

# **DEVELOPMENT ASSESSMENT REPORT - DA088/21 - SUBDIVISION OF 1 LOT INTO 6 LOTS WITH NEW ROAD – LOT 3 DP1268778, 50 KIRKLEY STREET, SOUTH BOWENFELS**

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## **1. PROPOSAL**

Council is in receipt of development application DA088/21 by Peter Basha for a subdivision of 1 lot into 6 lots with a new road at Lot 3 DP 1268778, 50 Kirkley Street SOUTH BOWENFELS.

The proposal also involves sewer and stormwater works and the removal of two trees to facilitate the extension of Heritage Close.

The land is currently 12.56ha in size. The proposed lots will be:

- Lot 1 – 1.932ha
- Lot 2 – 1.714ha
- Lot 3 – 1.464ha
- Lot 4 – 1.327ha
- Lot 5 – 4.085ha
- Lot 6 – 1.62ha

Lot 1 to 5 will obtain access from an extension of Heritage Close, to be constructed as part of this development. Lot 6 will obtain access from a future extension of Kirkley Street (by others).

The proposed subdivision is to be staged as follows:

- Stage 1: Creation of 2 lots, being proposed Lot 6 and a residue lot (Lot 7) encompassing proposed Lots 1-5 in Stage 2.
- Stage 2: Creation of proposed Lots 1 to 5 as individual lots, including the construction of the extension of Heritage Close.

The applicant has proposed to enter into a voluntary planning agreement with Council to make contributions towards community facilities and a cycleway.

The applicant also proposes the following restrictions on the titles of the proposed lots:

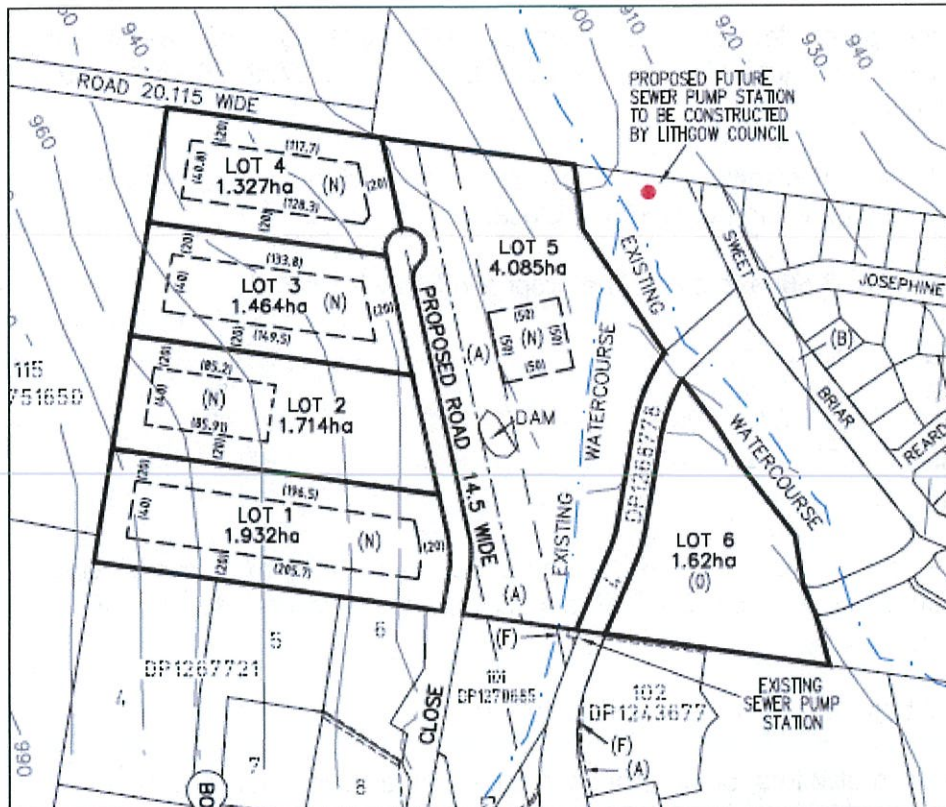
- Lots 1 to 5 – building envelope
- Lot 6 – no development unless access and services are provided

The proposed development is Integrated Development for the following reasons:

- Subdivision of bushfire prone land for residential purposes requires a Bushfire Safety Authority under the Rural Fires Act 1997, and
- Works within 40m of a watercourse (sewer works) requires a Controlled Activity Approval under the Water Management Act 2000.

The subject land already has development consent (DA335/05) for urban scale subdivision into 48 residential lots, as part of a larger development including land to the east. However, given the steep nature of the western part of the subject land, the applicant has decided to forego implementing that approval in favour of a more rural residential scale subdivision.

A plan of the proposed subdivision is provided below.



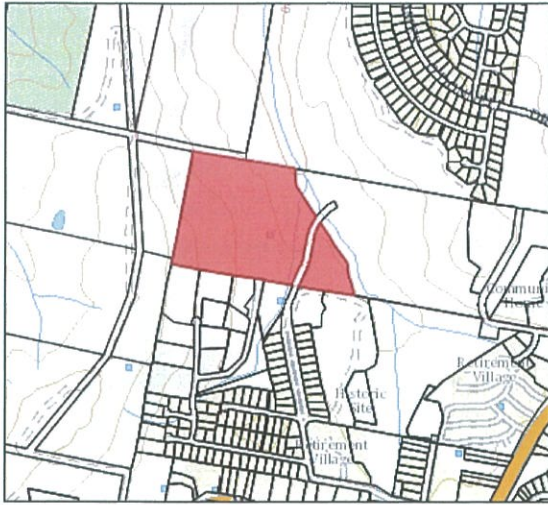
## 2. SUMMARY

To assess DA088/21 with recommendation for approval subject to conditions.

## 3. LOCATION OF THE PROPOSAL

Legal Description : Lot 3 DP 1268778  
Property Address : 50 Kirkley Street SOUTH BOWENFELS

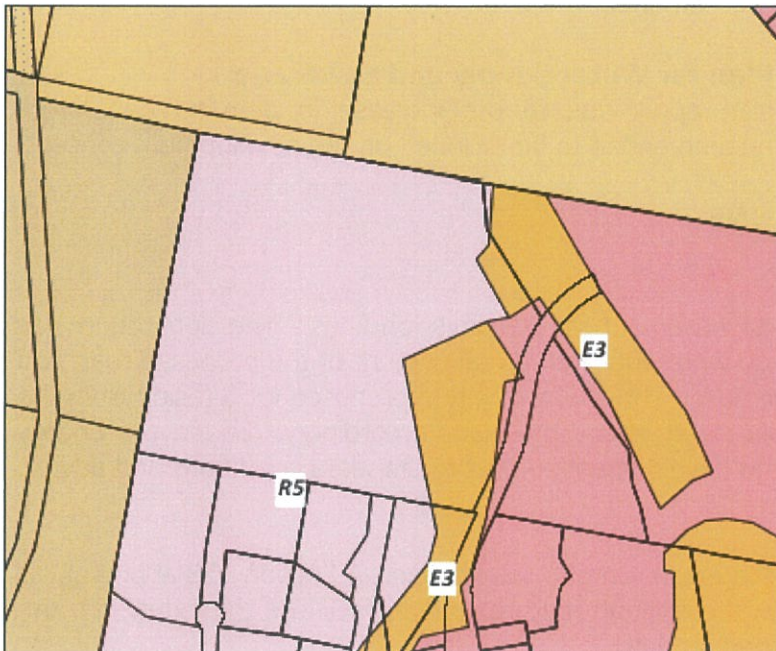
The location of the property is shown in the following map:



#### 4. ZONING

The land is zoned R5 Large Lot Residential, R2 Low Density Residential and E3 Environmental Management in accordance with the *Lithgow Local Environmental Plan 2014* (LEP).

The zoning of the land is shown in the following map:



#### 5. PERMISSIBILITY

The subdivision of land requires development consent under clause 2.6 of the *Lithgow Local Environmental Plan 2014* (LEP). A proposal for a subdivision must address the relevant LEP requirements for consent to be granted.

## **5.1 POLICY IMPLICATIONS (OTHER THAN DCPs)**

### **Lithgow Community Participation Plan**

The Lithgow Community Participation Plan applies to all land within the Lithgow Local Government Area (LGA) and prescribes certain types of development as exempt from requiring notification. The proposal is not exempt from requiring notification and therefore the development application was notified to adjoining landowners.

### **Policy 7.8 Voluntary Planning Agreements**

A voluntary planning agreement has been proposed by the applicant. The Council Policy requires draft planning agreements to be reported to Council for consideration and a resolution to place the draft agreement on public exhibition. The draft voluntary planning agreement has been prepared in accordance with the requirements of the Policy.

## **5.2 FINANCIAL IMPLICATIONS**

### **Planning Agreement**

The applicant has proposed to enter into a voluntary planning agreement to:

- Make a \$6,400 monetary contribution per lot for community facilities and
- Make a \$27,500 contribution towards continuation of a cycleway.

The proposed contributions are consistent with what Council has previously accepted through voluntary planning agreements.

### **Development Servicing Plan for Water Supply and Sewerage**

Contributions under this plan apply due to the increase in demand generated. Appropriate conditions are recommended to be included on the development consent.

## **5.3 LEGAL IMPLICATIONS**

### ***Conveyancing Act 1919***

The subject land contains an easement for transmission lines. The application was referred to Endeavour Energy who requested a realignment of the proposed road and lot boundaries to ensure the easement is wholly within proposed lot 5 (aside from the cul-de-sac head). The applicant amended the plans accordingly. Endeavour Energy has raised no objection to the development subject to standard conditions and advice.

### ***Roads Act 1993***

The development includes the extension of a public road. A Section 138 approval will be required for works within the existing road reserve to facilitate the extension. An appropriate condition is recommended.

### ***Rural Fires Act 1997***

The proposed development is subdivision of bushfire prone land for residential purposes and therefore is integrated development. The application was referred to the NSW Rural Fire Service who have issued General Terms of Approval and a Bushfire Safety Authority under the Rural Fires Act 1997. The General Terms of Approval have been incorporated into Schedule A.

### ***Telecommunications Act 1997***

As a subdivision of land for residential purposes, standard conditions requiring connection of lots to telecommunication facilities is recommended.

**Water Management Act 2000**

The proposed development involves works within 40m of the watercourse traversing the site, in the form of sewer upgrades, for which a Controlled Activity Approval is required. The application was referred to the Natural Resources Access Regulator who provided General Terms of Approval for the development. These have been incorporated into the recommended conditions of development consent.

**Biodiversity Conservation Act 2016**

The subject land is cleared of native vegetation and no clearing of native vegetation is required to facilitate the subdivision or future residential development. The land is not mapped on the Biodiversity Values Map.

**Environmental Planning and Assessment Act 1979**

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

5.3.1 Any Environmental Planning Instruments

**Lithgow Local Environmental Plan 2014**

LEP 2014 – Compliance Check		
Clause		Compliance
<b>Land Use table</b>	R2 Low Density Residential	Yes
<b>Land Use table</b>	R5 Large Lot Residential	Yes
<b>Land Use table</b>	E3 Environmental Management	Yes
<b>4.1</b>	Minimum subdivision lot size	Yes
<b>7.1</b>	Earthworks	Yes
<b>7.3</b>	Stormwater management	Yes
<b>7.4</b>	Terrestrial biodiversity	Yes
<b>7.6</b>	Riparian land and watercourses	Yes
<b>7.7</b>	Sensitive lands	Yes
<b>7.10</b>	Essential Services	Yes

The objectives of the **R5 Large Lot Residential Zone** are as follows:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To limit development to areas in reasonable proximity to the settled town centres of Lithgow, Wallerawang and Portland to strengthen settlement hierarchy.*
- *To maintain or improve the water quality of receiving water catchments.*

**Comment** – The proposed subdivision of the R5 zoned land provides residential housing opportunities in a partly rural setting, without hindering the orderly

development of urban areas or unreasonably increasing the demand for public services or facilities. The large size of the proposed lots will ensure any potential land use conflicts are minimised. The land is in close proximity to the Lithgow town centre. The proposal has been assessed as being able to achieve a neutral or beneficial impact on water quality.

The objectives of the **R2 Low Density Residential Zone** are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain or improve the water quality of receiving water catchments.*

**Comment** – The proposed subdivision of the majority of the R2 Low Density zoned land provides a single lot that will be capable of further subdivision to provide for additional low density housing opportunities. The proposal has been assessed as being able to achieve a neutral or beneficial impact on water quality and any future development application for further subdivision of this lot will also be assessed in relation to its potential impact on water quality.

The objectives of the **E3 Environmental Management Zone** are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To facilitate the management of environmentally sensitive lands and riparian areas.*
- *To protect and conserve the vegetation and escarpment landscape surrounding Lithgow.*
- *To maintain or improve the water quality of receiving water catchments.*

**Comment** – The proposed subdivision creates a lot that includes all of the E3 zoned part of the site within one lot along with an area of R5 zoned land for a dwelling opportunity. The E3 part of the lot contains the whole length of the watercourse traversing the subject land to avoid crossings and minimise impacts. The proposal has been assessed as being able to achieve a neutral or beneficial impact on water quality.

The proposal is considered to be consistent with the objectives of the R5, R2 and E3 zones.

**Clause 4.1 Minimum Lot Size** – Clause 4.1 states as follows:

**4.1 Minimum subdivision lot size**

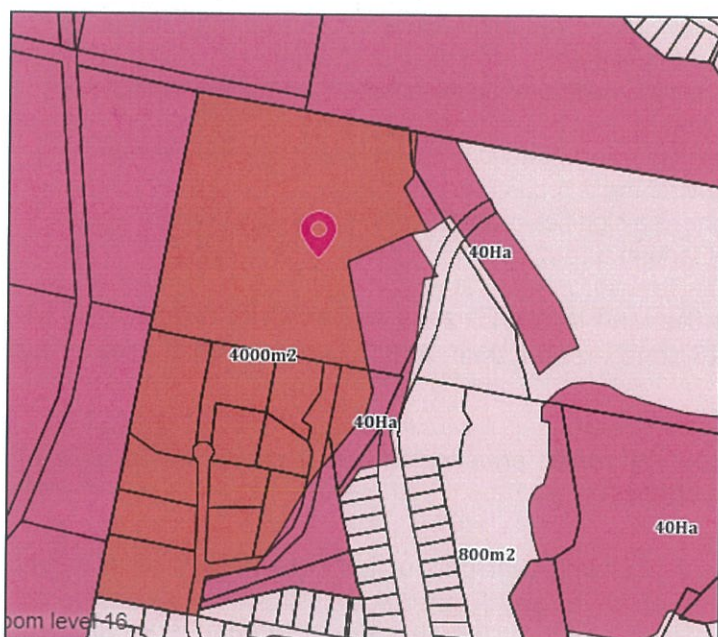
(1) The objectives of this clause are as follows:

- (a) to minimise the cost to the community of:
  - (i) fragmented and isolated development of rural land, and
  - (ii) providing, extending and maintaining public amenities and services,
- (b) to ensure that the character and landscape setting of an area is protected and enhanced by any development,
- (c) to promote development on appropriately sized lots and to ensure access to available essential services.

(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.

The subject land has a mix of lot sizes, as shown on the following map:



**Clause 4.1B Minimum subdivision lot size for certain split zones** – Clause 4.1B states as follows:

**4.1B Minimum subdivision lot size for certain split zones**

- (1) The objectives of this clause are as follows:
  - (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1, 4.1AA or 4.2C,
  - (b) to ensure that the subdivision occurs in a manner that promotes sustainable land uses and development.
- (2) This clause applies to any lot (an original lot) that contains:
  - (a) land in Zone RU5 Village or in a residential, business or industrial zone, and
  - (b) land in a rural zone or environment protection zone.
- (3) Development consent may be granted to the subdivision of an original lot to create other lots if:
  - (a) one of the resulting lots will contain:
    - (i) all of the land of the original lot that is in a rural zone or environment protection zone, and
    - (ii) land in Zone RU5 Village, or in a residential, business or industrial zone, that has an area not less than the minimum size shown on the Lot Size Map in relation to that land, and
  - (b) each of the other resulting lots will have an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

(4) Development consent may be granted to the subdivision of an original lot to create another lot that:

- (a) contains land in an environment protection zone, and
- (b) is less than the minimum size shown on the Lot Size Map in relation to that land,  
but only if the consent authority is satisfied that the resulting lot will be used for a public purpose.

(5) Subclauses (3) and (4) have effect despite clauses 4.1, 4.1AA and 4.2C.

(7) Development consent may only be granted under this clause if the consent authority is satisfied that the subdivision:

- (a) is not likely to have a significant adverse impact on the environmental values of the land, and
- (b) will not compromise the continued protection or long-term maintenance of any land in an environment protection zone, and
- (c) is not likely to have a significant adverse impact on the primary production value of land in a rural zone.

The proposal provides for all of the land in the E3 zone to be within one lot (Lot 5). Lot 5 also contains an area of R5 zone greater than 4000m<sup>2</sup>, plus a small area of R2 zoned land.

Lots 1 to 4 are wholly within the R5 zoned area which has a minimum lot size of 4000m<sup>2</sup>. Each lot is larger than 4000m<sup>2</sup>.

It is important to note that Lots 1 to 4 and that part of Lot 5 in the R5 zone would have further subdivision potential, however any further subdivision is not considered appropriate, given the steep nature of the land. It is therefore intended to amend the minimum lot size for the R5 part of the subject land to prevent further subdivision. In the meantime, a condition requiring a restriction to be placed on the title of Lots 1 to 5 to prevent further subdivision is proposed (with the exception of subdivision for a public purpose or a minor boundary adjustment).

In addition, a small part of Lot 5 in the R2 zone would have further subdivision potential. However, given the proximity of this part of the lot to the watercourse, further development is not appropriate. The abovementioned restriction on title would prevent any further subdivision of this land.

Lot 6 is wholly within the R2 zoned area which has a minimum lot size of 800m<sup>2</sup>. This lot is larger than 800m<sup>2</sup>. Further subdivision of this lot is achievable and would be the subject of a future development application. However, such subdivision (or any development of the land) is not appropriate until such time as the extension of Kirkley Street is constructed. A condition requiring a restriction to be placed on the title of Lot 6 to prevent development or further subdivision until Kirkley Street is constructed is proposed (with the exception of subdivision for a public purpose or a minor boundary adjustment).

The proposal complies with clause 4.1B.

**Clause 7.1 Earthworks** – Earthworks for the construction of the Heritage Close extension is proposed. The extent of earthworks ranges from up to 1.2m of fill and up to 2.3m of cut. The cut and fill will be battered into the proposed lots adjoining



the road extension. Earthworks for the sewer upgrade works is also proposed. The extent of earthworks for the proposed development is relatively minor and is considered unlikely to disrupt drainage patterns or soil stability. The earthworks facilitate a suitable rural-residential development of the land. Standard conditions relating to the potential disturbance of relics are proposed.

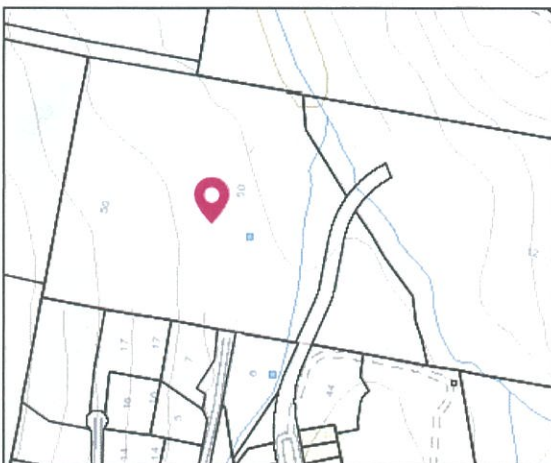
**Clause 7.3 Stormwater Management** – Stormwater from proposed lots 1 to 4 will be directed to the proposed road extension and piped under the road at various points, then directed via a bio-retention swale and overland flow over proposed lot 5 towards the watercourse.

**Clause 7.4 Terrestrial Biodiversity** – A small portion of the property is identified as containing terrestrial biodiversity as shown in the map below.



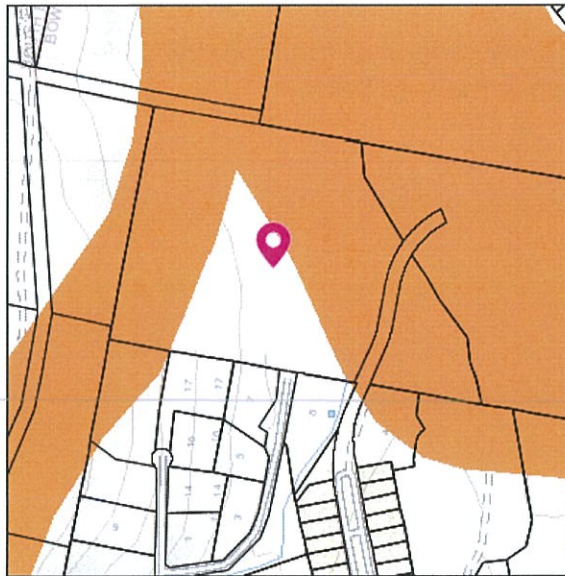
The proposed subdivision identifies the area of terrestrial biodiversity within lot 5. A building envelope is nominated away from the mapped area. The proposal therefore does not require any removal of mapped high value vegetation and will not have a direct or indirect impact on biodiversity. Two trees in the location of the extension of Heritage Close will be removed. The removal of these trees will have no significant impact on biodiversity.

**Clause 7.6 Riparian Land and Watercourses** – The subject land is crossed by a watercourse as shown on the map below:



The proposed extension of Heritage Close is not within 40m of the watercourse that traverses the land. Works to extend the sewer line are located within 40m of the watercourse. The application was referred to the Natural Resources Access Regulator who provided General Terms of Approval for the development. These have been incorporated into the recommended conditions of development consent.

**Clause 7.7 Sensitive Lands** – The subject land is mapped as containing sensitive lands, as shown on the map below:



The land is mapped as sensitive due to agricultural capability class 6 (suitable for grazing with no cultivation). As the land has been zoned for residential purposes, this is not a relevant factor. The proposal is unlikely to have detrimental impact on sensitive lands.

**Clause 7.10 Essential Services** – Proposed lots 1 to 5 will be connected to reticulated water supply. Proposed lots 1 to 4 will also be connected to reticulated sewer services, with proposed lot 5 to have on-site effluent management. Services to proposed lot 6 will be addressed as part of any future development application for that land.

The proposal is consistent with the Lithgow LEP 2014.

***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

Chapter 4 of this SEPP relates to koala habitat protection and applies to land greater than 1ha in size. The subject land is over 5ha in size. Two paddock trees are required to be removed to facilitate the extension of Heritage Close, with no other native vegetation removal required. The land is not considered to be potential or core koala habitat. No further assessment under this SEPP is therefore required.

Chapter 8 of this SEPP relates to the Sydney drinking water catchment. The application was referred to Water NSW for assessment. Water NSW have advised that the development can achieve a neutral or beneficial effect on water quality subject to conditions. The recommended conditions have been included in Schedule A.

**State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4 of this SEPP relates to remediation of contaminated land. The subject land has a history of rural use, being grazing of cattle. Potential land contamination was assessed as part of this application, and the land is considered to be suitable for the proposed use without remediation.

**State Environmental Planning Policy (Transport and Infrastructure) 2021**

SEPP (Infrastructure) 2007 – Compliance Check		
Division 5 Electricity transmission or distribution Subdivision 2 Development likely to affect an electricity transmission or distribution network		
<b>2.48</b>	Determination of development applications—other development	Yes

The application was referred to Endeavour Energy who requested a realignment of the proposed road and lot boundaries to ensure the easement is wholly within proposed lot 5 (aside from the cul-de-sac head). The applicant amended the plans accordingly. Endeavour Energy has raised no objection to the development subject to standard conditions and advice.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

5.3.3 Any Development Control Plan

Development Control	Assessment Comments
<b>Chapter 2 – Site Requirements</b>	
<b>2.2 Site Analysis, Local Character &amp; Context</b>	
2.2.1 Site Selection	The subject site is appropriate for the proposed development given its zoning, minimum lot size and environmental features.
2.2.2 Site Analysis & Development Response	The proposed subdivision has appropriately considered the slope of the land and the location of a watercourse in the lot layout.
2.2.3 Local Character & Context	The proposed development is appropriate having regard to the character of the land, providing a suitable transition between urban development and rural land.
2.2.4 Visually Prominent Sites	The subject land is partly visually prominent. That part of the site is proposed to have large lots over 1ha in size, representing a significantly

	lower density than the previous subdivision approval for the land. There is adequate room on each lot for the location of dwellings. Further assessment of this matter will be undertaken with DAs for dwellings on those lots.
2.2.5 Reflective Materials	N/A
<b>2.3 Slope Response &amp; Earthworks</b>	
2.3.1 Earthworks	Earthworks associated with the development consists primarily of works associated with the extension of Heritage Close. Given the proposed road follows the contours, earthworks are minimised.
2.3.2 Retaining Walls	N/A
<b>2.4 Stormwater Management</b>	Stormwater from proposed lots 1 to 4 will be directed to the proposed road extension and piped under the road at various points, then directed via a bio-retention swale and overland flow over proposed lot 5 towards the watercourse.
<b>2.5 Vehicle Access &amp; Parking</b>	Access to Lots 1 to 5 will be achieved by the extension of Heritage Close. Lot 6 will have access to an extension of Kirkley Street that is yet to be constructed. As such a restriction on title will be required to prevent any development or further subdivision of the lot until the extension of Kirkley Street is constructed.
<b>2.6 Pedestrian Access, Mobility &amp; Safety</b>	
2.6.1 Accessibility	N/A
2.6.2 Pedestrians	N/A
2.6.3 Street Numbering & Letterboxes	A condition relating to street addressing is included in Schedule A.
<b>2.7 Design for Crime Prevention</b>	
2.7.1 Crime Risk Assessment	The DCP requires a Crime Risk Assessment for subdivisions creating more than 4 lots or extending a public road by more than 50m, unless in the opinion of Council it is considered unwarranted. While the proposal satisfies both of these criteria, a

	formal crime risk assessment is not considered warranted for the development. The proposed subdivision is a logical extension of the residential area creating larger lots suitable to the terrain. The road and lot layout will facilitate natural surveillance of public areas and provide a clear separation between public and private space. Being a cul-de-sac with a relatively small number of lots fronting it, territorial reinforcement of the public land (the road) is likely to be high.
<b>2.8 Utilities, Easements &amp; Infrastructure</b>	
2.8.1 Connection to Utilities	All lots will be connected to appropriate utilities. Conditions relating to connection to utilities are included in Schedule A.
2.8.2 Building Near Utilities/Easements/Drainage Lines	The site is traversed by an electricity easement and a watercourse. The road and lot layout is suitable having regard to these features of the land.
2.8.3 On-Site Sewage Management	N/A
2.8.4 Liquid Trade Waste	N/A
2.8.5 Re-Use of Waste Water	N/A
2.8.6 Water Supply	N/A - The lots will be connected to the reticulated water supply.
<b>2.9 Solid Waste Management</b>	N/A
<b>2.10 Amenity/Buffers for Sensitive Uses</b>	
2.10.1 Noise & Vibration	The subject land is not located near a significant noise source and will not generate noise or vibration concerns.
2.10.2 Air Emissions, Odour & Dust	The proposal will not generate air emissions or odour and dust during construction will be controlled through a condition of consent.
2.10.3 Buffers to Sensitive Land Uses	The land adjoins land zoned RU2 Rural Landscape that is identified as suitable for grazing with no cultivation. It is unlikely that the land will be used for a high impact agricultural land use for which buffers may be required.

2.10.4 Buffers & Landscaping	The large size of the lots in the R5 zone provide suitable opportunity for landscaped buffers to adjoining land if required.
2.10.5 Agriculture & Right to Farm	The proposal is not considered to impact on the right to farm for adjoining rural land.
<b>2.11 Water &amp; Energy Efficiency</b>	N/A

<b>Development Control</b>	<b>Assessment Comments</b>
<b>Chapter 3 – Natural Environment &amp; Hazards</b>	
<b>3.2 Bush Fire Prone Land</b>	The subject land is bush fire prone. The application was referred to the NSW RFS who have provided General Terms of Approval.
<b>3.3 Biodiversity &amp; Vegetation Clearing</b>	The subject land is cleared of native vegetation and no removal of vegetation is required to facilitate the proposed subdivision or any future dwellings on the land.
<b>3.4 Land &amp; Soils</b>	The land is mapped as sensitive due to agricultural capability class 6 (suitable for grazing with no cultivation). As the land has been zoned for residential purposes, this is not a relevant factor. The proposal is unlikely to have detrimental impact on the land and soils.
<b>3.5 Flood Prone Land</b>	N/A
<b>3.6 Ground &amp; Surface Water Protection</b>	The application was referred to Water NSW for assessment. Water NSW have advised that the development can achieve a neutral or beneficial effect on water quality subject to conditions. The recommended conditions have been included in Schedule A.
<b>3.7 Mine Subsidence Risk</b>	N/A

Development Control	Assessment Comments
<b>Chapter 5 – Subdivision, Consolidation, Boundary Adjustments &amp; Roads</b>	
<b>5.2 Site Selection, Analysis &amp; Design Response</b>	
5.2.1 Site Analysis & Potential Land Use Conflicts	The subject site is appropriate for the proposed development given its zoning, minimum lot size and environmental features. No land use conflicts are anticipated.
5.2.2 Water, Natural Environment and Hazards	The subdivision layout has appropriately considered stormwater management, watercourses, vegetation, hazards and slope.
5.2.3 Lot Sizes, Dimensions & Suitability	The proposed subdivision has appropriately considered the slope of the land and the location of a watercourse in the lot layout. The lots are of suitable size and dimensions.
5.2.4 Access & Entrances	All lots will have frontage to a public road.
5.2.5 Utilities/ Easements	All lots will be connected to appropriate utilities. Conditions relating to connection to utilities are included in Schedule A.
5.2.6 Siting and Visibility of Utilities	The proposal can comply with the DCP requirements for efficient and low-scale utility infrastructure.
5.2.6 Staging	The subdivision is proposed to be staged and the staging plan will ensure no impact on the ultimate development.
<b>5.4 Urban Release Areas &amp; South Bowenfels</b>	
5.4.1 Corner Lots	No corner lots are proposed.
5.4.2 Battle-Axe Lots	No battle-axe lots are proposed.
5.4.3 Public Open Space & Facilities	N/A
<b>5.5 Large Lot Rural &amp; Residential Subdivision</b>	
5.5.1 Access & Road Design	The proposal provide appropriate access to Lots 1 to 5 via an extension of Heritage Close. The road design is considered acceptable.

5.5.2 Access to Lots with Limited or No Road Frontage	N/A
5.5.3 Lots for the Purpose of Agriculture	N/A
<b>5.7 New or Upgraded Public Roads</b>	
5.7.1 Engineering Guidelines	The proposal can comply with Council's Engineering Design Guidelines.
5.7.2 Surrounding Road Patterns & Access	The proposed subdivision effectively integrates with the existing road network.
5.7.3 Road Hierarchy & Design	<p>The proposal involves the extension of an existing cul-de-sac road providing ease of navigation, but limited connectivity. There is no alternative to the proposed cul-de-sac extension for the form of development proposed.</p> <p>The proposal adds a small number of lots which will have no significant impact in terms of traffic generation.</p>
5.7.4 Terminating Roads (Cul-de-sacs)	<p>This section of the DCP applies to urban areas. The subject land is zoned R5 with a MLS of 4000m<sup>2</sup> and will have urban services, however the proposed development is more rural-residential in nature. The DCP requires urban cul-de-sacs to be limited to locations where there is no alternative, serve no more than 25 lots and be no longer than 150m from the nearest intersection.</p> <p>Heritage Close is a cul-de-sac that currently serves 4 lots and is approximately 270m in length. With the proposed extension, the road will serve 9 lots and will be approximately 650m in length.</p> <p>There is no alternative to the proposed cul-de-sac extension for the form of development proposed.</p> <p>The application was referred to the RFS who have provided General Terms of Approval, raising no concerns with the length of the cul-de-sac road for evacuation purposes.</p> <p>The proposal is considered acceptable despite non-compliance with the length of cul-de-sac requirement.</p>



5.7.5 Crown Roads	N/A
5.7.6 Safety and Surveillance	The proposed subdivision is a logical extension of the residential area creating larger lots suitable to the terrain. The road and lot layout will facilitate natural surveillance of public areas and provide a clear separation between public and private space. Being a cul-de-sac with a relatively small number of lots fronting it, territorial reinforcement of the public land (the road) is likely to be high.
5.7.7 Public Domain Landscaping & Street Trees	An appropriate condition for street tree planting is recommended.
5.7.8 Naming of New Roads	N/A

5.3.4 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?

A draft Voluntary Planning Agreement (VPA) has been proposed by the developer in relation to this proposal. The developer has agreed to make a contribution of \$6,400 per lot to go toward community facilities and a contribution of \$27,500 for continuation of a cycleway.

5.3.5 Any matters prescribed by the regulations that apply to the land

Nil

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

**Adjoining Landuse:** The subject land is located at the edge of the urban/rural land in South Bowenfels. The proposal represents an appropriate transition between urban and rural areas and will cause no land use conflicts.

**Services:** Proposed lots 1 to 5 will be connected to reticulated water supply. Proposed lots 1 to 4 will also be connected to reticulated sewer services, with proposed lot 5 to have on-site effluent management. Services to proposed lot 6 will be addressed as part of any future development application for that land.

**Context and Setting:** The proposed development will be located adjoining an established residential area and will have no major impact on the context and setting of the area. The development has been designed to have minimal impacts on adjoining land.

**Access:** Access to proposed lots 1 to 5 is provided by the extension of Heritage Close. Lot 6 will have access to an extension of Kirkley Street that is yet to be constructed. As such a restriction on title will be required to prevent any development or further subdivision of the lot until the extension of Kirkley Street is constructed.

**Heritage:** There are no heritage items on or in the vicinity of the land.

**Flora and Fauna:** Two trees in the location of the extension of Heritage Close will be removed. The removal of these trees will have no significant impact on flora and fauna.

**Social and Economic Impact:** As the proposed development will be generally in keeping with the provisions of the planning instrument and is reasonably compatible with other similar development in the locality, it is expected a generally positive social and economic impact will result.

**Soils:** The proposed development involves relatively minimal earthworks to facilitate the new road extension. The land is not considered to be contaminated and is suitable for the proposed use. Standard conditions regarding sediment and erosion control are recommended.

**Water:** The application was referred to Water NSW for assessment. Water NSW have advised that the development can achieve a neutral or beneficial effect on water quality subject to conditions. The recommended conditions have been included in Schedule A.

**Air and Microclimate:** The proposal is unlikely to have a significant impact on air quality or the microclimate. A condition relating to dust suppression during construction is recommended.

**Natural Hazards:** The subject land is bush fire prone as shown in the map below. The application was referred to the NSW RFS who have provided General Terms of Approval.



**Noise and Vibration:** The subject land is not located near a significant noise source and will not generate noise or vibration concerns

### 5.3.7 The Suitability of the site for the development

The surrounding land uses are for residential pursuits with the size and nature of the development consistent with those in the surrounding area. The development will have minimal impact to the surrounding amenity. The proposed development complies with the objectives of the zone and the site is considered to be suitable for the proposal.

#### 5.3.8 Any submissions made in accordance with this Act or the Regulations

##### **NSW Rural Fire Service**

The NSW Rural Fire Service has reviewed the proposal and has issued General Terms of Approval which are included in Schedule A.

##### **Water NSW**

The application was referred to Water NSW for assessment. Water NSW have advised that the development can achieve a neutral or beneficial effect on water quality subject to conditions. The recommended conditions have been included in Schedule A.

##### **Natural Resources Access Regulator**

The Natural Resources Access Regulator has reviewed the proposal and has issued General Terms of Approval which are included in Schedule A.

##### **Endeavour Energy**

Endeavour Energy provides their standards conditions and advice regarding development near electricity easements. Specifically Endeavour Energy recommended a slight realignment of the proposed road to avoid any part of the easements being within Lots 1 to 4. The applicant amended the plans to address this requirement. All of Endeavour Energy's advice has been provided to the applicant under separate cover and will be provided as an attachment to Schedule A.

##### **Council's Engineering Officer**

Council's Engineering Officer has assessed the proposal and recommended conditions of consent, included in Schedule A.

##### **Council's Water and Wastewater Officer**

Council's Water and Wastewater Officer has assessed the proposal and recommended conditions of consent, included in Schedule A.

#### **PUBLIC SUBMISSIONS**

One submission was received to the notification of the development application. The submission notes the extension of Heritage Close and seeks Council approval to landscape an existing irregular shaped road frontage.

**Comment** – The submission does not raise any issues directly related to the proposed development. A response in relation to the landscaping of the road frontage has been provided separately to the submitter.

#### 5.3.9 The public interest

The public interest is best served by the orderly and economic use of land for permissible uses and that does not impact unreasonably on the use and development of surrounding land. The provision of additional residential land in a manner that minimises environmental impacts is considered to be in the public interest.

## 6. DISCUSSION AND CONCLUSIONS

The proposal is considered to generally comply with the relevant provisions of the applicable Environmental Planning Instruments. The proposal is not considered likely to have any significant negative impacts upon the environment or upon the amenity of the locality. As such it is recommended that development consent is issued subject to the conditions outlined below.

## 7. ATTACHMENTS

Schedule A- Conditions of consent.

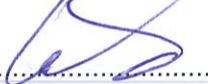
## 8. RECOMMENDATION

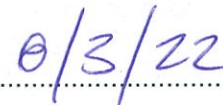
**THAT** development application DA088/21 is approved subject to conditions set out in Schedule A.


Report prepared by: Mark Hitchenson

Supervisor: Lachlan Sims

Signed: 

Signed: 

Dated: 

Dated: 

### REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.
- To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure lots are adequately serviced.
- To ensure there is no unacceptable impact on the water quality.
- To ensure compliance with the requirements of the Rural Fire Services.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

## Schedule A

### Conditions of Consent (Consent Authority) and General Terms of Approval (NSW Rural Fire Service and Natural Resources Access Regulator)

#### ADMINISTRATIVE CONDITIONS

- The development is to be carried out in accordance with the application, Statement of Environmental Effects, accompanying information and plans listed below and any further information provided during the process unless otherwise amended by the following conditions.

The plans and documents approved as part of this application include:

Plan No.	Plan Name	Rev	Date
13031DA Sheet 1 of 10	Locality Plan		30.08.2021
13031DA Sheet 4a of 10	Proposed Subdivision Overall		30.08.2021
13031DA Sheet 4b of 10	Proposed Subdivision – Stage 1		30.08.2021
13031DA Sheet 4c of 10	Proposed Subdivision – Stage 2		30.08.2021
2020.1480 G01	Cover Sheet	G	24.02.2022
2020.1480 G02	Legend and General Notes	G	24.02.2022
2020.1480 G03	Construction Details	G	24.02.2022
2020.1480 ES01 to ES02	Erosion and Sediment Control Plan and Details	G	24.02.2022
2020.1480 R01 to R06 and K01	Heritage Close Extension Plans, Longsections and Cross Sections	G	24.02.2022
2020.1480 SW01 to SW10	Stormwater Long Section, Catchment Plan, Calculations, Data and Results	G	24.02.2022
2021.1480 SS01 to SS05	Sewer Layout Plan and Long Sections	G	24.02.2022
2021.1480 D01 to D02	Driveway Crossovers	G	24.02.2022
2021.1480 T01	Tree Removal Plan	G	24.02.2022
QU-0422	Vegetation Management Plan	V3	09.02.2021
2020.1480 RC1	Riparian Corridor Plan	E	18.11.2021
	Stormwater Management Report		February 2022

## **Rural Fire Service Conditions – General Terms of Approval**

### **2. Asset Protection Zones**

All lots (except for the Vegetated Riparian Zones as shown in figure 4-1 of the Vegetation Management Plan prepared by AREA Environmental Consultants & Communication Pty Ltd, dated 9/02/2021) must be entirely managed in perpetuity as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA, the following requirements apply:

- Tree canopy cover be less than 15% at maturity;
- Trees at maturity are not touching or overhang the building;
- Lower limbs are removed up to a height of 2m above the ground;
- Tree canopies are separated by 2 to 5m;
- Preference is given to smooth-barked and evergreen trees;
- Large discontinuities or gaps in vegetation are provided to slow down or break the progress of fire towards buildings;
- Shrubs are not located under trees;
- Shrubs do not form more than 10% of ground cover;
- Clumps of shrubs are separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- Grass to be kept mown (as a guide grass should be kept to no more than 100mm in height);
- Leaves and vegetation debris are removed; and
- NSW Rural Fire Service's document Standards for asset protection zones.

### **3. Construction Standards**

Any new Class 10b structures as defined per the National Construction Code must be non-combustible.

### **4. Access – Public Roads**

Access roads must comply with the following requirements of Table 5.3b of Planning for Bush Fire Protection 2019:

- Traffic management devices are constructed to not prohibit access by emergency services vehicles;
- maximum grades for sealed roads do not exceed 15 degrees and an average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient;
- The proposed cul-de-sac must be a minimum 12 metres outer radius turning circle, and are clearly signposted as a dead end;
- the capacity of perimeter and non-perimeter road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges/causeways are to clearly indicate load rating.
- hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression;
- hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 for fire hydrant installations System design, installation and commissioning;
- minimum 5.5m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;

- hydrants are located clear of parking areas;
- curves of roads have a minimum inner radius of 6m;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches.

## 5. **Water and Utility Services**

The provision of water, electricity and gas must comply with Table 5.3c of Planning for Bush Fire Protection 2019.

## **Natural Resources Access Regulator Conditions – General Terms of Approval**

6. The attached GTA issued by NRAR do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to NRAR for a Controlled Activity approval after consent has been issued by Council and before the commencement of any work or activity. A completed application must be submitted to NRAR together with any required plans, documents, application fee and proof of Council's development consent. Finalisation of an approval can take up to eight (8) weeks from the date the application and all required supporting documentation is received.

## **Water NSW Conditions**

### 7. **General**

The lot layout, works and staging of the subdivision shall be as specified in the Statement of Environmental Effects (Ref: DA3PJB13031, dated April 2021), shown on the Proposed Subdivision Plans (Ref: 13031DA Lot3; Figure 4a, 4b and 4c, dated 30.08.2021) prepared by Peter Basha Planning & Development and as amended on the Heritage Close Extension & Longsection Plans (Job No. 2020.1480, Dwg Nos. R01-R03, Issue G, dated 24/02/22) prepared by Calare Civil Pty Ltd. No revisions to lot layout, works or staging of the subdivision that will have any impact on water quality, shall be permitted without the agreement of Water NSW.

### 8. **Sewerage Infrastructure**

All lots of the subdivision shall be connected to council's reticulated sewerage system and shall ensure that:

- all new sewerage infrastructure is designed, located, and installed in accordance with Council's requirements and be to the satisfaction of Council, and
- the existing sewer main and sewerage treatment plant have sufficient hydraulic capacity to collect, transfer, accommodate and treat the additional wastewater load generated by the subdivision.

### 9. **Subdivision Road and Stormwater Management**

The subdivision road which provides access to Lots 1 to 5 shall be located and constructed in Stage 2 as shown on Heritage Close Extension & Longsection, and Construction Details Plans (Job No. 2020.1480, Dwg Nos. R01-R03, and G03, Issue G, dated 24/02/22) prepared by Calare Civil Pty Ltd. The subdivision road shall:

- be sealed and otherwise constructed in accordance with Council's engineering standards
- have runoff collected, as appropriate, via spaced cross drains, grassed swales, check dams, and a series of mitre drains and directed to a bioretention basin

- ensure all swales, mitre drains, batters and verges are vegetated and stabilised with bitumen and jute matting or equivalent as soon as possible after construction to provide efficient sediment trapping and energy dissipation
  - ensure all drainage works associated with the proposed subdivision road including the bioretention basin are wholly included in the road reserve or suitably defined easements.
10. For Stage 2- stormwater management measures as specified in Section 4 of the Stormwater Management Report prepared by CEH Survey (dated February 2022) and Heritage Close Extension Cross Sections and Stormwater Long Section Plans (Job No. 2020.1480, Dwg Nos. R02 and SW03, Issue G, dated 24/02/22) prepared by Calare Civil Pty Ltd shall be incorporated to a final stormwater drainage plan. The final stormwater drainage plan shall:
- be prepared in consultation with Water NSW prior to the issuance of a Construction Certificate for Stage 2 and approved by Council
  - include bioretention basin, roadside swales, culverts along the subdivision road, and
  - cross-section of bioretention basin and outlet details.
11. The bioretention basin shall also:
- be designed consistent with Adoption Guidelines for Stormwater Biofiltration Systems Version 2 (Payne et al, 2015, Melbourne, CRC for Water Sensitive Cities)
  - also incorporate the following:
    - an armoured inlet considering the slope of the subdivision road
    - a filter media consisting of a clean sandy loam with a certified median particle diameter of 0.5 mm, a maximum orthophosphate concentration of 40 mg/kg and
    - a maximum total nitrogen concentration of 400 mg/kg
  - be planted with appropriate deep-rooted, moisture-tolerant vegetation protected by rock mulch (grass and turf is not appropriate vegetation and organic mulch is not suitable)
  - direct all discharge and overflow to the tributary of Farmers Creek via an armoured discharge point such that discharge does not cause erosion
  - have appropriate easement for discharge and overflow to proposed Lot 5
  - be accessible from the subdivision road by machinery to facilitate cleaning, monitoring and maintenance of the structures
  - be constructed after all hardstand areas have been paved or sealed and all ground surfaces have been stabilised
  - be permanently protected from heavy vehicle damage by guardrails, castellated kerb, bollards, or similar structures, with a sign to be erected to advise of its nature and purpose in water quality management, and
  - be protected by sediment and erosion control measures during any construction and post-construction phase until the ground surface is re-vegetated or stabilised.
12. No changes to stormwater treatment and management that will have any impact on water quality, shall be permitted without the agreement of Water NSW.
13. A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council prior to the issuance of a Subdivision Certificate for Stage 2 of the subdivision that all stormwater management structures have been installed as per these conditions of consent and are in a functional state.
14. An Operational Environmental Management Plan (OEMP) shall be prepared in consultation with Water NSW and Council by a person with knowledge and experience in the preparation of such



plans. The OEMP shall be prepared prior to the issuance of a Subdivision Certificate for Stage 2 of the subdivision and may be updated from the OEMP for the previous stage. The OEMP shall:

- identify the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures, before and after handing over to Council, including the frequency of such activities
- identify the individuals or positions responsible for inspection and maintenance activities, before and after handing over to Council, including a reporting protocol and hierarchy
- identify detailed requirements and measures for the protection of bioretention basin from future construction works i.e. dwellings on future lots
- include checklists for recording inspections and maintenance activities, particularly for bioretention basin, and
- be provided to Council when the management and maintenance of the bioretention basin is handed over to Council.

15. All stormwater treatment devices shall be monitored, maintained, and managed as per the Operational Environmental Management Plan.

16. **Crossing over the Tributary of Farmers Creek**

The existing crossing across the tributary of Farmers Creek on proposed Lot 5 shall be upgraded in Stage 1 to prevent further erosion. The crossing shall:

- be properly engineered pipe or box culverts consistent with the Unsealed Roads Best Practice Guide (ARRB, March 2020)
- be sealed for appropriate distance either side of the waterway crossing, and
- also be consistent with any requirements for Controlled Activities Approval under the Water Management Act 2000 issued by the Natural Resources Access Regulator (NRAR).

17. **Protection and Rehabilitation of the tributary of Farmers Creek**

The existing unformed crossing over the tributary of Farmers Creek and its upstream on proposed Lot 5 shall be fenced to the southern lot boundary in continuation of existing fencing and rehabilitated upon the extension of Kirkley Street to Lot 6 is completed.

18. There shall be a public positive covenant on land under Section 88E of the Conveyancing Act 1919, the prescribed authority being the Water NSW, placed over proposed Lot 5 requiring that the existing and new fences around the tributary of Farmers Creek shall be retained and maintained.

19. **Construction Activities**

A Soil and Water Management Plan, based on the Erosion and Sediment Control Plan (Job No. 2020.1480, Dwg Nos. ES01 and ES02, Issue G, dated 24/02/22) prepared by Calare Civil Pty Ltd, shall be updated for all works required as part of each stage of the subdivision by a person with knowledge and experience in the preparation of such plans. The Plan shall:

- meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
- be prepared prior to the issuance of a Construction Certificate for that stage of the subdivision, and be to the satisfaction of Council, and
- include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.

20. The Soil and Water Management Plans shall be implemented, and no works shall commence until effective erosion and sediment controls have been installed for each stage of the subdivision. The controls shall be regularly inspected, maintained, and retained until works have been completed and groundcover established.

#### **CONDITIONS APPLYING PRIOR TO ISSUE OF SUBDIVISION WORKS CERTIFICATE**

21. Prior to the issue of any Subdivision Works Certificate, the Certifying Authority shall ensure that engineering plans are generally consistent with the submitted preliminary engineering plans prepared by Calare Civil Consulting Engineers, Job Number: 2020.1480, Revision F, Dated (08/02/2022), and that all subdivision works have been designed in accordance with the development consent, Council's "Guidelines for Civil Engineering Design and Construction for Development", Austroads Guidelines and best engineering practice.
22. Prior to the issue of any Subdivision Works Certificate, the Certifying Authority shall ensure that the existing cul-de-sac at end of Heritage Close has been removed for aesthetic and consistent design in Lithgow City Council local government areas.
23. Prior to the issue of any Subdivision Works Certificate, the Certifying Authority shall ensure that potential driveway slope for all proposed lots is able to meet a maximum 25% according to 2890.1.
24. The Subdivision Works Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.
25. Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the proposed road have been designed in accordance with Lithgow City Council's Guidelines for Civil Engineering Design and Construction for Development for Developments and the following criteria: ESA: 5×104  
A copy of the pavement design prepared and certified by a suitably qualified geotechnical engineer must accompany the application for Construction.
26. Stormwater Drainage plans shall submitted to Council as part of the Subdivision Works certificate, drawn at a scale sufficient to show all necessary details, nominally 1:200, 1:500, 1:1000 or 1:2000. The following data is to be included with a contoured catchment area plan:
- I. Catchment areas and sub-areas, watershed (catchment boundary), overland flow paths, existing and proposed pipe layout. For large catchments, the total catchment area should be shown at a large scale on a separate plan or inset.
  - II. All sub-areas, drainage lines and pits are to be logically numbered.
  - III. A schedule of pipe details, including pipe number, size, class, bedding type, joint type, invert levels at inlet and outlet, slope, and length.
  - IV. A schedule of pit details, including pit number, type, road chainage, surface level to the Australian Height Datum (AHD), invert level to AHD, depth, and lintel length.
  - V. North point and legend.
  - VI. Setout information.
  - VII. Accurate position and level of all services and utilities which cross underground drainage pipelines.
  - VIII. Identify those building allotments adjacent to channels and major storm flow paths which may be liable to flooding in major flood events, and the minimum design habitable floor level adjacent to prevent flooding in the design flood event.
  - IX. Inlet and outlet treatments.
  - X. Measures for the prevention of erosion and sedimentation.

## **CONDITIONS APPLYING PRIOR TO COMMENCEMENT OF CIVIL WORKS**

### **27. Subdivision Works Certificate**

Work on the subdivision shall not commence until:

- a Subdivision Works Certificate has been issued;
- a Principal Certifying Authority has been appointed for the project and
- any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement of works is to be submitted to Lithgow City Council five (5) days prior to commencement of engineering works or clearing associated with the subdivision.

### **28. Site Access**

Prior to the commencement of any works on the land, a single vehicle/plant entry/access to the site shall be provided to minimise ground disturbance and prevent the transportation of soil onto any public place. Single sized 40mm or larger aggregate placed 150mm deep, and extending from the street, kerb/road to the site is to be provided as a minimum requirement.

### **29. Site Signage**

Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:

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

The sign/s are to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

### **30. Protection of adjoining areas**

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin, and must be kept in place until after the completion of works, if the works—

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

### **31. Toilet facilities**

(1) 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.

(2) 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.

### **32. Waste management**

(1) A waste management plan for the work must be prepared before work commences on the site.

- (2) The waste management plan must—
  - (a) identify all waste (including excavation, demolition and construction waste material) that will be generated by the work on the site, and
  - (b) identify the quantity of waste material, in tonnes and cubic metres, to be—
    - (i) reused on-site, and
    - (ii) recycled on-site and off-site, and
    - (iii) disposed of off-site, and
  - (c) if waste material is to be reused or recycled on-site—specify how the waste material will be reused or recycled on-site, and
  - (d) if waste material is to be disposed of or recycled off-site—specify the contractor who will be transporting the material and the waste facility or recycling outlet to which the material will be taken.

**33. Traffic Control Plan**

A fully certified traffic control plan and road works signage will be required where machinery may obstruct traffic on any Public Road whilst construction work is being undertaken. A traffic control plan and certification of fully qualified contractors/persons will be required to be submitted to Council prior to any work commencing on the shoulder of any Public Road. Failure to comply may result in Work Cover Intervention and may also include Council stopping all work immediately until such time the developer complies with suitable traffic management procedures.

**34. Adjoining wall dilapidation report**

- (1) Before commencing any demolition or excavation works, the person having the benefit of the development consent must obtain a dilapidation report on any part of a building that is within 2m of the works.
- (2) If the person preparing the report is denied access to the building for the purpose of an inspection, the report may be prepared from an external inspection.

**35. Run-off and erosion controls**

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by—

- (a) diverting uncontaminated run-off around cleared or disturbed areas, and
- (b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- (c) preventing the tracking of sediment by vehicles onto roads, and
- (d) stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.

These controls are to be implemented in accordance with the approved Sedimentation and Erosion Control Plan.

**36. Water and Sewer Conditions**

- 1) The applicant shall seek approval under Section 68 of the Local Government Act 1993 for a sewer infrastructure and water infrastructure to service the proposed lots.
- 2) The application should be accompanied by all plans showing water and sewer reticulation and connections to Council infrastructure and must be completed in accordance with Council policies 3.1 Water Service and meter Installation and 3.5 Sewer Connection. The plans should include all long sections of pipelines noting depth of cover, invert, infrastructure sizing and position of all infrastructure including junctions, manholes, meters, stop valves, hydrants and all other items in the water and sewerage infrastructure.

- 3) Following S68 approval, the applicant will submit a water and sewer connection application to purchase the water meters and a single low pressure sewer system which will service lot 5. The low pressure sewerage system will be paid for via a Work at Owners Cost and held on Council premise until a construction certificate is issued for lot 5 development.
- 4) The developments water meters and components are to be purchased through Council. This will be 6 x 20mm water meters at this stage, should the development change, this figure is also open to change or variation. Prices for these items are found in Council's fees and charges.
- 5) All construction and works on the development for sewerage shall be carried out to AS3500, Water Services Association of Australia WSA 02-2014 Gravity Sewerage Code of Australia Version 3.2 and the conditions of consent and S68 approval.

### **CONDITIONS APPLYING DURING THE WORKS**

*Note. The Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Noise Control) Regulation 2008 contain provisions relating to noise.*

#### **37. Standard hours for construction**

Construction may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 8.00am and 1.00pm on Saturday. No construction is to be carried out at any time on a Sunday or a public holiday.

#### **38. Construction Noise**

Construction noise shall be in accordance with the 'Noise Control Guidelines for Construction Noise Standards'.

#### **39. Compliance with plans**

- (1) Works must be carried out in accordance with the plans and specifications to which the development consent relates.
- (2) A copy of the stamped and approved plans, development consent are to be on the site at all times.

#### **40. Maintenance of site**

- (1) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- (2) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- (3) Any run-off and erosion control measures required must installed in accordance with the approved Sedimentation and Erosion Control Plan and be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.
- (4) During construction—
  - (a) all vehicles entering or leaving the site must have their loads covered, and
  - (b) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- (5) Only those areas involved in the construction of the civil works shall be disturbed, with all other areas of the site to be maintained with existing vegetation cover.
- (6) The developer shall ensure that during construction works, all measures are taken to eliminate/suppress any dust nuisance emanating from the site.

#### **41. Complaints**

The applicant is to comply with all reasonable requests from Council with regard to any complaints received during construction works.

42. **Earthworks, retaining walls and structural support**

- (1) Any earthworks (including any structural support or other related structure for the purposes of the development)—
  - (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 or cause sediment to be transported onto an adjoining property, and
  - (c) that is fill brought to the site—must contain only 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 2005*.
- (2) Any excavation must be carried out in accordance with Excavation Work: Code of Practice (ISBN 978-0-642-785442 [PDF] and ISBN 978-0-642-785459 [DOCX]), published in July 2012 by Safe Work Australia.
- (3) All earthworks shall be undertaken in accordance with AS3798 and Lithgow City Council's Guidelines for Civil Engineering Design and Construction for Development".

43. **Engineering Works**

All engineering works are to be to the standard specified in Council's "Guidelines for Civil Engineering Design and Construction for Development". This document is available on Council's website or upon request from Council's administration desk.

The subdivision works may include but are not limited to the following:

- Public and private roads
- Stormwater management (quantity and quality)
- Private access driveways
- Sediment and erosion control measures
- Overland flow paths
- Traffic facilities
- Earthworks
- culverts, retaining walls and other structures
- Landscaping and embellishment works.

44. **Traffic control devices**

Traffic signs, traffic signals, pavement markings, guide posts, delineators, safety barriers and the like, whether permanent or temporary, are to be designed and installed at all roads in accordance with guidelines contained within the Austroads publication, "Guide to Traffic Engineering Practice – Part 8: Traffic Control Devices", Australian Standard 1742 – Manual of Uniform Traffic Control Devices and the Roads and Traffic Authority "Road Design Guide". All traffic control devices and signage are to be detailed in the engineering drawings submitted with the construction certificate. The consent of Lithgow City Council's Executive Manager of Operations or appointed officer will be required prior to the installation of any traffic control devices on existing roads.

45. **Street lighting**

Street lighting is to be provided for all new and existing streets within the proposed subdivision to Lithgow City Council's standards.

46. **Pavement Testing**

Each layer of pavement shall be tested for compaction and deflection as detailed below. The Executive Manager of Operations or his delegate must approve each layer prior to the placing and compaction of subsequent layers.

**(a) Compaction Testing:**

The subgrade, and all pavement layers, shall be density tested in-situ at the start and finish of the work (within the first/last five metres), and thereafter at intervals of no more than 50 metres, or as indicated by Council's Development Engineer. A minimum of two tests will be required for road pavements less than 50 metres in length. At cul-de-sacs, additional testing will be required at the turning head. The test sites selected should be representative of the likely minimum pavement compaction levels achieved. Density testing must be undertaken by an authorised representative of a laboratory registered by the National Association of Testing Authorities (NATA). Density testing may be conducted using either the sand replacement test, nuclear gauge, or other NATA approved method.

Where a nuclear gauge in direct transmission mode is used to determine pavement density, the test method shall comply with RTA Test Method T173. Results of density testing shall be forwarded directly to Council for approval. No pavement layer shall be covered by a subsequent layer until the results of the density testing have been delivered to and approved by Council's Development Engineer. Table 1 below sets out the minimum compaction requirement for each pavement layer.

Laboratory determination of maximum dry density for pavement materials which have been modified with cement must be undertaken within 4 hours of the cement being added to the material. Materials tested outside this time will be subject to an adjustment to correctly determine the maximum dry density of the sample. For either natural or modified material, the laboratory determination of maximum dry density shall be undertaken at a frequency of no less than one determination for each days production of material.

**(b) Deflection Testing:**

All pavement layers must be proof-rolled, and approved by Council's Development Engineer prior to the placement of subsequent pavement layers.

The proof-rolling will be conducted using either:

- (i) a roller having a load intensity of seven (7) tonnes per metre width of roller
- (ii) a tandem axle rigid vehicle, having a maximum load of 15 tonnes per axle group (8 tyres), 12 tonnes per axle group (6 tyres), or 10 tonnes per axle group (4 tyres). Single axle vehicles should have maximum loads of 8.5 tonnes (dual tyres), or 5.4 tonnes (single tyres).

Any movement of the pavement layer under loading will be deemed a failure.

Although not a subdivision requirement at this stage, Council strongly encourages Developers to specify in their contracts the use of Benkelman Beam tests to test for any deflection in the pavement layers, and as a means of quality assurance.

**(c) Final Road Profile:**

The mean construction tolerance on pavement surface crossfalls should be within  $\pm 5\%$  of the design crossfall. The maximum allowable construction tolerance is  $\pm 5\%$ , and the

maximum standard deviation of crossfalls is 5%. The vertical alignment should not deviate by more than 25mm from the value shown on the drawings.

47. **Archaeology discovered during excavation**

If any object having interest due to its age or association with the past is uncovered during the course of the work—

- (a) all work must stop immediately in that area, and
- (b) the Office of Environment and Heritage must be advised of the discovery.

*Note. Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the Heritage Act 1997 may be required before further the work can continue.*

48. **Aboriginal objects discovered during excavation**

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.*

49. **Inspection of civil works**

All road, drainage, kerb and gutter, water and sewerage reticulation works associated with a development shall be inspected by Council's Operations Department. The whole of the works are to be carried out to the satisfaction of the Executive Manager of Operations. Council shall inspect engineering works at the following stages as a minimum:

- Following site regrading and shaping, and prior to installation of footway services;
- Installation of erosion and sedimentation control measures;
- Storm water drainage lines prior to backfill;
- Water and sewer lines prior to backfill;
- Testing of water and sewer lines;
- Subgrade preparation, before placing pavement;
- Establishment of line and level for kerb and gutter placement;
- Completion of each pavement layer ready for testing;
- Road pavement surfacing;
- Completion of works

The developer or contractor shall give Council a minimum 24 hours' notice when requesting an inspection to ensure that development works are not delayed. The developer shall, if required by a Council Engineer, submit delivery dockets for all materials used, and all material and performance test results obtained in the development.

50. **Works As Executed Plan**

A "Work-As-Executed" (WAE) plan is required to be prepared by a Registered Surveyor or professional engineer and forwarded to Council prior to the final inspection. The WAE is to include, as a minimum:

- certification that all works have been completed generally in accordance with the approved plans and specification,



- any departure from the approved plans,
- any additional/deleted work,
- the location of conduits, subsoil lines, stub mains and inter-allotment drainage lines,
- pipeline long sections showing the constructed invert levels of each pipe at each pit and pipe dimensions,
- details of overland flow provisions,
- site regrading areas by new contours, and
- all other details which have a bearing on the extent of works and their acceptance by Council

#### 51. **Completion of Works**

Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

#### 52. **Application Requirements**

An application for Subdivision Certificate is to be lodged with Council including payment of relevant fees, two copies of the registered surveyors plans of subdivision, any associated 88B instrument (if applicable) following the compliance with all conditions of this consent.

#### 53. **Maintenance Bond – Civil Works**

Prior to the issue of a Subdivision Certificate, a maintenance bond of 5% of final construction costs shall be paid to Council upon final inspection and approval of all civil works. The value of the maintenance bond shall be approved by Council after witnessing a certified copy of the contract documentation showing all civil construction costs for the subdivision. The maintenance period will start from the date of final inspection for a period of 12 months. At the conclusion of the 12 month period a final inspection is to be undertaken by Council at the request of the developer to determine if any defects have arisen during this time. All deficiencies are to be rectified by the developer, should outstanding works remain Lithgow City Council reserves the right to expend bond monies on rectification works.

#### 54. **Street Addressing**

**Stage 1:** Lot 6 shall retain the street address of 50 Kirkley Street, South Bowenfels. The residue lot (Lot 7) shall be assigned the street address 9 Heritage Close, South Bowenfels.

**Stage 2:** The lots shall be assigned the following street addresses:

- Lot 1 9 Heritage Close, South Bowenfels
- Lot 2 11 Heritage Close, South Bowenfels
- Lot 3 13 Heritage Close, South Bowenfels
- Lot 4 15 Heritage Close, South Bowenfels
- Lot 5 10 Heritage Close, South Bowenfels

The street addresses are to be shown on the final plan of subdivision for registration and submitted to Council prior to the release of a Subdivision Certificate.

#### 55. **Utility Services**

The applicant shall consult with an Authorised Telecommunications, Electricity and Gas Authorities for the provision of underground telephone, electricity, and gas services to each allotment.

Notification of Arrangement for provision to each allotment shall be lodged with Council prior to the issue of a Subdivision Certificate.

56. **Fibre-ready facilities**

Prior to the issue of the Subdivision Certificate in connection, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose, and
- (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).

57. **Voluntary Planning Agreement**

The Voluntary Planning Agreement (VPA) is to be endorsed by all parties as proposed by the developer of the land prior to the issue of the Subdivision Certificate. The contribution agreed to within the VPA is to be paid at a rate of \$6,400.00 per lot for community facilities and \$27,500 for continuation of a cycleway.

58. **Drainage easements**

The applicant shall grant easements to Lithgow City Council for drainage and overland flow purposes on the location shown on the submitted preliminary engineering plans accompanying this consent. The dimensions of easements shall be designed in accordance with Council's "Guidelines for Civil Engineering Design and Construction for Development". The easement design shall be provided in the Construction Certificate application for further assessment.

Note: stormwater drainage easements in favour of Council are required for any headwalls of the culverts and/or 3m wide emergency overflow flume protruding proposed private properties.

59. **Easements**

Prior to the issue of a Subdivision Certificate the following easements shall be created on the plan of subdivision:

- Easements for drainage
- Any other easements identified during the construction process.

60. **Restrictions on Title**

The following restrictions on title are to be included in an instrument created under Section 88B of the *Conveyancing Act 1919* and registered with the subdivision:

A restriction is to be placed on the title of Lots 1 to 5 to prevent further subdivision of the lots (with the exception of subdivision for a public purpose or a minor boundary adjustment). Lithgow City Council is to be named as the authority who can waive or vary this restriction.

A restriction is to be placed on the title of Lot 6 to prevent any development or further subdivision of the lot (with the exception of subdivision for a public purpose or a minor boundary adjustment) until Kirkley Street is constructed. Lithgow City Council is to be named as the authority who can waive or vary this restriction.

**61. Building Envelopes and Positive Covenant**

The nominated building envelopes identified in the approved plan of subdivision are to be included on the final plans of subdivision for registration and shall include relevant dimensions. A positive covenant for the building envelopes is to be imposed over the subdivision in accordance with Section 88E of the *Conveyancing Act 1919* and included in a suitable instrument for registration on the title. Lithgow City Council is to be named as the authority who can waive or vary this restriction.

**62. Water and Sewer Development Contributions**

1. The approved development is subject to Water and/or Sewerage Development Contributions. Contributions are levied in accordance with Section 64 of the Local Government Act 1993 which allows council to exercise this function pursuant to Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000.
2. Development Contributions are levied in accordance with the Development Service Plans for Water Supply and Sewerage enforce at the time of payment. The amount of the contribution per Equivalent Tenement is published in Council's adopted Fees and Charges. Contributions are subject to annual CPI increases.
3. The number of Equivalent Tenements in a development is determined using the methodology and definitions as described in the Water Directorate Section 64 Determinations of Equivalent Tenements Guidelines, April 2017. Council will make a copy available to the applicant for the purpose of determining the contribution amount.
4. An application for the Certificate of Compliance for all Water and Sewerage Supply works is to be submitted by the applicant at the completion of the works and prior to Subdivision Certificate or Occupation Certificate. This application is to be accompanied by all plumbing, drainage and civil works details associated with the water and sewerage supply including Work as Executed drawings.
5. A Certificate of Compliance issued under the Water Management Act 2000 only covers the water supply and sewerage supply works that are not defined as plumbing and drainage work within the meaning of the Plumbing and Drainage Act 2011.
6. A Certificate of Compliance must be issued prior to the release of the Subdivision Certificate/Occupation Certificate. In accordance with Section 306(2) Water Management Act 2000 a precondition to the issue of the Certificate of Compliance is the payment of Development Contributions and that all water and/or sewerage conditions of consent are satisfied.
7. In accordance with Section 307 Water Management Act 2000 Council may impose a requirement on the applicant to address outstanding matters. Where a matter remains unresolved Council may be satisfied that a requirement has been complied with if the applicant lodges with the Council such security to cover the cost of ensuring full compliance.

63. Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Lithgow City Council for any outstanding works.

## ADVISORY NOTES

AN1 Pursuant to condition 61, the charges calculated utilising LCC Development Servicing Plan, Water Directorate Section 64 Determination of Equivalent Tenements Guidelines applicable at the time of consent are as follows:

**Water**

$6(\text{lot}) \times 1.2(\text{ET}) \times \$3,066.61 \text{ (charge)} = \$22,079.592$

**South Bowenfels Sewer**

$6(\text{lot}) \times 1(\text{ET}) \times \$14,920.87 \text{ (charge)} = \$89,525.22$

**Total charges** = \$111,604.812 as at 11/02/2022

**Attachment 1: Rural Fire Service - Bushfire Safety Authority**



NSW RURAL FIRE SERVICE

# **BUSH FIRE SAFETY AUTHORITY**

Subdivision - Subdivision  
50 Kirkley Street Bowenfels NSW 2790, 3//DP1268778  
RFS Reference: DA20210618002460-Original-1  
Your Reference: DA088/21 (CNR-22717)

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997.

**Kalpana Varghese**  
Supervisor Development Assessment & Plan  
Built & Natural Environment

Friday 9 July 2021

## Attachment 2: Natural Resources Access Regulator - General Terms of Approval



Natural Resources  
Access Regulator

### General Terms of Approval

for proposed development requiring approval under s89,  
90 or 91 of the Water Management Act 2000

Reference Number:	IDAS-2021-10110
Issue date of GTA:	9 December 2021
Type of Approval:	Controlled Activity
Location of work/activity:	Lot 3 DP1268778, 50 Kirkley Street, BOWENFELS NSW 2790
Waterfront Land:	1 <sup>st</sup> order
DA Number:	DA088/21
LGA:	Lithgow City Council

The GTA issued by NRAR do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to NRAR for the relevant approval **after** development consent has been issued by Council **and before** the commencement of any work or activity.

Condition Number	Details
TC-G001	Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Natural Resources Access Regulator, and obtained, for a controlled activity approval under the Water Management Act 2000.
TC-G004	<p>A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application DA088/21 provided by Council to Natural Resources Access Regulator.</p> <p>B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Natural Resources Access Regulator, must be notified in writing to determine if any variations to the GTA will be required.</p>
TC-G005	<p>A. The application for a controlled activity approval must include the following plan(s):</p> <ol style="list-style-type: none"><li>Detailed civil construction plans;</li><li>Rehabilitation plan;</li><li>Construction streamworks plans;</li><li>Erosion and sediment control plans;</li></ol> <p>B. The plan(s) must be prepared in accordance with Natural Resources Access Regulator's guidelines located on the website <a href="https://www.dpie.nsw.gov.au/nrar/how-to-apply/controlled-activities/guidelines-for-controlled-activities">https://www.dpie.nsw.gov.au/nrar/how-to-apply/controlled-activities/guidelines-for-controlled-activities</a></p>

**Attachment 3: Endeavour Energy Advice**

To be attached to development consent.

