



Our Ref: ABI: 240294(40)

28 June 2022

The General Manager
Maitland City Council
P.O. 220 Maitland
NSW 2320

To whom it may concern,

**RE: SECTION 4.55(1A) MODIFICATION APPLICATION TO DA/2019/652
581 RAYMOND TERRACE ROAD CHISHOLM (LOT 1 DP 1032753)
TORRENS TITLE SUBDIVISION – 132 RESIDENTIAL LOTS AND ASSOCIATED
INFRASTRUCTURE**

1.0 INTRODUCTION

Please find enclosed for your consideration and determination, an application made under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, to modify a development consent DA/2019/652 granted by Maitland City Council on 28 April 2020 for a 132 lot torrens title subdivision at 581 Raymond Terrace Road Chisholm (Lot 1 DP 1032753)- refer approved plans and Notice of Determination at **Attachment A**.

The proposed modifications as detailed in this submission are of minimal environmental impact and will result in substantially the same development as that approved by the consent. ADW Johnson has been engaged by Allam Property Group to prepare the supporting information for the Section 4.55(1A) application.

The Section 4.55(1A) application seeks approval to amend the following conditions as set out below:

- 19 – Archaeology – to reflect current onsite findings and pre-commencement requirements;
- 32 - Traffic and Transport - to reflect that the proponent and MCC have already come to an arrangement for the acquisition of land required for road widening;
- 33 - Traffic and Transport - to reflect preference for development to commence once construction certificate for the intersection has been granted;
- 38 - Traffic and Transport - to reflect roads 3 and 4 being local primary roads rather than secondary collector roads;
- 40 - Traffic and Transport – to amend design of dual lane roundabout and proposed cycle lane off-line to single lane roundabout; and

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- 54 – Stormwater Drainage – to amend stormwater drainage requirements.

2.0 BACKGROUND

Development Consent DA/2019/652 was granted by Maitland City Council on 28 April 2020 and provides consent for 132 lots and associated infrastructure at 581 Raymond Terrace Road Chisholm. The Notice of Determination and approved plans are enclosed at **Attachment A**.

The approved subdivision comprises 132 residential lots, four (4) drainage reserve lots, two (2) road widening lots and associated infrastructure. The residential lots range in size from 465.6m² - 966.5m² as per below:



Figure 1: Approved Plan.

3.0 PROPOSED AMENDMENTS

The proposed amendments are discussed further below:

Condition 19

Condition 19 is set out as follows:

- 19. Prior to physical works commencing on the site** (including the clearing of vegetation), a copy of the Aboriginal Heritage Impact Permit (AHIP) issued under section 90 of the National Parks and Wildlife Act 1974 is to be submitted to Council.

It is proposed to delete condition 19 and replace it with the following:

- 19.** The persons responsible for the management of onsite works will ensure that all staff, contractors and others involved in construction and maintenance related activities are made aware of the statutory legislation protecting sites and places of significance. Of particular importance is the National Parks and Wildlife Regulation 2019, under the National Parks and Wildlife Act 1974; and Should any Aboriginal objects be uncovered during works, all work will cease in that location immediately and the Environmental Line contacted.

Justification

Condition 19 as previously drafted is no longer relevant as an AHIP is not required prior to commencement of works on site as the AHIMS site 38-4- 0892 has been updated on AHIMS to 'destroyed'. – refer Archaeological Due Diligence Assessment at **Attachment D**.

Condition 32

Condition 32 is set out as follows:

- 32. Prior to the issue of a Subdivision Works Certificate**, the land required to construct the Traffic Control Signals (TCS) at the intersection of Raymond Terrace Road/Government Road, Thornton including any road widening along the frontage of the development site and Raymond Terrace Road and the extent of the internal 4th leg intersection connection within the development site must be dedicated to Council as public road, at no cost to Council. The extent of land required will be determined by the final design approved by Transport for NSW.

It is proposed to delete this condition.

Justification

The proponent and MCC have already come to an arrangement for the acquisition of land required for road widening. Road widening was included as part of the S7.11 Contributions Plan as part of the intersection works.

Condition 33

Condition 33 is set out as follows:

- 33. Prior to the issue of a Subdivision Works Certificate**, the development site must be connected to the public road network through the construction of Traffic Control

Signals (TCS) at the intersection of Raymond Terrace Road/Government Road, Thornton and Practical Completion issued by Transport for NSW.

It is proposed to amend Condition 33 as follows:

- 33.** Prior to the issue of a Subdivision Certificate, the development site must be connected to the public road network through the construction of Traffic Control Signals (TCS) at the intersection of Raymond Terrace Road/Government Road, Thornton and Practical Completion issued by Transport for NSW.

Justification

The applicant requests that the issue of granting a subdivision works certificate should not be linked to Practical Completion of the Raymond Terrace Road/Government Road intersection, which could be up to 18 months away. Allowing commencement of the subdivision works to occur concurrently with/or prior to the intersection will bring housing release of key residential area forward by approximately 6 months. To avoid impact on the construction of the intersection upgrade, the applicant is proposing to construct a temporary construction access track through to McFarlanes Road. Please see attached plan demonstrating the proposed temporary access route at **Attachment C**.

Condition 38

Condition 38 is currently set out as follows:

- 38.** Prior to the issue of the Subdivision Works Certificate the following road hierarchy shall apply to all roads, (including widths, pavement design and the like) in accordance with council's Manual of Engineering Standards:

ROAD TYPE	ROAD DESCRIPTION	Comments (shared paths etc)
Local - Primary	Road 08, 09, 15, 16, 27	
Collector - Secondary	Road 03, 04, 13	
Collector - Primary	Road 12	2,5m shared path riparian corridor
Distributor – Secondary	NIL	
Distributor - Primary	NIL	
Sub-Arterial	Road 01	

Note: where other conditions of consent require larger criteria (such as shared paths and verge) the larger provision takes precedence.

It is proposed to amend Condition 38 as follows:

- 38.** Prior to the issue of the Subdivision Works Certificate the following road hierarchy shall apply to all roads, (including widths, pavement design and the like) in accordance with council's Manual of Engineering Standards:

ROAD TYPE	ROAD DESCRIPTION	Comments (shared paths etc)
Local - Primary	Road 03, 04 , 08, 09, 15, 16, 27	
Collector - Secondary	Road 13	
Collector - Primary	Road 12	2,5m shared path riparian corridor
Distributor – Secondary	NIL	
Distributor - Primary	NIL	
Sub-Arterial	Road 01	

Note: where other conditions of consent require larger criteria (such as shared paths and verge) the larger provision takes precedence.

Justification

This change is administrative. Proposed roads 03 and 04 are 17m wide local primary roads rather than Secondary Collector roads.

Condition 40

Condition 40 is currently set out as follows:

40. Prior to issue of the Subdivision Certificate for the relevant stage, a roundabout at the intersection of Roads 01, 12 and 27 shall be constructed provided, but not limited to:

- (a) a dual lane roundabout with on road cycle lane formation width in accordance with RMS and Austroads Standards;
- (b) pavement consisting of:
 - asphaltic cement wearing course & base (min. 175mm thick)
 - heavily bound upper sub-base
 - unbound lower sub-base
 - an additional min. 300mm deep subgrade replacement CBR 30 is required due to the presence of expansive and reactive clays in this area.
- (c) raised steel reinforced concrete mountable turning annulus;
- (d) raised steel reinforced concrete combination splitter island and pedestrian refuge on all legs with matching kerb ramps;
- (e) a pavement thickness delivering design-life traffic loadings in accordance with Council's Manual of Engineering Standards;
- (f) vehicle turning paths for 19m semi-trailer and 15m bus transport;
- (g) street lighting to provide advanced intersection warning and a safe night time environment for road users and pedestrians which adopts a minimum category 'V' in accordance with Australian Standard AS 1158;
- (h) major and minor event stormwater drainage for contributing catchments; and
- (i) all line marking and signage shall be approved by Local Traffic Committee.

It is proposed to amend Condition 40 as follows:

40. Prior to issue of the Subdivision Certificate for the relevant stage, a roundabout at the intersection of Roads 01, 12 and 27 shall be constructed provided, but not limited to:

- (a) Dual Lane roundabout in accordance with RMS and Austroads Standards only on the North, West and South legs;**
- (b) pavement consisting of:
 - asphaltic cement wearing course & base (min. 175mm thick)
 - heavily bound upper sub-base
 - unbound lower sub-base
 - an additional min. 300mm deep subgrade replacement CBR 30 is required due to the presence of expansive and reactive clays in this area.
- (c) raised steel reinforced concrete mountable turning annulus;
- (d) raised steel reinforced concrete combination splitter island and pedestrian refuge on all legs with matching kerb ramps;
- (e) a pavement thickness delivering design-life traffic loadings in accordance with Council's Manual of Engineering Standards;

- (f) vehicle turning paths for 19m semi-trailer and 15m bus transport;
- (g) street lighting to provide advanced intersection warning and a safe night time environment for road users and pedestrians which adopts a minimum category 'V' in accordance with Australian Standard AS 1158;
- (h) major and minor event stormwater drainage for contributing catchments; and
- (i) all line marking and signage shall be approved by Local Traffic Committee.

Justification

Part (a) of the condition currently requires a dual lane roundabout with on road cycle lane formation width in accordance with RMS and Austroads Standards at the intersection of Roads 01, 12 and 27. It is submitted that a dual lane roundabout is not required in all directions, given the eastern leg (Road 27) is classified as a local primary road and can be serviced by a single lane. The reliance of the roundabout by development to the east (DA/2016/2890-undetermined) leg has also been reduced by the inclusion of an additional local road through lot 233 in accordance with condition 41 of the approved consent.

Further, the applicant is proposing that cycle lanes be diverted to off road through the roundabout.

The proposed roundabout configuration is provided in **Attachment E**.

Condition 54

Condition 54 is currently set out as follows:

54. Prior to the issue of a Subdivision Works Certificate, a drainage report and design shall be prepared by a suitably qualified and experienced drainage engineer, in accordance with Council's Manual of Engineering Standards. The system requirements shall include, but not limited to, the following:

- a) A major and minor stormwater drainage system catering for discharge from contributing catchment areas in their ultimate developed state.
- b) An on-site detention system to reduce post-developed discharges to predeveloped discharges, for the critical storm up to and including the 1% AEP ("100 year") event for proposed Lots 105 and 106, 301, 302 and 303 and associated overland flowpaths.
- c) A stormwater water quality system to collect gross pollutants, nutrients and hydrocarbons generated from the contributing catchment areas in their ultimate developed state.

It is proposed to amend Condition 54 as follows:

54. Prior to the issue of a Subdivision Works Certificate, a drainage report and design shall be prepared by a suitably qualified and experienced drainage engineer, in accordance with Council's Manual of Engineering Standards. The system requirements shall include, but not limited to, the following:

- a) A major and minor stormwater drainage system catering for discharge from contributing catchment areas in their ultimate developed state.
- c) A stormwater water quality system to collect gross pollutants, nutrients and hydrocarbons generated from the contributing catchment areas in their ultimate developed state.

Justification

This site forms part of the catchment which utilises the recently constructed Basin 1 within the downstream, Sophia Waters Development. Onsite detention is catered for within this basin. Please see attached plan within **Attachment B**.

4.0 RELEVANT PROVISIONS OF SECTION 4.55(1A)

Section 4.55 of the Environmental Planning and Assessment Act, 1979 is set out 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
- (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
- (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.

Subsections (1), (2) and (5) do not apply to such a modification.”

In relation to 4.55(1A) (a) and (b), Council can be satisfied that the requested modifications will have minimal environmental impacts and that the development as proposed to be modified will still be substantially the same development as that approved under the Consent, for the following reasons:

- There will be minimal changes to the existing physical form of the development; and
- The environmental impacts resulting from the proposed modification are similar to those impacts for the already approved development.

Section 4.55(3) further states as follows:

“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.”

Section 4.15(1)(a) – Statutory Planning Considerations

Section 4.15 (1) (a) requires the consent authority to take into consideration of:

- “(a) the provisions of:
- (i) any environmental planning instrument, and
 - (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iii a) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,”

The proposed development in its modified form will continue to be permitted in the current R1 General Residential zone as set out under Maitland Local Environmental Plan 2011.

There are no draft instruments or planning agreements which would affect the proposed modification.

Section 4.15(1)(b) – Environmental, Social and Economic Impacts

Section 4.15(1) (b) requires the consent authority to consider:

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

The relevant matters are addressed above.

Impacts on the Natural Environment

There will be no additional issues relating to stormwater and flooding (including coastal hazards and sea level rise), erosion and sediment or flora and fauna from the modification.

Impacts on the Built Environment

There will be no impacts on the existing built environment as a result of the modification.

Social and Economic Impacts

There will be no additional social or economic impacts as a result of the modification.

Section 4.15(1)(c) – The Suitability of the Site

Section 4.15(1)(c) requires the consent authority to consider:

- “(c) the suitability of the site for the development.”

The site has already been approved for development and is able to accommodate the proposed modification.

Section 4.15(1)(d) – Submissions

Section 4.15(1)(d) requires the consent authority to consider:

“(d) any submissions made in accordance with this Act or the regulations”.

Any relevant representations will need to be considered by the Minister.

Section 4.15(1)(e) – Public Interest

Section 4.15(1)(e) requires the consent authority to consider:

“(e) the public interest”.

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls. The modification as proposed will not result in any additional environmental impacts and is therefore considered to be in the public interest.

5.0 RELEVANT ISSUES UNDER THE EP&A REGULATION 2021

Section 100 of the *Environmental Planning and Assessment Regulation 2021* sets out additional requirements that all applications for modifications of consent under Section 4.55(1A) must comply with. The relevant requirements and how they have been complied with are set out in the following table:

Table 1: Section 100 Requirements

Section 100 REQUIREMENTS	COMMENT
(1) A modification application must	contain the following information—
(a) the name and address of the applicant,	Provided within this Section 4.55(1A) Report and as part of the application on the NSW Planning Portal.
(b) a description of the development that will be carried out under the development consent,	Discussed within relevant sections of this Section 4.55(1A) Report.
(c) the address and folio identifier of the land on which the development will be carried out,	Provided within this Section 4.55(1A) Report and as part of the application on the NSW Planning Portal.
(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,	Discussed within relevant sections of this Section 4.55(1A) Report.
(e) whether the modification is intended to— (i) merely correct a minor error, misdescription or miscalculation, or (ii) have another effect specified in the modification application,	Discussed within relevant sections of this Section 4.55(1A) Report.
(f) a description of the expected impacts of the modification,	Discussed within relevant sections of this Section 4.55(1A) Report.
(g) an undertaking that the modified development will remain substantially the same as the development originally approved,	Discussed within relevant sections of this Section 4.55(1A) Report.
(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,	N/A
(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,	Consent of the owner of the land has been provided with the online lodgement application details.
(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.	N/A

6.0 SUPPORTING DOCUMENTATION

This correspondence forms part of the Section 4.55(1A) Application. Accompanying this correspondence are the additional supporting documents outlined below. All correspondence and supporting documentation have been attached to this letter for ease of reference and comprises the following:

- A completed Section 4.55(1A) application form;
- Approved plans and Notice of Determination at **Attachment A**;
- Stormwater Catchment Plan at **Attachment B**;
- Plan of proposed temporary access route at **Attachment C**;
- Archaeological Due Diligence Assessment at **Attachment D**;
- Proposed roundabout configuration at **Attachment E**.

7.0 CONCLUSION

This Section 4.55(1A) application seeks approval to modify conditions 32, 33, 36, 38 and 40 of the consent granted by Maitland City Council on 28 April 2020 for a 132 lot torrens title subdivision at 581 Raymond Terrace Road Chisholm (Lot 1 DP 1032753).

In relation to S4.55(1A)(a), Council can be satisfied that the requested modifications will have minimal environmental impacts and that the development as proposed to be modified will still be substantially the same development as that approved under the Consent for the reasons set out in 3 above.

In relation to S4.55(1A)(b), the development will remain substantially the same as that previously approved, and the modifications for which consent is now sought do not alter the original findings made in relation to DA/2019/652 regarding the reasonableness and appropriateness of the proposal when considered in the light of the matters listed in Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Council is therefore respectfully requested to approve the proposed modifications.

Should there be any further enquiries, please do not hesitate to contact me on 4978 5100.

Yours faithfully,



ANDREW BILLER
SENIOR TOWN PLANNER
 ADW JOHNSON PTY LTD
 HUNTER OFFICE



Attachment A

NOTICE OF DETERMINATION AND APPROVED DEVELOPMENT PLANS

Attachment B

STORMWATER CATCHMENT PLAN

Attachment C

TEMPORARY CONSTRUCTION ACCESS PLAN

Attachment D

ARCHAEOLOGICAL DUE DILIGENCE ASSESSMENT

Attachment E

PROPOSED ROUNDABOUT CONFIGURATION