

---

**PRESENT**

**Members:**

Paul Drake (Independent Members)  
Robert Hussey (Independent Members)  
Dan Croft (Group Manager Development Assessment)

**Other Attendees:**

Grant Burge (Engineering Development Coordinator)  
Pat Galbraith-Robertson (Development Assessment Coordinator)

---

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 26 February 2020 be confirmed with the following changes:

Item 6: DA2019 - 215.1 - Residential Flat Building Including Clause 4.6 Objection To Clause 4.3 (Height Of Buildings) Under The Port Macquarie Hastings Local Environmental Plan 2011 At Lot 22 DP38266, No. 5 Gray Street:

That it be recommended to Council that DA2019-215.1 for a Residential Flat Building Including Clause 4.6 Objection to Clause 4.3 (Height of Buildings) of the Port Macquarie-Hastings Local Environment Plan 2011 at Lot 22, DP 38266, No. 5 Gray Street Port Macquarie, be determined by refusing consent for the following reasons:

- 
1. This application proposes a number of variations to the development controls including the building height, side and rear setbacks and also has a compromised private open space area. The height exceedance is subject to a Clause 4.6 request to vary the height standard, which has an exceedance in the order of 14%. The subject Clause 4.6 request response does not satisfactorily demonstrate how strict compliance with the development standard is unreasonable and unnecessary in this case.  
The environmental planning grounds advised in the written Clause 4.6 request must justify that the contravention of the development standard is not simply to promote the benefits of carrying out the development as a whole. Accordingly, I do not consider the Clause 4.6 is satisfactory and therefore consent should not be granted
  2. The proposal to have 3 garages and a large driveway fronting Gray Street is not considered to demonstrate adequate compatibility with the existing streetscape, noting that other buildings in the street have open landscaping in the front setback area.
- 

#### **04 DISCLOSURES OF INTEREST**

---

There were no disclosures of interest presented.

---

#### **05 DA2019 - 649.1 TORRENS TITLE SUBDIVISION AND CONSTRUCTION OF A DWELLING INCLUDING CLAUSE 4.6 OBJECTION TO CLAUSE 4.1 (MINIMUM LOT SIZE) OF PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 144, DP 1230897, NO. 4 SHORE BREAK CRESCENT, LAKE CATHIE**

---

Speaker:  
Garth Schmitzer (applicant)

The Panel was unable to reach consensus.

*MOTION: Robert Hussey:*

That it be recommended to Council that DA2019 - 649.1 for a torrens title subdivision and construction of a dwelling including clause 4.6 objection to clause 4.1 (minimum lot size) of Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 144, DP 1230897, No. 4 Shore Break Crescent, Lake Cathie, be determined by refusing consent for the following reasons:

1. The determination of this application depends on the acceptance of a Clause 4.6 written submission seeking a variation in the order of 75% reduction for the minimum (1000m<sup>2</sup>) lot size development standard in this R3 Residential zone. The proposed lots are 227m<sup>2</sup> and 265m<sup>2</sup>
  2. The Clause 4.6 relies substantially on the fact that this 1000m<sup>2</sup> development standard has been effectively abandoned by Council. This seems to be the case because the subject Lot 144 was created along with some approximately 14 other similar lots with
-

- 
- areas in the order of 450 - 500m<sup>2</sup>. This outcome relied on a Clause 4.6 to vary the 1000m<sup>2</sup> Development Standard by 50%. However, the subject land is covered by the DCP 2013 controls for Area 14 Precinct B, which envisaged a mix of low density and medium density with the medium density evolving from the 1000m<sup>2</sup> lots.
3. From the site inspection and the documentation before the Panel, there is no significant evidence of any medium density development in this Area 14. Instead, it is substantially characterised by detached low density lots/dwellings.
  4. The proposal continues this pattern but with smaller (further 50% reduction in area) lots 1 and 2.
  5. The Clause 4.6 states that this increase in residential yield is consistent with Council's desired residential density for the area. The Clause 4.6 does not address in any detail the underlying objective or purpose of the 1000m<sup>2</sup> development standard, which is presumably to enable the economic and orderly development of some of the land in this Precinct B. Instead, the Clause 4.6 notes that the proposal will achieve the objectives of the relevant development standard, notwithstanding non-compliance with the standard.
  6. However, this proposal does not contribute to the medium density expectation of the development controls. What it proposed is much smaller, low density lots than the original compromise allowed by Council, resulting in 2 lots that do not comply with the overall lot depth in the DCP and have comprised rear setbacks. As such the approval of the proposal is likely to set a further precedent of subdivision of the other low density block, which impacts the amenity of the area with reduced boundary setbacks, less open space areas and less orderly development. In this regard the Public Interest is usually well served by the public having confidence in the consistent application of the adopted planning controls.
  7. With reference to the Wehbe test Clause 4.6 does not adequately address the underlying objectives of the 1000m<sup>2</sup> development standard, part of which is facilitate orderly and economic medium density development. In so far as the Clause 4.6 states that the "desired residential yield has been achieved and this is the orderly purpose" - this is not quantitatively substantiated.
  8. With regard to the 3<sup>rd</sup> test and to whether the underlying subject as proposed would be defeated or thwarted if compliance was required and therefore compliance is unreasonable, this was not made out because a complying development could achieve the underlying objectives and achieve a mixed form of development.
  9. In summary, the Clause 4.6 is not acceptable. The proposal would comprise the established residential amenity of the area and therefore the application should be refused because it does not represent economic and orderly development as required by Clause 1.3 of the Environmental Planning and Assessment Act 1979.

*FOR: Robert Hussey and Paul Drake*  
*AGAINST: Dan Croft*

*DISSENTING MOTION: Dan Croft*

That it be recommended to Council that DA2019 - 649.1 for a torrens title subdivision and construction of a dwelling including clause 4.6 objection to clause 4.1 (minimum lot size) of Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 144, DP 1230897, No. 4 Shore Break Crescent, Lake Cathie, be determined by granting consent subject to the recommended conditions.

---

**06 GENERAL BUSINESS**

---

Nil.

---

The meeting closed at 2:45pm.