

Our Ref: MSR:AM:161166
Your Ref:
Reply to: ALBURY OFFICE

8 November, 2016

The Secretary
Down to Earth (Victoria) Co-Operative Society Limited
PO Box 295
BRUNSWICK EAST VIC 3057

First by Email: directors@dte.org.au

Dear Sir/Madam

Proposed Summer Confest
Our client: Edward River Council

We act on behalf of Edward River Council.

We have been instructed to advise Council in relation to the proposal by Down to Earth (Victoria) Co-Operative Society Limited (**DTE**) to hold a Summer Confest between the dates of 28 December 2016 and 5 January 2017.

We have been provided with relevant background documents including the Development Consent 316A issued on 13 April 2006 (**Development Consent**).

We are aware that representatives of DTE have met with Council staff and local senior members of NSW Police and Rural Fire Services. Despite safety concerns expressed by Council, Police and RFS, DTE appear intent on holding the proposed Confest.

No Section 68 Approval

You are required to have a Section 68 Approval issued under the *Local Government Act 1993 (LG Act)*, in addition to the Development Consent issued under the *Environmental Planning and Assessment Act 1979*, prior to holding the proposed Confest.

In reliance upon section 672 of the LG Act the mere fact that DTE has threatened to proceed with Confest constitutes a breach of the LG Act and may subject DTE, and its members, to significant penalties.

Notice of Intention to Serve an Order

Prior to commencing proceedings in the Land and Environment Court, we have recommended to Council that it first offer DTE an opportunity to withdraw the threat of holding the proposed Confest.

Accordingly, Council has served upon you a Notice of Intention to Serve an Order dated 2 November 2016. In accordance with that Notice, you have 14 days to provide any representations in

Albury Office
571 Kiewa Street
Albury NSW 2640
Tel: (02) 6021 2844
Fax: (02) 6021 6075

PO Box 487
Albury NSW 2640
DX: 5804, Albury NSW

Corowa Office
73 Sanger Street
Corowa NSW 2646
Tel: (02) 6033 1055
Fax: (02) 6033 3356

PO Box 74
Corowa NSW 2646
DX: 26680, Corowa NSW

Wangaratta Office
15 - 17 Ely Street
Wangaratta VIC 3677
Tel: (03) 5721 6828

www.kellmoore.com.au

response to the Notice. If you do not provide any representations, Council will proceed with the service of the Order.

If you do provide any representations, Council is required to consider those representations before then determining whether to proceed with the service of the Order in its proposed form, or an amended form.

Support of NSW Police and RFS

Please find attached copies of correspondence received from Mr Paul Condon, Commander, Deniliquin Local Area Command of NSW Police Force dated 27 October 2016 and from Superintendent Lindsay Lashbrook, Manager-Mid Murray Zone of the NSW Rural Fire Service dated 27 October 2016.

Undertaking to avoid Legal Proceedings

To avoid unnecessary legal proceedings, we are instructed to seek your written undertaking that DTE will not conduct the proposed Confest, or any event, on the identified premises during the Bushfire Danger Period of 1 October 2016 to 31 March 2017.

If you are not prepared to provide a formal written undertaking and it is necessary for Council to serve the proposed Order, we hold instructions to enforce that Order in the Land and Environment Court and seek an injunction to restrain you from holding the proposed Confest, or any event during the Bushfire Danger Period.

Legal Advice

We strongly recommend that you seek legal advice in relation to the Notice of Intention and this letter. It is our intention to provide a copy of this letter to the Land and Environment Court in support of the foreshadowed injunctive proceedings and an application that DTE pay all of Council's legal fees on an indemnity basis.

Future Confests (outside of the Bushfire Danger Period)

Council has requested that we reiterate that it supports the holding of events of this nature within its Local Government area and wishes to continue to work with DTE in relation to the holding of other events outside of the Bushfire Danger Period (subject to DTE applying for and being granted a section 68 Approval).

We await your reply.

Yours faithfully
KELL MOORE

Per:


Matthew Rogers
Principal

Acc. Spec in Local Govt and Planning
Email: mrogers@kellmoore.com.au



27 October 2016

Ms Marie Sutton
Development Manager
Edward River Council
Conargo Office
122 End Street
DENILQUIN NSW 2710

Conargo Shire Council	
Date	27.10.16
File Name	Opinion
Action Officer	MS 88
For Info. only	
Doc. ID No.	20976 P



NSW Police Force
www.police.nsw.gov.au
Our Ref: D/2016/611403

As both the Police Commander and Local Emergency Operations Commander, I have the following comments to make in relation to the application from the Confest - Down to Earth Organisation's plans to hold a festival between the period 1 October 2016 and 31 March 2017.

I have grave concerns if this event occurs that holding this festival on the location would result in a potential life threatening hazard and threat to public health or safety and that there is no mitigation that can be done to stop this threat due to:

- 2016 has seen a weather pattern event that has caused wide spread rain and flooding within the area nominated for this event.
- It is now the indication that this climatic event will commence to change back into regular weather patterns over the next month which results in dry hot weather and strong winds.
- The high rain event of the last 6 months has caused an extreme amount of growth to local forests and grass lands that will not be able to be mitigated in the coming months because of cost and more importantly access to the site. In previous years the organisers of this event have slashed the festival area (Easter festival not summer) however, this will not mitigate the risk due to the summer bush fire weather conditions and the large amount of dried growth that is now expected.
- It is not just the area of the event that is of concern but also the surrounding area and forest. This area will not be slashed and if a bush fire ignites or travels through this area no amount of slashing will save the people within the festival sites. The conditions in my opinion could be similar to that of the 2009 Victorian bush fires where I personally sited the area where deceased victims who were in the middle of ovals who were not burnt; such was the intensity of the fire.
- I understand that the festival has a fire mitigation plan but I do not feel that any plan can mitigate the risk with the predicted fuel loads and summer season that will be upon us shortly.
- I have attended numerous Local Emergency Management Committee meetings over the last month and they all share the concern as does the local Bush Fire Management Committee which I am also a member. The other issue is the accessibility to the site which traditionally has been difficult with one way in and one way out which if cut off will trap all those within the location. As such I would not expect my police or any emergency services to enter the location if there was no way to escape.

There is no doubt in my mind that if this event is allowed to take place in the bush fire season and in particular the 2016/17 bush fire season, that this event will produce a life threatening hazard. If or when a bush fire does occur there is also an issue of resources as this will not be the only location in threat.

Yours sincerely

Paul Condon
Commander
Deniliquin Local Area Command

Deniliquin Local Area Command
Commander's Office

7 Hardinge Street Deniliquin NSW 2710

Telephone 03 5881 9400 Facsimile 03 5881 9438 ENet 83400 EFax 83438 TTY 02 9211 3778 Hearing Speech impaired

AGY 21/09/13 140



NSW RURAL FIRE SERVICE



27 October 2016

Marie Sutton
Development Manager
Edward River Council
Deniliquin NSW 2710

Dear Marie

**Notification from Down to Earth Co-op re planned summer ConFest
December 2016**

On 7th October 2016 I received written correspondence from DTE outlining their plans to commence preparation for a summer ConFest to be held between 28th December 2016 and 5th January 2017.

Due to concern for public safety, the NSW Rural Fire Service does not support DTE holding festivals on their property located on 7599 Pretty Pine Road during the statutory Bush Fire Danger Period 1st October – 31st March.

The reasons are:

- The Rural Fire Service does not have the resources locally to protect several thousand people located in a remote area during the peak fire season. During the Christmas break in particular, RFS volunteers traditionally take time away with the family and loved ones to enjoy the festive season. This drastically reduces the number of volunteer fire fighters available to the RFS to protect life and property in the Edward River district at that time.
- The ConFest site located at 7599 Pretty Pine road is open to threat from fast moving grass and bush fire that can occur when fire weather conditions reach a Fire Danger Rating of High and above.
- The large increase in traffic to and from the site greatly increases the risk of fire ignition from passing traffic that potentially may escalate to create a threat to life and property.

Although it is recognised that DTE has taken steps to create fire refuge areas on their property and upgrade their fire fighting capability, in my professional opinion

Postal address
NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address
NSW Rural Fire Service
15 Carter Street
LIDCOMBE NSW 2141

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

the risk to the general community and surrounding property is far too great during the summer months.

Under the Rural Fires Act 1997 The NSW Rural Fire Service has a duty of care to ensure the safety of the general public during the Bush Fire Danger Period. DTE's wish to hold a large scale event involving several thousand people during the BFDP is outside of what the Mid Murray Zone RFS is capable of protecting.

If you wish to discuss this matter further, please feel free to contact me at the Mid Murray Fire Control Centre.

Yours faithfully,



Superintendent Lindsay Lashbrook
Manager – Mid Murray Zone