

**CM13.1. Development Application - 10.2019.36710.1 - 125 Kerr Road, Thurgoona - 92 Lot
Torrens Title Subdivision - Woolshed Estate Stages 4 and 5**

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CONFIDENTIAL	No		
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1.0 Executive Summary

This report is presented for Council's determination as it relates to a Development Application for subdivision that exceeds twenty lots.

Development Application 10.2019.36710.1 was received by Council on 18 March 2019 for a 96 Lot Torrens Title subdivision for Stages 4 and 5 of Woolshed Estate. The subdivision is proposed at 125 Kerr Road Thurgoona (Lot 18 on DP 1057228) with ancillary drainage infrastructure works required on the adjacent lot known as 87 Kerr Road, Thurgoona (Lot 1 on DP 1004069).

Through a re-design of the layout as a result of a further information request, the number of lots in the subdivision was reduced to 92 lots and included the creation of residue lot (between proposed lots 515 and 516) which will allow future road connections to residential zoned land to the north. The plans of the proposed subdivision are included in attachment 1.

The land is zoned R1 General Residential and E3 Environmental Management under *Albury Local Environmental Plan 2010* (ALEP 2010).

The proposed development of residential lots is entirely located within land zoned R1 with a small amount of infrastructure (drainage road and sewer) located within the E3 zone. All of the E3 land is contained within one allotment which includes at least 450sqm of R1 zoned land. The proposed development is permissible with consent in these zones.

Fifteen trees are proposed to be removed from R1 zoned land to facilitate the development (eg roads, electricity, water, telecommunications etc), or improve the building envelope of future dwelling houses. Of the fifteen trees to be removed, nine are over 4.5 metres (m) in height and 3m in spread. One additional tree has been identified as potentially being lost due to stormwater pipe infrastructure, however the applicant has noted their intention to retain this tree if possible.

The Planning Report and Statement of Environmental Effects addressing relevant legislation and planning policy is included in attachment 2.

The application was publicly notified from 20 March 2019 to 29 March 2019. Two submissions were received as a result of the notification and are included in attachment 3.

The submissions raised concerns with access not being provided to the residential zoned land to the north of the site, lack of details regarding environmental impacts, and no provision of recreational or playground open space.

Following a Councillor Workshop on 15 April 2019, further information was requested by Council Officers. The applicant response to the request for further information is included in attachment 4. The response addressed the requirements of *Biodiversity Conservation Act 2016*, whereby Sloane's Froglet was not identified as being present on the site.

The further information also provided an amended subdivision layout which included a road interface with E3 zone providing a buffer between the majority of the residential allotments and environmental lands and the applicant also included a residue allotment to allow for a future road connection to land to the north of the site.

The Development Application seeks two very minor variations to Part 10.3.1 as follows:

- one corner allotment of 497sqm (where the control requires corner lots to be 500sqm); and
- one lot to have a front width of 12.34m opening up to a 23.5m to the rear (where the control requires a minimum lot width of 15m).

The remainder of the application is compliant with all of Council's controls identified under *Albury LEP 2010* and *Albury DCP 2010*.

Having regard to the compliance with relevant local and state planning instruments and the ultimate design outcomes, the Development Application is recommended for approval subject to the conditions contained in the Draft Determination, included as attachment 6.

2.0 Introduction

Development Application 10.2019.36710.1 was received by Council on 18 March 2019 for a 92 Lot Torrens Title subdivision for Stages 4 and 5 of Woolshed Estate. The subdivision is proposed at 125 Kerr Road Thurgoona (Lot 18 on DP 1057228) with ancillary drainage infrastructure works required on the adjacent lot known as 87 Kerr Road, Thurgoona (Lot 1 on DP 1004069).

The two parcels of land are zoned R1 General Residential and E3-Environmental Management under *Albury Local Environmental Plan 2010* (ALEP 2010). The proposed development of residential lots is located within land zoned R1 General Residential with a small amount of infrastructure (drainage and road) located within the E3 zone. The proposed development is permissible with consent in these zones.

The application originally proposed a 96 Lot subdivision over two stages, however following a further information request, the design of the subdivision was amended, reducing the number of lots proposed to 92 lots. The plans of the proposed subdivision are included in attachment 1. The Planning Report and Statement of Environmental Effects addressing relevant legislation and planning policy is included in attachment 2.

The proposed subdivision is an extension of previous completed stages of Woolshed Estate located to the north of the site approved under the Development Consents listed below:

File Number	Land Use	Consent Date
10.2011.31216.1	Stages 1 & 2 – 100 Lot staged subdivision	10 February 2014
10.2011.31216.2	Stages 1 & 2 – Modification to reduce the number of allotments (from 100 to 92) and adjust road alignments	25 May 2016
10.2016.34372.1	Stage 3 – 26 Lot subdivision	15 June 2016

The development also requires the following approvals:

- *'Controlled activity approval'* is under the *Water Management Act 2000* for stormwater drainage works proposed within *'waterfront land'*.
- *'Aboriginal Heritage Impact Permit'* (AHIP) under *National Parks and Wildlife Act 1974* as the proposal would impact on Aboriginal objects.

The applicant has elected to seek separate approvals for the above permissions rather than through the Development Application process.

Notwithstanding the above, the applicant has confirmed an Aboriginal Cultural Heritage Survey has been undertaken and an AHIP has been lodged with Department of Planning, Industry and Environment, Biodiversity and Conservation Division (BCD) (formally Office of Environment and Heritage). Council referred the application to BCD who provided recommended conditions which have been included in the *Draft Development Consent*.

The application was referred to Natural Resources Access Regulator (NRAR) who did not object to the application noting the application complies with NRARs guidelines for riparian corridors. Any works within 40m of the high bank of any watercourse will require a Controlled Activity Approval from NRAR under the *Water Management Act 2000* of which the applicant has acknowledged in their application. NRAR have advised that a Vegetation Management Plan for the riparian corridor and detailed plans of stormwater outlet pipes and retardation basin plans in accordance with NRARs guidelines will be required to be provided with the application for a Controlled Activity Approval. A condition of consent has been included in the *Draft Development Consent* requiring the relevant approvals be sought from the NRAR prior to any works being undertaken within *'waterfront land'*.

NSW Police were also referred the application and have recommended conditions which are included in the *Draft Development Consent*.

The application was publicly notified from 20 March 2019 to 29 March 2019. Two submissions were received as a result of the notification and are included in attachment 3. The submissions raised concerns with the following:

- no access being provided to the residential zoned land to the north of the site;
- the application lacking in details with regards to environmental impacts; and

- no provision of a recreational or playground open space.

On 15 April 2019, Council was briefed on the application at a Councillor workshop. Following the Councillor workshop, Council officers sent a request for further information to the applicant to provide additional details on the following:

- subdivision configuration with regards to impacts on E3 zoned land;
- provision for road access and services to allow for the potential future development of residential zoned land to the north;
- open space provision;
- consideration of the *Biodiversity Conservation Act 2016* for works proposed to be carried out in E3 land;
- submission of a tree report; and
- submission of a Landscape Plan.

The applicant provided response to the further information request on various dates, and the responses are included in attachment 4.

On 19 August 2019, the applicant provided a response to the further information request which included the following:

- The redesign of the subdivision layout to provide road interface with E3 zoned land and Stage 4 residential development. Due to the restrictions on the location of the intersection of Rodeo Drive and Kerr Road and potential traffic safety concerns as a result of altering the road alignment a road interface with E3 zoned land has not been provided in Stage 5.
- The redesign includes a residue allotment off Jackeroo Circuit which can provide future road access and gravity drainage access and reticulated services to residential zoned land to the north of the site.
- Detailed justification of why public open space is not required as part of the proposal, including referencing the TWSP which does not show the need for open space on the site given the proximity to other identified areas of open space. Notwithstanding this, the applicant has highlighted that E3 zoned land to the south of proposed Stage 5 is currently being considered in the *Environmental Land Review* by AlburyCity Council's Strategic Planning Officers. As part of the review, the land owner has proposed a 'zone swap' which would result in land to the south of proposed Stage 5 being rezoned to R1; and existing R1 zoned land to the north west of the site (within the same ownership) being rezoned to E3. Whilst the *Environmental Land Review* has not yet been completed, the applicant has identified the potential for public open space to be included within this area and has submitted indicative layout plans which are included in attachment 5.
- Council officers agreed that a Landscape Plan could be provided with the application for a Construction Certificate in this instance.

On 24 September 2019, the applicant submitted the outstanding further information by providing a Test of Significance (ToS) in accordance with the Biodiversity Conservation Act 2016 and a tree report.

Council officers consider the information provided to be satisfactory in addressing Council and community concerns.

2.1 Development Description

The application proposes to create 92 lots in total (inclusive of 91 residential allotments, one residue allotment and one larger lot containing the E3 zoned land) over two stages. Stage 4 proposes the creation of 40 Lots and Stage 5 proposes 52 Lots as shown in the development plans (included as attachment 1) and as described in the Statement of Environmental Effects (included as attachment 2).

Stage 4 works include:

- creation of 40 residential lots which range in size from 484sqm to 1,230sqm;
- extension of Woolshed Road, partial completion of Rodeo Drive which has an interface with E3 zoned land, partial completion of Jackaroo Circuit including footpath construction;
- construction of the intersection of Woolshed Drive and Rodeo Drive;
- drainage infrastructure including a detention basin located on 87 Kerr Road to the west of the site;
- utility installation for independent connections for electricity, water and sewer services; and
- removal of five trees located within the proposed road alignment of Rodeo Drive (numbered 1, 2, 3, 6 and 7 in the tree report).

Stage 5 works include:

- Creation of 52 lots which include 51 residential lots which range in size from 676sqm to 984sqm and one balance lot of 7.46 hectares which contains approximately 2,253sqm of R1 zoned land and the remaining E3 zoned land. It is envisaged that this lot will be retained to facilitate further development of the site, subject to potential re-zoning approval in the future.
- Completion of Rodeo Drive, including intersection upgrade treatments to Kerr Road; completion of Jackaroo Circuit with the creation of a residue allotment to provide future access to R1 zoned land to the north and the construction of Brumby Court including footpaths along all roads.
- Drainage infrastructure including a detention basin located on 87 Kerr Road to the south of the site. As a result of the infrastructure there is potential for one additional tree to be removed.
- Utility installation for independent connections for electricity, water and sewer services.
- Removal of 11 trees (numbered 14, 15, 16, 17, 18, 19, 24, 25, 26, 27 and 29 in the tree report)
 - six within residential zoned land which are required to be removed to allow for the road and lot layout;
 - four within the Kerr Road road reserve due to road upgrade requirements; and
 - one located in the E3 land (which is proposed to be retained at this stage, however may be impacted as a result of constructing drainage infrastructure).
- Filling of an existing dam.

The plans for subdivision are included as attachment 1, and described in the Statement of Environmental Effects, included as attachment 2.

2.2 Site and Locality Description

The subject site for the proposed 92 Lot Torrens Title subdivision is described as 125 Kerr Road Thurgoona (Lot 18 on DP1057228). Ancillary drainage infrastructure required to facilitate the development is proposed to be carried out within the adjacent lot known as 87 Kerr Road Thurgoona (Lot 1 on DP1004069).

The site is generally square in shape and is 17.45 hectares in size. The site is zoned *R1 General Residential* and *E3 Environmental Management*. The site generally slopes downwards from the north east towards an un-named watercourse located to the west and south west. The slope varies over the site, however within the R1 zone, the slope ranges from approximately 3.6% to 7.3% with a west, south west aspect and is considered appropriate for residential development.

Woolshed Creek is located approximately 400m to the west of the site. An un-named watercourse branches off Woolshed Creek and flows to Woolshed dam located on the adjacent site to the west. The watercourse runs from Woolshed dam through the site from the west to south east. The watercourse, riparian vegetation and other remnant scattered trees are predominately contained within the E3 zone where minimal works are proposed. The E3 zone is within a Biodiversity Certified exclusion area. The applicant has addressed the *Biodiversity Conservation Act 2016* and has included a ToS with the application which is addressed in detail in subsequent sections of the report. The R1 zoned land is predominately cleared of vegetation from previous agricultural activities (livestock grazing/extensive agricultural use) with minimal scattered trees and grass dominating the landscape within the R1 zoned area.

There is an existing land use restriction on the lot as identified as 'R1' on the Certificate of Title. The applicant has stated that an agreement between the land owner and beneficiary has been reached to allow the removal of this restriction (as has occurred in previous stages of Woolshed Estate). A 1m wide Country Energy Easement is located on the eastern side of the site. This will be contained within Kerr Road due to additional land being dedicated as road reserve as part of the subdivision. To the north of the site there is a 3m wide sewer easement which will be retained. A 3m sewer and drainage easement is located within E3 zoned land to the north and west of the site and will also be retained.

The Albury Airport is located approximately 3.3km to the south east of the site. The development area is within the take-off and approach flight path, however the subdivision and subsequent residential development will not result in any intrusions on the Obstacle Limitation Surface (OLS) area. The site is not located within the ANEF mapping area.

To the north of the site are preceding stages of Woolshed Estate and a single residential allotment on 1.293 hectares. The site is bound by Kerr Road to the east and a single allotment to the south and west, which is proposed to be developed for residential purposes in future stages of Woolshed Estate subdivision (subject to further development approval).

3.0 Council Plan and Council Policies

The following Council Policies are relevant to the application:

- *Albury Local Environmental Plan 2010 (Albury LEP 2010);*
- *Albury Development Control Plan 2010 (Albury DCP 2010);*
- *Albury Infrastructure Contributions Plan 2014; (AICP 2014)*
- *Albury City Council's Development Notification Provisions*
- *Thurgoona Wirringa Precinct Structure Plan (TWPSP)*

4.0 Environmental Assessment

An assessment of the application has been carried out under the provisions of the *Environmental Planning and Assessment Act, 1979 (EP&A Act)*. Relevant details are outlined below.

Development proposals within the R1 General Residential Zone and E3 Environmental Management Zone are assessed according to the zone objectives, the provisions of the ALEP and ADCP and the provisions of *Section 4.15 of the EP&A Act 1979*.

As the proposal includes development within Biodiversity Certified Exclusion Areas, the *Biodiversity Conservation Act 2016* has been considered in the assessment.

The relevant considerations under Section 4.15 are considered in this report and a response is outlined in the following section of this report.

4.1 Provisions of Environmental Planning Instruments (S4.15(1)(a)(i))

3.1.2 State Environmental Planning Policy (SEPP) No 55 – Remediation of Land

This State Environmental Planning Policy (SEPP) aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

- by specifying when consent is required, and when it is not required, for remediation work, and*
- by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out remediation work in particular, and*
- by requiring that a remediation work meet certain standards and notification requirements. In determining Development Applications on potentially contaminated sites, Councils are required to consider whether previous uses on the site may have resulted in contamination and whether the site is suitable for the development proposed.*

The subject site is not known to have any previous land uses that would have resulted in potential contamination of the site and that would warrant further investigations or remediation with regard to the use of the site for the proposed residential development.

3.1.3 Albury Local Environmental Plan 2010 (ALEP)

The subject site is zoned *R1 General Residential Zone* and *E3 Environmental Management Zone* under the ALEP 2010 and is subject to the provisions of that LEP.

The particular aims of the *ALEP 2010* are set out below:

- *To give effect to the desired outcomes, principles and actions contained in the Council's adopted strategies and policy documents, and*
- *To promote sustainable urban development by providing for efficient management of urban growth and resource utilisation, and*
- *To promote a city for the people, with a high level of social and physical amenity and a diversity of activities and uses, and*
- *To maintain or improve biodiversity across Albury, and to avoid significant impacts on matters of environmental significance.*

The development satisfies these aims in that the subdivision will *promote sustainable urban development by providing for efficient management of urban growth and resource utilisation* within the R1 area and *maintain or improve biodiversity across Albury, and to avoid significant impacts on matters of environmental significance* within the E3 zone.

Specific clauses of the *ALEP 2010* relevant to the development include:

Part 2 Permitted or prohibited development

Land Use Zones

The proposed development is located on a site zoned for a residential development and environmental management. The proposed development is permissible with consent in the zones, as discussed below.

Clause 2.3 of *ALEP 2010* references the Land Use Table and Objectives for each zone in *ALEP 2010*.

The objectives and permissible land uses in the *R1 General Residential zone* are as follows:

Zone R1 General Residential

Objectives of zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage affordable housing.*
- *To encourage medium density housing that is designed to achieve a high standard of amenity.*

Permitted without consent

Environmental protection works; Home-based child care; Home occupations.

Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Helipads; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Places of public worship; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Sewage reticulation systems; Shop top housing; Water recycling facilities; Any other development not specified in item 2 or 4.

Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Camping grounds; Car parks; Caravan parks; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Emergency services facilities; Entertainment facilities; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Public administration buildings; Recreation facilities (major); Registered clubs; Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewerage systems; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water treatment facilities; Wharf or boating facilities; Wholesale supplies.

The objectives and permissible land uses in the E3 Environmental Management zone are as follows:

Zone E3 Environmental Management

Objectives of zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To ensure the long term viability of populations of threatened species, populations and ecological communities by protecting and improving the condition of wildlife habitats and wildlife corridors.*
- *To allow appropriate land uses in close proximity to the Landfill Buffer Area.*

Permitted without consent

Environmental protection works; Home occupations.

Permitted with consent

Boat launching ramps; Boat sheds; Community facilities; Dual occupancies (attached); Dwelling houses; Environmental facilities; Extensive agriculture; Farm buildings; Group homes; Home-based child care; Information and education facilities; Jetties; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Roads; Signage; Tank-based aquaculture; Water recreation structures.

Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

Clause 2.6 of ALEP 2010 states that land to which this Plan applies may be subdivided, but only with development consent.

The application proposes the subdivision of one lot into 92 residential allotments, one (1) residue lot (between proposed lots 515 and 516) which will allow future road connections to residential zoned land to the north, and is inclusive of a balance lot which will contain all of the E3 zoned land.

The application proposes to construct stormwater management systems within the E3 zoned land which is permissible with Development Consent under the State Environmental Planning Policy (Infrastructure) 2007, Division 2, Stormwater management systems.

The application achieves objectives of the zones by allowing the development of residential zoned land which will provide increased variety of housing types and densities which will cater for a range of housing needs for the community. Only minor impacts to the E3 zones will occur as a result of the subdivision for the purpose of infrastructure provision. Conditions contained within the *Draft* Development Consent will require appropriate construction management of works with the E3 zone to ensure wildlife habitats and corridors are protected into the future.

Part 3 Exempt and Complying Development

The application is not Exempt or Complying Development.

Part 4 Principal Development Standards

4.1 Minimum subdivision lot size – This clause requires that lots proposed within an area subject to a minimum lot size (MLS) are to comply with that lot size. The MLS applicable to the R1 zone is 450sqm, and all lots proposed within the R1 Zone exceed this minimum. The proposed lot sizes are consistent with the lot sizes throughout the previous stages of Woolshed Estate. The MLS applicable to the E3 zone is 100 hectares, however the existing E3 land is less than 100 hectares and therefore 4.1B applies and is considered below.

4.1B Minimum subdivision lot sizes for certain split zones – This clause allows land in split zones such as the R1 and E3 zones; subject to the following:

- (3) *Despite clause 4.1, development consent must not be granted to subdivide an original lot to create other lots (the **resulting lots**) unless—*
- (a) *one of the resulting lots will contain—*
 - (i) *land in a business, industrial, recreation, residential or special purpose zone, or land in Zone RU1 Primary Production, Zone RU4 Primary Production Small Lots or Zone RU5 Village, that has an area not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (ii) *all of the land in Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living or Zone W2 Recreational Waterways that was in the original lot, and*
 - (b) *all other resulting lots will contain land that has an area not less than the minimum size shown on the Lot Size Map in relation to that land.*

As previously identified, all lots within the R1 Zone meet the MLS of 450sqm. All the E3 zoned land is contained within one allotment (as it is less than 100 hectares) and includes at least 450sqm of R1 zoned land (7.46 hectares in total with approximately 2,253sqm of R1 Zone).

Part 5 Miscellaneous Provisions

5.10 Heritage conservation

The subject land is not identified as a *Heritage Item* or part of a *Heritage Conservation Area* as defined by *ALEP 2010*. Aboriginal culturally significant sites are however addressed in subclause 5.10(8) of the *ALEP 2010* in the following manner:

- (8) *Aboriginal places of heritage significance - The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:*
- (a) *consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
 - (b) *notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

The site has been the subject of an Aboriginal Cultural Heritage Survey and consultation and an application for an AHIP has been lodged with BCD. BCD have provided recommended conditions of approval should Council decide to grant a development consent. The recommended conditions are included on the *Draft Development Consent* contained in attachment 6.

Part 6 Urban Release Area

The subject site is not located within an Urban Release Area.

Part 7 Additional Local Provisions

7.1 Earthworks

1. *The objectives of this clause are as follows:*
 - a) *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
 - b) *to allow earthworks of a minor nature without separate development consent.*
2. *Development consent is required for earthworks unless:*
 - a) *the work does not alter the ground level (existing) by more than 600 millimetres, or*
 - b) *the work is exempt development under this Plan or another applicable environmental planning instrument, or*
 - c) *the work is ancillary to other development for which development consent has been given.*
3. *Before granting development consent for earthworks, the consent authority must consider the following matters:*
 - a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
 - b) *the effect of the proposed development on the likely future use or redevelopment of the land,*
 - c) *the quality of the fill or the soil to be excavated, or both,*
 - d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*
 - e) *the source of any fill material and the destination of any excavated material,*
 - f) *the likelihood of disturbing relics,*
 - g) *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Earthworks are required to facilitate the proposed subdivision, in particular; lot creation, road construction and civil works. The filling of a dam is also proposed as part of the development. The earthworks can be appropriately conditioned on a development consent to address any potential issues, such as sediment spill or erosion, especially into nearby roadways and waterways.

To ensure the objectives and matters for consideration of Clause 7.1 are achieved, conditions have been recommended in the *Draft Development Consent* and include:

- no construction work is carried out until more detailed plans are prepared to the satisfaction of Council to manage the potential for environmental impacts on the surrounding locality;
- satisfactory erosion and sedimentation control practices are in place to minimise the impact on the E3 zoned land, any watercourse and adjoining properties and environmental management measures be implemented during draining and filling of the dam; and
- details will be required to show any proposed stockpiles required as a result of excavation on site (ie drainage basins) to be appropriately located and managed so as to not cause any negative environmental impacts, particularly on E3 zoned land.

7.2 Water

The site is not located within a 'sensitive area' as identified in the *ALEP 2010* Natural Resource Sensitivity Water Map. As the proposed drainage basins are in close proximity to the watercourse, separate approval is required to be sought from NRAR under the *Water Management Act 2000* prior to any construction works commencing which will address any impact on river health and water quality.

7.4 Flood planning

Land located within the E3 zone is identified in the Flood Planning Map as being 'floodway' and 'low hazard mainstream flooding'. The only works proposed within close proximity to these areas are for stormwater drainage management purposes. Detailed design plans will be required to be submitted as part of the Construction Certificate to ensure the works do not significantly impact on flood behaviours or cause adverse environmental impacts such as erosion, siltation, destruction of riparian vegetation or reduction in the stability of watercourses. A condition to this effect has been included in the *Draft Development Consent*.

7.6 Essential services

- (1) *This clause does not apply to land in an urban release area.*
- (2) *Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required*
 -
 - (a) *the supply of water,*
 - (b) *the supply of electricity,*
 - (c) *the disposal and management of sewage,*
 - (d) *stormwater drainage or on-site conservation,*
 - (e) *suitable road access.*

The subject land is not within an urban release area. All essential services are currently available to the site and there is sufficient capacity for any necessary extension to meet the demands of the proposed development. A condition of consent will require infrastructure to be capable of being extended to support potential future residential development within the area.

Indicative drainage plans have been submitted to Council with the application. As previously mentioned, detailed designs will be required to be submitted as part of the Construction Certificate for Council approval. Given the location of the proposed drainage basins, Council's Environmental Planner, in consultation with DPIE will need to ensure the design addresses any environmental concerns. Separate approval from NRAR will also be required to be sought.

The proposed road widths of Rodeo Drive will need to comply with Council's standards for a local distributor road. Currently the subdivision design shows the road width at 22m. This will be required to be extended where practical to 24m width which will assist in accommodating any future residential development that may be proposed to the west of the site.

7.8 Airport Operations

1. *The objectives of this clause are as follows:*
 - a) *to provide for the effective and on-going operation of the Albury Airport by ensuring that such operation is not compromised by proposed development that penetrates the Obstacle Limitation Surface for that airport,*
 - b) *to protect the community from undue risk from such operation.*
2. *If a development application is received and the consent authority is satisfied that the proposed development may penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Albury Airport, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.*
3. *Development consent may be granted for the development if the relevant Commonwealth body advises the consent authority that:*
 - a) *the development will penetrate the Obstacle Limitation Surface but it has no objection to its construction, or*
 - b) *the development will not penetrate the Obstacle Limitation Surface.*
4. *Development consent must not be granted for the development if the relevant Commonwealth body advises the consent authority that the development will penetrate the Obstacle Limitation Surface and should not be constructed.*
5. *In this clause:*
relevant Commonwealth body *means the body, under Commonwealth legislation, that is responsible for approvals for development that penetrates the Obstacle Limitation Surface for Albury Airport.*

The development is located within the *Take-off Surface* and *Approach Surface* area of the *Obstacle Limitation Surface Map* for Albury Airport. The *Take-off* restrictive height contours range from approximately 228.5AHD on the western side of the site to approximately 239AHD to the east.

The *Approach* restrictive height contours range from approximately 270AHD on the western side of the site to approximately 283AHD to the east.

The subject land falls from the north east of the site to the west, south west. The highest existing natural ground level is approximately 204AHD and is located to the north east of the site. Any future residential structures will have negligible impact on the ongoing safe and efficient operations of the Albury Airport given the ample amount of space from ground level to the required height clearances.

The site is within a lighting restriction area whereby the maximum allowed light intensity is 450cd measured at 3 degrees above the horizontal area. Conditions contained on the *Draft Development Consent* will ensure appropriate lighting restrictions are imposed.

The site is not within an ANEF area and therefore no additional noise attenuation measures are required to be incorporated in future residential developments. The site is also not within an *Airport Crane Notification Area*.

Other relevant Council policies

4.2 Provisions of any Draft Environmental Planning Instruments (S4.15(1)(a)(ii))

No Draft Environmental Planning Instrument affects the site or is proposed.

4.3 Provisions of Development Control Plans (S4.15(1)(a)(iii))

4.3.1 Albury Development Control Plan 2010 (ADCP)

The application has been assessed against the provisions of *Albury Development Control Plan 2010* (ADCP 2010). More specifically, the application has been assessed against the following Parts of *ADCP 2010*.

Part 3 Development Notification Policy

The Development Application was publicly exhibited from 20 March 2019 to 29 March 2019, the notification period is consistent with the notifications requirements of *ADCP 2010*. Two submissions have been received to date. Submissions are addressed in detail in subsequent sections of this report.

Part 4 Infrastructure Contributions

The application was lodged after the adoption of the *Albury Infrastructure Contributions Plan 2014* (AICP 2014) and in subject to consideration under that Plan. The subject land is within the Thurgoona Wirlinga Section 7.11 (formerly Section 94) Contribution Plan area and the Section 64 Water Plan and Section 64 Sewer Plan area.

The Development Application results in the creation of 92 lots. As the application proposes to complete the subdivision in stages, contributions have been calculated and will be required to be paid prior to the release of the Subdivision Certificate for each stage of the development.

A credit of 1ET is applicable to the existing lot (125 Kerr Road). No additional credit exists for the remaining stages.

A condition relating to contributions payable is contained in the *Draft Development Consent* attached at attachment 6. This condition includes indexation of contributions to the rate payable on the date paid, noting that the actual contributions paid may be greater than the specified figures (which are applicable for this financial year).

Part 5 Tree Preservation

A total of 15 trees are proposed to be removed as a result of the proposal. Of the fifteen trees to be removed, nine are over 4.5 metres (m) in height and 3m in spread.

Tree removal located within the R1 zone consists of the following:

- Four spotted gum trees (exotic/non-native) within the Kerr Road reserve. The trees are required to be removed to allow for road access to the subject land. The intersection is required to be

located as per the proposed plans to allow for appropriate sight distances and separation from other intersections along Kerr Road. The tree report has identified two of these trees as being in good condition, one being in average condition and one being of poor condition and none of these trees are hollow bearing.

- Two Pepper trees (exotic/non-native), located to the north east of the site which are required to be removed to allow for future residential development of the proposed Lot 512. One tree is in very poor condition and one in good condition. The tree in very poor condition is hollow bearing.
- Four Redbox (indigenous), two located in Lot 517 and two located within the proposed road alignment of Jackeroo Circuit. Removal is required for road construction and future residential development. One is a standing dead tree, two are in poor condition and one in average condition.
- Three yellow box trees (indigenous) located within proposed lot 412 and Rodeo Drive road alignment. Removal is required for road construction and future residential development. All three trees are in good condition and are relatively young trees with a maximum height of 4m.
- Two Blackley's Red Gum (indigenous) located within Rodeo Drive road alignment. Both are in good condition.

Potential tree removal within the E3 Zone:

- One Red Box (indigenous) located within E3 Zone proposed drainage alignment for Stage 5 drainage works. The tree is a large hollow bearing tree and has been assessed in detail as part of the ToS report submitted with the application. The applicant has stated that it is their intention to retain this tree if possible. A condition included within the *Draft* Development Consent will require further consultation between Council's Environmental Planner and the applicant to investigate all possibilities for the retention of this tree.

As noted above, the extent of tree removal is to facilitate infrastructure (eg roads, electricity, water, drainage, telecommunications etc), or improve the building envelope of future dwelling houses and/or vehicular access to each proposed lot and is considered satisfactory.

Conditions are contained within the *Draft* Development Consent to ensure only those trees identified for removal are removed. To enforce this, trees must be tagged and a Council Officer must visit the site before any trees are removed to ensure consistency with the approved plans. Standard Conditions are also recommended to ensure existing trees be retained are safely protected during construction.

The R1 zone portion of the site is Biodiversity Certified. The E3 Zoned land is within a Biodiversity Certified exclusion area. As the application proposes ancillary infrastructure works within the E3 Zone, the *Biodiversity Conservation Act 2016* has been addressed as part of the application.

7.2 Development or activity "likely to significantly affect threatened species"

(1) For the purposes of this Part, development or an activity is **likely to significantly affect threatened species** if:

- (a) it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or

- (b) *the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or*
 - (c) *it is carried out in a declared area of outstanding biodiversity value.*
 - (2) *To avoid doubt, subsection (1) (b) does not apply to development that is an activity subject to environmental impact assessment under Part 5 of the Environmental Planning and Assessment Act 1979.*
- 7.3 *Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats:*
- (1) *The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:*
 - (a) *in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,*
 - (b) *in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:*
 - i) *is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
 - ii) *is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,*
 - (c) *in relation to the habitat of a threatened species or ecological community:*
 - i) *the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and*
 - ii) *whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and*
 - iii) *the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,*
 - (d) *whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),*
 - (e) *whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.*
 - (2) *The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program. (Source: Biodiversity Conservation Act 2016)*

The subject site was cross referenced with the Biodiversity Values Map and Threshold Tool published by the BCD and it was found that the land does not contain any high diversity value, nor does the extent of native vegetation being removed exceed any threshold (1 hectare) requiring an offset area to be planted, as defined under the Biodiversity Conservation Act 2016 and Regulations.

If the biodiversity offsets scheme is not triggered (as per above), the ToS detailed in Section 7.3 of the Biodiversity Conservation Act 2016 must be used to determine whether a local development is likely

to significantly affect threatened species. A ToS was provided with the further information and is included in attachment 4.

BCD have identified Woolshed dam on the adjacent site as supporting a large area of breeding habitat and an important population of Sloane's Froglet (listed as a 'Vulnerable' by the State of NSW and has a Commonwealth status of 'Endangered'). Floating Swamp Wallaby Grass is also identified by BCD mapping to the west of the subject site (listed as 'Vulnerable' both by NSW and the Commonwealth). The ToS did not identify any Floating Swamp Wallaby Grass on the site and concluded that the development would have no impact on the threatened species. The ToS did not identify any Sloane's Froglet on site, however acknowledged that the site may contain potential for the species.

Given the proximity to the known location for Sloane's Froglet, the application was referred to DPIE who have provided conditions to be included in the *Draft Development Consent* requiring the following:

- *Development of a Drainage (Stormwater) Management Plan must accommodate the requirements of the 'Sloane's Froglet Wetland Stormwater Management Guidelines', and design and construction of the stormwater system is to be undertaken in consultation with OEH.*
- *Construction sediment captured by the temporary sediment basin needs to be periodically monitored and managed to ensure it doesn't flow into the large dam or surrounding native vegetation.*
- *An environmental management plan be prepared prior to clearing for construction that ensures protection of native vegetation within the mapped E3 zone (including grassland) and the large dam on Lot 1 DP1004069.*

Part 6 Planning for Hazards

The subject site is not identified as being Bushfire Prone Land.

A corridor of *Low Hazard Mainstream Flooding* and a small portion *Floodway* follows an un-named watercourse that runs through the south western corner of the site and is also contained within the E3 zone. The application proposes stormwater be collected within the R1 Zoned land, treated and drained to this low point. Conditions contained within the *Draft Development Consent* will require appropriate management and treatment of stormwater prior to being discharged.

No residential development is proposed within areas identified as having potential flood impacts.

Part 7 Heritage Conservation

The subject site is not located in a *heritage conservation area* nor is it a *heritage item*. The site is not located adjacent to, or in the vicinity of, any heritage items or heritage conservation areas. The main potential for impact relates to Aboriginal heritage.

The site has been the subject of an Aboriginal Cultural Heritage Survey and consultation and an application for an AHIP has been lodged with the BCD. The application was referred to the BCD who have recommended conditions which have been included in the *Draft Development Consent*.

Part 8 Development in the Environmental Zones

8.3 Subdivision

Objectives

1. *To ensure that subdivision and subsequent development enhances and does not spoil the natural backdrop of hills, valleys and tree lines to the urban area of Albury and Wodonga.*
2. *To ensure that all subdivision and subsequent development of the Murray River flood plain is compatible with the natural conservation and landscape values of the Riverine environment.*
3. *To provide limited environmental living opportunities on land having ready access to urban facilities and services, and to ensure that such development does not prejudice the future development of urban land.*

Comment: The proposed subdivision does not further fragment E3 zoned land as all E3 zoned land is contained within one allotment which also includes approximately 2,253sqm of R1 zone land. The subdivision proposes to only carry out necessary civil works within the E3 zone, which includes the following:

- two drainage basins;
- stormwater pipe infrastructure;
- the extension of sewer pipes to connect with the existing reticulated sewerage pipe network; and
- a small portion of road works.

The tree report identifies only one tree which may be impacted upon within the E3 zone which is subject to further investigations. Conditions have been placed on the *Draft* Development Consent to protect the remainder of the trees and ensure drainage infrastructure, such as treatment, discharge and detention basins are appropriately designed and constructed so as to not cause any significant impact on the environment and habitat areas.

Part 10 Development in the Residential Zones

10.3 RESIDENTIAL SUBDIVISION

10.3.1 Residential Subdivision – Lot and Road Layout

Objectives

1. *To encourage a diversity of lot sizes, housing forms and densities.*
2. *To provide a range of lot sizes to suit a variety of dwelling and household types, with areas and dimensions that meet user requirements.*
3. *To provide lots with areas and dimensions which protect environmental features and take account of site constraints.*

4. *To identify appropriate opportunities for higher residential densities in circumstances where the land use zoning permits.*
5. *To provide residential land buyers with more certainty as to the types of development that may be proposed within their street.*
6. *To assist in facilitating an appropriate and aesthetic interface between the built edge and arterial roads, buildings are encouraged to front and address the arterial roads through the provision of service roads (where appropriate).*

Controls

- i. *The minimum lot size for dwelling house purposes must comply with Clause 4.1 and the Lot Size Map of the LEP.*
- ii. *Greenfield subdivisions, shall be consistent with local and district structure plans adopted for the subject locality. In the absence of such plans, Council may require the proponent to prepare a structure plan, or contribute to the cost of preparing a structure plan, prior to granting consent to a subdivision proposal. For the purposes of this DCP, a greenfield subdivision is defined as the subdivision of any land title, or the aggregate of more than one land title, equal to or greater than 10,000m². Council may waive this requirement, if it is satisfied that integration of the proposed subdivision with the surrounding locality can be achieved in the absence of structure planning.*
- iii. *Greenfield subdivisions shall contain a variation in lot sizes and locations for dwelling houses, multi dwelling developments, attached dwellings or residential flat buildings shall be provided, with medium density development generally located adjacent or in proximity to commercial and community facilities, major public and private transport routes and adjacent to linear open spaces which provide access to the central elements of the pedestrian and cycle network.*
- iv. *Greenfield lots and street layouts shall be designed to achieve pedestrian, cycle and vehicular permeability, legibility, safety and long term urban design flexibility, in addition to integrated transport and land use planning outcomes, sustainability objectives (during construction and post-construction), water and energy efficiency design initiatives, including orientation, dimensions and configuration of lots to maximise solar access.*
- v. *Greenfield subdivisions shall include a drainage management plan, including water sensitive urban design measures, to maximise the reuse of stormwater and/or convey stormwater in a manner which reduces the rate of flow and improves the quality of water discharged into receiving or storage bodies. This may include underground stormwater storages in road reserves for irrigating landscaped areas.*
- vi. *Greenfield subdivisions shall provide sufficient and centrally located lots for the development of commercial and community facilities, in accordance with structure plans for the locality.*
- vii. *Proposed subdivisions in greenfield areas (excluding land listed in this DCP or within the LEP which is subject to special low density residential subdivision controls) are to nominate 10% of all lots as potential multi dwelling housing and residential flat building sites.*
- viii. *Building envelopes are to be defined on subdivision plans where zero setbacks area proposed for lots less than 600m² in area.*
- ix. *The following minimum lot widths and areas apply to detached dwelling lots (Table 10.1).*

Table 10.1

Lot Type	Minimum Width	Minimum Area
<i>450m² - 1,500m² lot size area</i>		
Non-corner lots	15 metres	450m ²
Corner lots	15 metres	500m ²
Battle-axe lot (within the lot – not including the access handle)	15 metres	500m ²
Lots containing land where slopes exceed 12%	25 metres	1200m ²
<i>Greater than 1,500m² lot size area</i>		
Corner and non-corner lots	25 metres	-
Battle-axe lot (within the lot – not including the access handle)	25 metres	-

- x. *Despite control (ix), Clause 4.1A of the LEP enables the subdivision of land less than the minimum lot size, where a development consists of the concurrent subdivision of land into 2 or more lots and erection of a single detached dwelling on each lot created by the subdivision.*
- xi. *Nominated multi dwelling housing sites within greenfield subdivisions, approved by the Council prior to the commencement of this DCP, are not required to comply with the minimum lot widths in Table 10.1. All other provisions, however, are to be fully satisfied.*
- xii. *Nominated multi dwelling housing and residential flat building sites within greenfield subdivisions, approved by the Council after the commencement of this DCP, must comply with the minimum lot widths in Table 10.1.*
- xiii. *Proposed multi dwelling and residential flat building sites are generally not to be irregular in shape or have uneven boundary lengths. Innovative use of sites with irregular boundaries, however, may be negotiated at pre-application meetings.*
- xiv. *For battle-axe lots, the minimum access handle width is to be 3.5 metres and the maximum length to the handle is to be 30 metres.*
- xv. *Shared access handles must be a minimum of 5 metres in width.*
- xvi. *No more than 2 battle-axe lots should adjoin one another, or share an access handle.*

Notation

Council discourages the creation of battle-axe lots, unless it can be demonstrated that the subdivision site characteristics and configuration constrain the provision of full street frontage to all lots. Clause 4.2A of the LEP prevents the creation of additional opportunities for dwellings on undersized lots by prohibiting strata and community title subdivisions that would create a lot of a size less than the minimum size shown on the Lot Size Map in relation to land in the R2 Low Density Residential and R5 Large Lot Residential Zones.

- xvii. *Asset Protection Zones for development(s) in Residential Zones must not extend into any neighbouring E2 Environmental Conservation or E3 Environmental Management Zones. Exceptions are shown in Figure 8.1 of Part 8 of this DCP.*

Comment:

The proposed subdivision is consistent with the controls of this Section as follows:

- The development is defined as a 'greenfield subdivision' and complies with the 450sqm minimum lot size as contained within the ALEP. Residential lots range from 480sqm to 1,230sqm with the exception of one larger lot (7.46 hectares) which also contains all of the E3 zoned land.
- The Thurgoona Wirringa Precinct Structure Plan (TWSP) has been adopted for this area and the proposed subdivision is consistent with the recommended land use provided in this plan with regards to proposed densities, stormwater management, open space, and movement networks.
- The subdivision design achieves pedestrian, cycle and vehicular permeability and connectivity between the previous stages of Woolshed Estate and Kerr Road. The subdivision layout allows for potential future connections to residential zoned land to the north, north west and south west and south of the site subject to further planning approval. Conditions are included on the *Draft* Development Consent to ensure road widths are appropriate to accommodate additional traffic likely to be generated by potential future development.
- The subdivision layout is similar to other residential subdivisions in the area whereby lots back onto Kerr Road and no service roads are proposed. Conditions included within the *Draft* Development Consent will require appropriate interface treatment such as fencing and landscaping to enhance visual amenity impact.
- Indicative plans showing the location of stormwater infrastructure have been provided. Conditions requiring appropriate treatment of stormwater prior to discharge have been included in the *Draft* Development consent.
- No commercial or community facilities are proposed as part of the subdivision. This is consistent with the land zoning and TWSP which does not identify any public open space, community facilities or commercial uses within the site.
- Smaller lots of 480sqm to 539sqm are proposed on corner sites which will allow for diverse housing options. The proposed subdivision does not limit the ability to further develop lots for multi dwellings in the future.
- A variation to the minimum lot size/width is sought and is as follows:
 - Corner lots are required to be a minimum of 500sqm. Proposed Lot 418 is a corner lot and is 497sqm resulting in a minor variation.
 - Minimum lot width required is 15m. Proposed Lot 407 has a width at the street frontage of 12.34m which opens up to a 23.5m width at the rear property boundary. The lot will have a minimum width of 15m for the majority of the lot.
- No part of the site exceeds 12%.
- Two battle-axe style allotments are proposed for corner sites. The battle axe allotments have a handle of approximately 11m and comply with minimum dimensions.
- No APZ are required as a result of the proposal.

10.3.2 Residential Subdivision - Lot and Road Orientation

Objectives

1. *To have regard to energy conservation principles in the orientation of lots.*
2. *To maximise the opportunity for the Northern orientation of lots.*
3. *To provide a subdivision layout where at least 70% of the lots will have favourable solar orientation.*

4. *To allow dwelling orientations to respond to streetscape.*
5. *To maximise opportunities for energy efficiency through subdivision design/s and resulting dwelling/s.*

Controls

- i. *The long axis of lots should be located within the North 20° West to North 30° East orientation range when fronting roads running north south and within the East 20° North to East 30° South orientation range when fronting roads running east west.*
- ii. *At least 70% of lots in a subdivision are to have a northern orientation.*
- iii. *Lots orientated in a North-South direction (i.e. having an East-West road) can provide good solar access to yards and living areas. These lots can also be longer and narrower than regular lots. See Figure 10.1.*
- iv. *Lots that are orientated in an East-West direction (i.e. having a North-South road) should have a width greater than its length to provide greater opportunity for solar access to yards and living areas. See Figure 10.2.*

Comment: The proposed residential subdivision is consistent with the objectives and controls of this section as it provides internal circulation and connection and provides lots that respond to the streetscape. Approximately 82% of the lots are oriented in accordance with the ADCP controls to make use of solar access. The orientation of the remaining lots are constrained due to the road interface with E3 zoning although it is considered that this will not significantly limit the potential to make use of solar access and to construct energy efficient dwellings on each lot.

10.3.3 Residential Subdivision - Public Open Space

Objectives

1. *To provide a highly accessible mix of local and district public open space areas and community facilities.*
2. *To ensure public open space, of appropriate quantity and quality, is provided to meet the recreational and social needs of the community.*

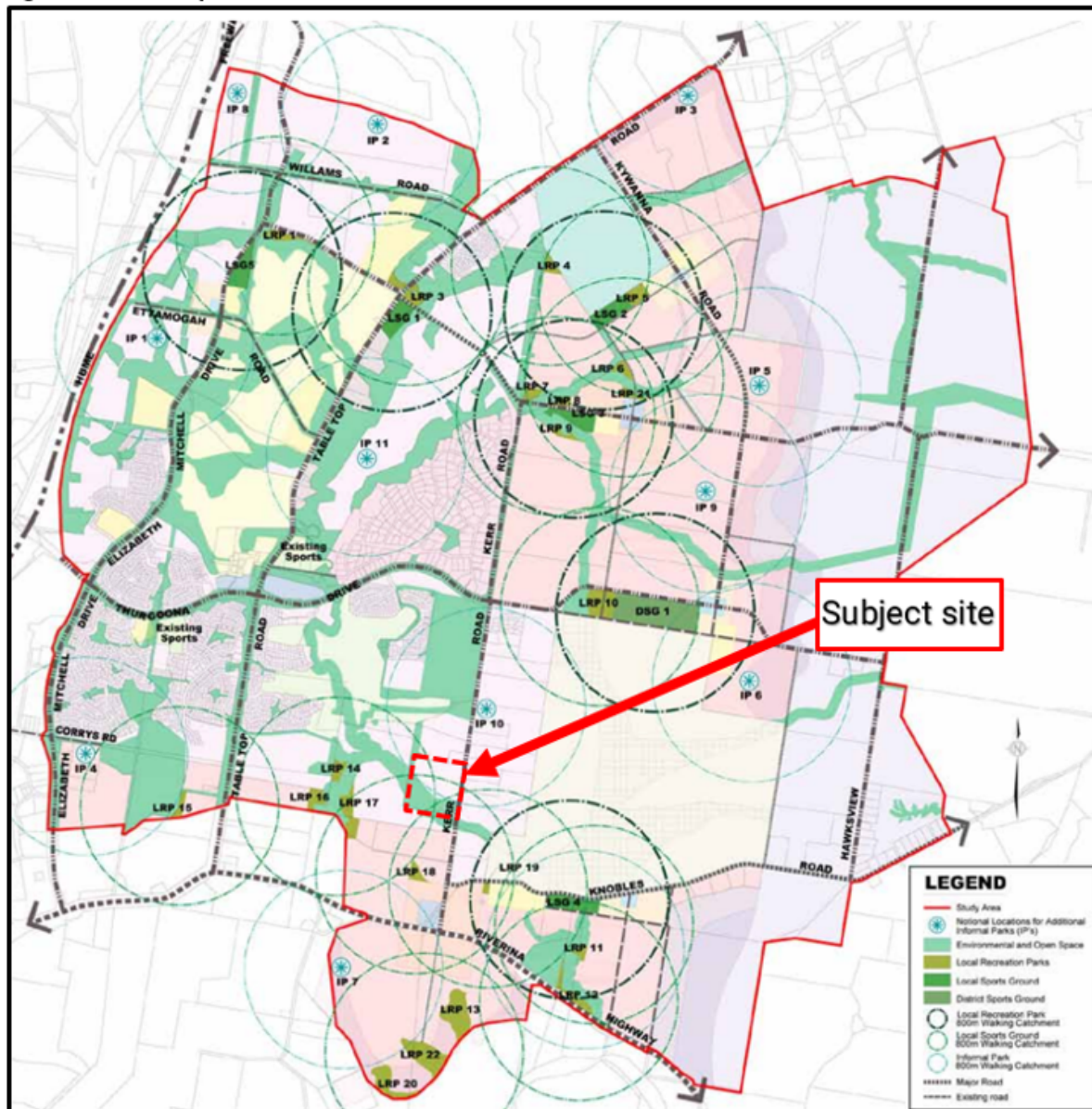
Controls

- i. *A public open space network shall be provided which protects areas of significant habitat, other ecological or significant environmental features, places and items of archaeological or cultural heritage value, damplands, wetlands and watercourses - preserved, rehabilitated, or constructed, and how these relate to a drainage management plan. Sufficiently located and dimensioned areas within the open space network should be available for usable public access to formal and informal recreation facilities. Proposals should contain linear arrangements within the network designed to create permeability and connectivity, and provide interface treatments between the network and other land uses.*
- ii. *All detached dwelling subdivisions and most multi dwelling housing and residential flat building proposals will result in the Council levying developer contributions under Section 94 of the Environmental Planning and Assessment Act 1979 and Section 64 of the Local Government Act,*

1993. The Council's Section 94 Development Servicing Plan fully details the relevant contributions.
- iii. *In the case of detached dwelling subdivisions, an open space contribution may be set aside by the Council, in whole or in part, where the physical public open space is not considered sufficient within the proposed subdivision.*
- iv. *Persons wishing to dedicate land in lieu of contributions should first discuss the proposal with Council.*
- v. *The dedication of land will be assessed according to the following criteria:*
- *A Council plan or DCP which outlines the provision and location of future open space areas.*
 - *The developer contribution plan relating to open space.*
 - *The size and proximity of other open space areas to the subject land, and the travel paths between them.*
 - *The existing attributes of the land (e.g. views, vegetation, natural features) and any negative features of the land (e.g. size, shape, location, maintenance costs).*
 - *Dual usage of the land for drainage purposes and/or easements.*

Comment: The site is within the area affected by the TWSP, which has been adopted by Council to guide future development in the Thurgoona and Wirlinga Growth areas. The TWSP (Figure 27: Local Sports Ground and Local Recreation Parks Facilities Plan shown below) identifies the site as being located within an 800m walking catchment of a number of identified Local Recreation Parks (LRP14, LRP16, LRP17, LRP18 and LRP19) of which are yet to be developed. The site is also located within an 800m walking catchment of an Additional Informal Park (IP10) which was previously developed as a drainage reserve.

Figure 27: Local Sports Ground and Local Recreation Parks Facilities Plan



As the TWSP does not identify the site area which is subject to this application for a Recreation Park (LRP), District Sport Ground, Local Sport Ground or Additional Informal Park (IP), no public open space is required to be provided as part of the development.

In previous stages of Woolshed Estate, 107 residential lots have been created with no provision of open space. This application will provide an additional 92 lots (199 lots in total) for which no provision of open space has been provided. To address this, the applicant has identified a potential future area of open space to the south of the Stage 5. This area is zoned E3 and is being investigated for a potential zone swap (from E3 to R1) as part of the *Environmental Zoned Lands Review*, currently being undertaken by Council. The applicant has provided an indicative layout plan (included in attachment 5) which shows how this area may be developed and includes an area of public open space.

As no physical public open space is being proposed as part of the subdivision, the development will be subject to Section 7.11 contributions in full, under the *AICP 2014*.

10.3.4 Residential Subdivision - Utilities and Infrastructure

Objectives

1. *To ensure all public utilities for the development of new lots are adequately planned as part of the subdivision stage.*
2. *To provide potable water, sewerage, drainage and garbage collection services for the maintenance of public health.*
3. *To ensure the provision of utilities and infrastructure meets minimum standards.*

Controls

- i. *A Drainage Management Plan shall be provided by the proponent, which includes water sensitive urban design measures used to maximise the re-use of stormwater and/or convey stormwater in a manner which reduces the rate of flow and improves the quality of water discharged into receiving or storage bodies. This may include underground stormwater storages in road reserves for irrigating landscaped areas.*
- ii. *AlburyCity Council is the responsible water and sewerage authority. The Council's requirements for those services, as well as stormwater provision and road construction, are provided in the document *AlburyCity Engineering Guidelines for Subdivisions and Development Standards*. Utilities and infrastructure shall be provided in accordance with these standards and the NSW Rural Fire Service Planning for Bushfire Protection Guidelines, in addition to the following supplementary standards and requirements. For more information, contact the Council.*
- iii. *Utilities and infrastructure provision in the R5 Large Lot Residential Zone must comply with Part 9 of this DCP, which relates to Development in Rural Zones, in particular Section 9.2.2, 9.2.3, 9.2.4 and 9.2.5, which relates to rural services.*
- iv. *Evidence should be provided to Council stating that adequate network capacities for electricity, natural gas and telephone services exist. The relevant service providers should be contacted for their servicing requirements.*
- v. *Council shall only grant subdivision consent where it is satisfied that the provision of utility service and community infrastructure would be a logical extension of the existing network and/or servicing program.*

Notation

Clause 7.6 of the LEP requires that development consent must not be granted unless Council is satisfied that adequate arrangements have been made regarding the supply of water, electricity, roads, stormwater drainage and the disposal and management of sewage for that development.

Comment: The development application is consistent with the objectives and controls of this section as follows:

- Each stage has been designed with regards to the existing slope of the site and stormwater infrastructure. Stage 4 is designed to divert stormwater drainage to the adjacent property to the east. A drainage basin was developed for stormwater retention as part of Stage 3 of Woolshed Estate. The existing drainage basin is not sized to accommodate the additional flows and an

additional basin will be required to be constructed. Conditions are included on the *Draft Development Consent* requiring the submission of detailed drainage designs.

- Council will require confirmation and evidence of the availability of services including telecommunications and electricity prior to the release of a Subdivision Certificate.

10.3.5 Residential Subdivision - Street Network

Objectives

1. To provide a road network that places a high priority upon vehicular and pedestrian safety, public transport, and connectivity.
2. To require sealed footpaths and public lighting, so as to improve access and safety for pedestrians and people with a disability.
3. To ensure the provision of a network of roads and streets that meets minimum standards.

Controls

- i. A Traffic Impact Assessment and Traffic Management Plan shall be provided by the proponent that provides for a proposed road system and its integration into the City-wide transport system, and (in the context of integrated transport and land use planning principles) includes measures deployed to encourage transit and pedestrian oriented development.

All requirements for the width and construction of roads shall be in accordance with the Council's Engineering Guidelines for Subdivisions and Development Standards and the NSW Rural Fire Service Planning for Bushfire Protection Guidelines, in addition to the following supplementary standards and requirements.

The AlburyCity Engineering Guidelines for Subdivisions and Development Standards contains requirements for the width of new roads to be undertaken in consultation with Council and generally in accordance with Table 10.2 below:

Table 10.2 - Road Standards, Urban Street Network

Classification of Road	Local Distributor	Collector	Local Access	Cul-De-Sac & minor access
Maximum traffic Volume (vehicles/day)	5000-7000	3000	1000	150
Number of dwellings	500-750	300	100	15
Carriageway Width (m)	13	11	8	6
Footway Width (m)	2 x 5.5	2 x 5.5	2 x 3.5 or 2x 5.5	2 x 3.5
Road Reserve (m)	24	22	15	13

Classification of Road	Local Distributor	Collector	Local Access	Cul-De-Sac & minor access
Lane Provision	2 Moving Parking	2 Moving Intermittent Parking	2 Moving Intermittent Parking	2 Moving Intermittent Parking
Maximum desirable speed (km/h)	60	50	20-30	15-25
Maximum design speed (km/h) (for sight distance calculations)	60	60	40	30
Footpaths	Both sides	Both sides	One side	Not required
Cycle Ways	2.5m wide shared cycleway footpath on one side	Marked	On road shared	On road shared
Kerb and Channel	150 mm high integral barrier	150 mm high integral barrier	Integral barrier or semi mountable	Semi mountable

NB Roads used as bus routes are usually designed to local distributor standards, ie 13-metre carriageway width or provision for two moving and two parking lanes.

Notation

Table 10.2 is an extract of the *AlburyCity Engineering Guidelines for Subdivisions and Development Standards* and has been provided in the interests of making relevant information available to assist the preparation of development applications for residential subdivision. Please note that this table may be revised without notice subject to any review and/or amendment to the *AlburyCity Engineering Development Standards*.

- ii. *Standard road widths are measured between kerb inverts as shown on the standard drawings.*
- iii. *Cul-de-sac or court roads that service 15 or more dwelling sites are to be provided with paved or sealed parking spaces (6 metres x 2.5 metres) within the road reserve (but not within the carriageway) for 50% of the dwelling sites. The parking spaces are to be accessible by semi-mountable kerb.*
- iv. *Within greenfield subdivisions, a 1500mm wide, 80mm deep, reinforced concrete footpath is to be provided at the developer's expense along the length of new roads constructed. All points of an intersection are to have pram ramps constructed into the kerb, also at the developer's expense. The Council will determine, by condition of consent, the footpath and pram ramp locations.*

Notation

The developer need not construct the required footpath until 75% of the lots in the subdivision have been developed. The Council will accept a bond for the value of the work to facilitate this requirement and timing of construction.

Comment: A traffic impact assessment was not required to be prepared and submitted as part of the application. The applicant has stated that the street network design will comply with Engineering requirements, and additional details will be provided for the Construction Certificate application.

The layout plans provided show the continuation of Woolshed Drive and Rodeo Drive to have a width of 22m and road width of 11m. To ensure future development to the east of the site can be catered for, Development Engineers have recommended that Rodeo Drive comply with the standards of a local distributor road. This will require Rodeo Drive road reserve to be 24m in width with a 13m wide carriageway). The requirement is consistent with the TWPSP which shows a 'collector road' running through the site to provide connections through the residential zoned land to Kerr Road. The additional road reserve width will result in slightly smaller lot sizes, however when shared over the entire development would result in insignificant impacts.

As Woolshed Drive is a continuation of an existing road which has a width of 22m the extension to Woolshed Drive at a width of 22m is considered appropriate.

The TWPSP identifies a portion of the site to the south for an '*Area subject to further investigation for an East-West Road*'. Further investigations were undertaken and in July 2014 Council commissioned a report and resolved that the east west connector road not proceed. The proposed subdivision is consistent with this direction and will allow for a local distributor road to service the residential development.

A condition is included in the *Draft* Development Consent requiring intersection works for Kerr Road to enable safe access to and from Rodeo Drive.

The plans submitted show the provision of a roundabout at the intersection of Woolshed Drive and Rodeo Drive which could facilitate future road connections through E3 zoned land to residential zoned land located to the north west and south west of the site. Whilst the roundabout may provide future connections it is noted that a roundabout is not required to be constructed as a result of Stage 4 and 5 of this subdivision. Further to this, no environmental impact assessment has been completed on any future road connections and would be required to be assessed prior to any road extension being approved and constructed. Of particular concern is the proposed south west road which would result in a roadway traversing Woolshed dam, which is a known Sloane's Froglet habitat.

10.3.6 Residential Subdivision - Bicycle Path Network

Objectives

1. *To provide opportunities for a range of non-vehicular transportation in order to access local and district public open space areas, commercial and community facilities and other local destinations.*
2. *To encourage the use of other transport modes as an alternative to motor vehicle transport.*

Controls

- i. *The Council has an established bicycle path network within the City, and this network is being progressively expanded via the annual Works Program. New bicycle paths shall be provided to integrate with Council's existing and planned future bicycle path network.*
- ii. *The provision of an off-carriageway (shared) bicycle path or on carriageway designation may be required for residential subdivisions located in proximity to the identified bicycle network and pedestrian generating land uses including schools, neighbourhood shops, open space and public reserves and facilities.*

Notation

AlburyCity staff are available to assist in any enquiries regarding the Council's bicycle path network.

The applicant has stated that development complies with the bicycle path network controls and additional details are to be prepared and submitted with the Construction Certificate. A shared path runs along the western side of Kerr Road. In addition to the proposed footpaths shown on the subdivision layout plan, a condition included in the *Draft* Development Consent will require an extension to the footpath infrastructure along Kerr Road and allow for an appropriate pedestrian crossing of Kerr Road to connect to the existing shared path on the eastern side of Kerr Road.

4.4 Any Planning Agreement (S4.15(1)(a)(iiia))

Not applicable to this application.

4.5 Provisions of Regulations (S4.15(1)(a)(iv))

Sections 92-98 of the Regulations outline the matters to be considered in the assessment of a development application. These matters have been considered and are deemed to be satisfied for the proposal.

4.6 Likely Impacts of the Development (S4.15(1)(b))

Section 4.15 of the *Environmental Planning and Assessment Act 1979* requires consideration of likely impacts of the development, including environmental impacts on both natural and built environments, and social and economic impacts in the locality. Key areas for consideration in respect to the subject application are outlined below.

Context and Setting

The surrounding locality is undergoing change by urban residential subdivision. The proposed subdivision is consistent with the adjoining previous stages (1, 2 and 3) in terms size and design, as well as their future residential context and setting. The subdivision design provides an appropriate interface with the environmental corridor which will assist in protecting important habitat areas and providing public views to natural environmental land. The proposal is consistent with the TWSP as the proposal will facilitate the development of residential allotments within residential zoned land whilst responding appropriately to site constraints, such as the existing watercourse and environmental zoned land.

Streetscape

The proposed development will result in a number of residential allotments backing onto Kerr Road. This is not dissimilar to the layout of previous Stages of Woolshed Estate and other subdivision developments along Kerr Road where service roads were not required. The subdivision allows for additional land to be dedicated as road reserve along Kerr Road which will allow for additional landscaping to be provided to reduce amenity impacts on the existing streetscape.

Site Design and Internal Design

Overall the proposed development as submitted and subject to conditions contained in the *Draft Development Consent*, is considered to be appropriate in regards to site design and internal layout having regard to Part 10 of the *ADCP 2010*, Council's Engineering Guidelines for Subdivision and Development and the TWSP for urban residential development across the precinct.

Traffic, Access and Parking

The proposed roads and access to the site is not considered to cause significant impact on existing traffic conditions in the area as Kerr Road has recently been upgraded to support the intended residential growth. A condition contained within the *Draft Development Consent* will require the proposed roadways and intersection treatments will be required to be design in accordance with Council's Engineering guidelines.

Public Domain

The development will have an overall positive benefit upon the public domain and will provide additional public assets, drainage reserves and will also provide and appropriate interface and maximise views to environmental land.

Utilities

The site has access to reticulated services, however drainage infrastructure will be required to be developed to accommodate for the residential subdivision. The development will be required to cater for predicted infrastructure, to ensure surrounding undeveloped residential zoned land may be developed into the future.

Construction

Standard conditions associated with the development, including the need for a Construction Management Plan and Environmental Management Plan to ensure the development is undertaken in accordance with suitable and appropriate environmental requirements to be included in the Draft Determination if Council were to resolve to grant development consent.

Water Quality and Stormwater

A detailed Stormwater Management Plan will be required to be prepared to address not only the proposed drainage regime following subdivision but also the means of protecting and enhancing the habitat for Sloane's Froglet. The plan will be required to be prepared in consultation with the BCD to ensure their requirements are met in regards to the preservation of Sloane's Froglet. Suitable and appropriate environmental requirements have been included in the *Draft Development Consent*. Accordingly, the proposed development will satisfactorily capture and manage stormwater in regards to the development.

Soils, Soil Erosion

A condition has been included in the Draft Determination regarding soil erosion, sediment control and stormwater management measures to protect the environment, watercourse and adjoining properties.

Noise and Vibration

A standard condition has been included in the Draft Determination regarding noise and vibrations during construction.

Flora and Fauna

The application proposes the removal of 15 trees and investigations into the removal of one further tree. The application was referred to BCD who provided recommended conditions which are included in the *Draft Development Consent*. As addressed earlier Sloane's Froglet was not identified on site, however detailed stormwater plans which are designed in accordance with *Sloane's Froglet Wetland Stormwater Management Guidelines* will be required prior to the issue of a Construction Certificate. All lots will be subject to a cat containment covenant to be imposed by way of an 88B on the Deposited Plan. This restriction is due to the proximity of the development to E3 Zoned land, this requirement is consistent with recent subdivision applications approved by Council.

Natural Hazards

The proposed development is not identified on the *Bushfire Prone Land Map 2014* as being prone to bushfire, nor is the site identified as being 'contaminated'.

A portion of the E3 zoned area of the site is identified as 'low hazard mainstream flooding' and as 'floodway'. No residential development is proposed within areas identified as having potential flood impacts.

Safety, Security and Crime Prevention

The application was referred to the NSW Police who did not raise any safety or security concerns subject to adequate lighting, location of street trees and fencing to enable appropriate sight lines and consideration of road width and car parking which will be addressed in the Construction Certificate.

Overshadow

Not applicable. No buildings are proposed as part of this development.

Overlooking

Not applicable. No buildings are proposed as part of this development.

Waste

Not applicable. No buildings are proposed as part of this development.

4.7 Public Submissions (S4.15(1)(d))

The Development Application was publicly exhibited from 20 March 2019 to 29 March 2019. Two submissions were received.

Issues raised in the submissions are summarised as follows:

- 1. Land to the north of zoned residential will be unable to be further subdivided in accordance with zone as the subdivision will leave the land locked as an additional access onto Kerr Road would not be supported by Council.**

Council Response

The applicant submitted revised plans to show a residue allotment located off Jackaroo Circuit which will enable a road to be constructed in the future to allow for access to the residential zone parcel to the north of the site. The location of the residue allotment has been chosen to allow for proposed infrastructure to be extended and also provides an appropriate setback from the corner of Jackaroo Circuit to enable appropriate site distances.

- 2. Application is lacking in information on stormwater retention basin and tree inventory report**

Council Response

Following a request for further information, the applicant has provided a ToS for areas within the E3 zone which will be impacted by the proposed development, namely the stormwater drainage basins). The detailed design of the stormwater retention basin will be required to be submitted prior to the issue of a Construction Certificate. Given the location of the proposed basins, approval will need to be sought from Council in conjunction with BCD and separate approval obtained from NRAR. Conditions have been included on the consent regarding detailed designs to address construction works, treatment, discharge flows and environmental impacts.

As a result of the further information request, the applicant has provided a tree report which identifies trees proposed to be removed, their species and condition.

- 3. Environmental concerns regarding E3 Zoned land, including:**

- **The need to include internal roads as buffers to E3 land;**
- **Extension of Woolshed Drive to future subdivisions relies on traversing E3 land;**
- **Location of stormwater basins and downstream impacts of stormwater runoff;**
- **Assessment on the presence of Sloane's Froglet;**

Council Response

- Amended plans were submitted with the additional information which provided a road interface with the E3 Zoned land in Stage 4;
- The applicant is proposing a roundabout which will provide connections to residential zoned land further to the north west and south west of the site. The south west leg of the roundabout will result in a future road extension traversing over Woolshed dam, a known habitat area for Sloane's Froglet, permission is not provided to construct this leg. The leg to the north west, whilst still in E3 zoned land has less risk of resulting in environmental impacts given this area has already been disturbed as a result of infrastructure installation (existing drainage basin and piping, sewer pipes) and past animal grazing. A condition of consent has been included in the *Draft Development Consent* to allow the construction of a roundabout with three legs only (ie. Woolshed Drive, Rodeo Drive and the leg to the north west). The extension of the road to the north west will require further approval. Any fourth leg of the roundabout to the south west will also be subject to further approval and require a full environmental assessment;
- Conditions included in the *Draft Development Consent* will require appropriate design and management of stormwater infrastructure, and will be required to be prepared in consultation with the BCD to ensure their requirements are met in regards to the preservation of Sloane's Froglet. Separate consent from the NRAR will also be required to be obtained prior to any works near the waterway in accordance with the *Water Act 2000*; and
- A ToS was submitted with the further information provided and did not identify the presence of any Sloane's Froglet on site.

4. Retention of trees in house blocks

Council Response

The applicant has stated that the site analysis and design response for the proposal considered the retention of existing trees within the R1 Zone on the grounds of amenity, however no trees were considered reasonably feasible to retain for amenity purposes. The application will result in the planting of many more trees within the streetscape both within the subdivision and along Kerr Road which will enhance the amenity of the area.

5. No recreational or playground space

Council Response

As assessed in detail in the body of this report, the TWPSP does not identify this portion of the site as being required to provide any areas of open space. The site is located within 800m of a number of identified open space areas and residents will be able to access these parks once developed. Future stages proposed to the south of Stage 5 (and subject to a zone swap as previously discussed) identify an area for the provision of public open space.

6. Cat containment condition should be included on E3 land.

Council Response

All lots will be subject to a cat containment covenant to be imposed by way of an 88B on the Deposited Plan. This restriction is due to the proximity of the development to E3 Zoned land, this requirement is consistent with recent subdivision applications approved by Council.

4.8 Public Interest (S4.15(1)(e))

The impact of the proposal on the locality and on the surrounding area has been considered in the body of the report. Having regard to the issues raised and discussed in this report, it is considered that the proposal can be supported.

Options

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.

The development complies with the TWPSP, zone objectives and the controls and standards contained in Albury DCP 2010. The assessment of the application, above, indicates that the development is suitable to this site and this area.

Consequently, this report recommends that Council resolve to approve the application, as per Option 2, subject to the conditions included in the Draft Determination attached as attachment 6 to this report.

Conclusion

The proposed development has been assessed against the requirements of Section 4.15 of the Environmental Planning and Assessment Act 1979. This has involved consideration of the requirements of relevant State Environmental Planning Policies, ALEP 2010 and ADCP 2010. It is considered that the proposed development is appropriate for this site the surrounding area. Accordingly, it is recommended that Development Application 10.2019.36710.1 for the 92 lot subdivision of Lot 18 on DP1057228 and ancillary infrastructure works on Lot 1 on DP1004069

approved subject to conditions contained in the Draft Determination, included at attachment 6 to this report.

Recommendation

That Council:

- a. Receive and note the contents of this report; and
- b. Grant development consent to Development Application 10.2019.36710.1 for a 92 lot subdivision at of Lot 18 of DP 1057228 and ancillary infrastructure works on Lot 1 on DP 1004069, subject to the conditions contained in the Draft Determination, included in this report at attachment 6.

Attachments:

1. Plan of subdivision (DOC19/166201)
2. Statement of Environmental Effects (DOC19/166206)
3. Submissions (DOC19/166226)
4. Further information (DOC19/166234)
5. Indicative subdivision layout –subject to zone swap (DOC19/166253)
6. Draft Development Consent (DOC19/167800)