

18 January 2022

718742

Minister for Planning and Public Spaces
NSW Department of Planning, Industry and Environment
12 Darcy Street
Parramatta NSW 2150

Dear Sir,

RE: Section 4.55(1A) modification (modification 12) to DA-220-07-2002-i, 1 Dampier Street, Bomen NSW

This application has been prepared by Ethos Urban on behalf of Teys Australia Southern Properties Pty Ltd (Tey's) pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979 (EP&A Act 1979) to modify Development Consent 220-07-2002-i (DA 220-07-2002-i).

The application relates to land currently used as an Abattoir located at 1 Dampier Street, Bomen NSW (the site). The proposal is for the provision of a new plate freezer/store, a new switch room and temporary workshop. The existing plate freezer capacity does not currently provide for the seasonal changes in chilled / frozen export carton numbers during the year. The new plate freezer will include technology that will increase the quality of frozen product and its shelf life. It will also automate the freezing and handling of all frozen cartons.

The proposal does not involve an intensification of the use. The approved throughput of 1,600 cattle per day is not proposed to be changed as part of this application. The proposal does not result in the increase of waste streams or traffic movements.

The site comprises two zonings being IN1 General Industry (IN1 zone) and SP2 Infrastructure Zone (SP2 zone) under Wagga Wagga Local Environmental Plan 2010 (WLEP 2010). The proposal is to be located predominantly in the SP2 zone, which prohibits *rural industry*, the definition of which includes an abattoir. As the existing abattoir was lawfully established on the site under Wagga Wagga Local Environmental Plan 1985 (WWLEP 1985) and prior to the establishment of WLEP 2010, and the subsequent SP2 zoning coming into effect, the site benefits from existing use rights. Division 4.11 of the EP&A Act 1979 allows the intensification, extension or expansion of an existing use.

Moreover, clause 5.3 in WLEP 2010 provides flexibility for a use near a zone boundary for a use(s) that would otherwise be prohibited to be granted consent if in doing so, it would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone. It is submitted herein that the Minister can comfortably rely on either mechanism to grant consent to the proposed modifications.

DA 220-07-2002-i has been modified eleven (11) times. The modification (modification 12) sought in this application is submitted under the provisions of section 4.55 of the EP&A Act 1979.

As demonstrated herein, this proposal meets the test of being 'substantially the same development' as originally approved and subsequently amended. Given the minor nature of the proposal, it is submitted that Secretaries Environment Assessment Requirements (SEAR's) are not required to be sought for this matter as was the case for recent other modification applications pertaining to this site.

This application describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 4.55(1A) of the EP&A Act 1979 and is accompanied by:

- Section 4.55(1A) application form and fee;
- Plans and elevations prepared by Wiley – **Attachment A**;
- Stormwater Management Plan prepared by MPN Consulting – **Attachment B**; and
- BCA Report prepared by McCarthy Consulting Group – **Attachment C**.

1.0 Site location and description

The site (as identified in **Figure 1** below) is located at 1 Dampier Street, Bomen NSW and is legally described as Lot 1 in DP 1213252. The site, which has a total area of 160.32ha is located east of East Street and west of Byrnes Road. The northern property boundary is situated south of Bomen Road and the southernmost portion of the site is located north of Hillary Street.

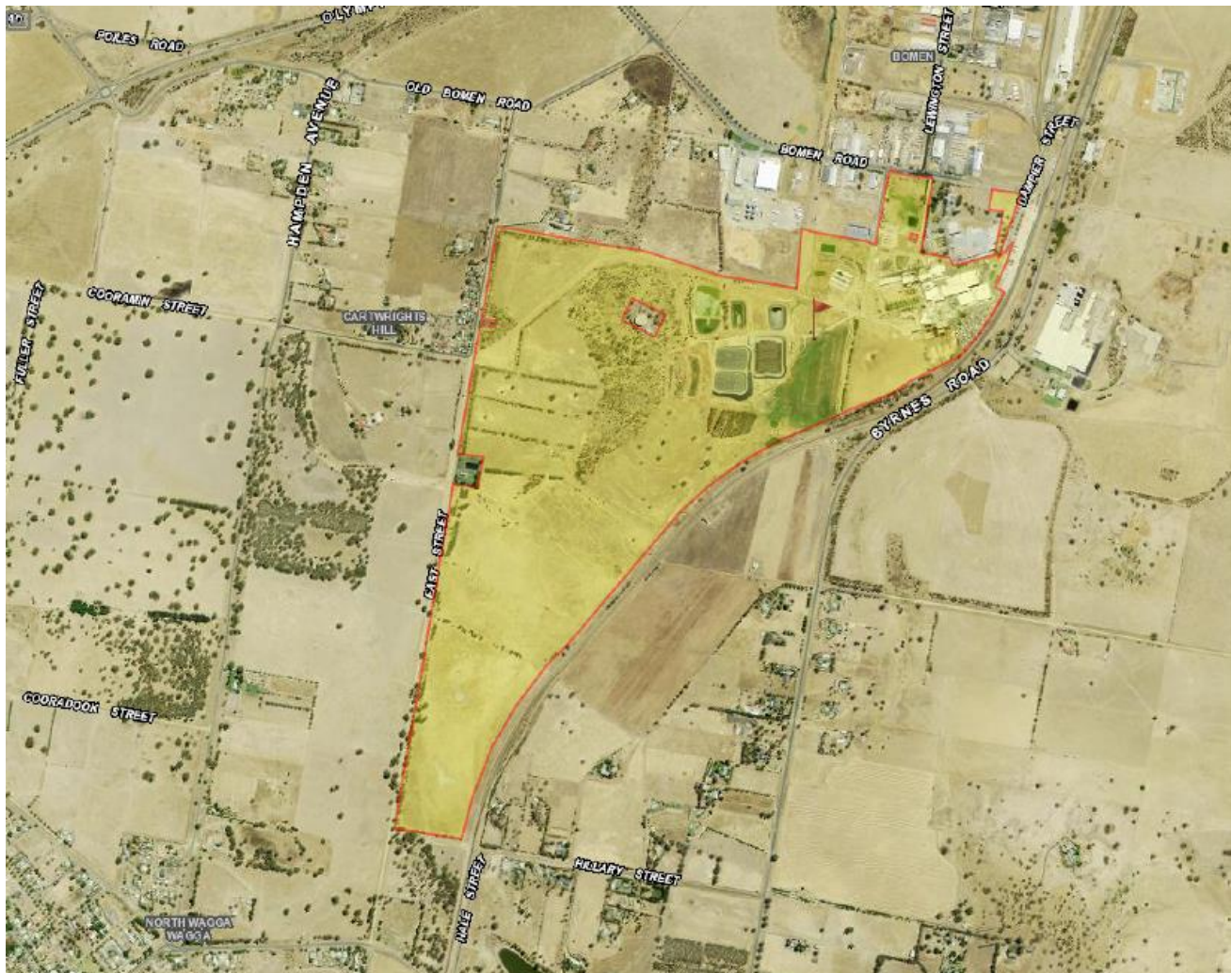


Figure 1: Site Location

The area of the site, subject to this proposal, is identified by the area within the red boundaries illustrated in **Figure 2** below.

The area proposed for the new switch room / temporary workshop is currently used for the said purposes. The proposal seeks to expand the building footprint for these uses.

The area proposed for the new plate freezer is current used as for internal vehicle access to the staff car park and open air storage.



Figure 2: Indicative location of areas subject to the modifications proposed in this application

2.0 Consent proposed to be modified

The site is currently used for the purposes of the Teys Australia Bomen Beef Processing Facility (abattoir), which has operated on the site since the 1940's. The facility was owned by the local Council until 1991 when it was purchased by Cargill Beef Australia (CBA). Teys Australia is an equal partnership between the Teys Family and the Cargill Company.

Development application (DA 220-07-2002-i) to which this application proposes to further modify, was submitted to the former Department of Urban Affairs and Planning (now the DPIE) in 2002 for extensions to the facility and was subsequently approved by the Minister on 27 February 2003. Eleven (11) subsequent modifications have been submitted and approved by the DPIE (previously known as the Department of Planning and Environment) with the most recent being in April 2020.

As previously outlined above, with the removal of Part 3A from the EP&A Act 1979, the appropriate mechanism for modifying DA 220-07-2002-i is now under the provisions of section 4.55(1A).

3.0 Description of the proposed modifications

3.1 Overview

The modification being sought as part of this proposal is primarily driven by the need for new and enhanced systems within the switch room / temporary workshop as well as additional storage space for meat to assist with distribution requirements and significantly increase the shelf life of the output. The proposal does not include any intensification of the existing use i.e., will not result in the exceedance of 1,600 cattle per day.

In summary, the proposed modifications, which are illustrated by the plans and elevations provided in **Attachment A**, include:

New Switch room / Temp workshop

- Increase of building footprint of existing switch room / temporary workshop.
- Relocation and expansion of switch room equipment.
- Demolition of internal walls and existing gantry frame to accommodate a larger roller shutter door.
- External works associated with the above.

New Plate Freezer / Store

- New plate freezer / store, approx. 18.5m in height, established over an area currently used for internal vehicle access and open-air storage.
- All required services to enable system operation, including:
 - refrigeration infrastructure upgrades and associated modifications to plant room; and
 - electrical infrastructure involving new substation.
- Building works to support plate freezers, conveyor systems and associated infrastructure.
- Manual blast options, including:
 - refurbishment of manual blast area (incl. replacement of EPS panel with PIR) to allow frozen carton storage and manual blast operation; and
 - auto blast tunnel.
- Realignment of the existing internal road to the staff car park in order accommodate the building footprint.
- Relocation of Telstra communications infrastructure located within building footprint (separate to this application).
- Elevated and enclosed conveyor tunnel connecting the proposed plate freezer with the existing boning room.

3.2 Stormwater management

A Stormwater Management Plan, prepared by MPN Consulting, has been provided to support the proposal, refer to **Attachment B**.

The plan concludes the proposal will meet the stormwater quality and quantity levels required by City of Wagga Wagga and best practice. The proposal will have a negligible increase in impervious area. There is no material increase in stormwater runoff from the site. On-site detention or treatment devices are not proposed to be constructed as part of this development.

3.3 BCA Report

An assessment of the proposal against the relevant provisions of the Building code of Australia (BCA) 2019 Amdt 1, prepared by McCarthy Consulting Group, has been provided to support the proposal, refer to **Attachment C**.

The assessment concludes the proposal is capable of achieving compliance with the relevant provisions of the BCA 2019 Amdt 1.

4.0 Assessment of proposed modifications

The extent of additional gross floor area (GFA) proposed by the modification is approximately 820m². Given the scale of the existing buildings already on site, and the significant distance from the nearest residence, approximately 1 kilometre away, the proposed modification will be negligible in terms of potential visual impacts derived from any additional building height, bulk or scale.

5.0 Section 4.55 (1A) assessment

Section 4.55(1A)(a)(b) of the EP&A Act 1979 states that a consent authority may modify a development consent if:

- *It is satisfied that the proposed modification is of minimal environmental impact, and*
- *It is 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 and before that consent as originally granted was modified (if at all)*

5.1 Minimal environmental impact

The proposal will have minimal environmental impacts as it only relates to a minor increase in GFA. The new switch room / temp workshop will not be readily viewed from the site boundaries and will have no adverse visual or other amenity impacts. The new plate freezer / store is in keeping with the built form of the existing abattoir and will not materially affect the visual amenity of the area. The proposal will not result in any increase to the intensification of the current operations. Subsequently, there will be no additional traffic generation, noise or emissions.

5.2 Substantially the same development

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- When viewed in the context of the existing built form on the site, the proposal will read as having very minimal change to visual amenity of the site.
- The modifications will not result in any environmental impacts.

In addition, given the proposal does not result in any increase in intensification of the current operations there will be no environmental impacts in terms of waste streams, traffic generation, noise or air quality. Consequently, the proposal remains substantially the same as the originally approved and subsequently modified abattoir.

6.0 Division 4.11 Existing uses

The proposal is located within both the IN1 and SP2 zones under the provisions of WLEP 2010, **see Figure 3** below. The SP2 zone prohibits *rural industry*. However, in this case the proposal relies on the benefit of having existing use rights as detailed below.

Clause 4.65 in the EP&A Act 1979 defines existing use, which is:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land—*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

In the circumstances of this case, the existing abattoir, which is partially located within the SP2 zone, was lawfully established in the 1940's. On 27 February 2003, the Minister for Planning approved DA-220-07-2002-i for significant upgrades and an expansion to the existing abattoir which included the following components:

- Demolishing some disused buildings;
- Reconstructing and expanding a major portion of the abattoir, including an administration and amenities building;
- Installing a bio-filter to capture and treat odour originating from the rendering plant and ancillary units, the DAF/Clarifier, Rotary Screen and Save-all;
- Augmenting and refurbishing the existing wastewater treatment system;
- Discharging 20% of effluent directly to the sewer system;
- Constructing an access road, internal roads, carparking, security gatehouse and associated infrastructure to service the abattoir;
- Increasing production from 850 to 2,000 head of cattle per day; and
- Operating 24 hours a day, seven days a week.

DA-220-07-2002-i was assessed at the time under the provisions of Wagga Wagga Local Environmental Plan 1985 (WLEP 1985). Under the WLEP 1985 the site was included within three zonings; Rural (1), Industrial (4) and Special Uses (5). The abattoir and its subsequent expansion were permissible with consent in the Rural and Industrial zones and permitted without consent in the Special Uses zone. Based on the site's zoning history and the time DA-220-07-2002-i was assessed and subsequently lawfully approved prior to WLEP 2010 coming into effect and prohibiting abattoir related development in the now SP2 zone, the site benefits from existing use rights.

Division 4.11, section 4.67 of the EP&A Act 1979 states:

The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:

- a) *the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
- b) *the change of an existing use to another use, and*
- c) *the enlargement or expansion or intensification of an existing use.*

Part 5, section 41 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) states:

- (1) An existing use may, subject to this Division –*
 - (a) be enlarged, expanded or intensified, or*
 - (b) be altered or extended, or*
 - (c) be rebuilt, or*
 - (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
 - (e) if it is a commercial use – be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
 - (f) if it is a light industrial use – be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).*

Part 5, section 42 of the EP&A Regulation 2000 states:

- (1) Development consent is required for any enlargement, expansion or intensification of an existing use.*
- (2) The enlargement, expansion or intensification –*
 - (a) must be for the existing use and for no other use, and*
 - (b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*

Despite the new plate freezer/store being located within the SP2 zone, which is typically prohibited, this development represents the *enlargement* and *expansion* of an existing use. As a result, the proposed new plate freezer/store is permitted subject to development consent.



Figure 3: Zone Map (Subject site bounded by dashed yellow line)

7.0 Planning assessment

Section 4.55(3) of the EP&A Act 1979 requires a consent authority to take into consideration matters referred in Section 4.15(1).

The planning assessment of the proposed modifications remains generally unchanged with respect to the above matters.

7.1 Compliance with Statutory Plans

The development, as proposed to be modified, remains generally consistent with the following statutory plans and policies:

- *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *Wagga Wagga Local Environmental Plan 2010*
- *Wagga Wagga Development Control Plan 2010*

The following matters require further consideration.

7.2 State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)

State Environmental Planning Policy 33 – Hazardous and Offensive Development (SEPP 33) defines 'hazardous industry', 'hazardous storage establishment', 'offensive industry' and 'offensive storage establishment' for all NSW planning instruments, existing and future. The definitions enable decisions to approve or refuse a development to be based on the merit of proposal. The proposal does not involve an increase in the storage of hazardous materials and chemicals beyond that deemed as to require a preliminary hazard analysis (PHA) or result in the operations changing such that it would be offensive. Subsequently, the modifications are not deemed hazardous or offensive development under the provisions of SEPP 33.

7.3 State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), aims to facilitate the effective delivery of infrastructure across the State. This is important to cater for developments that will require new infrastructure. The relevance of SEPP (Infrastructure) 2007 to the proposed modifications are whether it will result in an operation deemed traffic generating development. In this case, the proposed modifications do not seek to intensify the existing approved use of the operations.

7.4 Wagga Wagga Local Environmental Plan 2010

The site is zoned IN1 General Industrial (IN1 zone) and SP2 Infrastructure (SP2 zone). Under the provisions of the Wagga Wagga Local Environmental Plan 2010 (WWLEP 2010) the existing and subsequent proposed modifications are defined as *rural industry*.

The proposed new switch room / temporary workshop is located within the IN1 zone and is permissible with consent. The proposed new plate freezer / store is located predominantly within the SP2 zone, which prohibits this use. However, based on the following reasons the proposal is permitted with consent:

- Division 4.11 of the EP&A Act 1979 allows for the extension of an existing use. As the abattoir was lawfully established prior to the WWLEP 2010 the proposal, specifically the new plate freezer/store, is permitted subject to consent. See Section 6.0 above for further detail.
- Section 5.3 Development near zone boundaries, of the WWLEP 2010, states:
 - (1) *The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.*

- (2) *This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 50 metres in relation to land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry or Zone RU4 Primary Production Small Lots and 30 metres in relation to land in any other zone.*
- (3) *This clause does not apply to—*
- (a) *land in Zone RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone W1 Natural Waterways, or*
 - (b) *land within the coastal zone, or*
 - (c) *land proposed to be developed for the purpose of sex services or restricted premises.*
- (4) *Despite the provisions of this Plan relating to the purposes for which development may be carried out, development consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that—*
- (a) *the development is not inconsistent with the objectives for development in both zones, and*
 - (b) *the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.*

The proposed new plate freezer/store is in accordance with the above section of the WLEP 2010, specifically:

- The development is a logical and appropriate development of the site and is compatible with the planning objectives and land use of the adjoining IN2 Zone.
- The development does not extend into the IN2 Zone beyond 30m.
- The development is not on land:
 - Zoned RE1 Public Recreation, E1 National Parks and Nature Reserves, E2 Environmental Conservation, E3 Environmental Management or W1 Natural Waterways, or
 - within the coastal zone, or
 - proposed to be developed for the purpose of sex services or restricted premises.

7.5 Wagga Wagga Development Control Plan 2010

The Wagga Wagga Development Control Plan 2010 (WWDPC 2010) supports the WWLEP 2010 by providing additional objectives and controls. Many of those objectives and controls are not relevant to the proposed modifications. However, where they do apply it has been determined that the proposed modifications comply with the relevant numerical controls and their objectives.

7.6 Biodiversity Compliant Development

Under Schedule 1, Part 1, clause 1(2) of the Environmental Planning and Assessment Regulation, development for biodiversity compliant development, is to provide additional information.

The proposed modification does not relate to biodiversity compliant development and does not constitute any of the following:

- (a) development proposed to be carried out on biodiversity certified land within the meaning of Part 7AA of the Threatened Species Conservation Act 1995, or*
- (b) development in respect of which a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995, or*
- (c) development to which the biodiversity certification conferred by Part 7 of Schedule 7 to the Threatened Species Conservation Act 1995 applies, or*
- (d) development for which development consent is required under a biodiversity certified EPI (within the meaning of Part 8 of Schedule 7 to the Threatened Species Conservation Act 1995).*

7.7 Section 4.15(1)(b) impact on environment

The proposed modifications do not give rise to any alteration to the assessment of the potential impacts assessed as part of the original DA and subsequent modifications approved since.

7.8 Section 4.15(1)(c) suitability of the site for development

The site is suitable for the proposed modifications. The site is surrounded by low intensity rural land and established industrial uses. The site is currently occupied and used for a rural industry use i.e. abattoir.

7.9 Section 4.15(1)(d) submissions mad in accordance with this Act or the regulations

There are no known submissions against the proposed modifications.

7.10 Section 4.15(1)(e) public interest

The proposed modifications do not conflict with the public interest.

8.0 Conclusion

In accordance with Section 4.55(1A) of the EP&A Act 1979, the modified development will be substantially the same as the originally approved development. The proposed modifications will not result in any adverse environmental impacts or raise any additional environmental issues.

The proposal, which includes new development within the SP2 zoning on the site, which prohibits *rural industry*, benefits from existing use rights. The abattoir was lawfully established on the site prior to the effect of new zoning in WLEP 2010. Subsequently, the existing use can be expanded and permitted with consent.

In light of the above, we therefore recommend that the proposed modifications are supported. We trust that this information is sufficient to enable a prompt assessment of the proposed modification. Should you have any queries about this matter, please do not hesitate to contact me on 07 3852 1822.

Yours sincerely,



Ben Haynes

Director

07 3852 1822

bhaynes@ethosurban.com

Attachment A – Proposal Plans

Attachment B – Stormwater Management Plan

Attachment C – BCA Report