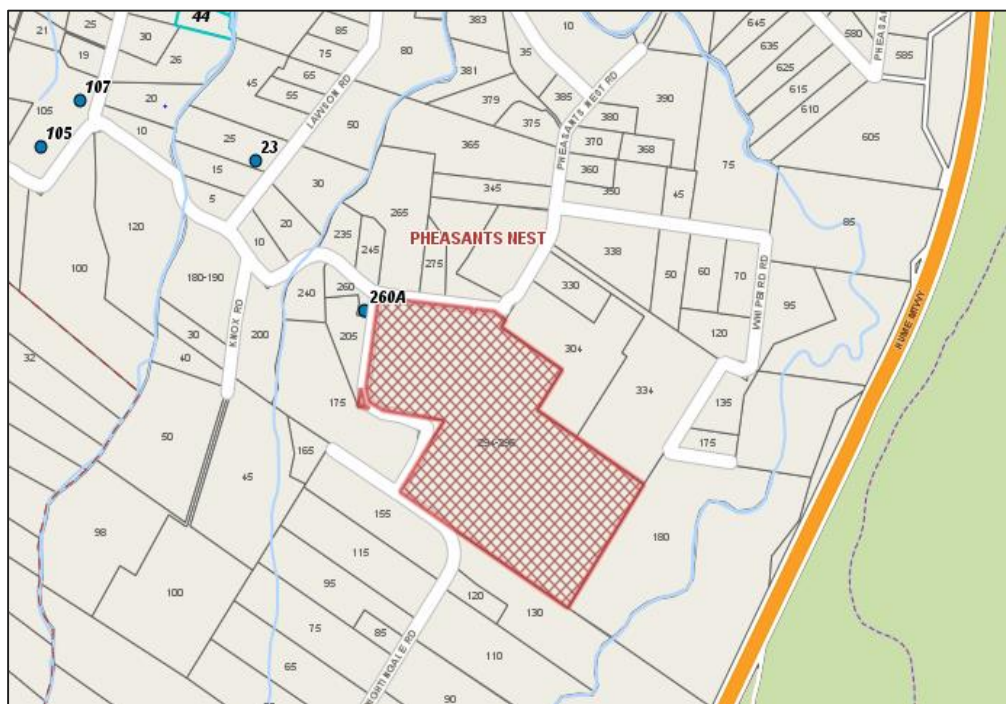


**GR3 – Development Application No. 010.2011.00000568.002 – Modification of Consent – 294- 296 Pheasants Nest Road, Pheasants Nest**

GR3

**Development Application No. 010.2011.00000568.002 – Modification of Consent – 294-296 Pheasants Nest Road, Pheasants Nest**  
278264 010.2011.00000568.001

Growth



LOCATION & ZONING MAP ↑ N

<b>Development Application No:</b>	010.2011.00000568.001
<b>Property Details:</b>	294 – 296 Pheasants Nest Road, Pheasants Nest
<b>Applicant:</b>	GWH Build Ltd.
<b>Owner:</b>	Pirovoc Investments Pty Ltd
<b>Proposal Details:</b>	Modification of Consent – 294-296 Pheasants Nest Road, Pheasants Nest
<b>Zone:</b>	RU1 – Primary Production

**GR3 – Development Application No. 010.2011.00000568.002 –  
Modification of Consent – 294- 296 Pheasants Nest Road, Pheasants Nest**

**EXECUTIVE SUMMARY**

- The purpose of this report is to consider the request to modify development consent 2011-568 approved 20 February 2012 to extend three (3) existing poultry sheds & erect seven (7) additional poultry sheds at 294-296 Pheasants Nest Road, Pheasants Nest.
- A total of 4 submissions were received.
- The application was called up by Council for determination.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that the Section 96 modification application be refused.

**REPORT**

The approved development proposal involved the extension of three existing sheds and the erection of seven (7) new sheds. The approved DA currently comprises:

- 3 existing and 7 proposed sheds
- 43,000 existing and after commissioning the new sheds the farm will hold 162,000 birds
- Hours of operation - 7.00am to 5.00pm
- Increased trucks by 1-2 per year.

The modification request is to revise the layout of the previously approved egg production poultry sheds. The applicant submits that, due to the proponent acquiring additional land adjacent to the original site and impractical earthworks proposed in the original development application, a revised layout is proposed.

As detailed in the plans above, the proposed modification changes involve the relocation of poultry sheds on the new adjoining lot, which results in the relocated sheds being closer to the adjacent poultry farm at 335 Pheasants Nest Road to the northwest as shown in the attachments.

**CONSULTATION**

The subject site is located within the rural area of Pheasants Nest. There are a number of rural developments within the locality, small scale farms and poultry farms.

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**Surrounding Land use**

Immediately surrounding the site are rural developments and residences to the north east and an abandoned poultry farm to the north (No. 335 Pheasants Nest Road).

This rural area is relatively large; there are E4 — Environmental Living zones to the north of the site and E2 — Environmental conservation areas approximately 350m to the east. The Hume Highway is approximately 700m east of the site and is separated from the rural industries by a vegetated environmental zone surrounding the Nepean River.

**Council's Senior Environmental Health Officer (EHO) Comments.**

The development application was discussed with a representative from NSW - Primary Industries (DPI). The following comments from Council's Senior Environmental Health Officer are provided below.

*"Since the original development consent, the Rural Industries Research and Development Corporation have produced an Industry Guideline, 'National Environmental Management System for the Meat Industry – Version 2, December 2014'. While this does relate to meat bird production, I have discussed biosecurity of poultry sheds with the DPI and it is considered that there is a higher biosecurity risk with egg layers due to prolonged production time of around 18 months and more exposure to pathogens over time.*

*The 'National Environmental Management System for the Meat Industry – Version 2', advises that new poultry farms should be sufficiently separated (ideally, by one kilometre) from neighbouring poultry farms to minimise risk of disease transfer.*

*The proposed location of the new sheds is approximately 380m to a neighbouring existing poultry farm. The submitted Environmental reports states that the existing farm (335 Pheasants Nest Road) has not been used for some time and that the sheds are dilapidated.*

*However, there is nothing to stop the owners, or new owners from reinstating the sheds to continue on with poultry production.*

*The subject approved poultry sheds were previously greater than 500m from the said existing poultry farm.*

*The DPI had advised that they would not support the location of the proposed sheds so close to neighbouring poultry sheds."*

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**The representative from DPI provided the following comments back to Council's EHO**

*"My comments are limited to issues associated with biosecurity as discussed on 27 June 2017. Two relevant guidelines with respect to biosecurity buffer distances for intensive poultry farming developments are:*

1. *Best Practice Management for Meat Chicken Production in NSW, Manual 1 (2012) and*
2. *Environmental Guidelines for the Australian Egg Industry (2008).*

*The above guidelines recommend biosecurity buffer distances of at least 1000m between proposed poultry farming developments and existing intensive poultry production farms. In addition to these buffer distances new developments are recommended to maintain a biosecurity buffer distance of at least 500m to nearby intensive poultry breeder farms.*

*I note that the proposed development is within 400m of an existing disused intensive poultry farm. In this case Council may need to determine if this nearby poultry farm is subject to existing land use entitlements."*

Attachment 3 depicts: No 335 Pheasants Nest Road (north-west) property indicating existing disused poultry sheds located within the 500 metre radius of Nos. 294-296.

To reinforce biosecurity of poultry farms, an extract from the 'Best Practice Management for Meat Chicken Production in NSW, Manual 1', is reproduced below.

*(Page 13 & 14 - 3.2.5 - Biosecurity separation)*

*"The risk of disease transmission between farms can be reduced through appropriate farm siting and management. Disease outbreaks (from pathogenic bacteria and viruses) in poultry can spread between farms and significantly affect poultry growing enterprises and the meat chicken industry through substantial losses of birds (including breeding stock if a breeder farm is involved). Breeder farms are normally located remotely from other poultry farms, and maintaining that level of separation can be critical for state or national chicken meat production.*

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*Loss of birds, production capacity and income may be a direct result of disease, or of destruction orders implemented by NSW DPI to control the risk of further disease spread. The risk of disease developing on a farm is influenced by many factors, including the management of litter, feed and water; disinfection of sheds; vermin removal; disposal of used litter and dead birds; and the effectiveness of biosecurity measures adopted for people and equipment entering the farm. The National Farm Biosecurity Manual for Chicken Growers (ACMF, 2010) provides more information on the best ways to control threats from pathogenic microorganisms and viruses. Consideration should also be given to the threat that disease outbreaks may pose to human health through the transmission of bioaerosols, as well as to the possible need to dispose of large numbers of dead birds, with its associated environmental risks and costs. Maximising the separation between farms remains the primary tool for reducing the potential for cumulative impacts on the local amenity and community, such as from bioaerosols, odour, dust, noise or traffic. Although the assessment of disease risk is a business decision for processors and growers, farms that are closely co-located may also create additional costs for government in controlling disease outbreaks and imposing quarantine controls. Current guidelines for controlling an exotic disease outbreak specify a 3-kilometre quarantine zone around affected premises. Although there is no set distance that will uniformly eliminate all risks of disease transfer, generally the greater the distance the lower the risk. When assessing distance, other factors such as topography and prevailing winds should also be considered.*

Best management practice recommendations:

- *Locate new poultry farms as far apart as possible to minimise the risk of disease transfer between farms. There should be a minimum of 1000 metres to other intensive poultry farms (500 metres when there are extenuating circumstances such as farms with a common owner or farms supplying the same processor); 3000 metres to commercial duck farms; and 5000 metres to poultry breeder farms.*
- *Preferably, locate new farms away from waterways and wetlands (ideally 3000 metres) that are used extensively by waterfowl, as these birds can carry avian diseases.*
- *As existing farms may not comply with the recommended biosecurity separation distances, growers proposing to expand their operations should assess the potential commercial risk in consultation with their processor.*

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**External Environment Submission**

As part of the application the applicant provided an Environmental assessment report prepared by Benbow Environmental in support of the section 96 modification and addresses issues related to the proposed changes. The environmental issues addressed by Benbow include noise, air quality (odour), water and stormwater, soil contamination, waste management, hazards, biosecurity, flora, fauna, heritage, visibility, chemicals and traffic. These topics are reproduced below from Benbow's submission:

"Odour - the new shed configuration places the shed with greater than 80 m separation distances to any of the receptors and as such, based on the results produced by Parsons Brinckerhoff Australia Pty Ltd, the 5OU criteria at receptors would not be exceeded."

Comment - the new shed locations are ideal however, they are placed closer to No. 335 Pheasants Nest Road (discontinued poultry sheds), which is a biosecurity concern.

"Noise - The predicted noise levels are expected to comply at all nearest sensitive receptors except R2 where an exceedence of 1 dB(A) was predicted for scenario 3. As the exceedence at R2 is negligible, would only occur for 15-30 minutes in a 24 hour period and the noise levels readily comply with the draft conditions in the PE2 — Noise Mitigation Measures for the Wollondilly Poultry Industry further noise mitigation measures are not considered necessary. Compliance with the noise criteria was achieved at all the considered residential receptors for road traffic noise."

Comment - agreed.

"Waste and Soil - The farm will be supplied with mains water for bird drinking water, cleaning, and office and amenities. Existing onsite bores will not be used. In the unlikely event of water services disruption it is recommended purchasing mains water delivered via tanker truck and onsite dams be utilised only as a last resort.

There is potential for the drainage of external free-range/ scratching areas to result in excessive loads of faecal bacteria, nutrients and turbidity in water resources. The site is in main covered by grass and this would minimise the nutrient accumulation from stormwater runoff. Most importantly, the external areas for the proposed chicken sheds drain to the north, northeast and southwest dam. Therefore, the external areas for the proposed chicken sheds do not drain into the dams that connect to Dry Creek, and this will significantly reduce the nutrient impact into the local waterways. The water from the dams would only be released into the water resource (Dry Creek) during a major rain event.

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This event would dilute the nutrient content of the water minimising the impact to Dry Creek. Furthermore several, areas of the intermittent creek that drains to Dry Creek have substantial vegetation (trees, shrubs and grasses) which would further reduce the impact of nutrients entering the water resource. Therefore the impact from drainage of external free-range/ scratching areas is not expected to be significant.

Comment - should the application be approved, appropriate conditions will be included to ensure this matter is under control.

"Waste - Waste would include general domestic waste, manure and dead birds. The domestic waste would be managed through the domestic waste collection services where the waste would be collected on a weekly basis. The manure would be removed from site at the end of each batch, typically three-four times a year by Recycling Leppington Pastoral Company. The dead birds, are frozen on —site and collected when the numbers are large enough to justify collection. This is usually approximately once a month. The dead birds are collected for disposal by Thiess Services Additionally any wastewater generated would be disposed of as trade waste and would require a trade waste agreement.

Comment - should the application be approved, appropriate conditions will be included to ensure this matter is under control.

Demolition/construction waste would be generated and reused onsite through landscaping works. Groundcover and topsoil will be stripped and stockpiled on site and then used in landscaping and stabilisation of disturbed areas. It is unlikely that excess concrete will be ordered. The new sheds will be prefabricated and assembled on site so waste from the construction of the sheds is not anticipated."

Comment - should the application be approved, appropriate conditions will be included to ensure this matter is under control.

"Chemicals - The potential impacts from the minor quantities of chemicals stored on site are expected to be insignificant. Staff must be trained in handling of chemicals in accordance with safety data sheets (SDS)."

Comment - should the application be approved, appropriate conditions will be included to ensure this matter is under control.

"Fire - The development is relatively low risk of fire, as each of the poultry sheds — considered to be farm buildings under the National Construction Code — are of very low occupancy. Furthermore, a fire event is rare in this industry.

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The most likely sources of ignition would be hot work such as welding, grinding and cutting of steel within the poultry sheds and malfunction of electrical equipment. The risk of an ignition source igniting the litter on the floor of the building is low. There would be strict control of ignition sources on-site. Fire safety requirements will be in accordance with the National Construction Code (NCC) and relevant Australian Standards.

Additionally, the subject site is within the Wollondilly Bushfire Management Committee (BFMC) Area, to which the Bush Fire Risk Management Plan (BFRMP) applies. It is necessary the proponent complete a revised "Guide to Farm FireWise Checklist and Action Plan" available on the RFS website."

"Biosecurity - The potential biosecurity issues and relative safeguards have been discussed. Due to the suitable design of the farm and to the various procedures that will be implement on site, any potential biosecurity risks threatening the poultry operations or the surrounding environment would be kept at a minimal risk level."

Comment - this matter is of concern to Council and DPI, as to ignore that No. 335 Pheasants Nest Road would not continue operating under their previous development approval is not a suitable outcome and may result in a conflict between surrounding operational poultry farms and the DPI guidelines and ultimately biosecurity issues.

"Flora and Fauna - Based on the environmental safeguards in place and also that the proposed development would not significantly alter the vegetation present on site, the development is not expected to impact threatened flora and fauna in the local area or affect the nearby environmental conservation areas."

**335 Pheasants Nest Road.**

A search of Council's records reveals that on 1 February 1989, Council granted approval for a worker's cottage on Lot 121 DP 712873). The Council report indicates that the site was Rural 1(a2) under Interim Development Order No. 17. In addition, the report explained that the said property (in 1989) was used to raise chickens under contract to Ingham's and that the application was made so that each part owner of the property could reside on the property to assist in the operation of the farm.

To this end, the applicant of 294-296 Pheasants Nest Road (the subject modification) was made aware that Council was of the opinion that the modification would be recommended for refusal based on biosecurity restrictions pursuant to the Bio-security Act 2015 and Department of Primary Industry (DPI) guidelines.



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In response, the applicant sought legal advice in which the essence of the advice centred on whether the site at 335 Pheasants Nest Road has 'existing use rights'. As reported above, the site has development approval, however as detailed above, it is acknowledged in a Council report back in 1989 considered that site operated as a poultry farm. Therefore, existing use rights do not apply in this case.

Furthermore, Council's Senior Health Officer visited the property at No. 335 Pheasants Nest Road on the 28 September 2017 and spoke to the owners. (who have objected to this modification). Council's Senior Environmental Health Officer questioned the owners as to their intention for the site in terms of the possible continuance of the poultry farm in the future. The owners indicated that they intend to reactivate the approved poultry farm in the future. No time frame was offered however; for Council, the biosecurity issue of the distance of 294-296 Pheasants Nest Road and No. 335 Pheasants Nest Road still applies and needs to be considered by Council.

**290 Pheasants Nest Road.**

The site at No. 290 forms part of the application as the new site that has been acquired by the applicant and forms part of the modification application. The site No. 290 (Part Lot 2 in DP 220981) contains a locally significant heritage item being - Farm Cottage (LEP - I128). The proposed new location for the poultry sheds would be approximately 480 metres away from the existing Heritage item.

However, it should be noted that the address stated above (290) is in fact noted in Schedule 5 of LEP 2011 as No. 280, Council's GIS does not register No. 280. The LEP description of house number 280 is incorrect; the heritage listed cottage as seen in the attachments is at the correct house number of 290 Pheasants Nest Road (source: google maps). Council's Strategic Section is currently investigating this matter for future correction.

**Substantially the same development**

The submitted Section 96 (1A) of the EPA Act states that a consent authority may modify a development consent if "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."

**Comment** - The proposed modification as outlined above in the assessment report is considered to potentially have an impact of the future operations of No. 335 Pheasants Nest Road.

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Notwithstanding, the assessing officer’s view is that the proposed amendments do not relate to the same site/development as per the original DA. For the reasons above, the consent authority is not satisfied that the modification represents substantially the same development for which consent was originally granted. The report demonstrates:

- new land applies
- new biosecurity rules and controls are raised
- the subject land now contains a heritage item.

**Is the consent current?**

Yes

**Is the proposal substantially the same development?**

No

**Does the modification require consultation with the relevant Minister or another public authority or approval body?**

No

**Has the application been notified in accordance with the regulations?**

Yes

Comment - Consideration of 4 submissions are detailed below

**CONSULTATION**

Title	Title
DPI	<p>The DPI have requested that Council give planning consideration to the location of each poultry farms at Nos. 294-296 Pheasants Nest Road and No. 335 Pheasants Nest Road with regards to The DPI's guidelines. However, the most comments from the DPI indicate support of the modification for the following reasons.</p> <ol style="list-style-type: none"> <li>1. The adjoining property has not been used for poultry production for over 10 years;</li> <li>2. The biosecurity guidelines apply to existing poultry enterprises;</li> <li>3. Poultry sheds on the nearby farm are in a significant state of disrepair and would require development consent to comply with current industry production standards and expectations;</li> <li>4. The adjoining property no longer has a contract with a poultry processing company in</li> </ol>



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Title	Title
	<p>NSW, without which it will not be able to operate as an intensive poultry meat production facility.</p> <p>Comment: Council has seriously considered the above issues and is of the view that the subject property at 335 Pheasants Nest Road can re-activate the poultry farm in the future without any further Development Application.</p>
Council's EHO	<p>The following comments have been provided by Council's Senior Environment Health Officer. "The 'National Environmental Management System for the Meat Industry – Version 2', advises that new poultry farms should be sufficiently separated (ideally, by one kilometre) from neighbouring poultry farms to minimise risk of disease transfer.</p> <p>The proposed location of the new sheds is 380m to a neighbouring existing poultry farm. While the report states that the existing farm has not been used for some time and that the sheds are dilapidated, there is nothing to stop the owners, or new people should the farm change ownership, from reinstating the sheds to continue on with poultry production. The previously approved poultry sheds were &gt;500m from the existing poultry farm.</p> <p>It is for the above reasons that the modification to consent should be refused."</p>
Council heritage advisor	<p>The Heritage Advisor has provided the following comments and conditions if approved:</p> <ul style="list-style-type: none"> <li>*Provide a landscape buffer to be:</li> <li>*30m between sheds and property boundaries, except where driveway, dams and other farm infrastructure is required.</li> <li>*Locally provenance native plants consistent with the Shale Sandstone Transition forest ecological community.</li> <li>*Show on a landscape plan for assessment by council.</li> <li>*Install prior to issue of a construction certificate.</li> </ul> <p>If approved, conditions of consent will apply.</p>

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**FINANCIAL IMPLICATIONS**

The developer contributions payable are not applicable.

**SUBMISSIONS**

The proposed modification was notified to surrounding residents for 15 days from the 30 May 2017.

Four (4) submissions were registered with Council. Their concerns are listed below with comments from the assessing officer.

Concern	Comment
<p>1.* we have a son with respiratory issues *air born contaminates and pollutants will affect our drinking water as Pheasants nest residents are on tank water *we have a swimming pool, phosphates cause a major problem with the clarity and quality of a pool, not to mention the ongoing expense for us to continually correct this problem. *There are currently three sheds and now it is to be seven more sheds. *Where are they being relocated from? Clearly not from the property. * how many birds are allowed in the current sheds?*how many birds will be in the new sheds? *is there a traffic management plan or a vehicle impact study. How may truck movements will there be daily? * has there been an air, noise and water impact study? *the state of our roads is another major concern as the roads are narrow and generally in poor condition. With the extra traffic, in particular trucks, this will only make the roads worse.</p>	<p>The proposed section 96 (1A) will maintain the already approved existing 3 sheds plus 7 new poultry sheds comprising 162,000 birds.</p> <p>Council has an issue with the new acquired lot being utilised for the location of part of the approved 7 sheds (2) being positioned on this allotment.</p> <p>Council gave consideration to traffic issues associated with the original development application and provided appropriate conditions of approval. The proposed modification does not alter the number of sheds, birds, or access.</p> <p>The applicant has submitted an environmental report, which has in part been reproduced above.</p> <p>A check of Council’s records show that previous compliance action has been taken in 2016 relating to unauthorised fill and truck movements however no current action is outstanding.</p>
<p>2. Is the poultry farm operation free range</p>	<p>From the information provided by the applicant, the operation is a free range farm continuing to produce free range eggs.</p>

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Concern	Comment
3. We are concerned with the biosecurity issues associated with this application, including the proximity of this proposal to existing surrounding dams on other properties.	This matter is of concern to Council due to close proximity.
4. The proposed modification extends the poultry production area and sheds considerably further west, closer to our property , imposing significantly more visual impact for our residence Potential greater truck and husbandry traffic movements and noise impact.	The proposal has indicated that there is no increase in truck movements as outlined in the original application. The intension to relocate poultry sheds on the adjoining newly acquired property, does bring them closer to residential properties, and is of concern to Council.

Growth

Consideration of relevant Section 79C matters:

Assessment of the proposed modification poses significant additional detrimental impacts on the adjoining and surrounding properties, greater or different to that already considered under the original development application.

The proposed modification extends poultry sheds closer to the disused poultry sheds at No. 335 Pheasants Nest Road and other residential properties, thus creating conflict with the DPI's guidelines for poultry farms. It is the view of the assessing officer that Council is required to seriously consider the impacts on poultry farms and their location to each other and residential properties.

Notwithstanding the detailed assessment undertaken by the applicant's Consultants, the proposed relocation of poultry sheds onto the new adjoining land introduces poultry sheds closer to residential properties to the west and northwest and to No.335 Pheasants Nest Road, that has old disused poultry sheds, which pose a future potential biosecurity risk in terms of an appropriate buffer distance between poultry farms as required by the DPI guidelines.

Moreover, the poultry farm operations are closer to the heritage item of 290 Pheasants Nest Road and are considered detrimental to the item and its curtilage.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Approved shed location on smaller lot
2. Modification to shed location on larger lot
3. Photographs of disused poultry sheds at No. 335 Pheasants Nest Road
4. Aerial location of subject site and adjacent No. 335 Pheasants Nest Road poultry farm.
5. Location of heritage dwelling at No. 290 Pheasants Nest Road.

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**RECOMMENDATION**

That the modification request to vary DD010.2011.0000568.001 for Intensive Agriculture on Nos. 294-296 (being Lot 5 DP1214896) Pheasants Nest Road, Pheasants Nest be refused on the following grounds:

1. The consent authority is not satisfied that the modification represents substantially the same development for which consent was originally granted. The report demonstrates:
  - new land applies
  - new biosecurity rules and controls are raised
  - the subject land now contains a heritage item
  - the proposal is closer to residential properties.
2. The revised poultry shed location poses a future potential biosecurity risk in terms of an in appropriate buffer distance between poultry farms and therefore is contrary to the Department of Primary & Industry Guidelines outlined below:
  1. *Best Practice Management for Meat Chicken Production in NSW, Manual 1 (2012) and*
  2. *Environmental Guidelines for the Australian Egg Industry (2008).*
3. The proposed relocation of poultry sheds onto the heritage listed property at 290 Pheasants Nest Road - farm cottage (LEP 2011 Schedule 5 item - I128) would compromise the local significance of the item and surrounding grounds.
4. The proposed relocation of poultry sheds to the western area of the subject site will have a detrimental impact on surrounding residential properties by way of odour, air borne contaminates and pollutants.
5. The proposal is not considered to involve minimal environmental impact and therefore, is not substantially the same development.