

26 February 2020

2200058

Jim Betts
Planning Secretary
Department of Planning, Industry and Environment
12 Darcy Street, Parramatta NSW 2150

Attention: Emma Butcher, Planning Officer, Regional Assessments

Dear Ms Butcher,

SECTION 4.55(1A) MODIFICATION APPLICATION MP_10_0137 (MOD 13) HUNTLEE NEW TOWN, BRANXTON

This application has been prepared by Ethos Urban on behalf of Huntlee Pty Ltd, pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), and Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A Regulation) to modify Stage 1 Project Approval MP10_0137 for Huntlee New Town (the site).

The modification relates to the amendment of lot boundaries within Residential Substages 5 and 6 (R5 and R6), triggering a reduction of seven residential allotments and resulting in an overall total of 1,619 residential lots across the total precinct. One commercial allotment is removed within the Town Centre consistent with that proposed under Modification 11.

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:

- Amended Huntlee Stage 1 Masterplan and Staging Plan, prepared by Daly Smith (**Attachment A**);
- Amended Huntlee Stage 1 Road Hierarchy Plan, prepared by Daly Smith (**Attachment B**);
- Amended Huntlee Stage 1 Lot Count Plan, prepared by Daly Smith (**Attachment C**);
- Amended Huntlee Stage 1 Project Embellishment Plan prepared by Daly Smith (**Attachment D**);
- Amended Huntlee Stage 1 Constraints on Amended Lots Plan prepared by Daly Smith (**Attachment E**); and
- Changes from MOD 9 Masterplan prepared by Daly Smith (for information purposes at **Attachment F**).

1.0 Consent proposed to be modified

Project Approval MP 10_0137 was granted by the Planning and Assessment Commission (PAC) on the 24th April 2013 for Stage 1 of the Huntlee New Town, comprising residential subdivision of 1,473 lots, 14 super lots, a primary school allotment and the creation of drainage and open space reserves, site preparation works and internal and external road works.

The development of Huntlee is long-term and has occurred over several sub-stages. The progression of the Huntlee New Town and the detailed design of the residential precincts within the Stage 1 approval have provided the impetus for a number of minor modifications to the approval, as outlined in Section 1.1 below.

This Section 4.55(1A) modification application seeks approval for minor amendments as a result of ongoing design refinements, including amending the lot boundaries within residential substage R5 and R6, resulting in a reduction of seven residential lots overall. The modifications are generally consistent with the Project Approval and are described in detail in Section 2.

1.1 Previous Modifications to the Project Approval

As stated, the progression of the Huntlee New Town and the detailed design of the various residential precincts within Stage 1 have provided the impetus for a number of minor modifications to the Project Approval. Nine previous modifications have been submitted to the Department and are outlined below.

- MP10_0137 MOD 1 – Comprised the minor alterations to the approved residential lot layout and subdivision pattern within Stage 1 Entry Village Precinct and the amendment of associated conditions to reflect the plans of subdivision. The modification was approved on 20th January 2015;
- MP10_0137 MOD 2- Comprised the modification of the super lot layout within the Town Centre precinct and the addition of two laneways. The modification also included minor alterations to the Stage 1 Approval boundary to accommodate riparian and water basin detention works as well as the relocation of open space and amendment of Consent Conditions. The modification was approved by the PAC on 2 April 2015;
- MP10_0137 MOD 3 – Comprised the redesign of the residential lots and road layout within sub-stages 2-5 as well as minor amendments to lots in sub-stage 1. The modification included the reconfiguration of the open space layout and the relocation of a sporting oval. The modification was approved by the PAC on 17 August 2015;
- MP10_0137 MOD 4 – Comprised minor modifications to the residential subdivisions layout in sub-stages 3-5. The proposed modifications related to the residential lot layout and access paths as well as the addition of a vehicular laneway and one new residential allotment. The modification was approved by the PAC on 19 November 2015;
- MP10_0137 MOD 5 – Comprised modifications to extend the Stage 1 approved boundary to include an additional 3.1 hectares of land to relocate 33 residential lots. This modification was approved by the PAC on 5 July 2016;
- MP10_0137 MOD 6 – Comprised modifications to the approved Town Centre lot layout and subdivision pattern, as well as modifications relating to contamination and remediation, the provisions of utility services and intersection upgrades;
- MP10_0137 MOD 7 – Comprised minor modifications to provide an access road to a portion of RMS owned land on the northern boundary. This modification was approved by the PAC on 17 May 2017;
- MP10_0137 MOD 8 – Comprised modifications to the residential subdivision layout, street layout, open space and relocation and reconfiguration of the proposed school allotment. This S75W modification was lodged on 12 May 2017 and was approved by the PAC on 4 May 2018;
- MP10_0137 MOD 9 – Comprised modifications to amend the Stage 1 site boundary to include a new substage 16 that comprises four super lots and sixteen residential dwelling allotments. Reconfigure the subdivision layout of the Town Centre and extend the town centre to include a K-12 school site. This modification was approved on 13 December 2019.
- MP10_0137 MOD 10 – Comprised modification to seek approval to reconfigure residential lots 1, 4, 6, 7, 9 and 10, subdivide super lots within the Town Centre into smaller commercial lots and amend the timing for the delivery of road infrastructure. This modification was approved on 22 May 2019; and
- MP10_0137 MOD 11 – Comprised modification to seek approval to amend road widths and lot boundaries in Town Centre substages TC1 and TC2 and residential substages R2, R3, R5, R6, R8, R9, R11, R12, R13, R14, R15 and R16. This modification is still under assessment by DPIE.
- MP10_0137 MOD 12 – Comprised modification to seek approval to include 4 additional residential lots within residential substage R5 and a minor decrease to the overall amount of open space for the Huntlee precinct. This modification was lodged on 5 February 2020.

Modification 11 and 12 also proposes changes in lot numbers, which will need to be taken into consideration as part of the assessment of Modification 13, as discussed in **Section 2.1** below.

2.0 Proposed modifications to the consent

This modification application seeks to make minor amendments to the lot boundaries contained in residential substages R5 and R6 which results in an overall reduction of seven residential allotments within the overall Huntlee precinct, as a result of ongoing design and product refinements. As a result, the overall lot numbers have been updated to reflect these changes. It should be noted that there is no change to the Stage 1 Project Approval Site boundary as part of this modification. The proposed modifications are described in more detail below.

2.1 Modifications to the lots proposed

It is proposed to amend existing approved lot boundaries within residential sub-stages R5 and R6 which results in a reduction of seven residential lots. The remaining lots in question will increase in size with the outcome resulting in fewer, larger lots.

Additionally, as a result of the reduction of seven residential allotments, the substage boundary between residential substages R5 and R6 is proposed to be amended to accommodate the revised lot boundaries. Refer to **Figure 1**.



Figure 1 Comparison of subject area proposed by Mod 9 (left) and as amended by Mod 13 (right)

Source: Daly Smith

As a result of these changes due to ongoing design development of Huntlee, various amendments have been sought to refine the lot layout. **Table 1** on the following page illustrates the current status arrangement of lot yield in each substage across the development in the context of the approved development per Modification 9 and this proposed Modification 13.

There is also a reduction of one allotment in TC1 (consistent per proposed Modification 11) from the approved 67 allotments under Modification 9.

Table 1 Approved and modified reconciliation of residential lots and superlots within Stage 1

Sub-Stage Name	No. of Lots Approved Under MP10_0137	Lots changed under previous approvals	Total approved under Mod 9	Difference (Between Mod 9 and Mod 13)	Total proposed under Mod 13
1	208	+2 (210)	215 6 infrastructure lots	0	215 6 infrastructure lots
2	98	+9 (107)	107	0	107
3	94	+23 (117)	120	0	120
4	91	+33 (124)	128	0	128
5	111	-	125	-6	119
5 (Large lot)	120	-	123	0	123
6	60	-	64	-1	63
7	147	-	104	0	104
8	106	-	143	0	143
9	130	-	75 3 infrastructure lots	0	75 3 infrastructure lots
10	81	-	152	0	152
11	118	-	82	0	82
12	109	-	104	0	104
13	1 (superlot)	-	66	0	66
14 (superlot)	1	-	1	0	1
15 (superlot)	1	-	1	0	1
16 (superlots)	-	-	4	0	4
16 (allotments)	-	-	17	0	17
'Lot 34'	1	-	1	-	1
Town Centre Superlots	11	-	0	0	0
Town Centre Lots	-	+2	67	-1	66
Total Resi Lots	1473	1473	1626 (excluding Stage 14, 15 and 16 superlots and infrastructure lots) 1632 (including Stage 14, 15 and 16 superlots)	-7	1619 (excluding Stage 14, 15 and 16 superlots and infrastructure lots) 1625 (including Stage 14, 15 and 16 superlots)
Total Superlots	14	-	6		7
Total Dwellings	2345	2345	2631	-7	2624

Notwithstanding the above, both Modification 11 and Modification 12 remain under assessment by DPIE, which propose to alter the amount of lots proposed from the approved number under Modification 9. Modification 11 proposes no increase to residential allotment numbers, from Modification 9. Modification 12 proposes to increase residential allotments by four from Modification 9.

The proposal involved in this modification application (Modification 13) proposes a reduction of seven residential allotments from Modification 9. Refer to **Table 2** below for a consolidated summary of residential allotment changes from Modification 9 proposed within Modification 11, 12 and 13.

Table 2 Summary of Changes from Modification 9

	Approved Modification 9	Modification 11	Modification 12	Modification 13
Increase in Residential Lots	-	0	+4	-
Decrease in Residential Lots	-	-	-	-7
Cumulative total amount of Residential Lots	1,626	1,626	1,630	1,623

Therefore, Condition A1 below has been amended to reflect the overall amount of lots proposed in Modification 13 from the approved Modification 9 layout, noting this number will change pending determination of Modification 12. Refer to **Section 2.2** below.

2.2 Modifications to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***.

2.2.1 Condition A1

A1. Development Description

Approval is granted only to carrying out the development described in detail below:

Subdivision of Stage 1 of the Huntlee New Town site including:

- subdivision to create ~~1,626~~ ***1,619*** residential allotments, 7 super lots, 1 allotment for a school; landscaped areas,
- drainage, public open space and recreation areas;
- associated bulk earthworks; and
- infrastructure including roads, drainage works and utility services provision.

Reason: It is proposed to amend the condition to reflect the reduction of 7 lots in substages R5 and R6 as a result of further design amendments to the lots boundaries within the residential substages.

2.2.2 Condition A2

A2. Development in Accordance with Plans and Documentation

The development will be undertaken in accordance with the following documentation:

- Project Application – Environmental Assessment Report – Huntlee Stage 1 Subdivision and Infrastructure Works (by JBA March 2011) and associated appendices as amended by:
- Project Application – Preferred Project Report – Huntlee Stage 1 Subdivision and Works (by JBA September 2012) and its associated appendices
- Statement of Commitments in aforementioned Preferred Project Report (by JBA Planning 2012)
- Amended subdivision plan “121129 Overall Lot Plan_1 to 3000” (Roberts Day Dec 2012) as to be amended in line with the additional amended subdivision concept plan “Huntlee – Stage 1 Concept Masterplan dwg UD4-401 01.02.13” (Roberts Day Feb 2013)

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M) and as amended by:

- **MOD 13 Application – Section 4.55(1A) Modification to Huntlee Major Project Approval MP 10-0137 Huntlee New Town, prepared by Ethos Urban, dated 21 February 2020, including supporting documentation;**

Reason: It is proposed to amend the condition to reflect the amended plans.

2.2.3 Condition A6

Condition A6 Staging Plan

- a) Development should be carried out in accordance with the amended Staging Plan 20406-1 to 3000 (MOD ~~9~~ **13**) **Issue 2** prepared by Daly Smith Pty Ltd dated ~~30/08/2019~~ **21/02/2020**.
- b) The Staging Plan can be varied with written consent of the Secretary of the Department of Planning and Infrastructure, or his nominee.

Reason: It is proposed to amend the condition to reflect the amended plans.

2.2.4 Condition C9

C9. Landscape Plan modifications

- a) Detailed landscape plans are to be prepared in consultation with Cessnock Council prior to the issue of the first construction certificate for each sub stage, and are to be generally in accordance with the “Huntlee Landscape Concept Report” Hassell August 2012 as amended by the:
 - Amended Landscape Masterplan prepared by AECOM Issue B dated 16 July 2015 (relating to Stages 2 to 5)
 - Landscape and Public Open Space report prepared by AECOM Issue C dated 5 December 2017 (relating to Stages 6 to 13)
 - Landscape masterplan – 20406-1 to 3000 (MOD~~9~~ **13**) – Public Embellishments **Issue 2** prepared by Daly Smith dated ~~21 August 2019~~ **21/02/2020**.

Reason: It is proposed to amend the condition to reflect the updated plans.

3.0 Substantially the same development

Clause 3BA (6) of the Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A Regulation) states

“In the application of section 4.55 (1A) or (2) or 4.56 (1) of the Act to the following development, the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent (as last modified under section 75W):

- (a) development that was previously a transitional Part 3A project and whose approval was modified under section 75W,*
-”*

The onus is on the applicant to satisfy the consent authority that the modified development will be substantially the same (*Seaforth Services Pty Limited v Byron Shire Council (No.2) (1991) 72 LGRA 44*). The following principles apply when determining whether a development as modified will be “substantially the same development”:

1. The meaning of “modify” is to alter without radical transformation;
2. The term “substantially” in this context means “essentially or materially or having the same essence”;

3. The assessment involves a comparison between the development as approved originally and the development as proposed to be modified. One does not compare the development as modified with what exists currently on the site, or the development as last modified (if applicable);
4. To assess whether a consent as modified will be substantially the same requires a comparison of before and after situations. Differences may involve differences of the result or outcome, as well as differences of the process of implementation (i.e., the way in which the development is carried out);
5. The consent authority is required to undertake both a qualitative and quantitative comparison of the whole development as consented to and the whole development to which the consent as modified relates. In other words, the consent authority must compare the physical features or components of the development as currently approved and modified, and appreciate the qualitative differences between the approved and modified developments, including the context in which the original application was approved;
6. The consent authority also needs to consider whether the proposed modifications will generate any additional impacts, and whether the proposed modifications relate to “material or essential features” of the development as originally approved.

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The modified development retains the same activity and proposed land uses as the approved development;
- The scale and density of the development are commensurate to that previously approved;
- The marginal decrease of 7 residential lots is considered to be of minimal impact and does not change the traffic modelling for Stage 1 of the development, which considers the impacts of approximately 2,350 dwellings. The approved vehicular entrance or exit points from the precinct remain unchanged, and the reduction of lots is likely to result in lesser impacts to the local road network; and
- The modifications remain within the Stage 1 Project Approval boundary. The proposed allotments remain substantially the same as the Stage 1 approval and the Huntlee DCP.

4.0 Environmental assessment

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 following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

4.1 Compliance with Relevant Statutory Plans and Policies

The development, as proposed to be modified, remains generally consistent with the following statutory plans and policies.

Consistency with Stage 1 Major Project Approval

The proposed modifications are considered to be consistent with the Huntlee Stage 1 Major Project Approval. The proposed modification is a result of ongoing design refinements in view of the following:

- Whilst the modification seeks to reconfigure some internal lot boundaries within residential substages R5 and R6, with a reduction of seven lots proposed, the general substage grid alignment remains consistent with the Stage 1 approval and the Huntlee DCP (refer to **Section 2.1**). The amended allotment boundaries will ensure that fewer, larger lots that remain consistent with minimum lot sizes.

- Despite the reduction of seven residential lots, the modifications remain consistent with the Stage 1 approval and the Huntlee DCP to provide the lots (refer to **Section 2.3**). The modification lots will ensure consistency with the vision for Huntlee contained within the DCP in that it will continue to promote housing diversity by providing a range of lot and housing types.
- This application will marginally decrease residential lots by seven (less than 0.4% decrease) and as such will not result in any impacts to population density nor will have an impact on traffic generation.
- The modifications remain capable of accommodating the necessary APZs and as such do not create any adverse bushfire impacts, as discussed further in **Section 4.3** below.

In light of the above, it is considered that the proposed modifications are consistent with the Stage 1 approval.

Cessnock Local Environmental Plan 2011

The proposed modifications are within the Cessnock LGA and subject to the Cessnock Local Environmental Plan 2011 (Cessnock LEP). The site is zoned R1 General Residential. Land uses proposed under this modification comprising residential use and recreational public open space area remains unchanged, which are permitted with consent in the R1 zone. The proposed modifications remain consistent with the original project approval.

Huntlee Development Control Plan 2013

The proposed minor changes to the Stage 1 Major Project Approval, as outlined in Section 2.0, retain consistency with the provisions contained in the Huntlee DCP. The modification has been designed with the controls contained within the DCP in terms of subdivision design and minimum lot sizes and it is concluded that the modification is consistent with the controls.

4.2 Urban Design and Lot Layout

The siting of the subject lots in this location are not proposed to change, nor is the configuration of the blocks in which the lots are positioned proposed to change. The proposal involves the reconfiguration of internal allotment boundaries to increase lot sizes and produce a better outcome for the built form interpretation of the streetscape in the approved block arrangement. In this regard, the existing approved allotments within Substages R5 and R6 are smaller allotments, being approximately 400 and 600m² in size, compared to the proposed new allotments within the same block configuration being between approximately 500m² and 800m². The proposed allotment amendments will not impact on the community's ability to navigate the streetscape. As such, the modifications to lot sizes, with a resulting reduction of seven lots, present an improved outcome from a smaller, denser allotment configuration (and subsequent built form) to slightly larger allotment configuration (and less dense build form), allowing further diversity in future built form and product outcomes.

4.3 Bushfire

It is considered that the minor nature of the modifications are intended to facilitate revised internal lot boundaries within wider block of lots to marginally increase the size of the internal lots to which this modification applies as a result of market demand, do not trigger the criteria outlined with Planning for Bushfire Protection 2006 (PBP 2006) for residential and/or Special Fire Protection Purpose (SFPP). In this regard, the provisions under the previously approved BCA for fire safety will be accepted for bushfire purposes where the aims and objectives outlined in section 1.1 of PBP (2006) can be met.

With regard to the residential subdivision areas, these areas have been subject to minor modifications that do not alter the positioning or scale of the allotment blocks and existing BAL ratings applicable to these wider blocks, and is considered to remain in accordance with the approved documentation as the proposed changes are extremely minor which will not create any adverse bushfire impacts. It is considered that minor alterations to lot layouts as proposed under this application does not affect compliance with PBP 2006, and the assessment and outcomes remains consistent with the previously assessed Modification 9.

4.4 Flooding

There are no changes to flood liable land under this modification and the existing findings of the flood assessment provided as part of the original application and subsequent modifications remains consistent. Flooding levels are illustrated and included on the Amended Huntlee Stage 1 Constraints on Amended Lots Plan prepared by Daly Smith (**Attachment E**), with the areas subject to the changes proposed under this modification outside of the 100-year floor level plane.

4.5 Services

The proposed modification will not have an adverse impact on the infrastructure services provided to the residential allotments. The service infrastructure planned for Huntlee New Town is capable to accommodate the entire town which allows for the construction of up to 7,500 dwellings and approximately 200 hectares of mixed-use employment lands. The proposed modifications will not disrupt the ability to provide infrastructure services to Huntlee as the proposal relates to modified lot boundaries only.

4.6 Social and economic impacts

In accordance with the original intent of the major project, the modifications will continue to facilitate the future development of the proposed allotments at future development stages, which will carry with its corresponding economic benefits. The proposal will not result in any adverse social impacts. Most importantly, whilst minor, the reduction of seven lots, will result in fewer lots of larger sizes which is considered a better outcome for the amenity of the residential lots and their future occupants in promoting social welfare by providing additional allotment space per lot and providing better economic investment value. The modification will not have any impact on open space provision for Huntlee.

4.7 Site suitability and the public interest

The proposal is consistent with the relevant planning provisions and will have no adverse environmental impact on the site. The proposed modifications are minor and still achieve consistency in that it is suitable to allow future development, as well as provide housing that maintains the vision in the Huntlee DCP Chapter. This application is in the public interest as it decreases the amount of lots proposed and allows for fewer, slightly larger lots which will provide a better economic investment value and social amenity outcome by allowing a marginal increase of space per allotment, meeting local demand for lots that are larger than the minimum lot size prescribed by Council.

5.0 Conclusion

The proposed modifications seek to modify the Huntlee Stage 1 Major Project Approval (MP10_0137) and is the result of ongoing design refinement of the Stage 1 project. Whilst the modified masterplan is an improved design to modify the subject lot boundaries to allow for fewer, slightly larger blocks, with a reduction of seven residential allotments as a result, it is considered that the modifications are minor and well-aligned with the original approved development.

The development as modified, remains generally consistent with the Modification 9 approval and has addressed the environmental impacts with regard to flooding, urban design, or bushfire impacts. The modifications proposed in this application do not alter the proposals consistency with the objectives and controls set in the Huntlee DCP Chapter and the reduction of lots is considered to result in positive outcomes for the Huntlee New Town as it removes some environmental pressure associated with population density.

In accordance with section 4.55(1A) of the EP&A Act and the clause 3BA(6) of the EP&A Regulation, the Department may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that last modified;
- the assessment of the likely environmental impacts demonstrates that the proposed modification is of minimal environmental impact;

- the proposed modifications do not alter the development's compliance with the relevant environmental instruments.

In light of the merits of the proposal and in the absence of any significant adverse environmental, social or economic impacts, we have no hesitation in recommending that the application be approved.

Yours sincerely,



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