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**ITEM 24 - MODIFICATION DA 2018/0151/2 - AMEND OR DELETE
CONDITION 14 - LOT 3 DP 591749, 2951 THE ESCORT WAY, BOREE.**

REPORT IN BRIEF

Reason For Report	To obtain council determination of the modification application
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	4.5.3.a - Assess and determine planning and development applications to foster community growth within the shire
Annexures	1. Notice of Refusal - 2018/0151/2 - Lot 3 DP 591749, 2951 The Escort Way, Boree ↓
File Number	\\Development Applications\\DEVELOPMENT APPLICATION\\2018\\03-2018-0151 - 1368864

RECOMMENDATION

THAT Modification of Development Application 2018/0151/2 to amend condition 14 of the development consent be refused, as council cannot issue a partial occupation certificate as requested, and that the requirements to adequately address road access and public road safety matters should be retained.

DEPUTY GENERAL MANAGER - CABONNE SERVICES REPORT

ADVISORY NOTES

Record of voting

In accordance with s375A of the Local Government Act 1993, a division is required to be called when a motion for a planning decision is put at a meeting of Council or a Council Committee. A division under s375A of the Act is required when determining this planning application.

Political Disclosures

In accordance with s10.4 of the Environmental Planning and Assessment Act 1979, a person making a planning application to Council is required to disclose political donations and gifts made within 2 years prior to the submission of the application and concluding when the application is determined.

In accordance with s10.5 of the Environmental Planning and Assessment Act 1979, a person making a public submission to Council in relation to a planning application made to Council is required to disclose political donations and gifts

made within 2 years prior to the submission being made and concluding when the application is determined.

Political donations and gifts (if any) to be disclosed include:

- All reportable political donations made to any local councillor or Council,
- All gifts made to any local councillor or employee of the Council.

Nil planning application disclosures have been received.

Nil public submission disclosures have been received.

SUMMARY

The following report provides an assessment of the modification application submitted for a dual occupancy development upon Lot 3 DP 591740 known as 2951 The Escort Way, Boree.

The application has been referred to the Council for determination as it is recommended that the application be refused.

Applicant: Suzanne & Anthony Maple-Brown on behalf of Backas Pty Ltd
Owner: Backas Pty Ltd (formerly Rockend Pty Ltd)
Proposal: Deletion or modification of condition 14 of development consent
Location: Lot 3 DP 591740 known as 2951 The Escort Way, Boree.
Zone: RU1 Primary Production

Background

Development consent was issued on 29 May 2018 for construction of a second dwelling upon the property known as 'Boree Cabonne'. The development was modified on 23 November 2018 and a Construction Certificate was issued by council on 2 April 2019. The dual occupancy has been constructed.

To obtain an Occupation Certificate all conditions of development consent must have been complied with. Condition 14 of the development consent was imposed by RMS and required certain road works affecting the property access to The Escort Way. These road works remain outstanding, and an occupation certificate cannot be issued.

THE PROPOSAL

The proponent seeks to modify the development consent (particularly removal of Condition 14) to avoid need to construct dedicated left & right-hand turn lanes to new driveway entrance for the dual occupancy and to allow the issue of an Occupation Certificate.

The proponent has stated:

The owners would like to apply to Cabonne Council to modify DA2018/151 so that they are able to either:

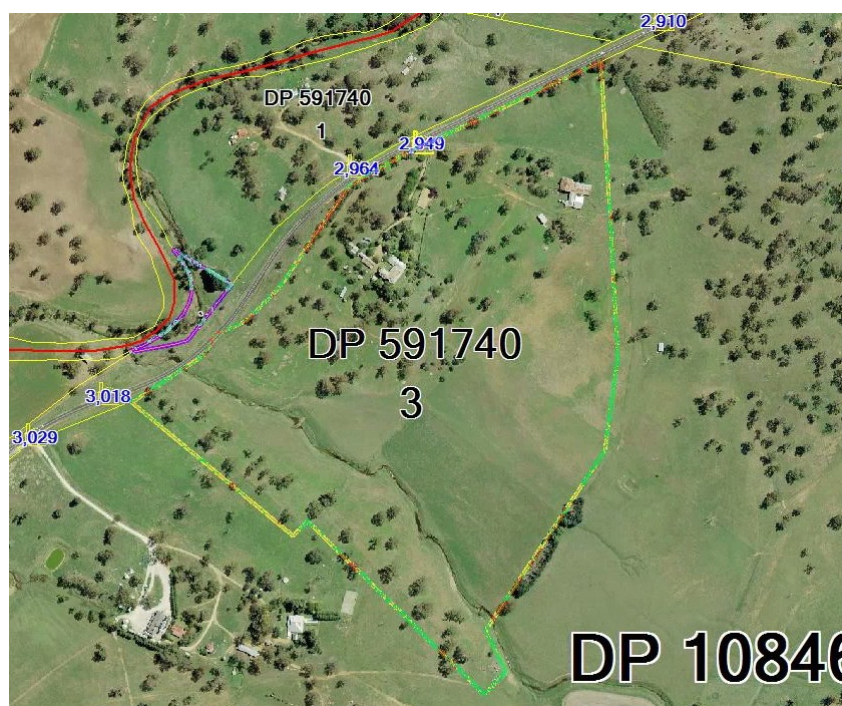
OPTION A: Remove Condition 14 (on the basis that TfNSW will be constructing those works so no condition is required) with no further conditions so the Applicant can seek a final Occupation Certificate; or

OPTION B: Remove Condition 14 but add a condition that the dwelling is not to be used for 'commercial purposes' (such as short-term rental accommodation, B&B or the like) until such time as the BAL/BAR is constructed so the Applicant can seek a final Occupation Certificate; or

OPTION C: (less preferred) Word the consent so it allows an interim/partial Occupation Certificate for the Dual Occupancy while they await the construction of the BAL/BAR by TfNSW if this pathway is suitable.

The proponent has been advised that Transport for NSW may undertake the construction works within the next 2 years, and that TfNSW is willing to agree to a modification to the consent to allow occupation of the dwelling prior to the BAL/BAR intersection being constructed by TfNSW with details to be sorted out during the assessment, subject to the building not being used for commercial purposes including short term accommodation rental.

Site Map





14 - INTERSECTION UPGRADES (AMENDED BY DA2018/0151/1)

- Safe Intersection Sight Distance (SISD) requirements outlined in the *Austroads Guide to Road Design Part 4A* and relevant Roads and Maritime supplements is to be provided at the vehicular access looking east along the Escort Way. For a 100km/h speed zone the minimum SISD is 262 metres.
- Maximum sight distance available is to be provided and maintained at the western approach to the access. As a minimum, Safe Stopping Distance (SSD) requirements outlined in *Austroads Guide to Road Design Part 4A* is to be provided and maintained. For a 100km/h speed environment, SSD is 132 metres.
- A basic right (BAR) turn treatment as shown in Figure A 28 of the *Austroads Guide to Road Design: Part 4* (copy enclosed) is to be provided in the Escort Way at the access intersection. The widened shoulder is to be sealed and built for a 100km/h speed environment to provide a reasonable level of safety for traffic turning right into the site and to allow following traffic an area to pass the right turning vehicle on the left hand side.
- Prior to the issuance of an occupation certificate, a Basic Left (BAL) turn treatment as shown in Figure 8.2 Part 4A of *Austroads Guide to Road Design* (copy enclosed), and relevant Roads and Maritime supplements, is to be provided at the intersection of the vehicular access with the

Escort Way. The BAL facility and the access are to be sealed a minimum of 10 metres from the edge of the Escort Way travel lane and built for a 100km/h speed environment.

- Installation of a "Concealed Driveway" sign on the western approach of the access, located 250 metres from the proposed property access. The sign is to include a distance indicator of "250m", mounted beneath the sign to give motorists, in particular, motorists unfamiliar with the access and the Escort Way, awareness of the access, decreasing the risk of a crash occurring at this location.
- Prior to the issuance of an Occupation Certificate, the existing vehicular access servicing the subject land is to be permanently closed, removed and revegetated to match existing roadside vegetation.
- The Escort Way is a state road and the developer will be required to undertake private financing and construction of works on a road in which Roads and Maritime Services has a statutory interest. A formal agreement in the form of a Works Authorisation Deed (WAD) is required between the developer and Roads and Maritime Services prior to works commencing.
- Prior to the commencement of construction work, the proponent is to contact Roads and Maritime's Field Traffic Manager to determine if a Road Occupancy Licence (ROL) is required. In the event that an ROL is required, the proponent is to obtain the ROL prior to works commencing within three (3) metres of the travel lanes in the Escort Way

(Reason: To ensure the safe vehicle access is available to the subject site)

The owners would like to apply to Cabonne Council to modify DA2018/151 so that they are able to either:

Option A: Remove Condition 14 (on the basis that TfNSW will be constructing those works so no condition is required) with no further conditions so the Applicant can seek a final Occupation Certificate; or

Option B: Remove Condition 14 but add a condition that the dwelling is not to be used for 'commercial purposes' (such as short-term rental accommodation, B&B or the like) until such time as the BAL/BAR is constructed so the Applicant can seek a final Occupation Certificate; or

Option C: (less preferred) Word the consent so it allows an interim/partial Occupation Certificate for the Dual Occupancy while they await the construction of the BAL/BAR by TfNSW if this pathway is suitable.

Comment: The condition of consent was required to address safety issues of traffic entering / existing the Boree Cabonne accessway to The Escort Way. The development application was for a dual occupancy.

There is no ability to do as requested and issue a partial compliance certificate. An occupation certificate cannot be issued to permit occupation of the dwelling, while ignoring the condition of consent addressing road access and public safety.

While TfNSW may have been contracted by the proponent to carry put the road works, the indication is that this work may be up to 2 years away.

Council is unable to prohibit use of the building if that land use is permissible via the provisions of the Cabonne LEP 2012 or State Environmental Planning Policies (short term accommodation).

It is recommended that Condition 14 be retained as written.

MATTERS FOR CONSIDERATION

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* requires Council to consider various matters in relation to modifying the approved development consent, of which those pertaining to the application are listed below.

The proposed modification has been assessed as a 4.55(1A) modification due to the minor environmental impacts that the minor modifications will have on the subject site or adjoining allotments.

(1A) Modifications involving minimal environmental impact

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

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

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

PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT

s4.15(1)(a)(i)

Cabonne Local Environmental Plan 2012

Clause 1.2 Aims of the Plan

The broad aims of the LEP are as follows:

(a) to encourage development that complements and enhances the unique character and amenity of Cabonne, including its settlements, localities, and rural areas,

(b) to provide for a range of development opportunities that contribute to the social, economic and environmental resources of Cabonne in a manner that allows present and future generations to meet their needs by implementing the principles of ecologically sustainable development,

(c) to facilitate and encourage sustainable growth and development that achieves the following:

(i) contributes to continued economic productivity, including agriculture, business, tourism, industry and other employment opportunities,

(ii) allows for the orderly growth of land uses while minimising conflict between land uses within the relevant zone and land uses within adjoining zones,

(iii) encourages a range of housing choices and densities in planned urban and rural locations that is compatible with the residential and rural environment and meets the diverse needs of the community,

(iv) promotes the integration of land uses and transport to improve access and reduce dependence on private vehicles and travel demand,

(v) protects, enhances and conserves agricultural land and the contributions that agriculture makes to the regional economy,

(vi) avoids or minimises adverse impacts on drinking water catchments to protect and enhance water availability and safety for human consumption,

(vii) protects and enhances places and buildings of environmental, archaeological, cultural or heritage significance, including Aboriginal relics and places,

(viii) protects and enhances environmentally sensitive areas, ecological systems, and areas that have the potential to contribute to improved environmental, scenic or landscape outcomes.

Clause 1.9A Suspension of covenants, agreements and instruments

This clause provided that covenants, agreements or other similar instruments that restrict the carrying out of development upon the subject land do not apply unless such are:

- *Covenants imposed or required by council*
- *Prescribed instruments under s183A of Crown Lands Act 1989*
- *Any conservation agreement under National Parks and Wildlife Act 1974*
- *Any trust agreement under the Nature Conservation Trust Act 2003*
- *Any property vegetation plan under the Native Vegetation Act 2003*
- *Any biobanking agreement under Part 7A of the Threatened Species Conservation Act 1995*

- *Any planning agreement made under Section 7.4 of the Environmental Planning & Assessment Act 1979*

Mapping

The subject site is identified on the LEP maps in the following manner:

Land zoning map	Land zoned RU1 Primary Production
Lot size map	Minimum lot size 100 Ha
Heritage map	Is a heritage item (I007)
Terrestrial Biodiversity Map	Has biodiversity sensitivity on the subject land
Flood planning map	Not within a flood zone
Natural resource – karst map	Not within a karst area
Drinking water catchment map	Not within a drinking water catchment area
Riparian land and watercourse map, groundwater vulnerability map	Groundwater vulnerable and affected by riparian land/ watercourse
Land reservation acquisition map	Not applicable.

These matters are addressed in the report following.

Cabonne Local Environmental Plan 2012

The subject land is zoned RU1 Primary Production by the Cabonne Local Environmental Plan 2012. A *Dual Occupancy (Detached)* is permissible within this zone, subject to Council's development consent.

Dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).

Dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

Dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Objectives of the RU1 Primary Production zone

The proposal is not contrary to the aims of the LEP or the objectives of the RU1 zone. The development relates to and is consistent with the zone objectives which seek to:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To enable function centres, restaurants or cafes and appropriate forms of tourist and visitor accommodation to be developed in conjunction with agricultural uses.*

Part 4 – Principal development Standards

The proposed modification does not alter compliance with the Development Standards.

Part 5 – Miscellaneous provisions

Clause 5.10 Heritage conservation

The proposed modification does not impact the heritage significance of the site.

Part 6 – Additional local provisions

Clause 6.8 Essential services

The proposed modification does not impact the previous assessment.

REGIONAL ENVIRONMENTAL PLANS

There are no Regional Environmental Plans that apply to the subject land.

STATE ENVIRONMENTAL PLANNING POLICIES

While several SEPPs apply to the land, the modification has no impact.

PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT THAT HAS BEEN PLACED ON EXHIBITION s4.15(1)(a)(ii)

There are no draft environmental plans that relate to the subject land or proposed development.

PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s4.15(1)(a)(iii)

Development Control Plan No 5 – General Rural Zones applies to this development.

The proposed modification does not alter compliance with the DCP.

PROVISIONS PRESCRIBED BY THE REGULATIONS s4.15(1)(a)(iv)

The proposed modification does not contravene the relevant provisions of the regulations.

THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)

Siting & Location

The proposed modifications will not have an adverse impact on the siting or location of the development.

Flora and Fauna

No impacts as a result of this modification.

Access & traffic

The modification will have the potential to impact road safety, as assessed via the initial application and the first modification.

As stated earlier in this report, condition 14 of the existing development consent was imposed to address safety issues for traffic entering / existing the Boree Cabonne property accessway to The Escort Way.

There is no ability to support the proponent's request to amend Condition 14 to enable issue of an occupation certificate while leaving the traffic access requirements for a later completion date. Nor can council issue a partial compliance certificate that enables full residential occupation of the building but setting aside the compliance with the traffic access provisions.

While TfNSW may have been contracted by the proponent to carry put the road works, the indication is that this work may be up to 2 years away.

Council is unable to prohibit use of the building if that land use is permissible via the standard provisions of the Cabonne LEP 2012 or State Environmental Planning Policies (short term accommodation). The initial assessment by the then RMS indicated that the additional use of the property for dual occupancy required significant upgrade works to enable safe ingress/egress to the property from The Escort Way. Occupation of the dwelling, without addressing the identified road safety matters is not supported.

It is recommended that Condition 14 be retained as written.

Services

The modification will not impact upon the provision of essential services.

THE SUITABILITY OF THE SITE s4.15(1)(c)

Physical Attributes and Hazards

There are no known technological or natural hazards that would affect the proposed development.

DEVELOPMENT CONTRIBUTIONS

No changes to the developer contributions.

ANY SUBMISSIONS MADE IN ACCORDANCE WITH THE ACT s4.15(1)(d)

The proposed development is not advertised development. The proposed development was not neighbourhood notified.

PUBLIC INTEREST s4.151)(e)

The proposed development is considered to be of minor interest to the wider public due to the relatively localised nature of potential impacts.

CONCLUSION

A section 4.55(1A) assessment of the development indicates that the modification request cannot be supported, based upon road safety issues. Attached is a draft Notice of Refusal.



NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION
Environmental Planning and Assessment Act 1979 Section 4.18

DEVELOPMENT APPLICATION

Application Number: 2018/0151/2

Applicant Name: Suzanne & Anthony Maple-Brown on behalf of Backas Pty Ltd

Applicant Address: 2951 The Escort Way, Boree NSW 2800

Owner: Backas Pty Ltd (formerly Rockend Pty Ltd)

Land to be Developed: Lot 3 DP 591740 known as 2951 The Escort Way, Boree

Proposed Development: Deletion or modification of condition 14 of development consent

Assessment Number: A4860

DETERMINATION

Made on: 22 March 2022

Determination: Application Refused



A WBC STRATEGIC ALLIANCE PARTNER
"WORKING FOR OUR COMMUNITIES".



REASONS OF REFUSAL

Council cannot issue a partial occupation certificate as requested, and that the requirements to adequately address road access and public road safety matters should be retained as set out in Condition 14 of the Development Consent 2018/0151/1.

Right of Appeal: If you are dissatisfied with this decision, Section 8.7 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court. Pursuant to Section 8.10 an applicant may only appeal within six (6) months after the date on which the decision is notified.

Signed

(On behalf of Consent Authority)

HJ Nicholls
Deputy General Manager – Cabonne Services

22 March 2022