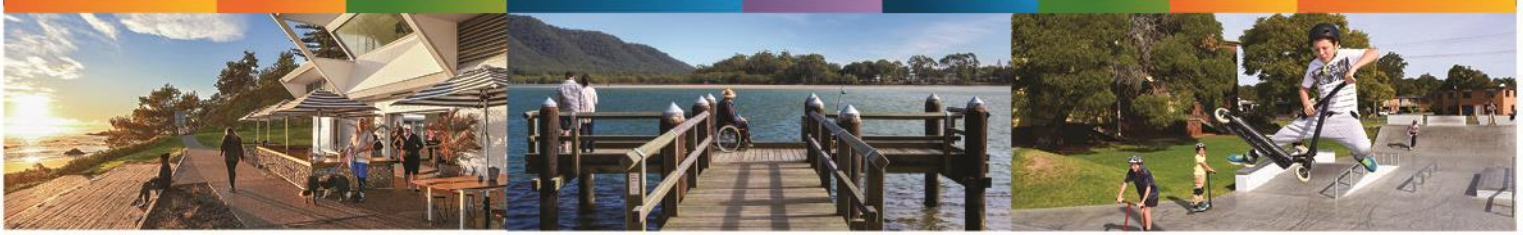




PORT MACQUARIE-HASTINGS
COUNCIL



Development Assessment Panel

Business Paper

date of meeting: Wednesday 13 March 2019

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

time: 2:00pm

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

Development Assessment Panel

CHARTER

1.0 OBJECTIVES

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

2.0 KEY FUNCTIONS

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

Delegated Authority of Panel

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

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

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

3.0 MEMBERSHIP

3.1 Voting Members

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

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

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

3.2 Non-Voting Members

- Not applicable

3.3 Obligations of members

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

3.4 Member Tenure

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

3.5 Appointment of members

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

4.0 TIMETABLE OF MEETINGS

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

5.0 MEETING PRACTICES

5.1 Meeting Format

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

5.2 Decision Making

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

5.3 Quorum

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

5.4 Chairperson and Deputy Chairperson

- Independent Chair (alternate, second independent member)

5.5 Secretariat

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

5.6 Recording of decisions

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

6.0 CONVENING OF “OUTCOME SPECIFIC” WORKING GROUPS

Not applicable.

7.0 CONFIDENTIALITY AND CONFLICT OF INTEREST

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

8.0 LOBBYING

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

Development Assessment Panel

ATTENDANCE REGISTER

Member	05/12/18	19/12/18	23/01/19	13/02/19	27/02/19
Paul Drake	✓	✓	✓	✓	✓
Robert Hussey	✓	A	✓	✓	✓
David Crofts (alternate member)		✓			
Dan Croft (Acting Director Development & Environment) Clinton Tink (Acting GM Development Assessment (alternates) - Director Development & Environment - Development Assessment Planner	✓	✓	✓	✓	✓

Key: ✓ = Present

A = Absent With Apology

X = Absent Without Apology

Development Assessment Panel Meeting

Wednesday 13 March 2019

Items of Business

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

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

Item: 02**Subject: APOLOGIES**

RECOMMENDATION

That the apologies received be accepted.

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

RECOMMENDATION

That the Minutes of the Development Assessment Panel Meeting held on 27 February 2019 be confirmed.

PRESENT

Members:

Paul Drake
Robert Hussey
Dan Croft

Other Attendees:

Fiona Tierney
Pat Galbraith-Robertson
Melissa Watkins

The meeting opened at 2:00pm.

01 ACKNOWLEDGEMENT OF COUNTRY

The Acknowledgement of Country was delivered.

02 APOLOGIES

Nil.

03 CONFIRMATION OF MINUTES

CONSENSUS:

That the Minutes of the Development Assessment Panel Meeting held on 13 February 2019 be confirmed.

04 DISCLOSURES OF INTEREST

There were no disclosures of interest presented.

05 DA2019 - 008.1 EXHIBITION HOME - LOT 20 DP1230717, NO 8 SEASIDE DRIVE, LAKE CATHIE

CONSENSUS:

That DA 2019 - 008 for an Exhibition Home at Lot 20, DP 1230717, No. 8 Seaside Drive, Lake Cathie, be determined by granting consent subject to the recommended conditions and as amended below:

- Additional condition in section B of the consent to read: 'The rear deck and spa area are to be deleted from the plans, details are to be submitted prior to release of the construction certificate.'

06 DA2018 - 1041.1 ALTERATIONS AND ADDITIONS TO DWELLING INCLUDING A CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF THE PORT MACQUARIE HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 - LOT 18 DP 31187, NO.23 BOURNE STREET, PORT MACQUARIE

Speakers:

Bill Rourke (o)

Jeff Davis (o)

Pat Davis (o)

Craig Maltman (applicant)

CONSENSUS:

That DA 2018 – 1041.1 for alterations and additions to an existing dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) of the Port Macquarie Hastings Local Environmental Plan 2011 at Lot 18, DP 31187, No. 23 Bourne Street, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

- Additional condition in Section B of the consent to read: 'Roof solar panels are to be flush with the roof and on the east facing portion of the roof, details are to be submitted prior to release of construction certificate.'

07 DA2018 - 1058.1 - CONTINUED USE OF ALTERATIONS AND ADDITIONS TO DWELLING (UNIT 4) AS PART OF MULTI DWELLING HOUSING DEVELOPMENT - LOT 3 DP 1214081, NO. 114 GREENMEADOWS DRIVE, PORT MACQUARIE

Speakers:
Brad Maggs (applicant)

CONSENSUS:

That DA 2018 - 1058 for the continued use of alterations and additions to dwelling (unit 4) as part of multi-dwelling housing development at Lot 3, DP 1214081, No. 114 Greenmeadows Drive, Port Macquarie, be determined by granting consent subject to the recommended conditions.

08 DA2018 - 599.1 - USE OF EXISTING DWELLING FOR TOURIST AND VISITOR ACCOMMODATION - LOT 9 DP 234920, NO.118 CAMDEN HEAD ROAD, DUNBOGAN

Speakers:
Narelle Thompson (o)
David Pensini (applicant)

CONSENSUS:

That DA2018 - 599 for use of an existing dwelling for tourist and visitor accommodation at Lot 9, DP 234920, No. 118 Camden Head Road, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

- Additional condition in Section A of the consent to read: 'The use is approved on the basis of a trial period for 12 months from the date of determination. During this period the owner/manager shall maintain a complaints register which provides a telephone number for complainants, records complaint details and response actions taken. A further application may be made to extend the use prior to completion of the trial period.'

**09 DA2018 - 1104.1 - TWO DWELLINGS - LOTS 8 AND 9 DP 271152, NO 3
 PENNANT LANE, PORT MACQUARIE**

Speaker:

Walter Gilmour (o)

Michelle Love (applicant)

Derek Collins (applicant)

CONSENSUS:

That DA2018 - 1104 for two dwellings at Lots 8 & 9, DP 271152, No. 3 Pennant Lane, Port Macquarie, be determined by granting consent subject to the recommended conditions.

10 GENERAL BUSINESS

Nil.

The meeting closed at 3:26pm.

Item: 04Subject: DISCLOSURES OF INTEREST

RECOMMENDATION

That Disclosures of Interest be presented

DISCLOSURE OF INTEREST DECLARATION

Name of Meeting:

Meeting Date:

Item Number:

Subject:
.....

I, declare the following interest:

☐**Pecuniary:**

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

☐**Non-Pecuniary - Significant Interest:**

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

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

May participate in consideration and voting.

For the reason that:

.....

Name:

Signed: Date:

(Further explanation is provided on the next page)

Further Explanation

(Local Government Act and Code of Conduct)

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

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

Pecuniary Interest

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

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

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

Non-Pecuniary

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

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

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

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

Non Pecuniary – Significant Interest

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

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

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

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

Non Pecuniary – Less than Significant Interest

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

SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

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

Councillor's Name:

Councillor's Signature: Date:

Important Information

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

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

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

Item: 05

Subject: DA2017 - 249.2 MODIFICATION TO PART CHANGE OF USE TO EDUCATIONAL ESTABLISHMENT - LOT 2 DP 610860, NO. 8 TABLE STREET, PORT MACQUARIE

Report Author: Benjamin Roberts

Applicant: Love Project Management
Owner: Trustees of Synod of Eastern Australia
Estimated Cost: N/A
Parcel no: 22976

Alignment with Delivery Program

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

RECOMMENDATION

That modification to DA2017 - 249 to part change of use to educational establishment at Lot 2, DP 610860, No. 8 Table Street, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a modification to the development application for a part change of use of the old church hall building to an educational establishment at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

The modified proposal is to:

- Increase maximum student numbers from 24 to 32 students and remove restriction on staff numbers
- Change operational hours to 7:30am to 6pm Monday to Friday, with weekday use to 8:30pm up to once a week to cover incidental components of the primary educational establishment use such as cleaning, parent teacher meetings, staff arrivals and departures.

Following exhibition of the application, one (1) submission was received.

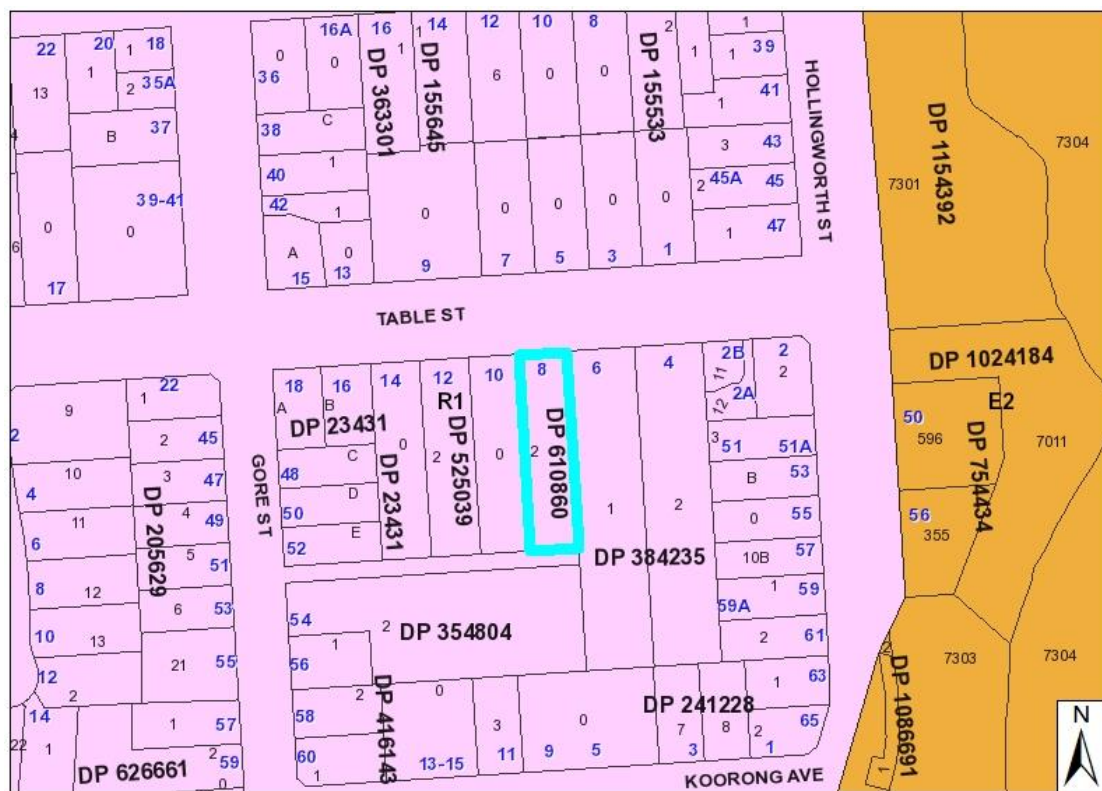
This report recommends that the development application be approved.

1. BACKGROUND

History

Existing sites features and surrounding development

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



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



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposed modification include the following:

- Increase student numbers to 32 students and remove restriction on staff numbers.
- Amend operational hours to be 7:30am to 6pm Monday to Friday, with weekday use to 8:30pm up to once a week to cover incidental components of the primary educational establishment use such as cleaning, parent teacher meetings, staff arrivals and departures.

Refer to attachments at the end of this report.

Application Chronology

- 10 December 2018 – Application lodged.
- 18 December 2018 to 14 January 2019 Public exhibition via neighbour notification.

3. STATUTORY ASSESSMENT

Section 4.55 of the Environmental Planning and Assessment Act 1979 enables the modification of consents and categorises modification into three categories - 4.55(1) for modifications involving minor error, mis-description or miscalculation; 4.55(1A) for modifications involving minimal environmental impact; and 4.55(2) for other modifications. Each type of modification must be considered as being substantially the same to that which was originally consented to.

Is the proposal substantially the same?

The subject application is being considered under the provisions of Section 4.55(1A). The proposal is considered to be substantially the same development to that which was originally consented to and will have minimal environmental impact. Specifically the part use of the site as an educational establishment and building footprint will remain unchanged. The proposed 33% increase in student numbers is a quantitative increase in student numbers, however it is considered that the fundamental characteristics and essence of the development remains essentially the same.

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

Neighbour notification has been undertaken.

Any submissions made concerning the modification?

One submission was received following completion of the neighbour notification period. The submission is considered later in this report.

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

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:

(a)(i) Any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007

This policy provides that development for the purpose of an educational establishment may be carried out with consent in the R1 general residential zone.

Before determining a development application for development for the purposes of a school, the consent authority must take into consideration all relevant standards in the following State government publications (as in force on the commencement of this Policy):

- (a) School Facilities Standards—Landscape Standard—Version 22 (March 2002),
- (b) Schools Facilities Standards—Design Standard (Version 1/09/2006),
- (c) Schools Facilities Standards—Specification Standard (Version 01/11/2008).

The proposal as modified is not inconsistent with these standards.

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

Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

This draft policy was exhibited from 3 February 2017 to 7 April 2017.

The draft policy provides that development for the purpose of an educational establishment may be carried out with consent in the R1 Residential zone.

The draft policy provides that before determining a development application the consent authority must take into consideration the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4 of the policy.

The proposal as modified is not inconsistent with the design quality principles set out in schedule 4 of the draft policy.

No other draft instruments apply.

(ii) Any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

Having regard to the above the relevant general provisions of the plan are addressed in the following table:

Requirement	Proposed	Complies
2.5 Transport, Traffic Management, Access and Carparking	<p>The plan contains no specific parking rate for educational establishments/schools.</p> <p>Council's previous development controls historically required parking for schools at a rate of 1 space per 8 students.</p> <p>Based on previous controls and the proposed increase to 32 students a total of 4 spaces would be required.</p> <p>5 parking spaces, inclusive of one disabled space and one stacked staff space are available onsite. The stacked space cannot be relied upon. 4 of the spaces shown on the plans are capable of compliance with the relevant standards and as such sufficient parking is proposed to serve the development.</p> <p>There is no separate parking requirement specific to staff/teachers and restricting the number of staff within the development consent is not considered appropriate/necessary.</p> <p>An amendment to condition A5 has been proposed removing the reference to staff numbers and allowing for an increase in maximum students to 32.</p>	Yes

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

No planning agreement has been offered or entered into.

iv) Any matters prescribed by the Regulations:

No matter prescribed by the regulations applicable to the modification.

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

Traffic and Transport

The modified proposal to increase student numbers from 24 to 32 is considered negligible and will not result in any significant impacts on traffic or the road network.

Noise

The current hours of operation are 8:30am to 4pm weekdays only. A condition confirming these operational hours applies.

The modification application highlights that while these hours adequately cover class times other activities outside of these hours like parent teacher meetings, staff arrivals and departures and cleaners will occur. In order to ensure these activities are included within the approved operations, the proposed modification requests the approved hours of operation be modified to 7:30am to 6pm Monday to Friday, with a weekday use to 8:30pm once a week. The suggested change is to cover the above activities which would occur outside of the normal teaching classroom hours.

It is considered that general cleaning, parent teacher meetings, staff arrivals and departures are simply an incidental component of the primary educational establishment use. The primary operational activity of an educational establishment is class times. Attempting to regulate via consent conditions such incidental activities is not considered appropriate and not practicable from a regulatory sense. Separate noise control regulations exist under the Protection of the Environment Operations Act to regulate such incidental activities.

It is also noted that State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 contains provisions for exempt development in existing schools. Specifically clause 38 (e) relates to routine maintenance and clause 38 (i) provides for use of existing facilities or buildings for the purpose of school based child care, or for the physical, social, cultural or intellectual development or welfare of the community (whether or not it is a commercial use of the establishment).

Similar to other schools and childcare centres where the potential exists for noise impacts to adjoining residential occupants the cleaning activities, arrival and departure of staff, parent teachers interviews within such facilities are typically not undertaken within the centres primary operational hours.

It is recommended that condition E4 remain unchanged.

The increase in student numbers from 24 to 32 is considered insignificant having regard to the scale of the establishment. Consistent with the findings of the original assessment report and having regard to the hours of operation, building separation distances and existing and required fencing arrangements. It is anticipated that no significant adverse noise impacts would result that warrant refusal of the modified proposal from the increase in student numbers from 24 to 32 (i.e. 8 more students).

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

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

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

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

One (1) written submission has been received following public exhibition of the application. A further letter was received from the same submitter after closure of the public exhibition period.

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

Submission Issue/Summary	Planning Comment/Response
A demountable site office has recently been erected onsite. There is no mention of this in the modification documentation.	The applicant has advised that a short term portable classroom has recently been erected as exempt development under clause 38 of State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017. The building does not form part of this modification application.
There is currently cleaning activities occurring on the site outside the nominated operational hours.	Refer to comments under noise heading within this report.
It was understood the limit of 24 students was applied to maintain an acceptable noise impact to residents and was in keeping with an old consent that provided for 24 students.	The original limit of 24 students was consistent with that requested by the applicant at the time. This was not as a result of the prior approval or noise impact to neighbours.
Increase in student numbers to 32 will result in unacceptable noise levels.	Refer to comments under noise heading of this report.
There is no justifiable reason provided for the increase in student numbers on such a small site. Is there going to be further requests for increase to student numbers? Surely extra staff and classes would be necessary.	The proposed increase in class size to 32 students is considered suitable for the site. Any further subsequent increase in student numbers would be subject to further consent and assessment.
The increase in student numbers to 32 will result in an unacceptable increase in traffic and parking impacts to the site and Table Street. The increase in student numbers should be rejected.	Refer to parking and traffic assessment comments within the report.
Removal of the reference to staff numbers could result in illegal OHS working conditions.	Working conditions is not a relevant planning consideration. Refer to parking assessment comment within the report.
There is no justifiable reason for the increased work hours as all activities mentioned in the supporting documentation may be undertaken within	Refer to comments under noise heading within this report.

Submission Issue/Summary	Planning Comment/Response
the approved operational hours. The increase in operational hours to accommodate these activities will result in an unacceptable noise impact to adjoining residential receivers.	
Allowing a further increase to numbers and expansion of operating hours is not appropriate. The current approval was issued some time ago and current enrolments have not reached 24 students. So the impact of the current approval is not measurable.	The assessment concludes that an educational establishment limited to 32 students is appropriate for the site.
The operators are ignoring the current conditions of the consent. The site is being occupied without an occupation certificate and holding activities up until 8pm.	According to Council's records an Occupation Certificate has been issued.

(e) The Public Interest:

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

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

Development contributions will be required towards augmentation of town water supply and sewerage system head works under Section 64 of the Local Government Act 1993.

Contributions were not levied under the original consent as an historic development approval provided for a contribution credit of 25 pupils and the original consent was limited to maximum 24 students.

Contributions will be levied on 7 additional pupils proposed under this modification application (i.e. total 32 students). A suitable condition has been recommended.

5. CONCLUSION AND STATEMENT OF REASON

The application has been assessed in accordance with Section 4.55 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 as modified 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 as modified provided in the attachment section of this report.

Attachments

AGENDA

DEVELOPMENT ASSESSMENT PANEL 13/03/2019

- 1 [View](#). DA2017 - 249.2 Recommended Amended Conditions
- 2 [View](#). DA2017 - 249.2 Contribution Estimate
- 3 [View](#). DA2017 - 249.2 SOEE

SCHEDULE OF CONDITIONS ATTACHED TO THIS CONSENT

The conditions of consent referred to in the Notice of Determination for DA No 2017/249 are as follows:

<No.1>	Modification No.1	<Insert modification date>
--------	-------------------	----------------------------------

PRESCRIBED CONDITIONS

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

A – GENERAL MATTERS

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

Plan / Supporting Document	Reference	Prepared by	Date
Development Plans stamped	8 Table Street	-	Undated

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

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

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

- (3) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.
- (4) (A009) The development site is to be managed for the entirety of work in the following manner:
- Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - Appropriate dust control measures;

3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
4. Building waste is to be managed via an appropriate receptacle;
5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidays

The builder to be responsible to instruct and control his sub-contractors regarding the hours of work.

- (5) (A014) This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.
- (6) (A017) A separate development application for any proposed advertising signs (other than signs which are exempt development or approved under this consent) must be submitted to and approved by council prior to the erection or display of any such signs.
- (7) (A030) The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's current AUSPEC Specifications and Standards. All works must be approved by Council pursuant to Section 138 of the Roads Act.
- (8) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:
 - a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
 - c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

The security may be used to meet any costs referred to above and on application being made to the Council by the person who provided the

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

- (9) (E009) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to student numbers exceeding 25 students, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
- augmentation of the town water supply headworks
 - augmentation of the town sewerage system headworks ²

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

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

Such works include, but not be limited to:

- Civil works
- Traffic management
- Work zone areas
- Hoardings
- Footway and gutter crossing
- Functional vehicular access

A longitudinal section must be submitted to and approved by Port Macquarie-Hastings Council prior to release of the Construction Certificate for the car park and associated driveway demonstrating how the access will comply with Council's adopted AUSPEC Design and Construction Guidelines.

- (3) (B053) The design of the carpark and accesses is to be in accordance with Australian Standard 2890 (including AS 2890.1, AS 2890.2 and AS 2890.6). Certification of the design by a suitably qualified consultant is to be provided

to the Principal Certifying Authority prior to release of the Construction Certificate for the car park. Specifically the car parking layout plan is to be amended to include:

- a) A dedicated turning bay to enable vehicles to turn around onsite and drive out in a forwards-only direction.
- (4) (B003) Submission to the Principal Certifying Authority prior to commencement of construction detailed design plans for the following public infrastructure works associated with the development. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:
1. Public parking areas including;
 - a. Driveways and access aisles;
 - b. Parking bays;
 - c. Delivery vehicle service bays (if required) & turning areas in accordance with AS 2890.
 2. Stormwater systems.
 3. Erosion & Sedimentation controls.
 4. Location of all existing and proposed utility services including:
 - a. Conduits for electricity supply and communication services (including fibre optic cable).
 - b. Water supply
 - c. Sewerage
 - d. Stormwater
 5. Traffic management control plan.
 7. Detailed driveway profile in accordance with Australian Standard 2890, AUS-SPEC Standard Drawing ASD 202 and ASD 207, Port Macquarie-Hastings Council current version.
- (5) (B072) A stormwater drainage design is to be submitted to and approved by Port Macquarie-Hastings Council prior to the issue of a Construction Certificate for the car park. The design must be prepared in accordance with Council's AUSPEC Specifications and the requirements of Relevant Australian Standards and make provision for the following:
- a) The legal point of discharge for the proposed development is defined as the kerb and gutter of a public road.
 - b) The design shall incorporate on-site stormwater detention facilities to limit site stormwater discharge to pre development flow rates for all storm events up to and including the 100 year ARI event.
 - c) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
 - d) The design shall provide details of any components of the existing stormwater drainage system servicing the site that are to be retained.

C – PRIOR TO ANY WORK COMMENCING

- (1) (C001) A minimum of one (1) week's notice in writing of the intention to commence works on public land is required to be given to Council together with the name of the principal contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.

D – DURING WORK

- (1) (D001) Development works on public property or works to be accepted by Council as an infrastructure asset are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection, by contacting Council's Customer Service Centre on (02) 6581 8111. You must quote your Construction Certificate number and property description to ensure your inspection is confirmed:
 - a. at completion of installation of erosion control measures
 - b. at completion of installation of traffic management works
 - c. when the sub-grade is exposed and prior to placing of pavement materials;
 - d. when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
 - e. before pouring of kerb and gutter;
 - f. prior to the pouring of concrete for sewerage works and/or works on public property;

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

E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount.
- (3) (E010) Prior to occupation or the issue of any occupation certificate driveways, access aisles and parking areas shall be provided with a sealed surface. Such a surface shall be on a suitable pavement, constructed and maintained in accordance with Council's Development, Design and Construction Manuals (as amended).
- (4) (E016) Prior to occupation or the issue of any Occupation Certificate the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate (or interim fire safety certificate in the case of a building or part of a building occupied before completion) in accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The certificate must only be in the form

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

- (5) (E030) Vehicle ramps, driveways, turning circles and parking spaces being paved, sealed and line marked prior to occupation or the issue of any Occupation Certificate or commencement of the approved land use.
- (6) (E034) Prior to occupation or the issuing of any Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (7) (E039) Prior to occupation or issue of any occupation certificate an appropriately qualified and practising consultant is required to certify the following:
 - a. all drainage lines have been located within the respective easements, and
 - b. any other drainage structures are located in accordance with the Construction Certificate.
 - c. all stormwater has been directed to a Council approved drainage system
 - d. all conditions of consent/ construction certificate approval have been complied with.
 - e. Any on site detention system (if applicable) will function hydraulically in accordance with the approved Construction Certificate.
- (8) (E040) Prior to occupation or issue of any occupation certificate each onsite detention system is to be marked by a plate in a prominent position which states:

"This is an onsite detention system. It is an offence to reduce the volume of the tank or basin or interfere with any part of the structure that controls the outflow".
- (9) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (10) Deleted
- (11) (B045) A schedule of fire safety measures is to be submitted to the Principal Certifying Authority with the application for an Occupation Certificate.
- (12) Prior to occupation or issuing of any occupation certificate the existing dilapidated boundary fencing shall be repaired/upgraded for safety and security purposes. The western boundary fence for its length from the rear of the main building to the rear boundary shall be increased to a height of 1.8m.
- (13) Prior to occupation or issuing of any occupation certificate established trees and shrubs shall be planted between the front boundary and car park.
- (14) A suitably qualified person shall provide certification to the Principal Certifying Authority confirming that the upgrade measures outlined on pages 21 and 22 of the Fire Safety Upgrade Report prepared by David Pensini dated 20 January 2017 have been undertaken prior to occupation or issuing of any occupation certificate.

F – OCCUPATION OF THE SITE

- (1) (F003) All loading and unloading operations associated with servicing the site must be carried out within the confines of the site, at all times and must not obstruct other properties or the public way.
- (2) (F013) All garbage areas are to be screened from the street, create no adverse odour impact on adjoining properties and be kept free of pests at all times.
- (3) (F024) Offensive noise as defined under the Protection of the Environment Operations Act 1997, shall not be generated as a result of the operation of the development.
- (4) (F025) The approved operating hours are 8:30am to 4pm Mondays to Fridays.
- (5) (FP195) The school is limited to a maximum of 32 students at any one time.²

Developer Charges - Estimate

Applicants Name: Port Macquarie Steiner
 Property Address: 8 Table Street, Port Macquarie
 Lot & Dp: Lot(s):2,DP(s):610860
 Development: Modification - part change of use to educational establishment (increase in students 24-32)



Water and Sewerage Headworks Levies are levied under S64 of the LGA Act & S306 of the Water Management Act 2000.
 Other contributions are levied under Section 94 of the Environmental Planning and Assessment Act and Council's S94 Contribution Plans.

Levy Area	Units	Cost	Estimate
1 Water Supply	0.298	\$10,129.00 Per ET	\$3,018.40
2 Sewerage Scheme Port Macquarie	0.298	\$3,843.00 Per ET	\$1,145.20
3 N/A			
4 N/A			
5 N/A			
6 N/A			
7 N/A			
8 N/A			
9 N/A			
10 N/A			
11 N/A			
12 N/A			
13 N/A			
14 N/A			
15 Admin General Levy - Applicable to Consents approved after 11/2/03		Contribution Not Applicable	
16			
17			
18			
Total Amount of Estimate (Not for Payment Purposes)			\$4,163.60

NOTES: These contribution rates apply to new development and should be used as a guide only.
 Contributions will be determined in conjunction with a Development Application (DA) or Complying Development Application (CDA).
 DAs will be subject to the contributions plans in force at the time of issue of the Consent and for CDCs at time of lodgement.
 Contribution Rates are adjusted quarterly in line with the CPI.

DATE OF ESTIMATE:

27-Feb-2019

Estimate Prepared By Clinton Tink

This is an ESTIMATE ONLY - NOT for Payment Purposes

Iacquarie Steiner, 8 Table Street, Port Macquarie, 27-Feb-2019.xls

PORT MACQUARIE-HASTINGS COUNCIL



Love Project Management

PO Box 161 Wauchope NSW 2446

Phone: 0400953101

ABN: 26 108 622 745

Amendments to Existing School Table St, Port Macquarie



PORT MACQUARIE

Steiner School

"Our highest endeavour must be to develop free human beings who are able of themselves to impart purpose and direction to their lives. The need for imagination, a sense of truth and a feeling of responsibility – these three forces are the very nerve of education." *Rudolf Steiner*

Michelle Love, Project No 6646

Love Project Management

December, 2018

Document Details

Document Version Date: 10th December, 2018

Authorised by: Michelle Love

Signed: 

This assessment has been undertaken with skill, care and diligence by the staff of Love Project Management. This assessment is based on information provided by the client, third party research and research undertaken by Love Project Management. Independent verification of the documents relied upon has not been undertaken.

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All parties must acknowledge that conditions of approval at time of consent, post development application and approvals, and other matters, may modify the outcomes described in this report. The information and conclusions presented in this report apply to the subject land at the time of the assessment. All parties must take into account the above information when making decisions on the basis of the findings and conclusion of this report.

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Executive Summary

This application relates to a minor change to an existing school. The change relates to an increase in maximum student numbers, removal of the reference to maximum staff numbers and alteration to the hours of operation.

This application consists of the Council's Application Forms, Owner's Consent and the following supporting documents, plus any additional matters lodged or amended during the application assessment period.

Document	Author	Date / Reference
<i>Statement of Environmental Effects</i>	<i>Love Project Management</i>	<i>Project 6646</i> <i>November 2018</i>

Contents

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a) Minor Environmental Impact	8
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c) Relevant matters in Section 4.15(1) and Reasons for Original Consent	8
4. Public Interest	11
5. Conclusion	11

The subject land has long standing existing use rights as a church / hall. A part change of use to an educational establishment was approved under the provisions of DA 2017/249. The occupation of the school was specifically limited via conditions which set the maximum number of students at 24, and two staff members, and the hours of operation were specifically identified as being 8.30am to 4pm, Mondays to Fridays. The approved site plan identifies five onsite parking spaces, including a disabled parking space and a stacked staff parking space.

[illegible]

In order to ensure these activities are included within the approved operations, the proposed hours of operation are: 7:30am – 6pm Monday – Friday, with weekday use to 8:30pm up to once a week. These hours will cover the above noted activities which occur outside of the normal teaching classroom hours.

It is also proposed to remove the reference to staff numbers. The ability to monitor and reconcile staff numbers on site at any one time is difficult and open to interpretation. For example, staff could include any of the following: part time staff, volunteers, visiting specialists, parent helpers, etc. The number of staff required on site will be controlled by the number of students enrolled. Therefore, it is considered more appropriate that the conditions refer to student numbers rather than make any reference to staff numbers on site at any one time.

These changes will require amendments to conditions F(4) and F(5) as shown below:

F – OCCUPATION OF THE SITE

- (1) (F003) All loading and unloading operations associated with servicing the site must be carried out within the confines of the site, at all times and must not obstruct other properties or the public way.*
- (2) (F013) All garbage areas are to be screened from the street, create no adverse odour impact on adjoining properties and be kept free of pests at all times.*
- (3) (F024) Offensive noise as defined under the Protection of the Environment Operations Act 1997, shall not be generated as a result of the operation of the development.*
- (4) (F025) The approved operating hours are ~~8:30am to 4pm~~ 7.30am to 6pm Mondays to Fridays, and weekday use to 8.30pm up to once a week.*
- (5) (FP195) The school is limited to a maximum of ~~24~~ 32 students ~~and two staff members~~ at any one time.*

School, Table St, Port Macquarie

6

2. Subject Land and Locality

The subject land may be identified as Lot 2, DP 610860, 8 Table Street, Port Macquarie.

The subject land is shown shaded yellow in the following plan extract.

Figure 2: SIX maps extract showing subject land



As shown in the aerial imagery, the subject land adjoins a mix of residential landuses. Educational establishments are permissible within the residential zone and the school has been established for approximately twelve months.

3. Statutory Assessment

The Environmental Planning and Assessment Act 1979, sets out the matters that must be considered when modifying an existing consent. These matters are contained in section 4.55 of the Act. This application is made under the provisions of section 4.55(1A) Modification involving minimal environmental impact. The matters for consideration are set out in the following extract from the Act:

4.55 Modification of consents—generally

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(5) (Repealed)

These matters are considered in the following sections.

a) Minor Environmental Impact

The proposed amendment will not result in changes to the site footprint. The existing carparking area on site is considered adequate to service the increase in student numbers (refer to discussion regarding parking later in this report), and the building will not be altered for the purposes of this amendment. The school activities will still be subject to the provisions of condition F(3) which confirms the application of the Protection of the Environment Operations Act – such that offensive noise shall not be generated by the development. Therefore, it is considered that the proposal will have minimal environmental impact and thus satisfies this provision of section 4.55 of the Act.

b) Substantially the same development

The proposed use of the site as an educational establishment will remain unchanged. The site footprint will remain unchanged. The school class times will remain unchanged, however the hours during which activities outside of class times operate will be specified in the consent conditions to ensure this matter is clarified for the school and adjoining property owners. The proposed 33% increase in student numbers is a quantitative increase in student numbers, however it is considered that the fundamental characteristics and essence of the development remains essentially the same.

Therefore, it is considered that the proposed amendments have satisfied the above tests, and the matter may be assessed by Council as an amendment to the original development consent.

c) Relevant matters in Section 4.15(1) and Reasons for Original Consent

The matters considered most relevant to the proposed amendments relate to impacts on the locality and particularly adjoining neighbours. These impacts may be further refined to relate to noise and traffic movements. Therefore, this section will focus on these issues as being the most relevant to the merit consideration of this proposal.

With regards to traffic, the school has undertaken an assessment of the existing vehicle movements to / from the school. The students were primarily transported to school via private vehicle. Some parents carpooled, which minimises vehicle movements. No students are currently utilizing bus services for school, however there are existing bus stops at the western end of Table Street, as well as Gordon Street, which could be used by students to access the school. The proximity to residential areas has also resulted in one family walking their students to the school.

The five onsite parking spaces exceeds the general requirement of 1 per 8 students ($32/8 = 4$). The five spaces include one stacked staff parking space and one disabled space. This standard of

1 space per 8 students, has been applied to other primary schools approved in the LGA including recent approvals at St Columba. It is considered reasonable to apply this standard in this case.

The demand for parking onsite should also be considered in the context that the school will always be a small school. The subject land limits the school to always being a small school with limited student numbers. The school directors consider 32 students will likely be the maximum number of students that may be accommodated on the subject land, and the school has already commenced their search for a larger, permanent location. Small schools do not have the additional staff of larger (300+ students) primary schools. These additional staff include specialist library staff, administration staff, and teacher's aides. Therefore, there is less demand for staff parking at smaller schools as the teaching staff generally fulfil multiple roles at the school.

The assessment of traffic included in Council's assessment of the original development application related to 30 students. Council staff noted that traffic movements on nearby streets did not have any similar peak traffic generators, and therefore there was less likely to be any significant traffic conflicts resulting from the school in this location.

For these reasons, the provision of five parking spaces on site is considered acceptable to service the needs of a 32 student school. The road network in this locality has also been considered able to accommodate the traffic movements associated with the proposed student numbers.

The issue of noise impacts was previously considered by Council when assessing the original proposal. The school staff have also been cognizant of their neighbours. Actions taken since the operation of the school commenced include applying silicone to the metal driveway grate to silence the banging noise this grate made when cars entered/ exited the carpark. Signage on the school gate reminds parents, staff and students to be quiet in the carpark area. This is a means of being respectful to the neighbours. Students are also always supervised on site to manage any noise in the carpark area. These actions have assisted in minimizing impacts on the adjoining neighbours.

It is noted that classroom hours are such that students arrive for class and leave from the site primarily during daylight hours, and this minimises the possibility of evening disturbance. The carpark monitoring undertaken by the school noted that students were generally being dropped off to the school no earlier than 8.40am, and the parents arrived at the school for student collection no earlier than 2.30pm. Staff arrive on site from just after 8am.

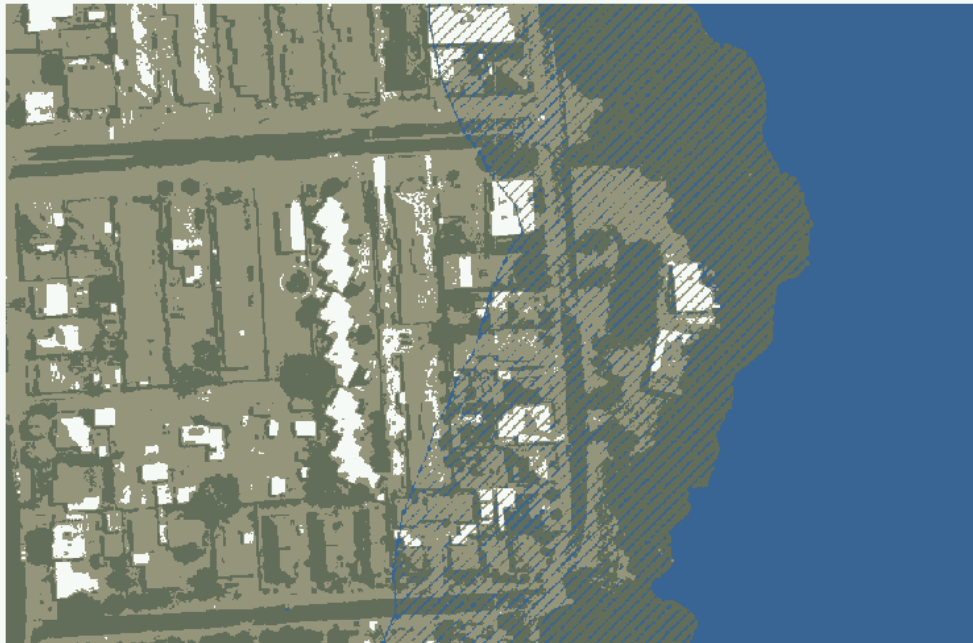
The reason for the change in operating hours arises from the prescriptive nature of the conditions. The current conditions do not permit the normal functions of a school. Under the current conditions, parent meetings, staff setup and the once a term school gathering outside of school hours, are not permitted. Therefore, the hours of operation are sought to be expanded to allow the school to operate as per all other school operations. The hours will permit the school to have parent meetings and staff setting up their classrooms, outside of the classroom times.

The noise emissions from any of the activities on the school site are still controlled by the limited number of students on the site at any particular time, and also by the retention of condition F(3) which reminds the school operators that offensive noise may not be emitted from the site at any time. With these controls in place, it is considered that the proposal will not adversely impact on the adjoining properties.

State Environmental Planning Policies

State Environmental Planning Policy (Coastal Management) 2018 does not map the subject land as being within a coastal wetland or within the coastal wetland proximity area, as shown by the solid blue and hatched area in the below mapping extract (the subject land is identified by a yellow circle).

Figure 3: Coastal SEPP extract – Coastal Wetlands and Proximity to Coastal Wetlands



The subject land is within the area mapped as Coastal Use Area Map and Coastal Environment Area Map. Consideration of clauses 13 and 14 of the Coastal SEPP has been undertaken. It is noted that the proposal does not involve any physical works on the subject land. It is considered that the proposal is consistent with the provisions of the Coastal SEPP and will not have an adverse impact on the coastal matters identified.

The provisions of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 were also considered in regards to the proposal. The design elements were considered in Council's assessment of the original development application. This proposal does not alter any of the physical aspects of the school and it is considered the proposal remains consistent with the provisions of this SEPP.

Local Environmental Plans

The proposal is permissible within the zone, and the proposal does not rely on any existing use rights or similar matters. The proposal remains consistent with the provisions of Port Macquarie – Hastings LEP 2011.

Development Control Plans

There are no provisions of DCP 2013 which are of particular relevance to the proposal.

4. Public Interest

Residential zones are localities where children's educational services are accepted – this includes schools and child care centres. Whilst such landuses may generate noise during the day, the adjoining neighbours will never be faced with noise arising from neighbour's parties at midnight, or noise during school holidays. Hence, there are large periods of the year when school sites are not in use. It is in the public interest to provide for educational facilities in readily accessible localities. Therefore, it is considered in the public interest to permit the use of this site up to a maximum of 32 students, with extended hours to allow for the school to operate the normal functions of a school operation whilst minimizing impacts on neighbouring properties.

The Steiner School has also undertaken both a door knock and letterbox drop to neighbouring properties. The letter was provided to neighbours at the end of November. The letter provided the details of the proposed amendments to the school hours of operation and student numbers. Contact phone number and email address details were provided, along with advice that the application would be lodged with Council. The neighbours were invited to make contact if they had any concerns. At the time of writing, no neighbours have raised any concerns with the school.

5. Conclusion

The amendment to the existing consent will provide for a 33% increase in student numbers. The previous assessment by staff noted that a school of 30 students was suitable for the site having regard to traffic and onsite facilities. This proposal is for a maximum of 32 students and it is considered the site has capacity to cater for this number of students. The removal of reference to staff numbers is commensurate with other school consents which refer to student numbers, and not staff numbers, and acknowledges the fact that student numbers ultimately dictate the number of staff that will be onsite.

Therefore, it is considered that the proposal is substantially the same, and the site has capacity to cater for the amendments as discussed in this report.

Item: 06**Subject: SECTION 4.55 MODIFICATION TO DA2017 - 336.2 - MODIFY
CONDITIONS RELATING TO ROAD CONSTRUCTION AND TIMING &
TIMING OF BOUNDARY ADJUSTMENT - SEASIDE DRIVE, LAKE
CATHIE****Report Author: Patrick Galbraith-Robertson**

**Applicant: Land Dynamics Australia Pty Ltd
Owner: Catarina Village Pty Ltd
Estimated Cost: N/A
Parcel no: 66531**

Alignment with Delivery Program

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

RECOMMENDATION

That the Section 4.55 modification application to modify DA2017 – 336.2 by modifying conditions relating to road construction and timing of boundary adjustment at Lot 167, DP 1229250 & Lot 229 1235792 (now Lot 331 DP1232490), Seaside Drive, Lake Cathie, be determined by granting consent subject to the recommended amended conditions included in the conclusion section of this report.

Executive Summary

This report considers an application to modify conditions relating to road construction and timing of boundary adjustment at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act (E P & A)1979.

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

This report recommends approval of the amended conditions in accordance with Section 4.55 of the E P & A Act.

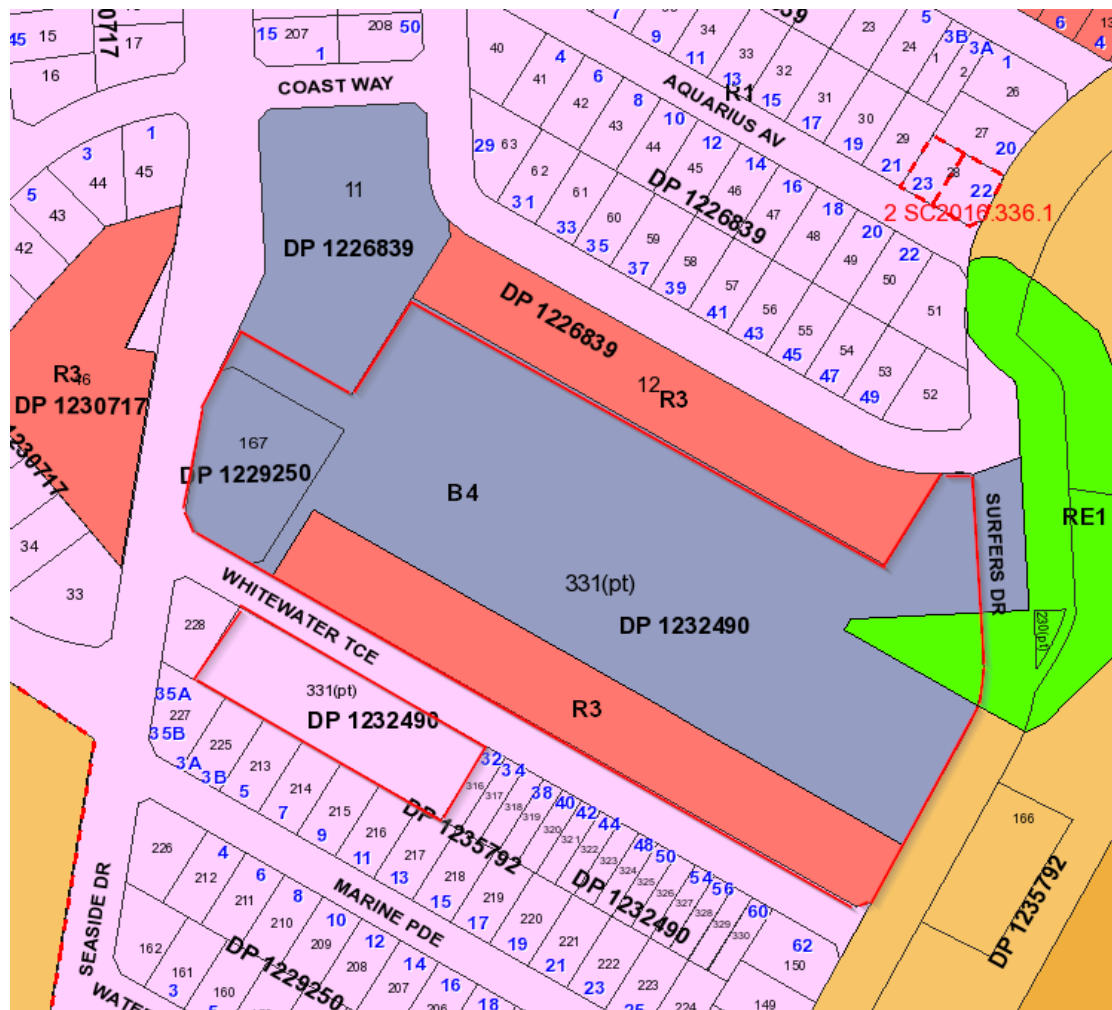
1. BACKGROUND**Existing sites features and surrounding development**

The site (as currently registered) comprises two (2) lots with a total 4.393 hectares in land area.

Lot 167 is already a standalone registered lot, with existing access to Road 1 which is already constructed and Road 9 which is constructed and registered.

The primary access to the approved building is via approved Road 9 which has now been completed and dedicated as Whitewater Terrace.

The site is zoned part RE1 public recreation, B4 mixed use, R3 medium density residential and R1 general residential, in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:



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



3. HISTORY OF SITES

Subject DA2017 – 336

Development consent was issued on 13 December 2017 for a Boundary Adjustment between two existing Torrens title lots, Residential Flat Building and Café with associated Strata Title Subdivision including Clause 4.6 objection to Clause 4.3 (Height of Buildings) of the Port Macquarie-Hastings Local Environmental Plan 2011 on the subject site.

Subdivision DA

Background relationship to the approved subdivision DA2012 - 381 being developed in locality including the subject sites:

- A Section 96 Modification (now Section 4.55) was approved by Council on 22 December 2016 to reflect an amendment to staging.
- The modified staging shows Lot 167 within Stage 1B, with Road 1. Road 7 is shown as part of Stage M9 and M10. On this basis, there was no expectation that Road 7 would occur at the time of development of Lot 167.

Condition A(3) of DA2012- 381 (subdivision DA) as modified states:

(3) (A007) The development must only proceed in accordance with the approved stages as set out below:

Stage 1 - Project Approval Environmental Works

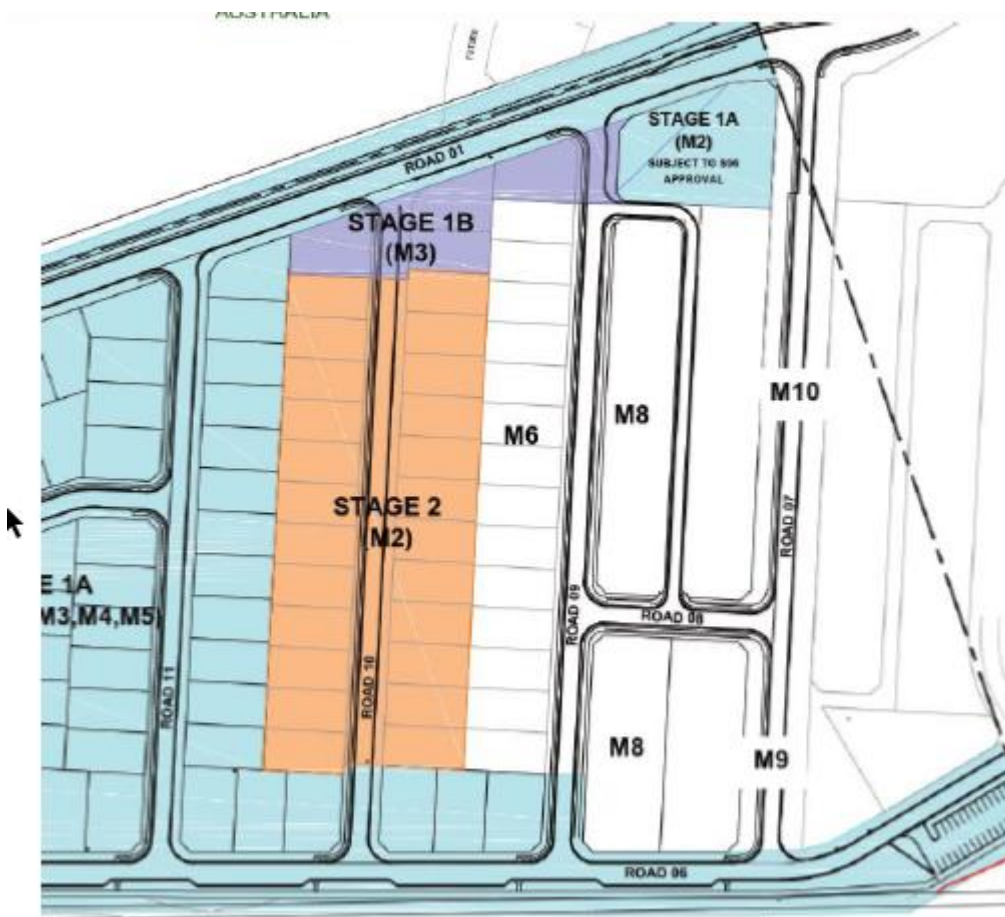
Stage 2 - Boundary Adjustment with Special Terms Right-of-Carriageway over existing track in use.

Stage 3 - First Development Stage (S2 on Seawide Property, Stages 1A, 1B and 2 on Milland Property)

Stage 4 - Additional Development Stages (S3-S7) and/or (M6, M8, M9 & M10)

Unless specified, the conditions of this consent will apply to all stages, with any decision on any discrepancy with conditions and associated staging resting with Council. Any decision to allow a change to staging will rest with Council along with applicable conditions and any contributions payable. ²

On the basis of the condition, Road 7 is within Stage 4 and the RFB on Lot 167 is in Stage 3.



4. DESCRIPTION OF DEVELOPMENT

Key aspects of the modification proposal include the following:

- This application is made under Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 (formerly S.96 modification) and relates to DA

2017/336 for a Boundary Adjustment between two existing Torrens title lots, Residential Flat Building and Café on Lot 167 at Catarina eatate.

- The modifications relate to conditions of consent being B(16), B(28) and E(2) regarding timing of road construction, the extent of the road length and the timing of the boundary adjustment registration. The Applicant contends/submits that the proposed conditions unfairly delay the construction of the approved building.
- A temporary turn around in the north-eastern corner of Lot 167 is more appropriate than the current requirement to construct the full length of the main street.
- A condition is also requested to be added allowing staging as outlined above in Section 2. The payment of the contributions at the time of the habitable building construction (i.e. ground floor and above) allows the basement excavation and construction to commence before being required to pay the substantial amount of monetary contributions, which would otherwise delay the development from proceeding.

Specifically the following changes are requested:

Current condition	Proposed modified condition
<i>B (16) (B197) Prior to any Construction Certificate for building works, a Construction Certificate for subdivision works under DA 2012/381 shall be approved for the full length construction of Road 7 (Ocean Blue Boulevard) and Road 9 (Whitewater Terrace) from Seaside Drive to Surfers Drive (inclusive).</i>	<i>Delete. or B (16) (B197) Prior to any Construction Certificate for building works, a Construction Certificate for subdivision works under DA 2012/381 shall be lodged for Road 7 (Ocean Blue Boulevard) from Seaside Drive for the length of Lot 167 with a temporary turnaround and Road 9 (Whitewater Terrace) from Seaside Drive to Surfers Drive (inclusive).</i>
<i>B (28) (B209) Prior to issue of any Construction Certificate for building works, proof of registration with the Land Title Office of the boundary adjustment required as part of this consent.</i>	<i>B (28) (B209) Prior to issue of any Occupation Certificate for building works, proof of registration with the Land Title Office of the boundary adjustment required as part of this consent. or B (28) (B209) Prior to issue of any Construction Certificate for building works, lodgement of the Subdivision Certificate for the boundary adjustment required as part of this consent.</i>
<i>E (2) Prior to any Occupation Certificate, the applicant is required to construct and dedicate as public road through an application for a Subdivision Certificate under DA 2012/381: a. Road 7 (Ocean Blue Boulevard) full length from Seaside Drive to Surfers Drive; and</i>	<i>E(2) Prior to any Occupation Certificate, the applicant is required to construct and dedicate as public road through an application for a Subdivision Certificate under DA 2012/381:</i>

<p><i>b. Road 9 (Whitewater Terrace) full length from Seaside Drive to Surfers Drive.</i></p>	<p><i>a. Road 7 (Ocean Blue Boulevard) from Seaside Drive to the eastern end of the boundary of Lot 167 and a temporary turning head provided; and</i> <i>b. Road 9 (Whitewater Terrace) full length from Seaside Drive to Surfers Drive.</i></p>
<p><i>(4)(B010) Payment to Council, prior to the issue of the Construction Certificate of the Section 94 contributions set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with the provisions of the following plans:</i></p> <ul style="list-style-type: none"> <i>Hastings S94 Administration Building Contributions Plan</i> <i>Hastings Administration Levy Contributions Plan</i> <i>Community Cultural and Emergency Services Contributions Plan 2005</i> <i>Hastings S94 Major Roads Contributions Plan</i> <i>Hastings S94 Open Space Contributions Plan</i> <i>Section 94 Local Roads Contributions Plan - Area 13 (Thrumster), Area 14 (Lake Cathie/Bonny Hills) and Area 15 (Camden Haven).</i> <p><i>The plans may be viewed during office hours at the Council Chambers located on the corner of Burrawan and Lord Streets, Port Macquarie, 9 Laurie Street, Laurieton, and High Street, Wauchope.</i></p> <p><i>The attached "Notice of Payment" is valid for the period specified on the Notice only. The contribution amounts shown on the Notice are subject to adjustment in accordance with CPI increases adjusted quarterly and the provisions of the relevant plans. Payments can only be made using a current "Notice of Payment" form. Where a new Notice of Payment form is required, an application in writing together with the current Notice of Payment application fee is to be submitted to Council.</i></p> <p><i>(5)(B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water</i></p>	<p><i>Reword conditions to permit the payment of development contributions for the habitable building construction and above.</i></p>

<p><i>Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to the issue of a Construction Certificate, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:</i></p> <ul style="list-style-type: none"> <i>• augmentation of the local area water supply</i> <i>• augmentation of the local area sewerage system</i> 	
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A copy of the original consent is attached to this report.

Application Chronology

- 20 March 2018 – Modification application lodged with Council.
- 6 to 19 April 2018 – Neighbour notification of modification proposal.
- 6 April 2018 – Additional information received.
- 24 April 2018 – Copy of redacted submissions forwarded to Applicant for consideration.
- 9 May 2018 – Additional information received.
- 10 May 2018 – Initial advice provided that owner's consent maybe required from Seawide Pty Ltd.
- 5 September 2018 – Follow up with Applicant as to status of additional information request.
- 5 February 2019 – Legal advice received from Applicant and additional information that owner's consent is not required from Seawide Pty Ltd for modification proposal.

5. STATUTORY ASSESSMENT

Section 4.55 of the Environmental Planning and Assessment Act 1979 enables the modification of consents and categorises modification into three categories - 4.55(1) for modifications involving minor error, mis-description or miscalculation; 4.55(1A) for modifications involving minimal environmental impact; and 4.55(2) for other modifications. Each type of modification must be considered as being substantially the same to that which was originally consented to.

Is the proposal substantially the same?

The subject application is being considered under the provisions of Section 4.55(1A).

The Applicant has provided satisfactory justification that the modified proposal is substantially the same development as originally approved for the following reasons:

- The change to conditions regarding timing does not alter the ability of the modified development to be substantially the same development, due to the overall development remaining for residential flat building and café purposes, no further loss of vegetation and the development is still for the same use with

- no material element of change (i.e. no additional land use or varying component added).
- With respect to qualitative, the amenity impacts, as the modification relates to conditions only, there is no associated amenity impact. The site remains serviced and accessible by vehicles.
 - In considering whether the modified development will be “substantially the same development” as authorised by the original development consent, the proposed modified development is to be compared against the development as it was originally approved. That is a factual exercise (comparison of one set of plans and conditions against the proposed modified plans and/or conditions) and in this instance revealed that the proposal remains as subdivision for residential purposes. No change is proposed to the layout.
 - The material and physical elements of the approved development remain the same. This modification application does not radically transform the approved development and the key issues remain unaltered. A comparison of the approved and modified plans would not easily identify the amendments and would appear as substantially the same development.

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

Neighbour notification has been undertaken.

Any submissions made concerning the modification?

Four (4) written submissions have been received following public exhibition of the application and are further considered below.

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

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

Port Macquarie-Hastings Local Environmental Plan 2011

The proposed modification remains consistent with the provisions of LEP 2011 and the use remains permissible.

(ii) Any Development Control Plan in force:

Development Control Plan 2013

With respect to DCP compliance, the approved development remains suitable as originally justified noting that the subject modification is primarily only relating to timing of conditions for external future public domains works (under a separate approved subdivision DA) to the proposed residential flat building and timing of a boundary adjustment already approved.

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

A planning agreement titled Ocean Drive, Lake Cathie applies to the sites. A copy of the Planning Agreement is attached to this report.

The below are comments regarding the Planning Agreement are noted:

- Requires certain roadworks to be undertaken.
- There is no restriction on the timing of Road 7.
- The two parties must not unreasonably withhold owner's consent as per the VPA terms.
- The VPA deals with the timing for road works and intersection upgrades in lieu of contributions.
- The Catarina Village and Seaside Shared Village Square Road is shown below and extends for the northern side of Lot 167. There is no mention of timing in the agreement.
- Clause 11 requires reimbursement of Access Road work.
- Clause 21 and 23 requires co-operation between both parties and access by the landowners.

The proposed modification is not considered to be inconsistent with the terms of the Planning Agreement.

iv) Any matters prescribed by the Regulations:

No matter prescribed by the regulations applicable to the modification.

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

Traffic and Transport

The Applicant submits that with the following points of justification with regard to the modification application:

- There is no change to overall lot numbers or traffic generation. The proposed change to allow the main street to be built for the length of the site only, with a temporary turnaround does not restrict access given that vehicular access to the site is via the southern boundary via Road 9. Therefore, the road network will not be impacted upon by this modification.
- The conditions in question require the full-length construction of Road 7 (Ocean Blue Boulevard), which is not required in order to service the approved building. As such, it is proposed that a temporary turnaround is proposed with this building at the north-east corner of the site in order to provide road frontage to the full development. It is unreasonable to delay the construction of the approved building in order to have the full length of Road 7 designed and approved. This design work has commenced as part of the design of the overall Hilltop Village however given the amount of work required, will delay this building unfairly given no vehicular access is required from Road 7.
- Traffic generation is not affected given that vehicular access to the site is via Road 9.

The above justifications are considered acceptable relating to the nexus of this development on its own following detailed review by Council staff. However, it is recommended that the design for the full length of the future main street including Road 7 be retained to ensure that the first section of road built will not compromise the ultimate outcome.

With regard to the legality of the proposed changes to conditions, the Applicant has submitted a legal opinion to justify that the proposal only relates to the development site itself. Any future Construction Certificate application for the first section of the main street Road 7 would need to the appropriate neighbouring owner's permission before commencing construction.

Services

Proposed services, drainage and sewer are not altered by the modification. As the proposed amendments will not alter the existing environment of the subject land, it is considered that the proposal involves minimal environmental impact.

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

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

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

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

Four (4) written submissions have been received following public exhibition of the application.

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

Submission Issue/Summary	Planning Comment/Response
<ul style="list-style-type: none"> • Road 7 will no longer connect directly to Surfers Drive which will concentrate the majority of Beach traffic through Summer Circuit. • By creating a dead end the proponent will force traffic to use minor streets and the Hilltop laneway. • Councils DCP 2013 Part 5 details Road 7 as a Collector or significant Road which explains the proposed roundabout where it intersects Road 1 (Forest Views). • If Road 7 does not connect directly to Surfers Drive then Summer Circuit will carry the majority of the traffic to the beach carpark on Surfers Drive a volume of traffic not accounted for in the DCP or its design. • The negative impact of the modification on adjoining developments must be considered when assessing the proposal. • As residents of the low density housing Seawide Estate we believe the modifications will affect the amenity of our development. • The developer has no intention of completing the construction of Road No.7 as agreed and will take any and all steps to avoid doing so. 	<p>The following assessment comments are made in response to Road 7 not being constructed for the full length between Seaside Drive and Surfers Drive:</p> <ul style="list-style-type: none"> • The modification proposes to construct Road 7 for the length of the boundary in order to provide a finished frontage to the building. • The primary access to the approved building is via Road 9 and not Road 7. • A reassessment of the approved development, including conditions has concluded that there is an insufficient nexus between the development of the building on Lot 167 and the full construction of Road 7. • It is proposed to undertake the first 60m "Village Square" component concurrently with the RFB on Lot 167 to provide a complete frontage to the development and construction of the remainder of Road 7 concurrently with the remainder of the Hilltop Village. • A condition is recommended to require full design details of the entire length of the road, but not construct with the Construction Certificate. • Lot 167 is already registered and has vehicle access to Whitewater Terrace. If a different landowner purchased the site it is now considered unreasonable to request the Road 7 to be fully constructed for this one development. • Any future developments will need to revisit the Road 7 construction extent issue on its own merits including any traffic impact implications.

Submission Issue/Summary	Planning Comment/Response
<ul style="list-style-type: none"> The Master Plan shows a tavern located in the North East corner of the site. This location is directly opposite low density housing, which will be severely impacted by both the increased noise and traffic generated by a tavern. 	There is no application lodged with a Council for a tavern, nor has one been approved.
<ul style="list-style-type: none"> Seawide Pty Ltd and is a party to DA2012 – 336 and does not agree to grant owner's consent. The subject modification has the effect of modifying DA2012 – 381 to an extent to which Seawide Pty Ltd will not agree. 	With regard to the legality of the proposed changes to conditions, the Applicant has submitted a legal opinion to justify that the proposal only relates to the development site itself. Any future Construction Certificate application for the first section of the main street Road 7 would need to the appropriate neighbouring owner's permission before commencing construction.
The proposed partial road construction of road No.7 will create unnecessary drainage issues and result in a compromised system of trunk mains which is extreme events could block and cause flooding in future buildings downstream.	Stormwater disposal requirements will need to appropriately be managed to Council standards through the application for Construction Certificate process for Road No.7. This is not a sufficient reason for refusing the modification application.
Seawide Pty Ltd objects to change in boundary adjustment condition.	The subject boundary adjustment is an internal boundary change only and does not relate to the Road 7 issue referred to.

6. DEVELOPMENT CONTRIBUTIONS APPLICABLE

No development contributions require reconsideration as part of determination of this modification application to that already approved by Council.

7. CONCLUSION AND STATEMENT OF REASON

It is recommended that the following changes to conditions be made. A comparison with existing, proposed and recommended is shown below:

Current condition	Proposed modified condition	Recommended changes to condition
<i>B (16) (B197) Prior to any Construction Certificate for building works, a Construction Certificate for subdivision works under DA 2012/381 shall be approved for the full length construction of Road 7 (Ocean Blue Boulevard) and Road 9 (Whitewater Terrace) from Seaside Drive to Surfers Drive (inclusive).</i>	<i>Delete. or B (16) (B197) Prior to any Construction Certificate for building works, a Construction Certificate for subdivision works under DA 2012/381 shall be lodged for Road 7 (Ocean Blue Boulevard) from</i>	<i>B (16) (B197) Prior to any Construction Certificate for building works, a Construction Certificate for subdivision works under DA 2012/381 shall be lodged for Road 7 (Ocean Blue Boulevard) from Seaside Drive for the length of Lot 167 with a temporary turnaround and Road 9 (Whitewater</i>

	<i>Seaside Drive for the length of Lot 167 with a temporary turnaround and Road 9 (Whitewater Terrace) from Seaside Drive to Surfers Drive (inclusive).</i>	<i>Terrace) from Seaside Drive to Surfers Drive (inclusive). As part of the detail submitted, full design details of the full length of Road 7 shall also be submitted.</i>
<i>B (28) (B209) Prior to issue of any Construction Certificate for building works, proof of registration with the Land Title Office of the boundary adjustment required as part of this consent.</i>	<i>B (28) (B209) Prior to issue of any Occupation Certificate for building works, proof of registration with the Land Title Office of the boundary adjustment required as part of this consent. or B (28) (B209) Prior to issue of any Construction Certificate for building works, lodgement of the Subdivision Certificate for the boundary adjustment required as part of this consent.</i>	<i>B (28) (B209) Prior to issue of any Occupation Certificate for building works, proof of registration with the Land Title Office of the boundary adjustment required as part of this consent.</i>
<i>E (2) Prior to any Occupation Certificate, the applicant is required to construct and dedicate as public road through an application for a Subdivision Certificate under DA 2012/381: a. Road 7 (Ocean Blue Boulevard) full length from Seaside Drive to Surfers Drive; and b. Road 9 (Whitewater Terrace) full length from Seaside Drive to Surfers Drive.</i>	<i>E(2) Prior to any Occupation Certificate, the applicant is required to construct and dedicate as public road through an application for a Subdivision Certificate under DA 2012/381: a. Road 7 (Ocean Blue Boulevard) from Seaside Drive to the eastern end of the boundary of Lot 167 and a temporary turning head provided; and b. Road 9 (Whitewater Terrace) full length from Seaside Drive to Surfers Drive.</i>	<i>E(2) Prior to any Occupation Certificate, the applicant is required to construct and dedicate as public road through an application for a Subdivision Certificate under DA 2012/381: a. Road 7 (Ocean Blue Boulevard) from Seaside Drive to the eastern end of the boundary of Lot 167 and a temporary turning head provided; and b. Road 9 (Whitewater Terrace) full length from Seaside Drive to Surfers Drive.</i>
<i>(4)(B010) Payment to Council, prior to the issue of the Construction Certificate of the Section 94 contributions set out in the "Notice of</i>	<i>Reword conditions to permit the payment of development contributions for the habitable building</i>	<i>Insert new condition A(19): This consent allows the development to be completed in two (2) stages as follows:</i>

<p><i>Payment – Developer Charges” schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with the provisions of the following plans:</i></p> <ul style="list-style-type: none"> • <i>Hastings S94 Administration Building Contributions Plan</i> • <i>Hastings Administration Levy Contributions Plan</i> • <i>Community Cultural and Emergency Services Contributions Plan 2005</i> • <i>Hastings S94 Major Roads Contributions Plan</i> • <i>Hastings S94 Open Space Contributions Plan</i> • <i>Section 94 Local Roads Contributions Plan - Area 13 (Thrumster), Area 14 (Lake Cathie/Bonny Hills) and Area 15 (Camden Haven).</i> <p><i>The plans may be viewed during office hours at the Council Chambers located on the corner of Burrawan and Lord Streets, Port Macquarie, 9 Laurie Street, Laurieton, and High Street, Wauchope.</i></p> <p><i>The attached “Notice of Payment” is valid for the period specified on the Notice only. The contribution amounts shown on the Notice are subject to adjustment in accordance with CPI increases adjusted quarterly and the provisions of the relevant plans. Payments can only be</i></p>	<p>construction and above.</p>	<ul style="list-style-type: none"> • Stage 1 involves earthworks, excavation and the construction of basement level works; and • Stage 2 involves the construction of the remainder of the building/works. <p>Unless specified, the conditions of consent will apply to all stages. Council will be the determining authority on any discrepancy of conditions and applicable staging.</p> <p>Amend the following conditions B(4) and B(5):</p> <p>(4) (B010) <i>Payment to Council, prior to the issue of the Construction Certificate (Stage 2) of the Section 94 contributions set out in the “Notice of Payment – Developer Charges” schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with the provisions of the following plans:</i></p> <ul style="list-style-type: none"> • <i>Hastings S94 Administration Building Contributions Plan</i> • <i>Hastings Administration Levy Contributions Plan</i> • <i>Community Cultural and Emergency Services Contributions Plan 2005</i> • <i>Hastings S94 Major</i>
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<p><i>made using a current "Notice of Payment" form. Where a new Notice of Payment form is required, an application in writing together with the current Notice of Payment application fee is to be submitted to Council.</i></p> <p><i>(5)(B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to the issue of a Construction Certificate, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:</i></p> <ul style="list-style-type: none"> <i>• augmentation of the local area water supply</i> <i>• augmentation of the local area sewerage system</i> 		<p><i>Roads Contributions Plan</i></p> <ul style="list-style-type: none"> <i>• Hastings S94 Open Space Contributions Plan</i> <i>• Section 94 Local Roads Contributions Plan - Area 13 (Thrumster), Area 14 (Lake Cathie/Bonny Hills) and Area 15 (Camden Haven).</i> <p><i>The plans may be viewed during office hours at the Council Chambers located on the corner of Burrawan and Lord Streets, Port Macquarie, 9 Laurie Street, Laurieton, and High Street, Wauchope.</i></p> <p><i>The attached "Notice of Payment" is valid for the period specified on the Notice only. The contribution amounts shown on the Notice are subject to adjustment in accordance with CPI increases adjusted quarterly and the provisions of the relevant plans. Payments can only be made using a current "Notice of Payment" form. Where a new Notice of Payment form is required, an application in writing together with the current Notice of Payment application fee is to be submitted to Council.</i></p> <p><i>(5) (B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act</i></p>
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		<p>2000, the payment of a cash contribution, prior to the issue of a Construction Certificate (Stage 2), of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:</p> <ul style="list-style-type: none"> • augmentation of the local area water supply • augmentation of the local area sewerage system
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The application has been assessed in accordance with Section 4.55 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. Modified conditions are recommended to manage the impacts attributed to these issues.

The site is considered suitable for the proposed modified 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 modified conditions of consent detailed above.

Attachments

1[View](#). DA2017 - 336.2 Correspondence to Council post submissions Lot 167

2[View](#). DA2017 - 336.2 VPA

3[View](#). DA 2017 - 336.1 Consent Approval

4[View](#). DA2017 - 336.1 Approved Stamped Plans



5 April 2018 – Rev A - 5105

The General Manager
Port Macquarie Hastings Council
Corner Lord and Burrawan Street
PORT MACQUARIE NSW 2444

Attention: Pat Galbraith-Robertson - Development Assessment Planner

Dear Pat,

Re: Additional Comment / Clarification Catarina Lot 167 & Road 7 - S.4.55 (1A) - DA 2017/336 – Approved Residential Flat Building – Seaside Drive and Surfers Drive LAKE CATHIE

As per our recent discussions, below are additional comments which provide further clarification regarding Road 7, it's timing, staging of the overall development and the unreasonableness of the conditions due to a lack of nexus.

a) Concept Approval Staging

Below is an extract from an exhibit from the approved Part 3A Concept approval. This plan shows Road 7 in more than one stage.



LandDynamics AUSTRALIA ABN 63 137 881 942
77 Lord Street, Port Macquarie NSW 2444 www.ldynamics.com.au P: 02 6583 2677



Staging is required by way of a condition of consent to be generally in accordance with that shown, however the detailed subdivision DA2012/381 which provides the details of the development also includes a staging plan and condition. Staging has been varied numerous times.

The approved staging plan indicated the likely stages of development, however states that the staging does not have to occur in order after Stage 2.

b) DA2012/381 Staging

A Section 96 Modification was approved by Council on 22 December 2016 to reflect an amendment to staging.

The modified staging shows Lot 167 within Stage 1B, with Road 1. Road 7 is shown as part of Stage M9 and M10. On this basis, there was no expectation that Road 7 would occur at the time of development of Lot 167.

The condition states:

(3) (A007) The development must only proceed in accordance with the approved stages as set out below:

Stage 1 - Project Approval Environmental Works

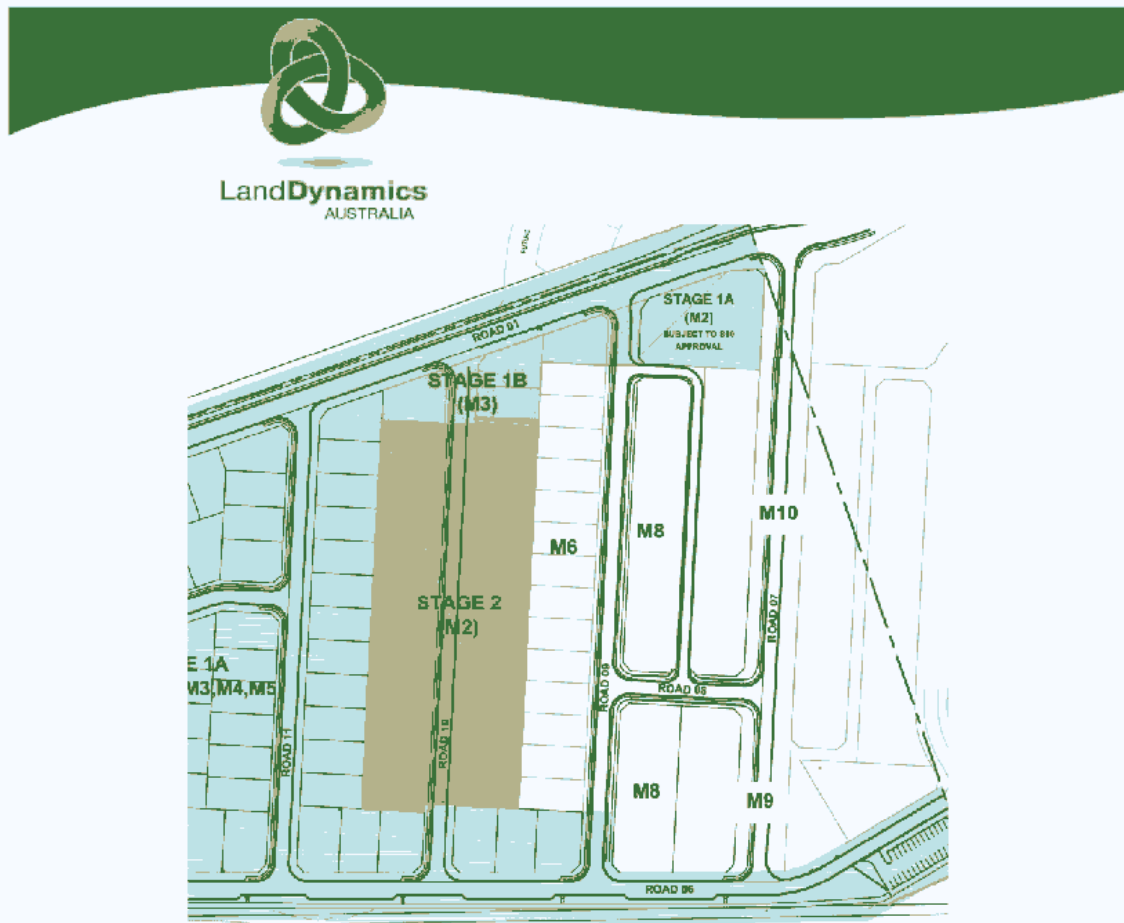
*Stage 2 - Boundary Adjustment with Special Terms Right-of-
Carriageway over existing track in use.*

*Stage 3 - First Development Stage (S2 on Seawide Property,
Stages 1A, 1B and 2 on Milland Property)*

*Stage 4 - Additional Development Stages (S3-S7) and/or (M6, M8,
M9 & M10)*

Unless specified, the conditions of this consent will apply to all stages, with any decision on any discrepancy with conditions and associated staging resting with Council. Any decision to allow a change to staging will rest with Council along with applicable conditions and any contributions payable.²

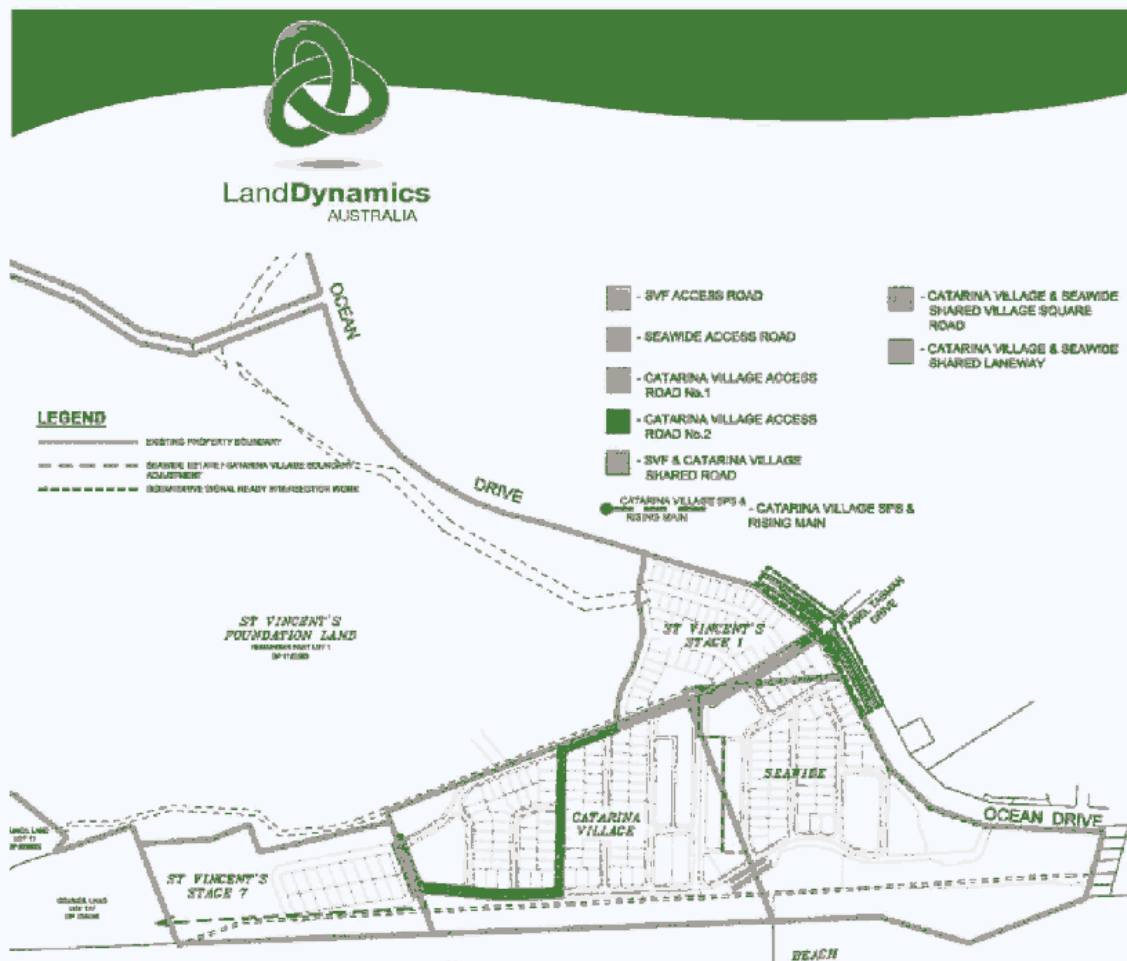
On the basis of the condition, Road 7 is within Stage 4 and the RFB on Lot 167 is in Stage 3.



c) Voluntary Planning Agreement

Below are comments regarding the VPA (copy attached):

- Requires certain roadworks to be undertaken.
- There is no restriction on the timing of Road 7.
- The two parties must not withhold owner's consent as per the VPA terms.
- The VPA deals with the timing for road works and intersection upgrades in lieu of contributions.
- The Catarina Village and Seaside Shared Village Square Road is shown below and extends for the northern side of Lot 167. There is no mention of timing in the agreement.
- Clause 11 requires reimbursement of Access Road work.
- Clause 21 and 23 requires co-operation between both parties and access by the landowners.



The Village Square part of Road 7 to the north of Lot 167 and the laneways are included in the definition in the VPA of Access Road:

Access Road means Catarina Village Access Road No. 1, Catarina Village Access Road No. 2, Seaside Access Road, SVF Access Road, Catarina Village and Seaside Shared Village Square Road, Catarina Village and Seaside Shared Laneway or SVF and Catarina Village Shared Road.

Access Road Work means work relating to the construction of an Access Road as a public road to a standard to serve the Development to the reasonable satisfaction of the Council.

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d) Traffic

The Part 3A consent states:

C13 Traffic Management

Future development applications for subdivision, medium density superlots and for the 'Hill-Top Village' shall contain a Traffic Assessment to demonstrate that traffic generated does not exceed the predicted traffic volumes outlined in Roadnet's *Traffic impact study Area 14 urban investigation area 2010*. Each traffic assessment must take into account traffic movements from the project and in the wider Area 14 area. Any traffic assessments that reveal impacts on the road network shall include mitigation strategies including road and/or junction upgrades for consideration by the RTA for approval.

The TIA for Lot 167 stated:

- The minor increase in traffic volumes on Ocean Drive and through the Seaside Drive intersection as a result of the proposed development do not 'trigger' any of the recommended upgrades of the local road network as described in RoadNet's 2009 assessment.
- Access to and from the development is proposed via a 2-lane driveway off Ocean Blue Boulevard (Road No.9). The recently constructed local road has adequate capacity to cater for the additional traffic without significant impact on local traffic flows. Similarly, Seaside Drive, which links the development with Ocean Drive, was designed and constructed with adequate capacity to cater for traffic generated by the Hill Top Village precinct.

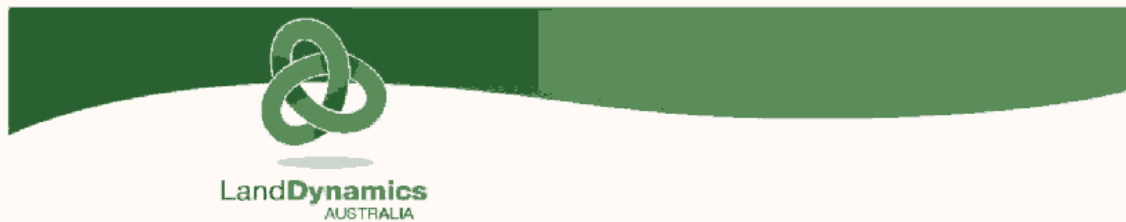
Additional traffic review will be undertaken with the subsequent Hilltop Village buildings.

Further, the approved Part 3A and DA2012/381 plans (above) clearly show the laneway which extends from Seawide onto Road 7, which provides access for the future residents of the Hilltop Village from Seawide roads.

e) Lot 167 & Relationship to Road 7

Lot 167 is already a stand alone registered lot, with existing access to Road 1 which is already constructed and Road 9 which is partially constructed and being constructed shortly.

The primary access to the approved building is via Road 9 and not Road 7.



There is no need for Road 7 to be constructed for access and the modification proposes to construct Road 7 for the length of the boundary in order to provide a finished frontage to the building, but it is not required by the Part 3A or original subdivision conditions of consent or for vehicular access to the development.

It is understood that the conditions with respect to timing of Road 7 were imposed in response to issues raised in submissions received by Council. It is unreasonable to impose these conditions, contrary to the previous Part 3A consent and DA2012/381 and the approved staging and are not necessary for access purposes to the approved Lot 167 development.

As such, there is no nexus between the development of the building on Lot 167 and the construction of Road 7 and the requirement to do so appears to be beyond the power of Council to impose.

f) Timing of Road 7

It is proposed to undertake the first 60m "Village Square" component concurrently with the RFB on Lot 167 to provide a complete frontage to the development and construction of the remainder of Road 7 concurrently with the remainder of the Hilltop Village. However, it is unreasonable to impose conditions regarding timing of the building construction and the road construction certificate as it delays the building construction unfairly, contrary to the existing overall estate consents.

The owners of Catarina have undertaken many millions of dollars of work to date constructing roads, which shows commitment to the roads in the area, and fully intend to construct Road 7. This road is required for the remainder of the Hilltop Village and completion of the Catarina development. In this regard, they have prepared a Statutory Declaration to that effect to provide surety for the adjoining Seawide developer.

g) Submissions

It is understood from a review of the submissions that there are concerns from residents in Seawide regarding roads within that estate being used instead of Road 7. In this regard, the approved Part 3A and DA2012/381 plans clearly show the laneway which extends from Seawide onto Road 7, which provides access for the future residents of the Hilltop Village. The sooner that Road 7 is constructed, the sooner the laneway can be constructed and connected to provide this link from Seawide through to the main street and allow for additional traffic in Seawide.



This concern is related to the already approved layout and has no relationship to the development of Lot 167.

Further, the submissions discuss Road 7 being terminated and not extending for the full length through to the beach. This is not part of our modification request and once again has no bearing on the development of Lot 167.

The development must occur as per the current approval in force for the overall road network. There is no need to amend DA2012/381 to allow a temporary turnaround as there is no condition of consent which stipulates that the full length of Road 7 is to be constructed at the same time or the timing for its construction other than indicating it is in the last stage, being Stage 4.

h) Determination

For the following reasons, it is unreasonable to prevent the change to conditions as requested and require reporting of this modification to the Development Assessment Panel:

- The submissions primarily relate to a change which does not form part of this modification i.e. cessation of Road 7, traffic impacts in Seawide, future tavern and associated noise impacts. The modification correctly relates to changes to timing of conditions to allow the building construction to commence and not be unfairly delayed, including staging of the basement and building construction, as per our Rev A letter dated 5 April 2018.
- Road 7 is not required to be constructed in the same stage as Lot 167 development, as per approved DA staging plans for the overall estate.
- There is no nexus between construction of the full length of Road 7 and the development of Lot 167, with no vehicular access required to Road 7.
- The retention of the conditions in their current manner could be seen to be a commercial restriction on the developer.
- There is a VPA in place which requires co-operation between both parties and access by the landowners but does not specify timing of Road 7.

As such, your timely determination at officer level is requested.



LandDynamics
AUSTRALIA

Yours faithfully

A handwritten signature in dark blue ink, appearing to read 'G. Burns'.

Graham Burns

Director – Land Dynamics Australia

Attachments:

1. Stamped Approved Staging Plan – DA2012/381
2. VPA
3. Statutory Declaration (to follow separately)



lindsaytaylorlawyers
planning • environment • local government

Deed

Ocean Drive, Lake Cathie

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

17/02/15

Port Macquarie Hastings Council


Catarina Village Pty Limited

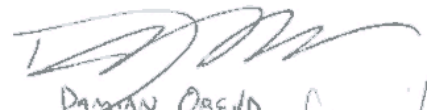
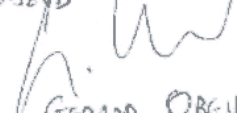
Catarina Developments Pty Limited

Seawide Pty Limited

St Vincent's Foundation Pty Limited

x  General Manager


PAUL OBEID


DAMIAN OBEID

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Ocean Drive, Lake Cathie Planning Agreement
Port Macquarie Hastings Council
Catarina Developments, Catarina Village, Seawide, SVF



Ocean Drive, Lake Cathie Planning Agreement

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Ocean Drive, Lake Cathie Planning Agreement
Port Macquarie Hastings Council
Catarina Developments, Catarina Village, Seawide, SVF



Ocean Drive, Lake Cathie Planning Agreement

Summary Sheet

Council:

Name: Port Macquarie-Hastings Council
Address: Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444
Telephone: (02) 6581 8111
Facsimile: (02) 6581 8123
Email: council@pmhc.nsw.gov.au
Representative: Tim Molloy

Landowner: **Catarina Village**

Name: Catarina Village Pty Limited
Address: PO Box 1456, Macquarie Centre NSW 2113
Telephone: 0419 243 598
Email: paul@obeidgroup.com.au
Representative: Paul Obeid

Developer: **Catarina Developments**

Name: Catarina Developments Pty Limited
Address: PO Box 1456, Macquarie Centre NSW 2113
Telephone: 0411 565 449
Email: gerard@catarinaliving.com.au
Representative: Gerard Obeid

Landowner: **Seawide**

Name: Seawide Pty Limited
Address: PO Box 360 Port Macquarie NSW 2444
Telephone: 0414 533 838

Ocean Drive, Lake Cathie Planning Agreement
Port Macquarie Hastings Council
Catarina Developments, Catarina Village, Seawide, SVF



Facsimile: (02) 6582 1605
Email: cunnings@bigpond.net.au
Representative: Graham Cuning

Landowner: SVF

Name: St Vincent's Foundation Pty Limited
Address: PO Box 1 Lismore NSW 2480
Telephone: (02) 6621 9444
Facsimile: (02) 6622 4239
Email: st.vincent@bigpond.com
Representative: Greg Isaac

Land:

See definition of *Landowner Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2.

Application of s94, s94A and s94EF of the Act:

See clause 8.

Dispute Resolution:

See clauses 33 and 34.

Security:

See clauses 35 and 36.

Registration:

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Port Macquarie Hastings Council
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See clause 39.

Restriction on dealings:

See clause 40.

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Catarina Developments, Catarina Village, Seawide, SVF



Ocean Drive, Lake Cathie Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie Hastings Council ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

and

Catarina Village Pty Limited ABN 80 003 509 822 of PO Box 1456, Macquarie Centre NSW 2113 (**Catarina Village**)

and

Catarina Developments Pty Limited ABN 93 167 644 706 of PO Box 1456, Macquarie Centre NSW 2113 (**Catarina Developments**)

and

Seawide Pty Limited ABN 18 063 316 736 of PO Box 360 Port Macquarie NSW 2444 (**Seawide**)

and

St Vincent's Foundation Pty Limited ABN 11 083 730 778 of PO Box 1 Lismore NSW 2480 (**SVF**)

Background

- A The Landowners own the Landowner Land.
- B The Landowners and the Developer propose to make Development Applications for the carrying out of the Development on the Landowner Land.
- C The Landowners are prepared to make Development Contributions to the Council in conjunction with the carrying out of the Development in accordance with this Deed.

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Operative provisions

Part 1 – Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

Access Road means Catarina Village Access Road No. 1, Catarina Village Access Road No. 2, Seawide Access Road, SVF Access Road, Catarina Village and Seawide Shared Village Square Road, Catarina Village and Seawide Shared Laneway or SVF and Catarina Village Shared Road.

Access Road Work means work relating to the construction of an Access Road as a public road to a standard to serve the Development to the reasonable satisfaction of the Council.

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

Catarina Village means Catarina Village Pty Ltd.

Catarina Village Access Road No. 1 means the road identified as such on Plan No.2.

Catarina Village Access Road No. 2 means the road identified as such on Plan No. 2.

Catarina Village and Seawide Shared Laneway means the road identified as such on Plan No.2.

Catarina Village and Seawide Shared Village Square Road means the road identified as such on Plan No.2.

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Catarina Village Land means Lot 1 DP 374315 as shown on Plan No. 1 or other land shown as 'Catarina Village' following a boundary adjustment between Lot 1 DP374315 and Lot 4 DP 615261 as shown on Plan No. 2.

Catarina Village Sewerage Services Work Reduction Amount means the \$ amount calculated by multiplying the Sewerage Services Contribution Distribution Component by 292.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Construction Certificate has the same meaning as in the Act.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Council Land means Lot 177 DP 754444 and Lot 11 DP 629025.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Developer means Catarina Developments.

Development means the development of the Landowner Land generally in accordance with the subdivision layouts shown on Plan 2 and development for urban purposes on that land.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act and as modified under the Act from time to time..

Development Contribution means a monetary contribution, the dedication of land free of Cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Landowner in connection with the performance of its obligations under this Deed.

ET (Equivalent Tenement) has the same meaning as in Council's *Development Contribution Assessment Policy July 2007*, a copy of which is available from the Council, or any document that relevantly replaces that document.

Final Lot means a lot created in the Development that is:

- (a) capable of separate occupation and disposition irrespective of whether or not it can be further subdivided, or
- (b) of a kind or created for a purpose that is otherwise agreed by the Parties,

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Catarina Developments, Catarina Village, Seawide, SVF



not being a lot created by a subdivision of the Land:

- (c) resulting from a boundary adjustment between any Landowner Land,
- (d) that is to be dedicated or otherwise transferred to the Council, or
- (e) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Initial Developer, in relation to each Work specified in this definition, means, subject to clauses 10 and 14, the Landowner responsible under this Deed for undertaking the Work so specified, being:

- (a) Ocean Drive Signal Ready Intersection Work,
- (b) Access Road Works or any Work included in the definition of Access Road Work,
- (c) Sewerage Services Work Pump Station,
- (d) Sewerage Services Work Rising Main.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Landowner means Catarina Village, Seawide or SVF and includes a reference to the Developer where relevant.

Landowner Land means the Catarina Village Land, Seawide Land or SVF Land.

LEP means *Port Macquarie-Hastings Local Environmental Plan 2011*.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work

Ocean Drive Signalised Dual Lane Intersection Work means the construction of a signalised intersection at the intersection of Ocean Drive, Abel Tasman Drive and the SVF Access Road as shown on Plan No. 5 and to a design and specification approved by Council and the RMS.

Ocean Drive Signalised Single Lane Intersection Work means the construction of a signalised intersection at the intersection of Ocean Drive, Abel Tasman Drive and the SVF Access Road as shown on Plan No. 4 and to a design and specification approved by Council and the RMS.

Ocean Drive Signal Ready Intersection Work means the Ocean Drive Signal Ready Intersection Work as shown on Plan No. 3 and to a design and specification approved by Council and the RMS.

Plan means Plan No.1, Plan No.2, Plan No.3, Plan No.4, Plan No.5, or Plan No.6 in Schedule 1.

Party means a party to this Deed.

Physical Commencement in relation to a Work means the time when building, engineering or construction work relating to the Work physically commences on land.

Rectification Notice means a notice in writing:

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Catarina Developments, Catarina Village, Seawide, SVF



- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

RMS means Roads and Maritime Services.

Roads Contribution means a monetary Development Contribution towards the Council's Costs of providing, extending or augmenting public roads, being \$12,076.00 per ET in the Development indexed quarterly after 30 March 2014 in accordance with the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Roads Contribution Reduction means the amount notified by the Council to the Initial Developer under clause 10.5, being so much of the Cost incurred by the Initial Developer Ocean Drive Signal Ready Intersection Works in the construction of the Ocean Drive Signal Ready Intersection Works that the Council reasonably considers it would have incurred had it undertaken the work itself but excluding any costs claimed by the Initial Developer under the Sewerage Services Relocation Work Reduction Amount and the Water Supply Services Relocation Work Reduction Amount.

Road Work means the Ocean Drive Signal Ready Intersection Work, the Sewerage Services Relocation Work, Water Supply Services Relocation Work and the relocation of electricity and telecommunications services within the area shown as 'Intersection Limit of Construction' on Plan No. 3.

Seawide means Seawide Pty Ltd.

Seawide Access Road means the road identified as such on Plan No. 2.

Seawide Equivalent Lots means the sum of the following:

- (a) the number of Final Lots created on the Seawide Land in R1 Zone, and
- (b) the area measured in square metres of any lot created on the Seawide Land in the R3 Zone divided by 144, and
- (c) the area measured in square metres of any lot created on the Seawide Land in the B4 Zone divided by 96.

Seawide Land means Lot 4 DP 615261 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between:

- (a) Lot 1 DP374315 and Lot 4 DP 615261 and/or
- (b) Lot 1 DP1193553 and Lot 4 DP615261.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed quarterly after 30 March 2014 in accordance with Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Sewerage Services Contribution means a monetary Development Contribution towards the Cost of sewerage services infrastructure determined in accordance with the *Port Macquarie Hastings Development Servicing Plans for Sewerage Services* as in force from time to time.

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Sewerage Services Contribution Distribution Component means 26% of the Sewerage Services Contribution.

Sewerage Services Relocation Work means the Work shown as 'Sewer Services Relocation' on Plan No. 3.

Sewerage Services Relocation Work Reduction Amount means the sum of:

- (a) the actual cost of constructing the Sewerage Services Relocation Work within the area marked as 'Area Y' as shown on Plan No. 3, and
- (b) the difference in value, determined by the Council, of the Sewerage Services Relocation Work within the area marked as 'Area X' on Plan No. 3 and the equivalent length of the sewerage service being replaced by that Work.

Sewerage Services Work means the Sewerage Services Work Pump Station and the Sewerage Services Work Rising Main.

Sewerage Services Work Cost means the Cost notified to the Initial Developer by the Council under clause 14.4.

Sewerage Services Work Cost Landowner Share means:

- (a) in relation to the Sewerage Services Work Pump Station:
 - (i) in relation to the Catarina Village Land, 63.75 % of the Sewerage Services Work Cost for the Sewerage Services Work Pump Station,
 - (ii) in relation to the SVF Land, 19.87 % of the Sewerage Services Work Cost for the Sewerage Services Work Pump Station, and
 - (iii) in relation to the Seawide Land, 16.38 % of the Sewerage Services Work Cost for the Sewerage Services Work Pump Station,
- (b) in relation to the Sewerage Services Work Rising Main:
 - (i) in relation to the Catarina Village Land, 63.75 % of the Sewerage Services Work Cost for the Sewerage Services Work Rising Main,
 - (ii) in relation to the SVF Land, 19.87 % of the Sewerage Services Work Cost for the Sewerage Services Work Rising Main, and
 - (iii) in relation to the Seawide Land, 16.38 % of the Sewerage Services Work Cost for the Sewerage Services Work Rising Main,

Sewerage Services Work Pump Station means Catarina Village SPS as shown on Plan No.6.

Sewerage Services Work Rising Main means Sewer Rising Main A on the Catarina Village Land, SVF Land and Council Land as shown on Plan No. 6.

Stage means a stage of the Development on Landowner Land approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 1 SVF means that part of the Development to be carried out on Part Lot 1 DP1193553 as shown on Plan No. 1.

Subdivision Certificate has the same meaning as in the Act.

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 Port Macquarie Hastings Council
 Catarina Developments, Catarina Village, Seawide, SVF



SVF means St Vincent's Foundation Pty Ltd.

SVF Access Road means the road identified as such on Plan No. 2.

SVF and Catarina Village Shared Road means the road identified as such on Plan No. 2.

SVF Land means Lot 1 DP1193553, Lot 5 DP 25886, and Lots 1, 2, 3 and 4 DP 1150758 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between Lot 1 DP1193553 and Lot 4 DP 615261.

SVF Sewerage Services Work Reduction Amount means the \$ amount calculated by multiplying the Sewerage Services Contribution Distribution Component by 91.

Tendered Cost means the sum of:

- (a) the cost of carrying out Work specified in a tender to carry out the Work which has been accepted, and
- (b) the cost of any design and survey work carried out for the Work approved by the Council, not being a cost referred to in paragraph (a) of this definition,
- (c) survey costs, legal costs, application fees and all other costs of and incidental to the dedication to the Council of the land on which the Work is carried out.

Water Supply Contribution means a monetary Development Contribution towards the cost of water supply infrastructure determined in accordance with the *Port Macquarie Hastings Development Servicing Plans for Water Supply* as in force from time to time.

Water Supply Services Relocation Work means the Work shown as 'Water Supply Relocation' on Plan No. 3.

Water Supply Services Relocation Work Reduction Amount means the sum of:

- (a) the actual cost of constructing the Water Supply Services Relocation Work within the area marked as 'Intersection Limit of Construction' as shown on Plan No. 3, and
- (b) the difference in value, determined by the Council, of the Water Supply Services Relocation Work within the area marked as 'Area X' on Plan No. 3 and the equivalent length of the water supply service being replaced by that Work.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

Zone means a land use zone specified in clause 2.1 of the LEP.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

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- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns, and a mortgagee in possession.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of Cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.

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- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed & Amendment of other Planning Agreements

- 4.1 This Deed applies to the Council Land and the Landowner Land, and to the Development.
- 4.2 On and from the date this Deed is entered into, the definition of 'Development' in clause 1.1 of the 'Rainbow Beach Central Corridor Planning Agreement' entered into between the Council and SVF on 22 December 2011 is amended to read as follows:

'Development' means the development described in the Concept Plan Application excluding the construction of the 'SVF Access Road' defined in clause 1.1 of the 'Ocean Drive Lake Cathie Planning Agreement' entered into between the Council, Catarina Village Pty Limited, Catarina Developments Pty Limited, Seawide Pty Limited and St Vincent's Foundation Pty Limited on or around _____.

- 4.3 On and from the date this Deed is entered into, the provisions of:
- 4.3.1 the 'Seawide Area 14 Stage 1B Planning Agreement' entered into between the Council and Seawide on 14 September 2011, and
- 4.3.2 the 'Milland Area 14 Stage 1B Planning Agreement' entered into between the Council and Milland on 14 September 2011, and
- 4.3.3 the 'Rainbow Beach Central Corridor Planning Agreement' entered into between the Council and SVF on 22 December 2011,
- relating to the payment by the Landowner to the Council of a 'Roads Contribution' as defined in clause 1.1 of each Agreement have no force or effect.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
- 5.1.2 are able to fully comply with their obligations under this Deed.
- 5.2 Without limiting clause 5.1:
- 5.2.1 Catarina Village, Catarina Developments, Seawide and SVF each warrant that they are solvent,
- 5.2.2 Catarina Village warrants that it is the registered proprietor of the Catarina Village Land at the date of this Deed,
- 5.2.3 Seawide warrants that it is the registered proprietor of the Seawide Land at the date of this Deed,
- 5.2.4 SVF warrants that it is the registered proprietor of the SVF Land at the date of this Deed.

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6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Landowner is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s94 to the Development except as regards contributions for public roads.
- 8.2 This Deed does not exclude the application of s94A to the Development.
- 8.3 This Deed does not exclude the application of s94EF to the Development.

Part 2 – Road Work and Roads Contribution

9 Restrictions on carrying out certain Development until Road Work completed

- 9.1 The Road Work is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development authorising the creation of a Final Lot.
- 9.2 The SVF Access Road is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development on the SVF Land authorising the creation of a Final Lot.
- 9.3 The SVF Access Road and the Seawide Access Road are to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development on the Seawide Land authorising the creation of a Final Lot.
- 9.4 The SVF Access Road, the Seawide Access Road, the Catarina Village Access Road No.1 and the Catarina Village Access Road No. 2 are to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development on the Catarina Village Land authorising the creation of a Final Lot.
- 9.5 Nothing in this Deed requires any Landowner to carry out Work comprising the Ocean Drive Signalised Single Lane Intersection Work or the Ocean Drive Signalised Dual Lane Intersection Work.
- 9.6 The Parties acknowledge and agree that Work associated with the upgrading of the Ocean Drive Signal Ready Intersection to become the Ocean Drive

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Signalised Single Lane Intersection Work or the Ocean Drive Signalised Dual Lane Intersection Work is intended to be carried out by the Council using Roads Contributions paid to it and only when the Council reasonably considers that traffic conditions warrant the carrying out of the Work but nothing in this Deed imposes any obligation on the Council enforceable at law or in equity to carry out that Work.

10 Carrying out of Road Work

- 10.1 A Landowner is the Initial Developer Ocean Drive Signal Ready Intersection Work and is to carry out that Work in accordance with this Deed if it is the first Landowner to give notice in writing to the other Landowners and the Council to that effect.
- 10.2 The Landowner referred to in clause 10.1 remains the Initial Developer:
 - 10.2.1 while ever the notice referred to in clause 10.1 is not withdrawn by a further notice in writing to the other Landowners and the Council at any time before the Physical Commencement of that Work, or
 - 10.2.2 once Physical Commencement of that Work occurs.
- 10.3 If the Initial Developer is:
 - 10.3.1 SVF, it is to complete the Road Work and SVF Access Road in accordance with this Deed,
 - 10.3.2 Seawide, it is to complete the Road Work, SVF Access Road and Seawide Access Road in accordance with this Deed,
 - 10.3.3 Catarina Village or the Developer, it is to complete the Road Work, SVF Access Road, Seawide Access Road, Catarina Village Access Road No.1 and Catarina Village Access Road No. 2 in accordance with this Deed.
- 10.4 Before the Physical Commencement of any Work required to be carried out under clause 10.3, the Initial Developer is to:
 - 10.4.1 submit detailed design plans of the Work to the Council for written approval by the Council, and
 - 10.4.2 after having received such approval, notify the Council in writing of the Tendered Cost of the Work , which Cost is to be itemised by reference to the different components of the Access Road Work required to be carried out under clause 10.3.
- 10.5 After receiving notification under 10.4.2, the Council is to notify the Initial Developer in writing whether it agrees to give the Roads Contribution Reduction.
- 10.6 If the Council notifies the Initial Developer under clause 10.5 that it agrees to give the Roads Contribution Reduction, the amount of the Roads Contribution Reduction is the actual cost of that Work incurred by the Initial Developer upon completion of that Work in accordance with the scope of work approved by the Council under clause 10.4 and as verified by tax invoices.
- 10.7 If the Council does not agree to the Tendered Cost notified to it under clause 10.4.2 or notifies the Initial Developer under clause 10.5 that it does not agree to give the Roads Contribution Reduction, a Dispute is taken to have arisen and clauses 33 and 34 apply.

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11 Reimbursement of Cost of Access Road Work

- 11.1 In this clause 11:
- 'Other Landowner' means a Landowner other than the Initial Developer.
 - 'Other Landowner Land' means land owned by the Other Landowner.
- 11.2 This clause applies if and only to the extent to which the Initial Developer Ocean Drive Signal Ready Intersection Work carries out Access Road Work under clause 10.3 on Other Landowner Land or a Landowner otherwise lawfully carries out Access Road Work on Other Landowner Land.
- 11.3 The Initial Developer or Landowner is not to enter Other Landowner Land for the purpose of carrying out Access Road Work unless:
- 11.3.1 it has first notified the Other Landowner in writing of the Tendered Cost of the Work in so far as it relates to that land and has provided such additional information that may be reasonably required by the Other Landowner to consider the Tendered Cost, and
 - 11.3.2 the Other Landowner has notified the Initial Developer or Landowner in writing that it consents to that Work being carried out.
- 11.4 For the purposes of clause 11.3.2:
- 11.4.1 the Other Landowner is not to unreasonably withhold its consent, and
 - 11.4.2 if the Other Landowner fails to give consent within 28 days of the date of the notification referred to in clause 11.3.1, a Dispute is taken to have arisen under this Deed.
- 11.5 Upon completion of Access Road Work by the Initial Developer or Landowner on Other Landowner Land in accordance with this Deed, the Initial Developer or Landowner is to notify the Other Landowner in writing of the actual Cost it incurred in carrying out the Work on that land in respect of the matters covered by the Tendered Cost.
- 11.6 Clause 33 applies if the Other Landowner disputes the actual Cost notified by the Initial Developer or Landowner to the Other Landowner under clause 11.5.
- 11.7 The Other Landowner is not to apply for, or cause, suffer or permit an application to be made for, or procure the Issuing of, a Subdivision Certificate relating to Development on its own Landowner Land unless the Council has been provided with written evidence, signed by the Initial Developer or the Landowner, and the Other Landowner, evidencing that the Other Landowner has reimbursed, or has agreed to reimburse, the Initial Developer or the Landowner for the actual Cost incurred by them of carrying out the relevant Work on the Other Landowner Landowner Land.

12 Roads Contribution

- 12.1 Subject to clause 12.2, the Landowner is to pay the Roads Contribution for the Development or each Stage at the following times:
- 12.1.1 if the Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage authorising the creation of a Final Lot,

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- 12.1.2 if the Stage does not involve subdivision but requires the issuing of a construction certificate – before the issuing of the first Construction Certificate for the Stage,
- 12.1.3 in any other case – before the Physical Commencement of the Stage unless otherwise determined by the Council acting reasonably.
- 12.2 The Roads Contribution payable by the Initial Developer Ocean Drive Signal Ready Intersection Work under clause 12.1 is to be reduced by the Roads Contribution Reduction agreed to by the Council and notified to the Initial Developer Ocean Drive Signal Ready Intersection Work under clause 10.5.
- 12.3 Clause 12.2 only applies if the Ocean Drive Signal Ready Intersection Work has been completed and the Landowner Land on which the Work was carried out has been dedicated to the Council in accordance with this Deed.
- 12.4 If, under clause 12.2, the Roads Contribution is not fully offset by the Roads Contribution Reduction, the Council is to pay to the Landowner from Roads Contributions received by it from time to time the remaining amount necessary to fully offset the Roads Contribution.
- 12.5 Clause 12.4 only applies to Roads Contributions received by the Council:
 - 12.5.1 after the Roads Contribution Reduction is determined,
 - 12.5.2 the expenditure of which by the Council is not otherwise committed by the Council.

Part 3 – Sewerage Services Work and Sewerage Service Contribution

13 Restrictions on carrying out certain Development until Sewerage Services Work completed

- 13.1 The Sewerage Services Work Pump Station is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development authorising the creation of a Final Lot other than:
 - 13.1.1 Stage 1 SVF, or
 - 13.1.2 Development anywhere on the Seawide Land in aggregate of not more than 70 Seawide Equivalent Lots.
- 13.2 The Sewerage Services Work Rising Main is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development authorising the creation of a Final Lot other than Development anywhere on the Seawide Land in aggregate of not more than 70 Seawide Equivalent Lots.

14 Carrying out of Sewerage Services Work

- 14.1 A Landowner is the Initial Developer Sewerage Services Work and is to carry out that Work in accordance with this Deed if it is the first Landowner to give notice in writing to the other Landowners and the Council to that effect.

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- 14.2 The Landowner referred to in clause 14.1 remains the Initial Developer:
 - 14.2.1 while ever the notice referred to in clause 14.1 is not withdrawn by a further notice in writing to the other Landowners and the Council at any time before the Physical Commencement of that Work, or
 - 14.2.2 once Physical Commencement of that Work occurs.
- 14.3 Before the Physical Commencement of any Work required to be carried out under clause 14.1, the Initial Developer is to:
 - 14.3.1 submit detailed design plans of the Work to the Council for written approval by the Council, and
 - 14.3.2 after having received such approval, notify to the Council the Tendered Cost of the Work.
- 14.4 After receiving notification under 14.3.2, the Council is to notify the Initial Developer in writing of the Sewerage Services Work Cost.
- 14.5 If the Council does not agree to the Tendered Cost notified to it under clause 14.3.2 or does not notify the Developer of the Sewerage Services Work Cost under clause 14.4 within a reasonable time, a Dispute is taken to have arisen and clauses 33 and 34 apply.
- 14.6 If:
 - 14.6.1 access is required to enable the Initial Developer Sewerage Services Work Pump Station to carry out the Sewerage Services Work Pump Station, and
 - 14.6.2 the Access Road Work has not been completed or that Work does not provide sufficient access to enable the carrying out of the Sewerage Services Work Pump Station,
 then,
 - 14.6.3 the Initial Developer Sewerage Services Work Pump Station is to construct so much of an access way that is sufficient to enable it to carry out the Sewerage Services Work Pump Station.
- 14.7 The access way referred to in clause 14.6.3 is to be constructed in the location of an Access Road to a standard to be agreed between the Parties.
- 14.8 For the avoidance of doubt, the access way referred to in clause 14.6.3 is not an Access Road, the construction of that access way is not an Access Road Work and nothing in this clause 14 affects anything in Part 2 of this Deed.
- 14.9 If a gravity sewerage reticulation system is required to connect the land owned by the Initial Developer Sewerage Services Work Pump Station to the Sewerage Services Work Pump Station, then the Initial Developer is to construct such a gravity sewerage reticulation system to a standard agreed to by the Parties.

15 Sewerage Services Contribution

- 15.1 The Landowner is to pay the Sewerage Services Contribution for the Development or each Stage at the following times:
 - 15.1.1 if the Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage authorising the creation of a Final Lot,

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- 15.1.2 if the Stage does not involve subdivision but requires the issuing of a Construction Certificate – before the issuing of the first Construction Certificate for the Stage,
- 15.1.3 in any other case – before the Physical Commencement of the Stage unless otherwise determined by the Council acting reasonably.
- 15.2 Notwithstanding clause 15.1, if the Landowner:
 - 15.2.1 is SVF, the Sewerage Services Contribution otherwise required to be paid is to be reduced by the SVF Sewerage Services Work Reduction Amount,
 - 15.2.2 is Catarina Village or the Developer, the Sewerage Services Contribution otherwise required to be paid is to be reduced by the Catarina Village Sewerage Services Work Reduction Amount.
- 15.3 If the sum of the Catarina Village Sewerage Services Work Reduction Amount and the SVF Sewerage Services Work Reduction Amount exceeds the Sewerage Services Work Cost, those amounts are to be reduced in proportion to the number of ETs in the Development to which they relate so that the sum of those amounts does not exceed that Cost.
- 15.4 In addition to the amount otherwise payable under clauses 15.1 and 15.2, the Landowner, if it is not the Initial Developer Sewerage Services Work Pump Station, is to pay the Sewerage Services Work Cost Landowner Share in relation to the Sewerage Services Work Pump Station:
 - 15.4.1 if the Landowner is SVF, before the issuing of any Subdivision Certificate that authorises the creation of any Final Lot that are to be connected to the Sewerage Services Work Pump Station,
 - 15.4.2 if the Landowner is Seawide, before the issuing of the Subdivision Certificate that authorises the creation of 71st Seawide Equivalent Lot,
 - 15.4.3 if the Landowner is Catarina Village or the Developer, before the issuing of the Subdivision Certificate that authorises the creation of any Final Lot on the Catarina Village Land after the commencement of construction work relating to the Sewerage Services Work Pump Station.
- 15.5 In addition to the amount otherwise payable under clauses 15.1 and 15.2, the Landowner, if it is not the Initial Developer Sewerage Services Work Rising Main, is to pay the Sewerage Services Work Cost Landowner Share in relation to the Sewerage Services Work Rising Main:
 - 15.5.1 if the Landowner is SVF, before the issuing of any Subdivision Certificate that authorises the creation of any Final Lots that are to be connected to the Sewerage Services Work Rising Main,
 - 15.5.2 if the Landowner is Seawide, before the issuing of the Subdivision Certificate that authorises the creation of 71st Seawide Equivalent Lot,
 - 15.5.3 if the Landowner is Catarina Village or the Developer, before the issuing of the Subdivision Certificate that authorises the creation of any Final Lot on the Catarina Village Land after the commencement of construction work relating to the Sewerage Services Work Rising Main.
- 15.6 As soon as practicable after the Council receives a Sewerage Services Work Cost Landowner Share payment under clause 15.4 or 15.5, the Council is to

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pay an equivalent amount to the Initial Developer for the Work in respect of which that payment was made to the Council.

- 15.7 Clause 15.6 only applies if the Sewerage Services Work concerned has been completed and:
- 15.7.1 the Landowner Land on which the Sewerage Services Work Pump Station was carried out has been dedicated to the Council in accordance with this Deed, and
 - 15.7.2 the Landowner Land on which Sewerage Services Work Rising Main was carried out has been dedicated to the Council in accordance with this Deed or included in an easement in favour of and to the satisfaction of the Council.

16 Sewerage Services Relocation Work Reduction Amount

- 16.1 The amount of Sewerage Services Contribution required to be paid by the Initial Developer Ocean Drive Signal Ready Intersection Work calculated under clause 15 is to be reduced by the Sewerage Services Relocation Work Reduction Amount as notified by the Council to the Landowner.
- 16.2 Clause 16.1 only applies if the Sewerage Services Relocation Work has been completed and the Landowner Land on which the Work was carried out has been dedicated to the Council in accordance with this Deed

Part 4 –Water Supply Contribution

17 Water Supply Contributions

- 17.1 Subject to clause 17.2, the Landowner is to pay the Water Supply Contribution for the Development or each Stage at the following times:
 - 17.1.1 if the Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage authorising the creation of a Final Lot,
 - 17.1.2 if the Stage does not involve subdivision but requires the issuing of a Construction Certificate – before the issuing of the first Construction Certificate for the Stage.
 - 17.1.3 in any other case – before the Physical Commencement of the Stage unless otherwise determined by the Council acting reasonably.
- 17.2 If the Landowner is the Initial Developer Ocean Drive Signal Ready Intersection Work, the Water Supply Contribution payable under clause 17.1 is to be reduced by the Water Supply Services Relocation Work Reduction Amount as notified by the Council to the Landowner.
- 17.3 Clause 17.2 only applies if the Water Supply Services Relocation Work has been completed and the Landowner Land on which the Work was carried out has been dedicated to the Council in accordance with this Deed.

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Part 5 – Development contributions generally

18 Provision of Development Contributions

- 18.1 The Landowner is to make Development Contributions to the Council in accordance with Parts 2,3 and 4, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 18.2 The Council is to apply each Development Contribution made by the Landowner under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

19 Payment of monetary Development Contributions

- 19.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 19.2 The payment to the Council of a monetary Development Contribution under this Deed may be deferred:
 - 19.2.1 in accordance with a policy adopted by the Council and in force from time to time governing the deferred payment of monetary contributions payable to the Council under conditions of development consent imposed under s94 of the Act, or
 - 19.2.2 otherwise by written agreement with the Council.

20 Dedication of land

- 20.1 A Landowner on whose Landowner Land Road Work, Access Road Work or Sewerage Services Work is carried out under this Deed must do all things reasonably necessary to cause the land on which the Work has been carried out to be dedicated to the Council not later than 28 days after the Work is completed in accordance with this Deed.
- 20.2 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 20.2.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - 20.2.2 the Council is given:
 - (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Landowner as transferor that is effective as the case requires to:
 - (i) transfer the title to the land to the Council,

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- (ii) impose a relevant restriction as to the user of the land, public positive covenant or easement in favour to the Council or its nominee,
 - (iii) when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the instrument of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the instrument.
- 20.3 The Landowner is to do all things reasonably necessary to enable registration of the instrument to occur.
- 20.4 The Landowner is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 20.5 If, having used all reasonable endeavours, the Landowner cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 20.6 Despite any other provision of this Deed, if the Landowner is required to dedicate land to the Council on which the Landowner is also required to carry out a Work under this Deed, the Landowner is to comply with clause 20.2.2 not later than 7 days after the Work is completed for the purposes of this Deed.

21 Carrying out of Work

- 21.1 The Landowner Parties are to co-operate with each other and co-ordinate the carrying out of Work under this Deed to facilitate the orderly, timely and efficient carrying out of the Development on all Landowner Land.
- 21.2 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Landowner under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 21.3 The Council is not to specify or approve any design or specification for any Work under this Deed unless it is reasonably satisfied that the design or specification reasonably promotes the objective of facilitating the orderly, timely and efficient carrying out of Development on all Landowner Land.
- 21.4 The Landowner, at its own Cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Landowner is required to carry out under this Deed.

22 Variation to Work

- 22.1 The design or specification of any Work that is required to be carried out by the Landowner under this Deed may be varied by agreement in writing

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between the Parties, acting reasonably, without the necessity for an amendment to this Deed

- 22.2 Without limiting clause 22.1, the Landowner may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 22.3 The Council is not to unreasonably delay or withhold its approval to any request made by the Landowner under clause 22.2.
- 22.4 The Council, acting reasonably, may from time to time give a written direction to the Landowner requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 22.5 The Landowner is to comply promptly with a direction referred to in clause 22.4 at its own Cost.

23 Access by Landowners to Landowner Land

- 23.1 The Landowners authorise each other to enter, occupy and use only so much of their Landowner Land as is reasonably necessary to enable them to perform their obligations under this Deed subject to such reasonable conditions as they may stipulate by notice in writing.
- 23.2 Nothing in this Deed creates or gives a Landowner any estate or interest in Landowner Land not owned by them.

24 Access to Council Land by Landowner

- 24.1 The Council authorises the Landowner to enter, occupy and use the Council Land for the purpose of performing its obligations under this Deed subject to such reasonable conditions as the Council may stipulate by notice in writing.
- 24.2 The Council is to permit the Landowner, upon receiving reasonable prior notice from the Landowner, to enter any other Council owned or controlled land in order to enable the Landowner to properly perform its obligations under this Deed subject to such reasonable conditions as the Council may stipulate by notice in writing.
- 24.3 Nothing in this Deed creates or gives the Landowner any estate or interest in any land owned by the Council.

25 Access to Landowner Land by Council

- 25.1 The Council may enter any Landowner Land on which Work is being carried out under this Deed in order to inspect, examine or test the Work..
- 25.2 The Council is to give a Landowner prior reasonable notice before it enters land under clause 25.1.

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26 Council's obligations relating to Work

- 26.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Landowner of its obligations under this Deed.

27 Protection of people, property & utilities

- 27.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 27.1.1 all necessary measures are taken to protect people and property,
 - 27.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 27.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 27.2 Without limiting clause 27.1, the Landowner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

28 Repair of damage

- 28.1 The Landowner is to maintain any Work required to be carried out by the Landowner under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 28.2 The Landowner is to carry out its obligation under clause 28.1 at its own Cost and to the satisfaction of the Council.

29 Completion of Work

- 29.1 The Landowner is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 29.2 The Council is to inspect the Work the subject of the notice referred to in clause 29.1 within 14 days of the date specified in the notice for completion of the Work.
- 29.3 Work required to be carried out by the Landowner under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Landowner to that effect.
- 29.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 29.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 29.5 Before the Council gives the Landowner a notice referred to in clause 29.3, it may give the Landowner a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 29.6 The Landowner, at its own Cost, is to promptly comply with a direction referred to in clause 29.5.

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30 Rectification of defects

- 30.1 The Council may give the Landowner a Rectification Notice during the Defects Liability Period.
- 30.2 The Landowner, at its own Cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 30.3 The Council is to do such things as are reasonably necessary to enable the Landowner to comply with a Rectification Notice that has been given to it under clause 30.1

31 Works-As-Executed-Plan

- 31.1 No later than 60 days after Work is completed for the purposes of this Deed, the Landowner is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 31.2 The Landowner, being the copyright owner in the plan referred to in clause 31.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

32 Removal of Equipment

- 32.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Landowner, without delay, is to:
 - 32.1.1 remove any Equipment from the land and make good any damage or disturbance to the land as a result of that removal, and
 - 32.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 6 – Dispute Resolution

33 Dispute resolution – expert determination

- 33.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 33.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 33.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 33.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 33.3 If a notice is given under clause 33.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

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- 33.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 33.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 33.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 33.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

34 Dispute Resolution - mediation

- 34.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 33 applies.
- 34.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 34.3 If a notice is given under clause 34.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 34.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 34.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 34.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 34.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 - Enforcement

35 Security for performance of obligations

- 35.1 This clause applies to the construction of following Work:
 - 35.1.1 the Ocean Drive Signal Ready Intersection Work,
 - 35.1.2 any Work required to be carried out on Council Land under this Deed.
- 35.2 The Landowner is not to carry out any Work to which this clause applies unless, before the commencement of the Work, the Landowner provides the Council with Security to secure the performance of the Landowner's obligations relating to the Work in accordance with an agreement between the Council and the Landowner relating to the provision of Security or, failing such

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agreement, on such terms and conditions required by the Council acting reasonably.

- 35.3 For the purposes of clause 35.2, the Parties are to have regard to any policy or practice of the Council, current at the time the Security is provided, relating to the provision of security to the Council for the construction of public infrastructure by Landowners.
- 35.4 The Council is to release and return the Security or any unused part of it to the Landowner within 14 days of compliance by the Landowner of its obligations under this Deed to the reasonable satisfaction of the Council.
- 35.5 The Landowner may at any time provide the Council with a replacement Security.
- 35.6 On receipt of a replacement Security, the Council is to release and return to the Landowner, as directed, the Security it holds that has been replaced.
- 35.7 The Council may call-up the Security if it reasonably considers that the Landowner has not complied with its Development Contributions obligations under this Deed.
- 35.8 However, the Council is not to call-up the Security unless it has given the Landowner not less than 30 days notice of its intention to do so and particulars of why it intends to do so, and the Landowner has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 35.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
 - 35.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 35.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 35.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's non-compliance.
- 35.10 If the Council calls-up the Security, it may, by notice in writing to the Landowner, require the Landowner to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 35.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

36 Acquisition of land required to be dedicated

- 36.1 If the Landowner does not dedicate land required to be dedicated under this Deed when it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land (or any interest of the Landowner in the land) for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 36.2 The Council is to only acquire land pursuant to this clause if it considers it reasonable to do so having regard to the circumstances surrounding the

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failure by the Landowner to dedicate the land required to be dedicated under this Deed.

- 36.3 Clause 36.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 36.4 If, as a result of the acquisition referred to in this clause, the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
- 36.5 The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 36.6 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, including without limitation:
 - 36.6.1 signing any documents or forms,
 - 36.6.2 giving land owner's consent for lodgement of any Development Application,
 - 36.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 36.6.4 paying the Council's costs arising under this clause 36.

37 Breach of obligations

- 37.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed, it may give a written notice to the Landowner:
 - 37.1.1 specifying the nature and extent of the breach,
 - 37.1.2 requiring the Landowner to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 37.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 37.2 If the Landowner fails to fully comply with a notice referred to in clause 37.1, the Council may, without further notice to the Landowner, call-up the Security provided by the Landowner under this Deed and apply it to remedy the Landowner's breach.
- 37.3 If the Landowner fails to comply with a notice given under clause 37.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Landowner and any Equipment on such land for that purpose.

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- 37.4 Any costs incurred by the Council in remedying a breach in accordance with clause 37.2 or clause 37.3 may be recovered by the Council by either or a combination of the following means:
- 37.4.1 by calling-up and applying the Security provided by the Landowner under this Deed, or
 - 37.4.2 as a debt due in a court of competent jurisdiction.
- 37.5 For the purpose of clause 37.4, the Council's costs of remedying a breach the subject of a notice given under clause 37.1 include, but are not limited to:
- 37.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 37.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 37.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 37.6 Nothing in this clause 37 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Landowner, including but not limited to seeking relief in an appropriate court.

38 Enforcement in a court of competent jurisdiction

- 38.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 38.2 For the avoidance of doubt, nothing in this Deed prevents:
- 38.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 38.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 8 – Registration & Restriction on Dealings

39 Registration of this Deed

- 39.1 The Parties agree to register this Deed on all Landowner Land for the purposes of s93H(1) of the Act.
- 39.2 Not later than 30 days after the commencement of this Deed, each Landowner is to deliver to the Council in registrable form:
- 39.2.1 an instrument requesting registration of this Deed on the title to the relevant Landowner Land duly executed by the Landowner, and
 - 39.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

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- 39.3 Each Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 39.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to each Landowner Land:
 - 39.4.1 in so far as the part of the relevant Landowner Land concerned is a Final Lot,
 - 39.4.2 in relation to any other part of the relevant Landowner Land, once the relevant Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.
- 39.5 Nothing in clause 39.4 requires the Council to take any action to remove any notation relating to this Deed from the title to any part of the Landowner Land in so far as the part concerned is a proposed Final Lot if, at the time, the relevant Landowner of that Landowner Land is in breach of any of its obligations under this Deed.

40 Restriction on dealings

- 40.1 A Landowner is not to:
 - 40.1.1 sell or transfer the Landowner Land, or any part, other than a Final Lot, or
 - 40.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed,
 to any person unless:
 - 40.1.3 the Landowner has, at no Cost to the Council, first procured the execution by the person to whom the relevant Landowner Land or part is to be sold or transferred or the Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 40.1.4 the Council has given written notice to the Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 40.1.5 the Landowner is not in breach of this Deed, and
 - 40.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 40.2 Clause 40.1 does not apply in relation to any sale or transfer of the relevant Landowner Land, or part:
 - 40.2.1 if this Deed is registered on the title to that Landowner Land at the time of the sale; or
 - 40.2.2 once the Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

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Part 9 – Indemnities & Insurance

41 Risk

- 41.1 The Landowner performs this Deed at its own risk and its own Cost.

42 Release

- 42.1 The Landowner releases the Council from any Claim it may have against the Council arising in connection with the performance of the Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

43 Indemnity

- 43.1 The Landowner indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

44 Insurance

- 44.1 The Landowner is to take out and keep current, and ensure that its contractors take out and keep current, to the satisfaction of the Council the following insurances (as relevant to the Landowner or contractor) in relation to Work required to be carried out by the Landowner under this Deed up until the time that the Work is taken to have been completed in accordance with this Deed:
- 44.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the Cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Works,
 - 44.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party,
 - 44.1.3 workers compensation insurance as required by law, and
 - 44.1.4 any other insurance required by law.
- 44.2 If a Landowner fails to comply with clause 44.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Landowner to the Council and may be recovered by the Council as it deems appropriate including:
- 44.2.1 by calling upon the Security provided by the Landowner to the Council under this Deed, or

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44.2.2 recovery as a debt due in a court of competent jurisdiction.

- 44.3 The Landowner is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in this clause 44.1.

Part 10 – Other Provisions

45 Notices

- 45.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 45.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 45.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 45.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 45.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 45.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 45.3.1 delivered, when it is left at the relevant address,
 - 45.3.2 sent by post, 2 business days after it is posted,
 - 45.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 45.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
 - 45.3.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

46 Costs

- 46.1 Each Party comprising the Landowner (other than Catarina Developments) is to pay to the Council the Council's costs not exceeding \$9,500.00 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

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- 46.2 The Landowner is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

47 Entire Deed

- 47.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 47.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

48 Further Acts

- 48.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.
- 48.2 Without limitation, clause 48.1 requires a Party to use its best endeavours to procure the execution of documents and the doing of other things by third parties.

49 Governing Law and Jurisdiction

- 49.1 This Deed is governed by the law of New South Wales.
- 49.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 49.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

50 Joint and Individual Liability and Benefits

- 50.1 Except as otherwise set out in this Deed:
- 50.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 50.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

51 No Fetter

- 51.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

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52 Illegality

- 52.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

53 Severability

- 53.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 53.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

54 Amendment

- 54.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

55 Waiver

- 55.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 55.2 A waiver by a Party is only effective if it is in writing.
- 55.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

56 GST

- 56.1 In this clause:
- Adjustment Event, Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Recipient, Supply and Tax Invoice** have the meaning given by the GST Law.
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 56.2 Subject to clause 56.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 56.3 Clause 56.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 56.4 No additional amount shall be payable by the Council under clause 56.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 56.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
 - 56.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - 56.5.2 that any amounts payable by the Parties in accordance with clause 56.2 (as limited by clause 56.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 56.6 No payment of any amount pursuant to this clause 56, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 56.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a Cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant Cost, expense or other liability.
- 56.8 If an Adjustment Event arises in respect of a Taxable Supply made by a Supplier under this Deed, the GST Amount payable under clause 54.2 will be recalculated to reflect the Adjustment Event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.
- 56.9 This clause continues to apply after expiration or termination of this Deed.

57 Explanatory Note

- 57.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

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- 57.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

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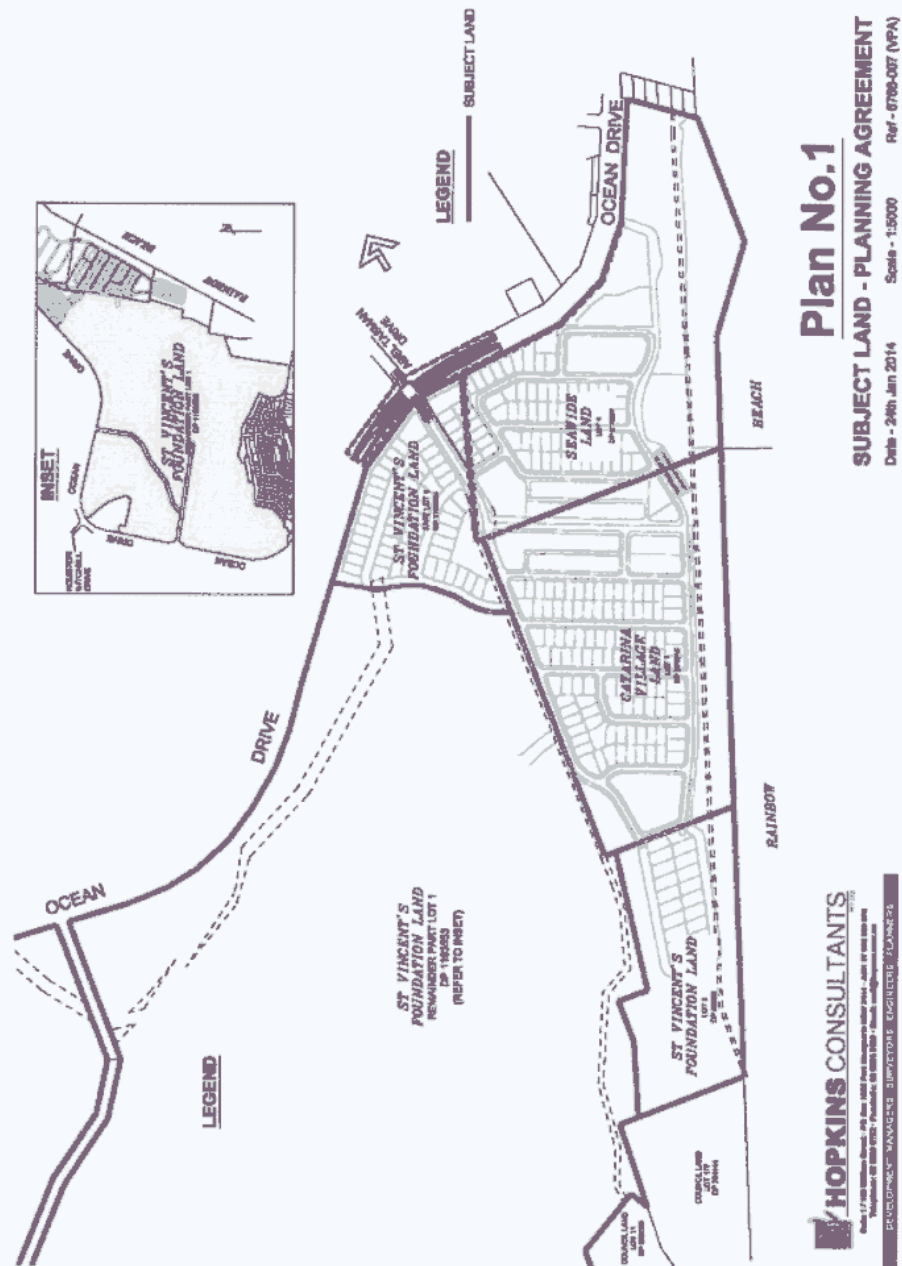


Schedule 1

(Clause 1.1)

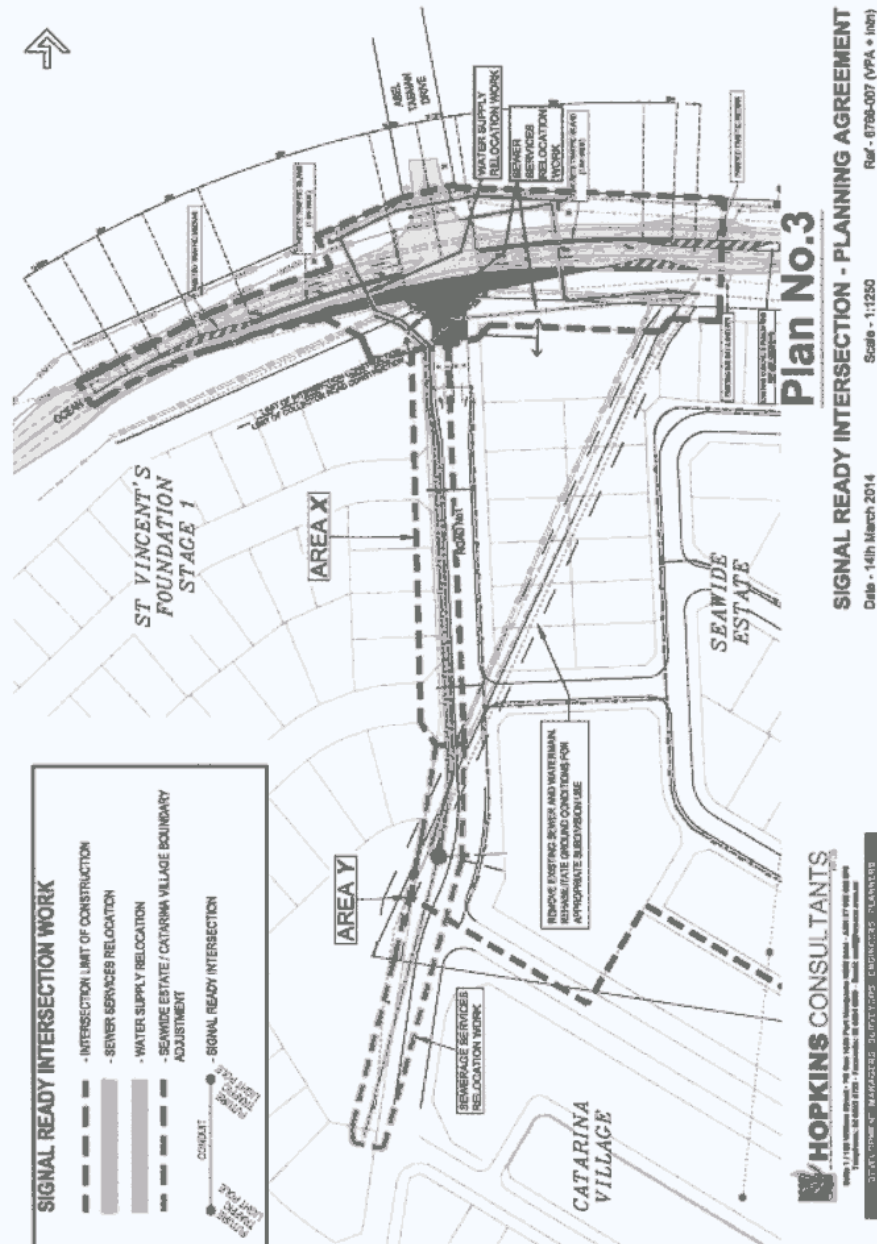
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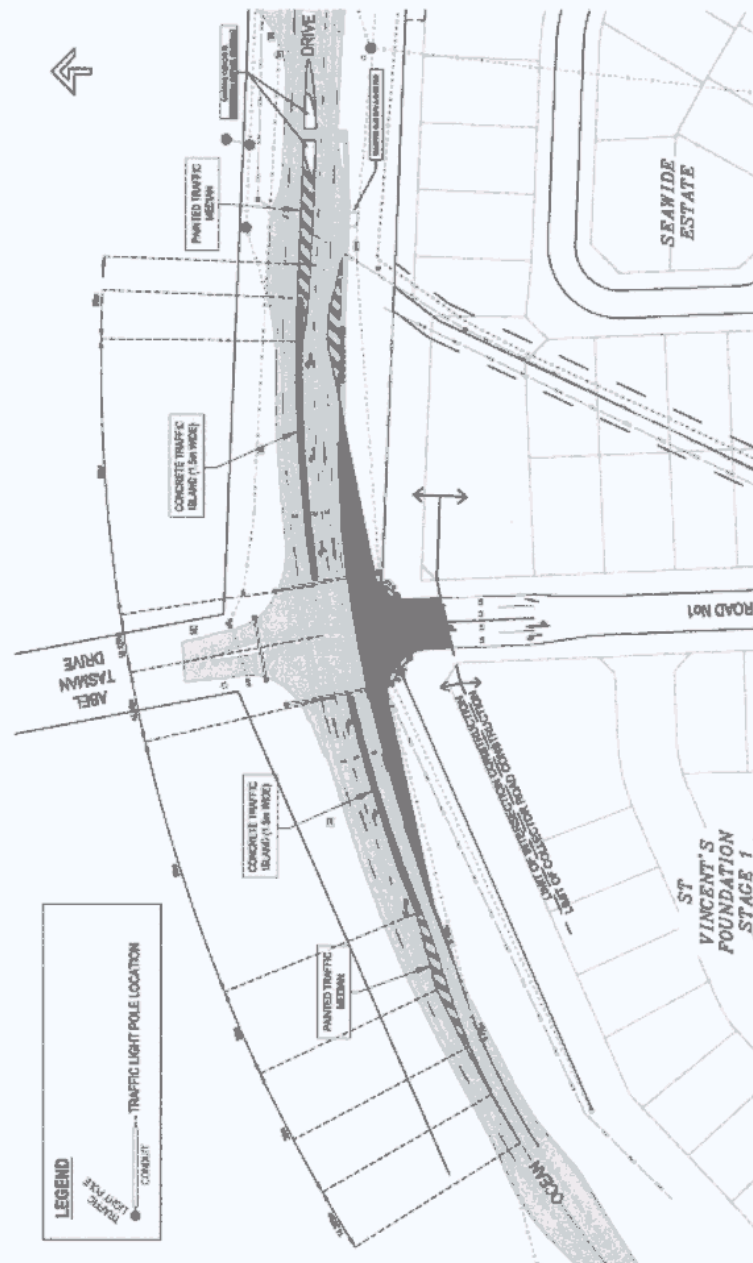
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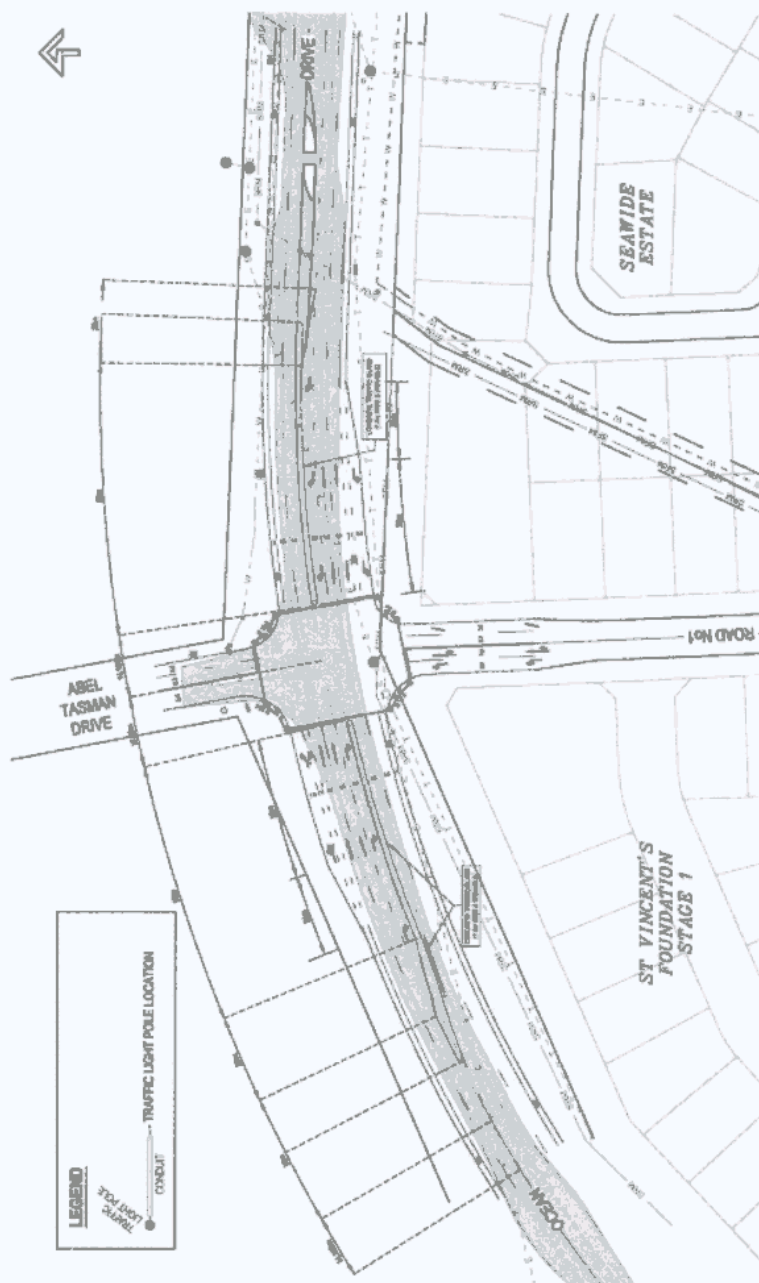


Plan No.4

SIGNALISED - SINGLE LANE - PLANNING AGREEMENT

HOPKINS CONSULTANTS

Baker 1110 Wilshire Blvd., P.O. Box 9867, North Hollywood, CA 91603 • 800-345-1111
Telephone: 818-709-0779 • Fax: 818-709-0889 • E-mail: info@hopkins.com

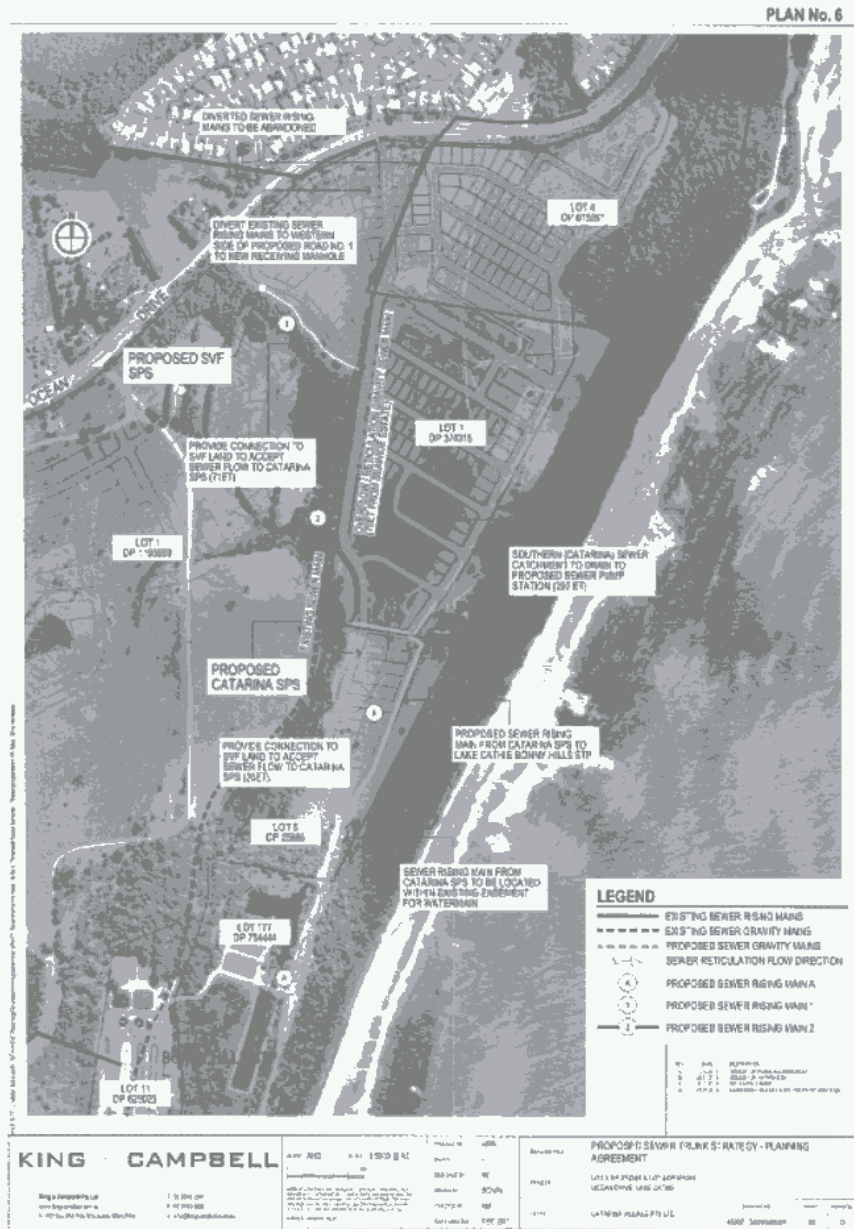


Plan No.5

SIGNALISED - DUAL LANE - PLANNING AGREEMENT

HOPKINS CONSULTANTS
217-762-1100
11100 Lakeside Blvd., Ste. 1000, South Barrington, IL 60015 • (708) 257-6600 FAX
Telephones: 10 Lines (708) • Telefax: 10 Lines (708) • Email: info@hopkins-consultants.com

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Execution

Executed as a Deed


Dated: 17/02/15

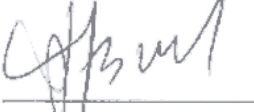
Executed on behalf of the Council

X 
General Manager


X 
Witness

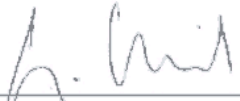
Executed on behalf of Catarina Village in accordance with s127(1) of the Corporations Act (Cth) 2001


Name/Position DAMIAN OBEID | DIRECTOR


Name/Position PAUL OBEID | DIRECTOR

Executed on behalf of Catarina Developments in accordance with s127(1) of the Corporations Act (Cth) 2001


Name/Position DAMIAN OBEID | DIRECTOR


Name/Position GERARD OBEID | SECRETARY

Ocean Drive, Lake Cathie Planning Agreement
Port Macquarie Hastings Council
Catarina Developments, Catarina Village, Seawide, SVF



Executed on behalf of Seawide in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Executed on behalf of SVF in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Ocean Drive, Lake Cathie Planning Agreement
Port Macquarie Hastings Council
Catarina Developments, Catarina Village, Seawide, SVF



Appendix

(Clause 56)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie Hastings Council ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

and

Catarina Village Pty Limited ABN 80 003 509 822 of PO Box 1456, Macquarie Centre NSW 2113 (**Catarina Village**)

and

Catarina Developments Pty Limited ABN 93 167 644 706 of PO Box 1456, Macquarie Centre NSW 2113 (**Catarina Developments**)

and

Seawide Pty Limited ABN 18 063 316 736 of PO Box 360 Port Macquarie NSW 2444 (**Seawide**)

and

St Vincent's Foundation Pty Limited ABN 11 083 730 778 of PO Box 1 Lismore NSW 2480 (**SVF**)

Description of the Land to which the Draft Planning Agreement Applies

Council Land being Lot 177 DP 754444 and Lot 11 DP 629025.

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Catarina Developments, Catarina Village, Seawide, SVF



Landowner Land being:

- Catarina Village Land, Lot 1 DP 374315 as shown on Plan No. 1 or other land shown as 'Catarina Village' following a boundary adjustment between Lot 1 DP374315 and Lot 4 DP 615261 as shown on Plan No. 2.
- Seawide Land means Lot 4 DP 615261 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between Lot 1 DP374315 and Lot 4 DP 615261 and/or between Lot 1 DP1193553 and Lot 4 DP615261.
- SVF Land means Lot 1 DP1193553, Lot 5 DP 25886, and Lots 1, 2, 3 and 4 DP 1150758 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between Lot 1 DP1193553 and Lot 4 DP615261.

Description of Proposed Development

The development of the Landowner Land generally in accordance with the subdivision layouts shown on Plan 2 and development for urban purposes on that land.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide for the coordination of Water Supply and Sewerage services and the provision of an intersection on Ocean Drive to serve the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Landowner for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Landowner of Development on the Land
- does not exclude the application of s94 and s94A of the Act to the Development.
- requires either monetary Development Contributions for Road works, Sewerage Services and Water Supply
- is to be registered on the title to the Land,
- imposes restrictions on the Landowner transferring the Land or part of the Land or assigning an interest under the agreement.

Ocean Drive, Lake Cathie Planning Agreement
Port Macquarie Hastings Council
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- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv), (v) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing water sewerage and road facilities for the community,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

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Port Macquarie Hastings Council
Catarina Developments, Catarina Village, Seawide, SVF




***All Planning Authorities – Whether the Draft Planning Agreement
Conforms with the Authority's Capital Works Program***

The Draft Planning Agreement requires the Landowner to carry out specified water supply, sewerage and road works. The works are not included in the Council's relevant current capital works program. However, the Council's Management Plan identifies these types of works in the relevant capital works program. Accordingly, the provision of these Works under the Agreement is consistent and conforms with the capital works envisioned by the Council's Management Plan.

***All Planning Authorities – Whether the Draft Planning Agreement
specifies that certain requirements must be complied with before a
construction certificate, occupation certificate or subdivision
certificate is issued***

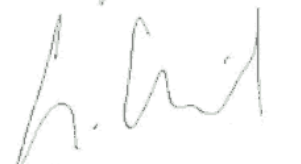
This Draft Planning agreement contains requirements that must be complied with before a construction certificate or subdivision certificate is issued.



DAMIAN OBEID



PAUL OBEID



GERARD OBEID

X  General Manager

PORT MACQUARIE-
HASTINGS COUNCIL

PO Box 84
Port Macquarie
NSW Australia 2444
DX 7415

council@pmhc.nsw.gov.au
www.pmhc.nsw.gov.au

ABN: 11 236 901 601

19 December 2017



Our ref: 2017/336
PN: 66531, 66532

Land Dynamics Australia
PO Box 2459
PORT MACQUARIE NSW 2444

Dear Sir/Madam

Notice to applicant of determination of a development application under Section 81(1) (a) of the Environmental Planning and Assessment Act 1979 and Section 99 of the Local Government Act 1993

Subject Development	Boundary Adjustment between two existing Torrens title lots, Residential Flat Building and Café with associated Strata Title Subdivision including Clause 4.6 objection to Clause 4.3 (Height of Buildings) of the Port Macquarie-Hastings Local Environmental Plan 2011
Property Description	LOT: 167 DP: 1229250, LOT: 229 DP: 1235792, Seaside Drive and Surfers Drive LAKE CATHIE
Applicant	Land Dynamics Australia

Notice is hereby given of the determination by the consent authority of your development application by granting of consent subject to the conditions detailed on the schedule attached to this notice.

Approvals under the Local Government Act, 1993

Local Government Act 1993 approvals granted under Section 78A of the Environmental Planning & Assessment Act 1979 are as follows: Nil

Notes to this consent

1. The date of determination is 13 December 2017.
2. The date from which this consent operates is 19 December 2017 and will lapse unless building, engineering or construction work or a use related to this consent is physically commenced within five (5) years of this date.
3. The period for which this consent can operate may be limited by conditions of this consent.

Yours sincerely

Ben Roberts
Development Assessment Planner

PORT MACQUARIE OFFICE
Corner Lord & Burrawan Streets
Telephone (02) 6581 8111
Facsimile (02) 6581 8123

WAUCHOPE OFFICE
High Street
Telephone (02) 6585 1922

LAURIETON OFFICE
9 Laurie Street
Telephone (02) 6559 9958

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SCHEDULE OF CONDITIONS ATTACHED TO THIS CONSENT

The conditions of consent referred to in the Notice of Determination for DA No 2017/336 are as follows:

PRESCRIBED CONDITIONS

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

A – GENERAL MATTERS

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

Plan / Supporting Document	Reference	Prepared by	Date
Cover sheet - identifying all plans	DA0.01	marchesepartners	13 September 2017
Landscape concept plan	Drawing 1	Land Dynamics Australia	17 October 2017
BASIX certificate	816923M	Efficient Living	5 May 2017
Traffic Noise Intrusion report	M17607.01A	Matrix Thornton	20 April 2017
Proposed services plan	Drawing 1	Land Dynamics Australia	17 October 2017
Draft plan of subdivision	5084	Graham McLeod Burns	5 February 2016

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

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

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

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- (3) (A003) The proponent shall submit an application for a Subdivision Certificate relating to the approved boundary adjustment for Council certification with all relevant documentation.
- (4) (A005) This consent allows the strata-subdivision of the units, subject to the submission of an application for a Strata Certificate.
- (5) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.
- (6) (A009) The development site is to be managed for the entirety of work in the following manner:
 1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 2. Appropriate dust control measures;
 3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
 4. Building waste is to be managed via an appropriate receptacle;
 5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
 6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidaysThe builder to be responsible to instruct and control his sub-contractors regarding the hours of work.
- (7) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.
- (8) (A014) This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.
- (9) (A017) A separate development application for any proposed advertising signs (other than signs which are exempt development or approved under this consent) must be submitted to and approved by council prior to the erection or display of any such signs.

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- (10) (A029) The provision, at no cost to Council, of concrete foot paving for the Seaside Drive and Whitewater Terrace frontages. A 1.2 metre wide footpath is required with design details in accordance with AUSPEC and Council Standard drawing ASD series. The design plans must be approved by Council pursuant to Section 138 of the Roads Act.
- (11) (A030) The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's current AUSPEC Specifications and Standards. All works must be approved by Council pursuant to Section 138 of the Roads Act.
- (12) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:
 - a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
 - c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

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

- (13) (A057) The applicant is to ensure the proposed development will drain to the existing point of connection to Council's sewerage system.

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- (14) (A062) The applicant shall submit to Port Macquarie-Hastings Council plans for the management of trade waste including pre treatment facilities to the sewerage authority for approval pursuant to Section 68 of the Local Government Act. Upon approval the proponent shall enter into a written "Trade Waste Agreement" with Council prior to discharging wastes.
- (15) (A195) A separate Development Application shall be lodged with Council for the first use and fitout of the café tenancy.
- (16) (A196) The existing potable and reclaimed water mains must be extended down Road 7 and Road 9 to the development lot's boundaries. Water main sizes are to be determined by PMHC's Water Supply Section.
- (17) (A197) Each proposed unit is required to be individually metered for water supply.
- (18) (A198) The development must discharge all sewage to a single direct connection to an existing or proposed sewer manhole. Any disused sewer junctions must be capped at the main.

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the building Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
 - Position and depth of the sewer (including junction)
 - Site excavation works adjacent to the Road Reserve
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (B003) Submission to the Principal Certifying Authority prior to the issue of a Construction Certificate detailed design plans for the following works associated with the developments. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:
 - 1. Sewerage reticulation.
 - 2. Water supply reticulation.
 - 3. Water supply plans shall include hydraulic plans for internal water supply services and associated works in accordance with AS 3500, Plumbing Code of Australia and Port Macquarie-Hastings Council Policies.
 - 4. Retaining walls.

5. Stormwater systems.
 6. Erosion & Sedimentation controls.
 7. Location of all existing and proposed utility services including:
 - a. Conduits for electricity supply and communication services (including fibre optic cable).
 - b. Water supply
 - c. Sewerage
 - d. Stormwater
 8. Landscaping.
 9. Traffic management control plan
 10. Detailed driveway profile in accordance with Australian Standard 2890, AUSPEC D1, and ASD, Port Macquarie-Hastings Council current version.
- (3) (B006) An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the building Construction Certificate.
- Such works include, but not be limited to:
- Civil works
 - Traffic management
 - Work zone areas
 - Hoardings
 - Concrete foot paving (1.2m width)
 - Footway and gutter crossing
 - Functional vehicular access
- (4) (B010) Payment to Council, prior to the issue of the Construction Certificate of the Section 94 contributions set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with the provisions of the following plans:
- Hastings S94 Administration Building Contributions Plan
 - Hastings Administration Levy Contributions Plan
 - Community Cultural and Emergency Services Contributions Plan 2005
 - Hastings S94 Major Roads Contributions Plan
 - Hastings S94 Open Space Contributions Plan
 - Section 94 Local Roads Contributions Plan - Area 13 (Thrumster), Area 14 (Lake Cathie/Bonny Hills) and Area 15 (Camden Haven).

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

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

- (5) (B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to the issue of a Construction Certificate, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
- augmentation of the local area water supply
 - augmentation of the local area sewerage system
- (6) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (7) (B034) Prior to release of the Roads Act (s138) application the submission of details to Council for the disposal of any spoil gained from the site and/or details of the source of fill, heavy construction materials and proposed routes to and from the site, including, but not limited to:
- The pavement condition of the route/s proposed (excluding collector, sub-arterial and arterial roads) for the haulage of fill material to the site and/or haulage of excess material from the site. The condition report shall include photographs of the existing pavement and pavement deflection test results taken in the travel lanes;
 - Recommended load limits for haulage vehicles and;
 - A procedure for monitoring the condition of the pavement during the haulage;
 - Bond to guarantee public infrastructure is not damaged as a result of construction activity,
- and;

Council shall determine the need for and extent of any rectification work on the haulage route/s considered attributable by the haulage of materials to and/or from the site.

- (8) (B038) Footings and/or concrete slabs of buildings adjacent to sewer lines or stormwater easements are to be designed so that no loads are imposed on the infrastructure. Detailed drawings and specifications prepared by a practising chartered professional civil and/or structural engineer are to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (9) (B042) A certificate from an approved practising chartered professional civil and/or structural engineer certifying the structural adequacy of the proposed permanent and temporary retaining walls, and any other structures within or supporting a public road reserve is to be submitted to Port Macquarie-Hastings Council prior to the release of the Construction Certificate.
- (10) (B053) The design of the carpark and accesses is to be in accordance with Australian Standard 2890 (including AS 2890.1, AS 2890.2 and AS 2890.6). Certification of the design by a suitably qualified consultant is to be provided to the Principal Certifying Authority prior to release of the Construction Certificate.
- (11) (B054) Where a vehicular access is provided, details (in the form of a longitudinal section) must be submitted to and approved by Port Macquarie-Hastings Council prior to release of the Construction Certificate demonstrating how the access will comply with Council's adopted AUSPEC Design and Construction Guidelines.
- (12) (B063) Prior to release of the Construction Certificate submission of a detailed landscape plan to the Principal Certifying Authority. The landscape plan is to have regard to the requirements of the State Environmental Planning Policy 65 - *Apartment Design Guidelines, including 4P - 2*.
- (13) (B071) Prior to the issue of any Construction Certificate, the provision of services to the land are to be approved by the relevant Water Authority and relevant payments received.
- (14) (B085) The location of electricity substations are to be clearly illustrated on the Construction Certificate plans. All substations are to remain on private property unless otherwise agreed to by Port Macquarie-Hastings Council.
- (15) (B195) Prior to the issuing of a Construction Certificate details shall be submitted to the Principal Certifying Authority that the construction of the building shall be in accordance with the Construction Categories set out under Table 5-3 and Figure 5-1 of the Matrix Thornton "Residential Development Lake Cathie Traffic Noise Intrusion" Report number M17607.01A dated 20 April 2017. It shall be acknowledged that the large balcony windows in the North-West corner shall be considered to be on the

western façade for noise mitigation purposes and the North Façade shall have smaller windows in the centre of the façade.

- (16) (B197) Prior to any Construction Certificate for building works, a Construction Certificate for subdivision works under DA 2012/381 shall be approved for the full length construction of Road 7 (Ocean Blue Boulevard) and Road 9 (Whitewater Terrace) from Seaside Drive to Surfers Drive (inclusive).

- (17) (B198) The concept stormwater design is inconsistent with the DA 2012/381 approved stormwater scheme and will result in additional runoff detention and/or quality treatment being required for the eastern catchment.

Prior to any approval under Section 68 of the Local Government Act, additional details shall be provided to the satisfaction of Council's Stormwater Engineer demonstrating that:

- (1) No additional end of line publically owned detention and/or water quality treatment is required within the catchment; and
- (2) That catchment hydrology (including land areas draining to pits, as well as overland flows during extreme events) remains the same as previously approved.

Where additional land is to be drained to the end of line basin constructed as part of DA 2012/381, compliance with the above shall be demonstrated via the provision of:

- a) Adequate detention and water quality treatment within the site of the Residential Flat Building (and not within the public road reserve); AND
 - b) Adequate additional detention and water quality treatment within the next future Hilltop Village DA to offset the impact of this development (i.e that an additional and un-quantified volume of stormwater is being discharged to the existing end of line detention/water quality basin), including the provision of a restriction as to user on the title of the residue lot. The restriction as to user shall both advise potential purchasers of this requirement and shall prescribe the specific discharge criteria to be achieved with any further development to ensure that stormwater discharge from the precinct to the existing basin meets the original design parameters as defined within DA 2012/381. The restriction shall be registered on the title of the lot prior to or concurrently with approval of the Subdivision Certificate for the boundary adjustment.
- (18) (B199) If augmentation of public water and/or sewer assets is required, prior to any Construction Certificate for subdivision works, a Compliance Certificate under Section 109(C) of the EP&A Act shall be issued by the Water Authority approving the design. The certificate and stamped plans shall form part of the Construction Certificate for subdivision works.
- (19) (B200) Prior to any Construction Certificate for basement excavation, a bond security shall be evaluated to the satisfaction of, and lodged with,

Council as the Road Authority. The bond may be used (without limitation) to make good any risk of personal injury, property damage, or ground movement. Prior to any excavation near, shoring of, or underpinning of the road reserve a dilapidation survey of surrounding assets and land shall be provided for Council's review and acceptance. Adjoining property owners shall be provided with a copy of any details which relate to their property. Prior to refund of the bond, a final dilapidation survey shall be provided to Council and any issues shall be made good to the satisfaction of Council.

- (20) (B201) Provision of an automatic stormwater sump and pump system designed by a Practising Hydraulic Engineer for the disposal of seepage and stormwater in the basement storeys, to drain only the minimum floor area which cannot drain by gravity to the public stormwater network. All of Council's AUSPEC requirements for such a system shall be complied with, including the maintenance in perpetuity of standby pump and power systems. Details shall be included with the design for approval by Council pursuant to Section 68 of the Local Government Act 1993.
- (21) (B202) As referenced at CP12 in the Statement of Commitments for the Part 3A Concept Approval MP 07_0010 that applies to the site, Geotechnical tests and an assessment of slope stability shall be undertaken and any recommendations incorporated into the structural foundation design. Prior to Construction Certificate the assessment report shall be provided to the Principal Certifying Authority for building works and to the Council.
- (22) (B203) Prior to any Construction Certificate for building works, a Groundwater Management Plan shall be prepared in relation to the building foundation design by an experienced specialist groundwater engineer to address the following:
 - a) All relevant recommendations made in the previous groundwater studies and plans (by Martens Consulting Engineers, dated July 2012 under DA 2012/381, July 2010 and July 2007 under Part 3A Concept Approval MP 07_0010);
 - b) All potential significant impacts by the development on subsurface flows shall be fully mitigated to the satisfaction of Council, including (without limitation) all impacts on the SEPP 26 Littoral Rainforest; and
 - c) The report shall be provided to Council's Director of Development & Environment for review and concurrence.
- (23) (B204) Provision shall be made of a dedicated turnaround bay at the end of each blind aisle to comply with AS 2890.1, including line marking. For example, convert space RES 69 in Basement 1 and RES 23 in Basement 3 to dedicated turning bays.
- (24) (B205) Final water service sizing will need to be determined by a hydraulic consultant to suit the domestic and commercial components of the development, as well as fire service and backflow protection requirements in accordance with AS 2419.

Port Macquarie-Hastings Council
Development Consent - Development Application 010.2017.00000336.001
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- (25) (B206) The plans submitted with the application for construction certificate shall include details of all windows to common foyer areas being operable/openable to provide for natural ventilation of these spaces.
- (26) (B207) Details shall be submitted with the application for construction certificate with a statement by the qualified designer verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
- (27) (B208) Prior to issue of the Construction Certificate for building works, evidence shall be provided to the Principal Certifying Authority that satisfactory arrangements can be put in place for collection of waste from the premises by a private waste contractor.
- (28) (B209) Prior to issue of any Construction Certificate for building works, proof of registration with the Land Title Office of the boundary adjustment required as part of this consent.

C – PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (C003) A controlled activity approval shall be obtained from the airport operator for any crane that may be used during the construction phase that would penetrate the Obstacle Limitation Surface (OLS) for the Port Macquarie Airport. To avoid any doubt as to whether an approval is required, applicants should check with the airport operator at the earliest possible stage.
- (2) (C001) A minimum of one (1) week's notice in writing of the intention to commence works on public land is required to be given to Council together with the name of the principal contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.
- (3) (C013) Where a sewer manhole exists within a property, access to the manhole shall be made available at all times. Before during and after construction, the sewer manhole must not be buried, damaged or act as a stormwater collection pit. No structures, including retaining walls, shall be erected within 1.0 metre of the sewer manhole or located so as to prevent access to the manhole.

D – DURING WORK

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

your Construction Certificate number and property description to ensure your inspection is confirmed:

- a. at completion of installation of erosion control measures
- b. at completion of installation of traffic management works
- c. at the commencement of earthworks;
- d. when the sub-grade is exposed and prior to placing of pavement materials;
- e. when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
- f. at the completion of each pavement (sub base/base) layer;
- g. before pouring of kerb and gutter;
- h. prior to the pouring of concrete for sewerage works and/or works on public property;
- i. on completion of road gravelling or pavement;
- j. during construction of sewer infrastructure;
- k. during construction of water infrastructure;
- l. prior to sealing and laying of pavement surface course.

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

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

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

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) Prior to any Occupation Certificate, the applicant is required to construct and dedicate as public road through an application for a Subdivision Certificate under DA 2012/381:
 - a. Road 7 (Ocean Blue Boulevard) full length from Seaside Drive to Surfers Drive; and
 - b. Road 9 (Whitewater Terrace) full length from Seaside Drive to Surfers Drive.
- (3) (E030) Vehicle ramps, driveways, turning circles and parking spaces being paved, sealed and line marked prior to occupation or the issue of the Occupation Certificate or commencement of the approved land use.

-
- (4) (E034) Prior to occupation or the issuing of the Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (5) (E036) Certification by a suitably qualified consultant is to be submitted to the Principal Certifying Authority (PCA) confirming that the car park and internal accesses have been constructed in accordance with Port Macquarie-Hastings Development Control Plan 2013 and Australian Standard 2890 (including AS 2890.1, AS 2890.2 and AS 2890.6) prior to occupation or issue of the Occupation Certificate.
- (6) (E039) An appropriately qualified and practising consultant is required to certify the following:
- a. all drainage lines have been located within the respective easements, and
 - b. any other drainage structures are located in accordance with the Construction Certificate.
 - c. all stormwater has been directed to a Council approved drainage system
 - d. all conditions of consent/ construction certificate approval have been complied with.
 - e. Any on-site detention system (if applicable) will function hydraulically in accordance with the approved Construction Certificate.
- (7) (E046) Prior to the issue of an Occupation Certificate, a positive covenant is to be created under Section 88E of the Conveyancing Act 1919, burdening the owner(s) of land with an on-site detention facility with the requirement to maintain that on-site stormwater detention facility (consistent with where the OSD is specified in the s68 approval) on the property.
- The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:
- a. The Proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures associated with the on-site stormwater detention facilities ("OSD").
 - b. The Proprietor shall have the OSD inspected annually by a competent person.
 - c. The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures in or upon the said land which comprise the OSD or which convey stormwater from the said land; and recover the costs of any such works from the proprietor.

- d. The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSD, or failure to clean, maintain and repair the OSD.

The proprietor or successor must bear all costs associated in the preparation of the subject 88E instrument. Evidence of registration with the Lands and Property Information NSW shall be submitted to and approved by the Principal Certifying Authority prior to the issue of any Occupation Certificate.

- (8) (E050) Prior to Council accepting new stormwater infrastructure, a CCTV inspection of all new and modified stormwater assets must be undertaken in accordance with the Conduit Inspection Reporting Code of Australia WSA 05.

A copy of the CCTV inspection footage and inspection report prepared and certified by a suitably qualified person shall be provided to Council prior to the acceptance of works into the nominated 'into maintenance period'.

- (9) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (10) (E053) All works shall be certified by a practicing Civil Engineer or Registered Surveyor as compliant with the requirements of AUSPEC prior to issue of Occupation Certificate or release of the security bond, whichever is to occur first.
- (11) (E056) A Certificate of Compliance under the provisions of Section 307 of the *Water Management Act* must be obtained prior to the issue of any occupation or subdivision certificate.
- (12) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any properly qualified person (eg the builder), stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (13) (E061) Landscaped areas being completed prior to occupation or issue of the Occupation Certificate. Public landscaping may be bonded as agreed to by Council.
- (14) (E068) Prior to the issue of each Occupation Certificate or Subdivision Certificate, evidence to the satisfaction of the Certifying Authority from the electricity and telecommunications providers that satisfactory services arrangements have been made to the proposal (including street lighting and fibre optic cabling where required).
- (15) (E072) Lodgement of a security deposit with Council upon practical completion of any public works.
- (16) (E082) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic

format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision or Occupation Certificate. The copyright for all information supplied, shall be assigned to Council.

- (17) (E195) Prior to occupation or the issuing of any Occupation Certificate or Interim Occupation Certificate, a suitably qualified and practising acoustic consultant shall submit details to the Certifying Authority certifying that the Category of construction for each façade of the building has been carried out in accordance with the recommendations made in the Matrix Thornton "Residential Development Lake Cathie Traffic Noise Intrusion" Report (number M17607.01A dated 20 April 2017).
- (18) (E196) Prior to the occupation or the issuing of any Occupation Certificate or Interim Occupation Certificate, a suitably qualified and practising acoustic consultant shall submit details to the Certifying Authority certifying that the noise from the roof mounted plant complies with relevant NSW noise criteria. The report shall include details and descriptions of the plant housed in the enclosed area and also details of the enclosure structure itself.
- (19) (E197) Provision of a sign at the front pedestrian access point(s) to the commercial tenancies, prior to occupation or the issue of the Occupation Certificate, indicating that staff and customer parking is available on-site.
- (20) (E198) Prior to any Occupation Certificate, proof of registration with the Land Title Office of a Right of Access over the private laneway burdening proposed Lot 167 and benefiting proposed Lots 73 & 75 as defined in DA 2012/381.4.

F – OCCUPATION OF THE SITE

- (1) (F001) On site car parking in accordance with the approved plans to be provided in an unrestricted manner at all times during the operations of development for use by both staff and patrons.
- (2) (F003) All loading and unloading operations associated with servicing the site must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way.

The conditions referred to in this schedule are imposed in conformity with the relevant provisions of the Environmental Planning and Assessment Act and Regulations, the Local Government Act and Regulations, The Building Code of Australia and with Council's Codes and Policies, LEP's, DCP's or any other ancillary Act or Regulation in force at the time of the date of determination and are aimed at protecting the natural environment, preserving our heritage and providing a safe and healthy built environment.

Port Macquarie-Hastings Council
Development Consent - Development Application 010.2017.00000336.001
Residential Flat Building and Cafe

Page 16 of 16

Rights of Appeal

If you are dissatisfied with this decision:

1. A request for a review of the determination may be made to Council, under the provisions of Section 82A of the Environmental Planning and Assessment Act 1979.
2. Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right of appeal to the Land and Environment Court.

Yours sincerely



Ben Roberts
Development Assessment Planner

DEVELOPMENT APPLICATION
Lot 167 Catarina, L

BASIX NOTES:

UPDATED DA DRAWING LIST			
DWG NO.	TITLE	REV	Current Revision Date
DA4.00 PRELIMINARIES			
DA4.01 COVER SHEET		D	13/09/2017
DA1.00 SITE PLANS			
DA1.01 SURVEY		B	13/09/2017
DA3.00 FLOOR PLANS			
DA3.01 BASEMENT 3		C	13/09/2017
DA3.02 BASEMENT 2		C	13/09/2017
DA3.02 BASEMENT 1		B	24/07/2017
DA3.03 GROUND LEVEL		C	04/06/2017
DA3.04 LEVEL 1-3		B	24/07/2017
DA3.05 LEVEL 4		B	24/07/2017
DA3.06 LEVEL 4		B	24/07/2017
DA3.07 ROOF LEVEL		B	24/07/2017
DA3.00 ELEVATIONS			
DA3.01 SITE ELEVATIONS - EAST AND WEST		B	24/07/2017
DA3.02 SITE ELEVATIONS - NORTH AND SOUTH		B	24/07/2017
DA4.00 SECTIONS			
DA4.01 SITE SECTION 1		C	13/09/2017
DA4.02 SITE SECTION 2		C	13/09/2017
DA4.03 SITE SECTION 3		C	13/09/2017
DA5.00 DATA			
DA5.01 JUNE 21st SHADOW ANALYSIS		B	24/07/2017
DA5.02 SOLAR ACCESS		B	24/07/2017
DA5.03 CROSS VENTILATION		B	24/07/2017
DA5.04 GFA DIAGRAMS		B	24/07/2017
DA5.05 UNIT DATA		B	24/07/2017
DA8.00 MATERIAL BOARD			
DA8.01 EXTERIOR FINISHES		B	24/07/2017
DA10.00 UNIT TYPES			
DA10.01 ADAPTABLE UNIT TYPE B		B	24/07/2017
DA10.01 UNIT TYPE A		B	24/07/2017
DA10.02 UNIT TYPES C - D		B	24/07/2017
DA10.03 UNIT TYPES E - F		B	24/07/2017
DA10.04 UNIT TYPES G - H		B	24/07/2017
DA10.05 UNIT TYPES I - J		B	24/07/2017
DA10.06 UNIT TYPE K		B	24/07/2017
DA10.07 UNIT TYPE L		B	24/07/2017
DA10.08 UNIT TYPE M		B	24/07/2017
DA10.09 UNIT TYPE N		B	24/07/2017
DA10.10 UNIT TYPE O		B	24/07/2017
DA10.10 UNIT TYPE P		B	24/07/2017

[illegible]

These are the plans referred to in Development Application No.:

5

and determined as APPROVED on: 13 December 2017

PORT MACQUARIE-HASTINGS COUNCIL



DEVELOPMENT DATA

LEO02 LOT 157		UNIT MIX				AREA (m²)		SEPPS		
LEVEL		ONE BED	TWO BED	TWO BED + STUDY	THREE BED	SUB TOTAL	GFA	CROSS VENT.	SOLAR ACCESS	ADAPT.
G		1	3	2	1	7	782	4	5	1
1		0	6	2	2	10	1002	7	8	0
2		0	6	2	2	10	1002	7	8	0
3		0	6	2	2	10	1002	7	8	0
4		0	0	0	4	4	666	4	1	0
TOTAL		1	21	8	11	41	4605	29	30	1
		2%	51%	20%	27%			70.7%	73.2%	2.4%

PARKING REQUIRED + PROPOSED

PARKING REQUIRED FROM LOT	CAR PARKING		MOTORCYCLE		BICYCLE	
	PARKING TYPE	RATE	REQUIRED SPACES	PROPOSED SPACES	RATE	REQUIRED SPACES
1 BED (INC. 11.1% ADAPT.)	0.6	0.6	1			
2 BED	0.9	26.1	35			
3 BED	1.4	3.8	30			
RESIDENTIAL SUBTOTAL		42.1	66		2	25
Cafe		2	5			
WISITOR	0.2	8.2	9			
TOTAL		52.3	80		2	25
			TOTAL			25

FSR		
SITE m ²	GFA m ²	FSR X:1
2064.82	44.95	1.52

IMPORTANT NOTES

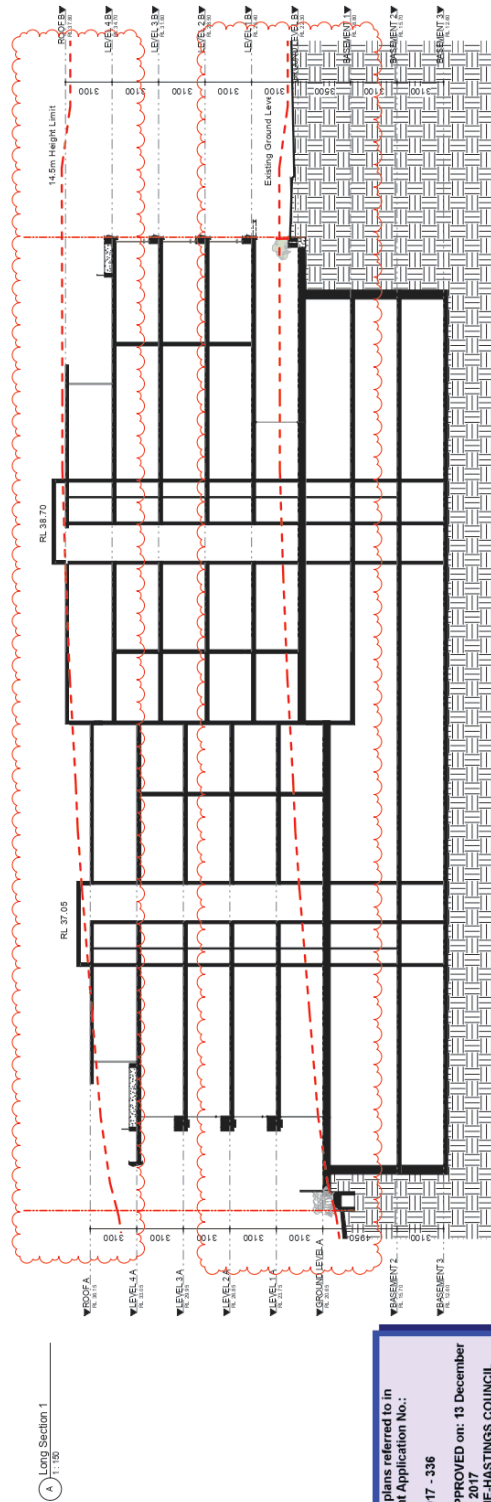
REVISION	DATE	DESCRIPTION
A	26/04/2017	Development Application Issue
B	26/07/2017	Updated DA Issue
C	04/09/2017	Updated outline and section shown

INTERNATIONAL PTY. LTD.
DEVELOPMENT
APPLICATION

IMPORTANT NOTES:

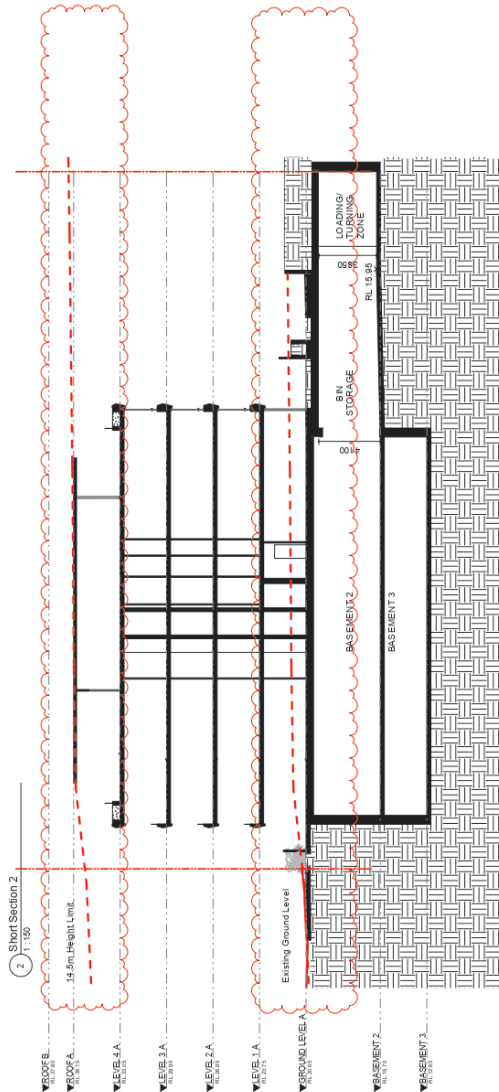
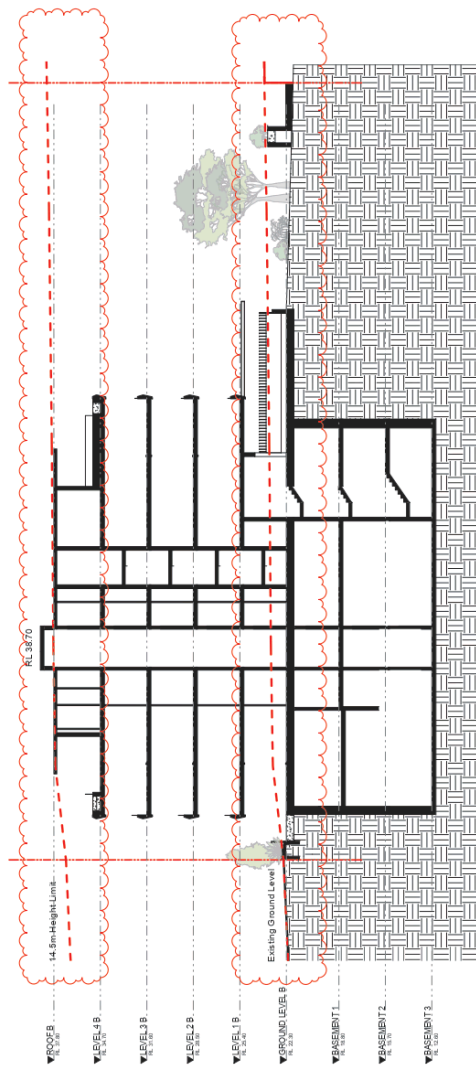
Do not scale from drawings. All dimensions to be checked on site before commencement of work. All discrepancies be brought to the attention of the Architect. Larger scale drawings and written dimensions take precedence. Dimensions shown on drawings are to be used unless otherwise stated and must not be retained, copied or used without the express authority of MARCHESE + PARTNERS INTERNATIONAL P.TY. LTD.

CLIENT	CATARINA DEVELOPMENTS	DRAWING TITLE	COVER SHEET
PROJECT	Lot 167 Catanna, Lake Cathie	SCALE	@1
		DWG	16082



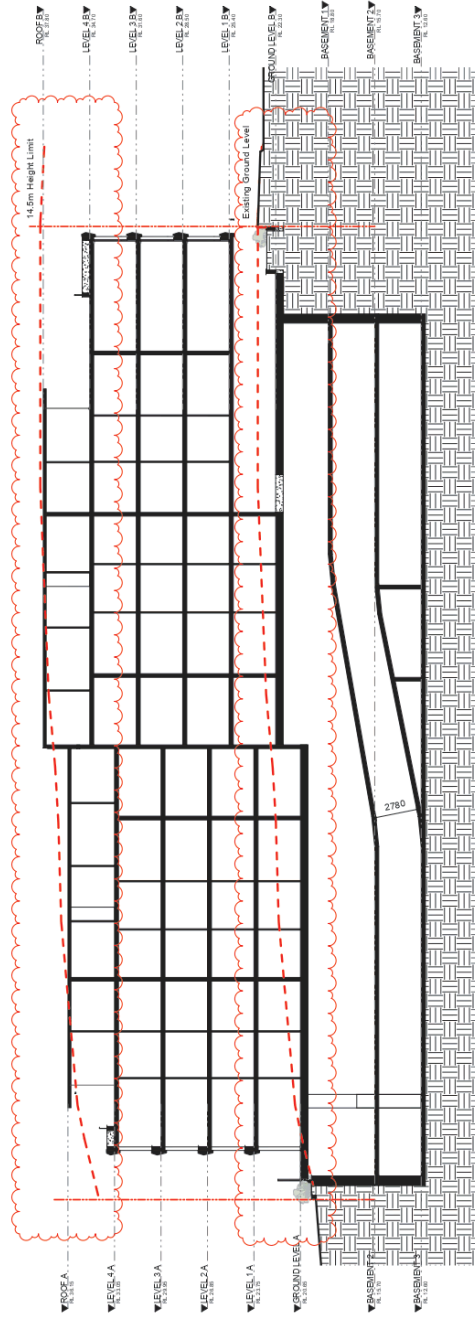
Port Macquarie-Hastings Council
2017
determined as APPROVED on: 13 December

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These are the plans referred to in
Development Application No.:
2017 - 336
and determined as APPROVED on: 13 December
2017
PORT MACQUARIE-HASTINGS COUNCIL

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1 Long Section 3
1:150

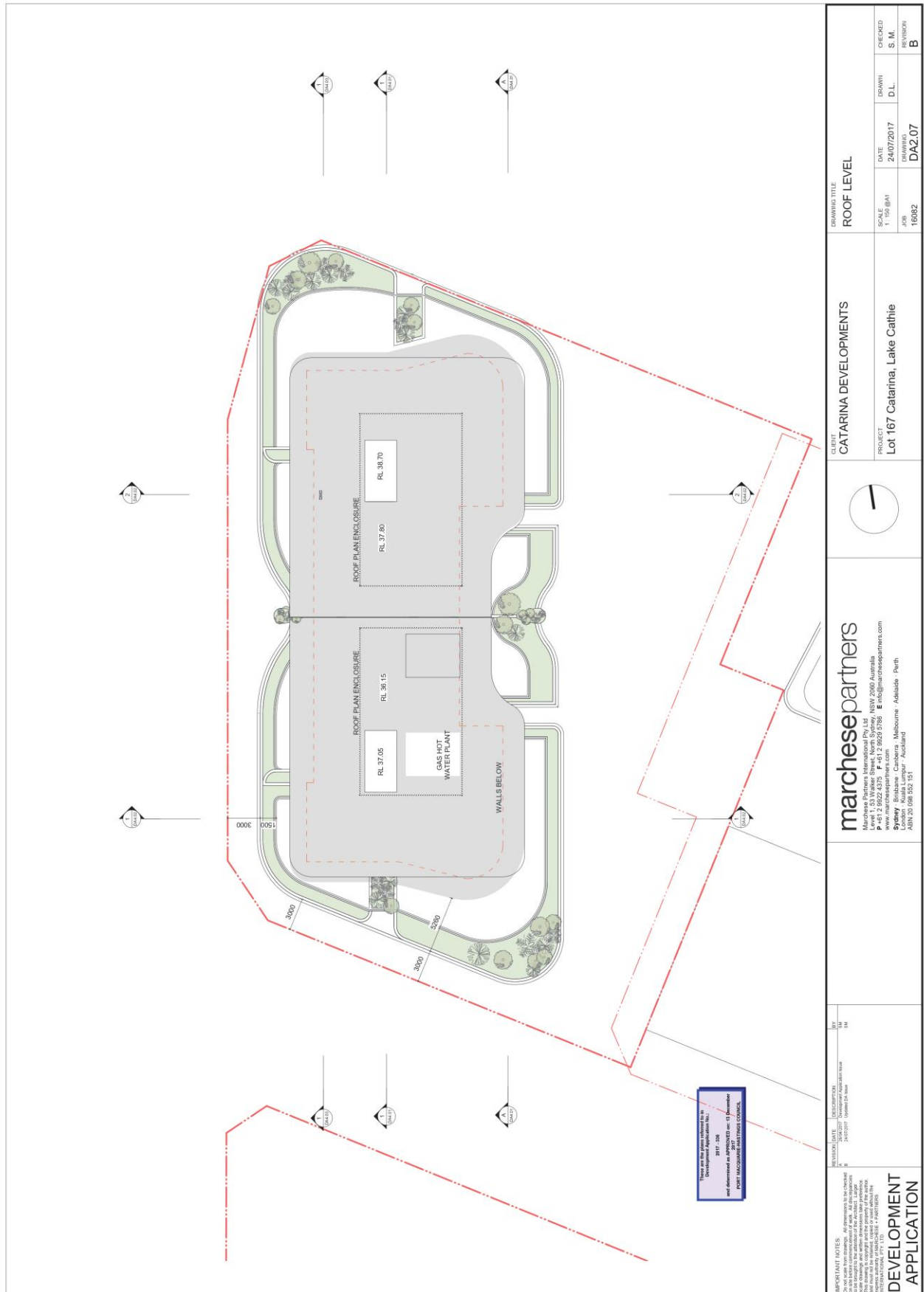
These are the plans referred to in Development Application No.:

2017 - 336

and determined as **APPROVED** on: 13 December 2017


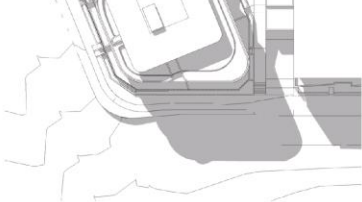
PORT MACQUARIE-HASTINGS COUNCIL

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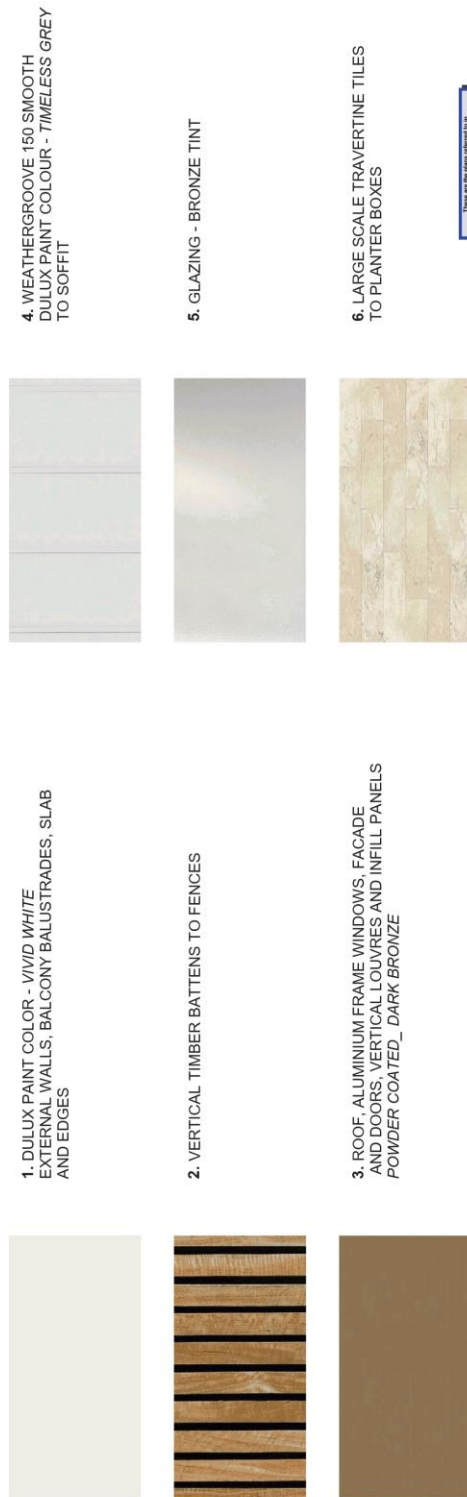


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<p>IMPORTANT NOTES: All drawings to be checked and approved by the Council prior to construction. This drawing is for the purpose of the Development Assessment Panel only. It is not to be used for any other purpose. The Council is not responsible for the accuracy of the information provided in this drawing. The Council is not responsible for the accuracy of the information provided in this drawing. The Council is not responsible for the accuracy of the information provided in this drawing.</p> <p>DEVELOPMENT APPLICATION</p>	<p>REVISIONS:</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>24/07/2017</td> <td>Development Application</td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION	1	24/07/2017	Development Application	<p>CLIENT:</p> <p>CATARINA DEVELOPMENTS</p>	<p>PROJECT:</p> <p>Lot 167 Catarina, Lake Cathie</p>	<p>DATE:</p> <p>24/07/2017</p>	<p>SCALE:</p> <p>1:100</p>	<p>DRAWING TITLE:</p> <p>JUNE 21st SHADOW ANALYSIS</p>	<p>CHECKED:</p> <p>S. M.</p> <p>REVISION:</p> <p>B</p>
NO.	DATE	DESCRIPTION											
1	24/07/2017	Development Application											
<p>1 9 AM</p> 	<p>2 12 PM</p> 	<p>3 3 PM</p> 	<p>These are the plans referred to in the Development Application No. 2017-130 and determined as approved on 13 October 2017.</p> <p>PORT MACQUARIE COUNCIL</p>										

Item 06
Attachment 4
Page 146

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Item: 07

Subject: DA2017 - 394.1 - VEGETATION REMOVAL - LOTS 33 AND 12
DP754405 , 169B & 201 OCEAN DRIVE, KEW

Report Author: Patrick Galbraith-Robertson

Applicant: Jojeni Investments Pty Ltd CARE GEM Planning Projects
Owner: Jojeni Investments Pty Ltd
Estimated Cost: \$230K
Parcel no: 16831 & 48324

Alignment with Delivery Program

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

RECOMMENDATION

That DA2017 - 394 for vegetation removal at Lots 33 & 12, DP 754405 & DP 191444, No. 169B & 201 Ocean Drive, Kew, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a Development Application for vegetation removal at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, two (2) submission has been received.

The proposal is an Integrated Development requiring a Controlled Activity Approval under the Water Management Act 2000.

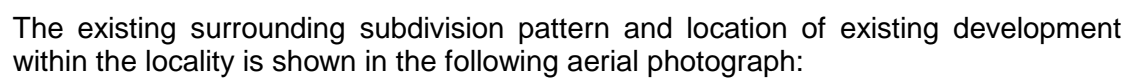
This report recommends that the development application be approved.

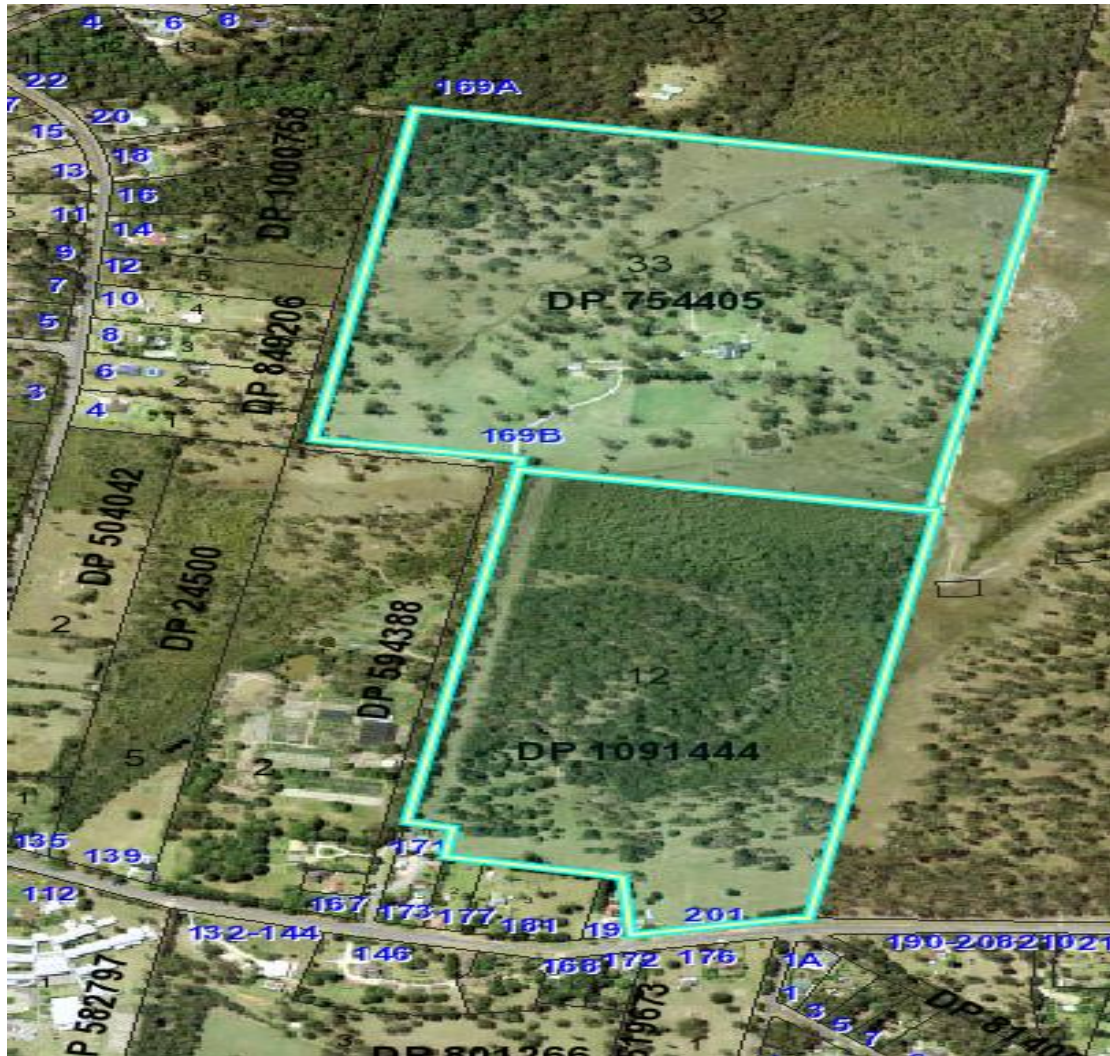
1. BACKGROUND

Existing sites features and surrounding development

The site has an area of 65.86 hectares.

The site is zoned part R1 general residential, part E2 environmental conservation and part E3 environmental management in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:





2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- The proposal seeks approval for tree removal across Lot 33 and Lot 12 within that part of the site zoned R1 residential and a section of the E(2) and E(3) zoned section of the site for future services;
- Clearing is to be limited to only those parts of the site identified for development under the Area 15 Structure Planning and in accordance with the Area 15 environmental offset arrangements.
- Survey and peg out the E3 environmental management (E3) zoned edges.
- Create exclusion areas for all stock (cattle) from E2 zoned areas within Lot 12 to allow natural regeneration.
- Surveys to locate identified Hollow Bearing Trees (HBTs) and installation of nest boxes within E2 zoned areas.
- Identify areas within 40m of a water course and obtain Controlled Activity Approval from Office of Water as appropriate. Noting Area 15 studies identified the upper extent of Tributary D as requiring this type of approval.
- Utilise existing farm gate access & tracks across the site, selectively remove timber suitable for milling or other re-use, remove and mulch remaining vegetation as appropriate.

- Establish erosion and sediment controls, remove stumps, fill hollows and establish grass cover.

The additional ecological investigations completed by the Applicant in support of the DA during assessment have resulted in a revised proposal reducing the extent of Residential zoned land to be cleared and proposing additional conservation areas.

After discussion with Council staff during the assessment of the DA, an amendment has also been made to identify future services corridors and includes assessment of the ecological impacts of future services and infrastructure locations. This issue has been specifically addressed to:

- utilize the existing power easement to create a connection between the 2 lots for roads and services, and
- provide for the sewerage reticulation and connection to Area 15 sewer trunk line that minimizes impacts on E2/E3 zoned areas and avoided all HBTs.

A revised clearing plan has been prepared by Hopkins Consultants - refer to attachments at the end of this report.

Application Chronology

- 10 May 2017 – DA lodged with Council
- 25 May to 23 June 2017 – Neighbour notification of proposal
- 15 June 2017 – Additional information requested – updated ecological assessments to that of 2009
- 7 May 2018 – Follow up with Applicant as to status of additional information request
- 1 August 2018 – Meeting with Applicant to discuss assessment issues
- 7 August 2018 – Referral to Office of Water for concurrence to future Controlled Activity Approval permit under Water Management Act 2000
- 29 October 2018 – Additional information received by Council including additional specialist ecological reports for the proposal and previous offset site (now dedicated as National Park) for rezoning of the land in Area 15.

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

With reference to clauses 6 and 7, the subject land is greater than 1 hectare (including any adjoining land under same ownership) and therefore the provisions of SEPP must be considered.

During the assessment of the DA, additional ecological assessments have been submitted which address the requirements of this SEPP and the Commonwealth

Environment Protection and Biodiversity Conservation Act 1999 – matters of National Environmental Significance in relation to the koala.

Specifically, a Koala Assessment report prepared by Biodiversity Australia dated July 2018 has been submitted to Council. This report has been reviewed by specialist staff of Council and the conclusions found to be acceptable.

The following ameliorative measures are recommended by Biodiversity Australia to be carried out during clearing works on site:

1. *The clearing extent is to be inspected for Koalas and other fauna by a qualified ecologist immediately prior to commencement of any vegetation removal involving machinery and/or tree-felling. This is to occur each morning if clearing spans over multiple days/weeks.*
2. *If a Koala is present in an area subject to vegetation removal/modification, works must be suspended until the Koala moves along of its own volition. If the Koala is located in a position that a 50m buffer may be established, works may proceed outside this buffer.*
3. *The ecologist is to remain on site to supervise clearing to retrieve any fauna detected during works, and undertake appropriate action (e.g. euthanize severely injured animals) and ensure Koalas do not enter the site during clearing works.*
4. *Koala underpasses are recommended to be installed on any internal roads which cross the E2 zones on site. These would consist of a concrete box culvert installed under the road.*
5. *It is recommended that plantings of preferred Koala food trees are undertaken in the E2 and E3 zones on site where space permits. The E2 zone within Lot 33 is currently regenerating following cessation of slashing, and regeneration of Koala food trees here should be encouraged through weed management and brush cutting around saplings to encourage growth.*
6. *A vegetation management plan is recommended to be prepared. This would guide the management of the conservation zones on site and the offsite offset. The plan would include details on any tree planting works, weed control, habitat enhancement measures (e.g. nest boxes, log relocation), as well as monitoring requirements.*
7. No further investigations are required and the above recommendation are recommended to be included in the reference to conditions (Condition A(1)) in this regard.

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 (Infrastructure) 2007

The subject land fronts Ocean Drive, Kew which is a Classified Road. The proposed clearing works will utilise the existing farm gate access onto Ocean Drive association with previous clearing on Lot 12.

Measures to prevent tracking of materail onto Ocean Drive are proposed to be installed inside the property boundary at the property egress and signage during active work periods ensuring driver awareness and road safety is recommended. A section 138 Roads Act 1993 permit approval and bond is recommended to be obtained to address the specifics of this request.

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, part E2 environmental conservation and part E3 environmental management.
- The closest definition in the LEP dictionary is “Clearing of Native Vegetation”.
The term “clearing of native vegetation” is not specifically prohibited in the R1 general residential land use table and Clause 5.9 and 5.9AA also set a consent requirement for removal of trees.
The NSW Land and Environmental Court case Gales Holdings Pty Limited v Tweed Shire Council [2008] NSWLEC 209 (14 July 2008) established that the clearing and filling of the land enables future urban development, and is therefore is consistent with the primary objective of the zone.
- The proposal under this application seeks to selectively clear the land zoned residential to enable future urban development and similarly is consistent with the objectives of the zones.
- Clause 2.7 - The demolition of existing structures on the site require consent as it does not fit within the provisions of SEPP (Exempt and Complying) 2008.
- Clause 5.9 - This application seeks consent for removal of trees within that part of the sited zoned R1 general residential and future services corridors, including identified Hollow Bearing Trees identified in Development Control Plan 2013.
- Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
- Clause 7.1 - The site is mapped as potentially containing class 3 and 5 acid sulphate soils. As part of the Area 15 Local Environmental Study a Land Capability Assessment was prepared by Coffey Geotechnical and included soil sampling for potential Acid Sulphate Soils. The report finds that while pH levels are lower, consistent with coastal soil characteristics they do not trigger the threshold for Actual or Potential Acid Sulphate Soils. The proposed selective tree clearing does not involve earthworks that would disturb soils below the mapped levels.
- The Coffey geotechnical assessment also identifies standard erosion and sediment control measures for clearing land and these will be taken into consideration when finalising the water quality and erosion control measures for the site.
- Clause 7.3 - The site is land within a mapped “flood planning area” (Land subject to flood discharge of 1:100 annual recurrence interval flood event (plus

the applicable climate change allowance and relevant freeboard) In this regard the following comments are provided which incorporate consideration of the objectives of Clause 7.3, Council's Flood Policy 2015, the NSW Government's *Flood Prone Lands Policy* and the NSW Government's *Floodplain Development Manual* (2005):

- The Applicant submits that part of the subject land is impacted by major flood event. This proposal does not include any land filling, will not create any new allotments nor introduced residential occupancy to the site.
- It is recommended with a condition of consent that the clearing does not occur within the 1 in 100 year flood area (not flood planning area).
- No impact on the flood plain or flood flows is anticipated as a result of the proposed selective clearing.
- The proposal is compatible with the flood hazard of the land taking into account projected changes as a result of climate change.
- The proposal will not result in a significant adverse effect on flood behaviour that would result in detrimental increases in the potential flood affectation of other development or properties.
- The proposal incorporates measures to minimise and manage the flood risk to life and property associated with the use of land.
- The proposal is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.
- The proposal is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013:

In addition to Clause 5.9 and 5.9AA above, the provisions of Development Control Plan Camden Haven Area 15 include:

OB1 To protect, maintain and enhance significant vegetation communities, habitat areas and wildlife corridors.

OB 1.1 requires that a vegetation management plan be submitted with the DA at subdivision stage or land development stage. The vegetation management plan is to specify:

- Full revegetation buffers to EEC areas
- Progressive dedication of environmental land and linked to proportionate stages of the development
- The maintenance regime prior to and following dedication and
- The process for certifying completion of works at critical stages of the process.

OB 1.1 requires Development applications for the first stage of development on any land to survey locate and assess hollow bearing trees on the land. The number and size of hollows to be recorded for each tree.

Comments:

1. The entire environmental land dedication has been completed well ahead of any stages of development. This application for selective tree clearing represents only part of the entire Area 15 lands that the environmental land offset benefits.
2. The proposal will fence off and exclude cattle grazing from the E2 environmental conservation lands within Lot 12 (excluding the power line easement through those zones). An existing boundary fence between Lot 12 and 33 will be complemented with fencing around the E2 zoned vegetation south of this fence within Lot 12.
3. Installation of Nest Boxes in the E2 zoned land following assessment of hollow bearing trees under the DCP methodology, as part of the overall Offset Package identified in the Area 15 LES and Structure plan.

The above measures represent significant environmental enhancements ahead of any actual subdivision approval.

Subsequent Development Applications for subdivision would include implementation of a vegetation management plan for the E2 and E3 areas in Lot 33 and Lot 12.

DCP Objective OB5 reflects the findings of the Area 15 Land Capability Assessment and potential acid sulphate soils as discussed in Section 3.1.6 above.

Other *DCP Objectives* relating to flooding, roads and acoustics are not applicable.

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

The land is part of Area 15 Urban Release Area and has a Voluntary Planning Agreement and dedicated environmental offset lands in place for the future development of the site.

This Development Application proposes to commence works associated with development of the land and consistent with the signed Voluntary Planning Agreement and Environmental offset arrangements. The 25.16ha (Lot 12 DP 1170551) environmental offset land has been dedicated to the Minister administering the National Parks and Wildlife Act 1974. Refer Figure 3 extract from submitted Statement of Environmental Effects below.



Figure 3 Environmental Offset land

iv) Any matters prescribed by the Regulations:**Demolition of buildings AS 2601 – Clause 92**

Demolition of the existing buildings on the site is capable of compliance with this Australian Standard and is recommended to be conditioned.

(a)(v) Any Coastal Zone Management Plan

- No Coastal Zone Management Plan applies to the subject site.

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

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

Access, roads, transport and traffic

No new roads are proposed as the application is for vegetation clearing only.

Standard conditions are recommended to require a Section 138 Roads Act 1993 permit and payment of bond to Council prior to the clearing works commencing.

Heritage

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

Other land resources

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

Water cycle

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

Soils

Managing disturbed soil and ensuring water quality protection is the key environmental consideration with this proposal. Appropriate erosion and sediment control measures are to be in place for the proposal.

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

Air and microclimate

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

Flora and fauna

The proposed development includes removal/clearing of vegetation. The applicant has submitted the following flora and fauna impact assessment reports to address the clearing impact:

A. Eco Logical Australia June 2018. 169B & 201 Ocean Drive Kew (Lot 12 DP1091444 and Lot 33 DP754405) – Final Flora & Fauna Assessment.

B. Biodiversity Australia July 2018. Lot 33 DP 754405 and Lot 12 DP 1091444, Ocean drive, Kew - Koala Impact Assessment | Ocean Drive Kew

C. Biodiversity Australia July 2018 - Ecological Assessment of Area 15 Offset Area Comprising Lot 12 DP 771931, Lakewood NSW

The total area of the subject properties is 65.86 ha, of which 20.85 ha is in Environmental Zones (E2 or E3) and 45.01 ha is zoned for residential development.

The revised proposal now offers an additional 4.39 ha (9.8%) of the residential zoned land as new Conservation Zones.

The E2 and E3 environmental zones and proposed new conservation zones includes 21.58 ha of the Swamp Forest Endangered Ecological Community (16.18 ha in E2, 2.86 ha in E3 and 2.55 ha in new Conservation Zones), which equates to 87% of its occurrence on the subject properties. The Swamp Forest is to be protected in conservation areas include 7.25 ha of modified or severely modified vegetation in which canopy trees and large shrubs are scattered or absent.

The Applicant proposes that a Vegetation Management Plan which will be required to be prepared to guide the restoration of this vegetation towards natural condition, resulting in a substantial improvement in habitat value. The below extract Figure 1 from the submitted additional information from the Applicant illustrates the additional proposed conservation zones in the context of a future subdivision concept and in relation to the existing E2 and E3 conservation zones.

It should be additionally acknowledged that as part of the rezoning of the Area 15 urban release area an offset site was secured to offset future development. This offset site was approved by Council and the Office of Environment and Heritage (refer to OEH certification attached). This offset was prior to the formal bio certification provisions of the EP&A Act however is considered to have a similar intent. The certification 'turns off' any offsetting requirements under the Biodiversity Conservation Act 2016 but does still require an ecological impact assessment (7-Part (now 5-Part) test) to be undertaken.



Figure 1 Proposed additional conservation zones

Council specialist environmental staff have reviewed the submitted information including the updated ecological work and provided the following summary:

- Based upon Council records and the ecological reports provided the local area is of high ecological significance. As such, environmental zoning and land certification has been undertaken prior to this submission to ensure appropriate conservation measures have been put in place. These processes have been supported and approved prior by Council and the NSW Office of Environment and Heritage. Based this information it would be difficult to recommend further studies or refuse this application. Accordingly on the basis of the history of the*

site, the rezoning of the land, the propose mitigation measures and the nature of the application being only for clearing the proposal is recommended to be supported subject to the following:

1. *The clearing does not occur within the 1 in 100 year flood area (not flood planning area);*
 -
2. *Future Development Applications for this site will require a full list of Hollow-Bearing Trees to be retained and details provided to Council to enable conditions of consent to be drawn up to protect these individual Hollow-Bearing Trees in perpetuity. Additional formal and contemporary surveys to be conducted in order to study the full range of threatened species that may exist on the site and their relative abundance in order to determine the full impact of the development.*

The above assessments address the requirements of the '7 part test' under Section 5A of the Act. With regard to the point 1 above, a condition is recommended to address this recommendation with restricting the clearing to be not within the flood prone land and therefore negate the hollow bearing tree removal in that section of the site at this point in time. Subject to compliance with the recommended consent conditions, the proposal is unlikely to have any significant adverse impacts on flora and fauna subject to the following recommended conditions which are recommended to form part of the consent.

Waste

No adverse impacts anticipated. Standard precautionary site management condition recommended.

Noise and vibration

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

Bushfire

The site is identified as being bushfire prone.

No landuse is proposed with this application and any future subdivision or dwelling Development Application will need to address bushfire risk and likely requirements for obtaining Bushfire Safety Authority from the NSW Rural Fire Service.

Social impacts in the locality

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

Economic impact in the locality

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

Site design and internal design

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

Construction

No potential adverse impacts identified to neighbouring properties with the clearing works associated with the proposal.

Cumulative impacts

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

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

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

The rezoning of the site resulted from comprehensive site assessments to identify land suitable for development. The proposed selective clearing works are consistent with the recommendations and future intent expressed in the Area 15 documentation.

The proposal is considered suitable for the site, in light of the significant environmental land offset already dedicated and the measures to remove cattle grazing from land within E2 zones.

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

Two (2) written submissions have been received following public exhibition of the application.

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

Submission Issue/Summary	Planning Comment/Response
Is it possible to retain trees along frontage to Ocean Drive and to part or all of road ways rather than the total frontage clearance of the block recently cleared to the North?	The Applicant has been forwarded a copy of this submission issue and has responded that the proposal is justified on ecological grounds and satisfies the Area 15 planning that has been put in place.
Is the requirement and responsibility for inspection and maintenance of the sedimentation controls been defined to avoid the fence being rendered ineffective?	Standard condition recommended for installation and maintenance of sedimentation control measures. A Controlled Activity Approval is also required to be obtained prior to clearing works commencing.
Request for a clear drawing to show road routing at junction of link road to Lake Ridge Drive and along the Southern and Eastern boundaries of property Lot 1, DP849206 (4 Lake Ridge Drive)	Refer to amended plans clearly showing extent of proposed clearing. No roads are proposed as this stage and will be subject to separate DA. Refer also to Area 15 DCP for planned strategic road connections.
Not in favour of the vegetation removal. There are at least 18 hollow bearing trees which are necessary for the habitat of	Refer to assessment comments earlier in this report under flora and fauna impacts. The recommended condition

Submission Issue/Summary	Planning Comment/Response
native birds and small animals. Therefore the clearing is going to negatively affect wildlife. Offsets are suggested but offsets are not suitable for many species and it is ridiculous to suggest that this is a serious proposal. Our beautiful district will become degraded and lose the advantages of clean and sustainable environment.	for removing the extent of clearing from the flood prone areas will reduce the number of hollow bearing trees being removed.

(e) The Public Interest:

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

Ecologically Sustainable Development and Precautionary Principle

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes.

The four principles of ecologically sustainable development are:

- the precautionary principle,
- intergenerational equity,
- conservation of biological diversity and ecological integrity,
- improved valuation, pricing and incentive mechanisms.

The principles of ESD require that a balance needs to be struck between the man-made development and the need to retain the natural vegetation. Based on the assessment provided in the report and subject to compliance with the recommended conditions of consent, it is considered an appropriate balance has been struck.

Climate change

Refer to comments provided earlier in this report under Port Macquarie-Hastings LEP addressing climate change.

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

No contributions are applicable to the proposal. Any future application for subdivision will be subject to development contributions.

5. INTEGRATED DEVELOPMENT

Referral has been undertaken to the Office of Water as required under the Water Management Act 2000 for works within 40m of drainage lines identified as Tributary D in the Area 15 Stormwater Management Strategy. No response has been received with no objectives assumed. A condition is recommended to require the Controlled Activity Approval permit to be obtained prior to works commencing.

6. 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](#). DA2017 - 394.1 Recommended Conditions
- 2[View](#). DA2017 - 394.1 Office Environment & Heritage Certification
- 3[View](#). DA2017 - 394.1 PMHC Letter Information Response
- 4[View](#). DA2017 - 394.1 Clearing Plan

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

NOTE: THESE ARE DRAFT ONLY

DA NO: 2017/394

DATE: 5/03/2019

PRESCRIBED CONDITIONS

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

A – GENERAL MATTERS

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

Plan / Supporting Document	Reference	Prepared by	Date
Woodlands Subdivision Clearing Plan	2 sheets	Hopkins Consultants	26 October 2018
Flora and fauna assessment		Ecological Australia	22 October 2018

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

- (2) (A009) The development site is to be managed for the entirety of work in the following manner:
1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 2. Appropriate dust control measures;
 3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
 4. Building waste is to be managed via an appropriate receptacle;
 5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
 6. Clearing work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidays
- The contractor to be responsible to instruct and control his sub-contractors regarding the hours of work.

- (3) (A016) This consent does not override any requirements of the *Environmental Protection and Biodiversity Conservation Act 1999*.

C – PRIOR TO ANY CLEARING WORK COMMENCING ON SITE

- (1) (A033) Prior to clearing works commencing, the applicant shall provide security to the Council for the payment of the cost of the following:
- a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
 - c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

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

- (2) (A031) Approval pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be obtained from Port Macquarie-Hastings Council.
- (3) (C195) Prior to clearing works commencing a Controlled Activity Approval permit is to be obtained under the Water Management Act 2000.
- (4) A vegetation management plan is to be prepared and approved by Council prior to clearing works commencing. This would guide the management of the conservation zones on site and the offsite offset. The plan would include details on any tree planting works, weed control, habitat enhancement measures (e.g. nest boxes, log relocation), as well as monitoring requirements.
- (5) Prior to clearing works commencing an amended clearing plan shall be submitted to Council for approval which removes the clearing proposed in the section of the site which is within the 1 in 100 year flood area being the area below 3m AHD (not flood planning area).

D – DURING CLEARING WORK

- (1) (D006) A copy of the current stamped approved construction plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- (2) (D033) Should any Aboriginal objects be discovered in any areas of the site then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service, Department of Environment and Conservation is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*. Subject to an assessment of the extent, integrity and significance of any exposed objects, applications under either Section 87 or Section 90 of the *National Parks and Wildlife Act 1974* may be required before work resumes.
- (3) (D040) Wastes including vegetation shall not be disposed of by burning.
- (4) (D045) A suitably qualified ecological consultant shall inspect all native trees that have been approved for removal before they are felled each morning of the clearing work. If there are any koala or other fauna species in the tree, work in the vicinity is to cease until the animal has moved from the area. If it is likely that hollows are providing habitat for native species, traps shall be set for several nights and any native species found shall be relocated to an appropriate nearby location.



Office of
Environment
& Heritage

DOC16/561305-8

General Manager
Port Macquarie-Hastings Council
PO Box 84
Port Macquarie NSW 2444

Dear Mr Swift McNair

Re: Request to certify Area 15 Urban Land Release at Camden Haven under clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017

I am writing to advise that Lesryk Environmental Pty Ltd, on behalf of Mr Graham Irving, have written to the Office of Environment and Heritage (OEH) seeking certification of a subdivision of Lot 3 DP 794077 at 1119 Ocean Drive, Kew under Clause 34A(4) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. This lot is part of the Area 15 Urban Land Release at Camden Haven that was rezoned by the *Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No 8)*.

On consideration of this matter, I determined to include the entire Area 15 Urban Land Release for the purposes of certification. I have therefore decided to certify the development as set out in the attached certification order.


The implication of this order means that the development referred to in that order does not require assessment under the *Biodiversity Conservation Act 2016*. Instead, the provisions of the *Environmental Planning and Assessment Act 1979* that would be in force if that Act had not been amended by the Biodiversity Conservation Act apply with respect to assessment of biodiversity impacts.

I have enclosed a copy of the letter to Mr Derek Engel, Director Lesryk Environmental Pty Ltd, and the certification order for your reference.

Should you have any further queries regarding this matter please contact Mr Dimitri Young, Senior Team Leader Planning, North East Branch, Conservation and Regional Delivery, on 6659 8272 or at Dimitri.Young@environment.nsw.gov.au.

Yours sincerely

 20/9/18
DEREK RUTHERFORD
Acting Executive Director
Conservation and Regional Delivery

 PORT MACQUARIE HASTINGS	
TRIM No	CRM No
27 SEP 2018	
Keyword	
Activity	
Subject	
Folder DA 2018-294	

PO Box A290 Sydney South NSW 1232
59-61 Goulburn St Sydney NSW 2000
Tel: (02) 9995 5000 Fax: (02) 9995 5999
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ABN 30 841 367 271
www.environment.nsw.gov.au

ORDER PURSUANT TO CLAUSE 34A(4) OF THE BIODIVERSITY CONSERVATION (SAVINGS AND TRANSITIONAL)
REGULATION 2017

I, Derek Rutherford, Acting Executive Director, Conservation and Regional Delivery, of the Office of Environment and Heritage as delegate of the Chief Executive of the Office of Environment and Heritage, certify under clause 34A(4) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* that:

- a) the Proposed Development is part of a Relevant Planning Arrangement for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017, and
- b) that conservation measures to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts have been secured into the future.

Proposed development is only certified by this order where the development for which a development application is made is in accordance with the provisions of the Relevant Planning Arrangement.

For the purposes of this order:

1. **Area 15 Land** means the land identified as an Urban Release Area in the Port Macquarie-Hastings Local Environmental Plan 2011 Urban Release Area Map (6380_COM_URA_011B_020_20111207) as adopted by the *Port-Macquarie-Hastings Local Environmental Plan 2011* on the date of the making of this Order.
2. **Proposed Development** means a proposed development that is both:
 - (a) the subject of all or any pending or future development applications; and
 - (b) on the Area 15 Land.
2. **Relevant Planning Arrangement** means:
 - (a) the provisions of the *Port-Macquarie Hastings Local Environmental Plan 2011* applying to the Area 15 Land by virtue of the *Port-Macquarie Hastings Local Environmental Plan 2011 (Amendment No 8)*;
 - (b) the area-based provisions in the *Port-Macquarie Hastings Development Control Plan 2011* for the Area 15 Land; and
 - (c) the voluntary planning agreements between Port Macquarie-Hastings Council and landowners, entered into for the purposes of the making of the *Port-Macquarie Hastings Local Environmental Plan 2011 (Amendment No 8)*.


Derek Rutherford

20/9/18
Date

Acting Executive Director
Conservation and Regional Delivery
Office of Environment and Heritage



DA 2017/394 Woodlands A15 Ocean Drive

25 October 2018

P O Box 2068
Port Macquarie NSW 2444The General Manager
Port Macquarie Hastings Council
P O Box 84
PORT MACQUARIE NSW 2444

Attn: Mr Dan Croft and Mr Patrick Galbraith Robertson

Dear Dan & Pat

RE: DA 2017-394 – Lots 12 & 33 area 15 Land Ocean Drive, Kew

I refer to your information request of 15 June 2017 and subsequent meetings with Council on 12 July 2017, 26 July 2017, 31 October 2017, 18 April 2018 and 1 August 2018.

A. Additional Ecological Assessments

As requested the owner, Mr John Harvey of Jojeni Investments Pty Ltd has had prepared extensive additional field survey and ecological assessment utilising the expertise of two highly experienced expert consultancies.

The ecological assessments prepared and attached to this letter address

- Section 5A of the EP&A Act: This was recently repealed and replaced with provisions in the *Biodiversity Conservation Act 2016*, but as a Development Application was lodged in May 2017, the savings and transitional arrangements apply (as confirmed by PMHC), and the proposal is to be assessed using Seven Part Tests under the original amendments of the now repealed *Threatened Species Conservation Act 1995*.
- The requirements of SEPP 44 – Koala Habitat Protection and the Commonwealth *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* - Matters of National Environmental Significance (MNES) in relation to the Koala.
- Assessment of the relevant provisions under the Port Macquarie Hastings Council (PMHC) Development Control Plan (DCP) 2013 is also provided.

To prepare the above, the previous ecological impact assessments relied up by Council to determine the environmental and urban land zonings for Area 15 in 2009 were utilised as the foundation assessments for this proposal and then supplemented by further ecological investigations as follows.





- i. ***Eco Logical Australia (2007). Camden Haven Urban Release Area: Part B – Area 15 Ecological Assessment.*** Report prepared for Port Macquarie Hastings Council by Eco Logical Australia. This study involved two experienced ecologists traversing the whole of UIA 15, mapping the vegetation communities, assessing the value of the land as fauna habitat and making opportunistic observations of fauna; it is the key document informing the UIA 15 land use plan.
- ii. ***Eco Logical Australia (2009a). Camden Haven Urban Release Area: Part B – Area 15 Ecological Assessment.*** Report prepared for Port Macquarie Hastings Council by Eco Logical Australia. This is an updated version of the previous study, with few, if any, amendments.
- iii. ***Eco Logical Australia (2009b). Camden Haven Urban Release Area: Part C – Area 15 Ecological Impact Assessment.***
Report prepared for Port Macquarie Hastings Council by Eco Logical Australia. This study assesses the impact of the land use plan for UIA 15, including an evaluation of the need for offsets under the BioBanking methodology.
- iv. ***Naturecall (2017). Ecological Impact Assessment: Proposed Residential Development on Lot 33 DP 754405 and Lot 12 DP1091444, Ocean Drive, Kew.***
(Incomplete) report for Jojeni Investments by Naturecall. This report is incomplete; however, the results of the fieldwork (in terms of species records) are available via the BioNet Atlas. The fieldwork was carried out by two experienced ecologists in August and September 2017. Assessment and reporting undertaken includes:
 - Targeted threatened flora searches (5 hours)
 - Elliott A trapping (160 trap-nights)
 - Pitfall trapping (24 trap-nights)
 - Spotlighting (6 hours total over 4 nights)
 - Call playback (4 hours total over 4 nights, targeting Wallum Froglet, Masked Owl, Grass Owl, Barking Owl, Powerful Owl, Squirrel Glider, Yellow-bellied Glider and Koala)
 - Anabat bat call detection (2 units for 5 nights: > 120 hours of detection in total)
 - Camera trapping (4 cameras targeting terrestrial fauna and 4 cameras targeting arboreal fauna, for two weeks each)
 - Diurnal bird surveys (8 half-hour surveys)
 - Active searches for herpetofauna and scats (4 hours in total)
- v. ***Naturecall (2018a). Koala Assessment: Proposed Residential Development on Lot 33 DP 754405 and Lot 12 DP1091444, Ocean Drive, Kew.***
Report for Jojeni Investments by Naturecall. This study involved a detailed assessment of the value of the subject properties for Koalas. Fieldwork took place in August and September 2017 and included:
 - 9 SAT (Koala scat) surveys
 - 4 nights of Koala call playback
 - Counting and mapping all primary Koala food trees (Swamp Mahogany and Tallowwood) in the areas zoned for development
 - Searches for scats beneath a total of 863 trees (the 593 food trees mapped, and the 270 trees assessed via SAT counts)



DA 2017/394 Woodlands A15 Ocean Drive

Despite the considerable survey effort, no Koalas or Koala scats were recorded at the site. An assessment under SEPP 44 (Koala habitat) concluded that the subject properties do not qualify as core Koala habitat and there is therefore no requirement for a Koala Plan of Management. An assessment under S5A of the NSW EP&A Act concluded that the proposal is unlikely to have a significant impact on Koalas. An assessment under the EPBC Act identified the need for Commonwealth referral for impacts on Koalas.

vi. Naturecall (2018b). Unpublished mapping data for Jojeni Investments.

This study involved counting and mapping Koala food trees over a 7 ha area of the offset property. One hundred and thirteen (113) Koala food trees (Tallowwoods) were recorded, equating to 19 Koala trees per hectare, or an approximate total of 475 trees in the 25 ha site.

vii. Naturecall (2018c). Unpublished mapping data for Jojeni Investments.

This study involved mapping all hollow-bearing trees on the offset property. A total of 198 hollow-bearing trees were recorded, equating to a density of 7.7/ha. Of which, 138 scored greater than twelve under the PMH DCP hollow-bearing tree scoring system, indicating a high habitat value. Forty-five (45) trees were scored with medium habitat value ranging between eight and twelve and the remaining fifteen (15) trees recorded with hollows, returned a score of less than eight.

viii. Additional Field survey to further inform the above work

- Vegetation Community Condition and Mapping Review (Bolwarra Environmental Services 2018a), as per request of PMHC.
- Updated hollow-bearing tree mapping and assessment (Bolwarra Environmental Services 2018b).
- Hollow-bearing tree inspections.
- Targeted threatened flora survey.
- Stagwatches.

The final suite of ecological reports attached are:

- A. *Eco Logical Australia June 2018. 169B & 201 Ocean Drive Kew (Lot 12 DP1091444 and Lot 33 DP754405) – Final Flora & Fauna Assessment.*
- B. *Biodiversity Australia July 2018. Lot 33 DP 754405 and Lot 12 DP 1091444, Ocean drive, Kew - Koala Impact Assessment | Ocean Drive Kew*
- C. *Biodiversity Australia July 2018 - Ecological Assessment of Area 15 Offset Area Comprising Lot 12 DP 771931, Lakewood NSW*

A result of findings of the above investigations and in direct response to recommendations from the project ecologists the clearing proposal has been revised to protect the areas of highest biodiversity value.

The total area of the subject properties is 65.86 ha, of which 20.85 ha is in Environmental Zones (E2 or E3) and 45.01 ha is zoned for residential development.





DA 2017/394 Woodlands A15 Ocean Drive

The revised proposal now offers an additional 4.39 ha (9.8%) of the residential zoned land as new Conservation Zones.

The E2 & E3 environmental zones and proposed new conservation zones include 21.58 ha of the Swamp Forest Endangered Ecological Community (16.18 ha in E2, 2.86 ha in E3 and 2.55 ha in new Conservation Zones), which equates to 87% of its occurrence on the subject properties. The Swamp Forest to be protected in conservation areas include 7.25 ha of modified or severely modified vegetation in which canopy trees and large shrubs are scattered or absent.

A Vegetation Management Plan to be prepared will guide the restoration of this vegetation towards natural condition, resulting in a substantial improvement in habitat value. Figure 1 below illustrates the additional proposed conservation zones in the context of a future subdivision concept and in relation to the existing E2 & E3 conservation zones.



Figure 1 Proposed additional conservation zones



B. Revised Clearing Proposal

As mentioned above, the additional ecological investigations have resulted in a revised proposal reducing the extent of Residential zoned land to be cleared and proposing additional conservation areas.

After discussion with Council the DA is also amended to identify future services corridors and includes assessment of the ecological impacts of future services and infrastructure locations.

This issue has been specifically addressed and the proposal modified to:

- utilize the existing power easement to create a connection between the 2 lots for roads & services, and
- provide for the sewerage reticulation and connection to Area 15 sewer trunk line that minimizes impacts on E2/E3 zoned areas and avoided all HBTs

A revised clearing plan has been prepared by Hopkins Consultants and is attached.

- ❖ Please note that the proposal seeks approval to clear all vegetation within the red dashed area on the Hopkins plans. The Hopkins plans also identify specific HBTs on the plans to enable better understanding of the ecological impact assessments.
- ❖ The subdivision concept plans (including future infrastructure corridors) referenced in the attached ecological assessments is solely for the purpose of demonstrating how the extent of clearing and ecological impacts have been ascertained. This application is not seeking approval for the subdivision itself.

C. Vegetation Management Plan principles

The Eco Logical Australia June 2018 report includes recommendations that the conservation areas (E2 and E3 zones and the new Conservation Zones) be protected and restored under the guidance of a Vegetation Management Plan (VMP). The recommended VMP principles are provided in Section 5.4 of the Final Flora & Fauna Assessment.

- The primary objective is to conserve and restore natural vegetation, most importantly the Swamp Sclerophyll Forest Endangered Ecological Community and the hollow-bearing trees
- A secondary objective is to allow enjoyment of the conservation areas by residents, and to foster appreciation of the natural environment.

A key VMP principle is that clearing should be staged so that the southern lot (Lot 12) is cleared first, allowing for restoration of the conservation areas in the northern lot (Lot 33) as well as further stag watching to identify any additional HBTs to be protected within the development footprint.

The proponent is fully supportive of implementing the VMP requirements for the northern block in conjunction with clearing and VMP works associated with the southern block to accelerate the overall environmental enhancements proposed.





Doing so would result in the northern environmental lands being well established and managed for many years prior to handover to Council. It is anticipated there is at a minimum five (5) years residential supply available from the southern block before development of the northern block would commence.

D. Environmental Offset lands & dedications

Timing of environmental land dedications is proposed as follows:

- 1 25 ha off site Environmental Lands Offset dedication to National Parks Estate. This dedication requirement was completed immediately upon request of Council staff as a significant gesture of good will and demonstration of the proponent's intent to meet the environmental obligations for both blocks (Lot 12 & Lot 33).
- 2 Southern conservation zone (E2 & E3 lands within the northern part of Lot 12) is to be dedicated to Council once the southern block (Lot 12) is 50% developed, excepting the western infrastructure corridor needed to access Lot 33 to the north.
- 3 Northern conservation zone (E2, E3 & new conservation areas within Lot 33) is to be dedicated to Council once the northern block (Lot 33) is 50% developed. Together with any remaining works and dedication required following completion of the infrastructure corridor works.

D.1 Off site Environmental Lands Offset dedication

Shortly after purchasing the property in early 2014 Council's Director of Environmental Services personally contacted Mr Harvey requesting his assistance to purchase the Area 15 offset land. Mr Harvey acted promptly on this request and by April 2014 had purchased the 25 ha parcel being Lot 12 DP 117051, then dedicated it to the Minister Administering the National Parks and Wildlife Act.

Review of the Local Environmental Study (LES) material relied upon by Council to rezone Area 15 shows that there was a specific body of work undertaken to evaluate the need for offsets under the Biobanking methodology of the time. This specific Ecological Impact Assessment titled **Camden Haven Urban Release Area: Part C – Area 15 Ecological Impact Assessment** was prepared by Eco Logical Australia (2009b).

Section 9.1 (c) of the LES report for the Area 15 rezoning states:

"Following completion of the ELA Part C Report, DECCW advised that the Option 2 Structure Plan would need a minimum off site offset of 34ha of White Stringybark-Red Bloodwood Dry Open Forest to satisfy the "improve or maintain" test (See Appendix I, DECCW letter 31 July 2009).

Following receipt of this advice, Council investigated options for the identification of offset sites. Landowners also pursued the securing of offset land. The result of these investigations was the securing of a land parcel of about 25 ha, containing 21 ha of White Stringybark- Red Bloodwood Dry Open Forest.





DA 2017/394 Woodlands A15 Ocean Drive

Due to the inability to secure the required 34ha of offsets, the development footprint was further modified to reduce the extent of White Stringybark – Red Bloodwood Dry Open Forest to be removed.

As part of these modifications, a north south wildlife corridor link was created to further satisfy the requirements of DECCW's advice.

The adopted Structure Plan (Map 9.1) shows the adopted Structure Plan. This provides for the retention and protective zoning of about 15ha of White Stringybark- Red Bloodwood Dry Open Forest and the loss of about 18 ha of this vegetation community. A 2:1 offset ratio requires securing of 36 ha as an offset. The offset site of 21 ha, plus the retained on-site vegetation, satisfies this criteria.

As result, this specific parcel of land adjacent nearby Dooragan National Park (North Brother Mountain) was identified as suitable and incorporated into the Voluntary Planning Agreements for Area 15.

Council's current DCP identifies that *"The loss of vegetation is to be offset by retention and enhancement of environmental zones within Area 15 and the dedication of land as addition to Dooragan National Park"*.

An ecological assessment of the abovementioned offset' property has been completed to ascertain current habitat values for offset of Koala Food Trees and Hollow Bearing Trees, as well as general bio-diversity values. Key findings of that assessment are:

- a) The assessment found the site vegetation was generally in good condition and weed cover was low throughout.
- b) One threatened flora species comprising the North Brother Wattle (*Acacia courtii*) was detected.
- c) The Eucalypts, Corymbias and Forest Oaks on site would provide foraging habitat for a range of species such as birds, gliders and Flying-Foxes.
- d) The subject site contains Koala habitat, preferred Koala food trees (KFTs) and numerous hollow-bearing trees. Specifically:

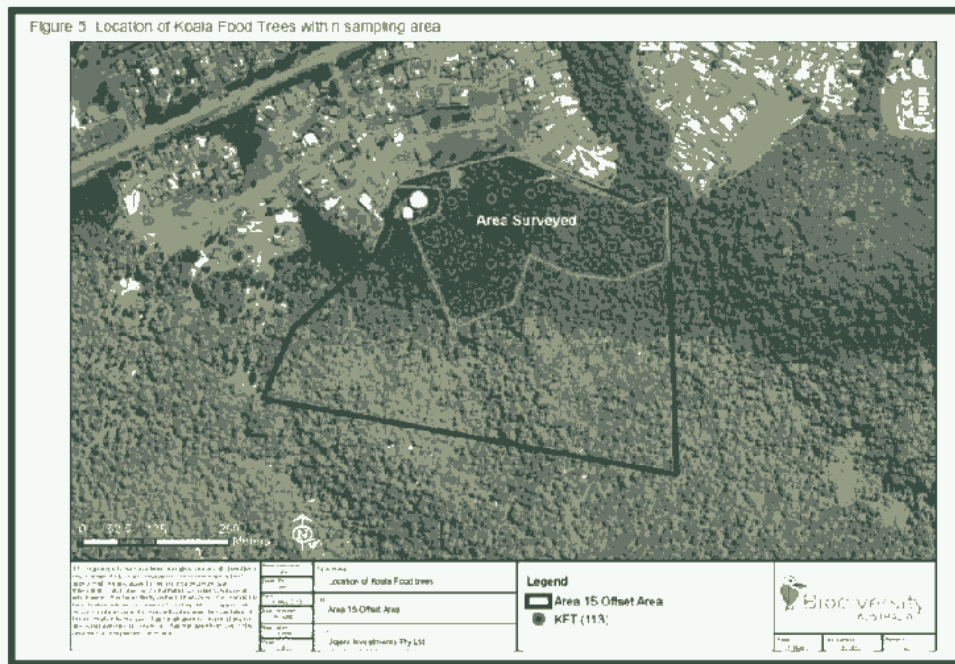
Koala Food trees

A subset of the site (Figure 2 below) was chosen to survey the number of Koala Food Trees species. It had a total of 113 Tallowwood evenly distributed through the survey area and observed to be consistently so across the site. This equates to an average of 19 Koala food Trees per hectare or approximately 475 KFTs across the 25 hectare site.





DA 2017/394 Woodlands A15 Ocean Drive



Hollow Bearing Trees

The entire offset property was surveyed for Hollow Bearing Trees (HBTs) and 198 HBTs were recorded. Of which 138 scored greater than twelve under the PMH DCP hollow-bearing tree scoring system, indicating a high habitat value. Forty-five (45) trees were scored with medium habitat value ranging between eight and twelve and the remaining fifteen (15) trees recorded with hollows, returned a score of less than eight.

A range of hollow sizes were recorded including trees with large hollows >20cm in diameter which could provide nesting/denning/roosting habitat for a wide range of fauna species including Glossy Black Cockatoos, Forest Owls and Yellow-bellied Gliders.



DA 2017/394 Woodlands A15 Ocean Drive

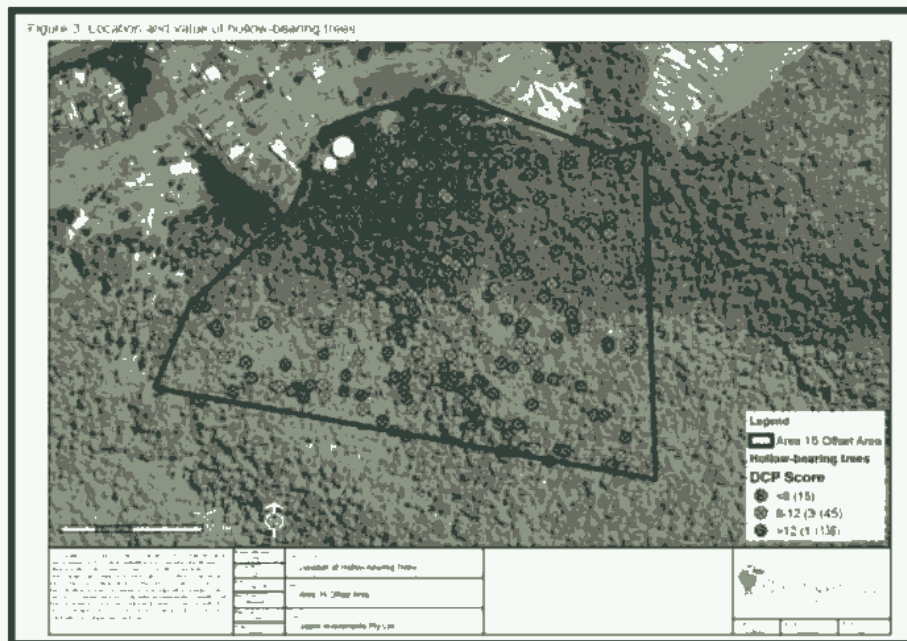


Figure 3 Hollow Bearing Trees

D.2 Environmental Lands dedications within Lots 12 & 33

As outlined above, the Vegetation Management Plan proposal is to establish all the on-site environmental enhancement works in conjunction with the commencement of clearing in the southern lot (Lot 12). Dedication of E2 & E3 areas would more appropriately occur with subsequent residential subdivision works enabling Council to resolve any outstanding matters prior to release of the subdivision certificate(s).

The identified infrastructure and services corridor at the north western most end of Lot 12 would progress in conjunction with any future subdivision works on Lot 33.

E2, E3 and proposed additional conservation areas in Lot 33 would be similarly well established and able to be dedication concurrent to adjacent residential stage releases.

E. Development Control Plan 2011 – Area 15 Camden Haven

Whilst this development proposal does not seek approval for a subdivision nor propose construction of any future public roads, it does identify the clearing likely to be required for future infrastructure and services corridors associate with any future residential subdivision as requested by Council staff.

To this end, a concept subdivision plan was prepared to help inform where infrastructure and services corridors would be needed. The concept subdivision plan proposes a north-south collector road between Lot 12 & Lot 33.





DA 2017/394 Woodlands A15 Ocean Drive

This development application seeks to vary the Camden Haven Area 15 DCP provisions on road hierarchy to allow the proposed services and infrastructure corridor to link Lot 33 and Lot 12.

The DCP for Area 15 identifies an east-west collector road from the north block (Lot 33) west to Lake Ridge Drive across 3 private land holdings through poorly drained constrained land.

The proposed north-south road corridor across the E2 & E3 zone is approximately 200 m long as opposed to the 500m east-west road corridor shown in the DCP.

The DCP road hierarchy potentially landlocks Lot 33 until all adjacent properties develop to the boundary, despite Lot 33 containing a significant proportion of the Area 15 yield, approximately 225 allotments.

Points in support of varying this small part of the DCP road hierarchy are:

E.1 No legal right to access or construct

The wording of the Voluntary Planning Agreements (VPA) for Area 15 contemplates Link Road A and Link Road B to be constructed and dedicated at no cost to Council by the landowner.

The VPA does not clearly bestow a right on adjoining Area 15 landowners to enter into the land and construct Link Roads A & B. In fact the wording of the VPA is such that it indicates the actual landowners of Link Road A & B are to construct and dedicate the roads before any lot reliant on those roads can be released. This ambiguity creates a very difficult position and high potential for conflict between the various Area 15 land owners.

The DCP also shows future road links across land to the east, which was not part of the Area 15 rezoning and VPA's. Development of land to the east has not extended to the boundary and is unlikely to.

The proposed north-south road link would facilitate more direct access for future residents of Lot 33 to Ocean Drive and the shops at Lakewood. The DCP road hierarchy as it stands would force future residents to drive a circuitous route to get to the Lakewood shopping centre, heading west first and then south along Lake Ridge Drive and then east again parallel to where they just came from. The more direct route would also encourage residents to ride pushbikes to the local Lakewood shops.

E.2 Sensible use of existing cleared lands

In light of the fact that any future residential development of Lot 12 & Lot 33 would require the existing overhead power to be placed underground, the existing electrical services corridor would ideally accommodate multiple infrastructure and services including road, sewer, water, power and telecommunications infrastructure. This would limit impacts on other areas of E2 & E3 land that are presently in much better condition, confining them to one alignment.

The multi-service corridor would be comprised of the existing electricity easement at approximately 20 m wide and currently cleared, as well as the remaining land west of the corridor to the property boundary, approximately 20 m wide and also cleared. A total of approximately 6,800 sqm.

E.3 Substantially offset by additional conservation areas



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DA 2017/394 Woodlands A15 Ocean Drive

The ecological impact of not revegetating this small area section of the E2 & E3 zoned lands as per the DCP provisions would be more than offset by the additional 4.39 ha (43,900 sqm) of residential land to be regenerated and conserved as part of this proposal.

E.4 Orderly and Economic Development of Land

Varying from this specific element of the DCP would facilitate a more orderly and economic development of the majority (62%) of the Area 15 residential land, allowing both parcels to access the designated future intersection at Ocean Drive & Mountain View Road, as identified in the DCP.

The subject land is the most feasible to see developed first. The provision for a north-south link overcomes the inefficiencies inherent in the DCP road hierarchy and provides opportunity for future development of the northern end of the adjacent land to the west, Lot2 DP 594388, to link into this road network. As it stands the neighbouring northern residential development area is sufficient for approximately 10 lots only and would never be feasible to fund the east west road links to Lake Ridge Drive.

F. Conclusion

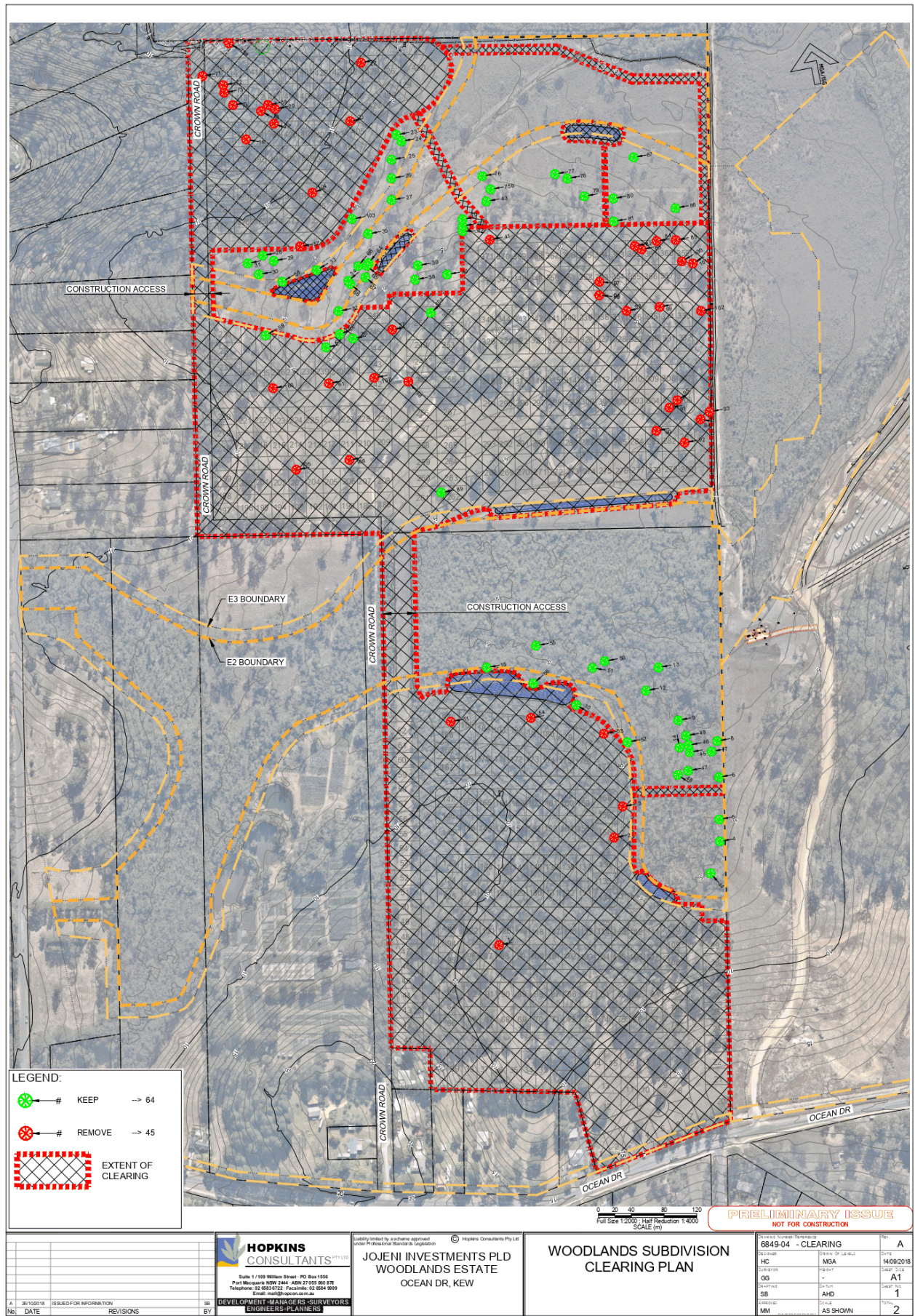
Thankyou for your patience while the extensive additional field work and ecological assessments were being completed. The revised proposal is considered a substantially better outcome, responding to the site ecology and other constraints which, we believe will ultimately result in a more sustainable project both environmentally and economically.

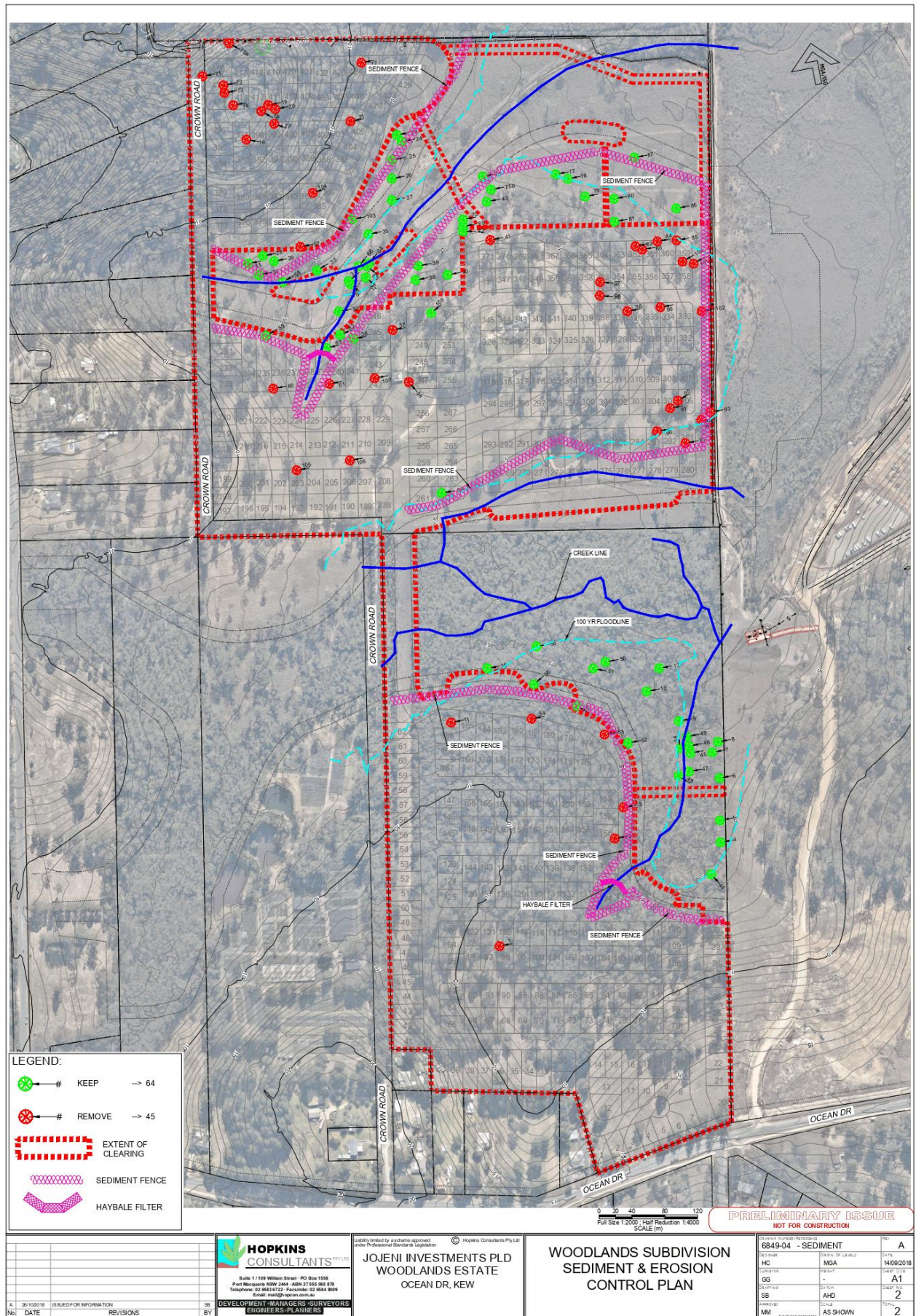
We look forward to progressing the application to approval in the near future.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G Haigh'.

Geraldine Haigh
Director & Senior Planner
GEM Planning Projects
0439 836 711





Item: 08

Subject: DA2018 - 876 - DEMOLITION OF EXISTING DWELLING, DUAL
OCCUPANCY AND TORRENS TITLE SUBDIVISION - LOT 272 DP
236277, NO. 45 THE SUMMIT ROAD, PORT MACQUARIE

Report Author: Patrick Galbraith-Robertson

Applicant: G & G Schwarzel
Owner: G & G Schwarzel
Estimated Cost: \$1.176M
Parcel no: 23910

Alignment with Delivery Program

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

RECOMMENDATION

That DA2018 - 876 for demolition of existing dwelling and construction of dual occupancy with torrens title subdivision at Lot 272, DP 236277, No. 45 The Summit Road, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a Development Application for demolition of an existing dwelling, dual occupancy and Torrens title subdivision at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, 10 submissions have been received.

The proposal has been amended during the assessment of the DA including reducing the building height to be compliant with the 8.5m building height standard.

This report recommends that the development application the development application be approved subject to conditions.

1. BACKGROUND

Existing sites features and surrounding development

The site has an area of 752.31m².

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 (2012):



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Demolition of existing dwelling
- Construction of dual occupancy including 2 detached dwellings
- 1 into 2 lot Torrens title subdivision

Refer to attachments at the end of this report.

Application Chronology

- 22 October 2018 – DA lodged with Council
- 30 October to 12 November 2018 - Neighbour notification of proposal
- 6 December 2018 – Additional information requested – submission issues and stormwater concerns
- 13 December 2018 – Additional information requested – height, driveway, fencing, character, floor space ratio, windows, kitchenette and view impacts issues to address
- 11 February 2019 – Amended plans and additional information received

3. STATUTORY ASSESSMENT

Section 4.15(1) Matters for Consideration

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

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

State Environmental Planning Policy No. 44 - Koala Habitat Protection

There is no Koala Plan of Management on the site. Additionally, the site is less than 1ha in area 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 site is located within a proximity area to Littoral Rainforest.

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

Having regard to clauses 13 and 14 of the SEPP and clause 5.5 of the Port Macquarie-Hastings LEP 2011 the proposed development is not considered 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 the use of 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 sufficiently compatible with the surrounding coastal and built environment noting the zoning and planning controls applying to the site. The site is predominately cleared and located within an area zoned for residential purposes.

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

A BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP. Amended plans have been submitted during the assessment of the DA which will require an updated BASIX certificate. It is recommended that a condition be imposed to ensure that the commitments are incorporated into the development and certified at Construction Certificate and Occupation Certificate stage.

Port Macquarie-Hastings Local Environmental Plan 2011

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

- Clause 2.2, the subject site is zoned R1 general residential. In accordance with clause 2.3(1) and the R1 zone landuse table, the proposed development for a dual occupancy 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 having regard to the following:

- the proposal is a permissible landuse;
- the proposal will contribute to the range of residential housing in the area
- Clause 2.7, the demolition requires consent as it does not fit within the provisions of SEPP (Exempt and Complying) 2008.

- Clause 4.1(4A), the minimum lot sizes do not apply to the proposal as it is characterised as dual occupancy.
- Clause 4.3, the maximum overall height of the buildings above ground level (existing) is 8.3m which complies with the standard height limit of 8.5m applying to the site.
- Clause 4.4, the floor space ratio of the proposal is 0.65:1.0 which complies with the maximum 0.65:1 floor space ratio applying to the site.
- Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
- Clause 7.13, satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development. Provision of electricity will be subject to obtaining satisfactory arrangements certification prior to the issue of a Subdivision Certificate as recommended by a condition of consent.

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

No draft instruments apply to the site.

(iii) **Any Development Control Plan in force:**

Port Macquarie-Hastings Development Control Plan 2013:

DCP 2013: 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 	Water tanks are appropriately located	Yes
3.2.2.2	Articulation zone: <ul style="list-style-type: none"> • Min. 3m front setback • An entry feature or portico • A balcony, deck, patio, pergola, terrace or verandah • A window box treatment • A bay window or similar feature • An awning or other feature over a window • A sun shading feature 	The development contains decks/ verandahs within the articulation zone. The decks/ verandahs do not technically exceed 25% of the articulation zone and is setback the minimum 3m.	Yes
	Front setback (Residential not R5 zone): <ul style="list-style-type: none"> • Min. 6.0m classified road • Min. 4.5m local road or within 20% of adjoining dwelling if on corner lot • Min. 3.0m secondary road 	Front building line setback requirements comply with the exception of the south-western corner of Lot A/Dwelling 1	Yes/No*

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	<ul style="list-style-type: none"> Min. 2.0m Laneway 		
3.2.2.3	Garage 5.5m min. and 1m behind front façade. Garage door recessed behind building line or eaves/overhangs provided	Garage door setback requirements are complied with.	Yes
	6m max. width of garage door/s and 50% max. width of building	Width of garage door requirements are complied with.	Yes
	Driveway crossover 1/3 max. of site frontage and max. 5.0m width	Driveway crossing width requirements are complied with.	Yes
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	The rear setback requirements are complied with and much greater than the minimum 4m setback.	Yes
3.2.2.5	Side setbacks: <ul style="list-style-type: none"> Ground floor = min. 0.9m First floors & above = min. 3m setback or where it can be demonstrated that overshadowing not adverse = 0.9m min. Building wall set in and out every 12m by 0.5m 	The minimum side setback requirements are complied with. The wall articulation is compliant and satisfies the objectives of the development provision. A review of the shadow diagram and inspection of the site and neighbouring properties has identified that the overshadowing impacts are not of a sufficient magnitude in time to warrant refusing consent to the proposal. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June.	Yes
3.2.2.6	35m ² min. private open space area	Each occupancy	Yes

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	including a useable 4x4m min. area which has 5% max. grade	contains 35m ² open space in one area including a useable 4m x 4m area. .	
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
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 fencing proposed.	N/A
3.2.2.10	Privacy: <ul style="list-style-type: none"> • Direct views between living areas of adjacent dwellings screened when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings. ie. 1.8m fence or privacy screening which has 25% max. openings and is permanently fixed • Privacy screen required if floor level > 1m height, window side/rear setback (other than bedroom) is less than 3m and sill height less than 1.5m • Privacy screens provided to balconies/verandahs, etc which have <3m side/rear setback and floor level height >1m 	No 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. Privacy screens are proposed on the rear decks in particular – as amended.	Yes

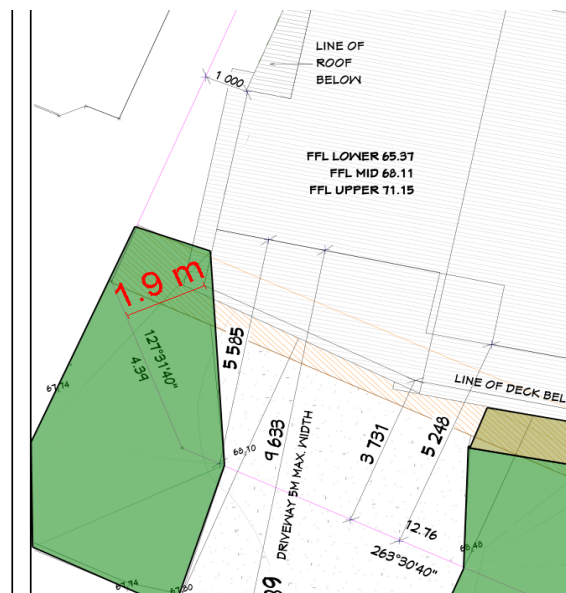
DCP 2013: General Provisions			
	Requirements	Proposed	Complies
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline	No concealment or entrapment areas proposed. Adequate casual surveillance available.	Yes
2.3.3.1	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls	Cut and fill <1.0m change 1m outside the perimeter of the	Yes

DCP 2013: General Provisions			
	Requirements	Proposed	Complies
		external building walls	
2.3.3.2	1m max. height retaining walls along road frontage	None proposed	N/A
	Any retaining wall >1.0 in height to be certified by structure engineer	No retaining wall likely >1m Condition also recommended to require engineering certification	Yes
	Combination of retaining wall and front fence height max 1.8m, max length 6.0m or 30% of frontage, fence component 25% transparent, and splay at corners and adjacent to driveway	No retaining wall front fence combination proposed.	N/A
	Driveway crossing/s minimal in number and width including maximising street parking	Driveway crossings are minimal in width including maximising street parking	Yes
2.5.3.3	Parking in accordance with Table 2.5.1. <u>Dwelling/dual occupancies</u> 1 space per dwelling/occupancy (behind building line). <u>Multi dwelling</u> 1 space per 1 & 2 bedroom occupancies 1.5 spaces per 3+ bedroom occupancies 0.25 spaces per occupancy for visitor parking.	Proposal involves 2 x 4 bedroom dwellings. Therefore 2 x 1 spaces = 2 spaces required. The development proposes 4+ parking spaces.	Yes
2.5.3.11	Section 94 contributions	Contributions apply - refer to ET calc and NOP.	Yes
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	Suitable limited landscaping proposed around driveway/parking locations.	Yes
2.5.3.14	Sealed driveway surfaces unless justified	Sealed driveway areas proposed.	Yes
2.5.3.15 and 2.5.3.16	Driveway grades first 6m or 'parking area' shall be 5% grade with transitions of 2m length	Driveway grades capable of satisfying Council standard driveway crossover requirements. Condition recommended for section 138 Roads Act permit	Yes
2.5.3.17	Parking areas to be designed to	Stormwater drainage	Yes

DCP 2013: General Provisions			
	Requirements	Proposed	Complies
	avoid concentrations of water runoff on the surface.	is capable of being managed as part of plumbing construction.	

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

The proposal seeks to vary Development Provision relating to front setback and articulation zone technically on the south-west corner of dwelling 1/Lot A. The below and aerial image showing boundaries and marked up image by the assessing officer shows the distance as approximately 1.9m to the splay in the front boundary returning to the western neighbour's boundary.



The relevant single objective is:

Front setbacks should support an attractive streetscape.

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

- The subject section of the front of the building deck dwelling 1/Lot A is setback 3.731m to the primary frontage which is a greater setback than the minimum 3m setback permitted as a section of articulation zone.
- The western neighbour's front boundary is in line with the primary frontage line of the subject dwelling 1 Lot A.
- There will be no discernible adverse impact on the streetscape given the primary alignment of the primary front boundary in the context of the remainder of the street.
- The western side setback is compliant with the DCP.
- It could technically be argued that the subject second boundary is a secondary frontage due to the change in the angle of the continuous boundaries fronting the road reservation area.

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

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

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

iv) Any matters prescribed by the Regulations:

NSW Coastal Policy 1997

The proposed development is consistent with the objectives and strategic actions of this policy.

Demolition of buildings AS 2601 – Clause 92

Demolition of the existing building on the site is capable of compliance with this 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 and setting

- The proposal will be unlikely to have any adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.

- The proposal is considered to be sufficiently compatible with other residential development in the locality and adequately addresses planning controls for the area.
- There are no adverse impacts on existing view sharing.
- There are no adverse privacy impacts.

View sharing

During the neighbour notification period concerns surrounding view loss were raised by two (2) neighbours to the east and west of the subject development at no.s 43 and 47 The Summit.

The location of the neighbours relative to the development site is shown below:



The 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 it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.

Using the planning principles of NSW Land and Environment Court in *Tenacity Consulting v Warringah 2004 NSW LEC 140*, the following comments are provided in regard 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:

No. 43 The Summit Road enjoys views from the front of dwelling of the coast, North Brother Mountain with glimpses of land/water interface and beach. From the rear of the dwelling across the development site there is a glimpse view of the Ocean.

The front views are considered to be valuable and iconic particularly of North Brother Mountain. The significance of the front views is considered to be high and the rear view to be low.

No 47 The Summit Road enjoys views partly across the development site side boundary from the front of dwelling of the coast, North Brother Mountain with glimpses of land/water interface and beach. From the rear of this home distant views are enjoyed across the development site from the dining room of the distant mountain views including Bago Bluff and Cairncross Mountain. The front view from the kitchen particularly is considered to be valuable and iconic particularly of North Brother Mountain and the rear view is valuable but moderately significant but considered not iconic. See below photos taken by the assessing officer:

View from kitchen window of No. 47 The Summit Road:



Views from rear of No.47 The Summit Road upper floor dining room:

**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:

Affected views (as described above) from No. 43 The Summit are obtained from the upper habitable bedroom level which is not the primary living area. Views are obtained from both a standing position.

Affected views (as described above) from No.47 The Summit are obtained from the upper habitable levels which are the primary living areas (dining room and kitchen). Views are obtained from both a sitting and standing position in the rear dining room and primary from a standing position in the kitchen at the front of the dwelling.

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 the affected views enjoyed from No. 43 The Summit Road is considered minor as it is from an upper floor bedroom.

The extent of view loss upon the affected views enjoyed from No.47 The Summit Road from the front kitchen window is considered to be devastating however the view is across the eastern boundary of the development site and the kitchen room is setback approximately 11m from the front boundary. The extent of view loss of the distant mountains from the rear dining room of this dwelling will be severe however the view is across the eastern boundary of the development site.

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:

The proposal (as amended) complies with the maximum building height of 8.5m set for the immediate locality. The front section of the dwellings is also 2 storey and less than 8.5m in height. There are no non-compliances with the provisions of DCP 2013 with the exception of the front south-western front corner splay which has no discernible impact on the streetscape having regard to the planning controls which permit the proposal including a reduced front setback with a limited articulation zone for both dwellings.

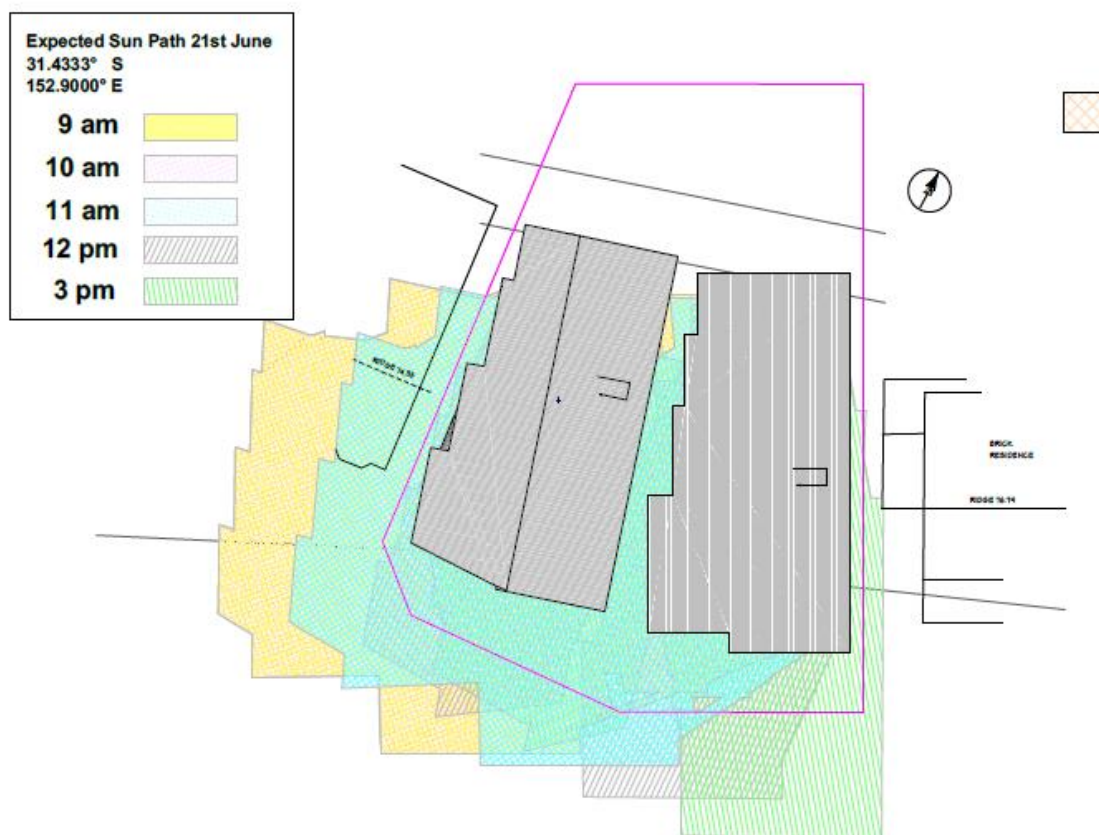
The proposal will have a devastating impact on the view from No.47 The Summit Road's kitchen window however it is considered that even if the proposal was setback 6 or 8m the impact would still be significant and the view is across a side

boundary of the development site. The Applicant has been made aware of these impacts however considers that the proposal complies with Council controls and views across the side boundaries should have limited consideration. As stated in the principles above, taking all of a view all away cannot be called view sharing, although it may, in some circumstances (such as the subject proposal) be reasonable.

In conclusion with regard to view sharing impacts, based upon the above it is considered that the proposal is acceptable and unable to be refused on the grounds of view sharing impacts to neighbouring properties.

Overshadowing

The impacts of potential overshadowing the neighbours has been raised with the Applicant during the assessment of the DA. The below diagram has been provided which provides an indication of shadows which will be generated at the winter solstice at the key times between 9am and 3pm.



A review of the above diagram and inspection of the site and neighbouring properties has identified that the overshadowing impacts are not of a sufficient magnitude in time to warrant refusing consent to the proposal. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June.

Roads

The site has road frontage to The Summit Road, which is a sealed road under the care and control of Council. The Summit Road is a Local road with an upright kerb and gutter. The pavement width is approximately 8m wide.

Traffic and Transport

The additional traffic associated with the development is unlikely to have any adverse impacts to the existing road network within the immediate locality.

Site Frontage & Access

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

Parking and Manoeuvring

Parking spaces have been provided on-site within garages with additional parking provided available within the driveway. Parking and driveway widths on site can comply with relevant Australian Standards (AS 2890) and conditions have been imposed to reflect these requirements.

Water Supply Connection

Council records indicate that the development site has an existing 20mm sealed service from the 100mm diameter AC water main on the opposite side of The Summit Road. An additional water service is required to service the development.

Engineering plans are required to show all existing and proposed water services to the lot.

Final water service sizing will need to be determined by a hydraulic consultant to suit the development as well as addressing fire service coverage to AS 2419 and backflow protection.

Detailed plans will be required to be submitted for assessment with the S.68 application.

Refer to relevant conditions of consent.

Sewer Connection

Council records indicate that the development site has an existing sewer junction from the AC sewer main which runs inside the northern boundary the development.

Torrens title subdivision shall require provision of an additional sewer service.

Engineering plans shall be required as part of the Subdivision Works (Infrastructure) application.

Detailed plans will be required to be submitted for assessment with the S.68 application.

Refer to relevant conditions of consent.

Stormwater

The site naturally grades towards the rear.

The legal point of discharge for the proposed development is defined as a direct connection to Council's kerb and gutter with the use of an approved adaptor (one per lot only). The rear garden area located below the level of the pavement shall drain to a rubble drain/soak away. Details shall be provided as part of the S68 application.

A detailed site stormwater management plan will be required to be submitted for assessment with the S.68 application and prior to the issue of a CC.

In accordance with Councils AUSPEC requirements, the following must be incorporated into the stormwater drainage plan:

- On site stormwater detention facilities

Refer to relevant conditions of consent.

Other Utilities

Telecommunication and electricity services are available to the site. Evidence of satisfactory arrangements with the relevant utility authorities for provision to each proposed lot will be required prior to Subdivision Certificate approval.

Heritage

No known items of Aboriginal or European heritage significance exist on the property. No adverse impacts anticipated.

Other land resources

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

Water cycle

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

Soils

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

Air and microclimate

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

Flora and fauna

Construction of the proposed development will not require any removal/clearing of any identified significant vegetation and therefore will be unlikely to have any significant adverse impacts on biodiversity or threatened species of flora and fauna. Part 7 of the Biodiversity Conservation Act is considered to be satisfied.

Waste

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

Energy

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

Noise and vibration

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

Bushfire

The site is not identified as being bushfire prone.

Safety, security and crime prevention

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area. The increase in housing density will improve natural surveillance within the locality and openings from each dwelling overlook common and private areas.

Social impacts in the locality

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

Economic impact in the locality

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

Site design and internal design

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

Construction

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

Cumulative impacts

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

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

The proposal will sufficiently fit into the locality based upon compliance with the planning controls (including a minor front setback variation) applying to the site and the site attributes are conducive to the proposed development.

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

Ten (10) written submissions have been received following public exhibition of the application.

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

Submission Issue/Summary	Planning Comment/Response
The proposal will have a devastating effect on the iconic view of North Brother Mountain from the kitchen of 47 The Summit Road. The proposal is forward of other residences in the street.	View sharing impacts to 43 and 47 The Summit Road have been assessed earlier in this report. The building height has been reduced be compliant with the 8.5m building height limit.
The proposal will severely restrict the view to the north-west to the airport,	

Submission Issue/Summary	Planning Comment/Response
Bago and Cairncross Mountains from the dining room of 47 The Summit Road.	
There are no other dual occupancies between the corner of Roma Terrace and the Summit Road.	The residential zoning and Development Control Plan permit the development to be proposed on the site. The proposal (as amended) has been assessed as being acceptable and suitable to the site. The planning controls permit a change in character in type of housing.
The proposed building height is 0.8m over the 8.5m building height restriction and is considered excessive. The height exceedance adversely impacts upon 43 The Summit Road.	The proposal has been amended to comply with the 8.5m building height limit with a proposed maximum height of 8.3m.
There is little justification for the clause 4.6 variation to building height.	
Concern with privacy impacts to 43 The Summit Road including from the rear decks and rear yard. Request screening of decks to be angled to the south.	The Applicant has reviewed the screening along the western elevation of dwelling 1/Lot A and this is considered acceptable to satisfy the standard requirements of the Development Control Plan 2013.
Request height poles to be erected including the finished floor levels.	The Applicant has not offered to erect height poles and has instead amended the proposal to comply with the 8.5m building height standard and address all privacy requirements of Development Control Plan 2013.
Proposal will have significant overshadowing impacts to ground floor rumpus, side of house and private open space of 43 The Summit Road in the morning periods mid winter.	This request has been forwarded to the Applicant for consideration. The Applicant has not proposed any change to the western side setback of dwelling 1/Lot A and justified their position that the proposal will not result in any adverse overshadowing impacts to this neighbour based upon existing orientation and permitted standards in the Development Control Plan. A review of the shadow diagrams provided and inspection of the site and neighbouring properties has identified that the overshadowing impacts are not of a sufficient magnitude in time to warrant refusing consent to the
The side setback is requested to be increased to a minimum 3m to reduce the overshadowing impacts to 43 The Summit.	

Submission Issue/Summary	Planning Comment/Response
	proposal. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June.
The proposal will eliminate the ocean views from one window and reduce them from another at 43 The Summit. The area of impact appears to be related to the height exceedance and side setback should be increased to 3m minimum.	View sharing impacts to 43 and 47 The Summit Road have been assessed earlier in this report. The building height has been reduced be compliant with the 8.5m building height limit.
Council should verify the proximity of the building to the south-west front corner splay.	Refer to assessment under the Development Control Plan 2013 and variation recommended to be supported due to this technicality.
Request a dilapidation report of neighbouring 43 The Summit Road be carried out prior to issue of a Construction Certificate including the existing sewer running under the home.	<p>This concern has been forwarded to the Applicant for consideration. The Applicant has advised that given the limited excavation proposed, likely nature of construction and side setbacks it is considered unnecessary to require a specialist dilapidation report prior to construction commencing.</p> <p>The justification provided from the Applicant is considered acceptable and it is noted that a qualified and experienced engineer would be required to design and certify structural capacity of the proposed buildings including excavation and filling.</p>
The floor space ratio is estimated to be 0.81:1 and is requested to be reviewed.	The gross floor space of the dwellings internally within the buildings has been amended and the ratio has been recalculated to be compliant with the 0.65:1 standard.
Details of the retaining walls in the rear yard and implications on fencing should be provided.	Additional details have been shown on the amended plans (attached to this report) including a proposed new boundary fence. The filled area complies with Council's Development Control Plan 2013.
The proposal will increase the living density and will negatively impact on the amenity of 43 The Summit Road in regards to sleeping quarters and areas of	The residential zoning and Development Control Plan permit the development to be proposed on the site. The proposal (as amended) has

Submission Issue/Summary	Planning Comment/Response
outdoor play for the children.	been assessed as being acceptable and suitable to the site. State Government legislation imposes a requirement that Council is not permitted to require more onus standards above DCP controls where a proposal complies with the deemed to comply Development Control provisions.
The proposal does not respect and reflect the neighbourhood and street character in its design. Just because a building code allows a height limit does not mean that it should be maintained to the maximum.	For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In this regard, the proposed building height is now compliant with the maximum building height of 8.5m, the front setback and side setback DCP guidelines and satisfactory landscaping is proposed. The proposal as read from the street is 2 storeys and there are numerous other 2 storey dwellings that have been approved and/or constructed within the immediate The Summit Road locality. The proposal is not located within a nominated conservation area.
The proposal will be a stark contrast to the rest of the current housing in the street.	
The large bulky nature of the proposed buildings will impact the outlook and dominate the private open space of 43 the Summit.	
Unit 1 has a 12m frontage and land sizes are 370m ² which is much smaller than the LEP and surrounding houses.	The residential zoning and Development Control Plan permits the development to be proposed on the site. The proposal (as amended) has been assessed as being acceptable and suitable to the site.
The proposal will have impacts on the value of 43 The Summit Road and 70A Bangalay Drive.	Any potential impacts on property values is not a matter for consideration in the assessment of the Development Application under the Environmental Planning and Assessment Act 1979.
The proposed subdivision will increase traffic and on street parking is already busy.	The additional traffic associated with the development is unlikely to have any adverse impacts to the existing road network within the immediate locality.

Submission Issue/Summary	Planning Comment/Response
	The proposal provides for compliant off-street carparking and opportunity for casual visitor parking within the driveways behind the front property boundaries.
There are already four townhouses at 27-31 The Summit.	Noted.
If the proposal is passed other similar developments will occur.	The zoning and planning controls permit this type of housing where the site conditions allow.
How is parking going to be provided for 2 to 3 cars and there is serious parking issues in the street.	The proposal provides for compliant off-street carparking and opportunity for casual visitor parking within the driveways behind the front property boundaries.
There is no detailed landscape plan to show how the frontage could be sympathetic to surrounding areas.	<p>The Applicant has provided an indicative concept landscape plan which proposes a limited area of low water use shrubs and ground cover in the front setback particularly where visible from the public domain.</p> <p>Given the extent of other numerous homes with only front yards of lawn it is difficult to recommend full landscaping of the front yard. There are no specific requirements in Council's Development Control Plan 2013 to specify landscaping also.</p>
The proposal will allow for direct visibility into the backyards of 70 and 70A Bangalay Drive which backs on the development and all privacy will be removed.	The typical 12m distance privacy separation distance standard in Development Control Plan 2013 is satisfied and it is noted that existing trees within 70 and 70A Bangalay Drive provide some obscuring of direct views as intended by the Development Control Plan.
The proposal will reduce the privacy of the bedrooms of 48 The Summit Road.	Any privacy potential privacy impacts to bedrooms is not a matter for considered under Council's Development Control Plan 2013.
Additional catchment in a stormwater event will discharge onto 70 The Summit Road. Question whether the developer installing stormwater drainage/onsite detention to collect from the rear and	Additional stormwater detail has been submitted during the assessment of the DA which proposes charged stormwater lines back to The Summit for the building itself. Refer to

Submission Issue/Summary	Planning Comment/Response
drain to the front of the block.	additional comments earlier in this report addressing Stormwater impacts and recommended conditions of consent.

(e) The Public Interest:

The proposed development will be in the wider public interest with provision of appropriate additional housing.

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

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

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

5. CONCLUSION 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 - 876.1 Recommended Conditions
- 2 [View](#). DA2018 - 876.1 Additional Information 45 The Summit response to Council
- 3 [View](#). DA2018 - 876.1 Contribution Estimate
- 4 [View](#). DA2018 - 876.1 Plans

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

NOTE: THESE ARE DRAFT ONLY

DA NO: 2018/876

DATE: 4/03/2019

PRESCRIBED CONDITIONS

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

A – GENERAL MATTERS

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

Plan / Supporting Document	Reference	Prepared by	Date
Development plans	Sheet 1 to 14	DLS Design	1 March 2019

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

- (2) (A002) No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- the appointment of a Principal Certifying Authority; and
 - the date on which work will commence.
- Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.
- (3) (A003) The proponent shall submit an application for a Subdivision Certificate for Council certification with all relevant documentation.
- (4) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.
- (5) (A009) The development site is to be managed for the entirety of work in the following manner:
- Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - Appropriate dust control measures;
 - Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
 - Building waste is to be managed via an appropriate receptacle;

5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidaysThe builder to be responsible to instruct and control his sub-contractors regarding the hours of work.
- (6) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.
- (7) (A030) The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's current AUSPEC Specifications and Standards. All works must be approved by Council pursuant to Section 138 of the Roads Act.
- (8) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:
 - a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
 - c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

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

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
 - Position and depth of the sewer (including junction)

- Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (B006) An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the Construction Certificate.
- Such works include, but not be limited to:
- Civil works
 - Traffic management
 - Work zone areas
 - Hoardings
 - Footway and gutter crossing
 - Functional vehicular access
- (3) (B003) Submission to the Principal Certifying Authority prior to the issue of a Construction Certificate detailed design plans for the following works associated with the developments. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:
1. Sewerage reticulation.
 2. Water supply plans shall include hydraulic plans for internal water supply services and associated works in accordance with AS 3500, Plumbing Code of Australia and Port Macquarie-Hastings Council Policies.
 3. Stormwater systems.
 4. Detailed driveway profile in accordance with Australian Standard 2890, AUSPEC D1, and ASD201 & ASD207, Port Macquarie-Hastings Council current version.
- (4) (B010) Payment to Council, prior to the issue of the Construction or Subdivision Certificate (whichever occurs first) of the Section 7.11 contributions set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with the provisions of the following plans:
- Port Macquarie-Hastings Administration Building Contributions Plan 2007
 - Hastings S94 Administration Levy Contributions Plan
 - Port Macquarie-Hastings Open Space Contributions Plan 2018
 - Hastings S94 Major Roads Contributions Plan
 - Port Macquarie-Hastings Community Cultural and Emergency Services Contributions Plan 2005

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

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

- (5) (B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to the issue of a Construction Certificate or Subdivision Certificate (whichever comes first), of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
 - augmentation of the town water supply headworks
 - augmentation of the town sewerage system headworks
- (6) (B016) Provision to each lot of a separate sewer line to Council's main. All work will need to comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies. Any abandoned sewer junctions are to be capped off at Council's sewer main.
- (7) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (8) (B037) The finished floor level of the building shall be at least 1050mm above the soffit of Council's sewer main. Details indicating compliance with this are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.
- (9) (B038) Footings and/or concrete slabs of buildings adjacent to sewer lines or stormwater easements are to be designed so that no loads are imposed on the infrastructure. Detailed drawings and specifications prepared by a practising chartered professional civil and/or structural engineer are to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (10) (B071) Prior to the issue of any Construction Certificate, the provision of water and sewer services to the land are to be approved by the relevant Water Authority and relevant payments received.
- (11) (B072) A stormwater drainage design is to be submitted and approved by Council prior to the issue of a Construction Certificate. The design must be prepared in accordance with Council's AUSPEC Specifications and the requirements of Relevant Australian Standards and make provision for the following:
 - a) The design is to be generally in accordance with the stormwater drainage concept plan on Drawing No 11036 prepared by Beukers & Ritter Consulting and dated 15/10/2018.
 - b) The legal point of discharge for the proposed development is defined as kerb and gutter.
 - c) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.

- d) The design shall incorporate on-site stormwater detention facilities to limit site stormwater discharge to pre development flow rates for all storm events up to and including the 100 year ARI event. Note that pre development discharge shall be calculated assuming that the site is a 'greenfield' development site as per AUSPEC requirements.
- (12) Council records indicate that the development site is connected to Sewer via junction to the existing sewer manhole in the southern corner of the lot. This can be adopted for Unit 1 (Lot 1). A second sewer junction is required for Unit 2 (Lot 2). The engineering plans are acceptable for Sewer Section.
- (13) An updated BASIX certificate to that submitted with the DA shall be submitted with the application for Construction Certificate.
- (14) (B039) Detailed drawings and specifications prepared by a professional engineer for all retaining walls supporting:
 - i. earthworks that are more than 600mm above or below ground level (existing); or
 - ii. located within 1m of the property boundaries; or
 - iii. earthworks that are more than 1m above or below ground level (existing) in any other location;are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.

C – PRIOR TO ANY WORK COMMENCING ON SITE

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

D – DURING WORK

- (1) (D001) Development works on public property or works to be accepted by Council as an infrastructure asset are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection, by contacting Council's Customer Service Centre on (02) 6581 8111. You must quote your Construction Certificate number and property description to ensure your inspection is confirmed:
 - a. when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
 - b. prior to the pouring of concrete for sewerage works and/or works on public property;
 - c. during construction of sewer infrastructure;

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

- (2) (D006) A copy of the current stamped approved construction plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- (3) (D025) The sewer junction shall be capped off with an approved fitting in conjunction with demolition works and Council notified to carry out an inspection prior to backfilling of this work.
- (4) (D029) The demolition of any existing structure shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.

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

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

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount.
- (3) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (4) (E034) Prior to occupation or the issuing of the Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (5) (E053) All works shall be certified by a practicing Civil Engineer or Registered Surveyor as compliant with the requirements of AUSPEC prior to issue of Occupation/Subdivision Certificate or release of the security bond, whichever is to occur first.
- (6) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any properly qualified person (eg the builder), stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (7) (E061) Landscaped areas being completed prior to occupation or issue of the Certificate.
- (8) (E056) A Certificate of Compliance under the provisions of Section 307 of the Water Management Act must be obtained prior to the issue of any occupation or subdivision certificate. The application for the certificate is to include an acceptable Work-As-Executed plan for water and sewer mains and services from a Professional Engineer or Registered Surveyor.

- (9) (E068) Prior to the issue of a subdivision certificate, evidence to the satisfaction of the Certifying Authority from the electricity and telecommunications providers that satisfactory services arrangements have been made to the proposed lots (including street lighting and fibre optic cabling where required).
- (10) (E195) The subdivision certificate shall not be issued until such time that the dwellings associated with this development are substantially commenced (as determined by Council) or where a strata management statement, or restriction as to user, prohibits any dwelling on each lot other than the dwelling approved as part of this consent.

F – OCCUPATION OF THE SITE

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

DRAFT

The General Manager,
Port Macquarie Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Attention: Pat Gailbraith Robertson, Development Assessment Planner

**Re: Development Application for Lot 272 DP 236277, DA2018.876
Number 45 The Summit Road, Port Macquarie 2444.**

Applicants: Glenn and Greg Schwarzel

This submission is to be read in conjunction with the revised plan-set as attached.

Thanks Pat for sending through the submissions Council received regarding our proposal. We note that many were lodged by parties not advised through the notification process and, with the exception of those from 43 and 47 The Summit Road, all after the expiration of the notification period as defined in the Port Macquarie-Hastings Development Control Plan 2013, Clause 1.3.2.4.

It is apparent from our reading of the submissions that some of the neighbours have not understood the details of the proposal nor the rules that apply to the proposed development.

Comments below have been provided to address all submissions received by Council including those received outside the notification period which we regard as being not duly made.

Introduction

We are the owners of 45 The Summit Road and we purchased the property over nine and a half years ago (in 2009) with a view to eventually retiring in Port Macquarie.

Our initial investigations indicated that the property was suitable for our proposed housing needs in the future and this was confirmed by way of the planning certificate at the time of sale, indicating we were eligible to further develop the property with consent from Council.

We note that a number of those who lodged submissions purchased their properties at a subsequent date and none had contacted us regarding our future development proposals or plans prior to the purchase of their property.

Prior to submitting our Development Application, DA 2018.876, advice was sought from Council several times on many aspects of the proposed plans and subsequent changes were made to the draft plans specifically based on that professional advice.

Amendments to the Previous Plans

Following further consultation with Council on Wednesday, 13th February 2019, a number of changes have been made to the previous plan set submitted with DA 2018.876.

Specifically, both dwellings now fully comply with the 8.5 metre Height of Building envelope at both the front and rear of each dwelling.

Dwelling 1 has had the roof over the rear deck redesigned so that it is entirely under 8.5 metres.

Dwelling 2 has had the pitch of its roof increased by lowering the roof at the rear of the building and then removing the portion of the roof over the rear deck that exceeds 8.5 metres so that it is entirely under 8.5 metres. A Registered Surveyor was engaged to provide accurate spot points to confirm the height of the roof.

In respect of Floor Space Ratio, Dwelling 1 has removed the Lower Ground Floor bathroom, including the toilet, along with the bedroom, the family room, an internal centre wall and part of the rear wall to create an open Alfresco area.

Dwelling 2 has reduced the size of the Lower Ground Floor Laundry and subsequently decreased the length of the Lower Ground Floor by 1.5 metres at the rear of the building.

In addition, the Bathroom at the rear of the Ground Floor has also been reduced in size subsequently decreasing the length of the Ground floor by 1.5 metres at the rear of the building.

Overview

Under the Port Macquarie Hastings Local Environmental Plan 2011 (PMH LEP 2011) the subject land is R1 General Residential (Land Zoning Map – Sheet LZN_013G).

Development within an R1 zone must comply with the planning provisions under the PMH LEP 2011. (see below).

The proposal is permissible with consent from Council.

Zone R1 General Residential

1 Objectives of zone

- *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.*

2 Permitted without consent

Home occupations

3 Permitted with consent

Attached dwellings; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Places of public worship;

Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Backpackers' accommodation; Boat building and repair facilities; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Electricity generating works; Entertainment facilities; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewerage systems; Sex services premises; Signage; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water storage facilities; Water treatment facilities; Wharf or boating facilities; Wholesale supplies

We wish to highlight that the amended proposal is consistent with the objectives of the Port Macquarie-Hastings Development Control Plan 2013 (PMH DCP 2013) and the relevant zones.

Following amendments to the plans they are Fully Compliant in all aspects of the PMH LEP 2011 and the PMH DCP 2013 including the following areas of concern raised in the submissions:

Height of Building - as defined in the PMH LEP 2011
 Floor Space Ratio – as defined in the PMH LEP 2011
 Front Setback – PMH DCP 2013 Clause 3.2.2.2 (b)
 Garage Setback – PMH DCP 2013 Clause 3.2.2.3
 Rear Boundary Setback – PMH DCP 2013 Clause 3.2.2.4
 Side Boundaries setback – PMH DCP 2013 Clause 3.2.2.25
 Provision of Parking – PMH DCP 2013 Clause 2.5.3.23
 Overshadowing – PMH DCP 2013 Clause 3.2.2.5(b)
 Privacy - PMH DCP 2013 Clause 3.2.2.10

We have summarised the submissions and provide below our responses to the varying concerns expressed.

Bulk, Scale and Character of the proposed Development

The proposed development at 45 The Summit Road is consistent with the objectives of the PMH DCP 2013 and the objectives within the zone in which the development is proposed.

The Summit Road is characterised by a mixture of double and single storey dwellings fronting the road, as well as several multi dwelling townhouses. All display varying rooflines, building styles and finishes.

As the land form changes, dwellings presenting with up to 3 storeys at the rear are present within the existing streetscape.

It is a sympathetic development to the emerging streetscape, visually appropriate to the surrounding area and not inconsistent with the zone objective of *providing for a variety of housing types and densities*. It will not result in a form of development that is uncharacteristic of the streetscape.

We note that the dwellings located at 43 and 47 The Summit Road present as 2 storeys fronting the road and are 3 storey dwellings at the rear. Our proposal is consistent with the built form of the adjacent dwellings.

45 The Summit Road has the widest street frontage of any block the length of The Summit Road. The site's unique shape and considerable width can accommodate 2 architecturally designed, detached dwellings whilst mitigating local impacts.

Dwelling 1 is only 10.4 metres wide with the body of the house being 15 metres long whilst Dwelling 2 is only 10.2 metres wide with the body of the house being 16.7 metres long.

Due to the allotment design each dwelling is offset to each other. The two separate dwellings will not create bulk as such. Each dwelling has been designed to face in a different direction thereby maintaining the existing quality and character of the precinct in which it is located and protecting the amenity of the existing residents.

As identified above, each dwelling like many others in The Summit Road, is two storeys high when viewed from the street and both dwellings sit well below the 8.5 metre numerical building height limit that applies to the subject land under the PMH LEP 2011.

We engaged a local Registered Surveyor to provide a contour plan of the property to confirm the following heights.

- Dwelling 1 is 1.86 metres below the 8.5 metre numerical height limit when viewed from the street.
- Dwelling 2 is 1.03 metres below the 8.5 metre numerical height limit when viewed from the street.

In addition they determined the height of the ridge line of 43 and 47 The Summit Road. The measured height of 47 The Summit Road is an RL of 78.7 m.

The maximum ridge line of either proposed dwelling on 45 The Summit Road is 76.63 m.

Therefore the height of the highest ridge line of either dwelling at 45 The Summit Road is a full 2.07 metres less than that of 47 The Summit Road.

Based on the information provided by the Registered Surveyor we have prepared an indicative front elevation (below) of the properties showing how the two dwellings sit within the landscape when viewed from the street.

Composite Front Elevation (Indicative)



When considering the redevelopment of the aging house stock on the site as applicants we did not want the proposed development to be a large and bulky “common wall” dual occupancy, even though this is a type of development which is permissible on the site under the PMH DCP 2013 with consent.

We understand that maximum Floor Space Ratios were introduced by Councils to ensure the bulk and scale of developments are appropriate to the area and our amended proposal is fully compliant in that respect.

Claims that our dwellings are “out of character” are merely individuals personal opinions not based upon facts or supported by any planning grounds.

Floor Space Ratio (FSR)



According to the Floor Space Ratio Map Sheet FSR_013G associated with the PMH LEP 2011 the maximum FSR permitted for the subject land is 0.65:1 (see above map for details).

We note that the permitted FSR varies within the street and half of the properties in The Summit Road have a higher permitted FSR of 1:1.

Both dwellings are Fully Compliant with the method of calculation as determined by the definition under the PMH LEP 2011. The exclusions include those highlighted in yellow.

(2) Definition of "floor space ratio" The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

The relevant FSR's in relation to our dwellings after deducting excluded areas, which includes only one parking space at 18 square metres, are:

Dwelling 1 – 204.88 square metres

Dwelling 2 – 258.58 square metres

This equates to a blended gross floor area of 463.46 square metres.

The total site area is 752.5 square metres as per the Register of Land Values (Lot/Section/Plan no: 272/236277).

Therefore the blended FSR is **0.61:1** and as such is within the applicable maximum FSR control at 45 The Summit Road.

To remove misperception, diagrams have been included with the amended plan set indicating the specific areas of compliance (refer pages 15 to 17).

Setbacks to The Summit Road

It is noted that existing dwelling setbacks within The Summit Road vary considerably.

The front building line of our proposal in respect of the Primary Frontage however is Fully Compliant with PMH DCP 2013, Clause 3.2.2.2 (b).

There are several nearby buildings in the street with garages built within the permitted front setback determined by the PMH DCP 2013. Refer photo below.



Furthermore the garage setbacks of our dwellings, unlike others in the street, are also Fully Compliant with PMH DCP 2013 Clause 3.2.2.3.

In fact ALL setbacks, front, rear and both sides are Fully Compliant with the requirements of PMH DCP 2013 which also includes Clauses 3.2.2.4 (Rear Boundary Setback) and 3.2.2.25 (Side Boundaries setback).

The rear setback far exceeds the minimum requirement of 4 metres at over ten and a half metres from the rear boundary. The two dwellings themselves also achieve a generous separation.

We note that there are no explicit provisions in the PMH DCP 2013 that state developments of this type need to depart from the stated numerical standard based on the primary frontage of adjacent buildings.

It would appear that 47 The Summit Road has a primary front setback of approximately 5 metres (refer photo in "Impacts on view sharing") whilst 43 The Summit Road has a primary front setback of approximately 5.5 metres.

Parking and Traffic Issues

In respect of parking both dwellings are fully compliant with PMH DCP 2013 Clause 2.5.3.23 and in fact they far exceed the minimum requirements, providing for a potential minimum combined total of up to seven (7) off street car parking spaces.

Each driveway allows for forward entry and exit with good visibility in both directions. The existing layback and nature strip driveway, which will be utilised by Dwelling 1, will be retained.

The removal of a car parking space from the street through the addition of a new driveway will likely improve safety, traffic flow and the amenity of the locality.

There are limited traffic considerations for a cul-de-sac where essentially only a three bedroom low density dwelling is being added to the street.

The development is not a Traffic Generating Development as defined under the State Environment Planning Policy (Infrastructure) 2007 Clause 104 and Schedule 3 and is therefore not subject to PMH DCP 2013 Clause 2.5.3.22.

The RMS Guide to Traffic Generating Developments (2013) provides likely traffic generation rates for regional area dwellings. A typical standalone low density residential dwelling generates 7.4 daily vehicle trips. This includes weekday average evening peak hour vehicle trips of 0.78 and average morning peak hour vehicle trips of 0.71. With both couples retired these can likely be discounted providing for an expected increase of approximately 5.9 trips per day on the local road network.

We would expect that the local road hierarchy is capable of accommodating this eventuality.

Submissions which claim that traffic volumes on The Summit Road are “*already busy*” are not supported by any data or logic and are unsubstantiated.

Overshadowing

In respect of over shadowing and solar access of the neighbouring properties it has been established by shadow diagrams that both dwellings are Fully Compliant with PMH DCP 2013 Clause 3.2.2.5 (b).

Specifically, due to the north / south orientation of the block, the sun study demonstrates that the adjoining properties primary living areas and primary open space areas are not adversely over shadowed for more than 3 hours between 9am and 3pm on 21 June. In fact by noon **none** of the adjoining property, primary space or otherwise, is over shadowed.

This is consistent with the planning principles outlined in *Parsonage v Ku-ring-gai Council* [2004] NSWLEC 347 and the revised planning principles in the *Benevolent Society v Waverley Council* [2010] NSWLEC108214 April 2010–NSW Land and Environment Court.

Furthermore, whilst inconsequential given the additional shadow diagrams provided in the amended plan set, reference to the floor plan of 43 The Summit Road (per Google search) indicates that the primary living areas are not impacted by overshadowing at all. The resident of 43 The Summit Road confirms this by stating in their submission "*the boundary with the proposed development shares all sleeping quarters*".



Google search of the floor plan of 43 The Summit Road.

As Council would be aware the neighbour at 43 The Summit Road sought additional shadow diagrams and these have been duly provided in the amended plan set (refer page 12).

Council should note that the submission from 43 The Summit Road, when discussing potential over shadowing of their property omits the full text of the planning control with respect to the length of time to which over shadowing applies. Additionally, they identify a pre-existing "*significant mould issue*" which will render any future allegations to be of no practical value.

Impacts on view sharing

The NSW Land & Environment Court (NSWLEC) has developed planning principles when considering the assessment of view impacts.

Commentary from the Planning Principles and Consistency of Decisions Talk delivered by Dr John Roseth, Senior Commissioner, Land and Environment Court of New South Wales to the Law Society's Local Government and Planning Law Seminar on 15 February 2005 are italicised below.

Step One

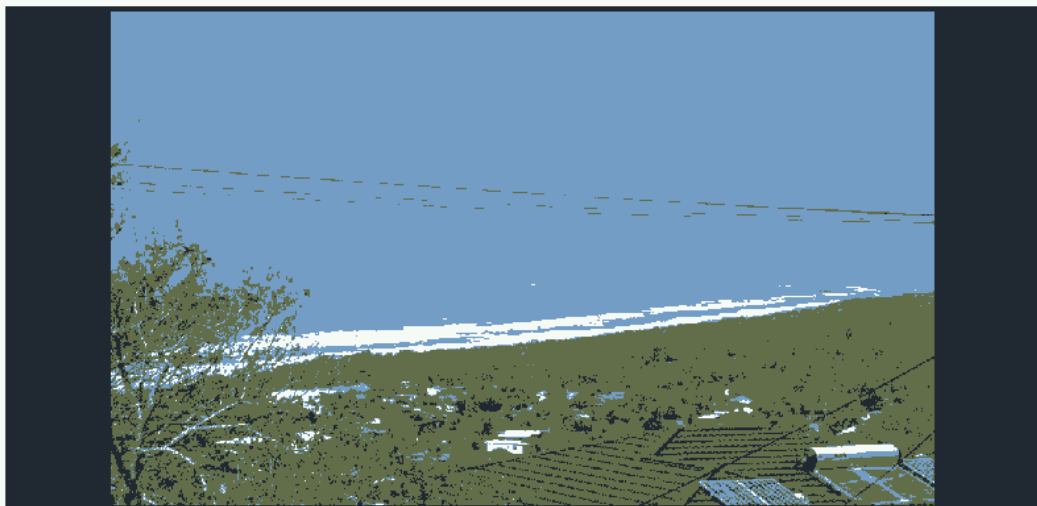
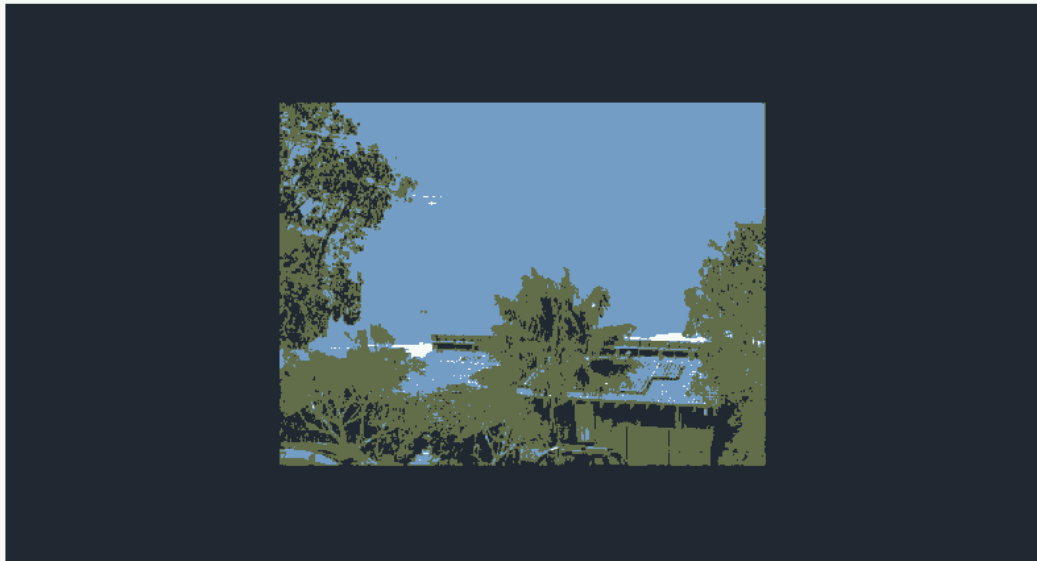
The first step requires the assessment of views that the proposal will affect. It establishes a value system for assessing different kinds of views. Water views are valued more highly than land views; iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment: The photographs provided to support the concerns regarding view sharing from the owners of 47 The Summit Road identify potential impacts on view sharing over some rural vistas to the west of the development site from a rear corner window across the side boundary of 45 The Summit Road and partial distant water views to the south west across the side boundary of 45 The Summit Road from a corner window which is set back approximately **11.5 metres** from the front boundary down the side of 47 The Summit Road.

It is unreasonable to expect the development site to maintain distant views for neighbours across their side boundary from a side window set so far back (refer attached photos in “Step Two”, pages 12 and 13).

The photograph provided by the owners of 43 The Summit Road of their forward view differs somewhat from those available through a property search on the internet. This view is expected to be unaffected.





The primary views from 43 The Summit Road per real estate listing of their property.

These and other unencumbered views can be confirmed by reference to the following web address.

<https://www.realestate.com.au/sold/property-house-nsw-port+macquarie-121195482>

Submissions regarding view sharing were not received from any other neighbouring property.

Step Two

The second step is to consider how reasonable it is to expect to retain the views. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.

Comment: The affected views of 47 The Summit Road are those directly across the side boundary of the development site. The proposal has no impact upon the views from both 43 and 47 The Summit Road over their front or rear boundaries.

It should also be noted that the views currently provided to 47 The Summit Road from these overlooking windows, across the side boundary of 45 The Summit Road come at considerable privacy impacts to the subject development site.

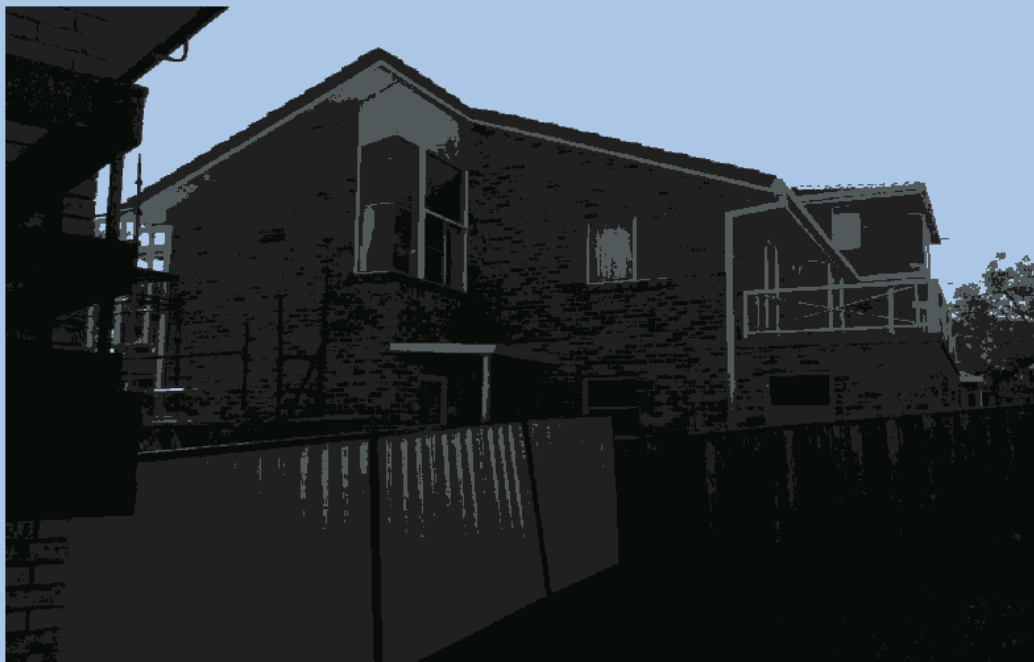
It is not understood by the owners of 45 The Summit Road what privacy considerations Council gave to the development application from the owners of 47 The Summit Road when Council approved the rear additions under PMH DCP 2013 (DA 3/2/2015 with S96 modification 20/8/2015).



The view from the rear corner window of 47 The Summit Road across the side boundary of the development site highlighting the considerable privacy impacts.



View from 47 The Summit Road across the side boundary of the development site from the side corner window setback approximately 11.5 metres from the front boundary down the side of the house.



The side corner window set back 11.5 metres from the front boundary and well back from the primary frontage of 47 The Summit Road.



The primary front setback of 47 The Summit Road is approximately 5 metres.



We note that no photos were provided by 47 The Summit Road from the Primary Frontage windows setback approximately 5 and 6 metres from the front boundary (above).

Comment: The photograph provided to support the concerns regarding view sharing from the owners of 43 The Summit Road identify potential impacts on view sharing over some partial distant rural vistas to the north east of the development site across the side boundary of 45 The Summit Road from a rear facing window located above a toilet in an ensuite of a bedroom set back approximately 16 metres from the rear boundary.

It is unreasonable to expect the development site to maintain distant views across a side boundary from this rear facing window (refer attached photo).

The proposal has no impact upon the views from 43 The Summit Road directly over the front or rear boundaries from the windows actually located at the front and rear of the property.



The view to the rear of 43 The Summit Road from the rear facing window in an ensuite.

Step Three

The third step is to 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.

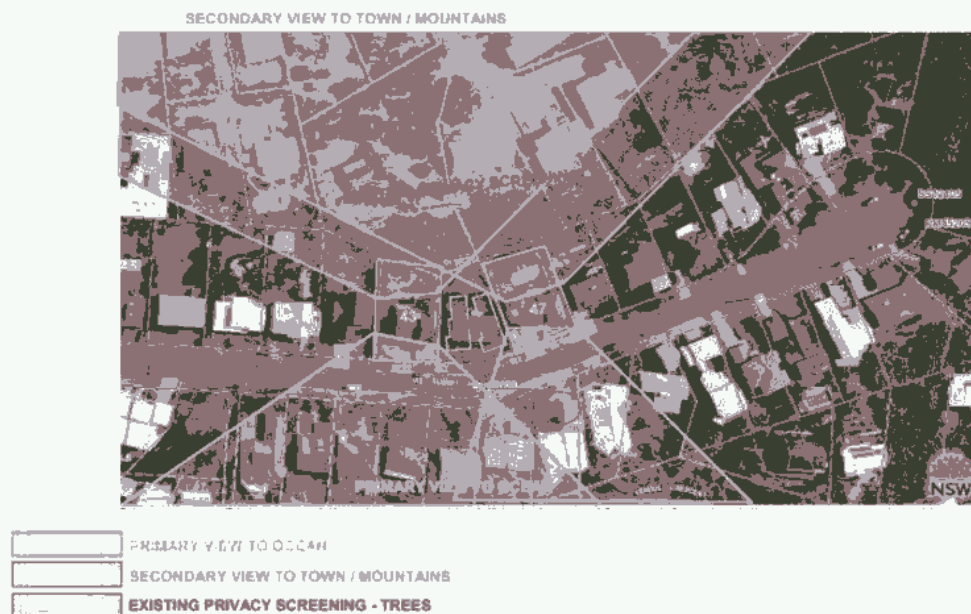
Comment: We consider the extent of the impact upon the views from both 43 and 47 The Summit Road over their front or rear boundaries to be negligible.

We concede that the partial distant water views across the side boundary of 45 The Summit Road from the overlooking corner window set back approximately 11.5 metres down the side of 47 The Summit Road will be impacted.

We have prepared a site analysis indicating the expected primary and secondary views from both 43 and 47 The Summit Road after the construction of the dwellings at 45 The Summit Road (refer below).

Site Analysis

Six Maps Aerial View - Identifying view sharing and existing privacy trees/screening





The view over the rear boundary of 47 The Summit Road showing no impact.

Step Four

The fourth step is to 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.

Comment: The proposed development fully complies with all relevant planning controls.

As such we consider the planning proposal does not warrant amendment or refusal.

Privacy

The development site is contained within an area of varying topography making the provision of privacy a challenging one. As stated above, the privacy of the development site is already greatly impinged upon by existing neighbouring dwellings.

Please refer to the previously attached photos of the westward views across 45 The Summit Road from 47 The Summit Road as well as the photo below taken from 43 The Summit Road of a small child looking over the western side boundary and into the rear of 45 The Summit Road.



To address privacy impacts on neighbouring properties the planning proposal includes within the building design a number of features intended to minimise privacy impacts comprising the provision of offset wall design, window placement with a sill height of more than 1.5 metres and the inclusion of privacy screens (Fully Compliant with the requirements of the PMH DCP 2013 Clause 3.2.2.10) to all side boundary open space areas.

In addition a retaining wall, built to consulting Engineers details, will be constructed inside the boundary of the allotment which will specifically include the western side boundary, the rear boundary and the eastern boundary (as detailed on Page 4 of the amended plan set).

A timber fence will then be erected on top of the retaining wall to increase privacy for both 43 and 45 The Summit Road. It is expected that the new fence will look similar to the current rear fence of 43 The Summit Road as pictured below.



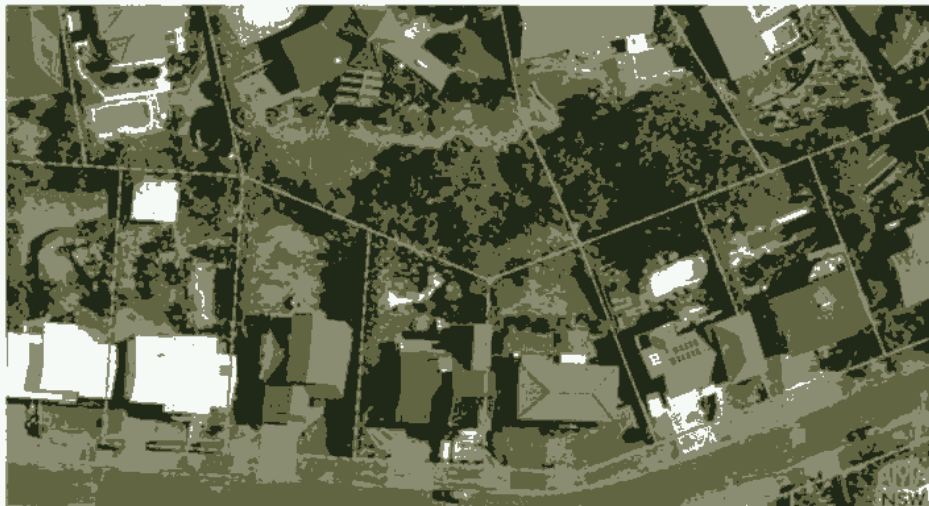
With respect to privacy concerns raised by the owners of 70A Bangalay Drive there is no overlooking potential from the proposed development site into the swimming pool area of the property. The pool area they speak of is approximately 45 metres away and already significantly screened by trees.

The owners of this property appear unaware that they actually share their rear boundary with 47 and 49 The Summit Road not 45 The Summit Road as stated in their submission, *"We currently have a house at 70A Bangalay Drive which backs onto the proposed Development Site"*. (Refer aerial photo attached).

With respect to privacy concerns raised by the owners of 70 Bangalay Drive the overlooking potential from the proposed development site is considered to be considerably less than that of several other properties which border 70 Bangalay Drive including both 41 and 43 The Summit Road. (Refer aerial photo attached).

13/12/2018

Site Maps



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5/1

Reference to the photo taken from the rear corner window of 47 The Summit Road would suggest that the dwelling at 70 Bangalay Drive would not be visible from 45 The Summit Road and in any case it is situated approximately 65 metres away.

With respect to privacy concerns raised by the owners of 48 The Summit Road. The proposed development is set back in excess of 25 metres from their dwelling and only 1.7 metres closer than the existing 2 storey dwellings front balcony on the subject land.

Furthermore, the width of the front balcony of Dwelling 1 is predominantly 1.2 metres deep whilst Dwelling 2 is only .96 metres deep. Given the public nature of both balconies and that they only provide sufficient space to stand they will not be used for entertaining.

48 The Summit Roads submission also indicates that the area in question is not a primary living area but a bedroom. We further suggest that the current level of existing landscaping and screening would provide for additional privacy. (Refer photo below).



48 The Summit Road

We consider that the planning proposal meets with the general principles for privacy considerations outlined in *Meriton v Sydney City Council* [2004] NSWLEC 313.

There is no significant exacerbation of privacy impacts as a result of the proposed development.

Height of Buildings

According to the Height of Buildings Map Sheet HOB_013G associated with the PMH LEP 2011 the building height permitted for the subject land is 8.5 metres.

As previously detailed, following amendments to their designs, both dwellings are now entirely under the 8.5 metre permitted height despite them being situated on a sloping block with a significant fall of 6.90 metres along the eastern boundary, away from the street.

Again, from the street perspective both dwellings remain well under 8.5 metres.

It would appear that the east facing wall of 47 The Summit Road exceeds the maximum permitted height.



The eastern wall of 47 The Summit Road as viewed from the street.



The eastern wall of 43 The Summit Road is 3 storeys high

Stormwater Management

We note that Council were consulted by engineers Beukers & Ritter Consulting prior to the lodgement of the Development Application.

Initially information was sought from Council regarding the location of the stormwater pipes.

Council provided the following on 22 May 2018.

Our records indicate that Lot 272, DP 236277 is benefited by a 1m easement to drain water (created vide DP 261345) along the southern boundary of Lot 131, DP 834256 and southern and western boundary of Lot 132, DP 834256. Your development will need to demonstrate the adequacy of this network to accommodate your development requirements for stormwater. Any upgrading of this network will be the responsibility of the development.

Several plumbers were engaged at considerable cost to determine where the current stormwater drains. It was eventually concluded that although the easement exists it would appear that Council did not install a pipe in the network when the easement was created.

Subsequent stormwater management plans have been provided to Council that direct stormwater catchment from the roof of the dwellings to the street on that basis.

Conclusion

The amended proposal is consistent with the objectives of the development standard and the relevant zones.

With regard to the merits of the development proposal, as stated in this response and in the resolution of the submissions presented, we see no adverse environmental or economic impacts imposed due to the development.

If required by Council we will provide a Dilapidation Report for 43 The Summit Road however a Consulting Engineer was engaged to provide construction details for the development in accordance with the structural requirements of the site and the amount of excavation is minor.

The proposed dwellings do not infringe on the current sewer line or the zone of influence as determined by the consulting Engineer.

It is noted that 43 The Summit Road has actually been built on top of the existing sewer line presenting the potential for a far greater chance of future damage.

There will be an increase in noise only during construction, typical of all development sites. Upon completion standard residential levels of noise are expected.

It is not unreasonable to presume that a growing young family, like that at 43 The Summit Road, will likely generate considerably more noise over a longer period of time than a retired couple.

The proposal is respectfully recommended for Council's favourable consideration.

Kind Regards, Glenn Schwarzel, Greg and Genevieve Schwarzel.
28 February 2019

Developer Charges - Estimate

Applicants Name: G & G Schwarzel
 Property Address: 45 The Summit, Port Macquarie
 Lot & Dp: Lot(s):272,DP(s):236277
 Development: Dual Occupancy & Torrens Title Subdivision



Water and Sewerage Headworks Levies are levied under S64 of the LGA Act & S306 of the Water Management Act 2000.
 Other contributions are levied under Section 7.11 of the Environmental Planning and Assessment Act and Council's Contribution Plans.

Levy Area	Units	Cost	Estimate
1 Water Supply	0.6	\$10,129.00 Per ET	\$6,077.40
2 Sewerage Scheme Port Macquarie	1	\$3,843.00 Per ET	\$3,843.00
3 Since 1.7.04 - Major Roads - Port Macquarie - Per ET	1	\$7,592.00 Per ET	\$7,592.00
4 Since 31.7.18 - Open Space - Port Macquarie - Per ET	1	\$5,594.00 Per ET	\$5,594.00
5 Commenced 3 April 2006 - Com, Cul and Em Services CP - Port Macquarie	1	\$4,593.00 Per ET	\$4,593.00
6 Com 1.3.07 - Administration Building - All areas	1	\$904.00 Per ET	\$904.00
7 N/A			
8 N/A			
9 N/A			
10 N/A			
11 N/A			
12 N/A			
13 N/A			
14 N/A			
15 Admin General Levy - Applicable to Consents approved after 11/2/03	2.2% S94 Contribution		\$411.00
16			
17			
18			
Total Amount of Estimate (Not for Payment Purposes)			\$29,014.40

NOTES: These contribution rates apply to new development and should be used as a guide only.
 Contributions will be determined in conjunction with a Development Application (DA) or Complying Development Application (CDA).
 DAs will be subject to the contributions plans in force at the time of issue of the Consent and for CDCs at time of lodgement.
 Contribution Rates are adjusted quarterly in line with the CPI.

DATE OF ESTIMATE:

5-Mar-2019

Estimate Prepared By Pat Galbraith-Robertson

This is an ESTIMATE ONLY - NOT for Payment Purposes

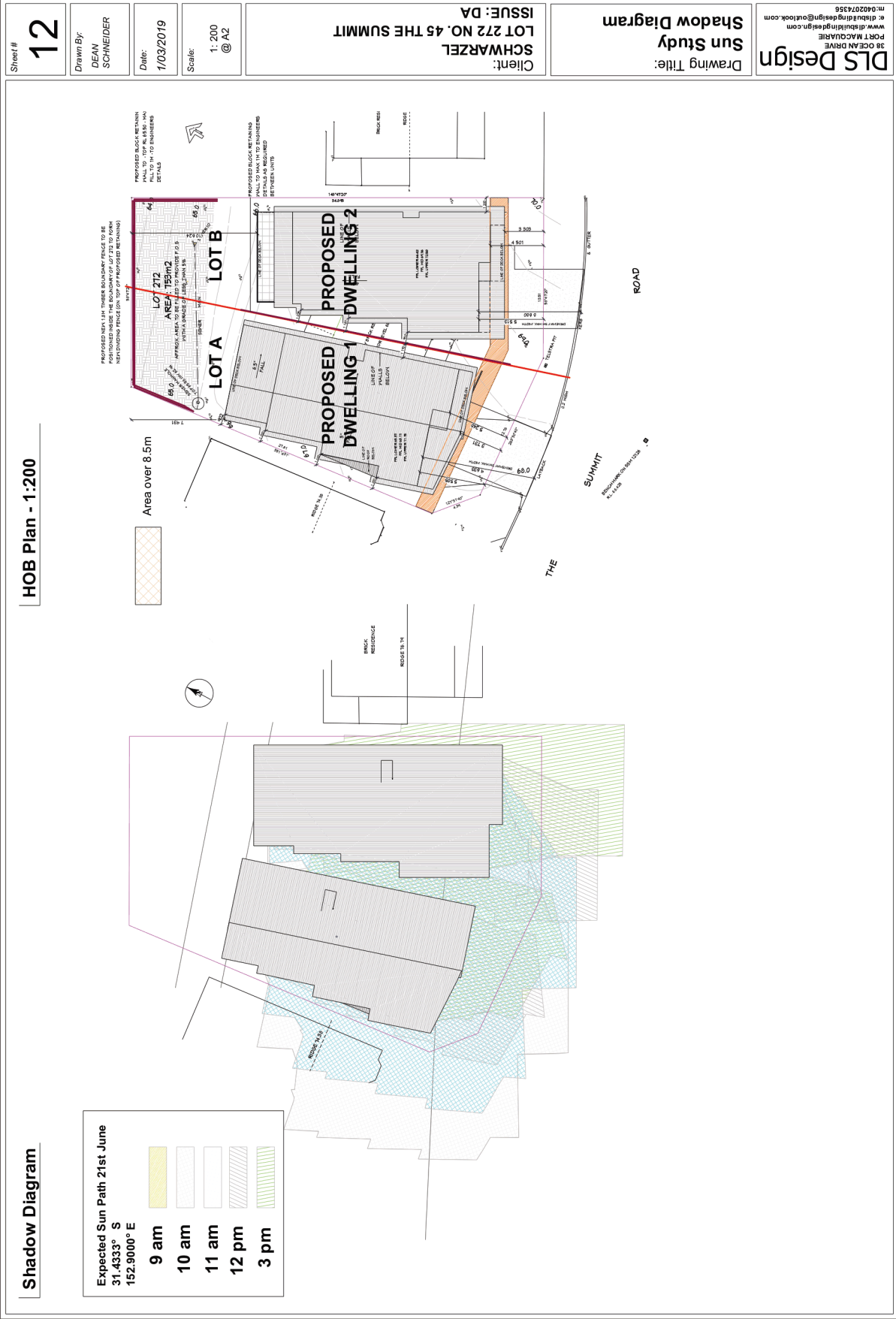
i: G Schwarzel, 45 The Summit, Port Macquarie, 5-Mar-2019.xls

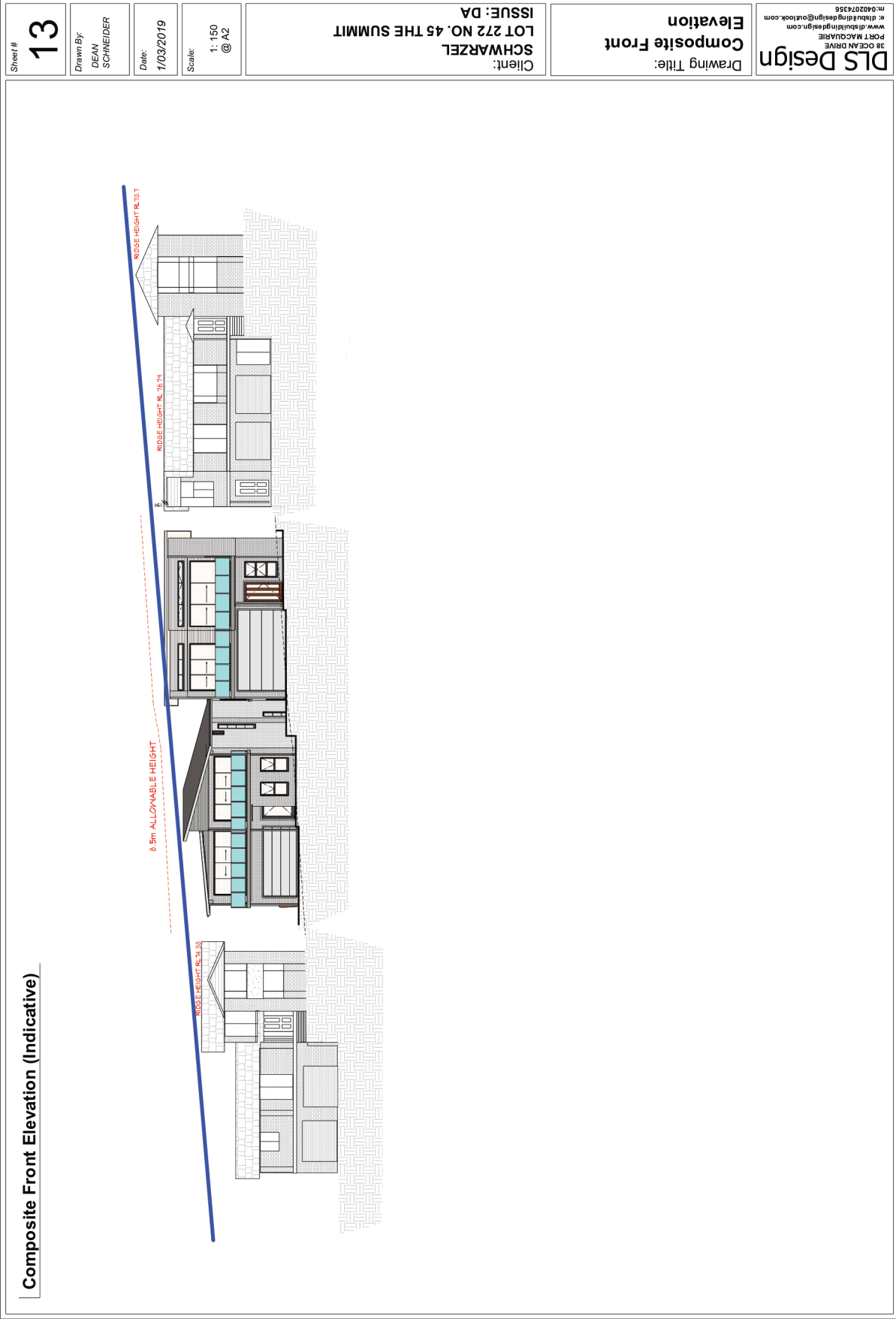
PORT MACQUARIE-HASTINGS COUNCIL

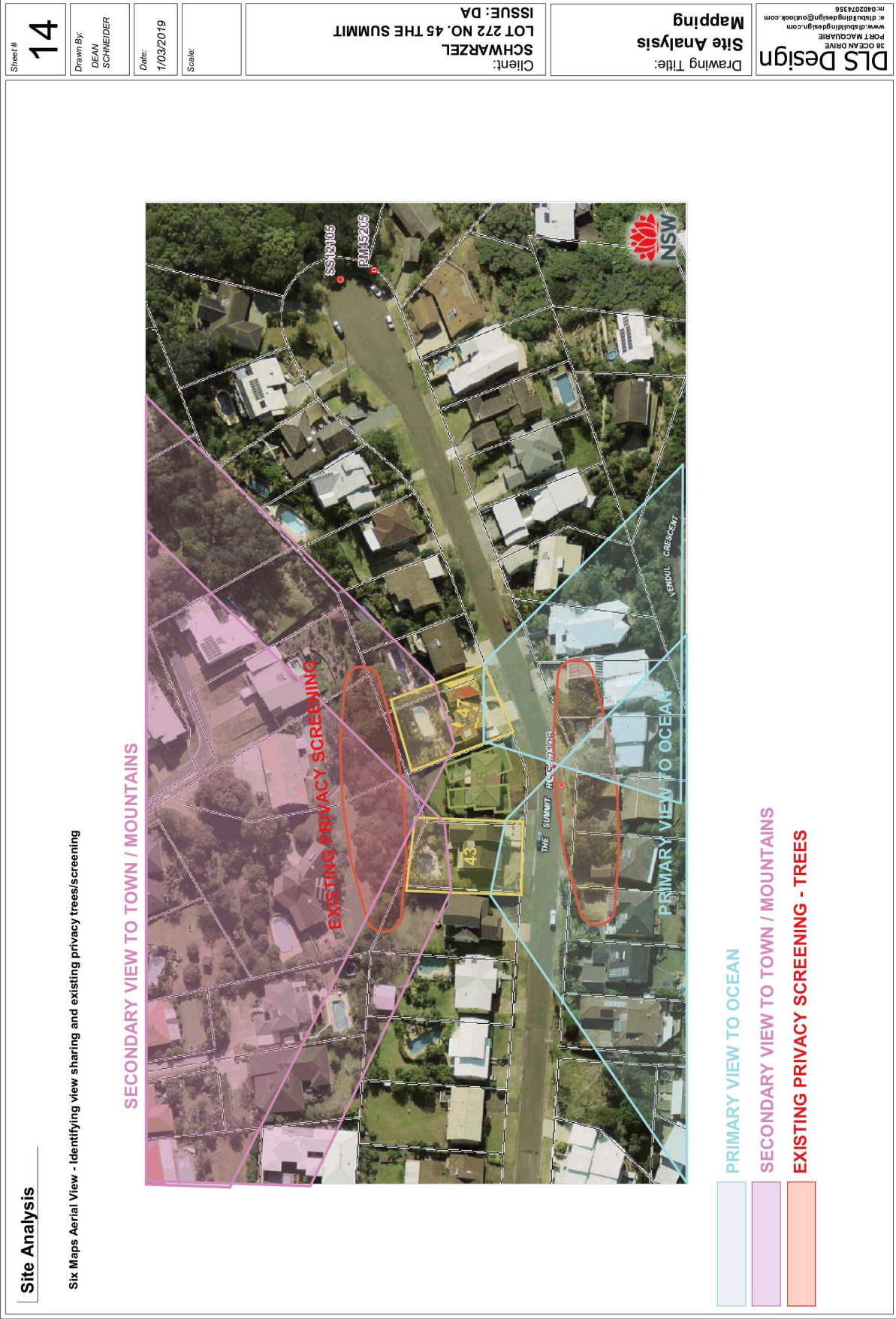
Sheet # 1	Drawn By: DEAN SCHNEIDER	Date: 1/03/2019	Scale: N/A	Client: SCHWARZEL LOT 272 NO. 45 THE SUMMIT ISSUE: DA	Drawing Title: Street View	<p>38 OCEAN DRIVE PORT MACQUARIE NSW 2444 www.dlsdesign.com.au info@dlsdesign.com.au 0402074356</p> <p>DLS Design</p>
<p>CLIENT: GLENN SCHWARZEL GREG AND GENEVIEVE SCHWARZEL ADDRESS: C/- 45 THE SUMMIT RD PORT MACQUARIE PROJECT: NEW TORRENS TITLED DETACHED DUAL OCCUPANCY DETAILS: @ No.45 THE SUMMIT (PM) LOT 272 - DP 236277</p> <p>DA AMENDMENT 1-3-2019 PER COUNCIL_CLIENT REQUEST _objection response AMENDMENTS IDENTIFIED BY GREEN CIRCLE</p> <p>Google Maps</p>				 <p>Image capture: Mar 2015 © 2017 Google</p>		
<p>GLenn SCHWARZEL GREG AND GENEVIEVE SCHWARZEL C/- 45 THE SUMMIT RD PORT MACQUARIE NEW TORRENS TITLED DETACHED DUAL OCCUPANCY @ No.45 THE SUMMIT (PM) LOT 272 - DP 236277</p> <p>DA AMENDMENT 1-3-2019 PER COUNCIL_CLIENT REQUEST _objection response AMENDMENTS IDENTIFIED BY GREEN CIRCLE</p> <p>Google Maps</p>				<p>Port Macquarie, New South Wales Street View - Mar 2015</p> <p>   </p> <p> Certificate no.: 0033045790 Assessor Name: Stephen Collins Accreditation no.: 23374 Certificate date: 08 August 2018 Dwelling Address: 45 The Summit PORT MACQUARIE, NSW 2444 www.nabers.gov.au </p> <p> CHECK ALL DIMENSIONS ON SITE PRIOR TO CONSTRUCTION REPORT ANY DISCREPANCIES IMMEDIATELY. THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH ALL RELEVANT CONTRACTS, STANDARDS, REPORTS, DRAWINGS, ENGINEERING, BASIX AND COUNCIL APPROVALS ETC... </p>		
<p>NOTE: ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS AND NOC</p> <p>NOTE: ALL DRAWINGS HAVE BEEN PREPARED WITH CLIENT SUPPLIED INFORMATION</p>						

[illegible]

FSR AS PER LEP		
SITE	753m2	
ALLOWABLE 0.65:1	489.45m2	
	UNIT 1	UNIT 2
L1	7.12	25.00
L2	87.47 (inc. -18)	103240. (inc.-18)
L3	110.02	129.79
Total	204.88m2	258.58m2
COMBINED TOTAL = 463.46m2		
ARTICULATION ZONE		
LENGTH @ 4.5m SETBACK	27.56m	
ARTICULATION AREA 3m - 4.5m SETBACK	42.033m2	
ALLOWABLE ARTICULATION @ 25% 10.51m2		
	UNIT 1	UNIT 2
ART. AREA:	5.34m2	5.18m2
COMBINED TOTAL= 10.52m2		







Item: 09**Subject: DA2018 - 911.1 DUAL OCCUPANCY AND STRATA SUBDIVISION AT
LOT 25 DP 32244, NO. 14 WINDMILL STREET, PORT MACQUARIE****Report Author: Chris Gardiner**

Applicant: JW Lanfranchi Pty Ltd**Owner: W M & A M Ryder****Estimated Cost: \$900,000****Parcel no: 25562**

Alignment with Delivery Program

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

RECOMMENDATION

That DA2018 – 911.1 for a Dual Occupancy and Strata Subdivision at Lot 25, DP 32244, No. 14 Windmill Street, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

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

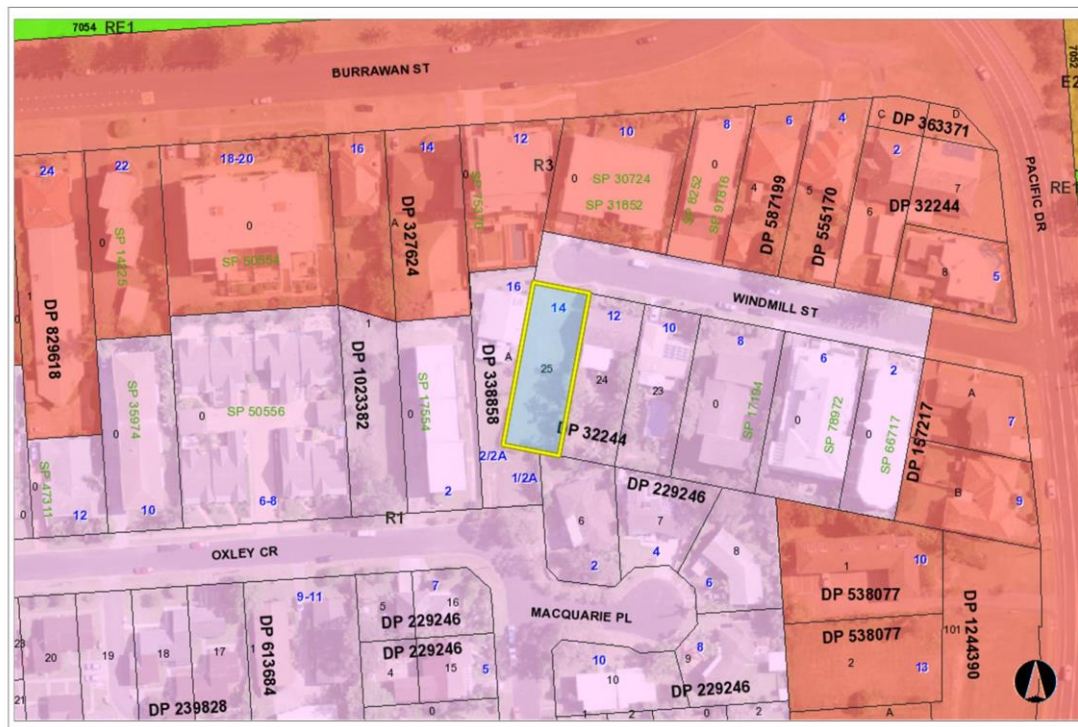
Following exhibition of the application, one submission was received.

This report recommends that the development application be approved.

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

The site has an area of 662.7m².

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



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



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Construction of dual occupancy (attached);
- Strata Subdivision.

Refer to attachments at the end of this report.

Application Chronology

- 29 October 2018 – Application lodged.
- 13 November 2018 to 26 November 2018 – Neighbour notification.
- 15 November 2018 – Additional stormwater information requested from Applicant.
- 20 November 2018 – Additional information submitted.
- 4 January 2019 – Additional information requested from Applicant.
- 13 February 2019 – Additional information and amended plans submitted. Copy of amended plans provided to objectors.

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 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

The site is located within a coastal use area.

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

Having regard to clause 14 of the SEPP the proposed development is not considered likely to result in any of the following:

- a) any adverse impact on Aboriginal cultural heritage, practices and places;
- b) any adverse impacts on the cultural and built environment heritage;

- c) any adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands;
- d) overshadowing, wind funnelling and the loss of views from public places to foreshores;
- e) any adverse impacts on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.

The bulk, scale and size of the proposed development is compatible with the surrounding coastal and built environment. The site is predominately cleared and located within an area zoned for residential purposes.

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

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

Port Macquarie-Hastings Local Environmental Plan 2011

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

- Clause 2.2, the subject site is zoned R1 general residential. In accordance with clause 2.3(1) and the R1 zone landuse table, the proposed development for a dual occupancy (attached) 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 having regard to the following:

- the proposal is a permissible landuse;
 - The development would provide a variety of housing types and densities to contribute to the housing needs of the community.
- Clause 4.1(4) - The minimum lot size is not applicable as the proposal is for strata title subdivision.
 - Clause 4.3 - The maximum overall height of the building above ground level (existing) is 8.6m which complies with the standard height limit of 11.5m applying to the site.
 - Clause 4.4 - The floor space ratio of the proposal is 0.62:1 (GFA 409.3m²) which complies with the maximum 0.65:1 floor space ratio applying to the site.
 - Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
 - Clause 7.13 - Satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

DCP 2013: 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 	Water tanks appropriately located.	Yes
3.2.2.2	Articulation zone: <ul style="list-style-type: none"> • Min. 3m front setback • An entry feature or portico • A balcony, deck, patio, pergola, terrace or verandah • A window box treatment • A bay window or similar feature • An awning or other feature over a window • A sun shading feature 	The development contains a porch and balcony within the articulation zone, which is setback 3m.	Yes
	Front setback (Residential not R5 zone): <ul style="list-style-type: none"> • Min. 6.0m classified road • Min. 4.5m local road or within 20% of adjoining dwelling if on corner lot • Min. 3.0m secondary road • Min. 2.0m Laneway 	Front building line setback requirements are complied with.	Yes
3.2.2.3	Garage 5.5m min. and 1m behind front façade. Garage door recessed behind building line or eaves/overhangs provided	Garage door setback requirements are complied with.	Yes
	6m max. width of garage door/s and 50% max. width of building	Width of garage door requirements are complied with.	Yes
	Driveway crossover 1/3 max. of site frontage and max. 5.0m width	Driveway crossing width requirements are complied with.	Yes
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	3m rear setback to ground floor of 14B, and 4m rear setback to upper floor.	No*
3.2.2.5	Side setbacks:	Minimum 0.9m	Yes

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	<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 	<p>ground floor side setback, and 1.5m side setback for upper floors to the eastern boundary.</p> <p>The upper floors have been setback a minimum of 3m from the western side boundary.</p> <p>The wall articulation satisfies the objectives of the development provision.</p>	
3.2.2.6	35m ² min. private open space area including a useable 4x4m min. area which has 5% max. grade	Each occupancy contains 35m ² open space in one area including a useable 4m x 4m area.	Yes
3.2.2.7	<p>Front fences:</p> <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 	The proposed front fence design is considered to meet the fencing provisions and objectives.	Yes
3.2.2.8	<p>Front fences and walls to have complimentary materials to context</p> <p>No chain wire, solid timber, masonry or solid steel front fences</p>	The street contains a mix of different fencing heights and styles. The proposed front fence is considered to be complimentary to the streetscape.	Yes
3.2.2.10	<p>Privacy:</p> <ul style="list-style-type: none"> Direct views between living areas of adjacent dwellings screened when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings. ie. 1.8m fence or privacy screening which has 25% max. openings and is 	The development will not compromise privacy in the area due to a combination of building design, compliant separation, and use of privacy screens and fencing.	Yes

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

	Requirements	Proposed	Complies
	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		
3.2.2.11	Roof terraces	N/A	
3.2.2.13 onwards	Jetties and boat ramps	N/A	

DCP 2013: General Provisions

	Requirements	Proposed	Complies
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline	No concealment or entrapment areas proposed. Adequate casual surveillance available.	Yes
2.3.3.1	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls	Cut and fill <1.0m change 1m outside the perimeter of the external building walls	Yes
2.3.3.2	1m max. height retaining walls along road frontage	None proposed	N/A
	Any retaining wall >1.0 in height to be certified by structure engineer	No retaining wall likely >1m.	Yes
	Combination of retaining wall and front fence height max 1.8m, max length 6.0m or 30% of frontage, fence component 25% transparent, and splay at corners and adjacent to driveway	No retaining wall front fence combination proposed.	N/A
2.3.3.8	Removal of hollow bearing trees	No trees proposed to be removed	N/A
2.6.3.1	Tree removal (3m or higher with 100mm diameter trunk at 1m above ground level and 3m from external wall of existing dwelling)	No trees proposed to be removed	N/A
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	Refer to main body of report.	
2.5.3.2	New accesses not permitted from arterial or distributor roads	No new access proposed to arterial or distributor road.	N/A
	Driveway crossing/s minimal in	Driveway crossing is	Yes

DCP 2013: General Provisions			
	Requirements	Proposed	Complies
	number and width including maximising street parking	minimal in width including maximising street parking.	
2.5.3.3	Parking in accordance with Table 2.5.1. <u>Dwelling/dual occupancies</u> 1 space per dwelling/occupancy (behind building line). <u>Multi dwelling</u> 1 space per 1 & 2 bedroom occupancies 1.5 spaces per 3+ bedroom occupancies 0.25 spaces per occupancy for visitor parking.	Proposal involves 2 x 4 bedroom dwellings. Therefore, 1 space per dwelling is required. The development proposes a double garage for each dwelling, which complies with the minimum requirements.	Yes
2.5.3.11	Section 94 contributions	Contributions apply - refer to ET calc and NOP.	Yes
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	Suitable landscaping proposed around driveway/parking locations.	Yes
2.5.3.14	Sealed driveway surfaces unless justified	Sealed driveway areas proposed.	Yes
2.5.3.15 and 2.5.3.16	Driveway grades first 6m or 'parking area' shall be 5% grade with transitions of 2m length	Driveway grades capable of satisfying Council standard driveway crossover requirements. Condition recommended for section 138 Roads Act permit	Yes
2.5.3.17	Parking areas to be designed to avoid concentrations of water runoff on the surface.	Stormwater drainage is capable of being managed as part of plumbing construction.	Yes

DCP 2013: Chapter 4.3 Port Macquarie East			
	Requirements	Proposed	Complies
4.3.2.1	Development is generally in accordance with the precinct structure plans	The site is located within the Windmill Hill Precinct. The proposal is consistent with the structure plan for the precinct.	Yes
4.3.2.2	Minimum lot width for residential flat buildings.	The proposal is not for a residential flat building.	N/A
4.3.2.3	Buildings do not exceed the	See comments under	Yes

DCP 2013: Chapter 4.3 Port Macquarie East			
	Requirements	Proposed	Complies
	maximum height of buildings shown in the Local Environmental Plan maps.	LEP earlier in this report. The proposal is below the maximum height of buildings permitted.	
4.3.2.4	Site specific minimum front setbacks.	No site specific controls for southern side of Windmill Street.	N/A
4.3.2.5	<p>a) Party wall development is to be used along the south side of Clarence Street where within the Town Beach Precinct.</p> <p>b) Party wall development is not appropriate in other areas within the East Port Neighbourhood.</p> <p>c) Where there is a zone change at the rear of the site to the R1 General Residential Zone, any storey above 11.5 metres in height is set back a further 3 metres from the rear boundary.</p>	Not applicable to proposal.	N/A
4.3.2.6	Communal bulk waste facilities are required for residential apartment development where collection is proposed from Windmill Street regardless of number of dwellings.	Proposal is not for a residential apartment building.	N/A

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

The proposal seeks to vary Development Provision 3.2.2.4 in relation to the minimum rear setback of proposed Unit 14B.

The relevant objectives are:

- To allow adequate natural light and ventilation between dwellings/buildings and to private open space areas.
- To provide useable yard areas and open space.

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

- The proposal provides an adequate and useable private open space area consistent with the DCP requirements.
- The setback variation is not expected to adversely affect natural light and ventilation to adjoining dwellings or private open space. The reduced 3m rear setback is only proposed at ground floor level and the first floor achieves a

compliant 4m setback. Given the orientation of the lot, the first floor would create greater shadowing than the part of the building that does not comply with the setback provision.

- The dwelling to the south of the proposal approved under DA2018 – 824.1 will be cut in approximately 1m below existing ground level with a 1.8m high fence on the boundary.
- The proposal is substantially below the maximum permitted building height of 11.5m and retains more solar access to neighbouring property than could be expected if a taller building was proposed.

Based on the above assessment, the variation proposed to the provisions of the DCP are considered acceptable and the relevant objectives have been satisfied.

The variation does not amount to an adverse impact or a significance that would justify refusal of the application.

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

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

iv) Any matters prescribed by the Regulations:

No matters prescribed by the regulations are applicable to the proposal.

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

Context and setting

The proposal is considered to be compatible with other residential development in the locality and adequately addresses planning controls for the area.

Roads

The site has road frontage to Windmill Street.

Adjacent to the site, Windmill Street is a sealed public road under the care and control of Council.

Traffic and Transport

The addition in traffic associated with the development is unlikely to have any adverse impacts to the existing road network within the immediate locality.

Site Frontage & Access

Vehicle access to the site is proposed through an individual driveway to Windmill Street being a Council-owned public road. The crossover will be required to be integrated with the access to adjoining land at No. 16 Windmill Street. Access shall comply with Council AUSPEC and Australian Standards, and conditions have been imposed to reflect these requirements.

Parking and Manoeuvring

A total of 4 parking spaces have been provided on-site within garages. Parking and driveway widths on site can comply with relevant Australian Standards (AS 2890) and conditions have been imposed to reflect these requirements.

Water Supply Connection

Council records indicate that the development site has an existing 20mm metered water service. Each proposed lot requires an individual metered water service. Engineering plans are to be submitted to Water and Sewer Section for approval.

Refer to relevant conditions of consent.

Sewer Connection

Council records indicate that the development site is connected to sewer via a junction to the sewer main that traverses the development site. Both units can drain to the existing point of connection to Council's sewer system. The existing sewer main that traverses the development site shall be replaced with PVC pipe. Engineering plans shall certify that no additional loads are imposed on the sewer main.

Refer to relevant conditions of consent.

Stormwater

The site naturally grades towards the rear and is currently un-serviced.

Ideally, the development site should be drained via an easement for drainage over downstream lots to Oxley Crescent. However, the Applicant has provided information to demonstrate that all reasonable attempts to contact and liaise with downstream property owners in order to obtain an easement have been either rejected or unsuccessful.

Hence, the Applicant has prepared a stormwater drainage strategy for the proposed development that consists of the following:

- Provision of a charged drainage system to enable all roof areas to drain to the existing public piped drainage system upstream of the site in Windmill Street.
- On-site disposal of stormwater runoff from any low levels paved and driveway areas.

The applicant's stormwater management plan indicates that this approach is feasible on the following basis:

- The capacity of the upstream public piped drainage system has been assessed and it was confirmed that there was excess capacity available to cater for the proposed site runoff;
- That via the use of onsite absorption and permeable pavements for the driveway area, that the volume and rate of discharge to downstream properties will not be increased as a result of the development.

Whilst the development has conceptually demonstrated how the site can be satisfactorily drained, a recent development consent (DA2018 – 824.1) for the adjoining downstream property at 16 Windmill Street has included a condition that required the downstream development to provide the subject development with an easement for overland flows. The provision of this easement will provide some certainty that the stormwater strategy adopted for the current proposal will have no negative impacts in the long term – in particular, should any element of the proposed stormwater system block or fail in future, the resulting flows can be legally and safely directed to the downstream easement for overland flow.

Refer to relevant conditions of consent.

Other Utilities

Telecommunication and electricity services are available to the site.

Heritage

No known items of Aboriginal or European heritage significance exist on the property.
No adverse impacts anticipated.

Other land resources

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

Water cycle

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

Soils

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

Air and microclimate

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

Flora and fauna

Construction of the proposed development will not require any removal/clearing of any significant vegetation and therefore will be unlikely to have any significant adverse impacts on biodiversity or threatened species of flora and fauna. Part 7 of the Biodiversity Conservation Act is considered to be satisfied.

Waste

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. The site has adequate frontage for kerbside waste collection for the two dwellings. Standard precautionary site management condition recommended for construction activities.

Energy

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

Noise and vibration

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

Bushfire

The site is not identified as being bushfire prone.

Safety, security and crime prevention

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

surveillance within the locality and openings from each dwelling overlook common and private areas.

Social impacts in the locality

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

Economic impact in the locality

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

Site design and internal design

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

Construction

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

Cumulative impacts

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

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

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

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

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

One written submission has been received following public exhibition of the application.

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

Submission Issue/Summary	Planning Comment/Response
The proposed development would result in significant overshadowing of one of the proposed dwellings on No. 16 Windmill Street approved under DA2018 – 824.1. Filling of the rear of the site will result in further overshadowing from the boundary fence at the top of the retaining wall.	<p>The part of No. 16 Windmill Street located to the south of the subject site is particularly susceptible to overshadowing due to the slope of the land and the 11.5m height limit applicable in the area. The proposed rear dwelling (14B) has a height almost 3m lower than the maximum permissible height.</p> <p>A substantially greater rear setback would be required to significantly improve solar access to the adjoining dwelling between 9.00am and 1.00pm midwinter. This is not considered reasonable to require of the Applicant having regard to the DCP envelope controls and the fact that the building has been designed to be well below the maximum permissible height for the area.</p> <p>It is considered that the only effective means of preserving reasonable solar access to the adjoining dwelling is to enforce the minimum 3m first floor setback of the proposed rear dwelling, consistent with the DCP requirements. The Applicant has agreed to increase the originally proposed 1.5m first floor setback to 3m.</p>
Variations to DCP in relation to side and rear setbacks of the rear dwelling (14B).	<p>As noted above, the Applicant has amended the plans to provide a compliant first floor side setback.</p> <p>The merits of the rear setback variation are discussed earlier in this report in the DCP section.</p>
Stormwater impacts on adjoining property at No. 16 Windmill Street.	See comments earlier in this report under Stormwater.
Loss of privacy to proposed dwelling on No. 16 Windmill Street.	The Applicant has amended the plans to provide privacy screens on the ground floor living area windows on the southern elevation of dwelling 14B in response to this concern.

(e) The Public Interest:

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

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

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

5. CONCLUSION 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](#). DA 2018 - 911.1 Recommended Conditions

2 [View](#). DA2018 - 911.1 Contribution Estimate

3 [View](#). DA2018 - 911.1 Plans

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2018/911****DATE: 6/03/2019****PRESCRIBED CONDITIONS**

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

A - GENERAL MATTERS

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

Plan / Supporting Document	Reference	Prepared by	Date
Site Plan and Dwelling 14A Plans	Page No: 1-6	Lanfranchi Design	10 February 2019
Dwelling 14B Plans	Page No: 1, & 3-5	Lanfranchi Design	27 February 2019
Dwelling 14B Ground Floor Plan	Page No: 2	Lanfranchi Design	4 March 2019
Fence Detail	Page No: 1	Lanfranchi Design	9 January 2019
Draft Strata Plan	8300	Mark Cornish	Undated
BASIX Certificates	965601S and 965883S	JW Lanfranchi Pty Ltd	27 October 2018

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

- (2) (A002) No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- the appointment of a Principal Certifying Authority; and
 - the date on which work will commence.
- Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.
- (3) (A005) This consent allows the strata-subdivision of the units, subject to the submission of an application for a Strata Certificate.
- (4) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.

- (5) (A009) The development site is to be managed for the entirety of work in the following manner:
1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 2. Appropriate dust control measures;
 3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
 4. Building waste is to be managed via an appropriate receptacle;
 5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
 6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidaysThe builder to be responsible to instruct and control his sub-contractors regarding the hours of work.
- (6) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.
- (7) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:
- a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
 - c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

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

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
- Position and depth of the sewer (including junction)
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (B006) An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the Construction Certificate.
- Such works include, but not be limited to:
- Civil works
 - Traffic management
 - Work zone areas
 - Hoardings
 - Footway and gutter crossing. The alignment of crossing is to consider adjoining property access to No. 16 Windmill Street. Alternatively a combined crossing within the road reserve would be acceptable.
- (3) (B003) Submission to the Principal Certifying Authority prior to the issue of a Construction Certificate detailed design plans for the following works associated with the developments. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:
1. Sewerage reticulation.
 2. Water supply plans.
 3. Stormwater systems.
- (4) (B010) Payment to Council, prior to the issue of the Construction or Subdivision Certificate (whichever occurs first) of the Section 7.11 contributions set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with the provisions of the following plans:
- Port Macquarie-Hastings Administration Building Contributions Plan 2007
 - Hastings S94 Administration Levy Contributions Plan
 - Port Macquarie-Hastings Open Space Contributions Plan 2018
 - Hastings S94 Major Roads Contributions Plan
 - Port Macquarie-Hastings Community Cultural and Emergency Services Contributions Plan 2005

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

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

- (5) (B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to the issue of a Construction or Subdivision Certificate (whichever occurs first), of the Section 64 contributions, as set out in the "Notice of Payment - Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
 - augmentation of the town water supply headworks
 - augmentation of the town sewerage system headworks
- (6) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (7) (B037) The finished floor level of the building shall be at least 1050mm above the soffit of Council's sewer main. Details indicating compliance with this are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.
- (8) (B038) Footings and/or concrete slabs of buildings adjacent to sewer lines or stormwater easements are to be designed so that no loads are imposed on the infrastructure. Detailed drawings and specifications prepared by a practising chartered professional civil and/or structural engineer are to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (9) (B071) Prior to the issue of any Construction Certificate, the provision of water and sewer services to the land are to be approved by the relevant Water Authority and relevant payments received.
- (10) (B072) A stormwater drainage design is to be submitted to and approved by Council prior to the issue of a Construction Certificate. The design must be prepared in accordance with Council's AUSPEC Specifications and the requirements of relevant Australian Standards and make provision for the following:
 - a) The legal point of discharge for the proposed development is defined as follows:
 - i. on-site disposal for those low level driveway and paved areas that cannot be drained via gravity to Windmill Street, AND
 - ii. a direct connection to the existing public piped drainage system in Windmill Street for all roof areas within the site.
 - b) The design is to be generally in accordance with the stormwater drainage concept plan on Drawing No 2385-DP Sheets S01 - 06 prepared by Dennis Partners and dated 25 October 2018 and subject to the following:
 - i. The design shall be accompanied by a certification that the development results in no increase in the rate or volume of stormwater runoff to adjoining downstream property.
 - ii. The method via which the proposed driveway runoff is managed so as to mitigate any negative impacts on downstream property shall be

detailed. In this regard, the catchment plan notes that the driveway will be a pervious pavement. Details are required in this regard.

- iii. The dimensions of the absorption trench located along the rear property boundary shall be nominated so as to achieve compliance with part i) above. Surcharge from the absorption trench shall be directed into either:
 - o The proposed easement for overland flow to be constructed as part of the recently approved adjoining downstream development (DA2018 - 824.1); OR
 - o Where the downstream easement for overland flow has not been created, directed across the boundary in a uniform manner which matches as close to practical the pre-development natural flow across the rear boundary.
 - c) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
 - d) The driveway access to the site and boundary levels to Windmill Street shall be set sufficiently high to ensure that any stormwater overflows from Windmill Street (in the event of blockage or failure of the upstream public drainage system), are directed overland into the easement. Boundary levels shall be a minimum of 100mm above the calculated top water level in Windmill Street for this purpose.
- (11) (B195) Each proposed lot requires an individual metered water service. Engineering plans are to be submitted to Council's Water and Sewer Section for approval prior to the issue of a Construction Certificate.
- (12) (B196) The existing sewer main that traverses the development site shall be replaced with PVC pipe. Engineering plans shall be submitted to Council's Water and Sewer Section for approval prior to the issue of a Construction Certificate.
- (13) (B197) The driveway adjacent to Dwelling 14A shall be widened to comply with AS2890. Amended plans are to be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

C – PRIOR TO ANY WORK COMMENCING ON SITE

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

D – DURING WORK

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

- b. prior to the pouring of concrete for sewerage works and/or works on public property;
- c. during construction of sewer infrastructure;

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

- (2) (D006) A copy of the current stamped approved construction plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- (3) (D003) The site is in an area known to contain rock that may contain naturally occurring asbestos (NOA). Should potential NOA be located on site notification shall be provided to Council and Workcover prior to works proceeding. No work shall recommence until a NOA management plan has been approved by Council or Workcover.
- (4) (D029) The demolition of any existing structure shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.

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

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

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (3) (E034) Prior to occupation or the issuing of the Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (4) (E053) All works shall be certified by a practicing Civil Engineer or Registered Surveyor as compliant with the requirements of AUSPEC prior to issue of Occupation/Subdivision Certificate or release of the security bond, whichever is to occur first.
- (6) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any properly qualified person (eg the builder), stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (7) (E061) Landscaped areas and fencing being completed prior to occupation or issue of the Occupation or Subdivision Certificate.
- (8) (E056) A Certificate of Compliance under the provisions of Section 307 of the Water Management Act must be obtained prior to the issue of any occupation or subdivision certificate. The application for the certificate is to include an

acceptable Work-As-Executed plan for water and sewer mains and services from a Professional Engineer or Registered Surveyor.

- (9) (E195) The subdivision certificate shall not be issued until such time that the dwellings associated with this development are substantially commenced (as determined by Council) or where a strata management statement, or restriction as to user, prohibits any dwelling on each lot other than the dwelling approved as part of this consent.
- (10) (E195) Prior to the issue of an Occupation Certificate, fixed privacy screens shall be installed on living area windows on the southern elevation of Dwelling 14B sufficient to prevent direct views to the living area windows of the proposed dwelling on Lot A DP 338858 approved under DA2018 - 824.1.

F – OCCUPATION OF THE SITE

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

Developer Charges - Estimate

Applicants Name: JW Lanfranchi Pty Ltd
 Property Address: 14 Windmill Street, Port Macquarie
 Lot & Dp: Lot(s):25,DP(s):32244
 Development: Dual Occupancy and Strata Subdivision



Water and Sewerage Headworks Levies are levied under S64 of the LGA Act & S306 of the Water Management Act 2000.
 Other contributions are levied under Section 7.11 of the Environmental Planning and Assessment Act and Council's Contribution Plans.

Levy Area	Units	Cost	Estimate
1 Water Supply	0.6	\$10,129.00 Per ET	\$6,077.40
2 Sewerage Scheme Port Macquarie	1	\$3,843.00 Per ET	\$3,843.00
3 Since 1.7.04 - Major Roads - Port Macquarie - Per ET	1	\$7,592.00 Per ET	\$7,592.00
4 Since 31.7.18 - Open Space - Port Macquarie - Per ET	1	\$5,594.00 Per ET	\$5,594.00
5 Commenced 3 April 2006 - Com, Cul and Em Services CP - Port Macquarie	1	\$4,593.00 Per ET	\$4,593.00
6 Com 1.3.07 - Administration Building - All areas	1	\$904.00 Per ET	\$904.00
7 N/A			
8 N/A			
9 N/A			
10 N/A			
11 N/A			
12 N/A			
13 N/A			
14 N/A			
15 Admin General Levy - Applicable to Consents approved after 11/2/03	2.2% S94 Contribution		\$411.00
16			
17			
18			
Total Amount of Estimate (Not for Payment Purposes)			\$29,014.40

NOTES: These contribution rates apply to new development and should be used as a guide only.
 Contributions will be determined in conjunction with a Development Application (DA) or Complying Development Application (CDA).
 DAs will be subject to the contributions plans in force at the time of issue of the Consent and for CDCs at time of lodgement.
 Contribution Rates are adjusted quarterly in line with the CPI.

DATE OF ESTIMATE:

5-Mar-2019

Estimate Prepared By Chris Gardiner

This is an ESTIMATE ONLY - NOT for Payment Purposes

franchi Pty Ltd, 14 Windmill Street, Port Macquarie, 5-Mar-2019.xls

PORT MACQUARIE-HASTINGS COUNCIL

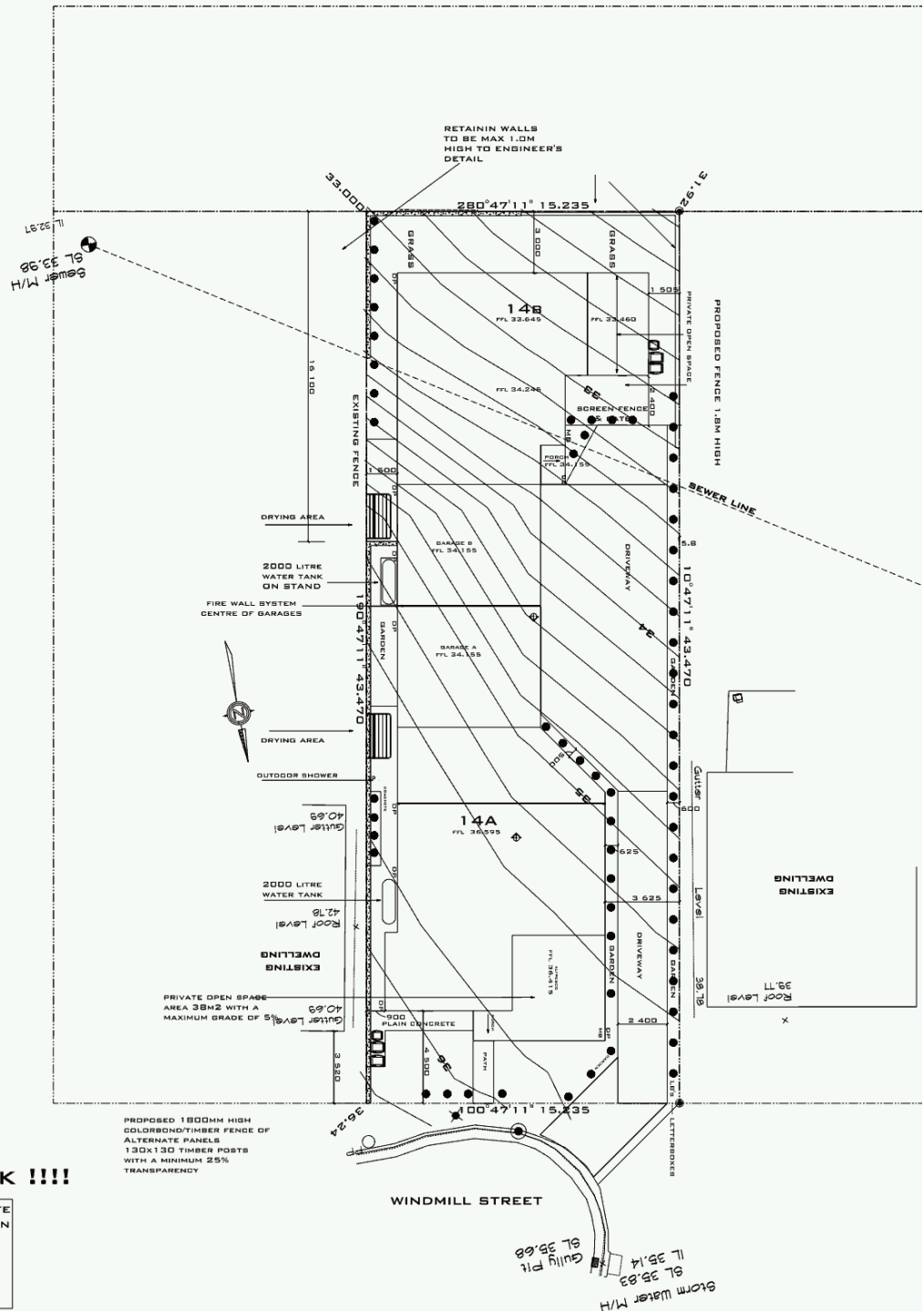
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14 WINDMILL STREET		
FLOOR AREAS	A	B
GARAGE/STORAGE FLOOR AREA	66.27 SQ M.	40.49 SQ M.
MAIN FLOOR AREA	120.49 SQ M.	87.35 SQ M.
ALFRESCO/PORCH FLOOR AREA	25.89 SQ M.	17.29 SQ M.
FIRST FLOOR AREA	134.81 SQ M.	92.82 SQ M.
BALCONY	9.21 SQ M.	6.49 SQ M.
TOTAL AREA	356.67 SQ M.	244.44 SQ M.
TOTAL ROOF AREA	212.69 SQ M.	189.29 SQ M.

**ROOF AREA AS FOOTPRINT ONLY

FSR			
	14A	14B	
MAIN FLOOR	97.05 sq M.	77.17 sq M.	
FIRST FLOOR	102.92 sq M.	76.07 sq M.	
GROSS FLOOR AREA (GFA)	199.97 sq M.	153.24 sq M.	353.21 sq M.
SITE AREA (SA)			662.27 sq M.
GFA / SA = FSR		FSR =	0.53:1

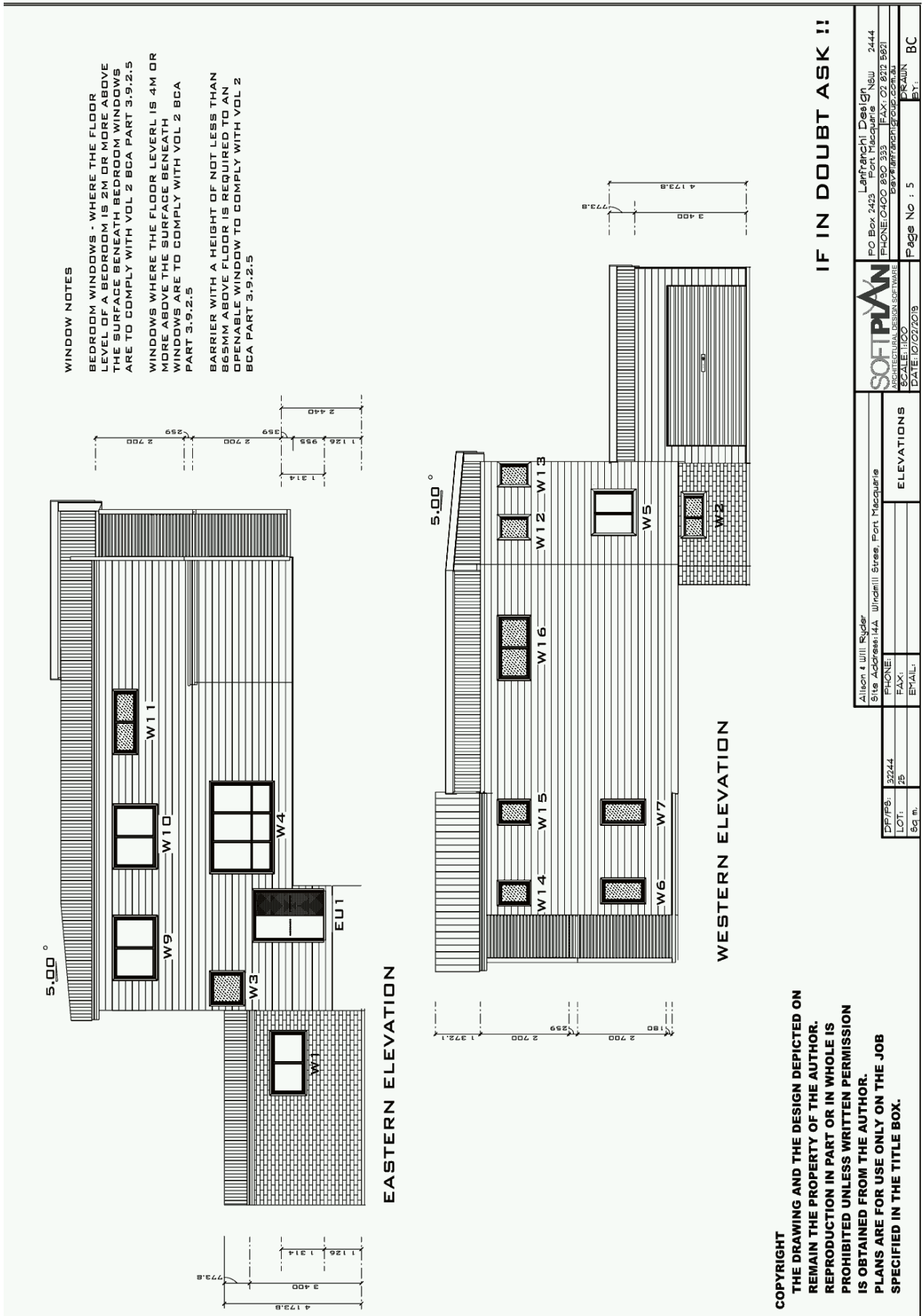
EXCLUDES ANY STORAGE, STAIRWELL'S VOIDS AS PER SEPP SCHEDULE 1

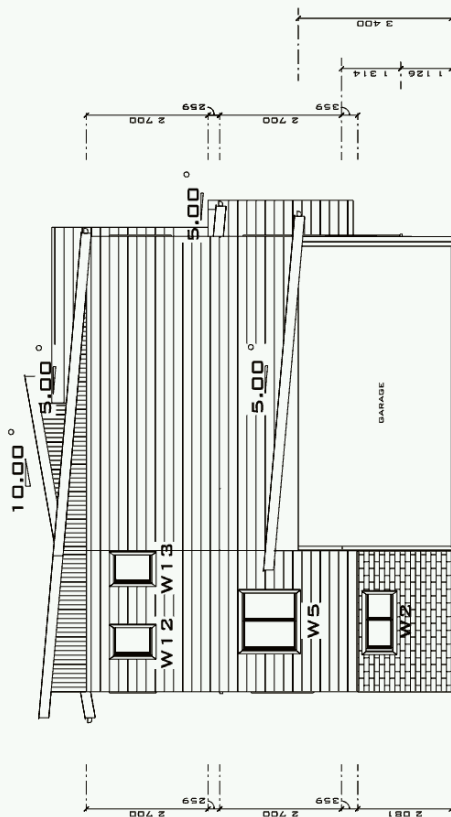
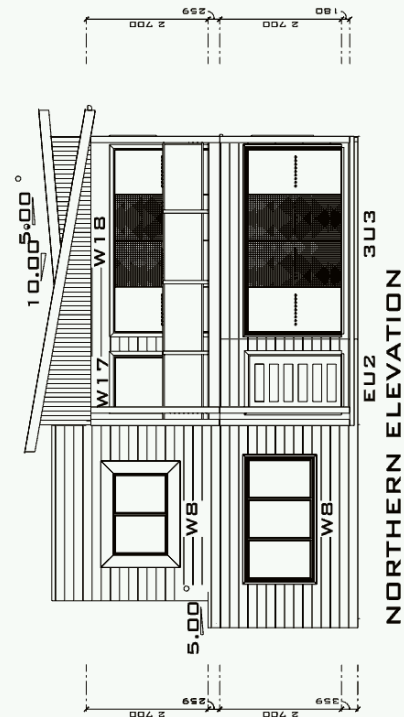


CHECK ALL DIMENSIONS ON SITE
THIS DRAWING IS TO BE READ IN
CONJUNCTION WITH ALL
RELEVANT CONTRACTS,
SPECIFICATIONS, REPORTS,
DRAWING, ENGINEERING &
COUNCIL APPROVALS

ALL LEVERS WERE COMPLETED BY
COASTAL SURVEY SOLUTIONS AND
ARE TO BE CONFIRMED BY
SURVEYOR PRIOR TO START OF
CONSTRUCTION

Alison & Will Ryder Site Address: 14 Windmill Street, Fort Macquarie				Lanfranchi Design Fort Macquarie NSW 2444 PHONE: 0400 890 333 MOBILE: 0400 890 333 email: lanfranchigroup@gmail.com	
PHONE: _____ MOBILE: _____ EMAIL: _____		SITE PLAN LOT 25 DB 32244 SCALE: 1:200 DATE: 11/02/2016		Page No: 1 DRAWN BY:	





SOUTHERN ELEVATION

WINDOW NOTES

BEDROOM WINDOWS - WHERE THE FLOOR LEVEL OF A BEDROOM IS 2M OR MORE ABOVE THE SURFACE BENEATH BEDROOM WINDOWS ARE TO COMPLY WITH VOL 2 BCA PART 3.9.2.5

WINDOWS WHERE THE FLOOR LEVEL IS 4M OR MORE ABOVE THE SURFACE BENEATH WINDOWS ARE TO COMPLY WITH VOL 2 BCA PART 3.9.2.5


BARRIER WITH A HEIGHT OF NOT LESS THAN 865MM ABOVE FLOOR IS REQUIRED TO AN OPENABLE WINDOW TO COMPLY WITH VOL 2 BCA PART 3.9.2.5

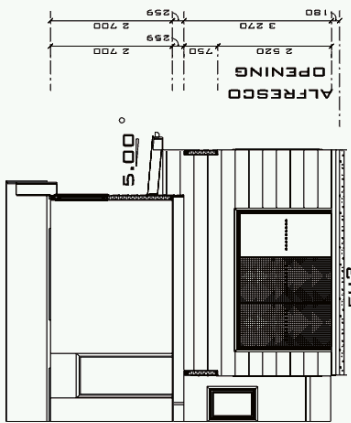
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W1 W2 W3 W4 W5 W6 W7 W8 W9	1030	Clear	Awning	MAIN FLOOR	Kitchen	1	East
	410	Clear	Awning		Living	1	East
	1800	Obscure	Awning		Living	1	East
	544	Obscure	Awning		Garage	1	East
	1810	Obscure	Awning		Garage	1	East
	1030	Clear	Awning		Family	1	South
	1810	Obscure	Awning		Family	1	South
	544	Obscure / Safety	Awning		WC	1	West
	1810	Obscure / Safety	Awning		WC	1	West
W10 W11 W12 W13 W14 W15 W16 W17 W18	1200	Clear	Awning	FIRST FLOOR	Study	1	North
	970	Clear	Awning		Study	1	North
	1800	Clear	Awning		Family	1	North
	730	Clear	Awning		Family	1	North
	1030	Clear	Awning		Bed 2	1	East
	1200	Obscure / Safety	Awning		Bathroom	1	East
	1030	Obscure	Fused		Landing	1	East
	2210	Obscure / Safety	Awning		Bed 3	1	South
	1810	Clear	Awning		Bed 3	1	South
W19 W20 W21 W22 W23 W24 W25 W26 W27	1029	Clear	Clear	MAIN FLOOR	Hallway	1	North West
	610	Clear	Clear		Hallway	1	North West
	514	Obscure / Safety	Awning		Ensuite	1	North
	1810	Obscure / Safety	Awning		Ensuite	1	North
	514	Obscure	Awning		Bed 1	1	North
	1810	Obscure	Awning		Bed 1	1	North
	2310	Clear	Awning		Bed 4	1	North
	1410	Clear	Clear		Bed 4	1	North
	1200	Clear	Awning		Bed 4	1	North
E1 E2 E3	1410	Clear	Clear	MAIN FLOOR	Landay	1	East
	1200	Clear	Clear		Landay	1	East
	3010	Clear	Clear		Landay	1	East
E4 E5 E6	1410	Clear	Clear	MAIN FLOOR	Landay	1	West
	1200	Clear	Clear		Landay	1	West
	3010	Clear	Clear		Landay	1	West

IF IN DOUBT ASK !!

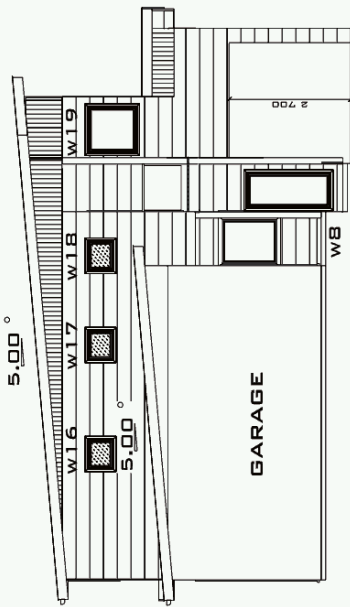
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Allison & Will Ryder		505 Third Street, Fort Macquarie				Lairfranchi Design	
Site Address: 14A						PO Box 2423 Port Macquarie New 2444	
DRP#:	32244	PHONE:				PHONE: 0400 890 333 FAX: 01 8212 5821	
LOT:	25	FAX:				www.lairfranchigroup.com.au	
sq m.		EMAIL:				Page No : 6	
		ELEVATIONS		SCALE: 1:100		BY: BC	
				DATE: 10/02/2019			



**CROSS SECTION VIEW
SHOWING ALFRESCO**



NORTHERN ELEVATION


BEDROOM WINDOWS - WHERE THE FLOOR LEVEL OF A BEDROOM IS 2M OR MORE ABOVE THE SURFACE BENEATH, BEDROOM WINDOWS ARE TO COMPLY WITH VOL 2 BCA PART 3.9.2.5

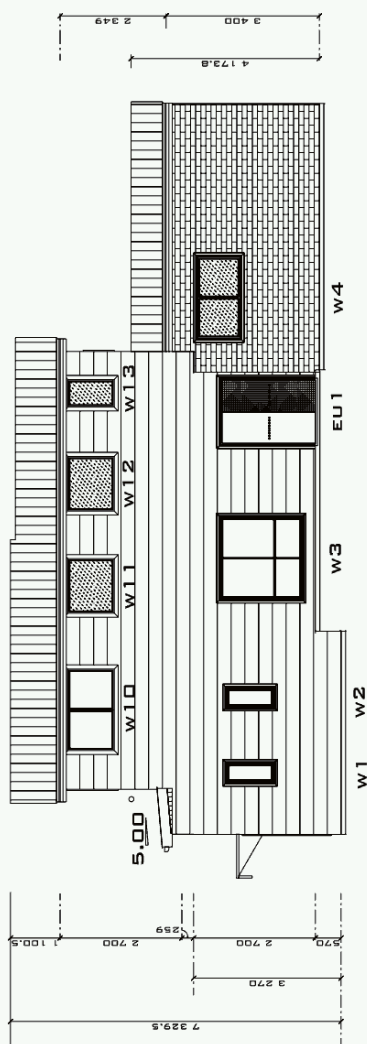
WHERE THE FLOOR LEVEL IS 4M OR MORE ABOVE THE SURFACE BENEATH WINDOWS ARE TO COMPLY WITH VOL 2 BCA PART 3.9.2.5

BARRIER WITH A HEIGHT OF NOT LESS THAN 865MM ABOVE FLOOR IS REQUIRED TO AN OPENABLE WINDOW TO COMPLY WITH VOL 2 BCA PART 3.9.2.5

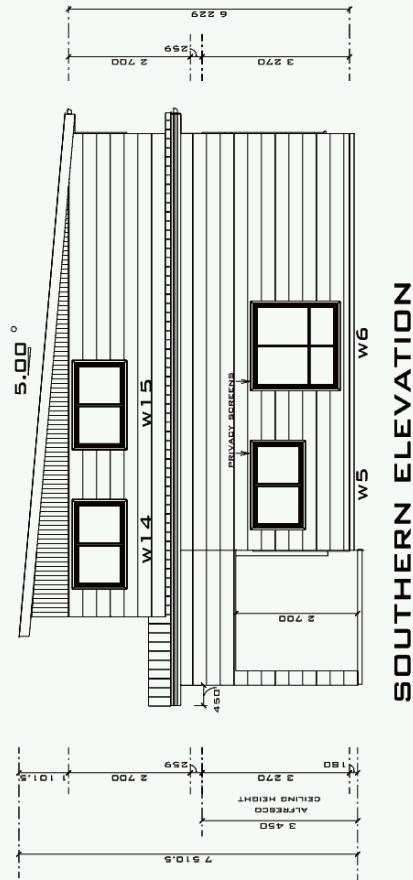
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IF IN DOUBT ASK !!!

DP/PB:	32244	Alton & Will Ryder Site Address: 4B Windmill Street, FORT MACQUARIE PHONE: _____ FAX: _____ EMAIL: _____		Lanfranchi Design PO Box 2423 Port Macquarie NSW 2444 PHONE: 04300 890 333 FAX: 01 832 5621 www.lanfranchigroup.com.au	Page No : 4 BY: BC
LOT:	25				
Sq m.					



EASTERN ELEVATION



SOUTHERN ELEVATION

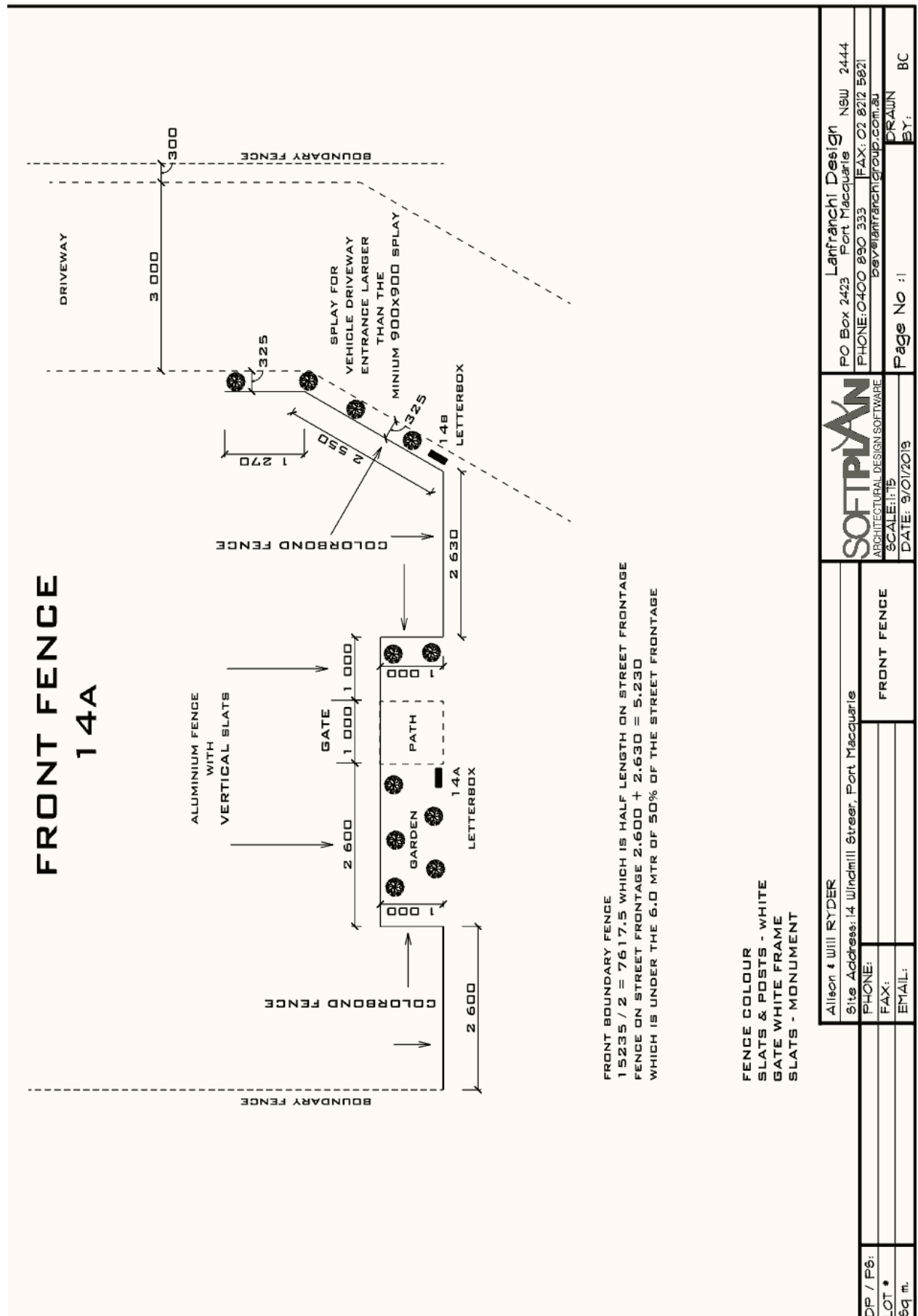
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W3	1400	Obscure	Awning		Living	1	East
W4	1410	Obscure	Awning	1st FLOOR	Garage	1	East
W5	1410	Obscure	Awning		Garage	1	East
W6	1410	Obscure	Awning		Garage	1	East
W7	844	Obscure / Safety	Awning	2nd FLOOR	Mez	1	West
W8	844	Obscure / Safety	Awning		WC	1	South
W9	1400	Clear	Awning		Family	1	North
W10	1410	Clear	Awning	FIRST FLOOR	Bed 2	1	East
W11	1410	Obscure / Safety	Awning		Bed 1	1	East
W12	1030	Obscure / Safety	Awning		Land	1	East
W13	1030	Obscure / Safety	Awning	2nd FLOOR	WC	1	East
W14	1030	Obscure / Safety	Awning		WC	1	East
W15	1030	Obscure / Safety	Awning		Bed 3	1	South
W16	514	Obscure / Safety	Awning	2nd FLOOR	Ensuite	1	North
W17	514	Obscure	Awning		Bed 1	1	North
W18	514	Obscure / Safety	Awning		Bed 2	1	North
W19	1030	Clear	Awning	2nd FLOOR	Bed 4	1	North
W20	1030	Obscure / Safety	Awning		Bed 4	1	North
W21	1410	Obscure / Safety	Awning		Bed 4	1	North
W22	1410	Obscure / Safety	Awning	MAIN FLOOR	Land	1	East
W23	1410	Obscure / Safety	Awning		Land	1	East
W24	1410	Obscure / Safety	Awning		Land	1	East
W25	1410	Obscure / Safety	Awning	MAIN FLOOR	Land	1	East
W26	1410	Obscure / Safety	Awning		Land	1	East
W27	1410	Obscure / Safety	Awning		Land	1	East
W28	1410	Obscure / Safety	Awning	MAIN FLOOR	Land	1	East
W29	1410	Obscure / Safety	Awning		Land	1	East
W30	1410	Obscure / Safety	Awning		Land	1	East
W31	1410						

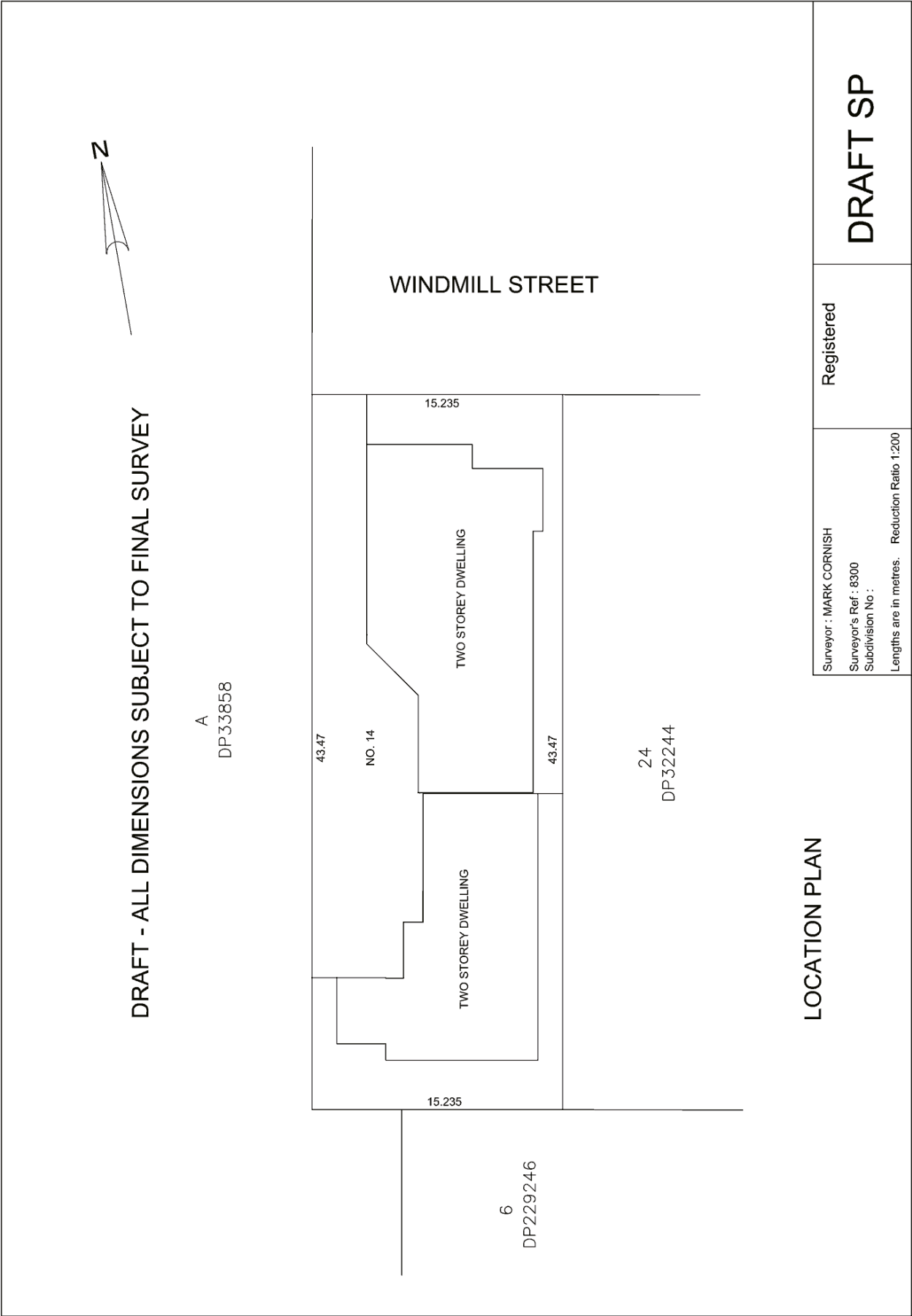
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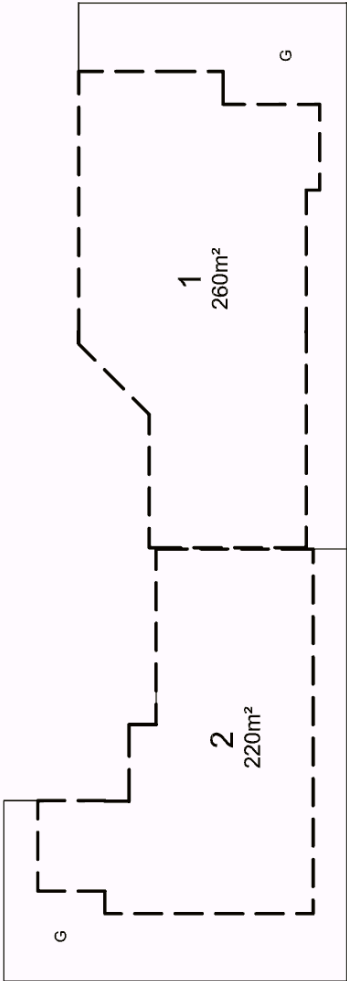
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DRAFT - ALL DIMENSIONS SUBJECT TO FINAL SURVEY



FLOOR PLAN

THE STRUCTURE OF THE BUILDING STANDING ON EACH LOT INCLUDING WALLS, FLOORS, CEILINGS, ROOFS AND PATIOS FORMS PART OF THE LOT AND IS NOT COMMON PROPERTY.

ALL COMMON SERVICE LINES ARE COMMON PROPERTY.

ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY.

ANY SERVICE LINE INCLUDING ELECTRICITY AND ELECTRICITY METER BOX WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY.

WATER TANKS AND HOT WATER TANKS FORM PART OF THE LOT AND ARE NOT COMMON PROPERTY.

LOTS 1 AND 2 ARE LIMITED IN STRUTUM FROM 5 METRES BELOW TO 10 METRES ABOVE THE UPPER SURFACE OF THE RESPECTIVE UNITS GROUND FLOOR.

TIMBER STAIRS AND DECKS FORM PART OF THE LOT AND ARE NOT COMMON PROPERTY.

ALL AREAS ARE APPROXIMATE

Surveyor : MARK CORNISH Surveyor's Ref : 8300 Subdivision No : Lengths are in metres. Reduction Ratio 1:200	Registered	DRAFT SP
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Item: 10**Subject: DA2018 - 322.1 BOUNDARY ADJUSTMENT AND VEGETATION
REMOVAL AT LOT 1 DP 224865 AND LOT 54 DP 233413, 18B AND
18A HIBISCUS CRESCENT, PORT MACQUARIE****Report Author: Benjamin Roberts**

Applicant: Land Dynamics Australia
Owner: M J and A J Roberts
Estimated Cost: \$30,000
Parcel no: 8831 and 35681

Alignment with Delivery Program

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

RECOMMENDATION

That DA 2018 – 322.1 for a boundary adjustment and vegetation removal at Lot 1, DP 224865 and Lot 54, DP 233413 No. 18B and 18A Hibiscus Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a development application for a two lot boundary adjustment and vegetation removal at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

The application as originally lodged was for a three lot subdivision. Following exhibition of the original application, three submissions were received including a group submission on behalf of six property owners.

Following concerns from Council staff surrounding the suitability of the site for a conventional three lot subdivision the application was subsequently amended to a two lot boundary adjustment. The amended application was re-exhibited and one further submission was received on behalf of six property owners.

This report recommends that the development application be approved.

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

The site comprises of two existing Torrens title lots. Lot 1 DP 224865 being 2017m² in area and Lot 54 DP 233413 being 803.78m² in area. The total combined site area is 2820.78m². Lot 1 DP 224865 contains an existing dwelling house.

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:

- Boundary adjustment
- Vegetation removal

Refer to attachments at the end of this report.

Application Chronology

- 30 April 2018 – Application lodged.
- 10 to 23 May 2018 – Public exhibition via neighbour notification.
- 28 May 2018 – Additional information request.
- 15 June 2018 – Additional information response with revised plans.
- 21 August 2018 – Additional information request.
- 5 September 2018 – Additional information response with revised plans.
- 28 September 2018 – Applicant advised unlikely to support application for three lot Torrens subdivision.
- 6 December 2018 – Application amended to a boundary adjustment with revised plans lodged.
- 13 December 2018 to 14 January 2019 Public exhibition of amended proposal.

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 therefore no further investigations are required. Refer to comments under flora and fauna heading of this report regarding impacts of vegetation removal.

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.

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 and the R1 zone landuse table and clause 2.6, subdivision/boundary adjustment is permissible with consent.
- The objectives of the R1 zone are as follows:
 - *To provide for the housing needs of the community.*
 - *To provide for a variety of housing types and densities.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives as it is a permissible landuse and consistent with the established residential locality.
- Clause 4.1, the proposed boundary adjustment will result in proposed lot 101 being 1496.6m² in area and proposed lot 102 being 524.4m². Both above the minimum lot size standard of 450m² applicable to the site.
- Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
- Clause 7.13 - Satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

Noting the proposal is for a boundary adjustment only the relevant subdivision and general provision of the plan are addressed as follows:

DCP 2013: Chapter 3.6 - Subdivision			
DCP Objective	Development Provisions	Proposed	Complies
3.6.3.4	Lots are to be designed to allow the construction of a dwelling, which does not involve more than 1m cut, or fill, measured from natural ground level, outside the dwellings external walls.	There is sufficient area available within proposed Lot 102 to accommodate a future dwelling. Having regard to the existing site contours some excavation is anticipated which would be subject to assessment under a future application for a dwelling.	
3.6.3.20	Water supply to meet Council's design specifications.	Water connections proposed to service new lot boundaries.	Yes
3.6.3.24	Separate sewer junction provided for each lot.	Sewer connections proposed to service new lot boundaries.	Yes

DCP 2013: General Provisions		
DCP Objective	Development Provisions	Proposed
2.3.3.5	Any habitat/vegetation to be lost to be offset based on expert ecological knowledge.	Offset Koala tree plantings proposed onsite consistent with the recommendations of the expert ecological report.
2.3.3.8	Removal of hollow bearing trees	No hollow bearing trees to be removed.
2.4.3.6	All stormwater to be designed in accordance with AUSPEC.	Capable of compliance. Conditions applied.
2.5.3	Transport, traffic and access	Refer to detailed comments under roads, transport and traffic heading later within this report.
2.6.3.2	Tree removal (3m or higher with 100mm diameter trunk and 3m outside dwelling footprint)	Tree removal proposed and assessed by ecological assessment with offset plantings proposed onsite.

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

No planning agreement has been offered or entered into.

iv) Any matters prescribed by the Regulations:

No matters prescribed by the regulations apply.

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

Context and Setting

The proposal will be unlikely to have any adverse impacts to existing adjoining properties.

The proposal is considered to be compatible with other residential lots in the locality and adequately addresses planning controls for the area.

There are no significant adverse privacy impacts.

Access, Traffic and Transport

The site has road frontage to Hibiscus Avenue which is a sealed public road under the care and control of Council. Hibiscus Avenue is a Local road with a 7m road formation width, with upright kerb both sides of the pavement.

The proposed lots have rights of carriageway over the existing battleaxe handles adjacent to their frontages, i.e. battleaxe handles located north and south of the development. Vehicle access to proposed Lot 102 is proposed via a further access handle. Construction of this additional handle shall be required as part of the subdivision works. Access shall comply with Council AUSPEC and Australian Standards, and conditions have been imposed to reflect these requirements.

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

Water Supply Connection

Council records indicate that the development site has an existing 20mm metered water service. This water service shall be adopted for proposed Lot 101 given it is relocated in accordance with the submitted water reticulation plan. A second water service shall be installed for proposed Lot 102.

Detailed plans will be required to be submitted for assessment with the S.68 application.

Sewer Connection

Council records indicate that the development site is connected to sewer via junction to the existing sewer line on the eastern property boundary. Council's sewer system shall be extended to provide proposed Lot 101 with a sewer junction with all the internal sewer lines from the existing dwelling directed to this junction.

Detailed plans will be required to be submitted for assessment with the S.68 application.

Stormwater

Stormwater is capable of being managed onsite. A detailed stormwater management plan will be required to be submitted and approved by Council prior to the issue of any construction certificate.

Other Utilities

Telecommunication and electricity services are available to the site.

Heritage

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

Other land resources

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

Water cycle

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

Soils

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

Air and microclimate

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

Flora and fauna

The proposed development will result in the removal of most of the sites existing vegetation with the retention of two mature healthy Tallowwoods trees.

An ecological impact assessment was undertaken by JB Enviro, dated 28 April 2018. The assessment has been undertaken in accordance with Section 5A of the Environmental Planning and Assessment Act 1979, as amended by the Biodiversity Conservation (BCA) Act 2016. The assessment identifies the sites vegetation as a mixture of regrowth and ornamental plantings with about a third of the site maintained as a lawn, with the rest being unmanaged gardens.

The assessment reported no observation of Koalas during survey but did identify one Koala scat, tree scratching's and records of Koalas within 100m of the site. It also acknowledges sightings of male and female Koalas (including with young) within the area. The assessment also identifies residents reporting the two largest Tallowwoods onsite as being periodically visited by a local Koala.

There are five (5) Tallowwood trees located on the site. The trees are described via a table and photographs within the ecological assessment report. The two largest, healthiest and most important trees being Tallowwoods 4 and 5 are to be retained. Tallowwoods 1, 2 and 3 are to be removed. The trees to be removed and retained are illustrated on the tree removal/retention plan. The report states that trees 1, 2 and 3 clearly have no significant ecological value to the Koala due to their condition.

The report identifies that loss of the trees onsite will incrementally reduce current connectivity within the local urban woodland which provides linkage most importantly for the Koala. Notwithstanding this, the two key Tallowwoods will be retained, and four additional plantings of Tallowwoods is proposed onsite.

The report recommends a number of ameliorative measures which include:

- Donation of removed Koala food trees to local Koala organisations;

- Trees 4 and 5 be retained and provided with dog-proof fencing;
- No Koala barriers to trees 4 and 5 or the replacement plantings;

The conclusion of the ecological assessment report is provided as follows:

“The subject land has been substantially modified from its original natural state to establish a residential dwelling. Subsequent vegetation appears to be planted mixture of native and exotic ornamentals with some dispersal of native pioneer species and weeds from other sources.

The site has limited habitat values due to the origin of the site vegetation, its small size and the location within a long established residential precinct. Its most significant value is to Koala – with two trees on the western side forming part of the wider home range of the local Koala. These trees are possibly home range trees and the layout has retained them accordingly. The site is also <1ha and hence SEPP 44 does not apply.

A number of other highly mobile fauna (Yangochiropteran bats, Grey-headed Flying Fox, raptors) may use habitat in the study area, but only for short periods as minute parts of their range.

The net impact of the proposal is unlikely to be of sufficient order of magnitude to place a local viable population at risk of extinction. Similarly, no threatened or migratory species listed as an MNES was considered likely to be significantly impacted.

Consequently a Species Impact Statement or referral to DEE is not required.”

Council's environmental staff have reviewed the report and agree with the findings. A series of condition have been recommended including title restrictions.

The tree removal/clearing of native vegetation onsite is less than the 0.25 hectare biodiversity offsets scheme threshold and therefore does not trigger the biodiversity offsets scheme. Part 7 of the Biodiversity Conservation Act 2016 is considered to be satisfied.

Waste

No adverse impacts anticipated. Standard precautionary site management condition recommended.

Energy

No adverse impacts anticipated.

Noise and vibration

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

Bushfire

The site is not identified as being bushfire prone.

Safety, security and crime prevention

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

Social impacts in the locality

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

Economic impact in the locality

No adverse impacts.

Site design and internal design

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

Construction

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

Cumulative Impacts

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

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

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

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

The application as originally lodged was for a three lot subdivision. Following exhibition of the original application, three submissions were received including a group submission on behalf of six property owners.

Key issues raised in the submissions received and comments in response to these issues are provided as follows. Noting these comments specifically relate to the prior three lot subdivision layout originally proposed:

Submission Issue/Summary	Planning Comment/Response
It's good to see retention of the two large Tallowood trees as Koalas are often sighted in these trees.	Noted.
There is too many rights of carriage ways/private roads at the end of the cul-de-sac. On garbage collection day there is often up to 18 bins on street. The extra lots will result in more bins.	No additional lots are proposed. The boundary adjustment will provide sufficient frontage to each lot for provision of mobile garbage bins.
Lot 1 DP 224865 (proposed lot 101) has no legal access to the northern right of carriageway. The SOEE is incorrect. The existing driveway into lot 1 is makeshift and needs to be closed off and reinstated to prevent further degradation to existing asphalt surface of the right of carriageway benefiting lots 45, 46, 47, 48.	Refer to comments under access, traffic and transport heading of this report. The existing and proposed lots do enjoy a right of carriage over the existing battle-axe handles.
The additional proposed access to lot 102 from the southern right of carriageway will create limited turning space and parking	The construction of the access handle to proposed Lot 102 will assist with vehicular movements even though

Submission Issue/Summary	Planning Comment/Response
issues for existing residents. It's a small lot and stormwater, tree removal, sediment control all need to be considered with the driveway access alongside the right of carriage way. All access should be from Hibiscus Crescent.	there is a right to use the existing right of carriageway. Details surrounding stormwater and sediment control will be provided as part of construction certificate process and would need to be contained with the proposed lot boundary.
The removal of the large trees prior to any building development would not be in the best interest if the residents or for flora and fauna in the area, particularly Koalas that frequent the area on a regular basis.	Refer to detailed comments under the flora and fauna heading of this report.
The 4m wide access to proposed lot 102 will cause runoff that would undermine the right of carriageway and potentially inundate downstream properties. Extensive cut and retaining would be required for a driveway to a dwelling on the lot. The new lot and driveway would create unacceptable traffic congestion in the right of carriageway.	This 4m wide access is no longer proposed. An additional access handle is now proposed direct to Hibiscus Crescent and will be required to be constructed under this application.
It is considered that movement of proposed lot 102 boundary 4 metres into existing lot 54 to take advantage of the southern right of carriageway constitutes a new terms of easement to be drawn up.	Refer to comments under access, traffic and transport heading of this report. The existing and proposed lots do enjoy rights of carriage over the existing battle-axe handles.
Heavy construction traffic up the right of carriageway to build on proposed lot 102 would cause considerable damage and inconvenience. It is understood Council may retain a bond for any damage caused to the right of carriageway.	There is no building development proposed. An additional access handle is now proposed. Council would not hold a bond for any work on private land only subject work on Council land.
Visual, acoustic, privacy, views and overshadowing are an issue now on proposed lot 102 and 103 due to future building potential.	It is consider there is sufficient area on proposed Lot 102 to locate a house. These impact would be considered via a future application for a dwelling.
Some comments regarding the health of trees in the ecology report are not true and the spotted gums are Koala food trees contrary to the report and are regularly used by Koalas.	Refer to detailed comments under the flora and fauna heading of this report.
Due to the increase in number of lots and boundary alterations, the benefit of the southern right of carriageway will need subsequent approval from the affected land owners.	Refer to comments under access, traffic and transport heading of this report. The existing and proposed lots do enjoy a right of carriage over the existing battle-axe handles.
The access to the proposed lots should come directly off Hibiscus Crescent and not the existing right of carriageways.	Refer to comments under access, traffic and transport heading of this report. The existing and proposed lots do enjoy a right of carriage over the existing battle-axe handles. The construction of the access handle to

Submission Issue/Summary	Planning Comment/Response
	proposed Lot 102 will assist with vehicular movements even though there is a right to use the existing right of carriageway.
If Council is genuine in their efforts to protect our Koala population then Koala trees including the spotted gums should not be removed. Once the blocks are sold the new owners may wish to keep them and build around them.	Refer to detailed comments under the flora and fauna heading of this report.

Following concerns from Council staff surrounding the suitability of the site for a conventional three lot subdivision the application was subsequently amended to a two lot boundary adjustment. The amended application was re-exhibited and one further submission was received on behalf of six property owners.

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

Submission Issue/Summary	Planning Comment/Response
Consideration of future use of the land should be given and it would be in the interest of all residents to extinguish both access points to the existing rights of carriageway to proposed lots 101 and 102 and create new access to each lot from Hibiscus Crescent.	<p>Consideration can only be given to the application as lodged. The future use of the land would be subject to further application and subject assessment.</p> <p>The proposed lots have rights of carriageway over the existing battleaxe handles adjacent to their frontages, i.e. battleaxe handles located north and south of the development.</p> <p>Vehicle access to proposed Lot 102 is proposed via a further access handle. Construction of this additional handle shall be required as part of the subdivision works.</p>
The benefits of extinguishing and creating new access for the lots would be improved drainage direct to the street, reduced traffic flow in the narrow handles, reduce erosion and sediment control and reduce risk of damage to existing services.	Noted. Council cannot deny the existing right of access to the lots. The requirement to construct the additional access handle for proposed Lot 102 will alleviate some of these problems. The existing access to proposed Lot 101 containing the existing house remain unchanged.
While proposed lot 102 meets the minimum lot size standard its shape and location is not in keeping with adjoining properties and will lead to increased traffic flow in the carriageway with lack of parking due to the steep and small lot size.	<p>Proposed Lot 102 is 524.4m² in area and exceeds the applicable minimum 450m² lot size standard. It is considered that there is sufficient area on the proposed lot to locate a house which would be considered via a future application.</p> <p>The construction of the access handle to proposed Lot 102 will assist with</p>

Submission Issue/Summary	Planning Comment/Response
	vehicular movements even though there is a right to use the existing right of carriageway.
Any approval should require the construction of retaining walls to support the site and access points especially with the removal of the vegetation. There is a legal obligation on a land owner not to do anything on or in relation to land that removes the support provided by that land to other land. The retaining will improve and redirect stormwater and sediment currently entering the right of carriageway.	The application is for a boundary adjustment only. The construction of the additional access handle may require retaining. These details will be provided as part of construction certificate process and would need to be contained with the proposed lot boundary.
The two spotted gums on proposed lot 102 need to be retained as they are regularly used as Koala refuge trees and are significant in this area. As indicated in photos attached to the submission.	Refer to detailed comments under the flora and fauna heading of this report.
The findings of the ecological impact assessment on page 24 are not indicative of the local area. A list of other bird/reptile species provided in the submission are also present on the site.	Refer to detailed comments under the flora and fauna heading of this report.
An alternate boundary adjustment design could retain/embrace the spotted gums and significant Koala habitat and associated flora and fauna without affecting the development potential of the site.	Noted. Council is required to assess the proposal as lodged. Refer to detailed comments under the flora and fauna heading of this report.
Traffic access, drainage and local amenity could also be retained and improved.	Noted. Council is required to assess the proposal as lodged. The proposal is considered appropriate.

(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

No development contributions applicable.

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 - 322.1 Recommended Conditions
- 2[View](#). DA2018 - 322.1 Ecology Report
- 3[View](#). DA2018 - 322.1 Subdivision Plan
- 4[View](#). DA2018 - 322.1 Services Plan
- 5[View](#). DA2018 - 322.1 Tree Retentionremoval Plan
- 6[View](#). DA2018 - 322.1 Arborist Letter

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2018/322****DATE: 28/02/2019****PRESCRIBED CONDITIONS**

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

A – GENERAL MATTERS

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

Plan / Supporting Document	Reference	Prepared by	Date
Subdivision layout plan as amended	5260 Drawing No:0001 Revision F	Land Dynamics Pty Ltd	5 December 2018
Tree removal and retention plan as amended	5260 Drawing No:0002 Revision F	Land Dynamics Pty Ltd	5 December 2018
General Services Layout Plan	5260 Drawing No: 0003 Revision F	Land Dynamics Pty Ltd	5 December 2018
Statutory Ecological Assessment	Version 2	JB Enviro	28 April 2018
Arborist letter	5260	Land Dynamics Pty Ltd	13 June 2018

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

- (2) (A003) The proponent shall submit an application for a Subdivision Certificate for Council certification with all relevant documentation.
- (3) (A004) An application for a Construction Certificate will be required to be lodged with Council prior to undertaking subdivision works and a Subdivision Certificate is required to be lodged with Council on completion of works.
- (4) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.

- (5) (A009) The development site is to be managed for the entirety of work in the following manner:

1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
2. Appropriate dust control measures;
3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
4. Building waste is to be managed via an appropriate receptacle;
5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidays

The builder to be responsible to instruct and control his sub-contractors regarding the hours of work.

- (6) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.
- (7) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:

- a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
- b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
- c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

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

- (8) (A057) The applicant is to ensure the proposed development will drain to the existing point of connection to Council's sewerage system.
- (9) A driveway to proposed Lot 102 shall be constructed in accordance with Aus-Spec, as part of the subdivision works, for the length of the access handle. The cross fall on the driveway shall not concentrate stormwater on adjoining lots. Details shall be provided to Council as part of the Construction Certificate or Roads Act applications.
- (10) The ameliorative measures as detailed on page 34 of the statutory ecological assessment prepared by JB Enviro and dated 28 April 2018 form part of this consent and shall be implemented at the relevant stages throughout the development.
- (11) The recommendations of the Arborist letter prepared by Claire Mathieson of Land Dynamics dated 13 June 2018 form part of this consent and shall be implement at the relevant stages throughout the development.

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
 - Position and depth of the sewer (including junction)
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (B003) Submission to the Principal Certifying Authority prior to the issue of a Construction Certificate detailed design plans for the following works associated with the developments. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:
 1. Earthworks, including filling of the land for flood protection.
 2. Sewerage reticulation. Council records indicate that the development site is connected to Sewer via junction to the existing sewer line on the eastern property boundary. Council's sewer system shall be extended to provide Lot 101 with a sewer junction with all the internal sewer lines from the existing dwelling directed to this junction.
 3. Water supply plans shall include hydraulic plans for internal water supply services and associated works in accordance with AS 3500, Plumbing Code of Australia and Port Macquarie-Hastings Council Policies. Council records indicate that the development site has an existing 20mm metered water service. This water service shall be adopted for Lot 101 given it is relocated in accordance with the submitted water reticulation plan. A second water service shall be installed for proposed Lot 102.
 4. Stormwater systems.
 5. Location of all existing and proposed utility services including:
 - a. Conduits for electricity supply and communication services (including fibre optic cable).
 - b. Water supply
 - c. Sewerage

d. Stormwater

6. Landscaping.

7. Detailed driveway profile in accordance with ASD 201 and 207.

- (3) (B006) An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the Construction Certificate.

Such works include, but not be limited to:

- Footway and gutter crossing
- Functional vehicular access

- (4) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (5) (B038) Footings and/or concrete slabs of buildings adjacent to sewer lines or stormwater easements are to be designed so that no loads are imposed on the infrastructure. Detailed drawings and specifications prepared by a practising chartered professional civil and/or structural engineer are to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (6) (B072) A stormwater drainage design is to be submitted and approved by Council prior to the issue of a Construction Certificate. The design must be prepared in accordance with Council's AUSPEC Specifications and the requirements of Relevant Australian Standards and make provision for the following:
- a) The legal point of discharge for the proposed development is defined as the kerb and gutter of a public road.
 - b) The design is to make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
 - c) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
 - d) The design shall provide details of any components of the existing stormwater drainage system servicing the site that are to be retained.
- (7) (B054) A driveway longitudinal section shall accompany the section 138 application pursuant to section 138 of the *Roads Act, 1993*. The section shall demonstrate compliance with Council's adopted AUSPEC Design and Construction Guidelines.
- (8) (B056) The Stormwater network proposed with the application for Construction Certificate is to include provision to each subdivided lot of a direct point of connection to Council's future piped drainage system.
- (9) (B057) The existing sewer including junction and/or stormwater drainage shall be located on the site and the position and depth indicated on the plans which accompany the application for the Construction Certificate.
- (10) (B071) Prior to the issue of any Construction Certificate, the provision of water and sewer services to the land are to be approved by the relevant Water Authority and relevant payments received.

C – PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (C001) A minimum of one (1) week's notice in writing of the intention to commence works on public land is required to be given to Council together with the name of the principal contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.
- (2) (C013) Where a sewer manhole and Vertical Inspection Shaft exists within a property, access to the manhole/VIS shall be made available at all times. Before during and after construction, the sewer manhole/VIS must not be buried, damaged or act as a stormwater collection pit. No structures, including retaining walls, shall be erected within 1.0 metre of the sewer manhole or located so as to prevent access to the manhole.
- (3) (C015) Tree protection fencing, compliant with *AS 4970/2009 Protection of trees* on development sites must be provided to all trees to be retained. The fencing shall be in place prior to the commencement of any works or soil disturbance and maintained for the entirety of the works.

D – DURING WORK

- (1) (D001) Development works on public property or works to be accepted by Council as an infrastructure asset are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection, by contacting Council's Customer Service Centre on (02) 6581 8111. You must quote your Construction Certificate number and property description to ensure your inspection is confirmed:
 - a. at completion of installation of erosion control measures
 - b. when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
 - c. prior to the pouring of concrete for sewerage works and/or works on public property;
 - d. during construction of sewer infrastructure;
 - e. during construction of water infrastructure;
 - f. prior to sealing and laying of pavement surface course.All works at each hold point shall be certified as compliant in accordance with the requirements of AUSPEC Specifications for Provision of Public Infrastructure and any other Council approval, prior to proceeding to the next hold point.
- (2) (D006) A copy of the current stamped approved construction plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.

E – PRIOR TO OCCUPATION OR THE ISSUE OF SUBDIVISION CERTIFICATE

- (1) (E005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount.
- (2) (E034) Prior to occupation or the issuing of the Subdivision Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.

- (3) (E039) An appropriately qualified and practising consultant is required to certify the following:
- a. all drainage lines have been located within the respective easements, and
 - b. any other drainage structures are located in accordance with the Construction Certificate.
 - c. all stormwater has been directed to a Council approved drainage system
 - d. all conditions of consent/ construction certificate approval have been complied with.
 - e. Any on site detention system (if applicable) will function hydraulically in accordance with the approved Construction Certificate.
- (4) (E051) Prior issue of Subdivision Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (5) (E053) All works shall be certified by a practicing Civil Engineer or Registered Surveyor as compliant with the requirements of AUSPEC prior to issue of Subdivision Certificate or release of the security bond, whichever is to occur first.
- (6) (E056) A Certificate of Compliance under the provisions of Section 307 of the *Water Management Act* must be obtained prior to the issue of any subdivision certificate.
- (7) (E066) Ancillary works shall be undertaken at no cost to Council to make the engineering works required by this Consent effective to the satisfaction of Director of Council's Infrastructure Division. Such works shall include, but are not limited to the following:
- a. The relocation of underground services where required by civil works being carried out.
 - b. The relocation of above ground power and telephone services
 - c. The relocation of street lighting
 - d. The matching of new infrastructure into existing or future design infrastructure
- (8) (E068) Prior to the issue of a Subdivision Certificate, evidence to the satisfaction of the Certifying Authority from the electricity and telecommunications providers that satisfactory services arrangements have been made to the lots (including street lighting and fibre optic cabling where required).
- (9) (E072) Lodgement of a security deposit with Council upon practical completion of the subdivision works.
- (10) (E076) The plan of subdivision and Section 88B instrument shall establish the following restrictions, easements and/or covenants; with Council having the benefit and having the sole authority to release, vary or modify each restriction, easement and/or covenant. Wherever possible the extent of the land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision:
- a. To ensure the long term retention of the two mature healthy Tallowood trees a prohibition on any excavation or building works in the area nominated 'D' within proposed lot 101 as indicated on the approved plans.
 - b. To ensure free passage for Koalas to the retained and proposed Tallwood trees that no barriers that would prevent Koala access be erected around the trees.
 - c. The dog-proof fencing provided around the retained and proposed Tallowood trees be maintained by the respective land owner.

Details are to be submitted to Council prior to issue of the Subdivision Certificate.

- (11) (E079) Submission to the Principal Certifying Authority of certification by a Registered Surveyor prior to the issue of a Subdivision Certificate that all services and domestic drainage lines are wholly contained within the respective lots and easements.
- (12) (E081) The applicant will be required to submit prior to the issue of the Subdivision Certificate, a geotechnical report certifying construction of all earthworks as controlled fill in accordance with Council AUS-SPEC Standard and AS 37898. Such report to provide details of:
 - a. The surface levels of the allotments created, filled or reshaped as part of the development.
 - b. Compaction testing carried out to Controlled Fill Standard as per AS 3798.
 - c. Standard penetration tests and calculated N values.
 - d. Bore logs
 - e. Site classification of all allotments in accordance with AS2870.2011 - *Residential Slabs and Footings*.
- (13) (E082) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision Certificate. The copyright for all information supplied, shall be assigned to Council.
- (14) Prior to the issue of the Subdivision Certificate written confirmation shall be provided to the certifying authority confirming successful establishment planting of the two Tallowood trees.

F – OCCUPATION OF THE SITE

- (15) The two Tallowood plantings shall be cared for and maintained.

April | 18



STATUTORY ECOLOGICAL ASSESSMENT
Three Lot Residential Subdivision of Lot 1 DP224865,
and Lot 54 DP233413 Hibiscus Crescent,
Port Macquarie

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User Notice

This report is presented on an objective basis to fulfill the stated legislative obligations, consideration and requirements in order to satisfy the client's instructions to undertake the appropriate studies and assessments. It is not directly intended to advocate the proponent's ambitions or interests, but is to provide information required in the determination of development consent by the decision-making authority for the subject proposal.

To the best of our knowledge, the proposal described in this assessment accurately represents the proponent's intentions when the report was completed and submitted. However, it is recognised and all users must acknowledge that conditions of approval at time of consent, post development application modification of the proposal's design, and the influence of unanticipated future events may modify the outcomes described in this document. Completion of this report has depended on information and documents such as surveys, plans, etc provided by the proponent. While checks were made to ensure such information was current at the time, this consultant did not independently verify the accuracy or completeness of these information sources.

The ecological information contained within this report has been gathered from field survey, literature review and assessment based on recognised scientific principles, techniques and recommendations, in a proper and scientific manner to ensure thoroughness and representativeness. The opinions expressed and conclusions drawn from this report are intended to be objective, based on the survey results and this consultant's knowledge, supported with justification from collated scientific information, references/citations or specialist advice.

Furthermore, it is clarified that all information and conclusions presented in this report apply to the subject land at the time of the assessment, and the subject proposal *only*.

This report recognises the fact, and intended users must acknowledge also, that all ecological assessments are subject to limitations such as:

- Information deficits (eg lack of scientific research into some species and availability of information)
- Influences on fauna detectability eg season in which survey is undertaken
- Influences on species occurrence eg stage of lifecycle, migratory, etc
- Time, resource and financial constraints.

All users should take into account the above information when making decisions on the basis of the findings and conclusions of this report.

Version	Distribution	Date	Approved for DA	Approved by:
1	Land Dynamics	17/4/2018	Draft only	
2	Land Dynamics	28/4/2018	Final	JB

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EXECUTIVE SUMMARY

This firm has been requested to undertake a statutory ecological assessment for a proposed three lot residential subdivision of Lot 1 DP224865 and Lot 54 DP233413 Hibiscus Avenue, Port Macquarie. The assessment forms part of a Development Application to Port Macquarie-Hastings Council (PMHC). The proposal is to subdivide the approximately 2021m² ha lot into three residential lots.

The site falls on the crest of a ridgeline which rises to the west. Elevation is about 90m above sea level, with a moderate slope, with no other topographic features.

The site is an existing residential block which has supported a dwelling for several decades. The site vegetation suggests most if not all of it was once cleared and the current stand is a mixture of regrowth and ornamental plantings. About a third of the site is maintained as a lawn, with the rest being unmanaged gardens with evidence of former landscaping.

The site does not contain any threatened flora or a vegetation community that qualifies as an Endangered Ecological Community (EEC).

The site is part of a tenuous local corridor/habitat link comprised of linear and small patches of remnant and planted native trees on public land and in the rear of residential lots. This corridor has tentative linkage via urban woodland for tolerant species to Sea Acres to the east, and the large public reserve and forested private land to the southwest. The main threatened species known to use these linkages is the Koala, with many Koala food trees planted in the 1970s-1980s to establish this linkage and urban woodland, as evident by planted Swamp Mahogany, which would not naturally occur in the edaphic situation.

The site has limited habitat values due to the origin of the site vegetation, its small size and the location within a long established residential precinct. Its most significant value is to Koala – with two trees on the western side forming part of the wider home range of the local Koala. The layout has retained them accordingly. The site is also <1ha and hence SEPP 44 does not apply.

The proposal will however see loss of much of the site's remaining vegetation, including 3 Koala food trees which are considered to have no significant value as one is nearly dead and the other two are very suppressed, with very poor form and no potential for improvement. Offsets for these habitat components will need to be met to address the PMHC DCP.

A number of other highly mobile fauna (Yangochiropteran bats, Grey-headed Flying Fox, raptors) have mostly low potential to use habitat in the study area, but only for short periods as minute parts of their range due to the limited ecological values of the site and study area, and their ecology.

The proposal will overall have the most impact on the Koala and Grey-headed Flying Fox, but while the impact for the latter is a net negative, the proposal is unlikely to be of sufficient order of magnitude to place a local viable population at risk of extinction.

Similarly, no threatened or migratory species listed as an MNES was considered likely to be significantly impacted. Consequently a Species Impact Statement or referral to DEE is not required.

1 INTRODUCTION

This firm has been requested to undertake a statutory ecological assessment for a proposed three lot residential subdivision of Lot 1 DP224865 and Lot 54 233413, Hibiscus Avenue, Port Macquarie. The assessment forms part of a Development Application to Port Macquarie-Hastings Council (PMHC).

The impact assessment in this report has been undertaken for this development proposal in accordance with Section 5A of the *Environmental Planning and Assessment Act 1979*, as amended by the *Biodiversity Conservation (BCA) Act 2016*. Assessment is also provided under the Commonwealth *Environment Protection and Biodiversity Conservation (EPBCA) Act 1999* - Matters of National Environmental Significance, SEPP 44 – *Koala Habitat Protection* and the relevant provisions of PMHC Development Control Plan (DCP) 2013.

The survey and assessment was performed in consideration of the draft Threatened Species Survey and Assessment – Guidelines for Developments and Activities (DEC 2004), and the Threatened Species Assessment Guidelines – Assessment of Significance (DECC 2007). The assessment has also been undertaken in accordance with the Ecological Consultants Association of NSW – Code of Ethics (2002) available at www.ecansw.org.au.

2 BACKGROUND INFORMATION

2.1 Project Description

The proposed development is to shown in Figure 2. The proposal is to subdivide the approximately 2021m² ha lot into three residential lots.

Lot 101 will include the existing dwelling and extend over 1018m² and contain the existing building and access. Lot 1022 will be smaller at 457.1² and Lot 103 at 546m², and both will have access to Hibiscus Avenue via an existing private driveway to the south.

2.2 Location of the Study Site and Key Definitions

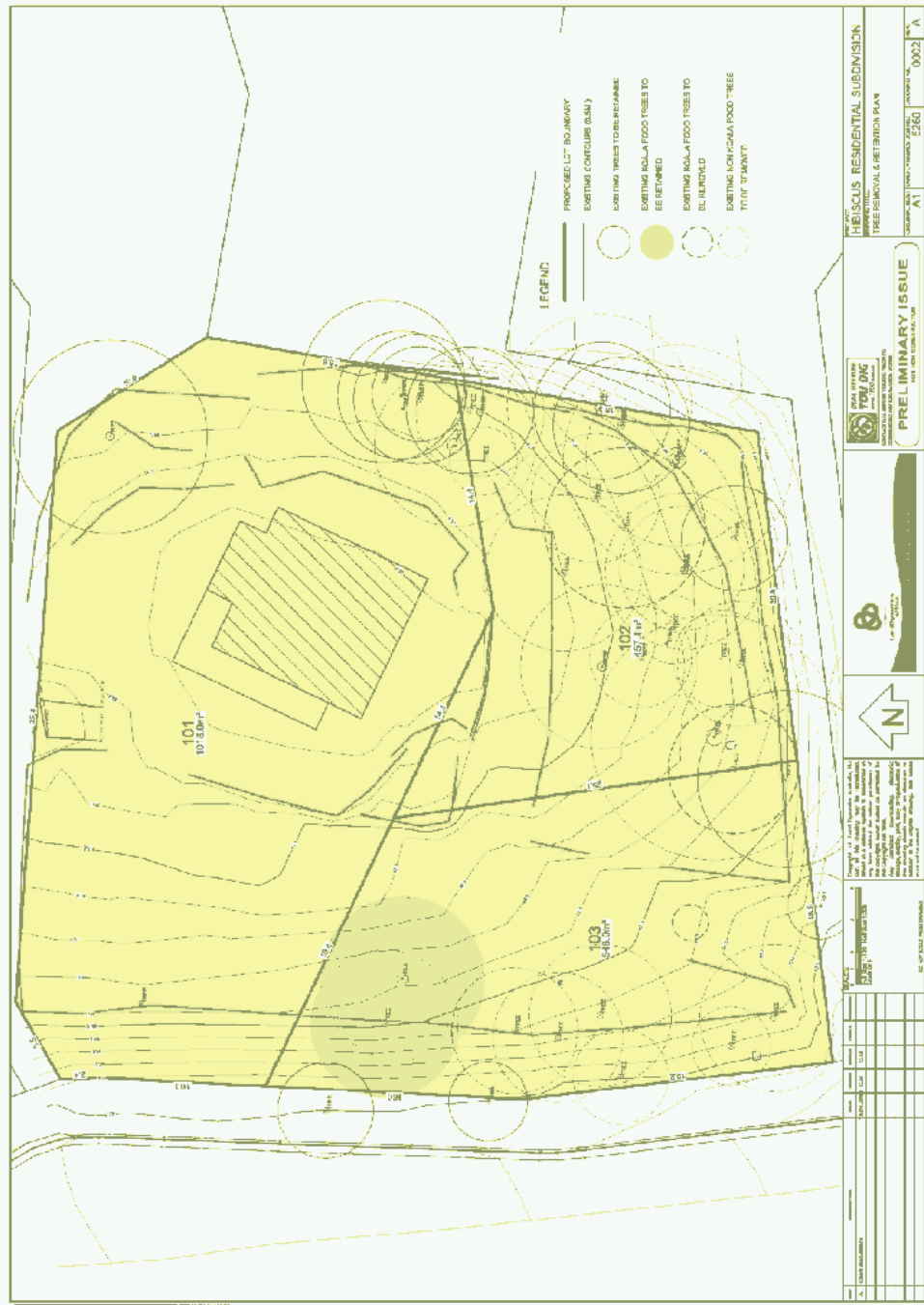
See Figure 1 for location of the study site.

The **study site** is Lot 1 DP224865 and Lot 54 DP233413 Hibiscus Avenue, Port Macquarie, as shown in Figure 1 and 2. The **study area** is nominated as the land within 100m of the site. The **locality** is nominated as the land within a 10km radius of the site.

Figure 1: Location of the study site



Figure 2: Development concept plan



2.2.1 Topography, Geology and Soils

Refer to the map in Figure 1.

The site falls on the crest of a ridgeline which rises to the west. Elevation is about 90m above sea level, with a moderate slope, with no other topographic features.

The geology of the site appears to fall on the Myra beds which are characterised by the sedimentary to metamorphic rocks such as schist, phyllite, greywacke, slate, etc (Hastings Geology Map SH 56/14). Soils on site were a reddish brown clay.

There are no Quaternary soil landscapes on site or in the study area

2.3 Landuse and Disturbance History

The site is an existing residential block which has supported a dwelling for several decades. The site vegetation suggests most if not all of it was cleared and the current stand is a mixture of regrowth and ornamental plantings. About a third of the site is maintained as a lawn, with the rest being unmanaged gardens with evidence of former landscaping with stones to mark the edge of beds.

Access is via an existing private road (battle-axe right of way) to the north which services other adjacent dwellings. A short driveway extends to the house off this road. A former access appears to have existed off the southeast corner, but a small Tallowwood has grown up in the middle indicating this was abandoned some time ago.

Some recent underscrubbing has occurred on site, mostly on the western side. Two large Coral Trees (**Erythrina x sykesii*) reportedly collapsed after a heavy rainfall event. A general cleanup of the adjacent area appears to have been undertaken shortly after.

2.4 Adjacent Developments

The site is located within a long established residential area formerly on larger than average lot size, some of which are progressively being redeveloped into higher density housing. Dwellings adjoin the site on all sides. Hibiscus Avenue adjoins to the west.

3 FLORA

3.1 Known Threatened Flora Records

No threatened flora species were detected on site. The following threatened flora species have been recorded within 10km of the site (OEH 2018a).

Table 1: Threatened flora species recorded in the locality

Scientific Name	Common Name	Legal Status
<i>Acronychia littoralis</i>	Scented Acronychia	E-BCA, E-EBPCA
<i>Asperula asthenes</i>	Trailing Woodruff	V-BCA

Scientific Name	Common Name	Legal Status
<i>Allocasuarina defungens</i>	Dwarf Heath Casuarina	E-BCA, E-EPBCA
<i>Chamaesyce psammogeton</i>	Sand Spurge	V-BCA
<i>Cynanchum elegans</i>	White-flowered Wax Plant	E-BCA, E-EPBCA
<i>Dendrobium melaleucaphilum</i>	Spider Orchid	E-BCA
<i>Diuris</i> sp. aff. <i>chrysantha</i>	Byron Bay Diuris	E-BCA
<i>Eucalyptus nicholii</i>	Narrow-leaved Black Peppermint	V-BCA, V-EPBCA
<i>Marsdenia longiloba</i>	Slender Marsdenia	E-TSCA, V-EPBCA
<i>Maundia triglochinoides</i>	-	V-BCA
<i>Melaleuca biconvexa</i>	Biconvex Paperbark	V-BCA, V-EPBCA
<i>Oberonia titania</i>	Red-flowered King of the Fairies	V-BCA
<i>Peristeranthus hillii</i>	Brown Fairy-chain Orchid	V-BCA
<i>Senna acclinis</i>	Rainforest Cassia	E-BCA
<i>Sophora tomentosa</i>	Silverbush	E-BCA

Narrow-leaved Black Peppermint is not endemic to coast, being found in the New England Tableland (PlantNET 2018). Its occurrence in Port Macquarie is as introduced exotic plantings.

3.2 Survey Methods

The flora survey routinely consists of two components:

- Identification, description and mapping of the major vegetation communities and any Endangered Ecological Community listed under the *Biodiversity Conservation Act 2016* (BC Act), and *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- Searches for, identification of, and (if found) mapping of any threatened species and their habitat.

3.2.1 Vegetation Mapping and Identification

The survey was undertaken in April 2018. As the study site is relatively small, full access to all areas was granted, and limited diversity in vegetation types: survey was undertaken via a random meander undertaken throughout the entire extent of the site vegetation stands to identify associations and structure, as well as and compile a species list, with limited use of aerial photo interpretation.

The advantages of this method are:

- Provides the most amount of information for given input.
- Provides a means to sample vegetation boundaries.
- Provides a means for assessing floristic diversity and possible presence of threatened species (Forest Fauna Surveys *et al* 1997).

3.2.2 Vegetation Classification and Species Identification

The vegetation communities were described from data collected by the random meander transects over the study area. Classification was based the OEH Plant Community Type (PCT) system.

Species identification was made with the assistance of PlantNET, GTCC (2007), Bale (1993), Beadle (1982), Harden (1990, 91, 92, 93, 2000), Williams and Harden (1984), Williams and Harden (1980), Williams and Harden (unknown), Robinson (1994), and Brooker and Kleinig (1999). Plant species were identified to species or subspecies level and nomenclature conforms to that currently recognized by the Royal Botanic Gardens and follows Harden and PlantNET for changes since Harden (1990-1992, 2000).

Identification of possible Endangered Ecological Communities was based on the data collected by the survey and review of the relevant listings on the Office of Environment and Heritage (OEH) website (OEH 2017b).

3.2.3 Threatened Flora Species Searches and Occurrence Assessment

3.2.3.1 Searches

Searches for threatened flora recorded in the Local Government Area (LGA) and/or in regionally similar habitats to that on the site were carried out over the entire area of the study site during specific targeted searches. A total of 1 dedicated hour was spent on searches for threatened flora on the site during the survey.

3.2.3.2 Potential Occurrence Assessment:

Potential occurrence assessment of threatened flora species is provided in Appendix 1. This section assesses all threatened species (BC Act 2016 and EPBC Act 1999) known to occur within range of the area for their potential to occur on the site based on the following factors:

- Presence/absence of suitable habitat.
- Condition and disturbance history of habitat.
- Local and regional records (eg. OEH 2017a).
- Location of site within known distribution of the species.

3.3 Site Vegetation Communities

As shown in Figure 1 and Photos 1-3, the vegetation on the subject land is a mixture of maintained lawn/gardens and mixed garden/regrowth.

A species list is provided in Appendix 3. Sample photos follow:

3.3.1 Maintained Lawns and Garden

PCT	Non-applicable.
Biolink (2013)	Not mapped
Location	Northern half of site.
Description	<p>(a) Canopy/Understorey: About 3-5 metres tall. Consists of a dense stand of exotic trees in the northeast behind the house, and single trees of common exotic ornamentals eg. Jacaranda (<i>*Jacaranda mimosifolia</i>).</p> <p>(b) Shrub layer: <i>Structure and Species:</i> Consists of scattered exotic ornamentals, a cultivar <i>Grevillea</i>, a single Cabbage Palm (<i>Livistona australis</i>), and a large patch of running bamboo (<i>*Phyllostachys</i> spp.) in the northwest corner, much of which was cleared when the Coral Trees and a Jacaranda fell after an extreme rain event.</p> <p>(c) Ground Layer: <i>Structure and Species:</i> Generally dominated by a mixture of Buffalo Grass (<i>Stenotaphrum secundatum</i>), Crowsfoot (<i>*Eleusine indica</i>) and Elastic Grass (<i>*Eragrostis tenuifolia</i>), with Panic Veldt Grass (<i>*Ehrharta erecta</i>), running bamboo, Fishbone Fern (<i>Nephrolepis cordifolia</i>), and a range of common ornamentals and garden weeds such as Ginger Lily (<i>*Hedychium gardnerianum</i>), <i>*Bidens pilosa</i>, Blackberry Nightshade (<i>*Solanum nigrum</i>) and Ground Asparagus (<i>*Asparagus aethiopicus</i>).</p> <p>(d) Lianas, scramblers, etc.: Number of exotic scramblers including Balloon Vine (<i>*Cardiospermum grandiflorum</i>) and Morning Glory (<i>*Ipomoea indica</i>).</p>
Comments	Comprises the most managed portion of the site, although the embankment behind the house is completely dominated by exotics in all strata, and is not maintained with some weeds (eg. Morning Glory) establishing. The running bamboo appears to be actively spreading south via underground rhizomes.

3.3.2 Mixed Garden/Regrowth

PCT	Non-applicable.
Biolink (2013)	Not mapped
Location	Southern half and southwest corner of site
Description	<p>(a) Canopy: Eclectic mix of species which most if not all appear likely to have been planted. Dominated on the southern side by two mature Spotted Gum (<i>Corymbia maculata</i>) about 15m high and trunk diameter at breast height (DBH) of 80-100cm. Underneath the crowns of these trees are suppressed Pink Bloodwoods (<i>C. intermedia</i>) about 6-10m tall with trunk DBH 20-40cm, but overall Turpentine (<i>Syncarpia glomulifera</i>) are the most common canopy tree, mostly along the southwest corner where multi-stemmed trees dominate. Two mature Tallowwoods with multi-stems occur on the mid-west boundary.</p>

	<p>(b) Understorey: Intergrades with the suppressed canopy, with <i>Banksia integrifolia</i> and a number of rainforest species dominating, with a number of exotics, wattles, 3 suppressed Tallowwoods and 3 Silky Oak (<i>Grevillea robusta</i>).</p> <p>(c) Shrub Layer: Well defined – consists of few scattered true native shrubs such as <i>Breynia oblongifolia</i> and numerous <i>Ochna serrulata</i>, but most of the shrubs are young seedlings of understory and canopy species.</p> <p>(d) Ground Layer: <i>Structure and Species:</i> Generally dominated by Fishbone Fern and Ground Asparagus. Rare tussocks of <i>Lomandra longifolia</i>. Projected foliage cover ranges from 30-50%.</p> <p>(e) Lianas, scramblers, etc.: Number of exotic scramblers as previously, with rare natives ie. <i>Smilax australis</i>.</p>
Comments	<p>The diverse mix of species in this unusual assemblage strongly suggests the vegetation is a mix of plantings and self-dispersal via animal vectors. In broad appearance, the vegetation could be described as a wet sclerophyll forest as it contains elements of local forests, but the canopy association is not typical of local forest. The oldest trees on site – the Spotted Gums – are unlikely to be original vegetation as this species is not naturally found on the soil type.</p>

Photo 1: Mixed native and exotic plantings on southern side of site



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Photo 2: Maintained lawn and exotic gardens in northwest corner of proposed Lot 1.



Photo 3: View west of southwestern side of site.



3.4 Threatened Ecological Communities

The site vegetation is not a Threatened Ecological Community (TEC) listed under the *Biodiversity Conservation Act 2016* or under the *Environment Protection and Biodiversity Conservation Act 1999* as the site vegetation does not match the specified habitat or floristic criteria.

3.5 Threatened Flora

3.5.1 Result of Threatened Flora Survey

Despite targeted searches, no threatened plants were recorded on the study site.

3.5.2 Potential Occurrence Assessment

Searches of relevant literature and databases (OEH BioNet 2018a) found records of 15 threatened flora species in the locality. Many of these are found in Sea Acres Nature Reserve, Lake Innes Nature Reserve, and major remnant habitat along riparian zones within or west of Port Macquarie. No records occur in adjacent habitat to the site.

The vegetation on site shows at times intensive disturbances including complete clearing, as well as dominance of the ground stratum by non-indigenous and exotic species. This combined with lack of proximate records or suitable habitat disqualifies any species known or locally occurring to potentially occur on site (see Appendix 1).

4 FAUNA

4.1 Survey Methods

4.1.1 Habitat Evaluation

The site was inspected to determine the available potential habitats, and the support value of these habitats for threatened species. Habitats were defined according to parameters such as:

- Structural and floristic characteristics of the vegetation, such as species mix, understorey type and development, maturity, groundcover density, etc.
- Degree and extent of disturbance, eg fire, logging, weed invasion, modification to structure and diversity, key threatening processes, etc.
- Soil type and suitability, eg for digging and burrowing.
- Presence of water in any form, eg dams, creeks, drainage lines, soaks.
- Size and abundance of hollows and fallen timber
- Availability of shelter, eg rocks, logs, hollows, undergrowth.
- Wildlife corridors, refuges and proximate habitat types.
- Presence of mistletoe, nectar, gum, seed and sap sources.
- Presence of preferred browse or sap species

Following assessment of the habitat and other survey work, threatened species recorded in the locality and in the region in similar habitats were evaluated for their potential to occur on the site. This is presented in Appendix 1.

4.1.2 Habitat Searches and Direct Observation

The site habitat was subject to the following searches:

- Bird nests: All canopy trees were searched for bird nests, specifically raptor nests of kites, eagles and hawks.
- Koala scats: A 1m radius around all the Tallowwoods Gum was inspected for Koala scats. This involved a preliminary visual search of the surface, followed by a search of the litter via raking material aside. Application of the Spot Assessment Technique (SAT) was statistically invalid due to the spatial arrangement of the trees.
- Habitat searches: Physical habitat searches were undertaken for an hour. This involved lifting up of timber and debris, inspection of dense vegetation and leaf litter for frogs and reptiles, binocular inspection of potential hollows, observation of likely basking sites and searches for scats, tracks and scratches.
- Other secondary evidence: Any other scats, bones, tracks, feathers, etc, identified to species if possible.

Any fauna observed directly via sight or call were recorded.

Birds were generally surveyed by detecting calls and searching by binoculars while walking around the entire site; and opportunistically during other activities.

Species identification was assisted by Simpson and Day (1996), Wilson and Knowles (1992), Strahan (1992), Briggs (1996), Robinson (1996), and Schode and Tideman 1990).

4.1.3 Survey Limitations

All surveys are limited in their ability to fully document all species of flora and fauna likely or actually occurring on a site. Surveys such as these are merely "snapshots" in time, and can only be expected to provide an indicative not absolutely comprehensive representation of a site's species assemblage. To counter this limitation, this survey has employed methods recommended in literature and known from personal experience to best detect the target species or assess their potential to occur.

4.1.3.1 Flora

The study site was intensively traversed by foot during specific flora surveys and during other survey activities. The survey was undertaken in spring is suitable for detection of all locally occurring threatened plant species. It was noted that the site has extensive disturbance of the ground and has been previously subject to landscaping with many exotic plants established.

Regardless, any short-term survey will only provide a list of plants detected during a brief interval of time (DEC 2004). The total species list of an area is usually much greater than can be detected in such a short time and it can be influenced by factors such as: size of the property, fire history, time since disturbance, flowering season (particularly orchids), and presence of reproductive material (DEC 2004). As the focus was on detection of threatened species, a comprehensive inventory of all species present was not obtained.

4.1.3.2 Fauna

Fauna detectability is limited by seasonal, behavioural or lifecycle of each species, and even habitat variations (eg flowering periods), which can vary within a year, between years, decades, etc. Habitat evaluation is used to counter this limitation by assessing the potential occurrence of threatened species based on potentially suitable habitat in the study area and local records.

The site is limited in extent and habitat values (eg. no hollow-bearing trees), as well as carrying capacity, and hence the survey methodology was considered appropriate. Nearby studies also provide very high value information on local threatened species present and their habitat preferences in the local area and provide reference data for the site's evaluation.

To counter standard survey limitations, habitat evaluation was used as well as a brief fauna survey. Habitat evaluation conservatively assesses the potential occurrence of threatened species based on potentially suitable habitat in the study area and local records, and provides a prediction of the likelihood of a particular threatened species occurring in the study area.

4.2 Corridors

Refer to Figure 3.

4.2.1 Regional and Sub-regional Corridors

Regional corridors are typically >500m wide and provide a link between major and/or significant areas of habitat in the region. Ideally they are of sufficient size to provide habitat in their own right and at least twice the width of the average home range area of fauna species identified as likely to use the corridor (OEH 2018c, Scotts 2003). Sub-regional corridors connect larger landscaped features and are of sufficient width to allow movement and dispersal (generally >300m), but may not provide substantial species habitat (OEH 2018c, Scotts 2003).

4.2.2 Local Corridors and Habitat Links

Local corridors provide connections between remnant patches of habitat and landscape features. Due to their relatively small area and width (they may be <50m) these corridors are subject to edge effects (OEH 2018c, Scotts 2002). Habitat links are evaluated in this report as links from habitat on-site directly to similar habitat on adjacent land. These would be used by fauna, which depend solely or at least partially on the site for all of their lifecycle requirements, and/or dispersal (Gibbons and Lindenmayer 2002). Local corridors provide connections between remnant patches of habitat and landscape features. Due to their relatively small area and width (they may be <50m) these corridors are subject to edge effects (DEC 2004b).

The site is part of a tenuous local corridor/habitat link comprised of linear and small patches of remnant and planted native trees on public land and in the rear of residential lots. This corridor has tentative linkage via urban woodland for tolerant species to Sea Acres to the east, and the large public reserve and forested private land to the southwest. The main threatened species known to use these linkages is the Koala, with many Koala food trees planted in the 1970s-1980s to establish this linkage and urban woodland (Wilkes and Snowden 1998), as evident by planted Swamp Mahogany (*E. robusta*), which would not naturally occur in the edaphic situation.

Figure 3: Regional corridors



4.3 Survey Results

4.3.1 Fauna Habitat Description and Evaluation

Table 2: Habitat evaluation summary

Habitat attribute	On-site values	Significance
Aquatic/wetland habitat	Absent.	No habitat for any threatened waterfowl or frog species.
Marine/estuarine habitats eg estuarine, rocky foreshores, open beaches, open ocean.	Absent	N/A
Caves, cliffs, overhangs, etc	Absent	N/A
Logs and stumps	Only one stump of one of the Coral Trees. No habitat value.	N/A
Groundcover/shrub layer/undergrowth	No significant undergrowth for passerine birds.	No particular threatened species considered likely to occur. No significant habitat for small native mammals which may offer prey.
Leaf Litter	Leaf litter was well developed in the southeast corner. Offers excellent refuge for invertebrates, frogs and small reptiles.	No potential for any significant fauna due to limited extent and edge effects.
Wattles, Melaleucas, Callistemons and Banksias (shrub layer)	Absent or only juvenile wattles <1m.	No specific significance to any threatened species.
Yangochiropteran bat habitats	In general, the site forms part of a wider modified landscape which contains of a mosaic of small areas of remnant forest and urban woodland but most of the study area is dwellings and lawns hence limited foraging structures. At most may suit species in transit or using linear remnants for a foraging structure as small part of wider area.	Little and Eastern Bent-wing Bats, East-coast Freetail Bat, Greater Broad-nosed Bat considered low to highly likely to use site as minute to minor portion of their wider local range.
Fruiting species	Some fruiting rainforest species, but preferred species (eg. Cabbage Palm and Acronychia) are only juvenile – insufficient to support or attract threatened species.	No potential foraging habitat for Wompoo Fruit-dove, Rose-crowned Fruit-dove and Barred Cuckoo Shrike.

Habitat attribute	On-site values	Significance
Nectar sources and (canopy understorey)	Eclectic mix of species with the two winter flowering Spotted Gums and autumn flowering Pink Bloodwoods most significant per se due to season and size of fruit. Handful of wattles offer some limited value. Five Banksias in understorey but sparse fruiting. Turpentine is a spring flowerer.	Species present preferred by Squirrel Glider, Grey Headed Flying Fox, Yellow-Bellied Glider and Little Lorikeet, plus passerine birds, but very limited habitat and urban context indicates only most common species or most tolerant would use these resources eg. Grey Headed Flying Fox.
Sap sources	Pink Bloodwood, Sydney Blue Gum and Spotted Gum are potential preferred sap sources for the Yellow-bellied Glider (Lindenmayer 2002, NPWS 1999, Smith et al 1995, NPWS 2002c, Gibbons 2002) and Squirrel Glider (pers. obs.).	Good potential sap source range for gliders, but no sap incisions noted. Isolation of site, location in highly urbanised areas and lack of hollows would precluded these species.
Allocasuarinas	These oaks generally provide nesting material for birds, and useful quantities of leaf litter, but their greatest value is to the Glossy Black Cockatoo, whose diet in this region is primarily based on Black She-oak and Forest Oak (NPWS 1999, OEH 2018b, Clout 1989, Birds Australia 2018, pers. obs.). Single suppressed tree in southeast.	The site does not offer any potential value to this bird.
Tree hollows	Two small cavities in a <i>Grevillea robusta</i> were directly inspected by ladder and found to lead into the same small cavity insufficient in depth to support nesting or roosting by any fauna (see Photo 4). This cavity would also be prone to filling with water after rain.	No value.
Decorticating bark	Spotted Gum is only decorticating species, but no significant aggregations within boughs were noted which may be used for roosting or denning by bats or gliders. The bark is also used by gliders as a foraging substrate.	No significant value for threatened species such as Yangochiropteran bats. Some generic value as foraging substrate for gliders.
Prey species	Expect low diversity and abundance of arboreals and native terrestrials. Passerine birds likely to be in low diversity and abundance – dominance by medium sized woodland species.	Small terrestrial and arboreal prey species likely to be marginal support at best for brief seasonal foraging by forest owls and other locally recorded threatened raptors such as the Square-tailed Kite, with site only forming minute part of a large area of potential foraging habitat within these species very large foraging range.

Photo 4: Small uninhabitable cavity in a *G. robusta*.



4.3.2 Observed fauna

As to be expected by the condition and types of habitats present, as well as periodic high level noise and artificial lighting, a very limited number of species were detected by this survey.

The only birds observed were Magpies (*Gymnorhina tibicen*) and a Kookaburra (*Dacelo novaeguineae*). No frogs were recorded, and only a single reptile - *Lampropholis guichenoti* was recorded.

4.3.3 Koala Survey

A single Koala scat was found under Tallowwood 4 in the mid-west side of the site. The residents reported periodic observation of a Koala in the two Koala Food Trees (KFTs) here.

Scratches were noted on the other large tree, and also the nearby small suppressed tree, and both Spotted Gums. The latter may be used for incidental refugia or shade in summer, but are not preferred forage species.

4.3.4 Discussion of Fauna Survey Results

4.3.4.1 Fauna assemblage

A depauperate fauna assemblage was recorded by this survey. Acknowledging that a limited range of survey techniques were used, the likely explanation for this finding is likely to be a combination of the disturbed nature of the site, combined with its context e.g. relatively small urban remnant within a larger urban area subject to a range of edge effects, in addition to disturbances on site e.g. artificial lighting and frequent human presence. A pet dog is also present on site.

No trees were also flowering at the time. Mass flowering on site would probably see an increase in fauna activity and hence detection.

4.3.4.2 Koala

The survey did not observe any Koalas and found only 1 scat. Notwithstanding this, Bionet (OEH 2018a) records Koalas within 100m of the site, and the area is well known to have sightings of male and female Koalas (including with young). Koala food trees are common in the local urban woodland, with a Swamp Mahogany within 30m east of the site. The residents reported that the two largest Tallowwoods on site are periodically visited by a local Koala.

The other three Tallowwoods are suppressed and have very poor crowns. These are unlikely to have any significant value to Koalas as the small limbs with leaves would be difficult for a Koala to access. Trees 1 and 3 being narrow would also be more difficult to climb.

4.4 Potential Occurrence Assessment

4.4.1 Overview

Database searches were made of Bionet (OEH 2017a) and the EPBC Act Protected Matters tool (DotEE 2018a). These combined with a literature review of previous ecological studies provided a list of known locally recorded threatened fauna. In addition, a number of regionally recorded species are considered potential occurrences in the locality. In total, these species were evaluated for potential to occur in Appendix 1. Potentially occurring migratory species listed under the EPBC Act 1999 were also assessed.

4.4.2 Potential Occurring Threatened Species

Habitat for the majority of the above listed species does not occur on near the site (see previous references and Appendix 1 for justification).

Due to potential habitat on and/or adjacent to the site, the following are considered at least low potential occurrences on or very near (within 100m) the site and thus require formal statutory assessment (see section 9 and 10):

Table 3: Threatened species potentially occurring in the study area

Species	Legal Status	Occurrence type and likelihood
Square-tailed Kite	V-BCA	Fair. Minute portion of large foraging territory. Generic nest potential.
Little Lorikeet	V-BCA	Low at best forming small portion of foraging habitat within adjacent forest, falling within a wider foraging range. No potential nest sites.
Grey Headed Flying Fox	V-BCA, EPBCA	High chance of using site as minute portion of large foraging territory. Not a known or potential camp.
Little and Eastern Bent-wing Bats	V-BCA	Fair chance of using site and study area as minute portion of large foraging territory with extensive potential habitat beyond study area. No potential roosts on site.

Species	Legal Status	Occurrence type and likelihood
Yellow-bellied Sheath-tail Bat		Low chance using site and study area as minute portion of large foraging territory with extensive potential habitat beyond study area. No potential roosts on site.
East-coast Freetail Bat	V-BCA	Fair chance of using site and study area as minute portion of large foraging territory with extensive potential habitat beyond study area. No potential roosts on site.
Greater Broad-nosed Bat	V-BCA	Low to Fair chance of using site and study area as minute portion of large foraging territory with extensive potential habitat beyond study area. No potential roosts on site.

5 SEPP 44 – KOALA HABITAT PROTECTION

5.1 Potential Koala Habitat Assessment

5.1.1 Introduction

The identification of an area of land as potential Koala habitat is determined by the presence of Primary Preferred Koala Browse tree species. These species are listed under Schedule 2 of SEPP 44: Koala Habitat Protection. Potential Koala Habitat is defined as areas where the tree species listed under Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. Primary preferred food species occurring in the Port Macquarie-Hastings Local Government Area (LGA) are: Tallowwood (*Eucalyptus microcorys*), Scribbly Gum (*E. signata*), Swamp Mahogany (*E. robusta*) and Forest Red Gum (*E. tereticornis*).

An area of land to which the policy applies to must be at least 1ha (and may include adjoining land in the same ownership). According to a Land and Environment Court ruling (*St Ives Bus Services v. Ku-Ring-Gai Council 1995 NSW LEC 189*), it may also refer to a minimum of 1ha of habitat within a larger property containing sufficient Schedule 2 species to qualify as Potential Koala Habitat.

5.1.2 Assessment

Assessment for Potential or Core Koala Habitat under SEPP 44 is not required as the subject land does not meet the 1ha threshold for the SEPP to legally apply.

6 IMPACT IDENTIFICATION AND ASSESSMENT

6.1 Direct Impacts

6.1.1 Habitat Loss

As mentioned previously, the proposal is to establish a three lot residential subdivision of the site. Engineering constraints require substantial re-engineering of the site including cutting of the slope to provide foundations and level surfaces for construction. This will necessitate removal of the two large Spotted Gums, and most if not all of the trees on proposed Lots 2 and 3 in general.

The two largest, healthies and most important trees –Tallowwoods 4 and 5 on proposed Lot 2, will be retained. Tallowwoods 1-3 will be removed.

6.1.2 Connectivity

The loss of most of the trees onsite will incrementally reduce current connectivity within the local urban woodland which provides linkage most importantly for the Koala. Notwithstanding this, the two key Tallowwoods will be retained, and as detailed in section 7, additional plantings of Tallowwoods near these trees will be made as per the PMHC DCP.

6.2 Indirect Impacts

The following indirect impacts may be associated with the proposal:

Table 4: Indirect threats potentially associated with the proposal.

Threat	Literature Review	Significance on Site
Noise and Physical Disturbance	Noise effects on fauna in Australia are relatively poorly studied (Clancy 2001, Berrigan 2001d). Most evidence presented is anecdotal, but suggests most fauna have a fair degree of tolerance and adaptation at least to residential noise, with military training grounds proving to be <i>de facto</i> nature reserves for some species such as the Powerful Owl, Bush Stone Curlew, Squirrel Glider and Brushtailed Phascogale (Anon 1990, Anderson <i>et al</i> 2007). For example, this consultant has observed Glossy Black Cockatoos foraging in a tree within 30m of a person chain-sawing firewood (Berrigan 1998d), Cattle Egrets foraging near an excavator in the nature strip in dual lanes south of Coopernook, and Jabirus foraging by an excavator dredging a dam (pers. obs.). Ospreys have been studied for sensitivity to low flying jets without significant adverse impact (Trimper <i>et al</i> 1998).	Noise or physical disturbance due to the proposal is unlikely to greatly exceed current levels of disturbance from the existing residential developments. Fauna currently and potentially occurring on the site are likely to be accustomed to existing noise levels and any adverse effects are likely to only be short term (eg Clancy 2003).

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Threat	Literature Review	Significance on Site
Weed Invasion	Disturbance of soil provides the opportunity for weed invasion. Weeds may also be transported to the site from vehicle, people (eg on clothing), etc, who visit the development area, and via introduced fill material.	Weeds were already present on the study site, as well as a range of ornamentals. Some of these will be removed by the proposal. Any remaining disturbed areas within the new lots will be converted to lawns and landscaping, or hard surfaces.
Fencing	Fences have potential to obstruct the movement of threatened fauna across the site. Some threatened fauna can be injured by collision with wire fences, particularly barbed wire eg the Yellow-Bellied Glider, owls and Squirrel Glider have been recorded being injured by barbed wire fences (Lindenmayer 2002, Berrigan 2001c, Woodford 1999).	Current fencing is limited to a temporary fence constructed of chicken wire in the rear yard of Lot 1 to enclose a medium sized dog. The subdivision poses the risk of new fences posing barriers or entanglement risks. Measures are provided to mitigate this risk.
Erosion and Sedimentation	Sedimentation and erosion impacts can occur at both the construction and establishment phases. Erosion may occur via erosion of fill material and disturbed soils, scouring of exposed soil, earthen banks and habitats adjacent to the development area via directed flow (eg stormwater), or where runoff is concentrated (DLWC 1998a).	Standard soil and erosion controls as per PMHC specifications will be implemented on site during the proposed works, thus should effectively abate any potential erosion and sedimentation impacts.
Direct mortality via clearing	<p>A recent literature review of the impacts of land clearing in NSW (Johnson <i>et al</i> 2007) and a review of habitat fragmentation and landscape change (Lindenmayer and Fisher 2006) state that studies have demonstrated that most fauna are not displaced to adjacent habitat but perish during or as a direct result of land clearing via:</p> <ul style="list-style-type: none"> • Direct injury or death during vegetation removal eg destruction of refugia while resident. • Loss of home range and social environment resulting in starvation, stress, disease, breeding failure (eg inability to maintain lactation demands), predation, exposure, etc. • Insufficient carrying capacity of retained habitat to support viable populations, breeding, etc. • Inability to secure alternative habitat eg due to lack of connectivity or inter/intra specific competition. • Insufficient carrying capacity of alternative habitat to support resident and displaced fauna. • Inability to support young, disruption of socio-ecological relationships, etc. 	No hollow-bearing trees to be removed hence risk is only to small fauna potentially in the leaf litter. These are likely to only be common skinks and perhaps frogs given the site's limited extent and location with an established residential area. Most of these animals are likely to be simply displaced into the adjacent yards and remnant bushland.

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Threat	Literature Review	Significance on Site
	<ul style="list-style-type: none"> Increased access and success by predators. 	
Disease	<p>This threat is relevant to both Koalas and amphibians. Most Koalas are naturally infected with <i>Chlamydia</i> pathogens (Sharp and Phillips 1999, Phillips 1997). This and other diseases may develop when Koalas are under stress, of which one cause is habitat disturbance</p>	<p>Disease is a potential issue via the risk of pathogens being transported to the site (eg via machinery) eg. <i>Phytophthora cinnamomi</i></p> <p>The proposal will see removal of 3 KFTs, however these trees are suppressed (one is declining rapidly), have low current potential to be used by the Koala, and have no further potential to improve in condition or value due to the long suppression under the dominant canopy. Loss of these trees is thus unlikely to impact the ability of the Koala to obtain sufficient nutrition and hence be at risk of stress-induced Chlamydia.</p> <p>The loss is to be over-compensated by planting on the Hibiscus Avenue frontage of two more trees. The lack of competition here should allow these trees to develop a stable form and normal crowns, hence resulting in a net increase in habitat compared to the current situation.</p>
Edge Effects	<p>The fragmentation and/or isolation of currently intact vegetation via partial/mosaic clearing and establishment of pastures, buildings, trails, roads, etc, can have the following effects which are generally referred to as edge effects (Lindenmayer and Fisher 2006, Andrews 1990, Goosem 2002, May and Norton 1996, Catterall 2004, Dickman 1996, NPWS 2001, Kelly <i>et al</i> 2003, Cropper 1993, Downy 2003, Brown <i>et al</i> 2003):</p> <ul style="list-style-type: none"> Increased ingress of feral species such as cats and dogs. Ingress of weeds into areas not previously found. Alterations to microclimate ie drying, altered humidity levels, increases light penetration, etc. Increased exposure to wind. Increased predation, competition and assemblage modifications. 	<p>The site is already in an area exposed to extreme levels of edge effects, as demonstrated by dominance of weeds and non-indigenous species in the groundcover and very low fauna diversity.</p>
Bushfire	<p>Fire is a natural ecological component of the flora and fauna occurring in the area (Lindenmayer 2002, Smith <i>et al</i> 2005, NPWS 2004, Catling 1991, Gill <i>et al</i> 1999), however, an inappropriate fire regime can have significant negative effects (NSWSC 2004a, 2004b, 2004c, 2004d, 2004e, 2004f, NPWS 2004, Catling 1991, Gill <i>et al</i> 1999),</p>	<p>No fire is to be associated with the proposal, hence no increase in fire frequency is likely.</p>

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Threat	Literature Review	Significance on Site
	potentially including local extinction.	
Artificial lighting	<p>Lighting may potentially discourage particularly nocturnal native species from foraging near areas of development (e.g. Squirrel Gliders and Yellow-bellied Gliders), especially given light may travel significant distances and it can have a similar effect to a full moon on the hunting success of predators such as owls, or a behavioural avoidance impact by potential prey species (DEC 2004a, Andrews 1990, Grayson and Calver 2004). Wallabies, kangaroos, Tawny Frogmouth Owls, Kookaburras, Magpies and possums have been noted foraging under artificial lighting in residential areas eg. around Lake Innes, Port Macquarie and Kendall (personal observations). Conversely Squirrel Gliders have been recorded foraging within urban woodland within a caravan park at Bonny Hills (Darkheart 2005b).</p> <p>Artificial lighting may also be beneficial to Yangochiropteran bats by localised aggregation of insects, with these animals being observed foraging under streetlights, and even landing on lit footpaths in Horton St Port Macquarie to scamper for insects (personal observations). Conversely, studies have also shown that artificial lighting can modify bat assemblages i.e. some species avoiding lit areas (Hourigan et al 2009, Scanlon and Petit 2008).</p>	Artificial lighting on site is currently high due to adjacent dwellings. This is expected to increase with the new development. Given no hollows are present which are likely to be used by sensitive species, this impact is not considered likely to affect any relevant species.

7 PMHC DCP 2013

Under the new Port Macquarie-Hastings Council Local Environmental Plan (PMHC LEP) 2010, Council has prepared and implemented the PMHC Development Control Plan (DCP) 2011.

The DCP has relevant provisions for EECs, hollow-bearing trees (HBTs) and Koala food trees (KFTs). There are no EECs in the study area, and as the hollow in the *G. robusta* is not habitable, the KFT provisions are the only relevant provisions to be assessed.

7.1 Koala Food Trees

Section 2.6.3.2 of the DCP specifies that Koala food tree removal must be replaced at ratio of 1:2.

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As mentioned above, 5 Tallowwoods occur on site. These are shown in the following photos and detailed in the following table:

Table 5: Koala Food Tree data

Species	ID	Diameter at Breast Height (cm)	Height (m)	Health	Remove /Retain
Tallowwood	1	Three stems 10-12cm	4	Two stems dead, third only small branches in decline	Remove
Tallowwood	2	Two stems: 15.5 and 25.5cm	6	Highly deformed due to suppression – very difficult for Koala to browse small crown.	Remove
Tallowwood	3	17.5cm	7	Suppressed with small crown, some dieback.	Remove
Tallowwood	4	70cm splitting into 3 stems	12	Mature, formerly part shaded by Coral Trees so leans to southwest. Very good crown. Scat found	Retain
Tallowwood	5	Triple stem: 43, 20 and 28cm.	12m	Leans west due to previous crowding. Very good crown.	Retain

Trees 1-3 clearly have no significant ecological value to the Koala due to their condition which would not improve if the large Spotted Gum were removed as the trees are declining. The proponent proposes to establish 4 new plantings in the frontage of Lots 102 and 103.

Trees 4 and 5 are to be retained in the front yard of Lot 103, with dog-proof fencing on the common boundaries and to any rear yard, and no barrier to Koala access from Hibiscus Avenue.

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Photo 5: Tallowwood 1



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Photo 6: Tallowwood 2



Photo 7: Tallowwood 3



Photo 8: Tallowwood 4 and 5



8 AMELIORATIVE MEASURES

8.1 Donation of Trees

The Port Macquarie Koala Hospital and the Billabong Wildlife Park both have a constant need for sections of rough-barked trees for 'gunyas' (wooden poles in enclosures which the Koala roosts) and Koala browse species.

Both organisations should be contacted for interest in collecting these materials (subject to WH&S considerations) during clearing.

8.2 Fencing

Trees 4 and 5 are to be retained in the front yard of Lot 103, with dog-proof fencing on the common boundaries and to any rear yard, and no barrier to Koala access from Hibiscus Avenue.

No fence is to pose a barrier to access of replacement plantings.

9 FIVE PART TESTS ASSESSMENT

9.1 General Overview

The Five Part Tests are used to determine whether a proposed development is likely to have a significant effect on threatened species, Endangered Ecological Communities and Areas of Outstanding Biodiversity Value listed under schedules of the *Biodiversity Conservation Act 2016* known or considered reasonably likely to occur in the area influenced by a development proposal (threatened species only). Considerations must be given to the possible significant impacts a proposed development may have on threatened species, populations, ecological communities, and their habitats (DECC 2007).

The content of the Five Parts are specified by Section 7.3 of the *Biodiversity Conservation Act 2016*.

The following species (see Appendix 1) are subject to the Five Part Tests as they are considered to have at least a low potential to use some habitat on the site or study area at some time (eg now or if they were to potentially recover and expand):

The guidelines associated with the revised factors have provided definitions for key terms with the most significant being that of the “*local population*” and “*local occurrence*” as follows (DECC 2007):

“Local population: the population that occurs in the study area. The assessment of the local population may be extended to include individuals beyond the study area if it can be clearly demonstrated that contiguous or interconnecting parts of the population continue beyond the study area, according to the following definitions.

- The *local population* of a threatened *plant* species comprises those individuals occurring in the study area or the cluster of individuals that extend into habitat adjoining and contiguous with the study area that could reasonably be expected to be cross-pollinating with those in the study area.
- The *local population* of *resident fauna* species comprises those individuals known or likely to occur in the study area, as well as any individuals occurring in adjoining areas (contiguous or otherwise) that are known or likely to utilise habitats in the study area.
- The *local population* of *migratory or nomadic fauna* species comprises those individuals that are likely to occur in the study area from time to time....”

The local population of the potentially occurring threatened species is thus defined as follows:

Table 6: Definition of Local Populations

Species	Legal Status	Local Population
Square-tailed Kite	V-BCA	Any individuals potentially using habitat within site/study area depending on prey abundance as part of larger range. Local population requires much more habitat than found within study area to meet lifecycle requirements.
Little Lorikeet	V-BCA	Any individuals potentially using habitat within the site/study area depending

Species	Legal Status	Local Population
		on flowering incidences. Local population requires much more habitat that found within study area to meet lifecycle requirements.
Koala	V-BCA, E-EPBCA	The local aggregate dependent on the remnant which include the site, the remnant to the east, the public reserve and remnant to the west and northwest, and the local urban woodland. Local population requires much more habitat that found within study area to meet lifecycle requirements.
Grey-Headed Flying Fox	V-BCA, V-EPBCA	Any individuals potentially using habitat within the study area depending on lifecycle stage/seasonal range and flowering/fruitle incidence. Due to its ecology, local population requires much more habitat that found within study area to meet lifecycle requirements.
Little and Eastern Bent-wing Bats	V-BCA	Any individuals known/potentially using habitat within site/study area depending on lifecycle stage/seasonal range. Due to the ecology of these species, the local population requires much more habitat that found within study area to meet lifecycle requirements.
Greater Broad-nosed Bat	V-BCA	
Yellow-bellied Sheathtail Bat	V-BCA	
East-coast Freetail Bat	V-BCA	

9.2 Five Part Test Assessment

a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction

The impact of the proposal will vary in significance and context per species/species groups as follows:

- (i) *Large range species:* Yangochiropteran bats, Square-tailed Kite, Little Lorikeet, Grey Headed Flying Fox

All of the subject species require very large home ranges/territories, or seasonably variable ranges that far exceed the site/study area, at least seasonally or due to their ecology (eg following flowering incidences in the bioregion) and/or habitat requirements (eg Debus 2012, Eby 2002, 2000a, 2000b, Dwyer 1966, 1968, OEH 2018b, ABS 2018, Clout 1989, Smith *et al* 1995, Belcher 2000, WWF 2002, Claridge *et al* 2005, Kortner *et al* 2004, DECC 2006a, Hall and Richards 2000, Churchill 2000, Eby 1995, Barnes *et al* 1999, Debus and Czechura 1989, Debus 1994, 1995, Cameron 2006, Kavanagh 2000b, Gibbons and Lindenmayer 2002, NSWSC 2010a, 2010b, etc). Hence ecologically, while an individual/s may use the site/study area for foraging, etc, at some time, this individual/s and any known/potentially occurring local population of these species would extend well beyond the site to meet their full lifecycle requirements.

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The proposal will result in the loss/modification of almost of the remaining native trees on the 0.2ha site, which comprises generic potential foraging habitat for these species such as nectar species, prey habitat, etc.

Given the ecology of these species, the proposal will essentially constitute the contraction of the local extent of habitat and its carrying capacity, which is limited due to the fact the small area of habitat is located within a larger urban landscape. Consequently, the site is not large enough to support the complete or key lifecycle stages of these species, and is only likely to be used as a non-important part of their foraging range which would extend far beyond the study area.

No hollow-bearing trees offering known or potential nest sites for the Little Lorikeet or roost sites for Yangochiropteran bats will be removed as none occur.

Overall, due to the ecology of the subject species; the low value of the site habitat relative to other habitat in the locality likely to be routinely used by these species for the majority of their ecological requirements; and the limited extent of available habitat in the study area, and its relativity to the more important habitat in the locality: it is apparent that while the proposal will have a some minor net negative effect on current carrying capacity, the order of magnitude of the proposal's net negative effect is not likely to be sufficient to consequently result in a direct decline (i.e. significantly reduce viability) of the local population of any of the subject species.

(ii) Koala

The site contains 5 KFTs, of which only 2 are considered likely to be used as the other 3 are in very poor condition and have both major structural limitations for Koalas and small crowns. A single scat was recorded, and the residents reported periodic sightings of a Koala. Given the historical and on-going records of Koalas periodically in the Hibiscus-Orr St area, it is very likely that the two larger trees with well-developed crowns are periodically used as food and form part of a home range trees by at least one Koala. This home range would be larger than the study area – extending over the several small remnants which include planted KFTs, as well as trees within the urban woodland along streets and yards.

The urban woodland in the local area has been subject to an incremental and cumulative loss of KFTs in the recent decade, hence this is a negative impact on carrying capacity for the local aggregate. The loss of the 3 suppressed trees is not considered likely to significantly add to this given they have essentially nil value in the short and long term due to their very poor condition. The replanting of two Tallowwoods will have the long term benefit of increasing carrying capacity via the addition of more vigorous trees with naturally full crowns.

Dogs may be introduced to the site in addition to the resident animal, which is kept within an enclosure with no KFTs enclosed within. Provided the recommendation for fencing is implemented, dogs introduced to the site should not significantly increase the current threat of attack.

Traffic will incrementally increase on local roads due to two additional dwellings, but the roads are already long established and pose an existing threat. Given the additional increment will peak during construction and fall back similar to current levels, and Hibiscus Avenue is a cul-de-sac hence speed is limited, the proposal is not considered likely to significantly elevate this threat.

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Overall thus the order of magnitude of the net impact is considered unlikely to be sufficient to place a local viable population at likely risk of extinction.

b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:

- (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or**
- (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,**

As detailed in section 3.4, the site and study does not contain any EECs. Hence the proposal has no capacity to place the local occurrence of any EEC at risk of extinction.

c) in relation to the habitat of a threatened species, population or ecological community:

- (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity,**
- (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and**
- (iii) the importance of the habitat to be removed, modified fragmented or isolated to the long-term survival of the species, population or ecological community in the locality;**

The proposal will result in the loss of most of the vegetation on the small site, further reducing the local carrying capacity for biodiversity in the study area, which is subject to increasing infill development.

The affected habitat is part of a local corridor and habitat link, and will reduce vegetation cover to a minimal amount compared to present. Hence connectivity will be reduced, but not severed and resulting in isolation of habitat. Sufficient connectivity will remain post-development to allow routine home range movements and gene flow of urban woodland tolerant species which currently occur.

Although the loss of habitat on site will reduce the local current carrying capacity, the site not sufficient in extent to maintain the current viability of the local populations, and the important habitat components for the Koala are retained.

d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),

No relevant Areas of Outstanding Biodiversity Value occur on site or in the study area.

e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

For all of the subject species, the proposal will or may contribute (to varying extents) to the following Key Threatening Processes:

Table 7: Contribution to Key Threatening Processes

KTP	EXTENT/MANNER WHICH PROPOSAL AFFECTS KTP	MITIGABLE?
Loss of hollow-bearing trees (NSWSC 2007)	Loss of 1 tree in the early stages of hollow-development.	Tree within development footprint and location of hollow development compromises tree integrity hence not viable to keep.
Clearing of native vegetation (NSWSC 2001c)	Removal of most of the remaining vegetation on the 0.2ha site	No – engineering constraints limit vegetation retention.
Human induced climate change (NSWSC 2000d).	Removal of most of the remaining vegetation on the 0.2ha site	No – engineering constraints limit vegetation retention.
Invasion of native plant communities by exotic perennial grasses (NSWSC 2004g)	Disturbance of vegetation and soil may provide opportunities for weeds to colonise the site.	This threat is already present on and adjacent to the site.
Invasion, establishment and spread of <i>Lantana camara</i> (NSWSC 2006)	Vegetation containing this weed will be removed.	

10 EPBCA 1999 – MNES SIGNIFICANCE ASSESSMENT**10.1 General Assessment Overview**

The provisions of the EPBCA require determination of whether the proposal has, will or is likely to have a significant impact on a “*matter of national environmental significance*”. These matters are listed and addressed as follows:

1. **World Heritage Properties:** The site/study area is not listed as a World Heritage area nor does the proposal affect any such area.
2. **Ramsar Wetlands of International Significance:** No Ramsar wetland occurs on or adjacent to the site, nor does the proposal affect a Ramsar Wetland.
3. **EPBC Act listed Threatened Species and Communities:** The Koala (Vulnerable), the Grey-Headed Flying Fox (Vulnerable) are considered potential occurrences in the study area. As detailed below, neither are considered at risk of a significant impact.
4. **Migratory Species Protected under International Agreements:** No migratory species is likely to be significantly affected by the proposal, as detailed in section 10.2.3.
5. **Nuclear Actions:** The proposal is not a nuclear action.
6. **The Commonwealth Marine Environment (CME):** Listed as relevant to the site though is not within the CME nor does it affect such.
7. **The Great Barrier Reef Marine Park:** The proposal does not affect the Great Barrier Reef Marine Park.
8. **National Heritage:** The site does not contain an item of National Heritage.
9. **A water resource, in relation to coal seam gas development and large coal mining development:** The proposal is not a mining development.

The proposal thus is not considered to require referral to the Department of Environment and Energy (DEE) for approval under the EPBC Act.

10.2 Threatened Species**10.2.1 Threatened Flora and TECs**

No EPBC Act listed flora species were found on the study site, and are thus not considered further.

No TECs listed under the Act occur on site or in the study area, and hence are not considered further.

10.2.2 Threatened Fauna**10.2.2.1 Koala**

Under the Act, proposed actions must be assessed under the Commonwealth Department of the Environment (2014) guidelines, and hence assessment is required. The assessment is three stages:

1. Qualification as Critical Koala Habitat assessment.
2. Impacts on Critical Koala Habitat.
3. Assessment of other threats.

The habitat on site has been assessed using the Koala habitat assessment tool from the EPBC Act Referral Guidelines (DotE 2014) to determine if the site contains habitat critical to the survival of the Koala. To qualify as critical habitat, it must score 5 or more. This is shown in the following table:

Table 8: Critical Koala Habitat assessment

Attribute	Score	Reason	
Koala occurrence	2	Desktop	Recorded within 100m of the site on Bionet Atlas
		On-ground	Evidence of Koalas found on site by this survey and sightings reported.
Vegetation structure and composition	2	Desktop	On-line vegetation mapping of site shows not recognised/.
		On-ground	Site surveys confirmed primary and tertiary preferred Koala food trees species
Habitat connectivity	0	Site is not part of a contiguous landscape	
Key existing threats	1	Desktop	OEH BioNet has records of Koala road kill in local area.
		On-ground	No evidence of Koala road kill found during survey. No evidence of wild dogs on site however domestic dogs common and attacks recorded nearby
Recovery value	1	<ul style="list-style-type: none"> Site is part of Core Koala Habitat, within a locality known to support a significant population. However: <ul style="list-style-type: none"> Risk of dog attack and car strike in study area 	
Total	6	Site qualifies as critical habitat	

As per the Koala habitat assessment tool, the site qualifies as critical habitat. An assessment has been undertaken to determine if the proposal will adversely affect this habitat and/or interfere substantially with the recovery of the Koala and require referral to the Minister.

The following table derived from the Koala Referral Guidelines (DotE 2014) assesses whether the proposal is likely to adversely affect habitat critical to the survival of the Koala.

Table 9: Critical habitat assessment

Factor	Y/N	Reason
Does impact area contain habitat critical to the survival of the Koala	Y	Site scores 6 as per the Koala habitat assessment tool.
Do the areas proposed to be cleared contain known Koala food trees	Y	Habitat to be removed contains 3 Koala food tree species. However these are suppressed/non-vigorous and hence have limited if any value to the Koala.
Are you proposing to clear >2ha of habitat containing known Koala food trees in an area with a habitat score of 5	N	No site is <0.5ha and scores 6
Are you proposing to clear at least 20ha of habitat containing known Koala food trees in an area with a habitat score of ≥8	N	No site is <0.5ha and scores 6
Outcome	Impact unlikely to be significant	

The Guidelines also require consideration of whether the proposed action may interfere with the recovery of the Koala, as follows:

Table 10: Impact on recovery assessment

Threat	Likely to increase Y/N	Reason
Increasing Koala fatalities in habitat critical to the survival of the Koala due to dog attacks to a level that is likely to result in multiple, ongoing mortalities.	N	Measures to avoid enclosing KFTs with dogs provided.
Increasing Koala fatalities in habitat critical to the survival of the Koala due to vehicle-strikes to a level that is likely to result in multiple, ongoing mortalities.	N	Existing threats posed by existing roads. Proposal is unlikely to significant increase risk.
Facilitating the introduction or spread of disease or pathogens for example Chlamydia or <i>Phytophthora cinnamomi</i> , to habitat critical to the survival of the Koala, that are likely to significantly reduce the reproductive output of Koalas or	N	Likely home range trees retained. No an area of major activity. <i>Phytophthora cinnamomi</i> introduction is a low risk as not known to be key threat in the locality. Can be mitigated if required by implementation of standard hygiene protocols.

Threat	Likely to increase Y/N	Reason
reduce the carrying capacity of the habitat.		
Creating a barrier to movement to, between or within habitat critical to the survival of the koala that is likely to result in a long-term reduction in genetic fitness or access to habitat critical to the survival of the Koala.	N	Reduction in connectivity incremental to existing fragmentation by existing industrial use, but no effective barrier created to the use of the local corridor overall.
Changing hydrology which degrades habitat critical to the survival of the Koala to the extent that the carrying capacity of the habitat is reduced in the long-term.	N	No changes to hydrology of local catchment that may adversely affect the adjacent vegetation or revegetation area.
Outcome	Referral not required as impact unlikely to be significant as: <ul style="list-style-type: none"> Measures generally at least meet the low criteria for mitigation. Offset habitat will see net increase in carrying capacity in the overall remnant. 	

10.2.2.2 Grey-Headed Flying Fox (V)

For the purposes of discussion, the “*important population*” of Grey-Headed Flying Foxes is defined as that population of the species likely to depend on colonial roosts in the locality or within foraging range of the site.

a) Lead to a long-term decrease in the size of an important population (Vulnerable) or population (Endangered) of a species, or:

The proposal may result in the loss/modification of most of the potential habitat on the 0.2ha site. This will result in a reduction in the study area's carrying capacity, as some potential foraging sources (eg Eucalypts and Cormbyias) will require removal. In total, the trees to be removed represent a minute fraction of the flowering trees present within range of the local population. Hence, the potential impact of the loss is expected to be minimal and demonstrates that the site is not of any specific importance to the local population of the flying fox. The proposal will thus not lead to a long-term decrease in the size of an important population.

b) Reduce the area of occupancy of an important population (Vulnerable) or population (Endangered), or:

For the Grey-Headed Flying Fox, the proposal will not result in the loss of any roosting habitat, as the site is not known or suitable to be a roost site. Foraging habitat of this species is measured in terms of hundreds of thousands of hectares, hence the loss of trees from 0.2ha of habitat on site is insignificant relative to the area of occupancy.

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c) Fragment an existing important population (Vulnerable) or population (Endangered) into two or more populations, or:

The Grey Headed Flying Fox is highly mobile and known to be capable of crossing human-modified habitat. The proposal will offer no barrier to movement. Thus it will not fragment an existing important population.

d) Adversely affect habitat critical to the survival of a species, or:

"Critical habitat" refers to areas critical to the survival of a species or ecological community may include areas that are necessary for/to:

- Activities such as foraging, breeding, roosting or dispersal.
- Succession.
- Maintain genetic diversity and long term evolutionary development, or
- Reintroduction of populations or recovery of the species/community.

The vegetation on the study site/area is not considered potential roosting habitat for the Grey-Headed Flying Fox, and relegates the site to only being a small area of low value potential foraging habitat on the outer fringe of a very large area of likely habitat. Hence the proposal will not remove areas critical to the survival of the species.

e) Disrupt the breeding cycle of an important population (Vulnerable) or population (Endangered) or:

The proposal is unlikely to disrupt the breeding cycle of an important population/population given that:

- The site does not represent potential breeding habitat for the Grey-Headed Flying Fox, with extensive habitat more likely to support breeding in the surrounding State Forests and Reserves;
- The extent of potential foraging habitat to be removed comprises a miniscule fraction of the local extent.
- The subject species has large to very large ranges that far exceed the site and study area,
- The potential for the species to occur within the study area will be retained post-development; and
- Alternative potential habitat in the locality is extensive.

f) Modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline, or:

As detailed previously, the site and the degree of vegetation/habitat loss is not significant enough to affect the local population of the subject species to the point it could cause a decline of the species.

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g) Result in invasive species, that are harmful (by competition, modification of habitat, or predation) to a Vulnerable and/or Endangered species, becoming established in the Vulnerable and/or Endangered species' habitat, or:

No new species that affects any of the subject species is likely to be introduced as a direct result of the proposed works.

h) Introduce disease that may cause a species to decline; or

No disease that affects either of the subject species is likely to be introduced as a direct result

i) Interferes substantially with the recovery of the species.

Ideally, the goal in threatened species recovery is to increase the number and extent of the threatened species, so that it is not in risk of becoming extinct. As detailed previously, the proposal will result in the modification of a relatively minute area of potential foraging habitat that is not significant enough to interfere with the recovery of either of the subject species.

10.2.2.3 Conclusion

The proposal will not have a significant impact on the Grey Headed Flying Fox.

10.2.3 Migratory Species

No EPBC Act listed migratory species was recorded on the site. However several species (eg Rainbow Bee-eater, White-throated Needletail, Fork-tailed Swift) are considered potential occurrences.

a) Substantially modify (including fragmenting, altering fire regimes, altering nutrient cycles or altering hydrological cycles), destroy or isolate an area of important habitat of the migratory species, or;

First, the site is not considered likely to constitute an *important area of habitat* on the basis of the following:

1. A number of species are considered potential occurrences, mostly as vagrants or seasonal foragers utilising the general area of part of their large seasonally nomadic range. The value of this habitat is as a fraction of a significant extent of similar habitat not only in the LGA, but the North Coast Bioregion. The study area and site are not known breeding habitat for any of these species. The study area is not considered capable of supporting an ecologically significant proportion of any of these species (for some at most only a small group or transient individuals).
2. While some migratory species occurring in the locality may be at the limits of their range, no such species were recorded in the study area. Additionally, similar habitat is known to occur both north and south of the locality.
3. If the site were located at the limits of a species whose abundance and range is declining, it would not be considered significant as such habitat is locally abundant in the area, and habitat with greater capability occurs within 10km eg Conservation Areas, Nature Reserves, State Forests, etc.

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In regards to point (a): The proposal does not affect important habitat, and while the proposal will most likely see a small reduction in the potential habitat for migratory species on the site, the area and locality contains an abundance of alternative habitat which is available to those species.

b) Result in an invasive species that is harmful to the migratory species becoming established in an area of important habitat of the migratory species, or;

In regards to point (b): An invasive species is one that may become established in the habitat, and harm the migratory species by direct competition, modification of habitat, or predation. No such invasive species is to be introduced by the proposal.

c) Seriously disrupt the lifecycle (breeding, feeding, migration or resting behaviour) of an ecologically significant proportion of the population of the species.

In regards to point (c): No disruption on the lifecycle of any migratory bird is likely as:

- Potential habitat to be affected is either only marginally suitable, and/or locally abundant.
- No nesting/breeding habitat is affected.
- Key habitat areas are not impacted.

In view of the above, no migratory bird is considered likely to be significantly affected by the proposal.

11 CONCLUSION

The subject land has been substantially modified from its original natural state to establish a residential dwelling. Subsequent vegetation appears to be planted mixture of native and exotic ornamentals with some dispersal of native pioneer species and weeds from other sources.

The site has limited habitat values due to the origin of the site vegetation, its small size and the location within a long established residential precinct. Its most significant value is to Koala – with two trees on the western side forming part of the wider home range of the local Koala. These trees are possibly home range trees and the layout has retained them accordingly. The site is also <1ha and hence SEPP 44 does not apply.

A number of other highly mobile fauna (Yangochiropteran bats, Grey-headed Flying Fox, raptors) may use habitat in the study area, but only for short periods as minute parts of their range.

The net impact of the proposal is unlikely to be of sufficient order of magnitude to place a local viable population at risk of extinction. Similarly, no threatened or migratory species listed as an MNES was considered likely to be significantly impacted.

Consequently a Species Impact Statement or referral to DEE is not required.

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13 APPENDIX 1: TSC ACT – FIVE PART TEST ELIGIBILITY**13.1 POTENTIAL OCCURRENCE ASSESSMENT****13.1.1 FLORA**

As mentioned previously, no threatened flora species were detected on site by the survey. Searches of relevant literature and databases (OE 2017a) found records of 15 threatened flora species in the locality. In the table below, these species are evaluated for their potential to occur on the site; significance of the proposal to this potential occurrence; and thus their eligibility/requirement for Five Part Test assessment. .

Table 11: Eligibility for the Five Part Tests – Flora

Species	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
<i>Acronychia littoralis</i>	E-BCA, E-EPBCA	4	An understorey tree found in littoral rainforest on sand. Recorded on Bare Point, Hastings, Kempsey, Nambucca, Macksville, Ballina, Tweed, Byron, Bellingen and Coffs Harbour databases	Only common <i>Acronychia</i> present. Unlikely to occur as not preferred substrate.	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
Dwarf Heath Casuarina (<i>Allocasuarina defungens</i>)	E-TSCA, E-EPBCA	1	A straggly oak about 2m high with blue-green foliage found in heath on sand (sometimes clay and sandstone soils), and swamp sclerophyll forest margins.	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
Trailing Woodruff (<i>Asperula asthenes</i>)	V-TSCA, V-EPBCA	1	An herb found in damp sites along riverbanks and similar areas	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
White-flowered Wax Plant (<i>Cynanchum</i>)	E-BCA E-EPBCA	4	A twiner occurring predominately in dry rainforest, littoral rainforest and the ecotone between dry rainforest and open forest, however it has been found in the Manning Valley and Hastings in Open	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.

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Species	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
<i>elegans</i>)			Forest types on specific geologies e.g limestone and serpentine respectively (Garry Germon pers. comm. 2004, personal observations). It occurs on a variety of lithology's and soil types. It has been found between the altitudinal ranges of 0 to 600 metres ASL and rainfall >760mm annually (NPWS 1999). Common associated species include <i>Geijera parviflora</i> , <i>Notelaea microcarpa</i> , <i>Banksia integrifolia</i> , <i>Ficus spp.</i> , <i>Guioa semiglaucosa</i> , <i>Melia azedarach</i> , <i>Streblus brunonianus</i> and <i>Pittosporum revolutum</i>		
Spider Orchid (<i>Dendrobium melaleucaphilum</i>)	E-BCA	1	An epiphyte on <i>Melaleuca styphelioides</i> , rainforest trees or rocks in coastal districts north from the Blue Mountains. It has square stems, similar to <i>D. tetragonum</i> and it flowers Jul.-Oct.	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
Narrow-leaved Black Peppermint (<i>Eucalyptus nicholii</i>)	V-BCA V-EPBCA	2	A medium-sized tree 15 - 20 m tall growing in dry grassy woodland, on shallow and infertile soils, mainly on granite. Restricted to the New England Tablelands of NSW, where it occurs from Nundle to north of Tenterfield, largely on private property.	No suitable habitat on site – local plants are horticultural/landscape plantings outside the natural range of the species. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
Brown Fairy-chain Orchid (<i>Peristeranthus hillii</i>)	V-BCA	1	An epiphytic orchid restricted to coastal and near-coastal environments, particularly remnants of littoral rainforest growing on Aeolian sands and lowland subtropical rainforest on floodplains. Hosts are woody climbers and trees. Recorded at Sea Acres Nature Reserve (NPWS 1995), and reaching its southern limit in the Hastings.	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
<i>Oberonia titania</i>	V-BCA	1	An epiphytic orchid that grows in a tight clump in a	No suitable habitat on site.	Modification of site of no significance

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Species	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
<i>Maundia triglochinosoides</i>	V-TSCA	6	variety of habitats from subtropical to littoral rainforest, <i>Melaleuca</i> swamps, and gorges within dry sclerophyll forest.	Unlikely to occur	as no habitat potential. No significant impact likely to occur. No Five Part Test required.
Biconvex Paperbark (<i>Melaleuca biconvexa</i>)	V-TSCA, V-EPBCA	33	A paperbark shrub/small tree found in damp places, often near streams, on the coast and adjacent tablelands from Jervis Bay to Coffs Harbour.	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
<i>Senna acclinis</i>	E-BCA	1	A shrub found in or on the edges of subtropical and dry rainforest. Variable geology and soils are favoured	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.
<i>Sophora tomentosa</i>	E-BCA	6	A coastal shrub that occurs on recent sands on frontal coastal dunes northwards from Port Stephens. Port Macquarie has the largest known population eg Shelley and Nobby's Beaches	No suitable habitat on site. Unlikely to occur	Modification of site of no significance as no habitat potential. No significant impact likely to occur. No Five Part Test required.

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13.1.2 FAUNA

As previously noted in section 4.3, a significant number of threatened fauna have been recorded in the locality, and a number of others are considered potential occurrences by the consultant. In the table below, these species (excluding pelagic and estuarine species due to obvious lack of habitat in the study area) are evaluated for their potential to occur on the site; significance of the proposal to this potential occurrence; and thus their eligibility/requirement for Five Part Test assessment.

Table 12: Eligibility for Five Part Test Assessment – Fauna

Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
Emu population in the New South Wales North Coast Bioregion and Port Stephens local government area	Endangered Population – BCA	1	Restricted to coastal and near-coastal areas between Evans Head and Red Rock and a small isolated population further west in the Bungawalbin area. Occur in a range of predominantly open lowland habitats, including grasslands, heathland, shrubland, open and shrubby woodlands, forest, and swamp and sedgeland communities, as well as the ecotones between these habitats. Also occur in plantations of tea-tree and open farmland (eg cane fields), and occasionally in littoral rainforest.	This is an erroneous record of an emu in the former Kingfisher Wildlife Park.	Not applicable
Powerful Owl (<i>Ninox strenua</i>)	V-BCA	8	Wet and dry sclerophyll forests. Nests in tree hollows. Requires high diversity and abundance of medium-sized arboreal prey. Very large territory (500-5000ha).	Habitat in the study area comprises very small patches of remnant vegetation which is within 250m of a large remnant where this species has been recorded – low chance of incidental foraging foray. No suitable potential nesting hollows. Only at best low potential to occur as rare foraging foray utilising it as minute fraction of wider territory.	Proposal only affects a very small area of marginal potential foraging habitat. Significant impact unlikely as almost negligible foraging value. Five Part Test required to demonstrate no significant impact risk.

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Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
Masked Owl (<i>Tyto novaehollandiae</i>)	V-BCA	9	Eucalypt forest and woodlands with sparse understorey. Nests in tree hollows. Requires high diversity and abundance of prey 200-600g weight. Large territory.	Habitat in the study area comprises very small patches of remnant vegetation which is within 250m of a large remnant where this species has been recorded – low chance of incidental foraging foray. No suitable potential nesting hollows. Only at best low potential to occur as rare foraging foray utilising it as minute fraction of wider territory.	Proposal only affects a very small area of marginal potential foraging habitat. Significant impact unlikely as almost negligible foraging value. Five Part Test required to demonstrate no significant impact risk.
Grass Owl (<i>Tyto capensis</i>)	V-BCA	19	Eastern population occurs on coastal floodplains in a variety of wet & dry heath, tall grass, swamps and sedgeland which may have common structure rather than floristics. Records in Port Macquarie area are all near wet sedgelands. Breeds year round. Known to nest near or surrounded by water. Forage near nest site. (summary in Redpath 2002) Dependant on good numbers of rodent prey, with possible nomadic link (NSW NPWS 2000).	No suitable habitat on or adjacent to the site. Recorded in locality. Unlikely to occur.	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Square-tailed Kite (<i>Lopholictinia isura</i>)	V-BCA	26	Open forests and woodlands in coastal and subcoastal areas. Forages low over, or in, canopy for eggs, nestlings, passerines, small vertebrates and invertebrates. Large home range (>100km ²). Observed foraging in residential areas of Port Macquarie. Large stick nest in high fork of living tree. Breeds July-December. Probably migrates to northern Australia in winter. (Debus 1998, NSW NPWS 2000).	Site provides generic potential foraging habitat. No nests found on or adjacent to the site and it was not detected by the survey. Recorded in locality. Fair chance of occurrence as part of a larger known foraging range.	No critical or preferred habitat to be modified. Significant impact unlikely given extent of territory, however Five Part Test undertaken as fair chance of occurrence and is commonly recorded in villages and townships in the LGA.

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Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
Little Eagle (<i>Hieraaetus morphnoides</i>)	V-BCA	2	Occupies habitats rich in prey within open eucalypt forest, woodland or open woodland, sheoak or acacia woodlands and riparian woodlands of interior NSW are also used (Marchant and Higgins 1993; Aumann 2001a). For nest sites it requires a tall living tree within a remnant patch, where pairs build a large stick nest in winter and lay in early spring. It eats birds, reptiles and mammals, occasionally adding large insects and carrion (Marchant and Higgins 1993; Aumann 2001b; Debus et al. 2007). It is distributed throughout the Australian mainland excepting the most densely forested parts of the Dividing Range escarpment (Marchant and Higgins 1993). It occurs as a single population throughout NSW.	Site provides only very marginal potential foraging habitat – not known to occur in urbanised remnants. No nests found on or adjacent to the site and it was not detected by the survey. Recorded in locality. Unlikely chance of occurrence – not recorded in peri-urban areas.	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Spotted Harrier (<i>Circus assimilis</i>)	V-BCA	1	Occurs in grassy open woodland including acacia and mallee remnants, inland riparian woodland, grassland and shrub steppe (e.g. chenopods) (Marchant and Higgins 1993; Aumann 2001a). It is found mostly commonly in native grassland, but also occurs in agricultural land, foraging over open habitats including edges of inland wetlands. The species builds a stick nest in a tree and lays eggs in spring (or sometimes autumn), with young remaining in the nest for several months. Diet includes terrestrial mammals, birds and reptiles, occasionally large insects and rarely carrion (Marchant and Higgins 1993; Aumann 2001b). Many of the remaining key prey species (e.g. terrestrial grassland birds such as quail, button-quail, pipits, larks and songlarks) require ground cover and are	Single record in the locality. Site does not contain preferred habitat type. Given lack of local records, preference for more open and drier habitats, and most records occurring in upper hinterlands, species is considered unlikely chance of occurrence.	No suitable habitat affected. No risk of significant impact. Five Part Test not required.

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Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
White-bellied Sea-Eagle (<i>Haliaeetus leucogaster</i>)	V-BCA	35	sensitive to habitat degradation from grazing (Marchant and Higgins 1993). Widespread in NSW along the coast, rivers, inland rivers and major wetlands. Feed on fish, waterbird, freshwater turtles and also known to take Flying Foxes. Needs large trees, usually emergent with dead branches for roosting, within range of water. Breeds from June to January with eggs laid June to September.	No foraging or nesting habitat present on site. Considered unlikely chance of occurrence on site.	Modification of habitat on site considered insignificant, given lack of local records and amount of similar habitat available locally. Five Part Test not required.
Osprey (<i>Pandion cristatus</i>)	V-BCA	41	Fish (mostly Mullet) and carrion eater. Forages along coastal rivers, lakes, beaches, creeks and inlets. Tall, dead tree for staging or feeding roost. Nests on exposed tree within 2km of water, but rarely adjacent, and with access to Paperbark or Swamp Oak for nest material. Breeds April-Sept. (Clancy, 1991)	No foraging, roosting or nesting habitat on or adjacent to site. Recorded in locality but not during survey. Unlikely to occur.	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Little Lorieet (<i>Glossopsitta pusilla</i>)	V-BCA	10	Gregarious, usually foraging in small flocks, often with other species of lorikeet feeding primarily on nectar and pollen in the tree canopy, particularly on profusely-flowering eucalypts, but also on a variety of other species including, melaleucas and mistletoes. Mostly occurs in dry, open eucalypt forests and woodlands. They have been recorded from both old-growth and logged forests in the eastern part of their range, and in remnant woodland patches and roadside vegetation on the western slopes. In south-east Queensland (Smyth <i>et al.</i> 2002), were more likely to occupy forest sites with relatively short to intermediate logging rotations (15–23 years) and sites that have had short intervals (2.5– 4 years)	The site contains only a relatively small area of generic potential foraging within a locality with a relatively vast area of such habitat. No potential hollows. Considered a low chance of rare transient occurrence as part of a wider foraging range.	Loss of very small area of generic potential foraging habitat but no likely potential nesting hollows. Extensive amount of similar habitat available locally, hence proposal unlikely to significantly impact Five Part Test required however due to potential to occur.

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Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
Glossy Black Cockatoo (<i>Calyptrorhynchus lathami</i>)	V-BCA	31	between fires. Dry sclerophyll forest and woodland containing Allocasuarina and Casuarina, and large tree hollows. Preferred regional forage species are A. littoralis and A. torulosa. Requires sufficient extent of forage within home range to support breeding. Breeds Mar-Aug, takes 90 days to hatch and fledge (Lindsey 1992).	No potential nest trees and single declining food tree. Unlikely to occur.	No loss of known or significant extent of potential foraging habitat or potential nest sites, hence no risk of significant impact. Five Part Test not required.
Swift Parrot (<i>Lathamus discolor</i>)	CE-BCA E-EPBCA	3	Breeds in Tasmania and winters in Victoria with some dispersal northwards. Feeds mostly on pollen and nectar of winter flowering eucalypts, but also feeds on fruit, seeds, lerps and insect larvae (Schodde and Tideman 1990). Also favours profusely flowering banksias. Favoured species are <i>E. robusta</i> , <i>Corymbia gummifera</i> , <i>E. globulus</i> , <i>E. sideroxylon</i> , <i>E. leucoxylon</i> , <i>E. fabens</i> , <i>E. ovata</i> , <i>C. maculata</i> , <i>Banksia serrata</i> and <i>B. integrifolia</i>	No preferred foraging species. Unlikely chance of occurrence.	No critical or preferred habitat to be modified. Significant impact unlikely. Five Part Test Not required. MNES assessment not required.
Wompoo Dove (<i>Ptilinopus magnificus</i>)	V-BCA	1	Sub-tropical, littoral, warm temperate and dry rainforest, and wet sclerophyll with rainforest understorey. Feeds on fruit. Known to feed on Camphor Laurel and Lantana.	No preferred foraging species. Unlikely chance of occurrence.	No critical or preferred habitat to be modified. Significant impact unlikely. Five Part Test Not required.
Rose-crowned Fruit Dove (<i>P. regina</i>)	V-BCA	12	Inhabits dense rainforest or vegetation containing fruit bearing trees, feeding on fruit. Migratory with fruiting patterns.	No preferred foraging species. Unlikely chance of occurrence.	No critical or preferred habitat to be modified. Significant impact unlikely. Five Part Test Not required.
Regent Honeyeater	CE-BCA	2	Nomadic. Inhabits temperate eucalypt woodlands and open forest, including forest	Mistletoe absent and no other preferred foraging species present.	No critical or preferred habitat to be modified.

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Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
<i>(Anthochaera phrygia)</i>	E-EPBCA		edges, woodland remnants on farmland and urban areas. Also uses <i>Casuarina cunninghamiana</i> gallery forests. Requires reliable and ample nectar supplies to support semi-permanent (core breeding) habitat Favoured nectar sources are <i>E. sideroxylon</i> , <i>E. albens</i> , <i>E. melliodora</i> , <i>E. leucocorydon</i> , <i>E. robusta</i> , <i>E. planchoniana</i> , and heavy infestations of mistletoe. Also take insects and orchard fruits. Breeds in pairs or small colonies in open woodland/forest and occasionally more disturbed woodland near housing and farmland, depending on food availability, from August-January. Breeding less likely to occur if nectar flows are low or unreliable, or heavy competition with more aggressive honeyeaters eg Noisy Miner, Red Wattlebirds and Noisy Friarbirds.	Recorded in locality as non-breeding birds. Unlikely chance of occurrence.	Significant impact unlikely. Five Part Test Not required. MNES assessment not required.
Brown Treecreeper <i>(Climacteris picumnus)</i> eastern subspecies	V-TSCA	1	Medium-sized insectivorous bird occupying eucalypt woodlands, particularly open woodland lacking a dense understorey. Sedentary and nests in tree hollows within permanent territories, breeding in pairs or communally in small groups (Noske 1991). Birds forage on tree trunks and on the ground amongst leaf litter and on fallen logs for ants, beetles and larvae (Noske 1979). Distributed through central NSW on the western side of the Great Dividing Range and sparsely scattered to the east of the Divide in drier areas such as the Cumberland Plain of Western Sydney, and in parts of the Hunter, Clarence, Richmond and Snowy River valleys, Coffs Harbour and Great Lakes Shire.	No foraging or nesting habitat present on site. Considered unlikely chance of occurrence on site.	Proposal only affects a small area of generic potential habitat with overwhelming majority retained. Significant impact unlikely as unlikely to occur. Five Part Test not required.

JBEnviro					
Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
Barred Cuckoo Shrike (<i>Coracina lineata</i>)			Gregarious rainforest/moist forest (especially creek gullies) species feeding mainly on fruit on tall rainforest trees and shrubs, and insects, generally moving with fruiting patterns	No suitable habitat on or adjacent to the site. Recorded in locality. Unlikely to occur.	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Scarlet Robin (<i>Petroica boodang</i>)	V-BCA	1	Small passerine bird usually found in open forests and woodlands from the coast to the inland slopes (Higgins and Peter 2002). Usually breeds in drier eucalypt forests and temperate woodlands, often on ridges and slopes, within an open understorey of shrubs and grasses and sometimes in open areas. Abundant logs and coarse woody debris are reported to be important structural habitat components. Migrates seasonally (Autumn and Winter) to more open habitats such as grassy open woodland or paddocks with scattered trees. Forages from low perches, feeding on invertebrates taken from the ground, tree trunks, logs and other coarse woody debris. Builds an open cup nest of plant fibres and cobwebs, sited in the fork of tree (often a dead branch in a live tree, or in a dead tree or shrub) which is usually more than 2 m above the ground (Higgins and Peter 2002; Debus 2006a,b, NSWSC 2009).	No preferred habitat. Only 1 local record. Unlikely to occur.	No critical or preferred habitat to be modified. Significant impact unlikely. Five Part Test Not required.
Dusky Woodswallow (<i>Artamus cyanopterus cyanopterus</i>)	V-BCA	1	Woodlands and dry open sclerophyll forest, usually eucalypts and mallee associations. Also have recordings in shrub and heathlands and various modified habitats, including regenerating forests. In western NSW, this species is primarily associated with River Red Gum/Black Box/Coolabah open forest/woodland and associated with larger river/creek systems.	Unlikely: Suitable habitat within site is limited to a remnant forest within an urban landscape.	No critical or preferred habitat to be modified. Significant impact unlikely. Five Part Test Not required

JBEnviro

Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
			Widespread in NSW from coast to inland including the western slopes of the Great Dividing Range and farther west. Species have also been recorded in southern and southwestern Australia.		
Bush Stone Curlew (<i>Burhinus grallaris</i>)	E-BCA	2	Nocturnal, sedentary and territorial (when breeding) species generally inhabiting open grassy woodlands with few or no shrubs. Abundant leaf litter and fallen debris such as tree branches required for foraging and roosting. Nests in more open areas with very little groundcover (even recorded on mown lawns and golf courses). Coastally, often associated with Swamp Oak groves, saltmarsh, mangroves, <i>Melaleuca quinquevneria</i> woodlands and even golf courses, etc. May travel as far as 3km from roost site to foraging grounds.	Not suitable habitat and no proximate records and not detected on urban fringe of Port Macquarie despite numerous surveys. Unlikely to occur.	No critical or preferred habitat to be modified. Significant impact unlikely. Five Part Test not required.
Black-Necked Stork/Jabiru (<i>Ephippiorhynchus asiaticus</i>)	E-BCA	10	Wetlands, mudflats, mangroves, floodplains, irrigated fields, farm dams. Forages in shallow water for small vertebrates. Shuns cover, prefers extensive open shallows. Nests in a tree, often above water in a secluded swamp. Eggs laid Aug-Nov in NSW. Adults resident, juveniles dispersive (DEC 2005a, Lindsey 1992).	No foraging, roosting or nesting habitat on or adjacent to site. Recorded in locality but not during survey. Unlikely to occur	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Brolga (<i>Grus rubicunda</i>)	V-BCA	1	Inhabits coastal and inland wetlands, shallow lakes, grassland, saltmarsh, farm and dry open land. Forages for large invertebrates, frogs, fish, seeds, green shoots and bulbs. Breeding occurs predominantly in tropical wetland and large inland swamps and irrigated grasslands at inland and central northern Australia (eg Queensland	No foraging, roosting or nesting habitat on or adjacent to site. Recorded in locality but not during survey. Unlikely to occur (possibly only flying over).	No suitable habitat affected. No risk of significant impact. Five Part Test not required.

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Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
			and Northern Territory), though has been recorded in the northwest and north-eastern corner of NSW and Victoria.		
Magpie Goose (<i>Anseranas semipalmata</i>)	V-BCA	1	Mainly found in shallow wetlands (less than 1 m deep) with dense growth of rushes or sedges. Equally at home in aquatic or terrestrial habitats; often seen walking and grazing on land; feeds on grasses, bulbs and rhizomes. Activities are centred on wetlands, mainly those on floodplains of rivers and large shallow wetlands formed by run-off; breeding can occur in both summer and winter dominated rainfall areas and is strongly influenced by water level; most breeding now occurs in monsoonal areas; nests are formed in trees over deep water; breeding is unlikely in south-eastern NSW. Often seen in trios or flocks on shallow wetlands, dry ephemeral swamps, wet grasslands and floodplains; roosts in tall vegetation.	No foraging, roosting or nesting habitat on or adjacent to site. Recorded in locality but not during survey. Unlikely to occur	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Black Bittern (<i>Dupetor flavicollis</i>)	V-BCA	1	Coastal waterways, estuaries, swamps with densely wooded edges, Swamp Oak, Mangroves. Secretive, partly nocturnal. Roosts in trees overhanging water or in dense reeds. Critical breeding habitat is mangrove belts (Lindsey 1992). Breeds Dec-Mar, nests in trees over water. (NSW NPWS 2000, DEC 2007b)	No foraging, roosting or nesting habitat on or adjacent to site. Recorded in locality but not during survey. Unlikely to occur	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Australasian Bittern	E-BCA E-EPBCA	2	Wetlands, preferably with dense sedges, rushes, reeds. Prefers freshwater, but also uses densely	No foraging, roosting or nesting habitat on or adjacent to site. Recorded in locality but not during	No suitable habitat affected. No risk of significant impact. Five Part Test not required.

JBEEnviro					
Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
<i>(Botaurs poiciloptilus)</i>			vegetated saltmarsh and flooded grasslands. Roosts on the ground, forages in shallow water from a platform of trampled vegetation, nests above water on similar platform. Single or groups to 12. Usually sedentary, but nomadic in response to flood, drought. (DEC 2007b)	survey. Unlikely to occur	required.
Blue-Billed Duck (<i>Oxyura australis</i>)	V-BCA	1	Deep, densely vegetated freshwater wetlands. Rarely comes ashore. Nests in vegetation over water. Nocturnal. Mainly inland. (Lindsey 1992)	No foraging, roosting or nesting habitat on or adjacent to site. Recorded in locality but not during survey. Unlikely to occur	No suitable habitat affected. No risk of significant impact. Five Part Test not required.
Spotted-tail Quoll (<i>Dasyurus maculatus</i>)	V-BCA E-EPBCA	3	Various forested habitats with preference for dense forests. Requires tree hollows, hollow logs or caves for nesting. Large home range (>500ha) and may move over several kilometres in a few days. Tends to follow drainage lines.	Site is too far away from potential habitat within a residential area where very high threats eg. vehicle strike and lack of refugia. Unlikely to occur.	No significant habitat affected, hence no significant impact likely. Five Part Test not required.
Brush-tailed Phascogale (<i>Phascogale tapoatafa</i>)	V-BCA	8	Range of forest habitats but prefers drier sclerophyll forest with sparse ground cover. Forages on large rough-barked trees for small fauna, also utilises eucalypt nectar. Rests in tree hollows, stumps, bird nests. Requires tree hollows for nesting. (NSW NPWS, 2000) Breeds May-July. Occupies territory of 20-100ha. Has been recorded in swamp forest	Site has no suitable tree hollows for shelter/denning and no population recorded within the Port Macquarie urban area. Recorded in the locality. Unlikely chance of occurrence as site is highly modified, in a residential area and not an interlink between likely habitat.	No significant habitat affected, hence no significant impact likely. Five Part Test not required.
Common Planigale (<i>Planigale maculata</i>)	V-BCA	3	Wide variety of habitats. Preference for areas of dense groundcover due to heat/dehydration problems. May prefer ecotones of dry/wet habitats (Denny 1982). Preys on arthropods, small vertebrates, shelters in nest under/in fallen	Site is highly modified larger remnant shows signs of historical clearing. Predator species (eg foxes, cats,) are present in the general area. Recorded in the locality. Unlikely	No significant habitat affected, hence no significant impact likely. Five Part Test not required.

JBEEnviro					
Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
			timber or rock (Strahan 1995). Home range about 0.5ha. Breeds Oct-Jan (NSW NPWS 2000).	chance of occurrence as site is highly modified, in a residential area and not an interlink between likely habitat.	
Eastern Chestnut Mouse (<i>Pseudomys gracilicaudatus</i>)	V-BCA	9	Appears to prefer heathland especially dense wet heath and swampy areas usually occupied by Swamp Rat (AMBS, 1996). Also recorded from mid-elevation grasslands, open dry and wet sclerophyll woodland. In the Port Macquarie area, associated with heathland with dense shrub layer of <i>Banksia ericifolia</i> , <i>B. serratifolia</i> , <i>Xanthorrhoea</i> spp, <i>Dillwynia floribunda</i> , <i>Boronia</i> spp, <i>Leptospermum flavescens</i> and <i>Melaleuca nodosa</i> . Requires specific fire regime, greatest density 3-4 years after fire. Omnivorous, seeds, fungi, green stem, arthropods. Home range <0.5ha (NSW NPWS 2000).	No suitable habitat present on site. Considered unlikely chance of occurrence on site.	No significant habitat affected, hence no significant impact likely. Five Part Test not required.
Squirrel Glider (<i>Petaurus norfolcensis</i>)	V-BCA	17	Dry, open forest and woodland, and occasionally wet eucalypt and rainforest. Most common in floriferous sub-coastal and coastal forests with abundant winter flowering trees and shrubs (coastal populations apparently rely heavily on <i>Acacia</i> sap and flowering <i>Banksias</i>	Site has no suitable tree hollows for shelter/denning and no population recorded within nearby urban area. Recorded in the locality. Unlikely chance of occurrence as site is highly modified, in a residential area and not a suitable interlink between likely habitat.	Unlikely to occur. No risk of significant impact. Five Part Test not required.
Yellow-bellied Glider (<i>Petaurus australis</i>)	V-BCA	26	Moist and dry mature eucalypt forest and woodland. Tree hollows, diversity of winter-flowering and suitable sap-feeding eucalypt species required. Large territory.	Site has no suitable tree hollows for shelter/denning and no population recorded within nearby urban area. Recorded in the locality. Unlikely chance of occurrence as site is highly modified, in a residential area and not a suitable interlink between	Unlikely to occur. No risk of significant impact. Five Part Test not required.

JBEEnviro					
Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
Greater Glider (<i>Petauroides volans</i>)	V-EPBCA	2	Restricted to eucalypt forests and woodlands of eastern Australia. Its diet is mostly eucalypt leaves and occasional flowers and is found in highest abundance in taller, montane, moist eucalypt forests, with relatively old trees and abundant hollows. The distribution may be patchy even in suitable habitat. Forests with a diversity of eucalypt species, due to seasonal variation, is its preferred tree species.	likely habitat. Site has no suitable tree hollows for shelter/denning and no population recorded within nearby urban area. Recorded in the locality. Unlikely chance of occurrence as site is highly modified, in a residential area and not a suitable interlink between likely habitat.	Unlikely to occur. No risk of significant impact. MNES assessment not required.
Koala (<i>Phascolarctos cinereus</i>)	V-BCA V-EPCA	492	Areas where preferred food species occur in sufficient concentrations and diversity. With suitable edaphic conditions and presence of other Koalas.	Scats and previously sighted on site. Core Koala Habitat identified in broader urban woodland	Five Part Test and MNES assessment required as known to occur.
Grey Headed Fruit-bat/Flying Fox (<i>Pteropus poliocephalus</i>)	V-BCA V-EPBCA	32	Nomadic frugivore and nectarivore on rainforest, eucalypt, melaleuca and banksia. Recorded flying up to 45km from roost (generally max. of 20km). Roosts colonially with short term individual or small groups, mostly near watercourses. Spring or Summer roosts are maternity sites. Dependant on Winter flowering species eg <i>E. robusta</i> and <i>E. tereticornis</i> .	Not recorded during survey, though numerous records in the locality. Site contains some potential nectar and pollen sources, and is considered highly likely to form a small part of the species wider foraging range. No roosting habitat on/adjacent to the site.	Proposal will remove some potential foraging resources Five Part Test required as considered likely to occur. MNES assessment required.
Greater Nosed Bat (<i>Scoteanax rueppellii</i>)	V-BCA	6	Forages over range of habitats including rainforests and moist forests, but prefers ecotones between riparian forest, woodland and cleared land. Requires sparse understorey and will forage over water. Roosts in tree hollows. Feeds on larger insects, small vertebrates and perhaps other bats.	Site and more so study area's remnants is considered marginally potentially suitable as foraging habitat. No hollows to offer potential roosting opportunities. Not recorded during survey, though recorded in the locality. Considered a low potential occurrence at some stage.	Low chance of occurrence. Five Part Test required.

JBEnviro

Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
East-coast Freetail Bat (<i>Micronomus norfolkensis</i>)	V-BCA	4	Specific habitat requirements of this species are poorly known. Has been recorded in habitats ranging from rainforest to dry sclerophyll and woodland, with most recorded in the latter (State Forests 1994). Roosts in small colonies under tree hollows and under loose bark; has been found under house eaves, in roofs and metal caps on telegraph poles. Recorded roosting in roof in Hat Head village. Probably forages above forest or woodland canopy, and in clearings adjacent to forest. Most records are of single individuals, and is likely to occur at low densities over its range.	Site and more so study area's remnants is considered marginally potentially suitable as foraging habitat. No hollows to offer potential roosting opportunities. Not recorded during survey, though recorded in the locality. Considered a low potential occurrence at some stage.	Low potential occurrence. Five Part Test required.
Eastern Bent-wing Bat (<i>Miniopterus schreibersii oceanensis</i>)	V-BCA	5	Habitat generalist - forages above well-forested areas. Roosts in old buildings, caves, mines etc. Dependent on nursery caves and communal roosts.	Site and study area's vegetation is considered marginally potentially suitable as foraging habitat. No preferred roosting opportunities. Not recorded during survey, though recorded in the locality. Considered a low potential occurrence at some stage.	Low potential occurrence. Five Part Test required.
Little Bent-wing Bat (<i>M. australis</i>)	V-BCA	5	Generally forages above and below canopy of well-forested areas. Roosts in old buildings, caves, mines etc. Recently found roosting in tree hollows and bananas. Dependant on nursery caves and communal roosts. Recorded foraging along vegetated roadside verges; along tracks in forest, and interfaces of forest and pasture.	Site's vegetation is considered potentially suitable as foraging habitat. No preferred roosting opportunities. Not recorded during survey, though recorded in the locality. Considered a low potential occurrence at some stage.	Low potential occurrence. Five Part Test required.
Dwyer's Bat/Large Eared Pled Bat	V-BCA	0	Found in moderately wooded habitats such as dry sclerophyll forest, tall open eucalypt forests, woodlands, sub-alpine woodlands, edge of	General foraging preferences of this poorly known species suggests locality potentially generically	Loss of extremely marginal structurally suitable potential habitat. Considered unlikely chance of occurrence. Five

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JBEnviro

Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
<i>(Chalinobus dwyeri)</i>			rainforest and wet sclerophyll forest. Roosts in caves, mines and abandoned bottle-shaped mud nests of Fairy Martins. In caves and mines, tend to roost in twilight sections near entrance. Insectivorous but habits poorly known. Fly relatively slowly, direct and maneuverable, low to ground or 6-10m above ground.	structurally suitable foraging habitat. No cave, mines, etc on or near site for roosting. Not recorded within 10km radius of site (or LGA, and very few regional records). Likelihood to occur on site considered unlikely.	Part Test not taken as no risk of significant impact
Yellow-Bellied Sheathail Bat (<i>Saccoptaimus flaviventris</i>)	V-BCA	2	Ecology poorly known. Found in almost all habitats, particularly wet and dry sclerophyll forests and woodlands below 500m altitude, and also open woodland, Acacia shrubland, mallee, grasslands and desert. Roosts mainly in tree hollows, but also under bark, under roof eaves and in other artificial structures. Fast flying species, believed to forage above the canopy or closer to the ground in open areas. Insectivorous. May be Summer migrant.	Site and more so study area's vegetation is considered potentially suitable as foraging habitat. No potential roosting opportunities. Recorded in the locality. Considered a low potential occurrence at some stage.	Low potential occurrence. Five Part Test required.
Eastern False Pipistrelle (<i>Falsistrellus tasmaniensis</i>)	V-BCA	5	Occupies sclerophyll forest from the Great Dividing Range to the coast, typically wet tall forest at high elevations and is more common in northern NSW. It may migrate to coastal areas in Winter. Roosts typically in tree hollows, but also in caves, buildings. Roosts as single sex colonies of 3-36 bats. Forages in and below tree canopy on moths, beetles, bugs, flies & ants, up to 12km from roost site. Breeds in Summer (Churchill 2009, Smith <i>et al</i> 1995). Recently recorded at Thrumster west of Port Macquarie.	Not known to occur in small remnants and urban woodland habitats. Not recorded during the survey. Recorded in the locality, though records at low elevations are scant. Overall considered unlikely potential occurrence.	Unlikely chance to occur and this potential will be retained post-development, hence no risk of significant impact. Five Part Test not required.
Hoary Bat (<i>Chalinolobus nigrogriseus</i>)	V-BCA	1	Occurs in a range of habitats, such as monsoon forest, tall open forest, open woodland, vine thickets, coastal scrub, sand dunes, grasslands, floodplains, watercourses and dams. Roosts in	Not known to occur in small remnants and urban woodland habitats. Not recorded during the survey. Recorded in the locality,	Unlikely chance to occur and this potential will be retained post-development, hence no risk of significant impact. Five Part Test not

GR

JBEnviro

Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
			eucalypt tree hollows, as well as rock crevices. Breeding colonies have been recorded in roofs of buildings. Preferred prey is beetles and moths, but also spiders, mantids, crickets, grasshoppers, cicadas, bugs, diving beetles, flies and ants (thus may land and forage). Previously not recorded south of Kempsey	though records at low elevations are scant. Overall considered unlikely potential occurrence.	required.
Eastern Cave Bat (<i>Vespadelus troughtoni</i>)	V-BCA	6	Rare and poorly known bat. Cave dwelling bat roosting in small (5) to large (500) groups in sandstone overhang caves, boulder piles, mines, tunnels and sometimes buildings. Tend to roost in well lit portions of caves in avons, domes, cracks and crevices. Inhabits tropical mixed woodland and wet sclerophyll forest on the coast and dividing range, but extend into drier forest on western slopes and inland areas.	Not known to occur in small remnants and urban woodland habitats. The nearest known caves are at Broken Bago State Forest/Bago Bluff National Park and Jolly Nose Hill. Overall considered a unlikely occurrence.	Loss of marginal structurally suitable potential habitat. Considered unlikely chance of occurrence. Five Part Test not taken as no risk of significant impact.
Southern Myotis (<i>Myotis macropus</i>)	V-BCA	4	Tunnel, cave, bridges, old buildings, tree hollow and dense foliage roosting bat which prefers riparian habitat over 500m long with nearby roosting habitat. Key habitats are streams, rivers, creeks, lagoons, lakes and other water bodies. Feeds on aquatic insects and small fish. Has recently been observed foraging in small bodies of water.	No aquatic foraging habitat. Recorded in locality but not on site. Unlikely chance of occurrence as not near likely foraging habitat.	Unlikely potential to occur hence no risk of significant impact. Five Part Test not required.
Green and Golden Bell Frog (<i>Litoria aurea</i>)	E-BCA V-EPBCA	3	Found in permanent swamps and ponds. Prefers water bodies which are: still; shallow; unshaded; ephemeral; unpolluted; generally isolated; and free of native fish species or Plague Minnow (<i>Gambusia holbrooki</i>) and little macro-algae. Requires emergent vegetation, grass tussocks or rocks for shelter. May use disturbed sites opportunistically. Eats insects and other frogs.	No suitable breeding or refugia habitat on site. Recorded in locality but unlikely to occur on site.	No impact likely as no potential or known habitat affected. Five Part Test not required.

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Name	Legal Status	Records	Habitat Requirements	Likelihood Of Occurrence	Significance Of Impacts
Green-Thighed Frog (<i>Litoria brevipalmata</i>)	V-BCA	1	Spring-autumn breeder. (Poorly known. Found in a range of habitats such as warm temperate open forest, rainforest, and forestry dams in dry, open forest; breeding aggregations around oxbow lakes, ditches, flooded paddocks, overflows and grassy semi-permanent ponds. Males call only for few days after spring and early summer rains. Possibly a lowland forest ground-dweller.	No suitable breeding or refugia habitat on site Recorded in locality but unlikely to occur on site.	No impact likely as no potential or known habitat affected. Five Part Test not required.
Wallum Froglet (<i>Crinia tinnula</i>)	V-BCA	7	Predominantly confined to acidic paperbark swamps of coastal areas. Also found in wet heathland and Melaleuca sedgelands. Recorded breeding in flooded pasture adjacent to paperbark swamps.	No suitable breeding or refugia habitat on site Recorded in locality but unlikely to occur on site.	No impact likely as no potential or known habitat affected. Five Part Test not required.
Giant Dragonfly (<i>Petaltura gigantea</i>)	E-BCA	4	Found along east coast of NSW from Victorian border to northern NSW. Known occurrences in the Blue Mountains and Southern Highlands, in the Clarence River catchment, and on a few coastal swamps from north of Coffs Harbour to Nadgee in the south. Live in permanent swamps and bogs with some free water and open vegetation foraging for flying insects over the swamp and along its margins. Females lay eggs into moss, under other soft ground layer vegetation, and into moist litter and humic soils, often associated with groundwater seepage areas within appropriate swamp and bog habitats.	No suitable breeding or refugia habitat on site Recorded in locality but unlikely to occur on site.	No impact likely as no potential or known habitat affected. Five Part Test not required.

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APPENDIX 2: SITE FLORA SPECIES LIST**Table 13: Site plant species list**

*introduced

Common Name	Scientific Name
Pink Bloodwood	<i>Corymbia intermedia</i>
Spotted Gum	<i>Corymbia maculata</i>
Sydney Blue Gum	<i>Eucalyptus saligna</i>
Tallowwood	<i>Eucalyptus microcorys</i>
Blackbutt	<i>Eucalyptus pilularis</i>
Weeping Callistemon	<i>Callistemon salignus</i>
Turpentine	<i>Syncarpia glomulifera</i>
Silky Oak	<i>Grevillea robusta</i>
Hickory Wattle	<i>Acacia implexa</i>
Forest Oak	<i>Allocasuarina torulosa</i>
Sydney Wattle	<i>Acacia longifolia</i>
Camphor Laurel	* <i>Cinnamomum camphora</i>
Bamboo	* <i>Phyllostachys</i> sp.
Mickey Mouse Plant	* <i>Ochna serrulata</i>
Jacaranda	* <i>Jacaranda mimosifolia</i>
Bitou Bush	* <i>Chrysanthemoides monilifera</i>
Palm Lily	<i>Cordyline stricta</i>
Coffee Bush	<i>Breynia oblongifolia</i>
Cheese Tree	<i>Glochidion ferdinandi</i>
Scentless Rosewood	<i>Synoum glandulosum</i>
Celery Wood	<i>Polyscias elegans</i>
Loquat Tree	* <i>Eriobotrya japonica</i>
Common Pittosporum	<i>Pittosporum undulatum</i>

Common Name	Scientific Name
Flame Tree	<i>Brachychiton acerifolius</i>
Common Acronychia	<i>Acronychia oblongifolia</i>
African Tulip	* <i>Spathodea campanulata</i>
Macadamia	<i>Macadamia integrifolia</i>
Umbrella Tree	* <i>Schefflera actinophylla</i>
Coral Tree	* <i>Erythrina x sykesii</i>
Elm	* <i>Ulmus sp.</i>
Sandpaper Fig	<i>Ficus coronata</i>
Twin-leaf Tuckeroo	<i>Rhysotoechia bifoliolata</i>
Cabbage Palm	<i>Livistona australis</i>
Bangalow Palm	<i>Archontophoenix cunninghamiana</i>
Bolwarra	<i>Eupomatia laurina</i>
Cocos Palm	* <i>Syagrus romanzoffiana</i>
Pink Laceflower	<i>Archidendron grandiflorum</i>
Bracken Fern	<i>Pteridium esculentum</i>
Buffalo Grass	<i>Stenotaphrum secundatum</i>
Crowsfoot Grass	* <i>Eleusine indica</i>
Elastic Grass	* <i>Eragrostis tenuifolia</i>
Rhodes Grass	* <i>Chloris gayana</i>
Common Couch	<i>Cynodon dactylon</i>
Panic Veldt Grass	* <i>Ehrharta erecta</i>
Rats Tail Grass	* <i>Sporobolus africanus</i>
Bird's Nest Fern	<i>Asplenium australasicum</i>
Hibiscus	* <i>Hibiscus sp.</i>
Oleander	* <i>Nerium oleander</i>
Winter Senna	* <i>Cassia floribunda</i>
Paspalum*	* <i>Paspalum dilatatum</i>

Common Name	Scientific Name
Broad-leaf Paspalum*	<i>*Paspalum mandiocanum</i>
Palm Grass	<i>*Setaria palmifolia</i>
Castor Oil Plant	<i>*Ricinus communis</i>
Poplar	<i>Populus sp.</i>
Ground Asparagus	<i>*Asparagus aethiopicus</i>
Spiny-Headed Matrush	<i>Lomandra longifolia</i>
Ginger Lily	<i>Hedychium gardnerianum</i>
Cudweed	<i>Gnaphalium gymnocephalum</i>
Peruvian Nightshade	<i>*Solanum peruvianum</i>
Blackberry Nightshade	<i>*Solanum nigrum</i>
Pennywort	<i>Centella asiatica</i>
*Fleabane	<i>*Conyza sp.</i>
Purple Flax-Lily	<i>Dianella caerulea</i>
Rasp Fern	<i>Doodia aspera</i>
*Catsear	<i>*Hypochaeris radicata</i>
Wandering Jew	<i>*Tradescantia fluminensis</i>
*Paddys Lucerne	<i>*Sida rhombifolia</i>
*Dandelion	<i>*Taraxacum officinale</i>
Farmers Friend	<i>*Bidens pilosa</i>
Wisteria	<i>*Wisteria sinensis</i>
Morning Glory	<i>*Ipomoea indica</i>
White Passionfruit	<i>*Passiflora subpeltata</i>
Balloon Vine	<i>*Cardiospermum grandiflorum</i>
Austral Smilax	<i>Smilax australis</i>
Jasmine Morinda	<i>Morinda jasminoides</i>

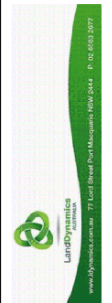




REV	DESCRIPTION	DATE	DRAWN	DESIGN	CHECK	APPROVED
A	ISSUED FOR DA APPROVAL	18.04.18	TV	TV	TV	
B	DA RESUBMISSION	19.04.18	CM	CM		
C	DA RESUBMISSION	20.11.18	CM			
D	DA RESUBMISSION	5.08.18	CM	JOH	JOH	
E	DA RESUBMISSION	20.09.18	CM	JOH		
F	DA RESUBMISSION	5.12.18	CM	CM		

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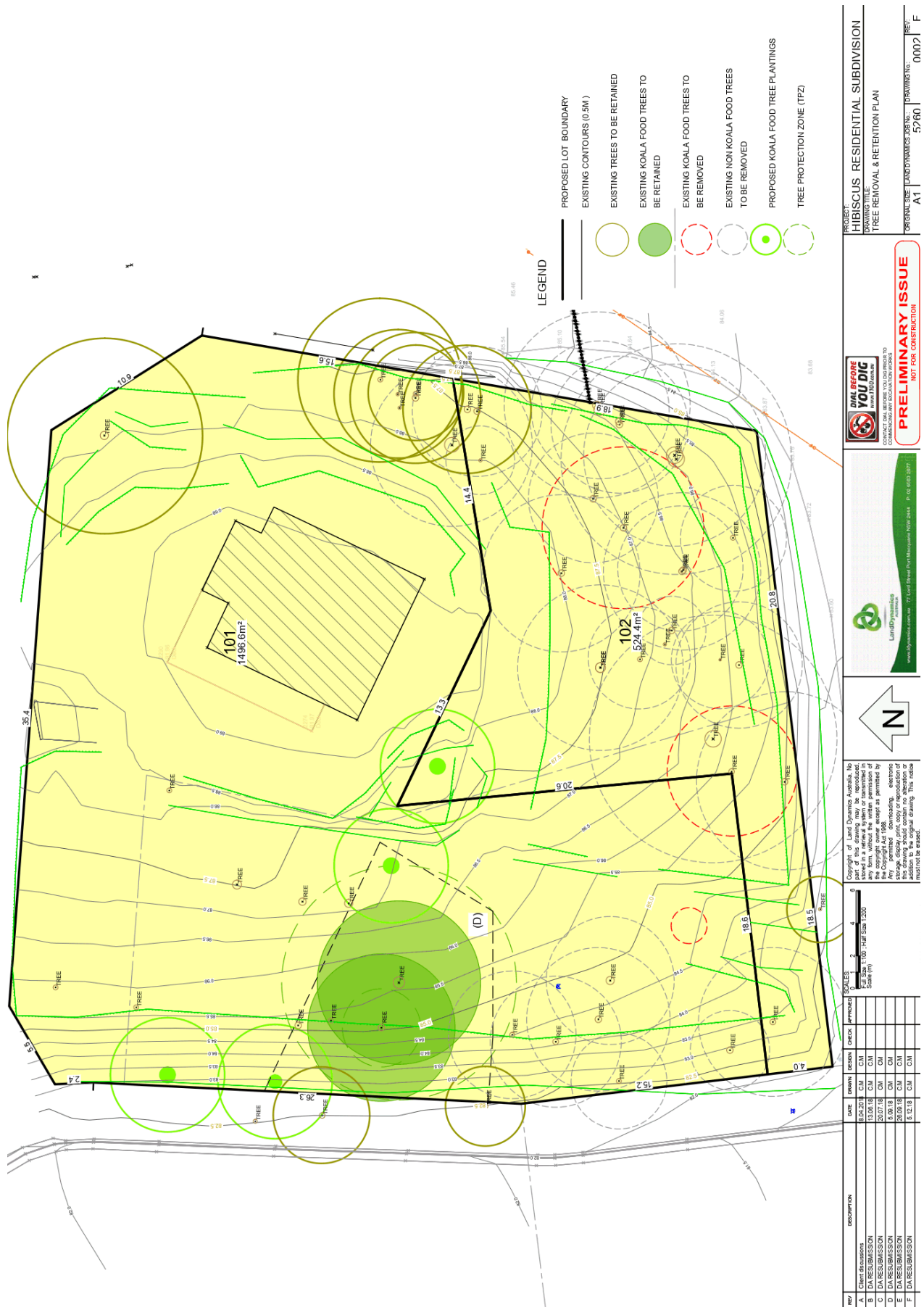
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PRELIMINARY ISSUE
NOT FOR CONSTRUCTION

PROJECT: HIBISCUS RESIDENTIAL SUBDIVISION	DRAWING NO.: 0003	REV: F
DRAWING TITLE: GENERAL SERVICES LAYOUT PLAN	DRAWING No.: 5260	
ORIGINAL SIZE: A1	LAND DYNAMICS JOB No.: 5260	





13th June 2018

Job No.5260

The General Manager
Port Macquarie Hastings Council
Corner Lord and Burrawan Street
PORT MACQUARIE NSW 2444

Attention: Ben Roberts

Dear Ben

RE: Arborist Advice – DA 2018-322 – Hibiscus Crescent, Port Macquarie

Council has requested confirmation regarding the suitable location of the proposed offset plantings as well as the proposed and effective long term retention of two koala food trees (4 & 5) within the proposed development.

1. Koala offset plantings

Four Tallowoods are proposed to be planted within the subject site as compensation for the loss of two Tallowoods within proposed Lot 102. The replacement trees are to be located within Lot 102 and 103 to the perimeter of the sites and away from any future dwelling sites. There are no conflicting services within the vicinity of the proposed trees. Refer to Figure 1.

Two of the proposed trees in Lot 103 are proposed within the tree protection and building exclusion zone therefore providing additional long term protection. The two trees proposed within Lot 102 are on a steep embankment and away from any dwelling site which would be located to the top of the embankment to maximise views and aspect.

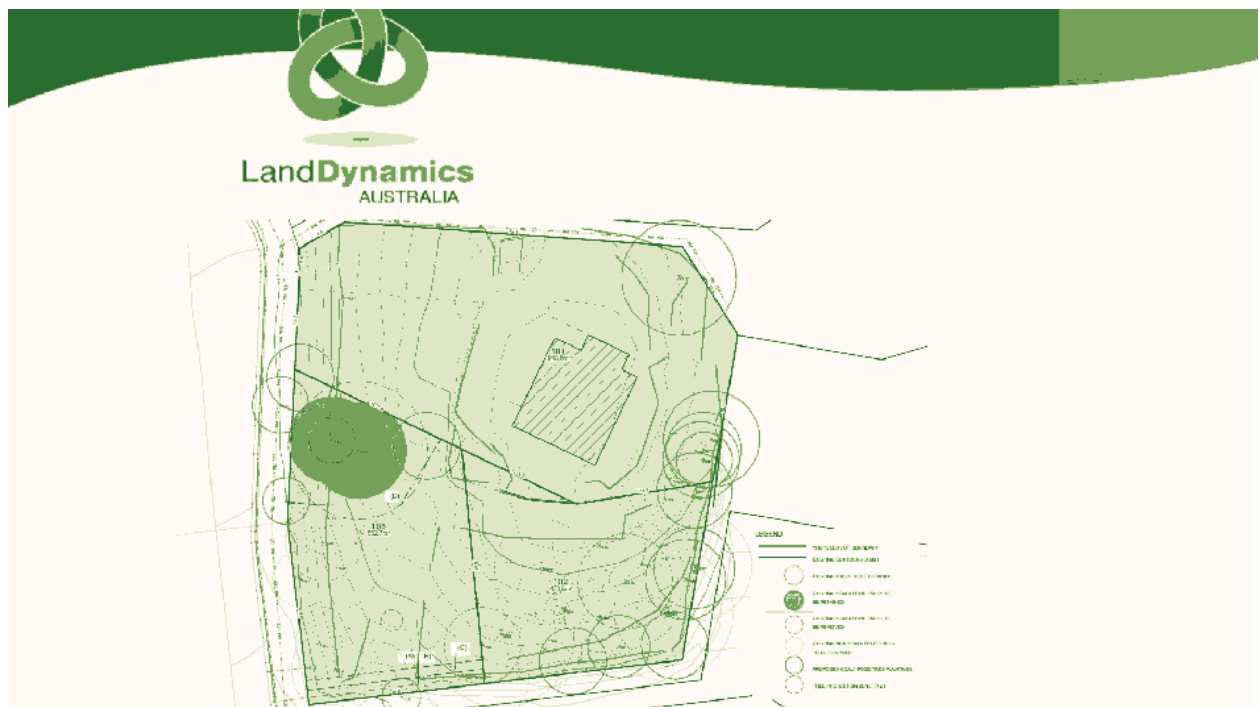


Figure 1 - Tree protection and removal plan

2. Retention of two koala food trees

Two existing koala food trees (*Eucalyptus microcorys*) are proposed to be retained within Lot 103. A 'restriction on use of land' (D) is proposed to this lot to ensure no excavation or building works occur within this zone. This line has been determined by way of calculating the tree protection zone (TPZ) as per AS 4970-2009 – Protection of Trees on Development Sites and is shown by the dashed blue line. A minor encroachment into this TPZ is shown which has been calculated as less than 10%. As this encroachment is minor then there is no requirement to demonstrate the long term viability of these trees (AS 4970 – 2009).

A number of recommendations should be implemented prior to any works commencing on the site within Lot 103 and Lot 101. These would include

- a. Establish a tree protection zone around all trees to be retained which is to be defined by the installation of protective fencing prior to any construction works commencing
- b. No earthworks (cut or fill) is to be permitted within the nominated area (D)
- c. Organic mulch layer to a depth of 100mm be placed around the root zone of all trees to be retained
- d. All services to be located outside of TPZ

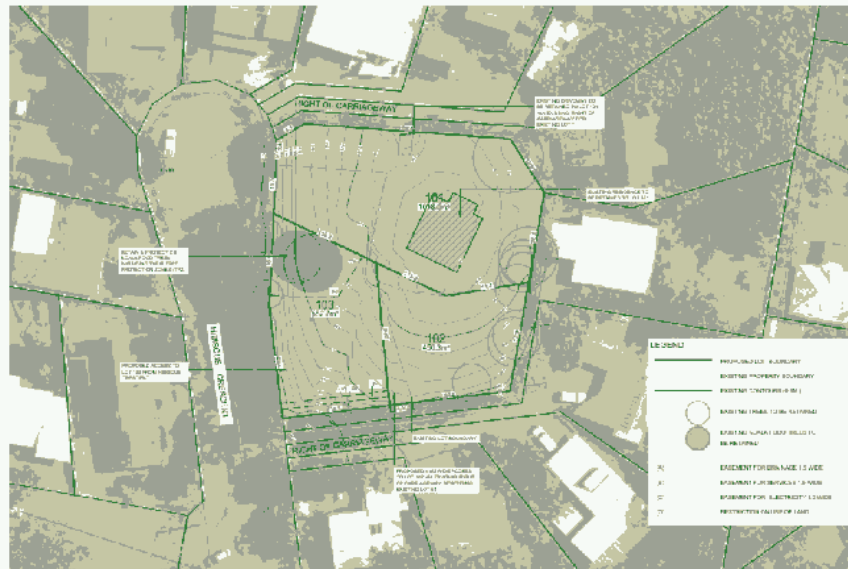


Figure 2 - Proposed subdivision layout

Yours faithfully

Claire Mathieson

Landscape Architect
AQF 5 Arborist

Land Dynamics Australia