



PORT MACQUARIE-HASTINGS  
COUNCIL



# Development Assessment Panel

## Business Paper

**date of meeting:** Wednesday 23 May 2018

**location:** Function Room  
Port Macquarie-Hastings Council  
17 Burrawan Street  
Port Macquarie

**time:** 2:00pm

**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.

## **Development Assessment Panel**

### **CHARTER**

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#### **1.0 OBJECTIVES**

To assist in managing Council's development assessment function by providing independent and expert determinations of development applications that fall outside of staff delegations.

#### **2.0 KEY FUNCTIONS**

- To review development application reports and conditions;
- To determine development applications outside of staff delegations;
- To refer development applications to Council for determination where necessary;
- To provide a forum for objectors and applicants to make submissions on applications before the Development Assessment Panel (DAP);
- To maintain transparency in the determination of development applications.

#### **Delegated Authority of Panel**

Pursuant to Section 377 of the Local Government Act, 1993 delegation to:

- Determine development applications under Part 4 of the Environmental Planning and Assessment Act 1979 having regard to the relevant environmental planning instruments, development control plans and Council policies.
- Vary, modify or release restrictions as to use and/or covenants created by Section 88B instruments under the Conveyancing Act 1919 in relation to development applications for subdivisions being considered by the panel.
- Determine Koala Plans of Management under State Environmental Planning Policy 44 - Koala Habitat Protection associated with development applications being considered by the Panel.

Noting the trigger to escalate decision making to Council as highlighted in section 5.2.

#### **3.0 MEMBERSHIP**

##### **3.1 Voting Members**

- Two independent external members. One of the independent external members to

- be the Chairperson.
- Group Manager Development Assessment (alternate - Director Development & Environment or Development Assessment Planner)

The independent external members shall have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, government and public administration.

### **3.2 Non-Voting Members**

- Not applicable

### **3.3 Obligations of members**

- Members must act faithfully and diligently and in accordance with this Charter.
- Members must comply with Council's Code of Conduct.
- Except as required to properly perform their duties, DAP members must not disclose any confidential information (as advised by Council) obtained in connection with the DAP functions.
- Members will have read and be familiar with the documents and information provided by Council prior to attending a DAP meeting.
- Members must act in accordance with Council's Workplace Health and Safety Policies and Procedures
- External members of the Panel are not authorised to speak to the media on behalf of Council. Council officers that are members of the Committee are bound by the existing operational delegations in relation to speaking to the media.
- Staff members shall not vote on matters before the Panel if they have been the principle author of the development assessment report.

### **3.4 Member Tenure**

- The independent external members will be appointed for the term of four (4) years maximum in which the end of the tenure of these members would occur in a cascading arrangement.

### **3.5 Appointment of members**

- The independent external members (including the Chair) shall be appointed by the General Manager following an external Expression of Interest process.
- Staff members of the Panel are in accordance with this Charter.

## **4.0 TIMETABLE OF MEETINGS**

- The Development Assessment Panel will generally meet on the 1st and 3rd Wednesday each month at 2.00pm at the Port Macquarie offices of Council.
- Special Meetings of the Panel may be convened by the Director Development & Environment Services with three (3) days notice.

## **5.0 MEETING PRACTICES**

### **5.1 Meeting Format**

- At all Meetings of the Panel the Chairperson shall occupy the Chair and preside. The Chair will be responsible for keeping of order at meetings.
- Meetings shall be open to the public.
- The Panel will hear from applicants and objectors or their representatives.
- Where considered necessary, the Panel will conduct site inspections which will be open to the public.

### **5.2 Decision Making**

- Decisions are to be made by consensus. Where consensus is not possible on any item, that item is to be referred to Council for a decision.
- All development applications involving a proposed variation to a development standard greater than 10% under Clause 4.6 of the Local Environmental Plan will be considered by the Panel and recommendation made to the Council for a decision.

### **5.3 Quorum**

- All members (2 independent external members and 1 staff member) must be present at a meeting to form a quorum.

### **5.4 Chairperson and Deputy Chairperson**

- Independent Chair (alternate, second independent member)

### **5.5 Secretariat**

- The Director Development & Environment is to be responsible for ensuring that the Panel has adequate secretariat support. The secretariat will ensure that the business paper and supporting papers are circulated at least three (3) days prior to each meeting. Minutes shall be appropriately approved and circulated to each member within three (3) weeks of a meeting being held.
- The format of and the preparation and publishing of the Business Paper and Minutes shall be similar to the format for Ordinary Council Meetings.

### **5.6 Recording of decisions**

- Minutes will record decisions and how each member votes for each item before the Panel.

## **6.0 CONVENING OF “OUTCOME SPECIFIC” WORKING GROUPS**

Not applicable.

## **7.0 CONFIDENTIALITY AND CONFLICT OF INTEREST**

- Members of the Panel must comply with the applicable provisions of Council's Code of Conduct. It is the personal responsibility of members to comply with the standards in the Code of Conduct and regularly review their personal circumstances with this in mind.
- Panel members must declare any conflict of interests at the start of each meeting or before discussion of a relevant item or topic. Details of any conflicts of interest should be appropriately minuted. Where members are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from deliberations on the issue where the conflict of interest may exist. A Panel meeting may be postponed where there is no quorum.

## **8.0 LOBBYING**

- All members and applicants are to adhere to Council's Lobbying policy. Outside of scheduled Development Assessment Panel meetings, applicants, their representatives, Councillors, Council staff and the general public are not to lobby Panel members via meetings, telephone conversations, correspondence and the like. Adequate opportunity will be provided at Panel inspections or meetings for applicants, their representatives and the general public to make verbal submissions in relation to Business Paper items.

## Development Assessment Panel

### ATTENDANCE REGISTER

Member	14/03/18	28/03/18	11/04/18	26/04/18	09/05/18
Paul Drake	✓	✓	✓	✓	✓
Robert Hussey	A	✓	✓	✓	✓
David Crofts (alternate member)	✓				
Dan Croft (Acting Director Development & Environment)				✓	✓
Clinton Tink (Acting GM Development Assessment (alternates)	✓	✓	✓	✓	✓
- Director Development & Environment					
- Development Assessment Planner					

**Key:** ✓ = Present

A = Absent With Apology

X = Absent Without Apology

# Development Assessment Panel Meeting

Wednesday 23 May 2018

## Items of Business

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**Item: 01****Subject: ACKNOWLEDGEMENT OF COUNTRY**

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"I acknowledge that we are gathered on Birpai Land. I pay respect to the Birpai Elders both past and present. I also extend that respect to all other Aboriginal and Torres Strait Islander people present."

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**Item: 02****Subject: APOLOGIES**

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**RECOMMENDATION**

That the apologies received be accepted.

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**Item: 03****Subject: CONFIRMATION OF PREVIOUS MINUTES**

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**RECOMMENDATION**

That the Minutes of the Development Assessment Panel Meeting held on 9 May 2018 be confirmed.



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**PRESENT**

***Members:***

Paul Drake  
Robert Hussey  
Clinton Tink

***Other Attendees:***

Dan Croft  
Patrick Galbraith-Robertson  
David Troemel

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The meeting opened at 2.10pm.

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**01 ACKNOWLEDGEMENT OF COUNTRY**

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The Acknowledgement of Country was delivered.

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**02 APOLOGIES**

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Nil.

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**03 CONFIRMATION OF MINUTES**

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CONSENSUS:

That the Minutes of the Development Assessment Panel Meeting held on 26 April 2018 be confirmed.

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**04 DISCLOSURES OF INTEREST**

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There were no disclosures of interest presented.

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**05 DA2017 - 780.1 SHOP TOP HOUSING - LOT 1 DP 536032, NO. 4 HASTINGS RIVER DRIVE, PORT MACQUARIE**

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Speakers:

Tony McVeagh (objector)

Wayne Ellis (applicant)

CONSENSUS:

That DA 2017 – 380.1 for shop top housing at Lot 1, DP 536032, No. 4 Hastings River Drive, Port Macquarie, be determined by granting consent subject to the recommended conditions as amended:

Add condition B(26) to state:

B(26) Prior to release of the Construction Certificate, an amended landscape plan is to be submitted to the Principal Certifying Authority. The landscape plan is to be prepared by a suitably qualified landscape architect and have regard for the approved building design and the suitability of the proposed vegetation species within the nominated space(s). The landscape plan will form part of the approved plans.

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**06 SECTION 4.55 MODIFICATION DA2010 - 577.4 - MODIFICATION TO SUBDIVISION LOT LAYOUT INCLUDING ADDITION OF ONE (1) TORRENS TITLE LOT - LOT 2 DP 1231106, NO. 72 LORNE ROAD, KENDALL**

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Speakers:

Michael Mowle (applicant)

Geraldine Haigh (applicant)

CONSENSUS:

The Panel was unable to reach a consensus.

For: Paul Drake and Clinton Tink

That Section 4.55 modification to DA 2010 – 577 for a modification to subdivision layout including addition of one (1) torrens title lot at Lot 2, DP 1231106, No. 72 Lorne Road, Kendall, be determined by granting the modified consent subject to the recommended conditions as amended:

Add Condition B(9) to state:

B(9) Prior to release of the Construction Certificate, a plan is to be submitted to Council showing a dwelling envelope on proposed Lot 7 that is capable of being above the 1:100 year flood level applicable to the site. The dwelling envelope is to be of a suitable size to accommodate a standard size dwelling. The plan is also to show the location of any drainage swale and also an area capable of containing an onsite waste management system for a standard size dwelling. <sup>3</sup>

Amend Condition E(20) to state:

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E(20) (DE195) Prior to the issue of the Subdivision Certificate, a positive covenant must be created under Section 88E of the Conveyancing Act 1919, burdening the owners of affected lots with the requirement to ensure the ongoing maintenance of the existing overland flowpath through the site. The terms of the 88E instrument with positive covenant must include, but not be limited to, the following:

- a) The proprietor of the property shall be responsible for maintaining and keeping clear the overland flowpath.
- b) The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all components or structures in or upon the said land which comprise the overland flowpath; and recover the costs of any such works from the proprietor.
- c) The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the overland flowpath, or failure to clean, maintain and repair the overland flowpath.
- d) Restricting construction on Lot 7 to have a finished floor level at or above 12.5 m AHD.<sup>3</sup>

Robert Hussey disagreed with the majority decision for the following reasons:

1. Concerned that a significant part of the site is shown within the major flood storage area and the site contains an overland flow path, which is to be re-aligned with a profile of depth up to a metre and width of six metres and receive a discharge from 2 x 600mm diameter pipes, resulting in a likely unsafe velocity in the channel (ie V x D ratio exceeding 0.4m<sup>2</sup>/second).
2. The proposal does not overlay properly the various easements to demonstrate that a suitable dwelling and ancillary buildings can be safely erected.

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## **07 GENERAL BUSINESS**

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Stormwater assessment process.

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The meeting closed at 4.00pm.

Item: 04

Subject: DISCLOSURES OF INTEREST

RECOMMENDATION

That Disclosures of Interest be presented

DISCLOSURE OF INTEREST DECLARATION

Name of Meeting: .....

Meeting Date: .....

Item Number: .....

Subject: .....  
.....

I, ..... declare the following interest:

☐

**Pecuniary:**

Take no part in the consideration and voting and be out of sight of the meeting.

☐

**Non-Pecuniary - Significant Interest:**

Take no part in the consideration and voting and be out of sight of the meeting.

☐

**Non-Pecuniary - Less than Significant Interest:**

May participate in consideration and voting.

For the reason that: .....

.....

Name: .....

Signed: ..... Date: .....

*(Further explanation is provided on the next page)*

**Further Explanation**

(Local Government Act and Code of Conduct)

A conflict of interest exists where a reasonable and informed person would perceive that a Council official could be influenced by a private interest when carrying out their public duty. Interests can be of two types: pecuniary or non-pecuniary.

All interests, whether pecuniary or non-pecuniary are required to be fully disclosed and in writing.

**Pecuniary Interest**

A pecuniary interest is an interest that a Council official has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the Council official. (section 442)

A Council official will also be taken to have a pecuniary interest in a matter if that Council official's spouse or de facto partner or a relative of the Council official or a partner or employer of the Council official, or a company or other body of which the Council official, or a nominee, partner or employer of the Council official is a member, has a pecuniary interest in the matter. (section 443)

The Council official must not take part in the consideration or voting on the matter and leave and be out of sight of the meeting. The Council official must not be present at, or in sight of, the meeting of the Council at any time during which the matter is being considered or discussed, or at any time during which the council is voting on any question in relation to the matter. (section 451)

**Non-Pecuniary**

A non-pecuniary interest is an interest that is private or personal that the Council official has that does not amount to a pecuniary interest as defined in the Act.

Non-pecuniary interests commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

The political views of a Councillor do not constitute a private interest.

The management of a non-pecuniary interest will depend on whether or not it is significant.

***Non Pecuniary – Significant Interest***

As a general rule, a non-pecuniary conflict of interest will be significant where a matter does not raise a pecuniary interest, but it involves:

- (a) A relationship between a Council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the Council official or of the Council official's spouse, current or former spouse or partner, de facto or other person living in the same household.
- (b) Other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
- (c) An affiliation between a Council official an organisation, sporting body, club, corporation or association that is particularly strong.

If a Council official declares a non-pecuniary significant interest it must be managed in one of two ways:

1. Remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official.
2. Have no involvement in the matter, by taking no part in the consideration or voting on the matter and leave and be out of sight of the meeting, as if the provisions in section 451(2) apply.

***Non Pecuniary – Less than Significant Interest***

If a Council official has declared a non-pecuniary less than significant interest and it does not require further action, they must provide an explanation of why they consider that the conflict does not require further action in the circumstances.

## SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

<b>By</b> <i>[insert full name of councillor]</i>	
<b>In the matter of</b> <i>[insert name of environmental planning instrument]</i>	
<b>Which is to be considered at a meeting of the</b> <i>[insert name of meeting]</i>	
<b>Held on</b> <i>[insert date of meeting]</i>	
<b>PECUNIARY INTEREST</b>	
Address of land in which councillor or an associated person, company or body has a proprietary interest ( <i>the identified land</i> )	
Relationship of identified land to councillor [Tick or cross one box.]	<input type="checkbox"/> Councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease trust, option or contract, or otherwise).  <input type="checkbox"/> Associated person of councillor has interest in the land.  <input type="checkbox"/> Associated company or body of councillor has interest in the land.
<b>MATTER GIVING RISE TO PECUNIARY INTEREST</b>	
Nature of land that is subject to a change in zone/planning control by proposed LEP ( <i>the subject land</i> ) <sup>iii</sup> [Tick or cross one box]	<input type="checkbox"/> The identified land.  <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control [Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]	
Proposed change of zone/planning control [Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]	
Effect of proposed change of zone/planning control on councillor [Tick or cross one box]	<input type="checkbox"/> Appreciable financial gain.  <input type="checkbox"/> Appreciable financial loss.

Councillor's Name: .....

Councillor's Signature: ..... Date: .....

**Important Information**

This information is being collected for the purpose of making a special disclosure of pecuniary interests under sections 451 (4) and (5) of the *Local Government Act 1993*. You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints made about contraventions of these requirements may be referred by the Director-General to the Local Government Pecuniary Interest and Disciplinary Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting in respect of which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

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- i. Section **443** (1) of the *Local Government Act 1993* provides that you may have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative<sup>iv</sup> or because your business partner or employer has a pecuniary interest. You may also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.
  - ii. Section **442** of the *Local Government Act 1993* provides that a **pecuniary interest** is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in section **448** of that Act (for example, an interest as an elector or as a ratepayer or person liable to pay a charge).
  - iii. A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in section **443** (1) (b) or (c) of the *Local Government Act 1993* has a proprietary interest..
  - iv. **Relative** is defined by the *Local Government Act 1993* as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

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**Item: 05**

**Subject: DA2018 - 139.1 FENCE - LOT 9 DP 20480, NO 15 ILLAROO ROAD,  
LAKE CATHIE**

**Report Author: Robert Slater**

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**Applicant: S J Hunt & K J Outtrim**

**Owner: S J Hunt & K J Outtrim**

**Estimated Cost: \$20,000**

**Parcel no: 10019**

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### **Alignment with Delivery Program**

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

### **RECOMMENDATION**

**That DA2018 – 139.1 for a fence at Lot 9, DP20480, No.15 Illaroo Road, Lake Cathie, be determined by granting consent subject to the recommended conditions.**

### **Executive Summary**

This report considers a development application for a masonry fence at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

While the development was not required to be notified, one (1) submission was still received.

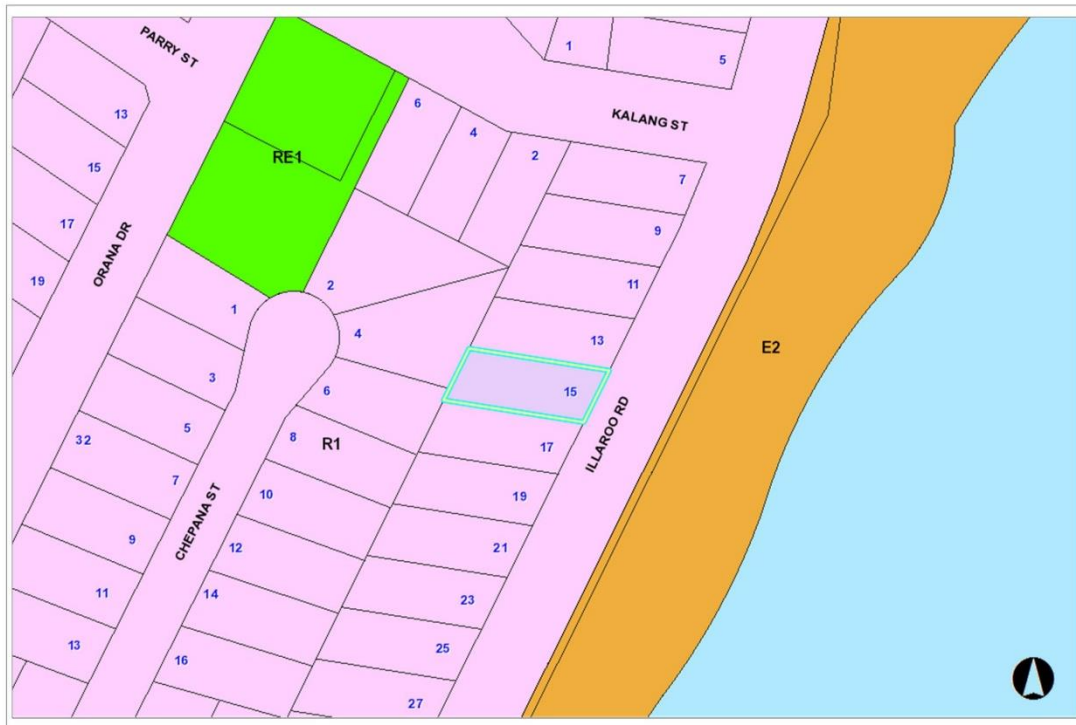
## **1. BACKGROUND**

### **Existing sites features and surrounding development**

The site has an area of 581.7m<sup>2</sup>

The site is zoned R1 General Residential in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:





The subdivision was registered on 20 March 1947 while the existing subdivision pattern and location of existing development within the locality is shown in the following aerial photograph:



## 2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- A 1.8m high concrete fence wholly within the boundaries of the subject property to structural engineer's detail.
- Stepped design to follow land contour.

Refer to attachments at the end of this report.

### **Application Chronology**

- 3 August 2016 - DA 2016/433 approved two storey residence.
- 27 February 2018 - DA 2018-139 submitted.
- 9 March 2018 - Request for additional information (adjoining neighbour consent for fence over boundary).
- 5 April 2018 - Submission received.
- 23 April 2018 - Revised submission.
- 9 May 2018 - Submission acknowledgement letter sent.
- 10 May 2018 - Amended plans received indicating the proposed fence wholly within the boundaries of the subject property and application listed for the Development Assessment Panel (DAP).
- 14 May 2018 – Applicant request for deferment of report to June DAP meeting. Request declined as the item had been listed and people notified.
- 16 May 2018 – Neighbour requested previous submissions be replaced with a revised submission. The revised submission is attached and has been considered in this assessment.

### **3. STATUTORY ASSESSMENT**

#### **Section 4.15(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)(i) Any environmental planning instrument**

##### **State Environmental Planning Policy No. 44 - Koala Habitat Protection**

There is no Koala Plan of Management on the site. Additionally, the site is less than 1ha in area and requires no tree removal. Therefore, no further investigations are required.

##### **State Environmental Planning Policy No.55 – Remediation of Land**

Following an inspection of the site and a search of Council records, the subject land is not identified as being potentially contaminated and is suitable for the intended use.

**State Environmental Planning Policy No. 62 – Sustainable Aquaculture**

Given the nature of the proposed development and proposed stormwater controls the proposal will be unlikely to have any adverse impact on existing aquaculture industries.

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

The site is located within a coastal zone as defined in accordance with clause 4 of SEPP 71.

In accordance with clause 5, this SEPP prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency.

Having regard to clauses 8 and 12 to 16 of SEPP 71 and clause 5.5 of Hastings LEP 2011 inclusive the proposed development will not result in any of the following:

- a) any restricted access (or opportunities for access) to the coastal foreshore;
- b) any identifiable adverse amenity impacts along the coastal foreshore and on the scenic qualities of the coast;
- c) any identifiable adverse impacts on any known flora and fauna (or their natural environment);
- d) subject to any identifiable adverse coastal processes or hazards;
- e) any identifiable conflict between water and land based users of the area;
- f) any identifiable adverse impacts on any items of archaeological/heritage;
- g) reduce the quality of the natural water bodies in the locality.

The site is a development site with the construction of a two storey residence underway and located within an area zoned for residential purposes. Council's Natural Resources Section have also reviewed the likely impacts of coastal processes/hazards in the area and deemed the development acceptable.

**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 R1 General Residential. In accordance with clause 2.3(1) and the R1 zone landuse table, the fence ancillary to the dwelling is a permissible landuse with consent.

The objectives of the R1 zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *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 as it is a permissible landuse and consistent with the established residential locality.

- Clause 5.9, no listed trees in Development Control Plan 2013 are proposed to be removed.
- Clause 5.10, the site does not contain or adjoin any known heritage items or sites of significance.

- Clause 7.1, the site is mapped as potentially containing class 3 acid sulphate soils. The proposed development includes a masonry fence, which will require an engineered strip footing. However, no excavation extending 3m below the natural surface level is proposed. In this regard, no adverse impacts are expected to occur to the acid sulphate soils found on site.
- Clause 7.6, applies to land that is shown as Coastal Erosion Risk on the Coastal Erosion Map. In this regard, the following comments are provided which incorporate consideration of the objectives of Clause 7.6 & the Coastal Protection Act 1979, NSW Coastal Policy 1997 and any relevant Coastal Zone Management Plan (CZMP);
  - The proposal will not significantly adversely affect coastal hazards.
  - The proposal will not result in significant detrimental increases in coastal risks to other development or properties.
  - The proposal will not significantly alter coastal hazards to the detriment of the environment.
  - The proposal avoids or minimises exposure to coastal hazards and is compatible with the coastal risk.
  - The proposal is in line with the provisions of the Lake Cathie Coastal Zone Management Plan.
- Clause 7.13, satisfactory arrangements are in place for provision of essential services.

**(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**

<b><i>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses &amp; Ancillary development</i></b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
3.2.2.1	Ancillary development: <ul style="list-style-type: none"> <li>• 4.8m max. height</li> <li>• Single storey</li> <li>• 60m<sup>2</sup> max. area</li> <li>• 100m<sup>2</sup> for lots &gt;900m<sup>2</sup></li> <li>• 24 degree max. roof pitch</li> <li>• Not located in front setback</li> </ul>	Controls not specific to 1.8m high masonry fence.	N/A
	Front setback (Residential not R5 zone): <ul style="list-style-type: none"> <li>• Min. 6.0m classified road</li> <li>• Min. 4.5m local road</li> <li>• Min. 3.0m secondary road</li> <li>• Min. 2.0m Laneway</li> </ul>	It is proposed that the fence has a front setback of 4.5m.	Yes



**DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development**

	Requirements	Proposed	Complies
3.2.2.7	<p>Front fences:</p> <ul style="list-style-type: none"> <li>• If solid 1.2m max height and front setback 1.0m with landscaping</li> <li>• 3x3m min. splay for corner sites</li> <li>• Fences &gt;1.2m to be 1.8m max. height for 50% or 6.0m max. length of street frontage with 25% openings</li> <li>• 0.9x0.9m splays adjoining driveway entrances</li> </ul>	No front fence proposed.	N/A

**DCP 2013: General Provisions**

	Requirements	Proposed	Complies
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline	No concealment or entrapment areas proposed.	Yes
2.3.3.1	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls	Cut and fill <1.0m change 1m outside the perimeter of the external building walls.	N/A
2.3.3.2	1m max. height retaining walls along road frontage	None proposed.	N/A
	Any retaining wall >1.0 in height to be certified by structure engineer	No retaining wall likely >1m.	N/A
	Combination of retaining wall and front fence height max 1.8m, max length 6.0m or 30% of frontage, fence component 25% transparent, and splay at corners and adjacent to driveway	No front fence retaining wall combination proposed.	N/A
2.3.3.8	Removal of hollow bearing trees	No trees proposed to be removed	N/A
2.6.3.1	Tree removal (3m or higher with 100mm diameter trunk at 1m above ground level and 3m from external wall of existing dwelling)	No trees proposed to be removed	N/A
2.4.3	Bushfire risk, Acid sulphate soils, Flooding,	Refer to main body of report.	Noted

<b>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses &amp; Ancillary development</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
	Contamination, Airspace protection, Noise and Stormwater		

(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:

No planning agreements have been entered into.

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.

**Demolition of buildings AS 2601:**

The proposed development is not subject to the requirements of this policy.

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

**Context and setting**

- The proposal will be unlikely to have any adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.
- The proposal is considered to be consistent with other residential development in the locality and adequately addresses planning controls for the area.
- There are no adverse impacts on existing view sharing.
- There are no adverse privacy impacts.
- There are no adverse overshadowing impacts. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June.

**Access, transport and traffic**

The proposal will be unlikely to have any adverse impacts in terms access, transport and traffic. The existing road network will satisfactorily cater for any increase in traffic generation as a result of the development.

**Water Supply**

No change or impact.

**Sewer**

No change or impact.

**Stormwater**

No change or impact.

**Other Utilities**

No change or impact.

**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.

**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.

**Noise and vibration**

No adverse impacts anticipated. Condition recommended to restrict construction to standard construction hours.

**Safety, security and crime prevention**

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate 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. Likely positive impacts can be attributed to the construction of the development and associated flow on effects (i.e. maintained employment and 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.

**(d) Any submissions made in accordance with this Act or the regulations**

While the development was not required to be notified, one (1) submission was still received.

Key issues raised in the submissions received and comments in response to these issues are provided as follows:

Submission Issue/Summary	Planning Comment/Response
<p>Sunlight (UV light and air cleaned by UV light) and air will not be able to get to the area between the dwelling and the proposed fence and has the potential to cause health problems with mould, moss and mildew growth. It is the proximity and height of the very solid wall to a fibro home that is going to cause the problems. The lack of ventilation, air and sun.</p>	<p>It should be noted that the impacts of a 1.8m high side/rear masonry fence would be the same or very similar to that of a 1.8m high colourbond or timber fence, which would not require Council approval under exempt provisions.</p> <p>Nonetheless, it is still considered that adequate light and ventilation can be provided via the 1.0m breezeway and due to the fence being orientated east-west.</p> <p>The surrounding sandy soils also provide suitable drainage.</p>
<p>Who will be responsible for the maintenance of the 1.8 metre fence to keep it in a pristine condition on neighbour's side of the wall?</p>	<p>No arrangements are in place for the future maintenance of the fence nor are they necessarily required. In particular, it is common practice for fences to be done as exempt development on a boundary and overtime require some maintenance. This situation/application is not dissimilar from exempt development and therefore not a reason for refusal.</p>
<p>Masonry walls are airless, cold, and prone to damp and moss. This wall will affect the quality of life of anyone who lives in this small unimposing home. The wall will create a narrow, airless gap which will end up with damp/smell problems with the potential to cause health problems.</p>	<p>The property substrate is sand, which is free draining. In addition, during the site inspection and after a prolonged period of rain, no evidence of water ponding was evident onsite between the existing dwelling and the boundary.</p> <p>The same could also be said for the impacts of a 1.8 high colourbond or timber fence, which are both permissible without consent.</p>
<p>The present height and length allows me to have reasonable views from my front deck. The proposed setback is 4.5 metres; the present setback is approx. 9-10 metres. A setback of at least 6 metres would allow me to continue to enjoy views from my deck.</p>	<p>Protecting views across side boundaries are difficult. However in this case, the view to the ocean from the seated position on the front verandah is maintained via view sharing principles.</p>
<p>My home is a small one storey home. With building regulations (relocatable, etc) I will be very restricted on size, height, building material and type of any new home, so will be restricted to renovating present home.</p>	<p>All development is subject to constraints and building regulations. The same would apply to the neighbouring property and would need to be considered in any re-design. It is considered that the proposed development does not stop the adjoining lot being re-developed. In</p>



Submission Issue/Summary	Planning Comment/Response
	particular, 1.8m side and rear fencing is common throughout residential areas.
Precedence of streetscape: This planned wall/fence style and height is contrary to the fences on Illaroo Road.	As mentioned earlier in the report, the subdivision was registered in 1947 and there is no restriction as to user or private covenant in relation to fencing.  The proposed fence also has a setback of 4.5m from the front boundary and does not impact on the existing streetscape amenity.  It is notable that many different fencing styles with variable heights exist within the precinct.
I am not willing for the wall to be centred on the boundary. This takes at least an extra 90mm away from my already narrow block size.	The fence is now situated wholly within the boundaries of 15 Illaroo Road.
I would need to see the detailed structural engineer's drawing so that I can satisfy myself about the construction.	This is not required at the DA stage. There is nothing to suggest the fence could not be installed as per the plans and engineering certification has been conditioned.
What provision has been made to prevent water build up against the wall? Any water currently flows through the fence.	At the time of the site inspection, it was noted that the ground was sandy and free draining. Even after a prolonged period of rain, the site showed no evidence of water ponding on the site.  Based on the above, it is considered that the proposed fence will not impede the flow of surface water between the properties as the soil is free draining sand and the existing site grades direct the water to the street frontage.

**(e) The public interest**

The proposed development satisfies relevant planning controls and is not expected to impact on the wider public interest.

**4. DEVELOPMENT CONTRIBUTIONS APPLICABLE**

Not applicable to a fence.

**5. CONCLUSION**

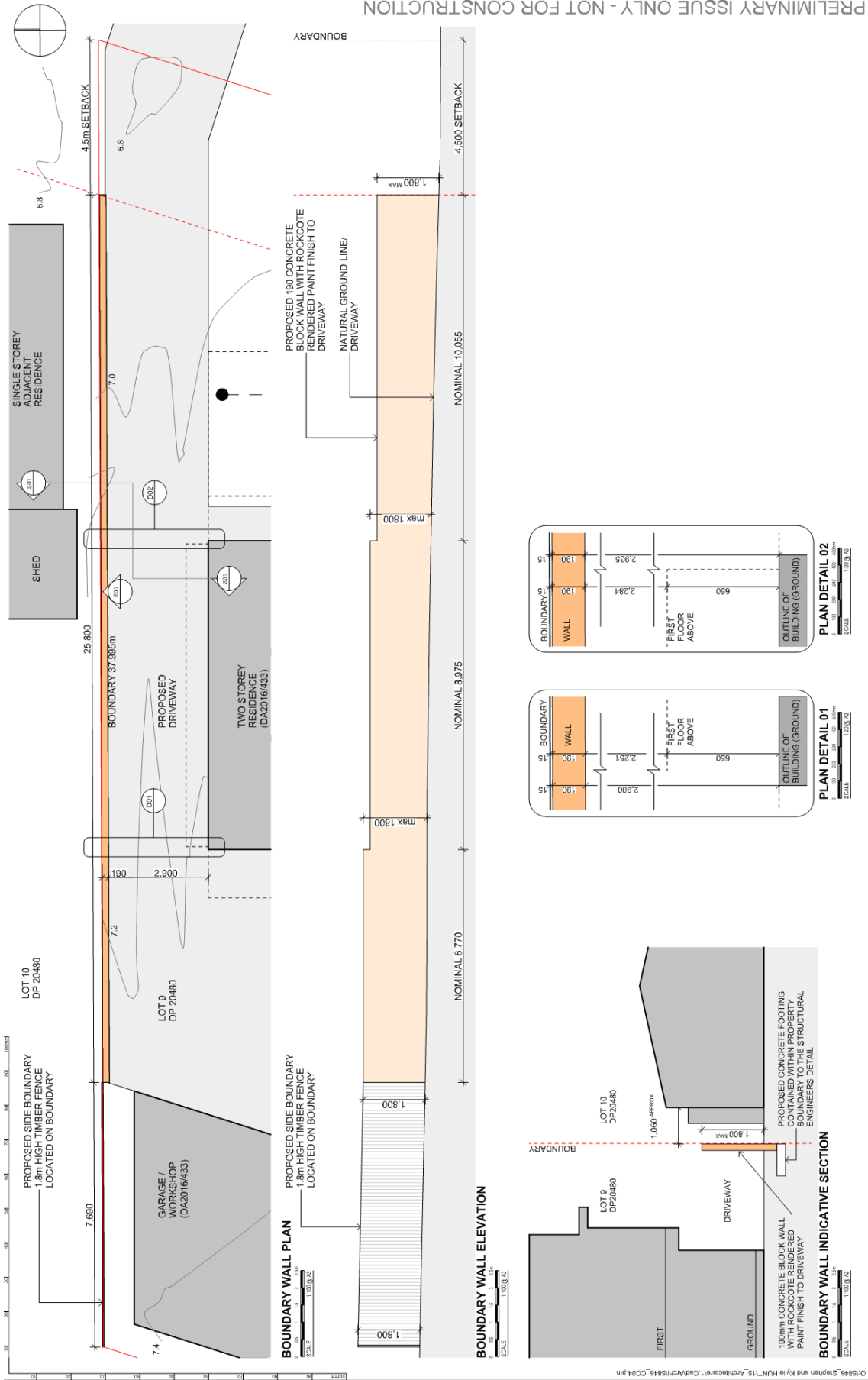
The application has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

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](#). DA2018 - 139.1 Plans
- 2[View](#). DA2018 - 139.1 Recommended DA conditions
- 3[View](#). DA2018 - 139.1 Submission - Fraser Martin



PRELIMINARY ISSUE ONLY - NOT FOR CONSTRUCTION				A3			
PROJECT NO.				DRAWING TITLE			
HUNT RESIDENCE ALTERATIONS & ADDITIONS				LOT 9 DP 20480 - 15 ILLAROO ROAD, LAKE CATHIE NSW 2445			
DRAWN BY				CHECKED BY			
MR S HUNT & MS KOUTRIM				DATE CREATED			
58446				58446			
DRAWING NO.				SHEET			
37				37			

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF  
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2018/139****DATE: 16/05/2018****PRESCRIBED CONDITIONS**

The development is to be undertaken in accordance with the prescribed conditions of Part 6 - Division 8A of the *Environmental Planning & Assessment Regulations* 2000.

**A – GENERAL MATTERS**

- (1) (A001) The development is to be carried out in accordance with the plans and supporting documents set out in the following table, as stamped and returned with this consent, except where modified by any conditions of this consent.

Plan / Supporting Document	Reference	Prepared by	Date
Fence Plans	5846_DA1.1_C	King & Campbell	10/05/2018

Pln the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

- (2) (A002) No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- the appointment of a Principal Certifying Authority; and
  - the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

- (3) (A009) The development site is to be managed for the entirety of work in the following manner:
- Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
  - Appropriate dust control measures;
  - Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
  - Building waste is to be managed via an appropriate receptacle;
  - Building work being limited to the following hours, unless otherwise permitted by Council;
    - Monday to Saturday from 7.00am to 6.00pm
    - No work to be carried out on Sunday or public holidays
- The builder to be responsible to instruct and control his sub-contractors regarding the hours of work.

**B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

- (1) (A195) Prior to the release of the construction certificate a Structural Engineer is to sign off on the fence design.

**C – PRIOR TO ANY WORK COMMENCING ON SITE**

nil

**D – DURING WORK**

- (1) D003) The Port Macquarie-Hastings area is known to contain rock that may contain naturally occurring asbestos (NOA). Should potential NOA be located on site notification shall be provided to Council and Workcover prior to works proceeding. No work shall recommence until a NOA management plan has been approved by Council or Workcover.

**E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE**

- (1) (E001) Upon completion of the fence, an Occupation Certificate is to be issued by the Principal Certifying Authority.

**F – OCCUPATION OF THE SITE**

nil

Dear PMHC General Manager,  
Development Application 10.2018.139.1  
15 Illaroo Road, Lake Cathie 2445 NSW (lot: 9 DP: 20480)  
Property: 15 Illaroo Rd, Lake Cathie 2445 NSW (LOT: 9 DP: 20480)  
Officer: Robert Slater

**Revised submission 16-5-2018**

I am the adjoining property owner, Margaret Fraser-Martin, 13 Illaroo Road, Lake Cathie 2445 NSW (lot: 10 DP 20480).

I received documentation from the architects for this proposed wall and then checked details on the PMHC website.

**2018 – 139.1 Public Plans and Documents**

I have concerns with the erection of this wall.

I am happy with the existing height and length of the existing boundary fence and do not see the need to extend the height and length of the fence.  
This is not a replacement, as stated on the document sent to me, but a completely different structure.

In the NSW Planning Portal: "Side and rear boundary fences must not be higher than 1.8 metres, or 1.2 metres if the fence is built from masonry." Could you please explain how this wall could be approved with regards to the above? Must be some sort of reason.

The concerns and issues with this proposed boundary wall are mainly about:

- Air flow to my home and property.
- Light into my home.
- Looking after the structure of my home.
- Potential health issues.
- Being able to enjoy the view from my deck area.
- Effect on the streetscape.

My home is a small one storey home. With building regulations (relocatable, etc) I will be very restricted on size, height, building material and type of any new home, so will be restricted to renovating present home, using its present footprint.

I want to have a home that uses natural resources (light and airflow) as much as possible as well as being able to enjoy the view from my front deck. The home constructed on the north side of my property (planned and built before relocatable building regulations) has already restricted light and airflow to my property. But this is just restricted to a small portion (garage length) to the back section of my property.

My concern is the "Proposed Boundary Fence (Wall)" starting 4.5 metres from front street boundary, at 1.8m high (for approx. 60% of the boundary length), will restrict both light and

air flow ventilation creating problems for my present home and occupants as well as restricting the enjoyment of views from the deck.

Concerns and problems that will be caused with Boundary Wall if built as proposed:

- The present fence height of 1.4 metres is an ideal height for a boundary fence that is 1 metre from a neighbouring home (my home). The present fence height allows the windows to be opened allowing in fresh air and also allowing natural light into the home from the windows. This is my present home with the present height fence.



Photo taken by Google car at 2.5metre above ground level

You can see the shadow that is cast, on the home, by the 1.4 metre fence paling fence. Now imagine a 1.8 metre masonry fence that extends by another approx. 4 metres, and the impact that this is going to have on my home.

- The present fence already creates a partway airless passageway and this is with an organic wooden paling fence of only 1.4metres in height.



Photo taken by Google car at 2.5metre above ground level

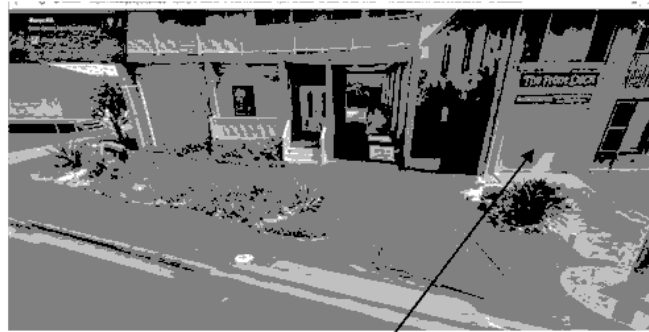


This shows the narrow gap between home and fence (also showing present security fence plus wooden paling fence).

- This home is built on blocks so needs under-house ventilation to prevent damp problems.
- A home would not be planned and built with the intention of having a window facing a 1.8 metre wall that is 1 metre away from the window. This is Lake Cathie, NSW, Australia, I do not expect or want to be able to open my drapes and be confronted by a 1.8 metre wall that is 1 metre away from my window.
- In a rented, very inner, Manhattan apartment you might expect to look out your bedroom window and see a wall a metre away (more likely to be 1.5 - 2 metres away), and only in the very older areas. This does not even happen in inner Sydney.
- Masonry walls are inorganic, in that they are solid, airless, cold, and prone to damp, moss and mildew. My residential home in Sydney has a similar, as the proposed, masonry wall that is not a metre away from any window but has the above mentioned problems.
  - A 1.8 metre masonry wall a metre away from my fibro home will cause damp and moss problems to the home as well as create a smelly area.
  - Sunlight (UV light and air cleaned by UV light) and air will not be able to get to this area, it has the potential to cause health problems with the mould, moss and mildew growth. It is the proximity and height of the very solid wall to a fibro home that is going to cause the problems with the lack of ventilation, air and sun.
  - This wall will affect the quality of life of anyone living in this home.
- Who will be responsible for the maintenance of the 1.8 metre wall to keep it in a pristine condition on my side of the wall?
- This wall is not about hiding my home from their view, at 15 Illaroo Road, as they have a balcony which practically goes over my property.



- The home at 15 Illaroo Road has not set any sort of precedence with large imposing masonry walls. The back fence is wooden paling; the other side is just a cold alley way with the neighbour's home and a 2 metre gap. You can probably see part of the effect this proposed wall will have on my property by this photo of numbers 15 and 17. Try and imagine these columns as a solid masonry wall 1.8 metre high and 190mm wide and 1 metre closer to Number 15 and the effect it would have on this area if the home was a single level fibro.



15

- Precedence of streetscape: This planned wall/fence style and height is contrary to the fences on Illaroo Road.  
Attachment PDF: Photos of Fences and Boundaries on Illaroo Road Lake Cathie
- I am not willing for the wall to be centred on the boundary. This takes at least an extra 90mm away from my already narrow block size.
- I would need to see the detailed structural engineer's drawing so that I can satisfy myself about the construction. To construct this wall, will access be needed to my property and who is responsible for any damage and remediation work on my property?
- What provision has been made to prevent water build up against the wall? Any water currently flows through the fence.

I propose the following alterations to the planned Masonry Boundary Wall between 15 & 13 Illaroo Road, Lake Cathie -

- Proposed Boundary Wall, currently planned at 4.5 metres from street boundary line, be moved back to 6 metres (present setback is 9-10 metres) from street boundary line (as per Council DCP Table 3.2.1 – Building Setbacks for Dwellings and Dual Occupancy).  
The present height and length allows me to have reasonable views from my front deck. A setback of at least 6 metres would allow me to continue to enjoy views from my deck.
- With the above increased setback to 6 metres, wall height to be reduced to maximum height of 1.4metres (present fence height), until inline with building front

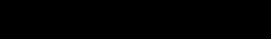
of 15 Illaroo Road. From this point towards the back (inline with building front of 15 Illaroo Road), fence to be 1.8m high as proposed if approved by council.

Attachment PDF: 15 Illaroo Road - Boundary Wall Possible Solution

- Another solution would be to have vent holes in the fence, this still will not allow light to get into the area, but will at least allow this narrow gap to breath. Probably not desirable from a design, safe construction, and safe wall and building codes view.

Hopefully we can work something out that works for everyone.

Margaret Fraser-Martin



#### Attachments

- PDF: Photos of Fences and Boundaries on Illaroo Road Lake Cathie
- PDF: 15 Illaroo Road - Boundary Wall Possible Solution

**ATTACHMENT PDF: PHOTOS OF FENCES AND BOUNDARIES ON ILLAROO ROAD LAKE CATHIE****PHOTO OF FENCE AND HOME IN APRIL 2018**

Taken at eye level, as you can see increasing the height to 1.8metres and increasing the length by approx. 4 metres is going to have a huge impact on my home, especially as this is going to be a masonry fence.

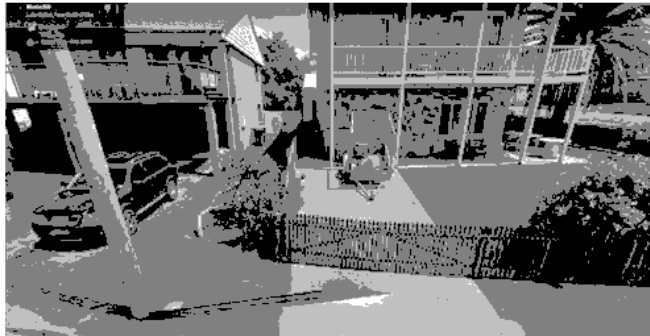
**FENCES AND BOUNDARIES OF NEIGHBOURS ON ILLAROO ROAD, LAKE CATHIE, NSW.**

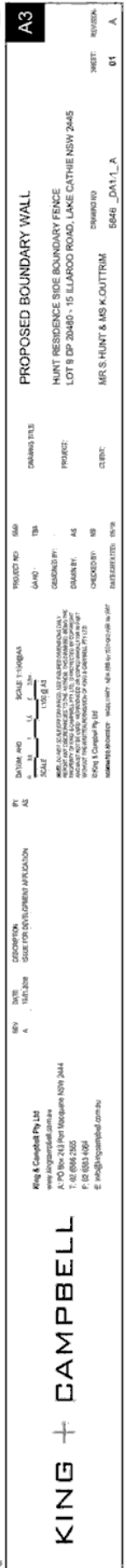
Photos taken by Google car at 2.5metre above ground level











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**Item: 06**

**Subject: DA2018 - 115.1 CHANGE OF USE FROM PANEL BEATER  
WORKSHOP TO RECREATION FACILITY (INDOOR) - LOT 2 DP 3749,  
NO. 148 NANCY BIRD WALTON DRIVE, KEW**

**Report Author: Fiona Tierney**

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**Applicant: S P & J A Bellamy**  
**Owner: S Gross & F J Hawkins**  
**Estimated Cost: \$5000**  
**Parcel no: 16975**

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#### **Alignment with Delivery Program**

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

#### **RECOMMENDATION**

**That DA 2018 – 115.1 for a change of use from panel beater workshop to a recreation facility (Indoor) at Lot 2, DP 3749, No. 148 Nancy Bird Walton Drive, Kew, be determined by granting consent subject to the recommended conditions.**

#### **Executive Summary**

This report considers a development application for a change of use from panel beater workshop to a recreation facility (indoor) 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, two submissions have been received.

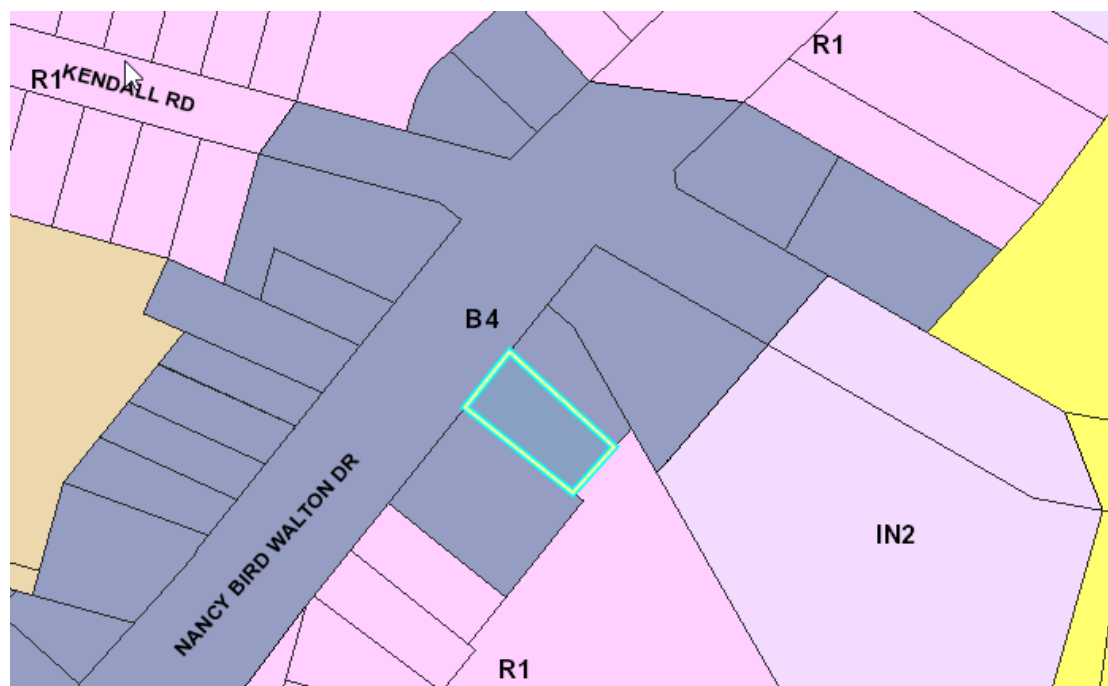
### **1. BACKGROUND**

#### **Existing sites features and Surrounding development**

The site has an area of 1031m<sup>2</sup>.

The site is zoned B4 - Mixed Use in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:





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



## 2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Change of use from an existing panel beater workshop to a recreation facility (indoor) – personal training gym.

Refer to attachments at the end of this report.

**Application Chronology**

- 21 February 2018 - Application lodged.
- 13 March to 26 March - Neighbour notification.
- 19 April 2018 - Request additional information on noise, parking, existing uses.
- 20 April 2018 - Additional information received.

**3. STATUTORY ASSESSMENT****Section 4.15(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.55 – Remediation of Land**

Following an inspection of the site and a search of Council records, the subject land is identified as being potentially contaminated from the past petrol station use. A remediation report has been submitted previously and the site deemed suitable for commercial purposes. Furthermore, the application was referred to Council's Environmental Health Officer who identified no conflicting issues. As a result, no further work or investigation is considered to be required.

**State Environmental Planning Policy No. 64 – Advertising and Signage**

The proposed development includes proposed advertising signage in the form of one flush wall building identification sign.

In accordance with clause 7, this SEPP prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency.

The following assessment table provides an assessment checklist against the Schedule 1 requirements of this SEPP:

<b>Applicable clauses for consideration</b>	<b>Comments</b>	<b>Satisfactory</b>
Clause 8(a) Consistent with objectives of the policy as set out in Clause 3(1)(a).	The proposed signage is consistent with the objectives of this policy.	Yes
Schedule 1(1) Character of the area.	The signage is consistent with the desired character of the area and locality as it is limited to the building's purpose and does not protrude above the building.	Yes
Schedule 1(2) Special areas.	The signage will not detract from the amenity or visual quality of any special areas.	Yes
Schedule 1(3)	The signage will not obscure or adversely	Yes

Views and vistas.	impact on any views of vistas.	
Schedule 1(4) Streetscape, setting or landscape.	The signage is proportionate to the building and the site to which it will be installed. The sign will also not detract from the streetscape.	Yes
Schedule 1(5) Site and building.	The signage is of a suitable scale and proportion to the site which it's to be located.	Yes
Schedule 1(6) Associated devices and logos with advertisements and advertising structures.	A logo is nominated and of an appropriate scale for the intended identification purpose.	Yes
Schedule 1(7) Illumination.	No illumination proposed.	N/A
Schedule 1(7) Illumination.	No illumination proposed.	N/A
Schedule 1(7) Safety.	No adverse safety impacts identified from the proposed signage.	Yes

**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 B4 Mixed Use. In accordance with clause 2.3(1) and the B4 zone landuse table, the proposed development for change of use to a recreational facility (indoor) is a permissible landuse with consent.

The objectives of the B4 zone are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To ensure that new developments make a positive contribution to the public domain and streetscape.

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

- The proposal is a permissible landuse.
- The proposal adds to the mixture of uses within the area.
- The proposal does not adversely impact on public domain or streetscape.
- Conditions will be utilised to reduce conflict with neighbouring properties.
- Clause 5.9, no listed trees in Development Control Plan 2013 are proposed to be removed.
- Clause 7.13, satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewage management, stormwater drainage and suitable road access to service the development.

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

Nil

## (iii) any Development Control Plan in force:

**Port Macquarie-Hastings Development Control Plan 2013**

The following table provides a checklist against the Development Provisions requirements of this DCP:

<b>DCP 2013: General Provisions</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline	The layout does not create any identifiable crime risk safety issues. The design limits potential concealment areas and allows surveillance of the carpark and street. Security fencing is proposed along the front of the premises. Appropriate lighting can be provided to improve safety.	Yes
2.5.3.2	New accesses not permitted from arterial or distributor roads	Existing access to be utilised.	Yes
	Driveway crossing/s minimal in number and width including maximising street parking	Driveway crossings minimal in width including maximising potential for street parking.	Yes
2.5.3.3	Parking in accordance with Table 2.5.1. Recreation facilities (indoor) - gymnasium require 7.5 spaces per 100m <sup>2</sup>	<p>The building is approximately 227m<sup>2</sup>.  <math>227/100\text{m}^2 = 2.27</math>.  <math>2.27 \times 7.5 \text{ spaces} = 15 \text{ spaces}</math> required.</p> <p>While 15 spaces would be required for a gym building of this size, the proposal is not considered to represent a typical gym. In particular, the proposal is more for personal training with limited group sizes of six (6) client's onsite at any one time. The parking rate for a dance studio is more conducive to the use/operation, which would only require 2 spaces (ie dance studio rates is 1 space per 3 pupils).</p> <p>In this case, five (5) onsite car</p>	No, but acceptable



<b>DCP 2013: General Provisions</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
		parking spaces are available, which is considered acceptable based on the restricted client numbers.	
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	Landscaping of parking areas satisfactory.	Yes
2.5.3.14	Sealed driveway surfaces unless justified	Sealed driveways proposed.	Yes
2.5.3.15 and 2.5.3.16	Driveway grades first 6m or 'parking area' shall be 5% grade with transitions of 2m length	Existing	Yes
2.5.3.17	Parking areas to be designed to avoid concentrations of water runoff on the surface.	Existing	Yes

(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:

Nil

iv) any matters prescribed by the Regulations:

Nil

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

#### **Context and setting**

The proposal will be unlikely to have any adverse visual impacts to existing adjoining properties or the public domain.

The proposal has adequately addressed the intent of the planning controls for the area and is a permissible landuse.

The proposal will not have any identifiable significant adverse lighting impacts.

There are no significant adverse privacy impacts.

#### **Roads**

The site is bounded by the Pacific Highway and Kendall Rd.

#### **Site Frontage & Access**

Vehicle access and egress to the site is proposed through the existing entry driveway and a dedicated exit driveway.

**Parking**

The existing centre has sufficient parking for the 2 approved uses on the site. Five dedicated spaces are proposed for the use as a gym and 13 spaces are provided over the site. Classes are a maximum of 3-6 people and 5 spaces are adequate for this proposed use consistent with required parking for a dance studio rate. No large format classes are proposed.

**Water Supply Connection**

Council records indicate that the development site has an existing sealed water service.

Final water service sizing would need to be determined by a hydraulic consultant to suit the commercial components of the development, as well as fire service and backflow protection requirements. Considered capable of being complied with.

**Sewer Connection**

There is existing sewer in place, which will not require any changes.

**Stormwater**

There is no change to existing hard stand spaces proposed and therefore no change to stormwater.

**Other Utilities**

Telecommunication and electricity services are available to the site with no changes foreseen.

**Heritage**

Following a site inspection (and a search of Council records), no known items of Aboriginal or European heritage significance exist on the property.

There is a local heritage item (Kew Hotel) on the adjoining property to the north. However, the application is for a change of use only and will create no adverse impacts.

**Other land resources**

The site is within a developing industrial/commercial context and will not sterilise any significant mineral or agricultural resource.

**Soils**

The proposed development will be unlikely to have any adverse impacts on soils in terms of quality, erosion, stability and/or productivity.

**Air and microclimate**

The construction and/or operations of the proposed development would be unlikely to result in any adverse impacts on the existing air quality or result in any pollution.

**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.

**Waste**

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. No adverse impacts anticipated.

**Noise and vibration**

The application was referred to Council's Environmental Health Officer for consideration of potential noise impacts during operation. It was determined that through the imposition of conditions, noise levels could be contained within acceptable levels.

**Bushfire**

The site is identified as being bushfire prone however site is existing and no additional residential components proposed. No further consideration required.

**Safety, security and crime prevention**

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area.

**Social and Economic impacts in the locality**

The development is likely to create positive social and economic benefits through employment and associated flow on effects.

**Site design and internal design**

The proposed development design satisfactorily responds to the site attributes and will satisfactorily fit into the locality.

**Construction**

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

**Cumulative Impacts**

No adverse cumulative impacts identified within the locality.

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

Based upon the assessment in this report, it is considered that the site is suitable for the development.

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

Two written submissions have been received following public exhibition of the application.

Key issues raised in the submissions received and comments in response to these issues are provided as follows:

<b>Submission Issue/Summary</b>	<b>Planning Comment/Response</b>
Acoustic report should be prepared and applicant made to comply with recommendations.	The applicant has provided an assessment with recommendations as to the required noise levels. This was subsequently reviewed by Council's Environmental Health Officer and deemed acceptable, subject to imposition of conditions of consent.
Proposal will impact on their motel business because of	Decibel levels and hours of operation are to be restricted in accordance with the noise report.

Submission Issue/Summary	Planning Comment/Response
music, yelling and metal weights being dropped.	Applicant has advised that impact flooring has been installed throughout and an internal wall has been installed adjoining motel boundary. Classes/sessions are limited to 6 people.
Ongoing issues with noise at the premises and complaints lodged with Council.	It is noted that noise issues have been raised in the past but not wholly the gym proposal. It is considered that the decibel reading restrictions and other noise related conditions will address noise issues in the future and allow a measure to enforce.
Requests hours of operation be changed to 9-5pm, all activities be inside the gym and roller door kept shut.	Applicant has agreed to modify the hours from 6am to 7am. It is recommended that the roller door be kept closed from 7am-8am and 8pm-9pm to further limit potential noise impacts. No gym class/training activities are permitted external to the gym adjoining the motel boundary.

**(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**

Credit exists from the previous use and therefore contributions do not apply.

**5. CONCLUSION**

The application has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

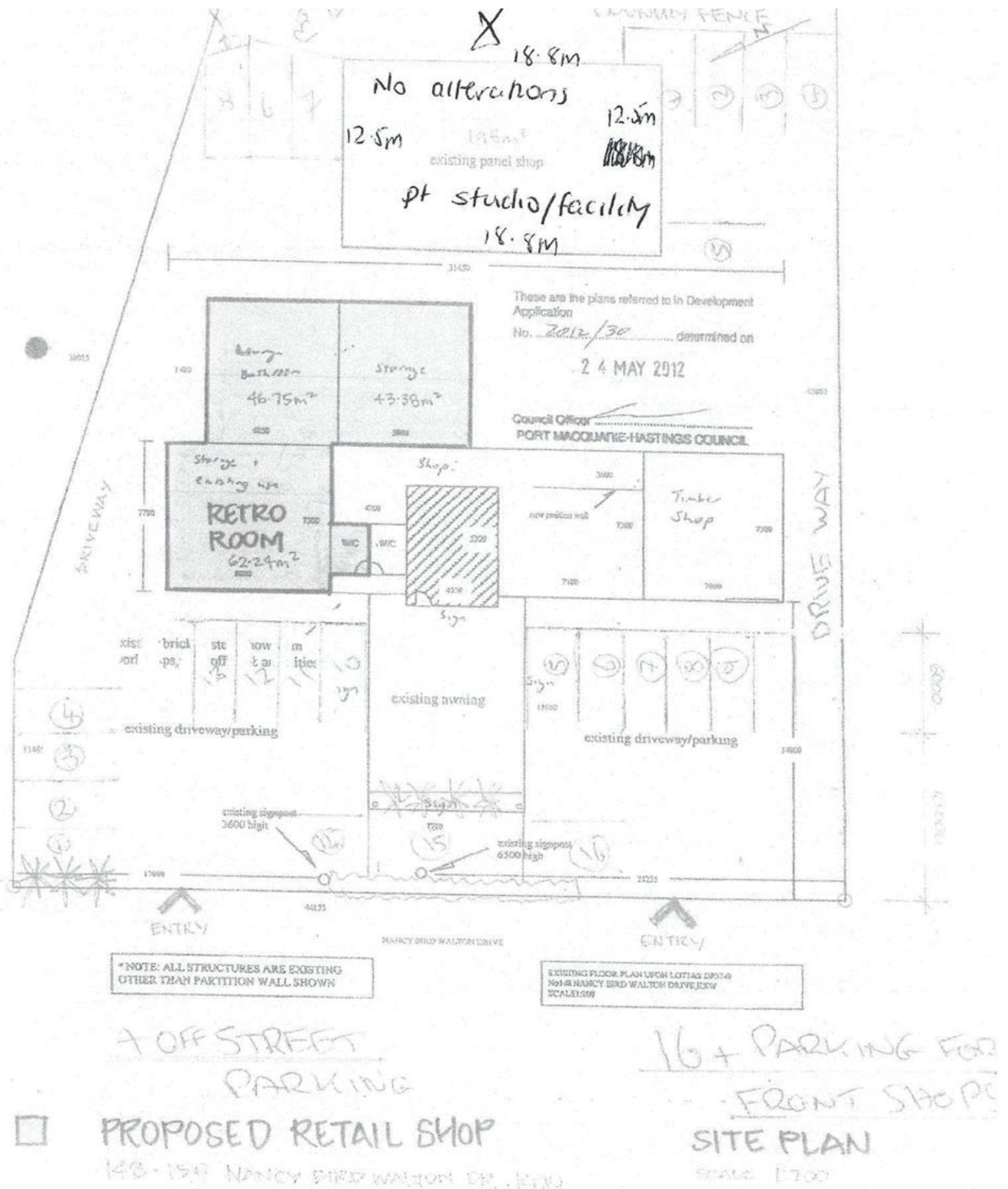
Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application. Where relevant, conditions have been recommended to manage the impacts attributed to these issues.

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](#). DA2018 - 115.1 Plans
- 2 [View](#). DA2018 - 115.1 Recommended Conditions
- 3 [View](#). DA2018 - 115.1 Submission - Tambotie Pty Ltd 19032018
- 4 [View](#). DA2018 - 115.1 Submission - Whelan







**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF  
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2018/115****DATE: 15/05/2018****PRESCRIBED CONDITIONS**

The development is to be undertaken in accordance with the prescribed conditions of Part 6 - Division 8A of the *Environmental Planning & Assessment Regulations 2000*.

**A – GENERAL MATTERS**

- (1) (A001) The development is to be carried out in accordance with the plans and supporting documents set out in the following table, as stamped and returned with this consent, except where modified by any conditions of this consent.

<b>Plan / Supporting Document</b>	<b>Reference</b>	<b>Prepared by</b>	<b>Date</b>
SOEE		J Bellamy	Undated
Floor Plan		J Bellamy	Undated
Site Plan		J Bellamy	Undated

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

- (2) (A014) This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.
- (3) Separate development consent will be required for any proposed signage not covered by this consent, unless considered exempt development.

**B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

nil

**C – PRIOR TO ANY WORK COMMENCING ON SITE**

nil

**D – DURING WORK**

nil

**E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE**

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (B196) Prior to occupation or the issue of the Occupation Certificate (or Interim Occupation Certificate) the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate (or interim fire safety certificate in the case of a building or part of a building occupied before completion) in accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The

certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.

#### F – OCCUPATION OF THE SITE

- (1) (F001) On site car parking in accordance with the approved plans to be provided in an unrestricted manner at all times during the operations of development for use by both staff and patrons. A total of five (5) spaces are to be provided onsite.
- (2) (F009) All new and existing essential fire safety measures shall be maintained in working condition at all times.
- (3) (F024) Offensive noise as defined under the Protection of the Environment Operations Act 1997, shall not be generated as a result of the operation of the development.
- (4) (F025) Hours of operation of the development are restricted to the following hours:
  - 7 am to 9 pm – Mondays to Fridays
  - 7 am to 9 pm – Saturdays
  - No work is to be carried out on Sundays and Public Holidays
- (5) (F195) The roller door adjoining the southern boundary is to be kept closed 7-8am and 8-9pm.
- (6) (F196) Clients onsite are limited to six (6) at any one time.
- (7) (F195) Noise from the use of the premises shall not exceed the following levels when measured from the most affected boundary of the premises.

Time Period	Maximum noise level
Daytime	51dB(A)
Evening	50dB(A)
Night time	45dB(A)

Where daytime is defined as 7.00am to 6.00pm, Monday to Saturday; 8.00am to 6.00pm Sunday and Public Holidays. Evening is defined as 6.00pm to 10.00pm, Monday to Saturday and Public Holidays. Night is defined as 10.00pm to 7.00am, Monday to Saturday; 10.00pm to 8.00am Sunday and Public Holidays.

- (8) (F197) Any illumination of signs, the building or surrounding areas should not be directed to existing residential receivers.
- (9) (F198) All garbage areas are to be screened from the street, create no adverse odour impact on adjoining properties and be kept free of pests at all times.

#### SCHEDULE OF FIRE SAFETY MEASURES PROPOSED

Building Code of Australia (BCA) -  
2010 Fire Safety Measure

Minimum Standard of Performance

AS2444 (2001) & E1.6 BCA

1. Portable fire extinguishers

Tambotie Pty Ltd  
Kew Motel  
144 Nancy Bird Walton Drive  
Kew  
2439

Ref: tin shed

19 March 2018  
Attention: General Manager  
Port Macquarie-Hastings Council

RE: NOTIFICATION OF DEVELOPMENT PROPOSAL  
LOT:2 DP3749, 148 Nancy Bird Walton Drive Kew, NSW,2439  
Application: 2018/115.  
Change of use Workshop to Recreational Facility (crossfit gym)

Referring to your letter dated 7 March 2018 received 13 March 2018.

Prior to required regulatory changes to the tin shed and amendments to the applicants business hours.

We strongly object to the mentioned change of use of the tin shed at 148 Nancy Bird Walton Drive Kew.

This year a similar application to use a shed for business activities was approved on the condition the shed had to have an Acoustic Report done and the owners had to make the necessary soundproofing and business hours changes to adhere to regulations.

The same rules should apply to the shed at 148 Nancy Bird Walton Drive Kew. A qualified acoustical consultant must prepare an Acoustic Report to which the applicant must adhere to.

The acoustic changes together with a change in operating hours that is currently from 6:00 a.m. to 9:00 p.m. must be made. Some sessions are held outside the shed. (attached find photo #6. The program of applicants' business hours on facebook.) The crossfit gym also opens up the four meter roller door, right next to and overlooking the Kew Motel at 144 Nancy Bird Walton Drive for airflow in the crossfit gym. (Please see attached photo's #2 and #3 for proximity to Kew Motel's rooms)

The Kew Motel at 144 Nancy Bird Walton Drive Kew was registered in 1970. It creates jobs and support seven local employees and their dependants. Kew Motel do not have a ocean view but offer a lovely quite calm small country town setting. The Kew Motel has an outlook over lush green fields and prides itself with an excellent and quality product. Our marketing slogan is "We are in the business of sleep"

The Kew Motel created a niche market. The Kew Motel's 400 clients per month are families and mature people with gold and platinum status cards. For the past two years the Kew Motel received a five star rating on TripAdvisor and Kew Motel received the Certificate of Excellence in 2017.

Page 1 of 5

The Kew Motel will always promote growth in the town and area, if it is for the benefit of the town and its people.

The proximity of the crossfit gym right next door overlooking the Kew Motel is the source of great disturbance, discontent and discomfort to the guests staying and using the facilities at the Kew Motel.

With pulsing music, chanting and motivational slogans being screamed while exercising to the rhythm of the music. Metal weights being tossed around, starting at 6:00 a.m and ending at 9:00 p.m. is something the Kew Motel cannot approve.

Good neighborliness and adhering to regulations is the foundation of a community. The following incidents were opened in regard to the property at 148 Nancy Bird Walton Drive Kew.

Monetary gain is the only driving force of the owners of 148 Nancy Bird Walton Drive Kew, with no regard to anybody else.

CRM: 20143/2017 - Noise and use of property.

CRM: 20144/2017 - Noise and use of property.

CRM: 24117/2017 - Noise and use of property.

Police Incident: 221399 -08102017 – Noise from brothel.

Police Incident: 671609 - 21122017 - Noise from brothel.

Department of Environment Ref #:152398 Noise and use of property (current applicant crossfit gym in tin shed)

Phone calls and video footage for all these incidents can be provided.

To conclude:

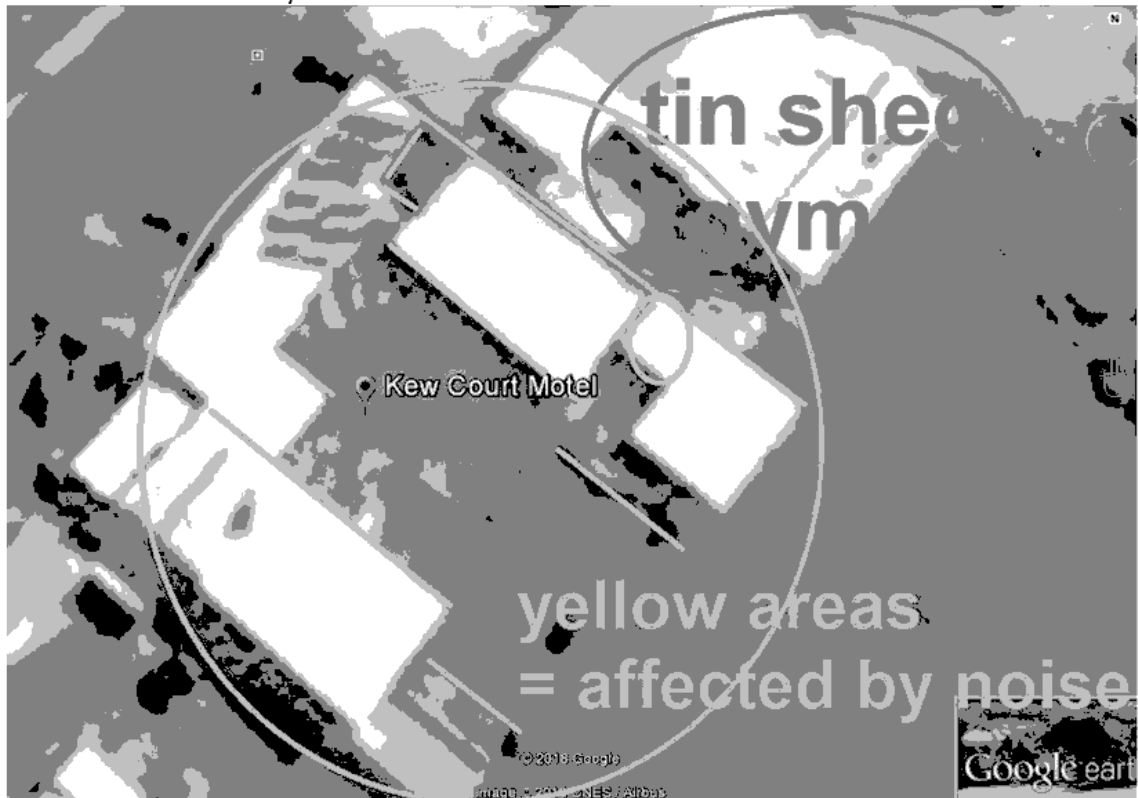
1. The applicant must supply and adhere and make changes according to recommendations made by a qualified acoustical consultant.
2. The business hours must be from 9:00 a.m. to 5:00 p.m. (normal hours..)
3. The applicant of the crossfit gym must conduct all activities inside the premises of the building\shed.
4. The four meter roller door and all other windows and openings facing towards the Kew Motel will be kept shut at all times.

Attached six photo's shows proximity and facilities all affected by the crossfit gym activities next to the Kew Motel.

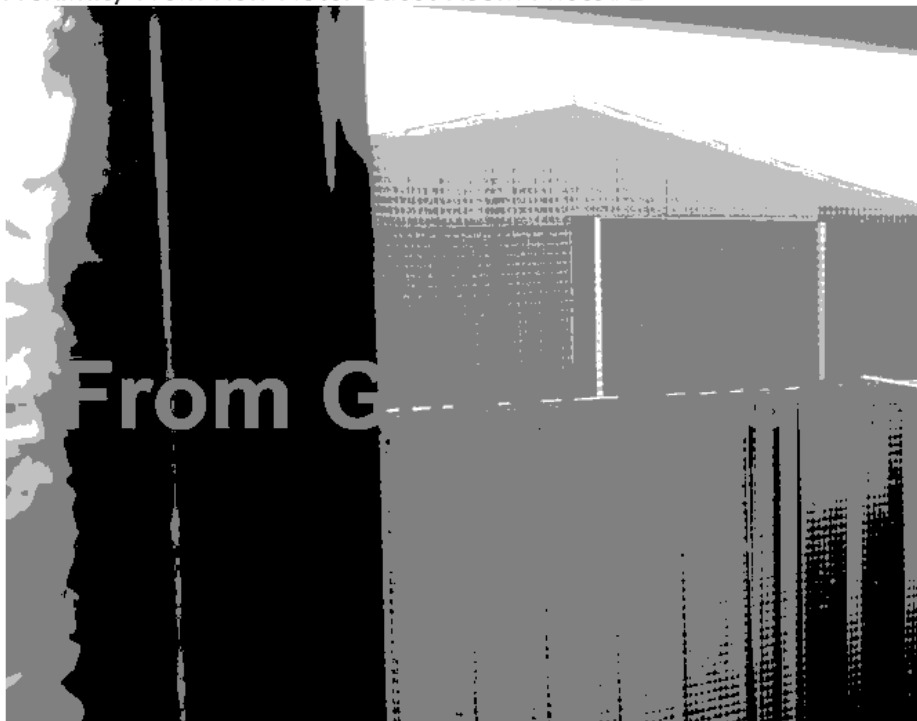
Tambotie Pty Ltd  
t/a Kew Motel  
144 Nancy Bird Walton Drive  
Kew  
2439



Kew Motel Affected By Noise Photo #1



Proximity From Kew Motel Guest Room Photo#2



Proximity from Kew Motel's Guests Rooms and Facilities Photo #3



Proximity of gym to Guests Rooms Photo #4





Kew Motel Relaxation Area Photo #5



Photo #6 tin gym program

# ACTIVE DISCOVERY PROJECT MID NORTH COAST KARATE

CROSSFIT

# 0497 956 924 5389

# 0473 559 236 1818

# 0438 432 348 7057

MON TUE WED THU FRI SAT

6.00am  
(700)

XFunctional Movement Strategy	CROSSFIT	CROSSFIT	XFunctional Movement Strategy	CROSSFIT	
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8.30am

CROSSFIT

9.30am

XFunctional Fitness (matte & kate)		XFunctional Fitness (matte & kate)		XFunctional Movement Strategy	
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10.00am

Stress Relief - @sugardoll

11.30am

Sparring, Karate.

3.30pm

Little Ninja		Little Ninja			
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4.00pm

Stitch & Kato	Tate Karate	Stitch Karate	Flash Karate	XFunctional Fitness - @sugardoll	
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5.00pm

CROSSFIT

5.15

CROSSFIT	Thump Boxing	Sparring Karate			
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5.30pm


Outdoor CROSSFIT

CROSSFIT

6.30pm

Adults Karate	CROSSFIT	Adults Karate		CROSSFIT	
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Mandy Whelan  
5/22 Blake Street  
Laurieton  
2443



21 March 2018  
Attention: General Manager  
Port Macquarie-Hastings Council

RE: NOTIFICATION OF DEVELOPMENT PROPOSAL  
LOT:2 DP3749, 148 Nancy Bird Walton Drive Kew, NSW,2439  
Application: 2018/115.  
Ref: DA2018.115.1  
Change of use Workshop to Recreational Facility (crossfit gym)

I am an employee at the Kew Motel. I'm a single mom with two dependants.  
I've been working at the Kew Motel for the past four and a half years.

The proposed change at 148 Nancy Bird Walton Drive Kew will have an adverse effect on the peaceful quite surrounds of the Kew Motel at 144 Nancy Bird Walton Drive Kew.

I worked at the Kew Motel when the crossfit gym operated illegally next door at 148 Nancy Bird Walton Drive Kew. All the guests complained. The protruding noise from 148 Nancy Bird Walton Drive Kew was overwhelming and was heard inside all the rooms and all over the property of the Kew Motel at 144 Nancy Bird Walton Drive Kew.

The request for change of use at 148 Nancy Bird Walton Drive Kew must also comply to sound proofing regulations just like a business in Kew with a shed had to comply with this year.

The soundproofing and business hours that is currently from 6:00 a.m. to 9:00 p.m. will not work next to the Kew Motel. Some sessions are held outside the shed.  
The crossfit gym also opens up the four meter roller door, right next to and overlooking the Kew Motel at 144 Nancy Bird Walton Drive.

The Kew Motel cannot offer guests an ocean view but the lovely quite calm small country town setting overlooking lush green fields is the reason why our guests keeps on coming back. Our guests always tell us how nice a peaceful the Kew Motel is. I know the majority of the guests that come to stay at the Kew Motel. 82% of all guests are returning customers.  
We have a five star rating on TripAdvisor and Kew Motel also received the Certificate of Excellence in 2017.

I trust these urgent issues will be addressed.

Regards

Mandy Whelan

5/22 Blake Street  
Laurieton  
2443

