



Report of Development Application

Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979

APPLICATION DETAILS

Modification No:	DA19/0181.01
Council File No:	D/2019/0181
Date of Lodgement:	06/03/2020
Applicant:	TJ Hinchcliffe & Associates Pty Ltd Po Box 5497 WAGGA WAGGA NSW 2650
Proposal:	Three Lot Residential Subdivision - Modification to subdivision plan
Development Cost	0
Description of Modification:	Modification to subdivision plan – Amend Condition 1 Plans.
Other Approvals:	Nil
Determination Body & Reason:	Officer Delegation 7.39
Assessment Officer:	Amanda Gray

SITE DETAILS

Subject Land:	119 Elizabeth Ave FOREST HILL NSW 2651 Lot 1400 DP 1243790
Owner:	DC Brunskill

REPORT

Type of Application:	S4.55(1A) Modification Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	Not required
Advertising:	Not required
Owner's Consent Provided:	Yes

Location:	Land to the south of the existing Brunslea Park estate, bounded to the east by Elizabeth
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Avenue, to the south by Inglewood Road and to the west by rural land.

PLANNING CONTROLS / STATUTORY CLASSIFICATION

Pursuant to Part 4

Description of Development

The original Development Application (DA19/0181) for a three lot residential subdivision was approved on 19 June 2019..

A modification pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 has been received that seeks an amendment to the approved plans to retain the original homestead within one of the lots.

The original plans showed the homestead being excised onto its own title which is no longer occurring upfront. The subdivision of the existing property will become the subject of a future development application for the newly created lot. As a result of the modification proposed lot 1402 increases in size from 17.7ha as originally approved to 18.36ha. The other two lots remain the same.

An update to condition 1 will be required to reference the updated Plans.

The Site and Locality

The site is legally identified as Lot 2 DP819642 and is known as 119 Elizabeth Avenue.

The subject land comprises an irregular shaped parcel of land situated south of the existing Brunslea Park Estate (Stages 1 to 13). The property is bounded to the east by Elizabeth Avenue, to the south by Inglewood Road and to the west by rural land.

The site extends to approximately 91ha of land of which approximately 20ha of land is zoned and approved for residential development in accordance with the Wagga Wagga LEP and DCP 2010. The first stage of the approved subdivision to the north of the site (14A) has been completed.

Previous Development Consents

DA15/0717.06 - Residential Subdivision (as amended) - 9.5.2019.

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.55(1A).

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if-

(a) it is satisfied that the proposed modification is of minimal environmental impact

The application does not change the proposed use and has nil adverse impacts to the subject site and neighbouring properties. The assessment of this modification has demonstrated that the proposed modifications are of minimal environmental impact and the modification is consistent with the provisions of the WWLEP2010 and WWDGP2010.

(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),

The proposed modifications sought are considered to be substantially the same development as that previously considered in the initial development application.

(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.**

Applications made in accordance with s4.55(1A) of the *Environmental Planning and Assessment Act 1979* are not required to be notified under the provisions of the *Wagga Wagga Development Control Plan 2010* where Council determines that the development is substantially the same development as outlined in subsection (b). There was no requirement to notify the modified application.

(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.

No submissions were received.

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

Section 4.15(a)(i) - The provisions of any environmental planning instrument (EPI)

Wagga Wagga Local Environmental Plan 2010

Under the provisions of the WWLEP2010, the subject site is within the R1 General Residential zone and RU1 Primary production zone. The proposed modifications to the development do not impact upon the original assessment whereby this development was consistent with the zone objectives.

The development is permissible with consent.

Under section 2.6 of the Wagga Wagga LEP consent is required for the subdivision of land. The lodgement of the development application as modified demonstrates compliance with this clause.

Part 3 Exempt & Complying Development

The proposed modified development is not Exempt or Complying Development. The application is seeking consent.

Part 4 Principal development standards

As originally assessed despite the creation of a lot that is less than the minimum lot size of 200ha in the RU1 zone, clause 4.2 allows for flexibility to enable lots to be created for the purpose of primary production only. As the lot is to be used for the purpose of agriculture only this remains consistent with this part.

Part 5 Miscellaneous provisions

There are no miscellaneous provisions that apply to the modified development.

Part 6 Urban Release Areas

The proposal is not within an Urban Release Area.

Part 7 Additional Local Provisions

The proposed modification has no impact on the original assessment against the applicable clause 7.9 Commercial Core.

There are no other relevant additional local provisions.

State Environmental Planning Policies (SEPPs)

SEPP 55 Remediation of Land

There are no SEPPs applicable to this modification. The original assessment of the application against SEPP55 Remediation of Land remains valid.

Section 4.15(1)(a)(ii) - The provisions of 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 Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

No relevant planning instrument under this clause is currently the subject of public exhibition or comment.

Section 4.15(1)(a)(iii) - The provisions of any development control plan

Wagga Wagga Development Control Plan 2010

The modified development remains consistent with the applicable controls of the WWDGP2010 as described below.

Section 1 - General

1.10 Notification of a Development Application

There was no requirement to notify the modifications.

Section 2 - Controls that Apply to All Development

2.1 Vehicle access and movements

The modified subdivision does not have any impact upon existing and approved road layouts and connectivity through the different stages.

2.2 Off-street parking

Each of the approved residential lots will provide parking as part of future dwelling applications.

2.3 Landscaping

Each of the approved residential lots will provide landscaping as part of future dwelling applications.

2.4 Signs

No signs are included as part of the modified application for residential subdivision.

2.5 Safety and security

Each of the approved residential lots will provide appropriate safety and security measures as part of future dwelling applications.

2.6 Erosion and Sediment Control Principles

There are no site works associated with this subdivision. The approved subdivision includes conditions to ensure that appropriate control measures are put in place during any site works.

2.7 Development adjoining open space

The modified development does not adjoin any areas of public open space.

Section 3 - Heritage Conservation

The subject site is not identified as a heritage item nor is it within a conservation area.

Section 4 - Environmental Hazards and Management

The site is not impacted by bushfire or flooding.

Section 5 - Natural Resource and Landscape Management

The subdivision does not propose or require the removal of any trees or native vegetation.

Section 6 - Villages

The proposal is for a modified residential subdivision and is not located in a village. Section 6 is not applicable to this development.

Section 7 - Subdivision

The proposed subdivision, as modified is subject to the following controls:-

7.1 Rural Subdivision

The objectives of this section are to protect the landscape character of rural areas, encourage best practice farm management and avoid conflicts between land uses.

The rural lot to be created is an existing residue lot of the Forest Hill subdivision that is to be excised onto an individual land parcel. The use of the land will not change in any way, no development is proposed.

The subdivision is consistent with the objectives.

7.2 Residential and large lot residential subdivision

The existing residential subdivision approved under DA15/0717.06 was assessed against the applicable controls in this section and Chapter 42 of the Wagga Wagga DCP2005.

There are no changes proposed to the lot layout and road networks currently approved. This subdivision is effectively a paper subdivision allowing separate land parcels to be sold to separate developers.

Section 8 - Rural Development

The proposal is for a modified residential subdivision. Section 8 is not applicable to this development.

Section 9 - Residential Development

The proposal is for a modified residential subdivision. Section 9 is not applicable to this development.

Section 10 - Business Development

The proposal is for a modified residential subdivision. Section 10 is not applicable to this development.

Section 11 - Industrial Development

The proposal is for a modified residential subdivision. Section 11 is not applicable to this development.

Section 12 - Specific Uses and Developments

The proposal is for a new residential subdivision. There are no specific use or development controls applicable to this development.

Section 13 - Bomen Urban Release Area

The subject site is not within the Bomen urban release area. Section 13 is not applicable to this development.

Section 14 - Boorooma Urban Release Area

The subject site is not within the Boorooma urban release area. Section 14 is not applicable to this development.

Section 15 - Lloyd Urban Release Area

The subject site is not within the Lloyd urban release area. Section 15 is not applicable to this development.

Section 16 - Gobbagombalin Urban Release Area

The subject site is not within the Gobbagombalin urban release area. Section 16 is not applicable to this development.

Section 4.15(1)(a)(iia) - Planning Agreements

There is no draft or current planning agreement applicable to this application under Section 7.4 of the *Environmental Planning and Assessment Act 1979*.

Section 4.15(1)(a)(iv) - any matters prescribed by the regulations

There are no applicable matters prescribed by the regulations.

Section 4.15(1)(b) - likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts

in the locality, development

The modified plan of subdivision has no impact upon the original assessment of impacts repeated below:-

Context & Setting

The subject land is within Forest Hill which is an expanding residential suburb. The land is bound by residential land to the north and east and open rural land to the south and west. The proposal is entirely appropriate in this location.

Access, transport and traffic

The subdivision will not result in any changes to the approved road layout throughout the stages. Roads associated with Stage 14A have been constructed in accordance with Council's engineering guidelines and enable future connectivity to both residential lots.

Services

Servicing (sewer and stormwater infrastructure) of each of the proposed residential lots was completed as part of Stage 14A works. Utility provision will be secured as part of the subdivision certificate.

Heritage

There are no likely impacts as there are no registered historic sites in the location of this development.

Natural Hazards & Man-Made Hazards

There are no known natural or man-made hazards impacting the site

Economic and Social Impact in the Locality

The subdivision of the existing lot will have a positive individual economic impact on landowners but also be of wider economic benefit in terms of new development within the locality. The development of a range of residential properties within an expanding suburb also has a positive social impact.

Other Land Resources

Given the increasing residential development in the area, and the zoning of the site, it is considered that the site has limited value from a land resource perspective.

Pollution and off-site environmental effects

During construction of future dwellings appropriate measures will need to be implemented to ensure soil erosion and degradation does not occur. Such conditions are included on the original subdivision consent, as amended.

Flora and fauna

There is no flora or fauna removal as part of the proposed subdivision.

Noise and Vibration

There are no noise impacts anticipated as a result of this subdivision.

Construction

There is no construction associated with the three lot subdivision. Infrastructure works completed as part of Stage 14A connected both roads and services to both of the proposed residential lots.

The Principles of Ecologically Sustainable Development

The following are principles of ecological sustainability:

1 The precautionary principle

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The principle requires decision-making to give the environment the benefit of the doubt.

2 Intergenerational equity

The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (that is, a partnership among all of the generations that may use or expect to benefit from the nation's resources).

3 Conservation of biological diversity and ecological integrity

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

The proposed development will not result in any anticipated irreversible environmental damage, the proposed subdivision is consistent with the existing overarching subdivision consent for Forrest Hill and accordingly the principles of ESD are considered to have been followed.

Section 4.15(c) - The Suitability of the site for the development

The subject land is considered to be suitable for the proposed (modified) development being subdivision across existing approved residential areas and a residue rural area of land.

Section 4.15(d) - any submissions made in accordance with the Act or the regulation

Referrals

The application was referred to relevant internal referral groups. Recommended conditions of consent have been included.

Notification

The modified application was not required to be notified.

Advertising

The modified application was not required to be advertised.

Section 4.15(e) - the public interest

The public interest is best served by the consistent application of the requirements of the relevant planning controls and by Council ensuring that any adverse effects on the surrounding area and the environment are avoided.

The proposed development, as modified will be in the public interest as separate land parcels

are created for future residential subdivision by different land-owners. There are no detrimental impacts anticipated.

Other Legislative Requirements

Section 1.7 of the EPA Act 1979 and Part 7 of the *Biodiversity Conservation Act 2016* (Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats)

The subject land is not covered by the bio-certification layer. The modification has no impact upon the original assessment as follows:-

The subdivision is across both residential and rural land. There is no removal of vegetation proposed and the residential subdivision across the R1 zoned land is subject to an existing approval that pre-dates requirements under this Act.

No further assessment is required under this section.

Council Policies

None

Development Contributions - Section 7.11/7.12 Environmental Planning and Assessment Act 1979 & Section 64 Local Government Act, 1993 and Section 306 Water Management Act, 2000

Contributions remain as originally assessed and are payable prior to release of the Subdivision Certificate.

Other Approvals

None required

Conclusion

The modified development is considered to be satisfactory based on the foregoing assessment. The proposal complies with the requirements of the Environmental Planning and Assessment Act 1979 and Councils Policies.

Recommendation

It is recommended that application number DA19/0181.01 to modify Development Consent DA19/0181 for Three Lot Residential Subdivision - Modification to subdivision plan be approved subject to the following conditions:-

Approved Plans and Documentation

- The development must be carried out in accordance with the approved plans and specifications as follows.

Plan/DocNo.	Plan/Doc Title	Prepared by	Issue	Date
19379	Proposed Plan of Subdivision	T.J Hinchcliffe & Associates	-	6 March 2020
	Statement of Environmental Effects	EDM Group		17 April 19
19379	Written Correspondence	T.J Hinchcliffe & Associates		6 March 2020

The Development Application has been determined by the granting of consent subject to and as amended by the conditions of development consent specified below.

NOTE: Any modifications to the proposal shall be the subject of an application under Section 4.55 of the Environmental Planning and Assessment Act, 1979.

REASON: It is in the public interest that work is carried out in accordance with the approved plans. Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, as amended.

- Pursuant to s7.11 of the Environmental Planning and Assessment Act 1979 and the City of Wagga Wagga Section 94 Contributions Plan 2006-2019 the following monetary contributions must be paid to Council, prior to the issuing of the Survey Certificate unless, before the time due for payment, the applicant and the Council enter into a legally binding agreement for the applicant to provide works-in-kind or any other material public benefit(s) to the Council in part or full satisfaction of the monetary contributions:

Forest Hill Section 94 Subdivision - Without Land Dedication	
Contributions Plan Preparation & Management	\$335.62
Future Civic, Community & Cultural	\$334.58
Recoupment Civic, Community & Cultural	\$1,635.37
Future Roads & Traffic Management	\$3,300.96
Recoupment Open Space & Recreation	\$754.63
Future Open Space & Recreation	\$4,060.80
Base Charge	\$10,423.00/residential lot
Final Amount Including CPI 115.2/95.6 (June 19)	\$12,559.93/residential lot

The amounts payable under this condition will be indexed in accordance with Clause 2.12 of the City of Wagga Wagga Section 94 Contributions Plan 2006-2019 from the endorsed date of this Development Consent until the date of payment. A copy of the City of Wagga Wagga Section 94 Contributions Plan 2006-2019, is available for inspection at Council Chambers, corner Baylis and Morrow Streets, Wagga Wagga.

NOTE 1: Clause 2.12 of the City of Wagga Wagga Section 94 Contributions Plan 2006-2019 provides for Section 94 contributions to be indexed in accordance with the Consumer Price Index - All Groups (Sydney) published by the Australian Bureau of Statistics.

NOTE 2: The figures outlined in this consent are based on the current rate of CPI. Please be advised that CPI changes on a regular basis and you are advised to contact Council prior to payments being made, to ensure no further CPI increases/decreases have occurred since the date of this consent.

REASON: Having considered the development in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979 and the City of Wagga Wagga Section 94 Contributions Plan 2006-2019, as amended, Council is satisfied that the development will require the provision of, or increase the demand for, public amenities and public services within the area.

3. Prior to the release of the Subdivision Certificate a compliance certificate under s306 of the Water Management Act 2000 must be obtained in respect of the development relating to water management works that may be required in connection with the development.

NOTE1: 'Water management work' is defined in s283 of the Water Management Act to mean a 'water supply work', 'drainage work', 'sewage work' or 'flood work'. These terms are defined in that Act.

NOTE 2: Riverina Water is responsible for issuing compliance certificates and imposing requirements relating to water supply works for development in the Council's area. An application for a compliance certificate must be made with Riverina Water. Additional fees and charges may be incurred by the proposed development - please contact Riverina Water to ascertain compliance certificate water supply related requirements. A copy of such a compliance certificate is required prior to release of Subdivision Certificate.

NOTE 3: The Council is responsible for issuing compliance certificates and imposing requirements relating to sewerage, drainage and flood works for development in its area.

NOTE 4: Under s306 of the Water Management Act 2000, Riverina Water or the Council, as the case requires, may, as a precondition to the issuing of a compliance certificate, impose a requirement that a payment is made or works are carried out, or both, towards the provision of water supply, sewerage, drainage or flood works.

NOTE 5: The Section 64 Sewer base figure is \$3538 / residential lot.

The Section 64 Sewer contribution (updated by the CPI/100.5) required to be paid is \$3988.61 / residential lot.

NOTE 6: The Section 64 Stormwater base figure is \$642 / residential lot.

The Section 64 Stormwater contribution (updated by the CPI/87.9) required to be paid is \$827.51 / residential lot.

NOTE 7: Section 64 contributions shall be indexed in accordance with CPI annually at the commencement of the financial year.

NOTE 8: The figures outlined in this consent are based on the current rate of CPI. Please be advised that CPI changes on a regular basis and you are advised to contact Council prior to payments being made, to ensure no further CPI increases/decreases have occurred since the date of this consent.

REASON: It is in the public interest that Council maintain the ability to provide adequate water and sewer reticulation services. Section 4.15 (1)(c) and (e) of the Environmental Planning and Assessment Act 1979, as amended.

4. A Subdivision Certificate, pursuant to Section 109C of the Environmental Planning and Assessment Act 1979, as amended must be obtained from Council, prior to its lodgement with the Lands Titles Office.

The Final Survey Plan (two paper copies and an electronic copy) must be submitted to Council along with the application for Subdivision Certificate and associated checklist.

NOTE: Council will only consider issuing a Subdivision Certificate in relation to this subdivision when it is satisfied that all conditions of development consent relating to the subdivision have been complied with and the appropriate fee paid.

REASON: It is in the public interest that the plan is certified in accordance with the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, as amended.

5. Prior to the issue of the Subdivision Certificate the following documents shall be submitted to Council to demonstrate that the requirements of the public utility services have been met:-

- i) Essential Energy: Notification of Arrangement OR Certificate of Acceptance**
- ii) APA Gas: Certificate of Acceptance**
- iii) Riverina Water: Certificate of Compliance**

REASON: To ensure that the servicing requirements of public utility authorities have been met, to service the development. Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as amended.

Report Prepared & approved by: Amanda Gray



Paul O'Brien

Manager Development Assessment & Building Certification

Date:01/05/2020