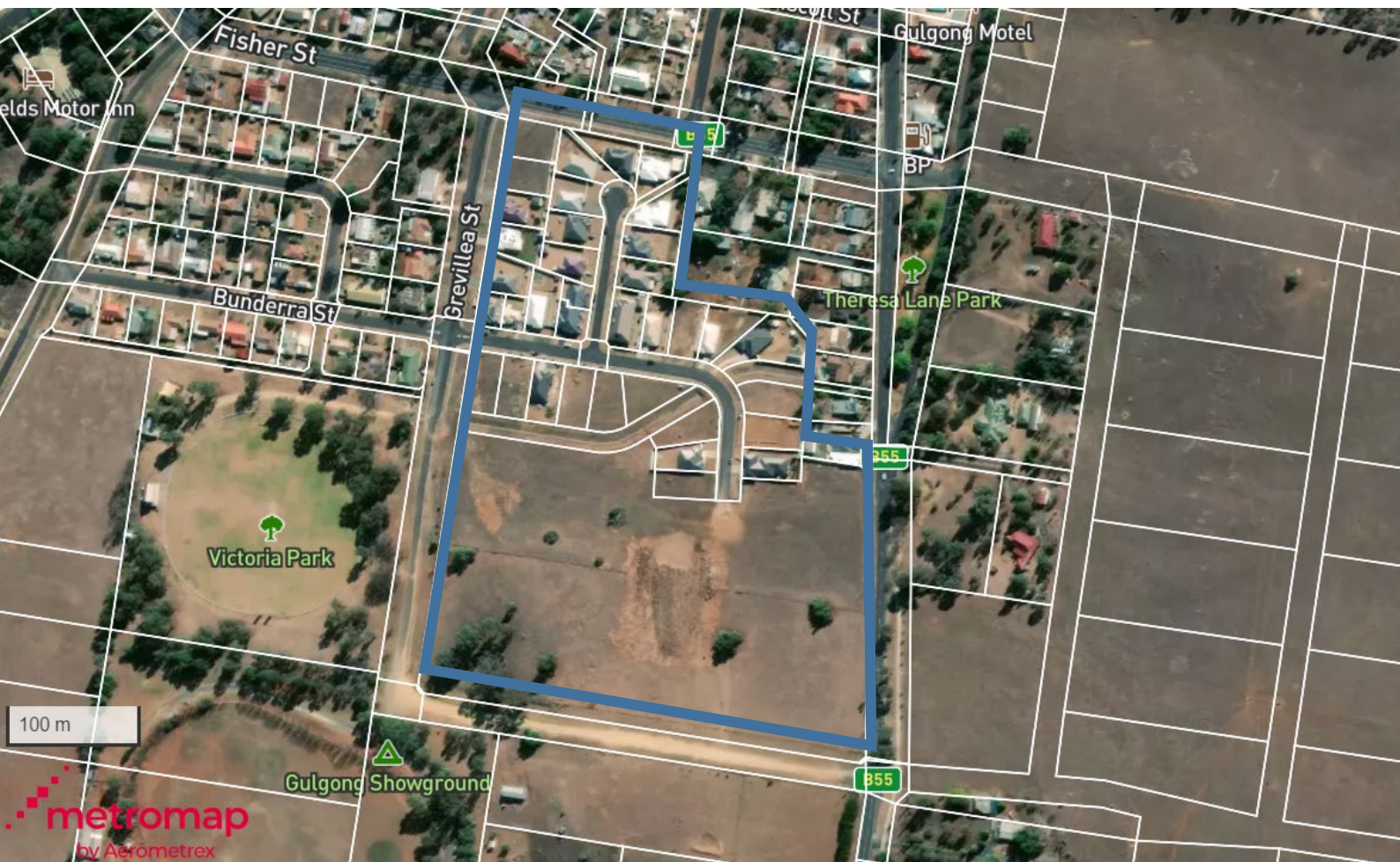


# S4.55 (1A) MODIFICATION

## PROPOSED MODIFICATION TO DEVELOPMENT CONSENT DA/0098/2006

HOLLINGSWORTH ESTATE  
CASTLEREAGH HIGHWAY (MEDLEY STREET), GULGONG NSW 2852



**CLIENT:** Ulan Coal Mines Limited

**DATE:** 15 NOVEMBER 2024

**PREPARED BY:**



ABN 23 104 067 405

87 Herbert Street Gulgong NSW 2852 | PO Box 232 Gulgong NSW 2852  
02 6374 2911

admin@dewittconsulting.com.au  
www.dewittconsulting.com.au

# CONTENTS

|       |  |    |
|-------|--|----|
| 1     | <b>INTRODUCTION</b> .....  | 3  |
| 1.1   | <b>EXISTING CONSENT</b> .....  | 8  |
| 2     | <b>PROPOSED MODIFICATION</b> .....   | 8  |
| 3     | <b>JUSTIFICATION FOR PROPOSED AMENDMENTS</b> .....                                   | 9  |
| 4     | <b>RELEVANT PROVISIONS OF SECTION 4.55</b> .....                                     | 10 |
| 4.1   | <b>SECTION 4.55(1A) - MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT</b> ..... | 10 |
| 4.2   | <b>SECTION 4.15(1)(A) – STATUTORY PLANNING CONSIDERATIONS</b> .....                  | 11 |
| 4.3   | <b>SECTION 4.15(1)(B) – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS</b> .....         | 11 |
| 4.3.1 | IMPACTS ON THE NATURAL ENVIRONMENT .....   | 12 |
| 4.3.2 | IMPACTS ON THE BUILT ENVIRONMENT .....   | 12 |
| 4.3.3 | SOCIAL AND ECONOMIC IMPACTS .....  | 12 |
| 4.4   | <b>SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE</b> .....                        | 12 |
| 4.5   | <b>SECTION 4.15(1)(D) – SUBMISSIONS</b> .....  | 12 |
| 4.6   | <b>SECTION 4.15(1)(E) – PUBLIC INTEREST</b> .....                                    | 12 |
| 5     | <b>CONCLUSION</b> .....  | 13 |

## APPENDICES

|                    |  |
|--------------------|--|
| <b>Appendix 1:</b> | RTA (Transport for NSW) Advice dated 17 August 2006                      |
| <b>Appendix 2:</b> | Highway Intersection Report prepared by Road Culture Traffic Consultants |
| <b>Appendix 3:</b> | Proposed Intersection Layout Plans                                       |
| <b>Appendix 4:</b> | Preliminary Consultation Response – Mid Western Regional Council         |

This document is issued to Ulan Coal Mines Limited for the purpose of supporting a modification application made under Section 4.55(1A) for development consent DA/0098/2006. It should not be used for any other purpose. The report must not be reproduced in whole or in part except with the prior consent of de Witt Consulting and subject to inclusion of an acknowledgement of the source. No information as to the contents or subject matter of this document or any part thereof may be communicated in any manner to any third party without the prior consent of de Witt Consulting.

Whilst reasonable attempts have been made to ensure that the contents of this report are accurate and complete at the time of writing, de Witt Consulting disclaims any responsibility for loss or damage that may be occasioned directly or indirectly through the use of, or reliance on, the contents of this report.

| Prepared by:   | Reviewed by:   | Released by:  |
|--|--|---|
| <b>Name:</b> Emma Mason<br><b>Position:</b> Principal Town Planner | <b>Name:</b> Jason Landers<br><b>Position:</b> Principal Registered Surveyor, Director | <b>Name:</b> Samara Jayne<br><b>Position:</b> Town Planner<br><b>Signed:</b><br><br><b>Version: 1</b> |

**Copyright:** The concepts and information contained in this document are the property of de Witt Consulting. Use or copying of this document in whole or part without the written permission of de Witt Consulting constitutes an infringement of copyright.



N° AU004875-1 N° AU004876-1 N° AU005201-1

This product has been manufactured under the controls established by a Bureau Veritas Certification approved management system that conforms with: ISO 9001:2015, ISO 45001:2018 and ISO 14001:2015

## 1 INTRODUCTION

de Witt Consulting has been engaged by Ulan Coal Mines Limited (the proponent) to prepare an application to modify the consent for development application (DA) 0098/2006 relating to the residential subdivision of land at 130 Medley Street, Gulgong NSW 2852 (the site). The original development application (DA) 0098/2006 was for the creation of 81 lots and the provision of associated infrastructure such as roads, stormwater, sewer and water, to be constructed over five stages. The application was amended by MA0001/2012, MA0014/2014 and more recently ME0033/2024. The recent modification nominated a change to the staging of the subdivision. The modifications are described in Table 1 below.

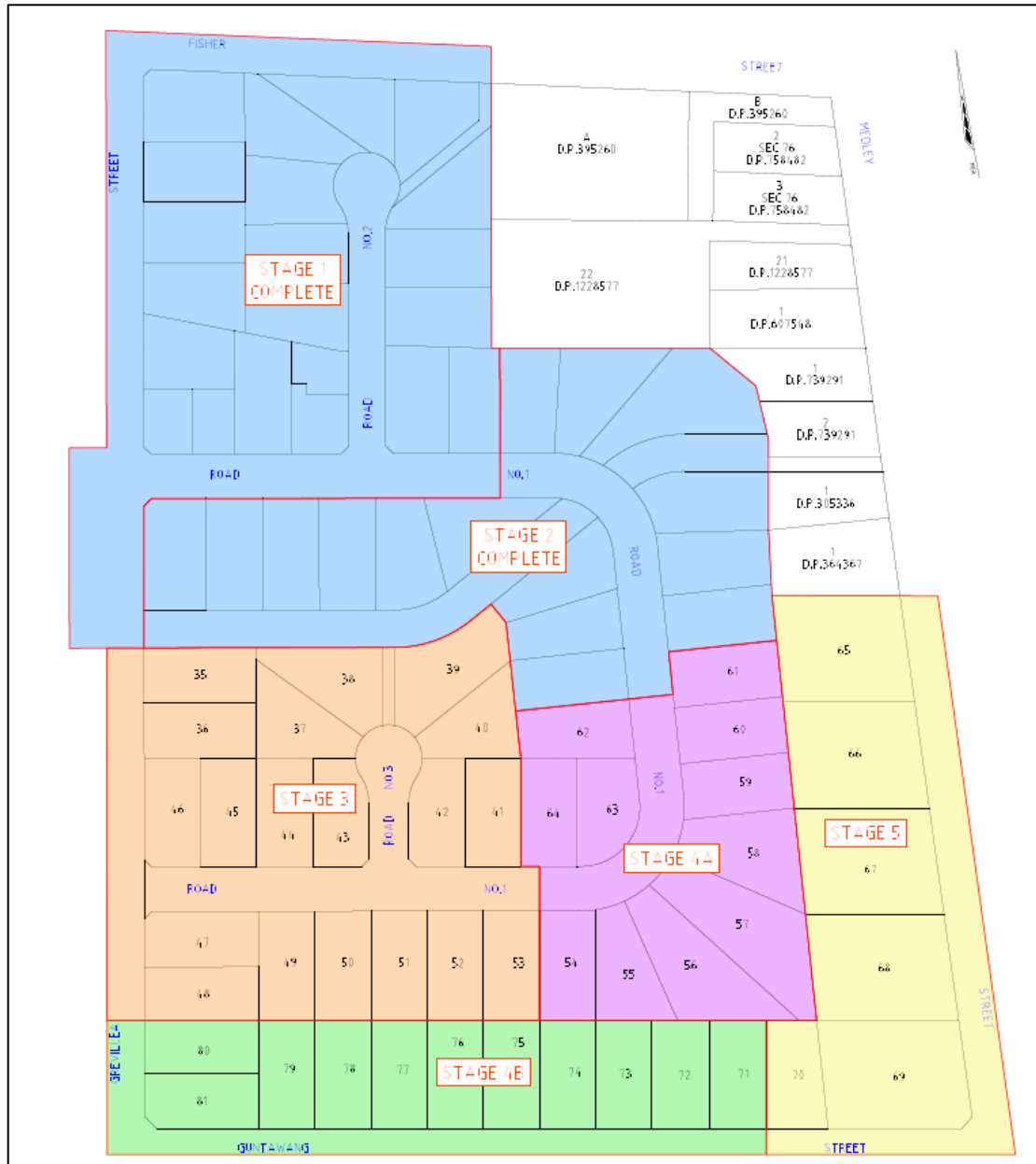
**Table 1: Existing Consents / modifications**

| Reference   | Date Approved    | Brief Description                                       |
|-------------|------------------|---|
| DA0098/2006 | 12 December 2006 | 81 lot subdivision                                      |
| MA0001/2012 | Unknown          | Modified conditions regarding Grevillea Street upgrades |
| MA0014/2014 | 5 November 2013  | Modified condition 18 and deleted condition 19          |
| ME0033/2024 | 17 July 2024     | Modified staging plan                                   |

The original DA has commenced and therefore remains active, noting that the first two development stages in the north-west of the site are already constructed, and the remaining Lots will be developed in a number of further stages in accordance with the modified consent. The site is shown in *Figure 1* for ease of reference with *Figure 2* being the current approved staging plan.



**Figure 1: Aerial overview of site (Source: Aerometrex).**



**Figure 2: Approved Staging Plan (Source: de Witt Consulting)**

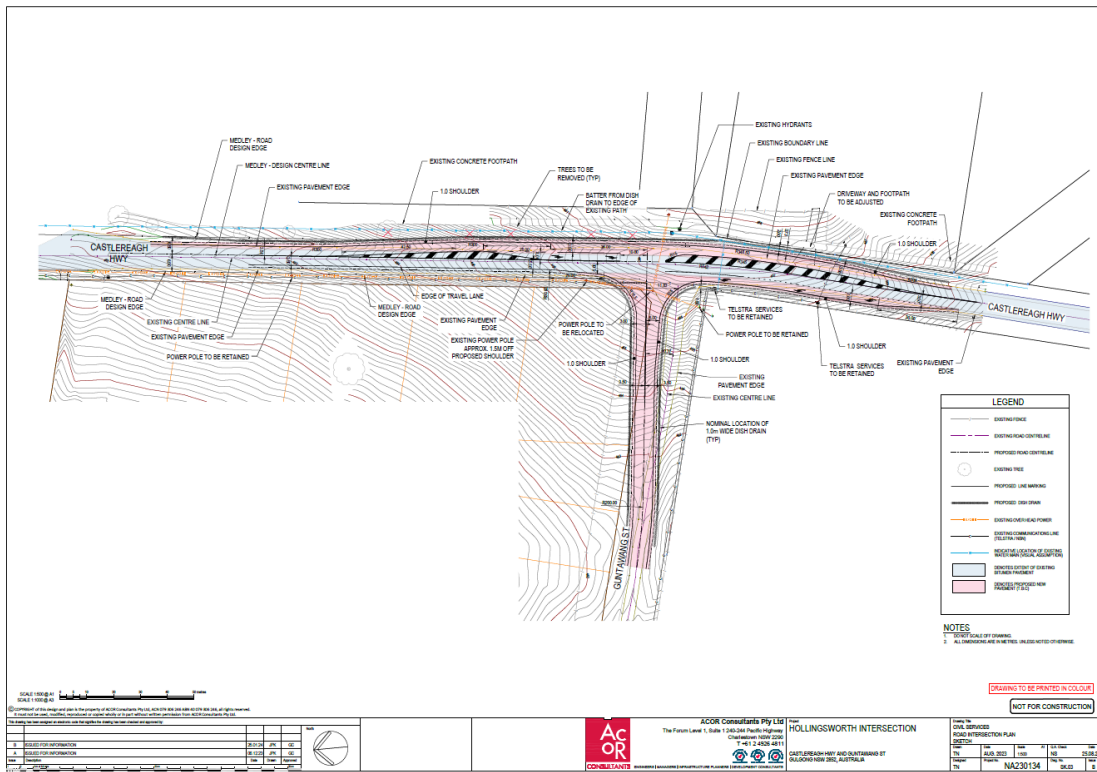
The consent imposes various conditions relating to the provision of services and infrastructure and includes condition No.55 relating to requirements for intersection upgrades:

55. Proposed intersection treatment measures must be detailed in the Engineering Plans submitted to Council prior to Construction Certificate for the intersection of Medley and Guntawang Streets and the intersection of Fisher Street and Grevillea Road. As both required intersections are located on the Castlereagh Highway the development will be required to enter into a Works Authorisation Deed with RTA. A Works Authorisation Deed is necessary in order to carry out privately funded works on a classified state road. All works are to be at no cost to the RTA.

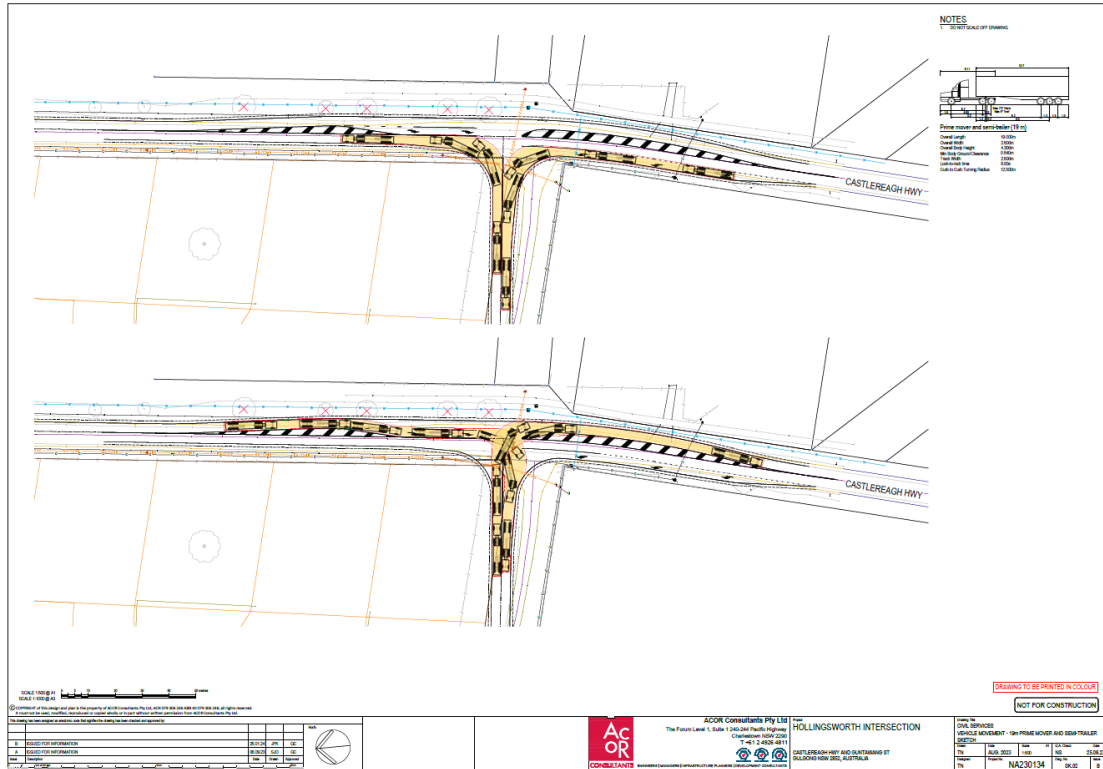
In summary, consent Condition 55 requires proposed treatments for Medley Street / Guntawang Street and Fisher Street / Grevillea Street to be submitted to council and requires a works authorisation deed (WAD) from Transport for NSW (TfNSW) (formerly RTA).

It is understood that Condition 55 is based on a letter of advice dated 17 August 2006 issued by TfNSW to Council during the original DA assessment. The advice letter is reproduced in full in **Appendix 1** to this modification report. A key point of difference between the TfNSW advice letter and Condition 55 lies in the fact that the TfNSW letter envisages channelised CHR and AUL intersection types (right- and left-turn bays), whereas Condition 55 does not specify the intersection types. Both the TfNSW letter and Condition 55 require the proponent to enter into a WAD.

The WAD process was initiated and preliminary drawings were submitted to TfNSW including concept intersection designs (*Figure 3*) and turning path plans (*Figure 4*). The plans were prepared by ACOR Consultants on behalf of the proponent. The plans aligned with the 2006 TfNSW letter of advice and therefore facilitated CHR and AUL intersection types.



**Figure 3:** Preliminary CHR and AUL intersection types prepared by ACOR Consultants – Medley / Guntawang Streets



**Figure 4:** Turning path plans prepared by ACOR Consultants – Medley / Guntawang Streets

However, recent investigation by the proponent and its appointed traffic consultant (Road Culture), reviewed the warrant for right- and left-turn lanes using preliminary traffic data and assumptions. The likely volume and distribution of traffic was considered, including that generated by the subdivision development. It was found most likely that only basic BAR and BAL intersection types are warranted - not channelised CHR and AUL types according to Figure 3.25 Warrants for turn treatments on major roads at unsignalised intersections (Austroads Guide to Traffic Management Part 6, Austroads, 2020, p.56). The investigation also concluded that in addition to turn treatment type, the design vehicle choice also requires further consideration as it is a significant factor on the extent of works likely to be required.

As a result, further, more detailed investigation has been carried out to:

- Describe existing traffic conditions at the two highway intersections – Fisher Street / Grevillea Street and Medley Street / Guntawang Street. *Note: existing conditions include development Stages 1 and 2 - 34 occupied Lots (36 dwellings since 2 Lots are duplex)*
- Outline further vehicle volumes likely to be generated after construction of dwellings in the remaining Lots of the approved Hollingsworth Estate development
- Define the functions of Fisher Street, Grevillea Street, Medley Street and Guntawang Street within the Gulgong traffic network, and
- Propose treatments for the two highway intersections to support total expected traffic.

The investigation is provided in **Appendix 2**. Based on the findings, the following proposed treatments for the two highway intersections to cater for the approved Hollingsworth Estate development are recommended:

- Basic left- and right-turn treatments at Medley Street / Guntawang Street, designed for an 8.8m service vehicle and checked for a 12.5m truck/bus.
- Basic left- and right-turn treatments at Fisher Street / Grevillea Street, designed for a 12.5m truck/bus and checked for a 19m semi-trailer.



Council has advised the Fisher Street / Grevillea Street intersection upgrade works were completed during development of Stages 1 and 2 of the subdivision. The works made provision for articulated vehicles. It would appear line marking has not been completed.

Following the traffic consultant's advice, amended design plans were prepared (**Appendix 3**) that align with the consultant's recommendations for Medley Street / Guntawang Street and plans developed verify compliance at the Fisher Street / Grevillea Street intersection. The plans for Medley Street / Guntawang Street proposed generalised intersection treatments for relevant design vehicles. de Witt Consulting then requested a formal meeting with TfNSW to discuss the amended plans with a view to reflect those changes in the WAD. TfNSW representatives declined to meet and requested input from Council prior to meeting with the proponent.

Mid-Western Regional Council (MWRC) (specifically, Council's Development Engineer David Webster) was consulted on the revised designs. On 13 September 2024 MWRC provided in-principle support for the revised designs (**Appendix 4**). MWRC's correspondence was forwarded to TfNSW. However, TfNSW then advised that the matter would not progress outside of a formal referral process.

As such this application is made under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the Act) to modify development consent Condition 55 of DA 0098/2006 granted by Council.

The proposed modification is of minimal environmental impact and will result in substantially the same development as approved by the consent. The proposed modification will not preclude the development from complying with the conditions of consent, except where specific conditions are requested to be amended under this application.





### 1.1 EXISTING CONSENT

As previously discussed, the existing consent includes condition 55 which requires a WAD to be entered into for the relevant intersection upgrades. Whilst the condition does not specify the intersection types, the TfNSW letter on which it was based did so. Recent consultation with TfNSW indicates that proposed changes to required intersection types must be modified by s4.55 of the EP&A Act.

## 2 PROPOSED MODIFICATION

The proposed modification seeks to amend Condition 55 to require alternative intersection treatments to those specified in the 2006 TfNSW letter. Justification for the proposed modification is provided in Section 3 of this report. Formal referral to TfNSW is required as part of the modification process. This would confirm Council and TfNSW support for the proposed amendment.

Condition 55 is proposed to be amended with the wording shown in Table 2.

**Table 2: Proposed Amendment to Condition**

| Existing Condition 55   | Proposed Condition 55  |
|---|--|
| <p>Proposed intersection treatment measures must be detailed in the Engineering Plans submitted to Council prior to Construction Certificate for the intersection of Medley and Guntawang Streets and the intersection of Fisher Street and Grevillea Road. As both required intersections are located on the Castlereagh Highway the development will be required to enter into a Works Authorisation Deed with RTA. A Works Authorisation Deed is necessary in order to carry out privately funded works on a classified state road. All works are to be at no cost to the RTA.</p> | <p>Proposed intersection treatment measures must be detailed in the Engineering Plans submitted to Council prior to Construction Certificate for the intersection of Medley and Guntawang Streets and the intersection of Fisher Street and Grevillea Road. As both required intersections are located on the Castlereagh Highway the development will be required to enter into a Works Authorisation Deed with TfNSW. A Works Authorisation Deed is necessary in order to carry out privately funded works on a classified state road. All works are to be at no cost to the TfNSW.</p> <p>The intersections may be designed as follows:</p> <ul style="list-style-type: none"> <li>• Basic left- and right-turn treatments at Medley Street / Guntawang Street, designed for an 8.8m service vehicle and checked for a 12.5m truck/bus.</li> <li>• Basic left- and right-turn treatments at Fisher Street / Grevillea Street, designed for a 12.5m truck/bus and checked for a 19m semi-trailer.</li> </ul> |

### 3 JUSTIFICATION FOR PROPOSED AMENDMENTS

The proposed changes will facilitate a reasonable and economic outcome for the ongoing release of land as per the original consent. Justification for the proposed changes are as follows:

- As shown in Appendix A and Appendix C of the attached Highway Intersection Report the two highway intersections carry relatively low volumes of traffic, and after completion of the residential development there is expected to be little increase in turning movements.
- The traffic volumes indicate formal capacity analysis is not required for either junction, and that uninterrupted traffic flow conditions generally prevail. The report (Appendix 2) details characteristics and treatment proposals for each intersection.
- Once developed, detailed design plans will be audited by an experienced road designer. The design audit should consider the proposal from the point of view of various road users, in different weather and lighting conditions, and make any recommendations required to ensure safety.
- A risk assessment will be undertaken at design stage to provide insight into other matters and risks to be managed during the final design and construction stages of the project.
- The proposed alternative intersection designs have received in-principle support of MWRC's development engineer. The following comments were provided by MWRC in relation to the alternative intersection treatments:
  - Given the constraints of the existing intersection including vertical and horizontal geometry. Limited road reserve width and other infrastructure constraints, Council is satisfied with the design presented.
  - It is Council's opinion that the design for this intersection should not be required to consider access by articulated vehicles.
  - Council is satisfied that the design as presented is generally satisfactory and meets appropriate and relevant design standards.
- The modification will be referred to TfNSW to ensure alignment of Council and TfNSW expectations and combined support for the proposal.
- It is possible that the selective wording of Condition 55 (i.e. the omission of reference to intersection types) indicates Council's intent to build in flexibility for alternative designs.
- The 2006 letter advice by TfNSW was not supported by any known traffic studies.
- There is no change to the proposed number of lots, lot configuration, development footprint, the nature of proposed works, or the extent of infrastructure provided. Therefore, the proposed modifications have been found to be of minimal or improved environmental impact and render the modified development substantially the same as that for which consent was originally issued.
- The design of the Medley / Guntawang Street, intersection may necessitate localised road widening in at the intersection affecting the subject land to provide for adequate footpath / verge widths. It is requested that the revised condition provide a mechanism for road widening which can be achieved a road widening dedication statement with the final plan of subdivision.

## 4 RELEVANT PROVISIONS OF SECTION 4.55

### 4.1 SECTION 4.55(1A) - MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT

Section 4.55(1A) of the Act states the consent authority may modify a consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and...*

The proposed modifications will not create any additional environmental impact to that which is already approved and regulated under the conditions of consent. Amendments to the intersection designs will not result in changes to the overall outcome. No additional impacts will arise from the proposal. All design related impacts as well as safety audit will occur as part of the WAD process.

- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and...*

The discussion included on the previous pages demonstrate that the proposed modification will result in substantially the same development as that approved under the existing consent. It is important to note that the development type and description of the development has not been changed with the development maintaining key features such as being a Torrens title subdivision being carried out over multiple stages. The proposed modification does not alter the number of lots being delivered or the ability to access the subdivision. Because the changes do not fundamentally change the development as a whole, the proposed modification is rendered substantially the same development for which the original consent was granted. The proposed modifications do not preclude compliance with the remaining conditions of consent except as discussed in Section 2 and 3 of this report.

- (c) it has notified the application in accordance with:*
- (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In relation to Section 4.55(1A) (c) and (d) of the Act, it is understood that any relevant representations will need to be considered by Council in determination of the proposed modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The modification will remain substantially the same as the development that is currently approved. The following subsections provide an assessment of the proposed modification against Section 4.15 (1) of the Act, as are of relevance to the development.

#### 4.2 SECTION 4.15(1)(A) – STATUTORY PLANNING CONSIDERATIONS

Section 4.15 (1)(a) of the Act requires the consent authority to take into consideration:

*“(a) the provisions of:*

*(i) any environmental planning instrument, and*

The proposed modification was approved under the previous local environmental plan. As the amount, area and configuration of lots remains the same, and the infrastructure being provided also remains the same, no assessment of the proposal against the provisions of the LEP is required and the findings in relation to the previous assessments remain unchanged.

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

No new instrument of this nature is relevant to the proposed modification.

*(iii) any development control plan, and*

Since the proposed modification relates to an ancillary component of the proposal which will undergo separate assessment through the WAD process, it is reasonable to conclude that previous assessments of the proposal against the development control plans in place at the time of assessment remain consistent with the proposed modification and that provisions under S4.15(1)(a)(iii) of the Act remain appropriately represented under both the documents provided for previous assessments and this modification.

*(iii)(a) any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4, and*

It is our understanding that the modification does not affect any existing planning agreements applicable to this development.

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

The proposed modification does not change the previous assessment against the regulations. All provisions continue to be met.

*(v) (Repealed)*

*that apply to the land to which the development application relates,*

As development consent was granted to the original DA it must be assumed that the development was considered satisfactory with respect to the above provisions, and as the proposed modifications will result in substantially the same development capable of achieving compliance with these provisions, and of reasonably the same environmental impact, then it is reasonable that the proposed modification is also considered satisfactory. The proposed modification will not result in additional impact or non-compliances with planning instruments or statutory requirements.

#### 4.3 SECTION 4.15(1)(B) – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS

Section 4.15(1)(b) of the Act requires the consent authority to consider:

*“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”*

These are each addressed below.

#### 4.3.1 IMPACTS ON THE NATURAL ENVIRONMENT

The proposed modifications to the conditions of consent will not create an altered or additional impact on the natural environment. In fact the extent of physical works will be reduced resulting in the potential to generate fewer environmental impacts. All potential natural environmental impacts, will be assessed, approved and regulated under the existing conditions of consent and the WAD process.

#### 4.3.2 IMPACTS ON THE BUILT ENVIRONMENT

The proposed modification does not alter the outcome for the site in regard to the built environment in any significant way. As previously stated, the proposed modification will still result in necessary upgrades to the local and state road network to facilitate safe and efficient access and egress arrangements.

#### 4.3.3 SOCIAL AND ECONOMIC IMPACTS

The proposed modified development will still result in the orderly economic development of the site for purposes for which it is zoned, and the modification will not preclude the adherence of other conditions of consent. The proposed modification is not considered to pose any adverse social or economic impacts.

#### 4.4 SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE

Section 4.15(1)(c) requires the consent authority to consider:

*“(c) the suitability of the site for the development.”*

The site has already been approved for development and the proposed modification does not seek to substantially change the development. As such the site is considered suitable for the development.

#### 4.5 SECTION 4.15(1)(D) – SUBMISSIONS

Section 4.15(1)(d) requires the consent authority to consider:

*“(d) any submissions made in accordance with this Act or the regulations”.*

It is understood that any relevant representations will need to be considered by Council in determination of the Section 4.55(1A) modification, and responses prepared by the applicant where appropriate.

#### 4.6 SECTION 4.15(1)(E) – PUBLIC INTEREST

Section 4.15(1)(e) requires the consent authority to consider:

*“(e) the public interest”.*

The public interest is best served by orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls. The modification will not alter the permissibility or compliance of the development and is therefore considered to be in the public interest.



## 5 CONCLUSION

This Section 4.55(1A) application seeks approval to modify development consent DA/0098/2006. The proposed modification will facilitate alternative intersection layout to those referred to in a 2006 concurrence letter prepared and issued by TfNSW, by re-wording Condition 55 to reflect more suitable and appropriate intersection types and facilitate TfNSW's consideration of alternate intersection layouts. The modification is not considered to have any additional environmental (natural or built), social, economic (or otherwise) impacts to those previously considered acceptable and approved under the existing consent.

In relation to Section 4.55(1A)(b), the development will remain the same as that approved under DA/0098/2006 and the modification sought does not alter the original findings made in relation to the DA regarding the reasonableness and appropriateness of the proposal when considered against the provisions of Section 4.15(1) of the Act.

The proposed modifications will result in substantially the same development as that approved under the existing consent.