

## NOTICE OF MODIFICATION TO DETERMINATION OF A DEVELOPMENT APPLICATION

Issued under Clause 118 of the Environmental Planning and Assessment Regulation 2021.

<b>Application No.</b>	DA-67/2013/A
<b>Applicant</b>	Mr Keith Mitchell Appleby
<b>Land to be developed</b>	Lot 2 DP 912844 180 Swanbrook Road, INVERELL 2360
<b>Approved development</b>	Staged Subdivision - 1 into 31 lots
<b>Building Code of Australia Classification</b>	Not Applicable
<b>Determination</b>	The determination is amended in accordance with Section 4.55 of the Environmental Planning and Assessment Act 1979.
<b>Original date of determination</b>	22 November 2013
<b>Modification determination date</b>	14 September 2022
<b>Consent will lapse on</b>	22 November 2018 Unless the work or use to which this consent relates has lawfully commenced on-site in accordance with Section 4.53 of Environmental Planning and Assessment Act 1979.

### CONDITIONS OF CONSENT

Note: This is a modified Notice of Determination for the original DA-67/2013. Deleted parts of conditions have ~~struck through~~. New conditions or additions to existing conditions have underline.

#### **General Conditions**

1. Inverell Shire Council issues its' consent, subject to the conditions imposed hereunder, in accordance with Section 80A of the *Environmental Planning and Assessment Act 1979*.

Consent is granted for the staged subdivision of Lot 2 DP 912844 into:

- Thirty-one (31) lots; and
- Construction of new roads and infrastructure.

The approved staging of the subdivision is as follows:

#### Stage 1

- Creation of Lot 1 - A single allotment being the total composition of Lots 4, 5, 6, 33 and 34; and
- Creation of Lot 2 - A single allotment being the total composition of Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

## Stage 2

- From Lot 2 in Stage 1 - Creation of Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32; and
- Construction of new roads and infrastructure.

## Stage 3

- From Lot 1 in Stage 1 - Creation of Lots 4, 5, 6, 33 and 34.
- Provision of infrastructure.

To confirm and clarify the terms of consent, the development must be carried out in accordance with the stamped and approved plan prepared by K Appleby, titled **WE-001A REVISED SUBDIVISION LAYOUT.**

If there are any inconsistencies between the conditions of this approval and the above subdivision layout, the conditions of this approval will prevail to the extent of that inconsistency. Any deviation from the approved subdivision layout will require the consent of Council.

1A. Modified consent (DA-67/2013/A) is granted to defer the construction of future road pavement (within the dam) from Stage 1 to Stage 2.

2. All lots within Stage 1 of the subdivision, must be serviced by:

- Council's reticulated water service;
- Electricity in accordance with the relevant energy provider; and
- Telecommunications in accordance with the relevant carrier.

The services must be provided prior to the issue of a Subdivision Certificate.

3. All lots within Stage 2 of the subdivision, must be serviced by:

- Council's reticulated water service;
- Council's reticulated sewerage supply (except existing residence);
- Electricity in accordance with the relevant energy provider; and
- Telecommunications in accordance with the relevant carrier.

The services must be provided prior to the issue of a Subdivision Certificate.

4. All lots within Stage 3 of the subdivision, must be serviced by:

- Council's reticulated water service;
- Council's reticulated sewerage supply;
- Electricity in accordance with the relevant energy provider; and
- Telecommunications in accordance with the relevant carrier.

The services must be provided prior to the issue of a Subdivision Certificate.

5. As the development is located outside the Development Servicing Zone for sewer, as defined in Appendix A of the Inverell Shire Council *Development Servicing Plan No 1*, the applicant is responsible for the preparation cost of a separate Development Servicing Plan (DSP) for sewer that is applicable to the development. The separate DSP must be adopted by Inverell Shire Council and registered by the NSW Office of Water prior to issue of a Subdivision Certificate for Stage 2 of the development.

6. Lot 2 in Stage 1 (**1 lot**), Lots 8 - 32 in Stage 2 (**25 lots**) and Lots 4 - 6 and Lot 33 in Stage 3 (**4 lots**) will be levied Section 94 Contributions in accordance with Inverell Shire Council

*Section 94 Contributions Plan 1992* (as amended in 2003). The contributions must be paid prior to the issue of the relevant Subdivision Certificate.

7. All fees, Section 94 and other contributions will be adjusted in accordance with Council's fees and charges applicable at the time of payment.
8. The subdivision must be undertaken in accordance with conditions specified in the Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1997* issued by the New South Wales Rural Fire Service on 7 November, 2013, (stamped and attached).

***Prior to Commencement of any Works***

9. Prior to the commencement of any subdivision works, including earthworks, a Construction Certificate must be obtained. The Construction Certificate may be issued for the whole development or as separate Construction Certificates in accordance with the approved stages of development.

***Prior to the Issue of a Construction Certificate***

10. Prior to the issue of a Construction Certificate, a detailed engineering survey and design for the entire subdivision must be prepared. The detailed design must be in accordance with the following:

**NATSPEC Specifications**

- Group 0 – Planning and Design;
- Group 01 – General;
- Group 11 – Construction- Roadways; and
- Group 13 – Construction- Public Utilities.

**Water Supply Code of Australia**

- WSA 02- Sewerage Code of Australia; and
- WSA 03- Water Supply Code of Australia.

The detailed engineering plans and specifications must be prepared by a practicing civil engineer and must include but are not limited to the following detail:

- Road works and pavement standards;
- Stormwater drainage and inter-allotment drainage;
- Stormwater drainage within Swanbrook Road;
- Water quality measures;
- Earthwork details including cut and fill ratios, quantities and stockpiling;
- Filling of the two (2) dams, this includes excavation of the dam filled under Condition 35 to place suitable road pavement;
- Kerb and gutter within the subdivision;
- Kerb and gutter including drainage works, shoulder widening and bitumen sealing in Swanbrook Road fronting the whole length of the development site;
- Inter-allotment drainage along the eastern boundary of proposed Lots 24 to 32 inclusive;
- Erosion and sediment control measures;
- Water supply works including reticulation, services, valves, hydrants and markers;
- Sewer works including mains extension, reticulation, manholes and junctions;
- Street and road signs;
- Design and location of access crossings;
- Street lighting;
- Street landscaping; and
- Location of all service conduits (telephone, electricity).

*Note: Prior to preparation of any engineering design plans, it is recommended that the consultant(s) preparing the design plans contact Council's Civil and Environmental Services division to confirm the extent and scope of all works and detail required on the design plans and specifications.*

11. Prior to issue of a Construction Certificate the detailed engineering survey and design must comply with the following:
  - Road pavements must be designed for a 40 year design life;
  - The drainage systems are to be designed for a 10 year ARI;
  - The maximum spacing for sewer manholes is 60 metres; and
  - The sub-base gravel for concrete kerb and gutter is to be stabilised with cement at a rate of 3% by weight to a depth of 150mm, 1 metre wide.
12. Prior to issue of a Construction Certificate the detailed engineering survey, design and specifications must specifically address kerb and guttering including drainage works, shoulder widening and bitumen sealing in Swanbrook Road fronting the whole length of the development site. The existing open drain along the whole development site in Swanbrook Road must be filled in so that there will be an even grade on the footpath area from the property boundary to the kerb along Swanbrook Road. The design of the drainage infrastructure is to allow for this filling. The design must be approved by Council under Section 138 of the *Roads Act 1993*, and the approved works must be completed at the applicant's expense.
13. Prior to the issue of a Construction Certificate(s) separate approval(s) from Council under Section 138 of the *Roads Act 1993* is required for any works within Council's road reserve. For any such works, design plans must be submitted to Council for approval prior to issue of the Construction Certificate.
14. Prior to the issue of a Construction Certificate three (3) suitable names, chosen in accordance with Council's Street and Road Naming Policy, for the proposed new roads are to be submitted to Council for consideration.

#### ***During Construction***

15. During construction the applicant must ensure that arrangements are made for the principal certifying authority, Council or a private certifier, to carry out inspections. Request for Council inspections may be made either by telephone or in person. Forty eight (48) hours notice must be given for inspections.

Inspections are required to be carried out in order to ensure that a Subdivision Certificate can be issued for the relevant stage. In the event that any inspection is not carried out, a Subdivision Certificate cannot be issued. Inspections will generally be required at the following stages:

- After stripping of topsoil from roads and fill areas (all erosion and sediment control devices and traffic control signs shall be installed at this stage);
- After completion and compaction of the road sub grade;
- After placement and compaction of each layer of gravel pavement material prior to sealing;
- After laying and jointing of all stormwater drainage pipelines prior to backfilling;
- During application of bitumen seal or asphaltic concrete wearing surface;
- After restoration and completion of all works; and
- As otherwise required to confirm that the works are satisfactorily executed and in conformity with engineering specifications, environmental controls and conditions of development consent.

It should be noted that Council charges fees for inspections. These inspection fees must be paid prior to release of the Construction/Subdivision Certificate associated with the

development consent. Inspection fees will be adjusted in accordance with Council's fees and charges operating at the time of inspection. In the event additional inspections are required, those inspections will attract inspection fees at the rate applicable at the time the inspections are carried out.

16. During construction all work must be carried out under the supervision of a suitably qualified project manager. The details and qualifications of the Project Manager must be provided to Council prior to commencing any works at the site.
17. During construction any relocation or alteration of public utilities required as a result of the development is to be carried out at no cost to Council.
18. During construction a copy of the approved engineering plans, specifications, management plans and documents incorporating conditions of approval must be kept on site at all times and must be readily available for perusal by Council.
19. During construction, works on site are to be carried out in accordance with the *Protection of the Environment Operations Act 1997* in relation to noise, dust and associated nuisances from the site. The carrying out of works must not interfere with the amenity of the surrounding lands.
20. During construction, stockpiles of topsoil, sand, aggregate, spoil or other material must be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and measures must be in place to prevent the movement of such material off site.
21. During construction, waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.
22. The hours of construction for all stages of the subdivision, including the delivery of materials or equipment to the site are restricted to between 7:00 a.m. and 5:00 p.m., Mondays to Saturdays inclusive and no work on Sundays and public holidays. Council may consent to vary these hours in particular circumstances where it can be demonstrated that it is unavoidable.
23. During construction a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out. The sign is to be maintained while work is being carried out, but must be removed when the work has been completed. The sign must:
  - include the name, address and telephone number for the principal certifying the work;
  - include the name of the principal contractor (if any) for the building work and telephone number on which that person may be contacted outside work hours; and
  - state that unauthorised entry to the work site is prohibited.
24. Should any aboriginal artefacts or places be discovered during excavation/construction, all works are to cease immediately. The NSW Office of Environment and Heritage is to be contacted immediately and any direction or requirements complied with.
25. Should any relics be uncovered during excavation/construction on site, the applicant must ensure that works cease in that area and the Heritage Officer is immediately notified in accordance with Section 146 of the *Heritage Act 1977*.
26. During construction works sediment and erosion control measures are to be implemented in accordance with the approved engineering plans and maintained until the site is fully stabilised.

### ***Prior to Issue of Subdivision Certificate – General***

27. Prior to the issue of a Subdivision Certificate for each stage of the subdivision, the relevant requirements of the development are to be undertaken in accordance with conditions specified in the Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1997* issued by the New South Wales Rural Fire Service on 7 November 2013.
28. Prior to the issue of a Subdivision Certificate an application for a Subdivision Certificate must be submitted to and approved by Council for each stage of the subdivision (as applicable). The applicant must submit a completed Subdivision Certificate Application Form (with applicable fee), four (4) copies of the survey plan, two (2) copies of any 88b instrument and documentary evidence demonstrating compliance with the relevant conditions of this development consent. A Subdivision Certificate will not be issued nor the final plan signed by Council until all relevant conditions have been complied with.
29. Prior to the issue of a Subdivision Certificate for each stage of the subdivision, all necessary easements, restrictions as-to-user pursuant to Section 88B of the *Conveyancing Act 1919* must be clearly marked on the plan of subdivision. Council is to be nominated as a party empowered to release, vary or modify only those easements and/or restrictions required by the conditions of this development consent.
30. Prior to the issue of a Subdivision Certificate for each stage of the subdivision, any pavement damage or structural deterioration caused to Council's roads by the use of roads as haulage routes for materials used in construction of the subdivision must either be repaired to the satisfaction of Council, or a payment made of the costs incurred by Council to undertake the repairs.
31. Prior to the issue of a Subdivision Certificate for each stage of the subdivision, electricity and a telecommunications service is to be provided to all lots within that stage. The proponent is required to submit to Council, certificates from:
  - An approved electricity service provider indicating that satisfactory arrangements have been made for the provision of electricity to each lot in the subdivision.
  - An approved telecommunications service provider indicating that satisfactory arrangements have been made for the provision of telecommunications to each lot in the subdivision.

### ***Prior to Issue of Subdivision Certificate – Stage 1***

32. Prior to the issue of a Subdivision Certificate for Stage 1, a Community Services Contribution for Lot 2 must be paid to Council pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*. This contribution is currently \$115.00 per lot.
33. Prior to the issue of a Subdivision Certificate for Stage 1, in reliance upon Section 64 of the *Local Government Act 1993* and Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000*, a Certificate of Compliance must be issued by Council for Lot 2 and complied with by the applicant.

*Note: This will require payment to Council of a Contribution for water for Lot 2 under Council's Development Servicing Plan No. 1 for one (1) equivalent tenement.*
34. Prior to the issue of a Subdivision Certificate for Stage 1, water connection fees for Lot 2 must be paid in accordance with Council's fees and charges.
35. Prior to issue of a Subdivision Certificate for Stage 1, the existing dam that straddles the boundary between Lot 1 and Lot 2 must be completely filled with Virgin Excavated Natural Material as defined under Schedule 1 of the *Protection of the Environment Operations Act*

1997. Documentary evidence must be provided by an engineer that the filling of the dam has been completed in accordance with the approved engineering plans and specifications. And is appropriate given the future use of the area as a public road.

- 35A. Prior to issue of a Subdivision Certificate for Stage 1, a bitumen sealed access crossing from Swanbrook Road and a 70 metre internal gravel driveway is to be constructed for Lot 2, in accordance with the approved plans and specifications to enable the construction of a dwelling on this lot.
- 35B. Prior to issue of a Subdivision Certificate for Stage 1, the following hold points / inspections must have been completed by Council:
- Inspection of the access crossing culvert and headwalls prior to placement of gravel pavement;
  - Inspection of compacted gravel pavement for the access crossing, prior to sealing works being undertaken;
  - Inspection of compacted subgrade material, prior to placement of the 300mm gravel pavement for the 70 metre internal gravel driveway. A report from the supervising civil engineer is to be provided on the suitability of the subgrade from Swanbrook Road through the filled dam site to support a 300mm gravel pavement capable of providing a durable all-weather heavy vehicle access associated with future construction of a dwelling on the site; and
  - A final inspection of the constructed earthworks including drainage works diverting runoff around the filled dam area.
- 35C. Prior to issue of a Subdivision Certificate for Stage 1, works-as-executed drawings are to be submitted for the access crossing, internal gravel driveway, filling of the dam and associated drainage works.
- 35D. Prior to issue of a Subdivision Certificate for Stage 1, an easement (or other suitable restriction) is to be created over Lot 1 in favour of Lot 2 for catch drain diverting water from the filled dam area.

Note: Subject to final engineering design, this easement or restriction can likely be varied or removed as part of Stage 2.

36. Prior to the issue of a Subdivision Certificate for Stage 1, all civil works must be completed in accordance with the approved Construction Certificate, engineering plans and specifications. The works are to have had all necessary inspections.
37. Prior to issue of a Subdivision Certificate for Stage 1, the on-site effluent disposal system, servicing the dwelling on proposed Lot 1, must be upgraded as follows:
- The standard hose and household sprinkler attachments must be replaced with fittings that are not capable of connecting to the domestic water supply (standard household hose fittings must not be used); and
  - The spray irrigation equipment must be fitted with low pressure, low volume spray heads which are not capable of producing aerosols.

***Prior to Issue of Subdivision Certificate – Stage 2***

38. Prior to the issue of a Subdivision Certificate for Stage 2, all civil works are to be completed in accordance with the approved Construction Certificate, engineering plans and specifications. This includes excavation of the dam filled under Condition 35 and placement of suitable road pavement. The works are to have had all necessary inspections.
39. Prior to the issue of a Subdivision Certificate for Stage 2, the proponent is to enter into a Defects Liability Period contract with Council, guaranteeing performance of work of any contractors for a period of twelve (12) months from the date of the issue of a Subdivision Certificate.

40. Prior to the issue of a Subdivision Certificate for Stage 2, Works as Executed Plans for the stage must be submitted to and accepted by Council. The plans are to be endorsed by a suitably qualified and practising civil engineer certifying that the plans accurately reflect the Works as Executed.
41. Prior to the issue of a Subdivision Certificate for Stage 2, the plan of subdivision must include the dedication of public roads to Council at no cost to Council. The registered surveyor who prepares the plan of subdivision must certify to Council that the constructed road is wholly contained within the road reserve boundaries shown on the plan of subdivision.
42. Vehicular access to Lots 4 and 32 must be taken from the new internal road off Swanbrook Road. Prior to the issue of a Subdivision Certificate for Stage 2 a restriction as-to-user pursuant to Section 88B of the *Conveyancing Act 1919* must be clearly marked on the plan of subdivision to restrict vehicular access to Lots 4 and 32 from Swanbrook Road.
43. Prior to issue of a Subdivision Certificate for Stage 2, the kerb and gutter including drainage works, shoulder widening and bitumen sealing in Swanbrook Road fronting the whole length of the development site must be completed in accordance with the approved detailed engineering survey and design.
44. Prior to the issue of a Subdivision Certificate for Stage 2, a Community Services Contribution for Lots 8 to 32 inclusive must be paid to Council pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*. This contribution is currently \$115.00 per lot.
45. Prior to the issue of a Subdivision Certificate for Stage 2, in reliance upon Section 64 of the Local Government Act and Division 5 of Part 2 of Chapter 6 of the *Water Management Act*, a Certificate of Compliance must be issued by Council for Lots 8 to 32 inclusive, and complied with by the applicant.

*Note:*

- *This will require payment to Council of a Contribution (for water) for Lots 8 to 32 inclusive under Council's Development Servicing Plan No. 1 for one (1) equivalent tenement per lot.*
  - *This will require payment to Council of Contributions required pursuant to the separate DSP for sewer, as adopted by Council in accordance with Condition 5 for Lots 8 to 32 inclusive.*
46. Prior to the issue of a Subdivision Certificate for Stage 2, water connection fees for Lots 8 to 32 inclusive must be paid in accordance with Council's fees and charges.

***Prior to Issue of Subdivision Certificate – Stage 3***

47. Prior to the issue of a Subdivision Certificate for Stage 3, a Community Services Contribution for Lots 4 to 6 inclusive and Lot 33 must be paid to Council pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*. This contribution is currently \$115.00 per lot.
48. Prior to the issue of a Subdivision Certificate for Stage 3, in reliance upon Section 64 of the *Local Government Act 1993* and Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000*, a Certificate of Compliance must be issued by Council for Lots 4 to 6 inclusive and Lots 33 and 34, and complied with by the applicant.

*Note:*

- *This will require payment to Council of a Contribution (for water) for Lots 4 to 6 inclusive and Lots 33 and 34 under Council's Development Servicing Plan No. 1 for one (1) equivalent tenement per lot.*



- *This will require payment to Council of Contributions required pursuant to the separate DSP for sewer, as adopted by Council in accordance with Condition 5 for Lots 4 to 6 inclusive and Lots 33 and 34.*
49. Prior to the issue of a Subdivision Certificate for Stage 3, water connection fees for Lots 4 to 6 inclusive and Lots 33 and 34 must be paid in accordance with Council's fees and charges.
50. As a result of the filling of the dam as part of Stage 1, prior to issue of a Subdivision Certificate for Stage 3, a Geotechnical report shall be prepared by a practising Geotechnical Engineer for lots 4 and 5.

This report is to provide a soil classification and other recommendations in accordance with Australian Standard 2870 (Residential Slabs and Footings) for the construction of a dwelling on these lots.

This report is to be registered as a Restriction of the Use of Land on Lots 4 and 5.

### **REASONS FOR CONDITIONS**

The above conditions have been imposed:

1. To ensure compliance with the terms of the applicable environmental planning instruments.
2. Having regard to Council's duties of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, as well as Section 4.17 which authorizes the imposing of the consent conditions.
3. Having regard to the circumstances of the case and the public interest.

### **RIGHT OF APPEAL**

If you are dissatisfied with this decision, Division 8.3 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice. You are also advised that Division 8.2 of the *Environmental Planning and Assessment Act 1979* provides that you may apply to Council for a review of this decision subject to the limitations contained in that section and payment of the prescribed fee.

On behalf of Inverell Shire Council



**ANTHONY ALLISTON**  
**MANAGER DEVELOPMENT SERVICES**