



Rushes Creek Poultry Production Farm Modification 1

State Significant Development Modification Assessment
(SSD-7704-Mod-1)

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Glossary

Abbreviation	Definition
Council	Tamworth Regional Council
Department	Department of Planning, Industry and Environment (DPIE)
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

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1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the Rushes Creek Poultry Production Farm (SSD-7704) (the development) located along Rushes Creek Road, Rushes Creek (the site) in the Tamworth local government area (LGA) as shown in **Figure 1**.

The modification application (modification) seeks consent to amend the contaminated land management requirements in relation to an existing sheep dip located on the site and to remove Condition B33(e) which requires the excavation and reporting of the Aboriginal historical feature known as Bondah H1 with the intention that it remain on site and undisturbed.

The modification was lodged on 11 May 2021 by ProTen Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Department's assessment has considered all documentation submitted by the Applicant, including the Statement of Environmental Effects (SEE) and advice received from agencies and Tamworth Regional Council (Council). The Department's assessment has also considered the legislation and planning instruments relevant to the site and the previous assessment undertaken by the Department for the development.

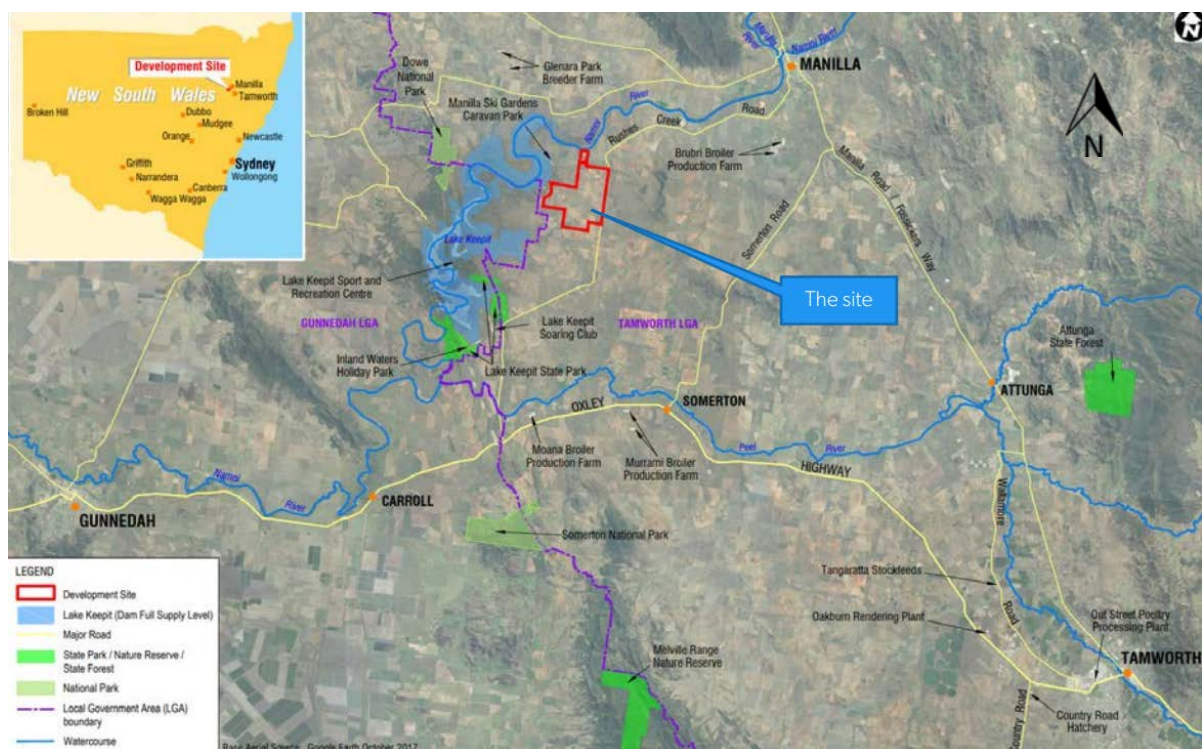


Figure 1 | Regional Context Map

1.1 Site Description

The site comprises approximately 1,016 hectares (ha) of RU1 Primary Production zoned land located on Rushes Creek Road in Rushes Creek (see **Figure 2**). The site is currently used for agricultural production, including both livestock grazing and cropping. There are currently five dwellings on the development site, one of which is derelict and unoccupied. Other infrastructure within the site includes fencing, former sheep dip groundwater bores, farm dams, farm contour banks and swales. The site is also occupied by a number of Aboriginal sites of cultural significance.

As shown on **Figure 2**, there are several intermittent drainage lines traversing through the site, however, there are no notable surface water bodies or tributaries within the site. Runoff to the east of the ridgeline that runs southeast-northwest through the centre of the site is directed to the Namoi River via contour banks and shallow swales. Runoff to the west of this ridgeline is channelled to Lake Keepit through drainage lines in the south, west and southwest of the site

1.2 Approval history

The development was approved under delegation by the then Executive Director – Regions, Industry and Key Sites Assessments on 14 April 2020. Under the development consent, the Applicant has approval to construct and operate a large-scale intensive poultry broiler production farm at Rushes Creek. The development includes:

- four individual poultry production units (PPUs), which are identified as Farms 1 to 4, where broiler birds would be grown for the purpose of producing poultry meat for human consumption
- each farm would contain between 10 and 18 tunnel-ventilated fully enclosed climate-controlled poultry sheds, which would each have the capacity to house 56,500 birds (at any one time)
- associated support and servicing infrastructure.

The development would comprise a total of 54 poultry sheds, housing a combined site population of 3,051,000 broilers at any one time.

The development consent included a requirement to excavate and dispose of offsite a former sheep dip (including surrounding soils) which were contaminated with arsenic, and the recording and removal of a site of Aboriginal cultural heritage known as Bondah H1.

This is the first modification application submitted in relation to the development. The Department understands that construction works have not yet commenced at the site.

2 Proposed Modification

2.1 Proposed Modification

The Applicant has lodged a modification under section 4.55(1A) of the EP&A Act to modify the existing development consent. The modification is described in full in the Modification Report and supporting documentation included in **Appendix A**.

The modification seeks to make two key amendments to the consent in relation to the following:

Sheep Dip Remediation – Condition B51 and B52

- amendment to the approved remediation strategy for the former sheep dip on the site from excavation and offsite disposal at a licensed landfill, to onsite management involving earthen capping and containment
- removal of the sheep holding shed which is adjacent to the sheep dip and offsite disposal to an appropriately licenced landfill facility
- the capping and containment would involve the establishment of four layers of capping material to create a cap with a minimum thickness of 1.3 m. The cap would then be planted with shallow rooting grasses with perimeter fencing and signage erected around the capped area
- delay the undertaking of remediation works from prior to the commencement of construction of the development to completion within 12 months of the commencement of construction
- relocation of one of the approved Farm 2 farm manager's residence to increase separation to the containment cell.

Aboriginal Cultural Heritage - Condition B33(e)

- deletion of Condition B33(e) which requires the Applicant to *include a program of excavation and reporting of the feature known as Bondah H1, in consultation with the Registered Aboriginal Parties and ESS*. It is noted that Bondah H1 is not within the development footprint and is not required to be excavated to permit the construction of the development.

2.2 Applicant's Justification for the Proposed Modification

The Applicant has justified the modification on the following grounds:

Sheep Dip Remediation

- the cost of offsite disposal is estimated at between \$160,000 and \$370,000 in comparison to onsite disposal which is estimated to cost between \$70,000 and \$130,000
- offsite disposal also requires the transportation of contaminated materials to the Kemps Creek landfill in western Sydney (a distance of kilometres (486 km)) which is the only licenced landfill in NSW which can receive arsenic contaminated soils
- offsite disposal would also take up scarce landfill airspace which could otherwise be utilised by other material where onsite management is not possible.

Condition B33(e)

- during the preparation of the Aboriginal Cultural Heritage Management Plan (ACHMP), the Applicant consulted with Registered Aboriginal Parties (RAPs). During this consultation it became apparent that the majority of the RAPs did not support the excavation of Bondah H1. Follow on engagement with Heritage NSW (post RAP consultation) revealed that Heritage NSW was also supportive of not excavating Bondah H1 in line with comments made by the RAPs.

3 Strategic Context

3.1 Tamworth Regional Development Strategy

The Tamworth Regional Development Strategy (TRDS) provides Council with a strategic plan to manage growth and to provide strategic direction for urban and rural areas in the Tamworth LGA. It sets out a broad planning framework which forms the basis for the Tamworth Regional Local Environmental Plan 2010 (TLEP).

The Department considered the TRDS as part of its assessment of the development and concluded that the development was consistent with the TRDS.

The Department has considered the TRDS as part of its assessment of the modification and concludes that the development, as proposed to be modified remains consistent with the TRDS.

3.2 Tamworth Tomorrow 2016 - 2021

Tamworth Tomorrow 2016-2021 (Tamworth Tomorrow) is a strategy focussed on driving the economic growth of the Tamworth region. 'Agriculture, food processing and agribusiness' is recognised as a key growth sector in the region, which includes the poultry industry.

The Department considered Tamworth Tomorrow as part of its assessment of the development and concluded that the development was consistent with the TRDS.

The Department has considered Tamworth Tomorrow as part of its assessment of the modification and concludes that the development, as proposed to be modified remains consistent with Tamworth Tomorrow.

4 Statutory Context

4.1 Scope of Modification

The Department has reviewed the scope of the modification application and considers the application can be characterised as a modification involving minimal environmental impacts as the modification:

- would not significantly increase the environmental impacts of the development as approved
- the primary function and purpose of the approved development would not change as a result of the modification
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent
- the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act.
- is substantially the same development as originally approved
- would decrease the extent of the already approved disturbance areas for the development.

Therefore, the Department is satisfied the modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers the modification should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

4.2 Consent Authority

The Minister for Planning and Public Spaces (Minister) is the consent authority for the modification application under section 4.5(a) of the EP&A Act. Under the Minister's delegation of 26 April 2021, the Team Leader, Industry Assessments, may determine the modification 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.

4.3 Mandatory Matters for Consideration

The Department undertook a comprehensive assessment of the development against the mandatory matters for consideration as part of the original assessment of SSD-7704. The modification does not result in significant changes that would alter the Department's consideration of the mandatory matters for consideration under section 4.15(1) of the EP&A Act and conclusions made as part of the original assessment.

4.4 Biodiversity Conservation Act 2016

Section 7.17 of the *Biodiversity Conservation Act 2016* 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 Department is satisfied that there will be no additional clearing of native vegetation or habitat loss beyond that previously assessed and considered for the development.

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

5 Engagement

5.1 Department's Engagement

Clause 117(4) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires a section 4.55(1A) modification application to be notified or advertised if specified by a community participation plan. The Department's Community Participation Plan notes the exhibition requirements for such modifications are discretionary, and based on the urgency, scale and nature of the proposal.

Given the proposed changes would result in minimal environmental impacts, the application was not notified or advertised. However, it was made publicly available on the Department's website on 11 May 2021 and was referred to the Environment Protection Authority (EPA), Heritage NSW and Council for comment.

5.2 Government Advice

Advice was received from EPA, Heritage NSW, and Council. A summary of this advice is provided below.

Heritage NSW – supported the modification as it would ensure that Bondah H1 is not harmed by the development.

EPA – did not object to the modification and recommended minor amendments to existing conditions and some additional conditions pertaining to contamination management to ensure adequate oversight and appropriate management of the remediation activities.

Council – raised no objection to the modification and noted that an approval under Section 68 of the *Local Government Act 1993* was required for the relocated manager's dwelling and associated onsite sewage management system.

6 Assessment

The Department has assessed the merits of the modification. During this assessment, the Department has considered the:

- the Modification Report provided to support the modification (see **Appendix A**)
- the documentation and Department's assessment report for the original development (see **Appendix A**)
- advice from State government authorities and Council (**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 considers the key assessment issues are:

- land contamination and remediation
- Aboriginal cultural heritage.

6.1 Land Contamination and Remediation

During the assessment of the development, the Applicant undertook a detailed site investigation (DSI) of a disused sheep dip which is located within the site. The DSI revealed the sheep dip contained elevated arsenic levels of 2,600 milligrams per kilogram (mg/kg) which exceeds the National Environmental Protection Council's *National Environmental Protection (Assessment of Site Contamination) Measure* (NEPM) Health Investigation Level – A (HIL-A) guideline level of 100 mg/kg.

The DSI concluded the arsenic in the soil presents an unacceptable risk to present and future site users, particularly in association with the development. The preferred remediation strategy identified by the Applicant was the excavation and offsite disposal to an appropriately licenced facility of approximately 330 m³ of contaminated material. EPA raised no concerns with this approach.

Since the approval of the development, the Applicant has identified that the only landfill in NSW which is able to receive the contaminated material is the Kemps Creek landfill in western Sydney which would involve transporting the material a distance of approximately 486 km. The distance involved, combined with the disposal fees is claimed to make offsite disposal the least financially viable with costs estimated at between \$160,000 and \$370,000. The Applicant also stated that offsite disposal is less preferred from an environmental perspective when considering the *Waste Avoidance and Resource Recovery Act 2001* which promotes the diversion of waste from landfill.

The Applicant is proposing to modify the approved approach in the following manner:

- revise the approved 2019 RAP to allow capping and containment of the arsenic impacted soils *in situ* as an alternative remediation strategy
- permit the remediation works to be completed within 12 months of commencing construction
- allow demolition and reuse / removal to landfill of the disused Sheep Holding Shed within the remediation area
- allow the relocation of one of the approved farm manager's houses at Farm 2 and the electricity line proposed to service this house in order to provide separation from the remediation area.

The Modification Report addressed the potential for *in situ* contamination to impact local groundwater was highly unlikely on the basis that:

- the shallow alluvium groundwater does not extend into the development site
- deeper fractured groundwater sources are generally between 10 – 20 metres below ground level (mbgl) and water bearing zones are found at between 31 – 104 mbgl
- bore logs indicate the presence of a weathered clay rich regolith between 0.5 – 3 m thick around 2 mbgl. It is believed that this regolith acts as an aquitard and its presence restricts downward movement into the groundwater system.

EPA and Council confirmed they were supportive of the change from offsite disposal to *in situ* containment. The EPA recommended modified and new conditions of consent to ensure oversight of the remediation activities is undertaken by a site auditor as well as the preparation and implementation of a Long-Term Environmental Management Plan (LTEMP) for the ongoing management of the remediation area.

The EPA's recommendations are supported by the Department to ensure that environmental impacts are appropriately managed.

In relation to the demolition of the sheep shed, the Department is concerned it may have potentially absorbed arsenic due to its proximity to the former sheep dip and the results of field testing undertaken to support the assessment of the original Development (see [Figure 3](#)). This concern is exacerbated by the Applicant's intention to reuse, recycle or dispose of the shed at a suitably licenced waste facility without further testing of the sheep shed for contamination.

The Department sought further advice from the EPA who agreed that further testing of the sheep shed should be required to ensure it is appropriately managed. This could be achieved with minor amendments to the conditions recommended to the Department by the EPA. The Department endorses this approach to require the Applicant to undertake further testing for contamination of the shed prior to its disposal.

The Department considers the Applicant has demonstrated *in situ* containment of contamination associated with the former sheep dip is acceptable and can be appropriately managed without unacceptable environmental and social impacts, subject to appropriate conditions of consent. The Department also notes *in situ* containment is supported by the relevant government agencies including the EPA.

In relation to the management of the sheep shed, the Department is satisfied that through appropriate new conditions such as, appropriate testing and waste classification of the sheep shed, the demolition and disposal of the sheep shed would not result in unintended environmental consequences. The Department notes this approach is supported by the EPA.

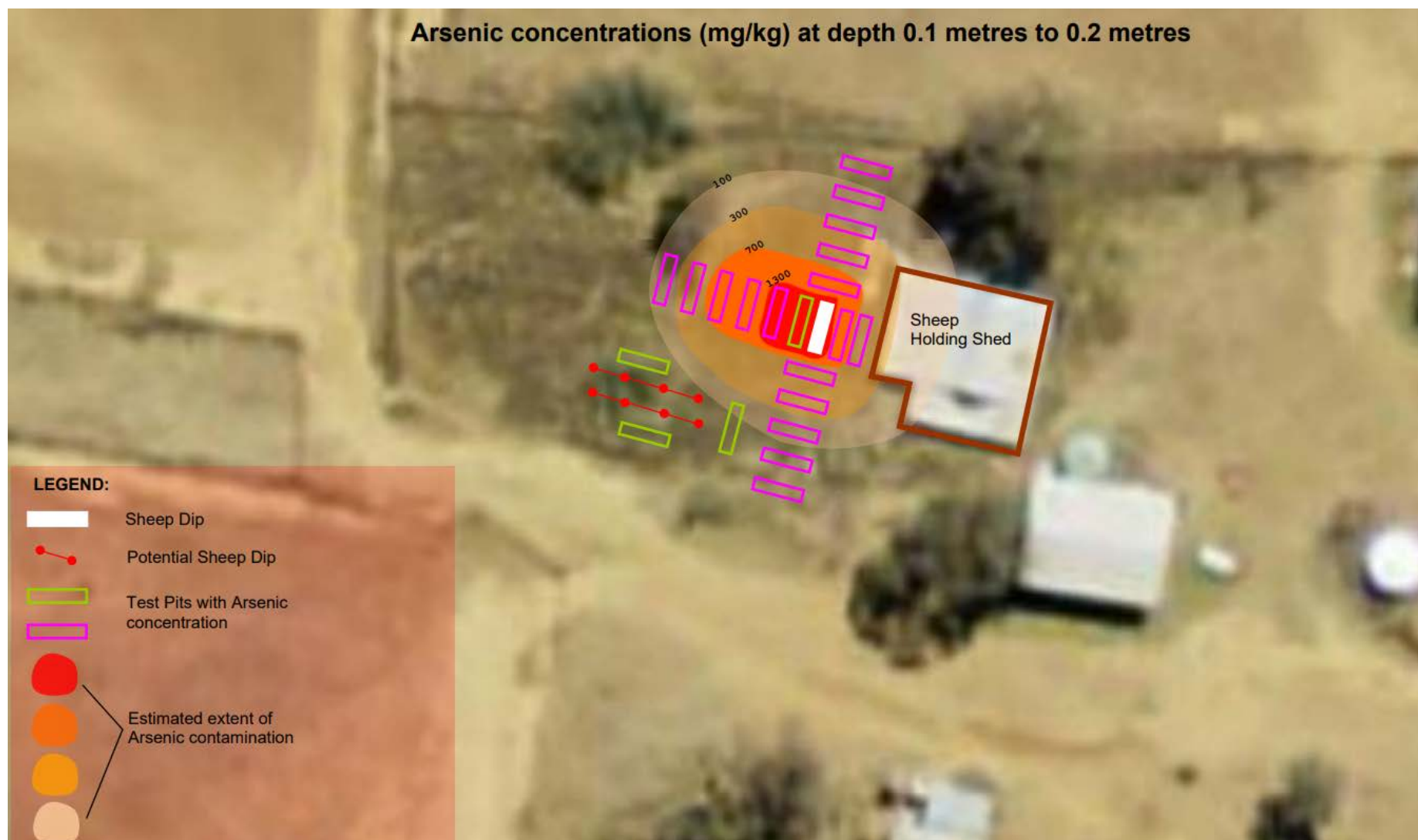


Figure 3 | Arsenic Concentrations (mg/kg) at depth 0.1 – 0.2 m

Source: *Detailed Site Investigation*, prepared by SLR Consulting Australia 2019a

The Applicant also requested to complete the remediation within 12 months of the commencement of construction works rather than prior to the commencement of construction. The Department notes that no objection from agencies were made and the Department supports this request on the grounds that the remediation area is not located within the development footprint and is not required to be completed to facilitate the commencement of development on the site.

As a result of the capping and *in situ* containment, the Applicant also requested to move the location of one of the Farm 2 manager's residence further from the remediation area. The Department notes that no objection from agencies were made and the Department supports this request on the grounds it provides greater assurance to residents in relation to potential health impacts and makes no material change to the development as approved.

The Department's assessment concludes that environmental risks associated with *in situ* containment are acceptable and manageable with appropriate updated and new conditions of consent.

6.2 Aboriginal Cultural Heritage – Bondah H1

During the assessment of the development, the former Office of Environment and Heritage (OEH) (now Heritage NSW) requested the Department impose a condition to authorise the archaeological excavation of the feature described as Bondah H1 (Condition B33(e)).

During the consultation process with RAPs in preparing an ACHMP, many of the RAPs who participated requested that Bondah H1 not be excavated and should be left onsite and undisturbed. This position was supported by Heritage NSW who the Applicant consulted with during the preparation of the ACHMP. As a result of the consultation undertaken for the ACHMP, the Applicant has sought to amend Condition B33(e).

As part of the Department's consultation on the modification application, Heritage NSW reconfirmed its support for the amendment to this condition. Similarly, Council confirmed that it too was supportive of the deletion of sub-clause (e).

The Department considers the Applicant has demonstrated the retention of Bondah H1 is acceptable as it is consistent with the wishes of the RAP and supported by the relevant government agencies. The Department notes that Bondah H1 is not in an area which would be disturbed by the construction and operation of the development and therefore its excavation is not critical.

The Department's assessment concludes that the retention of Bondah H1 is appropriate and is considered to be in the public interest and would result in a positive outcome for the locality and the preservation of Aboriginal Cultural Heritage.

7 Evaluation

The Department has assessed the modification in accordance with the relevant requirements of the EP&A Act.

The Applicant is proposing to modify the development consent to permit the in-situ capping and containment of contaminated land around a former sheep dip site, and to allow the retention of the Aboriginal cultural heritage site known as Bondah H1. The modification was supported by EPA, Heritage NSW and Council.

During the assessment of the modification the Department noted concerns for the reuse and disposal of the sheep holding shed due to potential contamination and has, in consultation with EPA provided amended conditions to address this to ensure appropriate management.

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

- are substantially the same development as that originally approved
- would not result in additional environmental impacts beyond those already assessed and approved
- remain consistent with the objectives of the relevant strategic planning controls
- allows for the appropriate management of contaminated land
- supports appropriate measures of conservation for sites of Aboriginal cultural heritage which is consistent with the requests of many RAPs with an interest in the development.

Consequently, the Department is satisfied the modification should be approved, subject to the implementation of the recommended conditions to SSD-7704-Mod-1.

8 Recommendation

It is recommended that the Team Leader – Industry Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that SSD-7704-Mod-1 falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** under section 7.17(2)(c) of the *Biodiversity Conservation Act 2016* that a BDAR is not required to be submitted with this modification as the modification 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 SSD-7704
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:



David Koppers

Senior Environmental Assessment Officer
Industry Assessments

9 Determination

The recommendation is **Adopted** by:



15 June 2021

Joanne Bakopanos

Team Leader

Industry Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of Documents

The Department has relied upon the following key documents during its assessment of the proposed development:

Modification Application

- *Rushes Creek Poultry Production Farm SSD 7704, Section 4.55(1A) Modification Report*, prepared by EME Advisory, dated May 2021
- *Aboriginal Cultural Heritage Management Plan*, prepared by OzArk Environment and Heritage, dated May 2021.

<https://www.planningportal.nsw.gov.au/major-projects/project/41836>

Agency Advice

- <https://www.planningportal.nsw.gov.au/major-projects/project/41836>

Department's Assessment Report for SSD-7704

- <https://www.planningportal.nsw.gov.au/major-projects/project/10721>

Appendix B – Notice of Modification

Appendix C – Consolidated Consent