



190455 SVD/BM

8th April 2022

The General Manager
Central Coast Council
2 Hely Street
WYONG NSW 2259

Dear Sir,

**PROPOSED S.455 (2) MODIFICATION
OF DA/363/2018/C
106 LOT RESIDENTIAL SUBDIVISION**

1. INTRODUCTION

On behalf of Allam Property Group, Council is requested to modify DA/363/2018/C pursuant to the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979 ("the Act") to make minor design changes to accommodate land swap arrangements with the adjoining property to the west and to accommodate a Voluntary Planning Agreement (VPA) which is currently under negotiation with Council.

2. DA/363/2018

DA/363/2018 was approved on 14th February 2019 consenting to a 106 lot residential subdivision over Lots 57 and 58 DP 7738, 200-222 Hakone Road, Woongarah. This has been amended multiple times since to make minor changes.

As part of the original and subsequently amended development, residue lots were created along the western boundary. These lots represented "left-over" land which required additional land from the adjoining property (Lot 56 DP 663082) to complete (see Figure 1). The same situation was approved over Lot 56 DP 663082 under DA/374/2021 in anticipation of a future land swap between the two (2) developers (see Figure 2).

DA/363/2018 also applied Condition 6.2 which required the payment of Section 7.11 contributions and application of associated land and works credits under the Warnervale District Contribution Plan.

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Figure 1: DA/363/18/C

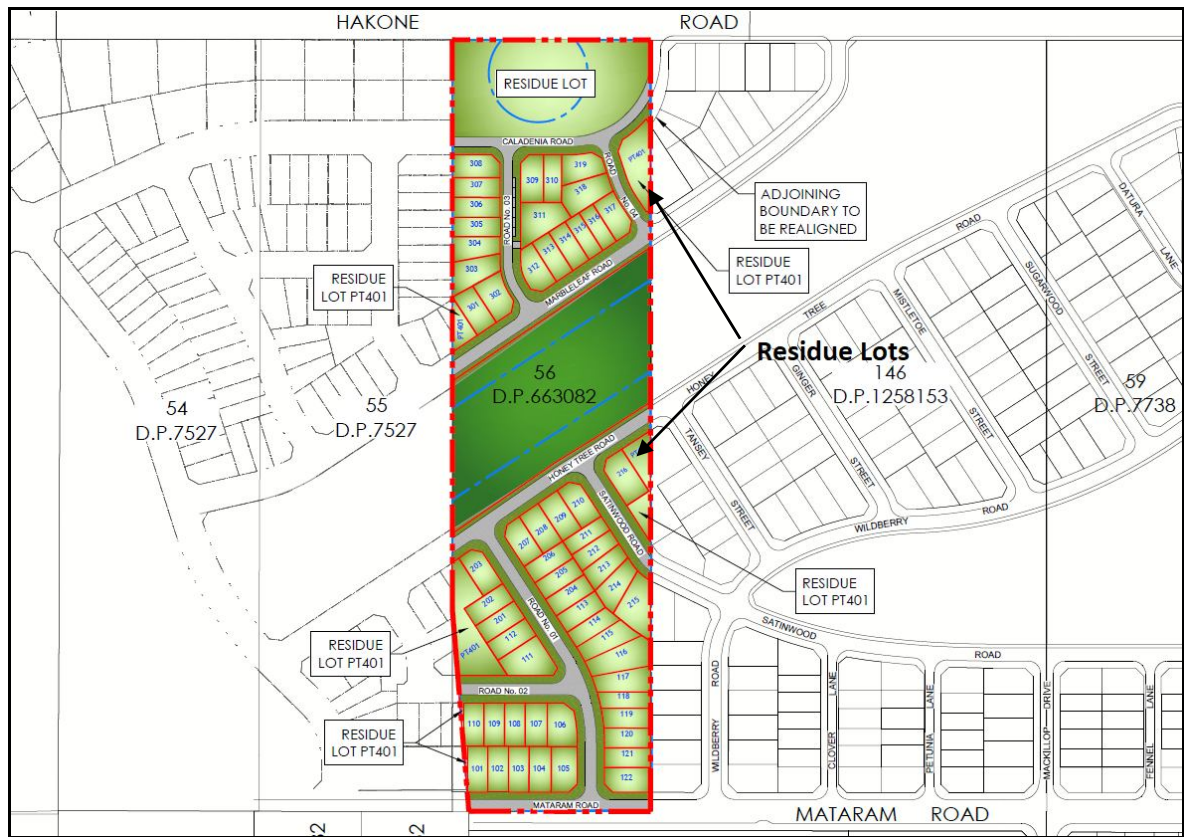


Figure 2: DA/374/21

3. AMENDMENTS

3.1 Lot Configuration Land Swap Amendments

Since consent was issued, Allam Property Group have negotiated with the developers of Lot 56 DP 663082 (Hakone Developments Pty Ltd) to purchase the residue lots created under their DA (DA/374/21). Consequently, it is now proposed to subdivide the residue lots to create developable lots. These lots will be delivered under Stage 7 (see Figures 3 and 4B).

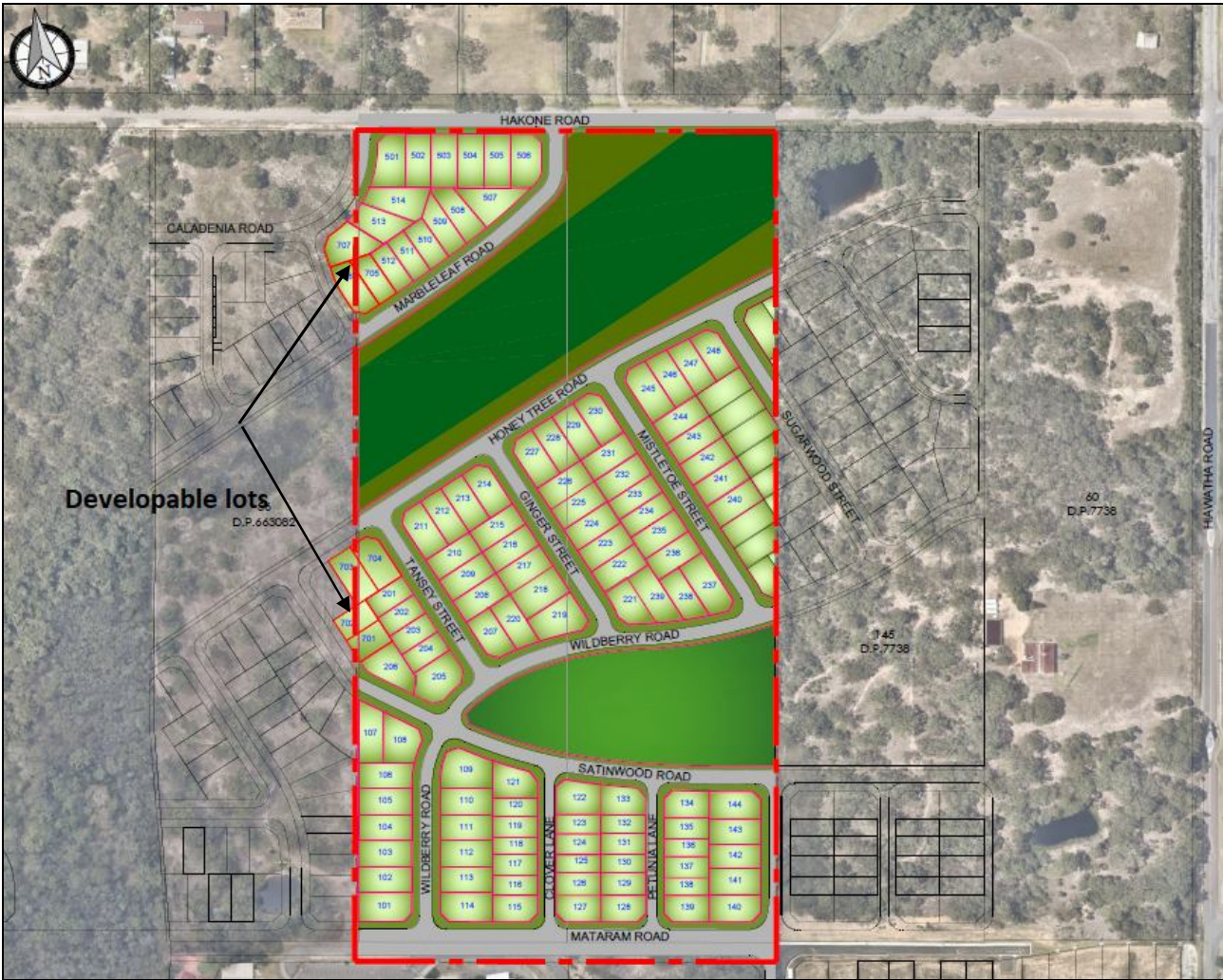


Figure 3: Proposed Lot Layout

To accommodate Stage 7, existing lots in Stage 5 will also require minor internal lot configuration changes. This is demonstrated in Figures 4A and 4B.



Figure 4A: Approved Lot Layout & Staging

Figure 4B: Proposed Lot Layout and Staging

Amended plans including this detail are located within **Attachment 1**.

Owners Consent from the owners of Lot 56 DP 663082 (Hakone Developments Pty Ltd) is provided within **Attachment 2**.

The above changes will result in an additional seven (7) lots being approved under DA/363/2018; or an additional three (3) lots in total accounting for the four (4) subject residue lots.

The addition of land to a consent is possible through a S4.55(2) application as demonstrated under *Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333 which specifically deals with and confirms that you can add land to a consent through a S4.55. <https://www.caselaw.nsw.gov.au/decision/549f8bf03004262463adb404>

21. Accordingly, I find that there is power under s 96(2) to modify the 1976 consent to add Lot 1 to the land to which the consent applies and on which the approved storage use can be carried out.

Under *Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333, the Court held that the addition of 1,250m² of land over a separate allotment not included under the original consent continued to “result in the development as modified being substantially the same development as the development for which consent was originally granted”.

Under the proposed arrangement, 1,272m² of land would be added to the consent which originally covered 11.3ha. This represents a change to the land area of only 1% and as such, can also be considered to represent substantially the same development as the development for which consent was originally granted.

3.2 Voluntary Planning Agreement

The original development was approved under a previous version of the Warnervale District Development Contributions Plan. This provided under valued costs for regional stormwater basins and open space and excluded costs for culvert upgrades to Hakone Road which Council have requested be undertaken as part of the development, despite these not being required under the consent.

Ongoing negotiations have been occurring with Council staff with regards to the above, where it has been agreed that the actual cost of delivering the above works, noting their public benefit to the wider region, should be applied, as should the increased value of the public open space land. These costs have consequently been included within the amended and current Warnervale District Contribution Plan.

Noting the contributions applicable to the developments are those which were applicable at the date of consent, in order to fulfil this requirement, a Planning Agreement needs to be reached with Council which can be applied through a Section 4.55 modification to the consent. A Letter of Offer in this regard was submitted to Council on 28th March 2022 (see **Attachment 3**).

4. DETAILS OF AND JUSTIFICATION FOR PROPOSED MODIFICATION

To accommodate the proposed modifications, the following condition requires amendment (**red** = additions; ~~strike through~~ = deletions):

Condition 1.1 – Amend

Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

Architectural Plans by: ADW Johnson

Drawing	Description	Issue	Date
190455-DA-002	Overall Site Plan	F G	13/8/2019 07/04/2022
190455-DA-004	Overall Masterplan	F G	13/8/2019 07/04/2022
190455-DA-005	Staging Plan	F G	13/8/2019 07/04/2022
190455-DA-006	Detail Plan Sheet 1	F G	13/8/2019 07/04/2022
190455-DA-007	Detail Plan Sheet 2	F G	13/8/2019 08/03/2022
190455-DA-008	Detail Plan Sheet 3	F G	13/8/2019 08/03/2022
190455-DA-009	Typical Road Portfolios Sheet 1	F	13/8/2019
190455-DA-010	Typical Road Portfolios Sheet 2	F	13/8/2019
190455-DA-011	Proposed Services Plan Sheet 1	F	13/8/2019
190455-DA-012	Proposed Services Plan Sheet 2	F	13/8/2019
190455-DA-013	Proposed Services Plan Sheet 3	F	13/8/2019
190455-DA-014	Proposed Services Plan Sheet 4	F	13/8/2019
19044-ESK-018	Proposed Creek Realignment Plan	F	13/8/2019

612	Tree Clearing Plan	F	13/8/2019
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Reason/Justification

To refer to the amended set of plans.

Condition 1.4 – Amend

1.4. Approval is granted for the development to be carried out in three stages in the following manner:

- Stage 1 – 44 Lots
- Stage 2 – 48 Lots
- Stage 3 **5** – 14 Lots
- Stage 7 – 7 Lots**

Works and contributions are to be finalised appropriate for each stage prior to the release of the Subdivision Certificate.

Reason/Justification

To refer to the amended set of plans.

Condition 2.2 – Amend

Amend to change reference from Stage 3 to Stage 5.

Reason/Justification

To refer to the amended set of plans.

Condition 2.6 – Amend

Amend to change reference from Stage 3 to Stage 5.

Reason/Justification

To refer to the amended set of plans.

Condition 6.2 – Amend

Amend to account for the seven (7) additional developable lots.

Reason/Justification

To account for the additional (7) developable lots.

Condition 6.2A – Amend

Amend to account for the seven (7) additional developable lots.

Reason/Justification

To account for the additional (7) developable lots.

Condition 6.2B – Add

As an alternate to Conditions 6.2 and 6.2A, the developer may enter into a Voluntary Planning Agreement with Council to provide a public benefit in the form provided for within the Letter of Offer to Council dated 28th March 2022.

Reason/Justification

To accommodate the current Draft VPA being negotiated with Council.

5. REQUIREMENTS FOR A SECTION 4.55(2) MODIFICATION

5.1 Relevant Issues under Section 4.55(2)

To lodge an amendment under Section 4.55(2) of the Act, the applicant needs to prove that the modification will involve minimal environmental impact, 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

By subdividing the residue lots approved under the subject DA and DA/374/2021, the proposed modifications will add an additional three (3) lots, or seven (7) developable lots, if discounting the four (4) residue lots created under both DAs. This is equivalent to less than a 10% increase in the overall lot yield. In addition to this, the subdivision will continue the same road layout and provide residential allotments of an appropriate size.

The proposed amendments to the layout are minor in nature, and do not represent any additional use or significant intensification to that which was originally approved. The amendments continue to allow the site to be developed as a residential subdivision albeit in a slightly amended internal lot layout configuration. So whilst three (3) additional lots have been included within the amendments, there is no extension or intensification to the approved impacts.

Taking these factors into consideration, the modifications proposed will continue to represent a development which is substantially the same as that originally approved.

(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

Rural Fire Service: In relation to the Integrated Development provisions under Section 4.46 of the EP&A Act, it is noted that Council may refer the modification to the Rural Fire Service (RFS) to provide amended General Terms of Approval which refer to the updated plans. The following amendments to the GTAs would be expected:

Condition 1 - Amend

*The proposed development is to comply with the subdivision layout identified on the drawing prepared by ADW Johnson numbered 190455-DA-002/014, Issue ~~F~~ **G**, dated ~~13 August 2019~~ **7 April 2022**.*

Reason/Justification

To refer to the amended set of plans.

Condition 3 - Amend

*A restriction to the land use pursuant to Section 88B of the Conveyancing Act 1919 shall be placed on proposed Lots 201-206, ~~301, 312-314~~ **501, 512-514** and ~~all lots labelled PT.249~~ Lots **701-707** within the subdivision. This restriction is to specify that these proposed lots cannot be sold until the land to the east or west of them (Lot 56 DP 663082 and Lot 59 DP 7738) is cleared for further development which removes the hazard vegetation for at least 20 metres.*

The property to the east of Lots 101-108 being Lot 56 DP 663082, shall be maintained as an inner protection area (IPA) for a distance of 25 metres as outlined within section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document Standards for asset protection zones (2005) until such time as development occurs on this land. This restriction can be extinguished upon commencement of any future development which removes this hazard vegetation for at least 20 metres.

Reason/Justification

To refer to the amended set of plans.

Natural Resources Access Regulator: The proposed modification will not alter the way in which the original consent was assessed by NRAR, and as such, a re-referral to this Authority is not required.

- 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, an*

- (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.*

It is assumed, Council will notify the modification in accordance with Chapter 1.2 Notification of Development Proposals.

(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. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15(1) of the Act is addressed below.

5.2 Relevant Issues under EPA Regulation 2021

Clause 100 of the Environmental Planning and Assessment Regulation 2021 sets out additional requirements that all modification applications must comply with. The relevant requirements and how they have been complied with are set out in the following table:

CLAUSE 100 REQUIREMENTS	COMMENT
(1) A modification application must contain the following information—	
(a) the name and address of the applicant,	See Planning Portal information.
(b) a description of the development that will be carried out under the development consent,	Described within Section 2.
(c) the address and folio identifier of the land on which the development will be carried out,	See Planning Portal information.
(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,	Described within Section 3 & 4.
(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 Section 5.
(f) a description of the expected impacts of the modification,	Discussed within Section 5.
(g) an undertaking that the modified development will remain substantially the same as the development originally approved,	Discussed within Section 5.
(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,	See Planning Portal information.
(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

5.3 Relevant Issues under Section 4.15(1)

Under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the following matters need be considered as part of the assessment of the application:

(a)(i) the provisions of any environmental planning instrument

The proposed modifications to the development are not inconsistent with any Environmental Planning Instruments (EPI), particularly the Wyong LEP 2013 as follows:

- The proposed allotments continue to be permissible within the R1 General Residential Zone;
- The modified subdivision will continue to achieve the objectives of the R1 General Residential Zone by providing additional allotments to satisfy the housing needs of the community whilst retaining the surrounding residential character; and
- The additional allotments will have access to all necessary services required under Clause 7.9.

(a)(ii) the provisions of any draft environmental planning instruments

The Draft Central Coast Local Environmental Plan (CCLEP) has been placed on exhibition and as such, requires consideration. The proposed amendments do nothing to alter the development such that it would contravene the draft CCLEP.

(a)(iii) any development control plans

The proposed amendment does not contravene any control within the Central Coast Development Control Plan 2013. The additional and amended lots continue to provide allotments of a suitable size for a dwelling.

(a)(iv) any matters prescribed by the regulations

There are no matters prescribed by the regulations relevant to the application.

(b) the likely impacts of the development

Context and Setting

The proposed amendments continue to provide a wide variety of allotment sizes within a growing residential area within the same footprint as previous approved. With this in mind, the proposed amendments continue to fit within the context and setting of the locality.

Access, Transport and Traffic

All access, transport and traffic issues surrounding the site were explored within the transport report prepared as part of the subdivision application. The proposed 6% increase in lot yield will not result in any significant additional traffic which would result in the need to upgrade the approved road system.

Landscaping

The proposed modifications will have no impact on the landscaping approved for the site.

Stormwater, Drainage and Water Quality

The overall stormwater management system for the approved subdivision will continue to be able to accommodate the proposed development, noting that the overall development footprint remains the same and no additional road pavement is required.

Flora and Fauna

The proposed modifications will have no impact on flora and fauna and will involve no more vegetation removal than as originally assessed under either subject DA or DA/374/21.

Natural Hazards

As the development footprint will remain the same, flooding and bushfire will have no more impact than as originally assessed.

Utilities

All additional allotments will be connected to services as necessary.

Social and Economic Impacts

The proposed amendments will have only beneficial social and economic impacts through facilitating additional lots within a climate of housing supply crises.

Waste Management

The proposed amendments will have no impact on waste management beyond that already assessed under the original application.

Site Design and Internal Design

The overall site design generally remains the same under the proposed amendments albeit with some additional allotments. The road layout and landscaping will be unaffected by the proposal and the site in general will continue to provide a wide variety of lot sizes.

(c) the suitability of the site for the development

The subject site remains entirely suitable for the approved subdivision including additional allotments, due to its residential zoning, its proximity to infrastructure, public transport and support services.

(d) any submissions made in accordance with the Act or regulations

Discussed above.

(e) the public interest

The proposed development will provide seven (7) additional lots within a strategically located area in terms of housing provision and growth. The release of these lots at a time of housing supply crises; and over land which results in no additional environmental impacts, is implicitly within the public interest.

6. CONCLUSION

The proposed modification does not change the approved use with the development remaining a Torrens Title residential subdivision. While there is a minor increase in the number of lots, the road layout and scale of the development will remain unchanged. The proposed modification will not change the character of the approved development, nor will it result in any significant change to environmental impacts. For these reasons, Council can be satisfied that while there is a minor change to the internal lot boundaries, the modified proposal will remain substantially the same as the development as that originally approved in a qualitative and quantitative sense and as such, satisfies the requirements of Section 4.55(2)(a).

Having regard for the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979, it is considered that the amended proposal is substantially the same as that originally approved by Council and that no prejudice will be caused to other persons as a result of the proposed modification.

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

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Step. Van Dissel'.

Stephanie van Dissel
Senior Town Planner
ADW JOHNSON

Attachment 1 – Amended Plans
Attachment 2 – Owners Consent
Attachment 3 – Letter of Offer to Enter into a VPA