

## Item 8: Development

---

- 8.1 ME0001/2022 - Proposed Modification to DA0428/2013 for Residential Subdivision at 26 Hone Creek Road, Caerleon (originally 38 Hill End Road, Caerleon Lot 2 DP1181749, Lot 1 DP1146227, Lot 1 DP32086 and Lot 136 DP 756894)

REPORT BY THE TOWN PLANNER  
TO 03 NOVEMBER 2021 ORDINARY MEETING  
GOV400088, P1939562

### RECOMMENDATION

#### That Council:

- A. receive the report by the Town Planner and Manager Statutory Planning on the ME0001/2022 - Proposed Modification to DA0428/2013 for Residential Subdivision at 26 Hone Creek Road, Caerleon (originally 38 Hill End Road, Caerleon Lot 2 DP1181749, Lot 1 DP1146227, Lot 1 DP32086 and Lot 136 DP 756894); and
- B. approve ME0001/2022 - Proposed Modification to DA0428/2013 for Residential Subdivision at 26 Hone Creek Road, Caerleon (originally 38 Hill End Road, Caerleon Lot 2 DP1181749, Lot 1 DP1146227, Lot 1 DP32086 and Lot 136 DP 756894) subject to the following conditions and statement of reasons:

#### Conditions of consent (*AMENDMENTS IN BLUE*)

### CONDITIONS

1. Development is to be carried out generally in accordance with stamped plans:

#### Masterplan

- Staging Plan, Proposed Subdivision "Caerleon" - Lot Layout; Job Code 319171\_08; Sheet No. TP01 Rev B-3; dated 23/06/2021 and prepared by Premise.

#### Detailed Stage Plans

- Stage 4 – Drawing Title - Sale Plan Stage 4, Project No. MX10286.11-SALE, Issue A, dated 28.10.20 and prepared by Triaxial Consulting
- Stage 5 - Drawing Title - Sale Plan Stage 5, Project No. MX10286.11-SALE5, Issue A, dated 28.10.20 and prepared by Triaxial Consulting
- Stage 6 - Sheet Name: Sale Plan – Stage 6, Sheet No. TP01, Rev C, Job Code 319171\_10, dated 05/03/2021 and prepared by Premise
- Stage 7A - Sheet Name: Sale Plan – Stage 7A, Sheet No. TP01, Rev D, Job Code 319171\_11, dated 18/03/2021 and prepared by Premise
- Stage 8 Sheet Name: Sale Plan – Stage 8, Sheet No. TP01, Rev D, Job Code 319171\_17, dated 27/04/2021 and prepared by Premise

- Stage 9 – Sheet Name: Sale Plan – Stage 9, Sheet No. TP01, Rev A, Job Code 319171\_18, dated 14/04/2021 and prepared by Premise
- Stage 10 – Sheet Name: Sale Plan – Stage 10, Sheet No. TP01, Rev C Dated 14/05/2021 Job Code 319171\_19 and prepared by Premise.
- Stage 11 – Sheet Name: Sale Plan – Stage 11, Sheet No. TP01, Rev A, Job Code 319171\_22, dated 14/05/2021 and prepared by Premise.

#### Landscaping

- Landscape Masterplan Neighbourhood 1, Site Image Landscape Architects, Plan No SS13-2563 C102, Issue B, Drawn 11/03/2013.
- Supplementary Landscape Report – Caerleon Mudgee, Site Image Landscape Architects, Issue A, Drawn 13/03/2013.

and the Application received by Council on 26/04/2013 except as varied by the conditions listed herein. Any minor modification to the approved plans will require the lodgement and consideration by Council of amended plans. Major modifications will require the lodgement of a new development application.

(Amended by MA0042/2021)

#### OPERATIONAL CONDITIONS

2. In accordance with S 93I of the *Environmental Planning and Assessment Act 1979* the development is to be undertaken in accordance with the executed Voluntary Planning Agreement.

#### GENERAL TERMS OF APPROVAL – WATER MANAGEMENT ACT

3. Pursuant to Section 91 A of the *Environmental Planning and Assessment Act 1979*, the development is to comply with the General Terms of Approval obtained from the NSW Office of Water: 80 ERM2013/0313.

#### BUSHFIRE SAFETY AUTHORITY CONDITIONS

##### Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities. To achieve this, the following conditions shall apply:

4. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the entirety of the proposed residential lots must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA the following requirements apply:
  - tree canopy cover should be less than 15% at maturity;
  - trees at maturity should not touch or overhang the building;
  - lower limbs should be removed up to a height of 2m above the ground;
  - tree canopies should be separated by 2 to 5m;
  - preference should be given to smooth barked and evergreen trees;
  - large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
  - shrubs should not be located under trees;

- shrubs should not form more than 10% ground cover; and
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

(Amended by MA0042/2021)

5. A restriction to the land use pursuant to section 88B of the Conveyancing Act 1919 shall be placed on all land to the south of stage 9 for a distance of 10 metres within Lot 201, DP 1269473 for the purpose of a temporary asset protection zone (APZ) in accordance with Appendix 4 of Planning for Bush Fire Protection 2019. The restriction to land use for the purpose of a temporary asset protection zone may be extinguished upon commencement of future development over the affected areas. The name of authority empowered to release, vary or modify any instrument shall be Mid-Western Regional Council.

When establishing and maintaining an IPA the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover; and
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

(Amended by MA0042/2021)

#### Access – Public Roads

The intent of measures is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

6. Access roads must comply with the following general requirements of Table 5.3b of Planning for Bush Fire Protection 2019 and the following:
- traffic management devices are constructed to not prohibit access by emergency services vehicles;
  - maximum grades for sealed roads do not exceed 15 degrees and an average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient;
  - all roads are through roads;
  - dead end roads are not recommended, but if unavoidable, are not more than 200 metres in length, incorporate a minimum 12 metres outer radius turning circle, and are clearly sign posted as a dead end;

- non-perimeter roads are a 5.5 metre minimum carriageway width kerb to kerb;
- perimeter roads are an 8 metre minimum carriageway width kerb to kerb;
- where kerb and guttering is provided on perimeter roads, roll top kerbing should be used to the hazardside of the road;
- where access/egress can only be achieved through forest, woodland and heath vegetation, secondary access shall be provided to an alternate point on the existing public road system;
- one way only public access roads are no less than 3.5 metres wide and have designated parking bays with hydrants located outside of these areas to ensure accessibility to reticulated water for fire suppression;
- the capacity of perimeter and non-perimeter road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges/causeways are to clearly indicate load rating.
- hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression;
- hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 - Fire hydrant installations System design, installation and commissioning; and
- there is suitable access for a Category 1 fire appliance to within 4m of the static water supply where noreticulated supply is available.

(Amended by MA0042/2021)

### Water and Utility Services

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

7. The provision of water, electricity and gas must comply with Table 6.8c of Planning for Bush Fire Protection 2019.

(Amended by MA0042/2021)

### Landscaping Assessment

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

- 7a. Landscaping within the required asset protection zone must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:
  - A minimum 1 metre wide area, suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
  - Planting is limited in the immediate vicinity of the building;
  - Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);
  - Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhang buildings;
  - Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
  - Use smooth bark species of trees species which generally do not carry a fire up

- the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Low flammability vegetation species are used.

(Added by MA0042/2021)

#### SECT. 138 – ROAD ACT – ROADS & MARITIME SERVICES CONCURRENCE

8. Conditions required by the RMS in their Concurrence dated 01 July 2013 and 08 October 2021 have been incorporated into the general conditions related to roadworks.

(Amended by ME0001/2022)

#### LEP AMENDMENT

9. Prior to the release of the subdivision certificate for lots 047-052 inclusive, an amendment rezoning the lots to be completely R1 General Residential (i.e. not split zoned) under the *Mid-Western Regional Council Local Environmental Plan 2012* will be approved by relevant bodies.

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. Prior to the release of any Subdivision Works Certificate a detailed contamination investigation will be undertaken in accordance with the recommendations made in Preliminary Contamination Assessment prepared by Envirowest Consulting dated 20 July 2012 Ref:12258c.

(Amended by MA0042/2021)

11. Prior to the release of any Subdivision Works Certificate a detailed aboriginal cultural investigation will be undertaken in accordance with recommendations of the Aboriginal Heritage Due Diligence Assessment Preliminary Investigations prepared by Kelleher Nightingale Consulting Pty Ltd dated June 2012 Ref: 1120.

Note: If any aboriginal artefacts are uncovered or identified during construction earthworks, such work is to cease immediately and the local aboriginal community and National Parks and Wildlife Service are to be notified.

A suitably qualified person is required to be present during earthworks to identify whether any artefacts were uncovered.

(Amended by MA0042/2021)

12. The development in general and plans submitted for any Subdivision Works Certificate shall be designed in accordance with the recommendations made in the Preliminary Soil Salinity Assessment prepared by Minespex dated May 2012.

(Amended by MA0042/2021)

13. All finished surface levels shall be shown on the plans submitted for the Construction Certificate. Where it is proposed to import fill, the material shall be certified as free of hazardous materials and contamination by a suitably qualified geotechnical engineer. Fill placed in residential or commercial lots shall be compacted in accordance with AS3798-2007 Guidelines on Earthworks for Commercial and residential Developments.

**Note:** Council will quote on connecting any sewer or water main extension to the existing “live” main on receipt and approval of engineering plans.

**Note:** Council does not permit other bodies to insert new junctions into “live” sewer mains.

14. No construction is to commence before a Subdivision Works Certificate is issued for the subdivision works. The works are to be constructed in accordance with the plans and specifications referred to in the Subdivision Works Certificate.

**Note:** The Subdivision Works Certificate may be issued by Council. Council’s fee for this service is set out in Council’s fees and charges.

(Amended by MA0042/2021)

15. A detailed engineering design with plans, and “AutoCAD compatible” Plan, (in dwg format including pen-map), material samples, test reports and specifications are to be prepared in accordance with current AUS-SPEC specifications (as modified by Mid-Western Regional Council) and the conditions of this development consent. The engineering design is to be submitted to and approved by Council prior to the issue of a Subdivision Works Certificate.

(Amended by MA0042/2021)

16. A site supervisor is to be nominated by the applicant prior to the issue of the Subdivision Works Certificate.

(Amended by MA0042/2021)

17. A Traffic Guidance Scheme (TGS) completed by the “Certified Person” for implementing during works is to be submitted to Mid-Western Regional Council prior to any work commencing.

(Amended by MA0042/2021)

18. Contractor’s insurance cover for a minimum of \$20,000,000 is to be sighted and to be shown to Mid-Western Regional Council as an interested party.

19. Existing and proposed contours are to be shown on detailed engineering plans.

20. Prior to the issue of a Subdivision Works Certificate, all details relating to decommissioning the farm dam in preparation for a residential site, including methods, materials and equipment shall be provided to Council.

(Amended by MA0042/2021)

- 20a** Prior to the issue of a Subdivision Works Certificate or any further works relating to Stage 6 the applicant must provide evidence to demonstrate stormwater runoff from the development can be directed to an existing or proposed basin as shown on “Dwg 319171\_08 TP01 Rev B-3”. Any application for a Subdivision Works Certificate must be accompanied by detailed calculations for all contributing upstream catchments to ensure the area set aside for the basin can accommodate a basin of sufficient capacity to capture all runoff generated by a fully developed upstream catchment.

(Added by MA0042/2021)

- 20b** Prior to the issue of a Subdivision Works Certificate or any further works relating to Stage 6 or Basin 3, the approved landscape plans identified in condition 1 are to be updated to reflect the amended location of Basin 3 identified in the approved staging plan. The amended landscape plan must also provide for open space within the basin in the form of passive recreation and a picnic and BBQ area.

(Added by MA0042/2021)

## INFRASTRUCTURE

### Stormwater Drainage

- 21.** The applicant is to submit a Drainage Report prepared in accordance with the current published version of Australian Rainfall and Runoff for approval prior to the release of the Subdivision Works Certificate. The report must demonstrate that stormwater runoff from the site is not increased beyond the existing undeveloped state up to and including a 100-year ARI. All storm water detention details including analysis shall be included with the drainage report.

(Amended by MA0042/2021)

- 22.** The trunk drainage system must be designed such that discharge from the subdivision satisfies the following water quality targets:

Post Development Stormwater Pollution Reduction Targets
<ul style="list-style-type: none"><li>• Total Suspended Solids (TSS) – 85% reduction of the typical annual load</li><li>• Total Phosphorus (TP) – 65% reduction of the typical annual load</li><li>• Total Nitrogen (TN) – 45% reduction of the typical annual load</li><li>• 90% of gross pollutant loads, oil and grease retained on-site</li></ul>

**Note:** Results from MUSIC modelling or equivalent shall be supplied with Construction Certificate Issue plans demonstrating that the design meets the above criteria.

- 23.** All internal roads shall comprise roll back concrete kerb and gutter. Sub-surface drainage is required where gutter flows exceed 2.5m width during minor events (1 in 5yr ARI). If required, sub-surface drainage shall be located behind the kerb.
- 24.** Interallotment drainage is to be provided to remove stormwater from any lots that cannot discharge to the street in accordance with AusSpec #1. An easement not less than 1.0m shall be created in favour of the upstream allotments for any interallotment drainage.

25. One (1) roof-water outlet per allotment is to be provided in the kerb and gutter 2m from the downhill boundary at the time of the installation of the kerb and gutter.
26. An Erosion and Sediment Control Plan for the development is to be prepared and implemented in accordance with the LANDCOM guidelines and requirements as outlined in the latest edition of "Soils and Construction – Managing Urban Stormwater". Points to be considered include, but are not limited to:
  - drainage reserves are to be turfed;
  - single strip of turf to be laid behind kerb and gutter;
  - saving available topsoil for reuse in the revegetation phase of subdivision;
  - using erosion control measure to prevent on-site damage;
  - rehabilitating disturbed areas quickly;
  - maintenance of erosion and sediment control structures;
  - a schedule of operations is to be submitted to ensure all appropriate works are undertaken at the correct stage.
27. Any soil / water retention structures are to be constructed prior to the bulk stripping of topsoil, to ensure sediment from the whole site is captured.
28. All earthworks, filling, building, driveways or other works, are to be designed and constructed (including stormwater drainage if necessary) so that no time will any ponding of stormwater occur on adjoining land as a result of this development.

#### Roads works

29. Internal road pavements shall be designed by a suitably qualified engineer in accordance with Austroads procedures. Materials and testing requirements shall comply with those set out in AUSPEC Construction Specification C242 with sample locations selected as per RMS Specification Q4. All flexible pavements to be sealed with a two coat Class C170 bitumen flush seal (14/7mm double/double).
30. Internal road reserve and pavement widths are to conform to those shown on the approved plans.  
  
(Amended by MA0042/2021)
- 30a. Prior to the release of a subdivision certificate for Stage 10, Hosking Street and Knox Crescent is to be constructed and bitumen sealed and formed with kerb and channel from the existing constructed pavement for the full extent of stage 10 of the subdivision.  
  
(Added by MA0042/2021)
31. All utility crossings are to be perpendicular to the road centreline and performed prior to the addition of the basecourse.
32. The internal road adjacent to the Hill End Rd shall be screened from the Hill End Rd and include physical barriers between the two roads. Details of the proposed screening and barriers are to be provided to Council for approval prior to issue of the Subdivision Works Certificate.  
  
(Amended by MA0042/2021)
33. Internal cross road intersections are to be designed to have



- Give Way signs, and
- Blisters

On the lesser priority road for pedestrian and cycle safety in accordance with Figure 2.1(a) of AS1742.2-2009 Manual of uniform traffic control devices, part 2 Traffic control devices for general use.

34. The intersection of the Hill End Road and the proposed Spine Road is to be designed and constructed with the following;
- A Basic Right Turn treatment (BAR) in accordance with Figure 7.5, Austroads Guide to Road Design 2010 – Part 4A: Unsignalised and Signalised Intersections and RMS Supplements
  - A Rural Auxiliary Left Turn treatment – Short Turn Lane (AUL(S)) in accordance with Figure 8.3 of Austroads Guide to Road Design 2010 – Part 4A: Unsignalised and Signalised Intersections and RMS Supplements;
  - The width of the Spine Road at the approach and connection to Hill End Road shall be wide enough to accommodate left and right turning vehicles, side-by-side waiting to enter Hill End Road.
  - The intersection shall be formed as to provide lay-bys on the departure sides for use as a school bus stop shelter, unless a bus stop is constructed by the developer within stage 1 of the subdivision.
35. Prior to the issue of the Subdivision Certificate for the 135<sup>th</sup> 180<sup>th</sup> lot, the intersection of the Hill End Road and the Castlereagh Highway is to be designed and constructed to comprise;
- A full length Rural Channelised T-junction – Full length (CHR) is to be provided in accordance with Figure 7.7 of Austroads Guide to Road Design 2010 – Part 4A: Guide to Unsignalised and Signalised Intersections and RMS Supplements;
  - A Rural Auxiliary Left Turn Lane Treatment (AUL) on the major road is to be provided in accordance with Figure 8.4 of Austroads Guide to Road Design 2010 – Part 4A: Guide to Unsignalised and Signalised Intersections and RMS Supplements;
  - The width of the Hill End Road at the approach and connection to the Castlereagh Highway shall be wide enough to accommodate left and right turning vehicles, side by side waiting to enter the Castlereagh Highway,
  - All existing and proposed utility services shall be located clear of existing road pavements,
  - The developer is required to enter into a formal agreement with ~~the~~ [RMS Transport for NSW \(TfNSW\)](#) in the form of a Works Authorisation Deed (WAD) prior to works commencing at the intersection,
  - A Road Occupancy License is required prior to any works commencing within 3m of the Castlereagh Highway.

[Notwithstanding the above, the final completion of this intersection upgrade, of the Hill End Road and the Castlereagh Highway, may be deferred until after the issue of the Subdivision Certificate for the 180<sup>th</sup> lot subject to agreement and written consent being provided from Transport for NSW \(TfNSW\).](#)

[For clarity, the intersection upgrade must then be undertaken prior to the issue of the Subdivision Certificate for the release of the revised number of lots, prescribed by Transport for NSW \(TfNSW\) and the written approval of Council \(Note: this does not require a modification application under Section 4.55 of the \*Environmental Planning and Assessment Act 1979\* to be made\).](#)

(Amended by ME0001/2022)

36. Street signs necessitated by the subdivision are to be installed in accordance with Aus-Spec #1 council conditions.

#### Water and Sewer

37. The developer is to meet the full cost of water and sewerage reticulations to service the new lots prior to the release of the Subdivision Certificate. Each lot must be provided with separate water and sewer services. All water and sewerage work is required to be carried out in accordance with the requirements of Mid-Western Regional Council (as the Water Supply Authority under the Local Government Act, 1993) and in accordance with the National Specification – Water & Sewerage Codes of Australia.

38. (Deleted under MI0017/2016)

- 38(a) Where infrastructure services cross through private land three metre wide easements, including associated Section 88B of the Conveyancing Act 1919 instruments, are to be created in favour of Council over any existing or newly constructed water, or sewerage reticulation components located within the subject property, or extended through adjoining private properties as a result of this subdivision.

Notwithstanding the above, two metre wide easements will be permitted adjacent to Public Roads for the 56 lots approved under Construction Certificate 0131/2014, only.

(Amended under MI0017/2016)

39. Water reticulation shall connect to the trunk main at four points: two where the trunk main enters the development (from the south) and two near its terminal point (in the north). The connections are required to be staggered (i.e. not through cross tee fittings) and the cost of the connections borne by the developer. The developer shall obtain a private works quotation from Council when ready to connect reticulation to the trunk main. All works are to be completed prior to the issue of a Subdivision Certificate.

Note: Council does not permit other bodies to connect into 'live' water mains.

40. Water services are to be located on alternate property boundaries to Telstra/Electricity. The developer will construct the water service to the water meter and then pay the water meter assembly only fee (\$370 in 2013-14 Fees & Charges) for council to supply a meter only for each lot in the subdivision.

#### Earthworks

41. All finished surface levels shall be shown on the plans submitted for the Subdivision Works Certificate. Where it is proposed to import fill, the material shall be certified as free of hazardous materials and contamination by a suitably qualified geotechnical engineer. Fill placed in residential or commercial lots shall be compacted in accordance with AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments.

(Amended by MA0042/2021)

## Footpaths and Cycle Ways

42. (Deleted under MI0015/2016)

42(a) Pedestrian and cycle paths are to be designed and constructed with the alignment as shown in Figure 8 of the Caerleon Subdivision Application Neighbourhood 1: Statement of Environmental Effects, dated March 2013. Foot and cycle ways shall be 1.2m and 2.0m widths respectively and be consistent with grades, depths and reinforcement detail as shown in MWRC Access to Properties Policy (Standard Dwg No. M524B). The paths are to be completed within 3 months of the completion of the full and final form of the Spine Road.

(Amended under MI0015/2016)

## PRIOR TO THE ISSUE OF THE SUBDIVISION CERTIFICATE

43. ~~A restriction prohibiting dual-occupancy development being constructed on all lots greater than 600m<sup>2</sup>, including associated Section 88B instruments, is to be created in favour of Council over the subdivision.~~

~~(Deleted by ME0001/2022)~~

44. A linen plan and two (2) copies are to be submitted to Council for approval and endorsement by the General Manager prior to the release of each stage of the development.

**NOTE:** Under the *Environmental Planning & Assessment Act, 1979*, a Subdivision Certificate is required before the linen plan of subdivision can be registered with the Land Titles Office. Council's fee to issue a Subdivision Certificate is set out in Council's fees and charges.

45. Following the completion of subdivision works, one set of Works As Executed Drawings in PDF format, AutoCAD compatible files in DWG format, MapInfo files (MGA GDA94 Zone 55/56) and completed Asset Data Template spreadsheets in MS Excel format, are to be submitted to Council. All Works As Executed plans shall bear the consulting engineer's or consulting surveyor's certification stating that all information shown in the plans are accurate.

### A) COVERSHEET

- Project Address.
- Client/Developer.
- DA Number.
- Lot Numbers.
- Subdivision Stage Number (If Applicable).

### B) INDEX

- Section Numbers.

### C) CONTRACTOR DETAILS

- Contractor Representative.
- Contractor Contact Details.

### D) SCOPE OF WORKS

- Enter description outlining scope of works completed.

**Records to be included as applicable**

- **Material Certification and Material Test Reports (Sub base, Base course, Water, Sewer, Stormwater, Bitumen etc. for supplied materials).**
- **Concrete mix Details (Concrete Register/ Concrete Test Results required).**
- **Bitumen Sealing Reports/Records.**
- **Earthworks/Civil Test Reports e.g. compaction tests - (Coordinates and RL required for each test required to be shown on a dwg).**
- **Dimensional and Tolerance Records (Survey Conformance Reports)**
- **Inspection Documentation (Development Engineer Inspections, ITPs, Lot Identification).**
- **Non-conformance reports (Major non-conformances not detailed on council inspections).**
- **Work As Executed Drawings and completed Asset Data spreadsheet (Council to provide at the request of the applicant) (Provide document register of all dwgs and Engineering Stamp required in AutoCAD, DWG, Map Info, Excel and PDF format).**
- **Copy of final inspection report from Council's Development Engineer.**

(Amended by MA0042/2021)

46. **If the Subdivision Certificate is not issued, for any reason, within twelve (12) months of the date of determination, then the charges and contributions contained in this consent will be increased to the current rate at the time of payment.**
47. **Prior to issue of the Subdivision Certificate**
- (a) **All contributions must be paid to Council and all works required by the consent be completed in accordance with the consent, or**
  - (b) **An agreement be made between the developer and Council; be paid to Council in accordance with this condition for the purpose of:**
    - i) **As to the security to be given to Council that the works will be completed or the contribution paid and**
    - ii) **As to when the work will be completed or the contribution paid.**
48. **Following completion of all engineering works, a defect liability bond of 5% of the value of such works (not carried out by Council) shall be lodged with Council to ensure that any defects in such works are remedied by the developer.**
49. **The developer is to ensure that all defects in the works that become apparent within twelve (12) months of Council accepting the works on maintenance are remedied to Council's satisfaction. If these defects are not satisfactorily remedied, Council may use bond money to carry rectification.**
- Note - Any unspent bond money will be returned to the developer at the end of the twelve (12) months period, less the estimated cost of any outstanding works.**
50. **The subdivision works are to be inspected by Council (or an Accredited Certifier on behalf of Council) to monitor compliance with the consent and the relevant standards of construction, encompassing the following stages of construction:**
- **installation of sediment and erosion control measures;**
  - **water and sewer line installation prior to backfilling;**
  - **stormwater pipes installation prior to backfilling;**

- water and sewer lines pressure testing;
  - sewer manholes vacuum testing;
  - establishment of line and level for kerb and gutter replacement;
  - road pavement construction;
  - road pavement compaction testing;
  - road pavement surfacing;
  - practical completion.
51. Upon completion of each stage of construction, the Council is also required to ensure that adequate provisions are made for the following
- Sediment and erosion control measures;
  - Traffic control measures;
  - Maintenance of public areas free from unauthorised materials, waste or other obstructions.
52. The applicants shall, at their own expense, engage a registered surveyor to relocate any survey marks that may be distributed by the development or any associated work. Any information regarding location should be supplied to the Land Titles Office and Council.
53. Underground electricity, street lighting and telecommunication are to be supplied to the subdivision. Prior to issue of the Subdivision Certificate, Council is to be supplied with:
- a) A certificate from the appropriate power authority indicating that satisfactory arrangements have been made for provision of electricity supply to the subdivision.
  - b) A certificate from the appropriate telecommunications authorities indicating that satisfactory arrangements have been made for provision of telephone and internet services to the subdivision that are NBN compliant.
54. The development is to be provided with completed drainage and open space areas as detailed in the approved landscape plans for each stage of the development. Any drainage or open space area within or adjacent to a stage is to be completed prior to the release of the Subdivision certificate for that stage.
55. All roadworks and other associated traffic control measures are to be completed with each stage of the development and prior to the release of the Subdivision Certificate.
56. The applicant shall repair in accordance with Aus-Spec#1 and Council Standard Drawings any part of Council's property damaged during the course of the development.
57. The developer must provide Council and land purchasers with a site classification for each lots within the subdivision. The classification is to be carried out at a suitable building site on each lot and is to be carried out by a NATA registered laboratory using method (a) of Clause 2.2.3 of AS2870-1996. Results are to be submitted to Council prior to the issued of the Subdivision Certificate.

#### ADVISORY NOTES

- 1 The removal of trees within any road reserve requires the separate approval of Council in accordance with the policy "Tree Removal and Pruning – Public Places".

- 2 The land upon which the subject building is to be constructed may be affected by restrictive covenants. This approval is issued without enquiry by Council as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this approval. Persons to whom this approval is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.
- 3 Division 8.2 of the *Environmental Planning and Assessment Act (EP&A Act)* gives you the ability to seek a review of the determination. This request is made to Council and must be made within 6 months after the date on which you receive this notice. The request must be made in writing and lodged with the required fee; please contact Council's Development Department for more information or advice.
- 4 If you are dissatisfied with this decision section 8.7 of the EP&A Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.
- 5 To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.

#### STATEMENT OF REASONS

1. The proposed modification is substantially the same development as that approved and will have minimal environmental impacts.
2. The proposed modification complies with all the relevant matters required to be taken into consideration in accordance with sections 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979*.

(ADDED BY ME0001/2022)

#### Executive summary

OWNER/S	Caerleon Mudgee Pty Ltd
APPLICANT:	Caerleon Mudgee Pty Ltd
PROPERTY DESCRIPTION	26 Hone Creek Road, Caerleon NSW 2850 (originally 38 Hill End Road, Caerleon Lot 2 DP1181749, Lot 1 DP1146227, Lot 1 DP32086 and Lot 136 DP 756894)
PROPOSED DEVELOPMENT	Modification to Development Consent DA0428/2013 to amend Condition 35 and delete Condition 43.
REASON FOR REPORTING TO COUNCIL:	Original Development Application Determined by Council
PUBLIC SUBMISSIONS:	Nil

A modification of consent application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* was lodged with Council on 6 July 2021 to modify Development Consent DA0428/2013 relating to a residential subdivision at 26 Hone Creek Road, Caerleon (also known as Neighbourhood 1 of the Caerleon Estate and identified under the original consent as 38 Hill End Road, Caerleon Lot 2 DP1181749, Lot 1 DP1146227, Lot 1 DP32086 and Lot 136 DP 756894).

The application seeks to modify the consent as follows:

1. Modify Condition 35 to amend the timing required for the upgrade of the intersection at Hill End Road and Castlereagh Highway to prior to the release of the subdivision certificate for the 248<sup>th</sup> lot rather than the 135<sup>th</sup> lot and delete the requirement to provide a Rural Auxiliary Left Turn Lane Treatment (AUL).
2. Delete Condition 43 which requires the developer to create a restriction in favour of Council prohibiting dual-occupancy development on lots greater than 600m<sup>2</sup>.

The modification of consent application is required to be determined by Council as the original development consent was determined by Council.

The application was notified in accordance with the Mid-Western Regional Community Participation Plan 2019. During the notification period of the application, no objections were received.

The proposed development has been assessed in accordance with Council's Development Control Plan 2013 (DCP 2013) and the *Mid-Western Regional Local Environmental Plan 2012* (MWRLEP 2012). The proposed development is considered generally consistent with Council's planning controls.

The proposed modification is recommended for approval subject to amendments as discussed within the body of this report.

## Disclosure of Interest

Nil.

## Detailed report

### *BACKGROUND*

#### **Original Approval**

The original development consent, DA0428/2013 was approved on 9 August 2013 for a staged subdivision comprising 267 residential lots. Condition A of the consent was a deferred commencement condition which required the landowners to enter into a Voluntary Planning Agreement with Council.

Following satisfaction of the deferred commencement condition, an operational development consent was issued on 6 March 2014.

#### **Approved Modifications to the Original Approval**

The consent was modified under MI0015/2016 on 8 April 2016. The modification amended Condition 42 of the consent and approved minor changes to the timing for the provision of footpaths and cycle ways of the development.

On 24 May 2016 the consent was further modified under MI0017/2016. The modification related to a minor change to Condition 38, adding an alternative to the normally required 3m wide easement over sewer and water components to be 2m wide where the easement is adjacent to a public road.

The consent was further modified, utilising the provisions of Section 80A(5) [currently s4.17A(5)] of the *Environmental Planning and Assessment Act 1979*, on 25 May 2016. This modification amended the lot layout by removing 59 lots from the Neighbourhood 1 layout and replacing them

with four super-lots. One of the super-lots accommodates Oakhill Retirement Village. The modification under s80A(5) was required by Condition 7 of Development Consent DA0253/2016 – a 2 into 3 lot subdivision.

The consent was modified a fourth time under MA0034/2018 on 23 July 2018 which approved an amendment to the configuration of the lots as a result of the prior modification to create four super lots under DA0253/2016.

The consent was modified a fifth time under MA0042/2021 on 21 July 2021 which approved an amendment to the layout of the subdivision and approved the relocation of the drainage basin number 3.

The subdivision has commenced with Stages 1, 2, 3 and 3A completed and residential lots released and sold to the public. Subdivision Certificates for the release of Stages 4 and 5 have been lodged with Council and the Subdivision Work Certificate for Stage 6 has also been approved.

#### *PROPOSED MODIFICATION*

The application seeks to modify Condition 35 to amend the timing required for the upgrade of the intersection at Hill End Road and Castlereagh Highway. Condition 35 reads as follows:

*Prior to the issue of the Subdivision Certificate for the 135th lot, the intersection of the Hill End Road and the Castlereagh Highway is to be designed and constructed to comprise;*

- *A full length Rural Channelised T-junction – Full length (CHR) is to be provided in accordance with Figure 7.7 of Austroads Guide to Road Design 2010 – Part 4A: Guide to Unsignalled and Signalled Intersections and RMS Supplements;*
- *A Rural Auxiliary Left Turn Lane Treatment (AUL) on the major road is to be provided in accordance with Figure 8.4 of Austroads Guide to Road Design 2010 – Part 4A: Guide to Unsignalled and Signalled Intersections and RMS Supplements;*
- *The width of the Hill End Road at the approach and connection to the Castlereagh Highway shall be wide enough to accommodate left and right turning vehicles, side by side waiting to enter the Castlereagh Highway,*
- *All existing and proposed utility services shall be located clear of existing road pavements,*
- *The developer is required to enter into a formal agreement with the RMS in the form of a Works Authorisation Deed (WAD) prior to works commencing at the intersection,*
- *A Road Occupancy License is required prior to any works commencing within 3m of the Castlereagh Highway.*

The traffic report provided with the application proposed to modify the condition as follows:

- Increase the threshold number to require an upgrade to the intersection of Hill End Road and the Castlereagh Highway prior to the issue of the Subdivision Certificate for the 248<sup>th</sup> lot rather than for the 135<sup>th</sup> lot.
- Delete the second bullet point requiring a Rural Auxiliary Left Turn Lane Treatment (AUL) to be provided.

On 13 September 2021, the applicant lodged a further amendment to delete Condition 43. Condition 43 reads as follows:

*A restriction prohibiting dual-occupancy development being constructed on all lots greater than 600m<sup>2</sup>, including associated Section 88B instruments, is to be created in favour of Council over the subdivision.*



## PUBLIC NOTIFICATION

The application was notified in accordance with Mid-Western Regional Community Participation Plan 2019 for a period of 14 days. The application was re-notified a second time following an amendment to the application to delete Condition 43 relating to dual occupancy. The second notification period ended on 6 October 2021. During the notification of the application, no objections were received.

## REQUIREMENTS OF REGULATIONS AND POLICIES

The application has been assessed in accordance with Section 4.15 and 4.55 of the *Environmental Planning & Assessment Act 1979*. The main issues are addressed below as follows.

### 4.55(1A) Modifications involving minimal environmental impact

#### (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*

**Comment** The proposed modification will have 'minimal environmental impact' in comparison to the approved development consent and will have no significant environmental impacts compared to the approved development for the following reasons:

- The intersection of Hill End Road and Castlereagh Highway will still be upgraded subject to the requirements of Council and Transport for NSW (TfNSW).
- The deletion of the restriction required in Condition 43 will not result in any physical changes to the proposed development.

*(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*

**Comment** The proposed modification to amend Condition 35 and delete Condition 43 is considered to be substantially the same as the original development granted being for residential subdivision.

*(c) it has notified the application in accordance with:*

- (i) the regulations, if the regulations so require, and*
- (ii) a development control plan,*

**Comment** The Section 4.55(1A) application was notified in accordance with the Mid-Western Regional Community Participation Plan 2019.

*(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.*

**Comment** No submissions were received.

- (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.*

**Comment** All matters under Section 4.15(1) of relevance to the modification have been addressed throughout this report.

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

**Comment** Noted.

#### 4.15(1) Evaluation

- (A) *THE PROVISIONS OF*  
(i) *ANY ENVIRONMENTAL PLANNING INSTRUMENTS*  
(ii) *ANY PROPOSED PLANNING INSTRUMENTS*  
(iii) *ANY DEVELOPMENT CONTROL PLAN*

##### 1. Modification to Condition 35

The original application was traffic generating development and involved a new road connected to a classified road. The concurrence of RMS (now Transport for NSW) was required for the subdivision under the *State Environmental Planning Policy (Infrastructure) 2007* (Clause 100-104 – Classified road and Traffic Generating Developments) and as a result conditions relating to road works were incorporated into the original consent. This included Condition 35 proposed to be modified under this application.

Condition 35 relates to the upgrade of the intersection of Hill End Road and Castlereagh Highway. This application proposes to amend the condition to extend the timing for the upgrade to the intersection from prior to the release of the 135<sup>th</sup> lot to prior to the release of the 248<sup>th</sup> lot. It is also proposed to delete the requirement for a Rural Auxiliary Left Turn Lane Treatment (AUL).

The application was referred to Transport for NSW (TfNSW) who did not support the modification to Condition 35 as proposed. Following discussions with the developer and in a subsequent response dated 08 October 2021 (Attachment 1), TfNSW agreed to extend the threshold for the intersection works to be completed from 135 to 180 lots however no agreement was provided to delete the Rural Auxiliary Left Turn Lane Treatment (AUL). The response also advised that an opportunity to further extend the threshold may be considered subject to progress made with construction of the intersection upgrade. This approach is also supported by Council's Development Engineers. An amended condition has been included in accordance with the above requirements including an allowance for an extension of the threshold, subject to the written approval of TfNSW.

##### 2. Deletion of Condition 43

Condition 43 requires a restriction to be imposed to prohibit dual occupancies on all lots greater than 600 square metres.

Under the *Mid-Western Regional Local Environmental Plan 2012* (MWRLEP 2012), the subject site is predominantly zoned R1 General Residential with a small area zoned B4 Mixed Use. The MWRLEP 2012 lists dual occupancy development as “permitted with consent” in the R1 General Residential zone and the B4 Mixed Use Zone. In addition, Clause 4.1A of the MWRLEP 2012 lists the minimum lots sizes for dual occupancies on land within Zone R1 General Residential as follows:

- dual occupancy (attached), if the area of the lot is equal to or greater than 600 square metres; and
- dual occupancy (detached), if the area of the lot is equal to or greater than 800 square metres.

As such, the restriction required under Condition 43 is inconsistent with the permissibility of dual occupancies under the MWRLEP 2012.

Under the *Caerleon Development Control Plan* (which forms Appendix C to the *Mid-Western Regional Development Control Plan 2013* (DCP 2013)) the following development standards relating to dual occupancies are specified:

- Dual occupancy development in Caerleon, in particular battle-axe style development, **will not be supported**.
- Subdivision of a single lot that contains a dual occupancy development or is proposed to contain a dual occupancy development into two lots, is only encouraged where each of the resulting lots is > 600m<sup>2</sup>.

The above standards do not prohibit the development of the land for dual occupancy as required in Condition 43, rather the standards discourage the development for this purpose.

Given the above requirements of the MWRLEP 2012 and the DCP 2013 in relation to dual occupancies, it is not clear why Condition 43 was included in the original consent. A review of the original assessment report did not provide any rationale for its inclusion. It is possible that the intention was for the restrictive covenant to be created in favour of the developer, allowing discretion on dual occupancy development only where the development was of excellent/high quality architectural design. However, it is unknown why Council was required to be the benefitting authority in this case.

It is also noted that the restrictive covenant, where imposed as per the condition, will have no effect. For a restrictive covenant to have effect, there needs to be a burdened and benefitting party. That means, Council would need to own land adjoining the subject site for it to benefit from the restrictive covenant. In this case, Council does not own adjoining land, meaning the restrictive covenant would not have any effect and Council would not be able to rely upon it as grounds for refusal for an application for dual occupancy development. The ineffectiveness of the restriction became apparent during the assessment of development applications for dual occupancy development within the Caerleon Estate where the restriction has already been imposed in accordance with the conditions of consent, on Stages 1 and 2.

Given the above, it is recommended that Condition 43 be deleted as it is inconsistent with the controls of the MWRLEP 2012 and the DCP 2013 and in addition any restriction created in accordance with the condition would be ineffective in prohibiting dual occupancy development on lots greater than 600m<sup>2</sup>.

#### (B) *LIKELY IMPACTS OF THE DEVELOPMENT*

The proposed modification will not result in any new impacts from that which is currently approved as follows:

- The modification to Condition 35 was originally imposed by RMS (now TfNSW) who have supported the modification to the threshold as recommended.
- The deletion of Condition 43 will have no impact on the development or future development of the created lots given the restriction cannot be enforced should a development application be lodged with Council.

No further issues were identified as a result of the proposed modification.

*(C) SUITABILITY OF SITE FOR DEVELOPMENT*

The proposed modification does not alter the suitability of the site for the approved development.

*(D) SUBMISSIONS MADE IN ACCORDANCE WITH ACT OR REGULATIONS*

**Public Submissions**

The application was notified in accordance with Mid-Western Regional Community Participation Plan 2019 for a period of 14 days. The application was re-notified a second time following an amendment to the application with the second notification period ending on 6 October 2021. During the notification of the application, no objections were received.

**Submissions from public authorities**

Transport for NSW (TfNSW)

The application was referred to Transport for NSW in relation to the proposed modification to Condition 35. TfNSW agreed to extend the threshold for the completion of the intersection works from 135 to 180 lots as discussed in the body of this report. A full copy of their response is available in Attachment 1.

*(e) THE PUBLIC INTEREST*

**Federal, State and local government interests and community interests**

No significant issues in the interests of the public are expected as a result of the proposed development.

*CONSULTATIONS*

**Health & Building**

No consultation necessary.

**Development Engineer**

Council's Development Engineer has made comments in relation to the proposed modification which support increasing the threshold for the completion of the intersection works from 135 to 180 lots.

Following the submission from TfNSW dated 8 October 2021, Council's Development Engineer recommended that Condition 35 be modified in accordance with the comments from TfNSW, incorporating an increase to the threshold to 180 lots with this number able to be increased subject to approval by TfNSW. The modifications to Condition 35, as proposed by Council's Development Engineers, have been included in the recommended conditions of consent.

Community Plan implications

---

Goal	Vibrant towns and villages
Strategy	Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning

---

## Strategic implications

### **Council Strategies**

Not applicable.

### **Council Policies**

Mid-Western Development Control Plan 2013.  
Community Participation Plan 2019.  
Mid-Western Regional Contributions Plan 2019.

### **Legislation**

Environmental Planning and Assessment Act 1979.  
Environmental Planning and Assessment Regulations 2000.  
Mid-Western Regional Local Environmental Plan 2012.

### **Other Documents / Agreements**

Planning Agreement between Mid-Western Regional Council and Caerleon Mudgee Pty Limited  
Caerleon Mudgee Trust dated 2013.

## Financial implications

Not applicable.

## Associated Risks

Should Council refuse the application, the applicant may seek a further review of this decision or appeal through the Land & Environment Court.

SARAH HOPKINS  
TOWN PLANNER

LINDSAY DUNSTAN  
MANAGER, PLANNING

JULIE ROBERTSON  
DIRECTOR DEVELOPMENT

12 October 2021

*Attachments:* 1. TfNSW Response dated 8/10/2021.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



Transport  
for NSW

8/10/2021

SF2013/043508 | WST13/0047/06

The General Manager  
Mid-Western Regional Council  
86 Market Street  
MUDGEE NSW 2850

**Attention: Sarah Hopkins**

Dear Ms Hopkins

**ME0001/2022: 38 Hill End Road, Caerleon Modification to DA 0428/2013 - Subdivision**

Thank you for the abovementioned application to modify an existing development application (DA) referral via the NSW Planning Portal dated 16 July 2021 inviting comment from Transport for NSW (TfNSW). Reference is made to TfNSW's previous submission dated 12 August 2021.

Since this letter, TfNSW have been in discussions with the developer. Following these discussions, TfNSW provides the following updated advice to finalise the modification:

- TfNSW will agree to extend the threshold for the intersection works to be completed from 135 to 180 lots, subject to a Works Authorisation Deed being entered into between TfNSW and the developer for upgrade to the Hill End Road (MR216) and Castlereagh Highway (HW18) intersection.

Further to the above, TfNSW has advised the developer that it is willing to review this position with the view to extending the threshold subject to progress made with construction of the intersection upgrade.

If you wish to discuss this matter further, please contact Alexandra Power on 02 6861 1428.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Andrew McIntyre'.

**Andrew McIntyre**  
**Manager Development Services West**  
**Regional and Outer Metropolitan**

---

Transport for NSW

Level 1, 51-55 Currajong Street, Parkes NSW, 2870 | PO Box 334, Parkes NSW 2870 | DX20256  
T 02 6861 1449 | W [transport.nsw.gov.au](http://transport.nsw.gov.au) | E [development.western@transport.nsw.gov.au](mailto:development.western@transport.nsw.gov.au) | ABN 18 804 239 602