

<b>L.2 MANAGEMENT REPORTS</b>
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**L.2.1 DA2022/0022 PROPOSED ALTERATIONS AND ADDITIONS TO A DWELLING LOT 6 DP511399 - 51 DALHUNTY STREET, TUMUT**

**REPORT AUTHOR:** MANAGER GROWTH & ACTIVATION

**RESPONSIBLE DIRECTOR:** EXECUTIVE CHIEF OF STAFF

**EXECUTIVE SUMMARY:**

A development application (DA2022/0247) was lodged with Council on 16 February 2022 seeking development consent for the purposes of a 'Alteration and Additions to an existing Residential Dwelling' at Lot 6, DP 511399, known as 51 Dalhunny Street, Tumut NSW 2720. The merits of the proposal include the demolition of existing carport and patio, new double garage, portico, patio, rumpus room, laundry, and internal alterations. This application has requested three separate variations to the Snowy Valleys Development Control Plan (DCP) 2019.

The proposal is being reported to full Council on the basis of significant policy departures, in particular three (3) adopted development control plan variations.

The merits of the application have been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* and accordingly it has been recommended that the application be determined by way of refusal for the provided reasons.

Applicant	Mel Tsarevich
Land owner	Dean & Jenny Parry
Zoning Context	R2 – Tumut Local Environmental Plan 2012
Capital Investment Vale (\$)	\$204,800
Notification Period	14 days under the DCP, Clause 1.7
Number of submissions	Nil
Political Donations declaration	Nil
Reasons for referral to Council	Significant policy departure

**RECOMMENDATION:**

**THAT COUNCIL:**

1. **Receive the Late report on DA2022/0022 Proposed Alterations and Additions to a Dwelling Lot 6 DP511399 - 51 Dalhunny Street, Tumut.**
2. **Determine the Development Application DA2022/0022 being Lot 6 DP511399, 51 Dalhunny Street Tumut NSW 2720, by way of refusal for the following reasons:**
  - (a) **The proposal is inconsistent with the controls outlined in the Snowy Valleys DCP 2019, specifically Clauses 3.2.6 Cut & Fill, 4.5.2 Building Setbacks-General and 4.5.4 Carports & Garages. The provided information is not adequately addressing the objectives or general principles for development of the DCP. The proposed development is 3m forward of the existing dwelling façade meaning the development bulk and scale will dominate the streetscape. It has not considered the character of the neighbourhood in the design especially regarding the garage door and solid brick wall forward of the neighbouring property. It is considered that the required setback could be achieved through amendment to the plans. The development application**

is not consistent with the requirements of s4.15(1) of the *Environmental Planning & Assessment Act 1979*, including a) iii) any Development Control Plan.

## BACKGROUND:

### Subject site and locality

Figures 1 and 2 provide an illustration of the land's general location and layout. The land is identified as Lot 6, DP 511399, known as 51 Dalhunny Street, Tumut NSW 2720, and comprises approximately 828.30 m<sup>2</sup> of total land area.

The subject site is in the Tumut township and is zoned R2: Low Density Residential under the Tumut Local Environmental Plan (LEP), with the surrounding land currently being utilised for residential land uses. It is considered that the proposal is generally consistent with the existing land uses of the area and is not expected to cause unmanageable land use conflict.

The site is currently utilised for residential use.



Figure 1: Aerial of Subject Site (Lot 6, DP 511399, known as 51 Dalhunny Street, Tumut NSW 2720)



Figure 2: Cadastral map of subject site and surrounding properties

### Proposed Development

The merits of the proposal include:

Alteration and Additions to an existing Residential Dwelling. The proposal includes the demolition of existing carport and patio, new double garage, portico, patio, rumpus room, laundry, and internal alterations.

**Attachment 2** provides the proposed site plan and **Attachment 3** provides the proposed floor plan. **Attachment 4** provides elevation drawings that outline the development as proposed.

The application contains variations to the DCP requests. (Attachment 1) the applicant has requested variations to Clauses 3.2.6 Cut & Fill, 4.5.2 Building Setbacks-General (was not addressed by the applicant) and 4.5.4 Carports & Garages.

The proposed development is 3m forward of the existing dwelling façade meaning the development bulk and scale would dominate the street scape., It has not considered the character of the neighbourhood in the design, especially regarding the garage door and solid brick wall forward of the neighbouring property. It is considered that the required setback could have been met. The development does not meet the requirements of these sections of DCP.

### REPORT:

#### Statutory Provisions

*Pursuant to Section 4.15 (1)(a)(i) and (ii) Any Environmental Planning Instrument / Draft Environmental Planning Instruments applying to the land.*

#### State Environmental Planning Policies

The application has been considered with regards to the relevant provisions of applicable state environmental planning policies (SEPPs) as outlined and discussed below:

### **State Environmental Planning Policy 55 Remediation of Land**

- Clause 2 - Object of the Policy

The proposed development is considered satisfactory with respect to the particular aims of SEPP 55 to promote the remediation of contaminated land for the purposes of reducing the risk of harm to human health or any other aspect of the environment.

- Clause 7 – Contamination and remediation to be considered in determining a development application

Council has undertaken a desktop review of the previous uses of the land and also has conducted a site inspection of the premises to ensure that there are no contamination issues present. The land is not considered to be contaminated, nor does it require remediation for the purposes of the development.

### **State Environmental Planning Policy – (Koala Habitat Protection) 2020**

- Clause 8 – Is the land potential koala habitat?

The land is not considered to be potential koala habitat given the amount of native vegetation on the site, as defined in the SEPP.

### **Local Environmental Plans**

The *Tumut Local Environmental Plan 2012* as amended applies to the subject site.

- Clause 1.2 - Aims of the Plan

The aims of the Tumut LEP are:

- *To provide a variety of residential environments to cater for differing lifestyles and needs,*

The proposal is considered to be generally consistent with the aims of the Tumut LEP 2012.

- Clause 1.4 Definitions

The proposed development comprises of the construction of alternation and addition to an existing dwelling, as defined in the Tumut LEP 2010.

- Clause 2.3 Zone objectives and Land Use Table

The land is zoned as R2 Low Density Residential under the Tumut Local Environmental Plan 2012. The proposed development site is located wholly within the R2 Low Density Residential zone. As defined within the R2 Land Use Table, Dwelling (alternation and addition) is permissible with development consent of the Council.

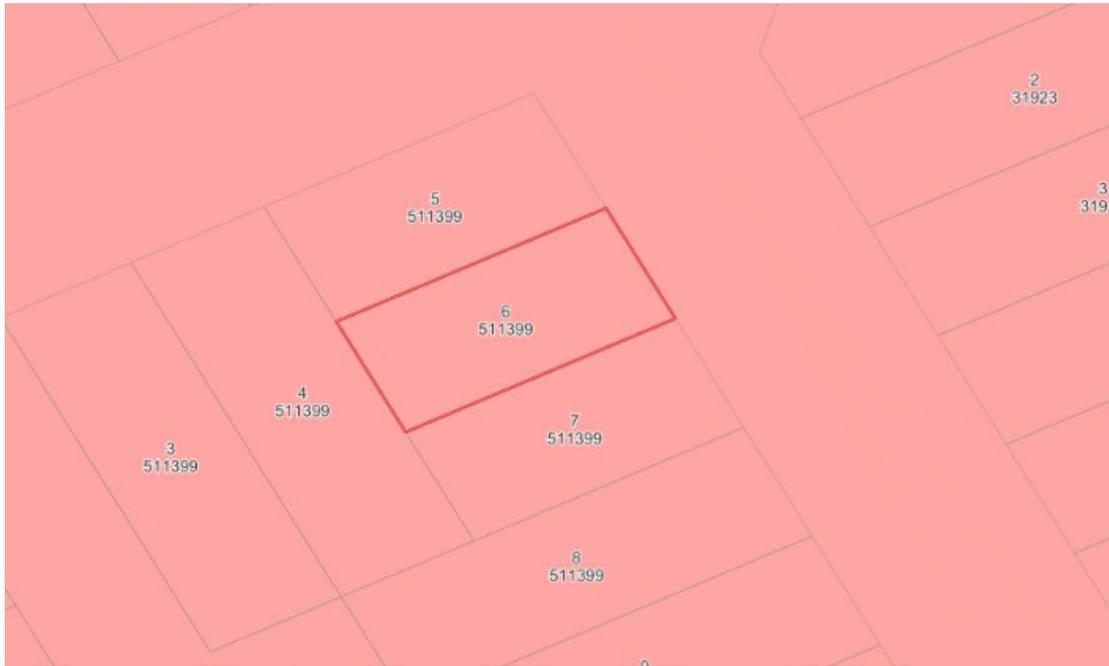


Figure 3: Zoning Map of Subject Site and Locality

- Clause 4.6 – Exemptions to development standards

This clause permits exemptions to development standards outlined in the LEP that may be necessary to permit development on the site. No exemptions to development standards outlined in the LEP are required to facilitate the development.

**Development Control Plans**

*Pursuant to section 4.15 (1)(a)(iii) – any development control plans applying to the land.*

The application has been assessed in accordance with provisions of the Snowy Valleys Council Development Control Plan 2019 that applies to the land. The following sections of the DCP require variation to permit the proposed development

Clause	Prescriptive Control/Performance Standard	Commentary	Compliance
3.2.6 Cut and fill	Cut and fill not to exceed 1m.	Some cut will be required to facilitate the development. A maximum of 1.55m of cut is required to achieve the required floor level. This requires a variation to the DCP control of a maximum of 1m of cut to be undertaken onsite. It is considered that a variation could be supported, given the nature of the site.	Non complaint – variation possible.

Clause	Prescriptive Control/Performance Standard	Commentary	Compliance
4.5.2 Building Setbacks- General	The portico is permitted to project up to 2m forward of the dwelling setback to the primary street.	The proposed development is 3m forward of the existing dwelling façade. The application does not provide justification why they couldn't meet the setback. It is considered that the required setback could be met through amendment to the plans. The development does not meet the requirements of this section of DCP.	Non-compliant – variation not supported
4.5.4 Carports & Garages	Garages are not permitted to be located forward of the primary building lines.  Garages are to be setback at least 0.5 metres from the dwelling front facade	The proposed development is 3m forward of the existing dwelling façade which the development bulk and scale will dominate the street scape, especially regarding the garage door and solid brick wall forward of the neighbouring property. It is considered that the required setback could have been met through amendment to the plans. The development does not meet the requirements of this section of DCP.	Non-compliant – variation not supported

It is considered that the proposal is not consistent with all relevant controls of the Snowy Valleys Council DCP 2019 with one major departure (Garage Setback) and two minor departures from the controls as identified above. It is considered that the development is compliant with all other relevant controls of the DCP.

### Planning Agreements

*Pursuant to section 4.15(1)(a)(iiia) - any planning agreement that has been entered into under section 7.4 of the Environmental Planning and Assessment Act 1979.*

Council records indicate that no planning agreements have been entered into in relation to this development.

### Regulations

*Pursuant to section 4.15(1)(a)(iv) any regulation that applies to the development for the purposes of this paragraph.*

There are no Regulations that are considered to be applicable to the subject land or the proposed development.

**Coastal Management Plans**

*Pursuant to section 4.15(1)(a)(v) any coastal management plan (within the meaning of the Coastal Protection Act 1979) that applies to the land to which the development relates.*

There are no coastal management plans that apply to the subject land.

**Impacts of the Development**

*Pursuant to section 4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality.*

**Context and Setting**

The proposed development needs to comply with the DCP development as the bulk and scale will dominate the street scape, especially regarding the garage door and solid brick wall forward of the neighbouring property. It is considered that the required setback could have been met.

**Site design and internal design**

The overall site design and layout is considered inadequate, as the design could have addressed the controls of the DCP.

**Heritage**

The site is not identified as an item of heritage in accordance with schedule 5 of the Tumbarumba Local Environment Plan nor is the site listed on the State Heritage Register. No heritage significance has been identified on the subject site as part of the assessment of this application.

**Flooding**

The site is not subject to flooding and not identified as flood prone land, being shown in the flood planning layer for the Tumut LEP 2012.

**Suitability of the site for the development**

*Pursuant to section 4.15(1)(c) the suitability of the site for the development*

The site is not considered to be suitable for the proposed development given the bulk and scale. The proposal should consider the DCP in its design.

**Submissions made in accordance with the Act or Regulations**

No submissions were received.

**Public Interest**

*Pursuant to section 4.15 (1)(e) whether the proposal is within the public interest.*

The proposed development is not in the public interest, given the Bulk and Scale on the existing streetscape.

**Consultation****Pre-lodgement Meetings**

There is no record of any pre-lodgement meetings having been undertaken with Council staff in relation to this proposal.

**Additional information Meetings**

Pending the provision of additional information, Council staff met with the applicant and one owner, on 30 March 2022, to discuss the proposal and the provision of information that may

satisfy the Snowy Valleys Councils DCP. The following key points were made at this meeting:

- The application needs to comply with the DCP 4.5.2 Building Setbacks-General and 4.5.4 Carports & Garages. The proposed development is 3m forward of the existing dwelling façade meaning the development bulk and scale will dominate the streetscape. It is considered that the required setback could have been met. The development does not meet the requirements of this section of DCP.
- Discussion of re-design to comply with the DCP.
- The request of the variation to Clauses 3.2.6 would be considered.

Further, an email from the applicant on 20 April 2022 was received advising the owner will proceed with the application as it was submitted.

### **Internal Referrals**

Not required.

### **Community Participation Plan – Notification**

The DA was notified for the standard period (25 February 2022 to 11 March 2022) and during this period no submissions were received by Council.

### **Discussion of Key Issues**

The key issue for this proposed development is the 3m forward of the existing dwelling façade meaning the development bulk and scale would dominate the street scape It has not considered the character of the neighbourhood in the design especially regarding the garage door and solid brick wall forward of the neighbouring property. It is considered that the required setback could have been met. The development does not meet the requirements of these sections of DCP.

The development is not considered to be suitable on the subject site for these reasons. As the application could be re-designed, the proposal to meet the Snowy Valleys Council DCP.

### **LINKS TO COMMUNITY STRATEGIC PLAN AND DELIVERY AND OPERATIONAL PLAN:**

#### **Integrated Planning and Reporting Framework: CSP Outcome 2028**

Theme 1: Towns and Villages

#### **Delivery Outcomes**

1.9 Provide a planning and development framework which protects the local amenity while supporting sustainable growth and an appropriate balance of land use

#### **Operational Actions**

1.9.2 Develop new draft Local Environment Plan that harmonises current Tumut LEP and Tumbarumba LEP

### **SUSTAINABILITY ASSESSMENT:**

Nil

**Financial and Resources Implications:**

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed below:

- Should the applicant choose to appeal a determination by way of refusal or pursue a deemed refusal by Council through the NSW Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or deemed refusal by Council through the NSW Land and Environment Court and win, the question of costs be dependent on the extent of the reasons for refusal;
- Should any person choose to pursue Class 4 proceedings against Council to the Land and Environment Court and lose, the question of costs with regards to Council's legal representation would be calculated at the appropriate time by either costs incurred or by costs assessment in favour of Council.
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the costs would be calculated at the appropriate time by either costs incurred or by costs assessment against Council.
- Should the applicant make no appeal, or proceedings not be taken out by another party to the NSW Land and Environment Court regardless of determination, the application would result in no further financial implication on the Council.

**Costs and Benefits:**

There are no expected costs associated with the application where the refusal determination is made. The refusal of the application will reduce the bulk and scale impacts to residents of the locality. Additionally, any approval may form a precedent for development in areas and weaken previously established planning principles.

**Policy, Legal and Statutory Implications:**

The assessment of the proposal has been carried out in accordance with the relevant provisions of section 4.15 of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning Regulation 2000*.

**RISK MANAGEMENT – BUSINESS RISK/WHS/PUBLIC**

Nil

**OPTIONS:**

Council has the following options with respect to Determination 2022/0022:

**Option 1** THAT Council determine the Development Application DA2022/0022 being Lot 6, DP 511399, 51 Dalhunny Street, Tumut NSW 2720, by way of refusal for the following reasons:

The proposal is inconsistent with the controls outlined in the Snowy Valleys DCP 2019, specifically Clauses 3.2.6 Cut & Fill, 4.5.2 Building Setbacks-General and 4.5.4 Carports & Garages. The provided information is not adequately addressing the objectives or general principles for development of the DCP. The proposed development is 3m forward of the existing dwelling façade meaning the development bulk and scale would dominate the

streetscape. It has not considered the character of the neighbourhood in the design especially regarding the garage door and solid brick wall forward of the neighbouring property. It is considered that the required setback could be achieved through amendment to the plans. The development application is not consistent with the requirements of s4.15(1) of the Environmental Planning & Assessment Act 1979, including a) iii) any Development Control Plan.

**Option 2** THAT Council determine the Development Application DA2022/022 being Lot 6, DP 511399, 51 Dalhunny Street Tumut by way of approval and delegate to the Chief Executive Officer the power to apply standard conditions of consent to any notice of determination.

**Option 3** THAT Council defer the Development Application DA2022/022 being Lot 6, DP 511399, 51 Dalhunny Street Tumut pending additional information.

Option 1 is recommended to Council.

Councillors must record their votes on the matter.

### **COUNCIL SEAL REQUIRED**

No

### **COMMUNITY ENGAGEMENT AND COMMUNICATION**

Community engagement surrounding the proposal has been outlined in the consultation section of the report.

### **ATTACHMENTS**

Attachment 1 – DCP Variation Request – 51 Dalhunny Street Tumut (ID3157318) (under separate cover)

Attachment 2 – Site Plan – Elevations – West Section – 51 Dalhunny Street Tumut (ID3170875) (under separate cover)

Attachment 3 – Site Plan – Elevations – East North and South – 51 Dalhunny Street Tumut (ID3170876) (under separate cover)

Attachment 4 – Proposed Site Plan – 51 Dalhunny Street Tumut (ID3170871) (under separate cover)

Attachment 5 – Internal Floor Plan - 51 Dalhunny Street Tumut (ID3170873) (confidential) (under separate cover)