



190433(54) BJ/LF

8th March 2022

Maitland City Council
PO Box 220
MAITLAND NSW 2320

**PROPOSED S4.55 (1A) MODIFICATION
OF DA18-1393
TORRENS TITLE SUBDIVISION
TWO (2) LOTS INTO 20 LOTS (STAGE 54)**

1. INTRODUCTION

On behalf of Avid Property Group Pty Ltd ("Avid"), Council is requested to modify DA18-1393 pursuant to the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979. The modifications proposed includes making a minor adjustment to the approved road and lot layout to accommodate the Development Application (DA/2021/1502) lodged over the adjoining residue land for the next stage of the Waterford development ("Stage 56").

2. DA18-1393

DA18-1393 was approved on 30th April 2019, consenting to a 20 lot residential subdivision, referred to as "Stage 54" of the Waterford development.

DA18-1393 is one of multiple DAs which make up the Waterford development which is currently under construction within the Thornton North Urban Release Area (see Figures 1A and 1B).

Stage 54 is currently approved to provide a road connection ("Regina Way") to future development over a residue portion of land. This road layout was designed at a time when the future lot layout for the residue portion of land was largely unknown.

ADW JOHNSON PTY LIMITED

ABN 62 129 445 398

Sydney

Level 35 One International Towers
100 Barangaroo Avenue
Sydney NSW 2000
02 8046 7411
sydney@adwjohnson.com.au

Central Coast

5 Pioneer Avenue, Tuggerah NSW 2259
PO Box 3717, Tuggerah NSW 2259
02 4305 4300

coast@adwjohnson.com.au

Hunter

7/335 Hillsborough Road,
Warners Bay NSW 2282
02 4978 5100

hunter@adwjohnson.com.au

www.adwjohnson.com.au

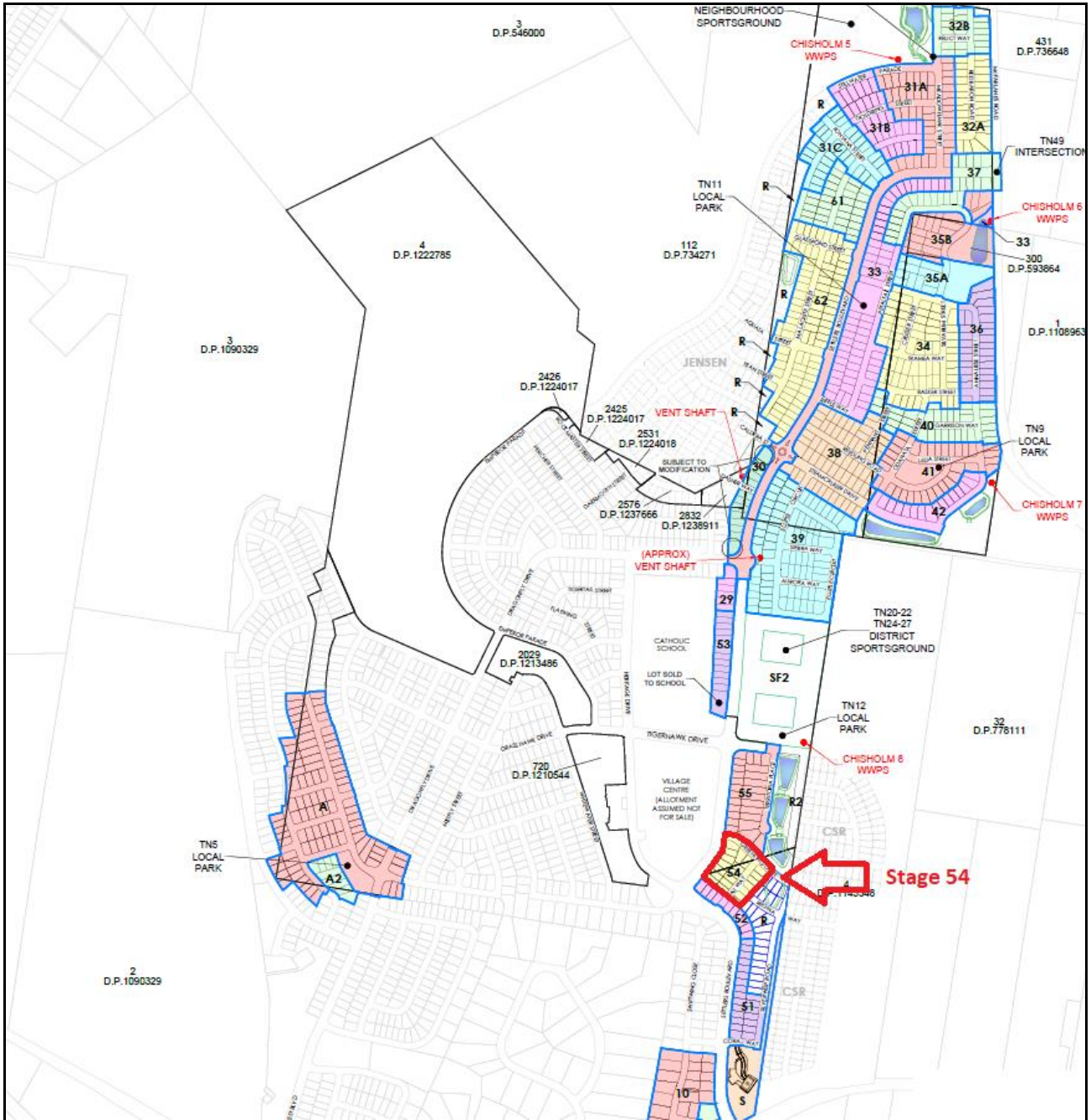


Figure 1A: Stage 54 within the context of the Waterford Masterplan

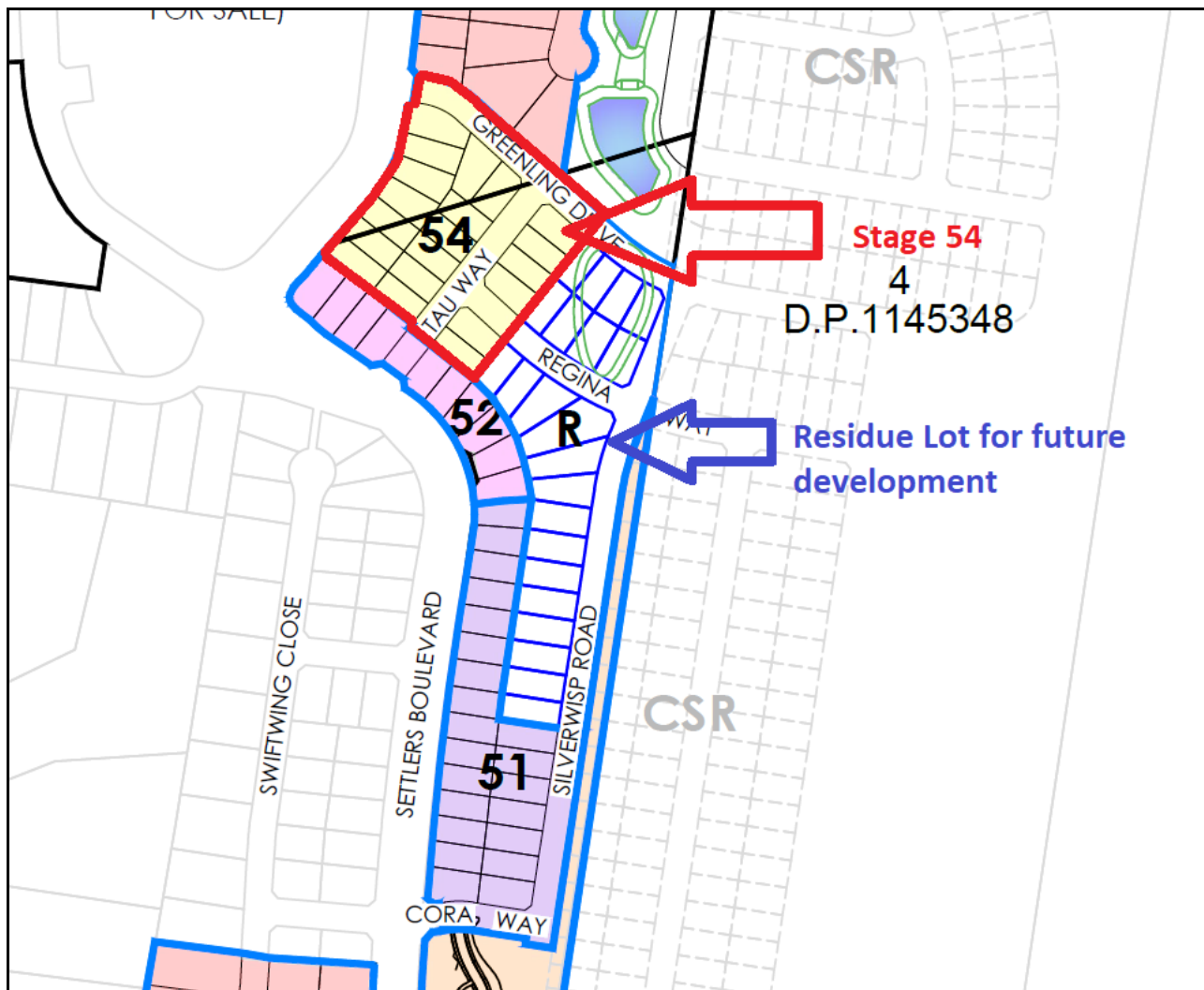


Figure 1B: Stage 54 within the context of the Waterford Masterplan and adjoining Residue Lot (DA/2021/1502)

The residue portion of land which is identified as Stage 56 of the Waterford development had previously remained undeveloped due to its topography and need for fill, the batters from which, would extend over the adjoining property (known as the CSR land).

3. AMENDMENTS

3.1 Lot Layout

Since consent was issued to the subject DA, a subdivision pattern over Lot 4 DP1145348 (DA/2021/1662) has been resolved, which has allowed for the design and development of Stage 56 to proceed. In preparing this design and the road layout, it became apparent that a more efficient layout could be achieved by removing Regina Way (approved as "Road No. 4"), and creating an additional allotment.

The approved and amended layout are provided within Figure 2.

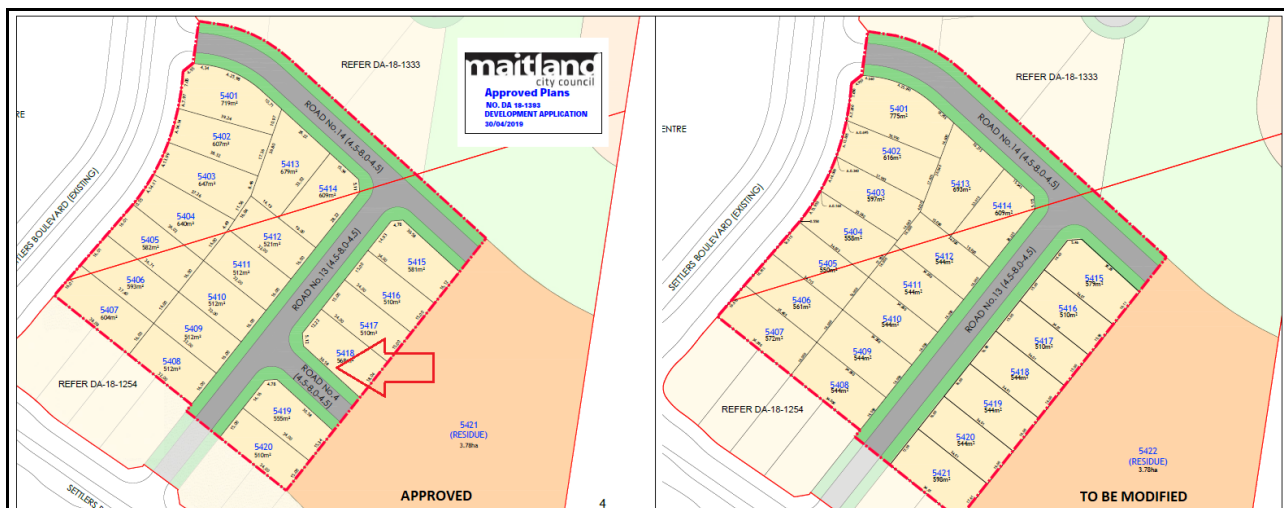


Figure 2: Stage 54 Current and Proposed Layout

3.2 Earthworks & Retaining

The proposed amendments also include amended regrading and the addition of retaining walls of up to 0.6m along the side boundaries of Lots 5404-5406, up to 1.25m along the side boundaries of Lots 5401 and Lots 5408-5421 and up to 2m along the rear of Lots 5416-5421.

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.

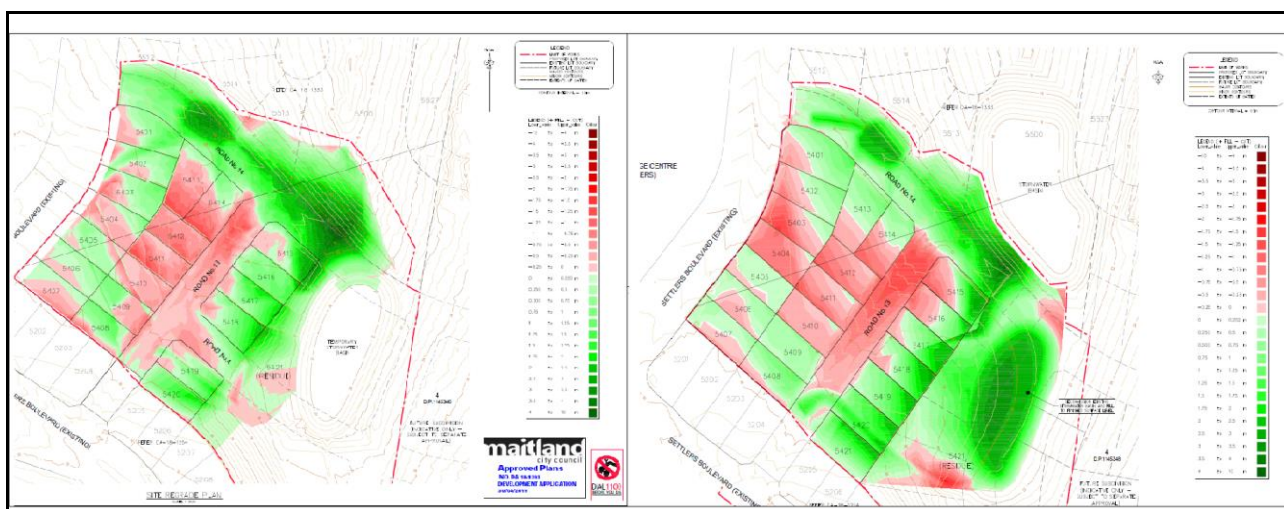


Figure 3: Stage 54 Approved and Proposed Earthworks

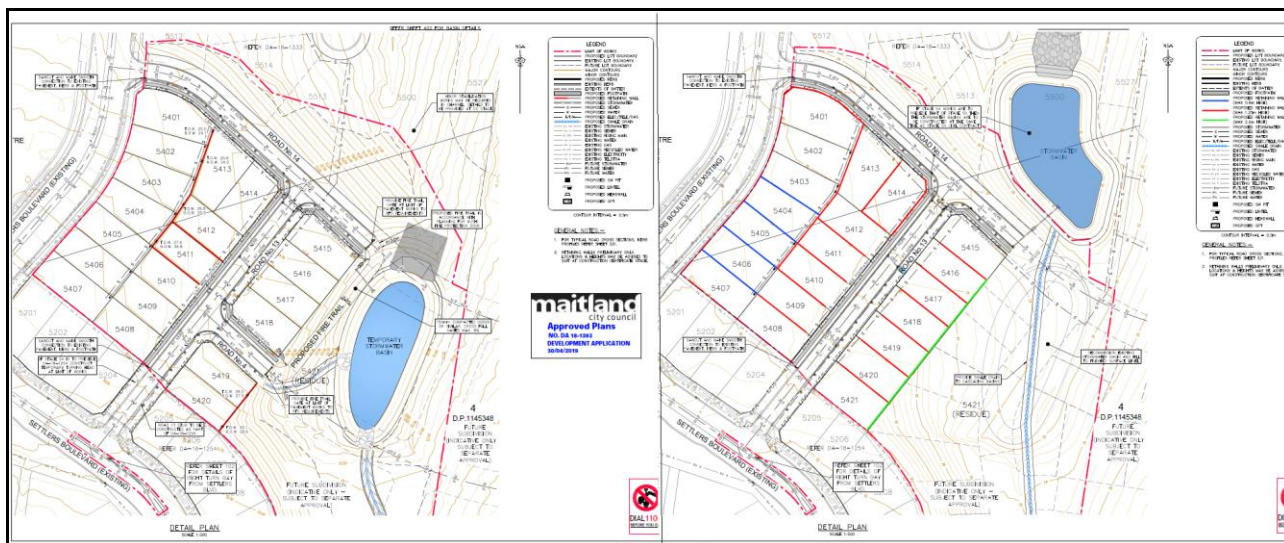


Figure 4: Stage 54 Approved and Proposed Retaining

3.3 Stormwater

Stormwater generated under Stage 54 was previously approved to discharge over a temporary basin located within the residue lot (Stage 56). Due to the decommissioning and removal of the temporary stormwater basin to accommodate Stage 56, stormwater from Stage 54 will be treated by the third stormwater basin proposed under Stage 55. Should Stage 54 works precede Stage 55, the third basin will be built at the same time as Stage 54.

The approved and proposed stormwater management for Stage 54 is provided within Figure 4.

3.4 Summary

In summary, the following modifications are requested:

- Remove Road No. 4;
- Adjust lot layout to suit, resulting in an additional lot (bringing the total to 21 lots);
- Amendment to the earthworks including the addition of retaining walls.

The following aspects of DA18-1393 will remain the same:

- No change to the development footprint or associated environmental impacts;
- No change to the road configuration or width of roads.

A complete set of amended subdivision and concept engineering plans are provided within Attachment 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)
Proposed Subdivision – Detail Plan – Project No 190433(54)	101	B C	21.01.19 15.02.22	ADW Johnson
Intersection Plan – Project No 190433(54)	102	A C	26.04.2019 15.02.22	ADW Johnson
Detail Plan – dwg ref: 190433(54)	106	A C	29.05.18 15.02.22	ADW Johnson
Site Regrade Plan – Project No 190433(54)	501	A C	07.06.18 15.02.22	ADW Johnson
Erosion & Sediment Control Plan – Project No 190433(54)	601	A C	07.06.18 15.02.22	ADW Johnson
Erosion & Sediment Control Details – Project No 190433(54)	611	A C	07.06.18 15.02.22	ADW Johnson

Reason/Justification

To refer to the amended plans.

Condition 2 – Contributions & Fees

Pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979, the Thornthorn North Section 94 Contributions Plan 2008 and the Maitland City Wide Section 94 Contributions Plan 2016, a contribution of ~~\$539,964~~ **\$569,772** shall be paid to the Council.

Facility	Per Lot	Total
	1	1819
TN Rec & Open Space	\$5,437	\$97,866 \$103,303
TN Road & Traffic	\$17,068	\$307,224 \$324,292
TN Community Facilities	\$1,724	\$31,032 \$32,756
TN Cycleways/Shared Paths	\$188	\$3,384 \$3,572
TN Management/Admin	\$433	\$7,974 \$8,227
CW Aquatics	\$928	\$16,704 \$17,632
CW Library Floor Space	\$588	\$10,584 \$11,172
CW Road & Traffic	\$3,074	\$55,332 \$58,406
CW Cycleways/Shared Paths	\$548	\$9,864 \$10,412
TOTAL	\$29,998	\$539,964 \$569,772

Reason/Justification

The contributions will be adjusted with the addition of an allotment.

Condition 28 – Stormwater Drainage

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

- a) In accordance with the approved drainage plan No. 190433(54) sheet No. CENG 101 Revision A **C**, revision date ~~7-6-2018~~ **15-02-22** by ADW Johnson.
- b) Unchanged
- c) Unchanged
- d) Unchanged

Reason/Justification

To refer to the amended plans.

Condition 44 – Bushfire

Condition 44 requires a fire trail to be provided to the south east of the approved subdivision. This fire trail can be removed upon the opening of future roads over Stage 56. This condition therefore does not require amendment.

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

5.1 Relevant Issues under Section 4.55(1A)

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

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

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

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.

With these factors in mind, it is considered that the amendments proposed will have positive environmental impacts.

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

Comment: The proposed amendments will continue to approve a residential subdivision in largely the same configuration. The road layout will remain the same, as will the development footprint. For these reasons, the development is considered to be substantially the same as the original consent.

(c) it has notified the application in accordance with:
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

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

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

5.2 Relevant Issues under EPA Regulation 2000

Clause 115 of the Environmental Planning and Assessment Regulation 2000 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 115 REQUIREMENTS	COMMENT
<i>(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:</i>	
<i>(a) the name and address of the applicant,</i>	See Development Application Form.
<i>(b) a description of the development to be carried out under the consent (as previously modified),</i>	Described within Section 2.
<i>(c) the address, and formal particulars of title, of the land on which the development is to be carried out,</i>	See Development Application Form.
<i>(d) a description of the proposed modification to the development consent,</i>	Described within Section 3 & 4.
<i>(e) a statement that indicates either:</i> <i>(i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or</i> <i>(ii) that the modification is intended to have some other effect, as specified in the statement,</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 to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,</i>	Discussed within Section 5.

<i>(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),</i>	See Development Application Form.
<i>(i) a statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under 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

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

(a)(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 amendments will have the following beneficial impacts:

- Creates another allotment for the shortage of supply within the surrounding environment.

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.

Context and Setting

The proposed modifications will have no impact on the context and setting of the subdivision as originally approved under this DA, aside from the addition of an allotment in place of approved Road 4.

Access, Transport and Traffic

The proposed modifications will alter the road layout as the approved "Road 4" will now be modified to become Lot 5419. Despite the removal of this road, the road layout across the wider Waterford Estate continues to provide suitable connections able to evenly distribute traffic.

Landscaping

The proposed modifications will have no impact on the landscaping as approved under this DA with the exception of minor changes to street trees due to the amended road layout. Plans in this regard will be provided as part of the Construction Certificate in accordance with Condition 13.

Earthworks/Retaining

Discussed above.

Utilities

The proposed modifications will have no impact on utilities other than minor changes to accommodate the increase of one (1) allotment.

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. Further, Stage 54 did not require any ecosystem or species credits to be retired as part of the original Ecological Assessment Report (EAR).

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 providing an additional residential allotment.

Waste Management

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

Site Design and Internal Design

The proposed modifications will have a beneficial impact on the overall internal design through facilitating a coordinated subdivision and road layout across the subject site and future stages.

(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.

(g) the public interest

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

6. CONCLUSION

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

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

Yours faithfully,

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

Ben Jia
Town Planner
ADW JOHNSON