

ORDINARY COUNCIL

LATE REPORTS

Wednesday 21 October 2020

Ordinary Council Meeting

Wednesday, 21 October 2020

Items of Business

Item	Subject	Page
13.08	DA2020 - 433.1 ALTERATIONS AND ADDITIONS TO DWELLING, PART CHANGE OF USE TO SECONDARY DWELLING AND CONSTRUCTION OF SWIMMING POOL INCLUDING CLAUSE 4.6 OBJECTION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF THE PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 392 DP 236950, NO. 1 VENDUL CRESCENT, PORT MACQUARIE APPLICANT: D J & J WEATHERLEY OWNER: D J & J WEATHERLEY	
	Attachment 1: DA2020 - 433.1 Recommended Conditions	4
	Attachment 2: DA2020 - 433.1 DAP Report 14 October 2020.....	8

4 Your Natural and Built Environment

What we are trying to achieve

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

What the result will be

We will have:

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

How we will get there

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

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2020/433****DATE: 2/10/2020****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 Set	Project No 1588	Robert Snow Architect	29 May 2020
Bushfire Certificate	1588-SK-0.1 27.02.2020	S & K Johnson	26 February 2020
BASIX Certificate	A378602	Concept Designs Australia	29 May 2020

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) (A044) The secondary dwelling shall be provided with a water service from the same meter as the principal dwelling. Any additional water service will incur contributions for augmentation of the town water supply headworks in accordance with the provisions of the relevant Section 64 Development Servicing Plan.
- (4) (A009) The development site is to be managed for the entirety of work in the following manner:
- Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - Appropriate dust control measures;

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

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

B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
 - Position and depth of the sewer (including junction)
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (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;
 - ii. or 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) (B045) A schedule of existing and proposed fire safety measures is to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (4) (B046) The building shall be designed and constructed so as to comply with the Bushfire Attack Level (BAL) 29 requirements of Australian Standard 3959 and the specifications and requirements of Planning for Bush Fire Protection. 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 the current Planning for Bush Fire Protection Guidelines to prevail in the extent of any inconsistency with the Building Code of Australia.

C – PRIOR TO ANY WORK COMMENCING ON SITE

Nil

D – DURING CONSTRUCTION

- (1) (D015) The swimming pool shall not 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) (D017) In accordance with the Swimming Pool Regulation a sign is to be erected and maintained that:
 - (a) Bears a notice containing the words "This swimming pool is not to be occupied or used", and
 - (b) Is located in a prominent position in the immediate vicinity of that swimming pool, and
 - (c) Continues to be erected and maintained until an Occupation Certificate has been issued for the pool.
- (4) (D029) Any demolition work shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.

Should asbestos be present, its removal shall be carried out in accordance with the National OH&S Committee – *Code of Practice for Safe Removal of Asbestos* and *Code of Practice for the Management and Control of Asbestos in Workplaces*.

For further information on asbestos handling and safe removal practices refer to the following links:

[Safely disposing of asbestos waste from your home](#)

[Fibro & Asbestos - A Renovator and Homeowner's Guide](#)

[Asbestos Awareness](#)

- (5) (D000) Any excess fill is to be disposed of at an approved location or taken to an approved waste management facility.
- (6) (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.

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) (E051) Prior to occupation or the issuing of any Occupation Certificate a Section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (4) (E020) The provision of a suitable sign containing the details required by the current Swimming Pools Act and Regulations.
- (5) (E021) The swimming pool is to be fenced in accordance with the Swimming Pools Act 1992.
- (6) (E016) Prior to occupation or the issue of the Occupation Certificate (or Part Occupation Certificate) the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate (or interim fire safety certificate in the case of a building or part of a building occupied before completion) in accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.

F – OCCUPATION OF THE SITE

- (1) (F004) The dwellings are approved for permanent residential use and not for short term tourist and visitor accommodation.
- (2) (F009) All new and existing essential fire safety measures shall be maintained in working condition at all times.
- (3) (F010) Within each 12 months after completion of the building, the owner of the building must cause Council to be given an annual fire safety statement in accordance with Clause 177 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The statement must only be in the form specified by clause 181 of the Regulation. A copy of the statement is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.
- (4) (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 pm
 - Should 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.

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Item: 08

Subject: DA2020 - 433.1 ALTERATIONS AND ADDITIONS TO DWELLING, PART CHANGE OF USE TO SECONDARY DWELLING AND CONSTRUCTION OF SWIMMING POOL INCLUDING CLAUSE 4.6 OBJECTION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF THE PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 392 DP 236950, NO. 1 VENDUL CRESCENT, PORT MACQUARIE

Report Author: Development Assessment Planner, Chris Gardiner

Applicant: D J & J Weatherley
Owner: D J & J Weatherley
Estimated Cost: \$475,000
Parcel no: 24330

Alignment with Delivery Program

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

RECOMMENDATION

That it be recommended to Council that DA2020 - 433.1 for alterations and additions to dwelling, part change of use to secondary dwelling and construction of swimming pool including Clause 4.6 Objection to Clause 4.3 (Height of Buildings) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 392, DP 236950, No. 1 Vendul Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a development application for alterations and additions to the existing dwelling, part change of use to a secondary dwelling and construction of a 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, no submissions were received.

The application includes a Clause 4.6 objection to Clause 4.3 (Height of Buildings) of the Port Macquarie-Hastings Local Environmental Plan 2011. The variation to the standard exceeds 10% and the application is required to be determined by Council following consideration by the Development Assessment Panel.

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 in a significant adverse social, environmental or economic impact.



Item 08

Page 127

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

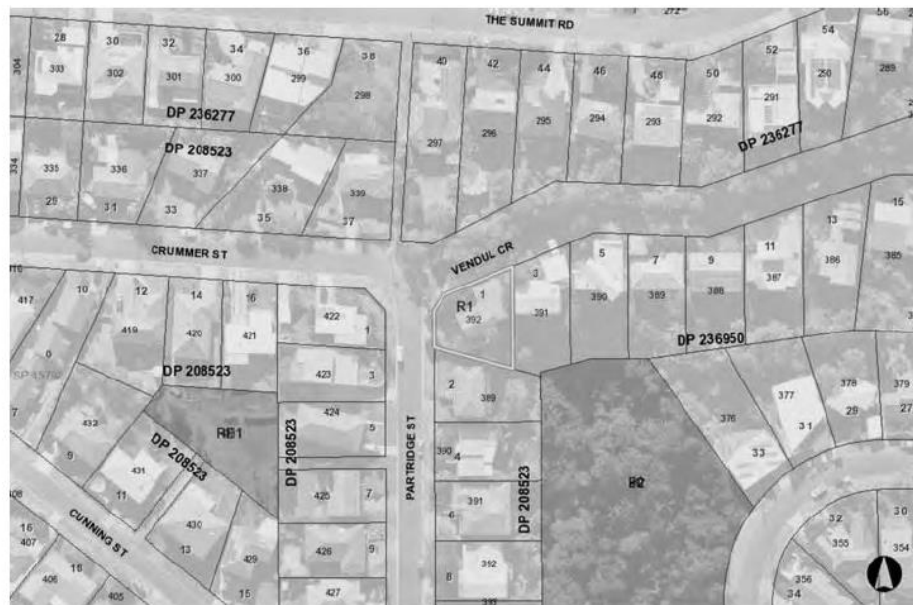
This report recommends that the development application be approved subject to the conditions in **Attachment 1**.

1. BACKGROUND

Existing Sites Features and Surrounding Development

The site has an area of 562.8m².

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:

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020**2. DESCRIPTION OF DEVELOPMENT**

Key aspects of the proposal include the following:

- Alterations and additions to dwelling;
- Conversion of part of the ground floor area to a secondary dwelling; and
- Construction of a new swimming pool and fencing.

Refer to **Attachment 2** at the end of this report for plans of the proposed development.

Application Chronology

- 1 June 2020 - Application lodged.
- 15 June 2020 to 29 June 2020 - Neighbour notification.

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:

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

State Environmental Planning Policy (Koala Habitat Protection) 2019

Clause 10 - The site isn't identified on the Koala Development Application Map or under a Koala Plan of Management and the land has an area less than 1 hectare



AGENDA**DEVELOPMENT ASSESSMENT PANEL
14/10/2020**

including adjoining land in the same ownership. The SEPP does not prevent the granting of consent on the land being less than 1 hectare in area. The application has also demonstrated that no habitat will be removed or modified 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 not within areas mapped as a wetland or littoral rainforest area. However, it is located within a proximity area for littoral rainforests. The south-eastern tip of the site is mapped as Coastal Use Area.

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

In accordance with Clause 11, the proposed development is not expected to significantly impact the biophysical, hydrological or ecological integrity of the adjacent littoral rainforest, or the quality or quantity of water flows to or from the adjacent littoral rainforest. The proposed works are contained within the managed yard of an existing dwelling and conditions have been recommended to ensure adequate stormwater management and erosions and sediment control.

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

In accordance with Clause 15 the proposal is not likely to cause increased risk of coastal hazards on that land or other land.

The bulk, scale and size of the proposed development is compatible with the existing built form. The site has an existing dwelling on it and is located within an area zoned for residential purposes.

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

Item 08

Page 130

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

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.

State Environmental Planning Policy (Affordable Rental Housing) 2009

Clause 20 - The site is in a prescribed zone and secondary dwellings are permissible with consent pursuant to the SEPP.

Clause 22(2) - The development would not result in there being a dwelling other than the primary dwelling and the secondary dwelling.

Clause 22(3) - The proposed secondary dwelling would not have a floor area exceeding 60m² and the combined floor area of the primary and secondary dwelling would not exceed the maximum permitted under the Port Macquarie-Hastings Local Environmental Plan 2011 (see comments below under LEP).

Clause 22(4) - It is noted that consent cannot be refused on the grounds of site area or parking.

Clause 24 - It is noted that the consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out.

The requirements of this SEPP are therefore satisfied.

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.
- Clause 2.3(1) and the R1 zone landuse table - The dwelling house and secondary dwelling are permissible land uses 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 provides a variety of housing types to meet the housing needs of the community.
 - Clause 4.3 - The maximum overall height of the building above ground level (existing) is 11.75m, which exceeds the standard height limit of 8.5 m applying to the site by 38%. A Clause 4.6 assessment is provided below, which concludes that the proposed roof extension over the rear deck is minor, and retains open areas. The height is consistent with a number of other dwellings in the neighbourhood and is a reflection of the steep topography of the area.
 - Clause 4.4 - The floor space ratio of the proposal is 0.55:1 which complies with the maximum 0.65:1 floor space ratio applying to the site.
 - Clause 4.6 - This clause establishes a degree of flexibility for certain development standards in certain circumstances which have demonstrated that a better planning outcome will occur from that flexibility. In this regard, the



AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

proposal seeks a variation to the building height standard. Assistance on the approach to variation to this standard is also taken from NSW Land and Environment Court and NSW Court of Appeal decisions in:

1. *Wehbe v Pittwater Council (2007) NSW LEC 827 (Wehbe);*
2. *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009; and*
3. *Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) NSWCA 245*

Having regard to specific requirements of clause 4.6(3) and 4.6(4) the following assessment comments are provided:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comments: The Applicant has submitted a request in writing (**Attachment 3**) to justify the contravention of the building height standard for the following reasons (as summarised):

- Compliance with the development standard is unnecessary in the circumstances of the case as the proposal satisfies the objectives of Clause 4.3 notwithstanding the numerical variation.
- Compliance with the development standard is unreasonable and unnecessary due to other height variations approved by Council in the locality. The Clause 4.6 written request includes a number of examples of approved buildings exceeding the height limit in the Lighthouse Beach area.
- The proposed roof addition over the existing upper floor balcony has been designed to be substantially open/openable to reflect the existing situation.
- The site slopes steeply from north to south.
- The existing building already exceeds the height limit and the proposed deck addition will sit below the roof of the existing dwelling.
- The provision of shade to an outdoor area will help reduce the incidence of skin cancer and improve the welfare of the community.

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3),*

In *Wehbe* five methods have been developed to test whether compliance with a development standard is unreasonable or unnecessary:

1. The objectives of the standard are achieved notwithstanding the non-compliance with the numerical standard and therefore compliance is unnecessary.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.



AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting a consent to proposals departing from the standard and hence compliance is unreasonable and unnecessary.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land.

The proposal relies upon the first and fourth tests and it is considered that the Applicant's written request had satisfactorily demonstrated that the proposed development will achieve the objectives of the height of building development standard despite the numerical non-compliance. Evidence has also been provided of a history of departures from the height of building standard on similar steeply sloping sites in the Lighthouse Beach area. However, the number of departures is not considered to constitute a total abandonment of the development standard by Council, particularly given that the variations have been appropriately considered in accordance with Clause 4.6. Notwithstanding this, the first test alone is sufficient to establish that compliance with the standard is unnecessary.

The written request also demonstrates that there are sufficient environmental planning grounds for the variation, with the steep topography and height of the existing dwelling being of particular merit. In relation to the comments relating to providing shade to outdoor areas and reducing the incidence of skin cancer in the community, this is an important message more broadly, but it is not considered to add any weight to the case for varying the development standard in this instance. The area is for private use and the shade wouldn't provide a broader public benefit to the community. There are also a number of opportunities to provide shade to outdoor spaces on the site below the height limit.

Overall, it is considered that the Applicant's clause 4.6 variation has adequately addressed the matters required to be demonstrated by clause 4.6(3).

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

The consistency of the proposal with the zone objectives has been discussed above under Clause 2.3. Consideration of the proposal's consistency with the objectives of height of buildings standard (Clause 4.3) is provided as follows:

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

Comments: The height of the proposed building is not out of character with existing development in the area. There are a number of examples of buildings on steeply sloping sites in the area, which are 3 to 4 storeys at the rear. The height of the roof over the upper floor balcony is lower in terms of RL than the ridge of the curved roof of the existing dwelling. The roof has been designed to be largely open to reduce its bulk. The bulk and scale of the proposal is considered to be acceptable and is below the maximum permitted FSR for the area.



Item 08

Page 133

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

The building would continue to present as a two-storey dwelling to the primary street frontage in Vendul Crescent

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

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

1. The development will not result in an increased loss of solar access to adjoining property. The adjoining dwelling to the south of the site has no living area windows on its northern elevation and has its main indoor and outdoor living spaces oriented towards the views to the south and east.
2. The proposal will not result in the disruption of any significant views. The roof addition is located below the level of the top of the existing roof of the dwelling and will not be visible from any angle where key views are obtained across the property.
3. Potential privacy impacts have been satisfactorily addressed in the building design. The height variation would not contribute to any adverse privacy impacts, as it is the deck that creates the potential privacy impact rather than the proposed roof addition.
4. Neighbour notification of the proposal did not identify any concerns regarding loss of amenity to nearby properties.

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

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

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

Comments: The site is surrounded by land with similar zoning and building height controls and is not in a location where development provides a transition in built form or land use intensity.

The development is consistent with the zoning and height objectives of the LEP 2011 and is unlikely to have any implications on State related issues or the broader public interest.

- (b) the concurrence of the Secretary has been obtained.*

Comments: In accordance with Planning Circular PS 20-002, the Secretary's concurrence can be assumed for variations to the height of buildings development standard. However, as the extent of the variation exceeds 10% the application is required to be determined by Council, to ensure that there is transparency in the decision-making process.

Having regard to the above requirements it is recommended that the height variation using Clause 4.6 be supported.

- Clause 5.4 - The proposed secondary dwelling has a floor area of 60m² and does not exceed 33% of the total floor area of the principal dwelling.
- Clause 5.10 - Heritage. The site does not contain or adjoin any known heritage items or sites of significance.



AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

- Clause 7.1 - The site is not mapped as containing any areas of potential acid sulfate soils.
- Clause 7.6 - The site is not mapped as being impacted by Coastline Hazards.
- Clause 7.9 - The site is not mapped as being in an area subject to acoustic controls.
- Clause 7.13 - Satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force

Port Macquarie-Hastings Development Control Plan 2013

DCP 2013: Part C - Development Specific Provisions - C1: Low Density Residential Development			
DCP Objective	Development Provisions	Proposed	Complies
Front Setbacks			
44	<p>a) Dwellings may incorporate an articulation zone to a street frontage at no less than 3m from property boundary. The following building elements are permitted within the articulation zone:</p> <ul style="list-style-type: none"> – an entry feature or portico; – a balcony, deck, patio, pergola, terrace or verandah; – a window box treatment; – a bay window or similar feature; – an awning or other feature over a window; – a sun shading feature. <p>b) These building elements should not extend above the eave gutter line, other than a pitched roof to an entry feature or portico that has the same pitch as the roof on the dwelling house.</p> <p>c) The primary road front setback shall be: Classified road = any frontage 6.0m</p>	<p>No building works are proposed within the 3m front articulation zone.</p> <p>Primary frontage - no alteration to the existing garage setback to Vendul Crescent.</p>	<p>Yes</p> <p>N/A</p>



Item 08

Page 135

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

	Primary frontage = 4.5m Secondary frontage = 3.0m Ancillary Lane = 2.0m Large lot residential and rural zones = 10.0m	Secondary frontage - no reduction to the secondary frontage setback is proposed.	
45	a) A garage, carport or car parking space should: <ul style="list-style-type: none"> – be at least 1m behind the building line, where the dwelling(s) has a setback from a front boundary of 4.5m or more, or – be at least 5.5m from a front boundary, where the dwelling(s) has a setback of less than 4.5m. 	There is no change proposed to the location of the garage, garage door or driveway crossover.	N/A
	b) The total width of the garage/carport openings should not be more than 6m and not more than 50 per cent of the width of the building.	There is no change proposed to the location of the garage, garage door or driveway crossover.	N/A
	c) Driveway crossovers are no greater than 5.0m in width.	There is no change proposed to the location of the garage, garage door or driveway crossover.	N/A
	d) Where a dual occupancy or attached dwelling is proposed on a corner lot a garage and driveway is provided on each road frontage.	The granny flat is on the ground level of the dwelling. It has a driveway onto Partridge Street. The main dwelling has a driveway and garages onto Vendul Crescent.	Yes
Side and Rear Setbacks			
46	a) A minimum rear boundary setback of 4m is to be provided to dwellings (including verandahs, patios and decks).	Minimum rear boundary does not apply to corner lots.	N/A
	b) A minimum rear boundary setback of 900mm applies to sheds and swimming pools subject to achieving minimum required private open space area.	N/A	N/A
	c) Council may consider varying rear setback requirements where it is demonstrated that the	N/A	N/A

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

	private open space could achieve better solar access between the building and the side setback. In that instance, one side setback should be a minimum 4m in width (for an equivalent length of rear boundary, behind building line) and the rear setback may be reduced to 900mm.		
47	a) Ground floors (being <1m above existing ground level) should be setback a minimum of 900mm from side boundaries.	All side setbacks are greater than 900mm from side boundary.	Yes
	b) First floors and above (including single storey with floor level >1m) should be setback a minimum of 3m from the side boundary, or reduced down to 900mm where it can be demonstrated that the adjoining property's primary living rooms and principal private open space areas are not adversely overshadowed for more than 3hrs between 9am - 3pm on 21 June.	<p>The existing north eastern side setback is 1.485m from the side boundary (neighbouring Lot 391 DP 236950). This remains unchanged.</p> <p>The south western most point of the existing dwelling is 1.5m from the side boundary (neighbouring Lot 389 DP 208523).</p> <p>The proposal is to provide a roller shade cover over the balcony on the first floor (south east elevation) and extended to full width of building at 10deg pitch. The corner of the roof will be extended to the dwelling edge at 1.5m from the neighbouring boundary. Due to the existing built form Lot 389 DP208523 is already overshadowed.</p>	No, but acceptable
	c) First floors and above should have building walls that step in and out at least every 12m by a minimum of 500mm articulation. Where first floors and above are setback >3m, wall articulation is not required.	No walls are unarticulated for 12m or greater.	Yes
Private Open Space			

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

48.	<p>a) All dwellings should have a minimum area of private open space of 35m², which includes a principal private open space area with:</p> <ul style="list-style-type: none"> – a minimum dimension of 4m x 4m, and – a maximum grade of 5% for minimum 4m x 4m of the total open space requirement, and – direct accessibility from a ground floor living area and orientated to maximise use. 	<p>Outdoor living space exceeds 35m² and includes the pool area.</p> <p>Granny flat has an existing outdoor paved area to achieve the 4m x 4m area.</p> <p>Proposal will provide better connection from the main dwelling to the outdoor area on the southern side of the dwelling.</p>	Yes
	b) Private open space may include clothes drying areas and garbage storage.	Noted.	
Public Domain and Fencing			
49	a) Front fences built forward of the building line for the primary road frontage should be detailed on the development application plans.	Plan set includes fence detail.	Yes
	<p>b) Solid Front fences up to 1.2m high should be:</p> <ul style="list-style-type: none"> – Setback 1.0m from the front boundary, and – Suitably landscaped to reduce visual impact, and – Provide a 3m x 3m splay for corner sites. 	Proposed fence 1.8m, refer to provision below.	N/A
	<p>b) Front fences proposed to be more than 1.2m high should be a maximum of 1.8m in height, above existing front property boundary level, and either:</p> <ul style="list-style-type: none"> – Include landscaped recesses having minimum dimensions of 1.8m long x 900mm deep which occupy no less than 50% of the total length of the fence, or – be erected up to the front boundary for a maximum length of 6.0m or 50% of the street frontage, 	<p>Vendul Crescent frontage will include a pool fence and compliance for such.</p> <p>Driveway is unfenced.</p> <p>Fence is max 1.8m high and no more than 50% of the length of the property boundary.</p>	Yes

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

	c) have openings which make it not less than 25% transparent (no individual opening more than 30mm wide);	Fencing provides for transparency and aligns with the splayed property boundary. The proposed fencing will not fully comply with the requirement for 25% transparency, but the fence is replacing an existing Colorbond fence that currently contains no openings. The introduction of some transparency to the proposed fence is considered to be an improvement to the current situation.	No, but acceptable
	d) provide a 3m x 3m splay for corner sites, and	Fence aligns with splayed property boundary	Yes
	e) provide a 900mm x 900mm splay for vehicle driveway entrances.	Driveway is unfenced.	N/A
Bulk and Scale			
51	a) Direct views between indoor living rooms and principal private open space of adjacent dwellings, including proposed dwellings approved on adjoining lots, including possible dwellings on future lots, should be obscured or screened where: <ul style="list-style-type: none"> Ground and first floor (and above) indoor living room windows are within a 9m radius. Direct views between principal private open space areas where within a 12m radius. Direct views between indoor living rooms of dwellings into the principal area of private open space of other dwellings within a 12m radius. 	Complies with ground and upper floor privacy areas. Lower areas to be screened by fencing and orientation of windows.	Yes
	b) A balcony, deck, patio, pergola, terrace or verandah should have a privacy screen where there are	Upper balcony area proposed to include screening on the eastern end.	Yes

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

	<p>direct views of:</p> <ul style="list-style-type: none"> Indoor living room windows of adjacent dwellings, including proposed dwellings approved on adjoining lots within 9m radius; or Principal areas of private open space of adjacent dwellings, including proposed dwellings approved on adjoining lots within a 12m radius. 		
	<p>c) Privacy protection is not required for:</p> <ul style="list-style-type: none"> Any Indoor living room windows with a sill height of greater than 1.5m above the finished floor level of that room or where fixed non-openable translucent glass is installed to the same height. 	Noted.	
	<p>d) Direct views described above may be reduced or obscured by one of the following measures (details to be submitted with the development application):</p> <ul style="list-style-type: none"> 1.8m high fence or wall between ground-floor level windows or between a dwelling and principal private open space Screening of minimum 1.7m height, that has 25% openings (max), with no individual opening more than 30mm wide, is permanently fixed and is made of durable materials. A window, the whole of which has translucent glass and is not able to be opened. 	<p>Privacy screen on the eastern end of the upper floor balcony complies with the screening requirements.</p> <p>1.8m high fencing also proposed for private open space areas of the primary and secondary dwellings.</p>	Yes

DCP 2013: Part B - General Provisions - B2: Environmental Management			
DCP Objective	Development Provisions	Proposed	Complies



AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

3	a) Development must comply with Council's Developments, Public Place & Events - Waste Minimisation and Management Policy.	Kerbside collection will remain unchanged.	Yes
Cut and Fill Regrading			
4	a) Development shall not exceed a maximum cut of 1.0m and fill of 1.0m measured vertically above the ground level (existing) at a distance of 1.0m outside the perimeter of the external walls of the building (This does not apply to buildings where such cut and fill is fully retained within or by the external walls of the building).	Terraced landscaped areas are proposed which exceed 1m of excavation outside the building footprint. The works are below street level to Vendul Crescent and will not be prominent in the streetscape. There are no adverse privacy impacts associated with the earthworks, and appropriate conditions have been recommended to ensure the stability of the retaining structures and appropriate stormwater management. The proposal is considered to be consistent with the objectives of the provision.	No, but acceptable.
5	a) A certified practicing structural engineer must certify any retaining wall greater than 1.0m.	Condition recommended requiring engineering certification of any retaining walls greater than 1m high.	Yes
	b) Where a combination of a fence and a wall is proposed to be greater than 1.2m high: <ul style="list-style-type: none"> – be a maximum combined height of 1.8m above existing property boundary level; – be constructed up to the front boundary for a maximum length of 6.0m or 30% of the street frontage, whichever is less; – the fence component has openings which make it not less than 25% transparent; and – provide a 3m x 3m splay for corner sites, and 	The fencing along Vendul Crescent will be on top of a retaining wall and the combination of the retaining wall and fence will have a combined height that is greater than 1.8m. The proposal is considered acceptable as the wall is retaining cut within the site and would not be visible in the streetscape. The fence will still present as having a height of 1.8m when viewed from Vendul Crescent.	No, but acceptable

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

	– provide a 900mm x 900mm splay for vehicle driveway entrances.		
Bushfire Hazard Management			
18	a) APZs are to be located outside of environmental protection zones and wholly provided within private land. Note perimeter roads provided as part of a residential subdivision are classified as being part of the subdivision and not a separate permissible land use within environment protection zones.	APZ for the dwelling does not extend into any environmental protection zones.	Yes
	b) Perimeter roads are to be provided to all urban areas adjoining environmental management areas and their buffers. Refer to Figure 2.	N/A	N/A
Road Hierarchy			
23	a) New direct accesses from a development to arterial and distributor roads is not permitted. Routes should differ in alignment and design standard according to the volume and type of traffic they are intended to carry, the desirable traffic speed, and other factors.	N/A	N/A
	b) Existing direct accesses from a development to arterial and distributor roads are rationalised or removed where practical.	N/A	N/A
	c) Vehicle driveway crossings are minimal in number and width (while being adequate for the nature of the development), and positioned: <ul style="list-style-type: none"> – to avoid driveways near intersections and road bends, and – to minimise streetscapes dominated by driveways and garage doors, and – to maximise on-street parking. 	Vehicular driveway crossings remain unchanged.	Yes
Parking Provision			
24	a) Off-street Parking is provided	The existing dwelling has	Yes

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

	in accordance with Table 3.	a double garage accessed from Vendul Crescent. The granny flat has an existing separate off street parking space accessed from Partridge Street.	
	b) Where a proposed development does not fall within any of the listed definitions, the provision of on-site parking shall be supported by a parking demand study.	N/A	N/A
	c) Where a proposed development falls within more than one category Council will require the total parking provision for each category.	N/A	N/A
Crime Prevention			
43	a) The development addresses the generic principles of crime prevention: <ul style="list-style-type: none"> – Casual surveillance and sightlines; – Land use mix and activity generators; – Definition of use and ownership; – Basic exterior building design; – Lighting; – Way-finding; and – Predictable routes and entrapment locations; – as described in the Crime Prevention Through Environmental Design (CPTED) principles. 	No concealment or entrapment areas proposed. Adequate casual surveillance available.	Yes

The proposal seeks to vary Development Provision relating to earthworks, fencing, and side building setbacks.

The relevant objectives are:

Objective 4:

To ensure that design of any building or structure integrates with the topography of the land to:

- *Minimise the extent of site disturbance caused by excessive cut and fill to the site. Ensure there is no damage or instability to adjoining properties caused by excavation or filling.*



Item 08

Page 143

AGENDA

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

- *Ensure that there is no adverse alteration to the drainage of adjoining properties.*
- *Ensure the privacy of adjoining dwellings and private open space are protected.*
- *Ensure that adequate stormwater drainage is provided around the perimeter of buildings and that overflow paths are provided.*

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:

- The site has significant slope and it is difficult to achieve usable outdoor spaces without large amounts of cut and fill.
- The variation relates to excavation adjacent to the Vendul Crescent frontage and the retaining walls would not be visible from the public domain.
- The excavation would not create any adverse privacy impacts.
- The proposed excavation would not affect stormwater flows around the building.
- Appropriate conditions have been recommended requiring engineering certification of the retaining walls, to ensure that the land is satisfactorily stabilised.

Objective 5:

To ensure retaining walls are functional, safe and positively contribute to the development and/or the streetscape.

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:

- The retaining walls will require engineering certification to ensure that they are functional and safe.
- The proposal includes excavation below street level along the Vendul Crescent frontage. The retaining wall would not be visible from the public domain and the fencing would present as 1.8m high when viewed from the street.

Objective 47:

*To reduce overbearing and perceptions of building bulk on adjoining properties.
To provide for visual and acoustic privacy between dwellings.*

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:

- The proposal would not significantly alter the bulk of the existing dwelling, and includes only a minor increase to the existing floor area of the building.
- The roof addition over the upper floor balcony has been designed to be largely open (including pergola and retractable shade sail). This addition will not present as adding to the bulk of the building.
- The proposal will improve privacy between the upper floor balcony and the adjoining dwelling to the east, with provision of a full height privacy screen at the eastern end.

Based on the above assessment, the variations proposed to the provisions of the DCP are considered acceptable and the relevant objectives have been satisfied. Cumulatively, the variations do not amount to an adverse impact of a significance that would justify refusal of the application.

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



AGENDA**DEVELOPMENT ASSESSMENT PANEL
14/10/2020**

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

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

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

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

The proposal will not have any significant adverse impacts on existing adjoining properties and satisfactorily addresses the public domain.

The topography in this area is such that dwellings are often stepped to match the land, which results in multi-level housing that exceeds the height limit. The existing dwelling and proposed alterations and additions are consistent with the local context, which includes dwellings constructed over three to four levels in places. The proposal adequately addresses the objectives of the planning controls for the area.

The proposal does not have a significant adverse impact on existing view sharing.

The proposal does not have significant adverse lighting impacts.

There are no significant adverse privacy impacts.

There are no significant adverse overshadowing impacts. The existing dwelling already substantially overshadows the adjoining property to the south, and given the nature of the building additions below the highest part of the existing roof line, it is not expected that the proposal would significantly change the existing impacts. The adjoining dwelling has no windows in the northern elevation and is generally oriented towards the views to the south-east.

Access, traffic and transport

The proposal will not have any significant adverse impacts in terms access, transport and traffic. The existing road network will satisfactorily cater for any increase in traffic generation as a result of the development.

Water supply connection

The site has an existing water supply connection. New plumbing associated with the development will require a Section 68 application, as recommended in the conditions.

Sewer connection

The site has an existing sewer connection. New plumbing associated with the development will require a Section 68 application, as recommended in the conditions.

Stormwater

The building is currently drained to a kerb adaptor in Vendul Crescent. The proposed building additions are capable of draining to the existing stormwater system serving



AGENDA**DEVELOPMENT ASSESSMENT PANEL
14/10/2020**

the site. Details will be required with the Section 68 application, as recommended in the conditions.

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. The site is considered to be disturbed land.

Other land resources

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

Water cycle

The proposed development will not have any significant adverse impacts on water resources and the water cycle.

Soils

The proposed development will not have any adverse impacts on soils in terms of quality, erosion, stability and/or productivity subject to a standard condition requiring erosion and sediment controls to be in place prior to and during construction.

Air and microclimate

The construction and/or operations of the proposed development will not result in any significant adverse impacts on the existing air quality or result in any pollution. Standard precautionary site management condition recommended.

Flora and fauna

Construction of the proposed development will not require any removal/clearing of any native vegetation and therefore does not trigger the biodiversity offsets scheme. Part 7 of the Biodiversity Conservation Act 2016 is considered to be satisfied.

Waste

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. No adverse impacts anticipated. Standard precautionary site management condition recommended.

Energy

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

Noise and vibration

The construction of the proposed development will not result in any significant adverse impacts on the existing air quality or result in any pollution. Standard precautionary site management condition recommended.

Bushfire

The site is identified as being bushfire prone.

The Applicant has submitted a Section 4.14 bushfire certificate prepared by a Certified Consultant. The certificate concludes that a Bushfire Attack Level 29 shall be required.



AGENDA**DEVELOPMENT ASSESSMENT PANEL
14/10/2020**

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 not considered to have any significant adverse social impacts.

Economic impact in the locality

The proposal is not considered to have any significant adverse economic impacts on the locality. A likely positive impact is that the development will maintain employment in the construction industry, which will lead to flow impacts such as expenditure in the area.

Site design and internal design

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

Construction

Construction impacts are considered capable of being managed, standard construction and site management conditions have been recommended.

Cumulative impacts

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

(c) The suitability of the site for the development

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

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

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

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

(e) The Public Interest

The proposed development satisfies relevant planning controls and will not adversely impact on the wider public interest.

(f) Ecologically Sustainable Development and Precautionary Principle

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

The four principles of ecologically sustainable development are:

- the precautionary principle,



AGENDA**DEVELOPMENT ASSESSMENT PANEL
14/10/2020**

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

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

(g) Climate change

The proposal is not considered to be vulnerable to any risks associated with climate change.

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

Development contributions will not be required under S64/S7.11 for the following reasons:

- The proposed secondary dwelling has a floor area not exceeding 60m² and is exempt from development contributions in accordance with Clause 2.5 of Council's Development Contributions Assessment Policy.

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. DA 2020 - 433.1 Recommended Conditions
2. DA2020 - 433.1 Plans
3. DA2020 - 433.1 Clause 4.6 Written Request



**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2020/433****DATE: 2/10/2020****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 Set	Project No 1588	Robert Snow Architect	29 May 2020
Bushfire Certificate	1588-SK-0.1 27.02.2020	S & K Johnson	26 February 2020
BASIX Certificate	A378602	Concept Designs Australia	29 May 2020

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) (A044) The secondary dwelling shall be provided with a water service from the same meter as the principal dwelling. Any additional water service will incur contributions for augmentation of the town water supply headworks in accordance with the provisions of the relevant Section 64 Development Servicing Plan.
- (4) (A009) The development site is to be managed for the entirety of work in the following manner:
- Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - Appropriate dust control measures;

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

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

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

B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
 - Position and depth of the sewer (including junction)
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (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;
 - ii. or 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) (B045) A schedule of existing and proposed fire safety measures is to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (4) (B046) The building shall be designed and constructed so as to comply with the Bushfire Attack Level (BAL) 29 requirements of Australian Standard 3959 and the specifications and requirements of Planning for Bush Fire Protection. 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 the current Planning for Bush Fire Protection Guidelines to prevail in the extent of any inconsistency with the Building Code of Australia.

C – PRIOR TO ANY WORK COMMENCING ON SITE

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Nil

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) (D017) In accordance with the Swimming Pool Regulation a sign is to be erected and maintained that:
 - (a) Bears a notice containing the words "This swimming pool is not to be occupied or used", and
 - (b) Is located in a prominent position in the immediate vicinity of that swimming pool, and
 - (c) Continues to be erected and maintained until an Occupation Certificate has been issued for the pool.
- (4) (D029) Any demolition work shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.
 Should asbestos be present, its removal shall be carried out in accordance with the National OH&S Committee – *Code of Practice for Safe Removal of Asbestos* and *Code of Practice for the Management and Control of Asbestos in Workplaces*.
 For further information on asbestos handling and safe removal practices refer to the following links:
[Safely disposing of asbestos waste from your home](#)
[Fibro & Asbestos - A Renovator and Homeowner's Guide](#)
[Asbestos Awareness](#)
- (5) (D000) Any excess fill is to be disposed of at an approved location or taken to an approved waste management facility.
- (6) (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.

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.

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

- (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) (E051) Prior to occupation or the issuing of any Occupation Certificate a Section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (4) (E020) The provision of a suitable sign containing the details required by the current Swimming Pools Act and Regulations.
- (5) (E021) The swimming pool is to be fenced in accordance with the Swimming Pools Act 1992.
- (6) (E016) Prior to occupation or the issue of the Occupation Certificate (or Part Occupation Certificate) the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate (or interim fire safety certificate in the case of a building or part of a building occupied before completion) in accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.

F – OCCUPATION OF THE SITE

- (1) (F004) The dwellings are approved for permanent residential use and not for short term tourist and visitor accommodation.
- (2) (F009) All new and existing essential fire safety measures shall be maintained in working condition at all times.
- (3) (F010) Within each 12 months after completion of the building, the owner of the building must cause Council to be given an annual fire safety statement in accordance with Clause 177 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The statement must only be in the form specified by clause 181 of the Regulation. A copy of the statement is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.
- (4) (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 pm
 Should 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.

DEVELOPMENT APPLICATION

D R A W I N G T R A N S M I T T A L :

[illegible]

TRANSMITTAL SHEET / RECORD:

STATUS:	C = CONSTRUCTION CG = CONSTRUCTION CERTIFICATE CQC = COMPLYING DEVELOPMENT CERTIFICATE DA = DEVELOPMENT APPLICATION FA = FOR APPROVAL P = PRELIMINARY S86 = S86 SUBMISSION S86 = SECTION 86 T = TENDER			
REVISION:	DATE:	STATUS:	TO:	
REV A	29.05.2020	DA	FMHC CLIENT & DESIGN TEAM	

ROBERT SNOW ARCHITECT
NEW SOUTH WALES ARCHITECTS REGISTRATION BOARD NUMBER: 8969

ALTERATIONS & ADDS, Lot 392 DP 236950, 1 VENDUL CRESCENT
PMQ 2444

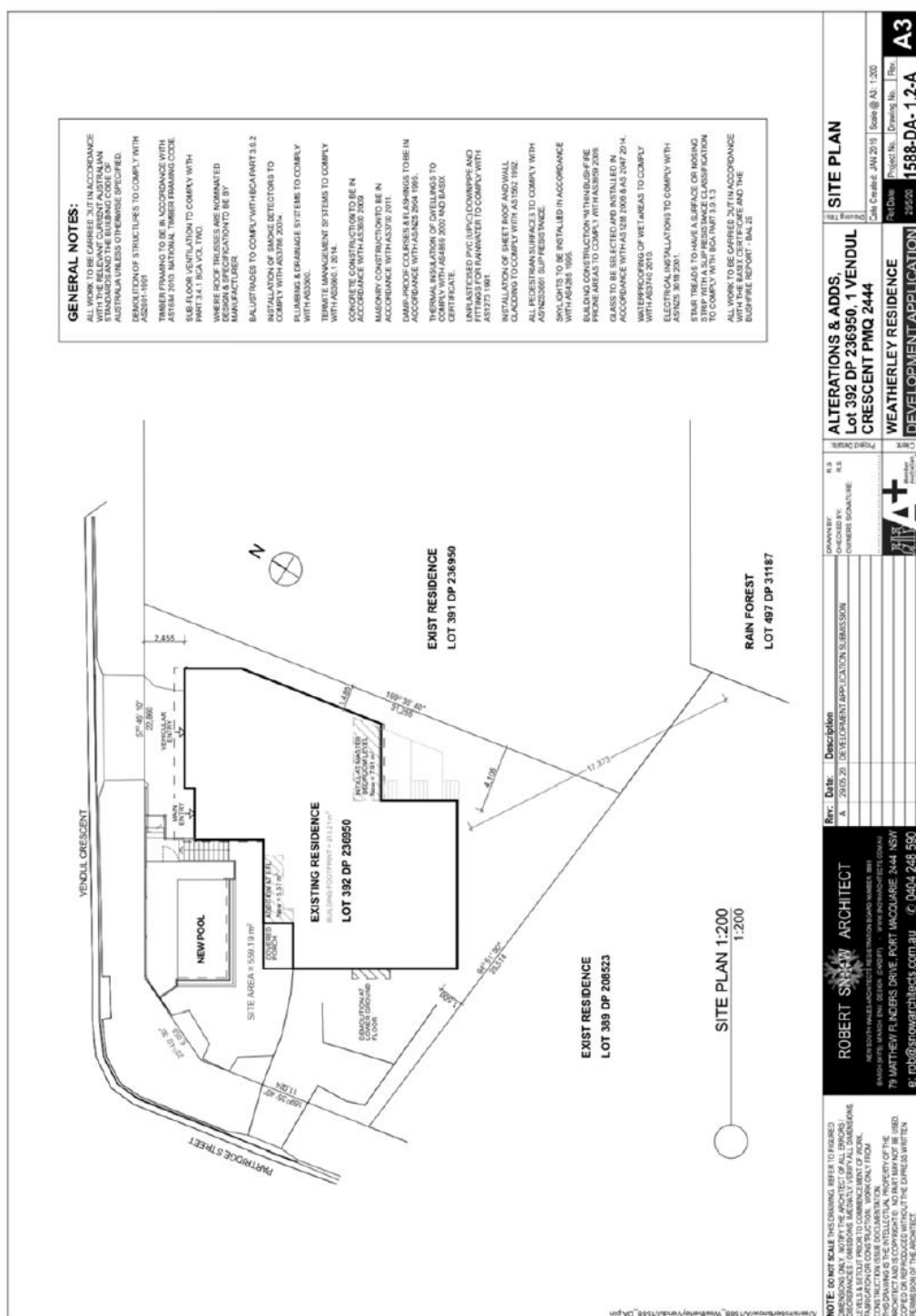
CLIENT: WEATHERLEY
RESIDENCE

COVER SHEET

Project No.	Drawing No.	Rev.
1588-DA-0.1-A		

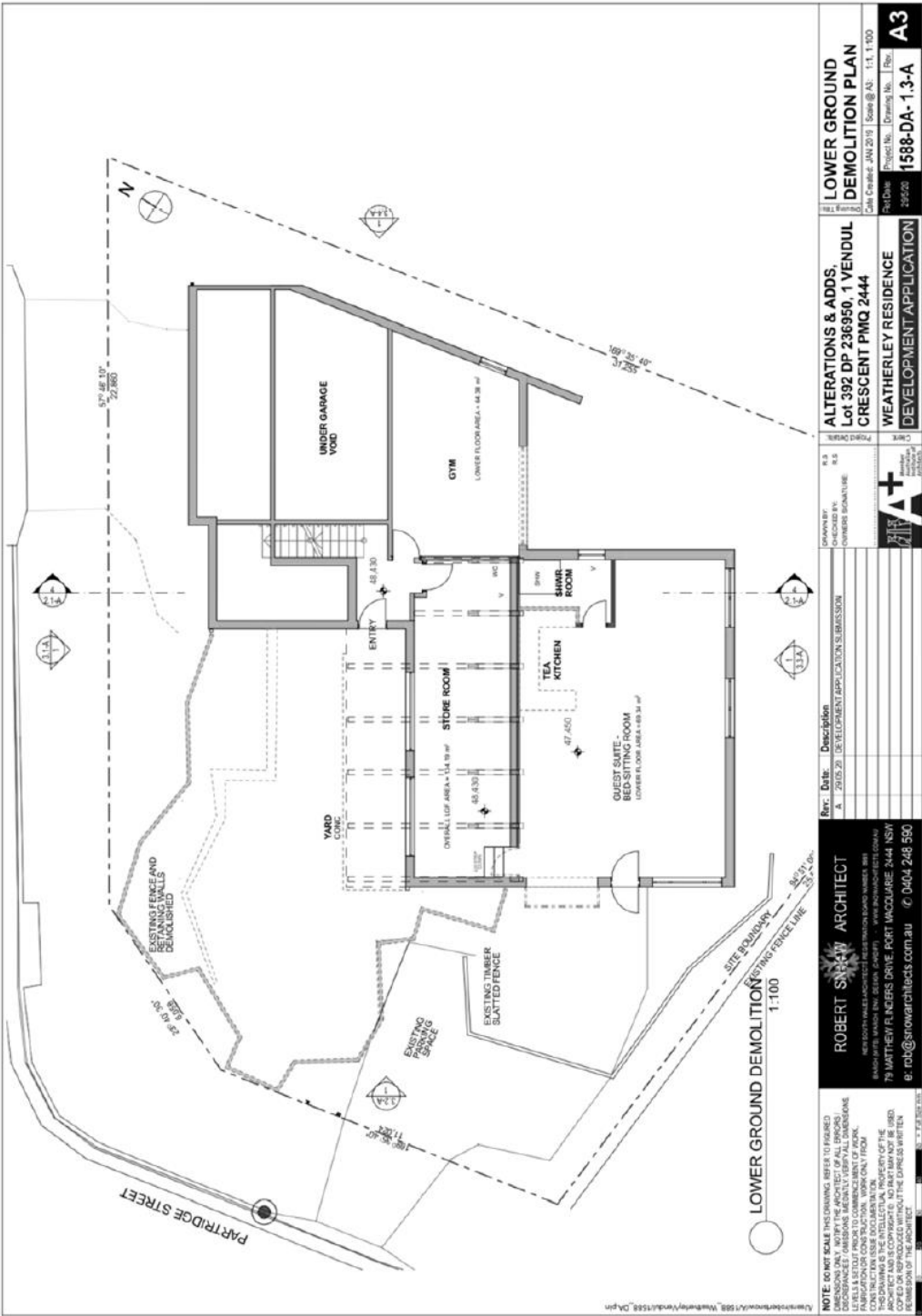
A3

[illegible]

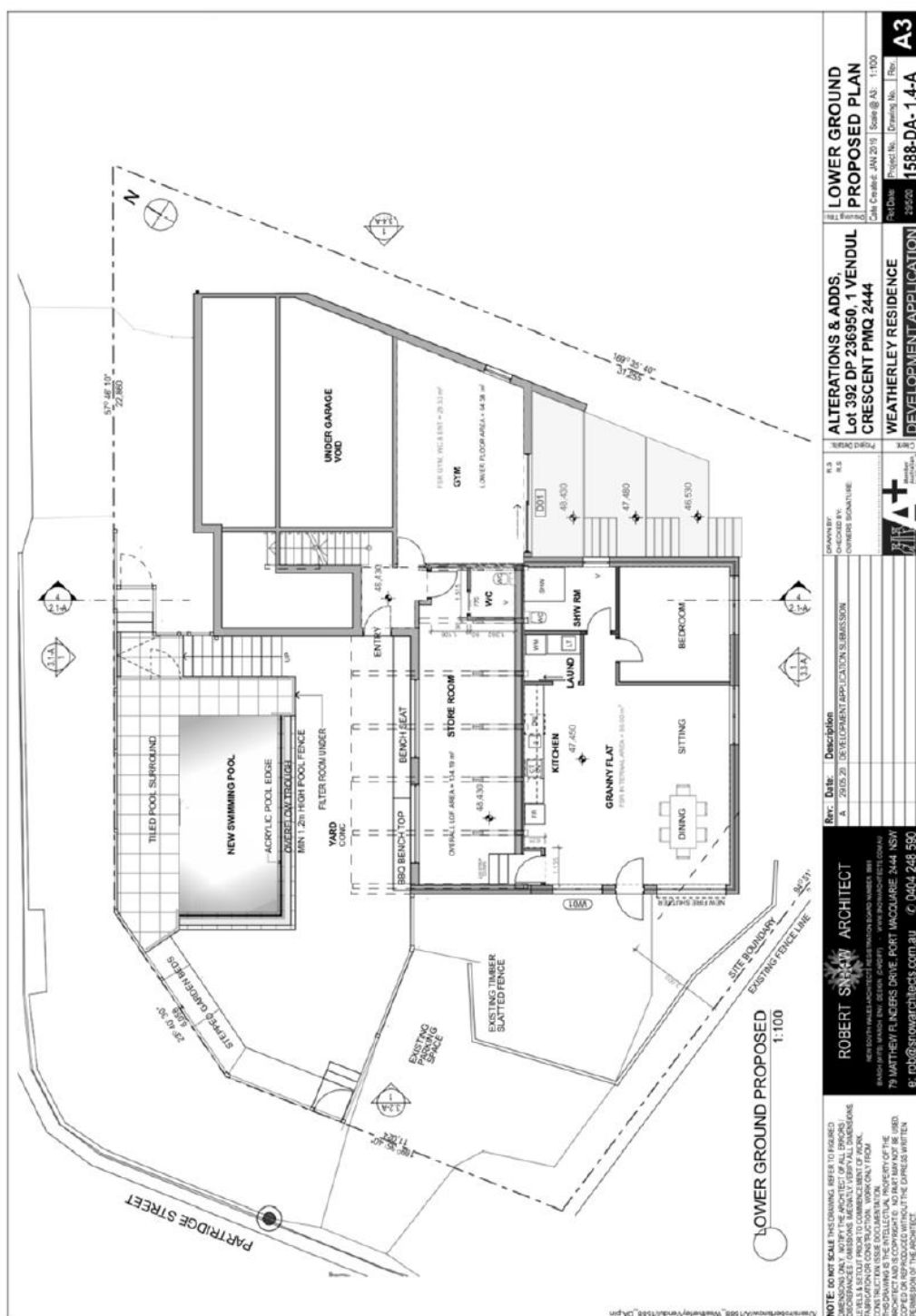


ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020



Item 08
Attachment 2
Page 156

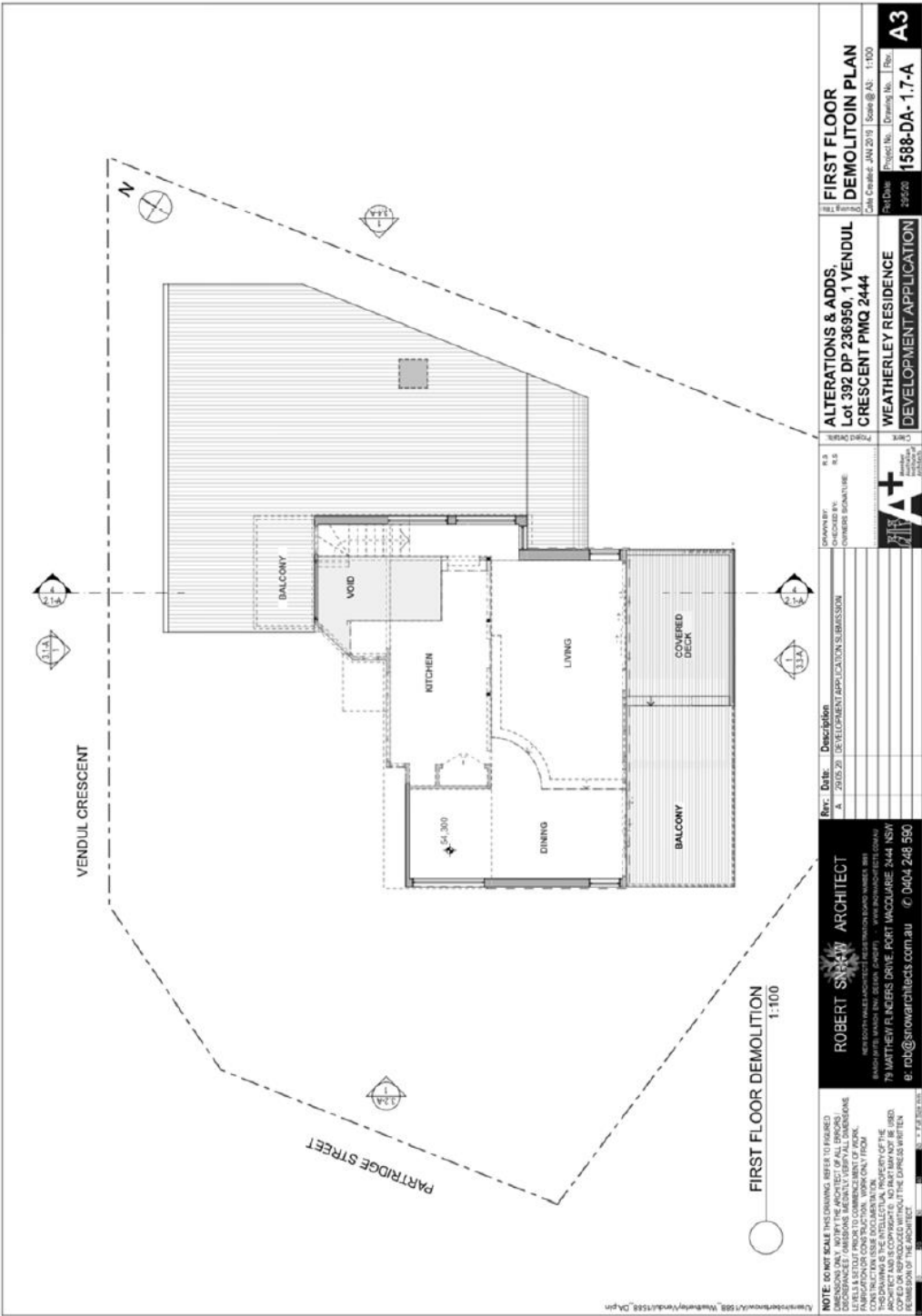




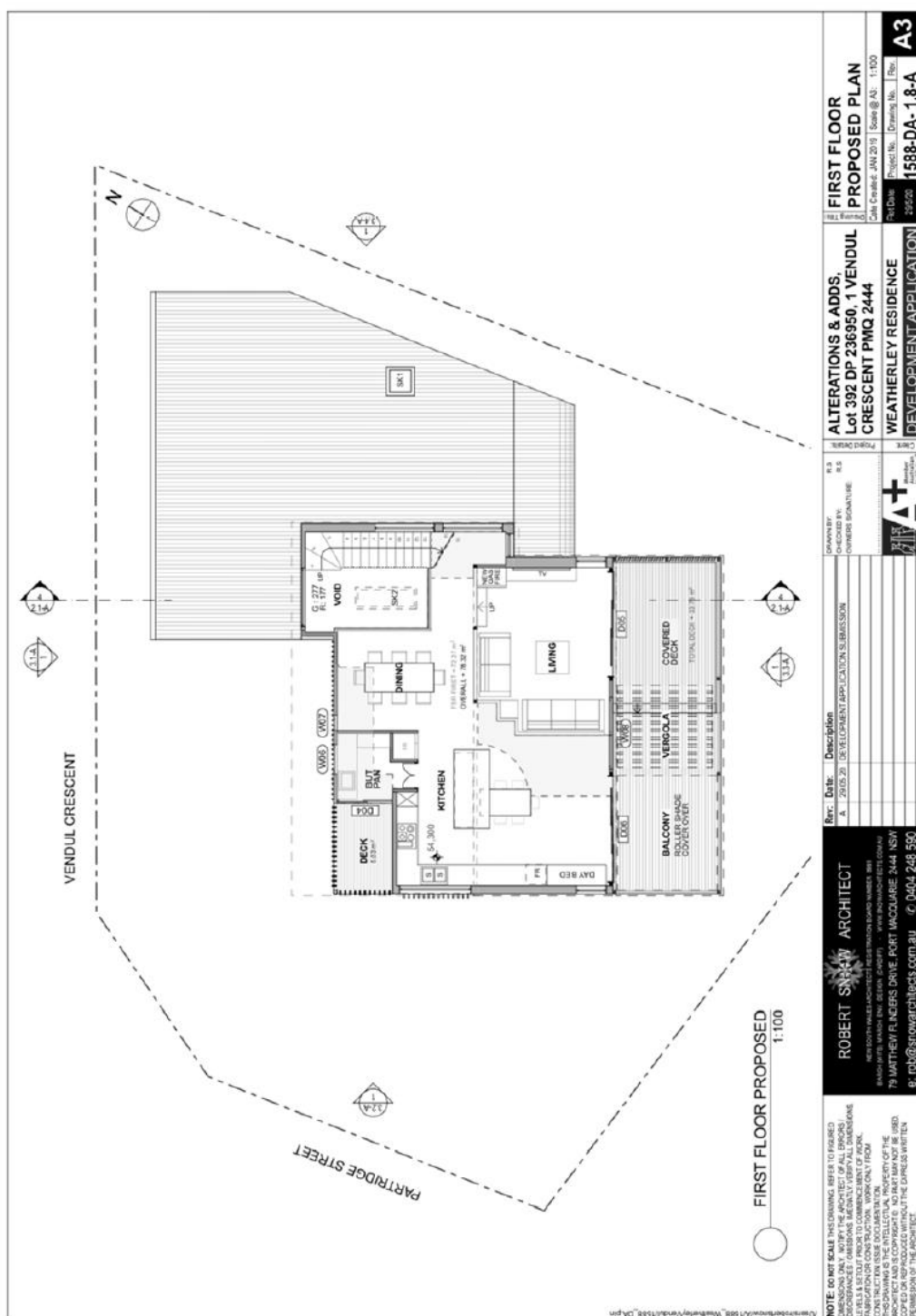


ATTACHMENT

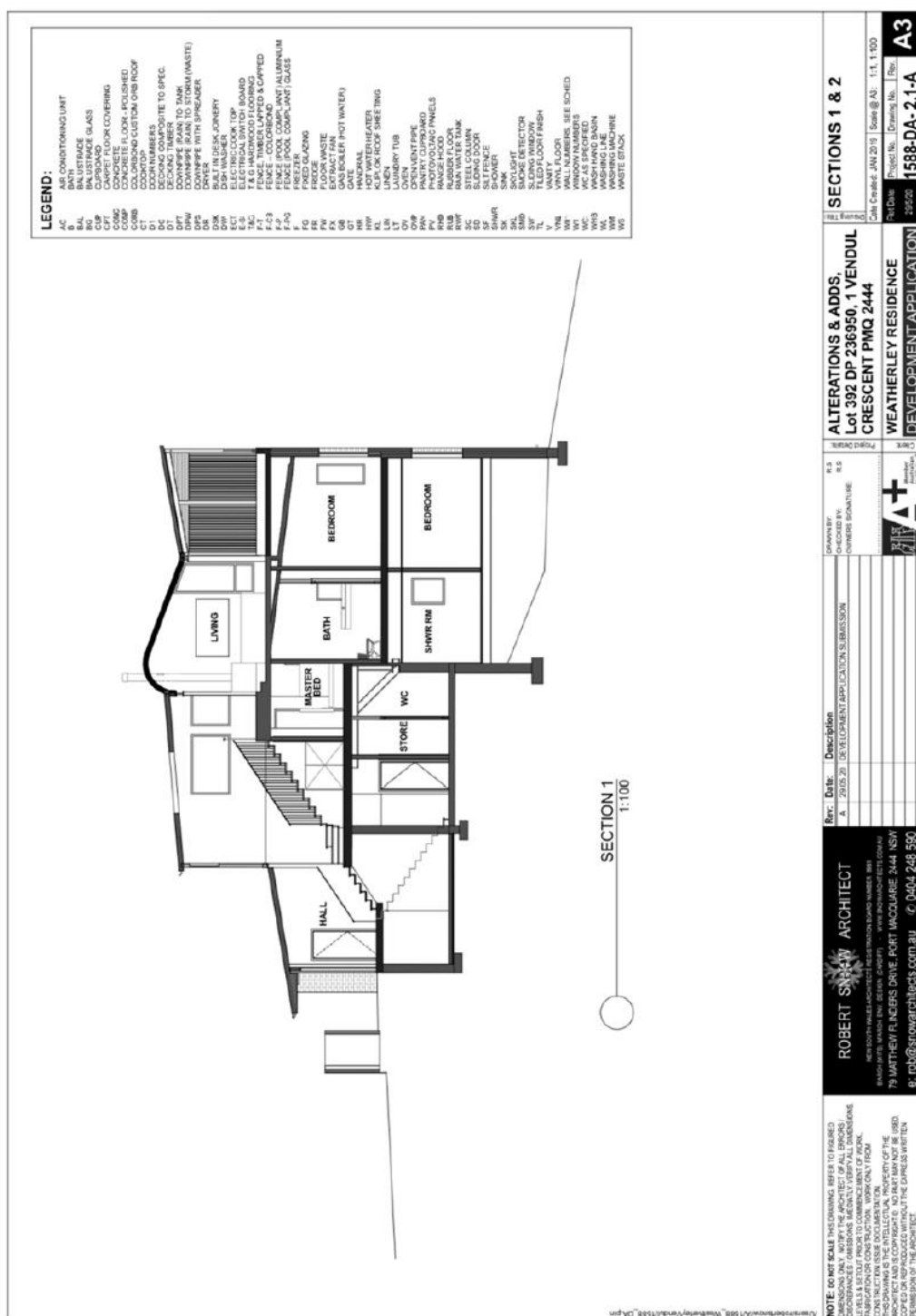
DEVELOPMENT ASSESSMENT PANEL
14/10/2020

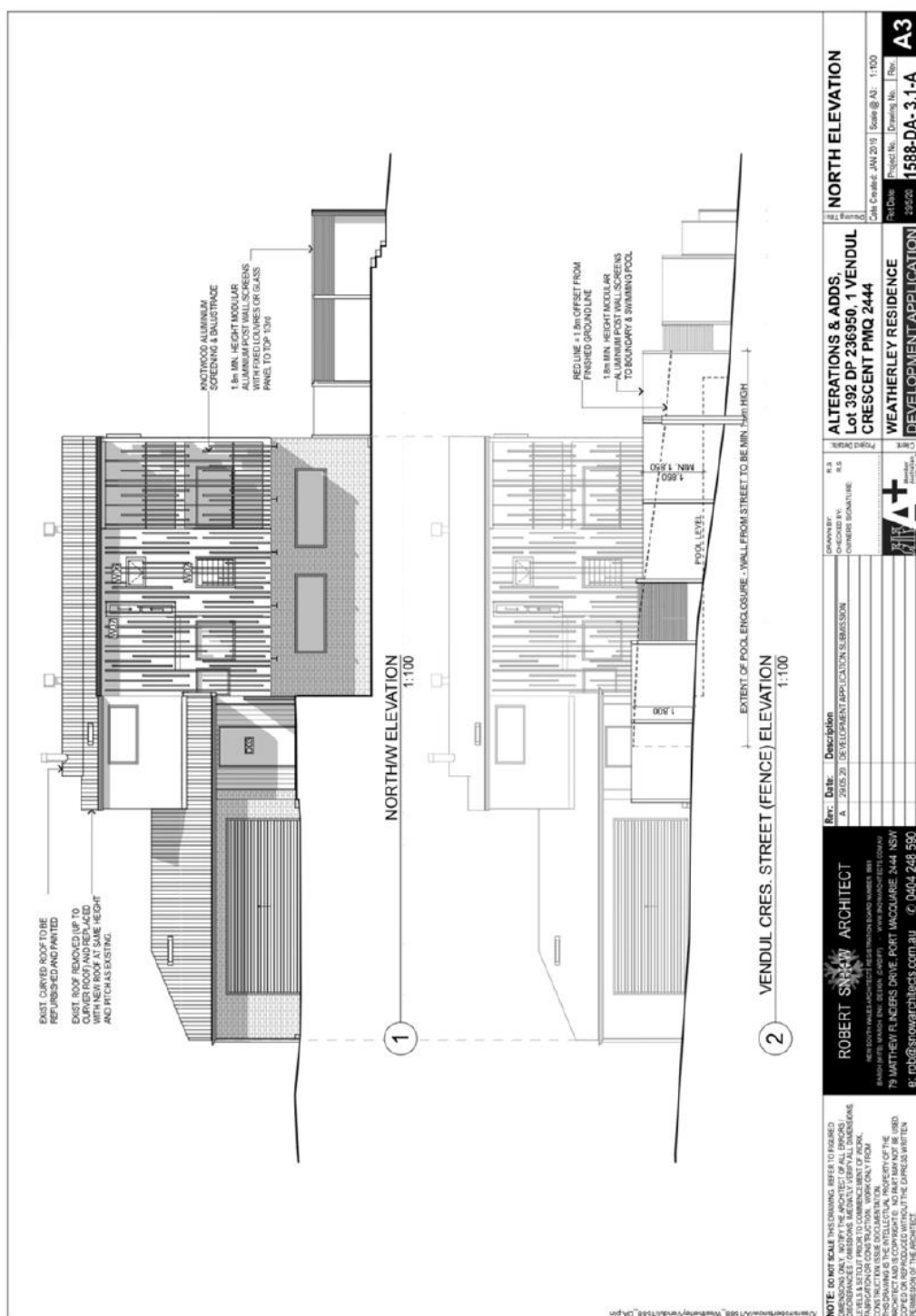


Item 08
Attachment 2
Page 160

















[illegible]

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

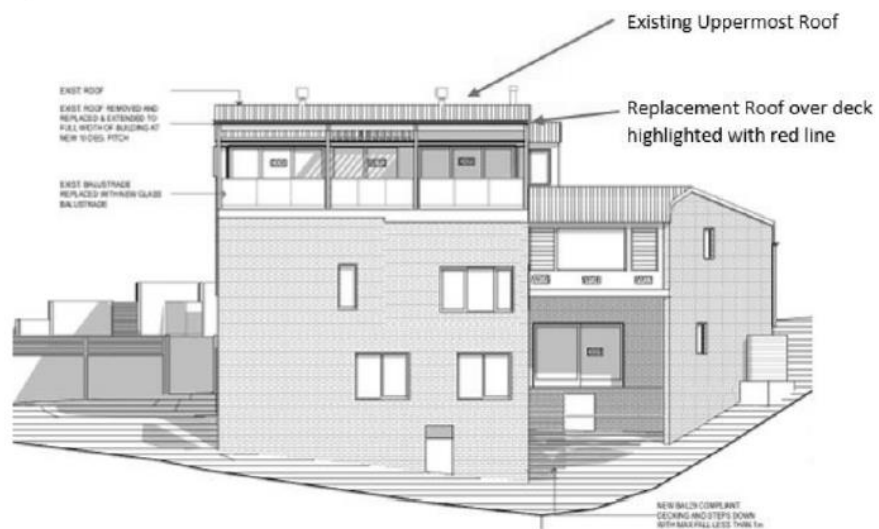
Vendul Crescent, Port Macquarie 24

6. Appendix One – Clause 4.6 Assessment

6.1 Description of the Proposal

The proposal includes a variation to a development standard, being the height of building. The existing dwelling is already above the 8.5m height. The proposal involves alterations and additions to the existing dwelling. The additions include the removal and replacement of an existing roof over a deck area at the front of the building. As this roof will be at the same height as the existing roof, the impact of this alteration is assessed in this report. However, the primary focus of this assessment will be roof over the existing rear deck, as the proposal includes both the removal of the existing roof, and the replacement with additional roof structure. This rear deck roof will sit lower than the existing uppermost roof area of the dwelling. The following extract from the plan set shows this rear roof in question:

Figure 13: Plan Extract - South-East Elevation



LPM May 2020



Item 08
Attachment 3
Page 170

Item 13.08
Attachment 2
Page 51

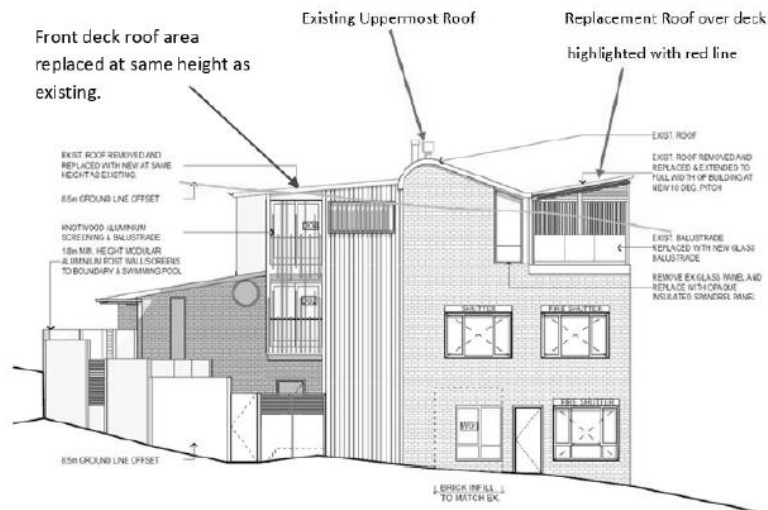
ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 25

The South-Eastern Elevation demonstrates that the existing uppermost roof is higher than the proposed replacement roof over the existing rear deck. This is also evident in the following plan extract:

Figure 14: Plan Extract - North-West Elevation



The north-western elevation shows the view from Partridge Street. There is an existing roof over part of the rear deck area. The proposal will remove this roof and replace it with a pitched roof which provides various levels of weather covering for the full length of the deck area. This rear deck is located directly off the living rooms and the proposal will improve the weather protection over this area.

LPM May 2020



Item 08
Attachment 3
Page 171

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 26

The proposed replacement roof is partially roller shade cover, partially a vergola and an area of covered roof. This is shown on the following plan extract. It is noted that the covered roof generally correlates to the existing covered area of the deck, whilst the roller shade and part of the vergola section generally correlates to the existing open area of the deck.

Figure 15: Plan View of the variety of roof coverings proposed for the existing deck



The following shows this variety of roof coverings in an indicative view. This demonstrates that whilst the existing roof will be removed and replaced with a full covered area, the deck roof area will remain a fairly open structure.

Figure 16: Indicative View



LPM May 2020



ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 27

6.2 Assessment of the Proposal

The overall development application is for the alterations and additions to an existing dwelling. A large area of the existing dwelling exceeds the 8.5m height of building development standard. The existing areas of the dwelling which exceed this height, and which are not being altered under the provisions of this application, have not been assessed in this matter, other than considering these areas as part of the overall context of the proposal. Thus, the focus is on the roof area of the existing rear deck, as this is the part of the dwelling above the 8.5m level which is being added to.

Thus, the following is an assessment of the proposal in accordance with the existing legislation.

The consent authority is able to consider a variation to a development standard under the provisions of clause 4.6 of the Port Macquarie – Hastings LEP 2011.

Clause 4.6 is as follows:

4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows—*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless—*

- (a) the consent authority is satisfied that—*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

(5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*

LPM May 2020



Item 08
Attachment 3
Page 173

Item 13.08
Attachment 2
Page 54

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 28

- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note. When this Plan was made, it did not include Zone RU4.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (ca) clause 6.1, 6.2 or 6.3.

The provisions of sub clause 4.6(6) and subclause 4.6(7) are not of particular relevance to this assessment. In regards to the provisions of subclause 4.6(8), it is noted that clause 5.4 of the LEP includes provisions relating to secondary dwellings. This proposal complies with these provisions and no further consideration of that item is included in this assessment. The subject land is not within an urban release area and thus the provisions of LEP clauses 6.1, 6.2 and 6.3 do not apply to this matter.

Therefore, only the provisions of subclause 4.6(3), subclause 4.6(4) and subclause 4.6(5) remain to be considered and discussed in this assessment. As part of this assessment, the guidance provided by the NSW Land & Environment Court determinations has been considered, with particular reference to the following court matters:

- Wehbe v Pittwater Council (2007) NSW LEC 827 (Wehbe);
- Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009;
- Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) NSWCA 245; and
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

The Wehbe five methods have been developed to test whether compliance with a development standard is unreasonable or unnecessary, and are set out as follows:

1. The objectives of the standard are achieved notwithstanding the non-compliance with the numerical standard and therefore compliance is unnecessary.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

LPM May 2020



ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 29

3. The underlying object or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting a consent to proposals departing from the standard and hence compliance is unreasonable and unnecessary.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land.

The first Wehbe matter is considered and assessed later in this report.

Compliance being unreasonable or unnecessary

The position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

- The objectives of the development standard **are achieved notwithstanding** non-compliance with the standard
- the underlying objective or purpose is **not relevant** to the development
- The underlying objective or purpose **would be thwarted** if compliance with the standard was required
- The development standard has been **virtually abandoned or destroyed** by the Council's decisions in granting development consents that depart from the standard
- The **Zoning of the land** is unreasonable or inappropriate (though this limb is limited)
- Some other way.

In the case of this proposal, the development standard being varied is the height of buildings. The objectives of this clause are as follows:

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to minimise the adverse impact of development on heritage conservation areas and heritage items,
- (d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.

The replacement of a roof area over the existing deck at the front of the dwelling, and a minor extension of a roof area over the existing rear deck area will be above the 8.5m height of buildings standard. The existing dwelling exceeds the height of building standard. In reviewing whether this exceedance was similar to other dwellings in the locality, a quick

LPM May 2020



Item 08
Attachment 3
Page 175

Item 13.08
Attachment 2
Page 56

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 30

review noted recent approvals in this locality which exceeded the height of building limit. A summary of some relevant approvals is provided as follows:

DA 2018-649.1: 14 Vendul Crescent, PM

Existing building – 12.79m, plus additions to extend existing roof area with a height of 10.965m.

CC2015-157.2: 3 Patridge Street, PM

Amendment to existing CC. Approved roof height of 8.86m. Minor changes to façade still result in exceedance of height of building.

DA 2017-342.1: 14 Coastlands Place, PM. Roof height of 9.3m approved. Noted to be similar to existing dwelling at 16 Coastlands Place, PM with a roof height of 9.34m.

DA 2017-437.1: 32 Bourne St, PM. New dwelling. Roof height of 9.35m approved.

DA 2018-1041.1: 23 Bourne St, PM. Alterations and additions to existing dwelling. 9.35m height approved.

DA 2018-361.1: 29 Vendul Crescent, PM. Additions to create new deck area. Height of building standard exceeded by existing dwelling.

The above examples of recent height exceedances in this area, demonstrates the character of the locality. There are numerous examples of dwellings constructed over several levels in this area, which occurs due to the slope of the land, and the need for the dwellings to have vehicular access at street level. The above examples also show that new dwellings are being constructed which exceed the height of building standard. In this manner, it is considered that this proposal is consistent with objective (a) such that the dwelling is compatible with the height, bulk and scale of the existing and desired future character of the locality.

With regard to objection (b), being to *minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development*, it is noted that the new roof over the rear deck area is located at the rear of the dwelling. The roof over the rear deck will not alter the shadow impacts on adjoining properties, and it is particularly noted that the area of the roof which will be covered is not significantly increased by this proposal. The rear deck is an existing structure on the dwelling and the roof will not alter any impacts on privacy of adjoining properties. The roof over the front deck is simply being replaced for maintenance purposes and the visual impact will be unaltered. It is noted that the front deck looks directly into a wall of native vegetation on the other side of Vendul Crescent and does not create any privacy or overshadowing impacts.

When examining view impacts, it was difficult to identify a dwelling which would potentially be adversely impacted by the additional roof area over the rear deck. The roof over this deck is located at the rear of the dwelling, and the nearest adjoining dwelling is located significantly downslope of the property. The views from adjoining dwellings were examined, with particular assistance being obtained from real estate listings which showed photos of the views obtained from adjoining properties. Invariably, the views in this locality are directly easterly towards the ocean, as well as some properties achieving views south towards the North Brother mountain area.

LPM May 2020



Item 08
Attachment 3
Page 176

Item 13.08
Attachment 2
Page 57

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 31

The roof over the rear deck is not located in an area on the property where it could possibly obstruct views from uphill neighbours towards the horizon, as the existing curved roof is higher than the new deck roof, and therefore the curved roof remains the limiting factor in this regard – and that is unchanged. In terms of views towards North Brother, it is considered that the adjoining neighbour in Vendul Crescent would still achieve a view to the south without being adversely impacted by the proposed roof area. This is based on the orientation of the existing deck areas of the neighbouring property, and the angle of view towards the southern coastal areas.

The replacement of the roof over the front deck will not impact on view lines.

Therefore, the proposal is considered to be consistent with objective (b) such that the roof over both the front and rear decks will not result in a significant visual impact, nor significantly disrupt existing views, alter privacy impacts or overshadow adjoining properties.

With regard to objective (c), there are no heritage items that could be impacted by the proposed roof areas. Objective (d) refers to the heights as they have been nominated in the LEP to provide a transition in built form. Residential areas have a standard height of 8.5m. This development standard was introduced some time after this dwelling was constructed, and the height of the existing dwelling is consistent with the height of buildings in this locality.

Therefore, it is considered that the proposal has achieved the objectives of clause 4.3 of the LEP despite the height variation. In this manner, it has been demonstrated that compliance with the development standard is unreasonable and unnecessary.

Sufficient environmental planning grounds

In demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard, the grounds must be:

- “environmental planning grounds” by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* (NSW) (including section 1.3 of the EPA Act); and
- Be “sufficient” in that they are adequate to:
 - **Justify** contravening the development standard, not simply promote the benefits of the development. The focus should be the element of the development that contravenes the development standard, not on the development as a whole.
 - **Demonstrate** that there are sufficient environmental planning grounds to justify contravention so that the Council can be satisfied that the written request has adequately addressed the matter.

LPM May 2020



Item 08
Attachment 3
Page 177

Item 13.08
Attachment 2
Page 58

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 32

The objects of the Act (section 1.3 of the EPA Act) are as follows:

1.3 Objects of Act

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

This proposal will not impact on the environment of threatened species, including ecological communities. The proposal will not adversely impact on areas of built or cultural heritage, including Aboriginal cultural heritage. The proposal will not impact on the responsibility of sharing planning responsibilities across all levels of government, nor will the proposal impact on the opportunity for community participation in planning matters.

In regards to the objects of the Act that are of relevance to this matter, it is particularly pertinent to note that the proposed roof over the rear deck provides improved opportunity for the residents to seek shade whilst enjoying the use of an outdoor deck. The high incidence of skin cancer in Australia makes the provision of shaded areas an important component of built form and a factor which will contribute to the improved well being of our community. A reduction in the incidence of skin cancers would be a valuable outcome and an overall improvement in the welfare of the community. The roof over the front deck maintains this shaded outdoor area.

It is noted that even without the roof over the both the front and rear deck areas, there would remain a number of other sections of the existing dwelling which currently exceed the height of building standard. Both roof areas in question will be partially screened by these existing, more elevated areas of the dwelling. The rear deck roof will not adversely impact on the adjoining neighbours in regards to privacy or overshadowing, and does not appear to have any adverse impact on view sharing. The replacement and upgrade of the deck roof areas is part of an overall, architectural upgrade of the dwelling. In this manner, the design is considered to promote good design and amenity of the built environment.

LPM May 2020



ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 33

Thus, it is considered that the proposal is a replacement, and a very minor additional roof area, is consistent with the existing character of the locality, is an improved design in regards to function and use of the outdoor living area, will not adversely impact on adjoining properties, improves the overall architectural design of the building, and promotes sunsafe use of outdoor areas. For these reasons, it is considered the proposal is consistent with the environmental planning grounds noted above and the variation is justified.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest **because it is consistent** with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

This assessment has already considered the objectives of clause 4.3 – Height of Buildings in the main body of this Statement of Environmental Effects. This proposal has been shown to be consistent with these objectives.

The objectives of the R1 – General Residential zone area 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.*

The overall proposal has been assessed in regards to these zone objectives. In terms of this clause 4.6 assessment, it is noted that the last two dot points of the zone objectives are not applicable and are not considered any further. In regards to the first dot point, it is noted that any roof over the existing decks in question, can only be achieved by a structure which will exceed the 8.5m height standard. A roof over the deck areas is important for the enjoyment and use of the residents of the dwelling and will contribute to their welfare by providing a level of solar protection when required. This is consistent with the intent of the zone objective to provide for the housing needs of the community.

Thus, it is considered that the proposal is consistent with objectives of both the development standard which is being varied, and the objectives of the relevant landuse zone.

Has the concurrence of the Secretary has been obtained?

The Secretary for Planning, under clause 64 of the *Environmental Planning and Assessment Regulation 2000* (NSW), has given written notice to consent authority that the Secretary's concurrence is to be assumed for exceptions to development standards requested under clause 4.6 (except for those excluded by Planning Circular PS 18-003 issued 21 February 2018). Concurrence can also be assumed by local or regional planning panels determining

LPM May 2020



Item 08
Attachment 3
Page 179

Item 13.08
Attachment 2
Page 60

ATTACHMENT

DEVELOPMENT ASSESSMENT PANEL
14/10/2020

Vendul Crescent, Port Macquarie 34

requests for departure from a development standard, unless excluded (Planning Circular PS 18-003).

For the purposes of this matter, the Council staff will refer the matter to the Development Assessment Panel for consideration as the variation exceeds 10%.

6.3 Conclusion

The provisions of clause 4.6, and the relevant court determinations, have set out a long list of matters to be considered when a consent authority assesses any proposal to vary a development standard. The above assessment has considered all of the relevant matters and assessed the proposal as required.

It is noted that there are a number of areas of the existing roof and parts of the dwelling which exceed the height of building standard. The proposed roof extension over the rear deck is minor, and retains open areas. The opportunity for residents to utilise shaded areas of the outdoor deck areas will have a positive outcome for the use of these areas and the long term health of the residents. The proposed alterations and additions to the dwelling will result in an improvement to the architectural design of the dwelling and the visual variation to the built form minimises the visual bulk of the dwelling. The dwelling is consistent with a number of existing and new dwellings in this locality, and reflects the steep topography in this area.

The proposal has been shown to be consistent with the zoning and clause 4.3 objectives and the public benefit of the development standard is not lost or eroded by this proposal.

For these reasons, the variation to the development standard, height of buildings, is considered acceptable in these circumstances.

LPM May 2020



Item 08
Attachment 3
Page 180

Item 13.08
Attachment 2
Page 61