

Blayney Shire Council



9 February 2012

Dear Councillor,

Your attendance is requested at an Ordinary Council Meeting of the Blayney Shire Council to be held in the Council Chambers on Monday, 13 February 2012 at 6.00 pm for consideration of the following business -

- (1) Acknowledgement of Country
- (2) Apologies for non-attendance
- (3) Confirmation of Minutes - Ordinary Council Meeting held on 12.12.11
- (4) Matters arising from Minutes
- (5) Disclosures of Interest
- (6) Public Forum
- (7) Mayoral Minute
- (8) Notices of Motion
- (9) Reports of Staff
 - (a) Corporate Services
 - (b) Engineering Services
 - (c) Environmental Services
- (10) Committee Reports
- (11) Questions from Councillors
- (12) Closed Meeting

Yours faithfully

GA Wilcox
GENERAL MANAGER

ENVIRONMENTAL SERVICES REPORTS
PRESENTED TO THE BLAYNEY SHIRE COUNCIL
MEETING HELD ON MONDAY, 13 FEBRUARY 2012



- 22) **DA59/2011 - SUBDIVISION - 56 RICHARDS LANE,
MILLTHORPE - MARRANGAROO EAST PTY LTD V
BLAYNEY SHIRE COUNCIL [2011] NSWLEC 245**
(Director Environmental Services)

RECOMMENDED:

1. That Council note the report from the Director of Environmental Services.

REPORT

Council originally approved DA59/2011 on 9 May 2011 for a ninety six (96) lot subdivision north of Millthorpe. The applicants for the development application subsequently filed with the Land and Environment Court a Class 4 appeal against Council's condition/s requiring Section 94 Contributions and condition 45 requiring dedication of the proposed Lot 25 to Council.

Prior to the hearing the applicants met with Council's General Manager, Acting Director of Environmental Services and Senior Town Planner to try and negotiate an out of court settlement proposal that could be put to Council, but no reasonable settlement could be reached, and the matter went before the Land and Environment Court on 6 and 7 December 2011.

Council's Director of Engineering and Senior Town Planner represented Council at the hearing with Council legal representatives from Pikes Lawyers.

The decision of the appeal was handed down on 16 December 2011 by A J Moore who dismissed the application with costs (see attachment). This outcome validates Council's original approval.

Council is awaiting advice as to a potential appeal to the attached decision and this advice will be provided at the Council meeting, if available.

BUDGET IMPLICATIONS

Nil.

POLICY IMPLICATIONS

Nil.

Attachments

- 1 Marrangaroo Judgment 18 Pages

- 23) **MODIFIED DEVELOPMENT APPLICATION NO.130/90/1 -
WESTERN WHITE LINEN - 190 MARSHALLS LANE,
BLAYNEY**
(Director Environmental Services)

RECOMMENDED:

1. That Council approve DA 130/90/1 to modify the proposed trading hours and proposed noise attenuation measures.

REPORT

Council originally approved DA130/90 on 12 October 1990 for the Western White Linen Commercial Laundry at 190 Marshalls Lane subject to trading hours of **6am to 8pm Monday to Friday** (see attachment).

Following representations to Council, from a neighbour of the laundry, regarding noise issues a Noise Assessment was carried out by Indigo Acoustics in June 2010 for the owner of Western White Linen.

On the 8th of September 2010 Council's Acting Director of Environmental Services wrote to Western White Linen recommending that certain provisions be put in place to reduce noise levels to deemed acceptable levels under the NSW Industrial Noise Policy (see attachment).

A modified application, to the original approved Development Application, was received on 20th June 2011 to vary the trading hours to provide for **Saturday trading from 7am to 5pm** and provide plantings of trees in 2 to 3 rows along the northern boundary to address the noise issues.

Following receipt of the modified application the proposal was notified, in accordance with Council's notification policy, and a submission was received from the owners of the adjoining northern premises objecting to the proposed modification to trading hours to allow Saturday trading.

Following meetings and negotiations with the applicant an amendment to the proposed modification was received on 25 November 2011 for proposed trading hours of **7am to 6pm Monday to Fridays and 7am to 5pm Saturdays and provision of a 1.8m high colorbond fence with landscaping along the northern boundary.**

The new amendment was notified and the same neighbour again objected to the new amended hours and proposed noise attenuation measures.

The proposed trading hours are expected to reduce any potential noise issues after **6pm Mon to Friday and 5pm Saturday**. Consideration of the Noise Assessment Report and the NSW Industrial Noise Policy reveals that the new proposed trading hours would meet the acceptable noise level of **65dBA** during the times proposed and the proposed 1.8m high colorbond fence and proposed tree plantings should also provide both an effective screen and some positive noise attenuation.

It is recommended that the modified application be approved.

BUDGET IMPLICATIONS

Nil.

POLICY IMPLICATIONS

Nil.

Attachments

- | | | |
|---|----------------------------------|---------|
| 1 | DA130/90 Original Consent | 2 Pages |
| 2 | DA130/90 Noise Assessment Letter | 3 Pages |
| 3 | Site Diagram | 1 Page |

24) LOCAL HERITAGE ASSISTANCE FUND 2011/2012
(Director Environmental Services)

RECOMMENDED:

1. That Council approve the provision of grant funding to the projects listed below to the total value of \$4000.00

REPORT

The following applications have been received and considered for funding under the Local Heritage Assistance Fund for 2011/2012. Please find attached completed recommendation forms by Heritage Committee Members.

1. Carcoar Hospital Museum & Restoration - 7 Eulamore Street, Carcoar.

Project:	Installation of compacted gravel barrier/path around northern side of the Carcoar Hospital and restoration of drainage/downpipes
Cost:	\$2,537.50
Grant Requested:	\$1,000.00
Grant Allocated:	\$1,000.00

2. Millthorpe Village Committee, Millthorpe Cemetery - 44 Park Street, Millthorpe.

Project:	Erection of a second niche wall
Cost:	\$3,800.00
Grant Requested:	\$1,000.00
Grant Allocated:	\$1,000.00

3. Blayney Uniting Church - 92 Adelaide Street, Blayney.

Project:	Repair and paint interior of church, replacement of stencils and repair and replace of Decorative mouldings.
Cost:	\$10,240.00
Grant Requested:	\$2,000.00
Grant Allocated:	\$2,000.00

BUDGET IMPLICATIONS

The 2011/2012 Management Plan outlined \$16,400.00 for the 2011/2012 Local Heritage Assistance Grant.

POLICY IMPLICATIONS

Nil

Attachments

Nil.

25) **SECTION 96 MODIFICATION OF CONSENT APPLICATION - DEVELOPMENT APPLICATION NO. 59/2011- RICHARDS LANE AND SPRINGVALE LANE, MILLTHORPE.**
(Director Environmental Services)

RECOMMENDED:

That Council consent to the Section 96 Modification of Consent for Development Application No.59/2011 subject to the following conditions of consent:

1. The determination shall be regarded as being in accordance with the particulars and endorsed plans set out and described in Development Application No. 59/2011 registered in Council's records as of 2 December 2010 and Section 96(2) application registered in Council's record system on 19 August 2011.

PUBLIC ASSETS

REASON: To ensure that the public interest is upheld.

2. That before commencement of any work, a sign is to be erected at the front boundary of the land clearly identifying the lot number and names of the owner, contractor and license number and emergency telephone contact numbers.
3. That any damage to Council's footpath, road or other land be restored in accordance with Council's specifications. Should you have any questions please contact Council's Engineering Department on (02) 63689618.
4. That no materials or machinery to be used in the construction of the development shall be stored or stacked on Council's footpath, nature strip or roadway.
5. That the hours of construction be restricted to:-

Monday to Friday	7:00am to 6:00pm
Saturday	8:00am to 1:00pm
Sunday & Public Holidays	Nil

ENVIRONMENTAL

REASON: To comply with Council's statutory requirements.

6. Erosion and sediment control measures are to be established prior to commencement of construction and maintained to prevent silt and sediment escaping the site or producing erosion. This work must be carried out and maintained in accordance with the *WBC Guidelines for Engineering Works*, and *Department of Housing – Soil and Water Management for Urban development (Blue*

Book).

NOTE: All erosion and sediment control measures must be in place prior to earthworks commencing. Copies of the above guidelines are available from Council's Environmental Planning and Building Services Department.

7. Any proposed site filling is to be clean material only, free from organic matter, and compacted in horizontal layers not more than 250mm thick to 95% of the standard maximum dry density of the soil. All such works are to comply with *WBC Guidelines for Engineering Works*.
NOTE: Soil density tests from a NATA registered laboratory, and conducted in accordance with Australian Standard 1289, will be required prior to the issue of any construction certificate for the erection of a building or the issue of a subdivision certificate.
8. That there be no burning of waste material, felled trees or other material on the site.

LANDSCAPING

REASON: To comply with Council's Policy for the provision of landscaping.

9. That the approved landscaping as identified in the landscaping plan be completed prior to the issue of the Subdivision Certificate for any allotment to which it relates.
10. The existing avenue planting of Plane trees along Park Street is to be extended from Richards Lane to meet the Village avenue planting, so as to enhance the streetscape and provide visual screening.
11. That a Section 88B Instrument be created to include a positive covenant on allotments 21, 52, 53, 79, 80, 81, 82, 83, 91, 95 and 96 to ensure that the approved landscaping, as per the landscaping plan be maintained by the owner.

STATUTORY

REASON: To comply with the statutory requirements of other authorities.

12. That documentary evidence be provided to Council that arrangements have been made with Central Tablelands Water for the supply of water prior to the issue of a Subdivision Certificate for any allotment to which it relates.
13. That documentary evidence be provided to Council that

arrangements have been made with Essential Energy for the supply of electricity prior to the issue of a Subdivision Certificate for any allotment to which it relates.

14. That documentary evidence be provided to Council that arrangements have been made with the relevant telecommunications authority for the provision of telephone services prior to the issue of a Subdivision Certificate for any allotment to which it relates.
15. The applicant is to obtain a construction certificate pursuant to Section 109C of the Environmental Planning and Assessment Act 1979, as amended from either Council or a accredited certifying authority. Certifying that the proposed works are in accordance with the *WBC Guidelines for Engineering Works* prior to any subdivision works commencing.
16. The applicant is to obtain a subdivision certificate pursuant to Section 109C of the Environmental Planning and Assessment Act 1979, as amended from Council. The final survey plan and two paper copies are to be submitted to Council along with the application for the subdivision certificate prior to its lodgement with the Lands Titles Office.

NOTE: Council will only issue a Subdivision Certificate in relation to the subdivision or any part thereof when it is satisfied that all conditions of development consent have been complied with and the appropriate fees paid with respect to the subdivision or that part to which the Subdivision Certificate relates.

17. That the final plan of survey is to provide for the dedication as public road all roads required to be (re) constructed under this consent.
NOTE: The applicant is to make arrangements for the closure and transfer of that part of the public road within proposed allotment 9 to provide for the realignment of Richards Lane.
18. That an original plan of subdivision be submitted for Council's registration prior to the issue of the Subdivision Certificate for any allotment to which it relates.

STATUTORY

REASON: To comply with the statutory requirements of Council's Policy and Development Control Plans.

19. That all new and replacement electricity, coaxial, telecom and other cables are to be laid underground.

20. That above ground utility installations and cabinets are to be kept to a minimum in size and number and if possible located on existing poles.
21. That any bicycle paths or footpaths are to be finished with a cement stabilised decomposed granite material from a local supply.
22. Prior to the issue of a construction or subdivision certificate, the applicant is to submit an electronic copy (AutoCAD 2000 format) and three (3) paper copies of engineering plans, specifications and calculations in relation to Condition(s) 30, 31, 33, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 51, 52 and 54. Further, the works are to comply with *WBC Guidelines for Engineering Works*.
23. During the course of construction, the applicant is to obtain a compliance certificate pursuant to Section 109C of the *Environmental Planning and Assessment Act 1979*, as amended, from either Council or an accredited certifying authority, certifying that the engineering work required by condition(s) 30, 31, 33, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 51, 52 and 54 has (have) been constructed in accordance with the approved plans and *WBC Guidelines for Engineering Works*.
NOTE: Where Council is the Certifying Authority in relation to engineering works fees will be payable in accordance with Council's Revenue Policy.
24. Prior to the issue of a subdivision certificate, the applicant is to submit to Council an electronic copy of the works as executed plans for the works required by Condition(s) 30, 31, 33, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 51, 52 and 54 in AutoCAD 2000 format. Further, the works are to comply with *WBC Guidelines for Engineering Works*.
NOTE 1: Information provided shall also include the provision of a table on the works as executed plan which details: the distance from the centre of the downstream manhole/pit to each sideline, house connection, and dead end; the depths to invert; and the length of such sidelines.
NOTE 2: Information provided shall also include the provision of information on the works executed plan which details: road levels, road crossfalls & longitudinal grades.
25. During the course of construction, the applicant is to arrange an inspection of the subdivision works by Council's Engineering Department at the following stages of the development. This condition applies notwithstanding any private certification of the

engineering works.

	COLUMN 1	COLUMN 2
A	Road Construction	<ul style="list-style-type: none"> • Following site regrading, and prior to installation of footway services; • Excavation and trimming of subgrade; • After compaction of subbase; • After compaction of base, and prior to sealing; • Subsoil Drainage; • Road pavement surfacing; • Pavement test results (compaction, strength).
B	Drainage	<ul style="list-style-type: none"> • After laying of pipes and prior to backfill; • Pits after rendering openings and installation of step irons. • Following channel shaping prior to topsoiling and seeding
C	Sewerage	<ul style="list-style-type: none"> • After laying of pipes and prior to backfill; • Main - air pressure testing; • Installation and commissioning of sewerage pump stations. • Manhole - water test for infiltration, exfiltration.
D	New Gate – Rural Crossing	<ul style="list-style-type: none"> • Prior to commencement of excavation works. • After compaction of base and prior to sealing • Road pavement surfacing
E	Erosion and Sediment Control	<ul style="list-style-type: none"> • Prior to the installation of erosion measures.
F	All Development & or Subdivision Works	<ul style="list-style-type: none"> • Practical completion.
G	Road Openings	<ul style="list-style-type: none"> • Upon completion of works.

26. Prior to the issue of a Construction Certificate, Engineering Inspection fees must be paid in accordance with Councils Fees and Charges for that length of road to be constructed to which the Construction Certificate relates.

SECTION 94 CONTRIBUTIONS

REASON: To comply with Council's policy for a contribution towards headworks.

27. That the applicant pays Section 94 Contributions as required by Council's Section 94 Plans. The amount applicable will be dependant upon the date on which

payment is made and will be as per Council's adopted fees and charges for the financial year in which payment is made. Section 94 Contributions will not be applied to the first 25 allotments for which a Subdivision Certificate is issued. Section 94 Contributions will not apply to proposed allotment 25 – Open Space.

28. That the applicant pays sewer head works charges pursuant to the Millthorpe Development Servicing Plan (Section 64). The amount applicable will be dependant upon the date on which payment is made and will be as per Council's adopted fees and charges for the financial year in which payment is made.
29. Payment of applicable Section 94 and 64 Contributions to be made prior to the issue of a Subdivision Certificate for any allotment to which they relate.
30. The developer is to lodge a bond with Council equal to 5% of the total subdivision civil construction costs for that part of the subdivision to which the Construction Certificate relates, at practical completion to be held by Council for a minimum period of twelve (12) months. The bond must be lodged with Council before a subdivision certificate will be issued by Council.

INFRASTRUCTURE

REASON: To comply with Council's requirements for the provision of infrastructure.

31. Sewer mains are to be constructed such that there is a separate and distinct sewer connection wholly within the boundary of each proposed allotment, in accordance with the Local Government (Approvals) Regulation 1999 and in accordance with *WBC Guidelines for Engineering Works*.
NOTE: The developer is to construct a 150 mm sewer riser at each property junction; each riser is to be constructed so that riser cap finishes 150 mm above the finished surface level of each allotment created.
32. The location of proposed sewer manholes shall be such that they are located entirely outside the designated 1% Annual Exceedance Probability (AEP) flood inundation zone.
33. The final plan of survey is to show an easement to drain sewage 4 metres wide within allotments 1 and 3 and in favour of Council

34. The location of each proposed sewerage pump station shall be such that it is located entirely within its own allotment and entirely outside the designated 1% Annual Exceedance Probability flood inundation zone. The allotment shall be sized to ensure suitable access is maintained at all times, for servicing of the pump station.
35. The pump station allotment(s) shall be transferred to Blayney Shire Council as allotment(s) in fee simple, and connections made for the separate servicing with water and electricity.
36. The developer is to relocate, if necessary, at the developer's cost any utility services.
37. During and after construction, minimum distances from powerlines are to be maintained.
38. Prior to the commencement of construction, the developer is to provide to Council a letter from Essential Energy indicating that satisfactory clearances from power lines will be maintained.
39. Prior to any work being undertaken on site, all roads (existing and proposed) within the proposed development, including Richards Lane and Springvale Lane are to be designed to Council's RB1 Road standard, in accordance with the Blayney shire Council *DCP No. 6, Development Guidelines for North Millthorpe*, and the *WBC Guidelines for Engineering Works* where applicable.
40. Provision for bus stops shall be provided such that no allotment is further than 400m from a bus stop. Bus stops are to be constructed and sealed in accordance with Section 3.4.8.2 of the Roads and Traffic Authority's Road Design Guide prior to the issue of Subdivision Certificate.
41. The development of any one of the proposed allotments shall require the construction of all roads servicing and fronting the proposed allotments, to Council's RB1 Road standard. (Prior to the issue of Subdivision Certificate.)
42. The development of any one of the proposed Allotments numbered 3 – 8 in Dwg No. 08-074 Rev C shall require the reconstruction of Richards Lane from the end of seal of Crowson Street to the northern boundary of Allotment 8 to Council's RB1 Road standard. (Prior to the issue of Subdivision Certificate)

43. The development of any one of the proposed Allotments numbered 9 -96 (excluding Allotment 25) in Dwg No. 08-074 Rev C shall require the reconstruction of; Richards Lane from Park Street (MR245) to the northern boundary of Allotment 8, Springvale Road to the western boundary of Allotment 54, and those roads that front proposed Allotments 22 – 24 & 71, to Council's RB1 Road standard. (Prior to the issue of Subdivision Certificate)
44. Prior to the development of the twenty-fourth (24th) allotment gaining access via Richards Lane to Park Street or Crowson Street. The developer shall upgrade the intersection of Park Street (MR245) and Richards Lane in accordance with the NSW Roads and Traffic Authority requirements in letter dated 2 June 2010. Prior to the issue of Subdivision Certificate.
NOTE: For the purpose of the calculation of the number of allotments, allotment 25 (open space) is not included.
45. Proposed lot 25 shall be created at the time of release of the first subdivision certificate for the proposed subdivision. Upon its creation this lot is to be dedicated to Council. All works required to be completed by the developer upon this lot are to be completed prior to its dedication to Council.
46. The developer is to construct an appropriate pedestrian and cycle link between Stabback Street and the unnamed street to the north of proposed lot 25, prior to release of the first subdivision certificate for the proposed subdivision. This link is to be constructed so as to be trafficable above the designated 1% Annual Exceedance Probability (AEP) flood inundation zone. Full plans and specifications for this pedestrian and cycle link are to be approved by Council prior to construction.

RURAL ADDRESSING

REASON: To comply with Council's Policy and requirements for the provision of rural addressing.

47. The designated number plate(s) shall be obtained and erected in accordance with the Specifications for Erection of Street Address Numbers as supplied by Council. Written notification is to be provided to Council indicating rural addressing number(s) has/have been erected. This letter is to be supplied to Council or Principal Certifying Authority prior to the issue of a Subdivision/Occupation Certificate.

ACCESS

REASON: To comply with Council’s policy and requirements for the provision of access.

48. During the course of construction, construct an all-weather 2WD vehicular access to each proposed allotment. Such access shall include:

- (a) A gate or stock grid set back in accordance with the following table:

COLUMN 1	COLUMN 2
Allotment area greater than 1 Ha.	A minimum distance of 15m from the edge of the road formation.
Allotment area of 1 Ha or less	A minimum distance of 10m from the edge of the road formation.

- (b) A minimum 4.0 metre wide sealed footway crossing, extending from the edge of the bitumen seal on the public road to the entrance gate or stock grid.
- (c) A 150 mm thick 3.0 metre wide concrete dish drain or 450 mm minimum diameter reinforced concrete pipe culvert with headwalls, aligned with the table drain in the public road.

NOTE: Any new vehicular access points are to be located such that all RTA stopping sight distances are achieved.

49. That all accesses are to be designed and constructed to provide all weather access to the subject land. If the 1% Annual Exceedance Probability storm can-not be catered for with piped drainage, the over road flow must have a velocity-depth product of less than 0.7m²/s.

50. Vehicular access shall not be created or used to give access to a road closer than 20 metres to any intersection with another road.

NOTE: Access to allotment 54 is to be provided off Springvale Lane.

51. During the course of construction, within and for the full length of the access handle(s) of the hatchet shaped allotment(s) and over the footway, construction of a sealed vehicular driveway(s) 2400 mm wide, designed to *WBC Guidelines for Engineering Works*. Further, the applicant is to obtain a compliance certificate pursuant to Section 109C of the *Environmental Planning and Assessment Act* at the completion of construction of the footway crossing from Council or an accredited certifying authority certifying that the works have been completed in accordance with *WBC Guidelines for Engineering Works* prior to issue of Subdivision Certificate.

NOTE: If other hard standing, dust free and weather proof surfaces are proposed instead of sealing, written approval is to be obtained from Council that the proposed alternative is acceptable.

52. The final plan of survey is to show a right of carriage way 10 metres wide within allotment 83 and in favour of allotment 84.

LIABILITY

REASON: To comply with Council's requirements for insurance coverage against claims.

53. Prior to the commencement of any works on Council controlled land including a public road, the applicant is to affect Public Liability Insurance in the minimum amount of \$20 million. This insurance is to note Council's interest and is to remain current for at least the period from the issue of the Construction Certificate until the issue of a Compliance Certificate for the works. Documentary evidence of the currency of the cover is to be provided to Council prior to the issuing of a Construction Certificate.

DRAINAGE

REASON: To comply with Council's requirements to ensure the site/buildings are adequately protected from storm water.

54. A Stormwater Management Plan is to be submitted, and approved by Council for development of the entire site, detailing water flow characteristics within and from the site to a designated drainage channel, treatment and handling of runoff from the development, potential pollution sources and proposed control mechanisms. The Stormwater Management Plan is to comply with *WBC Guidelines for Engineering Works* and be approved prior to issue of Construction Certificate for any allotment to which it relates.

NOTE 1: Implementation of the Stormwater Management Plan may necessitate the creation of easements over adjoining properties.

NOTE 2: The applicant shall demonstrate compliance with the Central West Councils Salinity & Water Quality Alliances *Stormwater to Smartwater: S₂S – Supporting Technical Guidelines* by incorporating Water Sensitive Urban Design principles into the stormwater system of the development.

55. The developer is to construct inter allotment drainage to drain all allotments not draining naturally to a public road. The drainage system is to include, but not be limited to, grassed swales, drop structures and energy dissipation

devices. All drainage works are to comply with the provisions of AS/NZS 3500 and the *WBC Guidelines for Engineering Works*.

56. The final plan of survey shall show easements to drain water over the land affected by the interallotment drainage in favour of those allotments benefiting from the interallotment drainage.

NOTE: The interallotment drainage system shall be designed to cater for the 1% AEP event plus a 500mm freeboard without any overtopping.

57. All road and inter allotment drainage is to be conveyed to a legal point of discharge, in accordance with the *WBC Guidelines for Engineering Works*.

NOTE. The current rural catchment discharge rates are to be used as the maximum post development discharge.

58. The final survey plan is to show easements in gross to drain water in favour of Council over all storm water drains conveying road and inter allotment drainage

REPORT

Applicant:	Marrangaroo East Pty Ltd
Owner:	Marrangaroo East Pty Ltd
Application No:	59/2011
Zone:	1(c) Rural Small Holdings
Date Received:	19 August 2011
Assessment No:	1536-11310-1
Property:	Lot 36 DP 750384, Lot 4 DP 750384, Lot 350 DP 1073010 and Lot 21 DP 1148965 – Richards Lane and Springvale Lane, Millthorpe
Proposed Development:	Section 96 Modification of Consent Application – Development Application No. 59/2011 proposes to amend fourteen (14) original conditions of development consent.

BACKGROUND

Development Application No.59/2011, for the subdivision of Lot 36 DP 750384, Lot 4 DP 750384, Lot 350 DP 1073010 and Lot 21 DP 1148965, Richards Lane and Springvale Lane, Millthorpe, into ninety six (96) allotments was reported to an Ordinary Council Meeting and subsequently granted conditional approval on the 9 May 2011.

The Applicant filed a Class 4 appeal to the Land and Environment Court against Council regarding the validity of Council's Section 94 Contribution Plan, BSC1 - Roads Road (2009 Review), the validity of condition 27 requiring the contributions and the validity of condition 45 requiring dedication

of land free of charge to Council. The matter was presented to the Land and Environment Court on the 6 and 7 December 2011 and the decision was handed down on the 16 December 2011 by AJ Moore who dismissed the application with costs.

The application now before Council proposes a modification to the approved subdivision under Section 96(2) of the Environmental Planning and Assessment Act 1979, proposing amendments to fourteen (14) original conditions of development consent.

The Section 96 Modification of Consent Application is reported to Council as the original Development Application was determined at Council and nine (9) submissions were received in relation to the Section 96 Modification of Consent Application.

A copy of the Section 96 Modification Application and supporting documents are included in the attachments to this report.

PROPOSAL

The application proposes amendments to the following fourteen (14) original conditions of development consent.

Condition No.5:

That the hours of construction be restricted to:-

Monday to Friday 7:00am to 8:00pm

Saturday 7:00am to 1:00pm

Sunday and Public Holidays Nil

Proposed Amendment:

That the hours of construction be restricted to-

Monday to Saturday 7:00am to 8:00pm

Sunday and Public Holidays As approved by Council at the request of the developer.

Assessment Response:

According to the NSW Office of Environment and Heritage, the *Interim Construction Noise Guidelines*, 2009 states the following recommended hours of construction:

Monday to Friday 7:00am to 6:00pm

Saturday 8:00am to 1:00pm

Sunday and Public Holidays Nil

It is recommended that condition number 5 be amended as per the NSW Office of Environment and Heritage Guidelines for Construction Noise.

Condition No. 10:

The existing avenue planting of Plane trees along Park Street is to be extended from Richards Lane to meet the Village avenue planting, so as to enhance the streetscape and provide visual screening.

Proposed Amendment:

Delete the condition on the following grounds:

- a) The condition is uncertain in its terms;
 - b) Park Street is not a street directly related to the proposed development;
- and
- c) The landscape plan as submitted in relation to the subdivision does not refer to any part of Park Street.

Assessment Response:

It is recommended that condition number 10 not be amended as it complies with DCP No.6, Section 3.3, Figure 5 outlining that the avenue planting to Richards Lane be extended for screening and streetscape purposes.

Condition No. 11:

That the approved landscaping be maintained for the life of the development.

Proposed Amendment:

That the condition be deleted/amended on the following grounds:

- a) The condition is unreasonable in that it requires the developer to maintain the landscaping in perpetuity;
- b) The condition is uncertain in its terms;
- c) To the extent that some landscaping is located on land which is owned by Council or will be dedicated to Council, the maintenance of that landscaping will be the responsibility of Council;
- d) That land on which landscaping is undertaken which is sold by the developer will be the responsibility of subsequent owners to maintain, not the developer.
- e) Potentially the condition could be modified to enable a positive covenant to be placed on the title to the affected private properties (particularly lots 21 to 79 to 83, 91, 95, 96, 52 and 53) which would ensure that purchasers of the land would be aware of maintenance requirements of the landscape buffer.

Assessment Response:

It is recommended that condition number 11 be amended to the following condition:

That a Section 88B Instrument be created to include a positive covenant on allotments 21, 52, 53, 79, 80, 81, 82, 82, 83, 91, 95 and 96 to ensure that the approved landscaping, as per the landscaping plan be maintained by the owner.

Condition No.16:

The applicant is to obtain a subdivision certificate pursuant to Section 109C of the Environmental Planning and Assessment Act 1979, as amended from Council. The final survey plan and two paper copies are

to be submitted to Council along with the application for the subdivision certificate prior to its lodgement with the Lands Titles Office.

NOTE: Council will only consider issuing a subdivision certificate in relation to the subdivision when it is satisfied that all conditions of development consent have been complied with and the appropriate fees paid.

Proposed Amendment:

Delete the NOTE and replace with NOTE: Council will only issue a subdivision certificate in relation to the subdivision or any part thereof when it is satisfied that all conditions of development consent have been complied with and the appropriate fees paid with respect to the subdivision or that part to which the subdivision certificate relates.

Assessment Response:

It is recommended that condition number 16 be amended as per the proposal, as it will allow the release of the Subdivision Certificates to occur for each Stage of the subdivision.

Condition No.27:

That the applicant pays Section 94 Contributions as required by Council's Section 94 Plans. The amount applicable will be dependent upon the date on which payment is made and will be as per Council's adopted fees and charges for the financial year in which payment is made. Section 94 Contributions will not be applied to the first 25 allotments for which a Subdivision Certificate is issued. Section 94 Contributions will not apply to proposed allotment 25 – Open Space.

Proposed Amendment:

Delete the existing condition and replace with –

That the applicant pays the following Section 94 Contributions:

- a) BSC8 Bushfire Services Contribution Plan at \$331.00 per lot; and
- b) BSC 10 Community Services Facilities Contribution Plan at \$518.00 per lot.

The prescribed rate will be varied in accordance with the indexation rate prescribed by each relevant Contribution Plan on or after the 1 July 2011.

Assessment Response:

It is recommended that condition number 27 not be amended due to the matter being presented to the Land and Environment Court and the decision being handed down on the 16 December 2011 by AJ Moore who dismissed the application with costs.

Condition No.39:

Prior to any work being undertaken on site, all roads (existing and proposed) within the proposed development, including Richards Lane and Springvale Lane are to be designed to Council's RB1 Road standard, in accordance with the Blayney Shire Council DCP No. 6 – Development Guidelines for North Millthorpe, and the WBC Guidelines

for Engineering Works where applicable. NOTE: Richards Lane shall be considered an Arterial Road for the purpose of stormwater design in accordance with the WBC Guidelines for Engineering Works.

Proposed Amendment:

Delete the NOTE from the condition.

Assessment Response:

It is recommended that condition number 39 be amended as per the proposal. The current condition references DCP No.6 and requires a drainage design to cater for a 1% Annual Exceedance Probability.

Condition No.40:

Provision for bus stops shall be provided such that no allotment is further than 400m from a bus stop. Bus stops are to be constructed and sealed in accordance with Section 3.4.8.2 of the Roads and Traffic Authority's Road Design Guide prior to the issue of a Subdivision Certificate.

Proposed Amendment:

Delete the condition.

Assessment Response:

It is recommended that condition number 40 not be amended as it complies with DCP No.6; Section 3.2.2 outlining that bus stopping bays are required.

Condition No. 41:

The development of any one of the proposed allotments shall require the construction of all roads servicing and fronting the proposed allotments, to Council's RB1 Road standard, prior to the issue of a Subdivision Certificate.

Proposed Amendment:

Delete the words 'servicing and' from the condition.

Assessment Response:

It is recommended that condition number 41 not be amended due to the Applicants desire to Stage the development in any matter they choose. Therefore, the condition is worded to ensure that any allotment that is subdivided has a suitable sealed road providing access to the property from either Crowson or Park Street, Millthorpe.

Condition No. 45:

Proposed lot 25 shall be created at the time of the release of the first subdivision certificate for the proposed subdivision. Upon its creation this lot is to be dedicated to Council. All works required to be completed by the developer upon this lot are to be completed prior to its dedication to Council.

Proposed Amendment:

Amend the condition to the following:

Proposed lot 25 shall be created at the time of the release of the first subdivision certificate for that part of the proposed subdivision north of lot 25. Upon its creation lot 25 is to be dedicated to Council. The Council is to compensate the applicant for the dedication of lot 25. In the event that the developer and the Council do not agree upon the compensation payable then:

- i) Compensation shall be paid by the Council determined in accordance with s54(1) of the Land Acquisition (Just Terms Compensation) Act 1991;
- ii) Compensation shall be determined by a Valuer appointed by the parties or if the parties do not agree by the President of the Real Estate Institute of NSW at the request of either party. The valuer shall act as an expert and not an arbitrator and his decision shall be binding on both parties.

All works required to be completed by the developer upon lot 25 pursuant to this consent to be completed prior to the dedication of lot 25 to Council.

Assessment Response:

It is recommended that condition number 46 not be amended due to the matter being presented to the Land and Environment Court and the decision being handed down on the 16 December 2011 by AJ Moore who dismissed the application with costs.

Condition No. 46:

The developer is to construct an appropriate pedestrian and cycle link between Stabback Street and the unnamed street to the north of proposed lot 25, prior to the release of the first Subdivision Certificate for the proposed subdivision. This link is to be constructed so as to be trafficable above the designated 1% Annual Exceedance Probability (AEP) flood inundation zone. Full plans and specification for this pedestrian and cycle link are to be approved by Council prior to construction.

Proposed Amendment:

Delete the condition, due to the following reason:

The construction of any structure across the water way section of the Open Space area to provide the required cycle way/footpath will interfere with flow of stormwater. The first stage of the project (the urban subdivision) was accompanied by a flood study prepared to determine the minimum floor levels for the lots at the end of Unwin and Stabback Streets. Any obstruction of the water flow (particularly and obstruction above the 1% AEP) could adversely affect these lots, as well as upstream adjoining lots.

Assessment Response:

It is recommended that condition number 46 not be amended as it complies with DCP No.6 and it is considered that a suitable engineering solution can be achieved to ensure that the pedestrian and cycle link does not obstruct water flow to adjoining allotments.

Condition No. 48:

During the course of construction, construct an all weather 2WD vehicular access to each proposed allotment. Such access shall include:
(a) A gate or stock grid set back in accordance with the following table:

COLUMN 1	COLUMN 2
<i>Allotment area greater than 1Ha.</i>	<i>A minimum distance of 15m from the edge of the road formation.</i>
<i>Allotment area of 1Ha or less.</i>	<i>A minimum distance of 10m from the edge of the road formation.</i>

(b) A minimum 4.0 metre wide sealed footway crossing, extending from the edge of the bitumen seal on the public road to the entrance gate or stock grid.

(c) A 150mm thick 3.0 metre wide concrete dish drain or 450mm minimum diameter reinforced concrete pipe culvert with headwalls, aligned with the table drain in the public road.

NOTE: Any new vehicular access points are to be located such that all RTA stopping sight distances are achieved.

Proposed Amendment:

Delete this condition, due to the following reason:

Access conditions should be applied upon approval of a development application for a dwelling to be erected on any allotment in the subdivision and positioned so as to suit the design of the residence to be erected.

Assessment Response:

It is recommended that condition number 48 not be amended. Council requires accesses to be constructed at the time of subdivision to service each new allotment. In addition, it is considered that due to the allotment sizes the access locations will not hinder dwelling location options on the allotments.

Condition No. 55:

The developer is to construct inter allotment drainage to drain all allotments not draining naturally to a public road. The drainage system is to include, but not be limited to, grassed swales, drop structures and energy dissipation devices. All drainage works are to comply with the provisions of AS/NZS 3500 and the WBC Guidelines for Engineering Works.

Proposed Amendment:

Delete the condition, due to the following reason:

The development when completed will cater for 95 additional home sites. Each of these home sites is expected to have a rainwater tank attached (under the BASIX requirements) and absorption trenches where required. The allotment sizes are 4000 square metres and above, and the flows of water across the grassed surface are not expected to increase as a result of the development.

Assessment Response:

This is Page No. 123 of the Business Paper of the Ordinary Council Meeting of Blayney Shire Council held on 13 February 2012

It is recommended that condition number 55 not be amended as it is unreasonable to expect any absorption trench to be sized suitably to ensure that all generated flows are captured within the trench. Due to the density of the development the overflow from these trenches will be required to be discharged to a legal point of discharge which may necessitate the need for interallotment drainage.

Condition No. 56:

That the final plan of survey shall show easements to drain water over the land affected by the interallotment drainage in favour of those allotments benefiting from the interallotment drainage.

NOTE: The interallotment drainage system shall be designed to cater for the 1% AEP event plus a 500mm freeboard without any overtopping.

Proposed Amendment:

Delete the condition, due to the amendment requesting condition number 55 to be deleted.

Assessment Response:

It is recommended that condition number 56 not be amended as it is required for condition number 55.

Condition No. 57:

All road and inter allotment drainage is to be conveyed to a legal point of discharge, in accordance with the WBC Guidelines for Engineering Works. NOTE: The current rural catchments discharge rates are to be used as the maximum post development discharge.

Proposed Amendment:

Amend the condition to state the following:

All road drainage is to be conveyed to a legal point of discharge, in accordance with the *WBC Guidelines for Engineering Works*.

Assessment Response:

It is recommended that condition number 57 not be amended as it provides environmental benefits to limit the discharge rate to the existing land.

MATTERS FOR CONSIDERATION

In accordance with Section 96(2) of the Environmental Planning and Assessment Act 1979, the proposed modification is considered to be substantially the same development for which consent was originally granted.

The proposed modification has been assessed against the relevant matters for consideration listed under Section 79C (1) of the Environmental Planning and Assessment Act 1979. The assessment is as follows:

(a) The provisions of:

(i) any environmental planning instrument, and

Blayney Local Environmental Plan 1998

The subject land is zoned 1(c) Rural Small Holdings under Blayney Local Environmental Plan 1998 (BLEP 1998).

Schedule 10 of the BLEP1998 specifies that Council may grant development consent to the subdivision of the land to create lots each having an area of less than 4,000m², subject to the connection of reticulated services, electricity and telecommunications services.

(b) any proposed instrument that is or has been the subject of public consultation under this Act and that been notified to the consent authority, and

Draft Blayney Local Environmental Plan

The site is proposed to be zoned RU5 Large Lot Residential under the Draft Blayney Local Environmental Plan and the same provisions apply as outlined in the BLEP1998.

(c) any development control plans

Development Control Plan No.6 – Development Guidelines for North Millthorpe

The proposed modification complies with all matters outlined in DCP No.6.

(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

There are no planning agreements applicable to the proposed modification.

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

The proposed modification is consistent with matters in the Environmental Planning and Assessment Regulation 2000 that apply to the proposed modification.

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

Not applicable to the subject land.

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

The likely impacts of the proposed modification have been considered and addressed in the proposal section of this report.

(c) the suitability of the site for the development

The proposed modification is considered to satisfy the aims and objectives of the zone, as outlined in the Blayney Local Environmental Plan 1998, the site therefore, is considered suitable for the proposed modifications as outlined in the proposal section of this report.

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

The proposed modification was notified to adjoining landowners. Notice of the modification application was advertised and notified in accordance with Council's Policy 19A Development Consent – Notification. Nine (9) submissions were received in relation to the modification proposal.

On the 17 November 2011 Council provided a summary of the submissions received during the advertising/notification period and requested the Applicant to provide comments on the submissions. To date the Applicant did not provide any comment to Council.

The issues raised in the submissions related to the proposed amendments to the fourteen (14) original conditions of development consent which have been considered and addressed in the proposal section of this report.

Copies of the submissions are included in the attachments to this report.

(e) public interest

The public interest has been considered throughout the assessment of this application.

CONCLUSION

The modification proposal has been lodged under Section 96(2) of the Environmental Planning and Assessment Act 1979, in that the proposed modification is considered to be substantially the same development for which consent was originally granted.

The proposed amendments to the fourteen (14) original conditions of development consent have been considered and addressed in the proposal section of this report and it is recommended that Council consent to the Section 96 Modification of Consent to Development Application No. 59/2011 subject to the conditions contained within this report.

BUDGET IMPLICATIONS

There are no budget implications for Council associated with this report.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

Attachments

- 1 DA59/2011 Application Documents
- 2 DA59/2011 Submissions Received

Land and Environment Court New South Wales

Medium Neutral Citation

Marrangaroo East Pty Ltd v Blayney Shire Council [2011] NSWLEC 245

Hearing Dates

6 and 7 December 2011

Decision Date

16/12/2011

Jurisdiction

Class 4

Before

Moore AJ

Decision

The application be dismissed with costs.

Catchwords

JUDICIAL REVIEW - validity of roads contributions plan - whether plan certain and reasonable - whether plan accords with clause 27 of Regulation
 JUDICIAL REVIEW - validity of condition requiring contributions - whether amount of contributions must be specified in condition
 JUDICIAL REVIEW - validity of condition requiring dedication of land free of charge to Council - where "offer" of dedication in statement of environmental effects

Legislation Cited

Environmental Planning and Assessment Act 1979 (NSW)
 Environmental Planning and Assessment Regulation 2000

Cases Cited

Atrial v Richmond River Shire Council (1995) 38 NSWLR 545
 Eastport Pty Ltd v Leichhardt Municipal Council (2001) 112 LGERA 376
 Hoxton Park Residents Action Group Inc v Liverpool City Council [2011] NSWCA 34
 King Gee Clothing Co Pty Ltd v Commonwealth (1945) 71 CLR 184
 Mirvac Homes (NSW) Pty Ltd v Baulkham Hills Shire Council [2000] NSWLEC 199
 Parry v Osborne [1955] VLR 152
 Project Blue Sky Inc v Australian Broadcasting Authority [1999] 194 CLR 355
 Wallaby Grip Ltd v GBE Insurance (Aust) Ltd (2010) 240 CLR 444

Category

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Principal judgment

Parties

Marangaroo East Pty Ltd (Applicant)
Blayney Shire Council (Respondent)

Representation

Campbell Paton & Taylor (Applicant)
Pikes Lawyers (Respondent)

Mr P R Clay SC, Mr R M O'Gorman-Hughes (Applicant)
Mr A M Pickles (Respondent)

File Number(s)

40682 of 2011

JUDGMENT

Introduction

- 1 The small township of Millthorpe in mid-western New South Wales is about to grow significantly. The applicant has successfully sought approval from Blayney Shire Council for a subdivision to create 96 allotments to the immediate north of the present township. The applicant was able to subdivide the land into this number of allotments because it was the beneficiary of an earlier decision of the Council concerning the size of the allotments. They could be smaller. The Council imposed conditions on the approval. Firstly the applicant was required to contribute to the improvement of roads. It disputes that the imposition of this requirement was lawful. Secondly the applicant was required to dedicate free of charge to the Council an area of land in the subdivision identified as open space. The applicant says it is entitled to retain ownership of that land and the imposition of a condition requiring transfer of the ownership was unlawful. The applicant contends it should not be bound by either of these conditions but that otherwise the consent should stand.
- 2 The issues raised are, in fact, a little more complex. This will emerge later in these reasons.

The background

- 3 The following is the background emerging from a chronology provided by the parties.
- 4 The Council made a contributions plan for roads identified as *BSC 1 Roads - Rural* pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) ("the Act") on 11 August 1997. On 21 April 2009 and again on 31 March 2011 the Council made a

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further contributions plan for roads (in terms similar to the 1997 plan) which was identified as the *2009 Review BSC 1 Roads - Rural*.

- 5 On 2 December 2010 the applicant lodged an application for development consent for a 96 lot subdivision of land which fronted Richards Lane and Springvale Lane, Millithorpe. The subdivision was permissible pursuant to *Blayney Shire Local Environmental Plan 1998* by reason of Amendment 10 which was made on 25 September 2009. Amendment 10 changed the minimum lot size in the relevant zone (which included the subject land) from 2 hectares to 4000 square metres.
- 6 A report on the development application by the Council's Senior Town Planner was prepared for a meeting of the Council on 11 April 2011 and Council granted consent to the development application on or about 9 May 2011. The consent was subject to certain conditions, including condition 27 (referring to contributions) and condition 45 (referring to the creation of lot 25), which are discussed later.
- 7 In addition to the contributions, the consent required access roads beyond the site to be upgraded. Conditions 41-43 required the construction to satisfy Council's RB1 standard on all roads that serviced and fronted the proposed allotments. These conditions also applied to Richards Lane from the end of seal of Crowson Street to its intersection with Park Street. Condition 44 required the developer to upgrade the intersection of Park Street and Richards Lane.
- 8 The parties agree that *2009 Review BSC 1 Roads - Rural* is the only contributions plan in respect of roads that applied to the consent and agree that *BSC 1 Roads - Rural* and *2009 Review BSC 1 Roads - Rural* are set out in similar terms.

The legislation

- 9 The power to approve a development of the type presently under consideration was conferred on the Council by s 80 of the Act. That section provided:

A consent authority is to determine a development application by:

 - (a) granting consent to the application, either unconditionally or subject to conditions, or
 - (b)

(2)
- 10 If consent was granted, conditions could be imposed. The source of the general power to impose conditions was s 80A which provided:

(1) A condition of development consent may be imposed if:

 - (a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or

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(b)

(c)

(f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent, or

(g) it modifies details of the development the subject of the development application, or

(h) it is authorised to be imposed under section 80 (3) or (5), subsections (5)-(9) of this section or section 94, 94A, 94EF or 94F.

- 11 Certain conditions could be imposed involving the payment of money or the contribution of land. This was addressed by s 94 which provided:

(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

(a) the dedication of land free of cost, or

(b) the payment of a monetary contribution,

or both.

(2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.

(3)

- 12 The payment of a monetary contribution could only be required if it was governed by a contributions plan. This is apparent from s 94B which provided:

(1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division)

(2)

(3) A condition under section 94 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the Court to disallow or amend the contributions plan or direction.

(4) A condition under section 94A that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Division) may not be disallowed or amended by the Court on appeal.

- 13 The Act made provision for how a contributions plan might be created. This was

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addressed by s 94EA which provided:

(1) A council, or two or more councils, may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing conditions under this Division (other than Subdivision 4).

(2)

(3) The regulations may make provision for or with respect to the preparation and approval of contributions plans, including the format, structure and subject-matter of plans.

(4) A council is, as soon as practicable after approving a contributions plan, to provide the Minister with a copy of the plan

- 14 The regulations referred to in s 94EA were embodied in the *Environmental Planning and Assessment Regulation 2000* ("the Regulation"). Clause 27 of the Regulation dealt with what a contributions plan must contain. It provided:

(1) A contributions plan must include particulars of the following:

(a) the purpose of the plan,

(b) the land to which the plan applies,

(c) the relationship between the expected types of development in the area to which the plan applies and the demand for additional public amenities and services to meet that development,

(d) the formulas to be used for determining the section 94 contributions required for different categories of public amenities and services,

(e) the section 94 contribution rates for different types of development, as specified in a schedule to the plan,

(f) if the plan authorises the imposition of a section 94A condition:

(i) the percentage of the section 94A levy and, if the percentage differs for different types of development, the percentage of the levy for those different types of development, as specified in a schedule to the plan, and

(ii) the manner (if any) in which the proposed cost of carrying out the development, after being determined by the consent authority, is to be adjusted to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date of that determination and the date the levy is required to be paid,

(g) the council's policy concerning the timing of the payment of monetary section 94 contributions, section 94A levies and the imposition of section 94 conditions or section 94A conditions that allow deferred or periodic payment,

(h) a map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds).

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(1) if the plan authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes, the priorities for the expenditure of the contributions or levies, particularised by reference to the works schedule.

(2) In determining the section 94 contribution rates or section 94A levy percentages for different types of development, the council must take into consideration the conditions that may be imposed under section 80A (6) (b) of the Act or section 97 (1) (b) of the *Local Government Act 1993*.

(3) A contributions plan must not contain a provision that authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes unless the council is satisfied that the pooling and progressive application of the money paid will not unreasonably prejudice the carrying into effect, within a reasonable time, of the purposes for which the money was originally paid.

The consent

- 15 When granting consent to the applicant's application, the Council imposed condition 27 which concerned contributions. It was common ground that this condition applied to several contributions plans though the focus of the challenge made by the applicant was to the operation of this condition as it applied to a roads contributions plan. Condition 27 read:

27: That the applicant pays Section 94 Contributions as required by Council's Section 94 Plans. The amount applicable will be dependant upon the date on which payment is made and will be as per Council's adopted fees and charges for the financial year in which payment is made. Section 94 Contributions will not be applied to the first 25 allotments for which a Subdivision Certificate is issued. Section 94 Contributions will not apply to proposed allotment 25 - Open Space.

- 16 The Council also imposed condition 45 which related to lot 25, described in a variety of ways but essentially land proposed as open space. This condition read:

45: Proposed lot 25 shall be created at the time of release of the first subdivision certificate for the proposed subdivision. Upon its creation this lot is to be dedicated to Council. All works required to be completed by the developer upon this lot are to be completed prior to its dedication to Council.

The roads contributions plan

- 17 The following are what I perceive to be the relevant parts of the roads contributions plan which was current (coming into effect on 31 March 2011) When the conditions were imposed. The notations "BSC 1/2" and the like was a form of pagination at the top of all but the first 2 pages of a 17 page document:

"THE PLAN:

INTRODUCTION:

Development within the Shire places additional pressures on Council to provide public

services and amenities, invariably at the expense of established priorities.

Under the Environmental Planning and Assessment Act 1979 (EP&A ACT), Section 94 is the sole source of power for Council to levy developer contributions for these public services and amenities.

Council can impose a condition requiring the dedication of land free of cost or the payment of a monetary contribution. Council can recoup costs for services and amenities which have been provided to facilitate development or in anticipation of development. Council is also permitted to levy contributions towards recurrent expenditure on roads where there is abnormal impact from mining and extractive industry traffic.

The Court has established the following principles for testing the validity of a consent condition requiring a Section 94 contribution.

The contribution must relate to a planning purpose

The contribution must fairly and reasonably relate to the subject dev

The contribution must be such as a reasonable planning authority, duly appreciating its statutory duties, could have properly imposed.

It is a requirement of the Act that Council prepare Section 94 Plans for the various categories of services and amenities for which a levy is made. The Plan identifies the project, method of funding, recovery of expenditure and timing of works.

...

BSC 1/2

PART C

ASSESSMENT OF CONTRIBUTIONS

NEXUS

As development proceeds within the Shire, additional road traffic is generated by that development, resulting in road improvements being required to satisfactorily meet the road safety and amenity standards of the community.

The Plan reflects the increase impact of additional traffic relative to the improvements required and the means of funding those improvements.

...

FUNDING

Each development will contribute towards road improvement within the locality on the basis of the demand generated by the development. Once improved, Council undertakes to maintain the section of road to the nominated standard.

METHODS OF FUNDING

Rural Subdivisions and Dwellings

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Each development shall contribute towards the improvement of the road condition in the locality to the nominated standard.

BSC1/3

Schedule 1 details Council's Road System which it currently maintains. New road dedicated to the Public and developed to the nominated standard will be maintained by Council to that standard, within the available resources of Council.

...

METHODOLOGY

Council has established road standards related to typical rural activities and the level of service demanded by those activities for various classes of road within the Shire (See Schedule 3).

The level of serviceability of a road is determined by the traffic volume on the road (AADT - Average Annual Daily Total expressed in light vehicle movements). Costs have therefore been equated to 1 AADT.

Standards

The demand for road improvements is directly related to the occupancy of tenements.

In order to calculate contributions, the occupancy rates of tenements have been determined as:

- a. Bedsitter or Bachelor Flat 1 person
- b. Single Bedroom Unit 1.1 person
- c. Two Bedroom Unit 2.2 persons
- d. Three Bedroom Unit 3.3 persons
- e. Dwelling House 4 persons
- f. Subdivision Lot 4 persons
- g. Industrial/Commercial Development 4 persons

BSC 1/4

Road standards set by Council are:

Rural Gravel

RG1 AADT less than 16 vehicles per day - right of ways only Minor Gravel Road Standard to 80km/h

RG2 AADT < 50 vehicles per day
Secondary Gravel Road Standards to 80km/h

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RG3 AADT 50-100 vehicles per day
Shire Gravel Road Standard to 80 kmh

Council has determined that gravel roads which have an AADT greater than 100 are to be progressively improved to a bitumen seal standard

Rural Bitumen Sealed

RB1 AADT > 100 vehicles per day
Bitumen Road Standard to 80 kmh

These standards have been applied to Council's Pavement Management Systems to determine average costs to improve each category to the next highest level.

CONTRIBUTIONS

Contribution Formula

Accepting that only infrequent opportunities exist for the augmentation of existing facilities, contributions will be sought for the embellishment of the existing facilities, as detailed in Schedule 1.

Council recognises the importance of growth within the Shire and will discount to 2 AADT per residential development or subdivision lot created for all development types, with the exclusion of a Workers Dwelling or a dwelling which creates a workers dwelling from an existing dwelling, for which no contribution will be required. These would normally be calculated at 8 AADT per residential development or subdivision lot created.

BSC 1/5

Formulae for the calculation of contributions related to AADT generated as a percentage of the Pavement Management System category range (1-10). Through traffic on Road Category RB1 (Rural Bitumen 1) is recognised by the application of a discount factor.

Contributions will be sought for the facilities detailed in Schedule 1.

Contribution Formula - Domestic

Rural Gravel Roads

RG2 < 50 AADT

Contribution per Development 2 AADT x \$4,072 = \$8,144

RG3 50-100 AADT

Contribution per Development 2 AADT x \$5,128 = \$10,256

Rural Bitumen Sealed Roads

Rural Bitumen Roads

RB1 > 100 Local Roads

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Contribution per Development 2 AADT x \$6,648 = \$13,296

...

BSC 1/6

At its meeting of 8 th December 1997, it was resolved by Council that the following merit assessment be applied to development contributions:

1. that where the total estimated cost of works for the proposed development is below the threshold of \$20,000, Council adopt the following staging of Section 94 contributions fees:

i. Total estimated building works less than \$10,000 - Nil payment;

ii Total estimated building works between \$10,000 and \$20,000 - payment of 50% of full contributions applicable for building works over \$20,000.

2. That the estimated building cost of any additional works carried out on premises within a two year period, will be considered with previous building works within that time frame, and the combined sum over \$10,000 will be subject to the appropriate Section 94 contribution fee.

3. That the application of this policy be retrospective to 1 st July 1997.

The Road Contribution Formulae (1996 and amended 2002) is attached as Schedule 2.

...

BSC 1/7

INDEXATION

Road contribution levies may be indexed on the 1 st July of each year in accordance with the Australian Bureau of Statistics Consumer Price Index for the preceding 12 months to take account of the increase in construction costs.

TIMING OF PAYMENT

Contributions will be payable prior to the release of the plan of subdivision or the Building Approval for new dwellings. Where no development consent is required, road contributions in terms of the provisions of the Local Government Act 1993, will apply in the same manner as if Development consent was required.

EXPENDITURE OF CONTRIBUTIONS

Council will utilise contributions from an development levied under this Plan on improvements to the road servicing the development in the following manner:

Widen and strengthen road formation and pavement

Improve alignment or sight distance

Improve lateral and transverse drainage

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Improve traffic facilities

..."

- 18 Schedule 1 of the plan was a list of roads in three columns. The left-hand column was a road identifier number, the middle column was the name of the road and the right-hand column was the present road classification using the classification system of RG1, RG2, RG3 and RB1 referred to at BSC 1/4. The schedule apparently identified all roads in the Shire.
- 19 Schedule 2 was headed "ROAD CONTRIBUTION FORMULAE (2002)". It provided:

ROAD CONTRIBUTION FORMULAE (2002)			
ROADS			
Description	RG2	RG3	RB1
Average AADT	25	50	100
Road Standard	Secondary Gravel Roads	Standard Gravel Roads	Standard Bitumen Roads
Construction Width	7m	9m	12m
Av. Condition to be maintained	Condition 7	Condition 8	Condition 8
Unit rate/m	\$14	\$18	\$35
Assumed Lots/100m Section	2	3	6
Construction Cost (100m)	\$9,800	\$16,200	\$42,000
Construction Cost (100m) based on condition	\$9,800 x 0.7	\$16,200 x 0.8	\$42,000 x 0.8

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Cost/lot - (calculated 2002)	\$3,430	\$4,320	\$5,600
Cost/lot- (calculated applying CPI 2002 to 2008)	\$4,072	\$5,128	\$6,648

- 20 Schedule 3 contained for comparatively simple engineering diagrams showing the dimensions and constituent physical elements of 4 road types.

Issue one - the validity of the current roads contributions plan

- 21 The applicant contended that the roads contributions plan effective 31 March 2011 was not of a character authorised by the Act. The plan does not, it was said, address the matters required to be addressed by clause 27 of the Regulation. Also, it was said, the plan was entirely unclear and the decision to make it, as I understood the argument, was so unreasonable no reasonable decision maker could have made it. Moreover, the plan made no connection between the proposed development and an increase in the demands for the use of amenities in the area, namely roads. A similar challenge was made to the roads contributions plan that preceded the current plan but it is unnecessary to address that challenge as it was conditional on the challenge to the current plan being successful.
- 22 At base, the applicant's challenge to the roads contributions plan is to be determined by reference to the principles discussed in *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] 194 CLR 355. The ultimate legal issue is whether the Act, properly construed, manifests an intention that the act done (in this case the making of the contributions plan under s 94EA of the Act) in breach of the provision (concerning the content of such a plan: s 94EA and clause 27 of the Regulation) should be invalid or was otherwise not authorized by the Act: *Project Blue Sky Inc* at [93].
- 23 It is fundamentally a task of statutory construction. However it is well settled that, at least in the ordinary course, it is impermissible to have regard to regulations when construing an Act: *Wallaby Grip Ltd v QBE Insurance (Aust) Ltd* (2010) 240 CLR 444 at [21]. But in the present case the relevant section, s 94EA, incorporates the requirements of the Regulation by conditioning the grant of power to make a contributions plan. The condition is that the preparation and approval of a contributions plan is to be "subject to and in accordance with the regulations". Having regard to recent authority in the Court of Appeal, a failure to do an act "in accordance with" a regulation as directed by statute, can render the act invalid: *Hoxton Park Residents Action Group Inc v Liverpool City Council* [2011] NSWCA 349.
- 24 Accordingly, it is necessary to determine as a first step what the Regulation required

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and then, as a second step, whether the road contributions plan met those requirements. A possible third step is whether a failure to meet those requirements would render the road contributions plan invalid. That is, was the road contributions plan one the Act authorised the Council to make.

- 25 The predecessor to clause 27 was clause 26. That latter clause was considered by Pearlman J in *Eastport Pty Ltd v Leichhardt Municipal Council* (2001) 112 LGERA 376. At that time clause 26(1)(g) required that a contributions plan include particulars of "a work schedule of the specific public amenities and services proposed to be provided by the council, together with an estimate of their costs and staging". Her Honour concluded the clause required particulars of public amenities proposed to be provided, the works involved in an estimate of their costs. It was not essential those particulars appear in a "works schedule" (a matter of form not substance) as long as they appeared in the contributions plan read as a whole. The works could be described at a level of generality such as "light rail access works, bicycle facilities, and commercial car parking". It was not necessary to set out the precise locations of those works. Her Honour noted "in some cases, it may be possible to be precise; but in other cases, the precise location of works may be dependent upon an estimate of future demand for the specific public amenity in question". Her Honour further noted that the use of the word "proposed" suggested that these specific public amenities are foreshadowed rather than fixed or binding.
- 26 Clause 27(1)(h) is in terms different to clause 26(1)(g). The former requires "a map showing" the specific public amenities "supported by a work schedule that contains" cost estimates and staging. It was common ground that the absence of a map in the present case in the roads contributions plan was a matter of form only. That is not to say, the requirement for a map does not inform the proper construction of paragraph (h) as a whole. Nonetheless, the general approach to the construction of clause 26 is, in my opinion, apt to apply to clause 27.
- 27 I turn now to consider the roads contributions plan in issue in these proceedings. The plan is not a model of plain English drafting revealing with great clarity how it is intended to operate. However my task is not to evaluate the plan as a piece of prose. Rather it is to assess whether it meets the requirements of clause 27 and is a plan of the type authorized by the Act.
- 28 I should, at this point, mention one matter of some importance to this task. Basten JA gave the leading judgment in *Hoxton Park Residents Action Group Inc v Liverpool City Council*. His Honour appears to have drawn a distinction (at [24]) between requirements imposed by regulation expressed with a degree of precision and requirements expressed in a way which requires elements of judgment or discretion. In my opinion where the regulation requires the satisfaction of a requirement involving judgment or discretion, it is necessary to endeavour to understand how that judgment or discretion has been expressed. If its expression can reasonably be construed in a way that satisfies the requirement, that construction should be adopted: see, by

analogy, *King Gee Clothing Co Pty Ltd v Commonwealth* (1945) 71 CLR 184 at 194-195 and *Parry v Osborne* [1955] VLR 152 at 154.

- 29 In my view, the roads contributions plan was intended to operate this way. Under the heading "EXPENDITURE OF CONTRIBUTIONS" on BSC1/7 the plan declared that contributions would be used on improvement to the road servicing the development. I have little doubt, and I think it was common ground, that the word "road" in the singular can in appropriate circumstances be treated as the plural. Thus we know from this declaration that it is the road or roads servicing the development that will be improved in one or a combination of the four ways identified in the four dot points. This is consistent with the observation under the heading "CONTRIBUTIONS" and the subheading "Contribution Formula" on page BSC1/4 that there will be infrequent opportunities for the augmentation of existing facilities rather than the embellishment of existing facilities. I take this to be a reference to road improvement rather than the building of new roads. Also, there is no reason to treat this reference (to "roads servicing the development") as being a reference only to roads directly connecting the development. It is reasonably capable of being understood as roads in a broader or wider road network ultimately connecting to the development. That is, roads in the Shire likely to be used more often because of use by the individuals populating the development.
- 30 This declaration makes tolerably clear that the contributions will not be used on all or any of the roads in the Shire set out in schedule 1, but rather only those roads in the schedule which are servicing the development.
- 31 The key to understanding the amount of the contribution required in any particular case is also found under the same heading and subheading on page BSC1/4. The plan notes that the Council will discount to 2 AADT (Average Annual Daily Total expressed in light vehicle movements) per residential development or subdivision lot created for all development types. Thus each lot created in a development is to have attributed to it the discounted level of 2 AADT. In, for example, a subdivision creating 10 lots there will be a notional attribution of 20 AADTs.
- 32 There is, I must accept, a measure of confusion in the "Contribution Formula - Domestic" table on page BSC1/5 which follows this narrative. The confusion arises because of the admixture of road types and light vehicle movements. However, on reflection, I think this formula is intended to illustrate that smaller developments with less than a notional 50 AADTs (that is with less than 25 lots) need only contribute to the cost of maintaining or improving roads at the RG2 standard (Secondary Gravel Roads to 80 km/h) while larger developments are, in 2 incremental steps, to contribute more. In relation to the present development of 95 lots (putting aside the discount given by Council for the creation by the applicant of sections of sealed road into the development) there would be a notional 190 AADTs which would warrant the maintenance or improving of roads at the RB1 standard (Bitumen Road Standard to 80 km/h).

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- 33 There is a certain logic to this approach. Large developments (with many lots, probably more occupants and almost certainly generating more road traffic) are likely to create significantly more demand on road surfaces of the roads servicing the development than smaller developments. That demand is likely to be best met by the road surface being bitumen. The same might not be so for smaller developments with fewer lots, probably fewer occupants and probably generating less road traffic. Road servicing a development of this latter type might not need to be of the same standard.
- 34 Understood this way, the formula demands of larger developments, a larger contribution to either create or maintain a road of a higher standard. The methodology for calculating the actual amount is in schedule 2 which identifies an amount per square metre of constructing a road of an assumed width for each road type. However, I accept that there is in schedule 2, a not readily comprehensible assumption that there will be more lots per 100 metres on a Standard Bitumen Road and a lesser number (itself disaggregated) on Gravel Roads. How this assumption arises I do not know. But I am not presently concerned with the minutiae of the formulation but rather the satisfaction of the statutory criteria.
- 35 Obviously the critical element in the plan is the amount, in aggregate, to be paid by a person or entity who has secured development approval conditional on paying a roads contribution. In relation to a development which is not an industrial or commercial development, it is tolerably clear that amount is to be determined by reference to the information under the heading "Contribution Formula -- Domestic".
- 36 There is, however, an ambiguity in that information. Under each of the three headings referring to road type and numbers of AADTs (it was common ground that the reference to ">100 Local Roads" should be ">100 AADT") there is the line commencing "Contribution per Development" followed by some figures and ending with a dollar amount. These lines are susceptible of the construction, when read literally, that the dollar amount is the amount to be paid in relation to the entire development. Thus, in the present case, the contribution would, in aggregate, be \$13,296. But this construction effectively ignores what is said in the plan under the heading "Contribution Formula" on page BSC1/4 discussed earlier in those reasons concerning AADTs per lot. It seems to me that the dollar amount at the end of each line is the amount payable per lot. In the result, a large subdivision (such as the present) has to pay a higher amount per lot because the contributions will be directed towards the creation or maintenance of roads to a higher standard.
- 37 In my opinion, the roads contributions plan understood this way sufficiently clearly satisfies paragraphs (c), (d) and (e) of clause 27(1). Perhaps it is a little less certain in relation to paragraph (h).
- 38 However it must be borne in mind that the roads contributions plan appears not to have been formulated with this or indeed any particular development in mind. This was a criticism made of the plan by senior counsel for the applicant. As I understood his

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submission, he suggested the plan in issue in these proceedings should have been recast or reformulated once it was known there was to be this significant development in the Shire. I do not agree. There is no reason apparent to me from the Act or the Regulation, why a roads contributions plan (or any other contributions plan for that matter) cannot be formulated for the purposes of general application over a period of time.

- 39 I recognise the difficulty in formulating a roads contributions plan which can anticipate precisely where any given development might occur and the likely impact of the particular, but then unknown, development (if approved) on the surrounding road system in the local government area. Accordingly some measure of latitude, in my opinion, should be afforded those formulating a plan in identifying the "public amenities" referred to in paragraph (h) proposed to be provided by the council and the estimation of their cost and staging.
- 40 I accept there is, in relation to the plan presently under consideration, no necessary connection between the cost of constructing new road (the amounts referred to in schedule 2) and undertaking the work identified in the four dot points referred to earlier, particularly when the plan recognizes there would be infrequent opportunities for the augmentation of existing facilities, viz. building new roads. However the connection does not appear to me to be irrational. For example, to widen and strengthen road formation and pavement (the first dot point) may well involve the reconstruction of a road. Thus there would be some correlation between the work and the cost. Likewise improving alignment or sight distance (the second dot point) may involve constructing small sections of new road to eliminate sharp curves or steep rises. Similarly improving drainage (the third dot point) may, at least in some cases, involve re-fabricating the road surface.
- 41 In the result I am satisfied the requirements of paragraph (h) have also been met, the plan is sufficiently certain and its making was not manifestly unreasonable.
- 42 The roads contributions plan effective 31 March 2011 was a plan authorised by the Act. It was a valid plan.

Issue 2 - the validity of condition 27

- 43 The essence of the applicant's challenge to condition 27 (apart from the challenge flowing from the collateral attack on the roads contributions plan) was that, firstly having regard to s 94 there must be a connection between development and the increased demand for public amenities, namely roads and secondly a condition requiring a contribution based on a contributions plan must specify the amount payable. That is, the amount must be identified in the condition. This was said to flow from the use of the expression "the payment of a monetary contribution" in s 94(1)(b). The first point is effectively dealt with in the earlier discussion about the plan.

- 44 As to the second point, I see no basis for construing the Act in this way. What the Act authorised was the imposition of "a condition requiring... the payment of a monetary contribution". A condition may create this requirement directly by specifying the payment of amount. However there is, in my opinion, no reason why the creation and identification of the requirement cannot be done indirectly by reference to another document. Obviously the amount needs to be certain. But s 94(1)(b) existed in a statutory framework requiring the creation of contributions plans: s 94EA and the imposition of conditions "of a kind allowed by, and is determined in accordance with, a contributions plan": s 94B. Thus the Act mandated that the condition would be formulated by reference to a contributions plan. I see no reason why the calculation of the amount certain, cannot arise from and be based on the operation of the contributions plan.
- 45 Indeed in so far as there are authorities addressing this point, they are to the effect that the total amount required to be paid by a condition can be ascertained, as to part of it, by referring to a contributions plan: see for example *Mirvac Homes (NSW) Pty Ltd v Baukham Hills Shire Council* [2000] NSWLEC 199. If, in principle, this is permissible in relation to part of the amount, there would be no reason why it could not be so in relation to the entire amount.
- 46 The imposition of condition 27 was authorised by the Act.

Issue 3 - the validity of condition 45

- 47 The applicant's contention was that a condition requiring the dedication of land free of cost (like condition 45 in the present case) could be imposed only if the application for the development consent included, as part of the application, a proposal that certain land in the development would be dedicated free of cost. As a matter of fact, so it was submitted, there had been no such proposal in the application in the present case. Accordingly the Council had not been empowered to impose condition 45.
- 48 In my opinion, the answer to this argument is tolerably clear. I will proceed on the basis that the expressions "a development application" and "the application" in s 80 is a reference to the application in contradistinction to documents which accompany it. That type of distinction is drawn in the Act: see, for example, s 78A(8), and the Regulation: see, for example, clause 50. However I entertain considerable doubt whether this is correct. On one view, the development application is, for the purposes of s 80, all elements of the proposed development submitted by the applicant for consent irrespective of where in the documentation any given element is articulated.
- 49 But assuming a narrow construction of "development application", it can be noted that s 80A(1)(a) authorises the imposition of a condition if it relates to any matter referred to in s 79C(1) of relevance to the development the subject of the consent. One of the matters referred to in that latter section is "any submissions made in accordance with this Act or the regulations": s 79C(1)(d). The Regulation requires that a development

application be accompanied by a statement of environmental effects: see clause 50 and Part 1 of Schedule 1 to the Regulation.

- 50 I have no doubt the expression "any submissions" should not be narrowly construed and would include any statement of environmental effects ("SEE") lodged with the development application (presently assuming the SEE is not part of the "development application"). In this matter, the SEE prepared for the applicant and accompanying the development application, when discussing pedestrian access, referred to "the open space lot intended to be dedicated to Council". That was a clear intimation, in my opinion, made on behalf of the applicant that lot 25 would be dedicated to Council. In this context the concept of dedication clearly comprehends dedication free of charge.
- 51 The expression "relates to" or "relating to" are ordinarily treated as words of very wide import: see for example the observations of Kirby JA in *Atrill v Richmond River Shire Council* (1995) 38 NSWLR 545 at 551. Neither the immediate nor broader context would suggest they should be narrowly construed as they appear in s 80A(1)(a). It seems to me that this provision authorises the imposition of a condition giving effect to what, in substance, was an intimation by the applicant in a document accompanying the development application of what would follow in the event that consent was given to the application. That is, the condition related to a matter required to be considered, namely a submission made in accordance with the regulations.
- 52 The Council was empowered to impose condition 45.

Conclusion

- 53 For the preceding reasons, the application should be dismissed with costs.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Last update

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FILE No. 116-O-1-BLY

ASS NO. 921.1

BLAYNEY SHIRE COUNCIL

Environmental Planning and Assessment Act, 1979

NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

TO: WESTERN WHITE LINEN SERVICE OWNER:
BLAYNEY SHIRE COUNCIL

ADDRESS: PO BOX 1833 ORANGE 2800

being the applicant in respect of Development Application No
130/90
for development consent to Establish a commercial laundry
Pursuant to Section 92 of the Act notice is hereby given of the determination by the consent
authority of the development application No: 130/90
relating to the land described as follows:-
Part Lot 1 DP 249490

The development application has been determined by:-

- ~~a. granting of consent unconditionally;~~
b. granting of consent subject to the conditions specified in this notice;
~~c. refusing of consent.~~

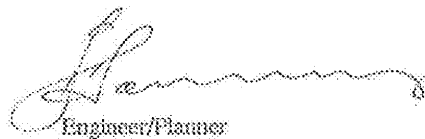
The conditions of the consent are set out as follows
See attached schedule

The reasons for the imposition of conditions/refusal are set out as follows:-
See attached schedule

Endorsement of date of consent: 12th October 1990

- Notes: 1. To ascertain the date upon which the consent becomes effective refer to Section
93 of the Act.
2. To ascertain the extent to which the consent is liable to lapse refer to Section 99
of the Act.
3. Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a
consent authority a right of appeal to the Land and Environment Court, 388 George Street,
Sydney, exercisable within 12 months after receipt of this notice

Date: 12th October 1990
Blayney Shire Council


Engineer/Planner

SHIRE OF BLAYNEY


CONSENT CONDITIONS ATTACHED TO DEVELOPMENT APPLICATION
NUMBER 130/90 TO ESTABLISH A COMMERCIAL LAUNDRY ON
PART LOT 1 DP 249490

1. The Applicant obtaining approval from the State Pollution Control Commission for the discharge of effluent.
2. The hours of operation being 6am to 6pm Monday to Friday
3. The Applicant making satisfactory arrangements with Council for the disposal of surplus ash.
4. The Applicant making satisfactory arrangements with Council for the disposal of solid waste.
5. The Applicant discharging surface water to Council's drainage system.
6. The Applicant submitting a landscape plan with the Building Application for Council's approval.
7. The Applicant making arrangements satisfactory to Council for the suppression of dust from the ash hopper.
8. The Applicant addressing a land crop management program for the removal of phosphorus as an integral part of effluent disposal to the satisfaction of Council and the State Pollution Control Commission.

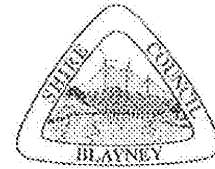
REASONS FOR THE IMPOSITION OF CONDITIONS:

1. Taking account of the impact of the development on the amenity of the adjoining area.
2. Taking account of proper manner for disposal of waste material and effluent from the site.
3. Statutory requirements.
4. The public interest.

DATED: 12 October 1990


SHIRE ENGINEER/PLANNER

Blayney Shire Council



8 September 2010

Our Reference: 264991
Your Reference: AD:DH:90494

Richard Steele & Co
PO Box 1504
BATHURST NSW 2795

Dear Sir

RE: Western White Linen – Noise Assessment

Thank you for your report in relation to noise impact of the Western White Linen operation on the adjoining residence at 194 Marshalls Lane, Blayney.

Council has undertaken a review of this report and the NSW Industrial Noise Policy (the Policy) as it relates to this land.

As the land is adjacent to an industrial district and 'urban hum', being the aggregate sound of many unidentifiable, mostly traffic-related sound sources, is present, the land can be classified under the provisions of that policy as "Urban". The policy states that an urban area may be located in either a **rural, rural-residential or residential zone** as defined on an LEP. In this instance the zoning of the land adjacent to Western White Linen is rural general.

The report finds that the noise level at the boundary between the two properties (with the doors open) was 57 dBA (L_{Aeq}). The noise level at 30m from the dwelling would therefore be approximately 52 dBA with the doors open. Where a modifying factor of 5 dBA is applied, due to the tonal nature of the noise source, this level would raise to approximately 57 dBA at this location.

For Urban/Industrial Interface areas the policy provides that the following noise levels are acceptable.

	Acceptable	Recommended Maximum
Day 7:00 am to 6:00 pm	65 dBA	70 dBA
Evening 6:00 pm to 10:00pm	55 dBA	60 dBA
Night The remaining periods	50 dBA	55 dBA

COUNCIL CHAMBERS
91 ADELAIDE STREET
BLAYNEY, N.S.W. 2799
email:council@blayney.nsw.gov.au

TELEPHONE: (02) 5368 2104
FAX: (02) 5368 3290

ALL COMMUNICATIONS TO
BE ADDRESSED TO

GENERAL MANAGER
BLAYNEY SHIRE COUNCIL
P.O. BOX 62,
BLAYNEY N.S.W. 2799

It can therefore be determined that Western White Linen operates within the acceptable noise level for industrial noise sources for its daytime operating hours. A reduction of 2 dBA for night operations (6 am to 7 am) would bring noise levels down to the recommended maximum and a reduction of 7 dBA would bring noise levels down to levels deemed acceptable under the policy.


It is therefore recommended that the following provisions be put in place to reduce noise levels to levels deemed acceptable under the policy.

1. All linen loading and unloading is to take place within the building (as detailed in the Statement of Environmental Effects submitted with the Development Application).
2. A 3m high noise barrier/fence is to be erected on the northern boundary, as detailed on the attached plan. This may be a lapped timber fence using 25mm thick palings or other system approved by Council.
3. Plantings Advanced Leylandii Pines at no more than 2m centres are to be undertaken as detailed on the attached plan. The adjoining owner has given written consent to these plantings being undertaken.
4. Plantings of mixed natives are to be undertaken as detailed on the attached plan. Species should include a mix of CALLISTEMON (Citrinus, Pinifolius, or Paludosus), GREVILLEA (Rosmarinifolia or Scarlet Sprite), WESTRINGIA (Fruticosa), LEPTOSPERMUM (Myrtifolium, Obovatum, or Scoparium), MELALEUCA (Ericifolia or Incana). If the list cannot be supplied it can be used as a guide by the Nurseryman to match with similar Species. The final planning schedule is to be approved by Blayney Shire prior to these plantings being undertaken.

You are requested to contact Council within 14 days of the date of this letter to provide a timetable for the implementation of these noise reduction measures.

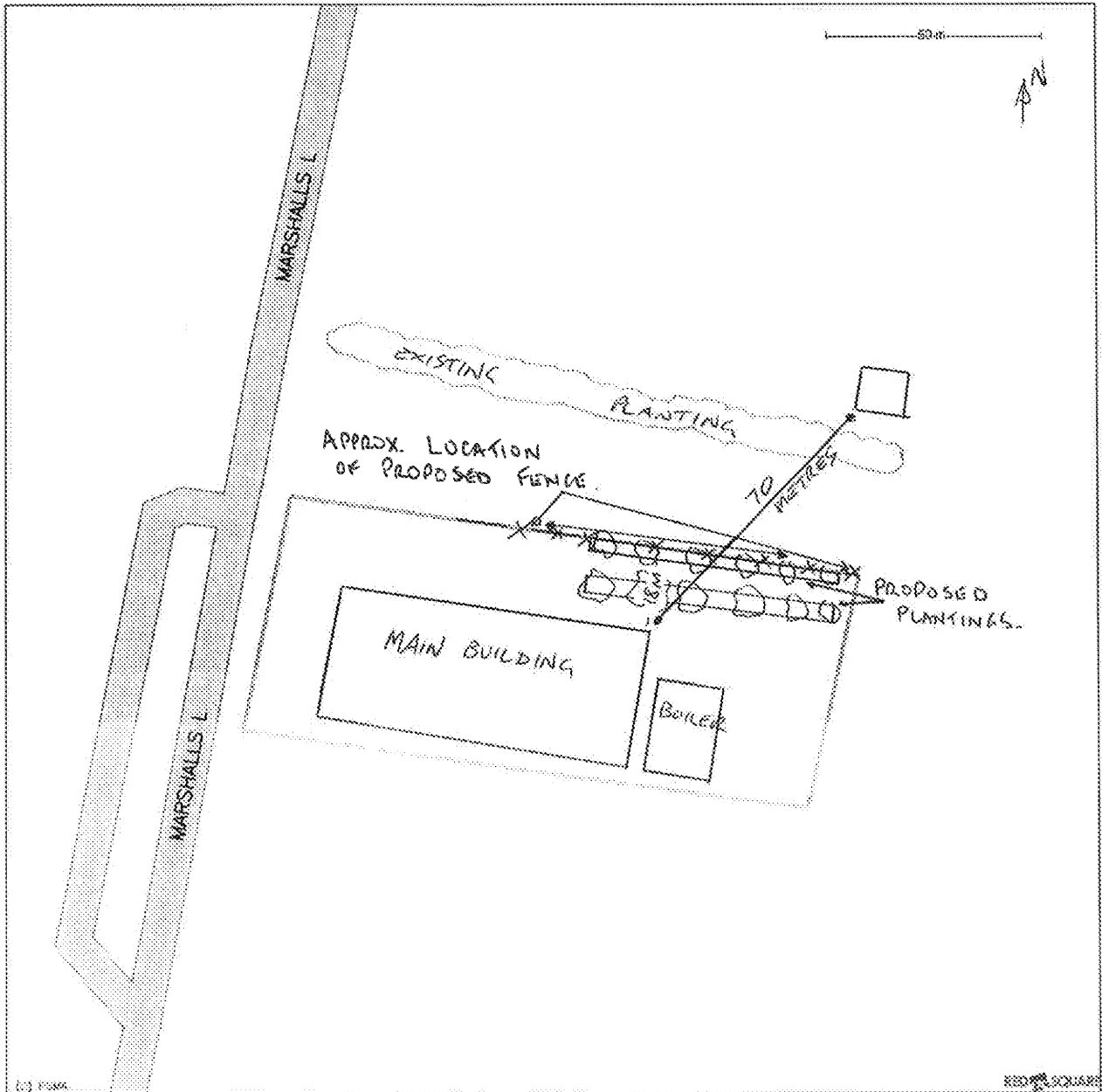
Council thanks you for your co-operation in this matter.

Should you require any additional information or explanation, please contact me on 02 6368 9618.



Paul A O'Brien
Director Environmental Services
for General Manager





This information is obtained from various sources and cannot be guaranteed. You must make your own enquiries as to its accuracy.


Campbell Paton & Taylor

SOLICITORS ATTORNEYS AND NOTARIES
Offices in Orange and Molong
ABN 44 093 265 917

Anson House, 193-195 Anson Street, Orange
New South Wales Australia
Telephone (02) 6362 1922 Facsimile (02) 6361 3674
Postal Address P.O. Box 1068, Orange NSW Australia 2800
DX 3011 Orange
Email cpr@cptlegal.com.au

FOUNDED 1868

PARTNERS
Bradford F.M. Stuart
Ian T. MacMicking
Timothy G. Dalla
S.F. (Fiona) Pigot *
Mason R. Manwaring
Andrew D. Kernode

CONSULTANTS
Christine A. McIntosh

ASSOCIATES
Deirdre K. May
Robert J. Rogers

CONVEYANCER
Margot J. Sawyer

Our Ref: ADK:20101099:ADK
Direct email: kerm@cptlegal.com.au
Your Ref:

The General Manager
Blayney Shire Council
PO Box 62
BLAYNEY NSW 2799



18 August 2011

By hand

Dear Sir,

Marrangaroo East Pty Ltd Subdivision
North Millthorpe
DA 59/2011

We act for Marrangaroo East Pty Limited.

Please find enclosed by way of service:

1. Summons in the Land and Environment Court of New South Wales proceedings 40682 of 2011; and
2. Request for section 96(2) of the Environmental Planning and Assessment Act 1979 modification DA 59/2011 ("Section 96 Modification")

Please find enclosed cheque in the sum of \$500.00 payable to Blayney Shire Council being the relevant fee in relation to the section 96 modification.

The Section 96 Modification is lodged as an alternative to the Land and Environment Court of New South Wales proceedings 40682 of 2011 challenging the validity of the BSC 1 Rural Roads Contribution Plans and conditions 27 and 45 of the consent. In the event that this application is approved before our client is required to file and serve its evidence in those proceedings it will not pursue the challenges to the validity of those contributions plans and conditions.

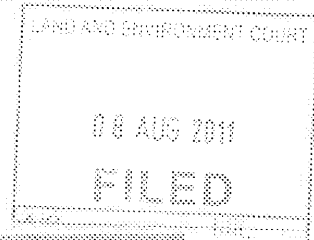
Yours faithfully,
CAMPBELL PATON & TAYLOR

Andrew D Kernode
Partner

60384097

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Professional Standards Legislation
* Accredited Family Law Specialist
Registered Migration Agents No.s 0101697 • 0745677

Form 4A (version 1)
UCPR 6.2



SUMMONS

COURT DETAILS

Court	The Land and Environment Court of New South Wales
Division	Class 4
Registry	Sydney
Case number	40682 of 2011

TITLE OF PROCEEDINGS

Applicant	Marrangaroo East Pty Ltd ACN 111 170 793
Respondent	Blayney Shire Council

FILING DETAILS

Filed for	Applicant
Legal representative	Campbell Paton & Taylor
Legal representative reference	ADK20101099
Contact name and telephone	Andrew Kermodie 02 6362 1922

HEARING DETAILS

This summons is listed at 9.15am - 2 SEP 2011 - 225 Macquarie St Sydney (WINDEYER CHAMBERS)

TYPE OF CLAIM

Proceedings seeking an order to remedy a breach of the *Environmental Planning and Assessment Act 1979* pursuant to s. 123 of that Act.

A copy of this document
must be served

15 AUG 2011
by.....

RELIEF CLAIMED

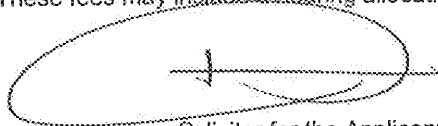
- 1 A declaration that the plan made by the respondent identified as *BSC 1 Rural Roads* is invalid.
- 2 A declaration that the plan made by the respondent identified as *2009 Review BSC 1 Rural Roads* is invalid.
- 3 A declaration that condition 27 of development consent 59/2011 granted by the respondent on or about 9 May 2011 is invalid.
- 4 In the alternative, a declaration that the amount payable pursuant to condition 27 of development consent 59/2011 granted by the respondent on or about 9 May 2011 in respect of roads is \$nil.
- 5 A declaration that condition 45 of development consent 59/2011 granted by the respondent on or about 9 May 2011 is invalid.
- 6 An order that the respondent pay the applicant's costs of these proceedings.

SIGNATURE OF LEGAL REPRESENTATIVE

This summons does not require a certificate under section 347 of the Legal Profession Act 2004.

I have advised the applicant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor for the Applicant

Date of signature

5 August 2011

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the applicant's costs of bringing these proceedings.

You must enter an appearance before you can appear before the court.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

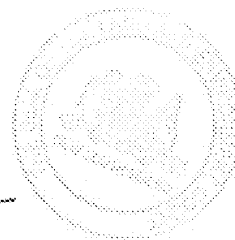
You can get further information about what you need to do to respond to the summons from:

- The court registry.
- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	225 Macquarie Street Sydney NSW 2000
Postal address	As above
Telephone	9113 8200



PARTY DETAILS

[Include only if more than two applicants and/or more than two respondents.]

PARTIES TO THE PROCEEDINGS

Applicant	Respondent
Marrangaroo East Pty Ltd	Blayney Shire Council

FURTHER DETAILS ABOUT APPLICANT**Applicant**

**Marrangaroo East Pty
Limited**

84	Cawarra	Road
Caringbah	NSW	2229

Legal representative for Applicant

Name	Andrew Donald Kermode
Practising certificate number	23170
Firm	Campbell Paton & Taylor

Address

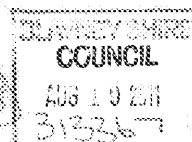
193-195	Anson	Street
Orange	NSW	2800

DX address	3011 Orange
Telephone	02 6362 1922
Fax	02 6361 3674
Email	cpt@cptlegal.com.au

#Electronic service address

DETAILS ABOUT RESPONDENTS**First Respondent**

Name	Blayney Shire Council		
Address	91	Adelaide	Street
	Blayney	NSW	2799



"WBC STRATEGIC ALLIANCE PARTNERS - WORKING FOR OUR COMMUNITIES"

MODIFICATION OF A DEVELOPMENT CONSENT

Form No. WBC011

This form is to be used to modify a Development Consent that has been granted under the Environmental Planning and Assessment Act 1979.

EXISTING CONSENT
 DA Number 59/2011 Complying Development Certificate No _____
 Date of Determination 09/05/2011

PROPERTY DETAILS
Lot/Section/DP Numbers can be found on the Certificate of Title or the Rates Notice for the land.
 Parcel No _____ Lot No/s 3, 4, 350 & 21 Section _____ DP No/s 750384, 750384, 1079010 & 1148965
 Property No _____ Street/Road Name RICHARDS LANE & SPRINGVALE LANE
 Property Name _____ Town/Locality NORTH HILLTHORPE Postcode _____

APPLICANT DETAILS
 Name/s MARRANGAROO EAST P/L (OWNER)
 Postal Address C/ 14 SAUE ST
 Town/Locality ORANGE NSW 2800 Postcode 2800
 Daytime Phone 6362 5433 Mobile _____
 Email tony@cheneywilson.com.au Fax _____
 Signature/s X PER OWNERS CONSENT/APPLICANT Date 17/8/2011

OWNERS CONSENT

- If more than one owner, every owner must sign.
- If you are signing on the owner's behalf as their legal representative, please state your legal authority (eg Power of Attorney, Executor, Trustee) _____ and attached evidence of this authority.
- If the property owner is within a strata plan, the consent of the Owners Corporation is required under seal.
 If the owner is a Company - all Directors must sign.

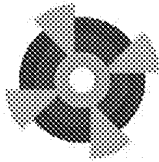
Full Name: <u>MARRANGAROO EAST P/L - PER P/A</u>	Full Name: _____
Postal Address: <u>C-14 SAUE ST, ORANGE</u>	Postal Address: _____
Signature/s: <u>X</u>	Signature/s: <u>X</u>
Date: <u>17 / 8 / 2011</u>	Date: <u>17 / 8 / 2011</u>

If signing on behalf of a company, please indicate your position within the Company.
 Position: POWER OF ATTORNEY Position: _____

REASONS FOR MODIFICATION
 Give details on the extent and manner of modification.
PER ATTACHED DOCUMENT.

OFFICE USE ONLY

Type of Modification Minor s96(1) Error or Misdescription Major s96(2)
 Minimal Environmental Impact s96(1a)



MPF SURVEYING

18 August 2011

Your Ref : DA 59/2011
Our Ref : 10014_mod03

The General Manager
Blayney Shire Council
PO Box 62
BLAYNEY NSW 2799

Attn – Paul O'Brien

Dear Paul

REQUEST FOR SECTION 96(2) MODIFICATION – DA 59/2011 NORTH MILLTHORPE

With regard to the above development consent we advise that the conditions of consent have been reviewed and after consideration we request the following amendments to be made (under section 96(2) of the EP and A Act). The reasons for the request for amendments are set out in the table below and are generally designed to enhance certainty in the scope of works prior to construction.

We confirm that this request is limited to the consent conditions listed below, and that no other aspect of the consent is at issue at this point in time.

Condition Number	Description of Condition	Proposed Amended Condition
5	Hours of construction.	That the hours of construction be restricted to- Monday to Saturday: 7.00am to 8.00pm Sunday and Public holidays as approved by Council at the request of the developer.
10	Extension of planting of Plane trees in Park Street from Richards Lane to meet the existing plantings.	Condition to be deleted on the following grounds- (a) The condition is uncertain in its terms; (b) Park Street is not a street directly related to the proposed development (c) The landscape plan as submitted in relation to the subdivision does not refer to any part of Park Street.
11	Maintenance of approved landscaping.	Condition should be deleted/amended on the following grounds- (a) The condition is unreasonable in that it requires the developer to maintain the landscaping in perpetuity;

LAND AND ENGINEERING SURVEYORS, TOWN PLANNING CONSULTANTS

MPF Surveying Pty Ltd ABN 92 109 448 372
PO Box 495 ORANGE NSW 2800
Telephone 02 8380 1161 Facsimile 02 8380 3171
Email: mfsurvey@bigpond.com

REGISTERED SURVEYOR -
M.P. FORSYTH, B. SURV., M.L.S. AUST.
Grad. Dip. Urban and Regional Planning.
Member of the Institution of Surveyors, Australia

		<p>(b) The condition is uncertain in its terms;</p> <p>(c) To the extent that some landscaping is located on land which is owned by Council or will be dedicated to Council, the maintenance of that landscaping will be the responsibility of Council;</p> <p>(d) That land on which landscaping is undertaken which is sold by the developer will be the responsibility of subsequent owners to maintain, not the developer.</p> <p>(e) Potentially the condition could be modified to enable a positive covenant to be placed on the title to the affected private properties (particularly Lots 21, 79 to 83, 91, 95, 96, 52 and 53) which would ensure that purchasers of the land would be aware of maintenance requirements of the landscape buffer.</p>
16	Subdivision Certificate.	<p>Delete -</p> <p>“NOTE: Council will only consider issuing a subdivision certificate in relation to the subdivision which it is satisfied that all conditions of development consent have been complied with and the appropriate fees paid.”</p> <p>Replace with -</p> <p>“NOTE: Council will only issue a subdivision certificate in relation to the subdivision or any part thereof when it is satisfied that all conditions of developments consent have been complied with and the appropriate fees paid with respect to the subdivision or that part to which the subdivision certificate relates”.</p>
27	Section 94 contribution .	<p>Delete the existing condition and replace with --</p> <p>That the applicant pays the following Section 94 contributions:</p> <p>(a) BSC8 Bushfire Services Contribution at \$331.00 per lot;</p> <p>(b) BSC 10 Community Facilities Contribution at \$518.00 per lot.</p> <p>The prescribed rate will be varied in accordance with the indexation rate proscribed by each relevant contribution plan on or after the 1 July 2011.</p>

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39	Road design.	<p>Delete -</p> <p>"NOTE: Richards Lane shall be considered an Arterial Road for the purpose of stormwater design in accordance with the <i>WBC Guidelines for Engineering Works</i>".</p> <p>Reason -</p> <p>Richards Lane is not an Arterial Road and does not require piped drainage to be designed for a 2% annual exceedance probability.</p> <p>Richards Lane will service less than 100 Lots which the WBC Guidelines clause 2.3.1 defines as an "Urban Local Access Road".</p> <p>WBC Guidelines clause 3.3.1 requires drainage in urban residential road to be designed for a 20% annual exceedance probability.</p>
40	Bus Stops.	<p>Delete this condition on the grounds that presently there are no bus services in the area.</p> <p>Upon contacting local bus companies we have been advised that if a service is provided the proposed route will follow the main transport links and will not travel through the internal roads of the proposed subdivision.</p>
41	Road Construction.	Delete the words "servicing and".
45	Proposed dedication of Lot 25.	<p>Amend to -</p> <p>"Proposed Lot 25 shall be created at the time of the release of the first subdivision certificate for that part of the proposed subdivision north of Lot 25. Upon its creation Lot 25 is to be dedicated to Council. The Council is to compensate the applicant for the dedication of Lot 25. In the event that the developer and the Council do not agree upon the compensation payable then :</p> <p>(i) Compensation shall be paid by the Council determined in accordance with s 54(1) of the Land Acquisition (Just Terms Compensation) Act 1991;</p> <p>(ii) Compensation shall be determined by a Valuer appointed by the parties or if the parties do not agree by the President of the Real Estate Institute of NSW at the request of either party. The valuer shall act as an expert and not an arbitrator and his decision shall be binding on both parties.</p>

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		All works required to be completed by the developer upon Lot 25 pursuant to this consent to be completed prior to the dedication of Lot 25 to Council.
46	Pedestrian and Cycle Link.	Delete the condition for the following reasons - The construction of any structure across the water way section of the Open Space area to provide the required cycle way/footpath will interfere with flow of stormwater . The first stage of the project (the urban subdivision) was accompanied by a flood study prepared to determine the minimum floor levels for the lots at the end of Unwin and Stabback Streets. Any obstruction of the water flow (particularly an obstruction above the 1% AEP) could adversely affect these lots, as well as upstream adjoining lots.
48	Access to Lots.	Delete this condition for the following reasons - Access conditions should be applied upon approval of a development application for a dwelling to be erected on any allotment in the subdivision and positioned so as to suit the design of the residence to be erected.
55	Inter allotment drainage.	Delete this condition for the following reasons - The development when completed will cater for 95 additional home sites. Each of these home sites is expected to have a rainwater tank attached (under the Basix guidelines) and absorption trenches where required. The Lot sizes are 4000 square metres and above, and the flows of water across the grassed surface are not expected to increase as a result of the development.
56	Easements for inter allotment drainage.	Delete this condition for the following reasons - By virtue of the deletion of condition 55 there will be no requirements for inter allotment drainage easements.
57	Drainage requirements.	Amend to - All road drainage is to be conveyed to a legal point of discharge, in accordance with the <i>WBC Guidelines for Engineering Works</i> .

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Please contact the undersigned should you require clarification of any aspect of this submission.

Yours sincerely

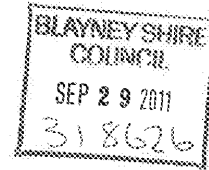


Matthew P. Forsyth
Registered Surveyor
Town Planner

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The General Manager
Blayney Shire Council
P.O. Box 62
Blayney
NSW 2799

27 September 2011



DA 59/2011 : 96 Lot Subdivision

Dear Sir

Marrangaroo East's proposed amendments to conditions of consent should not come as a surprise to Council because this action is entirely consistent with this developer's conduct in the recent past. While it is possible to sympathise to some extent with Marrangaroo East's representations in respect of bus stops for instance, most of the conditions for consent imposed by Council are very well justified in terms of quality standards or community interests and Council should stand by them.

We consider that Marrangaroo East's objection to Condition No. 5 (Hours of Construction), should be rejected simply on the basis of good sense and standard practice. Nobody needs a possible 365 working days in a year!

Condition 11 (landscaping) needs to be modified to clarify what "the life of the development" means - certainly not in perpetuity as suggested by the developer - and also along the lines suggested in 11(e) (Covenant).

Condition 27 (Section 94 Contribution) should not be modified, especially in the light of the timeframe for this development. The developer must be bound by the rules at the time.

Condition 39 (Road Design) should be maintained as is. The condition relates to stormwater, not traffic, and this developer has a history of under-engineering stormwater drainage.

Condition 41 (Road Construction) should not be amended. The developer should ensure that the approaches to the new blocks are of the same standard as those fronting the new blocks. This is in the developer's interest anyway.

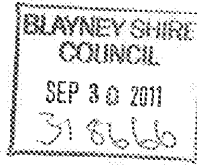
Condition 45 (Lot 25) should be maintained as it stands. Council must insist on the creation of this public space, with the pedestrian and cycle link) before the first subdivision certificate is issued. No compensation should be considered; adequate compensation has been given in terms of Condition 27.

Condition 55, 56 & 57 (Inter-allotment Drainage) should be maintained. Marrangaroo East failed in this respect on the Stabback/Unwin extensions DA, and Council was landed with major problems.

Yours sincerely

Two handwritten signatures in black ink. The first signature is "Anne Newton" and the second is "Brian Newton".

Brian and Anne Newton
21 Stabback Street
Millthorpe



Reference 287901

David and Diane Dixon

"Roscommon"

Forest Rd,

Millthorpe,

NSW 2798

Ph (02) 6366 3397

Thursday, September 29 2011

General Manager,
Blayney Shire Council,
PO Box 62,
NSW 2799

Dear Sir/Madam,

We would like to provide a written submission to Blayney Shire Council regarding the Marrangaroo East Pty Ltd Development Application No. 59/2011/1.

Specifically, we would like to comment on a number of the proposed amendments to the Development Application proposed by MPF Surveying (Reference 10014_mod03).

Our submission on the proposed amendments are as follows:

Condition 5: We believe that the hours of construction should remain as in the original approval; this is a major development and nearby landholders should be exempted from the noise, disruption, dust, and inconvenience caused by development at the times listed in the original condition.

Condition 16: The conditions relating to issuing of subdivision certificates should not be amended as requested by the developer. This is because Council's more onerous requirements will ensure that ALL conditions of the development have been complied with before certificates are issued, not just for specific areas of the development.

Condition 40: The original conditions regarding placing bus stops within 400M of each allotment should be retained. All levels of State Government are spending vast amounts of money to reduce impacts of global warming and providing alternatives to private motor car use in new developments. Removing this requirement flies in the face of Government policy at all levels of Government in Australia. Also, a number of children living in homes in this development will be required to catch buses to and from school. At present Orange Buslines Buses detour through a number of local streets to drop children traveling into and from Orange schools outside their houses. There is no reason to believe that this will not be the case with this development. Removing the bus stops would cause substantial inconvenience to families living in the new development, and would also lead to considerable inconvenience to children living in the development, and endanger lives by requiring children to walk substantial distances to and from bus stops each day.

Condition 45: Dedication of Lot 25: The proposed amendment removing the requirement of the developer to dedicate Lot 25 to Council must be opposed vehemently by Council in any shape or form. This dedication, as part of the original conditions of the proposal, was one of the major benefits suggested by a string of Council Officers to a number of Millthorpe residents over a number of years during a number of public meetings. For Council or its officers to now consider requiring Council to now buy this Lot would be in complete breach of the trust between Council and the residents. It would also be a complete repudiation of a number of promises the developer made, before the approval had been issued, on a gift of land that would be made to the citizens of Millthorpe via Council. Furthermore, as landholders who are presently negotiating with Council regarding remediation works on poorly-constructed drainage onto our land which led to the damaging floods in December 2010 — and which Council has begged a lack of funds for a delay in such works — we would be extremely disappointed in any proposal that saw a dilution in the requirement to gift Lot 25 to the Council from the developer. In fact, any such amendment to this condition would be nothing less than a direct transfer of wealth from the Council and the ratepayers to the pockets of the developers in the order of millions of dollars. This is for developers, who in any reasonable assessment, are likely to make millions of dollars out of the said development as it is. If a Council that continually cries poor when required to undertake capital works, and which has a habit of levying ratepayers surcharges on all and any major works carried out in the Shire, considered changing, amending, or modifying this Condition, the Council would likely be reported to the Independent Commission Against Corruption for acting against the interests of ratepayers and in the direct interests of the North Millthorpe developers.

Condition 46: This condition should remain unamended. The provision of the Pedestrian Cycle Link can be constructed without compromising the integrity of the natural flow of stormwater through the development. The issue of stormwater flow and the pedestrian and cycle link could be described as a furphy for the developer to not do such work as previously agreed, again saving the developer thousands of dollars to the detriment of the residents and ratepayers.

Condition 55: This proposed amendment should be rejected. Drainage problems are endemic to Millthorpe, as we know from experience. Therefore any mediation or precautionary work as required under AS/NZS 3500 and the WBC Guidelines should be adhered to in the strictest form to reduce over flow water impacting on other properties and on streets in the village.

Condition 56: As per above.

Condition 57: As per above.

We would like these comments and observations to be forwarded to all Council members for consideration of this development.

Yours Sincerely,

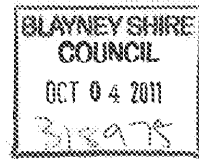


David and Diane Dixon.

Submission re DA No 59/2011 modification (Soden 76k)

Development by Manangaroo East Pty

To the General Manager
Blayney Shire Council.



Dear Sir,

We are dismayed that the above developers continue to seek variations to the DA approved in regard to the above development in North Milthorpe. They won the right to vary the allotment size so that some 91 allotments were able to be created where in fact there should have been only some 25 allotments allowed within the council zoning of the effected land.

Not withstanding their offers of considerable contribution to the area, it seems that now the deal is done so to speak.

Council is being faced with the last incredible demand for variation to the approval to the granted DA.

We remind and refer to the objections lodged by us over several years this development has been going on.

Enclosed as attachments are of some of our submissions from the past.

It would seem that the above developers had no intentions to honor their past overtures and promises.

In regard to the lot now known as lot 25 (the very fragile Riparian swamp land) and are now requiring Council to agree to compensate them for this land not being developed. The further amendments in regard to Richards Lane are also a reversal of what appeared to be agreements with Council and the Minister of Planning as to what the developer's intentions were if approval to develop were grants after the variation was allowed.

We think it is time this Council reviews the way it has conducted negotiations with the developers and looked after the Ratepayers interests. As it stands the developers are trying to develop piecemeal the area and thus avoid the agreement consents. At considerable cost to all the Blayney Shire Rate payer.

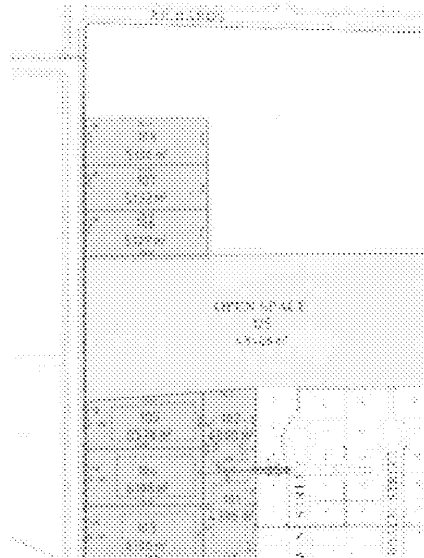
Please note that I wish to address Council on the night the request for variation is discussed.

Yours faithfully

Gedera
13 Statback Street
Milthorpe 2760

Lot 101 - 108, Lots 101-8 Richards Lane, Millthorpe, NSW 2798

- Starting from \$175,000.00



Blowes Real Estate - Orange

- 245 Summer Street
- Orange 2800

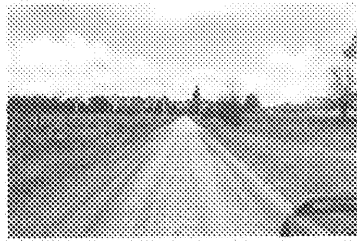
From this it is clear that the developer Marrangaroo Pty. Ltd will not proceed to put in all the infrastructure at the one time and thus the tree plantings will be inconsistent and at different times not the way at all that is in the included presentation DA or the best interests of our environment. It seems to us that there is a conflict that becomes dependant on whether Council can require the developer to put the entire infrastructure in place before selling any of the 96 lots. We believe there is no way Council can.

It is our opinion that in regard to Richards Lane and Springvale Road there is nothing Council can do to prevent the piecemeal development of this area as the roads are Council owned. And thus any road side planting planned by the developer will be very haphazard as it seems the development will be fragmented into stages.

Our closing comments are regardless of what approvals or conditions Council make when consenting to the DA the developer has a history of applying for variations and we are concerned that they will use this right to further avoid observing the Council requirements in the present approval being sort that ostensibly refers to 96 allotments. We for see the first fragment of the 96 allotments will be the 8 allotments presently being advertised as being for sale. See our above reference.

Yours faithfully

(Above comments from our previous submission and highlight an notice for sale of some of the land off Richards lane).



Richards Lane Millthorpe 2007

To the General Manager.

Mr A Roach

Submission re modified consent to DA 51/2008

Applicant Marrangaroo East P/L

Wednesday, 26 March 2008

Conditions 2, 3 and 4 Statutory

It would seem to be a reasonable for Council to be given documentary evidence of all arrangements made with providers of water, electricity and telephone services.

We feel that this request for modification should be refused.

Condition 7.

We refer to Councils DCP 3 and the requirements outlined as **4.4 Roads and access on part page 10 and pages 11, 12 and 13** for this reason;

we feel that the request for this modification should be refused.

We also feel that to rely on the developer experience does not reflect the traffic styles typical of Millthorpe.

The village has families involved in trucking and no doubt the 2 hectare allotments will attract people employed in the trucking industry. We often see large eight wheeled vehicles parked in the village streets, including Park St lower Crowson St, Pearce St and a special parking bay has been created for a Semi that parked on the area now known as Mill Green. We suggest the requested modification not be allowed.



Example of semi outside the owners home

Condition 8

This is a crown road and to date we have seen no evidence that Council has any consent from the Crown Lands department to require the Tar sealing of Richards Lane from Crown St to the intersection with Park St.

The failure to address this issue also;

Gives the developer reasonable grounds to request that this section be deleted.

We also feel the Council has very little chance of enforcing the sealing of Richards Lane in the area that will be adjacent to allotments fronting Richards Lane, because of certain BSC policies.

Condition 9.

There is a problem of description in places this condition is referred to as Springvale Road and in other places as Springvale lane in the DA consent. Springvale Road is a Council owned Road and as such Council requirements as set out in DCP 3 should apply as stated on part page 10 and pages 11, 12 and 13 for this reason we feel that the request for this modification be refused.

However see our comments re DCP's and the conflict with BSC policies

Condition 12

We have no comment as we feel it is a matter that is effected by Richards Lane being a Crown Road and the need to first provide evidence of written negotiations with the Crown Land Department. Also see our comments re DCP's and BSC policies

Condition 10

We feel that to amend the carriage ways from eight metres to 6 is not in the interest of future traffic needs. See also photo of semi it maybe that person eventually building on the allotments will be involved in the trucking industry

Conditions 17 and 18

We support the developers request in this regard.

Condition 19.

We feel that Council should not concede to this request by the developer to amend this condition as requested.

Condition 22

Again we find that we agree with the developer the wording of this section refers to building work and does not apply to the subdivision submission.

Condition 26.

While the statements contained in this condition refer to a building site (sloppy cutting and pasting perhaps) there is significant reasons that Council require the developer to erect signs that indicate details of construction companies, the developer ect, along with phone numbers.

We have many children living near by and construction sites are tempting places. Accidents can happen so there is a real need for signage that indicates the above details

Our further comments

We also note that condition 28 needs rewording to reflect that this a subdivision development site requirement and not a building site requirement as Council has set out in this section.

We are further concerned that Council allows such considerable concessions in regard to the payment of levies under section 94 contributions. The formula as under BSC1/2 is to be offset by 50%. We also think that the developer is right in regard to his statements regarding the way Council can levy developer contributions for public services and amenities.

We wish to say that Council policies in regard to discounting by 50% section 94 contributions for community infrastructure can in fact be seen as a subsidy by all ratepayers in the Blayney Shire for such developments.

No wonder we have poor community amenities.

We clearly see that this developer will be able to avoid complying with Councils requirements in some cases because of the law in regard to section 94. the BSC policies and the resultant conflict that occurs in regard to Council DCP's

Even Applying 4 people per allotment is, it seems according to the BSC policies covered in the BSC1/2/3. Council will not be able to enforce its requirement to tar seal or otherwise improve the two unsealed existing roads, being Richards Lane (A crown road) and Springvale Road.

We feel that these facts highlight Council lack of consistency between the various policies and DCP's when applied to subdivision development of this nature.

Condition 1 Landscaping and Tree Planting

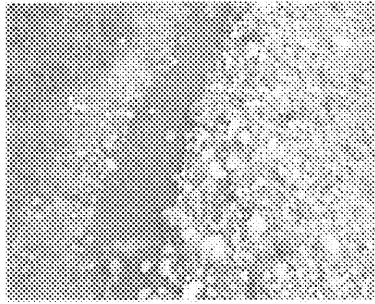
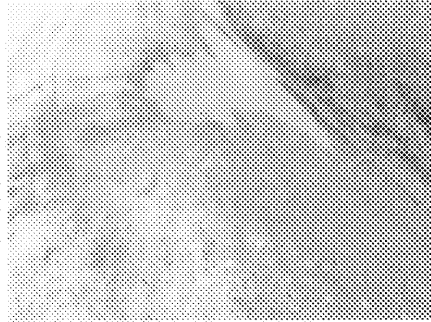
We are very concerned that the applicant states that tree planting and buffer zones were not retained in the Council consent of 11th of December 2007

We feel the development needs some form of buffer to demark the village area from the rural residential development. So that the historic ambience of Millthorpe is protected. We also note that there is no protection for the riparian swamplands that have been embedded in an application to vary allotment sizes from two hectares to 4,000 square metres. This application is being made by the same developer over the same lands. The Executive summary of the EIS of 2005 in par 5 on page 6 states in part: **provide dual drainage open space corridor in the south, which also distinguishes the rural living developments from the village houses.** This statement verifies the recognition for some demarcation of the village and ant rural housing development, and should have been rigorously applied to the present DA.

Further it was not particularly correct of the solicitor to state that section 94 Contributions plan applicable is BSC 1.

In fact this deals with Blayney in the first instance. Village roads are within BSC 2. So the correct reference would appear to be BSC1/2. Clearly the fax goes on to state section 94 under the EP& A act is the sole source of power for the Council to levy contributions for public amenities, and as we said before: this payment is calculated on the basis of a 50% discount by council. As such will produce little by way of income that should be spent on infrastructure needs

We have included pictures of Richards Lane to illustrate:



The above pictures were taken at the junction of Richards Lane as it turns east and in the vicinity of Sorinvale intersection.

Part of letter written to the Minister Hon F Sator in August 2007

It is my experience over the 12 years I have lived in the vicinity that this riparian swamp land, contains many species of amphibians, four specie of snakes, various lizards and supports several aquatic bird species it is also a resting and feeding area for migrating birds. I have photographed and recorded the amphibians that inhabit the area as I have come across them. Others and I feel that this particular Riparian swamp land would make an ideal buffer between the Milthorpe and any development of the Rural 1 (c) zone

This is a photo of the natural sink hole. This is a vital habitué to fauna and is the main water holding area in part lot 71. It has never been dry and is a part of the riparian swamp not recognized by the EIS. The background is looking across the proposal to the north from close to the village



Riparian communities

The riparian zone

The riparian zone is the area of the landscape directly associated with the stream or river. It has a number of sections to it

- Floodplain. This is the level ground furthest from the watercourse. This area usually gets inundated during flood periods.
- Banks. The banks are the sides to any stream or river. Depending upon the velocity of the water flows they may be deep or shallow.
- Bench. This is the flat area on the bottom of the riparian zone that is not submerged by the streamflow.
- Streambed. This is the active flow channel where the stream or river flows most of the time.

Riparian communities

Riparian communities are found along the watercourses of our district. These areas have higher moisture levels than the surrounding landscape and may also experience periodic flooding. In our district these communities are generally woodlands or fringing forests.

Plants of riparian communities are usually adapted to living in a particular part of the riparian zone. For example, large trees are usually found on the floodplain, shrubs and grasses on the banks, and rushes and sedges are often found close to or even in, the water.

Biodiversity

Central Tablelands Landcare Natural Resource Toolkit 21

Riparian communities are important as biodiversity corridors allowing wildlife and birds to move across the landscape. They are also important in maintaining stable stream banks and in keeping the aquatic ecological communities in our waterways healthy.

Riparian forest communities

These are relative relatively dense forests of trees along creeks and rivers. River she-oaks often make up these communities along the rocky streams and creeks of our district. They may also contain a variety of shrubs, sedges, rushes and grasses.

Figure 7.2.4

Fringing forests of River She-oaks at Summer Creek, north of Orange (D.Hardwick)

Riparian woodland communities

Many of our riparian areas consist of open woodland communities of a few species. Ribbon Gum and Apple Box communities are commonly found above about 700m in the Tablelands. Further west, on the slopes, River Red Gum is a dominant species in riparian woodland communities.

Changes to the riparian zones and communities

In the Central Tablelands Landcare district many riparian communities have been cleared for agriculture whilst intensive grazing and disturbance by livestock has prevented native plant species from regenerating. Weeds such as willows, phalaris and blackberries have invaded many of our riparian communities and there has been significant modifications to the riparian zone.

Dr Aaron Simmons
 17 Unwin St
 Millthorpe NSW 2798
 6366 3371
 17th September 2011

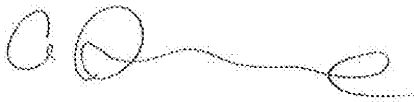
To whom it may concern,

Please accept this submission, from we the undersigned, into the Modification to Development Application 59/2011. My concerns regarding the modifications, and the conditions themselves, are detailed below. On a general note, the council has the moral obligation to ensure the development ensures a safe environment for community members that encourages a healthy lifestyle. Council also has the obligation to ensure that the development is in keeping with current village.

Condition number	Description of condition	Reason for objection
5	Hours of construction	Residents in the vicinity of the development have the right to spend evenings at home without building noise. For example, allowing building to continue at an hour when small children are being put to bed for the evening is unreasonable. The size of the development also means that building work is likely to be continuous for a number of years.
10	Extension of planting of Plane trees....	We agree with the applicant on point a) -- what the council wants is unclear, and it is concerning that council is unable to write a clear and concise condition of consent. Nevertheless it is the councils obligation to ensure the development merges into the existing landscape and does not appear an island to the village. Continuing Plane trees to Richards Lane will buffer the view of the new houses in the development.
27	Section 94 contribution	If the applicant is trying to reduce section 94 contributions then this is unacceptable.
41	Road construction	Should the developer wish to develop these blocks then it is the responsibility of the developer to make sure roads

		servicing the development are suitable for the traffic to the development. It is NOT in the best interest of the community (i.e. Blayney Shire ratepayers) to subsidise the developer, especially when they will not obtain financial benefit from the development. Roads in Millthorpe and other parts of the shire are in a state of disrepair and funds should not be diverted from ANY other program to subsidise the developer.
46	Pedestrian and cycle link	The suggestion that a cycle path could impact on storm water flows is preposterous. Engineering a solution to this supposed problem should be relatively easy. This path will provide safe passage for residents who wish to access the existing village (e.g. primary students walking to school) and provide an incentive for a healthier lifestyle (e.g. walking to the shop rather than driving). This pathway has the potential to reduce vehicle traffic on the village roads and will ensure a safer walking environment.
55	Inter-allotment drainage.	According to the Australian Bureau of Statistics, the average Australian house size is 264 m ² . The provision of water tanks under BASIX is a null point as these tanks are never empty and rarely exceed 2 000 L. Millthorpe regularly gets summer storms where 30 mm or more of rainfall falls in a short period of time. In a situation where the tank is full from a previous storm, simple mathematics shows that a 30 mm rainfall event on a 264 m ² roof will produce nearly 8 000 L of water that needs to be disperse. Provision needs to be

		made for water in excess of 8 000 L to be dispersed onto land while minimising storm water impacts.
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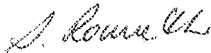


Aaron Simmons



Janine Friedrich

17 Unwin St Millthorpe



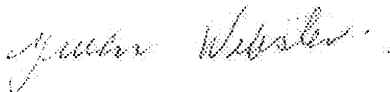
Sue Roweth



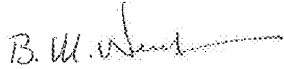
Leon Roweth

16 - 18 Unwin St Millthorpe

Gwen Webster



19 Unwin St Millthorpe



Brian Newton



Anne Newton

21 Stabback St Millthorpe

Stewart Turner



Sharon Turner

12 Unwin St Millthorpe



Peter Cullen

Dianne Cullen

9 Unwin St Millthorpe

Richard Tennant

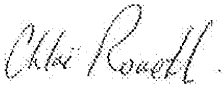


Tracy Nash

Crowson St Millthorpe



Jason Roweth



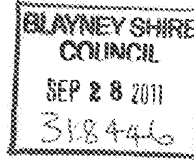
Chloe Roweth

19 Stabback St Millthorpe

Patricia Marie Mckenna
"Paddington Grove"
19 Richards Lane
MILLTHORPE NSW 2798

27th September, 2011

Mr Paul O'Brien
Director environmental Services
For the General Manager
Blayney Shire Council
PO Box 62
BLAYNEY NSW 2799



Cc: Paul Obrien, Councillors

Claire Johnston

RE: Opposition to the proposed Modification of Conditions of Consent
No. 58/2011

Dear Paul O'Brien,

As the owner of adjacent property please see below the facts for why this Development Application should stay as is and not altered in any form.

Condition 5

HOURS OF CONSTRUCTION:

This is unacceptable as Millthorpe is a major Tourist destination during weekends and public holidays. With construction eg: noise and dust levels will travel throughout the tranquil village as it does now on weekdays. Also I feel this will also allow a domino affect with future construction eg: Housing.

Condition 10

**EXTENSION OF PLANTING OF PLANE TREES IN PARK STREET
FROM RICHARDS LANE TO MEET THE EXISTING PLANTINGS.**

Clearly this condition should stay in its entirety. As to soften street scapes as well keep and overall even flow from existing village through to new development.

PLEASE REFER TO DCP PAGES 14 - 16

Condition 11

MAINTENANCE OF APPROVED LANDSCAPING

THE DCP REQUIREMENTS SHOULD STAY AS IS. IT SHOULD BE THE FULL RESPONSIBILITY OF DEVELOPERS TO PERMANENTLY MAINTAIN TREES AS TO KEEP UNSEEN THROUGH OUT STREETS. THIS IS A UNIQUE VILLAGE AND SHOULD NOT LOOK HODGE PODGE AT ANY STAGE.

Condition 16

SUBDIVISION CERTIFICATE.

THIS TOO SHOULD STAY IN ITS ENTIRETY AS COUNCIL AT THE END OF THE DAY ARE FULLY RESPONSIBLE FOR ALL CERTIFICATES CONSENTS AND FEES. AND NOT PART OF TO WHICH THE DEVELOPER WOULD LIKE TO INSERT.

Condition 27

SECTION 94 CONTRIBUTION

THIS IS ANOTHER WAY TO MAKE RATE PAYERS PICK UP THE TAB WHICH MILLTHOPRE RESIDENTS DID NOT WANT TO SEE HAPPEN.

Condition 39

ROAD DESIGN

RICHARDS LANE WILL AND IS THE MAIN ROAD THROUGHOUT THIS DEVELOPMENT WE LIVE ON THE SOUTHERN SIDE OF THIS ROAD AND WHEN IT RAINS WATER GUSHES DOWN TOWARDS FENCE LINES WITH EXTREMELY LARGE POOLS OF WATER. THIS TOO WILL AND DOES NOT LOOK GOOD WITH BEING A MAIN ENTRANCE TO THIS DEVELOPMENT.

Condition 40

BUS STOPS

IN THIS CASE, the developers clearly have it WRONG. Over the past 13 years children have been catching the bus from two services from the closed down garage and being dropped off on the other side of this dangerous road and walk across. It is commonsense thinking that more children will need to use this facility. A plan must be in place to ensure the safety of children. Which Council would agree comes first and foremost.

Condition 45

PROPOSED DEDICATION OF LOT 25

THIS ISSUE HAS BEEN RAISED MANY TIMES AND HAS ALWAYS BEEN ENFORCE AS A CONDITION. THIS IS OPEN SPACE AND IS VITAL TO THIS DEVELOPMENT, TO WHICH THE DEVELOPERS HAVE BEEN REQUESTED TO SEE TO THE WHOLE TIME.

Condition 46

Pedestrian and Cycle Link.

FROM THE START OF THIS DEVELOPMENT IT HAS BEEN THE REQUEST FROM RESIDENCE THAT THIS BE PUT IN PLACE THIS CONDITION WAS AND IS IMPOSED BY BLAYNEY SHIRE COUNCIL AND MUST STAY IN ITS ENTIRETY.

Condition 48

Access to Lots

THERE SHOULD NOT BE AMENDED AS THIS IS A COMMON PRACTICE WITH BLAYNEY SHIRE COUNCIL THAT ALL ACCESS BE COMPLETED EG: ELECTRICITY, GAS, TELSTRA AND ENTRY WAYS.

Condition 55, 56, 57

INTER ALLOTMENT DRAINAGE
EASEMENTS FOR INTER ALLOTMENT DRAINAGE
DRAINAGE REQUIREMENTS

THIS MUST STAY IN ITS ENTIRITY AND NOT BE AMENDED AS IT IS CLEAR TO SEE THAT THE DEVELOPERS DO NOT WANT TO PAY. AGAIN THE DRAINAGE HAS AND IS A MAJOR CONCERN THROUGHOUT THIS PROCESS, AND MUST BE ENFORCED.

After reading the Developers request, it is clear that all of the above is just a cost cutting exercise.

I feel that at the end of the day it will be Millthorpe residents paying.

It is the residents of these small villages within the shire who have given Blayney Shire Council and its Councillors the power to ensure these areas are looked after. Millthorpes fabric needs to be looked after and not hodge podge.

kind Regards



Patricia Mckenna

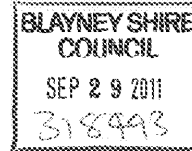
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p.1

Wayne Anthony Mckenna
"Paddington Grove"
19 Richards Lane
MILLTHORPE NSW 2798

27th September, 2011

Mr Paul O'Brien
Director environmental Services
For the General Manager
Blayney Shire Council
PO Box 62
BLAYNEY NSW 2799



Cc: Paul O'Brien, Councillors

RE: Opposition to the proposed Modification of Conditions of Consent
No. 58/2011

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weekends and public holidays. With construction eg: noise and dust
levels will travel throughout the tranquil village as it does now on
weekdays. Also I feel this will also allow a domino affect with future
construction eg: Housing.

My other concern is that the woodblind factory in Millthorpe has
restrictions on when they can operate due to noise pollution. I do not
know the hours of operation as I have to submit a letter to receive this
information. Hopefully all councillors would ask this same question.

Condition 10

EXTENSION OF PLANTING OF PLANE TREES IN PARK STREET
FROM RICHARDS LANE TO MEET THE EXISTING PLANTINGS.

29 Sep 2011 11:29AM PATWAYS TRANSPORT SERVICE 63663884

p.2

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28 Sep 2011 11:29AM PATWAYS TRANSPORT SERVICE 63663884

p. 4

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Condition 55, 56, 57

**INTER ALLOTMENT DRAINAGE
EASEMENTS FOR INTER ALLOTMENT DRAINAGE
DRAINAGE REQUIREMENTS**

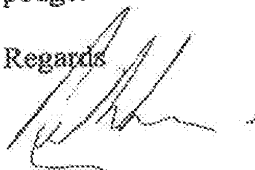
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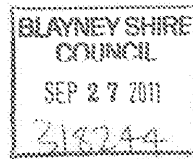
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Regards



Wayne Mckenna



The General Manager
Blayney Shire Council
P.O. Box 62
Blayney
NSW 2799

25 September 2011

DA 59/2011 : 96 Lot Subdivision

Dear Sir

We note that the developer, Marrangaroo East Pty Ltd, after agreeing to conditions imposed by Council in order to obtain consent to this development, is now seeking to renege on this agreement and has requested amendments to the conditions, and suggested that many be deleted altogether.

This is embarrassing for Council which would have assumed that with the signing of the conditions of consent the matter was settled. It now appears that Council assumed good faith on the part of the developer, and was mistaken. Having obtained the overall approval sought for the development, Marrangaroo East evidently feels it is in a position to reopen negotiations!

As you know, we have been following and commenting on this proposal, in its variously revised forms, for more than two years. Other residents of Millthorpe have been similarly interested and have commented in detail. Unfortunately these representations seem to have been without much effect.

Had Council given more weight to our earlier representations this embarrassing situation might not have arisen.

In general, the Millthorpe Village Committee feels Council was justified in imposing conditions intended to ensure that quality standards are maintained and that the community will benefit from this development, and urges Council to insist on compliance with the conditions agreed by the developer.

No special treatment or concessions should be granted to this developer, whose performance on earlier projects has been less than satisfactory.

Most particularly, Council should insist most strongly on conditions pertaining to roads, drainage and flood control - which were found to be defective in the recent Stabback/Unwin Streets subdivisions.

We also urge Council to insist on compliance with Condition 46, "Pedestrian and Cycle Link". The Millthorpe Village Committee has been very critical of the lack of public space and community facilities in the DA. Lot 25, now the only space allocated for public use in the development will remain mostly unusable without this access.

There are several other points in the letter from MPF Surveying that we regard as having serious implications, and which we would like to discuss with Council staff. We would therefore welcome a meeting when staff have assessed the impact of the various amendments and deletions requested, but before a recommendation has been made to Council.

Thank you for your attention to this submission.

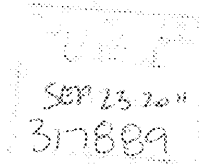
Yours truly



John Mason
President, Millthorpe Village Committee

22 September 2011

Blayney Shire Council
91 Adelaide Street
BLAYNEY NSW 2799



N & J Irvine
34 Crowson Street
MILLTHORPE NSW 2798

Re: Modifications to Development Application 59/2011

Dear Sir/Madam,

We recently received a letter from council about the proposed development for north Millthorpe and wish to raise a number of concerns in regards to the DA.

No: 5 Hours of construction – It is totally unacceptable to extend this for an extra hour as there are already 12 hours a day that residents in the near vicinity have to tolerate the noise and activity, which given the size of the development could extend for a number of years. Young families in particular need the opportunity to settle their children to bed at a reasonable hour without having the inconvenience of construction noises to make this very important family task manageable.

No: 10 Extension of planting of Plane trees – It is important that the council considers this point but what the council is proposing is unclear. The idea that the new development merges into the existing landscape and does not appear as an isolated appendage to the village is important and at least continuing the plane trees along Park Street to Richards Lane would at least obscure the view of a brand new housing estate that is not in sympathy with the heritage look of Millthorpe.

No: 27 Section 94 contribution – If the applicant is trying to reduce section 94 contributions this is unacceptable.

No: 41 Road Construction – Given the state of many of the roads in the shire area it is imperative that the council does not divert any of its funds from any other programs to subsidise the developer in this project. It must be incumbent on the developer to make sure roads and servicing the development for suitable traffic loads is properly undertaken and not the responsibility of the rate payers of the Blayney Shire.

No: 46 Pedestrian and cycle line – to use the argument that a cycle path would impact on storm water flows is unacceptable. Engineers are more than capable of finding a solution when the will is there. The potential benefits of such a path, far outweighs the so called problems that can be overcome.

No: 55 Inter-allotment drainage – according to the Australian Bureau of Statistics, the average Australian house size is 264 metres squared. The provision of water tanks under BASIX is a null point as these tanks are never empty and rarely exceed 2 000 litres. Millthorpe regularly gets summer storms where 30mm or more of rainfalls in a short period of time. In a situation where the tank is

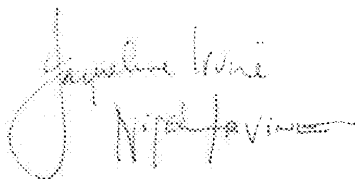
full from a previous storm , the simple mathematics shows that a 30mm rainfall event on a 264 metre square roof will produce nearly 8 000 litres of water that needs to disperse. Provision needs to be made for water in excess of 8 000 litres to be dispersed onto land while minimising storm water impacts.

These are merely concerns that address the actual DA rather than our overriding concern in regards to the whole concept of the development itself and its impact on the integrity of Millthorpe and its heritage, about which we have previously written to council.

It is also of concern that the letter sent by council did not have an address for submissions to be sent nor do they have the details of this DA easily accessible other than by a visit to Blayney and the Shire chambers. In this modern age of communications it is surely not unreasonable to expect that this information cannot be accessible on the council website.

We trust that these comments along with those of others in Millthorpe will enable the council to make sensible decisions in regard to this contentious development.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel J. Vincent'. The signature is written in a cursive style with a large initial 'N'.

General Manager
Blayney Shire Council
PO box 62
Blayney NSW 2799

19/9/11

Michael Uttley
Richards Lane
Millthorpe NSW 2798
02 63 663 407



RE: Development Application 59/2011 Modification – Richards and Springvale Lanes Millthorpe

Dear Paul

Re the recent amendments to the above application I would like to take exception to some of the amendments

5. There is no reason given to extend the hours of construction. Developments of this size and associated traffic and noise will impose not just on nearby residents but on the tourist trade which is a vital resource for this small community on Saturday afternoons, Sundays and Public Holidays. The increase in traffic will also significantly increase the risk of accidents when the town receives many out of town visitors and children are out and about on the public roads including Richards and Springvale Lanes.

11. Landscaping needs to remain part of the proposal until such time the subdivided blocks have been purchased and landscaping of the blocks can become the responsibility of the new owners. If the lots are not purchased they need to be maintained either by council or the developers.

40. The information is incorrect. Currently there are already 3 children who utilize a bus service at Richards Lane and a fourth soon (across 2 separate bus services). There is no bus stop or area to escape inclement weather. With the number of blocks on plan this number will increase considerably and it is quite possible a bus route will be diverted through the development.

46. This is a key bike/walkway for Millthorpe residents and pedestrians need the ability to get off the road through a cycle/walkway. Further residents will compound the issue. There needs to be a circular track that extends from Millthorpe Public School along Park Street to Richards Lane continuing to the end of seal of Crowson Street.

55-57. This is a major concern. Living in Richards Lane run off is already an issue and inadequate drainage could compound this further. Our driveway has washouts as currently run off from Richards Lane enters our driveway causing considerable damage. Richards Lane itself is under considerable repair from wash outs at the Crowson St end much of the year through inadequate drainage. Drainage points will be required as the increase in hard surface areas and shorter pasture/lawn length will considerably increase run off especially when soils are at saturation point which is most of winter in Millthorpe.

Finally while not an amendment I would like council to consider issue 43 whereby the Parks St end of Richards Lane is not to be reconstructed until lots 9-96 begin. Reconstruction needs to be undertaken at the start of any work as the main thoroughfare and access point will be Park St for all construction vehicles. It is the logical entry point for any vehicle accessing any part of the subdivision, especially trucks, as it avoids town. It is also the most direct route from Orange. Today as some 20 loads of earth was being dumped at the end of Richards Lane the traffic noise and dust was considerable. If road reconstruction is not to happen until lots 9-96 pass then what guarantee do we have from council the Parks end of Richards Lane will not be used as the main thoroughfare?

All these amendments appear to be cutting corners where no dollar return can be made for the developer eg landscaping, walkways, bikeways, bus stops etc. Conversely every amendment looks to disadvantage local and town residents. I hope they are not passed.

Regards

Michael Uttley

COMMITTEE REPORTS
PRESENTED TO THE BLAYNEY SHIRE COUNCIL
MEETING HELD ON MONDAY, 13 FEBRUARY 2012



26) **MINUTES OF THE BLAYNEY SHIRE ACCESS COMMITTEE MEETING - 8 DECEMBER 2011**
(Director Corporate Services)

RECOMMENDED:

1. That the Minutes of the Blayney Shire Access Committee Meeting held 8 December 2011 be received and noted.

REPORT

The Blayney Shire Access Committee held a meeting on Thursday 8 December 2011, at Neville Siding, Neville. A copy of the minutes from this meeting is provided as an attachment to this business paper.

BUDGET IMPLICATIONS

A budget allocation of \$1,000 exists for Access activities and will be drawn upon for brochure production should Council adopt this report.

POLICY CONSIDERATIONS

Nil effect.

Attachments

- 1 Minutes of Access Committee meeting 8 December 2011 1 Page

27) **MINUTES OF THE BLAYNEY SHIRE TOURISM COMMITTEE MEETING - 12 JANUARY 2012**
(Director Corporate Services)

RECOMMENDED:

1. That the Minutes of the Blayney Shire Tourism Committee meeting held 12 January 2012 be received and noted.
2. That Council be encouraged to develop procedures and guidelines for temporary signage pertinent to business in the Shire.
3. That the Carcoar Village Committee be approached to make a contribution towards Historic Carcoar signage and that investigation of further funding options for historic signage costs be explored.

REPORT

The Blayney Shire Tourism Committee held their meeting on Thursday 12 January 2012, at the Cottage. A copy of the minutes from this meeting is provided as an attachment to this business paper.

BUDGET IMPLICATIONS

Nil effect.

POLICY IMPLICATIONS

Nil effect.

Attachments

- 1 Minutes of Tourism Committee meeting 12 January 2012 2 Pages

28) **MINUTES OF THE BLAYNEY SHIRE YOUTH COUNCIL - 6 DECEMBER 2011**
(Director Corporate Services)

RECOMMENDED:

1. That the minutes of the Youth Council Meeting held on 6 December 2011 be received and noted.
2. That the appointment of Jordan Lane to the 2012 NSW Youth Week Young Peoples Advisory Committee be noted.
3. That Council seek expressions of interest from the community to conduct Youth Week Activities for 2012.
4. That the Blayney Shire Youth Council endorse the draft 2025 Community Strategic Plan strategic objectives.
5. That the nominations from Blayney High School and Community be accepted and they be appointed to the Blayney Shire Youth Council.

REPORT

The Youth Council held their first meeting under the new model on Thursday 6 December 2011 at the Blayney High School. A copy of the minutes from this meeting is provided as an attachment to this business paper.

The Youth Council comprises a mix of members from the Student Representative Council (years 8 – 11), School Captains, Future Leaders program and community representatives. Names of

SCHOOL REPRESENTATIVES:

Atticus Strong
Jordan Ryan
Elody Hulmeo
Sam Jones
Demi Chapman
Indiana Strong
Sarah Adams
Gabbriella Zideluns
Connor Andree- Evarths
Toby Colson
Michaela Hatch
Laura Reeks
Matthew Death

COMMUNITY REPRESENTATIVES:

Meg Summerson - Blayney Youth Group
Jordan Lane
Cathleen Schmarr

BUDGET IMPLICATIONS

Nil effect.

POLICY CONSIDERATIONS

Nil effect.

Attachments

1 Blayney Shire Youth Council minutes 6 December 2011 1 Page

Cr BR Kingham
MAYOR

Mr GA Wilcox
GENERAL MANAGER

**MINUTES OF THE MEETING OF BLAYNEY SHIRE ACCESS COMMITTEE
HELD AT NEVILLE SIDING ON 8 DECEMBER 2011**

The meeting commenced at 5:45pm.

1. Present:

Clr. Scott Ferguson	Tania Wills	Betty Wilson
Clr. Allan Ewin	Iris Dorsett	Anton Franze (DCS)
Val McGarthy		

2. Apologies: Jenny McMahon

RESOLVED: That the apology tendered on behalf of Jenny McMahon for her non attendance at the meeting be accepted and leave of absence granted. (Ewin / Wilson)

3. Adoption of Minutes

RESOLVED: That the minutes of the meeting held on 13 October 2011 be received and noted as a true and accurate record. (Wilson / McMahon)

4. Matters Arising from Previous Minutes

- Access Strategy for adoption in February 2012. Two or three questions to be developed to accompany feedback correspondence to community groups (for email to committee as well).

5. Budget Allocation

- Mobility Scooter Forum on Wednesday 21 March 2011. During Seniors Week (no need for funding from Access Committee).
- Brochure development for 'missed business' with self-audit section was discussed. Brochure to cover: self audit; FAQs; Council support; executive summary; missed business; Council information/overview; feedback page; other information/contact list.
RESOLVED: That the draft brochure on missed business be prepared for printing. (Wills / Ferguson) (Action: Ferguson / Dorsett)

6. Presentation on BCA Requirements

- That a presentation on the new BCA requirements be organised early in the new year. (Ewin / McCarthy) (Action: Dorsett)

7. Next meeting

Next meeting is to be held at the Blayney Tourist and Community Information Centre on Thursday 9 February 2012, commencing 5:30pm.

Meeting closed at 6.47pm.

**MINUTES OF THE MEETING OF THE BLAYNEY SHIRE TOURISM COMMITTEE
HELD IN THE 'COTTAGE' ON THURSDAY 12 JANUARY 2012**

The meeting commenced at 5.00pm

1. Present

Clr Kevin Radburn, Betty Wilson, Elizabeth Russ, Ena Norris, Cathy Griffiths, Karen Somerville, Clr Allan Ewin, Glenn Wilcox, Iris Dorsett, Anton Franze and David Kennedy.

2. Apologies

Tom Williams and Howard Sinclair

RESOLVED: That the apologies be accepted. (Wilson / Russ)

3. Adoption of Minutes of the Previous Meeting

RESOLVED: The minutes of the previous meeting held on the 10 November 2011 be received and noted as a true and accurate record. (Griffiths / Dorsett)

4. Matters Arising

Christmas Lights: Certificates and prizes awarded. Unfortunately there was some negative publicity however participation was good.

Signage: Response regarding signage and temporary promotional flags in business districts.

RESOLVED: That Council be encouraged to develop procedures and guidelines for temporary signage pertinent to business in the Shire. (Kennedy / Somerville)

5. Historic Carcoar and Windfarm Signage

RESOLVED: That Council approach Carcoar Village Committee to make a contribution towards Historic Carcoar signage and that Council consider investigation of further funding options for historic signage costs. (Wilson / Kennedy)

6. Event Support Group - Taste Orange

- Group established by Taste Orange to assist event organisers.
- ESG information session - 21/02/2012 - Carcoar School of Arts

RESOLVED: That the report on ESG be noted. (Dorsett / Noted)

7. Other matters

RESOLVED:

- That the Parks and Gardens staff be acknowledged for their work and great presentation of the Shire; and
- That the work on Newbridge Road be commended; and
- That Ena Norris be acknowledged and a letter of thanks be sent to Blayney High School for development of the Blayney Tourism brochure. (Kennedy / Russ)

8. Future Agenda Items

- Billy Soo Memorial Park and Picnic Area
- Wetlands Area - Heritage Park
- Removal parking signs

9. Next meeting

The next meeting is scheduled for Thursday 8 March 2012

Meeting closed at 6.23pm.

Placeholder for Attachment 1

Committee Reports No. 28

Blayney Shire Youth Council minutes 6 December 2011

1 Pages

CONFIDENTIAL MEETING REPORTS
PRESENTED TO THE BLAYNEY SHIRE COUNCIL
MEETING HELD ON MONDAY, 13 FEBRUARY 2012



- 29) **FINALISATION OF LEGAL ACTION - STAFF MEMBER**
This matter is considered to be confidential under Section 10A(2) (a) of the Local Government Act, as it deals with personnel matters concerning particular individuals.
- 30) **GENERAL MANAGER'S PERFORMANCE REVIEW COMMITTEE**
This matter is considered to be confidential under Section 10A(2) (a) of the Local Government Act, as it deals with personnel matters concerning particular individuals.