



190433(40) BJ/BM

7th April 2022

The General Manager
Maitland City Council
PO Box 220
MAITLAND NSW 2320

**PROPOSED S4.55 (1A) MODIFICATION
OF DA18-2023:4
TORRENS TITLE SUBDIVISION
TWO (2) LOTS INTO 196 LOTS (STAGED)**

1. INTRODUCTION

On behalf of Avid Property Group Pty Ltd ("Avid"), Council is requested to modify DA18-2023-4 pursuant to the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979. The modification proposed is to amend the approved staging sequencing to facilitate the current global material supply shortage and a more orderly construction sequencing across the site due to recent wet weather events.

The amendment proposed is to allow Stages 40, 41 and 42 occur sequentially, and to allow Stage 42 to be registered prior to the completion of the distributor road "Steamcruiser Drive" which links the Waterford development to future developments to the south-east. To ensure this critical link is constructed, Avid would offer a bond for the outstanding works.

2. DA18-2023

DA18-2023 was approved on 26th August 2019, consenting to a 196 lot residential subdivision over six (6) stages (Stages 34, 35, 36, 40, 41 and 42). This was subsequently amended a number of times to make various minor alterations. The current version of the consent was approved on 21st December 2020 under DA18-2023-4.

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Under the current consent, Condition 4 controls the sequencing of stages in the following order:

1. Stage 34;
2. Stage 35;
3. Stage 36;
4. Stage 42;
5. Stage 40; and
6. Stage 41.

The reason behind the staging was to ensure that the distributor road Steamcruiser Drive, linking the Waterford development to future developments to the south-east, was constructed, which would facilitate development of the remainder of the Urban Release Area.

To date, Stages 34-36 have been constructed and Stages 40-42 are under construction. A recent aerial image of the subject site and immediate surrounds is included within Figure 1 (current as of March 2022).



Figure 1: Aerial Image of Site and Immediate Surrounds

3. AMENDMENTS

Construction has occurred generally from north to south. Under the current approval, Stage 42 is the next stage to be registered. Stage 42 has been subject to some uncontrollable delays which has significantly impacted the delivery timeframes, making Stages 40 and 41 more advanced.

The delays include:

- With the ongoing wet weather and Stage 42 being the lowest lying stage within the development, the stage receives significant runoff and basin overflow that prevents the construction proceeding in a timely fashion. As a result, Stage 42 has fallen behind Stages 40 and 41, which are less impacted by the wet conditions. Stages 40 and 41 should be ready for completion in September 2022. It is also expected that the current wet weather will not ease for some time, further delaying the delivery of Stage 42.
- Stage 42 requires four (4) 1,500mm diameter pipes to form the culvert crossing across the distributor road Steamcruiser Drive. Procurement delays of concrete pipes, particularly those of larger diameter, has meant the pipes required to construct the culvert are unavailable. Best estimates to procure the pipes is late 2022, resulting in the earliest possible completion in March 2023.

Taking the above into consideration, it is requested that Stage 40 and Stage 41 be allowed to progress through to registration prior to Stage 42 which will take extra time to complete for the reasons mentioned above. It is also requested that Stage 42 be allowed to be registered prior to the completion of Steamcruiser Drive, with this to be facilitated through the bonding of any outstanding works.

We are aware that Council reasonably requires Stage 42 to be delivered to facilitate the delivery of the distributor road Steamcruiser Drive. To give Council assurance that Avid will proceed with Stage 42, we note:

- The Construction Certificate documentation has been lodged and approved;
- Notwithstanding the abovementioned delays, construction of road pavements, earthworks, sewer and smaller stormwater drainage has commenced in Stage 42;
- Avid has entered into a contract with construction contractors appointed to construct Stage 42 as approved;
- All lots in Stage 42 have been sold to future residents.

Further, the Steamcruiser Drive connection to future developments to the south-east is not required in the immediate future noting that the DA for this land has not yet been lodged.

As such we request to amend the staging to facilitate delivery of Stages 40 and 41 in line with construction progress and to allow Stage 42 to be registered prior to the completion of Steamcruiser Drive through the implementation of a bond.

Aside from staging amendments, no other changes are proposed.

4. DETAILS OF AND JUSTIFICATION FOR PROPOSED MODIFICATION

To accommodate the proposed modifications, the following conditions require amendment (**red** = additions; ~~strikethrough~~ = deletions):

Condition 4 – Staging

The subdivision shall be carried out in consecutive stages released in the following order:

- a) Stage 34
- b) Stage 36
- c) Stage 35
- d) ~~Stage 42~~ **Stage 40**
- e) ~~Stage 40~~ **Stage 41**
- f) ~~Stage 41~~ **Stage 42**

Stage 42 may be allowed to be registered prior to the completion of Steamcruiser Drive, provided a bond is in place covering the outstanding works.

Reason/Justification

To continue to be able provide allotments to the market whilst construction materials for Stage 42 are being sourced, and to allow the drier and higher part of the site (Stage 40 and Stage 41) to be delivered providing additional time for the lower portion of the site (Stage 42) to dry out.

Condition 63 – Basin (Stage 42)

*Prior to the issue of Construction Certificate, basin 1 that drains to the southern drainage catchment within the development shall be constructed within ~~Stage 42~~ **Stage 40**. All engineering details shall be in accordance with the approved plans and Council's standards and submitted to Council's Subdivision and Development Engineer for approval.*

Reason/Justification

To accommodate the amended staging to ensure appropriate stormwater controls are in place for Stage 40 and Stage 41.

Condition 69 – Basin (Stage 40)

*Prior to the issue of Construction Certificate, basin 3 that drains to the southern drainage catchment within the development shall be constructed within ~~Stage 42~~ **Stage 40**. All engineering details shall be in accordance with the approved plans and Council's standards and submitted to Council's Subdivision and Development Engineer for approval.*

Reason/Justification

To accommodate the amended staging to ensure appropriate stormwater controls are in place for Stage 40 and Stage 41.

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 no physical element of the development is changing.

(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 not alter the use of the site as a residential subdivision, nor will it impact the development footprint, yield, or any other matter beyond stage changes. For these reasons, the proposed amendments are 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 adjoining sites, re-notification is not considered necessary.

5.2 Relevant Issues under EPA Regulation 2021

Section 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:

SECTION 100 REQUIREMENTS	COMMENT
(1) <i>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>	
(a) <i>the name and address of the applicant,</i>	See Planning Portal information.
(b) <i>a description of the development to be carried out under the development consent</i>	Described within Section 2.
(c) <i>the address, and formal particulars of title, of the land on which the development is to be carried out,</i>	See Planning Portal information.
(d) <i>a description of the proposed 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.
(e) <i>whether the modification is intended to:</i> (i) <i>merely correct a minor error, misdescription or miscalculation, or</i> (ii) <i>have another effect specified in the modification application,</i>	Discussed within Section 5.
(f) <i>a description of the expected impacts of the modification,</i>	Discussed within Section 5.
(g) <i>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.
(h) <i>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 Planning Portal information.
(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.

(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

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 have no impact on the access, transport and traffic as approved under this DA. The distributor road Steamcruiser Drive, connecting to developments to the south, will be completed, with this being assured through the implementation of a bond covering any outstanding works.

Landscaping

The proposed modifications will have no impact on the landscaping as approved under this DA.

Earthworks/Retaining

The proposed modifications will have no impact on the earthworks/retaining as ultimately approved under this DA.

Utilities

The proposed modifications will have no impact on utilities as approved under this DA.

Stormwater, Drainage and Water Quality

Stormwater from Stage 40 and Stage 41 will go to the basin within Stage 42. This will be built at the same time as Stage 40 to ensure appropriate management measures are in place in this regard.

Flora and Fauna

The proposed modifications will have no impact on matters of flora and fauna as originally assessed under this DA.

Hazards

The proposed modifications will have no impact on or be impacted by hazards (flooding/bushfire) as approved under this DA.

Social and Economic Impacts

The social and economic impact of the proposed modifications will only be positive through facilitating the quick release of lots within Stage 40 and Stage 41, as well as the abovementioned benefits achieved through the construction efficiencies.

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 amendments will have no impact on the site and internal design of the layout as currently approved.

(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 by allowing for the expeditious release of lots in Stage 40 and Stage 41.

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 black ink, appearing to be 'Ben Jia', written in a cursive style.

Ben Jia
Town Planner
ADW JOHNSON