



# Report of Development Application Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979

## APPLICATION DETAILS

Application No.:	DA19/0665
Modification No.:	DA19/0665.02
Council File No.:	D/2019/0665
Date of Lodgement:	10/08/2022
Applicant:	Bunnings Group Ltd Level 8, 5 Rider Boulevard RHODES NSW 2137
Proposal:	Demolition of Existing Structures, Tree Removal and Construction Hardware and Building Supplies, Garden Centre and Ancillary Cafe
Description of Modification:	Modification to Permit Light Vehicle Egress to Pearson Street
Development Cost:	\$24,860,000
Assessment Officer:	Steven Cook
Determination Body:	Council - 1.11 of WWDCP 2010 - 10 or more objections
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	20/09/22 - 07/10/22
Advertising:	20/09/22 - 07/10/22
Owner's Consent Provided:	27/07/22
Location:	South-western corner of the intersection of Pearson St and Sturt Hwy. The site also has frontage to one of the cul-de-sac heads of Saxon St to the south.

## SITE DETAILS

Subject Land:	64 Pearson St WAGGA WAGGA NSW 2650 Lot 1 DP 798753
Owner:	Bunnings Properties Pty Ltd

## REPORT

### DESCRIPTION OF DEVELOPMENT

DA19/0665 for "Demolition of Existing Structures, Tree Removal and Construction Hardware and Building Supplies, Garden Centre and Ancillary Café" was approved (subject to a deferred commencement condition) by Council on 10/12/21.

Subsequently DA19/0665.01, which was an application to modify the consent, pursuant to s4.55(1A) of the Act, was approved by Council on 18<sup>th</sup> July 2022. This modification amended the approved plans and conditions to permit a vehicular egress from the site directly to the Sturt Highway.

Since the submission of this modification application currently under assessment, a separate modification application was lodged under Section 4.55(1) of the Act (DA19/0665.03), and approved, which rectified a minor error in the consent. Specifically, the modification rectified an error in the lapse date of the deferred commencement condition that was inconsistent with the provisions of the *Environmental Planning and Assessment Act 1979*, which mandated a 5-year lapse period for deferred commencement conditions (the condition as originally approved only allowed for 2-years).

This assessment report considers a modification application that has been submitted under s4.55(2) of the Act (DA19/0665.02). The application seeks approval for left-turn only, light vehicle egress from the site to Pearson St. This is currently denied by a condition of consent (Condition C.5(i)) and the application seeks deletion of this condition.

The condition reads as follows

*C.5 Prior to the release of a Construction Certificate, amended detailed design plans shall be submitted to, and approved by Council, to the satisfaction of both the General Manager or delegate, and Transport for NSW showing all proposed roadworks, linemarking and signage, including the following:*

- i) The exit driveway for light vehicles from the development site to Pearson Street deleted;*

The plans submitted with the Development Application showed light vehicle access and egress to Pearson St. At the time of the original Development Application Transport for NSW (TfNSW) advised that they had no objection to the proposed development, subject to it being amended by a range of conditions set out by TfNSW. One such condition was that the exit driveway to Pearson St be deleted. An exit from the site to Pearson St was also not supported by Council's Traffic Engineer.

The reasons that an egress directly to Pearson St was not supported was primarily due to the impacts on the performance of the roundabout at the intersection of Pearson St-Edward St-Sturt Highway-Olympic Highway. With right turns directly from the site to Pearson St considered to result in safety issues, all traffic would need to exit the site to Pearson St to the left. This would result in increased traffic through the roundabout, and in particular would result in substantial increases in traffic performing a u-turn at the roundabout and heading south. The proximity of the egress to the roundabout also meant that vehicles would need to weave across traffic within a short distance to get to the right land to make right turn and u-turn manoeuvres.

The application seeks to amend the light vehicle egress arrangements from the site directly to Pearson St. Associated median works are also proposed within Pearson St to deny right-turn movements from the site. No other amendments have been sought by the Applicant in relation to traffic.

Amended plans showing provision of an egress directly to Pearson St have been submitted with this modification application.

### **THE SITE & LOCALITY**

The site, being Lot 1 DP 798753, 64 Pearson St, Wagga Wagga, is located on the south-western corner of the intersection of Pearson St and Sturt Hwy. The site also has frontage to the cul-de-sac head in Saxon St to the south.

On the site stands a concrete block factory and batching plant, including:

- a maintenance workshop and associated infrastructure,
- a covered vehicle storage area,
- an office and a small building with a bathroom and
- storage areas and a concrete hopper.

The 4.67ha site is flat and generally rectangular. A small portion of land immediately on the Sturt Hwy-Pearson St intersection frontage is excised from the site and houses sewer infrastructure.

A small number of trees stand on the site, but otherwise the site is devoid of vegetation, including in most part, absent of any groundcover. Street trees are located within the Sturt Hwy, Pearson St and Saxon St road reserves bounding the site.

The locality is mixed but is predominantly characterised by uses found along highway land and major roads. To the east of the site are retailers, such as Barbeques Galore, auto parts shops and vehicle repair premises. These types of uses adjoin the site to the southeast along Pearson St, including a mower and chainsaw sales and repair business immediately to the south, and beyond, uses such as a car window tinting business.

Immediately to the south of the site, on Saxon St, uses are more traditionally “industrial” in character, including a builder’s depot, a bus depot, as well as associated uses, such as a brothel. West of the site is land zoned for public recreation, which also houses stormwater infrastructure, and beyond this lies residential land housing single dwellings. North of the site is undeveloped Crown Land.

Pearson St bounds the site to the east, and is a four lane road as it passes the site. To the north is the Sturt Hwy, which also carries the traffic of the Olympic Hwy at this point. At the western end of the site the Sturt Hwy is a two lane road, but diverges into a four lane road at eastern end of the site. Pearson St and the Sturt Hwy meet at a large two lane roundabout on the north-eastern corner of the site, with the Sturt Hwy continuing east, and the Olympic Hwy traffic diverting north at the roundabout onto Moorong St, which is the northern extension of Pearson St. Saxon St is a two lane road to the south, with the interface of the site with this street being a cul-de-sac head.

#### *Easements*

An easement for sewer, 3m wide, runs along the northern boundary of the site.

#### *Previous Consents*

BA66/71 - Concrete Block Making Factory

BA74/810 - Concrete Brick Factory

BA690/76 - Industrial Building and Amenity Block

BA438/77 - Petrol Instillation

BA766/80 - Concrete Batching Plant to Existing Factory

BA375/81 - Install 2,000 Litre Motor Spirit Tank and 15,000 Litre Distillate Tank All Underground

DA000073 - Tank Farm for Storage of Liquid Waste

### **MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.55 OR 4.56**

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:

#### **Section 4.55(2) Other modifications**

*(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).*

The proposed amendment is only to egress arrangements to Pearson St, with the overall development remaining fundamentally the same in character and operation. 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.

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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.*

The original Development Application was not Integrated Development, nor did it require concurrence. It did require referral to Transport for NSW under State Environment Planning Policy (Transport and Infrastructure) 2021. Whilst not a requirement under this section, the modification application was referred to Transport for NSW for comment. This is discussed in the body of the report.

*(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.*

In accordance with the requirements of the Wagga Wagga Development Control Plan 2010, the application was notified to adjoining owners, consistent with the original Development Application.

*(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.*

Submissions have been considered and are discussed in part (d) of the s4.15(1) assessment below.

#### **Section 4.55(3)**

*In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

### **MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)**

*For the purpose of determining this development application, the following matters that are of relevance to the development have been taken into consideration pursuant to the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act, 1979.*

**(a)(i) - The provisions of any environmental planning instrument (EPI)  
Local Environmental Plan**

Overall, the nature of the modifications to the development are such that the compliance of the development with the Wagga Wagga Local Environmental Plan 2010 will remain largely unchanged and the previous assessment remains valid.

**State Environmental Planning Policies**

Overall, the nature of the modifications to the development are such that the compliance of the development with relevant State Environmental Planning Policies will remain unchanged and the previous assessment remains valid, including the Koala SEPP and SEPP (Industry and Employment) 2021 in relation to signage. All SEPPs have been considered in full, noting that some SEPPs have been renamed and combined with other SEPPs since the original determination of the development, but have not altered in their essence.

Specific comments follow on relevant matters:

State Environmental Planning Policy (Transport and Infrastructure) 2021

Under Clause 2.48 of SEPP (Transport and Infrastructure) 2021, certain development that has the potential to affect an electricity transmission or distribution network must be referred to Essential Energy. The proposed access arrangements do not alter the proximity of access points to electrical infrastructure.

The Sturt Highway is a classified road, and consequently clause 2.119 of SEPP (Transport and Infrastructure) 2021 applies. Clause 2.119(2) is as follows:

*(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

Access to the site is proposed both from Pearson St and the Sturt Hwy. Egress is permitted under the consent to Saxon St as well as to the Sturt Highway. These arrangements satisfy the control.

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*

*(i) the design of the vehicular access to the land, or*

*(ii) the emission of smoke or dust from the development, or*

*(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

The modification proposes left-turn light-vehicle egress to Pearson St.

The application was referred to Transport for NSW (TfNSW). TfNSW advised that:

*TfNSW has completed an assessment of the application, based on the information provided and focussing on the impact to the classified state road network. TfNSW notes for this DA:*

*The key classified state road is Edward Street (Sturt Highway) which is located along the northern frontage of the development site. Pearson Street is classed as a local road and is located along the eastern boundary of the development site. The development site also has frontage and practical access to Saxon Street.*

- *A 2-lane roundabout is located at the north-eastern corner of the subject site at the intersection of Edward Street (Sturt Highway), Moorong Street (Olympic Highway). Pearson Street is a major north-south arterial road within Wagga Wagga,*
- *The TIA has adopted traffic data from 2010 and earlier which has been extrapolated with a 1% growth rate per year. Data observed in 2020 is available for the intersection of Edward Street and Pearson Street,*
- *The revised access arrangements propose an exit driveway to Pearson Street in addition to the approved left turn only entry driveway. The submitted documentation includes a raised central median which is intended to limit the proposed egress driveway to left turn only to Pearson Street. The placement of this median may impact on access to properties on the eastern side of Pearson Street. Detailed plans are required to allow further assessment of the potential impact to vehicle movements to/from these properties,*
- *The supporting documentation refers to the existing egress arrangement from the development site to Pearson Street via Saxon and Bye Streets as “arduous and counter intuitive trek around the rear of the building” and as “a convoluted and inconvenient egress pathway”. The issues with this “pathway” are created by the design and placement of the building and carpark on the subject site.*
- *It is the perceived inconvenient use of this “pathway” that may encourage customers wishing to head to the south or southeast to egress via the proposed driveway to Pearson Street and unnecessarily travel through the roundabout at the intersection of Edward and Pearson Streets,*
- *The design, placement and orientation of the proposed building and carpark on the subject site and the resulting traffic generation present a significant influence over the available options for appropriate and convenient access opportunities between the development and the public road network,*

*Based on the submitted information TfNSW does not support the deletion of Condition C.5(i) due to the following reason-*

- *The impact of the cumulative traffic generation resultant from the revised development on the safety, efficiency and ongoing operation of the existing roundabout at the intersection of Pearson Street, Edward Street (Sturt Highway) and Moorong Street (Olympic Highway).*

TfNSW therefore remained of the opinion that left-turn movements from the site will result in safety and efficiency impacts on the Sturt Highway, and will impact on the ongoing operation of the Pearson-Edward-Sturt-Olympic roundabout.

*Council’s Traffic Engineer made the following comments:*

- *It is noted that the revised proposal seeks to utilise the exit driveway on Pearson Street for light vehicles by installation of a central median island permitting left-only movements.*
- *As previously noted, and conveyed to the applicant/s, permitting left only movements from the exit driveway is expected to impact on the performance of the 2 lane roundabout at the intersection of Edward Street and Pearson Street.*

- *Pearson Street functions as an arterial road in Council's road network. As evidenced by the drone footage as part of the traffic survey undertaken by the applicant, lengthy queues and delays were noted particularly on the southern approach of the Edward Street and Pearson Street roundabout.*
- *Permitting left turns from the Pearson Road exit is expected to exacerbate the above conditions with the potential to compromise safety at the above intersection.*
- *Consequently, the revised proposal to utilise the Pearson Street driveway for light vehicles is not supported.*

At this point the Applicant requested that the modification not be determined, and a review of the traffic report, prepared by a different consultant, was submitted. This review concluded that the proposal to permit left out light vehicle egress to Pearson St would only have a minor impact on the surrounding road network (including the Pearson St-Sturt Hwy roundabout) and that background growth would result in the roundabout operating at capacity in the future. This was forwarded to TfNSW who advised in response:

*TfNSW has reviewed the information and does not support the proposed modification in its current form.*

...

#### **Reasons**

*TfNSW's reasons for not supporting the proposed modification are detailed below:*

- *TfNSW is concerned the modification and associated additional movements through the roundabout (as described above) will significantly impact the operation the roundabout, most notably, in the PM peak.*
- *While TfNSW generally supports the methodology used to assess the impact of the modification on the development, TfNSW believes the SIDRA modelling for the base/existing PM peak scenario does not reflect existing queuing and needs to be calibrated. For example, the modelling provided indicates a 95th percentile back of queue length of 43m for the east approach (Sturt Highway/Edward Street) and 45m on south approach (refer to Attachment 2) whereas TfNSW observed a queue length of around 150m on the east approach and around 100m on the south approach on 4 November 2020 (refer to photos in Attachment 3).*
- *TfNSW notes drone footage of queueing has been provided. While TfNSW supports the use of drone footage (as one means) of identifying existing queue lengths, TfNSW notes the footage was obtained on a Sunday and therefore does not provide an indication of queuing in the critical peak. Notwithstanding this, the drone footage shows queues significantly longer than the SIDRA modelling for the PM peak. For example, the SIDRA modelling indicates a 95% percentile back of queue length of 30m whereas the drone footage shows queues much longer (i.e. as shown in Attachment 4).*

*To reconsider the proposed modification, TfNSW requires the proponent to:*

- *Calibrate the existing/base case SIDRA modelling with observations of queue lengths in the PM peak and update the existing with development and future (10 year) scenarios.*
- *Provide an updated traffic assessment to TfNSW which includes:*
  - o *Evidence of the queue observations*
  - o *An assessment of the likely impacts to the roundabout including a quantitative assessment of how the additional trips from the modification will impact the life of the roundabout.*
- *Identify appropriate arrangements to reasonably mitigate the impact of the proposed*

*modification on the operation of the roundabout.*

In response to this, a further assessment was submitted. Again this assessment concluded that background growth would result in the Pearson St-Sturt Hwy roundabout reaching capacity before 2034, and that “the proposed development is not the catalyst for the...roundabout operating above capacity in the future”. The amended report also recommended a new condition to address the need for this upgrade as follows:

*Prior to Issue of an Occupation Certificate (of the development inclusive of the proposed Pearson Street customer egress), the applicant shall submit to Council evidence of satisfactory arrangements that will guarantee the replacement of the existing 2 lane roundabout with a completed and operational signalised intersection within 5 years (60 months) of the Issue of the Occupation Certificate for the Bunnings Warehouse. The signalised intersection shall be designed and completed to be generally in accordance with the intersection configuration depicted at Figure 1 (page 11) in the document prepared by Stantec titled “Bunnings Wagga Wagga - Transport Assessment and Peer Review”, Ref 300304266, dated 4 August 2023.*

The condition, per the reasoning set out in the traffic report, is recommended to:

*provide stakeholders with certainty that the modification will not be implemented prior to confirmation that the necessary road network upgrades will occur, and therefore that the development will not exacerbate existing road network congestion.*

The amended study was referred to TfNSW who advised:

*TfNSW has reviewed the information and does not support the proposed modification to Condition C.5(i) as proposed.*

...

#### *Reasons*

*TfNSW’s reasons for not supporting the proposed development are detailed below:*

- i) The proposed condition specifies construction of an intersection treatment for the future upgrade of an intersection of Edward Street and Pearson Street without evidence of consideration of alternative intersection options within the existing road network, justification for the selected treatment, or constructability and financial implications of the proposed treatment.*
- ii) The implementation of the proposed condition appears to rely on commitment from external parties including Transport for NSW. The condition appears to place time constraints and financial commitments on external parties that are not party to the development.*
- iii) TfNSW requires that developers provide a strategic design ([www.transport.nsw.gov.au/system/files/media/documents/2022/strategic-designfact-sheet-02-2022.pdf](http://www.transport.nsw.gov.au/system/files/media/documents/2022/strategic-designfact-sheet-02-2022.pdf)) for the selected road infrastructure upgrade to the intersection of Edward Street and Pearson Street as part of their DA submission to:
  - a) clarify the scope of works,*
  - b) demonstrate a compliant design (in accordance with Austroads guides and TfNSW supplements) can be constructed within the road reserve (or land available),*
  - c) allow the consent authority to consider the environmental impacts of the**



*upgrades as part of their determination under Part 4 of the Environmental Planning and Assessment Act, 1979.*

Council's Traffic Engineer also provided further comment at this point as follows:

*Considering the response provided by Transport for NSW in relation to Modification of Consent submitted by the applicant, Council does not support the application on grounds of road safety.*

Based on these comments it is considered that the consent authority cannot be satisfied that the:

*the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*

- (i) the design of the vehicular access to the land, or*
- (ii) the emission of smoke or dust from the development, or*
- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

This is because impacts on the intersection of Pearson St-Sturt Hwy have been identified, however, the modification is not supported by TfNSW. The proposed condition to address the impacts on the intersection would rely on the agreement of TfNSW. Imposing such a condition, where there is no clear evidence that the condition could be satisfied would constitute a constructive refusal. To be a valid condition, there needs to be a reasonable prospect that it could be satisfied.

In addition, the proposed condition does not address the road safety issues previously identified (such as traffic weaving from the exit point to the right lane at the roundabout) in the five year period until the intersection is upgraded, nor is it clear that the intersection upgrade would resolve these (post upgrade).

As such, the development is not consistent with Clause 2.119(2)(b)(i) and (iii) of State Environmental Planning Policy (Transport and Infrastructure) 2021.

In relation to the matters at 101(2)(b)(ii) the development is not of a kind that emits smoke or dust.

*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The development is not a use that is sensitive to traffic noise or vehicle emissions.

Clause 2.122 of the SEPP requires that traffic generating developments (as defined under Schedule 3 of the SEPP) be referred to TfNSW and Council take into consideration any submission made by TfNSW. Schedule 3 sets a 2500m<sup>2</sup> threshold for commercial premises to be considered traffic generating development where access directly to a classified road is proposed. The premises is around 18,385m<sup>2</sup> and as such is considered to be traffic generating development.

TfNSW comments are discussed above, noting that TfNSW does not support the proposed modification. These comments have been taken into consideration and inform the recommendation of this report.

In addition, the SEPP requires that Council take into consideration any potential traffic safety, road congestion or parking implications of the development. As discussed throughout this report, the proposed modification will result in increased and unacceptable traffic safety and road congestion impacts. These comments have been taken into consideration and inform the recommendation of this report.

There are no other provisions of SEPP relevant to the development.

**(a)(ii) - The provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)**

There are no draft State Environmental Planning Policies relevant to the proposed development.

**(a)(iii) - Any development control plan**

Wagga Wagga Development Control Plan 2010

The nature of the modification is such that the compliance of the development with the Wagga Wagga Development Control Plan 2010 plans will remain largely unchanged and the previous assessment remains valid. The following additional comments are made.

C11 of Section 1.10 of the WWDCP requires that modification applications made under 4.55(2) of the Act are to be notified/advertised consistent with the original application. This application was notified in this way.

Section 2 - Controls that Apply to All Development

2.1 Vehicle access and movements

*C1 Access should be from an alternative secondary frontage or other non-arterial road where possible.*

As discussed under SEPP (Infrastructure), access is proposed from roads other than the Sturt Hwy and the control is considered satisfied.

*C2 A Traffic Impact Study may be required where adverse local traffic impacts may result from the development. The traffic impact study is to include the suitability of the proposal in terms of the design and location of the proposed access, and the likely nature, volume or frequency of traffic to be generated by the development.*

A traffic impact assessment was prepared for the development.

*C5 Access driveways are not to be located opposite T-intersections or within 7m of a break in a median strip or intersection.*

The proposed additional light-vehicle egress to Pearson St is proposed would be located within 7m of breaks in the proposed median. The development would not comply with this control.

**(a)(iiia) - 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, and**

No planning agreements have been entered into in relation to the subject land.

**(a)(iv) - the regulations (to the extent that they prescribe matters for the purposes of this paragraph)**

The nature of the modification is such that the compliance of the development with the *Environmental Planning and Assessment Regulation 2021* will remain largely unchanged and

the previous assessment remains valid.

**(b) - 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 proposed modification, to permit left-turn light vehicle egress to Pearson St is likely to result in increased and unacceptable traffic impacts on the road network

It has been previously assessed that a left-turn only exit from the site onto Pearson St for light vehicles would result in an increase in vehicles using the Pearson-Edward-Sturt-Olympic roundabout, and in particular the number of vehicles using the roundabout to do a u-turn to travel south. In addition, the proximity of the egress is such that existing vehicles wishing to turn right or u-turn at the site would need to weave through traffic over a short distance to reach the right lane.

The provision of a right-turn exit from the Bunnings site would reduce the number of vehicles needing to u-turn at the roundabout, however, this option would present road safety issues, as it will result in a right turn movement across four lanes of traffic.

The traffic assessments submitted with the modification application does not adequately demonstrate that these impacts are acceptable, and as such, the previous assessment in this regard remains valid. Furthermore, mitigation proposed (i.e. signalisation of the intersection of Pearson St and the Sturt Hwy) relies on the commitment of agencies not party to the development (i.e. TfNSW). TfNSW in their responses have not indicated that they are committed to these works within the timeframe proposed by the Applicant. It is not possible to condition the development as proposed by the applicant as it defers the resolution of the issue for five years, and there is no clear prospect that TfNSW would ever agree to the works proposed and the condition could be satisfied.

For road safety reasons, and for the efficiency and operation of the road network, it is recommended that the condition remains in place, and that left-turn movements from the site for light vehicles to Pearson St remain denied.

The safest option for southbound vehicles, and that has the least impact on the operation of the road network, is for vehicles exiting the site to do so via a controlled intersection, as has been required at the intersection of Bye and Pearson Streets. This enables southbound vehicles to turn right onto Pearson St and not impact on the Pearson-Edward-Sturt-Olympic roundabout.

In addition to the above listed matters, it is considered that the proposed egress arrangements to Pearson St, and the need for additional medians, is likely to increase the potential for impacts on access and egress to adjacent and adjoining properties.

Remaining impacts of the proposed development are unlikely to be significantly altered from previous assessments as a result of the proposed modification.

**(c) - The suitability of the site for the development**

The site has been previously assessed as being suitable for the proposed development. Nothing in these proposed modifications is considered to alter this previous assessment.

**(d) - any submissions made in accordance with this Act or the Regulations**

**Referrals**

The modification application was referred to TfNSW and Council's Traffic Engineer.

### **Notification and Advertising**

In accordance with the requirements of the WWDCP 2010, the modification application was notified consistent with the original application, for a submission period from 20<sup>th</sup> September 2022 to 7<sup>th</sup> October 2022. Upon request from submitters, this submission period was extended to 14<sup>th</sup> October 2022.

### **Public Submissions and those from public authorities**

#### *Submissions from Public Authorities*

A submission was received from TfNSW. This is discussed in the body of the report.

#### *Public Submissions*

14 public submissions were received following the public exhibition period.

13 of the submissions made reference either solely, or at least in part, to the traffic lights required by condition of consent to be installed at the intersection of Bye and Pearson Streets. The modification application does not seek any amendment to conditions relating to the traffic lights, and is seeking amendment only to conditions preventing direct egress from the site to Pearson St.

A modification application under s4.55(2) of the Act does not allow the consent authority to revisit all elements of the consent. Any new conditions or changes to the consent must relate to the same 'planning matter'. The planning matter under assessment in this modification application is the light vehicle egress to Pearson St. The treatment of the intersection of Bye and Pearson Streets is not a matter for assessment.

Of the 13 submissions that made comment on the traffic lights, 4 made reference only to the traffic lights, and did not make any submission on the proposed modification. 1 of these submissions supported the lights, and 3 opposed.

Of the remaining 10 submissions, 9 supported the proposed modification (8 with suggested amendments) and 1 opposed the modification, however this appeared to be on the misunderstanding that the application was a modification to incorporate traffic lights.

Issues relating to access to Pearson St raised in submissions are summarised below:

#### *Proposed exit to Pearson St will better disperse traffic/provision of egress will not impact on operation of roundabout*

The impacts on the traffic network are discussed in part (a)(i) and (b) of this assessment report. It is considered that the proposed egress would have a negative impact on the local traffic network, particularly the Pearson-Edward-Sturt-Olympic roundabout.

#### *Access to the site and medians impacts on opposite properties. Access to the site should be moved further south, not opposite Barbeques Galore, the centre median should be replaced with a painted median, and parking bays installed adjacent to businesses on the on the western side of Pearson St.*

Similar to the traffic lights, the location of the access driveway is not directly related to the proposed modification nor is the proposal for parking bays. The modification application does not propose any amendments to the access from Pearson St. Issues related to impacts on adjacent properties from the access driveway were considered under the original application. The proposed modification would likely further impact on properties opposite as it would result in an expanded median network in Pearson St.

Given the traffic volumes expected to access the site, a painted median adjacent to driveways

would be ineffective at preventing illegal turning manoeuvres (right turns into the site, and right turns out if this modification is approved), and would present a road safety risk.

*Median makes access to Barbeques Galore dangerous as would involve u-turn at roundabout and possible weave / impacts on truck deliveries.*

The proposed modification does not impact upon this matter. Submissions were received at the time of the original Development Application to this end, and the issue was assessed under the original Development Application.

#### **(e) - the public interest**

The proposed modification may result in the operation of the at the Pearson-Edward-Sturt-Olympic roundabout being significantly impacted. This will accelerate the need for a substantial upgrade to this intersection, which would be at considerable cost to the community, and may result in the removal of u-turn options from this location. This is not considered to be in the public interest.

Whilst submissions were not made, a media report in the Daily Advertiser of the 27<sup>th</sup> September 2022 quoted two individuals who opposed the proposed modification to permit egress directly onto Pearson St, whilst another individual was quoted as saying that they “can’t see a major problem” with all egress via Saxon and Bye Streets, as long as the traffic lights were phased appropriately. The article quoted an individual who otherwise made a submission regarding impacts of medians on access.

A separate newspaper report on 10<sup>th</sup> October 2022 quoted a group of individuals who opposed the installation of traffic lights at the intersection of Bye and Pearson Streets. This story quoted an individual who supported the proposed egress from Bunnings who otherwise made a submission. Other individuals quoted did not reference the egress.

Whilst these comments are not submissions, and should not be considered as such, it does demonstrate a wider range of opinions exist in relation to the merits or otherwise of the proposed egress to Pearson St, and it is considered to be in the public interest to give regard to this.

#### **Other Legislative Requirements**

##### **Section 1.7 and Part 7 of the *Biodiversity Conservation Act 2016* (Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats)**

The proposed modifications do not alter the compliance of the development with the Biodiversity Conservation Act 2016.

#### **Council Policies**

Nil

#### **Comments by Council's Officers and/or Development Assessment Team**

Council's other relevant officers have reviewed the application in accordance with Council's processing procedures.

#### **Development Contributions - Section 7.11/7.12 & Section 64 Local Government Act, 1993 and Section 306 Water Management Act, 2000**

Development contributions are unaltered by the proposed modifications.

### Other Approvals

No other approvals have been sought.

### Conclusion

The proposed modification is considered to result in unacceptable traffic impacts, is inconsistent with the requirements of SEPP (Transport and Infrastructure) 2021, and is not in the public interest.

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## RECOMMENDATION

It is recommended that Council refuse modification application DA19/0665.02, to modify Development Consent DA19/0665 for 'Demolition of Existing Structures, Tree Removal and Construction Hardware and Building Supplies, Garden Centre and Ancillary Café' to permit light vehicle egress to Pearson Street, at Lot 1 DP 798753, 64 Pearson St, Wagga Wagga, for the following reasons:-

- A.1 Without upgrade, the proposed development will result in increased and unacceptable traffic impacts on the road network, and in particular on the performance, efficiency and safety of the roundabout at the intersection of Pearson Street-Edward Street-Sturt Highway-Olympic Highway.
- A.2 Due to the traffic impacts on the local road network, Council cannot be satisfied of the matters set out in Section 2.119(2) of *State Environmental Planning Policy (Transport and Infrastructure) 2021*. In accordance with the requirements of the SEPP, if Council cannot be satisfied of these matters it must not grant consent to the modification application.
- A.3 Pursuant to Section 2.122(4)(b)(i) of State Environmental Planning Policy (Transport and Infrastructure) 2021, taking into consideration the comments made by Transport for NSW, the modification cannot be supported due to *'the impact of the cumulative traffic generation resultant from the revised development on the safety, efficiency and ongoing operation of the existing roundabout at the intersection of Pearson Street, Edward Street (Sturt Highway) and Moorong Street (Olympic Highway)'*.
- A.4 Pursuant to Section 2.122(4)(b)(iii) of State Environmental Planning Policy (Transport and Infrastructure) 2021, the modification cannot be supported as the proposed modification will result in increased and unacceptable traffic safety and road congestion impacts, particularly without upgrade to the intersection of Pearson Street-Edward Street-Sturt Highway-Olympic Highway.
- A.5 The development proposes an additional driveway to Pearson Street within 7m of a break in a median strip, inconsistent with control C5 of Section 2.1 of the Wagga Wagga Development Control Plan 2010.
- A.6 Impacts on the Pearson Street-Edward Street-Sturt Highway-Olympic Highway roundabout will accelerate the need for a substantial upgrade to this intersection, which would be at considerable cost to the community, and may result in removal of u-turn opportunities at this point. This is not considered to be in the public interest.

- A.7 To overcome the impacts on the intersection of Pearson Street-Edward Street-Sturt Highway-Olympic Highway, the applicant has proposed to signalise the intersection of Pearson Street and the Sturt Highway within five years. Funding of these works not been clearly identified. This arrangement and the upgrade relies on the agreement of Transport for NSW, and may rely on financial commitment from Transport for NSW, however, the modification is not supported by Transport for NSW.
- A.8 The proposed condition to secure upgrade of the intersection of Pearson Street-Edward Street-Sturt Highway-Olympic Highway does not address the road safety issues previously identified (such as traffic weaving from the exit point to the right lane at the roundabout) in the five year period until the intersection is upgraded, nor is it clear that the intersection upgrade would resolve these (post upgrade).