

November 2021



Statement of Environmental Effects

Consent Modification of MI0010/2008



REFERENCE	20-620
TITLE	Statement of Environmental Effects
SUBTITLE	Consent Modification of M10010/2008
PREPARED BY	O'Ryan Geospatial Pty Ltd
LANDHOLDER/S	Kilvert
APPLICANT	Kerry Kilvert
SITE ADDRESS	18 Robert Jones Street Mudgee NSW 2850
LOT/SECTION/DP	20/-/DP1273049

VERSION	COMMENT	DATE
1.0	Report issued to client for review	15/11/2021

DISCLAIMER

O'Ryan Geospatial (O'Ryan), is responsible for the preparation, contents and information provided within this report and declare that there is no current benefit nor expect to have a beneficial interest in the study area of this project and will not benefit from any of the recommendations outlined in this report.

The preparation of this report has been in accordance with the project brief provided by the client and has relied upon the information, data and results provided or collected from the sources and under the conditions outlined in the report.

O'Ryan accepts no liability for the accuracy or completeness of the data and information provided to it by, or obtained by it, from any third parties, even if that data has been incorporated into or relied upon for generating this report.

This report has been produced by O'Ryan using information that is available to the client as at the date stated within this report and cannot be relied upon in any way if situations at the subject site changes. O'Ryan is under no obligation to update the information contained within the report at any time.

This report has been prepared on behalf of and for the exclusive use of the O'Ryan client and is subject to and issued in connection with the provisions of the agreement between O'Ryan and its client. All information contained within this report are prepared for the exclusive use of the client to accompany this report for the land described herein and are not to be used for any other purpose or by any other person or entity. No reliance should be placed on the information contained in this report for any purposes apart from those stated therein. O'Ryan accepts no responsibility for any loss, damage suffered or inconveniences arising from, any person or entity using the plans or information in this study for purposes other than those stated above.

TABLE OF CONTENTS

1	INTRODUCTION	4
2	SITE OVERVIEW	5
3	PROPOSED DEVELOPMENT	10
4	ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979	11
4.1	EP&A ACT SECTION 4.55	11
4.1.1	EP&A Act Section 4.55 (1a) (a) – Minimal Environmental Impact	11
4.1.2	EP&A Act Section 4.55(1a) (b) – Substantially the Same Development	12
4.1.3	EP&A Act Section 4.55(1a) (c) (d) – Public Notification	13
4.2	CONSISTENCY WITH PLANNING CONTROLS.....	13
5	CONCLUSION	15

1 INTRODUCTION

The landholder has engaged O'Ryan Geospatial Pty Ltd (O'Ryan) to prepare a Statement of Environmental Effects (SEE) to request a modification of development consent MI0010/2008. The requested modification seeks permission to alter the proposed subdivision layout approved under MI0010/2008 to consolidate lot 38 into lot 37.

The approved plans denote lot 38 as a "drainage reserve", however, no records of a formal agreement to dedicate lot 38 for operational use by Mid-Western Regional Council (MWRC) were found. The intended outcome of the consent modification is to consolidate the land within lot 38 into the adjoining lot 37 to prevent the release of a landlocked parcel. This modification seeks to amend the approved plan under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act), being a modification involving minimal environmental impact.

The subject site is comprised of the residual land of the subdivision approved under MI0010/2008 with three (3) R2 Low Density Residential allotments and the "drainage reserve" pending release. The subject site is 18 Robert Jones Street Mudgee NSW 2850, which is associated with one (1) allotment: Lot 20 in DP1273049. The location of the subject site is shown below in Figure 1.

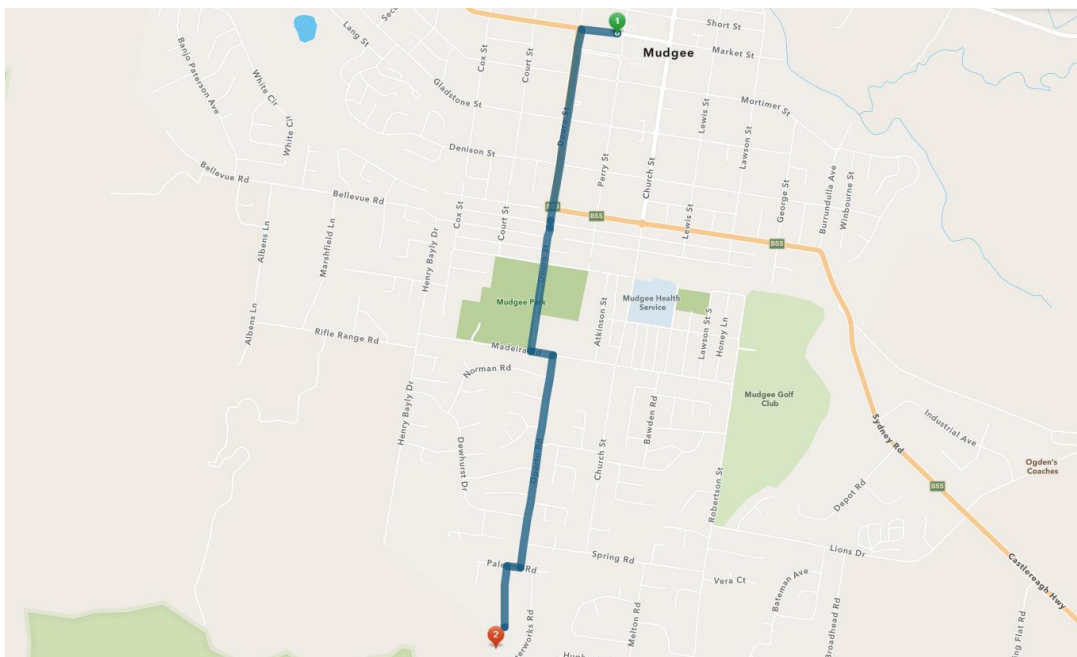


Figure 1 Site Location

This report assesses the proposed subdivision layout modification against the relevant environmental and planning framework to demonstrate that the development remains "substantially the same" as the approved plans and the environmental impact resulting from the change is negligible. The report is structured into two parts:

- The first part of the report provides an overview of the subject site
- The second part of the report evaluates the proposed modification against the requirements described under the *Environmental Planning and Assessment Act 1979* and associated planning instruments.

2 SITE OVERVIEW

Description:	
Address	18 Robert Jones Street Mudgee NSW 2850
Lot/Section/DP	20/-/DP1273049
Lot Configuration	Irregular shaped with two street frontages
Frontage (m)	Waterworks Road (40m) and Robert Jones Street (27m)
Area (Ha)	4.9 Ha
Setting	Low density residential
Built Features	Servicing for the three residential lots to be released have been installed.
Surrounding Development	The site is part of a low-density residential subdivision that extends to the north. Higher density residential land is located east of the site. The west and south are associated with a nature reserve and MWRC water supply infrastructure (water supply tanks).
Servicing	The site is within the outskirts of Mudgee and is connected to reticulated water supply, sewerage, electricity and NBN.
Site Access	The site can be legally accessed via Waterworks Road or Robert Jones Street.



Figure 2 Subject Site

Planning Context:	
LGA	Mid-Western Regional
Applicable LEP	<i>Mid-Western Regional Local Environmental Plan 2012</i>
Map Sheet	006D & 006H
Land Use Zone	R2 Low Density Residential
Minimum Lot Size	2 Ha
Lot Size Additional Provisions	Area B – 4000m ² minimum lot size if serviced

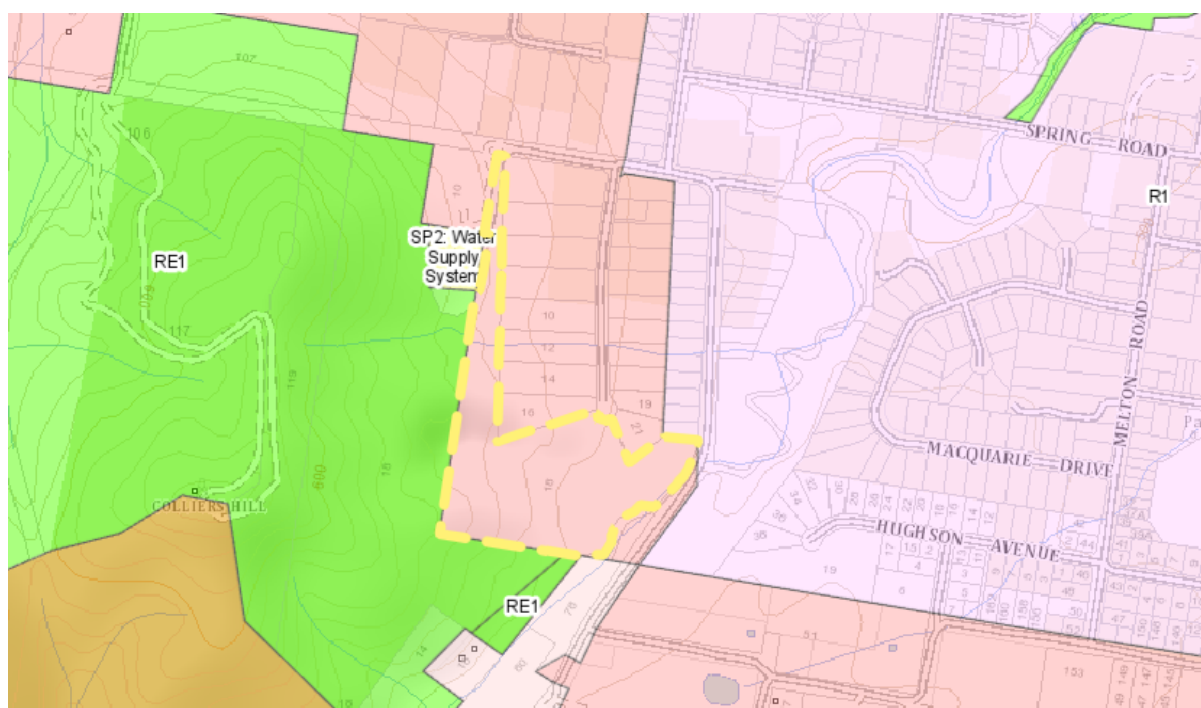


Figure 3 Land Zoning

Heritage:	
Heritage Conservation Zone	The site is <u>not</u> located within a heritage conservation zone
MWR LEP Schedule 5	The site is <u>not</u> associated with an item of local heritage significance.
State Heritage Register	The site is <u>not</u> associated with an item of state heritage significance.
Tree Preservation Order	The site has <u>not</u> been identified in MWR DCP Section 4.7
Aboriginal Heritage	The site is <u>not</u> associated with any known sites or places of Aboriginal heritage significance.

Physical Features:	
Slope description	The terrain can be characterised as highly sloping, with the building envelopes situated on flatter areas off the cul-de-sac head of Robert Jones St or Waterworks Rd.
Slope	Varies. See Figure below.
Watercourses/channels	A 1 st order Strahler hydroline is identified on the hydroline spatial data issued by Water NSW. A series of catch drains capture overland flow across the site south into a natural drainage depression. The drainage depression directs overland flows into an onsite detention (OSD) basin before discharging into Redbank Creek.
Ridgelines or crests	The site is <u>not</u> associated with significant crests or ridgelines however the site <u>is</u> identified as visually sensitive land.

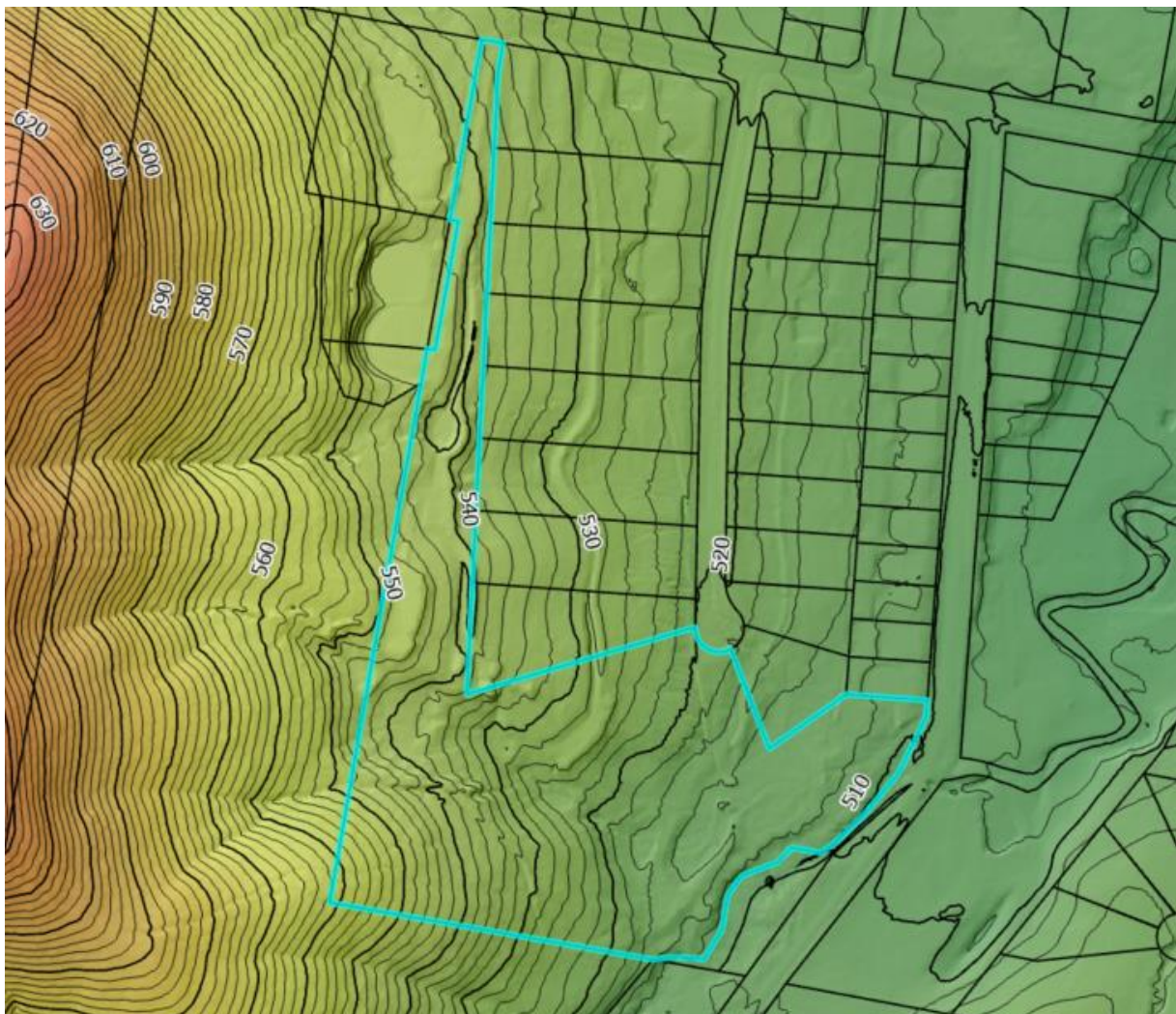


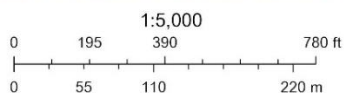
Figure 4 False Colour 1m DEM with Hillshade and 2m Contours

Biodiversity Features:	
Native Vegetation	Clusters of mature trees are scattered throughout the site. The site adjoins Redbank Creek and contains areas of riparian vegetation.
LEP Biodiversity Sensitivity	The site <u>does</u> contain areas mapped as being of "moderate" or "high" terrestrial biodiversity value
DPIE BV Map	The site <u>does</u> contain areas mapped as being of high biodiversity value on the BV map issued by DPIE.
Sensitive Receptors?	Yes – the subject site includes a low-order drainage channel and native vegetation mapped on the BV map. The eastern boundary of the site abuts Redbank Creek.



29/10/2021, 09:55:39

- Biodiversity Values
- Biodiversity Values
 - Biodiversity Values added in the last 90 days
 - Subject Site
 - NSW_Land_Parcel_Property_Theme_Lot - Lot
 - Terrestrial Biodiversity



Esri Community Maps Contributors, Esri, HERE, Garmin, METI/NASA, USGS, Maxar

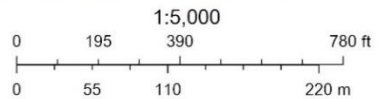
Figure 5 Mapped areas of high biodiversity value

Environmental Hazards:	
Bushfire Prone	Yes – contains Category 2 vegetation and buffer zones
Flood Affected	The site is mapped on the EPI Flood Maps however the approved building envelopes are situated above the 1 in100-year ARI.
Soil instability	The site is <u>not</u> subject to soil instability or subsidence



29/10/2021, 09:58:48

- Subject Site
- NSW_Land_Parcel_Property_Theme_Lot - Lot
- Flood Planning
 - Flood Planning Level (1:100 ARI)
 - Flood Planning Area
- Bushfire Prone Land
 - Vegetation Category 1
 - Vegetation Category 2
 - Vegetation Category 3
 - Vegetation Buffer



Esri Community Maps Contributors, Esri, HERE, Garmin, METI/NASA, IIRCS, Mapbox

Figure 6 Natural Hazards

3 PROPOSED DEVELOPMENT

MI0010/2008 was approved on 27 September 2007 for a 1 into 38 Torrens Title subdivision. The proposed modification seeks to amend the approved DA plans under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The DA sketch plan approved in MI0010/2008 denotes lot 38 as a "drainage reserve". It was the understanding of the landholder that lot 38 was to be dedicated as public operational land to Mid-Western Regional Council (MWRC). However, an internal review undertaken by MWRC staff did not identify any formal agreements specifying that lot 38 was to be dedicated as operational land. In pre-lodgement meetings, council staff have also indicated that a contemporary arrangement to dedicate lot 38 as operational land is not aligned with Council's current strategies and would be viewed unfavourably.

This modification application seeks to resolve potential issues before releasing the final three residential lots approved under MI0010/2008 by consolidating the land identified as lot 38 on the approved plans into lot 37 of the same plan. The intended outcome of the modification is to:

- Avoid releasing a lot (lot 38) inappropriate for residential development due to lot dimension, terrain and/or drainage constraints.
- Avoid complications to the release of the remaining three (3) residential portions approved by MI0010/2008.

The proposed modification would consolidate lot 38 on the approved plans into lot 37 (shown as proposed lot 3 in Figure 7). The remaining two lots (proposed lots 1 and 2 in Figure 7) are consistent with the existing approval.

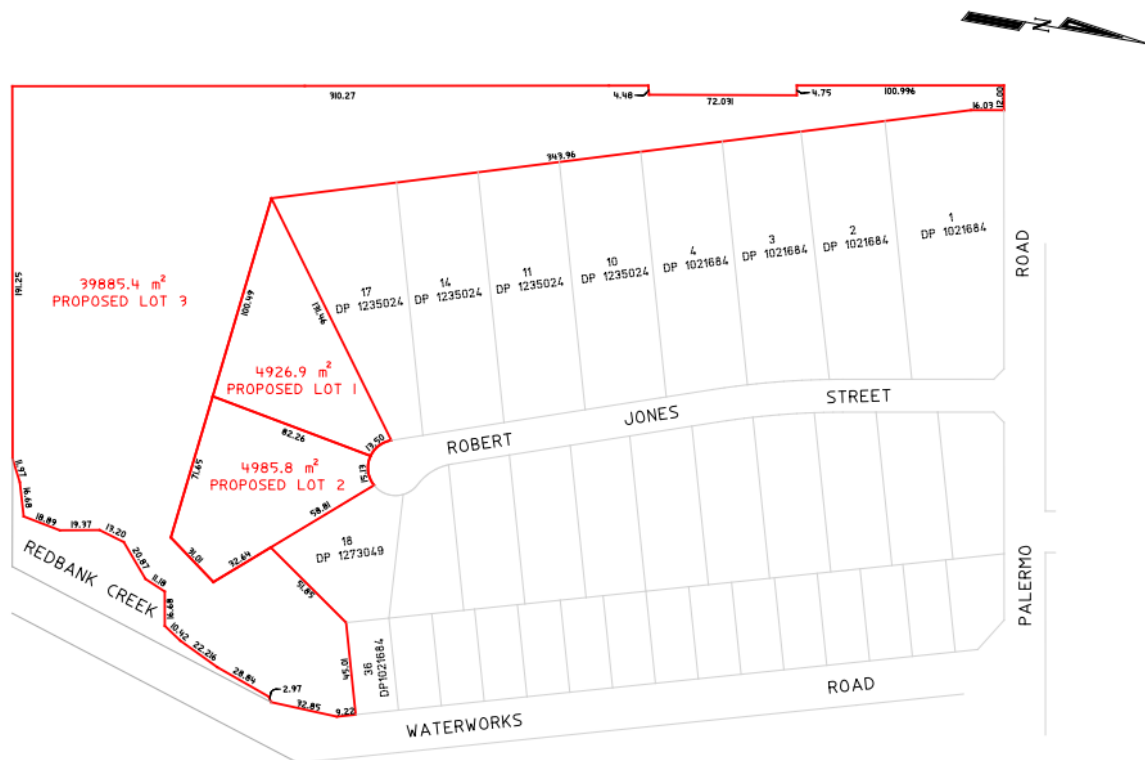


Figure 7 Proposed Layout

4 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

4.1 EP&A ACT SECTION 4.55

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

This consent modification intends to consolidate the land denoted on the approved plan as lot 38 into lot 37 of the same plan. Lot 38, denoted on the approved plan as a "drainage reserve" is considered inappropriate for residential development due to the lot dimensions, terrain and drainage constraints.

The proposed modification would result in a net reduction of one (1) lot with the development density remaining consistent with the existing approval. Given the net reduction in the subdivision yield and overall consistency with the approved development density, an application made under section 4.55(1A) is considered appropriate.

4.1.1 EP&A Act Section 4.55 (1a) (a) – Minimal Environmental Impact

Section 4.55(1a) (a) requires the application to demonstrate that the proposed modification will be of minimal environmental impact:

4.55 Modification of consents—generally

(1A) Modifications involving minimal environmental impact 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 proposed modification is of minimal environmental impact, and

This modification seeks a net reduction in the subdivision yield from 38 to 37 lots and is otherwise consistent with the approved development density. The following assessment criteria have been considered in the context of the approved development and proposed modification to evaluate if the proposal is "of minimal environmental impact".

Assessment Criteria	Comment
<i>Will the proposal result in a different land use or intensification of the approved land use?</i>	No. The proposed modification would reduce the overall subdivision yield, and the overall development density would remain consistent with the existing approval.
<i>Will the proposal impact surrounding landholders/users?</i>	No. The proposed modification only affects the residual land's internal layout and would not affect any other portion boundaries.

STATEMENT OF ENVIRONMENTAL EFFECTS

CONSENT MODIFICATION OF M10010/2008



<i>Will the proposal have wider community implications?</i>	No. The subject site is identified as being visually prominent land overlooking Mudgee however the modification will not increase the development density or siting of building envelopes within the subdivision.
<i>Will the proposal increase the extent or severity of the developments impact on sensitive environmental features?</i>	No. The site is associated with several sensitive environmental features, including vegetation of high biodiversity value identified on the BV Map and riparian vegetation along Redbank Creek however, the modification will not result in additional clearing of native vegetation.
<i>Will the proposal increase the risk associated with environmental or technological hazards?</i>	No. The site is identified as being bushfire prone land and flood-affected however the proposal does not seek to modify the location of any building envelopes or otherwise impact evacuation routes.
<i>Will the proposal impact an item, feature or area identified for heritage conservation?</i>	No. The site is not associated with any state or local heritage items and is located outside the Mudgee heritage conservation area. An AHIMS Search, attached as Appendix C, does not indicate the presence of any known Aboriginal Objects or Places within the site itself (one item at the edge of 200m buffer was identified) and the disturbance area remains consistent with the original approval.
<i>Will the proposal impact the availability of essential services or legal access to the site or adjoining sites?</i>	No. The proposed modification does not involve reconfiguration of proposed or existing services or access. Consolidating lot 38 and 37 discourages further development within those parts of lot 38 used for drainage.

4.1.2 EP&A Act Section 4.55(1a) (b) – Substantially the Same Development

Section 4.55(1a) (b) requires the application to demonstrate that the proposed modification will be "substantially the same development" as the original approval:

(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 approved development and proposed modifications are shown in Appendix A and Appendix B, respectively. The proposed modification would result in a net reduction of one lot within the approved subdivision layout. The approved internal boundaries and otherwise consistent with the approved plans. The proposed modification does NOT:

- increase the subdivision yield
- substantially alter the subdivision boundaries
- require modification of reconfiguration of services
- 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.

4.1.3 EP&A Act Section 4.55(1a) (c) (d) – Public Notification

- (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*
- (c) *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 proposed modification will have negligible impact or interactions with the surrounding landholders however it is recognised that given that the original development application may have required a notification period that the amendment may also require notification.

4.2 CONSISTENCY WITH PLANNING CONTROLS

Development consent modifications are outlined in section 4.55 of the EP&A Act and explored above however it is also considered prudent to consider the applicable environmental planning standards outlined by the *Mid-Western Regional Local Environmental Plan 2012* and the *Mid-Western Regional Development Control Plan 2013* to demonstrate that the proposed modification of the subdivision does not deviate from the standards.

MWR LEP 2012	
Part 2 Land Use Table	The subject site is wholly located within an R2 Low Density Residential Land Use Zone. The proposed modification reduces the approved subdivision yield however the development density and the proposed land use remains consistent with the current approval.
4.1 Minimum Lot Size	The subject site is identified on the Lot Size Map as having a minimum lot size of 10 Ha. The site is located within "Area B" on the Lot Size Map and under clause 4.1(3A) (b) land identified as "Area B" may be subdivided to create lots of at least 4000m ² if the consent authority is satisfied each lot will be serviced by a water reticulation service and sewerage system. The proposed modification does not alter the approved servicing arrangements and requirements 4.1(3A) (b) are satisfied.
6.1 Salinity	Not applicable - the proposed modification is unlikely to result in changes to salinity processes.
6.3 Earthworks	Not applicable – no additional earthworks are likely to result from the proposed modification.
6.4 Groundwater Vulnerability	Not applicable - The site is not identified as being groundwater vulnerable on the Groundwater Vulnerability Map.
6.5 Terrestrial biodiversity	Not applicable – the proposed modification seeks to consolidate two lots within the site and no clearing activities are anticipated to result from the modification.

STATEMENT OF ENVIRONMENTAL EFFECTS

CONSENT MODIFICATION OF M10010/2008



6.9 Essential services	Not applicable – no changes to essential services or legal access are proposed.
6.10 Visually Sensitive Land	Not applicable – the subject site is visually sensitive land however the proposal does not modify the development density or otherwise impact the visual amenity of the development.
Schedule 5 Environmental Heritage	Complies – The subject site falls outside the mapped Heritage Conservation Area of Mudgee and no items of local or state heritage significance are located within the site or adjoining land.
MWR DCP 2013 Section 7.1 Urban Subdivision	
Lot Size	Complies - As identified above, the applicable minimum lot size standard is 4000m ² with all allotments being well above this size.
Lot Design	Complies - The proposed modification will consolidate lot 37 and 38 into a single, irregular shaped allotment. The proposed layout is not the ideal configuration of the site however Robert Jones Street has been extensively developed and the options to revise the layout at this stage of the subdivision are limited.
Street Design	Not applicable – no proposed modifications are proposed to the street frontage and no additional traffic will be generated by the proposed modification.
Open Space	Not applicable – no modifications to the public space are proposed.
Landscaping	Not applicable – no amendments to the public domain are proposed.
Utility Services	Not applicable – no modifications to the utility services are proposed
Drainage	Not applicable – the proposed modification is unlikely to result in an increased generation of stormwater. The established stormwater controls remain suitable.

The proposed modification will result in a minor amendment of the approved plans to consolidate approved lot 37 and 38 of the DA plans into a single allotment. An assessment of the MWR LEP and MWR DCP indicate that the proposed modifications remain compliant with the applicable standards.

5 CONCLUSION

This Statement of Environmental Effects has considered the relevant planning and environmental considerations applicable to the proposed modification of MI0010/2008 to alter the internal subdivision layout. It is recommended that the proposed DA modification be approved on the following basis:

- The proposed amendments will not result in an increase to the development density and the modified layout is considered to be "substantially the same" as the development approved under MI0010/2008
- The proposed modifications are minor in nature and are the environmental impact remains consistent with the approved subdivision.
- 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(1A) 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.