

Statement of Environmental Effects

Modification DA230374

34 Lot Subdivision 75 Isabel Drive, Murrumbateman

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Contents

1.	INTRODUCTION	3
1.1	Site description	3
2.	PROPOSED MODIFICATION	4
2.1	Modification to Conditions of Consent	6
3.	STATUTORY ASSESSMENT	7
3.1	Modification of Consent	7
3.2	Notification	9
3.3	Matters for consideration	9
4.	CONCLUSION	10
FIGURES		
Figure 1	Subject Site	4
Figure 2	Murrumbateman Master Plan 2031	5
Figure 3	proposed future connection	6
TABLES		
Table 1	Comparison	8
Table 2	Matters for consideration (Section 4.15 requirements)	9

1. Introduction

This Statement of Environmental Effects (SEE) has been prepared by Eight Mile Planning on behalf of Next Level Eighteen Pty Ltd to support a Modification to DA230374 determined by Council 20 December 2023.

This SEE has been prepared under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Environmental Planning and Assessment Regulation 2021* (EP&A Reg) as well as the requirements of Yass Valley Council (Council).

The Modification relates to the removal of the requirement in the development consent to construct a pathway alongside proposed Lot 34 to Isabel Drive. The condition did not relate to the development to the extent that the demand for the infrastructure is not generated as a result of the subdivision.

The developer, in response to a submission following the public exhibition of the DA, agreed to provide for a future pedestrian link. There was no understanding or agreement that such a path would be constructed at this time, in part due to safety and biodiversity issues at the point of intersection with Isabel Drive. There is no evidence to support the need for a constructed pathway as an outcome of this DA. Further, no formal offer has made for the dedication of the land.

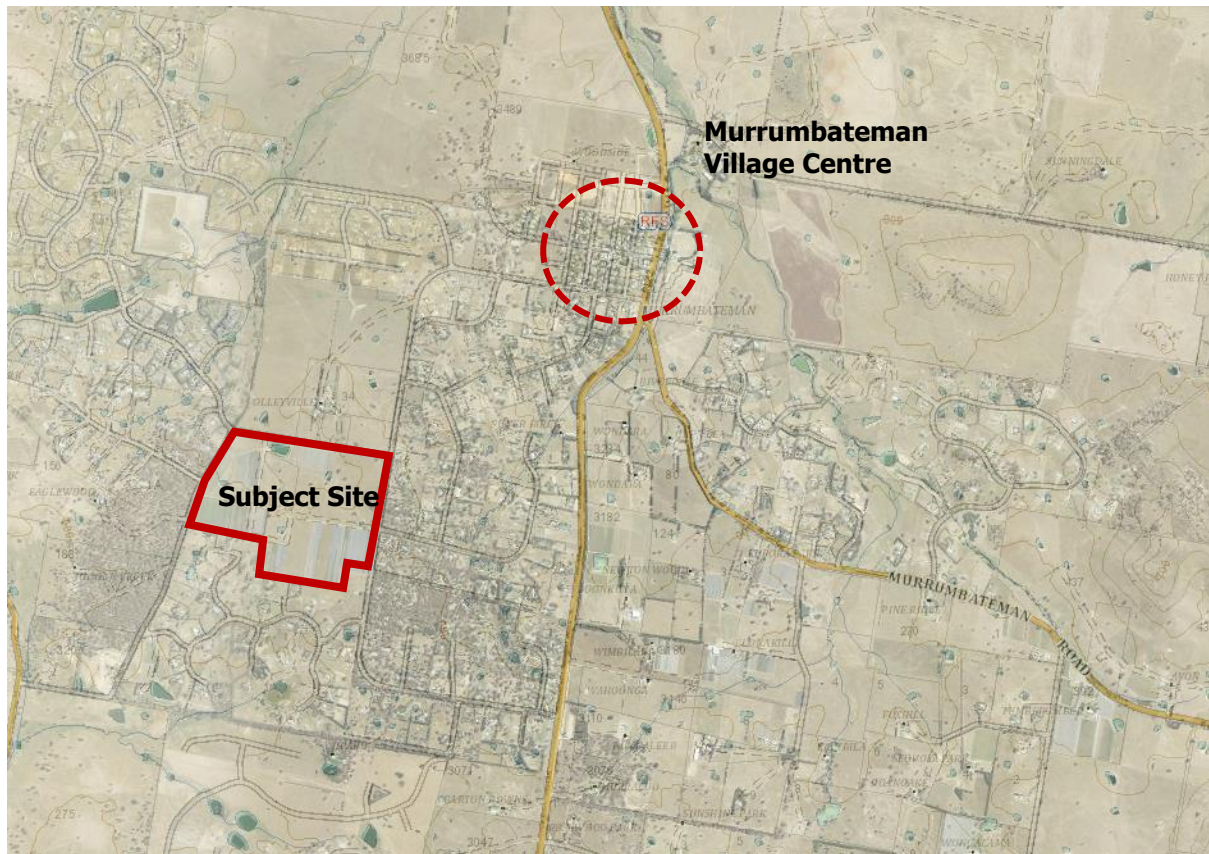
In order to resolve this issue, we propose include the land proposed to be set aside for a shared pathway in the road reserve lot and dedicated as part of the subdivision road as originally anticipated in the DA.

This Modification has been prepared to address these issues associated with the requirement in the consent to construct the pathway by:

- removing the requirement for the construction of the pathway adjacent to proposed Lot 34 to Isabel Drive; and
- dedicate the land for the construction of a future pathway as part of the local road network.

1.1 Site description

The proposed subdivision (modification) is for land at 75 Isabel Drive, Murrumbateman (legally described as Lot 2 DP1273254) refer **Figure 1**.

Figure 1 Subject Site

Source: Six Maps 2024

2. Proposed modification

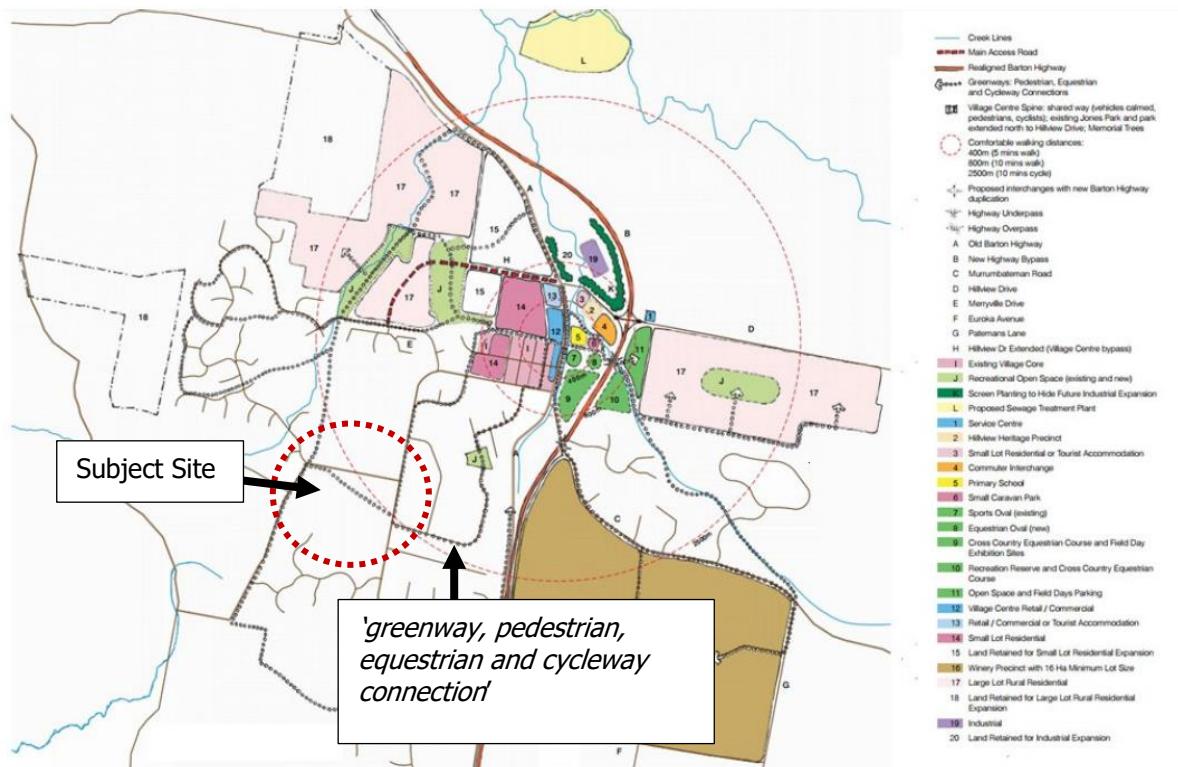
The modification to which this application relates refers to the amendment of the development to remove the construction of a pathway between proposed Lot 34 and Road 01.

A shared cycle/pedestrian pathway currently bounds the development along existing along McIntosh Circuit and Isabel Drive.

A new 2.0m shared path/cycleway link has been provided from Isabel Drive along proposed Road 01 to connect to the link provided to Grevillea Place to the south to provide a lineal connection from Merryville Park in the south to Merryville Drive in the north. This provides approximately 2.1km of shared cycleway/pedestrian path/horse trail for local the residents.

A pedestrian link through the site from McIntosh Circuit along proposed Road 01 and north to connect with Isabel Drive was included in the DA. This has now been constructed. This link satisfies the intended outcome of the Murrumbateman Master Plan 2031 (**Figure 2**).

Figure 2 Murrumbateman Master Plan 2031



Source: Extract Murrumbateman Master Plan 2031

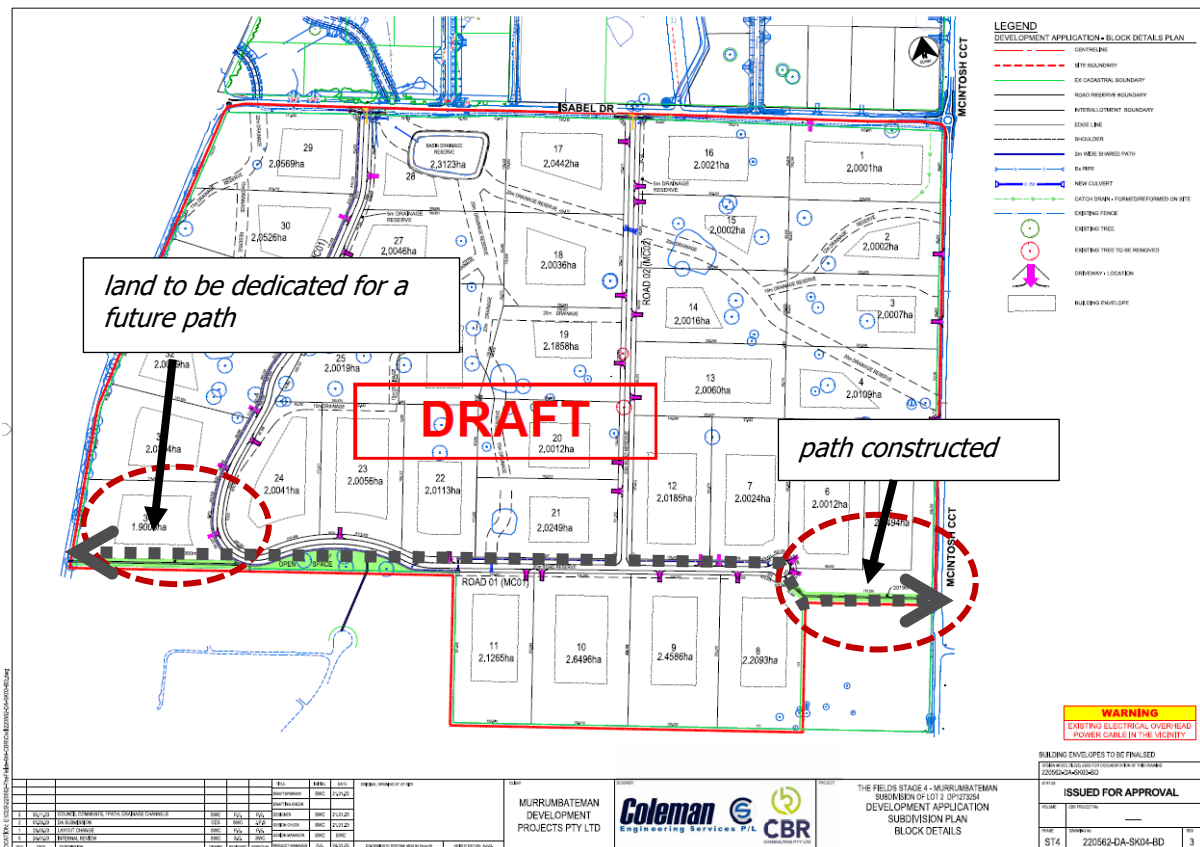
The developer, in response to a submission following the public exhibition of the DA, agreed to provide for an additional future pedestrian link through the site from Road 01 west to Isabel Drive.

There was no understanding or agreement that such a path would be constructed at this time, in part due to safety and biodiversity issues at the point of intersection with Isabel Drive. Further, no formal offer has made for the dedication of the land.

The modification relates to the removal of the requirement for the construction of the pathway. The pathway was not subject to any assessment as part of the determination other than deliberations in the council meeting in December.

As noted above, in order to resolve this issue, we would like council to consider a modification to the development to remove the conditions requiring the construction of the path.

Figure 3 proposed future connection



2.1 Modification to Conditions of Consent

The modification will require the removal of conditions of consent no 15 and 62 as follows.

15. Construction engineering drawings associated with the construction of 2.5 metre wide footpath on the land to be dedicated to Council adjoining proposed lot 34 shall be submitted for approval in accordance with:
 - Council’s Roads Standards Policy RD-POL-09 and
 - Council’s Design and Construction Specification – AUS-SPEC #1

62. A 2.5 metre wide footpath on the land to be dedicated to Council adjoining proposed Lot 34 is to be constructed in accordance with either Council’s Road Standards Policy RD-POL-09 or, where required, designs/drawings approved with the Subdivision Works Certificate.

The development does not propose to construct this shared pathway, however, the land is included as part of the land to be dedicated as road reserve under the approved DA.

3. Statutory assessment

The subject application has been assessed against the provisions of Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EPA Act) and the relevant matters for consideration have been discussed within this report. The following sections of this report provide an assessment of the relevant policies and instruments.

3.1 Modification of Consent

Section 4.55 of the EP&A Act permits the modification of consents under 4.55(1) modification involving minor error, misdescription or miscalculation, 4.55(1A) modifications involving minimal environmental impact and 4.55(2) other modifications.

This application seeks consent under section 4.55(1A) as the modification proposed minimal environmental impact as all the matters have been considered in the parent DA.

The proposal relates to a matter that was not the subject of consideration under section 4.15 or included in the staff assessment report presented to Council in the Ordinary Meeting in December 2023.

Test for a Modification

In an application to modify a development approval, a proponent must demonstrate that the change, if carried out, would result in a development that would be substantially the same development as the original development.

The following reference to the test for a modification has been sourced from the NSW Department of Planning, Industry and Environment in relation to State Significant Development. The same principles apply to Local Development and reference to case law clarifies the principles established through decisions of the NSW Land and Environment Court (LEC).

- » “Substantially” means “essentially or materially” or “having the same essence.”¹
- » A development can still be substantially the same even if the development as modified involves land that was not the subject of the original consent (provided that the consent authority is satisfied that the proposal is substantially the same)²
- » If the development as modified, involves an “additional and distinct land use”, it is not substantially the same development³

Notwithstanding the above, development as modified would not necessarily be substantially the same solely because it was for precisely the same use as that for which consent was originally granted.

- » To determine whether something is “substantially the same” requires a comparative task between the whole development as originally approved and the development as proposed to be modified. In order for the proposal to be “substantially the same”, the comparative task must:
 - > result in a finding that the modified development is “essentially or materially” the same

¹ Moto Projects (No 2) Pty Ltd V North Sydney C [1999] NSWLEC 280

² Scrap Realty Pty Limited v Botany Bay City Council [2008] NSWLEC 333

³ Vacik Pty Limited v Penrith City Council (1992) NSWLEC 8

- > appreciate the qualitative and quantitative differences in their proper context⁴
- > in addition to the physical difference, consider the environmental impacts of proposed Modification Applications to approved developments.⁵

The results of the comparative task "*does not eclipse or cause to be eclipsed a particular feature of the development, particularly if that feature is found to be important, material or essential.*"⁶

Comparative Task for the Proposed Modification

The proposed development, as modified has been compared to the original approved scheme having regard to and considering the following elements:

- » classification of development or primary use
- » development size, scale and footprint
- » project life and hours of operation
- » extent, duration and severity of impacts.

Table 1 Comparison

Element	Original	Proposed
Classification or primary use	Subdivision for residential purposes	No change
Development size, scale and footprint	Total area impacted by the development remains the same The number of lots approved will also remain the same given that two lots have been split and three consolidated into one. <i>Note: A boundary adjustment has been approved that reduces the total number of original lots by one.</i>	No net increase in the number of lots
Project life and hours of operation	No set life, hours during construction of civil works	No change
Extent, duration and severity of impacts	Environmental impacts assessed during initial DA and include Traffic, Noise, Biodiversity, Heritage.	No change. The matter was not the subject of an environmental assessment in the first instance. The point at which the path would terminate on Isabel Drive would create an unsafe environment for pedestrians and an as yet undetermined impact on the biodiversity value in the road reserve at this location.

⁴ Moto Projects (No 2) Pty Ltd V North Sydney C [1999] NSWLEC 280

⁵ Tipalea Watson Pty Ltd v Ku-Ring-Gai Council [2003] NSWLEC 253

⁶ Moto Projects (No 2) Pty Ltd V North Sydney C [1999] NSWLEC 280

The table above demonstrates that the proposed modification constitutes development that can be characterised as “essentially or materially” the same development for the purpose of the principles set down by the LEC.

3.2 Notification

Notification of a modification under section 4.55(1A) is not required under the EPA Regulation. The Development Control Plan (DCP) does not address notification of the modification of an application under section 4.55(1A).

3.3 Matters for consideration

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act as set out in the table below and detailed in **Section 4** of this report.

Table 2 Matters for consideration (Section 4.15 requirements)

EP&A Section and legislative requirement	Comment
<p><i>(1) Matters for consideration – general</i></p> <p><i>In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application</i></p>	
<p><i>(a) The provisions of:</i></p>	
<p><i>(i) Any environmental planning instrument, and</i></p>	<p>This SEE provides an assessment against the relevant Environmental Planning Instruments (EPIs) including State Environmental Planning Policies (SEPPs) and the <i>Yass Valley Local Environmental Plan 2013</i>.</p> <p>The modification does not interfere with the SEPPS beyond that original assessment.</p> <p>The primary planning instrument is the Yass Valley LEP. The use is permissible under the planning instrument.</p>
<p><i>(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i></p>	<p>There are no draft EPIs or DCPs that need to be considered at the time of preparing this application.</p>
<p><i>(iii) Any development control plan, and</i></p>	<p>Not Applicable. The modification does not relate to a matter in the DCP.</p>
<p><i>(iiia) Any planning agreement that has been entered into under section 7.4 or any draft planning agreement that a</i></p>	<p>Not Applicable.</p>

EP&A Section and legislative requirement	Comment
<i>developer has offered to enter into under section 7.4, and</i>	
<i>(iv) The regulations (to the extent that they prescribe matters for the purposes of this paragraph)</i>	The relevant matters under the <i>EPA Regulation 2021</i> that relate to the proposed development are contained within Part 6 (procedures relating to DAs). It is understood that Council will undertake assessment of the proposed development in accordance with this component of the <i>EPA Reg. 2021</i> .
<i>(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality</i>	The amendment will align with the <i>original</i> assessment of impacts identified in the original DA.
<i>(c) The suitability of the site for development,</i>	The site is suitable for the proposed development has previously been demonstrated
<i>(d) Any submissions made in accordance with this Act or the regulations</i>	Not Applicable
<i>(e) The public interest</i>	The modification will ensure that the community water scheme can operate efficiently across the entire development and is in the public interest.

4. Conclusion

The application has been prepared in accordance with the requirements of the EP&A Act, EP&A Regulation and the requirements of Council.

The proposal is consistent with the assessment report presented to council in December 2023 prepared by staff. There is no evidence to support the need for the additional through link to Isabel Drive as a reasonable impact attributed to our development. Further, there is not plan for Yass Valley Council to significantly increase the density of development to the south west of our site or construct a shared pathway along Isabel Drive on the western side of the site. The requirement for the additional infrastructure is unreasonable and unnecessary at this stage.

In good faith, the developer agreed to an additional connection and the dedication of the land. This can be achieved under the Roads Act in the same was as in the case for the McIntosh Circuit link without the need for a planning agreement.

The application demonstrates:

- » The proposal is complies with the controls in the LEP
- » No adverse impacts are envisaged as a result of the modification
- » The pathway construction was not included in the assessment of the original DA and the modification relates to the application as original present ed to council for determination at the Ordinary Meeting in December 2023.
- » The modification still allows for the future connection to be provided if the land is dedicated as a public road.

- » The proposal will not have an environmental impact and is not considered contrary to public interest.

Having considered all the relevant matters, we conclude that the proposal represents a sound development outcome and is therefore recommended for approval.

