

# S4.55 (1A) MODIFICATION

## PROPOSED MODIFICATION TO EXISTING DEVELOPMENT CONSENT DA0075/2023

6 Flirtation Hill Lane Gulgong NSW 2852 (LOT 158 DP 755433)



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## 1 INTRODUCTION AND PROJECT BACKGROUND

This application is made under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), to modify the development consent, DA0075/2023, granted on 21 December 2022. This DA consent was granted for *1 Into 5 Lots Subdivision*. de Witt Consulting has been requested by Lee & Jan Cunningham to prepare the supporting information for this Section 4.55(1A) application.

This proposed modification, referred herein as “Modification A”, proposes amendments to the approved subdivision on the site. The proposed modification will result in a reconfiguration of the subdivision compared to that approved by the original consent.

## 2 PREVIOUS APPROVALS AND EXISTING DEVELOPMENT

Mid-Western Regional Council approved DA0075/2023 for a 1 into 5 lots subdivision on 21 December 2022.

Previously approved and / or constructed features include one dwelling, swimming pool and two sheds.

## 3 PROPOSED MODIFICATION

The proposed modification seeks to make amendments to approved subdivision layout. Whilst remaining substantially the same layout as the approved subdivision, the modification proposes to split Lot 5 into 2 lots, adding a Lot 6, see **Attachment 1**.

The approved subdivision layout resulted in the dwelling, pool and sheds being located within a single lot. The proposed modification seeks to retain the dwelling and swimming pool within Lot 6 and the sheds within Lot 5. Lots 5 and 6 will have dual frontage to Flirtation Hill Lane and Grimshaw Lane, whilst all other lots will continue to have frontage to Grimshaw Lane.

Amendments are made to the servicing plan, notably a proposed water drainage easement, 3m wide, see **Attachment 3**.

The proposed modification also addresses point 4(a) and (b) of the Amended Plan Requirements of the Notice of Determination of DA0075/2023. These being splayed corner cut-offs on the corners of Flirtation Hill Lane/Grimshaw Lane and Grimshaw Lane/Zimmer Lane, and an easement for drainage of water 3 metres wide along the rear/eastern boundary of proposed Lots 1 to 4, see **Attachment 3**.

Finally, the proposal seeks to modify condition 12 to remove the reference to provision of street lighting, as indicated below:

12. *Underground electricity, ~~street lighting~~ and telecommunications are to be supplied to the Subdivision in accordance with the relevant authorities' standards. Each allotment is to be provided with a service point/ connection to an underground electricity supply.*

### 3.1 JUSTIFICATION FOR PROPOSED MODIFICATION

Justification for modification to the consent is as follows:

- The proposed modification will not adversely or significantly impact on the outcomes of the approved and constructed buildings.
- All lots achieve the minimum lot size of 600m<sup>2</sup> as prescribed by the Mid-Western Regional Local Environmental Plan 2012.
- The proposed changes are to reflect an existing built outcome, physical alterations to the built form are neither practical or necessary to enable an appropriate development to be occupied.
- The proposed changes will not adversely impact neighbouring properties.
- The previously approved development underwent rigorous assessment and consideration, the proposed change of the development will not result in any additional significant adverse impacts, nor will it significantly alter the impacts from those already considered as acceptable.

- The proposed modifications have been found to be of minimal environmental impact and render the modified development substantially the same as that for which consent was originally issued, referring to the discussion within Section 4.3 below.
- The proposed modification better enables the landowners to make use of the site as intended.
- Each lot is capable of supporting an on-site sewage management (OSSM) system as demonstrated by the OSSM strategy submitted as part of the original development application. Minor alteration to the location of the OSSM that supports the existing dwelling may be required. Should further investigation be required in this regard, Council may wish to impose this a condition of consent.
- In relation to Condition 12, it is considered unreasonable and inequitable to impose a requirement for provision of street lighting given that such lighting is not contiguous throughout the immediate area. Furthermore, the approved and proposed modified subdivision is not of a scale to warrant the provision of street lighting; the cost would likely be prohibitive.

## 4 RELEVANT PROVISIONS OF SECTION 4.55

### 4.1 SECTION 4.55(1A) - MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT

Section 4.55(1A) of the Act states the consent authority may modify a consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and...*

The proposed modifications are not considered to create any additional environmental impact to that which is already approved and regulated under the conditions of consent.

- (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.*

In relation to Section 4.55(1A) (c) and (d) of the Act, it is understood that any relevant representations will need to be considered by Council in determination of the proposed modification – although, the we do not believe the proposed amendment would require renotification, in any case it would be unlikely that submissions would be received.

*(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.*

The modification will remain substantially the same as the development that is currently approved. The following subsections provide an assessment of the proposed modification against Section 4.15(1) of the Act, as are of relevance to the development.

## 4.2 SECTION 4.15(1)(A) – STATUTORY PLANNING CONSIDERATIONS

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

*“(a) the provisions of:*

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed 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 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (v) (Repealed)*

*that apply to the land to which the development application relates,*

The proposal will result in a modification to the existing consent DA0075/2023. The proposed changes are to reflect a desired outcome for the owners on the site. The report and its attachments detail the specific modifications sought to the approved development. It is reasonable to conclude that the provisions under Section 4.15(1)(a) of the Act relevant to the development have been appropriately represented under both the documentation provided for the original DA and this proposed modification. Importantly, the proposed modification will not preclude the development from complying with the conditions of consent, unless where amended in this report.

In our opinion the proposed modification will not result in additional impact or non-compliances with planning instruments or statutory requirements. As development consent was granted to DA0075/2023, it must be assumed that the development was considered satisfactory with respect to the above provisions; and as the proposed modifications will result in substantially the same development capable of achieving compliance with these provisions, and of no more environmental impact, then it is reasonable that the proposed modification is also considered satisfactory.

## 4.3 SECTION 4.15(1)(B) – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS

Section 4.15(1)(b) of the Act 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.”*

These are each addressed below.

### 4.3.1 IMPACTS ON THE NATURAL ENVIRONMENT

Any previous impacts to the environment would have been considered in the original DA. The modification does not impact the approved use. Intensity of use changes as one new lot is added in the modification. Impacts on the natural environment are minimal as there are minimal physical works associated with this development. Alterations to the sewage system may occur due to the subdivision reconfiguration, which can be considered a potential risk to the natural environment.

### 4.3.2 IMPACTS ON THE BUILT ENVIRONMENT

The changes to the built environment are considered to be minor in that the change does not increase the footprint of the site nor, it does not change the view of the property from the street. There are therefore no adverse impacts to the built environment.



### 4.3.3 SOCIAL AND ECONOMIC IMPACTS

The modification does not seek to change the approved residential use onsite. This means that future residents can still benefit from having additional housing stock available in the area. The modification has a positive social and economic impact as it increases the potential for housing supply in the region. The modification also has a positive economic impact as it may produce new construction employment. The proposed modification is therefore not considered to pose any adverse social or economic impacts.

### 4.4 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 the proposed modifications do not seek to substantially change the development; as such the site is considered suitable for the development.

### 4.5 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”.*

It is understood that any relevant representations would need to be considered by Council in determination of the Section 4.55(1A) modification, and responses prepared by the applicant where appropriate. However, we are of the view the proposed changes would not require notification.

### 4.6 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 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 will not alter the permissibility of the development and is therefore considered to be in the public interest.

## 5 CONCLUSION

This Section 4.55(1A) application seeks approval to modify development consent DA0075/2023. The modification proposes amendments to the subdivision plan by reconfiguring Lot 5, creating a 6<sup>th</sup> lot. This report and its supporting documentation have demonstrated that the modifications are highly consistent with the approved use of the site and the approved development plans.

In relation to Section 4.55(1A)(b), the development will remain substantially the same as that approved under DA0075/2023. The modifications for which consent is now sought do not alter the original findings made in relation to the DA regarding the reasonableness and appropriateness of the proposal when considered against the provisions of Section 4.15(1) of the Act.



# APPENDICES





# APPENDIX 1

## Proposed Subdivision Plan



## APPENDIX 2

Proposed Subdivision Plan (with aerial overlay)



# APPENDIX 3

## Concept Servicing Plan