

Modification of Development Consent

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 9 March 2022, I approve the modification of the development consent referred to in Schedule 1, subject to the conditions outlined in Schedule 2.


Joanna Bakopanos
Team Leader
Industry Assessments

Sydney

24 May 2022

File: EF21/18638

SCHEDULE 1

Development Consent

Approval: MP 07_0162 granted by the then Minister for Planning on 27 August 2010

For the following: Stage 1 and 2 of the Warner Industrial Park, which includes:

- Torrens title subdivision to create 90 lots for industrial and ancillary uses;
- bulk earthworks including 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.

Modification 1

Modification Application: MP07_0162-Mod-1

The modification involves the introduction of sub-staging, 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

Applicant: Warnervale LF Pty Ltd

Consent Authority: Minister for Planning

Land: Land located adjacent to Sparks Road, Hue Hue Road, Kiar Ridge Road and the F3 Freeway at Jilliby

SCHEDULE 2

This consent is modified as follows:

1. Delete the definitions for “Council”, “DECCW”, “Department, the”, “Director-General, the”, “Proponent”, “RTA” and “Stage 1” and insert the following definitions in alphabetical order:

Council	Central Coast Council
Department, the	NSW Department of Planning and Environment
EPA	NSW Environment Protection Authority
Modification Assessments	The document assessing the environmental impact of a proposed modification of this approval and any other information submitted with the following modification applications made under the EP&A Act: a) MP07_0162-Mod-1 – The modification report titled ‘Proposed s4.55 (1A) modification of MP07_0162’, prepared by ADW Johnson and dated 19 December 2021; the document titled ‘Response to submissions report’, prepared by ADW Johnson and dated 8 April 2022; and the set of conceptual engineering plans titled ‘Engineering plans of Hue Hue Road Intersection Works – Lot 4, 6, 7, 8, D.P. 239704 & Lots 15-19, 25-26, D.P. 259306 Hue Hue Road, Jilliby’, prepared by ADW Johnson, dated 8 April 2022 (Rev. A).
Planning Secretary	Secretary of the Department, or delegate
Proponent	Warnervale LF Pty Ltd and LG Delahunty, or any person carrying out any aspect of the project to which this approval applies
Stage 1A	As described in the documents listed in condition 1.1 of this approval, being: • earthworks, including regrading and filling; • construction of the entry access intersection at Hue Hue Road; • partial construction of internal Roads No. 1, 3, 4 and 5; • provision of necessary infrastructure to service lots 15 – 20, 35, 41 – 56, 65 and 66; • partial construction of the open channel adjacent to Road No. 4; • landscape works as relevant to Stage 1A; • provision of ultimate stormwater works as required for Stage 1A; and • payment of biodiversity contributions for stages 1A, 1B and 1C (prior to the issue of the subdivision certificate for Stage 1A).
Stage 1B	As described in the documents listed in condition 1.1 of this approval, being: • earthworks, including regrading and filling; • partial construction of internal Roads No. 1 and 3; • provision of necessary infrastructure to service lots 14, 57 – 64, and 67 – 69; • partial construction of the open channel adjacent to Road No. 4; • Buttonderry Creek restoration and rehabilitation works as relevant to Stage 1B; and • provision of ultimate stormwater works as required for Stage 1B.
Stage 1C	As described in the documents listed in condition 1.1 of this approval, being: • earthworks, including regrading and filling;

- construction of the entry access intersection at Sparks Road;
- partial construction of internal Road No. 1 and full construction of internal Road No. 2;
- construction of the bridge over Buttonderry Creek;
- provision of necessary infrastructure to service lots 1 – 13;
- Buttonderry Creek restoration and rehabilitation works as relevant to Stage 1C;
- landscape works as relevant to Stage 1C;
- dedication of conservation lands to Council; and
- provision of ultimate stormwater works as required for Stage 1C.

Stage 1D

As described in the documents listed in condition 1.1 of this approval, being:

- earthworks, including regrading and filling;
- partial construction of internal Road No. 4;
- provision of necessary infrastructure to service lots 21 – 34 and 36 – 40;
- partial construction of the open channel adjacent to Road No. 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 the issue of the subdivision certificate for Stage 1D).

TfNSW

Transport for NSW

2. Delete all references to “development” and replace with the word “project”, with the exception of those references contained within conditions 1.1, 2.14, 2.16, 2.20, 2.25, 2.56 and 2.59 and the “Note” section in condition 2.31.
3. Delete all references to “Director-General” or “Director General” and replace with the words “Planning Secretary”.
4. Delete all references to “the RTA” or “RTA” and replace with the phrase “TfNSW”.
5. In condition 1.1, delete subpoint e) and replace with the following:
 - e) the Warner Industrial Park Masterplan prepared by ADW Johnson Pty Ltd (Drawing No. 190628-ESK-003, Revision E) and dated 21 March 2022;
6. In condition 1.1, delete subpoint g) and replace with the following:
 - g) the Statement of Commitments (MP07_0162-Mod-1, dated 13 May 2022) prepared by ADW Johnson Pty Ltd;
7. Re-number subpoint h) of condition 1.1 as subpoint i).
8. In condition 1.1, insert new subpoint h) as follows:
 - h) Modification Assessments; and
9. In condition 1.2, replace all references to the term “1.1 g)” with the term “1.1 h)”.
10. In condition 1.6, insert the phrase “and delivery” immediately after the phrase “stage the construction”.

11. Delete condition 2.1 and replace with the following:

- 2.1 A special infrastructure contribution must be made for the project in accordance with the Ministerial Determination titled 'Development Contributions for the Wyong Employment Zone' and dated 28 October 2008 (the 2008 Determination).

This contribution must be based on the following net developable areas (NDAs):

- a) Stages 1A to 1D – NDA of 55.64 hectares; and
- b) Stage 2 – NDA of 13.35 hectares.

The Proponent may not apply for a subdivision certificate in relation to each stage of the project unless it provides, with the application, written evidence from the Planning Secretary that the special infrastructure contribution for that stage has been made or that arrangements are in force with respect to the making of the contribution.

Note: A request for assessment by the Department of the amount of the contribution that is required under this condition can be made through the NSW Planning Portal (<https://www.planningportal.nsw.gov.au/development-assessment/contributions/sic-online-service>). Please refer enquiries to SIContributions@planning.nsw.gov.au.

12. Delete condition 2.2 and replace with the following:

- 2.2 Prior to the issue of the subdivision certificate for each stage of the project, the Proponent must provide a monetary contribution of \$383,169 (pro rata for the applicable stage) to Council towards the intersection upgrade at the Hue Hue Road/Sparks Road intersection.

The Proponent may opt to undertake the intersection upgrade as works-in-kind, should an agreement be reached between the Proponent and Council.

Note: This approval only covers site access points onto Hue Hue Road and Sparks Road. This approval does not cover Hue Hue Road/Sparks Road intersection works.

13. Delete conditions 2.3 and 2.4.

14. In condition 2.5, delete the phrase "On-site" and replace with the phrase "Unless otherwise agreed to in writing by Council, on-site".

15. In condition 2.5, delete the second sentence and replace with the following:

This includes the completion of construction of the open channel adjacent to Road No. 4 across three stages (stages 1A, 1B and 1D).

16. In condition 2.5, insert the phrase "for the applicable stage(s)" immediately after the phrase "Construction Certificate".

17. In subpoint c) of condition 2.6, delete the phrase "(Stage 1 only)" and replace with the phrase "for the applicable stage(s)".

18. In condition 2.6, delete the phrase "for that stage" and replace with the phrase "for the applicable stage(s)".

19. Delete condition 2.11 and replace with the following:

- 2.11 Prior to the issue of a Construction Certificate, the Proponent shall finalise the detailed design of the proposed stormwater, flooding and drainage infrastructure, water quality management and stormwater harvesting measures for the estate. The Proponent shall obtain Council's approval for the detailed design of the stormwater/flooding/water quality infrastructure prior to

the issue of a Construction Certificate for the applicable stage(s). Unless otherwise agreed to in writing by Council, the detailed designs shall include (but are not limited to) the following:

- a) treatments for water management facilities within the floodplain to ensure sufficient protection during flood events. This includes scour protection measures up to the 1% AEP;
- b) treatments, detail designs and provision for any additional on-site storage within individual industrial lots to achieve the necessary freeboard and storage requirements as a result of final flood modelling. The detention and reuse requirements for individual lots shall be identified within Council's stormwater approval(s) for the Site and clearly identified within a section 88B instrument on the titles of relevant allotments;
- c) details on the sizing, position, treatment methods and operation of water management facilities (which may include constructed wetlands and stormwater storages which treat and detain stormwater runoff). This shall be supported by detailed MUSIC and flood storage modelling to the satisfaction of Council;
- d) demonstration of compliance with Council's pollutant removal targets, being 85% reduction in average annual total suspended solids load, 45% reduction in average annual total phosphorus loads, 45% reduction in average annual total nitrogen loads and specific contemporary treatments of heavy metals, oils and greases for the 1.5 yr ARI event; and
- e) the detailed design for maintaining stream stability should demonstrate the following:
 - i. the release method can achieve the pre-development flow objective for Buttonderry Creek (1.5 yr ARI); and
 - ii. the method for preserving wetland peak flows and limiting wetting durations.

A copy of the detailed design documentation must be provided to the Planning Secretary within seven days of the associated Construction Certificate(s) being issued.

20. In condition 2.12, insert the phrase "(as applicable to each stage)" immediately after the phrase "detailed designs".
21. Delete subpoint a) of condition 2.12.
22. In subpoint b) of condition 2.12, delete the word "obligations".
23. In condition 2.12, insert the phrase "for the associated stage of the project" immediately after the phrase "Construction Certificate".
24. In condition 2.15, delete the phrase "(Stage 1)" and replace with the phrase "associated with Stage 1C".
25. In condition 2.16, delete the phrase "(Stage 1)" and replace with the phrase "associated with Stage 1D".
26. In condition 2.22, delete the second and third instances of the phrase "Stage 1" and replace each with the phrase "the applicable stage".
27. In condition 2.23, delete the phrase "DECCW" and replace with the phrase "the relevant EPA".
28. In condition 2.24, delete the phrase "DECCW" and replace with the phrase "the EPA".
29. In condition 2.25, delete the second instance of the word "development" and replace with the word "project".
30. In condition 2.31, delete the word "any" and replace with the word "the".
31. Delete condition 2.32 and replace with the following:
 - 2.32 Prior to the issue of a Construction Certificate for the applicable stage(s), the Proponent shall obtain an approval from the relevant roads authority for the design of the site access intersections from Hue Hue Road and Sparks Road.

32. Immediately after condition 2.32, insert new condition 2.32A as follows:
- 2.32A A subdivision certificate for the following stages of the project shall not be issued until the Proponent has completed the site access intersection:
- a) for Stage 1A, from Hue Hue Road to the satisfaction of the relevant roads authority; and
 - b) for Stage 1C, from Sparks Road, to the satisfaction of the relevant roads authority.
33. In subpoint a) of condition 2.34, delete the phrase “seagull arrangement with left turn auxillary lane” and replace with the phrase “channelised right-turn treatment with left turn auxiliary lane”.
34. In condition 2.36, delete phrase “for Stage 1” and replace with the phrase “as applicable to each stage”.
35. In subpoint a) of condition 2.39, delete the phrase “DECCW and Office of Water” and replace with the phrase “the Department’s Environment and Heritage Group and Water Group”.
36. In condition 2.41, delete the phrase “The constructed” and replace with the phrase “Unless otherwise agreed to in writing by Council, each stage of the”.
37. In condition 2.41, insert a comma immediately after the phrase “Design Code”.
38. In condition 2.41, insert the phrase “for the associated stage of the project” immediately after the phrase “prior to the issue of a Subdivision Certificate”.
39. In condition 2.48, delete all instances of the acronym “DECCW” and replace with the phrase “Heritage NSW”.
40. In condition 2.53, delete the phrase “issue of the relevant construction certificate” and replace with the phrase “commencement of construction of each stage of the project”.
41. In condition 2.55, delete the paragraph immediately after subpoint i) and replace with the following:
- The CTMP must be prepared in consultation with Council.
42. Immediately after condition 2.55, insert new condition 2.55A as follows:
- 2.55A The Proponent must ensure the CTMP (see condition 2.55) is approved by Council and the Certifying Authority prior to the commencement of construction of each stage of the project.
43. Delete condition 2.56.
44. In condition 2.57, delete the phrase “issue of a Construction Certificate for” and replace with the phrase “the commencement of construction of”.
45. In condition 2.59, delete the phrase “issue of a construction Certificate” and replace with the phrase “commencement of construction of each stage of the project”.
46. In condition 2.59, delete the word “Principal”.
47. In condition 2.62, insert the phrase “, unless required for the next stage of the project” immediately after the word “site”.
48. In condition 2.66, delete the phrase “issue of a construction certificate” and replace with the phrase “commencement of construction of each stage of the project”.