



PORT MACQUARIE-HASTINGS
COUNCIL



Development Assessment Panel

Business Paper

date of meeting: Wednesday 11 July 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

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	26/04/18	09/05/18	23/05/18	13/06/18	27/06/18
Paul Drake	✓	✓	✓	✓	✓
Robert Hussey	✓	✓	✓	✓	✓
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 11 July 2018

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

"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."

Item: 02**Subject: APOLOGIES**

RECOMMENDATION

That the apologies received be accepted.

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

RECOMMENDATION

That the Minutes of the Development Assessment Panel Meeting held on 27 June 2018 be confirmed.

PRESENT

Members:

Paul Drake
Robert Hussey
Dan Croft

Other Attendees:

Melissa Watkins
Jesse Dick
David Troemel

The meeting opened at 2:00pm.

01 ACKNOWLEDGEMENT OF COUNTRY

The Acknowledgement of Country was delivered.

02 APOLOGIES

Nil.

03 CONFIRMATION OF MINUTES

CONSENSUS:

That the Minutes of the Development Assessment Panel Meeting held on 13 June 2018 be confirmed.

04 DISCLOSURES OF INTEREST

There were no disclosures of interest presented.

05 DA2018 - 130.1 SUBDIVISION, CHILDCARE CENTRE AND MANAGERS RESIDENCE - LOTS 32 & 2, DP 1100016 & 505679, NGAMBA PLACE & MCGILVRAY ROAD BONNY HILLS

Speakers:

Terry Rixon (o)
Roberts Smallwood (o)
Nigel Swift (applicant)
Terrance Stafford (applicant)

The Panel noted that the second paragraph under the heading 'SEPP (Educational Establishments and Childcare Facilities) 2017' was erroneous and not relevant to the application.

CONSENSUS:

That DA 2018 - 130 for a subdivision, childcare centre and managers residence at Lot 32 & 2, DP 1100016 & 505679, Ngamba Place & 3 McGilvray Rd, Bonny Hills, be determined by granting consent subject to the recommended conditions with amendments as follows:

1. Amend condition A(1) to read:
'(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
SOEE	6023	King & Campbell	February 2018
Architectural Plans, subdivision plan and exhibits	6023	King & Campbell	Including plans as amended to revision F dated 17/5/2018
Bushfire Assessment		Krisann Johnson	19/2/2018
Ecological Assessment		JB ENVIRO	February 2018
Stormwater	SP15-MB8960-S	SPEL Environmental	14/7/2015

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. Amend condition A(10) to read:
'The provision, at no cost to Council, of 1.5m wide concrete foot paving for the Ngamba Place frontage of the development. The design plans must be approved by Council pursuant to Section 138 of the Roads Act.'

-
3. Amend point 11 in condition B(2) to read:
'Provision of a 1.5m (unless varied in writing by Council) concrete footpath across the Ngamba Place frontage of the property.'
 4. Amend condition A(15) to read:
'Six Koala food trees are to be planted either within the site as detailed in the submitted site plan (King & Campbell Drawing no 6023_DA1.1_F, dated 17 May 2018), or within the Ngamba Place road reserve (or a combination of both). Species and location of trees are to be approved by Council. Trees are to be a minimum 75L nat spec plants. 12 months maintenance is required as part of the defects liability period for the development.'
 5. Amend condition B(22) to read:
'Provision of kerb and gutter along the full frontage of Ngamba Place and Bundarra Way connecting to existing kerb and gutter adjacent to lot 2 DP1079630 (6 Bundarra Way). Kerb to be positioned generally 4.5m from the centre line of Ngamba Place. Provision of road widening adjacent to the kerb along Ngamba Place in accordance with Council AUS-SPEC standards. Construction details shall be included with any Road Act (Section 138).'
 6. Amend condition B(25) to read:
Acoustic lining or fencing is to be applied to the eastern boundary adjoining the residential backyards immediately adjacent to the carpark. The fencing is to be designed and certified by an acoustic consultant confirming that noise emanating from use of the car park will not be greater than 5dBA above background noise levels at the neighbouring property. Details are to be illustrated and provided prior to release of the construction certificate.'
 7. Amend condition F(1) to read:
'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 36 spaces are to be provided onsite.'
-

**06 DA2017 - 885.1 TOURIST AND VISITOR ACCOMMODATION - LOT 331
DP828346, LOT 24 DP 22883, 14-20 FLYNN STREET, PORT MACQUARIE**

CONSENSUS:

Speakers:

Michael Barry (o)
Mick Lyons (o)
Andrew Lister (applicant)
Andrew Dickson (applicant)
David Sparks (applicant)

CONSENSUS:

That DA2017 – 885.1 for tourist and visitor accommodation at Lot 331, DP 828346 and Lot 24, DP 22883, No. 14-20 Flynn Street, Port Macquarie, be determined by granting consent subject to the recommended conditions.

07 GENERAL BUSINESS

Nil.

The meeting closed at 3:15pm.

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

By <i>[insert full name of councillor]</i>	
In the matter of <i>[insert name of environmental planning instrument]</i>	
Which is to be considered at a meeting of the <i>[insert name of meeting]</i>	
Held on <i>[insert date of meeting]</i>	
PECUNIARY INTEREST	
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.
MATTER GIVING RISE TO PECUNIARY INTEREST	
Nature of land that is subject to a change in zone/planning control by proposed LEP (<i>the subject land</i>) ⁱⁱⁱ [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.

-
- 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^{iv} 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.

Item: 05

**Subject: DA2015 - 30.3 - SECTION 4.55 MODIFICATION OF CONSENT -
ALTERATIONS AND ADDITIONS TO DWELLING AT LOT 377 DP
236950, NO. 31 VENDUL CRESCENT, PORT MACQUARIE**

Report Author: Chris Gardiner

Applicant: Wayne Ellis Architect

Owner: A J Brinkman

Estimated Cost: N/A

Parcel no: 24362

Alignment with Delivery Program

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

RECOMMENDATION

That the Section 4.55(1A) modification to DA2015 - 30.2 to amend building design, windows, and internal layout for the dwelling at Lot 377, DP 236950, No. 31 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended modified conditions.

Executive Summary

This report considers a Section 4.55(1A) modification of consent application at the subject site and provides an assessment in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, two submissions were received (from the same property owners).

1. BACKGROUND

History

The original development application was reported to Council's Development Assessment Panel (DAP) on 22 April 2015. The outcome of the meeting was as follows:

DAP was unable to reach consensus.

David Fletcher moved the following motion:

'That the application be deferred to enable the applicant to investigate reducing the void height between the first and second floor to 300mm and a corresponding reduction in overall roof ridge height be made'.

David Troemel and Dan Croft supported the motion.

Paul Drake did not support the motion.

The dissenting recommendation from Paul Drake was:

'That it be a recommendation to Council that DA2015 - 0030 for additions to dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) of Port Macquarie- Hastings Local Environmental Plan 2011, at Lot 377, DP 236950, 31 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions with amendments to conditions of consent as follows:

- Amend condition A(4) by adding an additional numbered point to read: 'Building works are to be undertaken so as not to result in the damage or loss of existing vegetation on the site.'*
- Additional condition in Section B of the consent to read: 'Prior to release of the construction certificate, the plans are to be amended to provide for opaque glass to the windows of the second floor ensuite and wardrobe.'*

The application was then reported to Council on 20 May 2015 and Council resolved:

That Council:

- 1. Defer the determination of DA2015 - 0030 for additions to dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) of Port Macquarie-Hastings Local Environmental Plan 2011, at Lot 377, DP 236950, 31 Vendul Crescent, Port Macquarie, to allow for amended plans to be submitted.*
- 2. Refer the application to the Development Assessment Panel for determination in accordance with the Development Assessment Panel Charter.*

Amended plans were received on 15 July 2015 and the application was subsequently re-notified.

Following exhibition of the revised application, three (3) submissions were received. These included a revised submission from one of the previous objectors and a new objection from another neighbour. The third submission was from an original objector who no longer objected to the revised design.

As a result of the above, the application was again reported to DAP on 26 August 2015 whereby the following was resolved:

That it be recommended to Council that DA2015 - 0030 for additions to dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) of Port Macquarie-Hastings Local Environmental Plan 2011, at Lot 377, DP 236950, 31 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

- Delete condition B(8)*

- *Additional condition in section B of the consent to read: 'The balustrade on the second floor deck is to be constructed of opaque glass panels/walls joining floor and railing.'*

The application was then reported to Council on 19 September 2015 where the following was resolved:

That DA2015 - 0030 for additions to dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) of Port Macquarie-Hastings Local Environmental Plan 2011, at Lot 377, DP 236950, 31 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

- *Delete condition B(8).*
- *Additional condition in section B of the consent to read: 'The balustrade on the second floor deck is to be constructed of opaque glass panels/walls joining floor and railing'.*

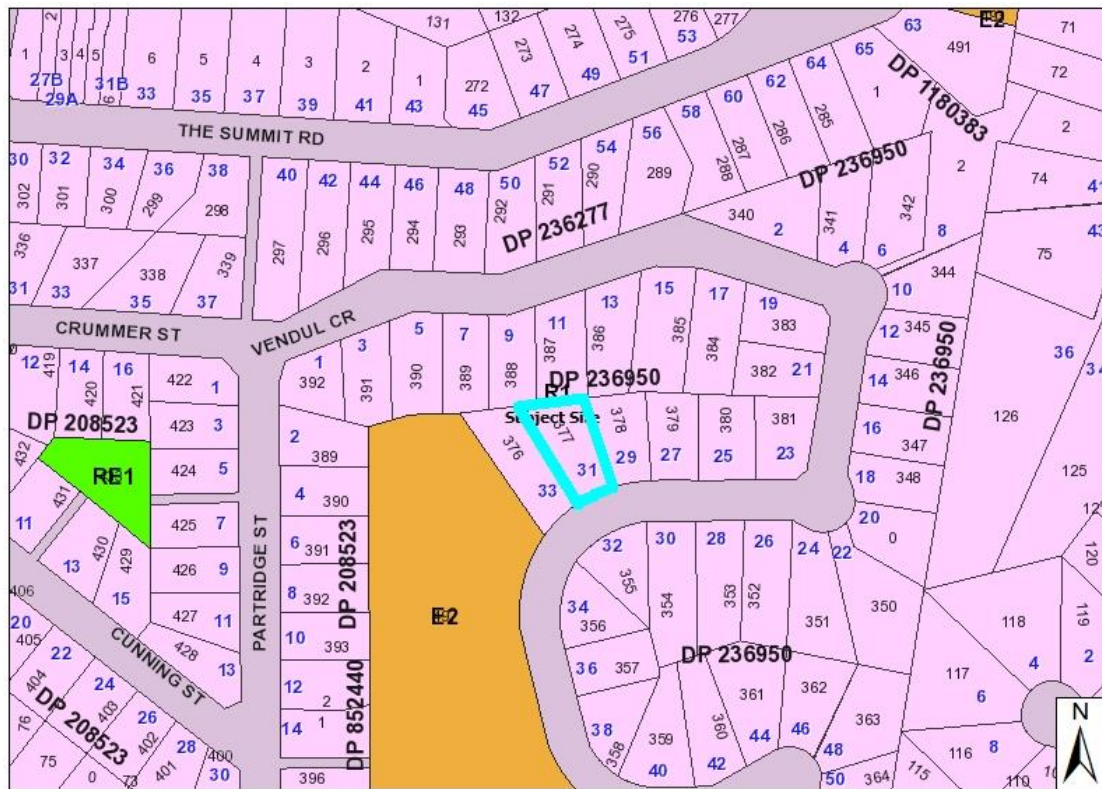
A Section 96(1A) application was subsequently lodged on 26 October 2015, seeking to clarify the screening and privacy requirements in the conditions of consent. The application was considered by the Development Assessment Panel on 9 December 2015, with the Panel reaching the following consensus:

That the Section 96(1A) modification to DA2015 - 0030.2 to clarify conditions on screening requirements for the dwelling at Lot 377, DP 236950, No. 31 Vendul Crescent, Port Macquarie, be determined by granting consent to the recommended modified conditions.

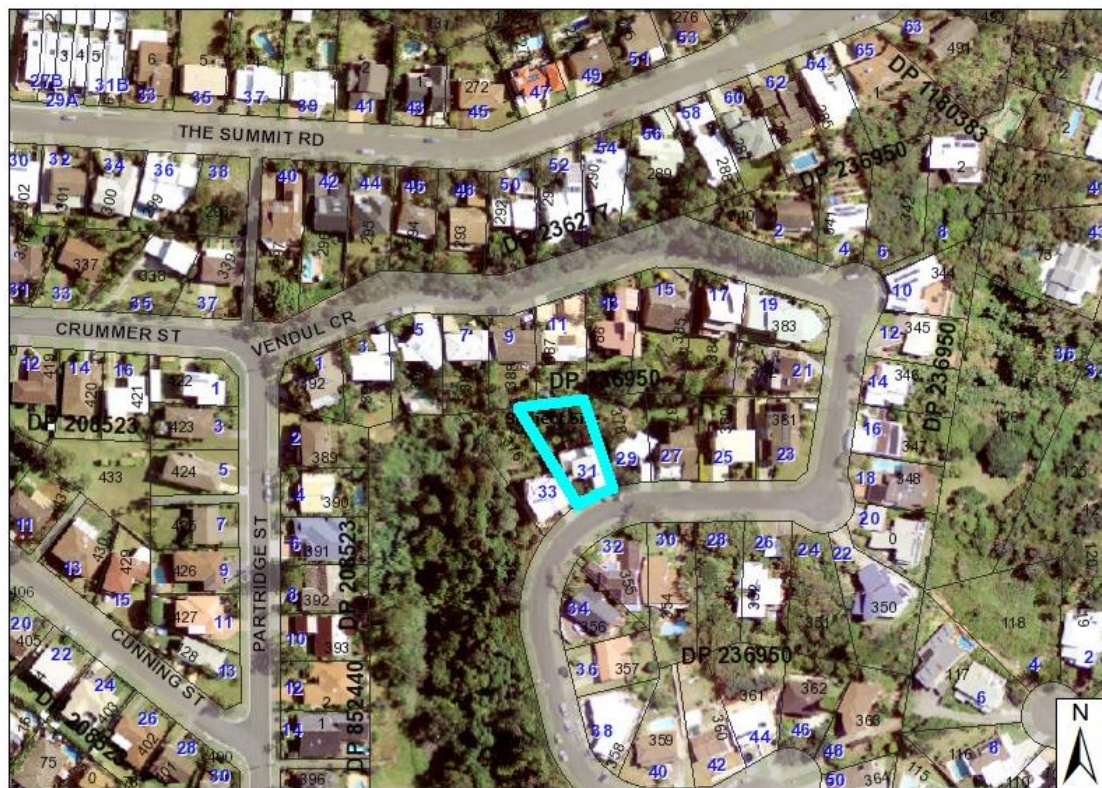
A Construction Certificate for the development was issued by BCA Consulting Mid North Coast on 7 August 2017 and the building is currently under construction.

Existing sites features and surrounding development

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 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 proposed modification include the following:

- The modification has been lodged to amend/delete condition B(5) of the consent relating to privacy screening of windows on the eastern elevation of the building;
- Amending windows and replacing a glass balustrade with a solid timber balustrade on the eastern elevation;
- Amending windows and balustrades on the western elevation;
- Extension of a second floor deck, ensuite, and bedroom and reconfiguration of windows on the northern elevation;
- Amending windows, balustrade, and feature wall on the southern elevation; and
- Amending internal room layout;

It is noted that some aspects that are shown on the submitted plans to be modifications have already been approved in the Construction Certificate issued by BCA Consulting Mid North Coast. These aspects of the development have not been considered in the assessment.

Refer to attachments at the end of this report.

Application Chronology

- 5 March 2018 – Application lodged.
- 20 March 2018 to 4 April 2018 – Neighbour notification.
- 23 March 2018 – Amended plans submitted by Applicant.
- 22 May 2018 – Amended plans submitted by Applicant.
- 23 May 2018 – Site inspected by assessing officer.
- 8 June 2018 – Further amended plans submitted by Applicant in response to concerns raised by the neighbour.
- 12 June 2018 – Amended plans forwarded to neighbour for review.
- 27 June 2018 – Adjoining property at No. 33 Vendul Crescent inspected by assessing officer.

3. STATUTORY ASSESSMENT

Is the proposal substantially the same?

Section 4.55 of the Environmental Planning and Assessment Act 1979 enables the modification of consents and categorises modification into three categories - 4.55(1) for modifications involving minor error, mis-description or miscalculation; 4.55(1A) for modifications involving minimal environmental impact; and 4.55(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 4.55(1A). The proposal is considered to be substantially the same development to that which was originally consented to and will have minimal environmental impact. Having regard to the above principles, the proposed modification is not considered to alter the fundamental essence of the original development.

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 in accordance with DCP 2013.

Any submissions made concerning the modification?

Two submissions have been received following completion of the neighbour notification period. The submissions are considered later in this report.

Any matters referred to in section 4.15(1) relevant to the modification?

(a)(i) Any environmental planning instrument

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

An amended BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP. The existing conditions of consent will ensure that the commitments are incorporated into the development and certified at Occupation Certificate stage. It is recommended that the table in condition A(1) be amended to refer to the updated BASIX certificate.

Port Macquarie-Hastings Local Environmental Plan 2011

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

- Clause 4.3, the maximum overall height of the building above ground level (existing) is not proposed to be altered as a result of the modification. It is noted that the development originally granted consent included a variation to the maximum building height specified on the Height of Buildings Map. The variation was appropriately tested against the objectives of clause 4.3 in accordance with the requirements of clause 4.6.
- 1.
- Clause 4.4, the floor space ratio of the proposal would increase slightly to 0.47:1, which still complies with the maximum 0.65:1 floor space ratio applying to the site.
- 2.

(a)(iii) Any DCP in force

Port Macquarie-Hastings Development Control Plan 2013:

<i>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development</i>			
	Requirements	Proposed	Complies
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	Modified proposal still complies with rear setback requirements.	Yes
3.2.2.5	Side setbacks: <ul style="list-style-type: none"> • Ground floor = min. 0.9m • First floors & above = min. 3m setback or where it can be demonstrated that overshadowing not adverse = 0.9m min. 	The only change proposed to the approved side setback is an extension of the second floor deck and balustrade around the south-west corner of the building. This part of the	Yes

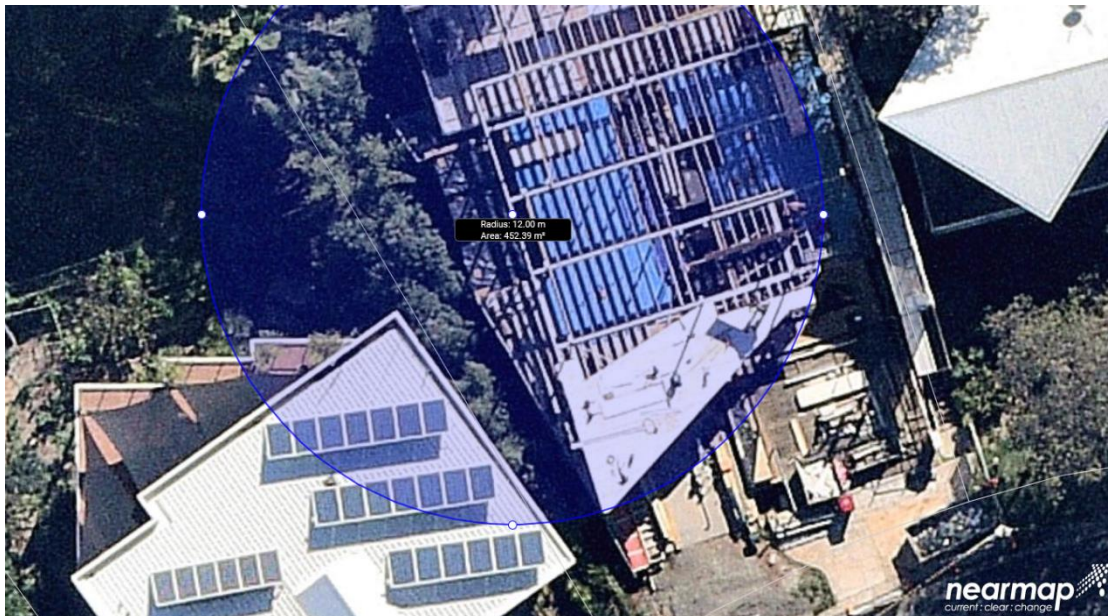
DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	<ul style="list-style-type: none"> Building wall set in and out every 12m by 0.5m 	building has a side setback ranging between 2.4m and 3.1m. The deck addition sits below the approved roof form of the building and would not result in any further loss of solar access to adjoining property. The assessment of the original application determined that having regard to the north-south orientation of the lot, the building would not overshadow adjoining living area windows and private open space areas for more than 3 hours between 9.00am and 3.00pm on 21 June. A side setback of less than 3m therefore complies with the DCP provision.	
3.2.2.8	<p>Front fences and walls to have complimentary materials to context</p> <p>No chain wire, solid timber, masonry or solid steel front fences</p>	Proposed change in material of the front feature wall from texture coating to timber is considered satisfactory.	Yes
3.2.2.10	<p>Privacy:</p> <ul style="list-style-type: none"> Direct views between living areas of adjacent dwellings screened when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings. ie. 1.8m fence or privacy screening which has 25% max. openings and is permanently fixed Privacy screen required if floor level > 1m height, window side/rear setback (other than bedroom) is less than 3m and sill height less than 1.5m Privacy screens provided to balconies/verandahs etc which have <3m side/rear 	See detailed discussion below regarding privacy.	

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

	Requirements	Proposed	Complies
	setback and floor level height >1m		

Privacy:

The proposal seeks to vary Development Provision 3.2.2.10 relating to screening of direct views between the second floor living area windows of the proposed dwelling and the private open space area of the adjoining dwelling at No. 33 Vendul Crescent. The DCP requires screening of the private open space area that is located within a 12m radius of the living room windows in the development. The below image shows the approximate extent of the neighbouring deck that is located within 12m of the living area windows.



The deck level on the neighbouring property is approximately 4m lower than the second floor level of the proposed development.

The development site has significant views to the south and west that the Applicant is seeking to retain. In lieu of providing minimum 1.5m sill heights or fixed privacy screens (which are acceptable solutions in the DCP), the Applicant is proposing the following:

- 1.1m sill height for W14a and W14b, with a fixed horizontal shelf 750mm wide at the base of the window to prevent downward views to the neighbour's private open space; and
- 1.1m sill height for W13b, with an angled sunhood designed to direct views to the south-west over the roof of the neighbouring dwelling.

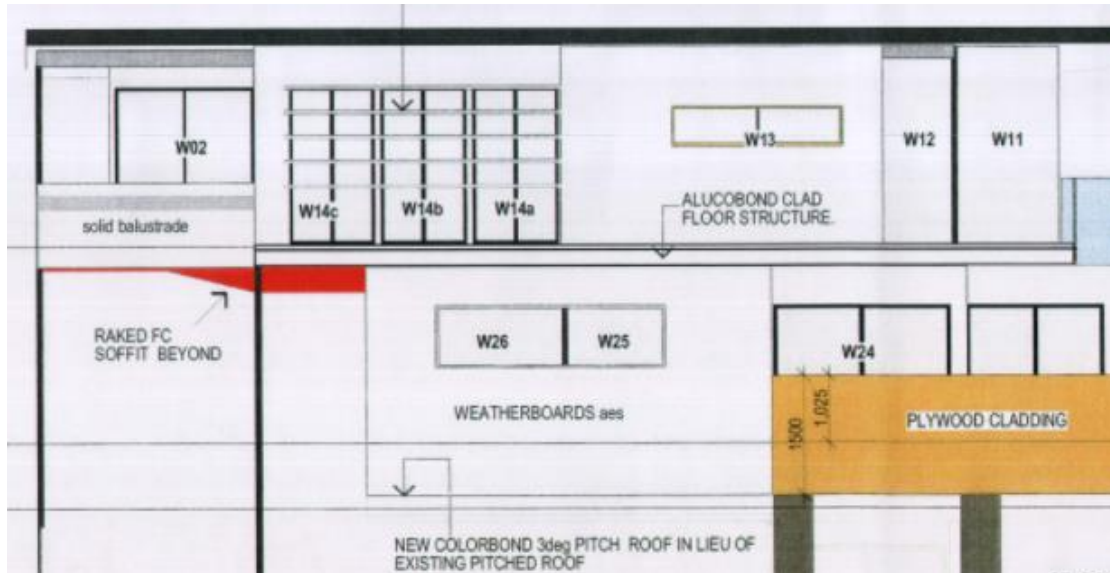
The relevant objective of the DCP provision is to protect the visual privacy of on-site and nearby residents.

The currently approved W14a, W14b, and W14c are full height glass with blades/fins to control the angle of views to a degree. The window arrangement was considered

acceptable due to the horizontal projection of the roof below restricting the opportunity for downward views to the neighbouring property.

W13 provided a minimum 1.5m sill height consistent with the DCP provisions, and W11 and W12 were approved with full height glass as they provided views across the roof of the neighbouring dwelling.

Approved western elevation windows:

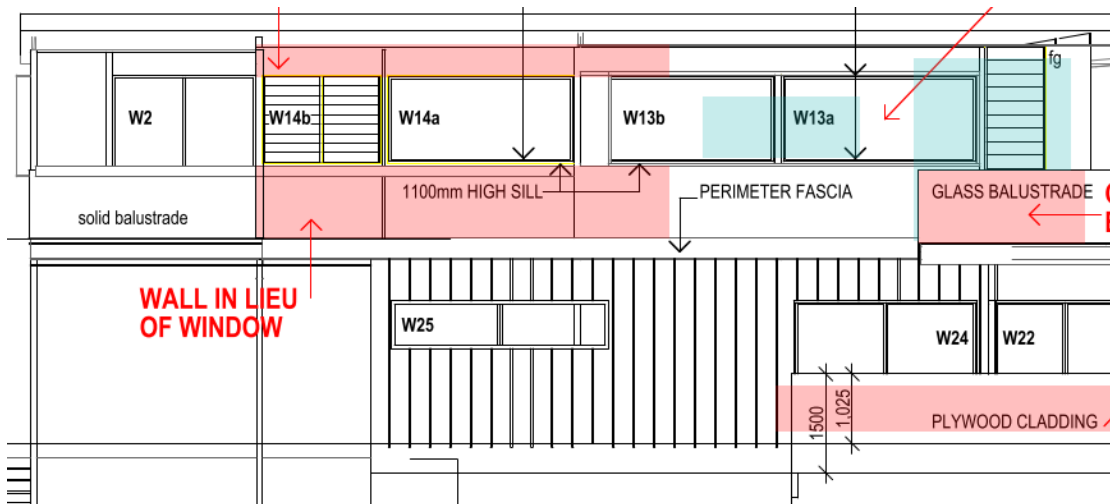


Proposed W14a and W14b would result in the sill height being raised by 1.1m, with an additional 750mm wide shelf provided at the base of the window. This would result in a substantial reduction in potential downward views compared to the proposal that has already been granted consent.

Proposed W13b would have a lower sill height (1.1m) than previously approved (1.5m). The Applicant has proposed to provide a sunhood above and to the northern side of this window. The northern side of the sunhood is proposed to be angled to direct views to the south-west, rather than towards the rear deck of the neighbour. The proposed means of screening this window is considered to be effective.

Proposed W13a provides views over the roof of the neighbouring dwelling and is not considered to require any additional privacy screening on the same basis that W11 and W12 of the approved development were permitted to be full height glass.

Proposed western elevation windows:



Having regard for the development provisions and relevant objectives, the variation is considered acceptable.

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

Bushfire

The site is identified as being bushfire prone.

A Bushfire Hazard Assessment was prepared by David Pensini Building Certification and Environmental Service for the original Development Application. Having regard to the report, conditions were imposed on the consent requiring construction of the building to BAL-29, and requiring the developer to provide certification that the recommendations in the Bushfire Hazard Assessment have been implemented prior to the issue of an Occupation Certificate.

The proposed additions on the northern end of the second floor are located within an area previously approved as deck and would not result in the building being located closer to the rainforest hazard to the north-west. BAL-29 construction is still considered to be appropriate to comply with Planning for Bush Fire Protection 2006, and no changes to the existing conditions are recommended in this regard.

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

Following exhibition of the application in accordance with DCP 2013, two submissions were received. The matters raised in the submission are considered in the below table:

Submission Issue	Comment
The development is already more than 62% above the LEP height limit. This needs to be considered when working through solutions to help maintain the amenity of residents of No. 33 Vendul Crescent	The proposed variations to the building height limit were considered in the assessment of the original Development Application in accordance with the requirements of Clause 4.6 of the Port Macquarie-Hastings Local Environmental Plan 2011 and found to be acceptable.

	The assessment of amenity impacts in this report has been carried out having regard to the building height and floor levels approved in the development consent (as modified) and the associated Construction Certificate.
Loss of sunlight and light to No. 33 Vendul Crescent from proposed solid balustrade on the western elevation of the first floor deck. The balustrade should be obscure glass or similar to allow sun/light through.	<p>While the solid balustrade is noted to be a proposed modification on the submitted plans, it has already been approved in the Construction Certificate issued by BCA Consulting Mid North Coast on 7 August 2017. The solid balustrade therefore forms part of the current development consent and would not be modified by this application.</p> <p>The merits of the solid balustrade cannot be considered further in this application as it has already been approved by the building certifier.</p>
The amended western elevation plans would not prevent downward views from the proposed development to the private open space and living areas of No. 33 Vendul Crescent.	<p>See detailed discussion on privacy earlier in this report.</p> <p>The modified proposal is considered to provide better privacy for the western neighbour than the development that has already been granted consent.</p>

Applicant's proposal for the deletion of Condition B(5)

Condition B(5) of the current consent is worded as follows:

- (5) (B196) *Prior to the release of the construction certificate, the plans are to show that the windows on the eastern elevation utilise either obscure glass or install privacy screens over the windows. The design of any privacy screen required by this condition, must comply with the privacy screen requirements in 3.2.2.10 of Port Macquarie Hastings Development Control Plan 2013. Where screens are proposed over a window, the screen must extend to a height of 1.8m above the floor level that the window is located on.*¹

The Applicant has requested that condition B(5) of the consent be deleted for the following reasons:

1. Window 1 has been shown on the plans to be obscure glass and satisfies the intention of the condition.
2. Window 2 is for a laundry and looks onto a blank wall and the sub-floor of the neighbouring dwelling. It is not considered to compromise the privacy of either property.
3. Window 3 has been amended on the submitted plans to provide a minimum 1.5m sill height and satisfies the intention of the condition.
4. Window 4 has been shown on the plans to be obscure glass and satisfies the intention of the condition.
5. Window 5 has been shown on the plans to be obscure glass and satisfies the intention of the condition.

6. Window 6 is for a bedroom and looks onto a blank wall and the sub-floor of the neighbouring dwelling. It is not considered to compromise the privacy of either property.

The assessing officer agrees with the comments provided by the Applicant. In addition, the DCP only requires privacy screening for habitable rooms, other than bedrooms. The two windows on the eastern elevation that are proposed to retain clear glazing are a laundry and a bedroom. The modified proposal therefore complies with the DCP.

It is recommended that condition B(5) be deleted, as requested by the Applicant. Condition A(1) of the consent requires the applicant to comply with the approved plans and will ensure that the applicant's above design elements will be transferred into the built form.

4. CONCLUSION

The application has been assessed in accordance with Section 4.55 and 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 for modification of the consent be approved, subject to the recommended modified conditions of consent provided in the attachment section of this report.

Attachments

- 1 [View](#). DA2015 - 30.3 Recommended Consent Conditions
- 2 [View](#). DA2015 - 30.3 Plans & Supporting Documents
- 3 [View](#). DA2015 - 30.3 Submissions

FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF PROPOSED CONDITIONS - 2011

NOTE: THESE ARE DRAFT ONLY

DA NO: 2015/30

DATE: 29/06/2018

1	Modification No. 1	9 December 2015
2	Modification No. 2	TBD

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
Statement of Environmental Effects	Project No 1102	Wayne Ellis Architect	10/11/2014 as amended 25/2/2015, 15/7/2015, 11/11/2015, and 23/2/2018
Plans	Project No 1102, Dwg No 1.1, 1.2, 1.5, 1.6, 1.7 & 1.8	Wayne Ellis Architect	22 February 2018
Plans	Project No 1102, Dwg No 1.3 & 1.4	Wayne Ellis Architect	8 June 2018
BASIX	A208975_03	Concept Designs Australia	15 June 2018
Bushfire Hazard Assessment		David Pensini	21 March 2015

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.^{1,2}

- (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) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.
- (4) (A009) The development site is to be managed for the entirety of work in the following manner:
1. 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;
 2. Appropriate dust control measures;
 3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
 4. Building waste is to be managed via an appropriate receptacle;
 5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
 6. Building works are to be undertaken so as not to result in the damage or loss of existing vegetation north of the existing dwelling. This does not apply to vegetation clearing that is allowed to be removed under the 10/50 ruling.
 7. 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) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out any water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
- Position and depth of the sewer (including junction)
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (B042) A certificate from an approved practising chartered professional civil and/or structural engineer certifying the structural adequacy of the proposed footings and frame of the existing building are capable of carrying the additional works/load is to be submitted to the PCA prior to the release of the Construction Certificate.
- (3) (B046) The building shall be designed and constructed so as to comply with the Bush Fire Attack (BAL) 29 requirements of Australian Standard 3959 and the specifications and requirements of Planning for Bush Fire Protection. Details shall be submitted to the Principal Certifying Authority with the application for Construction Certificate demonstrating compliance with this requirement.

Please note: Compliance with the requirements of Planning for Bush Fire Protection 2006 to prevail in the extent of any inconsistency with the Building Code of Australia.

- (4) (B195) Deleted. ¹
- (5) ~~(B196) Prior to the release of the construction certificate, the plans are to show that the windows on the eastern elevation utilise either obscure glass or install privacy screens over the windows. The design of any privacy screen required by this condition, must comply with the privacy screen requirements in 3.2.2.10 of Port Macquarie Hastings Development Control Plan 2013. Where screens are proposed over a window, the screen must extend to a height of 1.8m above the floor level that the window is located on.~~ Deleted. ²
- (6) (B197) Deleted. ¹
- (7) (B198) Prior to the release of the construction certificate, the plans are to be amended showing the building will utilise a muted, non reflective colour scheme.
- (8) The rear western elevation balustrade on the second floor deck is to be constructed of opaque glass panels/walls joining floor and railing. ¹

C – PRIOR TO ANY WORK COMMENCING ON SITE

nil

D – DURING WORK

- (1) (D029) The demolition of any existing structure shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.

Should asbestos be present, its removal shall be carried out in accordance with the National OH&S Committee – *Code of Practice for Safe Removal of Asbestos* and *Code of Practice for the Management and Control of Asbestos in Workplaces*.

For further information on asbestos handling and safe removal practices refer to the following links:

[Safely disposing of asbestos waste from your home](#)

[Fibro & Asbestos - A Renovator and Homeowner's Guide](#)

[Asbestos Awareness](#)

- (2) (D195) The development is not to proceed past the frame stage, unless a survey has been submitted to Council confirming that the maximum height of the development complies with the maximum height nominated in the approved development application plans being 13.262m.

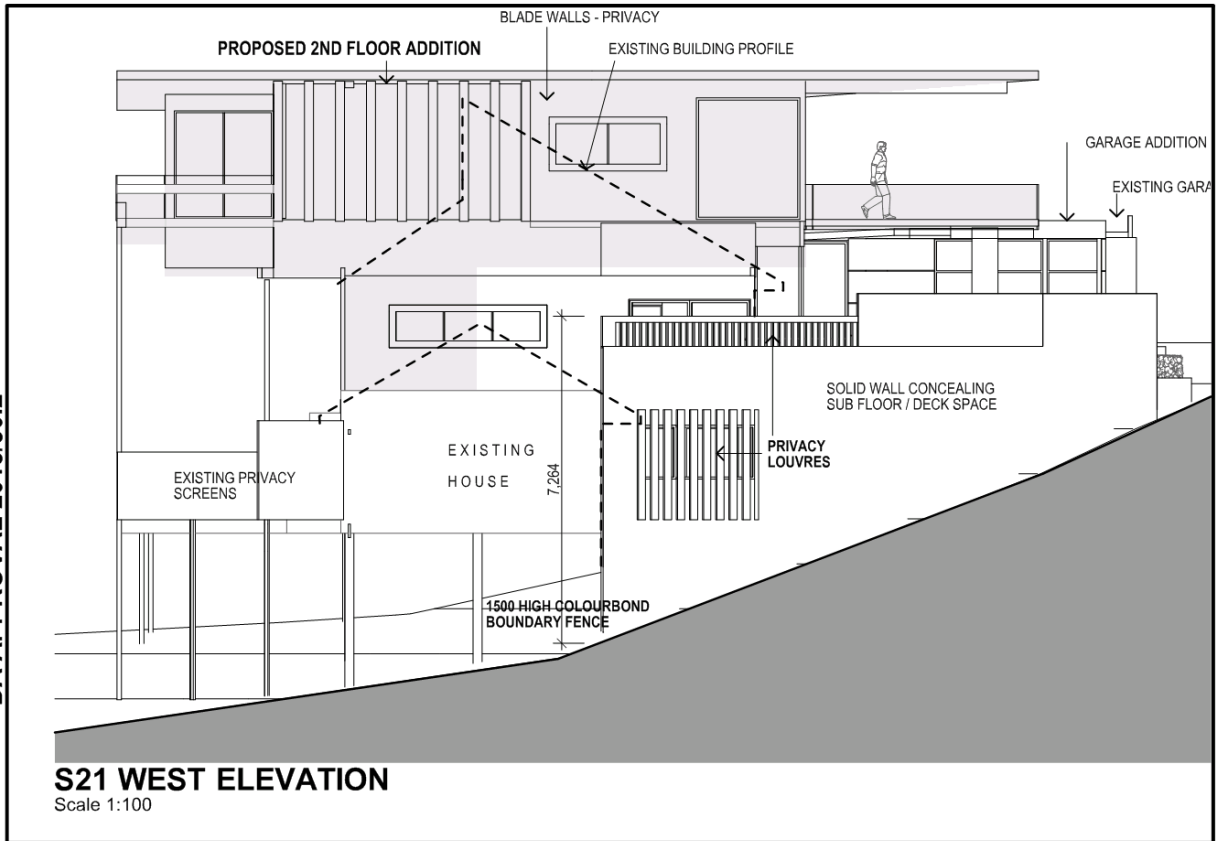
E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE

- (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) (E015) Prior to occupation or issue of the Occupation Certificate, details of compliance with the bushfire risk assessment is to be provided to the Principal Certifying Authority.
- (3) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (4) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any person responsible for the building works on the site, stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (5) (E195) Prior to release of the occupation certificate or occupation (whichever occurs first), the approved privacy screens and or nominated obscure glass windows/1.5m high window sill heights are to be in place onsite.

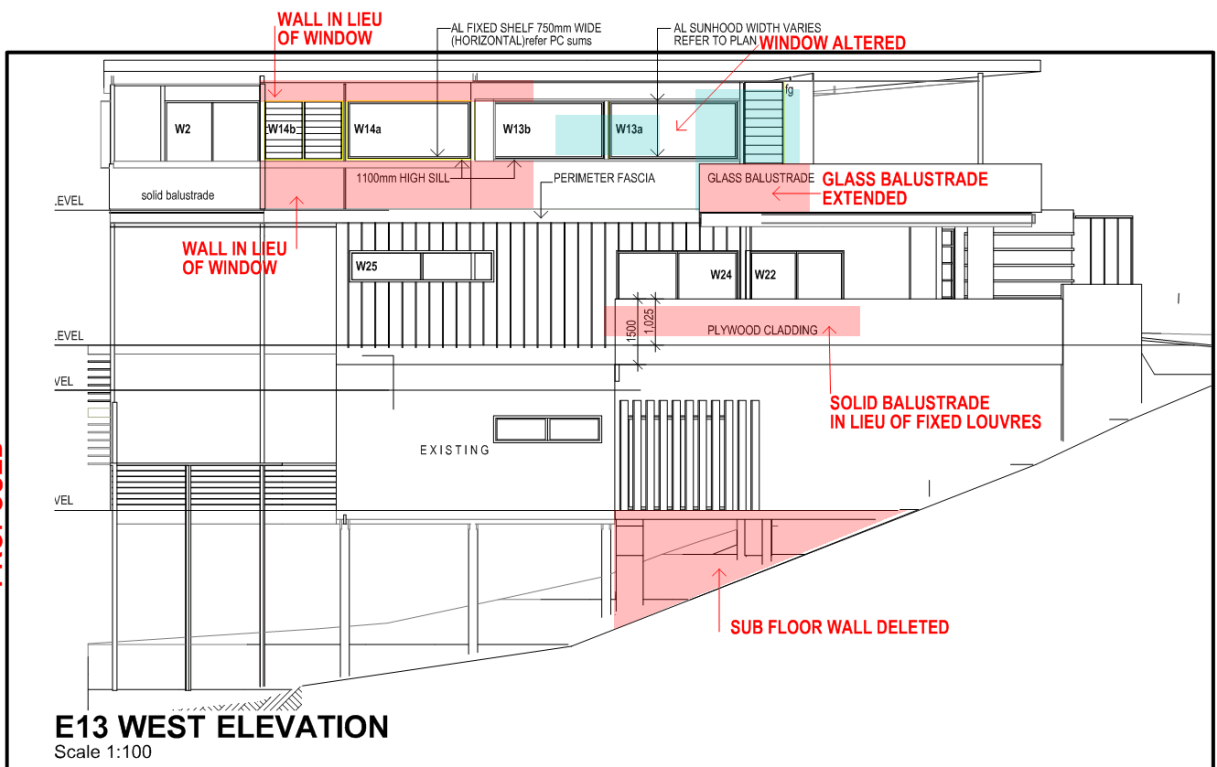
F – OCCUPATION OF THE SITE

- (1) (F004) The dwelling is approved for permanent residential use and not for short term tourist and visitor accommodation.
- (2) (F195) Any external lighting used onsite is not to be directed onto adjoining properties.

DA APPROVAL 2015/30.2



PROPOSED



8/06/2018

wayne ellis architect

B.Arch. R.A.I.A. NSW Reg No 4415
e wayne@wayneellisarchitects.com.au
t 0417 664 731

Proj. No 1102

Dwg No.

1.4/

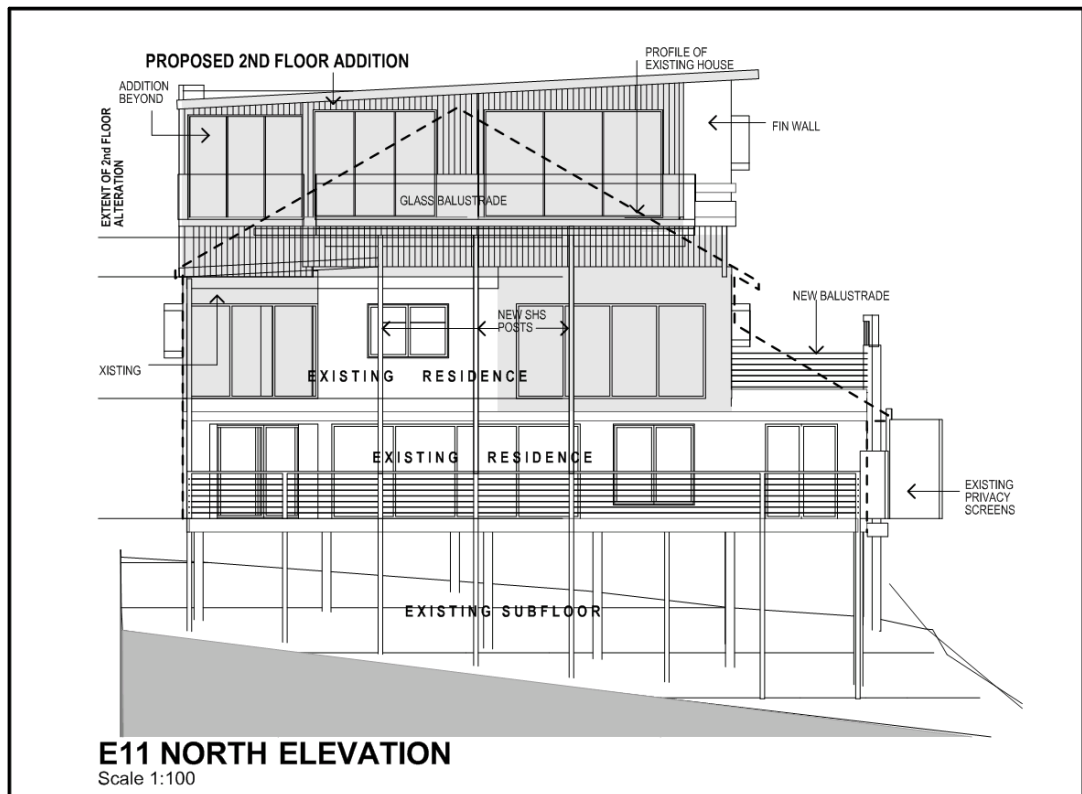
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Comp. Ref. 1102 SECT 96 2018 V17

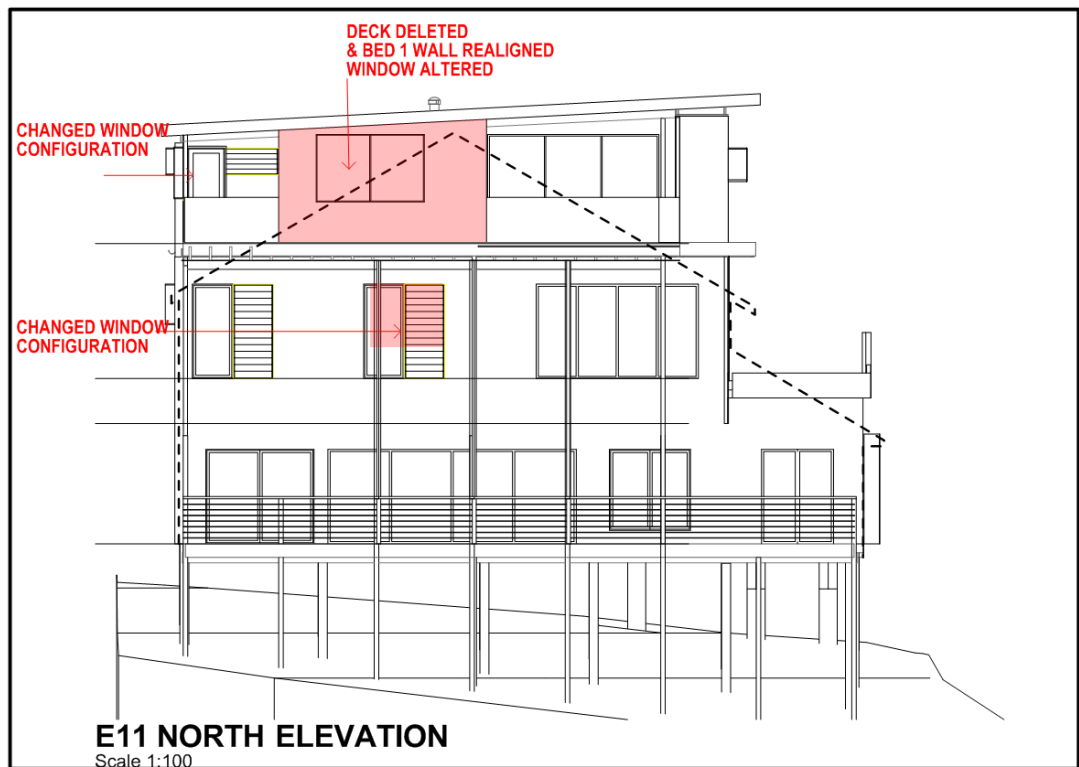


28/02/2018

DA APPROVAL 2015/30.2



PROPOSED



Sect 96

28/02/2018

wayne ellis architect

B.Arch. R.A.I.A. NSW Reg No 4415
 e wayne@wayneellisarchitects.com.au
 t 0417 664 731

Proj. No 1102

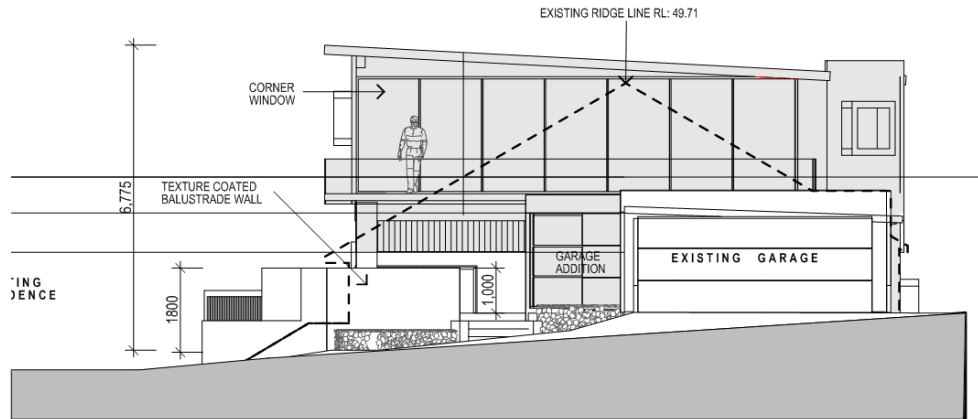
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1.6/

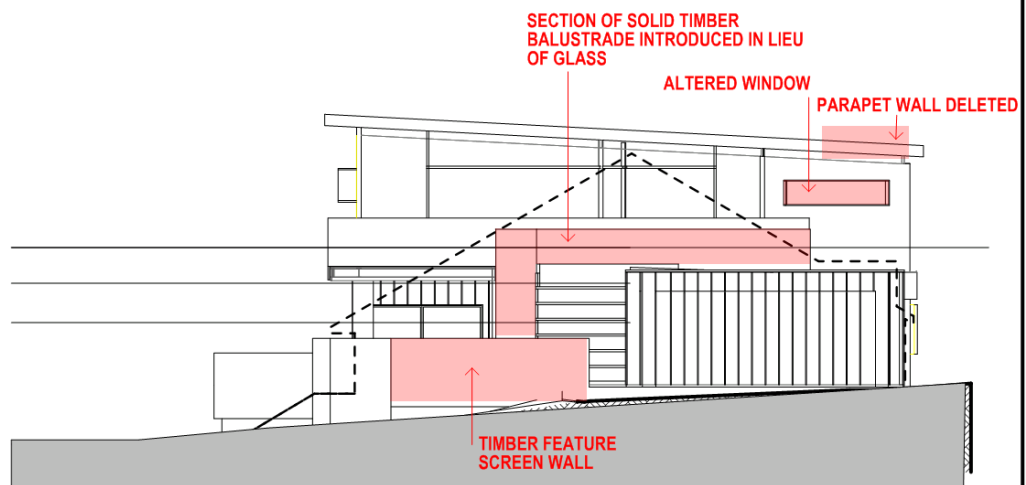
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Comp. Ref. 1102 SECT 96 2018 V11

DA APPROVAL 2015/30.2

**E09 SOUTH ELEVATION**
Scale 1:100

PROPOSED

**E09 SOUTH ELEVATION**
Scale 1:100

Sect 96

28/02/2018

wayne ellis architectB.Arch. R.A.I.A. NSW Reg No 4415
e wayne@wayneellisarchitects.com.au
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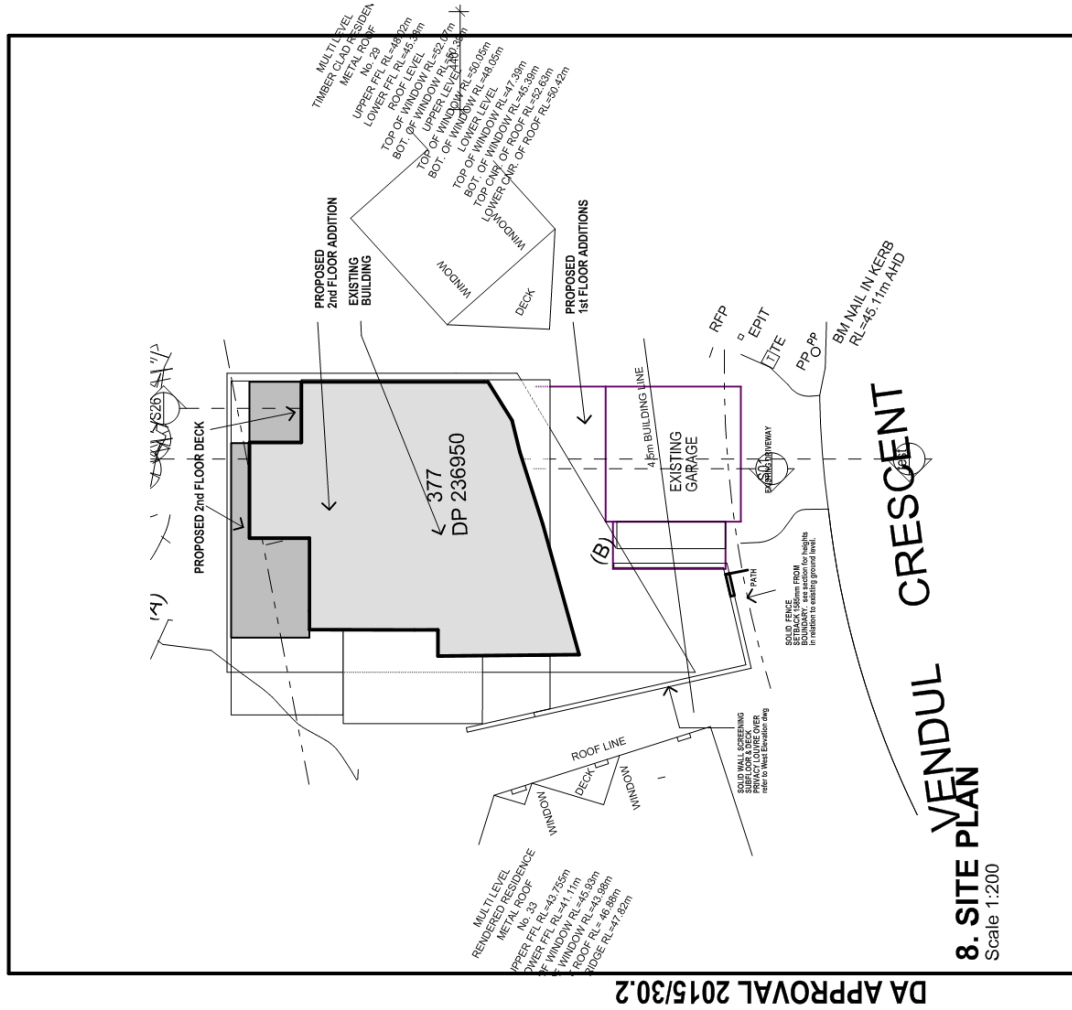
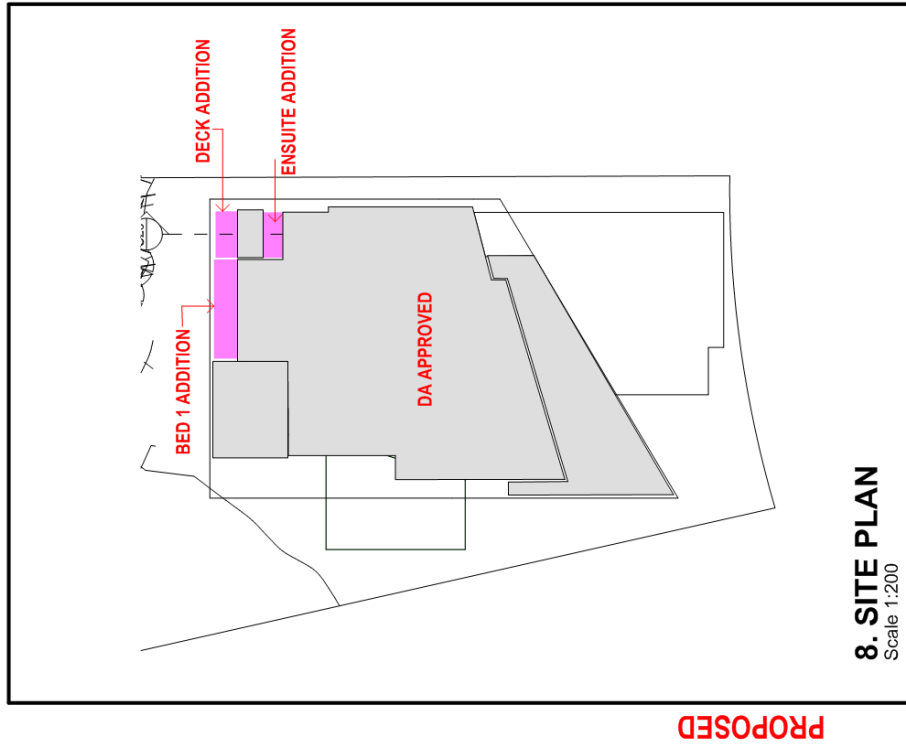
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Dwg No.

1.7/

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Comp. Ref. 1102 SECT 96 2018 V17



DA APPROVAL 2015/30.2

28/02/2018

Sect 96

wayne ellis architect

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B Arch. B.A.J.A. NSW Reg No 4415
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P.O. Box 1892 Pitts Point NSW 1335
Shop 11/4 Clarence Street
Port Macquarie NSW 2444

ABRINKMAN
PROPOSED ADDITIONS
No. 11A VENDOR 11/02/2017 11A/11A/2017

Proj No 1102 Dwg No.

1.8/ Scale 1:200 @ A3

Comp. Ref. 1102 SECT 96 2018 V17 pin





From: phil n bona
To: [Council](#)
Subject: Submission for LOT 377 DP 236950, 31 Vendul Crescent Port Macquarie
Date: Tuesday, 27 March 2018 10:30:44 AM

Submission: S96 Changes to 2015/30, 31 Vendul Crescent Port Macquarie

Grounds for objection for the proposal:

As this development is already well over 62% of LEP height restrictions, 10% - 20% being reasonable and because this has and will impact on our sun/light and privacy to our principal living areas, we are asking for this to be considered when working through solutions to help maintain our amenity

The documented height of the West Elevation wall/balustrade is 8.3 at its highest point, which is getting close to LEP height of 8.5. The wall is located approximately 900/1100 off our side boundary which further impacts on our sun/light. As the FFL has grown by approximately 1.2m due to the last MAJOR changes pushed through by Mr Illy without an S96 (building certifier). We are concerned about how the proposed "solid" balustrade will further impact on our sun/light. We have suggested to the developers, instead of a "solid" full length balustrade, to introducing a full floor to height balustrade using obscure glass or similar patterns or designs that would give us the same privacy but would let the sun/light through at the same time.

Philip & Robina Laing
33 Vendul Crescent
Port Macquarie NSW 2444
[REDACTED]

From: phil n bena
To: [Chris Gardiner](#); [Mayor Peta Pinson](#); [Council](#)
Subject: Re: Submission for LOT 377 DP 236950, 31 Vendul Crescent Port Macquarie
Date: Friday, 15 June 2018 8:23:14 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[Letter to Councilors.pdf](#)

Dear Chris

As you and the mayor are new to this position we will brief you on the history of this development.

Since 2009, we have been met by our next door neighbours, Lou Perri and Angela Brickman, with a continuous cycle of illegal and non compliant structures built and tradesmen working onsite without compliance to complete these structures despite Council being aware of these illegal activities. Inaccurate and misleading plans/applications were submitted by their architect and we were regularly hauled before many Council DAP and General meetings to defend our position against the harm caused to our amenity. This is not the first time Mr Perri has acted this way as it is well documented with a previous development at the SandCastle/Stunned Mullet. In processing 31 Vendul Crescent, malfeasance was committed by individual Council staff and council representatives, consultants and private certifiers by stepping outside of their binding legislation and allowing plans to pass that were not compliant or largely consistent with LEP, EP & A and other binding legislation (see attached report). As a result of these illegal/unlawful activities, the present day DA has grown into a monster in size and scale, defying all boundary setbacks, height and privacy legislation and has and will cause significant harm to us and our amenity. Neighbors are also very concerned with the impact this development is having on their amenities.

An unsubstantiated false floor void was passed, lifting the middle floor approximately 1.2m higher than it should. Overall floor to ceiling heights have been lifted for no sound reason, considering this and other factors increased the overall building height by 62% above LEP height variation, 10% - 20% is considered reasonable. The Ground Floor has been lifted to 3.7m floor to ceiling height in places (with the 1.2 false void added), 1st floor 2.7m and the 2nd floor 2.9m (3 deg roof pitch could be brought to 1 deg gaining approx 400mm), which has increased the overall height of the building by approximately 2m. We do believe that if the development had been properly assessed, reducing the overall height of the building by 2m, would have allowed Lou and Angela to push the development closer to the front boundary, minimally impacting on the upper neighbour's views and thereby granting them unattested views to their front (as we have), and a goodly side view at the same time, minimally impinging on our amenity and that of the neighbours.

We have considered the changes attached to the Western Elevation (our boundary side) to see how equivalent privacy might be achieved to meet council's DCP and State LEP regulations. We believe the DCP suggests 1.5m sill height or equivalent privacy screen, whereas the proposal is 1.1 m sill height with a customized 750mm wide sill. Even though we understand the customized sill is suppose to prevent downward views to windows W2, W14b, and W14a and an unspecified width sunhood to windows W13a and W13b. We do NOT believe these changes will stop anyone from peering into our principle living areas from their principal living. (see attached report)

Major changes to the development pushed through by Mr Illy without an S96 has lifted the FFL 1st floor and deck by approximately 1.2m or more with an illegal void , increasing the western decking wall height (our boundary side), including balustrade to around 8/8.5 m high. We believe this is also breaching DCP and the LEP Height Code. We suggested compensating by glassing (complete balustrade height) the side balustrade (where it affects our sun/light) with opaque (or equivalent opaque privacy patterns) to allow more sun/light through to the side, which has NOT been addressed as requested in our original objection. Instead, a change to the 2nd story western wall window schedule has been made, which still does NOT address our concerns as already stated in the attached report.

We also noticed a swimming pool DA to the back deck which we just ran out of time to comment on. However, we believe this proposal will increase the deck/floors size to over allowable figures within Council's planning schemes. It will also further compromise the Littoral Forest species found within this property. Many large trees have already been fallen and neighbors are concerned that more large trees will be taken because of the pool causing more problems with their privacy. If it is decided by Council to pass the pool, we ask Council inspectors to ensure the storm water connection for both the proposed pool and the development is attached to the appropriate council drainage easement, otherwise the pool overflow will spill over into our property, bringing further damage to our amenity.

We intend to hold to account any key people involved with this skullduggery. We already have the affidavit ready to proceed with a "Commercial Lien" (otherwise know as "private treaty" or "maritime lien") taken out on the individuals responsible in and outside of Council, however, we are waiting for the completion to ensure all directly involved are included. This is serious and we would advise research to understand the implications of this type of legal action. We feel the decision, is not ours but YOUR responsibility to comply with binding legislation to help protect what little amenity we have left.

We look forward to yours and other key council members/staff/contractors careful resolve.

You are more than welcome to ring us at any time to discuss, as well as view onsite

Sincerely

Philip & Robina Laing

On 12/06/2018 11:41 AM, Chris Gardiner wrote:

Dear Mr & Mrs Laing,
We have received amended plans from the Applicant after their consideration of your submission. I have attached a copy of the amended plans for your information. Could you please review the amended plans and let me know if the changes address your initial concerns.

Please feel free to give me a call on the number below if you need to discuss.

Regards

Chris Gardiner

Development Assessment Planner

Development & Environment



p (02) 6581 8585



From: phil n bena [REDACTED]

Sent: Tuesday, 27 March 2018 10:31 AM

To: Council

Subject: Submission for LOT 377 DP 236950, 31 Vendul Crescent Port Macquarie

Submission: S96 Changes to 2015/30, 31 Vendul Crescent Port Macquarie

Grounds for objection for the proposal:

"As this development is already well over 62% of LEP height restrictions, 10% - 20% being reasonable, (due to malfeasance from individuals working for Council (see attached report and counter replies)) which will grossly impact on our amenity particularly our privacy, light and sun and to our principal living areas, we are asking for this to be considered when working through solutions to help maintain our amenity" from origi

The documented height of the West Elevation wall/balustrade is 8.3 at its highest point, which is getting close to LEP height of 8.5. The wall is located approximately 900/1100 off our side boundary which further impacts on our sun/light. As the FFL has grown by approximately 1.2m due to the last MAJOR changes pushed through by Mr Illy without an S96 (building certifier). We are concerned about how the proposed "solid" balustrade will further impact on our sun/light. We have suggested to the developers, instead of a "solid" full length balustrade, to introducing a full floor to height balustrade using obscure glass or similar patterns or designs that would give us the same privacy but would let the sun/light through at the same time.

Philip & Robina Laing
33 Vendul Crescent
Port Macquarie NSW 2444
[REDACTED]

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Item: 06**Subject: DA2018 - 293.1 DUAL OCCUPANCY AND STRATA SUBDIVISION AT
LOT 228 DP 1223015, BLACK CAVIAR PARADE, PORT MACQUARIE****Report Author: Chris Gardiner**

Applicant: D J Rothe & J D Maggs**Owner: D J Rothe****Estimated Cost: \$470,280****Parcel no: 66070**

Alignment with Delivery Program

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

RECOMMENDATION

That DA2018 – 293.1 for a Dual Occupancy and Strata Subdivision at Lot 228, DP 1223015, Black Caviar Parade, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

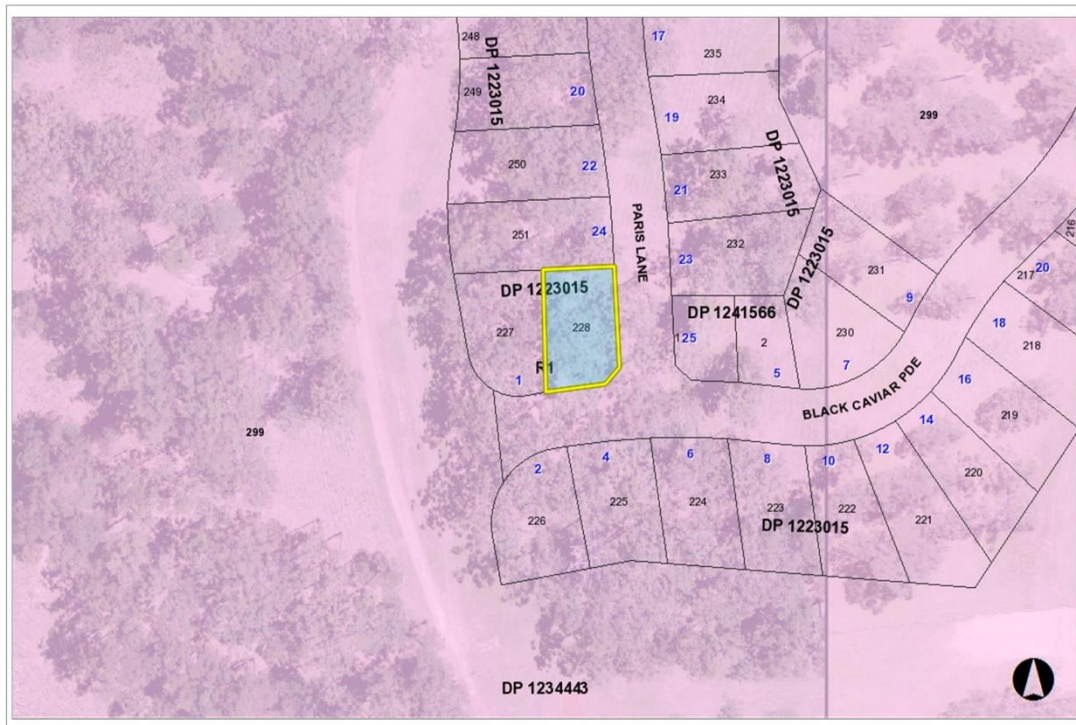
This report considers a development application for a dual occupancy and strata subdivision at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, two submissions have been received (from the same property owner).

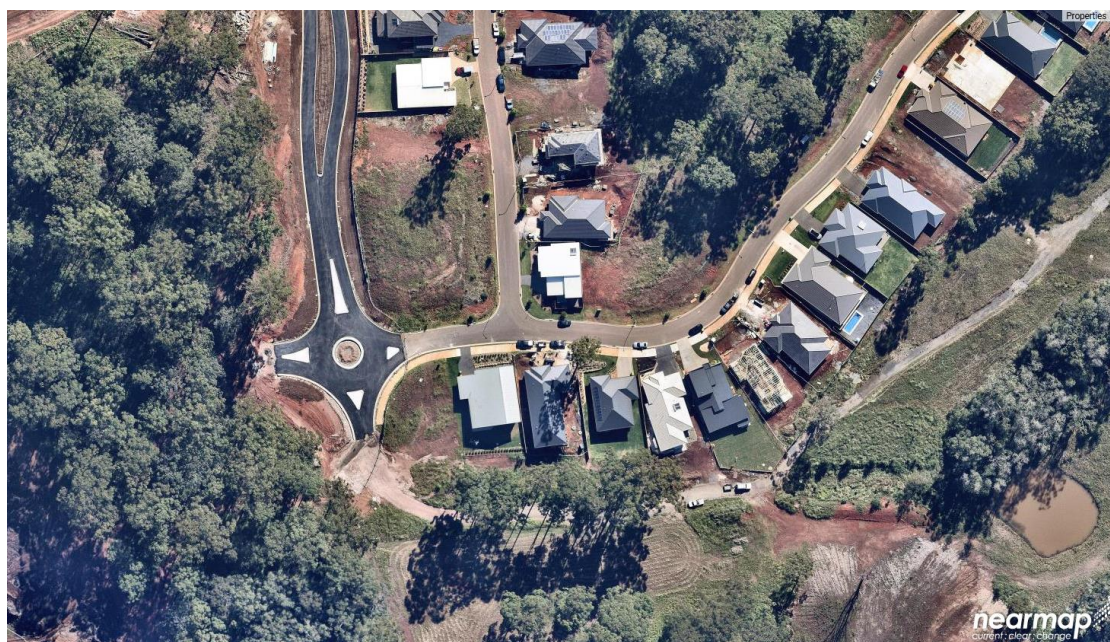
1. BACKGROUND**Existing sites features and surrounding development**

The site has an area of 601.4m².

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 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:

- Construction of dual occupancy (detached).
- Strata subdivision of the dwellings.

Refer to attachments at the end of this report.

Application Chronology

- 13 April 2018 – Application lodged.
- 20 April 2018 to 4 May 2018 – Neighbour notification.
- 30 May 2018 – Bushfire Safety Authority issued by NSW Rural Fire Service.
- 16 June 2018 – Amended plans submitted by Applicant.
- 26 June 2018 – Site inspected by assessing officer
- 26 June 2018 – Additional information requested from Applicant.
- 2 July 2018 – Amended plans submitted by Applicant.

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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP. It is recommended that a condition be imposed to ensure that the commitments are incorporated into the development and certified at Occupation Certificate stage.

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 multi dwelling housing/dual occupancy with subdivision 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 4.1(4) - the minimum lot size specified on the Lot Size Map is not applicable as the proposal is for a strata plan of subdivision.
- Clause 4.3 - the maximum overall height of the building above ground level (existing) is 6.1m which complies with the standard height limit of 8.5m applying to the site.
-
- Clause 4.4 - the floor space ratio of the proposal is 0.57:1, which complies with the maximum 0.65:1 floor space ratio applying to the site.
-
- Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
-
- 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

<i>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development</i>			
	Requirements	Proposed	Complies
3.2.2.1	Ancillary development: <ul style="list-style-type: none"> • 4.8m max. height • Single storey • 60m² max. area • 100m² for lots >900m² • 24 degree max. roof pitch • Not located in front setback 	Water tanks appropriately located.	Yes
3.2.2.2	Articulation zone: <ul style="list-style-type: none"> • Min. 3m front setback • An entry feature or portico • A balcony, deck, patio, pergola, terrace or verandah • A window box treatment • A bay window or similar feature 	The development contains an entry portico for Unit 1 within the articulation zone. The portico does not exceed 25% of the articulation zone and is still setback over 3m.	Yes

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

	Requirements	Proposed	Complies
	<ul style="list-style-type: none"> An awning or other feature over a window A sun shading feature 		
	Front setback (Residential not R5 zone): <ul style="list-style-type: none"> Min. 6.0m classified road Min. 4.5m local road or within 20% of adjoining dwelling if on corner lot Min. 3.0m secondary road Min. 2.0m Laneway 	Front building line setback requirements are complied with.	Yes
3.2.2.3	Garage 5.5m min. and 1m behind front façade. Garage door recessed behind building line or eaves/overhangs provided	Garage door setback requirements are complied with for Unit 2. Unit 1 garage is setback between 5.256m and 5.958m to angular front boundary.	No*
	6m max. width of garage door/s and 50% max. width of building	Width of garage door requirements are complied with.	Yes
	Driveway crossover 1/3 max. of site frontage and max. 5.0m width	Driveway crossing width requirements are complied with.	Yes
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	The site is a corner lot and does not have a rear boundary.	N/A
3.2.2.5	Side setbacks: <ul style="list-style-type: none"> Ground floor = min. 0.9m First floors & above = min. 3m setback or where it can be demonstrated that overshadowing not adverse = 0.9m min. Building wall set in and out every 12m by 0.5m 	The minimum side setback requirements are complied with. The wall articulation is compliant and satisfies the objectives of the development provision.	Yes
3.2.2.6	35m ² min. private open space area including a useable 4x4m min. area which has 5% max. grade	Each occupancy contains 35m ² open space in one area including a useable 4m x 4m area.	Yes
3.2.2.7	Front fences: <ul style="list-style-type: none"> If solid 1.2m max height 	No front fencing proposed.	N/A

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	and front setback 1.0m with landscaping <ul style="list-style-type: none"> • 3x3m min. splay for corner sites • Fences >1.2m to be 1.8m max. height for 50% or 6.0m max. length of street frontage with 25% openings • 0.9x0.9m splays adjoining driveway entrances 		
3.2.2.8	Front fences and walls to have complimentary materials to context No chain wire, solid timber, masonry or solid steel front fences	No front fencing proposed.	N/A
3.2.2.10	Privacy: <ul style="list-style-type: none"> • Direct views between living areas of adjacent dwellings screened when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings. ie. 1.8m fence or privacy screening which has 25% max. openings and is permanently fixed • Privacy screen required if floor level > 1m height, window side/rear setback (other than bedroom) is less than 3m and sill height less than 1.5m • Privacy screens provided to balconies/verandahs etc which have <3m side/rear setback and floor level height >1m 	The development will not compromise privacy in the area due to a combination of building design and use of screening.	Yes
3.2.2.11	Roof terraces	N/A	
3.2.2.13 onwards	Jetties and boat ramps	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. Adequate casual surveillance available.	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	Yes
2.3.3.2	1m max. height retaining walls along road frontage	Retaining walls adjacent to road frontage less than 1m high.	Yes
	Any retaining wall >1.0 in height to be certified by structure engineer	No retaining wall likely >1m.	Yes
	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 retaining wall front fence 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, 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	No new access proposed to arterial or distributor road.	N/A
	Driveway crossing/s minimal in number and width including maximising street parking	Driveway crossings are minimal in width including maximising street parking.	Yes
2.5.3.3	Parking in accordance with Table 2.5.1. <u>Dwelling/dual occupancies</u> 1 space per dwelling/occupancy (behind building line). <u>Multi dwelling</u> 1 space per 1 & 2 bedroom occupancies	Dual occupancy proposed with double garage for each dwelling and stacked visitor parking in the driveway of each dwelling.	Yes

DCP 2013: General Provisions			
	Requirements	Proposed	Complies
	1.5 spaces per 3+ bedroom occupancies 0.25 spaces per occupancy for visitor parking.		
2.5.3.11	Section 94 contributions	Contributions apply - refer to ET calc and NOP.	Yes
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	Suitable landscaping proposed around driveway/parking locations.	Yes
2.5.3.14	Sealed driveway surfaces unless justified.	Sealed driveway areas 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	Driveway grades capable of satisfying Council standard driveway crossover requirements. Condition recommended for section 138 Roads Act permit	Yes
2.5.3.17	Parking areas to be designed to avoid concentrations of water runoff on the surface.	Stormwater drainage is capable of being managed as part of plumbing construction.	Yes

Note: Subdivision provisions of the DCP (except battle axe handle width) are aimed at the creation of vacant lots (i.e. not lots within an integrated housing proposal such as this) and have therefore been excluded from the above assessment. Servicing requirements are discussed later in this report.

The proposal seeks to vary Development Provision 3.2.2.3 relating to the minimum front setback for garages on Unit 1.

The relevant objectives are:

- To minimise the impact of garages and driveways on the streetscape, on street parking and amenity;
- To minimise the visual dominance of garages in the streetscape.

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:

- The site has an angular front boundary and the garage has an average setback greater than 5.5m;
- The garage is still setback a minimum of 1m behind the entry porch, which would reduce the visual dominance in the streetscape;
- The garage setback is sufficient to provide stacked parking on the driveway entirely within the site. The proposal would not affect the availability of street parking.

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

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

No planning agreement has been offered or entered into relating to the site.

- iv) Any matters prescribed by the Regulations:**

None applicable.

- (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 compatible 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

Council records indicate that the development site has an existing 20mm sealed water service from the 100 PVC water main on the same side of Paris Lane. Each proposed unit shall have an individual metered water service. Path boxes shall be installed on the existing water services under the proposed driveway for Unit 1 (and Unit 2 if applicable) at no cost to Council. Details are to be shown on the engineering plans.

Sewer

Council records indicate that the development site is connected to sewer via a junction to the existing sewer line that runs along the southern property boundary. The engineering plans submitted with the Development Application are acceptable for Sewer Section purposes.

Stormwater

Council records indicate that the development site is connected to Council's piped drainage system in Paris Lane via a junction located in the south-east corner of the site. Both units are capable of draining to the existing point of connection and details will be required with the Section 68 application.

Other Utilities

Telecommunication and electricity services are available to the site.

Heritage

This site does not contain or adjoin any known heritage item or site of significance.

Other land resources

No adverse impacts anticipated. 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.

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.

Energy

The proposal includes measures to address energy efficiency and will be required to comply with the requirements of BASIX.

Noise and vibration

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

Bushfire

The site is identified as being bushfire prone.

In accordance with Section 100B - *Rural Fires Act 1997* - the application proposes subdivision of bush fire prone land that could lawfully be used for residential purposes. As a result, the applicant has submitted a bushfire report prepared by a Certified Consultant. The report was forwarded to the NSW Rural Fire Service who have since issued a Bushfire Safety Authority, which will be incorporated into the consent.

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 (ie maintained employment and increased 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:

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:

Submission Issue/Summary	Planning Comment/Response
The development is not consistent with the Ascot Park covenants.	These covenants do not apply to the assessment of the application in accordance with Clause 1.9A(1) of the Port Macquarie-Hastings Local Environmental Plan 2011.
Building to land ratio is well outside reasonable expectations.	The floor space ratio of the proposal is 0.57:1, which complies with the maximum 0.65:1 floor space ratio applying to the site.
The Applicant's motivation for the development is plainly monetary.	The Applicant's motivation for carrying out the development is not relevant to the assessment of the application.
The development puts two outdoor areas along the boundary of adjoining Lot 227.	The proposal includes a 1.8m high timber fence along the western boundary, between the private open space areas in the development and adjoining Lot 227. The finished level of the private open space areas would also be up to 1m below existing ground level at the common boundary. This would make the effective height of the boundary fence greater than 1.8m and ensure that adequate privacy is maintained between the properties.
The location of the Unit 1 driveway would create avoidable conflict with the location of a future driveway to Lot 227.	It is noted that the future driveway location for Lot 227 will be restricted due to access denial to the future extension of Philip Charley Drive and the location of the roundabout at the intersection with Black Caviar Parade. However, the Unit 1 driveway is located approximately 1.7m from the boundary with Lot 227 and would achieve the minimum 1m separation required in AUSPEC. The driveway location is therefore considered acceptable.
Objection to the removal and replacement of the street tree in Paris Lane for Unit 2 driveway.	The street tree was planted by the subdivision developer as a condition of that consent. It is common practice for such trees to be replaced or relocated with the ultimate development of the lots. Suitable conditions have been recommended requiring the replacement street tree to be provided

Submission Issue/Summary	Planning Comment/Response
	to Council's standards, and to ensure that there is an adequate establishment and maintenance period for the new tree.

(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.

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 - 293.1 Recommended Conditions

2 [View](#). DA2018 - 293.1 Plans

3 [View](#). DA2018 - 293.1 Submissions

FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF PROPOSED CONDITIONS - 2011

NOTE: THESE ARE DRAFT ONLY

DA NO: 2018/293

DATE: 2/07/2018

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
Plans	D3767 Issue N	Collins W Collins Pty Ltd	27 June 2018
Statement of Environmental Effects	D3767	Collins W Collins Pty Ltd	February 2018
BASIX Certificates	901229S and 901240S	Collins W Collins Pty Ltd	16 February 2018
Bushfire Assessment	-	Krisann Johnson	6 March 2018

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) (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) (A005) This consent allows the strata-subdivision of the units, subject to the submission of an application for a Strata Certificate.
- (4) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.
- (5) (A009) The development site is to be managed for the entirety of work in the following manner:

1. 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;
2. Appropriate dust control measures;
3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
4. Building waste is to be managed via an appropriate receptacle;
5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
6. 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.
- (6) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.
- (7) (A013) The general terms of approval from the following authorities, as referred to in section 4.50 of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval.
 - **NSW Rural Fire Service** - The General Terms of Approval, Reference D18/5332 DA18042412785 BS and dated 30 May 2018, are attached and form part of this consent.
- (8) (A072) The street tree impacted by the driveway shall be removed and reinstated to a position agreed to by Port Macquarie-Hastings Council. The position of the relocated tree shall be clearly shown on the plans accompanying the section 138 application. The relocated tree shall be cared for and maintained for a period of at least 12 months. If relocation is unsuccessful a new tree of the same species and size shall be planted in a suitable location in front of the property.
- (9) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:
 - a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
 - c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

Such security is to be provided to Council prior to the issue of the Subdivision Certificate/Construction Certificate or Section 138 of the Roads Act, 1993.

The security is to be for such reasonable amount as is determined by the consent authority, being an amount that is 10% of the contracted works for Torrens Title subdivision development/the estimated cost plus 30% for building development of public works or \$5000, whichever is the greater of carrying out the development by way of:

- i. deposit with the Council, or
- ii. an unconditional bank guarantee in favour of the Council.

The security may be used to meet any costs referred to above and on application being made to the Council by the person who provided the security any balance remaining is to be refunded to, or at the direction of, that person. Should Council have to call up the bond and the repair costs exceed the bond amount, a separate invoice will be issued. If no application is made to the Council for a refund of any balance remaining of the security within 6 years after the work to which the security relates has been completed the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
 - Position and depth of the sewer (including junction)
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (B006) An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the Construction Certificate.

Such works include, but not be limited to:

 - Footway and gutter crossing
 - Functional vehicular access
- (3) (B003) Submission to the Principal Certifying Authority prior to the issue of a Construction Certificate detailed design plans for the following works associated with the developments. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:
 1. Water supply plans.
- (4) (B010) Payment to Council, prior to the issue of the Construction Certificate of the Section 7.11 contributions set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with the provisions of the following plans:
 - Hastings S94 Administration Building Contributions Plan
 - Hastings Administration Levy Contributions Plan
 - Community Cultural and Emergency Services Contributions Plan 2005
 - Hastings S94 Major Roads Contributions Plan
 - Hastings S94 Open Space Contributions Plan

The plans may be viewed during office hours at the Council Chambers located on the corner of Burrawan and Lord Streets, Port Macquarie, 9 Laurie Street, Laurieton, and High Street, Wauchope.

The attached "Notice of Payment" is valid for the period specified on the Notice only. The contribution amounts shown on the Notice are subject to adjustment in accordance with CPI increases adjusted quarterly and the provisions of the relevant plans. Payments can only be made using a current "Notice of Payment" form. Where a new Notice of Payment form is required, an application in writing together with the current Notice of Payment application fee is to be submitted to Council.

- (5) (B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to the issue of a Construction Certificate, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
 - augmentation of the town water supply headworks
 - augmentation of the town sewerage system headworks
- (6) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (7) (B037) The finished floor level of the building shall be at least 1050mm above the soffit of Council's sewer main. Details indicating compliance with this are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.
- (8) (B038) Footings and/or concrete slabs of buildings adjacent to sewer lines or stormwater easements are to be designed so that no loads are imposed on the infrastructure. Detailed drawings and specifications prepared by a practising chartered professional civil and/or structural engineer are to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (9) (B071) Prior to the issue of any Construction Certificate, the provision of water and sewer services to the land are to be approved by the relevant Water Authority and relevant payments received.
- (10) (B195) Council records indicate that the development site has an existing 20mm sealed water service from the 100 PVC water main on the same side of Paris Lane. Each proposed unit shall have an individual metered water service. Path boxes shall be installed on the existing water services under the proposed driveway for Unit 1 (and Unit 2 if applicable) at no cost to Council. Details are to be shown on the engineering plans.
- (11) (B039) Detailed drawings and specifications prepared by a professional engineer for all retaining walls supporting:
 - earthworks that are more than 600mm above or below ground level (existing) and located within 1m of the property boundaries;
 - earthworks that are more than 1m above or below ground level (existing) in any other location;

are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.

- (12) (B046) The building shall be designed and constructed so as to comply with the Bush Fire Attack (BAL) 12.5 requirements of Australian Standard 3959 and the specifications and requirements of Planning for Bush Fire Protection. Details shall be submitted to the Principal Certifying Authority with the application for Construction Certificate demonstrating compliance with this requirement.

Please note: Compliance with the requirements of Planning for Bush Fire Protection 2006 to prevail in the extent of any inconsistency with the Building Code of Australia.

C – PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (C004) Prior to works commencing an application being made to the electricity and telecommunications service providers. Services are required to be underground.
- (2) (C013) Where a sewer manhole and/or Vertical Inspection Shaft (VIS) exists within a property, access to the manhole/VIS shall be made available at all times. Before during and after construction, the sewer manhole/VIS must not be buried, damaged or act as a stormwater collection pit. No structures, including retaining walls, shall be erected within 1.0 metre of the sewer manhole or located so as to prevent access to the manhole.

D – DURING WORK

- (1) (D001) Development works on public property or works to be accepted by Council as an infrastructure asset are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection, by contacting Council's Customer Service Centre on (02) 6581 8111. You must quote your Construction Certificate number and property description to ensure your inspection is confirmed:

- a. prior to the pouring of concrete for sewerage works and/or works on public property;

All works at each hold point shall be certified as compliant in accordance with the requirements of AUSPEC Specifications for Provision of Public Infrastructure and any other Council approval, prior to proceeding to the next hold point.

- (2) (D006) A copy of the current stamped approved construction plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- (3) (D003) The site is in an area 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.

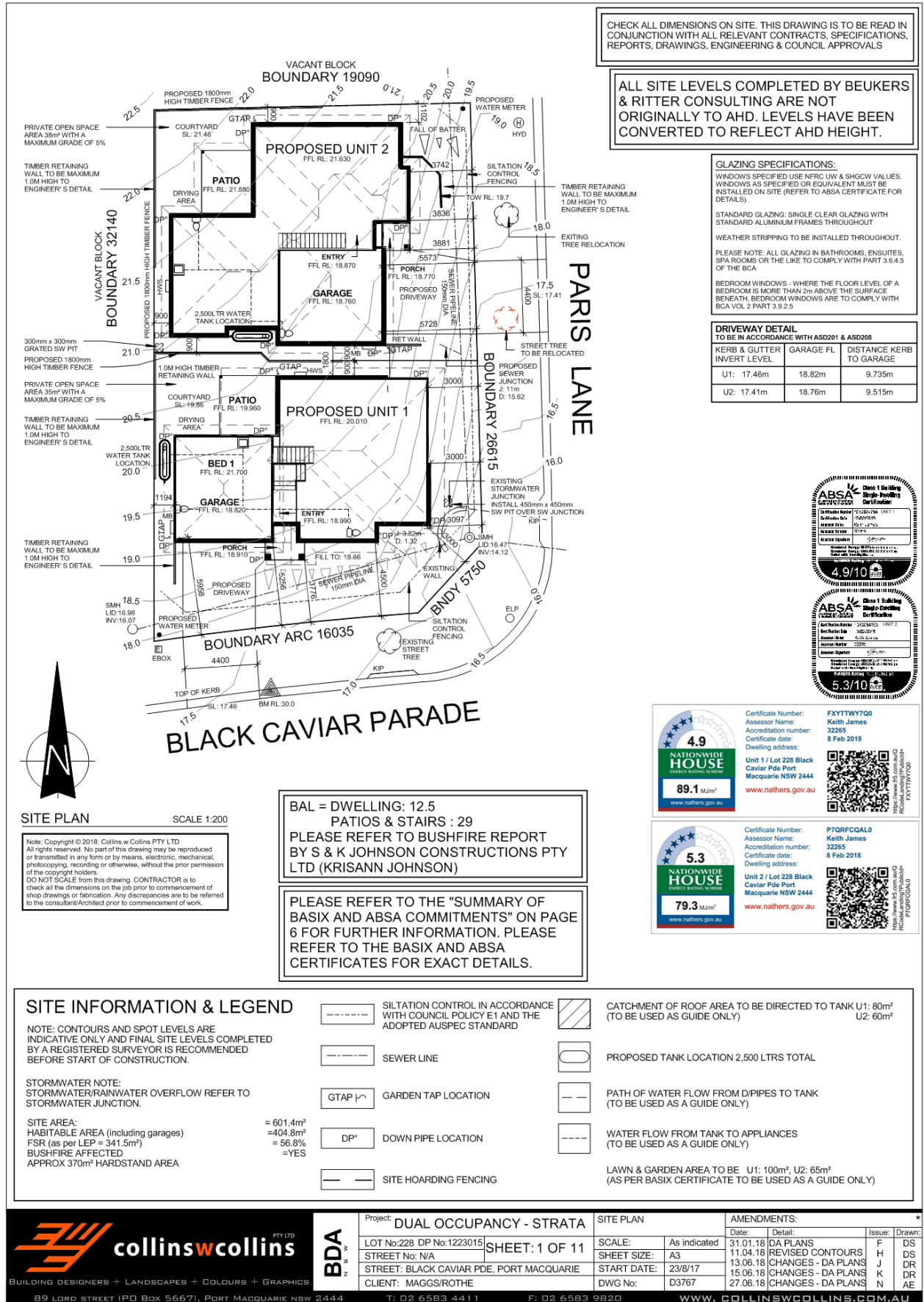
E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE / SUBDIVISION CERTIFICATE

- (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) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (3) (E034) Prior to occupation or the issuing of the Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (4) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any properly qualified person (eg the builder), stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (5) (E061) Landscaped areas being completed prior to occupation or issue of the Occupation Certificate.
- (6) (E056) A Certificate of Compliance under the provisions of Section 307 of the Water Management Act must be obtained prior to the issue of any occupation or subdivision certificate. The application for the certificate is to include an acceptable Work-As-Executed plan for water and sewer mains and services from a Professional Engineer or Registered Surveyor.
- (7) (E195) The subdivision certificate shall not be issued until such time that the dwellings associated with this development are substantially commenced (as determined by Council) or where a strata management statement, or restriction as to user, prohibits any dwelling on each lot other than the dwelling approved as part of this consent.
- (8) (E195) Prior to the issue of an Occupation Certificate all boundary fencing shown on the approved plans shall be completed. All fencing shall be koala friendly fencing in accordance with the Section 88B instrument.

F – OCCUPATION OF THE SITE

- (1) (F004) The dwellings are approved for permanent residential use and not for short term tourist and visitor accommodation.



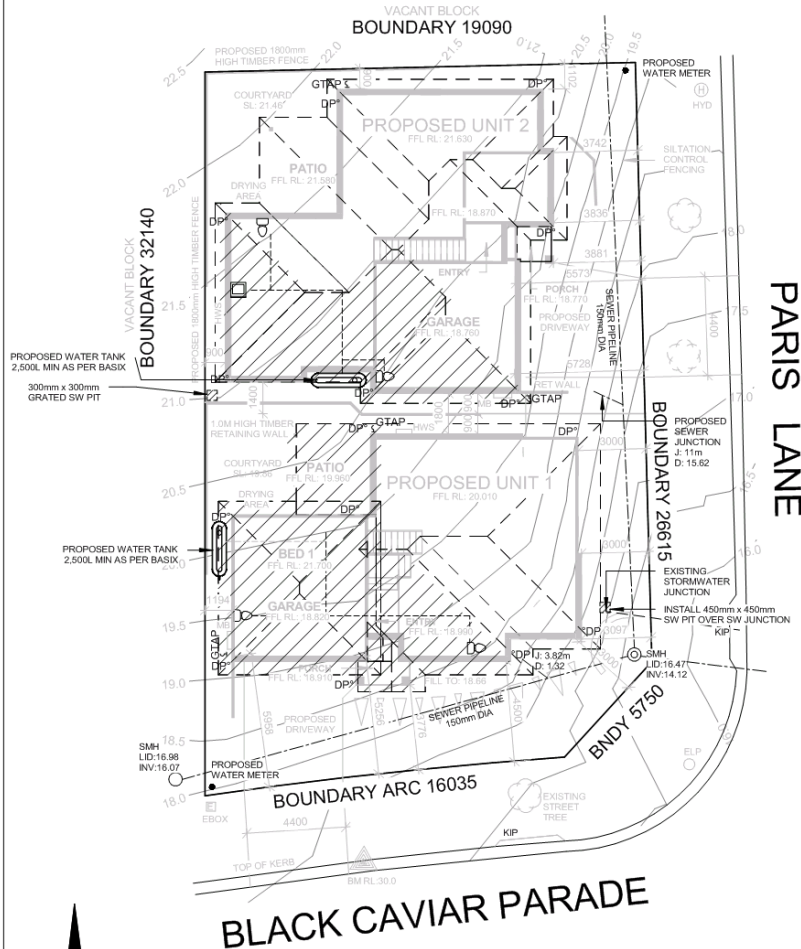
ALL SITE LEVELS COMPLETED BY BEUKERS & RITTER CONSULTING ARE NOT ORIGINALLY TO AHD. LEVELS HAVE BEEN CONVERTED TO REFLECT AHD HEIGHT.

CHECK ALL DIMENSIONS ON SITE. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT CONTRACTS, SPECIFICATIONS, REPORTS, DRAWINGS, ENGINEERING & COUNCIL APPROVALS

PLEASE REFER TO THE "SUMMARY OF BASIX AND ABSA COMMITMENTS" ON PAGE 6 FOR FURTHER INFORMATION. PLEASE REFER TO THE BASIX AND ABSA CERTIFICATES FOR EXACT DETAILS.

BAL = DWELLING: 12.5
PATIOS & STAIRS : 29
PLEASE REFER TO BUSHFIRE REPORT
BY S & K JOHNSON CONSTRUCTIONS PTY
LTD (KRISANN JOHNSON)

GLAZING SPECIFICATIONS:
WINDOWS SPECIFIED USE NFRC UW & SHGW VALUES. WINDOWS AS SPECIFIED OR EQUIVALENT MUST BE INSTALLED ON SITE (REFER TO ABSA CERTIFICATE FOR DETAILS).
STANDARD GLAZING: SINGLE CLEAR GLAZING WITH STANDARD ALUMINIUM FRAMES THROUGHOUT.
WEATHER STRIPPING TO BE INSTALLED THROUGHOUT.
PLEASE NOTE: ALL GLAZING IN BATHROOMS, ENSUITS, SPA ROOMS OR THE LIKE TO COMPLY WITH PART 3.6.4.5 OF THE BCA.
BEDROOM WINDOWS - WHERE THE FLOOR LEVEL OF A BEDROOM IS MORE THAN 2m ABOVE THE SURFACE BENEATH, BEDROOM WINDOWS ARE TO COMPLY WITH BCA VOL 2 PART 3.9.2.5



S68 & S138

SCALE 1:200

S68 & S138 SITE INFORMATION & LEGEND

STORMWATER NOTE:
STORMWATER/RAINWATER OVERFLOW REFER TO
STORMWATER JUNCTION.

SEWER LINE

GTAP GARDEN TAP LOCATION

DP DOWN PIPE LOCATION

CATCHMENT OF ROOF AREA TO BE DIRECTED TO TANK (TO BE USED AS GUIDE ONLY) U1: 80m² U2: 60m²

PROPOSED TANK LOCATION 2,500 LTRS TOTAL

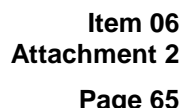
PATH OF WATER FLOW FROM DPIPES TO TANK (TO BE USED AS A GUIDE ONLY)

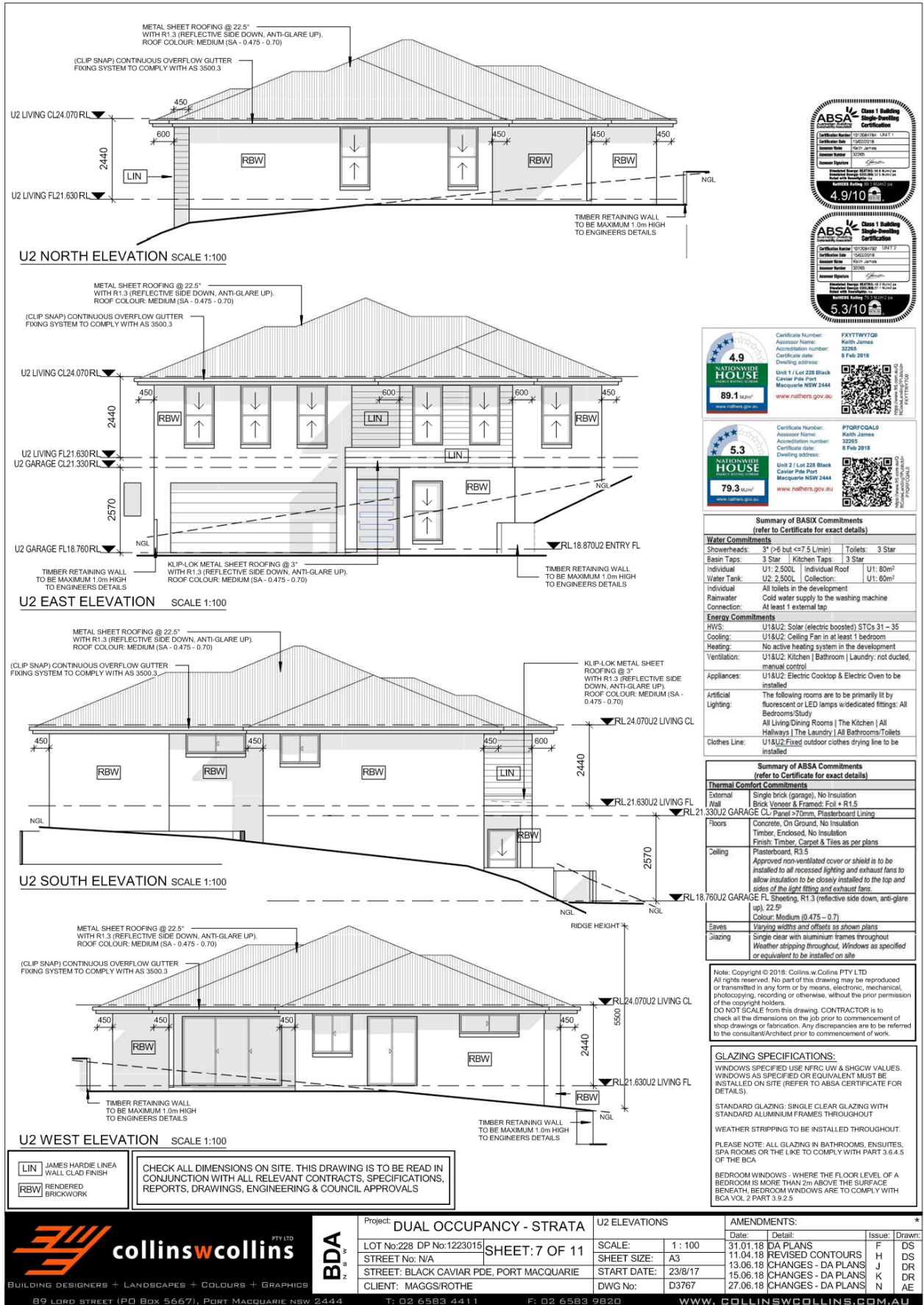
WATER FLOW FROM TANK TO APPLIANCES (TO BE USED AS A GUIDE ONLY)

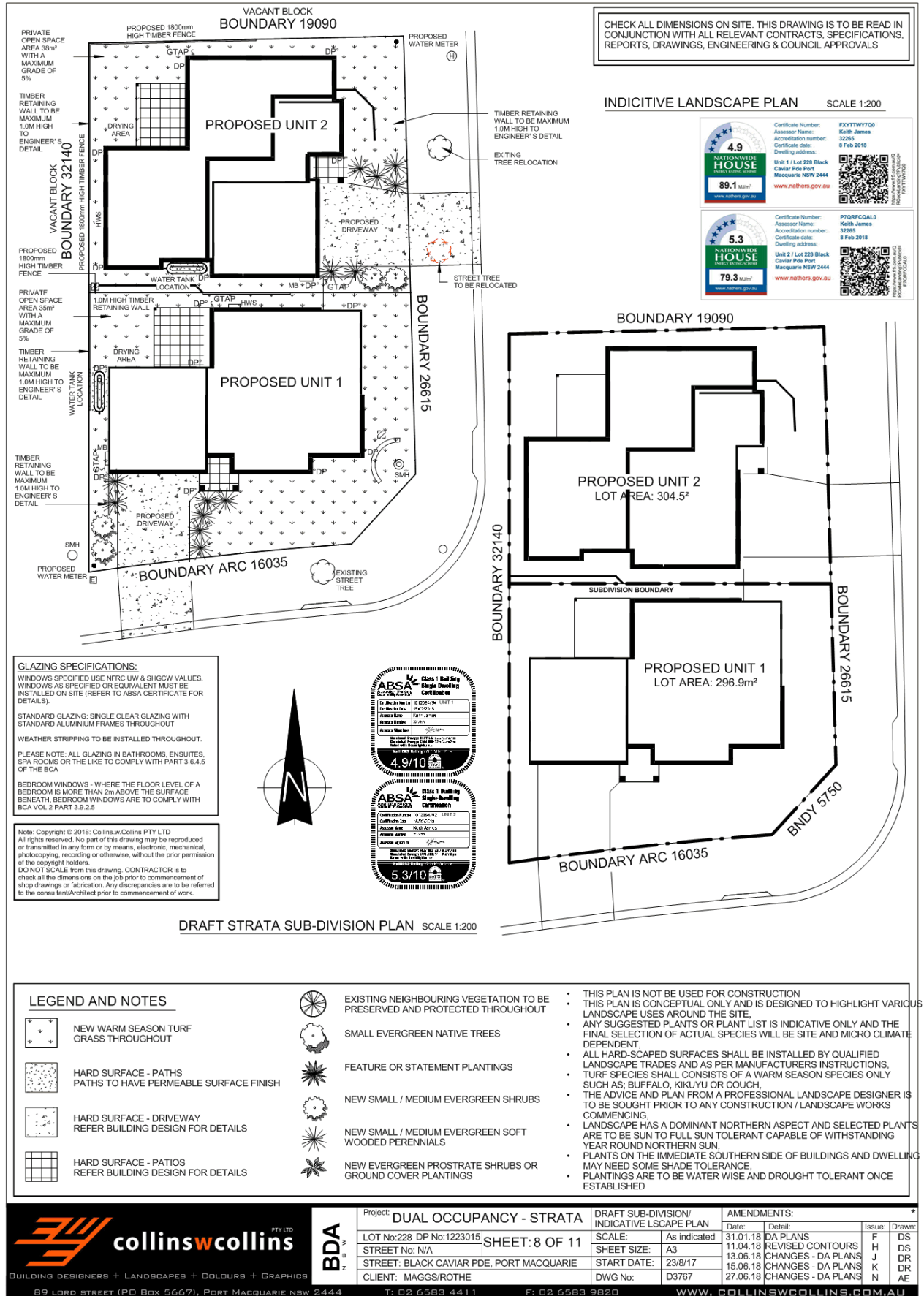
LAWN & GARDEN AREA TO BE U1: 100m²; U2: 65m² (AS PER BASIX CERTIFICATE TO BE USED AS A GUIDE ONLY)

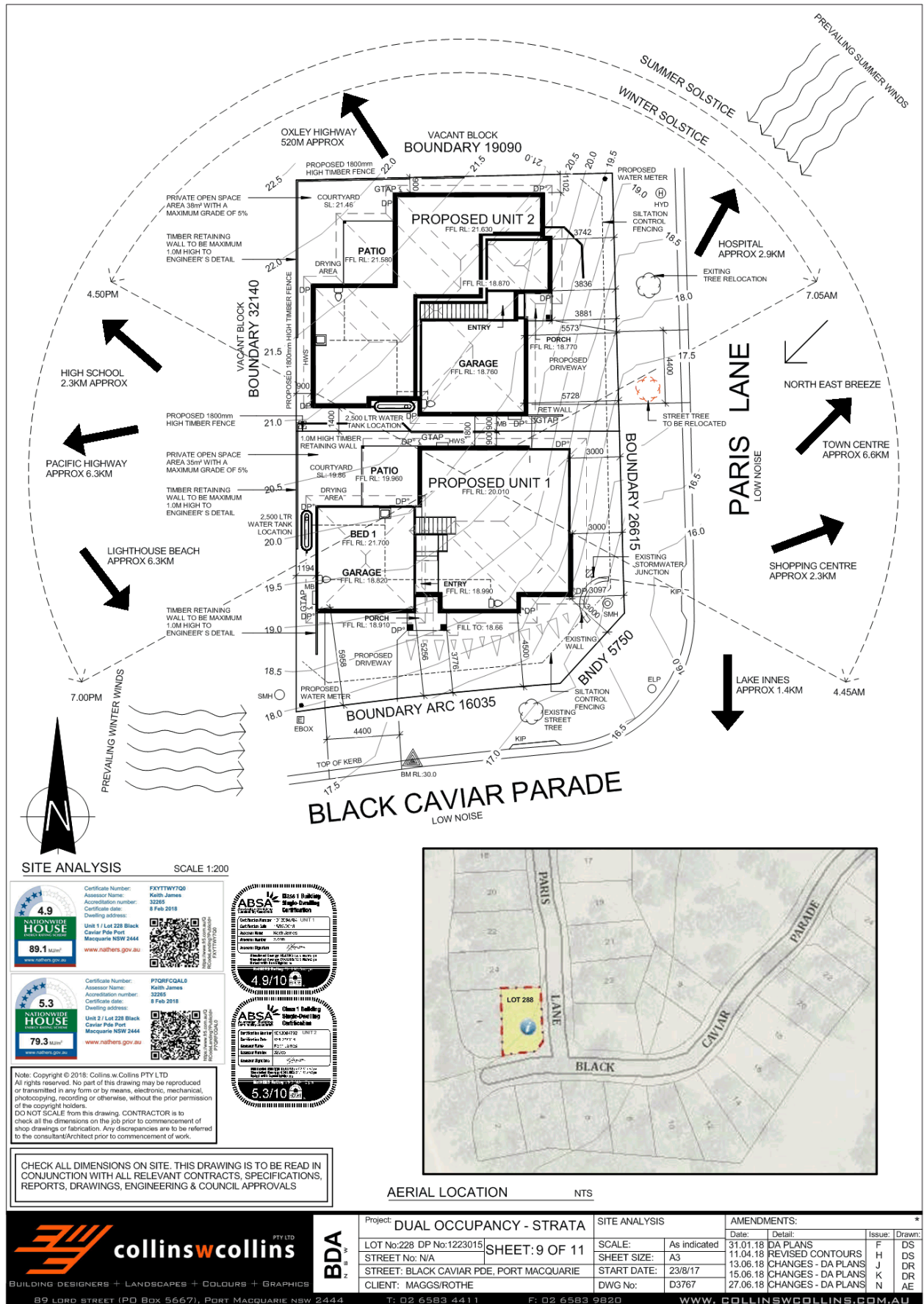
Note: Copyright © 2018: Collins.w.Collins PTY LTD
All rights reserved. No part of this drawing may be reproduced or transmitted in any form or by means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright holders.
DO NOT SCALE from this drawing. CONTRACTOR is to check all the dimensions on the job prior to commencement of shop drawings or fabrication. Any discrepancies are to be referred to the consultant/architect prior to commencement of work.











From: [Approval Regulatory Group](#)
To: [Leane Gadd](#)
Subject: FW: DA2018 - 293.1 Submission Acknowledgement letter - Black Caviar Parade PORT MACQUARIE - N Sormaz 66070
Date: Wednesday, 30 May 2018 2:24:37 PM
Importance: High

From: Nik S [REDACTED]
Sent: Wednesday, 30 May 2018 1:05 PM
To: Approval Regulatory Group
Subject: Re: DA2018 - 293.1 Submission Acknowledgement letter - Black Caviar Parade PORT MACQUARIE - N Sormaz 66070
Importance: High

Greetings

Further to my Notice of Objection I would appreciate your responses to the following concerning DA2018 - 293:

1. Has this DA been approved by the Ascot Park Committee (APC) ?
2. What is the expected time for a decision from Council ?
3. Is it OK for me to make an appointment to visit Council to discuss my key concerns ?

I take this opportunity to highlight my main (non compliance) concerns and the impact on my future enjoyment (at Lot 227) ie:

- the request to strata Lot 228
- the scale of the proposed development
- the location of additional driveway - directly adjacent to only location for Lot 227's driveway [ARRGGGH!]
 - attendant (otherwise avoidable) hazards that will regularly arise
 - requested relocation of Council planted tree!
 - loss of enjoyment
- the proximity of both dwellings all along shared border with Lot 227.

Noted that I'm renting in WOY WOY on the Central Coast and would appreciate notices to do with this DA to be sent to be sent to my email address in the first instance or via message alert to my mobile [*I only visit my PO Box in Mona Vale once a month*].

Kind regards, Nik
m: [REDACTED]

From: Jo-Anne Swan <[REDACTED]>
Sent: Monday, 14 May 2018 10:59 AM
To: [REDACTED]
Subject: DA2018 - 293.1 Submission Acknowledgement letter - Black Caviar Parade PORT
MACQUARIE - N Sormaz 66070

Good Morning,

Please find attached Submission Acknowledgement letter for the above DA.

Kind Regards

Jo Swan
Administration Officer
Development & Environment



p (02) 6581 8547



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From: Nik S
To: Council
Subject: NOTICE OF STRONG OBJECTION | DA 2018/293 | Re: Lot 228 Ascot Park
Date: Friday, 11 May 2018 5:00:35 PM
Importance: High

Greetings

Having only just being able to download proposed DA 2018/293, I hereby give notice that I **strongly object** on the grounds given hereinunder.

SUBMISSION

Details

Name: N Sormaz (owner of Lot 227 Ascot Park)

Address: Unit 4, 23 Paton St, WOY WOY NSW 2256

Mailing: PO Box 1238, MONA VALE NSW 1660

[REDACTED]

[REDACTED]

DA Ref: 2018/293

Gifts: No political gifts or associations

GROUND FOR OBJECTION

Background

As part of my due diligence prior to purchasing Lot 227 Ascot Park, I was led to believe that the [mother and son] owner(s) of Lot 228 were going to build a 'Better Homes' dual occupancy duplex design that shared a backbone and a footprint that was a 4-5 bedroom home with shared double garage that appeared like a single dwelling from the street.

What has transpired is manifestly not anything like I was expecting to see in the DA. How this got past the Ascot Park Covenant and attendant Guidelines is beyond belief.

Key Concerns with DA 2018/293

1. DA is manifestly at odds with Ascot Park Covenant and Guidelines ie:
 - o Application for Strata Titles (in addition to Dual Occupancy)
 - o Building to Land ratio is well outside reasonable expectations
 - o many other non complying matters which Council will undoubtedly identify.
2. DA motivation is plainly monetary ie:
 - o capitalise on the value of two saleable (strata title) large dwellings
 - o no regard for adjoining property (Lot 227) reasonable enjoyment
 - o apparent that at least one strata would be on sold/rented out
3. DA as proposed puts 2 (clothes lines/dwelling/outdoor) areas all along the border to Lot 227

4. DA should be consistent with plans originally canvassed (for dual occupancy by one family/owners)
5. DA in its present form (if approved) is at odds with Ascot Park community expectations.

Your truly, Nik