

Ordinary Council

LATE REPORTS

Business Paper

date of meeting: Wednesday 21 November 2018

location: Council Chambers
17 Burrawan Street
Port Macquarie

time: 5.30pm

Community Vision

A sustainable high quality of life for all

Community Mission

Building the future together
People Place Health Education Technology

Council's Corporate Values

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

Community Themes

- ★ Leadership and Governance
- ★ Your Community Life
- ★ Your Business and Industry
- ★ Your Natural and Built Environment

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

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

These are:

- Addressing Council on an Agenda Item (if the matter **is** listed in the Council Business Paper)
- Addressing Council in the Public Forum (if the matter **is not** listed in the Council Business Paper)

You can request to address Council by completing the:

- 'Request to Speak on an Agenda Item' form
- 'Request to Speak in the Public Forum' form

These can be obtained from Council's Offices at Laurieton, Port Macquarie and Wauchope or by downloading it from Council's website.

Requests can also be lodged on-line at:

<http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-Committee-Meetings/Request-to-speak-on-an-Agenda-Item>

<http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-and-Committee-Meetings/Request-to-speak-in-a-Public-Forum>

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

- Council will permit no more than two (2) speakers 'in support of' and two (2) speakers 'in opposition to' the recommendation on any one (1) Agenda Item.
- A maximum of five (5) speakers will be heard in the Public Forum.
- There is no automatic right under legislation for the public to participate in a Meeting of Council or a Committee of Council.
- For a member of the public to be considered to address Council they must agree to strictly adhere to all relevant adopted Council Codes, Policies and Procedures at all times.
- Consideration of items for which requests to address the Council Meeting have been received will commence at 5:30pm.
- When your name is called, please proceed to the Council Table and address Council.
- Each speaker will be allocated a maximum of five (5) minutes to address Council. This time is strictly enforced.
- Councillors may ask questions of a speaker following an address. Each answer, by the speaker to a question, is limited to two (2) minutes. A speaker cannot ask questions of Council.
- An Agenda Item will be debated by Council following the address.
- Council will not determine any matter raised in the Public Forum session, however Council may resolve to call for a future report.
- If you have any documentation to support your presentation, provide two (2) copies to Council by 12 noon on the day of the Meeting.
- If a speaker has an audio visual presentation, a copy of the presentation is to be provided to Council by 12 noon on the day of the Meeting.
- The following will **not** be considered in the Public Forum (in accordance with the Code of Meeting Practice, clause 2.14.14):
 - Proposed or current development and rezoning applications and related matters.
 - A third (3rd) or subsequent application by a single member of the public to address Council on the same issue in the same calendar year. Council, at its discretion, may elect to exempt representatives or members of community groups from this restriction.
 - Any formal procurement process, contract negotiation or dispute resolution being undertaken.
 - Any matter the General Manager (or their delegate) considers inappropriate for discussion in the Public Forum.
- Council accepts no responsibility for any defamatory statements made by speakers.
- Members of the public may quietly enter and leave the Meeting at any time.

Ordinary Council Meeting

Wednesday, 21 November 2018

LATE REPORTS

Items of Business

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12.10	DA2018 - 649.1 Alterations And Additions To A Dwelling Including A Clause 4.6 Variation To Clause 4.3 (Height Of Buildings) Of The Port Macquarie Hastings Local Environmental Plan 2011 - Lot 346 DP 236950, No. 14 Vendul Crescent, Port Macquarie.....	<u>6</u>

4 Your Natural and Built Environment

What we are trying to achieve

A connected, sustainable, accessible community and environment that is protected now and into the future.

What the result will be

We will have:

- Effective management and maintenance of essential water, waste and sewer infrastructure
- A community that is prepared for natural events and climate change
- Sustainable and environmentally sensitive development outcomes that consider the impact on the natural environment
- Accessible transport network for our communities
- Infrastructure provision and maintenance that meets community expectations and needs
- Well planned communities that are linked to encourage and manage growth
- Accessible and protected waterways, foreshores, beaches and bushlands
- An environment that is protected and conserved for future generations
- Renewable energy options that are understood and accessible by the community

How we will get there

- 4.1 Provide (appropriate) infrastructure and services including water cycle management, waste management, and sewer management
- 4.2 Aim to minimise the impact of natural events and climate change, for example, floods, bushfires and coastal erosion
- 4.3 Facilitate development that is compatible with the natural and built environment
- 4.4 Plan for integrated transport systems that help people get around and link our communities
- 4.5 Plan for integrated and connected communities across the Port Macquarie-Hastings area
- 4.6 Restore and protect natural areas
- 4.7 Provide leadership in the development of renewable energy opportunities
- 4.8 Increase awareness of issues affecting our environment, including the preservation of flora and fauna



Item: 12.10

Subject: DA2018 - 649.1 ALTERATIONS AND ADDITIONS TO A DWELLING INCLUDING A CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF THE PORT MACQUARIE HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 - LOT 346 DP 236950, NO. 14 VENDUL CRESCENT, PORT MACQUARIE

Report Author: Melissa Watkins

Applicant:	Wayne Ellis Architect
Owner:	Liquor Folliculi Pty Ltd
Estimated Cost:	\$43,995
Parcel no:	24344

Alignment with Delivery Program

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

RECOMMENDATION

1. That the Clause 4.6 Objection submitted with DA2018 – 649 be supported.
2. That DA2018 – 649.1 for alterations and additions to a dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) of the Port Macquarie Hastings Local Environmental Plan 2011 at Lot 346 DP 236950, 14 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

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

Following exhibition of the application, no submissions were received.

The application is being reported to Council for determination in accordance with Planning Circular PS 18 – 003 as the proposal includes a Clause 4.6 objection to Clause 4.3 (Height of Buildings) of the Port Macquarie Hastings Local Environmental Plan 2011 (LEP) and the variation is greater than 10% of the development standard. The proposed variation equates to a 2.44m or 29% variation to the 8.5m building height standard applying to the site under the LEP.

The application was considered by Council's Development Assessment Panel on the 14 November 2018 where the following was resolved:

1. That the Clause 4.6 objection submitted with DA2018-649 be supported.
2. That the Development Assessment Panel recommend to Council that DA2018 – 649.1 for alterations and additions to a dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) of the Port Macquarie Hastings Local Environmental Plan 2011 at Lot 346 DP 236950, 14 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions.

1. BACKGROUND

Existing sites features and surrounding development

The site has an area of 651.3m².

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:

- Proposal involves alterations and additions to an existing multi storey dwelling.
- The works are predominately contained within the footprint of the existing dwelling.
- Part of the existing roof design is being amended. The design results in a minor 553mm increase to the existing building height (relevant to that area of the dwelling). The additional height is predominately located central to the building design with the wall heights remaining relatively the same.
- The height limit for the area is 8.5m. It should be noted that the existing dwelling already exceeds the standard. In particular, the existing dwelling has a section that exceeds the height limit by 4.29m or 50% of the standard. Even where the new works are proposed, the existing roof already exceeds the height limit by 1.88m or 22%.
- The revised roof design will result in the height limit being exceeded by 2.44m or 29%.
- The front of the dwelling, when viewed from the street, complies with the 8.5m height limit (ie the height is 7.25m).
- As a result of the above, a Clause 4.6 variation is proposed to Clause 4.3 (Height of Buildings) of Port Macquarie-Hastings Local Environmental Plan 2011.

Refer to attachments at the end of this report.

Application Chronology

- 20/8/2018 – Development Application lodged with Council.

- 27/8/2018 – Council staff requested further detail on owners consent.
- 28/8/2018 – Council staff requested additional information on vegetation removal, view impacts, height impacts and consideration of State Environmental Planning Policy (Coastal Management) 2018.
- 30/8/2018 to 12/9/2018 – Notification period.
- 31/8/2018 – Application referred to Local NSW Rural Fire Service for consideration.
- 5/9/2018 – Applicant advised that the rear deck would be removed from the proposal. Discussion with Council staff on additional information request.
- 8-10/9/2018 – Discussion with applicant on bushfire report.
- 12-13/9/2018 – Revised bushfire report submitted and associated discussion with Council staff on report detail. The revised bushfire report was sent to the Local NSW Rural Fire Service.
- 13/9/2018 – Applicant submitted revised plans, removing the rear deck.
- 14/9/2018 – Owners consent clarified.
- 18/9/2018 – Local NSW Rural Fire Service accepted the proposal subject to conditions.
- 14/11/2018 – Consideration of DA by Council's Development Assessment Panel.

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. 44 - Koala Habitat Protection

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

State Environmental Planning Policy No. 55 – Remediation of Land

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

State Environmental Planning Policy No. 62 – Sustainable Aquaculture

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

State Environmental Planning Policy (Coastal Management) 2018 and Clause 5.5 of Port Macquarie-Hastings Local Environmental Plan 2011

The assessment table below considers the relevant provisions of the SEPP.

Clause	Provision	Proposed	Complies
10 Development of coastal wetlands or littoral rainforest land (Applies to land mapped as “coastal wetlands” or “littoral rainforest”)			
10(4)	Sufficient measures have been, or will be, made to protect the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.	The site contains sections of mapped littoral rainforest to the east of the existing dwelling. By removing the proposed eastern deck from the application, no works are proposed on the mapped littoral rainforest area. Therefore, Clause 10 does not apply.	Yes
11 Development on land in proximity to coastal wetlands or littoral rainforest land (Applies to land mapped as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both)			
11(1)(a)	The proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest.	The alterations and additions will not impact on the biophysical, hydrological or ecology of the littoral rainforest due to the already developed nature of the dwelling/site, existing stormwater in place and the fact no vegetation clearing is required.	Yes
11(1)(b)	The quantity and quality of surface and ground water flows to the adjacent coastal wetland or littoral rainforest if the development is on land within the catchment of the coastal wetland or littoral rainforest.	No change to water quality or quantity. In particular, minimal new hard stand areas proposed and the development will continue to drain to an existing approved stormwater system at pre-development flows.	Yes
12 Development on certain land within the coastal vulnerability area (Applies to land mapped as “coastal vulnerability area”)			
12(a)	If the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works.	The site is not located within the coastal vulnerability area.	N/A

Clause	Provision	Proposed	Complies
12(b)(i)	The proposed development is not likely to alter coastal processes to the detriment of the natural environment or other land.	The site is not located within the coastal vulnerability area.	N/A
12(b)(ii)	The proposed development is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development.	The site is not located within the coastal vulnerability area.	N/A
12(b)(iii)	The proposed development incorporates appropriate measures to manage risk to life and public safety from coastal hazards.	The site is not located within the coastal vulnerability area.	N/A
12(c)	Measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards	The site is not located within the coastal vulnerability area.	N/A
13 Development on land within the coastal environment area (Applies to land mapped as "coastal environment area")			
13(1)(a)	Whether the proposed development is likely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment.	No adverse impact will occur. Proposal is for alterations and additions to a single dwelling only, well clear of any key coastal environment. Refer to comments on Clause 11 above, in relation to the littoral rainforest provisions.	Yes
13(1)(b)	Whether the proposed development is likely to cause an adverse impact on coastal environmental values and natural coastal processes.	No adverse impact will occur. Proposal is for alterations and additions to a single dwelling only and will not impact on values or processes.	Yes
13(1)(d)	Whether the proposed development is likely to	No adverse impact will occur. Proposal is for	Yes

Clause	Provision	Proposed	Complies
	cause an adverse impact on marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms.	alterations and additions to a single dwelling only, clear of any key coastal environment/area.	
13(1)(e)	Whether the proposed development is likely to cause an adverse impact on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.	No adverse impact will occur. Proposal is for alterations and additions to a single dwelling only and will not impact on access to any key coastal area.	Yes
13(1)(f)	Whether the proposed development is likely to cause an adverse impact on Aboriginal cultural heritage, practices and places.	The site is not known to contain any heritage items or places. The site is also disturbed from past activities.	Yes
13(1)(g)	Whether the proposed development is likely to cause an adverse impact on the use of the surf zone.	The site is well clear of the surf zone. As a result, no adverse impact will occur.	Yes
13(2)	(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	Refer to above comments, which confirm no adverse impact will occur.	Yes
14 Development on land within the coastal use area (Applies to land mapped as “coastal use area”)			

Clause	Provision	Proposed	Complies
14(a)(i)	Whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.	No adverse impact will occur. Proposal is for alterations and additions to a single dwelling only and will not impact on access to any key coastal area.	Yes
14(a)(ii)	Whether the proposed development is likely to cause an adverse impact on overshadowing, wind funnelling and the loss of views from public places to foreshores.	No adverse impact will occur. Proposal is for alterations and additions to a single dwelling only. The proposed changes do not significantly change the bulk and scale of the dwelling and as a result will ensure no adverse overshadowing, wind funnelling, loss of views etc. The walls of the dwelling remain relatively unchanged with the minor change to height gradually occurring central to the building.	Yes
14(a)(iii)	Whether the proposed development is likely to cause an adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands.	No adverse impact will occur. Proposal is for alterations and additions to a single dwelling only within a semi developed residential area. The bulk, scale and positioning of works will ensure no adverse impacts on the visual or scenic qualities of the coast.	Yes
14(a)(iv)	Whether the proposed development is likely to cause an adverse impact on Aboriginal cultural heritage, practices and places.	The site is not known to contain any heritage items or places. The site is also disturbed from past activities.	Yes
14(a)(v)	Whether the proposed development is likely to cause an adverse impact on cultural and built environment heritage.	The site is not known to contain any cultural/heritage items or value. The site is also disturbed from past activities.	Yes

Clause	Provision	Proposed	Complies
14(b)	(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact.	Refer to above comments, which confirm no adverse impact will occur.	Yes
14(c)	The consent authority has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	The coastal environment has been considered in the assessment and the development deemed acceptable.	Yes
15 Development in coastal zone generally—development not to increase risk of coastal hazards (Applies to all land in the coastal zone other than land mapped as “coastal vulnerability area”)			
15(1)	The proposed development is not likely to cause increased risk of coastal hazards on the land or other land.	The site is not within a coastal hazard area.	N/A
16 Development in coastal zone generally—coastal management programs to be considered			
16	Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.	No coastal zone management program applies to the land.	N/A

Clause	Provision	Proposed	Complies
20 Flexible zone provisions			
20	Flexible zone provisions not applicable to land to which the SEPP applies.	The proposal does not rely upon flexible zone provisions.	Yes

Overall, the proposed development is not likely to result in any of the following:

- a) any adverse impact on integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment;
- b) any adverse impacts coastal environmental values and natural coastal processes;
- c) any adverse impacts on marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms;
- d) any adverse impact on marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms;
- e) any adverse impact on Aboriginal cultural heritage, practices and places;
- f) any adverse impacts on the cultural and built environment heritage;
- g) any adverse impacts to or from the surf zone;
- h) any adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands;
- i) overshadowing, wind funnelling and the loss of views from public places to foreshores;

The bulk, scale and size of the proposed development is compatible with the surrounding coastal and built environment.

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

The cost of the alterations and additions do not exceed \$50,000. Therefore, the proposal is not considered a BASIX affected development.

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, alterations and additions to a dwelling is a permissible landuse with consent.

The objectives of the R1 zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives as it is a permissible landuse and compatible with the established residential locality.

- Clause 2.7, the demolition requires consent as it does not fit within the provisions of SEPP (Exempt and Complying Development Codes) 2008.

- Clause 4.3, this clause establishes the maximum “height of a building” (or building height) that a building may be built to on any parcel of land. The term “building height (or height of building)” is defined in the LEP to mean “*the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*”. The term “ground level (existing)” is also defined in the LEP to mean “*the existing level of a site at any point*”.

The building height limit for the site is identified on the Height of Buildings Map as being 8.5m. The proposed development (new works) exceed the height by 2.44m, which represents a variation of 29%. Refer to the attached elevation plans, which demonstrate the areas of the building that exceed the height limit.

In considering the height variation, compliance with the objectives of Clause 4.3 of the LEP have been considered below:

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

Comment:

The locality and Vendul Crescent are characterised by a number of dwellings with similar heights, due mainly to the steepness of the land.

Key aspects of this proposal are:

- The dwelling still presents as a single storey dwelling to the street/public domain.
- The change in height occurs central to the building with the wall heights facing side boundaries/neighbours remaining relatively unchanged. This will limit the impact on neighbours as the central height will not be visible.
- The section of the dwelling being changed is only being raised 553mm.
- The dwelling already has multiple sections that do not meet the height limit and actually exceed the height limit by more than the proposed 2.44m/29% under this application.

Based on the above, the proposed height, bulk and scale of the development is considered compatible with the existing and future character of the locality.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

Comment:

The visual impact of the building is considered satisfactory for the following reasons:

- The main variations are located behind the facades of the building and are therefore less distinct.
- The variations are minor in the context of the existing built form and other existing height variations.
- The building height is similar to the existing dwellings in the area and will therefore not be visually dominant.
- The variation is created by the land sloping steeply away from the street.

View impacts and solar access are considered elsewhere in this report under 'View Sharing' and 'Overshadowing'. The proposed development and minor height variation do not create any adverse view loss or overshadowing.

Potential privacy impacts are considered under the relevant DCP provisions below and have been satisfactorily addressed in the building design.

(c) to minimise the adverse impact of development on heritage conservation areas and heritage items,

Comment:

The site does not contain any known heritage items or sites of significance.

(d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.

Comment:

The proposed height is consistent with other dwellings in the area. The variation does not compromise this intent of the standard.

In addition to the above, the applicant has lodged a written request in accordance with Clause 4.6 of the LEP objecting to the 8.5m building height standard applying to the site (see comments below under Clause 4.6).

- Clause 4.4, the floor space ratio of the dwelling is being increased 10m² and conservatively using mapping, will result in an FSR below the 0.65:1 standard (ie calculations suggest approx. 0.6:1).
- Clause 4.6, consent must not be granted for a proposal that contravenes a development standard unless the consent authority has considered a written request from the applicant that justifies the variation by showing that the subject standard is unreasonable and/or unnecessary and that there are sufficient environmental planning grounds to justify the contravening of the standard without compromising the public interest.

As a result of the above, the applicant submitted a Clause 4.6 variation for the height standard (ie Clause 4.3). The applicant's reasoning for varying Clause 4.3 are as follows:

- The resultant height difference is minimal at 553mm.
- The proposed height from the street is 7.25m, which is under the 8.5m height limit.
- The height limit is already exceeded when viewed from the east.
- Precedence already exists on adjoining properties.
- The site slopes away steeply from the street and strict compliance with the standard is difficult to achieve and considered unreasonable.
- To obtain reasonable views and access from the street, it is difficult to get floor levels that result in a compliant height.
- The proposal does not adversely impact on views from neighbouring properties.

Having considered the application and Clause 4.6 variation to Clause 4.3, the proposal was deemed to have limited impact on the environment as per the

reasons identified by the applicant above. In addition, it was also considered by staff that:

- The variation will not be readily visible due to the minor nature of the variation (553mm to a small portion of the building). In addition, the bulk of the variation occurs behind the front façade and central to the roof (ie not easily visible from adjoining properties or the public domain).
- The existing built form of the dwelling has multiple sections that already do not meet the height limit and exceed the height limit by more than that being varied under this application.
- Limited change to height of walls proposed, which will ensure no adverse increase in overshadowing to that occurring at present.
- There are similar sized buildings within 500m of the site. As a result, the proposed height and minor variation were not unreasonable within the context of the area.
- There will be negligible public domain impact.
- The development is well articulated, which further reduces the bulk of the building.
- No significant views impacts will occur.
- Through the use of screening, separation, room layout and window type; there will be no loss of privacy.
- The development is consistent with the zoning and height objectives of the LEP 2011 and is unlikely to have any implications on State related issues or the broader public interest.
- The public benefit of the standard is not compromised or eroded.

As per the Planning Circular PS 18 - 003, Council can assume the Director's Concurrence for variations to height. As a result, Concurrence from the Department of Planning and Environment is therefore not required. However, the variation is over 10% of the standard and will need to be determined by Council as per the circulars.

Overall, the design provides a suitable height that has regard for the current legislative height controls and what has actually been built in the area to date. Compliance with the standard would be unreasonable in this case due to the surrounding examples of non-compliance and the design difficulty associated with the steep slope. It is recommended that the Clause 4.6 variation to Clause 4.3 be supported.

- Clause 5.5, relevant provisions of this clause are addressed by State Environmental Planning Policy (Coastal Management) 2018 above in this report.
- Clause 5.10, 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:

None relevant.

(iii) any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	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 	None proposed.	N/A
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 • An awning or other feature over a window • A sun shading feature 	The dwelling contains a proposed bay window feature within the articulation zone. The window does not exceed 25% of the articulation zone and is still setback over 3m.	Yes
	Front setback (Residential not R5 zone): <ul style="list-style-type: none"> • Min. 6.0m classified road • Min. 4.5m local road • Min. 3.0m secondary road • Min. 2.0m Laneway 	Front building line setback is compliant with the minimum 4.5m front setback requirements.	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 remains unchanged.	N/A
	6m max. width of garage door/s and 50% max. width of building	Width of garage door remains unchanged.	N/A

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	Driveway crossover 1/3 max. of site frontage and max. 5.0m width	Driveway crossing width remains unchanged.	N/A
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	The rear setback requirements are complied with/remained unchanged.	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 southern side setback is the only one being changed under this application. On such a façade, the new works will provide a continuation of the existing 850mm side setback for a length of an additional 1.76m. No significant impact will be created but the wall will need to be fire rated during the Construction Certificate process. The building wall articulation is compliant and/or satisfactory to address the objective intent of the development provision.	No, but acceptable.
3.2.2.6	35m ² min. private open space area including a useable 4x4m min. area which has 5% max. grade	Open space areas will remain unchanged.	N/A
3.2.2.7	Front fences: <ul style="list-style-type: none"> • If solid 1.2m max height and front setback 1.0m with landscaping • 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 	No fences proposed.	N/A

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
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 fences 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 	No new openings are proposed that face adjoining properties and that are also within the relevant 9m/12m radius dimension.	Yes

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	No cut or fill proposed.	N/A
2.3.3.2	1m max. height retaining walls along road frontage	None proposed.	N/A

DCP 2013: General Provisions			
	Requirements	Proposed	Complies
	Any retaining wall >1.0 in height to be certified by structure engineer	None proposed.	N/A
	Combination of retaining wall and front fence height max 1.8m, max length 6.0m or 30% of frontage, fence component 25% transparent, and splay at corners and adjacent to driveway	No new 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 100m 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.	Noted
2.5.3.2	New accesses not permitted from arterial or distributor roads	No access proposed to arterial or distribution road.	N/A
	Driveway crossing/s minimal in number and width including maximising street parking	No change to existing driveway proposed or required.	N/A
2.5.3.3	Parking in accordance with Table 2.5.1. 1 space per single dwelling (behind building line)	No change to existing parking proposed or required.	Yes
2.5.3.11	Section 94 contributions	Development is alterations and additions to an existing dwelling only. No new occupancy created. Therefore, contributions do not apply.	Yes
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	No change to landscaping proposed or required in this case. Works are contained within the existing footprint.	N/A

- (iiiia) 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:

None relevant.

- iv) any matters prescribed by the Regulations:

New South Wales Coastal Policy:

The proposed development is consistent with the objectives and strategic actions of this policy - refer to comments on State Environmental Planning Policy (Coastal Management) 2018 above in this assessment report.

Demolition of buildings AS 2601:

Demolition is capable of compliance with the Australian Standard and is recommended to be conditioned.

- (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

- Surrounding uses comprise a mixture of multi storey dwellings with most being 2 and 3 storey.
- The proposal will be unlikely to have any adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.
- The proposal is considered to be consistent with other residential development in the locality and adequately addresses planning controls for the area.
- There is no adverse privacy or overshadowing impacts.

View Sharing

The overall notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. Taking all the view away cannot be called view sharing, although it may, in some circumstances, be quite reasonable

Having considered the principles of NSW Land and Environment Court case law - *Tenacity Consulting v Warringah 2004 NSW LEC 140* and following an inspection of the area, the following comments are provided in regards to the view impacts using the 4 step process to establish whether the view sharing is acceptable.

Step 1

Assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comments: An initial site inspection flagged the issue of potential view loss as it was unclear from the information originally submitted with the application. Concern was raised whether 10 & 21 Vendul Crescent will lose views to North Brother Mountain and the Lighthouse respectively. However, the applicant submitted photos clarifying that no adverse impact on views would occur. Only part of a distant, already obscured water view from 21 Vendul Crescent would be affected. The views from 10 Vendul Crescent are across a side boundary and from low use rooms. See further principles below, which apply little weight to views from low use rooms. Nonetheless, aerial mapping also shows the view to North Brother Mountain should still be retained down the road reserve.

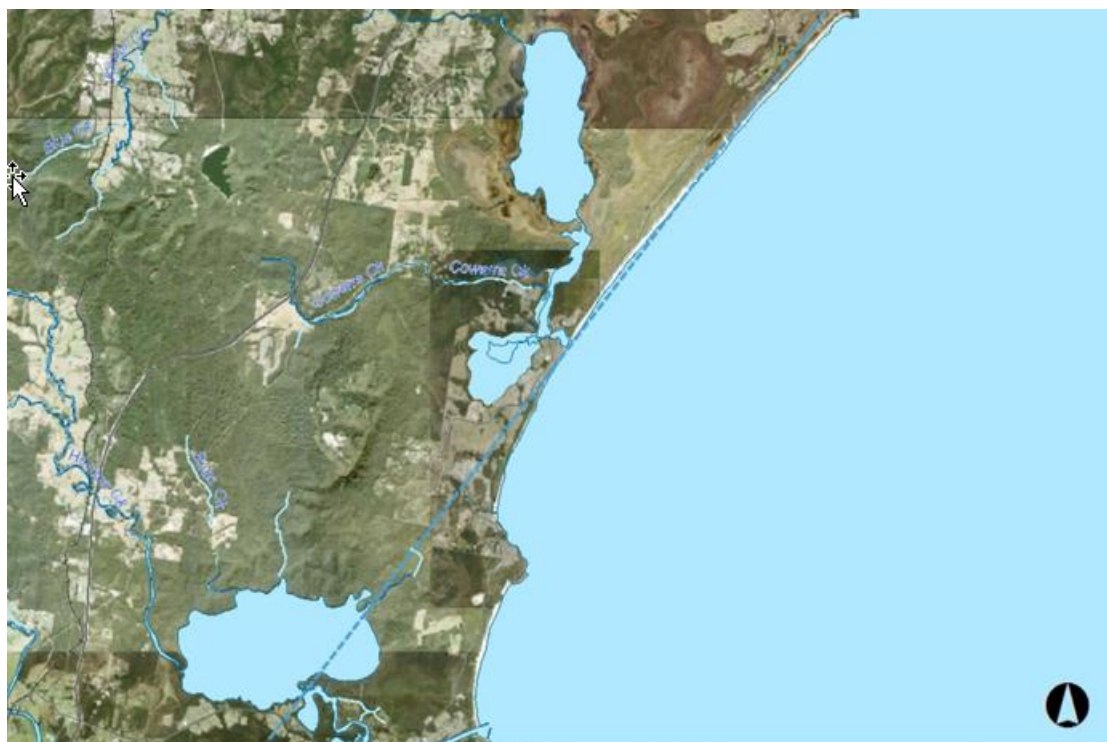
See photos/mapping below:



Photo 1: View from 21 Vendul



Photo 1: Use of 10 Vendul



Map 1: Dotted blue line shows view line from 10 Vendul Crescent to North Brother Mountain.



Map 2: Shows an enlarged image of the above dotted blue view line from 10 Vendul Crescent. The view is down the street.

As can be seen in the photos/mapping and in light of the principle of the case; no high value views exist or will be affected.

Step 2

Consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comments: The limited water views from 10 Vendul Crescent are obtained from living/deck areas across the front boundary. The views from 21 Vendul Crescent are obtained from a bedroom and ensuite window, across a side boundary/down the street.

Step 3

Assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comments: The extent of the impact upon views from 10 Vendul Crescent will be minor and acceptable. This is on the basis that the height and footprint of the subject dwelling remain relatively the same. The increased height is central to the dwelling with existing outer walls, footprint and vegetation already blocking the majority of the view. Refer to previous photo for context.

The view from 21 Vendul Crescent up the road to North Brother will be retained.

Step 4

Assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comments: Considering the comments on Clause 4.3 and 4.6 in the LEP 2011 section of this report, the proposal is considered reasonable and will not significantly change existing views. The proposed development will still achieve a suitable level of view sharing in terms of the planning principles of the court case.

It should also be noted that no submissions were received from adjoining neighbours, which is normally a sign of the acceptance of the design and that the existing views will not be impacted.

Overshadowing

Based on the submitted plans, the proposed development will not significantly increase overshadowing of key living areas/open space of any adjoining property to the point where an adverse impact is created. In particular, the increased height is predominately central to the dwelling with the external wall heights to remain relatively unchanged.

Access, Transport & 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.

Utilities, Water, Sewer & Stormwater

The proposed development will not impact on existing services.

Soils

The proposed development will not 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 & Micro-climate

The operations of the proposed development will not result in any adverse impacts on the existing air quality or result in any pollution.

Flora & Fauna

Construction of the proposed development will not require removal/clearing of any significant vegetation. The design is contained within the footprint of the existing building. The NSW Rural Fire Service have also confirmed that no vegetation removal is required to meet the bushfire requirements.

Waste

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

Noise & Vibration

Construction noise impacts are considered capable of being managed via standard construction hour conditions/restrictions.

Being a residential property, no adverse occupation noise will occur.

Bushfire

The site is identified as being bushfire prone.

The Applicant has submitted a bushfire report prepared by a Certified Consultant.

The application and report were referred to the Local NSW Rural Fire Service for comment. The Local NSW Rural Fire Service have reviewed the proposal and made recommendations which will be required to be imposed via conditions of consent.

Management of bushfire risk is considered acceptable subject to BAL 40 construction levels being implemented and landscape management. No tree removal is required. An appropriate condition is recommended.

Safety, Security & Crime Prevention

The proposed development creates no new concealment and entrapment areas. Surveillance is provided by the dwelling or street. In addition, the owner has the option of installing sensor lights and CCTV if deemed necessary.

Social Impact in the Locality

Given the nature and type of development proposed, no adverse social impacts foreseen.

Economic Impact in the Locality

No adverse impacts. Likely positive impacts can be attributed to the construction of the development and associated flow on effects (i.e. maintained employment in the construction industry and associated expenditure in the area).

Site Design and Internal Design

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

Construction

While there may be some standard short term impacts associated with a construction site (i.e. loss of off street parking due to construction workers, construction noise etc), no long term impacts to neighbouring properties will occur. In addition, standard conditions will be recommended to restrict hours of construction.

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.

The height of the building and variation is consistent with other houses in the area as property owners address the steep terrain.

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

While there are variations proposed, it is considered that suitable justification has been provided in this case to ensure the development is consistent with other development in the area. In this regard, the development is considered to still satisfy relevant planning controls for the area and is not expected to impact adversely on the wider public interest.

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

No written submissions were received following public exhibition of the application.

(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

Not applicable – no additional residential component being created.

5. CONCLUSION AND STATEMENT OF REASON

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 considered suitable for the proposed development and the proposal adequately addresses relevant planning controls. The development is not considered to be contrary to the public's interest and will not result 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 - 649.1 Recommended Conditions

2 [View](#). DA2018 - 649.1 Plans