

# **S4.55(2) ASSESSMENT REPORT**

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**MODIFICATION TO DA/2022/1260  
RESULTING IN REDESIGN OF  
STORMWATER MANAGEMENT AND  
INCREASE IN LOT YIELD**

**82 COLLAROY PARADE, LOUTH PARK  
(Lot 2 DP 1286289)**

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<b>PP Reference</b>		J004638		
<b>Prepared for (client)</b>		Newpro 25 Pty Ltd		
<b>Document Versions and Control</b>				
S4.55 Assessment Report – 82 Collaroy Pde Louth Park				
Version	Date	PP ref	Author	Reviewed by
1 (draft)	17/12/24	S4.55 – 82 Collaroy Pde	ED	Client / MB
2				
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## PLANS AND SUPPORTING DOCUMENTATION

This SEE is supported by the following plans and documentation:

Attachment	Document	Prepared by	Reference
1	Notice of Determination DA/2022/1260	Maitland City Council	Dated: 27 August 2024
2	Revised Subdivision Plans	GCA Engineering	Ref: 21360L Rev: 3 Dwg: L111, L112 and L113 Dated: 19 December 2024
3	Revised Civil Plans	GCA Engineering	Ref: 21360C <ul style="list-style-type: none"> <li>- C00 (Rev 14 and dated 18.12.24)</li> <li>- C01 (Rev 14 and dated 18.12.24)</li> <li>- C02 (Rev 14 and dated 18.12.24)</li> <li>- C03 (Rev 14 and dated 18.12.24)</li> <li>- C04 – C16 (Rev 13 and dated 14.11.24)</li> <li>- C17 (Rev 14 and dated 18.12.24)</li> <li>- C18 (Rev 14 and dated 18.12.24)</li> <li>- C21 – C30 (Rev 14 and dated 18.12.24)</li> <li>- C31 – C34 (Rev 13 and dated 14.11.24)</li> <li>- C35 (Rev 14 and dated 18.12.24)</li> </ul>

			- C36 (Rev 13 and dated 14.11.24)
4	Stormwater Management Report	GCA Engineering	Ref: 21360C Rev: 8 Dated: 19 December 2024
5	Bushfire Report	Bushfire Planning Australia	Ref: 23113 Rev: 4 Dated: 18 December 2024
6	Biodiversity Development Assessment Report	Habitat Environmental	HBT0019_BDAR_V7.2 Dated: 23/09/2024
7	Pre-DA Meeting Minutes	Maitland City Council	Thursday, 28 November 2024
8	Stamped Hunter Water Corporation (HWC) Plans	HWC	TBC
9	Stamped Subsidence Advisory NSW Plans	Subsidence Advisory NSW	TBC
10	Drainage Letter	Delfs Lascelles Consulting Surveyors	Ref: 21823 Dated: 7 August 2024

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## PROPOSED MODIFICATION

The following letter is seeking a modification to the layout of the approved subdivision, to increase the Lot yield to 30 (an increase in three Lots). Three additional trees are proposed to be removed as a result of the revised layout and associated Lot boundaries.

The revised stormwater management plan involves relocating the previously DA approved detention basin from on site to the existing regional detention basin. We will confirm the increased stormwater flows downstream will not impact existing dwellings and the required 0.5m freeboard will be maintained. A water quality basin will be retained on site to treat stormwater prior to discharge.

Pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) the consent authority can modify the development consent provided that the consent authority is satisfied that the applicant has addressed the relevant matters for consideration, as detailed within this assessment. The proposed modification is considered substantially the same as the original approved development. This letter provides details that demonstrates that the proposed modification meets the requirements of S4.55(2) to allow the Council to grant consent.

## PRE-DA MEETING

A pre-lodgement meeting with the Maitland City Council was held on 28 November 2024 to review the architectural design proposed civil and Lot layout amendment. The minutes of the pre-DA meeting is provided at **APPENDIX 7**. A response to the comments made are provided in the table below.

<b>Pre-DA Comment</b>	<b>Applicant response</b>
<b>Parking &amp; Vehicle Access</b>	
Council will require on street parking within the cul-de-sac (noting the increase to residential proposing to lots utilise this cul-de-sac).	A reduction in the number of Lots accessed via the cul-de-sac has occurred, in comparison to the plan set presented at the pre-DA (from 4 to 3). In addition, the Lots accessed via the cul-de-sac are 1500m <sup>2</sup> in area and not the standard 450-600m <sup>2</sup> , which will result in parking of vehicles being primarily contained on the lots and not in the road. Thus, the “no parking” around the cul-de-sac head as previously approved should remain.
<b>Stormwater Management</b>	
Advice has previously been provided during the assessment of the original approval (DA/2022/1260) regarding the requirement to provide onsite detention as opposed to augmentation of the existing basin [See	Discharge from the development is into a formal watercourse noted by the blue line on the topographic mapping and shown in the figures. As such, an easement is not actually required even though one was

<p>comments from RFI (29/08/2023)]. It is unacceptable to increase flooding on downstream lots and for this reason Council has not supported this option in the past, nor can it be supported moving forward. If the 1% AEP event was contained within the easement, then Council would consider this concept, however Figure 8 of the Stormwater Management Report by GCA (dated 13/11/24) depicts that the 1% AEP event already exceeds this easement. Therefore, there are two solutions available:</p> <ul style="list-style-type: none"> <li>• Post-development flows to be less than or equal to pre-development for the site. The original application was amended to suit this requirement.</li> <li>• Increase the width of the easement over the downstream properties. This would require owners' consent prior to issue of the DA with the registration of the easement prior to issue of the first Subdivision Certificate.</li> </ul> <p>Council's stance on this matter remains unchanged and the submitted pre-lodgement material is not supported from an engineering perspective.</p>	<p>historically added in the Hillview development. The easement should not be interpreted as a restriction given a formal watercourse already exists. This is further supported by the letter prepared by a Registered Surveyor, provided at <b>APPENDIX 11</b>.</p> <p>The modelling has confirmed the minor increase in flow does not impact the minimum 500mm freeboard of lots 701,702 and 703, nor does it impact their building envelopes.</p>
<p>Council has previously raised concern with the 3m wide easement for the approved 1050mm pipe infrastructure. This was generally not supported due to construction and maintenance concerns; however, management made the decision to allow this to occur. The revised civils (without detention) is further increasing the width of this pipe to 1350mm. This is not supported.</p>	<p>The basin size within the development has been increased, and lot yield reduced in comparison to the plan set provided at the pre-DA meeting, to provide additional detention and reduce the discharge pipe size to a 1200RCP. We note in accordance with MOES Stormwater Drainage Section 10 this pipe size is suitable within a 3m easement.</p>
<p>The access track around the bioretention basin must be 0.5m off set from boundaries</p>	<p>0.5m clearance is provided from the edge of the track to the basin (refer dwg C27). This was already noted in the plan set provided at the pre-DA meeting.</p>
<p>There are issues as previously raised with the combined detention basin.</p>	<p>See below.</p>

<p>(f) The augmentation of the existing detention basin is depicted on Figure 6 of the Stormwater Report. The following information shall be addressed:</p> <ul style="list-style-type: none"> <li>○ It is not suitable to have the spillway discharging onto Louth Park Road. The spillway is less than the 100 year event and hence it is expected that Louth Park Road will be not trafficable in these events. This is not a satisfactory solution.</li> <li>○ Further information regarding the existing 2x 1350mm culverts under Louth Park Road capacity shall be provided. Details such as their current capacity, the AEP they are currently exceeded and the AEP they are exceeded with the proposed design shall be provided.</li> <li>○ Provide a detailed comparison of the increase of flows/AEP event that the emergency spillway onto Louth Park Road is triggered prior to the development and after the proposed augmentation.</li> <li>○ If DRAINS has been used, the model shall be provided to council.</li> </ul>	
<p>In addition, a preliminary review of the pre-lodgement information has indicated the following for the augmented basin:</p> <ul style="list-style-type: none"> <li>• Batters do not facilitate access tracks.</li> <li>• Basin floor slope less than 0.2% fall (this is not compliant).</li> <li>• Previous basin modelled under AR&amp;R87. Council would require complete modelling of the catchment using AR&amp;R 2019 methodology for any augmentation of the existing basin.</li> <li>• Council would consider road culvert upgrade subject to above.</li> </ul>	<p>Modelling using AR&amp;R 2019 has confirmed that the existing basin is undersize and in fact the 1% AEP event top water level is more than the existing top of bank. The proposed augmentation and associated increase in storage volume from 13,074m<sup>3</sup> to 20,645m<sup>3</sup> will reduce the current 1% AEP level to below the existing top of bank. It's suggested that this is a major improvement to the overall catchment stormwater management.</p> <p>The stormwater plans demonstrate an increased fall in the base to 0.7% and note the basin access is already provided for Louth Park Road and Eldon Drive.</p>
<p>Further note:</p> <p>The augmentation of the drainage basin at Gillieston Heights for the purpose of the Loxford subdivision (DA2022/193) stormwater management was discussed. This matter has been investigated internally and it can be confirmed that this decision was made on the basis that augmentation works would be confined to increasing pipes within the road reserve and not via conveyance of increased stormwater through private properties.</p>	
<p><b>Planning Advice</b></p>	
<p>The pre-lodgement meeting only considered the information provided to Council for review. This relates to stormwater detention. Any modification resulting in proposed changes to the stormwater arrangement must consider any resulting changes to other</p>	<p>Noted. Analysis of the referenced requirements has been undertaken within this report.</p>

areas of consideration. This includes, and is not limited to: <ul style="list-style-type: none"> <li>• Biodiversity,</li> <li>• Bushfire,</li> <li>• Lot layout.</li> </ul>	
Noting the potential new impacts associated with the stormwater modification, a Section 4.55(2) modification will be required. This will be exhibited in the same manner as the original DA.	Noted, this Report has been prepared in accordance with the requirements of s4.55(2).
Contributions will be re-calculated based on the revised lot numbers.	Noted.

### PERMISSIBILITY AND MODIFICATION ASSESSMENT

The proposed modification is permissible through the *Environmental Planning and Assessment Act 1979*, under Section 4.55(2) other modifications. The proposed modifications will result in substantially the same development, with no additional impacts to the site or the surrounding area, as follows:

***(a) 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***

In this instance, it is necessary to consider whether the proposed modified development would be essentially or materially or having the same essence as that which had been originally approved. It is noted that the proposed development visually varies from the previous approval, with an increase in Lot yield and decrease in detention basin size, however the proposed use, and road layout remains the same. The following comparison involves an appreciation, qualitative, as well as quantitative, of the development being compared in their proper contexts.

#### Quantitative comparison

The characteristics of the revised Lots include:

No.	Lot (Existing + Proposed)	Approved	Proposed	% change
1	101	2070m <sup>2</sup>	1500m <sup>2</sup>	-27.54%
2	102	1932m <sup>2</sup> (1512m <sup>2</sup> )	1500m <sup>2</sup>	-22.36%
3	103	1507m <sup>2</sup>	1506m <sup>2</sup>	-0.07%
4	104	1508m <sup>2</sup>	1714m <sup>2</sup> (1507m <sup>2</sup> )	+13.66%
5	105	1508m <sup>2</sup>	1708m <sup>2</sup> (1501m <sup>2</sup> )	+13.26%



6	106	1610m <sup>2</sup> (1501m <sup>2</sup> )	1502m <sup>2</sup>	-6.71%
7	107	1718m <sup>2</sup>	1503m <sup>2</sup>	-12.51%
8	108 (new)	N/A	1515m <sup>2</sup>	+100%
9	108 (now 109)	1507m <sup>2</sup>	1505m <sup>2</sup>	-0.45%
10	109 (now 110)	4018m <sup>2</sup>	4000m <sup>2</sup>	-0.13%
11	110 (now 111)	4000m <sup>2</sup>	4000m <sup>2</sup>	No change.
12	111 (now 112)	2023m <sup>2</sup>	2004m <sup>2</sup>	-0.94%
13	112 (now 113)	2038m <sup>2</sup>	2012m <sup>2</sup>	-1.28%
14	113 (now 114)	2026m <sup>2</sup>	2003m <sup>2</sup>	-1.14%
15	114 (now 115)	2519m <sup>2</sup> (2233m <sup>2</sup> )	2289m <sup>2</sup> (2003m <sup>2</sup> )	-9.13% (-10.3%)
16	115 (now 116)	2519m <sup>2</sup> (2233m <sup>2</sup> )	2291m <sup>2</sup> (2000m <sup>2</sup> )	-9.05% (-10.43%)
17	116 (now 117)	2005m <sup>2</sup>	2008m <sup>2</sup>	+0.15%
18	117 (now 118)	2004m <sup>2</sup>	2006m <sup>2</sup>	+0.1%
19	118 (now 119)	2003m <sup>2</sup>	2102m <sup>2</sup>	+4.94%
20	119 (now 120)	2071m <sup>2</sup>	2071m <sup>2</sup>	No change.
21	120 (now 121)	2237m <sup>2</sup> (2091m <sup>2</sup> )	2237m <sup>2</sup> (2091m <sup>2</sup> )	No change.
22	121 (now 122)	4045m <sup>2</sup>	4045m <sup>2</sup>	No change.
23	122 (now 123)	4008m <sup>2</sup>	4008m <sup>2</sup>	No change.
24	123 (now 124)	1515m <sup>2</sup>	1500m <sup>2</sup>	-0.99%
25	124 (now 125)	1501m <sup>2</sup>	1500m <sup>2</sup>	-0.07%
26	125 (now 126)	1500m <sup>2</sup>	1500m <sup>2</sup>	No change.
27	126 (now 127)	1502m <sup>2</sup>	1500m <sup>2</sup>	-0.13%
28	127 (now 128)	1503m <sup>2</sup>	1500m <sup>2</sup>	-0.2%
29	129 (new)	N/A	1500m <sup>2</sup>	+100%
30	130 (new)	N/A	1500m <sup>2</sup>	+100%

The proposed modification incorporates a Lot yield increase of three Lots (from the approved 27, to proposed 30), which is an increase in 11.11%. It is noted that the Notice of Determination (**APPENDIX 1**) references 28 Lots which is an error. The stamped plans include 27 Lots only + one detention basin. All modified Lots comply with the minimum Lot size from a numerical perspective and are generally the same size and orientation as originally approved, except for the additional Lots added near the detention basin.

The Asset Protection Zone (APZ) approved under DA/2022/1260 will support the new Lots adjoining the detention basin and is not required to be modified or enlarged. A Bushfire Report providing a detailed assessment against the requirements of Planning for Bushfire

Protection is provided at **APPENDIX 5**. No quantitative change is proposed relating to the size of the APZs.

Taking the above into consideration, it is considered that from a strict numerical / quantitative perspective that the proposed modifications are suitable and result in a development that is substantially the same to that which was originally approved.

#### Qualitative comparison

From a qualitative perspective, the development as modified will continue to reflect a 'Torrens title subdivision' without departing from the approved development definition.

The minimum lot size of the Study Area (Lot 1 DP 221762) is 0.15 ha. The vegetation clearing threshold that triggers entry to the BOS is 0.25 ha. Approximately 7.54 ha of vegetation clearing will be required for the proposed development; therefore, a BDAR is required to support the modified development, and is provided at **APPENDIX 6**. The clearing extent (ha) has not changed as part of the modification. However, three additional trees are required to be removed, which are located on the boundary and within the right of carriageway, of Lots 103, 104 and 105. Despite this, the qualitative impacts upon consideration of the Biodiversity Conservation Act, remain the same as originally assessed, as detailed within the BDAR.

The approved DA included a combined detention / bioretention basin located on site. It is proposed to provide some detention and water quality onsite, and to upgrade the existing downstream regional basin to provide detention for the residential development. As a result, the on-site detention basin will reduce in size. The strategy for management of stormwater runoff for the proposed development includes (as detailed in **APPENDIX 3 and 4**):

- The road and pipe network will be sized to ensure flows for the 1% AEP event are captured and piped to the existing downstream watercourse.
- Grass-lined swales and interallotment drainage located on the Site's eastern and western boundaries are to be sized to capture and divert flows for the 1% AEP event to Basin 2.
- Construction of a bioretention / detention basin (Basin 2) on the northern boundary of the proposed development.

Whilst the overall stormwater management strategy has been revised, post development outflows at the overall catchment outlet are now less than or equal to predevelopment outflows for all events which is not currently the case. The local increase in flow between the proposed development and the existing detention basin will not impact on freeboard requirements for the adjacent lot building envelopes in lots 701, 702 and 703. Augmentation to the existing online detention basin will assist in reducing post developed outflows and lowering 1% AEP event water level below the top of bank. There will also be an improvement to existing minimum freeboard of the surrounding lots. Water quality modelling indicates that a treatment train approach including a GPT, and bioretention will allow the proposed development to meet regional guidelines for the best practice of TSS, TN, TP, and GP (80%, 45%, 45% and 70%, respectively). Based on this report, stormwater management

and flooding are significantly improved for the overall catchment by the proposed augmentation works.

In taking into consideration both the quantitative and qualitative aspects of the proposed modification, it is argued that the development to which the consent as modified is substantially the same as that for which the consent was originally granted.

***(b) it has consulted with the relevant Minister, public authority, or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

Not applicable.

***(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***

Neighbour notification was required as part of the original Development Application. It is anticipated that Council may deem neighbour notification necessary for the proposed modifications due to the extent of the modification. In the instance that notification is required by Council, we welcome the opportunity to respond to any submissions made.

***(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.***

This application does not require formal notification under any EPI or the DCP. However, any submission received as a result of the proposal will be considered. We welcome the opportunity to respond to any submissions to address any concerns expressed by the public.

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

Consideration of the relevant matters referred to in section 4.15(1) is provided below.

***(a) the provisions of—***

***that apply to the land to which the development application relates,***

***(i) any environmental planning instrument, and***

## ACTS

### Environmental Planning and Assessment Act 1979

The Environmental Planning and Assessment Act 1979 (EP&A Act) is the principal planning and development legislation in NSW and is applicable to the proposed development. Section 4.15 of the EP&A Act specifies the matters which a consent authority must consider when determining a DA. The relevant matters for consideration under Section 4.15 are addressed in further detail in separate sections of this SoEE below.

### Rural Fires Act 1991

The subject site is identified as bushfire prone land – vegetation category 1, 3 and buffer. The proposed subdivision as modified is defined as integrated development and requires referral to the NSW Rural Fire Service (RFS) requesting a Bushfire Safety Authority (BSA) under Section 100B of the Rural Fires Act 1997 and General Terms of Approval (GTA) under Division 4.8 of the EP&A Act.

The Asset Protection Zone (APZ) approved under DA/2022/1260 will support the new Lots adjoining the detention basin and is not required to be modified or enlarged. A Bushfire Report providing a detailed assessment against the requirements of Planning for Bushfire Protection is provided at **APPENDIX 5**. No quantitative change is proposed relating to the size of the APZs.

It is anticipated that bushfire risk and management can be managed in accordance with the existing conditions of consent within the Notice of Determination (**APPENDIX 1**).

## LOCAL ENVIRONMENTAL PLAN (LEP)

The existing development as approved was assessed in accordance with the Maitland LEP 2012. As such, the following assessment is provided under the relevant Clauses of the Maitland LEP 2012:

- **Clause 4.1 – Minimum subdivision lot size**

The minimum subdivision lot size applicable to the site varies between 4,000m<sup>2</sup> in the central portion of the site, 1,500m<sup>2</sup> (northern) and 2,000m<sup>2</sup> in the south as shown in **FIGURE 1** below.

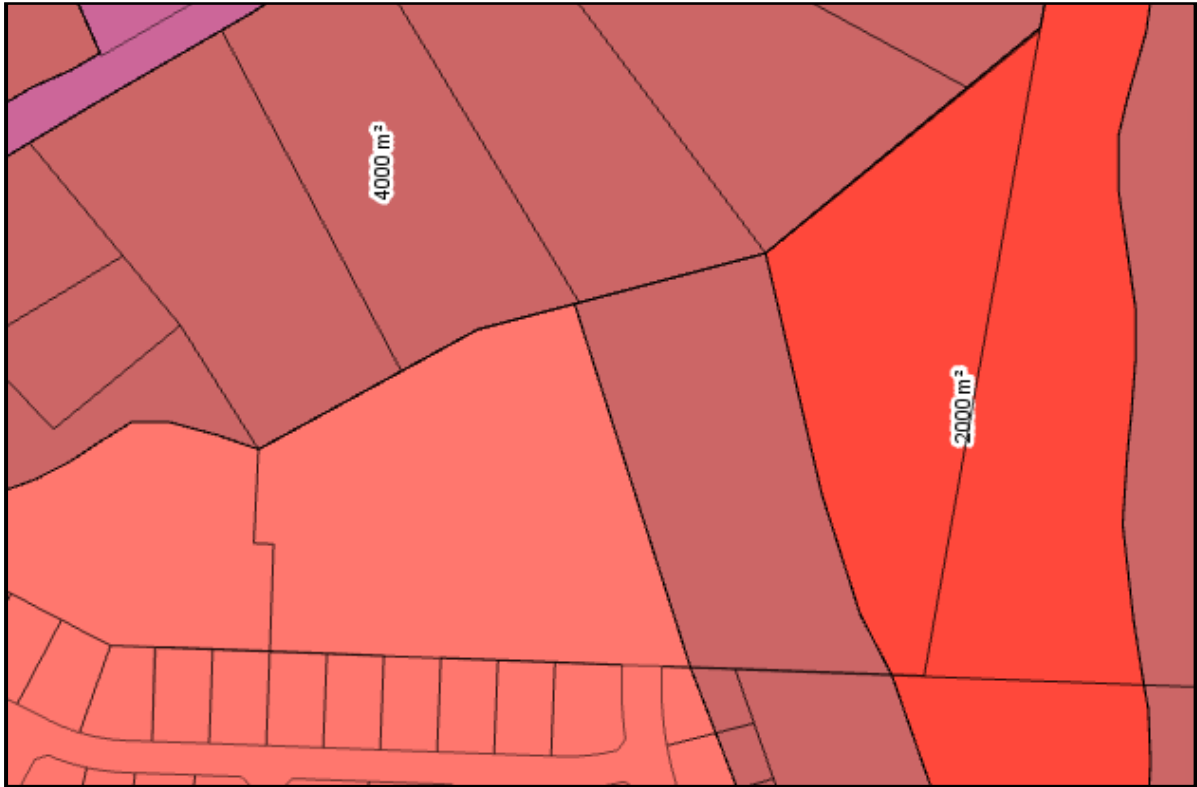


Figure 1: MLS (NSW ePlanning Spatial Viewer, 2024)

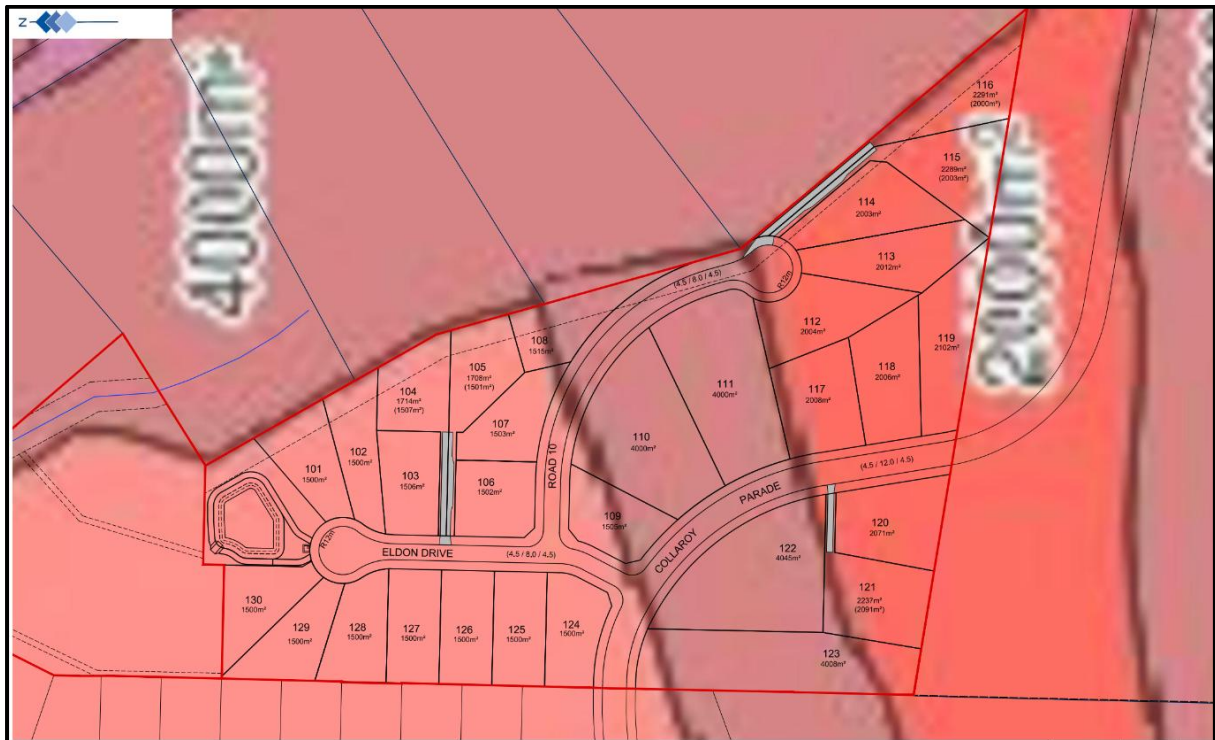


Figure 2: Proposed subdivision layout corresponding to MLS (GCA, 2024)

At completion of the subdivision, each proposed Lot will be compliant with the corresponding MLS applicable to the site, as shown in **FIGURE 2** above. Lots within the northern portion of the site measure over 1500m<sup>2</sup> (smallest 1,500m<sup>2</sup> and largest 1,515m<sup>2</sup>), Lots within the centre measure between 4,001m<sup>2</sup> and 4,045m<sup>2</sup> compliant with the MLS of 4,000m<sup>2</sup> and Lots to the

south measure between 2,001m<sup>2</sup> and 2,102m<sup>2</sup> compliant with the MLS of 2,000m<sup>2</sup>. Overall, the development is compliant with this clause.

*(ii) 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), and*

Not applicable.

*(iii) any development control plan, and*

**Maitland DCP 2012 (MDCP)**

The following Parts of the MDCP are considered to apply to the proposed modification:

<b>Part C – Design Guidelines (C10 – Subdivision)</b>			
<b>EC.1 – Flora and Fauna</b>	The objective of this section is to protect remnant bushland, significant flora and fauna habitats and wildlife corridors and aim to enhance or repair environmental significant or degraded land.	Vegetation removal is proposed as part of this application, as detailed within Section 3.1.2 of this report and within the BDAR provided at <b>APPENDIX 6</b> .	Yes
<b>DC.1 Lot size and dimensions</b>	These sections objectives are to ensure all new lots have an appropriate size and shape to their proposed use and to allow for the provision of necessary services and other requirements.	The lots meet the LEP lot size requirements and provide Lots capable of development in accordance with the URA requirements.	Yes
<b>DC.3 – Drainage, Water Quality and Soil Erosion</b>	The objective of this section is to preserve natural drainage, enhance environmentally significant and maintain the health and quality of the	The Stormwater Management Report provided at <b>APPENDIX 4</b> shows that the overall post development stormwater runoff quantity will not impact on downstream flooding. The report also demonstrates that the retention of nominated pollutants (Total Suspended Solids, Nitrogen, Phosphorous and	Yes

	water catchment and its health.	Gross Pollutants) will meet Maitland City Councils (MCC's) current nominated targets.	
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***(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and***

Not applicable.

***(i) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),***

Not applicable.

***(ii) (Repealed)***

Noted.

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

The proposed modified development incorporates amendments to layout and yield of the subdivision, and overall design of the stormwater detention system and basin.

The proposed modified development does not propose any additional adverse impacts to the natural or built environment that were not already considered in the approved DA, as detailed within the preceding assessment and supporting specialist reports. The previous assessment demonstrates that the environmental impacts of the development can be managed or mitigated where necessary. Overall, it is considered that there are minimal environmental impacts because of the modification.

The construction would result in the creation of jobs and would have a monetary injection into the municipality through development and contributions payments received under Section 7.11 of the Act.

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

The subject site continues to be suitable for the use as approved. There are no anticipated negative impacts on the locality as a result of the modified development. To this extent, the site is suitable for development.

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

Council as the consent authority will determine whether notification is required and in turn will take into consideration any submissions made.

***(e) the public interest.***

The proposed modification to the development remains to be in the public interest as it:

- is a permissible form of development,

- is consistent with the applicable environmental planning instruments;
- is not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality; and
- will have positive economic and social outcomes.

The proposal represents a positive contribution to the public realm, reinforces the use and nature of the land and is considered to be in the public's best interest.

## CONCLUSION

Please proceed to determine the proposed modification in line with the requested amendments listed above.

Thank you for taking the time to review the proposed s4.55(2) modification. Should you have any questions regarding these matters, please contact the undersigned.

Kind regards,

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**ERIN DANIEL**  
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