



Ordinary Council

LATE REPORTS

Business Paper

date of meeting: Wednesday 20 July 2016

location: Council Chambers
17 Burrawan Street
Port Macquarie

time: 5.30pm

Note: Council is distributing this agenda on the strict understanding that the publication and/or announcement of any material from the Paper before the meeting not be such as to presume the outcome of consideration of the matters thereon.

Community Vision

A sustainable high quality of life for all

Community Mission

Building the future together
People Place Health Education Technology

Council's Corporate Values

- ★ Sustainability
- ★ Excellence in Service Delivery
- ★ Consultation and Communication
- ★ Openness and Accountability
- ★ Community Advocacy

Council's Guiding Principles

- ★ Ensuring good governance
- ★ Looking after our people
- ★ Helping our community prosper
- ★ Looking after our environment
- ★ Planning & providing our infrastructure



**PORT MACQUARIE
HASTINGS**

How Members of the Public Can Have Their Say at Council Meetings

Council has a commitment to providing members of the public with an input into Council's decision making. The Council's Code of Meeting Practice provides two (2) avenues for members of the public to address Council on issues of interest or concern at the Ordinary Council Meeting. These are:

Addressing Council on an Agenda Item:

If the matter **is** listed in the Council Business Paper, you can request to address Council by:

- Completing the *Request to Speak on an Agenda Item at a Council Meeting*, which can be obtained from Council's Offices at Laurieton, Port Macquarie and Wauchope or by downloading it from Council's website.
- On-line at <http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-Committee-Meetings/Request-to-speak-on-an-Agenda-Item>

Your request to address Council must be received by Council no later than 4:30pm on the day prior to the Council Meeting.

Council's Code of Meeting Practice sets out the following guidelines for addressing Council:

- Addresses will be limited to 5 minutes.
- If you wish any written information, drawings or photos to be distributed to the Council to support the address, two (2) copies should be provided to the Group Manager Governance & Executive Services prior to the commencement of the meeting.
- Where speakers wish to make an audio visual presentation, a copy is to be provided to the Group Manager Governance & Executive Services by 4.30pm on the day prior to the Council Meeting.
- Council will permit only two (2) speakers "Supporting" and two (2) speakers "Opposing" the *Recommendation* contained in the Business Paper. If there are more than two speakers supporting and opposing, the Mayor will request the speakers to determine who will address Council.

Addressing Council in the Public Forum:

If the matter **is not** listed in the Council Business Paper, you can request to address Council by:

- Completing the *Request to Speak in the Public Forum at Ordinary Council Meeting*, which can be obtained from Council's Offices at Laurieton, Port Macquarie and Wauchope or by downloading it from Council's website.
- On-line at <http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-Committee-Meetings/Request-to-speak-in-a-Public-Forum>

Your request to address Council must be received by Council no later than 4:30pm on the day prior to the Council Meeting.

A maximum of eight (8) speakers will be heard in the Public Forum. Each speaker will be limited to 5 minutes. Council may ask questions of speakers but speakers **cannot** ask questions of Council.

Council will not determine matters raised in the Public Forum session, however may resolve to call for a further report, when appropriate.

Speakers will be allowed to address Council in the Public Forum on the same issue no more than three (3) times in each calendar year. (Representatives of incorporated community groups may be exempted from this restriction).



**PORT MACQUARIE
HASTINGS**

Ordinary Council Meeting

Wednesday, 20 July 2016

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**PORT MACQUARIE
HASTINGS**

Looking After Our Environment

What are we trying to achieve?

We understand and manage the impact that the community has on the natural environment. We protect the environment now and in the future.

What will the result be?

- Accessible and protected waterways, foreshores, beaches and bushlands.
- Renewable energy options.
- Clean waterways.
- An environment that is protected and conserved for future generations.
- Development outcomes that are ecologically sustainable and complement our natural environment.
- Residents that are environmentally aware.
- A community that is prepared for natural events and climate change.

How do we get there?

- 4.1 Protect and restore natural areas.
- 4.2 Ensure service infrastructure maximises efficiency and limits environmental impact.
- 4.3 Implement total water cycle management practices.
- 4.4 Continue to improve waste collection and recycling practices.
- 4.5 Provide community access and opportunities to enjoy our natural environment.
- 4.6 Create a culture that supports and invests in renewable energy.
- 4.7 Increase awareness of and plan for the preservation of local flora and fauna.
- 4.8 Plan and take action to minimise impact of natural events and climate change.
- 4.9 Manage development outcomes to minimise the impact on the natural environment.

Looking After Our Environment

Item: 12.05

Subject: DA2016 - 284.1 RESIDENTIAL SUBDIVISION (16 LOTS) INCLUDING CLAUSE 4.6 OBJECTION TO CLAUSE 4.1 (MINIMUM LOT SIZE) OF THE PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 4 DP 615261, OCEAN DRIVE, LAKE CATHIE

Report Author: Matt Rogers

Applicant: Hopkins Consultants Pty Ltd
Owner: Seawide Pty Ltd
Estimated Cost: Nil
Parcel no: 18655

Alignment with Delivery Program

4.9.2 Undertake transparent and efficient development assessment in accordance with relevant legislation.

RECOMMENDATION

That DA 2016 - 284.1 for a Residential Subdivision (16 Lots) Including Clause 4.6 Objection to Clause 4.1 (Minimum Lot Size) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 4, DP 615261, Ocean Drive, Lake Cathie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a development application for a residential subdivision (16 lots) at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, no unresolved written submissions have been received. The development is required to be reported to an Ordinary Meeting of Council for determination as it involves variation of the LEP minimum lot size standard by more than 10%.

The proposal was considered by the Development Assessment Panel at its meeting of 13 July 2016 and it was resolved:

That it be recommended to Council that DA 2016 - 284.1 for a Residential Subdivision (16 Lots) Including Clause 4.6 Objection to Clause 4.1 (Minimum Lot Size) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 4, DP 615261, Ocean Drive, Lake Cathie, be determined by granting consent subject to the recommended conditions, with the following changes to conditions of consent:

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- Amend condition E(10) as follows:
 - (10) (E196) A suitable restriction under Section 88B of the Conveyancing Act, 1919 shall be placed on the titles of proposed Lots 144 - 147 inclusive. The restriction shall specify that prior to Council or the Principal Certifying Authority issuing a Construction Certificate or Complying Development Certificate a report shall be submitted to the Principal Certifying Authority certifying that the building design incorporates category 2 construction measures and will achieve the acceptable daytime and night time noise levels contained within AS/NZS 2107:2000 – Acoustics – Recommended design sound levels and reverberation times for building interiors.
- Add new condition E(11) as follows:
 - (11) (E197) A suitable restriction under Section 88B of the Conveyancing Act, 1919 shall be placed on the titles of proposed Lots 148 - 150 inclusive. The restriction shall specify that prior to Council or the Principal Certifying Authority issuing a Construction Certificate or Complying Development Certificate for a two storey dwelling, a report shall be submitted to the Principal Certifying Authority certifying that the building design incorporates category 2 construction measures and will achieve the acceptable daytime and night time noise levels contained within AS/NZS 2107:2000 – Acoustics – Recommended design sound levels and reverberation times for building interiors.
- Move condition B(8) to Part E of the consent and amend the wording as follows:
 - (12) (E198) As part of the Seawide Voluntary Planning Agreement (Part 3), the Catarina Sewer Pump Station and Sewerage Infrastructure must be commissioned and fully operational before a Subdivision Certificate can be issued.

The recommended conditions in the attachments have been amended to include the above changes.

1. BACKGROUND

Subdivision History and Part 3A Approvals

There are existing Part 3A Concept Plan and Stage 1 Project Approvals for residential, commercial, tourist/mixed uses and environmental works applicable to the site, as follows:

07_0010 Residential, Commercial and Tourist Development (Concept Plan) being an approval for:

- residential uses for about 217 low density dwellings and about 82 medium density dwellings
- a 'Hill-Top Village' neighbourhood centre, including tourist and residential uses of about 160 apartments
- environmental works associated with the Littoral Rainforest and Duchess Creek

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- provision of perimeter road, pedestrian, cycle paths and opens space and access to Rainbow Beach
- provision of associated infrastructure including stormwater, drainage and utilities

07_0010 Residential, Commercial and Tourist Development (Project Application)
Dealing with:

- environmental works including establishment of regeneration area, erection of temporary fencing and construction of a timber boardwalk.

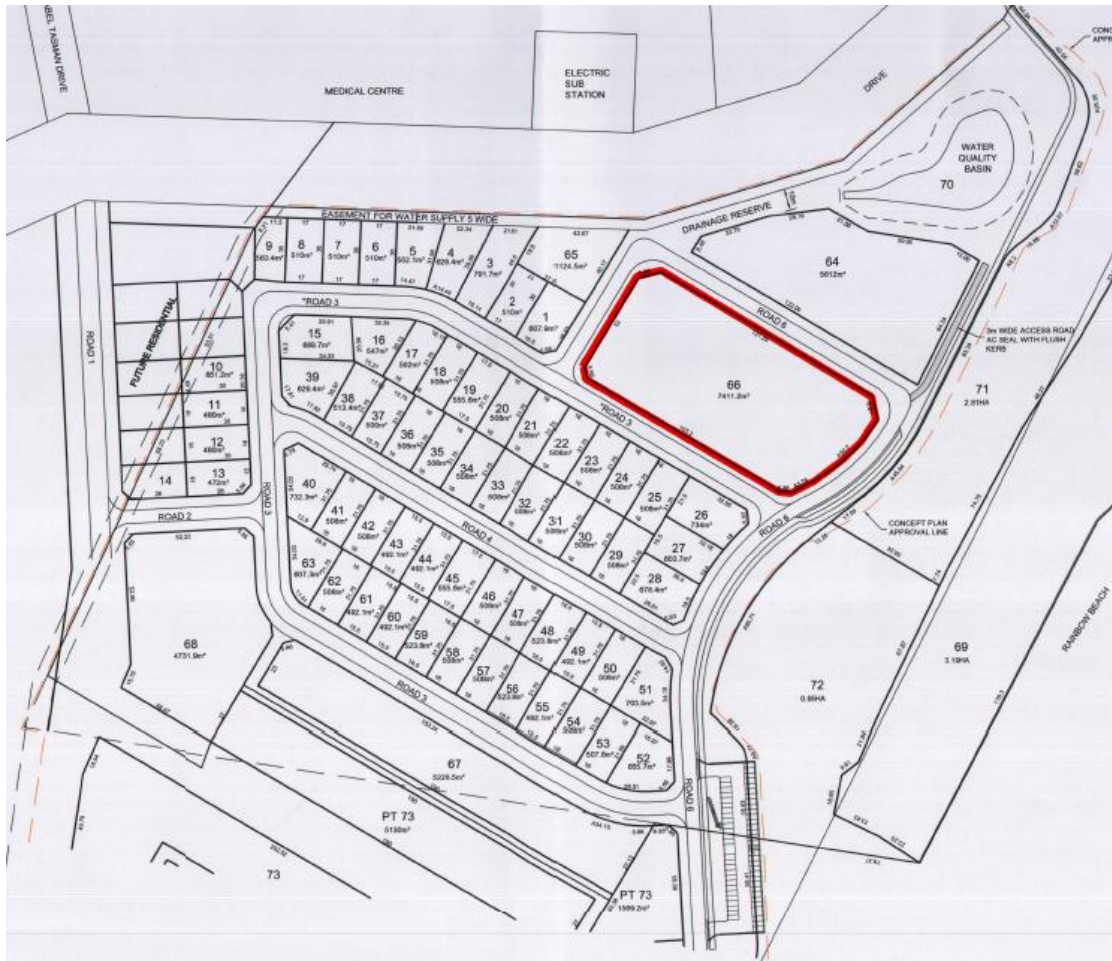
Part 3A of the Environmental Planning and Assessment Act, 1979 (the Act) was repealed on 26 August 2011. The Part 3A application was undetermined at the time of these changes. Schedule 6A of the Act established the transitional arrangements and subject to clause 2 of this schedule the project is a 'transitional Part 3A project'. Accordingly Part 3A of the Act as existed, prior to its repeal, continues to apply to the project.

Under the terms of the concept plan approval, future approval to carry out the project, other than 'Stage 1 Environmental Works', are subject to Part 4 of the Act.

Development Application DA2012/381 for a 176 lot subdivision and associated infrastructure was granted consent by the Joint Regional Planning Panel on 21 February 2013, and was subsequently modified on 27 August 2013. This subdivision is currently under construction and the lots are yet to be registered.

The proposal is for an infill subdivision of a development lot identified as Lot 66 on the modified approved plans for DA2012/381 (see below).

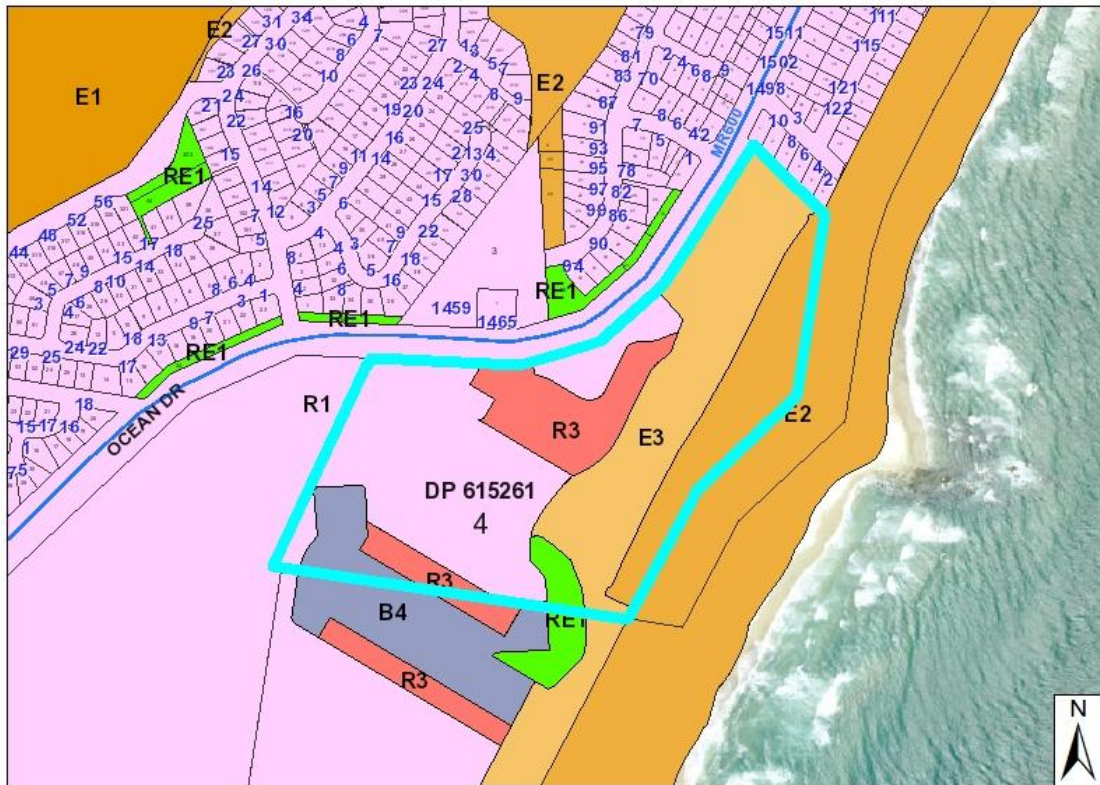
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**Existing sites features and surrounding development**

Lot 4 DP 615261 has an area of 16.38 hectares. Lot 66 in the approved subdivision of the land will have an area of 7411.2m².

The site is zoned B4 Mixed Use, R1 General Residential, R3 Medium Density Residential, RE1 Public Recreation, E2 Environmental Conservation, and E3 Environmental Management in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:

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The proposed infill subdivision of Lot 66 is located on the part of the site zoned R3 Medium Density Residential.

The existing subdivision pattern and location of existing development within the locality is shown in the following aerial photograph:

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2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Subdivision of part of the land into 16 additional residential allotments;
- Variation of the minimum lot size development standard for the land in the Port Macquarie-Hastings Local Environmental Plan 2011.

Refer to attachments at the end of this report.

Application Chronology

- 18 April 2016 - Application lodged.
- 26 April 2016 to 9 May 2016 - Neighbour notification.
- 2 May 2016 - Submission received from Essential Energy requesting additional information on the location of existing electricity easements.
- 19 May 2016 - Additional information requested from Applicant.
- 23 May 2015 - Additional information submitted by Applicant and forwarded to Essential Energy. Essential Energy response received.
- 24 May 2016 - Site inspected by assessing officer.
- 2 June 2016 - Further additional information requested from Applicant.
- 6 June 2016 - Additional information received.
- 10 June 2016 - Bush Fire Safety Authority issued by NSW Rural Fire Service.
- 13 July 2016 - Application considered by Development Assessment Panel.

3. STATUTORY ASSESSMENT

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Section 79C(1) Matters for Consideration

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

- (a) **The provisions (where applicable) of:**
(i) **any Environmental Planning Instrument:**

State Environmental Planning Policy No. 26 - Littoral Rainforests

This policy aims to preserve and protect littoral rainforests in their natural state. This policy applies to land within 100m of the marked boundaries identified in a series of maps marked "*State Environmental Planning Policy No. 26 - Littoral Rainforest (Amendment No.2)*".

The eastern boundary of the site forms part of the mapped Littoral Rainforest. Consideration to the potential impacts upon the Littoral Rainforest was considered by the Department in their assessment of the Part 3A Concept Plan. The relevant matters for consideration as required by this policy were addressed in Part 5 of the Director-General's Environmental Assessment Report (Appendix F).

The application is consistent with the Part 3A Concept Plan Approval and further consideration of this policy is not deemed necessary.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

This policy aims to encourage proper conservation and management of natural vegetation areas that provide habitat for koalas. The policy applies to land parcels of more than one hectare.

The area of the site is greater than 1 hectare and this policy applies. Consideration and assessment of the site was undertaken as part of the Part 3A Concept Plan. The assessment determined that no core or potential koala habitat existed on the site. As such a Koala Plan of Management was not required.

The application is consistent with the Part 3A Concept Plan Approval and further consideration of this policy is not deemed necessary.

State Environmental Planning Policy No. 55 – Remediation of Land

This policy requires a consent authority to consider the potential for a development site to be contaminated and therefore whether it is suitable for the use for which is proposed. If the land is unsuitable, remediation must take place before land is developed.

As part of the Part 3A Concept Plan the proponent undertook a preliminary site investigation notwithstanding that the site is not identified on Council's contaminated sites register. The investigations confirmed that the site is suitable in its current state for urban development.

The application is consistent with the Part 3A Concept Plan Approval and further consideration of this policy is not deemed necessary.

State Environmental Planning Policy No. 71 – Coastal Protection and Clause 5.5 of Port Macquarie-Hastings Local Environmental Plan 2011

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The policy applies generally to development in the coastal zone. Clause 2 sets out the aims of the policy which includes the protection, preservation and effective management of coastal areas and natural resources including vegetation, beaches and amenity. Clause 8 sets out the matters for consideration by a consent authority when determining a development application in the coastal zone.

As part of the Part 3A Concept Plan the Department considered these matters and concluded that the project would improve public access to the coastal foreshore, demonstrates due regard to its environmental setting and surroundings, is not detrimental to the scenic amenity of the coastal foreshore, includes measures to protect and regenerate existing coastal habitats and includes measures to protect and conserve items of Aboriginal cultural heritage.

In obtaining the Part 3A Concept Plan Approval for the development, the applicant is not required to obtain a Master Plan (or waiver) from the Department under SEPP 71. The application is consistent with the Part 3A Concept Plan Approval and further consideration of this policy is not deemed necessary.

Having regard for clauses 2, 8 and 12 to 16 of the SEPP and clause 5.5 of the PMH LEP 2011, the proposed development will not result in any of the following:

- a) any restricted access (or opportunities for access) to the foreshore
- b) any adverse amenity impacts along the foreshore and on the scenic qualities of the coast;
- c) any adverse impacts on flora and fauna;
- d) the development being subject to any adverse coastal processes or hazards;
- e) any significant conflict between water and land based users of the area;
- f) any adverse impacts on any items of archaeological/heritage;
- g) reduction in the quality of the natural water bodies in the locality (due to effluent & stormwater disposal, construction impacts, landuse conflicts);
- h) adverse cumulative impacts on the environment;
- i) a form of development that is unsustainable in water and energy demands;
- j) development relying on flexible zone provisions.

The site is predominately cleared and located within an area zoned for residential purposes.

Port Macquarie-Hastings Local Environmental Plan 2011

The proposal is consistent with the LEP having regard to the following:

- Clause 2.2, the subject site is zoned R3 Medium Density Residential.
The objectives of the R3 zone are as follows:
 - To provide for the housing needs of the community within a medium density residential environment.
 - To provide a variety of housing types within a medium density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.

In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives having regard to the following:

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- The proposal would provide lots capable of a variety of medium density housing types.
- The development would contribute to meeting the housing needs of the community.
- Clause 4.1, the lot sizes within the proposed subdivision range from 450m² to 516.4m². None of the proposed lots comply with the minimum lot size of 1,000m² identified in the Lot Size Map relating to the site. The proposal constitutes a variation of up to 55% of the development standard.

The objectives of Clause 4.1 are as follows:

(a) to ensure that lot sizes are compatible with local environmental values and constraints,

Comment: The site of the proposed infill subdivision is not affected by any significant environmental or other significant constraints. The reduced lot sizes are therefore considered compatible with the site characteristics

(b) to facilitate efficient use of land resources for residential and other human purposes,

Comment: The lot sizes would facilitate residential densities in the Rainbow Beach area consistent with the densities projected in Development Control Plan 2011.

(c) to minimise the fragmentation of rural land suitable for sustainable primary production,

Comment: Not applicable.

(d) to protect high ecological, scientific, cultural or aesthetic values of land in environment protection zones.

Comment: Not applicable.

- Clause 4.6 – Development consent must not be granted for development that contravenes a development standard unless the Council is satisfied that the applicant's written request has adequately addressed the following matters:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

Additionally, the proposed development must be shown to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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As detailed above under clauses 2.3 and 4.1, the proposed development would satisfactorily achieve the objectives of the zone and minimum lot size standards and is considered to be in the public interest.

Compliance with the minimum lot size standard is considered unnecessary in the circumstances of the case as the proposed development would provide suitable housing opportunities and not compromise the overall housing density projected for the area.

There is sufficient justification on environmental planning grounds for the development as follows:

- The same subdivision layout could be achieved with an integrated Torrens title housing development under the provisions of Clause 4.1A of the LEP, which would not require a variation of the minimum lot size provisions.
- The application has demonstrated that each proposed lot is capable of accommodating a dwelling that complies with the DCP controls.
- The development provides greater flexibility in building design for future purchasers of the land.
- The development would not compromise the desired dwelling yields for the Rainbow Beach urban release area.
- The proposal would not significantly compromise the future redevelopment of the land for higher density residential uses in accordance with the land zoning.

Council has assumed concurrence under the Department of Planning and Environment's Planning Circular PS 08-003 to determine the application. However, the application is required to be determined at a meeting of full Council in accordance with Planning Circular PS 08-014 due to the variation being greater than 10%.

- Clause 5.5 - Development within the coastal zone - relevant objectives of this clause are addressed by SEPP 71 section (see above).
- Clause 5.9 - No listed trees in Development Control Plan 2013 are proposed to be removed. Site clearing for residential subdivision has already been approved as part of DA2012/381.
- Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance. As part of the rezoning and Part 3A Concept Plan a Cultural Heritage Assessment was undertaken. The assessment made the following two recommendations:
 1. *a 5m buffer zone sparing development related ground disturbance along Duchess Gully.*
 2. *The scarred mature Brush Box tree detected to be preserved in its current rainforest context.*

The part 3A Concept Plan approval required that a Cultural Heritage Management Plan be prepared by a suitably qualified person and submitted for future development applications for subdivision. A Cultural Heritage

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Management Plan (appendix J) has been submitted to manage both points 1 and 2 above and future urban development of the site.

In summary the Part 3A Concept Plan Approval provides for an average 30 metre buffer to Duchess Gully. The management plan provides further measures to minimise potential disturbance of cultural materials that have not been detected to date in the surveys of Duchess Gully. The scarred tree is being preserved in its current rainforest setting and will form part of the foreshore reserve proposed to be dedicated to Council. Access to the scarred tree will be further minimised by the establishment of the pedestrian boardwalk link to Rainbow Beach in a location remote from the tree as part of the Part 3A Stage 1 Project Approval.

- Clause 6.1- A copy of the Director General's Certificate certifying that satisfactory arrangements are in place for the provision of State public infrastructure for the Area 14 Urban Release Area at Lake Cathie / Bonny Hills has been provided to Council and is dated 6 December 2012.
- Clause 6.2, satisfactory arrangements are in place for provision of essential public utility infrastructure including stormwater, water and sewer infrastructure to service the development within an urban release area. See detailed comments later in this report.
- Clause 6.3 - Development Control Plan 2011 - Rainbow Beach provisions are in place for the urban release area. See comments below under the DCP section for details.
- Clause 7.9 - Part of the subject site is mapped as being subject to acoustic controls. A Traffic Noise Impact Assessment was undertaken Heggies Pty Ltd, dated 5 July 2010 as part of the Part 3A Concept Plan application and road traffic noise impacts were also considered as part of the residential subdivision approved under DA2012/381 that will create the development lot.

Heggies have advised that the relevant current Australian Standards are an appropriate tool in the assessment of road traffic noise where the SEPP (Infrastructure) 2007 provisions do not apply. The relevant standards are as follows:

- AS 2107:2000 - Acoustics - Recommended design sound levels and reverberation times for building interiors; and
- AS 3671:1989 - Acoustics - Road traffic noise intrusion - Building siting and construction.

Construction categories 1 and 2 contained within AS 3671:1989 can provide an internal noise reduction of between 10dBA to 25dBA respectively. In relation to the predicted noise levels for the residential subdivision approved under DA2012/381, the incorporation of category 2 construction measures as follows was considered to satisfy acceptable internal noise level criteria:

- Category 2 construction measures for dwellings with a direct frontage to Ocean Drive.

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It was also proposed as part of DA2012/381 that allotments with direct frontage to Ocean Drive would incorporate lapped and capped boundary fencing 1.8m in height erected upon a 0.4m high earth mound. The proposed treatment would extend approximately 360m along the Ocean Drive frontage and provide for additional noise mitigation.

The conditions of consent for DA2012/381 required a restriction as to user under Section 88B of the Conveyancing Act 1919 to be placed on the titles of the lots with a direct frontage to Ocean Drive.

The noise barrier proposed as part of DA2012/381 only extends to the western side of the development site, and some of the lots are exposed to road traffic noise despite the greater separation distance. Modelling in the Heggies report suggests that Category 2 construction measures would be required for proposed Lots 144 - 150 of the proposed subdivision. A condition of consent is proposed requiring a restriction as to user under Section 88B of the Conveyancing Act 1919 to be placed on the titles of these lots.

With the above restrictions, the proposed development is considered capable of achieving satisfactory internal noise levels.

- Clause 7.13, satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development. Provision of electricity will be subject to obtaining satisfactory arrangements certification prior to the issue of a Subdivision Certificate as recommended by a condition of consent.

(ii) Any draft instruments that apply to the site or are on exhibition:

No draft instruments apply to the site.

(iii) any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

DCP 2013: Chapter 3.6 - Subdivision			
DCP Objective	Development Provisions	Proposed	Complies
3.6.3.2	Torrens title lots minimum width of 15m when measured at a distance of 5.5m from front property boundary.	<p>Lots 137 - 151 are minimum 15m wide at 5.5m from front boundary. Lot 152 achieves required width at 5.5m from Road 6, but is less than 15m wide at 5.5m from Road 3. Approximate width 12m.</p> <p>However, the submitted proposal demonstrates that the lot is capable of accommodating a dwelling that complies with the</p>	No, but acceptable.

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		DCP requirements.	
	Minimum width of 7m when boundaries are extended to kerb line.	Yes.	Yes
	Minimum depth of 25m.	All lots than are not corner lots comply with this requirement.	Yes
3.6.3.3	Battleaxe lots discouraged in greenfield development.	None proposed.	Yes
3.6.3.4	Lots are to be designed to allow the construction of a dwelling, which does not involve more than 1m cut, or fill, measured from natural ground level, outside the dwellings external walls.	Lots not expected to require more than 1m of cut or fill for dwelling construction. Acceptable site levels established under DA2012/381.	Yes
3.6.3.5	Wherever possible orientate streets to maximise the number of east, west and south facing lots and to minimise the number of narrow north facing lots. Residential street blocks should preferably be orientated north-south with dimensions generally limited to 60-80m by 120-150m as illustrated in Figure 3.6-2.	Street layout already established under DA2012/381.	n/a
	Lot size and shape are to reflect orientation to ensure future dwelling construction has optimal opportunity for passive solar design.	Lot orientation satisfactory.	Yes
3.6.3.6	Kerb and guttering, associated street drainage, pavement construction and foot paving across the street frontages should be constructed as part of the subdivision works where these do not exist (may be varied subject to criteria in this clause).	Relevant works will be required as part of the subdivision. See comments later in this report.	Yes
3.6.3.20	Water supply to meet Council's design specifications.	See comment later in this report under Water Supply Connection.	Yes
3.6.3.24	Separate sewer junction provided for each lot.	See comment later in this report under Sewer	Yes

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		Connection.	
3.6.3.27	Erosion and sediment control plan to be provided.	Condition recommended requiring erosion and sediment control plan to be provided prior to the issue of a Construction Certificate.	Yes
3.6.3.34	All service infrastructure should be underground unless otherwise approved by Council.	Condition recommended requiring satisfactory arrangements certification for electricity and telecommunications infrastructure.	Yes
	All service infrastructure should be installed in a common trench.		
	Conduits for the main technology network system should be provided in all streets.		
	Conduits are to be installed in accordance with the National Broadband Network Company Limited's 'Guidelines for Fibre to the Premises Underground Deployment'.		
	Access pits are to be installed at appropriate intervals along all streets.		
3.6.3.51	Street trees should be provided along all road frontages generally at a rate of 1 per 20m interval.	Street tree planting for all the adjoining streets shown on approved plans for DA2012/381.	Yes

DCP 2013: General Provisions

DCP Objective	Development Provisions	Proposed	Complies
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline: <ul style="list-style-type: none"> Casual surveillance and sightlines Land use mix and activity generators Definition of use and ownership Lighting Way finding Predictable routes and entrapment locations 	The subdivision layout will provide for additional dwellings with frontage to the existing subdivision roads, which will improve passive surveillance in the area.	Yes

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2.3.3.1	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls	Earthworks are currently being carried out at the site in accordance with DA2012/381. No further cut and fill proposed in this application.	Yes
2.3.3.8 onwards	Removal of hollow bearing trees	None proposed to be removed.	Yes
2.6.3.1	Tree removal (3m or higher with 100m diameter trunk and 3m outside dwelling footprint	None proposed to be removed.	Yes
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	Refer to main body of report.	
2.5.3.2	New accesses not permitted from arterial or distributor roads. Existing accesses rationalised or removed where practical	All proposed lots would have access from internal subdivision roads.	Yes
2.5.3.11	Section 94 contributions	Refer to main body of report.	

DCP 2011: Rainbow Beach - Precinct B

DCP Objective	Development Provisions	Proposed	Complies
OB1	DP1.1 Road layout, open space and commercial and residential generally in accordance with figures.	Yes	Yes
OB2	DP2.1 Development yields achieve those in figure.	<p>The proposed development achieves a lot yield well below the 31-36 dwellings per hectare envisaged for development on the R3 zoned land in the DCP. However, analysis of the overall development within Precinct B by the Applicant indicates that over 500 dwellings for the precinct is still expected to be achieved, without increasing the density of this particular site.</p> <p>In the longer term, lots could be consolidated and redeveloped for higher</p>	No, but acceptable

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		density residential uses.	
	DP2.2 Higher residential densities are provided in areas close to retail or community activities and public transport nodes.	See comments above.	No, but acceptable
OB5	DP5.1 Cycle ways, share ways and pedestrian facilities in accordance with figure 89.	Relevant facilities to be provided as part of DA2012/381.	Yes
OB6	DP6.1 Development subject to acoustic controls to comply with AS3671.	See comments earlier under clause 7.9 of LEP.	Yes
	DP6.2 Subdivision layout avoids need for acoustic fencing or noise barriers.	No acoustic fencing or noise barriers required for the proposal.	Yes
OB16	DP16.1 All stormwater and groundwater works are to be undertaken in accordance with the recommendations in the <i>Total Water Cycle Management Plan</i> dated July 2012 prepared by King and Campbell.	Capable of complying. See comments under Stormwater later in this report.	Yes
OB20	DP20.1 Development provides; <ul style="list-style-type: none"> • an east west main street road as part of the Hilltop Village, • a public perimeter road, incorporating walking and cycle park for the full frontage of the rainforest, • a public car park and local park adjoining the beach access path, • a shared pathway link to the existing formed pathway along Ocean Drive, and • a road connection to Precinct C. 	Relevant facilities provided as part of DA2012/381. Proposal would not affect provision of these items.	Yes

Based on the above assessment, the variations proposed to the provisions of the DCP are considered acceptable and the relevant objectives have been satisfied. Cumulatively, the variations do not amount to an adverse impact of a significance that would justify refusal of the application.

Looking After Our Environment

- (iia) 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:

The landowners entered into Voluntary Planning Agreements for the purposes of Section 93F of the Act in relation to the rezoning of the land. The Seaside Area 14 Stage 1B Planning Agreement between Council and the landowner was executed on 14 September 2011. The landowners agreed to make Development Contributions in accordance with the VPAs in connection with carrying out of development permitted by the LEP.

The VPAs provide for the carrying out of works by the landowners including establishing and maintaining environmental lands, road works, local park embellishment, pedestrian beach access and dedication of land to Council. The agreements also include arrangements for payment of development contributions towards management of environmental lands, administration levy contribution, open space and roads contributions.

- iv) any matters prescribed by the Regulations:

New South Wales Coastal Policy:

The proposed development is consistent with the objectives and strategic actions of this policy. See comments earlier under SEPP No. 71 - Coastal Protection.

- v) any coastal zone management plan (within the meaning of the [Coastal Protection Act 1979](#)), that apply to the land to which the development application relates:

No Coastal Zone Management Plan applies to the subject site.

- (b) **The likely impacts of that development, including environmental impacts on both the natural and built environments, social and economic impacts in the locality:**

The site is located on the southern fringe of the coastal village of Lake Cathie. The coastal village of Bonny Hills is located approximately 1km further south. The site has a frontage onto Ocean Drive along its north western boundary.

Adjoining the site to the north is predominately residential land with medical centre and electricity substation immediately opposite on Ocean Drive. Immediately adjoining the site to the south and west is undeveloped residential land. Adjoining the site to the east is Rainbow Beach separated by a corridor of Littoral Rainforest.

The proposal is for an infill subdivision of a development lot previously approved as part of DA2012/381 for a 176 lot subdivision of the land. The development is a logical progression of the earlier approved subdivision. The proposal satisfies relevant planning controls and is not considered to be at odds with the context and setting of the locality.

Roads

The site has road frontage to proposed Roads 3 and 5 within the approved Seaside Estate (DA2012/381).

Looking After Our Environment

Adjacent to the site, proposed Roads 3 and 5 will be sealed public roads under the care and control of Council. Proposed Roads 3 and 5 will be local roads with Road 3 having a 7m formation within a 16m road reserve, and Road 5 having a 7m formation within a 15m road reserve.

Traffic and Transport

The site is currently a residue lot that is intended for further development. The addition in traffic associated with the development is unlikely to have any adverse impacts to the existing road network within the immediate locality.

Site Frontage & Access

Vehicle access to the site is proposed through individual driveways to each lot. Access shall comply with Council AUSPEC and Australian Standards, and conditions have been imposed to reflect these requirements.

Water Supply Connection

Council records indicate that the development will have a 20mm sealed water service. The proposed Water Supply strategy is acceptable in principle. A detailed engineering plan is to be provided.

Sewer Connection

Council records indicate that the development site will have two connections to Sewer. The proposed sewer reticulation strategy is acceptable in principle. A detailed engineering plan is to be provided.

As part of the Seawide Voluntary Planning Agreement (Part 3), the Catarina Sewer Pump Station and Sewerage Infrastructure must be commissioned and fully operational before a Construction Certificate can be issued.

Stormwater

The site naturally grades towards the north and will be serviced via a proposed interallotment drainage system.

The legal point of discharge for the proposed development is defined as a direct connection to Council's stormwater pit within Road 5.

Stormwater from the proposed development is planned to be disposed via an interallotment stormwater system, which is consistent with the above requirements.

A detailed site stormwater management plan will be required to be submitted for assessment with the S.68 application and prior to the issue of a CC. In accordance with Councils AUSPEC requirements, the following must be incorporated into the stormwater drainage plan:

- Provision of interallotment drainage to allow the proposed development to drain to the nominated point of discharge via a single suitably sized conduit.

Other Utilities

Telecommunication and electricity services are available to the site.

Evidence of satisfactory arrangements with the relevant utility authorities for provision to each proposed lot will be required prior to Subdivision Certificate approval.

Looking After Our Environment

Heritage

See comments earlier under clause 5.10 of LEP.

Other land resources

The site is within an established urban context and will not sterilise any significant mineral or agricultural resource.

Water cycle

The proposed development will be unlikely to have any adverse impacts on water resources and the water cycle.

Soils

The proposed development will be unlikely to have any adverse impacts on soils in terms of quality, erosion, stability and/or productivity subject to a standard condition requiring erosion and sediment controls to be in place prior to and during construction.

Air and microclimate

The construction and/or operations of the proposed development will be unlikely to result in any adverse impacts on the existing air quality or result in any pollution. Standard precautionary site management condition recommended.

Flora and fauna

Construction of the proposed development will not require any removal/clearing of any significant vegetation and therefore will be unlikely to have any significant adverse impacts on biodiversity or threatened species of flora and fauna. Section 5A of the Act is considered to be satisfied.

Waste

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. No adverse impacts anticipated. Standard precautionary site management condition recommended.

Energy

No adverse impacts anticipated. Lot shapes and orientation are considered satisfactory for the provision of future energy efficient dwellings.

Noise and vibration

See comments earlier under Clause 7.9 of the LEP. Condition also recommended restricting construction to standard construction hours.

Bushfire

The site is identified as being bushfire prone.

In accordance with Section 100B of the *Rural Fires Act 1997* the application proposes subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes.

The applicant has submitted a bushfire report prepared by Australian Bushfire Protection Planners Pty Ltd and dated 23 March 2010.

Looking After Our Environment

The Commissioner has assessed the development and has issued a Bushfire Safety Authority dated 10 June 2016. A condition is recommended requiring the development to comply with the RFS general terms of approval.

Safety, security and crime prevention

The subdivision layout will provide for additional dwellings with frontage to the existing subdivision roads, which will improve passive surveillance in the area.

Social impacts in the locality

Given the nature of the proposed development and its' location the proposal is unlikely to result in any adverse social impacts.

Economic impact in the locality

No adverse impacts. A likely positive impact is that the development will maintain employment in the construction industry, which will lead to flow impacts such as expenditure in the area.

Site design and internal design

The proposed development design satisfactorily responds to the site attributes and will fit into the locality. No adverse impacts likely.

Construction

No potential adverse impacts identified to neighbouring properties with the construction of the proposal.

Cumulative impacts

The proposed development is not expected to have any adverse cumulative impacts on the natural or built environment or the social and economic attributes of the locality.

(c) The suitability of the site for the development:

The proposal will fit into the locality and the site attributes are conducive to the proposed development.

Site constraints have been adequately addressed and appropriate conditions of consent recommended.

(d) Any submissions made in accordance with this Act or the Regulations:

One written submission from Essential Energy was originally received during the public exhibition of the application. However, additional information submitted by the Applicant resolved their issues and a letter has been received from Essential Energy dated 23 May 2016 confirming that they no longer have an objection to the development, providing that the following matters are addressed:

- Any new easements are created in accordance with Essential Energy's requirements;
- Existing encumbrances in favour of Essential Energy are maintained;
- Council ensures that Notice of Arrangements for the provision of electricity supply to the development is received prior to the issue of a Subdivision Certificate.

Looking After Our Environment

A condition has been recommended requiring confirmation of satisfactory arrangements for electricity supply.

(e) The Public Interest:

The proposed development satisfies relevant planning controls and is unlikely to impact on the wider public interest.

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

- Development contributions will be required towards augmentation of town water supply and sewerage system head works under Section 64 of the Local Government Act 1993.
- Development contributions will be required under Section 94 of the Environmental Planning and Assessment Act 1979 towards roads, open space, community cultural services, emergency services and administration buildings.

Refer to recommended conditions.

5. CONCLUSION

The application has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application. Where relevant, conditions have been recommended to manage the impacts attributed to these issues.

The site is suitable for the proposed development, is not contrary to the public's interest and will not have a significant adverse social, environmental or economic impact. It is recommended that the application be approved, subject to the recommended conditions of consent provided in the attachment section of this report.

Attachments

1[View](#). DA2016 - 284.1 Plans

2[View](#). DA2016 - 284.1 Recommended DA Conditions

3[View](#). DA2016 - 284.1 Submission - Essential Energy

Looking After Our Environment

Item: 12.06

Subject: DA2006 - 593.3 SECTION 96 MODIFICATION TO DESIGN OF RESIDENTIAL FLAT BUILDING CONTAINING A MIX OF PERMANENT DWELLINGS, SERVICED APARTMENTS, RESTAURANTS AND COMMERCIAL TENANCIES - LOTS 1 & 2 DP 780593, LOT 1 DP 947705, LOT 1 DP 350138, LOT 1 DP 664057, 16 LORD STREET, 50 WILLIAM STREET AND CHURCH STREET, PORT MACQUARIE

Report Author: Matt Rogers

Applicant: BDM Constructions
Owner: Scenic Properties Pty Ltd
Estimated Cost: N/A - modification
Parcel no: 12746, 25410, 25411, 29647, 30757

Alignment with Delivery Program

4.9.2 Undertake transparent and efficient development assessment in accordance with relevant legislation.

RECOMMENDATION

That DA 2006 - 593 for a Modification to design of Residential Flat Building Containing Mix of Permanent Dwellings, Serviced Apartments, Restaurants and Commercial tenancies at Lot 1 DP 780593, Lot 1 DP 947705, Lot 1 DP 350138, Lot 2 DP 780593, Lot 1 DP 664057, 16 Lord Street, 50 William Street and Church Street, Port Macquarie be determined by Council.

Executive Summary

This report considers an application for modification to the design of residential flat building containing a mix of permanent dwellings, serviced apartments, restaurants and commercial tenancies at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

This matter was reported to Council's Development Assessment Panel (DAP) on 13 July 2016 with the following recommendation:

'That DA 2006 - 593 for a Modification to design of Residential Flat Building Containing Mix of Permanent Dwellings, Serviced Apartments, Restaurants and Commercial tenancies at Lot 1 DP 780593, Lot 1 DP 947705, Lot 1 DP 350138, Lot 2 DP 780593, Lot 1 DP 664057, 16 Lord Street, 50 William Street and Church Street, Port Macquarie be determined by granting the modified consent subject to the recommended condition changes detailed in the attached document ('modification 2' and highlighted referred to).'

Looking After Our Environment

The Panel was unable to reach consensus.

For the recommendation = David Troemel and Dan Croft
Against the recommendation = Paul Drake

The dissenting recommendation from Paul Drake was '*That DA2006 - 593.3 be deferred to enable Council to seek legal opinion as to whether the modified proposal represents substantially the same development and can be lawfully approved by Council.*'

As the Panel was unable to reach consensus, the application is required to be referred to full Council in accordance with the DAP Charter.

It should be noted that subsequent to the DAP meeting it has been determined that there was an error in the DAP assessment report in that there is a total of 77 units in the proposal and not 76. This report has been updated to reflect this.

Following exhibition of the application, four (4) submissions have been received.

The application has been amended during the assessment of the application.

The development has been physically commenced with works completed in Church Street as required by the current development consent.

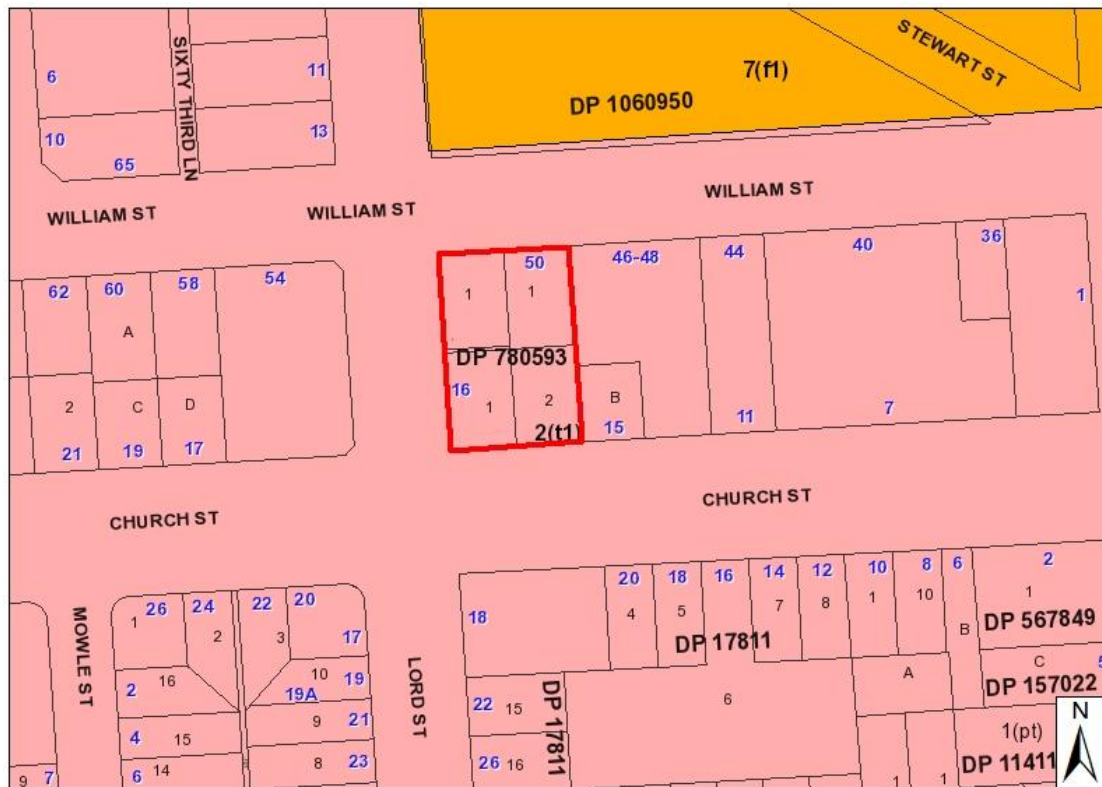
1. BACKGROUND

Existing sites features and surrounding development

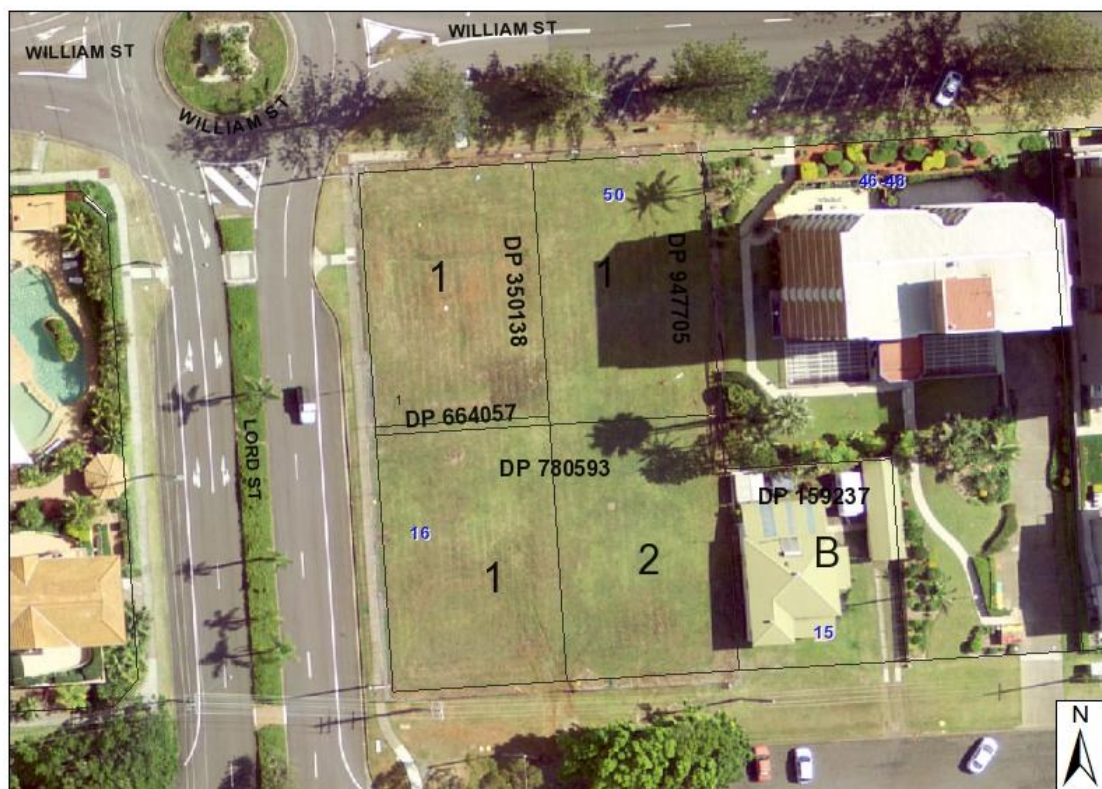
The site has a total area of 2512.3m².

The site was zoned 2(t1) residential tourist in accordance with the Hastings Local Environmental Plan 2001 (as in force at the time of the original application), as shown in the following zoning plan:

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The existing subdivision pattern and location of existing development within the locality is shown in the following aerial photographs (2012):



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2. DESCRIPTION OF DEVELOPMENT

The current approved development includes:

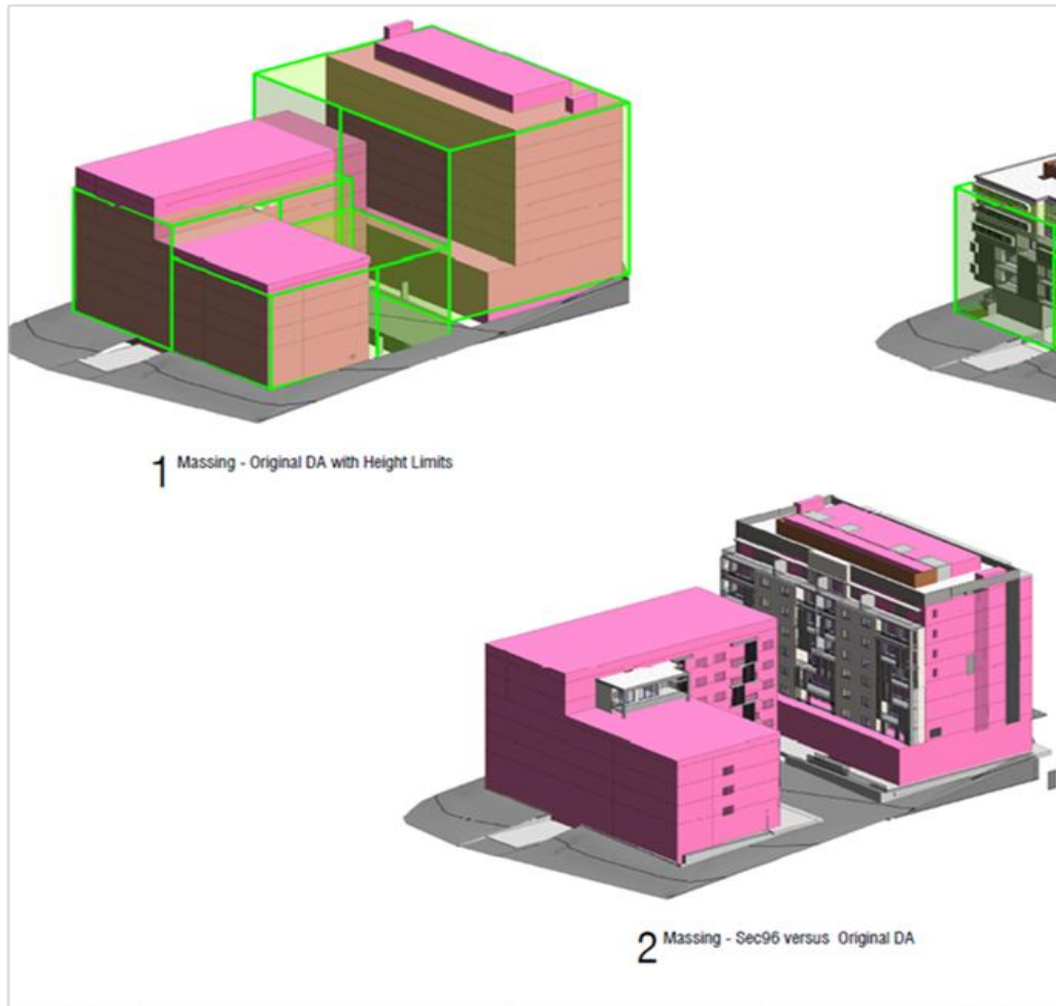
- A part 8, part 6 and part 4 storey residential flat building with:
 - Three (3) basement parking levels with 110 parking spaces and vehicle entrance off Church Street.
 - 57 serviced apartments
 - 17 residential apartments
 - A total of 74 units
 - Ground floor retail/restaurant tenancies
 - Removal of trees in Church Street

Key aspects of the modification proposal (as amended) include the following:

- The proposal includes a modification to the design of the previous approved residential flat building including:
 - Three buildings remain proposed as Buildings A, B and C
 - 56 residential units
 - 21 serviced apartments
 - A total of 77 units which is an increase in 3 units (4% increase)
 - There remains three levels of basement carparking, including disabled parking spaces. A total of 169 car spaces are now proposed.
 - Retail/restaurant tenancies along the William Street and Lord Street frontages
 - Staging of construction (individual Construction Certificates) - bulk earthworks, basement and then balance of works of completion of development.

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The following massing images (massing 1 and 2) show the difference between the current and proposed modification (white sections of building only increased footprint):



Refer to attachments at the end of this report.

Application Chronology

- June 2007 - original DA approved
- March 2010 - staging modification approved
- 4 July 2012 - Confirmation of physical commencement by Council
- 2 March 2016 - Modification application lodged with Council
- 10 to 23 March 2016 - neighbour consultation of modification proposal (original submitted).
- 23 March 2016 - Additional information requested
- 7 April 2016 - Additional information received.
- 13 April 2016 - Additional information received.
- 19 April 2016 - Copy of submission forwarded to Applicant
- 19 April 2016 - Additional information received.
- 9 May 2016 - Additional information received.
- 27 May 2016 - Additional information received including amended plans
- 2 to 15 June 2016 - neighbour consultation of amended plans and additional information submitted.

Looking After Our Environment

- 13 July 2016 - Application reported to Council's Development Assessment Panel.

3. STATUTORY ASSESSMENT

Is the proposal substantially the same?

Section 96 of the Environmental Planning and Assessment Act 1979 enables the modification of consents and categorises modification into three categories - S.96(1) for modifications involving minor error, mis-description or miscalculation; S.96(1A) for modifications involving minimal environmental impact; and S.96(2) for other modifications. Each type of modification must be considered as being substantially the same to that which was originally consented to.

The subject application is being considered under the provisions of Section 96(2). Whilst having quite a lot of design change to the buildings, the proposal is considered to be substantially the same development to that which was originally consented. The proposed modification is not considered to alter the fundamental essence of the original development for the following reasons:

- Building height and built form are generally the same as shown with the massing model above.
- The main parking access is to be located off Church Street and this remains the same for the proposal.
- This proposal retains active street front elements with two separate dining areas fronting William Street and large glass frontages to provide for a welcoming building at pedestrian level.
- There remains three (3) levels of basement carparking.
- The deep soil zone has been retained and is a landscaped area providing solar access to the internal facing units and has good pedestrian access at ground level.
- The architectural drawings show the original approved footprint via a dashed blue line, and it is evident that all three buildings are generally matching the footprint of the approved plans with the increased areas shown clearly on the plans and massing plans shown earlier in this report.

Are there any condition(s) of consent imposed by a Minister, government or public authority that require modification?

No changes to any conditions imposed by a Minister, government or public authority.

Does the application require notification/advertising in accordance with the regulations and/or any Development Control Plan?

Neighbour notification has been undertaken on two (2) occasions including notification of amended plans in accordance with DCP 2013.

Any submissions made concerning the modification?

Four (4) submissions have been received (see full copies attached to this report) following completion of the neighbour notification. Key issues raised in the submissions received and comments in response to these issues are provided as follows:

Looking After Our Environment

Submission Issue/Summary	Planning Comment/Response
The current lapsed or not lapsed status of the original DA consent dated 2007 is questioned.	Confirmation of physical commencement has been previously provided by Council. A footpath and pedestrian works have been constructed in Church Street as required under the consent.
On street parking is almost non-existent on most occasions in the vicinity, the additional demand this development will place on the area, especially for restaurant customers and visitors will cause substantial devaluation and congestion for other buildings in the vicinity, despite the allocation of on-site parking as these parking spaces are behind security doors and gates.	Off-street parking provision is compliant with Council Parking Policy. There is street parking in Lord Street and also in Church Street which is proposed to be reconfigured.
Restaurant customers and visitors will not be aware of the on-site parking accessed from Church Street apart from the fact the doors/gates are security access.	This arrangement is not proposed to change with the modification application. Staff can park in the basement carparking area within the allocated parking spaces for the commercial tenancies. Parking on the street will naturally occur with customers however this has not changes from the original proposal.
The 2007 Parking report should not be taken into consideration due to vast changes to the development since that date.	An updated traffic and parking report has been submitted with the modification application. There have been changes in the basement parking design, commercial space and traffic numbers during the assessment of the application. Parking and traffic implications with the modification proposed have been carefully considered.
In 2011 the zoning for the area was changed including the removal of the commercial zone.	This is correct however 'Shop top housing' is now permitted in a R4 high density zone as follows: <i>means one or more dwellings located above ground floor retail premises or business premises.</i>
The justification of using the parking rate of 1 space per 30m ² gross leasable floor area instead of 1 space per 6m ² in this assessment is based on the original 2007 parking calculation.	This is a modification application so it is not appropriate to revisit the interpretation on how parking should be assessed. Therefore 1 space per 30m ² commercial rate is used for the purpose of assessment of off-street parking provision.
In keeping with the surrounding café and restaurant usages it is felt patrons will utilize the existing available on street	Parking will be available for staff in the basement. Parking provision of off-street complies with the minimum

Looking After Our Environment

Submission Issue/Summary	Planning Comment/Response
parking. It is anticipated the parking calculated for these usages would be utilised by staff.	requirements of Council's Parking Policy. Parking on-street will occur however additional parking is unable to be required above Council Policy.
The estimated 36% decrease in traffic flow since the 2007 assessment, despite an increase in the number of total units appears to have no valid logic despite the latest slight reduction in the number of Units.	Refer to traffic impact comments provided later in this report.
It has been an ongoing problem in Gordon Street for many years with the sewer main being overloaded and blocked on many occasions. Are there proposed upgrades to this sewer line to cater for the substantial additional load which will be placed on this infrastructure?	No issues of sewerage capacity for the proposal were raised as part of the original approval. Existing conditions on the current approval remain to apply to the modification approval.
The Arborist report dated 2006 should be disregarded as outdated.	No change is proposed to the removal of trees within Church Street. The application is for modification of consent. There are conditions in place to require replacement plantings and treatment of street improvements - refer attached conditions.
There are a number of trees/palms close to the boundary of the proposed development. A number of these trees are, it appears, within the distance from boundaries guidelines. Council should obtain an independent arborist report.	This matter has been requested to be addressed by the Applicant. The basement parking is already approved to be within close proximity to the boundary. The trees on the north-western corner including palms maybe structurally effected however this will need to be resolved during construction as it is already approved.
Previous plans show the building envelope to be 3m from the eastern boundary however the plan on plans from the north-east corner of Building A to the boundary.	There is very little change in building envelope setbacks - refer mass modelling diagrams earlier in this report. Setbacks are addressed later in this report.
Do the SEPP 65 government regulations apply here and if so does the building comply with all SEPP 65 rulings.	The SEPP 65 rules apply however there have been amendments to this legislation and the current amendments to this SEPP apply to any building element which is proposed to change. A new Apartment Design Guide has been introduced which has different requirements to the previous

Looking After Our Environment

Submission Issue/Summary	Planning Comment/Response
	Residential Flat Code which was called under this SEPP. Refer specific details addressing this later in this report.
The current plans have blacked out building details. Is there are valid reason for this.	Council is required to not publicly release copies of the internal floor plan layout details without the owner's permission.
It is imperative that a pre-constructive dilapidation survey of the Seawatch Building should be completed in consultation with Seawatch Management.	Consent condition requiring dilapidation report is proposed to be retained.
The eastern side of Block A has windows facing the bathroom windows on the western wall of the Seawatch building.	A condition is recommended to require privacy screens to meet acceptable industry standards with openings - refer to recommended conditions.
The north-eastern corner balconies have views directly into the master bedrooms of Seawatch as well as into the lounge rooms and front balconies of Seawatch.	No privacy screens were considered to be required with the current approval. The changes are shown to the north-eastern corner later in this report with marked up diagrams.
The proposed increase in number of units associated with this development should not be supported as it increases the density of development and increases the need for additional off street parking within the complex.	The density is considered acceptable with the apartment mix changes proposed (as amended). The off street parking provision complies with Council Parking Policy requirements as detailed later in this report.
The increased number of units and changes made to Block A, clearly adds to the bulk and scale of the development and increases the shadows cast, thus impacting on the adjoining unit blocks B and C, particularly during the winter solstice.	There is no change to the height of the Building A and its likely shadow cast. There is no significant change in overshadowing from the current approved development.
Concerns with drainage of basement carpark given the contents of the geotechnical report and comments from Council's stormwater engineer that there has not been an approved drainage solution for the development. A drainage solution should be endorsed with the development consent.	<p>Consent conditions are recommended to be retained to require:</p> <ul style="list-style-type: none"> - Roof and surface waters to be disposed of to the street. - Provision is to be made for an automatic stormwater sump and pump system including standby pump designed by a Hydraulic Engineer. <p>These are acceptable - refer attached recommended conditions for further details.</p>
Upon receipt of a justified complaint in relation to noise pollution emanating	The following consent condition is to remain:

Looking After Our Environment

Submission Issue/Summary	Planning Comment/Response
<p>from rock breaking as part of the excavation and construction processes, rock breaking will be restricted to between the hours of 9am to 3pm Monday to Friday. Details of the noise mitigation measures and likely duration of the activity will also be required to be endorsed by Council.</p>	<p><i>Noise from construction activities (measure as the L_{AeqT} noise level) shall not exceed the background noise level (measured as the L_{A90} noise level in the absence of the source), for periods of construction between 4 and 26 weeks by 10 dB(A), and for periods of construction exceeding 26 weeks by 5 dB(A), in any Octave Band Centre Frequency, when measured at any affected residence.</i></p> <p>A construction management plan will be required to be prepared to address this requirement.</p>
<p>The emission of noise from the construction of the development should comply with the Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009).</p>	<p>The following consent conditions are recommended to be retained:</p> <ol style="list-style-type: none"> 1. <i>A person who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land shall do at their own expense and where necessary:-</i> <ul style="list-style-type: none"> • <i>Preserve and protect the building from damage; and</i> • <i>If necessary, underpin and support the building in an approved manner, details of which are to be submitted with the application for the Construction Certificate and certified by a practicing chartered professional civil and / or structural engineer or accredited certifier.</i> <p><i>The person who causes this excavation must, at least seven (7) days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to this owner of the proposed work. (Note: An adjoining allotment of land includes a public road and any other public place. A building includes a fence).</i></p> 2. <i>The approval of any structure supporting a public road, e.g. retaining wall, shall not be issued without the written concurrence of the Road Authority. Full details</i>

Looking After Our Environment

Submission Issue/Summary	Planning Comment/Response
	<p><i>including certification of design shall be submitted to the Road Authority.</i></p> <p>3. <i>If ground anchors are required for construction of the building foundations that extend across the boundaries of the site approval is required from the adjacent owners. If the anchors extend onto public land, submission of an application (under S.138 of the Roads Act, 1993) is required, in addition to lodgement of a separate security bond.</i></p>
<p>The stormwater pump out system must be certified by a qualified designer and provide for a 1:100 year design storm event, alternate pumping system capable of emptying the holding tank at either the permissible site discharge rate or the rate of inflow for a 1 in 5 year storm event, an alarm system to alert a pump failure, 100mm freeboard to all nearby parking spaces and discharge to the street along with the remaining site runoff under gravity.</p>	<p>Consent conditions are recommended to retained to require:</p> <ul style="list-style-type: none"> - Roof and surface waters to be disposed of to the street. - Provision is to be made for an automatic stormwater sump and pump system including standby pump designed by a Hydraulic Engineer
<p>An updated acoustic report should be provided for all mechanical equipment including but not limited to mechanical extraction proposed for the basement carpark and any common air conditioning units.</p>	<p>The application is for a modification of consent to a previous approved building.</p>
<p>It is observed that the NSW Apartments Design Guide (NSWADG) contains design controls that are more stringent and requiring of a higher level design quality in many of the key criteria applicable to this development. There are a very large number of non-compliances with the NSW Apartment Design Guide.</p>	<p>The Department of Planning and Environment's Circular PS 15-002 Issued 19th June 2015 specifically requires this amendment to consider the ADG. The RFDC provisions are not applicable to this assessment. The application therefore correctly refers to the ADG. The ADG are the current design controls relating to residential buildings. It is noted that there are some provisions which are more stringent and other provisions which are more flexible. It is also noted that the ADG overrides Council's DCP 2006 in force at the time in all regards except for height and front setbacks.</p> <p>The approach taken by the Applicant is that where the modified design</p>

Looking After Our Environment

Submission Issue/Summary	Planning Comment/Response
	<p>changes an element of the current approved design then the new Apartment Guide is applied.</p> <p>If there is no change to an element of the development then the Apartment Guide requirements are not required to be considered.</p> <p>Refer to assessment table later in this report which only considers those elements which have changed which require reconsideration.</p>
<p>The applicant states here regarding the development and Council's LEP & DCP controls, that: <i>"there will be aspects of the local planning controls that are not able to be complied with"</i>.</p> <p>This statement is unfortunately an understatement and there are large numbers of very major planning controls that are not complied with by the development.</p>	<p>The Applicant has stated the following in response: <i>Correctly noted. The Environmental Planning and Assessment Act requires applications made under the provisions of section 96 to meet the "substantially the same" test. Therefore, this is considered an overriding requirement for applications made under the provisions of s96.</i></p> <p><i>Amending the building which was approved in 2006 to fit the design requirements of the current development controls may result in a building which is no longer substantially the same. Such a scenario would mean the application could not legally be considered under the provisions of section 96. For these reasons, applications made under the provisions of s96 are assessed in this context.</i></p>
<p>The site analysis has patently failed to identify the site constraints imposed by the site boundary conditions and the NSWADG and the large setback distances that it requires.</p>	<p>The requirements of the NSW ADG are addressed later in this report. Whilst there is some information has not been provided in the site analysis there is sufficient information provided to make assessment and determination against the requirements of the Guide particularly when this application is a modification application.</p> <p>Specific reconsideration of the east side setback is addressed later in this report under the NSW ADG.</p>
<p>Both the new and original tower envelopes are both equally massively in gross contravention of all the DCP /</p>	<p>The Applicant has stated: <i>Noted that no significant change in shadow due to close alignment of</i></p>

Looking After Our Environment

Submission Issue/Summary	Planning Comment/Response
Residential Flat Design Code / & NSWADG code requirements that would prevent this tower from being placed this close to the side boundary, and accordingly to be casting this quantity of overshadowing.	<i>approved and proposed building envelopes as demonstrated in application documentation. Original approval remains active and valid. There will a negligible difference in quantity of shadowing in the afternoon mid winter to the neighbouring east property the Seawatch from the current approved building. The height of the Building A is same as currently approved.</i>
The existing streetscape is strongly contributed to by the Seawatch site next door, which is the only neighbour of the subject development), which has a much lesser level of street activation that that which is proposed by the subject development's 8 storey wall of building at a zero setback on the street boundary for almost the whole width of the frontage. Hence the subject development is very greatly increasing and intensifying, instead of 'maintaining'.	<i>The Applicant has stated: The "maintained" active street frontage refers to maintaining the approved active street frontage as per the current consent. The application for the current approval made reference to this requirement and the s96 consultation with Council identified this matter as an important issue - to maintain the active street frontage to improve pedestrian interaction along the William Street frontage in particular. This is similar to areas further east along William Street. This is also consistent with the provisions of DCP 46 which specifically noted William Street as not having a minimum front street setback as it formed part of the Town Beach Activity Area. DCP 46 specifically refers to the subject land in the following description of the desired future characteristics: "The Town Beach Area is to become a vibrant mixed-use area, providing a mix of tourist accommodation, particularly short-term rental apartments, as well as permanent residences. Ground floor retail (particularly cafes and restaurants) is to be encouraged, on William Street opposite Observatory Park, activating the street edge and optimising views and aspect to the north."</i>
The DCP controls specifically require the open space landscaping on this exact type of corner site to extend all the way through to the primary street frontage. Therefore in contravention of	<i>The Applicant has stated: Communal open space provisions are consistent with current approved building. The application is for a modification</i>

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<p>the DCP, the development has instead placed an 8 storey building envelope on the portion of its site that the DCP requires to be open space.</p>	<p>application. The 8 storey building envelope has been carefully assessed as part of the original assessment is proposed to be retained - refer to 3D massing model provided earlier in this report for assistance.</p>
<p>The separation distance proposed on the east side is highly non equitable. It proposes only 1.5m setback on its side of the common boundary in contravention of the following:</p> <ul style="list-style-type: none"> - RFDC, requires 4.5m min setback of the tower in this location, - NSWADG, requires 6.0m min setback of the tower in this location - Council's DCP requires 3.0m min setback in this location. <p>Moreover, despite the above gross non compliances, the applicant at the same time states and that "yes" it complies. A false statement, with very heavy damage effects to the neighbouring Seawatch property, that is being concealed by this statement.</p>	<p>The Applicant has stated the following:</p> <p><i>The eastern side setback is as per the current approval. The SEE provided by All About Planning with the original application specifically refers to this 1.5m side setback and notes, inter alia, this was supported by the then Design Review Panel; noting the short wall lengths of 25m and 15m as well as the central open space / deep soil zone; compliance with FSR; lack of detrimental overshadowing on adjoining properties due to northern orientation; only secondary windows on eastern side for both proposed building and existing Seawatch</i></p>

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The applicant then states that: "between habitable rooms and site boundaries 6m up to 4 stories...etc" and then states: "yes" it complies, despite the fact that it only proposes 1.5m separation.	
It is noted that the established legal position in NSW, is that to the extent that there exists any contradiction between the NSW Sepp 65 RFDC Code and a Council DCP, then at the very least the NSW RFDC Code is to be given, and applied with, a minimum of equal weighting if not more.	Consideration was given to the RFDC with the original approved development. The NSW Apartment Guide is considered with any element of change. The Apartment Guide more clearly now (compared to the RFDC) prevails over Council's DCP in the event of any inconsistency.
It is observed that in terms of many sets of building planning criteria that relate to the environmental benchmarks of a building, and also in terms of the adverse amenity effects that it will have on existing adjacent buildings, that the provisions contained within the Council DCP for apartment buildings, are demonstrably inferior and alarmingly more lax compared with those set by the NSW Department of Planning in the RFDC. In view therefore of the markedly lower standard of amenity promoted by the Council DCP, and in order to make this submission apply to the worst case scenario, we use Council's DCP by which to make our assessment of the subject proposed development against.	The requirements of the Apartment Guide now override Council's DCP where there is a change in building elements from the current approval. Privacy requirements are addressed later in this report.
The 1.525m setback distance is effectively for the whole length of the east wall of the tower envelope, with it only increasing to 1.7m at the far south end of the wall owing to it being slightly out of parallel with the site boundary.	
The whole east façade of the tower envelope, is in footprint, a continuous 8 storey external wall plane without any deep re-entrant recess or shadow relief in its broad envelope.	
The NSW RFDC at part .01. These apply to require this type of proposed 8 storey building envelope to be a minimum of 4.5m away from this category of side boundary.	
The NSW Department of Planning's 'Apartment Design Guide' at Part 3F,	

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and specifically on page 64, it applies directly to require the east wall of the subject building to have a minimum 6.0m setback distance from the side boundary.	
The proposal does not comply with the DCP in regards to the placement of the subject building so close to the boundary which will have a heavy overshadowing impact on the adjacent property owing to its very small setback distance, and it also has a large number of windows of habitable rooms overlooking directly into the adjacent property.	The Applicant has stated: <i>Noted that no significant change in shadow due to close alignment of approved and proposed building envelopes as demonstrated in application documentation. Original approval remains active and valid.</i> There will a negligible difference in quantity of shadowing in the afternoon mid winter to the neighbouring east property the Seawatch from the current approved building. The height of the Building A is same as currently approved. Privacy impacts are considered later in this report.
The placement of the subject building so close to the boundary will have material effects on the levels of natural light available on the Seawatch building in winter months. The extent of the adverse effect would be compounded an magnified many times over in the event that the owner of the Seawatch property should elect to construct a development similar to the one proposed on their own site.	
There are a large number of windows designed in the side wall of the proposed building (including windows of habitable rooms), and none of them are set back at the required 3m. Indeed all of them are only setback approximately half that 3m distance required by the DCP. All the windows are only setback between the narrow range of 1.5 to 1.7, from the boundary. (Moreover it is noted that the RFDC requires the windows to be at a minimum 4.5m setback). Effect: This specific DCP requirement for 3m setback is therefore breached.	The requirements of the Apartment Guide now override Council's DCP. Privacy requirements are addressed later in this report.
No part of the east wall of the 8 storey tower is setback 3m from the side boundary. It is setback only 1.5 to 1.7m from the boundary. The fact that the adjoining property is a strata titled building (and of the most applicable kind being residential), makes this DCP requirement for a 3m minimum setback distance directly applicable. The adverse ramifications of this breach are extremely severe, because they will	

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result in grossly inferior levels of occupational amenity, that fall short by a big margin of what the Drafters of Port Macquarie Council's DCP considered to be the minimum acceptable standard needed in order to provide acceptable living conditions for its residents.	
Whilst there is a superficial amount of materials modulation on the façade, there is no articulation.	There is satisfactory articulation of the facades to not warrant refusal of the application.
The sets of vertical louvres shown drawn on the elevation will not perform to block the privacy - violating sightlines that will still occur across the boundary.	Agree that there is limited detail on louvres. Condition recommended specifying openings.
Making the louvres even less effective is that they are drawn as being mounted on large metal frames that protrude out from the façade and the windows by approximately 500mm, making them even less effective for controlling sightlines.	Agree that there is limited detail on louvres. Condition recommended specifying openings. The architectural treatment chosen is unable to be refused on its own. Refer to setback discussion later in this report.
The other side effect is that to have these protruding large metal frames protruding out at only 1m approx. from the common boundary, is one of poor aesthetics and unsightliness.	
The most important principle to note regarding all these louvres, is that they are not in any way, any valid form of recognized substitute for the necessity to achieve the primary requirement to set this building back from the boundary by the following minimum clear distances	Agree that there is limited detail on louvres. Condition recommended specifying openings.
Although the subject development is not proposing to have a 'party wall' located on the actual boundary alignment, this provision nevertheless has some relevance because of the demonstrably non compliant and extremely close relationship that the 8 storey tower wall will nevertheless still have in relation to the boundary, - such that it will have an effect much in the same way that an actual party wall would.	Privacy requirements are addressed in detail later in this report.
Seawatch has this type of more generous landscaped setback beside the side boundary, and the point to be noted from this, is that it would be invalid for the proponent of the proposed	The minimum deep soil zone and communal open space requirements under the Apartment Guide are complied with. This is a modification application to an already approved

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development to seek to justify their very small setback on their side of the boundary, on account of there happening to be a larger than normal setback on the adjacent Seawatch site. That would be completely contrary to all the requirements and principles on this subject set out in the NSW state planning codes. Such an argument would also fail the 'combined effects test', (which is applied and analysed on a subsequent page of this submission).	building.
The development proposes zero setback distance between the underground parking basements structure and the side boundary, despite the fact that Council's DCP stipulates that the underground carpark structure must have a 3m setback.	This is a modification application. The basement is already approved with minimal setback (approx. 200mm currently approved) to the common boundary of the Seawatch property.
The development drawings show that it proposes to extend its excavated underground parking basement levels laterally to in effect extend all the way across to the side boundary (including the thickness of the proposed retaining wall structure at the boundary). This is in contravention of the DCP requirements.	
The development drawings show that there is no proposal to provide any deep soil landscaping between the proposed building and the side boundary, nor any proposal to connect deep soil areas through to the public street. This is in contravention of the DCP requirements.	The deep soil zone provision complies with the Apartment Design Guide which now prevails over the previous DCP 46 requirements as its extent and layout has been modified.
The proposed building development is not consistent with the adjacent streetscape. It's positioning at so close to the front boundary (in contrast to the adjacent building that is well set back), that it does not reduce visual impact on views from the public domain. It does the opposite. And result is that the proposed building form will have a grossly overbearing effect on the adjacent open space of the Seawatch property next door.	The front setback is not proposed to change with this modification application. If the Seawatch site was redeveloped it would be difficult to agree that the same generous setback would be retained for a new development of that site when so many other buildings in the street are forward of it and consistent with the desired character controls required under Council's DCP.
One of the key tests in assessing the level acceptability & compliance of a building design in relation to adjacent	This is a modification application to an already approved development. Notwithstanding that the Seawatch

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<p>properties, is to assess what would be the combined effect produced, if an identical building was to be developed on the property adjacent to the one proposed, such that they are the same height, same set back, and also have the same quantities of windows etc facing each other and the side boundary at the same setback distance as each other.</p> <p>The subject proposed building design, patently fails this test. It fails this test not only because of the gross violations of the RFDC and DCP codes that exist, but also most critically because of the severe deficiencies and damagingly unhealthy results that would be suffered by the occupants in both buildings.</p>	<p>building has generous setbacks and limited windows on its western elevation this additional specific privacy measures are recommended.</p>
<p>There would be two 8 storey high buildings, both with continuous 25m high parallel walls at just 3m apart from each other, and both with large numbers of large windows of habitable rooms facing directly toward each other, with amenity even further downgraded by both having large metal frames with louvres protruding out into this very narrow chasm space, at just 2m away from the ones opposite. In this scenario, it is not overstating the outcome to assess that it would equate to slum conditions. The lack of effective privacy and the acoustics from the dozens of open habitable windows directly opposite each other at such immediate range, would be appalling.</p>	<p>Setbacks and privacy are addressed later in this report as being satisfactory. This is a modification application.</p>
<p>For these reasons, if Council were to approve this proposed development it will result in a real and tangible reduction in the actual land real estate value of the Seawatch site. It would mean that the Seawatch site in reality, would be prevented from re-developing in reasonable and responsible manner, and also certainly prevented from re-developing in a manner equitable with that the subject adjacent development if it is approved.</p>	<p>The application is for a modification of a previous approved development. Subject to the additional privacy measures required (as detailed later in report) the difference in impacts to the neighbouring Seawatch property is negligible.</p>
<p>The measurable economic loss that would occur, would be at the liability of Council because it would not be an</p>	<p>All LEP, DCP and SEPP65 requirements are satisfactorily addressed in this report.</p>

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<p>outcome of valid application of LEP and DCP controls, but rather the direct consequence of Council approving a development that is in gross contravention of its own DCP requirements relating exactly to these gross loss of amenity issues.</p>	
<p>For the very substantial reasons as set out above in this submission, the SEPP 65 Verification Statement letters issued by the applicant, (as annexed to the reports by LPM), are observed to contain patently false, misleading, and erroneous representations, regarding 'Built Form', and Setbacks.</p>	<p>The Applicant has stated the following: <i>Response from architect: As the author and nominated responsible architect for the Section 96 Application for DA2006 - 593.3 I have reviewed Sepp 65 verification statement dated 25 May 2016 and confirm that the statements have been made in good faith and are consistent with the proposed Section 96 Application modifications to DA2006 - 593.3 As this application is made under the provisions of section 96 of the Act, any amendments may only be made such that the building remains substantially the same to that as approved. In this regard, ddc architects have aimed to ensure that the building envelopes were almost identical in scale and bulk. It is our opinion that an assessment of all amendments would satisfy the substantially the same test applied to all section 96 applications.</i></p>
<p>There is a very large, grand, and beautiful existing Fig tree located on the public footpath in Church Street that this development proposes to remove. This existing tree is a beautiful specimen, and is also located on a very wide public footpath area that is well away from the boundary of the proposed development.</p> <p>There can be no justification for its removal. It appears that the only reason the developer is proposing to remove it is that just a one third portion of the proposed development's driveway across the public footpath, is clashing with the tree circumference.</p> <p>This represents extremely poor project master planning, and is a disastrous and unnecessary result of a flawed design.</p>	<p>No change is proposed to the approved removal of trees within Church Street. The application is for modification of consent. There are conditions in place to require replacement plantings and treatment of street improvements - refer attached conditions.</p> <p>There also has been a previous Council resolution made at an Ordinary meeting of Council to approve removal of all Fig trees in Church Street. Several other fig trees to the east have been removed.</p>

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<p>The increase in the number of apartments and other uses that is proposed by the current S96 application, creates an increase in the intensification of the populations both within, and visiting the development, of the order that Council should resolve to be beyond what is the valid allowable scope for a S96 process to assess and determine.</p>	<p>It is considered that the proposal (as amended) is substantially the same development to that which has been approved. The difference in apartment numbers is as follows: <u>Current:</u></p> <ul style="list-style-type: none"> - 57 serviced apartments - 17 residential apartments <p>A total of 74 apartments</p>
<p>Council should determine that this development proposal should more validly be made by way of DA process rather than S96, so that all aspects will be more fully documented and assessed as to their full environmental effect. There are many effects of this proposed intensification that are not documented or reported on in the application.</p>	<p><u>Proposed:</u></p> <ul style="list-style-type: none"> - 56 residential apartments - 21 serviced apartments <p>A total of 77 apartments are now proposed which is an increase in 3 apartments.</p> <p>All applicable assessment issues have been addressed later in this report.</p>
<p>The impacts on both the traffic quantities and the car parking pressures that will be caused by casual visitors to the complex, need to be more thoroughly considered. The natural tendency will be for visitors to the apartments to prefer to not park underground, but rather seek street spaces. Similarly customers visiting the businesses in the development will also almost all tend to seek car spaces in the street rather than in the underground basements, placing over-capacity pressures on the street parking that is already exhausted in summer months.</p>	<p>The Applicant has stated: <i>The onsite parking and traffic was re-assessed in relation to the amendments. The parking is compliant with Council's parking requirements. It is noted that the onsite parking provided by the Seawatch development is less than current Council requirements (based on the consent documentation), however this building proposal meets and exceeds current onsite parking requirements.</i></p> <p>Refer to further detailed consideration of parking requirements under Council Parking Policy later in this report.</p>
<p>The DA consent conditions have been examined, and it is considered that the provisions in the conditions do not provide sufficient detail on the type of controls and methodology that the builder should be required to adhere to when carrying out excavation and removal of the large quantities of ground strata that are reported as containing naturally occurring asbestos.</p>	<p>The Applicant has stated: <i>Naturally occurring asbestos (NOA) is known to occur within the Port Macquarie Serpentine. However the presence of asbestos minerals in the weathered soil profile is considered highly unlikely due to chemical weathering of asbestos minerals to clay found on this particular site. Should highly weathered serpentinite rock be encountered further assessment would be required to assess for the presence of naturally occurring asbestos and in accordance with WHS Regulation an</i></p>

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	<i>asbestos management plan would then be required for the treatment and disposals.</i>

Any matters referred to in section 79C (1) relevant to the modification?

The following comments are provided to changes made to the original approved development triggering reconsideration of applicable planning requirements as follows:

- (a) **The provisions (where applicable) of:**
(i) **any Environmental Planning Instrument:**

Section 79C(1) Matters for Consideration

In determining the application, Council is required to take into consideration the following matters as are only relevant to the modification development:

- (a) **The provisions (where applicable) of:**
(i) **any Environmental Planning Instrument:**

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

In accordance with clause 4, this SEPP applies to the proposal and requires consideration. This SEPP has been updated since the assessment and determination of the original DA in 2006-2007.

In accordance with clause 31(3), the provisions of SEPP 65 as applied to the original consent in 2006 have now changed, and did not originally include the Apartment Design Guidelines. The transitional and savings provisions in SEPP 65 relate to applications which had been made but not determined at the time the new legislation was introduced. With regard to any section 96 amendment, regard should be given to the current legislation, and compliance with same achieved where possible, as it is considered that the current legislation is more reflective of the desired planning outcomes of the Council and State Government– particularly in relation to improving the design standards for residential buildings. Therefore, the provisions of the more up to date legislation have been applied, and therefore the current SEPP 65 provisions, and associated apartment Design Guidelines.

In accordance with clause 29(2)(b), the following table provides an assessment against the design quality principles:

Requirement	Proposed	Complies
Principle 1: Context and neighbourhood character Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental	The proposed modified buildings will satisfactorily contribute to the quality and identity of the area.	Yes

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<p>conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>		
<p>Principle 2: Built form and scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The proposed development remains to be of a scale and bulk that is compatible with the existing and intended built form for this locality. Appropriate setbacks are proposed together with landscaped areas and a satisfactory level of amenity through private gardens, balconies, terraces and direct pedestrian access to William Street, Church Street and Lord Street contribute to the streetscape character of the area.</p> <p>The heights of the buildings remain to step down from William to Church street in response to the sloped topography of the site.</p>	Yes
<p>Principle 3: Density</p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access</p>	<p>The density of the proposal is satisfactory having regard to the planning controls in place at the time of determination of the original application and new Apartment Design Guide.</p> <p>The proposal involves an</p>	Yes

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to jobs, community facilities and the environment.	amendment to the floor layouts which results in a changed mix and minor increase in the number of apartments.	
<p>Principle 4: Sustainability Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>Appropriate energy saving and water efficiency measures have been included into the design of the building.</p> <p>The majority of the apartments ie. 71 % of the units have 3 hours of sunlight facing units providing suitable solar access.</p> <p>The modified design makes provision of sun shade devices in the form of vertical louvres to windows and balconies, is a passive solar design measure and is incorporated throughout the development providing some enhanced privacy, glare control and control of heat gain.</p>	Yes
<p>Principle 5: Landscape Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p>	<p>The modified landscape design is satisfactory.</p> <p>The modified proposal provides for compliant deep soil planting zones around the central courtyard of the site.</p>	Yes

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<p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>		
<p>Principle 6: Amenity Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The modified apartments are generously sized and all have practical sized terraces and balconies directly accessible from living areas.</p> <p>Apartments have modified in design however retain design to favour orientation towards the streets, beach and the central courtyard with balconies / living areas receiving ample natural light and good ventilation.</p> <p>The proposal achieves compliance with sunlight criteria in that 71 % of apartments that need to receive a min. of 3 hours direct sunlight between 9.00 am to 3.00pm at mid-winter.</p>	Yes
<p>Principle 7: Safety Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The apartments fronting William Street, Church Street and Lord Street overlook either streets or the central courtyard which also assists with casual surveillance.</p> <p>Pedestrian and vehicle access will be via security doors and gates and intercom systems from Church Street.</p> <p>Access to the site for visitors is only available through the security gates. All pedestrian or vehicular</p>	Yes

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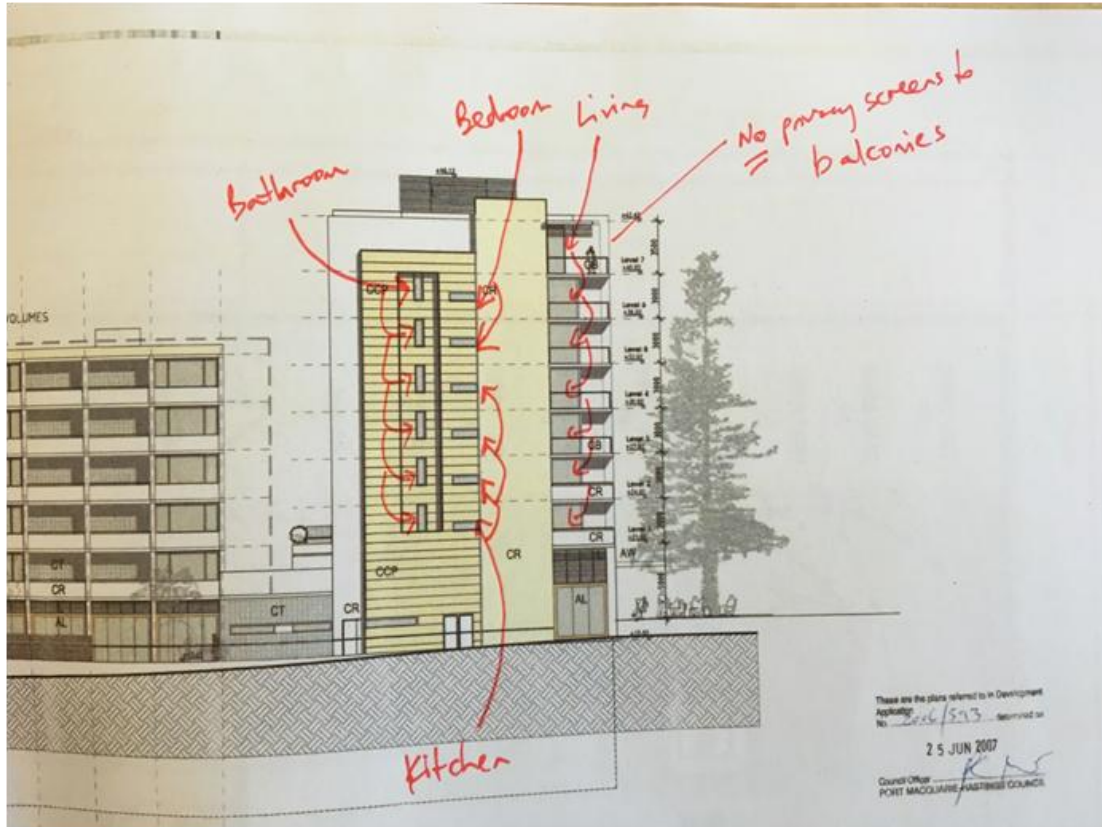
	<p>areas of the site will be well lit.</p> <p>There are no areas of the design that would pose a safety or security risk.</p>	
<p>Principle 8: Housing diversity and social interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>This proposal consists of 15 x 3 bedroom apartments, 57 x 2 bedroom apartments, 5 x 1 bedroom apartments; out of which 21 are the serviced apartments.</p> <p>Five adaptable units are proposed as a part of this proposal.</p> <p>A diverse range of housing is provided to cater for varying housing needs. This mix will be likely to result in smaller families and couples occupying the units, thereby promoting social mix.</p> <p>The units are designed to take advantage of the excellent location across the road from the local beach and park.</p>	Yes
<p>Principle 9: Aesthetics</p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The three buildings have satisfactory articulation with materials, textures and colours.</p>	Yes

In accordance with clause 28(2)(c), the modification proposal has adequately addressed applicable requirements of the Apartment Design Guide. The following table provides an assessment against these design criteria and design objectives (building design element changes shown in *italics*). The following marked up

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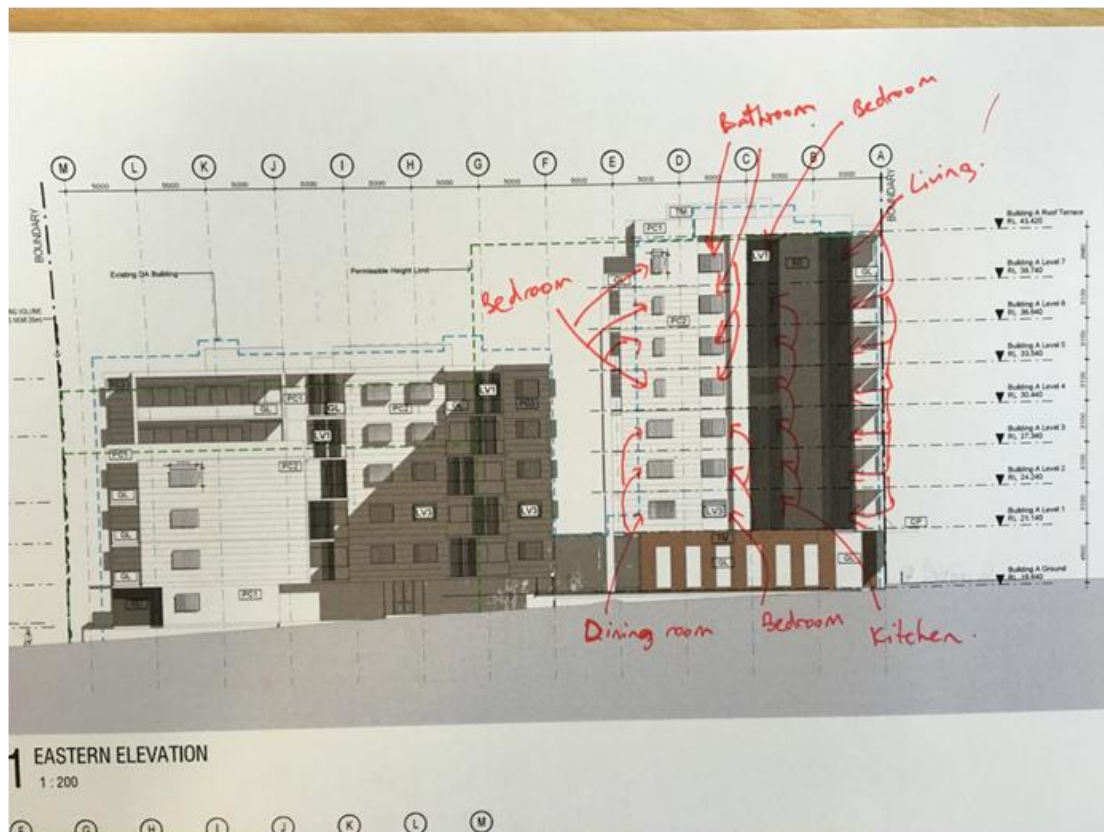
diagrams are provided to assist with addressing privacy requirements as addressed in the table under Section 3F.

Current approved eastern elevation

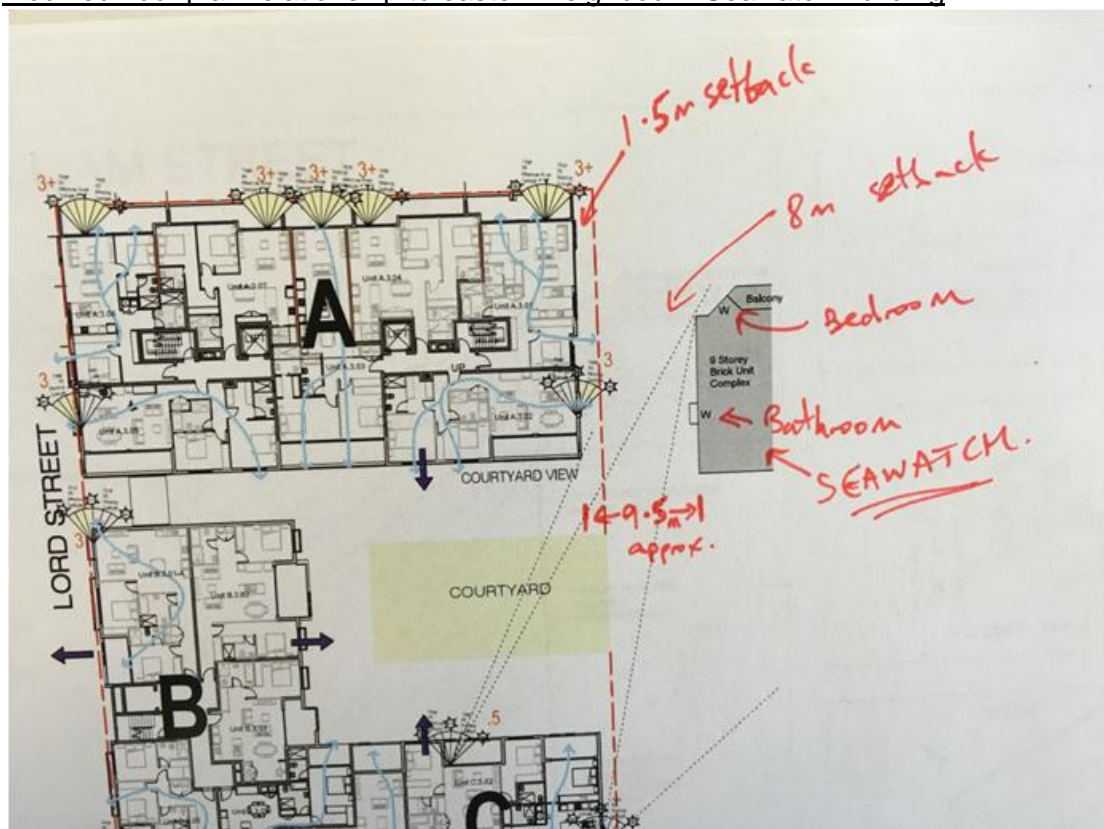


Modified eastern elevation:

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Modified floor plan relationship to eastern neighbour - Seawatch Building



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Apartment Design Guide (ADG) Objective	Design Guidance and Design Criteria (in <i>Italics</i>)	Proposed	Complies
3A Site analysis			
3A - 1 Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Each element in the Site Analysis Checklist should be addressed (Appendix 1 of ADG)	Site location shown.	Yes
		Aerial photo of site in context shown but sufficiently clear.	Yes/No - 2012 aerial shown earlier in this report.
		Outline of eastern Seawatch building shown on plans including window openings.	
		Local context plan details provided.	Yes
		Site context and survey information shown.	Yes
		Streetscape elevations and sections provided.	Yes
		Analysis details between current approved proposal and modification provided.	Yes
		The street elevations do not strictly show the existing buildings within William Street	No
3B Orientation			
3B - 1 Building types and layouts respond to the streetscape and site while optimising solar access within the development.		<u>Buildings remain to face street however direct access points have been modified</u>	Yes
		The development site has three major street frontages being William, Lord and Church Streets. The modified design addresses the street frontages to provide for a satisfactory	

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		streetscape as well as providing passive surveillance. Solar access is compliant to minimum standards.	
3B - 2 Overshadowing of neighbouring properties is minimised during mid winter.		<p><u>Minor increase in building envelope as shown earlier in this report depicted in comparison 3D massing plan</u></p> <p>The modified building envelope, both vertical and horizontal, is sufficiently aligned with the existing approval, with the exception of the Building A fronting William Street increasing in building depth by 2.6m on the southern side of building and eastern side of Building B changing the upper-most floor levels. This increase will have a very negligible impact on overshadowing to the eastern neighbours in the afternoon (mid winter).</p>	Yes
3C Public domain interface			
3C - 1 Transition between private and public domain is achieved without compromising safety and security		<p><u>Changes in building levels, access points, design treatment and balcony layouts.</u></p> <p>There are only ground floor units fronting Church</p>	Yes

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		<p>Street. Direct street access not provided due to level difference and servicing requirements.</p> <p>Access to residential areas is clearly defined with separation between ground floor commercial areas achieved via separate access areas.</p> <p>Length of solid walls should be limited along street frontages.</p> <p>Internal deep soil zone provides a clear private area for residents which is physically separate from the public domain.</p> <p>The use of awnings along the William Street frontage will maintain a vertical separation of public and private areas.</p>	
3C - 2 Amenity of the public domain is retained and enhanced.		<p><u>Access points and building elevations modified</u></p> <p>Planting on Lord and Church Street frontages softens the edges of any raised terraces to the street, for example above sub-basement car parking.</p> <p>Ramping for accessibility minimised by building entry locations.</p>	<p>Yes</p> <p>Yes</p>

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3D Communal and public open space			
3D - 1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	<p><u>Design Criteria</u></p> <p>1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)</p> <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).</p>	<p><u>Modification to design layout and communal open space</u></p> <p>1. Communal open space approx. 625m2 which is 25% of the site area.</p> <p>2. Shadow diagrams only show 9am and 12 midday shadowing. 9am shows 50% sunlight. Unable to determine if 50% communal area will have sunlight for 2 hours. Applicant submits that it complies.</p> <p>Communal open space is consolidated into a well designed, easily identified and usable area.</p> <p>Direct, equitable access at ground floor level is provided to communal open space areas from common circulation areas, entries and lobbies.</p>	<p>Yes</p> <p>Unknown as to whether complies however communal open space in same location as currently approved.</p> <p>Yes</p> <p>Yes</p>
3D - 2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting		<p><u>Modification to design layout and communal open space</u></p> <p>Satisfactory facilities are provided within communal open spaces and common spaces for a range of age groups.</p>	Yes
3D - 3 Communal open space is designed to		<u>Modification to design layout and communal open</u>	Yes

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maximise safety		<u>space</u> Communal open space and the public domain readily visible from habitable rooms and private open space areas while maintaining visual privacy.	
3E Deep soil zones			
3E - 1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	<u>Design Criteria</u> <i>1. Deep soil zones are to meet the following minimum requirements: >1500m², 6m dimension, 7% site area deep soil zone.</i>	<u>Modified deep soil zone extent of site</u> 180m ² deep soil zone with 9.3m minimum dimension. 7% of site area deep soil zone. The previous approved pool has been removed.	Yes Yes Noted
3F Visual privacy			
3F - 1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy	<u>Design Criteria</u> <i>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i> <i>a) Building height up to 12m (4 storey) need 6m setback to habitable and 3m to non habitable.</i> <i>b) Buildings up to 25m (5-8 storeys) need 9m to habitable and 4.5m to non habitable.</i> <i>c) Buildings over 25m (9+ storeys) need 12m to habitable and</i>	<u>Modified eastern elevations of Building A and C and reconfiguration of apartment layouts generally within the same footprint as approved</u> The eastern side setbacks have adopted the same setback as currently approved. The balconies on the north-eastern corner remain the same as currently approved. An indentation in the building has been provided with the amended plans	Non compliance with deemed to satisfy design criteria - *Variation justified

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	<p><i>6m to non habitable.</i></p> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2).</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</i></p> <p>New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:</p> <ul style="list-style-type: none"> - site layout and building orientation to minimise privacy impacts (see also section 3B Orientation) - on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4). <p>Direct lines of sight should be avoided for windows and balconies across corners.</p> <p>No separation is required between blank walls</p>	<p>to be consistent with the current approval.</p> <p>The Building A is the same height as currently approved.</p> <p>The window openings have changed due to apartment layout changes and do not comply with the recommended setbacks with a proposed minimum 10m distance separation between the closest bedroom windows of the eastern Seawatch building and the subject development to be modified. To revisit this matter the Visual Privacy requirements of this Guide have effect and the DCP in force at the time is considered to have no effect.</p> <p>This Guide makes it very clear that <i>'any one development will have a variety of visual privacy conditions to be accommodated'</i>. In other words the recommended privacy requirements do not apply to every situation.</p> <p>A comparison of the current approved elevation,</p>	
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		<p>proposed modification elevation and example floor plan relationship is provided above this table for assistance.</p> <p>The front north-eastern corner with the balconies and living areas remains the same as approved.</p> <p>Additional living and kitchen windows are proposed.</p> <p>The plans show vertical screens proposed which are proposing to address privacy impacts. There is no additional impact presently with the current Seawatch building as shown (only a bathroom window on western elevation approx. 8m from boundary). An objection has been received stating there may be an intention to redevelop the Seawatch building site. In this regard a condition is recommended to require compliance with standard privacy screen requirements with a condition as follows:</p> <p>Details shall be submitted with the</p>	
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		application for construction certificate identifying all louvre screens on the eastern elevations complying with the following: (i) no individual opening more than 30mm wide, and (ii) a total area of all openings that is no more than 30% of the surface area of the screen or barrier.	
3F - 2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space	Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas. Balconies and private terraces should be located in front of living rooms to increase internal privacy. Windows should be offset from the windows of adjacent buildings. Recessed balconies and/or vertical fins should be used between adjacent balconies	<u>Reconfiguration of design layout of units and communal open space internally</u> Communal open space, common areas and access paths are separated from private open space and windows to apartments, particularly habitable room windows.	Yes
3G Pedestrian access and entries			
3G - 1 Building entries and pedestrian access connects to and addresses the public domain		<u>Buildings remain to face street however direct access points have been modified</u> Multiple entries (including communal building entries) are provided to activate the street edge.	Yes

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		Entry locations relate to the street and subdivision pattern and the existing pedestrian network.	Yes
		Building entries are identifiable and communal entries are sufficiently distinguishable from private entries.	Yes
3G - 2 Access, entries and pathways are accessible and easy to identify		<u>Buildings remain to face street however direct access points have been modified</u>	
		Building access areas including lift lobbies, stairwells and hallways are sufficiently legible from the public domain and communal spaces.	Yes
		The design of ground floors and underground car park minimises level changes along pathways and entries.	Yes
		Steps and ramps are integrated into the overall building and landscape design.	Yes
3H Vehicle access			
3H - 1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes		<u>Redesigned vehicle access point remaining off Church Street</u>	
		The car park access is integrated with the building's overall facade.	Yes
		The car park entry is located behind the building line and	Yes

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		width is minimised. The vehicle entry remains at the lowest point of the site minimising ramp lengths, excavation and impacts on the building form and layout.	Yes
3J Bicycle and car parking			
<p>3J - 1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p> <p><u>Notes</u></p> <p>Port Macquarie is a nominated regional centre.</p> <p>In terms of using Guide to Traffic Generating Developments, Port Macquarie is a "sub-regional centre" as by definition it does not have access to rail.</p> <p>Medium density is 2 - <20 dwellings.</p> <p>High Density is 20 or more dwellings</p>	<p><u>Design Criteria</u></p> <p>1. <i>For development in the following locations:</i></p> <p>a) <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i></p> <p>b) <i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</i></p> <p><i>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i></p> <p><i>The car parking needs for a development must be provided off street.</i></p>	<p>Refer to parking assessment later in this report under consideration of Development Control Plan no.18 and 46 in force at time of original application.</p>	N/A
3J - 2 Parking and facilities are provided for other modes of transport		<p><u>Basement parking layout redesigned.</u></p> <p>Designated bike storage/parking area provided.</p>	Yes
3J - 3 Car park		<u>Basement parking</u>	

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design and access is safe and secure		<u>layout redesigned.</u> Car park design and access points are satisfactorily safe and secure. Lift access provided.	Yes
3J - 4 Visual and environmental impacts of underground car parking are minimised		<u>Basement parking layout and elevations redesigned.</u> Efficient car park layouts proposed and ramp design satisfactory. Protrusion of car parking area above existing ground level on Church Street minimised.	Yes Yes
4A Solar and daylight access			
4A - 1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	<u>Design Criteria</u> <i>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.</i> <i>2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</i>	<u>Apartment layouts redesigned</u> 71% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter. It is unable to be determined how many apartments receive no direct sunlight at all.	Yes
4A - 2 Daylight access is maximised where sunlight is limited	Achieving the design criteria may not be possible on some sites. This includes: <ul style="list-style-type: none">- where greater residential amenity can be achieved along a busy road or rail line by orientating the living rooms away from the noise	The Applicant has advised that where unit orientation due to existing approved building details, views oriented away from sunlight, south slope of site, and passive surveillance of	Yes

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	<p>source</p> <ul style="list-style-type: none"> - on south facing sloping sites - where significant views are oriented away from the desired aspect for direct sunlight <p>Design drawings need to demonstrate how site constraints and orientation preclude meeting the design criteria and how the development meets the objective.</p>	<p>the street resulted in limited sunlight, the proposed units have been designed maximised daylight access through the inclusion of larger glazed areas, open plan unit designs, and shallow apartment layout.</p> <p>Apartments have been designed to favour orientation towards the streets, beach and the central courtyard with balconies / living areas getting ample natural light and good ventilation.</p> <p>These units also receive sunlight and natural reflected light at other times of the day and/or year.</p>	
4A - 3 Design incorporates shading and glare control, particularly for warmer months		<p><u>Elevations and apartment layouts modified</u></p> <p>Balconies and sun shading devices are provided to shade summer sun, but will where possible allow winter sun to penetrate living areas.</p>	Yes
4B Natural ventilation			
4B - 1 All habitable rooms are naturally ventilated		<u>Apartment layouts modified</u>	Yes

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4B - 2 The layout and design of single aspect apartments maximises natural ventilation		The building's orientations will satisfactorily capture and use of prevailing breezes for natural ventilation in habitable rooms. Depths of habitable rooms support natural ventilation.	Yes
4B - 3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	<u>Design Criteria</u> <i>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</i> <i>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</i>	<u>Apartment layouts modified</u> 66% of apartments are cross ventilated. The overall depth of a cross-over or cross-through apartments do not exceed 18m, measured glass line to glass line.	Yes Yes
4C Ceiling heights			
4C - 1 Ceiling height achieves sufficient natural ventilation and daylight access	<u>Design Criteria</u> <i>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</i> <i>Minimum ceiling height for apartment and mixed use buildings</i> <i>Habitable rooms = 2.7m</i> <i>Non-habitable = 2.4m</i> <i>For 2 storey apartments = 2.7m for main living area floor and 2.4m for second floor, where its area does not exceed</i>	All habitable rooms have maintained a minimum 2.7m ceiling height; Non habitable rooms have been designed with a minimum 2.4m.	Yes

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	<p>50% of the apartment area</p> <p>Attic spaces = 1.8m at edge of room with a 30 degree minimum ceiling slope</p> <p>If located in mixed use areas = 3.3m for ground and first floor to promote future flexibility of use</p> <p>These minimums do not preclude higher ceilings if desired.</p>		
4D Apartment size and layout			
4D - 1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	<p><u>Design Criteria</u></p> <p>1. Apartments are required to have the following minimum internal areas:</p> <p>Studio = 35m²</p> <p>1 bedroom = 50m²</p> <p>2 bedroom = 70m²</p> <p>3 bedroom = 90m²</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p><u>Apartment layouts modified</u></p> <p>All apartments comply with minimum internal area requirements.</p> <p>All habitable rooms have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p>	<p>Yes</p> <p>Yes</p>
4D - 2 Environmental performance of the	<p><u>Design Criteria</u></p> <p>1. Habitable room depths</p>	<p><u>Apartment layouts modified</u></p>	

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apartment is maximised	<p><i>are limited to a maximum of 2.5 x the ceiling height.</i></p> <p><i>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</i></p>	<p>Habitable room depths other than open plan layouts are no greater than 2.5 x ceiling heights.</p> <p>The maximum habitable room depths of the open plan layouts is 8m.</p>	<p>Yes</p> <p>Yes</p>
4D - 3 Apartment layouts are designed to accommodate a variety of household activities and needs	<p><u>Design Criteria</u></p> <p><i>1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</i></p> <p><i>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</i></p> <p><i>3. Living rooms or combined living/dining rooms have a minimum width of:</i></p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments <p><i>4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</i></p>	<p><u>Apartment layouts modified</u></p> <p>Apartment designs comply with minimum dimensions.</p>	<p>Yes</p>
4E Private open space and balconies			
4E - 1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity	<p><u>Design Criteria</u></p> <p><i>1. All apartments are required to have primary balconies as follows:</i></p> <ul style="list-style-type: none"> a) <i>Studio apartments = 4m²</i> b) <i>1 bedroom apartments = 8m² and 2m min depth.</i> c) <i>2 bedroom</i> 	<p><u>Apartment layouts modified</u></p> <p>All apartments include appropriately sized and compliant private open space and balconies to enhance residential amenity.</p>	<p>Yes</p>

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	<p>apartments = 10m² and 2m min depth.</p> <p>d) 3+ bedroom apartments = 12m² and 2.4m min depth.</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>		
4E - 2 Primary private open space and balconies are appropriately located to enhance liveability for residents		<p><u>Apartment layouts modified</u></p> <p>Primary open space and balconies are located adjacent to the living room, dining room or kitchen to extend the living space.</p>	Yes
4E - 3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building		<p><u>Apartment layouts modified</u></p> <p>Glass balustrades proposed which are already approved on the current approval.</p>	N/A - no change to approved design approach to revisit
4E - 4 Private open space and balcony design maximises safety.	Changes in ground levels or landscaping are minimised.	<p><u>Apartment layouts modified</u></p> <p>Changes in ground levels or landscaping are minimised.</p>	Yes
4F Common circulation and spaces			
4F - 1 Common circulation spaces achieve good	<p><u>Design Criteria</u></p> <p>1. The maximum number of apartments off a</p>	<p><u>Apartment layouts modified</u></p> <p>< than 8 apartments</p>	Yes

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amenity and properly service the number of apartments	<i>circulation core on a single level is eight.</i>	per level off lifts proposed	
4F - 2 Common circulation spaces promote safety and provide for social interaction between residents		<p><u>Apartment layouts modified</u></p> <p>Direct and legible access provided between vertical circulation points and apartment entries by minimising corridor or gallery length to give short, straight, clear sight lines.</p> <p>Tight corners and spaces are avoided.</p>	<p>Yes</p> <p>Yes</p>
4G Storage			
4G - 1 Adequate, well designed storage is provided in each apartment	<p><u>Design Criteria</u></p> <p><i>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</i></p> <p>a) Studio apartments = 4m³.</p> <p>b) 1 bedroom apartments = 6m³.</p> <p>c) 2 bedroom apartments 8m³.</p> <p>d) 3+ bedroom apartments = 10m³.</p>	<p><u>Basement parking areas redesigned</u></p> <p>Design achieves storage requirements for residents</p>	Yes
4G - 2 Additional storage is conveniently located, accessible and nominated for individual apartments			
4H Acoustic privacy			
4H - 1 Noise transfer is minimised through the siting of buildings and		<p><u>Apartment layouts modified</u></p> <p>Adequate building separation is</p>	Yes

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building layout		provided within the development and from neighbouring buildings/adjacent uses	
4H - 2 Noise impacts are mitigated within apartments through layout and acoustic treatments		<u>Apartment layouts modified</u> Internal apartment layout separates noisy spaces from quiet spaces.	Yes
4J Noise and pollution			
4J - 1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings		<u>Redesign of ground floor level</u> Non-residential uses are located at lower levels vertically separating the residential component from the noise or pollution source.	Yes
4K Apartment mix			
4K - 1 A range of apartment types and sizes is provided to cater for different household types now and into the future		<u>Apartment mix and design modified</u> A variety of apartment types are provided.	Yes
4K - 2 The apartment mix is distributed to suitable locations within the building			
4L Ground floor apartments			
4L - 1 Street frontage activity is maximised where ground floor apartments are located		<u>Ground floor apartments redesigned</u> There are only ground floor units fronting Church Street. Direct street access not provided due to level difference and servicing	Yes
4L - 2 Design of ground floor apartments delivers amenity			

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and safety for residents		<p>requirements.</p> <p>Common entry point provided for Building C from Church Street.</p> <p>Privacy and safety should be provided without obstructing casual surveillance.</p>	
4M Facades			
4M - 1 Building facades provide visual interest along the street while respecting the character of the local area		<p><u>Modified building elevations</u></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p> <p>Awnings provided on William Street.</p>	<p>Yes</p> <p>Yes</p>
4M - 2 Building functions are expressed by the facade	<p>Building entries should be clearly defined.</p> <p>Important corners are given visual prominence through a change in articulation, materials or colour, roof expression or changes in height.</p> <p>The apartment layout should be expressed externally through facade features such as party walls and floor slabs</p>	<p><u>Modified building elevations</u></p> <p>Building entries are clearly defined.</p> <p>Corners of buildings fronting are given visual prominence through a change in articulation, materials or colour, roof expression.</p>	<p>Yes</p> <p>Yes</p>
4N Roof design			
4N - 1 Roof treatments are integrated into the building design and positively respond to the street		<p><u>Modified roof design</u></p> <p>The modification is similar to the original approval and the roof treatments are integrated with the building design.</p> <p>Residential use of roof spaces have been incorporated into the design as</p>	Yes

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		per the Apartment Guidelines.	
4O Landscape design			
4O - 1 Landscape design is viable and sustainable		<u>Modified landscape areas</u> The deep soil zone and rooftop areas are appropriately landscaped incorporating shade elements and diverse plantings. Streetscape enhancement is included in the landscape designs.	Yes
4O - 2 Landscape design contributes to the streetscape and amenity			Yes
4P Planting on structures			
4P - 1 Appropriate soil profiles are provided		<u>Modified landscape areas</u> The Applicant has advised that the deep soil zone is adequate to achieve long term plant sustainability and plants have been chosen for the conditions by a qualified landscape architect.	Yes
4P - 2 Plant growth is optimised with appropriate selection and maintenance			Yes
4P - 3 Planting on structures contributes to the quality and amenity of communal and public open spaces			
4Q Universal design			
4Q - 1 Universal design features are included in apartment design to promote flexible housing for all community members		<u>Modified apartment layouts</u> Of the 24 units types proposed, 4 unit types have been nominated as adaptable apartment designs with the balance of the unit types featuring universal design features and layout which provide a level of adaptability to promote the flexible housing for all	Yes
4Q - 2 A variety of apartments with adaptable designs are provided			
4Q - 3 Apartment layouts are flexible and accommodate			

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a range of lifestyle needs		community members. All apartments have been designed to provide flexibility of internal furniture layout.	Yes
4S Mixed use			
4S - 1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement		<u>Modified ground floor layouts</u> Ground floor commercial areas have achieved active street frontage as per the original approval.	Yes
4S - 2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents		<u>Modified ground floor layouts</u> Residential circulation areas should be clearly defined.	Yes
4T Awnings and signage			
4T - 1 Awnings are well located and complement and integrate with the building design		<u>Modified elevations</u> Awnings have been retained along the William Street frontage in particular, and are well located.	Yes
4U Energy efficiency			
4U - 1 Development incorporates passive environmental design		<u>Modified building design and apartment layouts within similar footprint</u> Adequate natural light is provided to habitable rooms	Yes
4U - 2 Development incorporates passive solar design to optimise heat storage in		Development incorporates sufficient passive	Yes

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winter and reduce heat transfer in summer		solar design to optimise heat storage in winter and reduce heat transfer in summer.	
4U - 3 Adequate natural ventilation minimises the need for mechanical ventilation		A BASIX certificate has also been submitted.	Yes
		Adequate natural ventilation provided	Yes
4V Water management and conservation			
4V - 1 Potable water use is minimised	Water efficient fittings, appliances and wastewater reuse should be incorporated. Apartments should be individually metered. Rainwater should be collected, stored and reused on site. Drought tolerant, low water use plants should be used within landscaped areas	<u>Change in apartment numbers and configuration</u> Updated BASIX provided - water efficient elements are included in the design.	Yes
4V - 3 Flood management systems are integrated into site design	Detention tanks should be located under paved areas, driveways or in basement car parks. On large sites parks or open spaces are designed to provide temporary on site detention basins.	Existing condition of consent addresses	Yes
4W Waste management			
4W - 1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents		Satisfactory arrangements for waste storage and collection.	Yes
4W - 2 Domestic waste is minimised by providing safe and convenient source separation			

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and recycling			
4X Building maintenance			
4X - 1 Building design detail provides protection from weathering		The Applicant has advised that the building has been designed with architectural, construction details and material selections which provide protection from weathering; and which have been selected in consideration of ongoing maintenance requirements.	Yes
4X - 2 Systems and access enable ease of maintenance			
4X - 3 Material selection reduces ongoing maintenance costs			

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

In accordance with clause 6, a BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP.

Hastings Local Environmental Plan 2001

The requirements of this LEP (as in force at the time of the original application) are considered satisfied having regard to the following provisions:

- clause 9 and 29 (schedule 3), The subject site is located within the 2(t1) Residential Tourist zone and the proposed residential flats, restaurants and motel best by definition are permissible landuses within the 2(t1) zone in this location. No uses have been nominated for the commercial tenancies fronting Lord Street however it is noted that Shoptop housing is permissible under the more current Port Macquarie-Hastings Local Environmental Plan 2011.
- clause 13, satisfactory arrangements remain in place for provision of essential services including water supply, sewer infrastructure and stormwater drainage.

(iii) any Development Control Plan in:

Port Macquarie-Hastings Development Control Plan 2006 (as in force at the time of the original application) - DCP 18 - Off Street Parking Code and DCP 46 - Town Beach Precinct

It is important to note that given that the new SEPP 65 Apartment Guide applies to the proposal where building element changes are proposed that where the DCP contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect. This overrides/removes from consideration of quite a lot of previous development controls originally considered.

The following comments are provided having regard to the development control criteria which require reconsideration:

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- Off-street Parking: 169 parking spaces including visitor spaces are proposed within the three (3) level basement parking area. This is an increase from the current approved 110 parking spaces. Under the DCP18/46 the parking provision is compliant with the following parking requirements applying:
 - 21 serviced apartments x 1.1 = 24 (23.1) spaces required
 - 1 space/2 employees = 1 space
 - 2 x 1 bed residential = 2 spaces required
 - 43 x 2 bed residential = 43 spaces required
 - 11 x 3 bed residential = 17 (16.5) spaces required
 - 77 @ 1/4 visitor spaces = 20(19.25) spaces
 - = 107 spaces subtotal required for apartments.
 - Commercial subtotal - 786m²/30m²(gross leasable floor area) = 27(26.2) spaces (note: individual DAs for first use require a DA which may reduce the parking requirements with GLFA)
 - TOTAL PARKING REQUIRED = 134 parking spaces
 - Building height: The building height remains within a compliant 8 storeys on William Street, 6 Storeys on Lord Street and 4 Storeys on Church Street. There is an increase in the width of Building B however within the 6 storey permitted height limit section. The roof terrace level for the William Street Building A is exactly the same as currently approved with a RL43.42m. The overall maximum height of the modified building fronting Church Street is lower than currently approved.
- (b) The likely impacts of that development, including environmental impacts on both the natural and built environments, social and economic impacts in the locality:**

Access, Transport & Traffic

Roads

The development has frontage to 3 streets:

William Street is a 28m wide secondary arterial road, with a 10m formation across the development site frontage. Part of the northern frontage serves as an entry to the Lord/William St roundabout, with no parking permitted. The remainder of the frontage is 'nose-in' 45 degree angle parking. A concrete footpath exists across the full William St frontage.

Lord Street is a 30m wide secondary arterial road, with 2 lanes and a parallel parking lane in either direction, separated by a landscaped median. A concrete footpath exists across the full western frontage.

Church Street is a 40m wide local access street with an 8m wide (and variable) sealed pavement. All Church Street works will need to be in accordance with Council's concept plan for future upgrade of Church St (RU-PM3-143).

Access

Standard vehicular access to the development is proposed via a 2-way driveway off Church Street, to 3 levels of undercover parking area. The proposed driveway access off Church St is shown on the submitted plans to be separated by a concrete

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island and protected by a kerb blister from Lord Street. It is likely a security gate will be installed at the Church Street driveway entry.

Traffic

A traffic and parking report prepared by Streetwise Road Safety and Traffic Services has been submitted with the modification application.

The proposed amendments will result in a development consisting of 21 serviced apartments and 56 residential flats. The traffic generation details submitted with the original amendment state that the net result of the proposed format is 430 daily traffic movements (50 peak hour), this is 36% less than the original proposal which generated 669 daily traffic movements (72 peak hour). The latest details have been checked for compliance with "RMS - Guide to Traffic Generating Developments" with the tabled results below,

Apartment format	Rate	Daily trips	Rate	Peak hour
Serviced apartments				
2 bedroom (17)	3/apartment	51	0.4/apartment	7
3 bedroom (4)	3/apartment	12	0.4/apartment	2
Residential flat				
1 bedroom (2)	5/apartment	10	0.5/apartment	1
2 bedroom (43)	5/apartment	215	0.5/apartment	22
3 bedroom (11)	6.5/apartment	72	0.65/apartment	8
Café (73m2)	60/100m2	44	5/100m2	4
Restaurant (85m2)	60/100m2	51	5/100m2	5
Total		455		49

In this regard the current proposal will generate 455 daily trips (49 peak hour) which represents a 33% drop in traffic generation compared to the current approved proposal."

Parking

The proposed amendment originally indicated that the ramp between floors for the basement parking was intended to be relocated from the rear to a central location. This created issues with circulating traffic and through discussions with the architect and his team it was agreed to leave the ramp at the rear of the parking area. This allows suitable circulation and removes two of the proposed blind aisles. The amended parking layout has been checked against AS 2890 and, although it is tight in spots, is considered acceptable.

Looking After Our Environment

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

- Updated development contributions will be required towards augmentation of town water supply and sewerage system head works under Section 64 of the Local Government Act 1993.
- Updated development contributions will be required under Section 94 of the Environmental Planning and Assessment Act 1979 towards roads, open space, community cultural services, emergency services and administration buildings.

5. CONCLUSION

The application has been assessed in accordance with Section 96 and 79C of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application. Where relevant, conditions have been recommended to manage the impacts attributed to these issues.

The site remains suitable for the proposed modified development, is not contrary to the public's interest and will not have a significant adverse social, environmental or economic impact. It is recommended that the application be approved, subject to the recommended modified conditions.

Attachments

- 1 [View](#). DA2006 - 563.1 Previous Approved Plans
- 2 [View](#). DA2006 - 563.3 Site Plan
- 3 [View](#). DA2006 - 593.3 Amended DA Plans.
- 4 [View](#). DA2006 - 593.3 Recommended Modification Consent Conditions
- 5 [View](#). DA2006 - 593.3 Submission - McRae_Redacted.
- 6 [View](#). DA2006 - 593.3 Submission - Owners SP31868_Redacted.
- 7 [View](#). DA2006 - 593.3 Submission - Stratton_Redacted.
- 8 [View](#). DA2006 - 593.3 Submission - Thrum Architects
- 9 [View](#). DA2006 - 593.3 Submission - Addisons Lawyers - 8 July 2016
- 10 [View](#). DA2006 - 593.3 Submission - Addisons Lawyers - 12 July 2016