



September 2021

4.55 (1A) APPLICATION

PLANNING REPORT

**91 GRAND PARADE
RUTHERFORD**

Disclaimer

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TABLE OF CONTENTS

1. Executive Summary	3
2. Site details	4
3. Proposed Modification.....	5
3.1. Planning History and Consent to be Modified.....	5
3.2. The Proposed Modifications in Detail	5
3.3. Conditions to be Modified.....	16
4. Statutory Planning framework	20
4.1 Section 4.55 (1A) Modification	20
4.2 Matters for Consideration.....	21
5. Section 4.15 (1) Assessment.....	22
5.1 The Proposed Changes	22
5.2 Section 4.15 (1)(a)(i) – Environmental Planning Instruments	28
5.2.1 State Environmental Planning Policy (State and Regional Development)	28
5.2.2 Maitland Local Environmental Plan (MLEP) 2011	29
5.2.3 Section 4.15 (1)(a)(ii) – Draft Environmental Planning	30
5.2.4 Section 4.15 (1)(a)(iii) – Development Control Plans	30
5.2.5 Section 4.15 (1)(a)(iiia) – Planning Agreements.....	31
5.2.6 Section 4.15 (1)(a)(iv) – Matters Prescribed by the Regulations	31
5.2.7 Section 4.15 (1)(b) – Likely Impacts of the Development.....	31
5.2.8 Section 4.15 (1)(c) – Sustainability of the Site	31
5.2.9 Section 4.15 (1)(d) – Submissions.....	31
5.2.10 Section 4.15 (1)(e) – Public Interest.....	32
6 Conclusion.....	33

APPENDICES

Table 1: Documents supporting the first s4.55 application.

Appendix	Document	Prepared by
A	Amended Master Plan	CKDS Architecture
B	Amended Community Building Architectural Plans	CKDS Architecture
C	Amended Villa Designs	CKDS Architecture
D	Amended Landscaping Plans	Studio 26
E	Amended Disability Access Report	Lindsay Perry Access

The proposed amendments to the architectural plans have been clouded to graphically show their location.

1. EXECUTIVE SUMMARY

This Planning Statement has been prepared by Enliven Communities P/L. It is submitted to Maitland City Council in support of an application to amend, viz s4.55(1A) the Notice of Determination dated 11 May 2021 which approved Development Application DA/2020/680. The approval encompassed a Manufactured Home Estate (Staged) – 160 home sites and associated community facilities and infrastructure.

The purpose of this Planning Statement is to describe the proposed amendments, review the applicable planning regime relating to the changes, assess the degree of compliance and examine the environmental effects of the amendments when measured against the relevant requirements of the Environmental Planning and Assessment Act, 1979 and Regulation 2000.

In respect of the assessment of the proposal, where impacts are identified, measures proposed to mitigate any adverse effect to environmental amenity have been addressed in this Planning Statement, including:

- Section 3 - A detailed description of the proposal
- Section 4 - The statutory planning policy framework
- Section 5 – A statutory assessment against the relevant planning controls

This Planning Statement has been prepared after taking into account the following key issues:

- Legislative requirements relating to the modification of a consent.
- Compliance with applicable environmental planning instruments.
- Likely impacts of the development as amended.
- Suitability of the site; and
- The public interest.

The Planning Statement has been prepared in association with a series of architectural plans prepared by CKDS Architecture Newcastle and a number of other allied design and engineering consultants. It is considered that the proposed amendments result in substantially the same development and does not result in any adverse environmental impacts over and above that which were originally approved.

2. SITE DETAILS

The subject site is legally described as Lot 20, DP 270823, being 91 Grand Parade Rutherford and the development is known as “Stonybrook Village”.

A map and aerial view of the site are shown below:

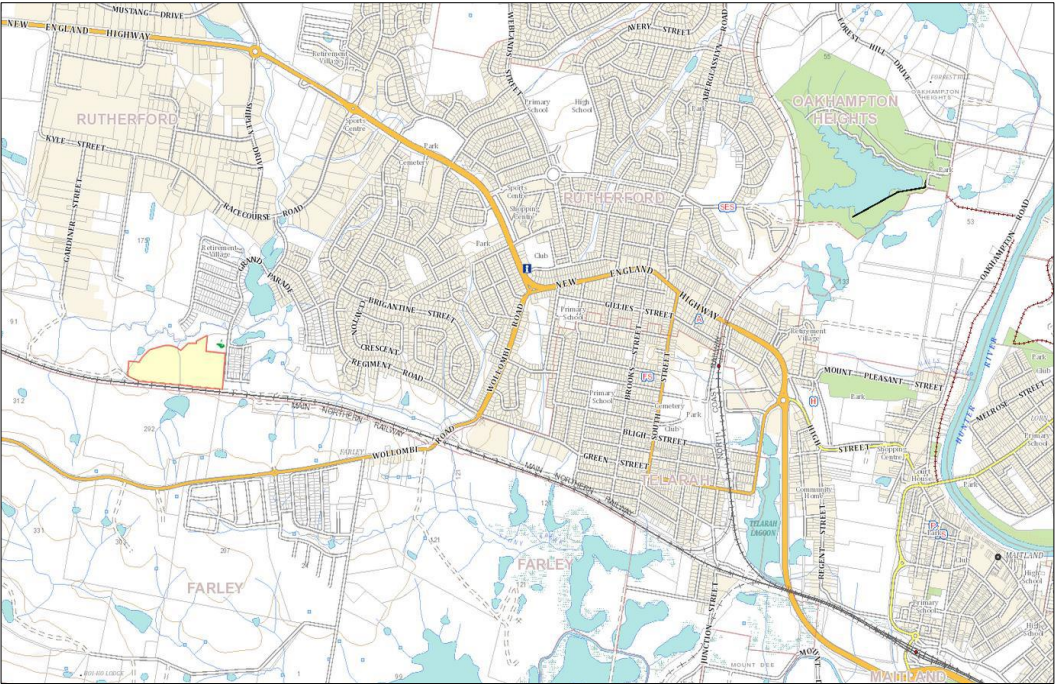


Figure 1: Map view of the site (site outlined in red) (Source: Sixmaps)



Figure 2: Aerial view of the site (site outlined in red) (Source: Nearmaps)

3. PROPOSED MODIFICATION

3.1. Planning History and Consent to be Modified

DA/2020/680 was approved on the 11 May 2021 subject to the imposition of 85 conditions of consent. The consent approved a Manufactured Home Estate (11 Stages) comprising 160 home sites and associated facilities. This included road works, landscaping, a resident community clubhouse, a tennis court, men’s shed, pool and gym, car parking, entry and advisory signage, and other associated works.

3.2. The Proposed Modifications in Detail

This 1st s4.55(1A) application seeks to amend Condition No. 1 from the Notice of Determination as issued on the 11/5/2021. The amendments encompass changes to the design and positioning of the Community Clubhouse, enhancement modifications to the home designs, and the positioning of several home sites in Stages 1, 3, 4, 5 & 11. In summary, the proposed changes are outlined in Table 2 and graphically shown in Figures 3-5 below:

Table 2: Proposed changes to the approved development

No.	Proposed Change
a)	Change the design and position of the Community Clubhouse.
b)	Change in the location of the boundaries to home sites 1 – 10 and 134 & 137.
c)	Creation of a combined overland flow stormwater channel and pedestrian pathway between lots 7 & 8.
d)	Change to the orientation of the proposed house pad on lot 132.
e)	Changes to the infrastructure associated with the home site and lot boundary repositioning.
f)	Changes to the landscaping provision around the amended Community Clubhouse building and repositioned house sites.
g)	Minor enhancement changes to home designs for Villa Types 1 – 5 in the village.

The proposed amendments to the architectural plans have been clouded to graphically show their location. The following figures are Plan extracts highlighting the difference between the existing approved and the proposed amended elements.

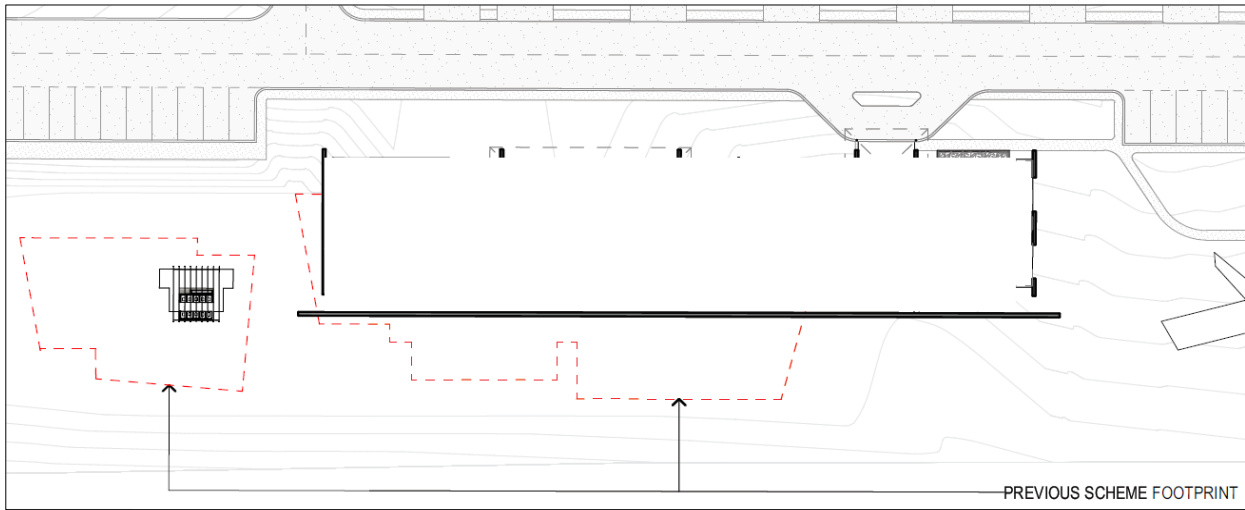


Figure 3: Extract showing the location of existing approved position of the Community Clubhouse (red dotted line) in relation to the proposed position of the amended Community Clubhouse building.



Figure 4:
 Extract showing the location of home sites (blue hatched) where the boundaries are proposed to be amended, including sites 1 – 10 and 133 & 137. Also showing lot 132 where the house pad is proposed to be swung 45 degrees.



Figure 5:
 Extract showing in detail the changes in the location of the boundaries to home sites 1 -10.

Note sites 1 – 7 are moved in a southerly direction and sites 8 – 10 are moved slightly in a northerly direction. This creates sufficient space between home sites 7 & 8 to enable the provision of a combined stormwater channel and pedestrian pathway (red circle indicates location of channel and pathway).

Proposed layout of sites 1 - 10

Existing layout of sites 1- 10

Figures 5 & 6 below depict the currently approved and the proposed amended Community Clubhouse building floorplan.

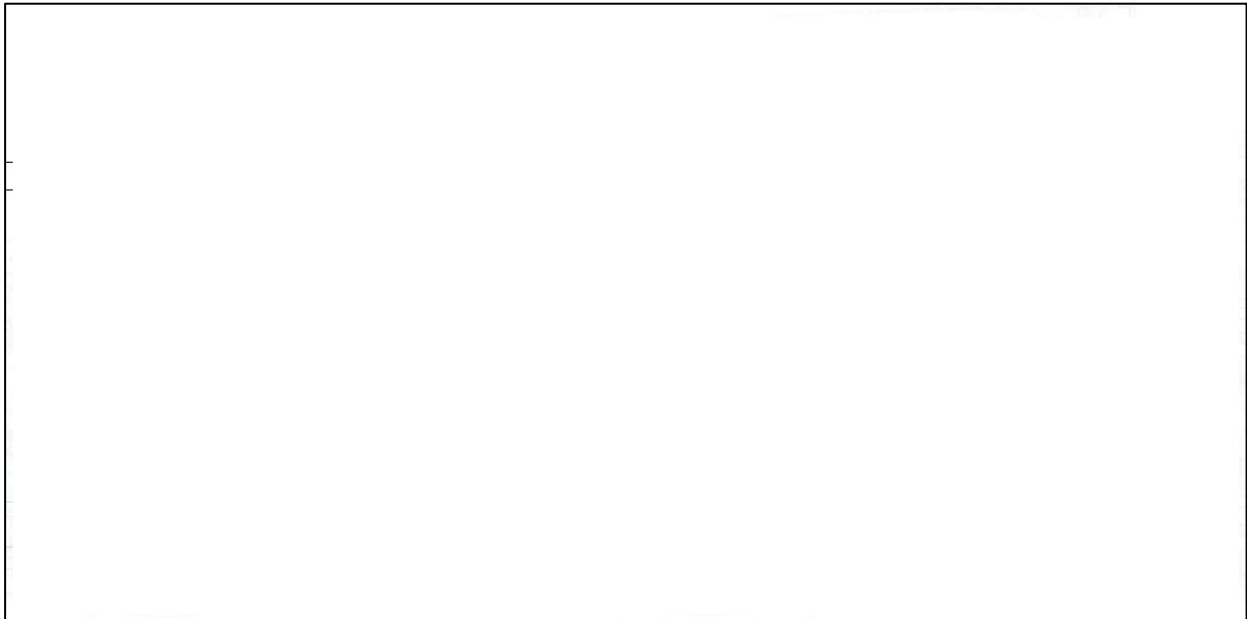


Figure 5: The currently approved Community Clubhouse internal layout

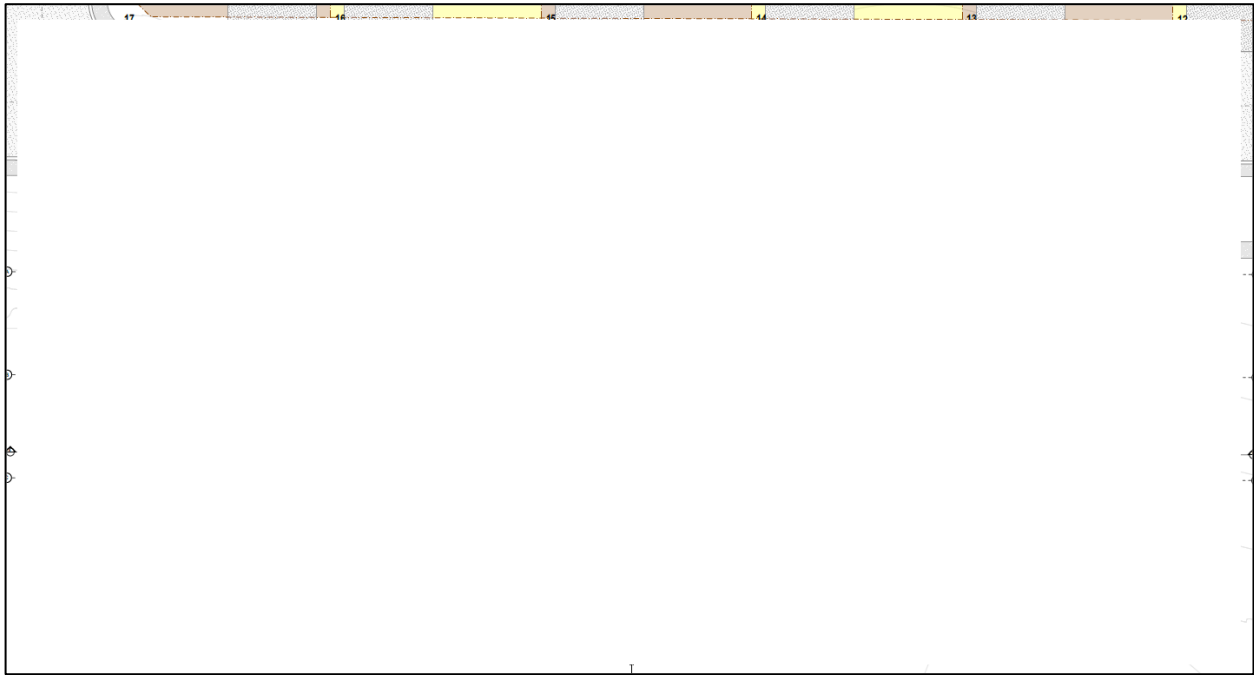


Figure 6: The proposed amended Community Clubhouse internal layout

Table 3: Comparison is size of buildings

Internal Space	Proposed Clubhouse	Approved Clubhouse
Overall Floor Area (including pool)	854	793 + 297
Outdoor BBQ Area	152	73
TOTAL	1,006m2	1,163m2

Figures 7 – 10 below show the contrast between the existing approved external facade of the Community Clubhouse building and the proposed amended design.



Figure 7: *Approved Community Clubhouse design – front north-eastern facade.*



Figure 8: *Proposed amended Community Clubhouse design – front north-eastern facade.*



Figure 9: Approved Community Clubhouse design – front northern elevation.

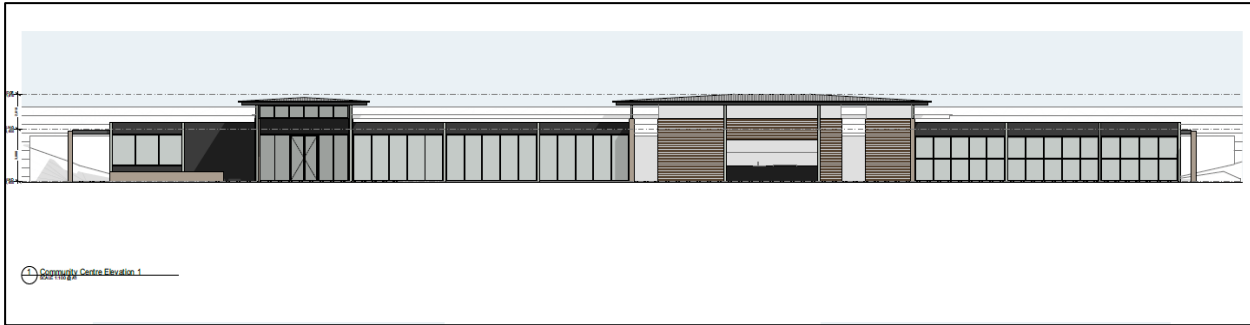


Figure 10: Proposed amended Community Clubhouse design – front northern elevation.



Figure 11: Proposed amended Community Clubhouse design – external materials of construction.

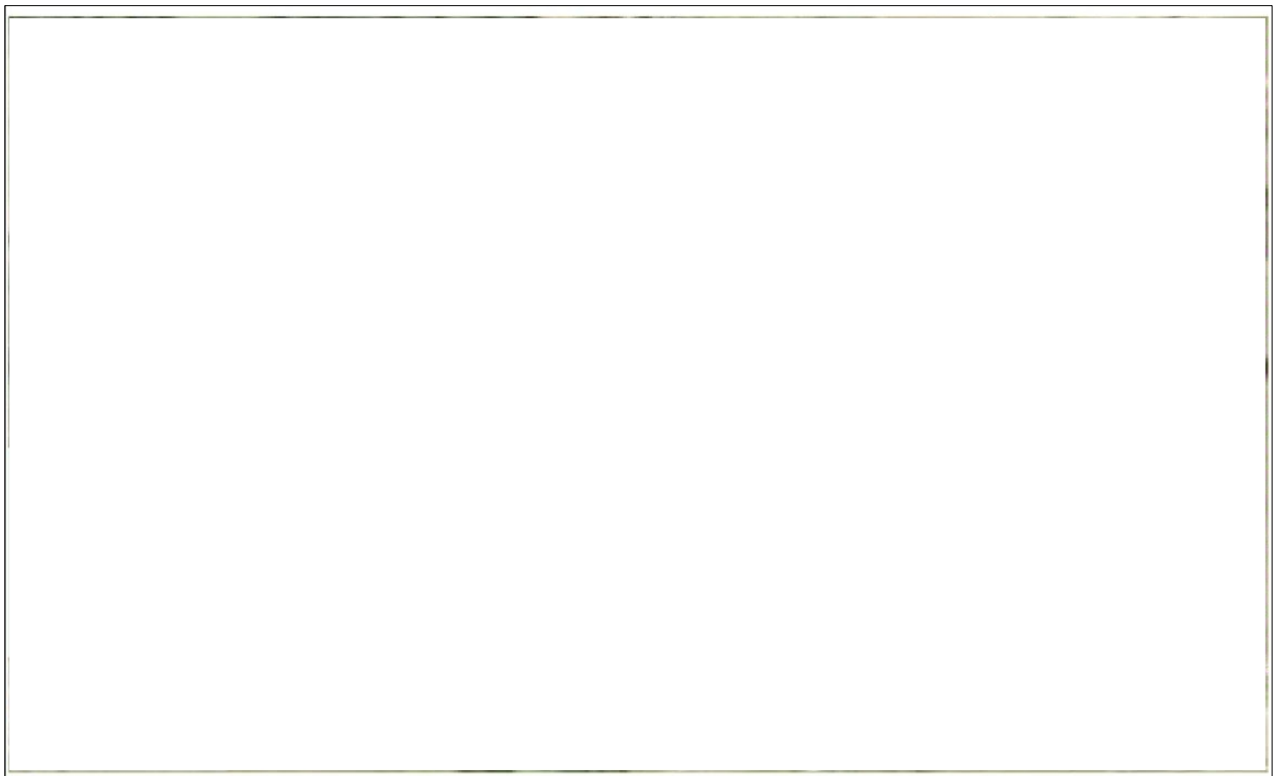


Figure 12: Approved Villa Types for each Lot

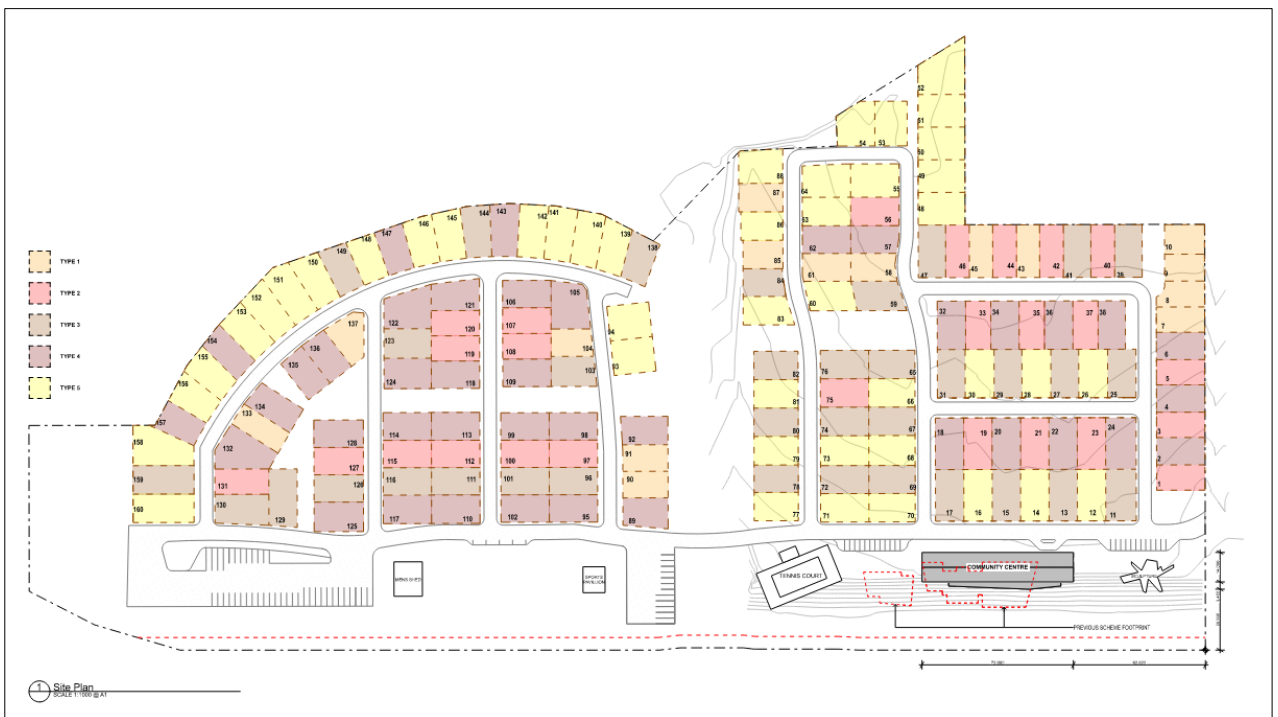


Figure 13: Amended Masterplan showing Villa Types for each Lot – It is noted that the villa types on each lot has not changed, and the overall housing mix and density has not changed.

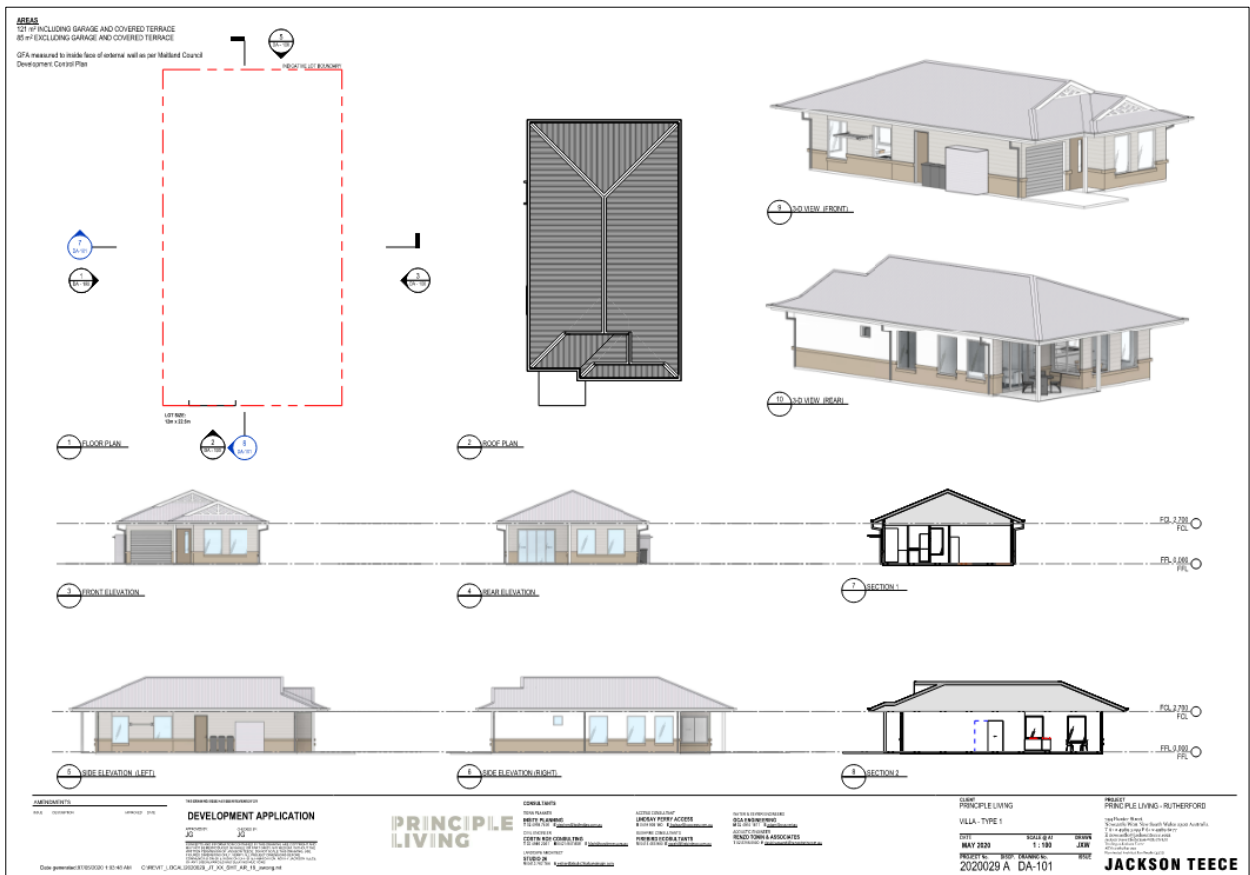


Figure 14: Approved Villa Type 1

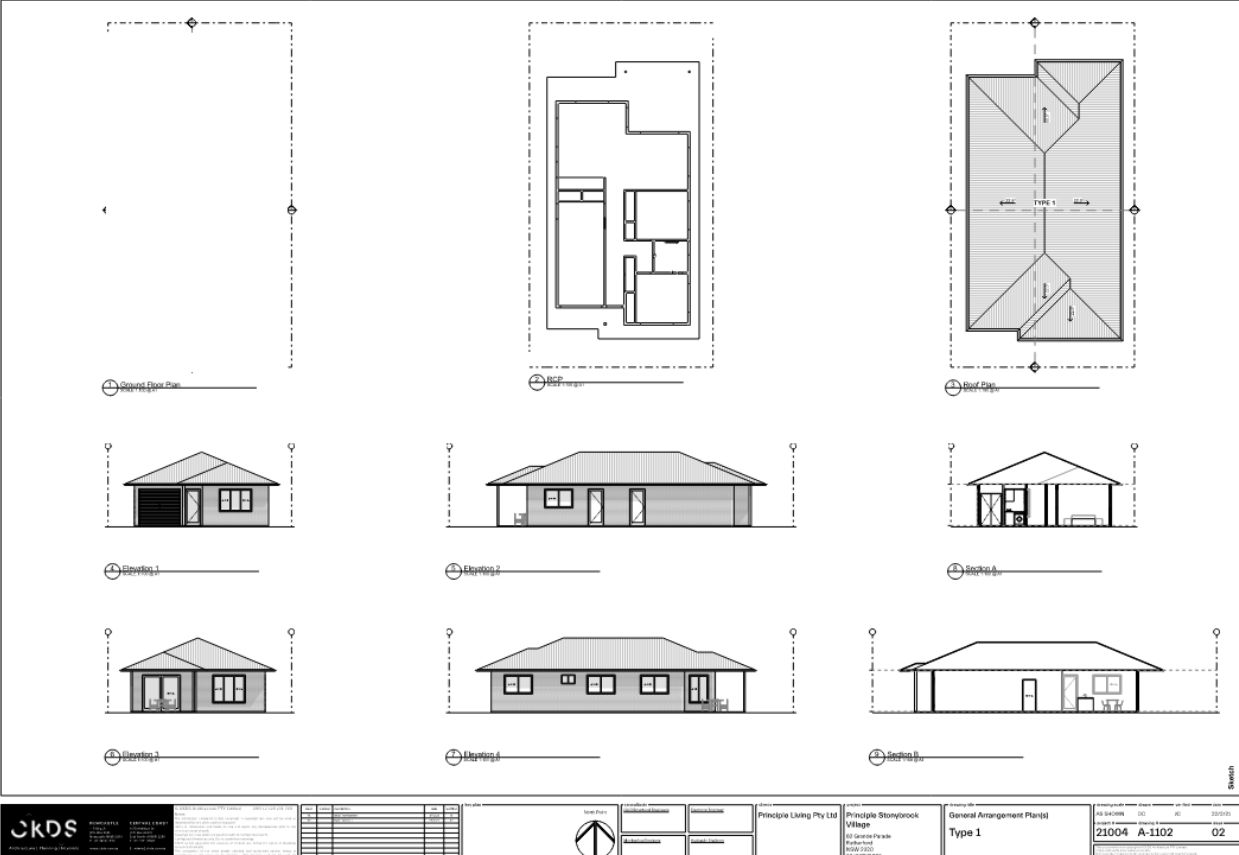


Figure 15: Proposed Amended Type 1 Villa

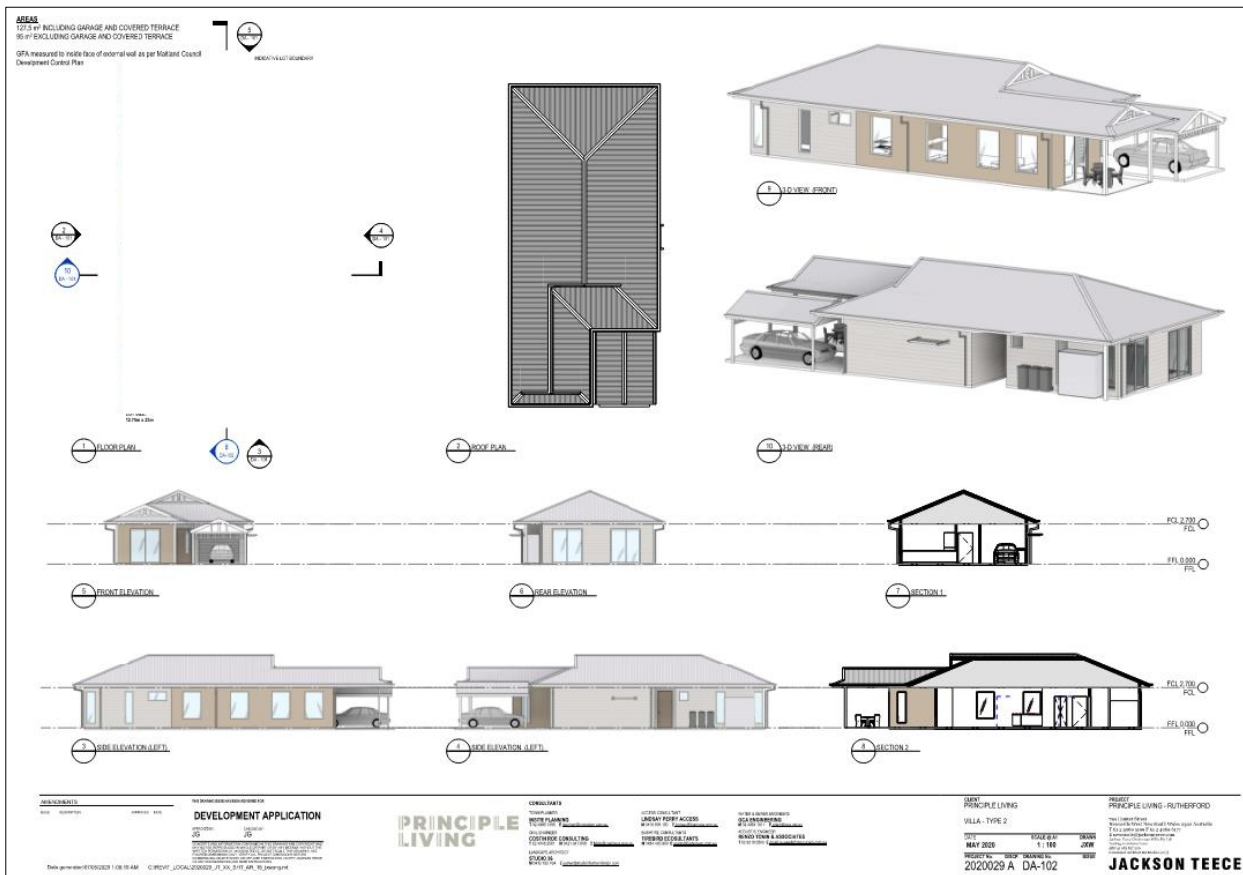


Figure 16: Approved Villa Type 2

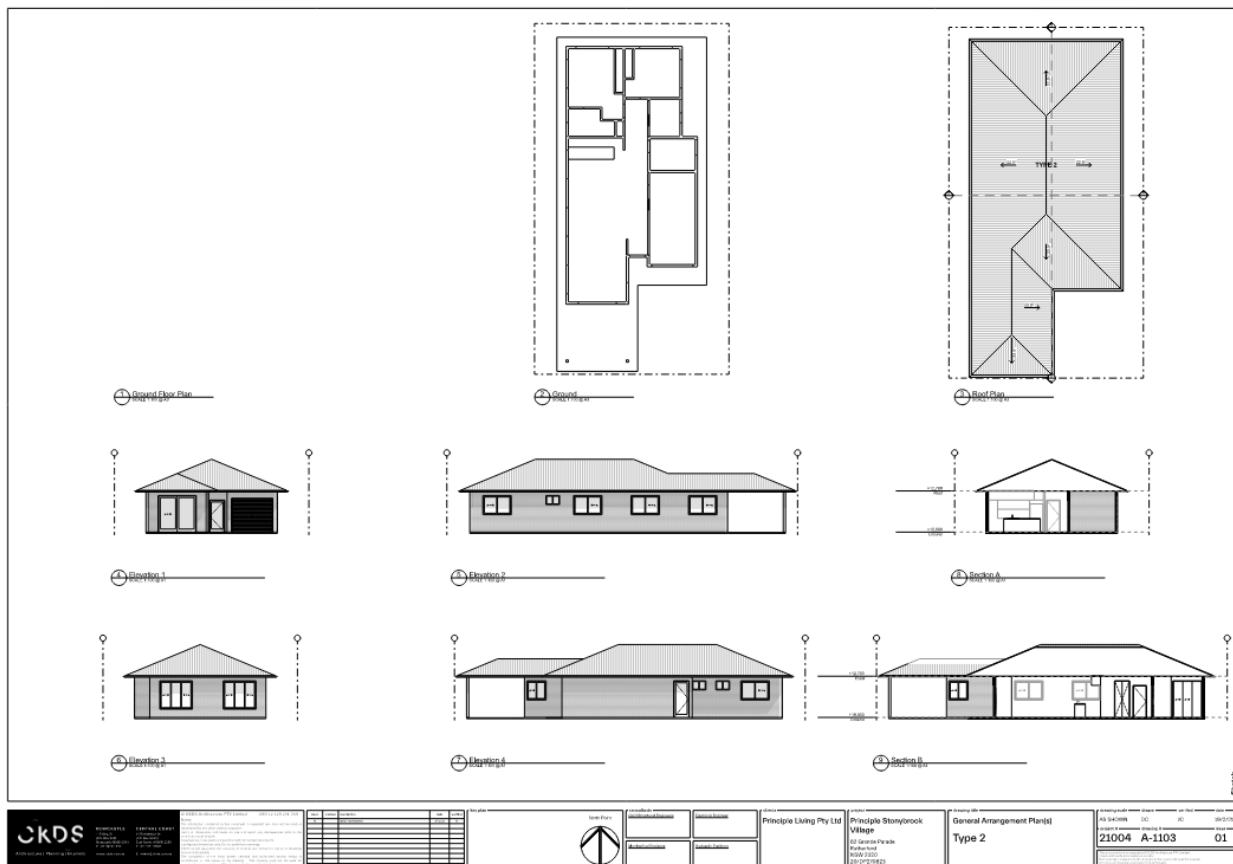


Figure 17: Proposed Amended Type 2 Villa



Figure 18: Approved Type 3 Villa

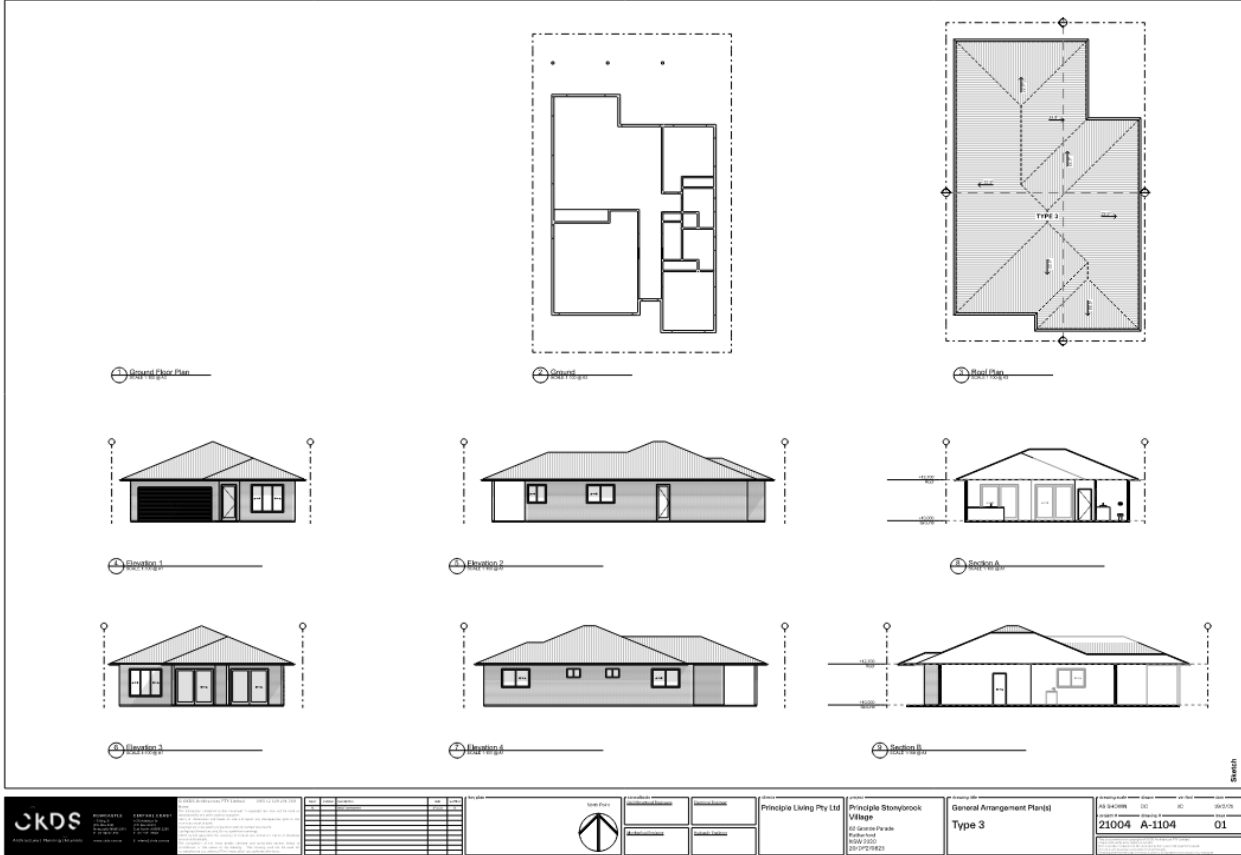


Figure 19: Proposed Amended Type 3 Villa

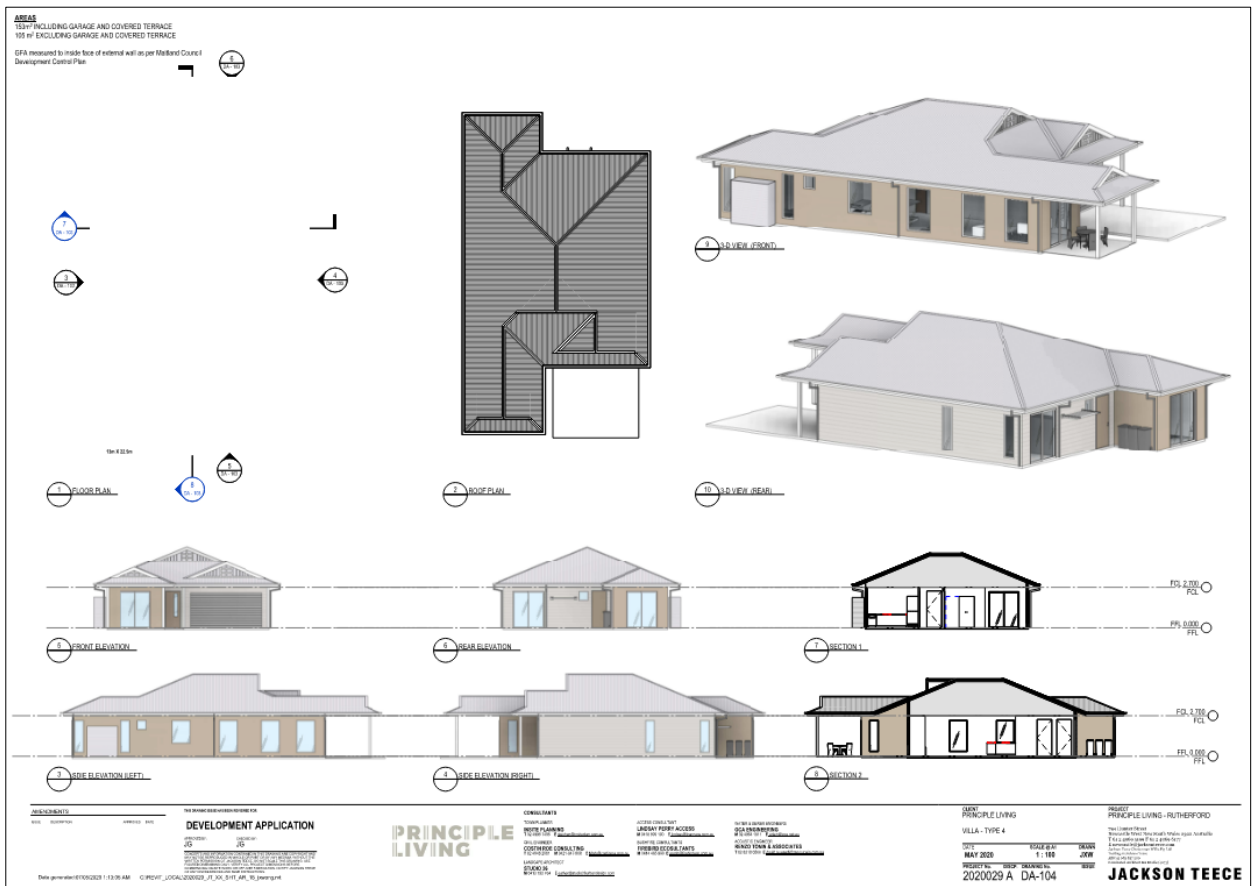


Figure 20: Approved Type 4 Villa

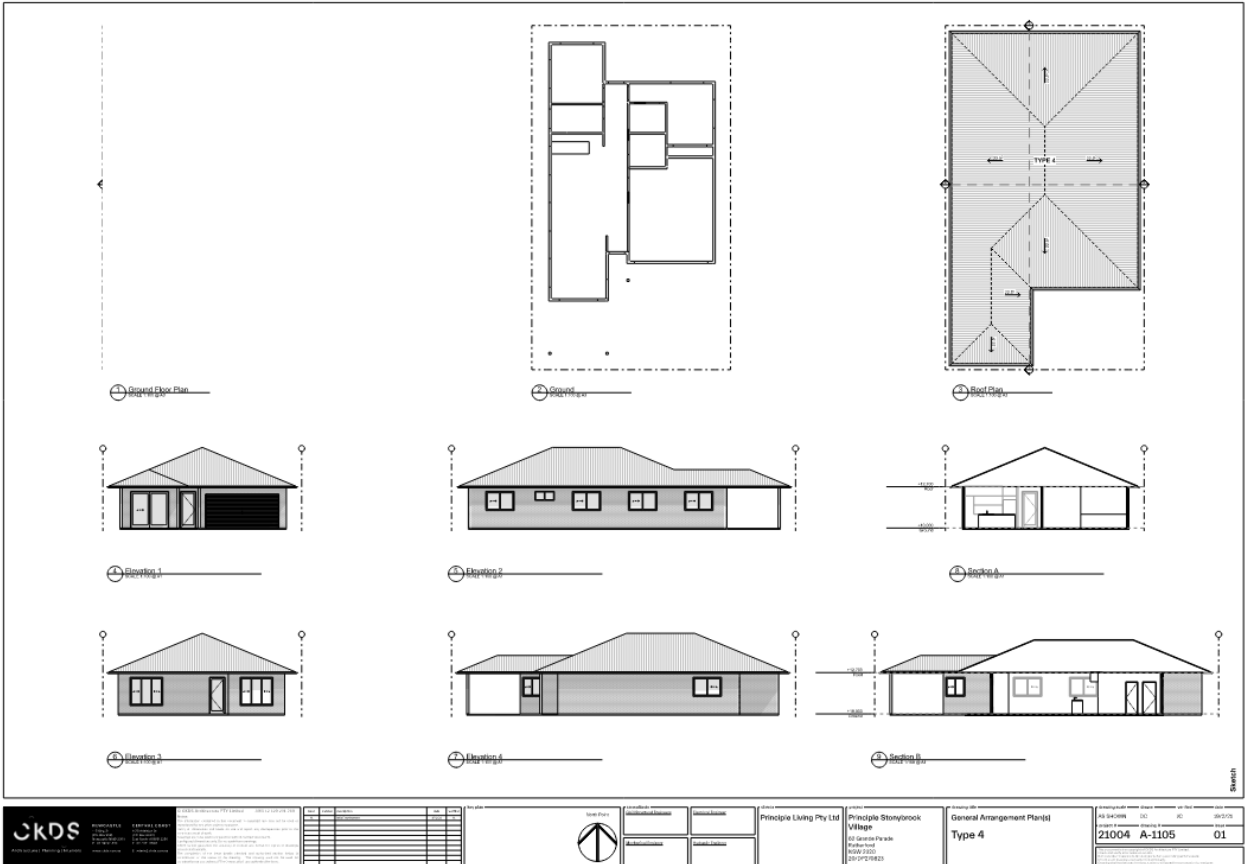


Figure 21: Proposed Amended Type 4 Villa

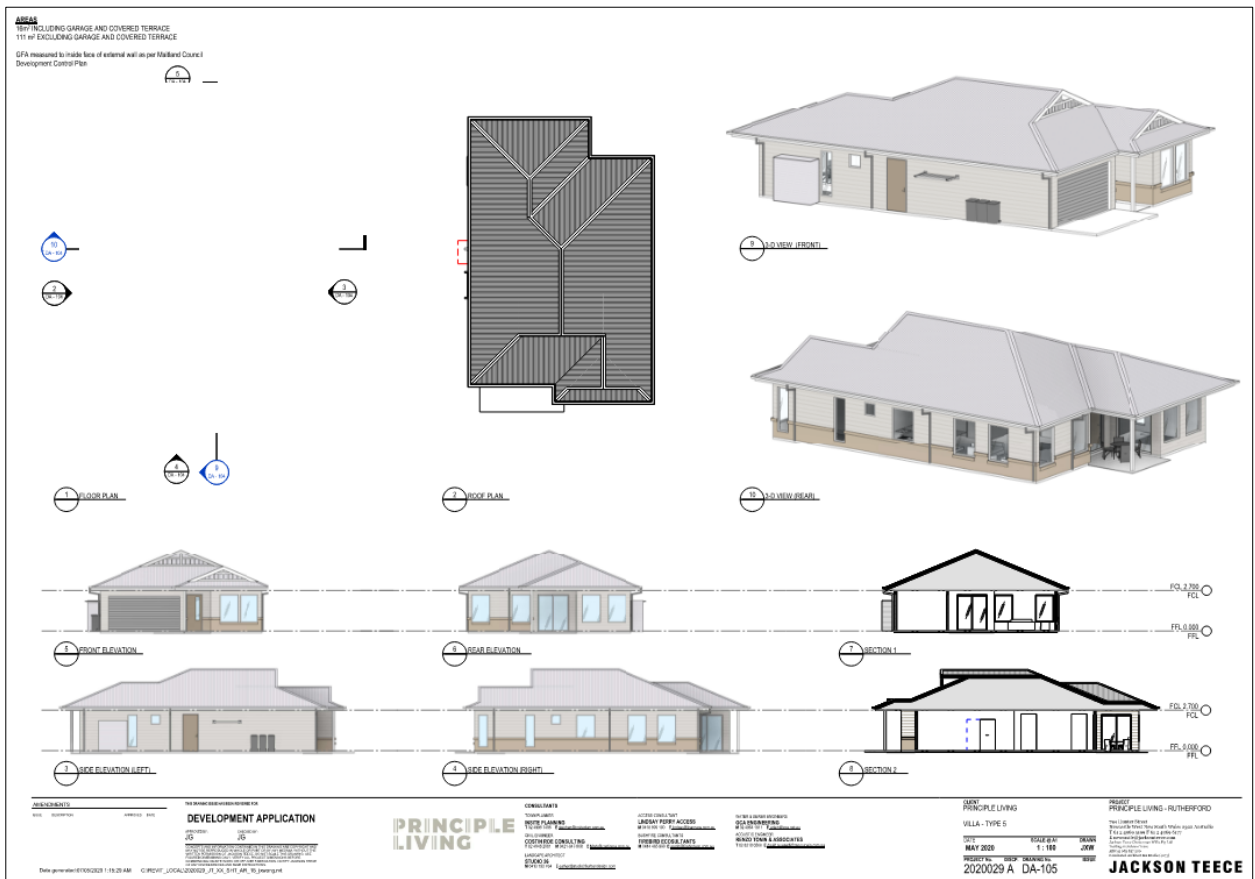


Figure 22: Approved Type 5 Villa

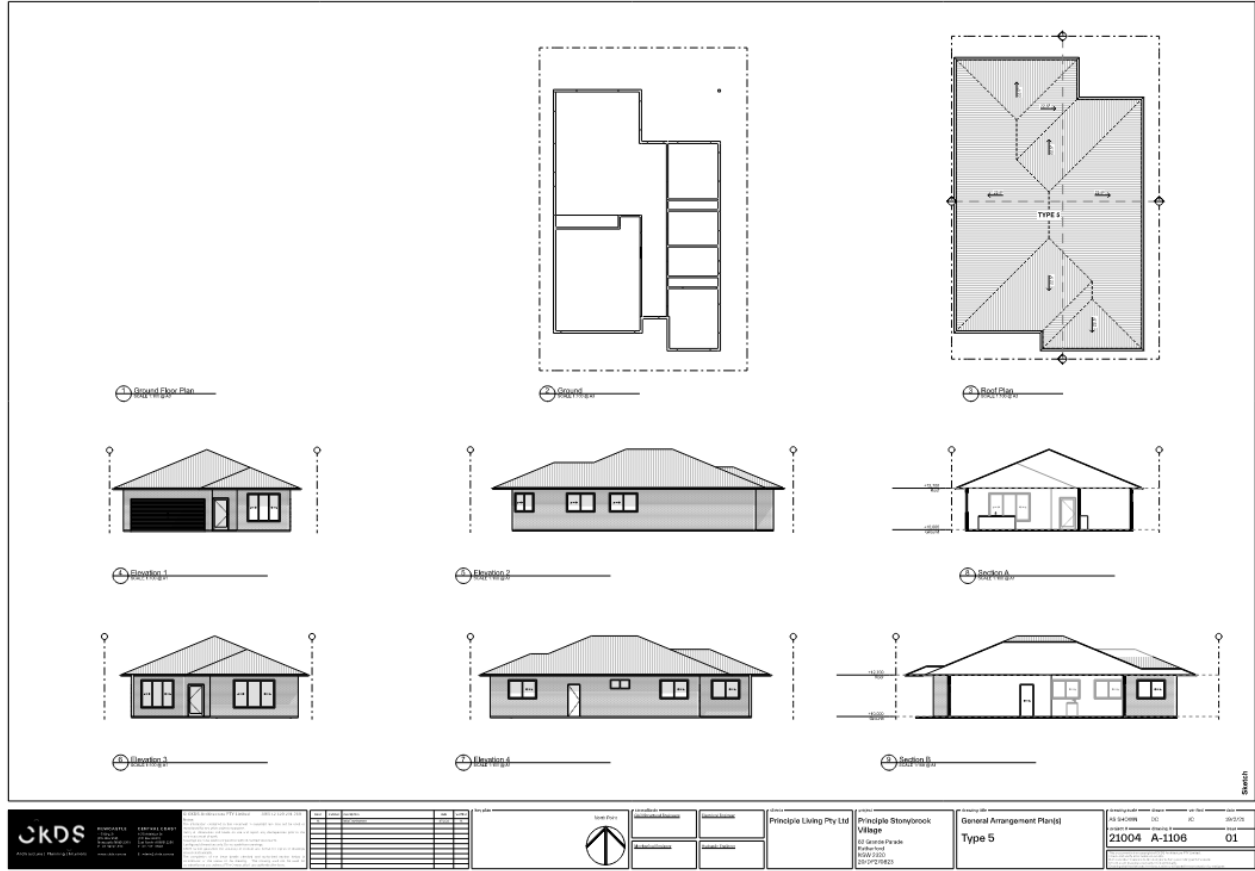


Figure 23: Type 5 as amended

3.3. Conditions to be Modified

The application seeks to modify only one (1) condition of the consent, being Condition No. 1. The details of, and the justification for the proposed modification to Condition No. 1 is detailed below:

Condition No. 1 as imposed:

1. *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 to this consent or as shown in red colour on the plans:*

Plan Ref No.	Sheet No.	Revn No.	Revision Date	Prepared by: (consultant)
<i>Cover Sheet</i>	<i>DA001</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Overall Masterplan</i>	<i>DA003</i>	<i>C</i>	<i>28/01/2021</i>	<i>Jackson Teece</i>
<i>Masterplan - West</i>	<i>DA004</i>	<i>C</i>	<i>28/01/2021</i>	<i>Jackson Teece</i>
<i>Masterplan – East</i>	<i>DA005</i>	<i>A</i>	<i>01/06/2020</i>	<i>Jackson Teece</i>
<i>Overall Villa Plans</i>	<i>DA006</i>	<i>C</i>	<i>28/01/2021</i>	<i>Jackson Teece</i>
<i>Villa Plans - West</i>	<i>DA007</i>	<i>A</i>	<i>01/06/2020</i>	<i>Jackson Teece</i>
<i>Villa Plans - East</i>	<i>DA008</i>	<i>A</i>	<i>01/06/2020</i>	<i>Jackson Teece</i>
<i>Staging Plan</i>	<i>DA009</i>	<i>C</i>	<i>28/01/2021</i>	<i>Jackson Teece</i>
<i>Community Centre – Ground Floor</i>	<i>DA110</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Community Centre – Roof Plan</i>	<i>DA111</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Community Centre - Elevations</i>	<i>DA112</i>	<i>A</i>	<i>12/10/2020</i>	<i>Jackson Teece</i>
<i>Ancillary Buildings</i>	<i>DA113</i>	<i>B</i>	<i>28/01/2021</i>	<i>Jackson Teece</i>
<i>Ancillary Buildings</i>	<i>DA114</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Ancillary Buildings – Bin Store Type 2</i>	<i>DA115</i>	<i>B</i>	<i>28/01/2021</i>	<i>Jackson Teece</i>
<i>Community Centre - Sections</i>	<i>DA116</i>	<i>A</i>	<i>18/01/2021</i>	<i>Jackson Teece</i>
<i>External Materials</i>	<i>DA500</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Street Elevations</i>	<i>DA300</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Villa Type 1</i>	<i>DA101</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Villa Type 2</i>	<i>DA102</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Villa Type 3</i>	<i>DA103</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Villa Type 4</i>	<i>DA104</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Villa Type 5</i>	<i>DA105</i>	<i>-</i>	<i>May 2020</i>	<i>Jackson Teece</i>
<i>Engineering Cover Sheet</i>	<i>C013079.0 5-DA10</i>	<i>B</i>	<i>6/05/2020</i>	<i>Costin Roe Consulting</i>
<i>Engineering Staging Plan</i>	<i>C013079.0 5-DA15</i>	<i>D</i>	<i>3/02/2021</i>	<i>Costin Roe Consulting</i>
<i>Erosion and Sediment Control Plan</i>	<i>C013079.0 5-DA20</i>	<i>B</i>	<i>06/05/2020</i>	<i>Costin Roe Consulting</i>
<i>Site Grading Plan</i>	<i>C013079.0 5-DA31</i>	<i>E</i>	<i>03/02/2021</i>	<i>Costin Roe Consulting</i>
<i>Cut and Fill Plan</i>	<i>C013079.0 5-DA32</i>	<i>E</i>	<i>03/02/2021</i>	<i>Costin Roe Consulting</i>

<i>Bulk Earthworks Sections</i>	<i>C013079.0 5-DA35, C013079.0 5-DA36</i>	<i>B</i>	<i>06/05/2020</i>	<i>Costin Roe Consulting</i>
<i>Civil Works Details</i>	<i>C013079.0 5-DA45</i>	<i>B</i>	<i>06/05/2020</i>	<i>Costin Roe Consulting</i>
<i>Concept Civil Works Plan</i>	<i>C013079.0 5-DA40</i>	<i>E</i>	<i>03/02/2021</i>	<i>Costin Roe Consulting</i>
<i>Easement Relocation Plan Sheet 1</i>	<i>C013079.05- SK01, C013079.05- SK02</i>	<i>A</i>	<i>08/10/2020</i>	<i>Costin Roe Consulting</i>
<i>Footpath Plan</i>	<i>C013079.0 5-SK03</i>	<i>D</i>	<i>26/02/2021</i>	<i>Costin Roe Consulting</i>
<i>Retaining Wall Plan and Details</i>	<i>C013079.0 5-SK06</i>	<i>B</i>	<i>26/02/2021</i>	<i>Costin Roe Consulting</i>
<i>Landscape Plans</i>	<i>Pages 1 – 29</i>	<i>G</i>	<i>4/02/2020</i>	<i>Studio 26 Urban Design</i>
<i>Ecological & Riparian Issues and Assessment</i>			<i>June 2020</i>	<i>Gunninah</i>
<i>Waste Management Plan</i>		<i>V4</i>	<i>January 2021</i>	<i>Principle Living</i>
<i>Bushfire Threat Assessment</i>			<i>1/07/2020</i>	<i>Firebird ecoSultants P/L</i>
<i>Acoustic Report</i>			<i>5/06/2020</i>	<i>Renzo Tonin & Assoc.</i>
<i>Air Quality Assessment</i>			<i>July 2020</i>	<i>RCA Australia</i>
<i>Geotechnical Report</i>			<i>22/09/2010</i>	<i>Coffey Geotechnics P/L</i>
<i>Traffic and Parking Impact Assessment</i>			<i>17/06/2020</i>	<i>McLaren Traffic Engineers</i>
<i>Disability Access Report</i>			<i>1/02/2021</i>	<i>Lindsay Perry Access</i>
<i>Construction Management Plan</i>		<i>1</i>	<i>June 2020</i>	<i>Avid Project Management</i>
<i>Site Access and Traffic Management Plan</i>		<i>V1</i>	<i>October 2020</i>	<i>Enliven</i>
<i>Community Bus Management Plan</i>		<i>V4</i>	<i>January 2021</i>	<i>Principle Living</i>

Recommended Amended Condition No. 1 (with changes highlighted):

Plan Ref No.	Sheet No.	Revn No.	Revision Date	Prepared by: (consultant)
<i>Lot Plan - West</i>	<i>DA-005</i>	<i>01</i>	<i>01/07/2021</i>	<i>CKDS Architecture</i>
<i>Lot Plan – East</i>	<i>DA-004</i>	<i>01</i>	<i>01/07/2021</i>	<i>CKDS Architecture</i>
<i>Overall Villa Plans</i>	<i>DA-006</i>	<i>01</i>	<i>01/07/2021</i>	<i>CKDS Architecture</i>
<i>Staging Plan</i>	<i>DA009</i>	<i>C</i>	<i>28/01/2021</i>	<i>Jackson Teece</i>
<i>Community Centre – Ground Floor</i>	<i>DA-110</i>	<i>01</i>	<i>01/07/2021</i>	<i>CKDS Architecture</i>
<i>Community Centre – Roof Plan</i>	<i>DA-111</i>	<i>01</i>	<i>01/07/2021</i>	<i>CKDS Architecture</i>

Community Centre - Elevations	DA-112	01	01/07/2021	CKDS Architecture
Ancillary Buildings	DA113	B	28/01/2021	Jackson Teece
Ancillary Buildings	DA114	-	May 2020	Jackson Teece
Ancillary Buildings – Bin Store Type 2	DA115	B	28/01/2021	Jackson Teece
Community Centre - Sections	DA-113	01	01/07/2021	CKDS Architecture
External Materials	DA-114	01	01/07/2021	CKDS Architecture
Villa Type 1	A-1102	02	22/2/2021	CKDS Architecture
Villa Type 2	A-1103	01	19/2/2021	CKDS Architecture
Villa Type 3	A-1104	01	19/2/2021	CKDS Architecture
Villa Type 4	A-1105	01	19/2/2021	CKDS Architecture
Villa Type 5	A-1106	01	19/2/2021	CKDS Architecture
Engineering Cover Sheet	C013079.0 5-DA10	B	6/05/2020	Costin Roe Consulting
Engineering Staging Plan	C013079.0 5-DA15	D	3/02/2021	Costin Roe Consulting
Erosion and Sediment Control Plan	C013079.0 5-DA20	B	06/05/2020	Costin Roe Consulting
Site Grading Plan	C013079.0 5-DA31	E	03/02/2021	Costin Roe Consulting
Cut and Fill Plan	C013079.0 5-DA32	E	03/02/2021	Costin Roe Consulting
Bulk Earthworks Sections	C013079.0 5-DA35, C013079.0 5-DA36	B	06/05/2020	Costin Roe Consulting
Civil Works Details	C013079.0 5-DA45	B	06/05/2020	Costin Roe Consulting
Concept Civil Works Plan	013079.05- DA40	E	03/02/2021	Costin Roe Consulting
Easement Relocation Plan Sheet 1	C013079.05- SK01, C013079.05- SK02	A	08/10/2020	Costin Roe Consulting
Footpath Plan	C013079.0 5-SK03	D	26/02/2021	Costin Roe Consulting
Retaining Wall Plan and Details	C013079.0 5-SK06	B	26/02/2021	Costin Roe Consulting
Landscape Plans	Pages 1 – 29	G	4/02/2020	Studio 26 Urban Design
Ecological & Riparian Issues and Assessment			June 2020	Gunninah
Waste Management Plan		V4	January 2021	Principle Living
Bushfire Threat Assessment			1/07/2020	Firebird ecoSultants P/L
Acoustic Report			5/06/2020	Renzo Tonin & Assoc.
Air Quality Assessment			July 2020	RCA Australia
Geotechnical Report			22/09/2010	Coffey Geotechnics P/L

<i>Traffic and Parking Impact Assessment</i>			<i>17/06/2020</i>	<i>McLaren Traffic Engineers</i>
<i>Disability Access Report</i>			<i>1/02/2021</i>	<i>Lindsay Perry Access</i>
<i>Construction Management Plan</i>		<i>1</i>	<i>June 2020</i>	<i>Avid Project Management</i>
<i>Site Access and Traffic Management Plan</i>		<i>V1</i>	<i>October 2020</i>	<i>Enliven</i>
<i>Community Bus Management Plan</i>		<i>V4</i>	<i>January 2021</i>	<i>Principle Living</i>

4. STATUTORY PLANNING FRAMEWORK

4.1 Section 4.55 (1A) Modification

Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) addresses modifications to a development consent involving minimal environmental impact and provides that Council may modify a consent if:

- a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, 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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and*
- d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The matters prescribed under Section 4.55 (1A) are addressed below:

In respect of point a), it is considered that the likely impacts of the modifications are negligible, and the development will remain consistent with the previously approved development application. The combined changes, being amendments that maintain the integrity of the approved development and the intent of the conditions, will have no identifiable adverse environmental impacts. Accordingly, the modifications are within the ambit of Section 4.55(1A) of the Act. Further, the assessment of the modified proposal pursuant to the relevant Section 4.15(1) evaluation criteria does not alter the assessment undertaken in the SEE and the assessment of the original development application. We see no reason therefore why the modifications should not be approved.

In response to point b), in our view, “substantially the same developments” means “essentially or materially or having the same essence” as defined by *Pearlman C.J. in Schrodgers Australian Property Management Ltd v Shoalhaven City Council and Anor (1999) NSWLEC 251*. Accordingly, it is the substance of the proposal relative to the substance of the development as originally approved. The development, as modified would essentially and materially have the same essence.

The proposed amendments will not result in any of the following:

- Significant change to the nature, density or intensity of the approved use.
- Significant change to the relationship to adjoining and adjacent properties.
- Additional adverse impact on neighbours or adjoining landholders from the changes (in respect of overshadowing, visual and acoustic privacy, traffic generation, etc.).
- Substantive change to the scale or character of the development.

Accordingly, in our opinion, the proposed modifications are not considered to change the essential features of the approved development.

With regards to point c) we note:

- This s4.55(1A) application concerns modifications to an approved development that does not require the concurrence of the relevant Minister, public authority or other approval body.
- The proposed modifications would not result in anything other than minor environmental impacts or affect the suitability of the site for the development as approved or as proposed to be modified as demonstrated at Section 5 below; and
- We anticipate that the proposed s4.55(1A) application would be exhibited to adjoining landowners for comment. Should Council receive any submissions we request the opportunity to provide a response to any issues raised, prior to the application being determined.

We therefore submit that the 'test' in Section 4.55 (1A) of the Act is satisfied and that Council can give consideration to this proposal.

4.2 Matters for Consideration

Section 4.55 (3) of the Act requires that in determining an application for modification of a consent, Council must take into consideration such of the matters referred to in Section 4.15 (1) of the Act as are of relevance to the development the subject of the application. This Section identifies the matters to be considered by Council when assessing an application, being:

- (a) the provisions of:*
- (i) any environmental planning instrument, and*
 - (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*
 - (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) (Repealed)*
- that apply to the land to which the development application relates,*
- (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,*
 - (c) the suitability of the site for the development,*
 - (d) any submissions made in accordance with this Act or the regulations,*
 - (e) the public interest.*

These issues are considered in Section 5 below.

5. SECTION 4.15 (1) ASSESSMENT

5.1 The Proposed Changes

The amendments now proposed results from further refinements of the village plans with an aim to ensure that the villas, facilities and ancillary services can be sustainably delivered; meets the users' needs and are developed commensurate with the staged evolution of the lifestyle village. In essence there are five main changes proposed viz this s4.55(1) application, including:

- a) The Community Clubhouse Design
- b) The repositioning of the boundaries of 13 lots
- c) The creation of a stormwater easement and pedestrian pathway between lot 7 and lot 8
- d) The reorientation of the home pad on lot 132
- e) Minor enhancement changes to the approved Villa designs

It is noted that the subsequent design of the future manufactured homes to be installed on the lots within the village has also been further refined. However, it is advised that the future housing mix, density and form has not altered, and the homes will be the subject of future s68 applications under the local Government Act 1993.

The Community Clubhouse Design Change:

The aim of the proposed changes to the Community Clubhouse is to increase the facilities:

- Environmental efficiency.
- Operational sustainability.
- User experience and resident sense of ownership.
- Aesthetic compatibility with the architectural style and built form character of the village.

In terms of functionality, the revised Clubhouse design provides the social and recreational needs that the new residents of the village consider to be necessary and important for their lifestyle and wellbeing. In discussions with stakeholders, it was concluded that the original Clubhouse Building was too large and impersonable, and that the building should be slightly scaled back in size with a greater emphasis on the provision of multi-use rooms and subsequent lower maintenance and every day running costs. The overall size of the Clubhouse building has been proposed to be reduced from 1,163m² to 1,006m² (a 157m² reduction).

Internally, it is noted that the design changes within the Clubhouse reflect a desire to create a less formal atmosphere and replace it with a more relaxed and intimate residential feel. In essence, smaller multi-purpose spaces that would have greater activation and connectivity. Importantly, the recreational facilities requested by the residents including the swimming pool, gym/activity room, and outside yoga/tai chi area remain. It is not proposed to prepare meals in the kitchen for sale to the residents or on a commercial basis, with the kitchen and bar used only occasionally and solely for the purpose of dispensing prepacked products.

Architecturally, the revised Clubhouse design retains its general scale and form. The combination of timber, rock and metal cladding on the exterior is enhanced by large openings in the northern and eastern facades to maximize favorable winter sun and cooling summer breezes. The outdoor terraces provide multiple areas for small group gatherings or can be combined when necessary, to accommodate larger groups. Internal – external connectivity has been boosted to enable a free-

flowing transition between the zones, to enhance a feeling of spaciousness and increase natural light. The overall height of the amended Community Clubhouse remains below the maximum height limit.

The repositioning of the Community Clubhouse further north and east on the site has been proposed for three main reasons:

- The new position is marginally further away from the rail corridor, and this will provide additional mitigation of potential adverse noise and vibration impacts upon the building and its users.
- The new position will require substantially less excavations along the batter to the rail corridor and subsequent less retaining wall construction.
- The new Community Clubhouse design is more elongated in its footprint, with the greater east-west axis. This new design results in a narrower building that capitalizes on the Clubhouse's favorable northern orientation. The narrower, but longer new Clubhouse building now sits more comfortably in the corridor between the rail line and the main entrance road within the village.

In terms of sustainability, the proposed new Community Clubhouse design will be more energy efficient due to a combination of building materials, thermal efficient construction, internal layout and orientation, lighting, and ventilation.

The new design will have lower energy consumption, lower running costs, and higher levels of comfort. The new design will ensure ideal room temperatures can be maintained with the use of proper insulation and daylighting and natural shading strategies. Overall, it's a better built form outcome.

The repositioning of the boundaries of lots 1 – 10 and the creation of the stormwater channel and pedestrian pathway:

In terms of lots 1 – 10, it is proposed that lots 1 – 7 are moved slightly in a southerly direction approximately 1.5m and lots 8 – 10 are proposed to be moved in a northerly direction approximately 1.5m.

The purpose of this change is to create sufficient space (approximately 3.0m) between lots 7 & 8 to enable the provision of a overland stormwater flow channel and pedestrian pathway.

The channel will allow the urban stormwater system in the village to connect unimpeded to the system in the adjoining Grand Parade. This change is as per the requirement of Condition 43 c) from the Notice of Determination dated 11/5/2021.

The additional pathway and pedestrian access gateway will enable residents to enter and leave the village through another access point, directly onto Grand Parade. This gateway will be secured at all times, and only accessible to residents.

Both these changes are graphically shown in figure 24 below:

Figure 24: The image on the right is the approved layout for the eastern portion of the site showing lots 1 – 10 in their position. The image on the left shows the proposed amended layout for lots 1 – 10 creating the stormwater channel between lots 7 & 8 (red circle).

The creation of the 3.0m wide stormwater channel and pedestrian pathway results in the overall width of the landscape area on the northern side of the front entrance reducing by a corresponding 3.0m to 8.1m in width.

However, the consequential decrease in landscaped area at the front entrance to the village will not be readily discernible due to its proposed treatment. Both the northern and southern zones directly adjacent to the front entrance gates are to comprise a mixture of hard and soft landscape elements. The hard elements include the village identification sign and stonework walls, security

fencing and access gates, and public art. The soft landscaping features include densely planted native gardens and feature trees.

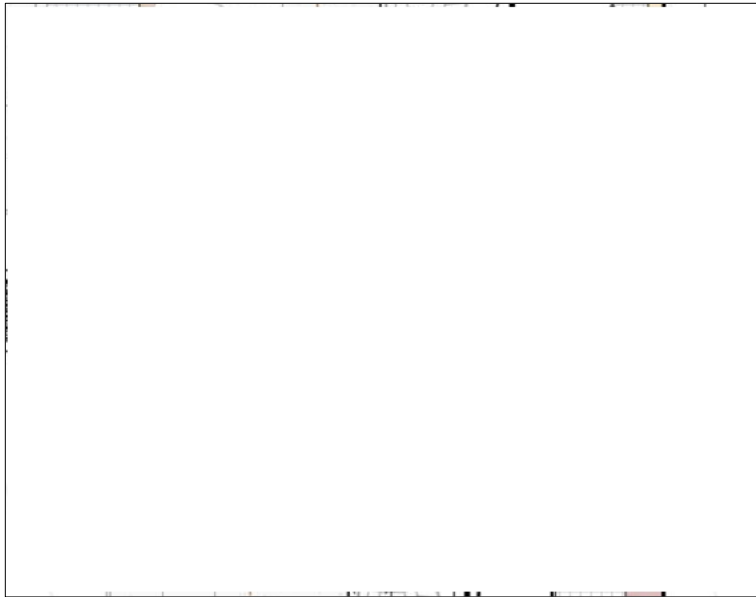


Figure 25: shows the location of the overland flow stormwater channel created between lots 7 & 8.

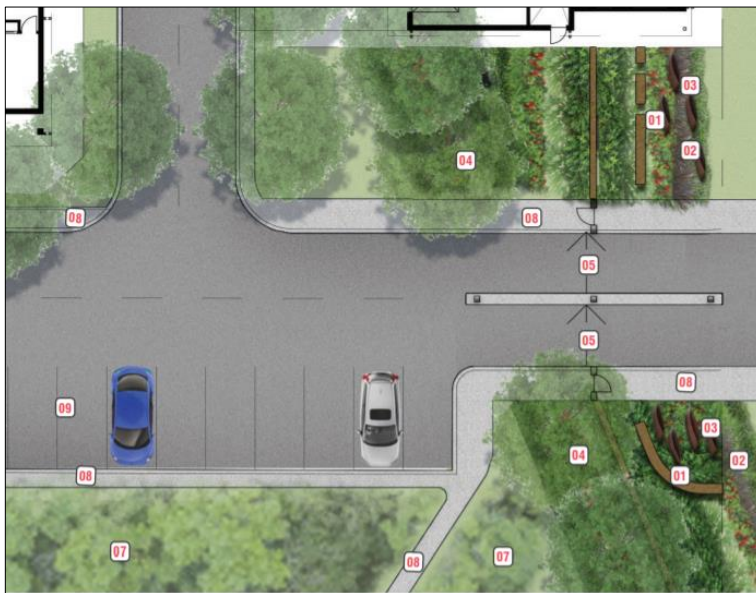


Figure 26: Extract from the Landscaping Plan showing the proposed treatment of the area on either of the main access gates. This treatment includes soft and hard landscaping elements.

- Key**
- 01** Entry Statement
 - 02** Feature Planting
To have striking planting to vary in height, colour and texture.
 - 03** Potential Public Art
Can be placed in surrounding landscape area.
 - 04** Feature Trees
 - 05** Security Gates
 - 06** Street Trees
Will have a varied species palette to create a contrast in colour and form.
 - 07** Australian Native Forest -
Australian Native forest that will feature pieces of public art.
 - 08** Pathway
Minimum 1m wide footpath network.
 - 09** On-Street Parking

In terms of lots 133 & 137, it is proposed to increase their width by approximately 500mm. The proposed changes to the width of these lots will enable the future homes to sit more comfortably within their boundaries and ensure that they have sufficient space around them to maintain adequate levels of aural and visual privacy.

The following figures show the approved layout for lot 132, and the proposed amended layout.

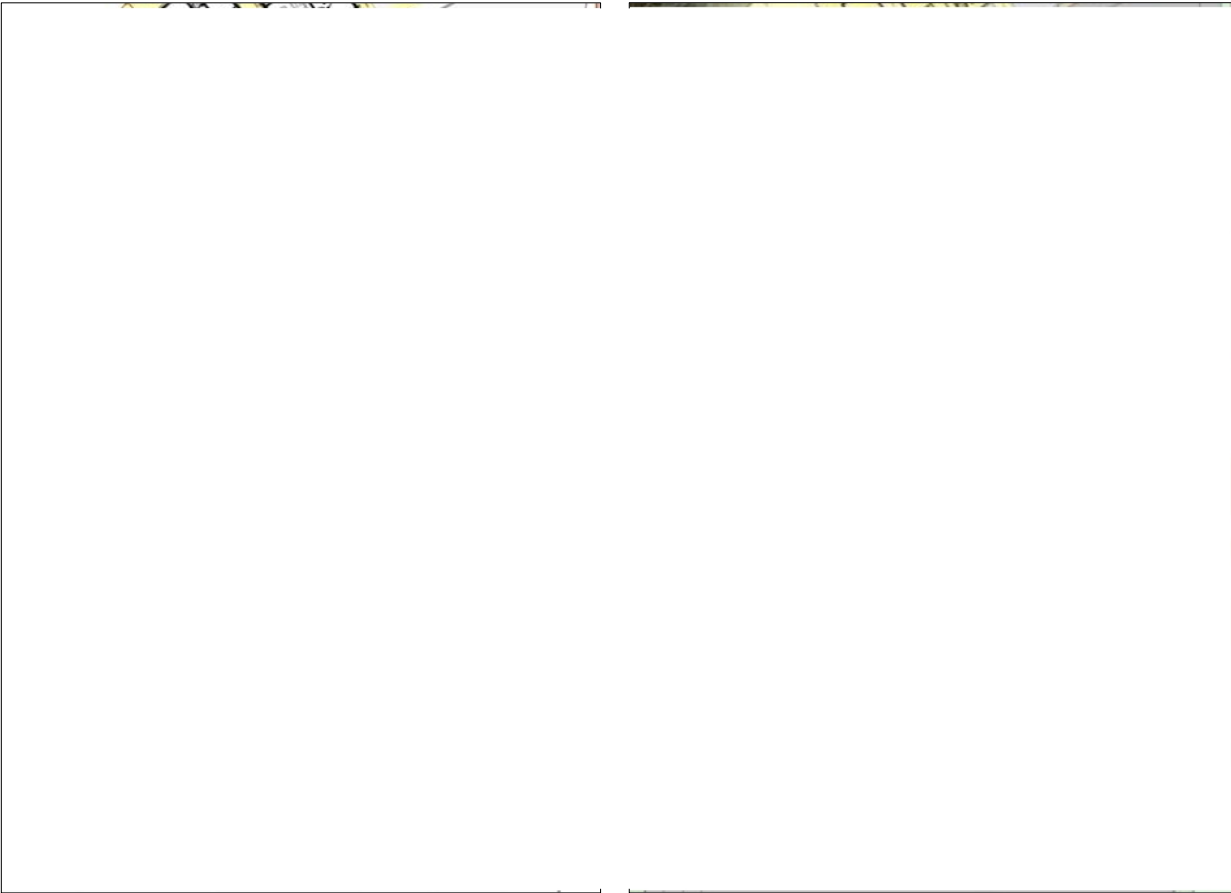


Figure 27: The image on the right is the approved layout for lots 133 and 137, and the image on the left is the proposed amended layout for these two lots.

The reorientation of the building pad on Lot 132:

The repositioning of the building pad on lot 132 is to enable the new home to be better located in relation to the site’s boundaries. By swinging the building pad 45 degrees, enables the positioning of the lots private open space area on the northern side of the home, whereas under the current approval, the POS is on the south-western side of the home. This is shown below:

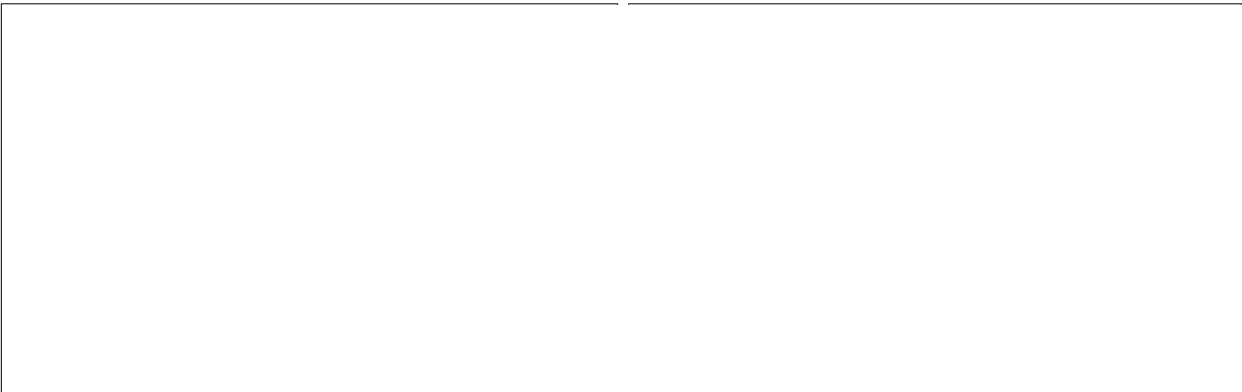


Figure 28: The image on the right is the approved layout of lot 132, and the image on the left is the proposed amended layout for this lot.

Minor enhancement changes to the approved Villa designs

The architectural changes to the design of the 5 different villa types is subtle and represents the progressive development of each home. Whilst approval is not been sought or obtained for the homes themselves (this will be obtained viz s68 of the LGA), the minor changes to each villa type is being noted in this s4.55 application. The changes are specifically aimed at improving the livability and functionality of each home, as well as enhancing their internal and external living spaces. The changes are graphically shown in figures 14-23 above.

However, it is noted that it is now proposed to have two (2) X Type 4 Villas, and these are shown below. The purpose of the two options for the Type 4 Villa is specifically in relation to the width of each lot and orientation of the covered outdoor terrace areas. In this respect, the narrower Type 4 Lots with a north-south axis are generally better suited for a Villa Type 4A. Whereas, the slightly wider Type 4 Lots with an east-west axis are generally better suited for a Villa Type 4B.

In terms of environmental impact on the surrounding natural and built environment, this proposed change is minimal. However, the change for the future resident, and their likely outdoor amenity is substantive.

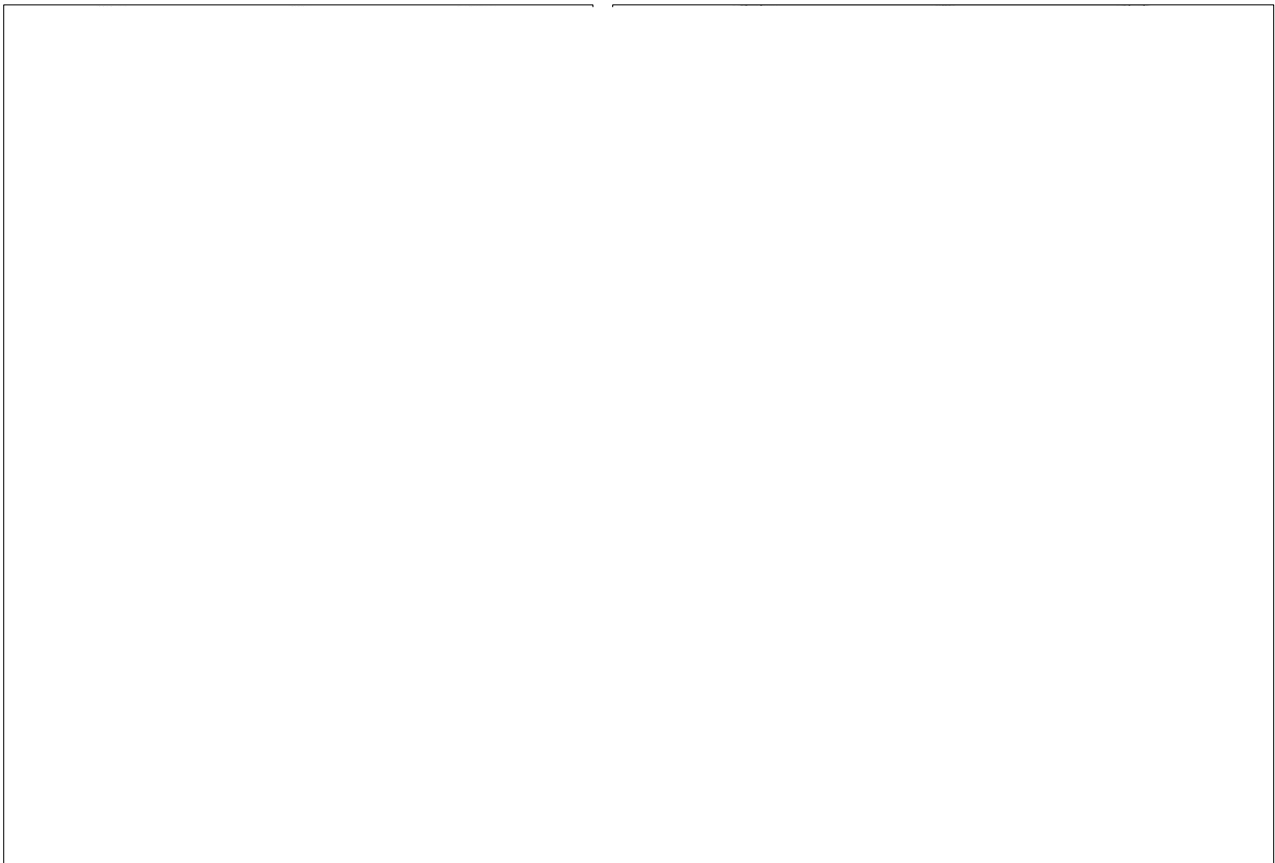


Figure 29: Villa Type 4A is proposed on all narrower Type 4 lots that have a north-south axis and includes a secondary covered outdoor living area at the front of the villa.

Figure 30: Villa Type 4B is proposed on all slightly wider Type 4 lots that generally have an east-west axis, and their covered outdoor living area is at the rear of the villa.

5.2 Section 4.15 (1)(a)(i) – Environmental Planning Instruments

Stonybrook is an Over 50's Lifestyle Village and whilst it may for all intents and purposes, look like, and operate like a traditional retirement village, it will not be operated under the *Retirement Villages Act 1999* and approval was not sought or granted viz DA/2020/680 under the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* which is the normal statutory framework for a retirement village.

Stonybrook Village is characterized as a long-term residential manufactured home estate, or 'Land Lease Community', and consequently the relevant statutory framework relied upon for its original approval was under the provisions of *State Environmental Planning Policy No. 36 – Manufactured Home Estates (SEPP 36)* and the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* with tenure for future residents secure under the *Residential (Land Lease) Communities Act 2013*.

The relevant statutory regime and assessment criteria taken into consideration in the preparation of this s4.55 application on the subject site comprise the following:

- Environmental Planning & Assessment Act 1979 and Regulation 2000
- Local Government Act 1993
- Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005
- Hunter Regional Plan
- Maitland Development Control Plan
- Maitland Contribution Plan
- Maitland Urban Settlement Strategy
- Maitland Affordable & Adaptable Housing Action Plan
- Maitland Local Strategic Planning Statement 2040+
- Threatened Species Conservation Act 1995 / Biodiversity Conservation Act 2016
- Heritage Act 1977
- Coal Mine Subsidence Compensation Act 2017
- Protection of the Environment Operations Act 1997
- Roads Act 1993
- Rural Fires Act 1997
- Water Management Act 2000

The proposed s4.55 amendment is considered to meet the overarching aims and objectives of these EPI's, as well as their strategic direction and numerical standards. The amendments proposed are of a minor nature and will not necessitate any variations to controls.

5.2.1 State Environmental Planning Policy (State and Regional Development)

In the preparation of this s4.55 application, the following SEPP's and Draft SEPP's have been taken into consideration:

- State Environmental Planning Policy No 36 – Manufactured Home Estate
- State Environmental Planning Policy (Building Sustainability Index) 2004
- State Environmental Planning Policy No. 44 – Koala Habitat Protection
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Concurrences) 2018
- Draft - Design and Place State Environment Planning Policy (2021)

The amendments as proposed are of a relatively minor nature and will not change the likely and identified impacts on the surrounding natural and built environment. Most importantly:

- Proposed general lot layout is of a design previously assessed and considered appropriate in form, juxtaposition, and character, as well as functionality and usability for the village.
- The subject site does not contain any noted habitat, and the potential impact of the proposed amendments upon threatened species is considered negligible.
- There is to be no change to the approved Staging of the construction of the village, its infrastructure services or its provision of passive and active recreational facilities.

5.2.2 Maitland Local Environmental Plan (MLEP) 2011

The subject site is zoned RE2 – Private Recreation under the provisions of MLEP and as noted previously this EPI does not contain a definition for *manufactured homes* or *manufactured home estates*. At the time DA/2020/680 was initially submitted, it was recognized that the *TMT Devco Pty Ltd v Cessnock City Council* had standing, and in that case Commissioner Brown held that an MHE is characterised as "*multi-dwelling housing*". There is an argument that this is an incorrect characterisation and that a MHE falls under the *residential accommodation* definition. Regardless, the site is zoned RE2 Private Recreation and both *multi-dwelling housing* and *residential accommodation* are prohibited in this zone.

Notwithstanding the land use zoning provisions of permissibility under the MLEP 2011, the original application relied on Clause 6 of SEPP 36 which states that a MHE is permissible use on any land in which a *caravan park* is a permissible land use. It is also noted that *caravan parks* are permissible with consent in the RE2 Private Recreation zone. Therefore, the development is still permissible by virtue of SEPP 36.

Regarding the inconsistency between SEPP 36 and MLEP 2011, *Clause 4* of SEPP 36 (*Relationship with other environmental planning instruments*, which the MLEP 2011 is one) states at subclause (1):

“In the event of an inconsistency between this Policy and any other environmental planning instrument whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.”

Section 3.28 of the Environmental Planning and Assessment Act has a similar provision:

3.28 Inconsistency between instruments

- (1) *In the event of an inconsistency between environmental planning instruments and unless otherwise provided—*
 - (a) *there is a general presumption that a State environmental planning policy prevails over a local environmental plan or other instrument made before or after that State environmental planning policy, and*
 - (b) *(Repealed)*
 - (c) *the general presumptions of the law as to when an Act prevails over another Act apply to when one kind of environmental planning instrument prevails over another environmental planning instrument of the same kind.*
- (2), (3) *(Repealed)*
- (4) *Nothing in this section prevents an environmental planning instrument from being expressly amended by a later environmental planning instrument, of the same or a different kind, to provide for the way in which an inconsistency between them is to be resolved.*

5.2.3 Section 4.15 (1)(a)(ii) – Draft Environmental Planning

At the time of preparing this s4.55 report, no relevant draft instruments were on exhibition.

5.2.4 Section 4.15 (1)(a)(iii) – Development Control Plans

The amended proposal has been assessed against Maitland Development Control Plan (MSDCP) 2011. The assessment has found that the development in its amended form complies fully with both the objective criteria and numerical standards for each control as contained within MDCP relevant to this type of development on the subject land. Matters assessed included:

- Community Participation
- Vegetation Management
- Waste Minimisation
- Riparian Waterways
- Accessible Living
- Heritage Conservation
- Residential Design
- Vehicular Access & Car Parking
- CPTED
- Communal Active & Passive, and Private Open Space
- Tree Management & Landscaping
- Natural Resource & Environmental Management
- Natural Hazards
- Essential Services & Facilities
- Social & Economic Impact

5.2.5 Section 4.15 (1)(a)(iiia) – Planning Agreements

There are no Planning Agreements relevant to the consideration of this proposed amendment.

5.2.6 Section 4.15 (1)(a)(iv) – Matters Prescribed by the Regulations

There are no matters prescribed by Regulations relevant to the consideration of this proposed amendment.

5.2.7 Section 4.15 (1)(b) – Likely Impacts of the Development

The likely impacts of the construction and operation of a manufactured home estate development on the subject land were responsibly considered and found to be acceptable when DA 2020/680 was initially assessed and determined. The current proposal to undertake amendments to the approved design do not noticeably change the findings, as:

- The proposed amendments are permissible, and the amended design is consistent with the objectives and numerical controls of all relevant EPI's.
- The amended designs comply with the SEPP 36.
- The amended designs are of high built form quality and will have minimal adverse environmental impacts.
- The subject site is appropriately located and is serviced by a range of public and private services and transport options that will meet the needs of the surrounding community as it continues to grow and develop.
- The amended design appropriately respects the existing and desired future character of the immediate and surrounding locality.
- The subject site does not possess any constraints that would compromise the safety, security and amenity for the future residents.

5.2.8 Section 4.15 (1)(c) – Sustainability of the Site

The sustainability of the site to accommodate a manufactured home estate was originally established by the granting of consent to DA/2020/680 in May 2021. The relatively minor amendments now proposed do not diminish or compromise its quality or the sustainability of the site.

5.2.9 Section 4.15 (1)(d) – Submissions

The Consent authority will need to consider any submissions received in response to the public exhibition of the proposed amended development.

5.2.10 Section 4.15 (1)(e) – Public Interest

Pursuant to case law of *Ex Gratia P/L v Dungog Council* ([2005] NSWLEC 148), the question that needs to be answered is “*Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development?*”

There are no unreasonable impacts that will result from the proposed development; therefore, the benefits outweigh any disadvantage and as such the proposed development will have an overall public benefit.

No public interest issues arise as a consequence of the proposed modifications. Council’s intentions in imposing conditions to preserve the public interest are not affected, since the proposed modifications continue to give effect to those general intentions, simply in a more practical and achievable way.

6 CONCLUSION

This application seeks approval for a Section 4.55 (1A) modification to DA/2020/680 granted on 11 May 2021 for a Manufactured Home Estate (staged) – 160 home sites and associated community facilities and infrastructure at 91 Grand Parade Rutherford.

Feedback from both the design team and discussions with a range of stakeholders, including most importantly prospective residents concluded that increased amenity and livability at the village could be substantially improved with some relatively minor changes, most notably to the Community Clubhouse and the individual villas. As subject matter experts, our stakeholder's opinions are valued, and their recommended changes are acknowledged. This s4.55(1A) application seeks approval to implement these relatively minor changes through modification to the approved plan.9.2021)s.

A comprehensive assessment of the proposed modifications has been made against all the applicable environmental planning provisions. The development has been found to be compliant in relation to all relevant planning controls in terms of standards, underlying objectives and merit. Arising from that assessment the amended proposal is considered to be:

- Substantially the same development as that which was originally approved.
- A suitable and desirable use for the site which meets the relevant heads of consideration under Section 4.15 (1) of the Act.
- In accordance with the aims, objectives and provisions of the planning instruments and controls; and
- An appropriate and acceptable development that will not generate any unreasonable environmental impacts over and above that which was originally approved.

We are satisfied that this proposal has properly responded to all relevant matters for consideration within the Environmental Planning and Assessment Act, and the accompanying Regulation. Accordingly, it is considered that the proposed development is worthy of Council support.
