

ASSESSMENT REPORT

Section 96 (2) Application No. DA/422/1998/C

Assessment Officer:	Tracy Sharp
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EXECUTIVE SUMMARY

Application details	
Subject land:	259-269 Warnervale Road, Hamlyn Terrace
Lot and DP Number:	Lot 54 DP 7091
Site Area:	40,470m ²
Original Proposal:	41 Lot Residential Subdivision
Modification:	Minor reconfiguration of lot layout to increase number of lots from 41 to 48
Applicant:	Hynken Pty Ltd
Owner:	Hynken Pty Ltd
Date lodged:	9 June 2017
Value of Works:	N/A
Submissions:	None
Zoning:	Part E2 Environmental Conservation & Part R2 Low Density Residential
DCP Non-Compliances:	Yes – Part 4 – Subdivisions – Corner lots and lot widths
Clause 4.6:	N/A
Report Recommendation:	Approval

REPORT

THE PROPOSAL:

Under the provisions of Section 96(2) of the *Environmental Planning and Assessment Act 1979*, consent is sought to modify a 42 lot subdivision approved under DA/422/1998 and as modified under DA/422/1998/A. This Section 96 application proposes the following amendments:

- Minor configuration of the lot layout to increase the number of lots

The proposed adjustment to the lot boundaries increases the lot yield by six from 42 to a total of 48 and will comprise 44 residential lots, two residue lots, one open space lot and one drainage lot. Subdivision of the proposed residue Lots 145 and 146 are to be included as part of Stages 3 and 4 within DA/771/2007/B.

The proposed reconfigured subdivision layout provides for a better mix of lot sizes in recognition of the current housing market demand. The residential lots range in size from 450m² to 750m² and the drainage reserve and open space lots have areas of 5,687m² and 4,021m² respectively.

The approved and partially constructed internal road system, proposed open space or drainage allotments are not proposed to be altered under this Section 96 application. The proposed reconfiguration of lots will require some minor amendments to the interallotment drainage and sewer reticulation designs as previously approved but not yet constructed.

This Section 96 application also rectifies a lot number error whereby proposed lot 40 on the approved plan is duplicated incorporating both the open space and drainage lots. These lots will now be proposed lots 147 and 148 respectively.

The new engineering construction certificate (SCC) will address any changes required to the proposed culverts, footpaths, servicing and any other works required within Louisiana Road as well as alterations to interallotment drainage and water and sewer reticulation designs.

An amended bushfire safety authority from NSW Rural Fire Service has been received with conditions requiring restriction as to users for the required asset protection zones.

An amended controlled activity approval is required from NSW Department of Primary Industries – Water prior to the issue of the construction certificate for Stage 1.

The reconfiguration and increase in lots alters the lot numbering and as such various conditions are to be amended to reflect these proposed changes.

The proposed reconfiguration of lots will require changes to the following conditions: -

- Condition 1 currently reads as follows:

The development taking place in accordance with the approved development plans reference number 16604 amendment "D" dated 7 December 2009 except as modified by any conditions of this consent and any amendments in red except as modified by any conditions of this consent, and any amendments in red.

- *Stage 1 Lots 28 – 41*
- *Stage 2 Lots 1 – 14*
- *Stage 3 Lots 15 – 27*

Contributions apply to the issue of the Subdivision Certificate for each respective stage.

- Condition 1 is proposed to be amended as follows:

The development taking place in accordance with the approved development plans project number 22377, drawing number SB04, amendment A, dated 19.4.17 by Trehy Ingold Neate except as modified by any conditions of this consent and any amendments in red except as modified by any conditions of this consent, and any amendments in red.

- Stage 1 Lots 115-120, 122-130 and associated roadworks;
- Stage 2 Lots 101-114, 121 and associated roadworks;
- Stage 3 Lots 131-144 and associated roadworks.

Contributions apply to the issue of the Subdivision Certificate for each respective stage.

- Condition 2 currently reads as follows:

Prior to preparation of any engineering design plans the consultant preparing the design plans will need to contact Council's Engineering Development Section to discuss the extent and scope of all works and details required on the design plans to conform to Council's DCP 49 – Warnervale East And Wadalba North West and DCP 67 – Engineering Requirements for Development.

Details that need to be discussed but not limited to:

- *Bus stop shelter in Warnervale Rd;*
- *Treatment of western side of Louisiana Rd new formation;*
- *Provision of two (2) lanes on the southern formation of Warnervale Rd between Louisiana Rd and Barlow Pl;*
- *Existing culverts in Louisiana Rd to be replaced by the ultimate design for its full length and appropriate outlet treatment;*
- *Extent of fill and protection within the proposed drainage reserve (Lot 40);*
- *Details of Gross Pollutant Traps (GPT);*
- *The location of the landscaped medians within Warnervale Rd.*

- Condition 2 is proposed to be amended as follows:

Prior to preparation of any engineering design plans the consultant preparing the design plans will need to contact Council's Engineering Development Section to discuss the extent and scope of all works and details required on the design plans to conform to Council's DCP 49 – Warnervale East And Wadalba North West and DCP 67 – Engineering Requirements for Development.

Details that need to be discussed but not limited to:

- Bus stop shelter in Warnervale Rd;
- Treatment of western side of Louisiana Rd new formation;
- Provision of two (2) lanes on the southern formation of Warnervale Rd between Louisiana Rd and Barlow Pl;
- Existing culverts in Louisiana Rd to be replaced by the ultimate design for its full length and appropriate outlet treatment;
- Extent of fill and protection within the proposed drainage reserve (Lot 148);
- Details of Gross Pollutant Traps (GPT);
- The location of the landscaped medians within Warnervale Rd.

- Condition 9 currently reads as follows:

The provision of a 2.5 metre wide combined cycleway/pedestrian path in accordance with Council's Development Control Plan No 49 – Warnervale east and Wadalba

Northwest and Development Control Plan No 67 - Engineering Requirements for Development; in the following locations:

- a) *Along the new southern and eastern boundary alignments of Warnervale and Louisiana Roads respectively for the full frontage of the subdivision; and*
- b) *Adjacent the southern boundaries of proposed Lots 10 and 19, and the northern boundary of Lots 20 and 34 connecting to the proposed combined cycleway/pedestrian path in Louisiana Road.*

The design plans must be approved by Council prior to the issue of a Construction Certificate for each stage. All works must be approved by Council prior to the issue of a Subdivision Certificate for each stage.

- Condition 9 is proposed to be amended as follows:

The provision of a 2.5 metre wide combined cycleway/pedestrian path in accordance with Council's Development Control Plan No 49 – Warnervale east and Wadalba Northwest and Development Control Plan No 67 - Engineering Requirements for Development; in the following locations:

- a) Along the new southern and eastern boundary alignments of Warnervale and Louisiana Roads respectively for the full frontage of the subdivision; and
- b) Adjacent the southern boundaries of proposed Lots 120 and 121, and the northern boundary of Lots 122 and 138 connecting to the proposed combined cycleway/pedestrian path in Louisiana Road.

The design plans must be approved by Council prior to the issue of a Construction Certificate for each stage. All works must be approved by Council prior to the issue of a Subdivision Certificate for each stage.

- Condition 19 currently reads as follows:

The roads, access and allotments adjacent to proposed Lot 40 (Open Space and Drainage) will be retained using rock walls or similar while the use of battering is prohibited to ensure maximum retention of trees and native vegetation within this allotment.

- Condition 19 is proposed to be amended as follows:

The roads, access and allotments adjacent to proposed Lots 147 and 148 (Open Space and Drainage) will be retained using rock walls or similar while the use of battering is prohibited to ensure maximum retention of trees and native vegetation within this allotment.

- Condition 20 currently reads as follows:

No construction or other vehicle access is permitted across proposed Lot 40.

- Condition 20 is proposed to be amended as follows:

No construction or other vehicle access is permitted across proposed Lots 147 and 148.

- Condition 21 currently reads as follows:

Trees and native vegetation proposed for retention and exclusion fencing are to be clearly identified on all the final approved engineering plans. In particular, proposed Lot

40 (Open Space and Drainage) is to be protectively fenced prior to the issue of a Construction Certificate for stage 1.

- Condition 21 is proposed to be amended as follows:

*Trees and native vegetation proposed for retention and exclusion fencing are to be clearly identified on all the final approved engineering plans. In particular, proposed **Lots 147 and 148** (Open Space and Drainage) is to be protectively fenced prior to the issue of a Construction Certificate for stage 1.*

- Condition 23 currently reads as follows:

Trees and vegetation within proposed Lot 40 are to be protected by the erection of 1.8 metre-high man-proof fencing as per the consulting arborist and ecologist's direction and maintained in good working order for the duration of works. This is to be confirmed to Council's Development Ecologist in writing by the consultant arborist/ecologist prior to the issue of a Construction Certificate for stage 1. All fenced tree protection areas are to be clearly marked as "No Go Area" on all final approved engineering plans and on the fencing itself. All construction contractors and personnel are to be advised of the importance of conserving these No Go Areas as part of their site and OH&S induction program. No clearing of trees or vegetation or storage or vehicles, fill or materials or access is to occur within proposed Lot 40 (Open Space and Drainage).

- Condition 23 is proposed to be amended as follows:

*Trees and vegetation within proposed **Lots 147 and 148** are to be protected by the erection of 1.8 metre-high man-proof fencing as per the consulting arborist and ecologist's direction and maintained in good working order for the duration of works. This is to be confirmed to Council's Development Ecologist in writing by the consultant arborist/ecologist prior to the issue of a Construction Certificate for stage 1. All fenced tree protection areas are to be clearly marked as "No Go Area" on all final approved engineering plans and on the fencing itself. All construction contractors and personnel are to be advised of the importance of conserving these No Go Areas as part of their site and OH&S induction program. No clearing of trees or vegetation or storage or vehicles, fill or materials or access is to occur within proposed **Lots 147 and 148** (Open Space and Drainage).*

- Condition 24 currently reads as follows:

The applicant is to prepare and submit to Council's Development Ecologist for approval a Habitat Restoration Plan (HRP) for the proposed habitat protection areas and buffers to the development prior to the issue of a Construction Certificate for stage 1. The HRP is to be prepared by a suitably qualified and experienced ecologist and will integrate with the required Category 3 Landscape Plan and Erosion Control Plans. The applicant is to demonstrate to Council's Development Ecologist's satisfaction how this integration has occurred. In preparing the HRP the applicant is to have due regard to the following specific and required components of the HRP:

Revegetation/restoration of proposed Lot 40 (Open Space and Drainage)

- A suitably qualified and experienced professional bush regeneration contractor is to be engaged to carry out revegetation planting, restoration and maintenance weed control specified in the Habitat Restoration Plan.*
- The minimum qualifications and experience required for the bush regeneration contractor are a TAFE Certificate 2 in Bushland Regeneration and two years demonstrated experience (for site supervisor) and a TAFE Certificate 2 in Bushland Regeneration and one year demonstrated experience (for other personnel). In addition the site supervisor is to be eligible for full professional membership of the Australian Association of Bush Regenerators (AABR).*

- c) *The mulch/tub grindings generated from the removal and thinning of trees associated with the development is/are to be re-used in restoring the 10(a) zoned section of the property as required.*
- d) *Restoration areas are to be maintained for a minimum of three years.*
- e) *Any plant stock used in revegetation (if required) will be sourced from Central Coast derived material.*

Wildlife Management Strategy

- a) *A Wildlife Management Strategy (WMS) is to be prepared by the consultant ecologist. The WMS is to address the handling of fauna species likely to occur on the site. The WMS is to determine the total number of roosting and denning hollows suitable for all fauna including microbats, birds and arboreal mammals, to be removed or isolated by the development, and provide for the creation of suitable replacement denning habitat via artificial nest boxes, within proposed Lot 40. Nest boxes are to be provided on a one for one basis for every natural hollow removed by the development. All nest boxes are to be erected prior to the issue of a Construction Certificate for stage 1 and at least one month prior to vegetation clearance on the site. The WMS is to also provide for the monitoring of nest boxes to determine their usage and carry out repairs or replacement (as required) on a biannual basis for a minimum period of two (2) years following erection. Monitoring reports are to be periodically forwarded to Council.*
- b) *The consultant ecologist is to supervise removal of any hollow bearing to ensure mitigation against any native animal welfare issues.*

- Condition 24 is proposed to be amended as follows:

The applicant is to prepare and submit to Council's Development Ecologist for approval a Habitat Restoration Plan (HRP) for the proposed habitat protection areas and buffers to the development prior to the issue of a Construction Certificate for stage 1. The HRP is to be prepared by a suitably qualified and experienced ecologist and will integrate with the required Category 3 Landscape Plan and Erosion Control Plans. The applicant is to demonstrate to Council's Development Ecologist's satisfaction how this integration has occurred. In preparing the HRP the applicant is to have due regard to the following specific and required components of the HRP:

Revegetation/restoration of proposed Lots 147 and 148 (Open Space and Drainage)

- a) A suitably qualified and experienced professional bush regeneration contractor is to be engaged to carry out revegetation planting, restoration and maintenance weed control specified in the Habitat Restoration Plan.
- b) The minimum qualifications and experience required for the bush regeneration contractor are a TAFE Certificate 2 in Bushland Regeneration and two years demonstrated experience (for site supervisor) and a TAFE Certificate 2 in Bushland Regeneration and one year demonstrated experience (for other personnel). In addition the site supervisor is to be eligible for full professional membership of the Australian Association of Bush Regenerators (AABR).
- c) The mulch/tub grindings generated from the removal and thinning of trees associated with the development is/are to be re-used in restoring the 10(a) zoned section of the property as required.
- d) Restoration areas are to be maintained for a minimum of three years.
- e) Any plant stock used in revegetation (if required) will be sourced from Central Coast derived material.

Wildlife Management Strategy

- a) A Wildlife Management Strategy (WMS) is to be prepared by the consultant ecologist. The WMS is to address the handling of fauna species likely to occur on

the site. The WMS is to determine the total number of roosting and denning hollows suitable for all fauna including microbats, birds and arboreal mammals, to be removed or isolated by the development, and provide for the creation of suitable replacement denning habitat via artificial nest boxes, within proposed **Lots 147 and 148**. Nest boxes are to be provided on a one for one basis for every natural hollow removed by the development. All nest boxes are to be erected prior to the issue of a Construction Certificate for stage 1 and at least one month prior to vegetation clearance on the site. The WMS is to also provide for the monitoring of nest boxes to determine their usage and carry out repairs or replacement (as required) on a biannual basis for a minimum period of two (2) years following erection. Monitoring reports are to be periodically forwarded to Council.

- b) The consultant ecologist is to supervise removal of any hollow bearing to ensure mitigation against any native animal welfare issues

- Condition 25 currently reads as follows:

The Landscape Plan is to only use native species endemic to the site and in particular focus on Eucalyptus tereticornis, Eucalyptus robusta, Angophora costata, Melaleuca spp. It is to integrate with the required Habitat Restoration Plan. In particular, the Plan is to detail the planting of a minimum of ten 100L suitable Eucalyptus species along both sides of the Louisiana Road reserve to provide future connectivity for Squirrel Gliders in to and out of Lot 40.

- Condition 25 is proposed to be amended as follows:

The Landscape Plan is to only use native species endemic to the site and in particular focus on Eucalyptus tereticornis, Eucalyptus robusta, Angophora costata, Melaleuca spp. It is to integrate with the required Habitat Restoration Plan. In particular, the Plan is to detail the planting of a minimum of ten 100L suitable Eucalyptus species along both sides of the Louisiana Road reserve to provide future connectivity for Squirrel Gliders in to and out of **Lots 147 and 148**.

- Condition 26 currently reads as follows:

All external lighting is to be of a type that minimises overspill into retained vegetated areas within proposed Lot 40.

- Condition 26 is proposed to be amended as follows:

All external lighting is to be of a type that minimises overspill into retained vegetated areas within proposed **Lots 147 and 148**.

- Condition 27 currently reads as follows:

A Part 3A Permit under the Rivers and Foreshores Improvement Act 1948 must be obtained from the Department of Infrastructure Planning and Natural Resources for any works within, or within 40 metres of, the natural drainage reserve (Lot 40). A copy of the permit is to be provided to Council prior to the issue of a Construction Certificate for stage 1.

- Condition 27 is proposed to be amended as follows:

An amended controlled activity approval under Section 91 of the Water Management Act 2000 (formerly known as a Part 3A Permit under the Rivers and Foreshores Improvement Act 1948) must be obtained from the Department of a Primary Industry - Water for any works within, or within 40 metres of, the natural drainage reserve (Lot 148). A copy of the permit is to be provided to Council prior to the issue of a Construction Certificate for Stage 1.

- New condition 27A:

Compliance with the Bushfire Safety Authority issued by the NSW Rural Fire Service as outlined in correspondence dated 13 November 2017, as indicated below: -

Asset Protection Zones

- a. At the issue of subdivision certificate and in perpetuity the entire property of each residential lot shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- b. Prior to the issue of a subdivision certificate, suitably worded instruments shall be created pursuant to section 88 of the 'Conveyancing Act 1919' on proposed lots 54 and 55 which requires the land to be managed as follows:
 - A 10 metre inner protection area (IPA) shall be managed north of De Havilland Circuit and Road No.1;
 - A 10 metre IPA shall be managed south of Lotus Place; and,
 - A 10 metre IPA and 10 metre outer protection area (OPA) shall be managed south of the lot boundaries of Lots 120 and 121 and north of Lots 122 and 136.

The land shall be managed as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

- c. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

- d. Public road access shall comply with the acceptable solutions as outlined within section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

Landscaping

- e. Landscaping shall comply with the principles as outlined within Appendix 5 of 'Planning for Bush Fire Protection 2006'.

- Condition 28 currently reads as follows:

The payment to Council of contributions for each stage (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act 1979 for Council's Contribution Plan for the Warnervale Social Planning District. Council's contributions are adjusted on the first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.

- Condition 28 is proposed to be amended as follows:

Prior to the issue of any Construction Certificate, the payment to Council of developer contributions as calculated in the formula below:

Developer contribution = \$2,084,495.40 X Current CPI ÷ Base CPI

where “**Current CPI**” is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician at the time of payment of developer contributions pursuant to this condition, and “**Base CPI**” is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician at the date of this consent.

This condition is imposed pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*.

- Condition 49 currently reads as follows:

The transfer to Council in fee simple prior to the issue of a Subdivision Certificate for stage 1 and at no cost to Council, of the land identified as being proposed Lot 40 as drainage land and open space, in accordance with the provisions of Development Control Plan No 49. It will be necessary to submit a transfer in registerable form for execution by Council, together with the deeds to that property.

- Condition 49 is proposed to be amended as follows:

The transfer to Council in fee simple prior to the issue of a Subdivision Certificate for stage 1 and at no cost to Council, of the land identified as being proposed **Lots 147 and 148** as drainage land and open space, in accordance with the provisions of Development Control Plan No 49. It will be necessary to submit a transfer in registerable form for execution by Council, together with the deeds to that property.

- Condition 50 currently reads as follows:

The provision of a lapped and capped timber fence along the northern boundary of proposed Lots 20 and 34 adjacent to the required cycleway. Details are to be provided to and approved by Council prior to the issue of a Subdivision Certificate.

- Condition 50 is proposed to be amended as follows:

The provision of a lapped and capped timber fence along the northern boundary of proposed Lots **122 and 138** adjacent to the required cycleway. Details are to be provided to and approved by Council prior to the issue of a Subdivision Certificate.

- Condition 51 currently reads as follows:

The plan of subdivision and Section 88B instrument are to establish the following restrictive covenants, with the Council having the benefit of these covenants and having sole authority to release vary or modify these covenants. Wherever possible the extent of the land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.

On Lots 2, 13 and 15:

- *Prohibiting direct vehicle ingress and egress to and from Warnervale Road.*

On Lots 10 and 19:

- *Prohibiting the erection of any building within the easement for sewer 5.0 metre wide over the existing 450mm carrier sewer main.*

On Lots 1 and 2:

- *Prohibiting the erection of any dwelling/building unless it is sympathetic in design and position to the orientation and roof form of the heritage item located on the adjoining property (Lot 1 DP 304957).*

On Lots 1, 3 and 4:

- Prohibiting the use of colourbond fencing along the common boundary of Lot 1 DP 304957.

- Condition 51 is to be amended as follows:

The plan of subdivision and Section 88B instrument are to establish the following restrictive covenants, with the Council having the benefit of these covenants and having sole authority to release vary or modify these covenants. Wherever possible the extent of the land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.

On Lots 102, 114 and 115:

- Prohibiting direct vehicle ingress and egress to and from Warnervale Road.

On Lots 120 and 121:

- Prohibiting the erection of any building within the easement for sewer 5.0 metre wide over the existing 450mm carrier sewer main.

On Lots 101 and 102:

- Prohibiting the erection of any dwelling/building unless it is sympathetic in design and position to the orientation and roof form of the heritage item located on the adjoining property (Lot 1 DP 304957).

On Lots 101, 103 and 104:

- Prohibiting the use of colourbond fencing along the common boundary of Lot 1 DP 304957.

Asset protection zone existing lots 54, 55, 120, 121, 122 and 136

- 'Restriction on the Use of Land' that the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' in perpetuity.
- 'Restriction on the Use of Land' for a 10 metre inner protection area (IPA) shall be managed north of De Havilland Circuit and Road No.1 and a 10 metre IPA shall be managed south of Lotus Place.
- 'Restriction on the Use of Land' that the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' in perpetuity.
- 'Restriction on the Use of Land' for a 10 metre IPA and 10 metre outer protection area (OPA) shall be managed south of the lot boundaries of Lots 120 and 121 and north of Lots 122 and 136.

- Condition 57 currently reads as follows:

Lot 41 is to be withheld from sale until such time as it can be subdivided in conjunction with the adjoining land. In this regard, the further subdivision of this lot is subject to the submission to and approval by Council of a separate development application.

- Condition 57 is to be amended as follows:

Lot 145 is to be withheld from sale until such time as it can be subdivided in conjunction with the adjoining land. In this regard, the further subdivision of this lot is subject to the submission to and approval by Council of a separate development application.

HISTORY:

DA/422/1998 for a 42 lot subdivision was approved on 2 July 2004. Physical commencement has been recognised by Council. A Section 96 application was approved on 4 March 2010 and proposed to stage the subdivision in three stages. Subdivision Construction Certificate (SCC) No. 1/2010 was issued on 2 June.

VARIATIONS TO POLICIES:

The original development application did not propose any variations to the Wyong Local Environmental Plan 1991 (WLEP 1991) or Wyong Development Control Plan 2005 (WDCP 2005) or policies.

The development the subject of this Section 96(2) application proposes the following variations: -

WDCP 2013	Part 4 - Subdivision
Clause	Clause 4.1.2 Corner Lots
Standard	700m ² minimum lot size for corner lot
Departure basis	Proposed lot sizes of 615m ² to 668.5m ² or variations of 85m ² or 12% to 32m ² or 4.6%

WDCP 2013	Part 4 - Subdivision
Clause	Clause 4.1
Standard	15m width at the building line
Departure basis	Width at the building line of 14.6m, which is a variation of 0.4m or 2.67%

The proposed variations are discussed in further detail below.

Environmental Planning and Assessment Act, 1979

1. Section 96 – Modification of Consents

In accordance with Section 96(2), Council may consider a modification of development consent provided:

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

Assessment Officers Comments

It is considered that the proposed development is substantially the same as that originally approved, as the road configuration is remaining the same, with changes to the lot configuration and number of lots only.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Assessment Officers Comments

The applicant provided a copy of the relevant general terms of approval from the Department of Primary Industries – Water and Subsidence Advisory NSW. This Section 96 application was referred to the NSW Rural Fire Service who provided an amended bushfire safety authority.

- (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*

Assessment Officers Comments

This application was notified in accordance with WDCP 2013 – Chapter 1.2 Notification of Development Proposals.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Assessment Officers Comments

No submissions were received during the notification period.

Section 96(3) requires Council to consider matters referred to in Section 79C(1) as are relevant to the application for modification of the development consent. Section 79C(1) is discussed in more detail further within this report.

REFERRALS:

External

- Subsidence Advisory NSW

The site is located within a mine subsidence district and the development constitutes integrated development requiring referral to Subsidence Advisory (formerly the Mine Subsidence Board) under Section 15 of the *Mine Subsidence Compensation Act 1961* and Section 91 of the *Environmental Planning and Assessment Act 1979* for their General Terms of Approval.

The applicant has provided a copy of the Subsidence Advisory's approval dated 1 June 2017 with this Section 96 application.

- NSW Rural Fire Service

The subject land is bushfire prone and the application was referred to the NSW Rural Fire Service (RFS) as the proposal is classified as integrated development and a Section 100B bushfire safety authority was provided with the original application. The RFS have issued an amended bushfire safety authority.

- Department of Primary Industries - Water

A Controlled Activity Approval (CAA) was issued by the Department of Primary Industries - Water (DPIW) for the original subdivision. An application was made by the landowner to Department of Primary Industries - Water (DPIW) who determined to extend the lapsing date and as such the Controlled Activity Approval (CAA) remains valid and a referral to DPIW is not required. Condition 27 is to be amended so that the applicant can provide a copy of the amended CAA from DPIW prior to issue of the construction certificate for stage 1.

Internal

The development was referred to the following internal officers and the following comments have been provided: -

- Development Engineer

The application has been assessed by Council's Development Engineer and the application is recommended for approval with no amendments to any conditions.

- Section 94 Contributions Officer

The application has been assessed by Council's Section 94 Contributions Officer and the application is recommended for approval subject to a condition requiring the payment of Section 94 contributions prior to issue of the Construction Certificate.

STATUTORY PROVISIONS:

SECTION 79C(1) HEADS OF CONSIDERATION

(a) The provisions of

(i) Any environmental planning instrument:

State Environmental Planning Policies

The proposed Section 96 application does not alter the assessment of any of the relevant SEPPs that were addressed under the original application. In addition there are no additional SEPPs that need to be considered as part of this Section 96 application.

Wyong Local Environmental Plan 2013 (WLEP 2013)

Permissibility

The original development application was permissible under the provisions of the 2(e) Urban Release zone and the development remains permissible under the commensurate zoning under WLEP 2013.

Relevant Clauses

The development application has been assessed against the following relevant clauses of the WLEP 2013:

- Clause 2.6 – Subdivision

The application satisfies the provision of this clause.

- Clause 4.1 – Minimum subdivision lot size

This Clause applies to any land shown on the lot size map that requires development consent.

The minimum lot size map identifies that the subject land has a minimum lot size of 450m² for the R2 Low Density Residential zoned portion of the site and 40ha for the E2 Environmental Conservation zoned portion of the site.

The proposed alteration to the lot configuration proposes lots with areas of 450m² to 750m² for the R2 Low Density Residential zoned portion of the site, therefore complying with the minimum lot size provisions of this Clause.

The E2 Environmental Conservation zoned portion of the site proposes lots with areas of 4,021m² and 5,687m², therefore not complying with the minimum lot size of 40ha for this zone. However, the lot size of these two lots is not altering from that which was approved

under the original application. The lot size of these two lots complied with the minimum lot size requirements of the previous zoning, 2(e) Urban Release zone under the WLEP 1991.

- Clause 5.9 - Preservation of trees or vegetation

No further tree removal is proposed and further consideration of Clause 5.9 is not required.

- Clause 7.2 - Flooding

The subject site has been identified as being subject to the 1:100 year flood event. The flood affectation was considered under the original application with appropriate conditions attached to the consent. There are no alterations proposed to the lot layout that would require additional consideration under Clause 7.2 of this LEP or amendments to any relevant conditions.

- Clause 7.9 – Essential Services

The amended concept engineering design plans address the proposed alterations to interallotment drainage and sewer reticulation to ensure that the essential services required under Clause 7.9 have been satisfactorily addressed. The location of these services will be provided in more detail as part of the new Subdivision Construction Certificate.

(ii) Any proposed instrument (Draft LEP etc)

There are no draft SEPP's or LEP's that are applicable to the subject site.

(iii) Any development control plan

Wyong Development Control Plan 2013 (WDCP 2013)

The original development complied with the provisions of WDCP 2005.

The following comments are provided in relation to WDCP 2013: -

- Chapter 3.1 – Site Waste Management

The proposed Section 96 application has included a new waste management plan as required under Chapter 3.1 of this DCP.

- Chapter 3.3 - Floodplain Management

The subject site has been identified as being subject to the 1:100 year flood event. The flood affectation was considered under the original application against the appropriate flooding chapter of WDCP 2005 with appropriate conditions attached to the consent. There are no alterations to the lot layout that would require additional consideration of the provisions within Chapter 3.3 of WDCP 2013.

- Part 4 - Subdivision

The existing subdivision layout includes seven lots that do not comply with the current minimum lot sizes under Part 4, all of which are corner lots. The proposed lot configuration comprises the following: -

- Under this Chapter the minimum lot size for corner lots is 700m². The original application proposed six lots under this minimum lot size requirement with lot sizes of 642m² to 694m² or variations of 58m² or 8.3% to 6m² or 0.86%. The proposed reconfiguration of the lot boundaries under this Section 96 application reduces the number of allotments with a variation to this 700m² minimum lot size requirement from seven to five. These lot sizes of 615m² to 668.5m² or variations

of 85m² or 12% to 32m² or 4.6%. The reduction in number of non-compliant lots is considered to be a positive outcome, even though the variation to the minimum lot size has increased slightly. However, it is considered that these lots will still enable a wide variety of dwelling designs to be constructed on these lots in the future as well as provide adequate setbacks, intersection sight lines and privacy. As such it is considered that these proposed variations are minor.

- The lots proposed as part of the original application are compliant with the required 15m width at the building line under this Part. However, the reconfiguration of lots results in five proposed allotments that do not comply with the 15m minimum width at the building line required under this Part 4. These non-compliant lots (109 to 113) have a width at the building line of 14.6m, which is a variation of 0.4m or 2.67%. This proposed variation is considered a minor non-compliance and will still enable a wide variety of dwelling designs to be constructed on these lots in the future. As such it is considered that these proposed variations are minor.

(iiia) any planning agreement

There is no planning agreement applicable to the subject site or proposed development.

(iv) The regulations

The *Environmental Planning and Assessment Regulations 2000* applies to all development applications in regards to such items as application type, compulsory contributions, notification of development applications and a range of many other details regarding development application requirements. In regards to this application, there is no specific clause that warrants discussion.

(v) Any coastal zone management plan

The subject site is not located within a coastal zone and therefore, there is no coastal zone management plan applicable to the proposed development.

(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

The amended development is considered satisfactory in terms of environmental impacts.

(c) The suitability of the site for the development

The proposed modification as discussed above is minor in nature. The modification will not impact on the findings of the original assessment which found the approved development suitable for the site and in keeping with the character of the area.

(d) Any submissions made in accordance with this Act or the regulations

In accordance with DCP 2013, Chapter 1.2 - Notice of Development Proposals, the proposed modification was required to be advertised however no submissions were received.

(e) The public interest

Having regard to the assessment contained in this report, it is considered that approval of the development is in the public interest.

OTHER CONSIDERATIONS:

- Section 94 Contributions

This Section 96 application proposes to increase the number of residential lots and as such the Section 94 contributions are required to be amended as indicated above as part of condition 28.

CONCLUSION:

After consideration of the development against Section 96(1A) of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposal is suitable for the site and is in the public interest. Therefore, it is recommended that the Section 96(1A) application be approved.

RECOMMENDATION:

That the application for modification of Development Application No. DA/422/1998/C be modified as follows:

- Condition 1 is proposed to be amended as follows:

The development taking place in accordance with the approved development plans project number 22377, drawing number SB04, amendment A, dated 19.4.17 by Trehy Ingold Neate except as modified by any conditions of this consent and any amendments in red except as modified by any conditions of this consent, and any amendments in red.

- Stage 1 Lots 115-120, 122-130 and associated roadworks;
- Stage 2 Lots 101-114, 121 and associated roadworks;
- Stage 3 Lots 131-144 and associated roadworks.

Contributions apply to the issue of the Subdivision Certificate for each respective stage.

- Condition 2 is proposed to be amended as follows:

Prior to preparation of any engineering design plans the consultant preparing the design plans will need to contact Council's Engineering Development Section to discuss the extent and scope of all works and details required on the design plans to conform to Council's DCP 49 – Warnervale East And Wadalba North West and DCP 67 – Engineering Requirements for Development.

Details that need to be discussed but not limited to:

- Bus stop shelter in Warnervale Rd;
- Treatment of western side of Louisiana Rd new formation;
- Provision of two (2) lanes on the southern formation of Warnervale Rd between Louisiana Rd and Barlow Pl;
- Existing culverts in Louisiana Rd to be replaced by the ultimate design for its full length and appropriate outlet treatment;
- Extent of fill and protection within the proposed drainage reserve (Lot 148);
- Details of Gross Pollutant Traps (GPT);
- The location of the landscaped medians within Warnervale Rd.

- Condition 9 is proposed to be amended as follows:

The provision of a 2.5 metre wide combined cycleway/pedestrian path in accordance with Council's Development Control Plan No 49 – Warnervale east and Wadalba Northwest and Development Control Plan No 67 - Engineering Requirements for Development; in the following locations:

- c) Along the new southern and eastern boundary alignments of Warnervale and Louisiana Roads respectively for the full frontage of the subdivision; and
- d) Adjacent the southern boundaries of proposed Lots 120 and 121, and the northern boundary of Lots 122 and 138 connecting to the proposed combined cycleway/pedestrian path in Louisiana Road.

The design plans must be approved by Council prior to the issue of a Construction Certificate for each stage. All works must be approved by Council prior to the issue of a Subdivision Certificate for each stage.

- Condition 19 is proposed to be amended as follows:

The roads, access and allotments adjacent to proposed Lots 147 and 148 (Open Space and Drainage) will be retained using rock walls or similar while the use of battering is prohibited to ensure maximum retention of trees and native vegetation within this allotment.

- Condition 20 is proposed to be amended as follows:

No construction or other vehicle access is permitted across proposed Lots 147 and 148.

- Condition 21 is proposed to be amended as follows:

Trees and native vegetation proposed for retention and exclusion fencing are to be clearly identified on all the final approved engineering plans. In particular, proposed Lots 147 and 148 (Open Space and Drainage) is to be protectively fenced prior to the issue of a Construction Certificate for stage 1.

- Condition 23 is proposed to be amended as follows:

Trees and vegetation within proposed Lots 147 and 148 are to be protected by the erection of 1.8 metre-high man-proof fencing as per the consulting arborist and ecologist's direction and maintained in good working order for the duration of works. This is to be confirmed to Council's Development Ecologist in writing by the consultant arborist/ecologist prior to the issue of a Construction Certificate for stage 1. All fenced tree protection areas are to be clearly marked as "No Go Area" on all final approved engineering plans and on the fencing itself. All construction contractors and personnel are to be advised of the importance of conserving these No Go Areas as part of their site and OH&S induction program. No clearing of trees or vegetation or storage or vehicles, fill or materials or access is to occur within proposed Lots 147 and 148 (Open Space and Drainage).

- Condition 24 is proposed to be amended as follows:

The applicant is to prepare and submit to Council's Development Ecologist for approval a Habitat Restoration Plan (HRP) for the proposed habitat protection areas and buffers to the development prior to the issue of a Construction Certificate for stage 1. The HRP is to be prepared by a suitably qualified and experienced ecologist and will integrate with the required Category 3 Landscape Plan and Erosion Control Plans. The applicant is to demonstrate to Council's Development Ecologist's satisfaction how this integration has occurred. In preparing the HRP the applicant is to have due regard to the following specific and required components of the HRP:

Revegetation/restoration of proposed Lots 147 and 148 (Open Space and Drainage)

- a) A suitably qualified and experienced professional bush regeneration contractor is to be engaged to carry out revegetation planting, restoration and maintenance weed control specified in the Habitat Restoration Plan.
- b) The minimum qualifications and experience required for the bush regeneration contractor are a TAFE Certificate 2 in Bushland Regeneration and two years demonstrated experience (for site supervisor) and a TAFE Certificate 2 in Bushland Regeneration and one year demonstrated experience (for other personnel). In addition the site supervisor is to be eligible for full professional membership of the Australian Association of Bush Regenerators (AABR).
- c) The mulch/tub grindings generated from the removal and thinning of trees associated with the development is/are to be re-used in restoring the 10(a) zoned section of the property as required.
- d) Restoration areas are to be maintained for a minimum of three years.
- e) Any plant stock used in revegetation (if required) will be sourced from Central Coast derived material.

Wildlife Management Strategy

- a) A Wildlife Management Strategy (WMS) is to be prepared by the consultant ecologist. The WMS is to address the handling of fauna species likely to occur on the site. The WMS is to determine the total number of roosting and denning hollows suitable for all fauna including microbats, birds and arboreal mammals, to be removed or isolated by the development, and provide for the creation of suitable replacement denning habitat via artificial nest boxes, within proposed Lots 147 and 148. Nest boxes are to be provided on a one for one basis for every natural hollow removed by the development. All nest boxes are to be erected prior to the issue of a Construction Certificate for stage 1 and at least one month prior to vegetation clearance on the site. The WMS is to also provide for the monitoring of nest boxes to determine their usage and carry out repairs or replacement (as required) on a biannual basis for a minimum period of two (2) years following erection. Monitoring reports are to be periodically forwarded to Council.
 - b) The consultant ecologist is to supervise removal of any hollow bearing to ensure mitigation against any native animal welfare issues
- Condition 25 is proposed to be amended as follows:

The Landscape Plan is to only use native species endemic to the site and in particular focus on *Eucalyptus tereticornis*, *Eucalyptus robusta*, *Angophora costata*, *Melaleuca* spp. It is to integrate with the required Habitat Restoration Plan. In particular, the Plan is to detail the planting of a minimum of ten 100L suitable *Eucalyptus* species along both sides of the Louisiana Road reserve to provide future connectivity for Squirrel Gliders in to and out of Lots 147 and 148.
 - Condition 26 is proposed to be amended as follows:

All external lighting is to be of a type that minimises overspill into retained vegetated areas within proposed Lots 147 and 148.
 - Condition 27 is proposed to be amended as follows:

An amended controlled activity approval under Section 91 of the *Water Management Act 2000* (formerly known as a Part 3A Permit under the *Rivers and Foreshores Improvement Act 1948*) must be obtained from the Department of Primary Industry - Water for any works within, or within 40 metres of, the natural drainage reserve (Lot 148). A copy of the permit is to be provided to Council prior to the issue of a Construction Certificate for Stage 1.

- New condition 27A:

Prior to the issue of the Occupation Certificate compliance with the Bushfire Safety Authority of the Rural Fire Service as outline in correspondence dated 13 November 2017, as indicated below: -

Asset Protection Zones

- f. At the issue of subdivision certificate and in perpetuity the entire property of each residential lot shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- g. Prior to the issue of a subdivision certificate, suitably worded instruments shall be created pursuant to section 88 of the 'Conveyancing Act 1919' on proposed lots 54 and 55 which requires the land to be managed as follows:
 - A 10 metre inner protection area (IPA) shall be managed north of De Havilland Circuit and Road No.1;
 - A 10 metre IPA shall be managed south of Lotus Place; and,
 - A 10 metre IPA and 10 metre outer protection area (OPA) shall be managed south of the lot boundaries of Lots 120 and 121 and north of Lots 122 and 136.

The land shall be managed as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

- h. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

- i. Public road access shall comply with the acceptable solutions as outlined within section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

Landscaping

- j. Landscaping shall comply with the principles as outlined within Appendix 5 of 'Planning for Bush Fire Protection 2006'.

- Condition 28 is proposed to be amended as follows:

Prior to the issue of any Construction Certificate, the payment to Council of developer contributions as calculated in the formula below:

Developer contribution = \$2,084,495.40 X Current CPI ÷ Base CPI

where “**Current CPI**” is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician at the time of payment of developer contributions pursuant to this condition, and “**Base CPI**” is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician at the date of this consent.

This condition is imposed pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*.

- Condition 49 is proposed to be amended as follows:

The transfer to Council in fee simple prior to the issue of a Subdivision Certificate for stage 1 and at no cost to Council, of the land identified as being proposed Lots 147 and 148 as drainage land and open space, in accordance with the provisions of Development Control Plan No 49. It will be necessary to submit a transfer in registerable form for execution by Council, together with the deeds to that property.

- Condition 50 is proposed to be amended as follows:

The provision of a lapped and capped timber fence along the northern boundary of proposed Lots 122 and 138 adjacent to the required cycleway. Details are to be provided to and approved by Council prior to the issue of a Subdivision Certificate.

- Condition 51 is to be amended as follows:

The plan of subdivision and Section 88B instrument are to establish the following restrictive covenants, with the Council having the benefit of these covenants and having sole authority to release vary or modify these covenants. Wherever possible the extent of the land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.

On Lots 102, 114 and 115:

- Prohibiting direct vehicle ingress and egress to and from Warnervale Road.

On Lots 120 and 121:

- Prohibiting the erection of any building within the easement for sewer 5.0 metre wide over the existing 450mm carrier sewer main.

On Lots 101 and 102:

- Prohibiting the erection of any dwelling/building unless it is sympathetic in design and position to the orientation and roof form of the heritage item located on the adjoining property (Lot 1 DP 304957).

On Lots 101, 103 and 104:

- Prohibiting the use of colourbond fencing along the common boundary of Lot 1 DP 304957.

Asset protection zone existing lots 54, 55, 120, 121, 122 and 136:

- 'Restriction on the Use of Land' that the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' in perpetuity.
- 'Restriction on the Use of Land' for a 10 metre inner protection area (IPA) shall be managed north of De Havilland Circuit and Road No.1 and a 10 metre IPA shall be managed south of Lotus Place.
- 'Restriction on the Use of Land' for a 10 metre IPA and 10 metre outer protection area (OPA) shall be managed south of the lot boundaries of Lots 120 and 121 and north of Lots 122 and 136.

- Condition 57 is to be amended as follows:

Lot 145 is to be withheld from sale until such time as it can be subdivided in conjunction with the adjoining land. In this regard, the further subdivision of this lot is subject to the submission to and approval by Council of a separate development application.

DELEGATIONS

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application have no pecuniary interest to disclose in respect of the application.



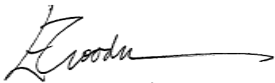
Tracy Sharp
Senior Development Planner
DEVELOPMENT ASSESSMENT

Assessing Officer

The staff authorised to determine the application have no pecuniary interest to disclose in respect of the application.

Approved:

Date: 23 November 2017



Emily Goodworth
Section Manager, Development
Assessment
DEVELOPMENT ASSESSMENT

Reviewing/Determining Officer