

## 8.2 ME0040/2023 - Section 4.55(1A) Modification to DA0135/2012 - Temporary Workers Accommodation - Increase from 144 to 200 beds - Lot 32 DP 750773 - 94 Main Street, Ulan

REPORT BY THE MANAGER PLANNING  
TO 13 DECEMBER 2023 ORDINARY MEETING  
GOV400103, P1411461 - Part 4

### RECOMMENDATION

**That Council:**

- A. Receive the report by the Manager Planning on ME0040/2023 - Section 4.55(1A) Modification to DA0135/2012 - Temporary Workers Accommodation - Lot 32 DP 750773 - 94 Main Street, Ulan;**
  - B. Refuse ME0040/2023 - Section 4.55(1A) Modification to DA0135/2012 - Temporary Workers Accommodation - Lot 32 DP 750773 - 94 Main Street, Ulan subject to the following Statement of Reasons;**
    - a) The Section 4.55(1A) Modification Application ME0040/2023 is not considered to be of minimal environmental impact;**
    - b) The Section 4.55(1A) Modification Application ME0040/2023 is not considered to be substantially the same development for which consent was granted by Council;**
    - c) The Section 4.55(1A) Modification Application ME0040/2023 does not achieve compliance with Section 6.11(2)(d) Temporary Workers Accommodation of the Mid-Western Regional Local Environmental Plan 2012 as adequate sewer systems cannot be provided on the site to support the development;**
    - d) The Section 4.55(1A) Modification Application ME0040/2023 does not achieve compliance with Part 5.4 Environmental Controls and Part 6.2 Temporary Workers Accommodation of the Mid-Western Regional Development Control Plan 2013;**
    - e) The subject site is not considered to be suitable for the proposed modified development as a result of the following:**
      - (i) The existing Sewerage Treatment Plant proposed to be utilised by the modified development is undersized and cannot adequately cope with the effluent loads associated with the proposed increase in demand over the site, and**
      - (ii) The subject site cannot adequately support the required increase in effluent disposal area as it is significantly constrained by buffers associated with the immediately adjoining Goulburn River, groundwater bore, adjoining dwelling and overall site boundaries.**
  - C. Proceed to authorise relevant Council staff to undertake compliance action pursuant to Schedule 5, Part 1 of the Environmental Planning and Assessment Act in relation to the development.**
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## Executive summary

<b>OWNER/S</b>	NSW Department of Industry – Crown Land (Registered Lease AH129615P)
<b>APPLICANT:</b>	The Trustee for Long Necks Unit Trust Mr Luke Morris
<b>PROPERTY DESCRIPTION:</b>	94 Main Street, Ulan (Lot 32 DP750773)
<b>PROPOSED DEVELOPMENT:</b>	Section 4.55(1A) Modification to DA0135/2012 (Temporary Workers Accommodation) Increase number of beds from 144 to 200
<b>ORIGINAL ESTIMATED COST OF DEVELOPMENT:</b>	\$2.8 Million
<b>REASON FOR REPORTING TO COUNCIL:</b>	Council approved the original development application and subsequent modifications
<b>PUBLIC SUBMISSIONS:</b>	Nil

Council is in receipt of a Section 4.55(1A) Application to modify DA0135/2012. The application has been amended a number of times by the applicant, along with their appointed legal advisors as a result of Council's further information requests and the unlawful placement of the accommodation units and new sewerage treatment plant on the site without the prior consent of Council.

In summary, the final amended modification application submitted on the 24 November 2023 proposes to:

1. Modify the approved development plans (condition 1) seeking approval for the use of fourteen (14) transportable buildings for the purpose of temporary workers accommodation (total of 56 rooms, each with a bathroom) that have been already placed on the site - This will increase the total number of accommodation rooms onsite from 144 to 200;
2. Extension of the sealed car park area at the front of the site;
3. A new stormwater detention basin to capture runoff from the car park;
4. Expansion of the effluent disposal area to accommodate the development towards the rear of the site (adjacent to the Goulburn River) and along the north eastern boundary.

The application originally sought the approval for installation of an additional laundry building (bringing the total to 3 onsite), the installation of the 14 accommodation buildings, along with the installation of a new 30,000L Sewerage Treatment Plant. These elements have subsequently been removed during the assessment of the application with the applicant now stating that all laundry will be undertaken by contract arrangement offsite. Despite this latest amendment, the applicant has not proposed the removal of the existing laundry buildings on the site.

The amended development proposal has been assessed in accordance with Council's LEP and DCP requirements, and in accordance with Section 4.55(1A) of the Environmental Planning and Assessment Act.

The assessment has concluded that the proposed development will not comply with Part 5.4 Environmental Controls (pollution and waste management) and Part 6.2 Temporary Workers Accommodation (a variation of 22.5% is sought to the parking requirements). The proposal is considered to result in unacceptable environmental impacts owing to the proposed increase in effluent loading generated by the development which cannot be accommodated by the existing 20,000L sewerage treatment plant, nor will the additional loading be disposed of onsite in a compliant manner. As a result, the proposed modified development is not considered to be substantially the same development as approved by Council and is recommended for refusal.

Pursuant to the powers handed down by the General Manager, conferred under Section 378 of the *Local Government Act 1993*, staff do not hold assumed delegation to determine the application as DA0135/2012 was approved at a full Council meeting on 15 February 2012, and consequently modifications to the consent shall be determined at a full Council meeting.

The Section 4.55 Application was not required to be notified as per Council's Community Participation Plan. However, as all prior applications made have been notified, this proposal was also notified for 14 days. No submissions were received during the notification period.

## Disclosure of Interest

Nil

## Detailed report

### PRIOR APPLICATION HISTORY

Council granted consent to DA0135/2012 for the construction of Temporary Workers Accommodation, located at 94 Main Street, Ulan Lot 32 DP750773 at the February 2012 Council meeting.

At the June 2012 Council meeting, Council approved a modification (MA0037/2012) of ten (10) conditions of consent relating to a number of matters including BCA, DDA compliance, and school signage upgrades.

At the 15 May 2019 meeting, Council also approved a modification (MA0036/2019) of six (6) conditions relating to the provision of potable water and the construction level of the effluent management system.

At the 15 March 2023 meeting, Council approved further changes to the consent and approved plans (ME0024/2023) allowing for an additional laundry building, modifying conditions 1 (approved plans) condition 50 (life of the development) and also removed the requirement for a footpath (condition 43).

Physical commencement has occurred, and consequently the consent remains active.

The approved development layout by Council is included as Figure 1 below. The proposed modified site layout, including the additional 14 buildings and car park extension is included within Figure 2 below.



Figure 1 – Approved Site Plan (ME0024/2023)

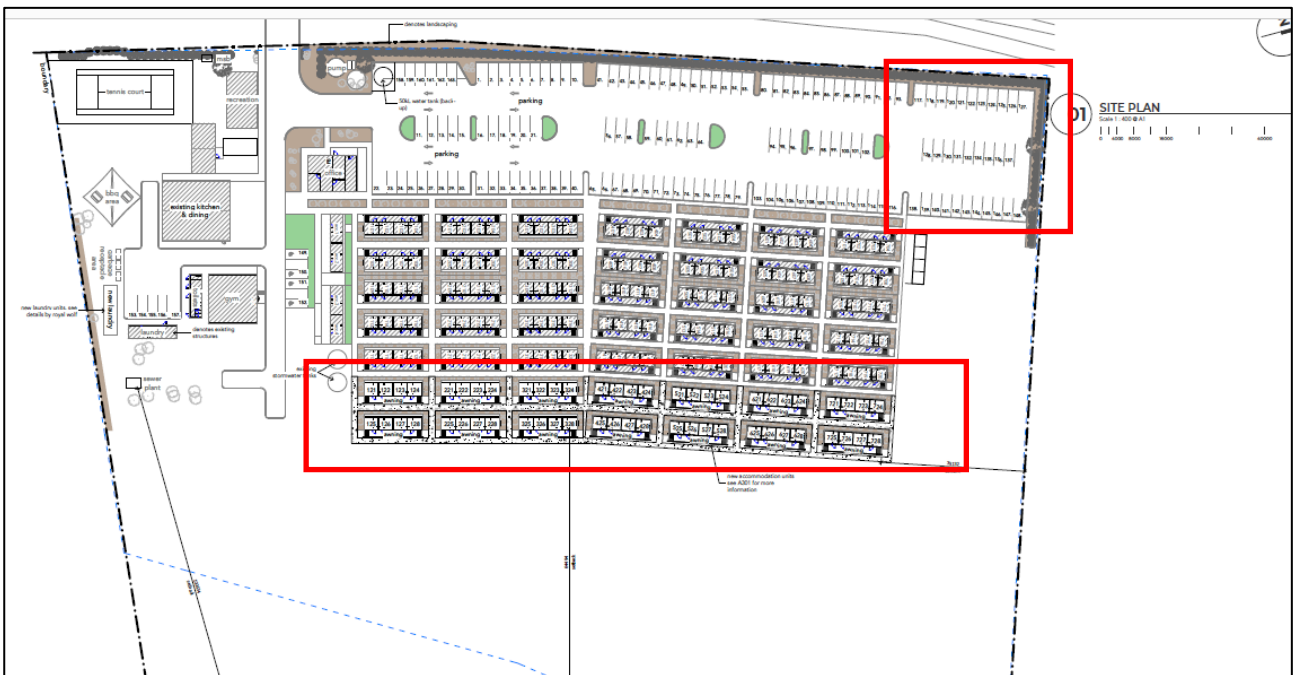


Figure 2 – Proposed Site Plan dated 08.05.2023 (Appendix C to SEE submitted 24 November 2023)

The following table outlines the history of the current modification application ME0040/2023 before Council:

Date:	Comment:
23 May 2023	ME0040/2023 lodged with Council.
10 June 2023	Initial site inspection conducted with Council's Health and Building and Engineering Officers.

<p>16 June 2023</p>	<p>Following a preliminary assessment, a further information request was issued to the Applicant requesting the following:</p> <ol style="list-style-type: none"> <li>1. A traffic impact assessment – due to the proposed 38.9% increase to the traffic associated with the development.</li> <li>2. A car parking demand assessment – due to the propose variation sought to car parking of the Mid-Western Regional DCP 2013.</li> <li>3. Further details on all stormwater capture and detention onsite including plans and supporting calculations.</li> <li>4. An updated Site and Soil Assessment for Onsite Effluent Management report – due to the discrepancies identified between the submitted report and sewer plan.</li> </ol>
<p>26 June 2023</p>	<p>Applicant submitted a Traffic Report, Stormwater plan / design and revised Site and Soil Assessment report.</p>
<p>29 June 2023</p>	<p>Meeting held at Councils Office with applicant and appointed consultants including Council Staff from Environmental Health, Health and Building, Development Engineering and Planning.</p>
<p>4 July 2023</p>	<p>Applicant submitted a revised Stormwater plan / design and further revised Site and Soil Assessment report.</p>
<p>6 July 2023</p>	<p>Applicant was advised the Traffic Report was deemed insufficient following Engineering referral response received and a final opportunity to submit an updated Traffic Report was provided.</p>
<p>10 July 2023</p>	<p>Applicant advised their response to the request for a revised Traffic Report was as follows:</p> <ol style="list-style-type: none"> <li>1. <i>Please see attached Traffic Impact Statement, and also comments below regarding the above:</i></li> <li>2. <i>The first three (3) points have been addressed in the amended Traffic Impact Statement.</i></li> <li>3. <i>The TIA shall include traffic counts on Main Street and Ulan Road. We have estimates on Main St and we have doubled what the traffic counts were on Ulan Road from 2011.</i></li> <li>4. <i>The TIA shall include SIDRA (or similar) modelling of the proposed development, including the intersection of Main Street and Ulan Road. No SIDRA has been provided. High level analysis done is section 3.4.</i></li> </ol>
<p>12 July 2023</p>	<p>The further revised Site and Soil Assessment report was not supported by Council's Environmental Health Officer with the following request made to the applicant:</p> <ol style="list-style-type: none"> <li>1. <i>The proposed effluent irrigation area needs to be accurately shown on the sewer disposal plan. The plan currently shows the scaled area to be 5250 sq. m when 5550 sq. m is required.</i></li> <li>2. <i>12 months of groundwater monitoring results from the well on the property is requested to be provided.</i></li> <li>3. <i>A written justification for the proposed additional laundry facilities is requested to be provided.</i></li> </ol>
<p>13 July 2023</p>	<p>The applicant provided a response to the Environmental Health Officers request for clarification from the 12 July 2023 which stated:</p> <ol style="list-style-type: none"> <li>1. <i>Please see attached amended Septic Report provided correct calculations and irrigation area recommended.</i></li> </ol>

	<p>2. <i>A consolidated report of groundwater monitoring results from prior to the commissioning of the STP (2019) to present (2023) attached.</i></p> <p>3. <i>The additional laundry has since been removed. Written justification not required.</i></p>
24 July 2023	Planning emailed request to meet with applicant's consultant regarding effluent disposal matters and issues with the report.
25 July 2023	<p>Engineering Referral Response received with a further request for information as follows:</p> <p><i>The TIA shall include traffic counts on Main Street and Ulan Road as previously requested.</i></p> <ul style="list-style-type: none"> <li>• <i>The TIA shall include SIDRA (or similar) modelling of the proposed development, including the intersection of Main Street and Ulan Road as previously requested</i></li> <li>• <i>Additional details of the proposed on-site detention system have been provided for consideration by the applicant in support of the proposed amendment; however, Council officers have advised that during a recent site inspection it has found that the as constructed on-site detention system did not comply with the approved plans. As such, additional information is required detailing the works required to achieve compliance with the approved plans and further justifying if the quoted additional detention storage exists.</i></li> </ul>
31 July 2023	Final Engineering referral response received with conditions included.
3 August 2023	Meeting with applicants' consultant held regarding the Site and Soil Assessment and supporting plan discrepancies with Council's Environmental Health Officer.
9 August 2023	Revised effluent plan submitted to Council with updated details.
10 August 2023	Site inspection following a report of new buildings being moved to the site – 5 buildings had been placed onsite and all piers were poured for the 14 buildings associated with the subject modification application ME0040/2023. Directions issued by Council's Compliance Coordinator to onsite contractor and applicant/ landowners to cease all works as no development consent is in place.
23 August 2023	Further site inspection undertaken with Council's Environmental Health Officers to view the effluent disposal area and sewerage treatment works.
24 August 2023	<p>Further request for information made by Council to address the effluent management of the development:</p> <p>1. An independent detailed survey plan of the site is to be provided to council including the following:-</p> <ul style="list-style-type: none"> <li>• the location of the rear boundary of the subject lot, and</li> <li>• the location of the top of bank of the watercourse to the rear of the site, and</li> <li>• the location of the existing effluent disposal area (including bunded area constructed) constructed onsite, and</li> <li>• the location of the existing sewerage treatment plant(s) constructed onsite, along with all existing holding well / pumps, and</li> <li>• the location of the water monitoring bore, and</li> <li>• all contours at 1m intervals over the site must be shown on</li> </ul>



	<p>the plan in AHD, commencing from the top of bank of the watercourse to the front boundary.</p> <p>2. A further amended sewer plan is to be provided to include all existing infrastructure (including any holding tanks/pumps onsite) and all proposed sewer infrastructure to support the additional accommodation.</p>
8 September 2023	Applicant provided supporting letter, revised sewer plan and survey plan in response to Council's request of 24 August 2023 which included the new sewerage works proposed.
18 September 2023	Final letter issued to applicant inviting the applicant to withdraw the current modification as it cannot be approved in its current form.
23 October 2023	<p>Applicant provided a response to Council's letter of 18 September 2023 via their appointed legal advisors seeking the following amendments to the current modification application:</p> <ol style="list-style-type: none"> <li>1. Removing the new Sewer Treatment Plant from the application and</li> <li>2. Seeking an amendment to condition 62 of the consent to read as follows: <i>The proposed sewerage treatment plant is to be located in accordance with drawing 'Locality Plan and Site Layout' 17239-A01 Rev C or in accordance with any plans approved by the required application under Section 68 of the Local Government Act 1993 (NSW) pursuant to condition 6 of this consent, with respect to the Goulburn River.</i></li> </ol> <p>Specifically, this correspondence referred to the existing sewer plant being adequate to service the 144 accommodation units, not the proposed 200 units.</p>
31 October 2023	Council sought further clarification from the applicant as to if the application was now amended to remove the 14 buildings (56 additional rooms) on the basis of there being no additional sewerage treatment works being required as part of the amended application.
11 November 2023	Applicant provided a further letter from their appointed legal advisors along with a former (outdated) site plan, operational manual for the existing sewerage treatment plant and sought to rely upon a previous version of the Site and Soil Assessment Report (dated July 2023) which removed the larger/ new treatment plant.
16 November 2023	The applicant further amended the application to seek the 'use' of the 14 buildings placed unlawfully onsite (not the installation of the buildings).
22 November 2023	A final referral response was received by Council's Environmental Health Officer with the recommendation of refusal on the basis of the waste water volumes are already at capacity on the site – this referral response was also provided to Council's Manager of Health and Building. The applicant was formally notified of Council's position with 5 key points of concern raised in relation to the Site and Soil assessment report and the waste management issues identified.
24 November 2023	The applicant provided a final amended SEE with supporting letter in response to Council's position on the waste water matters of the 22 November 2023.
28 November 2023	The applicants additional information was reviewed by the Manger of Health and Building and final advice issued to the Planning Department. The application in its current form is not supported and it was recommended that the applicant be offered the opportunity for a specialist / third party peer

review of the revised Site and Soil Assessment Report. The applicant was formally advised and in response, requested the matter be brought before Council for determination.

**LEGISLATIVE REQUIREMENTS**

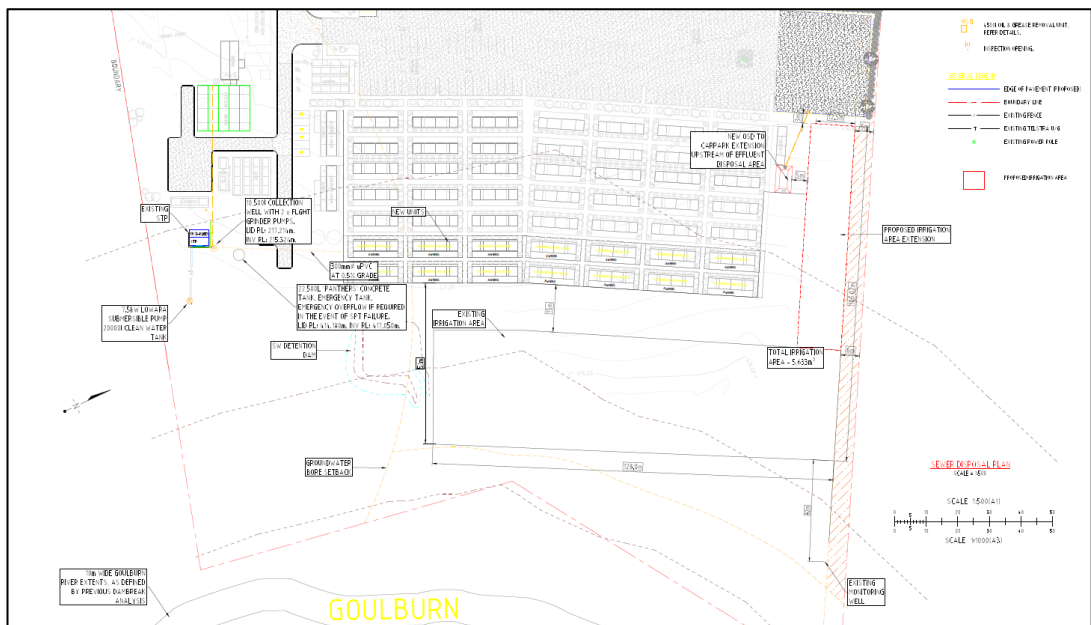
The application has been assessed in accordance with Section 4.55 and 4.15 of the *Environmental Planning & Assessment Act 1979*. The main issues are addressed below as follows:

**4.55(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 proposal to modify the development to increase the total number of accommodation beds from 144 to 200, along with the expansion to the car park is not considered to be of minimal environmental impact. The use of the unlawfully placed accommodation buildings on the site has been assessed in terms of the ability for the existing sewer treatment plant and effluent disposal area being able to accommodate the additional loads created by the proposed increase. The assessment has concluded that the existing sewerage plant is undersized to accommodate the additional loads, and the effluent disposal area would need to increase in size. Owing to the constraints of the site, adjoining the Goulburn River and a groundwater bore, along with a dwelling located at the adjoining north eastern boundary and overall site boundaries, it is considered that the additional effluent disposal area required to support a total of 206 persons (incl. 6 staff) cannot be safely accommodated onsite, without the likelihood of adverse environmental impacts. See Figure 3 below.



**Figure 3 – Sewer Disposal Plan / Constraints (updated 24 November 2023)**

It should be noted that a Clean-up notice was previously issued to the applicant by Council this year, owing to the existing sewerage treatment plant failing. Service reports provided by the applicant also demonstrates that the existing sewerage system placed onsite has failed in the past, and the total usage (inflow of sewerage)



is considered to have been underestimated by the applicants Site and Soil Assessment report used to support this modification application. As a result, it is considered that the proposed modification is not of minimal environmental impact.

*(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** Based on a full assessment of the application, Council is not satisfied that the proposed modification is substantially the same development as the original consent issued. The original approval granted consent to a maximum 144 bedrooms with supporting services (including water, sewer, stormwater, traffic and parking demand). The applicant now seeks a modified consent for the 'use' of 14 additional buildings for accommodation purposes along with an expanded parking area that is non-compliant with Council's DCP controls, seeking a variation of 22.5%, which is not supported.

*(c) it has notified the application in accordance with (i) the regulations, if the regulations so require, or (ii) a Development Control Plan,*

**Comment** The S4.55 Application was not required to be notified to adjoining neighbours as per Council's CPP. However, as all prior applications have been notified, this proposal was also notified for 14 days.

*(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 are addressed below.

#### **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?*

##### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

The proposed modified development does not result in any additional impacts to electrical infrastructure. Previous comments and conditions provided by Essential Energy may be retained accordingly.

##### **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 new issues that need to be considered/reconsidered.

*(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 Development Control Plan (DCP) 2013**

An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

**Section 5.4 – Environmental Controls**

Requirements	Compliance
<p><b>Pollution and Waste Management</b></p> <p>a) <i>Proponents should indicate all waste streams i.e. trade, liquid, chemical, solid, medical, and clarify how they will be managed and contained safely onsite and disposed of such that there are no environmental impacts of effects on adjoining properties, stormwater or sewerage systems or waterways.</i></p>	<p>No – compliance is not adequately achieved with the amended Site and Soil Assessment report failing to demonstrate that the existing sewerage treatment plant and associated effluent disposal areas can accommodate the additional waste water loads generated by the modified development without causing impacts to adjoining land, groundwater bores and the adjoining Goulburn River.</p>

**Section 6.2 – Temporary Workers Accommodation**

	Requirements	Compliance
<b>Location</b>	<p>(i) if the development relates to a mine—within 5 kilometres of the relevant mining lease under the Mining Act 1992, or</p> <p>(ii) in any other case—within 5 kilometres of the large-scale infrastructure in which persons are to be employed.</p> <ul style="list-style-type: none"> <li>• Provision of suitable arrangements for the disposal of waste water and the provision of a water supply. It should be noted that proposals relying on the provision of water transported by tankers will not be supported.</li> <li>• Design of the facility to ensure that there is no adverse visual impact discernible from outside the project site.</li> <li>• Submission of a plan of management to address the social concerns having regard to the particular location of the accommodation.</li> <li>• The application should address health and residential amenity issues that arise due to the location near the major infrastructure project site.</li> </ul>	<p>Yes, the proposal is within 5km of an existing mine however, as the proposal was approved prior to commencement of the DCP 2013, the proposal is not related to a specific mine or project.</p>

- Provision of additional access and parking infrastructure commensurate with the additional demand.
- Provision of a Social Impact Assessment.
- The application should identify and address potential positive and negative economic impacts of the proposal.

**Need**

The proponent shall demonstrate the need for the facility by providing an analysis of the number of major infrastructure project (including mining) jobs currently approved and the total number of temporary workers accommodation beds approved. The expected life of the Temporary Workers Accommodation facility shall be included in the Statement of Environmental Effects indicating the expected timing of decommissioning to relate to the life of the major infrastructure project.

Not Applicable – Existing approval in place.

**Social Impact Assessment**

The Social Impact Statement should include but is not limited to the following:

- Identification and an in-depth analysis of social impacts of the proposal.
- Outline the process of community consultation and address issues raised by the community.
- consideration of cumulative impacts, intergenerational equity, impacts on the provision of all services and identify ways to address these impacts.
- The results of consultation with relevant service providers including police and health providers.
- Identification of a strategy to mitigate impacts, encourage integration with the community, and permanent relocation to the area, timeframe for implementation of the strategy and a monitoring program.
- Identify and implement provisions that will address the needs identified by the SIS and the demands generated by the development in a way that will not

SIA to be submitted and approved prior to issue of CC as per existing retained condition of consent.

Part of the facility has a CC previously issued by a private certifier and is currently operational.

Separate compliance action is underway in respect of the buildings placed onsite without a valid Construction Certificate.

	adversely impact upon the existing community.	
<b>Transportable Buildings</b>	The application must illustrate that all transportable buildings can be permanently affixed to the site by footings in accordance with the requirements of the National Construction Code and associated Engineer's Certification. Detail that all buildings and structures will have adequate form and appearance, including material and colours in soft earth browns, creams and greens, which do not detract from the visual amenity of the area. The use of reflective cladding material on walls will not be permitted.	Conditions may be retained to ensure that transportable building footings comply with the NCC.
<b>Accessibility</b>	Accessibility requirements established by Access to Premises Standard, the National Construction Code and the associated Australian Standards are to be addressed in the application.	Compliance with the NCC and Access to Premises Standard is conditioned via the existing approval.
<b>Density</b>	Development shall be limited to a maximum of 100 beds per hectare.	Complies. Site is 4ha and only 200 beds are proposed under the modified development.
<b>Facilities</b>	<p>The accommodation facility is to provide the following facilities as a minimum:</p> <ul style="list-style-type: none"> <li>• Ablution facilities to be provided in each accommodation room including shower, toilet and washbasin connected to an approved effluent disposal system;</li> <li>• Communal laundry and associated facilities connected to an approved effluent disposal system;</li> <li>• A covered/ sheltered entry for each building;</li> <li>• An outdoor activity area of which part shall be shaded;</li> <li>• Adequate and secure storage space for workers, equipment and other material associated with the management and maintenance of the accommodation facility;</li> <li>• Adequate Lighting for pedestrian and vehicular safety and security throughout the complex; and</li> <li>• Paved internal pedestrian access to and between all buildings and facilities is to be provided.</li> </ul>	<p>Conditions exist on the consent to this affect and a Section 68 is required to be obtained from Council.</p> <p>As discussed within this report, the assessment has found that the site is significantly constrained and is not capable of managing the additional sewer loads generated by the proposed additional accommodation units.</p>

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**Traffic and parking**

- Internal road and vehicular access provided in accordance with Australian Standard No. AS2890 Council standard. Provision of one car parking space per room and one space per staff member in accordance with the car parking section of this DCP;
- Designated bus parking and collection/drop off area located within the development area with sufficient manoeuvring area to allow the bus to enter and leave the site in a forward direction; and
- Designated delivery areas.

The proposed modification seeks a variation to this requirement in terms of the total number of spaces provided onsite. The applicant contends that a total of 208 parking spaces are generated by the proposed modification however only 163 parking spaces are proposed by the application. This results in a shortfall of 45 parking spaces or 22.5%. This is not supported.

Conditions were previously imposed in relation to the construction requirements of the car park, no changes required as part of this modification.

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**Services**

- Provision of a potable water supply capable of providing a minimum of 140 litres per person per day. A lower daily minimum may be acceptable where the proposed development includes water saving measures such as recycling systems or non-potable water supply sources;
- A water balance is to be submitted demonstrating that the proposed provisions for water and sewer services can be met by the development;
- Demonstration of adequate water supply to maintain the accommodation facility including landscaping;
- Where the facility is to connect to a reticulated system approved by the local authority, the applicant must demonstrate that the reticulated system can support the additional demand generated by the Temporary Workers Accommodation whilst allowing adequate capacity to service existing demand, demand to meet land already zoned within the catchment, uses already approved to connect to the reticulated service and land

The modified application does not seek to alter the provision of potable water supply to the site, however, the requirement of a minimum of 140L / Person / Day required by the DCP has been overlooked by the applicant in the context of the demand referenced within the waste water assessment report submitted for assessment. This matter has been further discussed in the referral response completed by the Health and Building Department.

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	<p>identified in the Comprehensive Land Use Strategy;</p> <ul style="list-style-type: none"> <li>• Provision of waste collection and where necessary entering into a waste disposal agreement with Council or an approved waste collection operator; and</li> <li>• First aid facilities</li> </ul>	
<b>Landscaping</b>	<p>A landscape plan should be provided with the application. Where possible, remnant vegetation should be retained. Landscaping should focus on:</p> <ul style="list-style-type: none"> <li>• Providing a buffer to surrounding land, in this case vegetation should consist a combination of mature trees and shrubs to achieve a visual buffer;</li> <li>• Providing privacy within the development;</li> <li>• Improving the residential amenity through the provisions of shade;</li> <li>• Consist mainly of native species or species that thrive in this locality; and</li> <li>• At least 25% of the site should be open space. It will be a requirement of any development consent that the landscaping is to be maintained for the life of the development in accordance with the approved landscaping plan.</li> </ul>	<p>Condition exists for a landscaping plan prior to issue of the CC. No changes required as part of this modification.</p>
<b>Plan of Management</b>	<p>The applicant shall provide a Plan of Management that shall form part of any approval granted by Council. The Plan shall address, but is not limited to, the following issues:</p> <ul style="list-style-type: none"> <li>• Identification of measures introduced to mitigate social impacts;</li> <li>• Management of security and safety of tenants, community and surrounding residents;</li> <li>• Noise, dust, odour, light spill and litter;</li> <li>• Potential conflict with adjoining owners/occupiers that may be affected by the operation of the accommodation facility;</li> <li>• The method of transport of the workers to the project site;</li> </ul>	<p>A condition exists for a plan of management prior to commencement of works and in the general conditions.</p> <p>A site management document was submitted to Council on the 22 October 2019 which included a socioeconomic assessment, safety and security information along with environmental information (noise, waste, odour, light, dust, water and maintenance).</p> <p>The management plan confirms that the community hall and supporting facilities are open to the Ulan community and staff /</p>



	<ul style="list-style-type: none"> <li>• The consumption of alcohol at the accommodation facility (if applicable);</li> <li>• Where adjacent to a town or village, access to facilities;</li> <li>• Access to medical services;</li> <li>• Method for the collection of waste within the site;</li> <li>• Emergency response procedures;</li> <li>• Soil, groundwater and surface water protection methods;</li> <li>• Details of signage at the entrance to the accommodation which is to include the following:                     <ul style="list-style-type: none"> <li>• Site Manager / Operator;</li> <li>• Specific Rules of the Accommodation site;</li> <li>• Emergency Contact Details; and</li> <li>• Complaints Handling Procedure that will be publicly available and include a compliant contact phone number.</li> </ul> </li> </ul>	residence of the development.
<b>Decommissioning</b>	<p>The application shall be accompanied by a Decommissioning Plan that shall form part of any approval granted by Council. The Plan shall address the following issues: When the facility shall be decommissioned;</p> <ul style="list-style-type: none"> <li>• Works or facilities that shall remain in place following decommissioning;</li> <li>• Details of the clean – up and rehabilitation of the site;</li> <li>• The proposed use of the site after decommissioning; and</li> <li>• The transfer to public ownership of any legacy infrastructure.</li> </ul>	<p>A condition of consent exists for a decommissioning plan within the general conditions.</p> <p>A decommissioning plan was also provided to Council on the 22 October 2019.</p>
<b>Developer Contributions</b>	<p>Council will seek to negotiate planning agreements for major developments in accordance with s93F of the Environmental Planning and Assessment Act 1979. Proposals involving less than 50 beds will be assessed in accordance with Council Section 94 Contributions Plan as commercial development.</p>	<p>Section 94A contributions have been conditioned within the existing consent.</p> <p>Payment, including CPI was also made on the 30 April 2019 for the 144-bed development.</p>

**Mid-Western Regional Development Contributions Plan 2005–2021**

The original application was levied with S94A contributions under this Plan. This will continue to apply to the development under the existing conditions of consent and the current contributions

plan 2019 will apply to the additional 56 beds/additional works proposed pursuant to Section 7.12 of the Environmental Planning and Assessment Act.

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

No Planning Agreements are applicable.

*(iv) The regulations*

**Environmental Planning and Assessment Regulation 2021**

No matters prescribed by the Regulations impact determination of the Application.

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

The proposed changes to the development have been assessed and it is determined that the modified development sought is likely to significantly increase the impacts associated with the development. This is primarily due to the undersized current sewerage treatment plant, lack of available land on the site to accommodate the increased effluent disposal area required by the modified development and the high risk of the system failing, based on previous history of the system in this location.

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

**(a) Does the proposal fit in the locality?**

No. The amended application to increase the number of beds from 144 to 200 is considered to be unsuitable for this site and locality, owing to the constraints of the site and adjoining developments.

**(b) Are the Site Attributes conducive to Development?**

No. The site is subject to bushfire risk, localised flooding from the Goulburn River, and is immediately adjacent to a groundwater bore used for commercial water supply.

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

**(a) Public Submissions**

Section 1.12 of the Community Participation Plan 2019 does not require notification/advertising of S4.55 Applications. Notwithstanding this, as the original development application was notified, the proposed modification was re-notified. No submissions were received during the notification period.

**(b) Submissions from Public Authorities**

The application was referred to the NSW Rural Fire Service with revised conditions recommended for the development.

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

**(a) Federal, State and Local Government interests and Community interests**

Whilst no submissions were received during the public exhibition period, significant concern is raised in relation to the unlawful works undertaken over the site and the risks this poses to the community and the occupants of the facility. As a result, separate compliance action has commenced to date in relation to fire safety matters associated with the facility.

*CONSULTATIONS*

***Health & Building***

Council's Health & Building Department, including Council's Environmental Health Officer, have raised concerns with the proposal. Despite requests for information and meetings held, the following final referral comments are provided based on a detailed assessment of the application in terms of total persons/expected wastewater volumes, emergency buffer, the disposal area and setbacks required. The final referral response is provided as follows:

*Onsite sewage systems (i.e., Sewage Treatment Plant) should be sized for the total design flow (daily total), established on the basis of peak occupancy and recommended per person design flows for the type of facility (i.e. use, hotel/motel) it serves.*

Values for 'commercial' per person design daily flows in Australia are not provided in Australian/New Zealand Standard AS/NZS1547:2012 (only for NZ) or in any most recent guidelines. They must be determined by other means.

In the most recently submitted wastewater report prepared by BARNSON (23 Nov 2023), the applicant is proposing a per person design flow of 82L per day with the removal of laundry facilities from the site. The site has existing laundry buildings (x2) installed which accommodate commercial washing machines and separate wash tubs as well as laundries within the executive rooms, which are not proposed to be removed. It is for this reason laundry use has been included in the per person design flow calculations hereafter.

Previously endorsed wastewater reports for the site have used a per person daily flow of 120L/p/day. This number is consistent with that applicable to typical residential premises on tank water per Appendix H of AS1547 (a concession is provided if on tank water in lieu of reticulated water supply, when 150L/p/day is applicable). In such scenarios, these premises are owner/occupier and are responsible for water security and have a pecuniary interest. Conversely, the guests at the site are not owner/occupiers and do not have a vested interest in preserving water. For these reasons, it is highly likely that the expected per person design flow will be higher than 120L per day.

This assertion is consistent with the 'draft' Environment & Health Protection Guidelines: Onsite Wastewater Management June 2023, which states that for 'short-term accommodation' flow allowances should be based on a reticulated water supply i.e., 150L/p/day, and not the concession rate of 120L/p/day.

Australian Standard 1547:2012 (Appendix H) states that per person design flows are best represented by actual values from past experience and are considered likely to also be representative of anticipated future uses of the facilities.

Although the applicant has stated to Council (Nov 2023) that each of the design flow values selected or derived are explained at the hand of, now known, site specific conditions, the applicant has not provided such data, instead, references have been made to the NSW Health Department - Septic Tank and Collection Well Accreditation Guideline, which was published in 1999, to determine per person design flow values. This is not considered best practice, as the applicant could determine per person design flows by way of collating data arising from previous system usage, historical potable water volume usage / purchase, service reports, occupancy rate etc. To overcome the shortcomings in information, data etc., Council has relied upon statistical data and the STPs service documents previously submitted to Council to establish a per person design flows.

### **Per Person Design Flow**

Although the meter readings in some instances appear inconsistent, from 1 March through to the 19 July the data appears more stable and subsequently considered reliable.

1 March 2023 to 19 July 2023, a total of 2,095,602 L of raw water volume entered the system.

1/03/2023 – 19/7/2023 (inclusive) = 141 days

2,095,602 L / 141 days = 14,862 L per day.

Daily flow = 14,862 L / the number of people occupying the premises.

From Wednesday 8<sup>th</sup> March through to and including Thursday 30<sup>th</sup> March, the applicants traffic study (July 2023) identifies (by way the number of guests vs the number of vehicles per each day) a total of 2202 guests stayed at the site, with an average of 95.7 guests per night, or an occupancy rate of approximately 66%. This occupancy rate is applied to the total daily flow volume to ascertain the per person rate.

14,862 L / 95 guests on average (excluding staff) = **156 L per person / per day.**

If the values for February 2023 were to be included in the scope of data, (as the volume for that month is high and may represent an anomaly in the data, although the data may be correct as it could be expected that higher water usage is a result of the climate for that time of year), between 1 February 2023 and the 19 July 2023, a total of 4,120,587L raw water volume entered the system:

- 1/2/2023 – 19/7/2023 (inclusive) = 169 days
- 4,120,587 L / 169 days = 24,382 L/per day
- Daily flow = 24,382 / the number of people occupying the premises.
- 24382 / 95 guests on average (excluding staff) = **256 L/per person / per day.**

It shall be noted that the Technician undertaking the February STP service stated in the service report dated 1/3/23 that: ... The system is struggling to cope with the load levels going into it which accounts for the carry over that is happening due to constant high sludge levels, once the new larger capacity system is installed it will eliminate all these issues.... This gives reason to indicate that the February inflow meter reading may be correct.

### **Total Daily Flow**

In determining the total daily flow for the purposes of sizing the STP and effluent disposal area, if Council were to include the above per person design flows for the proposed 200 persons, plus 6 staff, the following are worked examples:

- 200 persons (guests) x 156L/p/day = 31,200 L p/day +
- 6 staff x 36 L/p/day = 216 L/p/day =
- Total daily flow = 31,416 L.

**This exceeds the current STP capacity of 20,000L (and would exceed the previously proposed 30,000L STP).**

- 200 persons (guests) x 256 L/p/day = 51,200 L p/day +
- 6 staff x 36 L/p/day = 216 L/p/day
- Total daily flow = 51,416 L

**This exceeds the current STP capacity of 20,000L (and would exceed the previously proposed 30,000L STP).**

### **Effluent Disposal Area Sizing**

To determine the size of the effluent disposal area, the total daily flows of 31,416 L or 51,416 L shall be included in a hydraulic loading calculation where the total daily flow is divided by a Design Irrigation Rate (per Australian Standard AS1547-2012)

- 31,416 L / 3.5mm Design Irrigation Rate (DIR) = **8,976 m<sup>2</sup>.**
- 51,416 L / 3.5mm Design Irrigation Rate (DIR) = **14,690m<sup>2</sup>.**

An effluent disposal area between **8,976m<sup>2</sup> and 14,690m<sup>2</sup>** is required to support the proposed development. Currently the applicant is proposing **5,633m<sup>2</sup>**. The site is 4Ha/10acres in size.

### **Council assessment against NSW Health Department - Septic Tank and Collection Well Accreditation Guideline (1999)**

Further, an assessment has also been undertaken in accordance with the 1999 guideline, NSW Health Department - Septic Tank and Collection Well Accreditation Guideline. Whilst Council believes this guideline is outdated, a review has been undertaken in this context.

### **Hotel/motel**

- Guest waste sources = WC/urinal (counted as one, whereas guideline counts them separately), handbasin, shower, kitchen and laundry = 5 wastes
- 5 waste types = **109 L/person/day for guests**
- 109L/p/day x 200 guests (100% occupancy = worst case scenario) = 21,800 L/day

- Staff 36L/person/day x 6 staff = 216 L/person/day
- Daily flow = 21,800 L + 216 L = 22,016 L/day (exceeds current STP capacity), plus,
- Dishwasher/glasswasher allowance = 1550L/100 persons = 3100L
- Total daily flow = 22,016L + 3100L = **25,116L** (which equates to 121L per person per day)
- Effluent disposal area = 25,116L / 3.5mm DIR = **7176m<sup>2</sup>**. Applicant proposing 5633m<sup>2</sup>. An additional 1,543m<sup>2</sup> of area is required.

### **Conclusion**

From information submitted to-date, as well as evidence collated, a reduction in the per person design flow from 120L previously approved by Council (approval s68.0019/2020) to the proposed 82L is not supported.

It has been demonstrated that a per person design flow of between 121L (inclusive of allowances) through to 256L shall apply and that the site is incapable of servicing the total daily flow arising from these per person design flows and the proposed increase in peak occupancy (from 144 to 200 guests).

It is considered that the applicant has not adequately demonstrated how the site can accommodate an increase in peak occupancy without having an adverse impact on the environment or an increased risk to public health.

The applicant was advised of the above recommendations and has formally requested the matter be determined at the next available Council meeting.

### **Development Engineer**

Council's Development Engineer has provided a referral response which supports the proposed modified development on the basis of the information submitted to date.

## 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 Local Environmental Plan 2012  
Mid-Western Development Control Plan 2013  
Community Participation Plan 2019

### **Legislation**

Local Government Act 1993  
Public Health Act 2010  
Environmental Planning and Assessment Act 1979 (as amended)  
Environmental Planning and Assessment Regulation 2021

## Financial implications

Development Contributions have been paid to Council in accordance with the approved consent. Should Council refuse the application however, the costs associate with an appeal through the Land & Environment Court will be required to be funded by Council.

## Associated Risks

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

LINDSAY DUNSTAN  
MANAGER PLANNING

ALINA AZAR  
DIRECTOR DEVELOPMENT

28 November 2023

*Attachments:*

1. Statement of Environmental Effects and Supporting Reports. (separately attached)
2. Applicants response to Councils Waste Water Matters and updated Report (24 November 2023). (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER