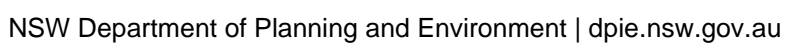




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Cover image: Indicative landscape plan (Peter Andrews + Associates, 2009)

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Glossary

Abbreviation	Definition
Applicant	Delcare Constructions Pty Ltd
BDAR	Biodiversity development assessment report
Council	Central Coast Council
DCP	Development control plan
Department	Department of Planning and Environment
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 2021
Minister	Minister for Planning
RFS	Rural Fire Service
SSD	State significant development
TfNSW	Transport for NSW
TTG	Terrace Tower Group Pty Ltd
Warnervale LF	Warnervale LF 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 to split Stage 2 of the project into two separate sub-stages (stages 2A and 2B).

The application was lodged on 26 July 2022 by Delcare Constructions Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

Warnervale LF Pty Ltd (Warnervale LF) and the Applicant are currently constructing an industrial subdivision known as the Warner Industrial Park at the corner of Sparks Road and Hue Hue Road, Jiliby 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 the Applicant.

In 2014, TTG sold Stage 1 of the project to the former Wyong Shire Council. The site remained undeveloped until 2021, when the Stage 1 land was sold again to Warnervale LF. The Applicant has maintained ownership of the Stage 2 land throughout this period.

At the time of writing this report, Warnervale LF has obtained deposits for the majority of lots within Stage 1 and has commenced bulk earthworks within the footprint of this stage. The Applicant is preparing to commence construction of Stage 2 of the subdivision.

1.2 Subject site

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.

The site is located within Precinct 14 of the Wyong Employment Zone (WEZ), which was listed as a State Significant Site under Schedule 3 of the former State Environmental Planning Policy (Major Development) 2005. The WEZ has a total area of 744 ha, of which 344 ha is zoned industrial and 346 ha is zoned for conservation purposes. Upon commencement of the Wyong Local Environmental Plan 2013, the WEZ was delisted as a State Significant Site.

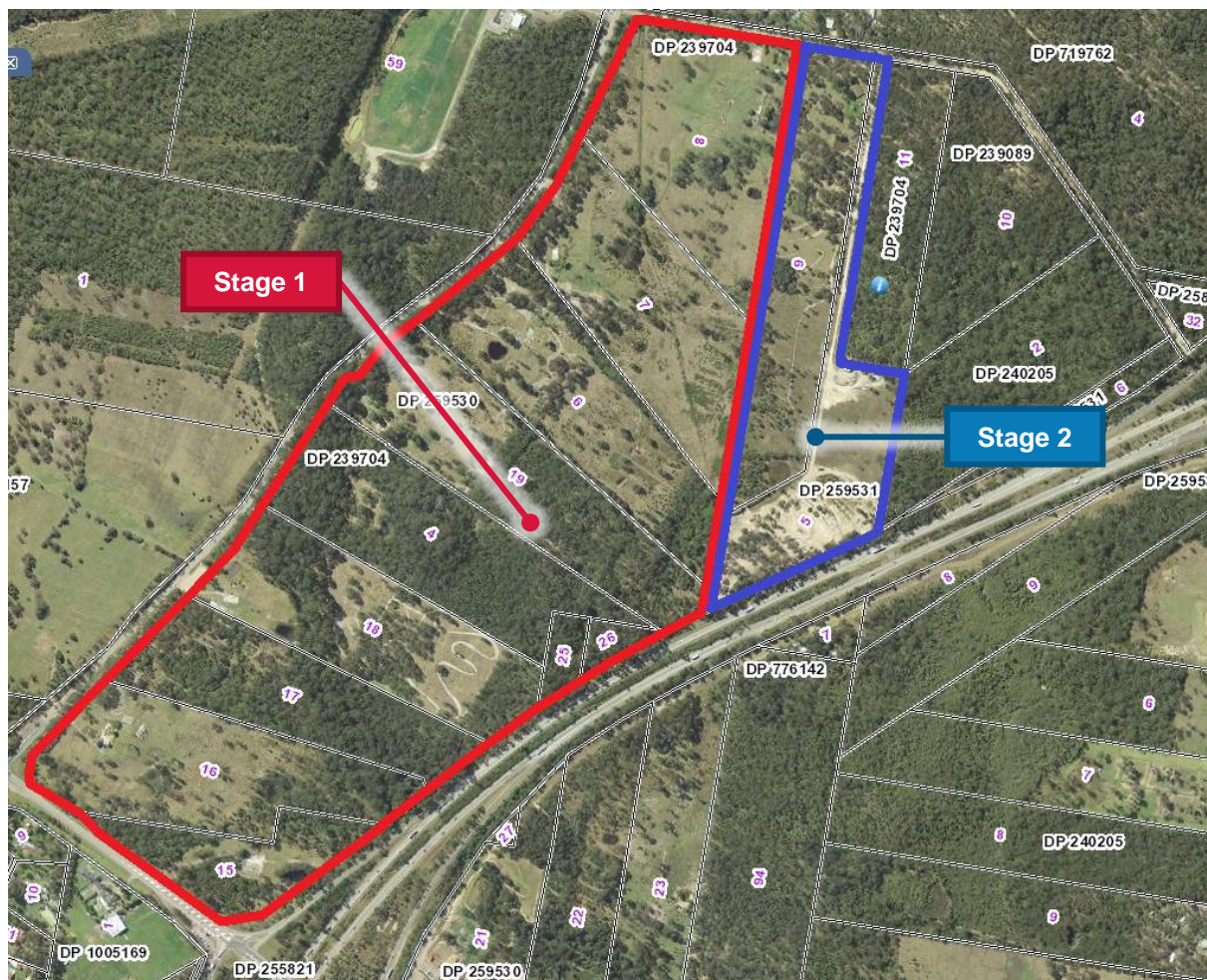


Figure 2 | Subject site

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. 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 has been modified on one previous occasion (MP07_0162-Mod-1). This modification involved:

- the splitting of Stage 1A into four separate sub-stages (stages 1A to 1D) (see **Figure 3**)
- 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
- several administrative amendments to the project approval.

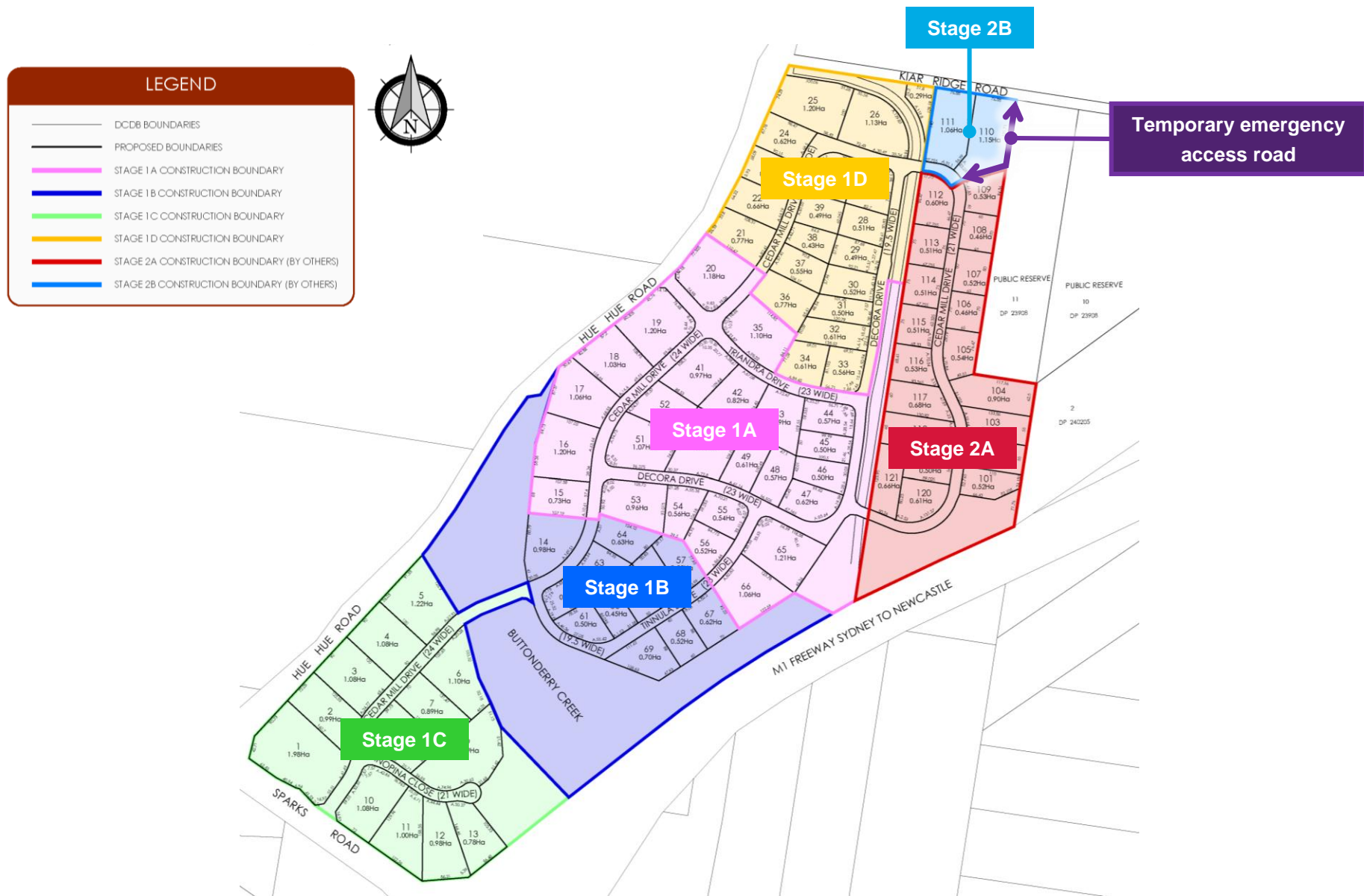
2 Proposed modification

The modification is described in full in the Modification Report included in **Appendix A** and is illustrated on **Figure 4**. The modification seeks approval to split Stage 2 of the project into two sub-stages (stages 2A and 2B).

While construction of Stage 1A of the project is currently underway, it is likely to be several years before Stage 1D and its associated access roads are delivered by Warnervale LF. Consequently, the Applicant has advised the proposed sub-staging arrangements would allow it to deliver the majority of the lots associated with Stage 2 following the completion of Stage 1A. The remaining two lots would then be delivered once Stage 1D has been constructed.

In order to ensure Stage 2A can comply with all relevant access requirements under *Planning for Bush Fire Protection 2019*, the Applicant would provide a temporary emergency access road connecting Cedar Mill Drive (Road No. 6) to Kiar Ridge Road (see **Figure 4**). This road would only be used during emergencies and access would be restricted at all other times.

The Applicant is also seeking to split the project approval's existing offset and infrastructure payment requirements to align with the two new sub-stages. Contributions for stages 2A and 2B would be paid prior to the issue of a subdivision certificate for the associated stage.



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 for Planning (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 Biodiversity Conservation Act 2016

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

The two new sub-stages (stages 2A and 2B) would be located entirely within the approved development footprint and would not result in the removal of additional vegetation beyond that which was assessed under the original application. In addition, the temporary emergency access road required to service Stage 2A would utilise an existing driveway crossing point on Kiar Ridge Road to ensure there are no additional vegetation impacts within the road reserve.

For the reasons discussed above, the Department's assessment concludes a BDAR is not necessary for the proposed modification.

4 Engagement

4.1 Department's engagement

Section 105(2) of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to SSD modifications with minimal environmental impact.

Accordingly, the application was not notified or advertised. However, it was made publicly available on the Department's website on 2 August 2022, and was referred to Council, Transport for NSW (TfNSW) and the Rural Fire Service (RFS) for comment.

4.2 Government advice

Advice was received from one State government authority during the notification period. A summary of this advice is provided below.

TfNSW did not object to the proposed modification given there would be no significant impact on the nearby classified road network. However, TfNSW noted the proposed emergency access road and the impact of the modification upon the performance of the surrounding road network were matters for Council's consideration as the relevant roads authority.

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 TfNSW (see **Appendix A**)
- the Department's assessment report for the original application and subsequent modification application (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
Additional sub-stages	
<ul style="list-style-type: none"> • The proposed modification seeks approval to split Stage 2 of the development into two further sub-stages (stages 2A and 2B). • The Applicant has advised the proposed staging arrangements would allow for the majority of Stage 2 to be delivered prior to the completion of Stage 1D, for which it would otherwise rely upon for access. • During the notification period, no specific concerns were raised in relation to the additional two 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 2 into two 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 two additional sub-stages and their associated infrastructure requirements. • The Department's assessment concludes the proposed substaging arrangements would not significantly increase the environmental impacts of the development as approved, subject to the recommended conditions of consent. 	<p>The Department has recommended the development consent be updated to reflect the proposed staging arrangements, as appropriate.</p>
Traffic and access	
<ul style="list-style-type: none"> • The modification application included an addendum traffic impact assessment to consider whether the two sub-stages would result in any additional traffic impacts, particularly until construction of the 	<p>No additional conditions are required.</p>

Assessment	Recommendation
<p>Buttonderry Creek bridge / Sparks Road intersection has been completed as part of Stage 1C.</p> <ul style="list-style-type: none"> The assessment concluded that while the construction and operation of stages 1A, 1B, 2A and 2B would result in a minor, temporary increase in traffic volumes travelling along Hue Hue Road, this increase would be adequately accommodated within the road's current capacity. In addition, the existing Sparks Road / Hue Hue Road intersection and the site access intersection off Hue Hue Road would continue to operate satisfactorily, with average delay increases and increased queue lengths of less than 4 seconds and 2.4 vehicles in the afternoon peak period, respectively. TfNSW advised it had no comments in relation to the proposed modification and noted the performance of the surrounding road network was a matter for Council's consideration as the relevant roads authority. However, Council did not provide a response in relation to the proposal. 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, 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 proposed modification would be adequately accommodated within the local and regional road network. 	
<p>Bushfire</p> <ul style="list-style-type: none"> The modification application included a bushfire advice letter to assess any potential bushfire risks associated with the two new sub-stages. 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 emergency access road off Kiar Ridge Road and a dead-end turning head as part of Stage 2A. In the modification report, the Applicant advised this road would only be used during emergencies, and that access would be restricted at all other times. In its advice, TfNSW noted the proposed emergency access road was a matter for Council's consideration as the relevant roads authority. However, Council did not provide a response in relation to the proposal. 	<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 emergency access road.

Assessment	Recommendation
<ul style="list-style-type: none"> During the assessment of MP07_0162-Mod-1, Council advised it did not support the construction of a separate temporary access road from Hue Hue Road to the development site due to potential traffic impacts. However at the time, the Department noted this access road was required to ensure that two escape routes could be provided until the Sparks Road access point and the Buttonderry Creek bridge can be constructed. Consequently, the Department is satisfied that the temporary emergency access road proposed under the subject modification application is necessary to ensure that Stage 2A can be accessed by emergency vehicles and/or safely evacuated during a bushfire event. 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. 	
Contributions	
<ul style="list-style-type: none"> 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 a Special Infrastructure Contribution (SIC) to the Planning Secretary (for new infrastructure works throughout the WEZ). As part of the proposed modification, the Applicant is seeking to allow for the Stage 2 contributions to be paid on a pro rata basis across each sub-stage. The Department has reviewed the amended timing proposed by the Applicant and is satisfied it would continue to ensure that funds are made available to Council and the Planning Secretary within a reasonable timeframe. The Department's assessment concludes the modification would not adversely impact on the rehabilitation and protection of conservation lands or the provision of State infrastructure within the WEZ, subject to the recommended modifying conditions of consent. 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> pay the biodiversity contributions for Stage 2 on a pro rata basis, prior to the issue of a subdivision certificate for the corresponding stage pay the applicable SIC for Stage 2 on a pro rata basis, across the two sub-stages.

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The modification seeks consent to allow for Stage 2 of the subdivision to be delivered across two separate sub-stages (stages 2A and 2B).

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

- the introduction of the two addition sub-stages would continue to ensure the subdivision's lots are supported by appropriate infrastructure and services
- the emergency access road off Kiar Ridge Road is a necessary, temporary measure to ensure that Stage 2A can be accessed by emergency vehicles and/or safely evacuated during a bushfire event
- the amendments to the contribution-related conditions would continue to ensure that funds are made available for the acquisition of other conservation lands and the construction of new State infrastructure within the WEZ
- 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-2 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 it 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:



16 September 2022

Patrick Copas

Senior Environmental Assessment Officer
Industry Assessments

8 Determination

The recommendation is **Adopted** by:



20 September 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 '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 15 July 2022 and all attachments
- the document titled 'Statement of commitments' prepared by ADW Johnson Pty Ltd, dated 6 September 2022.

Submissions and advice

- the advice received from TfNSW.

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 MP07_0162-Mod-2 may be viewed on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-2-introduction-stages-2a-and-2b>.

Appendix B – Notice of Modification

The modifying instrument for MP07_0162-Mod-2 may be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-2-introduction-stages-2a-and-2b>

Appendix C – Consolidated consent

The consolidated consent for MP07_0162-Mod-2 may be found on the Department's website at:
<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-2-introduction-stages-2a-and-2b>