

The General Manager
Central Darling Shire Council
21 Reid Street
Wilcannia NSW 2836

8 December 2023

Dear Sir

INFORMATION IN SUPPORT OF A MODIFICATION APPLICATION TO DA 04-2023 – 75 COLUMBUS STREET, IVANOE

1 INTRODUCTION

This letter is provided to support an application to modify Development Application (DA) 04-2023 which was granted consent by Council on 12 May 2023 for the demolition of a shed, installation of two manufactured dwellings to be used as a dual occupancy, a carport, and associated site works. The development is being carried out by the Land and Housing Corporation, which is the Crown. Consequently, the DA constitutes a 'Crown development Application', however it was not lodged or approved as such. This modification application seeks to rectify this error and the associated legislative implications.

2 CROWN DEVELOPMENT & LEGISLATIVE IMPLICATIONS FOR THE DEVELOPMENT

2.1 What is Crown Development

Section 4.32 of the EP&A Act outlines that DAs made by or on behalf of the Crown are known as Crown Development Applications. The Crown includes public authorities, which incorporates the following:

public authority means—

- (a) a public or local authority constituted by or under an Act, or
- (b) a Public Service agency, or
- (c) a statutory body representing the Crown, or
- (d) a Public Service senior executive within the meaning of the Government Sector Employment Act 2013, or
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the State Owned Corporations Act 1989, or
- (f) a chief executive officer of a corporation or subsidiary referred to in paragraph (e), or
- (g) a person prescribed by the regulations for the purposes of this definition.

The works are being carried on behalf of the Land and Housing Corporation, which is a statutory body representing the crown as outlined in section 6(4) of the Housing Act 2001.

This DA is therefore a Crown DA.

2.2 Implications for DAs

Pursuant to section 4.33 of the EP&A Act, Council is required to consult with the applicant (or the Minister) before imposing a condition on the consent.

Therefore, applicant therefore requests a copy of the draft modification approval be provided for review and approval prior to its determination.

2.3 Construction Certification

2.3.1 Construction Certificates

Section 6.7 of the EP&A Act provides that a Construction Certificate (CC) is not required for Crown Development. Instead, Section 6.28 of the EP&A Act provides that Crown building works cannot commence until it is certified by or on behalf of the Crown as complying with the Building Code of Australia.

Therefore, no conditions should be imposed on any consent requiring a CC or requiring that certain things be carried out before the issue of a CC.

2.3.2 Occupation Certificates

Section 6.9 of the EP&A Act provides that an Occupation Certificate (OC) is not required for Crown Development. Therefore, no conditions should be imposed on any consent requiring an OC or requiring that certain things be carried out before the issue of an OC.

3 OTHER MATTERS FOR CLARIFICATION

The DA includes the installation of two (2) manufactured homes, which area defined by the *Local Government Act 1993* (LG Act) as

... a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling—

- (a) that comprises one or more major sections, and*
- (b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the Road Transport Act 2013,*

and includes any associated structures that form part of the dwelling.

The footings of the manufactured homes, decks and carports are ‘associated structures’ as defined by the LG Act:

associated structure means—

- (a) a carport, garage, shed, pergola, verandah or other structure designed to enhance the amenity of a moveable dwelling and attached to or integrated with, or located on the same site as, the dwelling concerned, or*
- (b) a separating wall between 2 moveable dwellings.*

A section 68 approval is therefore required under Section 68 of the LG Act (Part A(1)) for the installation of a manufactured home and the associated structures. It is understood that Council has issued this approval.

Manufactured homes are not considered ‘buildings’ by the *Environmental Planning & Assessment Act 1979* (EP&A Act):

building includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.

By virtue of not being a building, a manufactured home cannot be a BASIX building:

BASIX building means a building that contains at least 1 dwelling, but does not include the following—

- (a) hotel or motel accommodation,*
- (b) a boarding house, hostel or co-living housing that—*
 - (i) accommodates more than 12 residents, or*
 - (ii) has a gross floor area exceeding 300 square metres.*

Therefore, the development does not require a BASIX Certificate.

4 PROPOSED MODIFICATION & JUSTIFICATION

4.1 Approval Pathway

This modification application is being made pursuant to section 4.55(1) of the EP&A Act as a minor error/misdescription through the previous omission of being identified as Crown Development.

- (1) Modifications involving minor error, misdescription or miscalculation A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.*

The modification does not change the proposed development at all and as such section 4.55(1A) or (2) would not be applicable to the proposed modification.

4.2 Proposed Modification

The modification application proposes the following components. No changes are proposed to the plans of the DA.

4.2.1 Change to a Crown Development Application

As outlined in **Section 2.1** the development is being carried out on behalf of the Land and Housing Corporation, which is the Crown. Therefore, the DA is to be identified as a Crown DA pursuant to section 4.32 of the EP&A Act.

4.2.2 Change to consent conditions

As outlined above, Crown Development legislatively does not require a Construction Certificate or Occupation Certificate, therefore the following conditions are to be deleted or amended as specified below.

Strikethrough text shows text to be deleted and underlined text shows text to be inserted.

4.2.2.1 Schedule 1A Prescribed Conditions (a)

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).*

As outlined in **Section 3**, the development does not involve any building works. The *Environmental Planning & Assessment Regulation 2021* (EP&A Regulation) only prescribes this condition where the development involves building work. As such this condition is to be deleted.

4.2.2.2 Schedule 1A Prescribed Conditions (b)

- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);*

As outlined in **Section 3**, the development does not involve a building and therefore is not BASIX development. The EP&A Regulation only prescribes this condition where the development involves BASIX development. As such this condition is to be deleted.

4.2.2.3 Schedule 1A Prescribed Conditions (c)

- (c) *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:*
- (i) *showing the name, address and telephone number of the Principal Certifying Authority for the work, and*
 - (ii) *showing 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*
 - (iii) *stating that unauthorised entry to the work site is prohibited.*

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

As outlined in **Section 3**, the development does not involve building works. The EP&A Regulation only prescribes this condition where the development involves building work. As such this condition is to be deleted.

4.2.2.4 Schedule 1A Prescribed Conditions (d)

- (d) *Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:*
- (i) *in the case of work for which a principal contractor is required to be appointed:*
 - A. *the name and licence number of the principal contractor, and*
 - B. *the name of the insurer by which the work is insured under Part 6 of that Act,*
 - (ii) *in the case of work to be done by an owner-builder:*
 - A. *the name of the owner-builder, and*
 - B. *if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.*

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

As outlined in **Section 3**, the development does not involve building works. The EP&A Regulation only prescribes this condition where the development involves building work. As such this condition is to be deleted.

4.2.2.5 Schedule 1B (c)

- (c) *At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.*

This condition is requested to be amended to remove the references irrelevant to a Crown DA.

- (c) *At all times after ~~the submission the Notice of Commencement to Council~~ commencement of works, a copy of the Development Consent ~~and Construction Certificate~~ is to remain onsite at all times until the issue of a final Occupation Certificate completion of works. The consent shall be available for perusal of any Authorised Officer.*

4.2.2.6 Schedule 1B (f)

- (f) *Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.*

This condition is requested to be amended to remove the references irrelevant to a Crown DA.

- (f) *Prior to the ~~release of the Construction Certificate~~ commencement of works, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.*

4.2.2.7 Schedule 1C (1)

All taps and shower heads installed must be water efficient with at least a 4-star rating under the Water Efficiency and Labelling Scheme (WELS). The details are to be submitted for the approval of the Principal Certifier, prior to any Occupation Certificate being issued.

This condition is requested to be amended to remove the references irrelevant to a Crown DA.

All taps and shower heads installed must be water efficient with at least a 4-star rating under the Water Efficiency and Labelling Scheme (WELS). ~~The details are to be submitted for the approval of the Principal Certifier, prior to any Occupation Certificate being issued.~~

4.2.2.8 Schedule 1D (4)

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

This condition is requested to be deleted and replaced with the following to remove the references irrelevant to a Crown DA.

A certificate of completion must be obtained from Council prior to the occupation of any manufactured home.

4.2.2.9 Schedule 1D (18)

Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

Compliance with the Remediation Action Plan

The requirements of the Remediation Action Plan required by this consent are to be fully implemented from commencement of any excavation, demolition or development works until the issue of any interim / final occupation certificate.

Reason: Protection of the environment, SEPP 55 compliance.

A validation report, is to be prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

If the site requires ongoing activities to control contamination, the validation report is to provide a list of ongoing measures to be undertaken to protect adjacent properties, the environment and the water table from further contamination.

Reason: To ensure environmental amenity is maintained.

This condition is requested to be amended to remove the references irrelevant to a Crown DA and irrelevant requirements as the application did not require a Remediation Action Plan or Validation Report.

Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

Compliance with the Remediation Action Plan

The requirements of the Remediation Action Plan required by this consent are to be fully implemented from commencement of any excavation, demolition or development works until the issue of any interim / final occupation certificate completion of works.

Reason: Protection of the environment, SEPP 55 compliance.

A validation report, is to be prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

If the site requires ongoing activities to control contamination, the validation report is to provide a list of ongoing measures to be undertaken to protect adjacent properties, the environment and the water table from further contamination.

Reason: To ensure environmental amenity is maintained.

4.2.2.10 Schedule 1D (21)

All landscape works including nominated tree species and other shrubs and vegetation species are to be approved by council prior to Occupation Certificate issue.

This condition is requested to be amended to remove the references irrelevant to a Crown DA.

All landscape works including nominated tree species and other shrubs and vegetation species are to be approved by council prior to Occupation Certificate issue occupation of the dwellings.

5 IMPACTS OF THE MODIFICATION

Section 4.55(3) of the EP&A Act requires:

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The proposed modification is not expected to have any impacts. It is simply to rectify the failure to identify the application as a Crown DA and the application of the correct legislative provisions throughout the conditions of consent.

In terms of section 4.15(1) of the EP&A Act:

- The development as modified would not impact on the provisions of any environmental planning instruments.
- The development as modified would not impact on the provisions of any proposed environmental planning instruments.
- The development as modified would not impact on the provisions of any Development Control Plan.
- No planning agreements have been entered into in relation to the development.
- In relation to the provisions of the Regulations, sections 98 to 100 have been taken into consideration in preparing this letter in order to provide sufficient information for the consent authority.
- There is expected to be no changes in likely impacts of the development, in terms of environmental impacts on both the natural and built environments, and social and economic impacts in the locality, as a result of the modification to the development.
- The site would remain suitable for the development as a result of the modification to the development.
- No submissions were received as part of the notification of the original DA. If Council is required to notify the DA, any submissions would be considered by Council at that time.
- The development as modified would remain in the public interest by providing much needed teachers housing.

6 SUBSTANTIALLY THE SAME DEVELOPMENT

The modified development will remain substantially the same as the development originally approved. It will not change any part of the development, simply it will rectify the absence of identification as Crown Development and apply the correct legislative provisions for construction.

7 CONCLUSION

The application proposes to modify the DA for demolition of a shed, installation of two manufactured dwellings to be used as a dual occupancy, a carport, and associated site works. The development is to be carried out on behalf of the Land and Housing Corporation, which is the Crown. The original DA was erroneously not identified as a Crown DA pursuant to section 4.32 of the EP&A Act. Consequently, the DA incorporated a number of conditions that do not apply to Crown Development.

The modification application therefore proposed to identify the DA as a Crown DA and remove/amend conditions that lawfully do not apply to Crown Developments.

The modification will not result in any environmental impacts and being solely to rectify an error, can be considered pursuant to section 4.55(1) of the EP&A Act. As outlined throughout this letter, the development as modified will remain substantially the development originally approved.

The applicant requests a copy of the draft modification approval be provided for review and approval prior to its determination, pursuant to section 4.33 of the EP&A Act.

If you have any questions regarding this application, please contact the undersigned on 0400 940 482.

Yours sincerely



Erika Dawson
Director | Registered Planner PIA