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A 33 Holly Street, Bowral NSW 2576  
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Wingecarribee Shire Council  
PO Box 141  
Moss Vale NSW 2577  
Attention: Nancy Sample

Dear Nancy,

**RE: Modification Application to Development Application 19/0922 –  
Residential Subdivision Ferguson Crescent, Mittagong**

This Statement of Support has been prepared to support an application made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*, in relation to the abovementioned Development Application.

It satisfies the requirements of Clause 115 of the *Environmental Planning and Assessment Regulation 2000* in providing the appropriate information to enable Council to appropriately assess and determine the application.

The application seeks a minor amendment to the approved plan of subdivision to take account of a small parcel of land within the ownership of State Rail that was originally intended to be part of the subdivision. Due to the failure of State Rail and the current lease holder of the land, Australian Rail Track Corporation, to properly engage with or respond to the applicant, it has not been possible to incorporate this land into the approved subdivision.

**Approved Development Application**

Development Application 19/0922 was initially approved on 26 February 2020.

The Notice of Determination of approval was issued for:

*Subdivision (31 Lots - 30 residential lots and 1 drainage easement lot)*

This Statement of Support provides the appropriate consideration of the proposed modification against the relevant planning legislation to allow Council to be satisfied pursuant to s4.55(1A), that the development, as modified, will be substantially the same development as originally approved and of minimal environmental impact.

The development as modified will remain as a 31 lot subdivision, in the same general configuration and incorporating the same land as the original development proposal.

*Providing a range of Planning and Development services including:*

· Planning Proposals · Statement of Environmental Effects · Strategic Planning and Development advice · Advocacy and problem solving  
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The exception is the small parcel of land owned by State Rail and leased by Australian Rail Track Corporation, being Part Lot 17 Section 1 DP651, which has an area of just 356 square metres.

The purpose of the modification application is to make minor adjustments to four lots that originally incorporated the area of the State Rail owned parcel.

With direct reference to the provisions of Clause 115 of the Regulations, the following information is provided:

*(1) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information: (a) the name and address of the applicant,*

Refer to application form

*(b) a description of the development to be carried out under the consent (as previously modified),*

The approval issued under Development Approval 19/0922 is for the development of the land for *Subdivision (31 Lots – 30 residential lots and 1 drainage easement allotment)*. The proposed modification to the consent does not seek any change to this.

*(c) the address, and formal particulars of title, of the land on which the development is to be carried out,*

Refer to application form. The land the subject of this modification application remains the same land as the land the subject of the original Development Application 19/0922.

*(d) a description of the proposed modification to the development consent,*

The proposed modification is described in this Statement of Support. In brief it seeks the replacement of the stamped approved Proposed Plan of Subdivision.

The change in this plan is the retention of Part Lot 17 Section 1 DP651 (the State Rail land) as a separate parcel rather than that land being incorporated into the subdivision. This affects Lots 6, 7, 19 and 20 of the approved subdivision, however with slight boundary adjustments, each of these lots will retain compliance with the 700sqm minimum lot size requirement.

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*(e) a statement that indicates either: (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation,*

It does not correct a minor error, misdescription or miscalculation.

*Or (ii) that the modification is intended to have some other effect, as specified in the statement,*

The modification is to have the effect of allowing the subdivision to proceed notwithstanding the inability to reach agreement with State Rail or Australian Rail Track Corporation in relation to the inclusion of the State Rail owned land. This is a failing of State Rail and not the applicant, who has made best endeavours to deal with State Rail and Australian Rail track Corporation, but to no avail. It has left no alternative but to proceed without the State Rail land.

*(f) a description of the expected impacts of the modification,*

It is not expected that the proposed modification will result in any impacts of an adverse nature, or be different to or greater than the impacts already accepted by Council in approving the original development application.

In a practical sense, there will be minor changes to the configuration and site areas of approved Lots 6, 7, 19 and 20. However, as already stated, all four of these lots remain fully compliant with the minimum 700sqm site area and all retain the capacity to accommodate suitable residential development.

*(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,*

The development, as to be modified, will remain substantially the same as that originally approved. The approval issued is for a residential subdivision to create thirty new residential lots and the modification retains that development outcome.

*(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),*

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## **Description of the Modifications being sought**

Council is requested to consider modifying the consent as issued, through the amendment of Condition 1 so as to refer to the Proposed Plan of Subdivision 170509 Issue H 24/03/2021, prepared by Australian Survey Solutions. This Plan has been submitted with this Statement of Support.

This Plan shows the State Rail land, Lot 17 Section 1 DP651, remaining as a separate parcel of land rather than being subsumed into the new subdivision layout.

## **Category of Modification**

The proposed modification to the existing consent is considered to be within the ambit of Section 4.55 of the *Environmental Planning and Assessment Act 1979* (the Act).

The modification application has been lodged pursuant to Section 4.55(1A) of the Act, which states:

### ***(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.*

Council is at liberty to accept that the modified development will be substantially the same as the development as originally approved. It remains a residential subdivision creating 30 residential lots with one drainage easement lot.

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### **Assessment of Proposed Modification**

The proposed modification to the issued consent is considered to be fair and reasonable, suitable to the circumstances of the case and can be supported.

Due to an inability to reach an agreement with State Rail, it is not possible that Part Lot 17 Section 1 DP651 can be part of the final subdivision layout.

This land comprises just 356sqm and its loss does not result in any change to the total number of lots within the subdivision. The 356sqm parcel was originally incorporated into Lots 6, 7, 19 and 20. These four lots have been slightly reconfigured to take account of the loss of this area.

The adjustment required has been taken into account in the latest iteration of the civil engineering plans prepared by Novati Consulting Engineers that have also been submitted for the information of Council. These plans are suitable for the requisite Section 68 approval, to be issued by Council for water, sewer and stormwater works.

### **Conclusion**

The proposed modification is not considered to be significant and is well within the ambit of S4.55(1A) of the Act.

There are no adverse impacts arising from the proposed modification.

All lots retain compliance with the minimum lot size and all will continue to be able to accommodate future residential development.

There are no impediments arising to the proper servicing of the site in terms of water, sewer and stormwater.

Thank you and I would be pleased to discuss any aspect of this submission with you at your earliest convenience if necessary.

Yours Faithfully,

Scott Lee

11 April 2021