

Warner Industrial Park Modification 1

State Significant Development Modification Assessment
(MP07_0162-Mod-1)

May 2022



Published by the NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Warner Industrial Park – Modification 1

Subtitle: State Significant Development Modification Assessment

Cover image: Indicative landscape plan (Peter Andrews + Associates, 2009)

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Glossary

Abbreviation	Definition
Applicant	Warnervale LF Pty Ltd
BDAR	Biodiversity development assessment report
Council	Central Coast Council
DCP	Development control plan
Delcare & Delahunty	Delcare Constructions Pty Ltd and Laurence Gerard Delahunty
Department	Department of Planning and Environment
E&H Group	Environment and Heritage Group of the Department
EP&A (ST&OP) Regulation	Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EP&A Regulation 2021	Environmental Planning and Assessment Regulation 2021
Minister	Minister for Planning
NRAR	Natural Resources Access Regulator
RFS	Rural Fire Service
RTS	Response to submissions
SSD	State significant development
TfNSW	Transport for NSW
TTG	Terrace Tower Group Pty Ltd
WCMP	Water cycle management plan
WEZ	Wyong Employment Zone

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1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the Warner Industrial Park (MP 07_0162).

The modification application seeks consent for the introduction of sub-staging, the alignment of the project's flooding and stormwater infrastructure with Central Coast Council's current requirements, an updated design for the site entry intersection off Hue Hue Road and administrative amendments to the conditions.

The application was lodged on 11 February 2022 by Warnervale LF Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

The Applicant is constructing an industrial subdivision known as the Warner Industrial Park at the corner of Sparks Road and Hue Hue Road, Jilliby in the Central Coast local government area (see **Figure 1**).

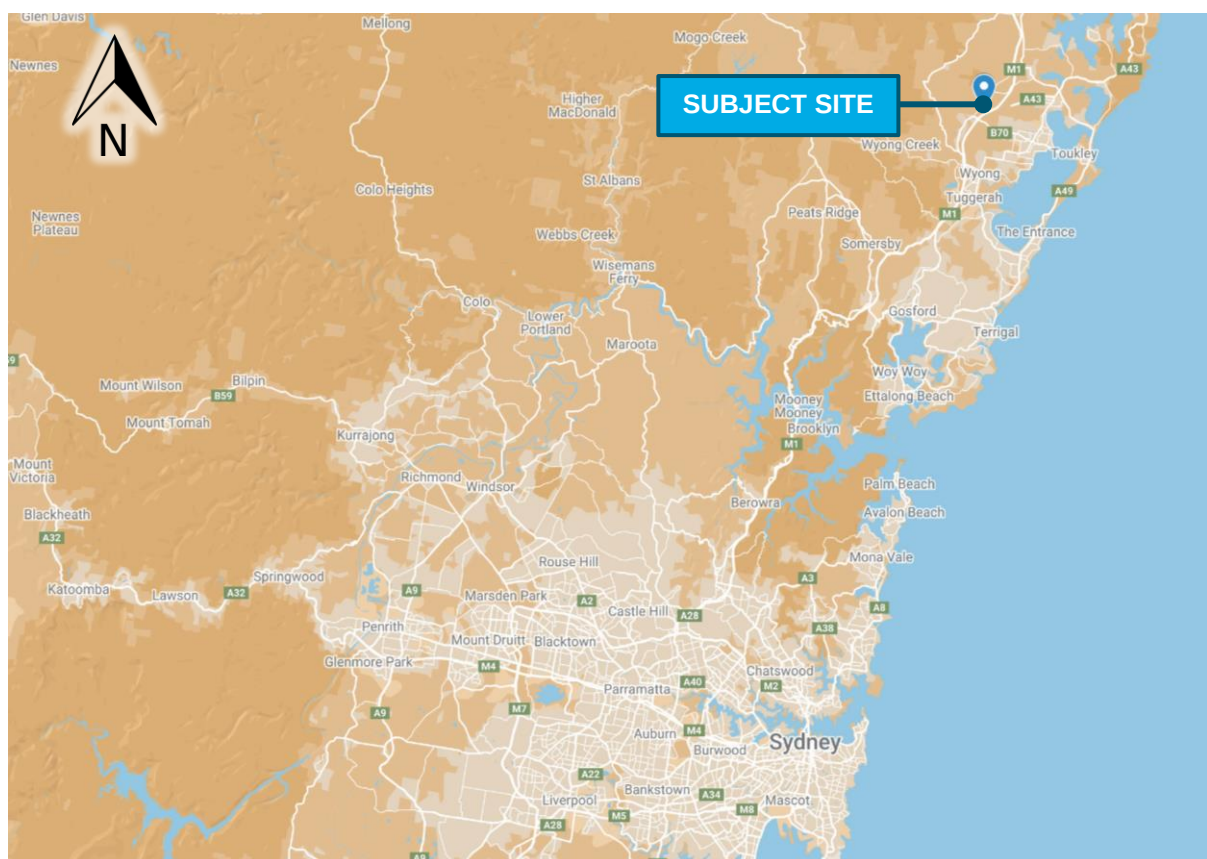


Figure 1 | Regional context map

In late 2010, Warner Business Park Pty Ltd, a subsidiary to the Terrace Tower Group Pty Ltd (TTG), obtained concept plan and project approval for the construction and operation of the Warner Industrial Park across two stages. Stage 1 was to be owned and developed by Warner Business Park Pty Ltd, while Stage 2 was to be owned and developed by Delcare Constructions Pty Ltd and Laurence Gerard Delahunty (Delcare & Delahunty).

At the time of writing this report, the Applicant has obtained deposits for the majority of lots within Stage 1 and has commenced vegetation clearing within the footprint of this stage.

The site comprises approximately 104.16 hectares (ha) of industrial zoned land at the corner of Sparks Road and Hue Hue Road, Jilliby. The site comprises 13 lots and has frontages to Sparks Road, Hue Hue Road, Kiar Ridge Road and the Pacific Motorway (see **Figure 2**). The topography of the site is relatively hilly, with a gentle slope towards the south-east. Buttonderry Creek traverses the middle of the site and discharges under the motorway via several box culverts.

Warner Industrial Park Modification 1 (MP07 0162-Mod-1) | Modification Assessment Report

The surrounding area is a rural-residential locality, and the nearest residential receiver to the site is located approximately 60 metres to the south-west, across Sparks Road. The site is immediately bounded by:

- Kiar Ridge Road, Hue Hue Road and the Buttonderry Waste Management Facility to the north
- the Pacific Motorway, native vegetation and agricultural lands to the east
- Sparks Road and large lot rural residential land uses to the south
- Hue Hue Road and native vegetation to the west.

The site is also located partially above the Waratah 2 Coal Project and is subsequently identified as being within a mine subsidence district.

1.3 Approval history

Concept plan approval

On 27 August 2010, concept plan approval was granted by the then Minister for Planning (the Minister) for the ongoing use of the site as an industrial subdivision. The concept plan permitted the following:

- Torrens title subdivision of the developable areas of the site into 90 lots for industrial and ancillary uses
- dedication of land identified for conservation purposes to Central Coast Council to protect, manage and conserve biodiversity and downstream receiving waters
- additional land uses which were otherwise prohibited in the IN1 – General Industrial zone
- adoption of a development control plan (DCP) to manage future development at the site.

Project approval

On 27 August 2010, project approval was also granted by the then Minister for stages 1 and 2 of the Warner Industrial Park (see **Figure 3**). The project approval permitted the following:

- Torrens title subdivision to create 90 lots for industrial and ancillary uses
- bulk earthworks including site preparation, vegetation clearing, temporary stockpiling and site remediation
- provision of on-site infrastructure including stormwater and roads
- landscape works and rehabilitation of conservation areas
- dedication of conservation lands to Central Coast Council (Council)
- construction of two site entry intersections off Sparks Road and Hue Hue Road
- construction of a bridge across Buttonderry Creek.

The project approval includes a condition requiring the Applicant to make a monetary contribution to Council to fund the construction of a stormwater transfer pipeline. This pipeline formed part of Council's original stormwater strategy for the WEZ and sought to minimise the volume of water discharged directly to the Porters Creek wetland by conveying excess stormwater to the Wyong River.

Council has since abandoned this stormwater strategy and, to date, an alternative strategy for the WEZ is yet to be developed.

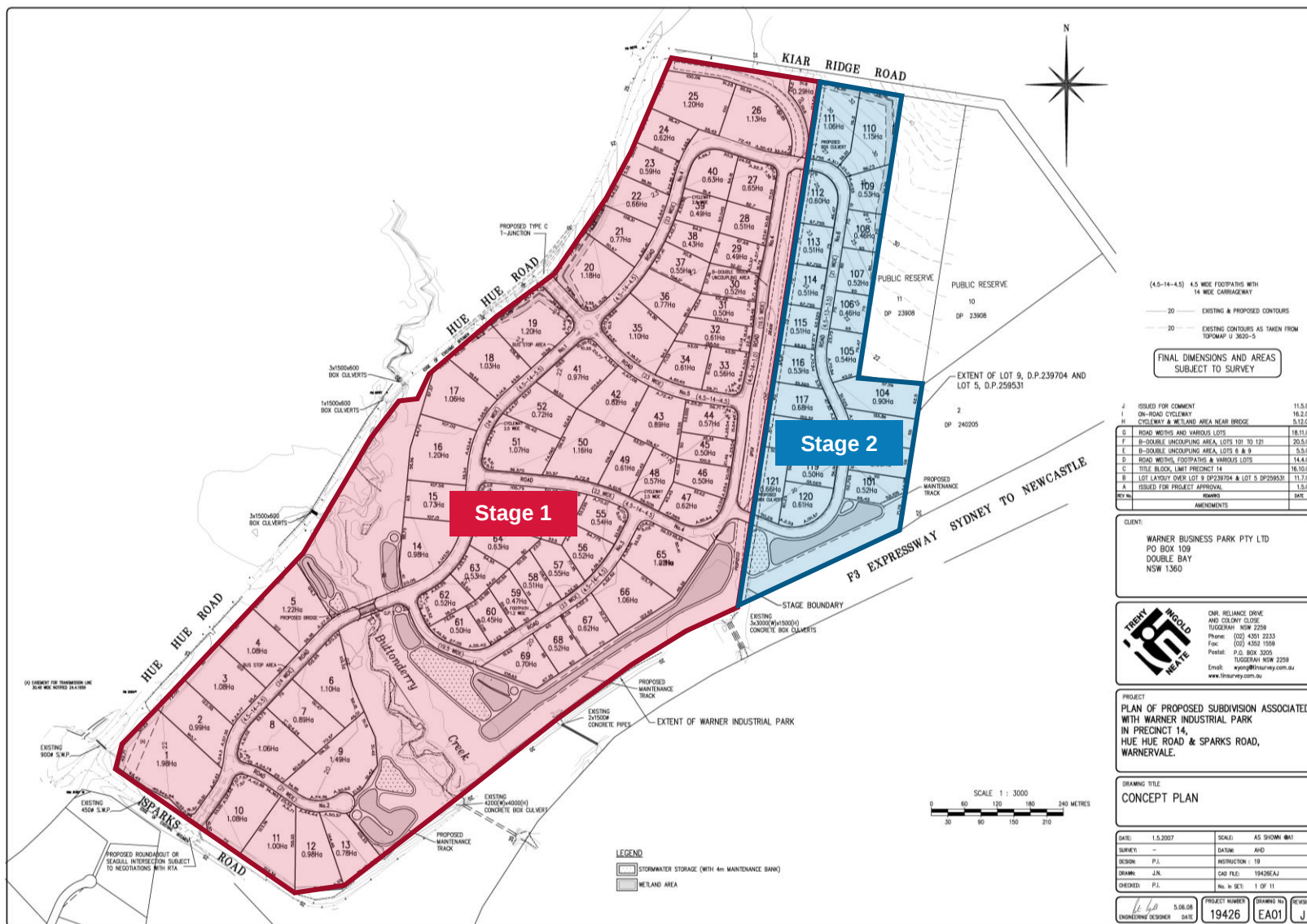


Figure 3 | Approved subdivision layout

2 Proposed modification

On 11 February 2022, the Applicant lodged a modification application under section 4.55(1A) of the EP&A Act to modify the project approval for the Warner Industrial Park. The modification is described in full in the Modification Report and Response to Submissions (RTS) included in **Appendix A** and is illustrated in **Figure 4**.

2.1 Original modification

The modification application originally sought to modify the consent to permit additional stormwater infrastructure works within the Buttonderry Creek corridor. During the notification period (see **Section 4**), several concerns were raised by Council and the Department's Environment and Heritage Group (E&H Group) in relation to the scale of works proposed within the Buttonderry Creek corridor.

Following further consultation with Council, the Applicant made the decision to withdraw these works from the subject modification application. Instead, the Applicant will work closely with Council to develop an alternative scheme for managing stormwater across the subdivision, with a focus on on-lot detention and treatment prior to discharge.

2.2 Proposed modification

The assessment undertaken herein is based on the modification as described in the RTS (see **Section 3.5**), which seeks approval for the following:

- splitting of Stage 1 into four sub-stages (stages 1A to 1D)
- minor updates to the stormwater and flooding-related conditions, to align with Council's contemporary engineering requirements and to allow for the detailed design to be finalised in accordance with the amended staging arrangements.
- an updated design for the Hue Hue Road / Road No. 5 intersection, reflecting a channelised right-turn treatment instead of the approved 'seagull' arrangement
- administrative amendments to the conditions (described in further detail below).

Since the approval was granted in 2010, the site has remained undeveloped. The Applicant argues that this is partially due to the scale of Stage 1 and the fact that:

- the Stage 1 Special Infrastructure Contribution (SIC) needed to be paid in full, prior to the issue of a subdivision certificate for that stage
- all biodiversity contributions and rehabilitation works needed to be completed prior to the commencement of construction of Stage 1
- all key infrastructure supporting this stage needed to be delivered upfront.

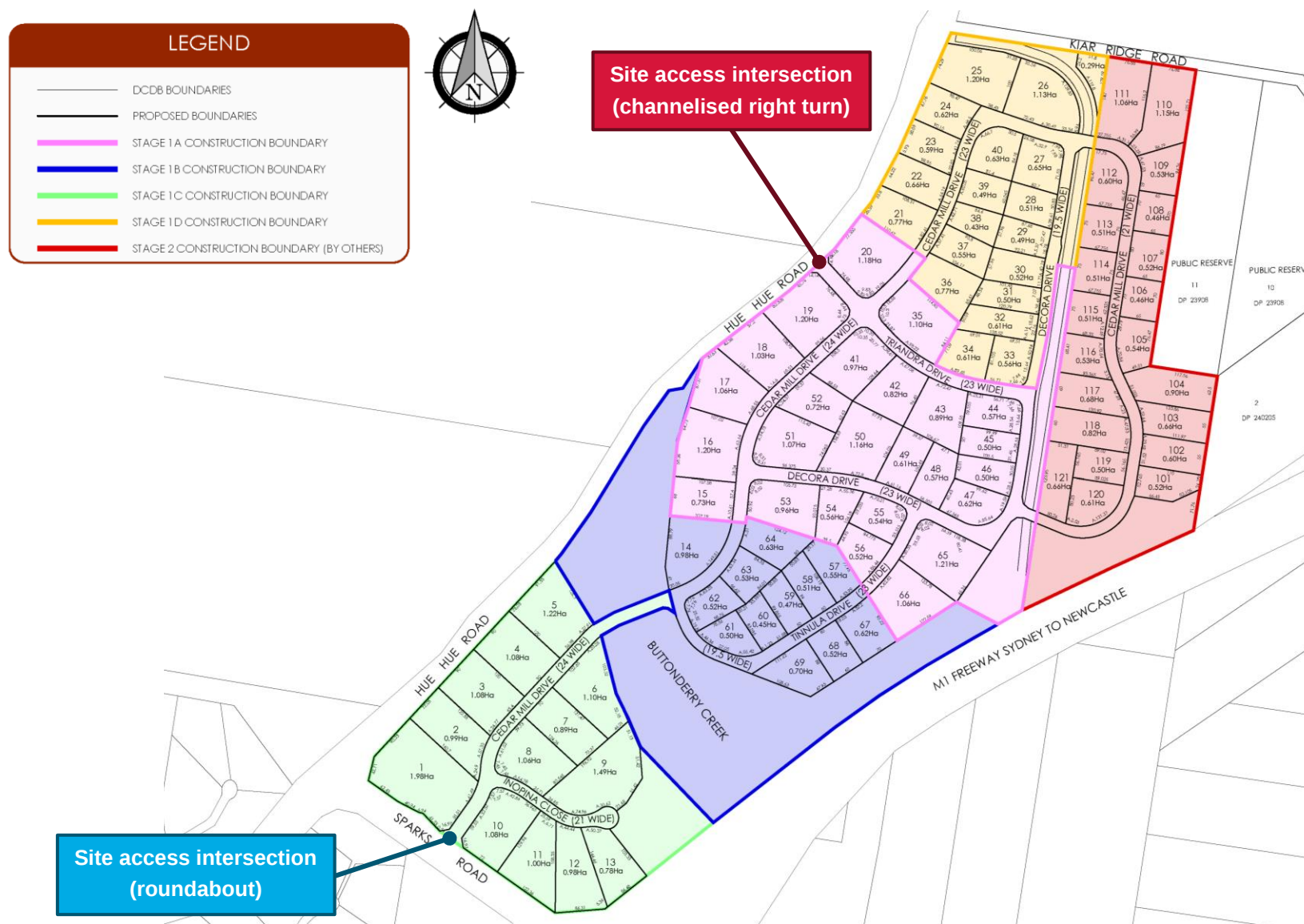
In addition, Council's stormwater strategy for the WEZ no longer involves the delivery of a pipeline to convey excess stormwater to Wyong Creek, and the Applicant is working closely with Council to develop an appropriate solution for the site.

Consequently, the Applicant is seeking to split Stage 1 into four sub-stages (stages 1A to 1D) to allow for the gradual delivery of the subdivision and its associated infrastructure (see **Figure 4**). The Applicant is also seeking to align the project approval with the current, discounted contribution rate for the WEZ Special Contribution Area, and to allow the SIC to be paid on a pro rata basis per stage.

In addition, the Applicant is seeking to split the project approval's existing offset and rehabilitation requirements to align with the four substages. The proposed timing would be as follows:

- biodiversity contributions for stages 1A, 1B and 1C – Paid prior to the issue of a subdivision certificate for Stage 1A
- biodiversity contributions for Stage 1D – Paid prior to the issue of a subdivision certificate for Stage 1D
- Buttonderry Creek restoration and rehabilitation works – To be completed as part of stages 1B and 1C.

To support the changes outlined above, the Applicant has identified a number of administrative amendments to the conditions. A full list of the conditions proposed to be removed and/or amended is provided in **Appendix B** of this report.



3 Statutory context

3.1 Scope of modifications

The Department has reviewed the scope of the modification application and considers the application can be characterised as a modification as it:

- would not significantly increase the environmental impacts of the project as approved
- is substantially the same development as originally approved
- is of a scale that warrants the use of section 4.55(1A) of the EP&A Act.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application (DA).

Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new DA to be lodged.

3.2 Consent authority

The Minister is the consent authority for the application under section 4.5(a) of the EP&A Act. Under the Minister's delegation of 9 March 2022, the Team Leader, Industry Assessments, may determine the application under delegation as:

- the application has not been made by a person who has disclosed a reportable political donation under section 10.4 of the EP&A Act
- there are no public submissions (other than a council) in the nature of objections, and
- Council has not made a submission by way of objection under the mandatory requirements for community participation listed under Schedule 1 of the EP&A Act.

3.3 Part 3A transition to state significant development

This project was originally approved under the former section 75J of the EP&A Act and was a transitional Part 3A project under Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulation).

Following amendments to the EP&A Act and the commencement of the associated EP&A (ST&OP) Regulation on 1 March 2018, the power to modify Part 3A project approvals under former section 75W is no longer available for modifications submitted after 1 March 2018. In order to modify a transitional Part 3A project approval, the Minister can declare the development to be SSD by order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulation. If a declaration is made the project approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant criteria.

On 3 February 2022, the Director, Industry Assessments (as delegate of the Minister), made an order under clause 6 of Schedule 2 to the EP&A (ST&OP) Regulation declaring the development the subject of the project approval to be SSD. The order was published in the NSW Government Gazette on 11 February 2022 and took effect from that date.

The effect of this order is that the project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development. The Department notes that the concurrent

concept plan was not transitioned. Any modifications to that approval would continue under the former section 75W of the EP&A Act.

3.4 Legislative amendments

As the application was originally lodged on 11 February 2022, the proposed modification has been assessed having regard to the requirements of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). Since lodgement, the EP&A Regulation has been repealed by the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021). Under Schedule 6(3) of the 'savings, transitional and other provisions' of the EP&A Regulation 2021, the EP&A Regulation continues to apply (instead of the new EP&A Regulation 2021) to an application made but not finally determined before 1 March 2022.

3.5 Amended modification application

Under section 121B of the EP&A Regulation, a modification application may be amended by the Applicant at any time prior to determination, but only with the agreement of the consent authority.

On 8 April 2022, the Applicant requested to amend the modification to remove the additional stormwater infrastructure works from the Buttonderry Creek corridor and to introduce minor design amendments to the Hue Hue Road / Road No. 5 intersection. The amendments were proposed to address several concerns raised by Council during detailed design of the subdivision's supporting infrastructure.

On 5 May 2022, the Team Leader, Industry Assessments (as delegate of the Minister), formally agreed to the modification amendment in accordance with section 121B of the EP&A Regulation.

3.6 Biodiversity Conservation Act 2016

Clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 specifies that if the consent authority is satisfied a modification will not increase the impact on biodiversity values, a biodiversity development assessment report (BDAR) is not required.

The Department's assessment of potential biodiversity impacts associated with the proposed modification, including the need for a BDAR, is provided in **Section 5** of this report.

4 Engagement

4.1 Department's engagement

Clause 117(4) of the EP&A Regulation requires a section 4.55(1A) modification application to be notified or advertised if specified by a community participation plan. The Department's Community Participation Plan notes the exhibition requirements for such modifications are discretionary, and based on the urgency, scale and nature of the proposal.

Given the proposed changes would result in minimal environmental impacts (see **Section 3.1**), the application was not notified or advertised. However, it was made publicly available on the Department's website and was referred to Council and several relevant State government authorities for comment.

4.2 Government advice

Advice was received from seven State government authorities and Council. A summary of this advice is provided below.

Council advised it did not support the deletion of the Warner Industrial Park Design Code from the development consent or the proposed temporary access road off Hue Hue Road. Council also raised a number of concerns in relation to the submitted Water Cycle Management Plan (WCMP) and sought further information from the Applicant regarding the biodiversity impacts associated with the proposed stormwater infrastructure within the Buttonderry Creek corridor.

The Department's **E&H Group** advised the modification would require entry into the Biodiversity Offset Scheme, and subsequently requested the Applicant prepare a BDAR for the proposed works in accordance with the *Biodiversity Assessment Method 2020*. The E&H Group also recommended the Applicant be required to undertake further flood and stormwater run-off modelling prior to the release of each sub-stage, and that the WCMP be updated to include a scour monitoring program.

Transport for NSW (TfNSW) advised it had no concerns in relation to the proposed modification and noted the submitted SIDRA modelling indicates the Sparks Road / Hue Hue Road intersection will perform well with the anticipated traffic volumes.

The **Rural Fire Service** (RFS) raised no concerns in relation to the proposed modification and noted any future development of the subdivided lots would be required to consider the relevant requirements outlined in *Planning for Bush Fire Protection 2019*.

Subsidence Advisory NSW noted that the site remains within an area subject to a mining development consent and an exploration tenure, and subsequently recommended subsidence parameters be incorporated into the design of the subdivision's infrastructure.

The Department's **Water Group** and the **Natural Resources Access Regulator** (NRAR) advised that they had no comments in relation to the modification as the SEE did not indicate any further impacts to water beyond those which were considered during the original assessment.

Department of Primary Industries – Fisheries advised it had no comments in relation to the modification.

4.3 Response to submissions

On 8 April 2022, the Applicant provided an RTS on the issues raised in submissions. As part of the RTS, the Applicant requested the consent authority's agreement to amend the modification application in accordance with section 121B of the EP&A Regulation (see **Section 3.5** above).

These amendments were subsequently accepted by the Minister's delegate and included:

- removal of the additional stormwater infrastructure works within the Buttonderry Creek corridor
- an updated design for the Hue Hue Road / Road No. 5 intersection, reflecting a channelised right-turn treatment instead of the approved 'seagull' arrangement.

The Applicant consulted regularly with Council during the preparation of the RTS, and Council subsequently advised that it had no further concerns regarding the amended stormwater arrangements or the proposed intersection design.

5 Assessment

The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:

- Modification Report provided to support the proposed modification (see **Appendix A**)
- advice received from the relevant State government authorities and Council
- RTS and additional information provided by the Applicant
- documentation and Department's assessment report for the original concept plan approval and development consent (formerly referred to as the project approval) (see **Appendix A**)
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department's assessment of the modification application is provided in **Table 1** below.

Table 1 | Assessment of the modification application

Assessment	Recommendation
Sub-staging	
• The proposed modification seeks approval to split Stage 1 into four sub-stages (stages 1A to 1D). • The Applicant has advised the proposed staging arrangements would improve the financial viability of the development by facilitating the gradual delivery of the subdivision and its associated infrastructure. • During the notification period, neither Council nor the relevant State government authorities raised any concerns in relation to the concept of sub-stages. • The Department has reviewed the proposed staging arrangements and is satisfied they would continue to ensure the subdivision's lots are supported by appropriate infrastructure and services. • Any potential environmental impacts associated with splitting Stage 1 into four stages would be minimal (see below) and can be appropriately managed through the existing and recommended conditions of consent. • The Department has recommended a number of conditions throughout the consent be updated to reflect the four sub-stages and their associated infrastructure requirements. These changes largely align with those referenced in Appendix B of this report. • The Department's assessment concludes the proposed sub-staging arrangements would not significantly increase the environmental impacts of the development as approved, subject to the recommended conditions of consent.	The Department has recommended the development consent be updated to reflect the proposed staging arrangements, as appropriate.

Assessment	Recommendation
Stormwater and flooding	

Stormwater and flooding management

- Under conditions 2.11 and 2.12 of the development consent, the Applicant is required to finalise the detailed design of the subdivision's stormwater, flooding and drainage infrastructure in consultation with Council. The detailed design must be supported by revised stormwater, flooding and water quality modelling for the site.
- The proposed modification (as amended) seeks approval for minor updates to these conditions to align with Council's contemporary engineering requirements and to allow for the detailed design to be finalised in accordance with the amended staging arrangements.
- Currently, the Applicant is working closely with Council to develop an alternative scheme for managing stormwater across the subdivision, with a focus on on-lot detention and treatment prior to discharge.
- The updated wording would help to support this process, while also ensuring the detailed design is prepared with regard to Council's current stormwater pollution reduction targets.
- The Department has reviewed the proposed condition amendments and is satisfied they would continue to ensure the development's stormwater and flooding infrastructure is designed to achieve Council's water quality targets and minimise on and off-site flooding impacts.
- The Department has subsequently recommended that all proposed amendments be incorporated into conditions 2.11 and 2.12, with the exception of an amendment proposed to the design flood event.
- In the absence of any further flood modelling for the site, the Department maintains the detailed design should be based on the 1.5-year Annual Recurrence Interval (ARI) event, instead of the 1.0-year ARI event, as proposed.
- The Department's assessment concludes that, subject to the recommended conditions of consent, the proposed modification would not result in any additional stormwater or flooding impacts beyond those which were considered and assessed as part of the original proposal.

The Department has recommended conditions 2.11 and 2.12 be updated to:

- align with Council's current pollution reduction targets
- permit the staged submission of the detailed design of the subdivision's stormwater, flooding and drainage infrastructure.

The Department has also recommended conditions 2.2 and 2.3 be deleted from the development consent.

Stormwater transfer pipeline

- Under conditions 2.3 and 2.4 of the development consent, the Applicant is required to pay a monetary contribution of \$19,647 per ha of net developable area (NDA) to Council to fund the construction of a stormwater transfer pipeline within the WEZ. The Applicant is also required to connect to this pipeline (or an alternative scheme) in accordance with Council's requirements.

Assessment

Recommendation

- The stormwater pipeline formed part of Council's original Integrated Water Cycle Management Scheme (IWCMS) for the WEZ and sought to minimise the volume of water discharged directly to the Porters Creek wetland by conveying excess stormwater to the Wyong River.
- As part of the proposed modification, the Applicant is seeking to delete conditions 2.2 and 2.3 from the development consent. This is because Council had already abandoned the proposed pipeline by the time the approval was granted and, to date, an alternative IWCMS has not been developed for the WEZ.
- The Applicant has argued it is unreasonable to require the payment of such a contribution when the stormwater pipeline no longer forms part of Council's identified infrastructure needs for the surrounding area.
- In its submission, Council did not raise any concerns in relation to the proposed condition amendments.
- The Department has reviewed the information provided by the Applicant and acknowledges there is no longer a clear nexus between the contribution and Council's stormwater strategy for the broader WEZ.
- Accordingly, the Department has recommended conditions 2.3 and 2.4 be deleted from the development consent.
- In the event that Council develops an updated stormwater strategy for the WEZ, any developer contributions required to fund the associated infrastructure works would need to be collected via the local infrastructure contributions system.
- The Department's assessment concludes the deletion of conditions 2.3 and 2.4 is acceptable given the stormwater pipeline no longer forms part of Council's IWCMS for the WEZ.

Biodiversity

Biodiversity values

- Under clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017, a modification application must be accompanied by a BDAR unless the consent authority is satisfied the modification will not increase the development's impact on biodiversity values.
- The original modification application included several design amendments to the stormwater infrastructure located within the Buttonderry Creek corridor.
- These works would have:
 - reduced the impact of the development on the Endangered Ecological Community (EEC) 'Alluvial Riparian Blackbutt Forest (type variant)'

Require the Applicant to:

- pay the biodiversity contributions for stages 1A, 1B and 1C, prior to the issue of a subdivision certificate for Stage 1A
- pay the biodiversity contributions for Stage 1D, prior to the issue of a subdivision certificate for Stage 1D
- complete the Buttonderry Creek restoration and

Assessment	Recommendation
○ resulted in a minor increase in the area of EEC ‘Alluvial Floodplain Shrub Forest (canopy only)’ which would be removed to accommodate the site’s redesigned discharge points. ● In its submission, the E&H Group advised the modification would require entry into the Biodiversity Offset Scheme, and subsequently requested the Applicant prepare a BDAR for the proposed works in accordance with the <i>Biodiversity Assessment Method 2020</i>. ● In its RTS, the Applicant subsequently amended the modification application to remove the additional stormwater infrastructure works from the Buttonderry Creek corridor (see Section 3.5 above). ● As a result of this change, the proposed modification would be located entirely within the approved development footprint and would not result in the removal of additional vegetation beyond what was assessed under the original application. ● Consequently, the Department is satisfied the proposed modification would not result in any additional biodiversity impacts beyond those previously considered. ● The Department’s assessment concludes a BDAR is not necessary for the proposed modification.	rehabilitation works, prior to the completion of Stage 1C.
<u>Timing of biodiversity offsets</u> ● Under the development consent, the Applicant is required to pay biodiversity contributions to Council (for the acquisition of other conservation lands within the WEZ) and complete rehabilitation works in the Buttonderry Creek corridor prior to the issue of a subdivision certificate for Stage 1. ● As part of the proposed modification, the Applicant is seeking to split these requirements to align with the four substages. The new timing would be as follows: ○ biodiversity contributions for stages 1A, 1B and 1C – Paid prior to the issue of a subdivision certificate for Stage 1A ○ biodiversity contributions for Stage 1D – Paid prior to the issue of a subdivision certificate for Stage 1D ○ Buttonderry Creek restoration and rehabilitation works – To be completed as part of stages 1B and 1C. ● The Applicant has advised this arrangement would minimise construction impacts to the Buttonderry Creek corridor and ensure the rehabilitated lands are dedicated to Council once infrastructure works within the corridor (e.g. the bridge) have been completed. ● In its submission, Council advised it was supportive of the biodiversity contributions for stages 1A, 1B and 1C being paid prior to the issue of a subdivision certificate for Stage 1A. ● The Department has reviewed the amended timing proposed by the Applicant and is satisfied it would continue to ensure the	

Assessment	Recommendation
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Buttonderry Creek corridor is appropriately protected and that funds are made available to Council within a reasonable timeframe for the acquisition of other conservation lands within the WEZ.

- The Department's assessment concludes the modification would not adversely impact on the rehabilitation and protection of conservation lands within the WEZ, subject to the recommended conditions of consent.

Traffic and access

Traffic impacts

- The modification application included an addendum traffic impact assessment to consider whether the introduction of sub-stages would result in any additional traffic impacts, particularly until construction of Stage 1C has been completed.
- The assessment concluded that while the construction and operation of stages 1A and 1B would result in a minor, temporary increase in traffic volumes travelling along Hue Hue Road, this would be adequately accommodated within the road's current capacity.
- In addition, the existing Sparks Road / Hue Hue Road intersection and the proposed site access intersection off Hue Hue Road would operate satisfactorily, with average delay increases and increased queue lengths of less than 4 seconds and 1.5 vehicles, respectively in the afternoon peak period.
- TfNSW advised it had no concerns in relation to the proposed modification and noted the submitted SIDRA modelling indicates the Sparks Road / Hue Hue Road intersection will perform well with the anticipated traffic volumes.
- The Department has reviewed the addendum traffic impact assessment and is satisfied the modification would not adversely impact upon the efficiency or safety of the surrounding road network. While the volume of traffic along Hue Hue Road would increase as a result of the staging arrangements, this increase would be minor and would cease once Stage 1C and the associated bridge across Buttonderry Creek has been constructed.
- The Department's assessment concludes the predicted traffic volumes associated with the modification would be adequately accommodated within the local and regional road network.

Require the Applicant to:

- ensure the Hue Hue Road / Road No. 5 intersection is constructed in accordance with the amended design plans.

Site access intersection off Hue Hue Road

- The proposed modification (as amended) seeks approval to update the design for the Hue Hue Road / Road No. 5 intersection, which would reflect a channelised right-turn treatment instead of the approved 'seagull' arrangement.

Assessment	Recommendation
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- During preparation of the RTS, Council advised the Applicant it had no concerns in relation to the proposed intersection design.
- The Department has subsequently recommended the updated plans for this intersection be incorporated into the development consent, and that condition 2.34 be updated to reference the amended design.
- The Department's assessment concludes the amended intersection design is acceptable and would not result in any additional traffic impacts beyond those which were assessed as part of the original application.

Bushfire

- | | |
|---|--|
| <ul style="list-style-type: none"> • The modification application included a bushfire advice letter to assess any potential bushfire risks associated with the introduction of sub-stages to the development. • The letter concluded the staging arrangements would comply with the access requirements outlined under <i>Planning for Bush Fire Protection 2019</i>, subject to the provision of a temporary access road off Hue Hue Road and dead-end turning heads as part of Stage 1A. • The RFS raised no concern in relation to the proposed modification and noted any future development of the lots would be required to consider the relevant requirements outlined in <i>Planning for Bush Fire Protection 2019</i>. • Council advised it did not support the proposed temporary access road off Hue Hue Road due to potential traffic impacts. • In its RTS, the Applicant clarified that the temporary access road was needed to ensure that two escape routes are provided until the Sparks Road access point and the Buttonderry Creek bridge can be constructed. The road would only be used during emergencies and access would be restricted at all other times. • While Council's concerns in relation to the temporary access road are noted, the Department concurs with the recommendations of both the bushfire advice letter and the RFS and is consequently satisfied that any potential bushfire risks associated with the proposed modification can be appropriately managed. • The Department has recommended the plans showing the temporary access road be incorporated into the development consent. • The Department's assessment concludes the proposed modification would not increase potential bushfire risks to people, the development and the surrounding environment, subject to the recommended conditions of consent. | <p>Require the Applicant to:</p> <ul style="list-style-type: none"> • carry out the development in accordance with the submitted plans for the temporary access road. |
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Assessment	Recommendation
State infrastructure contribution	
- Under condition 2.1 of the development consent, the Applicant is required to pay a SIC of \$91,000 per ha of net developable area (NDA), prior to the issue of a subdivision certificate for Stage 1. - As part of the proposed modification, the Applicant is seeking to amend condition 2.1 to reflect the current SIC rate in the WEZ and to allow for the payment of this contribution on a pro rata basis for stages 1A to 1D. - The Department notes that the applicable SIC rate was discounted in March 2018 and is currently \$79,612 per ha of NDA. - Accordingly, the Department has recommended condition 2.1 be updated to reflect the current standard wording for such conditions. - This wording will ensure the applicable SIC is paid for each stage prior to the issue of the relevant subdivision certificate, and will capture any further discounts or amendments made to the contribution rate.	Require the Applicant to: pay the applicable SIC for the project on a staged basis via the NSW Planning Portal, and in accordance with the Ministerial Determination for the WEZ dated 28 October 2008.

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act.

The Applicant is proposing to modify the development consent to allow for the subdivision to be delivered across four sub-stages, to make minor updates to the stormwater and flooding-related conditions, to facilitate an updated design for the Hue Hue Road / Road No. 5 intersection and to make administrative amendments to the conditions.

The Department considers the proposed modification is appropriate on the basis that:

- the introduction of the four sub-stages would continue to ensure the subdivision's lots are supported by appropriate infrastructure and services
- the amendments to the stormwater and flooding-related conditions would continue to ensure the development's associated infrastructure is designed and constructed in accordance with Council's current requirements
- the amendments to the biodiversity-related conditions would continue to ensure the Buttonderry Creek corridor is appropriately protected and that funds are made available to Council for the acquisition of other conservation lands within the WEZ
- the design amendments to the Hue Hue Road / Road No. 5 intersection are minor in nature and supported by Council
- the modification would not significantly increase the environmental impacts of the development beyond those assessed under the original project application.

Consequently, the Department is satisfied that the modification should be approved, subject to conditions.

7 Recommendation

It is recommended that the Team Leader, Industry Assessments, as delegate of the Minister:

- **considers** the findings and recommendations of this report
- **determines** that the application MP07_0162-Mod-1 falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** under clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 that a BDAR is not required to be submitted with this application as the application will not increase the impact on biodiversity values on the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent MP 07_0162
- **signs** the attached modifying instrument of consent (**Appendix B**).

Recommended by:



24 May 2022

Patrick Copas

Senior Environmental Assessment Officer
Industry Assessments

8 Determination

The recommendation is **Adopted** by:

 24 May 2022

Joanna Bakopanos

Team Leader

Industry Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of documents

The Department has relied upon the following key documents during its assessment of the proposed modification:

Modification application

- the document titled 'Proposed s4.55 (1A) modification of MP07_0162 – 90 lot Torrens title industrial subdivision' prepared by ADW Johnson Pty Ltd, dated 19 December 2021 and all attachments.

Submissions and advice

- all advice received from the relevant government authorities and Council.

Response to submissions

- the document titled 'Response to submissions report – Proposed s4.55 (1A) modification of MP07_0162 – 90 lot Torrens title industrial subdivision' prepared by ADW Johnson Pty Ltd, dated 8 April 2022 and all attachments.

All documents relating to MP07_0162-Mod-1 may be viewed on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-1-subdivision-staging-and-other-minor-amendments>.

Department's assessment report for MP 07_0162

- MP 07_0162, including all information submitted in support of that application and the Department's assessment report.

All documents relating to MP 07_0162 may be viewed on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/warner-industrial-park>.

Appendix B – List of amended conditions

Table 2 | Proposed conditions to be removed/amended in the development consent

Condition #	Description	Change	Reason
-	Definitions	Updated	Required to reflect updates to the conditions and the current names of the relevant State government authorities.
1.1 to 1.2	Terms of approval	Updated	Updated to require the Applicant carry out the development in accordance with MP07_0162-Mod-1.
1.6	Project staging	Updated	Updated to clarify that both the construction and delivery of the project can be staged.
2.1	State infrastructure	Updated	Updated to reflect the current SIC rate of \$79,612 per ha of NDA.
2.2	Local road contributions	Updated	Updated to allow for the payment of road contributions on a pro rata basis per stage.
2.3 to 2.4	Stormwater pipeline contributions	Deleted	No longer applicable, as the stormwater pipeline is no longer proposed as part of Council's infrastructure requirements for the WEZ.
2.5	Delivery of stormwater infrastructure	Updated	Updated to allow for the staged delivery of the on-site stormwater infrastructure.
2.6	Biodiversity contributions	Updated	Updated to allow for the staged delivery of the on-site biodiversity works and payment of associated contributions.
2.11 to 2.12	Detailed design of stormwater infrastructure	Updated	Updated to allow for the staged delivery of the on-site stormwater infrastructure in accordance with Council's requirements.
2.15	Lot 1 – Overland flow	Updated	Updated to align with Stage 1C.

Condition #	Description	Change	Reason
2.16	Lot 23 – Overland flow	Updated	Updated to align with Stage 1D.
2.22	Road No. 6 – Drainage structures	Updated	Updated to allow for the staged delivery of the on-site stormwater infrastructure.
2.23 to 2.24	Contamination	Updated	Updated to refer to the EPA.
2.31	Infrastructure design	Updated	Updated to allow for the staged delivery of on-site infrastructure in accordance with Council's requirements.
2.32	Site access intersections	Updated	Updated to allow for the staged delivery of the two site access intersections.
2.34	Modifications to the subdivision plan	Updated	Updated to reflect a channelised right-turn lane treatment for the Hue Hue Road / Road No. 5 intersection, instead of the approved 'seagull' arrangement.
2.36	Public transport	Updated	Updated to allow for the staged delivery of on-site bus stops.
2.39	Biodiversity management	Updated	Updated to allow for the staged delivery of the rehabilitation and creek stabilisation works.
2.41	Landscape plan	Updated	Updated to allow for the staged delivery of on-site landscaping in accordance with Council's requirements.
2.48	Aboriginal cultural heritage	Updated	Updated to refer to Heritage NSW.
2.53	Construction Noise and Vibration Management Plan	Updated	Updated to allow for the submission of the plan prior to the commencement of construction of each stage.
2.55	Construction Traffic Management Plan	Updated	Updated to allow for the submission of the plan prior to the commencement of construction of each stage.

Condition #	Description	Change	Reason
2.56	Geotechnical Report – Haulage route pavements	Deleted	Removed given both Sparks Road and Hue Hue Road are frequently used by heavy vehicles and it would be difficult to determine what damage, if any, was caused during construction of the development.
2.57	Dilapidation Report	Updated	Updated to allow for the submission of the plan prior to the commencement of construction.
2.59	Erosion and sediment control plan	Updated	Updated to allow for the submission of the plan prior to the commencement of construction of each stage.
2.62	Removal of excess soil	Updated	Updated to allow for excess soil to be stored on-site where it is required for a subsequent stage.
2.66	Construction Environmental Management Plan	Updated	Updated to allow for the submission of the plan prior to the commencement of construction of each stage.

Appendix C – Notice of modification

The modifying instrument for MP07_0162-Mod-1 may be found on the Department's website at:
<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-1-subdivision-staging-and-other-minor-amendments>

Appendix D – Consolidated consent

The consolidated consent for MP07_0162-Mod-1 may be found on the Department's website at:
<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-1-subdivision-staging-and-other-minor-amendments>