

31 August 2016

His Worship the Mayor & Councillors

**Notice of Ordinary Meeting of Bathurst Regional Council - Wednesday, 7 September 2016**

I have to advise that an **Ordinary Meeting** of Bathurst Regional Council will be held in the Council Chambers on Wednesday, 7 September 2016 commencing at approximately 6.00 pm (or immediately following the conclusion of the Policy Committee).



D J Sherley  
**GENERAL MANAGER**

## **BUSINESS AGENDA**

### **ORDINARY MEETING OF COUNCIL FOLLOWING POLICY COMMITTEE**

**TO BE HELD ON WEDNESDAY, 7 SEPTEMBER 2016**

**1. 6:00 PM - MEETING COMMENCES**

**2. APOLOGIES**

**3. DECLARATION OF INTEREST**

To assist the Councillors and committee members in their correct consideration of business before them at the meeting, please give consideration to Section 451 of the Local Government Act, in relation to Declaration of Interest at meetings.

**4. RECEIVE AND DEAL WITH DIRECTORS' REPORTS**

- \* DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT
- \* DIRECTOR ENGINEERING SERVICES' REPORT
- \* GENERAL MANAGER'S REPORT

**5. RESOLVE INTO CONFIDENTIAL COMMITTEE OF THE WHOLE TO DEAL WITH CONFIDENTIAL REPORTS**

**Recommendation:** That:

- (a) Council resolve into closed Council to consider business identified, together with any late reports tabled at the meeting.
- (b) Pursuant to section 10A(1)-(3) of the Local Government Act 1993, the media and public be excluded from the meeting on the basis that the business to be considered is classified confidential under the provisions of section 10A(2) as outlined above.
- (c) Correspondence and reports relevant to the subject business be withheld from access.

In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005,:

- 1. In accordance with Section 9(2A) of the Local Government Act 1993, it is the opinion of the General Manager that the following business is of a kind as referred to in section 10A(2) of the Act and should be dealt with in a part of the meeting closed to the media and public.
- 2. In accordance with Section 10A(4) members of the public are invited to make representations to the Council as to whether the matters should or should not be dealt with in Confidential Committee.

**\* DIRECTOR ENGINEERING SERVICES' REPORT**

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| ITEM | SUBJECT                                                                            | REASON FOR CONFIDENTIALITY                                                                                                                                                                                                                                                                                                                        |
|------|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1    | TENDER FOR DESIGN, SUPPLY AND INSTALLATION OF LED DISPLAY SCREEN - CARRINGTON PARK | 10A (2) (d) (i) – contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. Discussion of the matter in open council would, on balance, be contrary to the public interest as it would prejudice the commercial position of the person who supplied it. |
| 2    | TENDER FOR DESIGN AND CONSTRUCTION OF FIELD FLOODLIGHTING AT CARRINGTON PARK       | 10A (2) (d) (i) – contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. Discussion of the matter in open council would, on balance, be contrary to the public interest as it would prejudice the commercial position of the person who supplied it. |

**6. RESOLVE INTO OPEN COUNCIL**

**7. ADOPT REPORT OF THE COMMITTEE OF THE WHOLE**

**8. MEETING CLOSE**

**DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES'  
REPORT**

ORDINARY MEETING OF COUNCIL FOLLOWING POLICY COMMITTEE

7 SEPTEMBER 2016

**1 DEVELOPMENT APPLICATION NO. 2016/0118 – SEVEN LOT RURAL SUBDIVISION AND ASSOCIATED ROAD AND INTERSECTION CONSTRUCTION AT HOUSES LANE, THE ROCKS. APPLICANT: VOERMAN & RATSEP LAND SURVEYORS. OWNER: MR D & MRS J WHITE AND ROCKING W PASTORAL COMPANY PTY LTD (DA/2016/0118)**

**Recommendation:** That Council:

- (a) support the variation to the 100 hectare minimum lot size development standard pursuant to Clause 4.1 of the Bathurst Regional Local Environmental Plan 2014 and the associated Lot Size Map for the subject land for the creation of proposed Lot 3;
- (b) support the variation to the 100 hectare minimum lot size development standard pursuant to Clause 4.2B of the Bathurst Regional Local Environmental Plan 2014 for the erection of a future dwelling on proposed Lot 3; and
- (c) call a division.

**Report:** The Site

Council has received a Development Application (DA) for a seven lot rural subdivision and associated road/intersection construction at Houses Lane, The Rocks. The following table outlines the parcels that make up the subject land.

| <b>Lot</b> | <b>DP</b> | <b>Approx. Area (ha)</b> |
|------------|-----------|--------------------------|
| 73         | 750394    | 16.19                    |
| 74         | 750394    | 20.23                    |
| 80         | 750394    | 16.19                    |
| 83         | 750394    | 20.23                    |
| 84         | 750394    | 20.23                    |
| 79         | 750394    | 16.19                    |
| 72         | 750394    | 20.23                    |
| 78         | 750394    | 82.9                     |
| 127        | 750394    | 20.23                    |
| 148        | 750394    | 0.81                     |
| 30         | 750394    | 20.23                    |
| 1          | 126001    | 0.91                     |
| 82         | 750394    | 20.44                    |
| 87         | 750394    | 20.23                    |
| 85         | 750394    | 20.23                    |
| 88         | 750394    | 20.23                    |
| 120        | 750394    | 20.23                    |
| 92         | 750394    | 20.23                    |
| 96         | 750394    | 32.37                    |
| 105        | 750394    | 16.19                    |
| 1          | 126019    | 81.46                    |
| 134        | 750394    | 125.5                    |
| 42         | 750394    | 20.23                    |
| 113        | 750394    | 16.19                    |
| 117        | 750394    | 16.19                    |
| 98         | 750394    | 16.19                    |
|            |           | <b>700.48</b>            |

A location plan is provided at **attachment 1**.

The subject site currently contains a large machinery shed but is otherwise vacant.

Houses Lane is a partially constructed gravel road running from the Mitchell Highway generally in a north-westerly direction. It currently serves a small number of rural properties.

#### The proposal

The proposal is for the creation of seven rural lots. Six of the proposed allotments will be at least 100 hectares and one will be 94 hectares. The plan of proposed development is at **attachment 2** and Statement of Environmental Effects is at **attachment 3**.

The proposal also includes the construction/reconstruction of Houses Lane and its intersection with the Mitchell Highway.

#### Planning Context

##### *Bathurst Regional Local Environmental Plan 2014*

The subject site is zoned RU1 Primary Production under the provisions of the Bathurst Regional Local Environmental Plan 2014. The proposal, while not specifically defined, is being assessed as a *rural subdivision* and is permissible with consent in the RU1 Primary Production zone. The proposal is not inconsistent with the objectives of the zone.

#### **Clause 4.1 Minimum subdivision lot size**

The Lot Size Map indicates that the minimum lot size for the subject land is 100 hectares. The proposal involves the creation of seven lots as follows:

| <b>Proposed Lot No.</b> | <b>Area (approx.)</b> |
|-------------------------|-----------------------|
| 1                       | 100 ha                |
| 2                       | 100 ha                |
| 3                       | 94 ha                 |
| 4                       | 101 ha                |
| 5                       | 102 ha                |
| 6                       | 101 ha                |
| 7                       | 103 ha                |

As noted in the above table, six of the proposed lots comply with the minimum lot size and one of the lots (proposed Lot 3) is less than the minimum lot size. The applicant has lodged a Clause 4.6 Variation to justify the creation of this lot (see below).

#### **Clause 4.6 Exceptions to development standards**

- (1) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (2) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has made the following case as to why the development standard is

considered unreasonable or unnecessary in the circumstances of the case:

- The total area of the subject property is 700.48 hectares which numerically enables the creation of seven 100 hectare lots. However, 194 hectares of the total area is located on the southern side of the public road (Houses Lane). This allows for the creation of one lot of 100 hectares and one lot of 94 hectares wholly on the southern side of Houses Lane.
- Strict compliance with the standard would mean that one lot would be severed by the road with 6 hectares of it on the northern side of the road and the remainder on the southern side of the road.
- The variation is less than 10% being only a 6% variation.

The applicant has made the following case as to what the environmental planning grounds are to justify contravening the standard:

- Strict compliance with the standard would mean that one lot would be severed by the road with 6 hectares of it on the northern side of the road and the remainder on the southern side of the road. This would create unnecessary fragmentation.

(3) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The applicant's written request adequately outlines why the development standard is unreasonable or unnecessary in this instance and what the environmental planning grounds are to justify the contravention.

Strict compliance with the development standard would result in further fragmentation of productive agricultural land. Strict compliance with the development standard would contravene the objectives of the RU1 Primary Production zone relating to the fragmentation and alienation of resource lands.

It is considered that the creation of a lot of 94 hectares is in the public interest because it ensures compliance with the zone objective.

The applicant's 4.6 variation is at **attachment 4**.

### **Clause 7.2 Bush fire prone land**

The subject site is identified as being bushfire prone land. A Bushfire Risk Assessment Report was submitted with the Development Application and the Development Application was referred to the Rural Fire Service as Integrated Development. The Rural Fire Service has issued a Bush Fire Safety Authority.

*Bathurst Regional Development Control Plan 2014*

## **Bathurst Regional Development Control Plan 2014 – Chapter 3 Subdivision of Land**

### **Roads**

The subject property has a frontage of approximately 4.6 kilometres to Houses Lane.

Houses Lane is a partially constructed gravel road. The proposed development includes the extension and upgrading of Houses Lane to service the proposed allotments. Houses Lane will be constructed as a rural roadway in accordance with Council's Guidelines for Engineering Works.

The proposed subdivision also involves the reconstruction of the intersection of Houses Lane and the Mitchell Highway. Houses Lane currently intersects with the Mitchell Highway at an angle. The intention is to realign the intersection and create formalised turning arrangements. As the proposal involves this intersection reconstruction it has been referred to Roads & Maritime Services (RMS) under Section 138 of the Roads Act 1993 for concurrence. The Roads & Maritime Services will be required to approve the intersection design.

### **Drainage**

Not relevant to the proposal.

### **Soil & Water Management**

Conditions have been imposed to ensure that the provisions of Council's Environmental Management Guidelines for Land Development are observed.

### **Land Contamination**

Council is not aware of any past land uses that could have potentially contaminated the subject site.

### **Access via Crown Roads**

Not relevant to the proposal.

### ***Bathurst Regional Development Control Plan 2014 – Chapter 6 Rural and Rural Lifestyle Development***

### **Access, Entrances and Fencing**

Each of the proposed lots will have direct access to Houses Lane. A condition will be imposed to ensure that the proposed accesses and entrances are constructed in accordance with Council's Guidelines for Engineering Works and with Planning for Bushfire Protection.

### **Onsite Effluent Disposal**

Each of the proposed allotments will have sufficient area for the disposal of effluent. Given that each of the proposed allotments will be in excess of 94 hectares it was not considered necessary for the applicant to submit individual geotech reports at the subdivision stage.

### ***Bathurst Regional Development Control Plan 2014 – Chapter 9 Environmental Considerations***

| <b>Sensitive Land Areas – DCP Map No. 29 Land Resources</b> |                             |                                                                                                                                                                                       |
|-------------------------------------------------------------|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Environmentally Sensitive Area                              | Identified on Subject Site? | Comment                                                                                                                                                                               |
| Land Capability Class 7                                     | YES*                        | * <i>Plans and documentation submitted with the Development Application indicate that the proposed development will not result in significant disruption to sensitive land areas.</i> |
| Land Capability Class 8                                     | NO                          |                                                                                                                                                                                       |
| Karst Extent                                                | NO                          |                                                                                                                                                                                       |
| Salting                                                     | NO                          |                                                                                                                                                                                       |
| Severe or Extreme Sheet or Rill Erosion                     | YES*                        |                                                                                                                                                                                       |



| <b>Sensitive Waterways – DCP Map No. 30 Riparian Land &amp; Waterways</b> |                             |                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Environmentally Sensitive Area                                            | Identified on Subject Site? | Comment                                                                                                                                                                                                             |
| Sensitive Waterways                                                       | YES*                        | * <i>Plans and documentation submitted with the Development Application indicate that the proposed development will not result in significant disruption to sensitive waterways.</i>                                |
| <b>High or Moderate Biodiversity – DCP Map No. 31 Biodiversity</b>        |                             |                                                                                                                                                                                                                     |
| Environmentally Sensitive Area                                            | Identified on Subject Site? | Comment                                                                                                                                                                                                             |
| DECC Estate                                                               | NO                          | * <i>Plans and documentation submitted with the Development Application indicate that the proposed development will not result in significant disruption to areas of high or moderate biodiversity sensitivity.</i> |
| High/Moderate Biodiversity Sensitivity                                    | YES                         |                                                                                                                                                                                                                     |

### Submissions

The criteria in Chapter 2 - *Exhibition & Notification of Development Applications* in the Bathurst Regional Development Control Plan 2014 has been considered and a determination has been made that the Development Application not be notified to adjoining property owners in accordance with Chapter 2 in the Bathurst Regional Development Control Plan 2014.

### Conclusion

Council has received a Development Application (DA) for a seven lot rural subdivision and associated road/intersection construction at Houses Lane, The Rocks. The subject site is zoned RU1 Primary Production and the minimum lot size in this locality is 100 hectares. Six of the proposed lots comply with the minimum lot size while one of the lots (proposed Lot 3) is less than the minimum lot size. The applicant has lodged a Clause 4.6 Variation to justify the creation of this lot. It is recommended that the variation to the minimum lot size be supported in this instance for the reasons outlined in this report.

**Financial Implications:** Nil.

### **Bathurst 2036 Community Strategic Plan - Objectives and Strategies**

- Objective 28: To plan for the growth of the region and the protection of the region's environmental, economic, social and cultural assets. Strategy 28.8

Yours faithfully



R Denyer  
**ACTING DIRECTOR**  
**ENVIRONMENTAL, PLANNING & BUILDING SERVICES**

## **DIRECTOR ENGINEERING SERVICES' REPORT**

ORDINARY MEETING OF COUNCIL FOLLOWING POLICY COMMITTEE

7 SEPTEMBER 2016

**1 PROPOSED TRANSFER OF UNNAMED LANEWAY OFF KEPPEL STREET AT REAR 203-223 GEORGE STREET BATHURST (25.00587)**

**Recommendation:** For Council's consideration.

**Report:** A report on this item was presented at Council's meeting held 20 July 2016. Please refer to **attachment 1**. Council resolved to request the applicant to provide written advice from all adjoining landowners to the laneway, as to their concurrence with this request.

The applicant's solicitor under cover of a letter dated 29 July 2016 provided letters from the owners of the following properties, agreeing with the proposed upgrade. The letter notes the proprietor of one property no longer supports the scheme. Please refer to letter from Robert Hood Solicitor and enclosures, contained in **attachment 2**.

124 Keppel Street  
 223 George Street  
 213 and 215-217 George Street  
 209-211 George Street

Upon enquiry from the applicant as to the status, it became apparent a letter from the owner of 203 George Street had been omitted in error. Such email/letter has now been received by Council. Please refer to email from the authorised managing agent for the owner of 203 George Street at **attachment 3**.

**Summary of Comments from Property Owners**

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 124 Keppel Street             | <ul style="list-style-type: none"> <li>• In complete agreement with proposed upgrade</li> <li>• The work would complete the partial footpath</li> <li>• This would stop the rain water that currently runs into owner's buildings</li> </ul>                                                                                                                                                                                                                                                                                                                                                       |
| 223 George Street             | <ul style="list-style-type: none"> <li>• Building in family ownership since 1966</li> <li>• Seeking Council take ownership of lane, which will provide a legal right of way to use the road</li> <li>• Lane created in private old system subdivision circa 1841, but has never been formally dedicated. Asking for process to be completed</li> <li>• Road in bad state of repair</li> <li>• 6 out of the 7 properties seek a fully sealed road</li> <li>• \$9750 expended for engineering works, before it could go before council meeting</li> <li>• Funds deposited towards upgrade</li> </ul> |
| 213 and 215-217 George Street | <ul style="list-style-type: none"> <li>• Laneway with pot holes and erosion is quite hazardous, in urgent need of upgrading</li> <li>• Seek legal access to rear of their buildings</li> <li>• Owner approached all property owners approximately 6 months ago with proposal to upgrade lane</li> <li>• All owners were in agreement</li> <li>• Feels would be of great benefit to all owners</li> <li>• Funds deposited towards upgrade</li> </ul>                                                                                                                                                |
| 209-211 George Street         | <ul style="list-style-type: none"> <li>• In full agreement with request for Council to acquire the laneway</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|                   |                                                                                                                                                                                                                              |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | <ul style="list-style-type: none"> <li>• Funds deposited towards upgrade</li> <li>• Works will improve utility and amenity of the precinct</li> <li>• Strongly requests Council consent to the project proceeding</li> </ul> |
| 203 George Street | <ul style="list-style-type: none"> <li>• Confirm support of proposed lane upgrade</li> <li>• Owner will contribute funds for project</li> </ul>                                                                              |
| 221 George Street | <ul style="list-style-type: none"> <li>• No longer supports the proposal</li> </ul>                                                                                                                                          |

It is considered that Council has 2 options regarding the lane, being:

- (i) Approve the transfer of the unnamed laneway off Keppel Street at the rear of 203-223 George Street Bathurst to its ownership, in accordance with the Director Engineering Services' Report to the Meeting of Council held 20 July 2016, or.
- (ii) Not approve the transfer of the unnamed laneway off Keppel Street at the rear of 203-223 George Street Bathurst to its ownership.

**Financial Implications:** None. All costs are to be met by the applicant.

**Bathurst 2036 Community Strategic Plan - Objectives and Strategies**

- Objective 6: To support infrastructure development necessary to enhance Bathurst's life-style and industry development. Strategy 6.1

**2 ITEMS INCLUDED IN CONFIDENTIAL COMMITTEE OF THE WHOLE  
(36.00599, 36.00600 & 11.00005)**

**Recommendation:** That the information be noted.

**Report:** The following items have been included in the confidential section of the business paper for Council's consideration -

**1. TENDER FOR DESIGN, SUPPLY AND INSTALLATION OF LED DISPLAY  
SCREEN - CARRINGTON PARK**

The report considers the tender for an electronic LED screen at Carrington Park.

**2. TENDER FOR DESIGN AND CONSTRUCTION OF FIELD FLOODLIGHTING AT  
CARRINGTON PARK**

The report considers the tender for replacement lighting for the main playing field at Carrington Park.

**Financial Implications:** There are no financial implications resulting from this report.

**Bathurst 2036 Community Strategic Plan - Objectives and Strategies**

- Objective 32: To ensure Council is supported by an adequate workforce and appropriate governance procedures. Strategy 32.2

Yours faithfully



Doug Patterson  
**DIRECTOR  
ENGINEERING SERVICES**

## **GENERAL MANAGER'S REPORT**

ORDINARY MEETING OF COUNCIL FOLLOWING POLICY COMMITTEE

7 SEPTEMBER 2016

## **1 LOCAL GOVERNMENT CONFERENCE - NOTICE OF MOTION - CONTRACTUAL POWERS OF COUNCIL (18.00105)**

**Recommendation:** That Council forward a Notice of Motion to the LGNSW Annual Conference as follows:

That LGNSW lobbies the NSW State Government to

1. give urgent consideration to the effect of the judgement in the case, Bathurst Regional Council - ats - Adrenaline Pty Ltd (Formerly Trackcorp Adrenalin Pty Ltd) by the Supreme Court of NSW, Court of Appeal No 2014/162776.
2. draft legislation to ensure councils have the general power to contract.

**Report:** Councillors will recall the determination of the Courts in the Adrenaline (formerly Trackcorp/Adrenalin) matter. This matter went to the High Court, with the court dismissing the action taken by Adrenaline Pty Ltd. Since that time, representations have been made to the State Government & LGNSW about the possible impacts of an earlier decision in this matter by the Supreme Court NSW, Court of Appeal, (note the Court of Appeal dismissed Adrenaline Pty Ltd's appeal). However the court findings included that :

*"...the primary judge was wrong to regard Council's 'general power to contract' as permitting it to stand outside of Part 10 of Chapter 15 of the Local Government Act 1993 (NSW)"*

At the recent NSW Inland Forum meeting, consisting of Albury, Armidale, Bathurst, Dubbo, Orange, Tamworth and Wagga Wagga councils, it was determined that a Notice of Motion should be forwarded to the next LGNSW Annual Conference seeking legislative change to address the possible implications of the decision. This is considered timely as the State Government is entering the second phase of the review of the Local Government Act which was initiated through the Local Government Taskforce, that was charged with providing feedback to the Government as to the future structure of the Act. The Taskforce process is a component of the Review of Local Government, initiated by the Government with industry input.

Notices of Motion are presented by the individual members to LGNSW and as Bathurst Regional Council has been party to the legal action, it is appropriate that any Motion pertaining to this matter is sponsored by council. To present a Notice of Motion it is required that evidence must be shown of council's formal support of the motion.

The LGNSW has a set of criteria that must be met when submitting a Notice of Motion. The proposed motion complies with the LGNSW criteria as follows;

- i) It is consistent with the objects of the Association, including Rule 4 (a) - *to encourage, promote, protect and foster an efficient and effective autonomous, democratic system of Local Government elected by and responsible to local communities with its position constitutionally guaranteed and with adequate resources including revenue from State and Commonwealth Governments*
- ii) The matter impacts all councils across NSW
- iii) The ability to contract contained within legislation and its interpretation by the courts is a concern for the local government sector
- iv) Clarification and resolution of this matter will allow the policy agenda of LGNSW which includes ; facilitating an efficient & effective operation of the sector, to continue.
- v) The motion has a lawful purpose, in that it seeks to deal with the contractual powers of councils

- vi) The motion is clear and unambiguous
- vii) The motion does not express a preference for one or several members over one or several members

It is proposed that a Notice of Motion be submitted as follows;

That LGNSW lobbies the NSW State Government to

1. give urgent consideration to the effect of the judgement in the case, Bathurst Regional Council - ats - Adrenaline Pty Ltd (Formerly Trackcorp Adrenalin Pty Ltd) by the Supreme Court of NSW, Court of Appeal No 2014/162776.
2. draft legislation to ensure councils have the general power to contract.

**Financial Implications:** There are no financial implications from this report.

**Bathurst 2036 Community Strategic Plan - Objectives and Strategies**

- Objective 33: To be and develop good leaders. Strategy 33.1, 33.5

Yours faithfully



D J Sherley  
**GENERAL MANAGER**