



Proposed Section 4.55 (2) Modification  
DA/2021/1460

Modification of Approved Subdivision – Stage 0 and 8 to 15

799 New England Highway and 70 Christopher Road, Lochinvar

November 2024

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## 1 Introduction

This Section 4.55(2) modification has been prepared on behalf of Urban Land and Housing.

Development consent DA2021/1460 was approved by Maitland City Council on 9 May 2023 for a Two (2) into Three Hundred and Twelve (312) Lot Torrens Title Subdivision, including a local park.

This Section 4.55(2) application seeks to modify development consent DA2021/1460 to amend the approved Overall Master Plan, Preliminary Civil Plans, Landscape Plan and Stormwater Management Plan listed in Condition 1 for the purpose of improved drainage infrastructure and coordination between development to the north and west.

A discussion on the proposed changes is provided in Section 3.0 of this report.

Amended plans that are the subject of this modification application are attached in the Appendices to this report.



## 2 Site Analysis

### 2.1 Site Description

The real property description of the site is Lots 1 and 2 DP 1306134, and Lot 310 DP 1298400 located at 70, 71 and Christopher Road, Lochinvar. It is noted that the lot details associated with the site have been amended since the original approval (Lot 32 DP 1281200, Lot 31 DP 1281200 and Lot 1 DP 1280661).

The subject land is positioned off the southern side of New England Highway between Winders Lane to the east and Station Lane to the west. The site is positioned south of the approved stages 1 to 7 of the Lochinvar Ridge development.

Currently the site is vacant and is largely cleared of vegetation. Earthworks have been undertaken within the northern portion of the site to accommodate preliminary works for stages 0, 8 and 9. A Subdivision Works Certificate (SWC) has been approved for these stages.

**Figure 1** illustrates the existing conditions of the subject site through an aerial photograph. Note the development works area approved under DA2021/1460 does not constitute the whole site and is confined to the portion of the land illustrated by the red outline.



Figure 1 Aerial Photo of Site (Source: Nearmap; Image Date 06.10.2024)



## 2.2 The Locality

The site is located within the Lochinvar Urban Release Area (URA) in the Maitland Local Government Area (LGA). The area surrounding the site is undergoing change which is facilitated through the approval and construction of smaller residential lots occurring as part of the strategic vision of the Lochinvar URA. Land to the north and west of the site currently contains residential development or is currently being developed for residential purposes. Land to the south and east comprises a mixture of rural and rural-residential properties. It is understood that land to the south west and west of the site is to be developed for residential development in the future in accordance with the Lochinvar URA.

The site and surrounding lands are shown in the aerial photograph in **Figure 2**.



Figure 2: Aerial photo for the site and surrounds (Source: Nearmap; Image Date 06.10.2024)



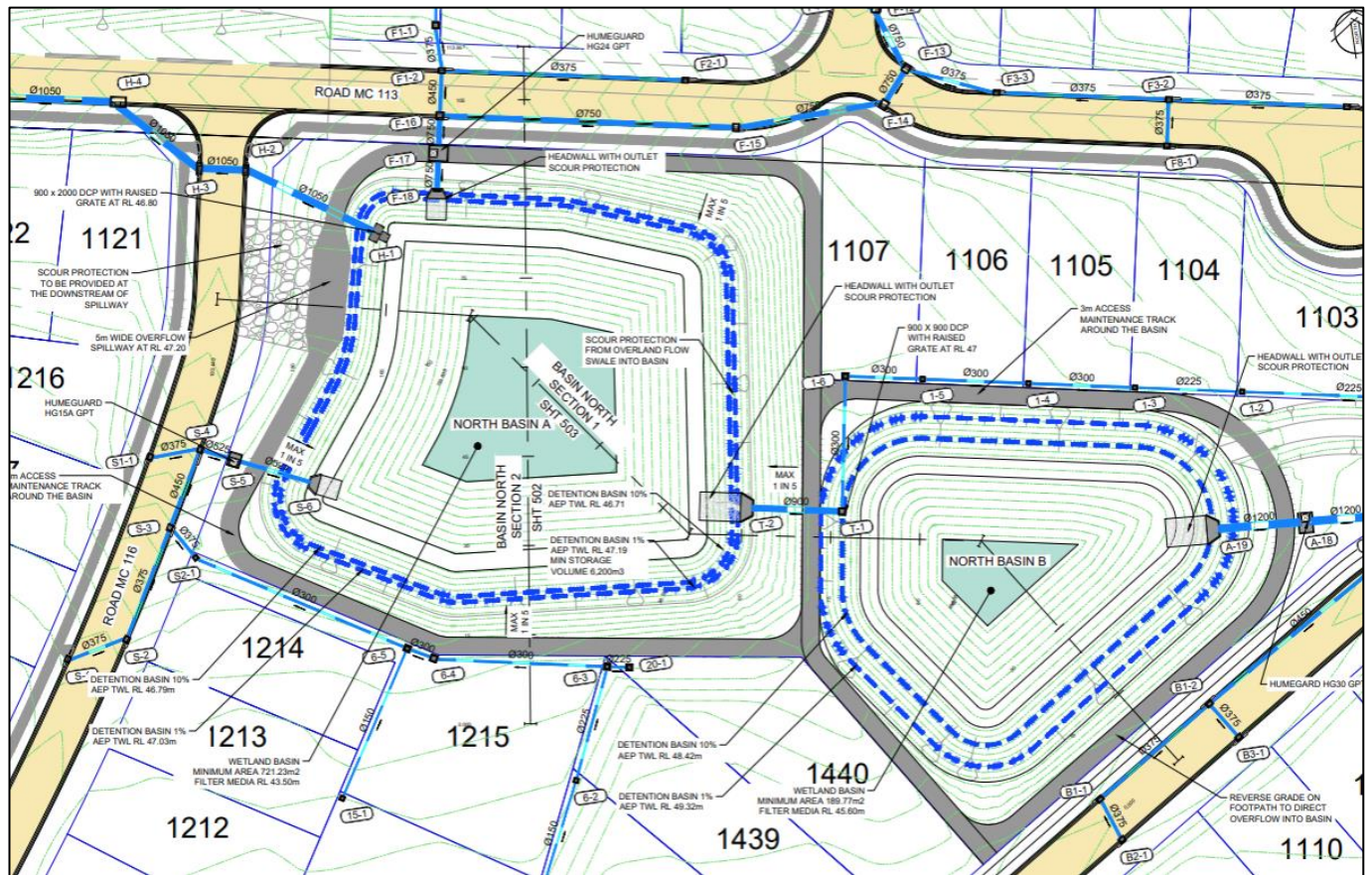
### 3 Proposed Modifications

The proposed modifications are outlined under subheadings below.

#### 3.1 Modification to Detention Basins

The modification proposes to increase the size and volume of the detention basins situated within Stage 11A and Stage 12 of the proposal to reduce post-development discharge in accordance with Councils stipulated discharge requirements.

The detention basin within Stage 11A, known as the north basin, is proposed to be segmented into two basins (upper and lower) and increased in size and volume. The modification also seeks to amend the basin type from a dry basin to wet basin. This amendment will require modification to the lot layout within stages 11A, 12 and 14, as discussed in Section 3.2 below. An extract of the modified detention basin is provided in **Figure 3**. **Figure 4** provides an extract of the stamped approved plans for comparative purposes. Refer to Appendix A for further details.



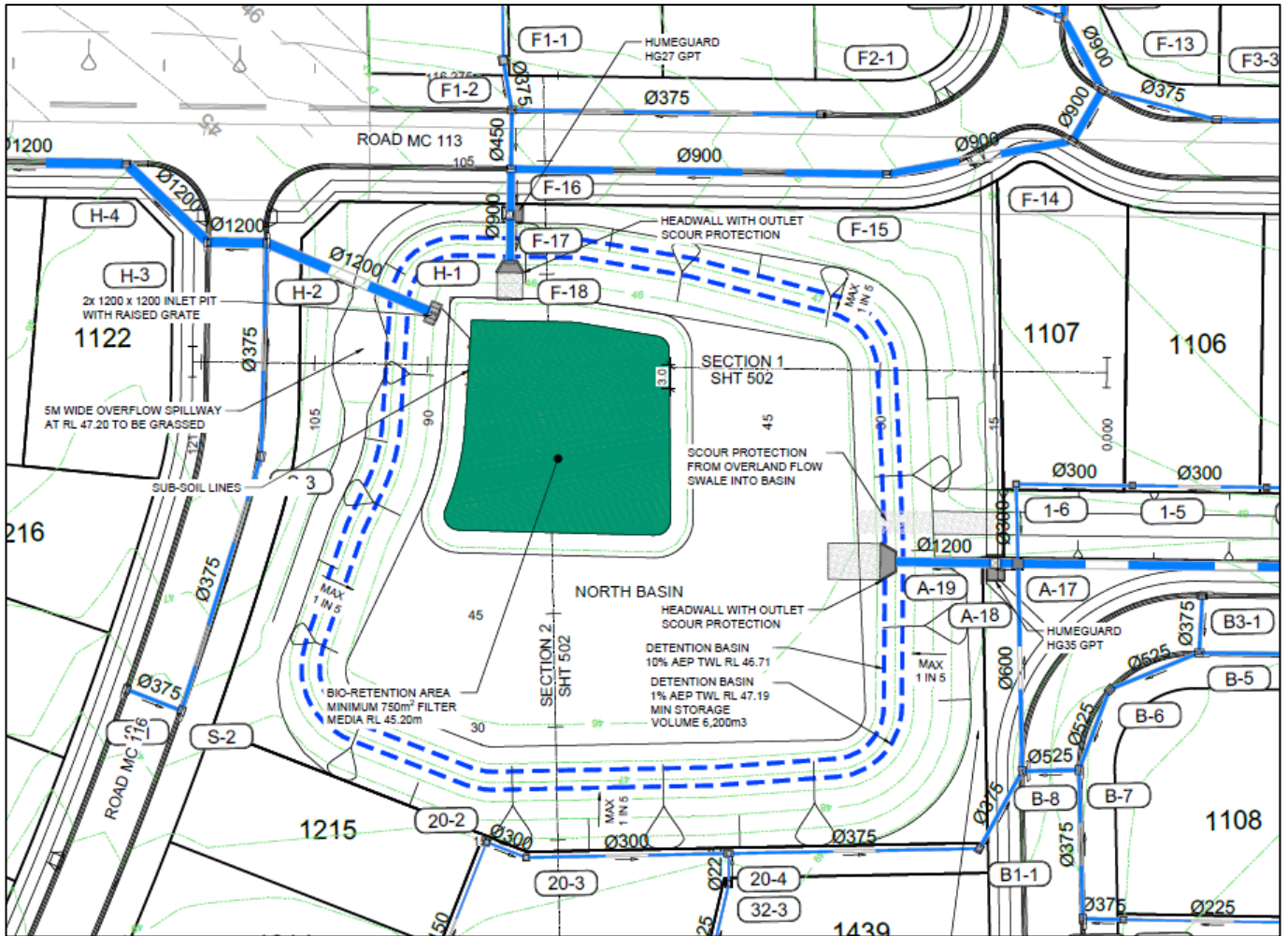


Figure 4: Extract of Approved North Basin under DA/2021/1460 (Source: BRS, 2023)

The detention basin within Stage 12, known as the south basin, will be extended in length and increased in size and volume. This detention basin will also be converted to a wet basin from the previously approved dry basin. An extract of the modified detention basin is provided in **Figure 5**. **Figure 6** provides an extract of the stamped approved plans for comparative purposes. Refer to Appendix A for further details.



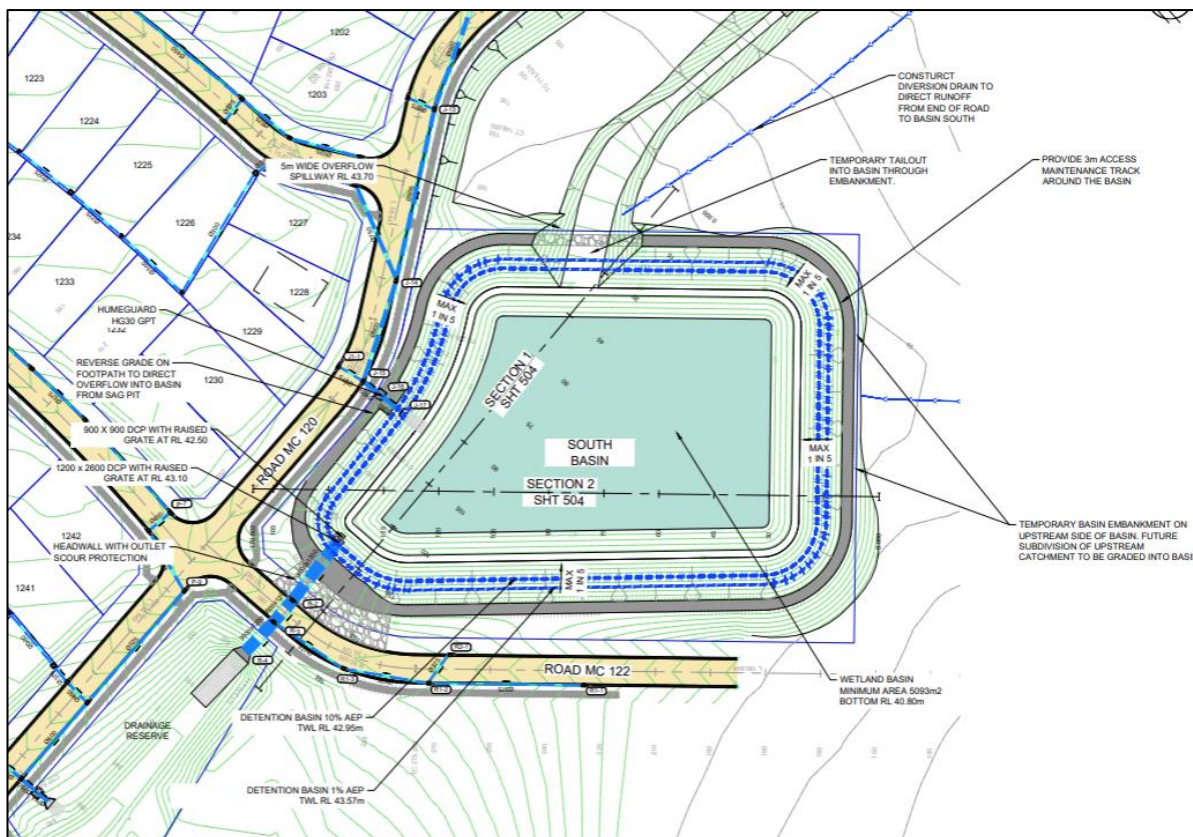


Figure 5: Extract of Proposed South Basin (Source, BRS: 2024)

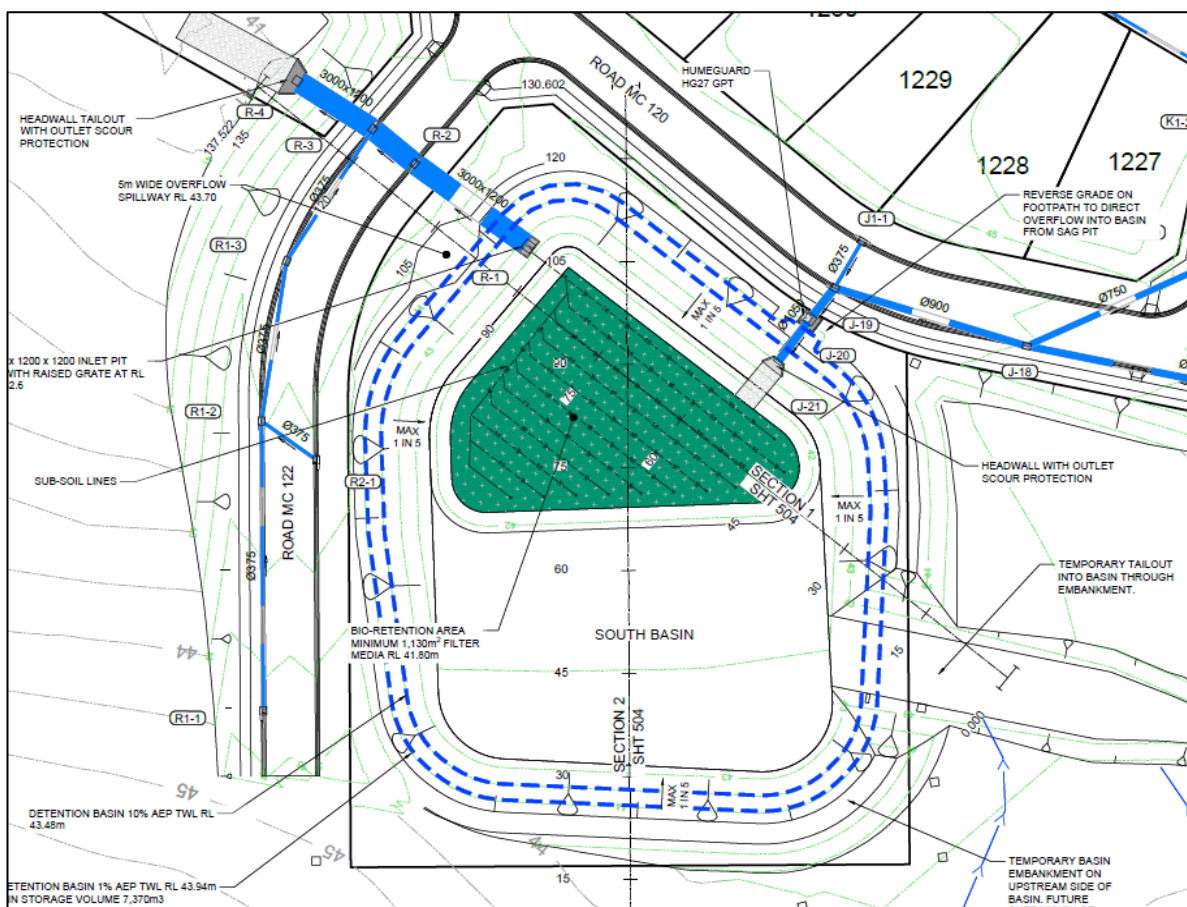


Figure 6: Extract of Approved South Basin under DA/2021/1460 (Source: BRS, 2023)

These works are to occur prior to the lodgement of the SWC for the other stages of the approval.

### 3.2 Modification to Lot Layout – Stage 11A, 12 and 14

The modification proposes to amend the lot layout of parts of Stage 11A, 12 and 14 to accommodate the proposed changes to the north basin, as discussed in Section 3.1 above. The modification will require a restructuring to the proposed lots surrounding the basin, resulting in the following –

- Modification to a total of 27 lots.
- Loss of a total of one (1) lot.
- Removal of one road (Road MC114) and proposed design modification of another (Road MC 118).
- Adjustment to retaining wall locations.
- Adjustment to drainage to facilitate new road and lot arrangement.

An extract of the proposed lot layout incorporating modifications is provided in **Figure 7**. **Figure 8** provides an extract of the stamped approved plans for comparative purposes. Refer to Appendix A for further details.

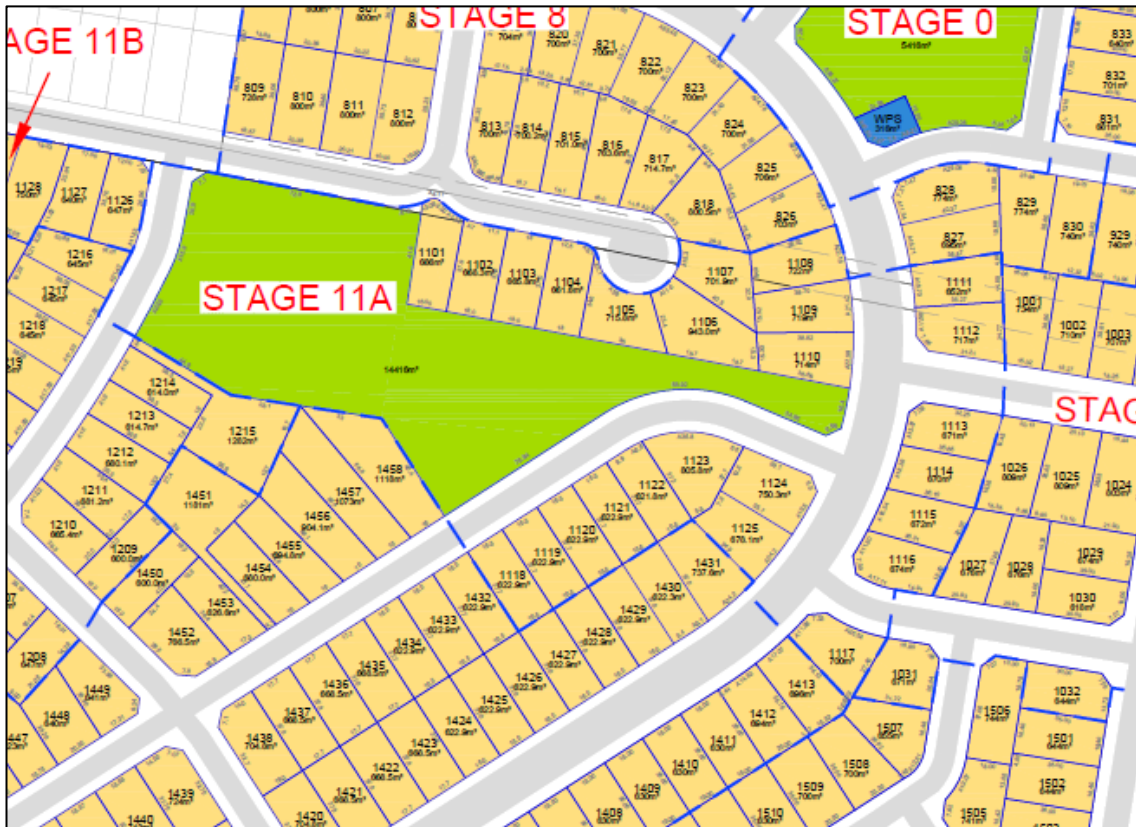


Figure 7: Extract of Proposed Lot Layout Modifications (Source, BRS: 2024)





Figure 8: Extract of Approved Overall Master Plan under DA/2021/1460 (Source: BRS, 2023)

### 3.3 Modification to Stage Boundaries – Stage 10, 11A, 14 and 15

The modification proposes to alter the stage boundaries of stages 10, 11A, 14 and 15 and amend the delivery of a number of lots within these stages to alternate stages to reflect the proposed boundary adjustments. The proposal incorporates the following –

- Relocate 8 lots from Stage 10 to Stage 11A (1001, 1002, 1029, 1030, 1031, 1032, 1039, 1040 and 1041)
- Relocate 1 lot from Stage 15 to Stage 11A (1517)
- Relocate 5 lots from Stage 11A to Stage 14
- Relocate 13 lots from Stage 15 to Stage 14 (1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529 and 1530)

The purpose of the modification is to align with the orderly delivery of the proposed modified Stage 11A. The extension of Stage 11A is proposed to incorporate a portion of Herdsmen Road (MC101) which will provide access to Road MC118 which is required for the delivery of the proposed amended north basin.

It is acknowledged that under Consent Condition 42, stage 11A is permitted to be constructed out of sequence. Consent Condition 42 is replicated below -

*42. Prior to the issue of the Subdivision Certificate the subdivision construction shall be carried out in the numerically consecutive stages, as amended, as shown on the approved plan (Overall Master Plan, Sheets 1-3 of 4, Revision R, File Ref. 14/46 by BRS). Specific works shall be completed by the following thresholds:*

- a) Construction of drainage reserve identified as South Basin during stage 12 and dedication by release of stage 12.*
- b) Construction of drainage reserve identified as North Basin during stage 8 and dedication by release of stage 11A.*



All allotments will drain to the north basin which can readily accommodate the proposed modification.

An extract of the proposed staging incorporating modifications is provided in **Figure 9**. **Figure 10** provides an extract of the stamped approved plans for comparative purposes. Refer to Appendix A for further details.

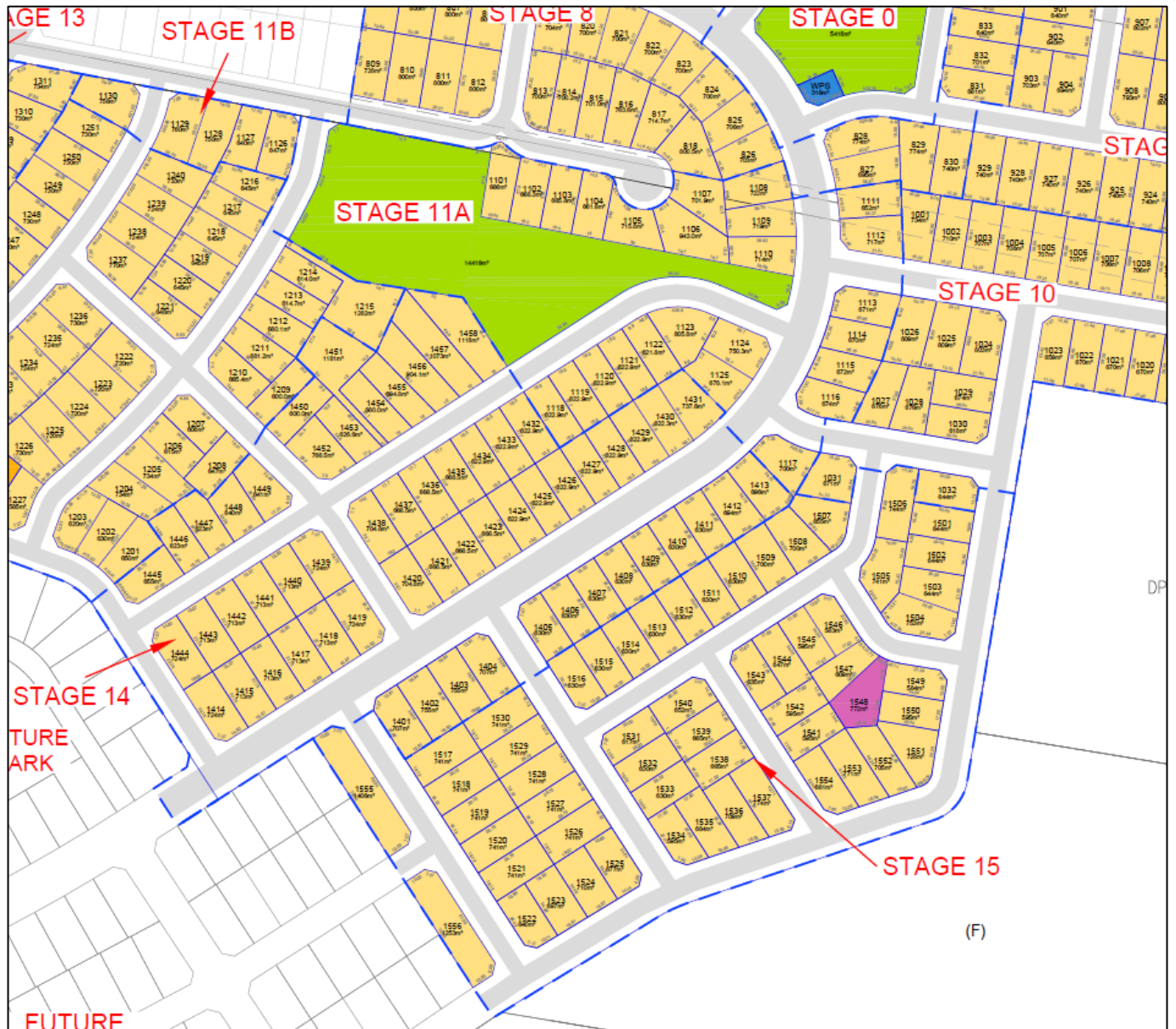


Figure 9 - Extract of Proposed Staging Modifications (Source, BRS: 2024)



Figure 10 - Extract of Approved Overall Master Plan under DA/2021/1460 (Source: BRS, 2023)

### 3.4 Relocation of Road Network – Stage 13

The modification proposes to relocate a portion of road north of Stage 13, to within the site. The purpose of this modification is to align the road with an existing trunk water main. Under the previous approval, the road directly adjoined the site boundary to the north. An existing trunk water main runs through the site affecting proposed lots 1312, 1230, 1321 and 1322. It is understood that the trunk water main and its associated easement is to be located on public land. As such, the proposed modification seeks to relocate the road to capture the water main and easement within public land. This is in line with the adjoining subdivisions which already have SWC approval.

The modification also proposes to shift the location of Springfield Drive (Road MC 112) to allow coordination between adjoining residential development. The southern extent of the road will be shifted slightly in a southern direction to align with the adjoining Lochinvar Downs development to the west.

The proposed modifications to the road network results in minor design changes to the 22 lots within Stage 13, including the size of 19 lots. The configuration of the lots will generally remain the same. An extract of the modified road network and lot layout is provided in **Figure 9**. **Figure 10** provides an extract of the stamped approved plans for comparative purposes. Refer to Appendix A for further details.





Figure 11: Extract of Proposed Road Layout and Lot Layout Modifications (Source, BRS: 2024)



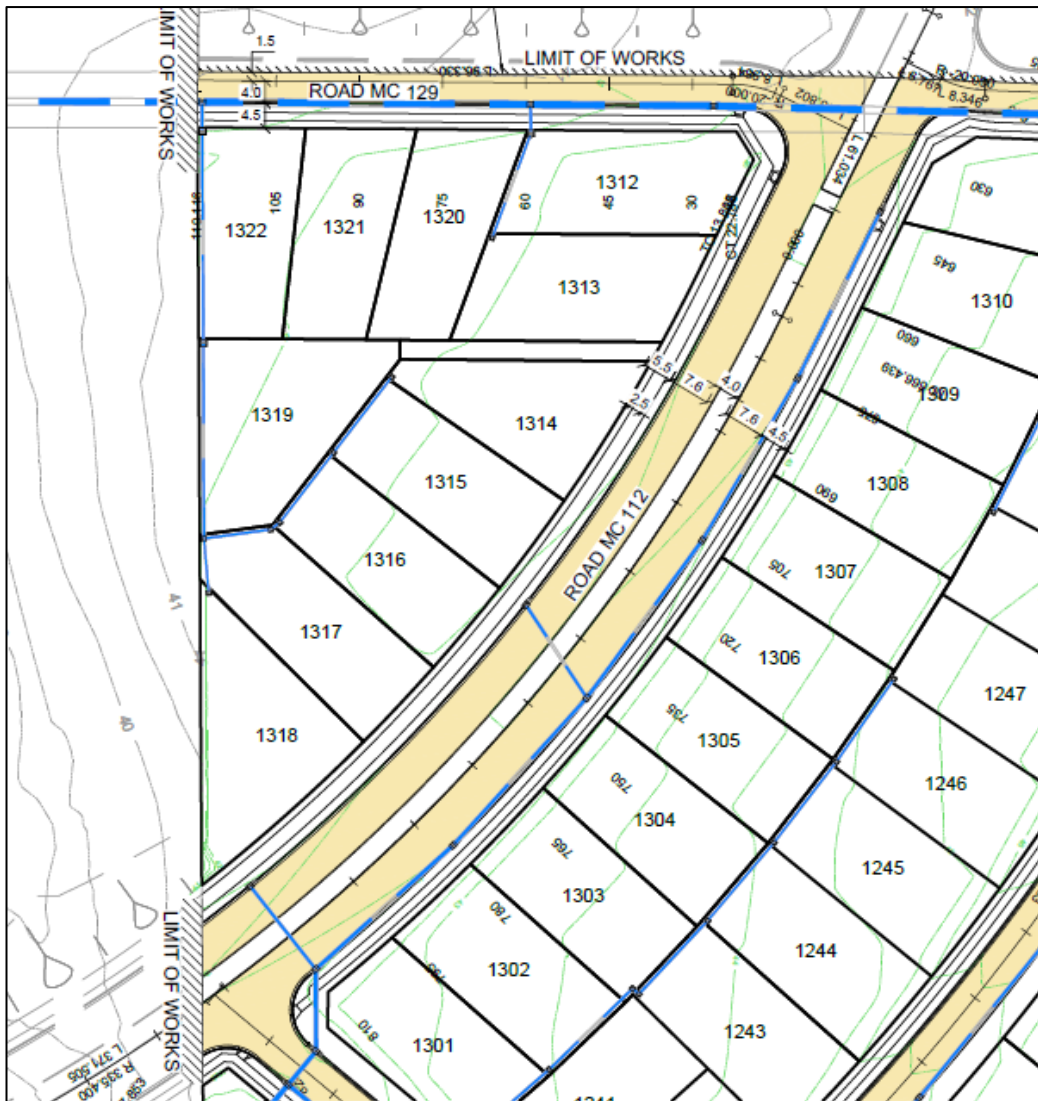


Figure 12: Extract of Approved General Arrangement Sheet 103 under DA/2021/1460 (Source: BRS, 2023)

### 3.5 Modification to Landscaping

The Landscape Plan prepared by Terras Landscape Architects has been amended to reflect the above-mentioned modifications.

Landscaping treatment applied to the detention basins will be similar to that of the detention basin for stages 1-7. The basin will be treated with low level plantings with scattered mature trees.

Refer to Appendix C for further details.

## 4 Statutory Matters

### 4.1 Environmental Planning and Assessment Act 1979

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) the following applies.

**(2) Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

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

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

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

It is our opinion that the proposed modification falls within Section 4.55(2) of the Act. The modification is substantially the same as the originally granted consent, will require referral to The Department of Planning and Environment - Water and it is considered that the amendment will not cause any adverse environmental impacts.

The proposed amendments to the approved design are considered to be substantially the same development as required by the provisions of s4.55(2) of the EPA Act.

In *Arrage v Inner West Council* [2019] NSWLEC 85 (herein "Arrage") at paragraph 27, Preston CJ states that one method of interpretation of "substantially the same development" as in *Moto Projects (No 2) Pty Ltd v North Sydney C* [1999] NSWLEC 280] (herein "Moto Projects") is to compare whether the modified development and the originally approved development are 'essentially or materially the same or having the same essence' as a means for assessment.

This approach is widely utilised by the Court in assessments of s 4.55, with two examples being *AG Kellyville Pty Ltd v The Hills Shire Council* [2020] NSWLEC 1205 and *Hatziandreou Holdings Pty Ltd v Bayside Council* [2020] NSWLEC 1191 ("Hatziandreou").

At 56, "Hatziandreou" makes the same comment as provided above, in that the assessment should include a comparative exercise as required by the statute between the original assessment and the development as proposed to be modified, which we have undertaken.

In summary, we consider that the modified design meets the requirements of s4.55(2) being substantially the same development for the following reasons:

- The modified design does not seek to change the use of the land from residential purposes and will remain in keeping with the emerging residential character of the locality.

- The modified design will not increase the yield or substantially alter the lot sizes of the previous consent granted. The modification will result in the loss of only one residential allotment.
- The modified design does not seek to change the location or staging of the detention basins with civil/ OSD modifications considered to be minor in the context of the subdivision development.
- The modified design does not significantly amend the approved road layout out or access arrangements of the existing approved lots.
- The modified design will not reduce land available for public recreation.
- The modified design allows for the same staging of development as previously approved.

It is therefore demonstrated that the subject modification will result in a development that is substantially the same development, satisfying 4.55(2)(a).

The original development comprised works that were classified as integrated development under Part 4 of the EP&A Act. The proposed development was referred to The Department of Planning and Environment - Water and General Terms of Approval were issued and incorporated into the development consent. The General Terms of Approval identified that if the proposed controlled activity is amended or modified, the Department of Planning and Environment—Water, must be notified in writing to determine if any variations to the GTA will be required. The proposed modification is to be referred to the Department of Planning and Environment—Water, satisfying 4.55(2)(b).

Section 4.55(3) of the EP&A Act provides that in determining a modification application, a consent authority is to consider relevant matters of Section 4.15(1) of the Act and the reasons given by the consent authority for the grant of the consent that is sought to be modified. An assessment of the proposed modifications under the relevant provisions of Section 4.15 is included in Section 5 of this report.

## 4.2 Environmental Planning and Assessment Regulation 2021

**Table 1** below confirms that the Section 4.55(2) modification has been prepared in accordance with Clause 100 of the EP&A Regulation 2021.

Table 1 – Clause 100 Requirements

Clause 100 Requirements	Comment
<i>(1) A modification application must contain the following information—</i>	
<i>(a) the name and address of the applicant,</i>	The applicant is Urban Land and Housing.
<i>(b) a description of the development that will be carried out under the development consent,</i>	Two (2) into Three Hundred and Twelve (312) Lot Torrens Title Subdivision, including Local Park.
<i>(c) the address and folio identifier of the land on which the development will be carried out,</i>	Lot 32 DP 1281200, Lot 31 DP 1281200, Lot 1 DP 1280661 now identified as Lots 1 and 2 1306134, and Lot 310 DP 1298400 located at 70, 71 and Christopher Road, Lochinvar.
<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>	Refer to Sections 1 and 3 of this report for details.
<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>	The purpose of the modification is to facilitate amendments to the approved subdivision layout for the purpose of improved drainage infrastructure and coordination between surrounding residential development.



	Refer to Section 3 above for further details.
(f) a description of the expected impacts of the modification,	The proposed modifications will cause negligible environmental impacts. Refer to Section 5 for further details.
(g) an undertaking that the modified development will remain substantially the same as the development originally approved,	The proposed changes to the consent will not alter the essential nature of the development and it is considered that the modified development will remain substantially the same as the approved development.
(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,	Not applicable.
(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,	The consent of the owner is included as part of this modification application.
(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.	Not applicable.

### 4.3 State Environmental Planning Policies

**Table 2** below identifies the State Environmental Planning Policies (SEPPs) which are applicable to the proposed modification.

Table 2 – Applicability of SEPPs

State Environmental Planning Policy (SEPP)	Relevant	Comment
<b>SEPP (Biodiversity and Conservation) 2021</b>	No	
Chapter 2 Vegetation in non-rural areas	No	Not applicable. No vegetation clearing is proposed by the modification outside of what has been approved under the original consent.
Chapter 4 Koala habitat protection 2021	No	No vegetation clearing is proposed and the proposed modifications will not generate any additional impacts beyond what has been previously assessed and approved under the original consent.
<b>SEPP (Industry and Employment) 2021</b>	No	Not applicable to site or proposed modifications.
<b>SEPP (Planning Systems) 2021</b>	No	The proposal is not State significant development or regionally significant development.
<b>SEPP (Resilience and Hazards) 2021</b>	No	

State Environmental Planning Policy (SEPP)	Relevant	Comment
Chapter 4 Remediation of land	No	The proposed modifications will not result in any risks or impacts beyond what has been previously assessed and approved under the original consent.
<b>SEPP (Sustainable Buildings) 2022</b>	No	Not applicable to proposed modifications.
<b>SEPP (Transport and Infrastructure) 2021</b>	No	
Chapter 2 Infrastructure	Yes	<p>The proposal seeks to modify the approved stormwater management system. Pursuant to clause 2.138 of the SEPP, development for the purpose of a stormwater management system may be carried out by any person with consent on any land.</p> <p>The development was considered and assessed as traffic-generating development under the original consent. The proposed modifications will not result in an increase to the yield of allotments under the previously granted. The modification will result in the loss of one residential allotment. Further assessment under clause 2.122 of the SEPP is not warranted.</p>

#### 4.4 Maitland Local Environmental Plan 2011

Under the provisions of the Maitland Local Environmental Plan 2011 (MLEP 2011) the site is zoned R1 General Residential and RU2 Rural Landscape. The proposal can be defined as a subdivision which is permissible subject to development consent within the R1 General Residential and RU2 Rural Landscape zone, in accordance with clause 2.6.

MLEP 2011 provisions applicable to the proposed modifications are discussed in **Table 3** below.

Table 3 – Applicable LEP Provisions

LEP Requirement	Comment	Compliance
<b>Part 4 Principal development standards</b>		
4.1 Minimum subdivision lot size	<p>The site is subject to a minimum lot size for subdivision of 450m<sup>2</sup> and 40ha, as shown in <b>Figure 11</b> below (development works area outlined in red). Clause 4.1 of MLEP 2011 provides that the size of any lot resulting from a subdivision of land is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</p> <p>The minimum lot size of the residential allotments within stages 8 to 15 approved</p>	Yes

	<p>under the original consent complied with this provision.</p> <p>The proposal will result in the modification to a number of allotments within Stages 11A, 12, 13 and 14. The proposed minimum lot size within these stages as a result of the proposed modification is 614m<sup>2</sup>, with each residential lot being in excess of the minimum 450m<sup>2</sup> requirement for the land. No other lots within any other stage will be modified.</p> <p>The proposed modification does not seek any amendments to the superlot subdivision or the land with a minimum 40 hectare lot size requirement. These lot sizes were previously considered and approved under the original consent. Further consideration is not required.</p>	
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**Part 6 Urban Release Areas**

<p>6.2 Public utility infrastructure</p>	<p>All necessary public infrastructure is to be made available to the proposed lots, utilising the existing and approved infrastructure available in the area, as per the original approval.</p>	<p>Yes</p>
<p>6.3 Development control plan</p>	<p>Clause 6.3 outlines that development consent must not be granted for development on land in an urban release area unless a development control plan has been prepared for the land. The Maitland Development Control Plan Part F – Urban Release Areas includes the Lochinvar Urban Release Area Plan, which covers the subject land and meets the criteria specified within clause 6.3 of the Maitland LEP 2011.</p> <p>The proposed modification is consistent with the provisions of the DCP as demonstrated in section 5.5 below.</p>	<p>Yes</p>

**Part 7 Additional local provisions**

<p>7.1 Acid sulfate soils</p>	<p>The subject site is mapped as Class 5 land on the Acid Sulfate Soils Map as illustrated in <b>Figure 12</b> below.</p> <p>As discussed in the Preliminary Geotechnical Assessment prepared by Qualtest that accompanied the original application, it is unlikely acid sulfate soils are present at the site. Notwithstanding, the proposed works under this modification are not below 5m Australian Height Datum and will not likely lower the watertable below 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. No further assessment is warranted.</p>	<p>Yes</p>
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<p>7.2 Earthworks</p>	<p>The proposed modification will require physical works outside of the original consent to deliver the proposed modifications.</p> <p>Earthworks and retaining are to be modified to suit the proposed changes to the detention basins, road network and lot layout. Reference should be made to the Bulk Earthworks Plan contained within Appendix A for further details.</p> <p>In accordance with Clause 7.2, the proposed earthworks and retaining will not result in a detrimental impact to the site or surrounding lands. Appropriate erosion and sediment control measures will also be implemented during construction. Refer to Appendix A for detailed civil design for these works.</p>	<p>Yes</p>
<p>7.4 Riparian land and watercourses</p>	<p>The site contains a mapped watercourse. The proposed modifications will not generate any additional impacts to those that have been previously considered and approved.</p> <p>As discussed in the Statement of Environmental Effects prepared by Barker Ryan Stewart that accompanied the original application, the site contains additional watercourses as mapped by NRAR. The modification proposes works within 40m of these watercourses and therefore referral to the Department of Planning and Environment - Water is required. Refer to Section 4.6 below for further details.</p>	<p>Yes</p>

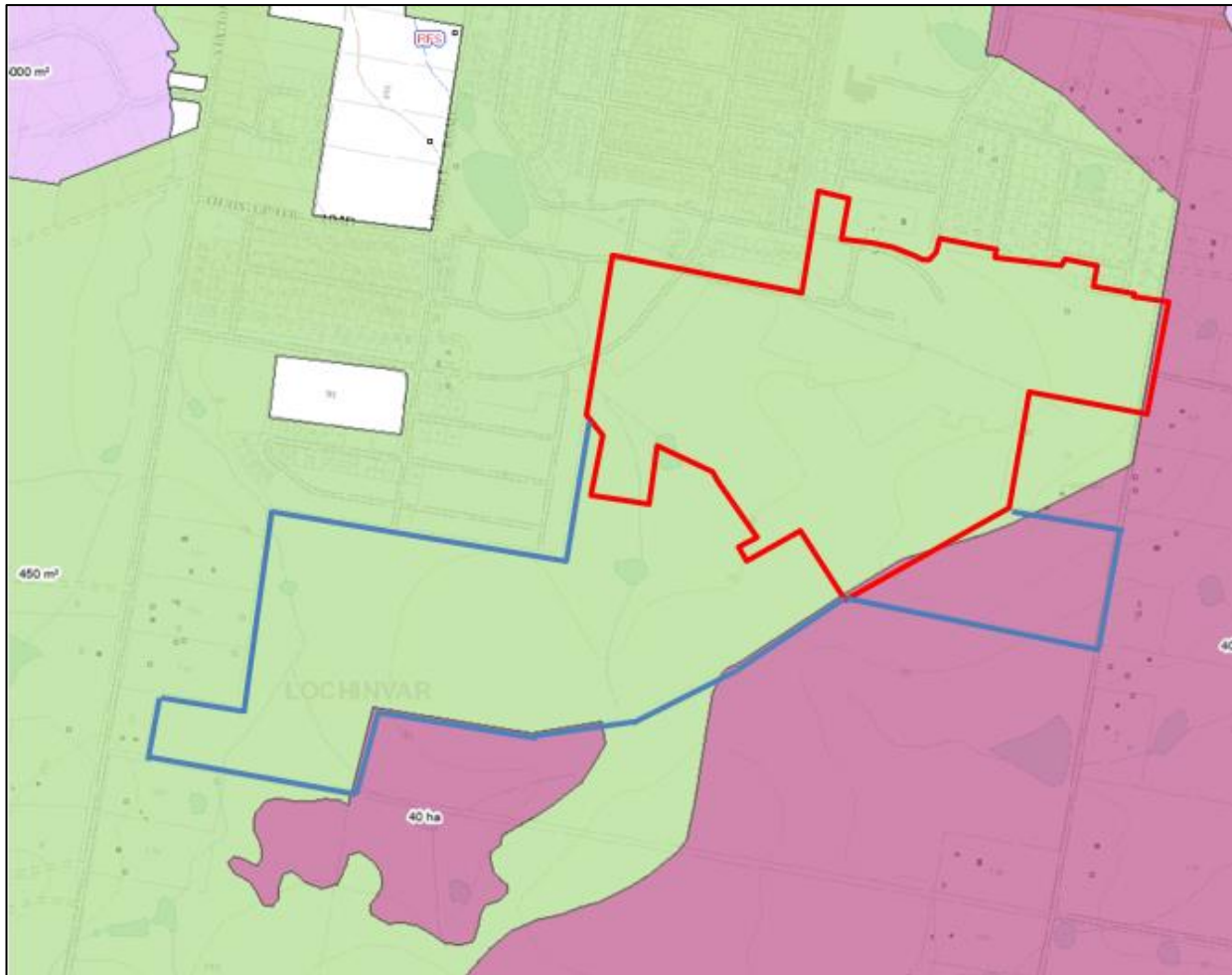


Figure 13: Extract of Minimum Lot Size Map (Source: Spatial Viewer, 2024)

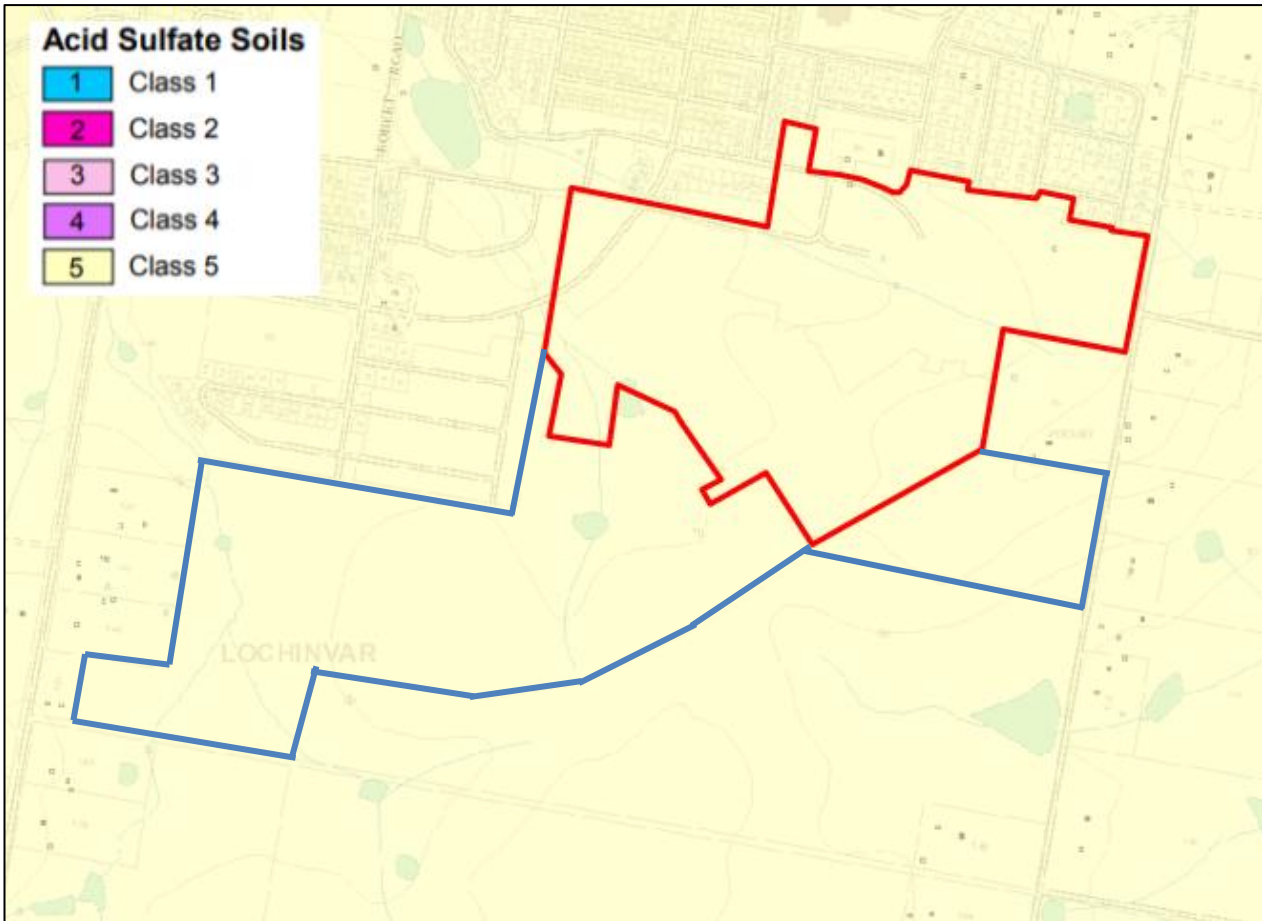


Figure 14: Extract of Acid Sulfate Soils Map (Source: Spatial Viewer, 2024)

### 4.5 Maitland Development Control Plan

Requirements of the Maitland Development Control Plan (MDCP) 2011 that are applicable to the proposed modifications are discussed in **Table 4** below.

Table 4 – Applicable DCP Requirements

DCP Requirement	Comment
<b>Part B: Environmental Guidelines</b>	
B.2 Domestic Stormwater	The Stormwater Management Report, prepared by Barker Ryan Stewart, has been amended to reflect the proposed modifications.  Refer to Appendix B for further details.
B.5 Vegetation Management	No vegetation clearing is proposed in the modification outside of what has been approved under the original consent. No further assessment is required.
B.6 Waste– Site Waste Minimisation and Management	The proposal seeks no change outside of what has been approved under the original consent for waste management.



B.7 Environmentally Sensitive Land	<p>The Stormwater Management Report, prepared by Barker Ryan Stewart, has been amended to reflect the proposed modifications.</p> <p>Refer to Appendix B for further details.</p> <p>The site contains a mapped watercourse. The proposed modifications will not present any impacts to what has been previously considered and approved.</p> <p>As discussed in the Statement of Environmental Effects prepared by Barker Ryan Stewart that accompanied the original application, the site contains additional watercourses as mapped by NRAR. The modification proposes works within 40m of these watercourses and therefore referral to the Department of Planning and Environment – Water is required. Refer to Section 4.6 below for further details.</p>
<b>Part C: Design Guidelines</b>	
C.1 Accessible Living	The proposal seeks no change outside of what has been approved under the original consent.
C.10 – Subdivision	
EC.1 Flora and Fauna	The proposal seeks no change outside of what has been approved under the original consent.
EC.2 Heritage and Archaeology	The proposal seeks no change outside of what has been approved under the original consent.
EC.3 Hazards	The proposal seeks no change outside of what has been approved under the original consent.
DC.1 Lot Size and Dimensions	<p>The proposal will require modification to the lot layout within stages 11A, 12, 13 and 14. The proposed modifications will result in changes to the lot size of a number of residential allotments as discussed in Section 3.2 and Section 3.3.</p> <p>As discussed in Section 4.4, the proposed minimum lot size as a result of the proposed modification is 614m<sup>2</sup>, with each residential lot being in excess of the minimum 450m<sup>2</sup> requirement under MLEP 2011. Allotments are of a suitable size and shape to be able to accommodate future residential development. Lots are generally rectangular in shape and are able to accommodate a suitable building envelope.</p> <p>Refer to Appendix A for further details.</p>
DC.2 Solar Access and Energy Efficiency	The proposal seeks modification to the lot layout within stages 11A, 12, 13 and 14.

	<p>The proposed modifications will allow for allotments which have good solar access, optimising the design performance of energy smart homes.</p> <p>Refer to Appendix A for further details.</p>
DC.3 Drainage, Water and Soil Erosion	<p>The Stormwater Management Report has been amended to reflect the proposed modifications.</p> <p>Refer to Appendix B for further details.</p>
DC.4 Landscape, Streetscape and Visual Impact	<p>The Landscape Plan prepared by Terras Landscape Architects has been amended to reflect the proposed modifications.</p> <p>Landscaping treatment applied to the detention basins will be similar to that of the detention basin for stages 1-7 which is considered an attractive design. Street tree plantings will be applied to the amended road layout to maintain an attractive streetscape and provide visual relief to the site. Refer to Appendix C for further details.</p>
DC.5 Effluent Disposal	<p>It is proposed that each of the allotments will be connected to reticulated sewer via a sewer trunk main, which will extend to the lots in accordance with Hunter Water Corporation requirements.</p>
DC.6 Roads and Access, Pedestrian and Cycleways	<p>The proposal seeks modification to the road network within stages 11A and 13.</p> <p>Roads and footpaths will be constructed to residential standards as defined within Maitland City Council's Manual of Engineering Standards and will provide access to all lots within the subdivision.</p>
DC.7 Crime Prevention – Safer by Design	<p>The subject land and surrounding area has been considered with the proposed subdivision layout designed to promote the safety of the community and minimise crime prevention through design.</p> <p>In addition to the CPTED strategies discussed as part of the original consent, the following CPTED strategies have been incorporated into the proposed modification –</p> <ul style="list-style-type: none"> <li>• A pedestrian link is proposed between the upper and lower north basin, connecting pedestrians from stage 11A to stage 8. The pedestrian link will follow the perimeter of the basins, which are generally straight, reducing the potential for any hidden corners.</li> <li>• Each basin is visible from the street from at least one side, enhancing natural surveillance to the areas.</li> <li>• Landscape design of the basins allows for clear sightlines by providing open visible areas, enhancing natural surveillance to</li> </ul>

	<p>the areas and reducing concealment opportunities. Detention basins will be planted with low level plantings and scattered mature trees, similar to that applied to the basin servicing stages 1-7.</p> <ul style="list-style-type: none"> <li>• Fencing of the yards of surrounding residential sites will ensure there is clear transition between the public and private open space areas.</li> <li>• The detention basins will be appropriately managed by Council employees and/or contractors.</li> </ul>
<p>DC.8 Site Filling</p>	<p>This application seeks modification to the approved earthworks and retaining associated with the construction of the subdivision under the original consent. Reference should be made to the Bulk Earthworks Plan contained within Appendix A for further details.</p> <p>Full details are to be provided to Council with the application for Subdivision Works Certificate.</p>
<p>DC.9 Reticulated Services</p>	<p>The lots created by the proposed subdivision are to be serviced with reticulated water, sewer, electricity and telecommunication services. Applications are to be made with service providers to establish servicing design requirements for the proposed development.</p>
<p>IC.1 Entry Features</p>	<p>The proposal seeks no change outside of what has been approved under the original consent.</p>
<p>IC.2 Street Names</p>	<p>The proposal seeks no change outside of what has been approved under the original consent.</p>
<p>IC.3 House/Lot Numbering</p>	<p>The proposal seeks no change outside of what has been approved under the original consent.</p>
<p><b>Part F: Urban Release Area</b></p>	
<p><b>F.9 – Lochinvar Urban Release Area</b></p>	
<p>1.2 Development Requirements</p>	
<p>1.1 Staging Plan</p>	<p>The subject lands are identified as Stage 1 within the Lochinvar URA Staging Plan.</p> <p>The proposed modifications to drainage infrastructure will not adversely affect other stages within the Lochinvar URA. The modified stormwater drainage infrastructure will be delivered in compliance with Council controls which is in keeping with surrounding development.</p> <p>The proposed modifications to road infrastructure within stage 13 will allow coordination between Hereford Hills development to the north and Lochinvar Downs to the west.</p>



	Appropriate infrastructure and services will be provided to each of the lots in accordance with service utility providers and DCP requirements.
1.2 Transport and Movement	The proposed modifications to the road, pedestrian and cycle network remains consistent with the DCP.
1.3 Overall Landscaping Strategy	<p>The Landscape Plan prepared by Terras Landscape Architects has been amended to reflect the proposed modifications.</p> <p>Landscaping treatment applied to the detention basins will be similar to that of the detention basin for stages 1-7. The basin will be treated with low level plantings with scattered mature trees.</p> <p>Refer to Appendix C for further details.</p>
1.4 Passive & Active Recreational Areas	The proposal seeks no change outside of what has been approved under the original consent.
1.5 Stormwater and Water Quality Management	<p>The proposal seeks modification to the stormwater and water quality management considered under the original approval. The proposal seeks modification to the north and south basin to increase their size and volume to reduce post-development discharge to meet Councils supplied discharge allowances.</p> <p>The Stormwater Management Report, prepared by Barker Ryan Stewart, has been amended to reflect the proposed modifications.</p> <p>The proposal utilises conventional pit and pipe conveyance to the site outlets, where water quality is improved through a treatment train including a gross pollutant trap and wetland basin before discharge.</p>
1.6 Amelioration of Natural & Environmental Hazards	The proposal seeks no change outside of what has been approved under the original consent.
1.9 Key Development Sites	The proposal seeks no change outside of what has been approved under the original consent.
1.10 Residential Densities	As discussed above, the proposed changes to the lot layout are compliant with the provisions of MLEP 2011 in relation to minimum lot size.
1.11 Neighbourhood Commercial and Retail Uses	The proposal seeks no change outside of what has been approved under the original consent.
1.12 Provision of Public Facilities and Services	The drainage basins will be provided in accordance with the associated Lochinvar Development Contributions Plan 2014.

No additional DCP provisions are relevant or applicable to the proposed modifications.

## 4.6 Water Management Act 2000

The proposed works associated with the modifications are within close proximity to watercourses. **Figure 13** illustrates the development area and watercourses as mapped by the Hydroline Spatial Data Map prepared by NSW Department of Planning and Environment – Water.

General Terms of Approval (GTA) were issued by the Department of Planning and Environment – Water on 14 August 2022. The GTA's stated the following –

*Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Department of Planning and Environment—Water, must be notified in writing to determine if any variations to the GTA will be required.*

The proposed modification therefore requires NSW Department of Planning and Environment – Water concurrence.



Figure 15: Hydroline Spatial Data Map (Source: NSW DPE - Water 24.10.2024)

## 4.7 Rural Fires Act 1997

General Terms of Approval were issued by the NSW Rural Fire Service on 14 August 2022.

The proposal does not seek to modify any of the conditions contained within the GTA's. It is considered that this modification does not require NSW RFS' concurrence.

#### **4.8 Biodiversity Conservation Act 2016**

No vegetation clearing is proposed by the modification outside of what has been approved under the original consent and the site is not mapped as containing biodiversity values. The proposal seeks no change outside of what has been approved under the original consent and no further assessment is required.

#### **4.9 National Parks & Wildlife Act 1974**

The proposal is located within the same development footprint as originally assessed. It is therefore considered that the proposed modifications will not generate any additional impacts beyond what has been previously assessed and approved. No further assessment is required.



## 5 Section 4.15 Assessment

Section 4.15 of the EP&A Act requires certain relevant matters to be considered when the consent authority is determining a development application.

### (a)(i) The provisions of any Environmental Planning Instrument

The proposal has been prepared in light of the relevant environmental planning instruments and does not amend the original development consent against these standards.

### (a)(iii) The Provisions of any Development Control Plan

The proposed modification has been prepared having regard for relevant DCP requirements; refer to Section 4.5 of this report above.

### (b) The Likely Impacts of That Development

#### Environmental Responsibility and Land Capability

##### Ecological Values

The proposed changes will not result in the need for any additional vegetation clearing and will not result in any adverse environmental impacts. No additional ecological impacts will be generated beyond what has been previously assessed and approved.

##### Waterways

The development is unlikely to have an adverse impact on surrounding waterways with appropriate stormwater quality treatment devices to be implemented in accordance with the amended Stormwater Management Report in Appendix B. Erosion and sediment controls will be implemented during the works to reduce indirect impacts to downstream environments. Refer to the plans contained in Appendix A for further details.

##### Acoustic Impact

The modifications will not result in any additional acoustic impacts from what has been assessed and approved previously.

##### Visual Impact

The modifications will not result in any additional visual impacts from what has been assessed and approved previously. The visual impact of the proposal as a whole will remain relatively the same. In the location of the proposed modifications, landscaping will be incorporated to provide visual relief to the site and create attractive streetscapes in keeping with surrounding development and the context of the Lochinvar URA. Landscaping treatment applied to the detention basins will be similar to that of the detention basin for stages 1-7 which is considered an attractive design. Refer to Appendix C for further details.

##### Erosion Prevention and Sediment Control

Erosion and sediment controls will be implemented during construction. The development is to incorporate measures to prevent and control the impacts of erosion and sedimentation as part of the construction. These details are to be included with the Subdivision Works Certificate and will be provided in accordance with Council's requirements.

### Energy Efficiency / Sustainability

The proposed modifications will facilitate allotments that have good solar access, optimising the design performance of energy smart homes.

### Geotechnical

Previous investigation found that the site had a "Low" risk of slope instability and that it was unlikely that acid sulfate soils would be present at the site. The site was considered suitable for the proposed development from a geotechnical viewpoint provided that development is carried out in accordance with sound engineering principles and good hillside practice, and with respect to the constraints and recommendations of the Preliminary Geotechnical Assessment. The proposed modifications do not warrant further investigations at this stage.

Further Geotechnical investigations are to be carried out at Subdivision Works Certificate stage to inform the engineering design and to also provide site classification for the residential lots.

### Contamination

Previous investigations found the site suitable for proposed residential development. The proposed modifications do not warrant further investigations.

## **Social Impact & Economic Impact**

No adverse social or economic impacts are expected from the proposed modifications.

## **Heritage**

There are no European heritage items on the site and no heritage impacts will be generated by the proposed modifications.

The proposal is located within the same development footprint as originally assessed. It is therefore considered that the proposed modifications will not generate any additional impacts beyond what has been previously assessed with respect to Aboriginal cultural heritage.

## **Infrastructure and On-site Services**

Each of the proposed residential allotments is to be serviced by reticulated electricity, water, sewer and telecommunication services. Existing public infrastructure will be upgraded or new infrastructure provided to adequately service the proposed lots.

The proposed modifications will alter the approved stormwater drainage arrangements. The proposed modifications will improve drainage infrastructure for the subdivision. The Stormwater Management Report has been amended to reflect the proposed modifications. Refer to Appendix B for further details.

## **Transport, Access, Parking and Servicing**

The proposal seeks to modify the approved road network in response to the proposed changes to the north basin. The proposal will result in the loss of one road and modification to another. The proposed modifications to the road network have been designed in accordance with Council's engineering standards.

The modification also proposes to shift the location of Springfield Drive to allow improved coordination between Hereford Hills development to the north and Lochinvar Downs to the west.

Access to the site will remain the same with additional access points to be retained.

The proposed modifications will not increase the traffic generated from the proposal greater than what was assessed under the original proposal. Previous investigations found that the subdivision is considered to have negligible impact on the safety and operating efficiency of the surrounding road network.

### Amenity

The proposed modifications will not cause any inappropriate impacts for neighbours and is consistent with the amenity and character of the area.

#### **(c) The Suitability of the Site for the Development**

The subject modification proposes to alter the detention basins, lot layout and road network. It does not propose any amendment to the approved development which would impact the suitability of the site for development of a residential subdivision with local park.

#### **(e) Public Interest**

The modifications outlined in this application will promote a development that is superior in planning outcomes when compared with the existing approved design. The proposed modifications will result in improved drainage infrastructure and coordination between surrounding residential development whilst providing the orderly development of the land for residential purposes. The proposed modifications will not create any additional unnecessary impacts on adjacent properties or the local community. The proposed development is therefore considered in the public interest as the layout changes will result in the generation of positive social, environmental and economic benefits.



## 6 Conclusion

The proposed modifications improve the potential environmental effects as considered under Section 4.15 of the Act and the proposal is considered to be substantially the same development as that approved by Council.

It is considered that the proposed amendments will:

- Comply with applicable legislation, environmental planning instruments and development controls;
- Allow for improved connection between development to the north and south; and
- Improve stormwater management through the provision of more stormwater storage, reducing post-development discharge.

The proposed modifications will not cause any unacceptable environmental impacts. The proposed modifications will allow for a more desirable outcome in terms of stormwater management and connectivity. The proposed modifications have been designed to comply with Council controls and policies and should be supported.

## Appendix A – Amended Civil Plans

## Appendix B - Amended Stormwater Management Plan

## Appendix C - Amended Landscape Plan