

Reference: D22830
Contact: Clem Rhoden
Your Reference: SJC1126-002

23 April 2009

SJ Connelly Pty Ltd
P O Box 53B
LENNOX HEAD NSW 2473

NOTICE OF DETERMINATION OF APPLICATION

Pursuant to Section 81(1)(a) of the Environmental Planning and Assessment Act, 1979

Application No:	SUB2005/5058, as modified by Court Order 10064 of 2009, MOD2009/0054 & MOD2016/0006
Applicant:	SJ Connell Pty Ltd
Owner:	Dougherty Bros Pty Ltd
Property Address:	362 North Street, Grafton
Legal Description:	Lot 1 DP799823 & Lot 46 DP751371
Development Proposal:	99 98 Lot Residential Lot Subdivision

DEVELOPMENT CONSENT

Notice is given that Council has considered your application for the subject development. The determination of the application is an "operational" consent.

The Development Application has been determined by:

Consenting to the development with conditions.

Determination of the application was made:

By Council at its Meeting of 25 July 2006 and modified by Order of the Court on the 23 April 2009, and modified by Council on 5 February 2010 & 19 July 2016.

Determination Date: July 25 2006

Approved Plans and Documentation

THE DEVELOPMENT SHALL COMPLY WITH THE PLANS LODGED WITH THE APPLICATION AND AS MAY BE AMENDED BY THE FOLLOWING CONDITIONS OF CONSENT AND/OR BY AMENDED PLANS AND DETAILS.

Sub2005/5058 99 98 Lot Subdivision
Consent Validation Date: July 25 2006

Modified: 23 April 2009, 5 February 2010 & 19 July 2016

Page 1 of 10

Locked Bag 23 GRAFTON NSW 2460

Definitions

Applicant means SJ Connell Pty Ltd or any party acting upon this consent.

Advice to Applicant

Council in determining the subject application requests you to take note of the following advice and where pertinent to convey the advice to future owners or tenants:

1. The submission of evidence that satisfactory arrangements have been made with service providers for the provision of utility services prior to issue of the subdivision certificate.
2. The control of erosion and silt discharge will involve works and measures on site, and possible additional silt retention works. Details of proposed control works are to be submitted to and approved by Council prior to the issue of the building construction/subdivision construction certificate.
3. It is the developer's responsibility to make satisfactory arrangements with other property owners affected by the development to meet all costs associated therewith.
4. The development works will be required to be designed and constructed in accordance with Council's Engineering Standards current at the time of approval of Engineering Plans. Approval of Engineering Plans will be current for a period of two years after which time Council may require the alteration to Engineering Design to comply with standards current at that date. The current Engineering Standards are the "Northern Rivers Local Government Development and Design Manual version 2" and "Northern Rivers Local Government Construction Manual Version 2".
5. All building and construction work, which includes subdivision and civil works, which cost \$25,000 or more require the payment of the long service levy prior to a construction certificate being issued. The levy is required under the Building and Construction Industry Long Service Payments Act 1986.
6. No construction is to be commenced until a Construction Certificate has been issued.
7. Any contributions must be paid to Council prior to a construction certificate being issued.
8. No advertising signs are to be erected, painted or displayed without obtaining any necessary approval from Council. This should be discussed with Council's Town Planner.
9. Concurrence of Country Energy is to be obtained prior to commencement of work, a copy of which is to be submitted to Council. (N.B. For use when development is adjacent to power lines).
10. A subdivision certificate fee is charged for the endorsement of linen plans. Fees for the 2005/06 financial year are \$52.50 per lot (minimum \$105.00).
11. ABld30 Asbestos sheeting is to be removed and disposed of to the requirements of the EPA and Workcover.

Conditions of Consent

1. The development being completed in conformity with the Environmental Planning & Assessment Act, 1979, the Regulations thereunder, the Building Code of Australia and being generally in accordance with plans as provided in the Statement of Environmental Effects dated November 2005 and prepared by Stephen J Conelly, Town Planner, **and the amended lot layout plan for lots 27-30, 57-61 and 68-71 only, drawing number 10450-01, dated 26 February 2016, one (1) sheet, prepared by Bothamley and O'Donohue Pty Ltd**, or as modified by any conditions of this consent.

(Reason: To comply with Legislative requirements).

[Modified 19 July 2016 by MOD2016/0006]

2. **Working/Construction Hours** Working hours on the construction project being limited to the following:

7.00 am to 6.00 pm Monday to Friday

8am and 1pm Saturday.

No working on Sundays or public holidays.

The builder to be responsible to instruct and control sub contractors regarding the hours of work and the requirements of the Protection of the Environment Operations Act 1997 and Regulations.

Waste materials shall not be burnt on site but are to be disposed of to an approved recycling service or waste depot.

All excavations and back filling associated with the erection and demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.

(Reason: To protect the amenity of the surrounding area).

3. **Site Safety Preparation and Management** Building equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.

(Reason: To ensure minimal disruption to pedestrian and vehicular traffic).

4. **Signage** A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- a) Stating that unauthorised entry to the work site is prohibited, and
- b) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside of working hours.
- c) Any such sign is to be removed when the work has been completed.

(Reason: To ensure visitors are aware of entry requirements and provided a contact number for enquiries).

Section 94 Contributions

5. **The amount of contributions payable** pursuant to **Condition Number 6** shall remain fixed for a period of 12 months from the date of this consent. Thereafter, the amount payable shall be in accordance with the current rate adopted by Council at the time that the Construction Certificate or Subdivision Certificate is submitted to Council.

(Reason: To ensure that contributions reflect costs at time of developments in accordance with Council's Section 94 Contributions Plan).

6. Payment to Council of a non-refundable contribution of ~~\$74,302.00 (\$766 X 97)~~ **\$73,536.00 (\$766 X 96)** for the provision of recreational and cultural facilities by the Council. Such contribution to be paid prior to the release of the Subdivision Certificate.

(Reason: To assist Council in providing for the recreational and community needs of the increased population resulting from this development cont).

(Note - the figures used in the re-calculation of the s94 contributions have not been updated. The amount to be paid will be calculated in accordance with the Council adopted fees and charges current at the time of payment.)

[Modified 19 July by MOD2016/0006]

7. **Section 64- Sewer and Water Head Works Charges**

Conditions required for approval under section 68 of the Local Government Act for water and/or sewer reticulation works being new works, upgradings or augmentations that will be of benefit to the development:

Payment to Council of the following contributions pursuant to Section 64 of the Local Government Act, 1993:

~~a. Water Headworks - 97 X \$4,000 = \$388,000.00~~

~~b. Sewer Headworks - 97 X \$4,000 = \$388,000.00~~

a. Water Headworks - 96 X \$4,000 = \$384,000.00

b. Sewer Headworks - 96 X \$4,000 = \$384,000.00

(Payment shall be made prior to the Linen Plan/prior to the issue of the Construction Certificate/prior to commencement of the development).

1. The obtaining from Clarence Valley Council of a certificate stating that the development complies with the requirements under Part 3 Clause 16 of the Local Government (Water Services) Regulation 1999, in regard to Water and/or Sewerage; and
2. The construction of water/sewerage works is a condition of consent for the subject development. All water/sewerage works to serve the development are to be in accordance with the specifications of the Director Engineering Services.
3. The contribution(s), as assessed, will hold for a period of 12 months from the date of this approval. Contributions not received by Council within 12 months of the date of this determination will be adjusted in accordance with the adopted Schedule of Fees and Charges current at the time of payment.

(Reason: a) To provide for adequate sewage management facilities

b) To provide for reticulated water management facilities)

(Note - the figures used in the re-calculation of the s64 charges have not been updated. The amount to be paid will be calculated in accordance with the Council adopted fees and charges current at the time of payment.)

[Modified 19 July 2016 by MOD2016/0006]

Telecommunications

8. The applicant to provide Broad Band service connection to all lots within the subdivision a written pre-provisioning confirmation, or similar written advice, issued by Telstra or other recognised telecommunications service provider confirming that arrangements have been made with the relevant developer to have these services provided to each allotment prior to issue of the subdivision certificate.

[Modified 5 February 2010]

(Reason: To ensure optimum telecommunication services are provided).

Section 88 Covenant

9. The applicant shall at the time of registration place a covenant on the title of each of the mews lots requiring all dwelling houses to be constructed in accordance with the document entitled "Waghorns Farm, Grafton Mews Allotments Design Guidelines, June 2006", **and as revised on 29 February 2016**. And all mews lots within the development are to be developed with single residences. No mews lot(s) shall be consolidated or further subdivided. The council shall be the only authority authorised to release vary or modify such covenant provisions.

(Reason: To ensure the adopted guidelines are applied consistently over the construction period).

[Modified 19 July 2016 by MOD2016/0006]

Engineering

10. Interallotment drainage lines are to be provided in accordance with Council's 'Engineering Specification for Development'.

(Reason: To ensure interallotment drainage is provided in accordance with Council Policy).

11. Applicant shall provide Council with soil compaction and bearing capacity tests prepared by a practicing geotechnical engineer for the filled area prior to the release of the Subdivision Certificate.

(Reason: To ensure adequacy of foundation material for future dwelling purposes).

12. A report from a Geotechnical Engineer indicating the lot classification of each allotment in accordance with AS2870, is to be submitted to Council prior to release of the Linen Plan – prior to the issuing of a subdivision certificate.

(Reason: To ensure land is suitable for residential development/rural residential development).

Compliance Certificates

- 13 Inspections and/or tests are required as part of the works approval process. The inspections and/or tests must be in accordance with Council's *Specification For Engineering Works*. Works are not proceed past the hold points specified in Council's *Specification For Engineering Works* until a Compliance Certificate has been issued for the relevant inspection and/or test. Compliance Certificates must be obtained from Council certifying that:
- a) All site management measures (erosion & sediment control / traffic control, etc.) are in place.
 - b) Compaction and levels of subgrade are satisfactory
 - c) Compaction and depths of subbase layers are satisfactory.
 - d) Compaction, depths and levels of base are satisfactory.

- e) Drainage trenches have been excavated to correct dimensions; pipes bedded, laid and jointed in accordance with the specifications; and pipelines do not deviate from grade and line.
- f) Thickness and reinforcement placed for concrete structures are in accordance with the specifications.
- g) Compaction and material of drainage trench backfill are satisfactory.
- h) Landscaping has been implemented in accordance with the approved landscaping plan and conditions of development consent;
- i) Subdivision engineering works are satisfactorily completed in accordance with the conditions of development consent (ie "final compliance certificate").

Construction noise

14 Construction noise is to be limited as follows

- a. For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b. For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).

(Reason: To protect the amenity of the local environment).

Public safety requirements

- 15 All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. Council is not held responsible for any negligence caused by the undertaking of the works.

(Reason: To assist in public safety).

Traffic Control Plan

- 16 The plans and specifications to accompany the construction certificate application are to include a traffic control plan to indicate the measures to be employed to control traffic during construction of the subdivision. The traffic control plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual (1998), *Traffic Control at Work Sites*, and Australian Standard 1742.3 - 1985, *Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'*.

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

(Reason: To assist in public safety).

Consent under the Roads Act required

- 17 Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve. Such plans are to be in accordance with Council's Specification for Engineering Works and are to provide for the following works:

Engineering plans required for proposed roadworks - Intersections

The application for a Construction Certificate is to include plans and specifications that indicate construction of the following roadworks, with associated stormwater drainage structures:

Construction of an intersection layout at the junction of the proposed subdivision access road and North Street in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance for an 85th percentile vehicle speed of 50kph.

A Construction Management Plan for the construction of all civil works outside the real property boundaries of the proposed development is to be included with the engineering plans and specifications submitted. The Construction Management Plan must schedule all works so that the works are completed in the shortest possible time, with minimal impact on the general community.

These roadworks, with associated stormwater drainage structures, are to be designed and constructed in accordance with the Northern Rivers Local Government Development and Design Manual Version 2 and the Northern Rivers Local Government Construction Manual Version 2.

The engineering plans and specifications are to be designed by a qualified practising Civil Engineer. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

Such plans and specifications must be approved as part of the Construction Certificate.

The developer is to construct the roadwork's, cycle ways, bus stop, bus shelter, stormwater management sewer and water reticulation works at own cost, in accordance with the Northern Rivers Local Government Development and Design Guidelines and in accordance with the Construction Certificate issued by Council and under the supervision of an engineer or surveyor approved by the Director of Engineering Services. The Council will hold the Subdivision Certificate or a bond in an amount to be determined against the construction and maintenance of the roadwork's, cycle ways, bus top, bus shelter, stormwater management sewer and water reticulation works until such time as Council is satisfied to take over the system.

(Reason: To ensure that the public service infrastructure is provided and/or upgraded having regard to the additional likely demand generated by the development).

18. Applicant being aware that the **bond** amount noted in Condition 31 will represent a fair estimate of the value of the respective works, and the applicant agreeing that if the work secured by the bonds is not done or is not done to Council's satisfaction, Council may enter upon the land and carry out the work or that part of the work not done, and recoup the cost thereof from the bond amount held.

(Reason: To ensure that public utility infrastructure required as a result of the development is provided in timing with the public demand for those services).

19. The developer shall provide at full cost to the developer, an off road shared cycleway/pedestrian path along the frontage of the development in North Street and Earl Street. The cycleway/pedestrian path shall commence from the point at which the internal cycleway meets those streets and extend to the southeast corner of the development.

(Reason: To provide for and encourage the use of cycles and public amenity).

20. Prior to development of the site beyond 50 lots, an on road cycleway shall be constructed, at full cost to the developer, from the south east corner of the development to connect with the North Street on road cycleway at the intersection of North and Cranworth Streets.

(Reason: To provide for and encourage the use of cycles and public amenity).

21. The developer shall provide at full cost to the developer, a bus shelter on the northern side of North Street and a set down point on the opposite side at an appropriate location. The location of both the bus shelter and set down point to be chosen to avoid conflict with the existing street trees.

(Reason: To provide for and encourage the use of public transport and public amenity).

22. Road widths within the subdivision shall be adequate to permit safe and easy manoeuvrability of garbage trucks/emergency vehicles.

(Reason: To ensure adequate road widths are provided for service vehicles).

23. ~~The developer shall provide a dedicated left turn lane into North Street from the Summerland Way and that the design shall be~~ *Prior to release of the linen plan for stage 1 the applicant shall pay \$30,000 to Council as a part contribution to the construction of a dedicated left turn lane into North Street from the Summerland way in accordance with AustRoad Guidelines and the requirements of RTA. The construction shall be at full cost to the developer. Such monies will be refunded if the intersection works are not commenced within five years from the date of payment.*

[Modified 23 April 2009]

(Reason: To ensure local road infrastructure is adequate for the development).

24. Submission of Work as Executed Plans in the preferred digital form (dxf) or in transparency form for works covered in Condition 23 above and a certification from the supervising engineer or surveyor that the works have been constructed in accordance with the approved plans and specifications, prior to the release of the linen plan or any bond held by Council.

(Reason: To ensure works are in compliance with approved plan and to facilitate the design of future augmentation and maintenance works).

25. The submission of the 88B Instrument, and one copy thereof, to Council prior to the release of the Subdivision Certificate.

(Reason: To ensure that Council's rights in regard to service provision are satisfactorily established).

26. The developer is to provide a constructed road pavement connecting Carr Street to Earl & Marlow Streets and install landscaping within the Carr Street Road reserve generally in accordance with the approved plan.

(Reason: To ensure local road infrastructure is adequate for the development).

27. Applicant providing, at own cost, underground electricity to the requirements of Country Energy or other recognised electricity provider to all lots within the subdivision and prior to the release of the linen plan or the bond, Council will require satisfactory evidence that all contributions to Country Energy for underground electricity have been lodged and all requirements of that Authority have been complied with.

(Reason: To ensure that electricity services are available and adequate for the increased intensity of land use proposed).

28. The provision of street name signs to all intersections to Council's specification and to the satisfaction of the Director of Engineering Services. The name of the proposed road(s) will require written approval from Council.

(Reason: For public convenience and for the safe orderly flow of traffic).

29. All pathways in the subdivision are to be provided with a concrete or brick paved surface with minimum 1.2 metres width in accordance with Council's Development Specification – Aus-Spec.

(Reason: To ensure pathways are provided in accordance with Council policy).

30. The provision and dedication of 3 metre splays at all street intersections in the subdivision are required in accordance with Council's Development Specification – Aus-Spec.

(Reason: To ensure adequate site distances are maintained at intersections).

31. A maintenance bond to the value of 5% of the contract value for the works is to be lodged with Council prior to the issue of the compliance certificate/final building inspection. All work is subject to a maintenance period of six (6) months (or 12 months for development constructed on dredged material).

(Reason: To ensure any works required post completion of construction are undertaken at the developers cost).

32. Driveways and on-site garage/parking areas, are to comply with Council's Development Specification – Aus-Spec.

(Reason: To ensure adequate access, parking and manoeuvring is provided to the development).

33. The filling of the site is not to adversely affect adjacent properties or local drainage patterns. Provision is to be made for the free passage of surface stormwater away from affected sites.

(Reason: To ensure local drainage patterns are not adversely affected).

34. Prior to issue of the building construction certificate/subdivision certificate, certification by an Engineer of the placement and compaction of fill in accordance with AS 3798.

(Reason: To ensure compliance with Australian Standards).

Erosion and Sediment Control

35. The control of erosion and the prevention of silt discharge into drainage systems, street drainage systems and waterways is subject to the following conditions and must be in accordance with the following conditions and Council's Erosion and Sediment Control DCP.

(Reason: To protect the environment from erosion and sedimentation).

- All erosion and sediment control measures are to be installed prior to the commencement of any work, including cutting and filling.
- All sediment control measures are to be constructed to prevent sediment from leaving the site or entering downstream properties, drainage lines or watercourses.
- Vehicular access is to be restricted to one stabilised access point.
- Stockpiles of erodible materials (sand, soil, spoil and vegetation) must be protected by a sediment fence or bund. If the stockpile area is prone to high winds or is to be there for a long time then the stockpile must be covered.

- All erosion and sediment control measures are to be regularly maintained in good working order at all times and inspected for adequacy following any rainfall event.
- All disturbed areas are to be made erosion resistant by revegetation, turfing or stabilised by paving on completion of the works.

Aboriginal Cultural Heritage

36. Prior to commencement of works the applicant shall undertake a review of the Department of Environment and Conservation's Aboriginal Heritage Information System (AHIMS) and liaise with the Local Aboriginal Land Council to determine the likely presence of any items of significance. The outcomes are to be forwarded to the Clarence Valley Council when applying for a Subdivision Certificate. Should the AHIMS search reveal items of Aboriginal Significance may be present on the site, the applicant shall consult the Department of Environment and Conservation and the Local Aboriginal Land Council to determine whether a cultural management plan (CMP) should be prepared and if so the contents of the CMP and/or whether a sites officer is to be present during initial excavation/site disturbance works.

Landscaping

37 A detailed landscaping Plan of all un-built upon areas of the subdivision be submitted to Council for approval prior to the issue of the Construction Certificate. The plan is to be prepared by a suitably qualified landscape architect and is to include a maintenance schedule to ensure plants survive. All landscaping is to be undertaken in accordance with the approved plan.

(Reason: To ensure the unbuilt upon areas are landscaped adequately).

Right of Appeal and Validity of Consent

Section 82A of the Act provides that you may request a review of your determination by Council. The review must be requested within 12 months of the date of this notice and must be accompanied by the prescribed fee.

Section 97 of the Act provides that you have a right of appeal to the Land and Environment Court against Council's decision in the matter, exercisable within 12 months after receipt of this notice.

Consent becomes effective from the consent validation date. Section 95 of the Act provides for the period of validity of consent, and it is the applicant's responsibility to ensure that commencement of the development is carried out within the prescribed period. The consent period for this application will be five (5) years.

If you require further information in regard to this notice of determination please contact Clem Rhoden of Council's Environment and Planning Department on 6643 0261.

Yours faithfully


Clem Rhoden
Manager Development Services

MODIFIED CONSENT

This is the plan referred to in Council's Modified Notice of Determination of

DVA No.: ~~1000~~ MAP 2016/10006 of SUB2005/5093

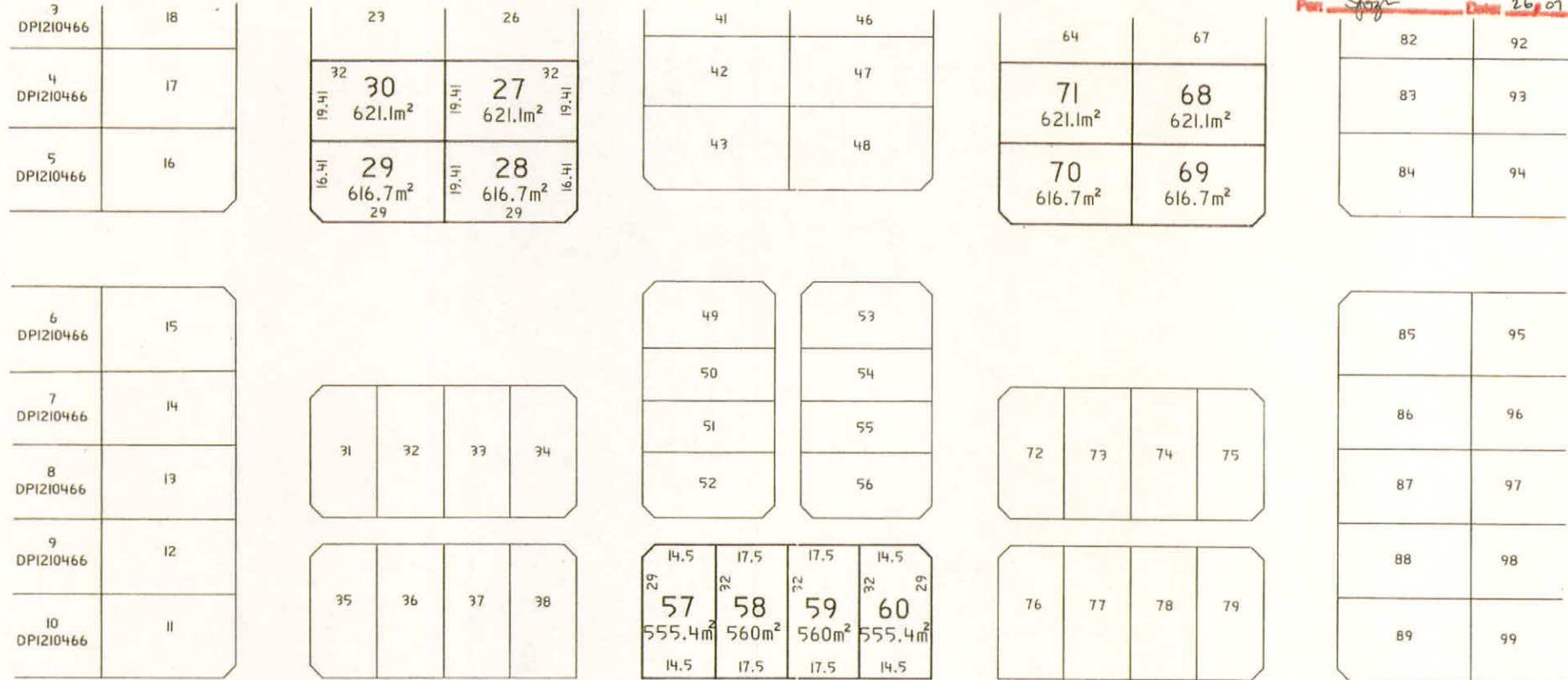
General Manager

Per: *[Signature]* Date: 26/07/2016

GRID NORTH

NB. ALL MEASUREMENTS & AREAS ARE SUBJECT TO FINAL FIELD SURVEYS & MAY DEPEND UPON THE NATURAL & BUILT FEATURES OF THE LAND

THE CURRENT LOT NUMBERS DO NOT INCLUDE 61. THE FINAL LOT NUMBERING WILL DEPEND UPON THE STAGING & NUMBER OF LOTS IN EACH STAGE



NORTH

STREET

BOTHAMLEY AND O'DONOHUE PTY LTD

ABN 17 002 718 185

LAND & ENGINEERING SURVEYORS
DEVELOPMENT CONSULTANTS

PO BOX 1034,
12 PRINCE STREET PHONE: 6642 3287
GRAFTON, NSW, 2460 FAX: 6642 7808
email: jim.odonohue@bothamleyandodonohue.com

PLAN OF THE RECONFIGURE OF LOTS 27 TO 30,
57 TO 61 & 68 TO 71 IN THE PROPOSED SUBDIVISION OF
LOT 11 IN DP1210466, 362 NORTH STREET, GRAFTON
MARLOWVALE ESTATE

CLIENT: DOUGHERTY BROS PTY LIMITED

LOCALITY: GRAFTON
LGA: CLARENCE VALLEY
PARISH: GREAT MARLOW
COUNTY: CLARENCE
DATUM:
RED RATIO: 1 : 1000 @ A3
DRAWING NO.: 10450-01
DATE: 26TH FEBRUARY, 2016

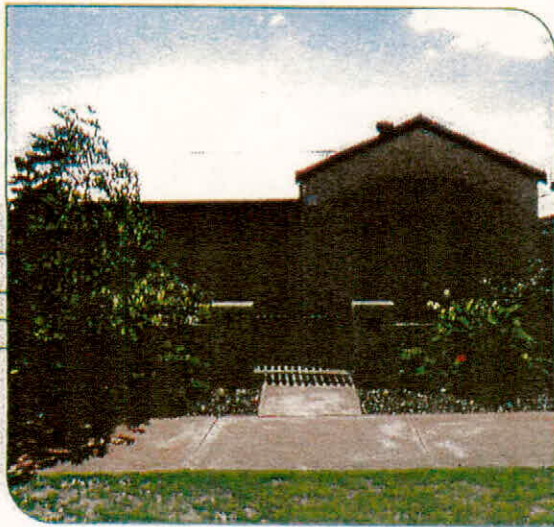
**CLARENCE VALLEY COUNCIL
MODIFIED CONSENT**

This is the plan referred to in Council's Modified
Notice of Determination of

D/A No.: MOD2016/0006 of SUB2005/5058

General Manager

Per: [Signature] Date: 26 07 2016



waghorns farm, grafton

mews allotments design guidelines june 2006

REVISED 29TH FEBRUARY, 2016



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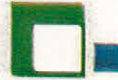
①. site planning / building height

②. setbacks / built to boundary walls

③. fencing / private open space

④. roofscape / garages and vehicles

⑤. setback requirements plan



Site Planning

Waghorns Farm provides an opportunity to establish an integrated residential community that complements the environmental features, character and scale of the surrounding landscape. Waghorns Farm is a mixed use development of 99 allotments including both Conventional and Mews allotments.

The Mews allotments in Waghorns Farm provide an exciting and enjoyable residential living opportunity through an alternative built form format. In developing this housing typology special consideration has been given to the rural and residential amenity of the surrounding land.

Allotments are predominately 400 - 512m² with larger allotments on the corner sites to facilitate larger setback requirements. It is intended that each of these allotments are developed with detached singular dwellings, rear loading garages and front facades devoid of garage doors and driveways.

These guidelines have been created to provide controls and assistance in the design of homes that will provide a high standard of amenity for residents through building design, privacy, safety and responsiveness to the climate and environmental conditions of Grafton. Amalgamation of these lots to form larger development parcels will not be permitted.

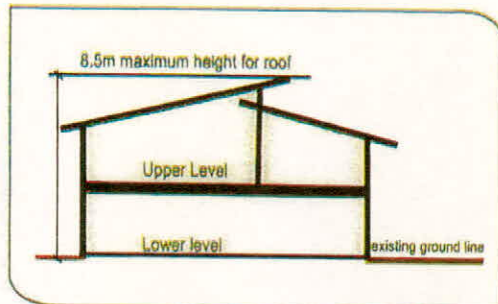


figure 1- building height limits

Building Height

Buildings and structures on the mews allotments must not cause loss of amenity to adjacent land and dwellings, with regard to overshadowing, privacy, views and vistas, building character and appearance and building massing and scale as seen from neighbouring premises.

Building heights are to be single or two storeys to a maximum of 8.5m, as indicated in figure 1. The building height is defined as existing ground line to the highest point on the roof.

The garage finished floor level must be vertically within 200mm of the laneway at the boundary.

1.

design guidelines june 2006

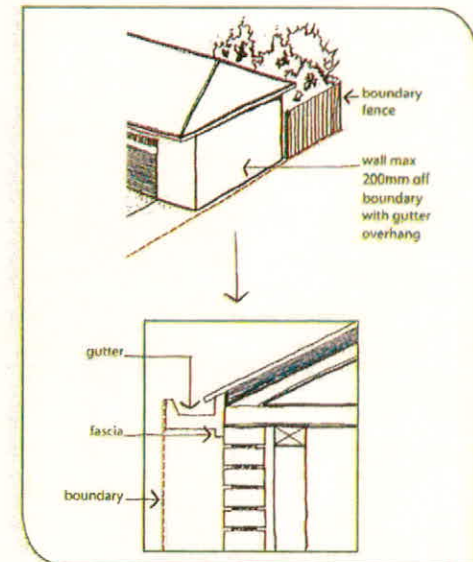
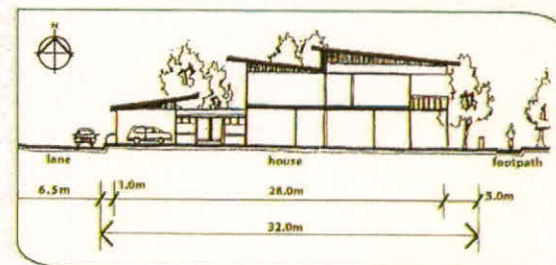
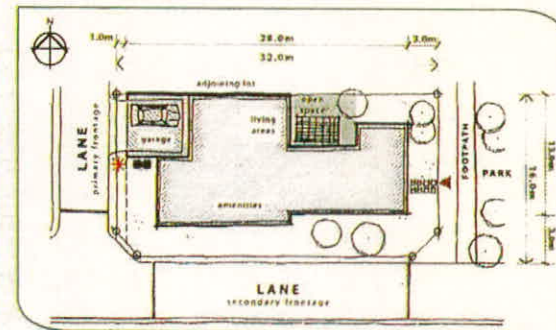
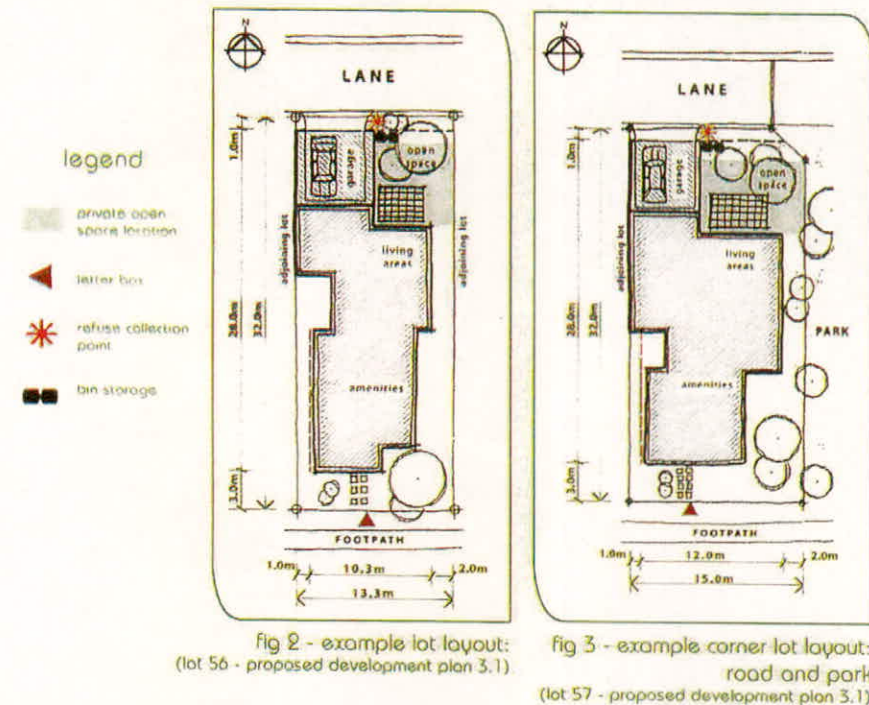
waghorns farm, grafton

Setbacks

Buildings must be setback in accordance with the parameters indicated in Figures 2 - 5 & figure 8. For a majority of the Mews allotments front and rear setbacks are as indicated in figure 2, with alternative side setback requirements applying to corner allotments or allotments adjoining open space (see figures 3 & 4).

The primary frontage (letter box location) of the allotments should have a 3m setback for the ground and first level of the dwelling. It should be noted that the facade of this frontage is intended to be reasonably substantial and consistent, therefore a large open verandah is not encouraged; 70% of the buildings front walls should be constructed between the 3m minimum setback and 4.5m from the allotments front boundary.

The minimum rear laneway setback should be 1.0m for the ground level. The entry to the garage must be built to meet this 1m setback requirement to ensure that illegal parking does not occur on the verge and rear fringe of the residents allotments. If a second level is included, the built form may be cantilevered out to the boundary line. Planting is to be included within the 1.0 m rear setback to soften and enhance the streetscape of the lane. Note: Figures 2-4 outline postal delivery location and refuse collection points.



Built to the Boundary Walls

All Mews allotments have nominated built to boundary walls, it is mandatory that the external wall is built to this boundary in accordance with figure 8.

A zero lot line tolerance of 0.2m is permitted to facilitate a gutter overhang, if this tolerance is used no fencing to the boundary is permitted for that length of the wall as shown in figure 6.

The built to boundary wall must not exceed 50% of the boundary at ground level. Where the built to boundary wall does not apply the side setback shall be a minimum of 1.0m to the outermost projection of the building.

The second level must be setback a minimum of 1.5m from the built to boundary side to avoid overshadowing on the adjoining dwellings.

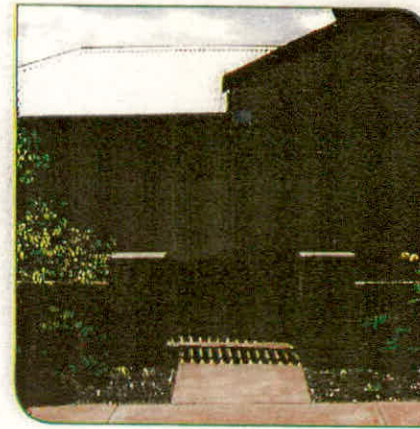
Fencing

All fences design should be constructed of materials that complement the dwelling design.

Primary street or park frontage fencing must not dominate the streetscape amenity, residences must be visible from the street. Fencing should be low in height (max 1.2m) and be of an open structure (at least 70% visually permeable), these objectives can be achieved via masonry base and piers with infilled timber or steel inserts.

The rear lane frontage will have approximately half it's frontage consumed by a garage. The remaining frontage should have a 1.8m fence providing privacy from the lane for private open areas and should be constructed from a materials which compliments the dwelling, whether it be a similar masonry, render, or timber panelling.

Colourbond panels will not be permitted for any fencing.



Private Open Space

Figure 7 identifies preferred private open space location for the four different allotment orientations within the development. The locations are based on preferred orientation for maximum natural light, aspect and privacy. Secondary living areas can be located on the park or street frontage as long as they are integrated into the built form. Designs may incorporate this semi open space on the first level to take advantage of possible views.

The following minimum areas should be adhered to in creating one major consolidated area of private open space:

- Two Bedroom 30m²
- Three Bedroom 40m²
- Four Bedroom 50m²

This area should be able to contain a minimum 5m diameter circle as indicated in figure 7

This area is not to include clothes drying, bin storage or other service provisions.

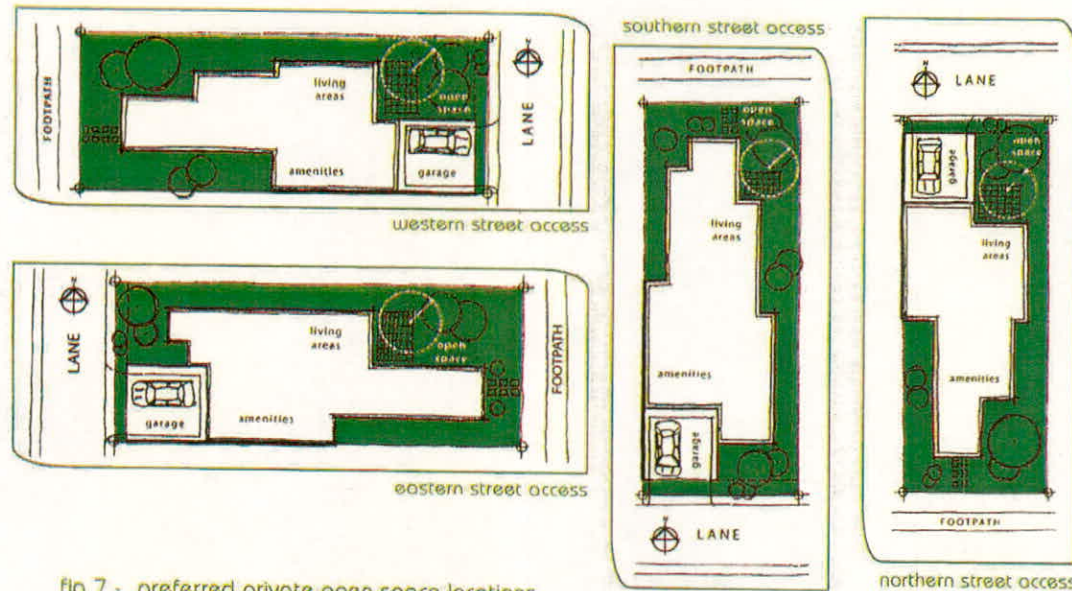
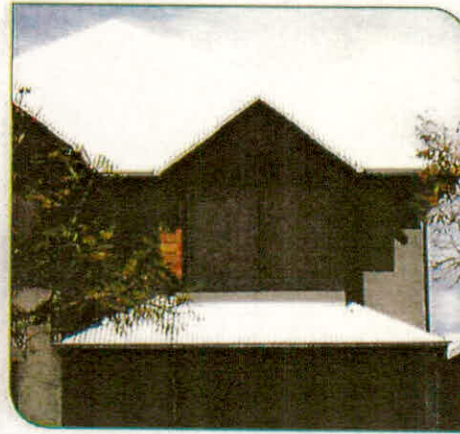


fig 7 - preferred private open space locations



Roofscape

Roofing is to be reflective of the surrounding residential character in scale, form and construction. This is achievable through pitch, materials and design innovation.

Consideration should be given to solar orientation in the design of the roof form. This should be done considering the most appropriate place to locate solar cells to ensure that it is not in a visually prominent location and that the orientation ensures maximum solar efficiency (generally 30 degrees either side of north). This should be done even if solar systems are not to be included in the initial construction phase facilitating their introduction in the future.

Conventional truss roofing should utilise pitches of 25 degrees or more. Skillion roofing is permitted. All roofing except for that on the built to boundary side should include eaves of at least 300mm. Colourbond or similar materials are encouraged.

Garages and Vehicles

It is a requirement that all homes in the precinct include a double bay garage or carport that has a door or gate. It is important that garages include detail that compliments and incorporates design details of the main dwelling to reduce their visual impact and improve the ground scale interface on the laneway.

Indicative driveway and garage locations have been included in Figure 8, any deviation from this will be considered in relation to relevant design issues.

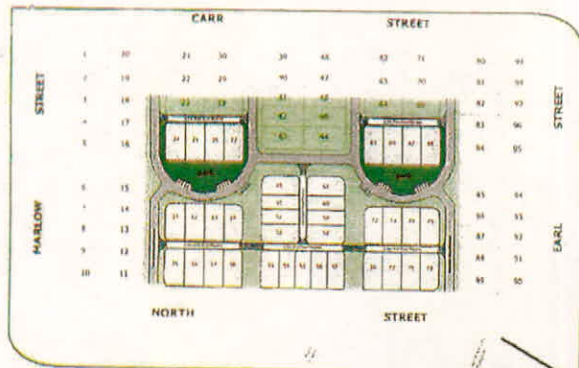


NOTES:-

REFER PLAN 10450-01 DATED 29TH FEBRUARY, 2016

A: LANES DELETED & PROPOSED LOTS 24 TO 27 AND 65 TO 68 RECONFIGURED & GUIDELINES NO LONGER APPLY

B: LOTS 53 TO 57 REDUCED BY ONE & FRONTAGE & AREA EQUALLY DISTRIBUTED



Key Plan
Source: Waghorns Farm Statement of Environmental Effects-proposed development plan 3.1

new allotment setback requirements

Legend

- 0.0m built to boundary
- - - 1.0m setback
- 2.0m setback
- 3.0m setback
- * private open space location
- ▽ preferred garage locallon

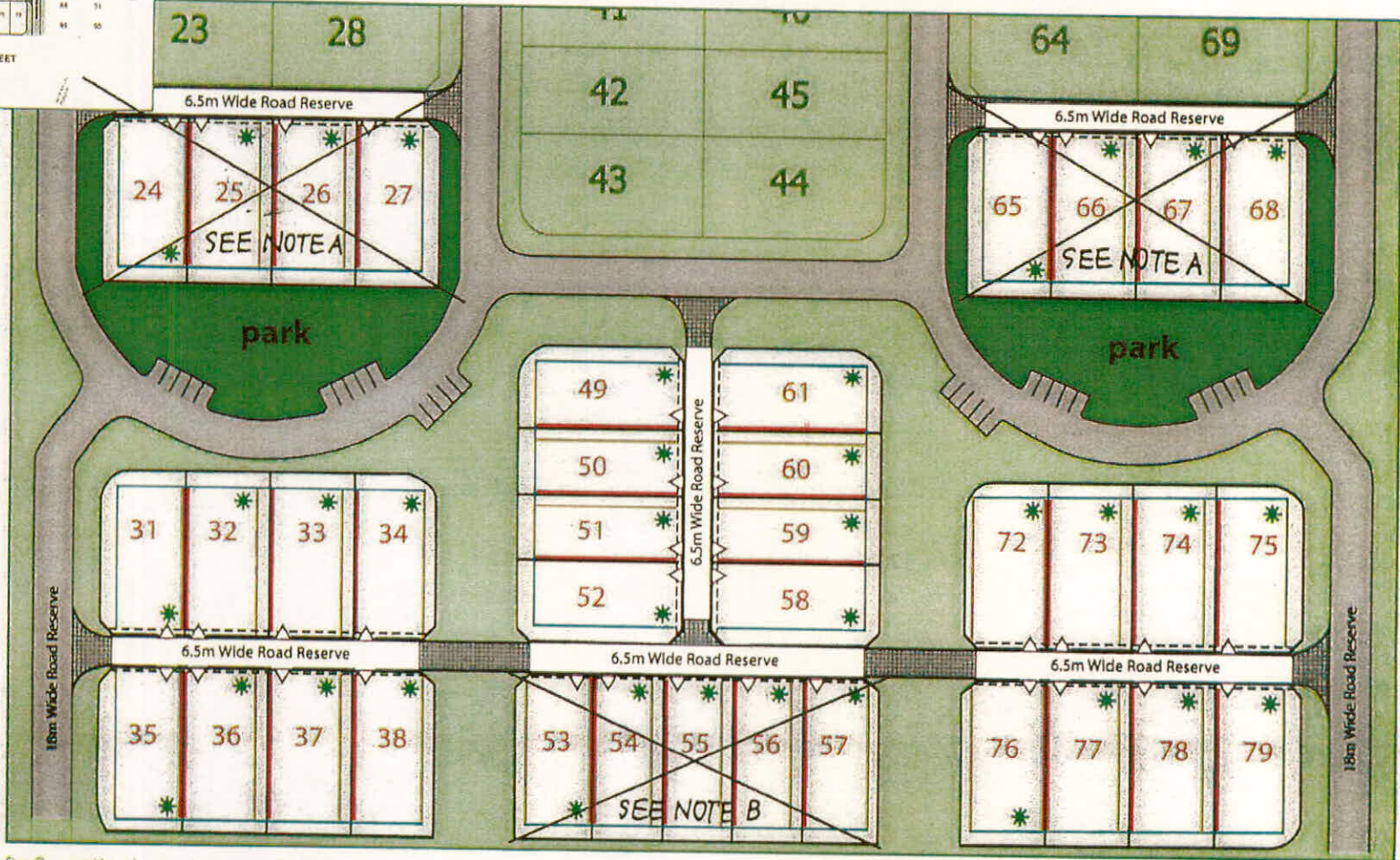


fig 8 - setback requirements (not to scale)

5.

design guidelines june 2006

waghorns farm, grafton

Attachment 3

REF: MOD2021/0034

Elaine Daniels

Grafton NSW 2460

Attn: James Hamilton

MOD2021/0034 for Lot 36 DP 1253089 at 362 North Street Grafton

I write in response to your letter dated 25 May 2021, regarding MOD2021/0034 for Lot 36 DP 1253089 in 362 North Street Grafton.

I have been a property owner at North Street, Grafton for 32 years and wish to lodge a submission for the proposed development adjacent to my property.

The original development application that I received from Clarence Valley Council dated 27 March 2007 MOD2007/0007 (REF: D22830) showed that all property driveway access for the subdivision were fully contained within the proposed subdivision. The latest development application MOD2021/0034 drawing 10450-02 shows lots 80 – 87 having access off North Street. I fully object as the existing road and drainage on North Street from McPherson Crescent to Marlow Street is inadequate and will not cope with the extra traffic and property stormwater runoff this subdivision will generate.

For this proposed subdivision to be approved an upgrade of the road to include widening and resurfacing, kerb and gutter and installation of a shared footpath must be undertaken to a standard that will accommodate the increase in traffic and improve the safety for all road users and pedestrians. This should not be at the cost of the rate payers and must be met by the developer.

I thank you for your consideration in this matter

Kind Regards

Elaine Daniels

DOC #	_____
DOC LOC	_____
G	08 JUN 2021
CLARENCE VALLEY COUNCIL	

From:
Sent: Wed, 9 Jun 2021 15:44:11 +1000
To: Council Email
Cc: James Hamilton
Subject: Development Application : MOD2021 / 0034
Attachments: 20210609_Objection to Development Application_Stage 4.pdf

Please find attached my my objection to the Development Application in relation to Stage 4 of the Marlowvale Estate located at 362 North Street Grafton.

Yours faithfully,

Sharon Hillery

abovenamed Development Application in relation to Stage 4 of the Marlowvale Estate located at 362 North Street Grafton.

1. Unauthorised Earthworks

The site of the proposed Stage 4 has, over the last couple of weeks, had extensive earthworks being undertaken to raise the level of the site. Numerous requests have been made to Council over the last 21 months to supply documentation where the Developer has provided an application to change the height of the development site in relation to Stages 2, 3 and now 4, as well as documentation from the Council approving such an application. None of the documents provided by Council up to this point of time show any application being made nor any approval being granted by Council in relation to the raised height of the development.

Therefore it is considered that the earthworks that have been undertaken in Stages 2, 3 and 4 by the Developer are not approved by Council.

If Council believe the earthworks had been granted approval for Stages 2 & 3, as a result of a Public Consultation process such as the one currently underway for Stage 4, then when and how was the public notified of such a consultation process.

As a result of the unauthorised earthworks which has substantially raised the ground level of the building lots in Stages 2, 3 and 4, any building now constructed on those lots will be in contravention of the Waghorns Farm Mews Allotments Design Guidelines dated June 2006 and revised 29th February 2016, which states :

“Building and structures on the mews allotments must not cause loss of amenity to adjacent land and dwellings, with regard to overshadowing, privacy, views and vistas, building character and appearance and building massing and scale as seen from neighbouring premises.”

2. Drainage and Stormwater

Para 33 of the Notice of Determination of Application, dated 23 April 2009, states

“The filling of the site is not to adversely affect adjacent properties or local drainage patterns. Provision is to be made for the free passage of surface stormwater away from the affected sites.”

Further to the issue of the unauthorised raising of the ground height on the development, residents have a VERY strong concern of the stormwater run off that will occur from the development. Again a number of attempts have been made over the last 21 months to raise our concerns with Council.

The Stormwater Management Plan for the Waghorn Farm Development prepared by GeoLINK, dated September 2005 is a totally flawed document. It has also made assumptions based on a Development Application prepared in 2005 that has now changed significantly to the development currently being undertaken.

Page 3 of the S.W. Plan states

“The site predominantly drains via overflow to the north east corner”, “About 82% of the site drains to the north east”.

No where in the subsequent pages of the report does it make reference to the development site being changed to increase the ground levels and therefore the “natural” flow of the site being changed.

The report does not address any fill to the areas of the north east and south east corners being predominately of a clay substance therefore having a direct impact on how the site could sustain substantial rainfall. Residents witnessed, and have photos of the clay substance being dumped in these areas.

The report does not address the impact of raised building lots on the increased flow of water into the stormwater system. It is acknowledged that it is a requirement for the buildings to have water tanks but once they are full all water will quickly flow into the stormwater system as the water will not be able to seep into the clay based building lots and due to the height of those lots, will flow straight onto the street level.

Page 26 of the S.W. Plan states

“The modelling indicates that post development discharge flow rates and volumes will be less than the pre-development conditions.”

Again this assumption is not correct based on the changes to the original Development Application, that being the enormous amount of a clay substance fill used to have raised the building lots. Pre development the land was predominately alluvial soil used for farming and therefore had a very high capacity to hold/seep rainwater.

Page 27 of the S.W. Plan states

“During extreme storm events the proposed weir structure will retain the increased runoff volumes and limit the discharges downstream to existing conditions.”

It is felt that this is one of the biggest flaws in this report. The report has not addressed the situation when the area is in flood and the flood gates are closed. The Eyre Street Canal fills very quickly, this was evident in March this year when Grafton had minor flooding. The new stormwater drain opening into the Eyre Street Canal was blocked by the canals’ rising water. The Residents have raised with Council on a number of occasions that the stormwater measures from the development will have a direct impact on their properties. When there is a severe weather event the outflow from 90+ building lots into the new stormwater drain, into a full Eyre Street Canal will result in rising water back up the drain to the inspection pit with potential to damage the Residents property and if/when the flood gates do require closing then there will be a definite issue with rising water, which hasn’t been a problem prior to the North Street Development.

3. Failure to meet Pre-existing Conditions

It is felt that the Council should not grant any further approvals on the development site until all pre-existing approval conditions have been met. It is unclear as why these conditions have not been met. Is it a case that

the Developer has been allowed to continue without the Council overseeing the development and enforcing the conditions of approval. Or is it a case that the Council has allowed the Developer to forgo meeting those requirements or making changes without an open and transparent consultation process with the Public.

Just some of those conditions that appear to have not been met or changed, with no reasoning as to why are:

- Para 13 e) of the Notice of Determination of Application, dated 23 April 2009. There has been issues with the drainage trenches, especially those at the intersection of Carr and Earl Streets and the stormwater drain on the north verge of Earl Street. This has been reported a number of times to Council where it is clearly evident the pipes have not been *“bedded, laid and jointed in accordance with the specifications..”*
- Para 19 of the Notice of Determination of Application, dated 23 April 2009, states *“The developer shall provide at full cost to the developer, an off road shared cycleway/pedestrian path along the frontage of the development in North Street and Earl Street.....”*, however on the drawing 0466/C1070 of the Marlowvale Development GeoLINK diagrams it shows a bitumen path on the opposite side of Earl Street. Where will the path be located? If the path is to go as per the diagram then have the residents/ratepayers been advised of this and asked for their submission about the change.
- Para 20 of the Notice of Determination of Application, dated 23 April 2009, states *“Prior to development of the site beyond 50 lots, an on road cycleway shall be constructed, at full cost to the developer, from the south east corner of the development to connect with the North Street on road cycleway at the intersection of North and Cranworth Streets”*. When will Council enforce this condition on the Developer. Stage 1 and 2 are complete as residences are in place. Stage 3 is clearly in development stage as roads are marked, drainage has been put in place and lots have been marked. Therefore this now meets this condition of 50 lots, so the Developer should be putting in the cycleway now, before any more work is allowed to be done on Stage 4.
- Para 23 of the Notice of Determination of Application, dated 23 April 2009, makes reference to the Developer being required to construct a dedicated left turn lane into North Street PRIOR to the release of the linen plan for Stage 1. Why has this Developer been able to ignore the Traffic Impact Report by Roadnet that stated the turn lane was a safety issue and why has the Council not addressed this?
- Page 9 – note 8, of the Stormwater Management Plan for the Waghorn Farm Development prepared by GeoLINK, dated September 2005, states Imported fill must be certified. Numerous request have been made to Council to confirm these test have been undertaken, especially in relation to the relocation of soil from the Eyre Street Canal to the development site. Council has stated they have not been unable to locate any record on file, why has the Developer been allowed to not meet this requirement, especially as the soil from the Eyre Street Canal has had a direct impact on the residents of Carr Street.
- Page 3 of the Waghorns Farm Mews Allotments Design Guidelines dated June 2006 and revised 29th February 2016 states *“Colourbond panels will not be permitted for any fencing”*, when was the Public advised of this change, driving through the development every house has colourbond panels as fencing.

Thankyou for giving me the opportunity to raise my objections to this Development Application. I hope that we can get some answers to the points raised above as the Residents/Ratepayers of Carr Street have had great difficulty in obtaining documents, information or answers to many more issues from the Council for the last 21 months.

Yours faithfully,

Sharon Hillery

Attachment 4

**SECTION 4.55 AMENDMENT
FILE REPORT FORM**

FILE NO:	SUB2005/5058
APPLICATION:	MOD2021/0034
APPLICANT:	O'Donohue Hanna & Associates Pty Ltd
OWNER:	Dougherty Bros Pty Ltd
LEGAL DESCRIPTION:	Lot 36 DP 1253089
PROPERTY ADDRESS:	362 North Street GRAFTON NSW 2460
APPROVED DEVELOPMENT:	98 Lot Subdivision

REQUESTED AMENDMENT: The applicant has requested an Amendment under Section 4.55 (1A) of the Environmental Planning & Assessment Act, in relation to amend the layout of an approved 98 lot residential subdivision under SUB2005/5058.

The modification will require an amendment to Condition 1 and deletion of Condition 9 which relates to the design guidelines for the Mews Lots. The Applicant also seeks to amend Conditions 20 and delete conditions 19 and 29 which read as follows:

19. The developer shall provide at full cost to the developer, an off road shared cycleway/pedestrian path along the frontage of the development in North Street and Earl Street. The cycleway/pedestrian path shall commence from the point at which the internal cycleway meets those streets and extend to the southeast corner of the development.

(Reason: To provide for and encourage the use of cycles and public amenity).

20. Prior to development of the site beyond 50 lots, an on road cycleway shall be constructed, at full cost to the developer, from the south east corner of the development to connect with the North Street on road cycleway at the intersection of North and Cranworth Streets.

(Reason: To provide for and encourage the use of cycles and public amenity).

29. All pathways in the subdivision are to be provided with a concrete or brick paved surface with minimum 1.2 metres width in accordance with Council's Development Specification – Aus-Spec.

(Reason: To ensure pathways are provided in accordance with Council policy).

In lieu of deleting Conditions 19 and 29, the Applicant is proposing to amend Condition 20 to extend the on-road cycleway further west to Flame Street and also provide the on-road cycleway on the southern side of North Street to the intersection with Cranworth Street.

ADVERTISING REQUIRED UNDER DCP OR REGULATION?

Yes, the application was advertised and notified in accordance with the Community Participation Plan.

DETAILS:

BACKGROUND OF DEVELOPMENT CONSENT:

The subdivision was granted approval under SUB2005/5058 on 25 July 2006. The Application has subsequently been modified by Court Order in 2009 which changed the requirement to provide a turning lane into North Street from Turf Street to make a monetary contribution to Council for the required works. The development has been subject to 2 previous modification applications being:

1. MOD2009/0054 – This application amended the telecommunication type required to service the development.
2. MOD2016/0006 – This application resulted in removal of the ‘Mews’ style lots in Stages 2 and 3 of the development and reverting back to a more conventional subdivision layout. This modification resulted in a reduction in lot yield of 1, dropping from 99 to 98 lots.

SECTION 4.15 EVALUATION:

(1) Matters for consideration—general

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

(a) the provisions of:

(i) any environmental planning instrument, and

The application was assessed under the provisions of the Grafton Local Environmental Plan (1988). The assessment concluded the development was consistent with the zone objectives for land zoned 2(a) Living Area. Clause 42: Land in North Street, Grafton – restrictions on development of the LEP also applied.

The modifications now proposed are not considered to alter the assessment undertaken for the development under SUB2005/5058 in relation to compliance with the LEP and do not affect compliance with the matter nominated in Clause 42 relating to Stormwater Management and contamination.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

The application was assessed under the provisions of the Grafton Residential Zones DCP No.4, Grafton DCP No.9 Development controls in Flood liable land, and CVC DCP No.1 Engineering Standards.

The only matter to consider is the change in lot sizes from the amendments proposed. All of the lots to be amended will only increase in size. No lots will be reduced in size. The lot sizes are considered to be consistent with the intent of the DCP.

The building height, landscaping, car parking, sitting, floor heights, flood controls and engineering standard assessments are unchanged by the modification. Revised engineering and detailed drawings will be necessary to accommodate the revised layout.

- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and**

The Applicant has not entered into a voluntary planning agreement.

- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates**

MOD2021/0034 has been lodged under Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which reads as follows:

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

Consideration of whether the proposed modification is substantially the same development needs to be assessed against the original approved development and not the current modified development. Comparison of the qualitative and quantitative changes is required to determine whether the proposed modification is substantially the same development. Focus is to be given on the particular elements that are being changed, especially where that component is an essential component of the development. The key difference proposed by the applicant is the complete removal of the Mews Lots and proposed access from North Street.

The Applicant has provided the following justification in support of the application to demonstrate the proposed modification is substantially the same development as approved:

- a) The reduction in public areas (roads and open space) results in a lower maintenance cost to Council.
- b) The larger lots provide greater flexibility in development potential for single level dwellings compared to the restrictive Mews Guidelines which would generally require 2 storey developments to meet the provisions resulting in increased construction costs.
- c) The changes from Mews Lots to traditional lots will facilitate provision of higher density development and provision of more affordable housing resulting in greater utilisation of available services in accordance with the concept of urban consolidation.
- d) The Mews Lots present servicing issues for utilities, stormwater management and waste collection due to the narrow 6.5m rear laneways which over time could become an issue.
- e) The Mews Lots were not proposed as affordable housing lots despite what State Policy suggested at the time of the DA.
- f) The modified layout will result in a traditional style estate which replicates the characteristics of the estate to be consistent throughout.
- g) The proposal will not present issues with provision of services.

Comment

Development Application SUB2005/5058 was approved by Council at their meeting of 25 July 2006 and has subsequently been modified by Court Order and further Council meetings (MOD2016/0006 – Item No. 14.063/16). The initial approval granted a subdivision for 99 lots and included Mews Style lots throughout the subdivision layout. The modification by Court Order and MOD2009/0054 did not change the fundamental layout of the development and was considered substantially the same. MOD2016/0006 gave approval to amend the subdivision layout for 12 lots and reduce the number of mews lots from 37 to 28.

The main amendment to the development is the change of access for lots that had frontage to North Street, with removal of the rear laneways a total of 9 lots will gain direct access from North Street. The frontage of the development in North Street is recognised by Council's Open Spaces Manager as an emerging avenue of significance regarding the Jacarandas once canopies on either side of the road combine. The Applicant has demonstrated that these lots will not result in the removal of any Jacaranda trees for the provision of driveways, other than what has already been approved for the new intersections on North Street to service the development.

The removal of the Mews Lots and reconfiguration of Stage 4 of the estate will not increase the number of lots, however will result in less public open space between the Mews Lots. The provision of public open space was provided to compensate for the small Mews Lots and guidelines which required less private open space in comparison to the Development Control Plan. Development of the reconfigured lots will need to comply with current Private Open Space and Landscaped Area provisions which are not considered to increase the density of developed areas of Stage 4. A further consequence of the proposed amendment will also be the removal of the rear laneways

and footpaths for pedestrian access through the open space areas for visitors to access the Mews Lots. Overall it is considered that the proposed modification will not create additional impacts that are not able to be satisfactorily mitigated through further detailed design of stormwater management and assessed as part of future development applications for each lot.

Taking into account the changes to the development and no greater impact as a result of the proposal it is considered that Council has the ability to determine MOD2021/0034 under Section 4.55 (1A) as the development is substantially the same development as approved.

(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,

An assessment of the impacts of the development was undertaken under SUB2005/5058 and that assessment is unaffected by the amendments now proposed. The modification to the layout of some of the lots is not considered to result in additional impacts resulting from the development.

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

An assessment of the suitability of the site for the development was undertaken under SUB2005/5058 and that assessment is unaffected by the amendments now proposed.

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

The proposed modification was advertised and notified in accordance with the Community Participation Plan, two submissions were received during the notification period. The majority of issues raised in the submissions received do not solely relate to the proposed modification. A summary of the issues is provided below with a relevant comment.

a) The filling of the land is unauthorised earthworks.

Comment: Filling of the land was proposed as part of the initial subdivision application, filling works have been subsequently undertaken for each stage of the development with appropriate civil construction approvals issued for bulk earthworks or was inclusive in the overall civil works for the respective stage. Material imported for Stage 3 and Stage 4 footprint is primarily quarry material, with minor quantities sourced from the South Grafton Golf Club. The fill was authorised under each respective Construction Certificate.

b) Filling of the land and further development of the site will increase runoff resulting in drainage and stormwater issues.

Comment: Stormwater modelling and assessment considered the completed development and demonstrated no additional runoff from the site. This may need to be upgraded/amended with the future construction of the subdivision to account for the amended design.

- c) Provision of access to North Street will compromise the existing drainage network and result in additional traffic, the developer should be required to widen the road and provide kerb and gutter and provision of a footpath.

Comment: Although all internal roads are serviced by kerb and gutter requiring the provision of kerb and gutter on North Street due to direct change in access would be out of character with the surrounds. The development has not been required to provide kerb and gutter in Marlow Street or Earl Street where direct access was proposed. The Applicant will construct an inter allotment drainage line to direct stormwater north/north-east to the Ayr Street Reserve, therefore no additional water from the development with the exception of new driveways on North Street will drain to the existing grass swale. Requiring kerb and gutter and associated road widening may result in the majority of Jacarandas in this locality needing to be removed. The applicant will be widening North Street to provide an on-road cycleway however, no additional traffic will be created by the reconfiguration of the lots. Therefore, the provision of kerb and gutter in North Street is not required.

- d) Compliance with consent Conditions:

- Incorrect construction of stormwater line:

Comment: Stormwater drainage infrastructure was constructed in accordance with the applicable engineering standards. All infrastructure adopted by Council is independently certified prior to acceptance.

- Provision of off-road footpath on North and Earl Streets for the development frontage and On-Road Cycleway.

Comment: The Applicant will be required to provide an on-road cycleway prior to the release of the subdivision certificate in the current stage under construction as the 50 lot threshold will be triggered. The developer currently is only required to provide the cycleway on the northern side. Should Council resolve to approve the modification application the cycleway will be extended from the Earl/North Street intersection further west to Flame Street and also be provided on both sides of the road. The developer has offered this additional length as an offset for removal of the off-street footpaths in North Street, Earl Street and through the subdivision.

- Provision of turning lane on Turf Street

Comment: This matter was the subject of the Court Order. The Court ruled in the favour of the developer and instead of constructing the turning lane, the developer was required to pay Council a contribution towards the upgrade. This was paid to Council before the release of Subdivision Certificate for the First Stage.

- Certification of Fill Material:

Comment: Council has been provided with the relevant Natural Excavated Natural Material and Excavated Natural Material Certificates for the source of fill associated with Stage 2, 3 and 4 of the Development.

- Colorbond panels not permitted:

Comment: The restriction on colorbond panels only applies to the 'Mews Lots' of which the developer has modified the subdivision to remove these lots from the first 3 stages of the development. Should this application be approved, this will delete the remaining 'Mews Lots' in the subdivision

(e) the public interest.

The public interest is not significantly affected by the modification proposed.

SECTION: Section 4.55 provides that where the development, the subject of consent, will be substantially the same, the consent may be amended. The requested amendment is reasonable and does not substantially change the approved development. In this instance the consent can therefore be amended under section 4.55 (1A).

RECOMMENDATION: It is recommended that the consent granted on 25 July 2006 be amended, pursuant to section 4.55 (1A) of the Environmental Planning and Assessment Act 1979, by the following:

Amended Conditions

1. *The development being completed in conformity with the Environmental Planning & Assessment Act, 1979, the Regulations thereunder, the Building Code of Australia and being generally in accordance with plans as provided in the Statement of Environmental Effects dated November 2005 and prepared by Stephen J Conelly, Town Planner, and the amended lot layout plan for lots 27-30, 57-61 and ~~68-74~~ only, drawing number 10450-01, dated 26 February 2016, one (1) sheet, prepared by Bothamley and O'Donohue Pty Ltd, and plan titled **Marlowvale Estate – Stage 4, dated 14 May 2021, one (1) sheet and drawn by O'Donohue Hanna & Associates Pty Ltd**, or as modified by any conditions of this consent.*
20. *Prior to development of the site beyond 50 lots, an on road cycleway **on both side of North Street** shall be constructed, at full cost to the developer, from ~~the south east corner of the development~~ **Flame Street** to connect with the North Street on road cycleway at the intersection of North and Cranworth Streets.
(Reason: To provide for and encourage the use of cycles and public amenity).*

Delete

9. *The applicant shall at the time of registration place a covenant on the title of each of the mews lots requiring all dwelling houses to be constructed in accordance with the document entitled "Waghorns Farm, Grafton Mews Allotments Design Guidelines, June 2006", and as revised on 29 February 2016. And all mews lots within the development are to be developed with single residences. No mews lot(s) shall be consolidated or further subdivided. The council shall be the only authority authorised to release vary or modify such covenant provisions.*
19. *The developer shall provide at full cost to the developer, an off road shared cycleway/pedestrian path along the frontage of the development in North Street and Earl Street. The cycleway/pedestrian path shall commence from the point at which the internal cycleway meets those streets and extend to the southeast corner of the development.
(Reason: To provide for and encourage the use of cycles and public amenity).*

- 29. All pathways in the subdivision are to be provided with a concrete or brick paved surface with minimum 1.2 metres width in accordance with Council's Development Specification – Aus-Spec.
(Reason: To ensure pathways are provided in accordance with Council policy).*

A new notice of consent outlining the amended conditions and/or new stamped plans are to be issued.

Report prepared by: James Hamilton, Development Planner
Date: 14 September 2021