

January 2022



**Statement of Environmental Effects**

Modification of DA0390/2021



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<b>TITLE</b>	Statement of Environmental Effects
<b>SUBTITLE</b>	Modification of DA0390/2021
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<b>SITE ADDRESS</b>	130 Mortimer Street Mudgee NSW 2850
<b>LOT/SECTION/DP</b>	Lot 4&5/-/DP37731

<b>VERSION</b>	<b>COMMENT</b>	<b>DATE</b>
1.0	Draft for Client Review	19/01/2022

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# STATEMENT OF ENVIRONMENTAL EFFECTS

DA Modification – 130 Mortimer Street Mudgee



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## 1 INTRODUCTION

O’Ryan Geospatial Pty Ltd (O’Ryan) has been engaged to prepare a Statement of Environmental Effects (SEE) report seeking to modify the approved site plan of DA0390/2021. This development application (DA) modification intends to reposition the granny flat approved by DA0390/2021 elsewhere within the site to address conflicts with Mid-Western Regional Councils (MWRC) sewerage infrastructure.

DA0390/2021 was issued on the 25 August 2021 and approves the construction of a secondary dwelling within the northwest corner of the subject site. A pre-construction inspection discovered an additional segment of sewer main not recorded on Council’s servicing diagrams that extends through the approved building footprint. The conditions of consent prohibit all structures within 1500mm of the centerline of the sewer main. This DA modification seeks to relocate the approved secondary dwelling to the northeast corner of the site such that the dwelling complies with the requirements of the consent.

### 1.1 SCOPE OF THIS REPORT

This SEE report provides an overview of the existing site, describes the proposed modification to the approved designs and evaluates the proposal against the environmental planning framework. The report is structured in the following sections:

- **Section 2** provides a description of the subject site
- **Section 3** describes the proposed modifications to the approved site layout
- **Section 4** evaluates the proposal against the planning framework
- **Section 5** provides a conclusion

The application is supported by additional technical plans that should be read in conjunction with this report, including:

- **Appendix A** – Approved Site Plans
- **Appendix B** – 21-710 Mod DA Sketch Plan v1.0
- **Appendix C** – 21-710 AHIMS Search 200m

### 1.2 SUBJECT SITE

The proposed development location (the subject site) is 130 Mortimer Street Mudgee NSW 2850, which is legally identified as 4&5-/DP37731. The subject site is located approximately 0.5km west of the Mudgee Post Office, as shown below by Figure 1.

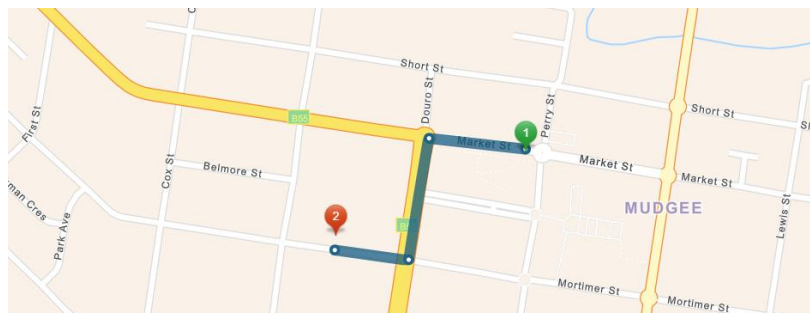


Figure 1 Subject Site Location

## 2 SITE OVERVIEW

The subject site comprises two allotments approximately 857m<sup>2</sup> in area and with 22m of direct frontage with Mortimer Street. The site incorporates an established weatherboard dwelling and a brick garage/shed. The surrounding properties are generally used for residential purposes with notable features, including a childcare facility immediately to the north and a watercourse/drainage channel located to the east. The site and surroundings are zoned R3 Medium Density Residential under the *Mid-Western Regional Local Environmental Plan 2012* (MWR LEP). An overview of the site is shown below in Figure 2.



**Figure 2 Site Overview**

The subject site is generally flat and is not associated with any crests, ridgelines or otherwise visually prominent land. No watercourses are located within the subject site however the site is located approximately 20m west of a 1<sup>st</sup> Strahler Order Stream identified on the *Water Management (General) Regulation 2018* hydroline data.

The site is located within the Mudgee Heritage Conservation Zone however no heritage items listed under Schedule 5 of the MWR LEP or the state heritage register are located within or adjoining the site. An AHIMS search conducted in January 2022 did not identify any Aboriginal Objects or Places within 200m of the site.

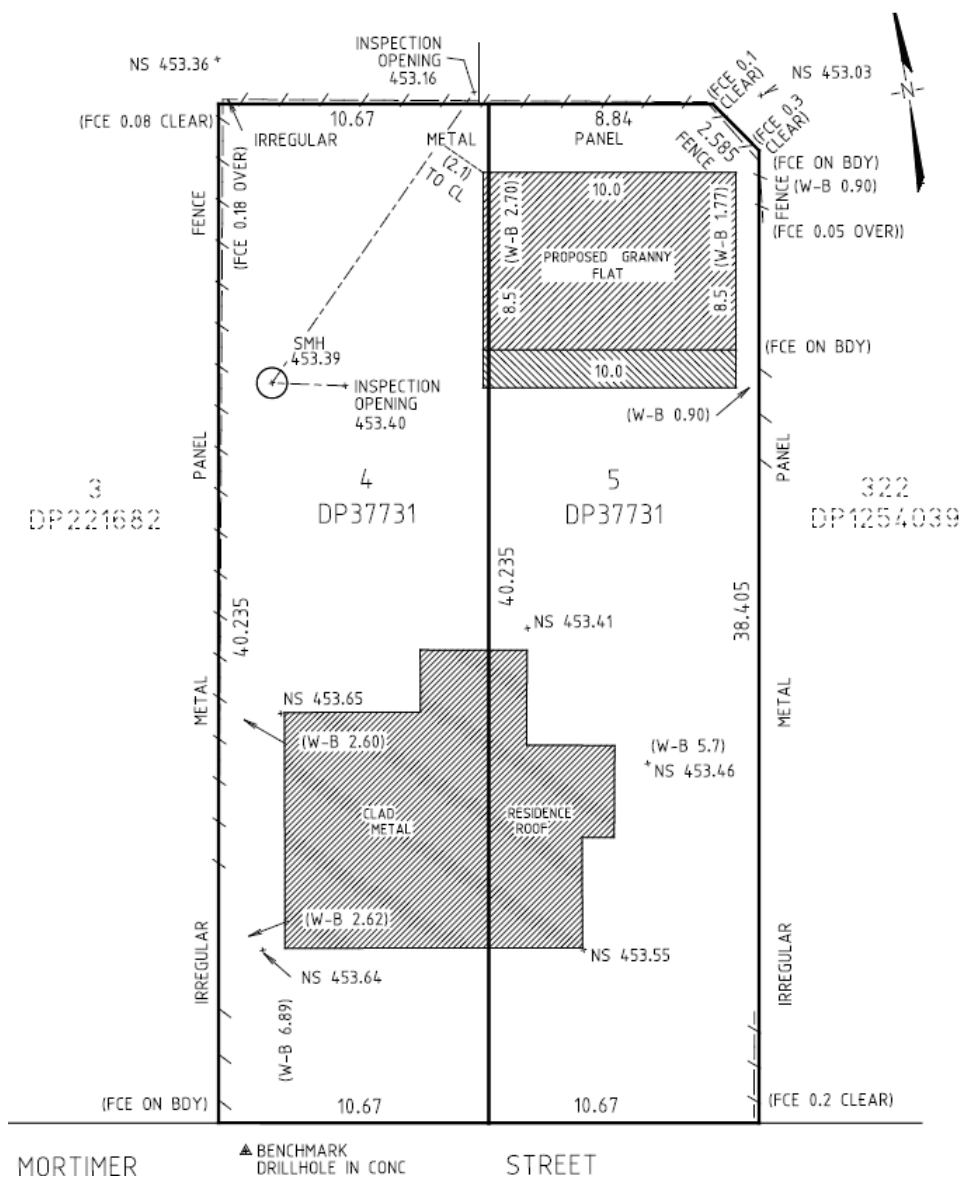
The site is not associated with sensitive environmental features. The site does not contain vegetation mapped on the Biodiversity Values Map (BV Map) or the MWR LEP Biodiversity Sensitivity Map. The site is not listed under the Section 4.7 Tree Preservation Order of the MWR Development Control Plan 2013 (DCP).



### 3 PROPOSED MODIFICATION

DA0390/2021 approves a 2-bedroom granny flat, being a secondary dwelling, on the northwest corner of the subject site. The nominated building footprint was originally situated to provide an adequate setback from the property boundary and Council’s sewer main. A pre-construction site inspection, however, identified a previously unknown segment of the sewer main that extends diagonally from the sewer manhole through the nominated building footprint and into the adjoining property.

The sewer main was not identified on the MWRC servicing diagrams, nor subject to an easement on the deposited plan, and was not otherwise identified by Council during the assessment of the DA. An inspection conducted by MWRC indicates that the sewer main is “live”. MWRC has recommended that the granny flat be relocated to achieve compliance with the conditions of consent. This application seeks to achieve compliance with the consent by relocating the granny flat to the northeast corner of the subject site. An excerpt of Appendix B, the revised site layout, is shown below in Figure 3.



**Figure 3 DA Site Layout Modification**

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The proposed relocation of the approved secondary dwelling requires the demolition of the brick garage/shed currently situated within the northeast corner of the site. The structure is comprised of brick walls with a sheet metal roof. Small quantities of concrete fibre sheeting, potentially containing asbestos, is present. The garage/shed is shown in Figure 4 & Figure 5.

All demolition works will be undertaken by a suitably qualified person in accordance with the relevant Australian Standards and Work Health Safety requirements. The proposed demolition works are isolated to the rear of the site and no encroachment or interference with the public space is anticipated. Where feasible, demolition debris will be separated to maximise the quantity of material that can be recycled.



Figure 4 Brick Garage/Shed for Demolition - Side

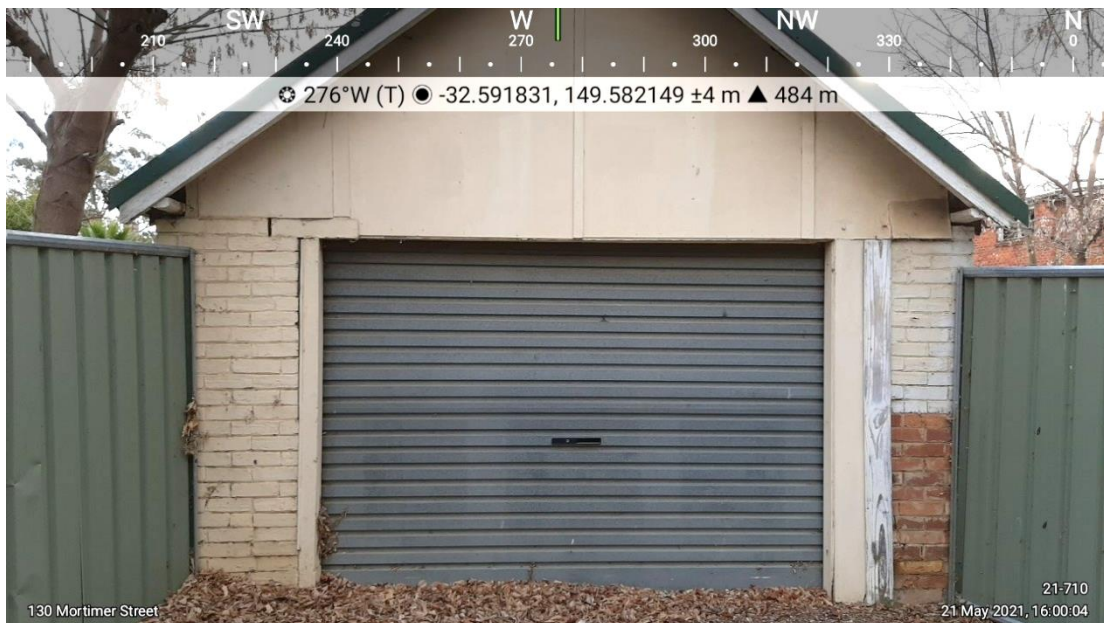


Figure 5 Brick Garage/Shed for Demolition - Front

## 4 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Pursuant to Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), Council may consider an application to amend a development consent under the following mechanisms:

- Section 4.55 (1) - modifications involving minor error, misdescription or miscalculation
- Section 4.55 (1A) – modifications involving minimal environmental impact
- Section 4.55 (2) - other modifications
- Section 4.56 - modification of consent granted by the Land & Environment Court

The proposed modification alters the siting of the approved secondary dwelling to resolve the conflict between the approved building site and the offsets to utility infrastructure required by conditions 7 and 8 of the consent. The modification also includes the demolition of the existing brick garage/shed. The DA modification is otherwise consistent with the original application. In this instance, a Section 4.55(2) application is sought.

### 4.1 SECTION 4.55(2)(A) – SUBSTANTIALLY THE SAME DEVELOPMENT

Section 4.55(2) (a) requires the application to demonstrate that the proposed modification will be "substantially the same development" as the original approval:

*(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) 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 approved development and proposed modifications are shown in Appendix A and Appendix B, respectively. The proposed modification involves the relocation of the approved secondary dwelling from the northwest to the northeast corner of the site and the removal of the existing brick garage/shed. The proposed modification does NOT:

- Alter the exterior design of the secondary dwelling
- Result in any change to the floor area or layout of the secondary dwelling
- Require modification or reconfiguration of existing services
- Modify the principal dwelling
- Result in a different land use

Therefore, it is considered reasonable and justifiable to view the modified layout as "substantially the same" as the approved development.

### 4.2 SECTION 4.55(2)(B)-(D) REFERRALS & PUBLIC NOTIFICATION

Section 4.55(2) (b)-(d) requires the application to be referred to the relevant public bodies in respect to conditions imposed as a concurrence to the consent and the appropriate notification be given to the public:



(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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

(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.

The original development application was not an integrated development as described by Section 4.46 of the EP&A Act and did not require the concurrence of external bodies or agencies. The proposed modifications will have negligible impact or interactions with surrounding landholders however it is recognised that given the original development application required a notification period, the proposed modification may also require notification.

### 4.3 SECTION 4.55(3) – SECTION 4.15(1) EVALUATION

Section 4.55 (3) requires due consideration of environmental and planning requirements described in Section 4.15(1) of the Act:

(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 original development application included an evaluation of the subject site and proposed development against the environmental and planning considerations outlined under section 4.15 of the Act. This modification application considers the relevant sections of the Act in the context of the proposed modifications. Section 4.15 specifies:

(1) **Matters for consideration—general** *In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

(a) *the provisions of—*

(i) *any environmental planning instrument, and*

(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*

- (iii) any development control plan, and
- (iia) 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
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),
- (v) (Repealed)

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

- (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,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

**4.3.1 4.15(1)(a)(i) Provisions of Any Planning Instrument**

**State Environmental Planning Policy NO 55 – Remediation of Land**

SEPP No 55 – Remediation of Land was identified in the original application assessment, given that the subject site is located on the land associated with the former Mudgee Gasworks Site. The development consent was issued with a deferred commencement condition requiring the applicant to provide a preliminary contamination report before the consent became operative. A contamination assessment and report were undertaken and issued to MWRC in September 2021. MWRC has indicated that the contamination concerns have been sufficiently addressed and no further consideration is required for this DA modification.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The proposed development required the issue of a BASIX Certificate. The proposed modifications are not considered to alter or impact the commitments listed in the certificate.

**Mid-Western Regional Local Environmental Plan 2012 (MWR LEP)**

The approved development is defined as a secondary dwelling under Clause 1.4 of the MWR LEP. The relevant clauses of the MWR LEP are explored below:

<b>MWR LEP 2012</b>	
Part 2 Land Use Table	The subject site is zoned R3 Medium Density Residential. The proposed modification does not alter the design or floorplan of the secondary dwelling. The dwelling would continue to provide variety to the housing types available along Mortimer Street while remaining sympathetic to the character of the Mudgee Heritage Conservation Area.
5.4 Controls relating to miscellaneous permissible uses	No alternations to the floorplan of the secondary dwelling are proposed. The secondary dwelling remains compliant with Clause 5.4(9)
5.10 Heritage Conservation	The brick garage/shed nominated for demolition is not listed as an item of local or state heritage significance. The design and siting of the development are considered sympathetic to the Heritage Conservation Area.

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5.21 Flood Planning	The subject site is identified as being a flood affected area (within the PMF extent) however the site, including the proposed secondary dwelling location, is wholly above the 1-in-100-year flood level. The proposed siting of the secondary dwelling will not be affected by severe flood risk and is unlikely to influence flood behaviour elsewhere.
6.1 Salinity	The proposal is minor in scale and considered unlikely to affect salinisation processes.
6.3 Earthworks	The site is generally flat and the new siting of the secondary dwelling is expected to have a similar impact to the existing approval.
6.4 Groundwater Vulnerability	The subject site is identified as groundwater vulnerable. The extent of the earthworks remains consistent with the existing approval.
6.5 Terrestrial biodiversity	The vegetation within the site is not identified as being of “moderate or high biodiversity sensitivity” on the MWR LEP maps
6.9 Essential services	The proposed modification seeks to reposition the secondary dwelling to incorporate suitable offsets to MWRCs sewerage infrastructure. No reconfiguration of existing services is proposed and new services required for the dwelling remain consistent with the existing approval.
Schedule 5 Environmental Heritage	The subject site is identified as being within the Mudgee Heritage Conservation Area however no items of local heritage significance are located within the site or adjoining properties.

## 4.3.2 4.15(1)(a)(ii) Any Proposed Instruments

No proposed instruments have been identified or considered in the preparation of this report.

## 4.3.3 4.15(1)(a)(iii) Any Development Control Plan

An assessment of the relevant components of the Mid-Western Regional Development Control Plan 2013 (MWR DCP) has been undertaken and is discussed below:

MWR DCP 2013 Section 2.1 Residential Development “Deemed to Satisfy” Provisions	
Building Side/Rear Setbacks	Complies – Side and rear offsets are 900mm or greater.
Building Height	Complies - Building heights remain unchanged, and the FFL will be less than 1m above the natural ground level.
Privacy	Complies - Single storey buildings achieving the setbacks do not require specific privacy controls.
Design	Complies – the building orientation remains consistent and will achieve adequate solar access. Private open space remains compliant.
Parking	Not applicable for a secondary dwelling

Utilities	Complies – this modification seeks to ensure that the secondary dwelling can achieve a 1500mm offset from the sewer main. The proposed location is not an overland flow path.
Fencing	Complies – no amendments are proposed.
Access	Not applicable for a secondary dwelling
Garages and outbuildings	Not applicable for a secondary dwelling
Slope & Cut and Fill	Complies – the site is generally flat. Cut and fill works will be minimal.
Site Coverage	Complies – the site coverage is reduced relative to the original application due to the removal of the brick garage/shed.

**4.3.4 4.15(1)(a)(iiia) Any Planning Agreements**

No draft or existing volunteer planning agreements have been made or are proposed for the subject site or development.

**4.3.5 4.15(1)(a)(iv) The Regulations**

No other regulations have been identified or are described in this report.

**4.3.6 4.15(1)(b) The Likely Impact of the Development**

**Visual Amenity, Solar Access and Privacy**

The proposed siting of the secondary dwelling remains well-screened by the principal dwelling when viewed from Mortimer Street. The weatherboard design, which is sympathetic to the structures within the Heritage Conservation Area, remains consistent with the original application. Suitable boundary offsets are maintained to provide adequate solar access and privacy.

**Heritage**

The subject site is located within the Mudgee Heritage Conservation Area however no items of local or state heritage significance are located within the site or the adjoining properties. An AHIMS basic search was conducted and no Aboriginal sites are located within 200m of the site. Overall, given the lack of sensitive receptors, the impact on heritage remains negligible.

**Air and Microclimate**

The demolition of the brick garage/shed may generate additional dust compared to the original application. The scale of demolition is minor and the dust control measures required by Condition 18 remains appropriate.

**Soil and Surface Water**

The proposed modification will result in a similar disturbance area to the original application and the sediment and erosion control requirements of Condition 18 remain appropriate.



## **Groundwater**

The subject site is identified as being groundwater vulnerable on the MWR LEP maps. The subject site is generally flat and the scale of earthworks remains minimal. Impacts to groundwater remain negligible.

## **Biodiversity**

The vegetation within the subject site is not identified on the BV map or the MWR LEP maps as being of high biodiversity value. Impacts on flora and fauna remain negligible.

## **Cumulative Impacts**

The proposed modification involves changes to the siting of the secondary dwelling and include the demolition of the brick garage/shed. The proposed modifications are generally considered comparable to the original application and the cumulative impact of the development remains low.

### **4.3.7 4.15(1)(c) The Suitability of the Site**

The proposed development remains consistent with the expectations of the R3 Medium Density Residential land use zone and is generally considered complimentary to the locality. The modification to the secondary dwelling siting is not expected to create additional interactions with neighbouring properties and the cumulative impacts of the modification remain consistent with the original application. Overall, the proposed site and development continue to be suitable.

### **4.3.8 4.15(1) (d) Submissions**

Any submissions made in accordance with the EP&A Act or Regulations and received during the notification period for the development would be required to be considered by Council in assessing the application.

### **4.3.9 4.15(1) (e) The Public Interest**

The proposal is unlikely to have broader public implementations and generally acts in the public's interest by providing opportunities for residential housing.

## 5 CONCLUSION

This Statement of Environmental Effects has considered the relevant planning and environmental considerations applicable to the proposed modification of DA0390/2021. The modification seeks to change the position of the secondary dwelling to achieve adequate offsets to MWRC's sewer mains and includes the demolition of the brick garage/shed. It is recommended that the proposed DA modification be approved on the following basis:

- The proposed amendments result in minor modifications to the site layout and are generally considered "substantially the same" as the approved development.
- The proposed modifications comply with the expectations of the *Environmental Planning and Assessment Act 1979* section 4.55(2).
- The proposal remains compliant with the relevant provisions of the *Mid-Western Regional Local Environmental Plan 2012* and the Mid-Western Regional Development Control Plan 2013.

Overall, the proposed modification meets the requirements for a modification application made under section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. Further environmental assessment or requirement of a new development application is not considered warranted and Mid-Western Regional Council can assess and determine this application based on this document and supporting plans.