



190433(CSR) BJ/BM

23<sup>rd</sup> August 2023

Maitland City Council  
PO Box 220  
MAITLAND NSW 2320

**PROPOSED S4.55 (1A) MODIFICATION  
OF DA/2021/1662  
ONE (1) INTO ONE HUNDRED AND NINETY-THREE (190) LOTS TORRENS TITLE RESIDENTIAL  
SUBDIVISION IN TWO STAGES**

**1. INTRODUCTION**

On behalf of Avid Property Group Pty Ltd ("Avid"), Council is requested to modify DA/2021/1662 pursuant to the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979. The modification proposed is for the reconfiguration of staging of the approved development to allow for the steady release of residential lots due to the slow down of the market as a result of the rising interest rates.

**2. DA/2021/1662**

DA/2021/1662 was approved on 9<sup>th</sup> May 2023, consenting to a 190-lot residential subdivision over two (2) stages (Stages 71 and 72).

DA/2021/1662 is one of the multiple DAs which make up the Waterford development which is currently under construction within the Thornton North Urban Release Area (TNURA). Stages 71 and 72 are the south eastern portion of the Waterford development and connects to the approved Stage 56 (DA/2021/1502) to the west.

**3. AMENDMENTS**

**3.1 Staging**

The proposed amendment for staging is to release smaller stages in response to the slowing market and rising costs. Recent increases in interest rates have resulted in higher holding costs along with experiencing increases to construction costs. By staging the development into smaller stages, it will allow for lower upfront development costs. A comparison of the approved and proposed staging is provided within Figure 1.

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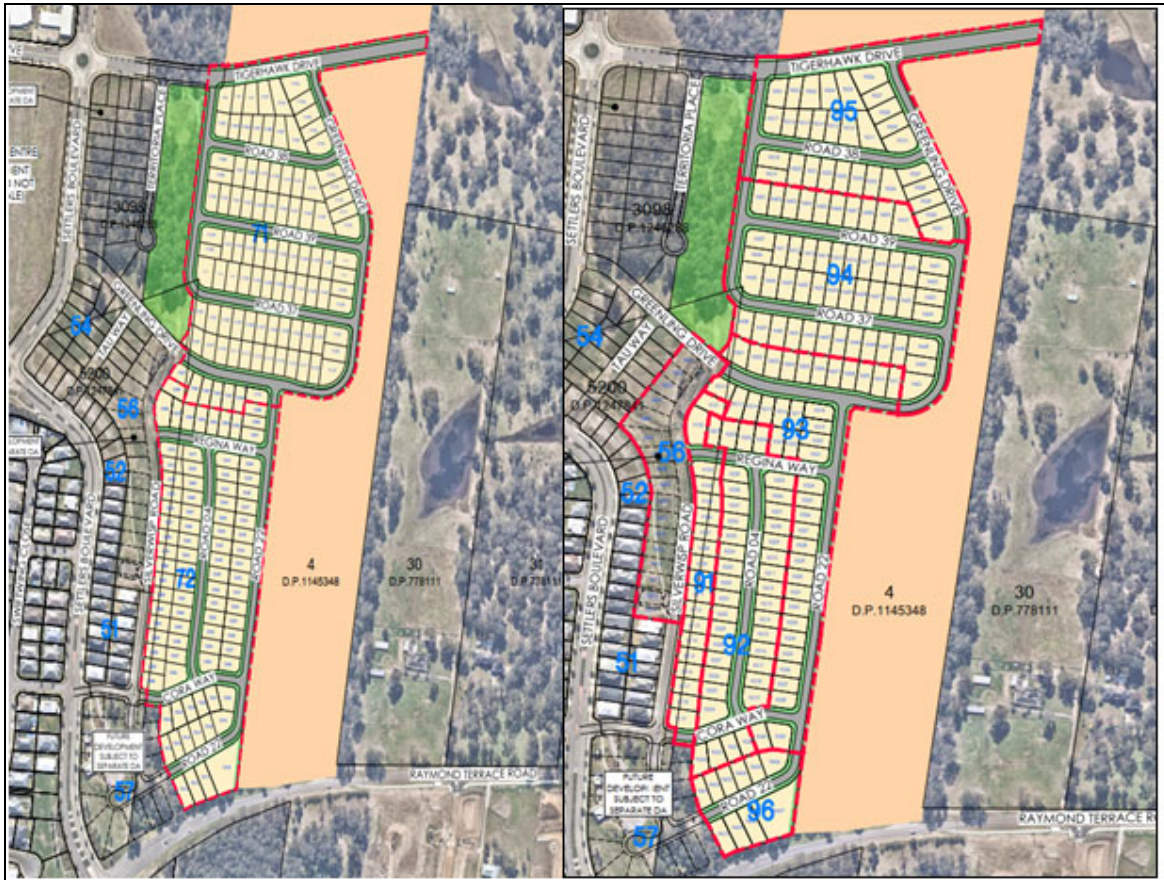
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**Figure 1: Approved and Proposed Staging Plan**

The construction of Tigerhawk Drive has been placed within proposed Stage 95. This is primarily to allow additional time to source and place fill at the former quarry located within proposed Stages 94 and 95. This sub-staging would provide the ability to release early stages while allowing the developer time to fill the abandoned quarry site. Deferring the quarry filling allows time to source nearby suitable fill, ensuring higher quality fill material and less disturbance on the Council Roads and to the residents within the locality.

Tigerhawk Drive acts as an east/west distributor road for the TNURA. The proposed staging includes Tigerhawk Drive in Stage 95, and is anticipated to be completed in 3-4 years which is well before they development to the east requires the transport link. Further, Tigerhawk Drive is also attached to a stage with 31 lots, which ensures there is commercial incentive to complete that stage, giving Council security in this regard.

There are no other amendments proposed for the subject proposal. A complete set of amended subdivision plans have been provided as Attachment 1.

**4. DETAILS OF AND JUSTIFICATION FOR PROPOSED MODIFICATION**

To accommodate the proposed modifications, the following conditions require amendment (**red** = additions; ~~strike through~~ = deletions):

### Condition 1 - Amend

The development shall be carried out in accordance with the stamped approved plans and documentation as detailed in the following schedule and any amendments arising through conditions of this consent or as shown in red colour on the plans:

Plans prepared by: ADW Johnson			
Plan Ref No.	Drawing Number	Issue	Date
Overall Masterplan	<del>190433(71-72)-DA-105</del>	€	<del>1 March 2023</del>
	190433(91-96)-DA-105	E	5 July 2023
Details Plan Stage 71	<del>190433(71-72)-DA-106</del>	€	<del>1 March 2023</del>
	190433(91-96)-DA-106	E	5 July 2023
Details Plan Stage 72	<del>190433(71-72)-DA-107</del>	€	<del>1 March 2023</del>
	190433(91-96)-DA-107	E	5 July 2023
Overall site plan	<del>190433(71-72)-CENG-002</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-002	D	5 July 2023
Temporary Servicing Plan	190433(91-96)-CENG-003	€ D	5 July 2023
Detail plan sheet 1	<del>190433(71-72)-CENG-101</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-101	D	5 July 2023
Detail plan sheet 2	<del>190433(71-72)-CENG-102</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-102	D	5 July 2023
Detail plan sheet 3	<del>190433(71-72)-CENG-103</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-103	D	5 July 2023
Detail plan sheet 4	<del>190433(71-72)-CENG-104</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-104	D	5 July 2023
Services Plan sheet 1	<del>190433(71-72)-CENG-401</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-401	D	5 July 2023
Services Plan sheet 2	<del>190433(71-72)-CENG-402</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-402	D	5 July 2023
Services Plan sheet 3	<del>190433(71-72)-CENG-403</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-403	D	5 July 2023
Services Plan sheet 4	<del>190433(71-72)-CENG-404</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-404	D	5 July 2023
Site Regrading Plan	<del>190433(71-72)-CENG-501</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-501	D	5 July 2023
Signage and line marking sheet 1	<del>190433(71-72)-CENG-701</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-701	D	5 July 2023
Signage and line marking sheet 2	<del>190433(71-72)-CENG-702</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-702	D	5 July 2023
Signage and line marking sheet 3	<del>190433(71-72)-CENG-703</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-703	D	5 July 2023
Signage and line marking sheet 4	<del>190433(71-72)-CENG-704</del>	€	<del>3 March 2023</del>
	190433(91-96)-CENG-704	D	5 July 2023
Waterford Southern Site Staging Subdivision Plan Stage 56, 91-96	<del>190433-SK-344</del>	B	<del>17 August 2022</del>
	190433-SK-386	B	1 May 2023

**Reason/Justification**

To refer to the amended plans.

**Condition 4 – Amend**

*The development shall be carried out in two consecutive stages as shown on the approved site plan as follows:*

- ~~○ Stage 71 with 100 lots; and~~
- ~~○ Stage 72 with 90 lots.~~
  
- Stage 91 with 19 lots;
- Stage 92 with 39 lots;
- Stage 93 with 40 lots;
- Stage 94 with 51 lots;
- Stage 95 with 31 lots; and
- Stage 96 with 10 lots.

**Reason/Justification**

To refer to the amended plans.

**Condition 11 – Amend**

*Street and pathway lighting shall be provided in accordance with the requirements of Council and the power supply authority:*

- Generally based on Australian Standard AS 1158 categories P5;
- Providing lighting for the public pathway adjacent to lots ~~7132, 7108 and 7210~~ 9438 and 9301;
- Providing “cut-off” luminaries (such as “Aeroscreen” or similar);
- Adopting category V intersection lighting at Tigerhawk and Greenling Drive intersection.

**Reason/Justification**

To refer to the amended plans.

**Condition 41 – Amend**

*A drainage design shall be prepared by a suitably qualified and experienced drainage engineer, in accordance with Council's Manual of Engineering Standards. The major system requirements shall include, but not limited to, the following:*

*(a) Generally in accordance with the approved drainage plan by ADW Johnson (ref: 190433, revision € D).*

**Reason/Justification**

To refer to the amended plans.

### **Condition 47 – Amend**

*Prior to issue of the Subdivision Works Certificate for the road, drainage, public landscaping and civil works an engineering design shall be prepared by a suitably qualified and practising engineer, in accordance with Council's Manual of Engineering Standards (MOES), and this consent. The design of the following shall be incorporated:*

- a) Remove the footpath connection from Road 22 through lot 7210 9607;*
- b) Detailed culvert design for the culvert crossing under Tigerhawk Drive.*

### **Reason/Justification**

To refer to the amended plans.

### **Condition 50 – Amend**

~~*Prior to issue of the Subdivision Works Certificate for the road, drainage, public landscaping and civil works an engineering design shall be prepared by a suitably qualified and practising engineer, in accordance with Council's Manual of Engineering Standards (MOES), and this consent. The design of the following shall be incorporated;*~~

- ~~*a) Remove the footpath connection from Road 22 through lot 7210;*~~
- ~~*b) Detailed culvert design for the culvert crossing under Tigerhawk Drive*~~

### **Reason/Justification**

This condition has been repeated.

## **5. REQUIREMENTS FOR A SECTION 4.55(1A) MODIFICATION**

### **5.1 Relevant Issues under Section 4.55(1A)**

To lodge an amendment under Section 4.55(1A) of the Act, the applicant needs to prove that the modifications will involve minimal environmental impact, as follows:

#### **“(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*

**Comment:** The proposed amendments are considered minor in comparison to the overall development and will have no more environmental impact than as originally approved under this DA given that the footprint and lot yield of the development have not increased.

- (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*

**Comment:** The proposed amendments will continue to approve a residential subdivision in the same configuration. The proposed amendments will simply amend the staging and the development therefore remains entirely the same as the original consent.

- (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”.*

**Comment:** Given the minor nature of the proposed changes and the fact that no changes are proposed which would alter any future development potential on future stages, re-notification is not considered necessary.

## 5.2 Relevant Issues under EPA Regulation 2021

Section 100 of the Environmental Planning and Assessment Regulation 2021 sets out additional requirements that all modification applications must comply with. The relevant requirements and how they have been complied with are set out in the following table:

SECTION 100 REQUIREMENTS	COMMENT
<i>(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:</i>	
<i>(a) the name and address of the applicant,</i>	See Planning Portal information
<i>(b) a description of the development that will be carried out under the development consent,</i>	Described within Section 2.
<i>(c) the address and folio identifier of the land on which the development will be carried out,</i>	See Planning Portal information
<i>(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,</i>	Described within Sections 3 & 4.
<i>(e) whether the modification is intended to— (i) merely correct a minor error, misdescription or miscalculation, or (ii) have another effect specified in the modification application,</i>	Discussed within Section 5.
<i>(f) a description of the expected impacts of the modification,</i>	Discussed within Section 5.
<i>(g) an undertaking that the modified development will remain substantially the same as the development originally approved,</i>	Discussed within Section 5.
<i>(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,</i>	N/A

(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,	N/A
(j) whether the modification application is being made to— (i) the Court under the Act, section 4.55, or (ii) the consent authority under the Act, section 4.56.	N/A

### 5.3 Relevant Issues under Section 4.15(1)

Under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the following matters need be considered as part of the assessment of the application:

(a)(i) the provisions of any environmental planning instrument

#### State Environmental Planning Policies (SEPPs)

The proposed modifications to the development are not inconsistent with any SEPPs.

#### Local Environmental Plans (LEPs)

*Maitland Local Environmental Plan 2011 (MLEP 2011)*

The proposed amendments do nothing to alter the classification of the development as a subdivision, and does not represent any form of non-compliance, or deviation from the original consent in terms of lot size compliance.

(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 Planning 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 environmental planning instruments relevant to the application.

(a)(iii) any development control plans

The amended plans do not impact the way in which the original DA was assessed under the DCP i.e. no new non-compliances have occurred as a result of the proposed changes.

(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,

N/A

(a)(iv) any matters prescribed by the regulations

There are no matters prescribed by the regulations relevant to the application.

(b) the likely impacts of the development

## **Context and Setting**

The proposed modifications will have no impact on the context and setting of the subdivision as originally approved under this DA.

## **Access, Transport and Traffic**

The proposed modification would not affect the existing access, transport or traffic that was previously approved under the DA. Access to each stage will be provided by the preceding stage and temporary turning heads will be provided on Greenling Drive and Regina Way as per Maitland's Manual of Engineering Standards. As discussed above, by sub-staging the proposed development, it would allow for the developer to source nearby fill which would reduce the impacts on traffic with works being completed in each sub-stage which would lower the impacts to the local road and disturbance to the local community.

It is noted that the approved Tigerhawk Drive has been proposed within Stage 95, being one of the later proposed stages. Even though Tigerhawk Drive is a distributor road providing the essential east/west connection, the future development would not require this connection in the near future. Stage 95 is expected to be complete in the next 3-4 years being sufficient time for the connection to the eastern portion of TNURA.

## **Landscaping**

The proposed modifications will have no impact on the landscaping as approved under this DA.

## **Earthworks/Retaining**

The proposed modifications will have positive impacts in regards to earthworks as described above and would also reduce the visual impacts for the surrounding residents.

## **Utilities**

The proposed modifications will have no impact on utilities.

## **Stormwater, Drainage and Water Quality**

The proposed modification will have no impact on stormwater, drainage and water quality. Temporary stormwater provisions have been provided for each stage and would not have additional impacts to that originally approved.

Stages 91-93 and Stage 96 will drain to the north through the minor and major stormwater infrastructure between Silverwisp Road, Road 4 and Road 22 respectively, toward Greenling Drive to be treated by the proposed water quality basins within Stage 55 (DA/2018/2022:3). From there, treated flows are discharge to the north per the approved DA. Temporary tail out drains will be provided to inter allotment drainage lines and will be connected to the subsequent stages as shown within Attachment 2. Stage 94 will drain to the west, and will drain via Road 39 into the central basin in the Stage 55 drainage corridor. Similarly Stage 95 will drain west to the lower basin.



The stormwater network discharge locations and basins have not altered to that which was approved under the original DA.

### **Flora and Fauna**

The proposed modification will have no additional impact on matters of flora and fauna given that the proposed development footprint is not changing.

### **Acid Sulphate Soils**

The proposed modifications will have no additional impact on acid sulphate soils.

### **Social and Economic Impacts**

The social and economic impact of the proposed modifications will only be positive through facilitating the most optimal construction sequencing across the large development site while creating a lower disturbance level to the general community.

### **Waste Management**

The proposed amendments will have no impact on waste management beyond that already assessed under this DA.

### **Bushfire**

There have been no changes to the proposed plans which would impact the existing General Terms of Approval issued by the NSW Rural Fire Service.

### **Site Design and Internal Design**

The site design and internal design of the approved layout will remain unchanged.

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

The subject site remains entirely suitable for the proposed development as previously assessed by Council.

*(d) any submissions made in accordance with the Act or regulations*

As discussed above, it is not anticipated that the proposed modifications would require public notification.

*(e) the public interest*

The proposed modifications will only have beneficial impacts to the economic and social fabric of the development as discussed above.

## 6. CONCLUSION

Having regard for the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, it is considered that the amended proposal is substantially the same as that originally approved by Council and that no prejudice will be caused to other persons as a result of the proposed modification.

Should there be any further enquiries, please do not hesitate to contact me on 4305 4300. Alternatively, I may be contacted via e-mail on [benj@adwjohnson.com.au](mailto:benj@adwjohnson.com.au).

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Ben Jia'.

Ben Jia  
**Town Planner**  
**ADW JOHNSON**



## Attachment 1

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REVISED DA SET



## **Attachment 2**

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REVISED CENG SET