

8.3 MA0030/2017 - Modification of Consent (S96AA) - Subdivision - White Rock Road, Pinnacle Swamp

REPORT BY THE SENIOR TOWN PLANNER
TO 16 AUGUST 2017 ORDINARY MEETING
GOV400064, MA0030/2017

RECOMMENDATION

That Council:

- A. receive the report by the Senior Town Planner on the MA0030/2017 - Modification of Consent (S96AA) - Subdivision - White Rock Road, Pinnacle Swamp; and
- B. approve MA0030/2017 - Modification of Consent (S96AA) - Subdivision - White Rock Road, Pinnacle Swamp subject to the following conditions:

APPROVED PLANS

1. The subdivision is to be carried out generally in accordance with the application and subdivision plan reference 07017 un-dated prepared by Anderson Surveying Pty Ltd received by Council 13 June 2006, except as varied by any conditions listed herein. Any minor modification to the approved subdivision plan will require the lodgement and consideration by Council of amended plans. Major modifications will require the lodgement of a new development application.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

These conditions have been imposed to ensure that the proposed subdivision complies with the requirements of the *Environmental Planning and Assessment Act 1979*, Council policy and the relevant standards.

2. Under the *Environmental Planning & Assessment Act 1979*, a *Subdivision Certificate* is required before the linen plan of subdivision can be registered with the Land Titles office.
Note: Council's fee to issue a *Subdivision Certificate* is set out in Council's fees and charges.
 3. Prior to the issue of a *Subdivision Certificate*:
 - (a) all contributions must be paid to Council and all works required by the consent be completed in accordance with the consent, or
 - (b) an agreement be made between the development and Council;
 - I. as to the security to be given to Council that the works will be completed or the contribution paid, and
 - II. as to when the work will be completed or the contribution paid.
 4. A linen plan and two (2) copies are to be submitted to Council for approval and endorsement by the General Manager.
 5. In accordance with the provisions of section 94(1)(b) of the *Environmental Planning and Assessment Act. 1979* and the Mid-Western Regional Council Section 94 Contribution
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Plan, a contribution shall be paid to Council in accordance with this condition for the purpose of:

Stage 1

Transport Management	
Traffic Management	\$2,379.00
Open Space	
Local Open Space	\$-
District Open Space	\$9,208.00
Community Facilities	
Library Buildings	\$888.00
Library Resources	\$1065.00
Administration	
Plan Administration	\$2,071.00
TOTAL PAYABLE	\$15,611.00

Stage 2

Transport Management	
Traffic Management	\$2,379.00
Open Space	
Local Open Space	\$-
District Open Space	\$9,207.00
Community Facilities	
Library Buildings	\$887.00
Library Resources	\$1065.00
Administration	
Plan Administration	\$2,071.00
TOTAL PAYABLE	\$15,609.00

6. If the *Subdivision Certificate* is not issued, for any reason whatsoever, within twelve (12) months of the date of determination, then the charges and contributions contained in this consent may be increased to the current rate at the time of payment.

SITE REQUIREMENTS Stage 1

- ~~7. Prior to the issue of a Subdivision Certificate the applicant is to construct White Rock Road for the full frontage of the lots gaining access to it and extending to the intersection of Tong Bong Road in accordance with the following minimum standards:~~

- ~~• Geometric standards – horizontal and vertical alignment to minimum standard of 100km/h~~
- ~~• A minimum 9.00m formed width~~
- ~~• 7.00m sheeted width & minimum sheeted thickness of 100-200mm to be confirmed by soil tests,~~
- ~~• The road should be an all-weather access formed using natural materials if suitable or otherwise approved road base.~~
- ~~• Erosion and drainage control measures such as 4-6% cross fall, table drains, mitre drains and culverts where necessary.~~

- 7a. Prior to the issue of a subdivision certificate the applicant is to upgrade White Rock Road for the full frontage of the additional lots gaining access to it in accordance with the

following minimum standards as a Class 4B Minor Road, Terrain Type - Rolling (as defined in ARRB Unsealed Roads Manual; Guidelines to Good Practice) with a carriageway width of 7m with an operating speed of 50km/h and meeting all geometric design standards for unsealed roads ARRB Unsealed Roads Manual; Guidelines to Good Practice Table 4.2.

(AMENDED MA0030/2017)

8. The road must be located wholly within the existing road reserve.
 9. A site supervisor is to be nominated by the applicant prior to construction of the road.
A Traffic Control Plan (TCP) completed by a "Certified Person" for implementation during works is to be submitted to Mid-Western Regional Council prior to any work commencing. Contractor's insurance cover for a minimum of \$10,000,000 is to be sighted and to be shown to Mid-Western Regional Council as an interested party. All work is to be at no cost to Council.
 10. The subdivision works are to be inspected by the Council (or an *Accredited Certifier* on behalf of Council) to monitor compliance with the consent and the relevant standards of construction, encompassing the following stages of construction:
 - Installation of sediment and erosion control measures;
 - Drainage structure installation;
 - Road pavement construction;
 - Practical completion.
 11. An Erosion and Sediment Control Plan for the development is to be prepared in accordance with the LANDCOM guidelines and requirements as outlined in the latest edition of "Soils and Construction – Managing Urban Stormwater". Points to be considered include, but not limited to:
 - (a) Saving available topsoil for reuse in the revegetation phase of the subdivision,
 - (b) Using erosion control measures to prevent on-site damage;
 - (c) Rehabilitating disturbed areas quickly;
 - (d) Maintenance of erosion and sediment control structures;
 - (e) A schedule of operations is to be submitted to ensure all appropriate works are undertaken at the correct stage.
 12. The construction of an all-weather vehicle access to each lot in accordance with the following minimum guidelines:
 - (a) A gate or stock grid (if applicable) set back a minimum distance of fifteen (15) metres from edge of the traffic lane of the public road;
 - (b) A minimum 4.0metre wide compacted gravel driveway, extending from the edge of pavement on the public road to the entrance gate or stock grid;
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- (c) A minimum 150mm thick, 4.0 metre wide concrete dish drain or 375mm diameter reinforced concrete pipe culvert with headwalls, located outside the clear zone, having the table drain directed through it.
- (d) The access shall be located such that adequate sight distances are achieved, as specified in the Austroads publication "*Intersections at Grade*".

13. When the accesses are complete, Council must be contacted to inspect the access and assign a rural road number.

STAGE 2

14. The applicant shall construct road access from White Rock Road to lots, 7, 8, 9, 10 and 11 within a 20m wide road reserve to the standard identified in condition 16 and shall identify by survey prior to construction the location of the road within a right of way or crown road reserve or a combination of both.

15. Prior to any road construction, have the crown road reserve transferred to Council. The transfer can be initiated by paying the fee required to the Department of Lands (via Council) and Council sending an accompanying letter requesting the road to be transferred to Council.

~~16. The applicant is to construct the new road for the full frontage of the lots gaining access to the new road in accordance with Council's minimum standard for a rural access road as set out in the Mid-Western Regional Council policy "Road Classifications and Standards and as indicated below, for Local Access.~~

- ~~• Geometric standards – horizontal and vertical alignment to minimum standard of 80km/h~~
- ~~• A minimum 8.00m formed width.~~
- ~~• 6.00m sheeted width & minimum sheeted thickness of 100-200mm to be confirmed by soil tests.~~
- ~~• The road should be an all-weather access formed using natural materials if suitable or otherwise approved road base.~~
- ~~• Erosion and drainage control measures such as 4-6% cross fall, table drains, mitre drains and culverts were necessary.~~

16a. Prior to issue of subdivision certificate that the applicant upgrade the existing access road commencing at White Rock Road and continuing to Lot 10 it in accordance with the following minimum standards as a Class 4C Access Road, Terrain Type - Rolling (as defined in ARRB Unsealed Roads Manual; Guidelines to Good Practice Table 4.2) with a carriageway width of 5m with an operating speed of 40km/h and meeting all geometric design standards for unsealed roads ARRB Unsealed Roads Manual; Guidelines to Good Practice Table 4.2.

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17. A site supervisor is to be nominated by the applicant prior to construction of the road.

A Traffic Control Plan (TCP) completed by a "Certified Person" for implementation during works is to be submitted to Mid-Western Regional Council prior to any work commencing.

Contractor's insurance cover for a minimum of \$10,000,000 is to be sighted and to be shown to Mid-Western Regional Council as an interested party. All work is to be at no cost to Council.

18. The subdivision works are to be inspected by the Council (or an *Accredited certifier* on behalf of Council) to monitor compliance with the consent and the relevant standards of construction, encompassing the following stages of construction:
 - Installation of sediment and erosion control measures;
 - Drainage structure installation;
 - Road Pavement construction;
 - Practical completion.

 19. An Erosion and Sediment Control Plan for the development is to be prepared in accordance with the LANDCOM guidelines and requirements as outlined in the latest edition of "Soils and Construction – Managing Urban Stormwater". Points to be considered include but not limited to:
 - (a) Saving available topsoil for reuse in the revegetation phase of the subdivision,
 - (b) Using erosion control measures to prevent on-site damage;
 - (c) Rehabilitating disturbed areas quickly
 - (d) Maintenance of erosion and sediment control structures;
 - (e) A schedule of operations is to be submitted to ensure all appropriate works are undertaken at the correct stage.

 20. The construction of an all-weather vehicle access to each lot, in accordance with the following minimum guidelines:
 - (a) A gate or stock grid (if applicable) set back a minimum distance of fifteen (15) metres from edge of the traffic lane of the public road;
 - (b) A minimum 4.0 metre wide compacted gravel driveway, extending from the edge of pavement on the public road to the entrance gate or stock grid;
 - (c) A minimum 150mm thick, 4.0 metre wide concrete dish drain or 375mm diameter reinforced concrete pipe culvert with head walls, located outside the clear zone, having the table drain directed through it.
 - (d) The access shall be located such that adequate sight distances are achieved as specified in the Austroads publication "*Intersections at Grade*".

 21. When the accesses are complete, Council must be contacted to inspect the access and
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assign a rural road number.

ENGINEERING DETAILS

22. All works are to be constructed at the full cost of the developer, in a manner consistent with Aus-Spec #1 and Council's standard drawings.
23. The developer is to grant Council (or an *Accredited Certifier* on behalf of Council) unrestricted access to the site at all times to enable inspections or testing of the subdivision works.
24. Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained for each stage and lodged with Council prior to the issue of the *Subdivision Certificate*.
25. The applicants shall, at their own expense, engage a registered surveyor to relocate any survey mark that may be disturbed by the development or any associated work. Any information regarding relocation should be supplied to the Land Titles Office and Council.
26. All earthworks, filling, building, driveways or other works, are to be designed and constructed (including stormwater drainage if necessary) so that at no time will any ponding of stormwater occur on adjoining land as a result of this development.

OTHER SERVICES

27. Prior to issue of the *Subdivision Certificate*, Council is to be supplied with:
 - (a) A certificate from an energy supplier indicating that satisfactory arrangements have been made for provision of electricity supply to the subdivision.
 - (b) A certificate from a telecommunications supplier indicating that satisfactory arrangements have been made for provision of telephone services to the subdivision.

GENERAL

28. A soil capability assessment for on-site sewerage disposal shall be undertaken for the lots within the proposed subdivision. Assessment shall provide recommendations as to how wastewater shall be treated and disposed. These recommendations shall be incorporated into positive covenants and registered in accordance with the provisions of the Conveyancing Act.
29. If any aboriginal artefacts are uncovered or identified during construction earth-works, such work is to cease immediately and the local aboriginal community and National Parks and Wildlife Service are to be notified.

~~Note: A suitably qualified person would be required to be present during earth works to identify whether any artefacts were uncovered.~~
(AMENDED MA0030/2017)

30. Development consent 0225/2008 issued by Council on the 19th March 2008 is to be surrendered prior to issue of the Subdivision Certificate in accordance with clause 97 of the *Environmental Planning and Assessment Regulation 2000*.
31. In registration of the plan of subdivision pursuant to the Real Property Act, the applicant shall cause to be registered on the title to proposed lots 1, 3, 5, 9 & 11 a restriction pursuant to s.88E of the Conveyancing Act 1919 substantially in the form set out below.

1. Definitions

In this restriction on the use of land unless the context otherwise requires:

“**Lot Burdened**” means the land burdened by this restriction on the use of land referred to at (A) on the front page;

“**Owner**” means the registered proprietor of the Parcel as at (date of subdivision certificate);

“**Parcel**” means the land formerly comprised in part lot 2 in deposited plan 730813 and part lot 102 in deposited plan 755450 being the land the subject of development application no 0642/2007 lodged with Mid-Western Regional Council on 13 June 2007;

“**Relative**” has the same meaning as defined in the Local Government Act 1993 and means any relative of the Owner;

2. Restriction on the use of land

The Lot Burdened and any dwelling erected or to be erected on the Lot Burdened shall only be used by the Owner or a Relative.

3. Duration

The restriction on use of land referred to in paragraph 2 shall cease to apply upon the earlier of:

- (a) the death of the Owner whilst he remains the owner of a Lot Burdened; or
- (b) a Relative becoming the registered proprietor of the Lot Burdened; or
- (c) a period of 5 years commencing on the date of registration of the subdivision plan which creates the final lot approved by the approval of development application no 0642/2007 lodged with Mid-Western Regional Council on 13 June 2007.

4. Removal of Restriction

The Council must sign all documents and co-operate with the registered proprietor of the Lot Burdened to enable that person to have this restriction on use of land released and to have this dealing removed from title of the Lot Burdened upon the registered proprietor of the Lot Burdened providing evidence to Council of the occurrence of any event specified in paragraph 3(a), (b) or (c).

Executive summary

OWNER/S	Hylton John
APPLICANT:	Hylton John
PROPERTY DESCRIPTION	329 (formerly 277) White Rock Road, Pinnacle Swamp
PROPOSED DEVELOPMENT	Subdivision – 11 lots
ESTIMATED COST OF DEVELOPMENT:	N/A
REASON FOR REPORTING TO COUNCIL:	Number of submissions >6
PUBLIC SUBMISSIONS:	Seven (7)

A Section 96(AA) modified Development Application for the proposed modification of Development Consent DA0642/2007 was lodged with Council on 3 May 2017, seeking changes to Conditions 7 and 16, both relating to road standards/construction, and Condition 29, which relates to the protection of aboriginal artefacts during construction, and the need to have a qualified person on site during all earth works.

During the notification period Council received a total of seven (7) letters of objection.

The proposal generally complies with all the relevant plans and controls and is recommended for approval.

Of note, DA0642/2007 was refused by Mid-Western Regional Council on 21 November 2007. Subsequently, the applicant commenced proceedings in the NSW Land & Environment Court, with a consent issued by the Court on 21 October 2008. The consent was issued subject to standard conditions, agreed upon between the applicant and Council at the time.

Clause 96AA of the Environmental Planning & Assessment Act 1979 requires that Council act as the consent authority in relation to a modification to a court issued consent - subject to certain criteria. As the application to modify the consent was lodged with Council, Council must act as the consent authority – and determine the application.

Disclosure of Interest

Nil.

Detailed report

The applicant has sought to amended DA0642/2007, which granted consent for an 11 lot subdivision at White Rock Road, Pinnacle Swamp. Specifically the modification seeks to:

1. Modify Condition 7 and 16 of the Consent

Condition 7 states:

Prior to the issue of a Subdivision Certificate the applicant is to construct White Rock Road for the full frontage of the lots gaining access to it and extending to the intersection of Tong Bong Road in accordance with the following minimum standards:

- *Geometric standards – horizontal and vertical alignment to minimum standard of 100km/h*
- *A minimum 9.00m formed width*

- *7.00m sheeted width & minimum sheeted thickness of 100-200mm to be confirmed by soil tests,*
- *The road should be an all-weather access formed using natural materials if suitable or otherwise approved road base.*
- *Erosion and drainage control measures such as 4-6% cross fall, table drains, mitre drains and culverts where necessary.*

Condition 16 states:

The applicant is to construct the new road for the full frontage of the lots gaining access to the new road in accordance with Council's minimum standard for a rural access road as set out in the Mid-Western Regional Council policy "Road Classifications and Standards and as indicated below, for Local Access.

- *Geometric standards - horizontal and vertical alignment to minimum standard of 80km/h*
- *A minimum 8.00m formed width.*
- *6.00m sheeted width & minimum sheeted thickness of 100-200mm to be confirmed by soil tests.*
- *The road should be an all -weather access formed using natural materials if suitable or otherwise approved road base.*
- *Erosion and drainage control measures such as 4-6% cross fall, tables drains, mitre drains and culverts were necessary.*

The subject application proposes to modify the wording of conditions 7 and 16, which impose minimum requirements with respect to upgrading White Rock Road and the unnamed, unsealed road accessing Lots 7 to 11 of the resulting subdivision.

The applicant states that the road upgrades imposed by Conditions 7 and 16 of the Consent: are,

- on a merit assessment, unreasonable and unnecessary; and
- cannot lawfully be complied with; and
- apply standards contained in Council's Road Classification and Standards Policy, a policy that has no application; and
- require works to be carried out within the existing road reserve which, for the reasons detailed in the Traffic Report, are not physically possible.

Condition 7 requires the upgrading of White Rock Road for the full extent of the frontage of the subject site and for its remainder up to the intersection with Tong Bong Road to the standard of a 100km/hr road.

As outlined in the Traffic Report, the condition will require the acquisition of private land. To the extent that private land would have to be acquired, the condition is ultra vires and unenforceable.

2. Delete the notation to Condition 29 of the Consent.

Condition 29 states:

If any aboriginal artefacts are uncovered or identified during construction earth-works, such work is to cease immediately and the local aboriginal community and National Parks and Wildlife Service are to be notified.

Note: A suitably qualified person would be required to be present during earth-works to identify whether any artefacts were uncovered.

The applicant believes the note to impose onerous requirements to engage and have present on-site, suitably-qualified aboriginal heritage expert for the entirety of the earthworks. This would have unreasonable financial, practical and safety implications for the developer.

The requirement is unreasonable in the context of there being no known places of aboriginal heritage significance within the immediate vicinity of the site and no evidence to suggest aboriginal artefacts are likely to be discovered.

For these reasons, the applicant seeks deletion of the notation.

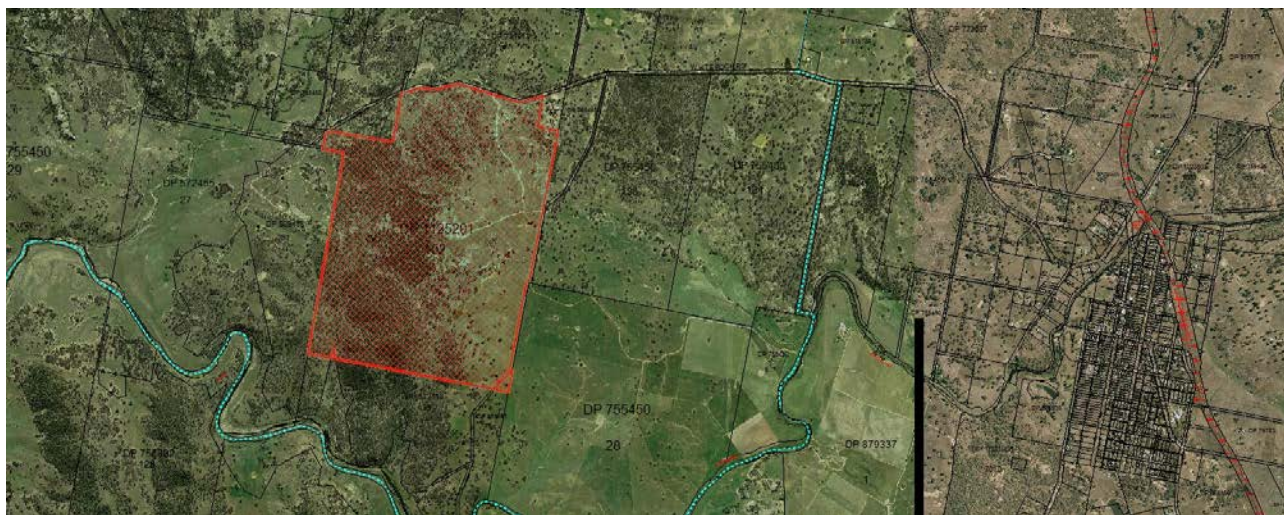


Figure 1: Location plan

The application has been assessed in accordance with Section 79C(1) of the *Environmental Planning & Assessment Act 1979*. The main issues are addressed below as follows.

S79C(1)(a) REQUIREMENTS OF REGULATIONS AND POLICIES

S96 Legislative Requirements - Environmental Planning & Assessment Act 1979

Section 96(AA) of the *Environmental Planning and Assessment Act 1979* pertains to modifications by consent authorities of consents granted by the Court. It states:

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

(a) 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

Comment: The original consent was for an 11 lot subdivision. This aspect of the proposal is not changing and the proposal overall is considered substantially the same. Accordingly, Council must assume the role of consent authority for the proposed modification.

(b) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, and*
- (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*

Comment: The application was notified to all adjoining property owners together with any property owners that had a frontage to White Rock Road. Additionally, the application was advertised in the Mudgee Guardian in accordance with the requirements of Mid-Western Regional Development Control Plan 2013.

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

Comment: All adjoining owners together with all owners with a frontage to White Rock Road were notified to ensure a reasonable attempt was made to any property owner that would be impacted by the proposed modification.

(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.

Comment: 7 submissions were received as a result of the notification of the proposal. These are discussed and considered later in this report.

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Comment: The heads of consideration stipulated under Section 79C are discussed throughout this report.

State Environmental Planning Policy No 44 – Koala Habitat Protection

SEPP 44 applies to the proposal as Rylstone Shire Council is listed within Schedule 1 of the SEPP and the area of land associated with the proposal in the same ownership is greater than 1 hectare in size.

However, the nature of the proposed modification with regards to road construction standards will not have any bearing upon the considerations of SEPP 44.

State Environmental Planning Policy No 55- Remediation of Land

The nature of the proposed modification will have no bearing upon the implications of SEPP 55.

Rylstone Local Environmental Plan 1996

The application was originally considered by the Court pursuant to Rylstone Local Environmental Plan 1996. The nature of the proposed modification does not relate to any specific controls within the LEP and the proposal is still generally compliant with the provisions of the LEP.

Mid-Western Regional Local Environmental Plan 2012

The land is now zoned RU1 Primary Production pursuant to Mid-Western Regional Local Environmental Plan 2012 (MWRLEP 2012). The proposed modification does not relate to any specific controls within the LEP and the proposal is still generally compliant with provisions of the LEP.

Mid Western Regional Development Control Plan 2013

Part 7.2 'Rural Subdivision' applies to the proposal. However, no specific provisions apply under this part due to the nature of the proposed modification not involving an amendment to the lot layout or number of lots.

S79C(1)(b) IMPACT OF DEVELOPMENT

Context and Setting

The modification to the road standards and Condition 29 will have no relevant bearing upon the context and setting of the original consent.

Access, transport and traffic

Council's Manager of Development Engineering in his report dated 14 June 2017 supports the proposed modifications to Conditions 7 and 16, with minor changes to reflect industry construction standards, prescribed under Austroads Guide to Road Design RMS Supplements and the Unsealed Roads Manual: Guidelines to Good Practice (ARRB Guide to Road Design). A full copy of the report is attached as an Appendix to this report (Appendix 4).

Council's Road Classification and Standards Policy was rescinded by resolution of Council at its 16 February 2011 meeting, Minute Number 16/11. In the absence of a Local Standards/Policy, Austroads Guide to Road Design, RMS Supplements and the Unsealed Roads Manual: Guidelines to Good Practice will form the basis of the assessment.

Assessment of Condition 7

Council's current asset class for White Rock Road is a Minor Road, which is consistent with Road Class 4B as per the ARRB Guide to Road Design having an ADT of 50 - 150.

In assessing daily traffic volumes Council staff have undertaken a count of lots that currently front and have access to White Rock Road. There are currently 14 lots that have a frontage onto White Rock Road of which 9 appear to have dwellings and are connected to White Rock Road. With the addition of 10 additional lots likely to hold a dwelling the estimated traffic generated using 7.4 vehicle movements a day (RMS Technical Directional td13-04a) would equate to 140.6 ADT. This figure is not significantly different to the estimate traffic volume provided in the Transport Planning Partnership Report (TPP) provided by the applicant dated 26 April 2017, of which the estimates were based on actual traffic counts obtained in February 2017.

Based on the above traffic volumes the road classification of 4B, Minor Road is appropriate in accordance with Table 4.1 of the ARRB Guide to Road Design, which is consistent with the TPP report, paragraph 27.

Paragraph 28 of the TPP Report, prescribes that *a two-lane road of 5.5m width would be adequate to accommodate the likely traffic levels*, is not consistent with the requirements of the ARRB Guide to Road Design. Table 4.1 Unsealed roads classification system, states: -

- All weather two-lane road formed and gravelled or single-lane sealed road with gravel shoulders

Council has opted to impose the requirement for formed and gravelled road rather than sealed road.

The final dot point within Table 4.1, Road Class 4B states, a minimum carriageway width of 5.5m. This reference is for a single-lane sealed road. As Council is not requesting a sealed road the requirements as outlined within Table 4.2, Guidelines for the Main Geometric Design Standards for

Unsealed Roads of the ARRB Guide to Road Design would be the minimum standard of construction required.

Table 4.2 provides an Operating Speed Value which is determined by the Road Classification as per Table 4.1 and Terrain Types, used to determine the adequate level of construction.

The TPP reports states “the road is a series of peaks and troughs”. In determining the Terrain Type from the 3 options available, being Flat, Rolling and Mountain, Council has assumed ‘Rolling’ is the most appropriate. This has an Operating Speed of 50km/h as per Table 4.2 (this is based on the 85th percentile speed). This is again consistent with the data provided in the TPP report where the average speed of the existing traffic was 49 – 51km/h.

Based on the above the roads construction condition should meet the geometric design standards for unsealed roads Table 4.2 of the ARRB Guide to Road Design with a Road Classification of 4B Minor, Terrain Type – Rolling. As such, it is proposed to modify Condition 7 to read:

Prior to issue of subdivision certificate that the applicant upgrade White Rock Road for the full frontage of the additional lots gaining access to it in accordance with the following minimum standards as a Class 4B Minor Road, Terrain Type - Rolling (as defined in ARRB Unsealed Roads Manual; Guidelines to Good Practice) with a carriageway width of 7m with an operating speed of 50km/h and meeting all geometric design standards for unsealed roads ARRB Unsealed Roads Manual; Guidelines to Good Practice Table 4.2.

The removal of the requirement to upgrade White Rock Road between Tong Bong Road and the subject property is also supported. Council’s current practice for subdivisions is that the developer is responsible only for constructing those sections of road that have a direct frontage to the property subject of the application.

Assessment of Condition 16

Estimated traffic generated using 7.4 vehicle movements a day (RMS Technical Directional td13-04a) would equate to 44.4 vehicle movements for the 6 lots that would be serviced from the newly constructed road. Classification of Road Class 4C – Access Road with between 10 – 50 ADT. Reference is made to Table 4.2 of the ARRB Guide to Road Design for the appropriate standard of construction for Road Class 4C, Terrain Type – Rolling. These findings are similar to the findings of the TPP Report. From this, it is proposed to modify Condition 16 to read:

Prior to issue of subdivision certificate that the applicant upgrade the existing access road commencing at White Rock Road and continuing to Lot 10 it in accordance with the following minimum standards as a Class 4C Access Road, Terrain Type - Rolling (as defined in ARRB Unsealed Roads Manual; Guidelines to Good Practice Table 4.2) with a carriageway width of 5m with an operating speed of 40km/h and meeting all geometric design standards for unsealed roads ARRB Unsealed Roads Manual; Guidelines to Good Practice Table 4.2.

Table 4.2 Guidelines for the main geometric design standards for unsealed roads

Road classification	4A Main			4B Minor			4C Access			4D Tracks			Comments
Terrain type ¹	Flat	Rolling	M'tain	Flat	Rolling	M'tain	Flat	Rolling	M'tain	Flat	Rolling	M'tain	
Main geometric characteristic <i>based on safety, costs and environmental considerations</i>													
Operating speed value km/h	80	70	50	70	50	30	60	40	20	N/A	N/A	N/A	based on 85th percentile speed
Cross-section elements													
number of traffic lanes	2	2	2	2	2	2	1	1	1	1	1	1	unsealed lanes
minimum cross fall unsealed road	5	5	5	5	5	5	5	5	5	4	4	4	min of 4% to drain rainfall off tracks
maximum superelevation % ²	6	7	8	6	8	10	6	8	10	N/A	N/A	N/A	
minimum traffic lane width m ³	3.5	3	3	3	3	3	3	3	3	3	3	3	
minimum shoulder width m	1	1	0.5	0.5	0.5	0.5	1.5	1	0.5	0	0	0	
minimum carriageway width (lanes + shoulder) m	9	8	7	7	7	7	6	5	4	3	3	3	
minimum formation width (including verges) ⁴	11	10	9	9	9	9	8	7	6	3	3	3	
Horizontal geometry													
minimum radius curve m ⁵	320	250	140	250	100	35	170	60	15	N/A	N/A	N/A	
minimum stopping sight distance m ⁶	150	120	70	120	70	30	90	50	30	N/A	N/A	N/A	
minimum meeting sight distance m ⁷	290	230	130	230	130	60	180	100	60	N/A	N/A	N/A	
Vertical geometry													
maximum vertical grade % ⁸	6	8	12	6	8	12	6	8	12	N/A	N/A	N/A	for tracks avoid steep grades to reduce soil erosion
minimum crest vertical curve K values ⁹	50	30	10	30	10	5	19	8	2	N/A	N/A	N/A	
minimum sag vertical curve K values ¹⁰	11	8	4	8	4	3	6	3	2	N/A	N/A	N/A	

¹ Flat, rolling or mountainous terrain.

² The maximum superelevation value will need to take into account the use of the road by high loaded heavy vehicles, speed and curve radii.

³ In cases where there are a high percentage of heavy vehicles (> 20%) minimum lane widths can be increased by 0.5 m.

⁴ Allows for 1m verge/table drain width. This must be reviewed based on actual locations where for drainage reasons greater widths may be required.

⁵ Values rounded up. For minimum radius curves widening on the inside of a curve may be necessary to accommodate longer vehicles.

⁶ Based on a reaction time of 2 seconds and surface coefficients relating to unsealed surfaces and values rounded up. Values based on flat grades and allowances will need to be made for up and down grades.

⁷ This is mainly a requirement for single lane two-way roads. Values rounded up.

⁸ In some cases higher grades of up to 20% can be allowed for short sections (about 150 m). Keep grades on unsealed roads lower due to raveling and scouring of surface.

⁹ Calculation of these values is to be based on information contained in Austroads (2003). The length of the vertical curve (L) is based on the product of K multiplied by the algebraic difference in grades percentage A (i.e. L = K x A).

¹⁰ Sag values are based on comfort control criteria.

Table 1: Excerpt ARRB Unsealed Roads Manual: Guidelines to Good Practice Table 4.2 Guidelines for the main geometric design standards for unsealed roads

Public domain

The modification to the road standards and condition 29 will have no relevant bearing upon the public domain.

Utilities

The modification to the road standards and condition 29 will have no relevant bearing upon the provision of utilities.

Heritage

Condition 29 currently requires the presence of a suitably qualified person to identify any aboriginal artefacts that are uncovered during earthworks associated with roads and accesses. The application is requesting the removal of this requirement due to the onerous nature of the requirement.

With improvements to the National Parks & Wildlife Services (NPWS) procedures and legislation around the protection of aboriginal artefacts, approvals are now generally issued with a condition requiring the contractors to stop work should an artefact be discovered and to notify NPWS immediately. This process then triggers the obligations within the *NPWS Act 1974* to be followed ensuring the artefact is dealt with appropriately. Accordingly, it is recommended to update the condition to reflect Council's current practice with regards to this issue.

Other land resources

The modification to the road standards and condition 29 will have no relevant bearing upon other land resources.

Water

The modification to the road standards and condition 29 will have no relevant bearing upon the impacts on water.

Soils

The modification to the road standards and condition 29 will have no relevant bearing upon soils.

Air and Microclimate

The modification to the road standards and condition 29 will have no relevant bearing upon air and microclimate.

Flora & fauna

The modification to the road standards and condition 29 will have no relevant bearing upon flora and fauna.

Waste

The modification to the road standards and condition 29 will have no relevant bearing upon waste.

Energy

The modification to the road standards and condition 29 will have no relevant bearing upon energy.

Noise & vibration

The modification to the road standards and condition 29 will have no relevant bearing upon noise and vibration.

Natural Hazards

The original application was referred to the NSW Rural Fire Service for the issue of a bushfire safety authority pursuant to 100B of the *Rural Fires Act 1997*. The Bushfire Safety Authority was issued on 21 August 2007, however, no conditions were subsequently included in the court issued consent.

The modification was referred to the NSW RFS to provide opportunity to review the Bushfire Safety Authority in light of the proposed changes. The RFS have issued a letter indicating that no changes to their original conditions are necessary.

Accordingly, it is recommended to now include the RFS requirements as an advisory note to the consent. The conditions relate to the new road and ensuring it complies with the access requirements contained within the document '*Planning for Bushfire Protection 2006*'. It is envisaged that the proposal can comply.

Technological hazards

The modification to the road standards and condition 29 will have no relevant bearing upon technological hazards.

Safety, security and crime prevention

The modification to the road standards and condition 29 will have no relevant bearing crime prevention.

Social impact in the locality

The modification to the road standards and condition 29 will have no relevant bearing upon any social impacts.

Economic impact in the locality

The modification to the road standards and condition 29 will have no relevant bearing upon any economic impacts.

Site design and internal design

The site design is not changing as a result of the proposed modification.

Construction

No BCA related issues with the proposal.

Cumulative Impacts

The modification to the road standards and condition 29 will have no relevant bearing upon any cumulative impacts.

S79C(1)(c) SUITABILITY OF SITE FOR DEVELOPMENT

Does the proposal fit in the locality

Already considered under the original assessment.

Are the site attributes conducive to development

Already considered under the original assessment.

S79C(1)(d) SUBMISSIONS MADE IN ACCORDANCE WITH ACT OR REGULATIONS

Public Submissions

The application was notified in accordance with the MWRDCP 2013 as discussed previously in this report. A total of 7 submissions were received with various concerns and queries. Each of the concerns of relevance to this assessment are addressed under a general heading below:

The road is currently not up to standard and will not be up to a suitable standard for the extra vehicles expected (including during construction of dwellings)

Comment: Council's Manager Development Engineering has reviewed the proposal and indicated that the proposed road construction standards reflect current policy and are a reasonable requirement for the expected number of extra vehicles (approximately 140 vehicles per day based on an additional 20 possible dwellings spread over the additional 10 lots). This is discussed previously in this report.

The new requirements will allow the flexibility to apply the most appropriate operating speed depending on the terrain for each section of the roads.

The sealing of the road is not triggered by the Mid-Western Regional Development Control Plan 2013 (subject lot is greater than 500m from the nearest sealed road).

The temporary use of the road for vehicles involved in the construction of dwellings is not expected to generate any significant impact.

What is the ability of Council to modify a consent issued by the NSW Land & Environment Court

As discussed previously Council is required to act as the consent authority to modify a Court issued consent pursuant to Clause 96AA of the *Environmental Planning & Assessment Act 1979*. The parameters in which this is determined has been discussed above.

Address referencing has changed since original consent

Changes have been made to the title since the original application due to other subdivision consents being acted upon. However, the land to which the original consent applied is still the same with no additional implications due to a change in lot and DP numbers.

Has the development consent lapsed

Council has previously provided confirmation to the owner that the consent was commenced prior to the lapse date.

No specific details of road construction provided for White Rock Road

Council's Development Engineer has indicated that the proposed road upgrades are capable of being accommodated within the parameters of the existing alignment. It is the responsibility of the developer to ensure the road is constructed to the required standards. Condition 24 requires that the final road construction be completed prior to the issue of a subdivision certificate together with the appropriate documentation to demonstrate this.

A block has already been sold

Any block being sold that is the subject of this application is not a matter for Council. A block cannot be formally created until a subdivision certificate is issued by Council and formally registered with the NSW Land & Property Information Department. If the developer has sold a block not yet registered, it is not a matter for consideration for Council.

Maintenance of the road

The road will continue to be maintained in accordance with Council Policy. Any request for additional maintenance can be made to Council in accordance with the policy.

Incorrect photos and references to sections of the road within the traffic report

Council's Manager Development Engineering has reviewed the report and identified those sections that are of relevance to the assessment of the proposal. A conclusion based on the relevant information and considerations within the report has been reached as previously discussed in this report.

Explanation letter concerning the proposal references the wrong consent number

The official S96 application form references the correct consent number i.e. 11269 of 2007 (LEC reference number).

Submissions from public authorities

The original application was referred to the NSW Rural Fire Service for the issue of a bushfire safety authority pursuant to 100B of the *Rural Fires Act 1997*. The Bushfire Safety Authority was issued on 21 August 2007, however, no conditions were then subsequently included in the court issued consent.

The modification was referred to the NSW RFS to provide opportunity to review the Bushfire Safety Authority in light of the proposed changes. The RFS have issued a letter indicating that no changes to their original conditions are necessary.

Accordingly, it is recommended to now include the RFS requirements as an advisory note to the consent. The conditions relate to the new road and ensuring it complies with the access requirements contained within the document 'Planning for Bushfire Protection 2006'. It is envisaged that the proposal can comply.

79C(1)(e) THE PUBLIC INTEREST

Federal, State and local government interests and community interests

No significant broader government and community issues identified as a result of the parameters considered in the proposed modification.

CONSULTATIONS

Health & Building

Not applicable.

Development Engineer

Comments received as discussed throughout this report.

Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning

Financial implications

N/A

DREW ROBERTS
SENIOR TOWN PLANNER

LINDSAY DUNSTAN
MANAGER, STATUTORY PLANNING

JULIE ROBERTSON
DIRECTOR DEVELOPMENT

17 July 2017

- Attachments:**
1. White Rock Submissions (7 in total). (separately attached)
 2. Consent issued by NSW Land & Environment Court. (separately attached)
 3. Application cover letter and traffic study. (separately attached)
 4. Development Engineering Referral 14 June 2017. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER