

Item 8: Development

8.1 ME0016/2022 - Proposed Modification to DA0011/2020 for Intensive Plant Agriculture at 80 Kemp's Valley Road, Kains Flat Lot 57 DP255534

REPORT BY THE TOWN PLANNER  
 TO 16 MARCH 2022 ORDINARY MEETING  
 GOV400098, ME0016/2022

**RECOMMENDATION**

**That Council:**

1. receive the report by the Town Planner on ME0016/2022 - Proposed Modification to DA0011/2020 for Intensive Plant Agriculture at 80 Kemp's Valley Road, Kains Flat Lot 57 DP255534; and
2. approve ME0016/2022 - Proposed Modification to DA0011/2020 for Intensive Plant Agriculture at 80 Kemp's Valley Road, Kains Flat Lot 57 DP255534 subject to the following conditions and statement of reasons:

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

**CONDITIONS**

**APPROVED PLANS**

1. Development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below except as varied by the conditions herein.

<i>Title/Name</i>	<i>Plan No.</i>	<i>Rev</i>	<i>Dated</i>	<i>Prepared by</i>
Existing – Site Plan	190259_A_101	011	9 July 2019	PharmOut
Proposed - Site Plan	190259_A_102	015	9 July 2019	PharmOut
Proposed – Ground Floor Layout	190259_A_202	08	9 July 2019	PharmOut
Proposed – Site Security Layout	190259_A_302	07	9 July 2019	PharmOut
Proposed Elevations	190259_A_401	08	9 July 2019	PharmOut

2. This development consent provides approval for intensive agriculture – horticulture, erection of 4 x greenhouses, head house and associated infrastructure, only.
3. The harvested plant shall not be treated, processed or packaged onsite. This shall occur entirely offsite from an external facility.
4. This development consent does not include approval for any signage for the approved development. A separate Development Consent or Complying Development Certificate may be required for signage, if the signage is not exempt development.

5. This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.

**PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE**

6. Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 for the installation of an On Site Sewer Management System is to be obtained from Mid-Western Regional Council.
7. In accordance with the provisions of Section 7.12 of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Contributions Plan 2019* (the Section 94A Plan), a levy based on the value of works shall be paid to Council in accordance with this condition for the purpose of public facilities, prior to issue of a Construction Certificate.

The value of works is to be calculated in accordance with Table 6 and the procedure outlined in Figure 1 of the Contributions Plan. A report regarding value of works and any necessary certification is to be submitted to Council. Council will calculate and advise of the levy amount following submission of the documents.

Note – based on the proposed cost of works being **\$6,279,000.00** it is estimated the contribution amount will be **\$62,790.00**. The contribution amount will be adjusted by the Consumer Price Index, if not paid in the same financial year the development consent was issued.

Note – *Mid-Western Regional Contributions Plan 2019* is available for perusal at Council's Administration Centre at 86 Market Street, Mudgee or on Council's website [www.midwestern.nsw.gov.au](http://www.midwestern.nsw.gov.au) under Council Documents/Strategies and Plans.

**(AMENDED ME0016/2022)**

**PRIOR TO THE COMMENCEMENT OF WORKS**

8. **Prior to the commencement of works a Road Maintenance Management Plan shall be submitted to and approved by Mid-Western Regional Council. The Road Maintenance Management Plan shall address the manner in which maintenance work to Kemps Valley Road is to be carried out during the construction phase of the development until such time that Kemps Valley Road is upgraded and sealed to the satisfaction of Council.**

**The Road Maintenance Management Plan is to be fully implemented at all times and a copy of the plan must be held on site at all times for compliance.**

**(ADDED ME0016/2022)**

9. No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
  - a) the appointment of a Principal Certifying Authority and
  - b) the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

10. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied

periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

**NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE**

11. A sign must be erected in a prominent position on any work site on which involved in the erection or demolition of a building is carried out:
  - a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
  - c) the name, address and telephone number of the principal certifying authority for the work; and
  - d) the sign shall be removed when the erection or demolition of the building has been completed.
12. If the work involved in the erection/demolition of the building;
  - a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - b) building involves the enclosure of a public place.

A hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

13. The development site is to be managed for the entirety of work in the following manner:
  - a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
  - b) Appropriate dust control measures;
  - c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
  - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

## **BUILDING CONSTRUCTION**

14. All building work must be carried out in accordance with the provisions of the National Construction Code, the Environmental Planning & Assessment Act 1979 and Regulations and all relevant Australian Standards.
15. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the Plumbing Code of Australia.
16. Construction work noise that is audible at other premises is to be restricted to the following times:
  - Monday to Saturday - 7.00am to 5.00pmNo construction work noise is permitted on Sundays or Public Holidays.

17. All mandatory inspections required by the Environmental Planning & Assessment Act and any other inspections deemed necessary by the Principal Certifying Authority being carried out during the relevant stage of construction.
18. All stormwater is to discharge a minimum 3m from the building and disposed of in such a way as to not adversely affect the adjoining properties.
19. All building work is to comply with the requirements of the Access to Premises Standard.
20. The list of measures contained in the schedule attached to the Construction Certificate are required to be installed in the building or on the land to ensure the safety of persons in the event of fire in accordance with Clause 168 of the Environmental Planning and Assessment Regulation 2000.
21. In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.

#### ENGINEERING CONDITIONS

~~21. Prior to the commencement of works onsite, the Applicant must upgrade Kemp's Valley Road in accordance with AusSpec #1. This is to include the upgrade of existing gravel pavement and bitumen sealing provide for no less than a 6 metre wide bitumen sealed pavement, formed with 1 metre wide gravel shoulders and be completed to the satisfaction of Council.~~

~~22. A new access crossover for the site must be constructed from Kemp's Valley Road to provide access to the proposed development. Consent from Council must be obtained for all works within the road reserve pursuant to Section 138 of the Roads Act 1993. Construction must be in accordance with the requirements of Council's "Access to Properties". Access to the development (crossovers and internal driveways), should require double lane access, and are to be maintained and upgraded as necessary, to the satisfaction of Council.~~

(DELETED ME0016/2022)

22. A total of 38 car parking spaces are to be provided within the site of the development and comply with AS 2890.1: 2004 and the following requirements:
  - a) Each parking space is to have minimum dimensions of 5.5m x 2.4m;
  - b) Each disabled car parking space is to be in accordance with the provisions of AS 2890.6: 2009 – *Parking facilities – Part 6: Off-street parking for people with disabilities*;
  - c) All car parking spaces are to be line-marked and provided with a hard standing, all weather compacted gravel surface and must be maintained in a satisfactory condition at all times.
23. All earthworks, filling, building, driveways or other works, are to be designed and constructed (including stormwater drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.

24. **All stormwater runoff from roof and developed surfaces, including overflow from rainwater tanks, is to be controlled in such a manner so as not to flow or discharge over adjacent properties. Methods of disposal of excess stormwater must also include adequate provision for prevention of erosion and scouring.**
25. **Costs associated with all development works including any necessary alteration, relocation of services, public utility mains or installations must be met by the developer. The developer is responsible to accurately locate all existing services before any development works commence to satisfy this condition.**
26. **Any damage which is caused to Council's infrastructure as a result of the proposed development must be repaired immediately to Council's satisfaction and at no cost to Council.**
27. **Prior to the commencement of any onsite work, Council must be provided with no less than five (5) working days notification to enable inspection of existing road conditions. At the completion of works, the road is to be re-inspected by Council and any defects caused by construction traffic or activities associated with the development must be repaired to the satisfaction of Council.**
28. **No earthworks (cut or fill) is permitted to extend beyond property boundaries. No cut or fill is to occur within 300 mm of any property boundary and details for stabilisation of earthworks to prevent erosion or scouring are to be provided prior to commencement of that part of the works.**

#### **PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE**

29. **Prior to the issue of an Occupation Certificate, the Applicant must upgrade Kemps Valley Road in accordance with AusSpec #1. This is to include the upgrade of existing gravel pavement and bitumen sealing provide for no less than a 6m wide bitumen sealed pavement, formed with 1 metre wide gravel shoulders and be completed to the satisfaction of Council.**
30. **A new access crossover for the site must be constructed from Kemps Valley Road to provide access to the proposed development. Consent from council must be obtained for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993*. Construction must be in accordance with the requirements of Council's "Access to Properties". Access to the development (crossovers and internal driveways), should require double lane access, and are to be maintained and upgrades as necessary, to the satisfaction of Council. The access shall be constructed prior to the issue of an Occupation Certificate**

**(ADDED ME0016/2022)**

31. **Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.**
32. **Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate in accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.**

## ONGOING / OPERATIONAL CONDITIONS

33. For every 12 month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement Certifying that each specified fire safety measure is capable of performing to its specification.
34. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and Council. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
35. The approved hours of operation for the facility are:
  - 24 hours per day / 7 days per week.
36. Medium and large vehicle movements including water trucks or the LPG Tanker and Small Lorry shown in the Preliminary Site Management Plan Project 190259 Doc REP007 Rev 02, may only access the site between the following hours:
  - 7am – 7pm / 7 days per week.
37. No less than two (2) rows of the existing olive grove along the north, north-west, and south western sides of the proposed buildings must be maintained at all times to provide screening for the facility.
38. The ventilation systems and exhaust fans must be operated in accordance with the *Protection of the Environment Operations (Noise Control) Regulation 2017*.
39. All vehicles must be able to enter and exit the site in a forward moving direction.
40. All loading and unloading in connection with the premises shall be carried out wholly within the site.
41. There being no interference with the amenity of the neighbourhood by reason of the emission of any “offensive noise”, vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.
42. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property or roadways, in accordance with Australian Standard 4282 “Control of the Obtrusive Effects of Outdoor Lighting”. This may include pointing security lighting downwards and/or the fitting of louvres, baffles or shields to limit spill light.
43. The roof and wall cladding shall be finished in a non-reflective; non-glaring material and shall not direct undue glare onto neighbouring properties.
22. The applicant is to prepare a plan of management (POM) to be kept at the site at all times, outlining the management and storage of fertilisers, to prevent any contamination of the site, soil or waterways. The occupiers of the site shall manage the facility in accordance with the POM at all times.

## STATEMENT OF REASONS

The determination decision was reached for the following reasons:



1. **The proposed development complies with the requirements of the applicable environmental planning instruments and Mid-Western Regional Development Control Plan 2013.**
- ~~2. **The proposed development is considered to be satisfactory in terms of the matters identified in Section 4.15 of the Environmental Planning & Assessment Act 1979.**~~
2. **The proposed modification is substantially the same development as that approved and will have minimal environmental impacts.**
3. **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 ME0016/2022)**

#### **Advisory Note**

- **The development is to operate so as to not emit offensive noise, as defined in the *Protection of the Environment Operations Act 1997*.**
- **Odour generated from the operation of the site must be in accordance with the NSW Environment Protection Authority's Technical Framework and Technical Notes: *Assessment and management of odour from stationary sources in NSW*.**

#### Executive summary

<b>OWNER/S</b>	Ms Susan Zaiter
<b>APPLICANT:</b>	Mr Daniel Elhindi C/- Barnson Pty Ltd
<b>PROPERTY DESCRIPTION</b>	80 Kempes Valley Road, Kains Flat, Lot 57 DP255534
<b>PROPOSED DEVELOPMENT</b>	Modification to Development Consent DA0011/2020 for Intensive Plant Agriculture to amend Condition 21 and 22
<b>REASON FOR REPORTING TO COUNCIL:</b>	A revised cost of works has been submitted totalling \$6,279,000.00 which exceeds the threshold for the application to be determined under delegation.
<b>PUBLIC SUBMISSIONS:</b>	Two (2) submissions

Council is in receipt of a Modification Application to DA0011/2020 (ME0016/2022) at 80 Kempes Valley Road, Kains Flat pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

The application seeks to modify the consent as follows:

1. Modify Condition 21 and 22 relating to the timing required for the upgrade of Kempes Valley Road. It is sought that the road upgrades be undertaken prior to the release of an occupation certificate instead of prior to the commencement of works.

The proposed modification has been sought to allow the proponent to explore potential avenues for establishing this upgrade.

The original Development Application was determined under delegation on 24 October 2019. The modification of consent application is required to be determined by Council as a more accurate cost of works has been submitted totalling \$6,279,000 which exceeds the threshold for the application to be determined under delegation, by staff.

The scope of works remains unchanged from the original Development Application.

The application was notified in accordance with the Mid-Western Regional Community Participation Plan 2019. During the notification period of the application, two (2) 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 the inclusion of a new condition of consent requiring a Road Maintenance Management Plan to be submitted prior to the commencement of works. This plan will manage the maintenance of the existing road during the construction phase of the development until the road can be upgraded and sealed to Council's satisfaction. This aligns with the condition recommended by Council's Development Engineer.

## Disclosure of Interest

Nil

## Detailed report

### BACKGROUND HISTORY

The original development consent, DA0011/2020 was approved on 24<sup>th</sup> October 2019 for intensive plant agriculture. The proposal involves the construction of 4x greenhouses, a head house and an associated infrastructure to be utilised primarily for growing medicinal cannabis.

#### *Development Details:*

- 11,600m<sup>2</sup> greenhouse area, inclusive of:
  - 4 x 2900m<sup>2</sup> greenhouses with a polycarbonate finish, enclosed walkways and technical area @ 6.8m high (4.6m to eaves);
- 3,270m<sup>2</sup> Head House consisting of:
  - Administration – 300m<sup>2</sup>;
  - Warehouse/Dispatch – 300m<sup>2</sup>;
  - Pre-harvest – 1,000m<sup>2</sup>;
  - Staff support / amenities – 400m<sup>2</sup>;
  - Post-harvest – 600m<sup>2</sup>;
  - Technical area – 275m<sup>2</sup>;
  - Enclosed walkways.
- 38 x staff;
- 60 x car parking spaces;



- Bitumen sealed internal driveway, manoeuvring and car parking areas;
- 2.4m high anti-climb security fence around the perimeter of the area of works, including a section of the common boundary on the south eastern side, which was recently purchased by the applicant;
- 5 x 300,000L (approximately) Rainwater Tanks to collect water for irrigation purpose;
- Composting of waste plant material on-site;
- Retention of approximately half of the existing olive trees, to be utilised as landscaping;
- 24 hour use – security to be at the site at all times. General hours of operation will be in line with agricultural activities and harvest phases;
- No treating, processing or packaging is to occur from the site. The harvested plant is to be transported to an external facility.

As a condition of this approval, the Kemps Valley Road, which is the main access road to the facility was required to be upgraded prior to the commencement of works.

## PROPOSED MODIFICATION

The application seeks to modify Condition 21 and 22 to amend the timing required for the upgrade of Kemps Valley Road. Condition 21 and 22 currently read as follows:

- 21. Prior to the commencement of works onsite, the Applicant must upgrade Kemps Valley Road in accordance with AusSpec #1. This is to include the upgrade of existing gravel pavement and bitumen sealing provide for no less than a 6 metre wide bitumen sealed pavement, formed with 1 metre wide gravel shoulders and be completed to the satisfaction of Council.*
- 22. A new access crossover for the site must be constructed from Kemps Valley Road to provide access to the proposed development. Consent from Council must be obtained for all works within the road reserve pursuant to Section 138 of the Roads Act 1993. Construction must be in accordance with the requirements of Council's "Access to Properties". Access to the development (crossovers and internal driveways), should require double lane access, and are to be maintained and upgraded as necessary, to the satisfaction of Council.*

The applicant seeks for the road upgrades to be undertaken prior to the release an occupation certificate instead of prior to the commencement of works.

The application was referred to Council's Development Engineer who acknowledged that the vehicles utilised during the construction phase of the development would impact on the existing road conditions. The condition change is supported subject to an additional condition of consent requiring a 'Road Maintenance Management Plan' be submitted for Council approval prior to the commencement of works. This plan is to be implemented during the construction phase of the development until the road is upgraded and sealed to the satisfaction of Council.

Condition 8 has been added as follows:

- 8. Prior to the commencement of works a road Maintenance Management Plan shall be prepared and approved by Mid-Western Regional Council. The Road Maintenance Management Plan shall address the manner in which maintenance work to Kemps Valley Road will be carried out during the construction phase of the development until such time that Kemps Valley road can be upgraded and sealed to the satisfaction of Council.*

*The Road Maintenance Management Plan is to be fully implemented at all times and a copy of the plan must be held on site at all times for compliance.*

The proposed development remains to be in accordance with Council's LEP and DCP and is considered generally consistent with Council's planning controls.

It should be noted, the original development application was submitted to Council with a Cost of Works (COW) totalling \$1.8M, and was determined by staff under delegation. The subject application has amended the COW, now totalling \$6.279M. As the COW now exceed staff delegations the report has been referred to Council for determination. The revised COW does not exceed any Regionally Significant or State Significant Development thresholds, requiring determination by a Regional Panel, or the Minister for Planning.

The application is recommended for Approval.

## LEGISLATIVE REQUIREMENTS

### Environmental Planning and Assessment Act 1979

#### 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' and will have no significant environmental impacts compared to the approved development for the following reasons:

- Kemps Valley Road will still be upgraded once the construction phase of the development is completed. The proprietor of the land will be required to maintain the road in accordance with a Road Maintenance Management Plan until such time as the road is upgraded to the satisfaction of Council.

*(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 21 and 22 is considered to be substantially the same as the original development granted for intensive plant agriculture. The scope of works remains unchanged from the original Development Application.

*(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** Two (2) submissions were received which have been considered within this report.

*(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)(a) Evaluation – Matters for consideration

*(i) Do any environmental planning instruments (SEPP, REP or LEP) apply to the land to which the Application relates?*

The proposed modification does not alter the proposal's compliance with the relevant State Environmental Planning Policies, considered as part of the original Development Application. No new considerations were required to be addressed as a result of the proposed modification.

#### **MID-WESTERN REGIONAL LOCAL ENVIRONMENTAL PLAN 2012 (MWRLEP 2012)**

The original development was considered against the Mid-Western Regional Local Environmental Plan 2012. The proposed modification does not give rise to any issues that need to be reconsidered under the MWRLEP 2012.

*(ii) Do any draft environmental planning instruments (EPI) apply to the land to which the Application relates?*

No draft environmental planning instruments apply to the land to which the Development Application relates.

*(iii) Do any development control plans apply to the land to which the Application relates?*

#### **MID-WESTERN REGIONAL DCP 2013**

The previous application submitted has been assessed in accordance with the DCP. The proposed modification (ME0016/2022) does not propose any changes that would impact upon compliance with the DCP provisions.

## MID-WESTERN REGIONAL DEVELOPMENT CONTRIBUTIONS PLAN 2019

The original application was levied with Section 7.12 contributions with the modification application having no impact or change to the levying of the contributions for the development. The revised, increased cost of works submitted, will result in a higher contribution amount.

*(iii) Do any planning agreement or any draft planning agreement apply?*

No Planning Agreements are applicable.

*(iv) The regulations*

## ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

No matters prescribed by the Regulations impact determination of the Application. No new matters of consideration arise because of the modification.

### 4.15(1)(b) Likely impacts of the development

<sup>1</sup> Including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

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

- The modification to Condition 21 and 22 was originally imposed by Council's Development Engineer who have supported the modification subject to an additional condition requiring a Road Maintenance Management Plan.

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

### 4.15(1)(c) Suitability of Site for the Development

The scope of works remains unchanged from the original Development Application. The proposed modification does not alter the suitability of the site for the approved development.

### 4.15(1)(d) Any submissions made in accordance with Act or Regulations

#### (A) PUBLIC SUBMISSIONS

The proposed modification was notified for a period of 14 days in accordance with the Mid-Western Regional Community Participation Plan 2019.

Two (2) submissions were received during the notification period. A summary of the issues raised by the objectors are provided below and a copy of the submissions are included in **Attachment 1**.

Concern raised	Comment
1. <i>The traffic volumes would further degrade the road should construction of the access be delayed.</i>	The applicant is required to prepare and submit a Road Maintenance Management Plan for Council approval prior to the commencement of works. During construction, the road will be required to be maintained until such time that it is upgraded and sealed to Council's satisfaction.
2. <i>The types of vehicles including heavy machinery, trucks, construction vehicles, and land clearing machinery would be large and numerous and would impact on the road.</i>	

<p>3. <i>The road currently is a dirt road which is in poor condition and can be very dangerous. It quite possibly is unable to sustain the volume of traffic to the development site which would be detrimental to local residents.</i></p>	
<p>4. <i>Dust generation and health impacts.</i></p>	<p>Dust generation has previously been assessed under the original Development Application. As part of this modification the applicant is required to undertake appropriate maintenance work to Kemps Valley Road, which is intended to prevent any excessive deterioration and dust generation.</p>
<p>5. <i>Light pollution from vehicles and noise from vehicles, generators, pumps etc.</i></p>	<p>Noise and light pollution has previously been assessed and addressed under the original Development Application. The scope of works remains unchanged from the original proposal as approved. No additional impact in terms of light pollution or noise is expected.</p>

**(B) SUBMISSIONS FROM PUBLIC AUTHORITIES**

No submissions were sought or received from public authorities.

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

**(A) 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, subject to compliance with the recommended amended conditions of consent. Submissions from the community have been considered and matters relating to the condition of the road and impact to existing road users has been addressed with appropriate conditions of consent.

**CONSULTATIONS**

**(A) DEVELOPMENT ENGINEER**

Council’s Development Engineer has reviewed the proposed modification and is supportive of the modifications to Condition 21 and 22 subject to the inclusion of an additional condition of consent requiring a Road Maintenance Management Plan. All recommended conditions have been applied.

Community Plan implications

<b>Theme</b>	<b>Protecting Our Natural Environment</b>
Goal	Protect and enhance our natural environment
Strategy	Ensure land use planning and management enhances and protects biodiversity and natural heritage

Strategic implications

**Council Strategies**  
 Not Applicable

### **Council Policies**

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

### **Legislation**

Environmental Planning & Assessment Act 1979  
Environmental Planning & Assessment Regulation 2000  
Mid-Western Regional Local Environmental Plan 2012

### 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.

HANNAH DRAPER  
TOWN PLANNER

LINDSAY DUNSTAN  
MANAGER, PLANNING

JULIE ROBERTSON  
DIRECTOR DEVELOPMENT

22 February 2022

*Attachments:* 1. ME0016/2022 - Attachment 1 - X2 Objections - 80 Kemps Valley Road, Kains Flat Lot 57 DP255534.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



**From:** [REDACTED]  
**To:** Council  
**Subject:** DA Modification @ 80 Kemps Valley Rd  
**Date:** Monday, 14 February 2022 5:11:03 PM

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14/2/22

To.  
The General Manager  
Mid Western Regional Council  
86 Market St  
Mudgee NSW 2850

Dear Sir,

In relation to the proposed modification to amend condition 21 and 22 @ 80 Kemps Valley Rd Kains Flat NSW 2850 by Mr Daniel Elhindi, I never opposed the original DA as I think it will be great for the opportunity for employment for locals, however, I would like to oppose this modification for the following reasons :

**Access to the Development site is only via one road - which is currently a dirt road, heavily tracked and generally in a poor condition.**

**The sheer volume of traffic this development will produce means that this road would be further degraded should construction of the access be delayed as per the amendment requested to the DA as follows:**

1. Trucks delivering construction materials to the site would be large and numerous considering the scope of the development.
2. Heavy Machinery required for construction gaining access to the site.
3. Land clearing machinery required prior to construction.
4. Workers employed at the site throughout the construction process.
5. Trucks required for the delivery of water tanks.
6. Trucks delivering materials for the construction of ancillary sheds.
7. Machinery required for the establishment of carparking areas.
8. Machinery required to construction carparking areas.
9. It should be noted also that when wet, the road in its current condition would be very dangerous and quite possibly unable to sustain the volume of traffic to the development site. This would also be detrimental for local residents gaining access to their properties.
10. The amount of dust from traffic has already affected my health [REDACTED] and if this modification is approved the dust will be a lot worse.

Thank You for the opportunity to allow me to comment on the said proposal and I hope to hear from you soon

Kindest Regards

[REDACTED]

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Kindest regards,

**From:** [Matthew.OREgan@glencore.com.au](mailto:Matthew.OREgan@glencore.com.au)  
**To:** [Council](#)  
**Subject:** DA Modification @ 80 Kemps Valley Rd  
**Date:** Friday, 18 February 2022 11:10:53 AM

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To.  
The General Manager  
Mid Western Regional Council  
86 Market St  
Mudgee NSW 2850

Dear Sir,

In relation to the proposed modification to amend condition 21 and 22 @ 80 Kemps Valley Rd Kains Flat NSW 2850 by Mr Daniel Elhindi, I never opposed the original DA, however I would like to oppose this modification.

Access to the Development site is only via one road - which is currently a dirt road, heavily tracked and generally in a poor condition.

The sheer volume of traffic this development will produce means that this road would be further degraded should construction of the access be delayed as per the amendment requested to the DA.

I also have some concerns around light pollution ie: lights for the proposal being on at night and also noise such as generators, pumps etc given that this is in very close proximity to my house.

Can you please provide me with further detail surrounding:

- Noise
- Light pollution
- Road sealing

Thanks

Matt O'Regan  
*Diesel Fleet and Equipment Coordinator*  
*Ulan West Underground - A Glencore managed company*

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