

2 October 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 Emma,

SECTION 4.55(1A) MODIFICATION APPLICATION MP_10_0137 (MOD 15) 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 subdivision of the education superlot within Town Centre Stage 5 area into two lots and a minor adjustment of a previously approved lot boundary within Town Centre Stage 1 area. This modification will result in 1 additional lot, being a new school lot. 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 13 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 and years. 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 changes to the Town Centre Substage 5 to subdivide the education superlot into two, as well as minor boundary lot changes between two approved lots in Town Centre Substage 1. The modification will result in an additional lot as a new 3ha lot will be created for the

provision of a future primary school, in line with the executed State VPA for Huntlee New Town MP 10_0137. 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;
- 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 was approved on 14 April 2020;
- 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 withdrawn on 1 June 2020; and
- MP10_0137 MOD 13: Comprised modification to modify staging boundaries. This modification was approved on 15 July 2020

- MP10_0137 MOD 14: Comprised modification to alter lot boundaries within the Residential Substage 5 (Large Lots) triggering a reduction of 10 residential allotments and resulting in an overall total of 1,609 residential lots across the total Huntlee Stage 1 precinct. This modification is still under assessment by DPIE

2.0 Proposed modifications to the consent

The proposed modification seeks to subdivide the education superlot (which is currently 8ha in area) within Town Centre Stage 5 area into two lots, creating an additional 3ha lot and a residue 5ha lot. The new 3ha lot will be the site of a future primary school, consistent with the State VPA to deliver a primary school lot of 3ha in size and a high school lot of up to 6ha in size. It is important to note that there is no overall lot size increase as part of this modification, the approved lot is proposed to be subdivided into two. The future primary school lot will be referred to as Lot 1549 and the future high school lot will be referred to as Lot 1556. Refer to **Figure 1** and **Figure 2**.

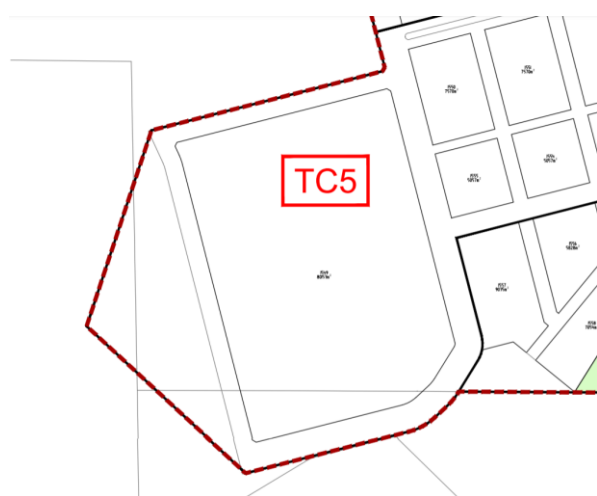


Figure 1 Mod 13 Approval Extract

Source: Daly Smith

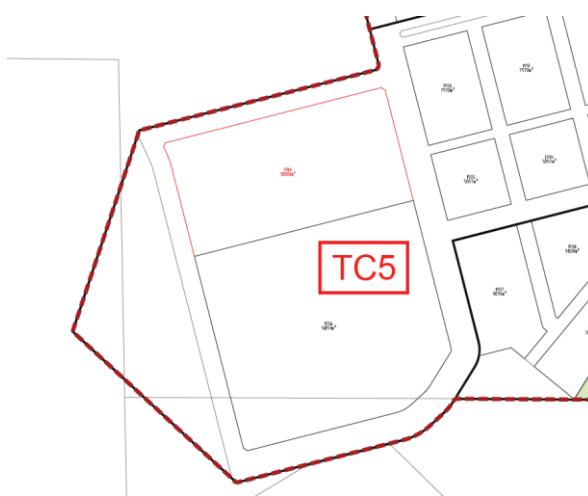


Figure 2 Mod 15 Proposed Subdivision

Source: Daly Smith

Additionally, it is proposed to alter the boundary between Lots 1528 and 1529 slightly so that Lot 1528 has a new lot area of 2,800m² and Lot 1529 has a new lot area of 1,680m². Refer to **Figure 3** and **Figure 4**.

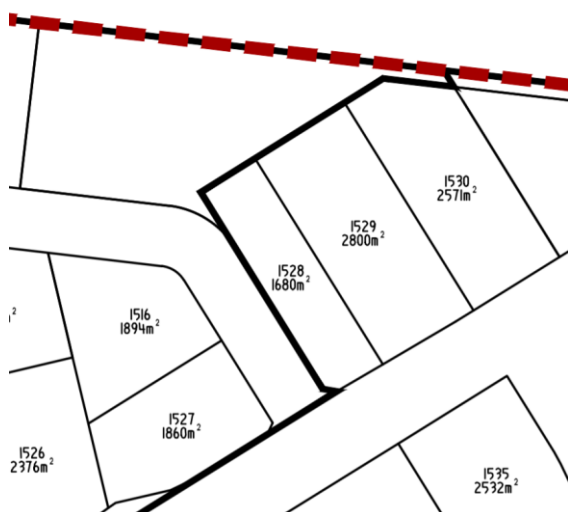


Figure 3 Mod 13 Approved Layout

Source: Daly Smith



Figure 4 Mod 15 Proposed Modification

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 previously. **Table 1** illustrates the current status arrangement of lot yield in each substage across the development in the context of the approved development per Modification 13 and this proposed Modification 15.

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 13	Difference (Between Mod 13 and Mod 15)	Total proposed under Mod 15
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	-6 (105)	119	0	119
5 (Large lot)	120	-	123	0	123
6	60	-1 (63)	63	0	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	-	11	+1	12
Town Centre Lots (inc. superlots)	-	+1	66	+1	67
Total Resi Lots	1473	-7 (1466)	1619 (excluding Stage 14, 15 and 16 superlots and infrastructure lots) 1632 (including Stage 14, 15 and 16 superlots)	0	1619 (excluding Stage 14, 15 and 16 superlots and infrastructure lots) 1625 (including Stage 14, 15 and 16 superlots)
Total Superlots	14	-	6	+1	7
Total Dwellings	2345	2345	2624	0	2624

Notwithstanding the above, Modification 14 remains under assessment by DPIE, which proposes to alter the amount of lots proposed from the approved number under Modification 11. Modification 14 proposes a reduction of residential allotment numbers, from Modification 11.

The proposal involved in this modification application (Modification 15) proposes an introduction of additional superlot within the town centre to accommodate a future primary school, as required by the State VPA for MP10_0137 for Huntlee New Town.

Therefore, Condition A1 below has been amended to reflect the additional lot proposed in Modification 15 from the approved Modification 13 layout, noting this number will change pending determination of Modification 14. Refer to **Section 2.1** below

2.1 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**.

2.1.1 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 1,619 residential allotments, ~~7 8~~ super lots, ~~1 2~~ allotments for a **primary school and a high 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 addition of a superlot to be used for a future primary school within Town Centre Substage 5 as denoted in the State VPA for MP10_0137.

2.1.2 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 24 September 2020, including supporting documentation;**

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

2.1.3 Condition A6

Condition A6 Staging Plan

- a) Development should be carried out in accordance with the amended Staging Plan 20406-1 to 3000 (MOD ~~13 15~~) **Issue 1** prepared by Daly Smith Pty Ltd dated ~~21/02/2020~~ **1/10/2020**.
- 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.

2.1.4 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 ~~13 15~~) – Public Embellishments **Issue 1** prepared by Daly Smith dated ~~21 February 2020~~ **10 October 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,
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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 increase of 1 superlot for the purpose of a primary school is considered to be of minimal impact and is inevitable and was anticipated to be delivered as part of the original MP10_0137, as Annexure E (3)(l) of the State VPA states that a lot of 3 hectares is desirable for a primary school lot; 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 assessment submitted with the Huntlee Major Project Approval addressed a range of environmental impacts. The planning assessment of the proposed modified development remains generally unchanged with respect to those matters and those considered under previous modifications, however, the following require further assessment. 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 (MP10_0137)

The proposed modifications are considered to be consistent with the Huntlee Stage 1 Major Project Approval. The proposed modification is a result of responding to the requirements of the State VPA as well as ongoing design refinements and does not seek to propose any amendment to the road or approved lot layouts and does not give rise to any adverse environmental effect such as bushfire, flooding or services. The proposed modification is considered 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 B4 Mixed Use as it is located within the town centre. The additional lot is consistent with the mixed use nature of the town centre in that it provides a diversified use ancillary to support the Huntlee New Town development which will seek to facilitate a future school on site. 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 in accordance 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 the TSC Stage 1 and TCS Stage 5 locations 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 subdivision of the existing single education lot into two allotments to facilitate a future primary school, and the adjustment of the boundary between two approved lots to produce a better outcome for the future built form interpretation of the streetscape in the approved block arrangement. The subdivision of the school lot will allow for a future primary school to be sited on a 3ha lot and reserve the remaining lot for a future high school sited on a lot of just over 5ha which are considered desirable as stated in the executed State VPA for the overall development.

4.3 Social and economic impacts

In accordance with the original intent of the Major Project, the modification will continue to facilitate the future mixed-use development within the town centre to be delivered at future development stages, which will carry with its corresponding social and economic benefits to ensure that Huntlee will really thrive. The proposal will not result in any adverse social impacts.

4.4 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 positive and in the public interest as it will enable the future development of a primary school lot and is suitable to allow for the future development of the town centre that maintains the vision in the Huntlee DCP Chapter.

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 and allow for the development of a future primary school and high school as well as continue to produce a better outcome for the future built form interpretation of the town centre.

The development as modified, remains generally consistent with the Modification 13 approval and will not give rise to any adverse environmental impacts such as flooding or bushfire. 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 subdivision of the school superlot is considered to result in a positive outcome for the development of the Huntlee New Town as it indicates progress to continue the development of the town centre.

In accordance with section 4.55(1A) of the EP&A Act, Council 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; and
- the proposed modifications do not alter the development's compliance with the relevant environmental instruments.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



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