



Development Assessment Panel

Business Paper

date of meeting: Wednesday 12 June 2019

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

time: 2:00pm

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	13/03/19	27/03/19	10/04/19	24/04/19	22/05/19
Paul Drake	✓	✓	✓	✓	✓
Robert Hussey		✓	A	✓	✓
David Crofts (alternate member)	✓		✓		
Dan Croft (Group Manager Development Assessment) (alternates) - Director Development & Environment - Development Assessment Planner	✓	✓	✓	✓	✓

Key: ✓ = Present

A = Absent With Apology

X = Absent Without Apology

Development Assessment Panel Meeting

Wednesday 12 June 2019

Items of Business

Item	Subject	Page
01	Acknowledgement of Country	<u>8</u>
02	Apologies.....	<u>8</u>
03	Confirmation of Minutes	<u>8</u>
04	Disclosures of Interest.....	<u>13</u>
05	DA2018 - 85.1 Deck and Swimming Pool at Lot 377 DP 236950, No 31 Vendul Crescent, Port Macquarie	<u>17</u>
06	DA2018 - 131.1 - Staged 2 into 4 Lot Torrens Title Rural Subdivision - Lot 1 DP 1009991, Sancrox Road and Lot 14 DP 1043738, Oxley Highway, Sancrox	<u>37</u>
07	General Business	

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 22 May 2019 be confirmed.

PRESENT

Members:

Paul Drake
Robert Hussey
Dan Croft

Other Attendees:

Ben Roberts
Chris Gardiner

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 24 April 2019 be confirmed.

04 DISCLOSURES OF INTEREST

There were no disclosures of interest presented.

**05 DA2019 - 213.1 DWELLING LOT 144 DP 1230897, NO. 4 SHORE BREAK
CRESCENT, LAKE CATHIE**

CONSENSUS

That DA 2019 - 213.1 for a dwelling at Lot 144, DP 1230897, No. 4 Shore Break Crescent, Lake Cathie, be determined by granting consent subject to the recommended conditions.

**06 DA2018 - 353.1 COMMERCIAL PREMISES AND TOURIST AND VISITOR
ACCOMMODATION WITH CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT
OF BUILDINGS) AND CLAUSE 4.4 (FLOOR SPACE RATIO) OF THE PORT
MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 123
DP 1219042, NO. 17 CLARENCE STREET, PORT MACQUARIE**

Mr David Pensini (applicant) spoke on the item.

The following motion was put to the panel:

That it be recommended to Council that DA2018 - 353.1 for a commercial premises and tourist and visitor accommodation with clause 4.6 variation to clause 4.3 (Height of Buildings) and clause 4.4 (Floor Space Ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 123, DP 1219042, No. 17 Clarence Street, Port Macquarie, be determined by granting consent subject to the recommended conditions.

The Panel was unable to reach consensus

For: Paul Drake and Dan Croft

Against: Robert Hussey

The dissenting recommendation from Robert Hussey was put:

That DA2018 - 353.1 for a commercial premises and tourist and visitor accommodation with clause 4.6 variation to clause 4.3 (Height of Buildings) and clause 4.4 (Floor Space Ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 123, DP 1219042, No. 17 Clarence Street, Port Macquarie, be determined by refusing consent for the following reason:

1. Insufficient car parking is provided on site. To vary the Development Control Plan (DCP) car parking provisions by 18% has significant implications on parking in the CBD, will lead to an undesirable precedent and undermine the DCP. Council should consider amending the DCP if such variations are to be considered acceptable.

**07 DA2018 - 427.1 DUAL OCCUPANCY AND TORRENS TITLE SUBDIVISION,
BOAT RAMPS AND JETTY AT LOT 7 DP 246284, NO. 14 SIRIUS CLOSE, PORT
MACQUARIE**

Mr Lex Wilke (applicant) spoke on the item.

Resolution as per recommendation subject to the following changes to conditions of consent:

CONSENSUS

That DA2018 - 427.1 for a Dual Occupancy and Torrens Title Subdivision, Boat Ramps and Jetty at Lot 7, DP 246284, No. 14 Sirius Close, Port Macquarie, be determined by granting consent subject to the recommended conditions.

- Amend condition A(9) to read:
The street tree impacted by the driveway shall be removed and replaced with 2 suitable amenity trees of a minimum 100 litre size in accordance with the specifications of Council's Arborist in a position agreed to by Port Macquarie-Hastings Council. The position of the replacement tree shall be clearly shown on the plans accompanying the section 138 application. The new tree shall be cared for and maintained for a period of at least 12 months. If establishment is unsuccessful a new tree of the same species and size shall be planted in a suitable location in front of the property.
- Amend condition B13 to read:
Prior to the issue of a Construction Certificate, a detailed planting plan for the provision One (1) Schedule 2 Koala food tree shall be submitted for the approval of Council's Environmental Services Section. The Plan shall include:
 - a) Location of plantings (to be confirmed with Council);*
 - b) Details of planting and appropriate tree protection;*
 - c) A schedule of care and maintenance for a minimum period of 12 months.**All work shall be carried out by a Council approved contractor at the developer's cost.*

**08 DA2019 - 27.1 PERMANENT GROUP HOME - LOT 31 DP 1190016, NO. 5
MCGILVRAY ROAD, BONNY HILLS**

Mr David Govers (applicant) spoke on the item.

CONSENSUS

That DA 2019 - 27.1 for a Permanent Group Home at Lot 31, DP 1190016, No. 5 McGilvray Road, Bonny Hills, be determined by granting consent subject to the recommended conditions.

09 DA2018 - 641.1 ADDITIONS TO EXISTING BUILDING AND CHANGE OF USE TO COMMERCIAL PREMISES - LOTS 1 & 2 DP 3749 NO.150 NANCY BIRD WALTON DRIVE, KEW

Mr Jurie Beukes (o) and Mr David Pensini (applicant) spoke on the item.

CONSENSUS

That DA 2018 - 641 for additions to existing building and change of use to commercial premises at Lot 1 & 2, DP 3749, No. 150 Nancy Bird Walton Drive, Kew, be determined by granting a deferred commencement with the following deferred commencement requirement being satisfied within six (6) months of the date of determination:

- 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. A total of 17 spaces are to be provided and the following matters are to be addressed and detailed on the plan:
 - Awning post locations.
 - Redesign entry and exist to provide for a designated ingress at the north of the site and a dedicated egress at the south of the site. The driveway widths are to be of a minimum size permitted by the standard so as to provide maximum opportunity for off street parking.
 - Ampol sign to be removed.
 - Planter boxes to be extended at the northern and southern driveways for the length of adjoining car parking spaces.
 - Northern access driveway to Bay 5 be extended to rear boundary to provide improved access and manoeuvring for Bay 5.
 - Traffic Management Plan be provided for use of the Southern driveway to reflect intermittent usage.

That following the above deferred commencement requirement being satisfied, the consent be operative as recommended with the following change:

- Replace condition F5 with the following:
 - 'Hours of operation of the development are to be restricted as follows:
 - Bays 1 and 2 - Monday to Sunday 8am to 6pm.
 - Bay 4 - Monday to Saturday 8am to 6pm.'

10 GENERAL BUSINESS

Nil.

The meeting closed at 3.23pm.

Item: 04
Subject: DISCLOSURES OF INTEREST

RECOMMENDATION

That Disclosures of Interest be presented

DISCLOSURE OF INTEREST DECLARATION

Name of Meeting:	
Meeting Date:	
Item Number:	
Subject:	
I, the undersigned, hereby declare the following interest:	
<input type="checkbox"/> Pecuniary: Take no part in the consideration and voting and be out of sight of the meeting.	
<input type="checkbox"/> Non-Pecuniary – Significant Interest: Take no part in the consideration and voting and be out of sight of the meeting.	
<input type="checkbox"/> Non-Pecuniary – Less than Significant Interest: May participate in consideration and voting.	
For the reason that:	
Name: Signed:	Date:
Please submit to the Governance Support Officer at the Council Meeting.	

(Refer to next page and the Code of Conduct)

Pecuniary Interest

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will 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 you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
 - (a) your interest, or
 - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
 - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
 - (a) Your "relative" is any of the following:
 - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - ii) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (i)
 - (b) "de facto partner" has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c)
 - (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

Non-Pecuniary

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
 - a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
 - b) other relationships with persons who are affected by a decision or a matter under consideration 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 the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
 - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
 - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
 - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
 - a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
 - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

This form must be completed using block letters or typed.

If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

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 the affected principal place of residence of the councillor or an associated person, company or body <i>(the identified land)</i>	
Relationship of identified land to councillor <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The 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"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has interest in the land.
MATTER GIVING RISE TO PECUNIARY INTEREST¹	
Nature of land that is subject to a change in zone/planning control by proposed LEP <i>(the subject land²)</i> <i>[Tick or cross one box]</i>	<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 <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	
Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on councillor or associated person <i>[Tick or cross one box]</i>	<input type="checkbox"/> Appreciable financial gain. <input type="checkbox"/> Appreciable financial loss.

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest]

Councillor's Signature: **Date:**

This form is to be retained by the council's general manager and included in full in the minutes of the meeting

Last Updated: 3 June 2019

Important Information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will 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.

"Relative" is defined by clause 4.4 of the Model Code of Conduct 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.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at 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.

¹ Clause 4.1 of the Model Code of Conduct 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 clause 4.6 of the Model Code of Conduct.

² 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 clause 4.3 of the Model Code of Conduct has a proprietary interest

Item: 05**Subject: DA2018 - 85.1 DECK AND SWIMMING POOL AT LOT 377 DP 236950,
NO 31 VENDUL CRESCENT, PORT MACQUARIE****Report Author: Development Assessment Planner, Chris Gardiner**

Applicant: Wayne Ellis Architect**Owner: A J Brinkman****Estimated Cost: \$50,000****Parcel no: 24362**

Alignment with Delivery Program

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

RECOMMENDATION

That DA2018 - 85.1 for a Deck and Swimming Pool at Lot 377, DP 236950, No. 31 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a development application for a deck and swimming pool 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, 8 submissions have been received.

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

The site has an area of 733.5m².

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 a swimming pool and deck addition at the rear of existing dwelling.

Refer to attachments at the end of this report.

Application Chronology

- 13 February 2018 - Application lodged.
- 23 February 2018 - Additional information requested from Applicant.
- 2 May 2018 - Additional information submitted.
- 8 May 2018 to 21 May 2018 - Neighbour notification.
- 28 May 2018 - Further additional information requested from Applicant.
- 5 June 2018 - Response and recommendations received from NSW Rural Fire Service.
- 18 February 2019 - Additional information submitted.
- 24 April 2019 - Amended Plans and Tree Protection Report submitted.
- 1 May 2019 to 14 May 2019 - Application re-notified.

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 (Coastal Management) 2018

The site is located within a coastal use area. The rear of the site is mapped as Littoral Rainforest, with the balance of the site also being within the proximity area for 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 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 public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability;

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.

In accordance with Clause 21(1) (1) the former planning provisions (SEPP 26) continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy in relation to land to which this Policy applies. The Application was lodged prior to the commencement of the SEPP on 3 April 2018.

Under SEPP 26, the land was not mapped as Littoral Rainforest or within the relevant buffer area and no further consideration is required.

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

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

Port Macquarie-Hastings Local Environmental Plan 2011

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

- Clause 2.2 -The subject site is zoned R1 General Residential. In accordance with clause 2.3(1) and the R1 zone landuse table, the ancillary structure to a dwelling is a permissible landuse with consent.

The objectives of the R1 zone are as follows:

- *To provide for the housing needs of the community.*
 - *To provide for a variety of housing types and densities.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- 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 4.3 - The maximum overall height of the building additions above ground level (existing) is 7.5m which complies with the standard height limit of 8.5m applying to the site.
- Clause 4.4 - The floor space ratio would not be increased as a result of the proposal, as the new works are outside the external walls of the building. The previous additions to the dwelling under DA2015 – 30 (as amended) were assessed to have an FSR of 0.55:1, which complies with the maximum 0.65:1 floor space ratio applying to the site.

- Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
- Clause 7.13 - Satisfactory arrangements are in place for provision of essential services.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

<i>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development</i>			
	Requirements	Proposed	Complies
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	The rear setback requirements are complied with.	Yes
3.2.2.5	Side setbacks: • 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.	Yes
3.2.2.6	35m ² min. private open space area including a useable 4x4m min. area which has 5% max. grade	The dwelling contains 35m ² open space in one area including a useable 4m x 4m space.	Yes
3.2.2.7	Front fences: • 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 front 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	N/A	

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

	Requirements	Proposed	Complies
	fences		
3.2.2.10	Privacy: <ul style="list-style-type: none"> • Direct views between living areas of adjacent dwellings screened when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings. ie. 1.8m fence or privacy screening which has 25% max. openings and is permanently fixed • Privacy screen required if floor level > 1m height, window side/rear setback (other than bedroom) is less than 3m and sill height less than 1.5m • Privacy screens provided to balconies/verandahs etc which have <3m side/rear setback and floor level height >1m 	The proposed deck addition is located within 3m of the eastern side boundary and is predominantly more than 1m above ground level. Condition recommended requiring privacy screen for the part of the deck with finished level greater than 1m above ground level.	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 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	Condition recommended to require engineering certification of retaining walls	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	No retaining wall front fence combination proposed.	N/A

DCP 2013: General Provisions			
	Requirements	Proposed	Complies
	driveway		
2.6.3.1	Tree removal (3m or higher with 100m diameter trunk at 1m above ground level and 3m from external wall of existing dwelling)	No trees proposed to be removed. The application includes a Tree Protection Report prepared by an Arborist for the 3 Cheese Trees located north-west of the pool within a landscaped terrace. The report demonstrates that the trees can be retained and protected subject to the recommendation in the report.	Yes
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	Refer to main body of report.	

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

Access, transport and traffic

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

Water Supply

Water supply connection not required for the proposal.

Sewer

The sewer main is located beneath the existing deck at the rear of the dwelling. The deck addition and swimming pool are not expected to place any additional load on the sewer main.

Stormwater

The proposed deck addition is located over an easement to drain water 6 feet (1.8m) wide in favour of Council. To ensure that future access is available for maintenance of the stormwater infrastructure, the deck will need to maintain a minimum 3m vertical clearance and all posts supporting the deck will need to be located clear of this easement. The deck will need to be designed to ensure that it does not place any load on the stormwater pipe and is capable of withstanding forces associated with overland flows.

The submitted plans indicate that up to 700mm of excavation would be required at the eastern end of the deck to achieve the required 3m vertical clearance. Detailed survey information is not available to confirm the depth of the stormwater pipe in this location, but it is estimated from contour information that the existing pipe has approximately 1.2m of cover.

The detailed stormwater design will need to determine the depth of the existing stormwater pipe and confirm that adequate cover can be retained in accordance with AUSPEC requirements. If a 3m vertical clearance to the deck is not achievable due to inadequate cover of the stormwater pipe, the relevant part of the deck will need to be designed to be easily removable in the event that future maintenance of the stormwater infrastructure is required.

Conditions are recommended confirming the above requirements.

Other Utilities

Telecommunication and electricity services are available to the site.

Heritage

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

Other land resources

No adverse impacts anticipated. The site is within an established urban context and will not sterilise any significant mineral or agricultural resource.

Water cycle

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

Soils

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

Air and microclimate

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

Flora and fauna

Construction of the proposed development will not require any removal/clearing of any significant vegetation and therefore will be unlikely to have any significant adverse impacts on biodiversity or threatened species of flora and fauna.

A Tree Protection Report prepared by Port Tree Fella has been submitted with the application and demonstrates that the existing trees adjacent to the new work are capable of being retained without significant damage from the development. The report includes the following recommendations, which are included in the proposed conditions.

1. Arborist to determine Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) of retained trees. AQF 5 Arborist to set out on site as per Report.
2. Design of structure/footings to be outside SRZ and to be advised where it encroaches into TPZ. Accurate survey of tree location and location of footing required. AQF 5 Arborist to supervise excavation of pier footing.
3. Tree Protection fencing to be installed by AQF 5 Arborist prior to works commencing.
4. Minor pruning undertaken as per survey on Tree #4 by an AQF 5 Arborist.
5. Supervision and documentation of works and compliance to AS 4970-2009 by an AQF 5 Arborist.

Waste

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

Energy

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

Noise and vibration

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

Bushfire

The site is identified as being bushfire prone.

The Applicant has submitted a bushfire report prepared by a Certified Consultant. An assessment of bushfire risk having regard to section 4.3.5 of Planning for Bushfire Protection 2006 including vegetation classification and slope concludes that a Bushfire Attack Level 29 shall be required.

As the assessment has determined that asset protection zones do not comply with Planning for Bush Fire Protection 2006, the application has been referred to the RFS in accordance with Section 4.14 of the EP&A Act. The RFS have reviewed the proposal and made recommendations which will be required to be imposed via conditions of consent.

Management of bushfire risk is acceptable subject to BAL construction levels being implemented and APZ being maintained. An appropriate condition is recommended.

Safety, security and crime prevention

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

Social impacts in the locality

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

Economic impact in the locality

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

Site design and internal design

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

Construction

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

Cumulative impacts

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

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

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

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

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

8 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
Proposal will increase the FSR above that allowable under Council's planning schemes.	The proposed deck addition and swimming pool are located outside the external walls of the dwelling and would not increase the FSR of the development.
The proposal will cause further impact on Littoral Rainforest species within the property. Many large trees have previously been removed within the footprint of the proposed development earlier in 2018.	<p>The proposal has been amended to retain all existing trees, and advice has been provided by an Arborist on measures required to achieve their protection and ongoing survival.</p> <p>It is understood that previous clearing at the site was carried out under the NSW Rural Fire</p>

Submission Issue/Summary	Planning Comment/Response
	Service's 10/50 Clearing legislation. Council's Compliance staff investigated a complaint in this regard in March 2018 and no further action was considered necessary.
The development, including swimming pool overflow, should be connected to the stormwater system to prevent overland flow into adjoining property.	<p>The proposed deck is not roofed and will not be required to be connected to the stormwater drainage system.</p> <p>Swimming pool overflow is required to be connected to sewer, rather than the stormwater system.</p>
Object to the removal of large established trees, which contribute to amenity, biodiversity values and privacy.	The proposal has been amended to retain all existing trees.
Cannot understand why someone would want to build a pool in a location that will be largely devoid of sunlight. If the pool is approved it is likely that additional tree removal will be carried out in the future.	<p>The future useability of the pool in terms of solar access is a matter for the Applicant to considered in deciding whether to proceed with the proposal.</p> <p>The application is supported by a Tree Protection Report, which includes recommendations on measures to ensure the retention of existing trees adjacent to the proposed works. Conditions of consent have been recommended requiring retention of the relevant trees.</p> <p>It is also noted that since the lodgement of this application, State Environmental Planning Policy (Coastal Management) 2018 has commenced and the rear of the site is now mapped as Littoral Rainforest. Any future proposal for works or tree removal would be designated development, which will provide additional protection for the retained trees.</p>
Amenity impacts on neighbours from late night parties in this location.	The site is located within an urban area and the deck and swimming pool are proposed to be used in connection with an existing dwelling house, which considered to be reasonable in a residential zone. Nuisance noise is controlled through separate legislation and is not a matter that can be managed through the planning process. The consent authority cannot assume that residents will behave in a manner that causes nuisance to neighbours.
Adverse noise impacts from children running on wooden decks and creating pool noise.	The site is located within an urban area and the deck and swimming pool are proposed to be used in connection with an existing dwelling house, which considered to be reasonable in a residential zone. Nuisance noise is controlled through separate legislation and is not a matter that can be managed through the planning

Submission Issue/Summary	Planning Comment/Response
	process. The consent authority cannot assume that residents will behave in a manner that causes nuisance to neighbours.
Concerns about loss of stability and impacts on the health of vegetation on adjoining property from excavation into the existing steep slope.	Engineering will be required for the proposed swimming pool, deck and associated retaining walls to ensure that stability is maintained. The closest part of the swimming pool to the rear boundary is approximately 5.7m and the excavation is not expected to impact on the health of vegetation on adjoining property.
Potential damage to neighbouring vegetation during tree removal.	The proposal has been amended to retain all existing trees and no tree removal is now proposed.
Loss of privacy to northern neighbours due to proposed tree removal. No compensatory planting or alternative screening proposed.	The proposal has been amended to retain all existing trees.
Potential noise from pool pumps and filters. Location of equipment is not shown on plans. Request that the equipment be located out of sight under the deck.	A condition is recommended restricting the hours that the filtration equipment can operate. Should noise levels exceed 5dBA above the ambient noise level measured at the boundary, the pool filtration motor will be required to be enclosed with an effective soundproof unit.
Loss of privacy to rear yard and rear decks of No. 29 Vendul Crescent.	<p>As noted in the DCP section, a privacy screen has been recommended along the eastern end of the elevated deck and pool area where the finished level is more than 1m above ground level. This would effectively screen views into the rear yard of No. 29 Vendul Crescent.</p> <p>The views between the rear decks at 29 Vendul Crescent and the proposed swimming pool and deck additions would be largely unobstructed, even with the privacy screen noted above, due to the topography of the site. A structure of substantial height would be required to entirely screen the swimming pool and deck from view from the neighbouring property.</p> <p>The DCP recognises that a 12m separation distance is sufficient to achieve adequate privacy in an urban context (without any additional screening). Sufficient separation distance is available in this instance to satisfy the DCP requirements.</p>
The proposal appears subjectively and objectively to be an overdevelopment of the area and is out of character with adjacent properties.	The proposal is within the allowable floor space ratio for the area and complies with the applicable height and setback controls. The addition is at the rear of the existing dwelling and would not alter the streetscape character.

(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 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 - 85.1 Recommended Conditions

2[View](#). DA2018 - 85.1 Plans.

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

NOTE: THESE ARE DRAFT ONLY

DA NO: 2018/85

DATE: 31/05/2019

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
Plans	1102 DA01/3, and DA02/3	Wayne Ellis Architect	23 April 2019
Section	1102 DA03/1	Wayne Ellis Architect	18 February 2019
BASIX Certificate	A316114	Concept Designs Australia	15 May 2018
Bushfire Hazard Assessment	-	David Pensini Building Certification and Environmental Services	April 2018
Arborist Report	-	Port Tree Fella	8 April 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) (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. 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.
5. 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.

- (4) (A069) Trees on the subject land, as marked on the approved plan, shall be retained.

B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- (1) (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.
- (2) (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) and located within 1m of the property boundaries; or
 - ii. 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.
- (3) (B046) New construction shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of Planning for Bush Fire Protection 2006. Details shall be submitted to the Principal Certifying Authority with the application for Construction Certificate demonstrating compliance with this requirement.

Please note: Compliance with the requirements of Planning for Bush Fire Protection 2006 to prevail in the extent of any inconsistency with the Building Code of Australia.
- (5) (B195) Any retaining walls or similar structures that form part of the 'Landscaped Terrace' shall be constructed of non-combustible materials. Details shall be submitted to the Principal Certifying Authority with the application for Construction Certificate demonstrating compliance with this requirement.
- (6) (B196) A privacy screen 1.8m high and with a maximum of 25% openings shall be provided along the eastern end of the deck for the extent that the finished level is 1m or more above ground level. Details are to be submitted for the approval of the Principal Certifying Authority prior to the issue of a Construction Certificate.

- (7) (B197) Prior to the issue of a Construction Certificate, written confirmation shall be obtained from Council for the proposed works within the existing easement to drain water that traverses the site. In seeking such agreement, the following details are to be submitted:
- a) Confirmation that all posts supporting the deck are located clear of the easement;
 - b) Engineering certification that the structure is capable of withstanding overland flows and would not be compromised by future excavation within the easement for maintenance purposes;
 - c) A minimum vertical clearance of 3m is to be provided between the finished ground level and the underside of the deck for the full width of the easement. Details of the depth of the existing pipe and proposed cover to be retained are to be provided. If insufficient cover is available to provide the required clearance through excavation, the part of the deck with less than 3m clearance shall be designed to be easily removable for future maintenance.
- (8) (B198) Prior to the issue of a Construction Certificate written confirmation is to be provided from an Arborist with a minimum qualification AQF level 5 (diploma level) or an international qualification considered equivalent by Council that the design of the structure/footings is outside the Structural Root Zone (SRZ) of retained trees and of an appropriate design where the structure encroaches into the Tree Protection Zone (TPZ). The Arborist shall supervise excavation for footings.

C – PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (C015) Tree protection fencing, compliant with *AS 4970/2009 Protection of trees* on development sites must be provided. The fencing shall be in place prior to the commencement of any works or soil disturbance and maintained for the entirety of the works.
- (2) (C195) At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- (3) (C196) Prior to works commencing an Arborist with a minimum qualification AQF level 5 (diploma level) or an international qualification considered equivalent by Council shall determine the Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) of retained trees and set them out on site.

D – DURING CONSTRUCTION

- (1) (D015) The swimming pool shall not to be filled with water until a safety fence/barrier complying with the current Swimming Pools Act and Regulations has been installed and an inspection has been carried out and approval given by the Principal Certifying Authority.
- (2) (D016) Where depth of water in the pool exceeds 300mm during construction a temporary barrier or fence in accordance with the current Swimming Pools Act and Regulations is to be erected or other precaution taken so as to prevent entry of children into the pool.
- (3) (D000) Any excess fill is to be disposed of at an approved location or taken to an approved waste management facility.
- (4) (D003) The Port Macquarie-Hastings area is known to contain rock that may contain naturally occurring asbestos (NOA). Should potential NOA be located

on site notification shall be provided to Council and Workcover prior to works proceeding. No work shall recommence until a NOA management plan has been approved by Council or Workcover.

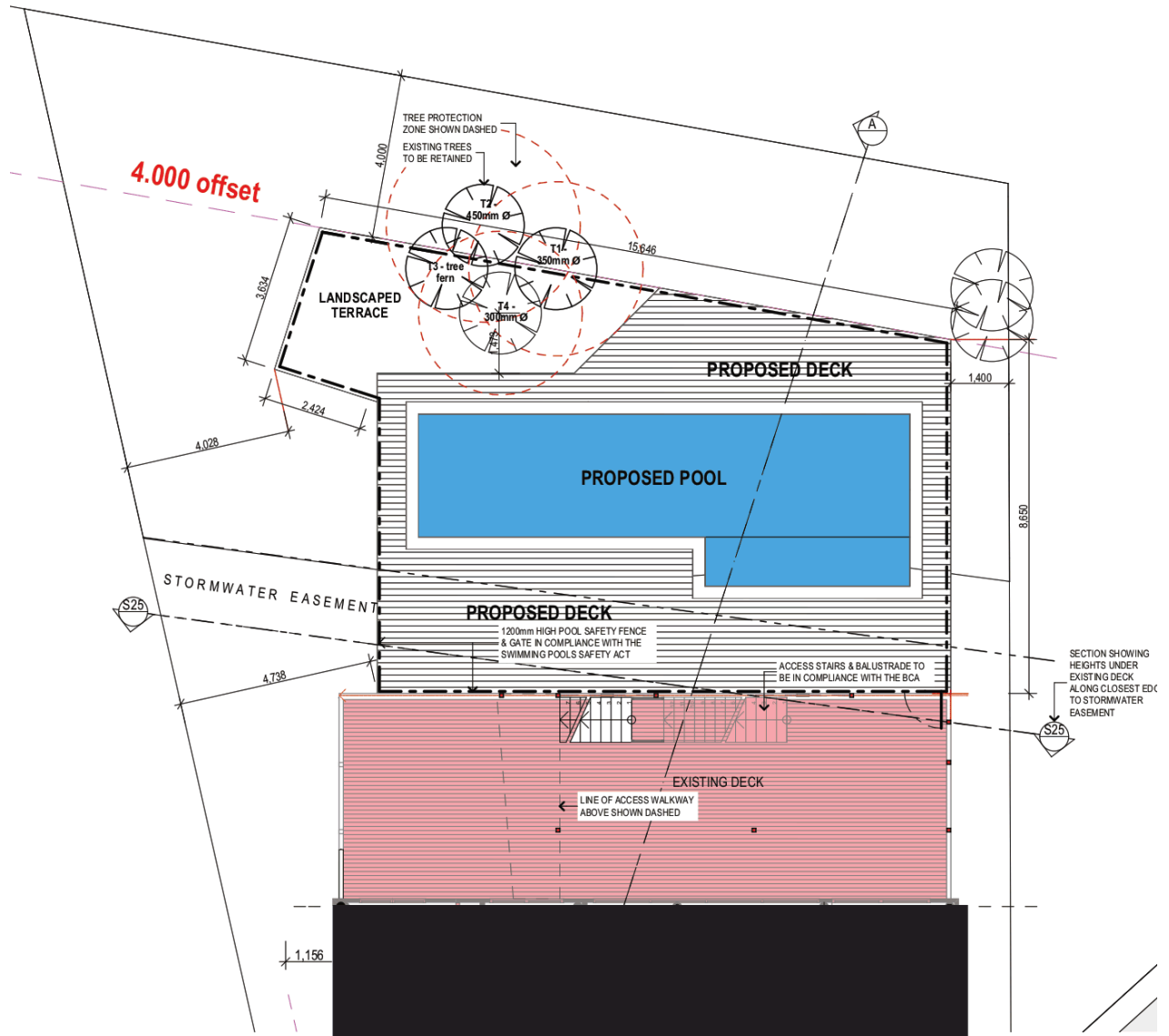
- (5) (D022) The proponent is responsible for ensuring that the existing stormwater pipe traversing/adjoining the land is not damaged while performing any works. If the existing stormwater pipe is damaged during the course of performing the works, the proponent will:
 - notify Council immediately when the breakage occurs, and
 - repair the damage at no cost to Council.
- (6) (D043) Any damage to a tree nominated for retention/protection during the construction phase shall be treated by an Arborist with a minimum qualification AQF level 5 (diploma level) or an international qualification considered equivalent by Council, or a person deemed suitable by Council at the developer's expense.
- (7) (D050) The capacity and effectiveness of tree protection fencing, compliant with *AS 4970/2009 Protection of trees on development sites* shall be maintained at all times in accordance with the approved management plan until such time as the site is no longer subject to any construction or earthmoving works.

E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE

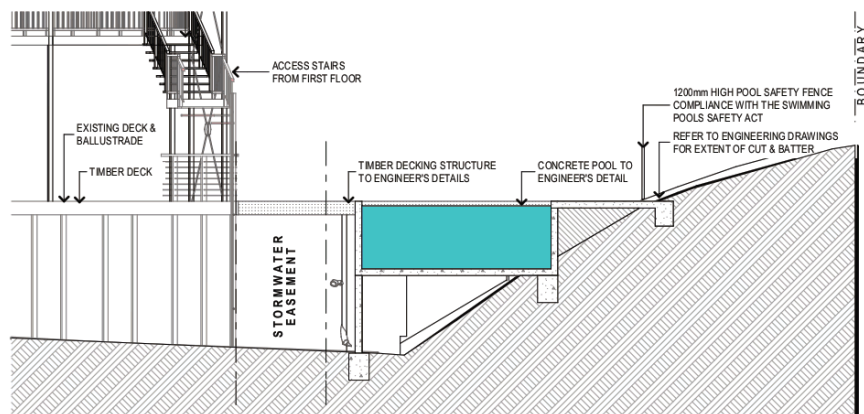
- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any properly qualified person (eg the builder), stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (3) (E020) The provision of a suitable sign containing the details required by the current Swimming Pools Act and Regulations prior to the issue of an Occupation Certificate.
- (4) (E021) The pool is to be fenced in accordance with the Swimming Pools Act 1992 prior to the issue of an Occupation Certificate.
- (5) (E195) Prior to the issue of the Occupation Certificate an Arborist with a minimum qualification AQF level 5 (diploma level) or an international qualification considered equivalent by Council shall submit documentation confirming that works were carried out in accordance with AS 4970-2009 and the conditions of this consent.

F – OCCUPATION OF THE SITE

- (1) (F027) The swimming pool filtration motor shall be operated between the following hours only:
 - Monday to Friday (other than a public holiday)
7.00 am – 8.00 pm
 - Saturday to Sunday and Public Holidays
8.00 am – 8.00 pmShould noise levels exceed 5dBA above the ambient noise level measured at the boundary, the pool filtration motor shall be enclosed with an effective soundproof unit.
- (2) (F195) Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006.

**PROPOSED POOL - PLAN**

Scale 1:100

**POOL - SECTION**

Scale 1:100

POOL DA ISSUE 23/04/2019

No.	Date	Description	By
3.	23.04.19	REVISED DA ISSUE ONLY	PS
2.	18.02.19	REVISED DA ISSUE ONLY	PS
1.	11.04.18	DA ISSUE ONLY	PS
No.	Date	Description	By
Amendments			

Client: A BRINKMAN

Project: PROPOSED ADDITIONS
No 31 VENDUL CR PORT MACQUARIE

Drawing: PLAN & SECTION OF POOL

**wayne
ellis
architect**

B.Arch. R.A.I.A. NSW Reg No 4415

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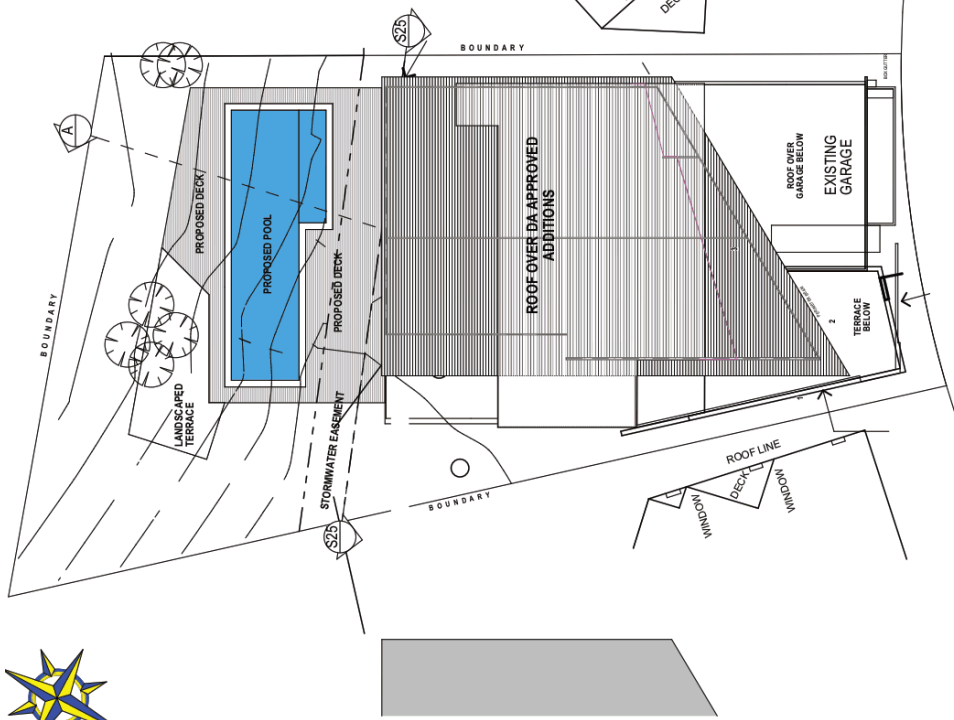
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Dwg No. DA01/3

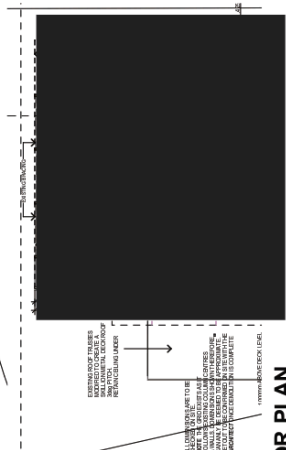
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Scale 1:100 @ A3

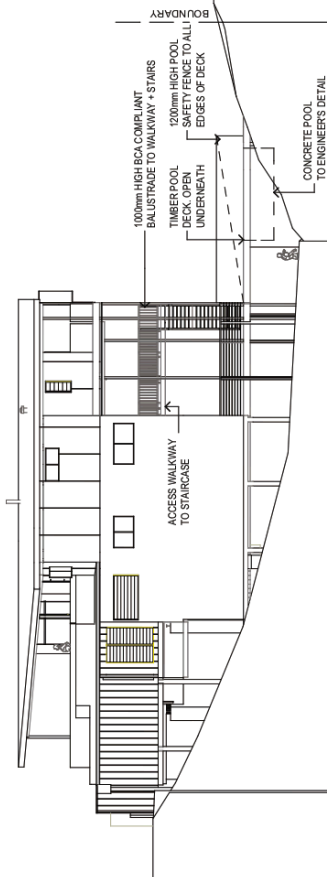
Comp. Ref. REV 1102 SECT 96 2018 V1;



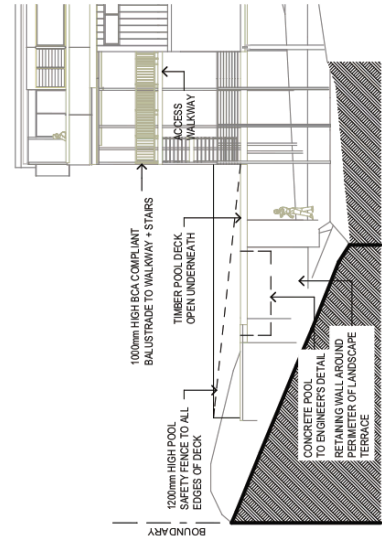
SITE PLAN
Scale 1:200



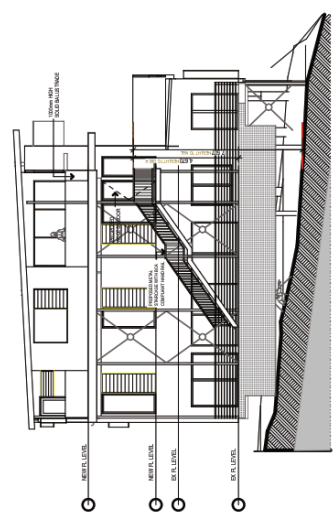
PARTIAL FIRST FLOOR PLAN
Scale 1:200



EAST ELEVATION
Scale 1:200



WEST ELEVATION
Scale 1:200



SIDE ELEVATION
Scale 1:200

POOL DA ISSUE
23/04/2019

No.	Date	Description
1.	23/04/19	REVISED DA ISSUE ONLY
2.	18/02/19	REVISED DA ISSUE ONLY
3.	18/02/19	DA ISSUE ONLY
4.	18/02/19	DA ISSUE ONLY
5.	18/02/19	DA ISSUE ONLY
6.	18/02/19	DA ISSUE ONLY

Notes

1. All dimensions on site before commencing any part of the works.
2. Report all discrepancies to architect for decision.
3. Work to be done in accordance with the drawings.
4. This drawing to be used in conjunction with all other drawings.
5. This drawing is copyright and must not be reproduced or used wholly or in part without the written consent of the architect.
6. The scale of this drawing may be affected by enlargement or reduction during transmission.

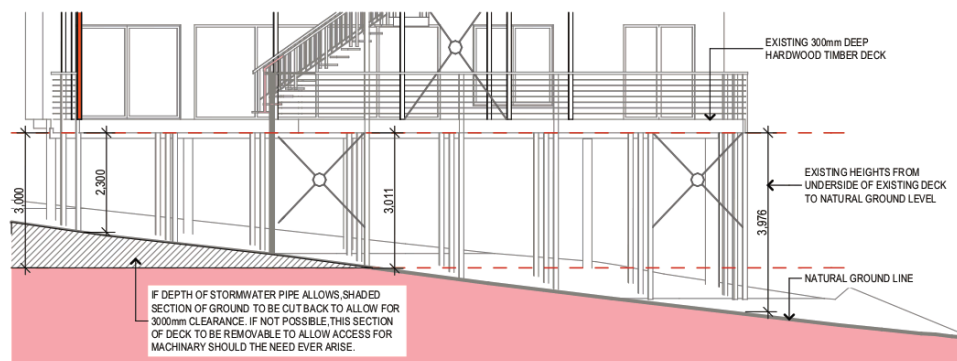
wayne ellis architect

B Arch R.A.I.A. NSW Reg No 4415
P.O. Box 1862 Potts Point NSW 1536
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E. wayne@wayneellisarchitects.com.au
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Client: A BRINKMAN
Project: PROPOSED ADDITIONS
NO. 31 VENDOR CR
PORT MACQUARIE
Site Plan + Elevations

Proj. No 1102
Dwg No. DA02/3

Drawn WE
Scale 1:200 @ A3
Comp. Ref. REV 1102 SECT 96 2018 V17.plt



SECTION THROUGH STORMWATER EASEMENT

Scale 1:100

POOL DA ISSUE 23/04/2019

		Client: A BRINKMAN	wayne ellis architect	B.Arch. R.A.I.A. NSW Reg No 4415 P.O. Box 1892 Potts Point NSW 1335 Unit 003 Sandcastle 24 William St Port Macquarie NSW 2444 e wayne@wayneellisarchitects.com.au t 0417 664 731	Proj. No 1102 Dwg No. DA03/1 Drawn WE Scale 1:100 @ A3 Comp. Ref. REV 1102 SECT 96 2018 V1;
1.	18.02.19 REVISED DA ISSUE ONLY PS	Project: PROPOSED ADDITIONS No 31 VENDUL CR PORT MACQUARIE			
No.	Date Description By	Drawing: STORMWATER EASEMENT SECTION			

Item: 06

Subject: DA2018 - 131.1 - STAGED 2 INTO 4 LOT TORRENS TITLE RURAL SUBDIVISION - LOT 1 DP 1009991, SANCROX ROAD AND LOT 14 DP 1043738, OXLEY HIGHWAY, SANCROX

Report Author: Development Assessment Planning Coordinator, Patrick Galbraith-Robertson

Applicant: 3 Sons Investments Pty Ltd CARE King and Campbell Pty Ltd
Owner: 3 Sons Investments Pty Ltd
Estimated Cost: N/A
Parcel no: 35198 & 46478

Alignment with Delivery Program

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

RECOMMENDATION

That DA2018 - 131.1 for a Staged 2 into 4 lot Torrens Title rural subdivision at Lot 1 DP 1009991, Sancrox Road and Lot 14 DP 1043738, Oxley Highway, Sancrox be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a Development Application for a Staged 2 into 4 lot rural 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, 1 submission has been received.

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

1. BACKGROUND

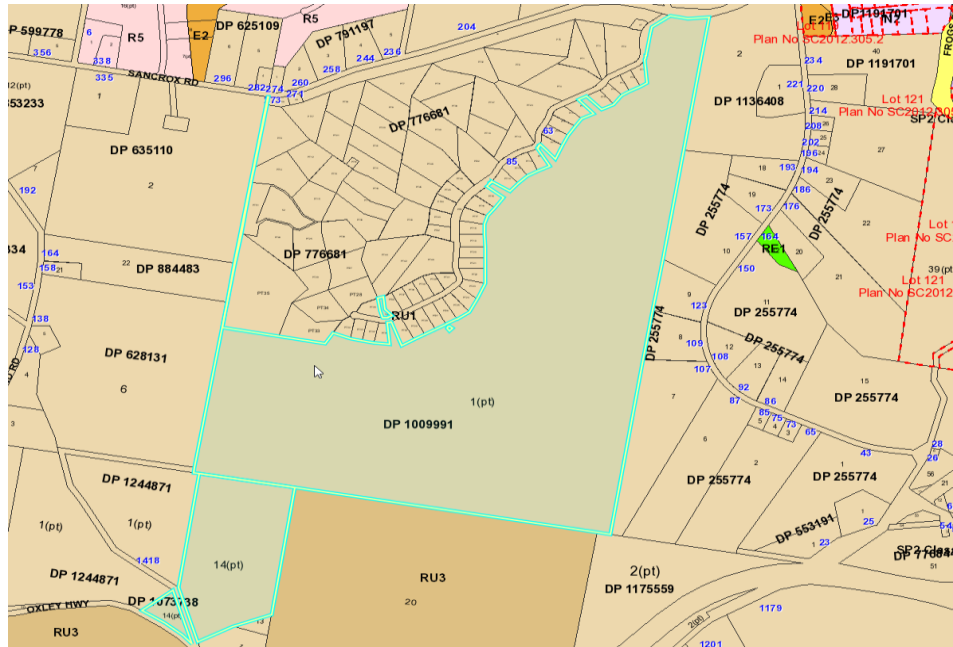
Existing sites features and Surrounding development

The subject site consists of the following lots:

- Lot 14 in DP1073738, being a vacant lot 18.77ha in size with frontage to the Oxley Highway; and
- Lot 1 in DP1009991, being a vacant lot 143.8ha in size with frontage to both Le Clos Sancrox Road and Sancrox Road.

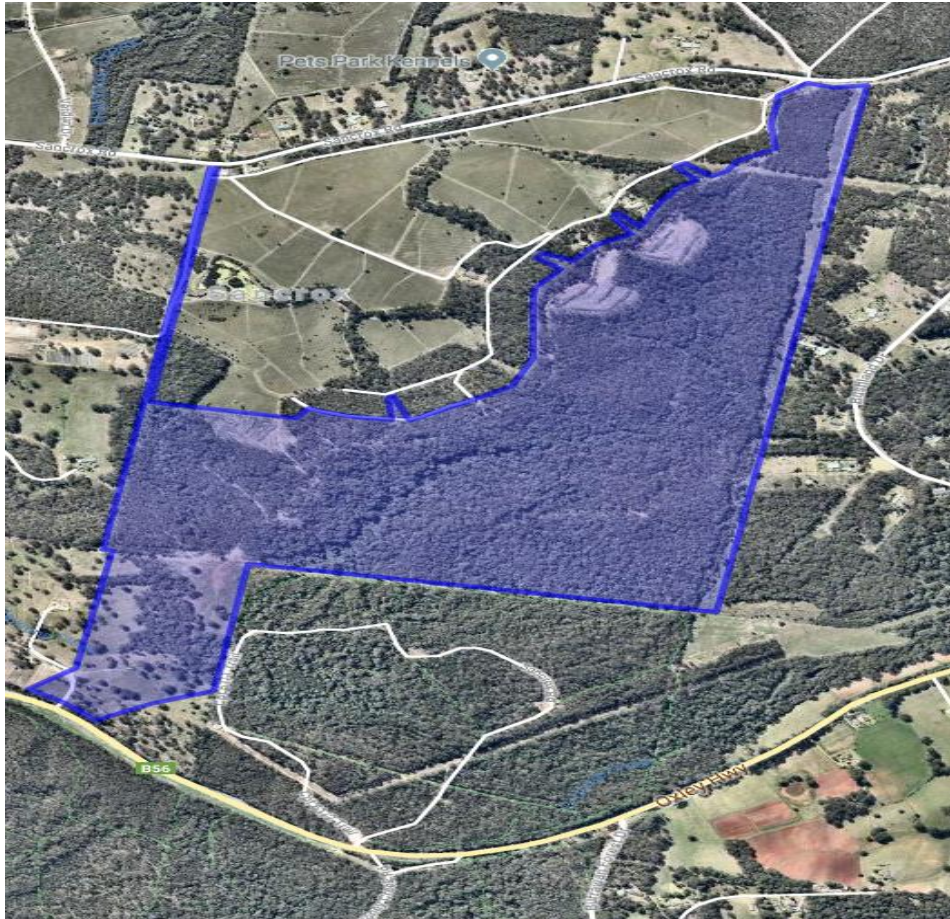
DEVELOPMENT ASSESSMENT PANEL
12/06/2019

The site is zoned RU1 Primary Production 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:





The subject site has previously been utilised for cattle grazing and has been subject to logging activities under Private Native Forestry (PNF) Agreements 02738 (November 2011) and 05998 (November 2017).

Existing gravel access tracks formed as a part of the logging and fire management activities afford access to all of the proposed building envelopes.

Application Chronology

- 23 February 2018 - DA lodged with Council.
- 8 March 2018 - Referral of proposal to the NSW Rural Fire Service.
- 14 to 27 March 2018 - Neighbour notification of proposal.
- 4 April 2018 - Additional information requested - address submission issues, initial ecological concerns including whether additional tree removal proposed, and clarify likely building envelopes and extent of bushfire risk Asset Protection Zones.
- 4 April 2018 - Site visit by assessing officer.
- 17 April 2018 - Request for further information by the NSW Rural Fire Service.
- 20 April 2018 - Request for further information by the NSW Rural Fire Service forwarded to the Applicant to respond to.
- 15 May 2018 - Update provided from Applicant on providing additional information.
- 26 July 2018 - Advice received from NSW Rural Fire Service that proposal initially determined to not support as additional information not provided within statutory timeframe.

- 5 September 2018 - Applicant requested to provide an update on additional information requests.
- 7 September 2018 - Applicant provided advice that they are working on providing additional information.
- 12 November 2018 - Follow up with Applicant to provide update on additional information requests.
- 12 November 2018 - Applicant provided advice that they are working on providing additional information.
- 18 March 2019 - Additional information received from Applicant including request to not charge water contributions, response to submission issues, updated building envelopes including Asset Protection Zones, and response to initial ecological assessment concerns raised.
- 19 March 2019 - Additional Bushfire Risk information forwarded to the NSW Rural Fire Service to review Bushfire Safety Authority.
- 9 April 2019 - Update on assessment of additional information provided to Applicant.
- 2 May 2019 - Update on assessment of additional information provided to Applicant.
- 28 May 2019 - Bushfire Safety Authority received from the NSW Rural Fire Service.

2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- 2 into 4 lot Torrens Title subdivision
- The existing Lots comprise Lot 1 DP1009991 and Lot 14 DP1073738 which have a combined area of 162.57ha. Each of the proposed lots shall have an area in excess of the minimum lots size (40ha) as detailed below:
 - Proposed Lot 1 – 42.2ha;
 - Proposed Lot 2 – 40ha;
 - Proposed Lot 3 – 40.3ha; and
 - Proposed Lot 4 – 40ha.
- The building envelopes and access tracks will be located in the existing cleared areas previously utilised as log dumps and logging trails. The existing access gate to the Oxley Highway will be maintained and utilised to service Proposed Lot 1. Proposed Lots 2, 3 and 4 each have existing access connections to Le Clos Sancrox Road (private road).
- This application is proposed to be undertaken in the following stages:
 - Stage 1 – Boundary adjustment to create Proposed Lot 1 and Residue Lot; and
 - Stage 2 – Subdivision of the residue lot to create Proposed Lots 2, 3 and 4.

Refer to attachments at the end of this report.

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.

The Applicant has submitted a SEPP 44 Koala Habitat Protection Assessment prepared by Naturecall Environmental. The Naturecall Environmental report concludes the following:

- The subject site has Potential Koala Habitat due to the co-dominance of Tallowwood over parts of the site.
- A dedicated Koala survey was carried out over the property which consisted of standard Koala survey techniques comprising spotlighting, call playback, diurnal searches and 23 SAT surveys.
- The spotlighting and call playback surveys carried out over 4 nights did not detect any Koalas. The diurnal searches did not observe any Koalas.
- Koala scats were found at 5 of the 23 SAT survey sites. In terms of activity levels, two sites scored 3.3% and three scored 6.6%.
- Based on the survey results and literature review, this assessment has concluded that the SEPP 44 criteria to indicate that the property currently supports a resident Koala population have not been met, and the site therefore does not contain Core Koala Habitat. A Koala Plan of Management is therefore not required to accompany the Development Application.
- Upon completion of the assessment it was determined that there is insufficient evidence to determine that the site is Core Koala Habitat as evidence of breeding was not found, and no historical records of a koala population associated with the site are known to exist, low numbers of koala scats were found and there were no koalas spotted at the time of surveying.

The Applicant has also provided additional information during the assessment of the DA to respond to initial assessment queries with regard to the potential for impacts of tree removal and determination as to whether the site is potential or core koala habitat. The information submitted has been reviewed as being satisfactory noting the following:

- It is recognised that detection or observation of breeding females is only one attribute to identifying the site as Core Koala habitat. As noted above, Naturecall did not observe a 'resident' population of Koalas. Evidence was detected which supports the site as being part of a home range for potentially a single transient Koala.
- Naturecall's assessment included an extensive literature review of publicly available documents and previous ecological assessments carried out over the site and surrounding lands. This included historical and recent sightings.
- 4 nights of spotlighting (over 2 hour periods by 2 observers) as well as field survey, diurnal searches, call playback and SAT survey were all carried out by Naturecall as a part of the preparation of their SEPP 44 Koala habitat

assessment. The searches carried out by Naturecall were undertaken in accordance with the accepted standards and are considered appropriate for the site.

An assessment of the submitted information by Council's natural resources staff has concluded that the site is not Core Koala Habitat. It has been satisfactorily demonstrated that no habitat will be removed or modified. 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, the proposal will be unlikely to have any adverse impact on existing aquaculture industries within the Hastings River approximately 5 kilometres from the site.

State Environmental Planning Policy (Infrastructure) 2007

The proposed development is not considered to trigger any of the size or capacity requirements outlined within Schedule 3 of this policy.

The southern portion of the development site, including proposed Lot 1, has frontage to the existing Oxley Highway which is a classified road. There is an existing driveway access available connecting to this Highway which also services an existing dwelling to the west.

Clause 101 of this policy aims to ensure that new development with frontage to a classified road, such as the Oxley Highway, does not compromise the effective or ongoing operation and function of the classified road whilst also reducing the potential impact of traffic noise and vehicle emission on development.

In this regard, the proposed use of the existing driveway connection to the Oxley Highway and location of a building envelope on proposed Lot 1 is acceptable for the following reasons:

- The use of the existing driveway by vehicles associated with any future additional dwelling are considered unlikely to significantly increase vehicular movements to or from the Oxley Highway;
- The proposed dwelling envelope for proposed Lot 1 is located on top of a ridge line and is estimated to be elevated approximately 50 metres above the Oxley Highway. The proposed dwelling envelope is approximately 550 metres north of the Oxley Highway and is therefore considered to be suitably separated so as not to be adversely affected by road or traffic noise; and
- Proposed Lots 2, 3 and 4 are located on the northern side of the existing ridge line in close proximity to the existing Right of Way over DP776681. Each of these lots are therefore proposed to be accessed via the existing Right of Way before entering Sancrox Road (local road). Lots 2, 3 and 4 will also be provided Rights of Way over the existing internal tracks including connecting back to the existing

driveway access to the Oxley Highway in use so that they can utilise the alternate access options in the event of an emergency such as a Bushfire.

State Environmental Planning Policy (Rural Lands) 2008

The following assessment table provides an assessment against specific requirements of this SEPP:

Matters to be considered in determining development applications for rural subdivisions or rural dwellings		
Requirement	Proposed	Complies
<p>10(1) This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.</p> <p>10(2) A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:</p> <p>(a) subdivision of land proposed to be used for the purposes of a dwelling,</p> <p>(b) erection of a dwelling.</p> <p>10(3) The following matters are to be taken into account:</p> <p>(a) the existing uses and approved uses of land in the vicinity of the development,</p> <p>(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,</p> <p>(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),</p>	<ul style="list-style-type: none"> • The proposed subdivision will result in four (4) separate Torrens Title allotments each in excess of the minimum 40-hectare allotment size. The proposed lot sizes will ensure the protection of opportunities for potential productive and sustainable rural activities notwithstanding the current vegetation constraints on the site; • The subject site is not identified as state significant farmland (mapped as 'other rural land'); • The proposed subdivision is considered unlikely to have any identifiable adverse impacts on services or infrastructure; and • The proposed subdivision including proposed dwelling locations will be unlikely to result in any identifiable landuse conflicts. 	<p>Yes - satisfactory</p>

<p>(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,</p> <p>(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).</p>		
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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 RU1 primary production.

The objectives of the RU1 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
 - *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
 - *To minimise the fragmentation and alienation of resource lands.*
 - *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- Clause 2.3(2) - The proposal is consistent with the zone objectives having regard to the following:
 - the proposal is a permissible landuse;
 - the proposed subdivision will result in four (4) separate Torrens title allotments each in excess of the minimum 40-hectare allotment size. The proposed Lot sizes will ensure the protection of opportunities for potential productive and sustainable rural activities notwithstanding the current vegetation constraints on the site.
- Clause 4.1 - The lot sizes within the proposed subdivision range from 40 hectares to 42.2 hectares. All proposed lots comply with the minimum lot sizes identified in the Lot Size Map relating 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 (only if required by future residents), electricity supply, on-site sewage management, stormwater drainage and suitable road access to service the development. Provision of electricity and telecommunications 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

The proposal complies with all applicable requirements of the DCP as detailed in the following tables:

DCP 2013: Chapter 3.6 - Subdivision			
DCP Objective	Development Provisions	Proposed	Complies
3.6.3.20	Reticulated water supply required to all subdivision except rural zoned areas greater than 40 hectares.	Each of the proposed Lots are zoned RU1 Primary Production and have an area of 40ha or greater. The Applicant has requested that the subdivision not be required to be connected to the reticulated water supply. This is considered acceptable noting that any future owners of the proposed lots can still potentially connect to existing water mains in the future subject to payment of appropriate development contributions.	Yes
3.6.3.41	A minimum gate width of 3.6m should be provided to any property.	No changes to the existing gate access off the Oxley Highway are proposed. The existing gate is 3.6 metres wide and will service proposed Lot 1. Proposed Lots 2, 3 and 4 will be accessed by existing frontage to Le Clos Sancroix Road.	Yes
	Land with a slope greater than 15 degrees is not to be proposed for house construction or effluent disposal.	The proposed building envelopes do not contain slopes greater than 15 degrees. It is considered that each of the proposed building envelopes is large enough to contain any necessary on-site effluent disposal system.	Yes
	Unless created under clause 4.2 of LEP 2011 or clause 9 of SEPP (Rural Lands) 2008, lots in rural areas should: <ul style="list-style-type: none"> • have an identified building platform for 	<ul style="list-style-type: none"> - The proposed subdivision identifies a building envelope (platform) for each of the proposed allotments; - The proposed building envelopes are considered suitable for the purposes of containing a dwelling house 	Yes

	<p>a dwelling house.</p> <ul style="list-style-type: none"> • have appropriate area and dimensions for the siting and construction of a dwelling and any ancillary outbuildings. • have a gate installed for the driveway. • demonstrate that an environmentally sensitive, 2-wheel drive standard access can be located between the driveway (referred to above) and the nominated building platform on each lot and in accordance with Council's adopted design specifications. • have a sealed driveway, constructed from the road to 3m inside the property boundary. • have access to a public road that is readily upgraded to all weather two-wheel drive standard; • comply with bushfire guidelines; • be above Q100 flood level and has high level road and/or pedestrian access to land above probable maximum flood level; • have adequate solar access; • not impact on rural activities on nearby land. 	<p>and any ancillary outbuildings;</p> <ul style="list-style-type: none"> - No changes to the existing gate to the Oxley Highway is proposed as a part of this application; - The existing gate access to the Oxley Highway is proposed to be maintained and contains a gravel surface to the building envelope on Proposed Lot 1. It is noted that the existing gravel tracks throughout the site have been utilised as a part of the Private Native Forestry agreement. - The proposed subdivision is considered to comply with the bushfire guidelines - The subject site is not identified as flood prone land; - Each of the proposed allotments exceed 40 hectares and are considered to allow suitable solar access to each of the proposed building envelopes. 	
	Where access is on a right of way over	The land has frontage to the Oxley Highway, Sancrox	Yes

	another property, the maximum number of allotments that may share in the above right of way access arrangements is 2.	Road and Le Clos Sancrox Road (private road). Access over Le Clos Sancrox Road (also identified as Lot 51 in DP776681) is via a RoW 20 and 30 wide and variable widths. This RoW was established to accommodate a large number of allotments within the Le Clos Sancrox estate, including the subject land. It is therefore considered that access over the RoW is appropriate for the proposed subdivision and is consistent with the intention for which the RoW was created.	
3.6.3.42	Lot boundaries should be suitably located taking into the relevant criteria slope of the land: <ul style="list-style-type: none"> • natural boundaries; • existing fencing and paddock structure; • protection of natural or cultural features; • site environmental constraints; • retention of special features such as trees and scenic topographical features. 	The proposed boundaries ensure that each allotment contains areas are consistent with the minimum 40ha lot size whilst also acknowledging existing features, including ridgelines, depressions and creeks/gullies. The proposed subdivision is therefore considered able to be suitably fenced (in locations where fencing does not currently exist) without adversely impacting any natural features.	Yes

DCP 2013: General Provisions

DCP Objective	Development Provisions	Proposed	Complies
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline: <ul style="list-style-type: none"> ▪ Casual surveillance and sightlines ▪ Land use mix and activity generators ▪ Definition of use and ownership ▪ Lighting ▪ Way finding ▪ Predictable routes 	No adverse crime risk potential identified noting the proposed lots are large rural lots.	Yes

	and entrapment locations		
2.3.3.8 onwards	Removal of hollow bearing trees	No tree removal proposed	N/A
2.6.3.1	Tree removal (3m or higher with 100mm diameter trunk and 3m outside dwelling footprint)	No tree removal proposed	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. Existing accesses rationalised or removed where practical	No changes to the existing gate access off the Oxley Highway are proposed.	Yes
2.5.3.11	Section 94 contributions	Refer to main body of report.	

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

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

(iv) Any matters prescribed by the Regulations:

N/A

(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.

The proposal is considered to be consistent with other existing development in the locality and adequately addresses planning controls for the area.

Roads

The site has road frontage to Sancrox Road, Le Clos Sancrox Road and the Oxley Highway.

The Oxley Highway and Sancrox Road are all-weather, bitumen sealed two-wheel drive public roads which service as main connecting roads within the locality.

Adjacent to the site, Le Clos Sancrox Road is a sealed private road under the care and control of the owners. Le Clos Sancrox Road is a local road with a 5m road formation within a 20m road reserve.

Traffic and Transport

The site is currently vacant land. This 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 for proposed Lot 2, 3 and 4 is proposed through individual handles to the Le Clos Sancrox private road. Vehicle access to proposed Lot 1 is proposed via the existing gated access connecting to the Oxley Highway. Access shall comply with Council AUSPEC and Australian Standards, and conditions have been imposed to reflect these requirements.

The existing access connection to the Oxley Highway is proposed to be maintained and utilised as the primary access point for proposed Lot 1. It will also act as the emergency access point for proposed Lots 2, 3 and 4. The gravel access driveway to the building envelope of Proposed Lot 1 has recently been utilised by logging trucks to remove logs and is therefore of a width and grade suitable for vehicular access. Proposed Lots 2, 3 and 4 have existing vehicular connection to Le Clos Sancrox Road which is identified as Lot 51 DP776681. Lot 1 DP1009991 maintains a Right of Way over Lot 51 thereby providing access to Sancrox Road.

No vegetation is therefore required to be removed in order to access the proposed building envelopes.

It is also proposed to provide reciprocal rights of access over the existing tracks in use internally to ensure that the future dwellings within the proposed building envelopes will be afforded with legal egress options in the case of emergencies.

Water Supply Connection

Council's records indicate that the development site does not currently have a water meter. There is an existing 100mm PVC water main that runs along the western side of lots 2, 3 & 4. There is a 300mm PVC water main on the southern side of Lot 1.

The Applicant has requested that the subdivision not be required to be connected to the reticulated water supply. This is considered acceptable noting that any future owners of the proposed lots can still potentially connect to existing water mains in the future. Any application for a water meter will include the costs associated with a water service and water meter in addition to applicable Section 64 contributions. An appropriate restriction as to user is recommended to be imposed on the proposed Lots to identify this for future landowners.

Stormwater

The site naturally grades towards the Le Clos Sancrox Road, Oxley Highway and Sancrox Road street frontages and is currently serviced via an existing rural road drainage.

The legal point of discharge for the proposed development is defined as the Le Clos Sancrox Rd and Sancrox Rd.

Other Utilities

Telecommunication and electricity services are capable of being provided to the site subject to satisfactory arrangements certifications being obtained from appropriate providers prior to issue of a Subdivision Certificate. A standard condition is recommended in this regard.

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 proposed subdivision 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.

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

This Development Application has been lodged under the transitional arrangements outlined within the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*. The application shall be assessed with respect to the provisions of the *Threatened Species Conservation Act 1995*.

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. Section 5A of the Act is considered to be satisfied.

Waste

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables noting that the proposed lots are rural lots. No adverse impacts anticipated.

Energy

No adverse energy impacts anticipated.

Bushfire

The site is identified as being bushfire prone.

Since the lodgement of the application the Applicant has undertaken a detailed survey of the proposed building envelopes. The attached sketch plans to this report detail the location of the cleared envelopes as well as the surveyed edge of vegetation. Sufficient cleared areas are available to accommodate a building

envelope for future dwellings and required Asset Protection Zones (APZs) without requiring vegetation removal.

In accordance with Section 100B - *Rural Fires Act 1997* - the application proposes: subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes.

The Applicant has submitted a bushfire report prepared by a David Pensini - Building Certification and Environmental Services. The report assumes that proposed subdivision will occur and has carried out an assessment under Section 100B requirements.

In this regard the proposal has been referred to the NSW Rural Fire Service and a Bushfire Safety Authority has been granted subject to conditions. The conditions will be recommended to be complied with as part of the recommended conditions of consent.

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 economic impacts identified.

Site design and internal design

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

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 of bushfire risk has 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.

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

Submission Issue/Summary	Planning Comment/Response
The proposal is relying upon emergency exits from proposed Lots 2, 3 and 4 to a private road between house lots within the Le Clos Sancrox locality and via an existing right of way along that private road to Sancrox Road.	The Applicant has detailed and confirmed that the existing access connection to the Oxley Highway is proposed to be maintained and utilised as the primary access point for proposed Lot 1. It will also act as the emergency access point for proposed Lots 2, 3 and 4. The gravel access driveway to the building envelope of Proposed Lot 1 has recently been utilised by logging trucks to remove logs and is therefore of a width and grade suitable for vehicular access.
Ongoing maintenance of the private road to Sancrox Road is no longer certain.	
The long term status of the private road to Sancrox Road is dependent upon the outcome of the Le Clos Sancrox land being considered in the Council's Urban Growth Management Strategy 2036.	<p>Proposed Lots 2, 3 and 4 have existing vehicular connection to Le Clos Sancrox Road which is identified as Lot 51 DP776681. Lot 1 DP1009991 maintains a Right of Way over Lot 51 thereby providing access to Sancrox Road. No vegetation is therefore required to be removed in order to access the proposed building envelopes.</p> <p>It is also proposed to provide reciprocal rights of access over the existing tracks in use internally to ensure that the future dwellings within the proposed building envelopes will be afforded with legal egress options in the case of emergencies.</p> <p>Use of the existing access private road is permitted and unable to be used as a reason for refusal to the application.</p>

(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

- The Applicant has requested that the subdivision not be required to be connected to the reticulated water supply. This is considered acceptable noting that any future owners of the proposed lots can still potentially connect to existing water mains in the future subject to payment of Development contributions towards augmentation of town water supply head works under Section 64 of the Local Government Act 1993.
- Development contributions will be required for two (2) of the four (4) proposed lots under Section 7.11 of the Environmental Planning and Assessment Act 1979 towards roads, open space, community cultural services, emergency services and administration buildings.
- It should be noted that following a detailed assessment of the DA it has been identified that both of the two (2) existing Lots - Lot 1 DP 1009991 and Lot 14 DP 1073738 enjoy dwelling entitlements under the Port Macquarie-Hastings Local Environmental Plan 2011. In this regard contributions credits apply to these existing lots which can be transferred to two (2) of the four (4) lots:

- Section 7.11 contributions credit only for existing Lot 14 DP 1073738
- Section 7.11 and Section 64 water supply contributions credit apply to Lot 1 DP 1009991.

A contributions estimate has been prepared and attached to this report.

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 - 131.1 Recommended Conditions
- 2 [View](#). DA2018 - 131.1 Building Envelopes (Excluded from Agenda)
- 3 [View](#). DA2018 - 131.1 Draft DP
- 4 [View](#). DA2018 - 131.1 Bushfire Safety Authority
- 5 [View](#). DA2018 - 131.1 Contributions Estimate

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

NOTE: THESE ARE DRAFT ONLY

DA NO: 2018/131

DATE: 4/06/2019

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
Plan of subdivision	6007S_DP	Christopher Brian Morrison	undated
Proposed building envelopes	Sheets 1 to 3	King and Campbell Pty Ltd	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) (A003) The proponent shall submit an application for a Subdivision Certificate for Council certification with all relevant documentation.
- (3) (A007) The development must only proceed in accordance with the approved stages as set out below:

- Stage 1: Boundary adjustment to create proposed Lot 1 and residue Lot.
- Stage 2: Subdivision of the residue lot to create Proposed Lots 2, 3 and 4

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.

- (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) This consent does not permit separate water meter connections to Council's water mains.
- (6) (A013) The general terms of approval from the following authorities, as referred to in section 4.50 of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval.

- **NSW Rural Fire Service** - The General Terms of Approval, Reference D18/4823 DA18031412202 BS and dated 28 May 2019, are attached and form part of this consent.

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

nil

C – PRIOR TO ANY WORK COMMENCING ON SITE

nil

D – DURING WORK

nil

E – PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

- (1) (E008) Payment to Council, prior to the issue of the Subdivision Certificate (for Stage 2) 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.

- (2) Prior to issue of the Subdivision Certificate, details of compliance with the Bushfire Safety Authority issued with this consent is to be provided to Council.
- (3) (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).
- (4) (E195) The application for Subdivision Certificate shall include creation of reciprocal rights of access over the existing access roads to provide satisfactory access in accordance with comply with PBP 2006.
- (5) (E196) The application for Subdivision Certificate shall include Creation of a restriction to the land use, pursuant to section 88B of the 'Conveyancing Act 1919' on all lots within the subdivision which includes the following:

- a) Proposed reciprocal rights of access over various existing tracks, that are proposed to provide alternative access to/from proposed Lots 1 to 4.

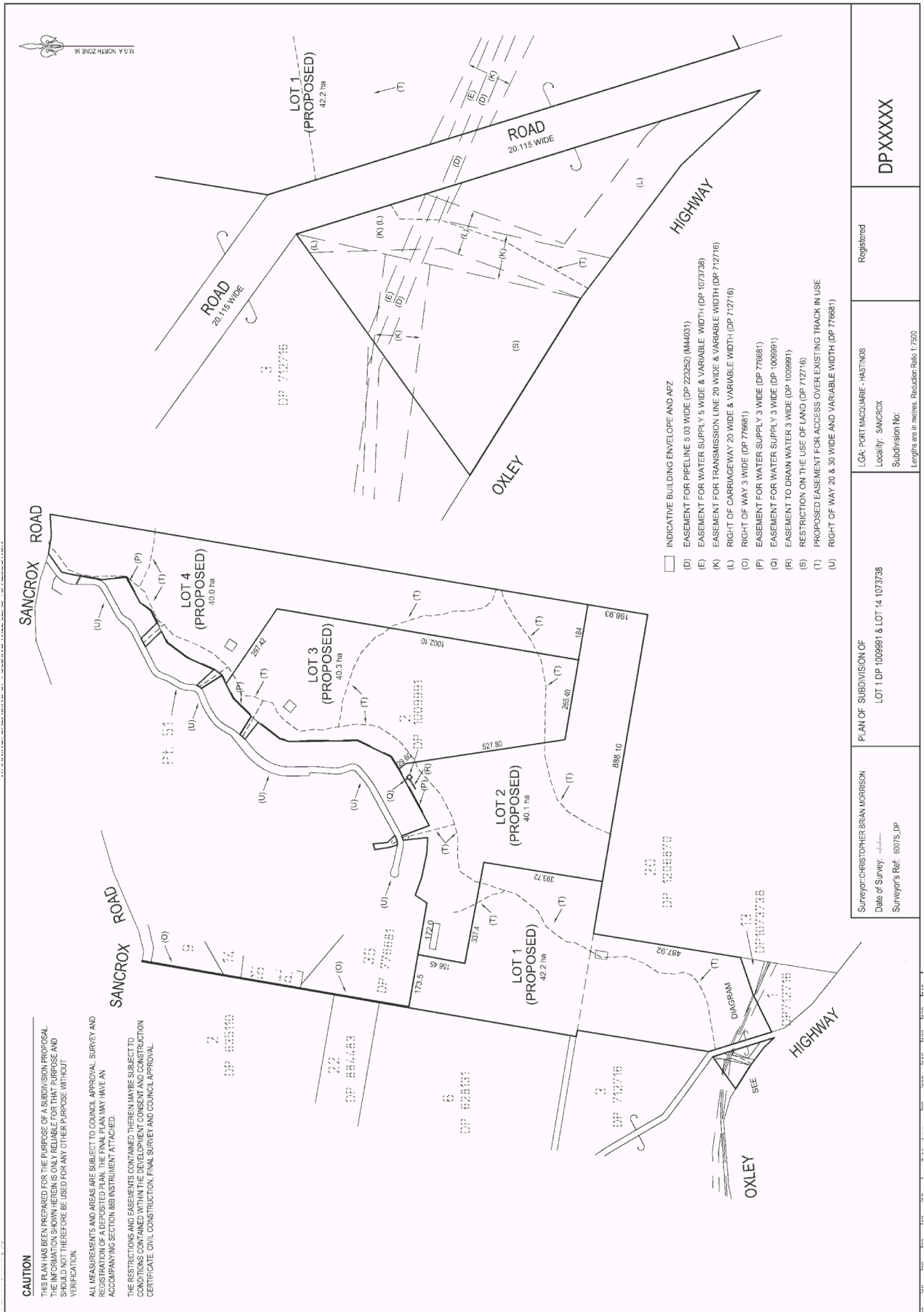
These access roads are to be constructed to and maintained in accordance with the requirements of section 4.1.3 Access (2) - Property Access, of PBP 2006.

- b) Any application for future water service and meters will include the costs associated with a water service and water meter installation and payment of development contributions under Section 64 of the Water Management Act 2000 (unless contributions credits are identified).

F – OCCUPATION OF THE SITE

nil

DRAFT



All communications to be addressed to:

Headquarters
4 Murray Rose Ave
Sydney Olympic Park NSW 2127

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: records@rfs.nsw.gov.au

Facsimile: 8741 5433



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

Your Ref: 2018/131
Our Ref: D18/4823
DA18031412202 BS

ATTENTION: Patrick Galbraith-Robertson

28 May 2019

Dear Mr Galbraith-Robertson

Integrated Development Application - 14/1073738 & 1/1009991 - Oxley Highway, Sancrox Road Sancrox

I refer to your correspondence dated 21 March 2019 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the 'Environmental Planning and Assessment Act 1979', and a Bush Fire Safety Authority, under Section 100B of the 'Rural Fires Act 1997', are now issued subject to the following conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. A restriction to the land use, pursuant to section 88B of the 'Conveyancing Act 1919', shall be placed on all lots within the subdivision requiring the provision of asset protection zones (APZ) and building envelopes (BEs), as identified on the following noted drawings prepared by King and Campbell and all dated 1/3/19. The APZs shall be managed as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones';
 - "Proposed Lot 1 - Building Envelope 40 x 25",
 - "Proposed Lot 2 - Building Envelope 85 x 21", and dated 1/3/19, and
 - "Proposed Lot 3 & 4 - Building Envelope 30 x 30".

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Any alteration to the electricity supply network required to service the subdivision shall comply with either section 4.1.3 of 'Planning for Bush Fire Protection 2006' or the requirements of Essential Energy NSW.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

3. The primary access for proposed lots 2 – 4, that are to be a combination of; an on-site property access road, and a private road (being Le Clos Sancrox Road), that lead to the public road Sancrox Road in the north, are to be compliant with the requirements of; section 4.1.3 Access (2) Property Access of PBP 2006 for those access roads located within each lot and section 4.1.3 Access (1) Public Road for the private road known as Le Clos Sancrox Road that connects to the public road Sancrox Road in the north.

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

4. A restriction to the land use, pursuant to section 88B of the 'Conveyancing Act 1919', shall be placed on all lots within the subdivision covering the proposed reciprocal right of ways over various existing tracks, that are proposed to provide alternative access to/from Lots 1 – 4.

These access roads are to be; constructed to, and maintained in accordance with the requirements of section 4.1.3 Access (2) – Property Access, of PBP 2006.

General Advice – consent authority to note

- The above conditions and advices are provided following assessment by the NSW RFS after; considering all relevant legislation and by using information provided by Port Macquarie - Hastings Council, that included the following noted drawing(s);
 - o The undated plan titled "Plan of subdivision of lot 1 DP 1009991 & Lot 14 DP 1073738", prepared by Kevin Bradley Pritchard that includes the Surveyors reference 6007S_DP,
 - o The building envelope plans prepared by King and Campbell titled; "Proposed Lot 1- Building Envelope", "Proposed Lot 2 - Building Envelope" and "Proposed Lot 3 & 4 - Building Envelope" that are all dated 1/3/19.

Council is further advised that where a minor amendment, to the above noted plans, is proposed (i.e. after this Bush Fire Safety Authority has been issued) the NSW RFS advises that Council may use its discretion to determine whether such minor amendment requires further assessment, for the reissue of a BFSA, to be undertaken by the NSW Rural Fire Service.

- This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 4.14 of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

- Establishment of asset protection zones on proposed Lots 1 - 4 may require the clearing of vegetation. This bush fire safety authority does not authorise the clearing of any vegetation, nor does it include an assessment of potential ecological impacts of clearing vegetation for the purpose of establishing asset protection zones. Approvals necessary for the clearing of vegetation should be obtained prior to the establishment of any asset protection zones.

This letter is in response to a further assessment of the application submitted and supersedes our previous general terms of approval dated 26 July 2018.

Should you wish to discuss this matter please contact Bradford Sellings on 1300 NSW RFS.

Yours sincerely



Alan Bawden

Team Leader - Development Planning and Assessment

For general information on bush fire protection please visit www.rfs.nsw.gov.au

Developer Charges - Estimate

Applicants Name: 3 Sons Investments Pty Ltd
 Property Address: Oxley Highway, Sancroix
 Lot & Dp: Lot(s):1 & 14,DP(s):1009991 & 1073738
 Development: Subdivision - 2 into 4 lots



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 N/A			
2 N/A			
3 Since 1.7.04 - Major Roads - Rural - Per ET	2	\$8,056.00 Per ET	\$16,112.00
4 Since 31.7.18 - Open Space - Rural - Per ET	2	\$4,809.00 Per ET	\$9,618.00
5 Commenced 3 April 2006 - Com, Cul and Em Services CP - Rural	2	\$5,180.00 Per ET	\$10,360.00
6 Com 1.3.07 - Administration Building - All areas	2	\$903.00 Per ET	\$1,806.00
7 Commenced 3 April 2006 - Com, Cul and Em Services CP - Bushfire	2	\$501.00 Per ET	\$1,002.00
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		\$855.70
16			
17			
18			
Total Amount of Estimate (Not for Payment Purposes)			\$39,753.70

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-Jun-2019

Estimate Prepared By Clinton Tink

This is an ESTIMATE ONLY - NOT for Payment Purposes

ns Investments Pty Ltd, Oxley Highway, Sancroix, 5-Jun-2019.xls

PORT MACQUARIE-HASTINGS COUNCIL