



190827 SVD/BM

15<sup>th</sup> July 2022

NSW Department of Planning, Industry & Environment

Attention: Patrick Copas  
Patrick.Copas@planning.nsw.gov.au

**RE: RESPONSE TO SUBMISSIONS REPORT  
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 Delcare Constructions Pty Limited, 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 only objective behind the modification is to include additional staging to Stage 2; namely Stage 2A (Lots 101-109 and 112-121) and Stage 2B (Lots 110 and 111).

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 ADW Johnson, as well as a temporary turning arrangements plan (**Attachment A**).

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## 2. MP07\_0162

### 2.1 Approved Development & Ownership

MP07\_0162 was approved on 27<sup>th</sup> August 2010 for:

Project Approval for Stages 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 onsite infrastructure including stormwater, roads and service infrastructure;
- Landscape works and rehabilitation of conservation areas;
- Dedication of conservation lands to Council;
- Construction of two (2) site entries at Sparks Road and Hue Hue Road;
- Construction of a bridge across Buttonderry Creek; and
- Temporary stockpiling.

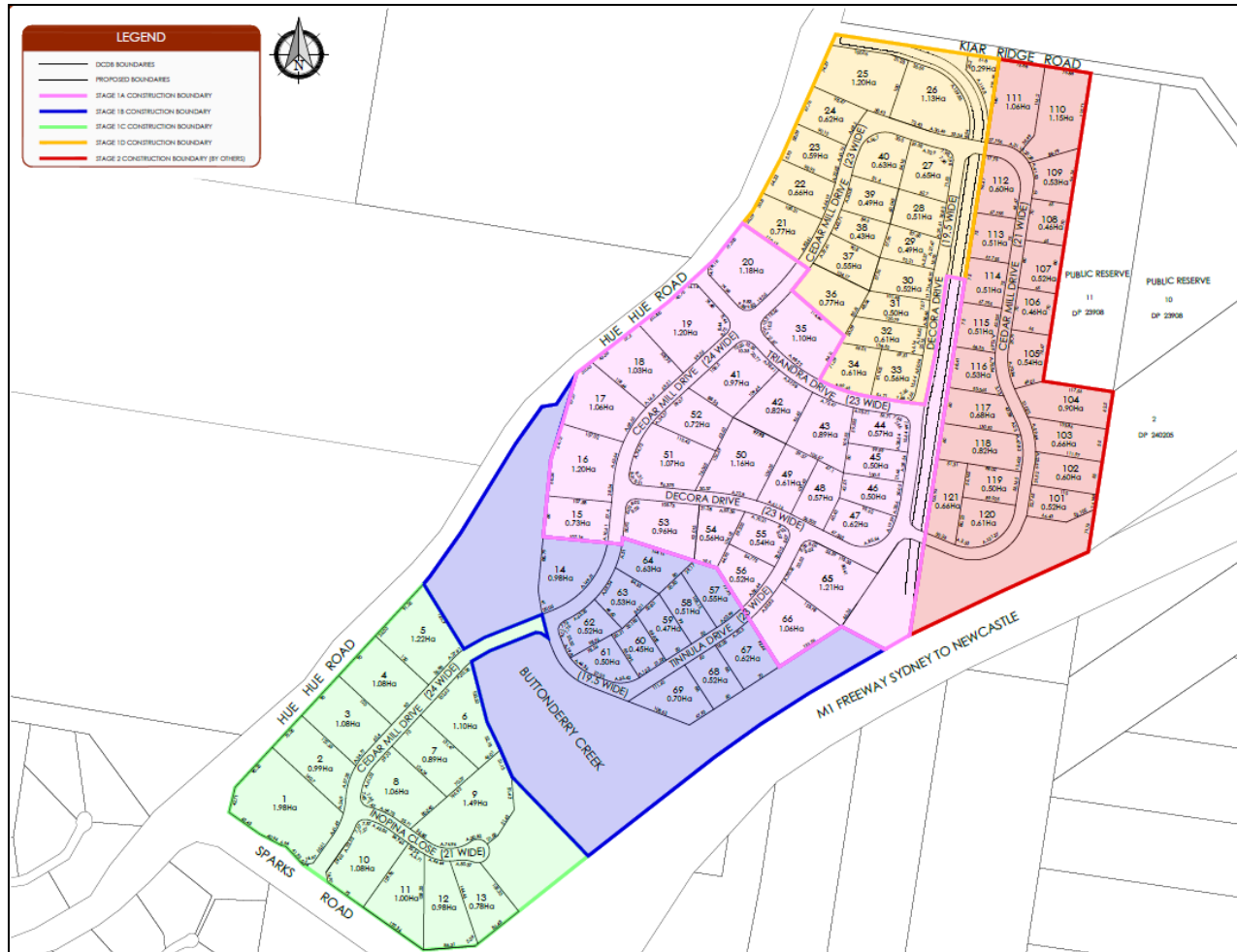
The development was proposed in two (2) stages as follows:

- 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 and 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 BA**.

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





**Figure 2: Current Approved Staging Plan (Rev E dated: 21-03-22)**

Other amendments approved included:

- Alignment of the project's flooding and stormwater infrastructure with Central Coast Council's current requirements;
- Updated design for the site entry intersection off Hue Hue Road; and
- Minor administrative amendments to conditions.

## 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 Motorway 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 (see Figure 3).

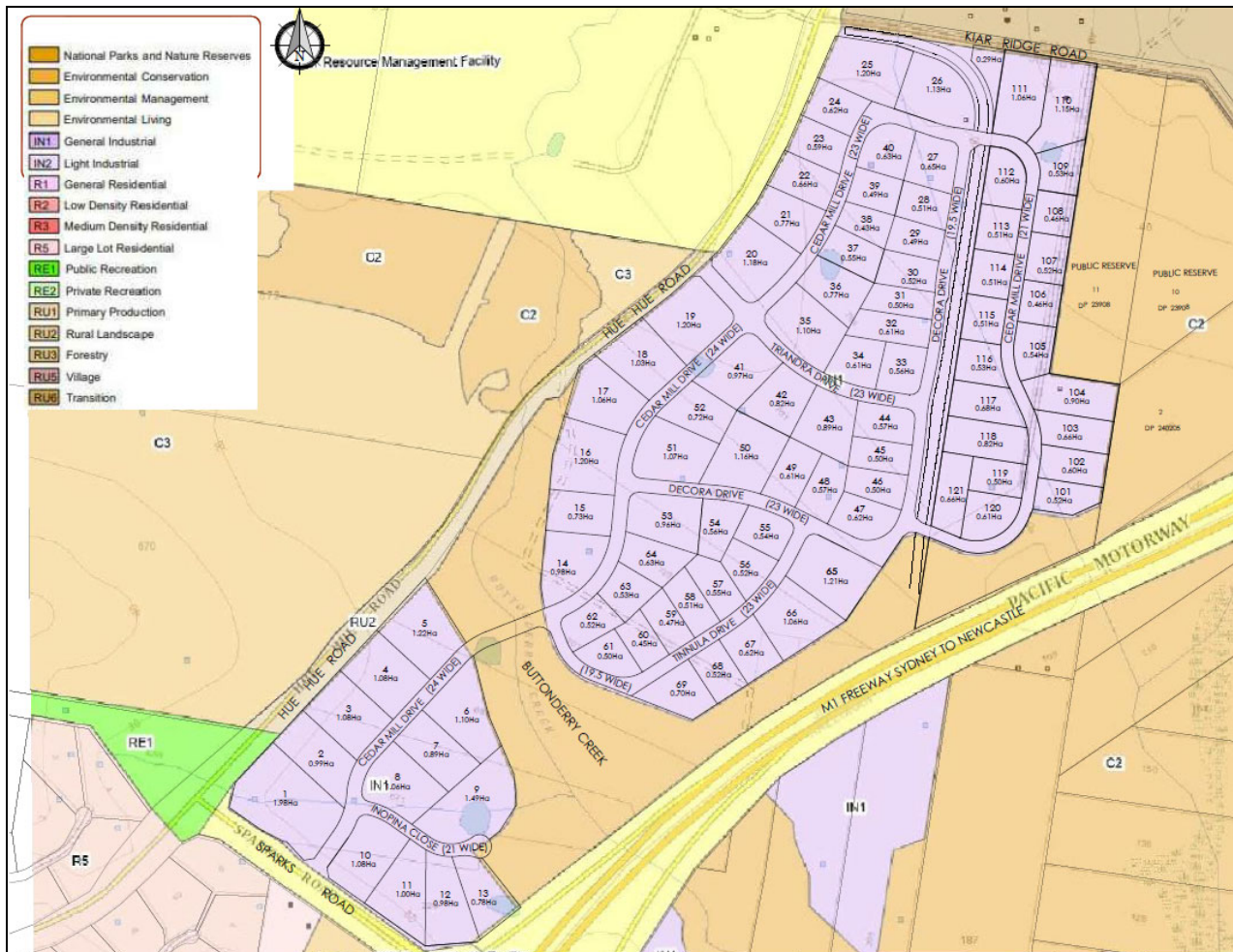


Figure 3: Approved Subdivision Plan with Zone Overlay

### 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 4). 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 4: Northern Growth Corridor (Source: CCRP 2036)

## 2.4 Key Infrastructure

As part of MP07\_0162, the following key infrastructure is required:

- 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;
- Sewer pumping station, rising main and trunk gravity sewer main;
- Trunk potable water mains.

## 2.5 Stormwater

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

Council's current preferred strategy to manage stormwater is more nature based, incorporating less hard infrastructure. As a result, as part of the recently approved modification, the conditions were amended to allow the proponents and Council to agree to a modified treatment to this affect through the Subdivision Works Construction Certificate (SWCC).

## 2.6 Flooding

The subject land is affected by flooding primary around Buttonderry Creek. As part of the development, significant amounts of fill were approved to raise 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 stormwater management 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 the 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 SWC documentation.

As a result of the above, Condition 2.12 requires a revised comprehensive flood, stormwater and water quality modelling report to be submitted with the SWC. This document will assess the detailed design of the proposed 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<sup>th</sup> May 2009), 11ha of remnant vegetation and 22ha of disturbed vegetation was required to be removed. This included impacts to the E2 zone due to the proposed construction of stormwater infrastructure, servicing and the bridge crossing of Buttonderry Creek. These impacts equated to the removal of 17,200m<sup>2</sup> of the existing 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 that time, significant upgrades have occurred to the Sparks Road interchange which would have improved access and egress from the M1 Motorway.

As part of the recent modification, the approved Stage 1 sub-staging altered the way in which traffic would be dispersed to the local network in that Stages 1A and 1B would use only the Hue Hue Road access until the bridge over Buttonderry Creek and second access to Sparks Road was constructed in Stage 1C. As part of the modification a traffic impact assessment was undertaken which concluded that there continued to be spare mid-block capacity on Hue Hue Road; and that the Sparks Road/Hue Hue Road intersection and the Hue Hue Road site access would continue to operate at a Level of Service (LoS) A, prior to the provision of the second access.

## 2.9 Project Status

To date, clearing and bulk earthworks across Stages 1A – 1C (excluding clearing within the environmental zoned areas) has commenced. A SWC for the Stage 1A Civil Works was also issued on 24<sup>th</sup> June 2022.

The proponent also understands that construction for Stages 1B and 1C will follow quickly after Stage 1A; however, the timing of Stage 1D is unknown at this stage.

## 3. PROPOSED MODIFICATION APPLICATION (MA) – “MOD 2”

The proposed sub-staging will include:

Stage 2A refers:

- Lots 101-109 and 112-121;
- Earthworks including regrading and filling;
- Partial construction of internal Roads No. 6 (Cedar Mill Drive);
- Provision of necessary infrastructure to service Stage 2A;
- Landscape works as relevant to Stage 2A;
- Payment of biodiversity contributions for Stages 2A; and
- Provision of ultimate stormwater works as required for Stages 2A and 2B.

Stage 2B refers:

- Lots 110 and 111;
- Earthworks including regrading and filling;
- Partial construction of internal Roads No. 6 (Cedar Mill Drive);
- Provision of necessary infrastructure to service Stage 2B;
- Landscape works as relevant to Stage 2B; and
- Payment of biodiversity contributions for Stages 2B.

A copy of the proposed staging plan is included within **Attachment A**.

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

#### 4. DETAILS OF AND JUSTIFICATION FOR PROPOSED MODIFICATION

The proponent for Stage 2 owns a civil construction company and as such, is able to commence construction of Stage 2 immediately. For this reason, it is requested that Stage 2 include sub-staging also, to allow construction of the majority of the allotments following completion of Stage 1A which will provide access to the site.

Taking the above into consideration, it is proposed to update the staging plan within the approved documentation and approved staging description.

#### 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 relate only to the inclusion of sub-staging 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 will remain as approved under the latest modification.

Further, traffic and bushfire assessments have been undertaken to ensure that no additional interim impacts will result from the staging proposed (see **Attachments E** and **F** 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.

(c) the address, and formal particulars of title, of the land on which the development is to be carried out,	See Major Projects Portal Information.
(d) a description of the proposed modification to the development consent,	Described within Sections 3 and 4.
(e) a statement that indicates either: (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or (ii) that the modification is intended to have some other effect, as specified in the statement,	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 <b>Attachment B</b> .
(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 unchanged.

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 potential that Stage 2A could proceed following Stages 1A or 1B and thereby rely on only one (1) 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 Stages 1A, 1B, 2A and 2B 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, 1B, 2A and 2B 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, 1B, 2A and 2B prior to the completion of the Sparks Road access;

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

Further to the above, as the proposed staging will result in a temporary “dead-end” road, 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 G** 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 potential that Stage 2A could proceed following Stages 1A or 1B and thereby rely on only one (1) 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 (refer to **Attachment F**). In accordance with this advice, a temporary secondary emergency access is proposed on to Kiar Ridge Road to ensure that two (2) escape routes are provided prior to the Sparks Road access being constructed. To ensure this is not used for day to day traffic, it would have gated access, chained and locked with a master key held by NSW Rural Fire Service. This would ensure it would be used in emergency situations only. A plan has been provided within **Attachments G** providing this detail.

### 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 nonetheless require assessment to ensure no additional biodiversity impacts are proposed.

In order to accommodate staging across the site, a temporary secondary access will be required for Stage 2A. This has been placed entirely within the approved development footprint, thereby requiring no additional vegetation removal. Furthermore, it is located over the existing driveway cross over point to Kiar Ridge Road to ensure there are no additional vegetation impacts within the road reserve (see Figures 5 and 6).



**Figure 5: Existing Access on to Kiar Ridge Road for Lot 5 DP259531**



**Figure 6: Existing Access on to Kiar Ridge Road for Lot 5 DP259531**

There will be no changes to the approved stormwater system or any other physical matter which would alter the original assessment of the project with regards to vegetation removal.

Noting the proposed staging, it is requested that contributions toward vegetation removal also be staged and paid on a pro-rata basis.

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.

*(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*

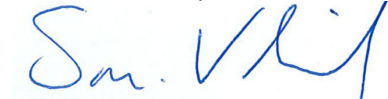
The proposed modifications will continue to be in the public interest most notably through the ability to deliver Stage 2A within the next 12 months, thereby facilitating an immediate provision of jobs to the Central Coast region.

## 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 & 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](mailto:stephaniev@adwjohnson.com.au).

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Step. van Dissel'.

Stephanie van Dissel  
**Senior Town Planner**  
**ADW JOHNSON**

Attachment A:	Proposed Staging Plan
Attachment B:	Owner's Consent
Attachment C:	Certificates of Title
Attachment D:	Proposed Modified Project Approval Conditions
Attachment E:	Traffic Impact Assessment Addendum #2
Attachment F:	Bushfire Compliance Advice
Attachment G:	Temporary Turning and Secondary Access Arrangements

# Attachment A

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PROPOSED STAGING PLAN

# Attachment B

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OWNER'S CONSENT

# Attachment C

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CERTIFICATES OF TITLE

## **Attachment D**

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### **PROPOSED MODIFIED PROJECT APPROVAL CONDITIONS**

# Attachment E

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TRAFFIC IMPACT ASSESSMENT ADDENDUM #2

# Attachment F

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**BUSHFIRE COMPLIANCE ADVICE**



# Attachment G

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## TEMPORARY TURNING AND SECONDARY ACCESS ARRANGEMENTS