be provided to Council before the end of August 2021 and that the matter be reported to council at it's September 2021 meeting.
26 August 2021	Letter offering to enter into a Voluntary Planning Agreement received by Council
28 September 2021	VPA Offer reported to Council. Offer rejected by Council.
3 October 2021	Rescission motion regarding the VPA offer lodged.
19 October 2021	Rescission motion regarding VPA offer resolved at council and new motion resolved by council. To enter into negotiations regarding the VPA offer.

4. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (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.*

These matters are further considered below.

4.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy No. 55 – Remediation of Land;*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;*
- *State Environmental Planning Policy (Koala Habitat Protection) 2021*
- *Murray Regional Environmental Plan No.2 – Riverine Land*
- *Corowa Local Environmental Plan 2012*

A summary of the key matters for consideration arising from these Environmental Planning Instruments are outlined in **Table 3** and considered in more detail below where applicable.

Table 1: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
SEPP 55 – remediation of Land	No evidence of contamination found on site. Unidentified Finds Protocol to be conditioned for any consent granted.	Y
State and Regional Development SEPP	The works value is approximately \$56 million therefore the application is classified under schedule 7, Item 2 of the SEPP as regional development.	Y
Infrastructure SEPP	• Clause 45 (Determination of development applications— other development) – electricity transmission - the proposal is satisfactory subject to conditions. • Clause 101 Development with frontage to classified road • Clause 102(2) Impact of road noise or vibration on non-road development • Clause 104(3) - Traffic-generating development	Y
Vegetation SEPP	Additional information was requested regarding the application and impacts on biodiversity both on and off site. A BAM assessment was undertaken and in May 2021 the BAM report and Offset requirements were provided to council. The contents of the BAM and required offsets are dealt with under Section 4.7 of this report	N
Koala Habitat Protection SEPP 2021	The proposed development site has been assessed as not part of Koala Habitat.	Y
Murray REP No.2	This is land which is to consider the impacts on the River Murray and its tributaries. The application did not require referral under the Part 3 of the Plan. However Item 26 under Clause 13 requires the consent authority consider the impacts of stormwater. This is dealt with in greater detail below in connection with clause 7.3 of Corowa LEP 2012	Y
Corowa Local Environmental Plan 2012	The Land is zoned R1 – General Residential under the Plan. A number of the clauses in the plan have been reviewed in making the recommendation to the panel. The consideration of the following clauses is provided in detail following this table	N

	R1 – General Residential Zone Objectives 4.1 – Minimum subdivision Lot sizes 4.3 – Height of Buildings 5.10 – Heritage Conservation 7.1 – Earthworks 7.3 - Stormwater Management 7.9 – Essential Services	
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State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

Clause 7 of the SEPP states:

7 Clearing that requires permit or approval

(1) A person must not clear vegetation in a non-rural area of the State to which Part 3 applies without the authority conferred by a permit granted by the council under that Part.

(2) A person must not clear native vegetation in a non-rural area of the State that exceeds the biodiversity offsets scheme threshold without the authority conferred by an approval granted by the Native Vegetation Panel under Part 4.

(3) Subclause (2) does not apply to clearing on biodiversity certified land under the [Biodiversity Conservation Act 2016](#), Part 8.

(4) Clearing of vegetation is not authorised under this clause unless the conditions to which the authorisation is subject are complied with.

(5) Subclause (4) extends to a condition that imposes an obligation on the person who clears the vegetation that must be complied with before or after the clearing is carried out.

(6) For the purposes of the Act, section 4.3, clearing vegetation that requires a permit or approval under this Policy is prohibited if the clearing is not carried out in accordance with the permit or approval.

The application was referred to Department of Planning, Industry and Environment - Biodiversity section to ascertain if any thresholds were being met and the section came back with the same concerns, so further assessment was requested from the applicant. The result of a Biodiversity Development Assessment Report (BDAR) concluded that offsets are required for the removal of vegetation that will be associated with the development, in accordance with the Biodiversity Conservation Management Act 2016.

The BDAR is dealt with in greater detail under section 4.7 of the report.

Corowa Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the Corowa *Local Environmental Plan 2012* ('the LEP'). The aims of the LEP relevant to the development are:

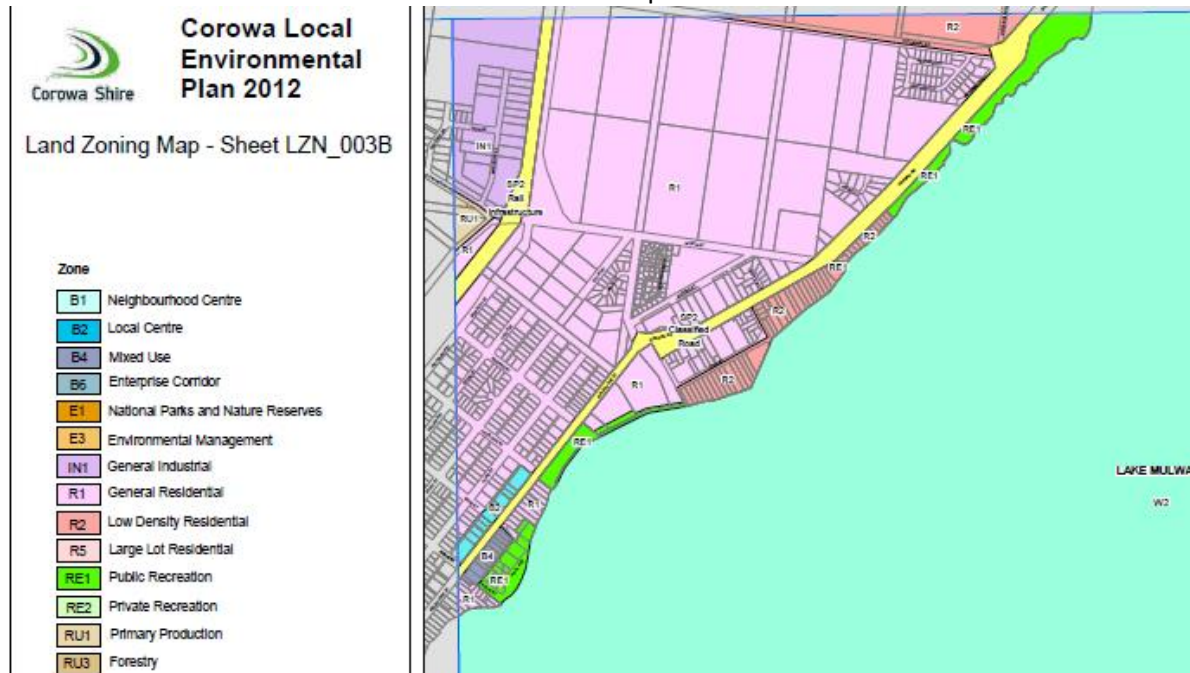
(a) to promote sustainable urban development by consolidating infrastructure and urban growth around the existing centres of Corowa, Howlong and Mulwala,

(b) to facilitate the equitable provision of social services and facilities for the community,

The proposal is considered to be inconsistent with the above aims for the following reasons

- The sustainability of the development cannot be clearly defined due to inconsistencies in the plans and studies provided.
- The lack of information provided regarding off site impacts notably for traffic impacts and provisions of essential services.
- There are social services proposed for the development in the form of green space, however it is not clear if the developer will be responsible for the development of the green space.

The site is located within the General Residential Zone pursuant to Clause 2.2 of the LEP



According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of subdivision of residential purposes which is a permissible use with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

1 Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The proposal will provides for the varying housing types and needs of the community and will provided access to only 2 other services open space and one commercial lot.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 2: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	550m ²	All lots are over 550m ² . Overall the varying lot sizes and layout meet with the character of surrounding developments and it is considered that the overall development will enhance the amenity of the area	Yes
Height of buildings (CI 4.3(2))	9 metres	This restriction will only be utilised for the future development of structures on site.	Yes

Heritage (CI 5.10)	Aboriginal Heritage Concerns raised by NSW Heritage Branch	Additional information requested and additional assessment received.	Yes
Earthworks (CI7.1)	Assess the impact of proposed earth works associated with the development	Earthworks will be required to the civil works, i.e. road, pits, trenches and the stormwater detention basin Given the flat nature of the site the main concern regarding earthworks is with regard to the proposed stormwater detention basin. 2 levels are provided on the stormwater catchment plan.	No
Stormwater Management (CI 7.3)	Minimise impact of Stormwater from the development	The proposal includes a large stormwater basin central to the development. The information in the Stormwater Management Strategy, November 2019 has not been updated to include mitigation requirements outlined in the Biodiversity Development Assessment Report - March 2021 by NGH	No
Essential Services (CI 7.9)	Ensure that the development can be adequately serviced	The development requires extensive upgrade to off-site infrastructure to allow the subdivision to be serviced in accordance with Council's Engineering Guidelines and Australian Standards. Areas of concern include: • Provision of water infrastructure • Provision of sewerage infrastructure • Provision of Stormwater Infrastructure • Provision of road infrastructure • Provision of open space infrastructure.	No

The proposal is considered to be inconsistent with the LEP regarding the provision of infrastructure. Clauses, 7.1, 7.3 and 7.9 are all impacted and cannot be considered in isolation from one another.

Clause 7.1 Earth Works and Clause 7.3 Stormwater Management

These clauses are considered together as the concerns regarding the likely earthworks are linked with the provision of suitable stormwater control.

Clause 7.1(3) States:

- (3) Before granting development consent for earthworks, the consent authority must consider the following matters—
- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,
 - (b) the effect of the development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,
 - (e) the source of any fill material and the destination of any excavated material,
 - (f) the likelihood of disturbing relics,
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Limited details have been provided to regarding the amount or quality of the soil to be excavated, and there are no details regarding appropriate measures proposed to minimise the impact of the proposed earthworks required to the provision of the stormwater detention basin.

The other earthworks associated with the development for roadworks and trenching for services are considered to be ancillary to the development and are likely to have minor impact.

In addition the stormwater and earthworks for the site will need to include the mitigation measures outlined in the BDAR for the site. Please refer to section 4.7 of further details.

Clause 7.3(3) States

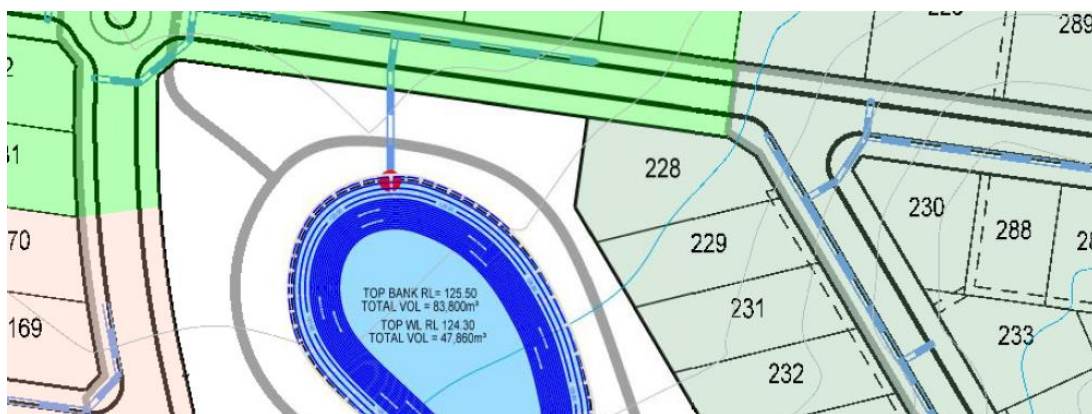
(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

No details have been provided regarding the depth or angle of batter for proposed onsite stormwater detention system. A Stormwater Catchment plan indicates that the depth in the basin between the bank and the water level will be 1.2 metres, the plans do not provide detail on the overall depth of the detention basin and no cross-sections have been provided of the proposed detention basin.



Clause 7.9 States:

7.9 Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable road access.

Supply of Water

The Riverland Gardens Estate and Tocumwal Road Development Report on Hydraulic Modelling and Water Supply Upgrade Requirements for 236 & 496 Lot Residential Developments dated April 2020 by Gordan Gibson Nominees and North East Survey Design was reviewed by Council officers and found to be deficient as the plan assumed that there are no other lots connected to the reticulation network from the treatment plant to the site. Additional information was requested and the concerns were raised at the mediation session on the 21 June 2021 and then again at the Panel Briefing session 23 July 2021.

The applicant did include upgrade works to the main in the Offer to enter into a voluntary planning agreement, however the value of the offer did not take into consideration the coefficients of pipe size verse flow rates for water reticulation. Further details regarding the VPA offer are dealt with under section 4.5 of the report.

Supply of Electricity

The Application was referred to Essential Energy for comment. No objection raised.

Disposal and Management of Sewage

The design provided by the applicant defined the need for the development only. Council attempted to engage with the applicant since November 2020 to discuss the limitations in the overall sewerage reticulation network in Mulwala, which would allow the network to take the additional load from the proposed development.

The matter was discussed at the mediation session on the 21 June and the Panel Briefing on 23 July.

An offer to enter into a Voluntary Planning agreement was received and again did not take into consideration the coefficients of pipe size verse flow rates for sewerage reticulation.

Further details regarding the VPA offer are dealt with under section 4.5 of the report.

Stormwater Drainage and Retention

The plan indicates the onsite detention of stormwater, however there are no cross-sections provided regarding the onsite detention basin and the information in the Stormwater Catchment Plan does not address the mitigation measures outline in the Biodiversity Development Assessment Report.

Suitable Road Access

Additional information was requested regarding the Traffic Impact Assessment in November 2020. The Concerns regarding the report from TTM was that the report only considered onsite impacts, or the application in isolation. It did not take into consideration the surrounding road network or intersections that would be impacted by the increase in traffic. The VPA offer to Council does not include any road works.

4.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which may be relevant to the proposal.

4.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

COROWA DEVELOPMENT CONTROL PLAN 2012

Chapter 2 of the DCP covers residential development and section 2.17 defined the prescribed standards for residential subdivisions.

2.17 Subdivision Objectives

To provide lots with areas and dimensions that enable the appropriate siting and construction of a dwelling, solar access, private open space, vehicle access and parking, water management, easements and the retention of significant vegetation and site features.

Standards

General

1. Compliance with Council's *Design Manual for the Subdivision of Land* in regards to:

- Road layout
- Road pavement
- Sub-surface drainage
- Stormwater drainage
- Site works (e.g. cut & fill)
- Soil & water management (e.g. erosion)
- Waterfront development
- Cycleway & pedestrian paths
- Bushfire protection
- Water reticulation
- Sewerage system

The layout design meets the prescribed standards for lot width, depth and solar access under clause 2.17 subclauses 2 and 3.

Under 2.17 (1) the Council's design manual provides for the details that are required for subdivisions. The plans have been assessed against the requirements of the manual and additional information requested regarding the provision of Roads, Water, Sewer and open space infrastructure.

The infrastructure requirements of the development were discussed in detail at the mediation session 21 June 2021. *Minutes from the mediation session are provided in attachment 3. As a result of the mediation session the applicant was to provide to Council the following*

<i>Item</i>	<i>Comment</i>
Details of the vegetative screen options to reduce the impact on adjacent land owner	<i>Layout plan amended indicating indicative vegetation screening – no detail provided</i>
Plans showing the road hierarchy	<i>Additional information has been provided for the proposed road network - details not included in the key of the overall concept plan nor the servicing plan</i>
Updated traffic impact assessment	<i>No updated traffic impact assessment has been provided</i>
Operational and community land lots to be defined on an updated plan	<i>Plan has been updated – considered satisfactory</i>
Details of the BBQ and Playground area to be provided.	<i>Concept plans have been provided. It is not clear however whether or not the applicant (developer) or Council will be developing the facilities. It is council's preference that the developer undertake these works.</i>
Amended plan showing the location of the neighbourhood shop on a separate title.	<i>Plans have been updated – considered satisfactory</i>
Updated Statement of Environmental Effects regarding the Objectives of the Zone and the sustainability of the development.	<i>The SEE has been updated. References the new information provided.</i>

In addition to the above matters, limitations of Council reticulation systems were discussed. The options to progress the development in light of the limited capacity of the systems were discussed.

In essence the Council does not have the upgrade works programmed in its long term financial plan 2021-2031 to allow the application to be approved. Council and the developer have two options.

<i>Option</i>	<i>Council Comment</i>
<i>1. Wait and program the works for 2032</i>	<i>This was not considered a viable option</i>
<i>2. Program the works and vary the council capital work program and Long term Financial Plan</i>	<i>This option would require the developer and council to enter into a Voluntary Planning Agreement for the works. This was considered the best option to progress the development. Please see Section 4.5 for further details.</i>

At the briefing the Panel also discussed the other information that should be provided on the plans and the time limits for providing the additional information:

- Landscaping details for the larger lots proposed along Savernake Road, Tocumwal Road and North Street (Lots 26-35; Lots 139-143; and Lots 190-200) – overall concept plan includes a vegetation buffer and fence to be located within blocks notation but no detail have been provided.*
- That the outstanding additional information be provided to council by 5 August 2021 - see table above for details*
- That an Offer for a Voluntary Planning Agreement be provided to Council by the end of August 2021 – Offer received 10 August 2021.*

4.4 S7.12 Development Contributions Plan 2019

The plan allows for the levying of a 1% contribution based on the capital investment value of the works. The payment of the contribution should be calculated and paid prior to release of the subdivision certificate for each stage of the development.

4.5 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

10 August 2021 an offer to enter into a voluntary planning agreement was received by Council. The offer was reported to the 28 September 2021 meeting of Council with a recommendation that the offer be refused. A rescission motion was received regarding the Council resolution and the Council resolved at its 19 October 2021 meeting to enter into negotiations regarding a voluntary planning agreement.

The owner via the applicant has formally agreed by way of a confirmation email to enter into negotiations. Copies of all correspondence, the Council meeting report and rescission motion are provided in attachment 4.

At the time of writing this report the negotiation process had not commenced due to limited time between the Council rescission motion, the applicant agreeing to enter into negotiations and the planning panel meeting. The request to have the Mayor involved has been referred to Council's Solicitor's for legal advice. The advice will be provided to the panel once available.

As noted in the Council report to the September 2021 Council meeting there are a number of concerns regarding the current offer. These can be negotiated, however the applicant is seeking the following:

“The Owner proposes that he be engaged to construct the asset.”

This is not permitted under the tendering provisions of the Local Government Act 1993 and General Regulation 2000 given the likely significant financial contribution required by Council (any amount valued over \$250,000) as part of the negotiation process along with the prioritisation of the works in a number of Council strategic planning documents including the Long Term Financial Plan and the Capital Works Delivery Program.

Section 2.26 of the Act states:

2.26 Obligation of Commission and panels to consult with council about certain decisions

(1) The Independent Planning Commission or a Sydney district or regional planning panel must not exercise a function that will result in the making of a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council.

The financial impact on the Council cannot be defined by the offer provided to Council on the 10 August 2021. Council is willing to negotiate with the developer towards a suitable voluntary planning agreement, however until the negotiations have been completed and the agreement has been through the process required under section 7.4 of the EP&A Act the panel cannot determine whether or not the future voluntary planning agreement will have a significantly adverse financial impact on the Council, therefore the panel are unable to approve the application in accordance with section 2.26 of the Environmental Planning and Assessment Act 1979 at this time.

4.6 Section 4.15(1)(a)(iv) - Provisions of Regulations

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, comprising the following:

None of these provisions apply to this application.

4.7 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting –The site has been zoned for general residential for a number of years and it is the logical progression for the expansion of Mulwala’s residential area. The variable lot sizes proposed provides for the transition between the General Residential area and the Low Density Residential area in Mulwala.
- Access and traffic – The application was accompanied by a Traffic Impact Assessment for the development. The report has been assessed and was found to have been developed in isolation with only the traffic that will be generated from the development included in the calculations. The assessment does not take into consideration the traffic impacts on nearby intersections nor the impact of existing traffic will have on the proposed development road hierarchy.

This concern was raised at the mediation session and an updated plan and traffic impact assessment was not provided as agreed at the mediation session

- Public Domain – The proposal includes a large open space central to the development. Additional details of the amenities and facilities that would be provided in the space were provided, however the voluntary planning agreement was silent on the provision of the facilities for the open space.

- Utilities – Concerns regarding the provision of water and sewer infrastructure have been dealt with throughout the report.
Electricity and NBN services are available to the site.
- Flora and fauna impacts – A Biodiversity Development Assessment Report (BDAR) March 2021 was prepared for the site by NGH as a result of DPIE- Biodiversity Section and Council request for additional information. The report details the number of offset credits that are required for the overall development, and defines mitigation measures to be utilised.

The Concept plan and stormwater management plan have not been modified in any way to lessen the impact of the development on the biodiversity of the site. The following is an excerpt from the executive summary outlines the credits required to be retired based on the current design.

A preliminary biodiversity assessment was undertaken by NGH (NGH 2021) and determined the clearing of native vegetation as part of this proposal exceeds the area clearing thresholds listed under CI7.2 of the *Biodiversity Conservation Act 2016* (BC Act) regulations. In accordance with the BC Act, the Biodiversity Offset Scheme (BOS) applies and a Biodiversity Development Assessment Report (BDAR) must be prepared.

This BDAR assesses the impacts of the proposed subdivision, associated infrastructure and anticipated future impacts resulting from the subdivision. The proposal would be undertaken in three stages which have been included in this assessment.

The proposal requires the removal of up to;

- 1.25 ha of PCT 237: *Riverine Western Grey Box grassy woodland of the semi-arid (warm) climate zone* comprised of planted and remnant vegetation.
- 2.1 ha of planted native vegetation not representative of a PCT
- 10 scattered paddock trees comprised of remnant PCT 237: *Riverine Western Grey Box grassy woodland of the semi-arid (warm) climate zone*

No threatened species were observed in the development site. Three candidate species have potential habitat in the development site (Major Mitchell's Cockatoo, Superb Parrot and White-bellied Sea-eagle) but were unable to be surveyed during the targeted survey time. For the purposes of the BAM, these species are assumed to occur in suitable habitat within the development site.

The offset credit requirements for the proposal are;

- 15 Ecosystem credit for impacts to PCT237 -*River Red Gum herbaceous-grassy very tall open forest wetland on inner floodplains in the lower slopes sub-region of the NSW South Western Slopes Bioregion and the eastern Riverina Bioregion*
- 15 Species credit for impacts to Major Mitchell's Cockatoo (*Lophochria leadbeateri*)
- 15 species credits for impacts to Superb Parrot (*Polytelis swainsonii*)
- 15 species credits for impacts to White-bellied Sea-eagle (*Haliaeetus leucogaster*)

Impacts to federally listed species have been considered and an assessment of significance was undertaken for the Swift Parrot, Sloane's Froglet, Superb Parrot and Grey Falcon. Potential impacts are considered unlikely to be significant and no referral is considered necessary to the Federal Department of Environment and Energy.

Consideration has been given to avoiding and minimising impacts to biodiversity throughout each phase of the proposal. Mitigation and management measures will be put in place to adequately address impacts associated with the proposal, both direct and indirect.

Another concern is highlighted on page 36 and 50 for the report.

6.1.2 Proposal planning phase – detailed design

The subdivision design has incorporated a stormwater detention basin and open space within the centre of the lot. This allows for retaining three scattered paddock trees and landscaping to increase habitat within the development site. The stormwater detention basin would be designed in accordance with the Sloane's Froglet Stormwater Wetland Design guidelines. This would provide additional habitat for threatened fauna including Sloane's froglet.

8.1.4 Prescribed impacts

1. Stormwater and Detention Basin designed and constructed in accordance with Sloane's Froglet Storm water Wetland Design Guidelines (ACC & OEH 2019).

The design guidelines are not referred to in the Stormwater Management Strategy or the Stormwater Catchment plan both of which were prepared by the applicant in 2020, prior to the BDAR being prepared.

All the mitigation measures identified on page 50 of the report have not been included or referenced on any other plans and are only referenced as attachments in the updated statement of environmental effects provided as part of the request for additional information key are examples provided below.

Landscaping plans for street trees and open spaces should incorporate native trees and plants representative of local vegetation.

All mature trees to be removed should be cut into manageable lengths and relocated to the detention basin as habitat.

Implement cat curfew covenant to prevent domestic cats roaming at night time from proposed residential areas into surrounding vegetation.

Implement Tree Preservation Order on retained vegetation to protect future clearing and cumulative impacts

Revegetation Guides issued to new subdivision landowners to encourage planting of local native species and prevent introducing of environmental weeds.

- Natural environment – The site is flat with a fall of 500mm over the site. The construction of the stormwater detention basin, drainage to the basin will impact on the levels of the site. No cross-sections have been provided to assess the impact this change in level will have on the overall site.



- Noise and vibration – The only likely noise and vibration impacts will occur over the construction periods of the development and construction of new dwellings while the subdivision is established.
- Natural hazards – The site is not impacted by any natural hazards
- Safety, security and crime prevention – The Subdivision has been designed to allow natural surveillance and interconnected roads and facilities.
- Social impact – The proposal will provide for the future growth of Mulwala, with an increase in population of 50% based on the 2016 census data. There are concerns about the services available to meet the needs of the increase in population as the majority of services of the town are located in the cross border town of Yarrawonga. The application proposes to provide green space and one lot for neighbourhood retail.

- Economic impact – There will be economic benefit to the town during the construction phases of the subdivision and home construction. The additional population will provide additional income for existing businesses.
- Site design and internal design – The principles of the Design Guide - Urban Design for Regional NSW by the Government Architect NSW have been used to assess the overall design of the subdivision.

Project type 4 – Greenfield Development

1. Manage Connections between new neighbourhoods and surrounding uses	Connections within the development are well defined. The connections with the surrounding area, notably the road networks and the intersections of Savernake Road and Corowa Road and North Street and Corowa Road have not been assessed or defined.
2. Connect and engage urban development with natural features	The BDAR assessment outlines the offsets required for the development in its current form. In the period since the BDAR has been provided no variation to the layout or details contained in the BDAR regarding mitigation measures have been incorporated into overall design. Therefore it is considered that there has been no attempt in the proposed development to engage with the natural features of the site and surrounding area.
3. Embed green infrastructure as a network	The application includes an onsite stormwater detention basin however, the mitigation measures of the BDAR have not been incorporated into the design of the detention basin as outlined on pages 26 and 50 and there has been no detail of stormwater reuse on the overall design of the detention system.
4. Design public open spaces and streetscapes to support biodiversity	The BDAR provides recommendations to allow the open space and streetscapes to support biodiversity, however the plans have not been updated to reflect this recommendation and measures.
5. Plan for a network of interconnected streets to facilitate walking and cycling	The development has been designed to provide for well connected streets to facilitate walking and cycling of residents and visitors.
6. Support the viability of public transport and local town and village centres	Bus stops and bus routes have been defined for the subdivision. A neighbourhood shop site has also be included in the design, so as to not fragment the central business area of the community located approximately 1km to the south of the site.

In summary due to the inconsistencies in documentation provided and lack of detail on the plans the overall impact of the development cannot be determined.

4.8 Section 4.15(1)(c) - Suitability of the site

The site is considered suitable for residential subdivision, however with the information provided the impact of the current application cannot be adequately assessed to ensure that adequate services can be provided to the site or that the environmental impacts and controls can be determined.

4.9 Section 4.15(1)(d) - Public Submissions

The 2 submissions are considered in Section 5.3 and attachment 3 of this report.

4.10 Section 4.15(1)(e) - Public interest

The application in its current form provides insufficient detail regarding provision of essential services and the inconsistencies in the information provided within the documents that support the application the environmental impact cannot be determined. Therefore the proposal considered not to be in the public interest.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment as required by the EP&A Act and outlined below in Table 2.

The outstanding issues raised by Agencies are considered in the Key Issues section of this report

Table 2: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies (if none – N/A – to show consideration)			
Biodiversity (Environment, Energy & Science Group within DPIE)	Biodiversity (Environment, Energy & Science Group within DPIE)	A Biodiversity Development Assessment Report (BDAR) has been prepared. Offsets will be required. However the additional mitigation measures have not been addressed in the other documentation associated with the application notably the Stormwater Catchment Plan and the Stormwater Management Strategy	N
Electricity supply authority	Essential Energy Clause 7.9 Corowa LEP 2012	Outlined future requirements for the subdivision.	Y
Transport for NSW	CI 104 – Infrastructure SEPP Development that is deemed to be traffic generating development in Schedule 3.	Concerns regarding Impacts on various intersections and awaiting updated traffic Impact assessment	N
Heritage NSW	Referral for aboriginal heritage impacts	Reply received. Aboriginal due diligence assessment undertaken. Unidentified find protocol included in the assessment	Y

Murrumbidgee Local Health District – Public Health	Referral for comment on population increase impact on services	No reply received	NA
Department of Education	Referral for comment on Population increase impact on services	No reply received	NA
Public Works Advisory	Referral for comment under Murrumbidgee REP No.2	No reply received	NA

5.2 Council Referrals (internal)

The development application has been referred to various Council officers for technical review as outlined **Table 3**.

Table 3: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineer	All engineering plans reviewed by Council's development engineer. Concerns raised regarding provision of infrastructure as outlined throughout this report.	Refer to key Issues
Utilises Engineer	All water and sewer documentation and plans reviewed. Concerns about capacity of Council's reticulation networks ability to service stage 1 and the entire concept plan raised	Refer to key Issues
Recreation Engineer	Concern raised about lack of detail regarding the facilities in the open space area proposed.	Detail ok, concerned about who will pay for the works
Building	No concerns raised	NA
Health	No concerns raised	NA

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

5.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 16 September 2020 until 14 October 2020 the notification included the following:

- An advertisement in the local newspaper Yarrowong Chronicle and Corowa Free Press;
- A sign placed on the site;
- A total of 55 notification letters sent to adjoining and adjacent properties
- Notification on the Council's website.

The Council received a total of 1 unique submissions, comprising 2 objections. A mediation session was held with the applicant and the landowners regarding the development on 21 June 2021, Please refer to appendix 3

The applicant agreed to provide details of suitable vegetative screening. The amended plans indicate the location of the proposed plantings to be consulted with the objectors.

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

6.1 PROVISION OF INFRASTRUCTURE TO SERVICE THE DEVELOPMENT

To ensure compliance with clause 7.9 of the Corowa Local Environmental Plan the consent authority must ensure the provision of essential services to all proposed lots in stage 1 of the development and the overall concept plan. Since November 2020 Council officers have attempted to engage with the applicant regarding the servicing issues for the site as outlined throughout this report.

At the Panel Briefing session 23 July 2021 the applicant was advised to have an offer for a voluntary planning agreement to Council before the end of August 2021 so the matter could be reported to Council in September 2021. These 2 requirements occurred with the Council first rejecting the offer at the 28 September Council meeting, however a rescission motion was prepared to the 19 October 2021 meeting of Council which was successful and now requires the Council to negotiate a planning agreement with the developer and owner.

Given the value of the works to be negotiated will be over \$250,000 in the value, at a minimum a period of 2-3 months will be required once the negotiations are complete to allow for any agreement to be exhibited and approved by the Minister and for Councils Integrated Planning and Reporting documentation to be updated accordingly along with the Council's Long Term Financial Plan. These documents will also require public exhibition.

Until this is completed the panel are unable to approve the development due to the panels obligation under section 2.26(1) of the Environmental Planning and Assessment Act 197 as the development.....*might reasonably be expected to have, a significantly adverse financial impact on a Council.*

In addition the consent authority cannot be satisfied that the water and sewer services that are essential for the development are available or that adequate arrangements have been made to make them available when required in accordance with Clause 7.9 of the Corowa Local Environmental Plan 2012

Finally the consent authority cannot be satisfied that the prescribed General Standards of Section 2.17(1) Subdivision Objectives of Corowa Development Control Plan 2012 can be complied with.

6.2 TRAFFIC IMPACT

Additional information regard the traffic impact of the development offsite was requested and by the panel set deadline an updated traffic impact assessment had not been received. The development will increase the population of Mulwala by 50% based on the 2016 census data for the overall population of Mulwala. The Census data also shows 1.7 vehicles are registered per property meaning the community is largely reliant on private vehicle transport.

The impacts on the intersections of Savenake Road -Corowa Road ; North Street –Corowa Road in particular require further assessment to determine if upgrade works or other measures are required to ensure continued safe movement of traffic.

Therefore the consent authority cannot be satisfied that the road services that are essential for the development are available or that adequate arrangements have been made to make them available when required in accordance with Clause 7.9 of the Corowa Local Environmental Plan 2012.

In addition the consent authority cannot be satisfied that the prescribed General Standards of Section 2.17(1) Subdivision Objectives of Corowa Development Control Plan 2012 can be complied with.

6.3 EARTHWORKS FOR THE STORMWATER DETENTION BASIN

To ensure compliance with clause 7.1 of the Corowa Local Environmental Plan the consent authority must ensure the following in relation to earth works for the proposed development:

- The quality of the soil to be excavated
- The destination of any excavated material
- Any appropriate measure proposed to avoid, minimize or mitigate the impact of the development.

No details have been provided regarding the earthworks associated with the stormwater detention basin, therefore the impacts of the required earthworks cannot be completed.

The consent authority is unable to consider the impacts the likely earthworks will have in accordance with the requirements of clause 7.1 of Corowa Local Environmental Plan 2012 as inadequate detail has been provided

In addition the consent authority cannot be satisfied that the prescribed General Standards of Section 2.17(1) Subdivision Objectives of Corowa Development Control Plan 2012 can be complied with.

6.4 STORMWATER MANAGEMENT

To ensure compliance with clause 7.3 of the Corowa Local Environmental Plan 2021 Stormwater Management the consent authority must ensure:

- includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
- avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

No details have been provided regarding reuse of the water and provides minimal detail regarding treatment of stormwater leaving the site and entering Council's existing system.

Therefore the consent authority cannot be satisfied that measures have been included to avoid any significant adverse impact to receiving waters in accordance with Clause 7.3 of the Corowa Local Environmental Plan 2012

In addition the consent authority cannot be satisfied that the prescribed General Standards of Section 2.17(1) Subdivision Objectives of Corowa Development Control Plan 2012 can be complied with.

6.5 FLORA AND FAUNA IMPACTS

Section 4.15(1)(b) of the Environmental Planning and Assessment Act requires a consent authority to consider the impact of a development on the natural environment. A Biodiversity development assessment report (BDAR) was prepared for the site which with require offsets for the impact the development will have on the natural environment.

As part of the BDAR mitigation measures were included to limit additional impacts on the natural environment. These mitigation measures include:

- The stormwater and detention basin designed and constructed in accordance with Sloane's Froglet Stormwater Wetlands Design Guidelines (ACC & OEH 2019)

- Landscaping plans for street trees and open spaces should incorporate native trees and plants representative of local vegetation
- All mature trees to be removed should be cut into manageable lengths and relocated to the detention basin for habitat
- Implement a cat curfew covenant to prevent domestic cats roaming at night time for proposed residential areas into surrounding vegetation.
- Implement Tree Preservation Order on retained vegetation to protect future clearing and cumulative impacts.
- Revegetation Guides issue to new subdivision landowners to encourage planting of local native species and prevent introduction of environmental weeds.

The BDAR is references and annexed to the updated Statement of Environmental Effects, however no plans have been updated with the mitigation measures, notably the plans and strategy for stormwater management. In addition there has been details regarding options to reduce the impact on the natural environment by a redesign of the concept plan.

Inconsistencies between the Biodiversity Development Assessment Report (BDAR) and plans submitted as part of Development Application 2020/37 mean the impacts on the natural environment cannot be adequately assessed in accordance with section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.

6.6 PUBLIC INTEREST

The application in its current form provides insufficient detail regarding provision of essential services, provision of facilities for the proposed open space and the impact the development will have on the road network surrounding the development. With the current information provided the consent authority cannot be sure that the public, as rate payers, will not be left to fund significant works both on site and off site as a direct result of this development. Therefore the proposal is considered not to be in the public interest under section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

It is considered that the key issues as outlined in Section 6 have not been resolved satisfactorily through amendments to the proposal.

7.1 RECOMMENDATION

That the Development Application 2020/37 For Stage 1 108 lot Subdivision and Concept Development (495 Lots total) at Lots 1&2, DP 1082130, Lots 69, 70 ,71, 74, 75, 76, 77, 78 DP 752290; Lot 2, DP 600973; and Lots 6&7, DP 253594 North Street and Tocumwal Road, Mulwala be **REFUSED** pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment 1: Draft Reasons for Refusal
- Attachment 2: Agency Submissions
- Attachment 3: Minutes of Mediation Session
- Attachment 4: Offer - Voluntary Planning Agreement Reports.

ATTACHMENT 1 – DRAFT REASONS FOR REFUSAL

1. The panel are unable to approve the development due to the panels obligation under section 2.26(1) of the Environmental Planning and Assessment Act 1979 as the development....*might reasonably be expected to have, a significantly adverse financial impact on a Council...* as no formal planning agreement has been finalised between the developer and Federation Council.
2. In accordance with the provisions of section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the consent authority is not satisfied that the water, sewer services that are essential for the development are available or that adequate arrangements have been made to make them available when required in accordance with Clause 7.9 of the Corowa Local Environmental Plan 2012
3. In accordance with the provisions of section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the consent authority cannot be satisfied that the road services that are essential for the development are available or that adequate arrangements have been made to make them available when required in accordance with Clause 7.9 of the Corowa Local Environmental Plan 2012.
4. In accordance with the provisions of section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the consent authority has not been able to consider the impacts the likely earthworks will have in accordance with the requirements of clause 7.1 of Corowa Local Environmental Plan 2012 as inadequate detail has been provided
5. In accordance with the provisions of section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the consent authority cannot be satisfied that measures have been included to avoid any significant adverse impact to receiving waters in accordance with Clause 7.3 Stormwater Management of the Corowa Local Environmental Plan 2012
6. In accordance with the provisions of section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the consent authority cannot be satisfied that the prescribed General Standards of Section 2.17(1) Subdivision Objectives of Corowa Development Control Plan 2012 can be complied with in the following areas:
 - Road layout
 - Road pavement
 - Stormwater drainage
 - Site works (e.g. cut & fill)
 - Water reticulation
 - Sewerage system
7. Inconsistencies between the Biodiversity Development Assessment Report (BDAR) and plans submitted as part of Development Application 2020/37 mean the impacts on the natural environment cannot be adequately assessed in accordance with section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
8. The application provides insufficient detail regarding provision of essential services, provision of facilities for the proposed open space and the impact the development will have on the road network surrounding the development. The consent authority cannot be sure that the public, as rate payers, will not be left to fund significant works both on site and off site as a direct result of this development. Therefore the proposal is considered not to be in the public interest under section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979

ATTACHMENT 2 – AGENCY SUBMISSIONS



Planning,
Industry &
Environment

Our ref: DOC20/767070
Senders ref: DA 2020/37

Ms Susan Appleyard
Director Development & Environment
Federation Shire Council
PO Box 77
COROWA NSW 2646
Via Concurrence & Referral Portal CNR-5479
14 October 2020

Dear Ms Appleyard

Subject: Development Application 2020/37 – 490 lot subdivision and development of 106 lot “Stage 1” – Lot 79 DP 752290, North Street, Mulwala (CNR-5479)

Thank you for your letter dated 8 September 2020 regarding the abovementioned planning proposal and seeking comments from the Biodiversity and Conservation Division of the Department of Planning, Industry and Environment (the Department).

The Biodiversity and Conservation Division (BCD) of the Department has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), and flooding.

While BCD may provide advice regarding the evidence relating to the clearing, Council remains the consent authority and must be satisfied that no harm will be caused to threatened species by the works proposed. We have reviewed the documents supplied and provide detailed comments and recommended actions at **Attachment A**.

In summary BCD do not agree with the assessment in Section 4.2 of the Statement of Environmental Effects (SEE) that the anticipated clearing is below the Biodiversity Offset Scheme (BOS) entry thresholds established at Ss.7.4 of the *Biodiversity Conservation Act 2016* (BC Act).

We suggest Council require assessment of the vegetation around dwellings in the north-east of the proposal site, including threatened species habitat values. Some of the trees are locally native species, and the vegetation appears to be combination of planted and remnant individuals. An updated BOSET report should be provided that includes planted native vegetation. Without inclusion of planted native vegetation in the assessment, we are unable to advise if the proposal is likely to cause significant harm to threatened species.

We consider the proposal to have potential to create new habitat for the Sloane's Froglet (*Crinia sloanei*). BCD can assist in the design and implementation of the storm water disposal system to maximise that opportunity.

BCD remind Council of its duty to assess all roadside vegetation that may be impacted when providing access and services to the subject land, as it has not been assessed by the applicant. Large, hollow-bearing trees remain along the Tocumwal Road, Mulwala – Savernake Road, and North Street roadsides. Vegetation on these roadsides may be part of NSW and Commonwealth-listed threatened ecological communities.

The subject land is located outside the current Flood Planning Area (FPA) for Mulwala, so we have no concerns about riverine flooding.

Subject:

RE: DA 2020/37- 495 Lot Subdivision - North Street, Mulwala (Lot 1 DP1082130, Lot 2 DP600973, Lots 69-71 DP752290, Lots 74-78 DP752290, Lots 6 & 7 DP253594)

Attachments:

DA2020-37 Concept Plan.pdf

Dear Sir/Madam,

We refer to the above matter and to your below correspondence seeking comment from Essential Energy in relation to the proposed development.

Strictly based on the documents submitted, Essential Energy has no comments to make as to potential safety risks arising from the proposed development.

Essential Energy makes the following general comments:

1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
2. As part of the subdivision, as required by Essential Energy, easement/s are to be created for any existing or new electrical infrastructure, using Essential Energy's standard easement terms current at the time of registration of the plan/s of subdivision – refer to Essential Energy's Contestable Works Team for requirements via email contestableworks@essentialenergy.com.au.
3. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above properties should be complied with.
4. Council should ensure that a Notification of Arrangement (confirming satisfactory arrangements have been made for the provision of power) is issued by Essential Energy with respect to all proposed lots which will form part of the subdivision/s, prior to Council releasing the Subdivision Certificate. It is the Applicant's responsibility to make the appropriate application with Essential Energy for the supply of electricity to the subdivision/s, which may include the payment of fees and contributions. Despite Essential Energy not having any safety concerns, there may be issues with respect to the subdivision/s layout, which will require Essential Energy's approval.
5. In addition, Essential Energy's records indicate there is electricity infrastructure located within close proximity to the properties. Any activities within this location must be undertaken in accordance with the latest industry guideline currently known as *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the properties encroach on the electricity infrastructure.
6. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the *Electricity Supply Act 1995 (NSW)*.
7. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice – Work near Overhead Power Lines* and *Code of Practice – Work near Underground Assets*.

Hi Susan,

As per your recent phone conversation with Maurice, it is understood than you intend to seek additional information from the proponent in relation to the following:

- Updated Traffic impact assessment, especially in relation to the impact of the development on the intersection of Savemake Road and Corowa Road;
- Revised Lot Layout, especially to ensure that newly created allotments do not have vehicular access to the classified road network;
- Information relating to updated bus routes within the proposed subdivision.

Kind regards,

Dear Ms Leahy

Subject: DA 2020/37 Proposed 107 Lot Subdivision (Stage 1), 37 North Street – Mulwala

The following information about the above development application received by Heritage NSW on 17 November 2020 is provided by Heritage NSW of the Department of Premier and Cabinet (the Department).

We have reviewed the documents supplied and can advise that the information supplied does not properly address Aboriginal cultural heritage or demonstrate consideration for impacts to any Aboriginal sites or objects that may arise through the proposed subdivision works and all associated activities. Heritage NSW recommends the Statement of Environmental Effects (SEE) include sufficient information to demonstrate that Aboriginal cultural heritage has been adequately addressed and ensure that all conclusions made in relation to Aboriginal cultural heritage are supported by adequate data.

Detailed comments relating to Aboriginal cultural heritage matters are in **Attachment A**.

Aboriginal cultural heritage

The information supplied does not demonstrate consideration for potential impacts to Aboriginal sites/objects (known or unknown) and provides no detail or supporting evidence relating to the impacts, or otherwise, that the proposed subdivision and associated activities may have on Aboriginal cultural heritage. We also note that not all areas of proposed works with potential to harm Aboriginal cultural heritage were referred to in the Statement of Environmental Effects (SEE Section 5.5 Aboriginal cultural heritage).

Our assessment identifies the occurrence of 12 Aboriginal sites/objects registered with AHIMS within close proximity (within approximately 2.3kms) north-west of the proposed subdivision site and within a similar landscape context. These known sites include culturally modified trees (ie. scarred trees) and stone artefacts and while they do not appear to be at immediate risk of harm from the proposed activities, they do indicate the potential for Aboriginal cultural heritage to occur in the proposal area.

The Statement of Environmental Effects (SEE) identifies that several scattered trees occur over the farming portion of the site (2.2 Site Description) and that tree removal will be necessary, including a number of scattered trees throughout the central portion of the subject land (3.1 Overview) however does not demonstrate that risk of harm to Aboriginal cultural heritage arising from this activity has been taken into consideration (5.5 Aboriginal cultural heritage). Our assessment indicates that mature native trees demonstrating potential for Aboriginal cultural modification may occur within the proposed subdivision site and along Tocumwal Road, Mulwala-Savernake Road and North Street roadsides. These may also be at risk of harm through clearance to provide improved access, stormwater disposal and services as described in the Development Servicing Report (Provision of Infrastructure).

Heritage NSW also notes that the proposal includes an upgrade to existing stormwater main to Lucan Street (Appendix A–201–Stormwater) along a route greater than 4kms from the proposed subdivision area. This is an area intended for ground disturbance works and potential impacts to mature native vegetation where the SEE has not demonstrated consideration of harm to Aboriginal cultural heritage. According to Appendix A (202–Stormwater) the existing main upgrade terminates in the southern portion of Lot 1 DP789195. Our assessment indicates this area of works contains mature native vegetation and known Aboriginal sites/objects registered in the Aboriginal Heritage Information Management System (AHIMS) with the nearest occurring approximately 50m of the upgrade. The SEE does not identify the presence of these sites or demonstrate consideration for potential harm to Aboriginal cultural heritage values as a result of this intended activity.

According to the Developing Service Report (Sewer Reticulation) the applicant proposes to install a new 200mm diameter sewer rising main from the proposed subdivision to the treatment plant in Bayley Street, also at some distance from the main subject site (greater than 3kms) but has not considered the potential impacts that may result from this activity to any Aboriginal cultural heritage that may occur across that footprint.

Given the proposed level of ground disturbance, impacts to native vegetation, presence of known Aboriginal cultural heritage values and potential risk to Aboriginal cultural heritage (known and unknown), Heritage NSW recommends that the proposed subdivision land and all associated works (including impacts to mature native trees) be subject to detailed Aboriginal cultural heritage investigation/impact assessment including archaeological survey. Potential archaeological test excavation may also be required. Should this assessment determine that harm to Aboriginal cultural heritage cannot be avoided then an application for an Aboriginal Heritage Impact Permit will be required to be submitted to Heritage NSW for consideration.

The assessment should comply with the processes described in the following documents:

- *Guide to investigation, assessing and reporting on Aboriginal Cultural heritage in NSW* (OEH April 2011) – <https://www.heritage.nsw.gov.au/assets/Uploads/files/Guide-to-Investigating-Assessing-and-Reporting-on-Aboriginal-Cultural-Heritage-in-New-South-Wales.pdf>. This document provides guidance on the process for investigating and assessing Aboriginal cultural heritage in NSW and Heritage NSW requirements for an assessment report.
- *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW 2010) – <https://www.heritage.nsw.gov.au/assets/Uploads/files/Aboriginal-Cultural-Heritage-Consultation-Requirements-for-Proponents.pdf>. This document further explains the consultation requirements that are set out in clause 60 of the *National Parks and Wildlife Regulation 2019*. The process set out in this document must be followed and documented in the archaeological report.
- *Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010) – <https://www.heritage.nsw.gov.au/assets/Code-of-Practice-for-Archaeological-Investigation-in-NSW.pdf>. The process described in this Code should be followed and documented where the assessment of Aboriginal cultural heritage requires an archaeological investigation to be undertaken.
- *Applying for an Aboriginal Heritage Impact Permit: Guide for applicants* (OEH May 2011) – <https://www.heritage.nsw.gov.au/assets/Uploads/files/Applying-for-an-Aboriginal-Heritage-Impact-Permit-Guide-for-applicants.pdf>. The aim of this guide is to assist in the preparation of an AHIP application. It should be read in conjunction with the *National Parks and Wildlife Act 1974* (NPW Act) and the *National Parks and Wildlife Regulation 2019*.

It is essential that all statements and conclusions made in relation to Aboriginal cultural heritage are supported by adequate data. The Development Application and Statement of Environmental Effects should provide sufficient and consistent information to demonstrate that impacts to Aboriginal cultural heritage have been adequately addressed.

We also recommend the following condition to ensure compliance with legislation in place to protect Aboriginal sites and objects in NSW and ensure that no additional harm is caused should Aboriginal cultural heritage be encountered:

If any Aboriginal object is discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the proponent must:

- *Not further harm the object*
- *Immediately cease all work at the particular location*
- *Secure the area so as to avoid further harm to the Aboriginal object*
- *Notify Heritage NSW as soon as practical on 131555, providing any details of the Aboriginal object and its location*
- *Not recommence any work at the particular location unless authorised in writing by Heritage NSW.*

In the event that skeletal remains are unexpectedly encountered during the activity, work must stop immediately, the area secured to prevent unauthorised access and NSW Police and Heritage NSW contacted.

MINUTES – DA2020/37 MEDIATION SESSION

Monday 21 June 2021

1	Meeting Open	4.00pm	Time
2	Attendees Applicant - Andrew Mott – OMLS Members of Public – Kate and Adam Trembath Council officers Susan Appleyard; Ben falconer; Scott Donders; Megan Leahy		
3	Aims of the meeting are to: (a) mediate potential solutions for the concerns to the objector (b) Outline the infrastructure requirements for the development (c) Negotiate the development of currently defined community land (d) Review the additional information provided and information that is still outstanding in relation to the application (e)		
4	Mediation between the Developer and the members of the public. Potential options to be discussed to reduce the impact on the amenity of the affected land owner(s). Concerns raised by Kate and Adam relate to the road intersection behind their house • Impact traffic will have on the amenity of their land, i.e. headlights and noise from the intersection Comment: Applicant was agreeable to assist with screening utilising vegetation. • Safety concern and the personal risks should a driver miss the intersection Comment: The intersection will include a reduction in speed from 80 km/hr to 50km/hr and will require the erection of a chevron sign, in addition any vehicle that fails to stop at the intersection will have to also navigate the table drain on the northern side of Tocumwal Rad. • Quersted why a + intersection could not be used with the entrance to Riverland Gardens Estate. Comment: The cross roads option was put forward in the first design for preliminary assessment, however offset intersections are safer than cross roads, so the design was changed accordingly. Resolved: Applicant to provide details of vegetative screening options to the Council which can be reviewed by the Kate and Adam Trembath.		

	Resolved: Traffic controls are to be put in place to reduce the risk to landowner opposite the intersection. Condition of consent to be included in any determination.
5	Road Infrastructure Additional information is still required: - Plans showing the road hierarchy - Updated traffic impact assessment which considers the impact this development will have on the surrounding road network and the ability for the network to service the proposed development. - It has been assessed that this development will trigger the upgrading of North Street through to Corowa Road. Once the Updated traffic impact assessment is received the trigger for the upgrade can be determined.
6	Water Infrastructure Infrastructure requirements to allow for this development to connect and estimated costs were provided to the developer. These costings are based on the Northern area catchment of 1700 lots and the limitations regarding space in the urban environment and the restrictions of the Mulwala Canal. (copy attached) Essentially the reticulation network is at capacity. The Gibson report for an adjoining development is considered redundant as it assumed that the network to the site didn't have or would never have any other connections to it. Agreed: Council will provide computations
7	Sewer Infrastructure Again like water capacity issues in the network, noted adequate capacity in the treatment plant to accept waste. Agreed: Council will provide computations and plans.
8	Drainage Infrastructure Design considered to be adequate with a defined 1%AEP path to be defined. This can be conditioned. Noted by applicant
9	Open Space (Community Land) and Operational land The area for the storage will be defined as operational plan and is to be located on a separate lot the open space. Agreed: Plans to up dated accordingly. BBQ and Playground Area – Applicant has provided no details and is has not considered providing this infrastructure. To be discussed at Manager level of council.

Federation Council
Development Application 2020/37

	Update: Given that the overall development is likely to increase the population of Mulwala by 40-50% it is considered that infrastructure should be provided for the future community. Details of the proposed playground, BBQ area and associated infrastructure is to be provided to council as requested in the letter dated 18 November 2020.
10	Neighbourhood shop Council agree with the inclusion of a neighbourhood shop, however will not be developing the site. Agreed: to create a separate title on the plan to allow for the development of a shop as part of stage 4 of the concept plan by a third party. Limitations to be included on the plan regarding the density of the development on the site.
11	Updated review of updated information The additional information provided will be referred to agencies for review. Information still not provided regarding the following: • How the proposed development meets with the zoning in greater detail. • How the proposed development is sustainable. Additional justification to be included in the Statement of Environmental Effects.
12	Outstanding information Information to be provided to the applicant: 1. Computations and plans for water and sewer infrastructure works to the network. 2. Once Updated traffic Impact Assessment received will define the trigger point or stage at which the upgrade to North Street will be required Information to be provided by the applicant: 3. Details of the vegetative screen options to reduce the impact on adjacent land owner 4. Plans showing the road hierarchy 5. Updated traffic impact assessment 6. Operational and community land lots to be defined on an updated plan 7. Details of the BBQ and Playground area to be provided. 8. Amended plan showing the location of the neighbourhood shop on a separate title. 9. Updated Statement of Environmental Effects regarding the Objectives of the Zone and the sustainability of the development.
13	Meeting Close 5.11pm
	Update: A Planning Panel Briefing date has been set for 23 July 2021 in Mulwala. Further details will be provided to all parties in due course. All parties will be given an opportunity to speak at the briefing.

ATTACHMENT 4: COUNCIL DOCUMENTS RELATING TO VOLUNTARY PLANNING AGREEMENT OFFER

Email confirming agreement to negotiate – personal information redacted.

Following receipt of your correspondence (dated 21 October), I can confirm that the landowner would like to continue negotiations with Council for Future Voluntary Planning Agreement per the Council Meeting resolution.

Are you able to advise the meeting date/time so we may coordinate our schedules?

Further, the landowner has expressed an interest in the Mayor being present at the meeting, given that he will be amongst the final approving (or otherwise) body – is this possible?

Look forward to confirmation of the meeting arrangements.

Regards

Andrew Mott

Director

Licensed Surveyor

Dear Andrew

RE: VOLUNTARY PLANNING AGREEMENT OFFER FOR DA2020/37

The Voluntary Planning Agreement Offer was reported to Council in September and the offer was declined. A rescission motion was made regarding the offer and at the October meeting of council the following was resolved:

- 1. THAT Council enter into negotiations regarding a Voluntary Planning Agreement for DA 2020/037, that seek to address the concerns raised in the report with the applicant as to uncertainty of terms and short fall in the offer to provide infrastructure which includes but is not limited to the list below and to define the level of works that will be required and the timing of payments outlined in the agreement:*
 - *Facilities to be provided in the open spaces*
 - *Upgrades to North Street and other intersection that will be impacted on by the development*
 - *Augmentation to sewerage infrastructure*
 - *Augmentation to water infrastructure,*
- 2. THAT Council receive a further report on the outcomes of these negotiations.*
- 3. THAT all costs (excluding Council staff costs but including any Council legal costs if required) associated with the negotiations for any agreement are to be met by the applicant and or developer.*

Can you please advise, in writing, by 5pm Monday 25 October 2021 if the owner is prepared to enter into negotiations regarding a future Voluntary Planning Agreement, the response will be included in the report to the Planning Panel Meeting scheduled for 4 November 2021.

Yours Sincerely



SUSAN APPLEYARD
DIRECTOR DEVELOPMENT AND ENVIRONMENT

11. NOTICES OF MOTION / QUESTIONS WITH NOTICE / RESCISSION MOTIONS

11.1 NOTICE OF RESCISSION - VOLUNTARY PLANNING AGREEMENT DA2020/037 - 495 LOT SUBDIVISION NORTH STREET, MULWALA

We the undersigned give notice that it is our intention to move the following motion at the next Ordinary Meeting of Council.

That the following resolution by Council at the meeting on 28 September 2021 for item:

9.8 Voluntary Planning Agreement DA2020/037 - 495 Lot Subdivision North Street, Mulwala

339/21FC RESOLVED on the motion of Councillors Miegel and Law that Council decline the Voluntary Planning Agreement offer associated with Development Application 2020/37 as the financial risks associated with the offer cannot be adequately defined and therefore it is not considered to be in the public interest to accept the offer.

Be rescinded.

Signed by Councillor Wales APM

Signed by Councillor Kennedy

Signed by Councillor Whitechurch

Notice of Motion to be moved if rescission is successful:

Motion

1. THAT Council enter into negotiations regarding a Voluntary Planning Agreement for DA 2020/037, that seek to address the concerns raised in the report with the applicant as to uncertainty of terms and short fall in the offer to provide infrastructure which includes but is not limited to the list below and to define the level of works that will be required and the timing of payments outlined in the agreement:
 - Facilities to be provided in the open spaces
 - Upgrades to North Street and other intersection that will be impacted on by the development
 - Augmentation to sewerage infrastructure
 - Augmentation to water infrastructure,
2. THAT Council receive a further report on the outcomes of these negotiations.
3. **Recommended Point 3 from Staff** – THAT all costs (excluding Council staff costs but including any Council legal costs if required) associated with the negotiations for any agreement are to be met by the applicant and or developer.

Background information to support this motion

Cr Wales has indicated he voted in error in the meeting on this matter, and is seeking to have the matter reconsidered, as his intent was to vote to allow negotiations to occur on this matter.

387/21FC **RESOLVED** on the motion of Councillors Wales and Kennedy:

THAT the following resolution by Council at the meeting on 28 September 2021 for item:

9.8 Voluntary Planning Agreement DA2020/037 - 495 Lot Subdivision North Street, Mulwala

339/21FC **RESOLVED** on the motion of Councillors Miegel and Law that Council decline the Voluntary Planning Agreement offer associated with Development Application 2020/37 as the financial risks associated with the offer cannot be adequately defined and therefore it is not considered to be in the public interest to accept the offer.

Be rescinded.

VOTING

For: Councillors Kennedy, Longley, Thomas, Wales, Whitechurch and Bourke.

Against: Councillors Law, Longmire, Miegel.

388/21FC **RESOLVED** on the motion of Councillors Kennedy and Thomas:

1. THAT Council enter into negotiations regarding a Voluntary Planning Agreement for DA 2020/037, that seek to address the concerns raised in the report with the applicant as to uncertainty of terms and short fall in the offer to provide infrastructure which includes but is not limited to the list below and to define the level of works that will be required and the timing of payments outlined in the agreement:
 - Facilities to be provided in the open spaces
 - Upgrades to North Street and other intersection that will be impacted on by the development
 - Augmentation to sewerage infrastructure
 - Augmentation to water infrastructure,
2. THAT Council receive a further report on the outcomes of these negotiations; and
3. THAT all costs (excluding Council staff costs but including any Council legal costs if required) associated with the negotiations for any agreement are to be met by the applicant and or developer.

VOTING

For: Councillors Kennedy, Law, Longley, Longmire, Miegel, Thomas, Wales, Whitechurch and Bourke.

Against: Nil.

Author: Susan Appleyard, Director Development and Environmental Services

Summary

A Letter of Offer to enter into a Voluntary Planning Agreement has been received by Council. It is recommended that the offer be declined for the reasons outlined in the report.

Background

On the 10 August 2021 Council received a letter of offer to enter into a VPA for the provision of the infrastructure outlined in the letter of offer. A copy of the VPA offer is provided as attachment 9.8.1.

The offer was a result of the Western Joint Regional Planning Panel Briefing on 23 July 2021.

SUSTAINABILITY

STATUTORY COMPLIANCE/POLICY

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Under Part 7, Division 7.1, Subdivision 2 Planning Agreements Section 7.4 defines under what circumstances an agreement can be entered into.

7.4 Planning agreements

- (1) *A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer)—*
 - (a) *who has sought a change to an environmental planning instrument, or*
 - (b) *who has made, or proposes to make, a development application or application for a complying development certificate, or*
 - (c) *who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,**under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.*
- (2) *A public purpose includes (without limitation) any of the following—*
 - (a) *the provision of (or the recoupment of the cost of providing) public amenities or public services,*
 - (b) *the provision of (or the recoupment of the cost of providing) affordable housing,*
 - (c) *the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,*

- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

INTEGRATED PLANS

[Links to Councils Integrated Planning Framework](#)

Community Strategic Plan 2018 – 2028 'Our Community Our Opportunity'

Theme: Built Federation

Outcome: *Maintained and improved infrastructure that meets the needs of residents and industry.*

Delivery Program 2018-22 4 year Goal – 1.7 Consistent and appropriate land use planning outcomes
– *transparent and accessible information on land use planning outcomes.*

RISK MANAGEMENT

The main risks to council in relation to the VPA Offer are financial.

The offer assumes that the developer should only pay for the 29% of the overall cost for the modelled growth for Mulwala for an additional 1700 lots. What this offer fails to note is that costs associated with the provision of infrastructure verses the capacity volumes are not linear they are exponential, i.e. doubling the capacity of a water main does not double the costs of installation.

In the past Council has permitted developers to design their developments in isolation and provide only infrastructure to service their development which now sees the community having to maintain and service multiple mains and pump stations. The assessing of all applications now includes assessment of the future growth of the towns and village over a 20 year period. The following tables outline why the offer before council either needs to be rejected or renegotiated.

Scenario 1 – Cater for 10 years growth – 500 Lots only/equivalent tenements

Water and Sewer Infrastructure cost	Offer by Developer	Cost to Council
\$2,975,000	\$850,000	\$2,075,000

*based on current rates of development

Scenario 2 – Cater for 20 years Growth – 1000 Lots/equivalent tenements

Water and Sewer Infrastructure cost	Estimated Cost water and sewer infrastructure just to service DA2020/37	Offer by Developer	Cost to Council
\$3,590,000	\$ 2,975,000	\$850,000	\$2,265,000

Development application 2020/37 proposes 495 lots total and will provide for approximately 10 years growth in Mulwala, therefore would take up 99.5% of the growth capacity of Mulwala and therefore the developer should pay for the component of that infrastructure provision to service the lots - \$2,975,000 rather than the \$850,000 offered.

In addition the offer does not include any other details in relation to the provision of facilities in the proposed green space, road upgrades required in the existing road network that will result from this development.

Community Engagement
CONSULTATION / ENGAGEMENT

Any offer received if accepted would require the drafting of a formal agreement, report to council, approval by the Minister and a 28 day public exhibition process, along with any exhibition of changes to Councils Long Term Financial Plan if required.

OPTIONS

1. Reject the Volunteer Planning Agreement
2. Enter into negotiations regarding a Voluntary Planning Agreement that seek to address the concerns raised in the report with the applicant as to uncertainty of terms and short fall in the offer to provide infrastructure which includes but is not limited to the list below and to define the level of works that will be required and the timing of payments outlined in the agreement:
 - Facilities to be provided in the open spaces
 - Upgrades to North Street and other intersection that will be impacted on by the development
 - Augmentation to sewerage infrastructure
 - Augmentation to water infrastructure

Conclusion

In light of the risks associated to the Council financially and the potential adverse impact to the provision of services to the community it is recommended that the offer be declined.

Attachments

9.8.1 Voluntary Planning Agreement offer from Ovens + Murray Land Survey

Financial Sustainability

Proceeding with this recommendation will have a neutral impact on Council's Long Term Financial Plan 2021-2031 financial sustainability ratios.

The Mayor, Councillor Bourke returned to the meeting at 12.01 pm.

RECOMMENDED that Council decline the Voluntary Planning Agreement offer associated with Development Application 2020/37 as the financial risks associated with the offer cannot be adequately defined and therefore it is not considered to be in the public interest to accept the offer.

339/21FC **RESOLVED** on the motion of Councillors Miegel and Law that Council decline the Voluntary Planning Agreement offer associated with Development Application 2020/37 as the financial risks associated with the offer cannot be adequately defined and therefore it is not considered to be in the public interest to accept the offer.

VOTING

For: Councillors Law, Longley, Longmire, Miegel, and Wales.

Against: Councillors Kennedy, Thomas, Whitechurch and Bourke.

S APPLEYARD

DIRECTOR DEVELOPMENT AND ENVIRONMENTAL SERVICES

Reference:

Date: 10 August 2021

Attention: Ms Susan Appleyard

Federation Council

Director of Development and Environmental Services

100 Edward Street

COROWA NSW 2464

WITHOUT PREJUDICE

Dear Ms Appleyard,

Letter of Offer for the Purpose of a Voluntary Planning Agreement

Subject Land: North Street / Tocumwal Road, Mulwala

Development Application Number: DA2020/37

Following recent discussions with Council facilitated by the Joint Regional Planning Panel (JRPP), the applicant has prepared this Letter of Offer made by Hezem Pty Ltd (**'Owner'**) to Federation Council (**'Council'**) in accordance with section 7.4 of the *Environmental Planning & Assessment Act 1979* (**'EP&A Act'**).

This Letter of Offer demonstrates the Owner's intention to enter into a Voluntary Planning Agreement (**'VPA'**) and captures the values applicable to DA 2020/37 that were discussed in a mediation session on Monday 21st June 2021 and subsequently an onsite meeting with the JRPP on 23 July 2021. This VPA will be finalised and executed following the grant of consent in relation to this development application.

Water Infrastructure

As laid out by Council there is necessity for trunk water reticulation infrastructure to service the 1700 lot catchment, which 495 lots is apportioned to this development. By agreement, the Owner is proposing that this infrastructure be delivered onsite/offsite as detailed below:

- Construction of a 450mm dia. (DICL) trunk main from the existing water storage tank in Lucan Street to the intersection of North Street and Corowa Mulwala Road in Mulwala.
- Construct a 250mm reticulation main (MPVC) cross connection approximately 1080 metres between the new 450mm DICL main and the existing 375mm main at the intersection of Saverlake Road and Barooga Road to ensure peak instantaneous demand is maintained.

Estimate total cost	\$2,925,000
Owner Contribution	\$ 850,000
Council Contribution	\$2,075,000

Proposed Timing: Prior issue of Subdivision Certificate for stage 1

The Owner proposes that he be engaged to construct the asset.

Sewer Infrastructure

As Council have identified, new sewer pumpstation and reticulation infrastructure are required to service the development and greater needs of the 1700 catchment, which 495 lots is apportioned to this development. By agreement, the Owner is proposing that this infrastructure be delivered onsite/offsite as detailed below:

- Construct a new sewer pump station ultimately capable of delivering 67 L/s @ 19m head at as depth to service the 495-lot subdivision.
- Construct a 300 mm rising main approximately 3200m in length connected directly into the inlet works at the sewerage treatment plant

Estimate total cost	\$2,410,000
Owner Contribution	\$ 700,000
Council Contribution	\$1,710,000

Proposed Timing: Prior to issue of Subdivision Certificate for stage 1

The Owner proposes that he be engaged to construct the asset.

Future VPA

If the development consent is granted in relation to DA2020/37 it is intended that this offer be consolidated and crystalized into a VPA with Council.

Any subsequent VPA will comply with the requirements of the *EP&A Act* and *Environmental Planning and Assessment Regulation 2000*, and contain mechanisms for completion of any works and / or grant of proprietary interests.

The VPA may be registered by the Registrar-General.

The VPA will contain mechanisms for the resolution of disputes and the enforcement of the agreement by the parties

This further draft offer is to form part of the subject Development Application lodged with Council and is a matter that is required to be considered by Council in the assessment of the Development Application, pursuant to s 4.15(1)(a) (iia) of the *EP&A Act*.

ANNEXURE 'A'

