
10.1.6. DA168/02 (MOD 036/20) - Earthworks, 14 Claret Ash Avenue, South Bowenfels

Prepared by Paul Cashel - Development Manager

Department Development

Authorised by Director of Economic Development & Environment

Property Details 14 Claret Ash Avenue, South Bowenfels Lot 1 DP 933666 & Lot 45 DP 1109094

Property Owner Ledger Enterprises Pty Ltd

Applicant Paul Ledger (Ledger Enterprises Pty Ltd)

Reference

Min. No. 21-62 Ordinary Meeting of Council held on 22 March 2021.

Summary

At the 22 March 2021 meeting, Council resolved:

THAT determination of this matter be deferred until Council holds an onsite meeting to discuss the issues which have been raised.

The purpose of this report is to advise Council of the outcome of a site meeting in relation to Development Application DA168/02 (MOD 036/20) for earthworks on land at 14 Claret Ash Avenue, South Bowenfels (Lot 1 DP 933666 & Lot 45 DP 1109094) and to recommend determination of the application.

Commentary

Following the resolution of Council, a site meeting was held on 8 April 2021. The following Councillors were in attendance:

Mayor – Councillor Ray Thompson
Deputy Mayor – Councillor Wayne McAndrew
Councillor Deanna Goodsell
Councillor Joe Smith
Councillor Darryl Goodwin
Councillor Cassandra Coleman
Councillor Stephen Lesslie

Apologies received:
Councillor Maree Statham
Councillor Steve Ring

The site meeting commenced at the top end of Munbinga Drive and first inspected the area of the proposed works associated with the modification application. No concerns were raised in relation to the proposed works.

The site meeting then moved to, and inspected, the land at 985 Great Western Highway, South Bowenfels. It was noted on-site that this locality was not relevant to the modification application. The owner showed photographs of overland flows and flooding. The owner claims that this situation has been made worse since works on the site upstream commenced. The applicant explained that the recently constructed detention basin (which increased the capacity of the existing detention basin) is oversized for the 1:100 ARI storm event. Council's Engineers have reviewed the calculations and agree that this is the case. There will be an opportunity to review this for any future subdivision of the land to ensure the basin is designed to cater for future residential subdivision and built development. However, Council's Engineers can only concur that the stormwater situation at 985 Great Western Highway is a natural occurrence, based upon the information and findings contained within Council's recently completed Flood Study.

In relation to a concern raised by residents at 981 and 983 Great Western Highway that stormwater is not escaping under the Highway quickly enough in storm events, Council's Director Infrastructure Services has undertaken to consider the concern and discuss with Transport for NSW whether additional drainage infrastructure under the Great Western Highway would be feasible and whether this could assist without creating problems for other properties.

Based on the above, the staff recommendation in relation to DA168/02 (MOD 036/20) remains unchanged.

Policy Implications

The Policy implications reported to the Council on 22 March 2021 remain unchanged. Rather than repeat that commentary the relevant Policies are simply listed for reference being:

Policy 7.1 Filling and Levelling of Land
Policy 7.6 Development Applications by Councillors and Staff or on Council Owned Land
Lithgow Community Participation Plan

Financial Implications

- Budget approved - N/A
- Cost centre – N/A
- Expended to date – N/A
- Future potential impact - N/A

Legal and Risk Management Implications

NIL.

Attachments

1. Planning- Assessment- Report- Modification-to- D A-168-02- MO D-036-20 [10.1.6.1 - 22 pages]

Planning Assessment Report - Modification to DA 168/02 (MOD 036/20).

Recommendation

THAT

1. The modification of Development Application DA168/02 (MOD 036/20) be APPROVED subject to conditions on the consent as shown in the attached Section 4.15 report.
2. A DIVISION be called in accordance with the requirements of Section 375A(3) of the Local Government Act, 1993.

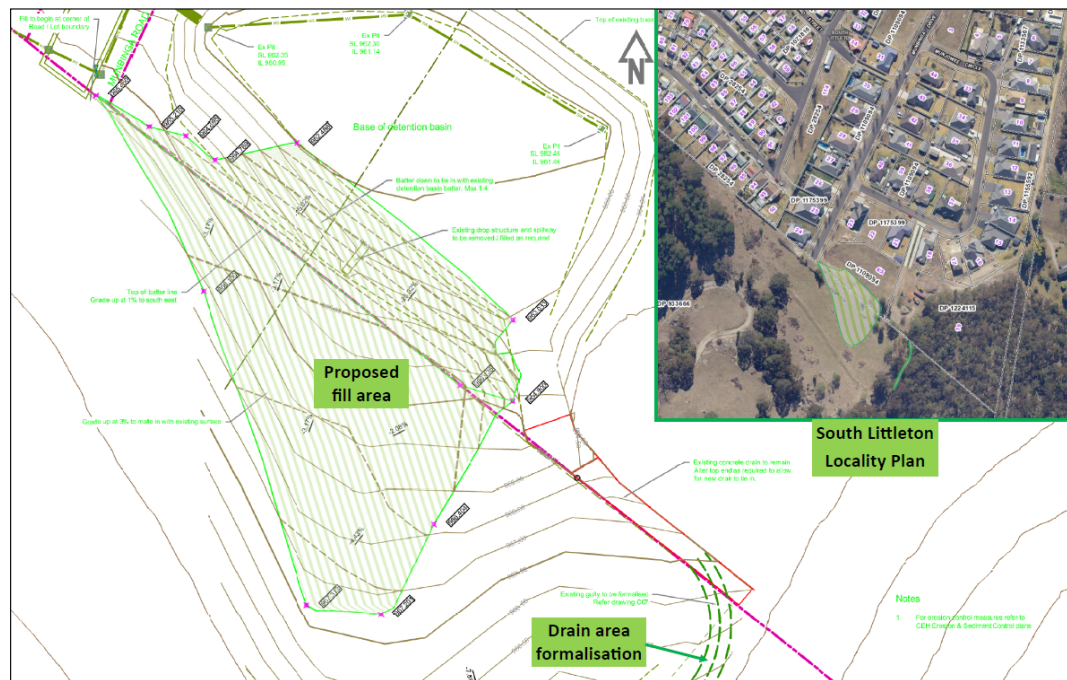
DEVELOPMENT ASSESSMENT REPORT – MOD036/20 (DA168/02) - PROPOSED EARTHWORKS, Lot 1 DP 933666 and Lot 45 DP 1109094, 14 CLARET ASH AVENUE, SOUTH BOWENFELS

1. PROPOSAL

Council is in receipt of a Development Application MOD036/20 (DA168/02) from Ledger Enterprises Pty Ltd for earthworks on land known as Lot 1 DP 933666 and Lot 45 DP 1109094, 14 Claret Ash Avenue, South Bowenfels.

The proposal seeks to utilise existing stockpiles of soil from the bulk earthworks approved under DA168/02 to fill a separate part of the subject land (Lot 1 DP 933666) and to modify the embankment of the existing sediment basin on the adjoining Council land (Lot 45 DP 1109094).

The proposed earthworks are shown in the following plan.



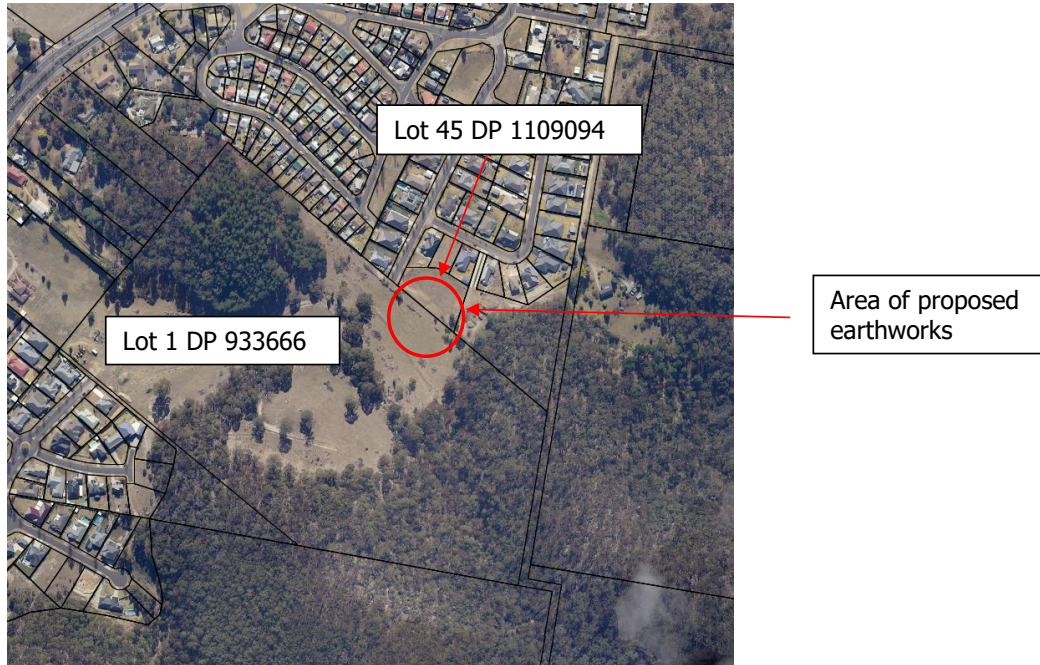
2. SUMMARY

To assess and recommend determination of MOD036/20 (DA168/02) with recommendation for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 1 DP 933666 and Lot 45 DP 1109094
Property Address : 14 Claret Ash Avenue, South Bowenfels

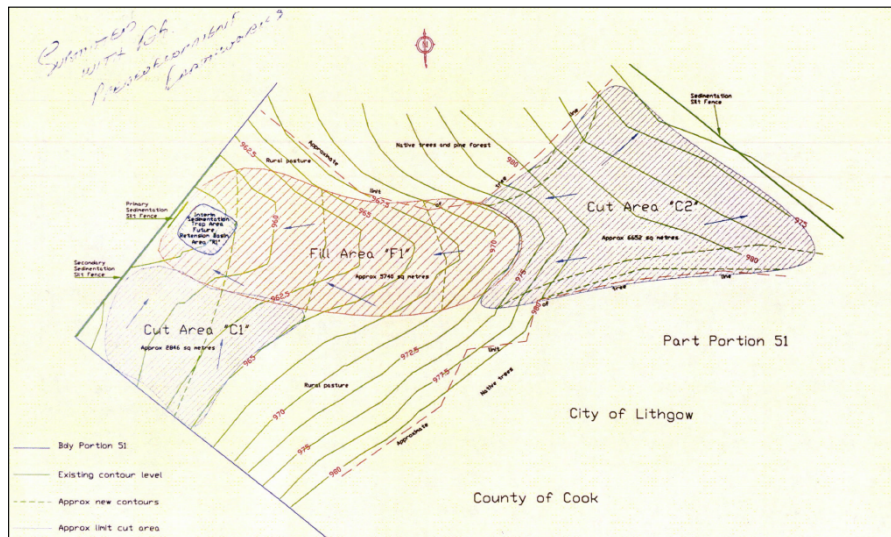
The location of the subject land is shown in the following map.



4. DETAILS OF CURRENT APPROVAL

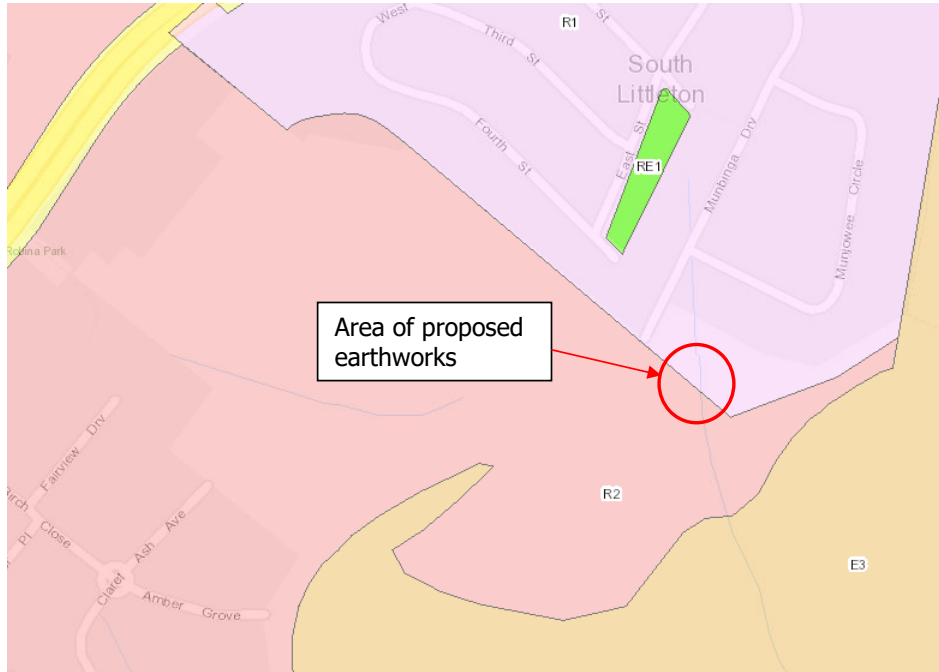
DA168/02

The original approval under was completed under delegation on 4 July 2002 and permitted earthworks to cut into the existing saddle on the eastern side of the lot to provide fill for other parts of the lot. The approved works were to facilitate future development of the land.



4. ZONING

The land is zoned R1 General Residential and R2 Low Density Residential in accordance with the *Lithgow Local Environmental Plan 2014* (LEP).



5. PERMISSIBILITY

The proposed use is defined as earthworks which is permitted with consent on land zoned R1 General Residential and R2 Low Density Residential under the LEP provisions, provided that the development/land complies with the requirements:

7.1 Earthworks

- (2) Development consent is required for earthworks unless—
 - (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.
- (3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—
 - (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
 - (b) the effect of the development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,
 - (e) the source of any fill material and the destination of any excavated material,
 - (f) the likelihood of disturbing relics,
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) the proximity to, and potential for adverse impacts on, any heritage item, archaeological site or heritage conservation area.*

Note. The *National Parks and Wildlife Act 1974*, particularly section 86, deals with harming Aboriginal objects.

A development application was submitted for earthworks in compliance with 7.1 (2) above as it is not exempt development or ancillary to other development requiring consent. Development consent was granted and the proposal is a modification of that consent.

The proposed modification will not result in any significant change to drainage patterns on site. The land currently slopes towards the detention basin on Council land and this will continue to be the case. The maximum change from natural ground level to proposed is up to 2m with the overall landform and drainage similar to the natural ground.

The proposed earthworks will promote reuse of the site as it will provide for a more level surface than existing. The proposal is not expected to have a negative impact on the potential reuse of the site.

The proposal involves the formalisation of a gully that is mapped as a watercourse. The application was referred to the Natural Resources Access Regulator who has issued General Terms of Approval for the works.

Water NSW has assessed the proposal in relation to neutral or beneficial effect on the existing drinking water catchment. No objections to the proposal have been provided subject to conditions of consent if approved to ensure minimal impact to the catchment and waterway.

Part of the land to be used for the earthworks is within the Groundwater Vulnerability layer of LEP2014. However, as the earthworks are on existing natural ground it is not expected the development will have any impact on groundwater.

Existing conditions of consent relating to minimising noise and dust impacts and management of any complaints will be retained. The land is not within proximity to any heritage item or conservation area that would warrant additional assessment, the closest item being a cottage fronting the Great Western Highway.

As such it is considered that the proposal will meet the requirements of Clause 7.1 of LEP2014 subject to appropriate conditions of consent being imposed.

5.1 POLICY IMPLICATIONS (OTHER THAN DCPs)

Policy 7.1 Filling and Levelling of Land

Policy 7.1 defines when a development application is required to fill land, including when the depth of fill exceeds 900mm. The extent of fill is up to 2m in depth, hence the proposal has been submitted as a modification to DA168/02 for assessment.

Policy 7.6 Development Applications By Councillors And Staff Or On Council Owned Land

Lot 45 DP 110904 is owned by Lithgow City Council. Policy 7.6 states that applications for the modification of development consent can be determined by delegated authority unless the modification represents a significant departure from the original application.

The original development application applied only to Lot 1 DP 933666 and did not affect Council's land at Lot 45 DP 1109094. While the earthworks are associated with existing earthworks approved under DA168/02, given the earthworks now extend onto Council owned land, it is considered that the application cannot be determined under delegated authority.

Lithgow Community Participation Plan

The Lithgow Community Participation Plan applies to all land within the Lithgow Local Government Area (LGA) and prescribes the following types of development as exempt from requiring notification:

2.0 APPLICATIONS FOR WHICH NOTIFICATION WILL NOT BE GIVEN

- Earthworks if exempted under Council Policy – Filling and Levelling Land.

The proposed earthworks are not exempt under Council Policy 7.1 and therefore adjoining land owners were notified of the modification application as part of this process.

5.2 FINANCIAL IMPLICATIONS

Section 94A (Section 7.12) Development Contributions Plan 2015

Council's Section 94A (Section 7.12) Development Contributions Plan 2015 applies to this development given it is for earthworks. However, as there is no estimated cost of works with no construction proposed, no levy is applicable to the development.

5.3 LEGAL IMPLICATIONS

Environmental Planning and Assessment Act 1979- Section 4.55 (1A)

(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*
- (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*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

Comment: Subsection 1A of Section 4.55 of the Act applies to modifications involving minimal environmental impact. Given the proposal involves the re-use of excavated material from the same site, does not significantly change localised drainage patterns

and will not involve the removal of native vegetation (other than planted shrubs), it is considered that the proposal is of minimal environmental impact.

The modification relates primarily to the same land for which the original development consent was granted and seeks to re-use stockpiles of excavated material on the same site. For this reason, the proposal is considered to be substantially the same development.

The proposal has been notified to adjoining and adjacent landowners for consideration as part of this process.

5.3.4 Environmental Planning and Assessment Act 1979- Section 4.55 (3)

(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.

This assessment report addresses all relevant matters under Section 4.15 (1) of the Act.

Biodiversity Conservation Act 2016

As there is no native vegetation clearing (other than planted shrubs) the proposal meets the requirements of the Act as it will have minimal impact on threatened and or endangered flora and fauna and their habitats.

Protection of the Environment Operations Act 1997

Under this Act the Environment Protection Authority has issued the Excavated Natural Material Exemption 2014 under Clause 91 & 92 of the *Protection of the Environment Operations (Waste) Regulation 2014* (Waste Regulation) along with the Excavated Natural Material Order 2014 under Clause 93 of the Waste Regulation which apply to the development.

The original development consent was granted prior to the exemption, regulation and order coming into force. Therefore, there are no appropriate conditions relating to use of virgin excavated natural material. The following condition is recommended to be added to development consent DA168/02:

“Fill material must be virgin excavated natural material within the meaning of the Protection of Environment Operations Act 1997 (POEO) or any other waste-derived material the subject of a resource recovery exemption under the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

Note: Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to Council.

Water Management Act 2000

The proposal involves the formalisation of a gully that is mapped as a watercourse. The development is therefore Integrated Development as an activity approval is required from the Natural Resources Access Regulator under clause 91 (2) of the Water Management Act:

91 Activity approvals

(2) A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land.

The application was referred to NRAR and General Terms of Approval have been issued. Council is therefore able to determine the application providing the General Terms of Approval are attached to the development consent, if granted.

Environmental Planning and Assessment Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

5.3.1 Any Environmental Planning Instruments

Lithgow Local Environmental Plan 2014

LEP 2014 – Compliance Check		
Clause		Compliance
Land Use table	R1 General Residential	Yes
Land Use table	R2 Low Density Residential	Yes
5.10	Heritage conservation	Yes
7.1	Earthworks	Yes
7.2	Flood Planning	Yes
7.4	Terrestrial biodiversity	Yes
7.5	Groundwater vulnerability	Yes
7.6	Riparian land and watercourses	Yes
7.7	Sensitive lands	Yes

Comment:

Zone Objectives

The proposed development for earthworks does not impact on the objectives of the R1 or R2 zones as there is no landuse proposed under this application. However, the earthworks will not impact on the potential use of the land for housing needs of the community and provision of facilities. Further, the development has been assessed by WaterNSW in relation to potential impacts to receiving water catchments and found to have a neutral or beneficial effect subject to conditions of consent if approved.

Clause 5.10 Heritage Conservation

The subject land does not contain a heritage item, though it adjoins an item fronting the Great Western Highway (Cottage, former Coerwull Academy) as shown below.



The proposed earthworks will have no impact on any heritage item in the vicinity of the subject land.

Clause 7.1 Earthworks

Refer to Section 5 above.

Clause 7.2 Flood Planning

The subject land is not mapped in the LEP as being flood prone land, however Council's internal mapping system identifies the land as having some flood inundation in the 100 year event, as shown in the map below.

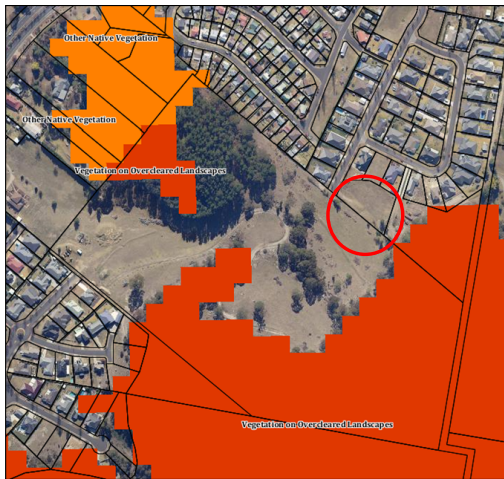


The detention basin on Council's land is designed to capture stormwater in a 1 in 100 year event, while overland flow towards the detention basin on the applicant's land

has a low flood hazard (approximately 200mm in depth). Council's Engineering Officer has advised that the proposed fill is unlikely to have an impact on the capacity of the drainage basin as the works do not change the size of the catchment and there is no significant change to the nature of drainage flows. The proposal is therefore considered satisfactory having regard to clause 7.2 of the LEP.

Clause 7.4 Terrestrial Biodiversity

The subject land contains areas mapped as having terrestrial biodiversity, as shown below.



The area of the proposed earthworks is not within the mapped areas, which are all upslope from the area of the proposed works. Therefore there is unlikely to be any adverse impact on the biodiversity values of the site as a result of the proposed works.

Clause 7.5 Groundwater Vulnerability

Part of the land to be used for the earthworks is within the Groundwater Vulnerability layer of LEP2014, as shown below.



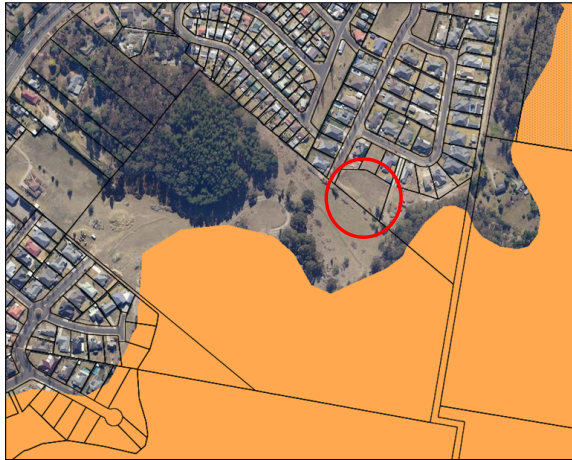
However, as the earthworks are on existing natural ground it is not expected the development will have any impact on groundwater.

Clause 7.6 Riparian Land and Watercourses

The subject land does not contain any watercourses that are mapped in the LEP. However, there is a gully to the south-east of the proposed earthworks within which some works are proposed to formalise the gully. The application has been referred to NRAR who have issued General Terms of Approval.

Clause 7.8 Sensitive Lands

The subject land contains areas mapped as having sensitive lands, as shown below.



The area of the proposed earthworks is not within the mapped areas, which are all upslope from the area of the proposed works. Therefore there is unlikely to be any adverse impact on sensitive lands as a result of the proposed works.

State Environmental Planning Policy (Koala Habitat Protection) 2020

As there is no native vegetation clearing (other than planted shrubs) the proposal will have no impact on potential koala habitat.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The application was referred to Water NSW who have advised that the proposal can achieve a neutral or beneficial effect on water quality, subject to conditions, as outlined later in this report.

State Environmental Planning Policy No 55—Remediation of Land

The subject land has a history of rural use and there is no evidence of previous contamination of the land. As the proposal is for earthworks only with no proposed use of the land, the proposal is considered suitable having regard to SEPP 55.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

5.3.3 Any Development Control Plan

Nil.

5.3.4 Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4?

No.

5.3.5 Any matters prescribed by the regulations that apply to the land

There are no demolition works, rebuilding or extension of the building is proposed as part of this application and therefore no building regulations were assessed as part of this proposal.

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Adjoining Landuse: The surrounding area is generally for residential type uses with the proposal to be consistent with the surrounding land uses. The proposal will not cause any land use conflicts and the development is permissible within the zone subject to consent. The proposal is for earthworks with no end landuse proposed.

Services: No services are required for the proposed earthworks as there is no end landuse proposed.

Context and Setting: The proposed development will be located within an established large residential allotment area and will have no major impact on the context and setting of the area. The development has been designed to allow for redevelopment of the site.

Access: The proposed means of access to the site will remain the same as for the existing earthworks on the land. Given the proposal involves the re-use of existing stockpiles of soil on the same land, the proposal will have minimal impacts on the surrounding road network.

Heritage: The proposed earthworks will have no impact on any heritage item in the vicinity of the subject land.

Flora and Fauna: As there is no native vegetation clearing (other than planted shrubs) the proposal will have no impact on potential koala habitat. A condition will be imposed to require the planting of replacement native trees and shrubs along the south-western embankment of the detention basin of Lot 45 DP 1109094.

Social and Economic Impact: The proposed development it is expected to have minimal social and economic impact as it is for earthworks only. Conditions were imposed on the original consent to ensure minimal impact to adjoining residents in relation to noise and dust and no changes to these conditions are proposed.

Soils: There is no evidence of any contamination of soils on site. The proposal involves the use of existing stockpiles of soil on the subject land. Conditions regarding erosion and sediment controls are recommended.

Water: The proposed development has been assessed by Water NSW under the *State Environmental Planning Policy (Sydney Catchment Drinking Water) 2011*. Water NSW found that the application will have a neutral or beneficial effect on water quality subject to conditions of consent. Therefore with appropriate conditions of consent it is considered that the development will have minimal impact on water.

Air and Microclimate: As the proposal is for earthworks, conditions of consent have been imposed on the original consent to ensure that no dust is eliminated beyond the site. This may include water carts and other mitigation measures employed by the developer. No change to this condition is proposed.

Natural Hazards: The detention basin on Council's land is designed to capture stormwater in a 1 in 100 year flood event, while overland flow towards the detention basin on the applicant's land has a low flood hazard (approximately 200mm in depth). Council's Engineering Officer has advised that the proposed fill is unlikely to have an impact on the capacity of the drainage basin as the works do not change the size of the catchment and there is no significant change to the nature of drainage flows.

Noise and Vibration: The works will be limited daylight hours and truck movements limited to ensure minimal impact to adjoining landowners. Conditions were imposed on the original consent in relation to noise and complaint management and no changes to these conditions are proposed.

5.3.7 The Suitability of the site for the development

The original application was assessed in terms of site suitability and was found to be suitable. The modification does not require any further assessment of suitability.

5.3.8 Any submissions made in accordance with this Act or the Regulations

The proposal was sent to Water NSW, the Natural Resources Access Regulator and Council's Engineering Officer for commenting with recommendations detailed below. The proposal was also sent to surrounding landowners and placed on public display in Council's Administration Building for a period of 14 days with one submission received.

WATER NSW

Water NSW does not object to the modification subject to the following conditions:

1. The fill works shall be undertaken as shown on the earthworks plan (Job No. 2020.0047, Dwg No. C06, Issue D, dated 1/12/20) prepared by Calare Civil Pty Ltd.
2. Any fill material used on the site shall comply with EPA's Guidelines on Resource Recovery Exemptions (2017) for the land application of waste material as fill.
3. The Erosion and Sediment Control Plans (Plan Nos. 5510_GV_ESCP_01_01-02-Issue-1 & 5510_GV_ESCP_02_01-02-Issue-1, dated 14-09-2020) prepared by CEH Survey shall be implemented and no works shall commence until effective erosion and sediment controls have been installed. The controls shall be regularly inspected, maintained, and retained until works have been completed and groundcover established.

NATURAL RESOURCES ACCESS REGULATOR

The following General Terms of Approval have been issued by the Natural Resources Access Regulator. The GTA's will be attached to the development consent, if granted.

Design of works and structures

1. Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Natural Resources Access Regulator, and obtained, for a controlled activity approval under the Water Management Act 2000.

Erosion and sediment controls

2. The following plan(s): - Erosion and Sediment Controls Plan must be:
 - A. prepared in accordance with Managing Urban Stormwater: Soils and Construction, Volume 1 (Landcom, 2004), as amended or replaced from time to time, and
 - B. submitted with an application for a controlled activity approval.
- 3A. The consent holder must ensure that any proposed materials or cleared vegetation, which may: i. obstruct water flow, or ii. wash into the water body, or iii. cause damage to river banks, are not stored on waterfront land, unless in accordance with a plan held by Natural Resources Access Regulator as part of a controlled activity approval.
- 3B. When the carrying out of the controlled activity has been completed, surplus materials must be removed from waterfront land.
4. The proposed erosion and sediment control works must be inspected and maintained throughout the construction or operation period of the controlled activity and must not be removed until the site is fully stabilised.

Plans, standards and guidelines

- 5A. This General Terms of Approval (GTA) only applies to the proposed controlled activity(s) described in the plans and associated documents found in Schedule 1, relating to Development Application as provided by Council to Natural Resources Access Regulator.
- 5B. Any amendments or modifications to the proposed controlled activity(s) may render the GTA invalid. If the proposed controlled activity is amended or modified, Natural Resources Access Regulator, Parramatta Office, must be notified in writing to determine if any variations to the GTA will be required.
6. The application for a controlled activity approval must include the following document(s): - outlet structures; Erosion and Sediment Control Plan; Soil and Water Management Plan; Vegetation Management Plan.
7. All documents submitted to Natural Resources Access Regulator as part of an application for a controlled activity approval must be prepared by a suitably qualified person.
8. Any proposed controlled activity must be carried out in accordance with plans submitted as part of a controlled activity approval application, and approved by Natural Resources Access Regulator.

9. The application for a controlled activity approval must include plans prepared in accordance with Natural Resources Access Regulator's guidelines located on the website <https://www.industry.nsw.gov.au/water/licensingtrade/approvals/controlled-activities>.

Rehabilitation and maintenance

10. When the proposed controlled activity is completed, and the rehabilitation plan has been implemented, maintenance of the site must be carried out for a period of 2 years in accordance with that rehabilitation plan submitted as part of the controlled activity approval, and approved by Natural Resources Access Regulator.

Reporting requirements

11. The consent holder must inform Natural Resources Access Regulator in writing when the proposed construction of the controlled activity has been completed.

COUNCIL'S ENGINEERING OFFICER

Council's Engineering Officer has assessed the proposal and recommended the following conditions be placed on the development consent:

1. The proposed earthworks and formalisation of existing drain area shall be constructed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.
2. The applicant shall ensure that during the construction works all measures are taken to eliminate/suppress any dust nuisance emanating from the site.
3. Effective erosion and sediment controls shall be installed prior to any construction activity including dwelling site access. The controls must prevent sediment entering drainage depressions and watercourses, and shall be regularly maintained by the Applicant, and retained until works have been completed and groundcover established.

Note: The existing development consent includes a condition equivalent to point 2 above and point 3 is addressed through the addition of the Water NSW condition referred to above.

PUBLIC SUBMISSIONS

One submission was received to the development application. The following issues were raised in the submission.

1. The original approval sought to use cut material for fill in those areas on site previously applied for. The extra available fill material for this proposal suggests that something has changed from the original proposal and this has not been documented.

Council Officer's comment – The applicant was asked to demonstrate that the works undertaken on site fully comply with the original development consent. Evidence was subsequently provided that demonstrated compliance with the original consent to Council's satisfaction.

2. A number of bird-attracting shrubs have been planted along the fence line of the drainage basin and these will be affected by the proposed works. It is requested that a row of native trees and shrubs be replaced along the boundary.

Council Officer's comment – A condition to this effect is recommended.

3. There will be an ongoing problem with dust and run-off if the filled area is not properly vegetated with suitable grasses, shrubs and trees on completion of the works.

Council Officer's comment – Appropriate conditions regarding dust suppression and erosion and sediment controls are either included on the original consent or recommended to be included.

4. The existing general water flow should not be altered in the area to be filled, so it should be an explicit condition that the overall fall in the filled area must be to the east, directing water towards the collection drain.

Council Officer's comment – An appropriate condition to this effect is recommended.

5. To protect adjoining residents from dust and noise problems, the following conditions should be applied to the development consent:
 - A definite time period within which the works must be completed and a documented plan of how that will be achieved, including dealing with contingencies.
 - Control of dust at all times until revegetation is complete.
 - The standard of revegetation must be defined, with dust control, water flow and bush-fire propagation risk taken into account.
 - Noise controls in place and enforceable.
 - If compaction of the filled area is to be done, strict controls to minimise the noise and vibration impacts should be applied.
 - An indication to affected residents before the commencement of works where machine and truck movements are going to be and that these movements be kept as far as practicable from the residents.
 - What contingency plans are in place if the developer encounters major problems that delay the works.

Council Officer's comment – Conditions regarding minimising noise and dust nuisance, and maintaining erosion and sediment controls in place until the area is revegetated, are already included on the development consent. Additional conditions specifying the standard of revegetation are not considered warranted. As this is a modification of consent, it is not appropriate to introduce a condition limiting the time period to complete the proposed works or requiring contingency plans to be developed. Truck and machinery movements are contained within the site and will be from existing soil stockpiles to the area of fill. No additional conditions relating to this matter are considered warranted.

6. There is a lack of clarity about what the final overall plan for the subject land is.

Council Officer's comment – The subject modification application is for a earthworks, being an extension of the earthworks approved under DA168/02. There is no requirement for an applicant for earthworks to identify the future use of the subject land. Further development consent will be required for the subdivision and/or use of the subject land. Subject to Council's Community Participation Plan, any future development application is likely to be notified to surrounding land owners for comment.

7. The scenario of the developer increasing the value of his property at the cost of neighbouring residents having a reduced amenity or property value ought to be considered by Council as part of the approval process.

Council Officer's comment – The impact of the proposed earthworks on the amenity of adjoining properties has been considered as part of the assessment of this modification application and appropriate conditions are either already included in the development consent or are recommended to be included. The impact of any future subdivision/use of the land on the amenity of adjoining properties will be considered as part of the assessment of any future development application. The impact of development on property values is not a planning consideration.

5.3.9 The public interest

The original application was assessed in terms of the public interest. The proposed modification does not change whether the development is within the public interest.

6. DISCUSSION AND CONCLUSIONS

The proposal is considered to generally comply with the relevant provisions of the applicable Environmental Planning Instruments. The proposal is not considered likely to have any significant negative impacts upon the environment or upon the amenity of the locality. As such it is recommended that development consent is issued subject to the conditions outlined below.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT the Section 4.55 Modification of Consent application MOD036/20 associated with DA168/02 be approved subject to the following amendments and additional conditions and outlined in Schedule A.

1. That the development is carried out in accordance with the application and plans submitted with the application, **MOD036/20** or otherwise amended by the following conditions.

(Amended as per MOD036/20 dated XX/XX/XXXX)

13. Fill material must be virgin excavated natural material within the meaning of the Protection of Environment Operations Act 1997 (POEO) or any other waste-derived material the subject of a resource recovery exemption under the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

Note: Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to Council.

(Added as per MOD036/20 dated XX/XX/XXXX)

14. The fill works shall be undertaken as shown on the earthworks plan (Job No. 2020.0047, Dwg No. C06, Issue D, dated 1/12/20) prepared by Calare Civil Pty Ltd.

(Added as per MOD036/20 dated XX/XX/XXXX)

15. Any fill material used on the site shall comply with EPA's Guidelines on Resource Recovery Exemptions (2017) for the land application of waste material as fill.

(Added as per MOD036/20 dated XX/XX/XXXX)

16. The Erosion and Sediment Control Plans (Plan Nos. 5510_GV_ESCP_01_01-02-Issue-1 & 5510_GV_ESCP_02_01-02-Issue-1, dated 14-09-2020) prepared by CEH Survey shall be implemented and no works shall commence until effective erosion and sediment controls have been installed. The controls shall be regularly inspected, maintained, and retained until works have been completed and groundcover established.

(Added as per MOD036/20 dated XX/XX/XXXX)

17. The proposed earthworks and formalisation of existing drain area shall be constructed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

(Added as per MOD036/20 dated XX/XX/XXXX)

18. The developer shall plant one native tree or shrub along the south-western embankment of the detention basin of Lot 45 DP 1109094 for every one removed to facilitate the proposed earthworks.

(Added as per MOD036/20 dated XX/XX/XXXX)

19. Compliance with the General Terms of Approval issued by the Natural Resources Access Regulator, included at Attachment 1.

(Added as per MOD036/20 dated XX/XX/XXXX)

Report prepared by: Mark Hitchenson Supervisor: Lachlan Sims

Signed:..... Signed:.....

Dated:..... Dated:.....

REASONS FOR CONDITIONS
The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure there is no unacceptable impact on the water quality.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

Schedule A

Conditions of Consent (Consent Authority) and General Terms of Approval (Natural Resources Access Regulator)

Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

ADMINISTRATIVE CONDITIONS

1. That the development is carried out in accordance with the application and plans submitted with the application, **MOD036/20** or otherwise amended by the following conditions.

(Amended as per MOD036/20 dated XX/XX/XXXX)

2. A detailed Soil and Water Management Plan indicating all proposed erosion and sedimentation controls shall be submitted with the forthcoming application for subdivision.
3. Siltation entering drainage works controlled by the NSW RTA, and determined to originate from the development, will be removed by the applicant's expense.
4. Earthen bund walls to direct and control water run-off shall be established to ensure water on-site is captured within and directed to the interim basin, during the construction phase of the project.
5. Noise relating to earthmoving (or development in general) shall be in accordance with the 'Noise Control Guidelines' for construction noise standards (Copy attached). Hours of operation shall be permitted between 7am – 6pm Monday to Friday, and 9am – 1pm Saturdays. No heavy machinery work or usage shall be permitted on Sundays or Public Holidays.
6. Prior to the commencement of works the applicant shall convene an on-site meeting with Council Officers and the Catchment Manager – Department of Land and Water Conservation.
7. The area of vegetation containing *Bursaria Spinosa* is to be fenced off with hazard netting to ensure protection. This is to be inspected by Council Planner prior to the commencement of works.
8. The applicant shall ensure that during that construction works all measures are taken to eliminate/suppress any dust nuisance emanating from the site. Details to be provided to Council on request.
9. The application shall comply with all reasonable requests from Council with regards to any complaints received during the construction works.
10. All embankments in the cut area being 'C1' and 'C2' shall have batters constructed no steeper than 1:3 gradient. These batters are to be topsoiled and revegetated immediately after they have been suitably constructed. Should the embankments consist of hard rock only batters to be constructed no steeper than 1: 1/2.
11. Vegetation removed during development is to be chipped/mulched and used in site rehabilitation.
12. The fill shall be compacted in layers to achieve a minimum of 98% compaction. On completion of works, the filling shall be tested by a Geotechnical Engineer and a copy of the report shall be submitted to Council.

13. Fill material must be virgin excavated natural material within the meaning of the Protection of Environment Operations Act 1997 (POEO) or any other waste-derived material the subject of a resource recovery exemption under the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.
Note: Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to Council.

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(Added as per MOD036/20 dated XX/XX/XXXX)

Attachment 1 General Terms of Approval



Natural Resources
Access Regulator

General Terms of Approval

for proposed development requiring approval
under s89, 90 or 91 of the Water Management Act 2000

Reference Number:	S961132120
Issue date of GTA:	17 February 2021
Type of Approval:	Controlled Activity
Description:	Modification of Consent - Earthworks
Location of work/activity:	14 Claret Ash Avenue, South Bowenfels NSW 2790
DA Number:	DA168/02
LGA:	Lithgow City Council
Water Sharing Plan Area:	Greater Metropolitan Region Unregulated River Water Sources

The GTA issued by NRAR do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to NRAR for the relevant approval **after development consent** has been issued by Council **and before** the commencement of any work or activity.

Condition Number	Details
Design of works and structures	
GT0009-00010	Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Natural Resources Access Regulator, and obtained, for a controlled activity approval under the Water Management Act 2000.
Erosion and sediment controls	
GT0006-00001	The following plan(s): - Erosion and Sediment Controls Plan must be: A. prepared in accordance with Managing Urban Stormwater: Soils and Construction, Volume 1 (Landcom, 2004), as amended or replaced from time to time, and B. submitted with an application for a controlled activity approval.
GT0014-00007	A. The consent holder must ensure that any proposed materials or cleared vegetation, which may: i. obstruct water flow, or ii. wash into the water body, or iii. cause damage to river banks, are not stored on waterfront land, unless in accordance with a plan held by Natural Resources Access Regulator as part of a controlled activity approval. B. When the carrying out of the controlled activity has been completed, surplus materials must be removed from waterfront land.
GT0021-00004	The proposed erosion and sediment control works must be inspected and maintained throughout the construction or operation period of the controlled activity and must not be removed until the site is fully stabilised.
Plans, standards and guidelines	
GT0002-00680	A. This General Terms of Approval (GTA) only applies to the proposed controlled activity(s) described in the plans and associated documents found in Schedule 1, relating to Development Application as provided by Council to Natural Resources Access Regulator. B. Any amendments or modifications to the proposed controlled activity(s) may render the GTA invalid. If the proposed controlled activity is amended or modified, Natural Resources Access Regulator, Parramatta Office, must be notified in writing to determine if any variations to the GTA will be required.
GT0003-00002	The application for a controlled activity approval must include the following document(s): - outlet structures; Erosion and Sediment Control Plan; Soil and Water Management Plan; Vegetation Management Plan.
GT0010-00006	All documents submitted to Natural Resources Access Regulator as part of an

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nrar.enquiries@nrar.nsw.gov.au | <http://www.industry.nsw.gov.au/nrar>



Natural Resources
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LGA:	Lithgow City Council
Water Sharing Plan Area:	Greater Metropolitan Region Unregulated River Water Sources
	application for a controlled activity approval must be prepared by a suitably qualified person.
GT0012-00004	Any proposed controlled activity must be carried out in accordance with plans submitted as part of a controlled activity approval application, and approved by Natural Resources Access Regulator.
GT0030-00006	The application for a controlled activity approval must include plans prepared in accordance with Natural Resources Access Regulator's guidelines located on the website https://www.industry.nsw.gov.au/water/licensing-trade/approvals/controlled-activities .
	Rehabilitation and maintenance
GT0007-00006	When the proposed controlled activity is completed, and the rehabilitation plan has been implemented, maintenance of the site must be carried out for a period of 2 years in accordance with that rehabilitation plan submitted as part of the controlled activity approval, and approved by Natural Resources Access Regulator.
	Reporting requirements
GT0020-00004	The consent holder must inform Natural Resources Access Regulator in writing when the proposed construction of the controlled activity has been completed.

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by NRAR for integrated development associated with DA168/02 as provided by Council:

- SEE
- Plans
- Note: 'new' drain area formalisation is to be naturally formed and not concrete lined. A VMP is to be supplied for this purpose at CAA stage.