



Development Assessment Panel

Business Paper

date of meeting: Wednesday 25 March 2015

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.



**PORT MACQUARIE
HASTINGS**

Development Assessment Panel

CHARTER

Functions:

1. To review development application reports and conditions.
2. To determine development applications outside of staff delegations.
3. To refer development applications to Council for determination where necessary.
4. To provide a forum for objectors and applicants to make submissions on applications before DAP.
5. To maintain transparency for the determination of development applications.

Delegated Authority:

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.

Format Of The Meeting:

1. Panel meetings shall be carried out in accordance with Council's Code of Meeting Practise for Council Sub-Committees, except where varied by this Charter.
2. Meetings shall be "Open" to the public.
3. 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.

Development Assessment Panel

ATTENDANCE REGISTER

Member	22/10/14	12/11/14	26/11/14	10/12/14	21/01/15
Paul Drake	✓	✓	✓	✓	✓
Matt Rogers					
Dan Croft Patrick Gailbraith-Robertson (alternate)	✓	✓	✓	✓	✓
David Fletcher Paul Biron (alternate)	✓	✓	✓	A	✓
David Troemel (alternate)	✓	✓	✓	✓	✓

Member	11/02/15	25/02/15	11/03/15		
Paul Drake	✓	✓	✓		
Matt Rogers					
Dan Croft Patrick Gailbraith-Robertson (alternate)	✓	✓	✓		
David Fletcher Paul Biron (alternate)	A	✓	✓		
David Troemel Caroline Horan (alternate)	A ✓	A	✓		

Key: ✓ = Present
A = Absent With Apology
X = Absent Without Apology



**PORT MACQUARIE
HASTINGS**

Development Assessment Panel Meeting

Wednesday 25 March 2015

Items of Business

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**PORT MACQUARIE
HASTINGS**

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 11 March 2015 be confirmed.

PRESENT

Members:

Paul Drake
Dan Croft
David Fletcher
David Troemel

Other Attendees:

Clinton Tink
Chris Gardiner
Fiona Tierney
Pat Galbraith-Robertson

The meeting opened at 2.04pm.

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 25 February 2015 be confirmed.

04 DISCLOSURES OF INTEREST

There were no disclosures of interest presented.

**05 DA 2014 - 0879 - MULTI DWELLING HOUSING AND 36 LOT TORRENS TITLE
SUBDIVISION AT LOT 15 DP 1145216 BATAR CREEK ROAD, KENDALL**

Speakers:

Kate Ginn (o)
Jane Lavender (o)
Kim Slough (o)
Terry Duff (o)
Terrance Stafford (applicant)

CONSENSUS:

That DA 2014 - 0879 for multi dwelling housing and 36 lot Torrens title subdivision at Lot 15, DP 1145216, Batar Creek Road, Kendall, be determined by granting consent subject to the recommended conditions and as amended below:

- Delete condition B(18).
- Amend the wording of condition E(20) to *"Waste from proposed Lots 208 and 209 shall be collected from within the lot boundaries or site frontage, with no bins to be placed in front of adjoining/adjacent property for collection. Evidence of satisfactory arrangements with a waste collection service are to be provided to the Principal Certifying Authority prior to occupation or the issue of an Occupation Certificate for these dwellings."*

**06 DA 2015 - 0018 - TELECOMMUNICATIONS TOWER - LOT 12 DP 810674, 21
HOSCHKE ROAD, WEST HAVEN**

A letter from Karen Hodgkinson was tabled at the meeting objecting to the proposal.

Speakers:

Jim Manning (o)
Larry Marr (o)
Daniel Forbes (o)
William Row (o)
Steve Barker (o)
Lee Feday (o)
Amanda Barker (o)
Phil Hull (applicant)

CONSENSUS:

That DA 2015/0018 for a telecommunications tower at Lot 12, DP 810674, No. 21 Hoschke Rd, West Haven, be determined by granting consent subject to the recommended conditions.

07 DA 2007 - 0540 - SECTION 96 MODIFICATION - MODIFICATION TO DESIGN OF PREVIOUS APPROVED CLUSTER HOUSING DEVELOPMENT (44 DWELLINGS) - LOT 1 DP 595959, 2-10 CATHIE ROAD, PORT MACQUARIE

Speakers :
Mark Stocks (o)
David Tierney (o)

CONSENSUS:

That the matter be deferred to enable a site inspection and an inspection from Mr Tierney's property.

08 DA 2014 - 0092 - CHANGE OF USE - SHOP TOP HOUSING TO OFFICE PREMISES AT LOT 1 SP 18857, NO. 53 PACIFIC DRIVE, PORT MACQUARIE

CONSENSUS:

Resolution as per recommendation with the addition of a fire safety schedule relevant to the building to be attached to the consent.

1. That DA 2014 - 0092 for a Change of Use - Shop Top Housing to Office Premises at Lot 1, SP 18857, No. 53 Pacific Drive, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

Additional condition:

Fire safety schedule relevant to the building.

2. That the General Manager exercise delegation granted by the Council resolution of 22 October 2008 to enter into the Flynn's Beach Parking Planning Agreement.

09 DA 2014 - 0975 - STAGED DEVELOPMENT COMPRISING DEMOLITION OF THE EXISTING DWELLING, SUBDIVISION AND ERECTION OF SEMI-DETACHED DWELLINGS AT LOT 2 DP 373915, 92 LORD STREET, LAURIETON

Rhonda Steel (o)
Robert Smallwood (applicant)

CONSENSUS:

That DA 2014 - 0975 for a staged development comprising demolition of an existing dwelling, subdivision and erection of semi-detached dwellings at Lot 2, DP 373915, No. 92 Lord Street, Laurieton, be determined by granting consent subject to the recommended conditions.

10 DA 2014 - 0967 - RESTAURANT AND TAKE AWAY FOOD AND DRINK PREMISES INCLUDING DRIVE THROUGH FACILITY (HUNGRY JACKS) AT LOT 3 DP 1021427, 112-114 GORDON STREET, PORT MACQUARIE

Karen McIntosh (o)
Michelle Cole (o)
Les Best (o)
Steve McMahon (applicant)

CONSENSUS:

That DA 2014 - 967 for a restaurant and take away food and drink premises including drive through facility (Hungry Jacks) at Lot 3, DP 1021427, No. 112-114 Gordon Street, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

- Amend condition B(12) to read: '(B195) Prior to the release of the construction certificate, the site plan is to be amended showing a 2m high solid fence from the finished ground level (i.e. on top of the retaining wall) along the length of the southern boundary and return along the western boundary up to the adjoining building to the west of the site. Details of the screen are to be submitted to and approved by Council and must comprise graffiti resistance materials. Should the screen be located on the common boundary, the adjoining owner is to provide agreement to the screen.'
- Additional condition in Section B of the consent to read: 'Council as the Road Authority shall require one driveway for egress directly to Gordon Street to be located along the western part of the northern boundary of the property. All drive-through traffic shall utilize this egress. In addition, the car park access shall be connected to this access through a one-way aisle adjacent to the northern edge of the building. Details shall be provided and approved by Council with any Roads Act application, prior to any Construction Certificate.'

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- Additional condition in Section B of the consent to read: 'Prior to release of the Construction Certificate the drive through ingress is to be relocated so as to be positioned adjoining the loading dock and the staff parking and landscaping strip is to be located adjoining the northern boundary.'
-

11 GENERAL BUSINESS

Nil.

The meeting closed at 4.30pm.

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:

.....

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. (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>) 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 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—see section **448** (g) (ii) of the *Local Government Act 1993*.
- 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: DA 2007 - 0540 - SECTION 96 MODIFICATION - MODIFICATION TO DESIGN OF PREVIOUS APPROVED CLUSTER HOUSING DEVELOPMENT (44 DWELLINGS) - LOT 1 DP 595959, 2-10 CATHIE ROAD, PORT MACQUARIE

Report Author: Patrick Galbraith-Robertson

Property:	Lot 1 DP595959, 2-10 Cathie Road, Port Macquarie
Applicant:	CKHS Architecture
Owner:	Bermuda Breezes Pty Ltd
Application Date:	4 December 2014
Estimated Cost:	\$N/A
Location:	Port Macquarie
File no:	DA2007 - 540
Parcel no:	3923

Alignment with Delivery Program

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

RECOMMENDATION

That Section 96(2) modification to DA2007 - 540 to modify the design of previous approved staged 44 dwellings at Lot 1, DP 595959, No. 2-10 Cathie Road, Port Macquarie, be determined by granting the modified consent subject to the following modified conditions:

1. Amend condition A(1) in part to update the plan references to modified plans dated 13 February 2015 prepared by CKDS Architecture.
2. Add new condition A(25) to state: A new boundary fence shall be constructed along the full length of the southern boundary where the property is zoned residential however not within 6m of the front boundary. The fence is to have a minimum height of 1.8m and a maximum height of 2m. The fence is to be of colourbond or timber finish and be constructed at the proponent's expense.
3. Delete condition B(19) relating to privacy screens to bedroom windows of previous approved dwelling designs.
4. Delete condition B(20) relating to structural independency between dwellings.
5. Add new condition B(25) to state: Prior to issue of any Construction Certificate updated BASIX certificates for all dwellings shall be submitted to Council.

Executive Summary

This report considers a modification application to modify the design of previous approved staged 44 dwellings at the subject site.

The previous approved development has been physically commenced.

This report 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.

The design plans for the proposal have been amended post neighbour notification to respond to neighbour concerns particularly in relation to the south side setbacks.

This matter was reported to Council's Development Assessment Panel on 11 March 2015 where it was resolved:

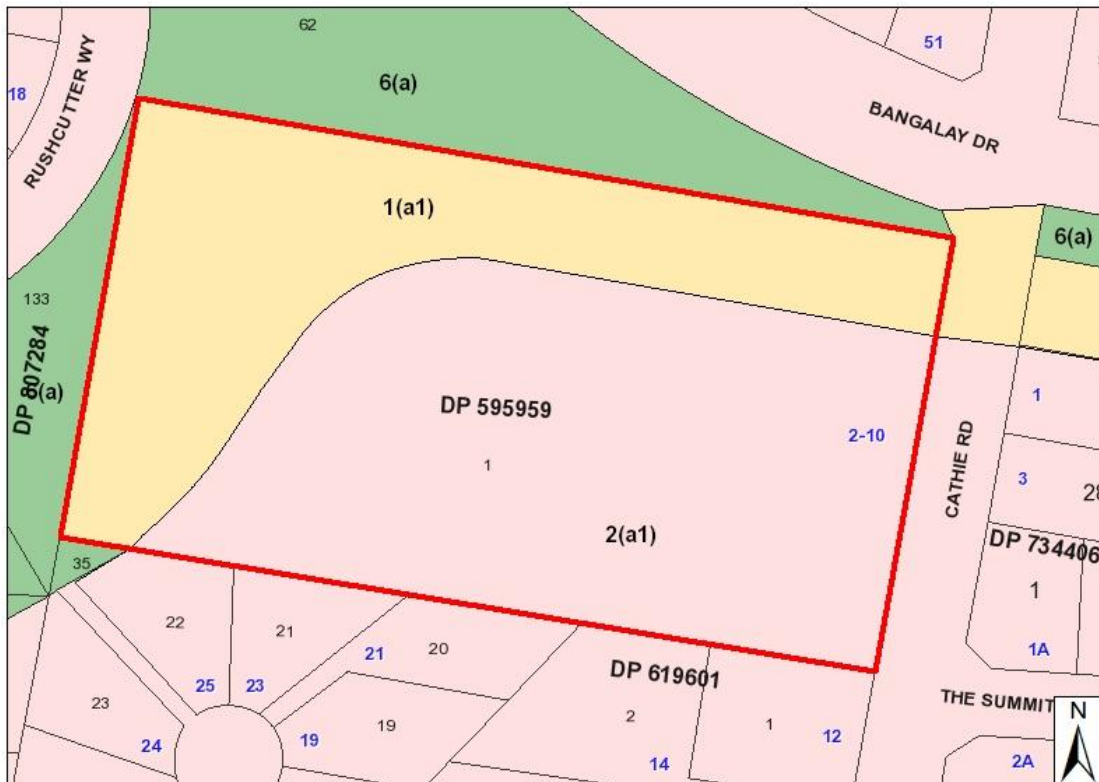
'That the matter be deferred to enable a site inspection and an inspection from Mr Tierney's property.'

1. BACKGROUND

Existing sites features and Surrounding development

The site has an area of 2.07 hectares.

The site was previously zoned 2(a1) Residential in accordance with the Hastings Local Environmental Plan 2001 (as in force at the time of the original application), as shown in the following zoning plan:



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 modified proposal (as amended) include the following:

Site Layout: The lot division, road and driveway locations across the site have been slightly amended but do not deviate significantly from the original proposal. The side setbacks and Asset Protection Zones are maintained.

Site Levels: The Applicant has stated that as with the original scheme, the layout of the site has been carefully considered to work in with existing levels. While the existing Development Application proposes split level apartments, the Section 96 proposal utilises retaining walls and elevated decks to respond to level changes across the site.

Staging: The proposed development is to be broken into 3 stages in line with the existing development approval. The boundary lines of these stages differs slightly from the original proposal. Refer A-031 Staging / Unit Type Plan.

Unit Design: The number of unit types have been reduced and rationalised in comparison to the original scheme. Refer to Unit Type Plans. The Applicant has advised that varying roof forms and material schemes have been implemented to maintain diversity throughout the site. The general density, massing and height of the proposed unit types are largely in line with the existing approval.

Refer to attachments at the end of this report.

Application Chronology

- 4 December 2014 - Modification application lodged with Council.
- 19 December 2014 to 19 January 2015 - Neighbour notification of modification proposal.
- 22 January 2015 - Additional information requested.
- 17 February 2015 - Amended plans received.
- 11 March 2015 - Matter considered by Council's Development Assessment Panel. The Panel resolved to defer the matter pending a site inspection.

3. STATUTORY ASSESSMENT

Is the proposal substantially the same?

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

The subject application is being considered under the provisions of Section 96(2). The proposal is considered to be substantially the same development to that which was originally consented to and will have minimal environmental impact. The proposed modification is not considered to alter the fundamental essence of the original development for the following reasons:

- The same number of dwellings at 44 are proposed within the same general footprint.
- The access points from Cathie Road are generally the same.
- The dwellings remain two storey.

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

The existing bushfire safety authority approved with the original development remains with no changes to conditions required.

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 were received following completion of the neighbour notification period.

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

Submission Issue/Summary	Planning Comment/Response
<u>21 Elparra Close</u> 1. There are some inconsistencies in the unit type chosen for Units 7 and 10 in plans provided. Neighbour prefers a type 1C roof line. 2. With relation to the southern	1. Inconsistencies with unit types and plans have been rectified with the amended plans. Unit 7 and 10 are Type 1D and Unit 8 and 9 are type 2A. 2. South side setback has been amended to be a minimum 3m second

<p>boundary, the previous approved development had a stepped design for the first floors in proximity to the southern boundary. The original setbacks are not as imposing as now in the proposed modification and do not comply with the development controls. No information on likely potential overshadowing has been provided.</p> <p>3. No details of height or distance from boundary of retaining wall along southern boundary have been provided. Request from neighbour to ensure that adequate drainage will be provided, engineering certification of structural integrity of retaining wall, not clear if existing dividing fence will be replaced and if wall will be on boundary but should be stepped back from boundary to allow for further privacy plantings along boundary.</p> <p>4. No information provided to demonstrate how privacy impacts have been considered relative to neighbouring southern properties and in accordance with development controls. Request for privacy strategies with screening increased fence heights and suitable plantings to be investigated.</p>	<p>storey setback for Units 1 to 10 to be consistent with the original approval. The ground floor patio area has been increased to 1m setback. Given the consistency of the proposal with the original setbacks no shadow diagrams have been provided to revisit the impacts to neighbours to the south.</p> <p>3. Amended plans submitted show a retaining wall just inside the boundary of the site and not on boundary. Indicative vegetation screening along the southern boundary is now shown. A new additional condition is recommended to replace the entire southern boundary fence to a minimum 1.8m height.</p> <p>4. A section plan has been submitted with amendments showing level relationship to southern neighbours. No adverse privacy impacts identified and compliant with the DCP 9 in force at the time of the original application.</p>
<p><u>23 Elparra Close</u></p> <p>1. The amended plans now show Unit 11's living area now being reversed and closer to southern boundary than original approval. The very point where the living areas are of main residence adjoining is also stated to be at its closest point to this boundary. Both properties are stated to be looking directly on to the living and entertainment areas of each other.</p> <p>2. There is a substantial height increase from the original approval from 6.7m to 7.4m with a view of blank wall from neighbouring property.</p> <p>3. The height increase will reduce the effectiveness of the neighbouring solar hot water system and overshadow our living and entertainment areas during winter months.</p> <p>4. Request removal of townhouse 11 as an appropriate outcome as requested in original submission for previous approved development. If not the townhouses 11 through to 16 should be moved to a minimum 3m north-east</p>	<p>1. Unit 11 has been amended to increase the second storey setback at the southern most corner of the building from less than 2m to a minimum 3m setback. The second storey floor areas are bedrooms only. The ground floor setback has been increased from less than 2m to 3m to the main corner of the living room. A covered patio remains to extend out to a minimum 2m approximate setback at the corner at the closest point to the southern boundary. A privacy screen has been added to the patio area. The deck will be approximately 1.5m above existing ground level at the highest point.</p> <p>2. The maximum 7.4m height is the height from the adjusted site levels. The varied increased setback from 3m to 8m for the second storey is acceptable and compliant with the DCP 9 in force at the time of the original</p>



away from the common boundary to provided improved privacy. 5. A 1.8m height fence should be built along the whole southern side boundary to protect the visual privacy of all nearby residents as per the development control requirements.	application. Refer to discussion later in report addressing height. No adverse impacts identified. 3. Amended plans submitted show retaining wall just inside the boundary of the site and not on boundary. Indicative vegetation screening along the southern boundary is shown. A condition is recommended to replace the entire southern boundary fence to a minimum 1.8m height.
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Any matters referred to in Section 79C(1) relevant to the modification?

Section 79C(1) Matters for Consideration

For the purpose of this modification assessment needs to be given to the environmental planning instruments applicable at the time. The following relevant instruments were in force at the time.

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

State Environmental Planning Policy 44 - Koala Habitat Protection

The existing approved Koala Plan of Management applying to the site and existing approved development will not be altered with the modified proposal. The existing conditions relating to this Koala Plan of Management can remain in place.

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

An updated BASIX certificate/s are required for the dwellings. A new additional condition is required to be provided prior to issue of a Construction Certificate.

- (iii) **any Development Control Plan in:**

Port Macquarie-Hastings Development Control Plan 9 - Residential and Tourist Accommodation

Parking

10 x 2 bedroom and 34 x 3 bedroom dwellings were originally approved.
Required parking for current approval = $10 \times 1 (=10) + 34 \times 1.5 (=51) + 44/4 (=11 \text{ visitor})$ = total required of 61 parking spaces for dwellings and 11 visitor spaces.

22 visitor parking spaces were originally proposed. 65 spaces provided for dwellings with 30 of the dwellings having tandem garages. This complied with the DCP at the time.

The modified proposal proposes all 44 dwellings as 3 bedroom dwellings. Required recalculated parking for modified proposal = $44 \times 1.5 (=66) + 44/4 (=11 \text{ visitor})$ = total required of 66 parking spaces for dwellings and 11 visitor spaces.

The modified proposal proposes 22 visitor spaces (11 above required minimum). 58 parking spaces are proposed for the dwellings with 26 dwellings having tandem garages. The tandem garages are considered to be able to be counted as 2 parking spaces therefore an extra 26 spaces above the 58 spaces can be counted with a total of 84 spaces for dwellings proposed. This remains compliant with the DCP at the time.

Front setbacks

The front setbacks have been modified for the dwellings fronting Cathie Road. The garage setbacks of units 25 to 30 have been increased to 7.5m and the primary setback of the dwelling reduced to 4.7m. These setback changes are compliant.

Side Setbacks

The south side setback has been amended to be a minimum 3m second storey setback for Units 1 to 10 to be consistent with the original approval. The ground floor patio area has been increased to 1m setback. Given the consistency of the proposal with the original setbacks no shadow diagrams have been provided to revisit the impacts to neighbours to the south.

Unit 11 has been amended to increase the second storey setback at the southern most corner of the building from 2m to a minimum 3m setback. The second storey floor area is bedrooms only. The ground floor setback has been increased from 2m to 3m to the main corner of the living room. A covered patio remains to extend out to a minimum 2m approximate setback at the corner at the closest point to the southern boundary. A privacy screen has been added to the patio area. The deck will be approximately 1.5m above existing ground level at the highest point.

Building height

The building height limit at the time of the original approval was 8m from natural ground level.

The majority of the current approved buildings range from being compliant at a height of 8m or less to around 8.7m with the exception of the north western-most dwellings with heights approximately to 9m.

The modified proposal includes:

- dwellings (units 1 to 10) along the southern boundary have maximum heights of approximately 8m which are compliant with the DCP.
- The south-western most dwelling (Unit 11) has an altered height at the southern elevation of approximately 9.5m at the highest point above natural ground level. This is primarily due to the change in ground floor level now not being split level. The actual height of the building above the adjusted ground level (up to 2.5m above existing ground level at the corner of the building) is 7.4m which is compliant with the DCP. The modified building design is considered to be generally consistent with the current approved height noting there is only a small increase of 0.5m above the original roof height. The additional height is considered to be consistent with the objectives of the DCP as the higher point of the building is setback further from the southern boundary at the highest point of Unit 11 (setback up to 8m from boundary). There is no adverse overshadowing or view loss impacts as a result of the modified height.

- (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 & Setting

- The modified proposal will be unlikely to have any adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.
- The modified proposal is considered to be consistent with other residential development in the locality and adequately addresses planning controls as justified for the area.
- There is no identifiable adverse impact on existing view sharing.
- There are no adverse privacy impacts.
- There are no identifiable adverse overshadowing impacts.

Access, Transport & Traffic

The modified 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.

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.

A modified Notice of Payment will be issued with the modification of consent.

5. CONCLUSION

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

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application.

The site is suitable for the proposed modified development, is not contrary to the wider 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 conditions of consent provided in the attachment section of this report.

Attachments

- 1 [View](#). DA2007 - 0540.2 Amended Plans
- 2 [View](#). DA2007 - 0540.2 Submission - Stocks
- 3 [View](#). DA2007 - 0540.2 Submission - Tierney

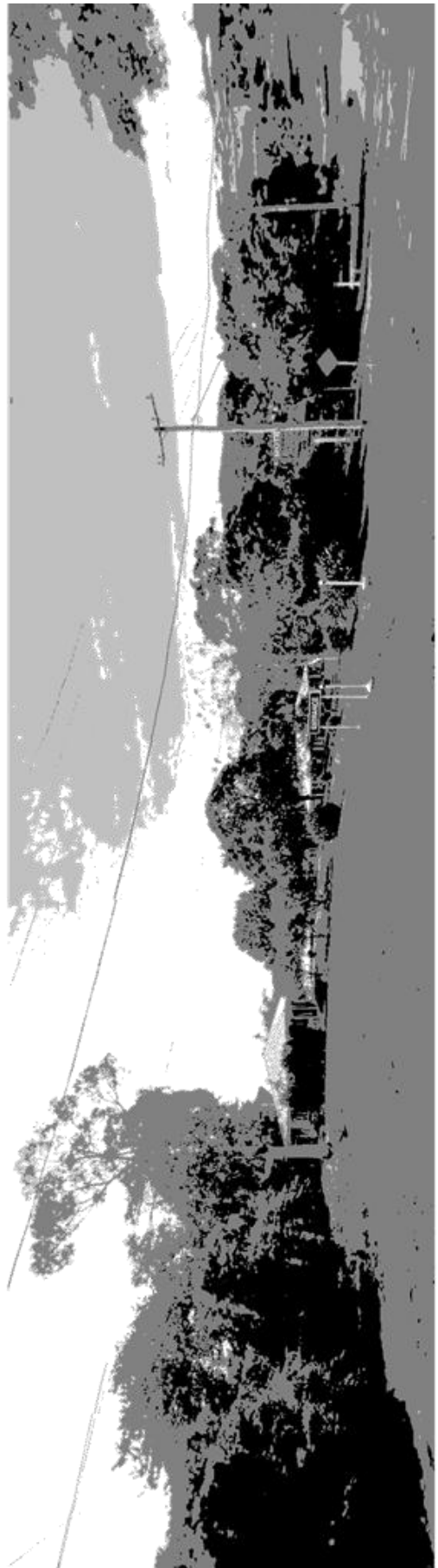
CKOS ARCHITECTURE

BERMUDA BREEZES
Lot 1 DP 595959, Cathie Road
Port Macquarie, NSW 2444

Section 96
Development Application Amendment

DRAWING LIST

AT Drawings	
A-001	Cover Page
A-002	Site Location Map
A-003	Boundary / Unit Type Plan
A-004	Unit Component Plan
A-005	Site / Ground Floor Plan
A-006	First Floor Plan
A-007	Roof Plan
A-008	Elevations / Site Sections
A-009	Elevations / Site Sections
A-010	Elevations / Site Sections
A-011	Unit Type 1A
A-012	Unit Type 1B
A-013	Unit Type 1C
A-014	Unit Type 1D
A-015	Unit Type 1E
A-016	Unit Type 1F
A-017	Unit Type 1G

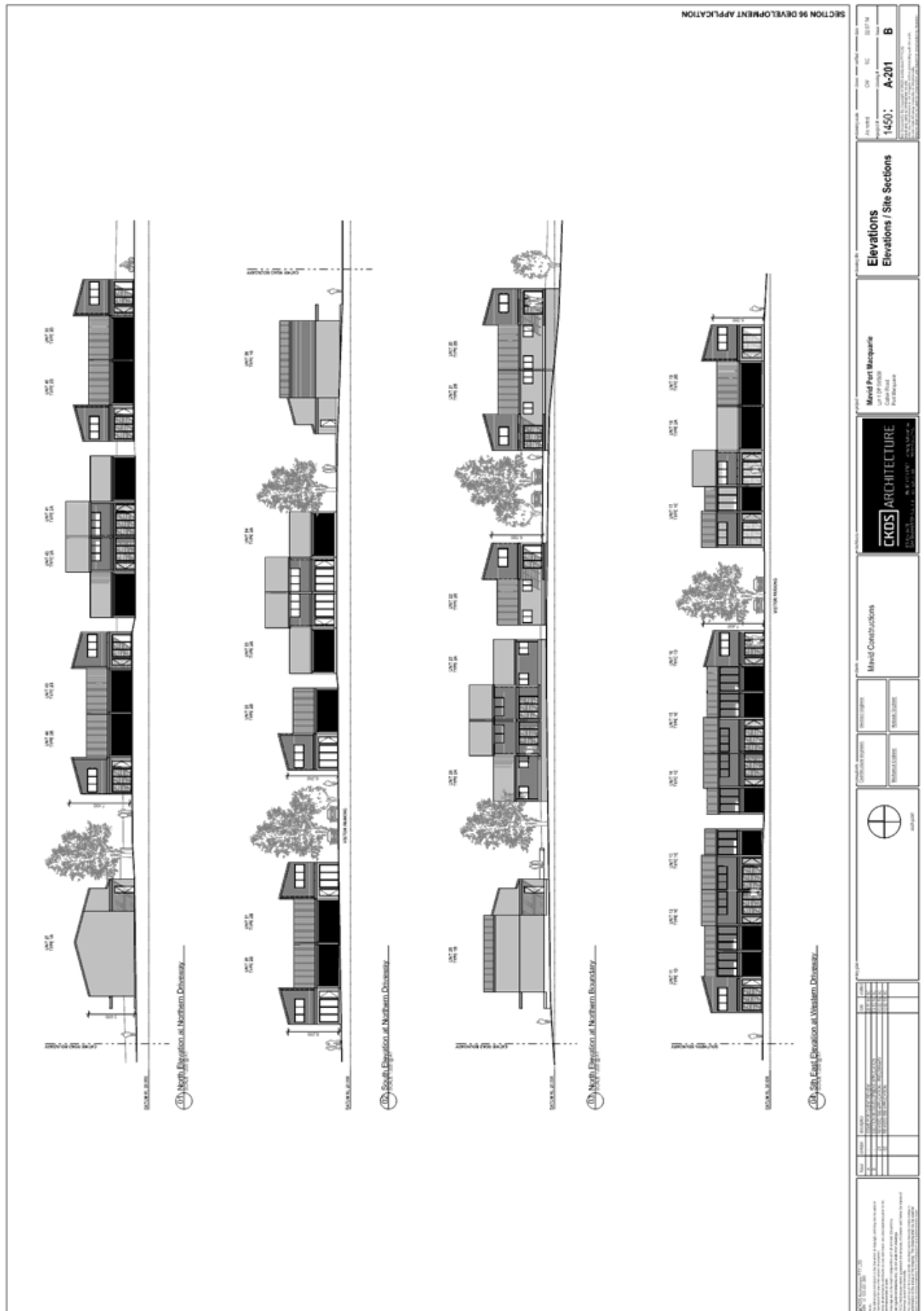




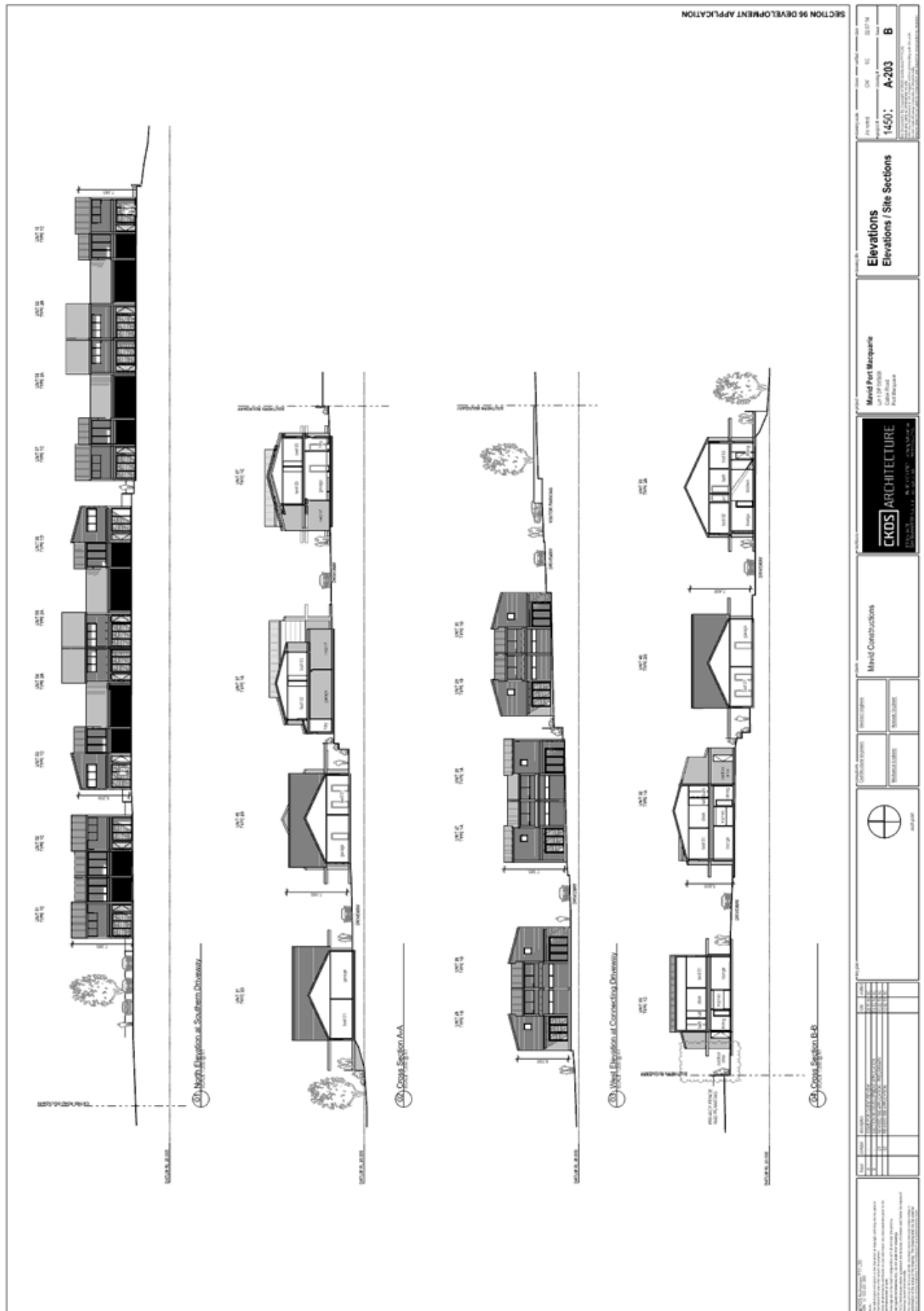












Mark & Megan Stocks
21 Elparra Close
Port Macquarie NSW 2444

Attention : Mr Patrick Galbraith-Robertson
Port Macquarie Hastings Council
P O Box 84
Port Macquarie NSW 2444

Dear Sir

RE: DA 2007/540 Multi Dwelling Housing – Section 96 Modification - Lot 1 DP595959 2-10 Cathie Road, Port Macquarie

We are the owners of land (Lot 20 DP700943) which adjoins this site.

We raise for Councils consideration as part of the assessment of this matter the following points of objection and concern regarding the proposed modification:

1. Proposed Unit Configuration – it is not clear from the plans which type of unit is proposed for units 10 and 7. Plan A031 and A032 indicate it will be 1D. Plans A202 & 203 indicate 1C. The plans we have reviewed did not show the first floor internal layout of these types of units. Assuming these are internally identical the only external difference to the southern boundary is the roof line (type 1C being a roof line flowing away from the boundary and 1D being more a built wall facing the boundary and extending to the top of the roof line). We would prefer type 1C for these units.
2. First floor distance from Rear Boundary adjoining Lot 20 – the modified development now proposes the first floor rear walls/windows will be aligned with the rear wall of each unit. The previous development application had a “stepped” or “tapered” design for first floors whereby the ground floor was closest to the rear boundary and the first floor was further toward the front. This was not as imposing for the first floors as what is now proposed in the modification. It is acknowledged (and appreciated) that under the modification the rear building alignment of the units are slightly further away from the boundary than under the original application, however this does not overcome the first floor areas now being closer.
3. Retaining Wall – It appears from plan A101 and plan A32 that a retaining wall in some form is proposed along the rear boundary with lot 20. There is no indication of the height of this wall or its distance from the boundary. We request Council to ensure in any approval that appropriate measures are taken for:

- a. adequate on site drainage (including behind the retaining wall) to accommodate stormwater runoff/ subsoil seepage from adjoining land to the proposed excavated area (note presently there are natural ground level graduated flowing garden beds on lot 1 along this boundary);
 - b. Appropriate certification to ensure structural integrity of the wall and its ongoing support of the adjoining land of lot 20;
 - c. It is not clear what is to happen to the existing dividing fence on the alignment. If the retaining wall is along the legal boundary then the fence will therefore need to be replaced. We should not have to replace this through no fault of our own;
 - d. It is not clear if the wall will be right on the legal boundary. If practical and possible, can the wall be stepped back from the boundary to allow further privacy plantings on top of it on lot 1 along this boundary.
4. Setbacks – we are concerned the proposed development may not comply with the required minimum 4 m set backs from the rear boundary under DCP 2013 clause 3.2.2.4. This is of particular concern now that the first floors are closer to the rear boundary. We have no information if this will now cause overshadowing problems.
5. Privacy – we are concerned the development application material we have seen does not adequately address privacy considerations relative to lot 20 as required by DCP2013 clause 3.2.2.10. There is no information in the application as to how this has been considered and is to be addressed eg retaining wall/excavation/fence heights, proposed screening, suitable landscaping (note the current screening vegetation on Lot 1 along this boundary will be removed under the development). We have living areas and decks facing the rear of these units. There is a first floor deck on lot 20 in close proximity to the rear of units 10 & 9. We request privacy strategies be imposed on the development such as screening, increased fence heights and suitable plantings be required at the rear areas of the units adjoining lot 20.

Thank you for your consideration of these issues. We would be available to attend a meeting with Council and request Councils advice on the outcome of the matter.



Mark and Megan Stocks



19 January 2015.

12 January 2015

Port Macquarie Hastings Council
Development and Environmental Services
PO Box 84
Port Macquarie NSW 2444

**Reply to Notification of Development Proposal – Section 96 Modification
Application No: 2007/540**

We have received notification of the above proposed development and as adjoining land owners we have objections to part of this development based on concerns in regards to **privacy, overshadowing and side setbacks** of Townhouse Number 11.

The amended plans show Unit 11's living area now being reversed (the living area now at the front) and closer to our boundary than the original approval. The living area is now approximately 1.30 metres out from our boundary **at the very point where the living areas of our residence is also at its closest point to this boundary**. This makes the living area of the proposed development and the living and entertainment area of our residence being positioned at their closest points, resulting in both properties looking directly on to the living and entertainment areas of each other.

There is also a substantial height increase from the original approved townhouse design of 6.711 metres to 7.4 metres and as raised in our original submission, from our living areas, 2 decks and bedrooms 1 and 2 we will be looking directly onto this solid side wall.

This also leads to concerns that the height increase will reduce the effectiveness of our solar hot water system and overshadow our living and entertainment areas of our residence during the winter months.

As stated in our original reply dated 21 November 2007, we believe the appropriate outcome should be the removal of townhouse 11 from this development. If not, townhouses 11 through to 16 should be moved a minimum of 3 metres north-east away from our boundary to give us our privacy as per DCP No. 9 rules and Port Macquarie Hastings development control plan 2013 (3.2.2.5). We also believe a 1.8 metre high fence should be built along the whole of the southern side of this development to protect the visual privacy of all nearby residents, as per the Port Macquarie Hastings development control plan 2013. (3.2.2.10).

We have lived in our residence for 23 years, raised our family here and we intend to stay here. We want an outcome that is in the best interests of everyone, including the future owners of these townhouses, not just for the developer to build as many townhouses as they possibly can on this site, make their money and walk away, leaving us and other property owners with possible noise concerns and most definitely privacy and visual issues in years to come.

We hope that an acceptable outcome can be achieved to address our legitimate concerns.

Thanking you,

David & Catherine Tierney
23 Elparra close
Port Macquarie NSW 2444

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