Statement of Environmental Effects:
Proposed s.96 Modification to Lot Layout
Heritage Parc Estate
62 Grand Parade
Rutherford

Source: Proposed Subdivision Plan (High Definition Design, 2017)

Prepared on behalf of:
McCLOY PROJECT MANAGEMENT Pty Ltd

Prepared for Submission to:
MAITLAND CITY COUNCIL;
HUNTER & CENTRAL COAST JOINT REGIONAL PLANNING PANEL
Document Control

Title: Proposed Retirement Village
Address: Lot 6 DP 270823, 62 Grand Parade, Rutherford NSW 2320
Job No: 17NEW0167
Client: McCloy Project Management Pty Ltd

Document Issue:

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<td>06/11/2017</td>
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Signed

Kirsty Tepper
Principal Planner
Jack Kelly
Planner

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Section 96 Modification Application
DA 08-2357

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1.0 Introduction

In 2011 Maitland City Council approved the creation of a four hundred and forty five (445) lot community title residential subdivision in Rutherford (DA 08-2357) on lot 1504, DP1141535. In October 2012, a modification to the original consent was approved with the total yield of the site increasing to 450 lots.

An application to modify the 2011 consent has been submitted to Council under section 96 of the EPA Act. That application seeks to modify the lot layout to create lot 1001 within the north-west quadrant of the subdivision. Lot 1001 is also the subject of a separate development application for 80 seniors living dwellings within a retirement village known as “Oak Tree”. The modification and application for retirement village are currently under consideration by Council.

This application seeks to further modify the approved subdivision to create a large lot within the south-west quadrant of the subdivision, Lot 2401. This proposed modification involves changes to condition 1 of the existing development application. Condition 1 will be amended by replacing the existing plans identified in Table 1 with the plans in Table 2 below.

Table 1: Existing Subdivision Plans

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Table 2: Proposed Subdivision Plans

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The proposed subdivision plans are contained within Appendix A.

2.0 Consideration of Section 96 of the Environmental Planning and Assessment Act, 1979.

For this assessment the relevant considerations under section 96 of the Environmental Planning and Assessment Act, 1979, follows.

There are three levels of section 96. These include:
- S96 (1) – A modification involving minor error, misdescription or miscalculation.
• S96 (1A) – Modifications involving minimal environmental impact, and
• S96 (2) – All other modifications.

Prior to granting consent to a modification under s.96(1A) of the Act, the consent authority is required to be satisfied that:
  a) the proposed modification is of minimal environmental impact;
  b) the development is substantially the same as that for which consent was originally granted, prior to modification;
  c) the application has been notified as required; and
  d) submissions have been duly considered.

This application is considered to be a modification under Section 96(1A) of the Act. The relevant criteria for consideration by the consent authority are summarised below:

a) The proposed modification is of minimal environmental impact. The proposed number of lots across the subdivision will be reduced, decreasing the servicing requirements of the lot. Trip generation will be reduced due to the demographics of residents. The footprint of the development area for the residential estate has not changed. The proposal will have a minimal environmental impact.

b) The consent as modified is substantially the same development as that for which the consent was originally granted. The proposed development does not change the intent of the lot to be developed from the original consent, being subdivision of land for urban purposes. The proposal will retain the land in a community title subdivision.

The overall footprint of the subdivision estate has not been impacted except for land in stages 24, 25 and 26. For this reason, this modification is deemed to be largely consistent with the original Council consent. This change has caused the staging design to be modified which will only impact on this southern part of the subdivision estate. This will not have an adverse impact on the rest of the subdivision estate and locality.

This proposed modification reduces the number of allotments from 450 to 394 across the site. The lot to be created is Lot 2401 and will have a lot size of 82,587 m². Riverdale Close, Pavilion Street, and Empire Crescent will be redesigned as result of the modification. Proposed lot 2401 will be used to accommodate the proposed development of a retirement village, the subject of a separate application.

The proposal maintains both the intent of the original development consent and the area to which that consent applies. The proposed modification results in a development that is substantially the same as that approved by Council, pursuant to s.96(1A) (b) of the Act.

c) The application will be notified by Council as required.
d) Submissions will be considered as required. The applicant welcomes the opportunity to address any matters of public concern raised in submissions.

3.0 Evaluation

In accordance with Section 96 of the Act an assessment under Section 79C (1) must be undertaken. Evaluation against section 79C (1) of the Act is undertaken below.

3.1 Environmental Planning Instruments (EPIs):

The Maitland LEP 2011 is the primary environmental planning instrument governing land use in Maitland and applies to the subject site. The site is zoned RE2 Private Recreation under the LEP and does not have an associated minimum lot size. Development on RE2 zoned land has the following objectives:

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The existing and proposed subdivision of this land in a community title scheme is permissible under Schedule 1 of the Maitland LEP 2011 in which clause 6 states:

(1) This clause applies to Lot 1504, DP 1141535 being land at Racecourse Road, Rutherford (Heritage Green).

(2) Development for the purposes of residential accommodation of up to 450 dwellings in a community title scheme (within the meaning of the Community Land Development Act 1989), a recreation facility (outdoor) and associated business premises and retail premises is permitted with development consent.

Schedule 1 provides the consent framework for the original subdivision application and all subsequent modifications. The proposed modification is permissible with consent under Maitland LEP 2011.

Legal advice has been sought on the permissibility of the lot for seniors housing. In pre-Development Application consultation, Council has confirmed that seniors housing is permissible on the lot (refer to Legal Advice within Appendix B and Council’s Minutes within Appendix C). When consent was granted originally by Council a 450 dwelling cap in was introduced in the conditions of consent, pursuant to clause 6 of Schedule 1 of the Maitland Local Environmental Plan 2011 (Maitland LEP 2011). This clause does not apply to seniors housing, as documented within Appendix B. A development application lodged for seniors housing on this land under the State Environmental Planning Policy (Housing for
Seniors or People with a Disability) 2004 (the SEPP) is excluded from the 450 dwelling cap.

In order to accommodate this additional seniors housing, the lot layout has been redesigned with the largest lot now being the proposed lot 2401. This is consistent with the statutory requirements for the site. There is no minimum lot size set out in the Maitland LEP 2011 and the proposal complies with other relevant statutory and non-statutory requirements as further demonstrated below.

Therefore, the use proposed is permissible and is not subject to the dwelling cap contained within clause 6 of Schedule 1 of the Maitland LEP 2011.

3.2 Proposed planning instruments:

There are no proposed planning instruments that are known to affect the site.

3.3 Development Control Plans:

The Maitland Development Control Plan 2011 (Maitland DCP 2011) applies to this site. Part C of the DCP contains provisions relevant to the subdivision of land.

Part C.10 of the DCP promotes a consistent and appropriate approach to the design of subdivisions, which includes the efficient use of land, innovation in subdivision design and an integrated approach to neighbourhood amenity, protection of cultural heritage and consideration of the principles of Ecologically Sustainable Development (ESD). The development, with the proposed modifications, will be consistent with these objectives. It will add to the diversity of subdivision design within the Heritage Parc estate, and maintain the integrated approach of the approved subdivision to the conservation of Aboriginal heritage, preservation of neighbourhood amenity, responsiveness to principles of ESD and management of the bushfire hazard.

This section considers the key design elements of the DCP to subdivision design. Relevant Environmental Controls (EC) and Development Controls (DC) are considered below.

EC.1 aims to preserve bushland and minimise the impact of likely future development of the site on vegetation. No additional clearing is required to accommodate the proposed modification. The proposal will retain and enhance natural drainage lines as originally approved. The preservation of the central drainage line and park land within community title will further enhance the opportunities for management and conservation of this natural resource. The proposed modification is consistent with this requirement.

EC.2 relates to the conservation of heritage and archaeology. The proposal is consistent with the existing Conservation Management Plan applicable to the site and does not alter compliance of the existing approved subdivision in this regard. The areas of conservation significance for Aboriginal heritage are shown on the
Masterplan within Appendix A, and are excluded from the area affected by the proposed subdivision. The nearest item of European heritage significance is the railway line located to the south of the site. This is separated from the site by an existing acoustic wall. The proposed modification to lot layout will have no impact on the heritage significance of this item.

EC.3 relates to hazards applicable to the site. The site is bushfire prone land and a referral will be made to the Rural Fire Service under s.91 of the EPA Act. A Bushfire Threat Assessment has been prepared and is contained within Appendix D. This incorporates an assessment of the proposal against Planning for Bushfire Protection 2006 and the provision of measures to protect the future occupants of the land from the bush fire hazard. Asset protection zones and a perimeter road have been incorporated into the development.

DC.1 of the MDCP 2011 deals with dimensions and lot sizing of developments. The proposed development site exceeds the minimum lot requirements. The lot is sited to avoid watercourses and other natural features to the north and east of the site, as required. It incorporates adequate space for on-site drainage systems, landscaping, solar access, servicing, and built form to meet the requirements of the DCP for future development of the lot.

DC.2 of the MDCP 2011 deals with solar access and energy efficiency. The orientation of the allotment provides for maximum northern solar access for future development.

DC.3 of the MDCP 2011 deals with drainage, water quality and soil erosion. The proposed amendment to the development approval will have no net impact on downstream water quality. An onsite detention system will be provided for the site. The overall estate catchment configuration and areas remain unchanged from the previous Stormwater Management Plan prepared by ADW Johnson for the entire Heritage Parc estate. Further detail is contained within Civil Engineering Plans (Appendix F) and Water/Sewer Concept Plans (Appendix G). Furthermore, an erosion and sedimentation control plan has been prepared including best practice measures to ensure minimal impact on water quality.

DC.4 of the DCP 2011 deals with landscaping and visual impact of subdivisions. The proposed amendment to the development approval will improve landscaping outcomes across the site. A Landscaping Plan has been prepared to satisfy the requirements in the DCP regarding subdivision, as well as the landscaping requirements for future development of the site. This is provided within the Statement of Environmental Effects for the development application for seniors housing on the site (refer to separate development application).

DC.5 of the Maitland DCP 2011 deals with effluent disposal. The new lot will be connected to a reticulated sewerage system supplied by the applicant as indicated on the Stormwater Plans within Appendix F. The proposal is consistent with DCP requirements in this regard.
DC.6 of the Maitland DCP 2011 deals with roads and access, pedestrian paths and cycleways. A Traffic and Parking Impact Assessment has been prepared by McClaren Traffic Engineering and Road Safety Consultants, concluding that will be a reduction in overall trips generated for the entire estate based on an assessment of the proposed development of the site as a retirement village (refer to separate development application). This assessment is contained within Appendix E to this report for reference, and further considered below. The proposal satisfies the requirements of the DCP with regard to the consideration of the proposed modification against likely traffic impacts.

DC.7 of the Maitland DCP 2011 deals with crime prevention within new subdivisions. The proposed lot modification does not alter the compliance of the subdivision with this aspect of the DCP.

DC.8 of the Maitland DCP 2011 relates to site filling. Levels of proposed cut and fill for the site are shown within the Civil Engineering Plans in Appendix F. The proposed fill is consistent with the maximum 2m fill depth set by Council.

DC.9 of the Maitland DCP 2011 deals with reticulated services. The new lot will be connected to a reticulated water and sewerage system, stormwater drainage, existing electricity power line and telephone line via the existing service lines along Grand Parade.

The minor modifications as proposed are consistent with the Maitland DCP 2011.

3.4 Planning Agreement

There is no known planning agreement affecting the site.

3.5 Regulations

There are no specific regulations that affect the proposed amendment.

3.6 Coastal Zone

There is no known coastal zone management plan affecting the site.

3.7 Likely impacts of the development:

The likely environmental, social and economic impacts of the proposed modification are addressed below.

3.7.1 Ecology

The original layout of the estate that was approved by Council considered the retention of native vegetation and potential impacts on vegetation. The flora and fauna report concluded that the original subdivision design was unlikely to have a significant effect upon any threatened species, population, ecological
communities or habitats. The design retains existing natural drainage and watercourses. The proposed subdivision modification does not alter the impact of the development on ecology.

### 3.7.2 Bushfire

The original layout of the estate that was approved by Council considered the need to minimise the risk of bushfire hazard to future inhabitants. A Bushfire Threat Assessment has been prepared for the proposed modification to the subdivision, and for the development of a retirement village, taking into consideration the requirements of Planning for Bushfire Protection 2006 for special fire protection purposes. The Assessment is contained within Appendix D and recommends a 30m Asset Protection Zone, inclusive of a fire trail circumnavigating the northern and western boundaries of the proposed allotment. These recommendations have been incorporated into the proposed modification.

### 3.7.3 Cultural heritage

The lot layout and design protects known Aboriginal and European heritage items.

As part of the original development approval an Aboriginal Cultural Heritage Management Plan was prepared to provide guidance for the management of Aboriginal heritage within the area. This report was used in the design process of the modification the subject of this application. These items are located outside the boundary of the proposed allotment and will not be affected by the proposed modification to lot layout.

Further, an existing acoustic wall separates the site of the proposed modification from the railway which is a listed European heritage item. The proposed modification will have no impacts on the heritage significance of this item.

### 3.7.4 Traffic, parking and trip generation

The proposed modification seeks to replace 56 approved residential allotments within the subdivision with one allotment. A separate application has been lodged for the development of 99 seniors living units on this allotment, as a new retirement village on the site. The traffic, parking and trip generation rates applicable to that development have been assessed within part 4.1.1.3 of the Statement of Environmental Effects lodged to support that development application (Barr Property and Planning, 2017). Detailed analysis of relevant census data is provided within that Statement to confirm that the use of RMS trip generation rates for seniors housing, contained within the RMS Guide to Traffic Generating Developments, are appropriate to the proposed development of seniors housing on the site.

Appendix E contains the Traffic and Parking Impact Assessment for the proposed modification and development of seniors housing (McLaren, 2017). The assessment shows that the proposed modification the subject of this application,
and the proposed development of the site for a retirement village (refer to separate development application) complies with Council’s controls and the relevant RMS guidelines, and is within the existing approved capacity of the road network.

3.8 The suitability of the site for the development:

Maitland Council has identified that the site is suitable for residential development, having consented to a 450 lot residential subdivision on the site. The proposed modification will not alter suitability of the site for urban purposes. The land is zoned for urban purposes and seniors housing is permissible with consent, as outlined in Schedule 1 of the Maitland LEP 2011 and confirmed in Appendix B.

3.9 Any submissions made:

Any submissions received as a result of the proposal will be considered.

3.10 The public interest:

The proposed modification will have no detrimental impact on the development of the site consistent with the public interest. The proposal will provide environmental, infrastructure and operational benefits for the subdivision of the site. In particular, the creation of an allotment to further the provision of seniors housing in the locality is considered in line with Council’s intentions to increase the diversity of dwelling stock and enable people to age in place through appropriate provision of housing for older people. The future development of the site will deliver a commitment and investment in seniors housing in Maitland and facilitate job creation in the construction and aged care sectors, whilst supporting and preserving existing environmental and cultural heritage attributes of the site. Accordingly, it is considered that the proposed modification is consistent with the public interest.

4.0 Conclusion

Based on the above assessment, it is considered that the proposed modification should be supported. The above assessment has been undertaken in accordance with the relevant parts of section 96(1A) of the EP&A Act 1979, including an assessment under section 79C(1). The proposed modification will have minimal impact on the environment, and positive social and economic impacts due to the provision of an allotment for housing for older people within the Maitland Local Government Area. The assessment has concluded that the amendment to the proposal satisfies the requirements of the EPA Act and should be supported within a reasonable timeframe by the consent authority.