

CM13.1. Development Application - DA10.2017.35258.1 Lot 34 DP 1217032 - Hume Country Estate Stages 3.3 & 3.4

DATE	30 June 2020	FIL REFERENCE	AF17/00701
CONFIDENTIAL	No		
FURTHER ENQUIRIES	David Christy City Development	PHONE	6023 8111
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Summary

This report is presented for Council's determination of Development Application 10.2017.36258.1 for the staged subdivision of Part Lot 34 in DP 1217032 at Union Road, Glenroy into Thirty-one (31) Torrens Freehold Title lots in Stage 3.3 (16 lots) and Stage 3.4 (15 lots).

People

Iramoo Flyer Pty Ltd (George Fendyk).

Cost

Not applicable.

Development Description

The development application proposes the subdivision of part of Lot 34 in DP 1217032 at Union Road, Glenroy into Thirty-one (31) Torrens Freehold Title lots with access roads and four stormwater retention dams. The development is located on the former 'Hume Golf Course' and is referred to as "Hume Country Estate Stages 3.3 and 3.4". Refer to Figure 1 Locality Plan and Figure 2 Proposed Subdivision Plan below.



Figure 1 – Locality Plan

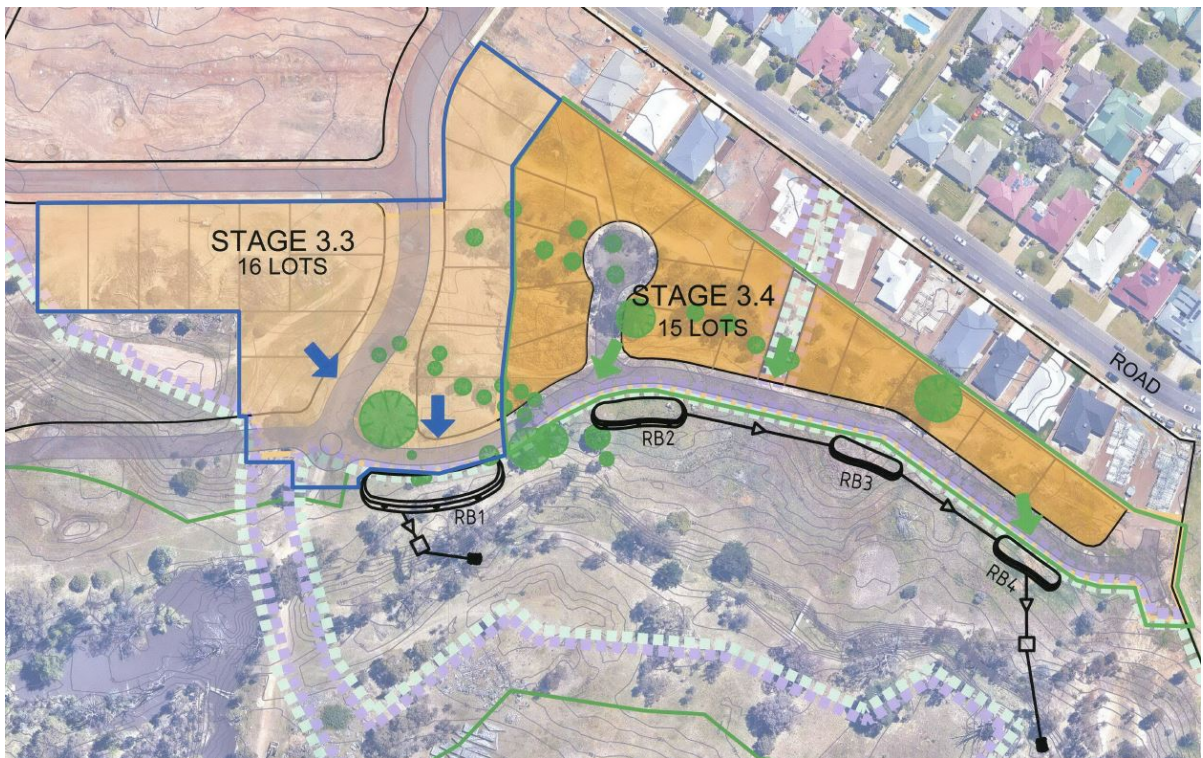


Figure 2 – Proposed Subdivision Plan

Following initial assessment, Council considered the application to be lacking in a number of areas and requested further information on 30 May 2017. In summary, the issues raised were:

1. Issues raised by the then NSW Department of Primary Industries: Water;

2. Issues raised by Water NSW;
3. Retarding Basins - Black Springs Creek Impacts;
4. Tree removal/Protection of retained trees;
5. Potential for items of Aboriginal Cultural Significance;
6. Proposed footpaths;
7. Legacy works from previous stages;
8. Road design; and
9. Tree removal/Landscaping.

The majority of the issues were addressed either through the provision of additional information and clarification provided on 30 June 2017 or in an updated response provided on 19 January 2018. The release of General Terms of Approval (GTAs) by the then NSW Department of Primary Industries: Water (now the Natural Resources Access Regulator or NRAR) further addressed issues surrounding the proposed stormwater retention dams. It is noted that the most significant issue that remained outstanding at the time was the Aboriginal Cultural Impact. This issue was to delay the assessment of the application by several years and will be discussed later in the report. The removal of the majority of the trees onsite, including Large Hollow-bearing (LHB) trees, was also a significant consideration, with an appropriate tree assessment only being provided in June 2020.

The proposed subdivision is permissible with consent pursuant to Albury Local Environment Plan (ALEP) 2010 Clause 2.6: Subdivision. The proposed subdivision is consistent with ALEP 2010 Clause 4.1 Minimum Subdivision Lot Size and the current minimum lot sizes contained in the Lot Size Map. The minimum lot size in the R1 zone in this area is 450m² and all the proposed lots are well above this minimum with the exception of proposed Lot 68 which is 402m². It is noted that proposed Lot 68 in Stage 3.4 is not identified as a residential lot and will be used for the purposes of a footpath and water supply easements and dedicated to Council.

Development Plans

The proposal is shown in the Subdivision Plans (included as attachment 1) and as described in the Statement of Environmental Effects (included as attachment 2).

Site and Locality Description

The subject site is described as Part Lot 34 in DP 1217032 at Union Road, Glenroy. The site has a total area of approximately 11ha. The land is zoned '*R1 General Residential*' with a small portion (approximately 107m²) of "*RE2 Private Recreational*" zone in the aforementioned proposed Lot 68. The site is vacant, with no improvements.

The site is located on the former Hume Golf Course on the southern side of Union Road approximately 500m west of Burrows Road. Proposed Stage 3.3 is located along Ellerston Avenue and Stableford Road to the south of the existing Stage 3.2 which is fully developed. Proposed Stage 3.4 is located immediately adjacent to the south of existing Stage 3.1, an earlier approved stage of the subdivision which is also fully developed. The land opposite Union Road is well established with conventional housing. The land to the south is open land zoned "*E2 Private Recreation*" (due to the

former Golf Course) and defined by Black Springs Creek. Further to the south of the site is land which forms part of the Hume Country Estate Retirement Village which is at varying stages of development.

Key Issues

Aboriginal Cultural Heritage: Owing to the land being located within 200m of a watercourse (Black Springs Creek) and the fact that previous studies in the area discovered artefacts, it was required that an Aboriginal Heritage Due Diligence Assessment be completed.

The assessment confirmed the findings of previous studies, which were that several objects of Aboriginal Cultural significance are indeed present. As a result, the applicant was advised to prepare the necessary Archaeological Report and Aboriginal Cultural Heritage Assessment and to subsequently apply for an Aboriginal Heritage Impact Permit (AHIP). It should be noted at this point that the application was not lodged as Integrated Development as far as an AHIP is concerned. This then created a situation where the Department of Planning, Infrastructure and Environment: Biodiversity Conservation Division (DPIE: BCD) was reluctant to consider an AHIP application in the absence of a Development Consent and, likewise, Council was reluctant to issue a Development Consent in the absence of an AHIP. Both Council and DPIE: BCD considered the risk of issuing consent without the assurance that the other consent will be issued too great.

To solve this dilemma, Council and DPIE: BCD agreed that the applicant provides comprehensive documentation in support of a future AHIP application (as if they applied for an AHIP) to DPIE: BCD who would then assess the 'application' for quality and completeness. Once they are satisfied that sufficient evidence has been provided and that the issue of an AHIP would be likely (when it is applied for), they will advise Council of their findings. Although not the norm, this special arrangement would provide Council with confidence that a Development Consent can be issued and the AHIP obtained directly after.

The first assessment submitted was received in May 2019 but was unfortunately considered insufficient and the applicant was asked to significantly improve the report. Several attempts were made thereafter to provide outstanding information, most notably evidence of the methodology of fieldwork and proper consultation processes with Aboriginal Cultural stakeholders. DPIE: BCD advised Council on two occasions (11 July 2019 and 7 August 2019) that it would be unable to grant an AHIP based on the information provided. In particular, they could not guarantee the issue of an AHIP as the information provided did not meet statutory requirements and therefore considered themselves to have sufficient reason to not approve an application. Further information was received on 11 March 2020.

DPIE: BCD subsequently confirmed on 16 April 2020 that they are satisfied with the information provided and is confident that an AHIP could be issued when it is applied for.

Potential Impacts on Black Springs Creek: Four (4) retarding basins are proposed to be constructed within the riparian zone of Black Springs Creek. These will be designed for the 100-year Average Recurrence Interval (ARI) storm event and will have capacity to store run-off from this development and restrict the outflow to the creek to the flow equivalent of pre-development flows. Gross pollutant traps will be provided on the inlets to the retarding basins. The retarding basins will have macrophyte

plantings in the base to provide nutrient reduction. A total of two outfall pipes will be constructed into the creek from the four retarding basins; this involves the placement of reinforced concrete pipe culverts with scour protection placed at each outlet. The outfall pipes will be 450mm diameter reinforced concrete pipes and there will be a grated pit on these outfalls close to the bank of the creek. This pit will provide access for maintenance purposes. The outfall from this pit into the creek bed will be laid to direct water downstream (i.e. with the direction of the flow) and will be provided with scour protection at the outlet.

The basins should be designed appropriately to ensure water quality meets the EPA guidelines when discharged into the creek. The fundamental basis behind the design response is to:

- ensure the Water Quality meets the 50mg/L EPA Guideline; and
- detain the Peak Water flows to their Pre-Development discharges.

Based on the preliminary designs it is considered that the proposal will achieve the design intent and will ensure compliance with EPA guidelines. A Condition of Consent is recommended to be imposed to ensure detailed designs are submitted for approval prior to the issue of a Subdivision Works Certificate.

It is further noted that, pursuant to Section 4.46 of the Environmental Planning & Assessment Act 1979 (EP&A Act), the proposal was identified as "integrated development" for the following reason:

- a "controlled activity approval" is required for the proposal under section 91(2) of the *Water Management Act 2000* (WM Act) as development (the construction of stormwater retention basins) is proposed within "waterfront land" (within the meaning of the Dictionary of the WM Act).

The Applicant has elected to seek a controlled activity approval as a part of the DA. The Controlled Activity Approval General Terms of Approval (GTAs) were issued on 15 September 2017 by the then NSW Department of Primary Industries Water (now the Natural Resources Access Regulator [NRAR]).

Tree Removal: The development proposes the removal of 392 trees and the retention of 17 trees. Of the retained trees, eight (8) will be just outside the development site to the south, two (2) will be in the pedestrian access (proposed Lot 68) and one (1) will be a Large Hollow-bearing (LHB) tree located in the proposed road reserve. The remaining six (6) to be retained are all in the rear yards of proposed lots in Stage 3.3. Through the Tree Assessment (included in attachment 3), the Development proposes the offset planting of 3,920 trees (a ratio of 10:1 for those lost) covering 22 varieties of native species at a rate between 147 and 196 trees per species. Offset planting is proposed in the Black Springs Creek RE2 Private Recreation zoned lands directly to the south of the proposed development.

It is noted that the trees to be removed are not identified as threatened species or part of an endangered ecological community and have not been included in any significant environmental area. Approximately 70% of all onsite trees are natural regeneration and less than 15 years old. The trees form a single clump of approximately 3,500m² in the middle of the site. A search of historical aerial

photography suggests the trees are relatively young and appeared to have been planted to line the greens of the former golf course. Refer to Figure 3 below:



Figure 3 Trees planted as part of golf course and some trees already removed

The site is bio-certified, and the proposed removal of the trees is not considered to have any adverse impact on biodiversity in the area. Although LHB trees in developable areas were deemed to be less significant for biodiversity conservation at a strategic level (i.e. biodiversity certification), consideration of tree protection and retention for values other than biodiversity remains an option.

Three (3) of the trees proposed to be removed were identified as LHB trees, located in the proposed court head in the centre of the development, in proposed Lot 66 and in proposed Lot 71 respectively. Despite their environmental and amenity value, these trees were not proposed to be retained for the following reasons:

- The trees are not considered to be of an urban scale. They would eventually be dangerous to the existing and future residents or community in the area;
- The trees are suffering from dieback and have an apparent history of dropping limbs (looking at the truncated branches and hollows along the trunks);
- The design is orientated towards Black Springs Creek with the proposed road fringing the open space for open views (to be further enhanced by significant offset planting) as an alternative to retaining trees; and
- There will be a program of street tree planting consistent with the theme of the earlier stages to assist with maintaining the amenity value of trees in a residential area.

A Condition of Consent requiring a Landscape Plan can be imposed should Council resolve to approve the development.

However, after careful consideration of the proposed removal of the LHB trees, it is suggested that there is sufficient opportunity to retain two of the three LHB trees, being DBH 400 (located in or at the street front of proposed Lot 66, and DBH 300 located within proposed Lot 71. In the absence of a specific arborist report, given their size, species, and location in the landscape it is likely that these trees are in excess of 200 – 300 years old, appear to be healthy and are in good condition. They are excellent specimens/examples of remnant native trees local to Albury. Saving DBH 400 would require modification of the lot boundaries of proposed Lots 65 and 66 by widening the road reserve of the central court (Brookwater Place) to ensure the tree is located within this wider road reserve. The

modification would leave proposed Lot 66 at approximately 550m² which is still above the minimum lot size for a residential corner lot. There is no need to amend the alignment of the carriageway as the change only serves to increase the verge width to accommodate the LHB and improve the streetscape in general. Refer to the Development Application Assessment Report included in attachment 4 for the suggested modification.

In terms of DBH 300 located in proposed Lot 71, boundary realignment is not a solution as the tree is located central to the lot. In this instance, it is suggested that proposed Lot 71 be reserved for community recreational purposes to protect the LBH tree whilst improving neighbourhood amenity and streetscape. Refer to the Development Application Assessment Report included in attachment 6 for the suggested modification.

Whilst it is acknowledged that the suggested modifications are not insignificant and will result in the loss of one (1) lot, the changes are not considered unreasonable insofar the inherent value of large trees and hollow-bearing trees in particular. In our urban areas large, hollow-bearing trees are in decline. Many species rely on tree hollows for habitat, including mammals, birds, reptiles and frogs. So important are tree hollows to our native wildlife, that their loss has been classed as a Key Threatening Process to biodiversity in New South Wales.

The main reason that their loss is so significant is the length of time that it takes for a tree hollow to form. In Australia, there are no animals that are able to create tree hollows (e.g. wood pecker in much of the rest of the world), thus hollow creation is a slow process that relies on fungus to eat away at the tree.

Large hollow bearing trees are particularly significant in urban and agricultural landscapes. They have survived in the landscape over many years and have outstanding aesthetic appeal due to their massive size and structural complexity. In ecological terms, they are keystone structures providing roosting and foraging habitat (including hollows, fissures, flowers, foliage, seeds, insects, decorticating bark, roots) for a wide diversity of birds, bats, gliders, possums, reptiles and native bees. Large trees provide important environmental services by slowing stormwater flows, regulating microclimate, increasing soil nutrients, preventing erosion and providing shade. For example, mature trees provide 75% more environmental benefits than smaller individuals. Shade cast by mature trees may cover 100 m² compared to 3m² for immature trees. Older larger trees grow more rapidly and therefore absorb more carbon dioxide. It is important to maintain large old trees wherever possible as we will never be able to replace them in our lifetimes. LHB trees have significant environmental value but they also have significant amenity value as they are very strong place-making features. The visual impact of large trees is considerable and together with other benefits such as regulating microclimate and attracting birds and other wildlife, the improved amenity benefit of retaining large old trees in urban setting should not be underestimated.

The LHB trees by their very nature drop limbs (how hollows are formed) and can pose risk to people and property. However, these trees can be safely managed in this landscape by AlburyCity to ensure the risk to public health and safety is minimised. AlburyCity currently manages a vast suite of LHB trees in suburban and built-up areas throughout the Albury LGA. These trees would be added to the existing ongoing management regime. It is recommended that a Condition of Consent be imposed

requiring the LHB trees to be retained through amendments to the layout in consultation with Council prior to the issue of a Subdivision Works Certificate.

Landscaping: The development proposes a “tree replacement program” which envisages street tree planting consistent with the theme of the earlier stages to assist with maintaining the amenity value of trees in a residential area. A Draft Landscape Plan has been submitted with the application (refer to attachment 1). A Condition of Consent requiring a *detailed* Landscape Plan and Arborist Report is recommended to be imposed should Council resolve to approve the development.

Submissions

The Development Application was originally notified and advertised from 17 March 2017 to 17 April 2017. No submissions were received.

Options

The Council has the following options in relation to this report:

1. Approve the application; or
2. Approve the application, subject to conditions; or
3. Defer the application for further information or redesign; or
4. Refuse the application.

Based on the assessment of the application and the minimal impacts arising from the proposed development, this report recommends that Council resolve to approve the application subject to the conditions contained in Draft Determination, included as attachment 5 to this report as per Option 2.

Recommendation

That Council:

- a. receives and notes the contents of this report; and
- b. grants Development Consent to Development Application 10.2017.35258.1 proposing the subdivision of Part Lot 34 in DP1217032 Union Road, Glenroy into thirty-one (31) Torrens Title lots with access roads and stormwater retention basins in two stages subject to the conditions contained in the Draft Determination, included as attachment 5 to this report.

Attachments

1. Development Plans (DOC20/61741).
2. Statement of Environmental Effects (DOC17/38327).
3. Tree Assessment Report (DOC20/103650).
4. Development Application Assessment Report (DOC20/57705).
5. Draft Determination (DOC20/61784).

