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SECTION 4.55 MODIFICATION - STATEMENT OF ENVIRONMENTAL EFFECTS

APPLICATION: Modification to DA/0162/2223 – Private Sewage Treatment Plant and Associated Irrigation Area
PROPERTY: 49 WILSON DRIVE, MARULAN (LOT 229 IN DP13024843)
PROPOSAL: Modification of DA to increase the treatment capacity of the existing private sewer treatment plant.

This Statement of Environmental Effects has been prepared to outline proposed modifications to the approved development consent DA/0162/2223 in response to Goulburn Council and WaterNSW's request to modify DA/0162/2223 as part of the concurrent assessment of DA/0275/2324 (Equinox Marulan Stage 3). The proposed modification seeks to:

1. Expand the private sewage treatment plant by an additional ≈55kl to service a further 106 residential lots. Lots shown as 301 – 407 on the proposed plan of subdivision in annexure D.
2. Expand the Effluent Irrigation Area within Lot 229 IN DP13024843 to irrigate the increased treated effluent.

This application has been prepared by Darraby Pty Ltd pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposed amendments are minor and will not result in any change to the overall functionality of the approved Private Sewer Treatment Plant or associated subdivision. The application is therefore submitted as a section 4.55(1A) modification as it is substantially the same as that approved by Council and will not have any significant or unreasonable environmental impact.

The application identifies the consent, describes the proposed modifications, and provides a planning assessment against section 4.55(1A) of the EP&A Act. This application involves changes to conditions specified by WaterNSW (Integrated Development Conditions) as part of the consent and as such, referral is considered necessary in the context of Section 4.55(2)(b). The modification should be assessed concurrently with DA/0275/2324. This statement is accompanied by:

- Annexure A – Upgrade Drawings
- Annexure B – Effluent Irrigation Field Upgrade Drawings
- Annexure C – Effluent Disposal Site Assessment
- Annexure D – Upgrade Scope

- Annexure E – Stage 3 Plan of Subdivision

1. EXPANSION OF THE INTERIUM PRIVATE SEWAGE TREATMENT PLANT (IPSTP)

Background

Development consent has been granted for the IPSTP in accordance with Notice of Determination DA/0162/2223 and Operational Consent to safely treat and manage effluent in the current two (2) stages of the Equinox Subdivision. The stages are detailed below:

- Stage 1 – 22 residential Lots, 1 residual Lot (DA/0230/1718)
- Stage 2 – 126 residential Lots, 2 drainage reserves and 1 residual Lot (MODDA/0017/2324 to DA/0035/1819).

Darraby are proposing to develop a further 106 residential lots as part of 'Stage 3'. Plans were submitted on February 2024 and is currently being assessed by Council under DA/0275/2324.

As a concurrent assessment, Water NSW and Goulburn Council have requested modification to the IPSTP (DA/0162/2223) to facilitate the proposed expansion.

PROPOSED MODIFICATIONS

Private Sewer Treatment Plant Design details

Due to the systems modularity, the plant can be upgraded without service interruption. A detailed project scope is contained within Annexure D. The documentation below details the proposed upgrade of the facility.

Drawings:

- Annexure A - IPSTP Upgrade - MAK5918-VA-001 – TWSe (Rev A)
- Annexure B - Effluent Irrigation Field Upgrade - 0823002p1 (Rev D)
- Annexure C - Effluent Disposal Site Assessment - 1732-EDSA-01-010824.v1f
- Annexure D - Equinox Marulan Stage 3 – Private Sewer Treatment Plant Upgrade Scope – Rev 1
- Annexure E – Stage 3 Plan of Subdivision - 217259

Calculation of Private Sewer Treatment Plant Upgrade Capacity

Existing Required Capacity:

$$\begin{aligned} 1et &= 2.6ep \\ 2.6ep * 149 \text{ Lots} &= 387.4ep \\ 387.4ep * 200L &= 77.48kl/day \end{aligned}$$

The upgrade of the system proposed in this modification is based on the below calculations:

$$\begin{aligned} 1et &= 2.6ep \\ 2.6ep * 106 \text{ Lots} &= 275.6ep \\ 275.6ep * 200L &= 55.12KL/day \end{aligned}$$

This increases the plants' required capacity to 133kl/day, however the plants' built capacity is proposed to be 138kl to act as a buffer.

Operation of Upgraded Interim Private Sewer Treatment Plant

The current s.68 (OSM/0080/2324) License to Operate will need to be amended to account for the expanded system.

Likely Impacts of the Proposed Modification

The expansion of the IPSTP imposes minimal additional environmental risk over and above the approved system and is housed within the immediate area of the existing approved system. The proposed management strategy remains as per the currently approved operational environmental management plan.

The increased size of the effluent irrigation area is provided in the most suitable location for irrigation with minimal environmental impacts. The environmental impacts are assessed within DA/0275/2324 as per direction by Goulburn Council on 11 March 2025.

Given the temporary nature of the system, all environmental impacts of the current or upgraded system will be extinguished upon decommissioning.

Visual Impacts

The additional tanks will be placed above ground and next to the existing system. The storage tanks will be dark green to further minimise visual impact and ensure they are more sympathetic to the natural environment. The system is located approximately 450m from the nearest residential Lot and is screened by existing thick bushland.

STATUTORY CONSIDERATIONS

Section 4.55 of the *Environmental Planning and Assessment Act 1979* provides the statutory instrument to amend a development consent. Section 4.55(1A) of the Act states that a consent authority may modify a development 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.*

Minimal Environmental Impact

The proposed modification will have minimal environmental impact for the reasons listed below:

- The proposed modifications result in only minor upgrade works to the Treatment Plant.
- The proposed modifications do not result in any additional environmental or social impacts from those considered as part of the original assessment.
- Based on the above, the proposed modification can be assessed in accordance with

section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

Substantially the Same Development

The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The proposed modifications do not radically alter the system or its function from its original purpose – ‘to provide an interim sewage treatment facility for the Equinox Subdivision until such time as the Marulan Waste Water Treatment Plant is operational.’ The increase in treatment capacity does not alter the key components of the approved development for which the consent was granted. The proposed modifications relates to the increased capacity of a temporary sewage plant which would enable servicing additional 106 lots due to the delays to the Marulan waste Water Treatment plant as discussed previously in this report. Moreover, the proposed upgrade will enable additional housing supply to Marulan.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved, satisfying the radical transformation test pursuant to *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358. A quantitative and qualitative test providing a comparison of the development as approved, and the development as proposed to be modified is summarized below:

The expansion of the interim private sewer treatment plant does not significantly alter the overall development footprint. Further the final residential development will not be impacted by the modification as it is a temporary measure to facilitate development staging and will be removed once the Marulan WWTP is operational.

The fundamental design with storage, treatment, irrigation and pump out option remain the same as per the license to operate. The modifications to the design are considered minor and whilst there is an increase in gross capacity there are only minimal impacts as noted above. A s4.55 (1A) is considered appropriate for this Modification pursuant to the EP&A Act.

The purpose of the modification is to allow the development of 106 residential lots as part of DA/0275/2324.

Having regard to the above, the proposed modification is ‘essentially and materially the same’ and therefore considered to be substantially the same as the development approved under DA/0162/2223, as amended, it involves modification to a limited number of conditions to DA/0162/2223. Further the final residential development will not be impacted by the modification as it is a temporary measure to facilitate sewer treatment of Stage 3.

Notification

There is no requirement for community notification pursuant to Appendix 1 of the Goulburn Community Participation Plan “modifications made under s4.55(1A)”.

Modifications made under s4.55(1A)	No requirement, unless the original development was approved by the Court on appeal, where the Court must be notified in addition and the same notification/advertising method being used as for the original development.	No requirement, unless the original development was approved by the Court on appeal, where the Court must be notified in addition and the same notification/advertising method being used as for the original development.
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Table 1 - Goulburn Community Participation Plan - Appendix 1

SECTION 4.15 ASSESSMENT

Environmental Planning Instruments

The SEE submitted with the original Development Application included a detailed assessment of the development against the relevant EPIs including State Environmental Planning Policies (SEPPs) and the Goulburn LEP. Table 1 outlines the consistency of the proposed modification with the relevant EPIs.

Table 1 Consistency with Environmental Planning Instruments

Environmental Planning Instrument	Consistency of Proposed Modification
Biodiversity Conservation Act 2016	The modification does not give rise to any further environmental impacts beyond those already assessed as a part of DA/0275/2324.
Roads Act 1993	No additional road infrastructure is proposed.
Local Government Act 1993	The proposed modifications will not impact the approved connections to water supply, sewerage and stormwater infrastructure connections to the site already approved under DA/0162/2223 or other Development Applications affecting the site. The active license to operate requires minor amendment to reference the allowable discharge lots.
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	The previously submitted stormwater concept plans and MUSIC modelling are not altered by the proposed modifications.
Goulburn Mulwaree Local Environmental Plan 2009	The proposed modifications remain largely consistent with the original development in the context of the Goulburn Mulwaree LEP 2009.
Any DCP provisions if applicable.	

Likely Impacts

Potential environmental impacts were considered in the original Statement of Environmental Effects submitted with DA/0162/2223. The proposed modifications will result in negligible impacts over and above that were already considered by the Council as part of its original assessment.

Suitability of the Site

Given the plant has already achieved development approval, construction, and license to operate, there is no requirement to further assess the sites' suitability.

Public Interest

The proposed modifications will facilitate a further 106 residential lots to be released to the greater community. This consent will facilitate housing supply to extraordinarily high demand for residential land in Marulan. Given the potential of such growth, we see no reason why the proposed modifications should not be supported by Council and approved so that the development can be implemented as a matter of urgency.

CONCLUSION

The proposed section 4.55(1A) modification involves minor changes to the Development Consent of DA/0162/2223. In accordance with section 4.55(1A) of the Environmental Planning and Assessment Act 1979, the consent authority may modify the consent as:

- The modification will result in a development that is substantially the same as the approved development;
- The modification will result in minimal environmental impacts;
- The development as modified remains in the public interest.

On this basis, we believe that Council should support the proposed modifications and approve this application.

Should you have any queries in this regard, please contact Chris West on 0475 905 539.

Chris West
Darraby Pty Ltd

Annexure A – Upgrade Drawings

Annexure B – Effluent Irrigation Field Upgrade Design

Annexure C – Effluent Disposal Site Assessment

Annexure C – Upgrade Scope

Annexure E – Stage 3 Plan of Subdivision