



190628P SVD/AB

19 December 2021

Mr Jim Betts
Secretary
NSW Department of Planning, Industry & Environment
12 Darcy Street
PARRAMATTA NSW 2150

**PROPOSED S4.55 (1A) MODIFICATION
OF MP07_0162
90 LOT TORRENS TITLE INDUSTRIAL SUBDIVISION**

1. INTRODUCTION

This application has been prepared by ADW Johnson Pty Ltd on behalf of Warnervale LF Pty Ltd, pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act) to modify Development Consent, former Part 3A Approval MP07_0162 relating to land located adjacent to Sparks Road, Hue Hue Road, Kiar Ridge Road and the M1 Motorway, Jilliby (the site).

The primary objective behind the modification is to include additional staging to Stage 1. Other changes proposed included amendments to the stormwater strategy for Stage 1; adjustment to the Hue Hue Road Access intersection treatment; and minor condition amendments.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. This application is accompanied by a Staging Plan prepared by ADWJ (**Attachment A**) and confirmation of physical commencement from Wyong Shire Council (now Central Coast Council) (**Attachment B**).

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2. MP07_0162

2.1 Approved Development & Ownership

MP07_0162 was approved on 27th August 2010 for:

Project Approval for Stage 1 and 2 of the Warner Industrial Park

- Torrens Title subdivision to create 90 lots for industrial and ancillary uses;
- Bulk earthworks included site preparation, vegetation clearing and site remediation;
- Provision of on-site infrastructure including stormwater, roads and service infrastructure;
- Landscape works and rehabilitation of conservation areas;
- Dedication of conservation lands to Council;
- Construction of two site entries at Sparks Road and Hue Hue Road;
- Construction of a bridge across Buttonderry Creek; and
- Temporary stockpiling.

The development was proposed in two (2) stages as follows:

- Stage 1 (69 lots) included the following properties:
 - Lot 8 DP239704, 811 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd;
 - Lot 7 DP239704, 791 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd;
 - Lot 6 DP239704, 781 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd;
 - Lot 19 DP259530, 749 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd;
 - Lot 4 DP239704, Lot 25 DP259530 & Lot 26 DP259530, 725 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd;
 - Lot 18 DP259530, 701 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd;
 - Lot 17 DP259530, 689 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd;
 - Lot 16 DP259530, 671 Hue Hue Road, Jilliby, owned by Warnervale LF Pty Ltd; and
 - Lot 15 DP259530, 225 Sparks Road, Jilliby, owned by Warnervale LF Pty Ltd.

Owners consent from Warnervale LF Pty Ltd to the lodgement of this modification is provided within **Attachment C**.

- Stage 2 (21 lots) included the following properties:
 - Lot 9 DP239704, 10 Kiar Ridges Road, Jilliby, owned by Delcare Constructions Pty Limited; and
 - Lot 5 DP259531, 20 Kiar Ridges Road, Jilliby, owned by Laurence Gerard Delahunty.

Owners consent from the above to the lodgement of this modification is currently being negotiated and will be provided prior to determination.

Figures 1 and 2 below illustrates the above, where Stage 1 is represented by the red outline and Stage 2 is represented by the blue outline.

Copies of the Certificates of Title for the above are provided within **Attachment D**.

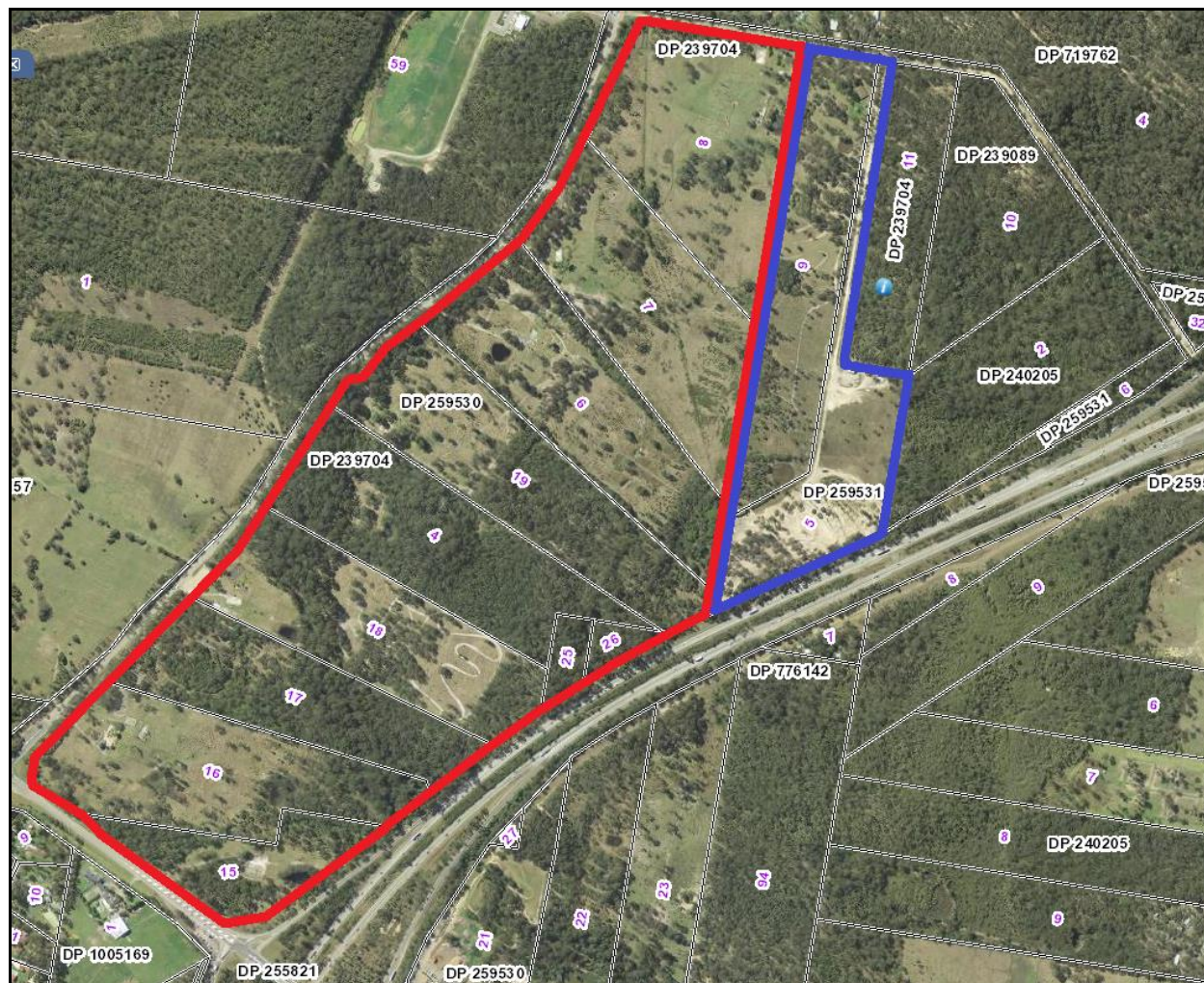


Figure 1: Properties subject to MP07_0612

2.2 Site Description

The site comprises 104.16ha of gently undulating land with slopes of less than five (5) degrees. The site is bound by Sparks Road to the south-west; Hue Hue Road to the north-west; the M1 Motorway to the south-east; Kiar Ridge Road to the north; and undeveloped vegetated lands to the east. Buttonderry Creek, a third order watercourse,

traverses the site in a north-south direction crossing under the M1 via 4200W x 4000H concrete box culverts.

The site is located within the IN1 Industrial Zone which contains the proposed subdivision lots and roads and the E2 Environmental Conservation Zone which contains retained ecological lands including a 100m wide rehabilitated corridor across Buttonderry Creek; and a 50m corridor along the M1. Stormwater infrastructure; utilities and a bridge over Buttonderry Creek are also located within the E2 Zone (see Figure 2).

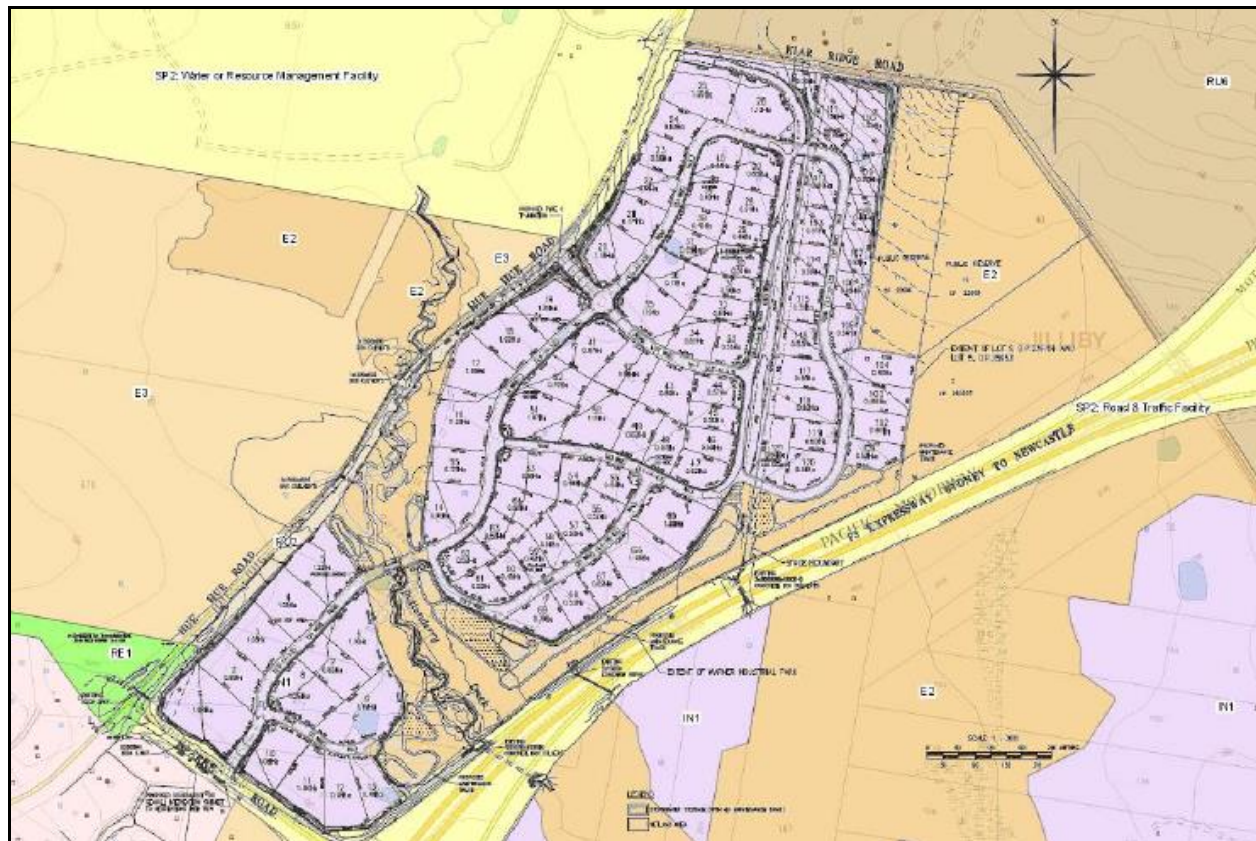


Figure 2: Approved Subdivision Plan with Zone overlay

2.3 Site Context

The site is located within the Wyong Employment Zone (WEZ), an area identified as a major employment node in the Central Coast Regional Plan 2036 (CCRP), as part of the Northern Growth Corridor and regional gateway (see Figure 3). It has long been touted for significant employment land development; however, this has largely been unrealised due to the significant infrastructure required to support it.



Figure 3: Northern Growth Corridor (Source: CCRP 2023)

2.4 Key Infrastructure

As part of MP07_0162, the following key infrastructure was approved:

- Intersection at Hue Hue Road;
- Intersection at Sparks Road;
- Bridge over Buttonderry Creek;
- Buttonderry Creek restoration works;
- Provision of stormwater infrastructure;
- Provision of an open channel adjacent to Stage 2;
- Eight (8) kilometres of lead-in electrical;
- Sewer pumping station, rising main and trunk gravity sewer main;
- Trunk potable water mains.

The current approval requires that all of the above are delivered within Stage 1. Delivering all of the above infrastructure within one stage creates a significant construction cost burden on the developer. Further, delivery of the above requires design and consultation with multiple different authorities, which adds a timing burden on the developer.

2.5 Stormwater

The subject land falls within the Porters Creek Wetland catchment which at the time of the original assessment was managed through the 'Integrated Water Cycle Management Strategy Wyong Employment Zone (WEZ), November 2006' (IWCMS). At this time, Council's preferred strategy to deal with stormwater involved constructing a stormwater transfer pipeline which would discharge excess stormwater from this site and the wider WEZ to Wyong River, thereby avoiding discharging additional water to the Porters Creek wetland.

During the assessment of the development, the pipeline method was abandoned by Council; however, a suitable alternate had not yet been developed for the WEZ. As a consequence, the development was approved to discharge stormwater downstream until such a time that Council constructed the proposed pipeline. The stormwater devices still included detention basins, constructed wetlands incorporating extended detention as well as on lot treatment by using water efficient appliances; harvesting rainwater; maximising irrigation of landscaped areas and infiltration via on lot infiltration trenches.

Noting the state of flux with regards to stormwater treatment within the WEZ, Condition 2.4 and 2.11 specifically allowed for the connection to an "alternate scheme".

2.6 Flooding

The subject land is affected by flooding primarily around Buttonderry Creek. As part of the development, significant amounts of fill were approved to bring the development above the 1 in 100-year flood event. In order to accommodate the displacement of flood waters through the importation of fill, the development proposed compensatory storage on both sides of Buttonderry Creek; stormwater detention basins; and onsite irrigation.

The assessment concluded that through incorporating these measures there would be no adverse impacts on external properties.

Council, Transport for NSW (then RTA) and the Department raised various concerns with the flooding, including concerns surrounding potential overtopping of the M1 Motorway (then known as the F3 Freeway). For this reason, an expert review process was commissioned by the Department. The review confirmed that the flooding could be satisfactorily managed; however, noted that further assessment would be required following the detailed design process which would occur as part of the Construction Certificate (CC) documentation.

As a result of the above, Condition 2.12 requires a revised comprehensive flood, stormwater and water quality modelling and report to be submitted with the CC. This document will assess the detailed design of the development and will therefore provide the most accurate information with regards to flooding. The development will not be able to proceed until this condition is complied with.

2.7 Ecology

The site contains two (2) Endangered Ecological Communities (EECs), being River-Flat Eucalypt Forest on Coastal Floodplains and Swamp Sclerophyll Forest on Coastal Floodplains; the majority of which have been retained within the E2 zoned lands.

As part of the approved Plan of Subdivision (Drawing No. EA01 Revision J – 11 May 2009), 11 ha of remnant vegetation and 22ha of disturbed vegetation was required to be removed. This included impacts to the E2 zone, including stormwater infrastructure, servicing and the bridge crossing. These impacts equated to 17,200m² of vegetation.

To manage and minimise impacts on ecology in this regard, conditions of approval require:

- The dedication of E2 zoned lands;
- Avoidance and minimisation of impacts within the 100m wide Buttonderry Creek corridor and the 50m M1 corridor;
- Preparation of a Vegetation Management Plan (VMP) to rehabilitate and manage the retained corridors; and a Wildlife Management Strategy (WMS) to manage vegetation removal; and
- Payment of contributions to Council to be used towards the purchase of conservation land and rehabilitation of those lands elsewhere within the WEZ.

2.8 Traffic

The traffic studies undertaken for the development informed the intersection treatments subsequently approved along Sparks Road and Hue Hue Road; these being a roundabout and Type 'C' intersection respectively. The main consideration under the original approval was potential impacts from the Sparks Road access on the M1 Motorway. Conclusions and assessment made in this regard, confirmed that this access would operate at a Level of Service (LoS) A or B and that there would be no queuing impact on the M1/Sparks Road off ramp. Since this time, significant upgrades have occurred to the Sparks Road on and off ramps which would have improved this situation.

2.9 Planning Legislation History

The land subject to MP07_0162 was located within the Wyong Employment Zone (WEZ), which at the time of lodgement was listed as a State Significant Site under Schedule 3 of the State Environmental Planning Policy (Major Development) 2005 (now repealed). The SEPP dictated that development could not proceed within the WEZ without a site specific Development Control Plan (DCP). Consequently, MP07_0162 was submitted with a Draft Development Control Plan (referred to as "Design Guidelines") and a concurrent Concept Approval which had the following effects:

- Allowing a minimum lot size of 2,000m² for a maximum of 10% of lots;
- Adding the following additional permitted uses:
 - Function centres;
 - Self-storage units;
 - Landscape and garden supplies;
 - Timber and building supplies;
 - Industrial retail outlets (not to exceed 20% of the building or 200m² whichever is lesser); and
 - Neighbourhood shops, kiosks and food and drink premises with a total floor area of 500m² across the entire development with a maximum retail floor area of 200m² per neighbourhood shop and food and drink premises, and 80m² for kiosks.

Since approval was issued to the development, the SEPP has been repealed, and the Wyong Local Environmental Plan 2013 has been adopted which has had the following effects:

- Placed the WEZ within an Urban Release Area;
- Removed the need for the creation of a DCP; and
- Added the above additional permitted uses to the IN1 Zone, with the exception of function centres.

Taking the above into consideration, had the subject development been proposed today, it could have been lodged with Council as a standard Part 4 development

requiring compliance with Council's Development Control Plan for subdivisions and industrial developments.

3. PROPOSED MODIFICATION APPLICATION (MA)

3.1 Proposed Amendments

Based on the background of the development described within Section 2, the following amendments are proposed:

- Inclusion of sub-staging;
- Adjustment to the State infrastructure contribution amount based on current prices;
- Adjustment to stormwater and flooding requirements in line with current Council methods;
- Hue Hue Road access treatment; and
- Minor construction requirements and timing-based changes.

A table illustrating the proposed amendments, where **red** = additions; and **strikethrough** = deletions, has been included within **Attachment E**.

3.2 Consultation

Two (2) meetings and ongoing correspondence with the Department of Planning, Infrastructure and Environment (DPIE) have been undertaken to discuss the proposed amendments. As part of these discussions, DPIE have provided the following advice with regards to the documentation required to support the proposal:

DPIE Request	Address in MA
Biodiversity: Biodiversity Development Assessment Report (BDAR) or confirmation that the modification will not increase the impact on biodiversity values.	An Assessment to Potential Impacts to Biodiversity Values is provided within Attachment J .
Revegetation/rehabilitation: Justification to defer approved offsetting.	Revegetation/rehabilitation of the Buttonderry Creek and wildlife dispersal corridors will occur in Stages 1B and 1C. This is required to ensure the construction works for Stages 1A – 1C do not destroy/adversely impact these areas, noting that the bridge and the majority of the ultimate basins will be constructed during later stages. To "compensate" for the delayed rehabilitation works, the proponent proposes to pay the offset contributions as stipulated in Condition 2.6 for Stages 1A, 1B and 1C prior to the Subdivision Certificate of Stage 1A.

Stormwater: Further detail is required surrounding the changes to the 2006 IWCMS	A Water Cycle Management Plan has been provided within Attachment F detailing the proposed stormwater strategy, including temporary arrangements to accommodate the proposed staging.
Traffic: Assessment of potential impacts upon Hue Hue Road as a result of the proposed staging.	A Traffic Impact Assessment Addendum has been provided within Attachment G .
Hue Hue Access: Details regarding the type of intersection proposed and potential impacts of this.	<p>A general arrangements of the proposed intersection design which has been completed in consultation with Central Coast Council is included within Attachment L.</p> <p>A Traffic Impact Assessment Addendum has been provided within Attachment G which confirms the amended access arrangements will accommodate the ultimate and staged traffic without a drop in LoS.</p>
General: Information regarding the timing for delivery of each stage, including confirmation as to whether the stages would be delivered on a linear (i.e. 1a then 1b, etc) or 'as-needs' basis.	<p>The development will be delivered in a linear manner.</p> <p>Registration of Stage 1A is anticipated for 2022. Stage 1B and 1C are likely to be constructed together, with construction estimated to begin in 2022 and registration anticipated for 2023-2024. All lots within Stages 1A, 1B and 1C have been sold (deposits received). For this reason, construction of these stages will occur as soon as possible, with timing generally dictated by the various approval Authorities. Delivery of Stage 1D is under investigation.</p>
Statement of Commitments: The modification application include an updated Statement of Commitments (SoC), along with justification for any proposed changes.	A proposed amendment to the SoC is provided within Attachment K . In this regard, it is worthwhile noting that the majority of the Commitments were either repeated within the conditions or superseded by the conditions. With this in mind, a number of commitments have been deleted. Where amendments are required these have been highlighted through red for additions; and strike through for deletions. Reasons for amendments have been provided for each.
Staging Masterplan: the proposed staging masterplan does not reference existing Stage 2.	An amended staging plan showing Stage 2 has been provided within Attachment A .

4. DETAILS OF AND JUSTIFICATION FOR PROPOSED MODIFICATION

4.1 Staging

Since approval was obtained, the site has remained undeveloped for over 10 years. This is in part due to the fact that the development did not propose sub-staging and consequently the approval was worded so as to require all key infrastructure as part of Stage 1.

As described above, the development is split into two (2) stages; with lots owned by Warnervale LF Pty Ltd in Stage 1 (69 lots) and lots owned by Delcare Constructions Pty Limited and Laurence Gerard Delahunty within Stage 2 (21 lots).

There is significant cost to construct the infrastructure described within Section 2.4. Forward funding these works without the ability to sell any lots, places a significant cash flow burden on any developer. Furthermore, the location of the proposed works is within the E2 zoned land which requires the appropriate ecology work to be completed prior to construction. With this in mind, Winarch Capital propose to deliver the first 25 lots as part of Stage 1A. These lots have been chosen as they can be delivered in an orderly and economic fashion without the need to construct the following:

- Intersection at Sparks Road, as access can be obtained from Hue Hue Road;
- Bridge over Buttonderry Creek, as access can be obtained from Hue Hue Road;
- Eight (8) kilometres of lead-in electrical, as the existing electrical infrastructure within Hue Hue Road can be upgraded to accommodate the first 25 lots without the significant lead in works;
- Trunk watermain works along the full length of Hue Hue Road as it is only required along Kiar Ridge Road and down Hue Hue Road to the access to the site for this stage; and
- Stage 1A can be delivered without having significant impacts on flooding as only minor filling will occur below the 1% AEP flood level and the permanent and temporary stormwater basins will provide compensatory storage to offset some of the effects of the fill. To determine the ultimate impact of flooding further modelling work will be required and additional time to work with Transport for New South Wales (TfNSW) as required by Condition 2.12 will also be required.

Further to the above, additional sub-staging is proposed through the inclusion of Stage 1B, 1C and 1D.

A copy of the proposed staging plan is included within **Attachment A** where staging is proposed as follows:

Stage 1A refers:

- Lots 15-20, 35, 41-56, 65 and 66;
- Earthworks including regrading and filling;
- Construction of the entry access intersection at Hue Hue Road;
- Partial construction of internal Roads No. 1, 3, 4-5;
- Provision of necessary infrastructure to service Stage 1A;
- Partial construction of open channel adjacent to Road 4;
- Landscape works as relevant to Stage 1A;
- Provision of ultimate and temporary stormwater works as required for Stage 1A; and
- **Payment of biodiversity contributions for Stage 1A, 1B and 1C prior to the Subdivision Certificate for Stage 1A.**

Stage 1B refers:

- Lots 14, 57-64 and 67-69;
- Earthworks including regrading and filling;
- Partial construction of internal Roads No. 1 and 3;
- Provision of necessary infrastructure to service Stage 1B;
- Partial construction of open channel adjacent to Road 4;
- Buttonderry Creek restoration and rehabilitation works as relevant to Stage 1B;
- Landscape works as relevant to Stage 1B;
- Provision of ultimate stormwater works as required for Stage 1A and Stage 1B.

Stage 1C refers:

- Lots 1-13;
- Earthworks including regrading and filling;
- Partial construction of internal Road No. 1 and bridge over Buttonderry Creek, and full construction of Road 2;
- Construction of the entry access intersection at Sparks Road;
- Provision of necessary infrastructure to service Stage 1C;
- Buttonderry Creek restoration and rehabilitation works as relevant to Stage 1C;
- Landscape works as relevant to Stage 1C;
- Dedication of conservation lands to Council;
- Provision of ultimate stormwater works as required for Stage 1C.

Stage 1D refers:

- Lots 21-34 and 36-40
- Earthworks including regrading and filling;
- Partial construction of internal Road No. 4;
- Provision of necessary infrastructure to service Stage 1D;
- Partial construction of open channel adjacent to Road 4;
- Landscape works as relevant to Stage 1D;
- Provision of ultimate stormwater works as required for Stage 1D; and
- Payment of biodiversity contributions for Stage 1D prior to Subdivision Certificate.

No changes are proposed to Stage 2.

Taking the above into consideration, it is proposed to include the staging plan within the approved documentation and approved staging description. It is also proposed to slightly adjust the wording of the majority of the conditions of approval, to ensure that only those conditions applicable to the relevant stage require compliance.

4.2 Special Infrastructure Contribution (Condition 2.1)

Condition 2.1 requires the payment of a Special Infrastructure Contribution (SIC) for the WEZ at a rate of \$91,000 per hectare of Net Developable Area (NDA), if paid after 30 June 2011. The condition also allows for a lesser rate to be applied in the event that the WEZ SIC is reduced beyond this amount, subject to a written agreement from the Director General. It is understood that the current WEZ SIC rate is approximately \$80,000 per lot. As such, it is requested to amend this condition in line with the latest rates so as to remove the need for a written agreement from the Director-General.

4.3 Stormwater & Flooding (Conditions 2.3, 2.4, 2.11 & 2.12)

Condition 2.3, 2.4, 2.11 and 2.12 are proposed to be amended to accommodate Council's preferred stormwater management strategy, noting this has changed since the original approval. To support the modifications proposed, a Water Cycle Management Plan (WCMP) has been prepared in consultation with Council (refer to **Attachment F**).

In summary the following amendments are proposed:

- Condition 2.3 required the payment of a contribution towards the IWCMS pipeline. With this no longer required by Council, it is considered appropriate to delete Condition 2.3.
- Stormwater solutions for the wider WEZ had not been confirmed at the time of approval, and as such Condition 2.4 required either:
 - Connection to a proposed pipeline (constructed by Council) to convey excess stormwater to Wyong Creek to remove flows to the downstream Porters Creek; or
 - Noting the uncertainty surrounding the delivery of this pipeline, Condition 2.4 allowed for connection to an "alternate scheme".

To date, an alternate scheme has still not been adopted; however, consultation with Council has suggested it will include allowing additional water to Porters Creek. This current approach has been studied at length for over a decade; however, no public information is yet available. Given the unknown nature and timing of this, it is not practical to require future lot owners to connect to a future unknown scheme. Instead, the WCMP included within **Attachment F** outlines the proposed stormwater infrastructure now proposed for the development. It is therefore appropriate to delete Condition 2.4.

- Condition 2.11 requires that the detailed design of the proposed stormwater, flooding and drainage infrastructure, water quality management and stormwater harvesting scheme be finalised prior to the CC. This allows the Proponent and Council to work together to develop an alternate stormwater and flooding management scheme through the CC process.

To allow Council and Proponent to develop a strategy which is in line with current Council methodology/doctrines, Condition 2.11 requires modification to:

- Remove reference to the Warner Industrial Park Design Code and the pipeline, as these are no longer applicable to the development; and
 - Remove the requirement to provide retardation storage in the stormwater storage basins, as well active storage in accordance with the IWCMS, or alternate methodologies for preserving pre-developed 1.5 yr. ARI flows, as these have been superseded by the methods proposed within the WCMP.
- Condition 2.12 requires that a revised comprehensive flood, stormwater and water quality modelling and report be finalised prior to the CC. This allows the Proponent and Council to work together to develop an alternate stormwater and flooding management scheme through the CC process. To allow Council and Proponent to develop a strategy which is in line with current Council methodology/doctrines, Condition 2.12 requires modification to:
 - Remove the requirement to provide active storage in accordance with the IWCMS, as this have been superseded by the methods proposed within the WCMP by heavily planted basins which provide biological uptake to reduce the water volume leaving the site.

Council have been consulted with regards to all of the above amendments, with the WCMP adopting all of their recommendations where possible (refer to **Attachment F**).

4.4 Intersection Treatment (Condition 2.34)

Condition 2.34 requires that the subdivision plan is modified to (amongst other matters) provide an intersection design for the Hue Hue Road access in accordance with the agreements reached with Council at the time of the original assessment - this being a Type 'C' intersection. Since this time, Council have requested that a CHR arrangement be provided due to safety issues associated with Type 'C' or seagull intersections. With this in mind, it is proposed to amend Condition 2.34 to accommodate this request.

4.5 Haulage Route Pavement Testing (Condition 2.56)

Condition 2.56 requires the approved haulage route road pavements to be tested by a practising Geotechnical Engineering Consultant including a comprehensive rehabilitation program for all affected haulage route pavements. This is considered an overly onerous condition noting that both Sparks Road and Hue Hue Road are frequent heavy vehicle routes to access Buttonderry Tip, and as such it would be difficult to ascertain what damage (if any) was caused by construction vehicles.

4.6 Spoil (Condition 2.62)

Condition 2.62 requires that excess spoil be removed from the site at the commencement of each stage. Noting that sub-staging is now proposed, it is requested to amend this condition to allow for excess spoil to be used in the subsequent stages. This minimises unnecessary construction vehicle trips in removing spoil from the previous stage and delivering fill for future stages.

4.7 Timing of Construction Documentation (Conditions 2.53, 2.55, 2.57, 2.59 & 2.66)

Conditions 2.53, 2.55, 2.57, 2.59 and 2.66 require various standard construction documentation to be prepared prior to Construction Certificate. It is requested that these be required prior to construction commencing, in order to provide additional time to prepare these and ensure that the CC is not held up unnecessarily. Compliance with each condition is still required and will be confirmed by Council at the pre-start meeting as these documents are generally completed by the civil contractor.

5. REQUIREMENTS FOR A SECTION 4.55(1A) MODIFICATION

5.1 Relevant Issues under Section 4.55(1A)

To lodge an amendment under Section 4.55(1A) of the Act, the applicant needs to prove that the modifications will involve minimal environmental impact, as follows:

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment: The proposed amendments generally relate to the inclusion of sub-staging only and will not increase the development footprint, therefore having no additional impacts on vegetation removal or site disturbance. The number of allotments and their configuration, as well as the configuration of roads will also remain the same, and therefore no additional impacts such as traffic or demand on servicing are proposed.

Stormwater and flooding management practices are proposed to be amended in line with Council's current strategy. The WCMP included within **Attachment F** demonstrates that these will have minimal impacts in this regard. Further, traffic and bushfire assessments have been undertaken to ensure that no additional interim impacts will result from the staging proposed (see **Attachment G** and **I** respectively).

With these factors in mind, it is considered that the amendments proposed will have minimal environmental impacts.

(b) 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), and

Comment: The proposed amendments will continue to approve an industrial subdivision in entirely the same configuration. The road layout will remain the same, as will the development footprint. For these reasons, the development is considered to be substantially the same as the original consent.

(c) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be".

Comment: Given the minor nature of the proposed changes and the fact that no changes are proposed which would alter any future development potential on adjoining sites under a different ownership, re-notification is not considered necessary; however, it is noted that this would be a decision for the Department.

5.2 Relevant Issues under EPA Regulation 2000

Clause 115 of the Environmental Planning and Assessment Regulation 2000 sets out additional requirements that all modification applications must comply with. The relevant requirements and how they have been complied with are set out in the following table:

CLAUSE 115 REQUIREMENTS	COMMENT
<i>(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:</i>	
<i>(a) the name and address of the applicant,</i>	See Major Projects Portal Information.
<i>(b) a description of the development to be carried out under the consent (as previously modified),</i>	Described within Section 2.
<i>(c) the address, and formal particulars of title, of the land on which the development is to be carried out,</i>	See Major Projects Portal Information.
<i>(d) a description of the proposed modification to the development consent,</i>	Described within Section 3 & 4.
<i>(e) a statement that indicates either:</i> <i>(i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or</i> <i>(ii) that the modification is intended to have some other effect, as specified in the statement,</i>	Discussed within Section 5.

(f) a description of the expected impacts of the modification,	Discussed within Section 4.
(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,	Discussed within Section 5.
(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),	See Attachment C .
(i) a statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56),	N/A

5.3 Relevant Issues under Section 4.15(1)

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the proposed modification is of minimal environmental impact”. Under section 4.55(3) the Consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The Environmental Assessment Report submitted with the original application assessed the potential impacts of the overall development with regard to the following:

- Central Coast Regional Strategy;
- WEZ State Significant Site Study;
- Relevant environmental planning instruments (EPIs);
- State and local contributions;
- Biodiversity and Environmental Sustainability matters;
- Aboriginal heritage;
- Site Design Matters;
- Contamination and geotechnical considerations;
- Utilities and infrastructure provision;
- Bushfire risk;
- Water quality, stormwater and flooding management;
- Traffic and transport impacts;
- Landscaping, public domain and visual impacts; and
- Social and economic impacts.

The planning assessment of the proposed modified development in its ultimate form remains generally unchanged with respect to the large majority of the above matters, with the exception of the stormwater and flooding treatment which has been discussed within Section 4.3 and the WCMP within **Attachment F**.

The following sections provide additional detail with regards to potential interim impacts as a result of the proposed staging.

5.3.1 Traffic

No modifications are proposed to the ultimate traffic, roads and circulation arrangements. This aside, it is acknowledged that the proposed staging needs an assessment in this regard to ensure that each stage can operate satisfactorily in its interim form. Of most significance to the proposed staging, is the delayed delivery of the secondary access out on to Sparks Road, whereby Stage 1A and 1B will rely solely on the access to Hue Hue Road, until Stage 1C is completed.

To ensure that the staging proposed will have no impacts on the surrounding traffic environment, a Traffic Impact Assessment Addendum has been prepared by Intersect Traffic which concludes:

- There is spare mid-block capacity on Hue Hue Road to accommodate Stage 1A and 1B prior to the completion of the Sparks Road access;
- The Sparks Road/Hue Hue Road intersection will continue to operate at a Level of Service (Los) A for Stages 1A and 1B prior to the completion of the Sparks Road access; and
- The Hue Hue Road site access will continue to operate at a Level of Service (Los) A for Stages 1A and 1B prior to the completion of the Sparks Road access;

Full details with regards to the above are provided within **Attachment G**.

Further to the above, as the proposed staging will result in temporary “dead-end” roads, it is necessary to ensure that appropriate interim turning arrangements can be accommodated to suit B double trucks. A plan has been provided within **Attachment H** providing this detail.

5.3.2 Bushfire

No modifications are proposed to the ultimate bushfire management arrangements for the site. This aside, it is acknowledged that the proposed staging needs an assessment in this regard to ensure that each stage is provided with satisfactory bushfire protection in its interim form. Of most significance to the proposed staging, is the delayed delivery of the secondary access out on to Sparks Road, whereby Stage 1A and 1B will rely solely on the access to Hue Hue Road, until Stage 1C is completed.

To ensure that the staging proposed will accommodate appropriate interim bushfire protection measures, bushfire advice has been prepared by MJD Environmental which concludes that the proposed development in its staged arrangement is capable of complying with Planning for Bushfire Protection 2019 provided temporary access arrangements are in place. In accordance with this advice, a temporary secondary emergency access is proposed on to Hue Hue Road to ensure that two escape routes

are provided prior to the Sparks Road access being constructed. A plan has been provided within **Attachment H** providing this detail.

Full details with regards to the above are provided within **Attachment I**.

5.3.3 Ecology

To offset ecological impacts from the approved development, a combination of rehabilitation works and monetary contributions were required. No changes are proposed to this ultimate arrangement; however, the proposed amendment to the staging and stormwater strategy nonetheless require assessment to ensure no additional biodiversity impacts are proposed.

5.3.3.1 Staging

In order to accommodate staging across the site, one additional temporary stormwater basin will be required for Stage 1A and temporary secondary access will be required for Stage 1A and Stage 1B. Both of these have been placed entirely within the approved development footprint, thereby requiring no additional vegetation removal.

Stage 1A also avoids placing the ultimate stormwater infrastructure and bridge within Buttonderry Creek. With this in mind, compliance with Condition 2.39 for Stage 1A revolves around rehabilitation and management of the works associated with clearing the development area, as opposed to works associated with the Conservation Area. An interim Vegetation Management Plan (VMP) has therefore be prepared for Stage 1A to comply with Condition 2.39.

Impacts upon Buttonderry Creek will be delayed until Stage 1B and Stage 1C. For this reason, rehabilitation of this area will be undertaken in these stages and partial dedication will occur as part of Stage 1C. For construction purposes, it is necessary to delay dedication until completion of works within Stage 1C, to prevent the need to obtain permission from Council to construct the bridge and any stormwater infrastructure. Ultimate VMPs will therefore be provided for 1C where rehabilitation works are proposed.

In order to offset impacts from Stage 1A, noting that the rehabilitation works are proposed in Stages 1B and 1C (which could be delayed), the Proponent is willing to pay the contributions required under Condition 2.6 for Stages 1A, 1B and 1C prior to the Subdivision Certificate for Stage 1A (i.e. bringing forward the timing of payment for the majority of the site).

With the above in mind, the proposed staging modification will have beneficial impacts on ecology through the payment of early contributions, which can be used to source offset sites in the immediate future.

5.3.3.2 Stormwater

As discussed above, the stormwater strategy for the site has changed since approval and consequently an updated WCMP and stormwater design has been prepared which alters the location of stormwater infrastructure as originally approved. In order to assess the amended ecological impacts from this, an Assessment of Potential Impacts to Biodiversity Values has been prepared which concludes that the proposed amendments will actually reduce impacts on ecology for the following reasons:

- Stormwater basins approved within the 50m buffer along the M1 have been removed;
- Stormwater basins north-west of the bridge have been removed;
- As a result of the above, the following additional vegetation is retained:
 - Total vegetation impact reduction overall = ~1.37ha
 - Within the Riparian Corridor = ~0.42ha
 - Within the Wildlife Dispersal Corridor = ~0.95ha

A comparison of impacts within the E2 zoned land is provided below:

Vegetation Community	Project Approval Extent	Project Modification Extent	Gain / Loss
MU 20 Alluvial Floodplain Shrub Swamp Forest (EEC)	0.122	0.192	~ - 0.070ha
MU 30 Narrabeen Dooralong Spotted Gum – Ironbark Forest	1.324	0.051	~ 1.272ha
MU 43a Alluvial Riparian Blackbutt Forest (EEC)	0.168	0.106	~ 0.062ha
Other disturbed Vegetation – Unspecified Regrowth	0.106	0	~ 0.106ha
Total			~ 1.37ha

Full details with regards to the above are provided within **Attachment J**.

Based on the above, the proposed modifications continue to appropriately address the relevant matters referred to in section 4.15(1) of the EP&A Act.

Other matters requiring consideration include:

(a)(i) the provisions of any environmental planning instrument

State Environmental Planning Policies (SEPPs)

The proposed modifications to the development are not inconsistent with any SEPPs noting that no physical changes are proposed.

Local Environmental Plans (LEPs)

The proposed modifications to the development are not inconsistent with any LEPs noting that no physical changes are proposed.

(a)(ii) the provisions of any draft environmental planning instruments

There are no draft environmental planning instruments relevant to the application noting that no physical changes are proposed.

(a)(iii) any development control plans

The proposed modifications to the development are not inconsistent with any DCPs noting that no physical changes are proposed.

(a)(iv) any matters prescribed by the regulations

There are no matters prescribed by the regulations relevant to the application.

(b) the likely impacts of the development

Discussed above.

(c) the suitability of the site for the development

The subject site remains entirely suitable for the proposed development as previously assessed by the Department of Planning, Industry & Environment.

(d) any submissions made in accordance with the Act or regulations

As discussed above, it is not anticipated that the proposed modifications would require public notification.

(e) the public interest


The proposed modifications will continue to be in the public interest most notably through the ability to deliver Stage 1A within the next 12 months, thereby facilitating an immediate provision of jobs to the Central Coast region.

6. CONCLUSION

Having regard for the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, it is considered that the amended proposal is substantially the same as that originally approved by the Department of Planning, Industry & Environment and that no prejudice will be caused to other persons as a result of the proposed modification.

Should there be any further enquiries, please do not hesitate to contact me on 4305 4300. Alternatively, I may be contacted via e-mail on stephaniev@adwjohnson.com.au.

Yours faithfully,



Stephanie van Dissel
Senior Town Planner
ADW JOHNSON

Attachment A:	Proposed Staging Plan
Attachment B:	Physical Commencement Confirmation
Attachment C:	Owner's Consent
Attachment D:	Certificates of Title
Attachment E:	Proposed Modified Project Approval Conditions
Attachment F:	Water Cycle Management Plan
Attachment G:	Traffic Impact Assessment Addendum
Attachment H:	Temporary Turning and Secondary Access Arrangements
Attachment I:	Bushfire Compliance Advice
Attachment J:	Assessment of Potential Impacts to Biodiversity Values
Attachment K:	Proposed Modified Statement of Commitments
Attachment L:	Hue Hue Road Intersection