



190433(55) BJ/BM

11<sup>th</sup> March 2022

Maitland City Council  
PO Box 220  
MAITLAND NSW 2320

**PROPOSED S.455 (2) MODIFICATION  
OF DA2018-2022  
TORRENS TITLE SUBDIVISION  
TWO (2) LOTS INTO 43 LOTS (STAGE 53 &, 55)**

**1. INTRODUCTION**

On behalf of Avid Property Group Pty Ltd ("Avid"), Council is requested to modify DA2018-2022 pursuant to the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modifications proposed includes adjustments to the lot layout to create a more even lot depth and more regular layout; modified regrading and retaining; and adjusting the stormwater design.

**2. DA18-2022**

DA18-2022 was approved on 30<sup>th</sup> March 2020, consenting to a 43 lot residential subdivision, referred to as "Stages 53 and 55" of the Waterford development.

DA18-2022 is one of multiple DAs which make up the Waterford development which is currently under construction within the Thornton North Urban Release Area (see Figure 1).

In addition to the above and of relevance to the subject modification, is the proposed development of land to the west of Waterford known as the "CSR land" which is currently under assessment with Council (DA/21-1662) (see Figure 1).

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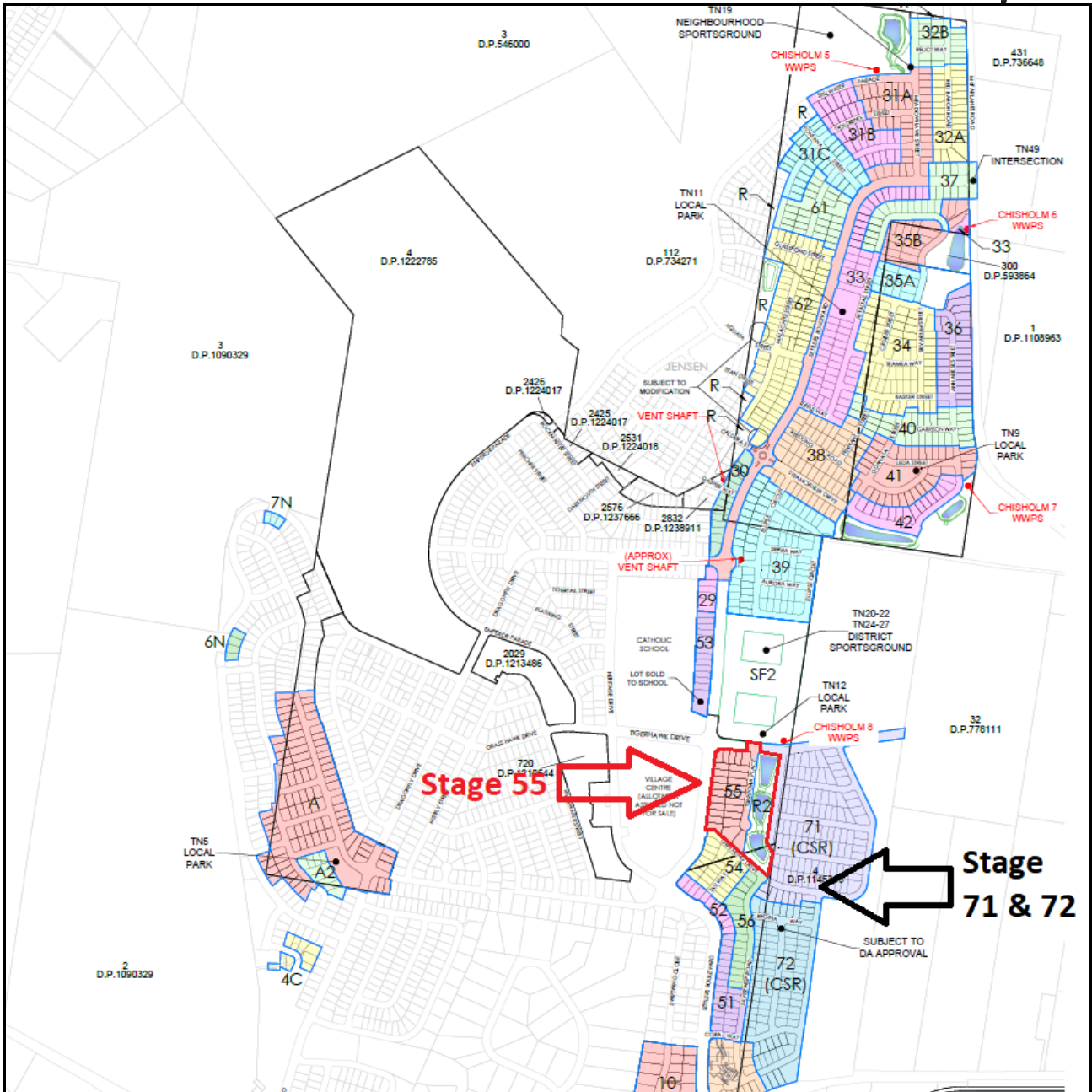
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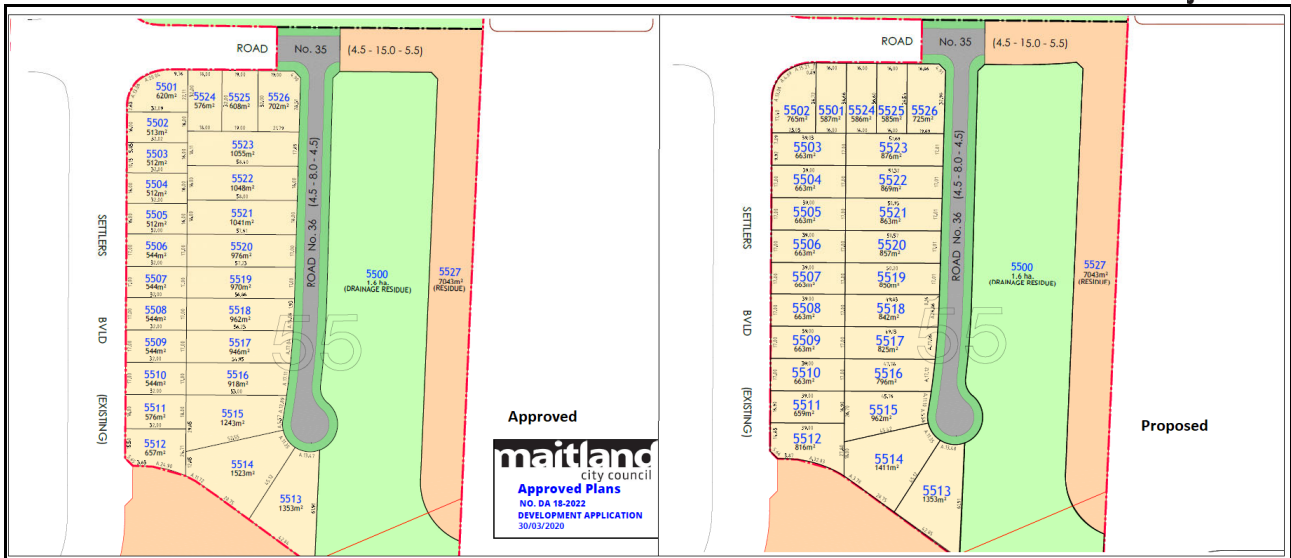
**Figure 1: Stage 55 within the context of the Waterford Masterplan (Stage 55 in red)**

### 3. AMENDMENTS

#### 3.1 Lot Layout

The proposed amended layout will allow for the increase of lot depth for the lots on the western boundary of Stage 55. This will create more even and regular lots which will increase the desirability of the lots and allow a greater building envelope to accommodate a wider range of housing design. In addition, the re-orientation to Lot 5502 will provide better access for this corner lot.

The approved and amended layout are provided within Figure 2.



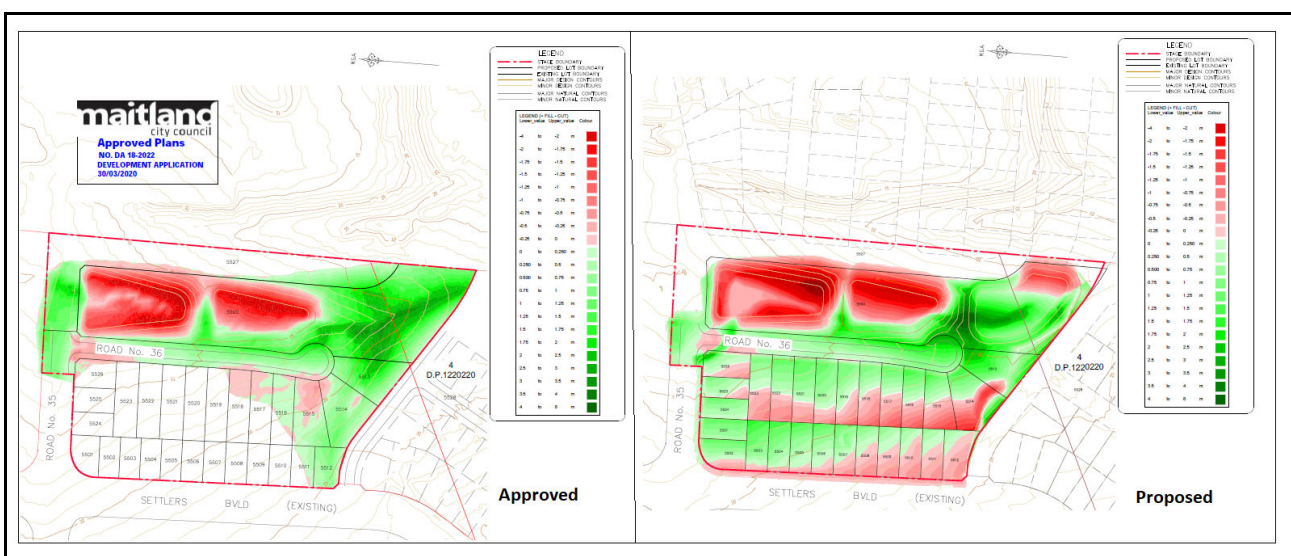
**Figure 2: Stage 55 Approved and Proposed Layout**

### 3.2 Earthworks & Retaining

The proposed amendments also include amended regrading and the addition of retaining walls of up to 1.25m across Lot 5501 and Lots 5524-5526 and up to 2m in the rear of Lots 5503-5512.

The original consent did not provide regrading and retaining across the lots and as a consequence, would have relied on individual lot owners undertaking piecemeal retaining. The ability to undertake regrading and retaining at construction stage by the Developer improves engineering outcomes across the site through being undertaken in a coordinated manner and under the supervision of qualified engineers. Further benefits in this regard are detailed within Section 5.

The approved and amended earthworks and retaining are provided within Figures 3 and 4.

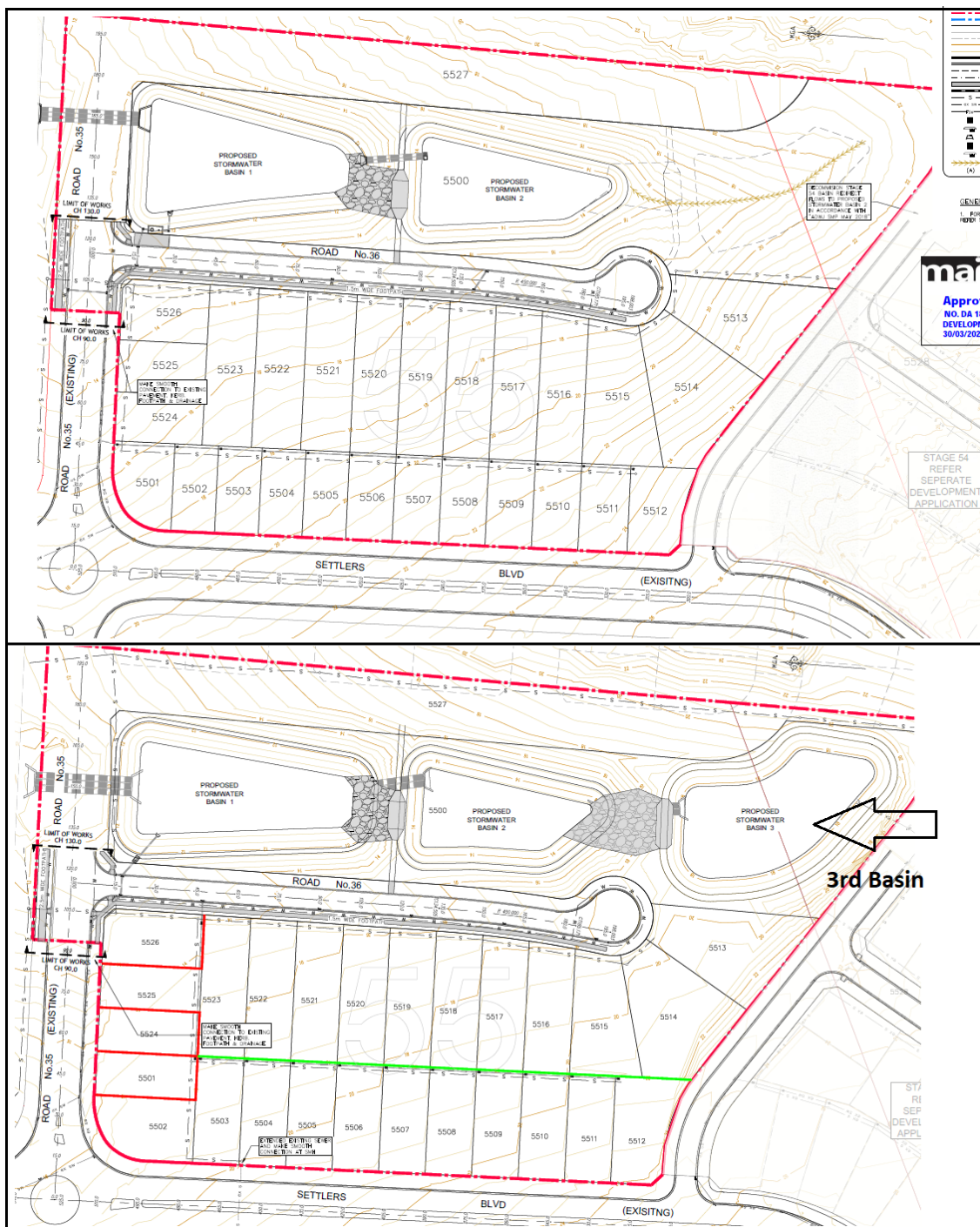


**Figure 3: Stage 55 Approved and Proposed Earthworks**

### 3.3 Stormwater

Under DA18-2022, two (2) stormwater basins were proposed as part of the stormwater management scheme for the southern portion of Waterford. As part of the Water Cycle Management Plan; however, a third was assessed as being required once development over the CSR lands occurred. As mentioned above, the Developer has now purchased the CSR lands and submitted a DA for a subdivision which relies on this third basin. As a consequence, the third basin is now formally proposed under the subject DA.

The approved and amended stormwater scheme are provided within Figure 4.



**Figure 4: Stage 55 Approved and Proposed Retaining and Stormwater**

### 3.4 Summary

In summary, the following modifications are requested:

- Reconfiguration of the lot layout; and adjustment to stormwater and servicing to correspond;
- Amendment to the earthworks including the addition of retaining walls; and
- The construction of the third stormwater basin.

The following aspects of DA2018-2022 will remain the same:

- No change to the development footprint or associated environmental impacts (note: the impact of the third stormwater basin was originally assessed with regards to biodiversity impacts);
- No change to the approved lot yield;
- No change to the road configuration or width of roads.

A complete set of amended subdivision and concept engineering plans are provided within Attachments 1 and 2, respectively.

## 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:*

Plan Ref No.	Sheet No.	Revision No.	Revision Date	Prepared by: (consultant)
Plan of Subdivision 190433 (53,55)	DA-105, DA-106	A <b>B</b>	<del>17.05.18</del> <b>17.02.22</b>	ADW Johnson
Concept Engineering Plans 190433	001 & 002, 101 & 102, 201 to 204, 221, 401 & 402, 501 & 502, 601, 611	A <b>B</b>	<del>01.06.2018</del> <b>16.02.2022</b>	ADW Johnson

### **Reason/Justification**

To refer to the amended plans.

### Condition 47 – Amend

Prior to the issue of construction certificate engineering plans and details for the driveway crossing into Lot ~~5501~~ **5502** & 5512 shall be prepared by a suitably qualified and experienced Civil Engineer and submitted to Maitland City Council for approval.

The driveway location is to accommodate a functional driveway outside of the roundabout turning circle and intersection. Driveway locations shall achieve minimum offsets to street furniture in accordance with Council's standard drawings, and be clear of any median/ splitter islands (ie not perpendicular).

### **Reason/ Justification**

Refer to the amended numbering of the approved lots.

## **5. REQUIREMENTS FOR A SECTION 4.55(2) MODIFICATION**

### **5.1 Relevant Issues under Section 4.55(2)**

To lodge an amendment under Section 4.55(2) of the Act, the applicant needs to prove that the modifications be substantially the same, as follows:

**(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**

**Comment:** The proposed amendments will have no more environmental impact than as originally approved under this DA given that the footprint of the development has not increased. Despite the addition of the third basin, this was always envisaged and as a result the original Biodiversity Development Assessment Report assessed the impact of the vegetation removal within this area.

Whilst the proposed earthworks scheme will add retaining walls up to 2m, this is considered to have benefits through the provision of a coordinated retaining scheme which will ultimately result in benefits to the overall subdivision.

Beyond the above, the proposed development continues a low density residential subdivision, in a similar pattern to the approved and similar to those surrounding. The lot yield will remain unchanged, and the reconfiguration and adjustment to internal lot boundaries only improves the subdivision design in terms of future housing.

Taking these factors into consideration, the modifications proposed will continue to represent a development which is substantially the same as that originally approved.

- (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**

**Comment: Natural Resources Access Regulator:** The proposed modification will not alter the way in which the original consent was assessed by NRAR, and as such, a re-referral to this Authority is not required.

**Rural Fire Service:** The proposed modification will not alter the way in which the original consent was assessed by the Rural Fire Service.

- 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, an**
  
- (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.**

It is assumed, Council will notify the modification.

**(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.**

Section 4.15(1) of the Act is addressed below.

**5.2 Relevant Issues under EPA Regulation 2021**

Clause 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:

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>	See Development Application Form.
<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 Development Application Form.
<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 Section 3 & 4.
<i>(e) whether the modification is intended to—</i> <i>(i) merely correct a minor error, misdescription or miscalculation, or</i> <i>(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>(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,</i>	See Development Application Form.
<i>(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.</i>	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.

Noting the earthworks design has been amended, it is considered necessary to address Clause 7.2(3) as follows:

*(3) Before granting development consent for earthworks, the consent authority must consider the following matters—*

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*

The earthworks have been designed in a wholistic manner in coordination with the stormwater design to ensure there is no disruption or impacts on existing drainage patterns and soil stability.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land,*

The earthworks are required to provide level building areas for future dwellings and therefore only improves the lands likely future use/redevelopment.



*(c) the quality of the fill or the soil to be excavated, or both,*

The quality of fill is able to be conditioned through the consent.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*

The higher retaining walls (2m) are located within the rear property boundary and as such, will not have any amenity impacts on adjoining properties or the public in general. All retaining walls will be in place prior to sale which is beneficial as future lot owners are fully aware of the retaining prior to purchase.

*(e) the source of any fill material and the destination of any excavated material,*

Fill will likely be sourced from the wider Waterford development site; however, where this is not possible, it will be sourced locally. The exact source of fill will not be known until the construction phase.

*(f) the likelihood of disturbing relics,*

All matters pertaining to heritage have been previously addressed through the existing AHIP ensuring no relics will be disturbed.

*(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

The proposed modified earthworks and retaining design will have no additional impacts on any watercourses, drinking catchments or environmentally sensitive areas.

Based on the above, the proposed earthworks are consistent with the requirements of Clause 7.2.

*(a)(ii) the provisions of any draft environmental planning instruments*

There are no draft environmental planning instruments relevant to the application.

*(a)(iii) any development control plans*

No aspect of the development requires any additional non-compliance against Council's DCP, noting that both do not comply with the maximum fill depth of 2 metres.

*(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*

The proposed lot configuration amendments will have the following beneficial impacts:

- Creates a more even lot depth across the development, thereby improving the building envelope for future housing; and
- Improves the orientation of the lot adjoining the round-about, thereby accommodating a safer driveway location.

The proposed coordinated earthworks and retaining strategy will have the following beneficial impacts:

- Ensures that a site wide design can be established which takes into consideration the overall topography, drainage and catchment areas;
- Retaining can occur at the same time as road construction and prior to any dwelling construction, significantly reducing site disturbance particularly on adjoining neighbours;
- Establishing benched and retained lots prior to dwelling construction allows unhindered construction vehicle access which removes potential impacts to neighbouring allotments;
- Removing the need for future retaining by home builders, the Developer can ensure that overall site stability is achieved and retaining is designed and supervised by qualified structural engineers;
- Providing level allotments allows for easy and more affordable construction of a wide range of future homes by individual purchasers;
- Amending the earthworks design to position larger retaining walls along rear boundaries, which improves solar access to future dwellings.

Finally, the inclusion of the third basin accommodates the development of lots within the CSR land.

Taking the above into consideration, it is evident that the proposed modifications will only have beneficial impacts to the economic, social and environmental fabric 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 modifications will alter the lot layout but will not cause any traffic or access issues as the development footprint of the subdivision has not been changed, with the modification being the most efficient way of connectivity to the remainder of the development. No other changes or impacts are generated from the proposed modification in terms of traffic generation or intersection/road treatments.

### **Landscaping**

The proposed modifications will have no impact on the landscaping as approved under this DA. Plans in this regard will be provided as part of the Construction Certificate in accordance with Condition 14.

### **Earthworks/Retaining**

Discussed above.

**Utilities**

The proposed modifications will have no impact on utilities with the exception of minor adjustments to suit the amended layout.

**Stormwater, Drainage and Water Quality**

Discussed above.

**Flora and Fauna**

The proposed modifications will have no additional impact on matters of flora and fauna given that the proposed development footprint is not changing (see Figure 5).



**Figure 5: Extract of Stage 53 & 55 BDAR Vegetation Impacts**

## **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 a better lot configuration and coordinated retaining strategy.

## **Waste Management**

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

## **Site Design and Internal Design**

Discussed above

*(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**

The proposed modification does not change the approved use with the development remaining a Torrens Title residential subdivision. While there are alterations to the stormwater basin and lot layout, the scale of the development will remain unchanged. The proposed modification will not change the character of the approved development, nor will it result in any significant change to environmental impacts. For these reasons, Council can be satisfied that the modified proposal will remain substantially the same as the development as that originally approved in a qualitative and quantitative sense and as such, satisfies the requirements of Section 4.55(2).

Having regard for the provisions of Section 4.55(2) 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**