

13 November 2024

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

Attention: Georgie Williams

Dear Georgie,

**RE: SECTION 4.55(2) MODIFICATION APPLICATION TO DA/2019/653:
119 MCFARLANES ROAD CHISHOLM (LOT 1 DP 198776)
ONE INTO 143 LOT RESIDENTIAL SUBDIVISION AND ASSOCIATED INFRASTRUCTURE**

1.0 INTRODUCTION

Please find enclosed for your consideration and determination, an application made under Section 4.55(2) of the Environmental Planning and Assessment Act 1979, to modify development consent DA/2019/653 granted by Maitland City Council on 12 May 2020 for a 143 lot Torrens title subdivision at 119 McFarlanes Road, Chisholm (Lot 1 DP 198776).

The proposed modification is requested to:

- Amend the development layout to satisfy Condition 44 of the consent;
- Resolve residual R1 zoned land at the common boundary with Lot 10 DP1281950; and
- Amend development conditions which conflict with the approved plans.

The proposed modifications as detailed in this submission 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(2) application.

In particular, this Section 4.55(2) application seeks approval to amend the following conditions as set out below:

- 1 – Approved Plans and Documentation;
- 2 – Contributions and Fees;
- 42 – Traffic and Transport Staging Sequence;
- 43 – Traffic and Transport Temporary Intersection;
- 47 – Traffic and Transport - Prior to the issue of a Subdivision Works Certificate;
- 48 – Traffic and Transport - Prior to the issue of a Subdivision Works Certificate;
- 49 – Traffic and Transport - Prior to the issue of a Subdivision Works Certificate;
- 52 – Traffic and Transport - Prior to the issue of a Subdivision Certificate;
- 53 – Traffic and Transport - Prior to the issue of a Subdivision Certificate;
- 56 – Traffic and Transport - Prior to the issue of a Subdivision Works Certificate or Roads Act Approval;
- 58 – Traffic and Transport Prior to the issue of a Subdivision Certificate;

- 60 – Batters and Retaining Walls;
- 62 – Stormwater Drainage - Prior to the issue of a Subdivision Works Certificate;
- 64 - Stormwater Drainage - Prior to the issue of a Subdivision Works Certificate; and
- 71 – Erosion and Buk Earthworks - Prior to the issue of a Subdivision Works Certificate.

2.0 BACKGROUND

Development Consent DA/2019/653 was granted by Maitland City Council on 12 May 2020 and provides consent for 143 residential lots and associated infrastructure at 119 McFarlanes Road Chisholm – refer **Attachment A**.

On 26 February 2024 the consent was modified to delete condition 28. The condition related to pre-commencement requirements for an AHIP to be established prior to clearing works. The modified Notice of Determination is included at **Attachment B**.

On 12 March 2024 a pre-DA package was forwarded to Council explaining the proposed changes. Following a subsequent meeting, Council officers advised that given the scope of additional earthworks proposed (including an increase in volume by ~70,000m³) and the increase in lot numbers (9), a Section 4.55(2) application would be required.

Since the meeting with Council, the proposed layout has been further amended to include three super lots which will be the subject of a future DA for integrated (small lot) housing pursuant to the requirements of Clause 4.1A of Maitland LEP 2011. As such, the layout which is the subject of this modification application has been amended to include 138 residential lots and three super lots.

3.0 PROPOSED AMENDMENTS

The proposed amendments are discussed further below:

Condition 1 - Approved Plans and Documentation

Condition 1 is currently set out as follows:

APPROVED PLANS AND DOCUMENTATION

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 of this consent or as shown in red colour on the plans:*

Plan Reference	Sheet No	Revision	Date	Prepared by: (consultant)
Cover Sheet & Drawing Index	DA-101	B	14/04/20	ADW Johnson 150101(38)
Context Staging Plan	DA-105	B	14/04/20	ADW Johnson 150101(38)
Proposed Subdivision of Lot 1 DP198776	DA-106	B	14/04/20	ADW Johnson 150101(38)
Stage 1 Detail Plan	DA-111	B	14/04/20	ADW Johnson 150101(38)

Stage 2 Detail Plan	DA-112	B	14/04/20	ADW Johnson 150101(38)
Stage 3 Detail Plan	DA-113	B	14/04/20	ADW Johnson 150101(38)
Stage 4 Detail Plan	DA-114	B	14/04/20	ADW Johnson 150101(38)
Stage 5 Detail Plan	DA-115	B	14/04/20	ADW Johnson 150101(38)
Stage 6 Detail Plan	DA-115	B	14/04/20	ADW Johnson 150101(38)
Road No. 1 Longsection Sheet 1	DA-401	B	14/04/20	ADW Johnson 150101(38)
Road No. 1 Longsection Sheet 2	DA-402	B	14/04/20	ADW Johnson 150101(38)
Road No. 2 Longsection	DA-403	B	14/04/20	ADW Johnson 150101(38)
Road No. 15 Longsection	DA-405	B	14/04/20	ADW Johnson 150101(38)
Roads No. 16 Longsection	DA-406	B	14/04/20	ADW Johnson 150101(38)
Road No. 20 Longsection	DA-407	B	14/04/20	ADW Johnson 150101(38)
Road No. 21 Longsection	DA-408	B	14/04/20	ADW Johnson 150101(38)
Road No. 22 Longsection	DA-409	B	14/04/20	ADW Johnson 150101(38)
Road No. 23 Longsection	DA-410	B	14/04/20	ADW Johnson 150101(38)
Road No. 24 Longsection - Sheet 1	DA-411	B	14/04/20	ADW Johnson 150101(38)
Road No. 24 Longsection-Sheet 2	DA-412	B	14/04/20	ADW Johnson 150101(38)
Typical Lot Interfacing Sections	DA-431	B	14/04/20	ADW Johnson 150101(38)
Earthworks and Retaining Wall Location Plan	DA-450	B	14/04/20	ADW Johnson 150101(38)
Riparian Corridor 100yr Local Flood Heights	SWMP-501	B	14/04/20	ADW Johnson 150101(38)
Riparian Corridor 100yr Local Flood Heights	SWMP-502	B	14/04/20	ADW Johnson 150101(38)
Riparian Corridor 100yr Local Flood Heights	SWMP-503	B	14/04/20	ADW Johnson 150101(38)
Sections 1 & 2 Riparian Corridor	SWMP-504	B	14/04/20	ADW Johnson 150101(38)
Sections 3 & 4 Riparian Corridor	SWMP-505	B	14/04/20	ADW Johnson 150101(38)
Section 5 Riparian Corridor	SWMP-506	B	14/04/20	ADW Johnson 150101(38)
Section 6 and 7 Riparian Corridor	SWMP-507	B	14/04/20	ADW Johnson 150101(38)
Section 8 Riparian Corridor	SWMP-508	B	14/04/20	ADW Johnson 150101(38)
Landscape Masterplan	LP-01	A	04/10/16	Terras Landscape Architects
Landscape Plan	LP-03	A	04/10/16	Terras Landscape Architects
Landscape Plan	LP-04	A	04/10/16	Terras Landscape Architects
Landscape Buffer Zone	LP-06	A	04/10/16	Terras Landscape Architects
Landscape Buffer Zone – Element	LP-07	A	04/10/16	Terras Landscape Architects
Planting Design	LP-08	A	04/10/16	Terras Landscape Architects

It is proposed to delete condition 1 to be replaced with the following:

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 of this consent or as shown in red colour on the plans:

Plan Reference	Sheet No	Revision	Date	Prepared by: (Consultant)
Cover Sheet & Drawing Index	DA-101	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Context Staging Plan	DA-105	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Proposed Subdivision of Lot 1 DP1032753	DA-106	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Stage 1 Detail Plan	DA-111	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Stage 2 Detail Plan	DA-112	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Stage 3 Detail Plan	DA-113	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Stage 4 Detail Plan	DA-114	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Stage 1 Services Plan	DA-201	E	8/11/24	ADW Johnson 240294(50)
Stage 2 Services Plan	DA-202	E	8/11/24	ADW Johnson 240294(50)
Stage 3 Services Plan	DA-203	E	8/11/24	ADW Johnson 240294(50)
Stage 4 Services Plan	DA-204	E	8/11/24	ADW Johnson 240294(50)
Road No. Longsection MC01 Sheet 1	DA-401	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. Longsection MC01 Sheet 2	DA-402	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. Longsection MC01 Sheet 3	DA-403	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. Longsection MC02	DA-404	E	8/11/24	ADW Johnson 240294(50)
Road No. 15 Longsection Road Longsection MC14	DA-405	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Roads No. 16 Longsection Road Longsection MC15	DA-406	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. 20 Longsection Road Longsection MC16	DA-407	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. 21 Longsection	DA-408	B	14/04/20	ADW Johnson 150101(38)

Road Longsection MC21		E	8/11/24	ADW Johnson 240294(50)
Road No. 22 Longsection Road Longsection MC22	DA-409	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. 23 Longsection Road Longsection MC23	DA-410	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. 24 Longsection— Sheet 1 Road Longsection MC28	DA-411	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Road No. 24 Longsection— Sheet 2	DA-412	B	14/04/20	ADW Johnson 150101(38)
Stage 5 Typical Cross Sections	DA430	E	8/11/24	ADW Johnson 240294(50)
Catchment Stormwater Details	DA440	E	8/11/24	ADW Johnson 240294(50)
Typical Lot Interfacing Sections	DA-431	B	14/04/20	ADW Johnson 150101(38)
Earthworks and Retaining Wall Location Plan Earthworks	DA-450	B E	14/04/20 8/11/24	ADW Johnson 150101(38) ADW Johnson 240294(50)
Retaining Walls	DA-451	E	8/11/24	ADW Johnson 240294(50)
Site Sections Plan	DA-501	E	8/11/24	ADW Johnson 240294(50)
Site Sections AA and BB	DA-502	E	8/11/24	ADW Johnson 240294(50)
Site Sections CC	DA-503	E	8/11/24	ADW Johnson 240294(50)
Site Sections DD	DA-504	E	8/11/24	ADW Johnson 240294(50)
Site Sections EE	DA-505	E	8/11/24	ADW Johnson 240294(50)
Site Sections FF and GG	DA-506	E	8/11/24	ADW Johnson 240294(50)
Culvert Section	DA-507	E	8/11/24	ADW Johnson 240294(50)
Erosion and Sediment Control Plan	DA-601	E	8/11/24	ADW Johnson 240294(50)
Greystones Road- Ballymore Drive Intersection – General Arrangement Plan	DA-701	E	8/11/24	ADW Johnson 240294(50)
Indicative Layout for Superlots	DA-801	E	8/11/24	ADW Johnson 240294(50)
Indicative Services Plan for Superlots	DA-802	E	8/11/24	ADW Johnson 240294(50)
Riparian Corridor 100yr Local Flood Heights	SWMP- 501	B	14/04/20	ADW Johnson 150101(38)
Riparian Corridor 100yr Local Flood Heights	SWMP- 502	B	14/04/20	ADW Johnson 150101(38)
Riparian Corridor 100yr Local Flood Heights	SWMP- 503	B	14/04/20	ADW Johnson 150101(38)
Sections 1 & 2 Riparian Corridor	SWMP- 504	B	14/04/20	ADW Johnson 150101(38)
Sections 3 & 4 Riparian Corridor	SWMP- 505	B	14/04/20	ADW Johnson 150101(38)
Section 5 Riparian Corridor	SWMP- 506	B	14/04/20	ADW Johnson 150101(38)

Section 6 and 7 Riparian Corridor	SWMP-507	B	14/04/20	ADW Johnson 150101(38)
Section 8 Riparian Corridor	SWMP-508	B	14/04/20	ADW Johnson 150101(38)
Landscape Masterplan	LP-01	A	04/10/16	Terras Landscape Architects
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Landscape Plan	LP-04	A	04/10/16	Terras Landscape Architects
Landscape Buffer Zone	LP-06	A	04/10/16	Terras Landscape Architects
Landscape Buffer Zone – Element	LP-07	A	04/10/16	Terras Landscape Architects
Planting Design	LP-08	A	04/10/16	Terras Landscape Architects
Cover Page	DA L000	B	25/9/24	Terras Landscape Architects
Site Plan	DA L010	B	25/9/24	Terras Landscape Architects
Key Diagram	DA L011	B	25/9/24	Terras Landscape Architects
Landscape Plan 1	DA L101	B	25/9/24	Terras Landscape Architects
Landscape Plan 2	DA L102	B	25/9/24	Terras Landscape Architects
Landscape Plan 3	DA L103	B	25/9/24	Terras Landscape Architects
Landscape Detail Plan – Buffer Zone	DA L104	B	25/9/24	Terras Landscape Architects
Tree Arrangement Plan	DA L201	B	25/9/24	Terras Landscape Architects
Plant Palette	DA L202	B	25/9/24	Terras Landscape Architects

Justification

Condition 44 of the consent requires that the subdivision be redesigned to remove the fire trail and extend Road 24 along a similar alignment to make a 4 way roundabout intersection connecting Roads 01, 02 and 20. Amended drawings showing the 4 way roundabout are included at **Attachment C**. Installing the roundabout has prompted a reconsideration of the approved lot layout, associated levels and staging, with the number of residential lots reducing from 143 (approved) to 138 and three super lots. It is anticipated that the three super lots will be the subject of a future DA for integrated (small lot) housing pursuant to the requirements of Clause 4.1A of Maitland LEP 2011. **Table 1** below provides a comparison.

Table 1 - COMPARISON TABLE

Stage	Number of Approved Residential lots	Approved Riparian Drainage	Proposed Residential lots	Riparian Drainage
1	37	1	69	-
2	25	1	38 + 3 residue (super) lots	-
3	34	-	15	2
4	9	-	16	1
			-	
Total	143	2	138	3

*Stage 2 includes three super lots to be the subject of a separate DA for integrated (small lot) housing.

Changes to Eastern Boundary

Approved Lot 510 on the eastern side was previously approved as part of a residue lot – refer **Figure 1** below. The remainder of the residue lot was approved under adjoining DA 16/2377. As part of this modification, it is proposed to include the entire residue lot within the area of DA/2019/653 which now includes 6 residential lots (the land for all of which has been cleared and regraded under their existing consents) – refer **Figure 2** below.

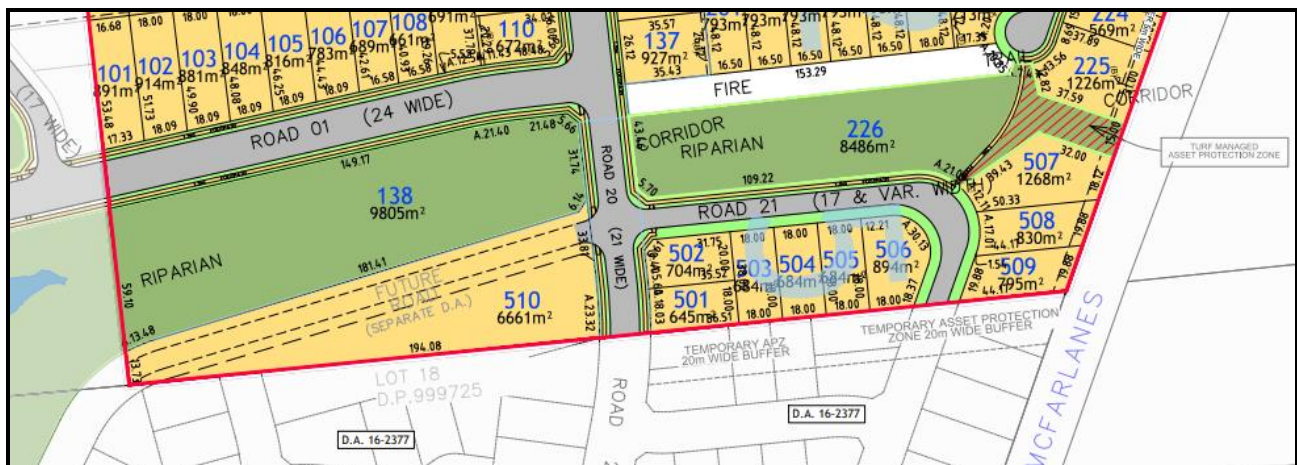


Figure 1: Eastern boundary of approved subdivision layout plan.



Figure 2: Eastern boundary of proposed subdivision layout plan.

It should be noted that the approved alignments of the distributor and collector roads will not be changing and road widths are consistent with the approved consent. Pedestrian linkages and access to public transport and facilities will remain consistent with the aims of Maitland DCP.

Changes to Southern Boundary

In relation to the amended southern boundary a separate Section 4.55 (1A) application has been lodged with Council to modify development consent DA/2019/652:2 granted on 28 April 2020 for a 132 lot Torrens title subdivision at 581 Raymond Terrace Road Chisholm (Lot 2 DP 1284512, formerly Lot 1 DP 1032753) to the south to address adjustments to the approved lot layout to ensure that lots in Stage 5 of that approval are of a suitable size and configuration to accommodate a building envelope for future residences - refer **Figures 3 and 4** below.

The modifications to Development Consent DA/2019/652 as proposed will require the modification of approved DA2019/653 to the north (subject site) to the extent that it needs to be modified from the area of land that DA 2019/652 covers.

As part of the modification application to (DA/2019/652), it has been requested that Council as the consent authority impose a condition requiring the modification of DA 2019/653 to the extent that it needs to include the area of land that DA2019/652 covers. In accordance with Clause 67 of the EP&A Regulation, once the modification to DA/2019/652 is approved, the applicant can then by written notice to the consent authority seek to have DA2019/653 modified. Under clause 67(3) the EP&A Regulations, the modification to DA2019/653 takes effect when the consent authority advises the applicant that they have received the notice.

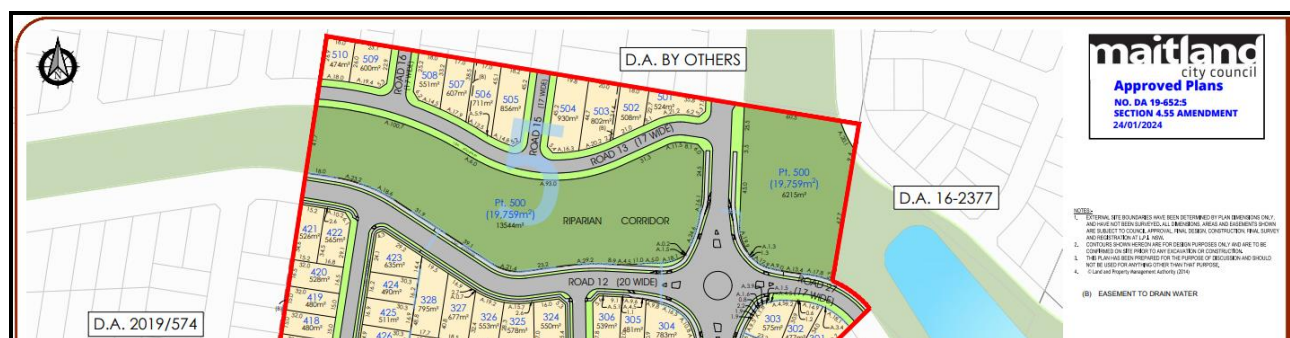


Figure 3: Approved subdivision layout plan for adjoining DA/2019/652:2.

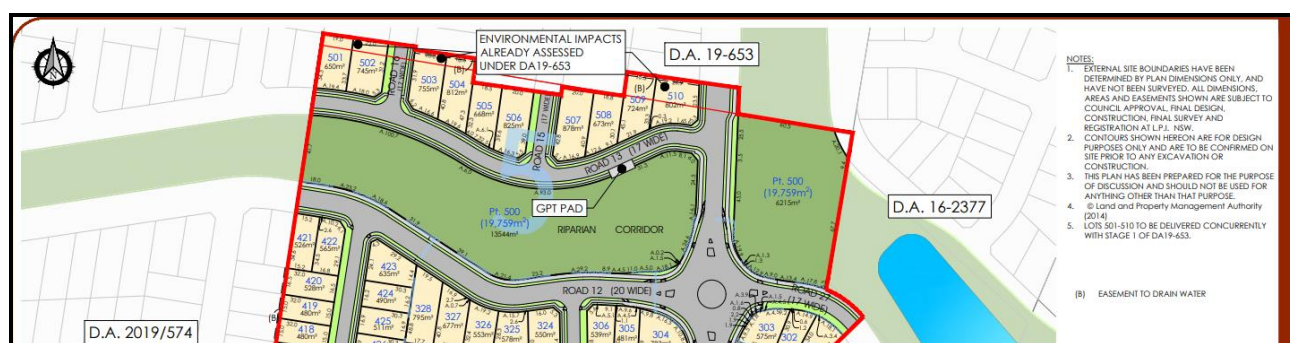


Figure 4: Proposed amendments for adjoining DA/2019/652:2.

Clearing and Disturbance

The proposed amendments to the layout incorporate the same extent of clearing and disturbance that was considered as part of the approved consent. However valued ecology will be retained as identified in Biobanking Statement 38 – refer **Condition 26**.

As of the date of this application, clearing has already been undertaken in accordance with MCC approved VMP and EMP.

Earthworks and Fill

The proposed changes will result in an increased volume of approximately 70,000m³ across the development site. A revised Earthworks drawing is included at **Attachment C**. There will be temporary construction impacts on riparian corridors during the construction of perimeter roads, however valued ecology will be retained as identified in Biobanking Statement 38. Furthermore, the riparian corridors will be embellished as per the approved VMP.

Condition 2 Contributions/Fees

Condition 2 relates to contributions and fees pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979 the Thornton North Section 94 Contributions Plan 2008 and the Maitland City Wide Section 94 Contributions Plan 2016. It is requested that the fees be adjusted to reflect 138 residential lots.

Condition 42 – Traffic and Transport Staging Sequence

Condition 42 is currently set out as follows:

- 42 *The subdivision shall be constructed in accordance with the staging sequence as shown on the approved Staging Plan (DA-105, Version B, 14/04/20).*

It is requested that Condition 42 be amended as per below:

- 42 *The subdivision shall be constructed in accordance with the staging sequence as shown on the approved Staging Plan (DA-105, Version **D, 25/09/24**).*

Justification

Amended Staging Plan (DA-105, Version D, 25/09/24) is included at **Attachment C**. It should be noted that Stage 3 relates to two super lots which will be the subject of a future DA for integrated (small lot) housing pursuant to the requirements of Clause 4.1A of Maitland LEP 2011.

Condition 43 – Traffic and Transport Temporary Intersection

Condition 43 is currently set out as follows;

43. *This consent does **not** approve a temporary intersection location off McFarlanes Road as indicated on the development plans.*

It is requested that Condition 43 be amended as per below:

43. *This consent does **not** approve a temporary intersection location off McFarlanes Road as indicated on the development plans. However temporary construction access off McFarlanes Road is approved.*

Justification

This change is proposed to allow the use of the established, temporary construction access which was approved under consent DA2016-652 and is already in use. Use of the established temporary construction access from McFarlanes Road will also minimise construction traffic through the newly completed stages of the subdivision.

Condition 47 – Traffic and Transport - Prior to the issue of a Subdivision Works Certificate

Condition 47 is currently set out as follows:

47. *Prior to the issue of a Subdivision Works Certificate, the limits of all roads that meet adjacent property boundaries shall be designed so that the finished level at the centreline is at natural surface level.*

It is requested that Condition 47 be amended as per below:

47. *Prior to the issue of a Subdivision Works Certificate, the limits of all roads that meet adjacent property boundaries shall be designed so that the finished level at the centreline is at natural surface level, unless owner's consent is provided by the adjoining development site."*

Justification

This consent condition is in conflict with the approved plans for this development and adjoining developments to the east, south and west, where design levels do not meet at natural surface levels at the boundary. This is evident on the long sections of Road 01, Road 02, Road 15, Road 16, Road 20 and Road 21. Please refer **Figures 5A-F** below.

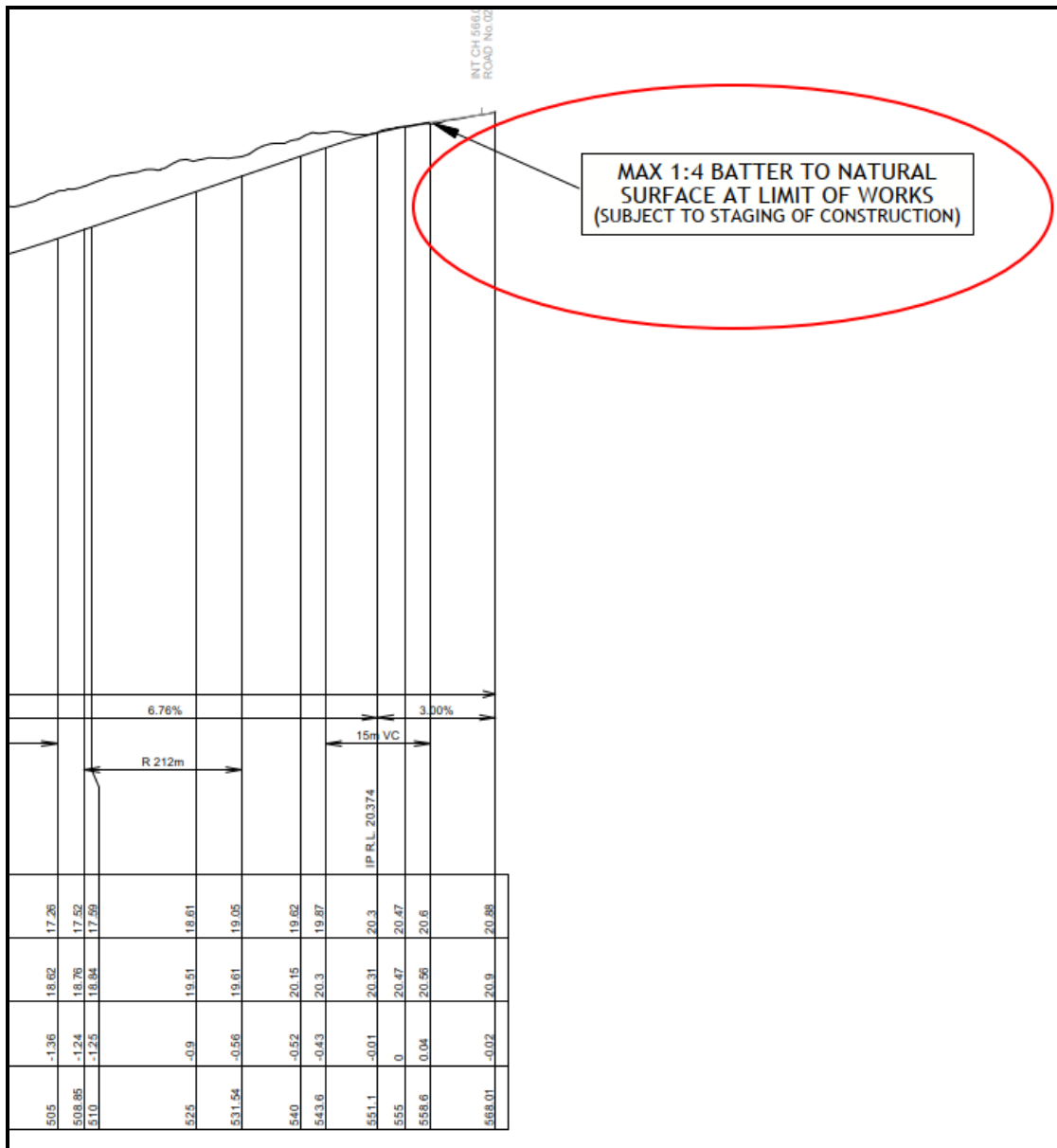


Figure 5A – Road 01 long section – in conflict with Condition 47 at limit of works.

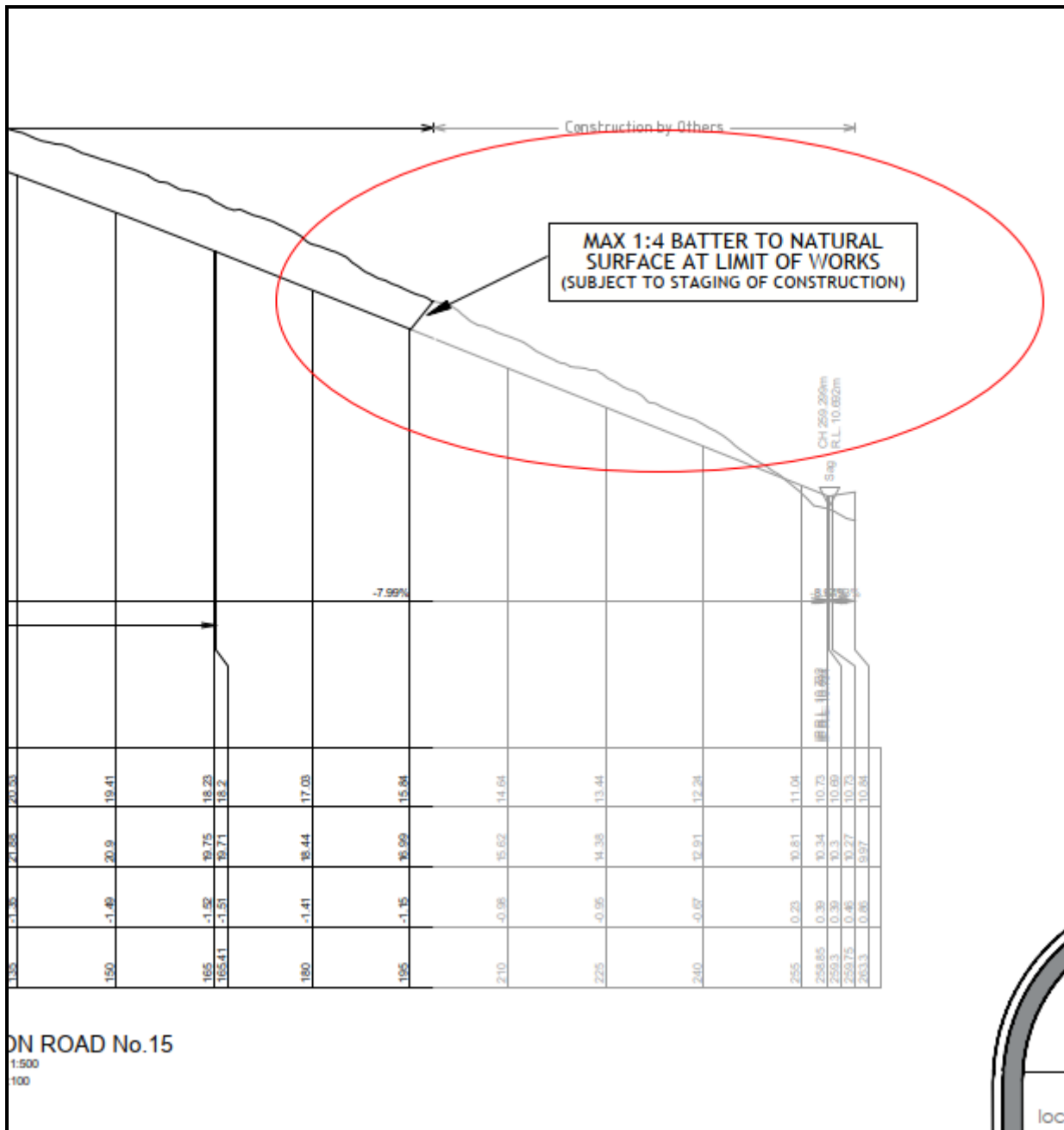


Figure 5C – Road 15 long section – in conflict with Condition 47 at limit of works.

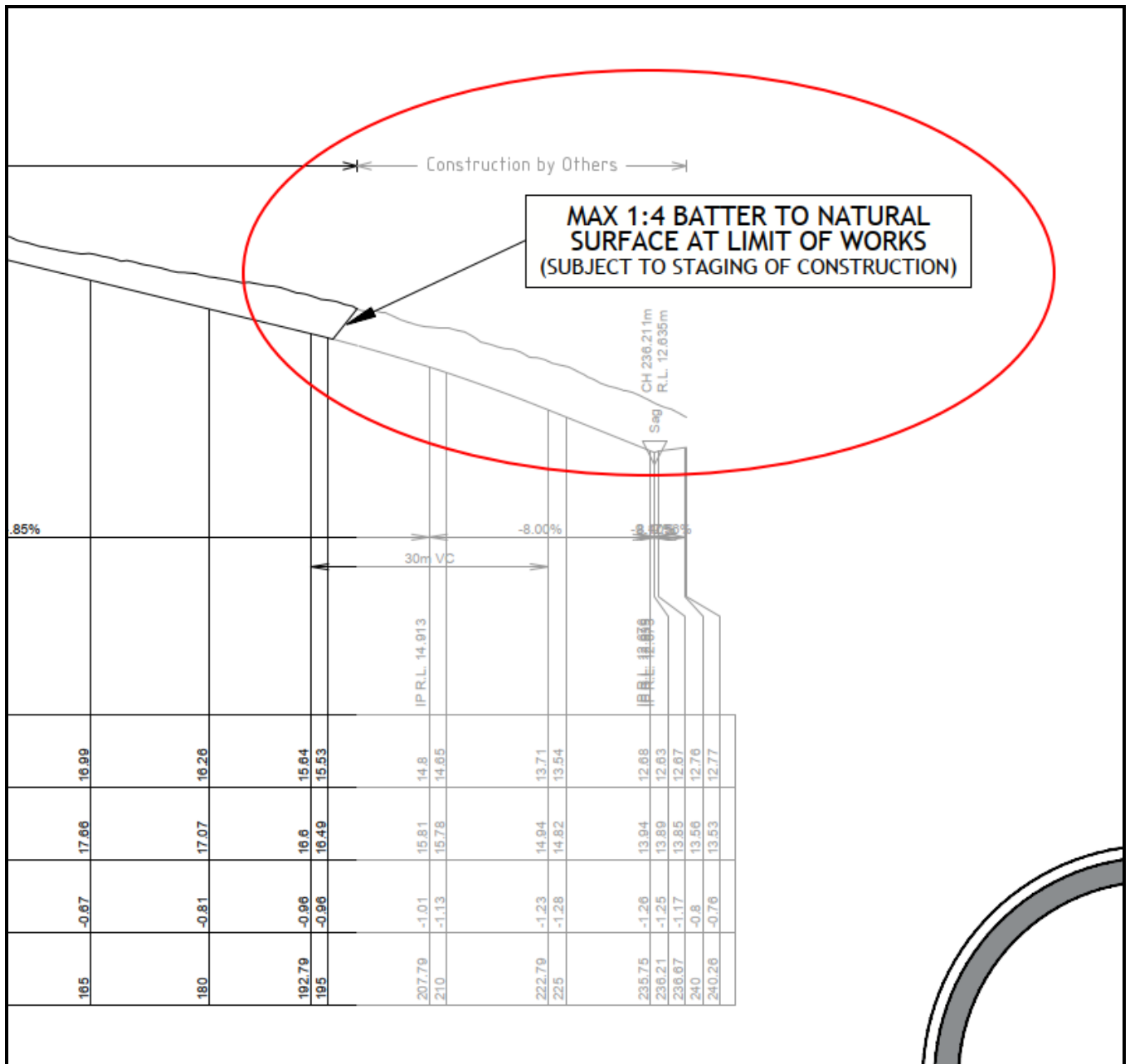


Figure 5D – Road 16 long section – in conflict with Condition 47 at limit of works.

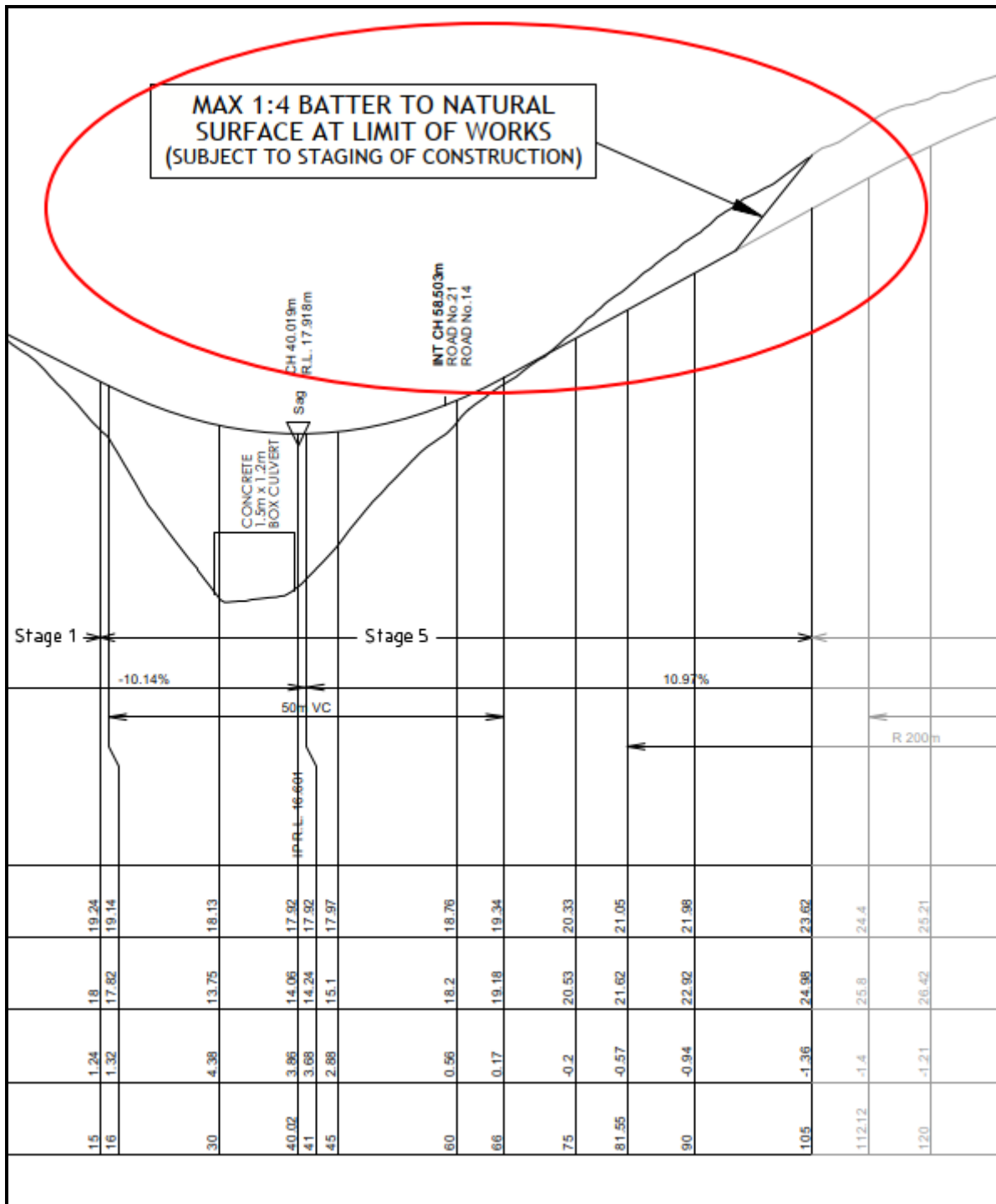


Figure 5E – Road 20 long section – in conflict with Condition 47 at limit of works.

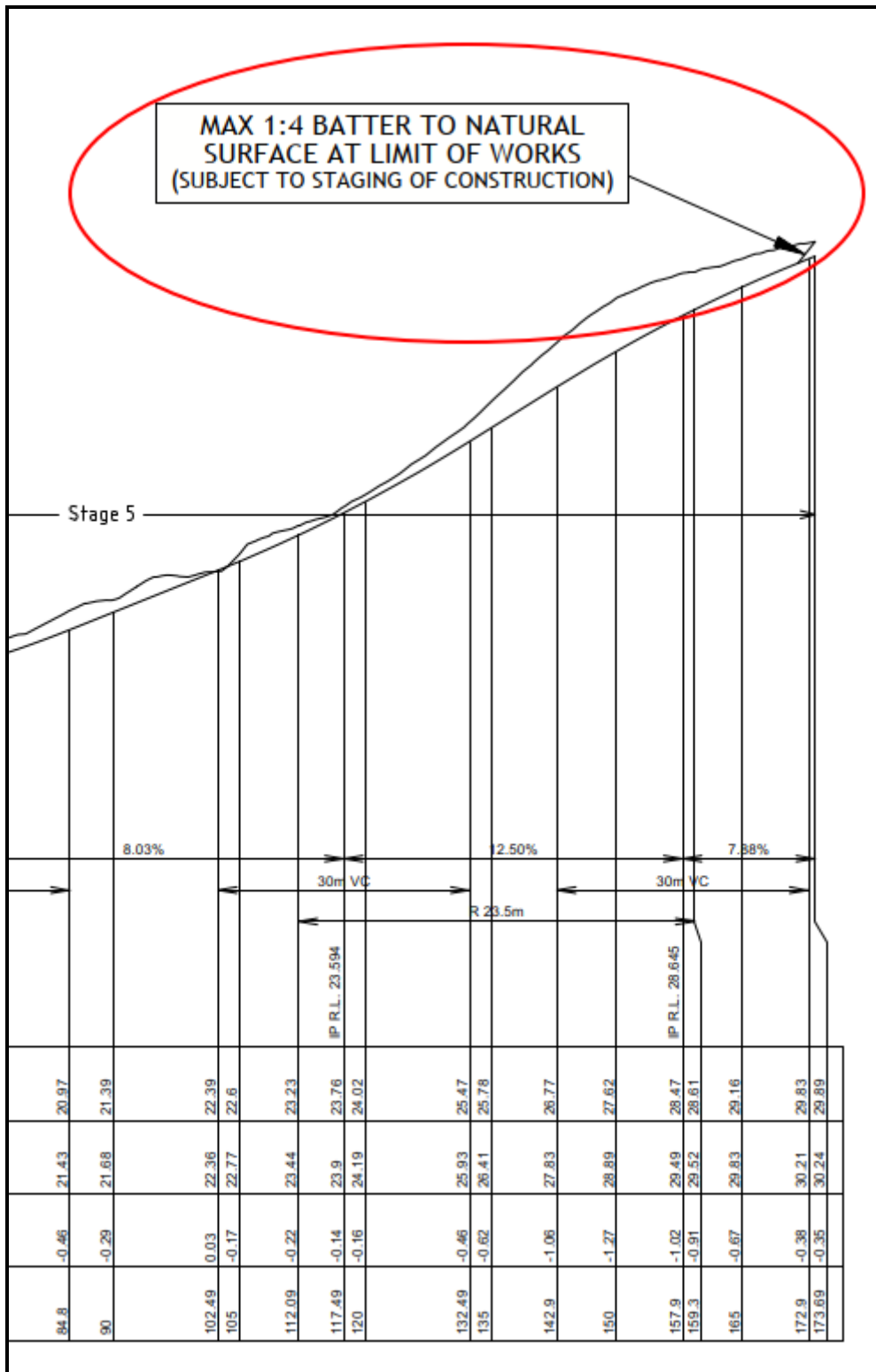


Figure 5F – Road 21 long section – in conflict with Condition 47 at limit of works.

Condition 48 – Traffic and Transport - Prior to the issue of a Subdivision Works Certificate

Condition 48 is currently set out as follows:

48. *Prior to the issue of a Subdivision Works Certificate, the applicant shall provide a permanent cul de-sac head at the end of Roads 02, 20 & 21. The cul-de-sac head is to be designed in a manner that can provide road connection to the adjacent property with minimal reconstruction.*

It is requested that Condition 48 be amended as per below:

48. *"Prior to the issue of a Subdivision Works Certificate, the applicant shall include in the design, a temporary cul-de-sac head at the end of Roads 02, 20 & 21 if connection has not already been provided from the development to the east. The cul-de-sac head is to be designed in a manner that can provide road connection to the adjacent property with minimal reconstruction."*

Justification

Roads 02, 20 & 21 connect to neighbouring developments. These turning heads should be temporary and not permanent.

Condition 52 – Traffic and Transport - Prior to the issue of a Subdivision Certificate

Condition 52 is currently set out as follows:

52. *Prior to the issue of the Subdivision Certificate, pedestrian refuge and public bus facilities shall be provided generally at the frontage of Lots 132, 133, 401 & 402 on Road 02. The works shall include:*
- a. Concrete pedestrian refuge to Transport for NSW standards*
 - b. kerb extensions for pedestrian refuge*
 - c. Opposing bus stops (concrete slabs)*
 - d. connecting footpaths, night time lighting, etc. are to be provided*

It is requested that Condition 52 be amended as per below:

52. *Prior to the issue of the Subdivision Certificate, pedestrian refuge and public bus facilities shall be provided generally at the frontage of **Lots 5152, 5153, 5164 and 5165** on Road 02. The works shall include:*
- a. Concrete pedestrian refuge to Transport for NSW standards*
 - b. kerb extensions for pedestrian refuge*
 - c. Opposing bus stops (concrete slabs)*
 - d. connecting footpaths, night time lighting, etc. are to be provided*

Justification

The modification to the condition is proposed to reflect the new lot numbers in the amended layout. There is no proposed change to the location.

Condition 53 – Traffic and Transport - Prior to the issue of a Subdivision Certificate

Condition 53 is currently set out as follows:

53. *Prior to the issue of the Subdivision Certificate, pedestrian refuge shall be provided generally at the frontage of Lots 104 & 105 on Road 01. The works shall include:*
- a. Concrete pedestrian refuge to Transport for NSW standards*
 - b. kerb extensions for pedestrian refuge*
 - c. connecting footpaths, night time lighting, etc. are to be provided.*

It is requested that Condition 53 be amended as per below:

53. *Prior to the issue of the Subdivision Certificate, pedestrian refuge shall be provided generally at the frontage of **Lots 5142 & 5143** on Road 01. The works shall include:*
- a. Concrete pedestrian refuge to Transport for NSW standards*
 - b. kerb extensions for pedestrian refuge*
 - c. connecting footpaths, night time lighting, etc. are to be provided.*

Justification

The modification to the condition is proposed to reflect the new lot numbers in the amended layout. There is no proposed change to the location.

Condition 56 – Traffic and Transport - Prior to the issue of a Subdivision Works Certificate or Roads Act Approval

Condition 56 is currently set out as follows:

56. *Prior to the issue of the relevant Subdivision **Works** Certificate or Roads Act Approval, all (traffic) Regulatory line marking and signage shall be approved by Council's Local Traffic Committee. Note: Please allow three months from lodgement for the LTC process. All recommendations of the committee shall be incorporated into approvals and works. The works to be approved include:*
- a) "Four-way" cross intersections shall identify priority requirements.*
 - b) All regulator line marking and regulatory signage.*
 - c) 14m wide roads, or wider, require line marking.*

d) Roundabouts and signals.

It is requested that Condition 56 be amended as per below:

56. *Prior to the issue of the relevant Subdivision Certificate or Roads Act Approval, all (traffic) Regulatory line marking and signage shall be approved by Council's Local Traffic Committee. Note: Please allow three months from lodgement for the LTC process. All recommendations of the committee shall be incorporated into approvals and works. The works to be approved include:*

- a) *"Four-way" cross intersections shall identify priority requirements.*
- b) *All regulator line marking and regulatory signage.*
- c) *14m wide roads, or wider, require line marking.*
- d) *Roundabouts and signals*

Justification

This approval should be prior to the issue of the relevant Subdivision Certificate or Roads Act Approval rather than prior to the issue of the relevant Subdivision **Works** Certificate or Roads Act Approval.

Condition 58 – Traffic and Transport Prior to the issue of a Subdivision Certificate

Condition 58 is currently set out as follows:

58. *Prior to the issue of a Subdivision Certificate, the applicant shall provide legal and practical temporary loop road linkages within the development stages so as to provide circulatory access for 19m semi-trailers transporting building products*

It is requested that Condition 58 be amended as per below:

58. *Prior to the issue of a Subdivision Certificate, the applicant shall provide legal and practical temporary loop road linkages adjacent to each of the development stages so as to provide circulatory access for 19m semi-trailers transporting building products. Where loop roads are required through adjoining development sites, owner's consent is to be provided.*

Justification

Loop roads within the development stages will inhibit the release of burdened lots. Loop roads should be provided within adjoining stages or neighbouring land in a similarly to how temporary turning heads are implemented.

Condition 60 – Batters and Retaining Walls

Condition 60 is currently set out as follows:

60. *No retaining walls are approved within existing or future dedicated public land including road reserves. All batter slopes shall comply with the 'desirable' requirements as listed in Council's Manual of Engineering Standards*

It is requested that Condition 60 be amended as per below:

60. *No retaining walls, **other than those shown on approved concept engineering plans**, are approved within existing or future dedicated public land including road reserves. All batter slopes shall comply with the 'desirable' requirements as listed in Council's Manual of Engineering Standards.*

Justification

This condition is in conflict with the approved DA plans which note that retaining of the road reserve, adjacent to the riparian corridor, is required.

Furthermore, the existing site topography is steep and not conducive to creating buildable lots. Earthworks, including retaining of the riparian corridor is required, in order to deliver buildable lots. Most notably, the culvert crossing requires retaining of the road reserve in order to retain vegetation in accordance with the approved biobanking statement.

Condition 64 – Stormwater Drainage - Prior to the issue of a Subdivision Works Certificate

Condition 64 is currently set out as follows:

64. *Prior to the issue of a Subdivision Works Certificate, the applicant shall design road 24 and associated drainage in a manner that provides a min 500mm freeboard to lots 614, 615, 616 to protect against overland flows generated by extreme rainfall events from the upstream catchment.*

It is requested that Condition 64 be amended as per below:

- 64 *Prior to the issue of a Subdivision Works Certificate, the applicant shall design road 24 and associated drainage in a manner that provides a min 500mm freeboard, **in the 1% AEP event**, to lots 5514, 5515, 5516 to protect against overland flows generated by extreme rainfall events from the upstream catchment.*

Justification

The modification to the condition is proposed to reflect the new lot numbers in the amended layout. There is no proposed change to the location. The condition should be limited to the 1% AEP storm event to align with planning requirements.

Condition 71 – Erosion and Bulk Earthworks - Prior to the issue of a Subdivision Works Certificate

Condition 71 is currently set out as follows:

71. Prior to the issue of a Subdivision Works Certificate, a Bulk Earthworks Management Plan (BEMP) is required to be submitted to Council for approval. The BEMP must include a report from a suitably qualified engineer that examines and determines:
- a) the extent of bulk earthworks required for the construction of each stage
 - b) how stockpiles will be managed during construction
 - c) where stockpiles will be located for each stage and what requirements are necessary to manage the locations
 - d) stock pile dimensions and stabilisation measures
 - e) site haulage routes and movement for each stage
 - f) how fill will be managed in the floodway during construction
 - g) any specific requirements relating to the management of Acid Sulfate Soils

It is requested that Condition 71 be amended as per below:

71. Prior to the **commencement of earthworks**, a Bulk Earthworks Management Plan (BEMP) is required to be submitted to Council for approval. The BEMP must include a report from a suitably qualified engineer that examines and determines:
- a) the extent of bulk earthworks require for the construction of each stage
 - b) how stockpiles will be managed during construction
 - c) where stockpiles will be located for each stage and what requirements are necessary to manage the locations
 - d) stock pile dimensions and stabilisation measures
 - e) site haulage routes and movement for each stage
 - f) how fill will be managed in the floodway during construction
 - g) any specific requirements relating to the management of Acid Sulfate Soils."

Justification

This condition is in conflict with standard procedures of engagement for construction. The BEMP is a document which is produced by the civil contractor, whom is not engaged until the Subdivision Works Certificate is issued. Therefore, this condition should be placed as a constraint on the pre-commencement of earthworks, not the Subdivision Works Certificate.

4.0 RELEVANT PROVISIONS OF SECTION 4.55

Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979 is set out as follows:

- (2) **Other modifications** 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

In relation to 4.55(2)(a) the Council can be satisfied that the development as proposed to be modified will be substantially the same development as that approved under the Consent, for the following reasons:

- The modified layout has a similar footprint to that which is already approved;

- The proposed number of residential lots is similar to that which is already approved – refer **Table 1** above;
- The proposed amendments to the layout incorporate the same extent of clearing and disturbance that was considered as part of the approved consent;
- The proposed amendments do not change the general nature of the development, which remains as a residential development (i.e. the same product is being provided with the same infrastructure requirements, the same construction procedures, the same authority approvals);
- The proposed amendments do not change the impacts on the surrounding community (i.e. lots still front the internal road network, the distributor road alignment has not changed); and
- The proposed changes address condition 44 of the consent which requires that the subdivision be redesigned to remove the fire trail and extend Road 24 along a similar alignment to make a 4 way roundabout intersection connecting Roads 01, 02 and 20.

In relation to 4.55((b), it is anticipated that Council will refer the application to NSW RFS for amended general terms of approval since the road layout and number of lots is changing. A Bushfire Assessment Report has been prepared in support of the modified layout and is included at **Attachment E**.

Section 4.55(3) further states as follows:

- (3) *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
- (iiia) 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,"*
- (v)

The above matters are considered individually below.

(i) any environmental planning instrument

Maitland Local Environmental Plan 2011

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.

All residential lots exceed the 450m² minimum lot size for the R1 zoned site.

In relation to Clause 5.9 Preservation of Trees, the proposed amendments to the layout incorporate the same extent of clearing and disturbance that was considered as part of the approved consent. There will be temporary construction impacts on riparian corridors during the construction of perimeter roads, however valued ecology will be retained as identified in Biobanking Statement 38 – refer Condition 26.

In relation to Clause 5.10 Heritage Conservation, the proposed changes will not result in any additional impact on Aboriginal cultural heritage. It should be noted that on 26 February 2024 the consent was modified to delete condition 28. The condition related to pre-commencement requirements for an AHIP to be established prior to clearing works. The modified Notice of Determination is included at **Attachment B**.

In relation to Clause 6.1, satisfactory arrangements were made for the provision of designated State public infrastructure for the original DA.

In relation to Clause 7.2 Earthworks, it should be noted that the proposed changes will result in an increase of approximately 70,000m³ of fill across the development site. Installing the roundabout as required by Condition 44 has prompted a reconsideration of the approved lot layout and associated levels. A revised Earthworks drawing is included at **Attachment C**. As discussed above, there will be temporary construction impacts on riparian corridors during the construction of perimeter roads, however valued ecology will be retained as identified in Biobanking Statement 38.

In relation to Clause 7.4 Riparian Land and Watercourses, the approved DA required General Terms of Approval (GTA's) from NSW Office of Water because the site contains a dam and watercourses as identified on the watercourse land map. It is considered that amended GTAs will be required.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.122 of SEPP (Transport and Infrastructure) provides that any development listed within Schedule 3 is classified as "traffic generating development" and requires referral to Transport for New South Wales. As the amended subdivision provides 138 residential lots, it is considered to be below the threshold (200 lots) required for referral to TNSW. The number of lots proposed is less than that which was originally approved (143).

State Environmental Planning Policy (Resilience and Hazards) 2021

Whilst the subject site is not identified as being within the coastal use area or coastal environment area as set out in SEPP Resilience and Hazards 2021, the proposed subdivision catchment drains south via Allams Property Group Development east of the subject site towards Woodberry Swamp (mapped as a coastal wetland) via existing culverts under Raymond Terrace Road.

In terms of the proposed residential subdivision, any related construction activities or other disturbances will occur at least 400 metres away from Woodberry Swamp. As per the approved layout, adequate treatment of runoff from the elevated areas of the site will occur during both the construction and operational phases of the development. It is therefore unlikely that the wetland complex would suffer from any additional indirect impacts as a result of the proposed modification. Further, the distance of the wetland from the residential allotments will provide an adequate buffer zone.

As per the already approved layout, gross pollutant traps and water quality basins will be installed at appropriate locations as part of the proposed stormwater system. These will capture sediment and rubbish ensuring the quality of stormwater leaving the site is maintained and in doing so, minimising any impact on the adjacent wetland.

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether the land is contaminated before consenting to a development. The site is already approved for development, therefore no further assessment of contamination is required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The proposed amendments to the layout incorporate the same extent of clearing and disturbance that was considered as part of the approved consent. However valued ecology will be retained as identified in Biobanking Statement 38 – refer **Condition 26**.

State Environmental Planning Policy (Planning Systems) 2021

Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 sets out that development that has a capital investment value of over \$30 million is Regionally significant development. Regionally significant development is determined by Regional Planning Panels.

As the proposed cost of development does not exceed \$30 million, Council will remain the determining authority.

(ii) any draft environmental planning instrument

There are no applicable draft environmental planning instruments.

(iii) any development control plan

Maitland Development Plan 2011

The site is located within Eastern Precinct 6 under Stage 2 of the Thornton North Urban Release Area (see **Figure 6**).

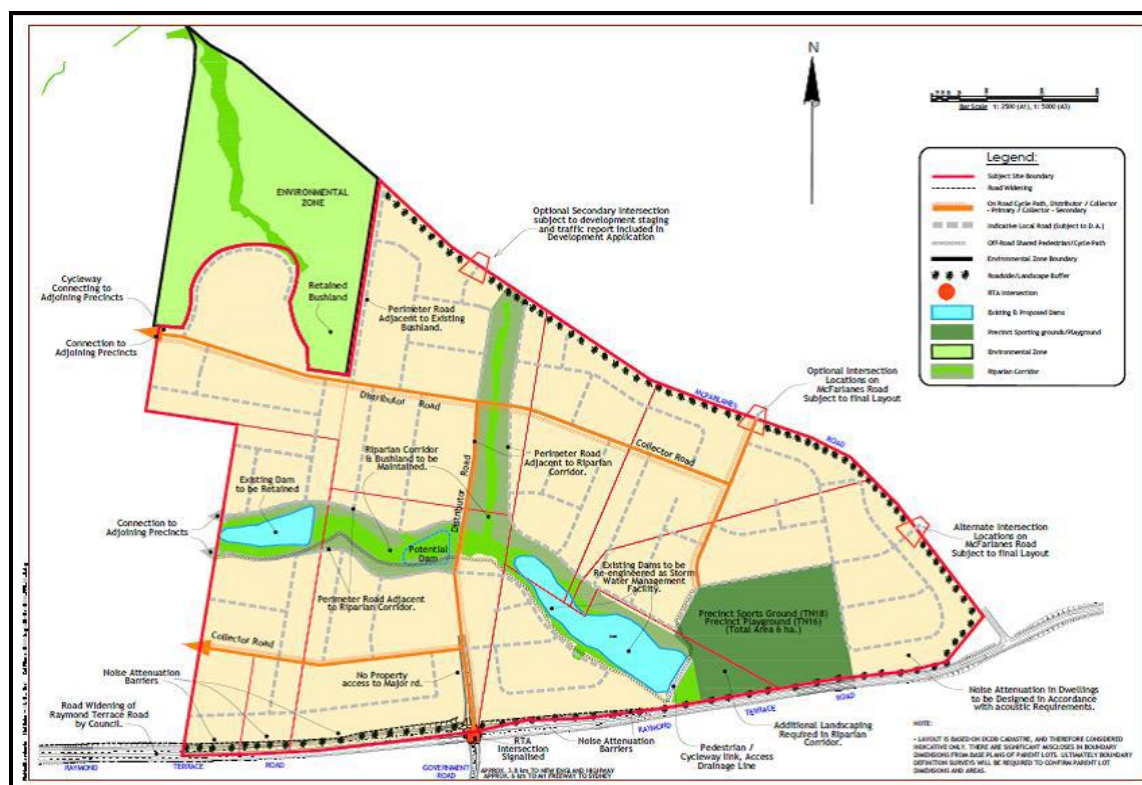


Figure 6: Eastern Precinct Plan.

The proposed subdivision provides the following main elements, as depicted under the precinct plan provided for within Part F of the DCP:

- Main access to the site is in accordance with the "RTA Signalised Intersection" to be provided in accordance with the Thornton North contributions plan;
- The Distributor Road provides access to future residential subdivision and a link through the site;
- Perimeter roads have been provided adjacent to the Riparian Corridor;
- Cycle paths have been provided along the collector roads;
- The Riparian Corridor and bushland will be maintained and provided in accordance with the plan; and
- The subdivision design provides for lot frontages addressing streets, reserves, open space and drainage land.

(iia) any planning agreement that has been entered into

There are no 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.”

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 Council.

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(2) must comply with. The relevant requirements and how they have been complied with are set out in the following table:

Table 2: 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(2) 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(2) Report.
(c) the address and folio identifier of the land on which the development will be carried out,	Provided within this Section 4.55(2) 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(2) 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(2) Report.
(f) a description of the expected impacts of the modification,	Discussed within relevant sections of this Section 4.55(2) Report.
(a) 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(2) Report.
(b) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,	N/A
(c) 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
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6.0 SUPPORTING DOCUMENTATION

These correspondence forms part of the Section 4.55(2) 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 comprise the following:

- Owners' consent;
- Approved plans and Notice of Determination at **Attachment A**;
- Modified Notice of Determination on at **Attachment B**;
- Amended subdivision layout plans at **Attachment C**;
- Amended landscape plan at **Attachment D**; and
- Bushfire Assessment Report at **Attachment E**.

7.0 CONCLUSION

This Section 4.55(2) application seeks to modify development consent DA/2019/653 granted by Maitland City Council on 12 May 2020 for a 143 lot Torrens title subdivision at 119 McFarlanes Road, Chisholm (Lot 1 DP 198776).

Broadly, the proposed modifications seek to:

- Amend the development layout to satisfy Condition 44 of the consent;
- Resolve residual R1 zoned land at the common boundary with Lot 10 DP1281950; and
- Amend development conditions which conflict with the approved plans.

In relation to S4.55(2)(a), Council can be satisfied that the requested modifications will be substantially the same development as that approved under the Consent for the reasons set out in 4 above. The modifications for which consent is now sought do not alter the original findings made in relation to DA/2019/653 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.

Overall, the amended subdivision will continue to promote a high standard of environmental performance, incorporating the principles of ecologically sustainable development, contributing positively to the amenity of the built environment and promoting the orderly and economic use and development of land. Any additional environmental impacts associated with the proposed changes can be managed via appropriate conditions of consent.

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,

A handwritten signature in blue ink that reads 'A Biller'.

ANDREW BILLER
SENIOR TOWN PLANNER
ADW JOHNSON PTY LTD
HUNTER OFFICE

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