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Parliament House
Macquarie St
Sydney NSW 2000

Attention to: Mr Andre Vernez
Wollondilly Shire Council
62-64 Menangle St
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27 June 2016

**Re: Development Consent Modification No. 010.2014.00000588.001 –
River Road, Tahmoor.**

Following representations I have received I write to you concerning the proposed modification of Development Consent No. 010.2014.00000588.001 which approved a 117 Lot Rural Residential Subdivision & 1 Open Space Lot in 6 Stages at 165, 175, 185 & 195 River Road, Tahmoor (Lots A & B DP 369710, Lots 1 & 2 DP 1210433 and Lots 85 & 86 DP 751270).

The Section 96(2) Modification seeks to amend the subdivision plan to a 160 lot Subdivision and 1 open space Lot with Associated Works.

I have specific concerns about the impact of this development which I will outline below but I am also concerned at what I see as a growing trend for developers to lodge a DA and gain council approval of a lower impact concept and subsequently lodge a modification to significantly increase the scale of development. In this case I note the modification is a 36% increase in the number of lots.

I do not think it is open to the council to deal with the proposed intensification of the proposal as a modification. The residents in the area have significant objections to the development for very practical reasons. The increase in scale potentially creates a very different impact and should be thoroughly reassessed as a new proposal.

As Pearson C held in *Charlie Lovett Pty Ltd v Hurstville City Council* [2014] NSWLEC 1146 (25 July 2014):

1. The requirement that the consent authority be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted is a condition precedent to the exercise of the power to modify a consent: *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333; [2008] 166 LGERA 342 at 347. The parties were in

agreement as to the approach to be adopted to consideration of whether the threshold requirement of [s 96\(1A\)\(b\)](#) is met, while differing as to the outcome in the circumstances of this application.

2. The power to modify a consent is a power "to alter without radical transformation" the consent: *Scrap Realty* at 347; *North Sydney Council v Michael Standley & Associates Pty Ltd* [\[1998\] NSWSC 163](#); [\(1998\) 43 NSWLR 468](#) at 474. The focus is on "the development", making a comparison between the development as modified and the development as originally granted: *Scrap Realty*. The result of the comparison must be a finding that the modified development is "essentially" or "materially" the same as the approved development: *Moto Projects (No 2) Pty Ltd v North Sydney Council* [\[1999\] NSWLEC 280](#); [\(1999\) 106 LGERA 298](#) at 309; *Vacik Pty Ltd v Penrith City Council* [\[1992\] NSWLEC 8](#). Both a qualitative and quantitative comparison is required, and the comparison involves an appreciation of the developments being compared in their proper contexts, which includes the circumstances in which the development consent was granted: *Moto Projects* at 309.

Taking both a qualitative and quantitative approach to this application it is clearly a "radical transformation" of the original application, involving a 36% increase in the number of lots and a very greatly increased impact on traffic, intensity and infrastructure requirements. In short it is unlawful for any consent authority to consider this application as a modification under s96(2) of the L&E Act.

Following are my office's further specific concerns:

Access and traffic implications - There are a number of developments slated for the area but there is a serious traffic concern. Between Tahmoor and the M5 Freeway there are only two routes. One is a one-lane bridge that is clogged at peak hours and the other goes via a railway underpass into the township of Picton which is a 50k zone and also becomes very congested at peak times.

Given the large number of lots proposed for this and other new developments there should really be a moratorium until the traffic issue is addressed. I note that would require a very expensive bridge across the gorge. The likelihood of such a bridge being justified needs to be carefully considered and taken into account.

Access and bushfire threat - There is only a single narrow access road which is highly dangerous if bushfires threaten. This access road also cuts through a wildlife corridor so the increases in the amount of traffic will be devastating for wildlife.

Environmental impact on Nepean Gorge and Bargo River Gorge - The development is nearby the Nepean Gorge which I understand has recently been listed by the National Trust. Nutrient runoff and plant contamination are inevitable. It also sits at the intersection of the Bargo River Gorge and will have serious impacts on this. Increasing this development by 36% would increase the potential for contaminated runoff. The impact of nutrient runoff is amplified by the fact that none of the proposed blocks are to be sewered.

I also understand the area nearby the development has been proposed for inclusion in a new park, The Bargo Nepean National Park. Given that the area is of such significance the council has a particular responsibility to protect the area abutting the proposed park from unsympathetic overdevelopment.

If you have any questions about this submission please contact my Policy Advisor Kym Chapple on 9230 3030 or kym.chapple@parliament.nsw.gov.au

Kind regards,

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

David Shoebridge MLC