

Late Report Ordinary Meeting Of Council



Wollondilly Shire Council

Late Report – Monday 18 July 2016

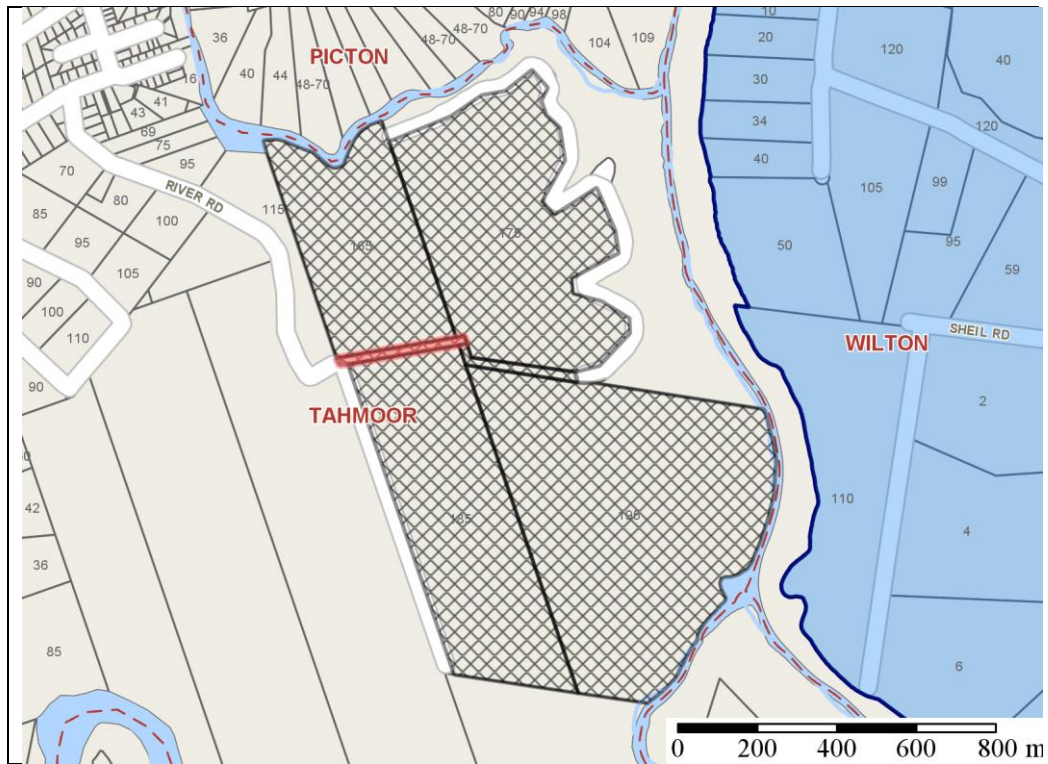
PE10 Development Application No.010.2014.00000588.002 - Modification of Consent –
Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

LATE REPORT

PE10 Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR
66876 TRIM DD010.2014.00000588.002



LOCATION MAP N

DEVELOPMENT INFORMATION

Development Application No:	DD010.2014.00000588.002
Property Address:	165-195 River Road, Tahmoor
Applicant:	Celestino Developments Tah P/L
Owner:	M Camilleri
Proposal Details:	Modification of Consent – Amended Subdivision Plan
Zone:	Part E2 Environmental Conservation Part R5 Large Lot Residential

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

EXECUTIVE SUMMARY

- The purpose of this report is to provide an update on the assessment of an Application to Modify Development Consent for the subdivision of land at 165-195 River Road, Tahmoor.
- Despite the original consent being subject to an Appeal before the NSW Land & Environment Court, this report does not contain advice concerning litigation and hence should be dealt with in the open session of the Ordinary Meeting.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that:
 - Determination of Modified Application 10.2014.00000588.002 to amend Development Consent No 10.2014.00000588.001 for the subdivision of land at 165-195 River Road, Tahmoor be deferred to permit ongoing assessment of the application.
 - In relation to the current Appeal against Development Consent No 10.2014.00000588.001, Council seek a date for a Section 34 Conciliation Conference.
 - For the purposes of the Section 34 Conciliation Conference, Council would not oppose any application made by the Proponent for substitution of the approval subdivision plans with the amended proposal considered in this report.
 - The General Manager be delegated authority to enter into any Section 34 Conciliation Conference Agreement and/or Consent Orders for the amended proposal subject to:
 - An independent Traffic Expert engaged by Council, confirming that the upgraded River Road has sufficient capacity to cater for the additional lot yield proposed by the amended subdivision design; and
 - Any Agreement / Consent incorporate conditions recommended by Rural Fire Service in relation to the bushfire risk, internal road configuration and increased lot yield proposed by the amended subdivision design, and
 - Consideration of any suggested conditions of consent recommended by the Court Commissioner to adequately address the concerns raised by residents.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

- The General Manager consider further the Letter of Offer for a revised Voluntary Planning Agreement and be delegated authority to endorse the offer for possible incorporation into any Section 34 Conciliation Conference Agreement and/or Consent Orders, once satisfied that the offer is reasonable and generally in accordance with Council's adopted Policies.

REPORT

BACKGROUND

On 16 November 2015, Council granted Development Consent No 010.2014.00000588.001 to subdivide the land into 125 residential allotments. The consent required a number of the proposed lots to be consolidated for environmental protection reasons. The requirement effectively reduced the development yield to 117 allotments. As a consequence of the resolution passed by Council, the consent also required:

That the land in Stage 6 of the subdivision located east of the 150 metre building envelope buffer line including the land beneath the escarpment shall be:

- Gifted to National Parks & Wildlife Services for creation of a National Park / Reserve*
- Should National Parks & Wildlife Services not wish to acquire the land it shall be gifted to Council and Council seek an appropriate funding source for the purpose of environmental protection or bio-banking in accordance with Council's Dedication of Land Policy.*

On 15 February 2016, the proponent commenced proceedings in the NSW Land & Environment Court ("Court"). The Appeal relates to a number of conditions imposed by Council including the consolidation and land dedication requirement referred to above.

It should be noted however that the proponent has not pursued the matter through the Court process. Rather the matter has been adjourned to permit further discussions between the parties and give Council an opportunity to consider an amended subdivision proposal. The alternate design seeks to combine the communal open space with the portion of land that Council is seeking to protect.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

1.1 DESCRIPTION OF SITE AND SURROUNDING AREA

The subject land is located at the end of River Road, Tahmoor, approximately 1.7km from the River Road and Remembrance Driveway intersection. The development comprises four allotments with a combined area of 111 hectares and is irregular in shape.

The land is bound by the Nepean River (to the east), Myrtle Creek (to the north), Bargo River (to the south) and rural land (to the west). The land immediately north, east and south comprises gorges with steep inaccessible land containing dense vegetation. Bargo River and Myrtle Creek form confluences with the Nepean River. A large natural pool is located at the confluence of the Nepean and Bargo Rivers.

The perimeter of the site is vegetated. However vast areas of the land have been cleared of vegetation and presently the site is vacant with no improvements apart from internal road and a dam. The dwelling house was removed from the site in May 2015. The other sheds and associated outbuildings were removed some time before.

One watercourse traverses the site, running in an east-west direction, and there are five watercourses that start from within the site.

Beyond Myrtle Creek are an abattoir and a poultry farm. To the west of the site is another poultry farm. South of the site beyond the Bargo River are a small number of dwelling houses and the land area used for rural residential purposes. Beyond the Nepean River to the east, there are a number of land parcels being used for rural residential purposes. These lots form part of the West Wilton area identified in the Wilton Junction Priority Precinct.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

1.2 MODIFIED APPLICATION

A Modified Application reflecting the alternate subdivision design was lodged with Council on 13 April 2016.

On 2 May 2016, the amended concept was presented to Council at a Councillor Workshop.

At the 16 May 2016 Ordinary Meeting, Council considered a Notice of Motion in relation to this matter and resolved:

That in relation to Modified Application No 10.2014.00000588.002, for the subdivision of land at 165 River Road, Tahmoor; Council proceed with its assessment of the application and respond to the Appeal currently before the Land & Environment Court in the following terms:

- a) *amended plans be sought from the Proponent based upon the dedication of land in the South East corner of the site for recreational and conservation purposes. The subdivision design shall satisfy the relevant provisions of Council's LEP 2011, DCP 2016 and draft Land Dedication Policy.*
- b) *the Modified Application incorporating the amended plans and revised Planning Agreement Letter of Offer shall be advertised and notified to nearby residents, previous submitters and relevant State Agencies for comment. The outcomes of this consultation be provided to the Land & Environment Court for their consideration as part of any Section 34 Conciliation Conference.*
- c) *following the exhibition and referral period the matter be reported to Council outlining options for determination of the amended proposal either through the Modified Application and/or Court Appeal process.*

A copy of the amended subdivision plan forms Attachment 1 of this report.

The submitted plans incorporate the following significant changes to the approved development:

- Reconfiguration of the internal road layout in response to the site contours. The amended design will result in better road geometry and longitudinal sections. It also lends itself to better connection with the land to the west which is seeking to be rezoned for residential purposes.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

- Relocation of the public park (2ha) from the centre to the south eastern corner of the site. The proposed Escarpment Park which is approximately 4ha in area will incorporate green space for active play, a multi-purpose sports court, passive recreation, children’s play station, BBQ pavilion, picnic shelters and car parking. A large proportion of the site can be preserved for bush regeneration particularly at the escarpment edge.
- The Escarpment Park, including the land located within the Gorge, will be dedicated to Council. In accordance with Council’s Land Dedication Policy, the proponent will pay a contribution for maintenance and conservation purposes.
- As a consequence of the internal road re-configuration, the proponent seeks to increase the development yield from 117 to 160 residential allotments. It should be noted that the proposal complies with the minimum lot size requirement (i.e. 4000sqm) stipulated in the Wollondilly Local Environmental Plan 2011 (“2011 LEP”).
- The Plan for the removal of trees on that part of the site zoned R5 Large Lot Residential has been revised. The trees nominated for removal align with the proposed internal road configuration and earthworks. Approximately 90 trees in the R5 zone will be retained and protected. No trees in the E2 Environmental Conservation Zone will be removed.
- A Plan detailing the proposed cut and fill across the site has also been submitted which reflects the amended road layout and achieves the necessary gradients for future effluent disposal envelopes.

The Modified Application was exhibited in the local paper. The previous submitters and approximately 122 adjoining residents were also notified of the amended proposal. Council received 28 written submissions. Details of the submissions and the planning response are provided elsewhere in this report.

Copies of the submissions have also been provided to the external referral agencies (i.e. Mines Subsidence Board, Department of Primary Industries – Water, and Rural Fire service) for their consideration prior to finalisations of their comments. An assessment, in terms of compliance with our LEP and DCP is also provided elsewhere in this report.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

1.3 VOLUNTARY PLANNING AGREEMENT

The rezoning of the site which occurred in January 2014, is subject to a Voluntary Planning Agreement (VPA). The VPA requires the proponent to pay for infrastructure upgrade works plus embellishments and facilities associated with the residential subdivision.

The facilities contemplated in the original VPA include a horse riding park / trails and a boat pond. The cost of these works is equal to a contribution of approximately \$40,000 per lot.

The proponent has indicated that they would like to substitute the facilities referred to above, with facilities suitable for more general use. These would include pedestrian paths, picnic tables, seating, exercise stations and the like.

A Letter of Offer pertaining to a revised VPA forms Attachment 2 to this report.

In addition to the substituted facilities, the Letter of Offer suggest that any revised VPA will account for the value of dedicated land, contributions for maintenance and preservation of those dedicated lands plus additional upgrade works to River Road. It should be noted that the Letter of Offer and any revised VPA will be based upon the original agreement to undertake works equal to \$40,000 per lot.

1.4 ASSESSMENT PATHWAYS

Under legislation, a Modified Application will only be valid if it is substantially the same as the development for which the consent was originally granted.

It should be noted that procedural questions of law may be the subject of a third party Appeal.

If Council was supportive of the amended subdivision design, it would be prudent to seek determination of the matter via the Proponent's Appeal currently filed with the Court.

This approach would involve the following steps:

1. The Proponent would file a Notice of Motion with the Court seeking to substitute the approved plans with the amended plans.
2. The Court be requested to set the matter down for a Section 34 Conciliation Conference ('Conference').

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

It should be noted that a Conference is facilitated by a Commissioner, who will hear from any objector wishing to address the Court. Given these Conferences are a form of mediation, the Commissioner may recommend appropriate terms for any Agreement / Consent between the parties to address the concerns of residents.

The alternative to the above is to advise the Court that Council intends to defend the Appeal and proceed to a full hearing.

2.1 SECTION 79C ASSESSMENT

2.2 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011

Clause 1.2 Aims of Plan:

Objective	Comment
(a) to provide for the management of natural resources and the protection of the natural landscape character,	The proposal is generally in accordance with the nominated objective.
(b) to protect, conserve and enhance the built, landscape and Aboriginal cultural heritage	The proposal is generally in accordance with the nominated objective.
(c) to protect water quality in land that is situated within water supply catchments,	Not applicable.
(d) to encourage development that provides for an integrated transport and infrastructure system and adequate facilities and service provision for future growth,	The proposal is generally in accordance with the nominated objective.
(e) to recognise, manage and protect rural resource lands for sustainable agriculture and extractive industry practices,	Not applicable.
(f) to maintain the separation between towns and villages to retain their unique character and rural and natural settings.	The proposal is generally in accordance with the nominated objective.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Characterisation: Subdivision
Zone of land: Part E2 Environmental Conservation and Part R5 Large Lot Residential
Permissibility: Permitted with consent

Zone objectives:

Objective	Comment
<u>R5</u>	
<i>To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.</i>	The proposed development is considered to satisfy this objective.
<i>To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.</i>	The proposed development is considered to satisfy this objective.
<i>To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.</i>	The proposed development is considered to satisfy this objective.
<i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i>	The proposed development is considered to satisfy this objective.
<u>E2</u>	
<i>To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</i>	The proposed development is considered to satisfy this objective.
<i>To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</i>	The proposed development is considered to satisfy this objective.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

LEP Clauses

Clause	Comment
Part 2 Permitted or prohibited development	
2.6 Subdivision—consent requirements	Consent is sought.
Part 4 Principal development standards	
4.1 Minimum subdivision lot size	Land within the R5 zone shall be no less than 4,000sqm in size – all lots are compliant.
Part 5 Miscellaneous provisions	
5.9 Preservation of trees or vegetation	Subject to Council’s Environment Officer advice.
5.9AA Trees or vegetation not prescribed by Development Control Plan	As above.
Part 7 Additional local provisions	
7.1 Essential services	Services are available apart from sewer.
7.2 Biodiversity protection	Subject to Council’s Environment Officer advice.
7.3 Water protection	Subject to Council’s Environment Officer and Environmental Health advice. Department of Primary Industries – Water advice is yet to be provided.
7.4 Flood planning	Not applicable.
7.5 Earthworks	Earthworks are proposed and subject to Council’s Development Engineer advice.
7.6 Development within a designated buffer area	Not applicable.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

2.3 WOLLONDILLY DEVELOPMENT CONTROL PLAN 2016 (WDCP 2016)
VOLUME 1 – GENERAL

Relevant Provisions	Comment
Part 2 – General considerations for all development	
<i>2.1 Objectives</i>	
<p>1. To ensure that developments are undertaken with due regard to human safety.</p> <p>2. To ensure that developments do not unreasonably impact on their surrounds.</p> <p>3. To ensure that developments achieve a satisfactory level of social equity.</p>	<p>The amended proposal is generally in accordance with Council's nominated objectives.</p>
<i>2.2 Controls</i>	
<p>1. The consent authority shall consider the following safety and human health risks in assessing a development application under this volume:</p> <p>(a) Road and traffic hazards;</p> <p>(b) Bushfire threat;</p> <p>(c) Flood risk;</p> <p>(d) Noise, vibration, pollution, odour, radiation or waste from surrounding land uses;</p> <p>(e) Exposure to electricity transmission systems;</p> <p>(f) Exposure to radiation from telecommunications infrastructure;</p> <p>(g) Potential exposure to children of material (including signage) from any nearby restricted premises and/or sex services premises;</p> <p>(h) Hazards from vehicles within car parking areas; and</p> <p>(i) Hazard from potential contamination of the land.</p>	<p>The amended proposal has had due regard to the nominated requirements (subject to recommended conditions of consent).</p> <p>Advice is yet to be provided by NSW Rural Fire Service.</p>
<p>2. The consent authority shall consider the suitability of the road network in the vicinity in assessing a development application under this volume.</p>	<p>Subject to Council's Development Engineer advice.</p>

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
3. The consent authority must not grant consent to a development application for development within a proclaimed mine subsidence area without the concurrence of the Mine Subsidence Board.	Mine Subsidence Board approval yet to be provided.
4. The consent authority must not grant consent to a development application for development subject to this volume on land unless it has considered the impact of the development on any system for the management of wastewater present on that land.	Subject to Council's Environmental Health Officer advice.
5. The consent authority must not consent to the carrying out of development within a drinking water catchment area unless it is satisfied that the proposal will have a neutral or beneficial effect on water quality.	Not applicable.
Part 3 – Variations to this Plan	
3.1 Controls	There is no request for variation to controls within WDCP 2016.
Part 4 – Community Engagement	
4.6 Applications to modify a development consent	<p>An application to modify a consent under Section 96(2) of the Act requires as a minimum notification to adjoining landowners and previous submitters.</p> <p>In accordance with this control, Council determined to carry out additional notification and advertising of the application due to the nature of the changes and that it was considered in the public interest to do so.</p>

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
Part 5 – Colonial Heritage (General)	
<i>5.2 General Controls</i>	Not applicable. The subject land does not contain a heritage item nor is it within a heritage conservation area.
Part 6 – Heritage (Specific Locations)	
<i>6.2 Application</i>	Not applicable. The subject land does not contain a heritage item nor is it within a heritage conservation area.
Part 7 – Aboriginal Heritage	
<i>7.2 Controls</i>	<p>Not applicable. The subject land does not contain a known Aboriginal object or Aboriginal place of heritage significance.</p> <p>No concerns have been raised by Cubbitch Barta Native Title Claimante Aboriginal Corporation or Tharawal Local Aboriginal Land Council in relation to the amended proposal.</p>
Part 8 – Flooding	
<i>8.2 Controls</i>	Not applicable. The subject land is not mapped as flood affected.
Part 9 – Environmental protection	
<i>9.3 Controls</i>	<p>The amended development shall occur so as to minimise or mitigate any adverse impact as detailed in Clause 7.2 and 7.3 of WLEP 2011 – and subject to Council’s Environment Officer advice.</p> <p>All stormwater generated shall be treated to an acceptable standard to maintain water quality and</p>

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
	subject to Council's Development Engineer advice.
Part 10 – Tree removal	
10.2 & 10.5	Revised tree removal is subject to Council's Environment Officer advice.
Part 11 – Landscaping	
11.2 – 11.4	Amended landscaping is subject to Council's Environment Officer advice.
Part 12 – Signage	
12.2 Signage as exempt development	Not applicable. No signage is proposed as part of this application.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

2.4 WOLLONDILLY DEVELOPMENT CONTROL PLAN 2016 (WDCP 2016)
VOLUME 3 – SUBDIVISION OF LAND

Relevant Provisions	Comment
Part 2 – General Requirements for all Development	
<i>2.1 Traffic and Transport</i>	
<i>Objectives</i>	
1. To ensure that new allotments created by the subdivision of land are provided with adequate public roads. 2. To ensure that the subdivision of land is only undertaken in locations where the road network is able to provide, or be made capable of providing adequate servicing. 3. To ensure new roads are safe and efficient. 4. To ensure access points for rural subdivisions are located at safe locations within the road network. 5. To ensure pedestrian and cycle paths are provided where required to maximise the uptake of healthy and sustainable transport options. 6. To ensure splay corners are dedicated at intersections so that intersections can be maintained to maximise sight distances and to maximise flexibility to upgrade intersections in the long term.	The amended proposal is generally in accordance with Council's nominated objectives, subject to Council's Development Engineer advice.
<i>Controls</i>	
1. All new public roads must comply with Council's design specifications including kerb and guttering, drainage pedestrian paths and street lighting.	Complies, subject to Council's Development Engineer advice.
2. All access handles must comply with the following minimum widths: Residential (R1, R2 or R3) servicing 2 or 3 allotments Minimum width of access handle: 6m Minimum Pavement Width: 4m	Not applicable.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
3. In the case of an access handle servicing one allotment the access handle must wholly be part of the allotment it is serving.	Not applicable.
4. In the case of an access handle servicing more than one allotment the access handle must be part of each of the allotments it is serving with reciprocal rights of carriageway provided.	Not applicable.
<p>5. Road infrastructure enhancement shall be provided to existing roads in accordance with the following table unless the improvements are already present:</p> <p><u>R5</u> Road, drainage for all frontages. Install street lighting. Install footpaths/ sharepaths/cycleways as required in Council's design specifications to the nearest available network connection to the village centre. Kerb and Gutter or Grass Swale as appropriate.</p> <p><u>E2</u> Requirements will be determined on a case by case basis to ensure adequate infrastructure is available for the development.</p>	Subject to Council's Development Engineer advice.
6. All intersections and new vehicular access points to public and/or private roads must have the relevant safe intersection sight distance for the relevant speed environment.	Applicant to provide amended plans to demonstrate compliance with this control.
7. New street lighting must use only LED type lights.	Subject to Council's Development Engineer advice.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
8. Access handles servicing more than 1 allotment in a rural, residential or environmental zone must be provided with a streetlight within a reasonable proximity (to be determined by Council and imposed as a condition of development consent) to the point where the access handle connects to the public road. Where existing street lighting in the vicinity of the site is deemed to be adequate by Council this condition does not apply.	Not applicable.
9. Splay corners shall be provided for newly created corner lots with the following sizes: Residential Zones: 4m by 4m Environmental Zones: 10m by 10m	Subject to Council's Development Engineer advice.
<i>2.2 Wastewater</i>	
<i>Objectives</i>	
1. To ensure wastewater generated by development can be managed without harm to the natural environment or human health. 2. To encourage sustainability in wastewater disposal by preventing the use of pump out systems which require significant energy inputs for the transport of waste. 3. To ensure development within the Sydney Drinking Water Catchment has a neutral or beneficial effect on water quality.	The amended proposal is generally in accordance with Council's nominated objectives, subject to Council's Environmental Health advice.
<i>Controls</i>	
1. All lots created must have access to one or more of the following: a. A reticulated sewage scheme	All lots have access to sufficient land with the correct physical and chemical characteristics to allow

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
<p>operated by the relevant statutory sewage authority; or b. A private reticulated sewage scheme operated by person licensed under relevant legislation; or c. Sufficient land with the correct physical and chemical characteristics to allow for the wastewater to be treated and disposed of within the boundaries of the lot.</p>	<p>for the wastewater to be treated and disposed of within the boundaries of the individual lot. Subject to Council's Environmental Health advice.</p>
<p>2. A "pump out" system is not a satisfactory method of wastewater disposal for the purposes of Control 1.</p>	<p>Not applicable.</p>
<p>3. Any subdivision that is carried out on unsewered land (i.e. carried out under control 1(c) above) must meet the requirements of Council's "On-site Sewage Management System and Grey Water re-use Policy".</p>	<p>Subject to Council's Environmental Health advice.</p>
<p><i>2.3 Stormwater</i></p>	
<p><i>Objectives</i></p>	
<p>1. To ensure stormwater is appropriately managed to prevent environmental harm and to reduce the risk of damage to property and human life. 2. To ensure stormwater is appropriately managed to minimise long term flooding impacts on and from developments. 3. To ensure that development within the Sydney drinking water catchment has a neutral or beneficial effect on water quality.</p>	<p>The amended proposal is generally in accordance with Council's nominated objectives, subject to Council's Development Engineer advice.</p>
<p><i>Controls</i></p>	
<p>1. Development involving the subdivision of land must demonstrate</p>	<p>Subject to Council's Development Engineer advice.</p>

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
that stormwater management arrangements will allow for drainage to be directed to either a natural water body or a constructed stormwater management system without causing significant environmental harm or risks to human health and safety.	
2. Medium and Large subdivisions must include provision of integrated stormwater management systems to achieve Water Sensitive Urban Design outcomes. These shall be detailed in an assessment report (a Water Cycle Management Study or Similar) to be submitted with the development application which must include modelling of both water quantity and quality and must also include a short and long term maintenance management plan.	Complies. Subject to Council's Development Engineer advice.
<i>2.4 Lot Size and Shape</i>	
<i>Objectives</i>	
1. To ensure regular and practical allotments that will encourage the orderly and economic use of land.	The amended proposal is generally in accordance with Council's nominated objective.
<i>Controls</i>	
1. Lots (other than lots in residential zones) shall have the following minimum dimensions:	Not applicable.
2. Lots in residential zones shall have the following minimum dimensions: Area 1500sqm or Greater Minimum Lot Width: 20m Minimum Lot Width (Corner allotment): 30m	Applicant to provided amended plans to demonstrate compliance with this control.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
Minimum Lot Depth: 30m	
<p>3. These controls do not apply to subdivision that places each dwelling on its own allotment in the following cases:</p> <p>a. The subdivision of a dual occupancy or medium density development that is existing and lawful; or</p> <p>b. The subdivision of a proposed dual occupancy or medium density development that complies with all other relevant controls in Wollondilly Development Control Plan, 2015.</p>	Not applicable.
<p>4. These controls do not apply to land to be dedicated to Council for roads, environmental reserves or for public open space.</p>	Noted.
<p>5. Lots that are irregularly shaped because of their location in the road network and/or because of constraints of the site may proceed in spite of a non-compliance with controls 1 and 2 if the consent authority is satisfied that the lots, when developed, will be capable of supporting:</p> <ul style="list-style-type: none"> • a dwelling with a footprint of at least 150m² ; and • Any required asset protection zone wholly within the proposed lot boundaries • If the subdivision occurs on unsewered land that the site can adequately accommodate any effluent disposal area that is required; and the resulting character of that development would be consistent with the character of the area. <p>Council may require the submission of</p>	Noted.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
specialist studies to justify development carried out under this control.	
6. For the purposes of calculating minimum lot size for land within an R1, R2 or R3 zone, the area of the battle-axe handle is not included in the calculation of the area of a lot which it services.	Not applicable.
7. Proposed lots which face onto a cul-de-sac head shall achieve a minimum “chord” width of 10 metres. The area considered to be the chord of the cul-de-sac is demonstrated in the diagram below. The width of any lot at the front building line shall be in accordance with the table above in control 2.	Applicant to provided amended plans to demonstrate compliance with this control.
<i>2.5 Landscape and Character</i>	
<i>Objectives</i>	
1. To ensure subdivisions are designed in a way that maintains or enhances the landscape character of the surrounding area.	The amended proposal is generally in accordance with Council’s nominated objective.
<i>Controls</i>	
1. The subdivision of land in environmental and rural zones must demonstrate, to the satisfaction of the consent authority that the location of all building envelopes and access driveways will not result in degradation of the landscape character of the surrounding area.	Not applicable.
2. The subdivision of land in residential zones must ensure that there are no two access handles along the same	Not applicable.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
property boundary.	
3. Access handles to lots in residential zones (excluding R5 Large Lot Residential zones) must be provided with landscaping between the edge of the driveway pavement and the property boundary. The minimum width of such landscaping shall be 1m at all points. Formal landscaping is not required for those parts of access handles where driveways connect the access handle to vehicle parking or manoeuvring areas.	Not applicable.
4. Landscaping required by control 2.5(3) shall be provided with: a. An automatic watering system; and b. A mix of ground covers and shrubs that are appropriate for the width of the handle; and c. A mulched or rocked garden bed with permanent edging.	Not applicable.
5. Landscaping for access handles shall not obscure the buildings at the rear of the handle.	Not applicable.
6. The subdivision of land that proposes the opening of a new public road must include embellishment of the new road verges in accordance with Council's Street Tree Risk Plan.	Subject to Council's Development Engineer advice.
<i>2.6 Corner Allotments</i>	
<i>Objectives</i>	
1. To plan corner allotments at the subdivision stage to ensure safe vehicular access and maximum amenity for the streetscape.	The amended proposal is generally in accordance with Council's nominated objective.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
<i>Controls</i>	
1. Corner allotments in residential zones shall be provided with a building envelope to identify the primary and secondary setbacks.	Complies.
2. Corner allotments in residential zones shall nominate a vehicular access point to allow the safety of the access point to be assessed with reference to any nearby intersection.	Applicant to provide amended plans to demonstrate compliance with this control.
3. These controls do not apply to proposed corner allotments on which a dwelling is already constructed.	Not applicable.
<i>2.7 Building Envelopes</i>	
<i>Objectives</i>	
1. To identify the constraints on rural and environmental land at the subdivision stage. 2. To ensure integrated housing lots are provided with adequate covenants for a future zero lot line.	The amended proposal is generally in accordance with Council's nominated objectives.
<i>Controls</i>	
1. Each lot created by subdivision of land within rural and environmental zones shall be provided within a building envelope that includes all developable land and excludes the following land: a. Land that is moderate or higher risk of geotechnical instability; and b. Land that is within a setback identified in Volume 4 of this DCP; and c. Land that is within 40 metres of the top of bank of a watercourse; and d. Land that contains significant native vegetation; and e. Land that has been identified as	Complies.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
<p>being subject to the 1% AEP flood extent; and f. Land that is required for an asset protection zone under a Bushfire Safety Authority; and g. Land that is subject to a transmission line or other utility service easement; and h. Land that is visually prominent or located upon a ridgeline and upon which the construction of a dwelling would degrade the landscape character of the area.</p>	
<p>2. Town Centre Residential Lots and residential small lots may be created where a building envelope allows for one boundary as a zero lot line boundary. If such a boundary is to be created then satisfactory easements must be provided on the adjoining lot for eave overhang, drainage, maintenance and any other relevant matter. The subject easement must be registered as a restriction on the title of the burdened lot prior to the issue of any Subdivision Certificate for the land.</p>	<p>Not applicable.</p>
<p><i>2.8 Environmental Protection</i></p>	
<p><i>Objectives</i></p>	
<p>1. To ensure significant native vegetation and other environmental assets are not lost in the provision of asset protection zones.</p>	<p>The amended proposal is generally in accordance with Council's nominated objective.</p>
<p><i>Controls</i></p>	
<p>1. The subdivision of land that comprises significant stands of native vegetation must provide for asset protection zones for all future development outside of that vegetation. The allotment size and layout must</p>	<p>Subject to Council's Environment Officer and NSW Rural Fire Service advice.</p>

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
facilitate this provision.	
2. The layout of any proposed subdivision must be designed to limit or avoid any adverse impacts on watercourses and vegetation and prevent future development occurring on steep and constrained lands.	Complies.
<i>2.9 Non-Residential Development</i>	
<i>Objectives</i>	
1. To ensure significant native vegetation and other environmental assets are not lost in the provision of asset protection zones.	The amended proposal is generally in accordance with Council's nominated objective.
<i>Controls</i>	
1. When the subdivision of land is proposed in an area where an existing nearby non-residential use may impact on future residents, the consent authority must be satisfied that the new development would not restrict the ability of the existing development to meet amenity requirements in relation to issues such as noise, odour and the like in accordance with the principles established in the case of Inghams Enterprises vs Kira Holdings.	Satisfied that the amended development addresses this control.
<i>2.10 Agricultural Subdivision</i>	
<i>Objectives</i>	
1. To ensure agricultural land is not fragmented and degraded by inappropriate subdivision.	Agricultural land is not impacted by this proposal.
<i>Controls</i>	
1. These controls relate to the subdivision of land carried out under	Not applicable.

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
Clause 4.2 of Wollondilly Local Environmental Plan, 2011.	
<p>2. Any development application for the subdivision of land under this clause must include a Total Farm Management Assessment which identifies the following:</p> <ul style="list-style-type: none"> • Details of the most suitable agricultural uses for the site taking into account soil type, agricultural land classification, slope, pasture/grass type, drainage characteristics of the site, microclimate and proximity to dwellings on adjoining lands; and • The agricultural use to be undertaken on each proposed lot; and • The nomination of an agricultural envelope within each lot which demonstrates that sufficient land is available for the nominated agricultural use for that lot. The agricultural envelope shall exclude areas of the site required for boundary setbacks, services (including on-site wastewater disposal), drainage and other infrastructure and the like; and • Provide evidence that the lots are large enough to prevent the onset of rural land use conflict by way of odour, spray drift etc from the proposed agricultural use; and • Indicate the source of water supply for the use; and • Provide an Economic Feasibility Assessment of the intended agricultural uses on each of the lots. • That the use of the land, including storage of equipment, will be satisfactory from a security perspective if the lots do not have a dwelling to provide supervision. 	Not applicable.
3. A restriction shall be placed on the title of each lot created under clause	Not applicable.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Relevant Provisions	Comment
4.2 of Wollondilly Local Environmental Plan stating that the lot shall only be used for the purposes identified in the Total Farm Management Assessment endorsed by Council and that the lot(s) shall no dwelling shall be erected on the lot burdened.	

3.1 COMMUNITY CONSULTATION

The application was advertised for a period of 15 days commencing 15 June 2016. A total of twenty-eight (28) submissions were received.

Below is an assessment of the key issues raised in submissions relevant to this application:

Concern	Comment
<p><u>Not substantially the same development</u></p> <p>A larger development than that previously approved, with increase in lot density unacceptable. Number of lots should be reduced.</p> <p>This would be more appropriately considered under a new development application.</p>	<p>These concerns raise questions of law, which only the Court can determine.</p> <p>Objectors have appeal rights in relation to procedural matters and Council's interpretation of the legislative provisions.</p>
<p><u>Traffic Impact</u></p> <p>The current proposed number of rural residential lots has increased by more than 50% since the land was rezoned. This will result in increased traffic and add a much greater number of cars parked directly on the road.</p> <p>Increase in traffic generation will be an additional 430 vehicle movements per day.</p> <p>This development is quite close to another recently advertised proposal in</p>	<p>Subject to advice from Council's Development Engineer and Environment Officer.</p>

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Concern	Comment
<p>Stilton Lane. The two (2) in conjunction have some rather significant ramifications in the flow of the carriageway near to the bridge at Myrtle Creek, Tahmoor.</p> <p>The access road cuts through a wildlife corridor so the increases in the amount of traffic will be devastating for wildlife.</p>	
<p><u>Access</u></p> <p>Only one access road (River Road) – serious risk in a bush fire prone area. There should be another entrance and exit to the site besides River Road.</p> <p>Determination of this application should be withheld until the traffic issue is addressed. This would require a very expensive bridge across the gorge. The likelihood of such a bridge being justified needs to be carefully considered and taken into account.</p> <p>The traffic will be heavy on the one entry/exit and there are also bush fire and flood problems for the site.</p>	<p>Subject to advice from Council's Development Engineer and Rural Fire Service</p> <p>The amended proposal lends itself to reasonable connection to the land to the west, which is subject to a planning proposal to rezone the land for residential purposes. Future development of this land could result in internal road connections to Progress Street and Cross Street (in addition to the current access arrangements via River Road)</p>
<p><u>There is insufficient infrastructure</u></p> <p>What plans are there regarding infrastructure to accommodate the increasing population?</p>	<p>This was addressed under the consent of the original development application.</p> <p>This application is for subdivision of land only.</p>
<p><u>Impact on the Gorge – 150m Buffer</u></p> <p>Has enough allowance been made for the protection of the natural environment and the Nepean and Bargo River Gorge?</p> <p>The 150 metre buffer zone from the escarpment has been encroached upon by lots 49, 50, 51, 52, 56, 57, 72, 73,</p>	<p>Subject to Council's Environment Officer and Environmental Health Officer advice.</p> <p>The existing consent requires development be located outside of the 150m buffer zone in the south eastern corner of the site (i.e. stage 6). The applicant has provided plans with building</p>

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Concern	Comment
<p>117, 118, a road and a “proposed escarpment park” (public?). This does not appear to comply with Council’s previous development consent.</p> <p>The buffer as approved by Council on 16 November 2015, be measured from the top of the cliffs or very steep slopes and/or a contour that is no less than 192 metres above sea level.</p> <p>Fragmentation of the E2 Environmental Conservation Zone remains in the northern half of the site where all the blocks extend to the edge of the gorge.</p> <p>The 150m buffer should apply right around the eastern edge of this development.</p>	<p>envelopes shown on each lot, demonstrating that no development is within 150m of the Escarpment line.</p>
<p><u>On-site Wastewater Disposal</u></p> <p>The effluent disposal system proposed for the 160 residential lots leaves the Bargo and Nepean Rivers at risk of runoff contamination during occurrences of high rainfall, such as we have just experienced (and also experienced in May 2015).</p> <p>Increase in treated effluent will flow into a single watercourse and into the Bargo River. The lack of any wetlands treating this flow before it enters the gorge is a major oversight.</p> <p>The much larger volume of nutrient rich runoff would require a much more significant system of waste water management than has been provided for.</p>	<p>Subject to Council’s Environmental Health advice.</p>

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Concern	Comment
<p><u>Bush Fire</u></p> <p>The last bush fires at Wilton and across the expressway at Bargo caused gridlock to the residents of River Road. To place all these new homes at the bottom of the hill would be criminal considering the extremely poor egress. One if not two additional egress routes would need to be in place prior to this development.</p> <p>Consider the creation of a perimeter road to act as a buffer between the houses and the gorge</p>	<p>NSW Rural Fire Service advice yet to be provided.</p>
<p><u>Public park remain in the approved location</u></p> <p>Relocating the central park will decrease the recreational area while the native vegetation that would have provided the buffer would be totally degraded. This will totally nullify the purpose of the buffer zone.</p> <p>This park provided an area for detention of stormwater and included a wetlands area for treatment of flows from roads and effluent systems.</p> <p>A park will not be supported for active recreation, in what needs to be a genuine revegetated buffer.</p> <p>The perimeter road should be outside (i.e. west of) the 150m buffer and that the park should extend north to follow the 150m line across Lots 117 and 118 and south across Lot 160.</p>	<p>The existing design and location of the proposed “escarpment park” is considered satisfactory.</p> <p>The park is within a reasonable walking distance to proposed lots and will be suitably embellished to address any concerns that it will detract from the buffer zone.</p>

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

Concern	Comment
<p><u>Removal of debris</u></p> <p>Rusting metal framework remains on the rocks at Junction Pool as a remnant of the pumping apparatus used by the former JR Stud. This is visible from what is potentially a magnificent lookout/vantage point off the proposed “escarpment park” or the 150m buffer.</p> <p>It should be a consent condition for this development that this unsightly debris be removed.</p>	<p>This matter was referred to Council’s Heritage Advisor for assessment.</p>
<p><u>Earthworks</u></p> <p>Significant earthworks are now proposed, with detrimental impact to the site.</p>	<p>Subject to Council’s Development Engineer and Environment Officer advice.</p>

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

CONCLUSION

The Consent for subdivision of the subject site, issued in November 2015, included conditions to address the concerns of residents and interest groups.

The amended proposal put forward by the proponent is a reasonable alternative to the outcomes sought under the original consent.

Determination of the Modified Application may result in a third party Appeal on the basis that it is not substantially the same development.

Council could seek determination of the amended proposal through the Courts in the form of Consent Orders or a Section 34 Conference Agreement. This approach would avoid the need for a full hearing of the Appeal.

Accordingly it is recommended that Council's solicitors be instructed to seek a date for a Section 34 Conciliation Conference. Furthermore, the General Manager be delegated authority to enter into a Section 34 Conciliation Conference Agreement or seek Consent Orders from the Court to determine the amended proposal subject to:

1. An independent traffic Expert engaged by Council, confirming that the upgraded River Road has sufficient capacity to cater with the additional lot yield proposed by the amended subdivision design; and
2. An independent Traffic Expert engaged by Council, confirming that the upgraded River Road has sufficient capacity to cater for the additional lot yield proposed by the amended subdivision design; and
3. Any Agreement / Consent incorporate conditions recommended by Rural Fire Service in relation to the bushfire risk, internal road configuration and increased lot yield proposed by the amended subdivision design, and
4. Consideration of any suggested conditions of consent recommended by the Court Commissioner to adequately address the concerns raised by residents.

FINANCIAL IMPLICATIONS

It is estimated that the legal and expert witness fees associated with preparation for and attendance at the Section 34 Conciliation Conference will cost between \$5,000 and \$10,000. If the matter proceeds to a full hearing the total cost is likely to exceed \$50,000.

These costs will be covered by the legal expenses allocation in the 2016/2017 Operational Plan.

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

ATTACHMENTS

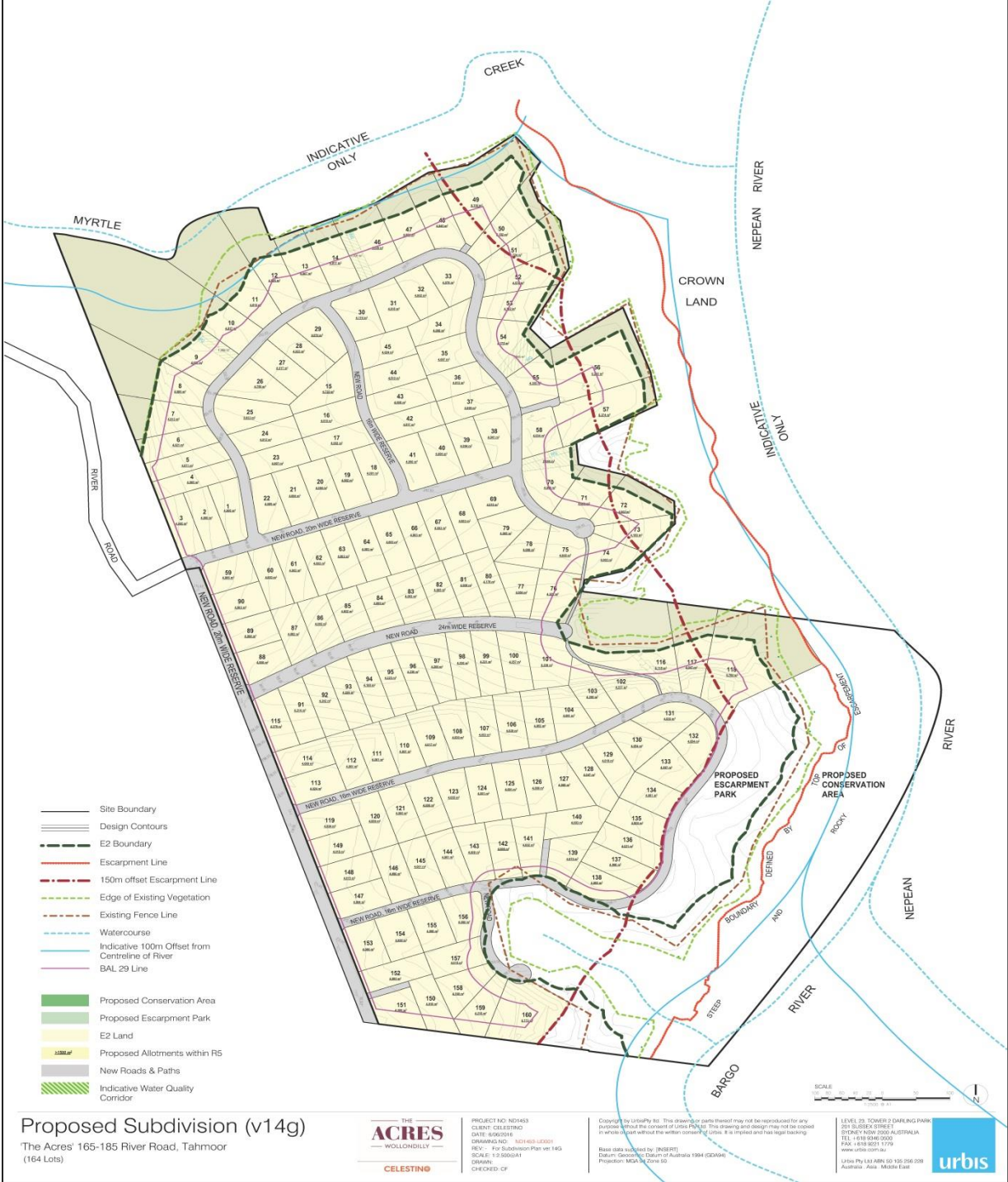
1. Amended subdivision plan
2. Letter of Offer for revised Voluntary Planning Agreement.

RECOMMENDATION

1. That determination of Modified Application 10.2014.00000588.002 to amend Development Consent No 10.2014.00000588.001 for the subdivision of land at 165-195 River Road, Tahmoor be deferred to permit ongoing assessment of the application.
2. That in relation to the current Appeal against Development Consent No 10.2014.00000588.001, Council seek a date for a Section 34 Conciliation Conference.
3. For the purposes of the Section 34 Conciliation Conference, Council not oppose any application made by the Proponent for substitution of the approval subdivision plans with the amended proposal considered in this report.
4. That the General Manager be delegated authority to enter into any Section 34 Conciliation Conference Agreement and/or Consent Orders for the amended proposal subject to:
 - a) An independent Traffic Expert engaged by Council, confirming that the upgraded River Road has sufficient capacity to cater for the additional lot yield proposed by the amended subdivision design; and
 - b) Any Agreement / Consent incorporate conditions recommended by Rural Fire Service in relation to the bushfire risk, internal road configuration and increased lot yield proposed by the amended subdivision design, and
 - c) Consideration of any suggested conditions of consent recommended by the Court Commissioner to adequately address the concerns raised by residents.
5. That the General Manager consider further the Letter of Offer for a revised Voluntary Planning Agreement and be delegated authority to endorse the offer for possible incorporation into any Section 34 Conciliation Conference Agreement and/or Consent Orders, once satisfied that the offer is reasonable and generally in accordance with Council's adopted Policies.

PE10 - Development Application No.010.2014.0000588.002 - Modification of Consent - Amended Subdivision Plan - 165-195 River Road, TAHMOOR

ATTACHMENT 1 - 010.2015.0000588.002 - 18 JULY 2016



Proposed Subdivision (v14g)
The Acres' 165-185 River Road, Tahmoor
(164 Lots)

THE ACRES
WOLLONDILLY
CELESTINO

PROJECT NO: ND1453
CLIENT: CELESTINO
DATE: 18/07/2016
DRAWING NO: 165-195-R001
REV: For Subdivision Plan ver 14G
SCALE: 1:2,500(A1)
DRAWN:
CHECKED: CF

Copyright by Urbis Pty Ltd. This drawing or parts thereof may not be reproduced for any purpose without the consent of Urbis Pty Ltd. This drawing and design may not be copied in whole or part without the written consent of Urbis. It is implied and has legal backing.
Base data supplied by: (INERT) Datum: Geocentric Datum of Australia 1984 (GDA84) Projection: MGA NZ Zone 58

LEVEL 20, TOWER 2 DARLING PARK
201 COLLEGE STREET
SYDNEY NSW 2000 AUSTRALIA
TEL: (615) 9261 0000
FAX: (615) 9261 1779
www.urbis.com.au
Urbis Pty Ltd ABN 59 135 256 208
Australia - Asia - Middle East



Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

Celestino Pty Limited
ABN 74 165 629 783

642 Great Western Highway
Pendle Hill NSW 2145
PO Box 438
Pendle Hill NSW 2145

t 02 9842 1218
f 02 9842 1059
e info@celestino.net.au
w celestino.net.au

6 July 2016

The General Manager
Wollondilly Shire Council
PO Box 21
PICTON NSW 2571

Attention: Mr Chris Stewart

Dear Sir

**Letter of Offer to amend Voluntary Planning Agreement between Council and
Mary Camilleri**

Introduction

We refer to:

- (a) the Voluntary Planning Agreement (VPA) executed between Council and Mary Camilleri dated 12 August 2013 (Existing VPA) in relation to the existing approved development at Nos. 165 - 195 River Road Tahmoor (Site);
- (b) the section 96(2) modification application DA 010.2014.00000588.001 which seeks to amend the approved development to a 160 lot residential subdivision and associated works (section 96(2) application);
- (c) the letter of offer prepared by Celestino dated 06 June 2016 (S96 letter of offer); and
- (d) Council's advice to Celestino of 29 June 2016 concerning the S96 letter of offer (Council Advice).

We are pleased to present to Council a revised Letter of Offer. This Letter of Offer seeks to address the issues raised in Council's Advice and proposes that a Deed of Variation to Planning Agreement to amend the Existing VPA be executed by the parties.

This Letter of Offer is made by Celestino Developments TAH Pty Ltd (Developer) on behalf of, and with the consent of, the registered proprietor of the Site, Mrs Mary Camilleri.

CELESTINO 

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

This Letter of Offer is in respect of residential subdivision to create 160 residential lots and one open space lot, delivery of infrastructure and construction of public roads as contemplated by the section 96(2) application (the Development). It applies to the Site being Nos. 165-195 River Road Tahmoor comprising Lots A & B in DP369710, Lots 85 & 86 in DP 751270 and Lots 1 & 2 in DP 1210433, and to Crown Road - Ridge Road 12/03655.

The general nature and extent of the offer

This Letter of Offer is made on the basis that the Council and the Developer enter into Consent Orders in Land and Environment Proceedings No 10113 of 2016 whereby the Development contemplated by the section 96(2) application is approved with conditions acceptable to the Developer.

The Developer offers to accept a deferred commencement condition in the consent to the Development which requires the negotiation and execution by the parties of a Deed of Variation to Planning Agreement to amend the Existing VPA (Deed of Variation).

The Deed of Variation will provide for the following:

1. Delivery of a package of material public benefits (Contributions) to the Council with a total value of \$44,398,375.00 comprising:
 - (a) A contribution of cash and works equivalent to \$40,000 per lot being a total of \$6,400,000;
 - (b) Direct works to build the unmade public road at a cost of \$1,600,000; and
 - (c) Dedication of land to Council worth \$36,398,375.00.
2. The breakdown of the above Contributions is shown in Attachment E.
3. The Contributions provide a major benefit to the community by providing cash to the Council to spend on various matters as Council sees fit, the dedication of significant area of land for open space and other purposes, the delivery of road improvements and cash contributions for ongoing maintenance of various assets of Council.
4. The Contributions include:
 - (a) Payment of a monetary contribution to Council for the construction of road widening, acceleration and deceleration lanes and foot paths as illustrated on the plan in Attachment A. We note these works are nominated as road works and improvements in the Existing VPA. An updated estimate of the cost of these works is in Attachment E.
 - (b) Re-construction of road pavement, road formation and ancillary works for an approximately 1100m long section of River Road from its intersection

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

with Moorland Drive to the entrance to the site. This work is also contemplated in the Existing VPA. **Attachment B** identifies the location and general layout of these works. The works will be constructed to Wollondilly Shire Council standard with an 8 metre wide sealed pavement. Final design details to be subject to further agreement between the parties and will be documented in a construction certificate prior to commencement of works. An estimate of the cost of these works is in **Attachment D**.

- (c) Dedication of approximately 37,350 sq.m of land to Council for the purposes of a public reserve (Local Park) as shown in **Attachment C**.
- (d) Carry out a program of works to embellish the Local Park worth approximately \$820,000 as set out in **Attachment E**. The scope of works and the standard of those works are to be negotiated between the parties. The scope of works may contain elements such as bushland regeneration, pedestrian paths, picnic tables, seating, exercise stations, children's play equipment and the like.
- (e) Dedication of approximately 189,550 sq.m of land to Council as environmental lands adjacent to the Bargo River. The location and configuration of the public reserve and environmental land dedication is shown in **Attachment C**.
- (f) Payment of a monetary contribution toward the long term maintenance of the public reserve and environmental lands as set out in **Attachment E**.
- (g) Dedication of land on which four WSUD basins will be constructed and payment of a monetary contribution towards the long term maintenance of up to seven WSUD elements within the site as set out in **Attachment C and E**.
- (h) Payment of a monetary contribution of approximately \$913,000 towards a program of community facilities, open space and infrastructure works in lieu of payment of section 94 or section 94A contributions as set out in **Attachment E**.
- (i) Construction of the currently unmade public road being a length of approximately 800m of Ridge Road 12/03655 and ancillary works. The road will be constructed to in accordance with Council's usual standard for such a road and with a minimum 8m wide road pavement. The location of the works and concept details are shown in **Attachment C**. An estimate of the cost of these works is in **Attachment E**.
- (j) Dedication to Council of all internal public roads as contemplated by the plan of subdivision lodged as part of the Section 96 application. These roads are those to be created as part of the future subdivision of the site

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

as detailed in the amended VPA master plan, a copy of which is
Attachment C.

Value of material public benefit

As noted above and as set out in the attachments, the value of the Contributions is approximately \$44,398,375.00. This is well above the level of contributions otherwise required under Council's s94 Contributions Plan. It equates to a contribution of \$277,489.84 per lot for each of the 160 large residential lots.

Cost Estimate of River Road works

Where necessary, the parties are to obtain a cost estimate for item 4 in Attachment E (River Road Works) by a suitably qualified Quantity Surveyor acceptable to the parties. In the event that the actual cost of the River Road works exceeds the estimate by the Quantity Surveyor, that additional cost will be borne by the Developer.

Timing of payments, dedication of land and delivery of works

The following sets out the proposed timing for payment of contributions, undertaking of works and dedication of land to Council. Please refer to Attachment E for Item Numbering.

- (a) Item 1 - Contribution towards future widening and improvements to Myrtle Creek Bridge and Remembrance Drive - to be paid prior to release of subdivision certificate for 40th lot.
- (b) Item 2 - Contribution to acceleration/deceleration lanes at River Road/Remembrance Drive intersection - to be paid prior to release of subdivision certificate for 40th lot.
- (c) Item 3 - Footpath from extent of River Road works to Remembrance Drive - to be paid prior to the release of the first construction certificate for the subdivision.
- (d) Item 4 - Reconstruction of River Road - works to be completed prior to release of subdivision certificate for the 1st lot.
- (e) Item 5 - WSUD Maintenance - the maintenance contributions will be paid in instalments in accordance with the delivery of the basins. All contributions must be paid within five years of grant of subdivision certificate for the final lot.
- (f) Item 6 - Public Reserve embellishment works - to be completed prior to grant of subdivision certificate for the 120th lot.
- (g) Item 7 - Public Reserve maintenance contribution - to be paid within five years after the grant of subdivision certificate for the 120th lot.

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

- (h) Item 8 - Environmental Lands - maintenance contribution to be paid within five years after dedication of environmental lands to the Council.
- (i) Item 9 - Monetary Contribution - to be paid prior to the release of the subdivision certificate for the 120th lot.
- (j) Item 10 - Construction of unmade public road - to be constructed prior to the release of the subdivision certificate for lots adjacent to the road.
- (k) Item 11 - Internal subdivision roads - to be dedicated progressively as the land is released.
- (l) Item 12 - WSUD Basins - land on which the basins are located to be dedicated progressively as the catchments the basin are servicing are released.
- (m) Item 13 - Public Reserve - to be dedicated prior to release of subdivision certificate for the 120th lot.
- (n) Item 14 - Environmental Lands - to be dedicated at an appropriate time to be agreed by the parties.

An appropriate provision will be inserted into the Deed of Variation to provide that if the Developer fails to dedicate the public reserve or environmental land to the Council prior to the release of the subdivision certificate for 120th lot or within 10 years of the execution of the Deed of Variation, the Council is able to compulsorily acquire that land for \$1 pursuant to a section 30 agreement under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Indexation and Discounting of Contributions

The Deed of Variation will provide for the indexation (allowance for price increase) and discounting (allowance for the time value of money) of the monetary contributions and the value of the works in kind.

Assignment and dealings

The Deed of Variation will provide for a modified assignment clause such that the Developer cannot sell or transfer the land or assign or novate its rights under the Deed of Variation unless it provides an executed deed in favour of Council on terms satisfactory to Council and the Developer is not in material breach of the Deed of Variation. This clause will not apply to any sale or transfer of the land if the Deed of Variation is registered on the title of the land at the time of sale or transfer.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent – Amended Subdivision Plan – 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

Acceptance of Works by Council

The Deed of Variation will provide for the transfer of dedicated land to Council as contemplated in this Letter of Offer. Provisions in the Existing VPA will apply to delivery of the works under the Deed of Variation.

Maintenance of open space and environmental lands

The Deed of Variation will include a provision noting that a component of the monetary contribution to be paid will be allocated to the ongoing maintenance of the public reserve and environmental lands to be dedicated to Council.

Application of section 94 and section 94A of the EP&A Act

The Deed of Variation will provide that section 94 and section 94A of the EP&A Act will not apply to the development of the site.

Council's costs

The Deed of Variation will provide that the Developer will pay Council \$12,000 (exclusive of GST) towards its legal costs in relation to the Deed of Variation.

Yours sincerely



Christopher W. Gantt
Development Director
Celestino Developments TAH Pty Limited
For Mary Camilleri

Attachments:

1. Attachment A: Existing VPA Road Works, Drawing X12166-SK1-1 by Brown.
2. Attachment B: Draft River Road Works Plan, Cardno Drawing 80216065-SK01 dated July 2016.
3. Attachment C: VPA Master Plan.
4. Attachment D: River Road Cost Estimate.
5. Attachment E: Letter of Offer Cost Schedule.

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent - Amended Subdivision Plan - 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

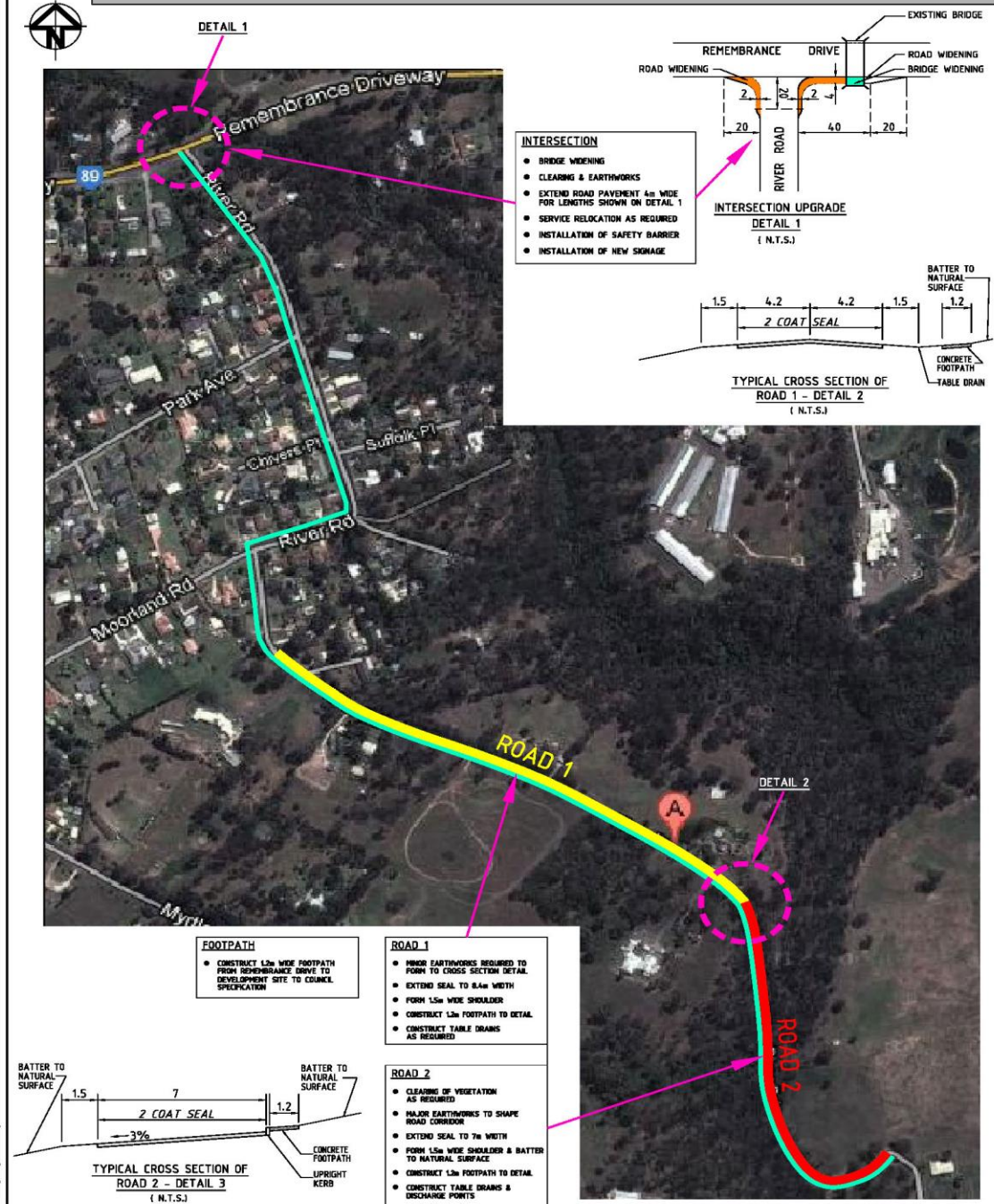
Attachment A

Existing VPA Road Works

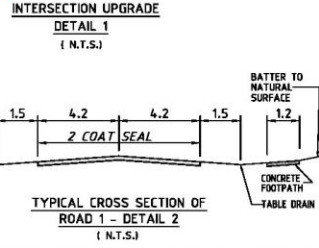
Celestino Developments TAH Pty. Limited, VPA Letter of Offer, 2016-07-06

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent - Amended Subdivision Plan - 165-195 River Road, TAHMOOR

ATTACHMENT 2 - 010.2015.00000588.002 - 18 JULY 2016



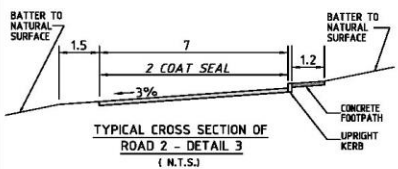
- INTERSECTION**
- BRIDGE WIDENING
 - CLEARING & EARTHWORKS
 - EXTEND ROAD PAVEMENT 4m WIDE FOR LENGTHS SHOWN ON DETAIL 1
 - SERVICE RELOCATION AS REQUIRED
 - INSTALLATION OF SAFETY BARRIER
 - INSTALLATION OF NEW SIGNAGE



- FOOTPATH**
- CONSTRUCT 1.2m WIDE FOOTPATH FROM REMEMBRANCE DRIVE TO DEVELOPMENT SITE TO COUNCIL SPECIFICATION

- ROAD 1**
- MINOR EARTHWORKS REQUIRED TO FORM TO CROSS SECTION DETAIL
 - EXTEND SEAL TO 8.4m WIDTH
 - FORM 1.5m WIDE SHOULDER
 - CONSTRUCT 1.2m FOOTPATH TO DETAIL
 - CONSTRUCT TABLE DRAINS AS REQUIRED

- ROAD 2**
- CLEARING OF VEGETATION AS REQUIRED
 - MAJOR EARTHWORKS TO SHAPE ROAD CORRIDOR
 - EXTEND SEAL TO 7m WIDTH
 - FORM 1.5m WIDE SHOULDER & BATTER TO NATURAL SURFACE
 - CONSTRUCT 1.2m FOOTPATH TO DETAIL
 - CONSTRUCT TABLE DRAINS & DISCHARGE PORTS



REDUCTION RATIO N.T.S.	Author and Copyright This drawing is the property of BROWN CONSULTING GROUP PTY LTD and is to be used only for the purpose for which it is prepared. It is not to be used for any other purpose without the written consent of BROWN CONSULTING GROUP PTY LTD.	BROWN Smart Urban	DIVERSE PTY LTD	RIVER ROAD - TAHMOOR	1	REVISION ORIGINAL ISSUE	1-1-200 6-7-200
DATE: 04/07/16	SCALE: 1:500			SKETCH OF PROPOSED ROAD WIDENING	DRAWING No. X12166-SK1	DESCRIPTION	DATE
DESIGNER: [Signature]	DATE: 16-07-16					AMEND.	
						1	1

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent - Amended Subdivision Plan - 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

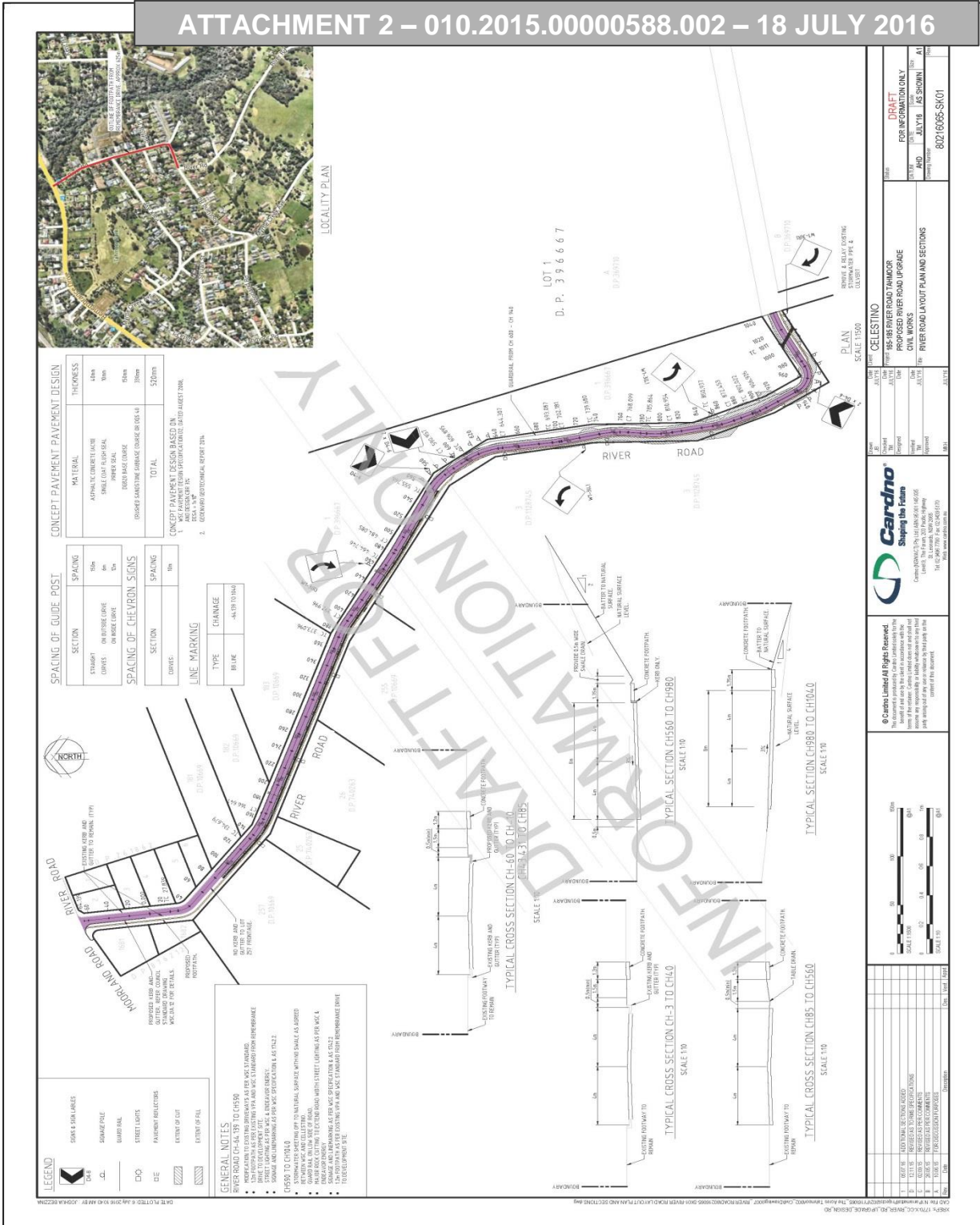
Attachment B

Draft River Road Works Plan

Celestino Developments TAH Pty. Limited, VPA Letter of Offer, 2016-07-06

PE10 - Development Application No.010.2014.0000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

ATTACHMENT 2 – 010.2015.0000588.002 – 18 JULY 2016



Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent - Amended Subdivision Plan - 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

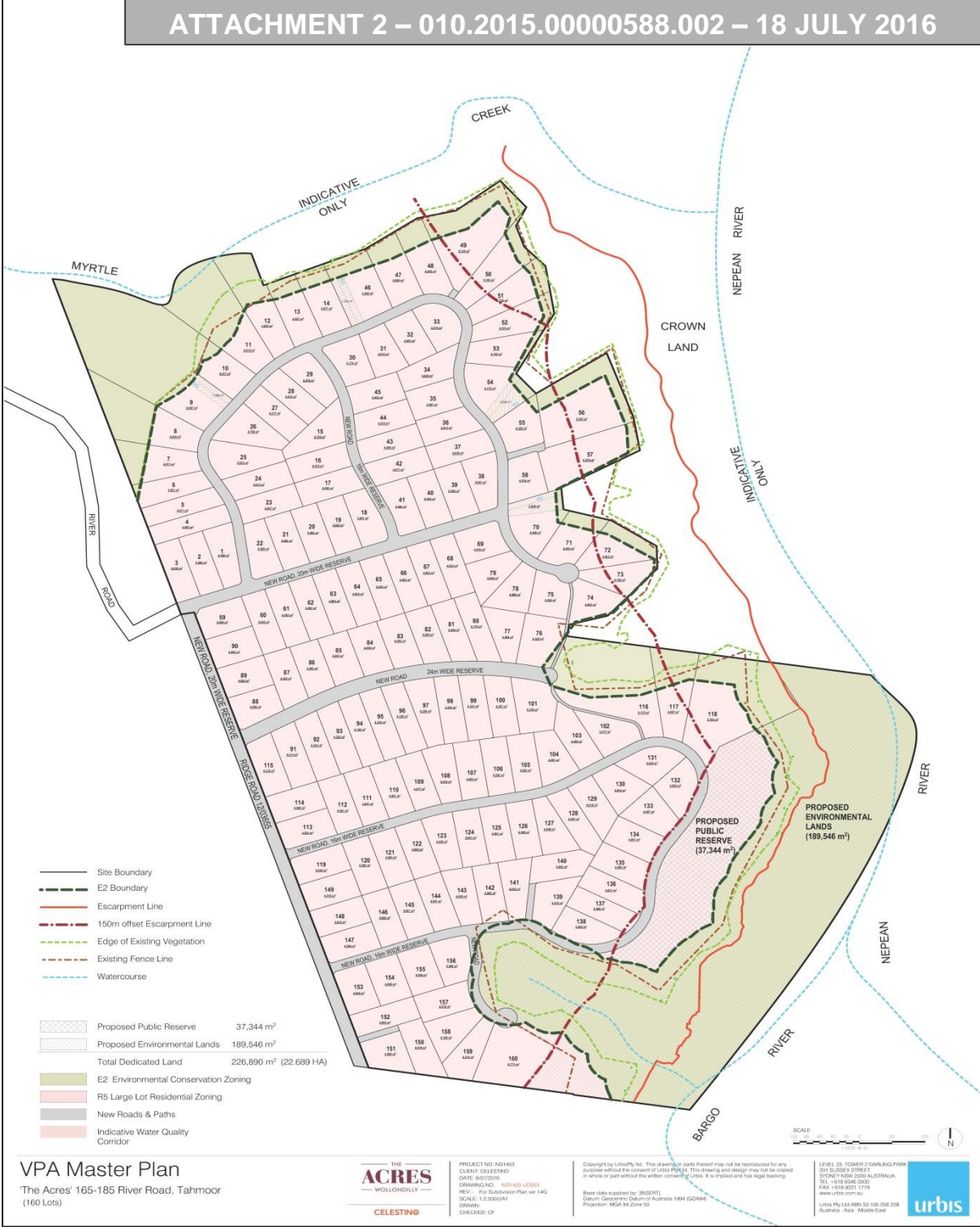
Attachment C

VPA Master Plan

Celestino Developments TAH Pty. Limited, VPA Letter of Offer, 2016-07-06

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent - Amended Subdivision Plan - 165-195 River Road, TAHMOOR

ATTACHMENT 2 - 010.2015.00000588.002 - 18 JULY 2016



Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent - Amended Subdivision Plan - 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

Attachment D


River Road Cost Estimate

Celestino Developments TAH Pty. Limited, VPA Letter of Offer, 2016-07-06

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR


ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

DRAFT ESTIMATE OF QUANTITIES AND RATES						
THE ACRES, TAHMOOR RIVER ROAD UPGRADE WORKS Order of Magnitude Estimate for VPA						
For: Celestino					 Cardno Shaping the Future	
At: River Road, Tahmoor						
Doc No. 80216065 - 16-0301 v3						
Item	DESCRIPTION	UNIT	QTY	RATE	TOTAL COST	
GENERAL						
(a)	Schedule of Quantities and Rates prepared 5 July 2016					
(b)	All works to be designed and constructed generally in accordance with relevant Authority and Contract Specifications and the relevant Australian Standards					
(c)	Estimate based on all components of works being constructed as one contract					
(d)	Internal Siteworks estimate based on work-in-progress drawings prepared by Craig & Rhodes (July 2015) as amended by Cardno 5/7/2016. Refer 80216065-SKC01 (1)					
(e)	Exclusions: Authority charges and fees Utility services (water, gas, telecommunication, electricity) Footpath between Moorland Road and Memembrance Drive					
(f)	Notes: It is assumed that existing kerb and gutter and driveway crossings on both sides of River Road near Moorland Road would be retained and new road pavement would be constructed to match existing gutter lip levels Pavement profile subject to detailed design All pavements and kerbs includes joints and finishes U.N.O. Signage and line marking to include raised markers.					
(g)	Quantity estimates presented in this report are indicative engineering estimates. These quantity estimates are not Quantity Surveyor quantities or estimates. Cardno does not warrant the accuracy of these quantities or estimates in any way, and they should only be used for indicative budgeting purposes.					

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

DRAFT ESTIMATE OF QUANTITIES AND RATES		
THE ACRES, TAHMOOR RIVER ROAD UPGRADE WORKS Order of Magnitude Estimate for VPA		
For:	Celestino	
At:	River Road, Tahmoor	
Doc No.	80216065 - 16-0301 v3	
SUMMARY		
1.0	SITE ESTABLISHMENT, EROSION & SEDIMENT CONTROL	\$ 100,000
2.0	DEMOLITION	\$ 270,400
3.0	BULK EARTHWORKS	\$ 300,500
4.0	STORMWATER DRAINAGE	\$ 102,750
5.0	PAVEMENTS	\$ 811,500
6.0	CONCRETE WORKS	\$ 171,100
7.0	SIGNAGE, LINEMARKING AND FENCING	\$ 100,000
8.0	SERVICES	\$ 70,000
9.0	LANDSCAPING	\$ 39,500
10.0	TRAFFIC MANAGEMENT	\$ 150,000
P	PROVISIONAL ITEMS	\$ 102,000
		SUB-TOTAL \$ 2,217,750
		CONTINGENCY (10%) \$ 221,775
		TOTAL EXCLUDING GST \$ 2,439,525

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

**PE10 - Development Application No.010.2014.00000588.002 -
Modification of Consent - Amended Subdivision Plan - 165-195 River
Road, TAHMOOR**

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

Attachment E

Letter of Offer Cost Schedule

Celestino Developments TAH Pty. Limited, VPA Letter of Offer, 2016-07-06

WOLLONDILLY SHIRE COUNCIL

Late Report to the Ordinary Meeting of Council held on Monday, 18 July 2016

PE10 - Development Application No.010.2014.00000588.002 - Modification of Consent – Amended Subdivision Plan – 165-195 River Road, TAHMOOR

ATTACHMENT 2 – 010.2015.00000588.002 – 18 JULY 2016

Precis: VPA Letter of Offer Cost Allocation Schedule
 Project: The Acres, Tahmoor
 Revision: 1.2.5
 Date: 2016/07/06
 Responsibility: CG



Proposed Contributions

Contribution per lot	Lots	Total Contributions	Maximum Contributions Inclusive of Roads	Minimum Contributions Exclusive of Roads
\$ 40,000.00	160	\$ 6,400,000.00	\$ 5,540,000.00	\$ 860,000.00

Proposed Works & Cash to Allocate Contributions

#	Works	Amount	Unit	Rate	Cost	Type	Notes
1	Roads - Widening	1	Per Item	\$ 410,000.00	\$ 410,000.00	Cash	Allowance per existing VPA requirement - Financial contribution toward future widening and improvements to Myrtle Creek Bridge and road widening of Remembrance Drive. Currently allowance of \$349,800 in existing VPA.
2	Roads - Accel/decel	1	Per Item	\$ 85,000.00	\$ 85,000.00	Cash	Allowance per existing VPA requirement - Construction of acceleration and deceleration lane at the River Rd / Remembrance Dr. intersection and associated intersection widening. Currently allowance of \$70,000 in VPA.
3	Roads - Footpath	600	lin.m	\$ 120.00	\$ 72,000.00	Cash	Allowance per Existing VPA requirement - Footpath from edge of River Road works at Moorland Drive to Remembrance Drive (approximately 600m long).
4	Roads - River Road	1	Per Item	\$ 2,500,000.00	\$ 2,500,000.00	Works	Re-construction of road and ancillary works to WSC standard at 20m wide section (approximately 1100m long) of existing public road from Moorland Drive to the Entrance to the site. Generally, rural formation with minimum 8m wide pavement.
5	Maintenance - WSUD	1	Per Item	\$ 1,000,000.00	\$ 1,000,000.00	Cash	General allowance for maintenance for WSUD elements proposed in the S96 submission package.
6	Facilities - Public Reserve Embellishment	1	Per Item	\$ 820,000.00	\$ 820,000.00	Works	Allowance per existing VPA requirement - Generally proposed to be greater than or equal to the aggregate cost of Community Facilities in the existing VPA (including costs allocated for Horse Trail, Boating Pond, Horse Riding Park, Playground and Multi-Purpose Court and Four Look-out clearings, excluding cost allocated for shared pathway).
7	Maintenance - Public Reserve	30	Per Annum	\$ 15,000.00	\$ 450,000.00	Cash	Assumed \$15,000/year for 30 years. Not reconciled to indexing for cost increases and discounting for time value of money.
8	Maintenance - Environmental Lands	30	Per Annum	\$ 5,000.00	\$ 150,000.00	Cash	Assumed nominal \$5,000/year for 30 years. Not reconciled to indexing for cost increases and discounting for time value of money. This is strictly a nominal amount. It is considered that practically there is no maintenance cost for the environmental lands once the VMP requirements for weed eradication and regeneration are implemented.
9	Miscellaneous Contribution	1	Per Item	\$ 913,000.00	\$ 913,000.00	Cash or Works	Contributions for typical S94 facilities. This could be allocated to non-road works for embellishments, facilities or maintenance, or it could be allocated as a cash payment.
SUB TOTAL					\$ 6,400,000.00		

Direct Works with Material Public Benefit

#	Works	Amount	Unit	Rate	Cost	Type	Notes
10	Roads - Unmade Public Road	1	Per Item	\$ 1,600,000.00	\$ 1,600,000.00	Works	Construction of road and ancillary works to WSC standard at 20m wide section (approximately 800m long) of unmade public road to the South West of the site. Generally, rural formation with minimum 8m wide pavement.
SUB TOTAL					\$ 1,600,000.00		

Proposed Land Dedication

	Land Component	Area (Approx)	Unit	Rate	Cost	Type	Notes
11	Land - Internal Public Roads	76,150	Sq.m	\$ 169.00	\$ 12,869,350.00	Land Value	Assumed Land Value from the current S94 plan, "Wollondilly Development Contributions Plan 2011," November 2011, for unserviced en globo land in Precinct 3.
12	Land - WSUD	7,100	Sq.m	\$ 169.00	\$ 1,199,900.00	Land Value	Assumed Land Value from the current S94 plan, "Wollondilly Development Contributions Plan 2011," November 2011, for unserviced en globo land in Precinct 3.
13	Land - Public Reserve	37,350	Sq.m	\$ 169.00	\$ 6,312,150.00	Land Value	Assumed Land Value from the current S94 plan, "Wollondilly Development Contributions Plan 2011," November 2011, for unserviced en globo land in Precinct 3.
14	Land - Environmental Lands	189,550	Sq.m	\$ 84.50	\$ 16,016,975.00	Land Value	Assumed Land Value from the current S94 plan, "Wollondilly Development Contributions Plan 2011," November 2011, for unserviced en globo land in Precinct 3. Value of Environmental Lands discounted by 50%.
SUB TOTAL					\$ 36,398,375.00		

TOTAL PROPOSED VPA CONTRIBUTION \$ 44,398,375.00