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CONFIDENTIAL ITEMS

Clause 240(4) of the Local Government (General) Regulation 2005 requires Council to refer any business to be considered when the meeting is closed to the public in the Ordinary Business Paper prepared for the same meeting. Council will discuss the following items under the terms of the Local Government Act 1993 Section 10A(2), as follows:

**ITEM 7 REQUEST FOR REDUCTION IN WATER CONSUMPTION
COSTS ON ACCOUNT 893000000**

(b) matters in relation to the personal hardship of a resident or ratepayer

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**ITEM 27 - DEVELOPMENT APPLICATION 2023/0047 - SUBDIVISION - LOT
68 DP 75036575, 494 WILLIAMSONS ROAD, LEWIS PONDS**

REPORT IN BRIEF

Reason For Report	For council determination.
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	3.1.1.1a - Receive and assess Development Applications.
Annexures	1. Draft Conditions DA2023 0047 ↓
File Number	\\Development Applications\DEVELOPMENT APPLICATION\2023\03-2023-0047 - 1486473

RECOMMENDATION

THAT:

- (1) Development Application 2023/0047 for the subdivision of Lot 68 DP 75036575 and known as 494 Williamsons Road, Lewis Ponds, be granted consent subject to the conditions attached, and
- (2) That the request submitted under s4.6 of the Cabonne LEP 2012 to vary the minimum lot size standard from 100ha to 96.2ha is supported.

DEPARTMENT LEADER - DEVELOPMENT 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(4) 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 has been prepared by council's contract town planner and provides an assessment of the development application submitted for the subdivision of land know as Lot 68 DP 75036575, 494 Williamsons Road Lewis Ponds.

The application has been referred to council for determination as it includes a request to vary the development standard relating to the minimum lot size under clause 4.6 of the Cabonne Local Environmental Plan 2012 (CLEP). In addition, there have been five (5) submissions received in relation to the proposed development. The submissions were concerned with the posted speed limits on Belgravia Road rather than the subdivision.

The application is *integrated development* for the purpose of section 100B of the *Rural Fires Act 1997* and General Terms of Approval have been received from the Rural Fire Service (RFS).

The clause 4.6 variation seeks a variation to the minimum lot size for proposed Lot 11 from 100 ha to 96.2ha. The written request provides sufficient justification for the variation and it has been supported.

The submissions have been considered and addressed.

It is recommended that the application be approved subject to conditions of consent.

Applicant: Premise Australia Pty Ltd

Owner: Fred Jeloudev

Proposal: Subdivision

Location: Lot 68 DP 75036575, 494 Williamsons Road Lewis Ponds.

Zone: RU1 Primary Production

Proposed Development

Council's consent is sought for the subdivision of the site into 3 lots as follows with an area of 100.4 (Lot 11), 96.2 (Lot 12) and 191.9 (Lot 13) hectares.

The proposed subdivision is based upon existing fence lines.

The proposed lots have frontage to Williamsons Road.

There is an existing dwelling on the land that will be accommodated within proposed Lot 12. The subdivision will create the opportunity for dwellings on

proposed Lots 11 and 13. Areas have been identified as suitable for the siting of dwellings including on-site waste water treatment.

The site is zoned RU1 Primary Production with a MLS of 100 ha. Subdivision is permissible with consent.

Adjoining landowners were notified and the application placed on public exhibition for 14 days between 21 September 2022 and 11 October 2022. There were five submissions received in response to the proposal. The key issues raised related to the condition of the road, minimum lot size, bushfire, location of fence lines and impact of future buildings. These issues are discussed further in this report.

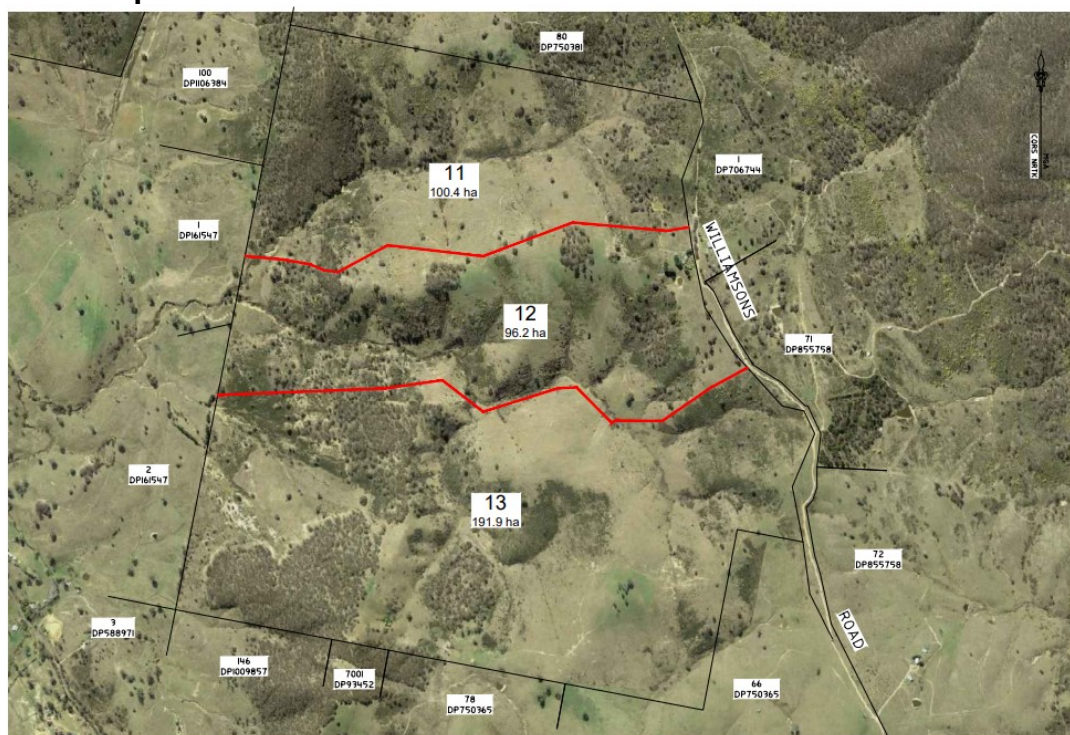
The application was referred to the RFS. The RFS has provided General Terms of Approval for the Bushfire Safety Certificate which will be incorporated into the determination.

The proposal was referred to Bathurst Regional Council who have provided a condition in relation to access to Williamsons Road.

The proposal has been assessed in accordance with the relevant provisions of section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposal complies with the relevant aims, objectives of the *Cabonne Local Environmental Plan 2012* (CLEP 2012).

Figure 1: Proposed Subdivision



LEGEND:
 PROPOSED BOUNDARY

Surveyor: PHILIP H. SEARL Date of Survey: Surveyor's Ref: 221937-0H	PLAN OF SUBDIVISION OF LOT 68 IN DP750365	LGA: CABONNE Locality: LEWIS PONDS Subdivision No: <small>Lengths are in metres. Reduction Ratio 1:7500</small>	Registered DP
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Site

The subject site has an irregular shape with an area of approximately 388 hectares and a single road frontage of 1.795 kilometres to Williamson Road. Williamsons Road is a Bathurst Regional Council local road. The site features undulating topography with level and gentle slopes located along the Williamson Road and western boundaries and in the southern portion of the site.

Steeper slopes are predominantly located centrally within the site falling to Deep Creek and its tributaries. Vegetation is predominantly concentrated within the steeper portions of the site. Built form is limited to a single dwelling house "Tyrall Eagle" and associated structures near the Williamsons Road boundary. Three dams are located within the site include one immediately to the south of the existing dwelling house, another approximately 200 metres to the north of the dwelling house and the third near the southern portion of the western boundary.

NSW Legislation

The following NSW legislation applies to the proposal:

Environmental Planning and Assessment Act, 1979

Rural Fires Act, 1997

Biodiversity Conservation Act, 2016

The relevant legislation is discussed in relation to the specific assessment triggers below.

Environmental Planning and Assessment Act 1979 - Section 4.15(1)

The following is a summary of the assessment of the application in accordance with section 4.15 of the EP& A Act.

Section 4.15(a)(i) the provisions of any environmental planning instrument

The relevant State Environmental Planning Policies are discussed below.

State Environmental Planning Policy (Resilience and Hazards) 2021(incorporates former State Environmental Planning Policy No 55 - Remediation of Land)

The site is potentially contaminated under the Management Contaminated Land Guidelines section 3.2, Table 1 having been historically used for agriculture.

The SEE addresses the SEPP as follows:

The proposed development does not include any building works and therefore will not disturb any contaminated soils. Any future DA for dwelling houses and associated structures is unlikely to disturb contaminated soils on the basis that:

- *There are no recorded contaminated sites in Lewis Ponds, Byng, Freemantle or Rock Forest under the NSW EPA List of Notified Sites (last updated 8 August 2022, searched 30 August 2022) or Contaminated Land Record of Notices (searched 30 August 2022); and*
- *Building footprints have been positioned on generally level ground to minimise excavation for future dwelling houses and therefore minimise the likelihood of disturbing contaminated soils if present.*

The potential for site contamination is low given both the historic use of the site for grazing.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

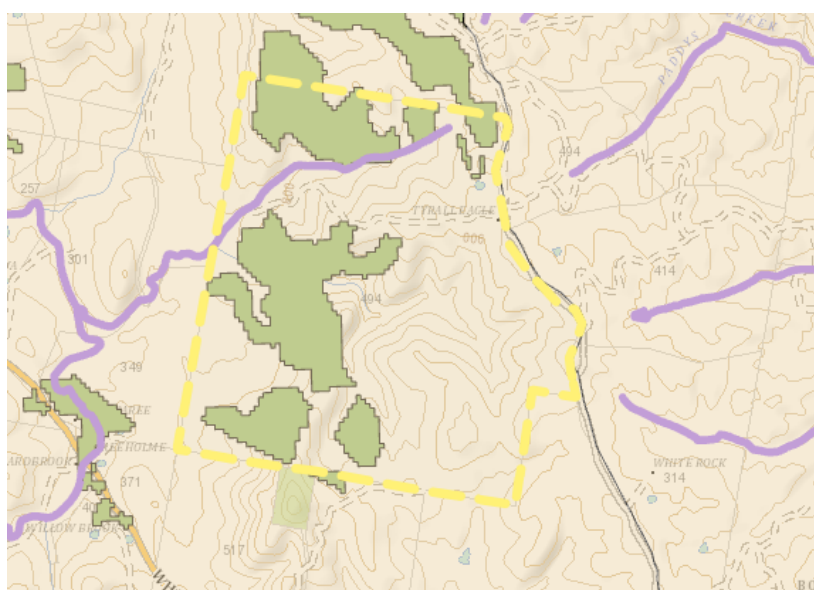
Chapter 3 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to koala habitat protection.

The SEPP is considered in the Biodiversity Assessment Report that accompanies the development application. The Biodiversity Assessment Report found that the site does not constitute core koala habitat and the loss of habitat across the site is not anticipated to have any significant impact on koala populations.

Cabonne Environmental Plan 2012

The principle environmental planning instrument is the Cabonne Local Environmental Plan 2012 (CLEP). The proposal has been considered in the context of the CLEP.

Figure 2 Zone



Source: Spatial Data, NSW Planning.

Specific provisions of the CLEP are addressed below.

Aims of the CLEP2012 (clause 1.2)

The proposed development is consistent with the broad aims of the CLEP2012.

Permissibility

The land is zoned RU1 Primary Production. Subdivision is permissible with development consent.

Objectives of the zone

The zone objectives are broad. The consistency of the proposal with the applicable objectives is summarised as follows:

R5 Large Lot Residential Objective	Comment
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	Consistent
To encourage diversity in primary industry enterprises and systems appropriate for the area	Consistent
To minimise the fragmentation and alienation of resource lands.	Consistent
To minimise conflict between land uses within this zone and land uses within adjoining zones.	Consistent – the proposal continues to enable the use of the land for agriculture. Future dwellings can be sighted to minimise impacts.
To enable function centres, restaurants or cafes and appropriate forms of tourist and visitor accommodation to be developed in conjunction with agricultural uses.	N/A

The relevant provision of the CLEP area addressed in the table below.

Provision	Comment
<i>Part 4 Principal development standards</i>	
Clause 4.1 Minimum subdivision lot size	Lot 11 and Lot 13 comply with MLS - 100ha

	A variation has been requested for Lot 12. The variation is <4% and can be supported (refer below).
Clause 4.2 -4.5	Not applicable to the subdivision
Clause 4.6 Variation to development standards	Council can only consider a variation to a development standard where the application is accompanied by a written request. The request has been considered and the variation supported (refer below).
<i>Part 5 Miscellaneous provisions</i>	
Clause 5.1-5.15	Not applicable to the subdivision
<p>Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones</p> <p>(3) A consent authority must take into account the matters specified in subclause (4) in determining whether to grant development consent to development on land to which this clause applies for either of the following purposes—</p> <p>(a) subdivision of land proposed to be used for the purposes of a dwelling,</p> <p>(b) erection of a dwelling.</p> <p>(4) The following matters are to be taken into account—</p> <p>(a) the existing uses and approved uses of land in the vicinity of the development,</p> <p>(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be</p>	<p>The assessment of the application has considered the matters specified in clause 5.16(4) to the extent that they apply to the proposal.</p> <p>The existing use of surrounding land is rural.</p> <p>Unlikely to have a significant impact on surrounding land use or be incompatible with uses surrounding the site.</p> <p>No specific measures are necessary.</p>

<p>preferred and the predominant land uses in the vicinity of the development,</p> <p>(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),</p> <p>(d) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).</p>	
Clause 5.9-5.22	Not applicable to the subdivision
<i>Part 6 Additional local provisions</i>	
Clause 6.1 (repealed), 6.2 and 6.3	Not applicable to the subdivision
Clause 6.3 Terrestrial biodiversity	<p>Part of the site is mapped terrestrial biodiversity. The subdivision boundary between lots follows existing fence lines, therefore, clearing will not be required for fencing of new boundaries. Two additional dwelling opportunities will be generated. Building sights have been identified and a Biodiversity Assessment Report addresses the impact of the proposal on biodiversity values. The report finds that there is unlikely to be an impact.</p> <p>It is noted that, should the internal boundaries between Lots 11, 12 and 13 be realigned to achieve the additional 3.8 ha, this could result in the need to clear existing woodland (depending on the alignment chosen). Supporting the minor reduction in lot size will mean that no such boundary clearing is required.</p> <p>The proposal is unlikely to have a significant impact on biodiversity.</p>
Clause 6.4 & 6.7	Not applicable to the subdivision
Clause 6.8 Essential services Consent authority to be satisfied that any of the	<p>Consistent.</p> <p>Water supply, sewerage and drainage will be considered when dwellings are proposed.</p>

<p>following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</p> <p>(a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.</p>	<p>Vehicular access is provided directly from Williamsons Road.</p> <p>There is a 132kV line running through the south-western corner of proposed Lot 13. The SEE requests that a condition of consent be included to allow flexible electricity supply solutions including connection to the 132kV line and/or reliance on solar systems. In either case, electricity will need to be provided prior to the erection of a dwelling on the land.</p>
<p>Clause 6.9</p>	<p>Not applicable to the subdivision</p>

Clause 4.6 Variation

The proposal is supported by a written request to vary the development standard in clause 4.1 relating to the minimum lot size for subdivision for the erection of a dwelling in the RU1 Primary Production zone.

Clause 4.6 of the CLEP provides for a variation to a development standard under certain circumstances. The objectives of clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances*

In the case of land within the RU1 Primary Production zone, development consent cannot be granted under clause 4.6 where the proposal will result in two or more lots less than the minimum lot size or where one lot has an area that is less than 90% of the minimum lot size.

The Land and Environment Court reiterated in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* per Preston CJ at [11] the four tests imposed by clause 4.6 as follows:

- 1. That compliance with the relevant development standard must be unreasonable or unnecessary in the circumstances of the case;*
- 2. That there are sufficient environmental planning grounds to justify contravening the development standard;*
- 3. That the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause 3;*

4. *That the proposed development would be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the relevant zone*

The test for “unreasonable or unnecessary” has also been settled by the Land and Environment Court. In *Wehbe V Pittwater Council (2007) NSW LEC 827*, Preston CJ identified a five-part test that could be applied to demonstrate that an objection to a development standard is reasonable and will deliver an outcome consistent with the relevant policy framework. The five elements are identified below.

1. ***The objectives of the standard are achieved notwithstanding the noncompliance with the development standard***
2. *The underlying objective is irrelevant*
3. *The underlying object or purpose would be defeated if compliance was required therefore compliance is unreasonable*
4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land*

In the variation request, the applicant has demonstrated that, in this case, compliance with the minimum lot size development standard is unreasonable and unnecessary in the circumstances of the in so far as *the objectives of the standard are achieved notwithstanding the noncompliance with the development standard*.

The objectives of clause 4.1 Minimum subdivision lot size have been addressed by the application as follows:

Objectives:	Objectives:	
(a) to prevent the fragmentation and isolation of rural land,	The proposed subdivision follows existing fence lines. The 3.8 hectare or 3.8% contravention of the development standard does not result in greater fragmentation or isolation of rural land than a compliant subdivision.	✓
(b) to ensure development is undertaken on appropriately sized parcels of land and responds to any topographic, physical or environmental constraints,	The existing dwelling house is retained in proposed Lot 12. It has sufficient area to accommodate the dwelling house with appropriate rural setbacks and agricultural activities.	✓
(c) to protect drinking water catchments from over-development that may impact on water quality and quantity in the catchment and drinking water systems,	The site is not located within a mapped drinking water catchment. The proposed variation does not result in additional water quality or quantity impacts.	✓
(d) to ensure that subdivision patterns and lot sizes result in a practical and efficient layout.	The proposed subdivision pattern is practical and efficient on the basis that it follows existing fence lines.	✓

The variation is not considered to result in an inconsistency with the objectives of the clause.

The variation also considered clause 4.6(3)(b) demonstrating that there are sufficient environmental planning grounds to justify the contravening the development standard, as notwithstanding non-compliance, the development remains consistent with the objectives of the development standard proposed to be varied, the objectives of land use zone and the objects of the EP&A Act.

The non-compliance results in a variation of 3.8% (3.8 ha). This is considered inconsequential in terms of the 100 ha minimum lot size. Further, the internal lot boundaries between proposal Lots 11 and 12, and Lots 12 and 13 follow existing fences. Retaining internal fence lines significant limits the potential impact on established woodland vegetation, and land clearing that would otherwise be involved in the realignment of the boundary. It is a practical solution. Upholding the development standard in this instance both unreasonable and unnecessary.

The variation is supported.

Section 4.15(1)(a)(ii) the provisions of any proposed instrument

There are no draft instruments applicable.

Section 4.15(1)(a)(iii) provisions of any development control plan

Cabonne Development Control Plan No.5 – General Rural zones has been considered in the assessment of the application.

The following relevant matters have been assessed:

Provision	Comment
	Consistent
<p>2.3 Lots created with an area of greater than 100 ha</p> <p>Lot Design, homesites and servicing</p>	<p>The lot boundaries following existing fence lines, minimising the environmental impact and aligning with existing operations.</p> <p>Home sites have been nominated and assessed for suitability in terms of biodiversity and bush fire. An AHIMS search has been conducted determining that there are no registered Aboriginal Sites or Artefacts.</p> <p>Each lot has practical access to a public road and can be serviced with on-site access to water and power (refer 2.7)</p> <p><i>Electricity</i> – the applicant has not provided evidence of consultation with the energy provider, however noted that it is anticipated that a condition of consent could be included to ensure that satisfactory arrangements can be made ahead of a Subdivision Certificate.</p> <p><i>Water supply</i> – the DCP includes a requirement for a small dam, however, water will be supplied by tanks.</p>

	<p><i>Sewerage disposal</i> – A Site and Soil Evaluation for on-site sewerage systems has not been provided. This should be undertaken prior to the release of the Subdivision Certificate as a condition of consent.</p>
<p>2.7 Servicing requirements in the general rural zone 2.7.2 Road Standards and road improvement contributions</p>	<p>Roads</p> <p>The 3.8 kilometre length of Williamsons Road between White Rocks Road and the site is unsealed. The additional traffic is estimated to be 12 movements per day (based on AADT of 6 movements refer Guide to Traffic Generating Development). The proposal was referred to Bathurst Regional Council on the basis that Williamsons Road is a local road in that local government area. Bathurst Regional Council provided the following comment:</p> <p><i>Council's minimum standard for a rural roadway in these circumstances would be the Planning for Bushfire Protection standards.</i></p> <p><i>Council's usual standard that it would apply to property accesses would be as follows:</i></p> <p><i>The construction of an all-weather vehicular access to each proposed allotment. Such access shall include:</i></p> <p><i>a) a gate or stock grid set back a minimum distance of ten metres from the boundary of the land with the public road.</i></p> <p><i>b) a minimum 4.0 metre wide gravel footway crossing, extending from the edge of the bitumen seal on the public road to the entrance gate or stock grid.</i></p> <p><i>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.</i></p> <p><i>NOTE 1: Any new vehicular access points are to be located such that all RTA stopping sight distances are achieved.</i></p> <p>Bathurst Regional Council also noted that ordinarily their Local Contributions Plan would apply to subdivision in rural zones and require a contribution towards local roads. The contribution cannot be levied across local government boundaries. Bathurst Regional Council further stated that any such contribution would not necessarily have been allocated to Williamsons Road.</p> <p>Access requirements have been included in conditions of consent.</p> <p>Contributions – The Cabonne Council Section 7.12 Development Contributions Plan came into effect 17</p>

	<p>October 2022. The DA was lodged prior to the commencement of the plan, therefore the earlier S94 Road Contributions Plan 2007 has been considered. As the plan relates to road upgrades in the Cabonne local government area, it can't be applied to road works where they occur in an adjoining local government area.</p> <p>However, the subsequent development application for dwellings on the newly created lots, will be required to make a contribution under the Section 7.12 Development Contributions Plan.</p> <p>Access from road to lot boundary – refer requirements from Bathurst Regional Council above.</p>
2.7.3 Water	Future development applications for dwelling houses will be required to demonstrate a reasonable water supply within each lot to service the proposed dwelling. This will include the provision of rainwater tanks in accordance with any BASIX requirements.
2.7.4 Power	Can be made available. Refer above.
2.7.5 Telephone	N/A
2.7.7 Domestic waste	Each of the proposed lots are provided with a 1,500 square metre effluent management area located down slope of the building footprint to enable gravity sewer.
2.7.8 Bushfire protection	A bushfire risk assessment has been undertaken and RFS have provided a Bushfire Safety Authority for the proposal.
2.7.9 Consideration of natural hazards	The site is not located within a known flood prone area or subsidence district.
2.7.10 Protection of established agricultural practices	The proposed subdivision will not unreasonably constrain any known established agricultural practices.
2.7.11 Privacy Considerations	N/A.
2.7.12 Control of noxious weeds	N/A

Section 4.15(1)(a)(iii) provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Not Applicable

Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

The *Environmental Planning and Assessment Regulation 2021* provides no specific requirements. The process for the assessment and determination of the application are consistent with the Regulation.

Section 4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Bushfire

The land is identified as bushfire prone land and section 4.14 of the *Rural Fires Act, 1997* requires a bush fire assessment to be undertaken as part of the development. A Bushfire Assessment Report has been prepared by Premise Australia Pty Ltd.

The development has been assessed in accordance with the matters for consideration under Section 4.14 (Consultation and development consent—certain bush fire prone land) of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following points are made:

- The proposal is integrated development with the NSW Rural Fire Services (RFS) as prescribed under the *Rural Fires Act 1997*, s100B.
- General Terms of Approval and have been provided by the NSW RFS and a Bush Fire Safety Authority dated 3 November 2022.

The General Terms of Approval will be included in the determination.

Biodiversity

The proposed subdivision follows fence lines and the total disturbed area is less than 1 ha (including building sites). The native vegetation removal required for the proposed subdivision does not trigger the threshold for entry into the NSW Biodiversity Offset Scheme under the *Biodiversity Conservation Act 2016* (BC Act).

The development application was accompanied by a Biodiversity Assessment Report that confirms the proposal is unlikely to result in a significant impact on biodiversity.

Cultural Heritage

The proposal includes an AHIMS database search. The development application should include advice as to the obligation of the developer should there be any unexpected finds under the *National Parkes and Wildlife Act, 1979*.

Other impacts

The proposal is of a minor nature and will have limited impact on the environment or amenity of the locality. The proposal is unlikely to have an adverse social or economic impact.

Section 4.15(1)(c) the suitability of the site for the development

The site land is zoned RU1 and the proposal is consistent with the objectives of the zone and the intended use of the site.

Section 4.15(1)(d) Any submission made in accordance with this Act or the Regulations

The development application was notified and five submissions were received. The issues raised varied. The matters raised in the submissions are summarised and addressed below.

Issue	Comment
Proposal does not meet the MLS	The application includes a clause 4.6 variation to the minimum lot size development standard. The rational for the variation, in particular that retaining the lot at 96.2 ha means that there will not be any realignment of boundaries or additional clearing of vegetation. Further, the variation is less than 4% and upholding the standard in this instance is unreasonable and unnecessary in the circumstances in that it will have no material difference to the outcome.
Additional traffic and the current standard of the road	The proposal did not include a traffic impact assessment, however, based on the RMS Guide to Traffic Generating Development, the proposal will generate up to an additional 12 vehicle movements per day. The road is a Bathurst Regional Council local road and the

	responsibility for maintenance lies with that authority. The proposal was referred to Bathurst Regional Council for comment (discussed above).
Telecommunications and electricity	The holder of the development consent will be responsible to ensuring arrangements have been made for electricity (hard wired or off grid) and the provision of telecommunications.
Bushfire management	A Bushfire Assessment Report has been prepared and General Terms of Approval issued by RFS.
Absent landholders due to smaller lots, visual impacts from infrastructure and zoning	<p>There is limited scope in the planning framework to influence future land ownership patterns and the manner in which an individual manages a rural holding, whether with or without a dwelling.</p> <p>There are no physical works proposed. However, the <i>State Environmental Planning Policy (exempt and Complying Development Codes)</i> allows for a range of rural activities to be undertaken on RU1 zoned land without development consent or as complying development eg. stock yards, sheds, tanks, silos which may have an impact.</p> <p>The proposal does not impact the zone which will remain RU1.</p>
Boundary (fence) of proposed Lot 13 is located on the adjoining property.	The proposal follows existing fence line. At final survey, if the fence line is found not to be on the existing boundary, this should be rectified as part of application prior to the release of the Subdivision Certificate.
Management of weeds	Landowners have an obligation to manage noxious weeds. The subdivision does not circumvent that responsibility.
Access to adjoining lot on easter boundary of Lot 11	The boundary fence is existing. There may be an opportunity for the two owners to negotiate the inclusion of a

	gate under the ordinary provisions of the <i>Dividing Fences Act</i> .
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Section 4.15(1)(e) The public interest

The proposed development is consistent with the planning framework and not contrary to the public interest.

REFERRALS

As noted above, Williamsons Road is in the Bathurst Regional Council local government area and the proposal was referred to Bathurst Regional Council for comment. Conditions relating to access will be included in the development consent.

The development application is *integrated development*. The proposal was referred to the NSW Rural Fire Service for concurrence under section 110B of the *Rural Fires Act*.

General Terms of Approval and a Bushfire Safety Authority have been issued by the RFS for the subdivision and will be included in the development consent. prior to work commencing to ensure that the work area is clearly identified.

SUMMARY

The proposed development is permissible with the consent of Council. The proposed development is consistent with the objectives of the CLEP and suitable in the location.

The submissions have been considered and addressed to the extent that they are relevant to the proposal. Bathurst Regional Council has been notified and provided a condition in relation to access to Williamsons Road.

The Rural Fire Service have provided support for the subdivision and issued General Terms of Approval and a Bushfire Safety Authority.

It is recommended that the development be approved with conditions.

**ITEM 28 - CANOBOLAS RURAL FIRE SERVICE REQUEST TO ACCESS
S94 BUSHFIRE FUNDS**

REPORT IN BRIEF

Reason For Report	To obtain council approval to draw from reserves the funds accumulated under the former s94 bushfire development contribution plan.
Policy Implications	Nil
Budget Implications	Nil

IPR Linkage	3.1.3.1a - Apply accumulated development contributions in accordance with the adopted section 94 plans.
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\LAND USE AND PLANNING\GEOGRAPHICAL OR LAND INFORMATION SYSTEMS - GIS OR LIS\MAPS AND PLANS - 1489459

RECOMMENDATION

THAT council authorise the transfer from reserves, \$164,519.20 of s94 Development Contributions accumulated for the purpose of funding local RFS brigade equipment, in accordance with the provisions of the current s7.12 Development Contribution Plan.

DEPUTY GENERAL MANAGER - CABONNE SERVICES REPORT

A request has been received from the Canobolas zone Rural Fire Service, to access the accumulated funds held in reserve under the former s94 Development Contributions Plan for provision of local RFS bushfire equipment. Currently \$164,519.20 is held in reserves as the accumulated funds under that particular s94 development contribution plan.

In October 2022, council adopted new development contributions plans under s7.11 and s7.12 of the Environmental Planning & Assessment Act 1979 as amended. The new plans indicate that funds accumulated under the former development contributions plans should be allocated on similar projects. The plans states that 'Unspent contributions raised and paid under the authority of the previous Contributions Plans will be transferred to this Section 7.12 Plan and will be continued to be directed towards achieving the outcomes sought by the Work Schedule of those Plans. The current works schedule is largely infrastructure based.

It is suggested that the intent of the allocation of those funds accumulated for bushfire contributions be withdrawn from reserves to be utilised by the Canobolas zone RFS for equipment for local brigades. Currently the Canobolas RFS are upgrading the facility at Emu Swamp, and much of the accumulated funds would be directed to that local project.

ITEM 29 - PLANNING CONFLICT OF INTEREST

REPORT IN BRIEF

Reason For Report	To exhibit a draft policy as required by the Department of Planning and Environment
Policy Implications	A new policy is required to be implemented for council-related Development Applications

Budget Implications	Nil
IPR Linkage	3.1.1.1a - Receive and assess Development Applications.
Annexures	1. Council-related Development Applications Conflict-of-interest Policy ↓
File Number	\\OFFICIAL RECORDS LIBRARY\LAND USE AND PLANNING\ZONING\REZONING APPLICATIONS - 1494111

RECOMMENDATION

THAT the attached draft Council-related Development Applications Conflict-of-interest Policy be placed on public exhibition for 28 working days.

DEPARTMENT LEADER DEVELOPMENT SERVICES REPORT

The Department of Planning and Environment regularly consults with the Independent Commission Against Corruption, the NSW Ombudsman, and others about its approach to address corruption in the planning system. It also actively works to make the planning system more transparent and accountable.

The department have finalised a proposal that seeks to support councils to manage potential conflicts of interest. This relates to situations where a council is the applicant developer (whether lodged by or on behalf of the council), landowner or otherwise holds a commercial interest in the land, as well as the consent authority and regulator.

This is in response to concerns identified by the NSW Ombudsman in its report: An inherent conflict of interest councils as developer and regulator (December 2020) that this dual role creates an inherent potential for conflicts of interest, and that it is a systemic issue that needs to be addressed.

The Department worked with Local Government NSW (LGNSW) and other key agencies to develop a response to the Ombudsman's concerns. This includes changes to the *Environmental Planning and Assessment Regulation 2021* to require councils to:

1. have a policy that sets out how they propose to manage any potential conflicts of interests that may arise in these circumstances,
2. that each council-related development application is accompanied by either a management strategy detailing how any conflict of interest is being managed, or a statement as to why a management strategy is not required [this is exhibited with the DA],
3. conflicts of interest with each council-related DA must be recorded in council's DA register,

4. Council-related development applications need to be exhibited for at least 28 days.

Councils' conflict of interest policy will need to comply with the Council-related Development Application Conflict of Interest Guideline prepared by the department and available on the NSW Planning Portal and a template has been provided for each council to use as a basis for adoption.

Councils will have until 3rd April 2023 to have a Conflict-of-Interest policy in place.

To support councils in implementing the proposed changes, the Department has prepared a Council-related Development Applications Conflict of Interest Guidelines; a Sample Policy and a Frequently Asked Questions (FAQs) paper. (copies attached)

The attached draft policy for exhibition has been prepared using the template provided on the NSW Planning Portal. The additions to the template relate to addressing risk (left blank in the template) and have been addressed as follows:

- development less than \$5m in value to be assessed by staff not involved in the preparation of the application
- a private certifier to be used in all certification
- development \$5m or more or any development deemed by the general manager to be high risk to be assessed by a consultant or another council.

It is appropriate that council now exhibit the draft policy.



Standard Conditions

A. ADMINISTRATIVE CONDITIONS

1. Approved plans and supporting documents

The development shall be carried out in accordance with the approved stamped and signed plans and/or documentation listed below **except where modified by any following conditions**. Where the plans relate to alteration or additions only those works shown in colour or highlighted/shaded are approved.

Reference/Dwg No	Title/Description	Prepared By	Date/s
Rev 001B	Statement of Environmental Effects (including Appendices)	Premise Australia Pty Ltd	1/9/2022

Note 1: Modifications to the approved plans will require the lodgement and consideration by Council of a modification pursuant to Section 4.55 of the Environmental Planning and Assessment Act.

Note 2: A warning to all Accredited Certifiers. You should always insist on sighting the original Council stamped approved plans/documentation and not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with original copies, Council will provide you with access to its files so you that may review our original copies of approved documentation.

Note 3: The approved plans and supporting documentation may be subject to conditions imposed under section 4.17 of the Act modifying or amending the development (refer to conditions of consent which must be satisfied prior to the issue of any Construction Certificate).

(Reason: To confirm and clarify the terms of consent)

2. Protection of trees

Should an existing boundary fence require realignment, any clearing of native vegetation should be undertaken in accordance with the *Biodiversity Conservation Act 2016*.

(Reason: To protect native vegetation from excessive clearing.)

3. Subdivision Works Certificate

A Subdivision Works Certificate is required for proposed access works.

This Development Consent does not constitute approval to carry out construction work. The Subdivision Works Certificate or Section 68 Development Works Application and accompanying engineering design plans and Certification Report must be submitted to Council prior to the commencement of any works for the subdivision.

Standard Conditions

Construction work may only commence upon the issue of a Subdivision Works Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement. Please note that council is the PCA for all subdivision works.

(Reason: Information)

4. Provision of private access

The construction of an all-weather vehicular access to each proposed allotment. Such access shall include:

- a) a gate or stock grid set back a minimum distance of ten metres from the boundary of the land with the public road.
- b) a minimum 4.0 metre wide *gravel* 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 1: Any new vehicular access points are to be located such that all RTA stopping sight distances are achieved.

(Reason: To achieve a safe access into the proposed lots)

5. Hours

This applicant must adhere to the following days and hours of operation for subdivision works associated with the development unless otherwise approved by Council in writing:

7 am to 6 pm Monday to Friday
8 am to 1 pm Saturdays

No work on Sundays or public holidays

(Reason: To protect the amenity of the adjoining areas)

General Terms of Approval

6. Rural Fire Service

The NSW Rural Fire Service has considered the application. General Terms of Approval under division 4.8 of the *Environmental Planning and Assessment Act, 1979*, and a Bushfire Safety Authority have issued under section 100B of the *Rural Fires Act, 1997*. Have been issued and are attached to this consent. The applicant shall comply with the General Terms of Approval.

(Reason: To satisfy the Rural Fire Service General Terms of Approval for the development under section 100B of the Rural Fires Act, 1997.)

B. PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Standard Conditions

7. Construction Environmental Management Plan

Prior to the issue of a Subdivision Works Certificate a Construction Environmental Management Plan for the management of soil, water, vegetation, waste, noise, vibration, dust, hazards and risk for the construction works shall be submitted to and endorsed by council. The plan must:

- (a) describe the proposed construction works and construction program and,
- (b) set standards and performance criteria to be met by the construction works and,
- (c) describe the procedures to be implemented to ensure that the works comply with the standards and performance criteria and,
- (d) identify procedures to receive, register, report and respond to complaints and,
- (e) nominate and provide contact details for the persons responsible for implementing and monitoring compliance with the plans.

Note: the detail of the construction management plan should be proportionate to the scale of the work, in this instance, driveway access.

(Reason: To ensure that satisfactory measures are in place to provide for environmental management of the construction works, and to ensure waste and contamination at the site are appropriately managed.)

C. PRIOR TO THE COMMENCEMENT OF SUBDIVISION WORKS

8. Site identification

The site where subdivision work is proposed to be carried out shall be identified by a sign sited in a visually prominent position containing the following information;

- the development application number,
- name, address and telephone number of the principal certifying authority,
- name of the principal contractor (if any) and 24 hour contact telephone number, and
- a statement that "unauthorised entry to the work site is prohibited".
-

(Reason: To satisfy the provisions of Clause 136B and 227A of the Environmental Planning and Assessment Regulation 2021.)

9. Traffic Management

Prior to undertaking any works within a public road reserve or affecting the road reserve, a traffic management plan is to be submitted to and approved by council and under Section 138 of the *Roads Act 1993*. Where occupancy of the road reserve is required, a Section 138 application shall accompany the Traffic Management.

(Reason: To ensure that works carried out comply with the Roads Act.)

10. Notice of Commencement of Subdivision Works

A notice to Commence Subdivision Works must be submitted to Council at least two days prior to commencing any subdivision works and nominating Council as the Principal Certifying Authority for the subdivision works.

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Standard Conditions

Note: If the principal certifying authority is the Council, the nomination will be subject to the payment of a fee for the service to cover the cost of undertaking all necessary inspections and the issue of the appropriate certificates.

Under the Environment Planning and Assessment (Quality of Construction) Act, 2003, a sign must be erected in a prominent position on the work site showing the name, address and telephone number of the principal certifying authority; the name of the principal contractor (if any) for the building work and a telephone number at which that person may be contacted outside working hours. That sign must also state that unauthorised entry is prohibited. The sign must not be removed until all work has been completed.

(Reason: Statutory requirements)

11. Erosion & Sediment Control

Erosion and sedimentation controls shall be in place prior to the commencement of site works; and maintained throughout construction activities until the site is landscaped and/or suitably revegetated. The controls shall be in accordance with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater - Soils and Construction produced by Landcom (Blue Book).

A copy of the Erosion and Sediment Control Plan must always be kept on site during construction and made available to Council officers on request.

Erosion and sediment control measures as detailed in the submitted Erosion and Sediment Control Plan must be installed and operating prior to and during all construction works.

(Reason: Environmental protection)

D. REQUIREMENTS DURING WORKS**12. Cultural Heritage**

During construction, the development is to proceed with caution. If any Aboriginal objects are found, works should stop, and the NSW Office of Environment and Heritage contacted. If an Aboriginal relic is uncovered, work must cease immediately, and the NSW Office of Environment and Heritage must be contacted. All workers on the site are to be made aware of this condition.

(Reason: To protect and conserve Cultural Heritage)

13. Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner Builder as required by the Principal Certifying Authority (PCA), any PCA Service Agreement, the Act and the Regulation.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act.

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Standard Conditions

'Critical Stage Inspections' means the inspections prescribed by the Regulations for the purposes of section 6.5 of the Act or as required by the PCA and any PCA Service Agreement.

Note 1: The PCA may require additional inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note 2: The PCA may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

(Reason: Statutory requirement)

14. Inspection Records & Compliance Certificates

The PCA or accredited certifier undertaking each of the inspections must make a record of each inspection in accordance with Clause 162B of the Environmental Planning and Assessment Regulations 2000 and, if the person is not the PCA, forward a copy to the PCA.

A copy of any compliance certificates issued in respect of the building work and any documents referred to in the certificate must be provided to Council within two (2) days of the certificate being issued.

(Reason: Statutory requirement)

E. PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

15. Construction levy

Prior to the issue of a Subdivision Certificate, a levy under the *Building and Construction Industry Long Service Payments Act, 1986*, equivalent to 0.35% of the value of the works, shall be paid to council, where the value of such work is greater than \$25,000.

(Reason: Statutory requirement)

16. Property access

Prior to the release of a Subdivision Certificate, the property vascular access is from the road to the property boundary must be constructed in accordance with the design drawings approved with the subdivision work certificate.

17. Fencing

Prior to the release of a Subdivision Certificate, stock proof fencing must be provided to all boundaries of the proposed lots. The minimal minimum acceptable standard for new fencing work in rural residential lots is as follows:

- fence height of no less than 1200 mm
- strainers spacing 100 m to 200 m depending on terrain
- steel star pickets at 4 m centres
- two 1.57 mm high tensile wires on top
- two 2.8 mm high tensile carry wires
- wire netting must be set no higher than 50 mm above the surface of the ground

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Standard Conditions

- gall gates must be set back a minimum of 15 metres from the edge of the road formation

The existing boundary fence and new boundary fences, where dilapidated must be repaired to the above standard.

Existing fencing in good order but varying standards may be permitted if such standard is determined by council as stock proof.

Where the boundary fence does not coincide with the property boundary for the proposed subdivision the applicant must provide a note on the linen plan that the fence may not be constructed on the boundary of a particular lot. In circumstances where fences encroach into adjoining properties, this is to be rectified prior to the release of the Subdivision Certificate.

(Reason: To confirm that all boundary fences are on the boundary and not encroaching on adjoining land.)

18. Satisfactory Arrangements for electricity

Prior to the release of a Subdivision Certificate, that applicant shall provide evidence that a satisfactory arrangements for the supply of electricity have been made by either:

- (a) Submission of a Notice of Arrangement from the Electricity Authority indicating that adequate power supply would be available to all proposed lots shall it be required, or
- (b) Place a restriction on the title of the proposed lots pursuant to clause 88B of the Conveyancing Act as follows: No dwelling shall be erected on the subject land without have first made arrangements for adequate power supply.

Where a restrictive covenant is applied, Cabonne Council shall be nominated as the sole party with the power to vary or remove the that covenant.

(Reason: To confirm that electricity is available for dwellings)

19. Building envelopes

Building envelopes must be designed on the final plan of subdivision over each proposed lot in accordance with the Bushfire Assessment Report (Statement of Environmental Effects Appendix D prepared by Premise Australia).

The name of the authority having the power to release very or modify this restriction must be Cabonne Shire council.

20. Applicant and final survey

An application to obtain a Subdivision Certificate must be made to Council. This must be accompanied by the following documentation:

- a) A final survey plan of subdivision and six copies;
- b) Any s88B instruments required by these conditions of consent
- c) A letter outlining how compliance with each condition of this development consent has been achieved; and
- d) A statement from Bathurst Regional Council that all access connections to Williamsons Road are satisfactory.

Standard Conditions

(Reason: To enable registration of the subdivision and to ensure compliance with conditions of consent. To provide sufficient signed copies of the subdivision plan for Council, the applicant and the NSW Land and Property Information.)

(Reason: To clearly contain development within the identified build envelope)

21. Damage to Public Assets

Any damage caused to footpaths, roadways, utility installations, trees and the like by reason of construction operations shall be made good and repaired to a standard equivalent to that existing prior to commencement of construction. The full cost of restoration / repairs of property or services damaged during the works shall be met by the Applicant.

(Reason: Safety & Amenity)

F. ADVISORY CONDITIONS**Dial Before You Dig**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's mobile network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision or essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443

Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of or payment for the erection of dividing fences.

Standard Conditions

If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre or if legal advice or action is required, you may contact the Chamber Magistrate.

Lapsing of Development Consent

In accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 (as amended), this Development Consent lapses five (5) years after the date from which it operates unless building, engineering or construction work has physically commenced.

A Construction Certificate must be obtained, and the works commenced in accordance with the approved plans and specifications within five (5) years from the date of this Development Consent.

Owner Builders

Under the Home Building Act 1989 any property owner who intends undertaking construction work to a dwelling or dual occupancy over the value of \$5,000 must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading. See www.fairtrading.nsw.gov.au.

Modification Process

The plans and/or conditions of this Consent are binding and may only be modified upon written request to Council under Section 4.55 of the Environmental Planning and Assessment Act, 1979 (as amended). The request shall be accompanied by the appropriate fee and application form. You are not to commence any action, works, contractual negotiations, or the like, on the requested modification unless and until the written authorisation of Council is received by way of an amended consent.

Review of Determination

In accordance with the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979 (as amended) the applicant can request Council to review this determination. The request must be made to and Council must determine that request within a period of 6 months from the date of determination shown on this notice. A fee, as prescribed under Council's current Fees and Charges, is payable for such a review.

Right of Appeal

Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 (as amended), gives the applicant the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. Section 97 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.

Part 1 Preliminary

(1) Name of policy

This policy is the Council-related Development Applications Conflict-of-interest Policy

(2) Aim of policy

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

(3) Scope

This policy applies to council-related development.

(4) Definitions

(1) In this policy:

application means an application for consent under Part 4 of the Act to carry out development and includes an application for a complying development certificate and an application to modify a development consent

council means Cabonne Council

council-related development means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority development process means application, assessment, determination, and enforcement the Act means the Environmental Planning and Assessment Act 1979.

(2) A word or expression used in this policy has the same meaning as it has in the Act, and any instruments made under the Act, unless it is otherwise defined in this policy.

(3) Notes included in this policy do not form part of the policy.

Part 2 Process for identifying and managing potential conflicts of interest

(5) Management controls and strategies

(1) The following management controls may be applied to:

- a. the assessment of an application for council-related development
 - development less than \$5m in value to be assessed by staff not involved in the preparation of the application
- b. the determination of an application for council-related development
 - a private certifier to be used in all certification
- c. the regulation and enforcement of approved council-related development
 - development \$5m or more or any development deemed by the general manager to be high risk to be assessed by a consultant or another council.

(2) The management strategy for the following kinds of development is that no management controls need to be applied:

- a. commercial fit outs and minor changes to the building façade
- b. internal alterations or additions to buildings that are not a heritage item
- c. advertising signage
- d. minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- e. development where the council might receive a small fee for the use of their land.

(6) Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls

(1) Development applications lodged with the council that are council-related development are to be referred to the general manager for a conflict-of-interest risk assessment.

Note: Council-related development is defined in section 4.

(2) The general manager is to:

- a. assess whether the application is one in which a potential conflict of interest exists,
- b. identify the phase(s) of the development process at which the identified conflict of interest arises,
- c. assess the level of risk involved at each phase of the development process,
- d. determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in clause 5 of the policy and the outcome of the general manager's assessment of the level of risk involved as set out clause 6(2)(c) of the policy,

Note: The general manager could determine that no management controls are necessary in the circumstances.

- e. document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.