

Department of Planning and Environment

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Guide to Varying Development Standards

November 2023





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Introduction

The Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) and other environmental planning instruments set out development standards that must be met before a consent authority, such as a local council, can grant development consent to a development application (DA). Clause 4.6 of the Standard Instrument LEP allows consent authorities to grant consent to development that contravenes one or more development standards.

Clause 4.6 provides flexibility in the application of development standards. However, confusion around the application of clause 4.6 has contributed to delays, cost burdens and litigation for applicants and councils.

In response, we have amended clause 4.6 – and similar provisions in non-standard local environmental plans (LEPs) and state environmental planning policies (SEPPs) – to simplify requirements and to make the clause easier to interpret.

We have also made changes to reporting requirements for councils and the approach that the Department of Planning and Environment will take to monitoring and auditing variations decisions. This is to ensure there is appropriate probity, accountability and transparency to maintain confidence in the planning system.

This guide is in 2 parts:

Part A clarifies requirements for preparing, assessing and determining requests to vary development standards.

Part B sets out the monitoring and reporting framework and replaces the planning circular PS 20-002.

A

Part A: Preparing and assessing variation requests

1 Overview

1.1 Purpose

Part A of this guide clarifies requirements for preparing, assessing and determining requests to vary development standards. It aims to:

- explain the tests in clause 4.6 of the Standard Instrument LEP
- clarify how to prepare and assess a variation request, including applying the tests
- identify the circumstances in which clause 4.6 does and does not apply.

Any references to clause 4.6 of the Standard Instrument LEP equally apply to equivalent clauses in non-standard LEPs and SEPPs.

We expect applicants – including planning consultants, developers and landowners – and consent authorities to use this guide to navigate the requirements of clause 4.6 and to determine when clause 4.6 does and does not apply.

Chapter 3 of this guide aims to assist applicants when preparing written requests to vary a development standard. Chapter 4 aims to assist consent authorities when assessing and determining those requests.

This guide is based on current case law and the intended application of the most recent changes to clause 4.6. Future court decisions may change the interpretation and application of the clause. This guide will be subject to regular review to reflect changes arising from court decisions.

1.2 NSW planning framework

The NSW planning system shapes the state's towns and landscapes. The planning system is underpinned by strategic analysis and implemented through statutory instruments and development standards and controls.

The key planning legislation is the *Environmental Planning and Assessment Act 1979* (EP&A Act), which sets out the laws under which planning in NSW takes place. The EP&A Act is supported by environmental planning instruments.

Environmental planning instruments are statutory documents that contain development standards and other planning controls to meet the objects of the EP&A Act. They include LEPs, SEPPs and deemed environmental planning instruments, such as planning scheme ordinances and interim development orders.

View the objects of the [EP&A Act \(section 1.3\)](#)

Environmental planning instruments allow councils and other consent authorities to manage land use and determine how development is carried out. The instruments generally contain land use zones, development standards and other provisions for a range of development types and planning matters.

SEPPs apply to all of NSW or specific areas within NSW. LEPs apply to local government areas. Both instruments guide planning decisions made by councils and other consent authorities.

Clause 4.6 of the Standard Instrument LEP only applies to development standards in environmental planning instruments. It does not apply to other planning controls such as prohibitions.

Development control plans are local guidelines that support the relevant LEP. Development control plans are not environmental planning instruments. Clause 4.6 does not apply to development control plans.

1.3 Development standards

Clause 4.6 of the Standard Instrument LEP applies to development standards, as defined in the EP&A Act.

View the EP&A Act definition of [development standards \(section 1.4\)](#)

Development standards are provisions of an environmental planning instrument or the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) which relate to the carrying out of development and specify requirements or fix standards in respect of any aspect of the development.

Generally, development standards either set numerical values or contain non-numerical requirements or criteria relating to the design and carrying out of development in certain circumstances.

Environmental planning instruments that use the Standard Instrument LEP format – and many other environmental planning instruments – contain development standards.

Numerical development standards use numbers to specify requirements (often minimum or maximum requirements) for measuring components of a site and/or development. Examples are minimum lot size requirements or building height limits.

Non-numerical development standards generally contain criteria or matters that need to be satisfied. These standards are typically found in the local provisions of a LEP and vary between LEPs.

Some development standards contain a mix of numerical and non-numerical standards.

1.3.1 Flexibility when applying development standards

In most cases development should comply with development standards that apply to a site. These standards have been set to ensure zone objectives are met, preserve the amenity of the site and mitigate unacceptable impacts on the environment and surrounding land uses. In some

circumstances, rigidly applying predetermined development standards is not always the best way to achieve good planning outcomes.

Clause 4.6 is the mechanism for varying development standards. It provides a degree of flexibility in circumstances where environmental planning objectives can be satisfied despite not meeting the required development standard.

Clause 4.6 variation requests are only required for DAs. A clause 4.6 variation request is not required for modification applications¹ and cannot be used to vary development standards for complying development.²

To vary a development standard, an applicant must formally lodge a document (also known as a written request) justifying the variation. This request forms part of the package of information lodged with a DA.

Clause 4.6 allows a consent authority to grant consent to a development that contravenes a development standard if the consent authority is satisfied that the applicant has demonstrated that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

¹ *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468, 481 (Mason P).

² Standard Instrument LEP cl 4.6(8)(a).

2 Provisions of clause 4.6

This chapter discusses the key elements of clause 4.6 of the Standard Instrument LEP and its statutory framework. It outlines the obligations on the applicant, assessment officer and consent authority in preparing and considering the written request to vary a development standard.

2.1 Revising clause 4.6

Clause 4.6 of the Standard Instrument LEP was revised in November 2023, as were equivalent clauses in non-standard LEPs and SEPPs. The changes:

- retain the existing ‘unreasonable and unnecessary’ and ‘sufficient environmental planning grounds’ tests in clause 4.6(3)
- require the applicant and consent authority to consider the same tests, retained in clause 4.6(3)
- require the consent authority to be satisfied that the matters in clause 4.6(3) have been demonstrated
- remove the need for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone – this will avoid duplication of tests and matters for consideration covered by other relevant statutory provisions
- remove the Planning Secretary’s concurrence requirements, replacing them with a new monitoring and reporting framework.

The requirement for a document to accompany a DA has now been explicitly set out in section 35B(2) of the EP&A Regulation (see Chapter 3.1 of this guide). This document (written request) must set out the grounds on which the applicant seeks to demonstrate the ‘unreasonable and unnecessary’ and ‘sufficient environmental planning grounds’ tests.

Clause 4.6 of the Standard Instrument LEP now reads:

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows –
- a. to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - b. to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that –
- a. compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - b. there are sufficient environmental planning grounds to justify the contravention of the development standard.
- Note – The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*
- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
- (5) (Repealed)
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if –
- a. the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - b. the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) (Repealed)
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following –
- a. a development standard for complying development,
 - b. a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - c. clause 5.4,
 - d. clause 5.5.

Direction – Additional exclusions may be added.

2.2 Role of objectives in clause 4.6

The objectives of clause 4.6 of the Standard Instrument LEP outline the clause's function and purpose.

A written request does not need to include an assessment against the objectives of clause 4.6. For example, a development that contravenes a development standard does not have to achieve better outcomes for and from development.³

2.3 Granting development consent

Clause 4.6(2) allows a consent authority to grant development consent to a development that contravenes a development standard.

Clause 4.6 can be used to vary development standards in the relevant LEP, or any other environmental planning instrument. This means that development standards contained in a SEPP can be varied through the provisions of clause 4.6 in a LEP.

Some SEPPs contain sections equivalent to clause 4.6. In these cases, a written request to vary a development standard would be made under the relevant section in the SEPP.

2.4 Obligations in clause 4.6(3)(a) and (b)

The consent authority must be satisfied that the applicant for development consent has demonstrated that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances (cl 4.6(3)(a))
- that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).

This places the responsibility on the applicant to demonstrate that they have understood the requirements of the provision and have prepared a written request that adequately addresses the provisions.

These provisions are examined in detail in the following sections.

2.5 The 'unreasonable or unnecessary' test

With respect to clause 4.6(3)(a), the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-part test' or the 'Wehbe test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827).

³ *Initial Action Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [89]–[90] ('Initial Action').

The test can be summarised as follows:⁴

Compliance with the development standard is unreasonable or unnecessary if the:

1. objectives of the development standard are achieved notwithstanding the non-compliance
2. underlying objective or purpose is not relevant to the development
3. underlying objective or purpose would be defeated or thwarted if compliance was required
4. development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard
5. zoning of the land on which the development is proposed was unreasonable or inappropriate.

The *Wehbe* test lists 5 common ways clause 4.6(3)(a) can be addressed but is not exhaustive.⁵ Additionally, an applicant only needs to satisfy at least one part of the *Wehbe* test, not all 5 parts. When addressing the test, the arguments must remain factual, relevant to the area of non-compliance and consistent.

With respect to point 4 of the test, the applicant must provide analysis of relevant council decisions and actions. A council varying the same development standard in a small number of circumstances is unlikely to be sufficient to establish virtual abandonment or destruction.

For point 5, the applicant must establish that the zoning is unreasonable or inappropriate so that the development standard appropriate for the zone is unreasonable or unnecessary. This relates to the land and the circumstances of the case. Compliance with the development standard is unreasonable or unnecessary not because the standard is inappropriate to the zoning, but rather because the zoning of the specific piece of land is unreasonable and/or inappropriate.⁶

2.6 Environmental planning grounds

The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act.⁷ The scope of environmental planning grounds is wide⁸ as exemplified by the court decisions in this area.

Sufficient environmental planning grounds need to be established by the facts of the request. The request must justify the contravention of the development standard, not simply promote the benefits of the development.⁹ The grounds must:

- be sufficient to justify the contravention
- focus on the aspect of the development that contravenes the development standard, not the development as a whole.

⁴ *Initial Action* at [16], summarising *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42]–[51] ('*Wehbe*').

⁵ *Initial Action* (n 3) at [22].

⁶ *Wehbe* (n 4) at [49].

⁷ *Initial Action* (n 3) at [23].

⁸ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [10]

⁹ *Initial Action* at [24].

Environmental planning grounds may not be sufficient to justify the contravention of a development standard if the variation results in unsatisfactory planning outcomes.

Avoiding adverse impacts may constitute sufficient environmental planning grounds as it promotes 'good design and amenity of the built environment'¹⁰ – one of the objects of the EP&A Act. However, the lack of impact must be specific to the non-compliance to justify the breach.

Other examples of environmental planning grounds include:

- dealing with the unique circumstances of the site such as historical excavation of basements or swimming pools
- achieving consistency with the streetscape and existing built form
- responding to flood planning levels
- responding to topography
- improving public benefit
- achieving equal or better amenity outcomes (solar access, privacy, views/outlook)
- being consistent with the prevailing subdivision pattern
- conserving built and cultural heritage values
- protecting or avoiding impacts to an area of environmental or biodiversity value.

In all cases, the justification must be specific to the aspect of the development that is the subject of the proposed contravention. Importantly, environmental planning grounds which justify the contravention of a development standard in one case may not justify contravention in another.

¹⁰ *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065 at [78].

3 Applying to vary a development standard

This chapter is for applicants and discusses how to prepare variation requests that meet the requirements of clause 4.6.

3.1 Written request requirements

There is no automatic right to vary a development standard. An applicant wishing to lodge a DA that proposes to vary a development standard must do so via a written request.

Clause 35B of the EP&A Regulation now explicitly requires a DA to be accompanied by a document (the written request) that sets out the grounds on which an applicant seeks to demonstrate that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

The written request is a standalone document lodged with the DA. It can also be an appendix to a statement of environmental effects.

Checklist for written requests

- The control to which the variation relates must be a development standard as defined in the EP&A Act.
- If the variation relates to the subdivision of land, the variation must be consistent with any relevant limits identified in clause 4.6(6) of the Standard Instrument LEP.
- The development standard being varied must not be specifically excluded from the operation of clause 4.6. Exclusions are listed in clause 4.6(8) and in some circumstances, within the development standard.
- The written request must be lodged as part of the DA.
- The written request must satisfy the 2 tests set out in clause 4.6(3):
 - clause 4.6(3)(a) – compliance with the development standard is unreasonable and unnecessary in the circumstances
 - clause 4.6(3)(b) – there are sufficient environmental planning grounds to justify contravention of the development standard.
- The written request must include sufficient information for the consent authority to understand the relevant aspects of the proposed development and the totality of the proposed variation to the development standard.

3.2 Preparing the written request

The written request must be factual and include justification specific to the variation being sought to allow the consent authority to exercise its regulatory role in assessing the DA.

3.2.1 Structure and matters to be addressed

The written request should:

- identify the development site
- describe the proposed development
- note the relevant environmental planning instrument and zoning of the site
- identify the development standard that the applicant is seeking to vary
- identify aspects of the proposed development that contravene the development standard (including where there is more than one aspect of a development that contravenes the development standard), including:
 - where these aspects occur or are located within the site
 - the extent of variation associated with each
- include an assessment of the proposed variation against the relevant tests in clause 4.6(3)(a) and (b).

Setting out the proposed variation

It is best practice to use diagrams and tables to identify exceedances of a development standard and support these with text. For example, if a development contravenes a building height development standard, the request should note the standard in the relevant LEP and include a diagram showing the height breach.

In this example, the written request would identify the:

- building height limit in the relevant LEP
- specific aspects of the development where the breach occurs (roof/parapet/shade structure on rooftop)
- extent of the variation in metres and as a percentage.

A written request does not need to be prepared by a professional. However, town planning consultants, legal representatives, architects or other built environment professionals can help with the process. **Appendix B** of this guide provides a template for a clause 4.6 written request and includes guidance for applicants. The template is also available in a word format on the department's website.

3.2.2 General advice

In constructing arguments, the applicant must be aware that although there are no numerical limits to the degree of a variation, a development standard can only be varied if the tests in clauses 4.6(3)(a) and (b) have been met to the satisfaction of the consent authority.

Clause 4.6 should not be used as an alternative to the strategic planning powers under Part 3 of the EP&A Act. Clause 4.6 cannot be used to effect general planning changes throughout a local government area.¹¹ If clause 4.6 is used as an alternative to a rezoning, the strategic studies typically required to justify a planning proposal may not be undertaken, and broader considerations such as consistency with state and regional planning strategies may not be considered. It is recommended that an applicant discuss any clause 4.6 variation with the relevant consent authority prior to lodging the variation.

The written request should use language consistent with clause 4.6 and address each element separately.¹² Avoid paraphrasing so as not to make a legal error.

3.2.3 Reference to case law

Appendix A: Relevant case law of this guide lists relevant legal cases.

While case law surrounding clause 4.6 (and its predecessor, known as State Environmental Planning Policy No 1—Development Standards or SEPP 1) is extensive, not all cases remain relevant. Development appeals are treated on their merits, so a finding in one case will not necessarily result in the same finding in another case.

The person preparing the written request should be familiar with the relevant case law as it provides a framework for the written request. However, pages of discussion on case law in the request is not needed. This does not help demonstrate compliance with clauses 4.6(3)(a) and (b).

However, you can refer to and rely on a judicial interpretation of a particular phrase or clause (such as the *Wehbe* test). This is addressed in the template in Appendix B.

3.2.4 Development standards without objectives

If a development standard does not have an objective, the written request must establish, through research and an understanding of the background to the standard, the environmental planning outcome the standard is seeking to achieve.

As the standard is read as part of the whole environmental planning instrument, reference to how the instrument addresses similar provisions in other zones, or the zone objectives in which the development is proposed¹³, may be necessary. Reference to planning practice, background information or other environmental planning instruments may help to understand the standard's purpose. For example, floor space ratio is a control of density and built form.

¹¹ *Wehbe* (n 4) at [51].

¹² *Bringham v Canterbury-Bankstown Council* [2018] NSWLEC 1406 at [42].

¹³ *Malton Road Development Pty Ltd v Hornsby Shire Council* [2018] NSWLEC 1265 at [44]

3.2.5 Development contravening more than one standard

A DA proposing to vary more than one development standard requires separate written requests for each variation. This avoids legal errors or generalisations. Each written request must address the relevant tests in clause 4.6(3) and provide justification for each variation.

3.2.6 Dos and Don'ts when preparing a variation request

Do:

- address the test in clause 4.6(3) – these are the matters of which the consent authority must be satisfied before granting consent
- use the template as a guide for format and structure
- prepare the written request as a standalone document that is separate to the statement of environmental effects (may be in an appendix) and other DA documentation
- separate each matter in each subclause into sections under different headings and subheadings
- include relevant diagrams, if possible, to support the written justification
- provide justifications and reasons that are specific to the proposed variation
- only state the facts when addressing the impacts of the proposed variation.

Do not:

- summarise each case relating to clause 4.6 or SEPP 1
- use generalisations about the development, such as listing the overall potential benefits or outcomes of the development
- include economic feasibility or commercial gain as a reason to justify a variation
- state that a development standard has been abandoned unless it can be supported with evidence.

4 Consideration of variations by consent authorities

This chapter is for consent authorities and discusses how to consider a variation request.

4.1 Consent authorities for variation requests

Clause 4.6 allows a consent authority to grant consent to a DA that contravenes a development standard, unless the standard is specifically excluded from the operation of the clause.

The consent authority will depend on the:

- local government area within which the development is located
- development type
- development standard being varied
- extent of variation.

The relevant determining authorities for DAs that contravene a development standard is summarised in Table 1. Certain ministerial directions and SEPPs determine the consent authority for a DA subject to a clause 4.6 request, based on specific referral criteria.

For example, a council may grant consent under delegated authority to a development that contravenes a development standard where the proposed extent of variation is 10% or less. Where the extent of variation is greater than 10%, the relevant local planning panel¹⁴ will determine the DA in metropolitan areas. In regional areas, the elected council should have the function of determining the DA.

State Environmental Planning Policy (Planning Systems) 2021 (SEPP (Planning Systems) 2021) sets out the referral criteria for DAs to be determined by the relevant Sydney district or regional planning panel, as well as those that are to be determined by the Minister for Planning (or delegate). Additionally, section 4.5(c) of the EP&A Act outlines the circumstances where a public authority may be the consent authority for a DA.

¹⁴ Section 9.1 Ministerial Direction – Local Planning Panels Direction: Development Applications and Applications to Modify Development Consents.

Table 1: Consent authorities for DAs

Level of development	Development type	Extent of variation – numerical development standard	Extent of variation – non-numerical development standard	Function of determining the DA
Local development	All	Less than 10%	N/A	Council (under delegation)
Local development	All	10% or more	Any	Local planning panel ¹⁵ /Council (elected)
Local development	Dwelling houses, dual occupancies and attached dwellings	More than 25%	Any	Local planning panel (applies to City of Sydney only) ¹⁶
Regionally significant development	All - see Schedule 6 of SEPP (Planning Systems) 2021	Any	Any	Relevant Sydney district or regional planning panel
State significant development	All See Schedules 1 to 2 of SEPP (Planning Systems) 2021	Any	Any	Independent Planning Commission or the Minister for Planning (or delegate)

4.2 Assessment and determination procedures

A consent authority must assess a written request to vary a development standard by applying the relevant tests in clause 4.6(3) of the Standard Instrument LEP.

4.2.1 Key matters for consideration

Under clause 4.6(3), the consent authority must be satisfied the applicant for development consent has demonstrated that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

¹⁵ Local planning panels are currently established in Greater Sydney, Wollongong, Wingecarribee and the Central Coast.

¹⁶ In some cases, the relevant local planning panel can delegate DAs involving a request to vary a development standard to council staff for determination.

Clause 35B of the EP&A Regulation requires the applicant to prepare a document (written request) that sets out the grounds on which these matters are demonstrated.

In considering the request, the consent authority must:

- understand the provisions of clause 4.6
- understand the relevant case law
- understand how the 'unreasonable and unnecessary' test may be satisfied
- consider what 'environmental planning grounds' may involve
- ensure there is sufficient, accurate material in the submission to allow them to understand the degree of variation and where it is.

Key considerations

The consent authority should be able to answer the following questions:

- Is the planning control being varied a development standard?
- What are the objectives of the standard?
- If the standard does not contain objectives, what is its purpose, why was it introduced and how is it applied?
- Does the written request demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances (*Wehbe* test)?
- What part of the *Wehbe* test is being used to justify the variation? Or is the variation otherwise justified?
- Does the written request demonstrate sufficient environmental planning grounds to justify the variation to the development standard being proposed?
- What are the environmental planning grounds being argued?
- Are the environmental planning grounds particular to the relevant aspect of the proposed development?

In considering the written request, clause 4.6(3) requires the consent authority to evaluate whether the applicant has demonstrated the matters in clause 4.6(3)(a) and 4.6(3)(b). Accordingly, whether variation of a development standard is justified, will depend on the information contained in an applicant's written request.

The consent authority's assessment report must adequately document consideration of the written request. In this regard, 'being satisfied' means the assessment officer has undertaken a critical review of the written request and has expressed their considerations and determination in writing.

This includes:

- determining that the provision being varied is a development standard
- being satisfied that the written request is accurate, for example that it has:
- correct references to the LEP and relevant objectives

- correct calculation and identification of the area of and extent of the variation
- in the case of a proposed height variation, a check of how ground level is identified
- being satisfied that the written request demonstrates where the variation is, whether compliance has been argued to be unreasonable or unnecessary, whether environmental planning grounds have been argued and are specific, and whether those arguments are supported or not.

In summary, the consent authority must be satisfied that the matters in clause 4.6(3)(a) and 4.6(3)(b) have been demonstrated in the written request.

Why we have removed the public interest test

Clause 4.6 used to require that the consent authority be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

This has been removed as it replicated existing requirements:

- The objectives of the development standard are generally considered as part of the ‘unreasonable and unnecessary’ test.
- The objectives of the zone are already a consideration under section 4.15(1)(a)(i) of the EP&A Act and clause 2.3 of the Standard Instrument LEP.
- The public interest more broadly is a consideration under section 4.15(1)(e) of the EP&A Act.

4.2.2 Cumulative impacts

In determining a DA involving variations to development standards, a consent authority may also consider the potential cumulative impacts of any previous and potential variations. This is considered under section 4.15 of the EP&A Act and is not necessarily required to satisfy clause 4.6.

Continued variation to development standards approved incrementally over time may undermine planning objectives relating to the site or local area.

A consent authority should consider any cumulative effects of similar approvals of a variation and whether further approval would result in an unacceptable planning outcome for the site as part of the broader assessment of the DA.

In some cases, the way certain development standards and objectives are drafted may contribute to frequent variations, potentially resulting in cumulative impacts. Councils should, as part of their 5-yearly reviews of the LEPs, ensure that development standards have not unreasonably restricted better planning outcomes, either because the standards are no longer fit for purpose or the objectives do not capture the preferred planning outcomes.¹⁷

¹⁷ EP&A Act s 3.21.

5 Variations for different types of applications

This chapter discusses how clause 4.6 applies to different types of development.

5.1 Existing development that contravenes development standards

It is not uncommon for existing buildings or structures to contravene or exceed current development standards. This can occur when the building:

- is constructed before the current development standard has come into force or has been updated
- has been subject to consent under which non-compliance with the relevant development standard was approved.

If an applicant proposes alterations and additions to an existing building that already exceeds a development standard, they still need to submit a written request to vary the development standard, even if the proposed development reduces the extent of the variation.

5.2 Subdivision

5.2.1 Variations to minimum lot size in certain rural and conservation zones

Clause 2.6 of the Standard Instrument LEP identifies that development consent is needed to subdivide land. Subdivisions are subject to development standards such as minimum subdivision lot size. These requirements may be varied under clause 4.6. However, the extent to which they may be varied is limited by clause 4.6(6), which limits variations of subdivision of certain rural land.

Similar limitations are also included in non-standard LEPs and SEPPs.

Clause 4.6(6) prevents a consent authority from granting consent to an application for subdivision in rural zones that will create a lot that is equal to or less than 90% of the relevant minimum lot size development standard. This means that a minimum lot size development standard can only be varied to a maximum of 10% in those zones.

Clause 4.6(6) of the Standard Instrument LEP

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if –

- a. the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- b. the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

5.2.2 Subdivision for primary production

In accordance with clause 4.2 of the Standard Instrument LEP, if an applicant proposes to subdivide land in the RU1, RU2, RU3, RU4 or RU6 zones for primary production, they do not have to prepare a clause 4.6 written request to support a lot size less than the minimum permitted by the instrument.

However, this only applies:

- in the specified zones
- to subdivisions for the purposes of primary production
- where there is no existing dwelling that would be situated on the resulting lot.

A dwelling (including a rural worker's dwelling) cannot be erected on the lot.

5.3 Existing use rights

5.3.1 Development on land with existing use rights

Existing use rights allow land uses to continue despite changes to planning legislation, such as where the land use becomes prohibited or now requires consent because of new or amended planning controls. Section 163 of the EP&A Regulation allows an existing use (with development consent) to be:

- enlarged, expanded, intensified, altered, extended or rebuilt for another use provided that certain conditions are met
- changed to another use if that use is permissible
- changed from commercial and light industrial use to other prohibited uses in limited circumstances.

Case law has established that development standards continue to apply to land with existing use rights if an applicant is seeking development consent to carry out one of the activities permitted in section 163.¹⁸

If that DA involves a variation to a development standard in the relevant environmental planning instrument, then the development will be subject to clause 4.6 and a written request is required.

5.4 Non-discretionary development standards

Non-discretionary development standards are defined in section 4.15(6)(b) of the EP&A Act as 'development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards'. A clause will explicitly state if it is a non-discretionary development standard.

Non-discretionary development standards are standards that, if complied with, prevent consent authorities from:

- taking the non-discretionary development standard into further consideration in determining the DA
- refusing the DA on the grounds that the development does not comply with those standards
- imposing a condition of consent that has the same, or substantially the same, effect as the standard but is more onerous than the standard.¹⁹

If a development does not comply with a non-discretionary development standard, section 4.15(3) of the EP&A Act allows the consent authority to apply clause 4.6 (or an equivalent provision) when considering and determining the development. The application of clause 4.6 will depend on the drafting of the non-discretionary development standard.

¹⁸ *Iris Diversified Property Ltd v Randwick City Council* [2010] NSWLEC 58; *Cracknell & Lonergan Architects Pty Ltd v Leichhardt Municipal Council* [2012] NSWLEC 194.

¹⁹ EP&A Act s 4.15(2).

6 When clause 4.6 does not apply

This chapter discusses specific circumstances when clause 4.6 does not apply.

6.1 Modification applications

Sections 4.55 and 4.56 of the EP&A Act enable a consent authority to modify an existing development consent. This allows an applicant to change a development consent without the need for a new consent.

Modification applications commonly seek to make physical or operational changes to a development, to alter or delete a condition of consent or to correct an error in a consent. A modification application may be lodged before a building is constructed, during construction or once the building is operational.

To modify a consent, a consent authority must be satisfied that the development, as modified, remains substantially the same development²⁰ as originally approved, except in cases involving minor errors, misdescriptions or miscalculations.

Clause 4.6 applies to applications for development consent, not applications to modify consents already granted. Therefore, a modification application that would result in a development that contravenes a development standard does not require submission of a clause 4.6 written request.

However, the requirement of satisfying the tests in sections 4.55 and 4.56 of the EP&A Act remains, ensuring an appropriate level of assessment is undertaken, including where variation to a development standard is sought or pre-existing.

Modification applications submitted under section 4.55(2) that contravene a development standard by more than 10% must be referred to the relevant local planning panel for determination.

6.2 Specific clauses

6.2.1 Development near zone boundaries – clause 5.3

Clause 5.3 of the Standard Instrument LEP relates to development near zone boundaries and applies to land within a specified distance of a boundary between any 2 zones. Clause 5.3(5) states that the clause does not prescribe a development standard that can be varied under clause 4.6. Non-compliance with the clause means the development must be refused.

²⁰ EP&A Act s 4.55.

6.2.2 Architectural roof features – clause 5.6

Clause 5.6 of the Standard Instrument LEP relates to architectural roof features. It allows a consent authority to approve a development containing an architectural roof feature that exceeds or causes a building to exceed the building height in clause 4.3 without the need for a written request to vary the standard.

Before granting consent, the consent authority must be satisfied the criteria identified in clause 5.6(3) is met. If the proposal does not satisfy the criteria, a written request under clause 4.6 is required.

6.3 Building information certificates and unauthorised works

Division 6.7 of the EP&A Act relates to building information certificates. A building information certificate is typically applied for when properties are being sold or when unauthorised building works have been carried out. It prevents councils from giving an order or undertaking civil proceedings in relation to matters that existed before the certificate was issued. A building information certificate is generally the only option available to regulate building work that has been carried out unlawfully.

Clause 4.6 expressly regulates whether development consent may be granted. Accordingly, the provisions of clause 4.6 do not apply to development that is the subject of a building information certificate application.

6.4 Exclusions to clause 4.6

Clause 4.6(2) and clause 4.6(8) of the Standard Instrument LEP provide a mechanism to exclude a development standard from the operation of clause 4.6. This means that the clause containing the development standard cannot be varied and any non-compliance must result in a development being refused.

Clause 4.6(8) of the Standard Instrument LEP identifies provisions that cannot be varied. This includes development standards relating to complying development, BASIX requirements and clause 5.4 and clause 5.5 of the Standard Instrument LEP. A clause 4.6(8) equivalent is also included in some non-standard LEPs and SEPPs.

These are the only development standards mandated to be excluded from the operation of clause 4.6. Councils may, in some circumstances, identify additional development standards within a LEP as exclusions in clause 4.6(8). These circumstances are identified in the section 9.1 ministerial direction 'Exclusion of Development Standards from Variation' and the 'Guide to exclusions from clause 4.6 of the Standard Instrument'.

B

Part B: Monitoring and reporting framework

7 Overview

7.1 Purpose

Part B of this guide sets out councils' reporting obligations where an applicant seeks to vary a development standard. It also explains how the department will monitor and audit the use of clause 4.6 of the Standard Instrument LEP to increase transparency, accountability and probity in planning. It replaces the requirements in Planning Circular PS 20-002, which no longer apply.

7.2 Background

Strong ongoing monitoring and regular audits of planning decisions are important to ensure transparency and minimise the risk of corruption when varying development standards. The department has had in place a comprehensive monitoring and reporting framework for clause 4.6 variations for several years to maintain transparency and accountability. This has included:

- quarterly reporting to the department by councils on variations approved and to the elected council on variations approved under delegation
- requiring councils to establish and maintain online public registers of all variations approved
- the requirement for concurrence of the Planning Secretary for a variation
- routine audits of councils to confirm they have met procedural and reporting requirements and have the correct delegations in place.

In recent years, there have been changes to how variations are assessed, how variations data is captured and consideration of the most effective monitoring approach. For example:

- where constituted, local planning panels are now responsible for determining DAs with larger departures from development standards
- it is mandatory to use the NSW Planning Portal for lodging, assessing and determining DAs, and reporting on other planning matters
- concurrence is now largely assumed, so it doesn't have the oversight function it was originally intended to have
- the Independent Commission Against Corruption recommended auditing variations in a more targeted and consistent way.

In response to these changes, the department has removed the need for the Secretary's concurrence and manual reporting requirements and developed a strengthened monitoring and reporting framework.

8 Procedural and reporting requirements

8.1 NSW Planning Portal

The NSW Planning Portal is an integral part of the clause 4.6 monitoring and reporting framework. When lodging a DA that proposes a variation to a development standard, the applicant must complete the relevant fields in the NSW Planning Portal and upload their written request. Following lodgement, the consent authority must update the numerical variations data (such as the extent of the variation) in the NSW Planning Portal. This will ensure it is accurate and consistent with any amendments that occur during the assessment.

When determining a DA, a consent authority must complete the relevant fields in the NSW Planning Portal for the variation request. Section 90A of the EP&A Regulation now requires councils to provide reasons for approving or refusing a contravention of a development standard through the NSW Planning Portal as soon as practicable after the determination of the DA. This includes entering the reasons for approval or refusal of a variation request where a DA has been determined by a local, regional or district planning panel. It does not apply to decisions the Land and Environment Court makes on appeal.

Gathering accurate data will help improve the transparency, accountability and probity of consent authorities and support any audit on the use of clause 4.6.

8.2 Variations register

A publicly available online register of all DAs with variation requests lodged and determined is available on the NSW Planning Portal. The register displays data from the planning portal, including the:

- planning application number and the council's DA number
- local government area and address
- land use type and development description
- zoning of land
- lodgement and determination date
- instrument and development standard subject to variation
- proposed and approved variation
- determination and consent authority
- reasons for approval or refusal of the variation.

Capturing data in the online DA service means councils no longer have to maintain and report their own registers, duplicating data. As the variations register is publicly available, council staff will no longer need to report quarterly on variations approved under delegation to the elected council.

Councils should maintain their online variations register for variations determined before 1 November 2023.

With the removal of separate reporting requirements and the introduction of the variation register, we expect councils to ensure that data entered through the NSW Planning Portal is accurate and complete.

8.3 Determination authority for certain variations where there is no local planning panel

Chapter 4 of Part A of this guide identifies the relevant consent authority for DAs that are subject to variations to development standards.

For councils that do not have a local planning panel, the full council must determine a DA if it:

- proposes a variation that will result in development that contravenes a development standard in an environmental planning instrument by 10% or more, or
- contravenes a non-numerical development standard.

The only exception is if the application is regionally significant development, which a regional planning panel will determine. This means these DAs must not be determined by a delegate of the council.

This requirement ensures that the elected council considers larger variations, so they receive greater public scrutiny than decisions made by council staff under delegation.

Summary of procedural and reporting requirements

- A council must ensure that the NSW Planning Portal is updated with accurate variations data when a DA that proposes a variation to development standards is lodged, assessed and determined. This includes reviewing and updating information submitted by an applicant that is no longer accurate at the time of determination and entering the reasons for refusing or approving the variation.

- If a DA includes a variation that:

- will result in development that contravenes a development standard in an environmental planning instrument by 10% or more or
- contravenes a non-numerical development standard,

the full council must determine the DA unless the development is to be determined by a local or regional planning panel.

- Councils are to maintain their online variations register for variations determined before 1 November 2023.

9 Monitoring and auditing

9.1 Active monitoring

To ensure the integrity and transparency of the planning system in determining applications using clause 4.6, the department will actively monitor all variation requests processed and determined through the NSW Planning Portal.

The department will review if councils are:

- providing accurate clause 4.6 data through the NSW Planning Portal
- providing reasons for approval/refusal through the NSW Planning Portal
- reporting applications to the correct determining authority (for example, the local planning panel, regional planning panel)
- approving the erection of dwellings on lots less than 90% of the minimum lot size in rural and conservation zones

For more significant variations, the department will review assessment and decision-making processes to confirm compliance with the requirements of clause 4.6.

9.2 Audits

The department will continue to carry out periodic audits or reviews to ensure that councils are complying with the process and reporting requirements in clause 4.6 of the Standard Instrument LEP and this guide. The department will audit councils at regular intervals, at least every 2 years and annually if possible.

Periodically auditing councils enables the department to:

- ensure the ongoing transparency and integrity of the planning system on the variation of development standards
- increase audited councils' awareness of the importance of properly using and reporting on clause 4.6 matters
- assess if development standards are being regularly varied by a council and may require review
- detect any anomalies, such as exceeding delegations or data discrepancies
- detect any concerning trends, such as an increase in the approval of undersized rural allotments
- identify areas where the department could provide more guidance and advice on the application of clause 4.6, and

- provide assurance that the variations process is operating effectively.

Regular audits will provide oversight, make sure processes are operating effectively and detect any improper conduct.

There are 2 types of periodic audits– standard and thematic. Standard audits will capture a sample of councils and DAs across the state based on risk. Thematic audits may focus on a particular geographical area, type of control or trend that the department has identified through active monitoring.

The department might also carry out special audits where it has identified a specific issue that requires immediate review.

9.2.1 Matters the department will examine in an audit or review

The department will review the following procedural and reporting requirements in an audit:

- whether all proposed variations to development standards have been received as written requests prepared by the applicant, and ensuring that the written request addresses the matters that must be addressed by clause 4.6
- whether council's decision-making is consistent, reasonable and justifiable
- whether the consent authority has assessed all factors that must be addressed in the written application and kept a record of its assessment
- if the development exceeds a numerical standard by more than 10% or the variation is to a non-numerical standard, whether these applications have been determined by council's local planning panel or full council where there is no local planning panel
- whether a council has provided accurate data for all DAs proposing variations to development standards through the NSW Planning Portal, including clear reasons for approving or refusing a variation.

9.2.2 Standard periodic audits

Council selection for standard periodic audits

The department will select councils to audit based on risk. We will consider auditing councils that meet multiple criteria in table 2.

Table 2. Council audit selection criteria

Criteria	Description
Number of councils	<ul style="list-style-type: none"> A minimum of 15 councils should be selected for audit
Geographic spread	<ul style="list-style-type: none"> Of the 15 councils selected for audit, a minimum of 5 regional councils should be selected
Volume of reported variations	<ul style="list-style-type: none"> Councils that have determined higher numbers of variations, in total, or as a proportion of their total DAs determined, per financial year Councils that are varying the same clauses more frequently The proportion of variations that were less than 10% and the proportion that were over 10%
Quality of NSW Planning Portal data	<ul style="list-style-type: none"> Councils that are routinely submitting incomplete and/or inaccurate clause 4.6 data through the NSW Planning Portal
Previous audit	<ul style="list-style-type: none"> Councils that were found to have issues with clause 4.6 procedural or reporting requirements in the previous audit, Councils that have been audited during the previous audit cycle, and were found to be compliant with the procedural and reporting requirements of clause 4.6, should not be audited in the subsequent cycle
Complaints of misuse of clause 4.6	<ul style="list-style-type: none"> Councils/DAs that have been the subject of complaints to the Office of Local Government, NSW Ombudsman and the Independent Commission Against Corruption.

Types of applications the department will review for standard periodic audits

Audits will focus on DAs:

- that have greater significance in size, scale, cost of works and public interest (for example, developments with cost of works exceeding \$10 million)
- that include larger variations (for example, variations exceeding 10%)
- that include variations involving the erection of dwellings on lots less than 90% of the minimum lot size in rural and conservation zones
- where incomplete and/or inaccurate clause 4.6 data was submitted through the NSW Planning Portal

- with a higher risk of misuse of clause 4.6 (for example, DAs where council is the applicant and/or owner)
- that are varying more than one development standard
- where the consent authority approved a greater variation than recommended by planning staff or departed from staff recommendations in another way
- where the decision makers declared a conflict of interest (for example, panel members, councillors or council staff).

9.2.3 Thematic periodic audits

The department may do a thematic audit as an alternative to a standard audit. These types of audits will focus on specific issues or trends that emerge through active monitoring. For example, if monitoring identifies that there is an increase in the approval of undersized rural allotments, the audit might focus on those councils and DAs to identify any systemic issues. The department may use this approach when the department is aware of a particular issue or trend that requires more focused analysis.

9.2.4 Special audits

The department may do a special audit in exceptional circumstances, where there are significant concerns with a council's use of the variation mechanism or a specific decision to vary a development standard. Special audits can be done on an individual DA or on a council's overall performance. The department will do these outside of the periodic audit process as needed.

9.2.5 Local audit and risk committees

Councils should also consider including matters relating to clause 4.6 variations in the audit cycles of local audit and risk committees. The audit and risk committee could consider if:

- the council has established appropriate delegations and is following them in relation to clause 4.6
- the applicant has submitted an adequate clause 4.6 written request and if this has addressed the matters under clause 4.6(3)(a) and (b)
- council has completed its assessment report in full and has assessed the variation under clause 4.6(3)(a) and (b) appropriately
- council has remediated issues identified in a previous audit and has implemented the recommendations
- council's decision-making is consistent, reasonable and justifiable.

9.3 Variations report

The department will prepare and publish a report on the use of clause 4.6 variations annually. This will analyse variation trends and statistics. We will base the report on data from the NSW Planning Portal for all DAs with variations in the reporting period and the findings of any periodic audits.

The report will include the:

- number of clause 4.6 variations approved (across NSW and per council)
- number of clause 4.6 variations refused (across NSW and per council)
- environmental planning instruments (EPIs) most frequently subject to clause 4.6 variations
- land uses most frequently subject to clause 4.6 variations
- consent authorities (Council, Local Planning Panels, Regional Planning Panels) determining clause 4.6 variations
- development standards most frequently varied (across NSW and per council)
- changes in variations between years
- number of major variations by council
- variations received by a council relative to the recency of its planning instrument
- outcomes of any clause 4.6 audits.

9.4 Unsatisfactory performance framework

Division 9.1 of the EP&A Act outlines a range of ministerial enforcement powers. Section 9.6 of the EP&A Act allows the minister to appoint a planning administrator (or a regional panel) to exercise some or all of the consent authority functions of a council in certain circumstances. This can be done if the minister believes that the council has failed to comply with its obligations under the planning legislation or if the council's performance is unsatisfactory in dealing with planning and development matters.

The unsatisfactory performance provisions will only be considered as a last resort if a council has not adequately responded to the findings of an audit and:

- is consistently approving an unreasonably high volume of variations that would have the effect of abandoning a development standard
- refuses or fails to take active steps to amend or improve a standard that has been frequently varied
- consistently fails to refer a DA to the correct determining authority or
- consistently fails to provide reasons for a decision relating to clause 4.6 in NSW Planning Portal and comply with other record keeping requirements.

The department will work with audited councils to help improve internal processes and the implementation of any recommendations from an audit report.

Appendix A: Relevant case law

Approach to clause 4.6

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130

Unreasonable and unnecessary

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7

Environmental planning grounds

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065

Structure of written request

- *Bringham v Canterbury-Bankstown Council* [2018] NSWLEC 1406

Importance of written request

- *Denny v Optus Mobile Pty Ltd* [2023] NSWLEC 27

Development standards

- *Strathfield Municipal Council v Poynting* [2001] NSWCA 270
- *Elimatta Pty Ltd v Read and Anor* [2021] NSWLEC 75
- *Blue Mountains City Council v Laurence Browning Pty Ltd* [2006] NSWCA 331
- *Principal Healthcare Finance Pty Ltd v Council of the City of Ryde* [2016] NSWLEC 153

Existing use rights

- *Iris Diversified Property Ltd v Randwick City Council* [2010] NSWLEC 58
- Cracknell & Lonergan Architects Pty Ltd v Leichhardt Municipal Council* [2012] NSWLEC 194

Appendix B: Written request template

Request to vary clause [_____] in [LEP/SEPP]

Address:

Date:

Site and proposed development

1. Describe the site.

2. Describe the proposed development.

Planning instrument, development standard and proposed variation

3. What is the environmental planning instrument/s you are seeking to vary?

4. What is the site's zoning?

5. Identify the development standard to be varied.

Please identify the name of the development standard being varied (for example, minimum lot size, floor space ratio, height of building), its relevant environmental planning instrument clause and the objectives of the development standard.

6. Identify the type of development standard.

Please identify if the development standard you are seeking to vary is numeric or non-numeric. For more guidance, see Part A, Chapter 1.3 of this guide.

7. What is the numeric value of the development standard in the environmental planning instrument?

This should be specific and address all non-compliance. Please see the relevant environmental planning instrument to determine the numeric value of the development standard for your site.

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

For example: The proposal exceeds the maximum _____ development standard by _____, which is a percentage variation of ___%.

9. Visual representation of the proposed variation (if relevant)

Justification for the proposed variation

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e). An applicant must satisfy at least one. This list is not exhaustive – there may be other ways available.

a) Are the objectives of the development standard achieved notwithstanding the non-compliance?
(Give details if applicable)

b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)

c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?
(Give details if applicable)

Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard? (Give details if applicable)

e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary? (Give details if applicable)

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

Note: Environmental planning grounds are matters that relate to the subject matter, scope and purpose of the EP&A Act including the Act's objects (see Part A, Chapter 2.6 of this guide). They must relate to the aspect of the proposed development that contravenes the development standard and not simply promote the benefits of the development as a whole. You must provide substantive justification as to why the contravening the development standard is acceptable.

12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

Please provide any other information that you feel is relevant in justifying your proposed variation to the development standard.

Statement of Environmental Effects

22 Lot Subdivision
Lot 1 DP 1311613
2603 Cullerin Road, Gunning



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July 2025

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Statement of Environmental Effects – 2603 Cullerin Road, Gunning				
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1	July 2025	Draft SOEE	NJC	

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INTRODUCTION

1.1. THIS REPORT

This statement provides an opinion, in addition to relevant information for the consent authority to assess and determine the subject development application including the following:

- A site analysis of the site and surrounding lands;
- Description of the proposed development;
- Evaluation of the proposed development against legislative and policy framework;
- Conclusion.

The Statement of Environmental Effects is prepared in accordance with Schedule 1 of Environmental Planning and Assessment Regulation 2000 for the purposes of demonstrating that the environmental impact of development has been considered against the relevant controls and to outline steps to be undertaken to protect the environment or to mitigate any potential harm, if necessary.

The development proposal is local as defined by the Environmental Planning and Assessment Act 1979 ('EPAA') and as such the Upper Lachlan Shire Council is the consent authority.

1.2. THE PROPOENT

The site is privately owned freehold land, held by McInerney & Willoughby Developers Pty Ltd who are the applicants for this development.

1.3. PROJECT LOCATION

The site is located at 2603 Cullerin Road, Gunning. The holding is approximately 5.80ha in total. The property is located on the eastern edge of Gunning.

1.4. DESCRIPTION OF DEVELOPMENT SITE

The site is located in a RU5 – Village Zone under the Upper Lachlan Local Environmental Plan 2010. Lot 1 DP 1311613 is vacant.

The site is accessed off Cullerin Road, which is a sealed council road.

The land slopes to the west.

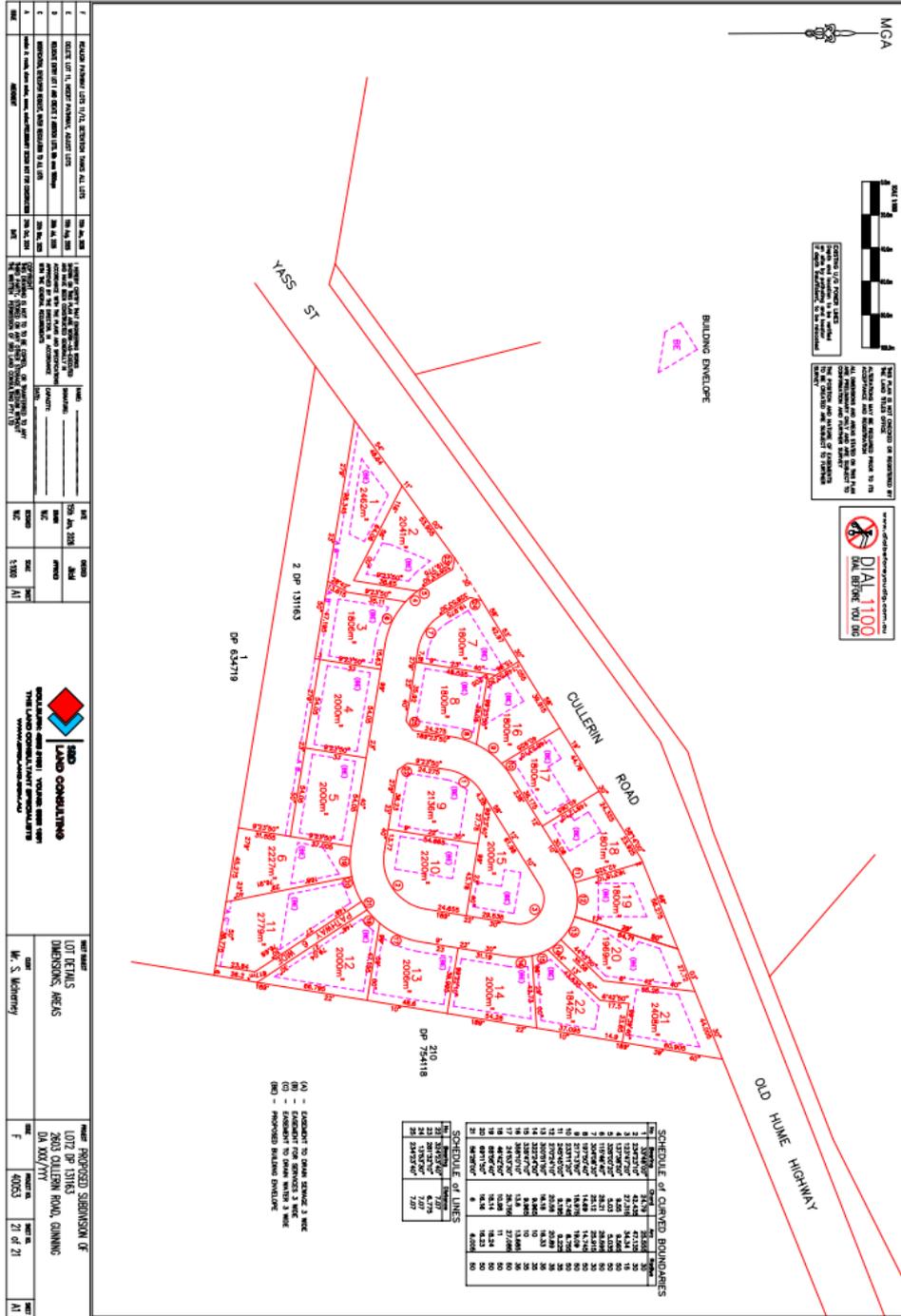
The nearest private receptors on neighbouring properties are dwellings to the southwest and northwest.



Aerial Photo of Site (Source: Google)



Aerial Photo of the site (Source: Six Maps)



2. THE DEVELOPMENT

2.1 OBJECTIVES AND OVERVIEW OF THE DEVELOPMENT

The objective of the proposed development is to obtain development consent for a 22 lot Subdivision at 2603 Cullerin Road, Gunning (the site). This development is enabled through the LEP and DCP.

2.2 DEVELOPMENT OPTIONS

A review of the alternative uses for the site identified the following:

1. Do nothing and leave the site as it is

By doing nothing and leaving the site as it is there are no additional benefits to the site or the surrounding area.

2. Lodge an application for the proposed subdivision

This second option is reflective of the landowner's interests and takes into account the relevant environmental planning regulations and features of the site. The proposed development will facilitate better development on the site to achieve better outcomes for the owner and wider community.

It is considered that by lodging an application for the proposed subdivision is in the best interest of the owner but also for the surrounding locality as it will help provide additional residential options to allow diversity of the residents.

2.3 STAGING

This development is not intended to be a staged development.

3 STATUTORY CONTEXT

The following Acts and planning instruments are considered relevant to the proposal.

3.1 RELEVANT LEGISLATION (ACTS AND REGULATIONS)

3.1.1 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The relevant sections of the Environmental Planning and Assessment Act 1979 (EPA & A Act) is s4.15 – Evaluation. This is addressed later in this SoEE.

3.1.2 BIODIVERSITY CONSERVATION ACT 2016

A Biodiversity Development Assessment Report has been undertaken and whilst there is no potential "prescribed biodiversity impacts" from the proposed development. The report recommends the following mitigation techniques:

The following mitigation techniques will be implemented to address the residual impacts on biodiversity values during and after the construction phase of the proposed development. In combination, these mitigation measures are considered sufficient to reduce the risk of residual impacts to an acceptably low level:

- *A construction Environmental Management Plan (CEMP) will be developed to guide the proposed development from before construction commences and until construction is completed. All retained vegetation and remnant trees will be protected in accordance with the Australian Standard*
- *Weed Management – all weeds will be removed as part of the proposed development.*
- *There are trees to be retained on lots 10, 15, 16, 17, 18 & 19. These will be protected under an 88b instrument and must not be touched.*

3.1.3 LOCAL GOVERNMENT ACT 1993

A Section 68 application will be required for this application to allow for water, sewer and stormwater connections.

3.1.4 ROADS ACT 1993

The application will be required an approval under the Roads Act 1993 for the new road and its connection with Cullerin Road, this will need integrated approval with Traffic for NSW as Cullerin Road at this point is a classified regional road MR52.

3.1.5 STATE ENVIRONMENTAL PLANNING POLICIES (SEPP'S)

3.1.5.1 State environmental planning policy (Transport and infrastructure) 2021

Division 5, Subdivision 2 Development Likely to affect an electricity transmission or distribution network Clause 2.48 Determination of development applications – other development.

(1) This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—

(a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,

(b) development carried out—

(i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or

(ii) immediately adjacent to an electricity substation, or

(iii) within 5m of an exposed overhead electricity power line,

(c) installation of a swimming pool any part of which is—

(i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or

(ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,

(d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.

The proposal does have an overhead power line running through, this will be removed and the electricity be placed underground through the subdivision in accordance with a power line design. It is anticipated that the development will be referred to Essential Energy as part of the process, therefore the development satisfies this section of the SEPP.

Division 17 Roads and Traffic Subdivision 2 Development in or adjacent to road corridors and road reservations Section 2.119 Development with frontage to classified road is also applicable to this development. Transport for NSW is the integrated authority for this development. The development however does not trigger section 2.122 Traffic Generating Development as the subdivision is only proposing 22 lots not 50, a Transport Impact Assessment is not required.

3.1.5.2 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

This State Environmental Planning Policy (SEPP) does apply to the lot, a Biodiversity Development Assessment Report has been prepared and is provided. There are no potential impacts but there are some trees that have been identified to be retained and some management practices to be implements as part of a CEMP. A copy of the report is provided.

3.1.6 UPPER LACHLAN LOCAL ENVIRONMENTAL PLAN 2010

The site is zoned RU5 'Village' under provisions of the Upper Lachlan Local Environmental Plan 2010 (ULLEP 2010). The proposed development relates to a 22 lot subdivision, which is permissible.

Objectives of the RU5 'Village' zone are as follows:

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To ensure the efficient use of land and infrastructure within each village.
- To provide high-amenity residential, commercial, civic and community uses within village areas.
- To conserve and enhance buildings and landscape and streetscape features that contribute to the character and identity of village areas.
- To conserve, link and enhance the quality of potentially valuable environmental assets, including waterways, riparian land, wetlands and other surface and groundwater resources, remnant native vegetation and fauna movement corridors, and to reduce land degradation affecting the assets.
- To encourage the development of tourism assets and the provision of associated services.
- To facilitate a strong and viable village system that provides housing options, business opportunities, adequate transport systems and concentrated community services.

Comment – The development is in keeping with the objectives of the zone.

The relevant provisions of the LEP are addressed in Appendix A of this report.

SECTION 4.6 VARIATION REQUEST

Upper Lachlan Local Environmental Plan 2010

Clause 4.1 – Minimum Lot Size

Subject Site: 2603 Cullerin Road, Gunning – Lot 1 DP 1311613

Zoning: RU5 Village

Minimum Lot Size (Clause 4.1): 2,000m²

Proposed Lots Below Minimum Lot Size:

Lot No.	Proposed Area (m ²)	Shortfall (m ²)	% Variation
3	1,806	194	9.7%
7	1,800	200	10%
8	1,800	200	10%
16	1,800	200	10%
17	1,800	200	10%
18	1,801	199	9.95%
19	1,800	200	10%
20	1,969	31	1.55%
22	1,842	158	7.9%

1. Clause to be Varied

This application seeks a variation to Clause 4.1 – Minimum Lot Size of the Upper Lachlan LEP 2010, which prescribes a minimum lot size of 2,000m² for land within the RU5 Village zone.

2. Extent of Variation

The proposal includes 9 lots that do not meet the 2,000m² minimum requirement. These lots range from 1,800m² to 1,969m², representing a maximum variation of 10% from the development standard.

3. Justification – Clause 4.6(3)

(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Strict compliance with Clause 4.1 is considered unreasonable and unnecessary for the following reasons:

- The departure from the development standard is minor in nature (maximum 10%), and the overall design of the subdivision achieves the planning objectives of the RU5 Village zone.

- The lots have been configured to accommodate appropriate residential development, with sufficient area for private open space, on-site services, access, and landscaping.
- The proposed lot sizes are consistent with existing lots in the locality, many of which are below the 2,000m² standard.
- The variation does not result in any adverse environmental, amenity, or servicing impacts and enables efficient use of land.

(b) There are sufficient environmental planning grounds to justify contravening the development standard

Yes, there are sound environmental planning grounds to justify the variation:

- The subdivision provides appropriate village-scale infill development consistent with the zone objectives, including providing a range of lot sizes and housing opportunities.
- The design responds to site constraints and topography, with minor lot size variations allowing for optimal layout and efficient servicing.
- The variation allows a logical and orderly development pattern, delivering lots that are capable of supporting future dwellings and infrastructure.

4. Public Interest – Clause 4.6(4)

This variation is in the public interest because:

- The proposal is consistent with the objectives of Clause 4.1, particularly in allowing subdivision patterns that reflect the character and context of the surrounding RU5 Village zone.

The proposal is consistent with the zone objectives, including:

- Providing for residential and associated uses that support village life.
- Promoting efficient use of land and infrastructure.
- Ensuring development is compatible with the character of the area.

Further, the proposal has been designed in accordance with the Upper Lachlan DCP and demonstrates that all proposed lots are capable of supporting residential development in accordance with council and state requirements.

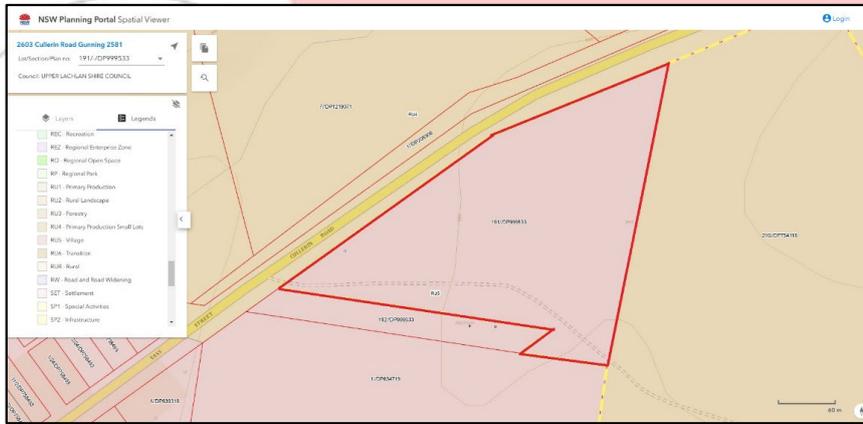
5. Conclusion

This request for variation to Clause 4.1 of the Upper Lachlan LEP 2010 meets the criteria in Clause 4.6, as:

- Strict compliance with the 2,000m² minimum lot size is unreasonable and unnecessary.
- The variation is minor, does not undermine the intent of the LEP, and is supported by sound planning grounds.

- The subdivision achieves a high standard of design, reflects the existing character of the area, and is in the public interest.

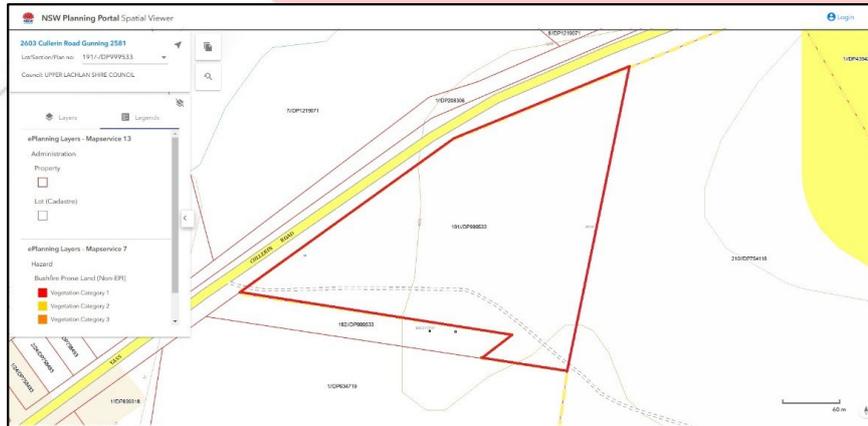
Approval of this variation will facilitate a well-considered subdivision outcome that meets both planning and community expectations.



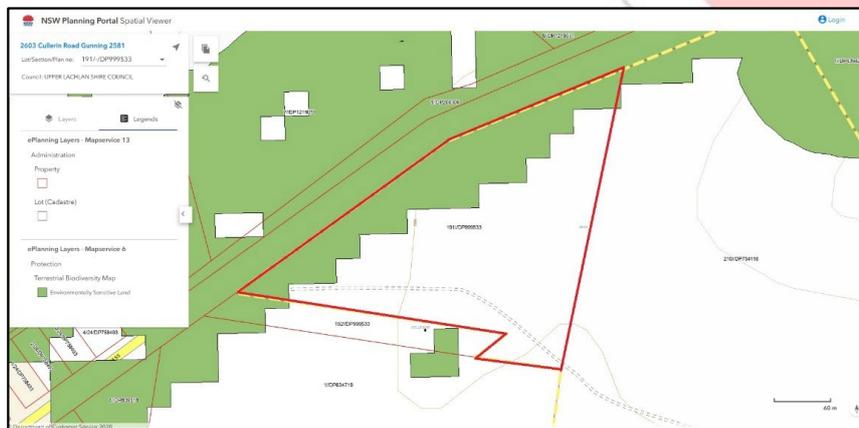
Zoning Map (Source: NSW Planning Portal)



Minimum Lot Size Map (Source: NSW Planning Portal)



Bushfire (Source: NSW Planning)



Biodiversity (Source: NSW Planning)

3.1.7 UPPER LACHLAN DEVELOPMENT CONTROL PLAN 2010

The relevant provisions of the Upper Lachlan Development Control Plan 2010 are addressed in the Table in Appendix B of this report.

3.1.8 UPPER LACHLAN DEVELOPER CONTRIBUTIONS PLAN

The development is considered part of the section 94 area and contributions may apply.

4 CONSULTATION WITH COUNCIL AND GOVERNMENT AGENCIES

Preliminary consultation with Government Agencies has not been undertaken.

4.1 UPPER LACHLAN COUNCIL

Preliminary Discussions have been held with Upper Lachlan Council to discuss the broad issues to be addressed in the development application. This application reflects these discussions.

4.2 GENERAL AND COMMUNITY CONSULTATION

Preliminary consultation has not been undertaken with adjoining property owners and industry members as part of the preparation of this application and the statutory public exhibition requirements under the Environmental Planning and Assessment Act 1979. Further consultation will be undertaken by the Council in the form of Advertisement and Notification as required by the EP&A Act and Council's Policies.

5 SITE CHARACTERISTICS AND KEY DEVELOPMENT ISSUES

5.1 LIKELY DEVELOPMENT IMPACTS

Section 4.15 – (1) Matters for consideration – general of the Environmental Planning and Assessment Act 1979 states:

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - i. any environmental planning instrument, and
 - ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - iii. any development control plan, and
 - iv. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - v. the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - vi. any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

5.2 CONTEXT AND SETTING

The proposed development has demonstrated consistency with the surrounding locality through the environmental planning framework and site features that have informed the proposed development. The proposed development will have a minimal visual impact on the locality, however that impact is not considered to be detrimental to the area and is in line with the existing surrounds and other similar developments within the local area.

5.3 VISUAL IMPACT

The development sits on one of the highest points overlooking the village of Gunning, it will have a visual impact, however this impact will be mitigated by the initial landscaping conditioned by the Council (street trees) and by the eventual landscaping undertaken by the future landowners.

5.4 PRIVACY AND OVERSHADOWING

The development is for a 22-lot residential subdivision. There are neighbours adjoining the allotment; however, it is not anticipated that this proposal will result in the loss of privacy or overshadowing for those neighbours.

5.5 ACCESS, TRAFFIC AND PARKING

Access to the new development is via a new road, that will loop around and service all allotments. The development will connect directly with Cullerin Road which is at the point of connection is a Regional Road (MR52) and will require referral to Transport for NSW as an integrated authority.

The new road will be sealed and have kerb and guttering.

All lots will have access from the new road.

Trip Generation:

Based on the 'Guide to Transport Impact Assessment' Version 1.1 (2024) which supersedes Guide to Traffic Generating Developments V2.1 (1993) & V 2.2 (2002) trip generation for the 22 lot subdivision has been calculated as:

Daily trips: 22 dwellings × 7.53 trips/dwelling = 165.66 trips per day

Peak hour trips: 22 dwellings × 0.84 trips/dwelling = 18.48 trips per peak hour (based on the higher pm peak hour trip calculation for Low Density Residential dwellings in a regional area).

The proposed road and existing road network can handle these movements, most of which will be turning left out of the development and heading towards the village of Gunning, Yass and potentially into the ACT along Gundaroo Road. Some vehicles will travel to the Hume highway and head towards Goulburn, this would still mean turning left out of the subdivision.

Parking Assessment:

The lots have been designed with sufficient area for a single dwelling and associated vehicle parking, 1-2 vehicles per dwelling for a single dwelling.

Pedestrian Connectivity

A footpath is proposed around the extent of the subdivision proposal and connects to Cullerin Road, it would be up to Council to extend the existing footpath up Yass Street/Cullerin road to connect to the development. A path has also been provided between Lots 11 & 12 and behind lot 11 that allows pedestrian connectivity with potential new subdivisions to the south of this proposal.

5.6 ARCHAEOLOGY

A search of AHIMS has been completed and found no sites or items of significance, a copy of the search is attached.

5.7 HERITAGE

The site is not a heritage listed item, nor is it in proximity to any heritage items. The site is not within a Heritage Conservation Area.

5.8 SERVICES

The developer will be responsible for providing reticulated water and will be required to ensure there is adequate pressure in the watermain to service the lots.

Reticulated sewer will be provided to all lots. Lot 11 and 12 will require an 88b restriction requiring future dwellings to be built to a determined finished floor level in order to be able to connect to the sewer system or install a small pump system to lift sewerage to the sewer system. A Pathway has been proposed between lots 11 & 12 and behind lot 11 that would also allow future connectivity to sewer in the neighbouring future development.

A drainage assessment has been undertaken, and a copy of the report is attached. It is proposed that each lot (1-22) have a restriction to user under 88b requiring a stormwater storage device (tank) of a minimum of 35CUM be provided to capture developed flows (hard stand, rooftop and diverted waters). Stormwater will be installed as per the accompanying engineering design.

5.9 LANDSCAPING

Landscaping will consist of street trees as per Council's Development Control plan and any ensuing consent. Future dwellings will further add to the landscaping after construction.

5.10 BUSHFIRE

The site is not identified as Bushfire Prone Land.

5.11 NOISE AND VIBRATION

No potential for noise or vibration impacts have been identified. Construction noise will be as per normal construction times/processes.

5.12 ECOLOGY

Site works will require the removal of some vegetation, however there have been significant trees that have been identified to remain past the subdivisions completion. A construction environmental management plan will outline the process to keep these trees safe during the construction works, and an 88b will outline their continued protection.

5.13 SAFETY, SECURITY AND CRIME PREVENTION

Streetlighting will be installed as part of the construction works.

5.14 WATER MANAGEMENT

Stormwater management will be as per the preliminary construction plans. Erosion and Sediment Control will be established as per the construction plans and will remain until the disturbed area has been revegetated.

5.15 FLOODING

The site is not located within a flood prone area.

5.16 EROSION AND SEDIMENT CONTROL

Erosion and Sediment Controls including sediment fencing and/or hay bales would be installed at the downslope sections of the development sites until vegetation is re-established in areas affected by construction works and not retained as hardstand.

5.17 SOCIAL AND ECONOMIC ASSESSMENT

The development would not result in any direct negative social or economic impact to the locality. The development is expected to have a positive impact on the village of Gunning, providing additional housing options and a potential increase in the population that will also bring positive economic benefits to the village.

5.18 SITE SUITABILITY AND THE PUBLIC INTEREST

The proposed development is considered to be a suitable use of the site. This development is permissible under the LEP and has addressed any relevant concerns through this SoEE. The proposal is considered to be within the public interest.

6 CONCLUSION

This SoEE has shown that the development is within the public interest, both socially, economically and environmentally. The proposed subdivision is the most suitable option for the development of the site. Any relevant matters have been addressed through this SoEE.

The key reasons why the proposed is acceptable includes;

- The proposed development is permissible through the LEP.
- The proposed development will have a positive impact on the site and the surrounding community
- Care has been taken to design and locate the lots to ensure that it is sympathetic to the site and the surrounding areas.

It is considered that the proposal will have no significant impacts on the surrounding properties to that it is likely to adversely affect their enjoyment or amenity. We look forward to Councils determination of this matter. If we can provide any further information or clarity, please don't hesitate to contact us.

APPENDIX A – UPPER LACHLAN LOCAL ENVIRONMENTAL PLAN 2010

Requirement	Proposed/Comments	Compliance
<p>Clause 1.2 Aims of the Plan</p> <p>(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,</p> <p>(a) to provide planning controls for Upper Lachlan and to update and consolidate into one instrument the various planning controls that currently apply to Upper Lachlan,</p> <p>(b) to encourage the sustainable management, development and conservation of natural resources,</p> <p>(c) to promote the use of rural resources for agriculture and primary production including fishing, forestry, mining and related processing, service and value adding industries,</p> <p>(d) to protect and conserve the environmental and cultural heritage of Upper Lachlan,</p> <p>(e) to encourage new residents to Upper Lachlan by providing a range of housing opportunities in the main towns and villages,</p> <p>(f) to allow development only if it occurs in a manner that minimises risks due to environmental hazards, and minimises risks to important elements of the physical environment, including water quality,</p> <p>(g) to promote and coordinate the orderly and economic use and development of land in Upper Lachlan,</p>	<p>The development satisfies the aims of the plan by:</p> <ul style="list-style-type: none"> • Encourages new residents to the Upper Lachlan Shire by providing a range of housing opportunities; • Is an orderly and coordinated development in accordance with planning requirements; 	<p style="text-align: center;">✓</p>

<p>(h) to protect and enhance watercourses, riparian habitats, wetlands and water quality within Upper Lachlan's drinking water catchments so as to enable the achievement of the water quality objectives.</p>		
<p>Landuse Table</p>		
<p>Zone RU5 Village 1 Objectives of zone</p> <ul style="list-style-type: none"> • To provide for a range of land uses, services and facilities that are associated with a rural village. • To ensure the efficient use of land and infrastructure within each village. • To provide high-amenity residential, commercial, civic and community uses within village areas. • To conserve and enhance buildings and landscape and streetscape features that contribute to the character and identity of village areas. • To conserve, link and enhance the quality of potentially valuable environmental assets, including waterways, riparian land, wetlands and other surface and groundwater resources, remnant native vegetation and fauna movement corridors, and to reduce land degradation affecting the assets. • To encourage the development of tourism assets and the provision of associated services. • To facilitate a strong and viable village system that provides housing options, business opportunities, adequate transport systems and concentrated community services. 	<p>The proposed development satisfies the objectives of the zone.</p> <ul style="list-style-type: none"> • Being an efficient use of land and infrastructure within the village of Gunning • Provides housing options 	

<p>4.1 Minimum Subdivision Lots Size</p>		
<p>(1) The objectives of this clause are as follows— (a) to provide minimum subdivision lot sizes for all zones. (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan. (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land. (4) This clause does not apply in relation to the subdivision of any land— (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or (b) by any kind of subdivision under the Community Land Development Act 2021.</p>	<p>A 4.6 variation accompanies this application, 9 of the 22 lots are under the minimum lot size, the smallest being 1800sqm.</p>	
<p>6.2 Biodiversity</p>		
<p>6.2 Biodiversity (1) The objective of this clause is to maintain terrestrial and aquatic biodiversity including— (a) protecting native fauna and flora, and (b) protecting the ecological processes necessary for their continued existence, and (c) encouraging the recovery of native fauna and flora, and their habitats. (2) This clause applies to land identified as “sensitive land” on the Natural Resources Sensitivity—Biodiversity Map. (3) Before determining a development application for</p>	<p>A biodiversity Development Assessment Report has been undertaken and is provided with this application. No significant impacts have been found. Trees to be retained have been identified and are to be protected by a construction environmental management plan and an 88b instrument.</p>	

<p>land to which this clause applies, the consent authority must consider any adverse impact from the proposed development on—</p> <ul style="list-style-type: none"> (a) a native ecological community, and (b) the habitat of any threatened species, populations or ecological community, and (c) a regionally significant species of fauna and flora or habitat, and (d) a habitat element providing connectivity. <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <ul style="list-style-type: none"> (a) the development is designed, sited and will be managed to avoid any adverse environmental impact, or (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact. 		
<p>6.9 Essential Services</p>		
<p>Development consent must not be granted to development unless the consent authority is satisfied that those 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—</p> <ul style="list-style-type: none"> (a) the supply of water, (b) the supply of electricity, 	<p>The land can be adequately resourced. The developer will be responsible for providing reticulated water and will be required to ensure there is adequate pressure in the watermain to service the lots</p> <p>Reticulated sewer will be provided to all lots. Lot 11 and 12 will require an 88b restriction requiring future dwellings to be built to a determined finished floor level in order to be able to</p>	

<p>(c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable road access.</p>	<p>connect to the sewer system or install a small pump system to lift sewerage to the sewer system.</p>	
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APPENDIX B – UPPER LACHLAN DEVELOPMENT CONTROL PLAN 2010

2.0 Plan Objectives		
2.1 Village/Residential Development Objectives		
<p>These objectives have been prepared to provide specific guidance for the use and development of land and premises within Crookwell, Gunning, Taralga and Collector.</p> <ul style="list-style-type: none"> • Residential development: <ul style="list-style-type: none"> ➤ To ensure that new and alterations to existing residential development do not significantly detract from the amenity, privacy and views of other dwellings and public view corridors. ➤ To manage the potential for land use conflict between residential and agricultural uses. New and or sensitive land uses should be located an acceptable distance from hazardous or offensive agricultural operations, unless an appropriate buffer has been established. ➤ To ensure that the scale of residential development is appropriate for lot sizes and in relation to other dwellings in the vicinity. ➤ To maximise the energy efficiency of dwellings. ➤ To improve stormwater management. 	<p>Development as proposed supports the village development objectives.</p>	<p style="text-align: center;">✓</p>

4.0 General Development Controls	
4.1.1 Matters for consideration (General)	
<p>Development consent must not be granted to an application to carry out development on land within Zones RU1, RU2, RU4, RU5, R2, R5, B2, B4, IN2, RE1, E2 and E3 unless the consent authority is satisfied that the matters under subclause (2) have been addressed.</p> <p>(2) Relevant matters for consideration are:</p> <ul style="list-style-type: none"> (a) the present use of the land for the purposes of agriculture and the potential of any land which is zoned RU1 or RU2 for sustained agricultural production, and (b) the impact of the development on the retention or embellishment of the rural character or environmental value of the land, and (c) the future recovery of known or prospective areas of valuable deposits of minerals, coal, petroleum, or extractive materials, and (d) the standard and capacity of public roads serving the land, and (e) the need for all-weather access to the development, and (f) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided in relation to the density of the allotments proposed to be created, and (g) whether the land can be economically serviced by reticulated sewer and water supply and the cost of providing, extending and maintaining public amenities 	<p>The land can be adequately resourced. The developer will be responsible for providing reticulated water and will be required to ensure there is adequate pressure in the watermain to service the lots</p> <p>Reticulated sewer will be provided to all lots. Lot 11 and 12 will require an 88b restriction requiring future dwellings to be built to a determined finished floor level in order to be able to connect to the sewer system.</p>

and services, including electricity, to the development, and

(h) the availability of an adequate reticulated water supply and, where such a supply is unavailable, the source and capacity of any alternate water supply intended to service the needs of the development, and

(i) in unserviced areas:

(i) the findings of a geotechnical report/permeability test to ascertain whether the land has adequate capability for onsite disposal of waste water and the potential impact of such disposal on any groundwater supplies used for drinking and domestic consumption (if located within the Sydney drinking water catchments, the findings of such a report must address Drinking Water Catchments Regional Environmental Plan No 1, and

(ii) the results of a detailed analysis demonstrate the suitability for on-site disposal of wastes from the lots to be created, where that analysis has included consideration of: shape, ground cover, transpiration factors, the proximity of the proposed dwelling to drainage lines, the location of the proposed dwellings in relation to a proposed onsite wastewater disposal system and to each other, and the composition of the soil.

<p>(j) the availability of other utility services and social facilities having regard to the likely demand for those services or facilities and the cost of their provision, and (k) the implications of a future dwelling house on adjoining existing primary industry landuses, and (l) the impact on the rural and scenic character of the area.</p>		
<p>4.1.2 Matters for consideration (Subdivision)</p>		
<p>(1) Development consent must not be granted to the subdivision of land within Zones RU1, RU2, RU4, RU5, R2, R5, E2 and E3 unless the consent authority is satisfied that the following matters have been addressed.</p> <p>(a) Whether the ratio of depth to frontage of each proposed allotment is adequate, having regard to:</p> <ul style="list-style-type: none"> (i) the purpose for which the allotment is intended to be used, (ii) minimising the creation of vehicular access points to main or arterial roads, (iii) the location of vehicular access points from the allotment in a safe position, and <p>(b) Whether the subdivision will create or increase potential for ribbon development along any road, particularly a main or arterial road, and</p> <p>(c) The siting of roads in relation to topography, drainage and soil erodability.</p> <p>(2) Development consent must not be granted to the</p>	<p>The lots are of sufficient size, have adequate access off the new proposed road.</p>	

<p>subdivision of land to which this plan applies unless the consent authority is satisfied that the applicant has made a submission addressing all relevant information having regard to following matters:</p> <ul style="list-style-type: none"> (a) the primary purpose for which each allotment to be created is intended to be used, and (b) whether any allotment to be created is intended to be used primarily for the purpose of a dwelling, and (c) whether a dwelling is intended to be erected on any allotment to be created and the approximate location of any such dwelling. 		
<p>4.2 Environment</p>		
<p>4.2.1 Tree and Vegetation preservation</p>		
<p>To ensure trees and vegetation that contribute to the environmental and amenity value of the region are preserved.</p>	<p>A BDAR has been undertaken and is provided. Trees to be protected have been identified and are covered in future CEMP and 88b Instruments.</p>	
<p>4.2.4 Groundwater</p>		
<p>These provisions seek to protect and enhance the water quality of groundwater systems as well as identifying and protecting vulnerable groundwater resources from contamination as a result of inappropriate development.</p>	<p>The proposed development will not impact groundwater.</p>	
<p>4.2.6 Biodiversity management</p>		
<ul style="list-style-type: none"> • To protect ecological and biodiversity values of environmentally sensitive areas, • To maintain and enhance significant habitat and ecological corridors, and • <input type="checkbox"/> To ensure connectivity between areas of native vegetation and habitat with and external to the site. 	<p>A BDAR has been undertaken and is provided. Trees to be protected have been identified and are covered in future CEMP and 88b Instruments.</p>	

4.5.2 Stormwater Management		
To improve water conservation, reduce the volume and increase the water quality of stormwater run-off and increase on-site storage of rainwater.	A drainage assessment has been undertaken, and a copy of the report is attached. It is proposed that each lot (1-22) have a restriction to user under 88b requiring a stormwater storage device (tank) of a minimum of 35CUM be provided to capture developed flows (hard stand, rooftop and diverted waters). Stormwater will be installed as per the accompanying engineering design.	
5 Residential Development		
5.1 Subdivision		
<ul style="list-style-type: none"> • Subdivision can only occur in accordance with the provisions of the LEP. • The layout of the subdivision is responsive and creates local identity by: <ul style="list-style-type: none"> ➤ responding to site characteristics, setting, landmarks, places of cultural heritage significance and views, and ➤ creating legible and interconnected movement and open-space networks. • Access for one dwelling via right of carriageway is to be a minimum of 4 metres in width (excluding traffic control devices) • Shared access for two or more dwellings is to be a minimum of 6.0 metres in width. • The layout of streets, lot and infrastructure responds appropriately to environmental features of the site or locality, by: <ul style="list-style-type: none"> ➤ following the natural topography, ➤ minimising the need for earthworks, 	<p>The lot and road layout responds to the site characteristics.</p> <p>No Rights of Carriageway proposed.</p> <p>The development design responds to the environmental features of the site.</p>	

<ul style="list-style-type: none"> ➤ minimising vegetation loss or the potential for adverse edge effects on remnant vegetation, ➤ avoiding risks to human health and the environment from contaminated land, ➤ maintaining natural drainage features and flood ways, and ➤ maintaining wildlife corridors and habitat areas. <ul style="list-style-type: none"> • The development is integrated with the surrounding urban or rural environment, having regard to: <ul style="list-style-type: none"> ➤ the layout and dimensions of streets and lots, ➤ connections to surrounding streets and infrastructure networks, ➤ provision for shared use of public facilities by adjoining communities, and ➤ buffering of any existing or potential incompatible land uses nearby. • The street and lot orientation facilitates buildings which have improved energy efficiency through climate responsive siting and design. • The street and lot layout facilitates the provision of services, including water supply, sewage disposal, waste disposal, drainage, electricity and telecommunications, in a manner that: <ul style="list-style-type: none"> ➤ is efficient, ➤ minimises risk of adverse environmental or 	<p>The development is integrated with the surround locality.</p> <p>Lots are off sufficient size to enable dwellings to be designed to take advantage of energy efficient design.</p> <p>The development is fully serviced as far as the availability of Gunning's infrastructure is concerned, Reticulated sewer will be provided to all lots. Lot 11 and 12 will require an 88b restriction requiring future dwellings to be built to a determined finished floor level in order to be able to connect to the sewer system.</p>	
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<p>amenity related impacts, and</p> <ul style="list-style-type: none"> ➤ minimises whole of life cycle costs for that infrastructure. • In a reconfiguration that involves the creation of a new street, streetscape and landscape • treatments are provided that: <ul style="list-style-type: none"> ➤ create an attractive and legible environment with a clear character and identity, ➤ use and highlight features of the site such as views, vistas, existing vegetation, landmarks and places of cultural heritage significance, ➤ enhance the safety, casual street surveillance, and comfort, and meet user needs, ➤ complement the function of the street in which they are located by reinforcing desired ➤ traffic speed and behaviour, ➤ assist the integration with the surrounding environment, ➤ provide for infiltration of stormwater runoff wherever practicable, and ➤ minimise maintenance costs having regard to: <ul style="list-style-type: none"> - street pavement, parking bays and speed control devices, - street furniture, shading, lighting and utility installations, and 	<p>The developer will be responsible for providing reticulated water and will be required to ensure there is adequate pressure in the watermain to service the lots</p> <p>New internal road will be created to Council's engineering standards. Fully sealed and kerb and gutter provided.</p>	
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<ul style="list-style-type: none"> - retention of existing vegetation, and - on street planting. <ul style="list-style-type: none"> • Lots created for residential purposes do not alienate or diminish the productivity of good quality agricultural land and are themselves protected from the potential adverse effects of rural uses. 		
10 Engineering Requirements		
10.1 Utility Services		
To provide satisfactory utility services to the development site.	Water, Sewer, Telephone and Electricity will be provided to each lot.	
10.2 Roads		
<i>Residential (Zones R2 and R5) and Village (Zone RU5)</i> All proposed public roads will be required to be constructed to requirements in accordance with the Table 3 at Section 5 and to be bitumen sealed.	Roads have been designed and will be constructed in accordance with Council's Engineering Standards.	
10.3 Easements		
Easements are required in accordance with Section 88B of the Conveyancing Act 1919.	Easements will be provided where required.	

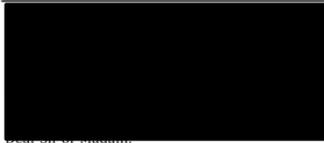
APPENDIX C - AHIMS SEARCH



AHIMS Web Services (AWS)
Search Result

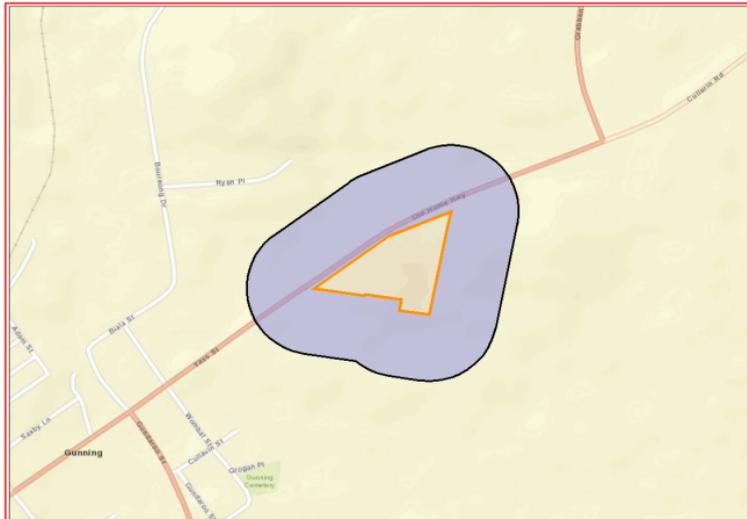
Your Ref/PO Number : Cullerin
Client Service ID : 1029292

Date: 31 July 2025



AHIMS Web Service search for the following area at Lot : 1, DP:DP1311613, Section : - with a Buffer of 200 meters, conducted by Narlisa Cooper on 31 July 2025.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location.*

DA68/2025 – 2603 Cullerin Road, Gunning – Submission Register

Submission 1

DP 1311613 - 2603 Cullerin Road Gunning

Upper Lachlan Shire Council approving yet another subdivision in the township of Gunning. Will approve all these developments without improving any of the infrastructure that is needed for these to be accepted

This development has also had a variation request approved to allow lot sizes to be reduced down 10% from the 2000m2 like originally stated for new residential development block sizes in any subdivision. Seems ridiculous to me.

STATUTORY CONTEXT

3.1.4 Roads Act 1993

Cullerin road is classified as a regional road MR52, and will need approval from traffic for NSW to have a connecting sided road onto it. The question is at the same time will traffic for NSW approve the readjustment of the existing speed signs as at the moment this new development sits within the 100km speed zone and not in the local town limit of 50km.

- Division 17 Roads and Traffic is stating that there is no need for a transport impact assessment. Please explain? Cullerin road is a major through road from Crookwell/Breadalbane with stock trucks and the like frequently using this route. It is also the old hume highway where on numerous occasions traffic will be diverted through Gunning up along the Cullerin road.

SITE CHARACTERISTICS AND KEY DEVELOPMENT ISSUES

5.2 Context and setting

5.3 Visual Impact

You state that this proposed development will have a minimal visual impact on the locality. It is one of the highest points overlooking the village of Gunning!!

- How can this be when there is another subdivision planned to be built right in front of it.
- The visual impact with all these blocks will be hugely detrimental to the area which as it stands at the minute is a lovely peaceful rural setting, which is why most people move to Gunning. If they wanted to live in suburbia they would move to either Canberra, Yass or Goulburn, Not rural downtown Gunning

5.5 Access, Traffic and Parking

It will be wonderful for the new road to be sealed with kerb and guttering but where will this kerb and guttering lead to? Where will the storm water be diverted to? On one of the maps it shows storm water connecting to an existing pipe that runs under Cullerin Road across to the other side. But then where does this flow? Not into any pit or storm water basin but to nowhere. Will this then be a problem for residents down along Yass Street from this development? I hope not as this will affect my property. How about Yass street and some other major streets in Gunning get an upgrade of kerb and gutter to match these developments, so we don't look out of place.

It seems that these new developments are somewhat great for the community but we are also forgetting about some of the problems it creates as well. Water flow and drainage are a very big problem as we know in this town from previous weather events. Lets make it a priority to fix these along the way then maybe we won't be so anti subdivisions.

In conclusion you state that this development satisfies and encourages new residents to the Upper Lachlan Shire by providing a range of housing opportunities.
With 3- 4 new housing development opportunities in the pipeline as we speak, where will all these new residents be coming from.
At this point in time, Gunning Facilities and infrastructures are at capacity. Shouldn't these things be upgraded first or in conjunction with these projects!
Otherwise these developments only attract sleepers who don't become a part of the community as they spend all their time commuting.

Submission 2

It will be good for the community, as long as local and state governments provide sufficient infrastructure improvements to support the additional town residents.

NOTE: Please be advised that submitters personal details have been redacted.



17 November 2025

Our Reference: 40053
Your Reference: DA/68/2025 (PAN-559067)

Upper Lachlan Shire Council
PO Box 42
Gunning NSW 2581

RE: 68/2025 – Subdivision (22 lots) and new road

Property: Lot 1 DP 1311613 – 2603 Cullerin Road, Gunning

We provide the following response to the submission to the above development application:

1. Public Exhibition – response to the submissions will follow at the end of this letter.
2. TforNSW response noted.
3. Access – The existing dwelling/adjacent land owner has an alternative access in place. The existing driveway will be removed during the construction of the subdivision.
4. Contamination – Please find report attached
5. Aboriginal Heritage – an Aboriginal Heritage Assessment has been attached to this submission.

Submissions:

Submission 1 – Bringing additional residence to Gunning will aid in the town receiving infrastructure funding from ULSC.

Submission 2 – With additional residential lots, council rates and contribution fees ULSC will have more income and greater reason to invest in Gunning and the upgrades to infrastructure required. More residents will mean more spending in town which can only be a good thing for the village.

TforNSW have provided concurrence and their conditions for the consent. It is expected a request to readjust the speed signs will be made to Council's traffic committee as part of future works (either at SWC or SC stage) as it has been done on the Dalton Road for the Whitton Estate subdivision.

GOULBURN OFFICE
299 Sloane Street
PO Box 70
GOULBURN NSW 2580
Phone: (02) 4823 5100
Email: goulburn@srdland.xyz

YOUNG OFFICE
121 Nasmyth Street
PO Box 338
YOUNG NSW 2594
Phone: (02) 6382 1501
Email: young@srdland.xyz

TforNSW have not noted any issues with the road being a classified road and neither TforNSW or Council have required a Traffic Impact Assessment for the development. The Development also does not trigger the need under the Infrastructure SEPP.

The subdivision is not quite on the top of the hill, the design of the subdivision will blend in to the surrounding landscape, the existing trees will remain and future dwellings will landscape their lots which will soften any impacts, coupled with the proposed neighbouring subdivision which will also soften the impacts of the development on the locality. The subdivision will keep a rural design with regard to fencing etc similar to the development at 35 Dalton Road and will blend into the landscape and add to Gunnings rural charm.

The development is for larger lots than regular village and urban lot sizes, this project will fit within the landscape and give the opportunity for growth and new residents to the region.

Stormwater has been addressed in the engineering design and will not impact surrounding areas. Kerb and guttering to existing areas of Gunning are outside the scope of this development.

Where future residents are coming from is not something the developer can state, it is their responsibility to design a development that attracts future residents. Villages like Gunning will not survive without new residents.

New development and new residents bring economic growth and therefore infrastructure growth to the village. With developer contributions and an increase in rates, these funds will eventually flow through to the village and its infrastructure.

Should you have any further concerns or questions please contact James McMahon at our Young Office.

Kind Regards

Narlisa Cooper

SRD Land Consulting

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PART 1: Application Details			
DA Number:	DA68/2025		
PAN Number:	PAN-559067		
Applicant:	SRD Land Consultants Pty Ltd		
Owner:	McInerney & Willoughby Developers Pty Ltd		
Property Address:	Lot 1 DP 1311613 2603 Cullerin Road, Gunning		
Proposed Development:	22 Lot Residential Subdivision		
Date of Lodgment:	22 August 2025		
Public Notification Period:	28 August 2025 – 15 September 2025		
Submissions Received:	Two (2) Submissions		
Request for Additional Information:	24/09/2025 Received: 17/11/2025 3/12/2025 Received: 9/12/2025 19/12/2025 Received: 28/01/2026		
Referrals			
Internal Referral		External Referral	
Infrastructure – Access & Stormwater	Yes	Transport for NSW	Yes
Water, Sewer & Waste	Yes	Water NSW	N/A
Health & Building	N/A	NSW RFS	N/A
Town Planner	N/A	DCCEEW	N/A
Heritage	N/A	NSW Heritage	N/A
Application was referred to the above-mentioned council and government agency bodies and comments are throughout the 4.15 assessment.			
PART 2: Site Description			
Date of site inspection:	17 September 2025		
<p>The subject site is legally described as Lot 1 DP 1311613 and is known as 2603 Cullerin Road, Gunning. The site is zoned RU5 Village and is located to the north-east of Gunning CBD. The allotment is irregular and generally triangular in shape with an area of approximately 5.67ha. The site is currently accessed via Cullerin Road.</p> <p>The surrounding locality is characterised by detached dwelling houses on village and rural residential allotments, as well as agricultural land.</p>			



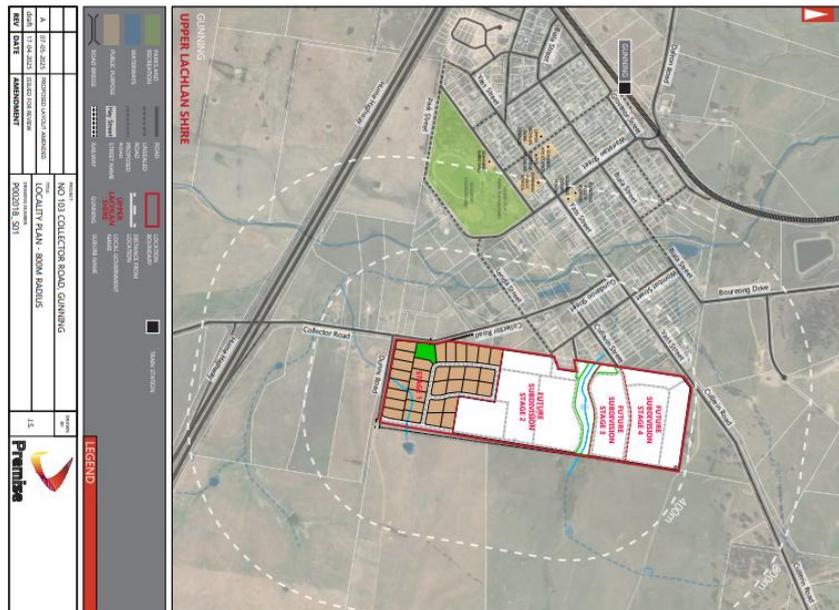
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The site is located on the eastern side of the Gunning village. Land to the north and east is zoned RU4 Primary Production Small Lots, with portions zoned RU2 Rural Landscape and minimum lot sizes varying from 10Ha to 100Ha.

Land to the South is zoned RU5 Village with a minimum lot size of 2000m2. This land is subject to a recently approved development application for subdivision, with stage 1 consisting of 32 residential allotments. Future stages 2, 3 and 4 have the potential to facilitate an additional 67 residential allotments.



To the west of the subject site is the Village of Gunning consisting of a mix of residential dwellings and local commercial premises.

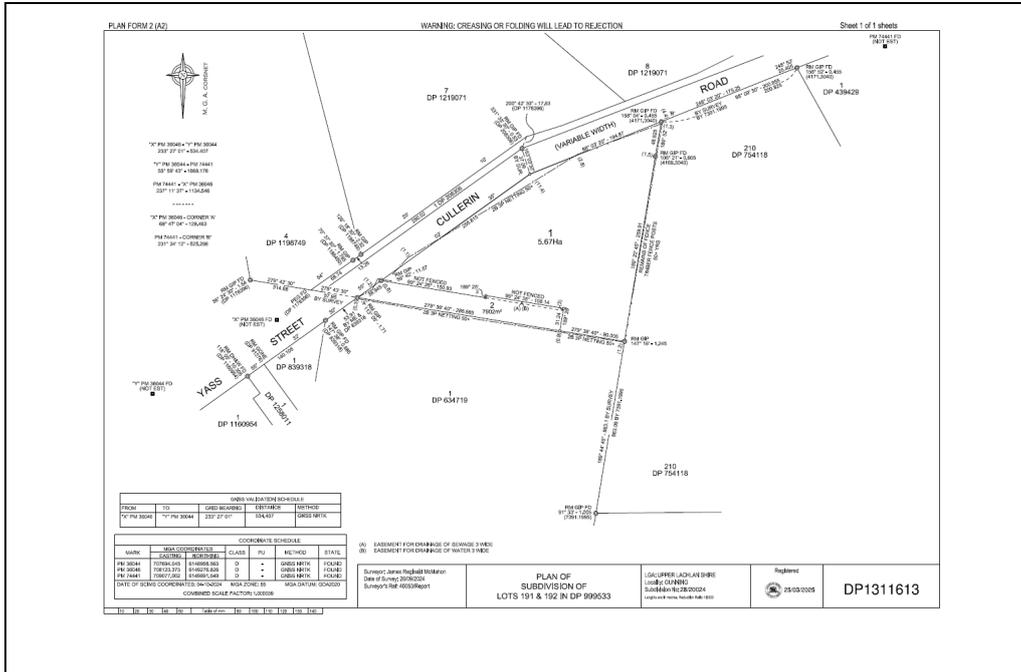
Easements:

Easement for drainage of sewage and water to service existing dwelling located on Lot 2 DP 1311613.



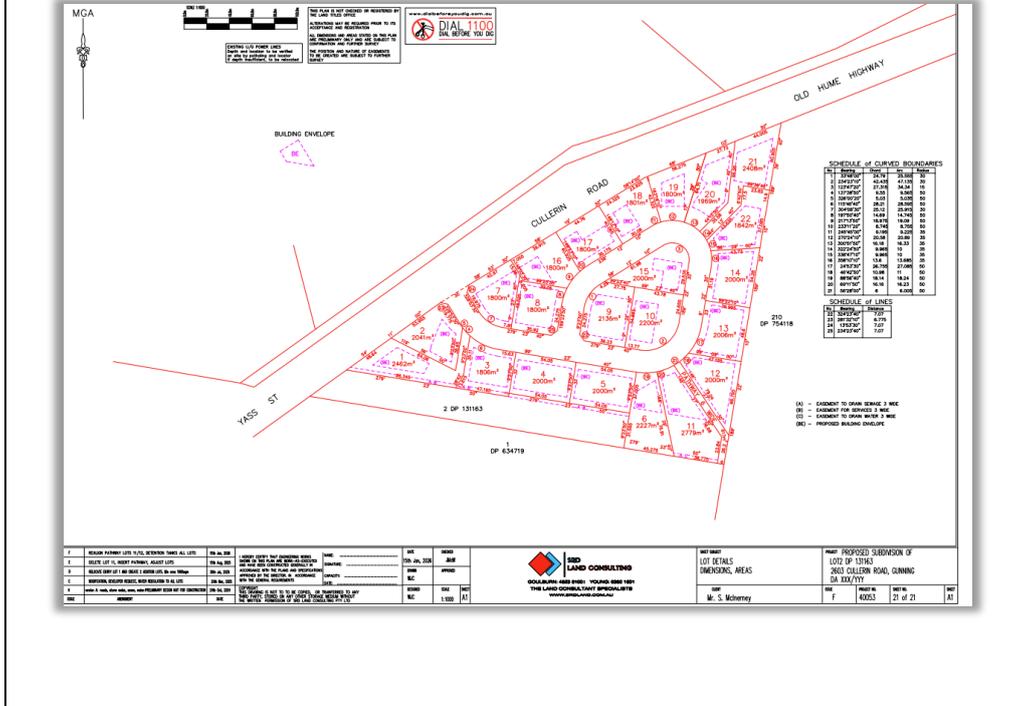
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PART 3: PROPOSED DEVELOPMENT

The proposed development is for the Subdivision of land to create twenty-two (22) residential allotments.





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PART 4: EVALUATION

This application has been assessed in accordance with clause 4.15 (previously known as 79C) of the Environment and Planning Assessment Act 1979. The matter relevant to this application have are detailed below.

S4.151(a)(i) State Environmental Planning Policy (SEPP)

SEPP Biodiversity and Conservation 2021

The *State Environmental Planning Policy (Biodiversity and Conservation) 2021* have been considered in the assessment of the application.

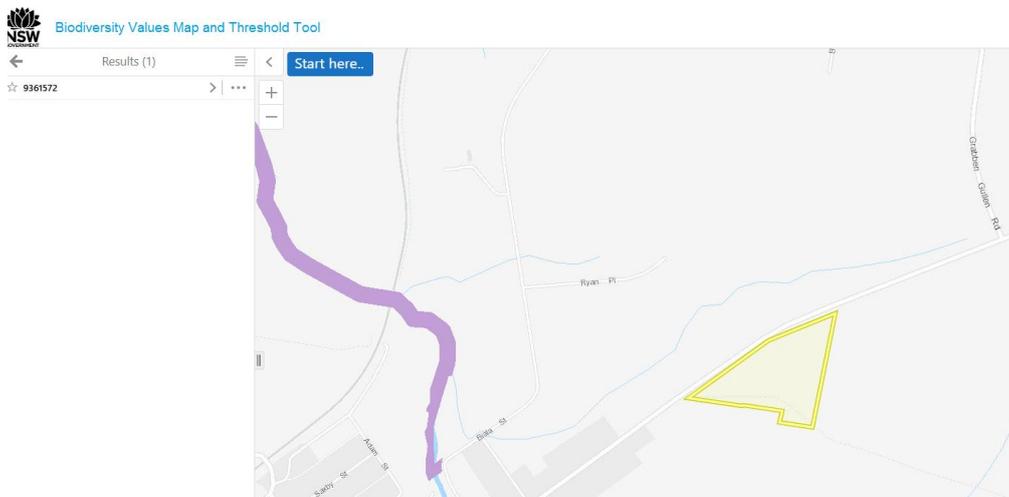
Chapter 4 – Koala Habitat Protection applies to development requiring consent on land greater than 1 hectare within a local government area listed in Schedule 1 of the SEPP. The subject land has an area of approximately 6.42 hectares and is therefore captured by the provisions of the SEPP.

A Biodiversity Development Assessment Report (BDAR) prepared by Capital Ecology Pty Ltd was submitted with the application. The BDAR identifies that the site does not contain vegetation that constitutes core koala habitat and is unlikely to support koala habitat.

Accordingly, the proposed development is not expected to have any adverse impacts on koalas or koala habitat and the proposal is considered to satisfy the relevant provisions of the SEPP.

The proposed construction area on the subject land is not identified as “sensitive land” on the Biodiversity Value Map

<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>



Threshold:

<https://www.environment.nsw.gov.au/biodiversity/entryrequirements.htm>

Area clearing threshold

The area threshold varies depending on the minimum lot size (shown in the Lot Size Maps made under the relevant Local Environmental Plan (LEP)), or actual lot size (where there is no minimum lot size provided for the relevant land under the LEP).



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Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply
Less than 1 ha	0.25 ha or more
1 ha to less than 40 ha	0.5 ha or more
40 ha to less than 1000 ha	1 ha or more
1000 ha or more	2 ha or more

The area threshold applies to all proposed native vegetation clearing associated with a proposal, regardless of whether this clearing is across multiple lots. In the case of a subdivision, the proposed clearing must include all future clearing likely to be required for the intended use of the land after it is subdivided.

Biodiversity Conservation Act 2016

The application was accompanied by a Biodiversity Development Assessment Report (BDAR) prepared by Capital Ecology Pty Ltd in accordance with the Biodiversity Conservation Act 2016 and the NSW Biodiversity Assessment Method.

The BDAR identifies that the subject land contains approximately 0.72 hectares of vegetation associated with the critically endangered White Box – Yellow Box – Blakely’s Red Gum Grassy Woodland and Derived Native Grassland ecological community (Box-Gum Woodland) in low condition.

The proposed subdivision will result in the clearing of this vegetation and the removal of ten (10) mature remnant trees. The BDAR concludes that the development will generate an offset obligation of 7 ecosystem credits under the Biodiversity Offset Scheme.

Subject to the retirement of the required biodiversity credits and implementation of the mitigation measures outlined in the BDAR, the biodiversity impacts associated with the proposed development are considered acceptable.

The recommended conditions of consent require compliance with the measures and requirements outlined in the BDAR.

SEPP Exempt and Complying Development Codes 2008	The proposed development is not exempt or complying development, therefore requires council consent and as such the SEPP does not apply.
SEPP Housing 2021	The application does not propose affordable rental housing, housing for seniors, a caravan park, manufactured home estate or residential flat building. As such, the SEPP does not apply.
SEPP Industry and Employment 2021	No advertising signage proposed and therefore SEPP is not applicable.
SEPP Planning Systems 2021	The proposed development is not State or Regional Development therefore the SEPP is not applicable.
SEPP Primary Production 2021	Chapter 2 – Primary Production and Rural Development Not applicable due to the zoning of the land.
SEPP Resilience and Hazards 2021	



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The subject land may or had been used for agricultural purposes and the land use will change as a result of the proposed subdivision which triggers the need for an investigation into potential land contamination under the terms of the SEPP.

As such, the proposed development required the submission of a preliminary site investigation which assesses the potential for contamination and a detailed site investigation (DSI) report which assesses the potential for contamination. The report concludes the following;

The site is considered suitable for the proposed subdivision. No further detailed environmental investigation is deemed warranted to support the proposed subdivision and development, however, the following are recommended:

- *If the dam is to be decommissioned, it should be managed under a Dewatering Management Plan. The dam water and sediment may require sampling for quality assessment.*
- *Assessment of stockpiled soils should be conducted to confirm that the materials are suitable for onsite reuse, including assessment for asbestos. Stockpiled waste should be classified for offsite disposal. It is recommended that the assessment is undertaken during the development and subdivision works.*
- *It is recommended that imported material to be appropriately certified as virgin excavated natural material (VENM), excavated natural material (ENM) or meet the requirements specified in the applicable Resource Recovery Orders and Exemptions (RRO/RRE) if recycled materials are used for the development.*
- *Unwanted material such as debris and the corrugated steel tank shed should be removed from the site.*

Condition consent accordingly.

SEPP Resources and Energy 2021	Not applicable to the proposed development.
SEPP Sustainable Buildings 2022	The proposed development is not a BASIX affected development.
SEPP Transport and Infrastructure 2021	Cullerin Road is considered a classified road and as such the application was referred to Transport for NSW for comments. Transport for NSW reviewed the documents and had no objection to the proposed development.
South East and Tablelands Regional Plan 2036	
<p>To achieve this vision the Government has set four goals for the region:</p> <ul style="list-style-type: none"> • A connected and prosperous economy - • A diverse environment interconnected by biodiversity corridors • Healthy and connected communities • Environmentally sustainable housing choices. <p>Response: The development/subdivision as proposed to be conditioned is consistent with the REP including Goal 1, which is A connected and prosperous economy; Goal 3, which is Healthy and connected communities; and Goal 4, which is Environmentally sustainable housing choices. Unlocking development potential through most efficient use of land will help support a stronger, connected and more prosperous Upper Lachlan economy. A stronger and more prosperous economy will provide benefits to the community as well as a wider and more appropriate range of rural and agricultural uses.</p>	



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Upper Lachlan Land Use Strategy		The Urban Land Use Strategy aims to provide a 10-year vision for Upper Lachlan Shire developed in accordance with community and stakeholder consultation. There are no provisions throughout the strategy which would prevent approval of the proposal.
Upper Lachlan Local Environmental Plan 2010		
Clause		Comments
1.2 Aims	<p>(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,</p> <p>(a) to provide planning controls for Upper Lachlan and to update and consolidate into one instrument the various planning controls that currently apply to Upper Lachlan,</p> <p>(b) to encourage the sustainable management, development and conservation of natural resources,</p> <p>(c) to promote the use of rural resources for agriculture and primary production including fishing, forestry, mining and related processing, service and value adding industries,</p> <p>(d) to protect and conserve the environmental and cultural heritage of Upper Lachlan,</p> <p>(e) to encourage new residents to Upper Lachlan by providing a range of housing opportunities in the main towns and villages,</p> <p>(f) to allow development only if it occurs in a manner that minimises risks due to environmental hazards, and minimises risks to important elements of the physical environment, including water quality,</p> <p>(g) to promote and coordinate the orderly and economic use and development of land in Upper Lachlan,</p> <p>(h) to protect and enhance watercourses, riparian habitats, wetlands and water quality within Upper Lachlan's drinking water catchments so as to enable the achievement of the water quality objectives.</p>	The proposed development is not inconsistent with the aims of the plan.
2.3 Zone objectives and land use table	<p>The proposed site is zoned RU5 Village.</p>  <p>RU5 Zone Objectives</p> <ul style="list-style-type: none"> To provide for a range of land uses, services and 	While subdivision is not a defined land use listed under the table to the land use zone, subdivision is permitted with consent subject to the minimum lot size map (under clause 2.6 & clause 4.1). The minimum lot size for the zone in this case is 2,000m ² . As such the development is permitted in



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	<p>facilities that are associated with a rural village.</p> <ul style="list-style-type: none"> • To ensure the efficient use of land and infrastructure within each village. • To provide high-amenity residential, commercial, civic and community uses within village areas. • To conserve and enhance buildings and landscape and streetscape features that contribute to the character and identity of village areas. • To conserve, link and enhance the quality of potentially valuable environmental assets, including waterways, riparian land, wetlands and other surface and groundwater resources, remnant native vegetation and fauna movement corridors, and to reduce land degradation affecting the assets. • To encourage the development of tourism assets and the provision of associated services. • To facilitate a strong and viable village system that provides housing options, business opportunities, adequate transport systems and concentrated community services. 	<p>the Zone subject to consent.</p> <p>The proposed development is consistent with the objectives of the zone.</p>
2.6 Subdivision – consent requirements	<p>(1) Land to which this Plan applies may be subdivided, but only with development consent.</p> <p>Notes—</p> <p>1 If a subdivision is specified as exempt development in an applicable environmental planning instrument, such as this Plan or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the Act enables it to be carried out without development consent.</p> <p>2 Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that the strata subdivision of a building in certain circumstances is complying development.</p> <p>(2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land.</p> <p>Note—</p> <p>The definition of secondary dwelling in the Dictionary requires the dwelling to be on the same lot of land as the principal dwelling.</p>	<p>Development consent required for the proposed subdivision. No secondary dwelling within the allotment.</p>
2.7 Demolition requires consent		<p>No demolition proposed as part of this application.</p>



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2.8 Temporary use of land		Not applicable. The proposed development is not for the temporary use of land.
3.1 Exempt Development		Not applicable. The proposed development is not considered exempt development.
3.2 Complying Development		Not applicable.
4.1 Minimum Lot Size	<p>The minimum lot size for the site is 2000m².</p> 	The proposed subdivision seeks to subdivide the subject site into 22 allotments. Thirteen (13) of the proposed lots comply with the minimum lot size of 2,000m ² , while nine (9) lots do not meet the minimum lot size requirement. Please refer to comments in 4.6.
Clause 4.3 Height of Buildings		Not adopted
Clause 4.4 Floor Space Ratio		Not adopted
Clause 4.5 Calculation of floor space ratio and site area		Not adopted
Clause 4.6 Exceptions to development standards	<p>Development within the Upper Lachlan Shire is regulated by the Upper Lachlan Local Environmental Plan 2010 (LEP 2010), which establishes land use zones, permissible land uses and development standards that apply to land within the local government area.</p> <p>Clause 4.6 of the LEP 2010 provides a mechanism that allows a consent authority to grant consent to development that contravenes a development standard where a written request has been submitted by the applicant.</p> <p>Under Clause 4.6(3), development consent must not be granted unless the consent authority is satisfied that:</p> <ul style="list-style-type: none"> (a) compliance with the development standard is unreasonable or unnecessary in the circumstances; and (b) there are sufficient environmental planning grounds to justify the contravention of the development standard. <p>The Applicant's written Clause 4.6 request (refer to Statement of Environmental Effects Attachment 5) addresses the matters required under subclause (3) of the LEP, as discussed below.</p>	



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	Proposed Lot	Proposed Area	Shortfall m2	Variation %
	3	1,806m ²	194m ²	9.7%
	7	1,800m ²	200m ²	10%
	8	1,800m ²	200m ²	10%
	16	1,800m ²	200m ²	10%
	17	1,800m ²	200m ²	10%
	18	1,801m ²	199m ²	9.95%
	19	1,800m ²	200m ²	10%
	20	1,969m ²	31m ²	1.55%
	22	1,842m ²	158m ²	7.9%
	<p>The proposed variations are minor in nature, with all affected lots seeking a variation of 10% or less from the applicable minimum lot size development standard. Strict compliance with the minimum lot size development standard is considered unreasonable and unnecessary in the circumstances as the objectives of the control are achieved notwithstanding the variation. The proposed lots remain of a substantial size, ranging from approximately 1,800m² to 1,969m², and are capable of accommodating a dwelling, ancillary structures and private open space consistent with the intended low-density residential character of the zone. The objective of the minimum lot size development standard is to ensure that lots are of sufficient size to accommodate development consistent with the zone while ensuring adequate servicing and amenity. The proposed variation continues to achieve this objective and is therefore considered satisfactory.</p> <p>All proposed lots will be serviced by reticulated water and sewer infrastructure, therefore the minimum lot size is not constrained by on-site wastewater management requirements. The proposed subdivision is consistent with the surrounding locality.</p> <p>The variation will not result in adverse environmental, amenity or servicing impacts and will not compromise the objectives of the minimum lot size development standard or the zone. The proposal represents an appropriate and efficient use of serviced land within the locality.</p>			
Clause 5.1 Relevant Acquisition authority				Not applicable – the land is not identified to be acquired rather dedicated to Council.
Clause 5.1A development on land intended to be acquired for a public purpose				Not applicable – the land is not identified to be acquired on a Land Reservation Acquisition Map.
Clause 5.2 Classification and reclassification of public land				Not applicable- The land is not listed in Schedule 4 to the LEP.
Clause 5.3 Development near zone boundaries				Not adopted



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Clause 5.4 controls relating to miscellaneous development		Not applicable in this instance – no use listed under cl.5.4 sought
Clause 5.5 Controls relating to secondary dwellings on land in a rural zone		Not adopted
Clause 5.6 Architectural roof features		Not adopted
Clause 5.7 Development below mean high water mark		Not applicable
Clause 5.8 Conversion of fire alarms		Not applicable
Clause 5.9 Dwelling house or secondary dwelling house affected by natural disaster		Not adopted
Clause 5.10 Heritage conservation	<p>The subject site is not identified as a heritage item and is not located within a heritage conservation area under the Upper Lachlan Local Environmental Plan 2010.</p> <p>An Aboriginal Cultural Heritage Due Diligence Assessment was submitted with the application. The assessment concluded that the site has a low potential to impact Aboriginal or historical heritage, with no heritage sites or areas of potential archaeological deposit identified.</p> <p>Accordingly, the proposal is considered satisfactory with respect to Clause 5.10 of the LEP.</p>	
Clause 5.11 bush fire hazard reduction		Not applicable
Clause 5.12 infrastructure development and use of existing buildings of the crown		Not applicable
Clause 5.13 Eco-		Not applicable



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tourist facilities		
Clause 5.14 Sliding spring observatory		Not adopted
Clause 5.15 defence communications facility		Not adopted
Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones		This clause does not apply due to the zone of the land.
Clause 5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations		Not applicable
Clause 5.18 Intensive livestock agriculture		Not applicable as no intensive agriculture proposed.
Clause 5.19 Pond-based, tank-based and oyster aquaculture		Not applicable as no pond- based, tank based or oyster aquaculture proposed
Clause 5.20 Standards that cannot be used to refuse consent – playing and performing music		Not applicable as the site is not a licenced premises (under the Liquor Act).
Clause 5.21 Flood planning		The site is not identified as flood prone land.
Clause 5.22 Special flood considerations		The site is not identified as flood prone land.



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<p>Clause 5.23 Public bushland</p>		<p>Not adopted.</p>
<p>Clause 5.24 Farm Stay accommodation</p>		<p>Not applicable in this instance.</p>
<p>Clause 5.25 Farm Gate Premises</p>		<p>No development for the purposes of farm gate premises is currently proposed</p>
<p>Clause 6.2 Biodiversity</p>	 <p>The lot is partially mapped on the Natural Resources Sensitivity – Biodiversity Map. The application was supported by a BDAR assessment report. Consent to be conditioned in accordance with the BDAR report.</p>	
<p>Clause 6.3 Land</p>	 <p>The lot is partly mapped on the Natural Resources Sensitivity – land map. Control regarding erosion and sedimentation and stormwater control measures have been applied consistent with best practice standards.</p>	



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<p>Clause 6.4 Water</p>	 <p>The lot is mapped on the Natural Resources Sensitivity – Water Map.</p> <p>Having regard to the matters for consideration there will be no adverse impact on the water, including water quality, flows and drainage lines of the site area. Standard erosion and sedimentation control measures will be conditioned to minimise and mitigate potential adverse impacts. The development is considered satisfactory and has minimal impact on Clause 6.4 subject to the recommended conditions.</p>	
<p>Clause 6.5 Earthworks</p>	<p>Earthworks will be required as part of the subdivision works and servicing of the development. Conditions of consent are recommended to ensure that these works are undertaken in accordance with relevant standards and do not result in adverse impacts.</p>	
<p>Clause 6.6 Erection of dwelling houses on land in certain rural and environmental protection zones</p>		<p>Not applicable due to the zoning.</p>
<p>Clause 6.7 Dual occupancy development</p>		<p>Not applicable at this stage – may be subject to future assessment at dwelling stage once the subdivision is completed.</p>
<p>Clause 6.8 Multi dwelling housing developments</p>		<p>Not applicable at this stage – may be subject to future assessment at dwelling stage once the subdivision is completed.</p>
<p>Clause 6.9 Essential services</p>	<p>The land is currently not serviced as it is vacant land.</p> <p>Water - A water main extension will be required to service all proposed allotments, and pump augmentation may be necessary to ensure adequate supply. The</p>	



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	<p>development consent includes conditions requiring the design and installation of the water infrastructure to the satisfaction of Council, ensuring that all lots are appropriately serviced.</p> <p>Electricity – Proposed development is required to be connected to mains. Consent conditioned accordingly.</p> <p>Sewer – Sewer main extension is required to service the allotments. Councils recent water sampling and flow monitoring of the Gunning Sewage Treatment Plant in May 2025 has determined there is approximately 290EP remaining out of the 1000EP for the Gunning Sewage Treatment Plant. Testing was completed during a dry period with no rainfall in the 5 days before testing or during the testing period. It is considered that there is availability to service a potential additional 290EP in the township of Gunning. Although a subdivision has recently been approved, there is enough availability for this proposed subdivision to be serviced.</p> <p>Stormwater – Council is satisfied that stormwater can be managed with the preliminary designs provided with the application. Onsite detention tanks will be required for each allotment. Condition consent accordingly.</p> <p>Access – New road proposed to service the allotments. Consent conditioned to comply with Council’s current access standards.</p>	
Clause 6.10 Erection of dwelling houses on land in certain rural and residential zones		Not applicable as reticulated sewerage is proposed to be provided to RU5 zoned land.
Clause 6.11 Development in proximity of waste disposal facilities and sewerage treatment works		Not applicable as not in the vicinity.
Clause 6.12 Airspace operations		Not applicable. The development is not in the vicinity of the Crookwell Airport and no sensitive uses proposed.
Clause 6.13 development in areas subject to airport noise		Not applicable
Schedule 1 additional permitted uses		Not applicable
Schedule 2		Not applicable



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exempt development		
Schedule 3 complying development		Not applicable
Schedule 4 classification and reclassification of public land		Not applicable – although land to be dedicated is proposed to be classified as operational.
Schedule 5 environmental heritage		No adverse impact identified as the land is already zoned for residential use.
Schedule 6 pond based and tank based aquaculture		Not applicable
S4.15 (1)(a)(ii) - Any proposed environmental planning instrument that has been subject to public consultation – (draft SEPPs/REPs/LEPs):		
Draft Bushfire Prone Land		The Draft BF Prone Land Package was open for public feedback from 3 July 2024 until 30 July 2024 and developed to ensure that bush fire risk is considered in strategic land use planning in NSW. The BFPL maps are required to be re-certified at least every five years. Council's current mapping is outdated and Council is in the process of reviewing the draft mapping with buffers for the Commissioner to amend the map. A draft map has been provided to Council to review and the subject land is identified to be mapped as BFPL.
S4.15(1)(a)(iii)- Any Development Control Plan (DCP)		
Upper Lachlan Development Control Plan 2010		
The application has been considered with regard to the following relevant provisions of the DCP.		
2. Plan Objectives		
2.1 Village/Residential Development Objectives		Residential development: <ul style="list-style-type: none"> To ensure that new and alterations to existing residential development do not significantly detract from the amenity, privacy and views of other



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	<p>dwelling and public view corridors.</p> <ul style="list-style-type: none"> • To manage the potential for land use conflict between residential and agricultural uses. New and or sensitive land uses should be located an acceptable distance from hazardous or offensive agricultural operations, unless an appropriate buffer has been established. • To ensure that the scale of residential development is appropriate for lot sizes and in relation to other dwellings in the vicinity. • To maximise the energy efficiency of dwellings. • To improve stormwater management. <p>The application has been submitted and is deemed to encourage orderly and sustained growth and is not inconsistent to the amenity of the area.</p>
<p>4. General Development Controls</p>	
<p>4.1.1 Matters for consideration (General)</p>	<p>The development is not inconsistent with this clause.</p>
<p>4.1.2 Matters for consideration (Subdivision)</p>	<p>The development is not inconsistent with this clause.</p>
<p>4.2 Environment</p>	<p>The site is partially bushfire prone following Council's January 2026 mapping update. Any future development will be required to comply with relevant bushfire planning and construction requirements.</p> <p>A Biodiversity Development Assessment Report (BDAR) prepared by Capital Ecology Pty Ltd identified 0.72 hectares of critically endangered Box-Gum Woodland (PCT3376) in low condition and ten (10) mature remnant trees. No threatened flora or fauna species were recorded, and the site is unlikely to provide habitat of significance. The BDAR concludes that the development will generate a requirement to retire 7 ecosystem credits under the Biodiversity Offset Scheme. Subject to the implementation of the BDAR's mitigation measures and the retirement of credits, biodiversity impacts are considered acceptable.</p> <p>Overall, the proposed subdivision is considered compatible with the environmental constraints of the site and</p>



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	satisfies the objectives of Clause 4.2 of the ULLEP.
4.3 Design	The development is not inconsistent with this clause.
4.4 Heritage	The site is not identified as heritage. Aboriginal Cultural Heritage Due Diligence Assessment was submitted with the development application and report concludes: <i>As a result of the site visit, field survey of impact areas and background research, it is considered that the project has low potential to impact on unrecorded Aboriginal or Historical heritage sites or areas of PAD. No Aboriginal heritage sites or areas of PAD were recorded or identified as a result of the assessment and no areas of high or moderate sensitivity are present in the development area based on previous research, modelling and the field survey assessment of disturbance and soils.</i>
4.5 Flooding and Stormwater	The site is not identified as being flood prone land. Council is satisfied that stormwater can be managed with the preliminary designs provided with the application. Onsite detention tanks will be required for each allotment. Condition consent accordingly.
4.6 Traffic and Carparking	Access will be provided off Cullerin Road via a new road to be constructed. Consent has been conditioned requiring road to be constructed in accordance with Councils engineering standards and Austroads.
5. Subdivision	
5.1 Subdivision To ensure appropriate subdivision for residential purposes within RU5 Village, R2 Low Density Residential and R5 Large Lot Residential zones, recognising local amenity and character whilst facilitating growth	<p>The proposed subdivision is consistent with the established rural-residential character of the locality. Lot sizes are generally large and any future dwellings would be subject to separate development application approval.</p> <p>Landscape design plans are required to be lodged prior to the issue of a subdivision works certificate and required details of proposed fencing and landscaping details. As such, the subdivision itself is not expected to result in unreasonable visual impacts within the surrounding area.</p> <p>The proposal is consistent with the objectives of the RU5 Village zone as it provides for residential development within the village boundary, represents an appropriate use of serviceable land within the village. and contributes to the orderly expansion of</p>



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	housing within Gunning.
10. Engineering Requirements	The development is not inconsistent with this chapter. Condition consent in accordance with comments provided by Council's Infrastructure Department.
Section 4.15(1)(a)(iia) – ANY PLANNING AGREEMENT (OR DRAFT) UNDER SECTION 7.4	
No planning agreement under section 7.4.	
Section 4.15 (1)(a)(iv) – ANY REGULATIONS	
The relevant matters prescribed under the <i>Environmental Planning and Assessment Regulation 2021</i> , including Clauses 61, 62, 64, 66A, 67 and 68 (where applicable), have been considered in the assessment of the application. The proposal does not raise any concerns in relation to these provisions.	
S4.15 (1)(b)-Likely impacts of the development:	
CONTEXT & SETTING	The proposed subdivision is considered consistent with the established village character and the surrounding context of the locality.
ACCESS, TRANSPORT & TRAFFIC	The application was referred to Council's Infrastructure Department for review. Comments were received and recommended conditions of consent have been included to address access, roadworks and servicing requirements.
PUBLIC DOMAIN	The proposed subdivision is not expected to result in adverse impacts on the public domain.
LANDSCAPING / CLEARING	The proposed subdivision will result in the removal of 10 mature trees. Impacts on native vegetation and biodiversity are addressed in the BDAR, which is discussed throughout this assessment report.
NOISE AND VIBRATION	The proposed subdivision is not expected to generate ongoing noise or vibration impacts. Temporary noise associated with construction works may occur; however, this can be appropriately managed through standard conditions of consent.
AIR QUALITY	The proposal is not expected to result in adverse impacts on local air quality. Any temporary impacts during construction can be managed through appropriate site management practices.
WASTE	The proposed subdivision will not adversely impact waste management. Future dwellings will be able to access Council's waste collection services.
ENERGY	The subdivision itself will not result in adverse impacts relating to energy consumption.
VIEWS	The proposed subdivision is consistent with the established rural-residential character of the locality. Lot sizes are generally large and any future dwellings



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	would be subject to separate development application approval. The subdivision itself is not expected to result in unreasonable visual impacts within the surrounding area.
SAFETY, SECURITY & CRIME PREVENTION (NSW POLICE SERVICE CHECKLIST)	The proposed subdivision is not considered to result in adverse impacts on safety, security or crime prevention within the locality.
SOCIAL IMPACT IN THE LOCALITY	The proposal is likely to result in positive social impacts through the provision of additional residential allotments within the village.
ECONOMIC IMPACT IN THE LOCALITY	The proposal is likely to generate positive economic impacts through increased housing supply and associated local investment.
SITE DESIGN & INTERNAL DESIGN	The subdivision layout, including road access and lot configuration, is considered satisfactory and suitable for the intended residential use.
FLORA & FAUNA	The proposal is not expected to result in significant impacts on flora and fauna.
NATURAL HAZARDS	The site is not identified as flood prone land. Council's bushfire mapping was updated in January 2026 to reflect grassland vegetation, and the site is now identified as bushfire prone land. Any future development will be required to address the relevant bushfire planning and construction requirements.
TECHNOLOGICAL HAZARDS	No technological hazards have been identified that would affect the proposed subdivision.
CONSTRUCTION	Construction works will be required to provide roads and infrastructure servicing the proposed lots. These works can be managed through standard conditions of consent.
Section 4.15 (1)(c) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT	
The site is considered suitable for the proposed subdivision given its RU5 Village zoning, location within the existing village, and the ability to service the proposed allotments with appropriate infrastructure.	
Section 4.15(1)(d) – Any Submissions received	
The application was notified in accordance with Council's Community Participation Plan to adjoining landowners from 28 August 2025 to 15 September 2025. Two (2) submissions were received during the notification period. The submissions were forwarded to the Applicant, together with a request for additional information from Council dated 24 September 2025. The Applicant provided a response to the submissions on 17 November 2025. The two submissions that were received during this period, raised concerns generally relating to the items	



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in the following table (Table 1).

Table 1: Summary of issues and response to submissions

Issues raised in submission	Planning Response
Classified Road and adjusting speed limit from 100km to 50km	<p>Cullerin Road is considered a classified road and as such the application was referred to Transport for NSW for comments. Transport for NSW reviewed the documents and had no objection to the proposed development.</p> <p>The road is currently subject to a 100 km/h speed limit. The proposed subdivision does not seek to alter the gazetted speed limit of the road but a condition of consent will be imposed (if approved) requiring the developer to request the speed limit to be reduced to 50km/h.</p> <p>The proposed development is required to provide safe vehicular access in accordance with relevant road design standards. Detailed access design and any required traffic management measures would be further considered at the Subdivision Works Certificate stage.</p>
Visual Impacts	<p>The proposed subdivision is consistent with the established rural-residential character of the locality. Lot sizes are generally large and any future dwellings would be subject to separate development application approval.</p> <p>Landscape design plans are required to be lodged prior to the issue of a subdivision works certificate and required details of proposed fencing and landscaping details. As such, the subdivision itself is not expected to result in unreasonable visual impacts within the surrounding area.</p> <p>Condition of consent requiring landscape plan and fencing details prior to the issue of a subdivision works certificate will be imposed (if approved).</p>
Kerb & Guttering requirements	<p>The proposed subdivision will be required to comply with Council's infrastructure and road construction standards to ensure appropriate drainage and road safety outcomes. These matters have been addressed through conditions of consent and detailed civil design submitted prior to the issue of a Subdivision Works Certificate.</p>
Stormwater	<p>Preliminary stormwater management design plans have been submitted with the development application as has been considered satisfactory from Council's Works and Operations Department. Final Stormwater design submitted to Council for approval with the lodgement of a Subdivision Works Certificate. The development will be required to manage stormwater to ensure that</p>



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	<p>runoff is appropriately controlled and does not adversely impact adjoining properties or the broader drainage network.</p> <p>Conditions of consent and detailed civil design are required to be submitted prior to the issue of a Subdivision Works Certificate.</p>
Infrastructure and capacities	<p>Prior to the issue of a Subdivision Works Certificate, design and engineering details are required to be lodged to Council for approval. The plans shall demonstrate that adequate infrastructure services are available to support the proposed lots.</p> <p>Conditions of consent have been imposed requiring water, sewer, electricity and telecommunications are available.</p>
<p>The issues raised in the submissions do not warrant refusal of the application.</p>	
<p>Section 4.15 (1)(e) The Public Interest</p>	
<p>The proposed subdivision is considered to be in the public interest as it is consistent with the objectives of the RU5 Village zone, generally complies with the relevant provisions of the Upper Lachlan Local Environmental Plan 2010 and Development Control Plan, and is considered an appropriate outcome for the site. Subject to the recommended conditions of consent, the proposal is not expected to result in unacceptable environmental, social or economic impacts.</p>	
<p>Contributions</p>	
Section 7.11 Contributions	<p>Applicable – Condition consent accordingly. To be calculated at the time of payment.</p>
Section 64 Contributions	<p>Applicable – Condition consent accordingly. To be calculated at the time of payment.</p>
<p>PART 5: CONCLUSION</p>	
<p>The application has been assessed in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i>, the Upper Lachlan Local Environmental Plan 2010 and the Upper Lachlan Development Control Plan.</p> <p>The proposed subdivision is considered to be consistent with the objectives of the RU5 Village zone and represents an appropriate development outcome for the site. The variation to the minimum lot size development standard affecting nine (9) allotments is supported by the submitted Clause 4.6 request.</p> <p>Subject to the recommended conditions of consent, the proposed subdivision is considered satisfactory and is recommended for approval.</p>	
<p>PART 6: RECOMMENDATION</p>	
<p>That Development Application DA68/2025 be approved subject to the conditions of consent attached to this report.</p>	
<p>Assessing Officer</p>	



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Karinne Granger – Development Control Officer	Dated: 5 March 2026
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SCHEDULE OF CONDITIONS

PART 1 - GENERAL CONDITIONS

The following conditions have been applied to ensure that the use of the land and /or the building is carried out in such a manner that it is consistent with the aims and objectives of the planning instrument affecting the land.

For the purpose of these conditions, the term 'applicant' means any person who has the authority to act on the development consent.

- (1) Except where otherwise required or permitted by conditions of development consent, the development shall be carried out generally in accordance with the information submitted in support of the development application and the following stamped approved development drawings, including any notations or amendments marked by Council in red.

Title/Description	Document Reference	Document Dated	Prepared by
Plan of Subdivision	40053	15/01/2026	SRD Land Consulting
Statement of Environmental Effects	-	July 2025	SRD Land Consulting
Preliminary Engineering Details	40053 Sheet 1 to 21	15/01/2026	SRD Land Consulting
Stormwater Drainage Report	40053	15/01/2026	SRD Land Consulting
Preliminary Site Investigation Report (Contamination)	AU125181-001-RevA	14/11/2025	Geosyntec
Aboriginal Cultural Heritage Due Diligence Assessment	-	3/10/2025	Past Traces Heritage Consultants
Biodiversity Development Assessment Report	3274	20/08/2025	Capital Ecology

Note: In the event of any inconsistency between the approved plans and documents, the approved prevail. In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

- (2) The development must be carried out in accordance with the Biodiversity Development Assessment Report prepared by Capital Ecology Pty Ltd for Jascott Civil Pty Ltd, unless otherwise approved by Council. Any biodiversity mitigation measures identified within the report must be implemented for the duration of the development.

Reason: To ensure compliance with the BDAR report.

- (3) The development must be carried out in accordance with the Preliminary Site Investigation Report prepared by Geosyntec Consultants, dated 14 November 2025, unless otherwise approved by Council.

Reason: To ensure compliance with the Contamination report.

- (4) The development is to be conducted in a manner to ensure that the environment of the surrounding locality is not adversely affected, disturbed or disrupted. Disturbing or disruption of the surround environment includes dust emissions, excessive noise or the like.

Reason: To ensure compliance with relevant standards and protect the amenity of the local area.

- (5) A copy of the stamped approved subdivision consents, certificates, plans, drawings, specification and documents shall be kept on site while work is being undertaken.

Reason: To ensure all relevant documentation is available for reference while constructing works on site by the developer/contractor, or council officer.

- (6) Water and Sewer Requirements - Each lot shall be separately connected to reticulated water and sewer at no cost to Council. No works shall commence until satisfactory arrangements have been made with Council's Water, Sewer and Waste Services Department to provide the connections and meters.

All works to be constructed to WSA 02-2014 Sewer & WSA 03-2011 Water Codes.

Clearances between sewer, water and other underground services shall comply with Water Services Association of Australia *Sewerage Code of Australia Part 1: Panning & Design Table 4.2 (WSA 02-2014)*. This shall be confirmed with Council's Water, Sewer and Waste Services Department.

Reason: To ensure any utility woks are carried out without cost to Council and in accordance with the requirements of the relevant authority.

- (7) Where any work associated with this consent has the potential to disturb neighbours through the generation of noise, dust, odour, vibration or through deliveries to the site the person with control over the works shall advise the occupants (at least 48 hours before commencement) of all adjoining and potentially affected properties of the timing and duration of such works. The landowner has the ultimate responsibility for ensuring that anybody undertaking works under this development consent on their behalf is aware of this requirement and completes the task required by this condition.

Reason: To ensure neighbours are notified of potential disturbance activities.

- (8) No consent is granted to the erection of retaining walls for the proposed subdivision. Natural ground levels shall not be altered or adjusted other than shown on the approved plans or where varied by the conditions of consent without the prior consent from Council.

Reason: To minimise the extent of cut and fill and comply with Council's DCP. To ensure appropriate design, construction and management measures are in place to protect the environment.

- (9) Any earthworks:
- a. Must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and
 - b. Must not redirect the flow of any surface or ground water without the support of an approved pre and post development stormwater assessment and management plan nor cause sediment to be transported onto an adjoining property, and
 - c. That is fill brought to the site—must contain only excavated natural material (EMN) or virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the Protection of the Environment Operations Act 1997, and
 - d. That is excavated soil to be removed from the site—must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2014*.
 - e. Any excavation must be carried out in accordance with *Excavation Work: Code of Practice (Catalogue No. SW08841)*, published in January 2020 by Safe Work NSW (as amended).
 - f. Stormwater runoff from and through the property is to be appropriately managed so as to control nuisance, damage and hazard during storm events.

Reason: To ensure earthworks are appropriately sourced, managed and/or disposed; To ensure stormwater is managed to not adversely impact neighbours or downstream catchment and water sensitive urban design best practice requirements. To

ensure alterations to natural surface contours does not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners or create an erosion or sediment problem.

PART 2 - BEFORE THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a subdivision works certificate by the principle certifying authority. All necessary information to comply with the following conditions of consent must be submitted with the application for a subdivision works certificate.

- (10) Before a subdivision works certificate shall be granted for any subdivision work in the development, detailed engineering drawings of the subdivision work, prepared by a suitably qualified and experienced civil engineering professional consistent with the development consent and associated stamped approved development drawings, must be submitted to and approved by Council.

A subdivision works certificate will only be released if the application demonstrates all conditions of consent required before the issue of the subdivision works certificate are satisfied (including agency requirements). In this regard, a schedule of compliance must be submitted with the application confirming compliance and how conditions were resolved.

Reason: To ensure works are undertaken in compliance with the Development Consent and relevant standards.

- (11) Before a subdivision works certificate shall be granted for any subdivision work in the development, the name, details of qualifications, and contact details of a suitably qualified civil engineer, appointed to supervise work carried out in the development, must be submitted in writing to Council.

In this regard, all work carried out in the development shall be supervised by the appointed civil engineer on a daily basis (or as agreed to with the Principal Certifying Authority). The supervising engineer shall ensure compliance with and adherence to all approved specifications and design plans, and shall be responsible for quality control of work in general.

Reason: To ensure works are undertaken in compliance with the Development Consent and relevant standards.

- (12) S.305 Application of Certificate of Compliance
A s.306 Certificate of Compliance – Pre-Condition Requirements under Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* must be obtained from Council as the sewer and water authority before the issue of any subdivision works certificate. Note: s.64 of the *Local Government Act 1993* authorises Council to issue Certificates of Compliance under s.307 of the *Water Management Act 2000* and to impose pre-conditions to the issuing of Certificates of Compliance.

NOTE: To obtain a s.306, a s.305 application must be lodged with Council.

- Mains pressure to service all blocks shall be a minimum of 30m head pressure. A review of the plans appears to indicate a Pressure pump system will be required to service proposed lots 11 and 12.
- Sewer Gradings shall have falls greater than 1% and less than 10%

Reason: Statutory requirement and to ensure compliance with the relevant standard.

- (13) Each lot shall be connected to reticulated sewerage at no cost to Council. Before the issue of a subdivision works certificate, a design of the sewer main connections to the proposed Lots is required to be prepared by a qualified engineer and submitted to Council for approval as the sewer authority and shall comply with the Sewerage Code of Australia (WSA relevant sections of the Sewerage Code of Australia WSA 02-2014-3.1 and WSA 04-2022) as amended unless otherwise approved by Council. In this regard:

A sewer main extension will be required to service each Lot, a full set of hydraulic designs will need to be submitted before the issue of s306, plans shall show the following:

- i. Long sections (chainage, grade, material, pipe class, invert & manhole level/depth, surface level, diameter, junction location and depth)
- ii. Alignment with easement widths complying with Council policy.
- iii. MH details complying with sewer construction standards.
- iv. Junction details complying with sewer construction standards.
- v. Sewer main is to be centrally located over dedicated easement and easement width is to comply with Council's Clearance & Easements Requirements.
- vi. Sewer specifications complying with WSAA construction standard.

Easement widths need to comply with Council requirements. For twin mains layout, each main needs to remain outside the zone of influence of the deeper main.

All works are to be inspected by Council prior to backfill.

Reason: To ensure that works are designed to cater for the demands generated by the development in accordance with Council's relevant standards.

- (14) Each lot shall be connected to reticulated water at no cost to Council. Before the issue of a subdivision works certificate, a design of the water main extension and connections, is required to be prepared by a qualified engineer and submitted to Council for approval as the water authority and shall comply with the Water Supply Code of Australia (WSA 03-2011) as amended unless otherwise approved by Council. In this regard:
- i. Each proposed lot shall have a separate water service and meter provided at the developer's full expense.
 - ii. A Full set of hydraulic designs will need to be submitted prior to issue of s306, the plans should show the following:
 - i. Alignment of water main.
 - ii. Water main specifications (class, size, material, etc.).
 - iii. Water meter locations and water service alignment (Copper service to be grade A copper).
 - iv. Water main specifications complying with Council and WSAA construction standards.
 - v. Thrust block, hydrant and stop valve details.
 - vi. Stop valves need to be located in a way to isolate individual streets.
 - vii. Design details of proposed fire hydrants in accordance with relevant Australian Standards

NOTE: Water services crossing roads need to be 25mm services with 20mm water meter in the lot. Deflection in water mains is not permitted. Connection into existing live infrastructure shall be done by Council upon submission of water application and payment of quote.

Where capacity is available to undertake the works, Council can provide a fee quotation for the required works to connect services and meters.

Council can provide a quote for the supply of water meters upon application separately.

Reason: To ensure that works are designed to cater for the demands generated by the development in accordance with Council's relevant standards.

- (15) Before issue of the Subdivision Works Certificate, detailed stormwater management design, consistent with the consent and stamped approved plans, shall be prepared and certified by a suitably qualified engineering professional (i.e. practicing stormwater drainage professional) to ensure that all the stormwater generated from the development is managed to limit the

discharge from the site to pre-development rate. Details of the on-site detention, pre-and post-development calculations and plans shall be provided to Council for approval with the subdivision works certificate.

Reason: To ensure that works are designed to cater for the demands generated by the development in accordance with Council's relevant standards; To ensure stormwater is managed and avoid potential for nuisance stormwater and adverse impact to the downstream properties.

- (16) Before the issue of a subdivision works certificate, a Services and Infrastructure Plan shall be submitted to Council for approval detailing locations and spacing of services in relation to infrastructure, street trees, footpaths, all services and extent of cut and fill.

Reason: To ensure there is sufficient area for services, road pavement, any landscaping and footpath requirements (where required) etc. The minimise the extent of cut and fill in accordance with Council's DCP.

- (17) Prior to the issue of a subdivision works certificate, engineering design and construction details of the proposed new public road, Cullerin Road intersection, footpaths, kerb and guttering shall be submitted to and approved by Council. In this regard;
- i. the proposed road shall be surveyed, designed and constructed in accordance with Austroads Guidelines.
 - ii. Detailed plans are to include pavement design, road geometry, intersection design and kerb and guttering and shall be at no cost to Council.
 - iii. The location and design of all subdivision accesses must comply with AS/NZS 2890.1. Access to each proposed Lot is required to be constructed to Council's standards including "Urban Driveway, Footpath and Gutter Crossing Standards" and "Urban Driveway Profiles." Any deviation from these standards will require submission of a justification to Council and approval from Council's Infrastructure Services.
 - iv. Each access location must be offset a minimum of 1 m from existing/proposed infrastructure in front of the property, such as light poles, trees, and kerb lintels.
 - v. All engineering design plans (including but not limited to road, drainage, access, lighting, and erosion control) must be certified by a suitably qualified Civil Engineer (RPEQ or equivalent) before submission of the subdivision works certificate to Council.

Reason: Subdivision works are undertaken in accordance with development conditions of consent and Council standards.

- (18) Before the issue of a subdivision works certificate, details of a concrete footpath (1.2m wide) between proposed lots 6 and 11 is required to be submitted and approved by Council and shall be at no cost to Council. The footpath shall be consistent with ULSC Footpath Standard dated 13 November 2019 (attached).

Reason: Subdivision works are undertaken in accordance with development conditions of consent and Council standards.

- (19) Before the issue of a subdivision works certificate, a landscape plan shall be submitted to and approved by Council. In this regard;
- i. A minimum of one (1) street tree shall be provided per average of 10m in accordance with the final approved streetscape plan.
 - ii. Street trees must be of a minimum container size of 45 litres with root barriers. The application must be submitted with written evidence of clearances from relevant service authorities.
 - iii. Fencing along the Cullerin Road frontage of the proposed lots shall be timber post and rail fencing, or similar rural-style fencing, to ensure the rural character and visual amenity of the locality is maintained, to the satisfaction of Council.

Reason: Subdivision works are undertaken in accordance with development conditions of consent and Council standards.

- (20) Before the issue of a Subdivision Works Certificate, any long service levy, must be paid to the Long Service Corporation under the Building and Construction Industry Long Service Payments Act 1986, with evidence to be provided to the Certifier. The levy rate is 0.25% of the cost of building and construction works of \$250,000 or more (incl GST).

Reason: The long service levy must be paid before building or construction works begin according to the Building and Construction Industry Long Service Payments Act 1986.

- (21) Before the issue of a Subdivision Works Certificate, all infrastructure, existing and proposed, is to be shown accurately on the engineering plans including longitudinal sections with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure. Any required alterations to infrastructure will be at the developer's expense.

Reason: To ensure there is sufficient area for services, road pavement, any landscaping and footpath requirements

- (22) A street lighting plan shall be prepared for the proposed subdivision, including lighting from the new intersection with Cullerin Road through to the existing street lighting in Yass Street. The plan is to be designed in accordance with the relevant Australian Standards by a suitably qualified professional and submitted to Council for approval prior to the issue of a Subdivision Works Certificate. All street lighting is to be installed at no cost to Council.

All lighting shall be designed to minimise light spill and prevent nuisance to nearby residences or motorists. Lighting must comply with AS 4282–2023 Control of the Obtrusive Effects of Outdoor Lighting (as amended).

NOTE: Lighting design shall ensure the number, control, direction, shielding, and luminosity of any outdoor lighting minimises light spill and obtrusive light to neighbours and the village of Gunning.

Reason: To provide suitable amenity and promote the safety and security of the development during night time hours. To protect amenity of surrounding area and minimise impact on biodiversity and sensitive nocturnal wildlife.

- (23) Before the issue of the Subdivision Works Certificate the class and number of ecosystem credits in the following table must be retired to offset the residual biodiversity impacts of the development. The requirement to retire credits may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator. Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund must be provided to Council before lodgement of the Subdivision Works Certificate.

Ecosystem credits required to be retired – like for like.

Impacted Plant Community Type	Proposed Clearance Area	Credits Required
PCT3376 Zone 10	0.72 ha	7
PCT3376 Zone 12	5.37 ha	0
Total	6.09 ha	7

Reason: To ensure compliance with the BDAR report.

- (24) Before the issue of a Subdivision Works Certificate, a plan detailing tree protection measures for trees to be retained on the site shall be submitted to and approved by Council. The approved protection measures shall be implemented prior to the commencement of works and maintained for the duration of construction.

Reason: To ensure the protection of trees to be retained during construction works.

- (25) Prior to the issue of Subdivision works certificate, a management plan and planting guide must be prepared by a suitably qualified person/s to assist rehabilitation efforts and provide for an ecologically sustainable development. These plan/s must consider the *Flora and Fauna Assessment report – Proposed development at Greenmantle Road, Bigga NSW 2583 dated 30 May 2024*. The Plan/guide at a minimum must include:

- a. A clear indication of all vegetation to be removed and retained.
- b. Details of all Operational Works likely to impact on existing vegetation.
- c. Temporary and permanent exclusion and protection fencing to prevent category 2 land and protection zones from grazing, clearing and or further construction.
- d. Roles and responsibilities for site contractors, the proponent, and the consultant group.
- e. A clearing sequencing plan showing the commencement of clearing and the direction of removal (this should be in conjunction with the Fauna Management Plan to allow the appropriate flushing of fauna to surrounding safe haven areas).
- f. Ongoing weed management.
- g. A detailed ongoing rehabilitation and maintenance plan including the restoration and enhancement of disturbed areas in the post construction phase and processes to maximise survival opportunities for areas of retained vegetation and newly rehabilitated areas.

Reason: To protect the environment from the development sites.

PART 3 – BEFORE THE COMMENCEMENT OF WORK

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with prior to the commencement of any work on site.

- (26) No subdivision work in the development shall commence unless the following provisions of section 6.13 of the Environmental Planning and Assessment Act 1979 (the Act) have been complied with:
- a) A Subdivision Works Certificate for the subdivision work concerned shall be obtained; and
 - b) A principal certifying authority shall be appointed and Council shall be notified of the appointment; and
 - c) Council shall be notified in writing at least two days prior to subdivision work commencing.

Reason: Statutory requirement.

- (27) Before commencement of work, the applicant must give Council a “Commencement of Subdivision Work” Notice and advise that Council or an Accredited Certifier has been appointed as the Principal Certifying Authority.

Reason: Statutory requirement.

- (28) Before commencement of work, satisfactory erosion and sediment controls shall be put in place to prevent soil erosion, water pollution and the discharge of loose sediment on surrounding land in accordance with the approved erosion and sediment control plan and as follows. Such measures shall include:
- a) Diversion of uncontaminated run-off around cleared or disturbed areas, and
 - b) Erection of silt fencing to prevent debris escaping into drainage systems and waterways, and
 - c) Prevention of tracking of sediment by vehicles onto roads, and
 - d) Stockpiling of topsoil, excavated material, construction and landscaping supplies and debris at the site of works.

Note: The above controls shall remain in place until all disturbed ground surfaces at the development site have been rehabilitated, vegetated and/or stabilised to prevent erosion or sediment loss.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

- (29) Before commencement of subdivision work, a sign must be erected, in a prominent position on the site on which such work is being carried out:
- a) Showing the name, address and telephone number of the Principal Certifying Authority for the work; and

- b) Showing the name of the principal contractor (if any) for any subdivision work and a telephone number on which that person may be contacted outside working hours; and
- c) Stating that unauthorised entry to the work site is prohibited.

Note: Any such sign shall be maintained while the subdivision work is being carried out, and must be removed when the work has been completed.

Reason: Statutory requirement.

- (30) Before commencement of work within the road reserve, a Section 138 Permit under the *Roads Act 1993* shall be applied for with Councils Infrastructure Department and granted. The application shall be made on the appropriate form available on Council's website and shall be submitted at least 72 hours prior to the commencement of work by the contractor undertaking the works.

Vehicular access driveways shall be provided to each lot with a concrete, or bituminous wearing or other impervious surface and shall be constructed in accordance with relevant Council standards. In this regard:

- a) Access shall comply with Council's urban driveway standards, AUSSPEC and AS2890.1.2004 (Off-street car parking)
- b) Driveway access is to have a minimum sealed width of 3 metres with a double 14/7mm bituminous seal, that includes a minimum 200mm consolidated pavement thickness of approved gravel.

NOTE: All work within the road reserve shall be conducted by Council or a Council approved contractor in compliance with the *Work Health and Safety Act 2011* and subordinate legislation.

Reason: Subdivision works are undertaken in accordance with development conditions of consent and Council standards.

- (31) Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
- a) be a standard flushing toilet connected to a public sewer, or
 - b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
 - c) be a temporary chemical closet approved under the *Local Government Act 1993*.

Reason: Statutory requirement.

- (32) No parking of vehicles or equipment or the like is permitted in the vicinity of the development including Cullerin Road by owners, visitors or contractors due to safety reasons of the area. Sufficient area is available on-site during the staged construction.

Reason: To ensure protection for safety reasons.

PART 4 - DURING CONSTRUCTION

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with during the construction of the development on site.

- (33) Building, demolition and/or subdivision work in the development shall be carried out only:
- a) On Mondays to Fridays between 7:00 AM and 6:00 PM, and
 - b) On Saturdays between 7:00 AM and 1:00 PM if inaudible on residential premises, otherwise 8.00 AM to 1.00 PM.

No building, demolition and/or subdivision work in the development shall be carried out on Sundays or public holidays.

NOTE: Variations to the construction hours or days must be approved by Upper Lachlan Shire Council in writing and will be considered on the merits on a case-by-case basis.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

- (34) Sound pressure levels measured as LA10 15 minutes emanating from the site must not exceed the background levels at the nearest affected residence by the following criteria for the time interval specified:
- 20dB(A) (Demolition) period up to 4 weeks;
 - 10dB(A) (Demolition) period greater than 4 weeks and not exceeding 26 weeks; and
 - 5dB(A) (Demolition) period exceeding 26 weeks;
- NOTE: These are levels determined by the EPA and are designed to ensure that neighbouring property occupants are not unduly affected by noise.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. To ensure compliance with AS 2436-2010 and the NSW Environment Protection Authority Interim Construction Noise Guidelines.

- (35) At least 48 hours notice shall be given to Council for inspection of any of the following works (where required) in the development:
- a) Roadworks;
 - b) Sub-grade earthworks prior to gravel;
 - c) Kerb & gutter completed/V-Drain completed - A Council inspection of kerb and gutter is required before the placement of concrete to confirm alignment, levels, and formwork. A follow-up inspection is required after completion to ensure finish quality and compliance with Council standards;
 - d) Gravel test results available;
 - e) Compacted gravel base completed;
 - f) A final pavement inspection before bitumen or asphalt sealing (proof roll);
 - g) Sealing completed;
 - h) Footpaths before the pour to verify alignment, thickness, reinforcement, and crossfall. A final inspection must be carried out after completion to ensure compliance with Council's specifications and no trip hazards or surface defects are present;
 - i) Water supply work;
 - j) Sewerage work; and
 - k) Stormwater drainage work.

All service trenches are to be backfilled, compacted, and reinstated to Council's standard.

NOTE: Access chambers and sewer mains will need to be inspected by Council as well as haunching, bedding material, pipe material, access chamber components and concrete supplier docketts.

No subdivision certificate shall be granted for the development unless each of the above components of work has been completed to the satisfaction of Council's Water, Sewerage and Waste Services Department and Infrastructure and Operations Department. Upon written request and with adequate notice, relevant Council staff may be available to meet on-site with the building contractors to be used for the construction of the infrastructure, if required.

Reason: To ensure that works carried out comply with the Roads Act and Water Management Act and relevant standards.

- (36) All work is to be undertaken in accordance with the documentation required and approved under this Consent.

Reason: To ensure that the development is undertaken in accordance with the submitted plans and documents as amended.

- (37) The developer is responsible for ensuring all erosion and sediment control measures are implemented in accordance with the approved plans, conditions and current best practice.

Reason: To manage adverse environmental and water quality impacts during the construction phase of the development so as to minimise the risk of erosion, sedimentation and pollution within or from the site during this phase.

- (38) Vehicles and equipment associated with the subdivision work in the development shall be located to minimise potential adverse impact on residential amenity in the locality.

Reason: Environmental amenity.

- (39) The subdivision works shall be supervised by a suitably qualified and experienced Civil Engineer on a daily basis. The supervising engineer is to ensure compliance with the requirements of the specification, adherence to design plans and quality control of all works.

Reason: Subdivision works are undertaken in accordance with development conditions of consent and Council standards.

- (40) Alterations to natural surface contours shall not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners or create an erosion or sediment problem. During Construction all work to be undertaken in accordance with the current version of AS/NZ3500.

Reason: To ensure stormwater disposal does not impact on the building, verge or neighbouring properties.

- (41) Vehicles entering and leaving the premises that are carrying excavated dusty materials, including clays, sands and soils, shall be covered at all times when not loading or unloading.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

- (42) If any Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work—

- (a) all excavation or disturbance of the area must stop immediately in that area, and
(b) the Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the [National Parks and Wildlife Act 1974](#).

Note—

If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the [National Parks and Wildlife Act 1974](#).

Reason: Statutory requirement.

- (43) No building material, waste (including demolition waste) or spoil shall be permitted to be deposited on any Council land, including public reserves, roads, gutters or footpaths without the prior approval of Council.

Reason: To ensure that local residents and activities are not disadvantaged and ensure the safety of the area.

- (44) Any fill imported to or placed on the site shall consist of approved clean fill and shall be in accordance with relevant *Australian Standards*.

Reason: To ensure that works carried out comply with the standards.

- (45) Any fill that is brought to the site, must contain only virgin excavated natural material (VENM) or excavated natural material (ENM) as defined in Part 3 of schedule 1 to the Protection of the Environment Operations Act 1997 (POEO Act).

NOTE: Documentation must be provided to the Certifier, certifying that any imported fill material is not contaminated and does not contain contaminants such as asbestos, chemicals or building waste and suitable for residential purposes.

Reason: To ensure that only VENM is used on site.

PART 5 - AGENCY CONDITIONS

- (46) Refer to Attachment A for Transport for NSW comments.

PART 6 – BEFORE THE ISSUE OF THE SUBDIVISION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a subdivision certificate by the principle certifying authority. All necessary information to comply with the conditions of consent must be submitted with the application for subdivision certificate.

- (47) A Subdivision Certificate must be applied for and released prior to the registration of the Plan of Subdivision with New South Wales Land Registry Services. A Subdivision Certificate will only be endorsed if the subdivision certificate application demonstrates all conditions of consent are satisfied. In this regard, a schedule of compliance must be submitted with the application confirming compliance and how conditions were resolved. Compliance with conditions must be achieved either by completion of the required physical works, meeting requirements or compliance with Council procedures (e.g. lodging a bond or bank guarantee for incomplete works).

NOTE: Current fee (2025/2026) for the Subdivision Certificate is \$259 per lot. The above fee is current at the time of determination of the development application and, until paid, shall be adjusted in accordance with Council's fees and charges amended annually on 1 July.

Reason: A legislative requirement.

- (48) Any Subdivision Certificate application to Council shall be accompanied by:
- a) The original Final Plan of Subdivision, including indication of the locations of any easements and permanent improvements on one print, and
 - b) A corresponding Deposited Plan Administration Sheet ("Plan Form 6") including a schedule of road names and addresses in accordance with clause 61 of the *Surveying and Spatial Information Regulation 2024*.
 - c) A S88B instrument, where required.

NOTE: Before the lodgement of a Subdivision Certificate, an urban address request with draft urban address numbers shall be submitted to Council for review and allocation. Approved allocated addresses shall be placed on the Administration sheet prior to lodgement of the Subdivision Certificate.

Reason: To ensure that street numbering is accurate and complies with the requirements of the Geographical Names Board addressing policy. Street numbering assists emergency services in locating properties.

- (49) S7.11 Contributions
Before the issue of a subdivision certificate for any work in the development, contributions shall be paid to Council in accordance with section 7.11 of the Environmental Planning and Assessment Act 1979 and Upper Lachlan Development Contributions Plan 2007.

Note: Contributions are current at the time of determination of the development application and, until paid, shall be adjusted quarterly by reference to the Consumer Price Index (All Groups) Sydney following publication by the Australian Bureau of Statistics in accordance with Council's Contribution Plan.

Reason: To ensure compliance with council's Contributions Plan and related legislation. To ensure all parties are aware of works required to public infrastructure and to ensure payment for works.

- (50) Before issue of a Subdivision Certificate shall be granted, high or low voltage electricity supply infrastructure must be:
- a) Available in sufficient capacity from the existing high voltage distribution; and
 - b) Provided to each lot; and
 - c) Where necessary, located within an easement as required by and in favour of Essential Energy, and depicted by the final subdivision plan, centred on:
 - (i) Any existing electricity supply infrastructure on the subject land; and

- (ii) Any electricity supply infrastructure (including electricity supply lines and associated structures, posts, stays and the like) proposed by the developer to make an electricity supply available to lots to be created by the development; and
- (iii) Any proposed electricity supply lines for which the developer is not required to make a capital contribution, but that would be required to be constructed in the future to make an electricity supply available to each lot created by staged and proposed future subdivision of land.

Provisions of electricity shall be made available to all newly created allotments.

Reason: To provide adequate utility servicing to the development.

- (51) Before issue of a Subdivision Certificate, a Notice of Arrangement (NOA) requested from, the Distribution Network Service Provider (DNSP) being Essential Energy, shall be supplied to Council. The NOA will confirm that a satisfactory electricity supply and street lighting has been provided to the subdivision and that conditions of supply have been met for each stage. Requests for a NOA are to be made to the Contestable Works Section at Essential Energy.

NOTE: Refer to Attachment 5 for specific Essential Energy requirements to be satisfied before the issue of the Subdivision Certificate.

Reason: To provide adequate utility servicing to the development.

- (52) Before issue of a Subdivision Certificate, Council's Engineering Inspection fee must be paid to Council. In this regard, Council's current fee at the time of consent (2025/26 financial year) is \$259 per inspection, per lot; if any re-inspection is required (e.g. if works have not been satisfactorily completed), an additional fee will apply, being \$515 (2025/26 financial year).

These payments are reviewed annually, and the rates are to be confirmed prior to payment. Additional fees may apply as identified in Council's fees and charges.

Reason: To ensure compliance with Council's current Fees and Charges.

- (53) Before issue of a Subdivision Certificate, if survey identifies that any public road encroaches on the land to be subdivided, the affected land shall be marked on the plan of subdivision and dedicated as public road with any fencing encroachments rectified at no cost to Council.

Reason: To rectify any encroachments.

- (54) Before the issue of a Subdivision Certificate the proposed street names and numbers for the new/unnamed road/s must be submitted to and approved by Council. The approved street/road names and numbers are to be indicated on the Survey Plan of Subdivision and provided on road name plates to be installed at the road intersections.

NOTE: Council has a list of approved names for subdivision roads which can be obtained by contacting Council's Environment, Planning and Development section. Any other names will require a written submission to be lodged with Council detailing the origin of the name and the reasons for selection and payment in accordance with Council's current fees and charges (2025/2026 rate \$780). Proposed names must also comply with the Guidelines for Road Naming prepared by the Geographical Names Board.

NOTE: The application must nominate additional suggested names per street, in order of preference, and the source of the names proposed to ensure sufficient road names available to review and comply with the Geographical Names Board requirements. It is noted that the land is in the vicinity of original soldier settlement allotment/s, and a potential theme of former servicemen and women would ensure an historical link between families from the district that had served their country to a new subdivision allowing expansion of the town of Gunning.

Reason: To ensure compliance with the Roads Act 1993, the Conveyancing Act 1919 and the Geographical Names Board.

- (55) At the conclusion of the construction works and before issue of the subdivision certificate, works-as-executed (WAE) plans and details to the satisfaction of Council, shall be certified by an

appropriately qualified and practicing Civil Engineer as complete and an accurate record of the work including:

- a) A PDF copy of the construction certificate plans clearly marked up to show all variations from the approved design, including locations and levels of any below ground infrastructure;
- b) An AutoCAD DWG or DXF file that includes the as-built details of all works. The map projection in the drawing shall be GDA2020 zone 55 and/ with GPS electronic data (unless otherwise agreed to by Council). The different infrastructure elements shall be delineated into different drawing layers. Council shall be issued with dwg files of WAE and GIS shape files;
- c) Include details of pipework and backfilling of material and locations;
- d) Include location and depth of fill where soil has been deposited, if not used in backfilling;
- e) The stormwater drainage system, sewerage and water services have been constructed in accordance with this Notice of Determination and the provisions of the applicable Australian Standard/ Standard;
- f) The WAE shall contain the certification of the Developers supervising engineer;
- g) Works as executed plans are to be accompanied by itemised information as to the asset value and include a schedule of materials used in construction;
The asset register shall include a breakdown including but not limited to the following; the unique ID of each new/renewed assets, assets decommissioned, GPS locations, cost and date of construction, materials etc, and any operation and/or maintenance manuals; and
- h) A CCTV recording of Sewer Main undertaken as part of the Works and air testing results for sewer mains and access chambers, as requested by Council. The CCTV shall include Asset ID, Date, GPS location of each access chamber, upstream and downstream manhole (for direction), video to stop and look up lateral connections, and include pipe material.to be submitted on completion of new ties to lots, works to be inspected by Council representative for both water ties and sewer.

These drawings are required before the subdivision plans will be released. The preferred format for WAE drawings is electronic using Autocad software unless otherwise requested and 1 hard copy suitably scaled at A3. Please confirm with Council's Infrastructure Services and Water and Sewer Services full requirements prior to preparation of the WAE plans.

Reason: To verify all infrastructure has been constructed to standard and as approved by the Subdivision Works Certificate. To provide an asset and infrastructure record for future technical reference.

- (56) Any works bonded shall be completed by the applicant within 12-24 months from the date of release of the Subdivision Certificate. A maintenance period of will apply to all infrastructure assets, during which the developer must rectify any defects identified by Council.

Before the release of the subdivision certificate, the Applicant shall lodge with Council a Defects Maintenance Bond to the value of **10%** for all works that are nominated to revert to the care and control of Council in accordance with Council's Development Bonding Policy, based on the total cost of subdivision construction works of the development bonded, for each stage. The bond must be in place prior to the release of any subdivision certificate and must remain in place for the required period of 12 - 24 months from the date of endorsement of the subdivision certificate.

Where the costs incurred by Council for any works required to remedy any defects exceeds the value of any bond held by Council, the person having the benefit of the consent will reimburse Council the difference in accordance with Council's Policy.

NOTE: Upon the expiration of the bond period, it is the applicant's responsibility to apply in writing to Council for release of the bond. A bond return request form is available on Council's web site.

Reason: To ensure that works have been constructed to an acceptable standard and allow for remedying any defects in any such public work that arise within a reasonable period after the work is completed.

- (57) Street tree bond - The applicant will be required to pay a tree maintenance bond to ensure the health and vigour of the tree(s). The bond will be returned 12 months after the completion of the development (i.e. subdivision certificate), to the Applicant if the trees are maturing satisfactorily. The applicant is responsible for notifying Council when the works are completed and on completion of the 12-month bond period for Council review.

Before the issue of the subdivision certificate, all required street tree planting and payments of bonds are to be completed to the satisfaction of Council's Infrastructure Services

NOTE: The current fee for 2025/2026 financial year rate is \$258.00 per planted tree and a bond administration fee of \$386.00 (2025/2026 financial year rate). These contributions are reviewed annually, and the contribution rates are to be confirmed prior to payment.

Reason: To ensure that works have been constructed to an acceptable standard and allow for remedying any defects in any such public work that arise within a reasonable period after the work is completed.

- (58) No subdivision certificate shall be granted for the development unless written evidence has been submitted to Council from Telstra, or a Telstra authorised contractor, including:
- a) Certificate of Practical Completion;
 - b) A plan of the development area including current records of Telstra network and associated information relating to Telstra assets; and
 - c) Written advice specific to any indicated Telstra assets within the property.

Your attention is drawn to the requirements of the Telecommunications Act 1997 to ensure fibre ready telecommunications facilities are installed to service all individual lots in new real estate development projects. It is recommended that the development complies with the Commonwealth's *Telecommunications in new developments policy*, March 2015 (as amended).

The submission of a Telecommunications Infrastructure Provisioning confirmation from an approved telecommunications carrier to the Certifier or Council (as applicable) confirming that satisfactory arrangements have been made for the provision of telecommunication services to all lots within the subdivision (identified as a Certificate of Practical Completion).

Reason: To provide adequate utility servicing to the development.

- (59) Before the issue of the Subdivision Certificate, any damage to Council property or infrastructure within the road reserves, along the frontage of the subject site or within close proximity, which has been damaged as a result of the subdivision works, must be fully rectified to the satisfaction of Council's Infrastructure Department and at no cost to Council.

The site must be left in a suitable and stable condition, with all infrastructure completed to Council's satisfaction. This includes removal of construction debris, reinstatement of disturbed areas, and completion of all drainage and roadworks.

Reason: To ensure that Council's assets are protected and completed to a suitable standard.

- (60) The developer must prepare a Section 88B/E Instrument (as required) under the *Conveyancing Act 1919* for approval by Council which incorporates the easements and restrictions as to user for services over any private land burdening and benefitting the relevant Lots/in favour of Council including:
- a) No buildings or structures shall be permitted within the easement(s);
 - b) Easements for stormwater, water (where necessary) and sewerage;
 - c) Any right of carriageway;
 - d) No vehicular access is permitted to Cullerin Road (Lots 1, 2, 7, 16, 17, 18, 19, 20, 21 shall only gain access from the new internal road);
 - e) Geotechnical requirements for residential slabs and buildings on filled land;
 - f) No pre-coloured metal manufactured fencing;
 - g) Restriction on the title requiring rural open style fencing;
 - h) A restriction on the use of land requiring the retention and protection of vegetation

identified for conservation in Figure 11 of the Biodiversity Development Assessment Report prepared by Capital Ecology Pty Ltd, dated 20 August 2025. Vegetation within the identified area shall not be removed, damaged or disturbed without the prior consent of Council;

- i) A restriction on the use of land requiring the provision of 35cum of stormwater storage of water will be required for each (lots 1-22) lot in the development.

The restrictions created by the Section 88B Instrument shall be binding upon the registered proprietors of the land and their successors in title. The instrument shall nominate Upper Lachlan Shire Council as the authority empowered to release, vary or modify the restrictions.

- (61) Before the issue of a Subdivision Certificate, the proposed sewer pump out station, the rising main and hydrants shall be installed and tested at no cost to Council.

Reason: To ensure that Councils assets are protected and completed to a suitable standard.

- (62) Before the issue of a Subdivision Certificate, a certificate of compliance under Section 307 of Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000*, shall be obtained from Upper Lachlan Shire Council to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Upper Lachlan Shire Council.

Reason: Statutory requirement and to ensure compliance with the relevant standard.

- (63) Before the issue of a Subdivision Works Certificate At the completion of works the supervising engineer shall present to Council a Certification Asset Report for civil works and is to include copies of any approvals outlined in this development consent. All project plans, inspection test plans, and results are to be included in the report and be certified by the supervising engineer or other authorised person.

Reason: To ensure compliance of the works with the terms of the development consent and quality control requirements.

- (64) Before the issue of a Subdivision Certificate, Cullerin Road shall be nominated for the speed zone to be reviewed from 100km/h to 50km/h.

NOTE: The speed zones are to be nominated via the 'have your say' website <https://www.saferroadsnsw.com.au/haveyoursay.aspx> by completing steps 1-3 and submitting the form. Written evidence shall be provided to Council of the outcome of the review and if additional signage is required it will be at no cost to Council.

Reason: To ensure that the speed limit along Cullerin Road is appropriate for a residential environment and consistent with road safety requirements.

REASONS FOR CONDITIONS

Conditions have been imposed in accordance with the requirements of Section 4.17 of the *Environmental Planning and Assessment Act, 1979*, in particular having regard to the relevant provisions of Section 4.15.

- To comply with the provisions of relevant Environmental Planning Instruments (including drafts) regulations and development control plans. (Section 4.15(1)(a)(i)-(iii)).
- To ensure that there is no adverse effect caused by the development. (Section 4.15(1)(b)).
- To ensure that the site is suitable for the development. (Section 4.15(1)(c)).
- To protect the public interest. (Section 4.15(1)(e)).

ADDITIONAL NOTES**Construction Certificate**

Where construction work is proposed development consent is the first step. Before construction commences, a Construction Certificate must be obtained from Council or an accredited certifier.

Lapsing of Development Consent

Development consent does not lapse if the approved use has actually commenced or the proposed work is physically commenced before the consent lapse date, except where a condition specifies a limit to the duration of the consent.

Planning Assessment Commission

The Independent Planning Commission has not conducted a public hearing in respect of the subject development application.

Right of Appeal

If you are the applicant:

You can appeal against this decision in the Land and Environment Court within six (6) months after the date the applicant received this notice (Section(s) 8.7 & 8.10 of the *Environmental Planning and Assessment Act, 1979*). You cannot appeal, however, in the case of designated development determined by the consent authority after a public hearing held by the Planning Assessment Commission.

Review

An applicant may request the Council to review this determination within six (6) months after the date the applicant received this notice. The prescribed fee must be paid with the request for a review. Once the review is completed the Council may confirm or change the determination.

If there is an appeal, the period of time within which Council may undertake a review is extended up to the time the Court hands down its decision.

Notes:

A Review cannot be requested for:

- *a determination to issue or refuse to issue a complying development certificate, or*
- *a determination in respect of designated development, or*
- *a determination in respect of integrated development, or*
- *a determination in respect of integrated development, or a determination made by Council under Division 4 in respect of an application by the Crown.*
- *a determination in which a regional panel exercises a Council's functions as the consent authority.*

Charges

Charges are reviewed each financial year. Any charges payable for this consent should be confirmed prior to payment. A copy of Council's fees and charges is available free of charge at the Council offices.

Dial Before You Dig

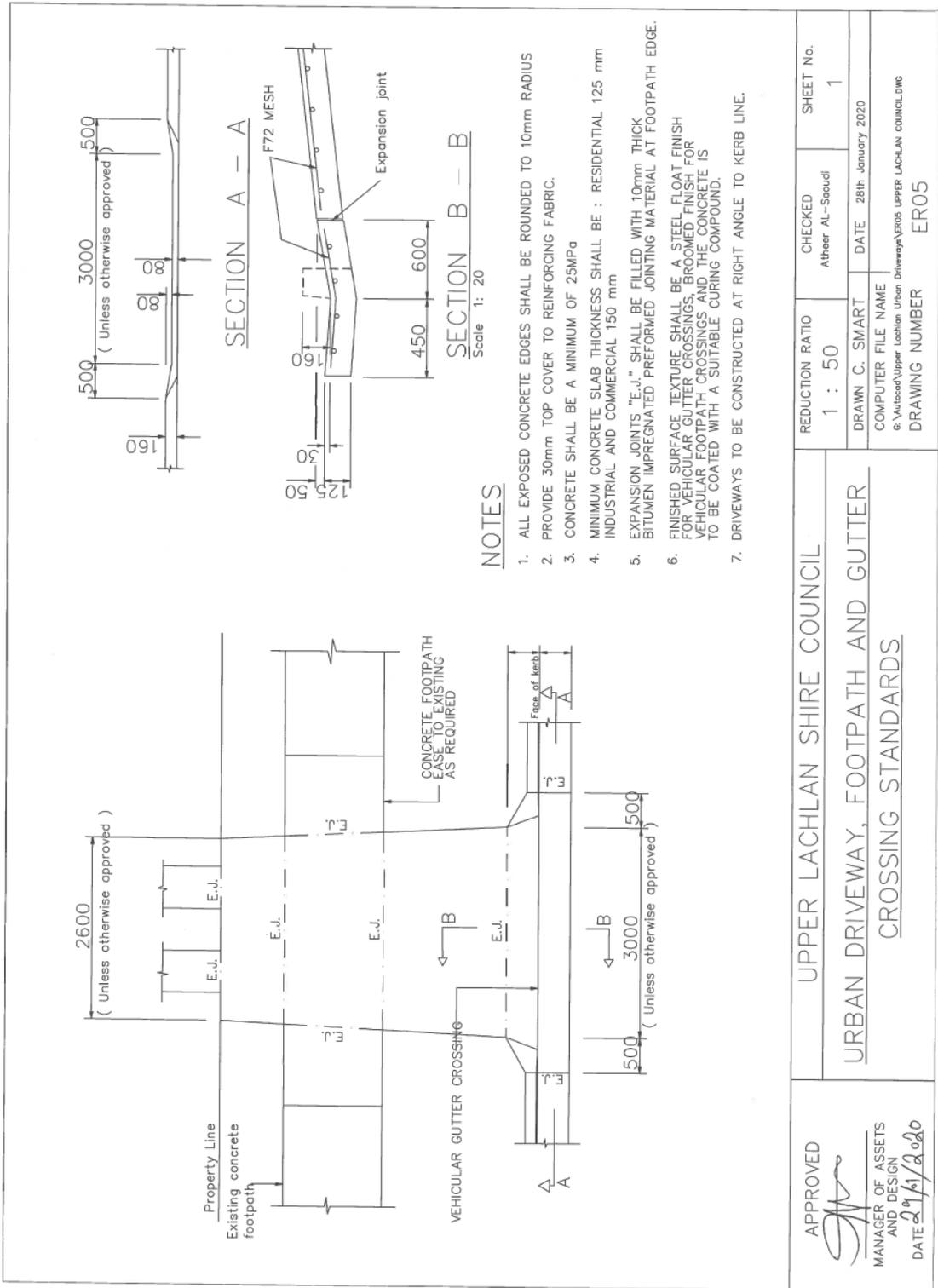
Underground assets may exist in the area that is subject to your application. In the interest of health & safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in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

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution.

Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: **Telstra's Network Integrity Team** on Phone Number 1800810443.

nil



Attachment 1 – Transport for NSW**Transport for NSW**

15 September 2025

TfNSW reference: STH25/00353/002
Your reference: DA 68/2025 - CNR-86265 - A-106814

Upper Lachlan Shire Council
By Email: kgranger@upperlachlan.nsw.gov.au
CC: council@upplachlan.nsw.gov.au

Attention: Karrine Granger

DA 68/2025 – 21 Lot Subdivision – LOT: 1 DP: 1311613 – 2603 Cullerin Road GUNNING

Dear Karrine

Transport for NSW (TfNSW) is responding to the DA 68/2025 referred on 2 September 2025.

TfNSW has reviewed the information and has **no objections** to the proposed development. Comment on the development is set out in Attachment 1.

TfNSW notes that in determining the application under Part 4 of the *Environmental Planning & Assessment Act 1979* it is the consent authority's responsibility to consider the environmental impacts of any road works that are ancillary to the development (such as removal of trees, relocation of utilities, stormwater management, etc). Depending on the nature of the works, the Council may require the developer to submit a further environmental assessment for any ancillary road works.

On Council's determination of this matter, please forward a copy of the Notice of Determination to TfNSW. If you have any questions, please contact Liliانا Hutchinson Development Services Case Officer, on 9595 5038 or email development.south@transport.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to read "Lachy Jones".

Lachy Jones
A Team Leader, Development Services

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Transport for NSW



Attachment 1

DA 68/2025 – 21 Lot Subdivision – LOT: 1 DP: 1311613 – 2603 Cullerin Road GUNNING

Context

TfNSW notes for this DA:

- The key state road is Hume Motorway,
- Cullerin Road is a regionally classified road under the management of Council,
- Council is seeking advice from TfNSW to assist in its assessment under s.2.119 of the SEPP (*Transport and Infrastructure*), 2021,
- The development proposes 21 Lot Subdivision with 21 residential lots and a new access road to Cullerin Road, as generally shown in **Attachment 2**,
- The existing access to the subject allotment (Lot1 / DP1311613) services the residential property at 2605 Cullerin Road (Lot 2 / DP1311613) and the farm located at the address 2603 Cullerin Road but on a different allotment (Lot 210 / DP754118). Additionally, an access has been proposed for a residential development for Lot:1 DP:634719. All lots in proximity to this proposal are shown in **Attachment 3**,
- Information regarding right of carriage for any of the above properties has not been provided.

Additional comments

TfNSW has reviewed the supporting information and have identified the following area that should be considered to achieve better outcomes for the road network.

The proposed development includes the construction of a new road connection to Cullerin Road with an internal loop road designed to provide access to 21 residential lots. The current design of the proposed subdivision road restricts opportunities for future connectivity to adjoining lots.

TfNSW believes Council should consider the potential for improved connectivity between the development and adjoining lots (Lot 210/DP754118, 1/DP634719 and 2/DP1311613). Providing connectivity through these adjoining parcels would minimise the need for additional direct access points to the classified road network and support a more integrated and efficient local road system.

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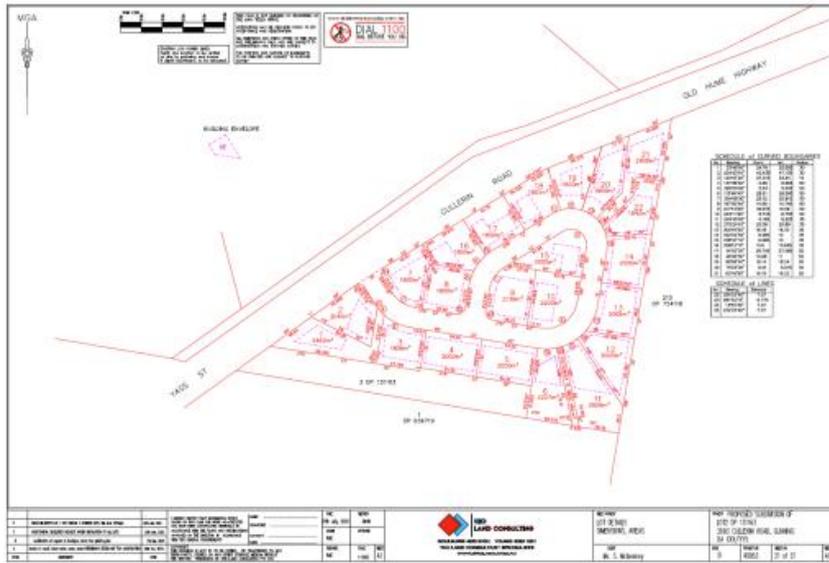
Transport for NSW



Attachment 2

DA 68/2025 – 21 Lot Subdivision – LOT: 1 DP: 1311613 – 2603 Cullerin Road GUNNING

Attachment 2: Site plan



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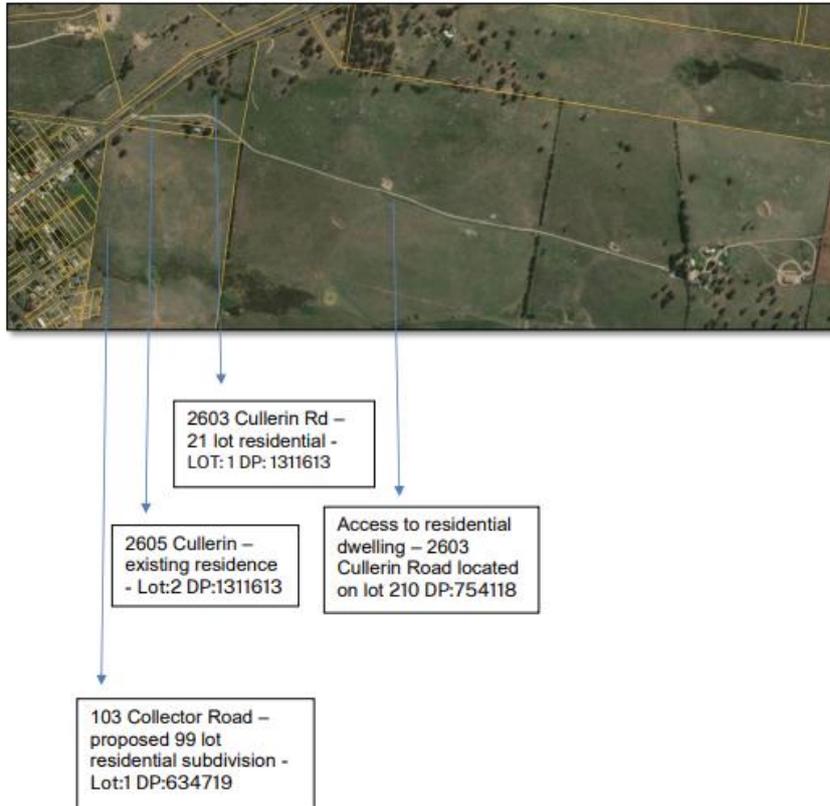
Transport for NSW



Attachment 3

DA 68/2025 – 21 Lot Subdivision – LOT: 1 DP: 1311613 – 2603 Cullerin Road GUNNING

Attachment 3: Access points for other residential dwellings



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