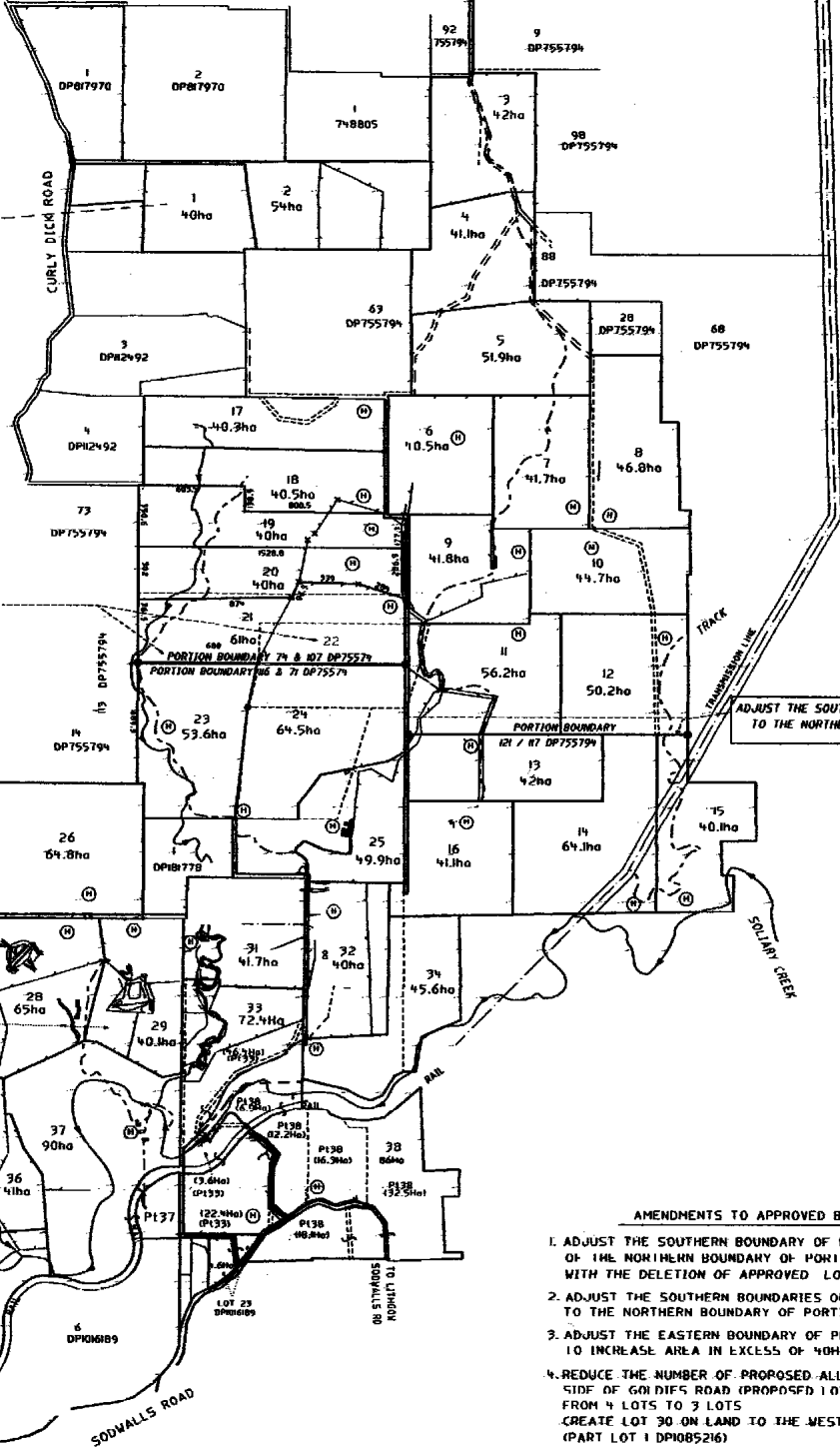




GREAT WESTERN HIGHWAY



STAGE 1  
CREATING PROPOSED LOTS 1 & 2

DELETE LOT 22 AND ADJUST  
SOUTHERN BOUNDARY OF LOT 21  
TO THE NORTHERN PORTION BOUNDARY  
LOTS 116 & 71 DP75574

ADJUST THE SOUTHERN BOUNDARIES OF PROPOSED LOTS 11 & 12  
TO THE NORTHERN BOUNDARY OF PORTION 121 DP75574

REDUCE LOTS FRONTING GOLDIES ROAD  
FROM 4 LOTS TO 3 LOTS  
& CREATE LOT 30(A) AS A  
SEPERATE LOT

LOT 35 WILL NEED AN APPROVED  
BUILDING SPACE

STAGE 1  
CREATE LOT 30A

AMENDMENTS TO APPROVED BOUNDARIES

1. ADJUST THE SOUTHERN BOUNDARY OF PROPOSED LOT 21 TO THE POSITION OF THE NORTHERN BOUNDARY OF PORTIONS 116 & 71 DP75574 WITH THE DELETION OF APPROVED LOT 22
2. ADJUST THE SOUTHERN BOUNDARIES OF PROPOSED LOTS 11 & 12 TO THE NORTHERN BOUNDARY OF PORTION 121 DP75574
3. ADJUST THE EASTERN BOUNDARY OF PROPOSED LOT 13 TO INCREASE AREA IN EXCESS OF 40HA
4. REDUCE THE NUMBER OF PROPOSED ALLTMENTS FRONTING THE SOUTHERN SIDE OF GOLDIES ROAD (PROPOSED LOTS 27, 28, 29, 30) FROM 4 LOTS TO 3 LOTS (CREATE LOT 30 ON LAND TO THE WEST OF DIAMOND SWAMP ROAD (PART LOT 1 DP1085216)

STAGING PLAN (STAGES IN ANY ORDER)

1. SUBDIVISION OF LOT 2 DP 1022552 INTO TWO ALLOTMENTS CREATING LOTS 1 & 2
  2. SUBDIVISION OF LOT 1 DP1085216 INTO TWO ALLOTMENTS CREATING LOT 30 (A) & RESIDE LOT 1 (PROPOSED LOTS 27-29 & 35-37)
  3. SUBDIVISION OF RESIDUE LAND OF LOT 1 DP 1085216 CREATING LOTS 27-29 & 35 - 37
  4. SUBDIVISION OF "HIGH COUNTRY" (ACCESS FROM GREAT WESTERN HIGHWAY) CREATING LOTS 3 - 21 IN SEVERAL STAGES
  5. SUBDIVISION OF "LOW COUNTRY" CREATING PROPOSED LOTS 13-16 & 23-34 IN SEVERAL STAGES
- SUBDIVISION OF SODWALLS ROAD LAND CREATING LOT 38

**G.B. MEYER & ASSOCIATES SURVEYORS**  
 222 BROADWAY, SUITE 101, LITHGOW NSW 2763  
 PHONE (02) 4622 2222 FAX (02) 4622 2222  
 EMAIL: G.B.MEYER@G.B.MEYER.COM

JOB REF: 64-06  
 PLAN No: 64-06-1071  
 CAD FILE: 64-06-10-000

DATE: 20/06/2014

PROJECT: PLAN OF PROPOSED SECTION 96 MODIFICATION TO PROPOSED LOT BOUNDARIES OF APPROVED SUBDIVISION AND STAGING PLAN FOR DEVELOPMENT "WESTHOLME" PROPERTY TARANA LITHGOW CITY COUNCIL DA598/04

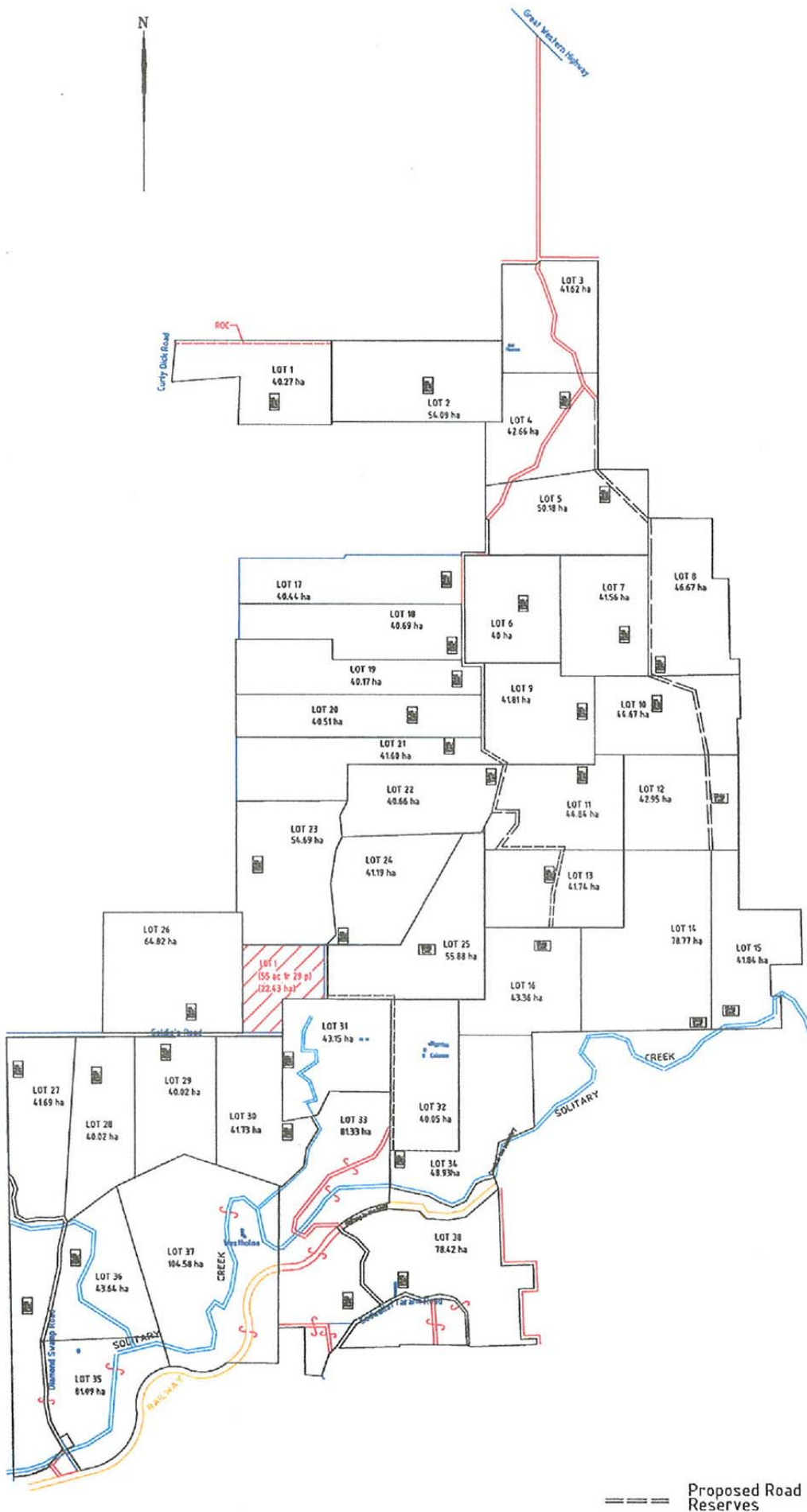
DATE: 21/06/2014

SCALE: 1:5000  
 8 A1 SHEET

CLEAR: AGONIC HOLDINGS

DATE: 21/06/2014

- (H) HOUSE SITE
- WATERCOURSE
- TRACK
- FENCE
- CROWN ROAD
- AMENDED LOT BOUNDARY
- LOT BOUNDARY



SCHEDULE OF AMENDMENTS	
Am. 1 7.9.07	Lots 17-24 modified due to access difficulties
Am. 2 15.10.07	Lots 35, 37, 39, 40 modified

**CLIENT**  
Agonic Holdings

**PROJECT**  
Proposed Subdivision  
- 'Westholme', Tarana  
**LOCATION**  
'Westholme', Sodwalls /  
Tarana Road, Tarana

**DWG TITLE**  
207 Westholme - 001



Ph: 6352 6474 Fax: 6352 2298  
5 Malvern Street, Lithgow NSW 2790

**SCALE:**  
1:25,000 at A3, 1:12,500 at A1

Rev. 15/10/07  
Drawn by:  
A. McNiven

==== Proposed Road Reserves

# MODIFICATION OF CONSENT REPORT 598/04DA – SUBDIVISION INTO 42 ALLOTMENTS

## PROPOSAL

Council is in receipt of a modification of development consent application from G.B Meyer & Associates Surveyors, who is seeking permission to modify the current approval for the Westholme subdivision in the following ways:

- Realignment of proposed lots 27, 28, 29, 30, 36 and 37 to be wholly within Lot 1 DP 1085216.
- Reduce the number of proposed allotments fronting Goldies Road by deleting proposed Lot 30 and creating Lot 30A, on land west of Diamond Swamp Road, having an area of 39.35ha. which includes a SEPP1 objection allowing for a variation to the minimum lot size of 40ha in a 1(a) Rural (General) zoning (being a 3% variation).
- Deleting proposed Lot 22 and increasing the area of proposed Lots 21 by moving the southern boundary to coincide with the northern portion boundary of proposed Lots 116 and 71 DP 75574.
- Moving the southern boundary of Proposed Lots 11 and 12 to coincide with the northern portion boundary of Lots 121 and 117 DP755794.
- Move the northern boundary of proposed Lot 134 to correspond with the portion boundary of lots 121 and 117 DP755794. Move eastern boundary of Proposed Lot 13 east to increase the area to in excess of 40ha
- Staging of the subdivision:
  - **Stage 1** subdividing Lot 2 DP1022552 into proposed Lots 1 & 2
  - **Stage 2** subdividing Lot 1 DP1085216 into two being Lot 30(A) and the residual
  - **Stage 3** subdividing residue lot creating Lots 35 to 37 & Lots 27 to 29
  - **Stage 4** subdividing “High Country” creating Lots 3 to 21 in several stages
  - **Stage 5** subdividing of “Low Country” creating Lots 13 to 16 and 23 to 24 in several stages

The modification is shown as below with contrast to previously approved in Image 1 and proposed modification in Image 2.

Image 1: Previously approved subdivision layout (only area to be changed)

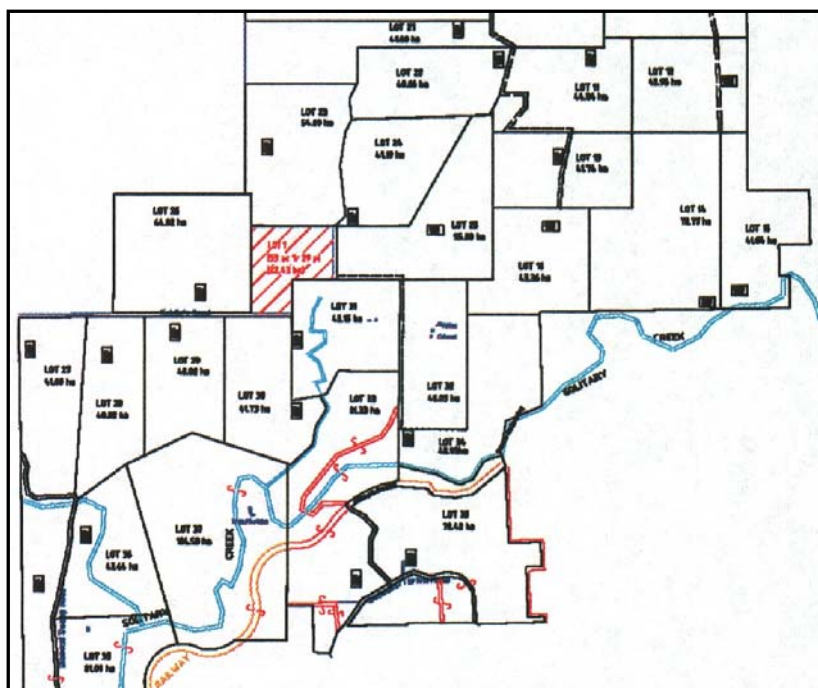
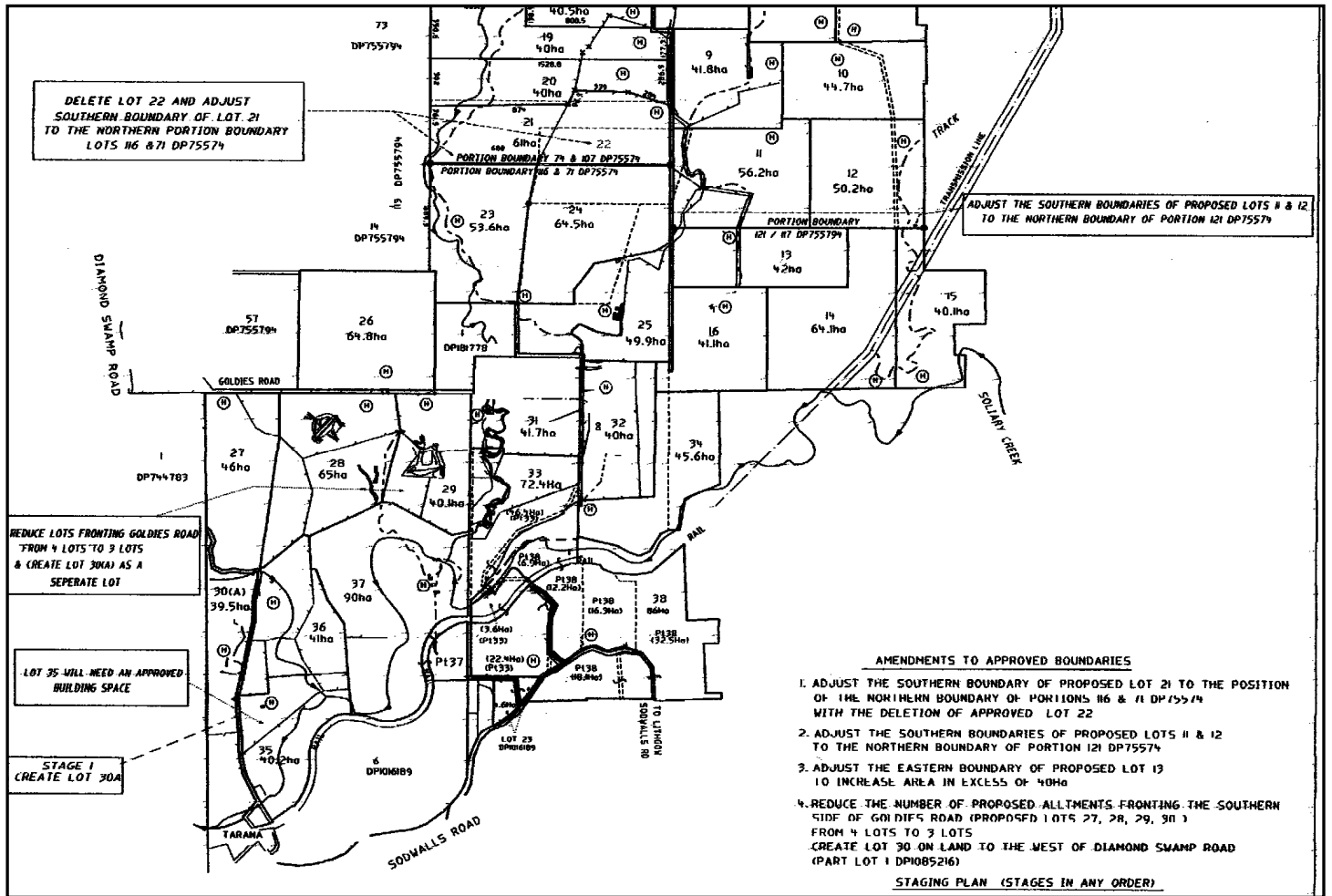


Image 2: Proposed modified subdivision layout (only area to be changed)



## SUMMARY

To assess and recommend determination of Section 96 Modification of DA 598/04 Recommendation will be for approval subject to conditions/refusal.

## LOCATION OF THE PROPOSAL

Legal Description : Lot 101 DP757076  
 Property Address : Curley Dick Road, Meadow Flat NSW 2790

## DETAILS OF CURRENT APPROVAL

It is noted that Council first refused the application on 12 June 2007 due to:

- The advice received by the Department of Primary Industries (Agriculture and Fisheries) pertaining to sustainable agriculture
- The application is antipathetic to the objectives of the 1(a) General Zone.
- The application is antipathetic to the aims of the 1(a) General Zone.
- The impact of the development on adjoining agriculture properties.
- The public interest.

The applicant of 598/04DA appealed the determination at the Land and Environmental Court and was then approved under by the Court on 1 October 2008, permitting the 38 lot subdivision.

### **POLICY IMPLICATIONS (OTHER THAN DCP's)**

There are no policy implications of the proposed modification.

### **FINANCIAL IMPLICATIONS (eg Section 94)**

A planning agreement was made as part of the original application. The proposed modification will not impact upon the recuperation of finances from this agreement.

### **LEGAL IMPLICATIONS**

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 96 of the Environmental Planning and Assessment Act 1979. These matters for consideration are as follows:

#### 96 Modification of consents—generally

**(1) Modifications involving minor error, misdescription or miscalculation**

*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 a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5), (6) and (7) do not apply to such a modification.*

Not applicable in this instance.

**(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 satisfied that the all of the modifications is of a minimal environmental impact. The proposal is in regards to internal lot alterations that do not alter the development in a significant way.

The Regulations do not require the notification of the modification, and therefore adjoining and adjacent landowners were not notified.

**(2) Other modifications**

*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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

Not applicable in this instance.

- (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 79C (1) as are of relevance to the development the subject of the application.*

**Any Environmental Planning Instrument**

*Consider SEPPs, REPs & LEPs. RELEVANT Provisions of LEP (eg permissibility, development standards, heritage listing, advertising requirements of another authority who administers a SEPP or REP). Is a SEPP1 objection required?*

**LEP**

The original application was assessed in accordance with the provisions of Lithgow's Local Environmental Plan 1994, and was found to not be compliant. However, the Land and Environmental Court proceedings have deemed that is not the case and therefore only the proposed modification is to be assessed under the LEP.

It is found that given the proposal is for realignment of proposed allotment boundaries, that the impact of the subdivision is unchanged. One allotment is being deleted and allotments have gained extra area as a consequence. It is found that generally the proposed modification complies with the aims and objective of the 1(a) General Rural zone given the allotments have been previously approved. Therefore the proposal has no increased impact that previously assessed and is acceptable in its current form.

Further, a SEPP1 objection has been sought as part of this application which is a variation to the following Clause:

**12 Subdivision in Zone No 1 (a)**

**(2) Creation of "40 hectare allotments"**

*The Council may consent to a subdivision of land within Zone No 1 (a) if each allotment to be created by the subdivision will have an area of not less than 40 hectares.*

The proposed objection to this Clause is to create one allotment of 39.35ha, which is a variation by 3% being a minimal change. Therefore the variation would have minimal impact to the area with the average size of all allotments exceeding the 40ha minimum in the proposed subdivision.

**SEPP No1 -Development Standards**

**3 Aims, objectives etc**

*This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.*

The applicant has submitted a SEPP1 Objection to Lithgow Local Environmental Plan 1994 Clause 12(2) in relation to minimum lot size in a rural 1(a) subdivision.

The propose Lot 30A is to be a total area of 39.35ha which does not meet the minimum lot size set in the LEP1994 of 40ha. The variation is minimal being only of 3% and it would be found that the additional 0.65ha to meet the 40ha would have an insignificant effect on the agricultural viability of the allotment.

Therefore, given the SEPP1 is a 3% variation Council can assume the Directors concurrence as outline in Department of Planning Circular No.B1 which states:

13. *Council may assume the Directors concurrence in respect of a development application referred to in paragraph 12(a) or 12(b) but only if:*
- a) *only one allotment does not comply with the minimum area; and*
  - b) *that allotment has an area equal to or greater than 90 percent of the minimum area specified in the development standard.*

Therefore, Council considers that given that no impacts are foreseeable and the SEPP1 objection is a variation of 3%, that the objection to the minimum 40ha allotment size in the 1(a) General Rural area is acceptable.

**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**

If applicable, is the development consistent with the objectives of the draft instrument?

None relevant.

**Any Development Control Plan**

Is the proposal consistent with the DCP? If not, is a variance warranted and has it been justified?

No DCP's are relevant in the assessment of this proposal.

**Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?**

Nil.

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

Refer to clause 92, 93, & 94 of the Regulation. If a DA for demolition, the provisions of AS 2601-1991; The Demolition of Structures. Fire Safety considerations – DA that does not seek the rebuilding, alteration, enlargement or extension of the building. Consent Authority may require buildings to be upgraded – DA comprising the rebuilding, alteration enlargement or extension, take into consideration whether it is appropriate to require the building to be brought into conformity with the BCA.

The application has no demolition or constructions proposed.

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

The relevant matters are up to assessment and merit. **As a guide only**, the following may be considered if they are considered to be of relevance to the proposal. Amenity, streetscape, scenic quality, bulk, scale character, density, design, adjacent landuse compatibility, solar access, noise, access & traffic, utility services, heritage, water, soils, air, flora & fauna, wastes, safety, security, crime prevention, natural hazards, social, economic & cumulative impacts.

**Amenity**

The proposal is for minor internal lot layout changes which are considered minimal. The development is substantially the same the proposed modification will not create any other impacts that were not previously assessed in the original application and can be considered satisfactory.

**The Suitability of the site for the development**

Does the proposal suit the site? Bulk/Scale/Sensitivity? Are there any natural or man made hazards?

The original application was assessed in terms of site suitability and was found not to be suitable. However, given the Court proceedings an alternative assessment of the proposal found the subdivision acceptable. The modification is only changing the allotment layout which will not change the dississions made through the Court. It is considered only the modification is being assessed, that the changes are minimal in nature and is acceptable in its current form.

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

If relevant, consider public and authority submissions. Do submissions relate to valid Planning issues?

The proposed modification was referred to the Rural Fire Service for recommendations as outlined below:



Rural Fire Service

Awaiting correspondence which will be adopted.

**The public interest**

Have any genuine Planning issues been raised in by the wider public? Is there genuine irrefutable concerns relating to public health & safety?

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.

**DISCUSSION AND CONCLUSIONS**

The application has been thoroughly assessed under Section 96 1(A) of the *Environmental Planning and Assessment Act 1979*. and is appropriate for recommendation of approval subject to conditions.

**ATTACHMENTS**

None

**RECOMMENDATION**

**THAT** the Section 96 1 (A) modification be approved with no changes to the Land Environmental Court Judgement.

The Condition 1, 79B be amended to read as follows:

- 1 That the development be carried out in accordance with:
  - Plans being no.66-06-10/14, 'Plan of Proposed Section 96 Modification to Proposed Lot Boundaries of Approved Subdivision And Staging Plan for Development "Westholme" Property Tarana Lithgow City Council DA598/04' dated 2 December 2011.
  - Vegetation Management Plan approved pursuant to Condition 68 of this consent.

Unless otherwise amended by the following conditions.

- 79 B A restriction as to user over lots 4, 5, 6, 11 and 21 in favour of Lithgow City Council prohibiting intensive agriculture/ horticulture being conducted within 20metres of the Blackthorn populations identified on the map jointly prepared by Mr Roger Lembit and Mr Greg Madafiglio and filed with the Land and Environmental Court on 17 December 2007.

Report prepared by:..... Supervisor:.....

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

## **REASONS FOR NEW CONDITIONS**

To protect the environment.

To ensure construction and operation of development is undertaken with minimal impact to the locality.

To prevent, minimise, and/or offset adverse environmental impacts.

To provide for the on-going environmental management of the development.

To ensure orderly development to the site.

To facilitate the manoeuvring of vehicles.

To ensure lots are adequately serviced.

To maintain the amenity of the local area.

To ensure there is no unacceptable impact on the water quality.

To ensure appropriate management of traffic.

To ensure adequate soil conservation and protect against movement of soil and sediments.