



TAMWORTH REGIONAL COUNCIL

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993 that a **Meeting of Tamworth Regional Council** will be held in the **Council Chambers, 4th Floor Ray Walsh House, 437 Peel Street, Tamworth**, commencing at **6:30pm**.

ORDINARY COUNCIL AGENDA

10 MAY 2022

**PAUL BENNETT
GENERAL MANAGER**

Order of Business

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Council

Meeting Date: 2nd and 4th Tuesday of the month commencing at 6:30pm.

Matters determined by Ordinary meetings will include all those non-delegable functions identified in Section 377 of the Local Government Act as follows:

- *“the appointment of a general manager*
- *the making of a rate*
- *a determination under section 549 as to the levying of a rate*
- *the making of a charge*
- *the fixing of a fee*
- *the borrowing of money*
- *the voting of money for expenditure on its works, services or operations*
- *the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)*
- *the acceptance of tenders which are required under this Act to be invited by the council*
- *the adoption of an operational plan under section 405*
- *the adoption of a financial statement included in an annual financial report*
- *a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6*
- *the fixing of an amount or rate for the carrying out by the council of work on private land*
- *the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work*
- *the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the [Environmental Planning and Assessment Act 1979](#)*
- *the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194*
- *a decision under section 356 to contribute money or otherwise grant financial assistance to persons*
- *the making of an application, or the giving of a notice, to the Governor or Minister*
- *this power of delegation*
- *any function under this or any other Act that is expressly required to be exercised by resolution of the council.”*

Other matters and functions determined by Ordinary Council Meetings will include:

- *Notices of Motion*
- *Notices of Motion of Rescission*
- *Council Elections, Polls, Constitutional Referendums and Public Hearings/Inquiries*
- *Ministerial Committees and Inquiries*
- *Mayor and Councillors Annual Fees*
- *Payment of Expenses and Provision of Facilities to Mayor and Councillors*
- *Local Government Remuneration Tribunal*
- *Local Government Boundaries*
- *NSW Ombudsman*
- *Administrative Decisions Tribunal*
- *Delegation of Functions by the Minister*
- *Delegation of Functions to General Manager and Principal Committees*
- *Organisation Structure*
- *Code of Conduct*
- *Code of Meeting Practice*
- *Honesty and Disclosure of Interests*
- *Access to Information*
- *Protection of Privacy*
- *Enforcement Functions (statutory breaches/prosecutions/recovery of rates)*
- *Dispute Resolution*
- *Council Land and Property Development*
- *Annual Financial Reports, Auditors Reports, Annual Reports and Statement of the Environment Reports*
- *Performance of the General Manager*
- *Equal Employment Opportunity*
- *Powers of Entry*
- *Liability and Insurance*
- *Membership of Organisations*

Membership: All Councillors
Quorum: Five members
Chairperson: The Mayor
Deputy Chairperson: The Deputy Mayor

Community Consultation Policy

The first 30 minutes of Open Council Meetings is available for members of the Public to address the Council Meeting or submit questions either verbally or in writing, on matters INCLUDED in the Business Paper for the Meeting.

Members of the public will be permitted a maximum of three minutes to address the Council Meeting. An extension of time may be granted if deemed necessary.

Members of the public seeking to represent or speak on behalf of a third party must satisfy the Council or Committee Meeting that he or she has the authority to represent or speak on behalf of the third party.

Members of the public wishing to address Council Meetings are requested to contact Council either by telephone, in person or online prior to 4:30pm the day prior to the Meeting to address the Council Meeting. Persons not registered to speak will not be able to address Council at the Meeting.

Council will only permit three speakers in support and three speakers in opposition to a recommendation contained in the Business Paper. If there are more than three speakers, Council's Governance division will contact all registered speakers to determine who will address Council. In relation to a Development Application, the applicant will be reserved a position to speak.

Members of the public will not be permitted to raise matters or provide information which involves:

- personnel matters concerning particular individuals (other than Councillors);
- personal hardship of any resident or ratepayer;
- information that would, if disclosed confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business;
- Commercial information of a confidential nature that would, if disclosed:
 - prejudice the commercial position of the person who supplied it, or
 - confer a commercial advantage on a competitor of the Council; or
 - reveal a trade secret;
- information that would, if disclosed prejudice the maintenance of law;
- matters affecting the security of the Council, Councillors, Council staff or Council property;
- advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege;
- information concerning the nature and location of a place or an item of Aboriginal significance on community land;
- alleged contraventions of any Code of Conduct requirements applicable under Section 440; or
- on balance, be contrary to the public interest.

Members of the public will not be permitted to use Community Consultation to abuse, vilify, insult, threaten, intimidate or harass Councillors, Council staff or other members of the public. Conduct of this nature will be deemed to be an act of disorder and the person engaging in such behaviour will be ruled out of the order and may be expelled.

Disclosure of Political Donations or Gifts

If you have made a relevant planning application to Council which is listed for determination on the Council Business Paper you must disclose any political donation or gift made to any councillor or employee of the Council within the period commencing two years before the application is made and ending when the application is determined (Section 147(4) Environmental Planning and Assessment Act 1979).

If you have made a relevant public submission to Council in relation to a relevant planning application which is listed for determination on the Council Business Paper you must disclose any political donation or gifts made to any councillor or employee of the Council by you as the person making the submission or any associate within the period commencing two years before the submission is made and ending when the application is determined (Section 147(5) Environmental Planning and Assessment Act 1979).

AGENDA

- 1 APOLOGIES AND LEAVE OF ABSENCE**
- 2 COMMUNITY CONSULTATION**
- 3 MINUTES OF PREVIOUS MEETING SUBMITTED FOR APPROVAL**

RECOMMENDATION

That the Minutes of the Ordinary Meeting held on Tuesday, 26 April 2022, copies of which were circulated be taken as read and confirmed as a correct record of the proceedings of the Meeting.

4 DISCLOSURE OF INTEREST

Pecuniary Interest

Non Pecuniary Conflict of Interest

Political Donations

5 MAYORAL MINUTE

Nil

6 NOTICE OF MOTION

6.1 NOTICE OF MOTION – CR BROOKE SOUTHWELL - REVENUE TASKFORCE ADVISORY COMMITTEE

MOTION

That Council:

- (ii) develop a Revenue Taskforce Advisory Committee to provide advice to Council on options to generate increased revenue to support services and expenditure; and*
- (iii) that the Committee is held for an initial 12 month period.*

Notice is given that I intend to move the above Motion at the Meeting of the Council to be held on 10 May 2022.

SUPPORTING INFORMATION

TRC have a number of new projects that need to be funded including an indoor aquatic centre and a cultural centre, among others. Council will need to contribute funding towards these projects, in order to seek funding from other levels of Government. Council's current expenditure of \$200M is mostly spent for ongoing recurrent activities that Council provides to the community, so it is imperative that Council finds new methods of creating increased revenue in order to fund these projects in the near future and meet the expectations and needs of the community.

The Revenue Taskforce Advisory Committee (the Committee) will look at new projects, or non-traditional revenue streams in order to provide increased revenue to support Council's future services and expenditure.

The Committee Meetings will be held monthly and will include representatives from Growth and Prosperity, Economic Development, Commercial Property Officer, the General Manager, Cr Brooke Southwell, the Mayor and other Councillor representatives. The committee will report to Council monthly and deliver a final report after 12 months, with recommended directions to support increased revenue.

The need for this type of committee, includes:

- all councils face significant financial challenges, recently exacerbated by the impact of COVID;
- cost shifting by the State Government;
- rate capping that is less than inflation; and
- the requirement to replace assets with the modern and up to date infrastructure.

Council is already implementing a program of continuous improvement in its business operations. The Revenue Taskforce Advisory Committee will focus on the need to identify ways of generating increased revenue to support the expenditure requirements of our communities through non-traditional revenue streams. As part of the committees' duties, it is expected they committee will look at other council's around Australia and overseas, such as New Zealand and the UK.

Additional or improved income streams will assist Council to comply with two of the government's requirements in relation to meeting the 'Own Source Revenue' and 'Operating Performance' ratios.

The Committee will be supported by Council administration, led by the General Manager, to drive the project over the next twelve months.

Council has an obligation to seek to improve outcomes for our communities under what has become increasingly difficult financial circumstances.

The establishment of a Revenue Taskforce Advisory Committee will assist the Council determine its financial pathway into the future.

Cr Brooke Southwell

3 May 2022

**6.2 NOTICE OF MOTION – CR BROOKE SOUTHWELL - TAMWORTH REGIONAL YOUTH COUNCIL
ADDITIONAL COUNCILLOR DELEGATE**

MOTION

That Cr Southwell is included as a member of the Tamworth Regional Youth Council meetings as a Councillor representative, alongside Cr Marc Sutherland.

Notice is given that I intend to move the above Motion at the Meeting of the Council to be held on 10 May 2022.

SUPPORTING INFORMATION

Cr Southwell has spoken with the Youth Council members and they are supportive of the motion.

Cr Brooke Southwell

4 May 2022

OPEN COUNCIL REPORTS

7 ENVIRONMENT AND PLANNING

**7.1 DEVELOPMENT APPLICATION FOR DUAL OCCUPANCY, RETAINING WALLS AND
TORREN TITLE SUBDIVISION ON LOT 15 DP 1212417, 13 FRANCIS AVENUE - FILE
NO. DA2021-0252 (PAN-176787)**

DIRECTORATE: LIVEABLE COMMUNITIES
AUTHOR: Sam Lobsey, Manager - Development

1 ANNEXURES ATTACHED

GENERAL MANAGER'S ADVISORY NOTE TO:

**Councillors
Applicants
Persons making public submissions (written or verbal) Members of the Public**

Record (Division) of Voting

In accordance with Section 375A(3) of the Local Government Act 1993, a Division is required to be called whenever a motion for a planning decision is put at a meeting of the Council or a Council Committee.

A DIVISION under Section 375A(3) of the Act is required on this Planning Application.

Relevant Planning Application

In accordance with Section 10.4(4) of the Environmental Planning and Assessment Act 1979, a person who makes a relevant planning application to Council is required to disclose the following reportable political donations and gifts (if any) made by a person with a financial interest in the application within the period

commencing 2 years before the application is made and ending when the application is determined:

- (a) all reportable political donations made to any local councillor of the Council;
- (b) all gifts made to any local councillor or employee of the Council.

Relevant Public Submission

In accordance with Section 10.4(5) of the Environmental Planning and Assessment Act 1979, a person who makes a relevant public submission to Council in relation to a relevant planning application made to the Council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing two years before the submission is made and ending when the application is determined:

- (a) all reportable political donations made to any local councillor of the Council;
- (b) all gifts made to any local councillor or employee of the Council.

Disclosure of Reportable Political Donations and Gifts

Planning Applications

Nil

Public Submissions

Nil

RECOMMENDATION

That in relation to the report “Development Application for a Dual Occupancy, Retaining Walls and Torrens Title Subdivision” on Lot 15 in DP 1212417 – 13 Francis Avenue, NORTH TAMWORTH NSW, Council:

- (i) authorise the Mayor and General Manager to enter into a Deed of Release and any other documentation required to effect the release of a Restriction on the Use of Land affecting Lot 15 in DP 1212417;*
- (ii) authorise the affixing of the Seal of Council to the Deed and any other related documents to effect the intention of the parties; and,*
- (iii) grant development consent to DA2022-0252, including a Clause 4.6 exception to the development standard under the Tamworth Regional Local Environmental Plan 2010, subject to the following conditions:*

GENERAL

- 1) Development shall take place in accordance with the attached endorsed plans:**
 - a) Architectural Plans (as amended in red) prepared by Dunst Bros Pty Ltd, Drawings Numbered A101 – A107, Revision 2, Dated 27 January 2022; and**
 - b) Proposed Subdivision Layout Plan (as amended in red) prepared by Dunst Bros Pty Ltd, Drawing Numbered A112, Dated 19 November 2021.**
- 2) The development must be carried out in accordance with the Development Application and accompanying plans, drawings and other documents as amended by conditions of this consent. Any amendment to the development or to these conditions will require the consent of the Council.**
- 3) All building work must be carried out in accordance with the provisions of the National Construction Code (NCC).**
- 4) It is the responsibility of the developer to meet all expenses incurred in**

undertaking the development, including expenses incurred in complying with conditions imposed under this approval.

- 5) *Pursuant to Section 97A(2) of the Environmental Planning and Assessment Regulation 2000, all the commitments listed in the relevant BASIX Certificate for the development shall be fulfilled at the milestones listed.*
- 6) *Any existing State Survey Mark or Cadastral Survey Mark shall be preserved during construction and not disturbed unless authority has been obtained from the Surveyor-General in accordance with the Surveyor-General's Directions published by the NSW Land and Property Information Service. In this regard, the Principal Contractor is responsible for the protection of the mark.*
- 7) *The Applicant shall consult with, as required:*
 - a) *Essential Energy;*
 - b) *Natural Gas Company;*
 - c) *A Telecommunications carrier;*

regarding their requirements for the provision of services to the development and the location of existing services that may be affected by the proposed works, either on site or on the adjacent public road(s).

PRIOR TO THE COMMENCEMENT OF WORKS:

- 8) *The approved development which is the subject of this development consent must not be commenced until:*
 - a) *a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier; and*
 - b) *the person having the benefit of the development consent has:*
 - i) *appointed a Principal Certifying Authority for the building work; and*
 - ii) *notified the Principal Certifying Authority that the person will carry out the building work as an owner-builder, if that is the case;*
 - c) *the principal certifying authority has, no later than two (2) days before the building work commences:*
 - i) *notified the consent authority and the council (if the council is not the consent authority) of his or her appointment;*
 - ii) *notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work;*
 - d) *the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:*
 - i) *appointed a principal contractor for the building work who must be the holder of a contractor license if any residential building work is involved;*
 - ii) *notified the Principal Certifying Authority of any such appointment;*
 - iii) *unless that person is the principal contractor, notified the principal*

contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work; and

iv) given at least two (2) days' notice to the council of the person's intention to commence the erection of the building.

9) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided:

- a) must be a standard flushing toilet;**
- b) must be connected to a public sewer;**
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council; or**

the provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

10) The applicant must ensure that a sign containing the following information is erected in a prominent position and maintained on the site at all times:

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

The sign is to be removed when the work has been completed.

11) Erosion and sediment control measures that will minimise damage to and avoid pollution of the environment are required for this development. An erosion and sediment control plan (ESCP) is to be prepared in accordance with the "Blue Book" Managing Urban Stormwater – Soils and Construction (Landcom 2004). The ESCP shall be submitted to Council and implemented prior to the commencement of any construction works.

12) A Traffic Management Plan (TMP) detailing how movements in and out of the site during the construction will be adequately managed so as not to adversely impact the safe operation of the road network shall be submitted to Council. This TMP shall consider both vehicular and pedestrian movements. Where the TMP is of a level of complexity that Traffic Guidance Schemes (TGS) are required, the TGS's shall be prepared by a person with the applicable certification from Transport for NSW (TfNSW) in accordance with AS1742.3-2009 and the TfNSW current version of the "Traffic Control at Worksites" manual.

13) The contractors engaged on the development must maintain public liability insurance cover to the minimum value of \$20 million. The policy shall specifically indemnify Council from all claims arising from the execution of the works. Documentary evidence of the currency of the policy shall be provided to the Council prior to the commencement of work and upon request, during the progress of the work.

14) Section 68 approval from Council under the Local Government Act 1993 to carry

out sewerage, water supply and stormwater drainage works for this development is required to be obtained prior to the commencement of works. Detailed stormwater plans and calculations shall be provided to Council for approval.

- 15) Section 138 approval from Council under the Roads Act 1993 for works and structures in the roadway for this development is required. Detailed construction plans shall be provided to Council for approval.

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE:

- 16) a) In accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 and the Tamworth Regional Council Section 7.11 (formerly known as S94 (Direct)) Development Contributions Plan 2013, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (\$)
Roads	\$ 1,672.00
Car Parking	\$ 0.00
Open Space Embellishment	\$ 516.00
Plan Preparation and Administration	\$ 46.00
TOTAL	\$ 2,234.00

- b) If the contributions are not paid within the financial year that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Development Contributions Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment in the following manner:

$$\$C_{PY} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

- $\$C_{PY}$ Is the amount of the contribution at the date of Payment
 $\$C_{DC}$ Is the amount of the contribution as set out in this development consent
 CPI_{PY} Is the latest release of the Consumer Price Index (Sydney - All Groups) for the financial year at the date of Payment as published by the ABS
 CPI_{DC} Is the Consumer Price Index (Sydney - All Groups) for the financial year at the date of this development consent

- c) The monetary contributions shall be paid to Council:

- i) Prior to the issue of the first Construction Certificate where the development is for building work.

It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Development Contributions Plan may be viewed at www.tamworth.nsw.gov.au <<http://www.tamworth.nsw.gov.au>> or a copy may be inspected at Council's Administration Centre during normal business hours.

NB: This condition is restated at Condition 34 to clarify the timing of payment of contributions.

- 17) A Compliance Certificate under Section 306 of the Water Management Act 2000 must be obtained from the Council (as the Local Water Supply Authority) prior to the issue of a Construction Certificate. Council requires the following works to be completed and/or payments received prior to the issue of a Compliance Certificate.**

Headworks (Additional)

- **Water = \$4,050**
- **Sewer = \$1,625**

Advisory Note: The above headworks contributions have been adopted under the 2021/2022 Council Annual Operational Plan. Revised rates adopted in subsequent Annual Operational Plans will apply to Headworks Contributions paid in later financial years.

NB: This condition is restated at Condition 35 to clarify the timing of payment of contributions.

- 18) Retaining walls greater than 600mm above finished ground level or other approved methods necessary to prevent movement of excavated or filled ground, together with associated stormwater drainage measures, shall be designed by a qualified, practising Structural Engineer. Details are to be included with any Construction Certificate application.**

DURING CONSTRUCTION OR WORKS:

General

- 19) Work on the project shall be limited to the following hours to prevent unreasonable disturbance to the amenity of the area:**

Monday to Friday - 7.00am to 5.00pm.

Saturday - 8.00am to 1.00pm if audible on other residential premises, otherwise 7.00am to 5.00pm.

No work to be carried out on Sunday or Public Holidays if it is audible on other residential premises.

- 20) The Developer shall be responsible to instruct and control their contractors regarding the hours of work. Council will exercise its powers under the Protection of the Environment Operations Act 1997, in the event that the building operations cause noise to emanate from the property on Sundays or Public Holidays or otherwise than between the hours detailed above.**
- 21) Dust control measures are to be in place or are to be undertaken for the duration of the works to prevent dust from affecting the amenity of the immediate area during construction. The applicant is to ensure controls are maintained for the duration of the works and is to inspect the control for this purpose at frequent intervals. Any deficiencies are to be immediately made good.**
-

- 22) *The approved Traffic Management Plan (inclusive of any resultant Pedestrian Management Plans and the Traffic Control Plans) shall be implemented and any associated barriers, signage and controls shall be maintained in a functional state at all times.*
- 23) *Erosion and sediment control measures in accordance with the Erosion and Sediment Control Plan are to be maintained by the developer at all times.*
- 24) *The footpath and/or road reserve are not to be used for construction purposes or placing of building materials, vehicles, refuse, skips or the like (without Council's prior consent) to ensure safe and unobstructed access for pedestrians. Where necessary, application may be made by contacting Council.*
- 25) *Any damage caused to Council infrastructure during in, on or under the road reserve as a result of works undertaken for the development site shall be rectified by the Developer to the satisfaction of the Council so as to ensure the integrity of Council's infrastructure.*

Allotment Filling

- 26) *Any allotment filling that may be required for the development site shall meet the requirements of AS3798 (as amended) – Guidelines on Earthworks for Commercial and Residential Developments. Certification of the allotment filling shall be provided by a geotechnical testing authority registered under NATA. The testing authority shall be required to certify whether the fill complies with the requirements of AS2870.1 (as amended) – Residential Slabs and Footings – Construction, as “controlled fill”.*

No allotment filling shall encroach on, or burden, any adjacent lots.

Stormwater

- 27) *All roof water and concentrated surface stormwater discharging from the development site, buildings or works must be conveyed to the approved points of discharge by underground pipe drains complying with AS3500.3 (as amended) to the satisfaction of Council. No effluent or polluted water of any type may be allowed to enter the Council's stormwater drainage system.*
- 28) *Runoff from all hardstand areas shall be captured on site and piped to the approved points of discharge in accordance with the current version of Council's Engineering Design Guidelines for Subdivisions and Developments.*
- 29) *The approved points of discharge for the development site are defined as the kerb and gutter located on McKay Place and / or Francis Avenue adjacent to the development site. Additionally, the stormwater discharge drainage system must be constructed to comply with the following requirements as a minimum:*
 - a) *all plumbing within the site must be carried out in accordance with relevant provisions of Australian Standard AS/NZS 3500.3 (as amended) Plumbing and Drainage – Stormwater Drainage;*
 - b) *temporary down pipes shall be connected as soon as the roof has been covered so as to not cause a nuisance to adjoining properties;*
 - c) *all overland surface flow paths must have a practical and satisfactory destination with due consideration to erosion and sediment control during all stages of development. A system to prevent overland flows discharging onto adjoining properties shall be implemented;*

- d) *any interruption to the natural overland flow of stormwater drainage which could result in the disruption of amenity, or drainage or deterioration to any other property is not permitted; and*
- e) *all overflow from rainwater tanks shall be collected and piped to the approved points of discharge.*

External Roads

- 30) *Should any works within the road reserve of Francis Avenue and / or McKay Place necessitate: installation, extension, removal, disposal, or reinstatement of any existing infrastructure or materials, all works and costs will be at the Developer's expense.*

Inspections

- 31) *It is required that a Principal Certifying Authority (PCA) be appointed to undertake all critical stage inspections as prescribed under the Environmental Planning and Assessment Regulations 2000. The owner may appoint either the Council or an accredited certifier to be the PCA.*

PRIOR TO THE RELEASE OF A SUBDIVISION CERTIFICATE:

- 32) *To confirm and clarify the terms of Council's approval, a Subdivision Certificate shall not be issued until either:*
 - a) *the development is completed in accordance with Development Application No. DA2022-0252 and an Occupation Certificate has been issued in respect to each dwelling; or*
 - b) *a restriction as to User, pursuant to Section 88B of the Conveyancing Act 1988, is submitted which provides that development of the lot may only be carried out in accordance with the comprising Development Application No. DA2022-0252.*
- 33) *Certification being provided that each lot is serviced with electricity and telecommunications infrastructure in accordance with recognised standards.*
- 34) a) *In accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 and the Tamworth Regional Council Section 7.11 (formerly known as S94 (Direct)) Development Contributions Plan 2013, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:*

<i>Description</i>	<i>Contribution (\$)</i>
<i>Roads</i>	<i>\$ 1,672.00</i>
<i>Car Parking</i>	<i>\$ 0.00</i>
<i>Open Space Embellishment</i>	<i>\$ 516.00</i>
<i>Plan Preparation and Administration</i>	<i>\$ 46.00</i>
TOTAL	<u>\$ 2,234.00</u>

- b) *if the contributions are not paid within the financial year that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Development Contributions Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time*

of payment in the following manner:

$$\$C_{PY} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

- $\$C_{PY}$ Is the amount of the contribution at the date of Payment
- $\$C_{DC}$ Is the amount of the contribution as set out in this development consent
- CPI_{PY} Is the latest release of the Consumer Price Index (Sydney - All Groups) for the financial year at the date of Payment as published by the ABS
- CPI_{DC} Is the Consumer Price Index (Sydney - All Groups) for the financial year at the date of this development consent

- c) The monetary contributions shall be paid to Council:
- i) Prior to the issue of the first Subdivision Certificate where the development is for subdivision.

It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Development Contributions Plan may be viewed at www.tamworth.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

NB: This condition is restated at Condition 16 to clarify the timing of payment of contributions.

- 35) *A Compliance Certificate under Section 306 of the Water Management Act 2000 must be obtained from the Council (as the Local Water Supply Authority) prior to the issue of a Subdivision Certificate. Council requires the following works to be completed and/or payments received prior to the issue of a Compliance Certificate.*

Water

- a single water service is to be provided to each lot;*
- proposed Lot 64 shall use the existing connection on the south west corner of the lot;*
- proposed Lot 65 shall be serviced from the existing water main DN100 located on the northern side of Francis Avenue;*
- works shall be undertaken in accordance with Council's Engineering Design Minimum Standards for Subdivisions and Developments; and*
- work on live water mains is to be undertaken by Council at full cost to the developer.*

Sewer

- *A single sewer service is to be provided to each lot;*
- *proposed Lot 64 shall use existing connection on the south west corner of the lot;*
- *proposed Lot 65 shall be serviced by a new connection off existing Council DN150 sewer main on McKay Place;*
- *work shall be undertaken in accordance with Council's Engineering Design Guidelines for Subdivisions and Developments; and*
- *work on live sewer mains shall be undertaken by Council at full cost to the developer.*

Headworks (Additional)

- *Water = \$4,050*
- *Sewer = \$1,625*

Advisory Note: *The above headworks contributions have been adopted under the 2021/2022 Council Annual Operational Plan. Revised rates adopted in subsequent Annual Operational Plans will apply to Headworks Contributions paid in later financial years.*

NB: *This condition is restated at Condition 17 to clarify the timing of payment of contributions.*

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE:

- 36) *The occupation or use of the whole or any part of a new building must not commence unless an occupation certificate has been issued in relation to the building or part.*
- 37) *The occupation or use of the whole or any part of a new building shall not commence unless a Section 68 certificate of completion has been issued by Council. The certificate of completion shall not be issued until such time as all relevant conditions of the Section 68 approval have been complied with and all applicable documents received by council. This includes the following works:*
 - a) *the installation of additional underfloor drainage pipes to enable an external greywater reuse device to be connected.*
- 38) *To ensure compliance with the Tamworth Regional Council Development Control Plan (2010), the following works shall be completed prior to the issue of an Occupation Certificate:*
 - a) *a letter box must be provided for each dwelling / unit at the front property boundary in accordance with Australia Post requirements;*
 - b) *clothes drying facilities must be provided for each dwelling / unit. Clothes lines and hoists shall be located at the rear of the development and adequately screened where visible from the street; and*
 - c) *evidence must be provided confirming the landscaped areas are installed as per the endorsed plans.*

CONTINUED OPERATIONS:

39) Vehicle crossovers, on-site stormwater systems and landscaped areas on the site are to be maintained at all times.

APPLICATION DETAILS:

Application No.	DA2021-0252 (PAN-176787)
Application For:	Dual Occupancy, Retaining Walls and Torrens Title Subdivision
Date Received:	8 December 2021
Applicant:	Bath Stewart Associates Pty Ltd
Owner:	Little Pretty Investments Pty Ltd Atf Sara Spokes Trust
Land/Address:	Lot 15 in DP 1212417 – 13 Francis Avenue NORTH TAMWORTH NSW 2340
Zoning:	R1 General Residential - <i>Tamworth Regional Local Environmental Plan 2010 (As Amended)</i>

DEVELOPMENT ASSESSMENT SUMMARY

The proposed development involves a Torrens title subdivision of one (1) lot into two (2) lots and construction of a detached dual occupancy development. The proposal is a permissible use in the R1 – General Residential zone in accordance with the Tamworth Regional Local Environmental Plan 2010 (LEP) and meets the zone objectives. The proposed development will be compliant with the relevant NSW planning legislation; State Planning Policies, the LEP and the Tamworth Regional Development Control Plan 2010 (DCP).

Council did not receive any formal submissions specifically relating to this development application.

There are two reasons why this application is required to be reported to Council and determined by the elected body (Council) rather than under staff delegation.

1. Clause 4.6 Variation

The Applicant has requested that Council consider a variation to the minimum lot size requirement for dual occupancy development in accordance with Clause 4.6 of the LEP. The minimum lot size is 450m² and one (1) of the proposed lots will be less than this requirement. Clause 4.6 aims to provide an appropriate degree of flexibility in applying certain development standards to particular developments in order to achieve better outcomes for, and from, development. Accordingly, Council may grant consent under Clause 4.6 even though the development would contravene a development standard. The proposed development will achieve compliance with the relevant planning legislation and suitable justification has been provided by the Applicant based on environmental planning grounds, therefore, it is considered appropriate to allow the proposed variation in this instance. As the development contravenes a numerical development standard by more than 10%, the development application is required to be determined by the elected body of Council and not under staff delegation.

2. Removal of Restriction on Use of Land

The registration of Deposited Plan 1212417 created a restriction on the use of the land, which burdens the subject Lot and states:

“No vehicular access shall be permitted to the burdened Lot from McKay Place.”

The above Restriction on the Use of Land was imposed by Council as a part of the subdivision that created the subject land (DA0042/2012). A review has been undertaken in consideration of the design elements of the proposed development and potential impacts on the immediate locality. The assessment concluded that there are no objections to lifting this restriction and allowing vehicular access to McKay Place.

DESCRIPTION OF PROPOSAL:

DA2022-0252 seeks development consent for a one (1) into two (2) lot subdivision and the construction of two (2) detached dwellings upon the newly created allotments. The proposed lot sizes following subdivision are as follows:

- Proposed Lot 64 approximately 375.4m²; and,
- Proposed Lot 65 approximately 491.6m².

Each newly created allotment will be improved with a single storey dwelling with an attached garage, alfresco and porch. The dwellings will be brick veneer construction with Colorbond roofing. Retaining walls will also be built as a part of the development. The proposed development will be carried out over the following stages:

- stage 1: the subdivision of the land;
- stage 2: the construction of Villa 1; and
- stage 3: the construction of Villa 2.

The Plan Set is **ATTACHED** to this report, see **ANNEXURE 1**.

SUBJECT SITE AND LOCALITY MAP:

The subject land is located on the corner of Francis Avenue and McKay Place (refer to **Figure 1** below). The site is currently vacant and has an approximate area of 867.22m². The land slopes from the north-east to the south-west. Surrounding land uses to the site include: vacant residential allotments, single storey dwellings (stand alone), single storey dwellings with attached secondary dwellings and dual occupancies.

The subject site is zoned R1 General Residential with a minimum lot size of 600m² in accordance with the provisions of the *Tamworth Regional Local Environmental Plan 2010* (LEP). The allotment is not prone to bushfire hazards or liable to inundation by flooding. There are no items of heritage significance known to be present on, or in proximity to, the subject land.



Figure 1 – Aerial map of the subject land (Lot 15 in DP 1212417 – 13 Francis Avenue NORTH TAMWORTH NSW 2340).

REFERRALS:

The development was referred internally to the following Council specialists:

- Development Engineering; and
- Section 7.11 Planner.

No objections were raised subject to conditions of consent.

ASSESSMENT REPORT:

The following matters listed under Section 4.15C of the *Environmental Planning and Assessment Act 1979*, are relevant in considering this application:

S4.15C(1)(a)(i) Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021:

The subject land is vacant and located in a residential locality. A search of Council’s records did not produce any approvals, notices or orders regarding contaminating, or potentially contaminating, land uses on or in proximity to the site. Furthermore, a site inspection did not reveal any evidence to suggest that the land is contaminated. It is therefore considered that the site is unlikely to be contaminated and development consent can be granted, pursuant to Clause 4.6(1) of this Policy.

State Environmental Planning Policy (BASIX) 2004:

BASIX Certificates prepared by Dunst Bros Pty Ltd (numbered 1260939S and 1260952S, dated 19 November 2021) have been submitted for each of the new dwellings proposed via DA2022-0252. The specified BASIX commitments have been shown on the submitted plans. A condition has been included in the terms of consent to ensure that the specified BASIX commitments are fulfilled by the Proponent.

Tamworth Regional Local Environmental Plan 2010:

An assessment of the proposed development against the provisions of the *Tamworth Regional Local Environmental Plan 2010* (LEP) is presented in **Table 1** below:

Table 1 – Compliance with the LEP.

Clause	Comment
1.2 Aims of plan	The proposed development complies with applicable aims of the LEP.
1.9A Suspension of covenants, agreements and instruments	This Report recommends Council consent to a release of the restriction as to the use of land in order to facilitate vehicular access to proposed Lot 64 via McKay Place. The restriction was imposed by Council at the time of subdivision and is not otherwise able to be varied under Clause 1.9A. This matter is discussed further in a later Section of this Report.
2.1 Land use zones	The subject site is zoned R1 General Residential with a minimum lot size of 600m ² .
2.3 Zone objectives	The consent authority must have regard to the relevant zone objectives in determining a DA (see Land Use Table provisions, below).
2.6 Subdivision	Development consent has been sought as a part of DA2022-0252 for the subdivision of the subject land, thereby complying with this Clause.
Land use table	<p>The objectives for the R1 General Residential zone are as follows:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community.</i> • <i>To provide for a variety of housing types and densities.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>It is considered that the proposed development is consistent with the applicable zone objectives. The proposal will provide for the housing needs of the community, and a variety of housing types and densities.</p> <p>The proposed development is defined as a ‘dual occupancy (detached)’ as follows:</p> <p>dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.</p> <p>Note—Dual occupancies (detached) are a type of dual occupancy—</p>

	<p>see the definition of that term in this Dictionary.</p> <p>‘Dual occupancy’ is a type of development that is permitted with consent in the R1 zone.</p>
4.1 Minimum subdivision lot size	<p>Clause 4.1(3) requires any lot resulting from a subdivision not to be less than the minimum size shown on the Lot Size Map. Although the proposed allotments will be less than the prescribed minimum lot size (i.e., 600m²), Clause 4.1A allows a smaller lot size, as addressed below.</p>
4.1A Minimum subdivision lot size for Zones R1 and RU5	<p>Clause 4.1A states that, despite Clause 4.1, the size of any lot resulting from a subdivision of land in the R1 zone may be less than the minimum lot size, but not less than 450m², if:</p> <ul style="list-style-type: none"> • the land is connected to reticulated sewerage; and • development consent has been granted in respect of the subdivision for the purpose of a dual occupancy. <p>The subject land is connected to Council’s reticulated sewer infrastructure and the proposed development is for the purpose of a dual occupancy.</p> <p>Proposed Lot 65 will be 491.6m² and therefore complies with the 450m² minimum lot size. Proposed Lot 64 will be 375.4m² which is 17% less than the minimum lot size. Notwithstanding, the Applicant has sought an exception to the development standard under Clause 4.6 of the LEP, as addressed below.</p>
4.6 Exceptions to Development Standards	<p>Clause 4.6 of the LEP aims to provide an appropriate degree of flexibility in applying certain development standards to particular developments in order to achieve better outcomes for, and from, development. Accordingly, Council may grant consent under this Clause even though the development would contravene a development standard, being the minimum lot size under Clause 4.1A, of the LEP. It is noted that Clause 4.1A is not excluded from the operation of Clause 4.6.</p> <p>In accordance with Clause 4.6(3), the Applicant is required to submit a written request to Council seeking variation from the development standard relating to compliance with the minimum lot size of 450m² specified in Clause 4.1A of the LEP. The written request includes justification as to how strict compliance with the development standard is unreasonable or unnecessary in the circumstances of this case (Clause 4.6(3)(a)). Additionally, the written request establishes that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).</p> <p>The key points in the Applicant’s written justification are provided below:</p> <ul style="list-style-type: none"> • <i>proposed Lot 65 has been made larger in order to minimise the grade of the driveway from the boundary of Francis Avenue to the garage door of the dwelling. This increases the functionality and enhances physical pedestrian manoeuvring within the site;</i> • <i>similarly, the reduction in the size of proposed Lot 64 has no adverse impact on vehicular access to the site or pedestrian manoeuvring within,</i>

	<p><i>and remains compliant, or capable of being compliant, with the DCP;</i></p> <ul style="list-style-type: none"> • <i>the proposed development is consistent with the objectives of the R1 zone;</i> • <i>if the development and creation of the proposed lots involved Strata or Community title subdivision, then these lot sizes, having areas greater than 300m², would be acceptable. Approval to the proposed development relates then to the tenure of the lot created rather than the area;</i> • <i>the proposed development is essentially no different to those nearby and considered in harmony with these surrounding developments;</i> • <i>furthermore, it is considered that the development will be of an acceptable design which responds to the site's topography; and</i> • <i>the proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically: the orderly and economic use and development of land, promotes the delivery and maintenance of affordable housing, represents good design and will ensure the protection of the health and safety of its future occupants.</i> <p>It is considered that the Applicant's written request has adequately addressed the prescribed matters under Clause 4.6(3) and that the proposed development is within the public interest. The five possible approaches established by the NSW Land and Environment Court in <i>Wehbe vs Pittwater Council (2007) LEC 827</i> for determining whether compliances are unnecessary or unreasonable, have been considered as part of the proposal. Based on the first approach, it is considered that the proposed variation still achieves the objectives of zone R1 by providing housing diversity to meet the needs of the community.</p> <p>The notion of smaller lots and higher density housing is a key requirement for adapting to a growing population and providing suitable housing for future residents. The variation to the development standard is well founded and based on environmental planning grounds, and will not lead to the abandonment of the prevailing minimum lot size requirement. As such, it is also considered that the proposed variation has merit and that an appropriate degree of flexibility should be supported in this instance.</p> <p>In accordance with Planning Circular PS 20-002 and the notice from the Secretary of the Department of Planning and Environment (dated 21 February 2018), Council can assume the Secretary's concurrence for the Clause 4.6 request. As the development contravenes a numerical development standard by more than 10%, the development application is required to be determined by the elected body of Council and not under staff delegation.</p> <p>In deciding whether to approve the request, Council is required to consider the elements for the concurrence of the Secretary, as set-out under Clause 4.6(5). The proposed contravention of the development standard will not be inconsistent with the <i>New England North West Regional Plan</i> or Council's Local Strategic Planning Statement and Blueprint 100. The proposed development will also achieve compliance</p>
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	with the applicable SEPPs, the LEP (subject to the acceptance of the 4.6 variation) and The Tamworth Regional Development Control Plan 2010. Finally, the proposed development is not expected to have any public disadvantages.
7.1 Earthworks	It is considered that earthworks will be ancillary to the development for which consent is to be given. The earthworks are not expected to result in adverse impacts, subject to compliance with the recommended conditions of consent.
7.5 Development within designated buffer	The development is not expected to adversely affect the operational environment of the Sewer Treatment Plant. The proposed development will be located within an approved subdivision and is adjoined by residential uses.
7.6 Flight Path	The subject land is identified as being located within the Obstacle Height Limitation (OLS) map under the LEP. As the proposed dwellings will not reach the specified height limit on the OLS map (45m), no further consideration is required in this regard.

S79C(1)(a)(ii) Provisions of any draft environmental planning instrument

There are no draft environmental planning instruments which apply to the development proposal.

S79C(1)(a)(iii) Provisions of any Development Control Plan

The *Tamworth Regional Development Control Plan 2010* (DCP) applies to the proposed development. An assessment of the proposal against the 'Residential (Dual Occupancy) Development Controls' and 'Subdivision Controls' is presented below:

Residential (Dual Occupancy) Development Controls:

Building Setbacks

The proposed development complies with the prescribed setbacks of 4.5m (dwelling) / 5.5m (garage) to the street, and 1m to side and rear boundaries.

Design

The proposed development complies with this Part. Each dwelling has been designed to present to, and have vehicle access from, alternate street frontages (i.e., Villa 1 to Francis Avenue and Villa 2 to McKay Place). Furthermore, the garages do not exceed 60% of the street elevation.

Utilities

The proposed development is capable of being serviced by Council's reticulated water and sewer infrastructure, and telecommunications and electricity. A gravity stormwater drainage system is proposed, as shown on the submitted plans. Stormwater from each villa will be directed to 1 x 5,000L rainwater tank with overflow diverted to the kerb and gutter located on McKay Place and / or Francis Avenue. Additionally, the proposed development has been located clear of existing utility infrastructure.

Building Height

The proposed development complies with the prescribed building heights under this Part, being 7.2m to the topmost ceiling and 10m to the ridge. According to the submitted plans,

the proposed Villas will measure approximately 4.8m – 5m to the ridge and 2.4m – 3.3m to the topmost ceiling.

Site Coverage

The total site coverage across both proposed lots is 448m² which equates to an overall site coverage of 51% (taking into consideration all hardstand areas). Compliance is therefore achieved with this Part of the DCP as the site coverage does not exceed 75%.

Parking

The proposed development achieves compliance with Option 1 under this Part of the DCP. Each Villa contains three (3) bedrooms and is required to have two (2) enclosed carparking spaces. This will be provided via the attached double garages for each Villa, as shown on the submitted plans.

Landscaping

The proposed development complies with the landscaping requirement, being a minimum 125m², under this Part of the DCP. Proposed Lot 65 (Villa 1) and Proposed 64 (Villa 2) will have landscaped areas of approximately 252m² and 153m² respectively.

Private Open Space

This Part of the DCP requires a minimum amount of 50m² and minimum dimension of 6m for POS to the east. As shown on the submitted plans, each Villa will have 50m² of POS directly accessible from the living area, at least 6m in dimension and separated by a 1.5m dividing Colorbond fence to ensure privacy and amenity.

Access

The access controls will comply, subject to the removal of a current restriction on the use of land, which does not allow vehicular access to the site from McKay Place. The driveway and garage areas will be constructed with hardstand material (pavers or concrete), as indicated on the submitted plans and designed to be compliant with Australian Standard AS2890.1. Each driveway is located further than 6 metres from the intersection tangents points (kerb return), allowing for safe traffic movements at each intersection.

Storage

The proposed dwellings will satisfy the minimum requirement of 5m³ of storage, as shown on the submitted Floor Plans.

Density

Complies. The proposed site areas are > 300m² per dwelling.

Facilities

Will comply. A condition has been included in the terms of consent requiring letter boxes and clothes line facilities to be provided prior to the release of an Occupation Certificate to ensure compliance with this Part of the DCP.

Future Subdivision

Addressed as a part of the development.

Water Tanks

Complies. As shown on the submitted plans, water storage tanks will be located behind the building line.

Water Sensitive Essentials (WSE)

Complies. As noted on the development plans and supporting BASIX Certificates, each dwelling will have 1 x 5,000L rainwater tank and 4 WELs star rating appliances and fixtures.

Plumbing for Recycled Water

Will comply. A condition has been included in the recommended conditions of consent requiring additional underfloor drainage pipes to be installed to enable an external greywater device to be connected.

Subdivision Development Controls:

Servicing Strategy

The subject land is improved with existing services and conditions have been included in the conditions of consent to ensure the proposed development is connected to services.

Telecommunications and Electricity

Will comply. A condition has been included in the recommended conditions of consent requiring a provisioning letter to be submitted prior to the issue of a Subdivision Certificate to confirm that each lot is serviced with telecommunications and electricity infrastructure.

Lot Size

As previously addressed in this assessment Report, proposed Lot 65 complies with the 450m² minimum lot size under Clause 4.1A of the LEP. The lot size of proposed Lot 64 which is 375.4m² does not comply, a variation to this control in the LEP has been sought under Clause 4.6 of the LEP.

Staging

According to the Statement of Environmental Effects accompanying the Development Application, the proposed subdivision will be carried out as Stage 1 and the new dwellings will be constructed as Stages 2 and 3.

Access

Public road access will be available to both dwellings via Francis Avenue and McKay Place, subject to the removal of the current restriction on the use of land which does not allow vehicular access to the site from McKay Place.

Developer Contributions

Section 7.11 (direct) developer contributions are applicable to cater for the increased demand for community infrastructure resulting from the proposed development. As such, the payable levy is calculated as follows:

Community Infrastructure Type	Contribution
Roads	\$1,672
Car Parking	\$0.00
Open Space Embellishment	\$516.00
Plan Preparation and Administration	\$46.00
TOTAL	\$2,234.00

A condition has been imposed in the development consent requiring the contributions to be paid prior to the release of a Construction Certificate / Subdivision Certificate.

Water Management Act 2000 – Water and Sewer Headworks Charges:

The referral response received from Development Engineering specified the following applicable water and sewer headworks charges for the proposed development:

- Water – 1.00 ET x \$4,050.00 = \$4,050.00
- Sewer – 1.00 ET x \$1,625.00 = \$1,625.00

A condition has been included in the development consent requiring headworks to be paid prior to the issue of a Construction Certificate / Subdivision Certificate.

S79C(1)(a)(iia) Provisions of any Planning Agreement

Not applicable.

S79C(1)(a)(iv) Any matters prescribed by the Regulations

Not applicable.

S79C(1)(b) The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality

Context and Setting

It is considered that the proposed development will be compatible with surrounding land uses. The proposed dwellings will be single storey brick veneer construction with Colorbond roof sheeting, which is consistent with existing dwellings in the locality.

Site Design and Internal Layout

Satisfactory.

Access, Transport and Traffic

It is considered that the existing road network is capable of supporting the proposed development subject to the removal of the restriction on the use of land. As the development is only intended for residential use, it is unlikely that the proposal will generate any significant increase in traffic and therefore will have a negligible impact on the operation of the existing road network. Each dwelling will also include a double garage.

Visual and Privacy Impacts

The proposed development is not expected to result in adverse visual, privacy or overshadowing impacts. The proposed dwellings are single storey construction and comply with the building setback requirements under Council's DCP.

Heritage

There are no items of heritage significance known to be present on, or in proximity to, the subject land.

Water, Sewer and Stormwater

A Section 68 approval under the *Local Government Act 1993* will need to be obtained from Council for sewer, water supply and stormwater drainage work. This has been conditioned in the conditions of consent.

Utilities

The site is capable of being serviced by utilities, including water, sewer, telecommunications and electricity.

Noise and Vibration

A condition has been included in the conditions of consent limiting construction hours in order to preserve neighbourhood amenity.

Safety, Security and Crime Prevention

The proposed development is not expected to have an adverse impact on safety, security and crime prevention. Natural surveillance is available from the street frontages.

Social and Economic Impacts

No adverse impacts are anticipated.

Cumulative Impacts

Acceptable.

S79C(1)(c) *The Suitability of the Site for the Development*

There are no site constraints, such as natural hazards, that would prevent the proposed development from being undertaken on the subject land. The site is considered to be suitable for the purposes of the proposed development.

Section 88B Instrument Impacts

The registration of Deposited Plan 1212417 created Restrictions on the Use of the Land, which burdens Lot 15 and states:

“No vehicular access shall be permitted to the burdened Lot from McKay Place.”

The above Restrictions on the Use of Land was imposed by Council as a part of the subdivision that created the subject land (DA0042/2012). Development Engineering have reviewed this previous decision by Council and do not have any objections to allowing vehicular access from McKay Place. It is also noted that Council has previously removed the same restriction for the property directly to the north at No. 40 Francis Avenue.

The owners of the subject land have requested that Council release this restriction as a part of DA2022-0252 to facilitate the proposed development, namely vehicular access to proposed Lot 64.

In this regard, there are no outstanding issues which would suggest that the removal of the restriction should not be supported. The proposed development has been designed to comply with relevant planning legislation and therefore is considered a functional and appropriate development. In fact, should a dual occupancy development have been designed with the current vehicular access restriction in place, it would have likely resulted in a poor outcome, with dual frontage and vehicular access from the narrow street frontage on Francis Avenue and a closed off (fenced) secondary frontage on McKay Place. It is therefore recommended that Council consent to a release of a restriction on the use of land.

S79C(1)(d) *Any Submissions Made in Accordance with the Act or Regulations*

In accordance with Council’s *Community Participation Plan 2019*, the proposed development was notified to adjoining landowners from 25 January to 10 February 2022. This included a letter to each adjoining landowner in addition to online notification via the NSW Planning Portal. No formal submissions were received by Council during the consultation period.

S79C(1)(e) The Public Interest

The proposed development is not deemed to be contrary to the public interest, as addressed throughout this assessment Report.

(a) Policy Implications

Nil

(b) Financial Implications

The costs related to the removal of the Restriction on the Use of land are to be borne by the owner.

(c) Legal Implications

The Deed and any Release form produced by Land and Property Information NSW will require the Seal of Council be affixed.

The *Local Government (General) Regulation 2005*, section 400(4), requires that the Seal of Council must not be affixed to a document unless the document relates to the business of the Council, and the Council has resolved (by resolution specifically referring to the document) that the Seal be so affixed.

(d) Community Consultation

The proposed development was notified to adjoining landowners from 25 January 2022 until 10 February 2022. This included a letter to each adjoining landowner in addition to online notification via the NSW Planning Portal. No formal submissions were received by Council during the consultation period.

(e) Delivery Program Objective/Strategy

A Prosperous Region – P11 Support and facilitate economic development and employment.

CONCLUSION:

This Report provides an assessment of the development with regard to all relevant matters listed under Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*. The proposal is considered to be satisfactory, having regard to the relevant legislation, Council Codes and Policies. Therefore, it is recommended that DA2022-0252 and the associated LEP Clause 4.6 exception to the development standard be determined by the granting of consent, subject to the recommended conditions. Additionally, it is recommended that Council consent to the release of a restriction on the use of land to authorise access via McKay Place.

7.2 DEVELOPMENT APPLICATION FOR DUAL OCCUPANCY, RETAINING WALLS AND TORRENS TITLE SUBDIVISION ON LOT 16 DP 1212417, 1 FRANCIS AVENUE, NORTH TAMWORTH - FILE NO. DA2022-0253 (PAN-176605)

DIRECTORATE: LIVEABLE COMMUNITIES
AUTHOR: Sam Lobsey, Manager - Development

1 ANNEXURES ATTACHED

GENERAL MANAGER'S ADVISORY NOTE TO:

Councillors
Applicants
Persons making public submissions (written or verbal) Members of the Public

Record (Division) of Voting

In accordance with Section 375A(3) of the Local Government Act 1993, a Division is required to be called whenever a motion for a planning decision is put at a meeting of the Council or a Council Committee.

A DIVISION under Section 375A(3) of the Act is required on this Planning Application.

) Relevant Planning Application

In accordance with Section 10.4(4) of the Environmental Planning and Assessment Act 1979, a person who makes a relevant planning application to Council is required to disclose the following reportable political donations and gifts (if any) made by a person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined:

- (a) all reportable political donations made to any local councillor of the Council;
- (b) all gifts made to any local councillor or employee of the Council.

) Relevant Public Submission

In accordance with Section 10.4(5) of the Environmental Planning and Assessment Act 1979, a person who makes a relevant public submission to Council in relation to a relevant planning application made to the Council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing two years before the submission is made and ending when the application is determined:

- (a) all reportable political donations made to any local councillor of the Council;
- (b) all gifts made to any local councillor or employee of the Council.

Disclosure of Reportable Political Donations and Gifts

Planning Applications

Nil

Public Submissions

Nil

RECOMMENDATION

That in relation to the report "Development Application for a Dual Occupancy, Retaining Walls and Torrens Title Subdivision" on Lot 16 in DP 1212417 – 1 Francis Avenue, North Tamworth, Council:

- (i) authorise the Mayor and General Manager to enter into a Deed of Release for the release of a Restriction on the Use of Land affecting Lot 16 in DP 1212417;*
- (ii) authorise the affixing of the Seal of Council to the Deed and any other related*

documents to effect the intention of the parties; and,

- (iii) grant development consent to DA2022-0253, including a Clause 4.6 exception to the development standard under the Tamworth Regional Local Environmental Plan 2010, subject to the following conditions:*

GENERAL

- 1) development shall take place in accordance with the attached endorsed plans:**
 - a) Architectural Plans (as amended in red) prepared by Dunst Bros Pty Ltd, Drawings Numbered A101 – A107, Revision 2, Dated 27 January 2022; and**
 - b) Proposed Subdivision Layout Plan (as amended in red) prepared by Dunst Bros Pty Ltd, Drawing Numbered A112, Dated 18 November 2021.**
- 2) The development must be carried out in accordance with the Development Application and accompanying plans, drawings and other documents as amended by conditions of this consent. Any amendment to the development or to these conditions will require the consent of the Council.**
- 3) All building work must be carried out in accordance with the provisions of the National Construction Code (NCC).**
- 4) It is the responsibility of the developer to meet all expenses incurred in undertaking the development, including expenses incurred in complying with conditions imposed under this approval.**
- 5) Pursuant to Section 97A(2) of the Environmental Planning and Assessment Regulation 2000, all the commitments listed in the relevant BASIX Certificate for the development shall be fulfilled at the milestones listed.**
- 6) Any existing State Survey Mark or Cadastral Survey Mark shall be preserved during construction and not disturbed unless authority has been obtained from the Surveyor-General in accordance with the Surveyor-General's Directions published by the NSW Land and Property Information Service. In this regard, the Principal Contractor is responsible for the protection of the mark.**
- 7) The Applicant shall consult with, as required:**
 - a) Essential Energy;**
 - b) Natural Gas Company;**
 - c) a Telecommunications carrier;**

regarding their requirements for the provision of services to the development and the location of existing services that may be affected by the proposed works, either on site or on the adjacent public road(s).

PRIOR TO THE COMMENCEMENT OF WORKS:

- 8) The approved development which is the subject of this development consent must not be commenced until:**
 - a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier;**
 - b) the person having the benefit of the development consent has;**

- i) *appointed a Principal Certifying Authority for the building work;*
 - ii) *notified the Principal Certifying Authority that the person will carry out the building work as an owner-builder, if that is the case;*
 - c) *the principal certifying authority has, no later than two days before the building work commences:*
 - i) *notified the consent authority and the council (if the council is not the consent authority) of his or her appointment;*
 - ii) *notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work;*
 - d) *the person having the benefit of the development consent, if not carrying out the work as an owner-builder has*
 - i) *appointed a principal contractor for the building work who must be the holder of a contractor license if any residential building work is involved;*
 - ii) *notified the Principal Certifying Authority of any such appointment;*
 - iii) *unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work; and*
 - iv) *given at least two (2) days' notice to the council of the person's intention to commence the erection of the building.*
- 9) *Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided:*
- a) *must be a standard flushing toilet;*
 - b) *must be connected to a public sewer; or*
 - c) *if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or*
- the provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.*
- 10) *The applicant must ensure that a sign containing the following information is erected in a prominent position and maintained on the site at all times:*
- a) *the name, address and telephone number of the principal certifying authority for the work;*
 - b) *the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and*
 - c) *a statement that unauthorised entry to the work site is prohibited.*
- The sign is to be removed when the work has been completed.*
- 11) *Erosion and sediment control measures that will minimise damage to and avoid*
-

pollution of the environment are required for this development. An erosion and sediment control plan (ESCP) is to be prepared in accordance with the “Blue Book” Managing Urban Stormwater – Soils and Construction (Landcom 2004). The ESCP shall be submitted to Council and implemented prior to the commencement of any construction works.

- 12) A Traffic Management Plan (TMP) detailing how movements in and out of the site during the construction will be adequately managed so as not to adversely impact the safe operation of the road network shall be submitted to Council. This TMP shall consider both vehicular and pedestrian movements. Where the TMP is of a level of complexity that Traffic Guidance Schemes (TGS) are required, the TGS’s shall be prepared by a person with the applicable certification from Transport for NSW (TfNSW) in accordance with AS1742.3-2009 and the TfNSW current version of the "Traffic Control at Worksites" manual.*
- 13) The contractors engaged on the development must maintain public liability insurance cover to the minimum value of \$20 million. The policy shall specifically indemnify Council from all claims arising from the execution of the works. Documentary evidence of the currency of the policy shall be provided to the Council prior to the commencement of work and upon request, during the progress of the work.*
- 14) Section 68 approval from Council under the Local Government Act 1993 to carry out sewerage, water supply and stormwater drainage works for this development is required to be obtained prior to the commencement of works. Detailed stormwater plans and calculations shall be provided to Council for approval.*
- 15) Section 138 approval from Council under the Roads Act 1993 for works and structures in the roadway for this development is required. Detailed construction plans shall be provided to Council for approval.*

PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE:

- 16) a) In accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 and the Tamworth Regional Council Section 7.11 (formerly known as S94 (Direct)) Development Contributions Plan 2013, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:*

<i>Description</i>	<i>Contribution (\$)</i>
<i>Roads</i>	<i>\$ 1,672.00</i>
<i>Car Parking</i>	<i>\$ 0.00</i>
<i>Open Space Embellishment</i>	<i>\$ 516.00</i>
<i>Plan Preparation and Administration</i>	<i>\$ 46.00</i>
<i>TOTAL</i>	<i>\$ 2,234.00</i>

- b) If the contributions are not paid within the financial year that this consent is*

granted, the contributions payable will be adjusted in accordance with the provisions of the Development Contributions Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment in the following manner:

$$\$C_{PY} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

$\$C_{PY}$ *Is the amount of the contribution at the date of Payment*

$\$C_{DC}$ *Is the amount of the contribution as set out in this development consent*

CPI_{PY} *Is the latest release of the Consumer Price Index (Sydney - All Groups) for the financial year at the date of Payment as published by the ABS*

CPI_{DC} *Is the Consumer Price Index (Sydney - All Groups) for the financial year at the date of this development consent*

c) The monetary contributions shall be paid to Council:

i) Prior to the issue of the first Construction Certificate where the development is for building work.

It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Development Contributions Plan may be viewed at www.tamworth.nsw.gov.au <<http://www.tamworth.nsw.gov.au>> or a copy may be inspected at Council's Administration Centre during normal business hours.

NB: This condition is restated at Condition 34 to clarify the timing of payment of contributions.

17) A Compliance Certificate under Section 306 of the Water Management Act 2000 must be obtained from the Council (as the Local Water Supply Authority) prior to the issue of a Construction Certificate. Council requires the following works to be completed and/or payments received prior to the issue of a Compliance Certificate.

Headworks (Additional)

- Water = \$4,050
- Sewer = \$1,625

Advisory Note: The above headworks contributions have been adopted under the 2021/2022 Council Annual Operational Plan. Revised rates adopted in

subsequent Annual Operational Plans will apply to Headworks Contributions paid in later financial years.

NB: This condition is restated at Condition 35 to clarify the timing of payment of contributions.

- 18) *Retaining walls greater than 600mm above finished ground level or other approved methods necessary to prevent movement of excavated or filled ground, together with associated stormwater drainage measures, shall be designed by a qualified, practising Structural Engineer. Details are to be included with any Construction Certificate application.*

DURING CONSTRUCTION OR WORKS:

General

- 19) *Work on the project shall be limited to the following hours to prevent unreasonable disturbance to the amenity of the area: -*

Monday to Friday - 7.00am to 5.00pm.

Saturday - 8.00am to 1.00pm if audible on other residential premises, otherwise 7.00am to 5.00pm.

No work to be carried out on Sunday or Public Holidays if it is audible on other residential premises.

- 20) *The Developer shall be responsible to instruct and control their contractors regarding the hours of work. Council will exercise its powers under the Protection of the Environment Operations Act 1997, in the event that the building operations cause noise to emanate from the property on Sundays or Public Holidays or otherwise than between the hours detailed above.*
- 21) *Dust control measures are to be in place or are to be undertaken for the duration of the works to prevent dust from affecting the amenity of the immediate area during construction. The applicant is to ensure controls are maintained for the duration of the works and is to inspect the control for this purpose at frequent intervals. Any deficiencies are to be immediately made good.*
- 22) *The approved Traffic Management Plan (inclusive of any resultant Pedestrian Management Plans and the Traffic Control Plans) shall be implemented and any associated barriers, signage and controls shall be maintained in a functional state at all times.*
- 23) *Erosion and sediment control measures in accordance with the Erosion and Sediment Control Plan are to be maintained by the developer at all times.*
- 24) *The footpath and/or road reserve are not to be used for construction purposes or placing of building materials, vehicles, refuse, skips or the like (without Council's prior consent) to ensure safe and unobstructed access for pedestrians. Where necessary, application may be made by contacting Council.*
- 25) *Any damage caused to Council infrastructure during in, on or under the road reserve as a result of works undertaken for the development site shall be rectified by the Developer to the satisfaction of the Council so as to ensure the integrity of Council's infrastructure.*

Allotment Filling

- 26) *Any allotment filling that may be required for the development site shall meet the requirements of AS3798 (as amended) – Guidelines on Earthworks for Commercial and Residential Developments. Certification of the allotment filling shall be provided by a geotechnical testing authority registered under NATA. The testing authority shall be required to certify whether the fill complies with the requirements of AS2870.1 (as amended) – Residential Slabs and Footings – Construction, as “controlled fill”.*

No allotment filling shall encroach on, or burden, any adjacent lots.

Stormwater

- 27) *All roof water and concentrated surface stormwater discharging from the development site, buildings or works must be conveyed to the approved points of discharge by underground pipe drains complying with AS3500.3 (as amended) to the satisfaction of Council. No effluent or polluted water of any type may be allowed to enter the Council’s stormwater drainage system.*
- 28) *Runoff from all hardstand areas shall be captured on site and piped to the approved points of discharge in accordance with the current version of Council’s Engineering Design Guidelines for Subdivisions and Developments.*
- 29) *The approved points of discharge for the development site are defined as the kerb and gutter located on McKay Place and / or Francis Avenue adjacent to the development site. Additionally, the stormwater discharge drainage system must be constructed to comply with the following requirements as a minimum:*
- a) *all plumbing within the site must be carried out in accordance with relevant provisions of Australian Standard AS/NZS 3500.3 (as amended) Plumbing and Drainage – Stormwater Drainage;*
 - b) *temporary down pipes shall be connected as soon as the roof has been covered so as to not cause a nuisance to adjoining properties;*
 - c) *all overland surface flow paths must have a practical and satisfactory destination with due consideration to erosion and sediment control during all stages of development. A system to prevent overland flows discharging onto adjoining properties shall be implemented;*
 - d) *any interruption to the natural overland flow of stormwater drainage which could result in the disruption of amenity, or drainage or deterioration to any other property is not permitted; and*
 - e) *all overflow from rainwater tanks shall be collected and piped to the approved points of discharge.*

External Roads

- 30) *Should any works within the road reserve of Francis Avenue and / or McKay Place necessitate: installation, extension, removal, disposal, or reinstatement of any existing infrastructure or materials, all works and costs will be at the Developer’s expense.*

Inspections

- 31) *It is required that a Principal Certifying Authority (PCA) be appointed to undertake all critical stage inspections as prescribed under the Environmental Planning and Assessment Regulations 2000. The owner may appoint either the*

Council or an accredited certifier to be the PCA.

PRIOR TO THE RELEASE OF A SUBDIVISION CERTIFICATE:

- 32) **To confirm and clarify the terms of Council's approval, a Subdivision Certificate shall not be issued until either:**
- a) **the development is completed in accordance with Development Application No. DA2022-0253 and an Occupation Certificate has been issued in respect to each dwelling; or**
 - b) **a restriction as to User, pursuant to Section 88B of the Conveyancing Act 1988, is submitted which provides that development of the lot may only be carried out in accordance with the comprising Development Application No. DA2022-0253.**
- 33) **Certification being provided that each lot is serviced with electricity and telecommunications infrastructure in accordance with recognised standards.**
- 34) a) **In accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 and the Tamworth Regional Council Section 7.11 (formerly known as S94 (Direct)) Development Contributions Plan 2013, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:**

Description	Contribution (\$)
Roads	\$ 1,672.00
Car Parking	\$ 0.00
Open Space Embellishment	\$ 516.00
Plan Preparation and Administration	\$ 46.00
TOTAL	\$ 2,234.00

- b) **if the contributions are not paid within the financial year that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Development Contributions Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment in the following manner:**

$$\$C_{PY} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

$\$C_{PY}$ Is the amount of the contribution at the date of Payment

$\$C_{DC}$ Is the amount of the contribution as set out in this development

consent

CPI_{PY} *Is the latest release of the Consumer Price Index (Sydney - All Groups) for the financial year at the date of Payment as published by the ABS*

CPI_{DC} *Is the Consumer Price Index (Sydney - All Groups) for the financial year at the date of this development consent*

c) the monetary contributions shall be paid to Council:

i) Prior to the issue of the first Subdivision Certificate where the development is for subdivision.

It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Development Contributions Plan may be viewed at www.tamworth.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

NB: This condition is restated at Condition 16 to clarify the timing of payment of contributions.

35) A Compliance Certificate under Section 306 of the Water Management Act 2000 must be obtained from the Council (as the Local Water Supply Authority) prior to the issue of a Subdivision Certificate. Council requires the following works to be completed and/or payments received prior to the issue of a Compliance Certificate.

Water

- *A single water service is to be provided to each lot;*
- *proposed Lot 63 shall use the existing connection on the north-east corner of the Lot;*
- *proposed Lot 62 shall be serviced from the existing water main DN100 located on the northern side of Francis Avenue;*
- *works shall be undertaken in accordance with Council's Engineering Design Minimum Standards for Subdivisions and Developments; and*
- *work on live water mains is to be undertaken by Council at full cost to the developer.*

Sewer

- *A single sewer service is to be provided to each lot;*
- *proposed Lot 62 shall use existing connection on the north west corner of the Lot;*
- *proposed Lot 63 shall be serviced by a new connection off existing Council DN150 sewer main on McKay Place;*

- *work shall be undertaken in accordance with Council’s Engineering Design Guidelines for Subdivisions and Developments; and*
- *work on live sewer mains shall be undertaken by Council at full cost to the developer.*

Headworks (Additional)

- *Water = \$4,050*
- *Sewer = \$1,625*

Advisory Note: *The above headworks contributions have been adopted under the 2021/2022 Council Annual Operational Plan. Revised rates adopted in subsequent Annual Operational Plans will apply to Headworks Contributions paid in later financial years.*

NB: *This condition is restated at Condition 17 to clarify the timing of payment of contributions.*

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE:

- 36) *The occupation or use of the whole or any part of a new building must not commence unless an occupation certificate has been issued in relation to the building or part.*
- 37) *The occupation or use of the whole or any part of a new building shall not commence unless a Section 68 certificate of completion has been issued by Council. The certificate of completion shall not be issued until such time as all relevant conditions of the Section 68 approval have been complied with and all applicable documents received by council. This includes the following works:*
- a) *the installation of additional underfloor drainage pipes to enable an external greywater reuse device to be connected.*
- 38) *To ensure compliance with the Tamworth Regional Council Development Control Plan (2010), the following works shall be completed prior to the issue of an Occupation Certificate:*
- a) *a letter box must be provided for each dwelling / unit at the front property boundary in accordance with Australia Post requirements;*
 - b) *clothes drying facilities must be provided for each dwelling / unit. Clothes lines and hoists shall be located at the rear of the development and adequately screened where visible from the street; and*
 - c) *evidence must be provided confirming the landscaped areas are installed as per the endorsed plans.*

CONTINUED OPERATIONS:

- 39) *Vehicle crossovers, on-site stormwater systems and landscaped areas on the site are to be maintained at all times.*

APPLICATION DETAILS:

Application No.	DA2021-0253 (PAN-176605)
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Application For:	Dual Occupancy, Retaining Walls and Torrens Title Subdivision
Date Received:	7 December 2021
Applicant:	Bath Stewart Associates Pty Ltd
Owner:	Mrs KR Spokes & Mr SJ Spokes
Land/Address:	Lot 16 in DP 1212417 – 1 Francis Avenue NORTH TAMWORTH NSW 2340
Zoning:	R1 General Residential - <i>Tamworth Regional Local Environmental Plan 2010 (As Amended)</i>

DEVELOPMENT ASSESSMENT SUMMARY

The proposed development involves a Torrens title subdivision of one (1) lot into two (2) lots and construction of a detached dual occupancy development. The proposal is a permissible use in the R1 – General Residential zone in accordance with the Tamworth Regional Local Environmental Plan 2010 (LEP) and meets the zone objectives. The proposed development will be compliant with the relevant NSW planning legislation; State Planning Policies, the LEP and the Tamworth Regional Development Control Plan 2010 (DCP).

Council did not receive any formal submissions specifically relating to this development application.

There are two reasons why this application is required to be reported to Council and determined by the elected body (Council) rather than under staff delegation:

1. Clause 4.6 Variation

The Applicant has requested that Council consider a variation to the minimum lot size requirement for dual occupancy development in accordance with Clause 4.6 of the LEP. The minimum lot size is 450m² and one (1) of the proposed lots will have an area less than this requirement. Clause 4.6 aims to provide an appropriate degree of flexibility in applying certain development standards to particular developments in order to achieve better outcomes for, and from, development. Accordingly, Council may grant consent under Clause 4.6 even though the development would contravene a development standard. The proposed development will achieve compliance with the relevant planning legislation and suitable justification has been provided by the Applicant based on environmental planning grounds, therefore, it is considered appropriate to allow the proposed variation in this instance. As the development contravenes a numerical development standard by more than 10%, the development application is required to be determined by the elected body of Council and not under staff delegation.

2. Removal of Restriction on Use of Land

The registration of Deposited Plan 1212417 created a restriction on the use of the land, which burdens the subject Lot and states:

“No vehicular access shall be permitted to the burdened Lot from McKay Place.”

The above Restriction on the Use of Land was imposed by Council as a part of the subdivision that created the subject land (DA0042/2012). A review has been undertaken in consideration of the design elements of the proposed development and potential impacts on the immediate locality. The assessment concluded that there are no objections to lifting this restriction and allowing vehicular access to McKay Place.

DESCRIPTION OF PROPOSAL:

DA2022-0253 seeks development consent for a one (1) into two (2) lot subdivision and the construction of two (2) detached dwellings upon the newly created allotments. The proposed lot sizes following subdivision are as follows:

- Proposed Lot 62 approximately 504.1m²; and,
- Proposed Lot 63 approximately 362.9m².

Each newly created allotment will be improved with a single storey dwelling with an attached garage, alfresco and porch. The dwellings will be brick veneer construction with Colorbond roofing. Retaining walls will also be built as a part of the development. The proposed development will be carried out over the following stages:

- stage 1: the subdivision of the land;
- stage 2: the construction of Villa 1; and
- stage 3: the construction of Villa 2.

The Plan Set is **ATTACHED** to this report, see **ANNEXURE 1**.

SUBJECT SITE AND LOCALITY MAP:

The subject land is located on the corner of Francis Avenue and McKay Place, North Tamworth (refer to **Figure 1** below). The site is currently vacant and has an approximate area of 866.9m². The land slopes from the north-east to the south-west. Surrounding land uses to the site include: vacant residential allotments, single storey dwellings (stand-alone), single dwellings with attached secondary dwellings and dual occupancies.

The subject site is zoned R1 General Residential with a minimum lot size of 600m² in accordance with the provisions of the *Tamworth Regional Local Environmental Plan 2010* (LEP). The allotment is not prone to bushfire hazards or liable to inundation by flooding. There are no items of heritage significance known to be present on, or in proximity to, the subject land.



Figure 1 – Aerial map of the subject land (Lot 16 in DP 1212417 – 1 Francis Avenue NORTH TAMWORTH NSW 2340).

REFERRALS:

The development was referred internally to the following Council specialists:

- Development Engineering
- Section 7.11 Planner

No objections were raised subject to conditions of consent.

ASSESSMENT REPORT:

The following matters listed under Section 4.15C of the *Environmental Planning and Assessment Act 1979*, are relevant in considering this application:

S4.15C(1)(a)(i) Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021:

The subject land is vacant and situated within a residential locality. A search of Council's records did not produce any approvals, notices or orders regarding contaminating, or potentially contaminating land uses on or in proximity to the site. Furthermore, a site inspection did not reveal any evidence to suggest that the land is contaminated. It is

therefore considered that the site is unlikely to be contaminated and development consent can be granted, pursuant to Clause 4.6(1) of this Policy.

State Environmental Planning Policy (BASIX) 2004:

BASIX Certificates prepared by Dunst Bros Pty Ltd (numbered 1260515S and 1260521S, dated 18 November 2021) have been submitted for each of the new dwellings proposed via DA2022-0253. The specified BASIX commitments have been shown on the submitted plans. A condition has been included in the terms of consent to ensure that the specified BASIX commitments are fulfilled by the Proponent.

Tamworth Regional Local Environmental Plan 2010:

An assessment of the proposed development against the provisions under the *Tamworth Regional Local Environmental Plan 2010* (LEP) is presented in **Table 1** below:

Table 1 – Compliance with the LEP.

Clause	Comment
1.2 Aims of plan	The proposed development complies with applicable aims of the LEP.
1.9A Suspension of covenants, agreements and instruments	This Report requests Council to consent to the release of the restriction as to the use of land in order to facilitate vehicular access to proposed Lot 63 via McKay Place. The restriction was imposed by Council at the time of subdivision and is not otherwise able to be varied under Clause 1.9A. This matter is discussed further in this Report.
2.1 Land use zones	The subject site is zoned R1 General Residential with a minimum lot size of 600m ² .
2.3 Zone objectives	The consent authority must have regard to the relevant zone objectives in determining a DA (see Land Use Table provisions, below).
2.6 Subdivision	Development consent has been sought as a part of DA2022-0253 for the subdivision of the subject land, thereby complying with this Clause.
Land use table	<p>The objectives for the R1 General Residential zone are as follows:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community.</i> • <i>To provide for a variety of housing types and densities.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>It is considered that the proposed development is consistent with the applicable zone objectives. The proposal will provide for the housing needs of the community, and a variety of housing types and densities.</p> <p>The proposed development is defined as a ‘dual occupancy (detached)’ as follows:</p> <p>dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.</p> <p>Note—Dual occupancies (detached) are a type of dual occupancy—see the definition of that term in this Dictionary.</p> <p>‘Dual occupancy’ is a type of development that is permitted with consent in the R1 zone.</p>

<p>4.1 Minimum subdivision lot size</p>	<p>Clause 4.1(3) requires any lot resulting from a subdivision not to be less than the minimum size shown on the Lot Size Map. Although both allotments will be less than the prescribed minimum lot size (i.e., 600m²), Clause 4.1A allows a smaller lot size for dual occupancy developments, as addressed below.</p>
<p>4.1A Minimum subdivision lot size for Zones R1 and RU5</p>	<p>Clause 4.1A states that, despite Clause 4.1, the size of any lot resulting from a subdivision of land in the R1 zone may be less than the minimum lot size, but not less than 450m², if:</p> <ul style="list-style-type: none"> • the land is connected to reticulated sewerage; and, • development consent has been granted in respect of the subdivision for the purpose of a dual occupancy. <p>The subject land is connected to Council's reticulated sewer infrastructure and the proposed development is for the purpose of a dual occupancy.</p> <p>Proposed Lot 62 will be 504.12m² and therefore complies with the 450m² minimum lot size. Proposed Lot 63 will be 362.88m² which is 19.4% less than the minimum lot size. Notwithstanding, the Applicant has sought a variation and exception to the development standard under Clause 4.6 of the LEP, as addressed below.</p>
<p>4.6 Exceptions to Development Standards</p>	<p>Clause 4.6 of the LEP aims to provide an appropriate degree of flexibility in applying certain development standards to particular developments in order to achieve better outcomes for, and from, development. Accordingly, Council may grant consent under this Clause even though the development would contravene a development standard, being the minimum lot size under Clause 4.1A of the LEP. It is noted that Clause 4.1A is not excluded from the operation of Clause 4.6.</p> <p>In accordance with Clause 4.6(3), the Applicant is required to submit a written request to Council seeking variation from the development standard relating to compliance with the minimum lot size of 450m² specified in Clause 4.1A of the LEP. The written request includes justification as to how strict compliance with the development standard is unreasonable or unnecessary in the circumstances of this case (Clause 4.6(3)(a)). Additionally, the written request establishes that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).</p> <p>The key points in the Applicant's written justification are provided below:</p> <ul style="list-style-type: none"> • <i>Proposed Lot 62 has been made larger in order to minimize the grade of the driveway from the boundary of Francis Avenue to the garage door of the dwelling. This increases the functionality and enhances physical pedestrian manoeuvring within the site;</i> • <i>similarly, the reduction in the size of proposed Lot 63 has no adverse impact on vehicular access to the site or pedestrian manoeuvring within, and remains compliant, or capable of being compliant, with the</i>

	<p><i>DCP;</i></p> <ul style="list-style-type: none"> • <i>the proposed development is consistent with the objectives in the R1 zone;</i> • <i>if the development and creation of the proposed lots involved Strata or Community title subdivision, then these lot sizes, having areas greater than 300m², would be acceptable. Approval to the proposed development relates then to the tenure of the lot created rather than the area;</i> • <i>the proposed development is essentially no different to those nearby and considered in harmony with these surrounding developments;</i> • <i>furthermore, it is considered that the development will be of an acceptable design which responds to the site's topography; and,</i> • <i>the proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically: the orderly and economic use and development of land, promotes the delivery and maintenance of affordable housing, represents good design and will ensure the protection of the health and safety of its future occupants.</i>
7.1 Earthworks	It is considered that earthworks will be ancillary to the development for which consent is to be given. The earthworks are not expected to result in adverse impacts, subject to compliance with the recommended conditions of consent.
7.5 Development within designated buffer	The development is not expected to adversely affect the operational environment of the Sewer Treatment Plant. The proposed development will be located within an approved subdivision and is adjoined by residential uses.
7.6 Flight Path	The subject land is identified as being located within the Obstacle Height Limitation (OLS) map under the LEP. As the proposed dwellings will not reach the specified height limit on the OLS map (45m), no further consideration is required in this regard.

S4.15C(1)(a)(ii) Provisions of any draft environmental planning instrument

There are no draft environmental planning instruments which apply to the development proposal.

S4.15C(1)(a)(iii) Provisions of any Development Control Plan

The *Tamworth Regional Development Control Plan 2010* (DCP) applies to the proposed development. An assessment of the proposal against the 'Residential (Dual Occupancy) Development Controls' and 'Subdivision Controls' is presented below:

Residential (Dual Occupancy) Development Controls:

Building Setbacks

The proposed development complies with the prescribed setbacks of 4.5m (dwelling), 5.5m (garage) to the street and 1m to side and rear boundaries.

Design

The proposed development complies with this Part. Each dwelling has been designed to present to, and have vehicle access from, alternate street frontages (i.e., Villa 1 to Francis

Avenue and Villa 2 to McKay Place). Furthermore, the garages do not exceed 60% of the street elevation.

Utilities

The proposed development is capable of being serviced by Council's reticulated water and sewer infrastructure, and telecommunications and electricity. A gravity stormwater drainage system is proposed, as shown on the submitted plans. Stormwater from each dwelling will be directed to 1 x 5,000L rainwater tank with overflow diverted to the kerb and gutter located on McKay Place and / or Francis Avenue. Additionally, the proposed development has been located clear of existing utility infrastructure.

Building Height

The proposed development complies with the prescribed building heights under this Part, being 7.2m to the topmost ceiling and 10m to the ridge. According to the submitted plans, the proposed Villas will measure approximately 4.8m – 5m to the ridge and 2.4m – 3.3m to the topmost ceiling.

Site Coverage

The total site coverage across both proposed lots is 409m² which equates to an overall site coverage of 47% (taking into consideration all hardstand areas). Compliance is therefore achieved with this Part of the DCP as the site coverage does not exceed 75%.

Parking

The proposed development achieves compliance with Option 1 under this Part of the DCP. Each Villa contains three (3) bedrooms and is required to have two (2) enclosed carparking spaces. This will be provided via the attached double garages for each Villa, as shown on the submitted plans.

Landscaping

The proposed development complies with the landscaping requirement, being a minimum 125m², under this Part of the DCP. Proposed Lot 62 (Villa 1) and Proposed 63 (Villa 2) will have landscaped areas of approximately 262m² and 135m² respectively.

Private Open Space (POS)

This Part of the DCP requires a minimum amount of 50m² and minimum dimension of 6m for POS to the east. As shown on the submitted plans, each Villa will have at least 50m² of POS directly accessible from the living area, at least 6m in dimension and separated by a 1.5m dividing Colorbond fence to ensure privacy and amenity.

Access

The access controls will comply, subject to the removal of a current restriction on the use of land, which does not allow vehicular access to the site from McKay Place. The driveway and garage areas will be constructed with hardstand material (pavers or concrete), as indicated on the submitted plans and designed to be compliant with Australian Standard AS2890.1. Each driveway is located further than six (6) metres from the intersection tangent points (kerb return), allowing for safe traffic movements at each intersection.

Storage

The proposed dwellings will satisfy the minimum requirement of 5m³ of storage, as shown on the submitted Floor Plans.

Density

Complies. The proposed site areas are > 300m² per dwelling.

Facilities

Will comply. A condition has been included in the terms of consent requiring letter boxes and clothes line facilities to be provided prior to the release of an Occupation Certificate to ensure compliance with this Part of the DCP.

Future Subdivision

Addressed as a part of the development.

Water Tanks

Complies. As shown on the submitted plans, water storage tanks will be located behind the building line.

Water Sensitive Essentials (WSE)

Complies. As noted on the development plans and supporting BASIX Certificates, each dwelling will have 1 x 5,000L rainwater tank (providing 10,000 litres in total) and 4 WELs star rating appliances and fixtures.

Plumbing for Recycled Water

Will comply. A condition has been included in the recommended terms of consent requiring additional underfloor drainage pipes to be installed to enable an external greywater device to be connected.

Subdivision Development Controls:

Servicing Strategy

The subject land is improved with existing services and conditions have been included in the conditions of consent to ensure the proposed development is connected to services.

Telecommunications and Electricity

Will comply. A condition has been included in the recommended conditions of consent requiring a provisioning letter to be submitted prior to the issue of a Subdivision Certificate to confirm that each lot is serviced with telecommunications and electricity infrastructure.

Lot Size

As previously addressed in this assessment Report, Proposed Lot 62 complies with the 450m² MLS under Clause 4.1A of the LEP. The lot size of Proposed Lot 63 which is 362.88m² does not comply, a variation to this control in the LEP has been sought under Clause 4.6 of the LEP.

Staging

According to the Statement of Environmental Effects accompanying the Development Application, the proposed subdivision will be carried out as Stage 1 and the new dwellings will be constructed as Stages 2 and 3.

Access

Public road access will be available to both dwellings via Francis Avenue and McKay Place, subject to the removal of the current restriction on the use of land which does not allow vehicular access to the site from McKay Place.

Developer Contributions

Section 7.11 (direct) developer contributions are applicable to cater for the increased demand for community infrastructure resulting from the proposed development. As such, the payable levy is calculated as follows:

Community Infrastructure Type	Contribution
Roads	\$1,672
Car Parking	\$0.00
Open Space Embellishment	\$516.00
Plan Preparation and Administration	\$46.00
TOTAL	\$2,234.00

A condition has been imposed in the development consent requiring the contributions to be paid prior to the release of a Construction Certificate / Subdivision Certificate.

Water Management Act 2000 – Water & Sewer Headwork’s Charges:

The referral response received from Development Engineering specified the following applicable water and sewer headworks charges for the proposed development:

- Water – 1.00 ET x \$4,050.00 = \$4,050.00
- Sewer – 1.00 ET x \$1,625.00 = \$1,625.00

A condition has been included in the development consent requiring headworks to be paid prior to the issue of a Construction Certificate / Subdivision Certificate.

S4.15C(1)(a)(iia) Provisions of any Planning Agreement

Not applicable.

S4.15C(1)(a)(iv) Any matters prescribed by the Regulations

Not applicable.

S4.15C(1)(b) The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality

Context and Setting

It is considered that the proposed development will be compatible with surrounding land uses. The proposed dwellings will be single storey brick veneer construction with Colorbond roof sheeting, which is consistent with existing dwellings in the locality.

Site Design and Internal Layout

Satisfactory.

Access, Transport and Traffic

It is considered that the existing road network is capable of supporting the proposed development subject to the removal of the restriction on the use of land. As the development is only intended for residential use, it is unlikely that the proposal will generate any significant increase in traffic and therefore will have a negligible impact on the operation of the existing road network. Each dwelling will also include a double garage.

Visual and Privacy Impacts

The proposed development is not expected to result in adverse visual, privacy or overshadowing impacts. The proposed dwellings are single storey construction and comply with the building setback requirements under Council's DCP.

Heritage

There are no items of heritage significance known to be present on, or in proximity to, the subject land.

Water, Sewer and Stormwater

A Section 68 approval under the *Local Government Act 1993* will need to be obtained from Council for sewer, water supply and stormwater drainage work. This has been conditioned in the terms of consent.

Utilities

The site is capable of being serviced by utilities, including water, sewer, telecommunications and electricity.

Noise and Vibration

A condition has been included in the terms of consent limiting construction hours in order to preserve neighbourhood amenity.

Safety, Security and Crime Prevention

The proposed development is not expected to have an adverse impact on safety, security and crime prevention. Natural surveillance is available from the street frontages.

Social and Economic Impacts

No adverse impacts are anticipated.

Cumulative Impacts

Acceptable.

S4.15C(1)(c) *The Suitability of Site for the Development*

There are no site constraints, such as natural hazards, that would prevent the proposed development from being undertaken on the subject land. The site is considered to be suitable for the purposes of the proposed development.

Section 88B Instrument Impacts

The registration of Deposited Plan 1212417 created Restrictions on the Use of the Land, which burdens Lot 16 and states:

“No vehicular access shall be permitted to the burdened Lot from McKay Place.”

The above Restrictions on the Use of Land was imposed by Council as a part of the subdivision that created the subject land (DA0042/2012). Development Engineering have reviewed this previous decision by Council and do not have any objections to allowing vehicular access from McKay Place. It is also noted that Council has previously removed the same restriction for the property directly to the north at No. 40 Francis Avenue.

The owners of the subject land have requested Council to release this restriction as a part of DA2022-0253 to facilitate the proposed development, namely vehicular access to proposed Lot 63.

In this regard, there are no outstanding issues which would suggest that the removal of the restriction should not be supported. The proposed development has been designed to comply with relevant planning legislation and therefore is considered a functional and appropriate development. In fact, should a dual occupancy development have been designed with the current vehicular access restriction in place, it would have likely resulted in a poor outcome, with dual frontage and vehicular access from the narrow street frontage on Francis Avenue and a closed off (fenced) longer secondary frontage on McKay Place. It is therefore recommended that Council resolves to consent to a release of a restriction on the use of land.

S79C(1)(d) Any Submissions Made in Accordance with the Act or Regulations

In accordance with Council's *Community Participation Plan 2019*, the proposed development was notified to adjoining landowners from 25 January 2022 until 10 February 2022. This included a letter to each adjoining landowner in addition to online notification via the NSW Planning Portal. No formal submissions were received by Council during the consultation period.

S79C(1)(e) The Public Interest

The proposed development is not deemed to be contrary to the public interest, as addressed throughout this assessment Report.

(a) Policy Implications

Nil

(b) Financial Implications

The costs related to the removal of the Restriction on the Use of land are to be borne by the owner.

(c) Legal Implications

The Deed and any Release form produced by Land and Property Information NSW will require the Seal of Council be affixed.

The *Local Government (General) Regulation 2005*, section 400(4), requires that the Seal of Council must not be affixed to a document unless the document relates to the business of the Council, and the Council has resolved (by resolution specifically referring to the document) that the Seal be so affixed.

(d) Community Consultation

The proposed development was notified to adjoining landowners from 25 January 2022 until 10 February 2022. This included a letter to each adjoining landowner in addition to online notification via the NSW Planning Portal. No formal submissions were received by Council during the consultation period.

(e) Delivery Program Objective/Strategy

A Prosperous Region – P11 Support and facilitate economic development and employment.

CONCLUSION:

This Report provides an assessment of the development with regard to all relevant matters listed under Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*. The proposal is considered to be satisfactory, having regard to the relevant legislation, Council Codes and Policies. Therefore, it is recommended that DA2022-0253 and the associated

LEP Clause 4.6 exception to the development standard be determined by the granting of consent, subject to the recommended conditions. Additionally, it is recommended that Council resolve to consent to the release of a restriction on the use of land to authorise access via McKay Place.

8 INFRASTRUCTURE AND SERVICES

8.1 PROPOSED CHANGES TO DOMESTIC WASTE MANAGEMENT CHARGES IN 2022-2023

DIRECTORATE: WATER AND WASTE

AUTHOR: Bruce Logan, Director Water and Waste

2 ANNEXURES ATTACHED

RECOMMENDATION

That in relation to the report “Proposed Changes to Domestic Waste Management Charges in 2022-2023”, Council receive and note the report:

SUMMARY

At the Council meeting of 10 May 2022, later in this business paper, Council will consider a report which includes details of the 2022-2023 Annual Operating Plan, Revenue Policy and associated documents and seeking Council’s approval to place these documents on public display. These documents contain, amongst other things, some significant changes to the method Council uses to calculate annual Domestic Waste Management charges and the proposed charges to be levied on property owners in 2022-2023.

The purpose of this report is to provide further detail to Council about these changes.

COMMENTARY

Council provides waste management services for approximately 62,000 residents/25,000 households through its existing network of eleven operational waste management facilities. *The Local Government Act 1993* allows councils to levy an annual charge for providing domestic waste management services on all parcels of rateable land for which the service is available, whether or not it is actually used. In this way all property owners contribute to the current and future provisions of waste management services.

Just how each Council calculates and applies the Domestic Waste Management (DWM) charges is open to each Council to consider – there is no regulation or legislation applying, although the Independent Pricing and Regulatory Tribunal (IPART) has released some draft guidance. It is at least 5 years since a detailed review of the way Council calculates and applies its DWM charges and given the rapidly changing environment in relation to solid waste and sustainability, in general, a complete review has been completed.

The review included a range of issues including:

- the range of waste management services Council currently offers to the community;
- the cost of providing services including costs associated with operating, running and rehabilitation of current and future infrastructure; and
- how these costs are recovered.

A number of workshops have been held with Council over the last few months to discuss various aspects of the review and seek direction from Council in relation to the proposed way forward.

Further discussion about the review is included below:

Item 1 – Range of Waste Management Services and facilities

Council presently has 11 waste management facilities across the council area as shown below:

Landfills	Small Vehicle Transfer Stations (SVTS)
Tamworth – Forest Road	Bendemeer
Barraba	Dungowan
Manilla	Duri
	Kootingal
	Somerton
	Niangala
	Nundle
	Watson’s Creek

A review has been undertaken of the facilities which looked at the following for each site:

- general locality;
- locality with reference to Forest Road Landfill;
- locality with reference to other small landfills and / or SVTS;
- material acceptance;
- waste volumes accepted at each site;
- servicing levels;
- operational costs; and
- operational hours.

From this review, Council was asked to consider the possibility of closing the Watson’s Creek and Niangala facilities. This proposal is presently on public display. A further report will be presented to Council in the near future with the results of the community consultation and seeking direction from Council on this proposal.

The services currently offered in the waste area were also looked at. Currently the services offered include:

Community Recycling Drop off points	Mattress Disposal
Municipal Solid Waste Landfill Cost – includes cost of transferring waste from SVTS and disposing in landfill	Tyre Disposal
Recycling Processing Costs	Public Place Bins
Green Waste Processing Costs	Event Waste Management costs
Food Organics Garden Organics Processing Cost	Street Sweeping Service
Landfill Remediation & Management - Forest Road	Litter Services
Landfill Remediation & Management - Barraba, Manilla, Kootingal and Nundle	Sanitation
Landfill Remediation & Management - Somerton, Duri, Dungowan, Bendemeer, Watsons Creek and Niangala	

It is not proposed to reduce or change these services at this time.

In addition, the review looked at the benefits/costs associated with continuing landfill operation versus Small Vehicle Transfer Stations. The review recommended that the Manilla and Barraba landfills be converted to SVTS's over time to:

- reduce environmental liabilities associated with landfills;
- reduce operating costs;
- promote diversion of recoverable materials from landfill through the use of SVTS; and
- promote increased community interaction between council and the community.

It is proposed to convert the Manilla and Barraba Landfills to SVTS's over the next 2-3 years.

Item 2 - Cost of providing services including costs associated with operating, running and rehabilitation of current and future infrastructure

A full review of costs involved with the operation of the current landfills and SVTS's has been undertaken. In addition, a 20 year capital works program was also prepared which included the following key items:

- funding for the new Organics Recycling Facility and associated works;
- ongoing operation of the new ORF;
- operation of existing facilities;
- funding for some proposals presently under discussion between Council and Challenge Community Services;
- conversion of Manilla and Barraba Landfills to Small Vehicle Transfer Stations;

- rehabilitation costs associated with the Manilla and Barraba Landfills; and
- other capital works identified in a 20-year capital works program based on the Forest Road Landfill Master Plan.

A financial model was then prepared based on the ongoing operation costs of existing/future facilities and the 20 year capital works program. This financial model established a minimum income that Council needs to raise to be able to fund the works included in the financial model.

Item 3 - How these costs are recovered

Given the income that is required to fund identified works the review then looked at the most appropriate way to raise this level of income.

Income for solid waste is raised from 2 main areas. Gate fees, which are charged when a customer visits any of Council's waste facilities, and annual charges or Domestic Waste Management (DWM) charges which are levied on property owners on an annual basis.

A review of gate fees was completed. The review identified a significant number of changes to the gate fees levied in current financial year. The proposed 2022-2023 gates fees are now on public display seeking public comment, before Council considers whether to formally adopt the gate fees for the 2022-2023 financial year.

Assuming Council does adopt the proposed 2022-2023 gate fees the estimated annual income raised from these fees has been calculated. The balance of the income required to fund necessary works from the financial modelling will then be required to be raised from DWM charges.

The review of DWM charges considered the following:

- current DWM charges do not align with the new kerbside collection contract services;
- the current DWM Charge boundaries/zones are 12+ years old;
- IPART in its draft guidelines recommend transparency in DWM charges and the inclusion of 2 charges as follows:
- a Base Charge which contributes toward the cost of:
 - operation of facilities;
 - street sweeping;
 - public litter bins;
 - litter costs;
 - sanitation;
- a Waste Service Charge which covers the cost of:
 - cost of the waste collection service – if provided;
 - cost of managing the Contractor and service; and
- the current DWM charge descriptions are out dated and not aligned with the Level of Service (LOS) provided across the Council area.

It is proposed to follow the IPART draft guidance and introduce an annual base charge and a waste service charge.

Base Charge

- reflects the cost of a number of services including landfill remediation, landfill operation, community drop off points, street sweeping and sanitation;
- however, these costs can be different depending on where a property is located and the services they receive – for example:
 - Manilla Landfill remediation – why do Tamworth residents contribute to that; and
 - street sweeping - is there a benefit to this outside the urban areas.

Waste Service Charge

- reflects the cost charged to Council by the contractor to provide the waste collection service;
- cost of managing the contractor and service are different depending on the centre the property is located in - Tamworth, Moonbi and Kootingal versus Manilla and Barraba and if the property is located on a road connecting those centres and receives the service;
- to address these and other concerns it is proposed to break the Council area up into 3 areas/zones:
 - **Urban** – Tamworth, Moonbi and Kootingal;
 - **Regional Centre** – Manilla, Barraba and Nundle and the main road network that connects these centres to Tamworth, where properties receive a waste collection service; and
 - **Regional Remote** – All other areas across Council and including the centres of Duri, Somerton, Dungowan, Bendemeer, Watsons Creek and Niangala.

Finally, it is proposed to introduce an annual Commercial Base Charge for property rated as business/commercial. The introduction of a Base Charge for commercial property is to help offset the cost of waste management services currently paid for by residential property owners. Commercial enterprises benefit from Council's waste management services including street sweeping, footpath sweeping, street litter bin services, sanitation services and litter picking services in public spaces.

Although businesses are encouraged to source their waste collection services from providers other than Council, some entities choose to participate in Council's kerbside service. The Commercial Base Fee will assist Council in cost recovery when businesses choose to use other providers for their waste collection service, yet still enjoy the waste management services provided by Council.

Waste Service Charges, for both residential and commercial, simply reflects the cost to Council of providing a collection service to a property. As a result, if a residential property can receive a waste collection service now, the charge levied by the contractor will be passed onto the property owner whether they choose to use the service or not. And for commercial, if the property chooses to use Council's service the associated cost will be passed on.

For the Base Charge it is proposed to levy charges based on recovering a certain percentage of the cost of the following services from the 3 area/zones created and from commercial property. The balance of the costs will be recovered mainly from gate fees.

Service	Recovery DWM %	Urban	Regional Centres	Regional Remote	Commercial
Community Recycling Drop	100%	x			
Municipal Solid Waste Landfill Cost	35%	x	x	x	x
Recycling Processing Cost	100%	x	x	x	x
Green Waste Processing Cost	50%	x	x	x	
Food Organics Garden Organics Processing Cost	100%	x	x		
Landfill Remediation & Management <i>Forest Road</i>	40%	x	x		x
Landfill Remediation & Management <i>Barraba, Manilla, Kootingal, Nundle</i>	60%		x		
Landfill Remediation & Management <i>Somerton, Duri, Dungowan, Bendemeer, Watsons, Niangala</i>	70%			x	
Mattress Disposal	100%	x	x	x	
Tyre Disposal	100%	x	x	x	
Public Place Bins	50%	x	x		x
Event Waste Management Fees	70%	x	x		x
Street Sweeping Service	50%	x	x		
Litter Services	50%	x	x		
Sanitation	40%	x			

A key consideration is the boundary between property considered urban or regional centres and those considered regional remote. Council presently uses a similar arrangement to allocate property into those receiving a waste service and all other areas not receiving a waste service as follows:

Category 1	All areas not part of Cat 2 and 3 receiving a waste collection service
Category 2	Barraba, Manilla & Nundle
Category 3	Tamworth, Kootingal, Moonbi & Attunga
No Waste Collection Services	All other areas TRC

However, the current boundaries used by Council were established nearly 13 years ago. As a result, a review has been undertaken of these boundaries. Boundaries are determined by considering access to services, access to waste disposal facilities, access to waste management services and population density. By definition, imposing a boundary will see some property owners on the edge of the boundary charged an annual fee and potentially their neighbours charged a different annual fee. There is no legislative guidance on establishing boundaries, as a result, it is up to Council to endeavour to establish boundaries which are considered fair and equitable. Maps showing the proposed boundaries for the new zones are **ATTACHED**, refer **ANNEXURE 1**.

(a) Policy Implications

Nil

(b) Financial Implications

Following completion of the review the financial implications of the proposed changes are shown in the **ATTACHED**, refer **ANNEXURE 2**.

(c) Legal Implications

Nil

(d) Community Consultation

The proposed changes to the way Council levies annual waste charges in 22-23 will be placed on public display together with the draft 22-23 Annual Operating Plan, Revenue Policy and associated documents seeking public comment. A further report will be

prepared for Council's consideration which will include the results of the public consultation before Council will be asked to adopt charges for 22-23.

(e) Delivery Program Objective/Strategy

A Region for the Future – F2203 Waste Management and Resource Recovery.

9 GOVERNANCE, STRATEGY AND FINANCE

9.1 PAYMENT OF SUPERANNUATION CONTRIBUTIONS TO COUNCILLORS

DIRECTORATE: OFFICE OF THE GENERAL MANAGER
AUTHOR: Tracey Carr, Coordinator Governance and Executive Services

RECOMMENDATION

That in relation to the report "Payment of Superannuation Contributions to Councillors", Council approve the payment of superannuation as a contribution to a superannuation account nominated by Councillors, starting from the financial year commencing on 1 July 2022.

SUMMARY

Following an amendment to the *Local Government Act 1993* in 2021, Councils may make payments as a contribution to a superannuation account nominated by their Councillors, starting from the financial year commencing 1 July 2022.

The making of superannuation contribution payments for Councillors is optional and is at each council's discretion.

COMMENTARY

In 2020 the Office of Local Government released a discussion paper to seek the views of councils and their local communities on whether councillors should receive superannuation payments. The discussion paper was released following concerns raised by mayors and councillors that the inability of councillors to receive superannuation payments was inequitable and a deterrent to more women and younger people standing as candidates at Local Government elections.

As a result of the submissions received in response to the discussion paper, an amendment to the *Local Government Act 1993* (the Act) was passed in 2021 allowing councils to make payments of superannuation to councillors starting from the financial year commencing 1 July 2022.

To exercise the option of making superannuation contribution payments to Councillors, a resolution in an open Council Meeting to make superannuation contributions to councillors is required.

Should Council resolve to make superannuation contribution payments for Councillors, the amount of the payment is to be the amount Council would have been required to contribute under the *Commonwealth Superannuation Guarantee (Administration) Act 1992* as superannuation as if Councillors were employees of Council.

As of 1 July 2022, the superannuation guarantee rate will be 10.5%. The rate will increase by half a percent each year until 1 July 2025 when it reaches 12%. The superannuation

contribution payment is to be paid at the same intervals as the annual fee is paid to Councillors. For Tamworth Regional Council this means a monthly contribution.

To receive a superannuation contribution payment, each Councillor must nominate a superannuation account for the payment before the end of the month to which the payment relates. The superannuation account nominated by Councillors must be an account for superannuation or retirement benefits from a scheme or fund to which the *Commonwealth Superannuation Guarantee (Administration) Act 1992* applies.

No superannuation payment will be made to a Councillor that fails to nominate an eligible superannuation account for the payments.

Individual Councillors must either opt out of receiving superannuation contribution payments or opt to receive reduced payments. Councillors must do so in writing.

It should also be noted that Councils must not make superannuation contribution payments for Councillors during any period in which they are suspended from their civic office or their right to be paid any fee or other remuneration, or expense, is suspended under the Act. Councillors are also not entitled to receive a superannuation contribution payment during any period in which they are not entitled to receive their fee under section 254A of the Act because they are absent.

(a) Policy Implications

Should Council endorse the payment of superannuation contributions as per the recommendation in the report, the “Payment of Expenses and Provision of Facilities to Councillors Policy” will be updated to reflect this.

(b) Financial Implications

Should Council endorse the payment of superannuation contributions as per the recommendation in the report the estimated total cost is \$30,477. This sum has been included in the Draft Annual Operating Plan and is the total cost to Council should all Councillors opt to receive superannuation contributions.

The actual cost to Council for the 2022-2023 financial year would be determined after Councillors advise, in writing, of their decision to either receive, or opt out of receiving, the contributions.

(c) Legal Implications

Nil

(d) Community Consultation

Community consultation was undertaken by the Office of Local Government in 2020 with the release of the Councillor Superannuation – Discussion Paper.

(e) Delivery Program Objective/Strategy

A Region of Progressive Leadership – L21 Transparency and accountability of government.

9.2 INTEGRATED PLANNING AND REPORTING - EXHIBITION OF DRAFT COMMUNITY PLAN, DELIVERY PLAN, ANNUAL PLAN, RESOURCING PLAN, REVENUE POLICY AND ANNUAL FEES & CHARGES

DIRECTORATE: OFFICE OF THE GENERAL MANAGER
AUTHOR: Anna Russell, Manager Strategy and Performance
Reference: Item 9.2 to Ordinary Council 12 April 2022 - Minute No 99/22
Item 9.4 to Ordinary Council 26 April 2022 - Minute No 116/22
5 ANNEXURES ATTACHED

RECOMMENDATION

That in relation to the report “Integrated Planning and Reporting – Exhibition of Draft Community Plan, Delivery Plan, Annual Plan, Resourcing Plan, Revenue Policy and Annual Fees & Charges”, Council:

- (i) place the proposed Draft documents on public exhibition for a period of 28 days in accordance with section 402 (6), 404 (4) and 405 (3) of the Local Government Act 1993; and*
- (ii) require a further report to be submitted at the completion of the formal exhibition period detailing any submissions received during exhibition for Council’s consideration and final adoption of the documents.*

SUMMARY

The purpose of this report is to present the suite of draft Integrated Planning and Reporting documents to Council to obtain a resolution for public exhibition of each of the related documents. The related documents **ATTACHED**, refer **ANNEXURES 1, 2, 3, 4, and 5**, include the following drafts:

- Our Community Plan 2023-2033;
- Our Delivery Plan 2023-2025/Our Annual Plan and Budget 2022-2023;
- Our Resourcing Plan 2023-2025;
- Revenue Policy 2022-2023; and
- Fees and Charges 2022-2023.

COMMENTARY

Background

Under the Integrated Planning and Reporting (IP&R) Framework, Council is required to prepare a number of documents to facilitate integration of long-term planning and implementation of Council activities.

After each ordinary council election council is required to review all IP&R documents to realign council’s goals with community expectations.

These documents are described in the table below.

Plan	Purpose	Timeframe/ horizon	Reviewed
Our Community Plan 2023-2033	Identify the community's main priorities and aspirations for the future and to plan strategies for achieving these goals	10 years	After every ordinary council election
Our Delivery Plan 2023-2025 And Our Annual Plan and Budget 2022-2023	A statement of commitment to the community from the newly elected Council, and translates the community's strategic goals in to actions An action plan for achieving the community's priorities, including operational and capital works budgets	3 year 1 year	Annually Annually
Our Resourcing Plan 2023-2025	Articulates how council will implement and resource the aspirations of the community set out in Our Community Plan Consists of three components:		
	1. Long Term Financial Plan- A rolling plan that informs decision making and demonstrates how commitments will be funded	10 years	Annually
	2. Workforce Management Plan- A proactive plan that shapes the capacity and capability of the workforce to achieve council's strategic goals	3 years	Annually
	3. Asset Management Plan- A plan to ensure council's assets are managed and accounted for in an efficient and sustainable way	3 years	Annually
Revenue Policy 2022-2023	The proposed Revenue Policy which includes the schedule of rates	1 year	Annually
Fees and Charges 2022-2023	Contains the proposed Schedule of Fees and Charges for council services for the period	1 year	Annually

The Impact of COVID-19

The postponement of the local government elections to December 2021 has had implications for Council with regards to its integrated planning and reporting (IP&R) cycle. The Office of

Local Government (OLG) extended the previous IP&R cycle from a 4 year to 5 year cycle, with the new cycle reduced to three years.

In addition, the delayed election resulted in a reduced timeframe to produce the required plans - from 9 months to 6 months. In an ordinary cycle the Community Plan would be developed and endorsed *before* the other plans were created. This year the plans have been developed in parallel, and will be placed on public exhibition concurrently. Any required changes following the public exhibition period will therefore be reflected in all attached documents before final adoption in June.

Financial Information

In regard to the Draft Fees and Charges, the following amendments were made to the S603 certificates as well as the development certificates listed below. There was one correction with regards to provision of Mobile Garbage Bin's (ref page 99) which was incorrectly displayed at \$128, since the Draft Fees and Charges went to council at its Ordinary Meeting, 12 April 2022 for adoption in principle;

Name	Pricing Policy	CSO	GST	Year 2022-2023 Fee (incl. GST)
S603 Certificates	B	N	N	\$90.00
Construction certificate for subdivision (per lot) - Minimum fee payable	F	N	Y	\$1,510.00
Residential lots provided with town water and/or sewer (per lot) - Minimum fee payable	F	N	Y	\$2,100.00
Lots not provided with town water and sewer (per lot) - Minimum fee payable	F	N	Y	\$1,550.00
Rural-residential lots with water and/or sewer (per lot) - Minimum fee payable	F	N	Y	\$2,200.00
Commercial/Industrial subdivisions (per lot) - Minimum fee payable	F	N	Y	\$6,220.00
Delivery Fee per Mobile Garbage Bin (MGB) Tamworth	D	N	Y	\$5.00

Further information regarding amendments to the Draft Fees and Charges 2022-2023 with respect to waste charges can be found in the report in this business paper.

The following requirements for Our Annual Plan and Budget have been included, as outlined in the Local Government Act and Regulations:

1. principal actions have been identified for each strategy and the plan directly relates to the nine Focus Areas and priorities of Our Community Plan;

2. the Revenue Policy includes all of the following requirements:
 - a statement detailing income estimates;
 - Council's Ordinary Rate Policy;
 - Council's Charges Policy;
 - Council's fees for services;
 - Council's Pricing Methodology; and
 - proposed borrowings.
3. Council's Ordinary Rate Policy for 2022-2023, included in the Revenue Policy, meets legislative requirements and best practice guidelines and includes for each rating category and sub-category:
 - the ad valorem amount (the amount in the dollar) of the rate;
 - advice on whether the rate has a base amount; the value of the base rate, and the percentage and yield of the total amount payable by the levying of the rate; and
 - maps demonstrating the parts of Council's local government area categorised into each of the different ordinary rate category and sub-categories.
4. Council's Charges Policy included in the Revenue Policy, meets legislative requirements and best practice guidelines and includes the amount or rate per unit of the charge, differing amounts for the charge (where applicable) and the estimated yield of the charge; and
5. financial information included in Our Annual Plan and Budget includes:
 - the forecast operating results for each fund;
 - the forecast cash results for each fund;
 - budget allocations linked to Our Community Plan; and
 - details of capital works for 2022-2023.

The Revenue Policy also includes a detailed budget by Council Directorates and functions, as well as forecast Income Statements by type and function and external borrowings proposed. With regards to ordinary rates to be levied the revenue policy includes two scenarios, the first outlines the income to be derived if Council is unsuccessful in its Additional Special Variation as per Council report April 26, Item 9.4 and the second scenario outlines income to be derived if Council is successful. The outcome of this application will be released by IPART in late June 2022.

This report confirms that Council has addressed the Integrated Planning and Reporting legislative requirements of the *Local Government Act(s)* 402, 404, 405 and 406, and legislative requirements associated with Council's Revenue Policy, Charges, Rating and Public Notice requirements of sections 532, 610B-F and 706(2) of the *Local Government Act 1993*. As such, it recommends the public exhibition of the Draft Our Delivery Plan 2022-25 and Our Annual Plan and Budget 2022-2023.

A further report, at the completion of the exhibition period, will be presented to Council outlining submissions received and recommendations for response, to allow Council to consider community feedback prior to final adoption of the plan.

(a) Policy Implications

The documents in this report, when adopted by Council, will replace all previously adopted Integrated Planning and Reporting documents. The documents form the basis for all Council's decision-making and operational activity for the next three financial years.

(b) Financial Implications

As per the Draft Our Annual Plan and Budget 2022-2023 **ATTACHED**, refer **ANNEXURE 2**.

(c) Legal Implications

The public exhibition and adoption of Integrated Planning & Reporting documents is required under sections 404 and 405 of the *Local Government Act* to:

- legitimise budgets;
- set rates;
- charges and fees; and
- create performance reporting actions.

(d) Community Consultation

The Act requires Council, to place the draft plans on public exhibition for a period of at least 28 days.

Council has prepared a Communication Plan for the exhibition period for documents in this report.

The Plan includes all media including TV, radio, digital and print, as well as pop-up information kiosks across the region where our community can engage with staff and councillors to provide feedback on the goals and actions set out in the documents.

Copies of the draft documents will be made available for download from Council's website: www.tamworth.nsw.gov.au.

(e) Our Community Plan Priority

Open and Collaborative Leadership – T.01 Conduct the business of Council with transparency and accountability.

10 COMMUNITY SERVICES

10.1 LOAN OF ARTWORKS FROM THE VISUAL ART COLLECTION

DIRECTORATE: LIVEABLE COMMUNITIES
AUTHOR: Bridget Guthrie, Director Tamworth Regional Gallery and Museums

RECOMMENDATION

That in relation to the report “Loan of Artworks from the Visual Art Collection”, Council approves the loan of these artworks to:

- (i) Ararat Gallery Textile Art Museum Australia (TAMA), and;*
- (ii) Wagga Wagga Art Gallery.*

SUMMARY

A request has been received from both the Ararat Gallery Textile Art Museum Australia (TAMA) and the Wagga Wagga Art Gallery for loan of a selection of the Utopia batik silks, and works on paper, from the Tamworth Regional Gallery Collection.

In accordance with Council’s policy in relation to the loan of artworks from the Permanent Collection, a Council resolution is required for such a loan to take place.

COMMENTARY

The Utopia loans are planned for exhibition at Ararat Gallery TAMA from 21 May to 14 August 2022 and from 5 September to 30 October 2022 at Wagga Wagga Art Gallery.

Named by German settlers in the early 1920s, Utopia is a region covering approximately 5,000 square kilometres of land northeast of Alice Springs and is home to around 2,000 Aboriginal people. Much of the region loosely termed ‘Utopia’ is Aboriginal-owned land called Urapuntja. Utopia comprises several large and small communities.

The initial Utopia Collection Bequest was received in 1999, and is not only a unique collection of historically and culturally important works from Utopia, but also a significant gift to the Gallery as part of the textile collection. This initial bequest was later added to with additional works from Utopia through a private donation to the Tamworth Regional Gallery as part of the Cultural Gift program.

In total, the Utopia Collection consists of over 50 batik silks, several clothing garments, acrylic paintings on paper, silk screen prints, etchings and aquatints, and carved wooden ceremonial figures.

Aboriginal artists are long-time masters of the tjanting (tulis) batik technique. Their characteristic style of working is to combine tjanting work with hand-painted motifs focusing around bush tucker themes and the flora and fauna of the outback.

The Utopia collection held by Tamworth Regional Gallery is extremely significant, highly regarded and these loans to external Galleries provide an important opportunity to showcase Tamworth Regional Gallery’s visual arts collection.

(a) Policy Implications

In accordance with the Tamworth Regional Gallery’s Collection Policy the loan of artworks from the Permanent Collection requires the approval of Council.

(b) Financial Implications

Nil, all costs relating to these loans will be met by applied loan fees to Ararat Gallery Textile Art Museum Australia (TAMA) and Wagga Wagga Art Gallery. This includes the costs relating to freight, insurance during freight and costs on exhibition and any exhibition installation costs.

Furthermore, both identified Galleries are equipped with the necessary environmental controls and facilities to accommodate the loan requirements.

(c) Legal Implications

There are no additional legal implications relating to this artwork loan request.

(d) Community Consultation

The Tamworth Regional Gallery's Collection Policy has previously been developed in consultation with community and has been on public exhibition as required.

(e) Delivery Program Objective/Strategy

A Spirit of Community – C21 Preserve and celebrate the character, heritage and culture of our city, towns and villages.

11 REPORTS TO BE CONSIDERED IN CLOSED COUNCIL

Nil